

BOROUGH OF ATLANTIC HIGHLANDS  
PLANNING BOARD OF ADJUSTMENT  
REGULAR MEETING

IN RE: PB18-06 - BLOCK 142, )  
LOT 5, 17 AVENUE D (DENHOLTZ ) TRANSCRIPT OF:  
CUSTOM HOMES) - APPLICATION FOR ) PROCEEDINGS  
PRELIMINARY AND FINAL )  
SUBDIVISION )  
\_\_\_\_\_ )

Wednesday, August 29, 2018  
Elementary School Auditorium  
140 First Avenue  
Atlantic Highlands, New Jersey 07716

**B E F O R E:**

JAMES NEFF - Chairman  
JOHN MCGOLDRICK - Board Member  
SANDRA HOFFMANN - Board Member  
DEBORAH MURRAY - Board Member  
MARTIN HAWLEY - Board Member  
LOUIS FLIGOR - Councilman  
LOUIS ILLIANO - Board Member  
RICHARD COLANGELO - Board Member  
BRIAN DOUGHERTY - Board Member  
JOSEPH CACCAMO - Board Member  
KERN ILARAZZA - Board Member

**ALSO PRESENT:**  
 MICHAEL B. STEIB, ESQ. - Board Attorney  
 DOUGLAS ROHMEYER - Board Engineer  
 ERIN URIARTE - Board Secretary

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**WITNESS:** JAMES A. KENNEDY, PE, PP  
 DIRECT CROSS REDIRECT RECROSS  
 MR. GIUNCO 18

**WITNESS:** ANDREW W. JANIW, P.P., AICP  
 DIRECT CROSS REDIRECT RECROSS  
 MR. GIUNCO 56

**WITNESS:** JAMES J. MONTEFORTE, AIA  
 DIRECT CROSS REDIRECT RECROSS  
 MR. GIUNCO 8

EXHIBITS

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A-2	Stormwater Management Report prepared by Kennedy Consulting Engineers, LLC dated 5/3/18.....	14
A-3	GO Technical Engineering Report prepared by Craig Testing Laboratories, Inc., dated 2/8/18...	14
A-4	Portion Topographical Survey Map prepared by Yorkanis & White Surveyors, dated 3/19/18.....	14

APPEARANCES:

GIORDANO, HALLERAN & CIESLA, P.C.  
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 Attorneys for the Applicant

ZAGER FUCHS, PC  
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 Red Bank, New Jersey 07701  
 732-481-1274  
 Attorney for Neighbors for Waterfront Preservation

EXHIBITS

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A-9	Waiver Request Justification.....	15
A-10	Will Serve letters from Verizon, New Jersey Natural Gas, JCP&L, and Comcast.....	15
A-11	CME Associates Completeness Technical Review No. 1, dated 6/13/18.....	15
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O-2	Letter from Kevin Asadi, Esq., dated 7/31/18.....	16
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A-16	Report from CME Associates, dated 7/27/18.....	16
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**CHAIRMAN NEFF:** Good evening. Please grab a seat. Grab a seat. We're about to start the meeting. Roll call, please.

**MS. URIARTE:** Mr. Illiano?

**MR. ILLIANO:** Here.

**MS. URIARTE:** Mr. Fligor?

**COUNCILMAN FLIGOR:** Here.

**MS. URIARTE:** Mr. Hawley?

**MR. HAWLEY:** Here.

**MS. URIARTE:** Mr. Caccamo?

**MR. CACCAMO:** Here.

**MS. URIARTE:** Dr. Cetron?

Mr. Colangelo?

**MR. COLANGELO:** Here.

**MS. URIARTE:** Ms. Hoffmann?

**MS. HOFFMANN:** Here.

**MS. URIARTE:** Mrs. Murray?

**MRS. MURRAY:** Here.

**MS. URIARTE:** Mr. Neff?

**CHAIRMAN NEFF:** Here.

**MS. URIARTE:** Mr. Pepe?

Mr. Ilarazza?

**MR. ILARAZZA:** Here.

**MS. URIARTE:** Mr. McGoldrick?

**MR. MCGOLDRICK:** Here.

**MS. URIARTE:** Mr. Dougherty?

**MR. DOUGHERTY:** Here.

**THE CHAIRMAN:** Please stand for a silent prayer and Pledge of Allegiance.  
(Pledge of Allegiance recited and silent prayer.)

**CHAIRMAN NEFF:** Pursuant to Section 5 of the Open Public Meetings Act, this meeting has been duly advertised in accordance with law by publication in the official newspapers of the Borough, and by posting in Borough Hall by the Borough Clerk as part of the annual notice.

This meeting is a quasi-judicial proceeding. Any comments or questions must be limited to issues that are relevant to what the Board may legally consider in reaching a decision. Decorum appropriate to a judicial hearing be must be maintained at all times.

I know there was some discussion amongst the public about some verbiage that was added to this procedural notice that had not been read previously, and I would just like it known that this addition, the verbiage that we added has been discussed at the last two Planning Board meetings and was voted upon by the Board to add to our procedural notice, and

1 this will be read at all future meetings, not just  
 2 this one. It's a statement that is used by many,  
 3 many Planning Boards in the state, and it's very  
 4 standard wording that is used.  
 5 Also, I'd like to read one other item:  
 6 That the Borough of Atlantic Highlands does not  
 7 video-record these proceedings; however, the public  
 8 has the -- however, the Borough of Atlantic Highlands  
 9 is aware and advises the public that these  
 10 proceedings may be videotaped, recorded for replaying  
 11 for livestream by third parties. Such third-party  
 12 video-recording is not sponsored by, or endorsed by  
 13 the Borough of Atlantic Highlands and will not be  
 14 available from the Borough of Atlantic Highlands via  
 15 the Open Public Records Request.  
 16 Attendees of this meeting acknowledge  
 17 that this recording via livestreaming may take place,  
 18 and acknowledge that their images may be recorded for  
 19 livestream. All attendees and participants agree to  
 20 conduct themselves in a manner appropriate for a  
 21 public gathering. Individual speakers are advised  
 22 that no right to privacy protects a person's public  
 23 comments made in a public forum. Accordingly, all  
 24 participants bear responsibility for their own  
 25 statements and commentary.

1 meeting. Same for comments.  
 2 Also, if, you know, questions become  
 3 redundant, and, you know, asked many times over, or  
 4 the same comment over and over, we may cut you off  
 5 and say, you know, that's been asked previously, or  
 6 that's been discussed previously. Again, you know,  
 7 we're trying to get through the proceedings and give  
 8 everybody a chance to state your questions or your  
 9 comments, but within reason.  
 10 (Board conducts other business.)  
 11 **CHAIRMAN NEFF:** Okay. Next is PB18-06 -  
 12 Block 142, lot 5, 17 Avenue D (Denholtz Custom Homes)  
 13 - Application for preliminary and final subdivision.  
 14 **MR. STEIB:** Mr. Chairman, this  
 15 application was accepted as to jurisdiction at the  
 16 last meeting. Notice was submitted at the last  
 17 meeting and approved. The Board took jurisdiction, I  
 18 should say, at the last meeting, and the case was  
 19 scheduled for discussion this evening so that we  
 20 would have enough room to accommodate the public and  
 21 so this is a continuation hearing at this time.  
 22 **AN AUDIENCE MEMBER:** We can't hear you  
 23 back here.  
 24 **AN AUDIENCE MEMBER:** None of us in the  
 25 room can hear.

1 As you all know, this is an off-site  
 2 meeting of the Planning Board. It is very important  
 3 that we maintain a clear recording for transcription  
 4 purposes. We ask that any members of the public who  
 5 wish to ask questions or give comment please sign up  
 6 with your name and address on the clipboards located  
 7 in the hall. They're on a table out there and  
 8 there's a couple of clipboards. There's one  
 9 clipboard for asking questions, and there's one for  
 10 comments.  
 11 So after the Applicant is done  
 12 presenting their testimony, we will call each person  
 13 up to the microphone to ask questions. The Applicant  
 14 has -- there's a couple of witnesses that they'll be  
 15 presenting tonight, so we're going to hold questions  
 16 until all witnesses are done with their testimony and  
 17 then ask -- you'll have the ability to ask questions  
 18 at that time.  
 19 It is not our intent right now to limit  
 20 the amount of time you can ask your questions;  
 21 however, we must be cognizant of the fact that, you  
 22 know, there's five pages of people out there who want  
 23 to sign up and ask questions, we may need to limit  
 24 the time for each to three minutes or five minutes.  
 25 And we'll see that as we get to that point in the

1 **AN AUDIENCE MEMBER:** The mic's not on.  
 2 **AN AUDIENCE MEMBER:** You're not coming  
 3 through on the microphone.  
 4 **MR. STEIB:** I indicated that the  
 5 Applicant appeared at the last meeting, presented  
 6 their notice of hearing and their proofs of notice  
 7 that was approved. There were some objections to  
 8 jurisdiction, they were discussed at that time on the  
 9 record. And at that time, the Board determined to  
 10 accept jurisdiction; however, because of the amount  
 11 of the public that was available, we could not  
 12 continue the hearing in that room, we needed a larger  
 13 facility such as this and we are here this evening to  
 14 continue the proceeding now in a facility that's  
 15 large enough to accommodate the public. So now we're  
 16 proceeding.  
 17 Mr. Giunco is here on behalf of the  
 18 Applicant. I know Mr. Asadi is here on behalf of  
 19 some interested parties.  
 20 There are a number of exhibits that the  
 21 Board has received thus far in connection with the  
 22 application that I'm gonna read into the record at  
 23 this time:  
 24 The first is Exhibit A-1, which is the  
 25 Application for Variance of Denholtz Construction

1 (sic) Homes, LLC with a checklist; that's dated May  
 2 10, 2018.  
 3 Exhibit A-2 is a Stormwater Management  
 4 Report prepared by Kennedy Consulting Engineers, LLC.  
 5 That has a date of May 3, 2018.  
 6 Exhibit A-3 is a GO Technical  
 7 Engineering Report prepared by Craig Testing  
 8 Laboratories, Incorporated. That's dated February 8,  
 9 2018.  
 10 Exhibit A-4 is a Portion Topographical  
 11 Survey Map prepared by Yorkanis & White Surveyors.  
 12 That's dated March 19, 2018.  
 13 Exhibit A-5 is a Boundary and  
 14 Topographical Survey prepared by Yorkanis & White  
 15 Surveyors; that's dated September 26, 2017.  
 16 Exhibit A-6 is a Preliminary and Final  
 17 Subdivision Plan prepared by Kennedy Consulting  
 18 Engineers, Incorporated; that's dated March 26, 2018,  
 19 revised July 10, 2018.  
 20 Exhibit A-7 is an Application for  
 21 Subdivision from Denholtz Construction Homes -- I'm  
 22 sorry -- Denholtz Custom Homes, LLC; that's  
 23 Exhibit A-7.  
 24 Exhibit A-8 is an Affidavit of Ownership  
 25 of McConnell Realty Company Corp.; that's dated

1 myself, dated July 26, 2018.  
 2 Exhibit A-15 is Correspondence from the  
 3 Applicant's attorney, Mr. Giunco, dated July 25,  
 4 2018, with a service packet for the application.  
 5 Exhibit O-2 is a second letter from  
 6 Attorney Asadi; that's dated July 31, 2018.  
 7 Exhibit PB-3 is a Supplemental  
 8 Memorandum from myself to the Board, dated July 31,  
 9 2018.  
 10 Exhibit A-16 is a report from the Board  
 11 engineer, CME Associates; that's dated July 27, 2018.  
 12 Exhibit A-17 is a Zoning Review from the  
 13 Borough Zoning Officer, Michelle Clark; that's dated  
 14 May 23, 2018.  
 15 Exhibit J-1 marked at the last meeting  
 16 is a Color Rendered Boundary and Topographic Survey  
 17 Map prepared by John T. Luts, dated September 28,  
 18 2017, Revised April 12, 2018.  
 19 Exhibit J-2 marked at the last meeting  
 20 is a Deed from the State of New Jersey to Standard  
 21 Oil of New Jersey, dated July 21, 1930, Recorded July  
 22 2, 1973. That's J-2.  
 23 Exhibit A-18 is a letter from the  
 24 Applicant's attorney, Mr. Giunco, regarding RSIS  
 25 requirements, dated August 29, 2018.

1 April 4, 2018.  
 2 Exhibit A-9 is a Waiver Request  
 3 Justification.  
 4 Exhibit A-10 is a Will Serve letter --  
 5 actually, Will Serve letters from Verizon, New Jersey  
 6 Natural Gas, JCP&L, and Comcast.  
 7 Exhibit A-11 is a CME Associates  
 8 Completeness Technical Review No. 1, dated June 13,  
 9 2018.  
 10 Exhibit A-12 is a Boundary and  
 11 Topographical Survey Map prepared Yorkanis & White,  
 12 Incorporated, dated April 12, 2018.  
 13 Exhibit A-13, a letter from Kennedy  
 14 Consulting Engineers, dated July 17, 2018.  
 15 Exhibit PB-1, a Planning Board exhibit  
 16 is a Memorandum from myself to the Planning Board  
 17 regarding the RSIS requirements; that's dated  
 18 July 23, 2018.  
 19 Exhibit O-1 is a letter from Attorney  
 20 Kevin Asadi on behalf of Neighbors for Waterfront  
 21 Preservation; that's dated July 25, 2018.  
 22 Exhibit A-14 is a letter from the  
 23 Applicant's attorney, Mr. Giunco, dated July 27,  
 24 2018.  
 25 Exhibit PB-2 is a Memorandum from

1 Those are the exhibits that I'm aware of  
 2 thus far that the Board has received with the  
 3 application, and Mr. Giunco is here to continue the  
 4 presentation.  
 5 **MR. GIUNCO:** Mr. Chairman, John Giunco  
 6 of Giordano, Halleran & Ciesla, appearing on behalf  
 7 of the Applicant. This is an application to seek  
 8 development of Block 142, lot 5 that consists of 7.09  
 9 acres. My client proposes to subdivide the property  
 10 into 21 building lots with some C variances, and one  
 11 RSIS waiver request.  
 12 I have two witnesses I plan to present  
 13 tonight: James Kennedy, our civil engineer; Andrew  
 14 Janiw, our professional planner.  
 15 **AN AUDIENCE MEMBER:** We can't hear you.  
 16 **AN AUDIENCE MEMBER:** It's a public  
 17 hearing.  
 18 **MR. GIUNCO:** So with your permission,  
 19 Mr. Chairman, I'd ask that they be sworn.  
 20 **CHAIRMAN NEFF:** Yes.  
 21 **MR. GIUNCO:** And I'll call Jim Kennedy,  
 22 please. Jim Kennedy is our civil engineer.  
 23 JAMES A. KENNEDY, PE, PP, doing business at Kennedy  
 24 Consulting Engineers, LLC, 211 Maple Avenue, Red  
 25 Bank, New Jersey 07701, having been sworn by a Notary

Public, testified as follows:

**MR. STEIB:** State your name and address.

**MR. KENNEDY:** James Kennedy, 211 Maple Avenue, Red Bank, New Jersey.

**EXAMINATION BY MR. GIUNCO:**

**Q. Mr. Kennedy, could you -- if you hold that, I'll use this. Thank you.**

**So, Mr. Kennedy, could you advise the Board as to your --**

**AN AUDIENCE MEMBER:** We can't hear you.

**Q. -- professional standing and training?**

**AN AUDIENCE MEMBER:** We can't hear you.

**Q. Mr. Kennedy, could you advise the Board as to your professional standing and education and professional qualifications?**

A. I'm a graduate of Lehigh University with a bachelor's in civil engineering; I have a master's degree from Rutgers University; and I've been licensed for the past two decades as a professional engineer in New Jersey. I've been qualified under the Superior Court of New Jersey as an expert in civil engineering; I've previously testified before this Board.

**Q. Did you, or others under your direction prepare plans and exhibits presented to the Board for**

A. Yes, they were.

**MR. GIUNCO:** Mr. Chairman, I'm gonna ask that they be marked A...

**MR. STEIB:** -19 and -20.

**MR. GIUNCO:** I'd ask that A-19 be the rendered site plan prepared by Kennedy Engineers, prepared July 31, 2018, which is the exhibit to the right. It has "The Aegean" in the lower left-hand side. Jim, could you mark that one as A-19, please.

(A-19, Site Plan prepared by Kennedy Engineers, dated 7/31/18, marked.)

**MR. GIUNCO:** And to the left, A-20, is a preliminary and final subdivision. Actually, no. This is a lot exhibit demonstrating the project site.

(A-20, Aerial Exhibit, Ex-1, marked.)

**MR. GIUNCO:** Would you hand those out to the Board.

**Q. Jim, would you describe to the Board the Applicant's proposal, please.**

A. Sure. Just to reiterate, A-20 on the left is an aerial exhibit. It's marked "Aerial Exhibit Ex-1" on the right.

This is A-19. A-19 is a subdivision rendering based upon the application that was submitted to this Board.

**consideration this evening?**

**MR. STEIB:** Before you go there. Board, any questions with regard to Mr. Kennedy's credentials? Nothing?

Mr. Asadi, any questions?

**MR. ASADI:** I don't think the public can hear the questions.

**AN AUDIENCE MEMBER:** You have to use the mic when everybody speaks.

**MR. STEIB:** I just asked if the Board had any questions as to the credentials as to Mr. Kennedy; they indicated no. I asked Mr. Asadi if he had any objections, and I think he said no.

**MR. ASADI:** Correct.

**MR. STEIB:** And he just said to me "Correct." So why don't you proceed.

**Q. Can you identify the location of the property by lot and block and street address?**

A. Yes. To facilitate that, I'd like to propose two rendered -- a site-plan exhibit as well as an aerial exhibit that I've mounted. I also have 11x17 versions to make it a little easier to store, and for the Board's reference.

**Q. Mr. Kennedy, these were prepared by you, or others under your direction?**

And what I'll do is I'll just start off with A-20, just to walk the Board through the property, although I'm quite sure that many of you are very familiar with it.

A-20 has a dark red line that passes along the perimeter of the site. That red line is indicative of the survey limits of the property. The current property slopes from -- basically, from Bay Avenue, Avenue D corner, down to the northwest -- the northwest direction towards the -- towards Sandy Hook Bay.

Avenue D is the street that runs in -- along the right-hand side of the property in a north -- roughly north, south direction; Harbor View Drive is the first road that you see at the top of the exhibit to the right; Bay Avenue is next; and then Center Avenue runs across the bottom of the exhibit that intersects with Avenue D.

Currently, this was -- well, formerly known as the McConnell Fuel Oil Company property at one time back in the '30s, '40s, '50s. It was used and populated with nine -- up to nine fuel oil tanks, large-scale wholesale fuel oil tanks, three commercial structures over the years. Many of the tanks were taken away both in the '50s, '60s. And

1 then finally, in the '90s, I believe the last tank  
 2 was actually removed from the site. Now it's  
 3 currently Blackfoot Marine storage. It's a  
 4 commercial use. Multi-tenant commercial use. At one  
 5 point, it had professional offices in the structure,  
 6 and the site is generally used for marine storage and  
 7 also for marine repair.

8 The exterior is broken stone, concrete  
 9 pavement, and remnants from the former fuel tank  
 10 days. Along the bay frontage a dilapidated bulkhead  
 11 exists that is generally at knee-high water, but it  
 12 really presents no barrier to water, and water  
 13 routinely flows through it. A rubble slope or a  
 14 broken concrete slope flows from -- or exists along  
 15 that bulkhead and upwind into our property. The  
 16 driveway is currently about midway along the property  
 17 frontage to the east and intersects at Avenue D.

18 The Catamaran Club, as it's known, is  
 19 Borough property. That's located to the west.  
 20 Immediately west of our property -- west of our site.  
 21 The Center Street Park is not adjacent, but also  
 22 close by.

23 To our south, generally south are  
 24 residential neighbors. As well as to our east,  
 25 generally residential neighbors.

1 will run completely through the open space lot and  
 2 along the bay front.

3 **MR. ILLIANO:** Question.

4 **MR. KENNEDY:** Yes, sir.

5 **MR. ILLIANO:** The bulkhead, what is it  
 6 gonna be made of?

7 **MR. KENNEDY:** The bulkhead by CAFRA and  
 8 DEP rules must be constructed of nonpolluting  
 9 materials, so that leaves us with two choices  
 10 depending on what CAFRA requires or permits. One  
 11 would be a vinyl type; ShoreGuard, that's the  
 12 trademark. Other commercial variations such as steel  
 13 or concrete could be used. But at this point, it  
 14 would likely be a nonpolluting material consisting of  
 15 vinyl.

16 **MR. ILLIANO:** Thank you.

17 **MR. KENNEDY:** You're welcome.

18 A. So the proposed subdivision would be 21  
 19 single-family lots. Each of the single-family lots  
 20 would meet the minimum 7,500 square foot lot area  
 21 that's required by ordinance. The ordinance is for  
 22 the R-1 zone. In the R-1 zone, again, the minimum  
 23 lot area is 7,500 square feet. We're not asking for  
 24 any variation for lot area. Each of the lots  
 25 conforms with regard to lot area, lot frontage,

1 Now moving on to what is proposed, I'm  
 2 going to highlight A-19. A-19 is, as I stated  
 3 before, a color rendering of the site prepared under  
 4 my direction which basically shows the outline of  
 5 where we propose single-family homes, as well as the  
 6 open space lot that will be located between the  
 7 single-family homes and the bay, as well as along the  
 8 westerly side between the proposed right-of-way and  
 9 the Catamaran Club.

10 So just to highlight those areas:  
 11 Starting along the westerly portion, the Catamaran  
 12 Club is, obviously, located to the west. The first  
 13 portion of the open space lot is at the upper  
 14 left-hand corner, and the second area of open space  
 15 is located along the bay front. In that area, we  
 16 propose native plantings to restore and vegetate the  
 17 slope that is currently broken concrete stone and,  
 18 basically, sand.

19 In addition, a ten-foot pedestrian  
 20 walkway is proposed along a brand-new bulkhead. The  
 21 bulkhead will be extended throughout the entire bay  
 22 front frontage raised to an elevation of eight, and a  
 23 walkway will be -- a surface walkway will be proposed  
 24 behind that bulkhead, and that would be proposed for  
 25 public access. Public access to the waterfront that

1 depth, width, as well as the building footprints that  
 2 you see conform with regard to side yard setback,  
 3 rear setback, and front setback.

4 We are requesting variances for lot  
 5 shape circle. We have a professional planner that  
 6 will go through the variance relief requested  
 7 consisting of those lot shape circle variances, but  
 8 what I wanted to do from an engineering standpoint is  
 9 point out the lots and describe where the variances  
 10 are.

11 So referring to A-19, we have four lots  
 12 that are located basically along the southerly  
 13 portion of southerly Road A. These four lots vary  
 14 between 38 feet lot shape circle and 45.5 feet lot  
 15 shape circle where a lot shape circle of 50 feet is  
 16 required. For Lots 5.03, 5.02, and 5.12 generally  
 17 located at the northerly portion of Road A, a  
 18 variance is requested for between 31.5 and 42.7 feet  
 19 where, again, a 50-foot lot shape circle is required.

20 Now, your ordinance requires and  
 21 actually lessens the variance relief for a corner  
 22 lot. Corner lots 5.01 and 5.13 are located along  
 23 Avenue D. 5.01 has a lot shape circle of 35.2,  
 24 lot 5.13 has a lot shape circle of 40.1; that is  
 25 where a 45-foot lot shape circle is required. And

1 then finally, lot 5.15 is located where we have a  
2 corner that juts into the property. That lot is 36.7  
3 lot shape circle where, again, a 50-foot lot shape  
4 circle is required.

5 So, in essence, we have -- and that's  
6 it. We have lot shape circle variances where -- and  
7 you'll see that even some of these lot shape circles  
8 exist on some of our larger lots. So what the  
9 ordinance looks for is a 75-foot lot width -- which  
10 is the minimum -- by 100-foot depth. And even when  
11 we provide those measurements, the lot shape circle  
12 cannot be inscribed within the lot as directed by the  
13 ordinance. I'm not gonna go too far into that  
14 because, again, we have a witness that will testify,  
15 basically, solely on those variance requests.

