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TOWNSHIP OF MIDDLETOWN
PLANNING BOARD
REGULAR MEETING

IN THE MATTER OF:

Application: 2018-203, SETH :
BELLER TRUST (WAWA) :
Block 807, Lot 1.02 :
Application for major site plan :
and minor subdivision with :
variances. :

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TRANSCRIPT OF VIDEOTAPED
PLANNING BOARD MEETING
HELD ON NOVEMBER 10, 2021

B E F O R E :

- DAVID MERCES, CHAIRMAN
- CARL RATHJEN
- KEVIN SETTEMBRINO
- JOHN RENTSCHLER
- KEVIN COLANGELO
- STEVE SCHWEIZER
- JOSEPH AMECANGELO
- ROSEANN ETESON
- JAY BANASIAK, ALTERNATE I

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

- JAMES H. GORMAN, ESQ., BOARD ATTORNEY
- ERIN URIARTE, BOARD SECRETARY
- ROBERT R. KEADY, JR., PE, BOARD ENGINEER
- STEPHEN R. NEHMAD, ESQ., FOR THE APPLICANT

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2	<p>1 I N D E X</p> <p>2 WITNESS EXAMINATION BY PAGE</p> <p>3 JAMES KENNEDY, MR. NEHMAD 11</p> <p>4 PE</p> <p>5</p> <p>6</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9</p> <p>10 NUMBER DESCRIPTION PAGE</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	4
3	<p>1 MR. NEHMAD: Good evening, Mr. Chairman,</p> <p>2 Members of the Board. For the record, my name is</p> <p>3 Stephen Nehmad, N-E-H-M-A-D. I'm an attorney. I'm</p> <p>4 a member of the firm Nehmad, Davis & Goldstein. My</p> <p>5 office is in the southern part of the state, in</p> <p>6 Atlantic County, however, for many, many years I've</p> <p>7 been representing mostly development entities all</p> <p>8 over the State of New Jersey, for over 40 years.</p> <p>9 I represent the applicant, Seth Beller</p> <p>10 Trust, who's here this evening in person, Robert</p> <p>11 Beller in the blue sweater just behind me.</p> <p>12 Robert's father for many years operated a</p> <p>13 supermarket on the corner where the Value City</p> <p>14 store used to be directly adjacent to this property</p> <p>15 in which today, of course, has been redeveloped to</p> <p>16 CVS and Chase Bank, which is directly contiguous to</p> <p>17 the property that's the subject of this</p> <p>18 application, which is currently improved with</p> <p>19 vacant buildings, the old Friendly's restaurant, as</p> <p>20 well as the bank, which is also vacant, I believe</p> <p>21 it's called the Twin Rivers Bank. We propose to</p> <p>22 redevelop that site. The site is just over 113</p> <p>23 acres. We propose to redevelop both the bank site</p> <p>24 and the Friendly's site and build a Wawa on the</p> <p>25 Friendly's site and take the bank site, take the</p>	5

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1 our engineer, who I know has testified before this
2 board many times previously, there are steep slopes
3 extending from our site up to the rear of the site
4 from 20 to 30 feet change in grade, however, along
5 the New Monmouth Road frontage there is very much
6 developable a three plus acre portion of the site.
7 We propose to impose a conservation easement so
8 there is a very, very significant buffer between
9 the Wawa development and the office building
10 development to take place in and along the frontage
11 of the site and at the rear of the site, where the
12 housing is in a different zone district. We, of
13 course, are in the B-3 zone and our use is
14 permitted. The only variance relief we seek, with
15 the exception of a technical variance for the size
16 of the store, we're actually required to have a
17 store -- a building be 5,000 square feet.
18 Obviously the intent of that regulation is to make
19 sure that your tract is not underdeveloped and we
20 have two buildings on the site, so between the
21 office building and the Wawa, we're well over 5,000
22 square feet. The Wawa building is just under 5,000
23 square feet, which requires, as your planner noted,
24 a technical variance. The only other variances we
25 seek relate to freestanding signage and setback and

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1 facade signs. As you'll hear from Jim momentarily,
2 we propose to develop our freestanding sign at
3 20 feet in height, consistent with the height of
4 the CVS and the Chase Bank sign, which was built
5 obviously only a couple short years ago. We
6 propose to develop basically at the same setback
7 they're proposing. That site is at about 19 feet.
8 We propose 20 feet. The ordinance technically
9 requires 25 feet. Your ordinance technically
10 limits the height of the sign to the lower height
11 than what we're proposing. It's actually 12 feet.
12 We're proposing 20. As you know, when you look at
13 sign height along the state highway or along any
14 arterial roadway with a high average daily traffic
15 count, one of the things you look at is what are
16 the heights of transitional signage along the side
17 of the roadway. We believe, and we've done a
18 survey of this, an analysis of this, as you'll hear
19 from our engineer, Jim Kennedy, we are at the lower
20 end but within the 20 feet, where the lower end of
21 the heights along this section of the roadway and
22 at the setback that's consistent with the property
23 next door. In addition to imposing a conservation
24 easement of nine plus acres of this 12 -- just
25 under 13 acre site, we're also proposing some

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1 stormwater management facilities. None exist today
2 so there are going to be -- there is going to be a
3 reduction in off site flow. Jim will talk about
4 that. That goes to -- will testify as a major
5 development. We're going to have a lessening of
6 stormwater that flows off of the site in the post
7 development condition. I know you heard a lot
8 about that in the prior application. We are also
9 having an environmental benefit in that regard, as
10 well. We also seek some -- a few design waivers
11 that you'll hear. Design waivers, as you know,
12 we're required to have a reasonableness test. We
13 believe the design waivers we're seeking are ones
14 that are eminently reasonable for the reasons that
15 Jim will talk about in his testimony, and also, we
16 believe that they're consistent with the type of
17 design waivers this board has granted to other
18 similarly circumstances types of applications
19 previously. So, moreover, we believe that the
20 variance relief we're seeking related chiefly to
21 signage is eminently justifiable. We did note some
22 items in your planner and engineer's report which
23 we're happy to discuss. We're not willing to -- in
24 any way. We're willing to work with all your staff
25 and this board in making modifications as desired.

9

1 With your permission, Mr. Chairman, I'd
2 like to call the witnesses that we propose to
3 produce this evening. I don't have them all here
4 this evening. Gary Dean, our traffic engineer, is
5 out of the country.
6 **CHAIRMAN MERCES:** So he's in December,
7 correct?
8 **MR. NEHMAD:** He and our planner,
9 although Paul is here, he will testify after Gary.
10 **CHAIRMAN MERCES:** Okay.
11 **MR. NEHMAD:** So what we would like to do
12 is present three of our witnesses this evening.
13 That would be our civil engineer who, as you know,
14 is Jim Kennedy. Also, we have another engineer
15 that does a lot of our work, Jeff Martell, he's
16 going to answer the operations related questions
17 which your planner has raised. We also have a
18 representative here of the firm -- from the
19 architecture firm that designed the building, Mr.
20 Stephen Fortwangler, who will just describe the
21 architecture of the building.
22 You want me to call them and swear them
23 all at once or separate?
24 **CHAIRMAN MERCES:** I would say
25 separately. That way it's -- there's going to be

<p style="text-align: right;">10</p> <p>1 public questions, so let's just compartmentalize 2 them.</p> <p>3 MR. NEHMAD: Okay. I call Jim Kennedy 4 first, Mr. Chairman.</p> <p>5 Before I do that, I do have a 6 housekeeping detail. I have supplied Erin with the 7 proof of publication and proof of service. May 8 I -- (unintelligible) -- for that, Mr. Chairman?</p> <p>9 MR. GORMAN: I reviewed the affidavits 10 and the publication and proof of service and 11 they're in order and the board has jurisdiction. 12 You can continue.</p> <p>13 MR. NEHMAD: Thank you, very much. 14 Jim, can you come forward, please, to be 15 sworn?</p> <p>16 CHAIRMAN MERCES: I know we kind of said 17 90 minute windows for this but the application that 18 was going to be after you obviously has been 19 carried to December so we'll give you guys a little 20 leeway.</p> <p>21 MR. NEHMAD: Mr. Chairman, give me the 22 high sign and we'll wrap it up.</p> <p>23 CHAIRMAN MERCES: You got it.</p> <p>24 MR. NEHMAD: Okay?</p> <p>25 CHAIRMAN MERCES: Gotcha.</p>	<p style="text-align: right;">12</p> <p>1 professional engineer, you specialize in civil 2 engineering and -- what we've done, Mr. Chairman, 3 we premarked exhibits that I've given Erin and Jim 4 your exhibit list and a copy of the exhibits. 5 Jim's going to hand out exhibits as he speaks from 6 them. We have hand-outs as well as full board 7 exhibit boards, as well.</p> <p>8 CHAIRMAN MERCES: Fair enough.</p> <p>9 MR. NEHMAD: Jim, tell us a little 10 bit -- you've had experience with this site before 11 this application. You were also the design 12 engineer on the prior application that I alluded to 13 in my opening remarks. Would that be an accurate 14 statement?</p> <p>15 MR. KENNEDY: Yes.</p> <p>16 MR. NEHMAD: Okay. And as such, would I 17 be accurate in saying that you are fully familiar 18 with the property in question and the surrounding 19 land uses, the underlying conditions of this 20 community's land development ordinance as it 21 affects this site and the pertinent positions of 22 the underlying zoning?</p> <p>23 MR. KENNEDY: Yes.</p> <p>24 MR. NEHMAD: Okay. Tell us a little bit 25 about the existing site conditions, if you would,</p>
<p style="text-align: right;">11</p> <p>1 MR. NEHMAD: All right.</p> <p>2 BOARD MEMBER: It's past our bedtime.</p> <p>3 MR. NEHMAD: Mother didn't raise any 4 fools.</p> <p>5 Full name for the record.</p> <p>6 JAMES KENNEDY, PE, having been first duly sworn, 7 testified as follows:</p> <p>8 MR. KENNEDY: James Kennedy --</p> <p>9 MR. GORMAN: State your full name and 10 business address.</p> <p>11 MR. KENNEDY: -- K-E-N-N-E-D-Y, 211 12 Maple Avenue in Red Bank, New Jersey.</p> <p>13 MR. NEHMAD: Mr. Chairman, I know Mr. 14 Kennedy has testified many times.</p> <p>15 CHAIRMAN MERCES: He's here every month.</p> <p>16 MR. NEHMAD: Thank you. So may we 17 stipulate his qualifications as a licensed 18 professional engineer specializing in civil 19 engineering? He's also a licensed professional 20 planner but his testimony will be chiefly in civil 21 engineering, so we can stipulate to his 22 qualifications and admit him as an expert?</p> <p>23 CHAIRMAN MERCES: Fair enough.</p> <p>24 MR. NEHMAD: Thank you, Mr. Chairman. 25 Jim, you're obviously a licensed</p>	<p style="text-align: right;">13</p> <p>1 and before you speak to or from the exhibit, we've 2 premarked, just tell us what the exhibit is and 3 identify it before you speak to it.</p> <p>4 MR. KENNEDY: Okay. So I'll be 5 discussing A-1 first. That's a colored aerial that 6 was developed under my direction and control. It's 7 actually dated November 3rd, 2021. It's an 8 exhibit. I'm not going to mark the full board 9 because I don't want to burden Erin in carrying 10 these around but we can mark it, I don't know, 17 11 or use those that were electronically submitted. 12 Up to you, Mr. Nehmad.</p> <p>13 MR. NEHMAD: Well, what I did, Mr. 14 Chairman, I provided Erin an electronic exhibit 15 list so she can print one out for her file. Right, 16 Erin?</p> <p>17 MS. URIARTE: Yeah. You're fine.</p> <p>18 MR. NEHMAD: Print one out for your -- 19 okay.</p> <p>20 Go ahead.</p> <p>21 MR. KENNEDY: So this is Lot 1.02 in the 22 B-3 zone. This is your highway district. B-3 23 is -- most of Route 35 in this area, it goes 24 from -- (unintelligible) -- right across the street 25 and Squires, where it used to be, that's B-3, as</p>

<p style="text-align: right;">14</p> <p>1 well, and there were -- (unintelligible) -- north 2 on 35. Saying north on 35 is a little bit of a -- 3 (unintelligible) -- because north is actually 4 facing up on this exhibit, so obviously Route 35 5 North, Route 35 South, but in this case, on this 6 exhibit we're actually talking west on the 7 left-hand side of the exhibit and east on the 8 right-hand side of the exhibit, north is up, 9 although Route 35 North is to the left, now that 10 I've thoroughly confused you guys. 11 So what we're looking at is the project 12 site outlined in red. It's a 12.7 acre site. This 13 is a site, if you grew up in this area whatsoever 14 you were here at Friendly's getting ice cream in a 15 cardboard box. I don't know how it did but it 16 stayed and it had the flaps on the side. This was 17 known as Friendly's. Friendly's had a -- 18 (unintelligible) -- entrance, that really steep 19 slope and when it snowed you just skid right down. 20 Friendly's restaurant is the property that's 21 basically highlighted by that project site 22 location. Just to the west along north Route 35 23 is -- was an office building and then became a bank 24 with a driveway canopy and professional offices 25 upstairs, former location of T&M Associates a few</p>	<p style="text-align: right;">16</p> <p>1 buildings, we've done concept plans for senior 2 living, we've done roadway cost for -- 3 (unintelligible) -- that's off the table with this 4 application. As counsel stated, the applicant is 5 willing to deed restrict that nine acres, plus or 6 minus, of property and either find a non-profit to 7 manage it or dedicate a conservation easement over 8 the property to include future development. That's 9 substantial, that's significant, because this area 10 of the exhibit does show the surrounding property 11 surrounding that back acre, the R-22. This is a 12 property that slopes substantially from that 13 portion of the property. As you know if you've 14 driven out there, there is a hill. It flattens out 15 and that property was up 20 to 30 feet higher than 16 Route 35. It's a very unique property, and again, 17 it's this applicant's desire to find a non-profit 18 to accept that property or deed restrict it against 19 future development from a conservation easement, 20 but that's the attempt. 21 MR. NEHMAD: Now, the entirety of the 22 property zoned in the B-3 district? 23 MR. KENNEDY: Yes, it is. 24 MR. NEHMAD: So if I look at the entire 25 outline in red on exhibit A-1, the aerial, that is</p>
<p style="text-align: right;">15</p> <p>1 years ago, and it has shuffled interest in 2 ownership and we propose now to remove the canopy, 3 and I'll get into that, but the existing building 4 will remain except for the canopy that I'll discuss 5 a little further. The frontage is about 500 feet 6 on Route 35, 70 feet on The Trail. Now, The Trail 7 goes back to our R-22 zone, single family 8 residential homes. The Trail is a one way road 9 that goes from the south to the north Route 35. 10 There's do not enter signs on Route 35, although I 11 have seen people go right up from Route 35, so it 12 is a line and it's purposefully dedicated to be a 13 one way road, but it is in the R-22 zone and this 14 applicant has attempted to be as sensitive as 15 possible to our surrounding residential neighbors, 16 so that is, that little 70 foot section just to the 17 west of the proposed office building, and then on 18 New Monmouth Road, there's about 272 feet of 19 frontage on New Monmouth Road. As counsel stated, 20 the most buildable portion of New Monmouth Road 21 portion of this wooded lot is up front. There's a 22 wetland configuration and a screen that basically 23 bisects that rear portion of the property on either 24 side of that screen with wetland area are steep 25 slopes, so we've done concept plans for office</p>	<p style="text-align: right;">17</p> <p>1 approximately 13 acres, did you say, 13. -- 2 MR. KENNEDY: 12 -- 3 MR. NEHMAD: 12? 4 MR. KENNEDY: -- .669 acres. 5 MR. NEHMAD: Okay. 12.669 acres but the 6 entirety -- 7 MR. KENNEDY: Yes. 8 MR. NEHMAD: -- of it is in the B-3 zone? 9 MR. KENNEDY: Yes. 10 MR. NEHMAD: Okay. 11 MR. KENNEDY: So your ordinance requires 12 to buffer the residential but it's nowhere near a 13 substantial buffer that we're providing with the 14 dedication of that. 15 MR. NEHMAD: Now, this application seeks 16 to redevelop the frontage of the site that's trying 17 to be improved with the building you talked about 18 as the former office building and the bank, as well 19 as the -- (unintelligible) -- correct? 20 MR. KENNEDY: Yes. And there was a 21 topographic -- (unintelligible) -- there are two, 22 I'm sorry, which is the wetlands area. I talk 23 about the wetlands area that bisects the property 24 in the rear and there's also a wetlands property, 25 area that is adjacent to The Trail. That's to the</p>

