

BRIDGEWATER TOWNSHIP  
**ZONING BOARD OF ADJUSTMENT**  
Regular Meeting  
November 28, 2023  
—MINUTES—

**1. CALL MEETING TO REGULAR MEETING ORDER**

Chairman Foose called the meeting to order at 7:00 pm

**2. MOMENT OF SILENCE FOR Mr. Subash Amin**

The Board held a moment of silence for Mr. Subash Amin

**3. ROLL CALL**

Jeff Foose-	Present	Andrew Fresco-	Present
James Weideli -	Present	Gary LaSpisa-	Present
Donald Sweeney-	Absent	Jeff Sicat-	Present
Bruce Bongiorno-	Present	Claudio Vescio-	Present
Pushpavati Amin-	Present	John Gayeski-	Present
John Kulak-	Present		

Others present: Board Attorney Rich Oller, Esq., Scarlett Doyle, Township Planner, Bill Burr, Township Engineer and Roger Dornbierer, Zoning Officer

Mr. Weideli extended his condolences to Mrs. Amin for the loss of her husband, Mr. Amin.

**4. OPEN TO THE PUBLIC**

Chairman Foose opened the meeting to the public. With there being no members of the public wishing to speak, this portion of the meeting was closed.

**5. BOARD MINUTES**

There were no minutes for approval

**6. RESOLUTIONS**

**Application No. 20-008-ZB; Shah, Samir & Sheetal  
Block 624, Lot 127; 1052 Rt. 202/206 North**

On motion by Mr. Weideli, seconded by Mr. Bongiorno, the Board voted to approve the resolution as presented based on the following roll call vote:

Ayes: Mr. Weideli, Mr. Fresco, Mr. Bongiorno, Mr. Gayeski, Mr. Kulak  
Mr. Vescio & Chairman Foose

Nays:

Ineligible: Mr. LaSpisa, Ms. Amin & Mr. Sicat

Abstain:

Absent: Mr. Sweeney



**7. LAND DEVELOPMENT APPLICATIONS**

**Application No. 23-012-ZB; Somerville Lumber Company  
1468 & 1480 Route 22; Block 234, Lots 2, 3&4**

See attached transcript prepared by On Q Reporting LLC.

On motion by voted to grant the applicant’s appeal of the Zoning Officers decision based on the following roll call vote:

Ayes: Mr. Weideli, Ms. Amin, Mr. Fresco, Mr. Bongiorno, Mr. Gayeski  
& Chairman Foose  
Nays: Mr. LaSpisa  
Ineligible: Mr. Sicat, Mr. Kulak & Mr. Vescio  
Abstain:  
Absent: Mr. Sweeney

**Application No. 21-020-ZB; Gateway 70-B LLC  
Block 221, Lot 1.01; 229 Adamsville Rd.**

Mr. Silbert was present to represent the applicant. He gave a brief overview of the application history and advised the applicant is currently seeking a second extension.

On motion by Mr. Weideli, seconded by Mr. LaSpia, the Board voted to approve the request with conditions based on the following roll call vote:

Ayes: Mr. Weideli, Mr. LaSpisa, Ms. Amin, Mr. Fresco, Mr. Bongiorno,  
Mr. Gayeski & Chairman Foose  
Nays:  
Ineligible: Mr. Sicat, Mr. Kulak & Mr. Vescio  
Abstain:  
Absent: Mr. Sweeney

**Application No. 23-014-ZB; CX Tower Leasing  
Block 163, Lot 6.01; 719 Route 202**

Mr. Purcell was present to represent the application. Chairman Foose advised Mr. Purcell that the Board is in the process of retaining an RF Engineer. Mr. Purcell confirmed his client will proceed with engineering testimony and reserve RF testimony until the next meeting when the Board’s Professional is in attendance.

Mr. Purcell provided a brief overview of the application. Sworn testimony was provided by Mr. Michael Martin, PE and Eugene Fassett, Managing Member of CX Towers.



Mr. Purcell advised the applicant is seeking approvals to place a monopole on Block 163 Lot 6.01 because NJ American Water is requiring the applicant to vacate the tower.

On questioning by the Board, Mr. Purcell confirmed the applicant must come to the Board of Adjustment for approval.

Mr. Purcell introduced Mr. Martin as the applicant's Professional Engineer. He was sworn and accepted by the Board.

Mr. Purcell reviewed the existing site conditions and location advising Dish will temporarily be placed on the water tower. Mr. Purcell and Mr. Martin confirmed Homeland Security would find this tower arrangement acceptable however the concern is contractors doing work on the water tank.

Mr. Purcell continued to describe the existing site details and landscaping. He then confirmed there are no wetlands or easements on the site that would restrict the property. He advised the applicant submitted an Environmental Impact Statement confirming same.

Mr. Martin described the proposed monopole and identified the proposed 10' chain-link fencing with barbed wire. Mr. Martin confirmed the applicant is agreeable to reducing the size of the fencing and removing the barbed wire to comply with Township Ordinances. He then described the proposed landscaping for the site.

Mr. Martin advised the closest residence is approximately 254 ft.

Chairman Foose advised he conducted a site visit and saw two generators that ran for the duration of his visit. Mr. Martin then confirmed the applicant is not proposing any generators as part of this application.

On questioning by the Board, Mr. Purcell confirmed he represented other "DAS" applications before this Board.

Mr. Martin discussed the access easement and advised the Bridgewater Fire Marshal has not yet determined the necessary width of access easement. The Board expressed concerns with emergency vehicles accessing the site.

On questioning by the Board Planner, Mr. Martin confirmed any mention of Verizon for the tower will be removed as they are not a part of the application.

On questioning by the Board, Mr. Eugene Fassett was sworn in as Managing Member of CX Towers. Mr. Fassett advised NJAM was concerned with more complex equipment on the water tower. NJAM has experienced issues with cellular carrier employees cutting



locks and accessing their towers without NJAM personnel present. The Board then engaged in a lengthy discussion regarding security measures on the site.

This application was carried to the Tuesday January 9, 2024 Reorganization at 7:00 pm for scheduling purposes only.

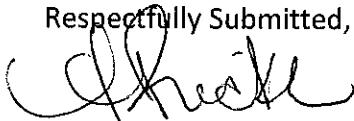
**8. OTHER BOARD BUSINESS**

There was no other business.

**9. ADJOURNMENT**

The Board unanimously voted to adjourn at approximately 10:07 pm.

Respectfully Submitted,



Jo-Ann M. Ricks

Deputy Land Use Administrator/Deputy Zoning Officer





1 TOWNSHIP OF BRIDGEWATER  
 2 ZONING BOARD OF ADJUSTMENT

3  
 4 IN THE MATTER OF THE :  
 5 APPLICATION OF: :  
 6 #23-012-ZB, SOMERVILLE :  
 7 LUMBER COMPANY, 1480 ROUTE:  
 22, BRIDGEWATER, Block: :  
 234, Lot: 2, 3 & 4 :  
 :

8 -----  
 9 TRANSCRIPT OF PROCEEDINGS  
 10 TUESDAY, NOVEMBER 28, 2023  
 COMMENCING AT 7:00 P.M.

11  
 12 BOARD MEMBERS PRESENT:

13 JEFFREY FOOSE--Chairman  
 14 JOHN KULAK  
 15 GARY LASPISA  
 16 CLAUDIO VESCIO  
 17 BRUCE BONGIORNO  
 18 JAMES WEIDELI  
 19 PUSHPAVATI AMIN  
 20 JEFFREY SICAT  
 21 JOHN GAYESKI  
 22 ANDREW FRESCO

23 ALSO PRESENT:

24 SCARLETT DOYLE, Board Planner  
 25 WILLIAM BURR, Board Engineer  
 RICHARD OLLER, ESQUIRE, Board Attorney  
 ROGER DORNBIERER- Zoning Officer

STENOGRAPHICALLY REPORTED BY:  
 DEVON GERBER, RMR, CRR, CCR

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

2 DIFRANCESCO, BATEMAN, KUNZMAN, DAVIS, LEHRER &  
 3 FLAUM, P.C.  
 15 Mountain Boulevard  
 4 Warren, New Jersey 07059  
 BY: MICHAEL SILBERT, Esq.  
 5 Counsel for the Applicant

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1 I N D E X :

2 WITNESS		PAGE
3 James Kyle		11
4 Roger Dornbierer		58

5  
 6  
 7 PUBLIC COMMENT:

8 NAME	ADDRESS	PAGE
9	(None.)	

10  
 11 E X H I B I T S

12 EXHIBIT NO.	DESCRIPTION	PAGE
13	(None.)	

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1 CHAIRMAN FOOSE: Good evening, everyone.  
 2 We're going to call the meeting to order. It's  
 3 Bridgewater Township Zoning Board of Adjustment  
 4 regular meeting, Tuesday, November 28th, 2023.  
 5 Both adequate and electronic notice of this  
 6 meeting, specifying the time, place, and manner  
 7 in which such notice provided in accordance  
 8 with Open Public Meetings Act N.J.S.A. 10:4-6.  
 9 Specifically on April 19th, 2023, proper notice  
 10 was sent to the Courier News and the  
 11 Star-Ledger, and filed with the clerk at the  
 12 Township of Bridgewater, and posted on the  
 13 bulletin board at the Municipal Building.

