

MINUTES OF THE
EAST BRUNSWICK TOWNSHIP
BOARD OF ADJUSTMENT

March 16, 2023

STATEMENT - Open Public Meetings Act

FLAG SALUTE

ROLL CALL -

PRESENT:

Steve Philips, Chairman
Christine Rampolla
Amy Papi
Ivan Wynter
Deepak Arora
Leon Gurevich
Steve Pepe
Chester Brandt
Drew Weingarth

ABSENT:

Cathy Decker
Bonnie Wilson
Miley Weiner, Student Rep.

ALSO PRESENT:

Jay Weiner, Esquire
Aaron Blessing - Zoning Assistant
K. Hughes - Planner
Joseph Kong - Engineer
Keith Kipp - Director of Planning and Engineering

OLD BUSINESS

Application #Z-22-22 - Red Oak Developers - Proposed four-lot subdivision located at 149 Joseph Street, block 111, lots 21-27 and 50-56, in the R-4 zone. Mandatory date March 29, 2023. Motion to approve by Mr. Wynter, second by Mr. Pepe. Application approved with conditions.

Application #Z-22-01 - American Brothers Realty - Proposed retail and self-storage building located at 1069 State Route 18, block 175, lot 6.28, in the HC-2 zone. Mandatory date April 1, 2023. Continued to April 20, 2023. Mandatory date extended to April 30, 2023.

ADJOURNMENT

Motion to adjourn by Mr. Pepe, second by Mr. Arora.
Meeting adjourned at 9:57 p.m.

THE CHAIRMAN: This is the March 16, 2023, East Brunswick Township Zoning Board of Adjustment meeting. In accordance with the Open Public Meeting Law, on December 15, 2022, notice of this meeting stating the time, date, and location was sent to the Home News Tribune, filed with the township clerk, and posted on the bulletin board in the lobby of the municipal building. A copy of this notice will be incorporated in the minutes of this meeting.

The zoning board will not hear any case beyond 10 p.m. with the exception of any hearing in progress at that time and will terminate all testimony at 10:30 p.m.

The chair reserves the right to call any application in an order different from that appearing on the agenda.

No smoking is permitted at public meetings of the zoning board of adjustment in accordance with township ordinance number 78-3. Should we sunset that, Keith? I don't think there's anybody that wanted to smoke in the courtroom in 30 years. Anyway, okay.

MR. WEINER: Better safe than sorry.

THE CHAIRMAN: Yeah.

MR. WEINER: You never told us.

THE CHAIRMAN: The doors outside the courtroom are the exits to be used in case of an emergency.

If we could rise for the pledge of allegiance.

(Flag salute)

THE CHAIRMAN: Okay. Aaron, if you could please call the roll.

MR. BLESSING: Student representative Miley Weiner. Mr. Weingarth.

MR. WEINGARTH: Here.

MR. BLESSING: Miss Wilson. Miss Decker. Mr. Brandt.

MR. BRANDT: Here.

MR. BLESSING: Mr. Pepe.

MR. PEPE: Here.

MR. BLESSING: Mr. Gurevich.

MR. GUREVICH: Here.

MR. BLESSING: Mr. Arora.

MR. ARORA: Here.

MR. BLESSING: Mr. Wynter.

MR. WYNTER: Present.

MR. BLESSING: Miss Papi.

MS. PAPI: Here.

MR. BLESSING: Miss Rampolla.

MS. RAMPOLLA: Here.

MR. BLESSING: Chairman Philips.

THE CHAIRMAN: Here.

Okay, we do not have any resolutions or anything tonight, so we go into old business, and at this point I'm going to call application Z-22-22, Red Oak Developers. So if you could, Mr. Roselli, please take a seat up front. And reaffirming we do have jurisdiction on this application?

MR. WEINER: Yes, this matter was previously carried, and jurisdiction continues.

THE CHAIRMAN: Okay.

MS. PAPI: Mr. Chairman, I'm going to recuse myself.

THE CHAIRMAN: Okay, that's fine. Thank you very much. And you'll be back.

MS. PAPI: Yup, I'll be back.

THE CHAIRMAN: For the fans in the audience, Amy is not leaving; she's only going to be resting for a while.

Okay, Mr. Roselli. Oh, you need another chair for him? He likes to stand.

UNKNOWN SPEAKER: I can move.

THE CHAIRMAN: It's not that. I don't think there's another chair there.

UNKNOWN SPEAKER: I'll just go over here for now. I'm not the court reporter for them.

THE CHAIRMAN: See that, she sacrificed her chair for you. Did you give her a polite thank you.

MR. WEINER: That's what we were thinking, Marc.

THE CHAIRMAN: All right. So, Mr. Roselli.

MR. ROSELLI: Good evening, ladies and gentlemen. My name is Thomas Roselli. I'm the attorney for Red Oak Developers. This is an application for a four-lot subdivision located at 149 Joseph Street. We are asking for three variances: density, lot area, and lot frontage where one of our lots is an existing lot. We have

one witness tonight, Marc Leber, our professional engineer and professional planner, and I would like to have him sworn in if I may.

THE CHAIRMAN: Certainly. Mr. Leber, you know the rules. Do you solemnly swear the testimony you're about to give this evening regarding the application before us is the truth, the whole truth, and nothing but the truth, so help you God?

MR. LEBER: Yes, I do.

THE CHAIRMAN: Okay. Even though we probably remember your CV, could you just please put it on the record.

MR. LEBER: Yes. Good evening once again. Still class of '94. Graduated with a Bachelor of Science degree from Drexel University, 1999. Following school, I went back and completed the MBA program at Rutgers Graduate School, and I was licensed in 2003 as a professional engineer, 2005 as a planner, and in 2006 I completed the Certified Municipal Engineering certificate program. Since then, I have worked on both the public and private side of the business and --

THE CHAIRMAN: And both your licenses are current?

MR. LEBER: Yes, they are.

THE CHAIRMAN: Okay.

MR. ARORA: Would like to take Mr. Leber as an expert.

THE CHAIRMAN: All in favor? Hearing no one opposed, thank you. I guess, Marc, you passed the bar again.

MR. LEBER: And thank you again. It's always a pleasure to be back.

MR. WEINER: Mr. Leber, are you being proffered for engineering, for planning, for both?

MR. LEBER: Both tonight.

THE CHAIRMAN: Okay. Before we go any further, it says here on collection of revenue, third and fourth quarter delinquent. Can you give us any update on that.

MR. ROSELLI: Yes. I believe --

MR. WEINER: Mr. Blessing can actually address that.

MR. BLESSING: Pardon me, Chairman Philips. Yes, we have actually received a memo from our Department of Revenue, and those delinquencies have been paid.

THE CHAIRMAN: Okay, so we're not going to confiscate his wallet and stuff?

MR. BLESSING: Correct, hopefully.

THE CHAIRMAN: Okay. Good.

MR. ROSELLI: Thank you.

Mr. Leber, in preparing these plans, did you have an opportunity to visit the site?

MR. LEBER: Yes.

MR. ROSELLI: And you're familiar with the request of the developer?

MR. LEBER: I am.

MR. ROSELLI: Please give an overview of the proposed application to the board.

MR. LEBER: Certainly. And I have two exhibits I want to pass around. One is some photos taken today, and the other one is just a coloring of the subdivision plan. I'm going to mark these.

MR. WEINER: Which are you going to mark as which, Mr. Leber?

MR. LEBER: I guess A-1 would be photos. It's three pages.

MR. WEINER: Photos, three pages of the site?

MR. LEBER: The first page is actually an aerial photo, but the two pages afterwards are taken of the property today.

MR. WEINER: Okay, so three pages, first page aerial, second and third pages --

MR. LEBER: Photos taken on today's date.

MR. WEINER: -- of the site on this date, on 3-16-23. And then A-2?

MR. LEBER: Is a coloring of sheet 3 of the plans.

MR. WEINER: Colored rendering of sheet 3 -- I'm sorry?

MR. LEBER: That's correct, sheet 3.

MR. WEINER: Rendering of sheet 3 of plans.

THE CHAIRMAN: Mr. Leber, I think they're all distributed.

MR. LEBER: Okay, excellent. So just a little background. This is block 111. It's comprised of lots 21 through 27 as well as lots 50 through 56. This is actually known as a through lot, and a through lot is a lot that has frontage on two streets but is not on a corner. So in this case we have 175 feet of frontage on Prigmore Street, but we also have a 175 feet of frontage on Joseph Street. So the total area here is .8 acres, and the part of the property on Joseph Street to the south contains an existing single-family dwelling, and the

rest of the property is vacant.

Situated in the R-4 zone, which requires a minimum lot width of 75 feet, lot depth of 100 feet, but a minimum lot area of 10,000 square feet.

If you go to A-1, which are the photos, you'll notice on the front sheet that the property is outlined in red, and there's a little red pin on top of the existing house. Behind that house, there's some detached garage structures. Those would be removed, but the house is going to remain. And frankly, when you're driving down Joseph Street, this lot sort of looks like a missing tooth in a way where all the other lots around it are developed, and I had worked years ago on 150 Prigmore Street, and I always wondered why this property was vacant.

So if you go to the next page, these are photos taken today on Prigmore Street. The house that's immediately to the right, the beige with the white garage door, that is 150 Prigmore, and then on the left of the photo in the distance, you'll see the existing house that's on Joseph Street and the detached garage that's going to be removed, and the property that's on the left, that's what we're here to discuss tonight.

On the bottom, I just went a little further down the street really to the north to get a better photo of the vacant area that's there today. Again, I'm on Prigmore Street here. Now, if you go on the next page, I went over to Joseph Street. So the house you see there has just recently been renovated by the applicant, and that's to stay. So that remain on one of the lots. And to the right of that house similarly there's an open area, which is shown on the bottom photo, and that's where we would propose to build an additional dwelling.

So if you go to A-2, I have just colored up placement of three new houses on the property with the retention of the existing home. The lots would be divided such that each lot has 87.5 feet of frontage, hundred foot of depth, so all the lot areas are 8,750 square feet. Again, the zone requires 10,000 square feet, so each lot is somewhat undersized.

These houses that are shaded in red here were plotted based on the colonial style architectural plans that were filed with the application, and these models were selected specifically to blend in and match the neighborhood, and there are a couple of new houses that were built

across the street, and this style house is similar to those houses that are across Joseph Street.

As far as servicing these lots, we did do soil borings out there. The soils are actually very good with a deep water table, so we would be providing basements for these houses, and they will all be connected to the public water and public sewer. The only item I do want to point out is that Prigmore Street is presently under a moratorium that expires in 2026, so in order to install water and sewer, we would have to do full-width repaving in front of those two lots, which is acceptable.

There was also a comment in the review letter from the board engineer about the property not having any sidewalks on either street. If you go back to A-1 and you look across the property on Joseph Street, those three new houses that were built, they had to put in sidewalk, and we will put in sidewalk, as well. You know, we're trying to, you know, add to this neighborhood in the sense that if you look down past Arthur Street, those newer houses have put in sidewalk, as well, so eventually at some point, they'll all be connected. So that would go for both streets.

I just want to go to the T & M letter dated January 26. You know, part A and B is more or less some background on the project. Item C, you know, that's regarding utility connections, which we will repair the streets.

Sidewalks and curbs, we're going to provide the sidewalks. I'm up to page 3.

Traffic impact. The net increase on the street network is three dwellings. It's four lots, but one house is already there, so we estimate that to be about 30 additional trips per day. I don't think that's a significant amount of traffic in this neighborhood.

We are proposing that these houses all have two-car garages and driveways for two spaces, which under RSIS counts as 3.5 off-street spaces, which does meet the requirements for either a four- or a five-bedroom dwelling.

Under E3, we would provide a sight triangle as necessary. All the driveways will have depressed curb and concrete aprons, and item 5, the driveway detail, we will conform with the town ordinance.

Now, with regard to the drainage, we had noted on the plans that this is not a building permit plan; this is a plan for subdivision, so that

at the time of an application for a dwelling to be built, we would provide a system of dry wells to attenuate any increase in runoff because we are having additional impervious surfaces placed on the property. Now, it should be noted that we're not disturbing more than an acre. We're proposing over a quarter acre new impervious, so we're not technically a major development, but we are still going to provide stormwater management to ensure that there's no off-site runoff concerns.

The other comments that are in the report we agree to address. We will need a tree removal permit. There's a couple minor grading comments. That's fine. We'll add, you know, some street trees to the plan. As far as, you know, if the board were to approve this, we would file this by a subdivision map, which would be prepared by the land surveyor, and the map will show the final tax lot numbers as assigned by the township tax assessor.

Under I, miscellaneous, we agree, you know, any other agency permits that are required we'll absolutely obtain. And our -- if there's any easements necessary, which we don't have any easements at this point, but if there are easements, required, we'll comply with the ordinance for that.

There was a report from the zoning code official about a dumpster stored in the driveway, which you'll note is in the photograph that was provided tonight. There is a permit for that dumpster, and they are almost finished using that dumpster, so that's going to go away.

As far as the tree limbs that are down, that's supposed to be cleaned up. You'll see that in her pictures. You know, it looks like storm damage.

The report from I guess the construction official indicates that we should show the fire hydrants on the plans. That's not a problem. We actually have a hydrant right in front of the property on Prigmore Street, and then we have a hydrant across from the property on Joseph Street, so that's not a concern.

Traffic safety had no comments.

The taxes were paid. I have a copy of those receipts if you need.

And that brings me to the Department of Public Works memo, which we agree to comply with all the items in here, noting that part 1F specifically points out the roadway moratorium on Prigmore

Street, which we agree that the repair will not just be a trench repair, it will be a full-width pavement repair.

Are there any questions at that point.

THE CHAIRMAN: I have a couple.

MR. LEBER: Okay.

THE CHAIRMAN: Under solid waste recycling, maybe we can get a clarification. The collection for solid waste and recycling shall remain private? Does that mean --

MR. KIPP: That sounds like a typo to me.

