

In The Matter Of:
Linden Development, LLC

September 8, 2020

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Page 1

1 LINDEN PLANNING BOARD
 2 LINDEN, NEW JERSEY
 3 CASE NO. SP-1129-20

4 IN THE MATTER OF THE APPLICATION) VIRTUAL
 5 OF LINDEN DEVELOPMENT, LLC 1016) HEARING
 6 WEST EDGAR ROAD for RESTAURANT/)
 7 FREDDY'S)
 8 - - - - -)

September 8, 2020
 10 P.M.

9 B O A R D M E M B E R S P R E S E N T :

10 JOSEPH LaPLACA, CHAIRMAN
 11 ARMAND FIORLETTI, VICE-CHAIRMAN
 12 BARRY JAVICK, COUNCILMAN
 13 MICHAEL ANDERSON
 14 ALEX LOSPINOSO, MAYOR'S DESIGNEE
 15 NICHOLAS J. PANTINA
 16 NOYO EDEM
 17 CURTIS HUMPHREY

18 ANTHONY D. RINALDO, JR., BOARD ATTORNEY
 19 PAUL RICCI, BOARD PLANNER
 20 LEE KLEIN, TRAFFIC ENGINEER
 21 D. KOTOWSKI, RECORDING SECRETARY

22 A P P E A R A N C E :

23 FAEGRE DRINKER BIDDLE & REATH, LLP
 24 BY: JOHN P. MICHALSKI, ESQUIRE
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 Florham Park, New Jersey 07932
 Attorneys for Applicant.

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Page 3

1 MR. PANTINA: We're going to
 2 listen to our last case, Site Plan-1129-20
 3 Linden Development, LLC 1016 W. Edgar Road,
 4 otherwise known as Freddy's.
 5 MR. RINALDO: John, we talked
 6 about moving forward tonight. Think about
 7 it.
 8 MR. MICHALSKI: We would like
 9 to move forward.
 10 I'll start my presentation and
 11 then we'll get to the issue we just
 12 discussed and see where it goes from there.
 13 Is that okay?
 14 MR. RINALDO: That's the best
 15 way to go.
 16 MR. MICHALSKI: Mr. Chairman,
 17 Members of the Board, thank you. I'm here,
 18 John Michalski from the law firm of Faegre,
 19 Drinker, Biddle & Reath on behalf of the
 20 applicant, Linden Development, LLC. We are
 21 here for amended preliminary and final site
 22 plan application for proposed 2591 square
 23 feet Freddy's Frozen Custard and
 24 Steakburgers Restaurant with drive-thru.
 25 The property is located at

Page 2

1
 2 I N D E X T O W I T N E S S E S

3 WITNESS	DIRECT
4 BRAD KERN	
5 By: Mr. Michalski	19
6 BRAD THOMPSON	
7 By: Mr. Michalski	24
8 KATE KELLER	
9 By: Mr. Michalski	29

10 E X H I B I T S

11 EXHIBIT	PAGE
12 A-1 Rendering	20
13 A-2 Site Plan	23

14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 4

1 Block 469 Lot 38.05, 1016 West Edgar Road.
 2 The zone is a PCD Planned
 3 Commercial Development District zone. We
 4 are pleased to be back before the Board for
 5 the approval of another restaurant within
 6 Legacy Square, along Route 1 and 9 frontage.
 7 This will be the fist location in New Jersey
 8 and Freddy's is excited to commence its
 9 expansion into New Jersey in the City of
 10 Linden.
 11 Freddy's was founded in 2002 in
 12 Kansas, and has over 300 locations in over
 13 30 states.
 14 As for our application, if you
 15 recall, we obtained an amended preliminary
 16 and site plan approval for Phase 3 in April
 17 2019, which preliminarily approved the
 18 Legacy Squad Pad sites fronting on Route 1
 19 and 9. We are now seeking amended
 20 preliminary and final site plan approval for
 21 the Freddy's restaurant on one of those pad
 22 sites.
 23 In connection with this
 24 application, we require relief from, in
 25 particular, seven variances. I'll go

Page 5

1 through them real quick. I'll put on
 2 testimony later.
 3 We need a variance for trash
 4 enclosure setback Ordinance Section
 5 31-11.6.e.2 which requires that outdoor
 6 trash areas and recycling bins, sheds and
 7 storage areas to be located a minimum 30
 8 feet from any street or property line and 10
 9 feet from any internal property line,
 10 whereas the proposed trash enclosure does
 11 not comply.
 12 Sign location - Ordinance
 13 Section 31-11.8.f.3(a) which limits the use
 14 of individually-mounted letters for wall
 15 mounted signs to the fronts of stores,
 16 whereas the application is seeking to have
 17 those signs on the side of the proposed
 18 building.
 19 Variance for sign size/area,
 20 Ordinance Section 31-11.8.f.3(d)(1) which
 21 limits the permitted wall sign area to two
 22 square feet of sign area for each linear
 23 foot of wall to which the sign is to be
 24 mounted, which would permit a sign area of
 25 74 square feet on the south side of the

Page 7

1 there is no setback proposed.
 2 We'll explain the need for
 3 these later on.
 4 Most of these variances have
 5 been granted previously by this Board for
 6 other lots that were within Legacy Square
 7 Shopping Center. We'll address this in more
 8 detail later.
 9 I'm going to have three
 10 witnesses I'm going to present, Brad Kern,
 11 architecture; Brad Thompson, Bohler
 12 Engineering; Kate Keller, Planner.
 13 We are in receipt of reports
 14 from the Board's professionals, a letter
 15 from Klein report dated August 3, 2020; Mr.
 16 Ricci's letter report dated September 3,
 17 2020; Mr. Pantina's report dated September
 18 4, 2020, and Fire Bureau Report dated August
 19 26, 2020, Fire Department.
 20 We can comply with all with the
 21 exception of one issue, Mr. Rinaldo's
 22 preference, I want to address that now.
 23 Mr. Pantina identified in his
 24 report an issue with the lot line. This
 25 came up during TRC. There's an issue, Mr.

Page 6

1 proposed buildig, whereas a sign area of
 2 74.4 square feet is proposed.
 3 We also need a variance for
 4 signage for upper case letter size.
 5 Ordinance 31-11.8.f.3(d)(4), which limits
 6 the letter height of a sign message area to
 7 36 inches for upper case letters, and we are
 8 requesting relief for 37.5 inch upper case
 9 letters.
 10 We are seeking a variance for
 11 drive-thru landscaped island - Ordinance
 12 Section 31-19.8.1, which requires 3 foot to
 13 5 foot landscaped islands between drive-thru
 14 lanes and parking areas. We are not
 15 complying with that.
 16 (6) Drive Aisle Width -
 17 Ordinance Section 31-27.7 and 27.8 requires
 18 an interior one-way aisle width for parking
 19 areas of 15 feet and 12 feet, respectfully,
 20 whereas an aisle width of 10 feet is
 21 proposed.
 22 Parking Area Setback -
 23 Ordinance Section 31.27.7, which requires a
 24 minimum off-street parking setback to side
 25 and rear property lines of 3 feet, whereas

Page 8

1 Pantina raised an issue with regard to the
 2 northern lot line plan right lot line of
 3 Freddy's.
 4 If you look at it, if my
 5 engineer comes up, he will show better. For
 6 the purposes of this discussion, the issue
 7 is Freddy's lot, the parking area you need
 8 to go from Freddy's lot onto the adjacent
 9 lot, and then onto the internal driveway to
 10 get out to the public right-of-way.
 11 When we were before this Board
 12 late last year, earlier this year for major
 13 subdivision approval, we got variance relief
 14 all the lots along Route 1 and 9 were
 15 landlocked, and we represented to the Board
 16 that we would have appropriate easements in
 17 place that would allow sufficient access
 18 from these landlocked lots to the public
 19 right-of-way.
 20 Based on that subdivision
 21 approval, we then entered into a lease with
 22 Freddy's for the lot line to be where it is.
 23 We now have an issue we can't
 24 move the lot line. From our perspective, we
 25 have gotten approval for the lot to be

Page 9

1 landlocked and for the appropriate easement
 2 to be put in place to get us from that lot
 3 out to the public right-of-way.
 4 It's my understanding that Mr.
 5 Pantina's report, I believe, takes the
 6 position of Mr. Pantina is that because we
 7 didn't show an easement from Freddy's onto
 8 the adjacent landlock to get to the internal
 9 roadway, that that's somehow an issue.
 10 My response would be, first of
 11 all, I have a couple points I want to make,
 12 we have represented that we will have the
 13 appropriate easements in place to get from
 14 those landlocked lots out to the public
 15 right-of-way. As you know, that plat hasn't
 16 been perfected and is still being reviewed
 17 by the Board and its professionals in
 18 compliance review.
 19 To the extent that something
 20 needs to be shown on that plan to satisfy
 21 the Board, to everybody's satisfaction, as a
 22 condition of this approval, we will be happy
 23 to show that something on the plat report.
 24 I will represent this. I will make this
 25 statement.

