

**BOROUGH OF MIDLAND PARK – ZONING BOARD OF ADJUSTMENT MINUTES**

**April 12, 2023**

PLEASE TAKE NOTE:

ON WEDNESDAY, APRIL 12, 2023, THE ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF MIDLAND PARK HELD A REGULAR MEETING IN THE MIDLAND PARK COUNCIL CHAMBERS, 280 GODWIN AVE., MIDLAND PARK, NJ. THE FORMAL MEETING BEGAN AT 7:30 P.M

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**FORMAL MEETING**

READING OF THE OPEN PUBLIC MEETINGS ACT

PLEDGE OF ALLEGIANCE

ROLL CALL:

Mr. Les Andersen	present	Mr. Mark Divak	present
Mr. David Zuidema	excused	Mr. William Placier	present
Mr. Richard Formicola	excused	Mr. David Barlow	present
Mr. Nick Papapietro	present	Mr. Joseph Eliya, Alt #1	present
		Mr. James Capalbo, Alt #2	present

Attendance by Board Professionals: R. Landel, Esq., Attorney; R. Wostbrock, Engineer; T. Behrens, Planner

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**PUBLIC HEARINGS**

**MHF Midland Park LLC/Taco Bell – 80 Godwin Avenue – BL 6 LT 17.02 – see attached transcript**

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**RESOLUTIONS**

**Nouvelle LLC – 714 Godwin Avenue – BL 55 LT 8 – motion to approve the resolution as amended made by Mr. Barlow. Seconded by Mr. Papapietro; all eligible members voted in favor**

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Meeting Adjourned – 8:41 PM  
Jessica Harmon

BOROUGH OF MIDLAND PARK  
ZONING BOARD OF ADJUSTMENT  
WEDNESDAY, APRIL 12, 2023  
7:30 P.M.

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IN THE MATTER OF: ) TRANSCRIPT OF  
APPLICATION OF ) PROCEEDING  
MHF MIDLAND PARK, LLC/  
TACO BELL - )  
80 GODWIN AVENUE, )  
BLOCK 6, LOT 17.02. )  
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B E F O R E:

LES ANDERSON, CHAIRMAN

NICK PAPAPIETRO, VICE CHAIRMAN

RICHARD FORMICOLA, SECRETARY (ABSENT)

DAVID BARLOW, MEMBER

JAMES CAPALBO, MEMBER

WILLIAM PLACIER, MEMBER

MARK DIVAK, MEMBER

JOSEPH ELIYA, MEMBER

DAVID ZUIDEMA, MEMBER (ABSENT)

LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.  
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LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.  
201-641-1812

**I N D E X**

1 WITNESS	SWORN	TESTIMONY
3 ANDREW H. MISSEY, P.E.	12	
4 Direct Examination by Mr. Whitaker		14
4 Cross-Examination by Ms. Rizzuto		49
5 Board/Professional Questions		
5 Vice Chairman Papapietro		34
6 Mr. Wostbrock		36
6 Mr. Behrens		42
6 Mr. Capalbo		44
7 Mr. Landel		45
8 Public Questions		
8 Karen Ng	56	56
8 30 Rea Avenue		
9 RICHARD WOSTBROCK, P.E.		37
10 THOMAS BEHRENS, P.P.		41
11		
12		
<b>E X H I B I T S</b>		
14 NO. DESCRIPTION		IDENT/EVID
15 A-1 Application for Use Variance and		4
15 Site Plan Approval		
16 A-2 Alta/NSPS Land Title Survey Prepared		
17 By DPK Consulting, Dated 11/12/21		4
18 A-3 Site Plan Prepared by Lapatka		
18 Associates, Dated 11/02/21,		
19 Last Revised 5/23/22 (3 pgs.)		4
20 A-4 Architectural Plans Prepared by		
20 Zelta Design, Dated 10/04/22 (3 pgs.)		10
21 A-5 Site Plan Prepared by Lapatka		
22 Associates, Date 11/12/21, Last		
22 Revised 3/20/23 (3 pgs.)		14
23 A-6 Revised Site Plan Rendering,		
24 Prepared by Lapatka Associates		21
25		

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.  
201-641-1812**

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

2 ROBERT LANDEL, ESQUIRE  
Counsel for the Zoning Board of Adjustment

3

4 BRUCE WHITAKER, ESQUIRE  
McDONNELL & WHITAKER  
245 East Main Street  
5 Ramsey, New Jersey 07446  
Counsel for the Applicant

6

7 ANNE MARIE RIZZUTO, ESQUIRE  
WEINER LAW GROUP, LLP  
8 629 Parsippany Road  
Parsippany-Troy Hills, New Jersey 07054  
9 Counsel for the Objector, Burger Barn

10

11

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

13 JESSICA HARMON, Board Secretary

14 THOMAS BEHRENS, P.P., Board Planner

15 RICHARD WOSTBROCK, P.E., Board Engineer

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201-641-1812**

1 (Whereupon, Application for Use

2 Variance and Site Plan Approval was received

3 and marked previously as Exhibit A-1 for

4 identification.)

5 (Whereupon, Alta/NSPS Land Title Survey

6 Prepared by DPK Consulting, Dated 11/12/21

7 was received and marked previously as Exhibit

8 A-2 for identification.)

9 (Whereupon, Site Plan Prepared by

10 Lapatka Associates, Dated 11/02/21, Last

11 Revised 5/23/22, three pages was received and

12 marked previously as Exhibit A-3 for

13 Identification.)

14 CHAIRMAN ANDERSEN: I call this meeting

15 to order.

16 This is the meeting of the Zoning Board

17 of Adjustment held on Wednesday, April 12, 2023.

18 Adequate notice of this meeting has been provided to

19 the public by written notice of the time, date and

20 place of this meeting, having been delivered to The

21 Ridgewood News and The Record, and by posting a copy

22 of the said notice on the bulletin board at the

23 Municipal Building, and by filing a copy of the said

24 notice with the Borough Clerk, all this required by

25 the Open Public Meetings Act.

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201-641-1812**

1 Please stand for the Pledge.  
 2 (Whereupon, all rise for a recitation  
 3 of the Pledge of Allegiance.)  
 4 MS. HARMON: Mr. Papapietro?  
 5 VICE CHAIRMAN PAPAPIETRO: Present.  
 6 MS. HARMON: Mr. Divak?  
 7 MR. DIVAK: Here.  
 8 MS. HARMON: Mr. Placier?  
 9 MR. PLACIER: Here.  
 10 MS. HARMON: Mr. Barlow?  
 11 MR. BARLOW: Here.  
 12 MS. HARMON: Mr. Elijah?  
 13 MR. ELIJAH: Here.  
 14 MS. HARMON: Mr. Capalbo?  
 15 MR. CAPALBO: Here.  
 16 MS. HARMON: Mr. Andersen?  
 17 CHAIRMAN ANDERSEN: Here.  
 18 We have one public hearing tonight, MHF  
 19 Midland Park, LLC.  
 20 Bruce, do you want to enter your  
 21 appearance?  
 22 MR. WHITAKER: Yes.  
 23 Good evening, Mr. Chairman, Members of  
 24 the Board, for the record, Bruce Whitaker from the  
 25 firm of McDonnell & Whitaker, representing the  
**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
**201-641-1812**

1 going to do what the construction officer has  
 2 proposed and suggested, and that's the movement of it  
 3 over near where the cell tower site is.  
 4 There is a report from the fire  
 5 department that asks that a Knox Box be installed.  
 6 Obviously, they were not here, but we had testified  
 7 that, yes, a Knox Box would be installed.  
 8 And then there is a request from the  
 9 DPW that the back end of the area at 80 Godwin Avenue  
 10 where there is certain construction equipment and  
 11 storage area, that that needs to get rectified before  
 12 the board would ever finalize in a hearing or make it  
 13 a condition of approval. And we're stipulating that,  
 14 obviously, that would have to be, because those  
 15 parking spaces are part of the count. And we had the  
 16 benefit of the photos that the DPW sent to us.  
 17 So I just want to put those things on  
 18 record.  
 19 We completed the testimony of our first  
 20 witness at the last meeting, as you'll recall, which  
 21 pertains to the operational aspects of Taco Bell,  
 22 talking about hours of operation, number of  
 23 employees. The fact that with today's world that the  
 24 idea of going to a fast food-style restaurant, a  
 25 takeout-style restaurant, that the public has got an  
**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
**201-641-1812**

1 applicant, MHF Midland Park, LLC, in connection of  
 2 the continuation of the Planning Board public hearing  
 3 for the Taco Bell installation that is proposed at  
 4 80 Godwin Avenue, Block 6, Lot 17.02, in Midland  
 5 Park.  
 6 I have just some housekeeping I'd like  
 7 to do first.  
 8 First, you do have -- I left this  
 9 evening an exhibit list. It's basically the same  
 10 list you had before.  
 11 The last plan is a plan of March the  
 12 20th, 2023 revision.  
 13 It's made some revisions based upon  
 14 your engineer's reports and suggestions, and based  
 15 upon some testimony that we received -- based on some  
 16 comments, I should say, that came through the course  
 17 of the testimony at the last meeting.  
 18 We've also had the benefit of certain  
 19 reports that have come in since the last hearing.  
 20 And I want to just put some things on  
 21 the record.  
 22 We have a report of April the 5th from  
 23 the construction official suggesting a relocation of  
 24 the dumpsters. And I'm going to provide you with an  
 25 exhibit tonight showing you that, basically, we're  
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**201-641-1812**

1 expectation now of not sitting down in such places,  
 2 but picking up, and that's COVID-driven and for many  
 3 other reasons, the public expectation now is a  
 4 drive-through window. And that's what we're  
 5 proposing.  
 6 We also had the testimony that the  
 7 existing building, servicing a bank at one time, did  
 8 have a drive-through window.  
 9 And we're basically replacing that  
 10 building with another one with the same type of one  
 11 drive-through window for it.  
 12 We also specified at the last hearing  
 13 what the variance requests were that we had as far as  
 14 the C-1 and C-2 variances that we were speaking of,  
 15 in generalities, because we don't have our planner to  
 16 testify, and also the use variance we're talking  
 17 about, and the fact that there is an ordinance that  
 18 prohibits a drive-through now for restaurant use.  
 19 I don't believe, as far as our direct  
 20 testimony, tonight will be that long. Famous last  
 21 words.  
 22 I have one witness, Mr. Missey, who  
 23 started at the last meeting.  
 24 What I want to do tonight is have him  
 25 finish his testimony pertaining to the site plan  
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**201-641-1812**

1 aspect.  
 2 We still have architectural to talk  
 3 about, which will be brief at another meeting.  
 4 We have traffic, a traffic report.  
 5 We'll have our traffic engineer for that.  
 6 Then, obviously, we'll have our planner  
 7 at a future meeting.  
 8 At the last meeting, Mr. Missey was  
 9 qualified as an expert witness in the field of  
 10 engineering.  
 11 You recognized him, from Lapatka  
 12 Associates. He's appeared here many times before.  
 13 He testified as to the existing conditions. He  
 14 testified, basically, where the placement of the  
 15 building would be and the bulk standards that were  
 16 being met as far as the building is concerned.  
 17 I'm going to have him -- he's still  
 18 under oath -- pick up from there. And he's going to  
 19 walk you through the various site aspects of it and  
 20 show you also some modifications that were made.  
 21 On the basis of that, from the original  
 22 plan, he will describe to you the small modifications  
 23 that were made, based upon it. And we'll work from a  
 24 revised plan of March 20th, 2023.

25 MR. LANDEL: Just one bit of  
**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 MS. HARMON: Yes.  
 2 MR. WHITAKER: Do you have one that's  
 3 appointed for the year?  
 4 CHAIRMAN ANDERSEN: No.  
 5 Who is the guy we use, Serge?  
 6 MS. HARMON: Serge, yeah.  
 7 MR. WHITAKER: Serge? Okay.  
 8 CHAIRMAN ANDERSEN: Serge.  
 9 Probably that's -- depending on  
 10 conflicts or whatever. Okay.  
 11 I interrupted you.  
 12 MR. LANDEL: Jessica just reminded me,  
 13 for the record that Mr. Placier has listened to the  
 14 tape and he's eligible.  
 15 He signed the certification.  
 16 We are all fine for tonight.  
 17 MR. WHITAKER: Fine.  
 18 Unless there's any other questions of  
 19 me, I'll call Mr. Missey up to set up.  
 20 And he'll go through the site plan  
 21 aspects.  
 22 MR. LANDEL: Thank you.  
 23 MS. RIZZUTO: Excuse me, Mr. Chairman.  
 24 Can I get the spelling of this witness's last name?  
 25 CHAIRMAN ANDERSEN: Sure.

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 housekeeping, Bruce.  
 2 The last -- I've got your exhibit list.  
 3 The last exhibit I had marked as A-3 was the site  
 4 plan.  
 5 The next one on your list is A-4,  
 6 architectural plans.  
 7 We haven't gotten to those.  
 8 MR. WHITAKER: We haven't gotten to  
 9 that yet, right. Okay.  
 10 (Whereupon, Architectural Plans  
 11 Prepared by Zelta Design, Dated 10/04/22,  
 12 three pages is premarked as Exhibit A-4 for  
 13 identification.)  
 14 CHAIRMAN ANDERSEN: And I also have one  
 15 interruption. You're having a traffic expert?  
 16 As long as it's come up now, should the  
 17 board retain a traffic expert to review the report  
 18 from their traffic expert?  
 19 VICE CHAIRMAN PAPAPIETRO: Yes.  
 20 MR. PLACIER: Yes.  
 21 CHAIRMAN ANDERSEN: Am I in your way?  
 22 MS. HARMON: Sorry.  
 23 CHAIRMAN ANDERSEN: All right.  
 24 So are you going to get in touch  
 25 with...

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 Do you have a set of plans?  
 2 MS. RIZZUTO: Because I missed the  
 3 first -- the first meeting.  
 4 MR. MISSEY: M-I-S-S-E-Y.  
 5 MS. RIZZUTO: And, Mr. Chair, would you  
 6 like me to enter my appearance?  
 7 CHAIRMAN ANDERSEN: Sure. Why not.  
 8 MS. RIZZUTO: Okay. Anne Marie  
 9 Rizzuto, R-I-Z-Z-U-T-O. Anne Marie is A-N-N-E,  
 10 Marie. From Weiner Law Group in Parsippany.  
 11 We represent Burger Barn, which is the  
 12 owner of the restaurant across the street, the  
 13 Wendy's across the street.  
 14 CHAIRMAN ANDERSEN: Thank you.  
 15 MS. RIZZUTO: Thank you.  
 16 CHAIRMAN ANDERSEN: That's the same  
 17 firm that was here last month.  
 18 MS. RIZZUTO: Yes.  
 19 CHAIRMAN ANDERSEN: A different person,  
 20 the same firm, okay.  
 21 MS. RIZZUTO: Right.  
 22 MR. MISSEY: Good evening.  
 23 MR. LANDEL: You're still under oath,  
 24 Mr. Missey.  
 25 MR. MISSEY: Yes.

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 ANDREW MISSEY, PE  
 2 12 North State 17, Suite 230, Paramus, New  
 3 Jersey, having been duly sworn, testifies as  
 4 follows:  
 5 MR. MISSEY: Just for the record, I'm  
 6 Andrew Missey with the firm Lapatka Associates in  
 7 Paramus.  
 8 MR. WHITAKER: So I would just like one  
 9 question before I ask Mr. Missey any questions.  
 10 At this point, the attorney, Anne Marie  
 11 Rizzuto, she's made representations that she  
 12 represents the Burger Barn, LLC, and that it operates  
 13 the Burger King -- it operates the Wendy's.  
 14 MS. RIZZUTO: Oh, I'm sorry.  
 15 MR. WHITAKER: I believe, if you look,  
 16 your client is Burger King.  
 17 So I want the record to be reflective  
 18 of that, because the last representation was that it  
 19 was Burger King.  
 20 The letter that is dated March 8th  
 21 references Burger King.  
 22 So we want to keep the record straight.  
 23 MS. RIZZUTO: Right.  
 24 And the entity is known as Burger Barn,  
 25 LLC.

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 testified as to existing conditions. And I take it  
 2 that the existing conditions you testified to have  
 3 not changed or been modified by the plans that have  
 4 been revised, correct?  
 5 A. That is correct.  
 6 Q. And you also testified as to the  
 7 proposal for the building, itself, and its location.  
 8 A. That's correct.  
 9 Q. Based upon the testimony you provided,  
 10 that building location has not been modified as far  
 11 as this revision is concerned.  
 12 Is that correct?  
 13 A. It has not. It remains in conformance  
 14 with the B-3 Zone setback.  
 15 Q. Because of the latest of the evening  
 16 last meeting, we decided that it was best to stop  
 17 there before you got into more of what is being  
 18 proposed for the site improvements on the property.  
 19 So what I would like you to do, without  
 20 going through a Q and A, is to give us an overview of  
 21 the overall proposal as it pertains to the building,  
 22 the parking, ingress and egress as proposed to the  
 23 site, drainage and the like?  
 24 A. Certainly.  
 25 I'll begin with the building, itself.

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 I apologize.  
 2 MR. WHITAKER: No. No apology needed.  
 3 I just want to get the record clear.  
 4 Thank you.  
 5 (Whereupon, Site Plan Prepared by  
 6 Lapatka Associates, Date 11/12/21, Last  
 7 Revised 3/20/23 is received and marked as  
 8 Exhibit A-5 for identification.)  
 9 CONTINUED DIRECT EXAMINATION  
 10 BY MR. WHITAKER:  
 11 Q. Mr. Missey, you're still under oath.  
 12 You have a plan up on the easel this  
 13 evening.  
 14 And we've marked this as A-5, but just  
 15 for the record, put on the title of the plan and the  
 16 final revision date.  
 17 A. Yes.  
 18 This plan is entitled: "Site Layout  
 19 Plan, Proposed Quick Service Restaurant, Block 6,  
 20 Lot 17.02, Midland Park, Bergen County, New Jersey,"  
 21 with an initial issue date of November 2nd of 2021,  
 22 and a most recent revision date of March 20th of  
 23 2023.  
 24 It's a three-sheet site plan set.  
 25 Q. Mr. Missey, at the last hearing you had

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 It's going to be a Taco Bell. It will be 25 feet in  
 2 width and about 80 feet in length, with a  
 3 drive-through window located on its easterly side.  
 4 That drive-through window will face Rea  
 5 Avenue and the building, the office building, across  
 6 the street.  
 7 The drive-through, itself, will be  
 8 accessed in a similar manner to the way that the  
 9 Atlantic Stewardship drive-through was accessed, that  
 10 is through an interior aisle way.  
 11 But the egress drive that the bank had  
 12 onto Godwin is proposed to be eliminated now.  
 13 And with the elimination of that egress  
 14 drive onto Godwin Avenue, the movement will continue  
 15 around in the U-shape to arrive at the drive-through  
 16 window at the northeasterly corner of the proposed  
 17 building.  
 18 Q. So, Mr. Missey, in Mr. Wostbrock's  
 19 report of January the 18th, 2023, specifically  
 20 Paragraph 3 on page 4, he states that:  
 21 "The removal of this curb cut on Godwin  
 22 would eliminate an existing nonconforming  
 23 condition by eliminating one of the driveways  
 24 close to each other on Godwin Avenue."  
 25 Do you concur with that statement?