14 Please be aware of the Zoning Board of  
 15 Adjustment policy for public hearings. No new  
 16 applications will be heard after 9:30 p.m. and  
 17 no new testimony will be taken after 10:00 p.m.

18 If you're able, please rise for the salute  
 19 to the flag.

20 (Pledge of Allegiance)

21 Welcome back, Roger. Roll call, please.

22 MR. DORNBIERER: Sure. Mr. Foose?

23 CHAIRMAN FOOSE: Here.

24 MR. DORNBIERER: Mr. Weideli?

25 MR. WEIDELI: Here.

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1 MR. DORNBIERER: Mr. Laspisa?  
 2 MR. LASPISA: Here.  
 3 MR. DORNBIERER: Ms. Amin?  
 4 MS. AMIN: Here.  
 5 MR. DORNBIERER: Mr. Sweeney? Mr. Sweeney  
 6 is absent. Mr. Fresco?  
 7 MR. FRESCO: Here.  
 8 MR. DORNBIERER: Mr. Bongiorno?  
 9 MR. BONGIORNO: Here.  
 10 MR. DORNBIERER: Mr. Gayeski?  
 11 MR. GAYESKI: Here.  
 12 MR. DORNBIERER: Mr. Sicat?  
 13 MR. SICAT: Here.  
 14 MR. DORNBIERER: Mr. Kulak?  
 15 MR. KULAK: Here.  
 16 MR. DORNBIERER: Mr. Vescio?  
 17 MR. VESCIO: Here.  
 18 MR. DORNBIERER: Ms. Doyle?  
 19 MS. DOYLE: Here.  
 20 MR. DORNBIERER: Mr. Burr?  
 21 MR. BURR: Here.  
 22 MR. DORNBIERER: Mr. Oller?  
 23 MR. OLLER: Here.  
 24 MR. DORNBIERER: We have a quorum.  
 25 CHAIRMAN FOOSE: Thank you very much.

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1 (Whereupon, the board proceeded  
 2 with its agenda and at 7:05 the  
 3 following application was  
 4 called.)  
 5 CHAIRMAN FOOSE: All right, Mr. Silbert  
 6 good evening. You're here on two cases.  
 7 MR. SILBERT: Yes, I am, Mr. Chairman.  
 8 We'll start with Somerville Lumber if that's  
 9 okay.  
 10 CHAIRMAN FOOSE: That's perfect. Good to  
 11 see you.  
 12 MR. SILBERT: Good to see you. Good to be  
 13 here.  
 14 Good evening, Board Members, Board  
 15 Professionals, Members of the Public. My name  
 16 is Michael Silbert and I'm an attorney at the  
 17 law firm DiFrancesco Bateman located in Warren  
 18 Township, New Jersey, and I have the  
 19 responsibility of representing the appellant  
 20 this evening, Somerville Lumber Company.  
 21 As a reminder, this is an appeal pursuant  
 22 to section 70a, 72, and 74 of the Municipal  
 23 Land Use Law for the purpose of appealing a  
 24 denial issued by the Township Zoning Officer  
 25 with respect to an application submitted by the

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1 appellant for a Certification of Nonconformity  
 2 pursuant to Section 68 of the MLUL.  
 3 As I'm sure the board recalls, Somerville  
 4 Lumber appeared before this board back in  
 5 August of 2023. Just some preliminary  
 6 background information to refresh everyone's  
 7 memory.  
 8 So back in April of 2023, the appellant  
 9 submitted a nonconformity application to the  
 10 Township Zoning Officer to certify that the  
 11 appellant and the property had vested rights to  
 12 principal warehouses uses, structures, as well  
 13 as those uses customarily incidental to  
 14 warehouse uses on property located on lots two,  
 15 three, and four, in block 234. Such rights  
 16 having preexisted the adoption of ordinance  
 17 number 22-30. And that ordinance, 22-30,  
 18 resulted in the prohibition of warehouse uses  
 19 in the M1-C Zone, the zone in which the subject  
 20 property is located.  
 21 The appellant's Section 68 application was  
 22 also accompanied by a zoning permit application  
 23 for a prospective warehouse tenant that was  
 24 going to lease a substantial amount of space  
 25 that was formerly occupied by my client,

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1 Somerville Lumber Company. And the Section 68  
 2 application was denied by the Township Zoning  
 3 Officer in a letter dated May 11th, 2023, since  
 4 it was determined by the Township Zoning  
 5 Officer that the principal use on the subject  
 6 property was not a warehouse use, but was  
 7 instead a principal retail use.  
 8 Thus, the appellant was not entitled to  
 9 the Certification of Nonconformity. And, as a  
 10 result of the denial, the appellant's zoning  
 11 permit application was also denied, since,  
 12 again, warehousing is no longer permitted in  
 13 the M1-C Zone.  
 14 At the August 22nd hearing, we presented  
 15 three witnesses. First, we presented Mr. Paul  
 16 Pettit, who worked for Somerville Lumber  
 17 Company for over four decades. He testified to  
 18 the authenticity of a number of photos that I  
 19 presented in a slide presentation.  
 20 Our second witness was Mr. Dominic  
 21 Caruso, who was a well-known and reputable  
 22 builder and resident of Bridgewater Township.  
 23 And he provided witness testimony with respect  
 24 to his longstanding business relationship with  
 25 Somerville Lumber, which we hoped would

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1 highlight Somerville Lumber's business  
2 operations on the property.  
3 Our third witness was Mr. Jonathan Glick,  
4 who was retained by Somerville Lumber a number  
5 of years ago to lease and market the subject  
6 property.  
7 To conclude our appeal, I would like to  
8 call our last witness, Mr. Jim Kyle, who is a  
9 professional planner. As stated at the last  
10 hearing, we felt that it would be helpful for  
11 the board and for Mr. Kyle to listen to the  
12 testimony presented at the prior hearing and  
13 then provide his professional planning  
14 prospective to the board in light of Somerville  
15 Lumber's other witnesses and in light of the  
16 presentation.  
17 So, with that as a reintroduction to this  
18 appeal and with your permission, Mr. Chairman,  
19 I would like to call our final witness, Mr. Jim  
20 Kyle and have him sworn.  
21 CHAIRMAN FOOSE: Mr. Silbert, I just want  
22 to make sure on Mr. Glick's testimony, maybe  
23 you can help me out here, Rich, did members of  
24 the public get to ask questions of him? I know  
25 we were running against the 10:00 p.m.

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1 Mr. Glick, now is the time to approach and give  
2 us your name and address.  
3 All right, seeing none, I guess we have  
4 satisfied that. Thank you.  
5 MR. SILBERT: Thank you, Mr. Chairman.  
6 Is it okay if I move forward with our  
7 final witness?  
8 CHAIRMAN FOOSE: Mr. Kyle, sure.  
9 MR. SILBERT: Great. Thank you.  
10 MR. OLLER: Would you raise your right  
11 hand please. Do you solemnly swear that the  
12 testimony you will give to this board will be  
13 the truth, the whole truth, nothing but the  
14 truth so help you God?  
15 MR. KYLE: I do.  
16 MR. OLLER: And would you state your full  
17 name for the record, please.  
18 MR. KYLE: Sure. James, last name Kyle,  
19 K-Y-L-E.  
20 MR. OLLER: Thank you, Mr. Kyle.  
21 MR. KYLE: Sure. And the firm is Kyle  
22 McManus Associates in Hopewell, New Jersey.  
23 Our business address is 2 East Broad Street in  
24 Hopewell 08525.  
25 MR. SILBERT: And if you wouldn't mind for

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1 MR. WEIDELI: I think we started.  
2 CHAIRMAN FOOSE: I have in my notes that  
3 we did start questions. I'm not sure if they  
4 were board or members of the public. I want to  
5 make sure that members of the public do have  
6 the ability to ask questions if they so wish.  
7 MR. SILBERT: Sure. I have the transcript  
8 in front of me. So I'm just going to make  
9 sure.  
10 CHAIRMAN FOOSE: Is Mr. Glick here?  
11 MR. SILBERT: He is here.  
12 CHAIRMAN FOOSE: Can we just open it up to  
13 members of the public to be safe and don't have  
14 a problem going forward.  
15 MR. SILBERT: Sure. Absolutely.  
16 CHAIRMAN FOOSE: All right, members of the  
17 public, Mr. Glick testified on -- he is a  
18 commercial real estate broker for 40 years.  
19 And he made some testimony that surrounded the  
20 historical primary use, the value of the  
21 property dropping without warehouse uses,  
22 historically marketing as a warehouse as  
23 primary use. I don't want to go over all of  
24 his points, but if any members of the public  
25 have any questions they would like to ask

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1 the benefit of the board and for the record, if  
2 you can just provide your credentials.  
3 MR. KYLE: Sure. I have a Bachelor of  
4 Science in environmental planning and design,  
5 which I received from Rutgers in 1996. I've  
6 been a practicing planner for over 25 years.  
7 I'm licensed by the state as a professional  
8 planner. I'm also a member of the American  
9 Institute of Certified Planners. Our office  
10 represents about 22 municipalities as their  
11 municipal planning consultant. I've also  
12 appeared before over 230 boards in the state,  
13 including past appearances in Bridgewater. I  
14 have also been qualified as an expert in  
15 planning in three vicinages in the Superior  
16 Court.  
17 MR. OLLER: And your license is current?  
18 MR. KYLE: It is.  
19 MR. OLLER: Thank you.  
20 CHAIRMAN FOOSE: Thank you, Mr. Kyle. The  
21 board accepts you.  
22 MR. KYLE: Thank you.  
23 MR. SILBERT: So, Mr. Kyle, I have a  
24 number of questions I've prepared, but you can  
25 go ahead and start off if you have a

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1 presentation and go from there.  
2 MR. KYLE: Sure. And my comments are  
3 fairly brief. I think the issue before the  
4 board is fairly simple. We heard pretty  
5 extensive testimony from Mr. Pettit at the  
6 August hearing. And really the question here  
7 before the board is whether the evidence that  
8 has been supplied and the testimony supports  
9 the notion that the primary use of this  
10 property historically has been for warehouse.  
11 And I'll just run through and kind of highlight  
12 some of that.

