

MINUTES OF THE
EAST BRUNSWICK TOWNSHIP
BOARD OF ADJUSTMENT

January 19, 2023

STATEMENT - Open Public Meetings Act

FLAG SALUTE

ROLL CALL -

PRESENT:

Steve Philips, Chairman
Christine Rampolla
Amu Papi
Ivan Wynter
Chester Brandt
Bonnie Wilson

ABSENT:

Cathy Decker
Miley Weiner, Student Rep.
Steve Pepe
Leon Gurevich
Deepak Arora

ALSO PRESENT:

Jay Weiner, Esquire
Aaron Blessing - Zoning Assistant
Colleen McGurk - Planner
Keith Kipp - Director of Planning/Engineering

NEW BUSINESS

Application #Z-21-28 - SBA Properties, Inc. -
Proposed site improvements for parking and outside
storage at existing office property located at 386
Old Bridge Turnpike, block 55.02, lot 20, in the
HC-2 zone. Mandatory date January 31, 2023.
Adjourned to April 20, 2023. Mandatory date
extended through April 30, 2023.

Application #Z-22-25 - Yacoub - Proposed patio and
pool with lot coverage variance located at 36
Buckingham Drive, block 319.20, lot 26, in the R-2
zone. Mandatory date March 22, 2023. Adjourned to
April 20, 2023. Mandatory date extended through
April 30, 2023.

Application #Z-22-18 - Raymond - Proposed addition
to existing single-family dwelling with setback
variance located at 81 Lois Avenue, block 740, lot
16, in the R-3 zone. Mandatory date March 22, 2023.

Motion to approve with conditions by Ms. Rampolla, second by Mr. Wynter. Application approved with conditions.

Application #Z-22-23 - Monroy - Proposed addition to existing single-family dwelling with setback variance located at 32 Herbert Drive, block 638, lot 3, in the R-3 zone. Mandatory date February 25, 2023. Motion to approve with conditions by Ms. Papi, second by Mr. Wynter. Application approved with conditions.

Application #Z-22-29 - Midstate Owner LLC - Proposed children's indoor playground within the Midstate Mall NYSC located at 314 State Route 18, block 33, lot 1.06, in the HC-2 zone. Mandatory date April 6, 2023. Motion to approve with conditions by Mr. Wynter, second by Ms. Rampolla. Application approved with conditions.

ADJOURNMENT

Motion to adjourn by Mr. Wynter, second by Mr. Brandt. Meeting adjourned at 10:40 p.m.

THE CHAIRMAN: This is the January 19, 2023, East Brunswick Zoning Board of Adjustment meeting. In accordance with the Open Public Meeting Law, on December 15, 2022, notice of this meeting stating the time, date, and location was sent to the Home News Tribune, filed with the township clerk, and posted on the bulletin board in the lobby of the municipal building. A copy of this notice will be incorporated in the minutes of this meeting.

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

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

No smoking is permitted at public meetings of the zoning board of adjustment in accordance with township ordinance number 78-3.

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

If I can ask everyone to please rise for

the pledge of allegiance.

(Flag salute)

THE CHAIRMAN: Thank you. At this point, Aaron, if you can please call the roll.

MR. BLESSING: Miss Wilson.

MS. WILSON: Here.

MR. BLESSING: Miss Decker. Mr. Brandt.

MR. BRANDT: Here.

MR. BLESSING: Mr. Pepe. Mr. Gurevich.
Mr. Arora. Mr. Wynter.

MR. WYNTER: Here.

MR. BLESSING: Miss Papi.

MS. PAPI: Here.

MR. BLESSING: Miss Rampolla.

MS. RAMPOLLA: Here.

MR. BLESSING: Chairman Philips.

THE CHAIRMAN: Here. Okay. First order of business tonight are two applications that will not be heard, and we need to go through the legal changes that are part of that decision on the applicant's part. So if I can look for our attorney.

MR. WEINER: Yes, Mr. Chairman Philips, first on application Z-21-28, SBA Properties, Inc., that matter has been adjourned. I believe we have a new date. They're requesting an adjournment until, Aaron, April?

MR. BLESSING: Twentieth.

MR. WEINER: April 20. They've also agreed to an extension of time until the end of April, as well, requesting an adjournment, so --

THE CHAIRMAN: And have we made sure we established jurisdiction?

MR. WEINER: That's what my next step is, is that before we grant an adjournment, I have reviewed the notices. They are acceptable, and the board as of now can accept jurisdiction for that application, and then, since we're accepting jurisdiction, we can now make a decision on granting an adjournment, and if that is done, we can announce the new date, and there will be no further notice required.

THE CHAIRMAN: Very good. Let me ask the board then on application Z-21-28, SBA Properties, we've established jurisdiction, and they're asking for a continuance until April 20. Does anybody have on the board have any objection to that?

MR. WYNTER: No.

THE CHAIRMAN: Seeing none, then -- we

don't have to take a vote on it; we can just accept --

MR. WEINER: We can grant it.

THE CHAIRMAN: Yeah, so at this point then, for anybody in the audience that might be here for application Z-21-28, it will not be heard this evening. We have established jurisdiction, and the applicant has asked to be continued until April 20, and the board has granted that. So this application will be continued April 20, at 7:30 in this room. There is no additional notice being required. The only notice is now been effective by giving it into this public forum at this time. So SBA Properties, April 20 at 7:30 p.m. I think that covers that.

MR. WEINER: Yes.

THE CHAIRMAN: Now we have another one.

MR. WEINER: Yes. Application Z-22-25, Yacoub, spelled Y-a-c-o-u-b in the event I'm not pronouncing is correctly. That matter for the -- by happenstance and subsequently convenience, both the Yacoub matter and the SBA matter both, they were represented both parties by the same attorney, so the adjournment request for convenience was made for the same night as the other one, until April 20, with an extension of time through the end of April. The board -- I have reviewed the notices on the Yacoub application, and they are satisfactory for the board to accept jurisdiction tonight, which we are doing, and therefore, the board can grant this adjournment without any further notice required.

THE CHAIRMAN: In that case then, let me ask the board if anybody has any questions or objections to continuing Yacoub to the 20th of April.

Seeing no objections, then to the public, anyone here that wishes to be involved with application Z-22-25, Yacoub, be advised that we will not be hearing them this evening. The applicant is not required to send out any additional notice. The only notice being given is being given out, and the continuation of that application will be on the 20th of April at 7:30 p.m. in this courtroom.

So I think that covers us pretty clearly on those two?

MR. WEINER: Yes.

THE CHAIRMAN: Okay, very good. Onto new business, application Z-22-18, Raymond. Okay, you can come up here if you don't mind, and then we'll have to swear you in, and this I assume would be your home or -- you're not an attorney representing.

MR. RAYMOND: No, it's my home.

THE CHAIRMAN: If you can please raise your right hand. Do you solemnly swear the testimony you're about to give this evening regarding the application before us is the truth, the whole truth, and nothing but the truth, so help you God.

MR. RAYMOND: Yes.

THE CHAIRMAN: Okay. You can have a seat, and just state your name, spell your last name, and give us your address.

MR. RAYMOND: My name is Clifford Raymond. My last -- my last name is -- spelling my last name is R-a-y-m-o-n-d. My address is 81 Lois Avenue, East Brunswick, New Jersey, 08816.

THE CHAIRMAN: Okay.

MR. WEINER: Mr. Chairman, I just want to put on the record. I have had an opportunity to review the notices in this matter. They are satisfactory, and the board does have jurisdiction to hear this matter tonight.

THE CHAIRMAN: Thank you.

Mr. Raymond, can you -- do you understand why you're before the board this evening?

MR. RAYMOND: Yes.

THE CHAIRMAN: Okay. So if you could briefly explain what it is you'd like to do and why you believe that you need relief for this application.

MR. RAYMOND: My current property has a two-car garage in it that is 4 feet from my property line. We are currently looking to redo our entire second floor and go over this garage. Since it's 4 feet from the property line, the current code says that it has to -- any new structure has to be 10 feet from the property line, which would mean that my new structure above my garage would have to be 6 feet in from -- that's above the garage.

The project is for an expanding family. I'm planning on taking care of my stepmother. So I actually would prefer the space if possible. It would help out a lot for the restructure of the second floor. So I'm asking for the variance to have that -- the remaining 6 feet back over the garage.

THE CHAIRMAN: So basically what you have is you have a situation where the existing house footprint is already technically in violation of --

MR. RAYMOND: Yes.

THE CHAIRMAN: -- the zoning code. But the home was built in the 1950's by all standards, and back then that was a mansion. There's significant differences that have happened over the evolution of the last 70 years. So -- and you can't buy anymore property. You can't take buying property from somebody else so that you don't have to get a variance; is that fair?

MR. RAYMOND: Yes, that's correct.

THE CHAIRMAN: So the hardship would be that you -- you're already existing in a nonconforming situation. What you're doing is you're going vertical from that.

MR. RAYMOND: Yeah.

THE CHAIRMAN: You understand that if you have any walls inside your house that you have -- that's part of your addition, you have to have rated for 1-hour fire.

MR. RAYMOND: Yes.

THE CHAIRMAN: You understand that.

MR. RAYMOND: Yes.

THE CHAIRMAN: And you have to comply with that.

MR. RAYMOND: Yes.

THE CHAIRMAN: Excuse me. I don't see a whole lot else, but let me ask staff if there's anything.

MS. MCGURK: I would just have a concern about the amount of bedrooms going from three to five, so I would like a condition added that the existing garage would remain for parking of vehicles, not for storage.

MR. RAYMOND: Yes.

THE CHAIRMAN: Mr. Raymond, they're trying to reduce or restrict the number of cars that wind up parking haphazardly in the streets in front of the houses.

MR. RAYMOND: That's absolutely fine.

THE CHAIRMAN: So they're asking that you use your garage as a garage. Do you have problem with guaranteeing that that's what you'll do?

MR. RAYMOND: Absolutely not. My wife, maybe, but --

THE CHAIRMAN: Is she here?

MR. RAYMOND: No.

THE CHAIRMAN: She doesn't get a (inaudible) just so you're clear. You're the one that's here so we're listening to you.

MR. RAYMOND: Exactly. I can by law

give that --

MR. WEINER: And then you can tell her should this matter be approved that she's the one who would be in violation.

MR. RAYMOND: Absolutely.

THE CHAIRMAN: Okay. And anything -- anybody on the board have any specific questions regarding this application or any questions of the applicant?

MR. BRANDT: Mr. Chairman, I only have -- and maybe Keith can answer this -- that since there's going to be living space above the garage, are there safeguards included, you know, that if you don't have a running vehicle, you know, underneath a bedroom.

MR. KIPP: Yeah, that's a good question, and through our building inspection process, when he submits his building plans, they will make sure that he's conforming with all codes and take all that into consideration for sure.

MR. BRANDT: Okay. Thank you.

MS. WILSON: Your plans for the exterior, it'll match what's already there, or you're going to redo the whole exterior of the addition so that it matches and with the rest of the --

MR. RAYMOND: Oh, you mean like siding-wise?

MS. WILSON: Yes.

MR. RAYMOND: So we're redoing the siding all over the house.

MS. WILSON: Okay.

THE CHAIRMAN: Because the roof will have to match because we won't have the existing roof anymore anyway.

MR. RAYMOND: Exactly.

MS. RAMPOLLA: Not the double garage, but the driveway, itself, holds how many cars?

MR. RAYMOND: So it's a two-car-wide. It says one-car, but it's a two-car-wide.

MS. RAMPOLLA: Yeah, that's why I asked, because staff report says one. Said one-car driveway, but it is two; is that right. So that there's technically there's room for four cars?

MS. MCGURK: Yeah, it's a two-car driveway. I didn't realize -- don't know that I put two-car. I put two-car garage, but, yeah, the driveway would also fit two cars.

MS. RAMPOLLA: Okay. It said property, like under findings, A, and it said two-car garage,

two-car driveway, but I just wanted to make sure. So it's actually for --

MS. MCGURK: Side by side. The depth isn't enough, but they can beside by side.

MS. RAMPOLLA: That just makes me a little more comfortable only because it's a five-bedrooms and the possibility of how many cars, but four spaces sounds like staff were comfortable with three, right, so four should be okay.

MS. MCGURK: Three would be the minimum. Four is even better.

MS. RAMPOLLA: Thank you. Okay.

THE CHAIRMAN: Any other questions from anybody on the board? Hearing none, and, staff, have we covered everything that you would like us to?

MS. MCGURK: Yes.

THE CHAIRMAN: In that case then, I'd be happy to listen for a motion from the board.

MR. WEINER: Public.

THE CHAIRMAN: Thank you. Is there anybody from the public here to speak about application Z-22-18?

Let the record show that nobody from the public is here so we'll close the public portion. Now I stand corrected.

MR. WEINER: Before we can go over motions, I jotted down -- I have three conditions. Condition 1, the house be rated for a 1-hour fire. Condition 2, the existing garage shall be for only -- shall be only for vehicles and not for storage. And condition 3 --

MR. KIPP: Excuse me. I just think for storage is appropriate. I mean, I'm sure he can store some things, but I think the main point is not to convert it to living space --

MS. MCGURK: Yes.

MR. KIPP: -- at any point. I think that's the main --

MR. WEINER: So existing garage shall be for vehicles and not to be converted to living space, or just will not to be converted for -- existing garage shall not be converted -- shall not be converted to living space.

THE CHAIRMAN: And the other one that you mentioned, actually, the 5-foot wall is only on the side where it's -- he doesn't have to have that same level of protection to the whole house.

MR. WEINER: Okay, so which wall was it, Mr. Chairman?

THE CHAIRMAN: It's the one on the right-hand side. It's the one that -- by the garage, the garage side.

MR. WEINER: Wall abutting garage.

THE CHAIRMAN: And above.

MR. WEINER: Abutting garage and above.

THE CHAIRMAN: Right.

MR. WEINER: To be fire rated for 1-hour fire. And then the last one was -- I have it as new siding to match with existing structure. Obviously, if you're going to redo the whole house, then the idea would be it's going to be uniform.

MR. RAYMOND: Yes.

THE CHAIRMAN: Okay, and --

MR. WEINER: And those were the only three conditions that I had here, so -- and I think the applicant, Mr. Raymond, has indicated they'd be acceptable to him. So if there's any motion to approve, it would be with those conditions.

MS. RAMPOLLA: I'll make a motion to approve with those conditions.

THE CHAIRMAN: Thank you. Do we have a second?

MR. WYNTER: I'll second the motion.

THE CHAIRMAN: Ivan. Okay. Thank you very much. And now if you could, Aaron, please call the roll.

MR. BLESSING: Mr. Wynter.

MR. WYNTER: Yes.

MR. BLESSING: Mr. Brandt.

MR. BRANDT: Since number 79 and 83 Lois Avenue have extensive additions, as well, I think this would be an improvement to the neighborhood, and I vote yes.

MR. BLESSING: Miss Wilson.

MS. WILSON: Yes.

MR. BLESSING: Miss Papi.

MS. PAPI: Yes. I, too, noticed that you have a beautiful neighborhood, and that's going to be a nice complement to the street.

MR. BLESSING: Miss Rampolla.

MS. RAMPOLLA: Yes.

MR. BLESSING: Chairman Philips.

(Inaudible)

MR. BLESSING: I called him first, did I not? I called your vote, yes?

MR. WYNTER: Yes. I voted yes.

THE CHAIRMAN: I will also vote yes and recognize that this area of town has undergone a significant change in terms of the way people have

built up their homes, and the street on Lois is every other home, if not every three out of four homes, have already established the vertical improvement in the houses, and this certainly would just fit in very nicely with the way that the street has evolved since the 1950's. So, Mr. Raymond, I will vote yes, and good luck to you on your application.

MR. RAYMOND: Thank you very much.

THE CHAIRMAN: Next we have application Z-22-23, Monroy. Anybody here from Monroy? We have to swear you in.

MR. WEINER: Mr. Chairman, even before we get that far, if I can just put on the record that I've reviewed the notices. They are acceptable, and the board has jurisdiction to hear this application.

THE CHAIRMAN: Thank you. Okay. I assume you are Claudia?

(Inaudible)

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

MS. MONROY: (Inaudible)

THE CHAIRMAN: Okay. You can have a seat. You can give us your name, spell your last name, and give us your address.

MS. MONROY: Okay. My name is Claudia Monroy. That spelling of the last name is M-o-n-r-o-y, and the address of the home is 32 Herbert Drive in East Brunswick, New Jersey, 08816.

THE CHAIRMAN: Okay, and briefly if you can tell us why you're before us and what you'd like to get relief for.

MS. MONROY: Okay. So I'm actually also applying for a variance. We do have an existing structure that is already in place, and I believe a variance was applied for in the past by the previous owner. We are trying to extend to that variance or to that extension, as well.

THE CHAIRMAN: Previous?

MS. MONROY: So there was an addition that was done in the past to the home, and again, we're trying to build above that addition.

THE CHAIRMAN: Yeah, well, do you know exactly what it is that is the reason why you need a variance?

MS. MONROY: Same scenario, the setback

from the neighbors is no code requirements. I believe it has to be the 10 feet. In one side it has 6 feet, and the other side has 4 feet.

THE CHAIRMAN: So you're looking for relief, and you have an existing home that is on a lot that is -- that was already undersized from the standpoint of the new zoning, but when it was first built, that was acceptable.

MS. MONROY: Correct, or at some point I believe the previous owner applied for a variance that I guess was granted, and that's why they were able to make the previous addition.

THE CHAIRMAN: You're looking to go up, not to expand anymore into the side.

MS. MONROY: Correct. I'm looking to extend up and in the back of the home because they only build that addition. They didn't extend it to the back of the house. So we're trying to or hopefully extend it also to the back of the house to make a uniform with the current structure.

THE CHAIRMAN: Okay, and you're looking to go straight up. Let's see what other situations there are. There's some issues or memorandum from the code enforcement, and I would -- I don't know if you've seen a copy of that, but I would ask if you could address those.

MS. MONROY: Okay.

THE CHAIRMAN: The first memorandum from code enforcement talks about tile pallets on the side of the house?

MS. MONROY: Yeah, everything was already cleared out.

THE CHAIRMAN: Cleared out.

MS. MONROY: Yeah.

THE CHAIRMAN: That means the large carpet that was rolled up.

MS. MONROY: Yeah.

THE CHAIRMAN: And so forth. Okay.

MR. WEINER: And the tree trunks.

THE CHAIRMAN: You cut the trunks, tree limbs, and so forth. That's all been cleared up.

MS. MONROY: Cleared out as well, yes.

THE CHAIRMAN: Okay. One of the -- I guess the other thing is is that there's a truck and a trailer that are parked on the grass in front of your house.

MS. MONROY: Yes.

THE CHAIRMAN: You can't tell me you cleared that up because I went by there today, and it's still there.

MS. MONROY: We still have it in there, yes.

THE CHAIRMAN: There's a couple of issues that I have with that personally because there's a retaining wall right there, and the truck is parked almost at the retaining wall. I'm sure you didn't build the retaining wall, and neither did your neighbor. This house has probably changed hands two or three times over the 70 years. But the issue of the retaining wall is either responsibility of kind of both of you because if you're going to be there and you put the weight on it and you damage the retaining wall that may be 70 years old, that's a problem.

MS. MONROY: Okay.

THE CHAIRMAN: So you can't park the truck there.

MS. MONROY: Okay.

THE CHAIRMAN: I mean, aside from the fact if I was a neighbor, I wouldn't want that because that retaining wall could suddenly come down, and it would come down on my property, not on yours.

MS. MONROY: Understood.

THE CHAIRMAN: So you understand that you have to have your vehicles in a driveway or in a garage.

MS. MONROY: I understand.

THE CHAIRMAN: And you'll agree as part of this if we put that in as a condition that you agree to adhere to that.

MS. MONROY: I do. Understood.

THE CHAIRMAN: Now, the next question -- and maybe I'll -- Christine wants to ask about the siding and --

MS. PAPI: I was going to do --

MS. RAMPOLLA: No, but it's still parked there right now, though, the truck?

MS. MONROY: Yes. We need to find a space. We actually just got the notice yesterday because they came back for a second inspection. When they did the initial inspection, the truck was not mentioned as a part of the violation. So we did clear out everything that was mentioned on the original form, but then when we received the new notice yesterday, everything again was up to code because we cleared everything out, but now they mention the truck, which it was again surprising because it was not on the original violation. So we will make sure to move it.

MS. RAMPOLLA: You mentioned there is a variance applied for the previous owners.

MS. MONROY: Yes, I mean, and that's what I believe Aaron was able to find on the records. I was not aware because obviously it was not mentioned to me when I purchased the home, but I believe that when he did the search on the variances from the home, he found that there was a variance out for an application.