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 A. I do. I do.  
 2 Q. So from a planning perspective, and a  
 3 site plan perspective, this would eliminate a  
 4 nonconformity and eliminate the issue of two driveway  
 5 -- two driveway curb cuts that close to each other?  
 6 A. That's correct.  
 7 Q. Please proceed.  
 8 A. With this -- with this configuration as  
 9 we're proposing on the southeasterly corner of this  
 10 site, there will be 171 parking spaces on the site.  
 11 So that will conform to the parking  
 12 requirement under the current code. The code  
 13 requirement is 167 spaces.  
 14 We will increase the greenery by  
 15 1,580 square feet. It will still be a nonconforming  
 16 condition, but we are making the condition better  
 17 than its present nonconformity of 83.6 percent.  
 18 Q. And that greenery that exists there now  
 19 has been previously approved by a site plan approved  
 20 by this borough in the past with the CVS, isn't that  
 21 correct?  
 22 A. That's correct, yes.  
 23 Q. Please proceed.  
 24 A. The drive-through, itself, will be  
 25 12 feet in width, with the standard counterclockwise

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**201-641-1812**

1 That is at the internal side of the  
 2 cell tower compound, immediately to the north of the  
 3 adjacent -- I forget what type of business that is.  
 4 Pool supplies possibly.  
 5 VICE CHAIRMAN PAPAPIETRO: Barbershop.  
 6 MR. MISSEY: Barbershop.  
 7 Thank you.  
 8 Barbershop and a nail shop.  
 9 That vehicle will pull into the space  
 10 from Godwin Avenue and make its off-loading, which I  
 11 believe takes 45 minutes to an hour, twice a week.  
 12 And then will make the movement within  
 13 the site back to Godwin Avenue, either directly  
 14 through the central ingress/egress drive or to the  
 15 Erie Avenue egress drive.  
 16 Q. So there was some concern about an  
 17 early delivery with a back-up of a truck and the  
 18 noise that a commercial vehicle makes in doing  
 19 backing up.  
 20 Am I correct in saying that based on  
 21 this revision now this truck would not have a  
 22 necessity to back up?  
 23 A. There is no need to back up with this  
 24 configuration.  
 25 Q. Thank you.

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**

**201-641-1812**

1 movement so that the driver faces the pickup window.  
 2 The drive-through stacks 11 vehicles in  
 3 total -- and the site plan depicts those 11 vehicles  
 4 queued up -- with -- and will stack six vehicles to  
 5 the menu board.  
 6 We have shifted the deliveries -- the  
 7 delivery space location to a location adjacent to the  
 8 cell tower compound in the internal aisle way. The  
 9 delivery space will accommodate a WB-40 delivery  
 10 vehicle.  
 11 And as the operations testimony was  
 12 stated last month, the deliveries are in the off  
 13 hours between 5:00 and 7:30 in the morning.  
 14 Q. Now, based upon where that delivery  
 15 space is, can that truck pull in and pull out?  
 16 A. Yes, it can.  
 17 That is illustrated on Plan  
 18 Sheet 3 of 3, where we have the inset that shows both  
 19 the passenger vehicle negotiating the drive-through  
 20 lane as well as the delivery vehicle pulling up and  
 21 then moving forward within the site itself to make  
 22 its movement back to Godwin Avenue.  
 23 Q. Can we just show and demonstrate where  
 24 that is on the plan?  
 25 A. Yes.

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**

**201-641-1812**

1 Please proceed.  
 2 A. Our soil moving quantities are not  
 3 significant.  
 4 To remove the existing bank building  
 5 and to configure the drive-through, as we proposed,  
 6 requires 96 cubic yards of cut and 268 cubic yards of  
 7 fill for a total import of 172 cubic yards.  
 8 Utility-wise, because there is a  
 9 building at this location now, utilities are not --  
 10 not complicated, by any means.  
 11 We are going to connect to the county  
 12 drainage without the necessity of intruding into the  
 13 Godwin Avenue right-of-way. That is where this  
 14 connection is now.  
 15 We are decreasing impervious by, as I  
 16 stated, 1,580 square feet. So we are actually  
 17 producing less stormwater under proposed conditions.  
 18 We will install a 1,500-gallon grease  
 19 trap on the sewer service.  
 20 And at the present time we show the gas  
 21 and water services to Godwin Avenue, but the water  
 22 may actually be within an easement on the site.  
 23 So if that is, in fact, the case, we  
 24 will make that connection onsite.  
 25 I'm going to show you now where our

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**

**201-641-1812**

1 refuse areas are going to be.  
 2 Q. Just to go back to utilities for one  
 3 moment, just to stipulate. All the utilities are  
 4 underground, correct?  
 5 A. All of them, yes.  
 6 Q. Thank you.  
 7 A. We will be moving the electric  
 8 underground as well. That's an important point.  
 9 Originally when I appeared here in  
 10 March, our dumpster area for this Taco Bell facility  
 11 was proposed in the northeasterly corner of this  
 12 easterly side of the site.  
 13 As a consequence of reports from, I  
 14 believe, the construction official, we re-evaluated  
 15 where that might best be located and have selected a  
 16 location immediately to the west of the cell tower  
 17 compound. And I've prepared an exhibit that  
 18 illustrates that.  
 19 MR. WHITAKER: We'll mark this Exhibit  
 20 A-6.  
 21 It's not on your list yet.  
 22 (Whereupon, Revised Site Plan  
 23 Rendering, Prepared by Lapatka Associates, is  
 24 received and marked as Exhibit A-6 for  
 25 identification.)

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 deciduous trees on Rea.  
 2 We are proposing to remove one  
 3 deciduous tree at the corner closest to Godwin Avenue  
 4 so that the new facility -- the new building has more  
 5 visibility from Godwin.  
 6 We are screening the drive-through with  
 7 a yew hedge. And we continue to propose additional  
 8 screening at this northeasterly corner (indicating),  
 9 which will consist of arborvitae and a yew hedge with  
 10 hollies, junipers at the islands and around the  
 11 building foundation where space permits.  
 12 That's in this vicinity (indicating).  
 13 I'm pointing to the exhibit.  
 14 Lighting-wise, we are going to reuse  
 15 two existing fixtures that were recently upgraded  
 16 with the LED fixtures as part of the CVS project. We  
 17 are going to relocate one of those fixtures and  
 18 construct two new fixtures that will be illuminating  
 19 the drive-through.  
 20 So we are proposing two new lights,  
 21 retrofitting one, and reusing two other fixtures.  
 22 These will be the 20-foot-tall shoebox fixtures that  
 23 are presently on the site to serve the CVS activities  
 24 (indicating).

I guess, is this a good time to go  
**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 MR. MISSEY: I can hand out copies, if  
 2 you wish?  
 3 MR. WHITAKER: Yeah, let's do that.  
 4 MR. MISSEY: Did everybody get one?  
 5 What I've just handed out is an  
 6 11-by-17 rendering of, basically, the layout that's  
 7 on our site plan, exactly the layout that's on our  
 8 site plan, with the exception that the refuse area  
 9 for this Taco Bell facility has been shifted from the  
 10 northeasterly corner of the site over to the --  
 11 immediately west of the cell tower compound.  
 12 It will continue to be fenced. It will  
 13 consist of a concrete apron. And there will be  
 14 dedicated areas for the Taco Bell waste stream.  
 15 Q. Okay.  
 16 Let's talk about then moving ahead with  
 17 the landscaping aspects of the site. We're adding  
 18 what you call "green space" to what exists there now?  
 19 A. Yes.  
 20 Q. Is it correct to say that that  
 21 additional 1,500-plus square feet will also be  
 22 incorporated with a landscape aspect?  
 23 A. Yes.

We have on the Plan Sheet 3 a fully --  
 25 a very specific landscape plan. We will retain four  
**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 through the zoning?  
 2 Q. We'll do that in a moment.  
 3 A. Okay.  
 4 Q. In connection with the lighting, just a  
 5 stipulation, is that the question came up at the last  
 6 meeting as it pertains to the hours of that lighting.  
 7 And that lighting would be in  
 8 accordance with the lighting that exists there now  
 9 and the hours that are operated for any of the other  
 10 businesses.  
 11 So the town previously approved that  
 12 lighting and the times the lighting would be on, and  
 13 this building would just conform to CVS or anybody  
 14 else that's there. So that's the answer to that  
 15 question.  
 16 Okay. Please proceed now with the  
 17 zoning.  
 18 A. Okay.

The site plan before you has an  
 20 extensive chart or table regarding the zoning. We,  
 21 in this instance, compared the B-3 retail  
 22 requirements to, number one, the prior approved plan,  
 23 because that's what's being constructed now, as well  
 24 as what's proposed under this -- under our proposal  
 25 to add the quick service restaurant.  
**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 With respect to the front yard on  
2 Godwin Avenue, we are taking a nonconforming  
3 condition for the present bank building and making  
4 that conforming. It will have a setback of 33 feet  
5 on Godwin Avenue, where it's 7.6 feet now, and  
6 32 feet for Rea Avenue, where it's 7.2 feet now.

7 All other buildings on this site do now  
8 conform to the setback requirements for front yard.

9 For the side yard, our side yard for  
10 the Taco Bell will be 22-and-a-half feet. The rear  
11 yard will be 134 feet.

12 The building height is not significant.  
13 It will be 25-and-a-half feet in height in a zone  
14 that allows a building to be 36 feet.

15 Building coverage will actually be  
16 reduced somewhat. It will go from about 20 percent  
17 now to 19 percent, because the Taco Bell will be  
18 smaller in footprint.

19 The proposed improved lot coverage will  
20 be improved, but it will not conform to the  
21 75 percent lot coverage requirement. It's 83.6  
22 percent now. Under this proposal it will be 82.6.

23 The minimum setback for improved lot  
24 coverage is supposed to be 5 feet. Right now it's  
25 about 6. And under our proposed conditions, it will

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
**201-641-1812**

1 continue to have a loading space.  
2 So zoning-wise, the bulk requirements  
3 of the B-3 Zone will be met. We're here at the  
4 Zoning Board, as has been mentioned previously, due  
5 to the fact that we're proposing a quick service  
6 restaurant with a drive-through.

7 **Q.** So the overall development of the bank  
8 and the CVS shopping center, we'll call it, had been  
9 previously approve by the Planning Board.

10 Certain variances or nonconformities  
11 were approved during the course of that process and  
12 that land use application, but it's correct to say  
13 that the nonconformities from a bulk standpoint,  
14 those are now eliminated by virtue of this proposal?

15 **A.** Yes.

16 **Q.** The building, itself, that was  
17 previously approved is reduced in size?

18 **A.** Yes.

19 **Q.** The green space is increased?

20 **A.** Yes.

21 **Q.** The nonconformity pertaining to  
22 setbacks that exists there now are eliminated?

23 **A.** Yes.

24 **Q.** The curb cut that has been called out  
25 as nonconforming is no longer in -- will no longer be

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
**201-641-1812**

1 be 5 feet.

2 We will have 171 parking spaces, where  
3 right now 180 exist. Under the current code, 167  
4 spaces are required.

5 Our drive-through queue length will be  
6 in conformance with the requirement of 150 feet. In  
7 fact, here it will be 153 feet.

8 And our parking setbacks will be  
9 improved. The prior approved plan had 5 feet along  
10 Godwin, 5 feet for the side yard along Rea, and  
11 12 feet for the rear yard.

12 In the case of this Taco Bell, we're  
13 really just talking about the one handicap space  
14 which will conform to all those setback requirements  
15 in this zone.

16 The distance to the intersection will  
17 be improved. The minimum exit driveway distance to  
18 an intersection will be improved or not be changed  
19 from the conditions, current conditions, as will the  
20 distance between driveways. There is a nonconforming  
21 condition right now.

22 By eliminating the Godwin Avenue  
23 egress, we will eliminate that nonconformity.

24 The buffer width for parking area will  
25 be 6 feet, where it's 5 feet now. And we will

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
**201-641-1812**

1 in existence?

2 **A.** That's correct.

3 **Q.** And the landscaping that's there and  
4 previously approved will now, in fact, be increased?

5 **A.** That's correct. That's correct.

6 **Q.** I'd like to turn your attention to  
7 Mr. Wostbrock's report, just to address some of the  
8 observations that he made.

9 Do you have a copy of his January 18th  
10 report?

11 **A.** I do.

12 I'm grabbing it now. Okay, I'm there.

13 **Q.** Okay. So the comments that he makes  
14 really begin on four concerning site plan layout,  
15 page 4.

16 And the first one is no longer relevant  
17 because you revised the loading space area, correct?

18 **A.** That's correct.

19 **Q.** Okay.

20 The second paragraph basically is an  
21 observation, nothing that would be required to make  
22 amendments to the plan.

23 Isn't that correct?

24 **A.** That's correct.

25 **Q.** Number 3 has now been removed, so

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
**201-641-1812**



1 that's no longer an issue.  
 2 You just testified to that?  
 3 A. Yes.  
 4 Q. Okay.  
 5 The next observation is that the board  
 6 should consider requiring an easement for road  
 7 widening purposes for the benefit of the Borough on  
 8 Rea Avenue.  
 9 And we have no objection to that,  
 10 correct?  
 11 A. That's correct.  
 12 Q. So we will stipulate, if the Borough  
 13 wants it, that we will provide it.  
 14 Number 5 which is the refuse area,  
 15 that's been changed so that's no longer relevant,  
 16 correct?  
 17 A. Yes.  
 18 Q. Okay.  
 19 Demonstrating the screening between the  
 20 drive-through and the street that will block the view  
 21 of headlights. Can you show that again? Because I  
 22 know you testified to it very briefly as to the  
 23 hedgerow.  
 24 Would you testify where that will be?  
 25 A. Yes.

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 A. It's probably a mislabel on our part.  
 2 It's an awning.  
 3 Q. So awning or canopy, it's just over  
 4 that area where the service is?  
 5 A. That's correct.  
 6 Q. The next comments made pertain to  
 7 utilities. I believe you have covered all of them.  
 8 You have testified that the utilities are all  
 9 underground?  
 10 A. Yes.  
 11 Q. And you have testified that those that  
 12 are aboveground now are being rerouted underground,  
 13 correct?  
 14 A. Correct.  
 15 Q. Now, as far as stormwater improvements  
 16 are concerned, you have testified to that in  
 17 connection with his observations, correct?  
 18 A. Yes.  
 19 And we have also on Item 4 in that same  
 20 area simplified the layout of the utilities so that  
 21 there is a sufficient clearance and to decongest the  
 22 underground space for those elements.  
 23 Q. After that we get to landscape and  
 24 lighting. You have testified to the landscaping  
 25 aspect. We've stipulated that there will be

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 I'm going to point to the exhibit that  
 2 was handed out. Those plantings will be 3-and-a-half  
 3 feet in height at maturity, planted all along the  
 4 Godwin Avenue side of the drive-through activity  
 5 area.  
 6 Q. And what will their height be at  
 7 planting?  
 8 A. At planting, they will be about  
 9 2-and-a-half feet in height.  
 10 Q. And that's basically the height that's  
 11 required for reduction of light from headlights.  
 12 Isn't that correct?  
 13 A. That's correct.  
 14 Q. The standard?  
 15 A. Yes.  
 16 Q. Okay.  
 17 There's an access door that's on the  
 18 south side of the building that's on the  
 19 architectural plans. Have you shown that on the site  
 20 plan yet?  
 21 A. We have, yes.  
 22 Q. Okay.  
 23 Number 8, canopy, has that been shown?  
 24 A canopy is proposed over the service entrance on the  
 25 west side of the building?

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 irrigation?  
 2 A. Yes.  
 3 Q. The plan to be updated in accordance  
 4 with the streetscape ordinance, that's the  
 5 stipulation we made at the last meeting. It will, if  
 6 it's not already.  
 7 Lighting controls, I just stipulated  
 8 to. That's Number 4 on page 5. That the hours of  
 9 operation will follow the format of what CVS is  
 10 permitted to do.  
 11 We're going to, Mr. Missey, provide a  
 12 lighting analysis at a future meeting, correct?  
 13 A. That's correct.  
 14 We've had it prepared, but it did not  
 15 get to us prior to the date for resubmission.  
 16 Q. And we have stipulated to Paragraph 6  
 17 on page 5, that if there's any necessity to modify  
 18 the lighting after it's installed, we will do that.  
 19 That's the Condition Number 6.  
 20 A. Yes.  
 21 Q. Okay.  
 22 The next aspect pertains to  
 23 architectural plans, which is not what Mr. Missey is  
 24 testifying to.  
 25 And that really concludes our responses

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 to Mr. Wostbrock's report of January the 20th.  
 2 Mr. Missey, is there any detail that  
 3 still needs to go over, or did we cover everything?  
 4 A. Let me check everything.  
 5 Q. Excuse me. The January 18th report,  
 6 not 20th.  
 7 A. There is not.  
 8 It's not a complicated site plan  
 9 presentation because this is an existing site with an  
 10 existing building in this location which also was  
 11 served by a drive-through.  
 12 So I'm not trying to shortchange  
 13 anything. There's just not a whole lot to talk about  
 14 to you.

15 MR. WHITAKER: As I've stated, as far  
 16 as the parking or the traffic aspect, that will be  
 17 done with our traffic expert. We'll have a report.  
 18 We'll get a copy to Serge also and go through it at  
 19 next meeting, then architectural and planning.

20 So that concludes our direct  
 21 presentation at this time.

22 CHAIRMAN ANDERSEN: Board questions?  
 23 (No Response.)

24 CHAIRMAN ANDERSEN: No? Yes?

25 VICE CHAIRMAN PAPAPIETRO: Just a  
**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**

**201-641-1812**

1 slight pitch in that property. You mentioned the  
 2 height of the shrubs may be up to 3 feet.  
 3 MR. MISSEY: Yes.  
 4 VICE CHAIRMAN PAPAPIETRO: Is that  
 5 going to be sufficient to cover and taking into  
 6 account the pitch of the property and as well as  
 7 higher vehicles.

8 MR. MISSEY: I believe so.  
 9 I think's why we selected those  
 10 particular shrubs.

11 MR. WHITAKER: So we could stipulate  
 12 that the height of the shrub would be subject to the  
 13 engineer specifying it based on the site conditions  
 14 that are required to eliminate that concern.

15 VICE CHAIRMAN PAPAPIETRO: Yeah.

16 MR. WHITAKER: No problem.

17 I think that really becomes a site  
 18 aspect when the grading is done and they're looking  
 19 before they put the shrubs in to say, okay,  
 20 2-and-a-half feet doesn't work, it needs to be  
 21 3 feet, 3-and-a-half, or whatever. Whatever it  
 22 requires.

23 So we would stipulate as a condition  
 24 that the shrubbery would be of a caliber and height  
 25 that would eliminate the concern pertaining to

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**

**201-641-1812**

1 couple for clarification.  
 2 Number one, you mentioned the  
 3 drive-through stacks 11 vehicles for stacking.  
 4 What type of vehicles are you  
 5 considering in there?  
 6 Cars come in all different sizes.  
 7 You've got monster trucks. You have tiny cars.  
 8 So what type of vehicle is in your  
 9 analysis that come up with 11.  
 10 MR. MISSEY: It's roughly 22 feet  
 11 between vehicles.  
 12 So it's a vehicle that is 8-foot in  
 13 width by somewhere around 18 feet in length, possibly  
 14 a little smaller. A standard passenger vehicle from  
 15 AASHTO.

16 VICE CHAIRMAN PAPAPIETRO: Okay.  
 17 The other question I had, you addressed  
 18 part of it, the -- I'm concerned about in the  
 19 drive-through lane when cars are stacking,  
 20 particularly in Lots 6, 7 -- 6 and 5, especially at  
 21 night as cars are proceeding west on Godwin Avenue.  
 22 You mentioned there's going to be some  
 23 shrubs there. I'm concerned about potential blinding  
 24 oncoming drivers heading towards the shopping center.

25 And I believe there's going to be a  
**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**

**201-641-1812**

1 blinding, the word you used.  
 2 VICE CHAIRMAN PAPAPIETRO: One more  
 3 question or observation.

4 This came up at the last meeting,  
 5 Where your stacking goes, and you're proposing now  
 6 the dumpster to be, I guess, behind this cell tower,  
 7 near there.

8 And during busy times, the chances are  
 9 you're going to have cars stacked in the parking lot,  
 10 and then you have parking over there. Okay.

11 It may interfere with people coming  
 12 into the lot as well as backing out of the existing  
 13 parking spaces, or trying to get into those spaces  
 14 where you have stacking proposed.