16 So just getting into the engineering,  
17 which, in essence, is why I'm here, we propose a  
18 28-foot RSIS compliant roadway with a 30-mile-an-hour  
19 design speed. "Design speed" is an engineering term  
20 that references a higher speed than what it would be  
21 posted. The posted speed would typically be 20 miles  
22 an hour, but we have to design to a higher speed. So  
23 that changes our radiuses, that changes our sags, our  
24 geometry of the roadway, and we are consistent with  
25 the Residential Site Improvement Standards with

1 The roadway is 1,300 feet long, like I  
2 said, 28 feet width of pavement with four feet  
3 concrete sidewalk on both sides, a 30-mile-an-hour  
4 design speed with a 50-foot right-of-way that  
5 encompasses the roadway improvements, Belgian Block  
6 curbing is proposed for the roadway edging. And that  
7 is, again, consistent with the RSIS that allows both  
8 Belgian Block or concrete curb. The Belgian Block is  
9 a mountable design and is used throughout New Jersey,  
10 throughout Monmouth County in residential  
11 subdivisions.

12 The utilities are a conventional gravity  
13 stormwater system. The topography of the site is  
14 such that the roadways drain to a low point. That  
15 low point is in the northwesterly corner of the  
16 property. There's a drainage system and inlet system  
17 with large diameter concrete piping proposed. That  
18 piping will convey water to a water filtration  
19 system, a stormwater filtration system. That product  
20 removes total suspended solids in accordance with the  
21 DEP requirements before it can be discharged to the bay.  
22 Water quality is -- is enforced by the DEP, and our  
23 design meets the requirements of the total suspended  
24 solid removal that's required by DEP.

25 This is a major development because we

1 regard to all of the geometry -- physical geometry of  
2 the roadway.

3 We are agreeing with CME, your engineer;  
4 and we have agreed to provide sidewalk on both sides  
5 of the street, so that's one waiver that we're no  
6 longer requesting.

7 In addition, there was a design waiver  
8 for street trees. And the only reason why that was  
9 requested was along the northerly portion of the site  
10 where we are revegetating with native materials,  
11 landscape materials, we had thought that the trees  
12 would be -- would not do well against that bay front.  
13 But we've reconsidered it, we've discussed it with  
14 the landscape architect, and we have found trees that  
15 would be suitable for the location, so we're  
16 eliminating that waiver as well. We are providing  
17 shade trees throughout the property in accordance  
18 with your ordinance.

19 Now, the ordinance presumes a  
20 5.8-dwelling-unit per acre density. The overall  
21 density of the -- of the property when you,  
22 basically, take seven acres and divide it into 21  
23 building lots is three dwelling units per acre so  
24 that density is consistent with -- consistent with  
25 your zoning.

1 are disturbing more than one acre of property, we are  
2 proposing more than one quarter acre of new  
3 impervious surfaces; however, because this is within  
4 a -- discharges to a title water body, there are  
5 different standards that we have to follow; we meet  
6 those standards.

7 **MR. ILLIANO:** Question.

8 **MR. KENNEDY:** Yes, sir.

9 **MR. ILLIANO:** The storm system you're  
10 proposing, who's gonna clean it?

11 **MR. KENNEDY:** So the -- your Board  
12 engineer has recommended a Developer's Agreement that  
13 would, basically, pick up for the maintenance of  
14 that, and also what I'm about to describe, which is  
15 the sanitary sewer system and the private lift  
16 station that's proposed. So we do have elements of  
17 this subdivision that -- for not only the Borough  
18 residents but for the residents that will live here  
19 in the future that we want it to be well maintained,  
20 so there are two elements that will be ongoing to be  
21 monitored and maintained in accordance with a future  
22 Developer's Agreement.

23 **MR. ILLIANO:** Okay. And I have one more  
24 question for you. You brought up the vinyl open  
25 space you're proposing here. Is that through an



1 easement, an open space easement, which usually has a  
2 99-year-date, or is that a -- a dedication of the  
3 property to the Borough of Atlantic Highlands? And  
4 my other -- and the reason I'm going there is because  
5 there's different ways that can be done that I know  
6 of, and I just want to know where your client stands  
7 in that regard.

8 **MR. GIUNCO:** I'll answer that. Our  
9 client is willing to dedicate the land to the Borough  
10 if the Borough so chooses. If you prefer an  
11 easement, we can, of course, deliver an easement. So  
12 either mechanism is available, but I would  
13 anticipate -- I'd expect you to request a deed, so we  
14 certainly can deliver that.

15 **CHAIRMAN NEFF:** This is Jim Neff.  
16 Would this be a homeowners' association  
17 or not?

18 **MR. GIUNCO:** That's not been decided  
19 yet. The land, however, is not going to be owned by  
20 anyone other than the Borough through either easement  
21 rights or dedication. Unless the Borough says, We  
22 want to do it differently, we would accommodate the  
23 Borough requirements.

24 **MR. COLANGELO:** The entire project  
25 itself, though, is there any common areas, and things

1 better. But you saying, We're gonna dedicate it, in  
2 other words, throw it on the town to take care of it,  
3 that's a whole new ball of wax.

4 **MR. GIUNCO:** Well, it was offered  
5 because there has been a lot of interest in having  
6 some access to the public along that bay front.

7 **MR. COLANGELO:** There are many ways to  
8 give access to the public.

9 **MR. GIUNCO:** If I could finish, I would  
10 like to be able to address my --  
11 (Applause.)

12 **MR. GIUNCO:** In response to the  
13 comments, it was my client's intention to satisfy  
14 those requirements by making these improvements  
15 and -- I know you don't like the word, so let me  
16 say -- giving them to the Borough.

17 **MR. COLANGELO:** A deed transfer?

18 **MR. GIUNCO:** However, in the event the  
19 Board does not want those improvements, we can  
20 certainly just leave it as open space. The idea was  
21 to try and make it functional by rebuilding a jetty,  
22 or the -- not a jetty, excuse me -- but the bulkhead  
23 and making it functional where you look at it today,  
24 I think you wouldn't be too comfortable being behind  
25 it if a big wave came in. And second, the intention

1 like roads? Is the town gonna be responsible for the  
2 roads? If the -- if the land needed development --  
3 and it might not be a condo, but the lots -- who's  
4 responsible for the roads? And if it was an  
5 easement, who's responsible for the upkeep of the  
6 walkway?

7 **MR. GIUNCO:** All of which we plan to  
8 dedicate to the town.

9 **MR. COLANGELO:** So then it would be --  
10 you want -- "dedicate" is a great word.  
11 (Applause.)

12 **AN AUDIENCE MEMBER:** Let's be honest  
13 here.

14 **MR. GIUNCO:** Well, I'm being honest. I  
15 will be honest, I can assure you. I will always -- I  
16 will not say anything that is not honest.

17 **MR. COLANGELO:** "Dedicate" is a great  
18 word, but if you are -- given what I would assume is  
19 an E zone, a flood zone, and you say, Great. Here  
20 you go. We'll build a walkway for you. I don't know  
21 if you live in this town, but at the same time,  
22 that'll be gone in five years. We spend a lot of  
23 money fixing the trail that's gone, what seems every  
24 two years. So, I mean, great. If the developer  
25 wants to maintain it, that makes it a heck of a lot

1 was to make it look more attractive. However, if the  
2 Borough's intention would be to leave it as is, we  
3 can certainly do that.

4 **CHAIRMAN NEFF:** Please do not clap and  
5 cheer and such when statements are made, please; just  
6 keep going. Because it's hard enough hearing each  
7 other, and the recording and such. So, you know,  
8 please refrain from clapping and yelling out. Thank  
9 you.

10 A. So I left off with a discussion on the  
11 stormwater management system. In addition, a public  
12 water system, a water main, a six-inch  
13 duct-to-wire-pipe water main will be looped through  
14 the site. In addition, a portion of the public Bay  
15 Avenue water infrastructure will be upgraded as well.  
16 The Bay Avenue water main is currently four inches.  
17 When we met with the water company, they requested  
18 that we upgrade that portion of the water main to six  
19 inches; and we've agreed to do so, and our plans  
20 reflect that.

21 Four fire hydrants will be added to the  
22 site located along the looped road. There are two  
23 existing fire hydrants along Avenue D along the  
24 frontage or near the intersections of the  
25 intersecting streets. In addition, electric, gas,

1 and communications all proposed underground. And as  
2 was entered into as Exhibit A-10, Will Serve from the  
3 utility letters were provided to the Board.

4 The sanitary sewer will be an eight-inch  
5 gravity main. It's a conventional sanitary sewer  
6 system design. The eight-inch gravity main will flow  
7 to a lift station at a lower point of our property,  
8 and a two-inch force main to an existing sewer main  
9 will be utilized to lift that sewerage out to the  
10 public and to be treated. The lift station is  
11 buffered with a six-foot fence, vegetation around the  
12 perimeter. And the sound emitted from the station  
13 will meet the state requirements under NJAC 7:29, the  
14 noise standard.

15 The lighting: Conventional lighting.  
16 LED, JCP&L fixtures. The JCP&L fixtures are a  
17 colonial decorative box top. A colonial box-type  
18 fixture. They are provided for safety levels of  
19 illumination at intersections and the curbs of the  
20 roadways.

21 The landscaping that's proposed is  
22 perimeter and buffer landscaping, as well as the  
23 revegetation of the slope between our proposed Road A  
24 and the bay to the north. Approximately 105  
25 deciduous trees, two hundred and -- I'm sorry -- 105

1 compliance and really, in this case, it makes sense.  
2 The intersection offset that I'm talking about is  
3 between Harbor Drive -- Harbor View Drive and the  
4 northerly portion of Road A. RSIS says when you  
5 propose roadways on opposite sides of a street, you  
6 should either meet 90 degrees, or offset the center  
7 lines of the right-of-ways by more than 150 feet.

8 Now, that's for a standard intersection  
9 throughout the state of New Jersey, it doesn't take  
10 into consideration that Avenue D is a dead end.  
11 There are no -- except for one house, there is no  
12 traffic southbound on Avenue D moving in a direction  
13 past Road A. So the whole idea behind this  
14 intersection setback is for something called a  
15 "left-hand lock" where you could have traffic moving  
16 in both directions trying to make left turns into  
17 either side of an intersection. It requires that you  
18 have enough traffic moving southbound in order to  
19 generate that lock.

20 In this case, because we have one  
21 single-family home and a dead end, there is no  
22 possibility of that left-hand lock ever occurring  
23 and, therefore, this makes more sense. This design  
24 makes more sense than trying to -- to move the roads  
25 or, in essence, creating one way into this

1 trees, 278 shrubs, plus perennials and grasses will  
2 be added to revegetate the site.

3 No sign is proposed with this  
4 development after it's developed. I know at one  
5 point our application did propose a sign. There is  
6 no sign now proposed except for whatever temporary  
7 construction signs are utilized during construction.

8 We do have, as I -- I guess I led off  
9 with this, we had a design waiver for shade tree  
10 spacing along the open space lot. We have agreed to  
11 eliminate that design waiver. We had previously  
12 requested a design waiver for having concrete  
13 sidewalk on both sides of the street. We've agreed  
14 to provide sidewalk on both sides of the street,  
15 thereby eliminating that design waiver. And that  
16 leaves us to a de minimis exception from the RSIS for  
17 intersection offset.

18 RSIS is the Residential Site Improvement  
19 Standards. The standards of the state preempt design  
20 standards of the Borough when the Borough has a  
21 standard. In this case, the Borough has no standard  
22 for intersection offset, and the RSIS standards then  
23 are -- are mandatory; however, it states that when  
24 certain circumstances exist, this Board can offer  
25 waiver relief from the strict standard of RSIS

1 development, and one way out. This is a better  
2 alternative. It gives a looped access through the  
3 site both for utilities, water, as well as safe  
4 access and egress, and emergency vehicle access.

5 Now, to the south at the intersection  
6 between Bay Avenue and Road A, the southern portion  
7 of it, we're about 20 feet short of that 150 feet.  
8 What that means is one car -- instead of having six  
9 cars queue for that left-turn lock, we have the  
10 availability of five cars queued. And given the  
11 limited -- well, first of all, there's limited  
12 traffic on Avenue D in this area; but secondly, if  
13 that left-hand lock were ever to occur, vehicles  
14 turning left into Road A could just simply go to the  
15 north entrance.

16 So, again, there's really no impairment  
17 to safety, there's no impairment to the zoning  
18 standards, certainly, and offering this -- requesting  
19 this waiver from intersection offset, given the facts  
20 of this case, given the facts and layout of the  
21 existing conditions of this site and how we've  
22 designed this subdivision.

23 So, unless I've missed something, that's  
24 my direct testimony on the subdivision.

25 **Q. Well, I would like to just ask for you**

1 to address the variances from the engineering  
2 perspective recognizing that our planner will testify  
3 as to the planning basis. With regard to the lot  
4 circle variances, in your opinion, if the Board were  
5 to grant that variance, do you think it would upset  
6 the zoning scheme and plan of the municipality?

7 A. So you asked me if -- if the Board were  
8 to grant the lot shape circle variances whether it  
9 would impair, from an engineering standpoint, the  
10 zoning of the town, and it -- and it won't. And I  
11 can give you the engineering, which is we meet the  
12 lot area. Our -- our lots are generally rectangular,  
13 generally square, generally in conformance with every  
14 other ordinance bulk standard. The lot shape circle  
15 variance is a -- kind of a recent standard that  
16 imposed on developers the requirement to create  
17 regularly shaped lots. Not triangles, not  
18 trapezoids, but regularly shaped lots. And if you  
19 look at our subdivision, we do have regularly shaped  
20 lots.

21 Q. Finally, Jim, with regard to the RSIS  
22 de minimis waiver we're asking this Board to grant,  
23 in your opinion as an engineer, would granting of  
24 that waiver upset the zoning scheme or plan?  
25

A. No, it would not.

1 A BOARD MEMBER: Originally, there was a  
2 variance for the front setback and the rear yard  
3 setback, and plans had been adjusted, so those  
4 variances are no longer needed. How did you  
5 accomplish that? Did you move a house back, or how  
6 did you change the variance?

7 MR. KENNEDY: So there was an existing  
8 nonconforming structure on the site that is  
9 eliminated through our proposed demolition of the  
10 site. I think that's what it might be referring to.

11 The existing commercial structure  
12 currently violates the setback variance -- the  
13 ordinance. It preexisted the ordinance, but it  
14 violates the setback. So if there was a front  
15 setback variance, it's been eliminated through simply  
16 either moving or shrinking the building, but I  
17 believe it's the elimination of an existing  
18 nonconforming condition.

19 MR. GIUNCO: Are we requesting any front  
20 or rear setback variances?

21 MR. KENNEDY: No, we're not.

22 MR. COLANGELO: You gave some  
23 calculations per house, per acre. Was that done  
24 including the deed transfer of the open space before  
25 that, or when did you do those, when it became 3 per

1 Q. And with regard to both of these, the  
2 variance and the RSIS de minimis waiver, if the Board  
3 were to grant those waivers, in your opinion, would  
4 it adversely affect or impact the health and welfare  
5 of the community, and explain why.

6 A. So for the reasons I stated, when we  
7 look at the lot shape circle, there's adequate air,  
8 light, and open space from an engineering standpoint  
9 because the setbacks are there, the lot area is  
10 there, frontage is there, and our design is compliant  
11 with the RSIS for all the geometry internal to the  
12 site. So from an engineering standpoint, there's no  
13 impairment to the health, safety, welfare with regard  
14 to the lot shape circle variance request.

15 With regard to the intersection offset,  
16 I testified that there's insufficient traffic on  
17 southbound Avenue D to create a left-turn lock into  
18 the site or into the adjacent streets to impair  
19 safety. For those reasons, there would be no  
20 impairment to the health, safety, welfare of the  
21 community to grant -- if the Board were to see fit to  
22 grant the intersection waiver.

23 MR. GIUNCO: Thank you.

24 MR. KENNEDY: You're welcome.

25 CHAIRMAN NEFF: Any questions?

1 acre? Was that done before? I'm not sure what the  
2 acreage is, but was that pre- or after?

3 MR. KENNEDY: It's done pre-. So a  
4 seven-acre property supporting 21 lots is roughly  
5 three dwelling units per acre. And, really, there's  
6 no ordinance standard; that's just a comparison.  
7 Your ordinance requires 7,500 square foot lots. Each  
8 of our lots conforms to the minimum lot area.

9 MR. GIUNCO: So from an engineering  
10 perspective, the ordinance doesn't set a density per  
11 acre, does it?

12 MR. KENNEDY: That's correct.

13 MR. COLANGELO: If you did follow the  
14 lot shape circle calculation, how many lots could you  
15 get on the property?

16 MR. KENNEDY: If we eliminated the lot  
17 shape circle variance, we would eliminate the  
18 dedication and utilize that area for lot area. This  
19 was seen as a better alternative, that we could  
20 provide about an acre and a half of property to -- to  
21 the public. However, to answer your question  
22 straight out: Seventeen lots, no public open space.

23 MR. COLANGELO: Thank you.

24 CHAIRMAN NEFF: Any other questions from  
25 the Board of this witness?

1 Mr. Rohmeyer, do you have any questions?  
 2 **MR. ROHMEYER:** Yes, I have a couple of  
 3 housekeeping items in the report.  
 4 **MR. GIUNCO:** Well, maybe we can address  
 5 that.  
 6 **BY MR. GIUNCO:**  
 7 **Q. Jim, with regard to the engineering**  
 8 **review, are there any issues that you want to discuss**  
 9 **with CME, or can you meet the requirements --**  
 10 **Mr. Rohmeyer is right here -- with any of the issues**  
 11 **that he raised?**  
 12 A. When we reviewed the second review  
 13 letter from CME, we eliminated many of the design  
 14 waivers that were of concern. I've tried to address  
 15 many of his questions during my direct testimony; but  
 16 to the extent that I haven't, we agree to work with  
 17 your office and comply with the letter as written.  
 18 **MR. ROHMEYER:** Thank you. With regard  
 19 to the base flood elevations on the property, can you  
 20 give a little insight as to where the zone boundaries  
 21 are with regard to the proposed boundaries, in  
 22 particular, the preliminary base flood elevations?  
 23 Will there be housing in any V zones, and how will  
 24 you comply with the Borough's Flood Damage Prevention  
 25 Ordinance?

1 **MS. MURRAY:** And to get it above that  
 2 elevation, is there a special -- do you have to raise  
 3 the grade there, or...  
 4 **MR. KENNEDY:** Yes. So a portion of the  
 5 property is being regraded.  
 6 **MS. MURRAY:** Right.  
 7 **MR. KENNEDY:** Along -- along the  
 8 westerly boundary of the property, the roadway, the  
 9 portion of open space lot, the pump station will all  
 10 be about five feet above existing grade. So a  
 11 retaining wall is proposed to drop us back down to  
 12 existing grade, and the remainder of the property is  
 13 sloped to meet up with adjoining grade.  
 14 **MS. MURRAY:** So even if you raise the  
 15 grade five feet, you're still gonna have a problem  
 16 with that area in the flood zone --  
 17 **MR. KENNEDY:** Well --  
 18 **MS. MURRAY:** -- for those two houses?  
 19 **MR. KENNEDY:** Well, yes and no. So the  
 20 "yes" part is that as soon as FEMA creates the flood  
 21 zone and delineates it on a plan, we have to deal  
 22 with it from a regulatory standpoint. Even if we  
 23 increased the elevation of the lot, we're not  
 24 removing that lot from the zone unless we get  
 25 something called a "Letter of Map Amendment." A

1 **MR. KENNEDY:** So there is an AE zone,  
 2 AE-13 zone that does clip the property. That --  
 3 although, it's an architectural building code issue,  
 4 that requires certain techniques for structure. It's  
 5 not a V zone, it's an AE zone with an elevation  
 6 associated with it. The AE zone is, like I said, not  
 7 a V zone; however, under the Uniform Construction  
 8 Code, it requires that the building be constructed to  
 9 V zone standards. So the lots that are impacted by  
 10 that, which I believe are -- are two, would, at such  
 11 time as building permit or plot plan -- would need to  
 12 comply with the Uniform Construction Code, which  
 13 requires V zone standard construction.  
 14 **MRS. MURRAY:** What two lots are they?  
 15 **MR. KENNEDY:** It's lot 5.06, which is  
 16 here, and the one section -- one portion of 5.07,  
 17 which is this lot here. I'm sorry, "this lot here"  
 18 doesn't make sense for the record. It's the  
 19 furthestmost west lot around the bend of the looped  
 20 road.  
 21 **MS. MURRAY:** And the pump station would  
 22 be involved in that area. You're building a pump  
 23 station there; correct?  
 24 **MR. KENNEDY:** Now the pump station would  
 25 be elevated above that AE zone elevation.

1 LOMA. So that would be something that was done at  
 2 the time of plot plan that on a lot-by-lot basis, the  
 3 two lots can actually be found by FEMA to not be in a  
 4 flood zone. But because it's demarcated as a flood  
 5 zone, an AE zone, you only have two choices: Comply  
 6 with the underlying AE zone construction, which is V  
 7 zone construction, or fill the lot and get a Letter  
 8 of Map Amendment from FEMA.  
 9 **MR. COLANGELO:** How does that work in  
 10 reverse? So, in other words, if you're grading along  
 11 what's called the "northerly end," that lot is --  
 12 obviously, you've been there. The topography is all  
 13 over the place.  
 14 **AN AUDIENCE MEMBER:** Use the mic.  
 15 **MR. COLANGELO:** How does that work in  
 16 reverse? So if you're grading the portion of that  
 17 property, say, to make it level, right now, if a  
 18 portion of it is in an AE zone, I've gotta assume  
 19 other parts of it -- it says so in the geographic  
 20 report -- are in the X zone. As you regrade, will  
 21 you be lowering any of that? Because if you have to  
 22 follow the AE zone where you're grading and leveling,  
 23 right now for construction, you have to follow X zone  
 24 requirements, which aren't anything. But if you  
 25 level that out, the flood maps right now say it's in

1 an X zone, and you're changing the actual level of  
2 the ground. So does it work in reverse as well?

3 **MR. KENNEDY:** Well, it would from your  
4 construction official's standpoint because something  
5 called an "Elevation Certificate" would be required  
6 at the time of construction. What I can assure you  
7 is that that -- this lot requires fill, and we are  
8 taking down -- as you know, there's a hump in the  
9 middle of the site. We are moving dirt around, but  
10 we're not imposing a lower elevation on this site  
11 that would trigger that AE zone.

12 **MR. COLANGELO:** So you're leaving all  
13 current elevations the same.

14 **MR. KENNEDY:** Well, no, because there's  
15 that hill. There's a higher point of the site that  
16 is at elevation, say, 22 --

17 **MR. COLANGELO:** On the south end.

18 **MR. KENNEDY:** -- or 26. So as we start  
19 to -- to modify the road there -- oh, it's not being  
20 modified by 13 feet, you know, it's being modified.  
21 So I can't honestly testify that we're not lowering  
22 grades in that area, because we are. But we're not  
23 imposing an elevation 13 where it doesn't exist  
24 today.

25 **CHAIRMAN NEFF:** So there'll be a

1 the site.

2 **MRS. MURRAY:** For how long?

3 **MR. KENNEDY:** I don't know. That's a  
4 legal question, not -- not for me.

5 **MR. ILLIANO:** Now, this wall that's  
6 gonna -- sorry. This wall that's gonna be concrete  
7 for AE, how does that work with this vinyl bulkhead  
8 you're putting in because that's gonna fall under the  
9 same plan; and vinyl and the bay, I can tell you,  
10 that's not gonna stand up very long.

11 **MR. KENNEDY:** Well, two different --  
12 really, two different constructions here. So --

13 **MR. ILLIANO:** Correct.

14 **MR. KENNEDY:** You probably know.  
15 So bulkhead construction is a completely  
16 different --

17 **MR. ILLIANO:** Animal.

18 **MR. KENNEDY:** -- design than a retaining  
19 wall. So this whole thing could really be done as a  
20 retaining wall -- I'm sorry -- as a bulkhead. But  
21 when you're subject to wave run-up like a bulkhead  
22 would be, it's a different type of construction with  
23 deadmen, with walers, with, as you know,  
24 projectiles -- I'm not telling this Board and this  
25 town anything they don't know, but floatables project

1 five-foot retaining wall against -- by the pump house  
2 in that area?

3 **MR. KENNEDY:** Yes, that's correct.

4 **CHAIRMAN NEFF:** How long will that be  
5 and what's that constructed of and what are the  
6 details?

7 **MR. KENNEDY:** So that is within an AE  
8 zone; so a structural engineer does have to design  
9 the wall. It's likely that that design will be of  
10 concrete or filled concrete block. I don't believe a  
11 segmented retaining wall, you know, a Keystone or  
12 something like that would be compliant with the AE  
13 zone construction, so a structural engineer will have  
14 to certify to the foundation, will have to certify to  
15 the structural strength of that wall.

