

Agenda

**BOROUGH OF WATCHUNG
BOARD OF ADJUSTMENT
DANIEL CRONHEIM, CHAIRMAN**

**Regular Meeting
October 11, 2018**

**OFFICIAL MINUTES
ADOPTED NOVEMBER 8, 2018**

Chairman Cronheim called the Regular Meeting to order at 7:38 p.m. Board members present were Ms. Fechtner, Mr. Hunsinger, Mr. Dallas, Mr. Brown, Mr. Kita, Mr. Panzarella, and Mr. Lauerman. Also present were Steven Warner, Esq., Board Attorney, David Stires, P.E., Board Engineer, Ed Bennett, Zoning Official and Theresa Snyder, Board Clerk. There were 16 members from the public present.

Chairman Cronheim read the statement indicating the meeting was being conducted according to the Sunshine Law, the Municipal Land Use Law requirements, and the recording of the Minutes as required by law. He then led the flag salute to the American flag, and the Board members identified themselves for the record.

ROLL CALL

On motion by Mr. Hunsinger, seconded by Mr. Brown, the Board unanimously voted to excuse Mr. Bell's absences due to an injury.

APPROVAL OF MINUTES

The September 13, 2018, Regular Meeting minutes were accepted and carried on voice votes.

RESOLUTION

BA 18-R13

Designating David Stires, P.E. to deem applications complete

On motion by Mr. Hunsinger, seconded by Mr. Kita, the Resolution was adopted and carried on voice votes.

12/6/18

BA 18-R14; Bolkhovskiy
Case No.: Ba 18-08; Bolkhovskiy
151 Sunlit Drive
Block 301, Lot 8
Denied 9/13/18

On motion by Ms. Fechtner, seconded by Mr. Panzarella, the Board adopted the Resolution based on the following roll call vote:

Roll Call:	Ayes:	Ms. Fechtner, Mr. Hunsinger, Mr. Dallas, Mr. Kita and Mr. Panzarella
	Nays:	
	Not Eligible:	Mr. Brown, Mr. Lauerman and Chairman Cronheim
	Abstain:	
	Absent:	Mr. Bell

NEW APPLICATIONS

Case No.: BA 18-11; Chick-Fil-A
1662 US Highway 22 E
Building D
Block: 6101 Lt: 5

Due to insufficient notice, this case was carried to the November 8th meeting with further notice.

Case No.: BA 18-12; Walmart
1515 US Highway 22 W
Block: 5703 Lt: 2.04

Attached is the court reporter's documentation of this case.

CONTINUED APPLICATIONS

Case No. BA18-01; Wilderness Trails (RETS Partners, LLC)
833 Mountain Blvd.
Block 201 Lot 17 RR Zone

Present for the applicant were Mr. Robert Berlant-applicant, Mr. Whitelaw, Esq.-applicant's attorney, Mr. McDonough, PP and Mr. Grazzale, P.E.-civil engineer. They were all still under oath.

existing zoning. Currently, there is a single-family residence and an office. There are a great deal of uses that could be considered for this site. The Ordinance says there should be a 25 ft. buffer. Wildwood Terrace residents will mainly see parking spaces. The setbacks proposed will change the feeling on Wildwood Terrace. There is virtually no flexibility with this plan. The property is simply too narrow. That will not change in the site plan. The Borough requires a designated right of way. The plan offers no open space to those who live there. There is no recreation area. The few trees on the space will be gone. This plan does not have sufficient room for the intensity of the property. The applicant is using the right of way as part of his setback. This shows how tight and overdeveloped this property is. They are proposing parking stalls that back into the right of way. The density is not what is considered appropriate density. It is 12-13 times the density of the district. The negative aspects outweigh the benefits. Providing affordable units is always a positive but does not mean any time you put affordable housing it should be approved. The site lacks minimum buffers required. The design turns Hauser Lane into a parking lot. The applicant is asking for this property to be re-zoned. There is really nothing that can improve this plan. It is a mixed use, but it looks like a single-family home. A single-family home could be accommodated on this lot.

Mr. Whitelaw said this was the kind of site that would be used as a transition between the business and residential.

The Board had questions about the roadway width and easement. There was concern that there would be parking overnight which is not allowed in Watchung.

Mr. Cronheim reminded the applicant that this was BA 18-01. During this time, they should have asked to be included in the COAH plans for the Borough, since this project proposes 4 affordable in Watchung. There is always a buffer between zones, and he was concerned if this created enough of a buffer.

Mr. Franklin knows the history of the property. Over the years, there have been different proposed plans for it. He could not see the benefits. The Borough should protect other residents who bought their house with certain conditions.

Due to the late hour, the Board, the applicant and the counsel for the neighboring objectors agreed to carry the application to the next meeting without further notice.

REQUEST

On motion by Mr. Dallas, seconded by Mr. Brown, the Board granted a request to AC Moore for temporary outdoor sales on the sidewalk for the months of November through December with the exception of one week between the months.

DISCUSSION

The Board agreed to do an amended resolution for Case No.: BA 18-05; Biviano to correct the lot coverage for steep slopes.

ADJOURN

The Board unanimously voted to adjourn the meeting at 11:20 p.m.

Respectfully Submitted,

Theresa Snyder
Board Clerk

BOROUGH OF WATCHUNG
BOARD OF ADJUSTMENT

-----X

IN RE:

WAL-MART

-----X

Watchung Borough Hall
15 Mountain Boulevard
Watchung, New Jersey
THURSDAY, OCTOBER 11, 2018
7:41 P.M.

HELD BEFORE:

DANIEL CRONHEIM, CHAIRPERSON
DOYLE J. HUNSINGER
PJ PANZARELLA
RICHARD BROWN
SANDRA FECHTNER
STEVE WARNER, BOARD ATTORNEY
ROBERT DALLAS
HENRY KITA
THERESA SNYDER

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REPORTED BY:

MARIANNE D'AMICO CANDILOROS, CCR, CRR, CLR

CCR NO. XI10998

1 APPEARANCES OF COUNSEL:

2
3
4 ATTORNEYS FOR Wal-Mart:
5 SCARINCI HOLLENBECK
6 One River Center
7 Red Bank, New Jersey 07701-5692
8 BY: PATRICK J. McNAMARA, ESQ.
9 732.780.5590
10 PMCNAMARA@SH-LAW.COM
11
12
13
14
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25

1 EXHIBITS

2
3 Number Description Page:Line
4
5 (NO EXHIBITS WERE MARKED.)
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11 -----INFORMATION REQUESTS-----

12 DIRECTIONS NOT TO ANSWER	(NONE)
13 REQUESTS FOR INFORMATION	(NONE)
14 MOTIONS	(NONE)
15 RULINGS	(NONE)

1 PROCEEDINGS, 7:41 P.M.
2 (Roll call.)

3 BOARD MEMBER HUNSINGER: Mr.
4 Chairman, I just want to make a note that
5 Mr. Bell has been hurt and that the reason
6 that he has missed a bunch of meetings is
7 he has been hurt and he's in the hospital.
8 He broke his hip and he fell into a ditch
9 in a construction accident, but I just
10 want the record to show why he's not
11 attending a number of meetings, is that he
12 has a health issue he will recover from.