15 MR. WHITAKER: So that, our traffic  
 16 expert is going to testify to.

17 VICE CHAIRMAN PAPAPIETRO: Okay.  
 18 That's all I have.

19 CHAIRMAN ANDERSEN: Anybody else?  
 20 MR. PLACIER: No.

21 He answered pretty much.

22 CHAIRMAN ANDERSEN: Okay.  
 23 Rich?

24 MR. WOSTBROCK: Certainly.

25 I'll follow up on the member's comment  
**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**

**201-641-1812**

1 as far as the screening. Another alternative you  
 2 could consider is -- I like the screening of  
 3 vegetation.  
 4 MR. LANDEL: Let's swear you in.  
 5 Do you swear the testimony you present  
 6 will be the truth, the whole truth, and nothing but  
 7 the truth?  
 8 MR. WOSTBROCK: Yes, I do.  
 9 R I C H A R D W O S T B R O C K, P.E.  
 10 44 Garret Place, Midland Park, New Jersey, having  
 11 been duly sworn, testifies as follows:  
 12 MR. LANDEL: Okay.  
 13 MR. WOSTBROCK: What I was saying is,  
 14 another alternative -- and I do like the vegetative  
 15 screening better.  
 16 It's not going to be just to put a  
 17 fence in that just to have a solid visual block.  
 18 But the space is limited. Vegetation  
 19 would be a nicer aesthetic. And to serve the  
 20 purpose, I think that's just a better option.  
 21 MR. WHITAKER: We have no objection to  
 22 either one.  
 23 MR. WOSTBROCK: I'm just presenting an  
 24 option for you.  
 25 Regarding what was submitted tonight, I  
**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 conflict with the utility poles and parking stalls 1,  
 2 12, 13, 14 in that area?  
 3 MR. WHITAKER: Operational aspect was  
 4 that it would be a pickup bay.  
 5 They will be private pickups, of  
 6 course. And they will -- the operator will govern  
 7 those hours to be off hours when the business is not  
 8 open.  
 9 MR. WOSTBROCK: Mr. Missey, do you see  
 10 any conflict with the truck maneuvering into those  
 11 spaces?  
 12 MR. MISSEY: Not during the off hours,  
 13 no.  
 14 MR. WOSTBROCK: The loading space is  
 15 now roughly 8-by-50, if I remember correctly.  
 16 Borough Ordinance requires a loading  
 17 space of 12-by-40. A design waiver would still be  
 18 needed for that sizing purpose.  
 19 Certainly, you know, we can stipulate a  
 20 12-by-40 space in the same general location.  
 21 The other concern, or larger concern to  
 22 me, is its location and the enforcement of off hours  
 23 in the deliveries and pickups -- I'm sorry --  
 24 deliveries during off hours.  
 25 That's a concern of an operational  
**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 agree the changes that were made are positive.  
 2 A couple questions pertaining to them.  
 3 The grease trap is still in the drive-through lane,  
 4 and that's typically serviced by a pumper truck or  
 5 removal.  
 6 Is that pumper truck going to be able  
 7 to make the passage around the building? I had  
 8 presumed that it was going out to Godwin in your  
 9 original layout.  
 10 Have you looked at that vehicle getting  
 11 around?  
 12 MR. MISSEY: No.  
 13 I'll have to cover that with the  
 14 operations people to make sure that this location  
 15 will work.  
 16 That's a good point.  
 17 MR. WOSTBROCK: The second question is  
 18 in the refuse area.  
 19 I do like the relocation away from the  
 20 residential neighbors. The question is to access for  
 21 the truck being picked up.  
 22 Are they going to be -- what are the  
 23 hours of your typical pickup of refuse, hours and  
 24 number of pickups per week?  
 25 And the other question is, is there any  
**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 issue, how to mitigate that, because the loading  
 2 space is now in the main east/west drive aisle of the  
 3 site.  
 4 So from Erie Ave to Rea Ave, that's the  
 5 main run-through, if you put a truck there for a time  
 6 period.  
 7 MR. WHITAKER: The testimony at the  
 8 first meeting, which was operational, is that the  
 9 person with the truck has the key to go into the  
 10 building. It is off hours. It's never when the  
 11 business is open.  
 12 In fact, the operator manager is not  
 13 there when they bring these deliveries in. There's a  
 14 cold area that they bring in -- both cold product  
 15 they bring in as well as the balance of the product  
 16 twice a week.  
 17 MR. WOSTBROCK: How does that  
 18 coordinate with the rest of the tenants on the site?  
 19 Off hours for Taco Bell, is that off hours for the  
 20 site as a whole?  
 21 It becomes an operational question.  
 22 MR. WHITAKER: Well, I don't know  
 23 what's open at 5 o'clock in the morning, because  
 24 that's what the operational person said, they're  
 25 doing it between 5 and 7 in the morning.  
**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 I don't think the center is very  
 2 operational at that time. It's a 45-minute drop-off.  
 3 That was the testimony.  
 4 MR. WOSTBROCK: I believe you -- I'm  
 5 just skimming through my notes. I believe you've  
 6 covered my other notes that I was taking as I was  
 7 listening.  
 8 Yes. Thank you.  
 9 CHAIRMAN ANDERSEN: Okay. I know he  
 10 didn't testify to any planning, but I don't want to  
 11 cut you off.  
 12 Do you have any questions?  
 13 MR. BEHRENS: Sure, I do have a  
 14 question.  
 15 MR. LANDEL: Please raise your right  
 16 hand.  
 17 Do you swear the testimony you're about  
 18 to give will be the truth, the whole truth, and  
 19 nothing but the truth?  
 20 MR. BEHRENS: For the record, I'm Tom  
 21 Behrens, filling in for Dave Novak.  
 22 T H O M A S B E H R E N S, P.P.  
 23 25 Westwood Avenue, Westwood, New Jersey, having  
 24 been duly sworn, testifies as follows:  
 25 MR. BEHRENS: A few of my questions  
**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
**201-641-1812**

1 building rooftop.  
 2 MR. MISSEY: Yes.  
 3 MR. BEHRENS: The menu board appears to  
 4 be positioned facing Godwin Avenue.  
 5 Is the menu board an electronic or  
 6 digital menu board.  
 7 MR. MISSEY: That's operations.  
 8 MR. WHITAKER: Yeah.  
 9 The architect will testify to that.  
 10 MR. BEHRENS: So the dimensions of that  
 11 sign have been provided.  
 12 MR. WHITAKER: Yes.  
 13 They're on the architectural plan.  
 14 MR. BEHRENS: I understand.  
 15 I guess my point is whether or not that  
 16 presents a visual impact to Godwin Avenue, having an  
 17 electronic digital board that again faces the street  
 18 of a certain size, and whether or not that screen  
 19 will change in appearance periodically, as they often  
 20 do these days.  
 21 So if someone can answer that question  
 22 at some point?  
 23 Finally, there was talk about potential  
 24 road widening. And the question is whether or not  
 25 that would impact any of the now conforming setbacks,  
**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
**201-641-1812**

1 have been answered. I did have a concern about the  
 2 adequacy of landscaping, which will be addressed.  
 3 But to that point, the headlights as  
 4 they pick up the food facing, I guess, in an easterly  
 5 direction toward the adjacent residential property at  
 6 Block 15.01, is the landscaping adjacent to parking  
 7 stalls 91 and 92, for instance, adequate to shield  
 8 the constant headlights that will be shining in that  
 9 direction from the residential property?  
 10 MR. MISSEY: Yes.  
 11 There's an existing evergreen row in  
 12 that vicinity.  
 13 It's matured.  
 14 MR. BEHRENS: Of what height would you  
 15 say, approximately?  
 16 MR. MISSEY: At least 25 feet in  
 17 height.  
 18 MR. BEHRENS: So it's adequate, you  
 19 would say.  
 20 MR. MISSEY: I would think so, yes.  
 21 MR. BEHRENS: Have the locations and  
 22 mechanical equipment been provided at this point.  
 23 MR. MISSEY: That would be the  
 24 architect.  
 25 MR. BEHRENS: I assume they're on the  
**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
**201-641-1812**

1 if those would become nonconforming.  
 2 MR. WHITAKER: The suggestion is we  
 3 still have ownership. It's just an assessment.  
 4 Mr. Wostbrock suggested it.  
 5 MR. WOSTBROCK: They did consider  
 6 included in their setbacks --  
 7 MR. WHITAKER: The county.  
 8 MR. WOSTBROCK: -- the 5 feet.  
 9 MR. BEHRENS: So you're satisfied?  
 10 MR. WOSTBROCK: Yes.  
 11 MR. BEHRENS: Those are my questions  
 12 for now.  
 13 Thank you.  
 14 CHAIRMAN ANDERSEN: Before we open to  
 15 the public, does anybody have any new questions?  
 16 MR. CAPALBO: Yes.  
 17 I have a question regarding the  
 18 deliveries for off hours. I think you said something  
 19 at the last meeting about the truck that was  
 20 delivering wasn't going to idling there, would turn  
 21 the motor off making the deliveries.  
 22 MR. WHITAKER: Yes.  
 23 MR. CAPALBO: Are you conversant with  
 24 what type of truck is making that delivery?  
 25 MR. WHITAKER: Mr. Missey, you heard  
**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
**201-641-1812**

1 the testimony and then designed the delivery spot for  
 2 it, WB-40.  
 3 MR. MISSEY: Yes.  
 4 It's a WB-40 design vehicle. So it's a  
 5 not a full semi. It's shorter.  
 6 MR. CAPALBO: Right.  
 7 The refrigeration unit is separate from  
 8 the cab. The reason I'm asking, I remember my  
 9 experience with transportation that they had reefer  
 10 units, and the reefer motor was louder than the truck  
 11 motor.  
 12 MR. WHITAKER: I didn't know that  
 13 but...  
 14 MR. CAPALBO: I was just wondering.  
 15 MR. WHITAKER: So this is a WB-40.  
 16 MR. CAPALBO: It's self-contained.  
 17 MR. WHITAKER: Yes, self-contained.  
 18 MR. CAPALBO: All right.  
 19 Thank you.  
 20 MR. LANDEL: You commented that the  
 21 hours, I guess, for the light is going to be  
 22 consistent with the CVS.  
 23 What were the approved CVS hours; do  
 24 you know?  
 25 MR. WHITAKER: I don't have that. I

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 parking lot and all the buildings.  
 2 MR. WOSTBROCK: I wasn't involved in  
 3 that application.  
 4 It was at the Planning Board.  
 5 So I guess, Bruce, if I may, are you  
 6 stipulating you're going to meet Borough Ordinance --  
 7 MR. WHITAKER: Of course.  
 8 MR. WOSTBROCK: -- or the approval of  
 9 CVS.  
 10 MR. WHITAKER: Yeah, we'll meet the  
 11 Borough Ordinance, or if it's more constrained in the  
 12 approval from the Planning Board, we will meet that  
 13 constraint.  
 14 MR. LANDEL: I just wanted the hours  
 15 for the record.  
 16 If it's 24 hours, I just want to know.  
 17 I don't know what was approved for CVS.  
 18 MR. WOSTBROCK: I don't know.  
 19 MR. LANDEL: We need to figure that  
 20 out.  
 21 CHAIRMAN ANDERSEN: If we could.  
 22 MS. HARMON: I have it right here.  
 23 CHAIRMAN ANDERSEN: Not now.  
 24 All right. Anybody?  
 25 (No Response.)

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 looked at the resolution once.  
 2 I don't know that they actually put  
 3 hours in it. But there's an ordinance, I think. An  
 4 hour after operation, isn't it?  
 5 MR. LANDEL: Yeah. That's the  
 6 suggestion.  
 7 I don't know what the hours of  
 8 operation are.  
 9 MR. WHITAKER: I mean, usually any  
 10 business is allowed time after they close to clean up  
 11 and do whatever. It's usually an hour.  
 12 And our operations person talked about  
 13 the hours of operation and that they needed an hour  
 14 after they locked up just to clean up.  
 15 CHAIRMAN ANDERSEN: Well, CVS is not  
 16 open as long as you're talking about being open.  
 17 MR. WHITAKER: I don't know.  
 18 CHAIRMAN ANDERSEN: They're not.  
 19 MR. LANDEL: Some CVSs are 24 hours.  
 20 MR. WHITAKER: I don't think there's  
 21 any prohibition with CVS as to their hours.  
 22 CHAIRMAN ANDERSEN: I don't know.  
 23 MR. WHITAKER: I don't think so.  
 24 MR. LANDEL: When the CVS got the  
 25 approval, did they approve the lights for the entire

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 CHAIRMAN ANDERSEN: No?  
 2 Then motion to open it to the public.  
 3 VICE CHAIRMAN PAPAPIETRO: Motion.  
 4 MR. PLACIER: Second.  
 5 MS. HARMON: Mr. Papapietro?  
 6 VICE CHAIRMAN PAPAPIETRO: Yes.  
 7 MS. HARMON: Mr. Divak?  
 8 MR. DIVAK: Yes.  
 9 MS. HARMON: Mr. Placier?  
 10 MR. PLACIER: Yes.  
 11 MS. HARMON: Mr. Barlow?  
 12 MR. BARLOW: Yes.  
 13 MS. HARMON: Mr. Elijah?  
 14 MR. ELIJAH: Yes.  
 15 MS. HARMON: Mr. Capalbo?  
 16 MR. CAPALBO: Yes.  
 17 MS. HARMON: Mr. Andersen?  
 18 CHAIRMAN ANDERSEN: Yes.  
 19 Ms. Rizzuto?  
 20 MS. RIZZUTO: Oh, do you want me to go?  
 21 Sure.  
 22 CHAIRMAN ANDERSEN: Sure, yes.  
 23 MS. RIZZUTO: I just have a few brief  
 24 questions.  
 25 CHAIRMAN ANDERSEN: We cater to

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 attorneys.  
 2 MS. RIZZUTO: Okay.  
 3 I just have a few brief questions.  
 4 CROSS-EXAMINATION  
 5 BY MS. RIZZUTO:  
 6 Q. Several items that you testified to,  
 7 Mr. Missey, were that you're increasing -- you're  
 8 decreasing nonconformities, et cetera. And you're  
 9 relying upon that prior board resolution in stating  
 10 that some items meet -- were previously approved and,  
 11 therefore, they should apply to you  
 12 Is that correct?  
 13 A. In what context specifically?  
 14 Q. Well, for example, you testified about  
 15 the 20-foot-tall lights.  
 16 A. Yes.  
 17 Q. That they were previously approved by  
 18 another board, and therefore they are allowed to be  
 19 approved for your application because they're going  
 20 to continue.  
 21 But you are changing those lights.  
 22 Is that correct?  
 23 A. It is not.  
 24 There are a combination of new or  
 25 retrofitted fixtures that are a component of this

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 A. Well, presumably there's a B-1 and a  
 2 B-2.  
 3 Q. Do you know whether or not  
 4 drive-through restaurants are permitted in those  
 5 zones?  
 6 A. I don't.  
 7 Q. Do you know how many fast-food  
 8 restaurants exist in town?  
 9 MR. WHITAKER: Irrelevant.  
 10 It's nothing he testified to. It's a  
 11 planning question that will be addressed at a later  
 12 time.  
 13 MS. RIZZUTO: He's testified about the  
 14 nonconformity in the use variance. I'm asking if the  
 15 knows.  
 16 MR. LANDEL: If he knows, he can  
 17 answer.  
 18 MS. RIZZUTO: Thank you.  
 19 MR. WHITAKER: It's not relevant to his  
 20 assignment.  
 21 MR. MISSEY: I've eaten at the Roy  
 22 Rogers. Then it became --  
 23 VICE CHAIRMAN PAPAPIETRO: A long time  
 24 ago.  
 25 MR. MISSEY: Yeah.

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 site plan.  
 2 And there are -- there is one fixture  
 3 that was not updated, remains the old metallic  
 4 K-light fixture. And then we are adding two new  
 5 fixtures which will match what was approved for the  
 6 CVS application.  
 7 Q. Are they conforming?  
 8 Not conforming to what the Planning  
 9 Board approved. Are they conforming to the code, the  
 10 Borough code?  
 11 A. Yes.  
 12 It's our every intention of ours to  
 13 conform to the Borough code with respect to lighting.  
 14 Q. So then it would be your testimony it's  
 15 not just what the other board did, but you comply  
 16 anyway for the lighting?  
 17 A. For this specific partial site plan, I  
 18 suppose, yes.  
 19 Q. Okay. All right.  
 20 So with respect to this zone, what is  
 21 this zone known as?  
 22 A. It's the B-3 Commercial Zone.  
 23 Q. Okay.  
 24 And how many other B zones are there in  
 25 town?

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 And then it became -- is that the  
 2 Wendy's?  
 3 Okay, that's the Wendy's. I've never  
 4 eaten at the Burger King. I went to the Dunkin'  
 5 Donuts, not the Dunkin' Donuts, the Starbucks.  
 6 That's it.  
 7 BY MS. RIZZUTO:  
 8 Q. So what you know about is that there's  
 9 a Wendy's, there is a Burger King, and there is a --  
 10 what did you call it?  
 11 A. Starbucks.  
 12 Q. Well, Starbucks is a coffee shop,  
 13 correct?  
 14 MR. WHITAKER: It's a drive-through.  
 15 MS. RIZZUTO: I understand.  
 16 MR. MISSEY: Yeah.  
 17 I'm just testifying where I've eaten.  
 18 BY MS. RIZZUTO:  
 19 Q. The prohibition is not -- the  
 20 prohibition is not drive-throughs for every use. The  
 21 prohibition is only for quick service restaurants,  
 22 isn't that correct, sir?  
 23 CHAIRMAN ANDERSEN: It's for all  
 24 restaurants.  
 25 MR. LANDEL: Starbucks serves food,

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 too.

2 MS. RIZZUTO: It's for all restaurants.

3 MR. WHITAKER: Yes.

4 That's what the ordinance says.

5 Starbucks needed a use -- needed a

6 variance.

7 CHAIRMAN ANDERSEN: They predated.

8 MR. WHITAKER: I was there.

9 BY MS. RIZZUTO:

10 Q. So you count four drive-throughs?

11 A. I'm not counting -- I'm not trying to

12 enumerate all of the drive-throughs in the B-3.

13 I'm really specifically speaking about

14 this one.

15 Q. Okay.

16 So on this property, are there any

17 drive-through restaurants?

18 A. Well, if this one is approved, there

19 will be one. The other is a CVS with a

20 drive-through.

21 Q. That's not a restaurant.

22 A. No.

23 You can buy food in there, But I don't

24 think they'll bring it to the window.

25 CHAIRMAN ANDERSEN: By definition, it's

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
201-641-1812

1 It has nothing to do with a site plan

2 application.

3 CHAIRMAN ANDERSEN: I think that would

4 be more appropriate for when the planner testifies.

5 MS. RIZZUTO: That's fine.

6 CHAIRMAN ANDERSEN: Mr. Missey is not

7 qualified to answer that.

8 MS. RIZZUTO: Okay, that's fine.

9 That's all I have.

10 CHAIRMAN ANDERSEN: Okay.

11 Anybody?

12 First of all, is there anybody here who

13 was not here at the last meeting? Okay.

14 Oh, all right. I was hoping I wouldn't

15 have to explain this.

16 You have two opportunities to speak.

17 This time is to ask questions of this witness, okay?

18 That's all that we're looking for is questions you

19 want to ask this witness.

20 After the application is complete,

21 you'll have another opportunity to speak. And at

22 that point, you can just give us your comments,

23 whether you think it's wonderful, or awful, or

24 whatever.

25 But at this point, all we want is

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
201-641-1812

1 not a restaurant.

2 MS. RIZZUTO: Thank you.

3 BY MS. RIZZUTO:

4 Q. It's my understanding that there are

5 two drive-through restaurants directly across the

6 street in another -- in another park, another strip

7 mall or another site, is that accurate?

8 A. Actually, they're freestanding

9 buildings, both of them.

10 CHAIRMAN ANDERSEN: Are you talking

11 about your client and Wendy's?

12 MS. RIZZUTO: Are they next to each

13 other?

