

BRIDGEWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT

Regular Meeting
Tuesday, February 2, 2016
—MINUTES—

CALL MEETING TO ORDER:

Chairman Sweeney called the meeting to order at 7:45 pm in the Auditorium of the Somerset County Vocational and Technical School 14 Vogt Drive, Bridgewater, New Jersey 08807

OPEN PUBLIC MEETING ANNOUNCEMENT:

Adequate notice of this meeting has been given in accordance with the Open Public Meetings Act N.J.S.A.10:4-6. On January 25, 2016 proper notice was sent to the Courier News and the Star-Ledger and filed with the Clerk at the Township of Bridgewater and posted on the bulletin board in the Municipal Building.

Please be aware of the Zoning Board of Adjustment policy for public hearings: No new applications will be heard after 10:15 pm and no new testimony will be taken after 10:30 pm. Hearing assistance is available upon request.

Accommodation will be made for individuals with a disability, pursuant to the Americans With Disabilities Act (ADA), provided the individual with the disability provides 48 hours advance notice to the Planning Board Secretary before the public meeting.

However, if the individual should require special equipment or services, such as a CART transcriber, seven days advance notice, excluding weekends and holidays, may be necessary.

ROLL CALL:

Don Sweeney – present	Alan Fross – present
Pushpavati Amin – present	James Weideli, Alt. #1 – present
Paul Riga – absent	Dawn Guttschall, Alternate #2- present
Michael Kirsh – present	John Fallone Alternate #3 – present
Evans Humenick – present	Jeff Foose Alternate #4 - present
Beth Powers – present	

Others present: Board Attorney Larry Vastola, Board Engineer Thomas Forsythe, Board Planner Scarlett Doyle, Ann Marie Lehberger, Planning Secretary

MINUTES FOR APPROVAL:

November 17, 2015, Regular Meeting (*pending*)

November 24, 2015, Special Meeting (*pending*)

January 19, 2016, Reorganization and Regular Meeting (*pending*)

The foregoing minutes will be presented for Board consideration when completed. No action was taken.

MEMORIALIZING RESOLUTIONS:

None Pending

HEARING AND DELIBERATIONS:

QUICK CHEK CORP

Block 400 Lots 1 & 2

#14-033-ZB- Preliminary & Final Major Site Plan w/ Variances

TIME: 120=12/31/15

BRIDGEWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT
Regular Meeting
Tuesday, February 2, 2016
—MINUTES—

See attached Transcription dated February 2, 2016 prepared by: Latitisa Russell, C.C.R. of Schulman, Wiegmann & Associates, 216 Stelton Road, Suite C-1, Piscataway, NJ 08854.

The QuickChek application was carried to February 23, 2016 at 7:30 pm at The Bridgewater Raritan Middle School located at 128 Merriwood Road in the Auditorium with no additional notice required.

ADJOURNMENT:

It was the consensus of the Board to adjourn the meeting at approximately 10:30 pm.

Respectfully submitted,

Ann Marie Lehberger, Planning Secretary

BRIDGEWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT
PUBLIC HEARING

IN RE: QUICK CHEK CORP. *
Block 400 Lots 1 & 2 *
#14-033-ZB-Preliminary *
& Final Major Site Plan *
w/Variances *
- - - - - *

SCHULMAN, WIEGMANN & ASSOCIATES
CERTIFIED COURT REPORTERS
216 STELTON ROAD
SUITE C-1
PISCATAWAY, NEW JERSEY 08854
732-752-7800

1
2 TRANSCRIPT of the stenographic
3 notes of the proceedings in the above-entitled
4 matter as taken by and before LATTISA RUSSELL, CCR
5 #30XI00234100, RPR and Notary Public of the State
6 of New Jersey, held at the Somerset County
7 Vocational and Technical School, 14 Vogt Drive,
8 Bridgewater, New Jersey, February 2, 2016
9 commencing at 7:30 p.m.

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1 APPEARANCES:
2
3 DiFRANCESCO, BATEMAN, COLEY, YOSPIN,
4 KUNZMAN, DAVIS, LEHRER & FLAUM, P.C.
5 BY: WILLIAM ROBERTSON, ESQUIRE
6 15 Mountain Boulevard
7 Warren, New Jersey 07059
8 Counsel for the Applicant
9
10
11 BOARD MEMBERS:
12
13 Donald Sweeney, Chairman
14 Dawn Guttschall
15 James Weidele
16 Michael Kirsh
17 Evans Humenick
18 Alan Fross
19 Pushpavati Amin
20 Jeffrey Foose
21 Lawrence Vastola, Board Attorney
22 Thomas Forsythe, P.E. Board Engineer
23 Scarlett Doyle, PP, Township Planner
24 Ann Marie Lehberger, Secretary to Planning Division
25

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<p style="text-align: right;">Page 6</p> <p>1 - - -</p> <p>2 CHAIRMAN: Call to order the Tuesday,</p> <p>3 February 2nd, Bridgewater Township Board of Zoning.</p> <p>4 Adequate notice given in accordance with the Open</p> <p>5 Public Meetings Act. Please be aware of the zoning</p> <p>6 Board of Adjustment policy for public hearings. No</p> <p>7 new applications will be heard after 10:15 p.m. and</p> <p>8 no new testimony will be taken after 10:30 p.m.</p> <p>9 Hearing assistance is available upon</p> <p>10 request. Accommodations will be made for</p> <p>11 individuals pursuant to the Americans With</p> <p>12 Disabilities Act. Provided the individual with the</p> <p>13 disability provides 48-hours advanced notice with</p> <p>14 the planning department secretary before the public</p> <p>15 meeting. However, if the individual should require</p> <p>16 special equipment or services such as a cart</p> <p>17 transcriber, seven days advanced notice excluding</p> <p>18 weekends and holidays.</p> <p>19 Ann Marie, would you call the roll,</p> <p>20 please?</p> <p>21 BOARD SECRETARY: Ms. Amin?</p> <p>22 MS. AMIN: Here.</p> <p>23 BOARD SECRETARY: Mr. Kirsh?</p> <p>24 MR. KIRSH: Here.</p> <p>25 BOARD SECRETARY: Mr. Humenick?</p>	<p style="text-align: right;">Page 8</p> <p>1 MR. ROBERTSON: Thank you, Mr.</p> <p>2 Chairman. This is the continuation of the December</p> <p>3 15th hearing. When we concluded, Ms. Cofone was</p> <p>4 testifying. She had marginally concluded her</p> <p>5 testimony. She has a couple of brief comments and</p> <p>6 then we would offer her for cross-examination.</p> <p>7 CHAIRMAN: She's still sworn.</p> <p>8 - - -</p> <p>9 CROSS-EXAMINATION</p> <p>10 OF MS. COFONE</p> <p>11 - - -</p> <p>12 MS. COFONE: Good evening, board</p> <p>13 members and members of the public. I'm pretty much</p> <p>14 done. I pretty much concluded my testimony at the</p> <p>15 last hearing. I just wanted to make a brief</p> <p>16 statement about the Medici criteria. As we are</p> <p>17 here for a non-inherently beneficial use. I just</p> <p>18 wanted the record to be clear, it is my</p> <p>19 professional opinion that this application meets</p> <p>20 its burden of proof. Under Medici, we had to</p> <p>21 demonstrate to the board members that the site was</p> <p>22 particularly suitable, that there were positive and</p> <p>23 negative criteria satisfied and then reconcile the</p> <p>24 continued omission of the proposed uses from the</p> <p>25 township's zone plan and I think I certainly went</p>
<p style="text-align: right;">Page 7</p> <p>1 MR. HUMENICK: Here.</p> <p>2 BOARD SECRETARY: Ms. Powers?</p> <p>3 MS. POWERS: Here?</p> <p>4 BOARD SECRETARY: Mr. Fross?</p> <p>5 MR. FROSS: Here.</p> <p>6 BOARD SECRETARY: Chairman Sweeney?</p> <p>7 CHAIRMAN: Here.</p> <p>8 BOARD SECRETARY: Mr. Weidele?</p> <p>9 MR. WEIDELE: Here.</p> <p>10 BOARD SECRETARY: Mr. Fallone?</p> <p>11 MR. FALLONE: Here.</p> <p>12 BOARD SECRETARY: Ms. Guttshall?</p> <p>13 MS. GUTTSCHALL: Here.</p> <p>14 BOARD SECRETARY: Mr. Foose?</p> <p>15 MR. FOOSE: Here.</p> <p>16 CHAIRMAN: We're going to take a 30</p> <p>17 seconds, because we have a new member, that has to</p> <p>18 be sworn in by our attorney. Please bear with us.</p> <p>19 We'll be back in a moment.</p> <p>20 As you know, we're all here for the</p> <p>21 Quick Chek hearing. Mr. Robertson, we had finished</p> <p>22 up at our last meeting I believe what was the end</p> <p>23 of Ms. Cofone's testimony, but I'll let you tell us</p> <p>24 whether she's ready for questions or has more to</p> <p>25 say for us.</p>	<p style="text-align: right;">Page 9</p> <p>1 through all of the prongs that we need to</p> <p>2 demonstrate to the board at length at the last</p> <p>3 hearing and I think, you know and I had would just</p> <p>4 like to reiterate that the continued omission is</p> <p>5 due to the fact that the township does not want</p> <p>6 this use to proliferate the entirety of the C-3</p> <p>7 district, but rather this creates an opportunity</p> <p>8 for the township to grant use variance relief on a</p> <p>9 very site specific property and I testified at</p> <p>10 length as to the site suitability criteria at the</p> <p>11 last hearing, as well as the positive and negative</p> <p>12 criteria.</p> <p>13 I think that the board can continue to</p> <p>14 rely on the fact that the omission is largely due</p> <p>15 to the service stations that exist to the east of</p> <p>16 the circle acknowledging that there are gaps to the</p> <p>17 west of the circle and I think certainly the board</p> <p>18 could look to that for the reconciliation.</p> <p>19 So with that, that would conclude my</p> <p>20 direct testimony and if anyone from the board or</p> <p>21 the public has any questions, I'd be happy to</p> <p>22 answer them.</p> <p>23 CHAIRMAN: I have a couple questions</p> <p>24 for you, Christine. I want to turn first your</p> <p>25 comments about particular suitability since they</p>

1 are really at the crux of this use variance.
 2 You've argued that this site is particularly
 3 suitable for this proposed use and there were three
 4 or four aspects to that argument. One of which is
 5 that because there is no other such combined use
 6 nearby. I have to confess I'm having some trouble
 7 getting my head around this one. So bear with me
 8 as I try to explain my confusion and hope you can
 9 straighten me out.

10 As I get it, your logic is that you're
 11 applying for a use variance and one reason why you
 12 believe this board should grant the use variance is
 13 because there are no other such uses nearby. Isn't
 14 that because the zone does not allow this use?

15 MS. COFONE: That's a fair question and
 16 I think in addition to testifying to that, I also
 17 testified as to the frontage, the elevation.

18 CHAIRMAN: Right. We'll get to those.

19 MS. COFONE: Grade changes. I
 20 understand your point, it's not zoned for it. So
 21 of course, you are not going to have it in the
 22 area. If you can recall my testimony also that
 23 spoke to how Bridgewater treats service stations
 24 and the conditional use and the definition. I also
 25 testified to the fact that I felt that there is

1 certainly the board could take notice of the fact
 2 that the way Bridgewater regulates a service
 3 station has absolutely nothing to do with the
 4 business model Quick Chek intends to operate here
 5 on this site or has ever operated in the past.

6 The conditional use standards, as you
 7 recall my testimony when I talked about this use
 8 and what you're trying to prohibit or regulate,
 9 certain of those items were not ever present in any
 10 of Quick Chek's stores and that specifically dealt
 11 with the storage of vehicles or the working on
 12 vehicles with a light repair on vehicles. When you
 13 look at the definition of automobile station or
 14 gasoline station in the ordinance, it talks about a
 15 gasoline, kerosene or other lubricating oil or
 16 grease for operating motor vehicles is offered for
 17 the sale to the public and deliveries are made
 18 directly into the vehicles, including sales of
 19 accessories, greasing oil and light motor vehicle
 20 services on premises.

21 So in Bridgewater when you're talking
 22 about a service station, you're talking about
 23 somewhere where you're selling fuel, of course, but
 24 you're doing some light maintenance and working on
 25 cars. We don't work on cars here and you're not

1 talking about a place where you could get a fresh,
 2 ready, made-to-order salad or sandwich. So I think
 3 the fact that the omission of that from the zoning
 4 ordinance, the board can consider that and look at
 5 the fact that this creates an opportunity to
 6 provide this use in the area in such a way that
 7 doesn't have an impairment on the zone plan because
 8 we are not immediately similar to the way
 9 Bridgewater regulates those uses.

10 CHAIRMAN: Let me go back to my
 11 question. The logic here is, you're applying for a
 12 use variance and one reason why we should grant the
 13 use variance is because there are no other such
 14 uses nearby and that's because the use is not
 15 allowed. To me, that seems more than a little
 16 disingenuous.

17 I mean, according to that logic, you
 18 can find an empty lot in the middle of a
 19 residential zone and apply for a use variance to
 20 build a department store and tell us it's a
 21 particularly suitable site for a department store
 22 because there aren't any other department stores
 23 nearby.

24 MS. COFONE: I believe that argument is
 25 completely divergent from the testimony that I put

1 on the record I think a department store smack in
 2 the middle of a residential use is completely
 3 dissimilar to any of the tangible arguments that
 4 we've made. I think that's really a
 5 mischaracterization of my testimony at all. You
 6 can't even compare the two.

7 This is a commercial district. I think
 8 I specifically put up an exhibit that talked about
 9 at least eight or ten similar other gas stations in
 10 the area and how we were dissimilar to them. So
 11 for you to say that my testimony is disingenuous,
 12 we went through the effort of putting up an exhibit
 13 showing where other fueling opportunities were in
 14 the area. So I don't see anything disingenuous
 15 about that and I certainly didn't rely exclusively
 16 on the testimony that there were just -- I didn't
 17 make a net conclusion that there were no other
 18 options in the area.

19 What I did was, I testified to the
 20 fact, I believe, prohibition or the statement in
 21 the 22 corridor plan where it says gas stations
 22 were adequately represented, I testified that it
 23 was my professional planning opinion that the
 24 planning documents really deal with those stations
 25 that were essentially east of the 202/206 circle.

1 So I have to respectfully disagree. If you thought
2 my testimony was disingenuous, I certainly
3 apologize for that because I would never and have
4 never tried to be disingenuous in front of this
5 board. We actually tried to be forthcoming and put
6 together an exhibit that showed where the other
7 service stations are. So I stand by my testimony.
8 I don't think that it's disingenuous and I
9 certainly did not stand up here and try to take
10 credit for a gap in-service areas simply because
11 this corridor is not zoned for such.

12 CHAIRMAN: Let's move on to some of the
13 arguments you made to support your claim of
14 particular suitability.

15 Another of those arguments was the
16 grade change that exists on this property as you
17 move from west to east and I think, if I remember
18 your words correctly, you noted that that grade
19 change allows you to tuck the building and the
20 canopy into the site. As I recall from the
21 simulated photos that we looked at earlier on, at
22 least the tops or the top of the building will be
23 visible certainly from Route 22. I mean, the
24 entire building, I think, is visible from Route 22
25 and at least the top of the building is visible

1 from Route 28 and the response, I believe it was of
2 the engineer to a question by Mr. Fross was that at
3 night, the glow from the overhead lights would also
4 be clearly visible from Route 28. So I don't think
5 there is anything about the grade change that
6 exists on this property that serves to make these
7 buildings or this building and the accompanying
8 lights invisible to those that live nearby, is
9 there?

10 MS. COFONE: Correct. That's certainly
11 not -- that's not just my answer. It's not going
12 to be invisible and certainly Mr. Cahill nor myself
13 would ever use the words invisible. What we used
14 is, it would have a filtered view. We don't have
15 an obligation, even though we're a non-inherently
16 beneficial use to make sure our building is
17 invisible. There is a C-3 zoning district that
18 allows for a building that can stand 45-feet tall
19 and three stories. So we or any other application
20 that comes before the Planning Board or the Zoning
21 Board of Adjustment will not have an obligation to
22 make sure the building is invisible to the
23 neighbors. That's not the burden of proof. That's
24 not why we're here. That's not what the ordinance
25 requires. The grade change does allow for the

1 canopy to sit below the grade of the road and be
2 less visible. If you had an opportunity to go back
3 and listen to the transcripts or the tapes you will
4 hear words like, a filter or screened obscured
5 view. Nowhere in my direct testimony or that of
6 our site engineer did you hear either one of us use
7 the term invisible.