<p style="text-align: right;">18</p> <p>1 westerly portion of the property. It's wooded now 2 and there is a delineated wetlands. The NJDEP -- 3 (unintelligible) -- their interpretation, which 4 shows that that is properly remaining and it is a 5 wetlands area in that location, so if that comes 6 into some kind of design relief later, so I just 7 wanted to point that out. 8 MR. NEHMAD: Okay. Would you describe 9 the plan of redevelopment for the tract, if you 10 would? 11 MR. KENNEDY: So I'd like to use -- I'm 12 going to skip out of order. I'd like to use A-3 13 for this, which is the minor subdivision plot, 14 colorized. 15 MR. NEHMAD: Is that -- 16 MR. KENNEDY: So A-3 is, again, prepared 17 under my direction and control. It's dated 18 November 3, 2021. 19 MR. NEHMAD: Happens every time. 20 MR. KENNEDY: A-3 merely takes the 21 property that we just looked at and subdivides it 22 as a minor subdivision which is part of this 23 application. It's the two lots that counsel -- 24 (unintelligible). The first is Lot 1.3. It's the 25 northerly portion and the western portion of the</p>	<p style="text-align: right;">20</p> <p>1 MR. KENNEDY: So the minor subdivision, 2 again, creates two lots. The first is the 3 northerly lot, which is our commercial development 4 portion, and the second, much larger piece is the 5 south portion that -- what counsel just said, it's 6 a dedicated conservation easement and that is 7 adjoining all of our residential neighbors. That 8 piece, that conserved piece will form the buffer 9 from Route 35 to the neighbors in the R-22 zone 10 both to our west and to our south. 11 MR. NEHMAD: Now, Jim, before you go on, 12 just so the board and our neighbors can have some 13 idea as to the distance, if we look at that 14 exhibit, A-3, and we look, take the rear limit of 15 disturbance of development, okay, can you tell us 16 how -- what is the distance from the rear limit of 17 disturbance from a plan of redevelopment to the 18 rear property? 19 MR. KENNEDY: Well, let's go closest 20 that I can here. So it is, let's see, 300, 360, 21 about 390 feet. 22 MR. NEHMAD: Okay. So it varies -- 23 MR. KENNEDY: That's the -- 24 MR. NEHMAD: -- but at its closest point 25 it's over 300 feet; is that an accurate statement?</p>
<p style="text-align: right;">19</p> <p>1 property. It is 3.6.5 acres in area. It contains 2 the frontage along Route 35, that 500 plus or minus 3 feet, as well as the 70 feet along The Trail. To 4 the rear or the south, to the south is Lot 1.04. 5 It's highlighted in green. It's highlighted in 6 green because this is the area we're talking about 7 with the conservation easement or finding a 8 non-profit to dedicate this property to. 9 MR. GORMAN: If you don't mind, I don't 10 want to interrupt, when you say a non-profit, the 11 word conservation easement, I'm not quite sure. 12 MR. NEHMAD: Yeah. What we intend to do 13 is impose a conservation easement over the 14 property. As a condition of any approval, you 15 would review it and approve it as to form, your 16 engineer would review it and your planner would 17 review it, the description, metes and bounds. 18 After that is imposed, we would then search for a 19 501(c)(3) non-profit, make it conservation 20 foundation to accept the dedication of the tract. 21 MR. GORMAN: Right. 22 MR. NEHMAD: If not, the conservation 23 easement will remain in place in any event. 24 MR. GORMAN: All right. Thank you. 25 MR. NEHMAD: Thank you.</p>	<p style="text-align: right;">21</p> <p>1 MR. KENNEDY: Yes. 2 MR. NEHMAD: So if you could point to 3 the closest point, if you would, Jim. 4 MR. KENNEDY: So roughly behind the 5 proposed refuse area, there's a proposed retaining 6 wall in that area, and then it drops and then it's 7 critical slope area so we're not disturbing that. 8 So from there, perpendicular to the back line 9 along -- (unintelligible) -- that's where we 10 propose the approximate property line. 11 MR. NEHMAD: Okay. That -- 12 MR. KENNEDY: Much deeper variance. 13 MR. NEHMAD: Right. And that distance 14 is approximately 390 feet, three nine zero? 15 MR. KENNEDY: Correct. 16 MR. NEHMAD: So it's over a football 17 field in distance at this lot? 18 MR. KENNEDY: Yes. 19 MR. NEHMAD: Okay. 20 MR. KENNEDY: That's linear dimensions, 21 so we also have to think about the topography 22 there. There are changes in the topography, you've 23 heard before. The topographical buffering is real. 24 So this property, the R-22 properties are now 25 perched not only behind 300 or 400 feet into the</p>

<p style="text-align: right;">22</p> <p>1 woods, but also they're perched higher, which means 2 something, so if it were lower, well, then this is 3 what would -- (unintelligible) -- on the hill. 4 You're looking up, added portion of development. 5 You're not. You're actually looking down on 6 Route 35, the Route 35 corridor, which changes 7 things when you have 30, 40, 50 foot streets 8 between you and the development. 9 MS. ETESON: I have two questions. 10 MR. KENNEDY: Yeah, sure. 11 MS. ETESON: I know that the parking lot 12 is green but I'm just wondering, since there is 13 going to be a big drop after the retaining wall, 14 but it's shown in white, you're not going to get 15 rid of those trees, right, you're not -- that are 16 listed, that are shown here in this photograph, or 17 are you planning to add to that retaining wall 18 going south? Are you eliminating those trees? 19 MR. KENNEDY: Let me interrupt you. I'm 20 sorry. I try not to ever do that, but you have a 21 critical slope ordinance. That area that we're 22 talking about is the critical slope that's 23 protected by your ordinance. We're not permitted 24 to actually enter into that steep slope area and 25 remove trees without coming before this board and</p>	<p style="text-align: right;">24</p> <p>1 MS. ETESON: I gotcha. 2 All right. So the last question, you 3 had said that the neighborhood is above it and 4 that's better than the neighborhood being below, 5 but would the neighborhood above it be at the same 6 height as the lights overhead? 7 MR. KENNEDY: Nowhere near it, no. 8 MS. ETESON: In other words, the lights, 9 even though they're overhead, the neighborhood is 10 even above that? 11 MR. KENNEDY: Yes, and those trees, over 12 300 to 400 feet of trees between the homes and the 13 lights. 14 MS. ETESON: So they should -- so the 15 trees would be in the way of seeing the -- 16 (unintelligible). 17 MR. KENNEDY: Correct. 18 MR. FAY: That's false. 19 MR. KENNEDY: So -- 20 CHAIRMAN MERCES: I'm sorry. The 21 neighbors -- 22 (Multiple parties speaking.) 23 MR. FAY: That's not true. I'm sorry. 24 I apologize. 25 CHAIRMAN MERCES: Everybody is going to</p>
<p style="text-align: right;">23</p> <p>1 testifying that it's necessary to the development 2 of property, and in this case it's not necessary to 3 the development because we're providing a retaining 4 wall and we have adequate space available on the -- 5 MS. ETESON: Okay. So it's just white 6 and it doesn't mean that's you're going to be 7 removing trees? 8 MR. KENNEDY: No. I created the green 9 to show you the limits of the proposed Lot 1.04. 10 So if it's not green, it's the white, it's -- 11 MS. ETESON: The other lot -- actually, 12 I have two. 13 MR. RATHJEN: That retaining wall is 14 there already, isn't it, partial? Is there a 15 partial wall, retaining wall? 16 MR. KENNEDY: You're absolutely right. 17 MS. ETESON: It looks like there's an 18 opening on the west end of the retaining wall where 19 it ends and then there's an opening, you just go 20 behind there. It doesn't go all the way to the 21 property on the lot, right? 22 MR. KENNEDY: Right, because the slope 23 starts to come down as we get towards the west 24 side, so the retaining wall runs down the face 25 as --</p>	<p style="text-align: right;">25</p> <p>1 get a chance. 2 MR. FAY: I'm sorry. 3 CHAIRMAN MERCES: I remember you guys 4 from last time. 5 MR. FAY: But that's not true. 6 MS. ETESON: So then the lights would -- 7 just curious about the lights. So would people -- 8 wouldn't have the lights at this point? 9 MR. NEHMAD: Well, first of all, it's 10 important to understand that that area is wooded. 11 Is that correct, Jim? 12 MR. KENNEDY: Yes, it is. 13 MR. NEHMAD: All right. And that we're 14 not taking down any of that green area. All those 15 will remain in that state. Secondly, the lights 16 are proposed at a height of -- to the extent -- I 17 mean, we're not doing the site plan yet but let's 18 jump ahead to that for just a second. The light 19 that we have on site are how high, Jim? 20 MR. KENNEDY: So they do vary. Let me 21 just get to them. 22 MR. NEHMAD: Take your time. 23 MS. KENNEDY: The poles are 20 feet. 24 Those are our tallest, 20 feet tall. 25 MR. NEHMAD: All right. So the tallest</p>

<p style="text-align: right;">26</p> <p>1 ones we have are 20 feet. It's also important to 2 understand that every one of the lights has, in 3 effect, cut-off shields, so it can only shine down; 4 is that correct? 5 MR. KENNEDY: So these are LED dark sky 6 light fixtures. You heard me testify before that 7 those are the lights that we do actually specify, 8 full cut-off lighting below 90 degree from the 9 bottom of the face of the light. Now, I understand 10 why there's -- why the neighbors are concerned, 11 because you can, if you go out there right now you 12 can see some of the houses through the woods. I 13 mean, that's the truth, but I haven't gotten to the 14 landscaped yet and I haven't gotten to the 15 development plan yet. We're not there yet. 16 MR. RATHJEN: Before you go any further, 17 the environmental board the first time you folks 18 were here, we walked the area and what I consider 19 that is what we call Middletown Old Road. Those 20 trees are very old. You can see a whole bunch are 21 dropped down, but it hasn't been touched. It's 22 really Middletown Old Road, about 250, 300 years 23 old in some areas. That's one of the oldest spots 24 that we have in Middletown, that old row of trees 25 in the Middletown Village area.</p>	<p style="text-align: right;">28</p> <p>1 people subdivide the lot they make it perfectly 2 square. How did you -- you went dog-legged and you 3 included wetlands. Why would you want to include 4 wetlands in your subdivided lot and, you know, get 5 this odd look? What was the reason? 6 MR. KENNEDY: Because we're adjoining 7 neighbors so I wanted to conserve the property 8 behind all the neighbors. If I had taken the 9 property line straight across, straight across 10 anywhere and squared it off, then we'd be missing 11 three or four homes on The Trail, so yeah, it does 12 look odd but there's a reason behind it, because 13 we're trying to form a buffer behind their houses. 14 BOARD MEMBER: So you will take on the 15 wetlands as part of this commercial property 16 because it just works out better for the residents? 17 MR. KENNEDY: Well, so the applicant's 18 green area, which is part of -- (unintelligible) -- 19 but there is, you're right, there is additional 20 wetlands past that that we can't touch. 21 BOARD MEMBER: Right. Now you have to 22 take that on your lot, commercial lot and you're 23 doing that because you want to continue to have the 24 buffer there, you want to square it off differently 25 and make it -- okay. I gotcha. I just want to</p>
<p style="text-align: right;">27</p> <p>1 MR. KENNEDY: And I do think it's 2 wonderful that it's being preserved as part of this 3 application, I do, I do, and I know that neighbors 4 play, you know, a game of golf and ride their bikes 5 and other forms of recreation in this area but, you 6 know, that's sort of what the neighborhood sort of 7 becomes. This is an old row of big trees, tall 8 trees and it's a healthy -- the wetlands are 9 healthy. That's their drainage, the drainage that 10 comes off The Trail and Winding Road actually forms 11 the wetlands that cut through this. Back when this 12 was developed it didn't have the same stormwater 13 requirements that we do now, but that is formative 14 over the years, that's when wetlands came in. 15 BOARD MEMBER: Hey, Jim, this is now one 16 contiguous lot, right? This is Lot 1.02, Block 17 18 -- 807 -- 18 MR. KENNEDY: That's correct. 19 BOARD MEMBER: -- correct? 20 There is no subdivision right now. 21 You're talking about the subdivision as we speak 22 and we got sidetracked? 23 MR. KENNEDY: Yes. 24 BOARD MEMBER: When you go to subdivide 25 this lot, you know, a lot of times you see when</p>	<p style="text-align: right;">29</p> <p>1 understand why you -- 2 MR. NEHMAD: I understand what you're 3 saying. Usually when you see a subdivision line 4 it's radial to the street and regular. 5 BOARD MEMBER: Right. 6 MR. NEHMAD: However, my experience when 7 you're imposing conservation restrictions like 8 this, it is common to file -- to follow wetlands 9 lines and sensitive land topography and that's what 10 we're doing in this, in this application. 11 BOARD MEMBER: I appreciate that and I 12 just want -- 13 MR. NEHMAD: That's why it has that 14 highly irregular configuration, so that we're 15 proposing basically two lots, one on the front 16 where you would have the office building and the 17 lot in the back which would be the far bigger lot, 18 nine plus acres, which would be imposed with a 19 conservation easement, the form of which, again, 20 would be reviewed by Mr. Gorman, this board, and 21 your engineer as to geometry and we would record 22 that before any building permit would be granted. 23 Go now to the plan, the site plan 24 itself. 25 MR. KENNEDY: So this will be going back</p>

30

1 to A-2.

2 **MR. NEHMAD:** Incidentally, Jim, before

3 we go to A-2, the subdivision plan that you

4 described previously, that complies with all zoning

5 requirements, does it not?

6 **MR. KENNEDY:** Correct. All of the lots

7 comply with your bulk standards in the underlying

8 zoning. Substantially oversized for the lots.

9 Both the conservation lot in the back, as well as

10 the lot in the front, it complies.

11 **MR. NEHMAD:** Let's talk and shift our

12 attention now to the plan of the development of the

13 smaller front lot, if we may. Again, I'd like you

14 to -- (unintelligible).

15 **MR. KENNEDY:** A-2, again, was prepared

16 under my direction and control. The site plan --

17 it's dated November 3rd, 2021. I've zoomed in on

18 that 3.6 or so acre site, so don't forget that

19 there's another, you know, nine acres behind it, to

20 the bottom of what we're showing here. Route 35 is

21 along the top of the exhibit. Again, Route 35

22 North is running to the west, on the left-hand side

23 of the exhibit, and east is going along the

24 right-hand side of the exhibit. I superimposed the

25 detail, as well as the -- (unintelligible) -- as

31

1 well as the zoning as other, other things. What

2 I'd like to go through is, I know you've all heard

3 this before in some fashion but I'd like to go in a

4 detailed way of what we propose. I'm going to

5 highlight some differences a little bit between the

6 last application and this.

7 **MR. GORMAN:** Can I just make a comment

8 so we're not confused?

9 **MR. NEHMAD:** Sure.

10 **MR. GORMAN:** This is a totally new area,

11 application. It was amended. It's just that this

12 record starting tonight, so any -- if we refer

13 back -- if you refer back and say we changed this,

14 we changed that, but that transcript from last time

15 is not part of this hearing tonight, it's not part

16 of the record and nobody here is going to have to

17 go back and read that and certify to it.

18 **MR. NEHMAD:** Right.

19 **MR. GORMAN:** I just want to make -- so I

20 see -- you know, so there's no confusion about it,

21 that is not part of this record or this

22 application, this amended application.

23 **MR. NEHMAD:** We agree. The only reason

24 we're doing it is so that the board understands and

25 so that those in the public that might have --

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1 **MR. GORMAN:** Certainly you can use it

2 and say we changed this.

3 **MR. NEHMAD:** Go ahead, Jim.

4 **MR. KENNEDY:** So you'll see a couple

5 rectangles here. The first is the fueling canopy,

6 that's the first rectangle and that's closest to

7 Route 35. That's moved to a conforming location,

8 shown in a conforming location. That's the canopy

9 that's commonly seen over the, I call it gas pumps

10 but they're multi product dispensers. The --

11 following to the lower labeled by Wawa is the 4,736

12 square foot Wawa building. The entrance to the

13 Wawa is located at the front of the building. The

14 entrance, the customer entrance that -- there is

15 no, there is no customer entrance at the rear of

16 the building. There are two doors at the rear of

17 the building. They're for loading purposes only.

18 That is where the striped loading area is located,

19 as well. At the front between the canopy and the

20 Route 35 right-of-way, these are the underground

21 fuel storage tanks that every gas service, gas

22 store, gas fueling station -- thank you -- fueling

23 station has and there's another witness, there's

24 someone that's going to discuss all the safety

25 measures that go along with these tanks, but they

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1 are state-of-the-art underground tanks for the

2 repository of fuel before it's pumped out to the

3 dispensers. You'll see the Route 35 southbound

4 traffic. Our entrance is a 22 foot wide bifurcated

5 entrance. The entrance is 22 feet wide. The exit

6 is also 22 feet wide. This entrance is under the

7 sole jurisdiction of the DOT. The DOT has approved

8 this configuration. We have our DOT access permits

9 for the installation and construction of not only

10 the entrance but the small island, the sidewalk.

11 Everything DOT related has been approved and a

12 permit is in hand. As one enters the site from

13 Route 35 we have the 30 foot wide access driveway.

14 It has landscaping on both sides and the first

15 opportunity to turn into the property occurs 146

16 feet to the first entrance, the first turn, the

17 right turn into either the fueling area or the

18 convenience store. That is in conformance with

19 your ordinance. That was where the previous

20 application has shown far less. This is

21 conforming. That previous variance was limited in

22 this new design. So the entrance occurs at the

23 intersection. A person could make the right turn

24 into the fueling canopies or continue into the

25 parking stalls located along the easterly portion

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1 of the property or to the rear or recirculate
2 the -- (unintelligible). Now, it's important to
3 note at this point that in order to create that
4 circulation that we look for, the bank canopies,
5 the former bank canopy was removed, so this is no
6 longer a drive-through bank facility. It's
7 proposed as an office building.
8 When we look at the parking, the office
9 building and the Wawa are separate parking
10 generators. They total 76 parking stalls and we
11 provide basically in excess of that amount, 86
12 parking stalls. So 76, 44 parking for the office,
13 32 for the Wawa using the ordinance standard, 82 --
14 (unintelligible). 85 are proposed with this
15 development. I want to point out a couple things
16 about the parking stalls. First, they are greater
17 in width than what the ordinance requires. The
18 ordinance requires 9 by 18 parking stalls. Along
19 the frontage, the front of the building they are 10
20 feet wide by 18 feet along, except for barrier
21 parking spots, which in the DSI they want 7.1. The
22 barriers are 7 foot -- (unintelligible). Those are
23 8 feet, 8 foot high, obviously. As we move around
24 the site, again, 18 feet wide by 10 feet long --
25 18 feet long by 10 feet wide and to the west,

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1 similarly, 18 feet by 10 foot wide. When we go to
2 the rear of the site, now, these parking stalls
3 where the loading area is, we have increased the
4 size of those stalls. We've not only increased the
5 island but we've increased the size of the stalls
6 to be 20 feet in depth where the ordinance requires
7 18, and still, each are oversized in width, 10 feet
8 wide. These are 10 by 20s along the rear. Now, as
9 we just move slightly west we go back to 9 foot by
10 20 foot stalls as we move away from the Wawa
11 building. The existing parking lot would be
12 utilized for the office building located directly
13 to the west. There's more than the number of
14 parking stalls that are required by the ordinance
15 to provide for the cumulative uses on the site.
16 **BOARD MEMBER:** Couple questions.
17 **MR. KENNEDY:** Sure.
18 **BOARD MEMBER:** Can you show me traffic
19 flow for the delivery of the tankers and/or can you
20 tell me the length of your tankers that are going
21 to go to the property and how they're going to
22 access that?
23 **MR. KENNEDY:** Of course. So as part of
24 this application we submitted, as part of our plan,
25 and I will show you, but I do want to point out

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1 that our last two plan sheets, sheet 14 and sheet
2 15, show modeling at 72 and 62. Now, the 62 foot
3 wheelbase truck, that's the largest size delivery
4 truck that will come to Wawa. It shows the
5 circulation pattern, as well as the fuel tanker
6 truck turning plan, which is 15 by 15. In both
7 cases the truck would enter, they would enter on
8 Route 35. The entrance configuration here is wide
9 enough in design pursuant to the DOT standards to
10 allow for that to be able to turn into the site.
11 The delivery truck at -- (unintelligible). That's
12 the wheelbase. The truck is actually longer than
13 that.
14 **BOARD MEMBER:** Yes, it is.
15 **MR. KENNEDY:** It goes around, comes
16 through this stop intersection, circles out and
17 around and comes into the loading area behind the
18 building. The extension for the wheelbase truck
19 requires a movement that goes past the loading area
20 and then backs into the loading area, and that's
21 not something that is unheard of. Of course,
22 trucks back into loading areas, especially when
23 we're talking about a truck that is nearly 70 --
24 **BOARD MEMBER:** 75 feet long.
25 **MR. KENNEDY:** Thank you. I was going to