14 MR. LANDEL: Yeah.

15 MS. RIZZUTO: Yeah.

16 That's what I'm talking about. They

17 both have drive-throughs.

18 CHAIRMAN ANDERSEN: Correct.

19 BY MS. RIZZUTO:

20 Q. So when the Council decided to prohibit

21 the use of drive-throughs for restaurants in the B-3

22 Zone, and in the B-1 and the B-2, what has changed

23 that would allow the grant of this use variance?

24 MR. WHITAKER: That's a planning

25 question.

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
201-641-1812

1 questions of this witness. Okay? So do you have any

2 questions?

3 MS. NG: Well, if it's regarding the

4 site plan?

5 CHAIRMAN ANDERSEN: Could you come

6 forward?

7 MR. LANDEL: Please raise your right

8 hand.

9 Do you swear the testimony you're about

10 to give at the present will be the truth, the whole

11 truth, and nothing but the truth?

12 MS. NG: Yes.

13 K A R E N N G,

14 30 Rea Avenue, Midland Park, New Jersey, having

15 been duly sworn, testifies as follows:

16 MR. LANDEL: And your name and address

17 for the record.

18 MS. NG: It's Karen Ng. The last name

19 is spelled N-G. The address is 30 Rea Avenue.

20 MR. LANDEL: Thank you.

21 MS. NG: So the question I had really

22 had to do with the signage, which I don't know if...

23 MR. WHITAKER: We'll have testimony on

24 that at another meeting.

25 MS. NG: I'm just concerned with

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
201-641-1812

1 signage on Rea Avenue.  
 2 CHAIRMAN ANDERSEN: They're going to  
 3 have an architect testify --  
 4 MS. NG: So that's different.  
 5 CHAIRMAN ANDERSEN: -- as to signage.  
 6 Yes, yes.  
 7 MS. NG: Okay.  
 8 Then we just looked up CVS. It's open  
 9 until 10:00.  
 10 CHAIRMAN ANDERSEN: 10:00.  
 11 Thank you.  
 12 MR. LANDEL: 10 o'clock, she said.  
 13 CHAIRMAN ANDERSEN: 10:00.  
 14 MR. WHITAKER: So we're talking about  
 15 our lighting would be not -- lighting will stay --  
 16 I'll look back at CVS.  
 17 The question was, we've already  
 18 testified as to what our hours of operation are.  
 19 CHAIRMAN ANDERSEN: That's what I said.  
 20 You're going to be open a lot more than CVS is.  
 21 MR. WHITAKER: But we'll also check to  
 22 see what the CVS is, if there's any condition in  
 23 their resolution.  
 24 CHAIRMAN ANDERSEN: Jess is going to  
 25 get to the --

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 presentation this evening.  
 2 So we have an announcement to carry it  
 3 to 7:30 on May 10th.  
 4 CHAIRMAN ANDERSEN: Do we do it by  
 5 motion to carry it.  
 6 MR. LANDEL: We're still within the  
 7 timeframe.  
 8 MR. WHITAKER: Yes, we are.  
 9 MR. LANDEL: Yeah.  
 10 We'll just make the announcement to  
 11 notice the continuation to the next meeting.  
 12 CHAIRMAN ANDERSEN: The next -- when is  
 13 it, May what, the 10th?  
 14 The next meeting, May 10th, they're  
 15 going to have additional witnesses. You will not get  
 16 another notice. This is your notice that we're going  
 17 to be here May 10th.  
 18 If you know other people who want to  
 19 come, let them know. You're not -- nobody is going  
 20 to get any more notices, okay? Okay.  
 21 MR. WHITAKER: Thank you for your time  
 22 this evening.  
 23 (Whereupon, this matter will be  
 24 continuing at a future date. Time noted:  
 25 8:27 p.m.)

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 MR. LANDEL: We'll check that  
 2 ourselves.  
 3 MR. WHITAKER: We will have it.  
 4 CHAIRMAN ANDERSEN: Okay.  
 5 Anybody else have any questions?  
 6 (No Response.)  
 7 CHAIRMAN ANDERSEN: Seeing none, motion  
 8 to close.  
 9 MR. PLACIER: Motion to close.  
 10 MR. DIVAK: Second.  
 11 MS. HARMON: Mr. Papapietro?  
 12 VICE CHAIRMAN PAPAPIETRO: Yes.  
 13 MS. HARMON: Mr. Divak?  
 14 MR. DIVAK: Yes.  
 15 MS. HARMON: Mr. Placier?  
 16 MR. PLACIER: Yes.  
 17 MS. HARMON: Mr. Barlow?  
 18 MR. BARLOW: Yes.  
 19 MS. HARMON: Mr. Eliyah?  
 20 MR. ELIYAH: Yes.  
 21 MS. HARMON: Mr. Capalbo?  
 22 MR. CAPALBO: Yes.  
 23 MS. HARMON: Mr. Andersen?  
 24 CHAIRMAN ANDERSEN: Yes.  
 25 MR. WHITAKER: That concludes our

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
 201-641-1812

1 C E R T I F I C A T E  
 2  
 3 I, RONDA L. REINSTEIN, a Certified Court  
 4 Reporter of the State of New Jersey, authorized to  
 5 administer oaths pursuant to R.S.41:2-2, do hereby  
 6 certify that the foregoing is a true and accurate  
 7 transcript of the testimony as taken stenographically  
 8 by and before me at the time, place and on the date  
 9 herein before set forth, to the best of my ability.  
 10 I DO FURTHER CERTIFY that I am neither a  
 11 relative nor employee nor attorney nor counsel of any  
 12 of the parties to this action, and that I am neither  
 13 a relative nor employee of such attorney or counsel,  
 14 and that I am not financially interested in the  
 15 action.  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23 *Ronda L. Reinstein*  
 24 -----  
 25 RONDA L. REINSTEIN, CCR No. 30X100217800

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 201-641-1812



<b>0</b>	<b>2023</b> [6] - 1:2, 4:17, 6:12, 9:24, 14:23, 16:19	<b>5:00</b> [1] - 18:13	16:9	47:21, 47:23, 48:1, 48:18, 48:22, 48:25, 52:23, 53:7, 53:25, 54:10, 54:18, 55:3, 55:6, 55:10, 56:5, 57:2, 57:5, 57:10, 57:13, 57:19, 57:24, 58:4, 58:7, 58:24, 59:4, 59:12
<b>07054</b> [1] - 2:8	<b>20th</b> [5] - 6:12, 9:24, 14:22, 33:1, 33:6	<b>5th</b> [1] - 6:22	<b>accommodate</b> [1] - 18:9	<b>Andersen</b> [3] - 5:16, 48:17, 58:23
<b>07446</b> [1] - 2:5	<b>21</b> [1] - 3:24	<b>6</b>	<b>accordance</b> [2] - 24:8, 32:3	<b>ANDERSON</b> [1] - 1:9
<b>07663</b> [1] - 1:23	<b>22</b> [1] - 34:10	<b>6</b> [9] - 1:6, 6:4, 14:19, 25:25, 26:25, 32:16, 32:19, 34:20	<b>account</b> [1] - 35:6	<b>ANDREW</b> [1] - 3:3
<b>1</b>	<b>22-and-a-half</b> [1] - 25:10	<b>629</b> [1] - 2:8	<b>accurate</b> [2] - 54:7, 60:6	<b>Andrew</b> [1] - 13:6
<b>1</b> [1] - 39:1	<b>230</b> [1] - 13:2	<b>641-1812</b> [1] - 1:23	<b>Act</b> [1] - 4:25	<b>ANNE</b> [2] - 2:7, 12:9
<b>1,500-gallon</b> [1] - 20:18	<b>24</b> [2] - 46:19, 47:16	<b>7</b>	<b>action</b> [2] - 60:12, 60:15	<b>Anne</b> [3] - 12:8, 12:9, 13:10
<b>1,500-plus</b> [1] - 22:21	<b>245</b> [1] - 2:4	<b>7</b> [2] - 34:20, 40:25	<b>activities</b> [1] - 23:23	<b>announcement</b> [2] - 59:2, 59:10
<b>1,580</b> [2] - 17:15, 20:16	<b>25</b> [3] - 16:1, 41:23, 42:16	<b>7.2</b> [1] - 25:6	<b>activity</b> [1] - 30:4	<b>answer</b> [4] - 24:14, 43:21, 51:17, 55:7
<b>10</b> [2] - 3:20, 57:12	<b>25-and-a-half</b> [1] - 25:13	<b>7.6</b> [1] - 25:5	<b>add</b> [1] - 24:25	<b>answered</b> [2] - 36:21, 42:1
<b>10/04/22</b> [2] - 3:20, 10:11	<b>268</b> [1] - 20:6	<b>75</b> [1] - 25:21	<b>adding</b> [2] - 22:17, 50:4	<b>anyway</b> [1] - 50:16
<b>10:00</b> [3] - 57:9, 57:10, 57:13	<b>2nd</b> [1] - 14:21	<b>7:30</b> [3] - 1:2, 18:13, 59:3	<b>additional</b> [3] - 22:21, 23:7, 59:15	<b>apologize</b> [1] - 14:1
<b>10th</b> [4] - 59:3, 59:13, 59:14, 59:17	<b>3</b>	<b>8</b>	<b>address</b> [3] - 28:7, 56:16, 56:19	<b>apology</b> [1] - 14:2
<b>11</b> [4] - 18:2, 18:3, 34:3, 34:9	<b>3</b> [10] - 3:19, 3:20, 3:22, 16:20, 18:18, 22:24, 28:25, 35:2, 35:21	<b>8</b> [1] - 30:23	<b>addressed</b> [3] - 34:17, 42:2, 51:11	<b>appearance</b> [3] - 5:21, 12:6, 43:19
<b>11-by-17</b> [1] - 22:6	<b>3-and-a-half</b> [2] - 30:2, 35:21	<b>8-by-50</b> [1] - 39:15	<b>adequacy</b> [1] - 42:2	<b>appeared</b> [2] - 9:12, 21:9
<b>11/02/21</b> [2] - 3:18, 4:10	<b>3/20/23</b> [2] - 3:22, 14:7	<b>8-foot</b> [1] - 34:12	<b>Adequate</b> [1] - 4:18	<b>applicant</b> [1] - 6:1
<b>11/12/21</b> [4] - 3:17, 3:22, 4:6, 14:6	<b>30</b> [3] - 3:8, 56:14, 56:19	<b>80</b> [4] - 1:6, 6:4, 7:9, 16:2	<b>adequate</b> [2] - 42:7, 42:18	<b>Applicant</b> [1] - 2:5
<b>12</b> [7] - 1:2, 3:3, 4:17, 13:2, 17:25, 26:11, 39:2	<b>30X100217800</b> [1] - 60:24	<b>82.6</b> [1] - 25:22	<b>adjacent</b> [4] - 18:7, 19:3, 42:5, 42:6	<b>Application</b> [2] - 3:15, 4:1
<b>12-by-40</b> [2] - 39:17, 39:20	<b>32</b> [1] - 25:6	<b>83.6</b> [2] - 17:17, 25:21	<b>ADJUSTMENT</b> [1] - 1:1	<b>APPLICATION</b> [1] - 1:4
<b>13</b> [1] - 39:2	<b>33</b> [1] - 25:4	<b>8:27</b> [1] - 59:25	<b>Adjustment</b> [2] - 2:2, 4:17	<b>application</b> [6] - 27:12, 47:3, 49:19, 50:6, 55:2, 55:20
<b>134</b> [1] - 25:11	<b>34</b> [1] - 3:5	<b>8th</b> [1] - 13:20	<b>administer</b> [1] - 60:5	<b>apply</b> [1] - 49:11
<b>14</b> [3] - 3:3, 3:22, 39:2	<b>36</b> [2] - 3:5, 25:14	<b>9</b>	<b>aesthetic</b> [1] - 37:19	<b>appointed</b> [1] - 11:3
<b>15.01</b> [1] - 42:6	<b>37</b> [1] - 3:9	<b>91</b> [1] - 42:7	<b>ago</b> [1] - 51:24	<b>appropriate</b> [1] - 55:4
<b>150</b> [1] - 26:6	<b>4</b>	<b>92</b> [1] - 42:7	<b>agree</b> [1] - 38:1	<b>Approval</b> [2] - 3:15, 4:2
<b>153</b> [1] - 26:7	<b>4</b> [7] - 3:15, 3:17, 3:19, 16:20, 28:15, 31:19, 32:8	<b>96</b> [1] - 20:6	<b>ahead</b> [1] - 22:16	<b>approval</b> [4] - 7:13, 46:25, 47:8, 47:12
<b>167</b> [2] - 17:13, 26:3	<b>41</b> [1] - 3:10	<b>A</b>	<b>aisle</b> [3] - 16:10, 18:8, 40:2	<b>approve</b> [2] - 27:9, 46:25
<b>17</b> [1] - 13:2	<b>42</b> [1] - 3:6	<b>A-1</b> [2] - 3:15, 4:3	<b>Allegiance</b> [1] - 5:3	<b>approved</b> [16] - 17:19, 24:11, 24:22, 26:9, 27:11, 27:17, 28:4, 45:23, 47:17, 49:10, 49:17, 49:19, 50:5, 50:9, 53:18
<b>17.02</b> [3] - 1:6, 6:4, 14:20	<b>44</b> [2] - 3:6, 37:10	<b>A-2</b> [2] - 3:16, 4:8	<b>allow</b> [1] - 54:23	<b>APRIL</b> [1] - 1:2
<b>171</b> [2] - 17:10, 26:2	<b>45</b> [2] - 3:7, 19:11	<b>A-3</b> [3] - 3:18, 4:12, 10:3	<b>allowed</b> [2] - 46:10, 49:18	<b>April</b> [2] - 4:17, 6:22
<b>172</b> [1] - 20:7	<b>45-minute</b> [1] - 41:2	<b>A-4</b> [3] - 3:20, 10:5, 10:12	<b>allows</b> [1] - 25:14	<b>apron</b> [1] - 22:13
<b>18</b> [1] - 34:13	<b>49</b> [1] - 3:4	<b>A-5</b> [3] - 3:21, 14:8, 14:14	<b>Alta/NSPS</b> [2] - 3:16, 4:5	<b>arborvitae</b> [1] - 23:9
<b>180</b> [1] - 26:3	<b>5</b>	<b>A-6</b> [3] - 3:23, 21:20, 21:24	<b>alternative</b> [2] - 37:1, 37:14	<b>architect</b> [3] - 42:24, 43:9, 57:3
<b>18th</b> [3] - 16:19, 28:9, 33:5	<b>5</b> [12] - 25:24, 26:1, 26:9, 26:10, 26:25, 29:14, 32:8, 32:17, 34:20, 40:23, 40:25, 44:8	<b>AASHTO</b> [1] - 34:15	<b>amendments</b> [1] - 28:22	
<b>19</b> [1] - 25:17	<b>5/23/22</b> [2] - 3:19, 4:11	<b>ability</b> [1] - 60:9	<b>analysis</b> [2] - 32:12, 34:9	
<b>2</b>	<b>505</b> [1] - 1:22	<b>able</b> [1] - 38:6	<b>ANDERSEN</b> [47] - 4:14, 5:17, 10:14, 10:21, 10:23, 11:4, 11:8, 11:25, 12:7, 12:14, 12:16, 12:19, 33:22, 33:24, 36:19, 36:22, 41:9, 44:14, 46:15, 46:18, 46:22,	
<b>2-and-a-half</b> [2] - 30:9, 35:20	<b>56</b> [2] - 3:8	<b>aboveground</b> [1] - 31:12	<b>ahead</b> [1] - 22:16	
<b>20</b> [1] - 25:16		<b>ABSENT</b> [2] - 1:11, 1:17	<b>aisle</b> [3] - 16:10, 18:8, 40:2	
<b>20-foot-tall</b> [2] - 23:22, 49:15		<b>access</b> [2] - 30:17, 38:20	<b>Allegiance</b> [1] - 5:3	
<b>201</b> [1] - 1:23		<b>accessed</b> [2] - 16:8,	<b>allow</b> [1] - 54:23	
<b>2021</b> [1] - 14:21			<b>allowed</b> [2] - 46:10, 49:18	

