

## Board of Zoning Appeals

1 Appeal Application #AP-19-11

April 24, 2019

### LEGAL NOTICE

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5 Notice is hereby given that the Orange Township Board of Zoning Appeals will hold a public hearing on  
6 Wednesday, April 24, 2019, beginning at 6:30 p.m. to consider the following application/s:

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8 **Appeal Application #AP-19-11, Buckeye Investments NOW Inc,** Requesting an appeal of the zoning  
9 inspector's decision to issue a commercial zoning permit of Sections 14.06(b(3)), 14.07(c), 14.07(f), and  
10 14.07(g) from Zoning Case #18517 of Olentangy Crossings South Planned Commercial & Office (PCD)  
11 District for the new construction of a Convenience Store and Gas Station known as Friendship  
12 Foodstore. The property in question is located at 45 Coal Bend, Lewis Center OH 43035 having  
13 permanent parcel number 318-220-02-017-002.

14  
15 The hearing will be held at the Orange Township Hall, 1680 East Orange Road, Lewis Center, Ohio,  
16 43035.

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18 The applications and plans are available for inspection for a period of at least 10 days prior to the hearing  
19 at the Orange Township Zoning Office, 1680 East Orange Road, Lewis Center, Ohio, 43035. Zoning  
20 Office hours are Monday through Friday, 8 a.m. to 4:30 p.m. except legal holidays.

21 Following this hearing the Board may have a meeting for general purposes to consider such business as  
22 may properly come before it including, but not limited to, consideration and/or approval of minutes,  
23 scheduling future hearing dates for this or other applications and like matters.

24  
25 The person responsible for the publication of this notice is Michele Boni, Orange Township Zoning  
26 Department.

27  
28 *Rick Oster, Chairman*

29 *Michele Boni, Orange Township Zoning Department*

30  
31 *Please publish one time, on or before Sunday, April 14, 2019 in The Delaware Gazette*

32  
33 Mr. Oster called the meeting to order at 6:30 p.m.

34  
35 Roll: Rick Oster, Victoria Jordan, Kelvin Trefz, Aaron Shipley

36  
37 Township Officials also present: Michael McCarthy, Township Counsel  
38 Michele Boni, Planning and Zoning Director

39  
40 Ms. Boni: Ms. Sundar did indicate that she was unable to attend.

41  
42 Mr. Oster: Have all the proper notices been given?

43  
44 Ms. Boni: Yes, and I sent it to the abutting property owners.

45  
46 Mr. McCarthy: Before we begin, I want to lay out the procedure. This is what is referred to as a quasi-  
47 judicial hearing; it's not a public comment session, so the function of the exercise is to determine if the  
48 Planning and Zoning Director correctly applied the approved development plan and Zoning Resolution in  
49 approving Zoning Permit Application ZC-18-04, and the testimony must be limited to facts related to that.

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50 There have been 3 objections raised by Kevin Schatz, who brought the appeal. Michele, I believe you  
51 indicated that was timely?

52

53 Ms. Boni: Yes.

54

55 Mr. McCarthy: And those will be the focus of the hearing this evening. I will read the summaries. First is  
56 whether the Zoning Inspector correctly decided that a gas station/convenience store is a permitted use.  
57 Secondly, whether the Zoning Inspector correctly decided that the site plan does not violate Section 14.0  
58 7 c), f) and g), Light, Noise and Odor Requirements. And finally, if the Zoning Inspector correctly  
59 decided that the site plan does not violate Section 14.06 b)3), Front Elevation Facing US 23 requirement.  
60 So those are the issues we'll be talking about. If you are called or would like to come up to speak as a  
61 witness, those are the issues we will be talking about. If you have any further questions, let us know. If  
62 you come up, we will ask each of you to come to the podium and be recognized by the Chair. No talking  
63 please from the audience; it makes it difficult for the court reporter and it doesn't add anything to the  
64 process. The appellant, Mr. Schatz, has the burden of proof in this case, that is proof by preponderance or  
65 greater weight of the evidence. He will proceed first with his witnesses; his proponents can then speak as  
66 well. He and his people testifying can be cross-examined by those present, that would include the Board  
67 members or other people present in this room. If you do speak, you will be asked for your name and  
68 address for the court record and it also might be important later on. Following the presentation by Mr.  
69 Schatz and his crew, the Planning and Zoning Director and her proponents will give their presentation.  
70 They too can be questioned just as the appellant and his folks. When the testimony is ended, the matter  
71 will then go to the BZA for its determination and, depending on how this proceeds, that could go in a  
72 couple ways and I won't go over the options right now. All testimony will be under oath; it will be  
73 necessary for people to swear or affirm to the truth of their statements.