8 CHAIRMAN: Another of your arguments in
9 support of your claim that the site is particularly
10 suitable for this proposed application, proposed
11 use, is the fact that the site sits on Route 22 and
12 in fact, has a fairly-long frontage on Route 22.
13 How do you reconcile that argument with what the
14 appellate division had to say in the Stoupas v.
15 Edison Zoning Board case of 2015 and I quote, as
16 our Supreme Court has made clear merely being
17 located near a highway does not distinguish a
18 proposed site from any other property in the
19 vicinity of the highway and does not demonstrate
20 that the proposed site is particularly suitable for
21 the planned development.

22 MS. COFONE: Right. Again, another
23 fair question because my testimony was not based on
24 the fact that it's on Route 22. My testimony with
25 regard to the particular suitability for this use

1 talked about the fact that we had 900 feet of
2 frontage on Route 22.

3 My testimony was paired with that of
4 our traffic engineer that talked about with the use
5 such as the gasoline filling station that does not
6 realize an a.m. peak and a p.m. peak like an office
7 does, but rather a more steady stream of traffic
8 throughout the day that the gap offering that we
9 would have less of an impact because we have 900
10 feet of frontage and that allowed us to safely and
11 efficiently bring the traffic in consistently
12 throughout the day.

13 I'm very familiar with the Edison case
14 because I testified on it. So I'm extremely
15 familiar with that decision. The decision that the
16 Judge took exception to in my interpretation or my
17 review of that was the fact that in that case we
18 relied on the fact that it was particularly
19 suitable because it was on a major highway and it
20 had a lot of pass-by traffic. So the pass-by
21 traffic and the fact that there wasn't anything
22 unique about that particular piece of property and
23 here to differentiate, we talked about the 900 feet
24 of frontage and the fact that that allows for
25 proper gaps for a use that rather than a permitted

1 -- a use that's permitted in the zone that has more
2 typical peak hours something that has a more steady
3 stream of traffic throughout the day.

4 So I have to say the use of the roadway
5 map was completely dissimilar to how it was
6 utilized and how the testimony went in in the
7 Edison case.

8 CHAIRMAN: One last question on
9 particular suitability. If this site is, in fact,
10 particularly suitable for a convenience store and a
11 refueling station, that means that if we were to
12 enforce the zoning requirements and denied the use
13 variance, that would actually be less beneficial to
14 the general welfare than allowing the proposed use.

15 In other words, the surrounding
16 community would be better off if we were to grant
17 the use variance. I'm having a problem. How do I
18 reconcile that alleged benefit with the fact that
19 hundreds of neighbors clearly don't see any benefit
20 from the proposed use?

21 MS. COFONE: Because there is no test
22 that I am aware of that says the number of
23 neighbors that come out, just like in there were a
24 bunch of neighbors came out in support of an
25 application and they thought it was terrific, but

1 it wasn't great land use planning, I would imagine
2 the board wouldn't rely on that either, but the
3 sheer volumes and the numbers of neighbors that
4 come out either for or against an application
5 should really have no bearing on the board making
6 their decision. It should be based on -- I'm
7 sorry. There is no caselaw that says the more
8 people that come out, the more the board should
9 consider their arguments either for or against the
10 application and that the board is considering the
11 number of people that come out in support for or
12 against an application in their deliberations, that
13 that certainly improper criteria to judge an
14 application.

15 CHAIRMAN: And I am not implying that
16 just the number of people that come out and voice
17 their opinion is the appropriate test. But what
18 I'm questioning is, if this is suppose to accrue to
19 the general welfare, especially that of the
20 surrounding community, why don't people recognize
21 that?

22 MS. COFONE: Because supporters
23 generally don't come out and speak in favor of an
24 application and I can't speak for the neighbors why
25 they think this is going to be so detrimental to

1 their neighborhood. I can't make that decision for
2 them. I'm building a home in Rumson within walking
3 distance to a gasoline filling station. So I don't
4 understand the aversion. So I can't speak for them
5 and I don't see it and I don't think that's based
6 in any fundamental land use planning uses.

7 CHAIRMAN: Let's turn away from
8 particularly suitability for a moment and talk
9 about impacts on the zone plan. You reviewed
10 various planning documents and reports and you
11 repeatedly noted the master plan stated desire to
12 and I quote, promote the development of
13 underutilized commercial and industrial areas. You
14 also opine that the Quick Chek application meets
15 that objective. Let me read one bullet point from
16 last year's master plan reexamination report, which
17 was repeated verbatim in the master plan amendment
18 to the land use element. It, basically, did say
19 that an objective of the master plan is, quote,
20 encourage appropriate development of land use focus
21 areas in the township that will within the limits
22 of zoning and I'm going to repeat that. Within the
23 limits of zoning return underutilized land to
24 productive use, generate economic development
25 activity, diversify the municipal economic base,

1 create new employment opportunities and strengthen
2 the tax base. The question I've got is, does the
3 Quick Chek application fall within the limits of
4 zoning?

5 MS. COFONE: I would not read your
6 master plan to mean that that statement means that
7 the Township of Bridgewater is going to shut down
8 the grant of any further use variances because the
9 mechanism of the Zoning Board of Adjustment is to
10 grant variance relief. One of the main charges of
11 this board is to grant D variance relief. You're
12 the only board that has that power. So I think to
13 read that and infer from that that Bridgewater
14 Township is no longer open to the concept of
15 granting the use variances in appropriate
16 locations, I don't make that parallel. Just
17 because it says within the limits of zoning.

18 The limits of zoning empower you as a
19 board to grant use variances. In fact, it's one of
20 your jobs. That's one of the things that this
21 board does. So I would say within the limits of
22 zoning, there's talking specifically about also
23 granting variance reliefs. The limits of the
24 Zoning Board of Adjustment, one of your limits is
25 to interpret and grant variance relief from the

1 zoning ordinance.

2 CHAIRMAN: Okay. Thank you.

3 MS. COFONE: You're welcome.

4 CHAIRMAN: Does anyone else on the
5 board have a Question for Ms. Cofone? Ms. Amin?

6 MS. AMIN: I have a question regarding
7 the number of variances, use variances, that are
8 being sought by the applicant. There are four use
9 variances that have been sought. So in Edison, you
10 have spoken about the gas station and the
11 convenience store, but I didn't see too much about
12 the other two that are existing and is there any
13 justification for keeping those or not keeping
14 those? Like the house, is there any special reason
15 to keep it?

16 MS. COFONE: I talked about that
17 specifically in my direct testimony because if you
18 recall last time, you're correct, we have four use
19 variances and I talked about the farm stand and the
20 residential use and that they would be staying and
21 I indicated and Mr. Lamont and I know you were here
22 for his testimony, as well, you heard him testimony
23 to the fact that it's well known to us and I think
24 Ms. Doyle acknowledges in her review letter on this
25 application that the farm stand has somewhat of an

1 iconic notion to it in Bridgewater. So in the
2 interest of being a good corporate citizen and
3 being a good neighbor, we felt that we would keep
4 that there because we understood it was something
5 that the neighborhood was fond of.

6 However, we made it abundantly clear,
7 that if the application -- if that was not the case
8 and we misread that, we would be more than happy to
9 eliminate those uses as part of the application.

10 To the particularly suitability when I
11 talked about that, was that they existed in the
12 area and they have somewhat of a charm, if you
13 will, to them understanding that the board or the
14 neighborhood, if that was not the perception, that
15 they didn't have to stay. So we didn't want the
16 application to rise and fall on their staying
17 because it's not critical to the Quick Chek's
18 business model that they be maintained onsite.

19 MS. AMIN: So I understand, how do you
20 measure the iconic status of something because the
21 neighborhood has changed quite. A bit? The new
22 houses in that area have new people come moving in.
23 How much of the neighborhood really attaches to
24 that farm stand?

25 MS. COFONE: I'm not sure how much of

1 the neighborhood. I can appreciate your concern or
2 comment, but I can tell you that farm stands are
3 something that you see popping up all over from Red
4 Bank to Atlantic City. So I think it's a unique
5 type of use that offer something to the
6 neighborhood to pop in and get some fresh or
7 locally grown fruits or vegetables. So to the
8 extent that does provide some level of service that
9 you might not be able to have, it's kind of a neat
10 thing to have in your neighborhood, to pop into a
11 farm stand and buy some locally grown produce.
12 Personally, I think it adds an interesting element
13 to the project and to keep it there. But again, if
14 that were not the board's pleasure, this applicant
15 willing to eliminate it.

16 MS. AMIN: The house, is that a
17 historic location that might --

18 MS. COFONE: I don't think so.
19 Certainly not on the historic register.

20 MS. AMIN: So there is no reason to
21 keep those around?

22 MS. COFONE: Not really, no. They
23 don't have to stay and that was our testimony and
24 that was Mr. Lamont's testimony, that we would like
25 to keep them, but they don't have to be kept in

1 order for this project to be successful.

2 MR. WEIDELE: I need a little more
3 clarification on Mr. Sweeney's, on one of his
4 questions that he had earlier. I understand when
5 you're driving down 28 going west to east that when
6 you get during the winter, remember the slide shows
7 that we had, either the first meeting or the second
8 meeting, was that you will see the top of the gas
9 station, the pumps, the canopy.

10 Now as I recall, that on the one
11 picture or two slides before that during the winter
12 that when I asked a question at the meeting was
13 you're looking at the farm stand, you're looking
14 directly at the building, that the top of it, are
15 you looking at the whole building or just the top
16 because according to the slide that we saw, I'm
17 still confused from your answer to Mr. Sweeney on
18 how much of the building you're going to see from
19 28 because it's right on top of 28.

20 MS. COFONE: The fence will obscure the
21 building. There's a fence there, a solid fence. I
22 can't testify and tell you that you're not going to
23 see the building.

24 MR. WEIDELE: How much of the building
25 are you going to see? I want to know.

1 MS. COFONE: It makes me uncomfortable
2 that we're even having a discussion about not being
3 able to see the building because I think it's
4 unfair to the applicant to try to hold us to a
5 standard that you can't see our building because
6 it's a commercial zone and any as-of-right
7 developer that came in and put an office building
8 up could go up 45 feet and three stories. So
9 coming down Route 22 or 28 or from your homes you
10 would see that building much more than you would
11 see what we're proposing and there is no obligation
12 for this or any other applicant to make the
13 building invisible. So I just -- I think that
14 that's an unfair -- it's an unfair presumption that
15 this applicant has any burden to demonstrate that
16 the building is not seen at all.

17 MR. WEIDELE: I don't think it's
18 unfair. All I want to know how much from 28 of the
19 building we would see. That's it.

20 MS. COFONE: I think certainly not the
21 entirety of the building.

22 MR. WEIDELE: Still doesn't answer the
23 question. How much of the building are they going
24 to see because you're saying the canopies, you'll
25 see the top of the building.

1 and again, it's not -- it's just not our burden of
2 proof. I don't think we should be looking to
3 standard of proof of the building to be invisible.
4 I think --

5 MR. WEIDELE: I didn't ask for it to be
6 invisible.

7 MS. COFONE: You have a very obscured
8 view. You see trees in there and that's the top of
9 the fence line and it's a brick building. It's an
10 attractive building. I went through at length the
11 architectural components. It's a traditional,
12 classic, red brick look. It's going to be a very
13 handsome-looking building. So I don't -- I don't
14 particularly find any view that's depicted on the
15 screen in A-14 that's offensive at all.

16 MR. VASTOLA: Isn't A-15 the same view
17 in winter?

18 MS. COFONE: I did say A-14. It's A-15
19 is the same view, but it's in the winter.

20 MR. VASTOLA: So that's A-15?

21 MS. COFONE: You're right. A-15. As
22 you can see it's clearly winter because there's no
23 leaves on the trees. So this is definitely a
24 winter view that will show and there is no leaves
25 on the trees there.

1 MS. COFONE: If you can pull that
2 exhibit up from the view of the farm stand?

3 MR. WEIDELE: The farm stand is to the
4 left and where your pointer is, that's the new
5 building?

6 MR. ROBERTSON: Identify the exhibit,
7 for the record.

8 MS. COFONE: What is up on the board is
9 Exhibit A-14, which was marked into evidence on
10 November 17th of 2015. You can see the farm stand,
11 the farm sign. The road frontage that you see on
12 the exhibit is Route 28. There is a very thin
13 black line, if you follow my pointer, which
14 represents the top of the fence. So you will have
15 a view of the top of the building. Because that's
16 going to be a solid fence, what you won't have view
17 of is any of the parking and the activity and the
18 fuel filling that's going on onsite. That's going
19 to be obscured from view. This is going to be,
20 again, a very filtered and obscured view of this
21 building.

22 Now this building, I believe, is about
23 26 feet tall, 26 or 27. If it were a permitted use
24 in the zone, again it could be up to 45. So you're
25 going to see it a lot more than you would see this

1 MR. KIRSH: Two areas of questions. So
2 on December 15th, I'm going to page 107 of your
3 testimony where you speak about a gap in service
4 stations being three miles.

5 MS. COFONE: Give me a second. I'll
6 grab my testimony and get to that page.

7 MR. KIRSH: I'm not going to go line by
8 line. I want to speak about the general idea that
9 there is a gap in service stations of three miles.

10 MS. COFONE: Yes.

11 MR. KIRSH: Is there a standard for
12 what an acceptable gap in service is?

13 MS. COFONE: I'm not aware of any.

14 MR. KIRSH: Three miles is too much,
15 right?

16 MS. COFONE: It just exists as a
17 statement of fact. Not really a standard.

18 MR. KIRSH: Is two miles better? Is
19 one mile better? Is a service station every 55
20 feet better? Like, what is the -- what is the
21 standard for an acceptable gap in service versus an
22 unacceptable gap in service?

23 MS. COFONE: It's just -- I don't think
24 it's about rather a level of service. I think it's
25 about not proliferating the zone. If there's

1 certainly not a proliferation of service stations
2 west of the circle. So it's really rather than
3 consider the testimony as a standard, I would
4 consider it more of a statement of fact and the
5 fact that service stations, let alone fueling
6 stations, retail fuel here that have fresh deli
7 options are not present in that corridor west of
8 the circle.

9 MR. KIRSH: I'm only worried about the
10 service station part because again, the Chairman
11 had the whole dialog about the reason why this use
12 is not evident here. You know, I'm really
13 struggling for understanding, you know, why a gap
14 in service of three miles is a part of, you know --
15 is a part of particular suitability.

16 MS. COFONE: If you go back to the 22
17 corridor plan that was done in 2010, there was a
18 finding in that plan that service stations were
19 adequately represented in the corridor and I think
20 that from a planning point of view that was
21 important to at least look at that and if you look
22 at what is marked -- so if you look at A-25, which
23 is the exhibit that was prepared by Bohler
24 Engineering in conjunction with my office that
25 showed the area service stations on 22. What it

1 did was it showed that they exist predominantly to
2 the east of the circle and that west of the circle
3 they really did not exist or proliferate. So
4 perhaps when that 22 corridor study was done, the
5 statement in there was really meant to speak to the
6 service stations east of the circle and not west of
7 the circle because there really is a very
8 substantial differentiation between their presence
9 east and west of the circle.

10 MR. KIRSH: I guess this is the part
11 I'm really struggling with. Clearly, a gap in
12 service of many, many miles is a problem because
13 cars can breakdown. People can run low on fuel.
14 In a three mile period -- there is no standard
15 here, so I'm trying to think logically. A gap of
16 three miles, you know, to me is not a horribly
17 large distance.

18 MS. COFONE: Well, I can appreciate
19 that argument. However, the only thing I would say
20 is that the gap for anything like Quick Chek with a
21 retail fuel and fresh prepared foods is far larger
22 than three miles. The gap that I talked about --

23 MR. KIRSH: Yes or no? On the same
24 site, but in Branchburg in very close proximity is
25 gas stations that oppose each other on the highway

1 and a Quick Chek. So while you are correct on the
2 same site there is a gap. In very close proximity,
3 I don't think there is a gap at all.

4 MS. COFONE: In very close proximity
5 there is nothing like this that has retail fuel
6 together with fresh prepared food items. I was at
7 both of those other service stations and neither
8 one of them have any kind of substantial offerings
9 for food services.

10 MR. KIRSH: We'll agree to disagree
11 then. On another one, page 102, talking about
12 particular suitability. Your comment and I'll read
13 for everyone's benefit. The concept of the
14 particular suitability is somewhat elusive in that
15 it is not defined in the land use law and you know,
16 I agree with that statement.

17 MS. COFONE: Yes, I gave a seminar on
18 that at the Institute of Continuing Legal
19 Education.

20 MR. KIRSH: That's why we're here
21 because if there was a standard, we can apply it
22 and we'd be done in half a meeting. So my question
23 is this, did you consider other sites in the
24 general area?