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1 say 76.
2 -- 75 feet long, so we have modeled this
3 for the largest delivery, a 75 foot Interstate
4 trailer. This is by far one of the largest
5 vehicles on the road today and --
6 **MR. RATHJEN:** Jim --
7 **MR. KENNEDY:** Yes.
8 **MR. RATHJEN:** -- facing the back row in
9 the lot, that back row, which is on the bottom all
10 the way over, can they take that in, also, or not?
11 **MR. KENNEDY:** Well, could they?
12 **MR. RATHJEN:** Is there an
13 interconnection?
14 **MR. KENNEDY:** Yes. These roads are
15 interconnected between CVS, Chase and our proposed
16 development. There is an interconnection. We
17 don't anticipate that being efficient or needed or
18 wanted.
19 **MR. RATHJEN:** But that will still be
20 open to customers that go back there?
21 **MR. KENNEDY:** Yes.
22 **MR. RATHJEN:** Okay.
23 **MR. NEHMAD:** It will be open to
24 customers and we have approval from the Monmouth
25 County Planning Department for that

<p style="text-align: right;">38</p> <p>1 interconnection.</p> <p>2 MR. RATHJEN: Okay.</p> <p>3 MR. NEHMAD: That's two very significant</p> <p>4 factors. The adjacent roadways, as Jim pointed</p> <p>5 out, along the north of the state highway portion</p> <p>6 of Route 35 and to our east, right at the site plan</p> <p>7 you're seeing is New Monmouth Road, which is</p> <p>8 obviously a county road. As Gary Dean will testify</p> <p>9 in our next hearing, we have studied the New</p> <p>10 Monmouth Road access at very significant length and</p> <p>11 the county has approved that.</p> <p>12 BOARD MEMBER: Could we go back to my</p> <p>13 original question?</p> <p>14 MR. KENNEDY: Yes. It will come through</p> <p>15 and directly -- the 62 can make this turning</p> <p>16 movement out of, and I would say this, make the</p> <p>17 right-hand turn only located to the west of the</p> <p>18 Wawa. The fuel, the fuel is a little bit</p> <p>19 different. So we modeled the fuel everywhere on</p> <p>20 the site because we wanted to be sure, but the fuel</p> <p>21 truck, and you'll see on sheet 15 of 15 of the plan</p> <p>22 set, can enter into the site on that first</p> <p>23 driveway, it can pull through, enter along between</p> <p>24 the canopy and the proposed office building and</p> <p>25 circulate into the area where it will discharge</p>	<p style="text-align: right;">40</p> <p>1 how would you -- (unintelligible) -- your parking</p> <p>2 and then come back up, make a right, stop at the</p> <p>3 stop sign, come right back out using the existing</p> <p>4 island, so we don't have a lot of overlapping</p> <p>5 movements that we did perhaps last application</p> <p>6 existing on the property. So the circulation, the</p> <p>7 intention of the circulation is to provide, is to</p> <p>8 provide safe and efficient access to the property</p> <p>9 and I just demonstrated that with the trucks. I</p> <p>10 hope you'll also understand that enlarging the</p> <p>11 parking stalls and increasing the size of the</p> <p>12 parking stalls, increasing some of the depths of</p> <p>13 the parking stalls, that we can accommodate that</p> <p>14 safe and efficient movement when the lot is parked</p> <p>15 and I want to point out a couple more things. So</p> <p>16 that island, which, as you know, your ordinance</p> <p>17 requires 24 feet for a development such as this.</p> <p>18 You won't really find a 24 foot island in this</p> <p>19 plan. We have a 26 foot island at its narrowest,</p> <p>20 which is as we enter from Route 35, a 26 foot</p> <p>21 island occurs between the rear of the parking</p> <p>22 stalls that are adjacent to the Wawa and the</p> <p>23 parking stalls that are adjoining to the east.</p> <p>24 BOARD MEMBER: Now, it says 28 here. I</p> <p>25 see 28 here.</p>
<p style="text-align: right;">39</p> <p>1 into, pump into the underground storage tanks.</p> <p>2 After that movement it can then follow through and</p> <p>3 circulate out, so it's almost like a figure eight,</p> <p>4 circulate through and out the entrance.</p> <p>5 BOARD MEMBER: Are the deliveries going</p> <p>6 to be -- (unintelligible).</p> <p>7 MR. KENNEDY: Yes.</p> <p>8 BOARD MEMBER: Deliveries coming in --</p> <p>9 (unintelligible).</p> <p>10 MR. KENNEDY: Yes, and the fuel</p> <p>11 deliveries must be -- (unintelligible).</p> <p>12 BOARD MEMBER: So not only the office</p> <p>13 building, you would still use this as the site</p> <p>14 entrance on I-35, the entry for the Wawa?</p> <p>15 MR. KENNEDY: So the office building,</p> <p>16 that entrance very well may be furthest to the</p> <p>17 west.</p> <p>18 BOARD MEMBER: Is that still going to be</p> <p>19 open?</p> <p>20 MR. KENNEDY: It's still open. DOT</p> <p>21 approved that entrance to remain. That provides</p> <p>22 the most efficient access to that parking field for</p> <p>23 the office building.</p> <p>24 BOARD MEMBER: And the circulation?</p> <p>25 MR. KENNEDY: The circulation, I mean,</p>	<p style="text-align: right;">41</p> <p>1 MR. KENNEDY: I'm sorry. It is 28.</p> <p>2 Absolutely.</p> <p>3 BOARD MEMBER: Okay.</p> <p>4 MR. KENNEDY: Even better. Okay.</p> <p>5 MR. NEHMAD: Thank you. If you see</p> <p>6 anything else that's never been entered, please let</p> <p>7 us know.</p> <p>8 MR. KENNEDY: So as you move through the</p> <p>9 site, to the rear of the Wawa with parking along</p> <p>10 the southerly side you'll also see that the access</p> <p>11 aisle as measured between the loading area and the</p> <p>12 back parking stalls is 28 feet. The loading area</p> <p>13 itself is 15 feet, 6 inches. That's almost double</p> <p>14 as wide as a truck is permitted, right, in that --</p> <p>15 in through here -- (unintelligible) -- so our</p> <p>16 loading area is almost double and there are</p> <p>17 movements towards there. We have to provide safe</p> <p>18 access and ingress for fire egress from the back of</p> <p>19 the building, so that, in part, was why that did</p> <p>20 get wider, to provide not only the maneuver</p> <p>21 necessary to get in and out, but the safe emergency</p> <p>22 egress to the building should that occur while the</p> <p>23 loading is being -- is taking place.</p> <p>24 As we move along to, again, to the</p> <p>25 westerly side, we have oversized aisles coming out</p>

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1 from the site, as well. Again, my job here is to
2 circulate -- to provide efficient and safe
3 circulation pattern for trucks and for cars. I
4 can't forget people, right, because without people
5 there's -- (unintelligible). So the pedestrian
6 circulation to me is just as important, even more
7 important than the vehicle circulation and truck
8 circulation, so we've tied all of the parking
9 either immediately around the perimeter of the Wawa
10 or we provided crosswalks that connect the banks of
11 parking to -- so you'll see crosswalks along, along
12 the parking areas to the rear, to the side. We
13 have sidewalk connecting from the Wawa building to
14 the office building and we have sidewalk from the
15 Wawa going to Route 35. You can't see it because
16 it didn't get covered correctly, but in this area,
17 which is just to the right of the underground
18 storage tanks, it's a concrete sidewalk that
19 connects our site to the pump and fire department,
20 which, of course, is a requirement under the --
21 (unintelligible). We also provide access -- well,
22 the most pertinent access is immediately during --
23 (unintelligible). That's a design that's --
24 (unintelligible). Our parking is -- the fire zone,
25 I'll go into that later. The location of parking,

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1 I'll get into that -- (unintelligible) -- is
2 pedestrian safety, provide for efficient
3 circulation and access to the site.
4 **MR. NEHMAD:** Jim, if I understand your
5 testimony correctly, then, in terms of vehicular
6 circulation by both delivery vehicles, trucks, as
7 well as passenger vehicles, you've had to
8 overdesign everything, the driveway aisles, the
9 parking space dimensions, everything is a little
10 bit overdesigned to give additional room for safety
11 and efficiency purposes in terms of circulation;
12 would that be an accurate statement?
13 **MR. KENNEDY:** So I prefer that that be
14 said, that it exceeds the municipal requirement,
15 because overdesigning almost becomes inefficient
16 and costly, so I don't want to say it's
17 overdesigning it but it exceeds the municipal
18 requirements in the width of parking stalls, the
19 width, in some areas the depth and width lines, so
20 it exceeds the municipal requirements for
21 circulation aisles and parking.
22 **MR. RATHJEN:** Jim, a question. The
23 little dots on the Wawa, are those the bollards?
24 Are these concrete bollards, safety bollards?
25 **MR. KENNEDY:** Exactly right, bollards.

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1 As the -- (unintelligible) -- obstructions --
2 **MR. RATHJEN:** Yup.
3 **MR. KENNEDY:** -- and parking stalls to
4 that concrete apron, curbs and wheel stops, wheel
5 stops, they shouldn't be on sites. Curbs have been
6 an issue, so every Wawa, Quick Chek convenience use
7 now moves towards the no curb and bollards and that
8 is a safety issue for pedestrians. It reduces the
9 number of obstructions that pedestrians navigate
10 going from --
11 **MR. BANASIAK:** Earlier you mentioned
12 there's now access to the back or rear entrance?
13 **MR. KENNEDY:** There's no customer access
14 from the rear entrance. It's loading only.
15 **MR. BANASIAK:** So this on the bottom
16 part, it looks like it's for maintenance, right, it
17 says maintenance. Can somebody directly just come
18 from the other adjoining lots and just drive across
19 that whole lot?
20 **MR. KENNEDY:** Say it again.
21 **MR. BANASIAK:** So coming from the
22 existing lots and just drive across into the Wawa
23 parking lot from that rear entrance?
24 **MR. KENNEDY:** Yeah. Well, okay. The
25 rear entrance -- I'm talking about the physical

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1 entrance to the building. I'm not talking about
2 this interconnection from Monmouth Road down the
3 site.
4 **MR. BANASIAK:** Okay.
5 **MR. KENNEDY:** This is approved by the
6 county. It's something that is promoted by your
7 Master Plan, to interlink commercial buildings so
8 that people don't have to go back out to the
9 highway to come back in to --
10 **MR. NEHMAD:** And historically this
11 property, as I understand it, when it was
12 Friendly's and the bank, before that an office
13 building, has always had the reciprocal access
14 easement across the CVS and Chase Bank property,
15 correct?
16 **MR. KENNEDY:** It was always one
17 property.
18 **MR. NEHMAD:** Right.
19 **MR. KENNEDY:** So I don't think it was a
20 reciprocal easement. I think it was all one
21 property.
22 **MR. NEHMAD:** Well, right, but when they
23 were subdivided any reciprocal easement has
24 remained in effect to provide access to the county
25 road, correct?

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1 **MR. KENNEDY:** That is correct, yes.
2 **MR. NEHMAD:** And that is proposed here?
3 **MR. KENNEDY:** Correct.
4 **MR. NEHMAD:** We're not proposing any
5 development at all on the property that's over the
6 CVS tract, where the CVS and the Chase Bank are
7 located, we're just utilizing that same access
8 driveway where we have reciprocal access rights,
9 correct?
10 **MR. KENNEDY:** That's existed for --
11 **MR. GORMAN:** There is a recording
12 reciprocal easement agreement so it's out there,
13 you know, we have it at the time at the subdivision
14 but it's recorded and it says what Mr. Nehmad has
15 talked about.
16 **MR. NEHMAD:** Thank you, Mr. Gorman, and
17 we have supplied a copy of that with our file with
18 this application.
19 **BOARD MEMBER:** Did the county put any
20 restriction on the egress on to New Monmouth, like
21 a right only or anything?
22 **MR. NEHMAD:** No. I would -- if we could
23 possibly hold that for Gary next time.
24 **BOARD MEMBER:** Sure.
25 **MR. NEHMAD:** I would gladly answer it,

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1 because we've studied that out the gazoo. I mean,
2 Gary is -- with drones, we studied peak periods,
3 we've looked at internal access, alternative access
4 plans and Gary will describe that, but the answer
5 is no, we did not. It has to do with -- he'll
6 explain next time, if we could.
7 **BOARD MEMBER:** Sure. I have one last
8 quick question.
9 **MR. NEHMAD:** Sure.
10 **BOARD MEMBER:** So when you show the
11 overhangs now coming off the existing Twin Rivers
12 Bank, the bank is not there anymore, there's a
13 significant topography distance between the
14 existing Friendly's lot and where the bank is. How
15 does that fly? How is that all mending together?
16 **MR. KENNEDY:** So as -- well, the
17 topography change really occurs as you go down into
18 this little parking area. Tell me exactly what
19 it --
20 **BOARD MEMBER:** So where the
21 drive-through is right now in the back --
22 **MR. KENNEDY:** Yes.
23 **BOARD MEMBER:** -- looking down at the
24 Friendly's lot is probably a 3 to 4 foot grade
25 difference.

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1 **MR. KENNEDY:** So our topographic survey
2 does not -- so when we remove, when we remove that,
3 okay, that --
4 **BOARD MEMBER:** Yeah. Is that becoming
5 part of the Wawa lot?
6 **MR. KENNEDY:** Exactly. One lot.
7 **BOARD MEMBER:** Okay. How are you
8 transitioning that together?
9 **MR. KENNEDY:** So we grade the whole
10 thing out, because we have the opportunity to
11 regrade all of the lots.
12 **BOARD MEMBER:** You are aware that
13 there's literally a step there, concrete steps that
14 go down from one property to the next with a
15 railing, so you're just gonna make that grade
16 change? Where there's concrete steps right now is
17 easily removed by just grading out the --
18 **MR. KENNEDY:** Well, the bank isn't --
19 the bank. The former bank isn't changing. We have
20 the ability to regrade the rest of the basically
21 three acre lot.
22 **BOARD MEMBER:** The bank will be higher
23 so is there a retaining wall or how is that --
24 **MR. KENNEDY:** The office building
25 itself --

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1 **BOARD MEMBER:** Yes.
2 **MR. KENNEDY:** -- is -- we're not
3 accessing from that side from the Wawa. We're
4 accessing it from the south and from the side, the
5 front, the Route 35 frontage, so that allows us to
6 move the grading. We don't really have to change
7 that whole property line.
8 **MR. NEHMAD:** Well, I think the question,
9 will there still be a step or something like that
10 or maybe regrade so that the transition is smooth
11 and it's an acceptable percent of grade?
12 **MR. KENNEDY:** Exactly. That's -- I'm
13 sorry. That -- we're regrading that portion of the
14 site to get rid of the change in our -- between the
15 two sites, because we don't need much to grade
16 the -- at two percent, you know, it's not that much
17 property in terms of the frontage.
18 **BOARD MEMBER:** I'm sorry. I still
19 don't -- I'm looking at it right here in front of
20 me and I'm saying that that's a noticeable 5 foot
21 grade change without a doubt. I do this for a
22 living, as well, so I'm saying to myself, you got
23 five steps, there's five steps walking up to the
24 bank and then the property development, you know,
25 I'm just trying to understand, if you're gonna

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1 grade that out, it's gonna be on an angle or you're
2 going to have a retaining wall.
3 **MR. NEHMAD:** Well, the grading, as you
4 know, we can only deal with certain slope.
5 **BOARD MEMBER:** That's my point, you
6 know. Right now the Friendly's site is -- looks
7 partly flat but the bank site sits higher so I'm
8 just trying to, you know, to Mr. --
9 (unintelligible) -- point, I'm just trying to
10 understand --
11 **MR. NEHMAD:** Let us check it, if we
12 could --
13 **BOARD MEMBER:** Sure.
14 **MR. NEHMAD:** -- have a moment.
15 **MR. KENNEDY:** So the best illustration
16 of this is page 6 of 15 shown in the grading plan.
17 The bank is on the, the bank is on the bank side of
18 the property with grading up the property along the
19 curb and changing the elevation of the property so
20 that they meet and then --
21 **BOARD MEMBER:** When you say grading up,
22 you mean you're adding dirt?
23 **MR. KENNEDY:** To the high spot. So the
24 Wawa is actually about a foot higher. It goes from
25 76 to about 77.