THE CHAIRMAN: I mean, maybe while they're doing construction, the town is not obligated to take away any of the construction debris. I think that's fair.

MR. KIPP: Yeah, that's correct.

THE CHAIRMAN: But the homeowners will not have to get private.

MR. KIPP: Correct.

THE CHAIRMAN: Okay, so I don't know how we just asterisk that one. That's on page 3 of 3 of that solid waste recycling, the B item, Mr. Leber. So when you're doing the construction, should the board approve this, you would have to take care of all refuse on the site yourself.

MR. LEBER: Got it.

MR. ROSELLI: That's agreeable.

THE CHAIRMAN: Once the homes are built, then those people will join the Township of East Brunswick's collection system.

MR. LEBER: Okay.

THE CHAIRMAN: Next question I had, in your analysis of the area, did you happen to check out any of the other homes that were all on these 25-by-100 lots from 1930, whenever they originally did?

MR. LEBER: I did.

THE CHAIRMAN: And how many of them don't comply with the overlay of R-4?

MR. LEBER: So I have another exhibit for that, which is going to put me more into, like, the planning aspects of the application.

THE CHAIRMAN: I don't want to take away your planning.

MR. LEBER: All right.

THE CHAIRMAN: Anybody from the board have any specific questions about the site or going through the reports from the town?

MR. WEINER: Mr. Chairman, I have a note

for our engineer. When Mr. Leber testified regarding the drainage and stormwater management, he made some comments that were not exactly indicating compliance to your memorandum. I just want to make sure that we're okay with that. In particular, the dry wells were mentioned. If you can elaborate on that.

MR. KONG: Yes. As long as when the individual plot plans come in we will also review that at that time for any concerns of the grading, because we do have some right now, but during testimony, it was noted that these are not the final grades and grading plans that's going to be constructed. So we're okay with that.

I just want to elaborate on a couple more things. I think if you show the limit of disturbance on here as part of the plan, if you're going to go to Freehold Conservation District Soils --

MR. LEBER: Yes, we definitely will need a land disturbance.

MR. KONG: You will we need that anyway. Next round of revisions we would like to see that. And if you could also add a detail for the driveway material, whether it's concrete or bituminous, because right now it just says it's paved, but I don't see a detail stating what that would be, just as a clarification item. That's all I have.

MR. ROSELLI: Next time.

MR. LEBER: Okay.

MR. GUREVICH: I just had one very minor clarification. When you say removal of the garage, there's two garage structures over there, and you are referring to removing both of those structures.

MR. LEBER: Yes.

MR. GUREVICH: Because I didn't see that in the final plan.

MR. LEBER: Yes.

MR. GUREVICH: I think that's what I heard.

MR. LEBER: All right, I'm going to --

MR. KIPP: I have a couple questions. Sorry, Marc. All right, we discussed adding shade trees. Typically, what we do, instead of putting them between the curb and the sidewalk, we have a shade tree easement behind the sidewalk, so would like to do the same for these lots and plant the trees in the shade tree easement.

Also, just looking at proposed lot A, all three new structures are centered on the lots with 15.33 side setbacks except the one. Now, I'm

wondering if you did that to try and line up with an existing driveway or a curb cut or something because it really seems like I would want to center all of those. You know, why be closer to an existing dwelling than we have to.

MR. LEBER: I don't know right now. I know there is a depressed curb over there. In fact, it's probably in this photo from today. I'll look at that. If I can center it, I will.

MR. KIPP: Yeah, I mean, even if there is a depression there, Marc, I think it's simple enough to modify that to center the house. I mean, I think it's long term worth it.

MR. LEBER: Okay.

MR. WEINER: How would you want me to phrase that conditionally?

MR. KIPP: Well, the shade trees, and I would say --

MR. WEINER: Shade trees I have.

MR. KIPP: Okay.

MR. WEINER: I'm up to about the centering.

MR. KIPP: I would request that we have even side yard setbacks on all three proposed lots.

MR. WEINER: Even side yard setbacks on all three lots. Okay.

THE CHAIRMAN: Mr. Roselli, for the record, just so it's clear, there are no other pieces of property that are adjacent to this that can be purchased.

MR. ROSELLI: No, there are not. It's fully developed. There's nothing.

THE CHAIRMAN: So we don't have any opportunity for this to become in compliance through additional.

MR. ROSELLI: That is correct.

THE CHAIRMAN: Thank you.

MR. ROSELLI: This next item will be marked as A-3.

THE CHAIRMAN: A-3, and what is it?

MR. LEBER: So this is a copy of the tax map. It's sheet number 20.02, and it shows the lot in question with the surrounding lots.

MR. WEINER: Sheet number 20. --

MR. LEBER: -- 02.

MR. WEINER: -- 02.

MR. BLESSING: Pardon, Mr. Leber, you wouldn't happen to have these in a flash drive available, would you, these exhibits?

MR. LEBER: I do. I can -- you want me

to send it right now.

MR. BLESSING: Please, if you could.

MR. LEBER: Okay.

THE CHAIRMAN: While we're passing this out, Mr. Leber, can you identify the -- what you used as your code here. You have yellow. You have --

MR. LEBER: Sure. Orange is the property that we're discussing tonight, and basically I took a look at all the lots in this area that were used as residential purposes. And keep in mind that everything south of Prigmore Street between Prigmore and Route 18 is actually the HC-2 zone, but there are a number of residences that are single-family that are existing there. So I felt the need to include those because the width of these lots I thought was very important when I analyzed the neighborhood, and the R-4 zone has always fascinated me because whether it's in this part of town or up by West Ferris or down at the presidential streets, one of inconsistencies that I find that's a little unusual in the ordinance is it states a minimum lot width of 75 feet and lot depth of a hundred, but the minimum lot area is not 7,500, it's actually 10,000. So I always thought that was interesting because if you look at this map, everything that I colored in yellow represents a single-family dwelling that has a lot width of pretty much 50 feet or 55 feet. There's two lots that are at 70 feet, which means those are 7,000-square-foot lots, but if you add it up, just on this one sheet alone, there's 40 lots in this neighborhood that have frontage that's less than 7 -- 70 feet or less.

Just sending this over to Aaron if you don't mind.

THE CHAIRMAN: So technically, they would all not be in compliance, as well.

MR. LEBER: Yeah.

THE CHAIRMAN: They'd be pre-existing nonconforming.

MR. ROSELLI: Correct.

MR. LEBER: Okay. Let me just forward this. All right, I just sent it.

Now, the next thing I looked at is what about the lots that are actually meeting the 75-foot frontage but they're still undersized on area, and I shaded those in in gray. So I counted up that there's 14 lots that are exactly 75-by-100, and then there's a few of them that are like 87 feet wide but

not quite as wide as a hundred feet, and there's six of those. So again, there's 20 lots in this neighborhood that are not a hundred feet wide. And again, these are nonconforming. So really, the lots that are shaded or unshaded actually, the ones that are in white, are the only lots in this area that have the 10,000 square feet. But I also want to point out something a little, you know, maybe less known in the ordinance, which is that the lots that are on the corners of Arthur Street and Marietta Street are supposed to be 10 percent larger than an interior lot because the code requires that a corner lot have an extra 10 percent of lot area. So even though I didn't shade those in and there's seven of those lots, they don't comply, either, because they would have to be 11,000 square feet.

So the reason I did this is because in addressing the need for the density variance in addition to the lot area variance, I just wanted to make it clear that this type of pattern of subdivision development is not uncharacteristic with the area, and I don't think that there's really a big concern that the lot can't sustain four houses, because certainly there's much smaller lots in the area, and there's also larger lots. So I think that it just blends in fine.

The other thing -- and I'm just going to the Phillips Preiss letter of January 26 -- was -- so in addition, we have to discuss the C variance relief, which pertains to the lot area, itself. You know, again, these lots are 8,750 square feet where 10,000 is required, and frankly, when you look at this and try and weigh, you know, are there any detriments here, I just frankly don't see any detriments. Not only that, but this is almost imperceptible that somebody driving down either Prigmore Street or Joseph Street would even be aware to identify the fact that these lots are only 87.5 feet wide, not a hundred feet wide. But what would not be consistent with the neighborhood is if we kept this property and maybe just created two lots and each lot being, you know, 175 feet wide and constructing, you know, an enormous house on either lot. I think that would be a little unusual for the area, and I think that this fits in much better.

As I stated, like, when you drive down this street, this kind of looks like something's missing, so to say. It's a fully developed residential neighborhood here, and, you know, we selected these houses to fit in very well. I just

don't find any detriments. We're not introducing any nuisances into the community. It's a permitted use. So, you know, again, putting aside the anomalies in the ordinance as far as minimum lot area, I just think that this is very much in line and in character with the area that we're working in.

MR. GUREVICH: By the way, the dark lines over there represent the lots. I'm assuming in your section over here, it's kind of off kilter on one side. That match up with your final. You're planning to split it into equal squares.

MR. LEBER: Equal -- four equals, but --

MR. GUREVICH: So it's not 3 and 4. It's 3 and a half and 3 and a half on each side.

MR. LEBER: It is, and to just elaborate, the dark black lines were drawn to call out the fact that many people here that get taxed have two lots or three lots or four lots, but for the purposes of zoning, they're one lot. So I just emphasized what the limits of those lots are to show you that, you know, there's a variety of sizes here.

THE CHAIRMAN: This is a common grid for areas of the town that were developed prior to World War II even, and you have these situations where they had 25-by-100, how many lots do you want. That's the way those were marketed. The other thing is they're actually used to be a restaurant on the Prigmore side of the street, and it was --

MR. PEPE: Years ago.

THE CHAIRMAN: Wagon Wheel. They sold pizza.

MR. PEPE: Oh, my God.

MR. LEBER: That was owned by John Drum, maybe his brother.

THE CHAIRMAN: That was eventually taken away, you know, when it was demolished, which is the reason why this open lot exists.

MR. PEPE: The Wagon Wheel.

MR. LEBER: It's fascinating.

MR. PEPE: I forgot about that.

THE CHAIRMAN: But I'm not here to provide testimony; you are.

MR. LEBER: I wish I had a picture of it, but I don't.

THE CHAIRMAN: I'm sure somewhere in the archives of the town we probably have a picture of the old Wagon Wheel. Okay, I'm sorry.

MR. LEBER: You know, I just really wanted to just emphasize that I don't think that

this is out of character, you know. I think it fits in perfectly. You know, I understand, you know, the relief that's required, but again, I don't see any detriment. I don't think we're harming the intent of the zone plan or, you know, creating any kind of a public nuisance. I think in reality what it comes down to is three new neighbors in the neighborhood, you know, want to live and take advantage of everything that's available in East Brunswick, and I hope you'll agree.

THE CHAIRMAN: I still have a couple more questions, Mr. Leber. In the past few months, we have had a few applicants come in who presented a plan not entirely dissimilar to this, and they also had a fifth bedroom that created a little bit of an issue with regard to parking and a fifth bedroom and so forth, and what they agreed to do was not make that a bedroom, make it like an office.

MR. LEBER: Okay.

THE CHAIRMAN: And by doing that, it, number 1, took pressure off of the parking requirement, and number 2, eliminated the chance for somebody -- since the way it's set up, Marc, the -- you could literally have that be almost a private home. They got their own bathroom, they've got their own bedroom, and it's walled off from the rest of the house. Do you see what I'm talking about?

MR. LEBER: I do.

THE CHAIRMAN: Behind the garage.

MR. LEBER: Yup.

THE CHAIRMAN: Okay, so the suggestion has been that that become an office and not be a bedroom.

MR. LEBER: Okay, I -- the client agrees to that.

MR. WEINER: And to clarify and to keep it consistent with the ordinance -- and I'll let our professional staff jump in, as well -- is we would need to with that condition remove any closets from the room.

MR. LEBER: Understood.

MR. WEINER: So this way that is more consistent with it not being used for a dwelling purpose within the room of a bedroom. So that's agreeable?

MR. ROSELLI: That's agreeable.

MR. WEINER: So we're going to put room behind garage in all -- this is in all three structures, right, Mr. Chairman?

THE CHAIRMAN: Yes. Obviously, the

existing home won't change.

MR. WEINER: In all three new structures shall be -- shall not be used as a bedroom and shall have no closets.

THE CHAIRMAN: Mr. Leber, what else do you have?

MR. LEBER: That's all I have tonight.

THE CHAIRMAN: No songs, no dancing?

MR. LEBER: I didn't warm up my singing voice.

MR. GUREVICH: If I can just ask one quick question. The driveway is the existing driveway. There's no plans to after the demolition of the two garages over there for the existing dwelling?

MR. LEBER: It was cut back or it's going to be cut back. So it doesn't go beyond that lot line that will be new.

MR. GUREVICH: So question in terms of right now it looks like the plan is to have the driveway go straight to the -- to stop at the line. Is the plan to be fenced lots with separation between that and -- because it -- the driveway of the existing property -- I'm just asking -- in the plan looks like it goes directly to the lot line.

MR. KIPP: That's an excellent point, and I believe technically there should be a 5-foot buffer on the impervious from that lot line.

MR. GUREVICH: That's what I was going to ask.

MR. LEBER: You know what, I could do that. I could realign it so that it doesn't go right there.

MR. GUREVICH: Yeah, when I looked at the property, I couldn't tell, like, if it actually did that catercorner or if that happens because you removed the --

MR. LEBER: It is.

MR. GUREVICH: -- exterior garage. It felt like that was where the exterior garage was, and when you removed it that was the remaining driveway or whatever that would be left over there, and that's what I was going to say is if we can ensure that it's 5 feet away from the -- or by whatever the code.

THE CHAIRMAN: Five feet away from the new lot line that's going to go there.

MR. LEBER: Yes, I could do that. That's very good.

MR. WEINER: Mr. Kong, do you have any

preferred language that you could put in for that?

MR. KONG: No, I think if it's stated to be 5 feet for the driveway (inaudible) property line.

MR. WEINER: Side line -- side property line shall be set back 5 feet?