74

75 John Kuhl, Vorys, Seymour and Peas, 52 E. Gay Street, Columbus, Ohio 43215, I represent the applicant  
76 and landowner, I have a point of procedure. Based on the presentation that's been provided to the Board,  
77 it appears that appellant's counsel is going to provide testimony evidence as opposed to witnesses if he's  
78 going to read thru this outline, in which case, appellant's counsel needs to be sworn in so that he can be  
79 cross-examined.

80

81 Mr. McCarthy: I agree; if counsel are going to do other than call witnesses and ask questions, they will  
82 need to be sworn in.

83

84 Mr. Kuhl: And also be subject to cross-examination. For purpose of the record, I was making the point  
85 that from the appearances of the power point presentation that's been provided, it appears that counsel for  
86 the appellant is preparing to offer testimony to this Board and, as such, he needs to be sworn in just as any  
87 other witness offering testimony and be subject to cross-examination.

88

89 A court reporter from Armstrong & Okey, Inc. administered the oath to Mr. Trombley

90

91 Logan Trombley, Warner Mendenhall, 190 N. Union Street, Akron, Ohio 44304, attorney for Mr. Schatz,  
92 To give you a greater context of what I'm going to go thru right now and to provide better context for the  
93 witnesses I'm going to bring up. I'm going to go thru the power point presentation. A lot of the materials  
94 I can't be questioned about if there's any math involved or anything. In terms of facts that have been  
95 related, I can be questioned about it, I researched it myself. Everything I gave to the Board in the packet is  
96 just this power point presentation with notes attached to it. With the notes, everything, every bullet, every  
97 figure has a citation to it, a source where I got it from. I want you for any evidence or facts to rely on  
98 what's presented in this presentation, the sources that are attached. In the back of the packet, anything that  
99 I cite to as an exhibit in the notes is attached in the back and highlighted so you can make reference to it.  
100 I'm not asking you to believe in me or what I say, I'm asking you to look at it yourself and believe it