13 CHAIRPERSON CRONHEIM: I will say
14 this about that as well, if he weren't
15 Skip, he'd be dead.

16 BOARD MEMBER HUNSINGER: No doubt.
17 CHAIRPERSON CRONHEIM: Because he's
18 that's tough and hardy because he
19 literally fell about 20 feet into a ditch
20 and got knocked over by a machine.

21 BOARD MEMBER HUNSINGER: And that's
22 what he did, he got knocked over by a
23 machine into a 11 or 12-foot ditch.

24 CHAIRPERSON CRONHEIM: He's in
25 several pieces but alive, which is the

1 surprising part.

2 ATTORNEY WARNER: If the Chair
3 wishes, we could have a motion, a second
4 and a voice vote to deem Board Member
5 Bells' absences excused.

6 PRESIDENT CRONHEIM: Absolutely.

7 ATTORNEY WARNER: Both
8 retrospectively and prospectively.

9 BOARD MEMBER HUNSINGER: I'll make a
10 motion.

11 BOARD MEMBER: I'll second.

12 ATTORNEY WARNER: Move to second
13 it.

14 All in favor?

15 ALL: Aye.

16 ATTORNEY WARNER: Anyone opposed?
17 I think it's appropriate, Skip has
18 been on this board for a long time.

19 BOARD MEMBER HUNSINGER: Yes.

20 BOARD MEMBER FECHTNER: Thank you.
21 This is nothing that's been done before,
22 but I very much would like to encourage us
23 all to do something more in terms of a
24 gift. I forgot, and I meant to get the
25 address on a personal level, but I think

1 And as a courtesy, since we have the
2 notice for the Zinburger aspect, we'll
3 renote for the Chick-Fil-A as well so
4 we'll have that covered.

5 CHAIRPERSON CRONHEIM: Thank you
6 Mr. McNamara, we do appreciate that.

7 ATTORNEY WARNER: You'll put, and
8 don't know if we even need the extension
9 of time to act, but --

10 MR. McNAMARA: I don't think you do
11 but I figured just in case.

12 ATTORNEY WARREN: -- we'll take it
13 at least through the end of November and
14 if Theresa needs it in writing, no doubt
15 you'll provide same?

16 MR. McNAMARA: Yes.

17 ATTORNEY WARNER: Thank you.

18 CHAIRPERSON CRONHEIM: Thank you.
19 We have an additional matter on
20 tonight, BA-18-12-Wal-Mart 1515 U.S.
21 Highway.

22 Mr. McNamara, you expect that not to
23 be a lengthy application?

24 MR. McNAMARA: No, sir, I have
25 three witnesses, but I believe I can do

1 it would be nice from the board to send
2 him something.

3 CHAIRPERSON CRONHEIM: We probably
4 can arrange that. We can figure that out.

5 BOARD MEMBER HUNSINGER: I'm O.K.
6 with that, as well.

7 PRESIDENT CRONHEIM: We have a
8 resolution, we have minutes, we'll put
9 them off because we want to get to all of
10 the matters first. We'll do it at the
11 end, just to make it happen.

12 We have two matters on tonight. We
13 have matters that are continued with the
14 RETS Partners matter is continued. We
15 have two new applications that were
16 noticed for tonight. The first is the
17 Chick-Fil-A application BA 18-11. If you
18 are here for that application, that matter
19 is being carried.

20 MR. McNAMARA: Thank you, Patrick
21 McNamara from the firm Scarinci
22 Hollenbeck. We consent to the extension
23 and to extend time for the board to act
24 accordingly with the application being
25 carried.

1 the entire presentation in approximately
2 30 minutes.

3 CHAIRPERSON CRONHEIM: With that in
4 order to get things moving and get you out
5 of here and get everything off the agenda,
6 can you kindly go first and I appreciate.

7 MR. McNAMARA: Thank you.

8 PRESIDENT CRONHEIM: Appreciate
9 that, Mr. Berlant.

10 MR. McNAMARA: For the record,
11 Patrick J. McNamara, Scarinci Hollenbeck
12 on behalf of the applicant. We are here
13 as part of an action which has since been
14 resolved in municipal proceedings with
15 Mr. Bennett with regard to the necessary
16 permitting for outdoor storage in select
17 areas of the Wal-Mart. We have three
18 witnesses: I have an engineer here from
19 Bohler Engineering first, who I would like
20 to have sworn and qualified, who will
21 illustrate the areas in question; I have a
22 gentleman who works in the security
23 department at the Wal-Mart here in
24 Watchung; and then our planner who will
25 testify because of the special nature of

1 this ordinance. Since it's a permit that
2 actually comes from the board through
3 approval or any alternative for D variance
4 relief, if we need to show that we meet
5 the appropriate standards, so as a matter
6 of precaution noticed for both just to be
7 safe.

8 CHAIRPERSON CRONHEIM: Mr. Warner,
9 will you kindly swear in our experts and
10 their experts as well.

11 ATTORNEY WARNER: I will, and we
12 will have the traditional mass swearing.

13
14 JAMES HUSTON, called as a
15 witness, having been duly sworn by a
16 Notary Public (Attorney Warner), was
17 examined and testified as follows:

18
19 MIGUEL MARRERO, called as a
20 witness, having been duly sworn by a
21 Notary Public (Attorney Warner), was
22 examined and testified as follows:

23
24 JUSTIN AUCIELLO, called as a
25 witness, having been duly sworn by a

1 expert in numerous land use boards throughout
2 the state of New Jersey?

3 A. Yes, this board, this planning board
4 some years ago.

5 ATTORNEY WARNER: License remains in
6 good standing?

7 THE WITNESS: Yes.

8 ATTORNEY WARNER: Being offered as
9 an engineer only?

10 MR. McNAMARA: Yes.

11 ATTORNEY WARNER: O.K., I defer to
12 the board.

13 MR. McNAMARA: Does the board have
14 any --

15 CHAIRPERSON CRONHEIM: I was on the
16 board when he's testified in front of us
17 before. We qualify him.

18 MR. McNAMARA: Thank you, Mr.
19 Chairman.

20 CHAIRPERSON CRONHEIM: Mr. McNamara.

21 MR. McNAMARA: Thank you,
22 Mr. Chairman.

23 THE WITNESS: Thank you

24
25 DIRECT EXAMINATION

1 Notary Public (Attorney Warner), was
2 examined and testified as follows:

3
4 ATTORNEY WARNER: Can we get names
5 and addresses, business address is fine
6 for the record.

7 MR. McNAMARA: Jim Houston from
8 Bohler Engineering --

9 ATTORNEY WARNER: You can do them as
10 you call them up.

11 MR. McNAMARA: Oh, O.K.

12
13 VOIR DIRE EXAMINATION

14 BY MR. McNAMARA:

15 Q. For the benefit of the record, will
16 you please state your name, provide your
17 business affiliation and background, licenses
18 and experiences as a professional engineer.

19 A. Yes, James R. Huston, Jr., Licensed
20 Professional Engineer, Land Surveyor Planner
21 Certified Municipal Engineer. I've been
22 employed by Bohler Engineering as a senior
23 project manager and I have been with them for
24 approximately 20 years.

25 Q. And you've been accepted as an

1 BY MR. McNAMARA:

2
3 Q. If you could please proceed to
4 describe for the benefit of the board the
5 problem with the areas that are demarcated in
6 various colorings on the rendering that is Sheet
7 3 of 11, that was previously submitted as part
8 of the application package.