Page 11

1 particular case, rather than you calling
 2 your witnesses first, I'm going to call my
 3 witness.
 4 Armand Fiorletti is
 5 Vice-Chairman of this Board. He's got a
 6 planner's license, a PE extraordinare, an
 7 L.S., and he's beyond the curve. He's going
 8 to tell you everything you just said is
 9 accurate, including the second point. He's
 10 going to tell you why you need that
 11 easement.
 12 MR. FIORLETTI: The easement
 13 should, number one, the Board subdivided a
 14 piece of property. They expect the site
 15 plan to stay within the property as is and
 16 has to be subdivided. In other words,
 17 Freddy's lot, we expect development of
 18 Freddy's lot in its entirety would be
 19 contained within the lot that we subdivided
 20 for Freddy.
 21 The lotting map should show the
 22 easement as part of the subdivision. And in
 23 New Jersey, you can't convey anything
 24 without Planning Board approval and some
 25 kind of a legal document to show the

Page 10

1 As a matter of law of New
 2 Jersey, there are two ways an easement can
 3 be obtained, one, put the easement on the
 4 plat and then record the plat.
 5 The other way it is created is
 6 by an instrument recorded in title. If you
 7 go back to look at the plat submitted to
 8 your professional by the Board, the internal
 9 roadway easement, that those lots need to
 10 get out to the public right-of-way were not
 11 shown on the plat. They was it was going to
 12 be handled, it was going to be done by
 13 instrument.
 14 So we are more than happy to
 15 represent as a condition of this approval
 16 that we'll put a note on the plat. I don't
 17 think we need to show metes and bounds of
 18 the individual easements on the plat. It's
 19 established by separate instrument. That
 20 instrument can be reviewed by the Board's
 21 professionals for subdivision approval, and
 22 if you grant this approval, it's a condition
 23 and we believe that would satisfy the
 24 Board's concern.
 25 MR. PANTINA: John, in this

Page 12

1 easement in a public way. That would be
 2 putting the easement on the lotting map to
 3 show Freddy.
 4 In other words, what you're
 5 doing with Freddy's property is putting five
 6 pounds in a one pound bag. In other words,
 7 the development within Freddy's property is
 8 incomplete.
 9 MR. MICHALSKI: Can I ask you
 10 this then? When we got subdivision
 11 approval, why wasn't one of the requirements
 12 of that approval that we provide the plat to
 13 show the internal driveway easement?
 14 MR. FIORLETTI: We didn't know
 15 what you were going to do.
 16 MR. MICHALSKI: You did. I'm
 17 sorry, I disagree. We represented that to
 18 the Board.
 19 MR. FIORLETTI: You would have
 20 had that on that map.
 21 MR. MICHALSKI. We did. We
 22 represented that taht was going to be
 23 established by an instrument. We have an
 24 approval resolution that supports that.
 25 MR. FIORLETTI: On the lotting

Page 13

1 map is a public document, you can convey the
 2 easement to Freddy's.
 3 MR. MICHALSKI: In New Jersey
 4 you can establish easement rights without a
 5 recorded plat. This is the problem I'm
 6 having. You can establish an easement by a
 7 legal instrument.
 8 There's two ways to create an
 9 easement, one on a recorded plat, the other
 10 by a separate legal instrument.
 11 This is what we represented to
 12 the Board back in January. The Board
 13 agreed, they signed the resolution, granted
 14 approval.
 15 If you want it shown, let's do
 16 the appropriate resolution of this issue be
 17 that we simply add a notation to the plat to
 18 show the easement?
 19 MR. PANTINA: How hard is it to
 20 put the easement on this plat? Cut it
 21 short. I'm not a lawyer.
 22 MR. MICHALSKI: On the current
 23 map that we are looking at?
 24 MR. FIORLETTI: It affects the
 25 lot.

Page 14

1 MR. PANTINA: Then go back and
 2 modify that lot. I'm not asking you to give
 3 up land. I'm not asking you to give up
 4 financial burden on other people's land
 5 either. I'm just asking you to show an
 6 easement. I'm not the lawyer. I'm not the
 7 L.S.
 8 To show that on these plans to
 9 get this moving.
 10 MR. MICHALSKI: Could we make
 11 it a condition, if you were to approve the
 12 Freddy's, can we make it a condition that as
 13 part of the compliance review, you're going
 14 for the subdivision plat, that we just show
 15 the easement on that plat before you give a
 16 final sign-off and that approval of
 17 subdivision is then recorded?
 18 MR. PANTINA: You can't say,
 19 John, that the plan I have in front of me on
 20 the table is the plan that I was supposed to
 21 sign off as far as the resolution of
 22 compliance March of 2020. It's three
 23 sheets, zoning map and subdivision of lines,
 24 no driveways, just a subdivision of land.
 25 Period, end of story.

Page 15

1 Tony, the question at the end
 2 is if he puts an easement on the current
 3 plan, and he modifies this map, can we do
 4 this administratively?
 5 MR. MICHALSKI: It's obviously
 6 Tony's call, I would say I believe it could
 7 be done that way. We have already
 8 represented to you as the prior subdivision
 9 approval that easement was going to be in
 10 place. Our contemplation was there would be
 11 a instrument, and the back end of that
 12 instrument would be a plan that would show
 13 where the easement was from a legal
 14 description. If you're saying, John, we
 15 don't want the instrument, we want it shown
 16 on the plat, I think it's more an
 17 administrative issue, instead of giving you
 18 the easement to review, we'll show it
 19 directly on the plat.
 20 MR. FIORLETTI: We didn't know
 21 that at the time.
 22 MR. RINALDO: John, I don't
 23 recall that being addressed at that prior
 24 meeting. I looked at my notes, I take
 25 notes.

Page 16

1 MR. MICHALSKI: I can tell you,
 2 we can look at the transcript later,
 3 obviously, we're not going to look now, we
 4 got variance relief for the fact those lots
 5 were landlocked. The only way the Board
 6 would have granted those variances is with
 7 the condition there were going to be
 8 easements in place. Otherwise the land is
 9 landlocked.
 10 MR. RINALDO: All that being
 11 said, I had this discussion with Mr.
 12 Fiorletti and Mr. Pantina, I'm not sure if
 13 Paul was there, and I agree with you that we
 14 could make it, I believe that you can do it
 15 by way of a condition to have that done
 16 based upon the fact that it's unclear
 17 whether or not he would need a full-blown
 18 subdivision plan showing an easement.
 19 I don't vote but my
 20 recommendation would be that you move
 21 forward to the Board, it's up to them to
 22 decide it. Follow my thinking. Maybe
 23 administrative hearing, whatever it is, and
 24 you have to provide us with an easement on
 25 the plat, and you're going to have to record

Page 17

1 an easement. Right?
 2 MR. PANTINA: John, I know this
 3 is what we're going to do, since these
 4 plans, you can see I didn't sign them off
 5 yet, you're going to send me a new
 6 resolution of compliance plan with the
 7 easement on it and the note, whatever note
 8 you want to make it, meanwhile, when you
 9 send these in for resolution compliance,
 10 it's going to have easements on it as well.
 11 Everybody is happy.
 12 We're going to talk about the
 13 letters. Do you agree to that?
 14 MR. MICHALSKI: Yes.
 15 MR. PANTINA: We're going to
 16 talk about the reports. Everybody is going
 17 to go home smiling.
 18 MR. MICHALSKI: With regard to
 19 the reports, there's nothing to talk about,
 20 comply with all the aspects of the reports.
 21 MR. PANTINA: Took the words
 22 out of my mouth.
 23 We have gotten reports, we sent
 24 out, got a bunch of revisions in the last
 25 couple days, exhibits that you sent through.

Page 18

1 They're on the website.
 2 As far as reports go, you have
 3 the engineering report, September 4, Ricci's
 4 report dated September 3, Klein's report
 5 dated August 3rd, and probably a fire
 6 report, I'm not sure.
 7 MR. MICHALSKI: Fire report
 8 dated August 26, 2020.
 9 MR. PANTINA: We have the fire
 10 report. Did we have the Stormwater
 11 Management Report, Paul?
 12 MR. RINALDO: Yes, we do.
 13 Ours.
 14 MR. RICCI: Stormwater was
 15 originally approved in the application.
 16 MR. PANTINA: Might have been
 17 approved with the whole site.
 18 MR. MICHALSKI: Yes.
 19 MR. PANTINA: You have no
 20 problems, conflict with our reports?
 21 MR. MICHALSKI: Correct,
 22 obviously, subject to what we just discussed.
 23 MR. PANTINA: So do I have --
 24 MR. RICCI: We have seven
 25 variances. Do you have a planner?