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1 **BOARD MEMBER:** Okay.
2 **MR. KENNEDY:** So the finished floor is
3 78 and change. The existing grade in the same area
4 is around 76.
5 **BOARD MEMBER:** Okay. Thank you.
6 **MR. KENNEDY:** You're welcome.
7 **MR. NEHMAD:** Jim, can you go on and
8 describe the stormwater management plan?
9 **MR. KENNEDY:** Yes. I believe it's the
10 site plan. So this is not a major development for
11 stormwater purposes. A major development requires
12 disturbance of more than one acre of earth, of
13 ground, so in that this is an existing site, it's
14 paved, it's redeveloped, it's developed, we are not
15 disturbing portions of the site. This has been
16 reviewed by the DOT, the county and the limit of
17 disturbance is the site minus the existing paved
18 surfaces of the site, so for disturbance purposes
19 this is not a major development. In addition, we
20 are not adding more than one-quarter acre of new
21 impervious surface, so our part in this is to not
22 impact downstream areas. Again, we've exceeded
23 that by decreasing run-off from this site to the
24 drainage system on Route 35 and we're doing that
25 through two underground detention basins. The

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1 detention basins are hatched in gray and in total
2 provides about 25,000 gallons of stormwater
3 underground for it to slowly -- the water goes to
4 the basin and slowly is discharged into the
5 existing system. It discharges to two places, one
6 is the existing pipe that's on the site and the
7 second is the existing connection on Route 35, so
8 we're -- we have two connection points and a
9 composite, we're just going to work this in the
10 composite. In a 10 year storm, which is not a
11 nuisance but, you know, a substantial storm, we're
12 reducing it by 17 percent. 17 percent less run-off
13 will come off this site during the 10 year storm on
14 that sight line basis. For the 100 year storm
15 about six percent less run-off will occur from this
16 site after, you know, and this, again, is through
17 the use of a detention basin, underground detention
18 basin. We're not -- (unintelligible). Not because
19 there's petroleum products used on the site.
20 Normally we're required to -- there is certainly
21 groundwater issues in and around the area. We're
22 right up against the wetlands. We have a large
23 hill that comes down on to the site so the
24 groundwater table is relatively high. Therefore,
25 we will have underground detention in order to

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1 mitigate the increase in run-off from this site to
2 the receding water. After this is developed less
3 water will go to the Route 35 system than happens
4 today.
5 **MR. NEHMAD:** In terms of landscape plan,
6 there's also one for the site. Can you explain
7 that, if you would?
8 **MR. KENNEDY:** Yes. 34 trees are
9 proposed, 224 shrubs and other plantings are
10 proposed. We're maintaining lawn areas and sod
11 areas. Our landscape plan is incorporated into A-3
12 but it's also detailed in the plans on sheet 715.
13 The perimeter of the site is being landscape with a
14 variety of shrubs and trees. The shade trees are
15 provided along Route 35 where possible, because our
16 500 feet of frontage on Route 35, portions of it
17 are wetlands and wooded and portions of it are the
18 existing driveways and the proposed driveway.
19 We're required to provide shade trees in a 30 foot
20 spacing pattern and we've done that where possible.
21 So one, two, three, four, five, six, seven, there's
22 seven shade trees proposed associated with the
23 application. If we were to extend it into the
24 wetlands area, which we can, but there's utility
25 poles, utility wires existing. Similarly, that is

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1 part of our -- (unintelligible) -- even though it's
 2 not being developed. That is a wooded frontage and
 3 your ordinance allows existing vegetation to meet
 4 the requirements in the shade tree ordinance. So
 5 if you want to throw the existing --
 6 (unintelligible) -- we'd provide for that shade
 7 tree planting but you don't want us to take out to
 8 plant trees. It doesn't make sense.
 9 **BOARD MEMBER:** Question.
 10 **MR. KENNEDY:** Yes.
 11 **BOARD MEMBER:** I can see wires on 35
 12 South.
 13 **MR. KENNEDY:** So we've actually moved
 14 the trees back so that the wires are out along the
 15 frontage and that's one reason, as we get closer to
 16 The Trail, which is up here, to the left of the
 17 exhibit, those wires go between the wood line and
 18 the back of the curb. There are certain small
 19 trees that could be planted in that area but I
 20 didn't look up with proposing trees in that area
 21 because of the wires and because of the
 22 approximately -- (unintelligible). We can plant in
 23 the wetlands but it's just didn't seem to make
 24 rational sense to plant trees up against that
 25 wetlands area where we could have a potential

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1 conflict with the utility wires.
 2 **MR. NEHMAD:** Now, Jim, if I may, you
 3 told us everything is in the B-3 zone, the entire
 4 tract. As we look at the redevelopment of the
 5 site, does this mean the use, of course, is a
 6 permitted use, correct?
 7 **MR. KENNEDY:** Yes.
 8 **MR. NEHMAD:** The setbacks, we meet all
 9 the setbacks?
 10 **MR. KENNEDY:** We do.
 11 **MR. NEHMAD:** Do we meet all building
 12 height requirements?
 13 **MR. KENNEDY:** Yes, we do.
 14 **MR. NEHMAD:** Although sheet -- and we'll
 15 talk about the building momentarily. Do we meet
 16 all lot coverage requirements, both in terms of
 17 building coverage and in terms of impervious
 18 coverage?
 19 **MR. KENNEDY:** Yes.
 20 **MR. NEHMAD:** And are we well within
 21 those coverage requirements?
 22 **MR. KENNEDY:** Of course, yeah. We're
 23 well within that.
 24 **MR. NEHMAD:** Do you have those figures?
 25 **MR. KENNEDY:** Yes. I believe. So our

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1 occupied livable space is, for the proposed Lot
 2 1.03 is 74,399, that's 47.25 percent of the tract.
 3 The lot coverage, gross tract area, is 52.9 percent
 4 and the contiguous open area is 71.4 percent.
 5 Floor area ratio is 9.86. Building height, of
 6 course, is less than 14 feet in stories, which is a
 7 little higher than --
 8 **MR. NEHMAD:** Okay. In terms of
 9 intensity of commercial development, one of the
 10 things that engineers and planners, as you well
 11 know, always look at is total impervious coverage.
 12 What is our total impervious coverage and what's
 13 allowed by ordinance?
 14 **MR. KENNEDY:** The lot coverage is
 15 52.9 percent and 60 percent is permitted.
 16 **MR. NEHMAD:** Is permitted by ordinance?
 17 **MR. KENNEDY:** Correct.
 18 **MR. NEHMAD:** Okay. And with respect to
 19 the -- the ordinance requires that buildings be a
 20 minimum of 5,000 square feet in the B-3 zone?
 21 **MR. KENNEDY:** Yes. That's right.
 22 **MR. NEHMAD:** And do we meet that
 23 requirement with the office buildings and existing
 24 building, but do we meet that?
 25 **MR. KENNEDY:** Yes. The office building

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1 is 10,796 plus or minus square feet.
 2 **MR. NEHMAD:** Okay. And the --
 3 (unintelligible) -- is slightly under 5,000?
 4 **MR. KENNEDY:** It is 4,736 square feet.
 5 **MR. NEHMAD:** We're asking for a
 6 technical variance for a minor grade there; would
 7 that be safe?
 8 **MR. KENNEDY:** If one considers the
 9 single building on site, yes. In conjunction with
 10 the area of development on the site, there is no
 11 variance required.
 12 **MR. NEHMAD:** And the purpose of that
 13 zoning control in your opinion as an engineer and
 14 planner is to make sure that buildings that are
 15 minutely small and underdeveloped are not
 16 buildings, correct?
 17 **MR. KENNEDY:** It has to do with
 18 utilization of the portion of --
 19 **MR. NEHMAD:** Right. And is that purpose
 20 here satisfied in your opinion?
 21 **MR. KENNEDY:** Absolutely. Between an
 22 office building and the gas sales, as well as the
 23 convenience store, this is not underutilization on
 24 the property. I think it's an appropriate
 25 utilization.

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1 **MR. NEHMAD:** Okay. Now, the variances
 2 we seek chiefly relate to building size and
 3 freestanding signage. Is that an accurate
 4 statement?
 5 **MR. KENNEDY:** Yes, it is.
 6 **MR. NEHMAD:** Is that accurate?
 7 **MR. KENNEDY:** Yes, it is.
 8 **MR. NEHMAD:** Okay. Would you describe
 9 the freestanding sign that's being proposed?
 10 **MR. KENNEDY:** I have -- this is also a
 11 colored version of it. This was premarked as A-4.
 12 So A-4 is the colorized version of the construction
 13 detail shown on 12 of 15 of the submitted plan set.
 14 It demonstrates the, you know, just the color of
 15 the sign but also demonstrates the heights and
 16 perspective.
 17 (Multiple parties speaking.)
 18 **MR. KENNEDY:** So A-4 depicts the
 19 freestanding pylon which is located in this grassed
 20 area between the Chase Bank and the entrance and
 21 exit on 35. It is shown on A-2 and this is a
 22 colorized version -- colorized elevation. It
 23 demonstrates the height, which is a 20 foot high
 24 sign and also indicates this area, 26.87 square
 25 feet. Under the B-3 zone a 50 foot sign area is

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1 permitted, so we are in compliance with the sign
 2 area. What we're requesting is two things with
 3 this sign, the height and the setback. In the zone
 4 it says that the sign must meet 25 percent of the
 5 front yard depth, so the sign has to be placed at
 6 25 percent of the front yard. So in the old days
 7 when I first started this that meant 25 percent of
 8 the front yard setback, so in this case you take 79
 9 setback, divide it by .25 and you get your sign
 10 setback. That interpretation has changed. The
 11 front yard is now between building and the
 12 right-of-way -- I'm sorry, the building and the
 13 right-of-way. So now if you have a building that's
 14 several hundred feet back from the road and you
 15 take 25 percent of that, your sign moves back from
 16 the right-of-way into the parking view or back into
 17 the site. We're 25 feet in that calculation and
 18 25 feet is required. We're requesting a setback of
 19 20 feet from the right-of-way, and that's not
 20 inconsistent with signs up and down the B-3 zone up
 21 along Route 35. In fact, the Chase Bank, CVS is
 22 the same, roughly 20 feet back from the
 23 right-of-way, and as all of you know from driving
 24 Route 35, you don't see signs set back 25 percent.
 25 In fact, just pull one out, Whole Foods, the

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1 parking sign, the sign is back, the freestanding
 2 sign in the parking lot, because Whole Foods is set
 3 back, so -- (unintelligible). I'll bring out this
 4 in a minute, but this setback makes sense for a
 5 couple reasons. There's going to be further
 6 discussion on this, but one of the reasons is a
 7 driver coming down southbound on Route 35 needs to
 8 see the location of the property, make their lane
 9 change, decel and get into the driveway. In this
 10 case we have a wooded area along, along The Trail,
 11 I'm sorry, along The Trail that's competing with
 12 our sign. In addition, we have signs at CVS and
 13 signs in other areas creating noise at times. We
 14 need to differentiate. We push the sign back
 15 25 feet to the required location, we now don't have
 16 the same visibility of that sign. We're talking
 17 about 5 feet and in my opinion, in my engineering
 18 opinion, that 5 feet makes all the world for this
 19 location, otherwise we wouldn't be asking for this
 20 variance. The 5 feet is justified from a safety
 21 perspective, from my engineering opinion, and
 22 again, it's the characteristics of the B-3 zone,
 23 it's to have signs that are up alongside Route 35
 24 and not pushed back, especially when you have
 25 further obstructions, so --

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1 **MR. NEHMAD:** And if you look at the
 2 freestanding sign adjacent to CVS and Chase Bank,
 3 is that the same setback?
 4 **MR. KENNEDY:** 20 feet is what the
 5 resolution approves.
 6 **MR. NEHMAD:** I think it's blacked out on
 7 the exhibit, A -- what exhibit? Is that A-2?
 8 **MR. KENNEDY:** Yeah. This is A-2.
 9 **MR. NEHMAD:** Where would the -- show our
 10 freestanding sign, if you would.
 11 **MR. KENNEDY:** It's located at the --
 12 right in the green area between the two sites and
 13 it's 20 feet from the edge of the right-of-way.
 14 **MR. NEHMAD:** The Route 35 right-of-way?
 15 **MR. KENNEDY:** Yes.
 16 **MR. NEHMAD:** And where would the CVS,
 17 Chase Bank sign be?
 18 **MR. KENNEDY:** That's right at the
 19 intersection of New Monmouth and Route 35.
 20 **MR. NEHMAD:** Okay. You can't see it
 21 because it's covered by the -- (unintelligible).
 22 **MR. KENNEDY:** Right. It's to the right
 23 of this.
 24 **MR. NEHMAD:** But they can't --
 25 **BOARD MEMBER:** Hold on. Just as far as

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1 perspective, you know, you got the sign past the
 2 driveway on a one way road, so what -- does it just
 3 not work for you to bring it, at least that's the
 4 way things go, to the western side of the property?
 5 **MR. KENNEDY:** That's a great point. I
 6 should have pointed this out. There's an existing
 7 freestanding sign at the office building that's
 8 proposed to remain. That's located squarely in
 9 front of the former bank, now office building. If
 10 we move this sign further west, then it starts to
 11 officially compete with the existing sign that's
 12 located along the office building.
 13 **BOARD PLANNER:** Did you consider one
 14 freestanding sign that had --
 15 **MR. KENNEDY:** We did but it would
 16 require a variance. As we move that office
 17 building signage to the Wawa sign and have the fuel
 18 numbers, that sign becomes a really bigger, much
 19 bigger, but it also doesn't give people time for
 20 identification to move into -- you don't want there
 21 to be confusion. If you're going into the office
 22 building, you generally want people to be able to
 23 get into that first driveway. The office is a
 24 little different, right, because people know it's
 25 there and it's usually a destination, not a

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1 convenience, where you're passing the side of the
 2 building, so an office building does need
 3 appropriate signage in this location for safe
 4 maneuvering but for a convenience use, I prioritize
 5 that. That's why it's a little more --
 6 **BOARD PLANNER:** But you -- oh, I'm
 7 sorry. Just for clarification, you also need a
 8 variance for quantity of freestanding signs --
 9 **MR. KENNEDY:** Yes.
 10 **BOARD PLANNER:** -- right?
 11 Just for clarification, okay. Not just
 12 area and setback --
 13 **MR. KENNEDY:** Right.
 14 **BOARD PLANNER:** -- height and setback.
 15 **MR. NEHMAD:** Height and setback and
 16 quantity.
 17 **BOARD PLANNER:** And quantity.
 18 **MR. NEHMAD:** Yeah. Now, if we were to
 19 subdivide the lots, which we're not proposing,
 20 that's the same for the office building on one lot
 21 and for the Wawa on the other lot, each would be --
 22 and there is sufficient area to do that, we're not
 23 proposing to do that but each is entitled to have
 24 their own freestanding sign, correct, Jim?
 25 **MR. KENNEDY:** Yes. The ordinance

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1 foresees a sign every 200 feet, which is the
 2 required minimum frontage along Route 35 in the B-3
 3 zone. We have 500 feet of frontage so we could
 4 remind you and I will remind you that two signs are
 5 foreseen by your zoning ordinance because we have
 6 over 400 feet of frontage on -- (unintelligible).
 7 **MR. RATHJEN:** Jim, I have a question.
 8 Is that office building for four or five different
 9 companies? Would you be having a stackable sign,
 10 you know, ABC Corporation? Right now it's one
 11 sign.
 12 **MR. KENNEDY:** Well --
 13 **MR. RATHJEN:** (Unintelligible) -- back
 14 to what it was before.
 15 **MR. KENNEDY:** So at one time it did have
 16 multiple tenants on that sign, when it was the
 17 offices upstairs, so we would -- the area of the
 18 sign would comply with the ordinance. It does not
 19 have to be 50 square feet of one use. It could be
 20 50 square feet of 10 uses.
 21 **MR. RATHJEN:** Where would that sign be
 22 right now?
 23 **MR. KENNEDY:** It's existing right here,
 24 that white rectangle --
 25 **MR. RATHJEN:** Right.

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1 **MR. KENNEDY:** -- centered on the --
 2 **MR. RATHJEN:** I see.
 3 **BOARD MEMBER:** Is the canopy going to
 4 have Wawa?
 5 **MR. NEHMAD:** There's a small Wawa canopy
 6 sign, a small sign on the canopy, which our
 7 architect will show momentarily. The ordinance
 8 does allow, as your planner points out, a sign on
 9 the canopy. The variance we need is about what's
 10 called Spanish signs, which our architect will show
 11 you momentarily and we're willing to discuss it
 12 with you. If you don't think they're needed -- we
 13 would like to have them but if you don't think
 14 they're needed or -- (unintelligible) -- they're
 15 not but, you know, these are very small signs on
 16 the canopy.
 17 **BOARD MEMBER:** What is the size of the
 18 total subdivided lot? The total lot for commercial
 19 purposes with the building and the Wawa on it,
 20 what's the size of the total lot?
 21 **MR. KENNEDY:** A little over 3.6 acres.
 22 **BOARD MEMBER:** And if you were just to
 23 segregate off, if you drew a rectangle around the
 24 Wawa section and the buffers inside of the Chase
 25 Bank and it ends right where the building is, the

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1 office building is, how much -- how many acres do
 2 you think that is right there?
 3 **MR. KENNEDY:** I would say it's a little
 4 more than two-thirds.
 5 **BOARD MEMBER:** It's more than
 6 two-thirds.
 7 **MR. KENNEDY:** I mean, I'm just --
 8 (unintelligible). This drops back. That drops
 9 back into the woods and --
 10 **BOARD MEMBER:** You know what I'm trying
 11 to grapple with, to me the site looks tight. It
 12 looks tight to me and Wawa right now, their current
 13 stores are 5,500 square feet when they go out.
 14 Their average store is 4,200 square feet. I
 15 already know that but I --
 16 (Multiple parties speaking.)
 17 **MR. NEHMAD:** Excuse me, sir.
 18 Respectfully, I've been representing Wawa since
 19 1984, Wawa and the gas business since 1996. We'll
 20 have an engineer speak to that momentarily. Okay.
 21 This is the smallest gas store that they've built.
 22 **BOARD MEMBER:** That's my point. That is
 23 exactly my point. You just answered my question.
 24 Why is this site smaller? Why are you trying to
 25 squeeze it on to the site?

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1 **MR. NEHMAD:** Well, no. It was bigger
 2 before and there was objection that it was too big
 3 and it had rear entry before so we made the Wawa
 4 store smaller to eliminate the two entry store.
 5 **BOARD MEMBER:** That's what I wanted to
 6 understand, because to me this is tighter than
 7 usual. I haven't seen a Wawa that's new that's
 8 this tight.
 9 **MR. NEHMAD:** We'll have an engineer that
 10 does Wawas talk about that, maybe the next meeting,
 11 I don't know if we'll get to him tonight, but we
 12 have a couple engineers here that design a lot of
 13 Wawas. There's about 170 Wawa stores in New Jersey
 14 that have gas since 1996, so you're right, there
 15 are Wawas that are called legacy stores --
 16 **BOARD MEMBER:** Right.
 17 **MR. NEHMAD:** -- that have no gas but
 18 they're from the 1970s and '80s when they were
 19 3,000 square foot stores.
 20 **BOARD MEMBER:** But that's my point.
 21 You're building a new Wawa and we're shrinking it.
 22 It feels like we're trying to confine it when we
 23 have other land. We have three acres here.
 24 **MR. NEHMAD:** Well, what we think is that
 25 this provides -- a lot of this will provide design

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1 efficiencies that Jim talked about previously. For
 2 example, it's often seen and desired by Wawa that
 3 the high turn-over parking spaces, even though the
 4 ordinance only requires 9 foot in width, be 10
 5 feet --
 6 **BOARD MEMBER:** Sure.
 7 **MR. NEHMAD:** -- because they turn-over
 8 frequently, because they --
 9 **BOARD MEMBER:** Exactly.
 10 **MR. NEHMAD:** So we're trying to do
 11 things like that. We're trying to do things like
 12 wider two way drive aisles than the ordinance would
 13 minimally require, so we want more than the ample
 14 circulation for the free flow of traffic and
 15 vehicular trucks all around the site and that's
 16 why -- I mean, this is a very efficient Wawa. This
 17 is prototype or this size store does exist.
 18 **BOARD MEMBER:** I know it exists. Lately
 19 I've seen bigger. I do this for a living, as well.
 20 I represent Quick Chek on many deals. I've
 21 represented on 7-Eleven many deals. There's other
 22 7-Elevens with gas. I understand, because the CO
 23 of Wawa is my fraternity brother, I happen to know
 24 him. This site to me just doesn't look to me like
 25 a typical Wawa is going out there today. It seems

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1 to me like it's shrunk down and confined and tight
 2 when we have three acres. I mean, it feels like if
 3 we made the circulation better, if we did things a
 4 little differently, I just don't know why we're
 5 trying to cram it all into this tight spot.
 6 **MR. NEHMAD:** Well, I don't know what the
 7 basis of you saying cramming it in is because we
 8 meet setbacks, we meet coverages, we meet height
 9 requirements, we meet -- you know, the only
 10 variances we're seeking are signage.
 11 **BOARD MEMBER:** So when you look at the
 12 circulation plan for the 75 foot truck, he's got no
 13 deceleration coming into this thing and then he's
 14 got to back up and move another way to get in here,
 15 go back and come back another way to make a figure
 16 eight turn to get out. You don't think that might
 17 be tight?
 18 **MR. NEHMAD:** No. That happens on many,
 19 many Wawas.
 20 **BOARD MEMBER:** I didn't say it didn't
 21 happen on --
 22 (Multiple parties speaking.)
 23 **MR. NEHMAD:** I will have testimony from
 24 engineers that have designed dozens of --
 25 **CHAIRMAN MERCES:** Joe, we're talking

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1 about traffic now.