MR. BLESSING: When we were initially doing the research on the proposed addition, we did find there was a much older variance on file. I think it was from the 1960's. It was quite old. But it was for the garage, which is -- if I recall correctly, it was the garage on the left side of the property as facing it from the street. I could be mistaken, but, yes, there was a variance from the 60's.

THE CHAIRMAN: Yeah, these homes were not built originally with garages, and the placement of this where it is would clearly indicate it was done after the original home was built and so forth. So it is possible from 1960's.

MS. RAMPOLLA: So the variance was just for the garage to be added on?

MS. MCGURK: The garage addition and the side yard setback.

MS. RAMPOLLA: Okay.

MS. MCGURK: And the new variances would be for the second floor addition plus the addition on the eastern side to square off the home on the first floor.

THE CHAIRMAN: Okay. And trailers, are those trailers still there?

MS. MONROY: Yeah. We just received the notice yesterday, so we'll just have to move them.

THE CHAIRMAN: Okay, so you wouldn't have any objection if we included that in a resolution, as well.

MS. MONROY: No.

THE CHAIRMAN: And the siding right now that you have appears to be like a yellowish. You're going to keep that and put it up above, or you're going to redo the entire siding and the roof and all that?

MS. MONROY: Redo the entire siding and roof.

THE CHAIRMAN: All new siding and all new roofing, okay.

We have a copy of your survey. Can I

ask you a question. I thought I saw a gazebo or something in the back yard. Is there a gazebo in the back yard?

MS. MONROY: There is a gazebo in the back yard.

THE CHAIRMAN: Okay.

MS. MCGURK: Well, the survey is from 2017. When was the gazebo installed?

MS. MONROY: It was I going to say probably like a year and a half ago.

THE CHAIRMAN: Did you apply for building permit for that?

MS. MONROY: So we were working with the township on the gazebo. We had our initial inspection. They had few things that we have to correct, which my husband is working on it. He's the one that built the gazebo and is the one that is planning on building the additions on the house. But, yes, we were working with the township.

THE CHAIRMAN: So you don't have a problem that this application will also require, since it only -- hasn't come to formal end yet, that the gazebo will also be completed.

MS. MONROY: Correct, that's fine.

THE CHAIRMAN: And all permits necessary will be applied for and --

MS. MCGURK: They have applied.

THE CHAIRMAN: They did apply. All right. The reason I ask is it wasn't on the plan you submitted, and normally, a structure such as that should normally be on the plan.

MS. MONROY: Yes.

MR. WEINER: I have a question for our staff, Mr. Chairman.

MS. MONROY: The survey was when I first purchase the home.

MR. WEINER: Colleen, is the gazebo not being on the survey, does that have any impact as far as any of the bulks that may be in effect, or impervious coverage, anything of that nature.

MS. MCGURK: No, when they go through the permitting process, we add that in and check that not exceeding any kind of coverage.

MR. WEINER: So I just want to state that should, once the permitting process is completed, the placement of the gazebo trigger the need for any variance, you would then have to -- if you wanted to proceed and with the gazebo, you would have to come back to this board for any variance that you're told you needed at that time separately.

MS. MONROY: Okay.

THE CHAIRMAN: Looking at the existing and proposed, it wouldn't impact the maximum building coverage. It would have to be as big as the house for building coverage. But the proposed goes to 24.7, and the maximum lot coverage is 30. If it's more than 5 percent, it could exceed the maximum lot coverage, and then that would trigger a variance.

MR. WEINER: Yes, which is why I want to put that out there, the possibility, because understand, until the permitting process is completed, it's not known yet, so that's something that's separate, but want you to understand that if it gets triggered, you may be back here.

MS. MONROY: Okay.

THE CHAIRMAN: Any questions additional from the --

MR. BRANDT: Board, Mr. Chairman -- go ahead, Ivan.

MR. WYNTER: I'm sorry. I have two questions. How long have you lived at this property?

MS. MONROY: Since 2017.

MR. WYNTER: 2017. Why were the vehicles parked where they are? They were --

MS. MONROY: This is my husband. I'm sorry.

MR. WYNTER: Why were they parked in the spot they were parked?

MS. MONROY: I guess just because we didn't have enough space to park our own vehicles, so, you know, we placed the trailer I guess on this side of the house. It was just more for space purposes, but again, we can always put the trailers in the driveway and remove them from the (inaudible)

MR. SANTOS: Can I speak?

THE CHAIRMAN: Hold on. You haven't been recognized yet.

MR. SANTOS: All right. No problem.

MR. WEINER: Just one other matter. With regard to the gazebo, are we looking for a window of time to have it completed by? Because otherwise it's pretty vague. We're saying it needs to be completed, but I just want to make sure it goes -- it doesn't go on eternally without being completed.

MS. MCGURK: Right. Once they apply for the permit, they have a year to complete the work.

MR. WEINER: And the permit has been

applied for already?

MS. MCGURK: Yes.

MR. WEINER: Okay. So then the permitting process will control that. That's fine.

MS. MONROY: And we'll make sure to get that addressed so we can move forward with the application.

THE CHAIRMAN: If you wish to be sworn in, then you're welcome to ask questions or provide testimony.

MR. SANTOS: Okay.

THE CHAIRMAN: Okay, so do you want to be sworn in?

MR. SANTOS: Yeah.

THE CHAIRMAN: Please rise. Raise your right hand. Do you solemnly swear the testimony you're about to give this evening regarding application Z-22-23 is the truth, the whole truth, and nothing but the truth, so help you God.

MR. SANTOS: Yes.

THE CHAIRMAN: Please state your name and validate your address.

MR. SANTOS: My name is Gil Santos. I live on 32 Herbert Drive in East Brunswick.

THE CHAIRMAN: Okay. Spell your last name.

MR. SANTOS: S-a-n-t-o-s.

THE CHAIRMAN: Okay. You're welcome to -- we've already gone over most of the --

MR. SANTOS: Okay.

THE CHAIRMAN: -- in your application, so what is it that you're welcome to add whatever --

MR. SANTOS: Yeah, I'll just listen for now, and if I have any questions, I will ask you.

THE CHAIRMAN: Okay.

MS. RAMPOLLA: Just to follow up to counsel's question. So how long ago was the application applied for for the gazebo?

MS. PAPI: Excuse me. Do you remember when you applied? Maybe that would speed up the process. It was when?

MS. MONROY: Last year.

THE CHAIRMAN: 2022.

MS. MONROY: Yes, in the summer of last year?

MR. SANTOS: I think so, yes.

THE CHAIRMAN: Well, while we're looking that up, does anybody else on the board have any questions they would like to ask to fill in this blank of space and silence we have here?

MR. BRANDT: I have one question. I mean, Mr. Chairman, I see in the photo that they have two trailers and one truck. I don't understand why he just couldn't put the truck in front of the one trailer, this way to alleviate the situation with the retaining wall, and if you have any other vehicles, park them in front of your home.

MS. MONROY: And that's what we'll do. We were just trying to prevent having the cars on the road, you know, to -- especially now in the winter if we get any snow storms, but that's pretty much what we'll do.

MR. BRANDT: Okay.

THE CHAIRMAN: You don't have a lot of opportunity to widen the driveway because of the limitations on that side. You might be able to widen it a little bit. I don't think you can put a full truck and car on there.

MS. MONROY: Yeah.

THE CHAIRMAN: So I don't know whether that would be a solution, but (inaudible) seems like it will. But, you know, consider the fact that, you know, these neighborhoods don't have a lot of trailers in their driveways, and I think there's some restrictions on the town's part as to have a bunch of trailers in the driveway.

MS. MCGURK: They're not permitted.

THE CHAIRMAN: There's your answer. It's not permitted. Now -- I'll leave it at that. They're not permitted.

MS. MONROY: Okay.

THE CHAIRMAN: Any other questions from anybody on the board?

MS. MCGURK: And to answer the question about the permit, March 2023 it would have to be completed by.

MS. MONROY: Okay. And it's minor -- I mean, according to the inspector, just minor changes that he just have to make the time.

MR. WEINER: Just understand for your edification, just so you understand what Miss McGurk means by that is whatever date in March coming up -- we're at the end, the latter part of January now -- whatever the anniversary date is, if it's not completed and the approval isn't issued by then, then you have to then either remove the gazebo or you have to come before the zoning board for a variance and you have to restart the whole process again.

MS. MONROY: We're going to get it done.

MR. WEINER: Because otherwise, under the -- you would be in violation by having it there without the proper approvals.

MS. MONROY: Okay. We'll make sure we get it done before then.

THE CHAIRMAN: Okay. Anybody else on the board have any other specific questions of this application? Seeing none, then let me open it up to the public and ask if anybody from the public is here specifically to speak about application Z-22-23.

Let the record show that no one from the public is here to speak, so we close the public pork.

If we can, Jay, if you could please review what we have on this application.

MR. WEINER: Yes. Okay. I have essentially four conditions, and if I've not jotted one other one down that was discussed, let me know, we'll add it. Condition 1 is vehicles to only be parked on the driveway and/or in the garage.

Condition number 2, the trailer to be removed from the property.

MS. RAMPOLLA: Plural I think, right?

MR. WEINER: Trailers, I'm sorry. Let me see. All trailers. Okay.

Number 3, the siding and roofing is to be replaced.

Number 4, the gazebo shall be completed in compliance with township codes.

I think that was all I had, Mr. Chairman.

THE CHAIRMAN: Anybody have anything that Jay didn't catch?

MS. MCGURK: If I can just add my usual comment about the garage never being converted to living space because we do want the amount of parking that's required for the bedrooms.

MR. WEINER: We can add that as number 5.

THE CHAIRMAN: Hopefully, with all the bedrooms that they're adding, they don't need one in the back that's --

MR. WEINER: So number 5, garage shall not be converted to living space.

THE CHAIRMAN: You heard them. They're all acceptable to you?

MS. MONROY: Yes, they are.

THE CHAIRMAN: Anything else from staff?

MS. MCGURK: No.

THE CHAIRMAN: Anything else from the board? We've come to that point then. I'll listen for a motion.

MS. PAPI: I motion to approve.

THE CHAIRMAN: We have a motion. Do we have a second?

MR. WYNTER: I'll second it.

THE CHAIRMAN: Ivan seconds it. Okay. We have those conditions. Everybody accepting it. Okay, Aaron, please call the roll.

MR. BLESSING: Mr. Wynter.

MR. WYNTER: Yes, I vote to approve this application.

MR. BLESSING: Mr. Brandt.

MR. BRANDT: Yes, I vote to approve, as well.

MR. BLESSING: Miss Wilson.

MS. WILSON: Yes.

MR. BLESSING: Miss Papi.

MS. PAPI: Yes, and I wish you a lot of happiness in your new home.

MR. BLESSING: Miss Rampolla.

MS. RAMPOLLA: I'll vote yes.

MR. BLESSING: Chairman Philips.

THE CHAIRMAN: I can repeat exactly what I said for the last application. These homes were built. They're preexisting nonconforming to today's standards. Going along that street along Herbert, it's clear that a number of people have already improved their homes vertically. Since there's not a rift in the ocean and suddenly there's going to be a whole bunch more land that shows up between these homes, the reality is that they can only build up, and in 2023, it's not the same world as it was in 1953, so what was a wonderful mansion then is no longer really acceptable to people today. So, yes, it makes sense for us to grant this variance, and I wish them a lot of luck, and I will say yes. Thank you.

MS. MONROY: Thank you so much.

MR. WEINER: Good luck to you.

MS. PAPI: Good night.

THE CHAIRMAN: Okay. I think that ends our business for tonight.

MR. WEINER: I heard a thud.

MS. MCGURK: I'm getting building permits for seven-, eight-bedroom homes.

THE CHAIRMAN: Well, that's because people can't find a place to live otherwise for the rest of their family.

(Application #Z-22-29 under separate
cover)

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BOARD OF ADJUSTMENT
TOWNSHIP OF EAST BRUNSWICK
COUNTY OF MIDDLESEX
STATE OF NEW JERSEY

In the Matter of)
The Application of:) Transcript of
MIDSTATE OWNER LLC) proceedings
#Z-22-29)
314 State Route 18)
Block 33, Lot 1.06)

Thursday, January 19, 2023
Municipal Building
One Jean Walling Civic Center Drive
East Brunswick, New Jersey

BOARD OF ADJUSTMENT

STEVE PHILIPS, Chairman
CHESTER BRANDT
IVAN WYNTER
CHRISTINE RAMPOLLA
BONNIE WILSON

AARON BLESSING, Secretary
COLLEEN MCGURK, Planner
KEITH KIPP, Director Planning/Engineering

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5 DAVID B. HIMELMAN, ESQUIRE
6 Attorney for the APPLICANT

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I N D E X

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<u>WITNESS</u>	<u>PAGE</u>
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I N D E X T O E X H I B I T S

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
A-1	Four photographs	30
A-2	Sheet 4 of plan colorized	30
A-3		

1 THE CHAIRMAN: Now we have application
2 Z-22-29, Midstate Owner, LLC, proposed children's
3 indoor playground, and I see we have Mr. Himelman
4 coming up here.

5 MR. HIMELMAN: Yes, Mr. Chairman. Good
6 evening.

7 MR. WEINER: Mr. Chairman, before we
8 begin, I'd just like to state that I have reviewed
9 all the notice proofs submitted. They are
10 satisfactory, and the board has jurisdiction to hear
11 this application. I also -- this evening, of
12 course -- and I also want to place on the record
13 that -- and this is for the purpose of the recording
14 as well as the court stenographer is in the room --
15 is that one of our board members, Miss Papi, is
16 recused on this application, and she will be leaving
17 the dais and the meeting and not participating. So
18 let that reflect in the record since she was present
19 in the attendance at the beginning of the recording,
20 so this way there's no confusion going forward.

21 MS. PAPI: I'm recusing myself. Good
22 night.

23 MR. HIMELMAN: Good night.

24 THE CHAIRMAN: Chester is moving over.
25 He's going to fill your spot in a second.

1 Now, Mr. Himelman, you understand that
2 you only have five people here.

3 MR. HIMELMAN: I do, Mr. Chairman, and
4 as in the case of any matter that we're -- we
5 require two-thirds affirmative votes of all
6 potential members, with only five here, I understand
7 the risk, and I certainly would reserve my right to
8 ask a vote at the conclusion of our case, but I
9 would ask that we be able to proceed.

10 THE CHAIRMAN: You understand that you
11 also have the availability, if you will, of
12 continuing --

13 MR. HIMELMAN: Yes.

14 THE CHAIRMAN: -- until there are more
15 members of people who have read the minutes and so
16 forth.

17 MR. HIMELMAN: Correct, and could read
18 the transcript and then vote at a subsequent
19 meeting.

20 THE CHAIRMAN: Okay.

21 MR. HIMELMAN: Understood.

22 THE CHAIRMAN: As long as that's clear
23 to everybody.

24 MR. HIMELMAN: I understand. Mr.
25 Chairman, good to see you. Happy new year. Members

1 of the board, nice to see you. My name is David
2 Himelman. I am the attorney for the applicant,
3 Midstate Mall Owner. I do have a brief opening, and
4 then we have several witnesses, Mr. Chairman, three
5 to be exact, and I will introduce them, and they'll
6 be sworn at the appropriate time.

7 Just by way of background, as you know,
8 the owner and applicant of the mall is looking to
9 lease out a portion of its property to Kids Empire,
10 which as you know from your -- the application is a
11 recreational use and because your ordinance
12 specifically on recreational amusement facilities is
13 conditionally permitted in the HC-2 zone, while we
14 meet one of the conditions, we do not meet the
15 other, and therefore, we are here this evening on a
16 conditional use variance. That condition, Mr.
17 Chairman, for the record is that no place of
18 amusement, recreation, or assembly shall be located
19 within 500 feet of a residential or residential zone
20 regardless of whether or not such zone is actually
21 developed for residences, which distance shall be
22 measured along the straight line to the nearest
23 property line. Since we are technically within that
24 500-foot distance requirement to a residential zone,
25 we are -- we do not meet the conditions even though

1 it's permitted use but it's conditional. So
2 therefore, Mr. Chairman, we are here on a D-3
3 variance before your board, and we seek that relief.

4 As you know from historical
5 applications, this board has the power to grant that
6 D-3 conditional use variance pursuant to the
7 Municipal Land Use Law at 40:55D-70(d)(3) and in
8 particular cases and for special reasons, and as you
9 know, Mr. Chairman, that's referred to as the
10 positive criteria of the D-3 variance, and we will
11 have to establish that through planning testimony.

12 In addition, the variance relief sought,
13 which is the other portion of the criteria, which is
14 known, Mr. Chairman, as you know, as the negative
15 criteria for the D-3 variance, and the seminal case
16 on that is Coventry Square, which held that the
17 strict requirements applicable to a D use variance
18 don't apply to the first prong of the negative
19 criteria of the D-3 variance, whether the variance
20 can be granted without substantial detriment to the
21 public good. Instead, I would assert, Mr. Chairman,
22 that the board's focus on a D-3 conditional use must
23 be whether the conditions imposed in its approval to
24 ensure that deviations from the conditional use
25 requirement do not cause substantial detriment to

1 the public good, and you may recall that that
2 actually -- that case is from an East Brunswick
3 decision, TCI East Brunswick, which goes -- which
4 was ruled by the court in 2013 -- as I see, I'm aged
5 as I look at that date.

6 In any event, the court in the TCI case
7 held that the strict requirements applicable to D-1
8 use variances do not apply to the second criteria of
9 the D-3 variance. Rather, I would assert that the
10 focus here is whether there is substantial
11 impairment to the intent and the purpose of the
12 master plan and zoning ordinance, and I think that's
13 really the focus of what our planner needs to
14 establish.

15 The applicant will testify that the site
16 we believe is particularly suited for the proposed
17 use because it has frontage and visibility on Route
18 18 and Old Bridge Turnpike. There's sufficient
19 means of access to public roads, and there's a safe
20 and functional circulation. As you know, the
21 property is surrounded by office building, retail
22 store, and we believe that there's substantial
23 buffer to the residential properties and also that
24 the proposed use, as our planner will indicate, we
25 believe will not have a negative impact on the

1 neighboring properties.

2 At the request of staff, the applicant
3 did perform a traffic analysis to ensure that
4 there's adequate parking at the mall, and our
5 engineer, Mr. Leber, has done that analysis, and, of
6 course, he will testify to that, and he will also
7 testify as to the justification for the variances
8 relative to the master plan and the purposes of
9 zoning under the Municipal Land Use Law.

10 Mr. Chairman, as I indicated, I've got
11 three witnesses. The first is Brandon Petersen, who
12 is a representative from Kids Empire, and he, of
13 course, represents the tenant; Marc Leber, our
14 engineer and planner; and Carl Counts, who is our
15 professional architect. And in addition, Mr.
16 Chairman, as always, the applicant will address any
17 of the staff reports and comments as we proceed.

18 So I don't have anything further at this
19 time. Unless you or the board does, we can proceed
20 with our first witness.

21 THE CHAIRMAN: It's your case. Go.

22 MR. HIMELMAN: Thank you, Mr. Philips.
23 Mr. Weiner, our first witness, as I indicated, is
24 Brandon Petersen. So -- and he's from Kids Empire.
25 So, Mr. Philips, Chairman Philips, we'd have to

1 swear him in.

2

3 B R A N D O N P E T E R S E N, sworn.

4 DIRECT EXAMINATION BY MR. HIMELMAN:

5 THE CHAIRMAN: Please take a seat. Give
6 us your name, spell your last name, and for the
7 record, we need to have your address.

8 THE WITNESS: Okay. It's Brandon
9 Petersen, P-e-t-e-r-s-e-n, and the address is 550
10 Town Center Boulevard, Garland, Texas, 75098.

11 THE CHAIRMAN: Okay, and for the record,
12 Mr. Himelman, he's here representing?

13 MR. HIMELMAN: He's representing Kids
14 Empire, who will be the intended operator at the
15 location.

16 THE CHAIRMAN: So he doesn't have to
17 be -- we don't have to have his credentials because
18 he's working for this company.

19 MR. HIMELMAN: Correct. He's really a
20 fact witness.

21 THE CHAIRMAN: He's a fact witness.

22 MR. HIMELMAN: Correct, okay.

23 THE CHAIRMAN: Let's make that clear, so
24 -- and for the record for the board, he's a fact
25 witness so --

1 MR. HIMELMAN: Correct. Before we
2 proceed, Mr. Chairman, we do have some exhibits.
3 They were submitted to staff as part of the letter
4 of intent for Kids Empire, and there are some
5 photographs, which we thought might be helpful. If
6 we --

7 THE CHAIRMAN: These have not be
8 provided.

9 MR. HIMELMAN: They were submitted with
10 the application I believe, but I'm not sure they
11 were circulated to the board members.