MR. KONG: Yup.

MR. GUREVICH: And to the second part of that question, is there a plan to put a fence in between?

MR. LEBER: There is no fence plan.

MR. GUREVICH: Okay.

MR. LEBER: I guess if the homeowner wanted to fence --

MR. GUREVICH: Just asking.

MS. RAMPOLLA: Mr. Leber, how many parking spaces does D have? The other ones have -- do have garages, right? You said they each have four parking spaces in total?

MR. LEBER: So I think D has three.

MS. RAMPOLLA: After you shorten it?

MR. LEBER: Okay, so the existing house is a three-bedroom house, and we can fit three cars on the driveway.

MS. RAMPOLLA: Okay.

THE CHAIRMAN: Even the revised driveway as just described?

MR. LEBER: Yeah. What I'll do is I'll straighten out the driveway. You know, I have enough lot coverage available where if I have to extend it a few feet, it will still be fine.

THE CHAIRMAN: Are there any other specific questions from the board about anything? From staff? Anything we haven't covered?

Okay, let me open this up to the public and ask if anybody from the public is here specifically to speak about application Z-22-22. Let the record show that there's 700 people on the way up -- no, they obviously aren't, and so we'll close the public portion.

All right. Let's have a summary if we can from our attorney. They're coming. And they were intelligible. I couldn't pick that up.

MR. WEINER: Any comments from the board, or do you want me to express conditions?

THE CHAIRMAN: I asked everybody on the board.

MR. WEINER: Okay. Mr. Chairman, I can just note -- I just want to quickly refer to the combined staff memoranda, and first the January 26

report of T & M. Mr. Leber, just to confer, all of the comments and recommendations stated therein the applicant agrees to comply with?

MR. LEBER: That's correct.

MR. WEINER: Okay, and specifically, as well as additionally, I have some other comments here, some other proposed conditions. All waste and debris during construction is the responsibility of the applicant; is that agreed to?

MR. LEBER: Yes.

MR. ROSELLI: That's correct.

MR. WEINER: There shall be a shade tree easement created to the satisfaction of the township professional staff and shall be subject to the review and approval of both the board attorney and the board engineer prior to recording.

(Inaudible)

There shall be even side yard setbacks on all three lots.

MR. ROSELLI: Correct, new construction.

MR. WEINER: The new construction.

MR. LEBER: Mr. Chairman, I failed to mention one thing, that the existing dwelling that's to remain has an existing nonconforming front yard setback of 15.6 feet, so although I didn't mention it, technically it does require relief where the minimum setback is 30 feet, but the house is to remain unchanged. I just neglected to mention that.

THE CHAIRMAN: Well, when that house was first built, was there any front yard requirements that might be existing with an existing variance that we know of?

MR. KIPP: Not that I'm aware of.

THE CHAIRMAN: Then we should add it.

MR. WEINER: Make a note. So that is, Mr. Leber, let's go back. On existing lot -- which number is that right now? What's that going to be after the subdivision?

MR. LEBER: That's D.

MR. KIPP: No, that's proposed lot C.

MR. WEINER: On proposed lot C, preexisting nonconformity for --

THE CHAIRMAN: Front yard setback.

MR. WEINER: -- front yard setback, okay, which there's a need for a C. Got it. And I'm going to go back to the conditional language. Let me just repeat myself. The last one was there shall be even side yard setbacks on all three lots of new construction.

MR. ROSELLI: Right.

MR. WEINER: Next, on all three of the new structures, the room behind the garage shall not be used as a bedroom and shall have no closets.

MR. ROSELLI: That is correct.

MR. WEINER: And the side property shall be set back 5 feet as to both lots between lots C and lot D.

THE CHAIRMAN: On lot C, on lot C.

MR. WEINER: On lot C from lot D. Got you.

MR. ROSELLI: Correct.

MR. WEINER: From lot D.

THE CHAIRMAN: Any other questions, comments, or anything from anybody on the board regarding the application as it's presented at this point? No. Staff? Okay. Well, then, I would like to listen for a motion to approve.

MR. WYNTER: Motion to an approve.

THE CHAIRMAN: Thank you, Ivan. Do I have a second?

MR. PEPE: I'll second that motion.

THE CHAIRMAN: Thank you, Steve. Motion and second. Please call the roll.

MR. BLESSING: Mr. Pepe.

MR. PEPE: You said Pepe, right, not Papi? I vote to yes on this application. I feel that it wouldn't have any detriment to that neighborhood by decreasing any sizes. I feel like it -- everything conforms to what that neighborhood has become now, and I think it will be a positive attribute to that side of town. So I vote yes.

MR. BLESSING: Mr. Gurevich.

MR. GUREVICH: I vote yes. I think it's a great use for that portion of the town and will be a great addition to the neighborhood.

MR. BLESSING: Mr. Brandt.

MR. BRANDT: I vote yes. And for the record, I bet my lovely Irish bride at the Wagon Wheel over 40 years ago, and that lot's been empty then, and it will be nice to see the neighborhood enhanced with the addition of three new homes.

MR. BLESSING: Mr. Arora.

MR. ARORA: I will say yes because rather having a one empty big lot with just one house, it will dwell properly with the four houses. So I vote yes.

MR. BLESSING: Mr. Wynter.

MR. WYNTER: My vote will also be yes. I think this project is suited for the area, and I see no reason to vote against this application.

Yes.

MR. BLESSING: Miss Rampolla.

MS. RAMPOLLA: I'm going to vote yes, also. My initial concerns were really just about the lot size, but I think that Mr. Leber makes a great argument with especially that Exhibit A-3 showing all of the -- not all of the -- the majority of the surrounding lots being similar sizes. These houses will fit in with the character of that neighborhood quite well. I appreciate that the applicant's going to center the home on lot A to Mr. Kipp's suggestion. I think this is the perfect use for this. I really liked your argument that putting two houses here really would be uncharacteristic, so I can't think of a better layout, and I think it will enhance the neighborhood. So I vote yes.

MR. BLESSING: Chairman Philips.

THE CHAIRMAN: Okay, there's no volcanos around that is going to add extra property anywhere around here, so you can't get more land. We recognize that. And despite the fact that you've trod on Mr. Brandt's early matrimonial life, the fact is that having the map just really enforced the reason why it's okay to put this here. The entire area has, again, these 25-by-100 lots that people used to buy two or three, whatever they could afford, and then try to build houses on, and now here we are looking at some situations like this, and this is undoubtedly the best use of this property. So I'm going to also vote yes. And that means it passes.

MR. LEBER: Thank you.

MR. ROSELLI: Thank you very much.

MR. PEPE: Congratulations.

THE CHAIRMAN: At this point, we're going to take a 5-minute break.

(Board recess)

THE CHAIRMAN: Okay, we're back in session. Thank you very much for your indulgence for the board.

(Application number Z-22-01 under separate cover)

THE CHAIRMAN: Any other business from the board? Any questions? Does anybody have anything to promote? They're going to be on a show or something?

MS. PAPI: St. Patrick's Day.

THE CHAIRMAN: Different group. Okay. Well, then --

MR. PEPE: I'll make a motion to

adjourn.

THE CHAIRMAN: We have a move. We have a second. You're always good on those. All in favor?

1 TOWNSHIP OF EAST BRUNSWICK
2 ZONING BOARD OF ADJUSTMENT
3 COUNTY OF MIDDLESEX - STATE OF NEW JERSEY
4

5 - - - - -

6 REGULAR MEETING FOR:

7 AMERICAN BROTHERS REALTY
8 BLOCK: 175, LOT: 6.28
9 ZONE: HC-2
10 1069 STATE ROUTE 18

11 APPLICATION NO: Z-22-01
12 - - - - -

13 MUNICIPAL BUILDING COURT ROOM
14 1 JEAN WALLING CIVIC CENTER
15 EAST BRUNSWICK, NEW JERSEY 08816

16 THURSDAY, MARCH 16, 2023
17 7:30 P.M.

18 - - -

19 TRANSCRIPT OF PROCEEDINGS

20 CONTINUED
21 PUBLIC HEARING

22 - - -

23 AB COURT REPORTING, LLC
24 Certified Court Reporters
25 26 Algonquin Terrace
Millstone Township, New Jersey 08535
Tel: (732)882-3590
angelabuonocsr@gmail.com

1 BOARD MEMBERS PRESENT:

- 2 STEVE PHILIPS, CHAIRMAN
- 3 DEEPAK ARORA
- 4 CHESTER BRANDT
- 5 LEON GUREVICH
- 6 AMY PAPI
- 7 STEVE PEPE
- 8 CHRISTINE RAMPOLLA
- 9 DREW WEINGARTH
- 10 IVAN WYNTER

11

12

13 BOARD PROFESSIONALS & STAFF PRESENT:

- 14 JAY A. WEINER, ESQUIRE, BOARD ATTORNEY
- 15 JOSEPH K. KONG, P.E., BOARD ENGINEER
- 16 KEITH T. KIPP, P.P., PLANNING & ENGINEERING DIRECTOR
- 17 KEENAN HUGHES, P.P., AICP, BOARD PLANNER
- 18 AARON BLESSING, BOARD CLERK

19

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21

22 STENOGRAPHICALLY REPORTED BY:

- 23 DEANNA WIZBICKI
- 24 Registered License No. 30CY00001700

25

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

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--Counsel for the Objector, 355 Route 9, LLC

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I N D E X

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OBJECTOR'S CASE

WITNESSES

PAGE

ALEXANDER LITWORNIA, P.E.
Litwornia Associates, Inc.

31

PUBLIC COMMENT:

NAME ADDRESS

PAGE

NONE.

E X H I B I T S

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1 CHAIRMAN PHILIPS: This is the March
 2 16, 2023 East Brunswick Township Zoning Board of
 3 Adjustment meeting. In accordance with the Open
 4 Public Meeting law, on December 15, 2022, notice of
 5 this meeting stating the time, date, and location
 6 was sent to the Home News Tribune, filed with the
 7 township clerk, and posted on the bulletin board in
 8 the lobby of the municipal building.

9 A copy of this notice will be
 10 incorporated in the minutes of this meeting.

11 The zoning board will not hear any case
 12 beyond 10 p.m. with the exception of any hearing in
 13 progress at that time, and will terminate any
 14 testimony at 10:30 p.m.

15 The chair reserves the right to call
 16 any application in an order different than that
 17 appearing on the agenda.

18 No smoking is permitted in public
 19 meetings of the Zoning Board of Adjustment in
 20 accordance with the township ordinance number 78-3.

21 Shouldn't we sunset that, Keith? I
 22 don't think there's anybody that's wanted to smoke
 23 in the courtroom in 30 years.

24 Anyway, the doors outside of the
 25 courtroom are the exits to be used in case of an

7

1 emergency.

2 If we could, rise for the Pledge of
 3 Allegiance.

4 (Pledge of Allegiance.)

5 - - -

6 CHAIRMAN PHILIPS: Aaron, if you could
 7 please call the roll.

8 MR. BLESSING: Student representative,
 9 Miley Weiner? Mr. Weingarth?

10 MR. WEINGARTH: Here.

11 MR. BLESSING: Ms. Wilson? Ms.
 12 Decker? Mr. Brandt?

13 MR. BRANDT: Here.

14 MR. BLESSING: Mr. Pepe?

15 MR. PEPE: Here.

16 MR. BLESSING: Mr. Gurevich?

17 MR. GUREVICH: Here.

18 MR. BLESSING: Mr. Arora?

19 MR. ARORA: Here.

20 MR. BLESSING: Mr. Wynter?

21 MR. WYNTER: Present.

22 MR. BLESSING: Ms. Papi?

23 MS. PAPI: Here.

24 MR. BLESSING: Ms. Rampolla?

25 MS. RAMPOLLA: Here.

8

1 MR. BLESSING: Chairman Philips?
 2 CHAIRMAN PHILIPS: Here.

3 Okay. We do not have any resolutions
 4 or anything tonight, so we go into old business.
 5 And at this point I'm going to call Application
 6 Z-22-22, Red Oak Developers.

7

8 (Whereupon, the board proceeded
 9 with agenda items.)

10 - - -

11 (Whereupon, the application is now
 12 called at 8:30 p.m.)

13

14 CHAIRMAN PHILIPS: Okay. We're back
 15 in session. Thank you very much for your indulgence
 16 for the board.

17 At this point, we have Application
 18 Z-22-01, American Brothers. I see Mr. Pape is
 19 sitting in the exalted chair, so we can continue
 20 this application, Mr. Pape.

21 MR. PAPE: Mr. Chair, board members,
 22 board professionals, and public, good evening all.
 23 Kenneth Pape, of the firm Heilbrunn Pape, on behalf
 24 of your applicant.

25 This is a request for use variance and

9

1 site plan approval. It's a request for two D
 2 variances, a C variance, and site plan approval.

3 We are here for the fifth time before
 4 you. We began our presentation to the board one
 5 year ago tomorrow, on March 17, 2022. And we have
 6 had -- this board has been very generous with its
 7 time, we have had four full evenings with you. This
 8 is our fifth.

9 At the meeting in January we presented
 10 Christine Cofone's testimony. She testified as the
 11 applicant's planner. And we concluded our
 12 presentation to the board. At that point, we had
 13 presented to the board the professional engineer,
 14 Steve Schwartz; we had presented the traffic expert,
 15 Justin Taylor; we had presented Steve Radosti, the
 16 architect; and Joanie Bachonski, who is with Extra
 17 Space Storage. All of the witness's testimony
 18 concluded, and we indicated that on the record.

19 There was one minor issue that was
 20 raised that evening and I wanted to just respond to
 21 it. There was a comment about the fences on the
 22 property and the gates on the property being in bad
 23 repair. And the fences have all been repaired. The
 24 fences have all been painted. They are now a
 25 uniform color, and they are in good repair. And the

1 gates have been repaired and/or replaced, so they're
2 in good order.