Page 19

1 MR. MICHALSKI: Correct.
 2 MR. RINALDO: What do you need
 3 from Bohler, Mr. Thompson, anything on the
 4 record?
 5 MR. MICHALSKI: Actually, I
 6 need to start with Brad, the architect.
 7 He's got to put something on the record with
 8 the design compliance. Then if Brad gives a
 9 two minute overview, I could go right to the
 10 planner.
 11 Brad Kern.
 12
 13 B R A D K E R N, having been duly sworn by
 14 the officer, testified as follows:
 15
 16 DIRECT EXAMINATION BY MR. MICHALSKI:
 17
 18 Q. Brad, give the Board your
 19 qualifications.
 20 A. Brad Kern with MMA Architects,
 21 3297 Route 66, Neptune City, New Jersey. I
 22 testified in front of this Board before.
 23 I'm a licensed architect in the
 24 State of New Jersey and have worked in
 25 commercial construction for over 10 years.

Page 20

1 Qualifications.
 2 Q. Can you give Brad Thompson
 3 control so he can throw up Exhibit A-1 for
 4 us?
 5 We'll mark this A-1, Rendering
 6 Perspective colored.
 7 Brad Kevin, give us quick
 8 testimony how this meshes with the
 9 established design themes?
 10 A. Sure. Just to start off, I
 11 represent the applicant Linden Development
 12 as the architect for the overall development
 13 of Legacy Square project. I reviewed the
 14 exterior elevation design and the exterior
 15 proposed materials are brick, eifs,
 16 storefront glazing, all primary materials
 17 that are used throughout the building in
 18 Legacy Square, so they are overall
 19 consistent in that manner.
 20 In general, reviewing the
 21 exterior elevation design, the materials,
 22 the masking overall design, in my opinion,
 23 is compatible with the design aesthetic of
 24 the overall theme of the development.
 25 And in addition to using the

Page 21

1 same materials that are seen throughout the
 2 development. This particular project allows
 3 for accent material and accent elements
 4 which is very, very important to the
 5 branding and the image of Freddy's.
 6 I'll note the changes we have
 7 made. You'll see in this rendering that's
 8 shown on exhibit A-1, we are in response to
 9 Paul Ricci's comments. I'll highlight a
 10 couple changes recently made, as well as one
 11 clarification just for the Board, number
 12 one, compared to what was previously
 13 submitted, and what you're looking at in
 14 this rendering changes the red color metal
 15 coping on the building to a color that
 16 matches the eifs cornice.
 17 You'll notice the amount of red
 18 on the top of the roofline, cornice accent
 19 has been reduced and eliminated.
 20 The second change that was made
 21 is the coping color of the trash enclosures.
 22 Again, that was changed from the red color
 23 to a brown color, that more closely matches
 24 the brick that is the material of the trash
 25 enclosure itself.

Page 22

1 The other clarification, there
 2 is no red color in the window framing.
 3 There was a slight misunderstanding, there
 4 may have been a red color there, but there
 5 is no red.
 6 The material of the window
 7 frame is dark brown, so that's what you'll
 8 see in this rendering here. That's my
 9 evaluation of the design.
 10 Lastly, just pointing to the
 11 signage, which will be discussed later in
 12 this application, we are requesting
 13 variances for the signage that's being
 14 proposed, both for size and location due to
 15 the branding and visibility of the building.
 16 Q. Despite the fact that the
 17 Winter Architects prepared the architectural
 18 plans, you're fully familiar with the brand
 19 and details in the plan and testified to
 20 same, correct?
 21 A. Yes.
 22 MR. MICHALSKI: I open up Brad
 23 to the Board. Anyone has questions?
 24 MR. RICCI: The handrails,
 25 bollards, got rid of the trash enclosure

Page 23

1 coping, handrails and bollard color.
 2 A. The bollard color is remaining
 3 red. The position is that that color will
 4 be more visible and more noticeable to cars
 5 and traffic. You're more likely to avoid
 6 the trash enclosure. The idea really is to
 7 keep these bollards the red color.
 8 In terms of the handrails,
 9 again I'm a little unsure which specific
 10 handrails you're referring to. As you'll see
 11 in the rendering, the patio is delineated by
 12 a railing, is a black color.
 13 MR. RICCI: Black, correct?
 14 I'm trying to be a hundred percent clear.
 15 The roofline in the red I thought was a
 16 little bit over the top. The trash
 17 enclosure and the roofline are the major
 18 changes? Correct?
 19 A. Yes.
 20 MR. PANTINA: Do I have any
 21 other questions from the Board members on
 22 anything that has been presented so far?
 23 Do we have any questions from
 24 the public? Hearing none, we close it to
 25 the public.

Page 24

1 B R A D T H O M P S O N, having been duly
 2 sworn by the officer, testified as follows:
 3
 4 DIRECT EXAMINATION BY MR. MICHALSKI:
 5
 6 Q. Qualifications, real quick.
 7 A. Sure. I'm a professional
 8 engineer licensed since 2011.
 9 MR. RINALDO: We accept. He's
 10 been here before.
 11 Q. Brad, can you just show A-2,
 12 please to mention the two minute overview?
 13 A. This is A-2 which is a
 14 rendered version of the site plan,
 15 colorized version of the site plan dated
 16 July 20th, 2020. North is to the right of
 17 the page for reference.
 18 We kind of went through and
 19 showed a couple things. I'll touch lightly
 20 on it.
 21 The proposed Freddy's building
 22 is a 2591 square feet restaurant and
 23 contains 84 indoor seats, 16 outdoor with
 24 the drive-thru. The drive-thru in our
 25 originally submitted documents only showed

Page 25

1 the car in one lane. At the request of
 2 Board's professionals, we showed what both
 3 lanes would look like as well as stacking
 4 fourteen cars in this configuration, nine
 5 are between the menu boards and the
 6 drive-thru window.
 7 Freddy's moves one car per
 8 minute, they see about 12.5 cars per hour so
 9 this amount of queuing is adequate.
 10 The impervious coverage is
 11 being reduced on the site to 78 percent,
 12 it's actually 78.08 where 90 percent is
 13 allowed.
 14 We comply with all the other
 15 bulk requirements. We are requesting a
 16 couple variances related to the design,
 17 parking spaces 38 included where 18 are
 18 required by ordinance, based on the one
 19 space per 150 square feet for eating and
 20 drinking establishments.
 21 We are requesting a variance
 22 for the parking setback to where three feet
 23 is required and zero feet is provided along
 24 with the northern property line.
 25 You can see that between this

Page 26

1 use and the adjacent use. The idea behind
 2 the parking spaces, it's not going to be for
 3 the Freddy's. We note that in the diamond
 4 shape. We are building those to help
 5 provide the access we talked about.
 6 Operations, cars come into the
 7 site, queue up after making a couple rights
 8 here, come down through the site and enter
 9 the parking field, or if the drive-thru gets
 10 full and they want to come in this way, they
 11 can. Cars can still head or leave through
 12 that area. This is a really thought-out
 13 with Freddy's use kind of how they see it
 14 being used, good design there.
 15 I think just a couple random
 16 things, hours of operation on this site,
 17 10:30 A.M. to 10 P.M.
 18 The variances he's talking
 19 about, technically, the bypass lane is
 20 supposed to have a five foot landscape lane
 21 and we don't provide that to allow cars to
 22 bail out. We are requesting a variance for
 23 the ten feet instead of fifteen required,
 24 that is in between two menu boards, when you
 25 have a split drive.

Page 27

1 Deliveries was another thing I
 2 wanted to touch on, basically, the site was
 3 modeled using a SU-30 truck through the
 4 site, a single unit truck with thirty foot
 5 wheel base and that truck was the
 6 controlling one, because it actually has a
 7 larger turning radius than an articulating
 8 truck like a WB-40 rather, so we modeled the
 9 WB-42 foot turning radius, they both worked
 10 through the site, they're pretty typical
 11 sizes. It's what some of the other uses in
 12 Linden are using, and it makes sense, taken
 13 into account the design.
 14 One of the things, Nick, you
 15 had mentioned in your letter about the
 16 dumpster and the trash enclosure. We're
 17 going to put springs on the doors so they
 18 remain closed, not a door opening up
 19 blocking the drive-thru.
 20 The architect testified how the
 21 dumpster will match the facade. We are
 22 proposing six pole mounted light fixtures,
 23 four of which are on the double fixtures,
 24 two other ones to basically hlep light the
 25 site, wall-mounted fixtues, nine of which

Page 28

1 are Freddy's gooseneck fixtures and one
 2 wall-pack on the western side to light the
 3 drive-thru area.
 4 Landscaping, we got two trees,
 5 155 total new plantings, 122 shrubs which is
 6 kind of abundant considering the layout.
 7 Then stormwater connecting to the system up
 8 in the common roadway, standard pipings and
 9 inlets.
 10 Q. Where would the easement be
 11 established?
 12 A. Between the northern property
 13 line and it goes about, twenty foot space,
 14 twenty-seven foot aisle, so that easement
 15 will be here, rectangular shape.
 16 MR. MICHALSKI: Thank you.
 17 With that, I open Brad Thompson
 18 up to the Board if they have any questions.
 19 MR. RINALDO: Mr. Klein, any
 20 questions?
 21 MR. KLEIN: I think not, I
 22 think he got everything in his testimony.
 23 MR. RINALDO: Any other
 24 members, Board or professional staff?
 25 MR. PANTINA: Other than the