25 MS. COFONE: I am not sure if Quick

1 Chek looked at other sites. However, there is a
2 case in 2013, Price v. Himeji and it was a specific
3 finding in that case that the ruling out of other
4 sites was not required to meet the burden of proof
5 for the granting of a use variance. So while Quick
6 Chek I would have to venture to say did consider
7 other sites. I'm really not the witness to answer
8 that, there is no rationale nexus between them
9 doing in that and meeting their statutory burden of
10 proof.

11 MR. KIRSH: Okay. I hear what you're
12 saying, but I think when you're coming into a
13 community and asking for a use variance that will
14 last in perpetuity, there is a reasonable
15 expectation that that is as close to an ideal
16 location as possible. You know, when everyone came
17 into this auditorium, they chose a seat and for
18 whatever reason they chose one seat over another,
19 because for whatever they were looking for, whether
20 they wanted to be on an aisle or wanted to be near
21 an exit, this seat was particularly suited for
22 their use.

23 You know, I guess in my mind whether --
24 you know, when we're -- this is dramatic action
25 that the applicant is asking for. I believe that a

1 reasonable expectation is a discussion of other
2 potential sites and why this one is our favorite.

3 MS. COFONE: Well, other sites would
4 require similar variance relief because the
5 corridor is zoned C-3. So even if we looked at
6 other sites, they would require a variance relief,
7 as well. So rather than and what the Price v.
8 Himeji case guided you to was that not to look at
9 what makes other sites inappropriate, but what
10 makes this location appropriate. So that's where
11 we focused our testimony. We did not focus our
12 testimony on knocking out other sites because
13 that's really not the statutory test or burden of
14 proof that we're asked -- or that you're asked to
15 vote on really.

16 MR. KIRSH: I would argue that you are
17 focused on suitability and I'm looking here at a
18 statement that says particular suitability and in
19 my mind particular suitability, a portion of that
20 because again, this community, if this application
21 is granted, will have this location, you know,
22 forever, basically.

23 So I'm really troubled that I haven't
24 heard enough conversation about particular
25 suitability. Like, this is the greatest location

1 in this three mile alleged gap in service and that
2 we'd be foolish to even consider -- we'd be foolish
3 to deny this because there is no better solution.

4 MS. COFONE: Well, if you go back and
5 look at all my testimony on the particularly
6 suitability and you consider the 900 feet of
7 frontage, the grade change and ability to obscure
8 it, every one of those things make it a stronger
9 case. Perhaps no one of them together would win
10 the day, but when you put it all together, in my
11 opinion you have a very compelling case for
12 particular suitability.

13 MR. KIRSH: It seems to me like you
14 have used the description of this land as your
15 argument for its particular suitability.

16 MS. COFONE: Thank you. That's exactly
17 what we're supposed to do.

18 MR. KIRSH: But that doesn't cut
19 mustard for me.

20 MS. COFONE: But it does, though. But
21 under the land use law on particular suitability,
22 that is exactly what you are supposed to do. In
23 fact, it has to be. When the Edison case
24 invalidated us on particular suitability, it
25 knocked us for not doing that. It said you didn't

1 take anything about this site and say that the land
2 here is particularly suitable. You just said the
3 corridor that it exists in given the excellent
4 regional highway access and the average daily
5 traffic that comes through it makes it suitable.
6 So in that case, we were not sustained because we
7 didn't rely specifically on the land.

8 The concept of particular suitability
9 is not about looking at other sites that are less
10 suitable. It's about looking at and walking
11 through which I think I did pretty carefully the
12 land. So I'm actually very encourage to hear you
13 say that.

14 MR. KIRSH: I feel as though you have
15 made a circular argument. It's as though I
16 described my shirt is blue and then I say, I'm
17 wearing a blue shirt. It's a circular argument.
18 It doesn't lead -- in my mind it doesn't lead to
19 answering the question of particular suitability.

20 MS. COFONE: Okay.

21 CHAIRMAN: Anyone else? John Fallone?

22 MR. FALLONE: I'd like to get back to
23 the height of the building in that winter view, if
24 you could.

25 MS. COFONE: Can you bring 15 back up,

1 please?

2 MR. FALLONE: You showed that black
3 line saying that's the top of the fence. From
4 testimony, I think the parking lot elevation is at
5 135 and it's a six-foot fence. That would put the
6 fence at 141. I think the building, the top of the
7 building, is at 162, which leaves 21 foot
8 difference between the top of the building and the
9 top of the fence.

10 MS. COFONE: I'm sorry. I couldn't
11 hear the last part.

12 MR. FALLONE: I'll go through it again.
13 The parking lot was at 135 elevation and it's a
14 six-foot fence. That puts the top of the fence at
15 141 and the top of the building is 162. So that's
16 a 21 foot difference, the top of the fence to the
17 top of the building. I'd like you to explain that
18 difference.

19 MS. COFONE: I just had an opportunity
20 to speak with our site engineer. He explained to
21 me and I think this was part of his direct
22 testimony, you're looking -- when you're standing
23 on the street or you're at an angle and you're
24 looking up, there is a grade change elevation of 30
25 feet. So when you're looking at this, you're

1 looking at it on a diagonal up because you're
2 standing 30 feet essentially below the site. So
3 that's why you see the top of the building in the
4 way that you do because of that grade change.

5 MR. FALLONE: Are you saying grade from
6 where that picture was taken was 30 feet lower?

7 MS. COFONE: Our engineer says it's
8 more like 21. It's not 30. It's more like 21 feet
9 that you're looking up on a diagonal at the site.

10 MR. FALLONE: I have the road elevation
11 at that point at about 121.

12 MS. COFONE: 120.

13 MR. FALLONE: Someone is shaking there
14 head yes. So 121? Okay. So it's a slight
15 difference because of the angle?

16 MS. COFONE: Yes.

17 MR. FALLONE: Thank you.

18 MS. COFONE: You're welcome.

19 CHAIRMAN: Any other questions? Ms.
20 Amin?

21 MS. AMIN: In your last testimony you
22 had mentioned that there are several gas stations
23 towards the east side of this property beyond the
24 202 intersection. I need to find out from you how
25 many gas stations are there on the west side of

1 this particular property within, like, maybe, five
2 miles?

3 MS. COFONE: Three. I think there's
4 about three.

5 MS. AMIN: So if someone is
6 traveling --

7 MS. COFONE: On the west side, the same
8 side of the highway, two of them on the other side
9 of the highway. So I think it's only one on the
10 same side of the highway.

11 MS. AMIN: So if someone is not going
12 to travel beyond 202 intersection and they are
13 working in one of those office buildings, MetLife
14 or whatever else, they don't want to go beyond 202,
15 then this becomes a convenience for them?

16 MS. COFONE: It does, yes.

17 MS. AMIN: The other question I have
18 for you is, how many gas stations does this
19 particular area open 24 hours, like, beyond 10
20 o'clock, beyond 11 o'clock if someone is traveling
21 at midnight, how many open?

22 MS. COFONE: I don't know if any of
23 them are open.

24 MS. AMIN: Then that would be in
25 consideration that this is 24 hours.

1 MS. COFONE: Yes, and it creates an
2 opportunity for someone to get off hours, yes.

3 MS. AMIN: If you are traveling from
4 the west to the east direction, are they left
5 U-turns for you to fill up, gas stations, 202 and
6 come back and come back to your office wherever,
7 you are making two U-turns.

8 MS. COFONE: I believe our traffic
9 engineer provided testimony about the circuitous
10 nature of those turning movements and how they were
11 inconvenient. So can it be done? Sure. You could
12 do it. Is it immediately convenient to do it?
13 Probably not.

14 MS. AMIN: That's it. Thank you.

15 MS. COFONE: You're welcome.

16 CHAIRMAN: Scarlett, I think you had a
17 question?

18 MS. DOYLE: I do. There are, as noted,
19 more than one. There are four use variances and
20 I'm going to ask you two questions and then you can
21 answer them. I'm not going to ask them one at a
22 time.

23 The first question, the first issue the
24 question is, in order for the board to make an
25 informed decision on a use variance they must have

1 information that would show that there is
2 particular suitability and there are special
3 reasons and there is no impairment to the zone plan
4 and the zoning ordinance.

5 The first thing I would like you to do
6 is talk about the house because I haven't heard --
7 you have to have a position. What that position
8 is, the board has to have data on which to make a
9 decision.

10 The second question that you can answer
11 that, also after that is, you have in many of the
12 questions focused on the gasoline station portion,
13 but there are four variances and the food service
14 is another variance and I would appreciate your
15 talking about that with respect to the particular
16 suitability, particularly in light of the fact that
17 we have Fox Chase at the intersection of 22 and
18 Milltown Road, which is due and it has been
19 approved for restaurants and fast food. So if you
20 would expand on that, I think that would be
21 something that the board would find helpful.

22 MS. COFONE: Sure. I'll talk first
23 about the house. As we said, previously it was not
24 integral to the application, but I do think that
25 the house creates an opportunity for the board

1 providing various different housing types and
 2 different modes of housing and different forms of
 3 housing is certainly an opportunity, a diversity of
 4 housing stock that's certainly beneficial to a
 5 community. So having this house here next to the
 6 farm stand certainly would allow for the town to
 7 continue to allow for this house at this location.
 8 So I see — I see no detriment. It's existed here
 9 for many years. To my knowledge there's been no
 10 negative impacts associated with this. It's not
 11 often that the board has the opportunity to
 12 consider a use variance that has existed in the
 13 community for so long. Here you have the
 14 opportunity to vote on the retention of the house
 15 knowing that it has had no substantial and negative
 16 impacts to this neighborhood. So I think that
 17 allowing it to continue creates no adverse
 18 residential — adverse impacts.

19 As far as the food use, allowing it to
 20 exist on the site, we will not have any access to
 21 this site off of 28. So we are certainly not going
 22 to have any competition with any of those existing
 23 or approved uses in the 28 corridor now. So we
 24 will only have access to 22. So as far as this use
 25 having a negative impact on anything that exists in

1 the 28 corridor that exists with access to the 28
 2 corridor, I don't think there is going to be an
 3 issue with us having a negative impact on that and
 4 it creates an opportunity for the co-mingled trip
 5 and the synergistic use with the retail fuel. So I
 6 think that for those reasons it's certainly
 7 appropriate to allow the food use here, as well.

8 MS. DOYLE: Perhaps, Mr. Chairman, if I
 9 might expand on that for one brief moment?

10 MR. VASTOLA: I think you should be
 11 sworn.

12 - - -

13 SCARLETT DOYLE, after having
 14 been first duly sworn, testified as follows:

15 - - -

16 CHAIRMAN: Give us your name,
 17 professional address and your position, please.

18 MS. DOYLE: My name is Scarlett Doyle.
 19 Address is 81 Woodchurch Road, Flemington, New
 20 Jersey. I'm the municipal township planner and I
 21 appreciate the comment with respect to Route 28,
 22 but the Fox — and I didn't — and I apologize for
 23 not mentioning the Fox Chase project, the one that
 24 has the fast food stores and the restaurants is
 25 located 22 just west of you at Milltown Road. It's

1 not on 28. It's on 22. So I didn't make that
 2 clear. Maybe, you could say why — again, why a
 3 food store, which is not a convenience store
 4 because you don't quite meet the standards for that
 5 definition, why a food store would be appropriate
 6 and particularly suited when you talked about gaps
 7 for fueling stations, but perhaps you also need to
 8 talk about that for the food store since it is an
 9 independent use variance.

10 MS. COFONE: It's a food store and I
 11 understand that's how you're clarifying it because
 12 we don't need your definition of convenience store.
 13 Your definition of convenience store in Bridgewater
 14 would require us to be 5,000 square feet or less.
 15 Because we're over 5,000 square feet, you're
 16 considering us to be a food store.

17 So I think, though, because we do offer
 18 convenience items that we are somewhat different
 19 than the uses that were approved over at the Fox
 20 Chase project and I don't think that there is
 21 anything similar in that project to our project.
 22 They are more fast food and just restaurants as
 23 opposed to the offerings here, which are more
 24 retail and general convenience items.

25 MS. DOYLE: I just have to put on the

1 record that I understand what the planner has said
 2 and she very well in the event — in the end of
 3 time be correct, but 90 percent of that project is
 4 not rented yet. It's just coming on board. So we
 5 don't know what we will be getting, but in the end
 6 she may or may not be correct.

7 CHAIRMAN: Thank you, Mr. Vastola did
 8 you have a question?

9 MR. VASTOLA: Would you agree that the
 10 character of the development of Route 22 changes
 11 once you get west of the circle?

12 MS. COFONE: Yes.

13 MR. VASTOLA: Thank you.

14 CHAIRMAN: Anyone else on the board
 15 with a question for Ms. Cofone? I see no response.
 16 Typically, what we would do at this point is open
 17 up to questions from the audience. I would like to
 18 do something a little bit different. Instead, I
 19 would like to call Scarlett Doyle to testify.
 20 Scarlett, you're already under oath. Ms. Cofone,
 21 thank you very much.

22 MS. COFONE: You're welcome.

23 - - -

24 DIRECT EXAMINATION
 25 OF MS. DOYLE

1 - - -
2 **CHAIRMAN:** Scarlett, in our review of
3 this variance application one of the issues we have
4 to consider is the negative criteria, which
5 requires an applicant to prove that the use
6 variance can be granted without substantial
7 detriment to the public good and will not
8 substantially impair the intent and purpose of the
9 zone plan and the zoning ordinance. I'm hoping,
10 Scarlett, that you can help the board better
11 understand the intent and purpose of the zone plan
12 as it specifically relates to this piece of
13 property in the C-3 zone.

14 As Ms. Cofone noted, wasn't there a
15 master plan study of the Route 22 corridor a few
16 years ago?

17 **MS. DOYLE:** Yes, sir. There was.

18 **CHAIRMAN:** As a result of that study,
19 didn't the governing body expand the list of
20 permitted uses in the C-3 zone along the Route 22
21 corridor?

22 **MS. DOYLE:** It did.

23 **CHAIRMAN:** Did the additional permitted
24 uses include either convenience stores, retail food
25 operations or refueling stations?

1 **MS. DOYLE:** In the C-3 zone, Mr.
2 Chairman?

3 **CHAIRMAN:** Yes.

4 **MS. DOYLE:** It did not.

5 **CHAIRMAN:** So the governing body chose
6 not to permit these uses in these zone along the
7 Route 22 corridor. Now at the same time has there
8 been any indication that the governing body is
9 aware of or has even perhaps tried to accommodate
10 the trend we see today to combine convenience
11 stores with refueling stations? What I'm thinking
12 about here is, has the governing body done anything
13 to rezone perhaps another piece of property
14 fronting on a highway from a zone that did not
15 allow these uses to a zone that would allow these
16 uses? Has the governing body done anything like
17 that?

18 **MS. DOYLE:** Yes, it has.

19 **CHAIRMAN:** But not in this zone? Not
20 in the C-3 zone in the Route 22 corridor?

21 **MS. DOYLE:** That's correct.

22 **CHAIRMAN:** During her testimony Ms.
23 Cofone suggested that there is a difference between
24 a service station and the refueling station that is
25 part of Quick Chek proposal, does this distinction

1 really make any difference in the C-3 zone along
2 the Route 22 corridor?

3 **MS. DOYLE:** I don't understand what you
4 mean by distinction. The service station
5 definition is a larger, more encompassing
6 definition which includes not only refueling, but
7 changing tires, changing batteries, those types of
8 services. The application here is simply for
9 refueling and if that answers your question, I'm
10 not certain.

11 **CHAIRMAN:** Let me put it a different
12 way. Neither the retail sale of gasoline or the
13 different services provided by a service station,
14 neither of those are allowed here in the C-3 zone
15 on 22; is that correct?

16 **MS. DOYLE:** That's true.

17 **CHAIRMAN:** If you look at the
18 development and this I think gets back to what
19 Mr. Vastola had in mind, if you look at the
20 development that's taken place along Route 22,
21 there is a huge difference between what you find
22 around this site and what you find further east.
23 Around the site there are corporate campuses,
24 office buildings, banks and so forth while to the
25 east there is a much more intense development

1 dominated by auto dealerships, gas stations,
2 convenience stores, restaurants and strip malls.
3 None of which are found here in the C-3 zone. In
4 your opinion is this difference just happenstance?
5 Is it random happening or does it reflect the
6 intent and purpose of our zone plan with respect to
7 this C-3 zone?

8 **MS. DOYLE:** At this point I really
9 think that I should make the distinction between
10 the master plan and the zoning ordinance. The
11 master plan is a planning board document. It is
12 not an authority. The authority comes from the
13 council. The township council decides what the
14 rules are in terms of adopting a zoning ordinance.

15 Now in the case of the master plan, the
16 master plan can suggest or it's a recommendation
17 document. It can -- it will give this document to
18 the council. The council will review it and they
19 have a couple of choices. They can put it on the
20 table and say thank you very much. I'm not
21 interested. As I said, the master plan is not a
22 document of authority. The council is the body
23 with the authority. So it can say I'm not
24 interested. I'm not going to change anything.

