

BOROUGH OF MONTVALE
PLANNING BOARD
Wednesday, October 30, 2013
Commencing at 7:30 p.m.
Regular Meeting

RE: Block 702 - Lots 1 and 39
Ali Enterprises, LLC.
Kinderkamack and Magnolia Avenue
Amended Site Plan Application

TRANSCRIPT
OF THE
PROCEEDINGS

M E M B E R S P R E S E N T :

JOHN DePINTO, Chairman
JOHN CULHANE, Member
DANTE TEAGNO, Member
WILLIAM LINTNER, Member
WOLFGANG VOGT, Member

COPY

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

ANDREW HIPOLIT, Borough Engineer
JEFFREY FETTE, Construction Code Official
RICHARD PREISS, Borough Planner
LORRAINE HUTTER, Board Secretary

REPORTED BY:
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Certified Shorthand Reporter

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K&L GATES
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Newark, New Jersey 07102-5285
BY: JOHN M. MARMORA, ESQ.
Attorney for the Applicant

CHAIRMAN DePINTO: The special meeting of the Montvale Planning Board will come to order. Will everybody please stand for the Pledge of Allegiance.

(At this point in the proceedings the flag is saluted.)

CHAIRMAN DePINTO: Notice requirements of the law have been satisfied. This meeting and date and its time has been published in two newspapers, also in this case the Bergen Record and the Ridgewood News of the special meeting of the Board, which is being held this evening. The date and time and notice of this meeting has also been posted on the bulletin board in the lobby, as well as on the Borough website. May I have a roll call please?

(At this point in the proceedings the roll call is taken with Board Members Mr. Culhane, Mr. Fette, Mr. Lintner, Mr. Teagno, Mr. Vogt and Chairman DePinto being present.)

(Unrelated business is discussed at this time.)

CHAIRMAN DePINTO: Let's move on to the purpose of the meeting, which is a continued public hearing on block 702, lots 1 and 39, Ali

I N D E X

WITNESS DIRECT CROSS REDIRECT RECROSS

JAMES HIGGINS
By Mr. Marmora 24
By The Board 31
By The Public 57

E X H I B I T S

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Enterprises, LLC, Kinderkamack and Magnolia Avenue. This is an application for amended site plan approval. Good evening, folks.

MR. MARMORA: Thank you, Mr. Chairman. For the Applicant, John Marmora. As you recall, we were last before you in September, and the primary purpose, or I should say a primary purpose, of tonight's meeting was to be a report from the Police Chief or the Police Lieutenant. We were made aware on Monday that they were going to be unable to attend. We did ask that the meeting be kept on for this evening so that we could proceed for a couple of reasons. So first of all, I do appreciate you coming out tonight, even though, as I understand, the Police Chief will not be available. I also understand that the next opportunity to schedule a hearing where there would be room on the agenda for that would be in January. It's quite a stretch, but certainly we would have no problem granting an extension to the extent that obviously the Board Members consider that testimony to be important.

There are a few things I would like to accomplish tonight, though. Number one, what I would like to enter into the record as Exhibit A-7 is our County Planning Board Approval, which was received on

1 October 9. It's a conditional approval. We have no
 2 problem with any of the conditions. The most
 3 significant is that we coordinate the bus stop with
 4 New Jersey Transit. It's still not entirely clear to
 5 me, Mr. Culhane, what that relationship is. The best
 6 I have it is this: It's not a subcontracted route,
 7 as you indicated. Rockland Coach does run that
 8 route, but somehow New Jersey Transit approves it and
 9 provides the bus station.

10 MR. CULHANE: That's correct.

11 MR. MARMORA: Once it's provided, then
 12 we would have to maintain it. As long as the bus
 13 shelter meets the minimum New Jersey Transit
 14 requirements, they have no problem with whatever the
 15 Township would want to see there. So for purposes of
 16 a condition, if the Board is inclined to approve this
 17 ultimately, we would put in whatever the Board
 18 Members would like to see there. We would maintain
 19 it, and, you know, presumably Rockland Coach would
 20 continue to operate the route, but New Jersey Transit
 21 would have to approve the bus station.

22 So what I would like to do is then
 23 submit A-7, which is our County Approval.

24 CHAIRMAN DePINTO: Okay.
 25

1 MR. HIPOLIT: No. Between the plans
 2 that we have, the Applicant is proposing, the
 3 County's review and their conditions, it covers all
 4 of the requirements we need on the public roads both
 5 on Kinderkamack and Magnolia.

6 CHAIRMAN DePINTO: So from a public
 7 safety design point of view, you find the plans as
 8 proposed, in conjunction with the requirements as
 9 stated by the County, would constitute a safe usage
 10 of this property?

11 MR. HIPOLIT: Yes. And everything I
 12 said at the last meeting, the benefits of the site
 13 improvements are significant with respect to
 14 Kinderkamack and Magnolia, because we are widening or
 15 lengthening the queuing lane on the property to move
 16 the traffic off of Kinderkamack. We also have the
 17 bus pull-off which moves the bus out of the road and
 18 let's traffic move through freely, and improving the
 19 signage and handicapped ramps around the site, so all
 20 of that makes a situation that's not very good right
 21 now, makes it significantly better.

22 CHAIRMAN DePINTO: All right.
 23 Mr. Marmora, as you may recall, at that September
 24 hearing, I guess there were a number of questions
 25 that both Board Members and members of the public had

1 (Exhibit A-7, Bergen County Planning Board
 2 Approval, is received and marked for identification.)

3 MR. MARMORA: Again, for the record,
 4 all of the other conditions in here are no problem.
 5 We will comply with them.

6 CHAIRMAN DePINTO: Okay. Mr. Hipolit,
 7 with respect to A-7, the letter of October 9 from the
 8 County, have you had an opportunity to review the
 9 conditions set forth in that letter.

10 MR. HIPOLIT: I have.

11 CHAIRMAN De PINTO: Are you in
 12 agreement with the County with their requests?

13 MR. HIPOLIT: Yes, and I did have
 14 discussions with Mr. Timsak along the way on this,
 15 because there was the bus stop, there was
 16 improvements to Kinderkamack Road with respect to
 17 widening and the handicapped ramps. The Borough is
 18 also working with the County to work on cameras in
 19 Kinderkamack, Spring Valley and Summit, so something
 20 -- not doing on this site, but yes, all of these
 21 conditions I basically saw before they saw them. So
 22 we are fine with them.

23 CHAIRMAN DePINTO: Okay. Are there
 24 any other conditions that your office considered to
 25 be of necessity beyond what the County is seeking?

1 with respect to public safety and the police's input
 2 as to the use of that property, and you've indicated
 3 today you heard that they were unable to attend this
 4 meeting. Have you had any direct communication with
 5 them?

6 MR. MARMORA: No, we have not.

7 CHAIRMAN DePINTO: Okay. And Mr.
 8 Hipolit, have you had any direct communication since
 9 the last meeting with the Police Department?

10 MR. HIPOLIT: No.

11 CHAIRMAN DePINTO: Okay. But I
 12 presume it was conveyed to them, the concerns that
 13 were expressed by the Board Members and the public,
 14 Ms. Hutter?

15 MS. HUTTER: Yes.

16 CHAIRMAN DePINTO: So they are aware
 17 of it, so that they should be prepared when they
 18 return in January. Now, have you scheduled a
 19 specific date for them to attend, Lorraine?

20 MS. HUTTER: No, because I wasn't sure
 21 when we would be doing our re-org. We do it that
 22 first Tuesday.

23 CHAIRMAN DePINTO: Unless there is any
 24 conflict with the governing body and their need to
 25 use these chambers that evening.

1 MS. HUTTER: No, the week before.
 2 MR. REGAN: What's the first?
 3 MR. PREISS: Seventh.
 4 MR. REGAN: The governing has to have
 5 the re-org the first seven days. More than likely
 6 they will have it the week before.
 7 CHAIRMAN DePINTO: The week before, so
 8 there is no reason why we can't re-org on the 7th and
 9 carry this hearing until then. Okay, Mr. Marmora?
 10 Is that date acceptable to you and your clients?
 11 MR. MARMORA: That would be fine,
 12 January 7.
 13 CHAIRMAN DePINTO: Yes. Members of
 14 the public that are here that may have an interest in
 15 this Application, please be advised that this hearing
 16 will be carried after this evening to January 7,
 17 2014. That meeting is scheduled to start at 7:30
 18 p.m. No further notice will be provided to you other
 19 than this announcement and a posting on the Borough
 20 website. There will be no certified mailings to you
 21 or any other type of advertising. If you have any
 22 question as to whether or not it will be on the
 23 agenda as you get a few days beforehand, please feel
 24 free to call Lorraine Hutter to get confirmation on
 25 that.

1 MR. MARMORA: Sure.
 2 MS. HUTTER: Thank you.
 3 MR. MARMORA: It's 336 square feet
 4 smaller in area, and 5.5 feet lower. So we will be
 5 curious if the -- we did not revise our site plan
 6 drawings. We were just wondering if it might be
 7 possible to get some preliminary indication if the
 8 Board thinks this is a preferable -- not that it
 9 anticipates an approval. I certainly wouldn't put
 10 the Board, ask the Board to put itself in that
 11 position, but if the concerns raised by the Board
 12 about the mass and height are addressed or at least
 13 ameliorated by this version, what we would like to do
 14 then is resubmit a revised site plan and we would
 15 then present this formally at the January hearing.
 16 CHAIRMAN DePINTO: Mr. Marmora, let's
 17 go over the math again. As to, I'm going to call it
 18 the footprint, or the shadow at the exterior-most
 19 points. It originally started out at what
 20 dimensions, length times width?
 21 MR. MARMORA: Originally, we had it at
 22 56 feet by 74 feet. And this proposal from
 23 Mr. Tagnell would reduce that to 56 feet by 68 feet,
 24 for a reduction of 336 square feet.
 25 CHAIRMAN DePINTO: I'm sorry 300

1 Okay. With that said, thank you, and
 2 let's go back to Mr. Marmora. Mr. Marmora?
 3 MR. MARMORA: Okay. Thank you. The
 4 second thing I wanted to hopefully accomplish this
 5 evening, at the conclusion at the last hearing it was
 6 relatively clear to us that the Board was, let's just
 7 say had reservations about the height and mass of the
 8 canopy. It was then suggested that it be referred to
 9 an urban designer who has a relationship with
 10 Mr. Preiss' firm, Mr. Tagnell(ph). He took a look at
 11 it, and we originally had -- we were trying to mimic
 12 the residential structures in that particular area.
 13 He proposed a design which is 34 square feet less in
 14 area, and approximately 5.5 feet lower, basically by
 15 flattening the roof a little bit. I have premarked
 16 that as Exhibit A-8 and placed it on the easel. It's
 17 facing out so that the public can see it, but in
 18 front of all of you, prior to the hearing I put a
 19 reduced-size version of that. So that's exactly
 20 what's on the easel and marked as A-8.
 21
 22 (Exhibit A-8, Canopy Design, is received and
 23 marked for identification.)
 24 MS. HUTTER: Mr. Marmora, do you have
 25 a copy that I can put in the public packet, please?

1 and --
 2 MR. MARMORA: And 36, about 8.1
 3 percent reduction. And by flattening the roof and
 4 lowering it slightly, we have reduced the height,
 5 which was originally proposed, and what you've
 6 previously seen and what's been presented to the
 7 public, as a height of 28.5 feet, has been reduced to
 8 21.97 feet, for a reduction of approximately 23
 9 percent.
 10 CHAIRMAN DePINTO: Now, how was the,
 11 let's start with the height. How was the height
 12 reduced? What changes would have to occur? Would it
 13 be the design of the roof?
 14 MR. MARMORA: The design and primarily
 15 it's the design of the roof. Originally, we were
 16 asked to, as I said, mimic residential structures.
 17 So it was a much more pitched roof. So that was
 18 flattened out and it was slightly lowered.
 19 CHAIRMAN DePINTO: Okay. But it's not
 20 flat on the top? It's still does peak, but in a
 21 different --
 22 MR. MARMORA: It's still pitched, just
 23 not in the same severity.
 24 CHAIRMAN DePINTO: Okay. And then
 25 with regard to the height beneath the canopy, I

1 believe it was 14 and a half feet.
 2 MR. MARMORA: Right. The height, the
 3 clearance remains the same.
 4 CHAIRMAN DePINTO: Okay. So with the
 5 alteration in the overall footprint and height, it
 6 had no impact on that area --
 7 MR. MARMORA: Clearance.
 8 CHAIRMAN DePINTO: -- where vehicles,
 9 both the delivery vehicles and vehicles to be
 10 serviced would have to pass-through?
 11 MR. MARMORA: Correct.
 12 CHAIRMAN DePINTO: Okay. Are there
 13 any other changes with respect to that architecture
 14 to that office area?
 15 MR. MARMORA: No.
 16 CHAIRMAN DePINTO: That remains the
 17 same?
 18 MR. MARMORA: Yes. The kiosk remains
 19 the same. It was just the canopy.
 20 CHAIRMAN DePINTO: Its location, its
 21 dimensions --
 22 MR. MARMORA: Correct.
 23 CHAIRMAN DePINTO: -- all of that
 24 remains the same?
 25 MR. MARMORA: Right. The site plan,

1 brick for a portion, and the roofing materials would
 2 be the same. I believe there was one request that we
 3 -- that before approvals are issued that we actually
 4 would provide sample.
 5 CHAIRMAN DePINTO: A sample.
 6 MR. MARMORA: We have no problem
 7 continuing to comply with that.
 8 CHAIRMAN DePINTO: I also believe the
 9 original plan showed the snow stops --
 10 MR. MARMORA: Correct.
 11 CHAIRMAN DePINTO: -- on it, as well.
 12 That has remained?
 13 MR. MARMORA: Yes.
 14 CHAIRMAN DePINTO: Okay. Okay, let me
 15 poll the Board with --
 16 MR. PREISS: Can I?
 17 CHAIRMAN DePINTO: Sure.
 18 MR. PREISS: Do you have the original?
 19 I don't think that -- I don't think everybody has the
 20 original so they can compare it. Can you put the
 21 original up side by side with the proposed, because
 22 you can really see the extent to which it is lower
 23 and smaller. If you could hold the two up so the
 24 board can see?
 25 MR. MARMORA: I'll put both of them

1 if the Board is more favorably disposed toward this
 2 design, we would show all of that in a revised site
 3 plan. That would show that that remains the same.
 4 Truck circulation, traffic circulation, everything
 5 else about the site would remain the same.
 6 CHAIRMAN DePINTO: And with the
 7 reduction in the size of the canopy by 336 square
 8 feet, has that, or will that change the location of
 9 any of the pumps?
 10 MR. MARMORA: No.
 11 CHAIRMAN DePINTO: So the pumps remain
 12 the same?
 13 MR. MARMORA: Correct.
 14 CHAIRMAN DePINTO: As they were,
 15 except, I guess, the pumps towards the end would be
 16 closer to being more exposed?
 17 MR. MARMORA: More exposed, correct.
 18 But business would be transacted in the driver window
 19 and would still be protected by the canopy.
 20 CHAIRMAN DePINTO: Okay. And then
 21 finally, with regards to the material proposed to be
 22 used for the canopy, the shingles, was any change
 23 anticipated --
 24 MR. MARMORA: No, that remains. The
 25 columns are, I guess, stone for a portion and then

1 up. Basically, you can see it was a much higher
 2 construction.
 3 CHAIRMAN DePINTO: Okay. John, if you
 4 could turn that around to the public, as well?
 5 MR. PREISS: Thank you.
 6 CHAIRMAN DePINTO: Okay. Mr. Preiss,
 7 anything else?
 8 MR. PREISS: Yes. I just wanted to
 9 mention that the -- in working with the Applicant and
 10 the revision, the idea was to maintain the canopy's
 11 main function, which is to have the drivers and the
 12 people who are pumping the gas still be protected
 13 from the elements, but the thought was that if a car
 14 at the end of the -- at the canopy, protrudes
 15 slightly beyond the canopy, that that would not
 16 basically harm the overall intent, and that would
 17 shrink the footprint of the canopy and reduce it in
 18 size.
 19 And then in terms of reducing the
 20 height, if you look at the two side by side, it was
 21 important to maintain the 14 foot clearance, so those
 22 arches remain, but you can see that the curvature is
 23 reduced. And then the extent of the support
 24 structure between the columns and the roof itself has
 25 been reduced in height. And the roof itself,

1 essentially, is a mansard roof, so it has a pitch,
2 which will be visible, but it doesn't end in a peak
3 like a gable roof. And that is really responsible
4 for lowering the height of the overall structure
5 significantly. And I think when you compare the two
6 side by side, you can see that it's much less visible
7 and much less prominent than it was before.