16 **MRS. MURRAY:** Who maintains that wall?  
17 Who maintains the pump station?

18 **MR. KENNEDY:** Well, the pump station, as  
19 well as the stormwater filter is going to be subject  
20 to a Developer's Agreement. And through that  
21 Developer's Agreement, the overall maintenance --  
22 now, if the sewerage authority decides to take the  
23 pump station over, that's out of our hands. But  
24 right now as it's proposed, the Developer's Agreement  
25 would handle the maintenance of those two features of

1 through the bulkhead boards; and that's why the  
2 ShoreGuard feature has seven different types of  
3 thickness in order to prevent that breakage and that  
4 projectile breakage when a loose piling gets through  
5 and -- and pierces the bulkhead sheath. That can  
6 happen with wood, that can happen with -- you may  
7 have seen it in Union Beach in 1992. Their steel and  
8 concrete bulkhead had failures. That's why this has  
9 to be designed by structural engineers, and that's  
10 what we're committed to doing.

11 **MR. ILLIANO:** And the section where  
12 you're doing the concrete or whatever, retaining  
13 wall, that's about 400 feet; correct? Four to five  
14 hundred feet?

15 **MR. KENNEDY:** I'm gonna just check that  
16 because that seems like more than --

17 **MR. ILLIANO:** Well, the reason I'm  
18 asking you that is because I've done a little work on  
19 this through Google, so... I know you're doing about  
20 700 feet of bulkhead in vinyl, and then you're, it  
21 looks like -- I'm not sure if you've got another wall  
22 here where this little radius is and then you're  
23 gonna come around, and I know the old bulkhead wall  
24 was probably about four or 500 feet long up the side.

25 **MR. GIUNCO:** If it helps, the bay front

1 dimension of this lot is 640 feet.  
 2 **MR. ILLIANO:** So you're close.  
 3 **MR. KENNEDY:** So the -- the bulkhead is  
 4 650 square feet along the frontage, and the retaining  
 5 wall is just about 200 feet. So if you look at the  
 6 dimension of that, the southwest segment, that's  
 7 about 270 feet. And if you just superimpose that  
 8 dark black line, you'll see that it's less than that  
 9 dimension. It's about 200 feet. Just a scale  
 10 dimension.  
 11 **MR. ILLIANO:** And when you said "650  
 12 square feet," you meant linear feet?  
 13 **MR. KENNEDY:** I apologize. If I said  
 14 "square feet," it's linear feet.  
 15 **CHAIRMAN NEFF:** So can you show exactly  
 16 where the retaining wall is going on the side there;  
 17 the concrete?  
 18 **MR. KENNEDY:** Yes. Referring to A-19,  
 19 in the upper left-hand corner up against the open  
 20 space area, there's a dark line that follows in a  
 21 diagonal east to west.  
 22 **MR. ILLIANO:** What about that radius  
 23 where it goes into the bulkhead?  
 24 **MR. KENNEDY:** That's where I'm pointing  
 25 to.

1 slope. But that's really not the public access that  
 2 we see. We see the public access between the --  
 3 adjacent to our own property.  
 4 **MR. ILLIANO:** That used to be the old  
 5 access road to Standard Oil and McConnell.  
 6 **MR. ROHMEYER:** Can you give a little  
 7 detail about the connection from Avenue D to the  
 8 proposed public walk?  
 9 **AN AUDIENCE MEMBER:** Can't hear you.  
 10 **MR. GIUNCO:** Let me repeat it. Can you  
 11 give a little direction about the public walk and --  
 12 **MR. ROHMEYER:** Thank you. Can you  
 13 provide some detail as to the means of connection  
 14 between Avenue D and the proposed public walkway,  
 15 will it be fully accessible; and how about the  
 16 connection on the western side as well?  
 17 **MR. KENNEDY:** So on the eastern side at  
 18 Avenue D, we're not proposing a connection there. We  
 19 had received some feedback from neighbors that they  
 20 didn't want cars parking at the end of Avenue D and  
 21 utilizing that area; however, we're happy to do it,  
 22 if that's what the Borough wants. But we did receive  
 23 feedback from neighbors who said they didn't want to  
 24 attract the public to the end of Avenue D, and that's  
 25 why we didn't propose the access in that area. On

1 **MRS. MURRAY:** That's just gonna be open?  
 2 **MR. KENNEDY:** Yes, because we actually  
 3 are grading to existing grade in that area. We  
 4 provided a grading plan, and through the natural  
 5 vegetation and the stabilization that we propose in  
 6 that area, we're grading back down naturally to  
 7 existing grade.  
 8 **MRS. MURRAY:** With drainage?  
 9 **MR. KENNEDY:** The what?  
 10 **MRS. MURRAY:** For access to the beach  
 11 with drainage?  
 12 **MR. KENNEDY:** For access -- really, for  
 13 access between the property. We're not walling it  
 14 off. Not really for drainage purposes.  
 15 **MRS. MURRAY:** Okay. Just asking.  
 16 **CHAIRMAN NEFF:** So it will be a gentle  
 17 slope going down from the green area there down to  
 18 where the club is and the open space there will be a  
 19 gradual walkway down to that open space?  
 20 **MR. KENNEDY:** Well, the gentle or  
 21 accessible portion is, really, from the Catamaran  
 22 Club property across -- in an easterly direction  
 23 across that area to the -- to the walkway. The  
 24 slope, really, exists up by the road along the  
 25 retaining wall coming down. That's the -- that's the

1 the other side, it is -- it would -- just as it is  
 2 today, it's a sandy area, and -- and we're providing  
 3 that same accessible area to our walkway.  
 4 For barrier-free accessibly, the closest  
 5 barrier-free parking stall is at -- at the park, at  
 6 the Center Street Park. So there's no compliant  
 7 route now. And the walkway, if the Borough wants us  
 8 to provide a compliant walk to somewhere, then it  
 9 would require modification of what the Catamaran Club  
 10 has because that would be the proximate location for  
 11 vehicular parking.  
 12 So as of right now, we don't provide a  
 13 barrier-free route to the walkway; we provide a  
 14 pedestrian route similar to a nature trail, similar  
 15 to the Henry Hudson trail, similar to the County Park  
 16 System trails. Not all the County Park System trails  
 17 are accessible, and that's what we propose in this  
 18 case.  
 19 **MR. ROHMEYER:** And what's the proposed  
 20 material for the public walkway?  
 21 **MR. KENNEDY:** We were actually looking  
 22 to this Board for some feedback on that. There's  
 23 been -- we've talked about TREX, we've talked  
 24 about -- we've talked about other materials. But  
 25 it's really up to the Borough or this Board to give

1 us feedback as to whether you want the walkway, and  
2 if you want the walkway, what you want us to  
3 construct it of. I mean, that's -- that's what it  
4 comes down to.

5 **MR. COLANGELO:** I'm a little  
6 uncomfortable with the several comments about what  
7 the Board or what the Borough wants. I don't see  
8 that as our job, really, to judge what you're  
9 presenting. Very often, we'll ask for different  
10 adjustments of what you're presenting; but several  
11 times you said, "What the Borough wants.

12 In fact, in talking about the deed  
13 transfer of the open space -- and we're in between  
14 right now -- Well, if we do this, we do that. We  
15 really don't have what you are asking us to look at,  
16 at this point in time.

17 **MR. KENNEDY:** So in that case, if it  
18 were left up to me, it would be nonpolluting vinyls,  
19 recycled material similar to a TREX. That's a  
20 brand-name. I'm not saying, you know, yes or no to a  
21 TREX, but something similar to a TREX. Recycled  
22 material that was constructed, again, to be inundated  
23 and constructed to V zone standards. That would be a  
24 typical boardwalk. It would be either frangible or  
25 structurally sound to withstand wave run-up.

1 we request for 5.12 is 40.1 feet, where lot 5.13 is  
2 41.9 feet.

3 **CHAIRMAN NEFF:** Okay. So it's correct,  
4 on the lot by the chart below, this is incorrect?

5 **MR. KENNEDY:** That's correct.

6 **CHAIRMAN NEFF:** Thank you.

7 Any other questions for this witness,  
8 Mr. Kennedy, from the Board?

9 **MR. GIUNCO:** Mr. Chairman, thank you. I  
10 would like to call Andrew Janiw, our professional  
11 planner.

12 **CHAIRMAN NEFF:** Okay.

13 **MR. GIUNCO:** I'd ask that he be sworn.

14 ANDREW W. JANIW, P.P., AICP, doing business at Beacon  
15 Planning and Consulting Services, LLC, 315 State  
16 Highway 34, Colts Neck, New Jersey 07722, having been  
17 duly sworn by a Notary Public, testified as follows:

18 **MR. STEIB:** State your name and address.

19 **MR. JANIW:** Certainly. It's Andrew  
20 Janiw, J-a-n-i-w. 315 Highway 34, Colts Neck,  
21 New Jersey.

22 **MR. GIUNCO:** Mr. Chairman, I'm gonna  
23 offer Mr. Janiw as a licensed professional planner.  
24 He's an expert in the field, and I would ask if you  
25 would hear his credentials and consider it.

1 **MR. GIUNCO:** And to clarify with regard  
2 to the open space, it was our intention to grant a  
3 deed to the Borough so the Borough would become the  
4 owner of the property. When you raised the question,  
5 I wanted to simply indicate we could do the same  
6 thing, achieve the same result through another  
7 technique, if you or others were to direct us.

8 So for purposes of evaluating the  
9 application, please consider the permanent material  
10 of TREX, which -- or similar because we know that's  
11 the longest-lived product that can go in that area.  
12 And, second, that we would dedicate the deed. But,  
13 again, we're certainly receptive to Borough  
14 instruction.

15 **CHAIRMAN NEFF:** This is just a very  
16 minor thing, but on your schedule here for the  
17 subdivision layout, page 3 of 11, you have the  
18 listing for the lots and the diameters and a couple  
19 of them are switched. I think 5.12 and 5.13, the  
20 diameter levels -- the diameter amounts don't match  
21 the chart on the bottom for those two. Maybe it's  
22 just a typo. Those two are switched.

23 **MR. KENNEDY:** You're absolutely right.  
24 5.13 and 5.12 were typographically switched. So just  
25 so the record is clear, the lot shape circle variance

1 **CHAIRMAN NEFF:** Yes, please.

2 **MR. GIUNCO:** Thank you.

3 **EXAMINATION BY MR. GIUNCO:**

4 **Q. Andrew, would you advise the Board of  
5 your credentials.**

6 A. Certainly. As Mr. Giunco had stated, I  
7 am a licensed professional planner in the state of  
8 New Jersey, as well as a member of the American  
9 Institute of Certified Planners. I'm a principal in  
10 the firm of Beacon Planning and Consulting Services  
11 and have been since 1997. I'm currently serving as  
12 the municipal planner for the Borough of Carteret and  
13 Middlesex County, redevelopment advisor for the South  
14 Amboy Redevelopment Authority, of the City of  
15 Wildwood, as well as the City of Bloomfield. I have  
16 represented municipal and state clients throughout my  
17 career. Most recently through last year, I was the  
18 planner also for Neptune City here in Monmouth  
19 County.

20 My practice is both public and private  
21 in nature. I have been qualified by the Superior  
22 Court of the State of New Jersey as an expert in land  
23 use planning. I currently lecture at Monmouth  
24 University on topics related to land use planning.  
25 I've also lectured at the League of Municipalities,

1 the New Jersey Development Authority on development  
2 aspects, planning, and redevelopment.

3 I have a degree in civil engineering  
4 from New Jersey Institute of Technology, both a  
5 bachelor's and a master's degree. And I'm open to  
6 any other questions that you may have regarding my  
7 qualifications.

8 **CHAIRMAN NEFF:** Thank you. Any  
9 questions from the Board on the qualifications?

10 We accept.

11 **MR. JANIW:** Thank you.

12 **Q. Andy, I asked you on behalf of our**  
13 **client to review the application, and particularly to**  
14 **address from a planning perspective the request for**  
15 **variances and waivers and conduct the necessary**  
16 **studies to evaluate the impacts in the community.**  
17 **Were you able to do that?**

18 A. Yes, I was.

19 **Q. And did you, in fact, prepare a report?**

20 A. I prepared a summary of my report,  
21 essentially, in an outline form. In preparation for  
22 this evening, I visited the property, I reviewed the  
23 ordinances, your Master Plan, as well as the RSIS  
24 standards, the State Plan, and the application, as  
25 well as your professional reports that were issued in

1 second side of that photo board are, again, of four  
2 other properties in close proximity. The purpose of  
3 the photographs of the properties are to identify the  
4 nature of the development patterns in the area, the  
5 type of homes that are constructed, basically, the  
6 eclectic nature of the architecture and the types of  
7 homes that are within this area.

8 So, again, it's a two-sided photo board,  
9 eight photographs total. Two of the existing  
10 property, six of the neighboring property.

11 (A-22, Two-sided photo board, marked.)

12 A. And finally, there is a board here, the  
13 upper left-hand corner is an aerial view of the R-2  
14 zoning district -- I'm sorry -- the R-1 zoning  
15 district, which is in the northwest portion of the  
16 community where this property is located. To the  
17 right of that is a copy of your zone map. For the  
18 record, I'm pointing to the R-1 zoning district in  
19 the northwest portion of the property.

20 Below that is a -- essentially a  
21 rendering of the lot layout that is proposed for this  
22 application.

23 And then finally, there are five pages  
24 of your tax maps. Those are Sheets 26, 27, 28, 29,  
25 and 30 in clockwise rotation. Those tax maps are

1 response to this application.

2 In doing so, again, I mentioned that I  
3 had visited the site, and I have prepared several  
4 exhibits. I don't know if you'd like to mark those  
5 all now.

6 **Q. Well, first, were those exhibits**  
7 **prepared by you, or others at your direction for**  
8 **presentation to this Board in support of your report?**

9 A. They were.

10 **Q. Okay. Would you identify them?**

11 A. There's three.

12 **MR. STEIB:** We're starting at A-21. Why  
13 don't you identify it, and then mark it.

14 A. A-21 is an aerial view of the site,  
15 essentially, in it's existing condition. It's  
16 entitled "17 Avenue D." It is a Microsoft aerial  
17 photograph and it's undated, although it's  
18 copyrighted 2018.

19 (A-21, Aerial view of the site entitled  
20 17 Avenue D, marked.)

21 A. The second exhibit is a two-sided photo  
22 board. The first side of this photo board has two  
23 photographs of the property in its existing  
24 condition. The other two photographs on the first  
25 side are of two properties in close proximity. The

1 denoted with some lots marked with blue dots and some  
2 with yellow. The yellow dots represent the six  
3 properties that were identified on the photo board  
4 that I just previously marked. The blue dots are the  
5 lots within the R-1 zoning district, which also do  
6 not meet the circle criteria. And I'll go into that  
7 a little bit more through my testimony.

8 (A-23, Aerial view board and tax maps,  
9 marked.)

10 **MR. ILLIANO:** When you start talking  
11 about that, are you gonna give the Board anything we  
12 can see from here?

13 **MR. JANIW:** Yeah, my apologies. I don't  
14 have anything reduced. I'd be happy to pass that  
15 down for the Board to take a look at it. I don't  
16 know if you want to do it once I start talking about  
17 that. It's a little ways into my testimony.

18 **MR. GIUNCO:** Yeah, it should blend in.

19 A. So, in prefacing my testimony, the  
20 property is located at 17 Avenue D at the  
21 intersection of Harbor View Drive and Bay Avenue.  
22 This is identified on your tax records as Block 142,  
23 lot 5, and it is in the R-1 residential zone.

24 The R-1 residential district permits as  
25 a right, single-family dwellings, community



1 residences for up to six residents, municipal  
 2 recreational facilities, and public utilities. The  
 3 Applicant is proposing to subdivide this parcel into  
 4 21 single-family lots and one open space lot, which  
 5 will also kind of traverse the waterfront of this  
 6 property and have a pump station located within  
 7 that -- a portion of that lot. The proposed use is a  
 8 permitted use within the zone.

9 We are not seeking any D variance  
 10 relief. This Board is not the appropriate venue for  
 11 such relief. We are here for a bulk variance. And  
 12 the sole bulk variance -- the nature of sole bulk  
 13 variance that applies to 11 of the lots is what you  
 14 identify in your bulk standards as the "lot circle  
 15 shape."

16 The subject property is located in the  
 17 northwestern portion of the property. The lot is  
 18 currently, as Mr. Kennedy indicated, utilized for  
 19 marine storage and repair, which is a non-permitted  
 20 use within this district. The zone contains in  
 21 excess of 308,000 square feet, which is significantly  
 22 over-sized to your minimum lot size in this area at  
 23 7,500 square feet. The parcel does have frontage  
 24 along Sandy Hook Bay along its northern perimeter and  
 25 is encumbered with coastal bluff along this area.

1 expressly disfavored, precarious, and subject to  
 2 review at various times. In dealing with  
 3 nonconforming uses and structures, the legislature of  
 4 municipal boards must continually balance the  
 5 important goals of bringing such uses and structures  
 6 into conformity with the equally compelling interest  
 7 in protecting property rights from being unfairly  
 8 restricted."

9 That's the nexus of this application.  
 10 We have here what is a nonconforming use, and we are  
 11 seeking to bring that into a conforming use with your  
 12 Zone Plan. Your Master Plan calls this out for  
 13 single-family homes, your bulk standards are related  
 14 to 7,500 square foot lots. We meet, with the  
 15 exception of the lot circle, every one of the bulk  
 16 standards related to minimum lot size, lot frontage,  
 17 setbacks -- front, rear, side setbacks -- coverage.  
 18 This is totally compliant with your bulk standards  
 19 with the exception of that circle, which is 50 foot  
 20 for an interior lot, 45 foot for a corner lot.

21 The circle is an interesting concept  
 22 that not -- that's not embraced by every community.  
 23 In fact, it's more rare to see than not. But the  
 24 intent of the circle inclusion in your bulk standards  
 25 is to ensure that lots are configured in a fairly

1 It's irregular in shape with its southern perimeter  
 2 containing a rectangular projection.

3 The redevelopment of this lot is  
 4 intended to bring it into conformity with your Zone  
 5 Plan, and that's an important concept which I'd like  
 6 to kind of preface my testimony with. I'm gonna read  
 7 a segment from the treatise prepared by William Cox.  
 8 William Cox prepared a treatise on the New Jersey  
 9 zoning and land use administration and the MLUL. I'm  
 10 reading from the 2018 Edition, and this specifically  
 11 deals with nonconforming uses.

12 Section 271.1 of the Cox treatise -- and  
 13 looking at page 578 -- reads, in short: "The  
 14 Municipal Land Use Law permits qualifying preexisting  
 15 nonconforming uses and structures to co-exist with  
 16 that ordinance, which on its face, prohibits them."  
 17 That is how the property is currently being used. It  
 18 is being used as a marine facility, a marine repair  
 19 facility; and it's been used for office use. It has  
 20 been used by Standard Oil for oil storage over the  
 21 years. It has a commercial and industrial history.  
 22 Those uses were grandfathered and are permitted to  
 23 remain grandfathered.

24 However, Cox goes on to say: "The  
 25 existence of nonconforming uses and structures is

1 regular shape; it's to prevent irregular shaped lots  
 2 with lots of zig-zags or sawtooth patterns. The  
 3 point of that circle is to provide a building  
 4 envelope that is fairly regular and can accommodate a  
 5 standard featured home, meaning something that's not  
 6 oddly shaped, something that's traditional, something  
 7 that's consistent with the character of the  
 8 neighborhood. That's basically the intent of the  
 9 circle from a -- from a zoning perspective.

10 And I'll offer to you -- going back to  
 11 my exhibit here -- the six homes that I have on here,  
 12 the lower left-hand is 110 Center Avenue, the lower  
 13 right-hand is 129 Center Avenue. On the back, we  
 14 have 27 Harbor View, we have 5 Avenue C, 101 Bay  
 15 Avenue, and 106 Center Avenue. 106 Center Avenue is,  
 16 in fact, a duplex. And your Master Plan speaks to  
 17 the point that this area of the zone does have some  
 18 multi-families, two-family homes, and it does seek  
 19 and encourage the return of those homes into single  
 20 families. But it acknowledges that your Zone Plan,  
 21 and particularly this area, does have multi-families.  
 22 This is an example of one of those.

23 The interesting thing is you'll see this  
 24 fairly eclectic array of architecture here. It  
 25 varies from a very traditional shore-type style to a

1 very modest Cape Cod, or a ranch-type style. But the  
2 interesting thing is of those six homes, five do not  
3 comply with your circle bulk standard and they are  
4 within the character of the neighborhood.

5 **MR. ILLIANO:** But they're existing  
6 nonconformities.

7 **MR. JANIW:** They're existing  
8 nonconformities, but that's important because your  
9 Master Plan specifically speaks to the preservation  
10 of the character of the neighborhood and  
11 acknowledgement of the neighborhood -- of the  
12 character of the neighborhood and acknowledgement of  
13 not only the density, but the style of construction  
14 and development and not trying to do something that's  
15 significantly different than what's in the  
16 neighborhood.

17 So when we -- when we study the  
18 character of the neighborhood, we have to look at  
19 what's there. Again, it's an existing nonconformity.  
20 If this neighborhood were suddenly zoned for  
21 half-acre lots, nothing would be compliant. That  
22 doesn't mean our introduction of half-acre lots would  
23 be appropriate for the neighborhood. It would be  
24 the -- we would be the anomaly as opposed to the  
25 existing. So it's important to recognize what is

1 character of the community. It talks about being  
2 consistent with the density of the community.

3 Now, if you look at the tax map that  
4 I'll pass around to you, the lots within this section  
5 of the Township vary, typically, between 50 feet in  
6 frontage and 100 feet in frontage; although you do  
7 have handfuls of lots that are greater than 100 feet,  
8 and you have handfuls of lots that are less than 50  
9 feet. In fact, there are some lots within this area  
10 that are 25 feet in frontage. And I'm not saying  
11 that's something that we're seeking to mimic, but  
12 it's the study of what's there.

13 We are proposing lots that will have and  
14 meet the 75-foot frontage requirements within your  
15 zone. That's what's requested, and that's something  
16 we are going to do. But when we look at density and  
17 we look at the population of homes around us, we are,  
18 by all means, consistent with the pattern. We're not  
19 something that would be deemed to be detrimental  
20 because they deviate so greatly from the size or  
21 shape of the lot to the immediate neighborhood.

22 It also talks about the constraints of  
23 the property and existing infrastructure. So this  
24 portion of the Township is within state planning area  
25 one, which is a smart growth area and, in fact, has a

1 around us; and, in fact, that's encouraged as a  
2 concept within your Master Plan.

3 A. So I talked about the variances that are  
4 being requested. Of the 21 lots, 10 of the lots  
5 don't meet the minimum shape diameter. Again,  
6 that's -- 50 feet is required. For the interior  
7 lots, 45 feet. And I believe Jim read into the  
8 record the deviations, so I won't repeat that. I  
9 will, at this point, though, introduce the concept of  
10 the Master Plan and what it seeks to do.

11 Your Master Plan was last done in 2006,  
12 and updated in 2007. And what's significant in that  
13 is we have to look to the principals, objectives,  
14 assumptions, and policy recommendations within that  
15 Master Plan. Those objectives and assumptions that  
16 continued as a -- as a precept through the Master  
17 Plan includes: "Maintain the present intensity of  
18 land use, density population, and existing lot sizes  
19 and configuration in view of environmental and other  
20 constraints, and in line with the capacity of  
21 existing infrastructure. The need to maintain  
22 satisfactory levels of municipal services and the  
23 goal of presenting the community's traditional  
24 character and economic viability is encouraged."

25 So, again, that speaks to the nature and

1 center designation. The State Plan specifically  
2 discusses that anything in the center and is  
3 designated with a planning area one is where growth  
4 is intended to go because there is available  
5 infrastructure. And, in fact, there is an available  
6 network of roads here, there is available water and  
7 sewer; it's sufficient conveyance capacity and  
8 treatment capacity to service this property.

9 So from a State Plan perspective, we are  
10 consistent with what is envisioned here; from your  
11 Zone Plan perspective, we are consistent with the  
12 density, the configuration of the lots, and the type  
13 of homes that are being introduced here. And it also  
14 talks about the economic -- presenting a way to  
15 preserve the economic viability of the community  
16 through the presentation of a land use that is  
17 consistent with the density of the population and  
18 existing lot size configuration; and, in fact, we  
19 believe we accomplish that as well.