2 **BOARD MEMBER:** I know, but the fact is

3 it's very tight and I'm just trying to understand

4 why when we have three acres we wouldn't utilize

5 the rest of the property for, or at least make it

6 so efficient that we don't have to be concerned

7 about the tightness of the site, having trucks

8 coming in, not having to make K-turns.

9 **MR. NEHMAD:** I'm not sure what the basis

10 of tightness is because tightness is respectfully

11 objectively a performance standard and we can look

12 at your ordinance and tell that this is tight and

13 everything that we've looked at, as Jim will say,

14 shows just the opposite. We're providing an

15 overabundance of open space. We could develop this

16 site to an even greater degree. We're reducing in

17 terms of coverage, in terms of circulation. We

18 have more than ample -- I have a couple engineers

19 that have designed all kinds of Wawas and you'll

20 hear testimony from them.

21 **BOARD MEMBER:** Okay. I just think it

22 feels tight. I'm sorry.

23 **MR. RATHJEN:** I have a question.

24 **MR. NEHMAD:** Yes, sir.

25 **MR. RATHJEN:** I helped open that

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1 Leonardo store and I know Leonardo's entrance --

2 **BOARD MEMBER:** You were on the board

3 when that --

4 **MR. RATHJEN:** I was on the board maybe

5 23 years, but the question is, you know when you're

6 going towards Sandy Hook on that right side where

7 the Wawa is, you have an entranceway fairly like

8 this. Why can't you put a small Wawa entrance sign

9 by -- I have a feeling people are going to use this

10 other turn in where you say -- (unintelligible). I

11 really think the locals will start using that turn

12 in. It's easier to get in.

13 **MR. NEHMAD:** You mean a directional

14 sign? Is that what you're referring to?

15 **MR. RATHJEN:** On the other side, an

16 entrance sign. You do have one at Leonardo's.

17 It's a small sign.

18 **MR. NEHMAD:** Right.

19 **MR. RATHJEN:** And people use that as the

20 main entrance all the time.

21 **MR. NEHMAD:** Yeah. The Route 36 and

22 Avalon sign.

23 **MR. RATHJEN:** Yes, with the fancy

24 canopy. We're not gonna discuss that yet.

25 **MR. KENNEDY:** So that's not -- the

72

1 intent is not to have it and it's --

2 **MR. RATHJEN:** I know that, but I have a

3 feeling locals will eventually use that to get in

4 because that's an easier way, I personally think.

5 **MR. KENNEDY:** They may, but really, the

6 easier way is to come here, to come here, come to

7 the stop sign and then make a right turn and then

8 be in the wrong -- it's less efficient to move that

9 way.

10 **BOARD PLANNER:** What about fueling, if

11 they're just coming in for gas, not necessarily

12 going to the store?

13 **MR. KENNEDY:** They can come that way,

14 too.

15 **BOARD MEMBER:** I have two quick

16 questions. One is, is the Wawa store sprinklered?

17 **MR. NEHMAD:** Whatever the building code

18 requires, we will do.

19 **BOARD MEMBER:** That's a yes or a no.

20 **MR. NEHMAD:** Well, no. I don't know the

21 answer to it because our architect is here and

22 he'll testify next, but it's a building code issue,

23 it's not a planning issue.

24 **BOARD MEMBER:** So it's not the planning

25 adviser -- the fire report requested a fire hydrant

73

1 for New Monmouth Road which I do not see on this

2 plan.

3 **MR. KENNEDY:** We just got that.

4 **MR. NEHMAD:** We got that today.

5 **BOARD MEMBER:** So you're aware of it?

6 **MR. KENNEDY:** Yeah. There's a fire

7 hydrant on Winding Road. There's a fire hydrant on

8 The Trail.

9 **BOARD MEMBER:** There's a fire hydrant on

10 New Monmouth and 35.

11 **MR. KENNEDY:** On the bank side?

12 **BOARD MEMBER:** On the bank side, yes,

13 Bank of America.

14 **MR. KENNEDY:** Yeah. I'm sorry. Not the

15 Chase Bank site. So if that's what the fire

16 marshal asked for, I don't think -- we're not going

17 to -- (unintelligible). So if that's the code,

18 that's the code.

19 **MS. ETESON:** I have a question.

20 **MR. NEHMAD:** Yes, ma'am.

21 **MS. ETESON:** Before we were talking

22 about how it has to be enough size building for the

23 particular property to take two buildings together

24 and get the size that you need. What was the size,

25 total size of that again?

<p style="text-align: right;">74</p> <p>1 MR. KENNEDY: The ordinance requires a 2 minimum building size of 5,000 square feet. 3 MS. ETESON: Okay. 4 MR. KENNEDY: The Wawa building is -- 5 MS. ETESON: Yeah. It's 47, okay. So I 6 have a question. All right. I'm just curious. 7 Given the fact that somebody just said the whole 8 area might be a little bit tight -- you don't have 9 to really answer this, but what if you were to 10 remove the office building and just make the Wawa 11 bigger? Then you'd have a lot more room on that 12 property. 13 MR. NEHMAD: We don't, we don't see a 14 need to do that. I don't know what the basis for 15 doing that is. We've got a productive use there. 16 MS. ETESON: Yeah. 17 MR. NEHMAD: It's a 10,000 square foot 18 ground floor office building, or is it -- 19 MR. KENNEDY: No. 5,000 and change. 20 MR. NEHMAD: Yeah. 10,000 square foot 21 office building and it's a rateable. It's going to 22 be redeveloped. It's been going under the -- 23 (unintelligible) -- development and the Wawa 24 doesn't have the need to build a larger store and 25 the testimony that we heard previously was that</p>	<p style="text-align: right;">76</p> <p>1 coverages, drive aisles, everything, and we meet or 2 exceed everything, so -- 3 MR. RATHJEN: Does this gas station have 4 six or eight pumps? I know Leonardo, I think has 5 something like 12 or -- 6 MR. NEHMAD: It has six MPDs, multi 7 product dispensers, okay, or pumps, as many people 8 say, with 12 fueling positions. 9 MR. RATHJEN: Okay. 10 MR. NEHMAD: Okay. I think Leonardo has 11 additional -- 12 MR. RATHJEN: Maybe four. 13 MR. NEHMAD: Yeah. I think it's four 14 and four, so I think eight for Route 35 -- 36 an -- 15 (Multiple parties speaking.) 16 MR. NEHMAD: Oh, is it? I stand 17 corrected. It's the same. 18 MR. RATHJEN: Same, okay. 19 MR. NEHMAD: Now, one of the -- I'm 20 sorry. 21 MR. BANASIAK: I just have a question 22 about the lighting. 23 MR. NEHMAD: Sure. 24 MR. BANASIAK: So I see it in the notes 25 about the street lighting and the --</p>
<p style="text-align: right;">75</p> <p>1 they didn't want a double entry store and so we 2 made it a little smaller. 3 MS. ETESON: Well, all you have to do is 4 make it bigger. You don't have to do a double 5 entry -- (unintelligible). 6 MR. NEHMAD: I'm sorry. I didn't hear 7 that. 8 MS. ETESON: You wouldn't necessarily 9 have to do double entry. You just have to make the 10 building bigger. 11 MR. NEHMAD: Well, I don't know why we'd 12 make it bigger just for bigger sake. We meet the 13 intent of the ordinance at having at least a 5,000 14 square foot building on the property. We have 15 almost 15,000 square feet of building on the -- 16 MS. ETESON: Right. I was just 17 mentioning it because somebody mentioned that the 18 area seems to be tight with a lot of stuff on it, 19 so that's the only reason why I mention that. 20 MR. NEHMAD: Well, again, I'm not sure 21 what the basis for the statement is because 22 tightness is a performance standard based kind of 23 adjustment and -- (unintelligible) -- tightness 24 based performance standards that are in your 25 ordinance. Your ordinance has setbacks, lot</p>	<p style="text-align: right;">77</p> <p>1 (unintelligible). I don't know with the dark sky 2 which you mentioned, but I can see those lights at 3 night coming down, you know, perhaps coming -- 4 (unintelligible). The light coming off the sky, 5 the sky is illuminating. Would these shields 6 really prevent that from happening? 7 MR. KENNEDY: So we're talking about two 8 different lighting techniques. So the sports 9 lighting, sports lighting is generally much higher, 10 40 to 60 feet tall in order to light uniformly the 11 field area. When they light the field area at 12 that -- that light, they can't provide light on the 13 field, so they can't put it at 90 degrees, they go 14 up on an angle and there's an array of lights that 15 are angled. It's -- (unintelligible). It's not a 16 good comparison between sports field lighting and 17 parking lot lighting. Parking lot lighting has the 18 ability to actually disburse lights throughout the 19 parking field and put the lights at 90 degrees, 20 shine them completely down straight and that's the 21 difference. We're not illuminating beyond the 90 22 degree light. Sports fields, you have to. You 23 light at an angle in order to uniformly -- 24 MR. BANASIAK: Thank you. 25 Is there a Wawa that I could take a</p>

<p style="text-align: right;">78</p> <p>1 drive by at night and take a look? 2 MR. KENNEDY: Route 36 in Manalapan. 3 MR. BANASIAK: Okay. 4 MR. NEHMAD: Jim, the light standards on 5 this site, where would they be placed? Just point 6 them out, if you would. 7 MR. KENNEDY: So at the entrance on the 8 incoming lane there's a black box. On the exit 9 lane there's a light out to the fueling area, 10 there's canopy lights beneath the canopy and then 11 throughout the parking lot the lights are located 12 just like an office building, along parking space 13 lines, parking lot lines. 14 MR. NEHMAD: Now, thank you. We talked 15 about the sign being 20 feet high. We're seeking 16 variance relief from it and the decision of law in 17 variance relief for signs, in a case called Valente 18 versus -- (unintelligible) -- one of the things we 19 looked at in terms of height of signs is what we're 20 competing with along this stretch of 35 in terms of 21 height of transitional signs in this area. Did you 22 examine the height of the signs along this area of 23 the roadway and is it consistent with them or how 24 we match up? 25 MR. KENNEDY: Yes. We actually surveyed</p>	<p style="text-align: right;">80</p> <p>1 from the '60s, which are way, way ahead of you and 2 those places were renovated, they were building new 3 stores like you want. 4 MR. KENNEDY: Okay. So I want to point 5 out that this forms a character of Route 35. So 6 these are immediately adjacent to us, across the 7 street and up and down the highway. I just wanted 8 to present the character of the signage along 9 Route 35. I'm not saying because they got it, we 10 should get it. That is not what I'm saying. 11 That's not how variances work. Variances work, 12 that we show that we're not out of character and 13 the planner will say that satisfies the negative 14 criteria and then the planner might say, you know, 15 one or two might say that the positive criteria is 16 advanced through safety, by providing a sign with 17 sufficient height and area that a person can safely 18 maneuver into the site and not cut me off, cut you 19 off trying to get into the Wawa. I don't want to 20 go through the whole planning proof but the -- this 21 other evidence, because it's a survey that is just 22 here to illustrate the character of the 23 neighborhood with regard to signs. 24 MR. RATHJEN: I have to say, though, 25 when you're saying that this is really, half of</p>
<p style="text-align: right;">79</p> <p>1 15 different signs in the B-3 zone. Plus, we 2 examined resolutions, approvals, such as the CVS 3 and Chase Bank, and the tract supplied -- 4 (unintelligible). So there's 15 signs and you have 5 an exhibit that I just handed out. This is A-7. 6 It's called Other Signage within the Route 35 7 Corridor, not very -- so down the bottom of the 8 exhibit it brings you to a location map of where 9 the signs are located. Each one is -- 10 (unintelligible). On the right-hand side of the 11 bollards is a sign where -- listing of the signs 12 with their height and then you see this pictorial 13 of the signs, the size of the signs, dimensions 14 that the surveyor surveyed, so when we average -- I 15 mean, I can go through every single one of them, 16 but when we average the sign height it comes out to 17 21.7 feet over those 15 signs. Well, highway -- 18 (unintelligible). Traffic supply was approved in 19 the last year or two. It has a sign height of 28. 20 CVS, Chase Bank, a smart little town right next 21 door, it has a sign height of 20 feet, which is 22 what we're requesting, 20 feet. So Firestone is 25 23 and -- 24 (Multiple parties speaking.) 25 BOARD MEMBER: The old shopping center</p>	<p style="text-align: right;">81</p> <p>1 these were put up before the sign ordinance that we 2 had in Middletown and Mrs. Demley (phonetic), our 3 former chair, would be rolling in her grave if she 4 saw these right now. A lot of these were put 5 through way before we had a sign variance. You're 6 absolutely right about the signs. You're 7 absolutely right about the signs, that they are 8 really, some of these are really old, especially 9 Firestone. 10 MR. NEHMAD: Let me say why we've 11 presented this. Okay. We've presented this 12 because from a traffic engineering perspective we 13 don't look at what was -- and Mr. Dean will deal 14 with this. You don't really look at what was 15 recently approved. You look at what the character 16 of the zone is in terms of the signage along this 17 corridor in terms of determining what is 18 appropriate for safety purposes for drivers' 19 visibility, irrespective of when it was approved. 20 (Multiple parties speaking.) 21 MR. NEHMAD: If I can finish. 22 Irrespective of that, if you look 23 directly next door to this, okay, which is a 24 recently approved sign, it's at 20 feet, the very 25 same, you know, height for your proposal so, you</p>

<p style="text-align: right;">82</p> <p>1 know, I don't think we're asking --</p> <p>2 MR. KENNEDY: And I don't want to</p> <p>3 confuse the area, because some of these signs are</p> <p>4 massive. We're not requesting an area, a</p> <p>5 freestanding sign area variance. We're presenting</p> <p>6 the area there but this is merely height. This is</p> <p>7 just demonstrating height. We don't need a</p> <p>8 variance for sign area, and to your point, I</p> <p>9 remember some of these were developed. These were</p> <p>10 massive signs.</p> <p>11 MR. RATHJEN: Well, not --</p> <p>12 MR. KENNEDY: And --</p> <p>13 (Multiple parties speaking.)</p> <p>14 MR. RATHJEN: Excuse me, sir. Excuse</p> <p>15 me, sir, please.</p> <p>16 One of the reasons we have the variance,</p> <p>17 we didn't want Route 35 and Route 34, Route 36,</p> <p>18 Route 18 in East Brunswick --</p> <p>19 MR. KENNEDY: Right.</p> <p>20 PUBLIC MEMBER: Yeah. It's --</p> <p>21 (Multiple parties speaking.)</p> <p>22 CHAIRMAN MERCES: Hold on. Hold on.</p> <p>23 (Multiple parties speaking.)</p> <p>24 CHAIRMAN MERCES: Hold on. This is my</p> <p>25 meeting. I'm running it. You can speak when it's</p>	<p style="text-align: right;">84</p> <p>1 (unintelligible) -- is reasonableness with any</p> <p>2 canopy site plan ordinance. Jim, will you just run</p> <p>3 through, if you would, a few design waivers?</p> <p>4 MR. KENNEDY: Yes. One is -- I'm just</p> <p>5 going to go back to an exhibit. So one is the</p> <p>6 location of parking within 20 feet of the building,</p> <p>7 that's a design waiver, and I'll go through -- I'm</p> <p>8 just going to read them off. The maximum curb cut</p> <p>9 is 50 feet. DOT has jurisdiction over that and we</p> <p>10 needed a larger curb cut to satisfy DOT's</p> <p>11 requirements. The pavement type, the ordinance</p> <p>12 only permits one type of pavement in any commercial</p> <p>13 parking lot. So we have concrete in the canopy, we</p> <p>14 have concrete anywhere where there's petroleum</p> <p>15 product, because the petroleum product breaks down</p> <p>16 the asphalt. Also, around the building itself,</p> <p>17 because cars, you know, can be driven and also we</p> <p>18 want to control the grading along the building, as</p> <p>19 well, so we have two different types of pavement.</p> <p>20 The exterior perimeter of the whole building, a</p> <p>21 landscaped strip of 4 feet, we are not proposing</p> <p>22 that 4 foot strip for a number of reasons. One is</p> <p>23 to minimize the obstruction of pedestrians that are</p> <p>24 circulating along the building. To find a 4 foot</p> <p>25 landscape strip we're introducing a bed and that</p>
<p style="text-align: right;">83</p> <p>1 public comment. If there are any more outbursts</p> <p>2 I'm going to start throwing people out of here.</p> <p>3 Enough is enough.</p> <p>4 PUBLIC MEMBER: Throw them out.</p> <p>5 CHAIRMAN MERCES: That's fine. If you</p> <p>6 want to leave, get out. Get out.</p> <p>7 PUBLIC MEMBER: All right.</p> <p>8 CHAIRMAN MERCES: Leave right now.</p> <p>9 PUBLIC MEMBER: That's it. I'm out.</p> <p>10 MR. NEHMAD: So this exhibit I'm showing</p> <p>11 the board members is not presented to show the area</p> <p>12 of the signs. We know many of those are</p> <p>13 nonconforming. We're not proposing anything</p> <p>14 anywhere near -- we're just presenting it to show</p> <p>15 height. I think the most probative piece of</p> <p>16 evidence is the sign next to it. That's all.</p> <p>17 May I move on, Mr. Chairman? I'm almost</p> <p>18 done with this witness.</p> <p>19 We are seeking a couple design waivers.</p> <p>20 Maybe we could run through those, Jim. We believe</p> <p>21 that they are ones that are either controlled by</p> <p>22 jurisdiction, such as the maximum curb cut for a</p> <p>23 two way drive aisle, but others are ones that the</p> <p>24 board deemed to be reasonable, and as you know, the</p> <p>25 standard for design waivers in the last --</p>	<p style="text-align: right;">85</p> <p>1 means that there is an edge to the sidewalk. If</p> <p>2 you look at -- that's another design waiver.</p> <p>3 Similar, hand in hand, is that building foundations</p> <p>4 need to be planted within an evergreen strip, sort</p> <p>5 of the same idea as the 4 foot strip we requested</p> <p>6 as a design waiver. And then finally, the street</p> <p>7 trees. The street trees are 30 feet along the</p> <p>8 property. We have 570 or so feet between The Trail</p> <p>9 and Route 35. The portion of the site we're not</p> <p>10 proposing shade trees as the utility wires --</p> <p>11 (unintelligible). In that case the ordinance</p> <p>12 offers and suggests that I can discuss with the</p> <p>13 board payment in lieu be placed on the shade</p> <p>14 tree -- can be provided when it's impossible to</p> <p>15 provide shade trees. The same thing with New</p> <p>16 Monmouth, it's wooded, it's -- (unintelligible) --</p> <p>17 counts under the ordinance for the provision of</p> <p>18 shade trees.</p> <p>19 MR. NEHMAD: The applicant will make the</p> <p>20 payments in lieu, correct?</p> <p>21 MR. KENNEDY: Yes.</p> <p>22 MR. NEHMAD: Okay. Now, with respect to</p> <p>23 the curb cut, the design waiver along Route 35, the</p> <p>24 maximum by ordinance is 50 feet. We're proposing</p> <p>25 94 feet and that was part of the DOT, correct?</p>

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1 **MR. KENNEDY:** Yes.