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101 yourself. I provided everything you need to make the decisions that are necessary in this case. I think this  
102 case is unique for the entire purpose of why we have Boards of Zoning Appeals, I think the Inspector did  
103 a good job of looking at what she was given and making the decision based off what she was given but, as  
104 Board members, remember there were a couple meetings before this for previous variances, there was  
105 testimony given under oath about certain parts of this plan that were not included in the site plan and a lot  
106 of what I'm doing here was either stuff that wasn't explicitly put in the site plan or wasn't necessarily  
107 brought up in the letter approving it. One big issue brought up in the variance meeting, the front elevation  
108 issue, where the inspectors themselves said they had a hard time making the call on that; they wanted the  
109 BZA to hear about it, so I want to give the BZA the chance to hear that issue and decide on that today. I  
110 will go thru this presentation to give greater context of what our appellant says or the objections and  
111 issues to the ruling. After that I will bring up 5 witnesses, people who are closest to this site and will be  
112 mostly affected by it. Appeal #1 is about permitted use violations. This property is subject to the  
113 development plan for a Planned Commercial District which was approved February 23, 2005 by the  
114 Orange Township Zoning Commission. The development plan consisted originally of 22 acres of single  
115 family residences and approximately 8 acres for commercial office buildings. The thing to understand  
116 about this is this plan was made in conjunction with the residents, with the concerns of the residents'  
117 understanding that residential property is going in right next to it, so there are certain things put in to  
118 protect those residents and it was a common plan, so that is something for you to understand. The plan  
119 was created with the residents' involvement and the future residents in mind, and also uniquely, All  
120 Shepherd's Lutheran Church in mind which is a church directly to the south where this site plan is  
121 located. The development plan states, the applicant proposes a maximum of four lots for a total of 8.188  
122 acres and there shall be no more than two lots adjacent to US Route 23. The minimum lot size shall be  
123 one acre per lot except for lots adjacent to US 23 which shall be a minimum of 1.5 acres. The  
124 development plan proposes a road which would split the district in half. In the plan you can see there is a  
125 long list of permitted uses and excluded uses that is applicable to this plan. The development plan  
126 generally excludes businesses that are related to any automobile and truck services, i.e. bus or truck  
127 terminals for fueling, truck service centers, tractor sales, drive thru's, drive ins, car repair and car lots.  
128 The development plan also excludes accessory buildings used for drive up services, likened to an ATM, a  
129 drive in service where you drive up, get in, get out, you interact with it, and it's a building separate from  
130 the actual building, so I think it's pretty similar to a canopy. The development plan also specifically  
131 excludes gasoline stations on lots abutting All Shepherd's Lutheran Church. I think the key thing about  
132 understanding this development plan is understanding the object and the purpose behind it was to protect  
133 the residents, exclude certain types of uses in this area, and the residents and their testimony will say that  
134 when they purchased their property, they were told gas stations and things like this were not going to be  
135 allowed. It was going to be medical office buildings, different types of commercial. When they bought  
136 that property, they relied on that from the developers and neighbors, and that was the general under-  
137 standing in the neighborhood throughout this time. After the development plan was done, the lot was later  
138 split into 2 lots, north and south, so the parcel we're talking about today is in the pink outline, below that  
139 is a pretty thin parcel, and below that is All Shepherd's Lutheran Church, so everything is pretty much on  
140 top of each other. The proposed road was never built, there's nothing between that parcel and the Church,  
141 so in effect what's going to happen is this site plan, if constructed, everything that was to protect the  
142 Church, the residents, it's going to be a violation of that object and purpose because there's going to be  
143 nothing in between to protect from those uses Currently the southern, small parcel is owned by  
144 McDonald's and if you refer back to the permitted use exhibit, that the big thing that was not a permitted  
145 use, was drive-thru's and we all know what McDonald's is. They've run out their permit, they don't have  
146 any plans of construction there, the parcel hasn't been sold, so for the foreseeable future, that's going to  
147 be a vacant lot. So the argument here is that the proposed kitchen violates the whole purpose of the plan  
148 by constructing a gasoline station with an accessory building that we also believe is not allowed under the  
149 permitted uses abutting All Shepherd's Lutheran Church. First we want you to get acquainted with the  
150 area we're dealing with. You can see the site plan with the residences next to it, there's a bank to the  
151 north of it, so the residents themselves will testify what their view is and what they can see, what they

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152 can hear. From the site plan looking at the residences, there is a slight berm, not providing much  
153 protection because the houses come over that berm pretty quick and there isn't anything in between the  
154 site and that berm in that road. Next slide.....

155  
156 Mr. Kuhl: I'm going to object to this portion of the presentation. As referenced in this exhibit compiled  
157 by LSA Associates, Inc. in 2004, unrelated to any analysis of this property or the proposed development.  
158 It's hearsay, and the witness' testifying hasn't laid any foundation to the fact that he's qualified to  
159 interpret this data, that he has been trained in the science related to this data, and I have not heard any  
160 evidence and won't hear any evidence that he has any assurance that the company that did prepare it is  
161 qualified or otherwise certified to even produce the data that is being presented to the Board as site plans.  
162 As such, it's hearsay that lacks foundation and it should be excluded from the Board's consideration.

163  
164 Mr. McCarthy: I guess I would indicate the objection is made for the record and the Board of Zoning  
165 Appeals members have been given the view, and certainly you will have your turn to speak as well.

166  
167 Mr. Kuhl: For purposes of the record, I would just like to make a standing objection to any testimony by  
168 this witness as it relates to noise evaluations and reference to third party noise studies that have nothing to  
169 do with this particular property, this particular case, this city, this use, or anything having to do with the  
170 issues that are presently before the Board.

171  
172 Mr. McCarthy: Mr. Kuhl, do you believe that you are capable to expanding on this in your cross-  
173 examination?

174  
175 Mr. Kuhl: I am but for purposes of the record, I just want to establish it.