8 MR. MARMORA: In the previous
9 testimony we provided that the lighting would be
10 substantially reduced, and that would remain the
11 same. It would be substantially reduced lighting to
12 what is out there presently.

13 CHAIRMAN DePINTO: Okay. I'll give
14 you my opinion. I think it is an improvement. I
15 recognize initially what we were trying to achieve.
16 However, I think that what is presented to us now is
17 an improvement over what had been previously
18 presented. However, in reflecting back on the
19 minutes of the prior meetings, there was proof
20 submitted in discussions relative to what products
21 would be sold at the gas station; more specifically
22 outdoor vending machines of soda, cases of soda and
23 water that you see in the highway gas stations. And
24 I believe the Applicant indicated that he would not
25 be selling any of that type of product on the site.

1 and you put these satellite dishes that all of the
2 gas stations seem to have on their roofs. I don't
3 find them particularly attractive on gas stations or
4 on residences, quite frankly. And, I know they have
5 those satellite dishes on their building right now.
6 And I believe there are alternatives to that. I
7 would also ask that when you communicate with your
8 client, that that request be conveyed, too.

9 MR. MARMORA: Okay.
10 CHAIRMAN DePINTO: If we are going to
11 continue in our efforts to make this the most
12 aesthetically pleasing facility that we possibly can,
13 let's not junk it up with garish signs selling
14 cigarettes or garish satellite dishes doing whatever
15 satellite dishes do. So I would ask that you do make
16 that request.

17 MR. MARMORA: No problem. I will take
18 that up with the Applicant and certainly advise the
19 Board prior to the next hearing.

20 CHAIRMAN DePINTO: Thank you. I
21 appreciate it.

22 MR. MARMORA: I understand. Just so
23 the Board understands, the satellite is for the
24 credit cards. I believe there is an alternative,
25 that it can be run by cable underground, and I'll

1 Is that correct, Mr. Marmora?

2 MR. MARMORA: That is correct. The
3 only thing we indicated that would be sold would be
4 motor oil, because it's expected, and cigarettes.

5 CHAIRMAN DePINTO: Okay.
6 MR. MARMORA: Everything sold at this
7 facility, if approved, would be stored within the
8 kiosk. There would be no separate --

9 CHAIRMAN DePINTO: I think it's
10 appropriate to sell motor oil, and I think it's
11 appropriate also to sell window washing fluid, but I
12 don't know if it's appropriate to sell cigarettes,
13 quite frankly. And I would ask that if you could get
14 back to the operator and request of him, though it is
15 a permitted use within the zone, I don't find it to
16 be something that is necessary for the sale of motor
17 vehicle fuel and oil and that type of service to
18 vehicles. I would like to eliminate the sale of
19 cigarettes on the property. And that it purely
20 voluntary. I recognize you have that right under the
21 existing code, but I would ask that that be
22 accomplished; number one. And number two, I think
23 the beauty of the roof, and something that a lot of
24 people had put a lot of time into that design, could
25 be very easily and very quickly destroyed once you go

1 have that nailed down before the January hearing.

2 CHAIRMAN DePINTO: Okay, very good.
3 Thank you. Okay, polling of the Board with respect
4 to the comparison of the proposed revised canopy
5 versus the original submission of the Applicant and
6 I'm starting with Mr. Vogt.

7 MR. VOGT: Thank you, Mr. Chairman. I
8 think the revision of this canopy is less massive. I
9 think it fits much more into the area, although the
10 original was fitting with residential roofs and all
11 of that. But I think it's less massive and I think
12 it's an improvement. Want to know anymore?

13 CHAIRMAN DePINTO: No, that's good.
14 Why, you don't feel like you spoke long enough?

15 MR. VOGT: I have other stuff coming.

16 CHAIRMAN DePINTO: Whatever you want,
17 Mr. Vogt. I like your costume.

18 MR. VOGT: You want my headband?

19 CHAIRMAN DePINTO: I use my glasses.

20 MR. VOGT: Good idea.

21 CHAIRMAN DePINTO: Mr. Lintner.

22 MR. LINTNER: I agree. I had an issue
23 with the 28-foot height. I thought that was much too
24 high. The reduction down to around 23 feet I think
25 is very positive, and I think it's an improvement and

1 I like it.
 2 CHAIRMAN DePINTO: And can I presume
 3 you dressed up as an engineer this evening?
 4 MR. LINTNER: And you dressed up as a
 5 chairman?
 6 CHAIRMAN DePINTO: Whatever.
 7 MR. FETTE: Touche.
 8 CHAIRMAN DePINTO: Mr. Teagno?
 9 MR. TEAGNO: Yes, I think it's a big
 10 improvement. I'm happy with the way it looks now
 11 compared to the way it was before. Just one
 12 question.
 13 CHAIRMAN DePINTO: Sure.
 14 MR. TEAGNO: On the right hand side
 15 there is another orange roof. Is that the
 16 remediation shed?
 17 MR. MARMORA: The original
 18 presentation was that the roof line, the roof
 19 structure of the remediation shed would be dressed up
 20 to match the canopy and we will obviously continue
 21 that as a condition if the Board is inclined to
 22 approve us.
 23 MR. TEAGNO: Okay, thank you. Just
 24 for the record, I'm dressed up as a retiree.
 25 CHAIRMAN DePINTO: Good one. Thank

1 CHAIRMAN DePINTO: Okay.
 2 MR. REGAN: We'll swear Mr. Higgins
 3 in.
 4
 5 JAMES W. HIGGINS,
 6 Having been duly sworn, testified under oath as
 7 follows:
 8 MR. REGAN: For the record, state your
 9 full name, please, and spell your last name.
 10 MR. HIGGINS: James W. Higgins,
 11 H-I-G-G-I-N-S.
 12 MR. REGAN: Mr. Chairman, Mr. Higgins
 13 has been previously qualified as a planner before the
 14 Board, and I recommend that he be deemed qualified in
 15 connection with this Application as a professional
 16 planner.
 17 CHAIRMAN DePINTO: The Chair will
 18 accept your recommendation, Counsel. Please
 19 continue, sir.
 20
 21 DIRECT EXAMINATION BY MR. MARMORA:
 22 MR. MARMORA: Thank you. Since the
 23 Board has accepted Mr. Higgins' credentials as a
 24 planner, since he's been around the block a few
 25 times, I will suspend the question-and-answer period

1 you, Mr. Culhane?
 2 MR. CULHANE: I prefer the revised
 3 plan.
 4 CHAIRMAN DePINTO: Okay, thank you.
 5 And Mr. Fette.
 6 MR. FETTE: I think the revised plan
 7 is much better. And I know it's not your
 8 jurisdiction, but boy if you could get rid of the
 9 billboards, it would be a home run.
 10 MR. MARMORA: I wish we could, but we
 11 did the best we could.
 12 CHAIRMAN DePINTO: That's for sure.
 13 There is a lot of case law on that, I believe. So
 14 it's a battle. I don't think we are going there.
 15 Okay, with that said, please continue, Mr. Marmora.
 16 MR. MARMORA: Thank you. We
 17 appreciate the indication. Obviously we know it's
 18 not an indication of an approval. We will revise the
 19 plans and submit it sufficiently in advance for the
 20 January hearing for Mr. Hipolit and Mr. Preiss to
 21 issue reports.
 22 With that, then all I would like to do
 23 is present my planner, Mr. Higgins, because his
 24 testimony is generally the same regardless of the
 25 design of the canopy.

1 and just ask Mr. Higgins to give you his thoughts on
 2 this Application as a planner.
 3 CHAIRMAN DePINTO: Thank you.
 4 MR. HIGGINS: Just so the Board is
 5 aware, I'm dressed as a planner.
 6 MR. DePINTO: And you qualify.
 7 MR. HIGGINS: One thing further, my
 8 daughter is also a planner. Her last name is Coffin.
 9 She is testifying tomorrow night at a hearing. She
 10 is going to have a lot of fun with that.
 11 CHAIRMAN DePINTO: That's funny.
 12 Where is she testifying?
 13 MR. HIGGINS: In Franklin Township.
 14 CHAIRMAN DePINTO: That is trick or
 15 treat town.
 16 MR. HIGGINS: Yes. You know, the
 17 Application is for deviations of conditions of a
 18 conditional use, as far as the D variance aspect of
 19 the Application goes. The standard for that, for the
 20 proof for that is whether or not the site can
 21 accommodate the use, despite the need for the
 22 deviation from the ordinance.
 23 In addition, you have a little wrinkle
 24 here, because this isn't a virgin site, a vacant site
 25 that we are putting a new conditionally permitted use

1 on the site. This is a site that has an existing
 2 conditionally permitted use on the site, that does
 3 deviate from a number of conditions of the ordinance.
 4 So there is a pre-existing condition here. It's
 5 important to understand that the use is not a use
 6 that's not permitted. The use is permitted. It
 7 simply has to meet certain conditions in order to be
 8 a permitted conditional use. So the deviations, the
 9 variances are from the conditions, not from the use
 10 itself.

11 There are six existing deviations from
 12 the conditions of your conditional -- of your
 13 ordinance. Of those, two are being eliminated. I'm
 14 sorry, there are five existing. Of those, two are
 15 being eliminated. Two are remaining unchanged, and
 16 one is being improved. In addition, there is one
 17 other condition of your ordinance that will be
 18 violated as a result of this Application that is not
 19 currently being violated. So there is a total of six
 20 conditions of your ordinance that are actually being
 21 impacted by this Application.

22 The two that are being eliminated,
 23 there is a minimum street frontage of 100 feet
 24 required, and the existing is 82 feet. With the
 25 acquisition of the adjacent lot, that frontage is

1 35.1 feet. And the site has functioned with that for
 2 a number of years. The distance from an existing
 3 railroad station, 1,500 feet is required. There is
 4 an existing railroad station. I don't know the exact
 5 distance, but it's less than 1,500 feet. That
 6 obviously, the gasoline station will remain in the
 7 same place. The railroad station remains in the same
 8 place. So that is not changing at all as a result of
 9 this Application.

10 The one condition that is being
 11 created, is your ordinance requires that walls of any
 12 building or structure be located 25 feet from a
 13 property line. In this instance the proposed kiosk
 14 under the canopy will be located 22.9 feet from the
 15 northern property line. So that's roughly two feet,
 16 2.1 feet difference. The intent of the ordinance in
 17 that requirement is really for buildings that have
 18 more mass, that are substantial. This is a little
 19 kiosk under the canopy. The fact that it deviates
 20 from that standard 2.1 feet is not substantial. It
 21 doesn't have a substantial negative impact. And
 22 clearly it's not the type of structure that is
 23 intended to be set 25 feet from property line anyway
 24 by your ordinance. I think the site can accommodate
 25 the use, despite the need for that variance.

1 improved to 512 feet. So that condition has been
 2 eliminated. That deviation is eliminated. Second,
 3 the minimum average lot depth, it's required to be
 4 150 feet. The existing is 84 feet. What's being
 5 proposed is 208 feet. So again, that's being
 6 eliminated. Those two conditions are going away.

7 With regard to what's being improved,
 8 you have a proposed driveway a Kinderkamack Road, and
 9 that driveway as it exists is 35 feet wide. The
 10 maximum permitted for a driveway is 25 feet wide for
 11 a gas station. That driveway is being moved 80 feet
 12 to the east, which is a substantial improvement away
 13 from the intersection, and it's being reduced to 30
 14 feet. And it was determined, and I believe there was
 15 traffic testimony on this already, if not there will
 16 be in January, that 30 feet is necessary to
 17 accommodate access into and out of the site. Any
 18 smaller and it really wouldn't work as well. So
 19 again, that condition is being improved, even though
 20 you have a situation that's much less desirable where
 21 the driveway is closer to the intersection and wider.