25 On the other hand, the council may say

1 I like a portion of what the master plan recommends
2 and I do not want the other portion. We're going
3 to pass an ordinance that relates to what we
4 prefer. We are the elected bodies and we have the
5 responsibility of answering to our residents. Or
6 the council can say we like the entirety of the
7 master plan and we will adopt an ordinance in
8 concert with the recommendation.

9 In the case of the master plan that was
10 recommended to the counsel and which appears to
11 have been through their ordinance changes is the
12 campus style. The C-3 zone is intended to portray
13 a campus-style appearance, relief from the density
14 that you see elsewhere. I'm not speaking about
15 particular suitability. I'm talking now about what
16 the council decided when they passed it. Did they
17 have an opportunity? Of course, they had an
18 opportunity to modify that. They have done that.
19 On Route 202 they have a convenience store and a
20 fueling station. They didn't do it here. That's
21 all I can tell you. They did not do it here.

22 CHAIRMAN: Thank you very much.
23 Mr. Robertson, any questions for Ms. Doyle?

24 - - -

25 CROSS-EXAMINATION

1 OF MS. DOYLE

2 - - -

3 MR. ROBERTSON: Ms. Doyle, you
4 mentioned the Route 22 corridor study. That was
5 actually study in April 2010; is that correct?

6 MS. DOYLE: 2009 or 2010. It was
7 started about that time.

8 MR. ROBERTSON: Were you a participant
9 in that corridor study?

10 MS. DOYLE: I was.

11 MR. ROBERTSON: The corridor study was
12 specifically and directly related to the Route 22
13 corridor?

14 MS. DOYLE: It was.

15 MR. ROBERTSON: The reason that the
16 township undertook a study of the Route 22 corridor
17 was because of underutilized properties along that
18 corridor?

19 MS. DOYLE: Underutilized properties
20 was one and the other was to revitalize buildings
21 that may have not been rented quickly and could be
22 more efficiently and economically advantageous to
23 the town to have activity in those buildings.

24 MR. ROBERTSON: So as far back as 2010
25 the township planning board, the township committee

1 were aware that there was a large vacancy problem
2 along Route 22 corridor, correct?

3 MS. DOYLE: No, I would not say a large
4 vacancy problem. The reason why I won't say that
5 is because there are large tracts. The tracts are
6 a minimum size of five acres. If they thought it
7 was a large vacancy problem, they might have made
8 other choices. The governing body decided that on
9 Route 22 corridor, which has many different zones
10 that they would address each zone differently. In
11 some cases, they added uses and some cases they
12 removed uses. The objective was to stimulate an
13 economic vitality.

14 MR. ROBERTSON: To a zone which needed
15 stimulation, I guess?

16 MS. DOYLE: That's correct.

17 MR. ROBERTSON: As I reviewed -- I have
18 reviewed the corridor plan and it actually -- it
19 identifies the goals and objectives of the Route 22
20 corridor and one of the those is to enhance and
21 increase tax ratables through diversity of
22 high-value uses. That was one of the goals?

23 MS. DOYLE: That's correct.

24 MR. ROBERTSON: Another goal was to
25 support existing economic anchors and encourage

1 reinvestment into existing facilities, correct?

2 MS. DOYLE: That's correct.

3 MR. ROBERTSON: Another goal was to
4 adjust to contemporary needs of commerce and
5 Bridgewater residents, correct?

6 MS. DOYLE: If you're reading from it,
7 yes. You're stretching my memory here.

8 MR. ROBERTSON: Okay. Also and if I
9 told you it also indicates to enable more
10 flexibility in the development context and to
11 promote economic activity in appropriate locations,
12 would that refresh your recollection as being one
13 of the goals?

14 MS. DOYLE: It is.

15 MR. ROBERTSON: And to offer building
16 design guidelines when appropriate, is that a goal
17 as well, if you recall?

18 MS. DOYLE: That's true.

19 MR. ROBERTSON: The corridor plan again
20 at page 13 again makes the comment that as noted
21 previously the viability of various uses will
22 almost certainly evolve in coming years which is
23 the main reason this plan advocates allowing
24 flexibility in the zoning regulations within the 22
25 corridor. Do you recall that as being one of the

1 reasons and goals for the 22 corridor study?

2 MS. DOYLE: Would you repeat that
3 again, please?

4 MR. ROBERTSON: On page 13 the study
5 indicates it has noted previously the viability of
6 various uses will almost certainly evolve in coming
7 years, which is a main reason this plan advocates
8 allowing flexibility in zoning regulations within
9 the Route 22 corridor.

10 MS. DOYLE: I'd like to explain that.
11 As I indicated, Route 22 corridor has several zones
12 in it and that plan did accomplish that by adding
13 medical uses in certain areas, by adding hotel uses
14 where hotels were not originally proposed, by
15 shifting things so that -- shifting zoning
16 standards so that it did accomplish what was being
17 sought as an objective. So although it's an
18 objective which appears it's going forward, it was
19 really designed to say that's why we're changing
20 the ordinance and we substantially changed that
21 ordinance including making the interchange at
22 Chimney Rock Road, totally rezoning that to
23 accomplish those goals that were there. So it's
24 not necessarily going forward so much as it is
25 justifying the master plan that was presented.

1 MR. ROBERTSON: The corridor plan also
2 talked about diversification of the types of uses
3 and that page 14 it said that the development
4 enhancements to underutilized properties will
5 benefit the residents by increasing the township
6 tax base. Was that a consideration or concern of
7 the township?

8 MS. DOYLE: Yes.

9 MR. ROBERTSON: It went on to say that
10 diversifying its commercial portfolio and
11 strengthening its economy will help Bridgewater
12 protect against dramatic future changes. That was
13 another concern at that time?

14 MS. DOYLE: Yes. The hint to that is
15 not terribly evident is the interchange of Chimney
16 Rock Road and Route 22, where we now have coming
17 Whole Foods. We have 200,000 square feet of retail
18 Jared -- not Jared. Other jewelry stores, the
19 container box. A very large array of retail and
20 residential use for underutilized land at this site
21 which we felt was underutilized at the time.

22 MR. ROBERTSON: The corridor plan also
23 talked about the C-3 office and service zone, did
24 it not?

25 MS. DOYLE: It does.

1 MR. ROBERTSON: In fact, it
2 specifically at page 16 says that it is suggested
3 that the C-3 zone regulations be amended to permit
4 additional uses to improve business offerings in
5 the Route 22 corridor. That would be the C-3 zone
6 that we're talking about now, correct?

7 MS. DOYLE: Yes. I believe it also
8 does mention that campus style. I want to make
9 sure that's -- and it does have assisted living and
10 other uses that we felt was appropriate for a
11 campus appearance. In other words, a large
12 setback, low aspect, in terms of activity on the
13 site.

14 MR. ROBERTSON: But it indicates in
15 allowing new complementary uses would broaden
16 opportunities for property owners and promote
17 diversification of uses in the corridor and by
18 extension the township's tax base, correct?

19 MS. DOYLE: Well, yes, it does and I
20 believe that again the intent of that document was
21 to justify the document and explain what the
22 objectives were in the creation of that document.

23 MR. ROBERTSON: That document also
24 suggested some recommended design guidelines.

25 MS. DOYLE: It did.

1 MR. ROBERTSON: Again, it restates
2 certain recommendations applicable to the Route 22
3 corridor as coming from the township's master plan
4 and in fact, the master plan, itself, recommends
5 amendments to the zoning ordinance and map that
6 would implement the land use plan including
7 permitted uses, bulk regulations and site plan
8 subdivision standards and to promote the
9 development of underutilized industrial and
10 commercial uses that complement the variety of uses
11 within the township; is that correct?

12 MS. DOYLE: That is correct and that
13 was accomplished in that report.

14 MR. ROBERTSON: At least to my view
15 there is a theme that runs through the Route 22
16 corridor and that has to do with the economic
17 viability of the entire Route 22 corridor and the
18 underutilization of certain properties along that
19 corridor, correct?

20 MS. DOYLE: Yes.

21 MR. ROBERTSON: Or would you agree?

22 MS. DOYLE: I agree with that.

23 MR. ROBERTSON: That is now almost six
24 years ago and subsequent to that corridor study the
25 township conducted a reexamination of April 2015;

1 is that right?

2 MS. DOYLE: We have had many. Yes,
3 there was one in 2015. You're talking about the
4 2002 study.

5 MR. ROBERTSON: No. I was talking
6 about the periodic reexamination report that I have
7 a date of April 27, 2015 as the date that it was
8 adopted.

9 MS. DOYLE: May I take a look at that?

10 MR. ROBERTSON: Sure. I'm sorry.

11 MS. DOYLE: Yes, thank you.

12 MR. ROBERTSON: In fact, the master
13 plan reexamination references the Route 22 corridor
14 study and again, indicates that the goal was to
15 encourage appropriate development of land use that
16 will return underutilized land to productive use,
17 generate economic development activity, diversify
18 the municipal economic base, create new employment
19 opportunity and strengthen the tax base. So that
20 summarizes the Route 22 corridor plan, correct?

21 MS. DOYLE: Partially.

22 MR. ROBERTSON: The preexamination plan
23 goes on to say this study, meaning the corridor
24 plan, it results in reports focused on
25 nonresidential improvements along much of Route 22

1 corridor. In an effort to bring land use along the
2 highway to a higher potential, correct?

3 MS. DOYLE: That's a general statement,
4 yes.

5 MR. ROBERTSON: The recommendations,
6 the specific recommendations of the master plan
7 reexamination would be to encourage appropriate
8 development of land use focus area that well within
9 limits of zoning return underutilized land to
10 productive use, generate economic development
11 activity, diversify the municipal economic base,
12 create new employment opportunities and strengthen
13 the tax base, correct?

14 MS. DOYLE: If that's what it says,
15 yes.

16 MR. ROBERTSON: I will represent that's
17 what it says. Again, it also recommended
18 consideration. This is April 2015, not 2010.

19 MS. DOYLE: Yes, it's 2015.

20 MR. ROBERTSON: It recommends
21 consideration of revising the list of permitted
22 uses along the major corridors of Route 22, Route
23 202 and Route 206 to improve the visual and
24 economic benefit that was another goal or
25 suggestion, recommendation of master plan.

1 MS. DOYLE: If you say it is, I will
2 take that as representation. Sure.

3 MR. ROBERTSON: Significantly, in the
4 reexamination it references a study and some
5 testimony by an economist in the area by the name
6 of Jeffrey Otto. Did he appear before the planning
7 board.

8 MS. DOYLE: Yes, he has.

9 MR. ROBERTSON: And specifically in
10 connection with the highway corridor issues?

11 MS. DOYLE: No.

12 MR. ROBERTSON: In what connection did
13 he appear before the planning board?

14 MS. DOYLE: He was before the planning
15 board with county — Bridgewater and county and
16 state trends in development and residential —
17 residential demand.

18 MR. ROBERTSON: Was it Mr. Otto who
19 sounded the alarm regarding the current trends with
20 regard to commercial uses in Somerset County,
21 generally in the state, as well?

22 MS. DOYLE: Sounded the alarm?

23 MR. ROBERTSON: Did he express any
24 concern about the viability of office complexes?

25 MS. DOYLE: He did express the need for

1 balance with residential.

2 MR. ROBERTSON: Why did he express the
3 need for balance with residential? Did he have
4 concerns about the vacancy, office vacancy, in
5 Somerset County and Bridgewater in particular?

6 MS. DOYLE: Not Bridgewater in
7 particular. Certainly Bridgewater, the county and
8 state in general.

9 MR. ROBERTSON: Not specifically
10 Bridgewater, but the entire state?

11 MS. DOYLE: Well, he mentioned
12 Bridgewater, but it was an overarching theme of his
13 testimony.

14 MR. ROBERTSON: He testified
15 specifically with regard to that Sanofi site? Is
16 that one of the reasons he was there.

17 MS. DOYLE: Yes.

18 MR. ROBERTSON: Did he indicate that
19 that campus-type of office use really was no
20 longer, in his opinion, wasn't going to be viable
21 going forward into the future?

22 MS. DOYLE: No, he did not reference
23 the Sanofi site at all. He was speaking more of a
24 global, discussing the millennials, discussing the
25 baby boomers and it was not targeted. Although he

1 was there for that purpose, there was no design at
2 all that was being targeted because there was no
3 design at that point.

4 MR. ROBERTSON: With regard to research
5 and development-type uses, the reexamination report
6 indicates that it would take 170 years to fill what
7 is currently available within a 15-mile radius of
8 the redevelopment area, which I assume was the
9 Sanofi site?

10 MS. DOYLE: That's correct.

11 MR. ROBERTSON: I take it from that his
12 testimony was there was a huge oversupply of this
13 campus-style, research and development, office-type
14 facility, right?

15 MS. DOYLE: No, he didn't say
16 campus-style, research and development. He said
17 offices in general, as opposed to the offices that
18 — he was talking about offices in general.
19 Period.

20 MR. ROBERTSON: But would the research
21 and development office space typically involve the
22 larger campus-style facility?

23 MS. DOYLE: Typically, it would include
24 that.

25 MR. ROBERTSON: The vacancy rates in

1 New Jersey for office space as of 2015 indicated
2 were 17 percent. Does that sound correct?

3 MS. DOYLE: Whatever is in the report
4 is correct.

5 MR. ROBERTSON: For pharmaceutical, the
6 vacancy rate is 49 percent; is that right?

7 MS. DOYLE: For what?

8 MR. ROBERTSON: State of New Jersey.

9 MS. DOYLE: In the State of New Jersey,
10 that's correct.

11 MR. ROBERTSON: The reexamination
12 report goes on to indicate that the master plan
13 amendment should address highway zoning with the
14 aim to adjust zoning strategies to fortify the
15 fiscal stability of the township. Is that a
16 recommendation or goal of this recent master plan
17 reexamination?

18 MS. DOYLE: Partially, yes.

19 MR. ROBERTSON: With respect to the
20 site that is the subject of this application, this
21 is a site that has at the very far western end of
22 the 22 corridor in Bridgewater Township or at least
23 within the C-3 zone, correct?

24 MS. DOYLE: It is within the C-3 zone
25 and the westerly portion of the township, correct.

1 MR. ROBERTSON: Lot one, which is the
2 lot with the farm stand and a house is,
3 approximately, a three-acre right; is that right?

4 MS. DOYLE: I don't know the size of
5 that.

6 MR. ROBERTSON: Under five acres?

7 MS. DOYLE: Yes.

8 MR. ROBERTSON: So it doesn't meet the
9 acreage requirement for the C-3 zone?

10 MS. DOYLE: That's correct.

11 MR. ROBERTSON: There's already been
12 testimony or an indication that the farm use is not
13 a permitted use in the C-3 zone, correct?

14 MS. DOYLE: The farm use? The farm
15 stand use?

16 MR. ROBERTSON: I'm sorry. The farm
17 stand use is not a permitted use?

18 MS. DOYLE: That is correct.

19 MR. ROBERTSON: There is a residential
20 house that is not a permitted use in the C-3 zone?

21 MS. DOYLE: Also correct.

22 MR. ROBERTSON: Those are existing
23 uses. There is a vacant office building, the
24 former Tectonic site that's located on the other
25 lot, that's the lot two.

1 MS. DOYLE: Yes, that's an existing
2 structure.

3 MR. ROBERTSON: It's been vacant how
4 many years, more than ten or less than ten.

5 MS. DOYLE: It's approaching ten either
6 way. It's either higher than or less than ten, but
7 it's been some time.

8 MR. ROBERTSON: That site is also under
9 five acres; is that right?

10 MS. DOYLE: I don't know that.

11 MR. ROBERTSON: Okay. The combined —
12 if I was to tell you that the combined size of the
13 two lots of the subject application is about 5.4
14 acres, would that change your opinion as to whether
15 you had knowledge as to whether it was less than
16 five-acre site?

17 MS. DOYLE: The cumulative of the two
18 meet the standard.

19 MR. ROBERTSON: Right. Each of them
20 individually do not?

21 MS. DOYLE: Correct.

22 MR. ROBERTSON: So that would it be
23 fair to say that both these lots are nonconforming
24 presently?

25 MS. DOYLE: As to size, it's obvious.

1 MR. ROBERTSON: As to size and also as
2 to use as to lot one, the farm and the house,
3 correct?

4 MS. DOYLE: Correct.

5 MR. ROBERTSON: So would you consider
6 the farm stand and the single-family house on that
7 lot in a C-3 zone to be underutilized for that
8 zone? Are those uses underutilizing that --

9 MS. DOYLE: I haven't studied that. I
10 can see the conclusion that you are drawing.
11 Because it is a D variance. It's not consistent
12 with the zoning and I will -- some might call it
13 hostile to the zoning. That's answering your
14 question. Underutilized, I don't know because
15 there are two uses placed on this property, but
16 clearly, neither of which are permitted.