12 MR. BLESSING: With the letter of
13 intent?

14 MR. HIMELMAN: Yes.

15 MR. BLESSING: I believe those were.

16 MR. WEINER: If they were part of the
17 letter of intent, then that's part of the initial
18 application, so it's already in the record, and we
19 do not have to mark them as exhibits.

20 MR. HIMELMAN: That's fine.

21 MR. WEINER: However, I'm assuming we're
22 going to be able to put them up on the screen just
23 so the board can be refreshed as to which photos --

24 THE CHAIRMAN: Other than the color
25 rendition, we did not get any.

1 MR. HIMELMAN: Yeah, Mr. Chairman, I did
2 submit them. I don't -- actually, Aaron, I don't
3 know if that's -- that's them, but they're not
4 color. I ran off extra copies so that for the
5 board's edification, but I can certainly --

6 THE CHAIRMAN: As long as we don't have
7 to mark them as --

8 MR. HIMELMAN: I don't think so.

9 MR. WEINER: We don't have to mark them.
10 I have them. They are part of the application.

11 MR. HIMELMAN: Okay. Fair enough. So I
12 think we're good on that.

13 Q. Okay. Mr. Petersen, good evening. Just
14 for the record, if you could provide your title and
15 position with Kids Empire.

16 A. Director of construction.

17 Q. Okay, great, and can you just briefly
18 explain your understanding as to why we're -- why
19 we're here tonight and what relief we're seeking.

20 A. Yes, Kids Empire is a recreational use
21 and therefore falls under recreational amusement
22 facilities, which is a conditionally permitted use
23 within the HC-2 zoning district. No such place of
24 amusement, recreation, or assembly shall be located
25 within 500 feet of a residence, and we're within

1 that.

2 Q. Okay, fair enough. Okay, so basically,
3 it's your understanding that we're here on a
4 conditional use variance relief request, correct?

5 A. Yes.

6 Q. Okay. Very good. And I understand from
7 our discussions that you have testified before other
8 similar zoning boards and planning board throughout
9 the country; is that correct?

10 A. Yes.

11 Q. On behalf of Kids Empire?

12 A. Yes.

13 Q. Okay, great. All right, so just for
14 purposes of clarity, even though the board and staff
15 has our proposed plans, can you just describe the
16 proposed project and the space at the Midstate Mall
17 that the Kids Empire will occupy?

18 A. Yes. Kids Empire is an indoor
19 playground for children 12 years old and younger.
20 It's a large two-story playground inside with a
21 smaller toddler area. It's a family environment
22 that brings a good, safe place for kids to play and
23 for families to be able to take them to. It's -- we
24 do birthday parties, and we don't make food there.
25 You can order pizza and cakes as a carry-in or a

1 cater-in from local businesses. It's a nice
2 family-friendly place.

3 THE CHAIRMAN: Just a clarification.
4 You said it's two-story, but there really is not a
5 second story activity area. It's just two stories
6 high inside a single story; is that correct?

7 THE WITNESS: Correct. It's a large
8 jungle gym that we have in different levels.

9 THE CHAIRMAN: That might extend beyond
10 8 foot high, but it's not a two-story -- you're not
11 having a separate two-story second area above.

12 THE WITNESS: Correct. It's single
13 story throughout the building with just a large
14 play.

15 Q. And it's my understanding -- you can
16 clarify this, Mr. Petersen -- that the Kids Empire
17 is not a daycare, correct?

18 A. Absolutely not.

19 Q. Okay, and you don't prepare or cook any
20 food on the premises?

21 A. No.

22 Q. Okay, so it's primarily prepackaged
23 foods, and how generally do we get deliveries for
24 that?

25 A. Once a week as far as the delivery.

1 Yeah, it's about once a week.

2 Q. Okay. Now --

3 THE CHAIRMAN: Clarify where the
4 deliveries are --

5 Q. Yeah -- well, do you have a sense of
6 where the deliveries will be generally provided
7 within the center. I mean, I presume it's in close
8 proximity to the building.

9 A. Yeah, usually through the front. It's
10 Instacart deliveries. It's just a replenishment of,
11 you know, our prepackaged foods.

12 Q. Fair enough. I know that in the staff's
13 memorandum, they have several items that we wanted
14 to -- we wanted clarification and testimony, so I'd
15 like to go through those with you. One of them had
16 to do with the disco area, how many seats will be
17 provided, the square footage of the toddler area,
18 and the proposed uses. Could you briefly go over
19 that.

20 A. So the disco is an ultraviolet room that
21 has a projector in it. Kids just go in there and
22 they go kind of crazy, and during the birthday
23 parties, they follow the mascot in there, a little
24 birthday parade. That's the main use. As far as
25 seating, it's got a lot of ample seating. I'd say

1 200 plus seats. Average people about 140 at the
2 peak time.

3 Q. Okay. Fair enough.

4 THE CHAIRMAN: Mr. Petersen, hold on.
5 You're showing that you would have 90 parents and 52
6 children. That's the ratio. You'd have, like,
7 almost 2 to 1 parents to children?

8 THE WITNESS: Yes. I mean, it could go
9 either way. Most birthday parties the parents are
10 come with the kids. Parent are free with the child
11 so it doesn't cost to have both parents there.

12 THE CHAIRMAN: I'm not suggesting that
13 you change your business plan. I'm just wondering.
14 You know, it seems to me that somebody -- most
15 people might come with two kids but it's one person,
16 one parent, especially during the week when one of
17 the parents is working. So I was surprised at the
18 90 parents and 52 children. That balance just
19 didn't seem right.

20 THE WITNESS: Yeah, it's an overall
21 ratio from the whole nation. So they're trying to
22 -- that's the numbers that we came up with through
23 the --

24 Q. Well, is it typical for -- just follow
25 up with Chairman Philips' question, is it typical to

1 have both parents with accompany one or more
2 children, or how does that typically work?

3 A. With the birthday parties, yes, and
4 that's primarily most people come in with the
5 birthday parties. If it's a after hours during the
6 week, it might be a lot slower, especially during
7 school or work hours. So it's something that, you
8 know, parents can do at night. They take -- both
9 parents take the kid. And birthday parties both
10 parents are usually there.

11 THE CHAIRMAN: And if the kids all know
12 each other, I can picture where one parent would
13 take four kids there, their own and the friends of
14 the kid, because the other people may not be
15 available.

16 THE WITNESS: Yes, that is possible.

17 THE CHAIRMAN: Just that's why I
18 questioned the ratio.

19 THE WITNESS: I understand.

20 MR. WEINER: I guess more importantly,
21 we're looking at the total occupancy as far as --
22 directed to our staff, as well -- 142.

23 MR. HIMELMAN: Yes. You beat me to the
24 question.

25 MR. WEINER: My question with staff.

1 MR. HIMELMAN: No, I was going to have
2 Mr. Petersen testify to that.

3 MR. WEINER: I just want to make sure
4 what the staff's comfort level is.

5 MS. MCGURK: Well, the fire official
6 would determine the max capacity, but we went by the
7 information provided by the applicant. It would be
8 142. Our only concern would be the parking
9 criteria, which we can get into later.

10 MR. HIMELMAN: Thank you, Colleen.

11 Q. Okay, just also just to get some
12 information on the record, Mr. Petersen, your
13 proposed hours of operation?

14 A. They are 10 to 8 Monday through -- or
15 Sunday through Thursday, and Friday and Saturday
16 it's 10 to 10.

17 Q. Okay, and the peak hours I understand
18 will be Monday through Friday about 4 to 8 and the
19 weekends 2 to 6 p.m.; is that correct?

20 A. Correct.

21 Q. Okay, fair enough, and your employee
22 count at peak shift generally?

23 A. Five to seven at the most.

24 Q. Fine. And as Mr. Weiner indicated, so
25 typically you're projecting an occupancy, an average

1 occupancy of 142 guests, and Mr. Chairman -- and the
2 Chairman Philips indicated a ratio, but those are
3 national numbers, right?

4 A. Yes.

5 Q. And they vary from facility to facility?

6 A. They do.

7 Q. Okay, fair enough. One of the other
8 items that staff had asked us to address is that the
9 LOI -- the letter of intent that we submitted
10 provides that drop-offs are not permitted, and they
11 wanted to understand how this would relate to
12 customers and is there any signage stating no
13 drop-offs are permitted. If you can maybe clarify
14 that for us.

15 A. Yes, there is signage that states no
16 drop-offs, and when you first enter the facility,
17 there is a -- it's not a vestibule. It's a
18 43-inch-tall roll wall with entry gates. You have
19 to sign a waiver first, be checked into the POS
20 system where they register, make sure that you have
21 a kid with you, that you're not coming by yourself
22 or an underage person is trying to come in without
23 an adult, and then you are led into the park. Same
24 thing when you leave. You are monitored to make
25 sure you are leaving with the child you came in with

1 and that you are not leaving a child there.

2 Q. Fair enough. So nobody -- so basically,
3 there's a check-in -- a security check-in process --

4 A. Correct.

5 Q. -- that occurs, and then they have to
6 sign the appropriate form?

7 A. Correct.

8 Q. Waiver form?

9 A. Yes.

10 Q. Okay, fair enough.

11 THE CHAIRMAN: Mr. Petersen, based on
12 what you said, is it reasonable to assume that with
13 90 parents and five to seven employees that
14 somewhere around 50 cars would be part of that.

15 THE WITNESS: Yes.

16 THE CHAIRMAN: Okay, so that's 50 cars.
17 So then that -- we'll get to parking, but that's a
18 number we have to keep in our head.

19 MR. HIMELMAN: Fair enough. Fair
20 enough.

21 Q. Mr. Petersen, did you want to add
22 anything else, or you think you've covered your
23 testimony as far as this application is concerned on
24 Kids Empire? Is there anything you want to add?

25 A. I think I've covered it. I would just

1 like to note that we -- it's a good addition to
2 communities. We have established ourselves here in
3 New Jersey. We have a few other locations, and we
4 haven't had problems, you know, with the community,
5 with the shopping centers we've had, where it brings
6 families to it, and we try to cater with local
7 companies, so it helps the local businesses, as
8 well. We'd appreciate a variance you can provide
9 us.

10 Q. Terrific. Thank you very much,
11 Mr. Petersen.

12 MR. HIMELMAN: Mr. Chairman, I don't
13 have any questions, but you or the board members or
14 staff might.

15 MR. KIPP: I just have one question. So
16 you've stated some averages for both parents and
17 kids. Is this a cookie-cutter site. Are all yours
18 exactly the same size with the same size equipment?

19 THE WITNESS: It is a cookie cutter.
20 Some of our square footage may change on some of our
21 buildings, and, of course, some locations are going
22 to do better just based on where they are, the
23 frontage, the view, the metro demographics, et
24 cetera, but that is our national average for that
25 size of facility.

1 MR. KIPP: Thank you.

2 MR. WEINER: Mr. Chairman, I have a
3 couple of questions, as well, based on the staff
4 report.

5 Mr. Himelman, I don't know if
6 Mr. Petersen would be the appropriate party to
7 answer this or one of your other witnesses --

8 MR. HIMELMAN: Sure.

9 MR. WEINER: -- but let me throw them
10 out there. How many seats will be provided for
11 dining?

12 THE WITNESS: Two hundred plus.

13 MR. WEINER: Two hundred plus is a
14 hundred -- is an open range. So if you can be a
15 little more specific.

16 THE WITNESS: Two hundred to 240.

17 MR. WEINER: Two hundred to 240, okay.
18 And the square footage of the toddler area; is that
19 something that you would be able to address or the
20 engineer?

21 THE WITNESS: It's 800 square feet.

22 MR. WEINER: Eight hundred square feet.
23 And can you explain the proposed uses within the
24 large play area and within the toddler area.

25 THE WITNESS: Yes, the proposed use for

1 the toddler area is infants to toddlers up to
2 3 years of age. There may be slightly older kids if
3 they are with a toddler. It is monitored by an
4 employee to make sure that it's a safe area for that
5 age. We don't like the older kids running through
6 there and, you know, causing it to be -- if they get
7 too hyper around the smaller kids, they can knock
8 them over, et cetera.

9 The larger play structure is for kids 2
10 to 12. If they're under 4, they usually have their
11 parent with them. It is large enough and can hold
12 adults, as well. It's spaced apart. It has
13 obstacles, mazes. The bottom story is actually an
14 electric go-cart. There is a Lego area where it's
15 got very large Lego blocks so you can, you know,
16 create stuff. There is a second part of the level
17 that has a soccer field. So it's just a multiplex
18 structure.

19 MR. HIMELMAN: Mr. Weiner, I believe one
20 of the photos that was submitted does depict the,
21 like, the seating area and how they're arranged, but
22 I don't know if you want to specifically look at
23 that.

24 MR. WEINER: I was more concerned with
25 the number count, and I think at least we got a

1 high/low range for the record.

2 MR. HIMELMAN: Fair enough.

3 MR. WEINER: I don't want to be trying
4 to design the layout by any means. And I guess as
5 far as the use for each, if you can describe the
6 type of uses. You went over the ages, which were
7 great, but, like, what are we looking for in there.
8 I know some of the pictures show it, but I don't
9 know if that's conclusive what you're going to be
10 presenting in here, and I don't want to leave it to
11 the board to try to determine what exactly the
12 equipment is for. I realize things may vary over
13 time, whatever, but if you could give as good a
14 description of the type of equipment, type of
15 features that would be.

16 THE WITNESS: Okay. So the first floor
17 there is -- you have a large area that's underneath
18 the soccer field that has the large Lego blocks so
19 you can build a creative section built in. You can
20 go through the obstacle where it has ramps that go
21 up to the next level. They have different shapes,
22 sizes of foam material that you have to crawl
23 around, rollers that you have to squeeze through.
24 It's got two very large slides. It's just a huge
25 jungle gym.

1 MR. WEINER: Thank you.

2 THE CHAIRMAN: I'm looking at one of
3 your submittals. It's proposed Kids Empire space
4 number 19, and I guess your testimony would be that
5 this would be -- based on the footprint you've been
6 given, this is what you're planning on putting in
7 there.

8 THE WITNESS: Correct.

9 THE CHAIRMAN: Okay. I counted about
10 168 places to sit, assuming each one of these tables
11 is actually four, not one.

12 THE WITNESS: Okay.

13 THE CHAIRMAN: So I would just --
14 because you mentioned a number over 200, and unless
15 there's something else -- there might be some other
16 area for eating and I missed it -- and that's fine,
17 but I just want to get some closure on all of that.

18 MR. HIMELMAN: Mr. Chairman, what are
19 you referring to specifically, the architectural?

20 THE CHAIRMAN: Let's see. It says
21 proposed Kids Empire space number 19.

22 MR. HIMELMAN: Oh, yeah, right, that's
23 the architectural. Some of those tables I
24 understand may seat six, but that may be the -- that
25 could be the differential.

1 THE CHAIRMAN: Okay. Well, that's not
2 how they're depicted, but I acknowledge that --

3 MR. HIMELMAN: I understand, and I agree
4 with you. You're right, that's not how it's
5 depicted, but that's what I understand.

6 Q. Is that a fair assessment?

7 A. Yes, that's correct. You can also see
8 the photo records. Those are considered the
9 birthday tables. When there's a birthday party,
10 they're reserved by sections, and they hold more
11 than the other tables.

12 MR. HIMELMAN: But we'll take the 168.

13 MS. RAMPOLLA: Are those tables, the
14 longer ones in bunches, that's what is at the top of
15 the architectural picture along the top, so it looks
16 like there's three seats there.

17 THE WITNESS: Yes.

18 MS. RAMPOLLA: But it's actually the
19 longer tables.

20 THE WITNESS: Correct.

21 MR. HIMELMAN: Yeah, there might be a
22 little differential between the architectural, and
23 those are like photo type photos.

24 Mr. Chairman, if you have any further
25 questions.

1 THE CHAIRMAN: I do not at this time. I
2 want to check, board, to see if anybody -- if we
3 have missed anybody having a question, or staff, at
4 this point.

5 So, Mr. Petersen, I'm assuming you're
6 going to hang around for the rest of the night.

7 THE WITNESS: Yes. Thank you.

8 MR. HIMELMAN: Thank you, Mr. Chairman.
9 Mr. Chairman, our next witness is our engineer, Marc
10 Leber. So we have to have Mr. Leber sworn and
11 qualified.

12

13 M A R C L E B E R, sworn.

14 DIRECT EXAMINATION BY MR. HIMELMAN:

15 THE CHAIRMAN: Okay, for formality sake,
16 please go through your CV and so forth.

17 THE WITNESS: Yes. First name is Marc,
18 M-a-r-c, Leber, L-e-b-e-r. I graduated from high
19 school here, '94, and I completed a Bachelor of
20 Science degree in civil engineering at Drexel
21 University. Following graduation, I went on to the
22 Rutgers Graduate School, where I completed an MBA
23 program, and was licensed in 2004 as a professional
24 engineer and 2005 as a planner and 2006 as a
25 certified municipal engineer. Testified before many

1 boards. I've been before this board in the past as
2 well as the planning board in town. I always take
3 professional interest in projects because I actually
4 still reside in East Brunswick. So I'm happy to be
5 here.

6 THE CHAIRMAN: Okay. We've seen
7 Mr. Leber before.

8 MR. WEINER: Mr. Himelman, are we
9 presenting Mr. Leber as an engineer or as a planner?

10 MR. HIMELMAN: Both.

11 MR. WEINER: This way, Mr. Chairman, if
12 the board wants to accept Mr. Leber, it would be
13 both as an engineer and as a planner.

14 THE CHAIRMAN: Are you going to split up
15 his testimony?

16 MR. HIMELMAN: Yes. Mr. Leber will,
17 yes.

18 THE CHAIRMAN: So we're only going to
19 have --

20 MR. HIMELMAN: No, we're going to have
21 -- he will handle right now the engineering and
22 planning together.

23 THE CHAIRMAN: You're going to do it
24 together.

25 MR. HIMELMAN: Correct, if that's okay.

1 THE CHAIRMAN: Clarification.

2 MR. HIMELMAN: Thank you, Mr. Chairman.

3 Q. Mr. Leber, good evening.

4 THE CHAIRMAN: Wait. We haven't got --

5 MR. HIMELMAN: I'm sorry. I apologize.

6 MS. RAMPOLLA: I was going to recognize

7 Mr. Leber as an expert planner and engineer.

8 MR. BRANDT: Second.

9 MR. HIMELMAN: Thank you.

10 THE CHAIRMAN: All in favor. Any

11 opposed?

12 You've passed again, Mr. Leber.

13 THE WITNESS: Thank you once again.

14 Q. Mr. Leber, now that you've been
15 qualified, we can proceed. Good evening, Mr. Leber.
16 It's my understanding that you may have -- before we
17 get into your testimony, you may have brought
18 several exhibits with you, and if so, you want to
19 describe what they are, and we would need to have
20 them marked --

21 A. Yes.

22 Q. -- initially.

23 A. The first one is a group of photos.

24 It's actually four pages. I guess A-1?

25 THE CHAIRMAN: Single sided?

1 THE WITNESS: Single sided.

2 MR. HIMELMAN: A-1?

3 MR. WEINER: Just taking a note if you
4 can give me a pause. Exhibit A-1, series of four
5 photos.

6 (Four photographs marked A-1 for
7 Identification)

8 THE WITNESS: Now, A-2 would be sheet 4
9 of the plan set. I added some color to it. It's
10 11-by-17.

11 MR. WEINER: Okay, Exhibit A-2 is sheet
12 4 of plans colorized.

13 (Sheet 4 of plan colorized marked A-2
14 for Identification)

15 Q. Mr. Leber, it's my understanding that
16 under your direction you prepared a site plan
17 modification, which I think was six sheets, and
18 obviously, you're going to get into the relief
19 that's sought and the -- what the site plan proposes
20 and also address the planning justification, as
21 well. So I turn over the testimony to you at this
22 point. Thank you.

23 A. Thank you. So this is block 33. It's
24 lot 1.06. It's 300 Route 18. Everybody is familiar
25 with this property. It's almost 34 acres in size.

1 It does have frontage on Route 18, but it also has
2 frontage on Old Bridge Turnpike, Tices Lane, and
3 West Prospect Street. If you look at the first page
4 of that photo handout, there's an aerial map, which
5 I just took off the internet.