22 With regard to the conditions that are
 23 not being changed, the driveway width on Magnolia is
 24 35.1 feet. Again, the maximum of 25 feet is
 25 permitted. It's going to remain exactly as it is,

1 In addition, when you look at the
 2 Application in its totality, there are so many
 3 improvements to this site that I think play into the
 4 aspect of the site being able to accommodate the use,
 5 despite the need for the deviations from the
 6 conditional use requirements. Those include the fact
 7 that there is going to be restroom where there is not
 8 one now inside the kiosk, substantial landscaping to
 9 the site, which doesn't exist now, the provision of a
 10 bus stop at the Applicant's expense, which doesn't
 11 exist now, the improved circulation on the site by
 12 extending the property to the east, and having a
 13 longer driveway, and the fact that you will have 12
 14 pump islands instead of 6 now, so you can accommodate
 15 more cars on the site, get them on and off the site
 16 quicker so that you don't have stacking running out
 17 on to Kinderkamack, as well as the fact that there is
 18 a longer stacking lane to help alleviate that
 19 existing problem, the fact that the driveway to the
 20 monitoring shed is going to be improved, there is
 21 substantial lighting improvements to the site, which
 22 is going to reduce the impact of lighting on the site
 23 on surrounding properties, sidewalk improvements, and
 24 the fact that there is going to be a canopy that is
 25 going to provide protection for the employees and the

1 public while they are getting their gasoline. I look
 2 at all of this, and I think clearly this site can
 3 accommodate this use on this side, despite the need
 4 for the variances from the conditional use
 5 requirements.
 6 MR. MARMORA: How about the negative
 7 criteria?
 8 MR. HIGGINS: Basically, because it's
 9 a conditional use, the use is permitted, so there is
 10 no need to go into the enhanced burden of proof in
 11 terms of compliance with your master plan and zoning
 12 ordinance. In fact, there is a recent case on that,
 13 that specifically outlines that.
 14 There is no substantial negative
 15 impact, in my opinion, as I said, with regard to this
 16 Application. There is a substantial number of
 17 improvements to this site that will make this site
 18 function much, much better, and it will appear much,
 19 much better to surrounding properties. So I don't
 20 see any substantial negative impact.
 21 And as far as your zoning goes,
 22 actually the number of non-conformities with the
 23 conditional use requirements are being reduced, so
 24 that I think that also plays into it, that it's more
 25 conforming with your ordinance than what currently

1 being changed, or whether variances were required.
 2 In the situation where a variance is required, the
 3 extent to which it's either being magnified or
 4 improved. And so it goes into great detail.
 5 I think Mr. Higgins did a good job of
 6 boiling it all down and putting it in the context of
 7 the required proofs for an expansion of a
 8 nonconforming use, and particularly in a situation
 9 where the use itself is permitted, subject to a
 10 certain number of conditions. And there is only a
 11 number of conditions that it does not meet.
 12 I think in this particular situation,
 13 the planner has indicated in very short form all of
 14 the significant advantages, or benefits, that this
 15 particular gas station will undergo if this plan is
 16 approved. And I looked at the negative impacts and
 17 have not found any. The one other thing I would say
 18 is that there is a case known as Burbridge versus
 19 Mine Hill, which deals with the expansion of a
 20 nonconforming use. And essentially in that case,
 21 what the Court said is where you have -- where you
 22 don't have the possibility of eliminating a
 23 nonconforming use, but by expanding it or altering
 24 it, you bring it into greater conformity with the
 25 surrounding neighborhood, that that is a sufficient

1 exists.
 2 MR. MARMORA: Thank you.
 3 Mr. Chairman, I have nothing further for Mr. Higgins.
 4
 5 QUESTIONING BY THE BOARD OF MR. HIGGINS:
 6 CHAIRMAN DePINTO: Okay, thank you.
 7 Before I open it up to the Board Members for
 8 questions, I'm going to refer back to Board Exhibit
 9 Three, which is the technical review letter of
 10 Mr. Preiss, addressed to the Board. Richard, your
 11 review of August 16?
 12 MR. PREISS: Yes.
 13 CHAIRMAN DePINTO: Do you want to give
 14 us the highlights of this review, and do you agree
 15 with the statements that were made on the record this
 16 evening by Mr. Higgins with regard to meeting the
 17 criteria of the law?
 18 MR. PREISS: Yes. I can certainly do
 19 so. I did go into great detail. I wanted to be
 20 absolutely sure that all of the variances were
 21 highlighted. And if you look at table one, that is
 22 attached to that review, that basically takes every
 23 requirement applicable to this particular site and
 24 then indicates whether the Application is compliant,
 25 whether it's an existing nonconformity that's not

1 special reason for the grant of the variance. And I
 2 think if you look at all of the testimony that's
 3 provided, you have an existing gas station that,
 4 quite frankly, for now is unattractive. There is
 5 circulation problems. There is some, you know,
 6 deteriorated fencing. The landscaping is not very
 7 good. And if you look at all of the improvements
 8 that are being made, even though it doesn't eliminate
 9 this as a nonconforming use, by virtue of all of the
 10 improvements, you are taking a situation and you are
 11 making it a lot better, and you certainly, in my
 12 opinion, if you are a neighbor, even though there is
 13 a slight expansion with the two additional gas pumps,
 14 overall, at the end of the day, it's improving the
 15 site substantially. So I tend to -- I tend to agree
 16 with the plan, that there are substantial benefits
 17 and a few detriments in this particular Application.
 18 CHAIRMAN DePINTO: Okay. Thank you.
 19 Next I'm going to go to Mr. Regan.
 20 Mr. Regan, any comments or questions?
 21 MR. REGAN: Yes, both to Mr. Preiss
 22 and Mr. Higgins. Richard, you just indicated in your
 23 testimony that -- you refer to the expansion of a
 24 nonconforming use, and Mr. Higgins indicated the use
 25 is a permitted conditional use under section 128-9.10

1 in the zoning ordinance. So is it an expansion of a
2 nonconforming use, or a deviation from a condition
3 pertaining to a conditional use?

4 MR. PREISS: It's actually both,
5 because you are expanding a nonconforming use by
6 virtue of the fact that it doesn't meet those
7 conditions, and by virtue of that expansion, certain
8 conditions will still not be met. So --

9 MR. REGAN: Wouldn't that be a
10 deviation from a condition pertaining to a
11 conditional use, a D-3?

12 MR. HIGGINS: It's really both. I
13 agree with Richard. That's why, when I said this is
14 a situation where you do have an existing
15 nonconforming situation. So I think the proofs for
16 either of those two variances are valid, and I think
17 they both equally apply.

18 MR. REGAN: Two planners agree. I
19 think relief is needed both under D-2 and D-3.

20 MR. PREISS: And I would say that just
21 one thing is that it's an expansion of a
22 nonconforming use, not in a situation where the use
23 is -- the use itself is nonconforming, but when the
24 nonconformity pertains to the conditions. So it's a
25 less -- I think there is a less burden of proof in

1 creates the expansion of a nonconforming use, because
2 the use itself is permitted.

3 MR. HIGGINS: Yes.

4 MR. REGAN: I've been thinking a lot
5 about this, because it is a complicated factual
6 pattern, if you will.

7 MR. PREISS: Right.

8 MR. REGAN: Under 128-9.10, gasoline
9 filling stations are permitted as a conditional use
10 in certain zones, including this zone, the D-1 zone.

11 It doesn't matter whether you have diesel, or in
12 terms of number of pumps. You can have diesel and it
13 could be -- it can be permitted. And you can have a
14 certain number of pumps, again, depending on the size
15 of the property and whether it can accommodate that.

16 There is no restriction as to the type of fuel. I
17 don't necessarily believe that the addition of the
18 diesel and the addition of two pumps creates an
19 expansion of a nonconforming use.

20 Again, I would like to hear the
21 planner on this, because it's --

22 MR. PREISS: If I could weigh in. If
23 we had a situation where they added the two pumps and
24 they had the diesel, but that didn't further violate
25 the conditional use standards, that could be entirely

1 terms of the expansion of the nonconforming use.

2 MR. REGAN: Do both planners agree
3 that the Medici standard does not apply to enhance
4 the quality of proof?

5 MR. HIGGINS: Yes.

6 MR. REGAN: In view of the East
7 Brunswick case decided by the Supreme Court in July
8 of this year?

9 MR. HIGGINS: Yes.

10 MR. PREISS: Yes.

11 MR. REGAN: That's all I have.

12 CHAIRMAN DePINTO: Questions, comments
13 from the Board Members starting with Mr. Lintner.

14 MR. LINTNER: Thank you, Mr. Chairman.
15 Just a few comments, one on the issue that Mr. Regan
16 just brought up: The expansion of a nonconforming
17 use. I believe that, in my opinion, the site
18 plan-related items of nonconformity or noncompliance
19 certainly have been improved. My question with the
20 business aspect of nonconformity with the additional
21 pumps, and also the selling of diesel fuel, I'm
22 wondering how they can be interrelated with -- with
23 the statute or with law.

24 MR. REGAN: I've been struggling with
25 that myself. I don't necessarily think that that

1 permitted.

2 MR. REGAN: I agree.

3 MR. PREISS: There would be no D
4 variance. So it's not the addition of the two pumps
5 and the fact that they are pumping diesel that
6 creates the necessity for the D variance in this
7 particular situation. It's other things that are
8 being done where those conditions are not met, and
9 where they will continue not to be met, or where that
10 condition may be exacerbated, for example, with the,
11 you know, with the width of the driveway on
12 Kinderkamack.

13 MR. REGAN: I'm still struggling with
14 this, because I'm not sure it's an expansion of a
15 nonconforming use, because the use itself under the
16 code is a permitted use, subject to the satisfaction
17 of certain conditions. The D-3 relief is clear. I
18 mean, there are provisions in 9.10 that are not met,
19 and as a result D-3 relief is required.

20 MR. PREISS: It may be that it's an
21 expansion of the non -- not with respect to the
22 nonconforming use, but with respect to the violation
23 of the conditional standards.

24 MR. REGAN: That's an exacerbation of
25 conditions governing a conditional use. But again,

1 I'm still having a problem with, in my mind, as to
 2 why it would constitute an expansion of a
 3 nonconforming use, because the use is permitted.
 4 CHAIRMAN DePINTO: Mr. Marmora, do you
 5 want to log in on this?
 6 MR. MARMORA: If you scraped this
 7 site, and this was a virgin site and we came in, we
 8 would be looking for D-3 conditional use variance
 9 relief, if proposing the pumps, the diesel. We would
 10 not be seeking any kind of a D-1 use variance in this
 11 case. So it's almost like, because what's there may
 12 be considered being expanded, in the layman's sense
 13 of the term, that it's being translated to, legally,
 14 as an expansion of a nonconforming use. Because I
 15 don't believe it is. I believe that it's a D-3
 16 conditional use variance.
 17 MR. REGAN: Clearly a D-3.
 18 MR. MARMORA: Clearly D-3. If we were
 19 working with a virgin site and coming in cold, it
 20 would be a D-3. So I think it really is more in the
 21 nature of a D-3.
 22 MR. HIGGINS: But I think in terms of
 23 the Board weighing the Application, let's assume that
 24 we are not a conditional use, not a permitted use.
 25 MR. REGAN: That's different.

1 pointed it out as nonconforming, because if you look
 2 at the use now, it's not a -- it's not a completely
 3 conforming use. Its nonconforming by virtue of the
 4 fact that it doesn't meet those conditions. So we
 5 are starting with a legal nonconforming use. Hence,
 6 I think it's both D-2 and D-3. But I agree in this
 7 particular situation, the focus really should be on
 8 the conditions which are not being met, rather than
 9 the expansion of those parts of the gas station which
 10 are permitted.
 11 In other words, the diesel and the two
 12 additional pumps are permitted expansions. Those are
 13 not creating any D variances. There is nothing that
 14 would prevent them from doing so. It's other
 15 elements of the plan which are either not being
 16 cured, or where the condition is being exacerbated
 17 that necessitates the D variance in this situation.
 18 I know this is all very technical, but
 19 I think the bottom line is, I think you go back to
 20 the case law, and basically the case law, in my
 21 opinion Burbridge is the applicable standard, is
 22 where you have this kind of situation, you look at
 23 all of the positives, and to the extent that there
 24 has been an effort to bring the site into greater
 25 conformity with the surrounding area, number one.

1 MR. HIGGINS: The substantial
 2 improvements to this site, under the Burbridge verses
 3 Mine Hill would justify the granting of the use
 4 variance, and I think that is something, because the
 5 site is being so substantially improved, that the
 6 site can accommodate the use, despite the fact that
 7 we do need these C3 variances. So I think that proof
 8 can be weighed towards the granting of the C3
 9 variances, even though it's not technically the C-2
 10 variance -- the D-2 -- D-3, rather. Even though it's
 11 not technically a D-2 variance.
 12 MR. REGAN: Adding the use, it's not a
 13 permitted use, and you were adding diesel and extra
 14 pumps, that clearly would be an expansion of a
 15 nonconforming use, because the use is not permitted.
 16 But it is permitted under 9.10. That's where I'm
 17 having a problem in terms of why D-2 relief is
 18 implicated.
 19 MR. MARMORA: I think it's primarily
 20 D-3, but we would like to address the D-2 in the
 21 alternative, in the event this ever gets subject to
 22 review we will have both.
 23 MR. REGAN: I think to be on the
 24 conservative side that's appropriate.
 25 MR. PREISS: The only reason why I

1 And number two, where you're able to allow for the
 2 expansion without creating problems, is where those
 3 conditional use standards are not being met, if you
 4 can accommodate the potential problems associated
 5 with that, then the variance ought to be granted. So
 6 it's those two things.
 7 CHAIRMAN DePINTO: Mr. Lintner?
 8 MR. LINTNER: My concern is, at the
 9 last meeting, the testimony was there was going to be
 10 five or ten cars served with diesel fuel a day.
 11 That's what the anticipation was. What I'm learning
 12 now is we really can't stop any type of pump at this
 13 facility.
 14 MR. REGAN: The mere fact that they
 15 are adding a couple of pumps, I think it's four
 16 filling stations.
 17 MR. MARMORA: That is correct.
 18 MR. REGAN: And adding a different
 19 type of fuel, in and of itself, I don't think
 20 constitutes an expansion of a nonconformity.
 21 MR. PREISS: Right.
 22 MR. LINTNER: Well, how do we control
 23 trucks coming in regularly? How do we control, if
 24 it's an allowable use, or permitted use, how do we
 25 stop a diesel dispenser for trucks being installed

1 down the road?
 2 MR. REGAN: Because I think you can
 3 justify it on the fact that it would be a condition
 4 in your approval, and you are justifying the other
 5 deviation relief as a result of the imposing that
 6 condition.
 7 MR. LINTNER: So my point and comment
 8 is: For the sake of five or ten cars a day, while
 9 are we putting diesel fuel in?
 10 My second comment is, I agree that the
 11 site, the aesthetics of the site are going to be
 12 dramatically improved, but one of the reasons they
 13 are going to be dramatically improved is the
 14 maintenance of the site has been atrocious for years
 15 and years, just looking at the fence and the fake
 16 flowers. So the opinion of the planner that, yes,
 17 it's going to be an improved site, a lot of it has to
 18 do with how the site is cared for right now. Thank
 19 you.
 20 CHAIRMAN DePINTO: That's a good
 21 point. Thank you. Mr. Teagno?
 22 MR. TEAGNO: I understand that there
 23 is planner's definitions and legal definitions, but
 24 as a layman, it's very difficult for me to understand
 25 how going from four pumps to six pumps is a 50

1 conditions which it violates, but the six -- the 6
 2 pumps and 12 fueling stations and the ability to pump
 3 gas is not regulated or controlled or even mentioned
 4 in the ordinance.
 5 MR. TEAGNO: An adding diesel fuel is
 6 not considered a new use.
 7 MR. PREISS: No, it's not.
 8 MR. TEAGNO: It's certainly a new type
 9 of customer, new demographic.
 10 MR. PREISS: That is true, but if any
 11 other gas station in Montvale were to add diesel,
 12 there is nothing in the zoning ordinance that would
 13 have Mr. Fette go out and say, "Wait a minute. It's
 14 a zoning violation."
 15 MR. TEAGNO: It's not a use violation.
 16 MR. PREISS: It's not a use violation.
 17 MR. TEAGNO: Fuel is fuel, it doesn't
 18 matter what type?
 19 MR. PREISS: Correct.
 20 MR. TEAGNO: It could be compressed
 21 natural gas? Could it be propane.
 22 MR. PREISS: I don't know. I would
 23 have to look at the definition.
 24 MR. HIGGINS: They are also separate
 25 regulations for compressed natural gas, too. I think

1 percent increase in the ability to pump fuel and
 2 service vehicles, and that's not considered an
 3 expansion.
 4 CHAIRMAN DePINTO: Mr. Preiss, can you
 5 address that?
 6 MR. PREISS: Yes. It's an expansion
 7 of that part of the use that's permitted under the
 8 ordinance. In other words, the ordinance doesn't say
 9 that one of the conditions is that you have a limited
 10 number of pumps, or one of the conditions is that you
 11 only pump gasoline and not diesel, so.
 12 MR. TEAGNO: So expansion of volume is
 13 not an expansion of use. Is that what you are
 14 saying?
 15 MR. PREISS: Correct, absolutely.
 16 Absolutely.
 17 MR. REGAN: Because the use itself is
 18 permitted.
 19 CHAIRMAN DePINTO: Permitted.
 20 MR. REGAN: In the ordinance
 21 permitted.
 22 MR. TEAGNO: The amount is not.
 23 MR. REGAN: Only it has bulk standards
 24 that the property has to be.
 25 MR. PREISS: There are other

1 you could draw a distinction for that.
 2 MR. TEAGNO: Most of the definitions
 3 are motor fuel. There is a lot of motors that run a
 4 different fuels.
 5 MR. REGAN: Well, there is a
 6 definition in 9.10A of what a gasoline station is, if
 7 you want I can read it into the record.
 8 CHAIRMAN DePINTO: Please.
 9 MR. REGAN: "Gasoline stations,
 10 gasoline filling stations and gasoline service
 11 stations as viewed in the ordinance shall be held to
 12 mean, and are hereby defined to mean any building,
 13 structure or premises, enclosure or other place
 14 within the Borough, where a container or containers,
 15 tank or tanks, containing either gasoline, oil or
 16 other motor vehicle fuel, or other inflammable
 17 liquids, are kept or located for the purpose of
 18 selling offering for sale, or distributing any such
 19 liquids from such containers, tank or tanks, and as
 20 any place or premises where gasoline or other motor
 21 fuel is offered for sale to the public and deliveries
 22 are made directly to motor vehicles, in which may
 23 provide for the maintenance, service, storage or
 24 washing of motor vehicles, or sale of automobile
 25 equipment or accessories."