17 MR. ROBERTSON: The Tectonic office
18 site that has been vacant for, approximately, ten
19 years, would you consider that are vacant property
20 underutilized?

21 MS. DOYLE: No.

22 MR. ROBERTSON: The fact that it is a
23 nonconforming lot and hasn't had a tenant there for
24 ten years, you don't consider that to be
25 underutilized?

1 there for the Tectonic site and for that reason I
2 can't say it's underutilized. The price could have
3 been too high. It was on a septic system. It's
4 now not on a septic system by your plan. So there
5 are too many parameters to say why that is not a
6 not a utilized parcel.

7 MR. ROBERTSON: With regard to this
8 particular site, would you agree that it is someone
9 a unique site in the C-3 zone?

10 MS. DOYLE: The geometry makes it
11 unique.

12 MR. ROBERTSON: Neither one of those
13 two lots meets the area requirement. Nor can it
14 meet the intent of the zone to create a
15 campus-style office structure, which is apparently
16 the intent of that zone. Neither one of those
17 sites is adequate for that; is that correct?

18 MS. DOYLE: That is correct.

19 MR. ROBERTSON: The shape of this
20 particular -- these two lots is somewhat unique in
21 that the lot one where the house is and the farm
22 stand actually is a pie-shaped lot, itself,
23 correct?

24 MS. DOYLE: Yeah, I said it was
25 geometry issues there.

1 MS. DOYLE: No.

2 MR. ROBERTSON: This section, this
3 five-acre section at the tail end of the C-3 zone,
4 you wouldn't consider that property to be
5 underutilized?

6 MS. DOYLE: You're asking it in a round
7 about the same thing and I think what I will
8 mention is that the master plan that you were
9 citing did state that there would be the effort to
10 provide for underutilized land and the zoning is
11 clearly contrary to those two uses, but it is
12 consistent with the engineering company, Tectonic,
13 that used to have its offices there. I'm certainly
14 not familiar with the rationale and there could be
15 so many reasons that it is not sold.

16 But I would also point out as it
17 relates to the 2015 master plan on page 14, there
18 was a recommendation to study the corridors. Those
19 corridors were identified and based upon zoning.
20 For example, in the M-1 zone on certain highways
21 there was a notation saying to be studied. But
22 when it came to C-3 it said studied. So I wouldn't
23 say that we have in the zoning throttled back the
24 desire for those properties based upon
25 underutilizing. I think the zoning is appropriate

1 MR. ROBERTSON: And the site, itself,
2 has some unique topographical features, including
3 the grade on the site, itself? It's not a flat,
4 five-acre parcel of land, correct?

5 MS. DOYLE: It is not flat.

6 MR. ROBERTSON: Does it have any
7 wetlands on it?

8 MS. DOYLE: I believe there are
9 wetlands that were delineated on your plan.

10 MR. ROBERTSON: So there are some
11 environmental constraints on the property?

12 MS. DOYLE: The degree to which the
13 wetlands can be filled has not been part of my
14 review -

15 MR. ROBERTSON: There was some
16 questioning earlier of Ms. Cofone regarding the
17 role of the Board of Adjustment. It's actually by
18 statute there were given certain powers, correct?

19 MS. DOYLE: Correct.

20 MR. ROBERTSON: While there is a
21 preference that municipal land use be done by
22 ordinance of the land use law specifically provides
23 for the accomplishment of the adjustment of certain
24 site specific properties as long as it complies
25 with the municipal land use law, correct?

1 MS. DOYLE: Yes.

2 MR. ROBERTSON: And the municipal land
3 use law specifically provides for use variances
4 under certain criteria; is that right?

5 MS. DOYLE: That's correct.

6 MR. ROBERTSON: It must be special
7 reasons and it must meet the negative criteria, as
8 well?

9 MS. DOYLE: There are negative and
10 positive criteria.

11 MR. ROBERTSON: Just because a use is
12 not permitted in a zone doesn't mean that the board
13 of adjustment can't grant a use variance, that's
14 their role; is it not?

15 MS. DOYLE: Yes.

16 MR. ROBERTSON: There was a question
17 with regard to the definition of what particular
18 suitability means and I think what Ms. Cofone was
19 referring to was a case by the name of Price verse
20 Himeji, which was decided by the New Jersey Supreme
21 Court in 2013. Are you familiar with that?

22 MS. DOYLE: I am, but I prefer not to
23 speak to the legal implications. I would rather
24 have the board hear from its attorney with respect
25 to that.

1 MR. ROBERTSON: I just think it's
2 important to clarify because there were some
3 questions of Ms. Cofone regarding specifically what
4 the Supreme Court has determined that standard to
5 be.

6 MS. DOYLE: As I said, when it comes to
7 interpretation of what specifics the Supreme Court
8 determined, I am far less competent than our
9 attorney, Mr. Vastola, to answer those and to guide
10 the board.

11 MR. ROBERTSON: I appreciate that. I
12 am not looking to put you in position of giving a
13 legal opinion, but if I read to you what the
14 Supreme Court says with regard to that standard,
15 can I ask you whether or not that sounds consistent
16 with your understanding of the case?

17 CHAIRMAN: Mr. Robertson, Scarlett has
18 said very clearly she is not comfortable. Nor does
19 she have the background to comment on legal cases.
20 So let's move on, please.

21 MS. DOYLE: Thank you.

22 MR. ROBERTSON: Would you agree,
23 however, that the inquiry is not -- it has to do
24 with the whether the property is particularly
25 suited for the proposed purpose in the sense that

1 it is well suited for the use in spite of the fact
2 that the use is not permitted? Is that --

3 MS. DOYLE: I understand what you're
4 trying to do. It's a different way of approaching
5 it. However, you're reading from the case and as I
6 said, I would prefer that the board be given its
7 guidance from its attorney as it relates to that.
8 Yes, I can answer it, but I really want the board
9 not to receive a planner's interpretation of a
10 Supreme Court decision, but rather from its own
11 attorney.

12 MR. VASTOLA: Mr. Robertson, I think in
13 your summation you can certainly put on the record
14 your understanding of what the holding was in that
15 case.

16 MR. ROBERTSON: I don't have anything
17 further. Thank you very much.

18 CHAIRMAN: One follow up, Scarlett. As
19 Mr. Robertson noted, there is a good bit of
20 language in the master plan encouraging the return
21 of underutilized land to productive use, the
22 generation of economic development activity, the
23 diversification of the economic base and so forth
24 and so on. Is there anything in the master plan,
25 in the ordinance or any in other documents that you

1 are familiar with that advocates the achievement of
2 these objectives by allowing non-permitted uses in
3 any zone anywhere?

4 MS. DOYLE: That would be -- the simple
5 answer is no. That's the Board of Adjustment case
6 under the municipal land use law criteria.

7 MR. ROBERTSON: Can I follow up on
8 that? I don't mean to belabor the issue.

9 CHAIRMAN: Sure.

10 MR. ROBERTSON: Isn't that the role of
11 the Board of Adjustment in the site specific
12 situations to look at a unique property and the
13 board has wide latitude to make these underutilized
14 properties valuable again, is that right, or has
15 that ability.

16 MS. DOYLE: I'm going to approach this
17 obliquely. Again, the master plan is a document of
18 recommendation of council. The council is the only
19 one who establishes the rules. Sometimes those
20 rules -- in other words, the zoning ordinance, it
21 isn't ideal for a particularly well-suited
22 circumstance, which is highly-controlled by the
23 municipal land use law. The Zoning Board of
24 Adjustment has the obligation. It's their duty to
25 take a look at any applicant that comes forward and

1 listen to the special reasons to whether or not it
2 would impair the intent and purpose of the zone
3 plan and render a decision. That's the job of the
4 zoning -- one of the jobs of the zoning board.

5 MR. ROBERTSON: In other words, if a
6 property is particularly suitable and meets the
7 negative criteria, then that would be consistent
8 with the goals of the master plan to bring
9 underutilized property back into utilization,
10 correct?

11 MS. DOYLE: The municipal land use law
12 would require that there be special reasons that
13 there would be particular suitability, that it
14 would be not impair the intent of the master plan,
15 the zoning plan or the zoning ordinance and then
16 based upon that the Board of Adjustment would
17 render its decision as to whether or not it should
18 grant the approval. The zoning board is not
19 permitted to grant an approval unless it has each
20 of those findings.

21 MR. ROBERTSON: Okay. I have no other
22 questions.

23 CHAIRMAN: Okay. Beth?

24 MS. POWERS: You talked about the
25 property not being underutilized.

1 what -- I don't know if it's cost. I don't know if
2 it's condition, but from the standpoint of having a
3 building of that size, it also meets the zoning and
4 it can be negotiated. Should the applicant wish to
5 reduce the price, is it all of a sudden able to be
6 utilized? There is nothing there that strikes me
7 as being underutilized. It's a large two-story
8 building. It has the utilities. It worked as a
9 professional office for 30 years. There is nothing
10 on that property, although, it has been vacant for
11 at least ten, maybe, more, the fact that it hasn't
12 been rented when the building next door on the
13 small lot has been rented over and over again and
14 it's smaller than this one. It's unclear why it
15 has not been rented or not been sold and I cannot
16 say that it is underutilized because I don't have
17 all the data that I would need to conclude that it
18 has been.

19 MS. POWERS: Okay. I wanted to
20 understand what your thought process was.

21 CHAIRMAN: Okay. At this point we have
22 an attorney here this evening representing a group
23 of citizens called Bridgewater Residents United.
24 Is that right, Ms. Suarez?

25 MS. SUAREZ: Good evening, Chairman.

1 MS. DOYLE: That's correct.

2 MS. POWERS: I'm a little confuse.
3 Please explain.

4 MS. DOYLE: Which property are you
5 talking about, the house and the --

6 MS. POWERS: No. More specifically,
7 the office building that's been vacant for almost
8 ten years. I don't know how that's not
9 underutilization.

10 MS. DOYLE: Sure. The question is
11 whether or not it's underutilized by virtue of the
12 fact that it is a structure that is sitting there
13 with the rights as an office, is that
14 underutilized. My answer is no, it has been -- it
15 has already received approval for a daycare center
16 there. It has -- the cost of that building may be
17 an impediment to its being used. So I don't have
18 enough information to say that a company would not
19 go in there and utilize that property. It's large.
20 It's got two levels. It has a parking facility.
21 It has -- so what is the reason? What is the
22 rationale that it is not being used? There is a
23 reason that it is not being used. I don't know
24 what the reason is, but there have been many
25 interested parties that look at it and I don't know

1 CHAIRMAN: Yes. Why don't you now
2 direct any questions that you have to Ms. Cofone,
3 follow up her planner's testimony and after you've
4 done that, we will then open up to questions from
5 the audience for Ms. Cofone or Ms. Doyle, if you'd
6 like.

7 MS. SUAREZ: So that we're consistent,
8 I think it makes sense, if it's acceptable to the
9 board, I am not going to ask any questions of Ms.
10 Cofone. I will allow the public to ask questions
11 of her at this time and at the conclusion of the
12 public's questions of Ms. Cofone, then to the
13 extent that I have questions for Ms. Doyle, I will
14 do my questions of Ms. Doyle then. If that's okay
15 with the Chairperson.

16 CHAIRMAN: That's fine. You'll take a
17 seat and at this point --

18 MR. ROBERTSON: I'm going to say I
19 think it makes a whole lot more sense and much more
20 focus to cross-examination of the planner if the
21 attorney asks the questions because it's going to
22 be repetitive and repetitive. I think if we had
23 Ms. Suarez ask the questions upfront, I think that
24 would be a more productive use of time.

25 CHAIRMAN: Well, I think what Ms.

1 Suarez is saying if her questions are not asked by
2 members of the public, she will ask them and that's
3 fine. So let's do it that way. So at this point
4 we will now open up the session to questions that
5 you might have for either Ms. Cofone, the planner,
6 for Quick Chek or Ms. Doyle. Anybody with
7 questions for Ms. Cofone, Ms. Doyle, questions that
8 are intended to uncover new information, not to
9 repeat what we've already heard, now is your time
10 to get up and get in line.

11 MR. KOLAVITCH: My name is Steve
12 Kolavitch. I'm from 21 Kiser Lane. Ms. Cofone,
13 I'd like to asked you, have you ever worked with
14 HUD, the Department of Housing Urban Development?

15 MS. COFONE: I have not.

16 MR. KOLAVITCH: One of the things they
17 do is, they oversee the VA and FHA loan programs
18 and do you know that they don't insure any
19 mortgages for any residential properties where
20 their boundaries are within 300 feet of gas tanks
21 proposed in this project and as a result the homes
22 in that area will not be as valuable because they
23 won't be as marketable?

24 MR. ROBERTSON: Mr. Chairman, I think
25 it's an opportunity to question. He's making

1 statements. I don't know whether they are accurate
2 or not accurate.

3 CHAIRMAN: He's absolutely right. The
4 point here is to ask questions. If you have a
5 statement, if you've got a statement you want to
6 make, we'll give you a chance to do that. But at
7 this point, you need to phrase your comments as a
8 question that she can respond to.

9 MR. KOLAVITCH: I guess she answered my
10 question. She doesn't work with HUD and she
11 doesn't understand the VA or the FHA. Thank you.

12 CHAIRMAN: Anyone else with a question
13 for Ms. Cofone or Ms. Doyle?

14 MR. YIN: My name is Gang Yin, 40
15 Purcell Road. Can I use the picture that you
16 showed us before from the bottom of Route 28?

17 MS. COFONE: The winter view?

18 MR. YIN: Yes. Do you know that the
19 engineering department made comments to the fire
20 access lane. Where is the fire emergency access?

21 CHAIRMAN: Ms. Cofone did not testify
22 about a fire access lane. You have to ask
23 questions that are -- you have to ask her questions
24 about her testimony. Otherwise, she can't answer
25 you.

1 MR. YIN: Okay. You testified that you
2 say from this view it's really limited visibility
3 for that. But as we know, that last time when
4 Mr. Cahill said there will be 20-foot wide fire
5 access from this side. Now by clearing this area,
6 do you feel it is not visible for this station.

7 MS. COFONE: I'm sorry. I didn't
8 understand the last part of your question.

9 MR. YIN: Because you said there is
10 limited visibility, there is 20-foot wide emergency
11 access from that area.

12 MS. COFONE: There is a solid fence
13 there. So you still won't see it.

14 MR. YIN: Emergency access will not be
15 a solid fence.

16 MS. COFONE: Emergency access is on the
17 other side of the other fence.

18 MR. YIN: From my understanding it's
19 from this side.

20 MS. COFONE: There is going to be a
21 gate with a lock to that access.

22 MR. YIN: Correct. But the gate is not
23 cannot blocked view, correct?

24 MS. COFONE: I don't see how the
25 emergency access is going to make the building more

1 visible. The emergency access should not have any
2 impact on the visibility of the building.

3 MR. YIN: Thank you.

4 MS. LI: My name is Jing Li and I'm
5 living in 833 Star View Way and I have a quick
6 question regarding -- I feel I am not a
7 professional. I feel it's part of the plan that's
8 why I'm asking Ms. Planner.

9 On the other side of 202, which is the
10 main entrance, right and I understand you said you
11 have 900 feet frontage to say this is wide. My
12 question is that, did you ever do any thorough
13 study on the public safety when people try to pull
14 over, which is cross bridge, go over the hurdle and
15 turn into the parking lot? Do you do any
16 third-party study to certify this is safe to turn
17 in, which is 50 miles highway.

18 MR. VASTOLA: Her testimony was limited
19 to planning. She did not give any testimony to
20 traffic. So you can't ask her a question about
21 safety.

22 MS. LI: So the answer is, no?

23 MS. COFONE: My answer is, another
24 witness asked that already. I believe you asked
25 that witness. I read that witness's transcript. I

1 didn't testify at all to safety.

2 MR. VASTOLA: We made the point. She
3 didn't testify on any safety issues. Your question
4 is out of order. Okay.

5 MS. LI: Okay. Thank you.

6 CHAIRMAN: Anyone else with a question
7 for Ms. Cofone or Ms. Doyle? Would you give Ann
8 Marie your name, please?

9 MR. HE: This question is about
10 planning. So in one of the documents in the
11 township, it says that you apply for the use of
12 variance, it will only be approved if you can
13 demonstrate the public good the larger than public
14 damage. So have you done enough study to prove
15 that and what is your proof point?

16 MS. COFONE: Yes, at the last hearing I
17 testified at length to all of the prongs required.
18 I testified specifically to the particular
19 suitability and the positive and the negative
20 criteria, as well as I testified this evening to
21 the Medici reconciliation. So I believe there is
22 more than adequate proof in the record for the
23 board to move favorably on the use variance
24 application.