6 There's really three main structures on
7 the property. You have the main plaza, which is,
8 you know, containing Shop Rite, Raymour & Flanigan,
9 and PetSmart on the left. There is a second
10 building, which contains the Best Buy and DSW. Then
11 there's a third building up in the top there in the
12 corner. Right now that building is mostly vacant.
13 There is a GOLFTEC facing Old Bridge Turnpike.
14 That's like a golf related retail use. And then
15 next to that is a WeightWatchers. I did put a red X
16 on the part of the building that we're here to talk
17 about tonight, but I do want to point out that
18 there's three other pad sites on the property. At
19 the corner of Tices you have a Starbucks that's got
20 a drive-through. In the center is Boston Market,
21 which is a sit-down restaurant, and by West Prospect
22 Street is a Wells Fargo Bank, and that also has a
23 drive-through.

24 The whole property is in the HC-2 zone.
25 There's about 401,000 gross square feet here, which

1 includes, you know, the buildings we just went over,
2 and if you look around what's around here, if you
3 look at West Prospect Street, there's a mix of
4 smaller commercial and medical office buildings,
5 beyond that, mostly single-family residential
6 dwellings. Across Route 18, you have the Kohl's
7 shopping center, which includes P.C. Richard and
8 Dick's Sporting Goods. Across Tices Lane, you have
9 the Walmart. Behind that you have apartments. I
10 believe it's called Kensington. And then beyond Old
11 Bridge Turnpike on the right side, you're now in
12 South River, and those are all single-family
13 dwellings on Old Bridge Turnpike.

14 Of course, you heard earlier, in the
15 HC-2 zone, this type of use is a conditional use.
16 We don't meet the requirements for the 500-foot
17 separation to a residential use or zone, which is,
18 of course, referring to both the apartments on Tices
19 Lane which are behind Walmart and as well as the
20 houses on Old Bridge Turnpike.

21 If you look at this photo, there is
22 roughly 1,430 parking spaces on the property, which
23 includes the ones in front of the building that
24 we're discussing tonight and the ancillary spaces
25 that are behind that building on Tices Lane and Old

1 Bridge Turnpike.

2 If you go to the next page, these are
3 some photos I took today. So I'm standing really in
4 front of GOLFTEC. I'm looking back at part of the
5 building that's vacant. You'll notice the double
6 door entry that used to go to New York Sports Club.
7 In the distance in that photo, you'll see two Do Not
8 Enter signs, so on the next photo below that I kind
9 of walked down that way to show you that there's a
10 one-way traffic circulation over there. There's
11 two, you know, truck loading docks that are
12 affiliated with Shop Rite. Those are older. Those
13 are I believe original from when that building was
14 constructed, and when the cars come around the side
15 of the building, you can only go one way through
16 this aisle.

17 If you go to the next page, I just
18 looked back the other way. You can see GOLFTEC in
19 the distance. Then you see some of the houses on
20 Old Bridge Turnpike on the right.

21 In the bottom photo, this is actually
22 behind the building, so my back is to Tices Lane.
23 You'll see the existing dumpster enclosure. There's
24 three dumpsters there and just some landscape areas.

25 The last page, this is the side of the

1 building, and that faces the rear of Shop Rite where
2 they have the rest of their loading area, and then
3 the last photo on the bottom is I'm actually in that
4 one-way aisle but I'm heading back out towards where
5 the front of this use would be, so the building's on
6 my left, and then on my right is the Shop Rite
7 loading docks.

8 Now, the proposed use is to occupy about
9 10,300 square feet of this building, which is
10 roughly a quarter. The building is about
11 40,758 square feet. So in the next exhibit, which
12 is A-2, I shaded in blue what really comes out to be
13 the part of this building that we're here to talk
14 about tonight, and frankly, the scope of work is
15 quite limited. There will be a new storefront entry
16 for the use. There will be a new side exit, which
17 will be on the west side of the building. We're
18 going to install a new ADA ramp in the front, add
19 two more ADA parking stalls in the parking lot.
20 We're going to provide four EV-ready parking stalls.

21 We're going to remove the trash area
22 that was in the photograph, and we're going to
23 relocate it to a different part of the property so
24 that the back of that trash area is closer to Tices
25 Lane. And there's also some ancillary work being

1 done around the entire shopping center, which
2 includes the trash areas. Most of them, if not all
3 of them, are missing gates. Some of them are not
4 being used. Some of them have just dumpsters
5 sitting on the parking lot. So the application
6 seeks to rectify that by both reconstructing some of
7 those trash areas -- one of them is to be removed --
8 and to provide gates on the other ones.

9 THE CHAIRMAN: So there will only be two
10 trash instead of the three that we're looking at?

11 THE WITNESS: No, this particular area
12 of the property will still get room for three
13 dumpsters, but there are other ones throughout the
14 property that are going to be renovated to, you
15 know, install the missing gates and things of that
16 nature.

17 THE CHAIRMAN: Again, just to clarify,
18 because there's not going to be a whole lot of
19 refuse from this particular operation.

20 THE WITNESS: Yes.

21 THE CHAIRMAN: Okay. There's virtually
22 no refuse with the GOLFTEC, and I can imagine
23 there's almost none with the WeightWatchers, as
24 well. So you have three dumpsters. Can you give
25 testimony as to what the three dumpsters are for.

1 THE WITNESS: Typically, it's one refuse
2 and the rest could be recycling, but we want to keep
3 things the way they are because, frankly, there's
4 other vacancies in the building. So conceivably,
5 another tenant can move in, and they're going to
6 need to use the same trash enclosure, as well.

7 THE CHAIRMAN: And you're going to --
8 and the new trash enclosures are going to meet
9 township code?

10 THE WITNESS: Yes. In fact, there was a
11 detail on sheet 6, which is the township detail for
12 a trash enclosure, which is masonry walls, gates
13 that lock, and --

14 THE CHAIRMAN: And your proposal is to
15 move them from where they're existing directly
16 behind where this application is looking, in between
17 you and, what is that, Tices Lane.

18 THE WITNESS: Yeah --

19 THE CHAIRMAN: Now, where is the new
20 location?

21 THE WITNESS: So if you look at the
22 color rendering, at the top left, you'll see an area
23 that's shaded in beige. That's the new location.
24 If you look to the right of that and a little bit
25 down, you'll see the note that says remove existing

1 trash enclosure. The reason we want to move that is
2 because when there are cars parked in those parking
3 stalls on Tices Lane, it makes it a little difficult
4 to pick up the trash. So what was happening is that
5 they were just leaving the dumpsters out in the open
6 on the corner of the building because it's more
7 convenient to pick it up, but the orientation that
8 we have in beige for the new location is as good as
9 you can get because there's, you know, full
10 unobstructed approach.

11 THE CHAIRMAN: Straight-in access.

12 THE WITNESS: Exactly.

13 THE CHAIRMAN: And they'll be meeting
14 township code.

15 THE WITNESS: Yes.

16 THE CHAIRMAN: And the area where the
17 dumpsters were is getting cleaned up and refreshed
18 back to --

19 THE WITNESS: Landscaping.

20 THE CHAIRMAN: -- landscaping. Okay.

21 Q. And just to follow up with Chairman
22 Philips' question, I know we had a memorandum,
23 Mr. Leber, from Jill Veit, our code enforcement
24 officer, about --

25 A. The dumpsters.

1 Q. -- the three dumpsters being stored
2 outside the enclosures. So we're going to address
3 that, correct?

4 A. Yeah. The picture on the second page at
5 the bottom was taken today, and it shows that
6 they're in the enclosure today.

7 Q. Right, okay, fair enough.

8 A. You know, from a zoning perspective,
9 there are a couple of existing nonconformities on
10 the property. I just want to state them for the
11 record. In the zone, you're required a 60-foot
12 front yard setback. So from a Tices Lane, it's
13 36.9 feet. That's an existing nonconformity. From
14 Old Bridge Turnpike, it's 50.1 feet, another
15 nonconformity. And West Prospect Street -- this is
16 down by, like, where Best Buy is -- is 43.7 feet.
17 Again, 60 feet's required. None of these things are
18 really affected by the application.

19 Now, the maximum lot coverage is
20 permitted to be 75 percent of the zone. I
21 calculated on the overall site that we're about
22 90.7 percent, and we're not increasing lot coverage
23 on the application. I actually feel that they might
24 have had a variance previously granted for that
25 condition because originally when the shopping

1 center was constructed, the parking lot had no
2 islands and no landscaping, no trees anywhere, and I
3 remember an application maybe around 2002 where they
4 had come in to reconfigure all the angled parking to
5 be perpendicular parking, and they put in all kinds
6 of islands throughout, so I have to presume that a
7 variance for lot coverage was granted back then.

8 MR. WEINER: Let me just interject and
9 say we don't want any presumptions on the record.

10 THE WITNESS: Then we're going to ask
11 for the existing nonconformity then.

12 MR. WEINER: Yeah, exactly. I mean, if
13 relief is needed, unless there's proof, if you have
14 as an exhibit a copy of the resolution or our staff
15 would -- can confirm it historically; otherwise, we
16 would need to ask for the relief if it's not
17 permitted.

18 THE WITNESS: Okay. I understand.

19 MR. HIMELMAN: Fair enough.

20 THE WITNESS: Next one is building
21 height. The zone permits 35 feet. Surveyor calls
22 out the tower at 38.4 feet at Shop Rite, so that's
23 another nonconformity.

24 Regarding landscape buffers, there's a
25 20-foot landscape buffer required. If you look at

1 the aerial photo along Route 18, the buffer is
2 actually zero. The property goes right up to the
3 sidewalk on 18, so that's another nonconformity.
4 Again, these things are not affected by the
5 application.

6 There's a requirement for a parking
7 setback, 10 feet to a lot line. I measure less than
8 2 feet along Tices Lane and the front of the
9 property, as well, so that's another nonconformity.

10 And the last thing is that there is a
11 calculation that's required for the number of shade
12 trees based upon your parking, and I figure we need
13 about 286 trees. I did my best counting. I believe
14 there's about 274. So there are a couple of trees
15 on the property that are not there. I don't know if
16 they were there at one time, but they're not there
17 today. If the applicant can plant additional trees,
18 they're happy to do that, but I just want you to
19 know that that is a nonconformity.

20 MS. MCGURK: Yeah, I actually noticed
21 that when I did my site visit so I was going to ask
22 that supplemental plantings be installed wherever
23 tree could fit and then some lower shrubs.

24 THE WITNESS: That would be fine. You
25 know, we'll try and keep them sporadic and spread

1 throughout so that it dresses up, you know, the
2 aesthetics all in all, not just in one spot.

3 MR. WEINER: Can you just repeat that.

4 MS. MCGURK: Supplemental plantings
5 where larger trees would fit in the landscape
6 islands, and where they would not thrive, lower
7 shrubs would be acceptable.

8 MR. WEINER: Supplemental --

9 MS. MCGURK: Clearly, some have already
10 died.

11 MR. WEINER: You went very fast.
12 Supplemental plantings to be included where larger
13 trees --

14 MS. MCGURK: Would fit and thrive, but
15 since it does appear some of them have died, lower
16 shrubs would be acceptable.

17 MR. WEINER: And otherwise, lower shrubs
18 are acceptable.

19 MR. HIMELMAN: Mr. Weiner, just a point
20 of reference. Mr. Leber did go over the bulk
21 variances, many of -- all of which are preexisting.
22 I don't know that the staff identified those, so --
23 or disagreed with that, but just want to make sure
24 that they're in agreement that those bulks are
25 needed and the relief sought along with appropriate.

1 I think they are, but that's what --

2 MS. MCGURK: Well, the dumpster
3 enclosure obviously would be a variance. I think
4 the other ones throughout the history of the site
5 were probably approved, but --

6 MR. HIMELMAN: Right.

7 MS. MCGURK: -- I don't see any harm in
8 just stating them and having the board reaffirm
9 them.

10 MR. HIMELMAN: Fair enough.

11 MR. WEINER: And I know we're getting
12 way ahead of ourselves, but we can talk
13 hypothetically. Should there be -- ultimately, the
14 board, should it move favorable on this application,
15 those variances would be part of the relief that
16 would be subsumed into a D variance relief, and --
17 but they will be -- based on the transcripts and the
18 notes, they will be referenced in any resolution,
19 which I think will be -- would be -- again,
20 hypothetically at this point -- a good thing going
21 forward so this way historically there is a more
22 precise resolution on file where no more
23 presumptions are needed to look forward if a prior
24 resolution may have been a bit more general than
25 today we would like and it was done many years ago.

1 MR. HIMELMAN: I agree, concur with
2 that. Thank you.

3 Q. Mr. Leber, you can continue.

4 A. You know, the next thing I wanted to go
5 over is parking. If you go back to that aerial
6 photo of the property. We've all been in the
7 shopping center so we know that there is a lot of
8 parking here that doesn't get used, but when I did
9 my parking analysis, I specifically only focused on
10 the parking that's adjacent to this building because
11 I don't think it's realistic to expect that somebody
12 going here is going to park along West Prospect
13 Street and walk a thousand feet to the front door.
14 I just don't think that's going to happen. So just
15 to be more practical about it, even though I ran an
16 analysis for the entire shopping center, I'm only
17 really focused on the spots that are immediately
18 adjacent to this building.

19 So in the front of the building, you
20 have 157 spaces. On the side there's another 21
21 spaces, and in the rear, which I refer to the rear
22 being along Tices Lane, there's another 44 spaces.
23 So just encompassing around this property, I count
24 222 spaces. Now, you know, some of these spaces are
25 shared with other users. So, for example, when we

1 did our study, we witnessed people leaving Shop Rite
2 that were parked in front of this building. We saw
3 people leave Dollar Zone that were parked in that
4 parking lot, and, you know, one or two cars
5 associated with GOLFTEC. Now, I'm familiar with the
6 WeightWatchers use. The meetings that they're doing
7 lately are online so their amount of traffic has
8 dwindled over the last few years. That being said,
9 this building still has other vacancies that we have
10 to account for in the event that this use is
11 approved that there's still, you know, additional
12 parking available.

13 So I started off first with the township
14 code, which is in chapter 228, section 218.1. Now,
15 that states that a shopping center requires 4.5
16 stalls per thousand square feet. So if you take the
17 total gross square footage of the shopping center
18 and divide by, you know, a thousand and divide again
19 by 4.5, I come up with 1,764, and I counted 1,427,
20 so we are under on the parking already. Now, again,
21 even though we're under, there's no way that the
22 parking lot is a hundred percent utilized, so --

23 THE CHAIRMAN: See, that's somebody
24 questioning your --

25 THE WITNESS: They haven't heard the

1 rest.

2 MR. WEINER: Mr. Leber, I apologize for
3 interjecting, but I just want to quickly, since the
4 thunder gave us a pause and I didn't want to
5 interrupt you, I just want to circle back briefly to
6 what we were talking about before with the bulk
7 variance relief that you were previously talking
8 about, and this is more of a legal note for the
9 board is that the applicant's notice does provide
10 sufficiency by seeking any other further approvals,
11 permits, variances, or waivers that may be deemed
12 necessary and appropriate by the board; therefore,
13 there's sufficient notice. Even if they weren't
14 spelled out previously, that is more than adequate
15 under the law to address it should the board
16 ultimately get to a point of considering an approval
17 on this matter. So I just wanted to get that into
18 the record before we go forward, and, Mr. Leber,
19 I'll let you continue, and I apologize for the
20 interruption.

21 MR. HIMELMAN: No, that's okay.
22 Mr. Weiner, you're correct, and also, I did include
23 -- at Mr. Leber's suggestion, I did include, you
24 know, a potential variance for off-street parking,
25 which is what he's describing now.

1 MR. WEINER: Yes, he's getting to that.
2 I saw that one, and I thought I would jump in now
3 before he got to that one.

4 MR. HIMELMAN: Fair enough.

5 THE CHAIRMAN: Mr. Leber, you also
6 referenced electronic vehicle.

7 THE WITNESS: Yes.

8 THE CHAIRMAN: Did you state that they
9 are going to be putting in four sites?

10 THE WITNESS: There are four EV-ready
11 stalls.

12 THE CHAIRMAN: EV-ready is not the same
13 thing as --

14 THE WITNESS: No. The equipment will
15 not be put in right now. It will be wired, you
16 know, for conduit for ready.

17 MS. MCGURK: We prefer them to be fully
18 installed.

19 THE WITNESS: Fully installed?

20 THE CHAIRMAN: Then the placement
21 thereof is going to be part of a testimony, as well,
22 Mr. Leber.

23 THE WITNESS: Okay.

24 MR. HIMELMAN: And I recall that when
25 the council adopted that ordinance, I think it was

1 really intended for these large facilities, shopping
2 centers, so I think you are correct in a sense that
3 I think that it's appropriate to have those EV
4 charging stations fully installed.

5 THE CHAIRMAN: The reason that comes up
6 now, and this board is not about to look at the
7 entire shopping center and wonder how come there
8 aren't 60 of them, all right. The fact is is it's
9 for this particular application --

10 MR. HIMELMAN: Right.

11 THE CHAIRMAN: -- and this particular
12 site. So the placement of it is important or you'll
13 have people from -- they're shopping at Shop Rite,
14 use these things all the time. So you have to be
15 diligent about where we consider putting them to not
16 make them convenient for somebody else but
17 convenient for this particular application.

18 MR. HIMELMAN: Fair enough.

19 THE WITNESS: Okay. So, you know,
20 looking at the parking ratio for the shopping
21 center, which is 4.5 spaces per thousand, I first
22 took the 10,000 plus or minus square foot for this
23 use and divided it, and that would come up with a
24 demand of 46 spaces. Now, the town has the right to
25 say, you know what, this specific use is not

1 shopping center. If it was classified as a
2 recreational facility, then it requires one space
3 for 250 square feet, and again, when I run the
4 square footage of Kids Empire on that ratio, I get
5 41 spaces, which is actually lower than a shopping
6 center ratio. So I said, you know what, let me go
7 to the authority on this, which is the ITE Parking
8 Generation Manual, and they have a chapter on this
9 type of a use, and they recommend between 6.33 and
10 10.67 spaces per thousand square feet for this type
11 of use, which works out to be between 65 and 110
12 spaces. And then I compared that to the operator's
13 data, which seemed to fall into the range of maybe
14 90 parking spaces, so I said, you know what, why
15 don't we go with the 110 spaces because that's
16 really the most conservative number.

17 So then what we did is we made many,
18 many site visits throughout the summertime on this
19 property during the week and on the weekends, both
20 mornings, afternoons, and evenings, and then I just
21 pulled out the busiest times we were able to find,
22 which, for example, on a Thursday, the busiest time
23 was 2, p.m., and at 2 p.m., out of the 222 spaces,
24 there were only 61 spaces occupied. On a Friday,
25 the peak time is 2:15 p.m. where there was only 69

1 spaces occupied. On a Wednesday, the peak time was
2 6 p.m. at night, and there was 36 spaces occupied,
3 and on Saturday, the peak was 82 occupied spaces at
4 11:30 in the morning. So even at 82 occupied
5 spaces, there's still 140 spaces left. So, you
6 know, doing this analysis, I felt very comfortable
7 that there is an adequate number of parking for this
8 use and that that really shouldn't be a concern.

9 THE CHAIRMAN: But, Mr. Leber, you
10 included the whole area around it, 360 degrees
11 around the site, correct?

12 THE WITNESS: Yes.

13 THE CHAIRMAN: And is it your opinion
14 that people are going to be parking along the row
15 behind Tices Lane?

16 THE WITNESS: If there were some
17 employee parking back there, I mean, I don't think
18 that's out of the realm because there is a side
19 door. It's not the main entrance, but there is a
20 side door that --

21 THE CHAIRMAN: I thought it was
22 emergency entrance only.

23 THE WITNESS: That's the one further
24 back, but there is a ramp that comes in on the front
25 corner, you know, that could be opened by an

1 employee if necessary.

2 THE CHAIRMAN: I'm asking because I
3 don't think we can expect any of the participants in
4 the festivities at this particular applicant's
5 location is going to be looking to park anywhere
6 other than right in front close because they're
7 walking with kids.

8 THE WITNESS: Okay, so if you take out
9 the ones in the back, then you're down to 178 spaces
10 from 222, but again, I still feel that there's
11 enough leeway in these numbers that even at the peak
12 times, which seems to be for Shop Rite more during
13 the day whereas a typical weekday daytime, this use
14 is not going to have any sort of a peak, you know,
15 concurrent with that.

16 THE CHAIRMAN: No, I just wanted to
17 clarify the usage area because we also don't know --
18 not that it's any responsibility of this
19 applicant -- what else might happen in the remaining
20 30,000 square feet, and so we can't presume that
21 nothing is going to happen there, and so we have to
22 be diligent in what we agree to put for this
23 application.