3 That was the only point that I wanted
4 to make.

5 CHAIRMAN PHILIPS: Mr. Pape, I'm glad
6 you brought that up first because I want to take
7 exception with that. I was there, and some of the
8 members of the board have also been there.

9 First of all, the fence was propped up
10 by using two by fours that are hammered into the
11 nearby trees. That is not an appropriate way to fix
12 a fence, and that is what is there.

13 Yes, it looks like they came by with
14 some spray paint and painted the fence. I don't
15 know if they painted it on both sides. I don't know
16 what the people -- I didn't go around to the back of
17 the fence, but it is -- I will ask our building
18 department.

19 Is it proper to put up a fence or to
20 prop it back up by using a two by four to hammer
21 into a local tree?

22 MR. KIPP: No, absolutely not.

23 CHAIRMAN PHILIPS: That's part of what
24 was done, Mr. Pape. Just so we're clear.

25 Secondly, there were a number of trees

1 taken down. Can I ask if we have received a request
2 for a tree removal permit for that property?

3 MR. BLESSING: There has not been any
4 tree removal permit that had been issued, nor was
5 there one pending with the township planner.

6 CHAIRMAN PHILIPS: So they came in and
7 they took, I'm going to say at least six or eight,
8 and I'm not talking about trees that are a half a
9 foot, I'm talking about two-plus-foot-wide trees
10 that were taken down without permits.

11 When you're in the spotlight, and
12 things are going on and everyone's looking at you,
13 that's probably not a good time to be flaunting
14 what's needed in order to make things work.

15 Unfortunately, this has been my
16 concern going back to one of the early meetings,
17 that the maintenance of the property has to be done
18 at the same level that they would have for anything
19 else. It can't be done slip shot.

20 And I can tell you, I don't want to
21 make too much light of it, but they didn't pay a
22 whole lot of money to have that done because if they
23 did, they got taken, just so we know.

24 And as far as the chain is concerned, I
25 went over to it, and it was tied like you would

1 start tying a shoe. I took my finger and moved it,
2 and the chain opened up. There is no lock on that
3 chain.

4 So I think it's a little bit
5 disingenuous for the applicant to tell us that he
6 spent time and effort to do that when the result of
7 it is no permit, a fence that looks like it was put
8 together by the Little Rascals, and the attachment
9 to the protection for the detention area is as tough
10 to get in as it is walking in the door here.

11 I'm sorry, but when I went there and I
12 looked at that -- and I will ask anybody from the
13 board if they saw it or whatever?

14 MR. GUREVICH: Yeah, I was there this
15 afternoon. I could support the fencing. I could
16 definitely see the fence was painted over. The
17 existing area that might have been in disarray or,
18 you know, had some rot to it or whatever, so that
19 wasn't corrected, it was just painted.

20 It does definitely look better than
21 what it was before, but I can support that there is,
22 what seems to be, two by fours propping up sections
23 of the fence that have been screwed into or nailed
24 into -- I think most of them have been screwed into
25 the trees, which obviously is not great.

1 So, to the extent that I can support on
2 that.

3 MR. BRANDT: I was there yesterday and
4 today as well, and I concur with the chairman.

5 MS. PAPI: I just want to make a
6 comment, Mr. Chair.

7 From my experience, from the times
8 you've been here and you testified, the fence was
9 supposed to be a brand new fence. So I'm surprised
10 to hear what I'm hearing this evening.

11 MR. PAPE: If I may or not, the
12 applicant's requesting relief and has indicated that
13 he will be installing a new fence, a different type
14 of fence, and a new fence as a condition of the
15 approval. The fence that was painted would be
16 removed. That's the fence that's been there for
17 20-something years.

18 CHAIRMAN PHILIPS: I would like, since
19 we both agreed we were not finishing tonight, I
20 would like to have a schedule of all the trees.
21 Because I went around the back, and I also noticed
22 more trees in the back are down.

23 I have no idea how many trees were
24 taken down over there, but just driving around the
25 parking lot and walking a little bit, I saw at least

1 eight that had to be a foot and a half, or two foot
2 in diameter.

3 And I also noticed it as I was driving
4 up Route 18, that the profile of the existing
5 building suddenly loomed out a lot more than it used
6 to. So I don't know what was taken down on that
7 side either.

8 MR. WEINER: Mr. Chairman, I want to
9 add, for the board's edification, although the board
10 is not an enforcement on the municipality as far as
11 code enforcement, in this application thus far,
12 aside from the direct representations that I know
13 Mr. Pape has proffered in good faith on behalf of
14 his client that these things were going to get done,
15 that he's related to the board on behalf of his
16 client, there has been testimony during the course
17 of the many prior hearings that at least certain
18 aspects of the proposed application, the operations
19 control. The testimony was, as well as the
20 proffers, those would be at least in part, left with
21 the applicant, with the property owner.

22 And therefore, those are issues that
23 the board can consider with regard to credibility,
24 particularly as to operations where there's been
25 part of the application proffered that the applicant

1 is going to be handling certain operations, and part
2 of the board's overall job in evaluating the
3 application and making a decision ultimately on the
4 application, that's one of the elements that the
5 board can balance as far as that credibility based
6 on that issue.

7 CHAIRMAN PHILIPS: I don't want to
8 belabor it, Mr. Pape. I think the findings of the,
9 of virtually half the board or more who have been
10 there or maybe everybody, indicate that they all saw
11 the same thing.

12 MR. PAPE: The, for purposes of this
13 evening, the applicant has no other statements to
14 make on the record.

15 We understand from our -- the way we
16 concluded at the beginning of January, is that
17 tonight would be open to the public for the, any of
18 the public who has not yet testified. And it would
19 also be an opportunity for the attorney, who had
20 indicated that he was representing another party, to
21 put on his case, so.

22 CHAIRMAN PHILIPS: As an objector.

23 MR. PAPE: As an objector.

24 CHAIRMAN PHILIPS: If that's okay with
25 you then, Mr. Pape, if we can, we can call up the

1 objector, or his representative.

2 MR. PAPE: Sure. I do have an
3 objection to the objector that I would like to place
4 on the record, and then you'll do as you choose.

5 The objector identified to this board,
6 the objector was identified to this board in
7 Gasiorowski and Holobinko's correspondence of
8 January 5, 2023. The objector is identified on the
9 first page in Mr. Gasiorowski's letter as Thafel,
10 and on the second page he cc's by e-mail Carey
11 Thafel. Carey Thafel is a very fine gentleman with
12 whom I have considerable knowledge.

13 Mr. Thafel came before this board in
14 2018 as the principal of CT 645RT18, LLC, and he
15 testified extensively on the record. And the author
16 of the zoning board of adjustment's resolution in
17 that matter made a number of references to Mr.
18 Thafel as the applicant and owner's representative,
19 and he also testified extensively as to the operator
20 of the self-storage facility proposed to be
21 installed in the Kmart.

22 So, we have Mr. Gasiorowski identifying
23 Carey Thafel as his client. We have the resolution
24 of this board identifying Carey Thafel as the owner
25 of the property and the self-storage facility. And

1 there is a considerable body of law that began some
2 40 years ago, began with Paramus Multiplex Corp v.
3 Hartz Mountain Industries, 236 N.J. Super 104. It
4 was a 1987 case that states that when the sole
5 purpose of objecting is to avoid competition, that
6 person is not a qualified objector, and does not
7 have standing to so object.

8 And I don't know how you choose to
9 handle that, but I think the record must reflect
10 that your objector is identified in
11 Mr. Gasiorowski's correspondence and is coincidental
12 with the individual who was the applicant for the
13 self-storage facility 1.2 miles away from this one.

14 MR. WEINER: I'm just going to respond
15 on that. And the objection is noted.

16 However, I would indicate that there is
17 other case law out there as well. And ultimately,
18 the board ultimately has a decision of to consider
19 the motivation of an objector, however, ultimately
20 the board can make a determination and consider it,
21 and grant it the according weight as opposed to
22 banning the objector or -- I don't want to say
23 banning, but precluding the objector.

24 So the board has the ability to hear
25 the objector and give it the appropriate weight and

1 consideration. And the board can consider
2 motivations of the objector, if the board chooses to
3 as part of it's evaluation.

4 And now that counsel is, I assume,
5 going to appear, and we will need a formal
6 identification of your client for the record at this
7 point since you're going to be speaking formally. I
8 know Mr. Pape has indicated that and, obviously, you
9 can confirm and identify your client.

10 CHAIRMAN PHILIPS: You're talking to
11 somebody who isn't even on the record.

12 MR. WEINER: I would let counsel go,
13 however, I'm just, I see the gentleman standing
14 here. You can begin.

15 MR. REILLY: Thank you. My name is
16 Bernard Reilly, R-E-I-L-L-Y. I'm an attorney with
17 the Gasiorowski and Holobinko Law Firm appearing
18 tonight. In lieu of Mr. Gasiorowski, for an
19 illness, I'm appearing, and I'm prepared to present
20 our objector case.

21 I would note that in reviewing the
22 record for tonight's hearing, Mr. Gasiorowski did
23 appear at an earlier hearing, I think it was the
24 second one, and identified the client who I
25 represent as 355 Route 9, LLC, which is the owner of

1 property at 260 Route 18.

2 So, now, I do know from --

3 MR. WEINER: Can you repeat that
4 address, please?

5 MR. REILLY: 260 Route 18 in East
6 Brunswick.

7 And my understanding is, just from
8 reviewing the file, that the principal of that
9 corporation is a people named Thafel. They are the
10 family that owns that corporation. They may, in
11 fact, own the other corporation, or property that
12 was identified by Counsel. That may or may not be
13 true. I don't know that for a fact, but I'm not
14 going to dispute it. But, it's irrelevant because
15 the issue is my client's own property in the
16 vicinity of this, and they're entitled to appear and
17 object.

18 I would also make the point, just for
19 the record, that the fact that they may, in some
20 capacity own a business that competes, does not
21 disqualify them from objecting.

22 In fact, there's a case called DePetro
23 v. The Township of Wayne, which says -- it's a
24 reported decision which Counsel, I'm sure, can look
25 up or is familiar with -- that says that, in fact,

1 somebody owns a competing business, they have
2 standing if that business is in the vicinity or in
3 the town. And secondly, they may in fact be the
4 best objectors, because they know the business and
5 they know what the difficulties are and the hazards
6 that arise from a particular business.

7 So it's not only that they're not
8 disqualified, they may, in fact, have a better
9 grounds to object than anybody else. Being as it
10 may, I'm not here as a competitor, so to speak;
11 we're here to discuss zoning reasons.

12 MR. WEINER: I'm going to interject
13 for a second because my understanding of the law is
14 that when an objection is made as to the standing of
15 an objector, the board may take testimony as to the
16 status of the objector, and then make a
17 determination.

18 So, I think we would ask for a proffer
19 from your client or you, on behalf of your client,
20 as counsel as to their standing.

21 MR. REILLY: Well, I think I just did.

22 MR. WEINER: You also indicated that
23 the ownership, based on the names that were
24 represented by counsel for the applicant, are the
25 same. It's a common ownership? It's the same

1 person?

2 MR. REILLY: Well, I think it is, I
3 think it is -- I, frankly, have no idea. And my
4 clients are not here, the principals of the
5 corporation are not here.

6 I don't -- I know it's a family named
7 Thafel. Which one of them that owns this particular
8 corporation, or which one of them might have
9 interest in some other corporation that was
10 indicated by counsel, that was a different corporate
11 entity. I honestly can't represent anything about
12 that, and they're not here to talk about it.

13 All I can say is, with assurance, is
14 that's the name of the corporation, and the
15 property. And they own the property, as I
16 indicated. And as a property owner in town, in the
17 vicinity of this property, they certainly have
18 standing to present their zoning objection.

19 MR. WEINER: Well, as I said, the
20 issue becomes what was raised.

21 So is there any type of proffer; do you
22 dispute that your client is not the owner of the
23 entity identified by Mr. Pape?

24 MR. REILLY: Do I dispute it? I
25 don't. I don't dispute it's probably either the

1 person who owns this corporation or a relative, I
2 believe, but beyond that --

3 MR. WEINER: Do you know the first
4 name of your client? Because Mr. Pape indicated a
5 first and last name.

6 MR. REILLY: If I went through my file
7 I could probably find it, but I don't know it
8 offhand. But, I mean, it doesn't matter.

9 MR. WEINER: Well, that's where I'm
10 disagreeing because the board can take testimony and
11 if you don't have a client here that can testify,
12 they can take a proffer from you as to the status of
13 such a person.

14 MR. REILLY: I can look in my file and
15 no doubt find the first name of the principal of 355
16 Route 9.

17 Now, when I say "principal," I don't
18 know whether he owns a hundred percent, whether he
19 owns ten percent, it was just --

20 MR. WEINER: Or he could be a
21 principal, is what you're saying?

22 MR. REILLY: He certainly is a
23 principal, that much I can state.

24 MR. WEINER: I think if you can
25 clarify for the record, regardless of whether it

1 turns out to be the same person that Mr. Pape is
2 raising, I think for clarity of the record, the
3 board should know who your client is, not just the
4 last name.

5 MR. REILLY: It's this corporation.
6 That's who the client is, that's who the owner of
7 the property is.

8 MR. WEINER: Well, in light of what
9 was raised, if you have a name?

10 MR. REILLY: If you give me a minute,
11 I can certainly look through the file.

12 CHAIRMAN PHILIPS: We're not picking
13 you up on tape, Mr. Reilly.

14 MR. REILLY: Oh, sorry.

15 MR. PAPE: And I just want to, the
16 name on Mr. Gasiorowski's January 5th correspondence
17 addressed to this planning board -- this zoning
18 board, is Carey Thafel.

19 MR. GUREVICH: Spell that, please.

20 MR. PAPE: Thafel is T-H-A-F-E-L.

21 MR. GUREVICH: And Carey?

22 MR. PAPE: And Carey is C-A-R-E-Y.
23 Carey is a man.

24 Carey Thafel is the same person whose
25 name appears throughout Resolution Z-18-16, which

1 was relief that was granted to Mr. Thafel's company.
2 And he indicated in the record and the transcript,
3 and the resolution confirms that he indicated that
4 he was the owner and applicant's representative,
5 that he was familiar with the application. And then
6 he went on to testify extensively about the
7 operation of the self-storage facility.