25 CHAIRMAN: Anyone else? Any other

1 zone for C-3 and you've mentioned permitted uses.

2 MS. HAYLAND: However, a combination
3 food store and refueling area appears to me and
4 perhaps you could comment to not maintain the
5 campus feel and to, in fact, change what that
6 stretch of road would be.

7 MS. DOYLE: The applicant has applied
8 for a use variance and has given testimony from a
9 planning perspective as to why it is believed that
10 this use is compatible with the zone plan, is
11 compatible with the zoning -- not substantially
12 inconsistent with the zoning ordinance and the zone
13 plan. It's up to the board to gather that
14 information and disseminate it, put it in their
15 brain and shake it around and see with their
16 knowledge of township, with their knowledge of the
17 law and the applicant's arguments whether or not it
18 is a particular suitable location for this use.

19 MS. HAYLAND: It would change the feel
20 of that stretch of road, it would no longer be a
21 campus feel?

22 MS. DOYLE: That would be up to the
23 board to make that determination based upon the
24 testimony that was given. You're asking me for a
25 planning conclusion and I just am not able to do

1 questions? We have another one coming.

2 MS. HAYLAND: Good evening. Martha
3 Hayland, 245 Woodside Lane. This question is for
4 the city planner. The current zone of this area,
5 the C-3 zone, you said a number of times meant that
6 the city planners were thinking that this was more
7 of the campus style and less like what Route 22
8 looks like on the east of the circle.

9 So my question is, in terms of your
10 view of the use of this property that would
11 maintain that original intent, you mentioned a
12 daycare, for example. Does that maintain this
13 intent from your view?

14 MS. DOYLE: I'm sure Mr. Vastola is
15 going to comment on that. The daycare use is a
16 permitted use by law, by state law. So obviously,
17 I would have no comment on that. That is a
18 permitted use in every nonresidential zone.

19 MS. HAYLAND: Same for assisted living
20 facility or medical use --

21 MS. DOYLE: I'm sorry?

22 MS. HAYLAND: An assisted living or
23 medical use that would also be permitted in this
24 area?

25 MS. DOYLE: You have to look at the

1 that.

2 MS. HAYLAND: Thank you. I appreciate
3 your comment. Thank you.

4 CHAIRMAN: Thank you.

5 MR. DAI: My name is Dong Dai, 15
6 Reinhart Way. My question to the Quick Chek
7 planner, could you explain us why C-3 zone does not
8 allow a gas station?

9 MS. COFONE: I think I testified to
10 that previously. I said I believed that one of the
11 reasons they wrote their master plan and the 22
12 study the way they did is because they didn't want
13 service stations and fueling stations to
14 proliferate the entirety of the district. Rather
15 they were concentrated, pretty well-represented
16 east of the circle, but allowing them as of right
17 would allow them on any site and rather this
18 creates an opportunity for them to be established
19 on a site where they meet the statutory criteria
20 for the grant of a use variance. I think it had
21 more to do with not allowing to proliferate the
22 entire corridor, rather than outright prohibition.

23 MR. DAI: Do you understand the nearby
24 zone, R-20 residential zone?

25 MS. COFONE: Do I understand it? Sure.

1 It's a residential zone.

2 MR. DAI: Let me tell you. C-3 zone
3 does not allow a gas station. First of all, which
4 is most important, C-3 zone allows for permitted
5 users. Examples engineering services, insurance
6 service, medical office, et cetera.

7 CHAIRMAN: Excuse me, sir. We know
8 what the permitted uses are.

9 MR. DAI: My point is --

10 CHAIRMAN: No, I don't want a point.
11 Do you have a question?

12 MR. DAI: She did not answer my
13 question.

14 CHAIRMAN: What is your question.

15 MR. DAI: Why C-3 zone cannot allow a
16 gas station.

17 MR. VASTOLA: She did answer the
18 question. You may not have liked the answer, but
19 that was her answer.

20 MR. DAI: That's why I want to let her
21 know because I heard -- she just say she does not
22 understand why people are against put up gas
23 station nearby here. I tried to let her
24 understand. That's my question started from.
25 Could you let me finish it?

1 CHAIRMAN: Make sure it's a question.
2 That's all.

3 MR. DAI: Yes. All the permit users
4 does not operate outdoor. The gas station is
5 operate outdoor. This not allowed in nearby the
6 residential area. It's one major point. The
7 second one gas station run 24/7 hours. All the
8 other permit user, none of them running on that
9 operating schedule. That's the second major
10 difference.

11 CHAIRMAN: Sir, you're making points.

12 MR. DAI: The point is --

13 CHAIRMAN: No, I don't want the point.
14 I want a question. If you want to make points,
15 there will be a time at the end of the hearing when
16 you can make all the points you want, as long as
17 you do it in three minutes. But right now, don't
18 make points. Ask questions.

19 MR. DAI: My point is follow with
20 question. I just stated two major difference.
21 First question, can you put enclosure in your gas
22 station?

23 MS. COFONE: Would we enclose the gas
24 station? No. But I don't agree with your point
25 that you're making because you can have a

1 bank-related function, which could have an ATM
2 outside. In addition you make the statement or the
3 point, as you said, that we are 24 hours and
4 nothing else in the zone is 24 hours. I
5 respectfully disagree with your points. Assisted
6 living facilities are staffed 24 hours a day.
7 Health clubs could be open 24 hours a day. So I
8 respectfully disagree this is the only 24-hour use
9 that can be established in the zone.

10 MR. DAI: This is residential.

11 Everybody need to sleep at night.

12 MS. COFONE: This is not a residential
13 zone. This is a C-3 zone.

14 MR. DAI: I asked you did you
15 understand. You said yes.

16 MS. COFONE: I understand what a
17 residential zone is.

18 MR. DAI: Across the street is all
19 residential area and this master plan design very
20 well. I will tell you why.

21 MR. VASTOLA: No, we don't need to know
22 why you think that. Ask a question.

23 MR. DAI: That's why all these permit
24 user, none of them work 24/7 hours. It's keep the
25 community peaceful at night and at weekend. That's

1 the major point.

2 CHAIRMAN: Your three minutes are up.
3 Would you please wrap your question up very
4 quickly.

5 MR. DAI: Could you run eight hours
6 only daytime?

7 MS. COFONE: Could we run the use for
8 only eight hours in the daytime?

9 MR. DAI: Yes.

10 MS. COFONE: No.

11 CHAIRMAN: Anyone else?

12 MR. ROSENBERG: Richard Rosenberg, 9
13 Stillwell Court. Did I hear a reference to the
14 lack of a gas station with extended hours within
15 three miles of this location?

16 MS. COFONE: I believe Ms. Amin asked a
17 question, are there any other 24-hour service
18 stations and I said, I did not -- I was not really
19 aware. I don't think that there are any.

20 MR. ROSENBERG: There is one. I don't
21 know that it's 24 hours. I've only see it open at
22 one o'clock in the morning and that's on Route 28
23 and First Avenue in Raritan Borough and is my rumor
24 correct that Quick Chek has asked for that location
25 prior to filing an application here and was turned

1 down by the Borough of Raritan?

2 MS. COFONE: I can't speak to that. I
3 did not represent them on that if they were.

4 MR. ROSENBERG: I think you raised the
5 question or the concern about the office vacancy,
6 which we've had confirmation today, which is
7 rampant through the State of New Jersey. Why do
8 you place part of curing that problem on the
9 residents in Bridgewater?

10 MS. COFONE: Well, part of
11 Bridgewater's vision and plan for this commercial
12 corridor is to revitalize underutilized properties.
13 I did not raise that. That was something that was
14 articulated in Bridgewater master plan, the 23
15 percent vacancy rate. So I was simply commenting
16 that revitalizing this property creates an
17 opportunity to revitalize and redevelop the
18 corridor consistent with some of the goals in the
19 master plan.

20 MR. ROSENBERG: Wouldn't that be a
21 small fraction of percentage reducing the vacancy
22 rate in this township? You have 2300 square feet
23 in that building?

24 MS. COFONE: Excuse me?

25 MR. ROSENBERG: How many square feet do

1 application, we have a large berm. We have a lot
2 of green space along the 28 corridor and we have
3 the parking --

4 MS. SHI: No matter how much you
5 have --

6 MS. COFONE: Can I finish my answer?

7 CHAIRMAN: Ma'am, you asked her a
8 question. Give her a chance to answer it.

9 MS. COFONE: Thank you. I appreciate
10 that courtesy. So I think that we also are
11 consistent with the intent to the C-3 zone. This
12 is a commercial zoning district that allows for
13 uses that could very well operate 24 hours a day in
14 buildings that are three-stories tall and 45 feet.
15 It also calls for large spans of green space in
16 front of the building berming along the perimeters
17 of the property. This application accomplishes all
18 of that. So I see no reason to conclude that this
19 application does not carry out the intent of the
20 C-3 zone.

21 MS. SHI: Thank you. No matter how
22 much you said, that's the current application, the
23 giant 24-hour gas station and not allowed in the
24 C-3 zone. Yes or no?

25 MS. COFONE: Of course, they are not

1 you have in that building?

2 MS. COFONE: In the building We're
3 proposing, over 5,000 square feet.

4 MR. ROSENBERG: The building that's
5 currently existing?

6 MS. COFONE: I'm not sure.

7 MR. ROSENBERG: It's very small
8 percentage of what's vacant on Route 22.

9 MS. COFONE: I don't think you can look
10 at it as an entire percentage. I think you have to
11 look at it more, this is an irregular piece of
12 property and it's seriously underutilized.

13 CHAIRMAN: Thank you.

14 MS. SHI: Hi. My name Carl Shi. I
15 live 63 Shaffer Road, Bridgewater. I want to ask
16 the continue with the question Mr. Dai. Do you
17 understand in the master plan why we have C-3 zone
18 next to the residential zone? What's the purpose
19 of that?

20 MS. COFONE: The intent of the C-3 zone
21 is to have commercial development along the highway
22 corridor. It calls for campus-like development,
23 which has parking tucked behind the building and
24 large bermed areas. If you had an opportunity to
25 look at the site plan in conjunction with this

1 allowed. That's why we're here for a use variance.

2 MS. SHI: When you're taking about
3 24-hour thing, do you think 24-hour working ATM is
4 the same as a 24-hour working gas station? Yes or
5 no?

6 MS. COFONE: They are different.

7 MS. SHI: Okay. Very different. Thank
8 you.

9 CHAIRMAN: Looks like we're done with
10 questions from the audience. Ms. Suarez, you don't
11 have any questions, do you?

12 MS. SUAREZ: No, Mr. Chairman.

13 CHAIRMAN: Ms. Suarez, I believe you
14 were the one at our last session that asked for
15 some time to digest Mr. Heffernan's appraisal
16 report. So at this point I'm going to ask Mr.
17 Heffernan to please stand up.

18 MR. ROBERTSON: Mr. Chairman, ms.
19 Suarez had communicated with me and says she has to
20 interest in pursuing that line of questioning.

21 CHAIRMAN: She can say that and if she
22 doesn't, I have some questions for Mr. Heffernan.

23 MS. SUAREZ: Mr. Chairman, Mr.
24 Robertson has properly reflected an understanding
25 of an agreement between us that I would not be

1 questioning Mr. Heffernan at this evening's
2 hearing.

3 CHAIRMAN: Okay. Great. Mr.
4 Heffernan, you're still under oath.

5 - - -

6 CROSS-EXAMINATION
7 OF MR. HEFFERNAN
8 - - -

9 CHAIRMAN: I want to talk a little bit
10 about your work and I want to start off asking you
11 some questions about your sample. You looked at
12 three Quick Cheks in New Jersey that sell gas,
13 right?

14 MR. HEFFERNAN: We looked at more than
15 three, but we decided to do a study on three
16 because they were most appropriate.

17 CHAIRMAN: That's three out of 34 Quick
18 Cheks in New Jersey that sell fuel, right?

19 MR. HEFFERNAN: I can't tell you the
20 exact number that sell fuel.

21 CHAIRMAN: Well, 34 is the number that
22 Quick Chek indicated earlier in the application
23 hearings. One of the developments you looked at is
24 the Old Ridge condo development in Hanover and I
25 think you noted there were seven sales within that

1 complex in 2015, I believe and your conclusion was,
2 there was no indication based on sale prices that
3 proximity to the Quick Chek had any impact on
4 property values.

5 MR. HEFFERNAN: That's correct.

6 CHAIRMAN: All of those seven sales
7 occurred within a quarter mile of that Quick Chek
8 and I don't know whether or not a quarter mile
9 means there was some impact, some proximity impact
10 or not. I think it might have been helpful,
11 though, if you had picked one of those seven and
12 compared it with a sale that was clearly outside
13 that area. But you didn't do that, right?

14 MR. HEFFERNAN: We didn't do that
15 because in this particular location we didn't feel
16 that there was another complex that would
17 adequately match those properties in question.

18 CHAIRMAN: So that left, basically, two
19 other sales. One in Rahway and one in South Bound
20 Brook. Now let's look at South Bound Brook first.
21 You included pictures of the subject property and
22 the comparable that you used in South Bound Brook
23 and those pictures are on pages 45 and 46 of your
24 study. People, I'm sorry if you don't have a copy
25 of this and I'm going to be referring to it a bit,

1 but my apologies.

2 Mr. Heffernan, you have pictures on
3 page 45 and page 46.

4 MR. HEFFERNAN: Correct.

5 CHAIRMAN: Page 45 is the subject
6 property. Page 46 is the comparable that you used,
7 correct? When I look at those two pictures, I have
8 to tell you, the one thing that jumps out at me is
9 the definition that you provided of your technique,
10 your paired data analysis and I believe you cited
11 the Appraisal Institute as the source of this
12 definition and let me read it. It's a quantitative
13 technique used to measure adjustments to the sales
14 prices or rents of comparable properties. To apply
15 this technique, sales or rental data on nearly
16 identical properties are analyzed.

17 Now when I look at the two units we're
18 talking about here, the pictures on page 45 and 46,
19 there is nothing remotely close to nearly identical
20 in those two properties. In fact, when I look at
21 them, the only thing I can see that those two
22 properties have in common is that they both have
23 windows and aside from that, nearly identical?
24 Really?

25 MR. HEFFERNAN: Are you asking me a

1 question you want me to answer?

2 CHAIRMAN: Yes. Explain how these are
3 nearly identical.

4 MR. HEFFERNAN: The reason that we
5 chose that property because there was not another
6 subdivision of condominiums located within South
7 Bound Brook that was comparable to the Canal
8 Crossing. But there were two new duplex properties
9 that sold units on 34 and I think it was 36
10 Armstrong Street.

11 Now as far as similarity, they are
12 relative any similar in size. They are attached
13 units and they have similar -- relatively similar
14 room counts and they are relatively new units. So
15 to the extent that they have some comparison in
16 terms of the price per square foot, that would
17 indicate to us there is nothing unusual about the
18 price that the property at 14 Tory Jack Terrace
19 sold for.

20 CHAIRMAN: So you're maintaining that
21 while they may not be nearly identical, they are
22 somewhat similar. Let's move on. What we're left
23 with in terms of properties that you looked at or
24 the sales you looked at is one sale in Rahway. Now
25 whether we look at the one sale in Rahway or the

1 two sales, including the relatively similar
2 properties in South Bound Brook or the seven sales
3 in Oak Ridge, we are talking about a sample size
4 that may be as small as one or as big as nine. So
5 let's for a moment talk about sample size and what
6 the implications of that sample size are for the
7 conclusions that you've drawn from your study.

8 Now you are essentially looking to
9 determine if a Quick Chek has a negative impact on
10 nearby property values. Now the best way to
11 determine if that's true would be to look at all
12 the sales of homes located close to a Quick Chek.
13 But since that's not practical, you looked instead
14 at a subset of those sales and you drew conclusions
15 about that subset and then you assumed that those
16 conclusions also hold for the much larger
17 population of all nearby home sales.

18 So the key question that I have is, how
19 valid are those conclusions or to put it another
20 way, how much faith do we have that your
21 conclusions, based on a relatively small sample
22 size, apply to all the homes that sell close to a
23 Quick Chek and not just the one or two or nine that
24 you looked at?

25 In most empirical studies there are

1 whole slew of so-called descriptive statistics,
2 confidence intervals, confidence limits, variance
3 standard areas and so forth that are usually used
4 to answer that question. Do you have any of those
5 descriptive statistics that you can share with us?

6 MR. HEFFERNAN: As I had mentioned
7 early in my testimony, there is not -- there really
8 were not enough properties, Quick Chek properties,
9 that had residential facilities located close by.
10 So we had to rely on the ones where there were
11 residential facilities relatively close and where
12 there had been sales of residential facilities
13 nearby those Quick Cheks. So that limited our
14 study down to only several properties and those
15 were the properties that we looked at and those
16 were the properties we study.