24 THE WITNESS: I agree. I mean, it would
25 have made my job easier if I knew that every -- if I

1 knew everybody in the building that would be there,
2 but I don't have a --

3 THE CHAIRMAN: And neither does the
4 board. So it's hard for us. You know, we can only
5 deal with what's put in front of us and the facts
6 that are provided to us.

7 THE WITNESS: Okay.

8 THE CHAIRMAN: Fair enough?

9 THE WITNESS: Okay. I mean, that being
10 said, are you comfortable with those numbers that
11 there seems to be enough parking there for this use?

12 THE CHAIRMAN: Let's keep going.

13 THE WITNESS: Okay.

14 MR. HIMELMAN: Mr. Chairman, if I can
15 just add a point, maybe ask Mr. Leber this.

16 Q. So to the extent -- and I'll defer to
17 Keith and Colleen, also, but to the chairman's
18 point, we don't know how the rest of the space is
19 going to be fitted out, but if it turns out
20 ultimately that there is a letter of intent
21 submitted for a prospective tenant and the zoning --
22 the planning office reviews that, and staff, if
23 there is a parking issue that may be triggered, that
24 would then necessitate them to come back before the
25 town, correct?

1 A. Yeah, depending on -- the use would
2 depend on the board.

3 MR. HIMELMAN: So it sort of drives --
4 to your point, Mr. Chairman, we can only deal with
5 the 10,000 square feet we have now, but the rest of
6 the building may or may not trigger other variances
7 for parking and other violations of code that may
8 require us to come back to this board or perhaps the
9 planning board.

10 THE CHAIRMAN: What I'm contemplating
11 and concerned about is maybe delineation of parking
12 spots through a colored -- you know, because that
13 area there actually needs to be restriped anyway.
14 It's in poor condition.

15 MR. HIMELMAN: When you say that area,
16 Mr. Chairman, are you referring to --

17 THE CHAIRMAN: The area directly into
18 that -- the square that would be outside, you know,
19 where the bowling alley used to be, that whole
20 square area there --

21 MR. HIMELMAN: Correct.

22 THE CHAIRMAN: -- including up to the
23 Shop Rite, but more specifically closer in to the
24 building, that area there. I looked at it, and, you
25 know, the parking lines are pretty bad. There's

1 gravel coming through in a couple places.

2 MR. HIMELMAN: Yeah.

3 MR. WEINER: Mr. Chairman.

4 MR. HIMELMAN: Mr. Weiner, if I can just
5 respond. I apologize. So my understanding from the
6 owner, there is going to be reconstruction of that
7 entire area that you're describing, that parking
8 area in front of the old bowling alley. So to I
9 guess to anticipate Mr. Weiner's statement or
10 question, should the board act favorably upon that
11 -- upon this application, we would -- we have -- the
12 applicant would have no objection to that adhering
13 to that request to, you know, either stripe or
14 reconstruct that area, better delineate it.

15 THE CHAIRMAN: Better delineate the
16 parking spaces, yes.

17 MR. HIMELMAN: Correct.

18 THE CHAIRMAN: Especially since you're
19 going to be putting your EV parking spot there, so
20 you don't clearly want to have -- not that you can
21 stop somebody, but you don't want people who might
22 be going to Shop Rite or someplace else to be
23 utilizing them until such time eventually down the
24 road that the whole shopping center be -- adds the
25 EV parking spaces, and that might happen at some

1 point when they come back to the board -- not to
2 this board, but to the town for something else.

3 MR. HIMELMAN: Fair enough, but to your
4 question and point, which I think is a good one, the
5 applicant would agree to that type of a condition.

6 THE CHAIRMAN: Okay.

7 MR. WEINER: I'm just jotting something
8 down. Bear with me, Mr. Himelman.

9 MR. HIMELMAN: Sure. Take your time.

10 MR. WEINER: Okay, here's what I got for
11 that one. The applicant shall restripe,
12 reconstruct, or otherwise delineate the parking area
13 and spaces in the full area in the front of the
14 building housing the proposed site.

15 MR. HIMELMAN: That's correct,
16 Mr. Weiner.

17 THE CHAIRMAN: Okay.

18 MR. HIMELMAN: And, Mr. Chairman, I
19 guess that would be, again, hypothetically, should
20 the board act favorably upon the application, those
21 revisions would be included at any resubmission to
22 both staff and obviously to the construction and
23 building department with the appropriate plans for
24 building permit.

25 MR. WEINER: Sure.

1 THE CHAIRMAN: Mr. Leber, I know that
2 you're not done, but I think what we're going to try
3 to do is take a 5- to 10-minute break. It's 10
4 after 9. If we can get back here between 15 and 20
5 after, give approximately 10 minutes, we'll be
6 adjourned for that. Okay. Thank you.

7 (Board recess)

8 THE CHAIRMAN: Okay, we're back in
9 session, and I just want to alert the board that the
10 person that you put in as our recording secretary is
11 here this evening. Miss Masterton is here. This is
12 a face that we don't often see, but we know of her
13 record and reports and her work. So thank you very
14 much. We appreciate it, and we're happy to have
15 reappointed you.

16 MR. KIPP: It's good to see you in
17 person, Debbie.

18 MR. HIMELMAN: Yeah, right.

19 THE CHAIRMAN: Mr. Himelman.

20 MR. HIMELMAN: Yeah, Mr. Chairman, if I
21 could just ask for a little discussion before we let
22 Mr. Leber continue. We had a discussion during the
23 break about the charging stations.

24 THE CHAIRMAN: Yeah.

25 MR. HIMELMAN: And the issue there -- I

1 was talking to Keith and to Colleen, and Colleen had
2 a good suggestion about how to handle that maybe
3 going forward, so maybe I could ask Colleen to sort
4 of describe her thoughts on this and maybe how we
5 can handle additional charging stations for the
6 whole center going forward.

7 MS. MCGURK: Yes. So, I mean, it would
8 be great to get more than four on this property
9 because there is so much parking and the demand for
10 charging is going to increase as the years go by.
11 So obviously, the infrastructure that you need to
12 install the charging stations, you want it all in
13 one section ideally, and maybe we don't want to take
14 up four stalls for this section. So if the
15 applicant were to propose additional EV charging
16 stations, not make-ready, but fully implemented, say
17 16 or so, 16 to 18 or 20, elsewhere on the property
18 where parking is in less demand and they do so
19 within a 3-year time frame, then I would say we
20 could release them from the condition of providing
21 these four at this location. Of course, if they do
22 not come in for any kind of permits for those 16
23 plus EV charging stations within the 3 years, then
24 we would then require that they install these four.

25 THE CHAIRMAN: So we're going to go with

1 the assumption of the four but a possibility of them
2 coming -- but if it's a 3-year period, what are we
3 suggesting, that after 3 years from now, if they
4 haven't done it, then they have to put in four?

5 MS. MCGURK: Correct, they would have to
6 meet what they're proposing now if they have not
7 come in with a different proposal for more elsewhere
8 on the property further away where the parking is in
9 less demand.

10 THE CHAIRMAN: Okay, so what we would
11 then have to do is we would have to approve four
12 with a specific spot pending an alternative of 16
13 somewhere throughout the shopping center; is that
14 what I think I understand?

15 MS. MCGURK: Yes.

16 MR. WEINER: I'm wording this a little
17 differently.

18 MS. MCGURK: Okay.

19 MR. WEINER: Just give me one second.

20 MR. HIMELMAN: Also, Mr. Chairman, while
21 Mr. Weiner is making note, my understanding of the
22 state law -- and, Colleen, you can correct me -- but
23 I don't believe the charging stations would in
24 essence be a decrease in total available parking
25 calculation that would technically be available to

1 an applicant that they'd have to comply with. So in
2 other words, the state law didn't want to penalize
3 the ability for, like, a shopping center owner to
4 put in multiple charging stations and then have that
5 trigger a parking related issue.

6 THE CHAIRMAN: Parking issue. I think
7 that's what we understand, as well.

8 MR. HIMELMAN: Right.

9 THE CHAIRMAN: So that's fine.

10 MS. MCGURK: So if we were to grant the
11 parking variance, we should probably grant it for
12 the additional -- we should take away the credit
13 that they were getting for the four EV's just to be
14 on the safe side.

15 MR. HIMELMAN: So, Mr. Weiner, if you
16 want to do it in the alternative, that's fine.

17 MR. WEINER: Let me just get my last
18 clause here. I just want to get it right hopefully.
19 Must install four EV stalls as indicated on the
20 plans, which shall be fully operational. Okay.
21 Here's what I got. Hopefully this is correct. All
22 EV stalls to be fully installed EV and not merely
23 EV-ready. Furthermore, applicant shall install 16
24 charging stations in total on the full property, and
25 if the 16 stalls are not fully installed within

1 3 years from the date of resolution of approval,
2 then applicant must install the four EV stalls as
3 originally indicated on the plans, which shall be
4 fully operational and not EV-ready.

5 MR. HIMELMAN: Correct, and the only
6 thing I would add, Mr. Weiner, is that -- and,
7 Colleen, correct me -- so the fact that you're
8 putting that potential condition in the resolution
9 should the board act favorably, that would then --
10 the applicant wouldn't be required to come in for a
11 separate approval before the planning or zoning
12 board for the additional charging station because
13 you're putting that in now.

14 MR. WEINER: That's going to be in the
15 resolution. The way I'm doing it now is the
16 condition is 16 with 3 years --

17 MR. HIMELMAN: Right.

18 MR. WEINER: -- but if that's not done,
19 then there's a fallback after the 3 years of four as
20 stated on the original plans.

21 MR. HIMELMAN: That's correct.

22 MR. WEINER: And I think what we should
23 put in is that the four then have to be installed
24 within a time window, as well, maybe within whatever
25 your preference is, 3 months, 6 months.

1 MS. MCGURK: I was going to say 6.

2 MR. WEINER: Okay. Ready and shall be
3 completed within 6 months. This way we have a date
4 certain worst-case scenario of 3 years, 6 months out
5 from a resolution.

6 MR. HIMELMAN: Fair enough. I think
7 that's a very good suggestion.

8 THE CHAIRMAN: One other thing that that
9 brings up though is there's chances in the next
10 3 years that the shopping center comes before this
11 board for something else unrelated, and then the
12 question of, you know, electric charging spaces are
13 going to rear their head yet again.

14 MR. HIMELMAN: Correct.

15 THE CHAIRMAN: So I don't think -- and
16 that may trigger more than 16 for a shopping center
17 of this size.

18 MR. HIMELMAN: Potentially.

19 THE CHAIRMAN: So I don't -- so again, I
20 don't know how that gets reconciled when we --

21 MR. HIMELMAN: I think the issue there
22 would be, I mean, we don't know what that potential
23 application will be, to your point, and also what
24 trigger would be with staff's review. I think --
25 and I think Mr. Weiner would agree -- we're going to

1 have to just look -- we're going to have to deal
2 with this application, the conditions imposed for
3 this application, and should -- and we'd still be a
4 record and the resolution will be obviously --

5 MR. WEINER: Yeah and --

6 MR. HIMELMAN: -- adopted.

7 MR. WEINER: The owners of the shopping
8 center is the applicant, correct, Mr. Himelman?

9 MR. HIMELMAN: Correct.

10 MR. WEINER: So I would think that the
11 resolution is going to run with the land --

12 MR. HIMELMAN: Correct.

13 MR. WEINER: -- whether it's this owner
14 or the property is conveyed to someone else in that
15 window of time, and they're going to then have to
16 reconcile this if the 16 are still outstanding
17 together with any hypothetical future application
18 where perhaps it might need to be accelerated at
19 that point or reopened before the board as an open
20 condition that's been unsatisfied --

21 MR. HIMELMAN: Fair enough.

22 MR. WEINER: -- based on a prior
23 resolution.

24 THE CHAIRMAN: Well, the thing that led
25 me to wonder about that is they have three

1 satellites right now. There's certainly ample space
2 for a fourth satellite, whether it be, you know, a
3 store that, you know -- a restaurant or something
4 else, and that would then trigger back to either
5 this board or the planning board, and now you're
6 looking again at -- we don't assume that the 16 are
7 done and now we have a new application, and so
8 you're going to want to attach EV's to them, as
9 well. So that's --

10 MR. HIMELMAN: Correct.

11 THE CHAIRMAN: Therein lies this issue
12 of some ambiguity 3 years from now.

13 MR. HIMELMAN: I think the point of the
14 request by the applicant is let's try and at least
15 have a large number of charging stations now and
16 maybe free up the four that are going to be
17 associated with this application, and I think the
18 way Mr. Weiner is wording the condition I think
19 we're covered. Any subsequent applications, you're
20 right, Mr. Chairman, it may be more than that 16 for
21 charging stations. We just don't know.

22 MR. WEINER: How about I'm thinking that
23 add to this condition that should prior to the
24 completion -- within the -- should within the same
25 3-year period, the -- any new land use application

1 either before the zoning board or planning board, is
2 submitted, that accelerates the 3-year window that
3 they need to be installed essentially at that time,
4 you know, immediately upon filing the application.

5 MR. HIMELMAN: Well, we would have to
6 comply, so you're right, so the 3-year period would
7 be short.

8 MR. WEINER: You put something in there
9 that it gets accelerated and would have to be
10 completed prior to any new land use application
11 being submitted connected to this property.

12 MR. HIMELMAN: I think that covers the
13 chairman's point.

14 MR. WEINER: And this way, if they're
15 going to come in and ask for relief, they have to
16 first be -- satisfy and have the 16, or if it's
17 after the 3 years, then the four, but at least we'll
18 have a sum certain as to how many are in there
19 before any board hears a new application.

20 MR. HIMELMAN: I'm okay with that as the
21 applicant's representative. I'm assuming, Colleen
22 and Keith, you're fine with that.

23 MS. MCGURK: Well, I mean, they'd have
24 to comply with state law.

25 MR. HIMELMAN: Right.

1 MS. MCGURK: State law you have to put
2 in the make-ready, and then within I think it's 3 or
3 5 years, they have to be fully implemented. This
4 application actually does not trigger any required
5 electric charging stations per the state law. It's
6 a use variance and minor site plan. So unless
7 something comes in with a major site plan or they're
8 increasing the parking by a certain amount, which I
9 don't know how they would do something like that,
10 there is no charging station requirement. So I
11 don't know that in the future there is much of a
12 likelihood that that would be triggered.

13 MR. WEINER: No, but I guess my concern
14 is is even though it's not being impacted by state
15 law is that gives us, the board, a little bit more
16 liberal scope, and the applicant is agreeable with
17 it. I just think it's clearer to say that if before
18 this issue is resolved completely, if you're going
19 to come in with any new application, complete this.

20 MR. HIMELMAN: Right.

21 MS. MCGURK: Okay.

22 MR. HIMELMAN: And I have no issue with
23 that, and I think you're both correct, Colleen and
24 Mr. Weiner.

25 THE CHAIRMAN: Good way to do that,

1 Mr. Himelman.

2 MR. HIMELMAN: What's that?

3 THE CHAIRMAN: You're both correct.

4 Yes, you're black and you're white. Yes, I agree
5 with both of you.

6 MR. HIMELMAN: No, no, no, they're --
7 the point is they were making two statements that
8 they were not contradicting the other.

9 THE CHAIRMAN: They weren't
10 contradicting.

11 MR. HIMELMAN: But thank you for
12 correcting.

13 THE CHAIRMAN: Where we left off with
14 Mr. Leber because there was something that --

15 MR. HIMELMAN: Mr. Leber was -- had
16 concluded his traffic analysis and study, okay, and
17 so, Mr. Chairman, I don't know whether you want to
18 go back and ask questions on that now or you want to
19 let Mr. Leber --

20 THE CHAIRMAN: I have -- there's one
21 area in particular.

22 MR. HIMELMAN: I know you mentioned
23 about Tices Lane.

24 THE CHAIRMAN: No, no. There's one area
25 that I see as a particularly difficult conflict, and

1 I need to know how the applicant will make sure that
2 he can assuage my concerns.

3 MR. HIMELMAN: Sure.

4 THE CHAIRMAN: The one-way street, as it
5 goes up, there's a stop sign there, but all of the
6 traffic of the little kids and their parents are
7 going to be going straight across that open area
8 right there. It's the same lane that's open all the
9 way to Shop Rite. And that's where undoubtedly
10 people are going to be moving the kids, and what I'm
11 concerned about, Mr. Himelman, is, number 1, that's
12 not well lit, and that's a concern in that specific
13 area. Now, I realize during the day that doesn't
14 matter, but at night it does.

15 MR. HIMELMAN: Fair point.

16 THE CHAIRMAN: And the stop sign is I
17 think a suggestion as opposed to any real activity.
18 I have never seen anybody officially stop there, and
19 when you've got little kids and their mothers or
20 fathers and both and they getting close to this
21 exciting place that's going to have a lot of fun, I
22 can picture them darting out and jumping to go to be
23 the one that's going in, oh, boy, can't wait, you
24 know, and then the two brothers are yelling, I'll
25 beat you there, and they're running, no matter how

1 much the parents want to control them. So what do
2 we do at that spot to guarantee that we don't
3 have -- the people have to stop and that there is no
4 way, that it isn't well lit and well identified with
5 markings in the street and also the way that the
6 people who could go through there have to stop.

7 MR. HIMELMAN: No, I understand your
8 point, Mr. Chairman.

9 Q. Mr. Leber, do we have any thoughts on
10 that?

11 A. Yeah, I'm actually looking at what we
12 did for Footbik at the Brunswick Square Mall because
13 that issue --

14 Q. Right, I remember that.

15 A. -- was a similar issue there. There
16 was, like, a sharp turn by Macy's where people come
17 around with the bus. I just want to see what we did
18 over there.

19 THE CHAIRMAN: Yeah, but the conflict
20 point is still further on down on the side of the
21 building because you haven't gotten to where the
22 entrance to that particular place is. This here is
23 directly -- it's less than 30 feet away from that
24 corner.

25 THE WITNESS: So what we did was we had

1 a crosswalk striped, and there were stop signs on
2 both sides of the crosswalk and warning signs ahead
3 of that that, you know, there's pedestrian crossing
4 there.

5 THE CHAIRMAN: There's got to be
6 something else, I don't know, a speed bump
7 something --

8 MR. MCGURK: Speed bump or the rumble
9 strip.

10 MR. HIMELMAN: I whispered speed bump.

11 THE CHAIRMAN: Speed bump, something
12 that forces people to come to a stop at that spot so
13 that there's no chance that somebody is going to run
14 through there, and it's going to be a decision that
15 everybody in this room is going to hate.

16 MR. HIMELMAN: I have gone on that part
17 of the center for many years, and I understand, and
18 I don't disagree. So we can stripe. We can put
19 speed bumps. We can put something that will clearly
20 make people come to a pretty much a complete stop.
21 And obviously, Mr. Chairman, I'm going to defer to
22 Mr. Leber and to staff, but I think the applicant --
23 the point of the message is the applicant's willing
24 to do all of the above if not more.

25 THE CHAIRMAN: Because in the --

1 MR. HIMELMAN: No, I agree with you.

2 THE CHAIRMAN: I'm not going to
3 reestablish this building, but had this been slid
4 over all the way to the right and they would be
5 going in close to where the original New York Sports
6 Club or the bowling alley entrance was, this
7 wouldn't be anywhere near as much of an issue --

8 MR. HIMELMAN: Fair enough.

9 THE CHAIRMAN: -- but in this corner
10 here, that alleyway is not particularly well lit to
11 begin with, and, you know, and it's a blind corner.

12 MR. HIMELMAN: No argument.

13 THE CHAIRMAN: And I know, but we need
14 to come up with a solution for it that appeases to
15 both town, the board, and your applicant.

16 MR. HIMELMAN: Okay.

17 MR. WEINER: Mentioned a few things.
18 Would the applicant be willing to do all of them?

19 MR. HIMELMAN: Yeah, listen, from --
20 Mr. Leber is suggesting, you know, that that
21 striping similar to what we did on another
22 application and speed bump maybe also in addition to
23 safeguard measure. So I think, unless Mr. Leber may
24 have two or three other suggestions, I think,
25 Mr. Weiner, those are certainly good from an initial

1 starting point. I think the point the chairman's
2 making is we've got to slow the cars down and pretty
3 much have them come to almost a virtual stop there
4 because people may not necessarily respect the stop
5 sign.

6 MR. WEINER: I'm not an engineer, I'm a
7 lawyer, but I would just think among all the things
8 -- just from my own driving experience, I think a
9 speed bump is something that's physically going to
10 slow down a car that may not stop, but I defer to
11 the people who have more knowledge on that than me.