8 So, it's Carey Thafel in the
9 correspondence of Mr. Gasiorowski, and it's Carey
10 Thafel in the resolution.

11 MR. GUREVICH: I'm familiar with the
12 storage facility, the Kmart facility over there.

13 What is the address; do you have it?

14 MR. PAPE: It says property address,
15 645 Route 18, East Brunswick, Block 89, Lot 4.29.

16 645 Route 18 East Brunswick, that's
17 what it says in the resolution.

18 CHAIRMAN PHILIPS: Aaron, do you have
19 the ability to look up an owner or particular spot
20 on an address?

21 MR. REILLY: The name I have as the
22 representative of this corporation is Carey Thafel.

23 CHAIRMAN PHILIPS: Okay. Thank you.

24 MR. WEINER: So we have a common name
25 for both items.

1 And can you make any indication as to
2 well, I think the board knows what -- this board
3 approved that application, which a component of it
4 was a self-storage component. That's part of the
5 application. And I think there's members of this
6 board who were there then who could, obviously, take
7 the equivalent of judicial notice as to that being
8 part of the application, based on this board's
9 personal knowledge.

10 CHAIRMAN PHILIPS: I remember the
11 application. It was part of the redo of the Kmart
12 facility. There was some items going in up front.
13 I believe there was the Men's Warehouse on the side.
14 And the storage was going to be all the way in the
15 back, much closer to Summerhill Road.

16 MR. WEINER: As I've indicated
17 previously, Mr. Chairman, the board has a right to
18 consider the extent of motivation of anyone,
19 including a competitor or having some type of
20 competitive nature, because we don't know if this
21 party is the actual operator of the storage facility
22 or not.

23 But that's up to the board, and it's up
24 to the board whether the board wants to consider
25 that and allow the objector to go forward.

26

1 CHAIRMAN PHILIPS: Yeah.
2 MR. PEPE: Do we have to take a vote
3 on that?
4 MR. WEINER: No. That's the Chair's
5 discretion at this point as far as allowing the
6 board to consider it.
7 And as counsel, my recommendation is to
8 allow the objection to go forward with that now at
9 least more out in the open. And then ultimately
10 it's up to the board, once you hear a full
11 presentation and so forth -- like any other witness,
12 or any other member of the public that speaks or
13 whatnot -- at least to give it the appropriate
14 weight that each individual board member decides to
15 do in your evaluation.
16 CHAIRMAN PHILIPS: It's okay then, I
17 think, if we proceed with the representative of Mr.
18 Gasiorowski, Mr. Reilly.
19 And if that's the case, Mr. Reilly,
20 there is a chair there; you don't have to stand, you
21 can sit. If you have a witness, your witness can
22 join you.
23 MR. REILLY: I do have one witness.
24 I, frankly, would only -- frankly, I'm not even
25 going to cross-examine any of their witnesses. So

27

1 I'm going to proceed directly --
2 CHAIRMAN PHILIPS: Okay, let's get
3 some -- you are Mr. Reilly. You work for the
4 Gasiorowski firm.
5 And just for the record, what's the
6 address of the Gasiorowski firm?
7 MR. REILLY: 54 Broad Street, Red
8 Bank, New Jersey 07701.
9 CHAIRMAN PHILIPS: So, then you can
10 proceed at this point, Mr. Reilly, with what it is
11 that you want to present.
12 MR. REILLY: Thank you.
13 As I indicated, I am not going to
14 cross-examine the applicant's witnesses.
15 MR. PAPE: Just to clarify, so this is
16 the evening that was specifically identified as the
17 opportunity to cross-examine witnesses and present
18 an objector's case. If there is no
19 cross-examination of witnesses, I would appreciate a
20 ruling that there is no further cross-examination of
21 witnesses and that portion is now closed.
22 MR. REILLY: I have no objection to
23 that.
24 MR. PAPE: Thank you.
25 CHAIRMAN PHILIPS: You heard that, Mr.

28

1 Pape?
2 MR. PAPE: I did. Thank you.
3 CHAIRMAN PHILIPS: Okay, Mr. Reilly,
4 please proceed.
5 MR. REILLY: Obviously, if he presents
6 -- let me back up for a minute. If he presents some
7 kind of rebuttal witness, I reserve my right on that
8 as to the rebuttal witness.
9 CHAIRMAN PHILIPS: Rebuttal witness.
10 MR. REILLY: Yes.
11 MR. WEINER: That's understood.
12 However, there would be no -- you just waived direct
13 cross-examination prior to any rebuttal.
14 MR. REILLY: Yes.
15 Okay. My first and only witness is Al
16 Litwornia, who is going to testify as both a traffic
17 engineer and a licensed planner.
18 CHAIRMAN PHILIPS: Okay. Well then,
19 Mr. Litwornia, please say your name, spell it.
20 First I'm going to swear you in.
21
22 A L E X A N D E R L I T W O R N I A,
23 having first been duly sworn, testified under
24 oath as follows:
25

29

1 CHAIRMAN PHILIPS: Mr. Litwornia, if
2 you could, give us your CV and your address, and
3 where you come from.
4 MR. WEINER: And spell your last name,
5 for the record.
6 MR. LITWORNIA: My name is Alexander
7 Litwornia, L-I-T-W-O-R-N-I-A.
8 I'm a graduate of Rutgers in civil
9 engineering. And practiced transportation planning,
10 traffic engineering, and urban planning, and master
11 plan reviews for over, probably over 20 years, 30
12 years. I was director of planning at Tri-State
13 Regional Planning Commission. I handled
14 transportation improvement program at Middlesex
15 County.
16 I was on the Middlesex County
17 Transportation Coordinating Committee a while back
18 before I moved to South Jersey. I was there during
19 Mr. Cravial's(sic) time.
20 CHAIRMAN PHILIPS: Your licenses are
21 all current?
22 MR. WEINER: And what are your
23 licenses?
24 MR. LITWORNIA: Yes, I am a licensed
25 engineer and professional engineer and a licensed

1 professional planner.
 2 CHAIRMAN PHILIPS: In New Jersey?
 3 MR. LITWORNIA: Yes.
 4 CHAIRMAN PHILIPS: And they're
 5 current?
 6 MR. LITWORNIA: And I have them in
 7 Pennsylvania, and I'm letting them lapse as I'm
 8 planning to retire.
 9 MR. REILLY: Can you give us a little
 10 bit more?
 11 MR. LITWORNIA: I'm letting the
 12 licenses lapse in Connecticut.
 13 CHAIRMAN PHILIPS: Well, but this is
 14 New Jersey, so you don't have to tell us about other
 15 states.
 16 MR. LITWORNIA: New Jersey is current
 17 and will be for a while.
 18 CHAIRMAN PHILIPS: And you testified
 19 before other boards similar to this zoning board,
 20 other zoning boards?
 21 MR. LITWORNIA: Yes, multiple boards
 22 across the state. And I've been a consultant to
 23 various boards in both planning and traffic
 24 engineering.
 25 I was the head of the traffic engineer,

1 MR. LITWORNIA: Basically I reviewed
 2 some various technical magazines, and technical
 3 journals, one of which was the Highway Research
 4 Board Special Report on improved street utilization
 5 for traffic engineering. In that, I bring that out
 6 because I think --
 7 MR. REILLY: Well, we'll go back to
 8 that, but did you review the plans and the
 9 ordinances, and have you been to any of these
 10 meetings?
 11 MR. LITWORNIA: Yes.
 12 What I wanted to do is just bring this
 13 out as a perspective, what it says in the article
 14 "Land-Use Controls" by William Marston, the basic
 15 objective of an urban area should be to improve the
 16 quality of life and make the city a better place to
 17 live, work, and pursue happiness.
 18 This objective implies a safer, and
 19 better environment. These implications require that
 20 traffic engineering and land planning be carried out
 21 as -- and in conjunction with that, I looked at the
 22 master plan and various revisions to the master plan
 23 and updates and, basically, I looked at that and
 24 listened to the testimony for -- I've been here for
 25 three, this is the third or fourth time I've been

1 county traffic engineer's group in the State of New
 2 Jersey for a couple of years.
 3 CHAIRMAN PHILIPS: I'll listen for a
 4 motion to accept Mr. Litwornia --
 5 MR. ARORA: I'll make the motion.
 6 MR. WEINER: -- as a traffic
 7 engineering expert, and planning expert is how he's
 8 been proffered.
 9 CHAIRMAN PHILIPS: We have this moved.
 10 Do we have a second?
 11 MR. PEPE: I'll second it.
 12 CHAIRMAN PHILIPS: All in favor?
 13 BOARD MEMBERS IN UNISON: Aye.
 14 CHAIRMAN PHILIPS: Okay, Mr. Litwornia
 15 and Mr. Reilly, please proceed.
 16
 17 E X A M I N A T I O N
 18
 19 MR. REILLY: Mr. Litwornia, let's go,
 20 first, to the traffic engineering issues and then
 21 we'll deal with the planning testimony in the second
 22 order.
 23 Basically, have you been, well, tell
 24 us, first, what you have reviewed in preparation for
 25 your appearance here.

1 here listening to the application.
 2 MR. REILLY: You've been at several of
 3 the prior meetings?
 4 MR. LITWORNIA: Yes, and I have
 5 received the minutes and reviewed some of the
 6 minutes.
 7 MR. REILLY: And have you reviewed the
 8 township zoning regulations relative to this?
 9 MR. LITWORNIA: Yes.
 10 MR. REILLY: All right. Now, with
 11 that, let's again, let's just focus for the moment
 12 on the traffic issues with regard to this property.
 13 By the way, have you been to the site?
 14 MR. LITWORNIA: I've been on the site
 15 more than once.
 16 MR. REILLY: And with regard to the
 17 proposed use of the site, could you tell us with
 18 regard to that, what your professional opinion is
 19 with regard to the proposed use and its
 20 compatibility from a traffic standpoint?
 21 MR. LITWORNIA: Well, from a traffic
 22 standpoint, what you do not want to do is mix
 23 different uses like commercial/residential,
 24 commercial/and other use that is personal type
 25 services use. Because what you do have is you have

1 a lot of pedestrian traffic going to the retail
2 uses, and the commercial uses require trucks to
3 deliver cargo and things to store, things like that.
4 And trucks may have problems circulating when you
5 have traffic that's both retail and vehicular truck
6 traffic.

7 So, what you try to do is separate them
8 for safety. The trucks have blind spots, so backing
9 up is hazardous. Not all trucks have back-up noise
10 makers on them; some do, some don't. But the main
11 thing is it's hazardous for a pedestrian to walk
12 through a parking lot. And that parking lot also
13 shares traffic from personal automobile traffic,
14 people going to the retail stores, people have to
15 contend with trucks or retail traffic coming off of
16 Route 18 at a rapid pace because the traffic itself
17 is passing in front of the site at a rapid pace.

18 When the light turns green, traffic
19 goes through and barrels through, so because of
20 that, because of that, you have people in trucks and
21 cars entering the site at a heavy -- faster than a
22 normal pace.

23 MR. REILLY: And how does that, what
24 is the issues that arise from mixing retail use with
25 storage use?

1 MR. LITWORNIA: So usually the storage
2 use comes with truck deliveries, and those truck
3 deliveries are usually handled by drivers that are
4 not used to driving trucks; they're not familiar
5 with the safety procedures that truck drivers have
6 to follow. They're not licensed truck drivers.
7 They're not commercial truck drivers.

8 MR. REILLY: Are you referring to
9 people driving U-Hauls, that are bringing things for
10 storage, that sort of thing?

11 MR. LITWORNIA: Yes. They come in
12 with U-Hauls, they come in with trailers that they
13 have temporary hitches on, same thing with permanent
14 hitches. And then what they do is they actually
15 enter the site, circulate around, go to where they
16 want to go, and then they have to walk to the retail
17 across the main aisle. And when they do that, they
18 run the risk of other trucks backing up or mixing
19 with their traffic, or mixing with pedestrian
20 traffic, that's there as well.

21 So basically the idea is to make it
22 safe, you want to separate the traffic for trucks
23 and commercial traffic from residential and retail
24 traffic.

25 MR. REILLY: Is that why, typically,

1 you don't see store operations next to or part of a
2 retail operation?

3 MR. LITWORNIA: Correct.

4 MR. REILLY: Now, is there anything
5 about the layout that enhances the problems that
6 would arise by inexperienced truck drivers being --
7 having to get to the site in conjunction with retail
8 customers?

9 MR. LITWORNIA: Basically, it was your
10 testimony that the size of the trucks had to be
11 limited to, I think 30 foot trucks. But you don't
12 know what people are going to bring to come in
13 because there is no signs that are going to say,
14 stop on Route 18 and reading this sign, it says you
15 can't get out without help if you enter with a truck
16 that's over 30 feet or you're towing a trailer, and
17 that's what creates the problem.

18 MR. REILLY: So, are there movements
19 onsite that are required that will result in trucks
20 being able to back up?

21 MR. LITWORNIA: Trucks will be able to
22 back out, but they are going to have to make more
23 than one truck movement. Usually you get out by
24 going around, or using like a K-turn to get out.
25 But if you can't use a K-turn or you can't use that

1 entrance, there is not enough room, so what you have
2 to do is keep backing up and going forward so you
3 can get an angle to make the movement.

4 MR. REILLY: Okay, so --

5 MR. LITWORNIA: It's like me trying to
6 back up a boat, it's almost an impossibility. But
7 if somebody else gets in, they can move it in five
8 seconds, but I can't.

9 MR. REILLY: All right, so my question
10 really is, and for the edification of the board, is
11 the fact that there is a retail component of this,
12 which will bring retail customers to a store or a
13 restaurant, does that create hazards in conjunction
14 with a storage operation where you will have,
15 presumably, inexperienced U-Haul drivers or trailer
16 drivers arriving regularly at the site?