20 Another goal within the Master Plan is  
21 to maintain and preserve the existing single-family  
22 neighborhoods. And, again, part of the reason we did  
23 that study in terms to identify how the lots  
24 generally complied with respect to what we're  
25 encouraging is to discuss and address the maintenance

1 and preservation of the existing family --  
2 single-family neighborhoods in the immediate vicinity  
3 here; and I believe we are actually on point. In  
4 fact, I mentioned most of the lots here are 50 to 100  
5 feet at 75 as a minimum. We are absolutely  
6 consistent with the character of the homes around us.

7 And, finally: "To encourage restoration  
8 as well as redevelopment of substandard sites,  
9 buildings and streetscapes would contribute to the  
10 improvement and enhancement of the community."

11 Again, looking at what we have there,  
12 it's a marine storage facility, a marine repair  
13 facility; that property has operated as a commercial  
14 or industrial property for many, many years. And, in  
15 fact, your Zone Plan prohibits that today. That  
16 point in your Master Plan speaks specifically to  
17 returning the property, as the Cox treatise  
18 indicates, into closer conformity with what your Zone  
19 Plan encourages. So, we are, in fact, doing that.

20 Again, from a -- from a bulk  
21 perspective, we meet all the lot area requirements,  
22 lot frontage requirements, setback requirements. The  
23 neighbors would enjoy the light, air, and open space  
24 that was subscribed within your Zone Plan; we're  
25 consistent with that. The single deviation that

1 will, because it is an ongoing commercial enterprise  
2 to something very consistent with your ordinances and  
3 your Master Plan recommendations but for the  
4 deviation with the lot shape. Again, we look at the  
5 purpose of that and we believe we do further the  
6 purpose of that restriction.

7 We also in looking at variance relief  
8 have to go to the Municipal Land Use Law which gives  
9 us the purposes of zoning. Again, what we have is a  
10 piece of property that's approved with a preexisting  
11 nonconforming use, was recognized incorrectly in your  
12 Master Plan as a vacant property, but it is operated  
13 for marine storage and marine repair, and what's  
14 being proposed is a permitted use envisioned by the  
15 Borough. The application, therefore, was subjected  
16 to a review under the Municipal Land Use Law of the  
17 purposes of zoning under 40:55D-2. And I'd like to  
18 point out several of those purposes that we believe  
19 we further that's important in terms of discussing  
20 the variance relief and the criteria for variance  
21 relief.

22 Point (a) under 40:55D-2 is: "To  
23 encourage municipal action to guide the appropriate  
24 use or development of all lands in this state in a  
25 manner which will promote the public health, safety,

1 we're seeking for the 11 lots would be that circle  
2 lot; and we are, as demonstrated by the footprint of  
3 the homes here, able to put a very conventional home  
4 in an area that allows for conventional homes to be  
5 constructed. There are no lots that are oddly shaped  
6 that are force fit, these are fairly standard  
7 footprints and very much in conformity with the  
8 nature of the homes that are within the immediate  
9 vicinity here.

10 Interestingly enough, your Master Plan  
11 does have a comment regarding vacant land and, in  
12 fact, your Master Plan identifies this property as  
13 one of three large parcels of vacant land. Now, we  
14 know factually that this isn't a vacant land, but  
15 your Master Plan treated and specifically called out  
16 the McConnell tract at Avenue D and the bay as a  
17 vacant parcel that would be under --

18 **AN AUDIENCE MEMBER:** Speak into the mic.

19 **MR. JANIW:** I'm sorry.

20 A. The Master Plan speaks about the  
21 McConnell tract at Avenue D and the bay as a vacant  
22 piece of land that is eventually going to be  
23 developed or redeveloped, and -- and that's what's  
24 here before you tonight. And, in fact, it's being  
25 proposed to be developed -- or redeveloped, if you

1 morals, and general welfare."

2 Again, the Municipal Land Use Law  
3 encourages the return of property that's  
4 nonconforming to a conforming use as soon as  
5 feasible. That is long considered and adjudicated  
6 through the courts as a public benefit, not just a  
7 benefit to the landowner. Returning a parcel to use  
8 as it is appropriately zoned is, in fact, a benefit  
9 to the community and is a way of promoting public  
10 health, safety, morals, and general welfare because  
11 we're taking something that's nonconforming that no  
12 longer is envisioned as a use by this community and  
13 returning it to a use that is subscribed, meaning a  
14 single-family use with the minimum lots of 7,500  
15 square feet and 75 feet of frontage. So we are  
16 absolutely on point with that purpose of the  
17 Municipal Land Use Law.

18 Point (c) under be the MLUL is: "To  
19 provide adequate light, air, and open space."

20 And again, we're not seeking any  
21 deviation from front yard setbacks, side yard  
22 setbacks, rear yard setbacks. Those are the measures  
23 of light, air, and open space. We also looked at  
24 coverage, and we'll meet the total impervious and  
25 building coverage that's prescribed within your

1 ordinance. Therefore, in terms of providing light,  
2 air, and open space, the neighbors here will get what  
3 was zoned for for this area by this community; they  
4 will have and enjoy those same setbacks, and light,  
5 air, and open space criteria that's set forth in your  
6 Zone Plan and by your bulk standards.

7 (E) under the Municipal Land Use Law is:  
8 "To promote the establishment of appropriate  
9 population densities and concentrations that  
10 contribute to the well-being of persons,  
11 neighborhoods, regions, and the preservation of the  
12 environment."

13 So we are absolutely on point in terms  
14 of the population density, consistency with the  
15 population density and character of the neighborhood  
16 and, in fact, are providing some open space along the  
17 waterfront to provide public access along the  
18 waterfront, and thus are establishing not only the  
19 appropriate population density, but preserving the  
20 elements of the environment for public enjoyment that  
21 are significant to this community.

22 (G) under the Municipal Land Use Law is:  
23 "To provide sufficient space in appropriate locations  
24 for a variety of agricultural, residential,  
25 recreational, commercial, industrial uses, and open

1 to consider when I get to the criteria that this  
2 Board must balance under the bulk standards for the  
3 relief that's sought.

4 I don't want to negligent to mention  
5 that we also had presented testimony with respect to  
6 the RSIS waiver with respect to the offsets on the  
7 streets. Mr. Kennedy very eloquently described the  
8 offset issue, how that deviates from the RSIS  
9 standards, why RSIS applies because your ordinance  
10 doesn't have any standards for those offsets and what  
11 the impact of it is and how we further the implied  
12 purpose of having that impact.

13 Again, Avenue D here is not very-well  
14 traveled, it only services at the end a single-family  
15 home, and Mr. Kennedy stipulated that because of the  
16 very limited traffic and because of the reason that  
17 the RSIS standard is intended to apply to standard  
18 intersections, more so well-traveled roads, he  
19 doesn't believe that waiver would cause any harm to  
20 the general health, safety, or welfare of the public  
21 and that that waiver can be considered and granted  
22 without any implications to the negative.

23 So, finally, I'm getting to the criteria  
24 under which this Board must consider the relief  
25 that's sought. So from strictly a planning and

1 space in order to meet the needs of all New Jersey  
2 citizens."

3 Again, this property is zoned for  
4 residential use on 7,500 square foot lots. That is  
5 what's proposed. We are proposing a use that is  
6 consistent with the Zone Plan that does, in fact,  
7 fulfill a purpose of zoning as defined by the  
8 Municipal Land Use Law.

9 And, finally: "To promote a desirable  
10 visual environment through creative development  
11 techniques and good civic design and arrangement."

12 And that goes to the configuration of  
13 the lot. I believe Mr. Kennedy talked about the fact  
14 that we looked at a couple of different zoning  
15 alternatives and settled upon this because we are  
16 able to provide 21 lots that meet all the minimum lot  
17 size, setback criteria, coverage criteria within your  
18 Zone Plan and still can provide for waterfront  
19 access, improvements along the waterfront, and  
20 maintain some public open space in an area along the  
21 water. So we are absolutely consistent with that  
22 element of the Municipal Land Use Law.

23 So we -- we further all those purposes,  
24 we are consistent with your Master Plan objectives  
25 and goals, and that's -- that's an important factor

1 zoning perspective, this is actually a very simple  
2 application. There's one deviation that's sought for  
3 the 11 lots, that is the circle. We talked about  
4 what the intent of that circle is, so we have to now  
5 discuss what proofs this Board has to consider in  
6 weighing the relief that's sought.

7 So we are asking this Board to consider  
8 this under the c(2) criteria. The c(2) is what's  
9 commonly known as the "balance test." And under the  
10 burdens of proof for the positive criteria of the  
11 balance test, there are three prongs that this Board  
12 must consider. The first is that the application  
13 relates to a specific piece of property, and in this  
14 case, it absolutely does. We have a vacant property  
15 that's currently utilized for commercial enterprises,  
16 has historically been used for industrial and  
17 commercial uses.

18 We are seeking to bring that into  
19 conformity with your Zone Plan, we're not seeking any  
20 use relief. What's proposed here is consistent not  
21 only in terms of use, but in terms of density,  
22 configuration, lot area, and by all standards,  
23 measurements of lots because we are able to meet all  
24 the setback criteria and still provide for a lot that  
25 is regularly shaped and has a substantial enough

1 building envelope to provide for a home that's  
 2 substantially, if not identical to what's in the  
 3 neighborhood, and a very regular type of home.  
 4 The second prong is that the purposes of  
 5 the Municipal Land Use Law would be advanced by a  
 6 deviation from the zoning ordinance requirements.  
 7 That's why I went through all those prongs within the  
 8 MLUL 40:55D, that's why I went through the Master  
 9 Plan. Those speak to what the purposes of the zoning  
 10 are and how we are addressing the public purpose  
 11 behind these criteria.  
 12 In fact, we talked about the health,  
 13 safety, and welfare of bringing a property back into  
 14 conformity with the Zone Plan as being a public  
 15 benefit, not just a benefit to the developer, and  
 16 that is on point. But for all the other reasons that  
 17 I had read into the record and discussed previously,  
 18 we do advance multiple purposes of the Municipal Land  
 19 Use Law, we are consistent with the character of your  
 20 -- of your Master Plan, and that such a deviation  
 21 would be a benefit in advancing that purpose of the  
 22 Municipal Land Use Law and the goals and objectives  
 23 of your Master Plan.  
 24 And, finally, that the benefits of the  
 25 deviation would outweigh any detriment. Again, the

1 land use ordinance, the Planning Board and the  
 2 governing body here made a conscious decision that  
 3 this property is capable of handling the traffic, the  
 4 trash, all the infrastructure requirements for  
 5 development of homes at that density on lots of that  
 6 size. The homes are situated with specific  
 7 setbacks -- front, rear, side -- so that they don't  
 8 create any nuisance to the neighbors in terms of  
 9 noise. All that is anticipated in creation of your  
 10 bulk standards.  
 11 The one bulk standard from which we are  
 12 seeking relief, interestingly enough, is not  
 13 something that impacts the neighbors. The circle  
 14 requirement is to ensure that the lot is a regular  
 15 shape and can accommodate a regular-shaped home.  
 16 It's not something that would be a nuisance in terms  
 17 of an obtrusive height, too close to the neighbors,  
 18 creating excessive noise, it is intended to  
 19 standardize, essentially, the building envelope on  
 20 the lot. And, in fact, we can still accomplish that  
 21 through these deviations and provide lots that can  
 22 honor all the expectations of neighbors in terms of  
 23 light, air, and open space, and the intent of the  
 24 ordinance of the Master Plan.  
 25 That finally brings us to the last

1 benefits of this application as repeated many times  
 2 tonight -- and I'm sorry for being so repetitive --  
 3 but it is to bring a property back into conformity  
 4 with the Zone Plan, back to the use that was  
 5 anticipated and is still listed as a permitted use  
 6 within the ordinances, and that the benefits of that  
 7 deviation outweigh any detriments. And we'll talk to  
 8 the detriments in a moment.  
 9 That brings us to the negative criteria,  
 10 and there are two prongs under the negative criteria  
 11 that this Board must consider. The first is that the  
 12 variance can be granted without substantial detriment  
 13 to the public good. And the standard is "substantial  
 14 detriment." So when we look at substantial  
 15 detriment, we have to look at what I usually refer to  
 16 in residential criteria as the "nuisance." Will this  
 17 generate unruly traffic? Will this generate any  
 18 flooding consideration? Any stormwater concerns?  
 19 Will this generate trash or noise that's not  
 20 anticipated? And, in fact, the answer to that is no.  
 21 Your Zone Plan anticipated and, in fact,  
 22 encourages development of this parcel for  
 23 single-family homes on 7,500 square foot lots. With  
 24 that recommendation in your Master Plan and  
 25 subsequently adopting that by ordinance into your

1 prong: "That the variance will not substantially  
 2 impair the intent and purpose of the Zone Plan and  
 3 zoning ordinance."  
 4 We're not here for a use variance; we  
 5 are, in fact, here for a subdivision that is  
 6 consistent with all the aspects of your ordinance for  
 7 7,500 square foot lots but for that circle, but we  
 8 can still meet -- and as you can see from  
 9 Mr. Kennedy's exhibit and what he passed out, that we  
 10 can fit a very regular shaped home here and certainly  
 11 something that's consistent with the character of the  
 12 neighborhood, we meet the intent and purpose of your  
 13 Master Plan -- I read to you the goals for this  
 14 area -- as well as the goals for bringing properties  
 15 back into conformity and the goals of the Master Plan  
 16 for being specific to the character of the  
 17 neighborhood.  
 18 I think I'd like to conclude with one  
 19 last point, which brings me to the board, which, I  
 20 think, is an opportune time to pass around now. We  
 21 talked about how we are consistent with the character  
 22 of the neighborhood and why I went through that  
 23 characterization. Just bear with me for one moment.  
 24 I'm gonna pass around the exhibit board, which has  
 25 the Zone Plan, and then the deviations outlined.

**Q. Is that Exhibit 23?**

A. That's Exhibit 23. And, again, the blue dots are lots, which when measured would not be able to accommodate the minimum circle pursuant to the zone. The yellow dots are the homes that were depicted on the photograph here.

The significance of that board -- and we did look at every one of the single-family lots within that portion of the district -- I'm sorry -- within that R-1 section. You have two areas that are zoned R-1 within the community, the western and eastern side. This is the area where we're located. We looked at all the single-family lots, and there are approximately 346 single-family lots in that R-1 district. Of those 346 lots, 189 or 55 percent do not meet the circle requirement.

Now, our proposal, strictly coincidental, is 11 of 21 lots do not meet the circle requirements, which is about 52 and a half percent. So in terms of even mimicking the pattern of nonconformity within the district, we are absolutely reflective of the character of the neighborhood. We are able, again, to accommodate a very typical home here. The envelopes show very standard rectangular, square homes can be accommodated in these lots, very

**MR. GIUNCO:** Okay. So our client has retained James Monteforte as an architect to design these houses. They will be custom designed for each individual buyer based on some criteria, all of which are designed to fit in with the lot. I could call Mr. Monteforte. We have -- he has a couple of designs that are similar to what would be carried throughout the project, but I can't -- I can ask him to say these are what we intend to do, but we don't have a designated lot for any of those yet. So with your permission, if you're finished with Mr. Janiw, I will call Mr. Monteforte.

**CHAIRMAN NEFF:** Any questions for this witness from the Board? Okay.

**MR. GIUNCO:** James Monteforte, please.

**CHAIRMAN NEFF:** We're just gonna take a ten-minute break. If you want to sign up and ask a question or comment later, the sign-up sheets are out in the hall.

(Break: 9:20 p.m.)

(Resume: 9:28 p.m.)

**CHAIRMAN NEFF:** All right. Please quiet down, we're calling the meeting to order again.

**MR. GIUNCO:** Mr. Chairman, I'm gonna offer the testimony of James Monteforte, a licensed

ample proportions. These aren't homes that would have to be somehow custom designed to fit on these. Not to say these won't be custom homes, but certainly the building envelope here can accommodate a very standard footprint that would be anticipated and reflective of the Zone Plan. And the Zone Plan does talk about the need to identify the characteristics of the neighborhood, and that's what that board does.

**CHAIRMAN NEFF:** You talked a lot about the character of the neighborhood and the homes and such. Are there any renderings of what these homes would look like? Are they two-and-a-half-story colonials, or are they -- is that gonna be discussed somewhere else, some other time?

**MR. GIUNCO:** Well, the project architect, Mr. Monteforte, is here. It is my client's intention that these homes would be custom for each individual lot, but we have --

(Audience members stating they can't hear.)

**MR. COLANGELO:** Ladies and gentlemen, please don't yell at him. We will ask him to speak louder.

If you could please make sure that it's up like this, we'd greatly appreciate it.

professional architect in the state of New Jersey to just describe the intended type of design, materials, colors, et cetera. I'd ask that he be sworn, please. JAMES J. MONTEFORTE, AIA, doing business at 733 Highway 33, Ocean Township, New Jersey 07712, having been duly sworn by a Notary Public, testified as follows:

**MR. STEIB:** State your name and address.

**MR. MONTEFORTE:** James J. Monteforte, M-o-n-t-e-f-o-r-t-e, 733 Ocean -- Route 35 in Ocean Township, New Jersey.

**EXAMINATION BY MR. GIUNCO:**

**Q. Would you present the Board with your credentials.**

A. Yes. I'm a graduate of the New Jersey School of Architecture, which is located in NJIT in Newark. I've been licensed since '93. I've had my practice since then. I have a moderate size firm. We do work up and down the Jersey Shore. We specialize in custom homes, multi-family buildings, high-rises, residential, mid-rise, office buildings.

I sat on the Planning Board in Oceanport for about four or five years, I've done many, many projects up and down the shore, including some buildings in this town.

1 Q. Jim, have you offered professional  
2 testimony before other boards in Monmouth County?

3 A. Just about every town.

4 MR. GIUNCO: Mr. Chairman, I'm gonna  
5 offer Mr. Monteforte as an expert in the field of  
6 architecture.

7 CHAIRMAN NEFF: Any questions from the  
8 Board? Accepted.

9 MR. GIUNCO: Thank you.

10 Q. Did you prepare any exhibits to  
11 demonstrate to the Board?

12 A. I did.

13 Q. Why don't you take this mic, describe  
14 the exhibits, and then we'll hand out what small  
15 sizes we have to the Board members.

16 A. Okay. Well, I brought two homes that  
17 we're working on currently. The one to the left  
18 is -- we actually labeled them. So they're all in  
19 this nautical flavor. That's gonna be the theme of  
20 our development. Every home, as was mentioned, will  
21 be designed and manipulated by myself for each site  
22 and for each homeowner who comes to purchase. Some  
23 of the floor plans may be reused, but modified.  
24 Again, I'm not really big on track housing, I'm more  
25 of a custom guy, and I like to see things to be

1 prepare 11x18 -- or smaller size replicas of those  
2 two exhibits?

3 A. I did. I have ten copies.

4 Q. Make sure the Board secretary has one,  
5 please.

6 A. So I think I'd like to start with the  
7 Spinnaker, which is A-25.

8 Q. Correct.

9 A. This -- this project -- this particular  
10 home I designed to go at the -- at the top of the  
11 hill, which would be the south portion of the lot  
12 where the grade is the most severe and it drops down  
13 rather quickly. So these units will meet the  
14 standard of a two-and-a-half-story unit; however, the  
15 car will be underneath the unit, and you can see the  
16 grade goes up on either side. So it varies, the  
17 house, within, like, five-point-something to the  
18 finished grade.

19 Living will be on the upper level. We  
20 have a floor plan there for you to see. It's pretty  
21 much an open floor plan. There is a deck that runs  
22 around the front of this particular style home so you  
23 can capture the views. And a lot of our tasks will  
24 be to try to manipulate our homes to capture as much  
25 view as possible between the homes as they go down

1 uniquely different and individual from each other,  
2 but have the same style.

3 So our style is basically this. We're  
4 gonna do a nautical-style seashore home. We're gonna  
5 be using indigenous materials to most shore homes you  
6 see, which would be a shake, clapboard,  
7 board-on-board. All with composite materials so that  
8 they will withstand the test of time as best  
9 possible. I know we have the worst climate in the --  
10 pretty much in the whole shoreline area because we go  
11 from cold to hot to humid to sleet, everything. So  
12 we're gonna try to be as sympathetic to that as  
13 possible.

14 So the home on the right -- I guess I  
15 have to....

16 Q. Jim, could I ask you, the exhibit to the  
17 left labeled "Starboard," can we identify that as  
18 A-24.

19 (A-24, Presentation board labeled  
20 "Starboard," marked.)

21 Q. And to your right, you labeled that the  
22 "Spinnaker." Could you mark that as A-25.

23 (A-25, Presentation board labeled  
24 "Spinnaker," marked.)

25 Q. And as you testified, did you also

1 the hill. So the concept here is that the houses  
2 will stare down the hill towards the waterfront. So  
3 this one is -- let's say this one starts five feet  
4 higher than -- than the next series of units that are  
5 in the center of the lot, and then they go down again  
6 to the ones that front on the street that's on the  
7 water.

8 The sizes are moderate. This one is a  
9 2,600 square foot home. And then if you move on to  
10 the Starboard, this would be one that would be more  
11 towards the waterfront. It's more of a Cape style.  
12 They all -- I wanna say they all have a little bit of  
13 a contemporary flair to them because I'm trying to  
14 create views, so I'm using casement windows instead  
15 of double-hung windows, and I'm not using a lot of  
16 mullions because I'm trying to capture as much of the  
17 views as possible for each home. But, again, they  
18 all have this nautical flavor throughout the style of  
19 each of the homes. So as we go, they're gonna be  
20 similar to this style, but they're gonna be a little  
21 different.

22 Q. Would you generally describe to the  
23 Board the types of materials you plan to use for  
24 siding -- the windows you described already -- and  
25 the colors that you would anticipate?

1 A. Well, the colors are -- are basically  
2 your grays and beiges and whites, and some blues.  
3 I'd like to bring in some color for the doors to try  
4 and make each house a little more unique. I was also  
5 thinking of using small portions of blue metal  
6 roofing on each of the houses to tie them all  
7 together and create a theme as they sit on the  
8 property. But the materials I had already mentioned,  
9 they're all composite materials: shake, clapboard,  
10 board-on-board. All those materials you see on a  
11 typical seashore-style home.

12 **CHAIRMAN NEFF:** Will some have  
13 basements?

14 **MR. MONTEFORTE:** Well, yeah, some --  
15 some can have basements. Some can have cellars.  
16 There's two different definitions. It's really gonna  
17 be up to the person buying it. And they need to be  
18 able to maintain the proper FDR for each lot.

19 **CHAIRMAN NEFF:** So it's up to the  
20 individual buyer if they want a basement added or a  
21 cellar added; you'd do that regardless of where  
22 they're located?

23 **MR. MONTEFORTE:** Yeah, except for in the  
24 coastal A zone. There's no basements allowed.

25 **MR. ILARAZZA:** Up to how many design

1 **MR. MONTEFORTE:** Im -- I'm kind of the  
2 restriction.

3 **MR. GIUNCO:** I was gonna say the exact  
4 same thing. Our client has retained Mr. Monteforte  
5 to act as the overall architect for the project to  
6 design each of the homes. So part of the things --  
7 one of the things that will make this an even more  
8 unique project is that our client will agree to sell  
9 it and the buyer will agree to use the design of  
10 Mr. Monteforte.

11 Now, each buyer can, of course, tell Jim  
12 the features that they might want, and then he needs  
13 to design it in the style. Did I say that properly,  
14 Jim?

15 **MR. MONTEFORTE:** Yeah, that sounded good  
16 to me.

17 **CHAIRMAN NEFF:** Any other comments or  
18 testimony?

19 **MR. GIUNCO:** Mr. Chairman, that was  
20 intended to give the overall concept and some of the  
21 examples that have been designed so far for purposes  
22 of, one, illustration to Board or other interested  
23 parties, and in the event we're successful in the  
24 application process, those would be used for  
25 conversation with potential buyers and examples of

1 options are you gonna allow, or is that just gonna  
2 vary by buyer?

3 **MR. MONTEFORTE:** Well, each lot is -- is  
4 quite unique the way the property is designed with  
5 the street winding through, and we tried to stagger  
6 the lots and the houses so that you can see between  
7 the houses you're living behind. So I'm thinking  
8 there's gonna be at least four to five basic floor  
9 plans that you can modify, and I would change the  
10 views of each one. It could be -- every house could  
11 be different as far as I can tell, as far as the look  
12 of the house. You could see they both have the same  
13 flavor, but they're not the same house.

14 **MR. CACCAMO:** What about outdoor space,  
15 patios, decks?