1 MR. TEAGNO: So as long as it's a
 2 flammable motor fuel --
 3 MR. REGAN: Diesel would be permitted.
 4 MR. PREISS: I think that answers the
 5 question about the natural gas. That would not be
 6 permitted.
 7 MR. MARMORA: But for the record, so
 8 we are clear, we have stipulated that if the Board is
 9 inclined to approve this, we would not serve diesel
 10 to tractor trailers, that the customer -- the
 11 essential customer base would remain the same,
 12 passenger vehicles, primarily.
 13 MR. TEAGNO: Well, if Wolfgang pulls
 14 in with his diesel truck --
 15 MR. MARMORA: That's not a tractor
 16 trailer. I mean --
 17 MR. TEAGNO: It's not a passenger
 18 vehicle, either.
 19 MR. MARMORA: But a box truck --
 20 however, we indicated we would work out a condition
 21 if the Board were inclined to go into that condition.
 22 MR. TEAGNO: That's not classified as
 23 a passenger vehicle.
 24 MR. VOGT: It is.
 25 MR. TEAGNO: No.

1 we also have a Maser report dated August 19th. On
 2 pages three and four of that, and also the table on
 3 page five of Mr. Preiss' report it talks about sign
 4 area and sign variances. And they both point out all
 5 four that I'm concerned with. The Maser report is
 6 page three at the bottom, item B and C: Minimum sign
 7 area prohibits signs bearing the trade name to exceed
 8 27 square feet in area. The Applicant is proposing a
 9 trade name sign of 27.97 square feet. Mr. Preiss'
 10 report says that's a pre-existing condition.
 11 C is minimum sign area not to exceed
 12 15 square feet, and the proposal is 19.74, and that
 13 says that's a C variance required.
 14 MR. PREISS: Yes.
 15 MR. TEAGNO: D on page four says
 16 minimum sign area prohibits aggregate area bearing
 17 the trade name and unit price to exceed 40 square
 18 feet. The Applicant is proposing an aggregate sign
 19 area 47.71 square feet, C variance required.
 20 MR. PREISS: Correct.
 21 MR. TEAGNO: Minimum sign height
 22 prohibits greater than 12 feet. The Applicant is
 23 altering an existing nonconforming site with a height
 24 of 16 feet. So that's an expansion of a
 25 nonconforming measurements right now. So I would

1 MR. VOGT: It is. It's not a truck --
 2 MR. TEAGNO: You would have to go by
 3 mileage and other measurements the federal government
 4 has.
 5 MR. MARMORA: What I'm trying to get
 6 at, Mr. Teagno, the trucks that go there now, box
 7 trucks, landscape trucks, those trucks, nothing would
 8 change. We are not opening up to a new class of
 9 vehicles that's not already going there, and we would
 10 continue to do that in any manner that would satisfy
 11 the Board; signage, obviously zoning restrictions,
 12 but we would agree to that and it's more designed
 13 here, and where obviously Mercedes and BMW has a
 14 substantial presence in Montvale, to continue serving
 15 that existing customer base as the demand for diesel
 16 increases. It's not to open the door to an entirely
 17 new class of customer that's not already patronizing
 18 the site. That's what we tried to convey in agreeing
 19 to that condition.
 20 MR. TEAGNO: And I'm not sure I agree,
 21 but that's okay. I would like to go on to back to
 22 zoning. I'm sorry, back to variances. You brought
 23 up the situations with variances, and I believe those
 24 were use variances. Mr. Preiss' report, he referred
 25 to the table of all of the variances, and so on. And

1 like to know if you could address those four, please?
 2 MR. HIGGINS: Yes, surely. I think
 3 part of the issue here is the Applicant is proposing
 4 to provide a much more attractive sign than the one
 5 that currently exists in the typical modern sign. He
 6 is going to the retro-type sign. And it's my
 7 understanding, and I may be wrong. It's my
 8 understanding that the sign that is being proposed is
 9 actually the same area as the existing sign.
 10 MR. TEAGNO: I don't believe that's in
 11 the Application, certainly not what's in the Maser
 12 and Preiss report.
 13 MR. HIGGINS: But we have a situation
 14 on Kinderkamack Road where you do have a bend in the
 15 road. You have a heavily traveled street. So having
 16 a sign that is slightly larger and more readable, has
 17 a functional and a safety advantage. And the
 18 differences in the size and the height are not
 19 substantial. It's not as if this is 100 square foot
 20 sign, which many gasoline stations are, anywhere from
 21 90 to 100 square feet. This is a much smaller sign.
 22 It's much more readable. Again, it's a very
 23 aesthetic sign, aesthetically pleasing. When you
 24 take that into account, along with all of the other
 25 improvements on the site, I think that what's being

1 proposed overall is a much better solution from a
2 planning and zoning standpoint, and there is no
3 substantial detriment.

4 MR. TEAGNO: Okay. Specifically item
5 C on the Maser report is the price sign not to exceed
6 16.3. You have 19.74. And on the A-8 Exhibit that
7 we were handed tonight, it still shows three prices.
8 If we decide that you are allowed to sell diesel
9 fuel, would there be a fourth sign?

10 MR. HIGGINS: I don't have an answer
11 to that.

12 MR. MARMORA: I would have to get you
13 the answer to that. I assume it would have to be,
14 because I think by law you have to.

15 MR. TEAGNO: Well then that certainly
16 would expand the 19.74 square feet, because you are
17 adding a fourth sign. I'm thinking that's at least
18 another five square feet.

19 MR. MARMORA: The engineer is
20 indicating that it would remain the same.

21 MR. HIGGINS: Yes.

22 MR. TEAGNO: Tell me what prices
23 would be displayed.

24 MR. MARMORA: It would be regular
25 cash, regular credit and diesel.

1 MR. PREISS: Let me just back up. The
2 two C variances is the price sign area, and then when
3 you take the price sign and the existing brand sign,
4 which is not -- which itself is not being expanded,
5 two of them together exceed the aggregate, those are
6 the two C variances that are required.

7 MR. TEAGNO: All driven by the price
8 signs being oversized?

9 MR. PREISS: Yes.

10 CHAIRMAN DePINTO: Okay.

11 MR. TEAGNO: Okay, thank you.

12 CHAIRMAN DePINTO: Okay. I think at
13 some point we may do a polling of the Board with
14 respect to those questions that were raised by
15 Mr. Teagno, and whether it would be the Board
16 preference to rely upon the testimony of the
17 Applicant's planner with regard to the aesthetics and
18 the need for the sign variation, because of the
19 curvature of the road, or to the alternative, request
20 that the signage be reduced in total size to bring it
21 more into conformity with existing code. But we will
22 make a note to do a polling of the Board at a later
23 time. Thank you for bringing that to our attention.

24 Mr. Culhane?

25 MR. CULHANE: Most of my questions

1 MR. TEAGNO: Okay. Thank you.

2 CHAIRMAN DePINTO: Mr. Teagno, just to
3 go back to the comments you had made with respect to
4 the proposal being at variance with the code, is it
5 your request that the signs be reduced in size to
6 comply to the Borough's standard?

7 MR. TEAGNO: I'm asking for an
8 explanation as to why they feel the variances are
9 needed.

10 CHAIRMAN DePINTO: But not making a
11 recommendation or request?

12 MR. TEAGNO: Not at this time.

13 CHAIRMAN DePINTO: Okay. Okay, I'm
14 sorry. Please continue.

15 MR. TEAGNO: Especially when the
16 difference is significant. I mean, the freestanding
17 sign, the ordinance says 12 feet and it's going 16
18 feet. Percentage-wise that's 33 percent.

19 MR. PREISS: Can I just indicate one
20 thing? That's the pre-existing height. They are not
21 going higher. That's the pre-existing height.

22 MR. TEAGNO: Okay. And the C variance
23 for the 40 square feet, going to 48 square feet?

24 MR. PREISS: That is -- well --

25 MR. TEAGNO: It's 20 percent.

1 have been answered, but the one thing I would like
2 the planner to give an opinion, what's the impact in
3 your judgement, of the improvements on the traffic
4 situation on Kinderkamack Road, especially
5 southbound?

6 MR. HIGGINS: I, from looking at this
7 plan and from discussing it also with the Applicant's
8 traffic engineer, and looking at the existing
9 situation, I think it's going to be a substantial
10 improvement to the situation on Kinderkamack Road.
11 Because of first of all, the provision of the bus
12 stop, when the bus is stopped, they don't stop out on
13 the road. They will be coming off the road and there
14 will be a shelter. Also you have, as I said in my
15 testimony, you have 12 fueling stations as opposed to
16 eight. So more cars will be able to be serviced
17 faster, so that that will reduce the queuing. And
18 then you have a much longer queuing area now, so that
19 most of those cars that would be out on Kinderkamack,
20 are now going to be on the site. Whether it will
21 totally eliminate that situation, I don't know. I
22 think the traffic expert would be better to discuss
23 that. But definitely, it will be a substantial
24 improvement.

25 MR. CULHANE: Another question; one of

1 the conditions that are remaining is the distance
 2 from the railroad station.
 3 MR. HIGGINS: Yes.
 4 MR. CULHANE: Did you have any
 5 knowledge of the history for that particular
 6 condition?
 7 MR. HIGGINS: No, I don't. I don't
 8 see any reason from a planning or zoning standpoint
 9 for that, but I don't know why that condition was in
 10 there.
 11 MR. CULHANE: Do you consider it a
 12 condition that's critical?
 13 MR. HIGGINS: No, I consider it
 14 actually to be frivolous. There are some proximity
 15 conditions that are important. That one, again, I
 16 don't see any basis for it.
 17 MR. CULHANE: No other comments,
 18 Mr. Chairman.
 19 CHAIRMAN DePINTO: Thank you.
 20 Mr. Fette?
 21 MR. FETTE: Just two quick comments.
 22 You made a comment, Mr. Higgins, that there is a
 23 restroom in the kiosk?
 24 MR. HIGGINS: Yes, there is, yes.
 25 MR. FETTE: I thought I heard you

1 artificial plants that Mr. Lintner seemed to --
 2 MR. VOGT: Those plants will be
 3 removed from the site because --
 4 CHAIRMAN DePINTO: You will pull them
 5 out.
 6 MR. VOGT: I'm not going to pull them
 7 out. The landscaping, which is being done, as simple
 8 as it is, but there is beauty in simplicity, I think
 9 it will certainly enhance the property.
 10 MR. HIPOLIT: He will put wood
 11 carvings in your place.
 12 MR. VOGT: You know I don't sell them.
 13 CHAIRMAN DePINTO: Okay. With that
 14 said, the Chair will entertain a motion -- I'm sorry,
 15 Mr. Marmora, do you have anything else?
 16 MR. MARMORA: I have nothing further
 17 this evening. Thank you.
 18 CHAIRMAN DePINTO: Okay, thank you.
 19 With that said, the Chair will entertain a motion to
 20 open the meeting to the public.
 21 MR. VOGT: So moved.
 22 MR. CULHANE: Second.
 23 CHAIRMAN DePINTO: Moved by Mr. Vogt,
 24 seconded by Mr. Culhane. All in favor?
 25

1 saying that. I wanted to clarify that. Also, I got
 2 a note from Carl Bello, our treasurer, looking for
 3 additional escrow money.
 4 MS. HUTTER: It was supplied.
 5 MR. FETTE: I'm sorry?
 6 MS. HUTTER: It was supplied.
 7 MR. FETTE: Okay, thank you. If you
 8 check that, I have no further comments.
 9 CHAIRMAN DePINTO: Mr. Vogt?
 10 MR. VOGT: Thank you, Mr. Chairman. I
 11 think most of my questions have been answered. I do
 12 have a comment, however.
 13 CHAIRMAN DePINTO: Please.
 14 MR. VOGT: Sometime ago I worked with
 15 the landscape architect to somewhat improve what he
 16 originally designed. And the architect agreed to it
 17 and revised all of those plans, and I think it's a
 18 substantial benefit to the site.
 19 CHAIRMAN DePINTO: Okay.
 20 MR. VOGT: And I agree with
 21 Mr. Higgins. Very rarely do I agree with a planner,
 22 but in this case I think he's right on the money. So
 23 that's all I have, Mr. Chairman.
 24 CHAIRMAN DePINTO: Okay, thank you.
 25 And you had nothing to do with the placement of the

1 (All Members present indicate an
 2 affirmative vote on the motion.)
 3 MR. DePINTO: Okay. Anyone from the
 4 public have any questions with regard to the
 5 testimony that was heard this evening? Just as a
 6 reminder to Members of the public that wish to speak,
 7 this is your opportunity, as the Board members had an
 8 opportunity to ask questions of either the
 9 Applicant's professionals or the Board professionals,
 10 it's not an opportunity to offer your comments on
 11 this Application. As we come to the close of the
 12 hearing, you will be given that opportunity.
 13 Sir, please identify yourself.
 14
 15 QUESTIONING OF MR. HIGGINS BY THE PUBLIC:
 16 MR. WOLFREY: Sure, Charles Wolfrey, 7
 17 Pearl Street. Forgive me. I may jump around a
 18 little bit. I was trying to make some notes here.
 19 CHAIRMAN DePINTO: That's okay.
 20 MR. WOLFREY: The first one I'll put
 21 out as a rhetorical question, just over the past one
 22 minute. I don't want you to take it the wrong way,
 23 but if it were your neighborhood planting plastic
 24 flowers all around your house, would you find it a
 25 laughing matter?