<p><b>architectural</b> [6] - 9:2, 10:6, 30:19, 32:23, 33:19, 43:13</p> <p><b>Architectural</b> [2] - 3:20, 10:10</p> <p><b>area</b> [13] - 7:9, 7:11, 21:10, 22:8, 26:24, 28:17, 29:14, 30:5, 31:4, 31:20, 38:18, 39:2, 40:14</p> <p><b>areas</b> [2] - 21:1, 22:14</p> <p><b>arrive</b> [1] - 16:15</p> <p><b>aspect</b> [7] - 9:1, 22:22, 31:25, 32:22, 33:16, 35:18, 39:3</p> <p><b>aspects</b> [4] - 7:21, 9:19, 11:21, 22:17</p> <p><b>assessment</b> [1] - 44:3</p> <p><b>assignment</b> [1] - 51:20</p> <p><b>Associates</b> [8] - 3:18, 3:22, 3:24, 4:10, 9:12, 13:6, 14:6, 21:23</p> <p><b>assume</b> [1] - 42:25</p> <p><b>Atlantic</b> [1] - 16:9</p> <p><b>attention</b> [1] - 28:6</p> <p><b>attorney</b> [3] - 13:10, 60:11, 60:13</p> <p><b>attorneys</b> [1] - 49:1</p> <p><b>authorized</b> [1] - 60:4</p> <p><b>Ave</b> [2] - 40:4</p> <p><b>Avenue</b> [26] - 3:8, 6:4, 7:9, 16:5, 16:14, 16:24, 18:22, 19:10, 19:13, 19:15, 20:13, 20:21, 23:3, 25:2, 25:5, 25:6, 26:22, 29:8, 30:4, 34:21, 41:23, 43:4, 43:16, 56:14, 56:19, 57:1</p> <p><b>AVENUE</b> [1] - 1:6</p> <p><b>awful</b> [1] - 55:23</p> <p><b>awning</b> [2] - 31:2, 31:3</p>	<p><b>Barlow</b> [3] - 5:10, 48:11, 58:17</p> <p><b>BARLOW</b> [4] - 1:12, 5:11, 48:12, 58:18</p> <p><b>Barn</b> [4] - 2:9, 12:11, 13:12, 13:24</p> <p><b>Based</b> [1] - 15:9</p> <p><b>based</b> [7] - 6:13, 6:14, 6:15, 9:23, 18:14, 19:20, 35:13</p> <p><b>basis</b> [1] - 9:21</p> <p><b>bay</b> [1] - 39:4</p> <p><b>became</b> [2] - 51:22, 52:1</p> <p><b>become</b> [1] - 44:1</p> <p><b>becomes</b> [2] - 35:17, 40:21</p> <p><b>begin</b> [2] - 15:25, 28:14</p> <p><b>behind</b> [1] - 36:6</p> <p><b>BEHRENS</b> [14] - 2:14, 3:10, 41:13, 41:20, 41:25, 42:14, 42:18, 42:21, 42:25, 43:3, 43:10, 43:14, 44:9, 44:11</p> <p><b>Behrens</b> [2] - 3:6, 41:21</p> <p><b>BELL</b> [1] - 1:5</p> <p><b>Bell</b> [10] - 6:3, 7:21, 16:1, 21:10, 22:9, 22:14, 25:10, 25:17, 26:12, 40:19</p> <p><b>benefit</b> [3] - 6:18, 7:16, 29:7</p> <p><b>Bergen</b> [1] - 14:20</p> <p><b>best</b> [3] - 15:16, 21:15, 60:9</p> <p><b>better</b> [3] - 17:16, 37:15, 37:20</p> <p><b>between</b> [5] - 18:13, 26:20, 29:19, 34:11, 40:25</p> <p><b>bit</b> [1] - 9:25</p> <p><b>blinding</b> [2] - 34:23, 36:1</p> <p><b>block</b> [2] - 29:20, 37:17</p> <p><b>Block</b> [3] - 6:4, 14:19, 42:6</p> <p><b>BLOCK</b> [1] - 1:6</p> <p><b>board</b> [12] - 4:22, 7:12, 10:17, 18:5, 29:5, 43:3, 43:5, 43:6, 43:17, 49:9, 49:18, 50:15</p> <p><b>Board</b> [13] - 2:2, 2:13, 2:14, 2:15, 4:16, 5:24, 6:2, 27:4, 27:9, 33:22, 47:4, 47:12,</p>	<p>50:9</p> <p><b>BOARD</b> [1] - 1:1</p> <p><b>Board/Professional</b> [1] - 3:4</p> <p><b>borough</b> [1] - 17:20</p> <p><b>BOROUGH</b> [1] - 1:1</p> <p><b>Borough</b> [8] - 4:24, 29:7, 29:12, 39:16, 47:6, 47:11, 50:10, 50:13</p> <p><b>Box</b> [2] - 7:5, 7:7</p> <p><b>BOX</b> [1] - 1:22</p> <p><b>brief</b> [3] - 9:3, 48:23, 49:3</p> <p><b>briefly</b> [1] - 29:22</p> <p><b>bring</b> [4] - 40:13, 40:14, 40:15, 53:24</p> <p><b>BROOK</b> [1] - 1:23</p> <p><b>Bruce</b> [4] - 5:20, 5:24, 10:1, 47:5</p> <p><b>BRUCE</b> [1] - 2:3</p> <p><b>buffer</b> [1] - 26:24</p> <p><b>building</b> [26] - 8:7, 8:10, 9:15, 9:16, 15:7, 15:10, 15:21, 15:25, 16:5, 16:17, 20:4, 20:9, 23:4, 23:11, 24:13, 25:3, 25:12, 25:14, 27:16, 30:18, 30:25, 33:10, 38:7, 40:10, 43:1</p> <p><b>Building</b> [2] - 4:23, 25:15</p> <p><b>buildings</b> [3] - 25:7, 47:1, 54:9</p> <p><b>bulk</b> [3] - 9:15, 27:2, 27:13</p> <p><b>bulletin</b> [1] - 4:22</p> <p><b>Burger</b> [10] - 2:9, 12:11, 13:12, 13:13, 13:16, 13:19, 13:21, 13:24, 52:4, 52:9</p> <p><b>business</b> [4] - 19:3, 39:7, 40:11, 46:10</p> <p><b>businesses</b> [1] - 24:10</p> <p><b>busy</b> [1] - 36:8</p> <p><b>but..</b> [1] - 45:13</p> <p><b>buy</b> [1] - 53:23</p> <p><b>BY</b> [7] - 14:10, 49:5, 52:7, 52:18, 53:9, 54:3, 54:19</p>	<p><b>canopy</b> [3] - 30:23, 30:24, 31:3</p> <p><b>Capalbo</b> [4] - 3:6, 5:14, 48:15, 58:21</p> <p><b>CAPALBO</b> [10] - 1:13, 5:15, 44:16, 44:23, 45:6, 45:14, 45:16, 45:18, 48:16, 58:22</p> <p><b>carry</b> [2] - 59:2, 59:5</p> <p><b>Cars</b> [1] - 34:6</p> <p><b>cars</b> [4] - 34:7, 34:19, 34:21, 36:9</p> <p><b>CARUCCI</b> [1] - 1:21</p> <p><b>case</b> [2] - 20:23, 26:12</p> <p><b>cater</b> [1] - 48:25</p> <p><b>CCR</b> [1] - 60:24</p> <p><b>cell</b> [6] - 7:3, 18:8, 19:2, 21:16, 22:11, 36:6</p> <p><b>center</b> [3] - 27:8, 34:24, 41:1</p> <p><b>central</b> [1] - 19:14</p> <p><b>certain</b> [3] - 6:18, 7:10, 43:18</p> <p><b>Certain</b> [1] - 27:10</p> <p><b>Certainly</b> [3] - 15:24, 36:24, 39:19</p> <p><b>certification</b> [1] - 11:15</p> <p><b>CERTIFIED</b> [1] - 1:22</p> <p><b>Certified</b> [1] - 60:3</p> <p><b>certify</b> [1] - 60:6</p> <p><b>CERTIFY</b> [1] - 60:10</p> <p><b>cetera</b> [1] - 49:8</p> <p><b>Chair</b> [1] - 12:5</p> <p><b>Chairman</b> [3] - 3:5, 5:23, 11:23</p> <p><b>CHAIRMAN</b> [62] - 1:9, 1:10, 4:14, 5:5, 5:17, 10:14, 10:19, 10:21, 10:23, 11:4, 11:8, 11:25, 12:7, 12:14, 12:16, 12:19, 19:5, 33:22, 33:24, 33:25, 34:16, 35:4, 35:15, 36:2, 36:17, 36:19, 36:22, 41:9, 44:14, 46:15, 46:18, 46:22, 47:21, 47:23, 48:1, 48:3, 48:6, 48:18, 48:22, 48:25, 51:23, 52:23, 53:7, 53:25, 54:10, 54:18, 55:3, 55:6, 55:10, 56:5, 57:2, 57:5, 57:10, 57:13, 57:19, 57:24, 58:4, 58:7, 58:12, 58:24, 59:4, 59:12</p> <p><b>chances</b> [1] - 36:8</p> <p><b>change</b> [1] - 43:19</p>	<p><b>changed</b> [4] - 15:3, 26:18, 29:15, 54:22</p> <p><b>changes</b> [1] - 38:1</p> <p><b>changing</b> [1] - 49:21</p> <p><b>chart</b> [1] - 24:20</p> <p><b>check</b> [3] - 33:4, 57:21, 58:1</p> <p><b>clarification</b> [1] - 34:1</p> <p><b>clean</b> [2] - 46:10, 46:14</p> <p><b>clear</b> [1] - 14:3</p> <p><b>clearance</b> [1] - 31:21</p> <p><b>Clerk</b> [1] - 4:24</p> <p><b>client</b> [2] - 13:16, 54:11</p> <p><b>close</b> [5] - 16:24, 17:5, 46:10, 58:8, 58:9</p> <p><b>closest</b> [1] - 23:3</p> <p><b>code</b> [6] - 17:12, 26:3, 50:9, 50:10, 50:13</p> <p><b>coffee</b> [1] - 52:12</p> <p><b>cold</b> [2] - 40:14</p> <p><b>combination</b> [1] - 49:24</p> <p><b>coming</b> [1] - 36:11</p> <p><b>comment</b> [1] - 36:25</p> <p><b>commented</b> [1] - 45:20</p> <p><b>comments</b> [4] - 6:16, 28:13, 31:6, 55:22</p> <p><b>commercial</b> [1] - 19:18</p> <p><b>Commercial</b> [1] - 50:22</p> <p><b>compared</b> [1] - 24:21</p> <p><b>complete</b> [1] - 55:20</p> <p><b>completed</b> [1] - 7:19</p> <p><b>complicated</b> [2] - 20:10, 33:8</p> <p><b>comply</b> [1] - 50:15</p> <p><b>component</b> [1] - 49:25</p> <p><b>compound</b> [4] - 18:8, 19:2, 21:17, 22:11</p> <p><b>concern</b> [7] - 19:16, 35:14, 35:25, 39:21, 39:25, 42:1</p> <p><b>concerned</b> [6] - 9:16, 15:11, 31:16, 34:18, 34:23, 56:25</p> <p><b>concerning</b> [1] - 28:14</p> <p><b>concludes</b> [3] - 32:25, 33:20, 58:25</p> <p><b>concrete</b> [1] - 22:13</p> <p><b>concur</b> [1] - 16:25</p> <p><b>Condition</b> [1] - 32:19</p> <p><b>condition</b> [8] - 7:13, 16:23, 17:16, 25:3, 26:21, 35:23, 57:22</p> <p><b>conditions</b> [8] - 9:13, 15:1, 15:2, 20:17,</p>
<b>B</b>				
<p><b>B-1</b> [2] - 51:1, 54:22</p> <p><b>B-2</b> [2] - 51:2, 54:22</p> <p><b>B-3</b> [6] - 15:14, 24:21, 27:3, 50:22, 53:12, 54:21</p> <p><b>back-up</b> [1] - 19:17</p> <p><b>backing</b> [2] - 19:19, 36:12</p> <p><b>balance</b> [1] - 40:15</p> <p><b>bank</b> [5] - 8:7, 16:11, 20:4, 25:3, 27:7</p> <p><b>Barbershop</b> [3] - 19:5, 19:6, 19:8</p>				
		<b>C</b>		
		<p><b>C-1</b> [1] - 8:14</p> <p><b>C-2</b> [1] - 8:14</p> <p><b>C.S.R</b> [1] - 1:21</p> <p><b>cab</b> [1] - 45:8</p> <p><b>caliber</b> [1] - 35:24</p>		

<p>25:25, 26:19, 35:13  <b>configuration</b> [2] - 17:8, 19:24  <b>configure</b> [1] - 20:5  <b>conflict</b> [2] - 39:1, 39:10  <b>conflicts</b> [1] - 11:10  <b>conform</b> [6] - 17:11, 24:13, 25:8, 25:20, 26:14, 50:13  <b>conformance</b> [2] - 15:13, 26:6  <b>conforming</b> [5] - 25:4, 43:25, 50:7, 50:8, 50:9  <b>connect</b> [1] - 20:11  <b>connection</b> [5] - 6:1, 20:14, 20:24, 24:4, 31:17  <b>consequence</b> [1] - 21:13  <b>consider</b> [3] - 29:6, 37:2, 44:5  <b>considering</b> [1] - 34:5  <b>consist</b> [2] - 22:13, 23:9  <b>consistent</b> [1] - 45:22  <b>constant</b> [1] - 42:8  <b>constrained</b> [1] - 47:11  <b>constraint</b> [1] - 47:13  <b>construct</b> [1] - 23:18  <b>constructed</b> [1] - 24:23  <b>construction</b> [4] - 6:23, 7:1, 7:10, 21:14  <b>Consulting</b> [2] - 3:17, 4:6  <b>contained</b> [2] - 45:16, 45:17  <b>context</b> [1] - 49:13  <b>continuation</b> [2] - 6:2, 59:11  <b>continue</b> [5] - 16:14, 22:12, 23:7, 27:1, 49:20  <b>CONTINUED</b> [1] - 14:9  <b>continuing</b> [1] - 59:24  <b>controls</b> [1] - 32:7  <b>conversant</b> [1] - 44:23  <b>coordinate</b> [1] - 40:18  <b>copies</b> [1] - 22:1  <b>copy</b> [4] - 4:21, 4:23, 28:9, 33:18  <b>corner</b> [6] - 16:16, 17:9, 21:11, 22:10, 23:3, 23:8  <b>correct</b> [32] - 15:4, 15:5, 15:8, 15:12,</p>	<p>17:6, 17:21, 17:22, 19:20, 21:4, 22:20, 27:12, 28:2, 28:5, 28:17, 28:18, 28:23, 28:24, 29:10, 29:11, 29:16, 30:12, 30:13, 31:5, 31:13, 31:17, 32:12, 32:13, 49:12, 49:22, 52:13, 52:22  <b>Correct</b> [2] - 31:14, 54:18  <b>correctly</b> [1] - 39:15  <b>Council</b> [1] - 54:20  <b>counsel</b> [2] - 60:11, 60:13  <b>Counsel</b> [3] - 2:2, 2:5, 2:9  <b>count</b> [2] - 7:15, 53:10  <b>counterclockwise</b> [1] - 17:25  <b>counting</b> [1] - 53:11  <b>county</b> [2] - 20:11, 44:7  <b>County</b> [1] - 14:20  <b>couple</b> [2] - 34:1, 38:2  <b>course</b> [4] - 6:16, 27:11, 39:6, 47:7  <b>COURT</b> [1] - 1:22  <b>Court</b> [1] - 60:3  <b>cover</b> [3] - 33:3, 35:5, 38:13  <b>coverage</b> [4] - 25:15, 25:19, 25:21, 25:24  <b>covered</b> [2] - 31:7, 41:6  <b>COVID</b> [1] - 8:2  <b>COVID-driven</b> [1] - 8:2  <b>Cross</b> [1] - 3:4  <b>CROSS</b> [1] - 49:4  <b>Cross-Examination</b> [1] - 3:4  <b>CROSS-EXAMINATION</b> [1] - 49:4  <b>cubic</b> [3] - 20:6, 20:7  <b>curb</b> [3] - 16:21, 17:5, 27:24  <b>current</b> [3] - 17:12, 26:3, 26:19  <b>cut</b> [4] - 16:21, 20:6, 27:24, 41:11  <b>cuts</b> [1] - 17:5  <b>CVS</b> [19] - 17:20, 23:16, 23:23, 24:13, 27:8, 32:9, 45:22, 45:23, 46:15, 46:21, 46:24, 47:9, 47:17, 50:6, 53:19, 57:8, 57:16, 57:20, 57:22  <b>CVSs</b> [1] - 46:19</p>	<p style="text-align: center;"><b>D</b></p> <p><b>Date</b> [2] - 3:22, 14:6  <b>date</b> [7] - 4:19, 14:16, 14:21, 14:22, 32:15, 59:24, 60:8  <b>dated</b> [1] - 13:20  <b>Dated</b> [6] - 3:17, 3:18, 3:20, 4:6, 4:10, 10:11  <b>Dave</b> [1] - 41:21  <b>DAVID</b> [2] - 1:12, 1:17  <b>days</b> [1] - 43:20  <b>decided</b> [2] - 15:16, 54:20  <b>deciduous</b> [2] - 23:1, 23:3  <b>decongest</b> [1] - 31:21  <b>decreasing</b> [2] - 20:15, 49:8  <b>dedicated</b> [1] - 22:14  <b>definition</b> [1] - 53:25  <b>delivered</b> [1] - 4:20  <b>deliveries</b> [7] - 18:6, 18:12, 39:23, 39:24, 40:13, 44:18, 44:21  <b>delivering</b> [1] - 44:20  <b>delivery</b> [8] - 18:7, 18:9, 18:14, 18:20, 19:17, 44:24, 45:1  <b>demonstrate</b> [1] - 18:23  <b>Demonstrating</b> [1] - 29:19  <b>department</b> [1] - 7:5  <b>depicts</b> [1] - 18:3  <b>describe</b> [1] - 9:22  <b>DESCRIPTION</b> [1] - 3:14  <b>design</b> [2] - 39:17, 45:4  <b>Design</b> [2] - 3:20, 10:11  <b>designed</b> [1] - 45:1  <b>detail</b> [1] - 33:2  <b>development</b> [1] - 27:7  <b>different</b> [3] - 12:19, 34:6, 57:4  <b>digital</b> [2] - 43:6, 43:17  <b>dimensions</b> [1] - 43:10  <b>Direct</b> [1] - 3:3  <b>DIRECT</b> [1] - 14:9  <b>direct</b> [2] - 8:19, 33:20  <b>direction</b> [2] - 42:5, 42:9  <b>directly</b> [2] - 19:13, 54:5</p>	<p><b>distance</b> [3] - 26:16, 26:17, 26:20  <b>DIVAK</b> [5] - 1:15, 5:7, 48:8, 58:10, 58:14  <b>Divak</b> [3] - 5:6, 48:7, 58:13  <b>DO</b> [1] - 60:10  <b>done</b> [2] - 33:17, 35:18  <b>Donuts</b> [2] - 52:5  <b>door</b> [1] - 30:17  <b>down</b> [1] - 8:1  <b>DPK</b> [2] - 3:17, 4:6  <b>DPW</b> [2] - 7:9, 7:16  <b>drainage</b> [2] - 15:23, 20:12  <b>drive</b> [38] - 8:4, 8:8, 8:11, 8:18, 16:3, 16:4, 16:7, 16:9, 16:11, 16:14, 16:15, 17:24, 18:2, 18:19, 19:14, 19:15, 20:5, 23:6, 23:19, 26:5, 27:6, 29:20, 30:4, 33:11, 34:3, 34:19, 38:3, 40:2, 51:4, 52:14, 52:20, 53:10, 53:12, 53:17, 53:20, 54:5, 54:17, 54:21  <b>drive-through</b> [28] - 8:4, 8:8, 8:11, 8:18, 16:3, 16:4, 16:7, 16:9, 16:15, 17:24, 18:2, 18:19, 20:5, 23:6, 23:19, 26:5, 27:6, 29:20, 30:4, 33:11, 34:3, 34:19, 38:3, 51:4, 52:14, 53:17, 53:20, 54:5  <b>drive-throughs</b> [5] - 52:20, 53:10, 53:12, 54:17, 54:21  <b>driven</b> [1] - 8:2  <b>driver</b> [1] - 18:1  <b>drivers</b> [1] - 34:24  <b>driveway</b> [3] - 17:4, 17:5, 26:17  <b>driveways</b> [2] - 16:23, 26:20  <b>drop</b> [1] - 41:2  <b>drop-off</b> [1] - 41:2  <b>due</b> [1] - 27:4  <b>duly</b> [4] - 13:3, 37:11, 41:24, 56:15  <b>dumpster</b> [2] - 21:10, 36:6  <b>dumpsters</b> [1] - 6:24  <b>Dunkin'</b> [2] - 52:4, 52:5  <b>during</b> [4] - 27:11,</p>	<p>36:8, 39:12, 39:24</p> <p style="text-align: center;"><b>E</b></p> <p><b>early</b> [1] - 19:17  <b>easel</b> [1] - 14:12  <b>easement</b> [2] - 20:22, 29:6  <b>East</b> [1] - 2:4  <b>east/west</b> [1] - 40:2  <b>easterly</b> [3] - 16:3, 21:12, 42:4  <b>eaten</b> [3] - 51:21, 52:4, 52:17  <b>egress</b> [5] - 15:22, 16:11, 16:13, 19:15, 26:23  <b>either</b> [2] - 19:13, 37:22  <b>electric</b> [1] - 21:7  <b>electronic</b> [2] - 43:5, 43:17  <b>elements</b> [1] - 31:22  <b>eligible</b> [1] - 11:14  <b>eliminate</b> [6] - 16:22, 17:3, 17:4, 26:23, 35:14, 35:25  <b>eliminated</b> [3] - 16:12, 27:14, 27:22  <b>eliminating</b> [2] - 16:23, 26:22  <b>elimination</b> [1] - 16:13  <b>ELIYA</b> [1] - 1:16  <b>Elijah</b> [3] - 5:12, 48:13, 58:19  <b>ELIYAH</b> [3] - 5:13, 48:14, 58:20  <b>employee</b> [2] - 60:11, 60:13  <b>employees</b> [1] - 7:23  <b>end</b> [1] - 7:9  <b>enforcement</b> [1] - 39:22  <b>Engineer</b> [1] - 2:15  <b>engineer</b> [2] - 9:5, 35:13  <b>engineer's</b> [1] - 6:14  <b>engineering</b> [1] - 9:10  <b>enter</b> [2] - 5:20, 12:6  <b>entire</b> [1] - 46:25  <b>entitled</b> [1] - 14:18  <b>entity</b> [1] - 13:24  <b>entrance</b> [1] - 30:24  <b>enumerate</b> [1] - 53:12  <b>equipment</b> [2] - 7:10, 42:22  <b>Erie</b> [2] - 19:15, 40:4  <b>especially</b> [1] - 34:20  <b>ESQUIRE</b> [3] - 2:2, 2:3, 2:7</p>
---	---	---	--	---