13 And, again, as Mr. Silbert said, you know,  
14 we're here because there was a certificate  
15 sought related to ordinance 22-30 from the  
16 Zoning Officer, which was denied, that would be  
17 a certificate of nonconforming use and also the  
18 zoning permit. So we're here to appeal that.  
19 And this comes to the board under Section 68 of  
20 the Municipal Land Use Law, which essentially  
21 says that if any zoning ordinance that changes  
22 and makes a use nonconforming, that use is  
23 allowed to continue.

24 So we have the option within one year of  
25 adoption of that ordinance to go directly to

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1 the Zoning Officer to seek that certificate,  
2 which we did, which was denied. And then we  
3 also had the option to appeal that denial,  
4 which is the basis for our appeal.

5 So the Zoning Officer's contention and his  
6 opinion in the matter was that retail use was  
7 the primary use of the property throughout the  
8 years. So as you heard Mr. Pettit testify to  
9 in August, essentially, most of the structures  
10 that are on the property, and that amounts to,  
11 and we presented this information in the  
12 presentation, is about 76 percent of the site  
13 is actually used for warehousing and building  
14 materials.

15 We also described how sales occurred, you  
16 know, some of it was occurring outside in  
17 another location. Some of it was occurring on  
18 site. But a very small percentage of the floor  
19 area of these facilities was dedicated to  
20 actual retail sales. A majority of the space  
21 was for the storage of, as we heard, lumber,  
22 material was brought in on train, on truck,  
23 stored for extended periods of time until a  
24 sale occurred. And then it was taken out to a  
25 job site or out to a client at that point.

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1 Very similar to how a traditional  
2 warehouse works: Material brought in, stored  
3 for an extended period of time, shipped out to  
4 another location when a sale occurs, either a  
5 wholesale sale or retail sale.

6 So I think the description by Mr. Pettit  
7 and the other witnesses of the way that this  
8 business operated supports the notion that a  
9 majority of the space that is here was simply  
10 used for the storage of materials similar to  
11 what you would do in a warehouse.

12 We also have -- and, Mike, we submitted  
13 the letter on November 17th, correct?

14 MR. SILBERT: That's correct. It was a  
15 letter exhibit with a resolution dating back to  
16 2002 for the approval from the Planning Board  
17 for the construction of a 7,000 square foot  
18 warehouse on the property.

19 MR. KYLE: Yeah, I believe that's part of  
20 the board's records. So just to highlight some  
21 of the issues in that letter that Mr. Silbert  
22 prepared. So I think the zoning history and  
23 the approval history, how this application has  
24 been treated over time, whether through the  
25 Planning Board or this board, is relevant to

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1 the board's consideration.

2 So because it really paints a picture of  
3 how the Township had viewed this use over time.  
4 So when we look at the 2002 resolution, it  
5 notes that the lumberyard is a permitted use  
6 within the underlying zoning district. Now, at  
7 the time, that was M-1A, and retail uses were  
8 not permitted in the M-1A district at that  
9 time.

10 In 2005 the ordinance was amended to  
11 eliminate the previously permitted building  
12 materials storage yard use. However,  
13 Somerville Lumber at that point was allowed to  
14 continue as a nonconforming use. And then in  
15 2006, the ordinance was amended again to permit  
16 retail as an accessory use. So, in other  
17 words, subordinate and in conjunction with the  
18 primary use that was occurring on the property.

19 I don't think we necessarily know if that  
20 was intentional, meaning there was a  
21 recognition that there was some limited retail  
22 use that was occurring on the property. But  
23 either way, I think the testimony that was  
24 provided in August does support the notion that  
25 the retail component of the site, in other

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1 words, we talked about things that were on the  
2 floor, floor sale, what types of sales were  
3 occurring, that was not walk-in sales. So most  
4 people were not walking in off the street to  
5 buy a hammer, or two by four, piece of plywood.  
6 It was primarily contractor sales. Items were  
7 shipped from this location to job sites, were  
8 held for extended periods of time potentially,  
9 and there was also inventory that was stored.  
10 Windows, you know, we described there was doors  
11 and windows manufactured on the site, and then  
12 stored for extended periods of time until they  
13 were sold.

14 So that, to me, is consistent with, you  
15 know, how the property has historically been  
16 used primarily as a storage use. So I think in  
17 this case, the nature of the business use that  
18 we've described, the evidence that was  
19 presented, was fairly extensive. I think the  
20 testimony of Mr. Pettit, an employee that was  
21 there for 40 years, you know, well knew for  
22 four decades how the operations worked, you  
23 know, gave the board a very good description of  
24 how that use occurred and what was occurring on  
25 the property. I think that's compelling.

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1 adoption of ordinance 22-30. So, essentially,  
2 you're certifying that the use was a warehouse,  
3 and, therefore, is allowing to continue in the  
4 future based on the issuance, really  
5 overturning the Zoning Officer's decision to  
6 make that finding. And I think that the  
7 evidence does support that in my opinion.

8 MR. SILBERT: And just a couple questions.

9 MR. KYLE: Sure.

10 MR. SILBERT: So back in early August you  
11 actually had the opportunity to walk the entire  
12 property, correct?

13 MR. KYLE: I did. Every building in the  
14 entire site.

15 MR. SILBERT: And so putting on the  
16 planner's hat, you observed everything.

17 In your opinion, would you say that the  
18 property was representative of an industrial  
19 property with accessory retail; is that a  
20 proper classification?

21 MR. KYLE: It was. When you look at the  
22 nature of the construction, the storage systems  
23 that are present in most of these buildings,  
24 it's consistent with what you would see in a  
25 warehouse facility.

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1 And the 76 percent figure that we  
2 presented as evidence based on the floor plans,  
3 76 percent of the building area, which would be  
4 the vast majority of the space that's on the  
5 site, was really used simply for the storage of  
6 those building materials and inventory that was  
7 then shipped out and sold.

8 So I think, you know, again, based on the  
9 testimony that's been presented to the board,  
10 my professional opinion is that when we look at  
11 that evidence, and we look at the nature of the  
12 use of these buildings in this facility, it  
13 essentially has been a warehouse operation, you  
14 know, from the beginning. And it's been  
15 treated that way as you look at the zoning  
16 history, approval history of this through the  
17 resolutions, as Mr. Silbert outlined in the  
18 November 17th correspondence, does support that  
19 notion in how this use has been historically  
20 treated.

21 So I think, at the end of the day, again,  
22 the board is deciding whether or not that is  
23 factually correct and that the applicant is  
24 entitled to a certificate of nonconforming use  
25 to continue that warehouse use despite the

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1 MR. SILBERT: Thank you. And then did you  
2 happen to take in at all the number of parking  
3 spaces on the property? If I suggested that  
4 there were approximately 60 spaces, would that  
5 sound accurate to you?

6 MR. KYLE: Roughly, yeah.

7 MR. SILBERT: And do you think that 60  
8 parking spaces would be able to accommodate a  
9 principal retail operation of that size and  
10 magnitude?

11 MR. KYLE: No, not based on current  
12 standards. And I'll say I don't know the  
13 Township's exact standards for retail, but it's  
14 typically somewhere between four and five  
15 spaces per thousand square feet. So you would  
16 be talking about a significant number of  
17 spaces.

18 MR. SILBERT: Turning to the joint  
19 municipal report, which was dated July 28th,  
20 2023. Is it fair to say that principal uses  
21 are highly integrated with accessory uses and  
22 vice versa, meaning that the uses complement  
23 one another, they're supportive of one another?

24 MR. KYLE: They are.

25 MR. SILBERT: So do you feel as though

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1 that the applicant's burden should be to prove  
2 to the board that the retail use on the  
3 property was subordinate in size and scale to  
4 the alleged principal warehouse use on the  
5 property? Is that -- what is the burden of  
6 proof to the -- of the applicant or the  
7 appellant to the board? What do they have to  
8 demonstrate?

9 MR. KYLE: Well, here, in this case,  
10 again, it's related to do you feel that the use  
11 that we've described, and how that use has  
12 occurred over time, is consistent with a  
13 warehouse use.

14 So it's not necessarily, you know,  
15 strictly the relationship between the retail  
16 component and the storage component that we're  
17 contending as a principal use. You know,  
18 there's not necessarily a bright line test in  
19 this case, you know, per se. So I think it's  
20 just as we had described, the retail component,  
21 any retail sales that were occurring on the  
22 site were fairly limited. It was more a  
23 wholesale type of operation directly to a  
24 contractor where material was shipped out  
25 directly from this site to a wholesale

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1 customer.