16 **MR. MONTEFORTE:** Yeah, we're gonna --  
17 well, this one you can see has a deck on the front  
18 because this one faces the water from the front. So  
19 we're gonna have different-level decks all over the  
20 houses. Some are built into the house. But, yeah,  
21 we're gonna try to get as much outdoor space,  
22 obviously, for everybody.

23 **MR. CACCAMO:** So there's not gonna be  
24 any real restrictions for, like, color and other  
25 modifications?

1 design.

2 **CHAIRMAN NEFF:** Thank you. Any Board  
3 questions for this witness?

4 **MR. ILLIANO:** Yes. You said some of  
5 these are gonna have basements; correct?

6 **MR. MONTEFORTE:** That's correct.

7 **MR. ILLIANO:** How are you gonna do that  
8 with the monitoring wells? I know that's probably  
9 not a question you can answer, but I assume you're  
10 gonna have an expert here.

11 **MR. MONTEFORTE:** Yeah, that would have  
12 to be determined also by each property individually  
13 as to whether we can do it or not. There's some of  
14 the properties that have a lot of fill, and some of  
15 the properties have no fill, and some are cut.  
16 They're all over the place. So, again, every  
17 property is almost like I'm doing a custom home for  
18 each property.

19 **CHAIRMAN NEFF:** Any other questions from  
20 the Board for this witness?

21 **MR. GIUNCO:** Mr. Chairman, I have no  
22 other direct witnesses, so our witnesses are here and  
23 prepared to stand for cross-examination.

24 **CHAIRMAN NEFF:** Okay. Thank you. So  
25 what we'll do is open it up for Public Questions at



1 this time. Erin, could you please get the sign-up  
 2 sheets up front.  
 3 Mr. Asadi, would you like to begin?  
 4 **MR. ASADI:** I don't care either way,  
 5 Mr. Chairman. It's up to you. If you want to allow  
 6 members of the public to ask their questions and then  
 7 I can finish, or if you'd like me to begin. I can do  
 8 that, too. So it's entirely up to you.  
 9 **CHAIRMAN NEFF:** So would you like to go  
 10 first? And tell us who you represent.  
 11 **MRS. MURRAY:** He said he'd like to  
 12 finish.  
 13 **CHAIRMAN NEFF:** You'd like to finish?  
 14 **MR. ASADI:** Yeah, Mr. Chair, there are  
 15 many, many members of the public here today, but I do  
 16 not know nor have I ever met or seen almost all of  
 17 them. I know about four people here tonight, and  
 18 they are called "Neighbors for Waterfront  
 19 Preservation." Those people will not be coming up to  
 20 ask questions because I represent them. Other than  
 21 those four people, everybody else here I have nothing  
 22 to do with, and they are allowed to ask their  
 23 questions because they're not represented.  
 24 **CHAIRMAN NEFF:** Who are those four  
 25 people?

1 **MS. KENNEDY:** Shelly Kennedy, 104 East  
 2 Highlands.  
 3 Thank you for the testimony. I found it  
 4 very enlightening. I also wanted to ask some further  
 5 questions. I'm not sure which of your experts would  
 6 be most appropriate, so I'll let you determine that.  
 7 **MR. GIUNCO:** Okay.  
 8 **MS. KENNEDY:** When you're coming -- when  
 9 you came up with a plan of the houses and the streets  
 10 as drawn, how did you come up with the spacing for  
 11 the homes?  
 12 **MR. GIUNCO:** Well, I'm gonna ask  
 13 Mr. Kennedy to address that.  
 14 **MR. KENNEDY:** The spacing of the homes  
 15 is dictated by the Borough ordinance. The Borough  
 16 ordinance requires certain setbacks. And what we  
 17 show is -- in this plan -- now, this is just one of  
 18 many iterations of plans. But in this iteration, we  
 19 show boxes. Mr. Monteforte's not going to build a  
 20 box, but what we have to show is that there's a  
 21 viable building envelope. That building envelope is  
 22 directly from your ordinance that requires ten-foot  
 23 side setbacks and a combined side setback of 20 feet.  
 24 So to answer your question, the ordinance tells us  
 25 the spacing of the homes.

1 **MR. ASADI:** I have Robert O'Connor, Ben  
 2 Chiles, and -- there's Ben's son, Tara Shaw. And  
 3 that's kind of it. And David Schutzenhofer. And  
 4 he's not even here. So other than those people, I  
 5 think everybody else should have their opportunity to  
 6 ask questions.  
 7 **CHAIRMAN NEFF:** That's fine. We'll  
 8 start with Shelly Kennedy.  
 9 **MR. GIUNCO:** Excuse me, Mr. Chairman.  
 10 Can we find out from Mr. Asadi, does he intend to  
 11 present any professional witnesses?  
 12 **MR. STEIB:** We know from his  
 13 correspondence that he intends to present  
 14 professional witnesses: Griessel, and also, perhaps,  
 15 Mr. Nolan.  
 16 (Audience members stating they can't  
 17 hear.)  
 18 **MR. ASADI:** That is correct.  
 19 The question was whether I was planning  
 20 on presenting any witnesses, and I am planning to  
 21 present two witnesses: Dr. Nolan and Paul Griessel,  
 22 who's a professional planner.  
 23 **AN AUDIENCE MEMBER:** Thank you.  
 24 **CHAIRMAN NEFF:** Please state your name  
 25 and address.

1 **MS. KENNEDY:** But you are asking for  
 2 some spacing -- some variance on the spacing of the  
 3 homes or the lot sizes?  
 4 **MR. KENNEDY:** No. Neither. We're  
 5 requesting variances for a lot shape circle. It has  
 6 nothing to do with building size. Every single lot  
 7 complies with the lot area. We comply with the  
 8 setbacks to side, front, rear. It's a lot shape  
 9 circle variance that we're requesting.  
 10 **MS. KENNEDY:** I guess I don't understand  
 11 what a lot shaped circle is. If you could explain  
 12 that, perhaps that would be helpful.  
 13 **MR. KENNEDY:** The ordinance requires the  
 14 inscription or inscribed circle within the lot. And  
 15 in a lot that's not a corner, it's required to be 50  
 16 feet. In a lot that's a corner, it's required to be  
 17 45 feet. My understanding of the purpose of that  
 18 ordinance is to provide for regularly shaped lots  
 19 where we can't have a triangle or a trapezoid and  
 20 barely squeak through and make 7,500 feet in a  
 21 triangle and yield a lot that wouldn't be able to be  
 22 built upon. So the lot shape circle is merely an  
 23 inscribed circle within the lot, and the size of  
 24 which is dictated by ordinance.  
 25 **MS. KENNEDY:** I have a question about --

1 and the other gentleman who was up may be the best  
2 person -- about the green space. He was speaking  
3 about how the plan is consistent with the current  
4 Borough's Master Plan, and I did confront him, and  
5 he's talking about the 2006 Borough Master Plan that  
6 was updated in 2007. When you say that the open  
7 space in the plan is consistent with the Master Plan,  
8 can you explain what you mean by that?

9 **MR. JANIW:** What I said was the  
10 provision of open spaces is consistent with the  
11 Master Plan because the Master Plan encourages  
12 utilization of the property as -- as it is zoned to  
13 bring it back into conformity with the Zone Plan. So  
14 your zoning ordinance here permits single-family  
15 lots, and it also encourages some public space and  
16 consideration of that. So what we've done here is  
17 create, essentially, a single-family development.  
18 And instead of utilizing all the property for  
19 single-family homes, we are retaining some of the  
20 property, critical waterfront to provide public  
21 access and to provide some waterfront space and  
22 linkage to the adjacent property which is, you know,  
23 the Catamaran Club. So we believe that is -- that is  
24 consistent with the intent of the Zone Plan and of  
25 your Master Plan with -- considering public access on

1 Plan is a moving target. But your property -- this  
2 property and a substantial portion of the community  
3 sought and obtained a center designation, which puts  
4 it in a PA 1 or Smart Growth area. So the State  
5 Plan -- and if you look it up today, you can put in  
6 this property and it will come up shaded red. It  
7 will come up shaded as -- part of the center will  
8 come up as PA-1, and PA-1 is the portion of the State  
9 Plan that encourages growth because of the  
10 availability of infrastructure and roads and all  
11 those issues.

12 **MS. KENNEDY:** But I believe that State  
13 Plan was dated around the year 2000.

14 **MR. JANIW:** The State Plan is a living  
15 document and it's still utilized by the state as a  
16 criteria for things like obtaining water, sewer. It  
17 is a consideration and it is a living document.

18 **MS. KENNEDY:** All right. Thank you.

19 **CHAIRMAN NEFF:** Okay. Next is Marilyn  
20 Scherfen. Please state your name and address, and  
21 spell your last name, please.

22 **MS. SCHERFEN:** Marilyn Scherfen, 55  
23 Avenue D, and it's S-c-h-e-r-f-e-n.

24 I'm wondering if you're aware of the  
25 history that exists for this particular space?

1 any type of such subdivision.

2 **MS. KENNEDY:** Did you make any -- did  
3 you factor in the Sandy affect at all in that the  
4 waves that came through Atlantic Highlands was  
5 significantly over ten feet; and that is not a  
6 particularly unheard of event around here.

7 **MR. JANIW:** These lots would have to be  
8 designed to all FEMA requirements. And as you're  
9 aware, the FEMA requirements are being adjusted to  
10 new base flood elevation. So this will have to be  
11 consistent with all that. Your 2006 Master Plan  
12 predates Sandy, so none of that consideration is in  
13 your Master Plan --

14 **MS. KENNEDY:** Yes.

15 **MR. JANIW:** -- however this application  
16 did consider all that. And I think Mr. Kennedy  
17 testified that the bulkhead and everything else will  
18 have to be considerate of all these types of  
19 scenarios including the base flood elevation under  
20 FEMA.

21 **MS. KENNEDY:** Thank you. And when you  
22 said it was also consistent with the State Plan,  
23 which revision of the State Plan were you referring  
24 to?

25 **MR. JANIW:** The state -- well, the State

1 **MR. GIUNCO:** Only what we've -- I've  
2 learned from my client and from the land seller.

3 **MS. SCHERFEN:** Are you aware that the  
4 Lenape people used Avenue D as the trail to the bay  
5 and used that particular space along with other spots  
6 in the area?

7 **MR. GIUNCO:** No.

8 **MS. SCHERFEN:** Are you aware that the  
9 first state legislature laid out -- well, the people  
10 that ran the legislature laid out lots along Avenue  
11 D, and the first state assembly in Colonial,  
12 New Jersey was there on Avenue D as well?

13 **MR. GIUNCO:** I really couldn't hear most  
14 of what you said. Would you mind saying that  
15 question again?

16 **MS. SCHERFEN:** I'm sorry.

17 **MR. GIUNCO:** And there were a bunch of  
18 questions in there.

19 **MS. SCHERFEN:** Okay. There are a  
20 number -- what I'm trying to get at is, there is --  
21 there are a number of different historical events and  
22 people who used this property, and I'm wondering if  
23 you get the approval to go ahead with this  
24 development and you find that there's some indication  
25 of this previous history, will you do an agricultural

1 survey to find out more information about that?  
2 **MR. GIUNCO:** In terms of the oil  
3 company?

4 **MS. SCHERFEN:** No, in terms of the  
5 Lenape people. The first state legislature in  
6 colonial New Jersey --

7 **MR. GIUNCO:** If there was an identified  
8 site, we would know that today, and it would have  
9 been studied. And that would be required when we go  
10 to CAFRA for final permit in archeology. However,  
11 it's our understanding based on the preliminary  
12 review, we don't have any issues.

13 **MS. SCHERFEN:** Okay. Thank you.  
14 And with the contamination, will the  
15 builder have to notify potential buyers about the  
16 contamination on the property?

17 **MR. GIUNCO:** No, the municipality is  
18 obligated under the Real Estate Disclosure Act to  
19 disclose any issues like that. Typically, I  
20 recommend to my clients that they identify those  
21 issues, deliver them to the Municipal Clerk, and then  
22 it's up to the clerk to determine whether or not they  
23 intend to put it into the register. That -- under  
24 that act, that buyer of any real property comes to  
25 the municipality and asks for identification of not

1 application, our -- and in the event there's an  
2 approval -- our client has to obtain an approval from  
3 the Freehold Soil Conservation District. That is an  
4 independent agency under the jurisdiction of the  
5 NJDEP that is responsible to limit erosion. And part  
6 of the plan set that's submitted here is a Soil  
7 Erosion Control Plan. That plan is implemented, not  
8 only is it inspected by the engineer inspector that  
9 Mr. Rohmeyer will send around, but the agency itself  
10 located, surprisingly, in Freehold, actually has  
11 their own inspectors that also follow that plan.

12 And they are regulators, just like your  
13 municipal engineer, and they have the authority, if  
14 you will, to issue instructions for any additional  
15 repair or any additional erosion control, or repair  
16 of anything that might happen. So there's constant  
17 monitoring on the project and those aren't signed off  
18 until it's actually what's called "stabilized." And  
19 in addition to the municipal inspection, the Freehold  
20 Soil has to be satisfied that soil erosion is not  
21 occurring.

22 **MS. SCHERFEN:** Okay. And one final  
23 question. If contaminated soil is found and you had  
24 gotten the approval from the Planning Board to go  
25 ahead with this development, what happens then?

1 just the on-site, but any surrounding sites.

2 So, if you were buying a property that  
3 had a fueling station nearby that had contamination,  
4 that should be on record in the municipality; and  
5 that legislation specifically requires that  
6 obligation to be performed by the municipality. What  
7 we generally do is provide to the municipality, which  
8 has already been done here, a copy of our  
9 environmental review.

10 **MS. SCHERFEN:** So you will remove 100  
11 percent of any contaminated soil?

12 **MR. GIUNCO:** The reports as of right now  
13 show the site to be clean subject to the conclusion  
14 of the monitoring wells.

15 **MS. SCHERFEN:** If this is not accurate,  
16 what will happen then?

17 **MR. GIUNCO:** Well, we'd have to make it  
18 accurate. And if there was any lingering  
19 contamination that was undiscovered or untreated, my  
20 client would remediate it immediately.

21 **MS. SCHERFEN:** Will the -- if -- if  
22 contaminated soil is found, and maybe even if  
23 contaminated soil isn't found, will the disturbance  
24 of the soil pollute Sandy Hook Bay?

25 **MR. GIUNCO:** In addition to this

1 Who's -- if potential buyers are scared away, then  
2 what happens?

3 **MR. GIUNCO:** Well, in the first  
4 instance, the jurisdiction with regard to  
5 contamination is not related to the Planning Board or  
6 any municipal or county agency; it is exclusively in  
7 the control of the New Jersey Department of  
8 Environmental Protection. And the McConnell property  
9 has been under their jurisdiction and obtained  
10 compliance for quite a while because -- I know this  
11 won't surprise you, but if you're an oil distributor,  
12 you're carefully scrutinized by the state.

13 **MS. SCHERFEN:** Okay. Thank you very  
14 much.

15 **CHAIRMAN NEFF:** Next, is Sonnek-Schmelz.  
16 State your name and address.

17 **MR. SONNEK-SCHMELZ:** My name is Brant  
18 Sonnek-Schmelz. Last name is spelled S-o-n-n-e-k -  
19 S-c-h-m-e-l-z. I have a number of questions for both  
20 the Applicant, as well as the Planning Board to  
21 follow.

22 First, to the Applicant: What is the  
23 lifespan of the final bulkhead, and is there a  
24 warranty against failure?

25 **MR. KENNEDY:** Typically, a bulkhead

1 designed to municipal standard would be a service  
2 life between 25 and 50 years; however, that -- it all  
3 depends on the ultimate material used, and the storms  
4 that are subject to it.

5 Like I said before, during Sandy, we saw  
6 a lot of damage of walls and retaining structures,  
7 bulkheads that were designed for, you know, a 50-year  
8 lifespan, and it was, basically, because of boats  
9 hitting them or projectiles hitting them. In this  
10 case, the similar municipal grade bulkhead would be  
11 constructed and offered and we would expect the same  
12 or similar lifespan unless something catastrophic  
13 occurred.

14 MR. SONNEK-SCHMELZ: What are the  
15 current design waivers you are seeking? It wasn't  
16 clear in your testimony.

17 MR. KENNEDY: The de minimis exception  
18 or similar to a design waiver is an offset between  
19 the north and south Road A intersections to the  
20 existing intersections. The other design waivers --  
21 for sidewalk, shade tree spacing -- we agreed to  
22 comply with.

23 MR. SONNEK-SCHMELZ: Okay. For the  
24 Board: Is my understanding that a board -- under the  
25 statute, a board is not obligated to accept any

1 MR. SONNEK-SCHMELZ: Do you have -- so  
2 that case -- was that a Supreme Court case in  
3 New Jersey?

4 MR. STEIB: It was.

5 MR. SONNEK-SCHMELZ: It was. Okay. And  
6 what was the name of that case?

7 MR. STEIB: Pizzo-Mantin.

8 MR. COLANGELO: P-i-z-z-o - M-a-n-t-i-n,  
9 Pizzo-Mantin. It was state -- Supreme Court of  
10 New Jersey.

11 MR. SONNEK-SCHMELZ: Okay. For the  
12 developer: It appears that based on comments of the  
13 planning -- no -- the engineer that you are also able  
14 to have a development of 17 homes and also meet your  
15 requirements for profit based on your comments  
16 earlier; is that correct?

17 MR. GIUNCO: There was no discussion of  
18 profit; that is not correct.

19 MR. SONNEK-SCHMELZ: Okay. So let me  
20 rephrase the question, then. It seems that the  
21 developer is also willing to put forth a development  
22 of up to -- of 17 homes if we do not want the open  
23 space and do not grant the waiver -- the variances  
24 for the lot circle.

25 MR. GIUNCO: I don't know the answer to

1 subdivision subject to -- even if they meet the  
2 zoning and variance approvals, that a subdivision  
3 approval is outside of all variances? Is that my  
4 correct understanding?

5 MR. STEIB: I don't understand your  
6 question.

7 MR. SONNEK-SCHMELZ: Okay. So -- so --

8 MR. STEIB: Let me characterize it for  
9 you. Let me just raise my voice so, hopefully,  
10 everyone can hear me.

11 You're asking me if the Board has the  
12 ability to decline a subdivision notwithstanding that  
13 it's requesting variances and waivers?

14 MR. SONNEK-SCHMELZ: That is correct.

15 MR. STEIB: And the answer is:  
16 According to the Pizzo-Mantin case, if the applicant  
17 submits an application that conforms with all the  
18 municipal requirements, they're entitled to approval.

19 MR. SONNEK-SCHMELZ: So that's yes, they  
20 are?

21 MR. STEIB: They're entitled to an  
22 approval.

23 MR. SONNEK-SCHMELZ: For the  
24 subdivision.

25 MR. STEIB: Correct.

1 that.

2 MR. SONNEK-SCHMELZ: The engineer does  
3 'cause he stated it.

4 MR. GIUNCO: No, he did not.

5 AN AUDIENCE MEMBER: Yeah, he did.

6 MR. GIUNCO: The testimony that I recall  
7 of the question that was asked was, What would be the  
8 yield in that situation? No one asked what the  
9 developer would do or proposes to do; however, the  
10 application that is submitted was submitted, and  
11 that's what the developer is asking the Board to  
12 consider.

13 MR. SONNEK-SCHMELZ: Can we have a --  
14 can we have testimony read back to us from that time  
15 to actually hear what was actually said?

16 MR. COLANGELO: I asked the question, so  
17 I'll tell you. I asked the question. My question  
18 actually was, What would be the calculation if you --  
19 if you --

20 AN AUDIENCE MEMBER: Talk louder.

21 MR. COLANGELO: I asked the actual  
22 question, so I could answer that. I asked a  
23 question: What would be the calculation if they  
24 removed the request for relief from the circle, all  
25 right. And I believe the engineer's response was

1 they -- if they maintained the open space and did not  
2 do a deed transfer to the town that they could put 17  
3 homes on them and meet the requirements. But there  
4 was no promise from the builder that they would do  
5 that, it was a direct response to my question.

6 **MR. SONNEK-SCHMELZ:** Okay. For the  
7 developer: Would you be willing to put 17 homes on  
8 this -- on this plot and have additional open space?

9 **MR. GIUNCO:** I don't -- I'm not willing  
10 to answer that question. What I am willing to say,  
11 however, is that we are proposing a request for a  
12 deviation from variances that are very insignificant  
13 relative to the design. We've entered testimony  
14 demonstrating that the very purpose of those lot  
15 shape circles is being met by the design, that the  
16 lots meet each of the design criteria, and they  
17 request no variance for lot size, for setbacks, or  
18 for any other condition.

19 And then that raises the question of  
20 whether or not that lot shape circle calculation at  
21 50 feet is actually considerate of the zone. It may  
22 be some kind of mistake in the ordinance because if  
23 it doesn't fit on the exact shape lot, then how is it  
24 consistent with that zone? But that's not our issue  
25 here, we offered the testimony to support a benefit

1 from the north, rather, heading south, there's no  
2 traffic generated because there's nothing there  
3 except the bay and -- above Bayview Avenue, and I  
4 think there's -- the testimony was there's one house  
5 that has a driveway on the easterly side of Avenue D.

6 **MR. SONNEK-SCHMELZ:** Wouldn't --  
7 wouldn't there be traffic generated by cars exiting  
8 the development on that street and then attempting to  
9 turn left on Harbor View or Bayside Drive? So that  
10 would be additional to that single house.

11 **MR. GIUNCO:** Well, yes, but that's what  
12 the design is for.

13 **MR. KENNEDY:** So -- so the  
14 intersection -- the left-turn model would require  
15 traffic to proceed through the intersection. What  
16 you're describing is a right-turn, left-turn which,  
17 at that point, is not subject to that left-turn lock.  
18 So you're right that there will be people that make a  
19 right turn and then a left turn into Harbor View  
20 Drive, but that is not -- has no bearing on the  
21 left-turn lock situation. The left-turn lock is  
22 based upon a queue approaching the intersection, not  
23 moving through the intersection.

24 **MR. SONNEK-SCHMELZ:** So I understand you  
25 said it would be adaptable with a one-way street.

1 to be derived and an analysis of the impact to those  
2 variances through Mr. Janiw's testimony which, I  
3 would advocate, concludes that the impact is  
4 insignificant, if even recognizable, and that the  
5 deviation is very minor relative to the lot size.  
6 They all fit, they're all shaped -- you've heard the  
7 testimony.

8 **MR. SONNEK-SCHMELZ:** For the RSIS  
9 offset, is the Board obligated to grant the offset?

10 **MR. STEIB:** No.

11 **MR. SONNEK-SCHMELZ:** Okay. Would this  
12 project be possible without the offset?

13 **MR. STEIB:** That's not for me.

14 **MR. GIUNCO:** Yes. We'd simply have to  
15 make it a one-way street that would go in and come  
16 around. However, given the traffic levels, given the  
17 fact that it's zoned -- which when it's zoned for  
18 single-family homes like that and we are in  
19 compliance with all of the zoning bulk requirements,  
20 it is implied in the ordinance that the traffic  
21 issues are acceptable or the zone would have been  
22 different. That's the analysis that the courts would  
23 generally make. However, in this instance, I think  
24 we've been able to demonstrate the dead end capacity  
25 of Avenue D, and the fact that from the south -- or

1 From what I heard, even though it's a small waiver,  
2 you still need a waiver for both entrances to the  
3 development, so you would be able to move the one  
4 street to allow -- or no waivers of the RSIS even if  
5 it's just one way.

6 **MR. KENNEDY:** One study we did was to  
7 provide a cul-de-sac, and that was just from a safety  
8 perspective, from a convenience perspective. A  
9 cul-de-sac at the end of a looped road, it just -- it  
10 just made no sense. This is a benefit to safety, to  
11 the welfare of the people that are living here, and  
12 to the people that have to respond -- or will respond  
13 to fire and emergencies to have a looped road system.  
14 It also allows us to loop and maintain water  
15 pressure, not only for this lot, but for off-site  
16 areas. To end a conventional looped road in a  
17 cul-de-sac to create a dead end to offset an  
18 intersection that doesn't matter, is -- it doesn't  
19 make sense, and it would be poor engineering.

20 **MR. SONNEK-SCHMELZ:** That doesn't answer  
21 my question. The question was, in a -- in a one-way  
22 street, the entrance into that one-way street would  
23 still require an offset per your testimony; is that  
24 correct?