2 **MR. NEHMAD:** DOT has exclusive

3 jurisdiction in terms of the design of that

4 driveway within that right-of-way; is that an

5 accurate statement?

6 **MR. KENNEDY:** Yes.

7 **MR. NEHMAD:** So they preempt the

8 controls of the local one is your understanding?

9 **MR. KENNEDY:** Yes. That is my

10 understanding.

11 **MR. NEHMAD:** Okay.

12 **BOARD MEMBER:** Quick question. The

13 island that's proposed as you're coming on the

14 entrance, is that a low grade for fire trucks and

15 access to come in here without going over the curb.

16 **MR. KENNEDY:** Yes.

17 **BOARD MEMBER:** Okay.

18 **MR. NEHMAD:** With respect to the

19 pavement types, you told us the ordinance says one

20 pavement type is allowed. We have two asphalt or

21 gratuitous concrete and also normal concrete or

22 cementitious concrete. I ask you because under the

23 fueling area where there's petroleum products you

24 must have normal white cementitious concrete,

25 correct?

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1 **MR. KENNEDY:** Correct.

2 **MR. NEHMAD:** Okay. That's for all fuel

3 facilities, correct?

4 **MR. KENNEDY:** Yes.

5 **MR. NEHMAD:** All right. Now, with

6 respect to the landscape buffer of 4 feet, has

7 that -- we talked about that. Has that deemed to

8 be, been deemed to be reasonable with respect to

9 other recent applications in this community?

10 **MR. KENNEDY:** So we looked at

11 resolutions from, well, 2008 because it was a

12 while, but 2016, 2018, 2019 and 2020 and in each

13 case the board provided a design waiver to North

14 Middletown, which is next door, Chase, CVS, the

15 bakery, that was along the -- but it's frozen.

16 They granted a waiver. The waiver was granted.

17 The -- (unintelligible) -- car wash on Route 36 was

18 granted and on Old Country Road the waiver was

19 granted there, as well.

20 **MR. NEHMAD:** And in your opinion are all

21 of those, is what you're proposing here reasonable

22 and within the intent and purpose of the site plan

23 ordinance?

24 **MR. KENNEDY:** Yes. It's the safety of

25 the site.

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1 **MR. NEHMAD:** Okay. And the

2 reasonableness in your opinion is also evidenced by

3 the fact that recent, relatively recent site plans

4 have been granted similar waiver relief; would that

5 be accurate?

6 **MR. KENNEDY:** Yes.

7 **MR. NEHMAD:** Thank you.

8 With respect to -- I don't know how much

9 longer you can go.

10 **CHAIRMAN MERCES:** I'll let Jim finish.

11 **MR. NEHMAD:** I'm sorry. I didn't hear

12 that.

13 **CHAIRMAN MERCES:** Let's let Jim finish.

14 **MR. NEHMAD:** Okay. Good.

15 Does the plan, in your opinion, satisfy

16 the requirements of this -- of these site

17 development ordinances for conditional preliminary

18 and final site plan approval?

19 **MR. KENNEDY:** It does, in that the

20 ingress and egress, the circulation through the

21 site is safe and efficient. In almost every

22 instance exceeds the municipal requirements for

23 island, the parking size, for the amount of parking

24 that's provided, the loading area is beyond the

25 municipal requirements and for those reasons and

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1 the reasons I testified I think it does, yes.

2 **MR. NEHMAD:** Now, with respect to other

3 improvements, you told us that the development and

4 this plan has a highway access permit from the DOT

5 for the proposed access to Route 35 as shown in

6 your site plan, correct?

7 **MR. KENNEDY:** Correct.

8 **MR. NEHMAD:** It also has approval from

9 the Monmouth County Planning Department for the

10 access to New Monmouth Road as shown in your plan

11 through the CVS site, correct?

12 **MR. KENNEDY:** Yes.

13 **MR. NEHMAD:** And it also has a sewer

14 conservation certification, as well?

15 **MR. KENNEDY:** Yes, it does.

16 **MR. NEHMAD:** So the only other remaining

17 approval was the engineer's memo would be the --

18 (unintelligible) -- correct?

19 **MR. KENNEDY:** And fire, as well, yes.

20 **MR. NEHMAD:** Well, so fire has advised

21 -- but we've looked at that and we can get that,

22 correct?

23 **MR. KENNEDY:** Yes.

24 **MR. NEHMAD:** Mr. Chairman, I believe

25 that's it for now. Obviously I'd like to move in

<p style="text-align: right;">90</p> <p>1 all these exhibits in evidence. I'll have our 2 architect prepared for the next time. I hope he 3 gets -- we'll provide your -- (unintelligible). 4 CHAIRMAN MERCES: Anybody else have any 5 questions for Jim? 6 BOARD MEMBER: I just have a question. 7 Maybe it's not just for Jim or just generally. 8 What are the hours of operation? 9 MR. NEHMAD: I have another witness that 10 will answer that, Jeff Martell. You want to, you 11 want to swear him in? He could answer that. 12 BOARD MEMBER: You can't answer that? 13 You've been running it for 36 years. 14 MR. NEHMAD: I can. It's 24 hours a 15 day, you know. 24 is -- 16 BOARD MEMBER: 24/7? 17 MR. NEHMAD: Yes, 24/7. 18 CHAIRMAN MERCES: Gas and the store? 19 MR. NEHMAD: Yes. 20 There were other issues -- questions 21 that your planner asked that I was going to have 22 him address but we'll do it next time. Number of 23 employees and that kind of thing, you know, we're 24 prepared to answer, so -- 25 BOARD PLANNER: One question.</p>	<p style="text-align: right;">92</p> <p>1 the fuel trucks only discharge on one side, so we 2 have to have the truck facing a certain way as 3 opposed to the other direction. I mean, we can't 4 just circulate out because we have that, that 5 throat, so that's the only reason why it does that 6 figure eight. 7 BOARD PLANNER: And the increase in the 8 throat width was to comply with the ordinance? 9 MR. KENNEDY: Correct. 10 BOARD PLANNER: And you did -- I'm 11 sorry. The previous application, that was a 12 shorter throat size? 13 MR. KENNEDY: Yes, it was. It was 50, I 14 think it was 50 feet where 60 feet was required. 15 It's not -- 16 MR. NEHMAD: We respectfully do not 17 believe that this is any -- we have Wawas all over 18 that have similar types of -- 19 BOARD PLANNER: I understand. 20 MR. NEHMAD: -- circulation and we have 21 experienced engineers talking about -- 22 BOARD PLANNER: Okay. I was just 23 wondering if it would change the circulation but I 24 understand. Thank you. 25 MR. NEHMAD: Chairman, thank you, very</p>
<p style="text-align: right;">91</p> <p>1 CHAIRMAN MERCES: Sure. 2 BOARD PLANNER: A follow-up on Mr. 3 Amecangelo's comment about tightness of the space. 4 (Multiple parties speaking.) 5 MR. NEHMAD: What was that? 6 BOARD PLANNER: Jim, would what be -- 7 was there consideration or would it affect the 8 circulation increase or improve the circulation on 9 the site if there was less amount of pumps? If 10 that pump area reduced in size would that help with 11 expanding or improving circulation? 12 MR. KENNEDY: So I didn't think there 13 was an issue with circulation, but changing -- 14 BOARD PLANNER: Or would it affect the 15 circulation of your fuel tank trucks and your -- 16 the other trucks? Like, would they have to do the 17 figure eight or could they get out of the site 18 differently if there was less amount, less amount 19 of pumps or less frequency -- yeah. Would it 20 affect the delivery of -- yeah, right. Less fuel 21 tankers coming to the site. 22 MR. KENNEDY: So I can't answer all of 23 that but what I can answer is the biggest 24 difference, the biggest variable here is having 25 this uninterrupted throat, like, from 35, because</p>	<p style="text-align: right;">93</p> <p>1 much. 2 MR. KEADY: I have one question. 3 MR. NEHMAD: Yes, sir. 4 MR. KEADY: So any of the comments in 5 the letter that you have not addressed, do you 6 agree to comply with? 7 MR. NEHMAD: We don't -- in your letter? 8 MR. KEADY: Yes. 9 MR. NEHMAD: The only item that we saw 10 was that comment about making the -- potentially 11 making this, I think, a one way drive aisle. 12 MR. KEADY: Correct. 13 MR. NEHMAD: Yeah. I don't think that 14 -- Jim, would you address that. 15 MR. KENNEDY: Well, I thought Gary was 16 going to address it but -- 17 MR. KEADY: I could wait, I could wait 18 until the traffic engineer. Specific to your, 19 specific to your area of expertise, any comments in 20 the letter that you had not discussed, would you 21 agree with addressing? 22 MR. KENNEDY: Other than -- well, that 23 was in, that was in my things that we disagreed 24 with, so other than -- another expert will testify. 25 MR. NEHMAD: Well, your traffic comments</p>

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1 we will have Mr. Dean address.
 2 **MR. KEADY:** I understand. That's it for
 3 Mr. Kennedy's testimony.
 4 **CHAIRMAN MERCES:** Anybody else?
 5 **MR. RATHJEN:** Hours of operation, I
 6 don't know how your store is built with percentage
 7 of business of fuel or food, but I'm just wondering
 8 about the amount of people that are coming in for
 9 those sub sandwiches. It really gets crowded in
 10 Leonardo. Do they have -- do you have excess
 11 parking by the bank, because I know Leonardo, once
 12 they do their own, like, between 12 and 2, it's a
 13 lot less -- it's not just fuel but it's the food
 14 area and you'll have the same, I guess the same
 15 type of system, sub sandwiches and food, which you
 16 have expanded on in the last two years, I would
 17 say.
 18 **MR. NEHMAD:** I have what?
 19 **MR. RATHJEN:** You have expanded, your
 20 company has expanded on.
 21 **MR. NEHMAD:** Not my company. Wawa, the
 22 client.
 23 **MR. RATHJEN:** But seriously, do you have
 24 the parking spaces?
 25 **MR. KENNEDY:** So we exceed the parking.

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1 The ordinance requires --
 2 **MR. RATHJEN:** I know about the ordinance
 3 but I'm just wondering about the business.
 4 **MR. NEHMAD:** Wawa, Wawa shoots for 50
 5 spaces around the perimeter of the building and we
 6 have that.
 7 **MR. RATHJEN:** Historically that's how
 8 your business is?
 9 **MR. NEHMAD:** Yes.
 10 **MR. RATHJEN:** Okay.
 11 **MR. NEHMAD:** And again, I will have
 12 engineers who design Wawa talk about that in
 13 greater detail for next meeting.
 14 **CHAIRMAN MERCES:** Anything else?
 15 **BOARD MEMBER:** When will we talk about
 16 landscaping? Is that coming up in future
 17 testimony?
 18 **MR. NEHMAD:** He did talk about --
 19 **BOARD MEMBER:** Okay. Are we going to
 20 have ferns along the Route 35 corridor? Because
 21 the ferns that exist for the CVS building -- is
 22 that CVS?
 23 **MR. KENNEDY:** Yeah.
 24 **BOARD MEMBER:** -- are absolutely
 25 horrible. Okay? They slope water and it runs off

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1 in the winter towards the sidewalk and the trees --
 2 (unintelligible) -- and I just didn't want that
 3 transition to follow through to this that exists
 4 on the --
 5 **MR. KENNEDY:** We have no proposal for
 6 ferns, just the sodded -- (unintelligible) --
 7 lawn and --
 8 **BOARD MEMBER:** Umm-hum.
 9 **MR. KENNEDY:** -- the sidewalk and the
 10 shade trees that we -- the street trees that are --
 11 **BOARD MEMBER:** Okay. The street trees,
 12 that's a -- (unintelligible) -- or is that the DOT?
 13 **MR. NEHMAD:** That's the --
 14 (unintelligible).
 15 **BOARD MEMBER:** Make sure they're off
 16 the -- (unintelligible) -- because they will
 17 encroach into the wires.
 18 **MR. NEHMAD:** I mean, you can --
 19 (unintelligible) -- to the wetlands, if you'd like
 20 us to. I mean, we're not adverse to do it or we
 21 can pay in lieu.
 22 **BOARD MEMBER:** Yeah, because each of the
 23 cars coming out on 35, you want them to have good
 24 sight line vision.
 25 **MR. NEHMAD:** Well, we have to keep site

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1 triangles.
 2 (Multiple parties speaking.)
 3 **BOARD MEMBER:** You want to slow down in
 4 that lane already. (Unintelligible).
 5 **MR. NEHMAD:** If you want us to make a
 6 payment in lieu, we'll make a payment in lieu.
 7 What would be our adjourn date, Mr.
 8 Chairman?
 9 **CHAIRMAN MERCES:** Well, hold on.
 10 **MR. NEHMAD:** I'm sorry.
 11 **CHAIRMAN MERCES:** Once the board is done
 12 I still want to offer the public to question Jim --
 13 **MR. NEHMAD:** Sure.
 14 **CHAIRMAN MERCES:** -- just for protocol
 15 and to keep it moving, keep everything in order.
 16 So you guys all good?
 17 **BOARD MEMBER:** I don't have any more
 18 comments right now.
 19 **CHAIRMAN MERCES:** I want to open up the
 20 mike to questions for Mr. Kennedy. This is not
 21 time for public comment. If you have a question of
 22 Mr. Kennedy, step forward, feel free.
 23 **MR. GORMAN:** We'll take everybody at
 24 their word. If you start making testimony we're
 25 going to swear you in.

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1 **CHAIRMAN MERCES:** Just questions. You
 2 don't need to be sworn in.
 3 **MR. DUNN:** My name is Eric Dunn and I
 4 live at 5 The Trail. I'll be staring at the light
 5 show in my backyard.
 6 **MR. NEHMAD:** Gun, G-U-N?
 7 **MR. DUNN:** D-U-N-N.
 8 **MR. NEHMAD:** Oh, D-U-N-N. Thanks.
 9 **MR. DUNN:** So as cars are coming down
 10 35, my knowledge, I just learned that cars can pull
 11 into the first driveway.
 12 **MR. KENNEDY:** Correct.
 13 **MR. DUNN:** If a car only --
 14 (unintelligible). So can you, can you guarantee,
 15 can you guarantee to the whole entire community
 16 neighborhood that cars will be pulling in this
 17 driveway just for the office use and not Wawa?
 18 **MR. KENNEDY:** No.
 19 **MR. NEHMAD:** No.
 20 **MR. DUNN:** That's a problem. Let me
 21 explain, or I won't explain. I'll ask the next
 22 question. Do you feel that over time the locals
 23 will have this mind-set of, well, why would they --
 24 why would I compete, why would I confront with a
 25 truck or car trying to pull out and accelerate, why

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1 go around them to get in the entrance, why not just
 2 use this entrance. That impacts some of us because
 3 someone cutting through, making a sharp right,
 4 trying to accelerate and someone flying down 50 to
 5 70 miles per hour, let's be real, driving is
 6 horrendous these days, that's gonna be -- that's a
 7 high probability of an accident waiting to happen,
 8 so the fact that you can't guarantee it, that's a
 9 problem. Take on the whole entire tightness of the
 10 layout, that's a problem. It's not, it's not like,
 11 oh, yeah, yeah, Eric, yeah, they can pull in,
 12 that's okay, they don't want to compete, we get it.
 13 That's not okay. That's why I'm up here.
 14 **MR. GORMAN:** First contestant fails the
 15 Jeopardy test.
 16 **MR. DUNN:** I'm sorry.
 17 **MR. GORMAN:** First contestant fails the
 18 Jeopardy test, but yeah.
 19 (Multiple parties speaking.)
 20 **MR. DUNN:** Next question. From the
 21 original plans was the Wawa pushed back? The Wawa
 22 was --
 23 **MR. NEHMAD:** Jim --
 24 **MR. DUNN:** The second stone right here.
 25 **MR. KENNEDY:** The store got smaller. It

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1 shifts on -- I believe the canopy was pushed back.
 2 **MR. DUNN:** Okay. So we know that leaves
 3 fall. When the leaves fall and I go to turn off my
 4 back lights, can you guarantee that I will not see
 5 a light show in my backyard?
 6 **MR. NEHMAD:** We can't guarantee --
 7 **MR. DUNN:** That's a problem, sir.
 8 **MR. NEHMAD:** Can I finish, Mr. Chair?
 9 **MR. DUNN:** Yeah. Well, I listened to
 10 you.
 11 **CHAIRMAN MERCES:** You asked a question.
 12 You got to let him --
 13 **MR. DUNN:** I was addressing this one,
 14 right here. Not him.
 15 **CHAIRMAN MERCES:** You were really
 16 testifying.
 17 **MR. DUNN:** It was one individual. You
 18 said address him. I was listening to your
 19 directions. I was addressing him, not you.
 20 **MR. NEHMAD:** Any development which would
 21 have lighting, whether it's Wawa or some other
 22 mixed use, no development can guarantee anything,
 23 but I can tell you we respectfully --
 24 (unintelligible) -- that we're going to ensure
 25 every effort, we're deed restricting the buffer