9 ATTORNEY WARNER: Last revised date,
10 please?

11 THE WITNESS: This is actually an
12 exhibit that was prepared, this is a copy
13 of the original site plan back in 2004.

14 ATTORNEY WARNER: All right, June 1,
15 2004.

16 THE WITNESS: Yes.

17 ATTORNEY WARNER: All right,
18 modified -- it was submitted more than 10
19 days in advance of this evening, correct?

20 MR. McNAMARA: Yes, it was part of
21 the application package.

22 ATTORNEY WARNER: O.K., it does not
23 have to be marked as an exhibit.

24 Please proceed.

25 BY MR. McNAMARA:

1
2 A. Thank you.
3 It indicates it's a copy of Sheet 3
4 of the site plan, of the original site plan and
5 you have two different areas colored: Green and
6 yellow. The green areas are for outdoor display
7 and sales; and the yellow are for the propane
8 and sale of propane cylinders. That simple, an
9 area along the building and you have an area out
10 in the parking area.

11 CHAIRPERSON CRONHEIM: If you want,
12 you can take the mic, it will be easier
13 for you than having to look back.

14 BY MR. McNAMARA:

15 Q. And it's your understanding that the
16 landlord has specified that these are the only
17 areas where under the terms of this current
18 lease with Wal-Mart, it will permit the outdoor
19 sales of spring and fall type merchandise,
20 mulch, plants, planters, things of that nature?

21 A. That's my understanding, yes.

22 Q. And that the removal of the eight
23 parking spaces does not wind up triggering any
24 type of variance relief, that there's still an
25 excess number of parking spaces available for

1 You talked about propane, are those
2 sealed locations?

3 THE WITNESS: Yes, there's bollards
4 there and they're caged.

5 MR. McNAMARA: They're in cages and
6 there are large bollards in front of each
7 of them.

8 MR. BROWN: Any safety issues with
9 them?

10 MR. McNAMARA: They can only be
11 kept outdoors, I believe it's a fire code
12 violation if you try to put them indoors.

13 ATTORNEY WARNER: Mr. Bennett,
14 that's correct, right?

15 MR. BENNETT: That's correct.

16 CHAIRPERSON CRONHEIM: Anyone else
17 have any questions?

18 ATTORNEY WARNER: Did you address
19 Mr. Stires' memo, would this be the
20 appropriate witness?

21 MR. McNAMARA: Yes. If you could.

22 ATTORNEY WARNER: I think it's dated
23 October 8, 2018.
24

25 EXAMINATION - CONTINUED

1 the general public to patronize the store?

2 A. That is also correct.

3 Q. And that the area where the parking
4 is being removed, there's a series of pedestrian
5 striping and other areas marking this off as a
6 fire zone so that's there no parking that is
7 taking place in that area?

8 A. That's also correct, yes.

9 Q. Thank you.

10 And in all of the material respects,
11 there's no change to the building, there's no
12 change to storm water management, there's no
13 change to any other parking, landscaping or
14 lighting of the facility?

15 A. That's correct.

16 Q. Thank you.

17 MR. McNAMARA: I have no further
18 questions of the witness, Mr. Chairman. I
19 make him available for cross examination
20 with the right to reserve.

21 ATTORNEY WARNER: I think he might
22 have already been cross-examined.

23 CHAIRPERSON CRONHEIM: Does anyone
24 here have any questions?

25 MR. BROWN: Just one.

1 BY MR. McNAMARA:

2 A. Yes, the Comments, page 2, under
3 Comments.

4 Q. Go ahead.

5 A. So comment No. 1, the applicant is
6 to provide testimony in support of the variance
7 to include whether this is enough parking
8 available on site to temporarily eliminate the
9 spaces noted in the area.

10 Per the original site plan, there is
11 originally 581 spaces proposed or necessary for
12 the Wal-Mart, and there's over 631 in the area.

13 Q. So subtracting the eight, you still
14 get to 622 which is well over the required
15 amount?

16 A. That's correct.

17 And comment No. 2, "Applicant to
18 discuss the impact of the neighbors to the west
19 including visual, additional sound and security
20 measures."

21 Q. In any way does the location here on
22 this side of the drawing, does it --

23 ATTORNEY WARNER: Bottom of the
24 drawing.

25 BY MR. McNAMARA:

1 A. To the west.
 2 Q. The proposed outdoor sale of
 3 planters, mulch, things of this nature, doesn't
 4 generate any additional noise in your
 5 professional opinion?
 6 A. That's correct.
 7 Q. And does not change the traffic
 8 patterns anywhere in the parking lot?
 9 A. That's also correct.
 10 Q. Thank you.
 11 ATTORNEY WARNER: Regarding sound
 12 and security?
 13 MR. McNAMARA: I have someone who
 14 will testify as to sound and security.
 15 CHAIRPERSON CRONHEIM: I would expect
 16 that he would not testify as to those
 17 matters.
 18 BY MR. McNAMARA:
 19 Q. And the other item?
 20 A. Item 3 is regarding the substance
 21 used by the building department --
 22 ATTORNEY WARNER: You'll stipulate
 23 to that as condition of approval?
 24 MR. McNAMARA: Yes.
 25 A. And that the applicant is to secure

1 all of the permits --
 2 ATTORNEY WARNER: Same stip.
 3 MR. McNAMARA: Yes
 4 ATTORNEY WARNER: By the way, if I
 5 may comment No. 1 part A to it, just to
 6 confirm as condition of approval, that the
 7 hours of operation will be --
 8 MR. McNAMARA: They are those
 9 hours, 7 a.m. to midnight and will not
 10 change.
 11 ATTORNEY WARNER: O.K., thank you.
 12 CHAIRPERSON CRONHEIM: Any other
 13 testimony for this witness?
 14 MR. McNAMARA: I have nothing
 15 further.
 16 MR. BROWN: One more question, by
 17 the way, looking at this, I'm sort of a
 18 safety, the green space, is that enclosed
 19 as well?
 20 THE WITNESS: No.
 21 MR. BROWN: It's not enclosed, it's
 22 open. So is there enough lighting since
 23 it will be a change of --
 24 THE WITNESS: Well, there are
 25 parking lot area lights already in that

1 location.
 2 MR. BROWN: In that area.
 3 THE WITNESS: It's already safe for
 4 pedestrians so you're not going to in fact
 5 --
 6 MR. BROWN: And there's no cars
 7 running in to it?
 8 THE WITNESS: No.
 9 MR. McNAMARA: Some of these
 10 displays are on carts so it's easy,
 11 they'll be rolled out and then roll them
 12 back in in the evening.
 13 MR. BROWN: O.K., thank you.
 14 ATTORNEY WARNER: And Mr. Chairman,
 15 I neglected to mention because you moved
 16 so quickly, I'll use that as a excuse, I
 17 did review the content of the notice and
 18 it was sufficient in my opinion, so the
 19 board has jurisdiction to proceed.
 20 CHAIRPERSON CRONHEIM: Thank you.
 21 ATTORNEY WARNER: I wouldn't have
 22 allowed you to proceed if I thought you
 23 didn't.
 24 MR. McNAMARA: Thank you, counselor.
 25 MR. BROWN: That's good, thank you.