17 MR. LITWORNIA: Correct.

18 MR. REILLY: All right. What do you
19 envision as the hazards?

20 MR. LITWORNIA: Well, the hazards are,
21 you can back up and hit somebody that's walking or
22 back into the car that enters the site, not knowing
23 that you're trying to get out for it to get in.

24 MR. REILLY: Okay. Are there any
25 other traffic issues or hazards that arise from the

1 fact that these vehicles, whether they are U-Hauls
2 or trailer vehicles or something coming off Route
3 18?

4 MR. LITWORNIA: So, depending upon the
5 time of day, you have noise problems with trucks
6 loading and unloading, dropping the pallet
7 sometimes. I understand these trucks may have
8 limited, self-storage may have limited hours of
9 operation. If they don't, then you have a problem
10 with idling trucks, making noise with mufflers,
11 truck drivers sometimes downshift to stop instead of
12 using air brakes. So I could see smaller vehicles
13 having problems, making noise, slamming doors.

14 MR. REILLY: What about issues for
15 these types of vehicles coming up on to the site off
16 of Route 18, or getting back on to Route 18?

17 MR. LITWORNIA: Well, coming in and
18 out of Route 18 is usually problematic, people stop
19 at the, could be stopped at the traffic signal just
20 to the west, which is really designated as a
21 north-south road when it's really to the west in
22 that location.

23 So, people would stop at the light, go
24 towards the site, and then get off of Route 18 by
25 making a right turn into the site, and they do that,

1 one of the things that that they do is they enter at
2 a higher speed, and the reason being, all of Route
3 18 traffic is going at a higher speed. So, they
4 have to go with the flow and try to make a higher
5 speed entrance.

6 A higher speed entrance is usually a
7 compound curb to enter the site at a higher speed
8 which is allowed. But when you do come in with a
9 faster entrance off of Route 18, you have less
10 response time for anybody that's backing up or
11 walking across the aisles in the entry area.

12 MR. REILLY: You're talking about of
13 the retail on the side of the zone.

14 MR. LITWORNIA: If there is somebody
15 entering retail slot which is on the first floor and
16 there would be serviced by people parking in the
17 parking lot and walking across the main aisle.

18 MR. REILLY: Okay. The site is in
19 proximity to a single family residential area, is
20 that correct?

21 MR. LITWORNIA: Yes, there is a
22 single-family residential community behind the fence
23 that was being discussed.

24 MR. REILLY: Now, would you see, would
25 you, in your opinion, note or speak to any issues

1 that might arise by the proximity of this storage
2 operation to traffic issues arising from that
3 proximity to a residential area?

4 MR. LITWORNIA: You always have a
5 problem with noise intrusion, noise violations. And
6 noise violations on a state highway or in a local
7 road are exempt from noise violations.

8 But if you have the same truck noise on
9 a site, it is a violation. When you have doors
10 slamming, trucks going, and people playing radios
11 after the traffic subsides on Route 18, that becomes
12 a problem.

13 MR. REILLY: What about the beeps from
14 trucks backing up and that sort of thing?

15 MR. LITWORNIA: Well, usually when you
16 have a site in the zone, you develop it so that
17 retail site that's most, that produces the most
18 trips is closest to the highway.

19 And after you go with the retail
20 development, you go into another type development
21 would be office use. And the office type use is
22 quiet and works as a buffer for the next use which
23 would be residential apartments, which is a buffer
24 in addition to the next use, which would be
25 single-family dwelling units.

1 So, basically what you're doing is
2 you're going from Route 18 off of it, and that's
3 basically what's been happening throughout the area.
4 In this area, with this site, the master plan calls
5 for the, the master plan calls for the applicant and
6 the uses to follow the same thing.

7 They have eliminated the use of, the
8 use of the site, they eliminated the use of the site
9 for this use, which is a self-storage warehouse.
10 It's not permitted, but it is permitted in other
11 zones.

12 MR. REILLY: We'll come to that in a
13 minute. I just want to finalize the traffic
14 impacts, or the noise impacts from truck traffic on
15 the surrounding or the adjoining residential area.

16 And would there be a noise impact from
17 this storage use, it's in the back of the building
18 really, to the adjoining residential uses that is
19 not compatible with those adjoining residential
20 uses?

21 MR. LITWORNIA: So, basically, what
22 you're doing is you have light intrusion and noise
23 intrusion because the residential dwelling units are
24 very close to this.

25 MR. REILLY: Okay, and now turning to

1 the planning aspects of this, this is, as been
2 established, they're requesting a use variance for
3 this site, basically to put the dual use of retail
4 which is a permitted use, and storage, which is not
5 a permitted use, is that correct?

6 MR. LITWORNIA: Right.

7 MR. REILLY: And now, if you -- and to
8 demonstrate a use variance or to be entitled to a
9 use variance, it's been established you have to
10 prove what is called a positive criteria and a
11 negative criteria.

12 Is that correct?

13 MR. LITWORNIA: Yes.

14 MR. REILLY: Now, let's talk about the
15 positive criteria which is basically that this
16 property is particularly suitable for the use
17 proposed, or the dual uses proposed.

18 Is this property particularly suitable
19 for the dual uses proposed?

20 MR. LITWORNIA: No.

21 MR. REILLY: Tell us why, in your
22 opinion.

23 MR. LITWORNIA: Because, basically it
24 is not allowed. It is a use that can create noise,
25 creates light intrusion, creates a safety hazard by

1 applicant is not warehousing and distribution
2 facility, it's retail.

3 MR. REILLY: All right. Are storage
4 units such as proposed here storage, is that a use
5 that is permitted in other zones in East Brunswick?

6 MR. LITWORNIA: Yes, it's also
7 permitted in the IM, Industrial Manufacturing zone,
8 and in the office industrial zone, the OI zone.

9 MR. REILLY: So, a facility like this
10 would be permitted in those zones?

11 MR. LITWORNIA: It is. There are two
12 zones that it is permitted in. Since it's permitted
13 in those zones, there is no particular need for it
14 in this zone.

15 MR. REILLY: Are you aware of any
16 particular need, or any particular reason why that
17 is inadequate to service the storage needs of the
18 municipality or the region?

19 In other words, limiting the use to
20 those zones, is there still a need beyond that's
21 been demonstrated?

22 MR. LITWORNIA: I didn't see any need
23 for that was demonstrated, besides that.

24 MR. REILLY: Now, is there a
25 particular function about why the, about the, HZ

1 mixing with commercial and retail and truck traffic
2 through the site throughout the day, and it doesn't
3 operate at the same hours as a lot of other uses.

4 MR. REILLY: All right. Now, this
5 property is in the HC-2 zone, and that zone permits
6 what type of use?

7 MR. LITWORNIA: Well, it does not
8 allow, this zone, this storage warehouses are not
9 permitted. And since they're not permitted in HC-2
10 zone, if you look to see what specifically uses are,
11 service uses and that includes a bank, health club,
12 dance studios, and undertaking establishments that
13 totally provides services. And additionally
14 permitted uses along with a few others to make it
15 clear what is permitted.

16 The other interesting item, the
17 directional section of your ordinance is that there
18 was a definition for storage as a space, or place
19 where goods, materials, or personal property is
20 placed, and kept along with a separate definition
21 for warehousing and distribution. You'll find that
22 the use primarily engages in storage, in
23 distribution of materials, supplies, equipment,
24 parts, goods, products, et cetera.

25 Clearly, the use proposed by the

1 stands for Highway-Commercial, does it not?

2 MR. LITWORNIA: Yes.

3 MR. REILLY: And is there a particular
4 focus that the town has placed upon the
5 Highway-Commercial zone along Route 18?

6 In other words, what's the uses that
7 are, is there a focus of the uses that are allowed
8 there?

9 MR. LITWORNIA: Well, the focus is the
10 retail uses.

11 MR. REILLY: So, there's nothing wrong
12 with the retail units that they're proposing?

13 MR. LITWORNIA: No.

14 MR. REILLY: The problem is what?

15 MR. LITWORNIA: The problem is there
16 is no need for the storage facility when there are
17 places where the governing body approved them in the
18 master plan.

19 They were approved in the master plan
20 and then updates to the master plan did not change
21 or call for modification in the zone.

22 MR. REILLY: Now, the master plan that
23 is in place right now is the 1990 master plan.

24 Is that correct?

25 MR. LITWORNIA: Correct.

46

1 MR. REILLY: And there have been a
 2 number of reexamination reports, 1995, 1999, 2005,
 3 2011, and 2015, have you looked at those?
 4 MR. LITWORNIA: Yeah, none of them
 5 call for, none of those call for a change to the
 6 zone or change to the uses in the zone, the HC-2
 7 zone.
 8 MR. REILLY: So, none of those master
 9 plan documents have made a recommendation that
 10 storage should be allowed in the HC zone?
 11 MR. LITWORNIA: Correct.
 12 CHAIRMAN PHILIPS: Mr. Reilly, if I
 13 could just interrupt.
 14 MR. REILLY: Yes.
 15 CHAIRMAN PHILIPS: From the 1990 on,
 16 how many different revisions or reviews of the
 17 master plan have been done, you rattled through
 18 them.
 19 MR. REILLY: I'm sorry, my records and
 20 review indicates there was a 1995, and these are all
 21 re-examination reports, 1995, 1998, 2005, 2011, and
 22 2015.
 23 CHAIRMAN PHILIPS: So, since 1990
 24 according to what you have, there would be five
 25 additional.

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1 Is that correct?
 2 MR. REILLY: Well, five
 3 re-examinations.
 4 CHAIRMAN PHILIPS: Re-examinations. I
 5 guess I will just ask if we can have some
 6 confirmation from our staff professionals about
 7 that.
 8 MR. HUGHES: That's my understanding
 9 as well, five re-exams since 1990.
 10 CHAIRMAN PHILIPS: So, the master plan
 11 has been looked at five times since 1990.
 12 MR. HUGHES: Yes.
 13 CHAIRMAN PHILIPS: Most recently in
 14 2015.
 15 MR. HUGHES: Correct.
 16 CHAIRMAN PHILIPS: And then the
 17 testimony is, is that they haven't changed that.
 18 Is that correct?
 19 MR. REILLY: Well, the testimony is
 20 that there has been no recommendation in any of
 21 those, the original master plan, and any of those
 22 later re-examinations that there be any change to
 23 any of the zones to put storage in, including the HC
 24 zone.
 25 CHAIRMAN PHILIPS: I was just looking

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1 for clarification.
 2 MR. REILLY: No, I appreciate that.
 3 So, what significance do you take from that?
 4 CHAIRMAN PHILIPS: There is also no,
 5 they also looked at the split zoning, and some of
 6 the zones were split zone, so in the highway
 7 commercial too, there is a split zone, they
 8 recommended that that property be all zoned as
 9 Highway-Commercial so that the Highway-Commercial
 10 would be developed in a way to create more buffer
 11 for the single-family homes, and because there is a
 12 substantial number of single-family homes in the
 13 area.
 14 MR. REILLY: Right, as a planner, what
 15 significance do you place on the fact that there
 16 have been five; there is a 1990 master plan and five
 17 re-examination reports, and none of those have made
 18 any recommendation or reference to a change in the
 19 zone to allow storage?
 20 MR. LITWORNIA: Well, I would make the
 21 assumption that the plan, the governing body wanted
 22 the type of self-storage facility in those zones
 23 that it proposed to be allowed in which would be the
 24 OI and the IM.
 25 MR. REILLY: Okay. The, as I

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1 indicated, I think we covered --
 2 CHAIRMAN PHILIPS: Could you repeat
 3 the two zones that you said?
 4 MR. REILLY: One is IM --
 5 MR. LITWORNIA: One is IM and the
 6 other is OT. It's looked at in section 288-210.
 7 MR. REILLY: The IM,
 8 Industrial-Manufacturing zone, where warehousing is
 9 permitted. And under section, I'm sorry, one is the
 10 IM zone is referenced at section 288-210, and the
 11 other zone is the OI industrial zone, and the
 12 reference is the uses at 288-217.16, which indicates
 13 that storage warehouses are permitted.
 14 CHAIRMAN PHILIPS: So, that's the IM
 15 zone and the OI zone.
 16 MR. REILLY: Yes.
 17 CHAIRMAN PHILIPS: Is that correct,
 18 where there are?
 19 MR. REILLY: Yes, and the sections are
 20 288-210, for the IM, Industrial-Manufacturing zone,
 21 and 288-217.16 for the OI, Industrial zone. Which,
 22 that OI, Industrial zone, my notes indicate, permits
 23 storage warehouses.
 24 CHAIRMAN PHILIPS: I just wanted a
 25 clarification.

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1 MR. REILLY: I appreciate that,
2 sometimes it's hard to follow.

3 Your traffic testimony about the
4 difficulties of navigating a storage facility with a
5 retail facility, how does that play into the
6 positive criteria, the particularly suitable
7 requirement?

8 MR. LITWORNIA: It's not particularly
9 suitable. The governing body put in certain zones
10 that it would be allowed, and the reason that we
11 bring some of this up is that there is an option
12 saying that there is no alternate locations for the
13 proposed use, there are.

14 There are two zones that are allowing
15 it, allowing this use. The two zones that allow
16 this use means that there is no reason for the board
17 to give a variance for this use in this zone where
18 it is not allowed.

19 And the relevance of bringing up the
20 other zones is that in New Jersey Supreme Court, in
21 Price v. Himeji, 214 N.J. 263, 292-293 (2013), held
22 that a board's analysis of alternate locations where
23 the use may be permitted is relevant. So, it's
24 relevant to look at the site and say it has some
25 problems with it and it doesn't deserve a use

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1 variance when there is another place you can put it
2 and you don't need the variances for height or for
3 the use.