1 Mr. Preiss referenced, as a neighbor
 2 he thinks it's an improvement, so I would ask: Are
 3 you a neighbor?
 4 MR. PREISS: No, obviously not.
 5 MR. WOLFREY: Did the old tanks have
 6 diesel capacity on the site?
 7 MR. MARMORA: Well, they have
 8 separates compartments, because you had the ability
 9 to serve regular gas, and high test and then the mid
 10 grade was a blend. So you could have eliminated
 11 either regular or the high test and added diesel to
 12 one of the two of them, but then you would have to
 13 eliminate one of the other, presumably, unless you
 14 replaced the tanks and they had three compartments.
 15 MR. WOLFREY: So the original tanks
 16 couldn't handle the current iteration that is being
 17 proposed?
 18 MR. MARMORA: The original tanks could
 19 probably -- you know, I'm going a little bit, as a
 20 lawyer, probably going too far here. My
 21 understanding is that the original tanks had two
 22 compartments and they were able to offer two. I
 23 don't know if it was one or two tanks. If there were
 24 two tanks, then they could have offered diesel,
 25 because then you could have had regular, diesel and

1 for the south. That's my recollection.
 2 MR. WOLFREY: So it would probably
 3 impede a little further than the kiosk into that
 4 setback?
 5 CHAIRMAN DePINTO: If -- well, correct
 6 me if I'm wrong, Bob, if it's viewed as an accessory
 7 structure, an accessory structure can be closer to
 8 the side or rear lot line than a principal structure?
 9 MR. REGAN: We are taking a more
 10 conservative approach.
 11 CHAIRMAN DePINTO: It would appear
 12 that that setback a greater if it's used as a
 13 principal structure, and I don't think it would
 14 qualify as that. I believe it would meet that, as
 15 well. Is that correct?
 16 MR. HIGGINS: The way the ordinance
 17 reads, it says the walls of the building or
 18 structure, and the canopy doesn't have any walls. So
 19 it doesn't apply to that requirement, because the
 20 canopy doesn't have walls.
 21 CHAIRMAN DePINTO: So therefore you
 22 would refer to the canopy as accessory versus
 23 principal?
 24 MR. HIGGINS: Yes, yes.
 25 CHAIRMAN DePINTO: And --

1 then in one of the other tanks you could have had the
 2 high test.
 3 MR. WOLFREY: Okay. The distance to
 4 the building from the street is 25 feet. Was that --
 5 I apologize. What you were saying?
 6 CHAIRMAN DePINTO: The kiosk to the
 7 property line?
 8 MR. WOLFREY: Correct.
 9 MR. HIGGINS: The kiosk from the
 10 street complies. It doesn't comply from the northern
 11 property line.
 12 MR. WOLFREY: From the norther
 13 property line, okay. Do the canopy walls also count
 14 as that, as well? Do they count as a wall
 15 structure --
 16 CHAIRMAN DePINTO: I believe that's
 17 interpreted as an accessory structure. Isn't that
 18 correct?
 19 MR. REGAN: Yes.
 20 CHAIRMAN DePINTO: As an accessory
 21 structure, Mr. Preiss, what are the bulk requirements
 22 or setback requirements for the canopy as an
 23 accessory. It's not a principal use.
 24 MR. PREISS: I think we viewed the
 25 canopy as having to comply with the setback standards

1 MR. HIGGINS: Also, that it doesn't
 2 have walls, and that the standard is to measure from
 3 the wall. So it's clear, it's intended for something
 4 that's a solid structure, not something that's an
 5 open-air structure.
 6 MR. WOLFREY: Okay. And may I ask,
 7 lot depth is measured how?
 8 CHAIRMAN DePINTO: Excuse me one
 9 second.
 10 MR. WOLFREY: No, that's fine.
 11 CHAIRMAN DePINTO: Okay, I may have a
 12 different opinion on this.
 13 MR. REGAN: On the canopy, isn't that
 14 really part of the principal lot use?
 15 MR. PREISS: I think that's the way we
 16 interpreted it, and the requirements in terms of the
 17 front yard setback, Magnolia 50 feet, Kinderkamack 50
 18 feet, that's to the canopy itself. And, you know,
 19 the --
 20 CHAIRMAN DePINTO: So therefore we
 21 applied a more restrictive standards than the more
 22 liberal standards of an accessory?
 23 MR. PREISS: I'm trying -- it's been
 24 sometime since I did this. I'm trying to --
 25 MR. HIPOLIT: On there plans, they are

1 asking for front yard setback from Kinderkamack to
2 the canopy, to the canopy, and then on Magnolia to
3 the canopy. So they are asking for variances for
4 that.

5 MR. REGAN: Yes, that's 9.10. Those
6 are the conditions.

7 MR. PREISS: Yes.

8 MR. REGAN: I think it has to be part
9 of the principal use.

10 MR. HIGGINS: The issue is not the
11 use. The issue is the standard, is the measurement
12 from the walls, and the canopy doesn't have any
13 walls. It's not that it's a principal or accessory
14 structure. It's a structure that doesn't have a
15 wall. So the setback, there is no measurement from
16 the setback from the wall.

17 MR. REGAN: Well, it's a structure, so
18 the setback would be 25 feet.

19 MR. HIGGINS: The setback is from the
20 walls of the structure, not from the structure.

21 CHAIRMAN DePINTO: Mr. Higgins, you
22 are saying it doesn't fall in either of the
23 definitions in our ordinance?

24 MR. HIGGINS: Yes, yes.

25 CHAIRMAN DePINTO: But yet on the plan

1 CHAIRMAN DePINTO: Mr. Hipolit?
2 MR. HIPOLIT: Again. The lot depth is
3 measured, they are required 150 feet, and they are
4 taking it and proposed 208. So the 150 feet or 208
5 is taken along, I guess from Magnolia into the site,
6 not from Kinderkamack into the site.

7 MR. WOLFREY: Is that -- forgive me,
8 is that how it's normally done? It's taken from one
9 direction only, not the other direction, which other
10 direction allows it to conform?

11 MR. PREISS: Yes. The other thing is
12 that condition is not changing. The site is not
13 changing in any way. They are not adding any
14 property or --

15 MR. WOLFREY: No, but I believe it was
16 being referenced as eliminating one of the
17 pre-existing conditions. That's why.

18 MR. HIGGINS: Because we added lot --

19 CHAIRMAN DePINTO: Lot area.

20 MR. PREISS: That's right, they added
21 an additional lot.

22 MR. HIGGINS: We added an additional
23 lot so that it did change that.

24 MR. PREISS: Correct. You are
25 correct. You did add additional area to the lot.

1 you are seeking relief from those bulk standards.

2 MR. HIPOLIT: And it looks like they
3 are basing it from the -- basing it from the side of
4 the canopy, so.

5 MR. PREISS: Let me see if I can
6 clarify this. The conditional use standard says the
7 walls of any building or structure, they are
8 referring to the walls, and the wall of the kiosk is
9 22.9 feet as opposed to 25 feet. So that is where
10 that -- the deviation, the D variance comes from. In
11 terms of the bulk standards, the minimum front yard
12 setback from Magnolia Avenue is 50 feet, and
13 Kinderkamack is 50 feet. The Applicant has proposed
14 41.3 feet and 33.4 feet, so --

15 MR. HIPOLIT: That's to the canopy.

16 MR. PREISS: That's to the canopy.

17 MR. HIPOLIT: They are taking the more
18 conservative variance request.

19 MR. PREISS: Those are C variances
20 that are required, in my opinion.

21 CHAIRMAN DePINTO: Mr. Wolfrey?

22 MR. WOLFREY: The section -- the last
23 question I asked was, the lot depth is measured in
24 what way? I know there was a reference made to lot
25 depth being no longer an issue.

1 MR. WOLFREY: Alright. And so there
2 is no regulation as far as what street those things
3 have to be measured off of, whether it's a main
4 street or side street?

5 CHAIRMAN DePINTO: Is there a
6 different standard for the type of street?

7 MR. WOLFREY: Or is there, I mean, is
8 there, you know, if we measure 22.9 feet off of one
9 street, and then -- I'm just asking. I don't know.
10 Is it -- do the standards apply to the main street, a
11 side street?

12 CHAIRMAN DePINTO: It applies to any
13 street.

14 MR. PREISS: There are two front yards
15 here, both Magnolia and Kinderkamack are treated as
16 front yards. So the front yard set back has to be
17 measured --

18 CHAIRMAN DePINTO: So it has to be
19 applied on both streets because of that.

20 MR. PREISS: Correct.

21 MR. WOLFREY: Okay.

22 CHAIRMAN DePINTO: The front yard
23 standards, corner properties, this is a corner
24 property, are penalized with the burden of two front
25 yards, and have to comply with that.

1 MR. WOLFREY: Understood. Okay. So
 2 does it -- so would it then remove the existing
 3 standard, because it doesn't seem like the lot depth
 4 from Kinderkamack is 108 feet or 150 feet.
 5 MR. PREISS: That would be the width.
 6 MR. LINTNER: That is the side yard
 7 now. If they are using -- if the depth is the 200
 8 feet, the other become side yards.
 9 CHAIRMAN DePINTO: Andy, what are your
 10 definitions of the yard areas?
 11 MR. HIPOLIT: I mean, it really
 12 depends. We had this discussion back a few meetings
 13 ago. It depends. If you look at Magnolia as the
 14 front, or north Kinderkamack as the front, they have
 15 two existing fronts. So you have one lot depth from
 16 Magnolia, and one lot depth from Kinderkamack Road.
 17 Either way, if under the original conditions off of
 18 Kinderkamack or Magnolia, it didn't meet the
 19 regulation. So now when you add the extra lot area,
 20 it would definitely meet on Magnolia. I'm not sure
 21 if it meets on Kinderkamack. Let me check.
 22 MR. HIGGINS: It would remain.
 23 MR. MARMORA: The point is that if
 24 there were two, if there were two violations
 25 previously, now there would only be one, because you

1 addition?
 2 MR. MARMORA: It's an addition.
 3 MR. PREISS: There is no restroom as I
 4 understand currently.
 5 CHAIRMAN DePINTO: There is no public.
 6 MR. MARMORA: There is no public
 7 restroom, correct.
 8 CHAIRMAN DePINTO: I believe it was
 9 stated that there is toilet facilities.
 10 MR. MARMORA: Toilet facilities there.
 11 CHAIRMAN DePINTO: Yes, for employees.
 12 MR. WOLFREY: Okay.
 13 CHAIRMAN DePINTO: Which will continue
 14 in the future in the kiosk.
 15 MR. MARMORA: In the kiosk.
 16 MR. WOLFREY: It sounded as if there
 17 was an addition. I wanted to make sure, because I
 18 know we discussed the footprint was remaining the
 19 same in the kiosk.
 20 MR. MARMORA: Correct.
 21 MR. WOLFREY: Okay, very good. If I
 22 may ask: When you reference substantial negative
 23 impact, I mean, how is that -- how do you quantify
 24 that?
 25 MR. HIGGINS: You can't quantify it as

1 have Magnolia.
 2 CHAIRMAN DePINTO: Because of the
 3 addition of the land and the merging of the lots.
 4 MR. MARMORA: If you apply the
 5 standard on both roads, obviously the lot depth on
 6 Kinderkamack is not going to change, but the lot
 7 depth on Magnolia will.
 8 MR. HIPOLIT: Is the lot depth from
 9 the center line or the.
 10 MR. FETTE: The lot depth should be
 11 from the front to the rear lot lines. Not the center
 12 line of the road, not the --
 13 MR. HIPOLIT: So you're an existing
 14 nonconforming from Kinderkamack.
 15 MR. MARMORA: From Kinderkamack,
 16 correct. Right. Yes, we are testifying we are
 17 eliminating on the other frontage.
 18 MR. HIGGINS: That's a width.
 19 MR. HIPOLIT: We are about 125 feet
 20 from Kinderkamack roads that's existing.
 21 MR. WOLFREY: Okay. I just wanted to
 22 have clarity. It didn't seem like it was actually
 23 eliminating that one that was mentioned.
 24 Forgive me. Is the restroom currently
 25 in existence inside the kiosk, or is that an

1 such. When I talk about the negative impact, I'm
 2 talking about the negative impact as it relates to
 3 the specific variances that are requested. Okay?
 4 MR. WOLFREY: I understand.
 5 MR. HIGGINS: For example, most of
 6 them are either remaining the same, or they are being
 7 improved. The one that's being requested that is
 8 new, is the 22.1 feet from the northern property line
 9 of the kiosk. And that is a minimal, it's 2.1 feet.
 10 As a lay person, you can't stand and look at
 11 something that's 22 feet from a property line and
 12 tell whether it's 22 or 25. So there is no
 13 substantial negative impact.
 14 Now, if this was a large building, and
 15 it was ten feet from the property line, then there
 16 would be substantial impact. So it's a matter of
 17 opinion. Quantifying it in many cases is not
 18 possible.
 19 MR. WOLFREY: Okay. And also it was
 20 referenced, just the terminology was used that it was
 21 much more attractive. So I would question the Board
 22 that is that factual testimony or is that just more
 23 of a subjective personal thought? I don't agree with
 24 him in any regard.
 25 CHAIRMAN DePINTO: Mr. Higgins, as a

1 planner are you qualified, or is that a personal
2 opinion as to --

3 MR. HIGGINS: That's a professional
4 opinion that it is. Just so for the member of the
5 public asking the question understands, most of
6 planning testimony is opinion, and it can't be
7 quantified.

8 MR. WOLFREY: All right, thank you.

9 CHAIRMAN DePINTO: Okay. Mr. Wolfrey,
10 before you sit down. Mr. Fette, with regard to
11 Mr. Wolfrey's rhetorical question regarding the
12 plastic flowers, is there anything in the code of the
13 Borough of Montvale that would prohibit a property
14 owner of either commercial or residential property
15 from installing those types of flowers on their
16 property?

17 MR. FETTE: No, there is not.

18 CHAIRMAN DePINTO: So we may not like
19 them, but there is nothing in the ordinance that
20 Mr. Fette could enforce to go there and say, those
21 plastic flowers have to be removed. I think
22 personally it's in poor taste, but they are not
23 violating any of the codes, and it's not the Borough
24 has turned their back on that. It's just we never
25 addressed that, number one.

1 CHAIRMAN DePINTO: Good evening.
2 MS. BARNES: I wrote out comments, so
3 I will try to convert them into questions.

4 CHAIRMAN DePINTO: Yes, please.

5 MS. BARNES: One just off the top of
6 my head, just from what the other gentlemen was
7 saying. My thought was if the Applicant has trouble
8 maintaining the property as it is now, how is
9 expanding it and having more landscaping
10 responsibility and more buildings going to make that
11 easier for him?

12 MR. MARMORA: I can address that.

13 And, you know, I think that to some extent we are
14 part of your community now. We've been here for, I
15 guess, three or four years. In fairness to
16 Mr. Chaudhary, he acquired the site relatively
17 recently, and came up with immediately started to
18 work on a plan to improve it. This has been a
19 process that's gone on for many years. He's not
20 really undertaken any improvements, because he hopes
21 to implement obviously a much broader redevelopment
22 of the site. So he acquired an unaesthetic site. A
23 use that the Board, and other members of the public,
24 including yourself, obviously and the neighbors, were
25 never terribly enamored with, but the reason why no

1 Number two, we've asked Mr. Marmora to
2 speak to his client with regard to the signage
3 relating to cigarettes and satellite dishes, could
4 you also speak to your client with regard to what
5 most people would consider to be rather unsightly,
6 the plastic flowers.

7 MR. MARMORA: Absolutely. Obviously,
8 if this is approved and there would be a landscaped
9 plan and we would have to conform to the landscape
10 plan, meaning we would be prohibited from using the
11 plastic flowers.