<p><b>et</b> [1] - 49:8  <b>evaluated</b> [1] - 21:14  <b>evening</b> [7] - 5:23, 6:9, 12:22, 14:13, 15:15, 59:1, 59:22  <b>evergreen</b> [1] - 42:11  <b>exactly</b> [1] - 22:7  <b>EXAMINATION</b> [2] - 14:9, 49:4  <b>Examination</b> [2] - 3:3, 3:4  <b>example</b> [1] - 49:14  <b>exception</b> [1] - 22:8  <b>Excuse</b> [2] - 11:23, 33:5  <b>Exhibit</b> [7] - 4:3, 4:7, 4:12, 10:12, 14:8, 21:19, 21:24  <b>exhibit</b> [7] - 6:9, 6:25, 10:2, 10:3, 21:17, 23:13, 30:1  <b>exist</b> [2] - 26:3, 51:8  <b>existence</b> [1] - 28:1  <b>existing</b> [11] - 8:7, 9:13, 15:1, 15:2, 16:22, 20:4, 23:15, 33:9, 33:10, 36:12, 42:11  <b>exists</b> [4] - 17:18, 22:18, 24:8, 27:22  <b>exit</b> [1] - 26:17  <b>expectation</b> [2] - 8:1, 8:3  <b>experience</b> [1] - 45:9  <b>expert</b> [6] - 9:9, 10:15, 10:17, 10:18, 33:17, 36:16  <b>explain</b> [1] - 55:15  <b>extensive</b> [1] - 24:20</p>	<p>25:13, 25:14, 25:24, 26:1, 26:6, 26:7, 26:9, 26:10, 26:11, 26:25, 30:3, 30:9, 34:10, 34:13, 35:2, 35:20, 35:21, 42:16, 44:8  <b>fence</b> [1] - 37:17  <b>fenced</b> [1] - 22:12  <b>few</b> [3] - 41:25, 48:23, 49:3  <b>field</b> [1] - 9:9  <b>figure</b> [1] - 47:19  <b>filing</b> [1] - 4:23  <b>fill</b> [1] - 20:7  <b>filling</b> [1] - 41:21  <b>final</b> [1] - 14:16  <b>finalize</b> [1] - 7:12  <b>Finally</b> [1] - 43:23  <b>financially</b> [1] - 60:14  <b>fine</b> [3] - 11:16, 55:5, 55:8  <b>Fine</b> [1] - 11:17  <b>finish</b> [1] - 8:25  <b>fire</b> [1] - 7:4  <b>firm</b> [4] - 5:25, 12:17, 12:20, 13:6  <b>first</b> [6] - 6:7, 7:19, 12:3, 28:16, 40:8  <b>First</b> [2] - 6:8, 55:12  <b>fixture</b> [2] - 50:2, 50:4  <b>fixtures</b> [8] - 23:15, 23:16, 23:17, 23:18, 23:21, 23:22, 49:25, 50:5  <b>follow</b> [2] - 32:9, 36:25  <b>follows</b> [4] - 13:4, 37:11, 41:24, 56:15  <b>food</b> [5] - 7:24, 42:4, 51:7, 52:25, 53:23  <b>food-style</b> [1] - 7:24  <b>footprint</b> [1] - 25:18  <b>foregoing</b> [1] - 60:6  <b>forget</b> [1] - 19:3  <b>format</b> [1] - 32:9  <b>FORMICOLA</b> [1] - 1:11  <b>forth</b> [1] - 60:9  <b>forward</b> [2] - 18:21, 56:6  <b>foundation</b> [1] - 23:11  <b>four</b> [3] - 22:25, 28:14, 53:10  <b>freestanding</b> [1] - 54:8  <b>front</b> [2] - 25:1, 25:8  <b>full</b> [1] - 45:5  <b>fully</b> [1] - 22:24  <b>FURTHER</b> [1] - 60:10  <b>future</b> [3] - 9:7, 32:12,</p>	<p>59:24  <b>G</b>  <b>Garret</b> [1] - 37:10  <b>gas</b> [1] - 20:20  <b>general</b> [1] - 39:20  <b>generalities</b> [1] - 8:15  <b>GODWIN</b> [1] - 1:6  <b>Godwin</b> [22] - 6:4, 7:9, 16:12, 16:14, 16:21, 16:24, 18:22, 19:10, 19:13, 20:13, 20:21, 23:3, 23:5, 25:2, 25:5, 26:10, 26:22, 30:4, 34:21, 38:8, 43:4, 43:16  <b>govern</b> [1] - 39:6  <b>grabbing</b> [1] - 28:12  <b>grading</b> [1] - 35:18  <b>grant</b> [1] - 54:23  <b>grease</b> [2] - 20:18, 38:3  <b>green</b> [2] - 22:18, 27:19  <b>greenery</b> [2] - 17:14, 17:18  <b>GROUP</b> [1] - 2:7  <b>Group</b> [1] - 12:10  <b>guess</b> [6] - 23:25, 36:6, 42:4, 43:15, 45:21, 47:5  <b>guy</b> [1] - 11:5</p>	<p>25:13, 30:3, 30:6, 30:9, 30:10, 35:2, 35:12, 35:24, 42:14, 42:17  <b>held</b> [1] - 4:17  <b>hereby</b> [1] - 60:5  <b>herein</b> [1] - 60:9  <b>higher</b> [1] - 35:7  <b>Hills</b> [1] - 2:8  <b>hollies</b> [1] - 23:10  <b>hoping</b> [1] - 55:14  <b>hour</b> [4] - 19:11, 46:4, 46:11, 46:13  <b>hours</b> [26] - 7:22, 18:13, 24:6, 24:9, 32:8, 38:23, 39:7, 39:12, 39:22, 39:24, 40:10, 40:19, 44:18, 45:21, 45:23, 46:3, 46:7, 46:13, 46:19, 46:21, 47:14, 47:16, 57:18  <b>housekeeping</b> [2] - 6:6, 10:1</p>	<p><b>indicating</b> [1] - 23:8  <b>indicating</b>) [2] - 23:12, 23:24  <b>ingress</b> [1] - 15:22  <b>ingress/egress</b> [1] - 19:14  <b>initial</b> [1] - 14:21  <b>inset</b> [1] - 18:18  <b>install</b> [1] - 20:18  <b>installation</b> [1] - 6:3  <b>installed</b> [3] - 7:5, 7:7, 32:18  <b>instance</b> [2] - 24:21, 42:7  <b>intention</b> [1] - 50:12  <b>interested</b> [1] - 60:14  <b>interfere</b> [1] - 36:11  <b>interior</b> [1] - 16:10  <b>internal</b> [2] - 18:8, 19:1  <b>interrupted</b> [1] - 11:11  <b>interruption</b> [1] - 10:15  <b>intersection</b> [2] - 26:16, 26:18  <b>intruding</b> [1] - 20:12  <b>involved</b> [1] - 47:2  <b>Irrelevant</b> [1] - 51:9  <b>irrigation</b> [1] - 32:1  <b>islands</b> [1] - 23:10  <b>issue</b> [4] - 14:21, 17:4, 29:1, 40:1  <b>Item</b> [1] - 31:19  <b>items</b> [2] - 49:6, 49:10  <b>itself</b> [6] - 15:7, 15:25, 16:7, 17:24, 18:21, 27:16</p>
<p><b>F</b></p>	<p><b>face</b> [1] - 16:4  <b>faces</b> [2] - 18:1, 43:17  <b>facility</b> [3] - 21:10, 22:9, 23:4  <b>facing</b> [2] - 42:4, 43:4  <b>fact</b> [7] - 7:23, 8:17, 20:23, 26:7, 27:5, 28:4, 40:12  <b>Famous</b> [1] - 8:20  <b>far</b> [7] - 8:13, 8:19, 9:16, 15:10, 31:15, 33:15, 37:1  <b>fast</b> [2] - 7:24, 51:7  <b>fast-food</b> [1] - 51:7  <b>feet</b> [32] - 16:1, 16:2, 17:15, 17:25, 20:16, 22:21, 25:4, 25:5, 25:6, 25:10, 25:11,</p>	<p><b>H</b>  <b>hand</b> [3] - 22:1, 41:16, 56:8  <b>handed</b> [2] - 22:5, 30:2  <b>handicap</b> [1] - 26:13  <b>HARMON</b> [26] - 2:13, 5:4, 5:6, 5:8, 5:10, 5:12, 5:14, 5:16, 10:22, 11:1, 11:6, 47:22, 48:5, 48:7, 48:9, 48:11, 48:13, 48:15, 48:17, 58:11, 58:13, 58:15, 58:17, 58:19, 58:21, 58:23  <b>heading</b> [1] - 34:24  <b>headlights</b> [4] - 29:21, 30:11, 42:3, 42:8  <b>heard</b> [1] - 44:25  <b>hearing</b> [6] - 5:18, 6:2, 6:19, 7:12, 8:12, 14:25  <b>hedge</b> [2] - 23:7, 23:9  <b>hedgerow</b> [1] - 29:23  <b>height</b> [11] - 25:12,</p>	<p><b>I</b>  <b>idea</b> [1] - 7:24  <b>IDENT/EVID</b> [1] - 3:14  <b>identification</b> [5] - 4:4, 4:8, 10:13, 14:8, 21:25  <b>Identification</b> [1] - 4:13  <b>idling</b> [1] - 44:20  <b>if..</b> [1] - 56:22  <b>illuminating</b> [1] - 23:18  <b>illustrated</b> [1] - 18:17  <b>illustrates</b> [1] - 21:18  <b>immediately</b> [3] - 19:2, 21:16, 22:11  <b>impact</b> [2] - 43:16, 43:25  <b>impervious</b> [1] - 20:15  <b>import</b> [1] - 20:7  <b>important</b> [1] - 21:8  <b>improved</b> [6] - 25:19, 25:20, 25:23, 26:9, 26:17, 26:18  <b>improvements</b> [2] - 15:18, 31:15  <b>IN</b> [1] - 1:3  <b>included</b> [1] - 44:6  <b>incorporated</b> [1] - 22:22  <b>increase</b> [1] - 17:14  <b>increased</b> [2] - 27:19, 28:4  <b>increasing</b> [1] - 49:7</p>	<p><b>J</b>  <b>JAMES</b> [1] - 1:13  <b>January</b> [4] - 16:19, 28:9, 33:1, 33:5  <b>JERSEY</b> [1] - 1:23  <b>Jersey</b> [8] - 2:5, 2:8, 13:3, 14:20, 37:10, 41:23, 56:14, 60:4  <b>Jess</b> [1] - 57:24  <b>Jessica</b> [1] - 11:12  <b>JESSICA</b> [1] - 2:13  <b>JOSEPH</b> [1] - 1:16  <b>junipers</b> [1] - 23:10</p>
<p><b>face</b> [1] - 16:4  <b>faces</b> [2] - 18:1, 43:17  <b>facility</b> [3] - 21:10, 22:9, 23:4  <b>facing</b> [2] - 42:4, 43:4  <b>fact</b> [7] - 7:23, 8:17, 20:23, 26:7, 27:5, 28:4, 40:12  <b>Famous</b> [1] - 8:20  <b>far</b> [7] - 8:13, 8:19, 9:16, 15:10, 31:15, 33:15, 37:1  <b>fast</b> [2] - 7:24, 51:7  <b>fast-food</b> [1] - 51:7  <b>feet</b> [32] - 16:1, 16:2, 17:15, 17:25, 20:16, 22:21, 25:4, 25:5, 25:6, 25:10, 25:11,</p>	<p><b>freestanding</b> [1] - 54:8  <b>front</b> [2] - 25:1, 25:8  <b>full</b> [1] - 45:5  <b>fully</b> [1] - 22:24  <b>FURTHER</b> [1] - 60:10  <b>future</b> [3] - 9:7, 32:12,</p>	<p><b>K</b></p>	<p><b>idea</b> [1] - 7:24  <b>IDENT/EVID</b> [1] - 3:14  <b>identification</b> [5] - 4:4, 4:8, 10:13, 14:8, 21:25  <b>Identification</b> [1] - 4:13  <b>idling</b> [1] - 44:20  <b>if..</b> [1] - 56:22  <b>illuminating</b> [1] - 23:18  <b>illustrated</b> [1] - 18:17  <b>illustrates</b> [1] - 21:18  <b>immediately</b> [3] - 19:2, 21:16, 22:11  <b>impact</b> [2] - 43:16, 43:25  <b>impervious</b> [1] - 20:15  <b>import</b> [1] - 20:7  <b>important</b> [1] - 21:8  <b>improved</b> [6] - 25:19, 25:20, 25:23, 26:9, 26:17, 26:18  <b>improvements</b> [2] - 15:18, 31:15  <b>IN</b> [1] - 1:3  <b>included</b> [1] - 44:6  <b>incorporated</b> [1] - 22:22  <b>increase</b> [1] - 17:14  <b>increased</b> [2] - 27:19, 28:4  <b>increasing</b> [1] - 49:7</p>	<p><b>K</b>  <b>K-light</b> [1] - 50:4  <b>Karen</b> [2] - 3:8, 56:18  <b>keep</b> [1] - 13:22  <b>key</b> [1] - 40:9  <b>King</b> [6] - 13:13,</p>

13:16, 13:19, 13:21, 52:4, 52:9 <b>known</b> [2] - 13:24, 50:21 <b>knows</b> [2] - 51:15, 51:16 <b>Knox</b> [2] - 7:5, 7:7	<b>less</b> [1] - 20:17 <b>letter</b> [1] - 13:20 <b>light</b> [3] - 30:11, 45:21, 50:4 <b>Lighting</b> [2] - 23:14, 32:7 <b>lighting</b> [13] - 24:4, 24:6, 24:7, 24:8, 24:12, 31:24, 32:12, 32:18, 50:13, 50:16, 57:15 <b>Lighting-wise</b> [1] - 23:14 <b>lights</b> [4] - 23:20, 46:25, 49:15, 49:21 <b>limited</b> [1] - 37:18 <b>list</b> [5] - 6:9, 6:10, 10:2, 10:5, 21:21 <b>listened</b> [1] - 11:13 <b>listening</b> [1] - 41:7 <b>LLC</b> [5] - 1:5, 5:19, 6:1, 13:12, 13:25 <b>LLP</b> [1] - 2:7 <b>loading</b> [6] - 19:10, 27:1, 28:17, 39:14, 39:16, 40:1 <b>located</b> [2] - 16:3, 21:15 <b>location</b> [10] - 15:7, 15:10, 18:7, 20:9, 21:16, 33:10, 38:14, 39:20, 39:22 <b>locations</b> [1] - 42:21 <b>locked</b> [1] - 46:14 <b>look</b> [2] - 13:15, 57:16 <b>looked</b> [3] - 38:10, 46:1, 57:8 <b>looking</b> [2] - 35:18, 55:18 <b>LOT</b> [1] - 1:6 <b>louder</b> [1] - 45:10	4:12, 10:3, 14:7, 14:14, 21:24 <b>match</b> [1] - 50:5 <b>matter</b> [1] - 59:23 <b>MATTER</b> [1] - 1:3 <b>matured</b> [1] - 42:13 <b>maturity</b> [1] - 30:3 <b>McDonnell</b> [2] - 2:4, 5:25 <b>mean</b> [1] - 46:9 <b>means</b> [1] - 20:10 <b>mechanical</b> [1] - 42:22 <b>meet</b> [4] - 47:6, 47:10, 47:12, 49:10 <b>meeting</b> [23] - 4:14, 4:16, 4:18, 4:20, 6:17, 7:20, 8:23, 9:3, 9:7, 9:8, 12:3, 15:16, 24:6, 32:5, 32:12, 33:19, 36:4, 40:8, 44:19, 55:13, 56:24, 59:11, 59:14 <b>Meetings</b> [1] - 4:25 <b>MEMBER</b> [6] - 1:12, 1:13, 1:14, 1:15, 1:16, 1:17 <b>member's</b> [1] - 36:25 <b>Members</b> [1] - 5:23 <b>mentioned</b> [4] - 27:4, 34:2, 34:22, 35:1 <b>menu</b> [4] - 18:5, 43:3, 43:5, 43:6 <b>met</b> [2] - 9:16, 27:3 <b>metallic</b> [1] - 50:3 <b>MHF</b> [3] - 1:5, 5:18, 6:1 <b>Midland</b> [6] - 5:19, 6:1, 6:4, 14:20, 37:10, 56:14 <b>MIDLAND</b> [2] - 1:1, 1:5 <b>might</b> [1] - 21:15 <b>minimum</b> [2] - 25:23, 26:17 <b>minutes</b> [1] - 19:11 <b>mislabel</b> [1] - 31:1 <b>missed</b> [1] - 12:2 <b>Missey</b> [16] - 8:22, 9:8, 11:19, 12:24, 13:6, 13:9, 14:11, 14:25, 16:18, 32:11, 32:23, 33:2, 39:9, 44:25, 49:7, 55:6 <b>MISSEY</b> [23] - 3:3, 12:4, 12:22, 12:25, 13:5, 19:6, 22:1, 22:4, 34:10, 35:3, 35:8, 38:12, 39:12, 42:10, 42:16, 42:20, 42:23, 43:2, 43:7,	45:3, 51:21, 51:25, 52:16 <b>mitigate</b> [1] - 40:1 <b>modifications</b> [2] - 9:20, 9:22 <b>modified</b> [2] - 15:3, 15:10 <b>modify</b> [1] - 32:17 <b>moment</b> [2] - 21:3, 24:2 <b>monster</b> [1] - 34:7 <b>month</b> [2] - 12:17, 18:12 <b>morning</b> [3] - 18:13, 40:23, 40:25 <b>most</b> [1] - 14:22 <b>motion</b> [3] - 48:2, 58:7, 59:5 <b>Motion</b> [2] - 48:3, 58:9 <b>motor</b> [3] - 44:21, 45:10, 45:11 <b>movement</b> [5] - 7:2, 16:14, 18:1, 18:22, 19:12 <b>moving</b> [4] - 18:21, 20:2, 21:7, 22:16 <b>MR</b> [146] - 5:7, 5:9, 5:11, 5:13, 5:15, 5:22, 9:25, 10:8, 10:20, 11:2, 11:7, 11:12, 11:17, 11:22, 12:4, 12:22, 12:23, 12:25, 13:5, 13:8, 13:15, 14:2, 14:10, 19:6, 21:19, 22:1, 22:3, 22:4, 33:15, 34:10, 35:3, 35:8, 35:11, 35:16, 36:15, 36:20, 36:24, 37:4, 37:8, 37:12, 37:13, 37:21, 37:23, 38:12, 38:17, 39:3, 39:9, 39:12, 39:14, 40:7, 40:17, 40:22, 41:4, 41:13, 41:15, 41:20, 41:25, 42:10, 42:14, 42:16, 42:18, 42:20, 42:21, 42:23, 42:25, 43:2, 43:3, 43:7, 43:8, 43:10, 43:12, 43:14, 44:2, 44:5, 44:7, 44:8, 44:9, 44:10, 44:11, 44:16, 44:22, 44:23, 44:25, 45:3, 45:6, 45:12, 45:14, 45:15, 45:16, 45:17, 45:18, 45:20, 45:25, 46:5, 46:9, 46:17, 46:19, 46:20, 46:23, 46:24, 47:2,	47:7, 47:8, 47:10, 47:14, 47:18, 47:19, 48:4, 48:8, 48:10, 48:12, 48:14, 48:16, 51:9, 51:16, 51:19, 51:21, 51:25, 52:14, 52:16, 52:25, 53:3, 53:8, 54:14, 54:24, 56:7, 56:16, 56:20, 56:23, 57:12, 57:14, 57:21, 58:1, 58:3, 58:9, 58:10, 58:14, 58:16, 58:18, 58:20, 58:22, 58:25, 59:6, 59:8, 59:9, 59:21 <b>MS</b> [59] - 5:4, 5:6, 5:8, 5:10, 5:12, 5:14, 5:16, 10:22, 11:1, 11:6, 11:23, 12:2, 12:5, 12:8, 12:15, 12:18, 12:21, 13:14, 13:23, 47:22, 48:5, 48:7, 48:9, 48:11, 48:13, 48:15, 48:17, 48:20, 48:23, 49:2, 49:5, 51:13, 51:18, 52:7, 52:15, 52:18, 53:2, 53:9, 54:2, 54:3, 54:12, 54:15, 54:19, 55:5, 55:8, 56:3, 56:12, 56:18, 56:21, 56:25, 57:4, 57:7, 58:11, 58:13, 58:15, 58:17, 58:19, 58:21, 58:23 <b>Municipal</b> [1] - 4:23
<b>L</b>	<b>M</b>			
<b>L.L.C</b> [1] - 1:21 <b>land</b> [1] - 27:12 <b>Land</b> [2] - 3:16, 4:5 <b>LANDEL</b> [24] - 2:2, 9:25, 11:12, 11:22, 12:23, 37:4, 37:12, 41:15, 45:20, 46:5, 46:19, 46:24, 47:14, 47:19, 51:16, 52:25, 54:14, 56:7, 56:16, 56:20, 57:12, 58:1, 59:6, 59:9 <b>Landel</b> [1] - 3:7 <b>landscape</b> [3] - 22:22, 22:25, 31:23 <b>landscaping</b> [5] - 22:17, 28:3, 31:24, 42:2, 42:6 <b>lane</b> [3] - 18:20, 34:19, 38:3 <b>Lapatka</b> [8] - 3:18, 3:21, 3:24, 4:10, 9:11, 13:6, 14:6, 21:23 <b>larger</b> [1] - 39:21 <b>last</b> [22] - 6:11, 6:17, 6:19, 7:20, 8:12, 8:20, 8:23, 9:8, 10:2, 10:3, 11:24, 12:17, 13:18, 14:25, 15:16, 18:12, 24:5, 32:5, 36:4, 44:19, 55:13, 56:18 <b>Last</b> [4] - 3:19, 3:22, 4:10, 14:6 <b>latest</b> [1] - 15:15 <b>LAURA</b> [1] - 1:21 <b>lauraACarucci@</b> <b>gmail.com</b> [1] - 1:24 <b>Law</b> [1] - 12:10 <b>LAW</b> [1] - 2:7 <b>layout</b> [5] - 22:6, 22:7, 28:14, 31:20, 38:9 <b>Layout</b> [1] - 14:18 <b>least</b> [1] - 42:16 <b>LED</b> [1] - 23:16 <b>left</b> [1] - 6:8 <b>length</b> [3] - 16:2, 26:5, 34:13 <b>LES</b> [1] - 1:9	<b>M-I-S-S-E-Y</b> [1] - 12:4 <b>main</b> [2] - 40:2, 40:5 <b>Main</b> [1] - 2:4 <b>mall</b> [1] - 54:7 <b>manager</b> [1] - 40:12 <b>maneuvering</b> [1] - 39:10 <b>manner</b> [1] - 16:8 <b>March</b> [5] - 6:11, 9:24, 13:20, 14:22, 21:10 <b>Marie</b> [4] - 12:8, 12:9, 12:10, 13:10 <b>MARIE</b> [1] - 2:7 <b>mark</b> [1] - 21:19 <b>MARK</b> [1] - 1:15 <b>marked</b> [7] - 4:3, 4:7,			
			<b>N</b>	
			<b>N-G</b> [1] - 56:19 <b>nail</b> [1] - 19:8 <b>name</b> [3] - 11:24, 56:16, 56:18 <b>near</b> [2] - 7:3, 36:7 <b>necessity</b> [3] - 19:22, 20:12, 32:17 <b>need</b> [2] - 19:23, 47:19 <b>needed</b> [5] - 14:2, 39:18, 46:13, 53:5 <b>needs</b> [3] - 7:11, 33:3, 35:20 <b>negotiating</b> [1] - 18:19 <b>neighbors</b> [1] - 38:20 <b>never</b> [2] - 40:10, 52:3 <b>NEW</b> [1] - 1:23 <b>new</b> [7] - 23:4, 23:18, 23:20, 44:15, 49:24, 50:4 <b>New</b> [8] - 2:5, 2:8, 13:2, 14:20, 37:10,	