4 MR. REILLY: Now --

5 MR. LITWORNIA: We bring that out so
6 that the board can see that there are other places
7 that this use can be put without a variance, which
8 would be consistent with the master plan and the
9 updates to the master plan.

10 MR. REILLY: Now, the second aspect of
11 the requirements to demonstrate a use variance
12 entitlement is what is called the negative criteria,
13 which, again, is no substantial detriment to the
14 zone plan.

15 Now, in your opinion, does putting this
16 dual use with this prohibited storage aspect, would
17 that cause detriment or substantial detriment to the
18 zone plan and the surrounding area?

19 MR. LITWORNIA: Well, I find it would
20 have detriment to the surrounding area and the zone
21 plan both. The zone plan was developed with the
22 purpose in mind of having this type of use and a
23 certain, basically in a certain zone that can handle
24 that, and it was, those uses were allowed in those
25 zones.

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1 Since they're allowed in those zones,
2 there is no use opening up another zone where the
3 master plan said what they wanted to do was to
4 improve the use of the Highway-Commercial, and
5 develop it with uses that are more appropriate,
6 retail uses that make this a viable commercial
7 corridor.

8 MR. REILLY: And would you, in your
9 opinion, would putting a self-storage facility hard
10 up against a retail, half of the building so to
11 speak, would that be detrimental to the zone?

12 MR. LITWORNIA: Other places that have
13 the retail on, usually try to have the truck
14 deliveries behind the building, not going through
15 the middle of the site. The bigger the site, the
16 bigger and more offset would be the, more offset
17 would be the service road. So you would have a
18 service road in different places, but there is no
19 service road for this site.

20 The service road is really the main
21 access aisle, there is only one way in and one way
22 out so an accident in the entrance area would be
23 problematic as well.

24 MR. REILLY: Now, with regard to the
25 impact on the adjoining residentials, in your

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1 opinion, this proposal would be substantially
2 detrimental to the adjoining residents?

3 MR. LITWORNIA: It would be
4 detrimental because you have the height of the
5 building which requires a variance, and you also
6 have the use which you need for a variance.

7 MR. REILLY: Speaking of the height,
8 is there any basis that you can see that justifies
9 just ignoring the 35 foot height --

10 MR. LITWORNIA: I don't believe there
11 is any testimony that is a justification of the
12 height variance.

13 MR. REILLY: And in your opinion, is
14 there any justification?

15 MR. LITWORNIA: Not that I know of.

16 MR. REILLY: Okay. Last thing I want
17 to touch on is the, what some people call the Medici
18 criteria about reconciliation with the master plan.

19 Now, is that a requirement to be
20 demonstrated for the board to justify a commercial
21 use variance.

22 MR. LITWORNIA: Well, basically, there
23 is a quick case in the Appellate Division in
24 Kinderkamack Road Associates, LLC v. Mayor of
25 Oradell, 421 N.J. Super. 8,21. It held a use

1 variance should be granted sparingly with great
2 caution. The court went on to say because of the
3 legislative preference from a municipal land use
4 planning by ordinance rather than variance, use
5 variances may be granted only in exceptional
6 circumstances.

7 Basically what they're saying, what the
8 court is saying is that there is no need to give a
9 use variance if, in fact, the legislative body
10 already provided a place for that use. If they
11 already have it in two zones, and they allow it in
12 those two zones, and the legislative body never got
13 a recommendation from the planning board or from any
14 of the re-examination reports to modify that, then
15 what you have is a master plan with a substantial
16 number of upgrades.

17 Yet, this was never addressed, as
18 including that use in the highway commercial zone.
19 Since it wasn't, we say in this no ordinances may
20 have prevented, then we say that if we give a
21 variance to the applicant, you're in contravention
22 of what the master plan and the re-examination
23 report states, as well as the endorsement body which
24 would be the legislative body of the municipality
25 because they never recommended or changed anything.

1 They wanted it there as well, but they did want to
2 have a viable Route 18 retail corridor.

3 MR. REILLY: Do you think allowing
4 this type of use on that Route 18 retail corridor
5 would be detrimental overall to the zone plan?

6 MR. LITWORNIA: It would be
7 detrimental to the zone plan because it's not
8 consistent with the legislative consent to create a
9 retail corridor and maintain it.

10 MR. REILLY: In summary, do you feel
11 that this property is particularly unsuitable for a
12 use variance, and if so, why?

13 MR. LITWORNIA: Well, basically, you
14 have Route 18 and because Route 18 is there and it's
15 a viable retail corridor, and recently numerous
16 corridors are not viable, and some small shopping
17 centers and some larger shopping centers have been
18 through the pandemic have lost clients and gone out
19 of business. And because of that, there is no
20 reason to modify the intent of what this corridor is
21 doing, which is maintaining viability because of the
22 fact that you have, in this corridor, a viable
23 retail component. And that has been the major
24 factor of this master plan to maintain that corridor
25 and this is definitely in contravention of that

1 requirement or that request.

2 And it's a requirement because the
3 board found governing body has approved it. The way
4 that this governing body, this body including zoning
5 board, permits it's recommendations to the governing
6 body and the governing body then acts on it, there
7 has been nothing from this governing body requesting
8 that change. There has been nothing but consistency
9 in trying to get a viable retail corridor, and this
10 is not really a retail use.

11 MR. REILLY: I have no further
12 questions. Thank you.

13 CHAIRMAN PHILIPS: Does anyone from
14 the board have any specific questions of Mr.
15 Litwornia?

16 MR. REILLY: Litwornia, with a W.

17 CHAIRMAN PHILIPS: L-I-T --

18 MR. REILLY: L-I-T-W-O-R-N-I-A.

19 MR. LITWORNIA: Correct.

20 CHAIRMAN PHILIPS: Sorry about that.

21 MR. REILLY: No, that's quite all
22 right.

23 CHAIRMAN PHILIPS: There is a couple
24 of extra letters missing in my --

25 MR. REILLY: No problem.

1 MR. GUREVICH: I have a couple.

2 Number one, just to quickly understand, I know we
3 got testimony as to understanding your client and
4 the relationships specific to this. You mentioned
5 the client is 355 Route 9.

6 MR. REILLY: LLC, yes.

7 MR. GUREVICH: LLC, but specific to
8 that, are they in proximity of this?

9 MR. REILLY: Yes, I understand they
10 are, I can't tell you exactly how far away.

11 MR. GUREVICH: I would like to
12 specifically understand, are they individually
13 impacted, and are making the statement because of
14 personal impact, or as a general statement for the
15 town and community?

16 MR. REILLY: Well, frankly, as you can
17 see, our testimony is focused on zoning issues. We
18 haven't brought up how this is impacting this
19 particular, or my client's site, which incidentally,
20 I've been told, is the Dunkin Donuts and a AAA Store
21 at that location at 260 Route 18.

22 CHAIRMAN PHILIPS: It's all the way
23 down, not far from Edgeboro Road and Old Bridge
24 Turnpike come in. So, it's probably three miles up
25 the road.

1 MR. GUREVICH: I totally understand
2 and that's why I'm, obviously because it's an
3 address, LLC, it can be located anywhere.

4 MR. REILLY: I think I've seen, that
5 site, that corporation is actually based --

6 MR. GUREVICH: I would just like to
7 understand in all of this testimony that we have
8 just heard, interpreting that as a general impact in
9 terms of the zoning or the planning.

10 MR. REILLY: Yes, that's what we
11 presented. We're not here saying he's punched us in
12 the nose and we don't want them.

13 MR. GUREVICH: No, but we usually
14 hear, for example, neighbors that say this is going
15 to be light into my property or --

16 MR. REILLY: I understand. We're not
17 within 200 feet. We're talking about a general
18 zoning, which I think it's frankly the most proper
19 way to deal with it, not so much as it's bothering
20 me because the question is, why is this a bad idea
21 for the town and the zone.

22 When I say "bad idea," why is this not
23 legal for the town and the zone to grant them a use
24 variance. That's our position.

25 MR. GUREVICH: And just as a point of

1 clarification again, interpreting the testimony that
2 came in here, I want to process it for myself. I
3 feel like what I'm hearing is that the main issue is
4 not if, for example, the application was solely for
5 the purpose of a storage facility variance on its
6 own, it would have a different consideration. The
7 main consideration or concern has surfaced over here
8 is the mixed-use relationship of a storage facility
9 with a retail facility.

10 MR. LITWORNIA: I think the main thing
11 is that you are trying to develop a retail corridor
12 and this project doesn't fit into the retail onsite.
13 You're squeezing another use in on the site that
14 doesn't go in the corridor.

15 MR. GUREVICH: And I would say,
16 obviously, we would love to be in the position to
17 sit down with applicants and decide what they want.
18 We have to look at the merits of every application
19 as it comes in, right, and that's it. So I'm just
20 asking from the perspective of, as I listened to and
21 I took diligently on all the points that you
22 mentioned, and consider it relative to this
23 application, the main concern is the mixed-use
24 relationship.

25 So, for example, hypothetically, if I

1 had a facility that had a storage facility with,
2 let's say a gym and a men's clothing store,
3 mixed-use type of facility, that too, would be the
4 types of things that I would be concerned about?

5 MR. LITWORNIA: Yes.

6 MR. REILLY: If I may, I think we
7 would object in both situations. One, I think the
8 mixed use makes it worse, so to speak, for the
9 reasons he announced, but this is not an
10 appropriate spot for a self-storage facility,
11 whether it's on top of a retail use or standing near
12 by itself, it's not zoned for it. The town
13 government has said it's not zoned for it. The
14 master plan has said it's not appropriate. It's not
15 appropriate.

16 MR. GUREVICH: That's why we're here.

17 MR. REILLY: Yes, I understand.

18 MR. GUREVICH: Otherwise we're out of
19 a job.

20 CHAIRMAN PHILIPS: Wait, we don't get
21 paid? We don't get paid anyway.

22 MR. REILLY: No, I understand the
23 process. I just want to clarify, we're opposed to
24 it for both reasons.

25 MR. GUREVICH: Okay. I'm looking at

1 understanding the individual points relative to
2 those two areas.

3 CHAIRMAN PHILIPS: Let me ask staff,
4 based on this gentleman's testimony if there are any
5 particular questions you have at this time?

6 MR. HUGHES: Of this witness? Anyone
7 else?

8 CHAIRMAN PHILIPS: I'm sorry, identify
9 yourself because you haven't been on our -- for the
10 court reporter.

11 MR. HUGHES: Good evening, my name is
12 Keenan Hughes, board planner.

13 CHAIRMAN PHILIPS: Thank you.

14 MR. HUGHES: I guess the only question
15 I would have, I think you touched on it in passing,
16 but as part of your evaluation, did you take note of
17 the D(6) height variance that's being requested?
18 And, if so, what was your analysis of that variance
19 request?

20 MR. LITWORNIA: The analysis?

21 MR. HUGHES: The height variance.

22 MR. LITWORNIA: The height variance,
23 basically my analysis of the height variance was
24 that I couldn't figure any need for or justification
25 for the height variance, unless it was to provide

1 more storage and make it a more profitable venture
2 as opposed to the need for it. There's not a need
3 for the extra height. The only need is if you want
4 to make a higher profit margin. As far as I can
5 tell, there was no other need for it.

6 MR. HUGHES: Okay. Nothing further.

7 CHAIRMAN PHILIPS: Thank you. Anybody
8 else from the board?

9 Okay, Mr. Pape, did you wish to
10 cross-examine?

11 MS. RAMPOLLA: Do you agree with the
12 gentleman's analysis of it being purposely, this use
13 being purposely designated or allowed in the two
14 zones that?

15 Is that the case in the town?

16 MR. HUGHES: That's a good question.
17 So storage warehouses, that's the specific term, are
18 permitted within the OI zone. There is other zones,
19 including the IM, that permit warehouse in some
20 other shape and form, but to me, as I interpret the
21 ordinance, I would say that storage warehouse is
22 really the category that this use would be slotted
23 into. It's not specifically defined within the
24 ordinance, but I think it's the right category.

25 And so it's permitted in the OI, but I

1 don't think it's permitted in the IM.

2 MS. RAMPOLLA: Thank you.

3 And also in the reexaminations of our
4 master plan, do you agree that this use wasn't
5 brought up in any of those reexaminations, or
6 addressed at all?

7 MR. HUGHES: Yeah, that's accurate.

8 We did, as part of our review, also review the
9 master plan re-examinations going back to 1990, and
10 I did not find any specific recommendations relative
11 to self-storage or storage warehouse uses one way or
12 the other.

13 MS. RAMPOLLA: Okay, thank you.

14 CHAIRMAN PHILIPS: Mr. Pape?

15 MR. PAPE: I have no questions of Mr.
16 Litwornia.

17 CHAIRMAN PHILIPS: At this point, as
18 you have discussed with us, you wish to continue
19 this so you can review both what has been discussed
20 this evening, along with the report from Phillips
21 and Preiss -- no relation.

22 MR. PAPE: Mr. Chair, I would ask if
23 Mr. Reilly would confirm that he has completed his
24 case on behalf of his client.

25 MR. REILLY: Yes. I have no other

1 witnesses, and this is my sole witness. So, absent
2 some rebuttal, then yes.

3 CHAIRMAN PHILIPS: Another piece of
4 business keeping, at this point I'm going to open it
5 up to the public and ask the public if anybody wish
6 to be asking questions of the testimony that was
7 given by Mr. Reilly and his expert, Mr. Litwornia.

8 Seeing no one, we'll close the public
9 portion on that.

10 And then I guess, Mr. Pape, we can
11 discuss the schedule.

12 MR. PAPE: Sure. I have one -- I did
13 not wish to ask any questions of Mr. Litwornia, but
14 I wanted to make a comment to the board.