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1 that is over 300 feet in width to the adjacent
 2 area.
 3 **MR. DUNN:** Did you previously state in
 4 this meeting that the tree, since it's a developed
 5 wooded area, that it's Old Middletown, did you
 6 previously state that the trees will be good
 7 enough, the trunk, the big trunks will be good
 8 enough to block out all the light? Did you say
 9 that earlier? Yes or no?
 10 **MR. KENNEDY:** I said two things. You
 11 might remember I said the topographic buffer, okay,
 12 the amount of the light splashing from the people
 13 below the elevation, I don't know where you are on
 14 The Trail, but behind us, this nine acre deed
 15 restricted property is far higher than that 20 foot
 16 light, so unless you're going to see through the
 17 trees, through the earth, you aren't going to see
 18 through that nine acre parcel, so light that's
 19 20 feet off the pavement, the topography goes
 20 higher than that.
 21 **MR. DUNN:** You added a lot of detail but
 22 you're really focusing on before. Those trees
 23 blocking out the light, do you feel that those
 24 trees are going to block out the light?
 25 **MR. KENNEDY:** Well, I tried to answer it

<p style="text-align: right;">102</p> <p>1 the best I could. It's a combination of the trees 2 and topography. I recognize that when you go out 3 there right now, that you can see through some of 4 the woods, just like you can see through when the 5 Friendly's was operational and when the bank was 6 operational.</p> <p>7 MR. DUNN: So as a taxpayer, right, my 8 wife and I were strategic, you know, we put on a 9 new roof, central air, new driveway to be in a 10 quiet, safe, good location. I'm a taxpayer. I'm 11 limited. I step out my back door, take a few 12 steps, wait, here's the line, because if I go any 13 further I'm going to see the Wawa, so I'm limited 14 in what I can explore as a homeowner.</p> <p>15 (Multiple parties speaking.)</p> <p>16 CHAIRMAN MERCES: Sir, you're getting 17 into comments.</p> <p>18 MR. KENNEDY: There's rules. Okay. So 19 the township has rules. The township has 20 performance standards, has lighting standards. In 21 fact, in order to meet the lighting standards we 22 have to make the lights brighter, okay, because the 23 average to minimum, we were under-lighting the site 24 and in order to meet that design waiver we have to 25 increase the light illumination, but I don't work</p>	<p style="text-align: right;">104</p> <p>1 MR. FLANDER: Morris Flander. 2 The lot size extends up to what you 3 described as the slope area and I'm assuming now 4 you're stating that that's not slated to be 5 developed but it does kind of encroach further into 6 the woods.</p> <p>7 MR. KENNEDY: I just want to be clear, 8 it actually extends beyond the critical slope area 9 and it's not to be developed. It's not in our area 10 of disturbance. We're not removing trees. The 11 trees, in order to disturb those trees it would 12 require specifically -- (unintelligible). We're 13 not proposing any changes.</p> <p>14 MR. FLANDER: My question really was not 15 what's there right now. What is the potential for 16 that being changed at some point to -- 17 (unintelligible) -- to being just say a vertical 18 retaining wall because more is needed?</p> <p>19 MR. KENNEDY: It would require relief 20 from this board for the site plan. We would 21 receive -- (unintelligible) -- and we'd go through 22 the approval process. It's not something that 23 happens in the, you know, overnight.</p> <p>24 MR. NEHMAD: I can also tell you having 25 represented Wawa as long as I have, I don't know</p>
<p style="text-align: right;">103</p> <p>1 with arbitrary standards of what -- 2 (unintelligible). I work with the design standards 3 that the ordinance hands me. We talked about the 4 design waivers. We're not requesting design 5 waivers for light.</p> <p>6 MR. DUNN: Okay. Now, I just, I have a 7 question for the board. I really, like, was 8 listening to the previous application of how you 9 mentioned confidence, confidence with the overall 10 effectiveness of the plan and is this the right 11 decision. So I'm just going to ask you to, you 12 know, are you doing your very best to pause and 13 reflect and take care of us as just good people of 14 Middletown, keeping a safe location for all? 15 Thanks, so much.</p> <p>16 CHAIRMAN MERCES: We're all residents 17 here. We're all on the same team.</p> <p>18 Anybody else have questions for Mr. 19 Kennedy?</p> <p>20 Yes, sir.</p> <p>21 MR. FLANDER: Name and address, all that 22 kind of stuff?</p> <p>23 CHAIRMAN MERCES: Yes.</p> <p>24 MR. FLANDER: Morris Flander.</p> <p>25 MR. NEHMAD: Say it again.</p>	<p style="text-align: right;">105</p> <p>1 one store -- I don't do every Wawa but I've done 2 over 100 in this state and I don't know one store 3 where -- (unintelligible) -- went back and put "an 4 addition". Stores are built, they're open, they're 5 operational and they function. They're all owned 6 by the company and they're all -- and lighting -- 7 almost 45 percent of the company is owned by the 8 employees. I don't know if you know that, but the 9 employees own 45 percent of Wawa.</p> <p>10 BOARD MEMBER: I'm sorry. Did you say 11 the Wawas own the properties?</p> <p>12 MR. NEHMAD: No. They do not franchise 13 out any of the stores. Wawa owns and operates 14 every store. Now, they may bring in somebody like 15 Mr. Beller to lease them the land but they build 16 the store, they own the building, they operate the 17 store. They don't franchise out any of the stores 18 and the ESOP, the ESOP means Employee Stock 19 Ownership Plan, the employees own 45 percent of the 20 stock in the company, so that Wawa is almost half 21 owned by its employees. I believe that's 22 significant because I would respectfully urge that 23 they're well-operated, they're well-run, they're 24 well-maintained and I think, respectfully, that has 25 a lot to do with it.</p>

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1 **MR. FLANDER:** Primarily it's the
2 township, for that being part of the future
3 building --
4 **MR. NEHMAD:** Sure.
5 **MR. FLANDER:** -- versus what is going
6 there now versus future development.
7 **MR. NEHMAD:** We understand.
8 **MR. FLANDER:** Thank you.
9 **MR. NEHMAD:** Thank you for coming.
10 **CHAIRMAN MERCES:** Anybody else,
11 questions for Mr. Kennedy?
12 **MR. MUNIZ:** Andy Muniz, 6 The Trail.
13 **MR. NEHMAD:** Can you give us your last
14 name, please?
15 **MR. MUNIZ:** Yes. M-U-N-I-Z.
16 So my question is, the Wawa and the
17 office building is 3.6 acres?
18 **MR. KENNEDY:** Yes.
19 **MR. MUNIZ:** Is the CVS and the Chase one
20 lot, as well?
21 **MR. KENNEDY:** It's a separate owned
22 parcel.
23 **MR. MUNIZ:** Okay. Is the CVS one lot
24 and the bank another lot?
25 **MR. KENNEDY:** To the best of my

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1 recollection, it's only one. It's only one.
2 **MR. NEHMAD:** I think it's one lot.
3 **MR. GORMAN:** It's only one lot
4 originally. It's one lot.
5 **MR. MUNIZ:** Okay.
6 **MR. GORMAN:** Now it's two. They're
7 gonna make it three if this is granted. If I
8 understand, their total property was one lot, the
9 CVS and the Chase are on -- created their own lot,
10 this is the remainder and they're going to
11 subdivide the remainder into two lots.
12 **MR. NEHMAD:** Correct, but I think, if I
13 understand Mr. Munoz's question -- I apologize. Is
14 your name Munoz?
15 **MR. MUNIZ:** Muniz.
16 **MR. NEHMAD:** Muniz. I'm sorry.
17 **MR. MUNIZ:** That's all right.
18 **MR. NEHMAD:** I think his question was,
19 is CVS and Chase on one lot or two lots?
20 **MR. MUNIZ:** One.
21 **MR. NEHMAD:** One.
22 **MR. MUNIZ:** They're saying one lot.
23 **MR. NEHMAD:** Yes.
24 **MR. MUNIZ:** Okay. So the Wawa and the
25 office building, the former bank is another lot,

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1 correct?
2 **MR. KENNEDY:** Correct.
3 **MR. MUNIZ:** Okay. Can the Wawa survive
4 without part of the office building?
5 **MR. KENNEDY:** I don't think I can
6 answer.
7 **MR. MUNIZ:** Does it need the office
8 building to make it a use?
9 **CHAIRMAN MERCES:** I understand the
10 question. That's not what Mr. Kennedy can testify
11 to.
12 **MR. MUNIZ:** I asked the lawyer.
13 **MS. ETESON:** I think they were saying
14 that the square feet has to be 5,000 square feet so
15 it does if you're going to make it 4,700.
16 **MR. MUNIZ:** He's saying the Wawa is
17 two-thirds of the lot so that would make it
18 2.4 acres of the 3.6. Does 2.4 acres work for a
19 Wawa? Because every Wawa that I see is 3 plus.
20 **MR. NEHMAD:** No. There's ones that are
21 much smaller. There are ones that are considerably
22 smaller.
23 **MR. KENNEDY:** There's also shared
24 circulation. There's no restriction on
25 circulation --

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1 **MR. MUNIZ:** Okay.
2 **MR. KENNEDY:** -- so it does function.
3 **MR. MUNIZ:** So it was a Friendly's, the
4 Friendly's closed at 9. You don't know about that?
5 **MR. KENNEDY:** It certainly wasn't at 9.
6 **MR. GORMAN:** That's a long time ago.
7 (Multiple parties speaking.)
8 **MR. MUNIZ:** It wasn't 24 hours with a
9 fuel sign lit up day and night.
10 The other question would be, is there
11 any plan for, if it gets developed and approved,
12 adding more of a buffer to the woods?
13 **MR. KENNEDY:** So is your question
14 supplementing along our rear lot line somehow or is
15 it saying add --
16 **MR. MUNIZ:** Just saying it's 400 feet to
17 these homes here and I don't think that it is.
18 **MR. KENNEDY:** No. That's off the back.
19 Absolutely.
20 **MR. MUNIZ:** This way?
21 **MR. KENNEDY:** Correct.
22 **MR. MUNIZ:** Because there's a house
23 here, here, here, here.
24 **MR. KENNEDY:** Well, it's off, it's off
25 the exhibit. It's not right there. That's the

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1 subdivision.

2 **MS. ETESON:** What's the buffer at its --

3 **BOARD MEMBER:** How close to the

4 building?

5 **MR. KENNEDY:** The existing parking lot's

6 140 feet and then --

7 **MR. GORMAN:** Put that on the record.

8 **MR. KENNEDY:** 140 feet from the corner

9 that's closest to the homes on The Trail, 140 feet

10 from that existing parking lot corner to the

11 property line.

12 **MR. MUNIZ:** What's the buffers first?

13 **BOARD MEMBER:** What is the buffer

14 distance? You just measured off, not including the

15 building, just the buffer.

16 **MR. KENNEDY:** Okay. So just take out

17 the 6 feet, I guess, so it's the lot width -- I'll

18 just measure that now. So it's 110 feet, that

19 little -- that width, 110 feet.

20 **MS. ETESON:** Are those houses at a

21 higher elevation than the three story building?

22 **MR. MUNIZ:** As they come up the road

23 they're a little bit higher.

24 **MS. ETESON:** The houses are higher than

25 a three story building?

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1 **MR. MUNIZ:** I mean, we can see the roads

2 below us. We're definitely gonna see the Wawa.

3 **MR. KENNEDY:** They're much higher.

4 **MS. ETESON:** Okay. The building is not

5 going to block the lighting from the Wawa. The

6 building can't block the lighting for the houses.

7 **MR. MUNIZ:** No.

8 **MR. KENNEDY:** Those -- so if you look at

9 them from Friendly's, it looks like there's -- I'm

10 not gonna count them but it looks like there's

11 between 20 and 30 contours which, again, puts the

12 ground of their property higher than -- this is the

13 existing, this is the existing site, but it puts

14 their --

15 **MR. MUNIZ:** What's this elevation here?

16 These homes are all sloped.

17 **MR. KENNEDY:** Okay. Look at the

18 contours. This whole contour, that's the wetlands.

19 See all those, those are the ones at equal

20 elevation, so this house, which is the first on the

21 left, as you come up from Route 35 it slopes down

22 to Route 35 --

23 **MR. MUNIZ:** Right.

24 **MR. KENNEDY:** -- and it slopes down

25 towards the wetlands. The wetlands is the low

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1 point between the two properties, then it goes up

2 on our side and obviously up on their side, so

3 there, there is definitely a topographical change

4 between these two properties, between the

5 properties.

6 **MR. MUNIZ:** Is there a noise ordinance

7 for a 24 hour operation?

8 **MR. KENNEDY:** Yes.

9 **MR. NEHMAD:** There is a noise ordinance

10 under the State Noise Control Act that applies to

11 all commercial buildings, existing and new.

12 There's a daytime noise level and a nighttime noise

13 level. I'm very familiar with it. The daytime

14 noise level is 65 decibels from 7 in the morning to

15 10 at night and it goes to 50 decibels from 10 at

16 night to 7 in the morning and 50 decibels -- and

17 the scale is a logarithmic scale and that's very

18 significant because a 10 decibel increase in noise

19 is perceived as a double in the intensity of the

20 sound, so it's not an arithmetic scale, it's a

21 logarithmic scale. I litigated a case in Northern

22 New Jersey and it's very significant because it

23 applies to all uses, not just reuses, so that if we

24 were to build a use and you measure it at the

25 receiving residential property line, that's where

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1 you measure noise under the State Noise Control

2 Act, so if there were ever a violation of the

3 daytime or nighttime hours, I assume it's your

4 County Department of Health that administers Noise

5 Control Act regulations, must be -- that would

6 apply to the town engineer.

7 **MR. KENNEDY:** That's true.

8 **MR. NEHMAD:** Well, they can come out

9 with a noise meter. They can readily measure that

10 and if you're not in compliance you're issued a

11 summons, and compliance really chiefly with respect

12 to shopping centers and chiefly with respect to

13 large supermarkets and that kind of thing, but we

14 must meet the State Noise Control Act. We want all

15 of our neighbors to understand that and it applies

16 and it goes down during the evening hours to 50

17 decibels. In the daytime it's 65 decibels.

18 **MR. MUNIZ:** Okay. So there is an

19 ordinance?

20 **MR. NEHMAD:** Yes, sir. There's a state

21 law and state regulations on it.

22 **MR. MUNIZ:** One more question.

23 **MR. NEHMAD:** Sure.

24 **MR. MUNIZ:** Do either of you gentlemen

25 live by a Wawa? I'll take that as a no.

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1 **MR. NEHMAD:** My sister-in-law lives
 2 right next to --
 3 **MR. MUNIZ:** I'll take that as a no.
 4 Thank you, everyone.
 5 **MR. NEHMAD:** Thank you.
 6 **CHAIRMAN MERCES:** Yes, ma'am. Come on
 7 up.
 8 **MS. DUNN:** Allison Dunn, 5 The Trail.
 9 **MR. GORMAN:** What's that?
 10 **MS. DUNN:** My name is Allison Dunn, 5
 11 The Trail.
 12 **MR. NEHMAD:** I'm sorry. I couldn't hear
 13 that.
 14 **MR. GORMAN:** Allison Dunn, 5 The Trail.
 15 **MS. DUNN:** Thank you.
 16 **MR. NEHMAD:** Thank you, Allison.
 17 **MS. DUNN:** Mr. Kennedy, I have a lot of
 18 questions for you. You had discussed the lighting,
 19 it goes down, correct, it goes into the parking, it
 20 doesn't go up. You provided by the pump stations
 21 the lighting that is going to be there to
 22 accommodate cars pulling in. Where do the lights
 23 reflect? Did you not say down?
 24 **MR. KENNEDY:** So the site lighting is
 25 designed with light fixtures that are set at a 90

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1 degree angle so that they illuminated below the
 2 light fixture and not up and out. The canopy and
 3 building lighting I did not testify to and there
 4 will be an expert here to testify with regard to
 5 the building lighting itself.
 6 **MS. DUNN:** So you guys don't know
 7 offhand, either one of you, just off the top of
 8 your head where those lights --
 9 **MR. NEHMAD:** Yes, we do.
 10 **MS. DUNN:** Okay. I'd be glad to hear
 11 from you, sir.
 12 **MR. NEHMAD:** I'm not an expert. I can
 13 tell you what it is. Wawa has one of the --
 14 (unintelligible) -- for night sky because they have
 15 indirect lighting. One of the most offensive
 16 things you'll see on a service station, old service
 17 station is where you see a canopy and then you see
 18 a projection down from the canopy and you see no
 19 cut off shield of the light. It's tremendously
 20 offensive. As you drive by the site it's as if my
 21 head were the light bulb and you can see the light
 22 bulb of my head. Wawa's lighting is indirect
 23 lighting and it all has cut off shields and you'll
 24 hear it from engineers that have designed Wawas at
 25 the next hearing. I just want to tell you because

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1 I can't testify but I can tell you.
 2 **MS. DUNN:** I still can expect lighting?
 3 **MR. NEHMAD:** Well, any commercial use --
 4 **MS. DUNN:** I can still see lighting?
 5 **MR. NEHMAD:** Any use that goes on the
 6 site is going to have lighting.
 7 **MS. DUNN:** Flick the switch on the light
 8 and the light goes on, correct?
 9 **MR. NEHMAD:** Any use is going to have
 10 lighting.
 11 **MR. RATHJEN:** You have to realize that
 12 any kind of lighting, you're going to have ambient
 13 light reflecting from the floor up. That's
 14 something that you can't -- we haven't discovered
 15 how we cannot let ambient light go high. That's --
 16 **MS. DUNN:** I have a question, however.
 17 Mr. Kennedy keeps saying about the elevation, when
 18 he -- (unintelligible) -- looking down and they're
 19 seeing lights, they're seeing loading and you're
 20 saying elevation, elevation. If you and I stand on
 21 Mount Everest and you look down you're going to see
 22 the white snowcaps.
 23 **CHAIRMAN MERCES:** Ma'am, this is
 24 questions.
 25 **MS. DUNN:** Sure. I'm asking a question.