12 MR. KIPP: I just want to say there's no
13 speed bumps in town for a reason. We don't -- we're
14 not -- we don't like speed bumps. They're
15 maintenance nightmares, and they make a problem for
16 emergency vehicles, and in this area there's
17 actually trucks that are using the loading dock,
18 right. I'm not sure that --

19 MR. WEINER: Rumble strip.

20 MR. KIPP: A rumble strip would be
21 preferred, Marc, in addition to some signage.

22 THE CHAIRMAN: Striping, and again, I
23 don't know whether or not it's applicable here, but
24 there's -- they put a stop sign at the end of --
25 what do you call it road -- Old Stage Road --

1 MR. HIMELMAN: Old Stage, yeah.

2 THE CHAIRMAN: -- and I don't know if
3 that's appropriate, but if something, God forbid,
4 ever happens there, we're all going to say why
5 didn't we do X.

6 MR. HIMELMAN: Well, and, of course, and
7 also, you know, as the owner of the center, nobody
8 wants anybody to get hurt, so we need to safeguard
9 that, and I agree with you. So I guess, Keith, if
10 you're okay with -- you want to avoid the speed
11 bump --

12 MR. KIPP: Right.

13 MR. HIMELMAN: And I get that.

14 Q. So, Marc, do you have anything on what
15 Keith's suggesting?

16 A. Yeah, we could do the rumble strips on
17 the approach. I mean, the door into this place is
18 about 30 feet to the left of the existing entrance.
19 So it is beyond that stop sign, but maybe what we
20 could do is we could also make the stop signs much
21 larger. They come in different sizes.

22 MR. KIPP: They definitely do, yes.

23 THE CHAIRMAN: Something that is going
24 to make it clear, you know. How about something
25 like, Warning, Kids Crossing, something.

1 THE WITNESS: Yeah, we had warning signs
2 at the soccer place. You know, I could put that in
3 with the rumble strips and the striping.

4 THE CHAIRMAN: And the stop sign.

5 THE WITNESS: Right. There's another
6 thing we could do, which is you could make the lane
7 narrower visually by bringing the stripes further
8 into the lane, and when people feel that they're
9 being narrowed down, they tend to slow down, so we
10 could also, you know, the pavement width would stay
11 the same, but we could narrow it down through the
12 use of stripes so people feel like, okay, why is
13 this getting narrow, I better slow down.

14 THE CHAIRMAN: You understand --

15 THE WITNESS: Yeah.

16 THE CHAIRMAN: -- the concern. I think
17 we all do, and all we want to make sure is that we
18 do everything we can to not have an incident.

19 THE WITNESS: I understand.

20 MR. WEINER: Mr. Chairman, I think I
21 came up with some language that might work if I may.

22 MR. HIMELMAN: Sure.

23 MR. WEINER: In the roadway between the
24 subject site and the Shop Rite building in the
25 vicinity of the entrance, applicant shall install

1 striping, a rumble strip, and signage, including but
2 not limited to a flashing stop sign, all to the
3 satisfaction of the township professional staff.

4 MR. HIMELMAN: That's fine, and if you
5 want to add, Mr. Weiner, that obviously we would --
6 I have no issue or the applicant wouldn't have an
7 issue having staff review that plan revision and
8 sign off, you know, approve that.

9 MR. WEINER: That's what I'm putting in,
10 to the satisfaction of the staff. This way --

11 MR. HIMELMAN: Fair enough.

12 MR. KIPP: Approve traffic calming
13 devices.

14 MR. WEINER: Okay. I'll add that.

15 THE CHAIRMAN: And while we're on that,
16 Mr. Leber, can you have -- do you have any testimony
17 about the lighting that's in that particular corner?
18 Is additional lighting that we can provide for
19 nighttime?

20 THE WITNESS: I didn't do a lighting
21 study, but --

22 MR. HIMELMAN: We're talking about that
23 alleyway area.

24 THE CHAIRMAN: Well, the area between
25 the corner of Shop Rite and the entrance to --

1 there's -- I mean, admittedly, I haven't gone by
2 there very often, but I don't recollect it being
3 very well lit.

4 MR. HIMELMAN: If I can make a
5 suggestion, Mr. Chairman, so we can submit a
6 lighting plan to obviously illuminate that area to
7 staff's satisfaction, and if staff thinks we need to
8 do some candle lighting analysis, I'm sure the
9 applicant would agree to that, but I think your
10 point's well taken. I've gone through that area at
11 night, also, and it is very dark. So if that's okay
12 with the board and -- but again, this would all is
13 hypothetical assuming the board would act upon this,
14 but, Mr. Weiner, we can certainly add that as a
15 potential condition, also.

16 THE CHAIRMAN: Well, Mr. Himelman, we
17 have to address it now.

18 MR. HIMELMAN: No, I agree.

19 THE CHAIRMAN: Because this, you know,
20 that is -- that's what I saw is probably one of the
21 major issues with regard to where it happens to be
22 placed.

23 MR. HIMELMAN: Fair enough.

24 THE CHAIRMAN: That's all.

25 MR. WEINER: Mr. Chairman, I do have a

1 lighting plan is to be submitted to the satisfaction
2 of the township professional staff.

3 THE CHAIRMAN: Okay.

4 MR. WEINER: Unless there's something
5 more that the board or our staff would like.

6 MS. MCGURK: Well, Chairman, I did drive
7 by there this evening at night, and you're correct,
8 it's not very well lit. I don't know how we can
9 install lighting except for building mounted
10 lighting, which would then require a design waiver
11 that can be granted by the board, and we can
12 obviously review a lighting plan to be submitted at
13 a later date.

14 THE CHAIRMAN: Under those restrictions
15 or limitations because of where the lighting is, I
16 think the board would probably be inclined to go
17 along with that.

18 MS. MCGURK: Right.

19 THE CHAIRMAN: But I can't speak for the
20 board.

21 MR. WEINER: I'll put that down as a
22 potential condition subject to approval that design
23 waiver permitting --

24 MR. HIMELMAN: Yeah, wall mounted.

25 MR. WEINER: -- wall mounted lighting.

1 MR. HIMELMAN: So, Mr. Weiner, the point
2 I guess Colleen is making is to the extent that wall
3 mounted lighting would appear to make the most sense
4 based upon the lighting analysis that we would --
5 the board would grant the relief for that as a
6 design waiver as part of a condition. I think
7 that's what Colleen is indicating.

8 MS. MCGURK: Yes.

9 MR. WEINER: I'm jotting this down.
10 Give me one second.

11 THE CHAIRMAN: But I don't have a
12 photographic memory to know exactly where the lights
13 are, but there is an island at the end of right
14 across from the subject site. I don't know if
15 there's a lighting there, but they might be able to
16 add a secondary light there or something to aim it.

17 MR. HIMELMAN: We'll look at that. I
18 don't know --

19 MS. MCGURK: I don't think there was a
20 light there. There was a tree. I don't think there
21 was a lighting mounted pole on that island. So one
22 could possibly fit there.

23 THE CHAIRMAN: Yeah, the one around the
24 corner. I'm talking about the one that's actually
25 in the large --

1 MS. MCGURK: Right in front of the ADA
2 stalls.

3 THE CHAIRMAN: Yeah, yeah, yeah.

4 MR. MCGURK: Yeah.

5 MR. HIMELMAN: It's in the photo.

6 Mr. Chairman, there may be an opportunity to either
7 increase the lighting capability, so we'll take a
8 look at that, as well, and certainly, again,
9 hypothetically, that would all be -- if approved,
10 the applicant would look at that as, you know, under
11 the lighting analysis.

12 MR. WEINER: Mr. Chairman, if I may,
13 what I've jotted so far as a potential condition is
14 the lighting plan is to be submitted to the
15 satisfaction of township professional staff. A
16 design waiver is granted for wall mounted lighting
17 to the extent such lighting is required by the
18 township professional staff. And, of course, that
19 would be a condition of approval should the board
20 ultimately decide to move favorable on this
21 application.

22 MR. HIMELMAN: Right. Mr. Chairman,
23 just in looking at some of the photos that was in
24 A-1, I believe that there -- Mr. Leber will
25 obviously include that in lighting, but I think

1 there may be more than adequate electric, 1, and 2,
2 facade area to put wall mounted lighting there,
3 which could significantly brighten that area.

4 THE CHAIRMAN: Okay, that's fine.

5 MR. HIMELMAN: Yes.

6 THE CHAIRMAN: That was my major
7 concerns to be brought --

8 MR. HIMELMAN: Fair enough.

9 THE CHAIRMAN: -- Mr. Himelman, on this
10 movement of traffic through this area and so forth.

11 MR. HIMELMAN: It's a valid concern.

12 THE CHAIRMAN: So if we can address
13 that, that's fine.

14 MR. HIMELMAN: Okay. Mr. Chairman, if
15 we can, I think Marc is going to -- Mr. Leber is
16 going to want to continue with the rest of his
17 testimony.

18 THE WITNESS: Yeah, I just wanted to
19 talk about some of the planning aspects of the
20 variance, the D-3 variance. As you heard already,
21 because this use is already listed as a permitted
22 use in the zone, we don't have to go through all the
23 proofs as to why what we're asking for was neglected
24 to be included as a permitted use, but really like
25 to focus on the impact of that use in the respect to

1 the 500 feet to the residences, and obviously, the
2 shopping center has a lot of history. Believe it
3 opened in the summer of 1958. It's seen many
4 tenants over the years. It has held within its
5 walls recreational type uses. Of course, this was
6 the one-time Midstate Bowl. There was also a tenant
7 further down the shopping center, Discovery Zone,
8 which was a similar type of indoor playground. They
9 turned that into a laser tag something or another
10 use later on. So this type of a use is not a
11 foreign use. It also does exist throughout the
12 area, different formats. For example, this is
13 geared toward 12 and under as an indoor play space.
14 There're also trampoline parks in the area. There
15 are -- there's Jumping Jungle and, of course,
16 Rock N Air on Route 18, which is like a climbing
17 place. And you're going to see these types of uses
18 pop up more and more often everywhere because I
19 don't know if it's something in society or just
20 times have changed, but kids don't play as much
21 outside as they used to. So these types of uses are
22 actually in demand.

23 Now, you know, I looked in the master
24 plan, you know, as far as several goals that we
25 could be advancing, and it's basically recognizing

1 that the role of Route 18 as a major regional
2 commercial area, that we're promoting, you know,
3 adequacy and convenience of uses for the residents,
4 but I think most importantly is that the governing
5 body of East Brunswick has expressed in the last
6 couple of years bringing more recreational type uses
7 to Route 18 because, you know, it's not common that
8 someone is going to open up a retail store, and most
9 of this is zoned retail. So, you know, the plan
10 does promote the public health, welfare, and safety
11 because it's providing something that I believe is
12 in demand; therefore, it's serving the needs of the
13 community. And there really is no detriment to the
14 public, and the reason for that is because all these
15 activities are going to be indoors. We're not
16 building a new building here. This is already an
17 existing shopping center. We're just adding a new
18 use to the building. We're not asking to clear
19 trees. We're not asking to fill wetlands. We're
20 not digging along the side of a stream or an
21 environmentally sensitive area, you know. There's
22 no loud noise associated with this use. And at the
23 end of the day, what is most important to an
24 application like this is are we creating a nuisance,
25 and the answer to that is no. This is not, you

1 know, a very large trip or traffic generator. It
2 doesn't have hours of operation that would tend to
3 be nuisance hours, which is beyond 10 p.m. at night.
4 And it's frankly just, you know, one more place
5 where children can go and play and feel safe.

6 So, you know, I think given the fact
7 that the building has been here for, you know, as
8 long, if not possibly longer, certainly longer than
9 the residences behind Walmart, that I just don't see
10 the detriment here. So I just wanted to state that
11 for the record.

12 THE CHAIRMAN: Is that the planning
13 testimony?

14 THE WITNESS: Yes.

15 Q. Mr. Leber, just for the record, so I
16 know you've gone through the engineering aspects of
17 this, the site plan. You described all the
18 nonconforming bulk variances that were -- that the
19 applicant technically needs to seek. We've gone
20 over, discussed the parking issues, site related
21 issues, and the planning testimony. Is there
22 anything else you'd like to cover, or you think
23 we've addressed everything at this point?

24 A. Unless there's questions, I think I
25 have.

1 Q. Fair enough.

2 THE CHAIRMAN: I want to clarify
3 something. In light of our conversations about the
4 tightness of the area right in front here and the
5 issues that we have, there was some reference that
6 they get deliveries. I would like to make sure on
7 testimony and guarantee that we do not have any
8 deliveries of a truck parked in front of this place
9 to pull stuff in if there's, as you alluded to,
10 there's a side door with a ramp, that there only can
11 be deliveries on the west side of this building. No
12 cars -- no trucks are parked in the front.

13 MR. PETERSEN: We don't have --

14 MR. HIMELMAN: Hold on. Just for the
15 record, Mr. Chairman, I'm going to have Mr. Petersen
16 address your question.

17 THE CHAIRMAN: Okay. You're still under
18 oath.

19 MR. PETERSEN: Yes, correct. We don't
20 have any deliveries from a truck or anything like
21 that. It's just Instacart, small passenger
22 vehicles, no large truck deliveries of any type.

23 THE CHAIRMAN: Fair enough, but they're
24 not going to park in front of this door to make it
25 easy to bring stuff in.

1 MR. PETERSEN: Correct.

2 THE CHAIRMAN: I want that cleared on
3 the record that there's no delivery that happens by
4 walking, you know -- parking a car in the driveway
5 area here and walking in with stuff.

6 MR. PETERSEN: Correct.

7 THE CHAIRMAN: Okay?

8 MR. WEINER: That will be a condition.

9 MR. HIMELMAN: Mr. Chairman, we can
10 agree to that as a stipulation.

11 THE CHAIRMAN: That's fine.

12 MR. WEINER: Putting some words
13 together.

14 THE CHAIRMAN: Mr. Petersen, I think you
15 may have to stay because some of the members have
16 additional questions from your testimony regarding
17 the operation and safety features of it.

18 MR. PETERSEN: Okay.

19 THE CHAIRMAN: So we'll let Mr. Weiner
20 finish up and then --

21 MR. WEINER: And I also just -- I want
22 to get this down. But first, all deliveries shall
23 be made to the west side of the facility.
24 Furthermore, no delivery vehicles shall be parked or
25 standing in front of building. Additionally,

1 applicant agrees that all deliveries are made by car
2 and not with trucks.

3 MR. HIMELMAN: Correct.

4 MR. PETERSEN: Correct.

5 MR. WEINER: And then I have one tied to
6 this before we move on. I just don't want to lose
7 my train of thought. Hours of delivery, if we can
8 narrow that down.

9 MR. HIMELMAN: Mr. Petersen, you want to --

10 MR. PETERSEN: I'd say between 8 and 11
11 in the morning.

12 MR. WEINER: Deliveries shall occur
13 between 8 a.m. and 11 a.m. That's all I need.

14 MR. HIMELMAN: Mr. Weiner, just a point
15 of clarification. When you said park in front of
16 the building, I presume you mean --

17 MR. WEINER: Near the site. I'm going
18 to put the site, the subject site.

19 MR. HIMELMAN: Because the chairman was
20 concerned about --

21 MR. WEINER: Which building.

22 MR. HIMELMAN: Right.

23 MR. WEINER: I'm going to change that
24 right now to in front of subject site.

25 MR. HIMELMAN: Right. Thank you.

1 THE CHAIRMAN: Okay. Christine, you had
2 -- you were asking questions about the operations of
3 safety.

4 MS. RAMPOLLA: Can you just tell us more
5 about the check-in process and just sort of the
6 security features that you have in place with the
7 parents or guardians arriving with children and
8 exiting, how you're keeping track of who's coming in
9 and leaving with the same people they entered with.

10 MR. PETERSEN: Okay. Yes, the staff for
11 the store, they -- so when you bring your child in,
12 you have to check in at a kiosk and sign in on a
13 waiver and state you understand the rules and you
14 can't leave your kid there, that you have to stay
15 with them. From there, you go to the point of sale,
16 the POS. They look up the phone number. They see
17 that you have a kid. They link the kid to the
18 parent and put that into their system. At that
19 time, they buzz you into the entry gate. So you go
20 into the gate, and if, say, you're the parent and
21 you try to leave, they're going to say, hey, where
22 is the kid you came with, give me your phone number.
23 They'll look it up, and if you don't have your kid
24 with you, they won't let you leave. You have to go
25 back and get your kid. If you have your kid with

1 you, then they will check and let you out.

2 MR. HIMELMAN: So just to follow up with
3 Miss Rampolla's question, so if there's an issue in
4 the initial entrance with the -- before they sign
5 the waiver form and process all that, if there's an
6 issue, there is going -- there's a gate there,
7 correct?

8 MR. PETERSEN: Correct.

9 MR. HIMELMAN: And no one is going to be
10 allowed to go into the facility unless they meet all
11 those procedures, correct?

12 MR. PETERSEN: Correct.

13 MR. WEINER: Jumping ahead on this, I
14 already jotted down a potential condition based on
15 the findings in the staff report corresponding to
16 the submissions of the applicant that there are to
17 be no drop-offs of any patrons to this facility. So
18 that is aside from all the security -- the security
19 measures, I think what's been testified to kind of
20 corresponds to that, but as a condition, there's to
21 be no drop-offs.

22 MR. HIMELMAN: Yeah, and I think, right,
23 Mr. Petersen testified to that.

24 MS. RAMPOLLA: I think I understand the
25 check-in, but then when children are leaving, are

1 they checking back in with the same people they
2 checked in?

3 MR. PETERSEN: Yes, same people at the
4 same counter. They give a phone number. They give
5 the kid the name. So the parent does it, as well,
6 and it checks out the same way. So the same gates
7 you have to be let out by the employee.

8 MR. WEINER: So they'll verify basically
9 that child A is going home with parent A if child A
10 came in with parent A.

11 MR. PETERSEN: Correct.

12 THE CHAIRMAN: And if one parent brings
13 in two, three kids, that still is locked together.

14 MR. PETERSEN: Correct.

15 THE CHAIRMAN: All three are the
16 responsibility of the person who brought them in.

17 MR. PETERSEN: Correct.

18 MR. HIMELMAN: And also, Mr. Petersen,
19 just to follow up with the board questions, so with
20 regard to the parent and children coming in
21 together, there's only one access point here,
22 correct, the main entrance.

23 MR. PETERSEN: Yes.

24 MR. HIMELMAN: The other potential
25 entrances are all locked, correct?

1 MR. PETERSEN: Yes, you can't enter
2 through a side door or anything like that, and they
3 have the alarms on them, so if somebody does open to
4 let their friend in or something, everybody is
5 notified.

6 MR. HIMELMAN: Fair enough. And during
7 an activity when everybody is checked in, are there
8 -- does staff also observe what's going on and also
9 look to make sure that there's no unusual activity
10 or there's somebody that may be not doing what
11 they're supposed to be doing, et cetera?

12 MR. PETERSEN: Yes. There's a -- you
13 have the two staff members that are at the POS, and
14 then you have the manager that's behind observing
15 the whole lobby, the check-in, the guests, who's
16 coming in, who's leaving, the secondary set of eyes.

17 MR. HIMELMAN: Fair enough.

18 THE CHAIRMAN: You also mentioned that
19 the side door would be accessible to employees.

20 MR. PETERSEN: Correct.

21 THE CHAIRMAN: So would you have a
22 problem if we stipulated that employees have to park
23 on the west side.

24 MR. PETERSEN: No, not at all. We
25 actually -- that's part of the hiring process that

1 we stay away from parking in the front areas.

2 THE CHAIRMAN: Well, but this way here
3 it just reinforces it.

4 MR. PETERSEN: Yes.

5 THE CHAIRMAN: And you're okay with
6 that.

7 MR. PETERSEN: Yes, sir.

8 MR. HIMELMAN: And, Mr. Chairman, just
9 to clarify, also, because I think Mr. Petersen
10 testified that they believe there will be five to
11 seven employees, so those would obviously be parking
12 on the west side, as you've indicated.

13 THE CHAIRMAN: And there's ample parking
14 there from what I can see.

15 MR. HIMELMAN: Right. That was my
16 point.

17 THE CHAIRMAN: So that's fine. Okay.

18 MS. WILSON: Can I just ask about the
19 drop-off situation? I go to a lot of these birthday
20 parties in town, so I probably will utilize this
21 facility. When the people who are making these
22 parties and sending out invitations, how do you
23 articulate to the parents that there is no
24 drop-offs, because we're typically used to, at least
25 with older children, dropping our kids off and then

1 coming back to pick up later. That's never an
2 option?

3 MR. PETERSEN: So it is if they come
4 with another parent. So it --

5 MS. WILSON: So an adult has to be with.

6 MR. PETERSEN: Yes.

7 MS. WILSON: Okay, because, like,
8 typically in this area, from my experience, like, we
9 drop off our kids, we check in, we leave, and then
10 we come back to pick them up 2 hours later.