2 So that's, you know, I guess in a way it's  
3 retail, but it's more consistent with a  
4 warehouse type use, which would be a wholesale  
5 operation that is shipped out directly to a  
6 larger scale customer, rather than an  
7 individual retail client that might come in,  
8 again, and buy, a couple of two by fours and  
9 some nails and screws. So that was not really  
10 what these operations were historically.

11 MR. SILBERT: Couple more questions.

12 MR. KYLE: Sure.

13 MR. SILBERT: So you obviously reviewed  
14 the letter exhibit. To your knowledge, are you  
15 aware of a history of the appellant ever  
16 receiving D(2) variance relief for the  
17 intensification or expansion of a retail use,  
18 which you had stated was not a permitted use in  
19 the zone?

20 MR. KYLE: Correct. No, quite to the  
21 contrary. In 2002, that issue did not arise.  
22 So the point in the letter correspondence was  
23 that if it was truly a retail use at that time,  
24 any expansion of that would have required D(2)  
25 variance relief from this board, and that was

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1 not the action that was taken in 2002.

2 MR. SILBERT: Two more questions from my  
3 end.

4 MR. KYLE: Sure.

5 MR. SILBERT: Would you say that it's  
6 customary for a warehouse use to store building  
7 materials?

8 MR. KYLE: Yeah. I mean, it's not -- it's  
9 not necessarily relevant what's being stored.  
10 I think it's more the manner in which it's  
11 being stored.

12 MR. SILBERT: Right.

13 MR. KYLE: So, again, the racking systems,  
14 the buildings are consistent with a warehouse  
15 style building.

16 MR. SILBERT: And then just to conclude my  
17 questions. In your review of that  
18 November 17th letter, did you agree with the  
19 conclusions drawn from that letter?

20 MR. KYLE: I did.

21 MR. SILBERT: Okay, thank you.

22 MR. KYLE: Sure.

23 CHAIRMAN FOOSE: Back to the D(2). So  
24 there was never a D(2) that was applied for at  
25 any time in the history of this property; so

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1 there's no expansion of the preexisting  
2 conforming use?

3 MR. KYLE: No. And I think that's an  
4 important fact. So I, as a municipal planner,  
5 and certainly Ms. Doyle or Mr. Burr, if an  
6 application comes in and you're looking at it,  
7 that's the first thing I look at. Is the use  
8 permitted? What type of relief is really  
9 associated with what's before the board? And  
10 is it before the right board? I mean, in the  
11 case of Bridgewater having separate Planning  
12 Board and separate Zoning Board, it's always  
13 important to make sure you're at the right  
14 body.

15 So that's typically an analysis that I  
16 would undertake as a consultant and I would  
17 figure the same would happen here. So there  
18 was no identification of the need for D(2)  
19 variance relief to expand a non-permitted  
20 retail use.

21 CHAIRMAN FOOSE: Okay.

22 MR. KULAK: Mr. Silbert, was there, in the  
23 letters that you submitted, evidence of retail  
24 being granted as an accessory use? Because I  
25 didn't hear you, Mr. Kyle, testify to that. So

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1 I just want to be clear if that was true or  
2 not.

3 MR. SILBERT: So in the letter that I  
4 submitted, I attached a resolution. I think  
5 that the 2002 resolution and then the  
6 resolutions that came after that, all  
7 acknowledge the fact that there was retail on  
8 the property. I don't believe it ever  
9 acknowledged that it was accessory or  
10 principal. What was very consistent was that  
11 they acknowledged that there was building  
12 materials being stored on the property. And I  
13 don't want to give testimony. But the  
14 resolution speaks for itself in the sense that  
15 that was considered to be the principal use.  
16 Certainly not retail. Retail was never  
17 considered to be the principal use on the  
18 property.

19 MR. KULAK: Right. So there was no formal  
20 granting or acknowledgment of the accessory use  
21 as retail. Because I get a little bit lost in  
22 the OPRA request you had filed and some of the  
23 letters I was reading. That's why I'm asking  
24 for clarification.

25 MR. SILBERT: Well, if I can just clarify

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1 properties were a zone in and of themselves.  
2 So there were no other properties in the  
3 Township that this would have been applicable  
4 to. So one would draw the conclusion that it  
5 was intended to acknowledge a condition that  
6 existed on the site at that time.

7 MR. KULAK: And would similarly permit  
8 those other lots, if they so engaged in an  
9 accessory use as retail, to do so?

10 MR. KYLE: Right, correct.

11 MR. KULAK: Correct. So I think where I'm  
12 having a little trouble though is in the  
13 terminology that we're using. You're saying  
14 that the buildings in question were used  
15 primarily as a warehouse. And what I'm saying,  
16 perhaps a little differently, is that this  
17 business was primarily a wholesale distribution  
18 business that was perfectly acceptable to  
19 operate as such in the zone as it was described  
20 at the time.

21 And so, without the wholesale distribution  
22 business, all of these accessory buildings  
23 would have been something else. So I'm trying  
24 to differentiate between warehouse and  
25 wholesale distribution businesses that need to

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1 for a second. So the letter references  
2 ordinance number 06-24 which was adopted in  
3 2006. And it relates to a piece of property  
4 which, to my knowledge, consists of Somerville  
5 Lumber's property, what now is lot one, the  
6 DOT's property, and the Denholtz property. And  
7 that ordinance essentially permitted limited  
8 accessory retail on the property -- or within  
9 the zone, provided that it was subordinate in  
10 size and scale to the principal uses.

11 So that ordinance, in my opinion -- well,  
12 I don't know if Mr. Kyle would agree with me,  
13 but if the zone only consists of four to five  
14 lots, and an ordinance is enacted to  
15 acknowledge the fact that there is accessory  
16 retail, that's accessory and subordinate in  
17 size and scale to the principal uses. And, I  
18 guess this is really a question for you.

19 Do you think that's suggestive of the fact  
20 that the Township is trying to acknowledge the  
21 fact that there is accessory retail on the  
22 property or in the zone.

23 MR. KYLE: Usually I would think it would  
24 be. When you have a limited number of  
25 properties within a zone -- and this, these

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1 put stuff in those buildings so they can sell  
2 it. And I'm looking for a better definition  
3 because, should the board find that this is an  
4 acceptable use, are we declaring this a  
5 warehouse space as opposed to what it really  
6 was, which was a wholesale distribution that  
7 needed to store materials that would then be  
8 distributed to its customers?

9 MR. KYLE: Again, I think warehouse and  
10 distribution are two terms that typically go  
11 together in my world. Generally, if you have a  
12 warehouse, you probably have some type of  
13 wholesale or distribution use that you're  
14 utilizing that space to store those goods for  
15 distribution. So you don't normally see one  
16 without the other.

17 MR. KULAK: Well, you might argue there  
18 are warehouses that are simply storing  
19 materials for their clients. And sometimes  
20 they're not selling -- other than warehouse  
21 services -- those products themselves at all.

22 MR. KYLE: Yeah, that could be true in  
23 limited instances, sure.

24 MR. KULAK: So what I'm wrestling with,  
25 and I don't know, I don't want to speak for the

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1 whole board, they can ask their questions, is  
2 what is it if we should say, yes, you can go  
3 ahead and continue to use the property as it  
4 had been used in the past, what are we really  
5 approving? Are we approving this property's  
6 use as a primary use as a, quote, warehouse,  
7 which would then set the stage for a lot of  
8 other potential activities. Or are we saying  
9 this was a wholesale distribution business that  
10 stored materials on site, added additional  
11 businesses as their business grew, and then  
12 from those buildings, distributed materials to  
13 the customers who bought them.

14 MR. KYLE: I think it's --

15 MR. SILBERT: Well, I would address that  
16 by saying that -- you're saying that by saying  
17 it's a warehouse use, it opens the doors to  
18 other types of warehouse uses. That's what I'm  
19 interpreting. But the board is protected in  
20 the sense that if a tenant comes in and the use  
21 is considered to be an intensification, so if a  
22 tenant comes in and they have to construct ten  
23 more loading docks because their warehouse  
24 operation is drastically different than what  
25 existed, the tenant has to come right back

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1 before this board, and they can't do it unless  
2 the board says -- unless they provide the  
3 proper justifications for D(2) variance relief.

4 So I don't think that this is -- I see  
5 your concern, and I think what you're saying is  
6 you don't want the appellant to have carte  
7 blanche authority to operate the property in  
8 any warehouse as it sees fit. But I think  
9 you're protected in the sense that, again, they  
10 have to come back if there's what is considered  
11 to be an intensification of warehouse use.

12 MR. OLLER: John, I agree with that  
13 interpretation.

14 MR. KULAK: Yes.

15 MR. OLLER: But, bear in mind, they would  
16 come back as a D(2), not a D(1). So the legal  
17 proofs are somewhat different, right, because  
18 they would be expanding a preexisting  
19 nonconforming use as opposed to coming in for a  
20 new not permitted use.

21 CHAIRMAN FOOSE: They would need five  
22 votes for that.

23 MR. OLLER: Either way, five votes.

24 CHAIRMAN FOOSE: Four votes for tonight.

25 MR. OLLER: Yeah, tonight's application is

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1 a majority vote.