17 When you asked me how does an appraiser
18 make a decision as to whether or not to apply an
19 adjustment when he's doing an appraisal, then I
20 have explained to you in this report and I
21 explained to you in my previous testimony how it's
22 done.

23 CHAIRMAN: I'm not asking you about
24 adjustments. I understand how you make
25 adjustments. I'm okay with that. That's not my

1 question. What I'm trying to get at is, how
2 comfortable should I be looking at a sample of one
3 or two sales or maybe, even nine sales and assuming
4 that they apply to every home that sells close to a
5 Quick Chek? How do I know that those one or two or
6 even nine sales that you looked at, how do I know
7 that they are the exception or the rule without
8 looking at a bigger sample? How do I know that.
9 Typical when you do an empirical study like this,
10 the rule of thumb is, the bigger sample the more
11 comfortable you are with the conclusions that are
12 drawn. My problem is, your sample is so small, I
13 don't know how to feel about the applicability of
14 your conclusions to all property values of homes
15 located approximate to a Quick Chek.

16 MR. HEFFERNAN: As I said, if you
17 expected to see a major statistical study of sales
18 adjacent to Quick Cheks there is not enough
19 empirical data to do that with. What we did do is,
20 we did an analysis that most appraisers would do to
21 determine whether or not an adjustment is
22 appropriate and that's what we applied and that's
23 what I have shown here. Would I rely on it? Sure,
24 I would rely on it because as an appraiser I made
25 the study and I feel confident with my findings.

1 Until I had some information that showed me
2 different, I would rely on this information.

3 CHAIRMAN: Thank you. Does anybody
4 else have any questions for Mr. Heffernan while
5 he's up here?

6 MR. FOOSE: I reviewed all the
7 testimony. I'm the new member here and I have a
8 couple questions just from your last bit of
9 testimony in that, essentially paired data analysis
10 and I remember from grad school it was called Para
11 Wise Analysis, but you know, what we referenced
12 when I studied these statistical references is that
13 you always had externalities and you try to make
14 comparisons and you would be subjected to those
15 externalities.

16 Could you just give a definition when
17 you paired a sale with another comparable sale,
18 what made you throw out a property? What made you
19 keep in a property and when you realized that you
20 only had such a small sample size, why didn't you
21 expand that universe? Quick Chek is not such a
22 unique retail establishment that we couldn't
23 intervene and look at other similar types of
24 establishments.

25 When we go to the Medici filings and we

1 try and find out what is a negative and what's a
2 positive, I think your testimony is critical to a
3 lot of these evaluations. So I'm just trying to
4 get a better understanding of what went into that
5 type of analysis?

6 MR. HEFFERNAN: I'm not sure which part
7 of your question to answer. I'll try and do my
8 best. As far as the paired data analysis is
9 concerned, you know, I think I defined it well in
10 the report. I think I explained how it's done and
11 I believe that even what the Chairman read from the
12 Appraisal Institute book is accurate. It explains
13 quite well what I did and I did it according to the
14 manner in which we are supposed to do it.

15 As far as whether or not we had enough
16 properties to study, I think I had mentioned
17 several times that there were a relatively
18 significant lack of residential houses that were
19 surrounding Quick Chek. Where we were able to find
20 them and find them in an area that we can make a
21 study of, then we utilized them and that only
22 happened to be three of their facilities. I think
23 I'm trying to remember other parts of your question
24 and maybe, you can help me out.

25 MR. FOOSE: When it comes to an

1 a property that was located adjacent to the Quick
2 Chek. We looked at what that property sold for in
3 comparison with a similar property that's not
4 located next to a Quick Chek in Rahway. That
5 showed us that there was relatively no difference
6 that we can discern about the location of both of
7 those properties. That would indicate to us that
8 we would not make an adjustment for a property that
9 is located next to a Quick Chek.

10 Now why didn't I use regular gas
11 stations? I didn't use regular gas stations
12 because they are different than Quick Chek. Why
13 didn't I look at, I don't know, the Exxon, when
14 Exxon has a convenience store located with it?
15 Because Exxon convenience stores and Exxon stations
16 are not operated by Quick Chek. So they may be
17 managed and operated completely differently and it
18 may not be a fair evaluation to make that choice in
19 utilization as a comparison.

20 MR. FOOSE: I appreciate that. That's
21 a good answer. Really since 2005, New Jersey
22 according to the New Jersey Association of
23 Realtors, we average about 100,000 residential real
24 estate sales per year, plus or minus 5,000. I just
25 would have hoped you would have more relevant

1 externality, when you dropped properties, I'm
2 curious why you can only come up with nine total
3 properties in this. I mean, the sample size just a
4 pure statistics show us that nine isn't a universe
5 or a sample set that has any statistical
6 significance.

7 MR. HEFFERNAN: First of all, because
8 in my opinion, we're looking for properties that
9 are relatively close to the Quick Chek. We are not
10 looking for ones that are four or five blocks away.
11 You know, we're trying to determine whether or not
12 a property that has some location that is
13 relatively close to the Quick Chek has a price
14 difference in terms of its saleability and that's,
15 basically, what we did.

16 Now, did we have 500? No, we didn't
17 have 500 sales. But we had a sample that any
18 appraiser would look at and say, okay. Is there a
19 difference here? Is there anything that shows me
20 there is a substantial price difference between a
21 property that is 200 feet from a Quick Chek or 500
22 feet from a Quick Chek or 1,000 feet from a Quick
23 Chek. So none of that appeared to show in any of
24 the studies that we did.

25 As far as the Rahway study, we did have

1 statistical data to support nine houses. That's
2 all. You know, like I said, I don't think Quick
3 Chek is that unique where Wawa has a similar
4 business model with the large fueling stations and
5 the convenience side and 7-11 and I've driven past
6 many of these in other municipalities that I just
7 can't believe that you only found nine houses. I
8 appreciate your answer. Thanks for your time.

9 CHAIRMAN: Any other questions for Mr.
10 Heffernan from the board? Ms. Suarez and since we
11 had a planner since, we're talking about planning
12 testimony this evening, I think it might be a good
13 time for you to call your planner to testify.

14 MS. SUAREZ: Mr. Chairman, as of
15 deference to the Chairman, we will take our
16 witnesses out of order and have Mr. Steck testify
17 now instead of all of the factual witnesses that
18 were listed to the board in my letter of January
19 22nd.

20 CHAIRMAN: I'm sorry. Who are you
21 going to have testify?

22 MS. SUAREZ: Our planner, Peter Steck.

23 - - -

24 P E T E R S T E C K, after having been
25 first duly sworn, testified as follows:

1 - - -
 2 CHAIRMAN: Would you give us your name
 3 and your professional address, please?
 4 MR. STECK: My name is Peter G. Steck.
 5 S-T-E-C-K. 80 Maplewood Avenue, Maplewood, New
 6 Jersey.
 7 CHAIRMAN: Mr. Steck, I don't know that
 8 you've testified before this board in the past,
 9 have you?
 10 MR. STECK: I don't believe so.
 11 CHAIRMAN: Why don't you quickly
 12 summarize your background and why we're listening
 13 to you today?
 14 MR. STECK: Well, I can't answer to why
 15 you're listening to me, but I'll -
 16 CHAIRMAN: Fair enough. Tell us why
 17 you're qualified for us to listen to you.
 18 MR. STECK: By way of education, I have
 19 a bachelor's degree in civil engineering from
 20 Marquette University and masters in city and
 21 regional planning from Rutgers. I was licensed as
 22 a planner in 1976 and continue to hold that
 23 license. I worked for two consulting firms in the
 24 past, Malcolm Kasler Associates and Albert Gerson
 25 Associates. I was the planning director for

1 Montclair for about ten years and for the last 20
 2 years I've been self-employed as a community
 3 planning consultant and have testified in,
 4 approximately, 170 municipalities and been accepted
 5 as an expert witness in Superior Court.
 6 CHAIRMAN: Terrific. Anyone on the
 7 board have any questions for Mr. Steck about his
 8 qualifications?
 9 MR. ROBERTSON: Just two quick
 10 questions. Mr. Steck, have you previously
 11 represented Quick Chek in any applications in the
 12 State of New Jersey?
 13 MR. STECK: Yes.
 14 MR. ROBERTSON: The applications in
 15 which you represented Quick Chek, did it involve a
 16 24-hour convenience store with a gas station?
 17 MR. STECK: I don't recall whether it
 18 was 24 hours or not.
 19 MR. ROBERTSON: Do you recall where it
 20 was?
 21 MR. STECK: Sparta.
 22 MR. ROBERTSON: Mr. Chairman, I don't
 23 have any other questions. Although, I would
 24 indicate that the applicant - or the witness may
 25 have a conflict and the board will have to consider

1 whether he's an appropriate witness for this board.
 2 CHAIRMAN: I don't -
 3 MR. STECK: It's probably ten years ago
 4 and just for my - what is the conflict you are
 5 alleging?
 6 MR. ROBERTSON: Did the application
 7 involve a use variance in that town, if you recall?
 8 MR. STECK: I don't recall. It was
 9 more than ten years ago.
 10 CHAIRMAN: Mr. Robertson, even if it
 11 involved a use variance and he was testifying for
 12 Quick Chek, I don't see the potential conflict.
 13 I'm certainly not troubled by it. Does anyone else
 14 on the board have an Issue with that?
 15 MR. VASTOLA: I think if we were in a
 16 Superior Court, it could be an issue on that. But
 17 given the fact that this board is not bound by the
 18 strict rules of evidence, they can listen to Mr.
 19 Steck's testimony and give it the weight they deem
 20 appropriate, knowing that at one time over ten
 21 years ago he testified on behalf of Quick Chek.
 22 MR. ROBERTSON: Thank you.
 23 CHAIRMAN: Please proceed. Are you
 24 guys going to share that mike? You can grab one of
 25 these.

1 - - -
 2 DIRECT EXAMINATION
 3 OF MR. STECK
 4 - - -
 5 MS. SUAREZ: I think we can share. Mr.
 6 Steck, to set the stage for your testimony, I see
 7 on the screen that we've put up materials. I'm
 8 going to show you what I had inadvertently
 9 pre-identified as exhibit O-16, thinking this would
 10 be our 16th exhibit, rather than O-1. So I'd like
 11 you to look at this and if you can please identify
 12 that for the board?
 13 MR. STECK: That's an exhibit that I
 14 prepared and I have multiple copies for board
 15 members.
 16 MS. SUAREZ: At this point I would like
 17 to take one copy of this. I'm going to cross out
 18 of the number six. It's going to be O-1. I'm
 19 going to date it February 2, 2016.
 20 - - -
 21 (At which time, Mr. Steck's report was
 22 received and marked as O-1 for identification.)
 23 - - -
 24 CHAIRMAN: While Mr. Steck is handing
 25 out these colored exhibits, I just want to remind

1 everybody that while we normally have a little bit
2 of wiggle room in terms in our 10:30 time to
3 adjourn, the Vo-Tech doesn't provide that wiggle
4 room. So at 10:30 we are going to leave. As long
5 as you guys recognize that and hopefully, Mr. Steck
6 can come again in three weeks time, if he needs
7 that time.

8 MS. SUAREZ: We will start his
9 testimony.

10 CHAIRMAN: Terrific.

11 MS. SUAREZ: Mr. Steck, without further
12 ado, you would you please begin your testimony
13 about this project?

14 MR. STECK: Yes. Let me just identify.
15 What didn't we mark this as?

16 MS. SUAREZ: It's going to be O-1.

17 MR. STECK: This is an exhibit I
18 prepared to it's dated January 29, 2016 and it
19 consists of four pages double sided. So I'll just
20 briefly describe what it is. The first page has an
21 aerial photograph from Bing maps where I've
22 outlined the two subject lots. Below that is a
23 rendition of the colorized site plan superimposed
24 on an aerial photograph.

25 The second page is a reproduction of

1 wooded. It's largely deciduous. So you can see
2 through it in the winter time. There is sloping
3 topography and I'll draw your attention to the
4 second page of O-1. While the lot slopes from east
5 to west. The cross-section is fairly level. So I
6 drew a line in red from Route 22 to Route 28 and I
7 labeled various elevations and you can see oddly
8 enough the right-of-way line on Route 22 is 138
9 feet. The right-of-way line on Route 28 is 138
10 feet. The elevation in the middle of the property
11 ranges from 139 to 141. So at least from that
12 dimension, the property is easily developed.
13 Nothing peculiar about it. It does slope upward as
14 you go to the east and that's where the applicant
15 is cutting into the slope to build the gas station
16 part of the property.

17 I also put into the east and west
18 elevation at the far eastern portion of 152 and
19 again, to the left side which is the midpoint of
20 the property 132. So that shows you where the drop
21 in elevation is. I.

22 Note that if you look at back to the
23 first page of my exhibit that had the aerial
24 photograph, you'll see that the A-15 exhibit that
25 showed this visual look was apparently -- that

1 part of the applicant's survey that show existing
2 topography and I've added notations to that.

3 The third page as an excerpt from the
4 zoning map on the upper section and an excerpt of
5 the land use plan on the lower section and the back
6 page has the zoning that exists in the Route 22
7 corridor where I've emphasized Route 22 with a dark
8 black line and I have also added notations to that.

9 By way of background, the properties
10 have been fairly well-described. There are two tax
11 map lots. One is over three acres. One is under
12 three acres.

13 MS. SUAREZ: Could you please identify
14 them by lot numbers?

15 MR. STECK: Yes. Lot 1 and Block 400
16 is the 3.1 acre property. That's the one that has
17 the office building on it that has been vacant.
18 Excuse me. That's the one that has the dwelling on
19 it and the farm stand. Block 400, Lot 2 is the lot
20 that is 2.10 acres, I believe, according to the tax
21 records and that's the one that has the vacant
22 office building. That's the one that fronts on
23 Route 22. Whereas, the farm stand is oriented to
24 Route 28.

25 The property as, you know, is fairly

1 showed some fencing and you can see the top of the
2 building. That was the applicant's exhibit.
3 That's not really a true rendition because that was
4 the site plan prior to the introduction of an
5 emergency access drive. If you move the exhibit up
6 a little bit. So that driveway is going to remove
7 some trees. So the rendition that you saw is not
8 in my opinion as accurate view of what the current
9 site plan because yes, the lower part of the
10 building will be blocked because there is a fence
11 there.

12 But the other thing that's somewhat
13 skewed is that as you travel to the east on Route
14 28, the elevation goes up and the elevation goes up
15 about 12 feet. So if you were looking from the
16 eastern part of the property, looking toward the
17 gas station, you'd be looking down. So what I'm
18 suggesting is the applicant's rendition while it
19 may have been accurate in an earlier plan, it's no
20 longer accurate because of this plan and it's kind
21 of skewed because they picked a lower elevation as
22 opposed to moving further to the east that you
23 would have a higher elevation.

24 In addition to examining the property,
25 of course, I looked at the application and there

1 are two nonconforming uses now, the residential
2 dwelling and the farm stand, that are being
3 intensified because other things are being added to
4 those properties. There is a case called
5 raspberries that says when you take away vacant
6 land from a nonconforming use it gets intensified.
7 So those involve D variances.

8 But the real thrust of this application
9 is the two non-permitted uses, the gas station and
10 the retail store. Again, it doesn't meet your
11 definition of convenience because it's too large.
12 You have a definition of a convenience store that's
13 up to 5,000 square feet. This is 5,700 square
14 feet. It's bigger than what your ordinance allows.
15 But essentially, it carries convenience goods and
16 it's a retail store.

17 There's been a lot of discussion about,
18 you know, is this a gas station a real -- let me
19 finish just describing it. As depicted in the
20 latest rendition of the site plan. You know, we
21 have access only from Route 22 eastbound. No
22 formal access at least for the gas station and the
23 convenience store are proposed from Route 28.

24 There are a number of bulk variances
25 and sign variances, but as the Chairman has

1 if you look at the Route 22 study of the planning
2 board, they say, we already have gas stations in
3 the area and the answer is, some of those gas
4 stations don't have repair bays, Lukoil, Sunoco,
5 Valero or BP, Raceway. So in my opinion people
6 knew -- when the ordinance says service station, I
7 think the governing body knew what they were
8 talking about. I think the planning board knew
9 what it was talking about when they put it in the
10 master plan.

11 So moving right along part of my
12 examination was to look at the area and this is in
13 two corridors. It's oriented toward the Route 22
14 corridor to the east is a landscaping business.
15 Across Route 28 is the single-family neighborhood
16 that's well established.

17 There is a major interchange to the
18 west of the subject property, but what is
19 noticeable in driving the corridor is that it
20 changes in character. As you go east of 202/206
21 there's a different area and in fact, there are
22 different zones that are there. There are gas
23 stations in this corridor and if you look at the
24 last page, for example, of my exhibit O-1, PP-4, I
25 put where the subject property is, with a red dot

1 indicated, we're going to concentrate on the use
2 variance at least this part of the application.