Page 29

1 fact we went over they will comply with
 2 everything in the letters plus the easement
 3 we talked about on this plan and our plan,
 4 I'm good.
 5 Anybody from the public?
 6 Hearing none, do you have
 7 anything else, John.
 8 MR. MICHALSKI: Just our
 9 planner who will be very brief, putting on
 10 the proof for the variances.
 11
 12 K A T E K E L L E R, having been duly
 13 sworn by the officer, testified as follows:
 14
 15 DIRECT EXAMINATION BY MR. MICHALSKI:
 16
 17 Q. Kate, give the Board your
 18 qualifications.
 19 A. I'm a principal at the firm of
 20 Phillips, Preiss, Grygiel, Leheny, Hughes
 21 based in Hoboken. I'm a professional
 22 planner in the State of New Jersey and have
 23 been for about six years and my license is
 24 in good standing.
 25 I have been accepted as an

Page 30

1 expert witness in about 20, 25 boards around
 2 the state.
 3 MR. RINALDO: We accept your
 4 qualifications.
 5 Q. Just walk the Board through the
 6 variances.
 7 A. Sure. Most of these have been
 8 mentioned in the previous testimony. We are
 9 requesting seven variances, three sign
 10 variances, to permit individual mounted
 11 lettering on the side which would be the
 12 south side of the buildng. We're,
 13 technically, only permitted on the front of
 14 stores; to permit upper case letters in the
 15 signage, thirty-seven, we are thirty-six
 16 maximum permitted by ordinance, wall sign
 17 facing 1 and 9 is proposed to measure 74.4
 18 feet, 74 would be the maximum permitted on
 19 the calculations.
 20 These variances are pretty much
 21 de minimis in nature and related to just the
 22 size of the store branding the company is
 23 looking for.
 24 These two were touched on, we
 25 need setback variances from the property

Page 31

1 line for both the trash enclosure, which is
 2 5.2 feet from the top of the screen property
 3 line where ten feet is required.
 4 The parking area did not have a
 5 setback where three feet is required.
 6 Finally, the last two variance
 7 related to not providing a landscaped island
 8 between the drive-thru and other parking
 9 circulation areas where one is required.
 10 We're requesting a variance to
 11 allow drive aisle circulation throught the
 12 drive-thru to measure ten feet where fifteen
 13 feet is required.
 14 It sounds like a lot, but it's
 15 generally de minimis in nature. Most are
 16 related to the internal subdivision lines
 17 and just the desire to have a safe layout
 18 that functions properly.
 19 Q. Briefly, go through the
 20 purposes advanced by the sign variances.
 21 A. With regard to the sign
 22 variances, these are advanced: Purposes A
 23 and G in terms of faciliating appropriate
 24 site design, it also allows for appropriate
 25 location for commercial property in a

Page 32

1 highway development district; also Purpose H
 2 which encourages the free flow of traffic.
 3 To say that I believe the site
 4 design with the signage and the way the
 5 architecture has been tweaked the better
 6 meld with the rest of the development, and
 7 also Purpose I.
 8 Q. What purposes are advanced for
 9 the trash unloading setback variances?
 10 A. Sure. I believe all these
 11 variances can be granted under the C-2
 12 criteria, these purposes will outweigh any
 13 detriments.
 14 With regard to the setbacks
 15 with the trash enclosure and the parking,
 16 this is the result generally of the internal
 17 subdivision line discussed tonight. I think
 18 this advances, this is a Planned Unit
 19 Development.
 20 This is a site that will
 21 function cohesively and also Purpose G, to
 22 provide sufficient space for a variety of
 23 uses, including commercial uses because of
 24 the way that this allows the site to be
 25 optimately designed and function as a whole.

Page 33

1 Q. With regard to the drive aisle
 2 width, there are variances and purposes
 3 advanced for those two as well?
 4 A. Sure. These are both design
 5 drive-thru safely which means plenty of
 6 stacking. These will advance Purpose A
 7 traffic and safety, as well as public safety
 8 and welfare, and will also promote the free
 9 flow of traffic.
 10 Everything is carefully
 11 considered from our engineering testimony to
 12 allow cars to access to the site.
 13 Q. Purpose H?
 14 A. Yes.
 15 Q. Can you sum up the negative
 16 criteria?
 17 A. Sure. Essentially, that there
 18 will not be substantial detriment to the
 19 public good, there's no adjacent residential
 20 uses, the reduced setbacks will not be
 21 impacting neighboring properties because of
 22 the internal subdivision line. Landscaping
 23 is proposed, a significant amount throughout
 24 the site that will mitigate a smaller
 25 setback of the trash enclosure and just

Page 34

1 generally provide a good visual environment.
 2 The planning and zoning
 3 ordinance, taken from both the requirements
 4 for the P.C.D. District and also just the
 5 overall ordinances there are de minimis in
 6 nature.
 7 Basically, when you're
 8 designing a site of this size, there's going
 9 to be some of these small items. So I think
 10 granting this relief will really further the
 11 stated purpose of cohesive planned
 12 development.
 13 MR. MICHALSKI: Thank you. I
 14 have no further questions.
 15 MR. RINALDO: Anybody have any
 16 questions?
 17 MR. PANTINA: I have one
 18 question for Mr. Klein, are you happy with
 19 the traffic circulation?
 20 MR. KLEIN: Yes. They are
 21 showing the worse case scenario. I hear a
 22 lot from engineers when they testify this is
 23 sort of self-regulating. People will get in
 24 line when they see their spot, the line gets
 25 too long, they go into a parking spot and

Page 35

1 they have adequate parking.
 2 MR. PANTINA: Is "happy" a
 3 legal definition?
 4 Are you satisfied with your
 5 comments?
 6 MR. KLEIN: Yes.
 7 MR. PANTINA: No further
 8 questions. Anybody else have any questions
 9 for the professionals? Any questions from
 10 the public?
 11 We close the hearing.
 12 Do I have a motion to move on
 13 this application in one way or another?
 14 MR. JAVICK: I have a motion to
 15 move this application.
 16 MR. RINALDO: With the
 17 conditions that we set forth including
 18 easements.
 19 MR. LaPLACA: Second.
 20 MR. PANTINA: We have a motion
 21 to approve the application with the
 22 variances as stated and with the conditions
 23 with regard to the easement on this plan and
 24 also on the previous subdivision plats that
 25 will also be provided and we have a second

Page 36

1 by Chairman LaPlaca.
 2 Roll call, please.
 3 MS. KOTOWSKI: Mr. Pantina.
 4 MR. PANTINA: Yes.
 5 MS. KOTOWSKI: Mr. Lospinoso.
 6 MR. LOSPINOSO: Yes.
 7 MS. KOTOWSKI: Councilman
 8 Javick.
 9 COUNCILMAN JAVICK: Yes.
 10 MS. KOTOWSKI: Mr. LaPlaca.
 11 CHAIRMAN LaPLACA: Yes.
 12 MS KOTOWSKI: Mr. Fiorletti.
 13 MR. FIORLETTI: Abstained.
 14 MS. KOTOWSKI: Michael
 15 Anderson.
 16 MR. ANDERSON: Yes.
 17 MS. KOTOWSKI: Curtis Humphrey.
 18 MR. HUMPHREY: Yes.
 19 MS. KOTOWSKI: Ms. Edem.
 20 MS. EDEM: Yes.
 21 MR. MICHALSKI: Thank you, very
 22 much.
 23 (Adjournment.)
 24
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C E R T I F I C A T E

I, M. VIRGINIA GUINTA, a Certified
Court Reporter of the State of New Jersey,
do hereby certify that the foregoing is a
true and accurate transcript of proceedings
had in this matter.