2 MR. KULAK: Thank you.

3 CHAIRMAN FOOSE: That was a great point,  
4 Mr. Silbert. And I do echo those exact  
5 concerns. Even though -- and I'll save this  
6 for deliberation -- even though I do think, and  
7 my question is going to go to this, that that  
8 part of Bridgewater, the MI-C Zone  
9 specifically, I do think does lend itself to  
10 warehousing.

11 Can you speak to other buildings in this  
12 neighborhood, maybe within a quarter mile, talk  
13 about their uses and talk about how those uses  
14 compare to what the applicant is seeking and  
15 maybe some differences in the building sizes,  
16 et cetera.

17 MR. KYLE: So these properties and this  
18 MI-C, they're other all kind of similar  
19 buildings. They're older, you know, they're  
20 not modern. So Denholtz received approval to  
21 remove four of those buildings. I actually  
22 worked on that application with them.

23 CHAIRMAN FOOSE: That went to the Planning  
24 Board, correct?

25 MR. KYLE: It did. Because that

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1 application was filed before that ordinance was  
2 adopted.

3 It's funny, we filed the initial  
4 application and there was a request actually to  
5 take more of the old buildings down and make  
6 the, you know, building bigger, because it's a  
7 more modern, you know, nicer looking facility.  
8 Most of the buildings that are out here, so  
9 along Chimney Rock Road and on the property  
10 adjacent to ours, they're all very similar.  
11 They're older warehouse buildings. They don't  
12 have really high, clear heights inside. You  
13 know, in college I played hockey at a place on  
14 Chimney Rock Road that was an old warehouse.  
15 They converted it into a roller hockey rink.  
16 It was low ceilings, a lot of columns. None of  
17 the buildings are very large in size. They're  
18 all kind of medium size. I would say most are  
19 probably 50,000 square feet or less. I think  
20 the exception would be the UPS facility a  
21 little closer to Route 28. But, you know,  
22 they're all kind of older, older style  
23 warehouse buildings. Similar in size, I would  
24 say on the smaller size, you know, particularly  
25 in the modern marketplace.

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1 CHAIRMAN FOOSE: How about residential; do  
2 you have any houses in this neighborhood?

3 MR. KYLE: There are -- no, not anywhere  
4 near here. I mean, you have to go all the way  
5 down to Route 28 and beyond to really have any  
6 residential housing structures that are close  
7 to these properties.

8 CHAIRMAN FOOSE: Right. So based on your  
9 analysis of the area, warehousing function you  
10 think is appropriate, and based on what other  
11 businesses are doing in this neighborhood, you  
12 think it's a good use of the space and it's  
13 appropriate use of the space?

14 MR. KYLE: It is. I mean, it's what's  
15 happening in the a majority of this area. If  
16 you look at this particular little pocket of  
17 Bridgewater along Chimney Rock Road, they're  
18 all primarily conducting the same uses, and  
19 it's primarily warehouse and distribution type  
20 use. There's some wholesaler. I think there's  
21 a stone -- you know, there might be some  
22 contractors that have occupied some of these  
23 spaces as well.

24 MR. SILBERT: I think historically the  
25 Denholtz property was operated in a very

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1 based, wholesale type sales.

2 CHAIRMAN FOOSE: Okay. Rich?

3 MR. OLLER: I have no questions.

4 CHAIRMAN FOOSE: Any other members of the  
5 board?

6 MR. GAYESKI: It would be safe to say that  
7 the retail component was a retail showroom  
8 component of the products and materials that  
9 they took in and out of the warehouse. And any  
10 members of the public that would have attended  
11 or been present there, would have been likely  
12 with a contractor, getting an idea of what was  
13 available.

14 MR. KYLE: Yeah, and I think that's how  
15 Mr. Pettit categorized it in his testimony.  
16 Not that you wouldn't get a normal retail  
17 customer once in a while, but it was primarily  
18 a retail customer with a contractor to view  
19 products that they were going to use in a job.

20 CHAIRMAN FOOSE: All right. Bill or  
21 Scarlett?

22 MS. DOYLE: Hi.

23 CHAIRMAN FOOSE: Hi. Questions?

24 MS. DOYLE: No, I just wanted to put on  
25 the record that I did provide a letter to the

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1 similar matter.

2 MR. KYLE: It was.

3 MR. SILBERT: To Somerville Lumber's,  
4 where they had accessory retail.

5 MR. KYLE: It was. Yep.

6 CHAIRMAN FOOSE: In terms of the retail  
7 that exists, we have literally warehouse  
8 retail. We have Home Depot. We have Costco.

9 MR. KYLE: Right.

10 CHAIRMAN FOOSE: How would you classify  
11 those retail establishments within a quarter  
12 mile?

13 MR. KYLE: So most of those are consumer,  
14 you know, I'll say normal consumer. So, you,  
15 going into Costco or Home Depot to buy, you  
16 know, lumber products. And we had some  
17 discussions with the client that that's really  
18 the opposite of what their business was. Not  
19 that contractors don't go to Home Depot, but  
20 it's primarily, you know, normal folks that  
21 need small things. Not the type of business  
22 that was occurring here. But that's -- those  
23 are certainly things that are occurring as  
24 well. But those are more consumer retail,  
25 rather than how this business was contractor

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1 Zoning Board 2018, which cited the applicant's  
2 need for better signage for the retail  
3 function. And also point out it was mentioned  
4 that the DOT site, I just wanted to remind the  
5 board, that used to be E & B Distributors. So  
6 and they had a showroom and they sold things as  
7 well. That's all I wanted to mention.

8 CHAIRMAN FOOSE: Thank you.

9 MR. BURR: I have no questions. Thank  
10 you, Chairman.

11 CHAIRMAN FOOSE: All right, members of the  
12 public, questions?

13 All right, seeing none, back to you, Mr.  
14 Silbert.

15 MR. KYLE: Thank you.

16 CHAIRMAN FOOSE: Thank you.

17 MR. SILBERT: So I think that -- I think  
18 what I want the -- what I would ask the board  
19 to focus on is the size discrepancy between the  
20 warehouse functions of the operations on the  
21 property versus the showroom. And it sounds  
22 strange to say it, but to try not to conflate  
23 how Somerville Lumber made its money versus the  
24 actual function of the property. What  
25 predominantly drove the property was its

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1 ability to store and distribute materials on  
2 the property.

3 At the previous hearing, we had stated  
4 that the showroom component, the sales office,  
5 that could have been located anywhere. Yes,  
6 for convenience purposes, it was located on the  
7 property. But that's not really what drove the  
8 property and what was known as the industrial  
9 park here.

10 So I would conclude our presentation by --  
11 our testimony here, by asking you to vote  
12 favorably on this application. And rest  
13 assured that if there's an intensification of  
14 the warehouse operation or the warehouse use on  
15 the property, that we'll be back.

16 CHAIRMAN FOOSE: All right, thank you.  
17 Rich, why don't you walk us through Section 68  
18 cases. And then I don't know if Bridgewater  
19 Township wants to put up evidence if they want  
20 to put up the original letter. Walk us through  
21 that.

22 MR. OLLER: Sure. So Section 68 cases are  
23 somewhat rare, but this board has now heard I  
24 think three of them in the last year. So, you  
25 know, and really, they're all the same. As I

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1 mentioned before, it's a majority vote, not a  
2 supermajority vote. And, essentially, it is an  
3 application where the zone has been changed  
4 and/or the use predates what the current zoning  
5 is. And, in this case, we know that the zone  
6 was changed about a year ago now.

7 And so the applicant is seeking  
8 confirmation that their preexisting use, which  
9 they deem to be primarily warehousing and  
10 accessory retail, is what the use was. And  
11 they're asking this board, based on the  
12 evidence that we have heard, to confirm that in  
13 what's commonly called a Certificate of  
14 Nonconformity. It's not really a certificate.  
15 It's a resolution ultimately by the board.

16 The Zoning Officer denied their  
17 application. And, as you heard, they were able  
18 to go to the Zoning Officer for that  
19 certificate because of the time period. The  
20 change of zone was less than a year from the  
21 time that they made that application. That was  
22 denied because the Zoning Officer felt that the  
23 retail portion of the use on the property was  
24 what was primary, and the warehousing was  
25 accessory to that primary.

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1 I think it's important that the board look  
2 at not just the layout of the property and the  
3 number of parking spaces, for example, that we  
4 heard, but also the history of the zoning. I  
5 think, you know, Mr. Silbert's letter and the  
6 information that he was able to find through  
7 his OPRA request, I think is very helpful and  
8 the board should consider that. That in 2002,  
9 there was a Planning Board resolution that  
10 indicated that the lumberyard on site was  
11 permitted, and at the time in the 2002 zoning,  
12 retail was not permitted.

13 Subsequently, the zone was changed to  
14 permit accessory uses. I'm sorry, retail as an  
15 accessory use, but not as a primary use. And  
16 their conclusion, as we heard from their  
17 planner, was that happened because the zoning  
18 was essentially catching up to the use that was  
19 on the property in that area and there was a  
20 limited number of lots in use in that area.

21 So, you know, the other testimony we heard  
22 there's train tracks to the property. Is that  
23 something that's consistent with retail or  
24 warehouse? All of those things are for  
25 consideration by the board.

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1 And Mr. Silbert is correct that if the  
2 board were to grant their application, they  
3 could not expand their preexisting  
4 nonconforming use without coming back to the  
5 board for a D(2) use variance.