<p>41:23, 56:14, 60:4  <b>News</b> [1] - 4:21  <b>next</b> [9] - 10:5, 29:5, 31:6, 32:22, 33:19, 54:12, 59:11, 59:12, 59:14  <b>Ng</b> [2] - 3:8, 56:18  <b>NG</b> [7] - 56:3, 56:12, 56:18, 56:21, 56:25, 57:4, 57:7  <b>nicer</b> [1] - 37:19  <b>NICK</b> [1] - 1:10  <b>night</b> [1] - 34:21  <b>NO</b> [1] - 3:14  <b>nobody</b> [1] - 59:19  <b>noise</b> [1] - 19:18  <b>nonconforming</b> [6] - 16:22, 17:15, 25:2, 26:20, 27:25, 44:1  <b>nonconformities</b> [3] - 27:10, 27:13, 49:8  <b>nonconformity</b> [5] - 17:4, 17:17, 26:23, 27:21, 51:14  <b>none</b> [1] - 58:7  <b>North</b> [1] - 13:2  <b>north</b> [1] - 19:2  <b>northeasterly</b> [4] - 16:16, 21:11, 22:10, 23:8  <b>noted</b> [1] - 59:24  <b>notes</b> [2] - 41:5, 41:6  <b>nothing</b> [6] - 28:21, 37:6, 41:19, 51:10, 55:1, 56:11  <b>notice</b> [7] - 4:18, 4:19, 4:22, 4:24, 59:11, 59:16  <b>notices</b> [1] - 59:20  <b>Novak</b> [1] - 41:21  <b>November</b> [1] - 14:21  <b>number</b> [3] - 7:22, 24:22, 38:24  <b>Number</b> [6] - 28:25, 29:14, 30:23, 32:8, 32:19, 34:2</p>	<p>28:8, 31:17  <b>Obviously</b> [1] - 7:6  <b>obviously</b> [2] - 7:14, 9:6  <b>OF</b> [5] - 1:1, 1:1, 1:3, 1:4  <b>off-loading</b> [1] - 19:10  <b>office</b> [1] - 16:5  <b>officer</b> [1] - 7:1  <b>official</b> [2] - 6:23, 21:14  <b>often</b> [1] - 43:19  <b>old</b> [1] - 50:3  <b>once</b> [1] - 46:1  <b>oncoming</b> [1] - 34:24  <b>one</b> [25] - 5:18, 8:7, 8:10, 8:22, 9:25, 10:5, 10:14, 11:2, 13:8, 16:23, 21:2, 22:4, 23:2, 23:17, 23:21, 24:22, 26:13, 28:16, 34:2, 37:22, 50:2, 53:14, 53:18, 53:19  <b>One</b> [1] - 36:2  <b>onsite</b> [1] - 20:24  <b>open</b> [9] - 39:8, 40:11, 40:23, 44:14, 46:16, 48:2, 57:8, 57:20  <b>Open</b> [1] - 4:25  <b>operated</b> [1] - 24:9  <b>operates</b> [2] - 13:12, 13:13  <b>operation</b> [6] - 7:22, 32:9, 46:4, 46:8, 46:13, 57:18  <b>Operational</b> [1] - 39:3  <b>operational</b> [6] - 7:21, 39:25, 40:8, 40:21, 40:24, 41:2  <b>operations</b> [4] - 18:11, 38:14, 43:7, 46:12  <b>operator</b> [2] - 39:6, 40:12  <b>opportunities</b> [1] - 55:16  <b>opportunity</b> [1] - 55:21  <b>option</b> [2] - 37:20, 37:24  <b>order</b> [1] - 4:15  <b>Ordinance</b> [3] - 39:16, 47:6, 47:11  <b>ordinance</b> [4] - 8:17, 32:4, 46:3, 53:4  <b>original</b> [2] - 9:21, 38:9  <b>Originally</b> [1] - 21:9  <b>ourselves</b> [1] - 58:2  <b>overall</b> [2] - 15:21,</p>	<p>27:7  <b>overview</b> [1] - 15:20  <b>owner</b> [1] - 12:12  <b>ownership</b> [1] - 44:3</p> <p style="text-align: center;"><b>P</b></p> <p><b>P.E</b> [4] - 2:15, 3:3, 3:9, 37:9  <b>P.M</b> [1] - 1:2  <b>p.m</b> [1] - 59:25  <b>P.O</b> [1] - 1:22  <b>P.P</b> [3] - 2:14, 3:10, 41:22  <b>page</b> [4] - 16:20, 28:15, 32:8, 32:17  <b>pages</b> [2] - 4:11, 10:12  <b>Papapietro</b> [4] - 3:5, 5:4, 48:5, 58:11  <b>PAPAPIETRO</b> [14] - 1:10, 5:5, 10:19, 19:5, 33:25, 34:16, 35:4, 35:15, 36:2, 36:17, 48:3, 48:6, 51:23, 58:12  <b>Paragraph</b> [2] - 16:20, 32:16  <b>paragraph</b> [1] - 28:20  <b>Paramus</b> [2] - 13:2, 13:7  <b>park</b> [1] - 54:6  <b>Park</b> [6] - 5:19, 6:1, 6:5, 14:20, 37:10, 56:14  <b>PARK</b> [2] - 1:1, 1:5  <b>parking</b> [14] - 7:15, 15:22, 17:10, 17:11, 26:2, 26:8, 26:24, 33:16, 36:9, 36:10, 36:13, 39:1, 42:6, 47:1  <b>Parsippany</b> [3] - 2:8, 2:8, 12:10  <b>Parsippany-Troy</b> [1] - 2:8  <b>part</b> [4] - 7:15, 23:16, 31:1, 34:18  <b>partial</b> [1] - 50:17  <b>particular</b> [1] - 35:10  <b>particularly</b> [1] - 34:20  <b>parties</b> [1] - 60:12  <b>passage</b> [1] - 38:7  <b>passenger</b> [2] - 18:19, 34:14  <b>past</b> [1] - 17:20  <b>PE</b> [1] - 13:1  <b>people</b> [3] - 36:11, 38:14, 59:18  <b>per</b> [1] - 38:24  <b>percent</b> [5] - 17:17,</p>	<p>25:16, 25:17, 25:21, 25:22  <b>period</b> [1] - 40:6  <b>periodically</b> [1] - 43:19  <b>permits</b> [1] - 23:11  <b>permitted</b> [2] - 32:10, 51:4  <b>person</b> [4] - 12:19, 40:9, 40:24, 46:12  <b>perspective</b> [2] - 17:2, 17:3  <b>pertain</b> [1] - 31:6  <b>pertaining</b> [4] - 8:25, 27:21, 35:25, 38:2  <b>pertains</b> [4] - 7:21, 15:21, 24:6, 32:22  <b>pgs</b> [3] - 3:19, 3:20, 3:22  <b>photos</b> [1] - 7:16  <b>pick</b> [2] - 9:18, 42:4  <b>picked</b> [1] - 38:21  <b>picking</b> [1] - 8:2  <b>pickup</b> [3] - 18:1, 38:23, 39:4  <b>pickups</b> [3] - 38:24, 39:5, 39:23  <b>pitch</b> [2] - 35:1, 35:6  <b>place</b> [2] - 4:20, 60:8  <b>Place</b> [1] - 37:10  <b>placement</b> [1] - 9:14  <b>places</b> [1] - 8:1  <b>PLACIER</b> [8] - 1:14, 5:9, 10:20, 36:20, 48:4, 48:10, 58:9, 58:16  <b>Placier</b> [4] - 5:8, 11:13, 48:9, 58:15  <b>Plan</b> [11] - 3:15, 3:18, 3:21, 3:23, 4:2, 4:9, 14:5, 14:19, 18:17, 21:22, 22:24  <b>plan</b> [31] - 6:11, 8:25, 9:22, 9:24, 10:4, 11:20, 14:12, 14:15, 14:18, 14:24, 17:3, 17:19, 18:3, 18:24, 22:7, 22:8, 22:25, 24:19, 24:22, 26:9, 28:14, 28:22, 30:20, 32:3, 33:8, 43:13, 50:1, 50:17, 55:1, 56:4  <b>planner</b> [3] - 8:15, 9:6, 55:4  <b>Planner</b> [1] - 2:14  <b>planning</b> [5] - 17:2, 33:19, 41:10, 51:11, 54:24  <b>Planning</b> [5] - 6:2,</p>	<p>27:9, 47:4, 47:12, 50:8  <b>plans</b> [5] - 10:6, 12:1, 15:3, 30:19, 32:23  <b>Plans</b> [2] - 3:20, 10:10  <b>planted</b> [1] - 30:3  <b>planting</b> [2] - 30:7, 30:8  <b>plantings</b> [1] - 30:2  <b>Pledge</b> [2] - 5:1, 5:3  <b>point</b> [10] - 13:10, 21:8, 30:1, 38:16, 42:3, 42:22, 43:15, 43:22, 55:22, 55:25  <b>pointing</b> [1] - 23:13  <b>poles</b> [1] - 39:1  <b>Pool</b> [1] - 19:4  <b>positioned</b> [1] - 43:4  <b>positive</b> [1] - 38:1  <b>possibly</b> [2] - 19:4, 34:13  <b>posting</b> [1] - 4:21  <b>potential</b> [2] - 34:23, 43:23  <b>predated</b> [1] - 53:7  <b>premarked</b> [1] - 10:12  <b>Prepared</b> [10] - 3:16, 3:18, 3:20, 3:21, 3:24, 4:6, 4:9, 10:11, 14:5, 21:23  <b>prepared</b> [2] - 21:17, 32:14  <b>present</b> [5] - 17:17, 20:20, 25:3, 37:5, 56:10  <b>Present</b> [1] - 5:5  <b>presentation</b> [3] - 33:9, 33:21, 59:1  <b>presenting</b> [1] - 37:23  <b>presently</b> [1] - 23:23  <b>presents</b> [1] - 43:16  <b>presumably</b> [1] - 51:1  <b>presumed</b> [1] - 38:8  <b>pretty</b> [1] - 36:21  <b>previously</b> [11] - 4:3, 4:7, 4:12, 17:19, 24:11, 27:4, 27:9, 27:17, 28:4, 49:10, 49:17  <b>private</b> [1] - 39:5  <b>problem</b> [1] - 35:16  <b>proceed</b> [4] - 17:7, 17:23, 20:1, 24:16  <b>proceeding</b> [1] - 34:21  <b>PROCEEDING</b> [1] - 1:4  <b>process</b> [1] - 27:11  <b>producing</b> [1] - 20:17  <b>product</b> [2] - 40:14, 40:15</p>
<b>O</b>				
<p><b>o'clock</b> [2] - 40:23, 57:12  <b>oath</b> [3] - 9:18, 12:23, 14:11  <b>oaths</b> [1] - 60:5  <b>objection</b> [2] - 29:9, 37:21  <b>Objector</b> [1] - 2:9  <b>observation</b> [3] - 28:21, 29:5, 36:3  <b>observations</b> [2] -</p>				

<p><b>prohibit</b> [1] - 54:20  <b>prohibition</b> [4] - 46:21, 52:19, 52:20, 52:21  <b>prohibits</b> [1] - 8:18  <b>project</b> [1] - 23:16  <b>property</b> [6] - 15:18, 35:1, 35:6, 42:5, 42:9, 53:16  <b>proposal</b> [5] - 15:7, 15:21, 24:24, 25:22, 27:14  <b>propose</b> [1] - 23:7  <b>proposed</b> [14] - 6:3, 7:2, 15:18, 15:22, 16:12, 16:16, 20:5, 20:17, 21:11, 24:24, 25:19, 25:25, 30:24, 36:14  <b>Proposed</b> [1] - 14:19  <b>proposing</b> [6] - 8:5, 17:9, 23:2, 23:20, 27:5, 36:5  <b>provide</b> [3] - 6:24, 29:13, 32:11  <b>provided</b> [4] - 4:18, 15:9, 42:22, 43:11  <b>Public</b> [2] - 3:7, 4:25  <b>public</b> [7] - 4:19, 5:18, 6:2, 7:25, 8:3, 44:15, 48:2  <b>pull</b> [3] - 18:15, 19:9  <b>pulling</b> [1] - 18:20  <b>pumper</b> [2] - 38:4, 38:6  <b>purpose</b> [2] - 37:20, 39:18  <b>purposes</b> [1] - 29:7  <b>pursuant</b> [1] - 60:5  <b>put</b> [7] - 6:20, 7:17, 14:15, 35:19, 37:16, 40:5, 46:2</p>	<p><b>Quick</b> [1] - 14:19</p> <p style="text-align: center;"><b>R</b></p> <p><b>R-I-Z-Z-U-T-O</b> [1] - 12:9  <b>R.P.R</b> [1] - 1:21  <b>R.S.41:2-2</b> [1] - 60:5  <b>raise</b> [2] - 41:15, 56:7  <b>Ramsey</b> [1] - 2:5  <b>re</b> [1] - 21:14  <b>re-evaluated</b> [1] - 21:14  <b>Rea</b> [10] - 3:8, 16:4, 23:1, 25:6, 26:10, 29:8, 40:4, 56:14, 56:19, 57:1  <b>really</b> [6] - 26:13, 28:14, 32:25, 35:17, 53:13, 56:21  <b>rear</b> [2] - 25:10, 26:11  <b>reason</b> [1] - 45:8  <b>reasons</b> [1] - 8:3  <b>received</b> [6] - 4:2, 4:7, 4:11, 6:15, 14:7, 21:24  <b>recent</b> [1] - 14:22  <b>recently</b> [1] - 23:15  <b>recitation</b> [1] - 5:2  <b>recognized</b> [1] - 9:11  <b>record</b> [12] - 5:24, 6:21, 7:18, 11:13, 13:5, 13:17, 13:22, 14:3, 14:15, 41:20, 47:15, 56:17  <b>Record</b> [1] - 4:21  <b>rectified</b> [1] - 7:11  <b>reduced</b> [2] - 25:16, 27:17  <b>reduction</b> [1] - 30:11  <b>reefer</b> [2] - 45:9, 45:10  <b>references</b> [1] - 13:21  <b>reflective</b> [1] - 13:17  <b>refrigeration</b> [1] - 45:7  <b>refuse</b> [5] - 21:1, 22:8, 29:14, 38:18, 38:23  <b>Regarding</b> [1] - 37:25  <b>regarding</b> [3] - 24:20, 44:17, 56:3  <b>REINSTEIN</b> [2] - 60:3, 60:24  <b>relative</b> [2] - 60:11, 60:13  <b>relevant</b> [3] - 28:16, 29:15, 51:19  <b>relocate</b> [1] - 23:17  <b>relocation</b> [2] - 6:23, 38:19  <b>relying</b> [1] - 49:9  <b>remains</b> [2] - 15:13,</p>	<p>50:3  <b>remember</b> [2] - 39:15, 45:8  <b>reminded</b> [1] - 11:12  <b>removal</b> [2] - 16:21, 38:5  <b>remove</b> [2] - 20:4, 23:2  <b>removed</b> [1] - 28:25  <b>rendering</b> [1] - 22:6  <b>Rendering</b> [2] - 3:23, 21:23  <b>replacing</b> [1] - 8:9  <b>report</b> [10] - 6:22, 7:4, 9:4, 10:17, 16:19, 28:7, 28:10, 33:1, 33:5, 33:17  <b>Reporter</b> [1] - 60:4  <b>REPORTERS</b> [1] - 1:22  <b>reports</b> [3] - 6:14, 6:19, 21:13  <b>represent</b> [1] - 12:11  <b>representation</b> [1] - 13:18  <b>representations</b> [1] - 13:11  <b>representing</b> [1] - 5:25  <b>represents</b> [1] - 13:12  <b>request</b> [1] - 7:8  <b>requests</b> [1] - 8:13  <b>required</b> [5] - 4:24, 26:4, 28:21, 30:11, 35:14  <b>requirement</b> [4] - 17:12, 17:13, 25:21, 26:6  <b>requirements</b> [4] - 24:22, 25:8, 26:14, 27:2  <b>requires</b> [3] - 20:6, 35:22, 39:16  <b>requiring</b> [1] - 29:6  <b>rerouted</b> [1] - 31:12  <b>residential</b> [3] - 38:20, 42:5, 42:9  <b>resolution</b> [3] - 46:1, 49:9, 57:23  <b>respect</b> [3] - 25:1, 50:13, 50:20  <b>Response</b> [3] - 33:23, 47:25, 58:6  <b>responses</b> [1] - 32:25  <b>rest</b> [1] - 40:18  <b>Restaurant</b> [1] - 14:19  <b>restaurant</b> [8] - 7:24, 7:25, 8:18, 12:12, 24:25, 27:6, 53:21, 54:1</p>	<p><b>restaurants</b> [8] - 51:4, 51:8, 52:21, 52:24, 53:2, 53:17, 54:5, 54:21  <b>resubmission</b> [1] - 32:15  <b>retail</b> [1] - 24:21  <b>retain</b> [2] - 10:17, 22:25  <b>retrofitted</b> [1] - 49:25  <b>retrofitting</b> [1] - 23:21  <b>reuse</b> [1] - 23:14  <b>reusing</b> [1] - 23:21  <b>review</b> [1] - 10:17  <b>Revised</b> [6] - 3:19, 3:22, 3:23, 4:11, 14:7, 21:22  <b>revised</b> [3] - 9:24, 15:4, 28:17  <b>revision</b> [5] - 6:12, 14:16, 14:22, 15:11, 19:21  <b>revisions</b> [1] - 6:13  <b>Rich</b> [1] - 36:23  <b>RICHARD</b> [3] - 1:11, 2:15, 3:9  <b>Ridgewood</b> [1] - 4:21  <b>right-of-way</b> [1] - 20:13  <b>rise</b> [1] - 5:2  <b>RIZZUTO</b> [28] - 2:7, 11:23, 12:2, 12:5, 12:8, 12:15, 12:18, 12:21, 13:14, 13:23, 48:20, 48:23, 49:2, 49:5, 51:13, 51:18, 52:7, 52:15, 52:18, 53:2, 53:9, 54:2, 54:3, 54:12, 54:15, 54:19, 55:5, 55:8  <b>Rizzuto</b> [4] - 3:4, 12:9, 13:11, 48:19  <b>road</b> [2] - 29:6, 43:24  <b>Road</b> [1] - 2:8  <b>ROBERT</b> [1] - 2:2  <b>Rogers</b> [1] - 51:22  <b>RONDA</b> [2] - 60:3, 60:24  <b>rooftop</b> [1] - 43:1  <b>roughly</b> [2] - 34:10, 39:15  <b>row</b> [1] - 42:11  <b>Roy</b> [1] - 51:21  <b>run</b> [1] - 40:5  <b>run-through</b> [1] - 40:5</p> <p style="text-align: center;"><b>S</b></p> <p><b>SADDLE</b> [1] - 1:23  <b>satisfied</b> [1] - 44:9</p>	<p><b>screen</b> [1] - 43:18  <b>screening</b> [6] - 23:6, 23:8, 29:19, 37:1, 37:2, 37:15  <b>Second</b> [2] - 48:4, 58:10  <b>second</b> [2] - 28:20, 38:17  <b>SECRETARY</b> [1] - 1:11  <b>Secretary</b> [1] - 2:13  <b>see</b> [2] - 39:9, 57:22  <b>Seeing</b> [1] - 58:7  <b>selected</b> [2] - 21:15, 35:9  <b>self</b> [2] - 45:16, 45:17  <b>self-contained</b> [2] - 45:16, 45:17  <b>semi</b> [1] - 45:5  <b>sent</b> [1] - 7:16  <b>separate</b> [1] - 45:7  <b>Serge</b> [5] - 11:5, 11:6, 11:7, 11:8, 33:18  <b>serve</b> [2] - 23:23, 37:19  <b>served</b> [1] - 33:11  <b>serves</b> [1] - 52:25  <b>Service</b> [1] - 14:19  <b>service</b> [6] - 20:19, 24:25, 27:5, 30:24, 31:4, 52:21  <b>serviced</b> [1] - 38:4  <b>services</b> [1] - 20:21  <b>servicing</b> [1] - 8:7  <b>set</b> [4] - 11:19, 12:1, 14:24, 60:9  <b>setback</b> [5] - 15:14, 25:4, 25:8, 25:23, 26:14  <b>setbacks</b> [4] - 26:8, 27:22, 43:25, 44:6  <b>Several</b> [1] - 49:6  <b>sewer</b> [1] - 20:19  <b>shape</b> [1] - 16:15  <b>Sheet</b> [2] - 18:18, 22:24  <b>sheet</b> [1] - 14:24  <b>shield</b> [1] - 42:7  <b>shifted</b> [2] - 18:6, 22:9  <b>shining</b> [1] - 42:8  <b>shoebox</b> [1] - 23:22  <b>shop</b> [2] - 19:8, 52:12  <b>shopping</b> [2] - 27:8, 34:24  <b>shortchange</b> [1] - 33:12  <b>shorter</b> [1] - 45:5  <b>show</b> [5] - 9:20, 18:23, 20:20, 20:25, 29:21</p>
--	---	--	--	--