M. VIRGINIA GINTA, C.C.R.
License No. 30XI00038100

	8:17;26:21;31:11; 33:12	4:4;10:7;13:12;14:1; 15:11	branding (3) 21:5;22:15;30:22	21:22
A	allowed (1) 25:13	bag (1) 12:6	brick (2) 20:15;21:24	changes (4) 21:6,10,14;23:18
A-1 (3) 20:3,5;21:8	allows (3) 21:2;31:24;32:24	bail (1) 26:22	brief (1) 29:9	circulation (3) 31:9,11;34:19
A-2 (2) 24:11,13	along (3) 4:6;8:14;25:23	base (1) 27:5	Briefly (1) 31:19	City (2) 4:9;19:21
Abstained (1) 36:13	amended (3) 3:21;4:15,19	Based (4) 8:20;16:16;25:18; 29:21	brown (2) 21:23;22:7	clarification (2) 21:11;22:1
abundant (1) 28:6	amount (3) 21:17;25:9;33:23	basically (3) 27:2,24;34:7	buildig (1) 6:1	clear (1) 23:14
accent (3) 21:3,3,18	Anderson (2) 36:15,16	behalf (1) 3:19	building (6) 5:18;20:17;21:15; 22:15;24:21;26:4	close (2) 23:24;35:11
accept (2) 24:9;30:3	applicant (2) 3:20;20:11	best (1) 3:14	bulk (1) 25:15	closed (1) 27:18
accepted (1) 29:25	application (9) 3:22;4:14,24;5:16; 18:15;22:12;35:13,15, 21	better (2) 8:5;32:5	bunch (1) 17:24	closely (1) 21:23
access (3) 8:17;26:5;33:12	approve (2) 14:11;35:21	beyond (1) 11:7	burden (1) 14:4	cohesive (1) 34:11
account (1) 27:13	approval (17) 4:5,16,20;8:13,21, 25;9:22;10:15,21,22; 11:24;12:11,12,24; 13:14;14:16;15:9	Biddle (1) 3:19	Bureau (1) 7:18	cohesively (1) 32:21
accurate (1) 11:9	architect (4) 19:6,23;20:12;27:20	bins (1) 5:6	by (1) 26:19	color (12) 21:14,15,21,22,23; 22:2,4;23:1,2,3,7,12
Actually (3) 19:5;25:12;27:6	Architects (2) 19:20;22:17	bit (1) 23:16	C	colored (1) 20:6
add (1) 13:17	architectural (1) 22:17	black (2) 23:12,13		colorized (1) 24:15
addition (1) 20:25	architecture (2) 7:11;32:5	Block (1) 4:1	C-2 (1) 32:11	commence (1) 4:8
address (2) 7:7,22	area (10) 5:21,22,24;6:1,6,22; 8:7;26:12;28:3;31:4	blocking (1) 27:19	calculations (1) 30:19	comments (2) 21:9;35:5
addressed (1) 15:23	areas (5) 5:6,7;6:14,19;31:9	Board (25) 3:17;4:4;7:5;8:11, 15;9:17,21;10:8;11:5, 13,24;12:18;13:12,12; 16:5,21;19:18,22; 21:11;22:23;23:21; 28:18,24;29:17;30:5	call (3) 11:2;15:6;36:2	Commercial (4) 4:3;19:25;31:25; 32:23
adequate (2) 25:9;35:1	Armand (1) 11:4	boards (3) 25:5;26:24;30:1	calling (1) 11:1	common (1) 28:8
adjacent (4) 8:8;9:8;26:1;33:19	around (1) 30:1	Board's (4) 7:14;10:20,24;25:2	came (1) 7:25	company (1) 30:22
Adjournment (1) 36:23	articulating (1) 27:7	Bohler (2) 7:11;19:3	can (21) 7:20;10:2,20;12:9; 13:1,4,6;14:12;15:3; 16:1,2,14;17:4;20:2,3; 24:11;25:25;26:11,11; 32:11;33:15	compared (1) 21:12
administrative (2) 15:17;16:23	aspects (1) 17:20	bollard (2) 23:1,2	car (2) 25:1,7	compatible (1) 20:23
administratively (1) 15:4	August (4) 7:15,18;18:5,8	bollards (2) 22:25;23:7	carefully (1) 33:10	compliance (6) 9:18;14:13,22;17:6, 9;19:8
advance (1) 33:6	avoid (1) 23:5	both (6) 22:14;25:2;27:9; 31:1;33:4;34:3	cars (7) 23:4;25:4,8;26:6,11, 21;33:12	comply (5) 5:11;7:20;17:20; 25:14;29:1
advanced (4) 31:20,22;32:8;33:3	B	bounds (1) 10:17	case (7) 3:2;6:4,7,8;11:1; 30:14;34:21	complying (1) 6:15
advances (1) 32:18	back (5)	Brad (12) 7:10,11;19:6,8,11,18, 20;20:2,7;22:22;24:11; 28:17	Center (1) 7:7	concern (1) 10:24
aesthetic (1) 20:23			brand (1) 22:18	Chairman (3) 3:16;36:1,11
affects (1) 13:24			change (1) 21:20	conditions (2) 35:17,22
Again (2) 21:22;23:9			changed (1)	configuration (1) 25:4
agree (2) 16:13;17:13				conflict (1) 18:20
agreed (1) 13:13				connecting (1)
Aisle (6) 6:16,18,20;28:14; 31:11;33:1				
allow (4)				

<p>28:7 connection (1) 4:23 considered (1) 33:11 considering (1) 28:6 consistent (1) 20:19 construction (1) 19:25 contained (1) 11:19 contains (1) 24:23 contemplation (1) 15:10 control (1) 20:3 controlling (1) 27:6 convey (2) 11:23;13:1 coping (3) 21:15,21;23:1 cornice (2) 21:16,18 Councilman (2) 36:7,9 couple (7) 9:11;17:25;21:10; 24:19;25:16;26:7,15 coverage (1) 25:10 create (1) 13:8 created (1) 10:5 criteria (2) 32:12;33:16 current (2) 13:22;15:2 Curtis (1) 36:17 curve (1) 11:7 Custard (1) 3:23 Cut (1) 13:20</p>	<p>16:22 definition (1) 35:3 delineated (1) 23:11 Deliveries (1) 27:1 Department (1) 7:19 description (1) 15:14 design (13) 19:8;20:9,14,21,22, 23;22:9;25:16;26:14; 27:13;31:24;32:4;33:4 designed (1) 32:25 designing (1) 34:8 desire (1) 31:17 Despite (1) 22:16 detail (1) 7:8 details (1) 22:19 detriment (1) 33:18 detriments (1) 32:13 Development (13) 3:3;20:4;3;11:17; 12:7;20:11,12,24;21:2; 32:1,6,19;34:12 diamond (1) 26:3 DIRECT (3) 19:16;24:4;29:15 directly (1) 15:19 disagree (1) 12:17 discussed (4) 3:12;18:22;22:11; 32:17 discussion (2) 8:6;16:11 District (3) 4:3;32:1;34:4 document (2) 11:25;13:1 documents (1) 24:25 done (3) 10:12;15:7;16:15 door (1) 27:18 doors (1) 27:17 double (1) 27:23 down (1)</p>	<p>26:8 Drinker (1) 3:19 drinking (1) 25:20 Drive (4) 6:16;26:25;31:11; 33:1 drive-thru (12) 3:24;6:11,13;24:24, 24;25:6;26:9;27:19; 28:3;31:8,12;33:5 driveway (2) 8:9;12:13 driveways (1) 14:24 due (1) 22:14 duly (3) 19:13;24:1;29:12 dumpster (2) 27:16,21 during (1) 7:25</p> <p style="text-align: center;">E</p> <p>earlier (1) 8:12 easement (31) 9:1,7;10:2,3,9;11:11, 12,22;12:1,2,13;13:2,4, 6,9,18,20;14:6,15;15:2, 9,13,18;16:18,24;17:1, 7;28:10,14;29:2;35:23 easements (6) 8:16;9:13;10:18; 16:8;17:10;35:18 eating (1) 25:19 Edem (2) 36:19,20 Edgar (2) 3:3;4:1 eifs (2) 20:15;21:16 either (1) 14:5 elements (1) 21:3 elevation (2) 20:14,21 eliminated (1) 21:19 else (2) 29:7;35:8 enclosure (10) 5:4,10;21:25;22:25; 23:6,17;27:16;31:1; 32:15;33:25 enclosures (1) 21:21 encourages (1)</p>	<p>32:2 end (3) 14:25;15:1,11 engineer (2) 8:5;24:8 Engineering (3) 7:12;18:3;33:11 engineers (1) 34:22 enter (1) 26:8 entered (1) 8:21 entirety (1) 11:18 environment (1) 34:1 Essentially (1) 33:17 establish (2) 13:4,6 established (4) 10:19;12:23;20:9; 28:11 establishments (1) 25:20 evaluation (1) 22:9 Everybody (2) 17:11,16 everybody's (1) 9:21 EXAMINATION (2) 24:4;29:15 EXAMINATION (1) 19:16 exception (1) 7:21 excited (1) 4:8 Exhibit (2) 20:3;21:8 exhibits (1) 17:25 expansion (1) 4:9 expect (2) 11:14,17 expert (1) 30:1 explain (1) 7:2 extent (1) 9:19 exterior (3) 20:14,14,21 extraordinaire (1) 11:6</p> <p style="text-align: center;">F</p> <p>facade (1) 27:21</p>	<p>facilitating (1) 31:23 facing (1) 30:17 fact (4) 16:4,16;22:16;29:1 Faegre (1) 3:18 familiar (1) 22:18 far (3) 14:21;18:2;23:22 feet (21) 3:23;5:8,9,22,25;6:2, 19,19,20,25;24:22; 25:19,22,23;26:23; 30:18;31:2,3,5,12,13 field (1) 26:9 fifteen (2) 26:23;31:12 final (3) 3:21;4:20;14:16 Finally (1) 31:6 financial (1) 14:4 Fiorletti (10) 11:4,12;12:14,19,25; 13:24;15:20;16:12; 36:12,13 Fire (5) 7:18,19;18:5,7,9 firm (2) 3:18;29:19 first (2) 9:10;11:2 fist (1) 4:7 five (2) 12:5;26:20 fixtures (1) 27:25 fixtures (3) 27:22,23;28:1 flow (2) 32:2;33:9 Follow (1) 16:22 follows (3) 19:14;24:2;29:13 foot (8) 5:23;6:12,13;26:20; 27:4,9;28:13,14 forth (1) 35:17 forward (3) 3:6,9;16:21 founded (1) 4:11 four (1) 27:23 fourteen (1)</p>
---	--	---	--	---