6 MR. WEIDELI: Rich, can they use the  
7 buildings currently as they are then?

8 MR. OLLER: Yes.

9 MR. WEIDELI: Without coming back here?

10 MR. OLLER: Depending on what the use is,  
11 yes.

12 CHAIRMAN FOOSE: Scarlett, can you walk us  
13 through the M1-C Zone, what it is, and what its  
14 permissible use is?

15 MS. DOYLE: I would prefer to get the  
16 ordinance and come back.

17 CHAIRMAN FOOSE: Let's take a break.  
18 Let's take ten. We'll see you back at let's  
19 call it 7:50. Thank you.

20 MR. SILBERT: Thank you.

21 (Whereupon, a brief break was  
22 taken.)

23 CHAIRMAN FOOSE: We're all here. Roger,  
24 can we get a roll call please.

25 MR. DORNBIERER: Yes, sir. Mr. Foose?

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1 CHAIRMAN FOOSE: Here.  
2 MR. DORNBIERER: Mr. Weideli?  
3 MR. WEIDELI: Here.  
4 MR. DORNBIERER: Mr. Laspisa?  
5 MR. LASPISA: Here.  
6 MR. DORNBIERER: Ms. Amin?  
7 MS. AMIN: Here.  
8 MR. DORNBIERER: Mr. Fresco?  
9 MR. FRESCO: Here.  
10 MR. DORNBIERER: Mr. Bongiorno?  
11 MR. BONGIORNO: Here.  
12 MR. DORNBIERER: Mr. Gayeski?  
13 MR. GAYESKI: Here.  
14 MR. DORNBIERER: Mr. Sicat?  
15 MR. SICAT: Here.  
16 MR. DORNBIERER: Mr. Kulak?  
17 MR. KULAK: Here.  
18 MR. DORNBIERER: Mr. Vescio?  
19 MR. VESCIO: Here.  
20 MR. DORNBIERER: Ms. Doyle?  
21 MS. DOYLE: Here.  
22 MR. DORNBIERER: Mr. Burr?  
23 MR. BURR: Here.  
24 MR. DORNBIERER: Mr. Oller?  
25 MR. OLLER: Here.

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1 related functions, credit services, security  
2 and commodity brokers and dealers, insurance  
3 carriers and agents, real estate services,  
4 photographic services, advertising services,  
5 employment agencies, consumer and mercantile  
6 credit and collection services, printing,  
7 publishing, duplicating, mailing and  
8 stenographic services, consulting services and  
9 data processing. That's the main one.  
10 Then there are several additional  
11 principal permitted uses: Manufacturing,  
12 trucking terminals, essential services,  
13 multimedia production, such as graphic design  
14 and web based services, research labs and  
15 research facilities, adult medical daycare  
16 facilities, nursing homes, and assisted living  
17 facilities, indoor commercial recreation, as  
18 well as a special economic development option,  
19 which is not applicable here.  
20 Now, principal accessory uses, other uses  
21 and structures customarily incidental to the  
22 principal permitted use. Public and private  
23 parking, signs -- here we go. Limited retail.  
24 Let me repeat that. Limited retail that is  
25 accessory to the permitted use, internal to the

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1 CHAIRMAN FOOSE: All right, thank you for  
2 your patience. Scarlett?  
3 MS. DOYLE: Yes, Mr. Chairman, I have  
4 checked the ordinance that I have --  
5 CHAIRMAN FOOSE: Scarlett, can you turn  
6 your mic back on.  
7 MR. DORNBIERER: I think I turned it off.  
8 MS. DOYLE: Oh, I'm sorry. There we go.  
9 Thank you.  
10 CHAIRMAN FOOSE: Green is good.  
11 MS. DOYLE: The property is in the M1-C  
12 Zone, and the ordinance specifically identifies  
13 four lots in that zone of which these  
14 properties are a part. They're principal  
15 permitted uses and accessory uses and  
16 conditional uses in this zone. And I think I'm  
17 going to read them all only because they  
18 relate. They relate.  
19 Principal permitted uses are several. I'm  
20 going to say them relatively quickly.  
21 Principal permitted uses are: Business,  
22 professional, and service offices and  
23 establishments, such as engineering and  
24 architectural services, accounting and  
25 bookkeeping services, banking and banking

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1 permitted use and primarily intended to service  
2 the needs of the employees. The next one is --  
3 warehouse uses of course has been deleted.  
4 Conditional uses, accessory retail services  
5 within professional business and research  
6 offices.  
7 Again, accessory retail services within  
8 professional and business and research offices.  
9 Child care centers, as part of the professional  
10 business and research offices, and animal  
11 hospitals and animal kennels. And, of course,  
12 the normal parking requirements set forth in  
13 126, 169. So those -- that is the current  
14 permitted uses as per the ordinance as it  
15 stands today.  
16 CHAIRMAN FOOSE: Thank you very much.  
17 Scarlett, can I also put you on the spot for  
18 Township ordinance 22-30 and what that is and  
19 when that was enacted.  
20 MS. DOYLE: Twenty what?  
21 CHAIRMAN FOOSE: 22-30.  
22 MS. DOYLE: Ordinance 22-30?  
23 CHAIRMAN FOOSE: Yes.  
24 MS. DOYLE: Do you have a copy of it?  
25 CHAIRMAN FOOSE: That was the Township

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1 council voting on no warehousing as a permitted  
2 use.  
3 MS. DOYLE: Oh, sorry. That was the  
4 council that took warehouses out of every zone  
5 in the municipality that was just recently  
6 effectuated, yes.  
7 CHAIRMAN FOOSE: Right. And basically it  
8 was town wide? Every --  
9 MS. DOYLE: Every zoning district in the  
10 Township, they removed the permitted warehouse  
11 use as a principal use. They maintained it as  
12 an accessory use, but they took it out of  
13 principal use in every zone in the Township.  
14 CHAIRMAN FOOSE: Now, in your opinion as  
15 professional planner, why do you think the  
16 Township council took that action?  
17 MS. DOYLE: I believe that the Township  
18 responded to several iterations of documents  
19 prepared by the state planning commission where  
20 they said that the municipalities throughout  
21 the state should immediately revisit their  
22 warehouse ordinances because it could have  
23 great impact on their community.  
24 CHAIRMAN FOOSE: That was September 2022  
25 recommended document from the state, from

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1 Trenton?  
2 MS. DOYLE: That's correct. The State  
3 Planning Commission.  
4 CHAIRMAN FOOSE: State Planning  
5 Commission.  
6 MS. DOYLE: Sent that out.  
7 CHAIRMAN FOOSE: Thank you.  
8 MR. WEIDELI: Scarlett, can I ask you a  
9 question when you read. You brought up a  
10 trucking terminal.  
11 MS. DOYLE: Yes.  
12 MR. WEIDELI: Wouldn't that require like  
13 some sort of warehousing?  
14 MS. DOYLE: The trucking terminal could be  
15 argued that the trucking activity is involved  
16 in as an accessory use the warehouse.  
17 MR. WEIDELI: Right. Because most of the  
18 time that we've dealt with them, they pull in,  
19 leave the stuff there, and then it gets  
20 disbursed out to other one --  
21 MS. DOYLE: Right.  
22 MR. WEIDELI: Trucks could sit there for  
23 an hour or could sit there for weeks.  
24 MS. DOYLE: That's correct.  
25 MR. WEIDELI: And that would be some sort

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1 of warehousing to me.  
2 MS. DOYLE: It's a fashion of it, but it's  
3 not part of the warehouse definition.  
4 MR. WEIDELI: Okay.  
5 CHAIRMAN FOOSE: Anyone else, any  
6 questions for our planner?  
7 All right, Rich. So we covered Section  
8 68, what the hearing is. Have we satisfied all  
9 that we need to satisfy as a board for that  
10 hearing?  
11 MR. OLLER: I believe you have. And other  
12 than any further discussion among the board  
13 members and those items that I mentioned  
14 before, you can deliberate that. I do want to  
15 point out, too, just so Mr. Silbert is aware as  
16 well, I have signed certifications from  
17 Mr. Gayeski and Mr. Fresco indicating that  
18 they've read the transcript or listened to the  
19 tape. So they're eligible to vote.  
20 MR. SILBERT: Great. Thank you.  
21 CHAIRMAN FOOSE: If you're finished, we're  
22 going to open up deliberations. Unless you  
23 want to add anything post Scarlett.  
24 MR. SILBERT: Yeah, the only thing I would  
25 just add just to clarify is that I referenced

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1 an ordinance back in 2006, it was ordinance  
2 number 06-24. Which, at that time, amended the  
3 zone to permit -- and I'm quoting -- limited  
4 retail uses subject to the requirement that  
5 they are accessory in size and scale to  
6 permitted uses. And that ordinance was then  
7 amended into its current, into its current  
8 form.  
9 So when Scarlett read the definition of  
10 the way that retail is permitted on the  
11 property, essentially to serve employees within  
12 the existing buildings, I just want to clarify  
13 that that wasn't always the case. And that I  
14 wanted to make sure that the board is aware of  
15 that ordinance I referenced number 6-24 was  
16 amended. But at one time it was permitted  
17 simply as an accessory retail use provided that  
18 it was limited in scale and size compared to  
19 the principal use.  
20 CHAIRMAN FOOSE: Thank you. All right,  
21 nothing further. I'm going to open it up to  
22 the board for deliberations. Mr. Weideli, open  
23 us up.  
24 MR. WEIDELI: Let me see, where to start  
25 here. I lived in Bridgewater for a little over

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1 30 years. And back going back many years, my  
2 wife and I would often go to Somerville Lumber  
3 to purchase items for the house. This is  
4 before the Home Depots came in and took over  
5 everything and the Lowe's and everything where  
6 you basically go now.