25 **MR. KENNEDY:** No. Simply, if there was

1 a cul-de-sac, it would shift and we would pick up the  
2 20 feet, and at that point, we would comply with the  
3 one intersection we have. Like I said, it's not a  
4 viable concept from what I saw. Why would you ever  
5 have emergency or -- or homeowners driving 1,380 feet  
6 to end in a cul-de-sac where Avenue D was just beyond  
7 the edge of the cul-de-sac? It just doesn't make  
8 sense.

9 MR. SONNEK-SCHMELZ: Question for the  
10 Planning Board: From my understanding of the  
11 statute, the Planning Board has the power to engage  
12 in experts to be paid for by the developer for  
13 this -- for this development. Have you engaged  
14 experts to analyze traffic?

15 MR. STEIB: No.

16 MR. SONNEK-SCHMELZ: Have you engaged  
17 experts to analyze the plan?

18 MR. STEIB: Yes.

19 MR. SONNEK-SCHMELZ: Have you -- you've  
20 engaged additional experts to analyze engineering?

21 MR. STEIB: We have an engineer.

22 MR. SONNEK-SCHMELZ: Just our own  
23 engineer. Have you -- to deal with environmental  
24 contamination?

25 MR. STEIB: For what reason?

1 MR. SONNEK-SCHMELZ: -- experts to do  
2 anything.

3 MR. STEIB: We could. There are people  
4 with counsel that are hiring experts and we'll hear  
5 from them.

6 MR. SONNEK-SCHMELZ: Correct. But the  
7 Planning Board also has the -- the right to hire  
8 experts for anything it deems necessary to be paid  
9 for by the developer.

10 MR. STEIB: If at some point they see an  
11 issue that arises, they will consider doing that. At  
12 this point, that issue has not arisen.

13 AN AUDIENCE MEMBER: Sir, can you speak  
14 in the microphone. This is important to us.

15 MR. STEIB: My comments were that the  
16 environmental issues regarding this site are  
17 controlled by the New Jersey Department of  
18 Environmental Protection. There is currently a  
19 licensed site remediation professional -- LSRP --  
20 who's overseeing that remediation under the  
21 jurisdiction of NJDEP. This Board has no authority  
22 under that; it's under the authority of NJDEP and,  
23 therefore, at this juncture, the Board doesn't see a  
24 need to spend money to engage an additional  
25 environmental consultant. And I said if at some

1 MR. SONNEK-SCHMELZ: This site had --  
2 had oil tanks on it for 80 years -- or 60 years, and  
3 it's --

4 MR. STEIB: This site is under the  
5 jurisdiction of the NJDEP and has an LSRP overseeing  
6 that site.

7 MR. SONNEK-SCHMELZ: Do you -- do you  
8 have --

9 MR. STEIB: We have no control over  
10 that; it's under NJDEP.

11 MR. SONNEK-SCHMELZ: Would you have the  
12 ability to hire an independent environmental engineer  
13 to oversee this site in addition?

14 MR. STEIB: No --

15 MR. SONNEK-SCHMELZ: No.

16 MR. STEIB: -- we don't because NJDEP  
17 oversees this site, we don't.

18 MR. SONNEK-SCHMELZ: Okay. Would you  
19 have -- any environmental impact engineer for  
20 environmental impacts of this development?

21 MR. STEIB: Of what nature?

22 MR. SONNEK-SCHMELZ: I'm not sure. I'm  
23 asking the Planning Board if -- you can hire -- if  
24 you can hire --

25 MR. STEIB: We could.

1 point an environmental issue arose that this Board  
2 might have jurisdiction over, they might consider it,  
3 but that has not arisen as of this point.

4 MR. SONNEK-SCHMELZ: Just to be clear,  
5 the money that you say you would spend would not be  
6 spent by the Board or the municipality but simply by  
7 the developer; is that correct?

8 MR. STEIB: I've already answered your  
9 question and I'm not going to argue with you, so  
10 let's move on. You're being redundant.

11 MR. SONNEK-SCHMELZ: I am not being  
12 redundant because it's -- you're being argumentative  
13 as well.

14 MR. STEIB: I'm not being argumentative.

15 MR. SONNEK-SCHMELZ: Okay. Then let's  
16 move on.

17 MR. STEIB: All right.

18 MR. SONNEK-SCHMELZ: In cases such as  
19 this -- this might be appropriate for Councilman  
20 Fligor -- does the Mayor have the right to engage a  
21 Citizens Advisory Committee? I do not believe that  
22 that's been the case. As a member of council, you  
23 may be more party to conversations concerning that  
24 or -- or why it has not been engaged.

25 MR. FLIGOR: Never has been.

1 MR. SONNEK-SCHMELZ: Why?  
 2 MR. FLIGOR: Because we haven't had one.  
 3 AN AUDIENCE MEMBER: Mic.  
 4 MR. FLIGOR: We've never had a citizens  
 5 advisory on an application before the Board; we let  
 6 the Board handle it.  
 7 MR. SONNEK-SCHMELZ: In an instance such  
 8 as this where we see such an outcry by the  
 9 population, do you think that a Citizens Advisory  
 10 Committee would be appropriate?  
 11 MR. FLIGOR: No.  
 12 MR. SONNEK-SCHMELZ: Why?  
 13 MR. FLIGOR: Because it's the job of  
 14 this Board to -- look, these are citizens of your  
 15 town sitting on this Board currently; right? These  
 16 are all volunteers. There's nobody paid here, okay.  
 17 And every one of these people live in this town. So  
 18 they're the ones who make the decision, period.  
 19 MRS. MURRAY: Could you tell me what  
 20 committee you belong to?  
 21 MR. SONNEK-SCHMELZ: None.  
 22 MRS. MURRAY: None.  
 23 MR. SONNEK-SCHMELZ: None. I have been  
 24 on several. I've been on the Environmental  
 25 Commission, and the Board of Ed, so I have committed

1 please. State your name, address, and spell your  
 2 last name, please.  
 3 MS. WIGGINTON: Good evening. My name  
 4 is Kate Wigginton, W-i-g-g-i-n-t-o-n. My address is  
 5 62 Avenue D in Atlantic Highlands.  
 6 My first question: I didn't --  
 7 Mr. Steib, I didn't see it here on any of your  
 8 exhibits, but was a 200-name list certified?  
 9 MR. STEIB: It hasn't been marked as an  
 10 exhibit; however, the Applicant produced the service  
 11 packet which includes the Notice of Hearing, the  
 12 certified Property Owner List, the certified mailing  
 13 receipts for the mailing to the property owners, as  
 14 well as the Affidavit of Publication in the  
 15 newspaper.  
 16 MS. WIGGINTON: Can you mark that?  
 17 MR. STEIB: I'm gonna give it a marking  
 18 right now, and that's going to be A-26.  
 19 (A-26, Service packet, marked.)  
 20 MS. WIGGINTON: Thank you, Mr. Steib.  
 21 My next question: When will we make --  
 22 when will the Applicant make an application to the  
 23 sewer authority to accept the plans?  
 24 MR. GIUNCO: Upon approval of this  
 25 Board, we proceed with the other applications.

1 my time, okay. Just to confirm, because I'm sure  
 2 that's what you -- the general answer to the question  
 3 is yes. I would consider others as well.  
 4 To members of the Planning Board: Have  
 5 you ever -- have any of you ever been advised by  
 6 counsel or considered voting or granting variances  
 7 based on fear of a lawsuit?  
 8 MR. STEIB: None of you have to respond  
 9 to that. This Board is not under your interrogation.  
 10 These are questions for the Applicant and their  
 11 witnesses; you're not putting the Board under  
 12 interrogation.  
 13 AN AUDIENCE MEMBER: Can you please  
 14 speak into the mic.  
 15 MR. STEIB: This is a time period for  
 16 questions of the Applicant and the witnesses based  
 17 upon the testimony and the exhibits that they've  
 18 presented, it's not a place for interrogation of  
 19 Board members, and I'm not going to permit it.  
 20 (Applause.)  
 21 MR. SONNEK-SCHMELZ: Okay. When we're  
 22 looking at this case -- one more question here.  
 23 Looking -- for the developer -- I'll end  
 24 my questions there.  
 25 CHAIRMAN NEFF: Thank you. Next,

1 MS. WIGGINTON: Okay. And if the  
 2 sewer --  
 3 MR. GIUNCO: I'd just like to make sure  
 4 you understand. There have been discussions already  
 5 with the sewer department, if you will, to make sure  
 6 that our design plans fit in with the way that the  
 7 system operates.  
 8 MS. WIGGINTON: And if it doesn't accept  
 9 responsibility?  
 10 MR. GIUNCO: Well, then, I guess we  
 11 would have to have a discussion with them. But the  
 12 concept of the sewer, the capacity is available and  
 13 it's just the design, and the design has to be done  
 14 to engineering standards. So if, for example, the  
 15 design required an amendment, then it would go back  
 16 and forth to the engineers.  
 17 AN AUDIENCE MEMBER: You need to speak  
 18 up.  
 19 MS. WIGGINTON: But you have to have an  
 20 operator in charge, right, if the Authority didn't  
 21 accept it?  
 22 MR. GIUNCO: No, you don't need a  
 23 licensed operator because the municipality is the  
 24 licensed operator.  
 25 MS. WIGGINTON: But if they didn't

1 accept responsibility for the sewers.  
 2 **MR. GIUNCO:** I-- I guess. But the  
 3 reason that the sewer department is there is to  
 4 handle sewerage disposal. That's a municipal  
 5 obligation.  
 6 **MS. WIGGINTON:** And have you received  
 7 authority from the water department that they can  
 8 accept the additional homes?  
 9 **MR. GIUNCO:** Again, it's similar. The  
 10 application will have to be made subsequently,  
 11 however, it has been investigated.  
 12 Mr. Kennedy, have you done that?  
 13 **MR. KENNEDY:** Yes, we have.  
 14 **MS. WIGGINTON:** And they have okayed it?  
 15 **MR. GIUNCO:** We're here.  
 16 **MS. WIGGINTON:** Okay. My next question  
 17 is, once the developer starts disturbing the concrete  
 18 slabs, does the Freehold Sewer Authority -- I mean  
 19 the Freehold Soil authority take the samples after  
 20 the concrete is disturbed?  
 21 **MR. GIUNCO:** No, Freehold Soil does not  
 22 take samples. That's already been done, as Mr. Steib  
 23 indicated. That's under the jurisdiction of NJDEP,  
 24 and those samples have been monitored by the licensed  
 25 remediation specialist. The soil conservation is

1 primarily, is the fact that it was an oil  
 2 distribution facility --  
 3 **MS. WIGGINTON:** That's correct.  
 4 **MR. GIUNCO:** -- they've been under  
 5 review from NJDEP for quite some time.  
 6 **MS. WIGGINTON:** But we still have those  
 7 huge concrete slabs that have to be removed; right?  
 8 **MR. GIUNCO:** And the buildings. All  
 9 that has to be removed, demolished, and then disposed  
 10 of.  
 11 **MS. WIGGINTON:** Also, you said there was  
 12 going to be no association that's going to be with  
 13 this development; is that correct? So who would be  
 14 maintaining the wall?  
 15 **MR. GIUNCO:** No, the homeowners'  
 16 association hasn't been decided yet.  
 17 **MS. WIGGINTON:** Okay. So if you have no  
 18 association, who would be maintaining the wall and  
 19 the bulkhead, and whatever has to be maintained if  
 20 there's no association?  
 21 **MR. GIUNCO:** Correct.  
 22 **MS. WIGGINTON:** If there's -- that was a  
 23 question.  
 24 **MR. GIUNCO:** Yes. If there was an  
 25 association, that's what the association would do.

1 there to make sure that the soil does not erode from  
 2 the site.  
 3 **MS. WIGGINTON:** Okay.  
 4 **MR. GIUNCO:** I mean, it can happen if  
 5 you have a big storm. They expect it to be repaired  
 6 and cleaned up, but that is -- have you ever seen,  
 7 like, a black fence around a construction site type  
 8 of thing?  
 9 **MS. WIGGINTON:** Lots of times.  
 10 **MR. GIUNCO:** That's what we're speaking  
 11 of. That's -- that's the erosion control. They also  
 12 put controls over the inlets so that soil and sand  
 13 and dirt and things don't get into the inlets.  
 14 **MS. WIGGINTON:** Okay.  
 15 **MR. GIUNCO:** It's all on the plan that  
 16 Mr. Kennedy submitted.  
 17 **MS. WIGGINTON:** I guess my concern is  
 18 the fact that McConnell has been there all that time  
 19 and there's huge concrete slabs there, and there was  
 20 always the marine repair, so I'm just --  
 21 **MR. GIUNCO:** I think that's the reason.  
 22 **MS. WIGGINTON:** -- expecting that  
 23 something's going to come up.  
 24 **MR. GIUNCO:** Yeah, and that's the reason  
 25 this site has been -- that's one of the reasons

1 **MS. WIGGINTON:** And if there was no  
 2 association?  
 3 **MR. GIUNCO:** Well, then, it gets  
 4 determined whether it's a municipal, public  
 5 improvement or a private improvement and whose  
 6 obligation it is. And that's the subject of the  
 7 recommendation from the municipal engineer, and there  
 8 would be an agreement.  
 9 **MS. WIGGINTON:** So the municipality  
 10 might accept responsibility of the wall?  
 11 **MR. GIUNCO:** Well, typically, there's an  
 12 obligation of municipalities to accept public  
 13 improvements that are built to standard and have  
 14 passed inspection. And for that purpose, one of the  
 15 things the developer's obligated to do is to  
 16 propose -- post a performance guarantee in the amount  
 17 of 120 percent of the cost of those improvements that  
 18 is only released when the engineers are satisfied --  
 19 the municipal engineers are satisfied that it's built  
 20 to those standards.  
 21 Similarly, when those performance  
 22 guarantees lapse or are completed, then there's a  
 23 two-year maintenance obligation that's also protected  
 24 by bond. So the municipality has in hand a bond from  
 25 an insurer -- a surety, if you will -- to guarantee



1 the performance of the developer even if, for some  
 2 reason, the developer went out of business.  
 3 **MS. WIGGINTON:** Okay. My final question  
 4 was, I guess, to the planner. When you did your  
 5 survey of the 300 homes or thereabouts, they were on  
 6 undersized lots?  
 7 **MR. JANIW:** No, not necessarily  
 8 undersized lots. Dimensionally, the lots have some  
 9 deviation that didn't permit the circle to fit, so  
 10 that doesn't make them undersized because some of  
 11 them could have been narrower or longer. They may  
 12 have met the minimum lot size, but --  
 13 **MS. WIGGINTON:** But they're not  
 14 conforming.  
 15 **MR. JANIW:** -- there was some -- some  
 16 issue that prohibited the circle to fit.  
 17 **MS. WIGGINTON:** Right. But a lot of  
 18 these lots were nonconforming in that neighborhood.  
 19 **MR. JANIW:** Well, there are many 50-foot  
 20 lots there, yes.  
 21 **MS. WIGGINTON:** Right. My question is,  
 22 how many homes that are nonconforming would be 2,600  
 23 feet in size?  
 24 **MR. JANIW:** That -- that was outside the  
 25 scope of my review.

1 **MR. KRAUSS:** Okay. You also talked  
 2 about elevation of the proposed homes, but you didn't  
 3 speak about the numbers. Can you give us either -- a  
 4 range of what the elevations will be for the proposed  
 5 homes?  
 6 **MR. KENNEDY:** So when you say  
 7 "elevation," I think architectural elevation, that  
 8 Mr. Monteforte went through.  
 9 **MR. KRAUSS:** No. I'm talking about the  
 10 flood elevation.  
 11 **MR. KENNEDY:** Oh. Okay. So we prepared  
 12 a grading plan that was submitted to the Board and  
 13 reviewed by the Board engineer on Sheet 5 of 11  
 14 entitled "Grading Plan." We set finished floors.  
 15 Now, just so the Board knows and the  
 16 public knows, each one of these lots is subject to a  
 17 plot plan review. Just because we're showing  
 18 finished floor elevations and rectangles -- it means  
 19 that this is what, at this point, we show and we can  
 20 show conformance. But each of these lots has to be  
 21 independently reviewed for a building permit, so each  
 22 of the grading plans are independently reviewed at  
 23 the time of construction. So I just want that caveat  
 24 because they -- it might go up, it might go down.  
 25 But the lowest lot is elevation -- has a finished

1 **MS. WIGGINTON:** But isn't that kind of  
 2 important, though?  
 3 **MR. JANIW:** I don't --  
 4 **MR. COLANGELO:** Ladies and gentlemen,  
 5 please don't engage, just let the question be asked.  
 6 **MS. WIGGINTON:** Thank you very much.  
 7 **CHAIRMAN NEFF:** Next is Mr. James  
 8 Krauss. State your name, address, and spell your  
 9 last name.  
 10 **MR. KRAUSS:** James Krauss, 77 Bayside  
 11 Drive, K-r-a-u-s-s. I believe my couple of questions  
 12 are for Mr. Kennedy.  
 13 You testified as to the height of the  
 14 bulkhead, but there was difficulty hearing. Can you  
 15 repeat how high the bulkhead would be.  
 16 **MR. KENNEDY:** We propose the top to the  
 17 bulkhead to be 8.0.  
 18 **AN AUDIENCE MEMBER:** Feet? Meters?  
 19 Kilometers?  
 20 **MR. KENNEDY:** It's an elevation. 8.0  
 21 elevation.  
 22 **MR. KRAUSS:** 8.0 feet. Ninety-six  
 23 inches?  
 24 **MR. KENNEDY:** Feet in elevation above  
 25 zero.

1 floor elevation of 20. The highest lot, which would  
 2 be lot 5.15, has a finished floor elevation of 36.75.  
 3 And that's just really a means of this 20-foot  
 4 vertical slope of property. So those are the  
 5 finished floor elevations where the AE zone has an  
 6 elevation of 13.  
 7 **MR. KRAUSS:** Okay. Thank you.  
 8 **MR. KENNEDY:** You're welcome.  
 9 **CHAIRMAN NEFF:** Next on the list is  
 10 Benjamin Chiles, but you're represented by counsel,  
 11 so it will be Laurie Zydel.  
 12 **MS. ZYDEL:** Hi. I'm Laurie Zydel, 39  
 13 East Lincoln Avenue, and that's Z-y-d-e-l.  
 14 My first question is for the developer.  
 15 The gift that you're providing for us, this nice  
 16 walkway, the ten-foot walkway that connects Avenue D  
 17 to this little slice of beach that you're giving us,  
 18 will that -- how high will that be in height from the  
 19 ground at -- or should I say, to access the water?  
 20 **MR. GIUNCO:** I don't know. The bulkhead  
 21 is eight. Is that what you're asking?  
 22 **MS. ZYDEL:** Okay. So is this gonna be  
 23 built on top of the bulkhead?  
 24 **MR. GIUNCO:** No, it's a walkway behind  
 25 the bulkhead.

1 **MS. ZYDEL:** Okay.  
 2 **MR. GIUNCO:** So it would be south of the  
 3 bulkhead.  
 4 **MS. ZYDEL:** So it will be just behind  
 5 the bulkhead. Okay. So that means we don't have  
 6 access to the beach from this walkway. We would have  
 7 to walk along this path --  
 8 **MR. GIUNCO:** On the edges.  
 9 **MS. ZYDEL:** It's a path. So it's -- so  
 10 you're saying there's an eight-foot bulkhead and then  
 11 there's this path. So we don't have access to the  
 12 water from this path.  
 13 **MR. GIUNCO:** No, because there's a  
 14 bulkhead.  
 15 **MS. ZYDEL:** Okay.  
 16 **MR. GIUNCO:** You'd have to either go up  
 17 and over, or around.  
 18 **MS. ZYDEL:** Okay. So it's really not  
 19 access to the water. The only access we have to the  
 20 water is walking along the path and then down onto  
 21 the beach. So we can't access the beach from that  
 22 path.  
 23 **MR. GIUNCO:** Well, it's very similar to  
 24 the condition today. The bulkhead has to be  
 25 restored, so that bulkhead that's there --

1 **MS. ZYDEL:** Okay.  
 2 **MR. GIUNCO:** You can -- actually, I  
 3 think you're on the other side of the bulkhead there,  
 4 too.  
 5 **MS. ZYDEL:** How steep is that, the  
 6 gradation?  
 7 **MR. KENNEDY:** It slopes about a foot in  
 8 30 feet, so it's -- it's very mildly sloped if you're  
 9 talking about from the walkway back to the toe of  
 10 slope that's being revegetated because we're bringing  
 11 the elevation of the bulkhead up, the walkway's  
 12 higher, and then we have a flat area back towards --  
 13 back towards the revegetated area of the open space.  
 14 **MS. ZYDEL:** Can you tell me how big that  
 15 space is, or how big the beach will be once the slope  
 16 down from the boardwalk or the path, or whatever  
 17 you're calling it?  
 18 **MR. KENNEDY:** So I'm not talking about a  
 19 beach. The beach is waterward of the face of the  
 20 bulkhead, and that bulkhead, if you were to walk out  
 21 there now and see, basically, the --  
 22 **MS. ZYDEL:** Let me rephrase. The open  
 23 space that you're providing, how big is that?  
 24 **MR. GIUNCO:** You want to know how much  
 25 open space this is --

1 **MS. ZYDEL:** But you're extending it the  
 2 length of the bench.  
 3 **MR. FLIGOR:** Excuse me.  
 4 **MS. ZYDEL:** Am I correct?  
 5 **MR. FLIGOR:** My question to him was on  
 6 that radius. The reason I was asking about the  
 7 radius is because besides the beach, there's a piece  
 8 of property they use on McConnell's, okay. It's  
 9 slightly elevated, but it's accessible to the  
 10 boardwalk from what I can see, okay. And that's why  
 11 I was asking about the radius; was that a wall there  
 12 or not. And they said, No, that was a grade where it  
 13 sloped down to the beach and the boardwalk.  
 14 **MS. ZYDEL:** Could you be more clear,  
 15 like, pointing it out on your map?  
 16 **MR. FLIGOR:** I have it right here.  
 17 **MR. McGOLDRICK:** I'll do it. I'll do  
 18 it. He's talking about the radius. He's talking  
 19 about this right here; am I right?  
 20 **MR. FLIGOR:** Yes.  
 21 **MR. McGOLDRICK:** Right here. So it's  
 22 graded. You'll be able to walk --  
 23 **MR. FLIGOR:** From the beach.  
 24 **MR. McGOLDRICK:** -- from the beach up to  
 25 here, and also access this walkway.

1 **MS. ZYDEL:** I want to know how much open  
 2 space there is to access the water.  
 3 **MR. GIUNCO:** Like an acre or something  
 4 like that?  
 5 **MS. ZYDEL:** Yeah, give me a size.  
 6 **MR. KENNEDY:** It's 1.63 acres, or 71 --  
 7 about 71,000 square feet of area.  
 8 **MS. ZYDEL:** Seventy-one thousand square  
 9 feet. How many feet across is it when you come off  
 10 the path, just so we know how much water we can  
 11 access. Literally walk from the sand to the water.  
 12 **MR. KENNEDY:** It's 650 feet of -- of  
 13 frontage along the bay.  
 14 **MS. ZYDEL:** Okay. Thank you.  
 15 **MR. KENNEDY:** You're welcome.  
 16 **CHAIRMAN NEFF:** Andy Clurfeld.  
 17 **MS. CLURFELD:** Most of my questions have  
 18 been answered. I mean, I can wait till the end.  
 19 There were others who asked the same questions I was  
 20 going to ask. I still want to reserve -- I signed up  
 21 for comments as well.  
 22 **MR. COLANGELO:** That's great. Thank you  
 23 for saying that.  
 24 **MR. STEIB:** Just so you understand,  
 25 we're going through the questions list now. We're

1 not going to --

2 **MS. CLURFELD:** And since my questions

3 were largely answered, I don't want to take up your

4 time now, but make a comment later.

5 **CHAIRMAN NEFF:** Okay. So next is Janice

6 Evertsen.

7 **MS. EVERTSEN:** Hi. My name is Janice

8 Evertsen, 72 Burlington Avenue. Last name spelled

9 E-v-e-r-t-s-e-n.

10 Question to the Board. How does the

11 Board justify in a situation like this granting 12

12 variances plus waivers to one buyer who intends to

13 change the current land usage?

14 **MR. COLANGELO:** We can't justify

15 anything. We can't answer that question because

16 until we hear all the public comments, testimony and

17 everything else --

18 **AN AUDIENCE MEMBER:** Can't hear you.

19 **MR. COLANGELO:** It would be impossible

20 to answer that question because at this point in

21 time, our job is to hear the testimony, the public

22 comments, questions and everything. And so to say

23 what we're justifying, nothing has been done yet for

24 us to justify. So that's an open question that can't

25 be answered, all right. It just can't, you know.