<p><b>showing</b> [1] - 6:25  <b>shown</b> [2] - 30:19, 30:23  <b>shows</b> [1] - 18:18  <b>shrub</b> [1] - 35:12  <b>shrubbery</b> [1] - 35:24  <b>shrubs</b> [4] - 34:23, 35:2, 35:10, 35:19  <b>side</b> [9] - 16:3, 19:1, 21:12, 25:9, 26:10, 30:4, 30:18, 30:25  <b>sign</b> [1] - 43:11  <b>signage</b> [3] - 56:22, 57:1, 57:5  <b>signed</b> [1] - 11:15  <b>significant</b> [2] - 20:3, 25:12  <b>similar</b> [1] - 16:8  <b>simplified</b> [1] - 31:20  <b>Site</b> [9] - 3:15, 3:18, 3:21, 3:23, 4:2, 4:9, 14:5, 14:18, 21:22  <b>site</b> [38] - 7:3, 8:25, 9:19, 10:3, 11:20, 14:24, 15:18, 15:23, 17:3, 17:10, 17:19, 18:3, 18:21, 19:13, 20:22, 21:12, 22:7, 22:8, 22:10, 22:17, 23:23, 24:19, 25:7, 28:14, 30:19, 33:8, 33:9, 35:13, 35:17, 40:3, 40:18, 40:20, 50:1, 50:17, 54:7, 55:1, 56:4  <b>sitting</b> [1] - 8:1  <b>six</b> [1] - 18:4  <b>size</b> [2] - 27:17, 43:18  <b>sizes</b> [1] - 34:6  <b>sizing</b> [1] - 39:18  <b>skimming</b> [1] - 41:5  <b>slight</b> [1] - 35:1  <b>small</b> [1] - 9:22  <b>smaller</b> [2] - 25:18, 34:14  <b>soil</b> [1] - 20:2  <b>solid</b> [1] - 37:17  <b>someone</b> [1] - 43:21  <b>somewhat</b> [1] - 25:16  <b>somewhere</b> [1] - 34:13  <b>sorry</b> [2] - 13:14, 39:23  <b>Sorry</b> [1] - 10:22  <b>south</b> [1] - 30:18  <b>southeasterly</b> [1] - 17:9  <b>space</b> [16] - 18:7, 18:9, 18:15, 19:9, 22:18, 23:11, 26:13,</p>	<p>27:1, 27:19, 28:17, 31:22, 37:18, 39:14, 39:17, 39:20, 40:2  <b>spaces</b> [8] - 7:15, 17:10, 17:13, 26:2, 26:4, 36:13, 39:11  <b>speaking</b> [2] - 8:14, 53:13  <b>specific</b> [2] - 22:25, 50:17  <b>specifically</b> [3] - 16:19, 49:13, 53:13  <b>specified</b> [1] - 8:12  <b>specifying</b> [1] - 35:13  <b>spelled</b> [1] - 56:19  <b>spelling</b> [1] - 11:24  <b>spot</b> [1] - 45:1  <b>square</b> [3] - 17:15, 20:16, 22:21  <b>stack</b> [1] - 18:4  <b>stacked</b> [1] - 36:9  <b>stacking</b> [4] - 34:3, 34:19, 36:5, 36:14  <b>stacks</b> [2] - 18:2, 34:3  <b>stalls</b> [2] - 39:1, 42:7  <b>stand</b> [1] - 5:1  <b>standard</b> [3] - 17:25, 30:14, 34:14  <b>standards</b> [1] - 9:15  <b>standpoint</b> [1] - 27:13  <b>Starbucks</b> [5] - 52:5, 52:11, 52:12, 52:25, 53:5  <b>started</b> [1] - 8:23  <b>State</b> [2] - 13:2, 60:4  <b>statement</b> [1] - 16:25  <b>states</b> [1] - 16:20  <b>stating</b> [1] - 49:9  <b>stay</b> [1] - 57:15  <b>stenographically</b> [1] - 60:7  <b>Stewardship</b> [1] - 16:9  <b>still</b> [10] - 9:2, 9:17, 12:23, 14:11, 17:15, 33:3, 38:3, 39:17, 44:3, 59:6  <b>stipulate</b> [5] - 21:3, 29:12, 35:11, 35:23, 39:19  <b>stipulated</b> [3] - 31:25, 32:7, 32:16  <b>stipulating</b> [2] - 7:13, 47:6  <b>stipulation</b> [2] - 24:5, 32:5  <b>stop</b> [1] - 15:16  <b>storage</b> [1] - 7:11  <b>stormwater</b> [2] - 20:17, 31:15  <b>straight</b> [1] - 13:22</p>	<p><b>stream</b> [1] - 22:14  <b>Street</b> [1] - 2:4  <b>street</b> [6] - 12:12, 12:13, 16:6, 29:20, 43:17, 54:6  <b>streetscape</b> [1] - 32:4  <b>strip</b> [1] - 54:6  <b>style</b> [2] - 7:24, 7:25  <b>subject</b> [1] - 35:12  <b>submitted</b> [1] - 37:25  <b>sufficient</b> [2] - 31:21, 35:5  <b>suggested</b> [2] - 7:2, 44:4  <b>suggesting</b> [1] - 6:23  <b>suggestion</b> [2] - 44:2, 46:6  <b>suggestions</b> [1] - 6:14  <b>Suite</b> [1] - 13:2  <b>supplies</b> [1] - 19:4  <b>suppose</b> [1] - 50:18  <b>supposed</b> [1] - 25:24  <b>Survey</b> [2] - 3:16, 4:5  <b>swear</b> [4] - 37:4, 37:5, 41:17, 56:9  <b>SWORN</b> [1] - 3:2  <b>sworn</b> [4] - 13:3, 37:11, 41:24, 56:15</p>	<p>8:25, 15:9, 18:11, 37:5, 40:7, 41:3, 41:17, 45:1, 50:14, 56:9, 56:23, 60:7  <b>THE</b> [1] - 1:3  <b>therefore</b> [2] - 49:11, 49:18  <b>think's</b> [1] - 35:9  <b>THOMAS</b> [2] - 2:14, 3:10  <b>three</b> [3] - 4:11, 10:12, 14:24  <b>three-sheet</b> [1] - 14:24  <b>throughs</b> [5] - 52:20, 53:10, 53:12, 54:17, 54:21  <b>timeframe</b> [1] - 59:7  <b>tiny</b> [1] - 34:7  <b>Title</b> [2] - 3:16, 4:5  <b>title</b> [1] - 14:15  <b>today's</b> [1] - 7:23  <b>Tom</b> [1] - 41:20  <b>tonight</b> [6] - 5:18, 6:25, 8:20, 8:24, 11:16, 37:25  <b>total</b> [2] - 18:3, 20:7  <b>touch</b> [1] - 10:24  <b>toward</b> [1] - 42:5  <b>towards</b> [1] - 34:24  <b>tower</b> [6] - 7:3, 18:8, 19:2, 21:16, 22:11, 36:6  <b>town</b> [3] - 24:11, 50:25, 51:8  <b>traffic</b> [9] - 9:4, 9:5, 10:15, 10:17, 10:18, 33:16, 33:17, 36:15  <b>TRANSCRIPT</b> [1] - 1:3  <b>transcript</b> [1] - 60:7  <b>transportation</b> [1] - 45:9  <b>trap</b> [2] - 20:19, 38:3  <b>tree</b> [1] - 23:3  <b>trees</b> [1] - 23:1  <b>Troy</b> [1] - 2:8  <b>truck</b> [12] - 18:15, 19:17, 19:21, 38:4, 38:6, 38:21, 39:10, 40:5, 40:9, 44:19, 44:24, 45:10  <b>trucks</b> [1] - 34:7  <b>true</b> [1] - 60:6  <b>truth</b> [9] - 37:6, 37:7, 41:18, 41:19, 56:10, 56:11  <b>trying</b> [3] - 33:12, 36:13, 53:11  <b>turn</b> [2] - 28:6, 44:20  <b>twice</b> [2] - 19:11, 40:16</p>	<p><b>two</b> [9] - 17:4, 17:5, 23:15, 23:18, 23:20, 23:21, 50:4, 54:5, 55:16  <b>type</b> [5] - 8:10, 19:3, 34:4, 34:8, 44:24  <b>typical</b> [1] - 38:23  <b>typically</b> [1] - 38:4</p>
<b>U</b>				
<p><b>U-shape</b> [1] - 16:15  <b>Under</b> [2] - 25:22, 26:3  <b>under</b> [8] - 9:18, 12:23, 14:11, 17:12, 20:17, 24:24, 25:25  <b>underground</b> [5] - 21:4, 21:8, 31:9, 31:12, 31:22  <b>unit</b> [1] - 45:7  <b>units</b> [1] - 45:10  <b>Unless</b> [1] - 11:18  <b>up</b> [23] - 8:2, 9:18, 10:16, 11:19, 14:12, 18:4, 18:20, 19:17, 19:19, 19:22, 19:23, 24:5, 34:9, 35:2, 36:4, 36:25, 38:21, 42:4, 46:10, 46:14, 57:8  <b>updated</b> [2] - 32:3, 50:3  <b>upgraded</b> [1] - 23:15  <b>utilities</b> [6] - 20:9, 21:2, 21:3, 31:7, 31:8, 31:20  <b>utility</b> [1] - 39:1  <b>Utility</b> [1] - 20:8  <b>Utility-wise</b> [1] - 20:8</p>				
<b>V</b>				
<p><b>variance</b> [5] - 8:13, 8:16, 51:14, 53:6, 54:23  <b>Variance</b> [2] - 3:15, 4:2  <b>variances</b> [2] - 8:14, 27:10  <b>various</b> [1] - 9:19  <b>vegetation</b> [1] - 37:3  <b>Vegetation</b> [1] - 37:18  <b>vegetative</b> [1] - 37:14  <b>vehicle</b> [10] - 18:10, 18:19, 18:20, 19:9, 19:18, 34:8, 34:12, 34:14, 38:10, 45:4  <b>vehicles</b> [7] - 18:2, 18:3, 18:4, 34:3, 34:4, 34:11, 35:7</p>				



<p><b>Vice</b> <sup>[1]</sup> - 3:5  <b>VICE</b> <sup>[14]</sup> - 1:10, 5:5, 10:19, 19:5, 33:25, 34:16, 35:4, 35:15, 36:2, 36:17, 48:3, 48:6, 51:23, 58:12  <b>vicinity</b> <sup>[2]</sup> - 23:12, 42:12  <b>view</b> <sup>[1]</sup> - 29:20  <b>virtue</b> <sup>[1]</sup> - 27:14  <b>visibility</b> <sup>[1]</sup> - 23:5  <b>visual</b> <sup>[2]</sup> - 37:17, 43:16</p>	<p>26:24, 34:13  <b>WILLIAM</b> <sup>[1]</sup> - 1:14  <b>window</b> <sup>[8]</sup> - 8:4, 8:8, 8:11, 16:3, 16:4, 16:16, 18:1, 53:24  <b>wise</b> <sup>[3]</sup> - 20:8, 23:14, 27:2  <b>wish</b> <sup>[1]</sup> - 22:2  <b>with..</b> <sup>[1]</sup> - 10:25  <b>WITNESS</b> <sup>[1]</sup> - 3:2  <b>witness</b> <sup>[6]</sup> - 7:20, 8:22, 9:9, 55:17, 55:19, 56:1  <b>witness's</b> <sup>[1]</sup> - 11:24  <b>witnesses</b> <sup>[1]</sup> - 59:15  <b>wonderful</b> <sup>[1]</sup> - 55:23  <b>wondering</b> <sup>[1]</sup> - 45:14  <b>word</b> <sup>[1]</sup> - 36:1  <b>words</b> <sup>[1]</sup> - 8:21  <b>world</b> <sup>[1]</sup> - 7:23  <b>Wostbrock</b> <sup>[2]</sup> - 3:5, 44:4  <b>WOSTBROCK</b> <sup>[17]</sup> - 2:15, 3:9, 36:24, 37:8, 37:13, 37:23, 38:17, 39:9, 39:14, 40:17, 41:4, 44:5, 44:8, 44:10, 47:2, 47:8, 47:18  <b>Wostbrock's</b> <sup>[3]</sup> - 16:18, 28:7, 33:1  <b>written</b> <sup>[1]</sup> - 4:19</p>
<b>W</b>	
<p><b>waiver</b> <sup>[1]</sup> - 39:17  <b>walk</b> <sup>[1]</sup> - 9:19  <b>wants</b> <sup>[1]</sup> - 29:13  <b>waste</b> <sup>[1]</sup> - 22:14  <b>water</b> <sup>[2]</sup> - 20:21  <b>WB-40</b> <sup>[4]</sup> - 18:9, 45:2, 45:4, 45:15  <b>WEDNESDAY</b> <sup>[1]</sup> - 1:2  <b>Wednesday</b> <sup>[1]</sup> - 4:17  <b>week</b> <sup>[3]</sup> - 19:11, 38:24, 40:16  <b>WEINER</b> <sup>[1]</sup> - 2:7  <b>Weiner</b> <sup>[1]</sup> - 12:10  <b>Wendy's</b> <sup>[6]</sup> - 12:13, 13:13, 52:2, 52:3, 52:9, 54:11  <b>west</b> <sup>[4]</sup> - 21:16, 22:11, 30:25, 34:21  <b>Westwood</b> <sup>[2]</sup> - 41:23  <b>WHITAKER</b> <sup>[50]</sup> - 2:3, 2:4, 5:22, 10:8, 11:2, 11:7, 11:17, 13:8, 13:15, 14:2, 14:10, 21:19, 22:3, 33:15, 35:11, 35:16, 36:15, 37:21, 39:3, 40:7, 40:22, 43:8, 43:12, 44:2, 44:7, 44:22, 44:25, 45:12, 45:15, 45:17, 45:25, 46:9, 46:17, 46:20, 46:23, 47:7, 47:10, 51:9, 51:19, 52:14, 53:3, 53:8, 54:24, 56:23, 57:14, 57:21, 58:3, 58:25, 59:8, 59:21  <b>Whitaker</b> <sup>[3]</sup> - 3:3, 5:24, 5:25  <b>whole</b> <sup>[5]</sup> - 33:13, 37:6, 40:20, 41:18, 56:10  <b>widening</b> <sup>[2]</sup> - 29:7, 43:24  <b>width</b> <sup>[4]</sup> - 16:2, 17:25,</p>	<p style="text-align: center;"><b>Y</b></p> <p><b>yard</b> <sup>[7]</sup> - 25:1, 25:8, 25:9, 25:11, 26:10, 26:11  <b>yards</b> <sup>[3]</sup> - 20:6, 20:7  <b>year</b> <sup>[1]</sup> - 11:3  <b>yew</b> <sup>[2]</sup> - 23:7, 23:9</p>
<b>Z</b>	
<p><b>Zelta</b> <sup>[2]</sup> - 3:20, 10:11  <b>Zone</b> <sup>[4]</sup> - 15:14, 27:3, 50:22, 54:22  <b>zone</b> <sup>[4]</sup> - 25:13, 26:15, 50:20, 50:21  <b>zones</b> <sup>[2]</sup> - 50:24, 51:5  <b>zoning</b> <sup>[4]</sup> - 24:1, 24:17, 24:20, 27:2  <b>Zoning</b> <sup>[3]</sup> - 2:2, 4:16, 27:4  <b>ZONING</b> <sup>[1]</sup> - 1:1  <b>zoning-wise</b> <sup>[1]</sup> - 27:2  <b>ZUIDEMA</b> <sup>[1]</sup> - 1:17</p>	