12 CHAIRMAN DePINTO: But in the interim,
13 as a good neighbor, pull out the plastic.

14 MR. MARMORA: I will speak to
15 Mr. Chaudhary. He's still on his religious
16 retreat and not in the country and that is why he is
17 not here tonight. I obviously have a couple of
18 things to discuss with him upon his return.

19 CHAIRMAN DePINTO: Okay. Anyone else?
20 Yes, ma'am?

21 MR. BARNES: Hi, Bella Barnes, 23
22 Magnolia Avenue.

23 CHAIRMAN DePINTO: I'm sorry, your
24 name?

25 MS. BARNES: Belle Barnes.

1 significant changes were made is because this process
2 has been sort of going along. But obviously if there
3 is an approval to be granted, and there is a
4 landscaped plan, and there is supposed to be a bush
5 maintained at least a certain height in this
6 particular location, and that bush is no longer
7 there, Mr. Fette can issue a zoning violation and
8 enforce it.

9 In fairness to Mr. Chaudhary, the
10 whole idea was to not address this in piecemeal
11 fashion, but to come up with an entire plan for an
12 upgrade to the facility.

13 MS. BARNES: Honestly, it's a minor
14 issue, but when you have to go by it everyday,
15 it's --

16 MR. MARMORA: It's a valid point. I
17 don't mean to minimize it.

18 CHAIRMAN DePINTO: It's a valid and
19 good question, but I do agree with Mr. Marmora.
20 Having sat on this Board for as many years as I have,
21 when the Board grants an approval for amended site
22 plan Application such as this, there are those
23 requirements and the new standards that are applied
24 to that property. And when an officer -- when
25 Mr. Fette or someone else in the Borough observes a

1 violation, they only have to go back to this
2 approval, and not to the approval that had been
3 granted for that gas station maybe 20, 30 or 40 years
4 ago, which often cannot be found. So it will make it
5 easier in the future to enforce violations.

6 MS. BARNES: Okay. On that picture
7 does it show the -- where you would enter off of
8 Kinderkamack? Because it's not clear to me. Do you
9 see on it that, or is it further down?

10 MR. MARMORA: It's on the site plan.
11 I don't know if it shows up on that picture.

12 MR. HIGGINS: I don't think it does.

13 MR. MARMORA: If you -- I don't know
14 if you were here for the prior hearings. It's on the
15 far far end of the other site.

16 CHAIRMAN DePINTO: Mr. Marmora, can
17 you just reference that?

18 MR. MARMORA: I'm sorry. It's Exhibit
19 A-3, which is the colored rendering of the site plan
20 that we previously presented to you. And A-3 is, you
21 know, I think shows the exact location of where that
22 driveway would be. I don't know that it shows up on
23 the airbrush photo, it's down too far.

24 MS. BARNES: From where you are
25 standing, can you show me where the curve of the

1 CHAIRMAN DePINTO: Rather than how you
2 feel, ask Mr. Hipolit if he feels --

3 MS. BARNES: Mr. Hipolit, if you are
4 moving that 80 feet closer to that curve, I
5 understand that cars will be coming off, but how is
6 that not going to be more of a safety issue with
7 people whipping around, because you said tonight that
8 you are not sure if there is going to be continued,
9 you know, queuing. You are hoping there is not, but
10 if there is, it's going to be closer to that curve
11 from how I --

12 MR. MARMORA: If I can answer that
13 question, it's 210 feet to the curve. We just
14 measured that. So it's 210 feet from the driveway to
15 that curve. And we'll point out that the County
16 reviewed this.

17 CHAIRMAN DePINTO: Let's break down
18 the question. First, Mr. Hipolit, with regards to
19 where that driveway is located, and based upon your
20 knowledge of the community and the traffic patterns
21 in the community, do you find that to be an unsafe
22 location?

23 MR. HIPOLIT: I'll try to answer your
24 question as directly as I can. Just to the east of
25 this site is a house or a dwelling with a driveway.

1 roads is coming from?

2 MR. MARMORA: I can't from this.

3 MS. BARNES: Okay. My -- how do I
4 turn this into a question?

5 CHAIRMAN DePINTO: Let's see. I'll
6 stop you if you go too far.

7 MS. BARNES: If I say concern, I don't
8 know if that's a comment. I'm concerned about
9 safety. I'm wondering how far back you went to
10 address the safety issue?

11 CHAIRMAN DePINTO: Okay. I think
12 that's a question that Mr. Hipolit can answer. You
13 are questioning the placement of that point of
14 ingress?

15 MS. BARNES: I am, because when people
16 come around that curve they are not -- I mean, some
17 people are, but a large amount of people are not
18 going the speed limit. It is not enforced as far as
19 I can see. I mean, I travel that road almost
20 everyday for 30 -- okay, I can't do that. So --

21 CHAIRMAN DePINTO: Let's get an answer
22 to your question.

23 MS. BARNES: Okay. If you are
24 moving -- right now I feel it's a safety issue as it
25 is now with them coming speeding around there.

1 Just a little bit east of this driveway they are
2 moving a new driveway, which is pretty much in line
3 with that pump house they have. They are moving the
4 driveway a little more east towards the curve, but
5 the curve is still pretty far away from where there
6 driveway is. The added benefit of safety of the bus
7 drop-off, the queuing to get the cars off, I can't --
8 the reason I said, I think it's because a what if 250
9 cars rush there because there is a Hurricane Sandy,
10 every gas station in America or New Jersey had lines
11 three miles in every direction. I sat in them. So
12 can that happen again? That can happen. We can't
13 prevent that. The Applicant can't prevent that. But
14 the curve coming from the north from the south to the
15 site is what it is. You can't change it. That curve
16 by itself does slow traffic down, though you are
17 correct, there are cars that come through there
18 relatively fast. The police need to be diligent in
19 that area. But the improve can be made to get the
20 cars off the road, that's a significant improvement.
21 And you are only moving the driveway a very short
22 distance with respect to how far back that curve is.
23 That curve is still a few hundred feet away from
24 there. So it's a much safer situation. Our traffic
25 guys did look at it. I know their engineers designed

1 it, and our own police looked at it, the Montvale
 2 Police. And the organization of that driveway
 3 moving, queuing vehicles off, moving the bus off the
 4 street, and not getting any closer to a residential
 5 driveway just to the east of this, it's still will be
 6 a safer situation than what you have with what you
 7 have to work with. Other than widening Kinderkamack
 8 Road or changing the alignment of Kinderkamack Road,
 9 there is a lot of other properties involved. It's
 10 not an easy task.

11 MS. BARNES: Is there a reason that
 12 the study, I just kind of perused that quickly. They
 13 did it on a Wednesday and a Friday. Why not on a
 14 weekend where there is a large volume of people
 15 coming around that curve?

16 MR. HIPOLIT: In the traffic world,
 17 most residents, because they are mostly home
 18 weekends, they think most of the traffic is on
 19 weekends. In the traffic world you look at traffic
 20 numbers, the higher volumes are Tuesday, Wednesdays
 21 and Thursdays. Mondays and Fridays would be the
 22 least desirable to do counts, but you can do them on
 23 there. And weekend counts you usually don't do at
 24 all because it's very irregular. People are home on
 25 weekends and they sporadically go out to the store,

1 traveling to and from work. Usually they get it on
 2 the way home from work. That's by national
 3 standards, not my opinion.

4 MS. BARNES: Okay. I can't comment
 5 right now.

6 CHAIRMAN DePINTO: You will have an
 7 opportunity to do so.

8 MS. BARNES: The other question is, I
 9 don't remember this being mentioned, but was there
 10 talk about flow in the lanes by the pumps themselves?

11 MR. PREISS: On-site circulation?

12 CHAIRMAN DePINTO: On-site
 13 circulation?

14 MS. BARNES: Yes.

15 CHAIRMAN DePINTO: Yes. What was your
 16 question relative to that?

17 MS. BARNES: So are they supposed to
 18 go, you know, if you come in from the south, they
 19 should be going into the pump, and then out Magnolia?
 20 And then if you come in from Magnolia you should be
 21 heading, you know, north and, you know, egressing
 22 that way, or not?

23 CHAIRMAN DePINTO: Richard?

24 MR. PREISS: My recollection is that
 25 if that's the easiest way of getting out once you are

1 and they sporadically go out. It might be volume all
 2 day, but when we look at traffic you look at peaks
 3 and a peak is seven to nine in the morning when
 4 school and workers are going to work, and again four
 5 to six at night. So you try, min the traffic world
 6 to get the worst peak you can get, and then try to
 7 relate that to all of the traffic. If you take a
 8 Saturday, what you normally find is there may be more
 9 volume, but the peaks aren't there. So you don't get
 10 the rushes and back-ups and it's congestion you
 11 normally get. It's not all concentrated into an hour
 12 or two. It's all day. In the traffic world, you
 13 always look to peaks in the worst situation in a
 14 15-minute to an hour period. That's why we use those
 15 days and dates.

16 MR. PREISS: Can I add something? The
 17 critical thing is not the peak of the use itself.
 18 It's the peak of the traffic on the roadway. That's
 19 when you do your counts. This use may have its peak,
 20 there may be more people coming on the weekends, but
 21 the impact on the roadways always measured when the
 22 roadway has the heaviest volume of traffic. That's
 23 why they did the count then.

24 MR. HIPOLIT: Even a gas station the
 25 peak is a weekday. Most people get their gas

1 done -- let's say you come in Kinderkamack and pull
 2 up to the pump, you go out Magnolia. That would seem
 3 to be the easiest way of doing that. Vice-verse, if
 4 you come in Magnolia, it seems it would be the
 5 easiest way would be to go out Kinderkamack. But the
 6 site has been designed where you could actually come
 7 in on either end and go out on either end as well.
 8 So all of those options remain for the driver. And I
 9 think that the traffic testimony was that to keep it
 10 two-way in either direction, because that doesn't
 11 force the traffic, you know, to all exit in one area
 12 and to go in another.

13 MS. BARNES: Should they be going in
 14 different directions in the same lane?

15 MR. HIGGINS: No.

16 MR. PREISS: They won't be doing that,
 17 obviously.

18 MS. BARNES: But they are now.

19 MR. PREISS: When you say in the same
 20 lane, you mean --

21 MS. BARNES: When I came here tonight,
 22 they were, you know, like this (indicating,

23 MR. PREISS: Once -- that's very
 24 typical of gas stations.

25 MS. BARNES: I understand that.

1 MR. PREISS: If there is enough room
 2 to get around, that's the critical thing. And the
 3 way that the pumps are designed now, and the
 4 distances between them, there is sufficient room if
 5 there are two cars parked at the fueling station to
 6 go in between.

7 CHAIRMAN DePINTO: I also think,
 8 because I happened to be there last night and I
 9 observed the same thing. I think part of the
 10 problems is with the operations of the station, and I
 11 think they employ a limited number of gasoline
 12 attendants, particularly at night, and the attendants
 13 have a tendency to put cones out to prohibit opposite
 14 lane fueling, and that's forcing cars to make that
 15 maneuver. I think that's something we should speak
 16 to the owner of the property in terms of options, in
 17 particular with the new development. Because I
 18 agree. I personally dislike that. That's kind of a
 19 pet peeve of mine, and I think they should be
 20 directed by the service station attendant to keep the
 21 traffic traveling in the right direction by
 22 maintaining open lanes so that you can get proper
 23 access to the pumps. I think that's something we
 24 could bring up with Wasseem.

25 MS. BARNES: Did the study look at

1 coming off Magnolia.

2 CHAIRMAN DePINTO: There is a neatness
 3 with this gas station, also, because the majority of
 4 the gas station is from the north heading southbound,
 5 people making the right-hand turn into the gas
 6 station, and then exiting out on to Magnolia. I
 7 don't think those traffic patterns will change with
 8 the new design.

9 So again, I go back to operations, and
 10 again, I go back to the ability of the site to
 11 accommodate the traffic in a safer manner than it's
 12 currently doing. I think through design and through
 13 operations there could be tremendous improvement to
 14 public safety.

15 MR. MARMORA: I would also add,
 16 Mr. Chairman, like the landscape comment before, I
 17 don't believe an Applicant can come before a board,
 18 present a certain circulation plan, and then
 19 essentially obstruct the plan by putting in cones.
 20 Because obviously we are presenting that plan to you,
 21 our traffic expert testified as to the circulation.
 22 I don't believe an Applicant can then put cones in
 23 and live by a different circulation plan. So I think
 24 that is also a condition that that would be part of
 25 an approval if the Board were inclined to grant.

1 people coming in, and would they be able to come in
 2 when they see cars going in different directions, or
 3 are they queuing maybe because they don't see that
 4 they can safely come in to where they need to be from
 5 where the gas tank, that kind of thing.

6 CHAIRMAN DePINTO: I think they are
 7 queuing the way they are queuing because of lane
 8 closure, which is a controllable element associated
 9 with the plan, and I think we should hear testimony
 10 from the operator relative to that to ensure us, or
 11 to help prevent that from happening. I happened to
 12 observe it last night at that gas station.

13 MR. PREISS: I think just to go back,
 14 one is by moving that driveway, we talked about
 15 moving that driveway, is that it allows for
 16 additional stacking if cars are coming on Magnolia.
 17 Now, it's true that in gasoline stations there may be
 18 some people who are coming to the site for the first
 19 time. But I think over time, it's basically the same
 20 people coming, you know, down the road or going back
 21 home that use the gasoline station. So if they know
 22 at certain time when they fill up with gas, but there
 23 is a longer stacking on the Magnolia side, there will
 24 be a tendency for those people to come off of
 25 Kinderkamack, so that they can stack as opposed to

1 CHAIRMAN DePINTO: A valid point.

2 MS. BARNES: So I hear you talking
 3 about making it safe coming in, heading south, and we
 4 all know that's where the majority of people are
 5 coming. I agree with that. I really -- I brought it
 6 up at the last meeting. I really haven't heard any
 7 safety concerns about egressing on to Magnolia. Now,
 8 you talked about stacking on to Magnolia. There is
 9 only room for a couple of cars there.

10 MR. PREISS: Right, agreed.

11 MS. BARNES: I mean, really. That's
 12 where I live. I see it everyday. And I haven't
 13 heard the addressing of the safety issue of the cars
 14 that are coming out of that gas station, they are not
 15 adhering to the stop sign and, you know, they are
 16 acting as though we have the right-of-way.