11 MR. PETERSEN: Yeah, no, that --

12 MS. WILSON: That's not this facility.

13 MR. PETERSEN: No, not this facility.

14 MS. WILSON: Okay. Just wanted to
15 clarify.

16 MR. HIMELMAN: That may be a trend in
17 the corporate mindset of these type of businesses
18 because I had the same issue you experienced with my
19 children. We dropped them off.

20 MS. WILSON: Right.

21 MR. HIMELMAN: But I think the world's a
22 different place now.

23 MS. WILSON: So they're trying to be a
24 little bit more secure. I have experience at Chuck
25 E. Cheese, the secured check-in and check-out, but

1 not, like, with the newer facilities in town not so
2 much recently.

3 THE CHAIRMAN: Thank you.

4 MR. HIMELMAN: Mr. Chairman, does the
5 board have any other questions for Mr. Petersen?
6 He's not going anywhere.

7 THE CHAIRMAN: And he's not going
8 anywhere. No, I think that there was some concerns
9 about the safety because we've had over the course
10 of the last 3 years several of not identical but
11 similar operations, and we've had much better
12 clarity from them initially up front as to how all
13 that works.

14 MR. HIMELMAN: Fair enough.

15 THE CHAIRMAN: So there were gaping
16 holes in what our understanding was, but now --

17 MR. HIMELMAN: Fair enough.

18 THE CHAIRMAN: -- as long as the board
19 is satisfied that -- okay. So then the answer is we
20 can hang out.

21 MR. HIMELMAN: Fair enough. Thank you,
22 Mr. Chairman.

23 MR. PETERSEN: Thank you.

24 MR. HIMELMAN: I think we've concluded
25 with Mr. Leber.

1 THE CHAIRMAN: So who else do we have?

2 MR. HIMELMAN: One more witness, who is
3 our architect.

4 THE CHAIRMAN: Your architect.

5 MR. HIMELMAN: Yes.

6 MR. WEINER: Mr. Himelman, before we
7 jump to that, this actually may be for Mr. Petersen,
8 but there was a lingering item in the staff report
9 that it was a request that the applicants reconsider
10 the use of single-use plastics.

11 MR. HIMELMAN: Plastics.

12 MR. WEINER: Since the -- seems to be
13 the trend in the state is to shift away from
14 single-use plastics due to environmental concerns.
15 As we know, there's recent changes in the law
16 banning the plastics, even other bags, from
17 supermarkets and such. So I don't know. I'm going
18 to gather which -- whoever your witnesses might be
19 best to address that.

20 MR. HIMELMAN: I think Mr. Petersen can
21 probably address that. Use of plastics, are we okay
22 with eliminating that?

23 THE CHAIRMAN: Could you speak up, by
24 the way, just in case, because you're not by a mic.
25 We can hear you, but it has to get to the tape.

1 MR. PETERSEN: Okay.

2 MR. WEINER: One right behind you.

3 MR. BLESSING: It records. I don't
4 believe it's set up for amplification.

5 MR. HIMELMAN: Mr. Petersen, do you
6 understand the question?

7 MR. PETERSEN: Yes, sir. We're okay
8 with doing away with single-use plastics. Is there
9 an option for the more environmental, like, paper
10 stuff that they're reusing nowadays?

11 MR. WEINER: Yeah, I think if there
12 would be a condition, applicant shall not use
13 single-use plastics, I think that would be
14 sufficient. We'll leave it to the applicant -- and
15 I don't want to speak to the staff and the board,
16 but beyond that, I know there was a staff concern
17 about eliminating single-use plastics. Beyond that,
18 what you use instead of it we'll leave -- I guess
19 that can be left to the applicant.

20 MS. MCGURK: Yeah, that's fine.

21 MS. WILSON: I mean, I think that's
22 going to be really tricky if you're bringing in
23 outside foods, right?

24 MR. PETERSEN: Yeah --

25 THE CHAIRMAN: That's starting to evolve

1 though, because I've been getting, if I've taken
2 anything out now, you're not always get -- you're
3 getting, you know, a different type of a cardboard
4 box.

5 MS. WILSON: More compostable. It's
6 inconsistent. I'm just thinking it depends on
7 the --

8 THE CHAIRMAN: Well, that might be --

9 MS. WILSON: If you limit who you can.

10 THE CHAIRMAN: Might be who you use for
11 that if somebody comes in.

12 MR. HIMELMAN: I would agree with that.

13 MR. PETERSEN: Okay.

14 MR. HIMELMAN: Thank you, Mr. Chairman.

15 THE CHAIRMAN: Okay, Mr. Himelman.

16 MR. HIMELMAN: Yes, one more witness.

17 THE CHAIRMAN: You can bring in your --

18 MR. KIPP: I'm sorry. One more comment
19 for Marc. You do have the town standard dumpster
20 enclosure detail incorporated into the plan set, and
21 with that, there's landscaping.

22 THE WITNESS: Yes.

23 MR. KIPP: I just want to make sure we
24 work -- the staff works out with you exactly the
25 landscaping we put around that dumpster enclosure,

1 and I would like evaluate that intersection for a
2 sight triangle as we are putting a potential sight
3 obstruction up at that corner.

4 THE WITNESS: That's okay. That's fine.

5 MR. WEINER: I'm writing the first part
6 down. Bear with me. What I got for the first part
7 is landscaping around dumpster enclosure is subject
8 to township professional staff approval.

9 MR. HIMELMAN: And check for sight
10 triangle.

11 MR. WEINER: Keith, how do you want me
12 -- to your satisfaction with the sight triangle.

13 MR. KIPP: Marc can do an analysis of
14 the sight triangle at that intersection at Tices
15 Lane where the dumpster enclosure is being
16 installed.

17 MR. HIMELMAN: And you can say, Mr.
18 Weiner, you're okay with to staff satisfaction.

19 MR. WEINER: Yeah, analysis to be
20 provided regarding need of sight triangle at
21 intersection of Tices and -- I'm sorry -- Tices Lane
22 and --

23 MR. KIPP: Tices Lane in the area of the
24 proposed dumpster enclosure.

25 MR. WEINER: At Tices Lane in area of

1 proposed dumpster enclosure to satisfy of staff.

2 MR. KIPP: Thank you.

3 THE CHAIRMAN: Okay, Mr. Himelman, who
4 do we have?

5 MR. HIMELMAN: We have Carl Counts,
6 who's our representative from the architectural
7 firm, and while Mr. Counts is coming up, I do think
8 we'll have to obviously have him sworn in and
9 qualified, and then we can introduce any exhibits
10 obviously, but first things first.

11 THE CHAIRMAN: Okay, and your name is
12 Mr. Counts?

13 MR. COUNTS: Yes.

14

15 C A R L C O U N T S, sworn.

16 DIRECT EXAMINATION BY MR. HIMELMAN:

17 THE CHAIRMAN: Okay. Please state your
18 name and spell your last name and your affiliation.

19 THE WITNESS: It's Carl Counts. My last
20 name is C-o-u-n-t-s, and I'm with Sargenti
21 Architects in Philadelphia, and I am a senior
22 project manager.

23 THE CHAIRMAN: Okay, and CV.

24 Q. Yes. You can sit down, Mr. Counts. If
25 you would just briefly provide your educational

1 background and professional qualifications and your
2 licensure status, that would be great. Thank you.

3 A. I have a Bachelor's of Architecture I
4 received from Howard University in 1984. I became
5 licensed in the State of New Jersey in 1991, and I'm
6 also licensed in the state of New York.

7 THE CHAIRMAN: Have you been before
8 zoning boards and planning boards?

9 THE WITNESS: Yes, I have, many times.

10 Q. In the State of New Jersey?

11 A. Many times.

12 THE CHAIRMAN: And your license is
13 current?

14 THE WITNESS: Yes.

15 THE CHAIRMAN: And his testimony is
16 going to be only about the architectural --

17 MR. HIMELMAN: The architectural plans
18 actually, Mr. Chairman, that you were alluding to
19 earlier.

20 THE CHAIRMAN: Okay.

21 MR. HIMELMAN: Yes, that's correct.

22 MS. RAMPOLLA: I motion to recognize the
23 witness as an expert.

24 THE CHAIRMAN: And we have a second.

25 Any in favor? Any opposed? Hearing none.

1 MR. HIMELMAN: Thank you, Mr. Chairman.

2 Q. Mr. Counts, good evening. Did you bring
3 any exhibits with you that you would like to have
4 marked or introduced other than what was submitted
5 with the application, which I believe was your
6 architectural plans?

7 A. Yes, I do have the elevations.

8 Q. Yeah, there's elevations and --

9 A. Floor plans.

10 Q. Is the second sheet.

11 A. Those are the same two sheets I have.

12 Q. Fair enough, so we don't need to
13 introduce anything further, correct? Okay.

14 MR. KIPP: Would you like it up on the
15 screen?

16 MR. HIMELMAN: That might be helpful.

17 MR. KIPP: Be easier for everybody to
18 look at.

19 Q. Okay, great. Mr. Counts, if you would,
20 I understand under I guess your input and direction,
21 your office prepared I guess what for the record
22 there are two sheets marked proposed Kids Empire,
23 space number 19, and these plans were sealed and
24 submitted with the application. I believe the
25 application date is 11 -- November 16, 2022, and

1 these are the plans that you're going to testify on;
2 is that correct?

3 A. Correct.

4 Q. Okay. So if you would briefly describe
5 I guess the, you know, the floor plan, which I know
6 the board has reviewed, and also describe, you know,
7 the second sheet, which is the elevations and
8 schematics, so that we can get all that information
9 on the record, and obviously, the board may have
10 questions, and staff, but thank you.

11 A. First I'd like to mention that we are
12 not the architects that designed the layout of the
13 interior of the building. That's an example of what
14 a Kids Empire model would be. Our role or scope of
15 work in this project is to design the new entrance
16 to the building. There is a new ramp into the
17 entrance and some modifications to the exterior,
18 making some exterior repairs, et cetera.

19 Q. So just so I understand, so should this
20 application be approved and the board act favorably,
21 the tenant, if you will, Kids Empire, has their own
22 architect --

23 A. That's correct.

24 Q. -- that will submit application for the
25 building permit and full construction plans and

1 drawings; is that correct?

2 A. That's correct.

3 Q. Okay, so you're just going to testify --
4 and you've pretty much relied on the information
5 that Kids Empire architect with regard to the floor
6 plan.

7 A. Correct.

8 Q. Okay, fair enough. Okay, thank you.

9 MR. KIPP: So all the interior partition
10 walls will be designed not by you.

11 THE WITNESS: That's correct.

12 MR. KIPP: Okay. Thank you.

13 THE CHAIRMAN: Mr. Himelman, this is his
14 design, this is what he's presenting?

15 MR. HIMELMAN: Yes.

16 THE CHAIRMAN: And this meaning -- it
17 says Sargenti. It's dated 11-16-2022, and it is a
18 rendition of the west and north elevation of the
19 building by Mr. Counts' company; is that correct?

20 MR. HIMELMAN: That is correct.

21 Q. Mr. Counts, I just want to clarify. Mr.
22 Kipp asked you a question about the demising wall.
23 Did you want to clarify your testimony?

24 A. Yes, there is other facilities on --
25 within that building, and they will have demising

1 walls that we will be involved with that portion of
2 it, but here again, the interior of those other
3 spaces we will not be the architect of record for.

4 Q. So is it fair to say, Mr. Counts, that
5 you'll -- the landlord will be fitting out the
6 shell, if you will?

7 A. That's correct.

8 Q. And delivering that to the tenant to
9 then go ahead and do the fit-out; is that correct?

10 A. That's correct.

11 THE CHAIRMAN: But the elevations that
12 we got on the document we just described is, in
13 fact, a product of Mr. Counts company.

14 MR. HIMELMAN: Yes.

15 THE CHAIRMAN: And this is what the
16 anticipated rendition would be.

17 MR. HIMELMAN: That is correct.

18 THE WITNESS: Correct.

19 Q. So to that, Mr. Counts, if you can
20 describe I guess --

21 A. Yes. The elevation that they have up
22 there is basically a stucco type building. The ramp
23 that you see to the right is an existing ramp, and
24 then we're providing a new door to the left on that
25 particular elevation. That's really all we're doing

1 with this particular elevation.

2 THE CHAIRMAN: Okay. There's an
3 emergency door there on the right side, and you're
4 saying that you're adding this door that we see next
5 to a window on the left side --

6 THE WITNESS: That's correct.

7 THE CHAIRMAN: -- of this particular
8 west elevation picture.

9 THE WITNESS: Yes. And if we can go to
10 the next frame. Now, this is where we're designing
11 -- to the right of the building you see the double
12 doors and the window and then a signage above.
13 That's what we're designing. That's the main
14 entrance to the building. So we're providing the
15 doors, the windows around the doors, and the
16 signage.

17 THE CHAIRMAN: Is the signs -- how are
18 they illuminated?

19 THE WITNESS: We haven't figured out the
20 illumination of the signage just as of yet, but that
21 will be, you know, factored in, as well.

22 THE CHAIRMAN: But it will comply with
23 township requirements.

24 THE WITNESS: Yes. And there's also a
25 ramp. As you enter the building going through the

1 two double doors, there's a platform, and then
2 there's a ramp that takes you down to the main
3 space. We're providing the details for that ramp,
4 as well.

5 THE CHAIRMAN: Okay.

6 MS. RAMPOLLA: Can you go back to that
7 last picture. I'm just -- I'm just confused about
8 how it lines up with how the building currently
9 exists. Is the elevation in the front changing?

10 THE WITNESS: Well, we're providing the
11 new doors and the windows that are around the doors
12 as a new entrance.

13 MS. RAMPOLLA: It's just in the -- if
14 you look at the front of the building the way it
15 currently -- I'm just looking at one of the pictures
16 that was given to us --

17 MR. HIMELMAN: Mr. Leber.

18 MS. RAMPOLLA: -- in A-1.

19 MR. HIMELMAN: Yes.

20 MS. RAMPOLLA: In the very front of the
21 building, in the center, the height of the building
22 is higher than it is on the left and the right.

23 MR. BLESSING: This one?

24 MS. RAMPOLLA: Yes. Thank you. So I
25 don't know how to go back and forth between the two.

1 But from that picture, it looks like where the door
2 was, it was -- there was an elevated height above
3 the door. So is the door where the window is next
4 to the current main entrance?

5 THE WITNESS: That, door, yeah, that
6 door will remain.

7 MS. RAMPOLLA: But the new door -- so on
8 this picture here, roughly where is the new door?

9 THE CHAIRMAN: Use the fire hydrant as a
10 reference.

11 THE WITNESS: Yeah, you can't really see
12 it because it's sort of behind that -- if you look
13 at the center of the photograph, that wall is set
14 back somewhat so you can't really see it from
15 that -- this angle.

16 MS. RAMPOLLA: So it's --

17 THE WITNESS: It's like in that corner.

18 MS. RAMPOLLA: So it's past that orange
19 line.

20 THE WITNESS: Yes.

21 MR. HIMELMAN: Miss Rampolla, if you
22 look at the second sheet, the bottom drawing, you'll
23 see that that's where the new window to the left of
24 the column -- to the left of, you know, where the
25 Kids Empire entrance will be. So you can't really

1 see it there.

2 Q. But, Mr. Counts, just to ask -- just to
3 follow up on a question, the elevations aren't
4 changing, correct?

5 A. That's correct.

6 Q. Okay.

7 FROM THE FLOOR: That's --

8 THE WITNESS: I'm sorry, but we are
9 raising the -- the cornice is going to be raised up
10 to match the space to the left -- right of it.

11 MS. RAMPOLLA: Okay. That's what I --

12 THE WITNESS: That is going to be raised
13 up, yes. It was down lower before. I see what
14 you're saying, ma'am, yes.

15 MS. RAMPOLLA: Okay, so --

16 THE WITNESS: The parapet is going to
17 raise up to match the other.

18 MS. RAMPOLLA: Okay. Thank you.

19 MR. HIMELMAN: That's what I wanted to
20 get clarity.

21 MS. RAMPOLLA: That explains it. I
22 couldn't understand why the height was different.

23 THE WITNESS: Yeah, that's what we did.

24 MR. HIMELMAN: Fair questions.

25 THE WITNESS: Everything else will be

1 the same.

2 MR. HIMELMAN: Okay, fair enough.

3 Q. Mr. Counts, you want to add anything
4 else to your testimony? You think you've covered
5 everything?

6 A. I think.

7 MR. HIMELMAN: Mr. Chairman, he's here
8 for questions, obviously.

9 THE CHAIRMAN: Anybody, board questions?
10 Staff questions?

11 MR. KIPP: Yeah, just a quick question.
12 The shell of the partition is not in conflict with
13 the existing swimming pool I'm guessing.

14 THE WITNESS: I'm sorry, the shell?

15 MR. KIPP: The exterior of where this
16 new space is going to be built out is not in
17 conflict with the existing pool inside the building.

18 THE WITNESS: No, it's not in conflict.
19 The pool is in a different location.

20 MR. KIPP: Okay. Thank you.

21 THE CHAIRMAN: Anything else from staff?
22 Anything else from the board?

23 MS. RAMPOLLA: Just so I understand, the
24 layout that we have, I'm just confused about what
25 you said at the very beginning about what part of

1 the architecture you are and are not doing.

2 THE WITNESS: Right.

3 MS. RAMPOLLA: So what's covered in the
4 plans, the layout here, that's what will be in the
5 building?

6 MR. HIMELMAN: Yeah, my understanding is
7 -- and I'll have Mr. Counts confirm. So they got
8 the floor plan from the Kids Empire architect, and
9 they basically included that in their submission.

10 MS. RAMPOLLA: Okay.

11 MR. HIMELMAN: But should the board --
12 and this is exactly how the space will be laid out
13 that's shown on sheet 1.

14 MS. RAMPOLLA: Okay.

15 MR. HIMELMAN: So in the event the board
16 approves this and the applicant -- the Kids Empire
17 will then be responsible as a tenant to do the
18 interior fit-out once the shell is delivered to them
19 by the landlord.

20 MS. RAMPOLLA: Okay. Thank you.

21 THE CHAIRMAN: Any other questions from
22 the board? No.

23 Mr. Himelman, what else?

24 MR. HIMELMAN: We are -- all of our
25 witnesses are -- have been testified to -- testified

1 before the board, and we are subject to opening this
2 up to the public.

3 THE CHAIRMAN: That's why I was asking.

4 MR. HIMELMAN: We are done with our
5 affirmative case, if you will.

6 THE CHAIRMAN: Okay. At this point, on
7 application Z-22-29, Midstate Owner, LLC, this is
8 open to the public. Anyone from the public who
9 wishes to speak, identify yourself and we will
10 recognize you.

11 There doesn't appear to be a ground
12 swell of people from the public, Mr. Himelman. So
13 what I'll do then is I will close the public
14 portion, and at this point, did you want to -- what
15 did you want to do? You know you only have five
16 potential votes.

17 MR. HIMELMAN: Correct. So, Mr.
18 Chairman, yeah, so what I would like to ask is --
19 we've obviously gone through a litany of issues with
20 the application. Potentially there are many
21 conditions that would be imposed if the board act
22 favorably upon the application. I think the
23 applicant's agreeing to all of those. But I think
24 initially what I'd like to suggest, if the board,
25 yourself and any of the members, still have ongoing

1 concerns with the application, I think we'd like to
2 sort of understand what they are, and if so, we may
3 want to --

4 THE CHAIRMAN: It's easy. We can poll
5 the board. If they're comfortable with what's been
6 presented, Mr. Himelman, and so forth, that would be
7 your decision as to whether or not you wish to
8 proceed for a vote.

9 MR. HIMELMAN: That's correct, Mr.
10 Chairman.

11 THE CHAIRMAN: So at this point then, I
12 guess I'll poll the board. Do you have any
13 additional questions, Chester or Bonnie, regarding
14 to what's been presented? Are you okay with what's
15 been presented so far?

16 MR. BRANDT: Yes.

17 MS. WILSON: Yes.

18 THE CHAIRMAN: And then I'll ask over
19 here.

20 MR. WYNTER: Yes.

21 MS. RAMPOLLA: Can I just ask -- I have
22 one question.

23 THE CHAIRMAN: Sure.

24 MS. RAMPOLLA: I'm not sure, maybe --
25 I'm not sure who to ask the question to.

1 MR. HIMELMAN: Fire away.

2 MS. RAMPOLLA: Mr. Himelman, maybe you
3 can help. Is there -- can we have some testimony on
4 why this portion of the building is being used for
5 this particular use. And I'm only thinking that it
6 would be helpful to just hear a little justification
7 for that given the concerns that the chairman raised
8 about the traffic flow and the entrance where it is
9 for this use with children going through that front
10 door. If we could just hear something why that side
11 of the building was the right use for this
12 particular applicant.