3 I'm going to jump. The applicant's
4 planner was saying that, well, this isn't really a
5 gas station because it doesn't meet your
6 definition. Well, I would disagree and the reason,
7 let me just read what your ordinance says is a gas
8 station. This is from Section 126-2, automotive
9 service station or gas station. A place where
10 gasoline, kerosene or any other motor fuel or
11 lubricating oil or grease for operating motor
12 vehicles is offered for sale to the public and
13 deliveries are made directly into motor vehicles,
14 including sale of accessories, greasing, oiling and
15 light motor service on the premises. The
16 definition is expansive. It includes some light
17 repairs, but the fundamental nature of this is a
18 service station and I don't think a reasonable
19 person would doubt that the governing body didn't
20 know what it was talking about when it talked about
21 a service station. If you look at the conditional
22 use requirements where it's allowed in other zones
23 they talk about distance to pumps. You know,
24 setbacks to the pumps. The governing body knew
25 what a gas station was in my opinion and in fact,

1 and labeled subject property and then I listed the
2 gas stations I found and I'm only going eastbound
3 because in some cases, it's difficult to turn
4 around. There are aren't that many places to do
5 it. So going eastbound, I first hit a Shell and
6 then I hit a Lukoil, who doesn't have any bays. I
7 have an Exxon I hit and these are in Somerville and
8 your master plan recognizes that some of these
9 stations are not in this municipality. There is
10 Sunoco with no bays. There's Valero with no bays.
11 There's BP with no bays and there's Raceway with no
12 bays. So if I am running low on gas and I am at
13 the subject site, within a little over five minutes
14 assuming that I -- I drove it and in five minutes,
15 actually five minutes, eight seconds, I happen to
16 be going 60 miles an hour with not traffic, I
17 passed five gas stations within that time. So we
18 have five minutes. It certainly is a six-minute
19 period of time where I pass five gas stations.

20 Now let's say that you are running low
21 not on gas, but on food, there are a number of
22 restaurants along the way that you can stop and
23 eat, too. There is no special requirement that you
24 have to eat and fill your stomach at the time you
25 fill your tank. The applicant is kind of

<p style="text-align: right;">Page 118</p> <p>1 connecting those two, but they are different uses.</p> <p>2 As part of my analysis in terms of</p> <p>3 looking at the surrounding area, I looked at your</p> <p>4 master plan and the first primary document is the</p> <p>5 2010 document that specifically studied the Route</p> <p>6 22 corridor and it talked about in general, you</p> <p>7 know, increasing the value of commercial</p> <p>8 properties, providing for commercial diversity. So</p> <p>9 it wanted different kinds of uses. It didn't want</p> <p>10 all the same use repeated over and over again. It</p> <p>11 listed goals and objectives for the Route 22</p> <p>12 corridor on page eight and it talked about and I'll</p> <p>13 just summarize them, they are bullet points.</p> <p>14 Protecting the quality of life enjoyed by</p> <p>15 Bridgewater residents. It talked about increasing</p> <p>16 tax rates, supporting economic anchors,</p> <p>17 adjusting to contemporary needs, encouraging</p> <p>18 long-term sustainable site planning, enable more</p> <p>19 flexibility and development context and offering</p> <p>20 building design guidelines where appropriate.</p> <p>21 Now the planning board used those goals</p> <p>22 and what did it do with those goals? It</p> <p>23 produced a land use plan and it advanced those</p> <p>24 goals by having this section that the property is</p> <p>25 in, in a C-3 zone, that doesn't permit retail and</p>	<p style="text-align: right;">Page 120</p> <p>1 multifamily townhome development. So it looked at</p> <p>2 the corridor. It said there are different sections</p> <p>3 with different characteristics. So that's how it</p> <p>4 looked with the existing character and that exists</p> <p>5 today. When you drive the corridor, you notice the</p> <p>6 different characteristics.</p> <p>7 On page 11, it talks about an overview</p> <p>8 of the market demand and again, keep in mind this</p> <p>9 corridor plan was done in 2010. So this was after</p> <p>10 the 2008 crash and the plan said, the office market</p> <p>11 ain't great. People aren't doing speculative</p> <p>12 offices anymore because the economy has tanked and</p> <p>13 the market isn't strong. The governing body knew</p> <p>14 at the time that they did the recommendations for</p> <p>15 the Route 22 corridor, that the office market</p> <p>16 wasn't as potent as it was at an earlier period of</p> <p>17 time.</p> <p>18 On page 14 it talked about specifically</p> <p>19 the C-3 office and service zone and it described it</p> <p>20 as permitting a broad range of offices for</p> <p>21 business, professional and service uses, as well as</p> <p>22 research activities, medical services, banks and</p> <p>23 financial institutions and assisted living</p> <p>24 facilities. Retail activity is conditionally</p> <p>25 permitted as an accessory use only provided as part</p>
<p style="text-align: right;">Page 119</p> <p>1 doesn't permit gas stations, it had other lands</p> <p>2 east of Route 202/206 that did allow service</p> <p>3 stations as a conditional use. So what I'm saying,</p> <p>4 the applicant looks at these general goals and</p> <p>5 says, I'm advancing this.</p> <p>6 Well, first of all, you're existing</p> <p>7 land use pattern advances these goals. This is one</p> <p>8 document. Now the applicant could disagree how to</p> <p>9 implement those goals. But unfortunately, the</p> <p>10 applicant is not the elected officials of the</p> <p>11 planning board. The planning board looked at these</p> <p>12 goals and said, we're going to implement these</p> <p>13 goals by a certain pattern of land use that happens</p> <p>14 to be consistent with what the zoning pattern is.</p> <p>15 If you look at page ten of the master</p> <p>16 plan, it divided Route 22 into different sections</p> <p>17 because they had different characteristics. This</p> <p>18 happens to be in the western area. It's titled to</p> <p>19 page ten, Western Area of Route 22 Corridor From</p> <p>20 North Branch of the Raritan River to the Somerville</p> <p>21 Circle. The western section of Route 22 is</p> <p>22 characterized by office campuses with expansive</p> <p>23 lawns separating buildings, parking areas from the</p> <p>24 roadway. Nestled between these office complex is</p> <p>25 Raritan Country Club, single-family homes and a</p>	<p style="text-align: right;">Page 121</p> <p>1 of the larger principle office use. So again, if</p> <p>2 you had an office campus, you could have a small</p> <p>3 retail outlet there. That's okay. But not as a</p> <p>4 principle use. So that was the existing zoning.</p> <p>5 And then as recently as -- then there</p> <p>6 had been a series of reexamination reports and the</p> <p>7 important thing is that after looking at this time</p> <p>8 and time again with several reexamining reports,</p> <p>9 the planning board said, we don't need any changes</p> <p>10 to this C-3 district. It said in general that we</p> <p>11 wanted to expand the uses and if you look at the</p> <p>12 document, they showed what the existing zone was</p> <p>13 and in fact, the governing body did follow up by</p> <p>14 expanding the uses. The applicant wants to say</p> <p>15 that's open-door policy. That means they were</p> <p>16 thinking of my eighth gas station or something.</p> <p>17 But that's not what the documents read. They want</p> <p>18 to expand the uses and the governing body did</p> <p>19 expand the uses.</p> <p>20 In fact, they -- of significance is</p> <p>21 that they did delete forms of art, agriculture and</p> <p>22 horticulture. So they took out some uses, but they</p> <p>23 did add other uses and indeed, they would permit</p> <p>24 three stories and 45 feet. No one has a problem</p> <p>25 with three stories and 45 feet. That kind of a</p>

1 building is usually not as active as a gas station
 2 and a convenience store and open 24 hours a day.
 3 There's a whole different nature of land uses
 4 impacts with the land use that the applicant is
 5 proposing. The important issue on page 29 of one
 6 — of the reexamination report has to do with
 7 service stations and that's up on the board and
 8 it's a little hazy. So I'm going to read it into
 9 the record. This is C policy determinations
 10 subsection five. Service stations: There was
 11 discussion regarding whether more service stations
 12 should be encouraged along the Route 22 corridor.
 13 Some zones along Route 22 already permit gas
 14 service stations as conditionally permitted use.
 15 Should be uses. After consideration, the board
 16 concluded that gasoline service stations were found
 17 in the westbound lane and in the eastbound lane of
 18 Route 22. Some of the stations are in Somerville
 19 and some are in Bridgewater. The board concluded
 20 that this use is adequately represented and the
 21 master plan amendment endorses the existing
 22 ordinance and does not recommend additional service
 23 stations as permitted use in other zones.

24 Now in common sense, that tells me that
 25 the planning board said, we have enough service

1 stations considering the ones in Bridgewater and
 2 the ones in Somerville and in fact, one of my
 3 exhibits shows that in six minutes you pass at
 4 least six other gas stations. The applicant is
 5 saying, well, it doesn't say the Board of
 6 Adjustment shouldn't grant use variances. Well,
 7 the master plan never says that because the Board
 8 of Adjustment has different jurisdictions. You
 9 look at the evidence. You see there are situations
 10 where applications should be denied. There are
 11 situations where applications should be approved
 12 based on the evidence. But a master plan never
 13 says to a Board of Adjustment, don't grant any
 14 variances. This is the policy and the plain
 15 reading of this is, we have enough gas stations in
 16 the area and in fact, physically that's the
 17 situation as indicated by just the eastbound lane.

18 The master plan recommended a different
 19 definition for convenience stores. Cap it off at
 20 5,000 square feet and that indeed is the zoning
 21 ordinance. The master plan also had on aesthetics,
 22 it said on page 34 under materials it want to limit
 23 artificial, they call it EIFS, artificial siding
 24 and insulation to ten percent of a building. They
 25 wanted it essentially untrimmed. Now the

1 applicant's design doesn't necessarily follow that
 2 issue. Although there is a lot of talk about we
 3 did four sides of the building. The answer is, you
 4 can put columns on this building, but it's still
 5 going to look like a Quick Chek and it's still
 6 going to look like a gas station and on the issue
 7 of aesthetics you shouldn't approve a use just
 8 because some of put some drivet on it.

9 The famous case on this is the
 10 Burbridge case in Mine Hill and that wasn't the
 11 case about curtains in the window or the color of
 12 the siding. That was someone that took junk cars
 13 from the front lawn and put them in the back and it
 14 mounted to an expansion of the use and that was the
 15 aesthetic improvement at least that the Supreme
 16 Court looked at in terms of public purposes. So
 17 it's a different issue than I'm going to add some
 18 siding to this building and that justifies the
 19 permitted use.

20 I note that in the C-3 office zone
 21 there are a number of uses that are permitted that
 22 are not offices. It talks about nursing homes,
 23 assisted living. It talks about medical offices.
 24 Specifically along Route 22, it talks about health
 25 clubs, indoor commercial recreation, adult medical

1 daycare, medical support centers. So while the
 2 applicant is saying the market is difficult for
 3 offices, this is not just an office zone. It
 4 allows a range of uses that have not been addressed
 5 by the applicant and again, I just reference where
 6 service stations are permitted as a conditional use
 7 in Section 126-352. They talked about pumps. The
 8 governing body knew what a service station was and
 9 just because you don't repair cars there, doesn't
 10 take it out of a category of a service station.

11 The applicant's planner summarized her
 12 testimony earlier this evening and I'm going to
 13 just generally categorize it and comment on it. It
 14 was an acknowledgment that there are four D
 15 variances that are involved. But the two important
 16 ones in my opinion and again, the applicant is
 17 willing to demolish the dwelling and the farm
 18 stand, but the two issues are the two non-permitted
 19 uses. The retail store of 5,700 square feet and
 20 the gas station with 16 fueling locations.

21 The applicant in setting the stage for
 22 a peculiar suitability talked about the change in
 23 topography of the lot. The change is in east to
 24 west and the answer is, most of these improvements
 25 are on the eastern part of the property and yes, it

1 does rise there. But the elevations, if you split
2 the property from Route 22 to 28 are not
3 significant. There is nothing unusual about that.

4 The applicant talked about the lower
5 first floor of the building. That's true if you're
6 at the low side of Route 28 where that photograph
7 was. But if you go east, the answer is, you're
8 above the elevation of the building. It's much
9 more apparent there and those trees are deciduous
10 trees that are going to be kept.

11 The applicant talked about this
12 three-mile gap. The answer is, I know why there is
13 a three-mile gap because gas stations aren't
14 permitted even as a conditional use in this zone.
15 That makes sense to me. The applicant said there
16 are no other convenience store with the same
17 offering. This is like saying that a restaurant
18 should be permitted in the zone because it has a
19 different menu. The answer is the fact whether
20 it's fresh bread, frozen bread, fresh donuts,
21 overnight storage of donuts, that doesn't change
22 the land use in my opinion. The fact that it's
23 fresh or not fresh is not for land use
24 consideration.

25 The applicant says the architecture

1 responds to the requirements of the design
2 standards. Well, the architecture is a minor
3 issue. This is going to look and operate as a gas
4 station and effectively as a convenience store.
5 The fact that the applicant is using some brick on
6 four sides, in my opinion doesn't change the nature
7 of the use. In fact, there is probably too much
8 dryvet on the building that would comply with the
9 standards.

10 As specials reasons, the applicant's
11 planner talked about purposes G, H, I and M and as
12 the board can recall, G talks about sufficient
13 space in an appropriate location. Well, the master
14 plan and the zoning ordinance tell you what the
15 appropriate location is. It's not here. It talks
16 about the location, design of transportation routes
17 that will promote the free flow of traffic. That's
18 I. Not discussed by the applicant, the applicant
19 says that 90 percent of this traffic. Even though
20 the study says 66 percent is pass-by traffic. That
21 traffic still has to enter the site, which means
22 they still have to slow down and accelerate on
23 Route 22. It was no discussion at all about an
24 accident pattern and you will hear a witness after
25 me that did some research on the incidents of

1 accidents in the area. So when you have cars
2 slowing down and speeding up in a stretch of
3 highway, yes, it's 900 feet long, but in a stretch
4 of highway, the more intensive that use is, the
5 more likely you'll have accidents because there is
6 traffic of different speeds.

7 It talks about promoting a visual
8 environment. A gas station with a canopy is not
9 what was anticipated. This is a brightly-lit
10 feature. It looks like a gas station. In fact, it
11 was going to be a beacon for 24 hours a day. This
12 is a highly-illuminated issue. This is not going
13 to look like an office building. It's not going to
14 look like a health club. It's not going to look
15 like an assistant living facility.

16 MR. VASTOLA: Mr. Steck, we're get
17 very, very close to the bewitching hour and let me
18 end on this note. We've heard some testimony from
19 you making reference to the master plan, the master
20 plan amendments and the 22 corridor study.
21 Mr. Robertson, very thorough cross-examination of
22 Ms. Doyle on the same issues, but from the point of
23 view of the zoning board in a case like this, the
24 zoning board is on a proverbial slippery slope
25 between exercising its power under the D section of

1 the statute or legislating and I think the board
2 has to be very careful to be not legislating and
3 this case to be based on the property and what is
4 it about this property that makes it particularly
5 suited and not to say that the governing body
6 really maybe meant that you should have a gas
7 station here. Well, if they wanted a gas station
8 here, they would have said a gas station. That's
9 the way I see it.

10 MR. STECK: That happens to be where
11 some of my testimony is going.

12 CHAIRMAN: Okay. We are going to have
13 to cut it off at this point. For everybody that's
14 here now and Mr. Steck, I certainly hope you're
15 going to join us at our next session, which is in
16 three weeks on the 23rd of this month and that
17 meeting is going to be at the middle school at 7:30
18 on the 23rd. The middle school is at 128 Merriwood
19 Drive.

20 Now one other thing folks before you
21 leave, I'm hoping that at the next session we will
22 have time to start listening to your comments about
23 this application so be prepared and when you
24 prepare your comments, remember that after three
25 minutes, I'm going to cut you off. So keep them

1 short. Short and sweet. We'll see you on the
2 23rd. Thank you. We're adjourned.

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4 (The hearing concluded at 10:30 p.m.)
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1 CERTIFICATE
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4 I, LATITISA RUSSELL, a Certified Court
5 Reporter and Notary Public of the State of New
6 Jersey, certify that the foregoing is a true and
7 accurate transcript of the stenographic notes of
8 the deposition of said witness who was first duly
9 sworn by me, on the date and place hereinbefore set
10 forth.

11 I FURTHER CERTIFY that I am neither
12 attorney, nor counsel for, nor related to or
13 employed by, any of the parties to the action in
14 which this deposition was taken, and further that I
15 am not a relative or employee of any attorney or
16 counsel in this case, nor am I financially
17 interested in this case.
18
19
20

21 LATITISA RUSSELL, C.C.R.
22 LICENSE NO. 30XI00234100
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