1 This is an application. It is our job

2 to sit here and listen to both the Applicant, we have

3 to listen to the public comments, we have to listen

4 to everything and then make a decision. There's no

5 answer of how can we justify it because there's no

6 decision that's been made yet. For us to make our

7 decision before, we wouldn't be doing our duty, so...

8 **AN AUDIENCE MEMBER:** Well, how do you

9 justify --

10 **MR. COLANGELO:** Excuse me, sir. I'm

11 sorry. She's here asking the questions.

12 **MS. EVERTSEN:** Okay. Thank you. That's

13 all I have.

14 **CHAIRMAN NEFF:** Okay. Next is Donna

15 King.

16 **MS. KING:** Hi. Donna King, 43 4th

17 Avenue.

18 First of all, I want to thank the Board

19 for your patience, your duty. Whatever puts you here

20 at everybody's -- you know, you've got a target on

21 you, but I have to also ask you, who do you

22 represent? There are a lot, a lot of people in

23 Atlantic Highlands that are really, really upset

24 about this and we just want to make sure that you

25 represent the majority of us. We know that --

1 **CHAIRMAN NEFF:** Is there a question?

2 **MS. KING:** Who are you gonna represent?

3 Are you gonna represent the majority of people in

4 Atlantic Highlands, or just...

5 **MR. COLANGELO:** Ms. King, I'm sorry.

6 That is more for the comment section, and that is

7 more of a statement. If you have a question in

8 reference to one of the witness's on the application,

9 please.

10 **MS. KING:** Okay. How many of these 21

11 homes have garages?

12 **MR. KENNEDY:** All of them are proposed

13 to have garages.

14 **MS. KING:** Right. And how many garages

15 per home?

16 **MR. KENNEDY:** Two-car garages.

17 **MS. KING:** So that means that most

18 likely, everybody that buys one of your homes are

19 going to have two cars, which means that -- 42 cars,

20 which means that's a lot more traffic going into that

21 area. So how do you propose that that is not a

22 problem?

23 **MR. KENNEDY:** Well, the state gives us

24 guidelines for how much -- for how many vehicle trips

25 a single-family home generates, and that's 10.1 trips

1 per day, per single-family home. So that is the

2 traffic generation that you heard Mr. Janiw testify

3 with regard to the Master Plan. And when the Master

4 Plan was developed, the infrastructure such as the

5 roads, the intersections is studied and recognized

6 and -- and looked at for these things. We're not

7 requesting a use variance, we're requesting to

8 actually take a property that's nonconforming and do

9 something that the ordinance is asking us to do --

10 **MS. KING:** Okay.

11 **MR. KENNEDY:** -- which is to develop --

12 **MS. KING:** If you're saying there's 10.1

13 percent --

14 **MR. GIUNCO:** Mr. Chairman, I'm gonna

15 object at this moment. Can my client -- can my

16 witness finish his answer, please.

17 **MS. KING:** I'm sorry.

18 **CHAIRMAN NEFF:** Yes.

19 **MR. KENNEDY:** So just doing the 10.1 and

20 21 homes brings us to 213 trips per day. That's over

21 a 24-hour period. And one trip is vehicle movement

22 in or out. So that's -- if you divide it in half,

23 that's the amount of -- of -- a round trip trip. So

24 it's foreseen by the Master Plan, we're not

25 requesting anything -- any deviation from use that

1 would generate traffic over and above what's foreseen  
2 by the Master Plan and ordinance of the -- of the  
3 Borough.

4 **MS. KING:** And are you also aware -- and  
5 I -- I know our Board is, but there's also going to  
6 be other homes that are being proposed on now  
7 St. Agnes' property, which is also going to impact --

8 **CHAIRMAN NEFF:** There's nothing --

9 **MR. COLANGELO:** There's nothing about  
10 St. Agnes here. The diocese still owns that  
11 property, okay.

12 **MS. KING:** For now.

13 **CHAIRMAN NEFF:** Well, there's nothing  
14 decided about that. That's not before this Board  
15 right now.

16 **MS. KING:** Okay.

17 **CHAIRMAN NEFF:** Next, Kevin Milne.

18 **MR. MILNE:** Kevin Milne, 36 South  
19 Avenue, M-i-l-n-e. I have a couple questions for, I  
20 guess it would be Mr. Kennedy.

21 In regard to the pump station, the  
22 sewerage lift station, what's the redundancy of a  
23 power outage?

24 **MR. KENNEDY:** We are required by the DEP  
25 to provide a back-up generator for emergency use of

1 three-step process. We can't actually start the  
2 process until there's some -- a municipal approval.  
3 After the municipal approval, we have to seek a  
4 conveyance authority approval. The conveyance  
5 authority, in this case, is Atlantic Highlands Sewer  
6 Department, and then we have to seek treatment  
7 approval. Just because there's conveyance capacity  
8 does not mean that there's treatment capacity. So we  
9 then have to go to a third step and seek Treatment  
10 Capacity Approval.

11 After that, we put the application in to  
12 DEP, they review the pump station specifics, they  
13 review the entire capacity calculations and approvals  
14 that were done by the other agencies, as well as our  
15 conveyance system calculations that we propose. So  
16 it's a multi-step process, and it only occurs after a  
17 municipal approval. And that's because you don't  
18 want your sewer authority reserving capacity for a  
19 project that won't get approved, so that's the idea.

20 **MR. MILNE:** Going back to the generator,  
21 would that be running -- most generators need to run  
22 certain times a week, a month in order to -- the  
23 engines need to run. What is the cycle or the time  
24 of day or the decibel level or any of those things?

25 **MR. KENNEDY:** It's a once-per-week

1 the pump station, just like many of the other pump  
2 stations throughout the Borough.

3 **MR. MILNE:** What would -- what would  
4 the -- what fuel would that run on?

5 **MR. KENNEDY:** Natural gas.

6 **MR. MILNE:** It would be natural gas.  
7 Would there be any accommodation for variable-speed  
8 drives for these pumps, or anything to pull down  
9 power usage or spikes?

10 **MR. KENNEDY:** There's actually a  
11 conceptual design that's been developed by a  
12 different consultant and I do not know if they  
13 utilize two speed or variable-speed pumps. Two speed  
14 would -- would -- typically is what I've seen. I  
15 don't know if they've used a variable-speed drive on  
16 the -- on the pump station. I mean, that's really  
17 not -- that's -- that's usually approved and  
18 submitted through DEP. The Planning Board normally  
19 doesn't get into the specifics of the pump drives,  
20 but it is something that we have to satisfy with  
21 regard to the DEP through our Treatment Works  
22 Application with DEP.

23 **MR. GIUNCO:** Explain what that is.

24 **MR. KENNEDY:** Sure.

25 The Treatment Works Approval is a

1 exercise period. The time of that exercise can be  
2 adjusted so as to not be obtrusive. And we are  
3 required to meet NJAC 7:29, which is the noise code,  
4 and that permits certain daytime decibel levels and  
5 nighttime decibel levels at sensitive receptors. In  
6 this case, the sensitive receptor would be the  
7 closest single-family home, which occurs on our -- on  
8 our property. So in order to meet those noise  
9 requirements, it is likely that a critical muffler  
10 will be proposed. In addition, the solid wood fence  
11 and landscaping will be proposed to meet the noise  
12 requirements. That's an ongoing performance  
13 standard.

14 That's not nothing that we're requesting  
15 a waiver, it's something that if there's a complaint  
16 that the Borough, or any other agency, would have  
17 to -- would have to -- we would have to modify until  
18 we meet that performance criteria in that  
19 administrator code provision.

20 **MR. MILNE:** Going on to the two-inch  
21 force main, where would that run?

22 **MR. KENNEDY:** The two-inch force main  
23 would run to the existing infrastructure at Harbor  
24 View Drive. There's a terminal manhole at the  
25 intersection, just in from the intersection of Avenue

1 D and Harbor View Drive. That was the location that  
2 our initial consultations with the department  
3 indicated had capacity was the most appropriate area  
4 to discharge.

5 **MR. MILNE:** So you're gonna run gravity  
6 to that pump station and pump it all the way back  
7 across the neighborhood?

8 **MR. KENNEDY:** That's correct. We -- we  
9 have a lift station at the lowest portion of the  
10 property, and we will be pumping it about six to 700  
11 feet to the existing infrastructure.

12 **MR. MILNE:** Is there any thought to -- I  
13 know when I walked by the end of 1st Avenue here and  
14 we walked past our municipal pump station, it's  
15 malodorous, to say the least. Is there gonna be any  
16 steps to chemically treat the pumping station area  
17 or in that? Because there's the Catamaran Club and  
18 there's proposed new homeowners and existing  
19 homeowners that will be subject to that. And when  
20 the wind blows, I mean...

21 **MR. KENNEDY:** I completely understand.  
22 This is a state-of-the-art pump station with a wet  
23 well that's specifically designed to handle this  
24 number of homes. The municipal infrastructure is --  
25 as you know, has been here since the '60s, and a lot

1 Program, as well as many other youth sailors and  
2 kayakers? As I see in your existing plan, these  
3 groups will be displaced from the property and have  
4 great difficulty in finding open space to operate.  
5 Also, access from Center Avenue will be removed,  
6 which is parallel to the Cat Club.

7 **MR. GIUNCO:** Could you break that down  
8 into one question at a time.

9 **MR. GOUSHY:** Where you have the beach on  
10 the northwestern edge, there is a youth sailing  
11 program operated there. There's an access road  
12 parallel to the entrance to the Cat Club. You have a  
13 house being built in the southwestern section, which  
14 takes up that roadway. So now -- and the Cat Club is  
15 gated and closed off certain -- sometimes, or  
16 whatever. So now you cannot access that beach. None  
17 of the kayakers, none of the boaters, the sail  
18 boaters, the youth. The kids in the area.

19 **MR. GIUNCO:** Is the question is there an  
20 access that will be open?

21 **MR. GOUSHY:** Well, you've taken away the  
22 access. So you have a beach there, but we can't  
23 access it.

24 **MR. GIUNCO:** So the question is,  
25 Mr. Kennedy, is there any access?

1 of development has occurred since that time. I don't  
2 know exactly what's happening at the municipal pump  
3 station, but it will not be happening at this lift  
4 station. That's specifically designed for the homes  
5 that we propose.

6 **MR. MILNE:** So there is no way to go  
7 gravity to -- to the same spot that you're tying in  
8 with the force main?

9 **MR. KENNEDY:** No, we would have to fill  
10 the site in excess of 15 feet at the lowest portion  
11 to go gravity to Harbor View Drive. That -- that --  
12 it doesn't make -- no. The force main is the -- is  
13 the standard of practice given the topography on the  
14 site.

15 **MR. MILNE:** Okay. I believe that's all  
16 I have.

17 **CHAIRMAN NEFF:** Thank you.  
18 Matthew Goushy.

19 **MR. GOUSHY:** My name is Matthew Goushy,  
20 G-o-u-s-h-y, 230 Hillside Avenue. So I guess my  
21 question is for Mr. Kennedy.

22 With respect to the open space on the  
23 northwestern edge that you're giving to the Borough,  
24 how do you see this access for use by the small boat  
25 sailors such as Atlantic Highlands Sailing Education

1 **MR. KENNEDY:** So the portion of the  
2 McConnell tract that you're referring to is subject  
3 to this development. It's part of the property. But  
4 there is -- as you know, that goes past Center  
5 Street, the park. You can actually go right around  
6 the location.

7 Now, the gating of the Catamaran Club is  
8 not anything to do with this Applicant. The gating  
9 or -- or access through the Catamaran Club is really  
10 a function of -- of the use of the property. All  
11 we're proposing is to give the Borough property  
12 that's used now under whatever agreement there is.  
13 It would become Borough property. So we're -- we're  
14 not changing your access configuration, we're  
15 basically providing property to you at that corner,  
16 at that northwest corner that would be the Borough's  
17 to use as it sees fit.

18 **MR. COLANGELO:** Just to clarify, that's  
19 lot 5.22.

20 **MR. KENNEDY:** 5.22 is the open space  
21 lot; correct.

22 **MR. GIUNCO:** Can I follow up?  
23 Mr. Kennedy, in looking at A-19 where it  
24 shows on the plan, as I'm looking at it, I see an  
25 access that goes to the west and southwesterly corner

1 of the site and still enters the Catamaran area. Am  
 2 I missing it?  
 3 **MR. GOUSHY:** Right. We drive through  
 4 here right now.  
 5 **MR. GIUNCO:** Sir, there's a  
 6 demonstration going on right now, if you would just  
 7 look.  
 8 **MR. GOUSHY:** Right. So we access -- we  
 9 access right through here. We can't -- we can't go  
 10 through the Catamaran Club, we drive right through  
 11 here. We have all our junior sailing stuff in this  
 12 area.  
 13 **MR. KENNEDY:** Would you mind -- I'm  
 14 sorry. I was kind of talking over him. Would you  
 15 mind just taking that Starboard -- that right there.  
 16 Just take that down.  
 17 **MR. GOUSHY:** All right. Right here.  
 18 **MR. KENNEDY:** And now tell us what  
 19 you're talking about.  
 20 **MR. GOUSHY:** This is us right here. We  
 21 have to come in this way. We had a real huge  
 22 regatta, like, a month or two ago. We had 50, 60  
 23 kids' boats there. Obviously, we're all gonna be  
 24 out. We're gonna have to leave. But with this  
 25 boardwalk, there's no way to bring a trailer or boat

1 You have to have a question.  
 2 **MR. GOUSHY:** Okay. So my question was  
 3 answered. I guess we're not gonna have that anymore.  
 4 **CHAIRMAN NEFF:** Dawn Mclane.  
 5 **MS. MCLANE:** Dawn Mclane, 31 East  
 6 Lincoln Avenue. Thank you very much for tonight.  
 7 There's a lot of emotions here. My questions about  
 8 the pumping station were asked, but I do have one  
 9 other one, and I think it's for the Planning Board  
 10 and the developer, but you tell me.  
 11 So if people do understand that these  
 12 houses are being built on land with benzene and they  
 13 go unsold because of that, or vacant, then what and  
 14 who is responsible for those vacant and unsold homes?  
 15 **MR. GIUNCO:** The developer.  
 16 **MS. MCLANE:** Then what happens?  
 17 **MR. GIUNCO:** Well, it would first have  
 18 to -- what would happen? There would be a pretty  
 19 significant lawsuit over the basis that all of the  
 20 testing and the reports that have been given to date  
 21 demonstrate that the site is developable and meets  
 22 residential standards. So somebody along the line  
 23 must have made a mistake, if that was to happen. But  
 24 it's been done once by a professional, reviewed by  
 25 another professional who is a licensed professional

1 or do anything again to get these kids --  
 2 **MR. GIUNCO:** If you were to -- see that  
 3 red outline. And go to the southwest corner of the  
 4 proposed development. A little further, and you'll  
 5 be right at the corner. Immediately to your left, it  
 6 looks like there's a driveway there, and that is part  
 7 of the public property.  
 8 Now, if you go towards the north -- a  
 9 little further. From there, move back towards where  
 10 the vegetation is shown, like, on an angle, and that  
 11 area is what's gonna be dedicated, maybe, excuse my  
 12 word. It's available for public property. So,  
 13 basically, not only do you -- is there an access  
 14 route that is all public property that you should  
 15 have access to, but that additional is where your  
 16 regatta is.  
 17 **AN AUDIENCE MEMBER:** There's a big slope  
 18 there, so how are you supposed to use it?  
 19 **CHAIRMAN NEFF:** Excuse me.  
 20 **MR. COLANGELO:** Mr. Goushy, there's got  
 21 to be a question, I'm sorry, at this point.  
 22 **MR. GOUSHY:** Well, I'm gonna have to  
 23 disagree that we'll be able to use this because this  
 24 is gated off, this is full of stuff all the time.  
 25 **MR. COLANGELO:** Again, I'm sorry, sir.

1 under the DEP, and they approved it.  
 2 **MS. MCLANE:** Thank you.  
 3 **CHAIRMAN NEFF:** Douglas Leite.  
 4 **MR. LEITE:** Douglas Leite, 51 Burnside  
 5 Avenue, Cranford, New Jersey, L-e-i-t-e. My question  
 6 is for Mr. Kennedy.  
 7 The underground utilities, where are  
 8 they located on the parcel?  
 9 **MR. KENNEDY:** The underground utilities  
 10 would follow the municipal right-of-way -- or the  
 11 proposed roadway right-of-way.  
 12 **MR. LEITE:** So they're gonna be in the  
 13 roadway.  
 14 **MR. KENNEDY:** Correct.  
 15 **MR. LEITE:** Okay. And the -- one  
 16 further question. The --  
 17 **MR. KENNEDY:** I'm sorry. You said the  
 18 "road." I said the "right-of-way." They would be  
 19 within the right-of-way, which is not -- just isn't  
 20 the road, it's a 50-foot right-of-way.  
 21 **MR. LEITE:** Well -- okay. So where --  
 22 where on the parcel is that right-of-way, then?  
 23 **MR. KENNEDY:** The right-of-way is the  
 24 black line that follow the asphalt roadway, and is  
 25 inclusive of the sidewalk and the other

1 infrastructure such as street lighting, fire hydrant.  
 2 Just to point it out, it is to the  
 3 north. It's that black line. Then follows around to  
 4 the south. That's the outermost portion of the  
 5 right-of-way. And then the right-of-way to the  
 6 inside would be the limits of the single-family  
 7 homes.  
 8 **MR. LEITE:** Okay. All right. Thanks.  
 9 And the bulkhead; you mentioned the  
 10 bulkhead height. What -- exactly what height is it?  
 11 What NAVD height is the top of the bulkhead?  
 12 **MR. KENNEDY:** So "NAVD" is -- you're  
 13 referring to a vertical datum, which is generally  
 14 referred to -- its not sea level, but -- and I know  
 15 there's surveyors here -- but it's generally zero.  
 16 Generally. So that is a datum of zero, that vertical  
 17 datum that you just mentioned. The top of the  
 18 bulkhead is eight feet above that datum.  
 19 **MR. LEITE:** Okay. All right. I just  
 20 want to make sure. It's eight feet NAVD.  
 21 **MR. KENNEDY:** Correct.  
 22 **MR. LEITE:** Okay. Thank you.  
 23 **CHAIRMAN NEFF:** Don Adler.  
 24 **MR. ADLER:** Don Adler, 110 Neil Street,  
 25 Leonardo. I've been there for two years now. I walk

1 when a signal is required, you want the intersection  
 2 to lineup at 90 degrees because of site visibility,  
 3 and because of the ability to signalize an  
 4 intersection.  
 5 In this case -- and that was your  
 6 question, why do engineers like to lineup roads in a  
 7 90-degree angle, and why does RSIS have that  
 8 standard? Because it's a standard that applies  
 9 regardless of the facts across the state of New  
 10 Jersey in many, many instances. When we deviate from  
 11 that standard, we have to provide factual testimony  
 12 as to why that standard doesn't make sense, or why  
 13 the standard -- why a different standard is a better  
 14 engineering solution. And -- and that's what I've  
 15 done, and we actually discussed this during the  
 16 break, you and I.  
 17 **MR. ADLER:** So -- so you're saying that  
 18 since Avenue D is a dead end at the bay and there's  
 19 little traffic that comes from the north, that your  
 20 offset allows for 200 cars safely to make that right  
 21 turn onto Avenue D. That the site line for 200 cars  
 22 going onto Avenue D will be, in your opinion, safe,  
 23 essentially.  
 24 **MR. KENNEDY:** Yes.  
 25 **MR. ADLER:** And is the 200 cars in 24

1 a lot -- I have a dog and I walk a lot along  
 2 Avenue D. Also, we traverse the McConnell site a  
 3 lot. Probably over the last year and a half --  
 4 **CHAIRMAN NEFF:** Please use the mic.  
 5 **MR. ADLER:** Probably over the last year  
 6 and a half about 100 plus times. So my first  
 7 question is, because there is more than just minimal  
 8 traffic on Avenue D at most hours of the day, and on  
 9 Harbor View, I'd like to know what -- or why -- and  
 10 this is for the engineer -- why there's a standard  
 11 and why the need for the offset where -- so my first  
 12 question is, why is there a standard where you build  
 13 a new road like you had in the development and the  
 14 standard is to continue the road across the  
 15 intersection going straight rather than the right  
 16 turn onto Avenue D? In other words, the offset that  
 17 you have, why do you have that standard in the first  
 18 instance?  
 19 **MR. KENNEDY:** Well, RSIS has developed  
 20 certain standards that apply to every municipality in  
 21 the state of New Jersey, not just Avenue D, Atlantic  
 22 Highlands, but every intersection. So you could have  
 23 an issue where you have instead of 213 cars divided  
 24 by, maybe, 100 cars, you could have tens of thousands  
 25 of cars leading into an intersection. In that case

1 hours, approximately, it's not over 24 hours? Is it  
 2 over a ten-hour period, or 20 cars per hour?  
 3 **MR. KENNEDY:** Oh, was that a question?  
 4 **MR. ADLER:** Yes.  
 5 **MR. KENNEDY:** So we have something  
 6 called "average daily traffic." And average daily  
 7 traffic is traffic over a 24-hour period whether that  
 8 be -- if I were to tell you it's ten hours, that  
 9 would be not something that would be studied because  
 10 the -- the standard is for average daily traffic.  
 11 10.1 trips per dwelling unit in a 24-hour period. If  
 12 you're gonna say it goes over ten hours, I might say,  
 13 No, it goes over 16 hours. I -- I don't know that  
 14 ten hours is a reasonable estimate of when average  
 15 daily traffic -- which is 24 hours -- occurs.  
 16 **MR. ADLER:** Okay. My next question will  
 17 have to do with the pump station. Who is to maintain  
 18 the pump station after you sell the -- all the  
 19 residential units?  
 20 **MR. KENNEDY:** So the sewer pump station  
 21 would first be offered to the Borough of Atlantic  
 22 Highlands Sewer Department. And pursuant to the  
 23 Planning Board engineer's suggestion, a Developer's  
 24 Agreement would be entered into by this developer  
 25 to --

1 **MR. ADLER:** So can you detail for us all  
2 of the obligations and liability that Atlantic  
3 Highlands -- the Borough of Atlantic Highlands would  
4 have under your plan? So you have the pump station,  
5 you have the retaining wall or bulkhead, you have the  
6 roads. What other obligations would there be?

7 **MR. GIUNCO:** Well, when you say  
8 "obligations," many of these are statutory. For an  
9 example, we're not permitted in that service area for  
10 the sewer to run a private sewer system, only the  
11 municipality is.

12 **MR. ADLER:** I understand that.

13 **MR. GIUNCO:** And that's why it's  
14 built -- instead of being built at municipal cost,  
15 which is -- and you understand the sewer water rules,  
16 it would be spread over the users, and they would pay  
17 the capital improvement. You pay that every month.  
18 In this instance, all the capital improvements are  
19 gonna be paid by our client, so there would be no  
20 capital assessment in the municipal. At that point  
21 going forward, there's a user rate, and the user rate  
22 is assessed. And the user rate is not only the  
23 processing fees or cost of the sewerage, there's also  
24 maintenance going forward over the system. So, in  
25 effect, the obligation remains by statute with the

1 performance guarantee, it's typically a two-year  
2 period. However, if construction extends beyond  
3 that, the obligation of the -- well, the  
4 municipality's request, and the developer is  
5 obligated to extend that by extending the bond.

6 **MR. ADLER:** For two years.

7 **MR. GIUNCO:** It -- it depends. If it's  
8 a ten-year construction, it would be for ten years.  
9 If it's one-year construction, it could be for one  
10 year.

11 **MR. ADLER:** Well -- okay. But let's be  
12 reasonable and --

13 **MR. GIUNCO:** Will you let me finish,  
14 please.

15 **MR. ADLER:** Sure. Sorry.

16 **MR. GIUNCO:** Okay. The second portion  
17 of the guarantee is called a "maintenance bond."  
18 After the construction is finished, it's then  
19 inspected. The inspector is an employee -- not an  
20 employee, but a consultant to the municipality. The  
21 municipality, in fact, is compensating for this  
22 inspection work based on fees assessed to the  
23 developer. The developer pays for all of that. And  
24 then once it's inspected, what that means is that  
25 it's met the standards of construction that the

1 municipality to maintain and operate the sewer  
2 system.

3 **MR. ADLER:** Okay. So that answers my  
4 question, that the town would be responsible.

5 **MR. GIUNCO:** Yes.