17 CHAIRMAN DePINTO: I think when we
 18 hear the testimony from our Police Department with
 19 regards to that, both the Chief of Police and
 20 Lieutenant Boman are very knowledgeable with respect
 21 to this property from their many years of patrolling
 22 the streets before becoming officers. And they have
 23 some very strong opinions with respect to that. And
 24 I believe when we hear testimony from them in
 25 January, those questions would best be placed before

1 them. And let's get their opinions on that.
 2 MS. BARNES: Okay. And I think one
 3 last -- once this improvement takes place, is the
 4 fueling truck going to be coming in off of, you know,
 5 from the -- heading south, as well? Was that -- I
 6 can't remember. I thought I remembered the police
 7 saying it was easiest for them to go the other way,
 8 but --
 9 MR. PREISS: I believe --
 10 MS. BARNES: That would be something
 11 for the police to address?
 12 CHAIRMAN DePINTO: The Police
 13 Department will be addressing that. My recollection
 14 is the testimony was that the de-fueling of the
 15 tankers that come in will occur in the center of the
 16 facility beneath the canopy, and the ingress and
 17 egress, Richard was supposed to be what?
 18 MR. PREISS: In the sets of plans at
 19 the back, there is a plan which shows the movement of
 20 that vehicle coming in and leaving the site. That's
 21 what's been proposed.
 22 MR. MARMORA: It's called the truck
 23 circulation exhibit. It's one of the plans. If you
 24 look at the one that says, "Truck Circulation Plan."
 25 MR. PREISS: Another thing I'll say,

1 this would be a lucrative operation, why would he be
 2 spending so much money, you know, fixing it up,
 3 unless he's expecting to have a larger volume? It
 4 just doesn't make any sense to me.
 5 MR. MARMORA: I don't think that's a
 6 question for the planner.
 7 MR. LINTNER: I think she crossed the
 8 line.
 9 CHAIRMAN DePINTO: Yes, you made it
 10 sound like a question, but I don't know.
 11 MS. BARNES: Sorry. Thank you.
 12 CHAIRMAN DePINTO: Thank you very
 13 much. Okay, in the back. Yes, ma'am?
 14 MS. CLOHESSY: Hi, Noreen Clohessy,
 15 C-L-O-H-E-S-S-Y, 10 Magnolia Avenue in Montvale.
 16 Mr. Preiss, you are the gentleman I
 17 believe who authored the master plan for Montvale?
 18 MR. PREISS: Correct.
 19 MS. CLOHESSY: I apologize. I don't
 20 have it with me, but I remember very distinctly you
 21 said that this gas station was the most prominent
 22 thing on this section of, I guess North Kinderkamack
 23 Road, and that was unfortunate. Do you think this
 24 plan makes it more or less prominent?
 25 MR. PREISS: I think -- my opinion is

1 are you bringing your traffic engineer back in
 2 January?
 3 MR. MARMORA: The traffic engineer
 4 will be here, yes, when the police testify.
 5 MR. PREISS: So you will have an
 6 opportunity -- were you here when she testified?
 7 MR. MARMORA: Ms. Dolan?
 8 MS. BARNES: I was.
 9 MR. PREISS: Some of these questions
 10 you can ask her again. She'll be here to answer
 11 those questions.
 12 MR. HIPOLIT: The only other thing
 13 I'll add for you too, Kinderkamack Road is a County
 14 road. And I think Mr. Chairman mentioned this. The
 15 County reviewed this plan. This is their road.
 16 Technically they have jurisdiction. They look at
 17 improving safety, improving the road as part of it.
 18 They looked at it, and they deemed it to be a better
 19 situation.
 20 MS. BARNES: Okay. Just, I just want
 21 -- I would like to know how, if there is not going to
 22 be that much -- I agree with, I think -- one of you
 23 said, if there is only going to be a few more people
 24 using diesel, why -- why the diesel truck? And I
 25 guess my question is: If the owner didn't believe

1 that it will remain prominent, but that the overall
 2 operation and the aesthetics will be substantially
 3 improved. Under New Jersey law, if a particular use
 4 is nonconforming, there is no ability of the
 5 municipality of requiring the Applicant to either
 6 close the property down or make any improvements.
 7 They are grandfathered. They can remain exactly as
 8 they are for many, many years. And as we know from
 9 prior testimony, this is a lucrative business. So in
 10 looking at this, and how the municipality views this,
 11 the expectation is that if the -- if this Application
 12 is denied, it will continue to operate into the
 13 future exactly the way it is. And the question
 14 really before the Board is: In allowing this to go
 15 forward, is this something that would improve it, and
 16 make it more conforming with the neighborhood and
 17 reduce the impacts, and make it safer? And I think
 18 you've heard the testimony tonight as to what the
 19 planner and the Applicant's opinion is.
 20 MS. CLOHESSY: Okay, but aesthetics,
 21 that's really a subjective standard, isn't it? What
 22 you view as aesthetically pleasing, I could view
 23 something, you know, else, you know, something is
 24 being horrific.
 25 MR. PREISS: It goes beyond that. I

1 would agree with you to some extent. When you are
 2 talking about aesthetics, it is subjective, but when
 3 you are talking about things like safety and lowering
 4 the lighting standards and having improved
 5 landscaping, I don't think that's a subjective thing.
 6 I think we can all agree that everything that has
 7 been proposed in that situation is going to have less
 8 of an impact on the surroundings.

9 Now, you may say, I rather not see a
 10 canopy at all as opposed to having the canopy. That
 11 may be a subjective thing. But some of the actual
 12 improvements that are being made as part of this
 13 Application, it's not subjective. I think, you know,
 14 the evidence has been is that there will be
 15 substantial improvements. You heard not just from
 16 myself, the engineer, the County, the Police Chief
 17 and these are, you know, we are all people that have
 18 professional training in making judgements about
 19 those things.

20 MS. CLOHESSY: Yes, I did hear from
 21 you, and also heard from Mr. Hipolit. Unfortunately,
 22 we did not hear from Mr. Timsak. He's not here. His
 23 report is here. We certainly had no ability to
 24 cross-examine him or question him on any of the
 25 opinions.

1 had a full picture as to whether or not this is
 2 safer.

3 MR. PREISS: She said she will be
 4 back. I think she said it was safer. I don't know
 5 if that question was asked.

6 MS. CLOHESSY: I asked her if she knew
 7 it was a blind corner and she said she didn't. She
 8 didn't have an opinion on the corner.

9 MR. PREISS: She will be back in
 10 January. You can ask the question again, and
 11 Mr. Marmora will let her know you are going to ask
 12 that question, as well.

13 MS. CLOHESSY: Okay. Write that in
 14 and underline it. Now, with respect to, I guess,
 15 expansion of a nonconforming use. What I've always
 16 been troubled about, was a permit was issued for
 17 larger tanks, and a split tank. Now, I would think
 18 if I wanted to expand my basement, I couldn't just go
 19 and get a permit stamped. I would probably have to
 20 get some sort of a variance, because that certainly,
 21 to me, seems like it would be an expansion of a
 22 nonconforming use, or at least it would have been
 23 something that was subject to a variance that this
 24 Board should have considered. Now we are in a
 25 situation where the tanks are in. It may not have

1 MR. PREISS: Understand that's the way
 2 the County operates. But I'll just say this, and
 3 Andy can correct my if I'm wrong. The County in
 4 reviewing the Application, is just as concerned about
 5 traffic safety as we are, and we would not have
 6 approved the plan and may have put in certain
 7 conditions about prohibiting left turns in or
 8 basically said the driveway is too close to the
 9 intersection, please move that. There was an
 10 opportunity for them to make comments on the plan,
 11 and by virtue of their approval, and you can read the
 12 letter and what they came up with, it's pretty clear
 13 from their point of view they viewed this as an
 14 improvement, as well, or deemed it satisfactory.

15 MR. HIPOLIT: Right. The County,
 16 though, they don't notify anybody. The County
 17 Planning Board does have their own meetings. Anybody
 18 can go and make comments. Usually nobody goes. I go
 19 to them. Usually nobody goes to them. That's why
 20 they put it in a detailed letter. That's how they
 21 get the word out to us.

22 MS. CLOHESSY: With respect to making
 23 this safer, the Applicant's traffic expert never
 24 considered the blind corner. She said that the last
 25 time that she was here. So I don't know that we've

1 been business-wise for the Applicant to remove one of
 2 the tanks and use it for diesel and then only have
 3 one tank for gasoline. So I feel like we are almost
 4 rewarding the Applicant for not getting the variance,
 5 or maybe I'm wrong. And please tell me, because I
 6 would like to know if I can expand my basement.

7 CHAIRMAN DePINTO: I think the
 8 question is the expansion of the nonconforming use.
 9 I believe an opinion has been rendered on that.
 10 Again, I'll turn to Mr. Regan.

11 Mr. Regan, what is your position with
 12 regard to that request?

13 MR. REGAN: Well, the use is
 14 permitted. It's a permitted conditional use and, in
 15 the B-1 district, as well, as nonresidential district
 16 of the Borough. There are a number of existing
 17 conditions that are nonconforming. I believe it's
 18 the opinion of both planners that in addition to the
 19 proposed conditions that implicate D-3 variance
 20 relief, because it -- of the deviations from
 21 conditions established in section 128-9.10.

22 MS. CLOHESSY: I'm sorry. I don't
 23 mean to interrupt you. I know where we stand right
 24 now. What I'm saying is, you know, they got to put
 25 in bigger tanks, and a split tank, with just getting

1 a permit stamped and you issued a stop work order.
2 I'm just trying to -- you know, would we be -- I feel
3 we are kind of stuck like with having diesel in the
4 neighborhood because somebody may have screwed up or
5 -- tell me if I'm wrong, because I would like to put
6 this to bed.

7 CHAIRMAN DePINTO: The Application had
8 been -- my understanding, and Mr. Fette, obviously
9 heads up to the Building Department, an application
10 had been submitted to the Building Department to make
11 certain improvements to the tanks that then existed
12 on the property. Mr. Fette's office reviews the
13 Application to determine compliance with not only the
14 local codes, but the State requirements with respect
15 to those tanks. And Mr. Fette, and his office,
16 rendered an opinion, and issued permits to allow them
17 to make those improvements. Mr. Fette, is that
18 correct?

19 MR. FETTE: That's correct. And the
20 tank improvements were also EPA requirements because
21 the existing tanks did not meet the current code
22 requirements for underground storage tanks.

23 MS. CLOHESSY: Okay. Then why not
24 same-size tanks?

25 MR. PREISS: Can I address that? I

1 whatever zone we live in, we have to get appropriate
2 approvals from the Building Department. We have to
3 get permits to do that. And if what either you or I
4 are seeking to do with our property is at variance
5 with the code, then we would be denied that right to
6 expand it, and you would appeal that denial to a
7 Board of Adjustment or Planning Board, or whatever
8 the case may be.

9 MS. CLOHESSY: I don't know if I agree
10 with you, because these are larger tanks that permit
11 a greater quantity of fuel and a different kind of
12 fuel being stored. We may have to agree to disagree
13 with that.

14 CHAIRMAN DePINTO: It's not my
15 personal opinion. It's the law will dictate. I
16 heard Mr. Regan's opinion on it. Mr. Marmora, your
17 opinion?

18 MR. MARMORA: My opinion, the size of
19 the underground storage tank doesn't effect the use.

20 MR. REGAN: It's a site plan issue.

21 MR. MARMORA: If anything, it lessens
22 it, because the tanker comes fewer times to fill it
23 up. You don't increase the capacity of the site to
24 serve gas. It means the fueling truck has to come,
25 you know, less frequently then it would have to if it

1 think, the use is permitted, and the size of the
2 tanks and the kind of fuel that is permitted is not
3 controlled by the zoning. So the ability to add
4 larger tanks, was not a zoning violation. It was not
5 and is not a zoning violation. That's why the
6 permits were issued.

7 MS. CLOHESSY: So any gas station can
8 put in as large a tank as they want and there is
9 nothing you can do about it?

10 CHAIRMAN DePINTO: There is nothing in
11 the code --

12 MS. CLOHESSY: There is no variance
13 required for that?

14 CHAIRMAN DePINTO: There is nothing in
15 the code that says if you own a gas station, and you
16 want to increase the capacity of those tanks, we have
17 nothing in our code that would prohibit that from
18 occurring.

19 MR. PREISS: Correct.

20 MR. REGAN: Not only Montvale, I don't
21 know of any municipality. I remember six other
22 communities besides Montvale.

23 CHAIRMAN DePINTO: So they did not
24 violate. Now, if you or I want to increase the size
25 of our homes, even if they are in conformity with

1 were smaller tanks.

2 MS. CLOHESSY: It's probably a lot
3 more expensive for the fuel tank to come more
4 frequently.

5 MR. MARMORA: Whether it's expensive
6 or not, I don't know. I'm not in the business.
7 That's not a zoning issue.

8 CHAIRMAN DePINTO: That's not a zoning
9 issue. If it's costing the operator more to service
10 the facility, that is of no interest to us. That's
11 his problem, quite frankly.

12 MS. CLOHESSY: That's why you let him
13 keep what he had, unless he demonstrates to you that
14 he has some need for larger tanks.

15 MR. REGAN: This Board hasn't rendered
16 a decision on anything related to this property.

17 MS. CLOHESSY: I don't really feel
18 that way, but I'll try to keep an open mind.

19 MR. REGAN: You are wrong. The Board
20 has not taken any action with this property, other
21 than the public hearing that was held, and this
22 particular public hearing.

23 MS. CLOHESSY: Okay. Now, with
24 respect to the way the fuel truck enters, I guess
25 that's something that you want to discuss next time

1 when you have the police officer?
 2 CHAIRMAN DePINTO: I think it's best
 3 probably to discuss that when the Applicant's traffic
 4 expert is here, our engineer is here, and equally as
 5 important, the representatives of our Police
 6 Department.
 7 MS. CLOHESSY: Okay.
 8 CHAIRMAN DePINTO: I'm personally
 9 quite concerned as to their opinions.
 10 MS. CLOHESSY: Okay.
 11 MR. PREISS: The only thing I would
 12 say is, there is a plan which shows how it would be
 13 done. So if you look at the plan, that's what's
 14 being proposed, and there will be testimony on that
 15 next time.
 16 MS. CLOHESSY: Right. This is just an
 17 administrative, like little bit of advice. Your
 18 packet there is missing information. You may want
 19 to, when you have public packet there, it's not
 20 really clear to members of the public that they are
 21 not supposed to just take items and take it home with
 22 them. If you had a stamp or something that says
 23 "remains here"? Because your report, I know it was
 24 there the first time I was here. It's not there now.
 25 You know, if you could maybe go through and make sure

1 Until the permit is actually issued and paid for, it
 2 is not considered a viable permit. I'm sorry, a
 3 valid permit by the State of New Jersey, and
 4 therefore it is subject to a Stop Work Order.
 5 MR. HOPPE: Mr. Marmora, was that your
 6 recollection?
 7 MR. MARMORA: I don't know. I don't
 8 know why it was issued.
 9 CHAIRMAN DePINTO: A Stop Work Order
 10 was issued by Mr. Fette's office, so he would be the
 11 appropriate party to ask that question, and that's
 12 his recollection on the occurrence.
 13 MR. HOPPE: It was my understanding
 14 last week that there was pending litigation regarding
 15 the introduction of diesel.
 16 MR. REGAN: There is no litigation.
 17 MR. HOPPE: Pending. Mr. Marmora, you
 18 made that statement.
 19 MR. MARMORA: There is no litigation
 20 pending. There is no litigation pending.
 21 MR. HOPPE: We can look up the minutes
 22 from the last. Okay.
 23 MR. REGAN: You will find there is no
 24 litigation. Look it up.
 25 MR. HOPPE: The question was the

1 it's complete?
 2 CHAIRMAN DePINTO: Thank you. We
 3 appreciate that suggestion.
 4 MS. CLOHESSY: Thank you.
 5 CHAIRMAN DePINTO: Okay. Anyone else
 6 that wishes to be heard? Yes, sir.
 7 MR. HOPPE: Ralph Hoppe.
 8 CHAIRMAN DePINTO: Excuse me one
 9 second. I'll ask the stenographer --
 10 (There is an off-the-record
 11 discussion.)
 12 MR. HOPPE: 10 Magnolia Avenue. Okay.
 13 Just to follow-up with what my wife just said, to
 14 reiterate again, why was a Stop Work Order issued for
 15 the site three years ago?
 16 CHAIRMAN DePINTO: Mr. Regan, can you?
 17 MR. REGAN: I have no idea.
 18 CHAIRMAN DePINTO: Mr. Fette?
 19 MR. REGAN: The Board does not issue a
 20 Stop Work Order.
 21 MR. FETTE: That is correct. To the
 22 best of my recollection, and I probably issue since
 23 that was done, 45 or 50 Stop Work Orders. So to the
 24 best of my recollection is they started work without
 25 having the permits issued, which is a violation.