7 So, when you go in, as we've described  
8 this whole thing over the last this meeting and  
9 the other one, was that you do go in, there's  
10 retail, there's a round area. And employees  
11 would sit there, and they wouldn't get up, they  
12 would point you where to go. So, yes, the  
13 majority it was not that big, we could get what  
14 we wanted. We did cabinetry, all that type of  
15 stuff there. Then I would purchase what I want  
16 and they would give me a slip paid. They would  
17 -- I would have to drive around the back, and  
18 drive into the area and park, depending on how  
19 much stuff I was getting. And you go in and  
20 pick it up. And there was all tons of stuff  
21 stored. There was several buildings. They  
22 tell you to go to A, B or C, whichever one to  
23 pick it up. So go do that, load the car, and  
24 go home.

25 So what I'm trying to get at is if you go

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1 back there, the way the employee who was here  
2 last time spoke about it is, I tend to agree  
3 that it was a warehouse.

4 So, at this point, I would vote in favor  
5 of the fact that, you know, approving your, you  
6 know, to appeal the change of the decision.

7 CHAIRMAN FOOSE: Thank you. I agree,  
8 Mr. Weideli. I think Mr. Pettit's testimony,  
9 you know, he's an employee since 1974. He  
10 really spoke to what happened, the heart of  
11 activity at this establishment.

12 We established that 76 percent of the  
13 square footage was warehouse and approximately  
14 21 percent was retail, with the balance  
15 3 percent being used for office space. You  
16 know, he talked about 10 tractor trailers that  
17 would arrive daily. In addition, the railroad  
18 tracks. You know, that's a wholesale function.  
19 And Mr. Caruso, I think that was -- I was  
20 skeptical at first. And I thought his  
21 testimony really spoke to when a house is  
22 built, especially, you know, multiple houses,  
23 how essentially the materials are stored on  
24 site at Somerville Lumber. And as each house  
25 went up, they went back to Somerville Lumber

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1 and products were delivered.

2 You know, I think the Zoning Officer in  
3 this case was 100 percent correct. And I hope  
4 that they take action. And the reason I asked  
5 Scarlett her opinion on Township ordinance  
6 22-30, because in the spirit of that, I think  
7 was reaction, and I think it was a right  
8 reaction to an inundation of applications in  
9 Bridgewater by warehouses. You know, I'm  
10 guilty, most of us are guilty, of buying things  
11 online. And the logistics, the nature of that  
12 business, is a warehouse centric function.

13 I don't think that type of warehouse is  
14 what's desired in this location. And if it is,  
15 it's an intensification and Mr. Silbert made a  
16 very strong point that it would have to come  
17 back before this board for a D(2).

18 So this is a long-winded way of saying I'm  
19 definitely in favor of this. But I really want  
20 to put on the record that the Zoning Officer  
21 really did the right thing here. We needed to  
22 have a case. We needed to have evidence. We  
23 needed to have witnesses. Which, you know, the  
24 Zoning Officer should have no business being  
25 involved in. Absolutely did the right thing.

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1 I'm glad this came to the board. I'm glad we  
2 had the benefit of Mr. Silbert and his  
3 witnesses testifying that. And Bridgewater is  
4 inundated with these cases. And they don't  
5 belong everywhere. They don't belong next to  
6 senior living houses. They don't belong next  
7 to places that there currently are  
8 applications. And we want to protect those  
9 residents.

10 So, with that said, I'm going to be voting  
11 in favor. Mrs. Amin, good evening.

12 MS. AMIN: The way I look at this  
13 application is that the building has been used  
14 for so many years as warehouse. Not recently.  
15 Our use in the Township have changed back and  
16 forth, back and forth. You know, going back 20  
17 years ago, when I read this application, you  
18 know, it was allowed, and then not allowed, and  
19 then allowed, and not allowed.

20 So, technically speaking, this building  
21 has been used as warehouse for 78 years now.  
22 Why do we have to deny this application when  
23 they are going to be using for a similar kind  
24 of purpose, what warehouse and whatever else.  
25 So I'm in favor of voting yes for this

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1 application.  
2 CHAIRMAN FOOSE: Thank you, Mrs. Amin.  
3 Mr. Fresco?  
4 MR. FRESCO: You know, I, like Jim, I  
5 recollect as a kid, I might be a little younger  
6 than you, Jim. I was in the back of my  
7 father's station wagon and we would go there.  
8 We built a deck and a shed and we ordered the  
9 stuff and drove through, which I remember  
10 thinking was the coolest thing. And, you know,  
11 simply put, it's always been that way.  
12 I am convinced by the case and I had the  
13 privilege of listening to this case for the  
14 last three hours today. So I'm probably the  
15 most -- the freshest with the August testimony.  
16 But I am convinced that it's a primary, you  
17 know, warehouse. And that the retail I feel  
18 was accessory. So I, too, do support this as  
19 well, so.  
20 CHAIRMAN FOOSE: Thank you. Mr. Laspisa?  
21 MR. LASPISA: Thank you, Mr. Chairman.  
22 I'm a little bit maybe more torn than my  
23 colleagues on this one.  
24 I know that we've been focused a lot on  
25 whether storing materials that you're selling

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1 is warehousing or a retail operation. And from  
2 my perspective, and maybe because of my  
3 background in insurance, I think about how we  
4 would insure such a property, and we I think  
5 would underwrite this primarily from a retail  
6 risk, and with the accessory risks that go with  
7 storing the materials that we're selling. So  
8 maybe from my professional background, that's  
9 why I maybe am having a little bit of a harder  
10 time. Because I think that's how an  
11 underwriter would look at an operation of a  
12 lumberyard.  
13 But, at the same time, the Township has  
14 basically ping-ponged the use of this property  
15 over decades. So it certainly seems like we've  
16 already got four folks leaning yes. I'm not  
17 really sure what I'm -- I'm going to listen to  
18 the rest of my colleagues here. But I am torn  
19 on this application because I think that just  
20 because you're selling to contractors primarily  
21 and not necessarily Jim or Andy's dad as your  
22 primary customers, doesn't necessarily mean  
23 that it's not a retail operation. So I'm a  
24 little bit torn.  
25 CHAIRMAN FOOSE: Thanks. Mr. Bongiorno,

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1 good evening.  
2 MR. BONGIORNO: Good evening. We have  
3 heard a lot of expert testimony. We've read  
4 through some of the ordinances. I'm still not  
5 sure I know what the difference is between a  
6 warehouse and a distribution center is. But,  
7 given that, this is an industrial area, I'm  
8 inclined to support the application.  
9 CHAIRMAN FOOSE: Thank you. Mr. Gayeski,  
10 good evening.  
11 MR. GAYESKI: Good evening. Yes, my  
12 understanding and knowledge of Somerville  
13 Lumber over the years, it was absolutely used  
14 as a warehouse facility to store all of the  
15 building materials and the primary clientele  
16 that were there, were contractors. The retail  
17 component of it was, in my opinion, accessory  
18 use, and I would be in favor of this  
19 application.  
20 CHAIRMAN FOOSE: Thank you. Mr. Sicat,  
21 good evening.  
22 MR. SICAT: Hi. Bridgewater resident for  
23 25 years. I'm familiar with Somerville Lumber,  
24 and I've been a past client or customer. I  
25 agree with the historic portrayal of the way

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1 the business has been, you know, described.  
2 And this is really, you know, in my mind,  
3 granting the approval for a grandfathered  
4 activity, so I would be in favor.  
5 CHAIRMAN FOOSE: Thank you. Mr. Kulak?  
6 MR. KULAK: I would also urge the board to  
7 approve the application. I would caution,  
8 however, that the terminology we use is very  
9 important.  
10 So we're asking for permission to continue  
11 to operate as the business or property had  
12 operated in the past. We are not saying that  
13 you are a, quote, warehouse. And even if you  
14 do come back for an intensification of use,  
15 you're coming back as a -- something other than  
16 a warehouse. Because I think setting that  
17 precedent perhaps creates more value in this  
18 market for that property than you're currently  
19 asking for.  
20 I'm not suggesting you would do that. I  
21 am suggesting or I am acknowledging, as  
22 Mr. Silbert said, you'd have to come back for  
23 an intensification of use. But I would  
24 definitely support allowing the property to  
25 function as it had done in the past.

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1 CHAIRMAN FOOSE: Mr. Vescio, good evening.  
2 MR. VESCIO: One of the examples brought  
3 up today or in previous testimony was comparing  
4 this property to Home Depot. I think that's a  
5 fair analogy in today's 2023. But, looking  
6 back sort of the 1980s and before, you know, I  
7 think one would always shop at one of these  
8 type of establishments for raw materials.

9 I see the resolution that was provided  
10 earlier this month, and also the ordinance that  
11 was written in 2006, weighing those two things,  
12 I do believe that the property did have a  
13 warehouse use as more of a principal use than  
14 the retail establishment. So I will side with  
15 the applicant in this manner.