1 CHAIRPERSON CRONHEIM: Next witness.
 2 MR. McNAMARA: Mr. Marrero.
 3
 4 EXAMINATION
 5 BY MR. McNAMARA:
 6 A. Yes.
 7 Hello, my name is Miguel Marrero, I
 8 work for the AP, which is home security for
 9 Wal-Mart and I've been there for three weeks
 10 now; I worked for Wal-Mart before, O.K.
 11 So what I'm trying to explain to you
 12 guys is in there's overall nine cameras outside
 13 of Wal-Mart, overall for the whole parking lot,
 14 two cameras inside where we sell the special,
 15 which is the home and garden, and then inside as
 16 well, we have over about 60 cameras inside where
 17 very, very good.
 18 Q. And there's a room with monitors so
 19 you can track all of these cameras, both, out in
 20 the parking lot and in the building?
 21 A. In the building, I take care of that
 22 myself.
 23 CHAIRPERSON CRONHEIM: So somebody
 24 is actually looking at those cameras?
 25 THE WITNESS: Yes, I'm looking at

1 those cameras. Also the --
 2 BY MR. McNAMARA:
 3 Q. And the video is recorded and
 4 preserved for 31 days?
 5 A. Yes, 31 business days.
 6 Q. And on average there's at least two
 7 security people, separate and apart --
 8 A. Yes.
 9 Q. -- from Wal-Mart employees who
 10 either greet people or screen people --
 11 A. Yes, that's right.
 12 Q. -- and they're leaving to check
 13 their receipt when they walk out --
 14 A. Yup.
 15 Q. -- that's separate and apart from
 16 what you do?
 17 A. Yes, sir, yes, sir, we have four
 18 host, four host.
 19 Q. Go a little slower.
 20 A. So we have four of them, two in
 21 store making sure that we have receipts because
 22 we also have people stealing and using
 23 counterfeit money, fake money to buy things. A
 24 lot of people do that, a lot of 20s, worst.
 25 So, yeah, we also have the AP, which

1 witness, Mr. Chairman.
 2 MR. LAUERMAN: This area won't be
 3 manned, this area is separate, shoppers go
 4 in, take something out, go back into the
 5 store?
 6 THE WITNESS: What do you mean?
 7 MR. LAUERMAN: Well, you're going to
 8 have flowers here, you're going to have
 9 mulch here, I am a shopper, I want to buy
 10 this, I put it back in my little wagon, I
 11 go back in the store to check it out?
 12 THE WITNESS: Oh, yes, you check it
 13 in out in the store.
 14 MR. LAUERMAN: Thank you, so there
 15 will be no one outside except on the very
 16 busy day you might have a cashier outside?
 17 THE WITNESS: Yeah, the receipt lady
 18 which is outside like, for example, the
 19 door come into Wal-Mart, there's another
 20 door and she's going to be in the middle
 21 making sure that you --
 22 MR. LAUERMAN: But theoretically I
 23 can just toss it into my wagon.
 24 THE WITNESS: If you try to steal --
 25 MR. LAUERMAN: Well,

1 is us, two outside and one inside the office
 2 checking the cameras while other two walking
 3 around making sure people don't steal and, yeah,
 4 all of that, yes.
 5 Q. And when you do this, you're also,
 6 you would also be prepared to go outside so when
 7 the people --
 8 A. Yes.
 9 Q. -- are walking in the parking lot,
 10 they'll monitor this and on busier activity
 11 days, they may set up a portable register and if
 12 they do, then someone would be out there from
 13 security?
 14 A. Yes, sir.
 15 Q. And the security problems you have
 16 where you need to notify the local police
 17 department are overwhelmingly either shoplifting
 18 issues or issues about the counterfeit money?
 19 A. Yes, sir.
 20 Q. And nothing with regard to seasonal
 21 type sales or other type products?
 22 A. No.
 23 Q. Thank you.
 24 A. No problem.
 25 Q. I have no further questions of the

1 theoretically...
 2 BY MR. McNAMARA:
 3 Q. Let me direct the witness.
 4 There are security cameras that are
 5 mounted on the roof of the building that point
 6 down directly into these areas where the outdoor
 7 storage is proposed, correct?
 8 A. Yes, sir.
 9 Q. And that's part of what you monitor
 10 amongst the video monitors that you have in your
 11 security facility in the store?
 12 And there are security people in the
 13 store during all operational hours, 7 a.m. to
 14 midnight?
 15 A. 7 a.m. to midnight, yes.
 16 Q. Thank you.
 17 ATTORNEY WARNER: And during all of
 18 those operational hours, at least one
 19 person is viewing the monitors at all
 20 times?
 21 THE WITNESS: Yes, at all times,
 22 there's somebody viewing the monitors,
 23 because you never know, we could be
 24 walking, nobody is checking the monitors,
 25 checking them, and then what if something

1 happens, nobody saw, you know? So we've
2 got to have somebody in the room at all
3 times.

4 BY MR. McNAMARA:

5 Q. And you save the video for 31 days,
6 that's company policy?

7 A. Save the video, that's company
8 policy got, to save it like that.

9 BOARD MEMBER FECHTNER: I'm going to
10 follow up on your line, if you're seeing
11 it on a film or on your camera, and you
12 say there's a store person who's
13 monitoring someone shoplifting or
14 stealing, do you have a way of
15 communicating with them immediately --

16 THE WITNESS: Yes.

17 BOARD MEMBER FECHTNER: -- about
18 that?

19 THE WITNESS: Yes, we use our
20 phones, personal phones, we call or text
21 each other, hey, somebody is at this
22 particular place, and they are doing this.
23 So, what we do is attempt, sir, do you
24 need help?

25 MR. McNAMARA: Hold the mic.

1 THE WITNESS: Like four years, they
2 overnight and day time.

3 BOARD MEMBER HUNSINGER: And do you
4 have a background in security or degree or
5 something in security?

6 THE WITNESS: No, no, no.

7 BOARD MEMBER HUNSINGER: So they
8 hired you, they trained you.

9 THE WITNESS: Yes, they hired me and
10 trained me, yes, yes.

11 MR. McNAMARA: The gentleman who
12 runs the department is out of state at a
13 training program and so Miguel graciously
14 offered at the last minute because he got
15 stuck and couldn't get here.

16 BOARD MEMBER HUNSINGER: So you
17 don't run the department; you --

18 MR. McNAMARA: He works in the
19 department.

20 BOARD MEMBER HUNSINGER: So you've
21 only been there three weeks, but by your
22 own admission, there's a lot the theft in
23 this location?

24 THE WITNESS: Yes, a lot, yeah.

25 BOARD MEMBER HUNSINGER: What is

1 THE WITNESS: Sorry.

2 Hey, sir, do you need any help
3 because we don't like to disrespect the
4 customer; they're always right, also.

5 BOARD MEMBER HUNSINGER: So you have
6 no, the store provides no communication
7 device, you use your personal device?

8 THE WITNESS: Well, we can use the
9 walkies because but they don't want to
10 make it seem like obvious to them that we
11 are watching them, you know.

12 ATTORNEY WARNER: I hear you.

13 MR. LAUERMAN: You're undercover?

14 THE WITNESS: Yes, sir, technically
15 undercover.

16 BOARD MEMBER HUNSINGER: So you've
17 been working there for how long?

18 THE WITNESS: Well, for this store,
19 I started, I'm sorry, three weeks ago.

20 BOARD MEMBER HUNSINGER: Three
21 weeks?

22 THE WITNESS: But I worked at the
23 one in Bayonne.

24 BOARD MEMBER HUNSINGER: How long
25 did you work at the one in Bayonne?

1 your policy on the theft, if someone takes
2 something and runs out, do you just let
3 them go, do you chase them, what do you
4 do?