6 **MR. ADLER:** There would be some  
7 assessment to the homeowners, and I understand that  
8 as well.

9 **MR. GIUNCO:** But just like every --  
10 every resident is paying a sewer rate that's  
11 connected to the system in Atlantic Highlands.

12 **MR. ADLER:** Right. Right. But the town  
13 is ultimately responsible.

14 **MR. GIUNCO:** Correct.

15 **MR. ADLER:** Okay. And the same with the  
16 bulkhead. If the town accepts your dedication,  
17 so-called dedication, the town would be responsible  
18 for that as well.

19 **MR. GIUNCO:** Correct. However, as I  
20 said to another person who asked the same question,  
21 we talked about the performance guarantees, and then  
22 the maintenance guarantees. So there is a financial  
23 obligation that the developer --

24 **MR. ADLER:** For how long a period, sir?

25 **MR. GIUNCO:** With regard to the

1 municipality requires to accept it.

2 Now, if there's something that they  
3 don't think is built properly that will last a  
4 lifetime --

5 **MR. ADLER:** I'm sorry.

6 **MR. GIUNCO:** -- they can require --

7 **MR. ADLER:** That's not my question. My  
8 question is --

9 **MR. GIUNCO:** Well, then, you'll have to  
10 clarify your question, sir; I'm sorry.

11 **MR. ADLER:** Well, it's quite simple.

12 **MR. GIUNCO:** I didn't think it was.

13 **MR. ADLER:** The town, after -- if they  
14 decided to accept the burden, the town will be  
15 responsible for the upkeep beyond this two-year  
16 period or -- or ten plus two, if there's a ten-year  
17 development. But after a certain period of time,  
18 fairly limited period of time, the town will be  
19 responsible.

20 **MR. GIUNCO:** Correct.

21 **MR. ADLER:** Simple question. Thank you.

22 Now, this dedicated easement of 71,000  
23 feet, of that 71,000 feet, how many -- square feet;  
24 I'm sorry. A little over an acre. An acre and --

25 **MR. COLANGELO:** 1.6.



1           **MR. ADLER:** How much of that is actually  
2 buildable by the developer? I mean, you're --  
3           **MR. GIUNCO:** None of it.  
4           **MR. ADLER:** -- dedicating land --  
5           **MR. GIUNCO:** None of it. It's gonna be  
6 open space.  
7           **MR. ADLER:** -- that you can't build on.  
8           **MR. GIUNCO:** None of it. It's gonna be  
9 open space.  
10          **MR. ADLER:** You're dedicating land that  
11 can't be built on.  
12          **AN AUDIENCE MEMBER:** Yes.  
13          **AN AUDIENCE MEMBER:** Yes.  
14          **MR. ADLER:** Thank you.  
15          **MR. GIUNCO:** Well --  
16          **CHAIRMAN NEFF:** All right. Next is --  
17          **MR. GIUNCO:** -- that's not -- that's not  
18 correct. The original application sought -- the  
19 original application between where the road is now  
20 proposed and the bay front had a proposal for 21  
21 docks, one for each of the lots with a boathouse  
22 attached that had been reviewed --  
23          **MR. COLANGELO:** Mr. Giunco, I have to  
24 make this comment. Whatever was initially presented  
25 was not presented.

1 effect?  
2          **MR. JANIW:** I don't. First of all, let  
3 me stipulate, the circle applies to the lot, not to  
4 the homes. The homes are nonconforming, the lots are  
5 nonconforming.  
6          **MR. ADLER:** Right.  
7          **MR. JANIW:** So -- and the answer is no,  
8 I do not know when the idea of these lot circles --  
9          **MR. ADLER:** Okay. So most of the towns  
10 have adopted this type of ordinance generally within  
11 the last ten years?  
12          **MR. JANIW:** No. I think it was my  
13 testimony that most towns do not have this type of an  
14 ordinance. There are some towns that use the lot  
15 circle for configuration requirements, but that's --  
16          **MR. ADLER:** So --  
17          **MR. JANIW:** That's not something that I  
18 see as a propensity.  
19          **MR. ADLER:** Right. So these houses were  
20 built, generally -- the existing houses, the 189  
21 houses were built before this ordinance went into  
22 affect.  
23          **MR. JANIW:** I -- I don't know that.  
24          **MR. ADLER:** Well, I think it's safe to  
25 assume that's correct, most of these houses --

1           **MR. GIUNCO:** I don't understand how I  
2 can possibly answer his question, so that's fine.  
3           **MR. COLANGELO:** I'm gonna -- I'm gonna  
4 answer that question, okay. You just said we -- you  
5 said that we originally presented. Nothing like that  
6 was presented to this Board. So to say that there  
7 were docks presented on this application has nothing  
8 to do with this application.  
9           **MR. GIUNCO:** Correct. And I didn't say  
10 that. What I said was there was an initial  
11 presentation to the -- and I didn't say it, but to  
12 the NJDEP to put docks with a boathouse for each of  
13 the houses, and the DEP was in agreement with that  
14 plan. However, after some discussion, we recognized  
15 the Borough would like to see that land -- I don't  
16 want to use the word to offend you -- but dedicate.  
17 And that's why my client changed the plan and  
18 proposed the plan that's in front of you.  
19           **MR. ADLER:** There's been a lot of  
20 discussion about this lot circle of 50 feet. And  
21 there was a comment by, I believe, the planner that  
22 in this particular zone, 189 houses, existing houses  
23 are nonconforming, if you look at the -- or apply the  
24 ordinance, this -- this lot circle ordinance. Sir,  
25 do you know when this lot circle ordinance went into

1           **MR. JANIW:** Well, no. Because lot  
2 circle ordinances in some communities, like  
3 Manalapan, have been in existence since the '80s, so  
4 they may have been in place over 30, 35 years. We  
5 don't know when the lot -- I don't know when the lot  
6 circle ordinance was adopted, and we don't know --  
7          **MR. ADLER:** But you're asking -- okay.  
8 But you're asking the town to say -- there's 189 lots  
9 that are nonconforming, and you're asking the town to  
10 allow another 12 more lots to be nonconforming. Why  
11 continue -- why continue a nonconforming situation?  
12 Why have any new ordinance go into effect and then,  
13 essentially, not apply it?  
14          **MR. JANIW:** The intent of the lot circle  
15 as a portion of the ordinance is to procure and --  
16 and determine that lots are regular shaped. And as  
17 Mr. Giunco pointed out, there's the example of a  
18 triangular lot. So we look to the intent of what the  
19 purpose of that ordinance is. Given that that  
20 ordinance doesn't impact the neighborhood in terms of  
21 light, air, open space, or minimum size lot -- all  
22 those are conformed with -- we look to see if the  
23 intent of the ordinance is met even though there's a  
24 deviation. We are meeting the minimum lot size,  
25 we're not asking for any deviations from that. We

1 are asking for the deviations, and yet still have  
2 demonstrated that a standard building envelope is  
3 available here that can accommodate homes that are  
4 not only consistent with what the Zone Plan  
5 anticipates, but also consistent with the character  
6 of the neighborhood.

7 **MR. ADLER:** Character of the  
8 neighborhood, though, you say is nonconforming for  
9 189 lots.

10 **CHAIRMAN NEFF:** Next is Mary McDonald.  
11 (Reporter requests break.)

12 **MS. POMEROY:** My name is Elizabeth  
13 Pomeroy, P-o-m-e-r-o-y.

14 So my first question is, lot 5.22, one  
15 and a half acres. Could you give me the dimensions  
16 of the location of the narrowest section of that, and  
17 does that lot include the sewer pump house and the  
18 boardwalk? I didn't get a description of it. I got  
19 a little confused when the engineer gave his  
20 testimony. He kept talking about portions of the  
21 lot, and I wasn't sure if it was one lot or two lots,  
22 and what the configuration of that lot is.

23 **MR. KENNEDY:** So 5.22 is the proposed  
24 open space lot. It starts at the limits of the pump  
25 station and is irregularly shaped, moves -- I'm

1 **MS. POMEROY:** So maybe only 16 houses?  
2 **MR. KENNEDY:** No, no, no. It's 17 with  
3 or without. It was 17 with or without the sewer lift  
4 station. The lift station doesn't have to be on that  
5 lot, it could be within an easement. So it might be  
6 17 with the lift station on an easement.

7 **MS. POMEROY:** When you say "easement,"  
8 that easement would be located on a residential lot?

9 **MR. KENNEDY:** That's correct.

10 **MS. POMEROY:** Okay. What's the increase  
11 of the elevation in feet along the border of the  
12 property that meets the recreational area or the  
13 Catamaran Club?

14 **MR. KENNEDY:** So we're required, as you  
15 know, to get back down -- maybe you don't know -- to  
16 get to existing grade. We can't fill the Catamaran  
17 Club, so instead what we propose is a wall with a  
18 maximum elevation of five feet that's generally  
19 along where I'm pointing on A-18 which runs  
20 diagonally along the left-hand side of the exhibit.  
21 So at the open space lot at the Catamaran Club, at  
22 that interface is the existing grade. We're not  
23 changing grade.

24 **MS. POMEROY:** How about at the narrowest  
25 section where the sewerage pump house is located?

1 pointing at the left-hand portion of Exhibit A-19 --  
2 moving northerly through the beach area, and then  
3 easterly through the area that will be revegetated.  
4 The walkway I testified to is this brown area that's  
5 located on the waterway side of the revegetated area.  
6 The brown indicates not only the walkway, but also  
7 the existing bulkhead to be replaced. The walkway is  
8 ten feet in width. When you say the "narrowest  
9 portion" of lot 5.22, because of its unique shape,  
10 the narrowest portion is really at the start and in  
11 conjunction with 5.21.

12 **MS. POMEROY:** And that dimension at the  
13 narrowest point?

14 **MR. KENNEDY:** I'm scaling off, and that  
15 would be 45 feet. I'm pretty sure.

16 **MS. POMEROY:** When you said that you  
17 could have 17 houses if you were not to require a  
18 variance and that would not include the open space,  
19 would that include the lot for this -- this sewer  
20 pump house?

21 **MR. KENNEDY:** I don't know.

22 **MS. POMEROY:** Probably not.

23 **MR. KENNEDY:** I believe -- I believe in  
24 that configuration that there would have to be a  
25 small lot for an easement.

1 **MR. KENNEDY:** That is sloped from the  
2 pump station to existing grade. We have contour  
3 lines on Sheet 5 of the plan set that shows the  
4 grading. The grading conforms with the municipal  
5 standards.

6 **MS. POMEROY:** I'm not talking about the  
7 grading; I'm talking about the increase in elevation  
8 at that point.

9 **MR. KENNEDY:** So we have to match the  
10 elevation at the property line.

11 **MS. POMEROY:** Oh, I'm sorry --

12 **MR. KENNEDY:** -- so there is no --

13 **MS. POMEROY:** -- from existing to  
14 proposed.

15 **MR. KENNEDY:** There is no increase at  
16 the property line because we have to meet existing  
17 grade.

18 **MS. POMEROY:** Okay. Then setback ten  
19 feet from the property line, what would be the change  
20 in elevation? You're filling there; right?

21 **MR. KENNEDY:** A couple feet.

22 **MS. POMEROY:** I'm just trying to get an  
23 idea how much fill you're putting in.

24 **MR. KENNEDY:** Well, if I take up a line  
25 midway along that 45-foot dimension to the west -- to

1 the south of the pump station, it's being filled  
 2 about three or so feet. Approximately three feet.  
 3 **MS. POMEROY:** So the floor of the pump  
 4 station would be about three feet above the existing  
 5 ground elevation?  
 6 **MR. KENNEDY:** No. No. We're talking  
 7 about the land --  
 8 **MS. POMEROY:** Okay.  
 9 **MR. KENNEDY:** -- adjacent to. The pump  
 10 station elevation has to be elevated above 13 because  
 11 of the AE zone requirements.  
 12 **MS. POMEROY:** So the floor of the pump  
 13 station will be at elevation 13.  
 14 **MR. KENNEDY:** No, above.  
 15 **MS. POMEROY:** I looked at the plans.  
 16 They weren't clear to me. I'm sorry to put you  
 17 through this.  
 18 **MR. KENNEDY:** No, it's totally fine.  
 19 The floor is at approximately elevation 16 where the  
 20 Catamaran Club is at elevation, plus or minus, 12.  
 21 So the floor of the pump station is approximately  
 22 four feet above the grade at the common property  
 23 line.  
 24 **MS. POMEROY:** Thank you.  
 25 What is the location for the stormwater

1 system. The municipal has a -- I think it's a tier 2  
 2 stormwater -- stormwater permit. The municipal  
 3 agency, whoever is in charge of it, which is the  
 4 Borough in this case, is required to perform  
 5 inspections and cleaning of their Borough  
 6 infrastructure. This would be part of the Borough  
 7 infrastructure if, again, the roadway infrastructure  
 8 is accepted by the town.  
 9 **MS. POMEROY:** And the design calls for  
 10 clean-out how often?  
 11 **MR. KENNEDY:** Well, it's a 24-inch pipe.  
 12 Being that it's a 24-inch pipe, clean-outs are not  
 13 typically installed because a 24-inch pipe allows for  
 14 access; however, the manhole and the filtration  
 15 system is located immediately upstream. So the  
 16 standard of practice is 300 feet, and we're well  
 17 below the 300-foot limitation for stormwater pipe.  
 18 **MS. POMEROY:** So that filtration system  
 19 does not have to be cleaned out?  
 20 **MR. KENNEDY:** It certainly does.  
 21 **MS. POMEROY:** What's the design for  
 22 clean-out times?  
 23 **MR. KENNEDY:** It's a quarterly  
 24 inspection period, and it depends on the inflow to  
 25 the filtration system.

1 pipe?  
 2 **MR. KENNEDY:** The stormwater pipe is  
 3 proposed to go through the new bulkhead underground,  
 4 obviously. And there is a dashed line that says  
 5 "utility easement" at the top of Exhibit A-19.  
 6 Within that utility easement is our -- our outfall  
 7 for stormwater after it's treated. The treatment  
 8 facility -- the treatment filters are within that  
 9 utility easement as well.  
 10 **MS. POMEROY:** And that's part of the  
 11 property, lot 5.22?  
 12 **MR. KENNEDY:** Yes. It's an easement  
 13 across that property; that's right.  
 14 **MS. POMEROY:** So the outfall pipe is  
 15 about the second house in, would you say?  
 16 **MR. KENNEDY:** It's --  
 17 **MS. POMEROY:** Or the first house in?  
 18 **MR. KENNEDY:** -- roughly across the  
 19 street from lot 5.06.  
 20 **MS. POMEROY:** And how often is the  
 21 stormwater outfall designed to be cleaned out?  
 22 **MR. KENNEDY:** Well, because of the slope  
 23 of the pipe and what we're proposing, we don't  
 24 anticipate much maintenance with the pipe; however,  
 25 it does need to be cleaned, just like the municipal

1 **MS. POMEROY:** And how would you  
 2 determine inflow?  
 3 **MR. KENNEDY:** There's an operation  
 4 maintenance manual that goes along with this. And  
 5 based upon each quarterly inspection, that's how it's  
 6 determined whether the filter needs to be cleaned.  
 7 **MS. POMEROY:** By rainfall?  
 8 **MR. KENNEDY:** It is not rainfall, it's  
 9 sediment.  
 10 **MS. POMEROY:** Okay.  
 11 **MR. KENNEDY:** So clean water going  
 12 through a filtration system will have very little  
 13 impact to the filtering needs.  
 14 **MS. POMEROY:** So based on inspection.  
 15 **MR. KENNEDY:** Yes, that's correct.  
 16 **MS. POMEROY:** And that would be part of  
 17 the public record, I guess, if someone cared to find  
 18 out if it was being cleaned out.  
 19 **MR. KENNEDY:** Yes, that's correct.  
 20 **MS. POMEROY:** What's the flood  
 21 designation from FEMA for the land where the sewerage  
 22 pump station is going to be located?  
 23 **MR. KENNEDY:** It's the existing zone --  
 24 I have to check. I believe it's outside of the AE  
 25 zone, but it was in an existing X zone.

1 **MS. POMEROY:** Okay.  
 2 **MR. KENNEDY:** Which would make sense.  
 3 But let me just double-check.  
 4 It appears that it is just within the  
 5 preliminary AE-13 zone.  
 6 **MS. POMEROY:** It is in AE-13?  
 7 **MR. KENNEDY:** It appears to be that.  
 8 It's either X or A-13.  
 9 **MS. POMEROY:** Is that important to know  
 10 which zone it's in?  
 11 **MR. KENNEY:** Well, because it's elevated  
 12 and we have a finished grade elevation and the  
 13 mechanical equipment is above that elevation 13,  
 14 it's -- I mean, it's critical when we get to the  
 15 structural design. But for Planning Board approval,  
 16 I don't -- it's on the plan. I just can't read the  
 17 plan I have.  
 18 **MS. POMEROY:** Oh, okay.  
 19 **MR. KENNEDY:** So I can -- I can -- if  
 20 you want to take just two minutes here, I can --  
 21 **MS. POMEROY:** No. I mean, as long as  
 22 it's on the plan, that information exists.  
 23 **MR. KENNEDY:** It's definitely on the  
 24 plan. I just have to get the date of the plan out.  
 25 **CHAIRMAN NEFF:** Maybe we can do that at

1 **MS. POMEROY:** Is it located on this plan  
 2 along the boundary of the property?  
 3 **MR. KENNEDY:** No, it's -- the boundary  
 4 of the property is out here.  
 5 **MS. POMEROY:** Okay.  
 6 **MR. KENNEDY:** Or this red line out here.  
 7 **MS. POMEROY:** So during construction,  
 8 the area of disturbance will only be on the property,  
 9 not on the municipal property.  
 10 **MR. KENNEDY:** Correct.  
 11 **MS. POMEROY:** So does the pump station  
 12 only service the 21 homes?  
 13 **MR. KENNEDY:** Yes.  
 14 **MS. POMEROY:** When you pardon the bay  
 15 shore with the retaining wall, what occurs to the  
 16 remaining area? For instance, does it cause erosion?  
 17 **MR. KENNEDY:** It could at the toe of the  
 18 hardened structure, and that's part of the  
 19 structural --  
 20 **MS. POMEROY:** Could you point to the  
 21 toe?  
 22 **MR. KENNEDY:** The toe is just merely the  
 23 downsloping portion of the wall. So in this case,  
 24 we're meeting existing grade. So if a wave does  
 25 reflect off the wall, it could cause scouring.

1 the next meeting.  
 2 **MR. KENNEDY:** Absolutely.  
 3 **MS. POMEROY:** So a retaining wall that's  
 4 proposed alongside the Catamaran Club, or, you know,  
 5 the community recreation area, could you point to  
 6 that so I can see it because I couldn't see it  
 7 before.  
 8 **MR. KENNEDY:** Absolutely. I'm referring  
 9 to A-19, it says "Proposed retaining wall with a  
 10 liter." And that liter is pointing to this dark line  
 11 that, again, goes in a diagonal -- diagonal fashion  
 12 from about the midpoint of the westerly line in the  
 13 direction towards the open space area.  
 14 **MS. POMEROY:** So that dark line --  
 15 **MRS. MURRAY:** You could get closer, if  
 16 you want. It probably would be easier for you to  
 17 see.  
 18 **MR. KENNEDY:** You see this black line?  
 19 That's the retaining wall.  
 20 **MS. POMEROY:** Oh. So that's a line of  
 21 trees, okay. So the retaining wall has not been  
 22 designed yet?  
 23 **MR. KENNEDY:** The retaining wall as  
 24 required by -- well, let me just answer that;  
 25 correct.

1 That's part of the structural design that has to be  
 2 looked at. Typically, toe protection is added. In  
 3 this case, it may or may not be necessary.  
 4 **MS. POMEROY:** You think it's a  
 5 possibility it might affect -- I mean, I have to ask  
 6 this question -- the Catamaran Club's property, or  
 7 the municipality's property located next to that or  
 8 just, you know, on the other side of the retaining  
 9 wall?  
 10 **MR. KENNEDY:** That's why the walls are  
 11 in place, to ensure that the structural design does  
 12 not impact adjacent areas and off-site areas.  
 13 **MS. POMEROY:** But we don't have that  
 14 design yet.  
 15 **MR. KENNEDY:** No, that's typically  
 16 something that's done as part of the building permit  
 17 process.  
 18 **MS. POMEROY:** And if that design takes  
 19 place after the Planning Board has given approval and  
 20 it's impossible to design a retaining wall that does  
 21 not cause erosion on municipal property, then what?  
 22 I mean, don't you think that design should take place  
 23 now?  
 24 **MR. KENNEDY:** No, I don't because it's  
 25 something that's typically reviewed by the building

1 department professionals, as well as the DEP. And  
2 until we can make application to those entities, they  
3 won't review it, so --

4 **MS. POMEROY:** Doesn't the Applicant  
5 then --

6 **MR. KENNEDY:** Your first question was  
7 what happens if a wall can't be designed so as to not  
8 impact off-site areas. Well, that might be  
9 considered a standard deviation, or it could be an  
10 administrative change. I -- I don't know. But it  
11 would require change to the plan.

12 **MS. POMEROY:** Or you could make the  
13 approval subject to design of that wall, I guess.  
14 Either way.

15 **MR. KENNEDY:** That's pretty typical,  
16 yes.

17 **MS. POMEROY:** And what are the setbacks  
18 from the pump station to the nearest dwelling, and  
19 how did you determine those standards, or is that  
20 just by design of the sewer project?

21 **MR. KENNEDY:** The setback to the nearest  
22 residential dwelling would be lot 5.07 from the  
23 enclosure about a hundred and -- I'm sorry -- about  
24 90 -- between 85 and 90 feet. But, again, that house  
25 is not representative of exactly what Mr. Monteforte

1 after eleven p.m. We are going to cease with the  
2 hearing at this time and reschedule it.

3 Erin, what is the September meeting  
4 date?

5 **MS. URIARTE:** It would be --

6 **MR. STEIB:** The regular meeting.

7 **MS. URIARTE:** The regular meeting would  
8 be September 13 at Borough Hall.

9 **MR. STEIB:** So for members of the public  
10 who are interested -- and please let me finish --  
11 this application is gonna be continued to the  
12 September 13, 2018 meeting at 7:30 p.m. in Town Hall.  
13 We are not going to continue the hearing of this  
14 application on that night. In the interim, we are  
15 trying to reschedule for this room so that we can  
16 accommodate everyone, but we haven't gotten that date  
17 yet from the Board of Ed. At the September meeting,  
18 we will announce what date we've been able to get  
19 this room for. The date and time.

20 So you can come to the meeting to hear  
21 that, but don't expect to have a hearing on that  
22 night. If you prefer, you can contact the Planning  
23 Board office the following day, and they will tell  
24 you what day and time -- and we expect this place --  
25 for the next meeting. So you will not get further

1 might place there.

2 **MS. POMEROY:** Oh, right. Right.

3 **MR. KENNEDY:** So I measured it to the  
4 front wall as shown. Close to 100.

5 **MS. POMEROY:** And then what -- does the  
6 boardwalk dead end, or does it connect to Avenue D?

7 **MR. KENNEDY:** It does not at this time  
8 connect to Avenue D --

9 **MS. POMEROY:** Okay.

10 **MR. KENNEDY:** -- because we received  
11 feedback indicating --

12 **MS. POMEROY:** Yes, I know. I just  
13 couldn't -- I didn't get the answer to that.

14 This is a question for the planner --  
15 thanks for answering my questions.

16 **CHAIRMAN NEFF:** Could you come back?

17 **MS. POMEROY:** Sure, I'll come back next  
18 time and finish. The planner and the engineer will  
19 be here?

20 **MR. KENNEDY:** Yes.

21 **MS. POMEROY:** Okay. Great.

22 **CHAIRMAN NEFF:** Okay. We will continue  
23 at another meeting where you can continue to ask  
24 questions, those who have signed up.

25 **MR. STEIB:** Mr. Chairman, it is now 25

1 notice by mailing, by public notice in the newspaper.  
2 But for now, it's September 13, 7:30 p.m., and we  
3 will advise when the hearing will continue. And we  
4 need a motion to adjourn.

5 **MR. DOUGHERTY:** Motion.

6 **MR. CACCAMO:** Second.

7 (All in favor.)

8 (Proceedings concluded at 11:25 p.m.)

CERTIFICATE

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I, LYDIA F. McDONNELL, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings 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 the action.

Notary Public of the State of New Jersey  
License No. 30XI00155900  
My Commission expires June 30, 2020  
Dated: September 20, 2018

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