25:4 frame (1) 22:7 framing (1) 22:2 Freddy (2) 11:20;12:3 Freddy's (22) 3:4,23;4:8,11,21;8:3, 7,8,22;9:7;11:17,18; 12:5,7;13:2;14:12; 21:5;24:21;25:7;26:3, 13;28:1 free (2) 32:2;33:8 front (3) 14:19;19:22;30:13 frontage (1) 4:6 fronting (1) 4:18 fronts (1) 5:15 Frozen (1) 3:23 full (1) 26:10 full-blown (1) 16:17 fully (1) 22:18 function (2) 32:21,25 functions (1) 31:18 further (3) 34:10,14;35:7	32:11 granting (1) 34:10 Grygiel (1) 29:20	inch (1) 6:8 inches (1) 6:7 included (1) 25:17 including (3) 11:9;32:23;35:17 incomplete (1) 12:8 individual (2) 10:18;30:10 individually-mounted (1) 5:14 indoor (1) 24:23 inlets (1) 28:9 instead (2) 15:17;26:23 instrument (9) 10:6,13,19,20;12:23; 13:10;15:11,12,15 interior (1) 6:18 internal (8) 5:9;8:9;9:8;10:8; 12:13;31:16;32:16; 33:22 into (5) 4:9;8:21;26:6;27:13; 34:25 island (2) 6:11;31:7 islands (1) 6:13 issue (10) 3:11;7:21,24,25;8:1, 6,23;9:9;13:16;15:17 instrument (1) 13:7 items (1) 34:9	Kate (2) 7:12;29:17 keep (1) 23:7 Keller (1) 7:12 Kern (3) 7:10;19:11,20 Kevin (1) 20:7 kind (4) 11:25;24:18;26:13; 28:6 Klein (6) 7:15;28:19,21;34:18, 20;35:6 Klein's (1) 18:4 known (1) 3:4 KOTOWSKI (8) 36:3,5,7,10,12,14,17, 19	leave (1) 26:11 Legacy (5) 4:6,18;7:6;20:13,18 legal (5) 11:25;13:7,10;15:13; 35:3 Leheny (1) 29:20 letter (5) 6:4,6;7:14,16;27:15 lettering (1) 30:11 letters (6) 5:14;6:7,9;17:13; 29:2;30:14 license (2) 11:6;29:23 licensed (2) 19:23;24:8 light (3) 27:22,24;28:2 lightly (1) 24:19 likely (1) 23:5 limits (3) 5:13,21;6:5 Linden (5) 3:3,20;4:10;20:11; 27:12 line (15) 5:8,9;7:24;8:2,2,22, 24;25:24;28:13;31:1,3; 32:17;33:22;34:24,24 linear (1) 5:22 lines (3) 6:25;14:23;31:16 listen (1) 3:2 little (2) 23:9,16 LLC (2) 3:3,20 located (2) 3:25;5:7 location (4) 4:7;5:12;22:14; 31:25 locations (1) 4:12 long (1) 34:25 look (5) 8:4;10:7;16:2,3;25:3 looked (1) 15:24 looking (3) 13:23;21:13;30:23 Lospinoso (2) 36:5,6 Lot (18)
G	H	I	L	
general (1) 20:20 generally (3) 31:15;32:16;34:1 gets (2) 26:9;34:24 gives (1) 19:8 giving (1) 15:17 glazing (1) 20:16 goes (2) 3:12;28:13 good (5) 26:14;29:4,24;33:19; 34:1 gooseneck (1) 28:1 grant (1) 10:22 granted (4) 7:5;13:13;16:6;	25:8 hour (1) 25:8 hours (1) 26:16 Hughes (1) 29:20 Humphrey (2) 36:17,18 hundred (1) 23:14	January (1) 13:12 JAVICK (3) 35:14;36:8,9 Jersey (8) 4:7,9;10:2;11:23; 13:3;19:21,24;29:22 John (8) 3:5,18;10:25;14:19; 15:14,22;17:2;29:7 July (1) 24:16	land (4) 14:3,4,24;16:8 landlock (1) 9:8 landlocked (6) 8:15,18;9:1,14;16:5, 9 landscape (1) 26:20 landscaped (3) 6:11,13;31:7 Landscaping (2) 28:4;33:22 lane (3) 25:1;26:19,20 lanes (2) 6:14;25:3 LaPLACA (4) 35:19;36:1,10,11 larger (1) 27:7 last (4) 3:2;8:12;17:24;31:6 Lastly (1) 22:10 late (1) 8:12 later (5) 5:2;7:3,8;16:2;22:11 law (2) 3:18;10:1 lawyer (2) 13:21;14:6 layout (2) 28:6;31:17 lease (1) 8:21	
J	K	Kansas (1) 4:12		

4:1;7:24;8:2,2,7,8,9, 22,24,25;9:2;11:17,18, 19;13:25;14:2;31:14; 34:22	mentioned (2) 27:15;30:8		27:6,14;28:1;31:9; 34:17;35:13	6:14,18,22,24;8:7; 25:17,22;26:2,9;31:4, 8;32:15;34:25;35:1
lots (6) 7:6;8:14,18;9:14; 10:9;16:4	menu (2) 25:5;26:24	N	ones (1) 27:24	part (2) 11:22;14:13
lotting (3) 11:21;12:2,25	meshes (1) 20:8	nature (3) 30:21;31:15;34:6	one-way (1) 6:18	particular (3) 4:25;11:1;21:2
LS (2) 11:7;14:7	message (1) 6:6	need (11) 5:3;6:3;7:2;8:7;10:9, 17;11:10;16:17;19:2,6; 30:25	only (3) 16:5;24:25;30:13	patio (1) 23:11
M	metal (1) 21:14	needs (1) 9:20	onto (3) 8:8,9;9:7	Paul (3) 16:13;18:11;21:9
major (2) 8:12;23:17	metes (1) 10:17	negative (1) 33:15	open (2) 22:22;28:17	PCD (2) 4:2;34:4
makes (1) 27:12	Michael (1) 36:14	neighboring (1) 33:21	opening (1) 27:18	PE (1) 11:6
making (1) 26:7	MICHALSKI (26) 3:8,16,18;12:9,16, 21;13:3,22;14:10;15:5; 16:1;17:14,18;18:7,18, 21;19:1,5,16;22:22; 24:4;28:16;29:8,15; 34:13;36:21	Neptune (1) 19:21	operation (1) 26:16	People (1) 34:23
Management (1) 18:11	Might (1) 18:16	New (10) 4:7,9;10:1;11:23; 13:3;17:5;19:21,24; 28:5;29:22	Operations (1) 26:6	people's (1) 14:4
manner (1) 20:19	minimum (2) 5:7;6:24	Nick (1) 27:14	opinion (1) 20:22	per (3) 25:7,8,19
map (7) 11:21;12:2,20;13:1, 23;14:23;15:3	minute (3) 19:9;24:12;25:8	nine (2) 25:4;27:25	optimately (1) 32:25	percent (3) 23:14;25:11,12
March (1) 14:22	misunderstanding (1) 22:3	none (2) 23:24;29:6	Ordinance (10) 5:4,12,20;6:5,11,17, 23;25:18;30:16;34:3	perfected (1) 9:16
mark (1) 20:5	mitigate (1) 33:24	North (1) 24:16	ordinances (1) 34:5	Period (1) 14:25
masking (1) 20:22	MMA (1) 19:20	northern (3) 8:2;25:24;28:12	originally (2) 18:15;24:25	permit (3) 5:24;30:10,14
match (1) 27:21	modeled (2) 27:3,8	notation (1) 13:17	otherwise (2) 3:4;16:8	permitted (4) 5:21;30:13,16,18
matches (2) 21:16,23	modifies (1) 15:3	note (5) 10:16;17:7,7;21:6; 26:3	Ours (1) 18:13	perspective (2) 8:24;20:6
material (3) 21:3,24;22:6	modify (1) 14:2	notes (2) 15:24,25	out (7) 8:10;9:3,14;10:10; 17:22,24;26:22	Phase (1) 4:16
materials (4) 20:15,16,21;21:1	more (7) 7:7;10:14;15:16; 21:23;23:4,4,5	notice (1) 21:17	outdoor (2) 5:5;24:23	Phillips (1) 29:20
matter (1) 10:1	Most (3) 7:4;30:7;31:15	noticeable (1) 23:4	outweigh (1) 32:12	piece (1) 11:14
maximum (2) 30:16,18	motion (3) 35:12,14,20	number (2) 11:13;21:11	over (5) 4:12,12;19:25;23:16; 29:1	pipings (1) 28:8
may (1) 22:4	mounted (4) 5:15,24;27:22;30:10	O	overall (5) 20:12,18,22,24;34:5	place (5) 8:17;9:2,13;15:10; 16:8
Maybe (1) 16:22	mouth (1) 17:22	obtained (2) 4:15;10:3	overview (2) 19:9;24:12	plan (18) 3:22;4:16,20;8:2; 9:20;11:15;14:19,20; 15:3,12;16:18;17:6; 22:19;24:14,15;29:3,3; 35:23
means (1) 33:5	move (5) 3:9;8:24;16:20; 35:12,15	obviously (1) 16:3	P	Plan-1129-20 (1) 3:2
meanwhile (1) 17:8	moves (1) 25:7	obviously (2) 15:5;18:22	Pad (2) 4:18,21	Planned (3) 4:2;32:18;34:11
measure (2) 30:17;31:12	moving (2) 3:6;14:9	off (3) 14:21;17:4;20:10	page (1) 24:17	Planner (5) 7:12;18:25;19:10; 29:9,22
meeting (1) 15:24	much (2) 30:20;36:22	officer (3) 19:14;24:2;29:13	PANTINA (24) 3:1;7:23;8:1;9:6; 10:25;13:19;14:1,18; 16:12;17:2,15,21;18:9, 16,19,23;23:20;28:25; 34:17;35:2,7,20;36:3,4	planner's (1) 11:6
meld (1) 32:6		off-street (1) 6:24	Pantina's (2) 7:17;9:5	Planning (2) 11:24;34:2
Members (3) 3:17;23:21;28:24		one (18) 4:21;7:21;10:3; 11:13;12:6,11;13:9; 21:10,12;25:1,7,18;	parking (14)	plans (3) 14:8;17:4;22:18
mention (1) 24:12				