13 MR. HIMELMAN: Right, Miss Rampolla, I
14 think I understand your question. In other words,
15 if I look at the 40,000-square-foot footprint,
16 you're looking to really get clarification on why
17 this particular 10,000-square-foot area on the left
18 side, if you will, was -- was to be designated as
19 the leasehold space for the Kids Empire; is that
20 your question?

21 MS. RAMPOLLA: Yes.

22 MR. HIMELMAN: Okay. Yeah, my
23 understanding is that the owner has been involved in
24 lease negotiations with other potential tenants. As
25 a matter of fact, we submitted several letters of

1 intent to staff for review. Those leases have not
2 been finalized, but I think the owner was trying to
3 juxtapose and lay out the 40,000 square feet that
4 makes sense given the fact also that there is, you
5 know, an existing swimming pool. There may be
6 ultimately a swim school that may come in, again,
7 subject to review by staff. So I think from an
8 owner's view, I think they were trying to maximize
9 and make the most sense out of the use of the space.

10 MS. RAMPOLLA: Okay. That's helpful I
11 think to have on the record just only because of the
12 concerns about where the doors were located and
13 things like that.

14 MR. HIMELMAN: And I think the issue
15 here, also, as we've heard from our witnesses, is
16 that this is a large building, and as we know,
17 retail use is difficult to find, you know, specialty
18 with regard to that, so I think there's a heightened
19 sensitivity to try and find the right tenants --

20 MS. RAMPOLLA: Okay.

21 MR. HIMELMAN: -- for this building and
22 to make sure that it works from a safety, traffic,
23 et cetera. So -- and by the way, just so you're --
24 just to give you some comfort, the board members, so
25 this property was owned by the Gabrellian family for

1 many years. You may know the name. But anyway --
2 and I've represented -- I represented Mr. Gabrellian
3 for many years. It was recently sold to Acadia
4 Realty, which is a very large company. So they have
5 really looked at the site as an opportunity to
6 redevelop it, to enhance it, to bring in different
7 types of tenants that make sense. So that's what we
8 discussed about the chairman's point about improving
9 the parking lot, okay, and upgrading the lighting
10 and the charging stations. I think there is a
11 commitment, financial most important, for Acadia to
12 put into the center to make it attractive and safe
13 and also, you know, upgrade it so that when
14 potential tenants are looking to come into the
15 center, it's something that will be appealing to
16 them. So there is going -- we're probably going to
17 see other applications coming in the town. They're
18 looking to maybe make some changes here, but we
19 don't have to get into that now, but the point is I
20 think there was a business decision as to how they
21 were going to lay out that old New York Sports Club
22 area.

23 MS. RAMPOLLA: Okay. I appreciate that
24 explanation.

25 MR. HIMELMAN: Okay, great. Thank you.

1 THE CHAIRMAN: Mr. Himelman, you've
2 alluded to something that we don't need to know
3 about yet.

4 MR. HIMELMAN: Fair enough.

5 THE CHAIRMAN: Is that going to do
6 anything to change any of the requests and/or
7 agreements that we have come together at this point?

8 MR. HIMELMAN: Fair enough. No, I
9 agree.

10 THE CHAIRMAN: Okay. Well -- okay,
11 that's fine. You have obviously some information,
12 and I just want to make sure that what we're being
13 asked to approve here won't suddenly be different.

14 MR. HIMELMAN: No, absolutely not. I
15 was just trying to give Miss Rampolla a sense of --
16 to answer her question to give her sort of a global
17 response.

18 THE CHAIRMAN: One last item that I was
19 thinking about is we know that there is a
20 conflagration of signs that are located on the main
21 billboard that's out by Route 18.

22 MR. HIMELMAN: Correct.

23 THE CHAIRMAN: Is it the intention of
24 this applicant to slide into one of those?

25 MR. HIMELMAN: When you say slide in,

1 what do you mean?

2 THE CHAIRMAN: Well, in other words,
3 they're all horizontal --

4 MR. HIMELMAN: Oh, yeah, fair enough. I
5 believe so. I mean, I don't know.

6 Marc, do you want to answer that? I
7 think what I understand potential be replacement,
8 but I don't know about new.

9 THE CHAIRMAN: In other words, yeah,
10 you're not going to add anything --

11 MR. HIMELMAN: No, correct.

12 THE CHAIRMAN: -- to the square footage
13 of that sign; you're just going to simply take one
14 tenant who may not be there anymore and put in this
15 tenant.

16 MR. HIMELMAN: Correct, correct, that is
17 correct.

18 THE CHAIRMAN: And that is the only
19 signage that would be outside of the actual
20 building, itself.

21 MR. HIMELMAN: Right, and to add to
22 that, obviously, the sign code would govern, and
23 Colleen would have to approve any of that anyway,
24 but you're correct, Mr. Chairman.

25 MS. MCGURK: Yeah, I think they're at

1 their maximum signage for the freestanding signs, so
2 if they were to want to expand it, they'd have to
3 come back for a variance.

4 THE CHAIRMAN: I just imagine -- there's
5 so many, you don't get a chance to read them all,
6 but I don't know if all of them are still viable
7 tenants, so it would be easy to slide somebody else
8 in there.

9 MS. MCGURK: A.C. Moore.

10 MR. HIMELMAN: Right, we can take A.C.
11 Moore off. You're absolutely right, Mr. Chairman.

12 THE CHAIRMAN: It's up -- now we've got
13 to the point, Mr. Himelman, what do you want to do?

14 MR. HIMELMAN: Okay, well, what I was
15 going to do is just briefly summarize, and based
16 upon what I heard and thanks to your guidance on
17 this, you've polled the board members, and I think
18 the applicant's comfortable with proceeding with a
19 formal vote, but I just want to say a few points,
20 and then I will ask, Mr. Chairman, that you would
21 call for a vote at the appropriate time.

22 Anyway, I think the board -- first of
23 all, I want to thank you, Mr. Chairman, and I want
24 to thank all the board members and I want to thank
25 staff for allowing us the opportunity to go through

1 this application tonight and to at least be able to
2 conclude our testimony. I know the board had other
3 applications on, so it's very much appreciated that
4 you gave us this time, and I don't want that to go
5 unnoticed.

6 Number 2, I think the applicant has
7 presented, both from an
8 engineering/planning/architectural standpoint as
9 well from an operational standpoint, I think we've
10 addressed the site plan concerns, the justification
11 for the D-3 conditional use variance. I think the
12 board and staff's questions were very thoughtful. I
13 think they were excellent questions about site
14 safety, traffic, parking, and being able to assure
15 that the site can operate appropriately. I think
16 Kids Empire, Mr. Petersen, did a very good job
17 explaining the testimony from an operational
18 standpoint. Mr. Chairman, you made the point that
19 there were several gaps, and I do apologize for
20 that, and I hope Mr. Petersen did address those
21 issues. And I think also Mr. Leber I think did a
22 very good job explaining the positive and negative
23 criteria in support of the D-3 variance and the fact
24 that this is, you know, Route 18, it is a commercial
25 retail portion of the highway, and also, he made an

1 excellent point that I think the township is looking
2 to bring this type of recreational entertainment
3 type uses along this portion of the highway through
4 East Brunswick, and I have noticed obviously that
5 there are those facilities.

6 So, Mr. Chairman, with that said, I
7 would ask that the board act favorably upon the
8 application and at this point would ask that the
9 chairman move forward with a formal vote and ask for
10 a motion for approval. Thank you.

11 MR. WEINER: Mr. Chairman, before we do
12 that, I just need to address a couple of points.

13 MR. HIMELMAN: Sure.

14 MR. WEINER: First, I want to remind the
15 board that being this is a D-3 variance, a
16 conditional use variance, as Mr. Himelman correctly
17 stated at the very onset of his presentation, there
18 is a lesser standard than a normal D-1 use variance,
19 which this board is very familiar with the higher
20 standard. We deal with them a lot of times. We see
21 conditional use variances a little bit less
22 frequently. So I just want to remind everyone, and
23 as Mr. Himelman also indicated, the state Supreme
24 Court case called Coventry scare, and basically,
25 it's not the regular site suitability test, which is

1 a higher threshold that we deal with when we're
2 dealing with regular D-1 use variances. Here
3 basically, the proofs only need to support that the
4 conditional use justifies the continued permission
5 of this use. So in other words, if you feel that
6 the testimony is justified, that this use, otherwise
7 conditional use of this type of facility is
8 permitted, then that would satisfy the burden.

9 Additionally, the applicant need only
10 show that the site will accommodate any problems if
11 there are any associated with the use despite its
12 nonconformity to the letter of the ordinance. So
13 it's a much lesser burden than we normally see with
14 use variances.

15 So I just want to remind everyone that
16 when you do your analysis that instead of the
17 threshold being at one level, it's at a lower level
18 for this type of -- this type of variance, and the
19 first part that I talked about with the site
20 suitability deals with the positive criteria, and
21 the second part that I mentioned, the latter part,
22 deals with the negative criteria, so both prongs are
23 a lesser burden for the board to evaluate than a
24 normal D-1 use variance.

25 And the other thing I wanted to go --

1 and, Mr. Himelman, if you want to interject if I did
2 not state that and you want to disagree with me,
3 please jump in, but I think --

4 MR. HIMELMAN: I think you did.

5 MR. WEINER: I think we're both on the
6 same page as that, and I just want to make sure the
7 board understands that with the D-3, it's a lesser
8 burden, so the applicant has an easier threshold or
9 a lighter threshold or burden to carry to meet the
10 threshold.

11 With that said, I did jot down according
12 to my notes 18 conditions. I'd just like to read
13 all of them in the record and make sure there's no
14 comments, no changes, and if not, if we can ask the
15 applicant to acknowledge each one with agreement.

16 Number 1, the facility is not to be used
17 for daycare.

18 MR. HIMELMAN: That's agreeable.

19 MR. WEINER: Number 2, no food
20 preparation is to occur on site.

21 MR. HIMELMAN: That's agreeable.

22 MR. WEINER: Three, no drop-offs of
23 patrons are permitted; signage to the same should be
24 posted.

25 MR. HIMELMAN: That's agreeable.

1 MR. WEINER: Four, seating for the
2 dining area shall be limited to a range of 200 to
3 240 people.

4 MR. HIMELMAN: That's agreeable and
5 consistent with what the applicant testified.

6 MR. WEINER: Yeah. Five, the toddler
7 area shall be 800 square feet.

8 MR. HIMELMAN: That's acceptable.

9 MR. WEINER: Six, the toddler area shall
10 be for ages up to 3 years old with older children --
11 with older children accompanying younger age
12 appropriate children.

13 MR. HIMELMAN: That's acceptable.

14 MR. WEINER: Number 7, the large play
15 area shall be for ages 2 to 12 years of age with
16 children under 4 accompanied by a parent, and the
17 area is also appropriate for adults.

18 MR. HIMELMAN: That's correct and
19 acceptable.

20 MR. WEINER: Number 8, supplemental
21 plantings to be included where larger trees would
22 fit and thrive, and otherwise, lower shrubs shall be
23 acceptable.

24 MR. HIMELMAN: That's acceptable.

25 MR. WEINER: Number 9 -- and this is a

1 long one -- EV stalls to be fully installed EV and
2 not merely EV-ready. Furthermore, applicant shall
3 install 16 charging stations in total on the full
4 property, and if the 16 stalls are not -- let me
5 change that to stations -- 16 stations are not fully
6 installed within 3 years from the date of any
7 resolution of approval, then applicant must install
8 the four EV stalls as provided in the original
9 plans, which shall be fully operational and not
10 EV-ready, and shall be completed within 6 months.
11 Requirements are accelerated -- these requirements
12 are accelerated if any future land use application
13 for this property is submitted prior to completion
14 of the EV stations, and they must then be installed
15 completely in accord with this condition at the time
16 of such new application.

17 MR. HIMELMAN: That's acceptable and I
18 think consistent with what the staff had
19 recommended, also.

20 MR. WEINER: Number 11, in the roadway
21 between the subject site and the Shop Rite building
22 in the vicinity of the entrance, applicant shall
23 install striping, a rumble strip, and signage,
24 including but not limited to a flashing stop sign,
25 all to the satisfaction of township professional

1 staff.

2 Furthermore, next condition, number 12,
3 all traffic calming devices to be approved by
4 township professional staff.

5 Number 13, a lighting plan is to be
6 submitted to the satisfaction of the township
7 professional staff. Furthermore, a design waiver is
8 granted for wall mounted lighting to the extent such
9 lighting is required by the township professional
10 staff.

11 MR. HIMELMAN: They're all acceptable,
12 so 10, 11, 12, and 13, yes.

13 MR. WEINER: Fourteen, all deliveries
14 shall be made to the west side of the facility.
15 Furthermore, no delivery vehicles shall be parked or
16 standing in front of the subject site.
17 Additionally, applicant agrees to all deliveries are
18 to be made by car and not with trucks -- or not by
19 trucks. Deliveries -- and deliveries shall occur
20 only between 8 a.m. and 11 a.m.

21 MR. HIMELMAN: All acceptable.

22 MR. WEINER: Number 15, employees shall
23 only park on west side of site.

24 MR. HIMELMAN: Acceptable.

25 MR. WEINER: Number 16, applicant shall

1 not use single-use plastics at facility.

2 MR. HIMELMAN: Acceptable.

3 MR. WEINER: Number 17, landscaping
4 around the dumpster enclosure is subject to township
5 professional staff approval.

6 MR. HIMELMAN: Acceptable.

7 MR. WEINER: Number 18, an analysis is
8 to be provided regarding the need of a sight
9 triangle at the Tices Lane area.

10 MR. HIMELMAN: Intersection, right?

11 MR. WEINER: Do we want intersection or
12 area? How did we want that?

13 MR. KIPP: You can -- the rear exit at
14 Tices Lane?

15 MR. WEINER: Tices Lane.

16 THE CHAIRMAN: Exit, yes.

17 MR. WEINER: Rear exit area.

18 MR. HIMELMAN: Fine.

19 MR. WEINER: At the Tices Lane rear exit
20 area of the -- near the proposed dumpster to
21 satisfaction of township professional staff.

22 MR. HIMELMAN: That's acceptable.

23 MR. WEINER: And that was the last one I
24 had unless -- I'm going to look to our staff if
25 there was something.

1 THE CHAIRMAN: Could you read one more
2 what they're going to do in the parking and
3 striping.

4 MR. WEINER: Oh, did I miss that one?

5 MR. HIMELMAN: No, no, I think Mr.
6 Chairman just want you to read it again.

7 MR. WEINER: Let me find it.

8 THE CHAIRMAN: I think it was earlier
9 on.

10 MR. WEINER: I had it earlier. Let me
11 get it. No, I missed that one. That was number 10.
12 Applicant shall restripe and reconstruct or
13 otherwise delineate parking area in spaces in the
14 full area in front of the building housing the
15 proposed site.

16 MR. HIMELMAN: Right, I think you did
17 say that, and it's acceptable.

18 MR. WEINER: No, what happened is I
19 started with 9, and my notes got so long that they
20 were kind of circled around 10, and I didn't circle
21 back to it. Good catch, Mr. Chairman.

22 MR. HIMELMAN: So we're 18 though,
23 right?

24 MR. WEINER: It was 18, but I only read
25 out 17. I had skipped number 10, which was the

1 striping.

2 THE CHAIRMAN: Okay, and you agree to
3 all of that.

4 MR. HIMELMAN: The applicant agrees to
5 all of that, yes, Mr. Chairman.

6 THE CHAIRMAN: Okay. Keith, are we
7 satisfied that we have covered everything.

8 MR. KIPP: Absolutely.

9 THE CHAIRMAN: Okay. At that point,
10 then, I will listen for a motion to approve.

11 MR. WYNTER: I will motion to approve.

12 THE CHAIRMAN: From Ivan. Do we have a
13 second?

14 MS. RAMPOLLA: I'll second.

15 THE CHAIRMAN: From Christine. Second
16 from Christine. Any other comments from the board?
17 Hearing none, then please call the roll.

18 MR. BLESSING: Mr. Wynter.

19 MR. WYNTER: Thank you for your
20 presentation this evening. I have to say that I'm
21 satisfied with the presentation made before us
22 tonight. I think that it's the use that it will be
23 used for would be used by our East Brunswick
24 residents. I am satisfied with you accepting all of
25 our recommendations and make sure that this project

1 remains safe for all the kids and all the residents
2 of East Brunswick, and therefore, I am going to vote
3 yes on this project.

4 MR. BLESSING: Mr. Brandt.

5 MR. BRANDT: I want to thank counsel and
6 all the professionals from the applicant. I think
7 you guys did a very good job this evening -- and
8 ladies, sorry. And, you know, our most important
9 assets are our children, now grandchildren, and --
10 for some of us.

11 MR. HIMELMAN: I have one of those.

12 MR. BRANDT: And I especially appreciate
13 Mr. Petersen's testimony on the safety protocols
14 that you guys have in place, and I like the idea. I
15 think it's going to be a great asset to our
16 community, and I vote yes.

17 MR. HIMELMAN: Thank you.

18 MR. BLESSING: Miss Wilson.

19 MS. WILSON: I would just like to say
20 thank you, also, and I definitely vote yes. I am
21 looking forward to experiencing this with my young
22 children as another alternative in town. It's
23 always good to increase our entertainment. And I
24 appreciate the fact that you're going to go through
25 the 18 conditions, as well. That was -- I think

1 that's pretty much it. I mean, this is -- I don't
2 think it's going to be any more detrimental to the
3 people who live across the street than the gym was
4 that existed there prior, which I was a member of,
5 and the parking lot was always full, and I'm sure
6 everybody is used to that kind of traffic in the
7 area. So I welcome you, and I'm looking forward to
8 experiencing it.

9 MR. BLESSING: Miss Rampolla.

10 MS. RAMPOLLA: Yeah, I appreciate all
11 the, you know, thoughtful answers that you had for
12 all of our questions. I'm happy to see this moving
13 into that space. It's been a number of other
14 recreational or sport type uses in that building, so
15 it seems to make sense there. It seems like a
16 fitting place for it. I look forward to seeing the
17 group move in there and having it used by the town.
18 So I vote yes.

19 MR. BLESSING: Chairman Philips.

20 THE CHAIRMAN: Well, first of all, I
21 want to thank the board for the diligence on this
22 and the fact that we were alone. We only had five
23 of us. So I'm glad that we were able to get through
24 this and so forth. So that's good. And again, I'll
25 thank the board under these circumstances.

1 As far as the applicant's concerned, my
2 concerns were the safety, and that was something
3 that was tantamount to any possible way to agree to
4 this, and the willingness of your applicant to
5 understand what the biggest problems were in this
6 site and to go along with any recommendations of
7 ameliorating those issues was greatly appreciated,
8 and within the framework of what we were offered, I
9 think that you've done a good job of providing us
10 with the information we need. I like the fact we
11 have 18 conditions that make sure that you'll be
12 adhering to all of them, and with that said, I will
13 also vote yes.

14 MR. HIMELMAN: Thank you, Mr. Chairman.

15 THE CHAIRMAN: Any other discussion from
16 the board? Anything from staff?

17 MS. MCGURK: No.

18 THE CHAIRMAN: Our next meeting is the
19 2nd of February.

20 MS. MCGURK: Yes.

21 THE CHAIRMAN: So we are bringing in
22 Bill Murray and the rest of the Groundhog movie so
23 that all of you can enjoy the night, and we'll be
24 doing that night again and again. No, but thank you
25 very much and --

1 MR. HIMELMAN: Mr. Chairman, thank you
2 and the board members.

3 MR. WYNTER: Motion to adjourn.

4 THE CHAIRMAN: Motion to adjourn, yes.
5 Do we have a second?

6 MR. BRANDT: Second.

7 THE CHAIRMAN: All in favor.

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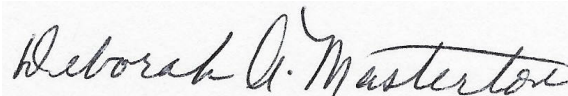
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C E R T I F I C A T E

I, DEBORAH A. MASTERTON, a Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings in the above entitled matter as taken stenographically by me at the time and place aforesaid.

I do further certify that I am neither a relative, nor employee, nor attorney, nor counsel of any of the parties to this action; and that I am neither a relative, nor employee of any such attorney or counsel; and that I am not financially interested in the action.

A handwritten signature in cursive script that reads "Deborah A. Masterton". The signature is written in black ink on a light-colored background.

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