5 THE WITNESS: No, that's funny.

6 Well, if somebody comes and they're
7 aggressive, we basically can't -- what we
8 do is, hey, come over here, what are you
9 doing, because, you know, it's a personnel
10 thing.

11 But what we do is we call the
12 authority real quick and we check on the
13 cameras, we get the license plate, they
14 come to us.

15 BOARD MEMBER HUNSINGER: So you
16 stand down, observe and then --

17 THE WITNESS: Yes, we can't do much
18 else. Once they leave, we can't chasing
19 them, none of that.

20 BOARD MEMBER HUNSINGER: So you said
21 -- so this is going to be materials that
22 are outside.

23 Do these materials get moved inside
24 in off hours?

25 THE WITNESS: Yes, they do, we don't

1 don't keep them outside.
 2 MR. BROWN: Except the propane.
 3 MR. McNAMARA: The propane.
 4 BOARD MEMBER HUNSINGER: That has to
 5 be there, I get that.
 6 So here is my concern, you know, I
 7 live in town, we live in town, we hear
 8 about the crime, most of our crime happens
 9 unfortunately in the 22 corridor. And we
 10 already have a great deal of crime from
 11 people taking stuff from inside the store
 12 and removing it and going.
 13 And so we're making it easier and
 14 we're putting it outside and we're saying
 15 that it's going to be a safe situation.
 16 And, you know, my concern is that this is
 17 going to lead to an even greater amount of
 18 theft.
 19 And, now, you said there's going to
 20 be cash register?
 21 MR. McNAMARA: If necessary, we
 22 would have someone out there if there was
 23 was extremely high volume of traffic like
 24 the day before certain holidays or others
 25 where people want to purchase these little

1 pretty much spring and fall. And if the
 2 board felt the need to specify the
 3 particular months, I would say March --
 4 BOARD MEMBER HUNSINGER: But this
 5 isn't a temporary use, right, we're not
 6 approving a temporary use, we're approving
 7 a permanent use?
 8 CHAIRPERSON CRONHEIM: Not temporary
 9 use because use temporary is only good for
 10 30 days. So they want to put it outside
 11 for two months, so March and April, maybe
 12 May and then it goes away.
 13 MR. McNAMARA: We are looking
 14 March, May, August, September.
 15 BOARD MEMBER HUNSINGER: My concern
 16 is security, my only concern is security.
 17 I am and always have been pro
 18 business. I believe that you guys can do
 19 whatever and I want to help you whatever
 20 you can to help promote your business, but
 21 we live in town, hearing these stories and
 22 my concern is safety. And my concern is
 23 now even higher due to the fact that not
 24 only are we putting goods outside to make
 25 it easier, but we're not going to put a

1 items like right before Easter or
 2 something like that, on that rare
 3 occasion. Otherwise, the customer would
 4 pick up the item there and then bring it
 5 inside and ring it up like they would the
 6 rest of their purchases.
 7 The area is all under the area of
 8 surveillance, there are numerous signs up
 9 throughout the area that show security
 10 cameras in use to alert people to that, I
 11 believe there's probably nine to 12 of
 12 those signs in the parking area alone.
 13 BOARD MEMBER HUNSINGER: O.K.
 14 BOARD MEMBER KITA: Are we talking
 15 about this just for growing season,
 16 spring, fall, summer?
 17 MR. McNAMARA: Yes, primarily the
 18 spring and then again from August to early
 19 October. Seasonal plants, plants, mulch
 20 fertilizer, it's a lot of easier to pilfer
 21 stuff out the cosmetics or electronics
 22 than to grab a 20 bag of fertilizer.
 23 MR. LAUERMAN: So June, July, it's
 24 not there.
 25 MR. McNAMARA: No, this would be

1 cash register out there as well.
 2 MR. McNAMARA: If you think that's
 3 inappropriate, then we'll instruct the
 4 management that that's not an acceptable
 5 option, and you just have to have people
 6 come into the store. We have no problem
 7 with that.
 8 BOARD MEMBER HUNSINGER: And one of
 9 my things is here is the only thing we are
 10 putting there is cameras and really only
 11 the cameras, to your admission, they are
 12 going to record is, they're going to
 13 record the crime, they're not going to
 14 stop the crime.
 15 BOARD MEMBER FECHTNER: Does this
 16 not reflect the same situation we have
 17 with the flowers over at Home Depot?
 18 BOARD MEMBER HUNSINGER: That's a
 19 great question.
 20 MR. LAUERMAN: They have people
 21 outside though.
 22 BOARD MEMBER FECHTNER: Will they
 23 not have people outside?
 24 MR. LAUERMAN: No.
 25 BOARD MEMBER FECHTNER: No

1 salesperson?

2 MR. McNAMARA: We may have people
3 coming back and forth to restock or to fix
4 up the area during the course of the day
5 to maintain it properly, but Home Depot
6 obviously you have a large garden center
7 and it's laid out in a different manner.

8 BOARD MEMBER HUNSINGER: My concern
9 is I think they're very different sites.

10 If you take the Home Depot and try and run
11 behind the Home Depot, you're going to run
12 into a 30-foot wall or you're going to run
13 off a 30-foot wall. So the only way --
14 the only way to get out is to go to 22
15 into the middle of the parking lot.

16 In the Wal-Mart parking lot, and you
17 know this probably more than me, you just
18 hightail it through the woods and you can
19 go anywhere you want, right? Let's be
20 honest. Right?

21 THE WITNESS: Crazy.

22 BOARD MEMBER HUNSINGER: And for me
23 to say that it, you know that's where
24 people go, they can just run that way.

25 THE WITNESS: They run everywhere.

1 BOARD MEMBER HUNSINGER: That's why
2 I think this is a little bit different
3 than Home Depot.

4 CHAIRPERSON CRONHEIM: I would agree
5 with that because Home depot is isolated
6 off, as you said, a 30-foot cliff and
7 you're just not going to go that way, and
8 it's a long way to get off the property;
9 there's an enormous way to get off the
10 property.

11 I think the concern that you're
12 expressing, D.J., is that we have an issue
13 that exists for people leaving the
14 building and running out; I think that is
15 our major concern.

16 BOARD MEMBER HUNSINGER: Absolutely.

17 CHAIRPERSON CRONHEIM: I think
18 that's the concern of the board. And I
19 think the answer is we would like to see
20 something a little more proactive if they
21 want to be outside.

22 BOARD MEMBER HUNSINGER: I agree.

23 But I feel like having lived in the
24 town, this is one of the largest
25 complaints we hear from residents, is the

1 crime rate on 22. And for us some sit
2 here and exacerbate that situation with
3 our decisions, I'm troubled.

4 And really you have to know the
5 history of this board and the history of
6 my decisions, I'm very pro business and I
7 really do want you guys make --

8 MR. McNAMARA: I understand the
9 security concern and I handled the
10 Seritage application on the other side of
11 22 with the old Sears site.