<p>plantings (1) 28:5</p> <p>plat (18) 9:15,23;10:4,4,7,11, 16,18;12:12;13:5,9,17, 20;14:14,15;15:16,19; 16:25</p> <p>plats (1) 35:24</p> <p>please (2) 24:12;36:2</p> <p>pleased (1) 4:4</p> <p>plenty (1) 33:5</p> <p>plus (1) 29:2</p> <p>PM (1) 26:17</p> <p>point (1) 11:9</p> <p>pointing (1) 22:10</p> <p>points (1) 9:11</p> <p>pole (1) 27:22</p> <p>position (2) 9:6;23:3</p> <p>pound (1) 12:6</p> <p>pounds (1) 12:6</p> <p>preference (1) 7:22</p> <p>Preiss (1) 29:20</p> <p>preliminarily (1) 4:17</p> <p>preliminary (3) 3:21;4:15,20</p> <p>prepared (1) 22:17</p> <p>present (1) 7:10</p> <p>presentation (1) 3:10</p> <p>presented (1) 23:22</p> <p>pretty (2) 27:10;30:20</p> <p>previous (2) 30:8;35:24</p> <p>previously (2) 7:5;21:12</p> <p>primary (1) 20:16</p> <p>principal (1) 29:19</p> <p>prior (2) 15:8,23</p> <p>probably (1) 18:5</p>	<p>problem (1) 13:5</p> <p>problems (1) 18:20</p> <p>professional (4) 10:8;24:7;28:24; 29:21</p> <p>professionals (5) 7:14;9:17;10:21; 25:2;35:9</p> <p>project (2) 20:13;21:2</p> <p>promote (1) 33:8</p> <p>proof (1) 29:10</p> <p>properly (1) 31:18</p> <p>properties (1) 33:21</p> <p>property (13) 3:25;5:8,9;6:25; 11:14,15;12:5,7;25:24; 28:12;30:25;31:2,25</p> <p>proposed (12) 3:22;5:10,17;6:1,2, 21;7:1;20:15;22:14; 24:21;30:17;33:23</p> <p>proposing (1) 27:22</p> <p>provide (6) 12:12;16:24;26:5,21; 32:22;34:1</p> <p>provided (2) 25:23;35:25</p> <p>providing (1) 31:7</p> <p>public (13) 8:10,18;9:3,14; 10:10;12:1;13:1;23:24, 25;29:5;33:7,19;35:10</p> <p>Purpose (6) 32:1,7,21;33:6,13; 34:11</p> <p>purposes (6) 8:6;31:20,22;32:8, 12;33:2</p> <p>put (7) 5:1;9:2;10:3,16; 13:20;19:7;27:17</p> <p>puts (1) 15:2</p> <p>putting (3) 12:2,5;29:9</p>	<p>26:7</p> <p>queuing (1) 25:9</p> <p>quick (3) 5:1;20:7;24:6</p>	<p>Rendering (5) 20:5;21:7,14;22:8; 23:11</p> <p>renderized (1) 24:14</p> <p>report (14) 7:15,16,17,18,24;9:5, 23;18:3,4,4,6,7,10,11</p> <p>reports (7) 7:13;17:16,19,20,23; 18:2,20</p> <p>represent (3) 9:24;10:15;20:11</p> <p>represented (6) 8:15;9:12;12:17,22; 13:11;15:8</p> <p>request (1) 25:1</p> <p>requesting (7) 6:8;22:12;25:15,21; 26:22;30:9;31:10</p> <p>require (1) 4:24</p> <p>required (7) 25:18,23;26:23;31:3, 5,9,13</p> <p>requirements (3) 12:11;25:15;34:3</p> <p>requires (4) 5:5;6:12,17,23</p> <p>residential (1) 33:19</p> <p>resolution (6) 12:24;13:13,16; 14:21;17:6,9</p> <p>respectfully (1) 6:19</p> <p>response (2) 9:10;21:8</p> <p>rest (1) 32:6</p> <p>Restaurant (4) 3:24;4:5,21;24:22</p> <p>result (1) 32:16</p> <p>review (3) 9:18;14:13;15:18</p> <p>reviewed (3) 9:16;10:20;20:13</p> <p>reviewing (1) 20:20</p> <p>revisions (1) 17:24</p> <p>RICCI (4) 18:14,24;22:24; 23:13</p> <p>Ricci's (3) 7:16;18:3;21:9</p> <p>rid (1) 22:25</p> <p>right (4) 8:2;17:1;19:9;24:16</p> <p>right-of-way (5)</p>	<p>8:10,19;9:3,15;10:10</p> <p>rights (2) 13:4;26:7</p> <p>RINALDO (12) 3:5,14;15:22;16:10; 18:12;19:2;24:9;28:19, 23;30:3;34:15;35:16</p> <p>Rinaldo's (1) 7:21</p> <p>Road (2) 3:3;4:1</p> <p>roadway (3) 9:9;10:9;28:8</p> <p>Roll (1) 36:2</p> <p>roofline (3) 21:18;23:15,17</p> <p>Route (4) 4:6,18;8:14;19:21</p>
R				
<p>radius (2) 27:7,9</p> <p>railing (1) 23:12</p> <p>raised (1) 8:1</p> <p>randum (1) 26:15</p> <p>rather (2) 11:1;27:8</p> <p>real (2) 5:1;24:6</p> <p>really (3) 23:6;26:12;34:10</p> <p>rear (1) 6:25</p> <p>Reath (1) 3:19</p> <p>recall (2) 4:15;15:23</p> <p>receipt (1) 7:13</p> <p>recently (1) 21:10</p> <p>recommendation (1) 16:20</p> <p>record (4) 10:4;16:25;19:4,7</p> <p>recorded (4) 10:6;13:5,9;14:17</p> <p>rectangular (1) 28:15</p> <p>recycling (1) 5:6</p> <p>red (9) 21:14,17,22;22:2,4, 5;23:3,7,15</p> <p>reduced (3) 21:19;25:11;33:20</p> <p>reference (1) 24:17</p> <p>referring (1) 23:10</p> <p>regard (6) 8:1;17:18;31:21; 32:14;33:1;35:23</p> <p>related (4) 25:16;30:21;31:7,16</p> <p>relief (5) 4:24;6:8;8:13;16:4; 34:10</p> <p>remain (1) 27:18</p> <p>remaining (1) 23:2</p>	<p>Qualifications (4) 20:1;24:6;29:18; 30:4</p> <p>qualifications (1) 19:19</p> <p>queue (1)</p>	S		
<p>safe (1) 31:17</p> <p>safely (1) 33:5</p> <p>safety (2) 33:7,7</p> <p>same (2) 21:1;22:20</p> <p>satisfaction (1) 9:21</p> <p>satisfied (1) 35:4</p> <p>satisfy (2) 9:20;10:23</p> <p>saying (1) 15:14</p> <p>scenario (1) 34:21</p> <p>screen (1) 31:2</p> <p>seats (1) 24:23</p> <p>second (4) 11:9;21:20;35:19,25</p> <p>Section (6) 5:4,13,20;6:12,17,23</p> <p>seeking (3) 4:19;5:16;6:10</p> <p>self-regulating (1) 34:23</p> <p>send (2) 17:5,9</p> <p>sense (1) 27:12</p> <p>sent (2) 17:23,25</p> <p>separate (2) 10:19;13:10</p> <p>September (4) 7:16,17;18:3,4</p> <p>set (1)</p>				