15 The only other place in East Brunswick
16 Township where you have a self-storage facility on
17 the same property where you have --

18 MR. REILLY: If he's going to testify,
19 I'm objecting, which I think he is starting to.

20 MR. PAPE: Lawyers can't testify.

21 MR. REILLY: Well, you're stating
22 facts, you need them from a witness, not the lawyer.

23 MR. PAPE: Mr. Chairman, Counselor, I
24 am going to ask that the board take judicial notice
25 that this board approved the only other building on

1 the highway that is both retail and self-storage
2 immediately adjacent to a residential community and
3 it is the one that the record reflects, and I read
4 it into the record earlier, that Carey Thafel is the
5 owner, and that is the one at 645 Route 18, a
6 self-storage building with retail blended into it,
7 immediately adjacent to a residential community.

8 CHAIRMAN PHILIPS: I will accept that
9 as not testimony, but simply fact.

10 MR. WEINER: However, I will caveat
11 one item, the board will acknowledge that that
12 application was approved and that property is on
13 Route 18.

14 However, without research and
15 confirmation, there cannot be acknowledgement that
16 that is the only thing on all of Route 18, as
17 Mr. Pape had indicated. However, that application
18 was approved by the board.

19 MR. PAPE: In a zone known as the
20 Highway-Commercial zone, reflected in the
21 resolution.

22 I would ask that I have the opportunity
23 to sum. I think we have now identified the public
24 portion is closed, the objector's case is concluded,
25 all that remains is summation. And I ask that if we

1 could at your April 20th meeting, with a promise
2 that I will take no more than 15 minutes -- promise,
3 no more than 15 minutes, you can put the clock on --
4 and we'll then ask the board to vote on the
5 application.

6 CHAIRMAN PHILIPS: Let me ask the
7 board if anybody, since we have a lot of people who
8 have to agree that they have heard it, April 20 is
9 what Mr. Pape is asking for, is anybody on the board
10 who is currently able to vote, know that they cannot
11 make it on April 20th at this point?

12 MS. PAPI: I may not be able to.

13 CHAIRMAN PHILIPS: Mr. Brandt is here,
14 however, if that's the case.

15 If Amy can't make it, if you can make
16 it on April 20?

17 MR. BRANDT: Yes.

18 CHAIRMAN PHILIPS: Just a bit of
19 really ominous fact, that's Hitler's birthday. Not
20 that I want to throw anything into this, but just so
21 you know.

22 MR. REILLY: Can I just ask one
23 question --

24 CHAIRMAN PHILIPS: How do I know that?

25 MR. REILLY: I was afraid to ask that

1 question.

2 Would I have the opportunity, likewise,
3 to make a brief summation?

4 MR. WEINER: I think your case is
5 concluded. Your summation, if you want it, can come
6 now, but that's your presentation. You're not the
7 applicant.

8 MR. REILLY: I know that, but
9 typically an objector with an attorney is, in my
10 experience, is usually alright to make a summation.
11 I'm just asking if my --

12 MR. WEINER: The thing is you can make
13 a summation, but you can make the summation at the
14 conclusion of your case. So, you made a
15 presentation, if you want to make a summation now,
16 you certainly can do so.

17 CHAIRMAN PHILIPS: You're welcome to
18 do that.

19 MR. WEINER: You've reserved -- let me
20 just, if I may, you've reserved, which the board
21 acknowledged, that if Mr. Pape provides any type of
22 rebuttal presentation, that you can have an
23 opportunity at that point to have limited
24 cross-examination just to address a rebuttal. And
25 if that happened and you gave that rebuttal existed,

1 it would be fair to allow you an additional time to
2 wrap up and sum your rebuttal.

3 But right now your case is finished.
4 This would be the time.

5 MR. REILLY: Are you saying you're not
6 going to have any more witnesses on April 20th?

7 MR. PAPE: We do not have any
8 additional witnesses on April 20th.

9 MR. REILLY: I just ask if that
10 changes, he notify us in advance.

11 MR. WEINER: I don't know that that's
12 an obligation.

13 MR. REILLY: All right, well, I'll
14 make it as a request.

15 MR. WEINER: You can be present at the
16 meeting.

17 MR. REILLY: Okay.

18 I will be very brief. Use variances
19 are a special type of procedure. And the court
20 system, the courts in particular since this -- I'm
21 sure you heard the name Medici case plenty of times,
22 since that case was decided, the courts have looked
23 very strictly upon granting a use variance, and it
24 made it clear that there are stringent requirements
25 of the proof.

1 The fact of the matter is you have to
2 prove the property is particularly suitable, that is
3 what is known as the positive criteria. And very
4 briefly, this property is not particularly suitable
5 for the dual use proposed.

6 Obviously, it's retail, you can put a
7 retail use there, there is our dimensions and
8 setback requirements and so on and so forth, and the
9 size requirements. As you meet those, you're
10 entitled to put a retail use there. And there are
11 dozens of retail uses, retail-type uses in the
12 ordinance that are permitted. And as indicated by
13 the planner, that is how the zoning ordinance is
14 formulated, they want to encourage and establish a
15 retail corridor.

16 You don't see retail uses mixed with
17 storage, self-storage uses. And why don't you see
18 that? Because there are hazards and difficulties
19 which are really kind of self apparent, if you think
20 about it. People come in to storage units with
21 U-hauls, trailers, all kinds of stuff and they are
22 not compatible with crossing paths with people going
23 into stores or restaurants and so on and so forth,
24 just not compatible.

25 And frankly, to approve that and say

1 well, we're going to make an exception and put it
 2 right on Route 18 is, I believe, and respectfully,
 3 is nonsensical.

4 So this property is not particularly
 5 suitable for a dual use and particularly a dual use
 6 of retail with self-storage, and the amenities, so
 7 to speak or the things that occur with self-storage.
 8 It's just not. Anybody that thinks that is not
 9 thinking correctly.

10 And then the second thing you have to
 11 prove is no negative impact, no substantial
 12 detriment to the surrounding area in the zone plan.
 13 And, you've heard some testimony about the fact that
 14 the zone plan is pretty fixed, it establishes this
 15 area as a Highway Commercial along Route 18. And
 16 why? Because they want to establish a viable,
 17 stable, retail-type, service-type uses. They don't
 18 put self-storage, you wouldn't put self-storage on
 19 that type of zone.

20 And the master plan in 1990 doesn't
 21 permit that. There has been five re-examination
 22 reports, none of which have referenced putting this
 23 type of use in a highway, HC zone.

24 Now, if you're familiar with the Medici
 25 case, and I'll paraphrase it, they made a

1 study it, because the procedure is to study, they
 2 have determined that this does not belong in the HC
 3 zone, it doesn't belong there.

4 And for obvious reasons, I would submit
 5 this does not belong there. And they have at least,
 6 and we may disagree whether it's permitted in two
 7 zones or one zone, but it's permitted elsewhere.
 8 And that's the answer.

9 The governing body, which is the body
 10 charged with actually planning this out with the
 11 planning board, has said don't put these facilities
 12 along the highway; put them over here in the
 13 industrial zone. That's what they thought. And can
 14 anyone really say that's not a good idea, that's not
 15 the best way to do it? I don't think so.

16 So, that's what you're charged with,
 17 you're charged with considering this under the legal
 18 standards. And the legal standards, as we tried to
 19 announce, clearly say this does not belong there.

20 And frankly, as I said earlier, to mix
 21 this with a retail use, with retail, there's going
 22 to be eight stores, seven or eight stores in this
 23 place, or store front. It could be restaurants,
 24 there could be ice cream stores, could be all kinds
 25 of things with little kids running out, running

1 particular, the Supreme Court made, they affirmed
 2 that ruling many times, the Supreme Court said that
 3 the applicant has got to demonstrate that it's an
 4 oversight, or somehow the fact, the master plan does
 5 make recommendations along for such a use like this,
 6 for some reason or another hasn't been enacted or
 7 whatever. But you have to establish that there is,
 8 to reconcile it with the master plan, you have to
 9 reconcile this use with the fact that the master
 10 plan, the zoning ordinance and the master plan,
 11 since 1990, has not mentioned or endorsed this.

12 Now, when I read the record for this
 13 application, I read particularly the planner's
 14 testimony. And the planner, how did the planner
 15 deal with that, their planner? Well, their planner
 16 said well, she really didn't deal with it, what she
 17 said was, well, maybe they didn't know about storage
 18 uses, or maybe storage is a new use. The Medici
 19 case references maybe, it's such a new use that
 20 nobody thought about it.

21 Well, self-storage facilities have been
 22 around a long time. A long time. And the fact of
 23 the matter is that over the past 32 years, 33 years,
 24 this town, the governing body and the planning board
 25 who are supposed to be studying this, and they do

1 around, there could be all kinds of uses in these
 2 seven or eight stores.

3 Now, does it make any sense to put
 4 retail uses which could be patronized by little
 5 children or older people, people who have difficulty
 6 with mobility or whatever, does it make any sense to
 7 put that, those eight stores?

8 And think about it, eight stores draws
 9 a lot of different people. To make eight stores and
 10 then put a self-storage facility where people who
 11 don't know how to drive a truck, don't know how to
 12 buy -- go to the U-Haul place and rent a big U-Haul
 13 and come wheeling in off of Route 18 into this
 14 place, backing the thing up because it's tight
 15 corners to get around -- apparently from the
 16 testimony, as I understand it, to get in and out of
 17 the back area, you gotta jockey the vehicles
 18 around -- does it make any sense to put that type of
 19 use with inexperienced vehicle drivers driving
 20 vehicles they're not familiar with, that are 35 feet
 21 long or whatever? Does that make any sense at all?
 22 Is that something that you can say is sound
 23 planning?

24 I respectfully submit it doesn't make
 25 any sense. It's certainly not sound planning. And

1 lastly, it's totally contrary to everything that's
2 come out of the planning board and the governing
3 body for 35 years.

4 So, with that said, I respectfully
5 submit if you analyze it by a legal standard -- and
6 again, I'm not getting into personal impacts or
7 anything else. I specifically avoided all that,
8 because that's not the issue, really, it's not the
9 issue used to base the decision on either for or
10 against my point of view.

11 What you're supposed to base your
12 opinion on is the planning aspects of it, the land
13 use aspects of it. And if you think about it in any
14 logical way, I respectfully submit you have to say
15 no.

16 I realize no one likes to say no, but
17 this is going to be here for longer than, probably,
18 any of us will be around. And I, respectfully,
19 submit if you put these two incompatible uses
20 together on one relatively small piece of property,
21 is fool-hearted.

22 So, I respectfully request, for those
23 reasons, you deny this application.

24 Thank you for your time.

25 CHAIRMAN PHILIPS: Thank you. Okay,

1 so we have a date of April 20.

2 MR. WEINER: We need an extension of
3 time.

4 MR. PAPE: On the record, granted.

5 And I'll follow up with my letter tomorrow.

6 CHAIRMAN PHILIPS: Thank you, Mr.
7 Pape.

8 MR. WEINER: So, we want to go --

9 MR. PAPE: April 30.

10 MR. WEINER: -- April 30?

11 CHAIRMAN PHILIPS: So, for the record
12 and for anybody who might be here, application
13 Z-22-01 is going to be continued. It's going to be
14 continued until the night of April 20, 7:30 p.m. in
15 this room.

16 The applicant is not required to send
17 out any additional notice. The only notice deemed
18 necessary is being provided at this time. And at
19 that point then, we will hear this. And if all is
20 as planned, Mr. Pape will have a summation. And
21 unless something else comes up in between, we will
22 review things with our staff as we want to do.

23 MR. PAPE: So, because the record
24 reflects that the objector's case is concluded, and
25 because the record reflects that the public portion

1 is concluded, when we return, the applicant and I
2 will be here, I will be here to do a summation.

3 All of the witnesses have been fully
4 examined by the board, the board's professionals,
5 the public, and the objector. Accordingly, I would
6 just like the record to reflect that the witnesses,
7 who have testified over the past year, will not be
8 returning that evening; it will just be the
9 summation.

10 CHAIRMAN PHILIPS: And that is fine.

11 MR. WEINER: Just understand that that
12 is ultimately the applicant's choice in the decision
13 going forward as it's the applicant's application,
14 but it's noted.

15 MR. PAPE: Thank you. Thank you all.

16 MR. REILLY: Thank you again.

17 CHAIRMAN PHILIPS: Mr. Hughes, if, the
18 one thing that came in tonight, the question about
19 the two different zones, can we get, when we, either
20 you or Ms. Hughes, can just reinforce what seems to
21 be at this instant -- Ms. Keller, I'm sorry. What
22 did I say?

23 MR. WEINER: You said Mr. Hughes or
24 Ms. Hughes.

25 CHAIRMAN PHILIPS: Okay. Mr. Hughes

1 or Ms. Keller would give us some kind of clarity as
2 to IM and OI.

3 MR. HUGHES: Certainly.

4 MR. REILLY: Can I just ask that a
5 copy of that be sent to the Gasiorowski law firm?

6 CHAIRMAN PHILIPS: You can call the
7 office and ask for it.

8 MR. WEINER: They will provide it to
9 you.

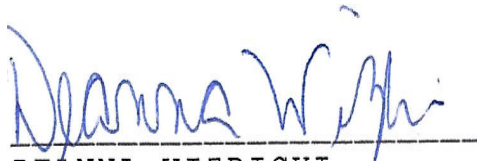
10
11 (Hearing was adjourned at 9:57 p.m.)

C E R T I F I C A T E

1
2
3 I, Deanna Wizbicki, a Registered Court
4 Reporter of the State of New Jersey, certify that
5 the foregoing is a true and accurate verbatim
6 transcript of the testimony provided under oath
7 before any court, referee, board, commission or
8 other body created by statute of the State of New
9 Jersey, on the date and place hereinbefore set
10 forth.

11 I FURTHER CERTIFY that I am neither attorney,
12 nor counsel for, nor related to or employed by, any
13 of the parties to the action in which this
14 deposition was taken, and further that I am not a
15 relative or employee of any attorney or counsel
16 employed in this action, nor am I financially
17 interested in this case.

18



23

DEANNA WIZBICKI

Registered License No: 30CY00001700

24

Notary ID No: 2330518

25 DATED: 3/21/23

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