12 BOARD MEMBER HUNSINGER: Yup.

13 MR. McNAMARA: The police chief
14 came to two of the hearings, we met
15 extensively. We're certainly willing to
16 do that if that would assuage your
17 concern. I'm more than happy to sit with
18 the chief and our client, and say, O.K.,
19 what do you think we can do to improve
20 what we're doing, whether it's realignment
21 of cameras or doing something else or
22 having somebody walk out there every 30
23 minutes, we can put that together as a
24 conditional approval. I would submit it
25 to your board attorney and police

1 department and say here is our security
2 protocol, if there's anything that you
3 think we can supplement this with, we're
4 certainly prepared to, you know, sit down
5 and sort out what everybody thinks works
6 best.

7 And we did that with Seritage.

8 BOARD MEMBER HUNSINGER: I generally
9 think that's a good solution.

10 My only question is in this
11 particular case, and I'm asking this
12 candidly, is: Should we make it a
13 condition of approval or should we get
14 this information and then come back here
15 and talk about this, only --

16 MR. McNAMARA: The Planning Board
17 was willing to make it a conditional
18 approval and they delegated it to the
19 police chief, the borough administrator
20 and borough attorney.

21 BOARD MEMBER HUNSINGER: And
22 normally I would say yes to that. I just
23 don't want to be guy that created more
24 crime on 22. That's all I really want to
25 do.

1 BOARD MEMBER FECHTNER: Well, help
2 me with some knowledge, though, I'm not a
3 shopper of Wal-Mart.

4 What are you selling there that
5 would be of interest to someone who wants
6 to grab it and run?

7 MR. LAUERMAN: A 40 pound bag of
8 mulch.

9 MR. McNAMARA: If someone can run
10 that fast with a 20-pound bag of
11 fertilizer, they should be playing NFL
12 football. I don't want to sound
13 facetious, but it's mums, it's planters;
14 in the spring it's Scott's fertilizer, and
15 spring planting, perennials.

16 MR. LAUERMAN: You're absolutely
17 correct, but let's look at it the other
18 way, you're viewing the film, now you have
19 all of these people on film, who do you
20 call? The police?

21 MR. MARRERO: I call the police. For
22 sure.

23 MR. LAUERMAN: The police for sure.

24 And so here we are making more of a
25 deal for the police.

1 calling over a plant.

2 MR. McNAMARA: Well, I guess from
3 corporate experience, and I don't want to
4 testify to this, they don't see this as a
5 risk item compared to the electronics and
6 cosmetics or other high end items.

7 MR. LAUERMAN: So if I lifted a
8 couple of bags, you're not going to
9 call --

10 MR. McNAMARA: If you can run
11 faster than he can.

12 MR. LAUERMAN: I'm not going to do
13 that, I'm just going to pull up my pickup
14 truck.

15 (WHEREUPON, LAUGHTER ENSUED.)
16 CHAIRPERSON CRONHEIM: Let's get
17 back to being serious.

18 BOARD MEMBER KITA: What are the
19 hours of operation for this store?

20 MR. McNAMARA: 7 a.m. to midnight.

21 BOARD MEMBER KITA: Seven days a
22 week?

23 MR. McNAMARA: Yes, and I believe
24 that's been their hours of operation since
25 they opened.

1 MR. MARRERO: Well, what happens is
2 they always end up stealing electronics
3 and cosmetics and that's inside the store.

4 And technically, we stop them before they
5 head out the door, because our office is
6 right outside, right here (indicating).
7 And once they come out, we stop them. And
8 we speak to them, and they, you know.

9 BOARD MEMBER FECHTNER: That's --

10 MR. LAUERMAN: But if they take off,
11 you can't stop them, you have to call.

12 BOARD MEMBER HUNSINGER: I've put
13 pallets in the back of my building and
14 they steal those.

15 MR. LAUERMAN: I know what you're
16 saying, I know.

17 BOARD MEMBER FECHTNER: Again, if
18 someone is shoplifting and then costs the
19 taxpayers for using our police force down
20 there, but I can certainly see something
21 that's worth \$100. But I can't fathom how
22 people are running off with a bag of seed
23 or a plant that's worth calling, at
24 Wal-Mart to call the police. I think the
25 please would kind of get annoyed with you

1 BOARD MEMBER KITA: During the
2 season, what time would this stuff be
3 pulled back in?

4 MR. McNAMARA: Probably around
5 dusk. It's usually not left out in the
6 evenings. We would agree to that as a
7 condition, it's got to be brought within
8 the 30 minutes of sunset or something like
9 that, if that's a fair way of addressing
10 it.

11 ATTORNEY WARNER: So we have that as
12 a potential -- well, as a stipulated
13 condition, we have it subject to the
14 approval of the police department
15 reviewing the protocol, et cetera, and we
16 have the possibility of no portable
17 outdoor cash registers and the possibility
18 of no -- requiring additional or some
19 employees or employee outside.

20 Any and all of the above are
21 acceptable to the applicant as stipulated.

22 MR. McNAMARA: Yes.

23 ATTORNEY WARNER: Including all four
24 of them?

25 MR. McNAMARA: Yes, sir.

1 ATTORNEY WARNER: All right, it's up
 2 to the board.
 3 MR. McNAMARA: I don't think we
 4 have any further questions for this
 5 witness.
 6 MR. McNAMARA: No, I have my
 7 planner here to just briefly testify given
 8 the nature of the relief.
 9 CHAIRPERSON CRONHEIM: Yes.
 10 (Whereupon the witness was excused.)
 11 CHAIRPERSON CRONHEIM: Do we open it
 12 up to the public.
 13 ATTORNEY WARNER: We will after this
 14 witness?
 15 THE WITNESS: Hi, Justin Auciello,
 16 Justin Auciello, A-U-C-I-E-L-L-O, license
 17 professionals planner in New Jersey.
 18
 19 EXAMINATION
 20 BY MR. McNAMARA:
 21 Q. And you've been accepted as an
 22 expert in planning before numerous land use
 23 boards in the State of New Jersey?
 24 A. Yes, in 18 counties.
 25 Q. Thank you.

1 create a hazard for motor vehicle traffic or
 2 pedestrians; that does not substantially affect
 3 the value of adjoining properties, and that it
 4 does not" -- it's not --
 5 CHAIRPERSON CRONHEIM: "Injurious to
 6 the health and welfare of the general
 7 public."
 8 THE WITNESS: Yes, "injurious to
 9 the health and welfare of the general
 10 public."
 11 MR. McNAMARA: Thank you.
 12 BY MR. McNAMARA:
 13 A. So in this instance, you heard from
 14 our engineer, you heard that the traffic
 15 circulation is not going to be impacted by the
 16 upper display, you heard from the security expert
 17 who testified to the fact that is an area that
 18 is going to be under surveillance.
 19 You know, from the standpoint of
 20 whether, you know, this will have a negative
 21 impact or, you know, serious impact on the
 22 public good, I think you will see the cars will
 23 be able to circulate, you'll see that people
 24 will be able to find the goods easily and
 25 safety, and with respect to security, they will

1 ATTORNEY WARNER: Before you on
 2 further, your business address.
 3 THE WITNESS: 125 Half Mile Road,
 4 Suite 200, Red Bank, New Jersey, 07701.
 5 ATTORNEY WARNER: And I apologize, I
 6 didn't get your name.
 7 THE WITNESS: My name?
 8 ATTORNEY WARNER: Yes.
 9 MR. MARRERO: Miguel, M-I-G-U-E-L,
 10 last name, Marrero, M-A-R-R-E-R-O.
 11 ATTORNEY WARNER: Thank you.
 12 Sorry.
 13
 14 EXAMINATION
 15 BY MR. McNAMARA:
 16 Q. Justin, if you could please review
 17 the contents of the ordinance that we're seeking
 18 relief from and the justification for the relief
 19 being sought.
 20 A. Yes, absolutely.
 21 So we require relief from ordinance
 22 section 28:401:L, which is for the outdoor
 23 supply. The ordinance requires that the Board
 24 of Adjustment should issue a special permit if
 25 the display, and I'm going to quote, "does not