35:17 setback (9) 5:4;6:22,24;7:1; 25:22;30:25;31:5;32:9; 33:25 setbacks (2) 32:14;33:20 seven (3) 4:25;18:24;30:9 shape (2) 26:4;28:15 sheds (1) 5:6 sheets (1) 14:23 Shopping (1) 7:7 short (1) 13:21 show (15) 8:5;9:7,23;10:17; 11:21,25;12:3,13; 13:18;14:5,8,14;15:12, 18;24:11 showed (3) 24:19,25;25:2 showing (2) 16:18;34:21 shown (5) 9:20;10:11;13:15; 15:15;21:8 shrubs (1) 28:5 side (6) 5:17,25;6:24;28:2; 30:11,12 Sign (14) 5:12,19,21,22,23,24; 6:1,6;14:21;17:4;30:9, 16;31:20,21 signage (5) 6:4;22:11,13;30:15; 32:4 signed (1) 13:13 significant (1) 33:23 sign-off (1) 14:16 signs (2) 5:15,17 simply (1) 13:17 single (1) 27:4 Site (23) 3:2,21;4:16,20; 11:14;18:17;24:14,15; 25:11;26:7,8,16;27:2,4, 10,25;31:24;32:3,20, 24;33:12,24;34:8 sites (2) 4:18,22	six (2) 27:22;29:23 size (4) 6:4;22:14;30:22; 34:8 size/area (1) 5:19 sizes (1) 27:11 slight (1) 22:3 small (1) 34:9 smaller (1) 33:24 smiling (1) 17:17 somehow (1) 9:9 sorry (1) 12:17 sort (1) 34:23 sounds (1) 31:14 south (2) 5:25;30:12 space (3) 25:19;28:13;32:22 spaces (2) 25:17;26:2 specific (1) 23:9 split (1) 26:25 spot (2) 34:24,25 springs (1) 27:17 Squad (1) 4:18 square (10) 3:22;4:6;5:22,25; 6:2;7:6;20:13,18; 24:22;25:19 stacking (2) 25:3;33:6 staff (1) 28:24 standard (1) 28:8 standing (1) 29:24 start (3) 3:10;19:6;20:10 State (3) 19:24;29:22;30:2 stated (2) 34:11;35:22 statement (1) 9:25 states (1) 4:13	stay (1) 11:15 Steakburgers (1) 3:24 still (2) 9:16;26:11 storage (1) 5:7 store (1) 30:22 storefront (1) 20:16 stores (2) 5:15;30:14 Stormwater (3) 18:10,14;28:7 story (1) 14:25 street (1) 5:8 SU-30 (1) 27:3 subdivided (3) 11:13,16,19 subdivision (14) 8:13,20;10:21;11:22; 12:10;14:14,17,23,24; 15:8;31:16;32:17; 33:22;35:24 subdivision (1) 16:18 subject (1) 18:22 submitted (3) 10:7;21:13;24:25 substantial (1) 33:18 sufficient (2) 8:17;32:22 sum (1) 33:15 supports (1) 12:24 supposed (2) 14:20;26:20 sure (8) 16:12;18:6;20:10; 24:7;30:7;32:10;33:4, 17 sworn (3) 19:13;24:2;29:13 system (1) 28:7	3:5;26:5;29:3 talking (1) 26:18 technically (2) 26:19;30:13 ten (3) 26:23;31:3,12 terms (2) 23:8;31:23 testified (6) 19:14,22;22:19;24:2; 27:20;29:13 testify (1) 34:22 testimony (5) 5:2;20:8;28:22;30:8; 33:11 theme (1) 20:24 themes (1) 20:9 thinking (1) 16:22 thirty (1) 27:4 thirty-seven (1) 30:15 thirty-six (1) 30:15 Thompson (4) 7:11;19:3;20:2; 28:17 thought (1) 23:15 thought-out (1) 26:12 three (5) 7:9;14:22;25:22; 30:9;31:5 throughout (3) 20:17;21:1;33:23 thought (1) 31:11 throw (1) 20:3 title (1) 10:6 tonight (2) 3:6;32:17 Tony (1) 15:1 Tony's (1) 15:6 Took (1) 17:21 top (3) 21:18;23:16;31:2 total (1) 28:5 touch (2) 24:19;27:2 touched (1) 30:24	traffic (5) 23:5;32:2;33:7,9; 34:19 transcript (1) 16:2 trash (13) 5:3,6,10;21:21,24; 22:25;23:6,16;27:16; 31:1;32:9,15;33:25 TRC (1) 7:25 trees (1) 28:4 truck (4) 27:3,4,5,8 trying (1) 23:14 turning (2) 27:7,9 tweaked (1) 32:5 twenty (1) 28:13 twenty-seven (1) 28:14 two (11) 5:21;10:2;13:8;19:9; 24:12;26:24;27:24; 28:4;30:24;31:6;33:3 typical (1) 27:10
U				
		T	unclear (1) 16:16 under (1) 32:11 unit (2) 27:4;32:18 unloading (1) 32:9 unsure (1) 23:9 up (12) 7:25;8:5;14:3,3; 16:21;20:3;22:22;26:7; 27:18;28:7,18;33:15 upon (1) 16:16 upper (4) 6:4,7,8;30:14 use (4) 5:13;26:1,1,13 used (2) 20:17;26:14 uses (4) 27:11;32:23,23; 33:20 using (3) 20:25;27:3,12	
		table (1) 14:20 taht (1) 12:22 talk (3) 17:12,16,19 talked (3)		

	6:16,18,20;33:2	25:17	
V	window (3) 22:2,6;25:6	2	4
variance (10) 5:3,19;6:3,10;8:13; 16:4;25:21;26:22;31:6, 10	Winter (1) 22:17	20 (1) 30:1	4 (2) 7:18;18:3
variances (19) 4:25;7:4;16:6;18:25; 22:13;25:16;26:18; 29:10;30:6,9,10,20,25; 31:20,22;32:9,11;33:2; 35:22	within (5) 4:5;7:6;11:15,19; 12:7	2002 (1) 4:11	469 (1) 4:1
variety (1) 32:22	without (2) 11:24;13:4	2011 (1) 24:8	5
version (2) 24:14,15	witness (2) 11:3;30:1	2019 (1) 4:17	5 (1) 6:13
Vice-Chairman (1) 11:5	witnesses (2) 7:10;11:2	2020 (7) 7:15,17,18,19;14:22; 18:8;24:16	5.2 (1) 31:2
visibility (1) 22:15	words (4) 11:16;12:4,6;17:21	20th (1) 24:16	6
visible (1) 23:4	worked (2) 19:24;27:9	25 (1) 30:1	6 (1) 6:16
visual (1) 34:1	worse (1) 34:21	2591 (2) 3:22;24:22	66 (1) 19:21
vote (1) 16:19	Y	26 (2) 7:19;18:8	7
	year (2) 8:12,12	27.8 (1) 6:17	74 (2) 5:25;30:18
	years (2) 19:25;29:23	3	74.4 (2) 6:2;30:17
W	Z	3 (6) 4:16;6:12,25;7:15, 16;18:4	78 (1) 25:11
walk (1) 30:5	zero (1) 25:23	30 (2) 4:13;5:7	78.08 (1) 25:12
wall (4) 5:14,21,23;30:16	zone (2) 4:2,3	300 (1) 4:12	8
wall-mounted (1) 27:25	zoning (2) 14:23;34:2	31.27.7 (1) 6:23	84 (1) 24:23
wall-pack (1) 28:2	1	31-11.6e2 (1) 5:5	9
way (10) 3:15;10:5;12:1;15:7; 16:5,15;26:10;32:4,24; 35:13	1 (4) 4:6,18;8:14;30:17	31-11.8f3a (1) 5:13	9 (4) 4:6,19;8:14;30:17
ways (2) 10:2;13:8	10 (4) 5:8;6:20;19:25; 26:17	31-11.8f3d1 (1) 5:20	90 (1) 25:12
WB-40 (1) 27:8	10:30 (1) 26:17	31-11.8f3d4 (1) 6:5	
WB-42 (1) 27:9	1016 (2) 3:3;4:1	31-19.8.1 (1) 6:12	
website (1) 18:1	12 (1) 6:19	31-27.7 (1) 6:17	
welfare (1) 33:8	12.5 (1) 25:8	3297 (1) 19:21	
West (1) 4:1	122 (1) 28:5	36 (1) 6:7	
western (1) 28:2	15 (1) 6:19	37.5 (1) 6:8	
wheel (1) 27:5	150 (1) 25:19	38 (1) 25:17	
whereas (5) 5:10,16;6:1,20,25	155 (1) 28:5	38.05 (1) 4:1	
whole (2) 18:17;32:25	16 (1) 24:23	3rd (1) 18:5	
Width (4)	18 (1)		