16 The site is bound by 287, Route 22, and  
17 really the only access you have there is by the  
18 Frontage Road that would lead to Chimney Rock  
19 Road. And as just a retail establishment in  
20 this location, you know, I don't think it has a  
21 proper frontage for such. So I think this  
22 is -- this property was used more as a  
23 warehouse type facility.

24 CHAIRMAN FOOSE: Thank you very much.  
25 Based on what we've heard, Rich --

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1 Official for the Township.  
2 So two items. One, the question is, is  
3 the focus on warehousing or on retail. There's  
4 two things I just want to share with you.

5 Number one, on April 10th of 2018, an  
6 article appeared in My Central Jersey about  
7 Somerville Lumber rebranding itself as  
8 Somerville Home Center. So I'm just going to  
9 pull some information out of the article here.

10 On June 2nd, Somerville Home Center will  
11 celebrate a grand reopening that officially  
12 will launch the rebranding, including a  
13 redesign of logos and decor, as well as  
14 remodeling that features a new facade and  
15 signage. The new image reflects a refocus that  
16 will raise even more about awareness about the  
17 multifaceted business that is being run there.

18 One of the quotes is: Some people don't  
19 even know that we do kitchens under the  
20 Somerville Lumber. So now under the Home  
21 Center, which incorporates the lumber, as well  
22 as all these other areas, people can say, oh, I  
23 want a new kitchen, I want a new bathroom, I  
24 can go over to Somerville Home Center, rather  
25 than the lumberyard.

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1 MR. DORNBIERER: Mr. Chairman, as the  
2 Zoning Officer, I was under the impression I  
3 might have the ability to make a statement.

4 CHAIRMAN FOOSE: You have more than the  
5 ability. I apologize. I probably should have  
6 let you testify before deliberation.

7 MR. DORNBIERER: If it's proper,  
8 Mr. Oller, would it be proper at this time?

9 MR. OLLER: Yes.

10 CHAIRMAN FOOSE: Please, by all means.

11 MR. DORNBIERER: There was just two items  
12 I wanted to make the board aware of with the  
13 question of primary -- do I need to be sworn  
14 in?

15 MR. OLLER: Yes.

16 MR. DORNBIERER: Okay.

17 MR. OLLER: Do you solemnly swear that the  
18 testimony you will give to this board will be  
19 the truth, the whole truth, and nothing but the  
20 truth so help you God?

21 MR. DORNBIERER: So help me god.

22 MR. OLLER: For the record, Roger, just  
23 state your full name please.

24 MR. DORNBIERER: Yes, Roger Dornbierer,  
25 and I am the Zoning Officer, Certified Zoning

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1 There are other items in here I could  
2 reference. We service the entire tristate. We  
3 service builders, remodelers, homeowners. We  
4 service everybody. So with this concept, we  
5 want to try to make it a little more appealing  
6 to the masses on a level of new. Somerville  
7 Lumber will continue to supply building  
8 supplies to builders, remodelers, and  
9 homeowners.

10 Let me see if there was anything else. I  
11 don't think so for that.

12 The last item would be, in the testimony  
13 at the last meeting, Mr. Lehrer referenced the  
14 complete book of development definitions. We  
15 call it the Moskowitz book. And the term  
16 lumberyard has been -- between the previous  
17 meeting and this meeting -- been used at least  
18 a half a dozen times. I wish to provide you  
19 the definition of a lumberyard.

20 A retail establishment whose primary  
21 products include finished or rough cut lumber  
22 and lumber products that are stored on site.

23 That's all I have to offer for your  
24 consideration.

25 CHAIRMAN FOOSE: Thank you as always,

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1 Roger.  
2 MR. DORNBIERER: Thank you.  
3 MR. OLLER: So, with respect to the  
4 newspaper article, I would just caution the  
5 board that, you know, to the extent there are  
6 quotes in there, you know, it's technically  
7 hearsay to the board. The board is not  
8 necessarily bound by the rules of evidence,  
9 and, you know, we have lots of leeway as you  
10 can tell, just by the way testimony comes in  
11 sometimes. But I would just caution you with  
12 the truth of anything that might be in a  
13 newspaper article.  
14 CHAIRMAN FOOSE: So we shouldn't believe  
15 everything we read?  
16 MR. OLLER: Don't believe everything you  
17 read in the newspaper.  
18 MR. SILBERT: Mr. Oller, obviously the  
19 appellant hasn't had the opportunity to review  
20 that article in advance of the hearing either.  
21 I just wanted to point that out for the board,  
22 so.  
23 CHAIRMAN FOOSE: The only thing I'm going  
24 to add to my deliberation and, Roger, thank,  
25 you and I apologize for not letting you put

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1 that on the record sooner.  
2 MR. DORNBIERER: No problem.  
3 CHAIRMAN FOOSE: You know, 22-30, Township  
4 ordinance 22-30 was designed to stop  
5 warehouses. And it wasn't going to stop them  
6 unless they came to a land use board. And I  
7 still believe that the right outcome prevailed,  
8 and that we heard evidence. We heard  
9 essentially a briefing by both sides,  
10 Bridgewater Township and Mr. Silbert and his  
11 law firm, on why warehouse functioning existed  
12 side by side with the retail function. So, you  
13 know, if anyone else wants to add to the  
14 deliberations, now is the time. Otherwise,  
15 I'll entertain a motion if anyone has one.  
16 Anyone have a motion?  
17 MR. FRESCO: I'll move.  
18 CHAIRMAN FOOSE: Okay, Mr. Fresco made the  
19 motion.  
20 MR. WEIDELI: I'll second.  
21 CHAIRMAN FOOSE: Okay, Mr. Weideli.  
22 MR. DORNBIERER: Motion made by?  
23 CHAIRMAN FOOSE: Mr. Fresco. Motion to  
24 approve?  
25 MR. DORNBIERER: Mr. Fresco, seconded by?

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1 CHAIRMAN FOOSE: Mr. Weideli.  
2 MS. AMIN: Second.  
3 MR. WEIDELI: No, Weideli.  
4 CHAIRMAN FOOSE: I think Jim snuck in  
5 there.  
6 MR. DORNBIERER: Mr. Weideli is seconding,  
7 okay. And this is a resolution to approve?  
8 CHAIRMAN FOOSE: Approve.  
9 MR. OLLER: To approve the application for  
10 the issuance of a Certificate of Nonconformity.  
11 MR. DORNBIERER: Okay. So we have a first  
12 and second. Mr. Foose?  
13 CHAIRMAN FOOSE: Yes.  
14 MR. DORNBIERER: Mr. Weideli?  
15 MR. WEIDELI: Yes.  
16 MR. DORNBIERER: Mr. Laspisa?  
17 MR. LASPISA: No.  
18 MR. DORNBIERER: Ms. Amin?  
19 MS. AMIN: Yes.  
20 MR. DORNBIERER: Mr. Fresco?  
21 MR. FRESCO: Yes.  
22 MR. DORNBIERER: Mr. Bongiorno?  
23 MR. BONGIORNO: Yes.  
24 MR. DORNBIERER: And Mr. Gayeski?  
25 MR. GAYESKI: Yes.

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1 CHAIRMAN FOOSE: All right, Mr. Silbert.  
2 MR. SILBERT: Thank you.

3  
4 (Whereupon the application was  
5 concluded at 8:20 p.m.)  
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C E R T I F I C A T E

I, DEVON GERBER, a Certified Court Reporter, Registered Merit Reporter, Certified Realtime Reporter, do hereby certify that prior to the commencement of the examination, the witness was duly sworn by me to testify the truth, the whole truth, and nothing but the truth.

I FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth, to the best of my ability.

I FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

DEVON GERBER, RMR, CRR, CCR  
Certification # 30X100238100

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CHAIRMAN FOOSE: [72]  
 MR. BONGIORNO: [4] 5/9 41/11 55/2 63/23  
 MR. BURR: [3] 5/21 36/9 41/23  
 MR. DORNBIERER: [46]  
 MR. FRESCO: [5] 5/7 41/9 53/4 62/17 63/21  
 MR. GAYESKI: [5] 5/11 35/6 41/13 55/11 63/25  
 MR. KULAK: [11] 5/15 24/22 25/19 27/7 27/11 28/17 28/24 30/14 31/2 41/17 56/6  
 MR. KYLE: [38]  
 MR. LASPISA: [4] 5/2 41/5 53/21 63/17  
 MR. OLLER: [23] 5/23 11/10 11/16 11/20 12/17 12/19 30/12 30/15 30/23 30/25 35/3 37/22 40/8 40/10 41/25 47/11 58/9 58/15 58/17 58/22 61/3 61/16 63/9  
 MR. SICAT: [3] 5/13 41/15 55/22  
 MR. SILBERT: [35]  
 MR. VESCIO: [3] 5/17 41/19 57/2  
 MR. WEIDEL: [15] 4/25 10/1 40/6 40/9 41/3 46/8 46/12 46/17 46/22 46/25 47/4 48/24 62/20 63/3 63/15  
 MS. AMIN: [5] 5/4 41/7 52/12 63/2 63/19  
 MS. DOYLE: [21] 5/19 35/22 35/24 40/15 41/21 42/3 42/8 42/11 44/20 44/22 44/24 45/3 45/9 45/17 46/2 46/6 46/11 46/14 46/21 46/24 47/2

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10 [1] 50/16  
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 19th [1] 4/9  
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