1 testimony given at the prior meeting.
 2 CHAIRMAN DePINTO: And who --
 3 MR. HOPPE: By Mr. Marmora and
 4 yourself. I asked the question last time.
 5 MR. MARMORA: I indicated litigation
 6 is pending?
 7 MR. HOPPE: My recollection --
 8 MR. MARMORA: If I indicated
 9 litigation is pending I misspoke. There is no
 10 litigation.
 11 MR. REGAN: You didn't. I have the
 12 transcript right here. You didn't indicate
 13 litigation is pending.
 14 MR. MARMORA: We have no litigation
 15 pending with the Borough of Montvale and never have,
 16 to my knowledge. I mean I only represent
 17 Mr. Chaudhary in this one matter, but to my
 18 knowledge, he doesn't have litigation --
 19 MR. HOPPE: I'll look at the
 20 transcript --
 21 MR. MARMORA: It's my understanding
 22 that there has never been any litigation between Mr.
 23 Chaudhary and the Municipality.
 24 MR. HOPPE: Okay. I will look that
 25 up. Will it be required for Mr. Chaudhary and Chief

1 Abrams to give testimony and be allowed to be cross
 2 questioned prior to this Board making a decision on
 3 this Application?
 4 CHAIRMAN DePINTO: Anyone who appears
 5 before this Board, either by presentation by the
 6 Applicant's Counsel or at the request of the Chair,
 7 it is the policy and practice of this Board to open
 8 the meeting to the public, and you will have the same
 9 opportunity as Board Members to ask questions of
 10 either the Chief or the Lieutenant or the Applicant
 11 in this case.
 12 MR. HOPPE: Should those persons not
 13 be made available --
 14 CHAIRMAN DePINTO: They will be made
 15 available.
 16 MR. HOPPE: Before the decision is
 17 made? Before a vote -- I'm sorry, a vote is taken.
 18 CHAIRMAN DePINTO: Sure.
 19 MR. HOPPE: Thank you. Okay. Last
 20 question. There was, in my opinion, a whole bunch of
 21 subjective speak about the benefits to the property
 22 and surrounding neighborhood regarding -- well, okay.
 23 Have you employed an expert in real estate to
 24 determine what effect those supposed improvements
 25 have on property values and quality of life issues in

1 MR. HOPPE: But no opinion as to home
 2 values?
 3 MR. HIGGINS: No, I don't -- I don't
 4 get into specific home values.
 5 CHAIRMAN DePINTO: He's not qualified
 6 to answer that.
 7 MR. HOPPE: Okay. That's all the
 8 questions that I have. Thank you.
 9 CHAIRMAN DePINTO: Thank you very
 10 much. Okay. Anyone else from the public?
 11 Mr. Wolfrey?
 12 MR. WOLFREY: Thank you. My
 13 apologies. As a follow-up question, okay,
 14 Mr. Hipolit, you are probably best to answer this
 15 one. When you are determining lane width, how wide
 16 would you -- or what -- is there a standard? I know
 17 the federal highway is 10 to 12 feet for a lane. Is
 18 that the same that would apply in this kind of
 19 situation, or is that different?
 20 MR. HIPOLIT: For roadways, if you are
 21 on a federal highway, you use federal standards.
 22 County roads or state roads, you use state or county
 23 standards. Municipal roads, you use municipal
 24 standards. Kinderkamack Road is a County road, so
 25 you use their standard. Magnolia is a municipal

1 the neighborhood?
 2 MR. MARMORA: I believe that was
 3 raised in August, and the question was presented, do
 4 we intend to call an appraiser? And we do not intend
 5 to call an appraiser. The real estate expert, so to
 6 speak, is our planner, Mr. Higgins. We don't intend
 7 to call an appraiser.
 8 MR. HOPPE: Okay. Then the next
 9 question would be then, would be, do these
 10 improvements have a detriment to house values, have a
 11 detriment to the quality of life of the neighborhood
 12 or do they increase the values of properties in the
 13 neighborhood?
 14 MR. MARMORA: Well, Mr. Higgins didn't
 15 testify as to relative values. What he testified to
 16 was to impacts, which is a planning opinion. I'll
 17 leave it to you.
 18 MR. HIGGINS: I don't testify to
 19 relative values. I can testify to visual impacts,
 20 functional impact to the use and enjoyment, and that
 21 type of thing. And quality of life, in my opinion,
 22 what's being proposed here, again that's a
 23 professional opinion, what's being proposed here will
 24 have a substantial benefit to the surrounding area,
 25 aesthetically and functionally.

1 road, so you use the town standards, with one
 2 exception. Magnolia intersects a County road, so the
 3 County does have some oversight on it.
 4 MR. HOPPE: I apologize. What are
 5 those standards?
 6 MR. HIPOLIT: For?
 7 MR. WOLFREY: For like the County road
 8 width, or what they consider the County road width.
 9 MR. HIPOLIT: County road what they
 10 like is a lane with 12 feet. They do have lane width
 11 in many occasions throughout the County below 12
 12 feet. I know there is no below ten. There are
 13 greater, but there is --
 14 MR. WOLFREY: Are there strictures on
 15 parking lots and the internal parking of parking lots
 16 or is that just not --
 17 MR. HIPOLIT: The internal properties
 18 are the municipal standards.
 19 MR. WOLFREY: Okay.
 20 MR. HIPOLIT: The County, when it's on
 21 a County road, they do look at it a little bit. They
 22 are concerned about how that site will access a
 23 County road, and whether something on that site,
 24 whether it be width, parking spaces, lot, structures
 25 effect that access, and will cause congestion on

1 their road, that's what they look at. They don't
 2 look to really get involved with internals of the
 3 site.
 4 MR. WOLFREY: And I apologize. The
 5 reason I'm questioning is there has been several
 6 references tonight to -- forgive me. I was trying to
 7 find the actual -- the circulation, the internal
 8 circulation. And I've sat there and I've had to
 9 wait, and I just wait and I wait until the person in
 10 front of me has finished fueling their vehicle. So,
 11 you know, I would like to ask that the Board consider
 12 that in the next meeting, perhaps when we speak to
 13 the traffic expert. Because if we are saying between
 14 the two center islands it's 25.7 feet, that's not
 15 enough for a lane of vehicles fueling, a lane of
 16 vehicles fueling, and a lane of vehicles exiting. So
 17 you are not going to alleviate any stacking in that
 18 area. And if the other one is 19.6 feet, then you
 19 just hope you don't have a wide truck there. So we
 20 are increasing filling stations, but we are not
 21 really alleviating the internal circulation. So
 22 perhaps we can propose that to the traffic expert the
 23 next time we get testimony from them.
 24 MR. DePINTO: Okay. Thank you.
 25 MR. WOLFREY: Thank you.

1 his client, I would only like to seek a polling of
 2 the Board Members as to their preference, whether to
 3 proceed with the signs as presented, or a change to
 4 those signs. I guess I'm starting with Mr. Teagno.
 5 MR. TEAGNO: Yes. I guess I have to
 6 start with a question as to the reason for the
 7 signage increase. Is that because of the corporate
 8 sign sizes? Is that because of aesthetics or a new
 9 style? I mean, it's certainly a new Shell logo on
 10 top of that. Is there any factor that you know of
 11 that is causing these signs to be larger than they
 12 were before?
 13 MR. MARMORA: Well, it's funny. It's
 14 actually -- Mr. Chaudhary is somewhat off of the
 15 reservation here with respect to the sign. We've
 16 gone through several technical reviews with the
 17 sub-committee and the Site Plan Committee of the
 18 Planning Board. And it was suggested to us that
 19 because this is the gateway, even though it's a
 20 permitted, conditionally permitted use here, it's a
 21 gateway to a residential area, something with a
 22 softer feel. It was suggested, for example, a retro
 23 sign. Shell does not permit that. Mr. Chaudhary, as
 24 I said, has gone off the reservation and has found
 25 it, and has agreed to install it. But it's a little

1 CHAIRMAN DePINTO: Okay. Anyone else?
 2 Okay, the Chair will entertain a motion to close the
 3 meeting to the public.
 4 MR. VOGT: So moved.
 5 MR. CULHANE: Second.
 6 CHAIRMAN DePINTO: So moved by Mr.
 7 Vogt and seconded by Mr. Culhane. All in favor?
 8 (All Board Members present indicate an
 9 affirmative vote to close the meeting to the public.)
 10 CHAIRMAN DePINTO: Okay. If you take
 11 a minute longer, Mr. Teagno raised some points
 12 relative to the existing signs, their sizes and the
 13 proposed signs and there sizes. And his statements
 14 were clarified by Mr. Preiss in his review of his
 15 report, and I guess of Mr. Hipolit's report. And I
 16 guess the choice is, could be as follows. We could
 17 prefer, based on testimony we've heard, in particular
 18 from Mr. Higgins, that that sign area necessitated
 19 because of that curvature in the road, and the need
 20 for visibility of those signs, or to the alternative,
 21 if it would be this Board's preference, to reduce the
 22 size of those signs to probably what currently
 23 exists, or something less, or I should say to bring
 24 them into compliance.
 25 And so that Mr. Marmora can speak to

1 bit larger than the normal sign, only because it's
 2 sort of a Normal Rockwell looking sign. But as far
 3 as the price points, they just -- I believe that's
 4 regulated, because you are -- gas stations have to
 5 show price visible from the roadway, and you can only
 6 change it once every 24 hours. So I believe that
 7 the, that the free-standers is sort of driven by the
 8 request to come up with this retro sign, and the
 9 State requirements for price points.
 10 MR. TEAGNO: I guess then my comment
 11 is, I don't see anything about this intersection
 12 that's changed over the last, I don't know how many
 13 years. So I don't think that there is a reason to
 14 need a bigger sign, because there is traffic going by
 15 and they need to read it.
 16 MR. HIGGINS: I think when you look at
 17 the existing sign, versus the proposed sign, the
 18 existing sign is not nearly as attractive and
 19 actually the posts are the same distance apart. And
 20 it's the fact that the price signs don't extend from
 21 the post to post. There is a gap between the signs
 22 and the post, which quite frankly I find to be
 23 disturbing when I look at it. But what the Applicant
 24 is proposing to do is run the price signs from post
 25 to post and make their vertical height a little bit

1 shorter. The area gets a little bit bigger, but the
2 vertical height of the price sign shorter. It's
3 actually a much more attractive sign than what exists
4 there today. If you look at the details of the
5 existing and the proposed.

6 MR. TEAGNO: Since you started with
7 me, then I'll render my opinion. I would like to see
8 them conform as closely as possible to the ordinance.
9 I'm not sure I see any valid reason to increase the
10 sign.

11 CHAIRMAN DePINTO: Very good. Thank
12 you. Mr. Culhane?

13 MR. CULHANE: Basically, I think we
14 have to get a little more information, because we are
15 not dealing with one sign, as I understand. You have
16 three different signs we are dealing with. So just
17 off of top of my head for now, I would say I go along
18 with Mr. Teagno's indication, and go as close to the
19 ordinance as you can, and let the Applicant provide
20 more justification for each individual sign in
21 question.

22 CHAIRMAN DePINTO: Very good. Thank
23 you. Mr. Fette?

24 MR. FETTE: I would agree with that.

25 CHAIRMAN DePINTO: Okay, thank you.

1 closer to conformity, I think that would be better
2 for the community. I think it would be better as to
3 the -- for the aesthetics of the project. And one
4 thing I will say for the operator, he has been quite
5 cooperative with the requests that were made from the
6 members of the Site Plan Review Committee, as well as
7 the Borough professionals, Mr. Hipolit's office,
8 Mr. Preiss' office. I think if that request is made
9 of him, he probably will try to comply. I think it's
10 our responsibility to see to that.

11 MR. MARMORA: We certainly appreciate
12 the indication that we received both as to this and
13 as to the canopy. We are going to be resubmitting.
14 I'll certainly take that up when he returns from his
15 retreat.

16 CHAIRMAN DePINTO: Thank you. We
17 appreciate it. Anyone else? Okay, that's it. Okay.
18 Thank you.

19 MR. MARMORA: Thank you very much. We
20 appreciate your time.

21 CHAIRMAN DePINTO: Members of the
22 public that are here, be advised that the meeting
23 will be carried to January 7, 2014, 7:30 p.m. No
24 further notice will be provided to you, other than
25 this announcement and what will be posted on the

1 Mr. Vogt?

2 MR. VOGT: I tend to agree with
3 Mr. Higgins, as far as seeing the price signs like
4 driving down Kinderkamack Road. I think it's -- I
5 would like to see what the prices are from that
6 distance, and if they are too small you can't see
7 what the hell the price is.

8 CHAIRMAN DePINTO: So therefore, it's
9 your --

10 MR. VOGT: It's my opinion to agree to
11 what's proposed.

12 CHAIRMAN DePINTO: To agree to what's
13 proposed. Okay, thank you. Mr. Lintner?

14 MR. LINTNER: I find that sign experts
15 and sign testimony is second only to traffic
16 testimony in terms of telling you what you want to
17 hear and not want to hear. I don't see any reason,
18 if we are going to upgrade this facility, why we
19 don't get these signs in compliance in terms of
20 height, square footage, etcetera. We have an
21 opportunity to improve. I think we should improve.

22 CHAIRMAN DePINTO: Okay. And I, too,
23 agree with Mr. Teagno with respect to that, and
24 Mr. Lintner and Mr. Culhane and Mr. Fette. If there
25 is anything that the Applicant can do to bring it

1 Borough's website. Thank you, and have a good
2 evening.

3 MR. CULHANE: The Applicant indicated
4 there are going to be some changes to the plans.
5 When will we be expecting the plans ready for the
6 January meeting?

7 CHAIRMAN DePINTO: Mr. Marmora?

8 MR. MARMORA: We will certainly make
9 every effort to, whether or not it would have to be
10 carried to the second meeting in January, you know,
11 I'll let you know significantly in advance. I will
12 certainly not call on the 5th and ask for the
13 adjournment. We'll know it in December or so and
14 correspond with Ms. Hutter.

15 CHAIRMAN DePINTO: Okay. Thank you
16 very much. Have a good evening.

17 MR. MARMORA: Okay. Thank you.

18
19 (The Application is adjourned and will
20 be continued at a future date.)
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CERTIFICATE

ALI ENTERPRISES, LLC.
Block 702 - Lots 1 and 39
October 30, 2013

I, HEATHER M. HOLMES, a Certified Court Reporter of the State of New Jersey, do hereby 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.

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

HEATHER M. HOLMES, CCR
License No. XIO1952

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C E R T I F I C A T E

ALI ENTERPRISES, LLC.
Block 702 - Lots 1 and 39
October 30, 2013

I, HEATHER M. HOLMES, a Certified Court Reporter of the State of New Jersey, do hereby 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.

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

Heather M. Holmes

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