1 be under surveillance and if there's an issue,
 2 that will be addressed expeditiously.
 3 You know, that's the relief for the
 4 special permit. I mean, do you want to go
 5 through the special reasons for -
 6 ATTORNEY WARNER: Yes, and before
 7 you do, if I may, and I apologize, I may
 8 have just not heard, did you cover all of
 9 those four items in section L? It's not
 10 in the easement, doesn't create a hazard
 11 for vehicle or pedestrians, does not
 12 substantially affect the value of the
 13 property and not injurious to the public's
 14 health.
 15 MR. McNAMARA: Well, let's go over
 16 it.
 17 ATTORNEY WARNER: I didn't mean to
 18 slow you up; just want to make sure we've
 19 covered all four.
 20 BY MR. McNAMARA:
 21 Q. Mr. Auciello, there's no public
 22 easement in that area of the parking lot or the
 23 sidewalk area where the store frontage is
 24 located?
 25 A. No, no public easement.

1 Q. Thank you.
 2 Actually, let me re-call the
 3 engineer briefly.
 4 (Whereupon, JAMES HUSTON of BOHLER
 5 ENGINEERING RESUMED HIS TESTIMONY.)

6
 7 JAMES HUSTON,
 8 Resumed the stand and testified further
 9 As follows:

10
 11 RE-EXAMINATION
 12 BY MR. McNAMARA:

13 Q. In your professional opinion, do you
 14 believe there's any impact to motor vehicle
 15 traffic or pedestrians from the location of the
 16 proposed outdoor storage? I believe I asked
 17 you that before, but for the record per the
 18 direction of counsel?

19 A. My opinion, no.
 20 (Whereupon, Mr. James Huston was
 21 excused.)

22 (Whereupon, Mr. Justin Auciello
 23 resumed the stand.)

24
 25 JUSTIN AUCIELLO, resumed the stand and testified

1 Wal-Mart operation. There's a demands for these
 2 goods. These are goods that are more intended
 3 to be outside for easy access by customers. I
 4 think the site is obviously, you know, large
 5 enough and sufficiently designed to accommodate
 6 this proposal.

7 You heard from our engineer, that
 8 there won't be any conflicts with pedestrians
 9 and motorists. You know, there's more than
 10 sufficient parking on these sites. We're
 11 meeting the requirements with ADA.

12 And I think importantly, too, when
 13 you're looking at whether this will have a
 14 negative impact on the operation of the site,
 15 and whether I think in this instance, whether
 16 the site is particularly suited, we're not
 17 requiring any bulk variances for the outdoor
 18 storage as well. So certainly I think it's more
 19 than suited for the proposal.

20 The second prong is a showing of
 21 special reasons. As the board is aware, it's a
 22 showing that the proposal does advance one
 23 purpose the MLUL. I certainly think that we
 24 advance more than one.

25 G, H and I. G is to provide for a

1 further as follows:

2
 3 EXAMINATION - CONTINUED
 4 BY MR. McNAMARA:

5 Q. Mr. Auciello, then do you believe
 6 that there would be any impact to the value of
 7 the adjacent properties if the outdoor storage
 8 was to be permitted?

9 A. No, absolutely not.

10 Q. And lastly, in your professional
 11 opinion, do you believe that the proposed use
 12 does not substantially affect the public health
 13 and welfare?

14 A. Absolutely not.

15 Q. Thank you.
 16 But please continue with regard to
 17 the special reasons.

18 A. Sure.

19 So as part of the proofs for the use
 20 variance, as you're well aware we require relief
 21 in accordance with the P1 proofs under Medici
 22 and the first prong of that is a showing of
 23 whether the site is particularly suited for the
 24 proposed use. I mean, I think in my opinion as
 25 a planner, this is a natural extension to the

1 sufficient space and appropriate locations for
 2 commercial use. As I said, I think there's more
 3 than sufficient space.

4 H is to encourage safe circulation
 5 and doesn't call blight.

6 And I is a desirable visual
 7 environment. I think in this instance, the
 8 outdoor supply is attractive, it's orderly, and
 9 it's safe.

10 Next is the negative criteria. It's
 11 a showing of whether the proposal will create a
 12 substantial detriment to the public good. I
 13 don't really see any detriment in this instance.
 14 Certainly I don't see any detriment that rise to
 15 the level of being substantial.

16 You know, again, this is going to be
 17 orderly, safe and as you heard from our security
 18 expert, this area will be monitored.

19 And last is the enhanced quality of
 20 proof. It's a showing of whether the variance
 21 for the proposal will substantially impair the
 22 intent of the zone plan, the zoning ordinance
 23 and the Master Plan. This site is located in
 24 the zone of HD. This is exactly the type of use
 25 that is common in these type of zones. I think

1 it's again, providing a service for the
2 community by having these goods, seasonal goods
3 in the front and that are accessible.

4 I think looking at the
5 reconciliation, I think it's obvious that the
6 Borough does have a need to control the outdoor
7 area, but I think overall, when looking at this
8 proposal, we do meet the overall intent and the
9 spirit of the ordinance, we meet all of the bulk
10 requirements and we do not create a condition
11 that is problematic.

12 I think importantly too when we're
13 looking at the zoning ordinance and the intent
14 of the HD zone, in 2018, you know, the outdoor
15 display of goods is commonplace; not just in
16 New Jersey, but throughout the country. So I
17 think again, this is a proposal that really
18 advances the intent and the spirit of the zoning
19 ordinance.

20 And I think to, you know, to finish,
21 I think we also do advance aspects of the 2001
22 Master Plan Reexamination and that's speaks to
23 the improvement of the commercial vitality of
24 the Borough and to promote the new development
25 of non-residential uses in appropriate locations

1 in the audience have any questions of this
2 or any of the previous two witnesses?

3 Hearing none, we'll close that
4 portion of the hearing.

5 BOARD MEMBER BROWN: I have one
6 question.

7 CHAIRPERSON CRONHEIM: Yes, go
8 ahead.

9 BOARD MEMBER BROWN: The engineer,
10 sir.

11 Just looking at this, can you give
12 me an idea of the what widths of the
13 sidewalk is in the flowers.

14 MR. HUSTON: Along the front of the
15 building, it's 12 feet and the proposed
16 sales display area is 6 feet wide, so
17 there's still six feet of sidewalk left.

18 MR. BROWN: That's enough to get two
19 cars through?

20 THE WITNESS: Oh, yeah, 6 feet is
21 ample.

22 CHAIRPERSON CRONHEIM: Any other
23 questions from the board.

24 Are there any comments from the
25 public?

1 with the appropriate regulation, and lastly to
2 promote a strong economy and balance between
3 residential and non-residential development.

4 So I think in this instance,
5 obviously, again, to repeat myself, but I think
6 it's important just to reiterate, this certainly
7 helps the vitality of economic base of the
8 municipality.