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1 If I'm high up in the air am I not going to see
 2 what's below me?
 3 **MR. KENNEDY:** You will not have the
 4 glare from the light fixture.
 5 **MS. DUNN:** But am I not going to see
 6 what's below me?
 7 **MR. KENNEDY:** I hope you --
 8 **MS. DUNN:** I am, I am going to see
 9 what's below me. No mother how high I am, I am
 10 going to see that.
 11 **MR. KENNEDY:** The question is can you
 12 see the glare and the lighting is typically
 13 associated with glare and what we're required to do
 14 under the Middletown Performance Standards is to
 15 provide a glare-free illumination and that's what
 16 we've done. We met the requirements that the
 17 township gives us. I can't have a dark setting.
 18 The site, it will be lit. You know, no matter what
 19 goes there, it will be lit.
 20 **MS. DUNN:** I'm not worried about having
 21 a dark site. I'm asking you about the elevation
 22 with the lights glooming, am I going to see that?
 23 **MR. KENNEDY:** You are not going to see
 24 the illumination.
 25 **MS. DUNN:** Am I going to see the lights?

<p style="text-align: right;">118</p> <p>1 Am I going to see the lights? 2 MR. KENNEDY: The light source, no. 3 MS. DUNN: I'm not going to see lights? 4 MR. KENNEDY: You're not going to see 5 the light source because it's below you. 6 MS. DUNN: I'm not asking the light 7 source. I'm asking you, am I going to see lights? 8 Okay. You don't want to answer that, I'll go on to 9 my next question. 10 MR. KENNEDY: You don't like my answer. 11 I am trying to answer you. 12 MS. DUNN: No, I don't like your answer, 13 you're right, and you probably don't like the 14 question. 15 MR. KENNEDY: No. I-- 16 MS. DUNN: However, I'm going to go on 17 to the next question. You were talking about the 18 Wawa sign and the 20 feet and you want the public 19 to see that sign. Okay. Why does the public want 20 to see that sign so immediately? Why do you think 21 the public needs to see that sign so immediately? 22 MR. NEHMAD: I can answer that. 23 MS. DUNN: Okay. 24 MR. NEHMAD: There's a law, N.J.S.A. 25 56:6-2.3 which requires anybody selling fuel to</p>	<p style="text-align: right;">120</p> <p>1 do that but -- 2 CHAIRMAN MERCES: We're going to have -- 3 (Multiple parties speaking.) 4 CHAIRMAN MERCES: This is questions for 5 Mr. Kennedy. 6 MS. DUNN: You feel like that's a really 7 big strip there for traffic that's coming down 50 8 miles an hour Highway 35 South? You feel like -- 9 MR. KENNEDY: So again, this is not 10 about my feelings. This is about the rules. The 11 rules say that the minimum frontage in the B-3 zone 12 is 200 feet. We have over 500. 13 MS. DUNN: Okay. 14 MR. KENNEDY: So when you say it's a 15 minimum strip, that doesn't comport with the rules 16 that the township -- 17 BOARD MEMBER: Well, Mr. Kennedy, I 18 understand the 500 feet, but including the bank all 19 the way to the end or are you saying just in front 20 of the Wawa? That's a little bit tricky the way 21 you answered that. 22 MR. NEHMAD: Your ordinance allows you 23 to have multiple buildings on one site. 24 BOARD MEMBER: I know, but the egress 25 points are not available here. Your only egress</p>
<p style="text-align: right;">119</p> <p>1 conspicuously show the price per gallon for the 2 rider. 3 MS. DUNN: Okay. So let me ask you 4 this, sir. You don't think it's because the strip 5 is so small for a gas station -- when you're coming 6 down highway 35 South it's like an airplane landing 7 on a small landing strip. You don't think that's 8 why your sign should be out there for the people? 9 Because maybe, oh, I got to stop, I got to go to 10 the Wawa, right? That's a very, very tight, very 11 tight area for a gas station. You have a big truck 12 coming down south on 35 and -- I know you guys want 13 me to do this thing like Jeopardy. You have a huge 14 fuel tank coming down 35. I don't know what the 15 speed limit is there. Anybody know? 16 MR. GORMAN: 50. 17 MS. DUNN: Okay. Oh, my God. So 18 they're coming with a huge truck down 35, 55 miles 19 per hour and they're gonna land that fuel truck on 20 that tiny little strip safely and nobody's gonna 21 get in an accident and -- 22 CHAIRMAN MERCES: Ma'am, I think we've 23 given you a little leeway but you're getting way 24 off. 25 MS. DUNN: I know you don't want me to</p>	<p style="text-align: right;">121</p> <p>1 point -- ingress point is on the Wawa site only. 2 MR. NEHMAD: Right, and we have -- 3 BOARD MEMBER: And so to say we have 500 4 feet of frontage is not actually accurate. 5 MR. NEHMAD: Well, it is accurate. 6 BOARD MEMBER: If you nuance it, yes, 7 but there's no ingress point anywhere within that 8 500 feet except for in the 200 feet. 9 MR. NEHMAD: That's not -- there 10 absolutely is. 11 BOARD MEMBER: So you're saying that 12 it's okay for a semi, a 75 foot semi to pull into 13 the first ingress point and then pull across the 14 office building -- 15 MR. NEHMAD: Yes. Mr. Kennedy said 16 there's another access point. Can you bring it up? 17 MR. KENNEDY: Just referring to A-2, so 18 you're saying that there's no other access points 19 and there is. There's an entrance, an exit and 20 then the bifurcated next to entrance pass along. 21 BOARD MEMBER: So you are including the 22 far left as an entrance point including for the 75 23 foot semi trucks? 24 MS. DUNN: At 55 miles per hour. 25 MR. KENNEDY: That's not -- so that is</p>

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1 an entrance point. That is not designed for a semi
 2 truck but could one enter there, yes. A semi truck
 3 can circulate that.

4 **BOARD MEMBER:** Okay.

5 **MR. KENNEDY:** I don't know why they
 6 would but they can. This is -- this whole
 7 arrangement was reviewed and approved by the DOT.
 8 That includes multiple entrances and exits along
 9 this one frontage that's treated as one lot. Not
 10 only, not only -- my testimony was that this is not
 11 a narrow strip, that this frontage on this lot
 12 exceeds your ordinance requirements doubled, 200,
 13 we're at 500-something.

14 **BOARD MEMBER:** But right now your
 15 testimony is that you expect cars to come in from
 16 the original and first entrance point and make us
 17 stop at the stop sign in front of the office
 18 building?

19 **MR. KENNEDY:** Yes. Absolutely.

20 **BOARD MEMBER:** I did not get that you
 21 expected that. I honestly think your traffic
 22 pattern, it seems to me you were directing traffic
 23 to where the sign is located and that would be
 24 where cars would be coming in, so you expect that
 25 cars will be coming in off the highway to the first

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1 entrance?

2 **MR. KENNEDY:** I mean, to be honest and
 3 fair, that is why we widened this driveway to
 4 25 feet, to comport with the zoning.

5 **MR. RATHJEN:** Jim, I really think you
 6 guys should really think about that entrance way as
 7 a main entrance because I think that's -- this was
 8 the main thing when you had the first, when we had
 9 the first iteration, was that entrance way. That
 10 far entrance way is a lot safer than the one where
 11 you're going to have the sign and that's something
 12 we looked at before. We couldn't say anything
 13 because we cannot say what the DOT does, we're not
 14 allowed to, but that was one of the reasons, in the
 15 back of my mind I said it was lousy. That
 16 entrance, that northern entrance I think is the
 17 safer way to get in. You do have a stop sign in
 18 Leonardo, they have it coming in and you do have a
 19 stop sign where the, where the pumps are so I know
 20 that the stop sign works but I think that entrance
 21 way should be considered more of a main entrance.

22 **MR. KENNEDY:** There's nothing to
 23 preclude --

24 **MS. ETESON:** There are two entrances.
 25 He's talking about going in the first one but how

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1 far in front of the second entrance is the sign
 2 going to be? In other words, is the sign right at
 3 the entrance where you're almost going to have to
 4 stop short to get in because the sign's going to be
 5 right in front of you? Like, how far ahead of the
 6 second entrance is the sign?

7 **MR. KENNEDY:** So the sign for Wawa is --

8 **MS. ETESON:** Well, right, but it's not
 9 too far after. It's pretty much right there, where
 10 the entrance is, so what I'm saying is if they see
 11 the sign ahead, say they -- if you're trying to get
 12 right in -- do you know where the, do you know
 13 where Maddie's Kitchen is in Middletown?

14 **MR. KENNEDY:** Yes.

15 **MS. ETESON:** There are two entrances to
 16 get in there. I always want to go in the first
 17 entrance but with traffic stopped on 35, I fear
 18 that if I try to get into the second entrance,
 19 which is right at the edge, that I'm going to pass
 20 it. You know what I'm talking about? You know
 21 where Maddie's Kitchen is?

22 **MR. KENNEDY:** There's nothing precluding
 23 the use of that first entrance. Mr. Rathjen's
 24 comment was maybe you should provide a Wawa entry
 25 sign to promote use of that.

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1 **MR. RATHJEN:** That's what I'm -- that
 2 might be a little -- a lot safer than stopping and
 3 just before you get to that sign.

4 (Multiple parties speaking.)

5 **MR. KENNEDY:** The traffic engineer is
 6 the guy that -- I have not studied that portion of
 7 this like he has. He has studied it, you know, six
 8 ways. I haven't studied that so I think that we
 9 hear your comment and your comment and your comment
 10 and I think that's something that we have to
 11 process and have Gary --

12 **MR. RATHJEN:** Well, let's process it
 13 because we know 35. We don't want them coming in
 14 where the BP place has that -- (unintelligible). I
 15 kept coming from the racetrack and cutting in for
 16 gas, that is tough. This one you have a little bit
 17 of a race -- a car which I think is safer. That's
 18 my opinion. I know we can't say anything because
 19 the DOT says that.

20 **MR. NEHMAD:** Well, no. You can say it
 21 but --

22 **MR. RATHJEN:** An entrance sign there
 23 might be something --

24 **MR. NEHMAD:** You can request us to put a
 25 directional entry sign there. Wawa does it

<p style="text-align: right;">126</p> <p>1 frequently and I don't think anybody --</p> <p>2 BOARD MEMBER: I do want to say one</p> <p>3 thing. When I asked you the question earlier about</p> <p>4 the tanker and the entrance, you strictly commented</p> <p>5 on the one spot. That's why everybody has that</p> <p>6 perception sitting here and that's why I asked you</p> <p>7 about the frontage and the 500, because you're</p> <p>8 including everything and that was not my perception</p> <p>9 of your testimony.</p> <p>10 MR. KENNEDY: I didn't study the tanker</p> <p>11 coming into that spot because it's not -- you know,</p> <p>12 that tanker driver would really need to know how</p> <p>13 the site works to be assured that he can pull in</p> <p>14 this alternate driveway and get around. The</p> <p>15 direction from the store is going to be using the</p> <p>16 entrance because that's the circulation pattern for</p> <p>17 a tanker or delivery truck. Anyone coming in from</p> <p>18 Monmouth, anyone coming in this first entrance,</p> <p>19 because it's closest to The Trail, I'd prefer the</p> <p>20 use of the entrances that was specifically designed</p> <p>21 for his circulation map and that, I believe, would</p> <p>22 be the instruction that is given to delivery</p> <p>23 drivers that deliver to any Wawa, go in the main</p> <p>24 entrance.</p> <p>25 BOARD MEMBER: They're gonna learn real</p>	<p style="text-align: right;">128</p> <p>1 they need.</p> <p>2 CHAIRMAN MERCES: I'm assuming that</p> <p>3 someone else is going to testify as to how it</p> <p>4 works.</p> <p>5 MR. NEHMAD: Yes.</p> <p>6 CHAIRMAN MERCES: Someone else will</p> <p>7 testify about that.</p> <p>8 MS. DUNN: Okay. Because we all want to</p> <p>9 go home, the last thing is, I know, Mr. Kennedy,</p> <p>10 you have a job and you have a job and you're trying</p> <p>11 to represent your client the best you can, that's</p> <p>12 your job, right, but the Planning Board also has a</p> <p>13 job.</p> <p>14 MR. NEHMAD: That's not --</p> <p>15 MS. DUNN: But you're working. You have</p> <p>16 a job. The Planning Board has a job and I just ask</p> <p>17 you, question, are you going to make it a safe and</p> <p>18 as neighborly friendly as possible?</p> <p>19 MR. NEHMAD: May I address something?</p> <p>20 MS. DUNN: Can you guarantee that it</p> <p>21 will not affect the neighborhood above, the people</p> <p>22 coming through, because they don't want to take the</p> <p>23 u-turn or they're in a hurry? Can you guarantee</p> <p>24 that if you're not --</p> <p>25 BOARD MEMBER: Let me make a comment to</p>
<p style="text-align: right;">127</p> <p>1 quick that that's going to be a shortcut and --</p> <p>2 BOARD MEMBER: Either that specifically</p> <p>3 or they figure it out and start doing what they</p> <p>4 want to do.</p> <p>5 (Multiple parties speaking.)</p> <p>6 BOARD MEMBER: Just utilize the site and</p> <p>7 make it really efficient -- (unintelligible).</p> <p>8 MR. NEHMAD: We do control the delivery</p> <p>9 of the trucks, the tanker trucks, yes.</p> <p>10 BOARD MEMBER: You have control over</p> <p>11 where they're going?</p> <p>12 MR. NEHMAD: We can direct them what</p> <p>13 driveway to use, yes, sir.</p> <p>14 MS. DUNN: Can you guarantee that?</p> <p>15 MR. NEHMAD: Yes.</p> <p>16 MS. DUNN: Even if you're not there, on</p> <p>17 site 24/7, because they're open 24/7, can you</p> <p>18 guarantee -- what time is delivery time, by the</p> <p>19 way? What time is delivery for the Wawa to refuel</p> <p>20 the tanks?</p> <p>21 MR. NEHMAD: It depends on how busy the</p> <p>22 store is.</p> <p>23 MS. DUNN: So my question to you is rush</p> <p>24 hour --</p> <p>25 MR. NEHMAD: It varies in terms of what</p>	<p style="text-align: right;">129</p> <p>1 what you said. All right. So -- (unintelligible).</p> <p>2 I thought for sure everybody in Middletown is going</p> <p>3 to come through my neighborhood and go that way.</p> <p>4 You know how many people come through my</p> <p>5 neighborhood? You can count on one hand.</p> <p>6 MS. DUNN: I'm not understanding that.</p> <p>7 BOARD MEMBER: So your point is you</p> <p>8 cannot guarantee -- nobody can guarantee anything,</p> <p>9 but a guarantee -- let me finish.</p> <p>10 MS. DUNN: That's why --</p> <p>11 BOARD MEMBER: Let me finish.</p> <p>12 MS. DUNN: Okay.</p> <p>13 BOARD MEMBER: You're saying people</p> <p>14 cutting through your neighborhood, coming down The</p> <p>15 Trail and going in there.</p> <p>16 MS. DUNN: Well, I couldn't elaborate on</p> <p>17 that because --</p> <p>18 BOARD MEMBER: Well, that's what you</p> <p>19 said to us. I'm going to say I've been a</p> <p>20 Middletown resident, I lived here my whole life.</p> <p>21 MS. DUNN: Okay. Me, too. Me, too.</p> <p>22 BOARD MEMBER: I just gave you an</p> <p>23 example of me living on 35 and they built out. All</p> <p>24 right. I was against it and I said all these cars</p> <p>25 are going to come through my neighborhood, speed</p>

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1 through, all the locals are going to come through.
 2 It didn't happen.
 3 **MS. DUNN:** But if it does happen --
 4 **BOARD MEMBER:** You can't control it.
 5 It's a public street.
 6 **MS. DUNN:** I know you can't control it.
 7 I know you can't guarantee it. All I'm asking is,
 8 I'm here to ask a question, not to play a scenario,
 9 and my question is, will all of you sitting here
 10 seriously consider the safety value of the
 11 neighborhood and the --
 12 **CHAIRMAN MERCES:** We are. That's why
 13 we're sitting here.
 14 **BOARD MEMBER:** We're all volunteers.
 15 (Multiple parties speaking.)
 16 **MR. NEHMAD:** Can I just say one thing
 17 before we break?
 18 **CHAIRMAN MERCES:** Yeah.
 19 **MR. NEHMAD:** Wawa has an obligation from
 20 a civil law perspective, it invites the business
 21 invitees on to their property, it has the highest
 22 obligation the law imposes on a property owner and
 23 that is to make the property safe. Okay. More so
 24 than somebody that may come on your property that
 25 delivers something or some business invitee comes

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1 to your property, it has an obligation to make your
 2 property safe, which means to design it, it works
 3 with all applicable codes and standards and Wawa
 4 takes that seriously. They really do. You can see
 5 that through the operation of their stores. I also
 6 would like to point out that if the municipality is
 7 really concerned, I mean, it's a rationale concern
 8 that somebody says that the truck --
 9 (unintelligible). You have the ability as a
 10 municipality to impose -- (unintelligible). Just
 11 simply say the Wawa trucks have to -- impose this
 12 condition, they have to use the main drive aisle.
 13 Well, however he wants to come, come that way. I
 14 mean, that's the way we want to come because that's
 15 safe and efficient and there are drivers, we
 16 instruct them to come that way. We have no
 17 objection to that.
 18 **MR. GORMAN:** (Unintelligible) -- issues
 19 on The Trail, as well.
 20 **MR. NEHMAD:** The municipality can.
 21 (Multiple parties speaking.)
 22 **MR. GORMAN:** I mean, on The Trail we
 23 could put, we could -- I think the board --
 24 (Multiple parties speaking.)
 25 **MR. NEHMAD:** Thank you for staying this

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1 late.
 2 **CHAIRMAN MERCES:** No problem.
 3 Anybody else?
 4 All right. Motion to adjourn?
 5 **MR. NEHMAD:** What's our date?
 6 **MR. GORMAN:** We'll carry this to
 7 December 1 without further public notice.
 8 **MR. KENNEDY:** You're closing out that
 9 portion?
 10 **MR. GORMAN:** Public portion is closed.
 11 (Meeting is adjourned.)
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1 CERTIFICATE
 2
 3 I, MICHELLE GRUENDEL, a Certified Court
 4 Reporter and Notary Public of the State of New
 5 Jersey, do hereby certify that the foregoing is a
 6 true and accurate transcript of the testimony as
 7 taken stenographically from a videotaped recording
 8 to the best of my ability.
 9 I DO FURTHER CERTIFY that I am neither a
 10 relative nor employee nor attorney nor counsel of
 11 any of the parties to this action, and that I am
 12 neither a relative nor employee of such attorney or
 13 counsel, and that I am not financially interested
 14 in the action.
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