9 That concludes my testimony.

10 CHAIRPERSON CRONHEIM: Anyone on
11 the board have any questions for this
12 witness?

13 BOARD MEMBER HUNSINGER: No.

14 ATTORNEY WARNER: No one else does?
15 Just one.

16 I think you may have said 2001
17 Reexamination Report; that's 2011.

18 THE WITNESS: 2011, correct.

19 ATTORNEY WARNER: Because 2001, we'd
20 be overdue for another. 2011 we have a
21 few years, we'll monitor that.

22 THE WITNESS: Few more years.

23 ATTORNEY WARNER: Thank you.

24 Nothing further.

25 CHAIRPERSON CRONHEIM: Does anyone

1 Hearing none.

2 Now we'll completely close the
3 public hearing.

4 With that, if the board have has any
5 comments or thoughts, do they want to
6 approve this conditional of the police, or
7 do we want to have them talk to the police
8 before we vote on this?

9 BOARD MEMBER HUNSINGER: I'm just
10 going to say you how I feel.

11 I'm completely buying all of what
12 the planner said except for one thing; and
13 that is, the public good and what it could
14 do for the public. I am seriously
15 concerned about the crime situation, and I
16 would be -- if the police chief said, you
17 know, I'm good with it, do these things,
18 do those things, then I would feel
19 comfortable voting for it. And normally I
20 would just say leave it to him. But this
21 is such, for me and this is personal for
22 me, it's such a concern that I almost feel
23 like I want to hear from the police chief
24 first before I make that decision. And I
25 don't know how much authority does the

1 police chief have, you know, we're saying
2 make it a stipulation, but how much
3 authority can we give him and is he going
4 to be in the situation, well, it's already
5 approved, I can just make some minor
6 changes.

7 I want to hear from him whether this
8 is going to be a crime problem, I really
9 do. I want to know is this going to be an
10 issue? And if it is, maybe it can't be
11 remedied, I don't know, I don't know,
12 that's just me.

13 MR. BROWN: Why impact him when he
14 has no choice, at least ask him if we are
15 going to impact him.

16 BOARD MEMBER HUNSINGER: I know
17 that's normally what we do: I'll defer to
18 the Chair.

19 CHAIRPERSON CRONHEIM: No, no, I
20 asked for opinions, and I wanted to hear
21 from the board. And I think,
22 Mr. McNamara, I think you're going to hear
23 from more members of the board that we
24 would like to have the police chief look
25 at it and I think you sort of volunteered

1 Surge had its own security training,
2 they're a national -- Cinemark rather, is
3 a national chain, an international chain
4 really, they're in Central and South
5 America also. So we've spent a lot of
6 time and effort with the chief, with your
7 BA going through that process. So I have
8 no problem if the board would like to
9 carry this to the November meeting with no
10 further notice being required --

11 CHAIRPERSON CRONHEIM: That's an
12 easy request.

13 MR. McNAMARA: -- we'll reach out.

14 CHAIRPERSON CRONHEIM: We can carry
15 this with no further notice, it's on the
16 record.

17 BOARD MEMBER FECHTNER: Can I throw
18 a different question in there: Has it
19 ever been done or would it be practical to
20 control the dollar amount of thievery
21 before the police are involved? If
22 someone, if Wal-Mart is losing a \$20 item,
23 are they going to call the police, or --

24 MR. McNAMARA: I can find out.

25 BOARD MEMBER HUNSINGER: The answer

1 that anyway.

2 MR. McNAMARA: Yes.

3 CHAIRPERSON CRONHEIM: We are a
4 little different from the planning board
5 in that that request was sort of what
6 impact will the whole building have on it.
7 This request is what happens if we put it
8 here.

9 I would ask, with your consent, that
10 you and your client would go to the police
11 department and ask them for an opinion,
12 then we might be able to work something
13 out with them. I think that will give
14 this board some real assurance that it
15 might need, considering that we are aware
16 some of the issues that have gone on here
17 and up and down 22, although I'm not
18 picking on this center.

19 MR. McNAMARA: No, I know you're
20 not. I spent a lot of time going through
21 a lot of reports from numerous places
22 because of the discussions we have over an
23 extended period of time on the Seritage
24 project. Because there were concerns
25 there, we came up with a security plan.

1 is probably no.

2 MR. MARRERO: No.

3 MR. McNAMARA: I don't believe that
4 they've ever had an actual threshold that
5 I'm aware of.

6 (Whereupon, background discussion
7 ensued.)

8 BOARD MEMBER HUNSINGER: Is there a
9 corporate policy, you can ask if there's a
10 corporate policy.

11 MR. McNAMARA: I don't know if
12 there is or not, but I'm make an inquiry.

13 BOARD MEMBER HUNSINGER: I just
14 want to notes that's my only objection;
15 otherwise, I'm O.K. with it.

16 MR. McNAMARA: I think that is a
17 concern and we know that you've done this
18 with, as you stated, with the cinema. And
19 I think it's important that we get this
20 done in advance giving the public some
21 comfort as to this, and I'd think it's
22 something that you can handle with our
23 police department; they're very competent.

24 MR. McNAMARA: We've enjoyed a very
25 cordial relationship with the chief and

1 the Borough administrator. I have no
 2 problem reaching out to them tomorrow or
 3 Monday and saying, hey, I was there, I've
 4 been requested to submit this for your
 5 review and comment and consideration.
 6 Then if I can then ask them to give me a
 7 simple letter or report that I can then
 8 present it as an exhibit back here with
 9 the report.
 10 CHAIRPERSON CRONHEIM: Whatever the
 11 chief and you agree to, we'd love to hear
 12 it.
 13 MR. McNAMARA: O.K.
 14 BOARD MEMBER HUNSINGER: And even if
 15 some of those things may need variances to
 16 get them done, the fences, et cetera, I
 17 mean, whatever.
 18 MR. McNAMARA: We're open to any
 19 rational suggestion.
 20 MR. McNAMARA: Understood.
 21 BOARD MEMBER HUNSINGER: And also,
 22 like maybe adjusting, what is this, is
 23 this a 6-foot high stuff where people are
 24 hiding behind and doing stuff, the height
 25 of it is important as well, whatever it

1 make sure it's in advance of the meeting.
 2 MR. McNAMARA: Thank you.
 3 CHAIRPERSON CRONHEIM: Thank you
 4 appreciate your time.
 5 (Whereupon, at 8:24 p.m., the
 6 Wal-Mart matter was adjourned.)
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1 may BE.
 2 MR. McNAMARA: Average height is
 3 around 6 feet for the carts that they
 4 place planters and things on but we'll
 5 look in to that, also.
 6 BOARD MEMBER HUNSINGER: That may be
 7 part of security issue because things
 8 that are 4 feet, you can see over, things
 9 that are 6 feet, you can't -- well, maybe
 10 you can, I can't.
 11 MR. McNAMARA: They don't escape
 12 the cameras.
 13 CHAIRPERSON CRONHEIM: No, the
 14 cameras are higher.
 15 All right with that, we'll carry
 16 this.
 17 ATTORNEY WARNER: Yes.
 18 BOARD MEMBER HUNSINGER: Thank you.
 19 ATTORNEY WARNER: I think the board
 20 is going to entertain your request to
 21 carry this matter without further notice
 22 to the next meeting for purpose of this
 23 inquiry and presenting this report
 24 hopefully in advance.
 25 MR. McNAMARA: No, we'll try to

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