176  
177 Mr. Trombley: Respecting the opposing counsel's opinion, this quasi-judicial proceeding; we are not  
178 subject to the rules of evidence here, I'm trying to give the facts that have been given. Let's understand  
179 what BZA is in the first place. A lot of times it is per se, people coming up here providing opinion,  
180 providing facts like that; this is not a court of law. This is a point where you can produce facts and  
181 evidence so that you, as the members, can have the best educated decision that you can given what's in  
182 the situation here. I feel you can have as many experts at what cost and reports but that would be  
183 prohibitive cost and ridiculous for the entire proceedings of what BZA's are; it's a place for the people as  
184 residents, as normal people, to deal with these very local issues. What I provided earlier and the  
185 attachments you have to it, it's a simple study, a study done about sound and construction. What they did  
186 in this study was simply measured the decibels, a decibel being a unit of measurement for sound. To get a  
187 better idea of what that means in layman's terms, look at the table and it gives you an idea of what it  
188 means, so 85 decibels is loud; it's like freight cars and this gives you a very good way to understand what  
189 the subjective meaning of what decibels means, what you can and can't hear. Go down to 80, it's a  
190 vacuum cleaner, 75 is a busy restaurant; 70 is a three-way auto traffic stop, so these are things that are  
191 created so laymen can understand what the sound actually means and what is the reality of what's going  
192 to happen. This is extremely important for understanding how this Code is written and how you can apply  
193 this to this situation. I wanted to give this because people like to have their testimony but what does a  
194 resident know about sound and how it travels? I wanted to give you this so you could make the decisions  
195 yourself. I don't pretend to be an expert nor do I want to be; all I have is math in front of me and it's up to  
196 you to do the math. Understanding the math behind this, noise is generated from a source and the decibel  
197 level decreases as the distance from that source increases. Sound dissipates exponentially with the  
198 distance from the noise source. For a single point source, sound levels decrease approximately 6 decibels  
199 for each doubling the distance from the source. This drop off rate is appropriate for the noise from  
200 stationary equipment, so that is specifically talking about the formula, the math required to figure out for  
201 stationary equipment how the decibels drop off over space or distance. I provided a table using 86  
202 decibels as a truck; take that as you will and use whatever you think is reasonable. I used the distance and

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203 the numbers of the decibels based off of that. I didn't do the math myself; there's a level of sound  
204 distance calculator and I verified everything using that. The logic behind it is pretty simple. They start at  
205 50' which is where this was originally measured from. At 86, when you double it, you subtract 6, so you  
206 double 50 and you subtract and it goes by 6, it goes to 80, then you double it again, you subtract another 6  
207 and it goes to 200, double it again, and it goes to 400, it goes down another 6. I provided it so you can see  
208 the degradation of how it goes. The Board members can go back to it and we'll get confirmatory  
209 testimony from the opponents to the site plan after this is over just to confirm what I am saying, but refer  
210 back to the variance meetings, the big issue was this fuel truck that was coming in to refill the gas station.  
211 What we talked about at that meeting was literally walking thru how would that truck move thru that area,  
212 where would that truck go according to the site plan that was proposed. I remember the applicant going  
213 up, showing it with the map....

214  
215 Mr. Kuhl: I'm going to object again to hearsay. The proceedings for the prior variance meetings are not  
216 part of this record. This is a quasi-judicial hearing, you are acting as judges, this is a formal process where  
217 you are to consider the evidence that is presented before you and it is inappropriate hearsay for a  
218 proponent of any evidence to say, remember my recollection of what happened at the last meeting and  
219 trust me on this one and then I'm going to explain it for you. This type of testimony cannot be permitted  
220 and to the extent it is permitted, this Board is setting itself up to be reversed on any decision that it makes  
221 in this case. Hearsay testimony should be excluded and as the quasi-judicial body here, you have the  
222 ability to determine whether or not this evidence is hearsay and whether or not you may permit it to be  
223 heard. I ask you sustain my objection and preclude the introduction of blank hearsay into these  
224 proceedings.

225  
226 Mr. McCarthy: As Mr. Trombley pointed out, strict rules of evidence to not apply for the BZA, a fact  
227 you're well aware of, but the Board should be suspect in hearsay; you'll have to judge for yourself if a  
228 statement without any support or documentation is appropriate for making a decision. Ultimately, you  
229 need to work thru that.

230  
231 Mr. Oster: I believe I was the one who brought up the question of what route those trucks were going to  
232 take to get to their fuel point and they brought up that pattern.

233  
234 Mr. Kuhl: My point is that your decision tonight is limited, and you're limited to the evidence being  
235 presented to you tonight with testimony. You can't rely on your recollections at what happened at past  
236 meetings; that is totally impermissible. This is a quasi-judicial hearing that needs to be decided based on  
237 the evidence presented tonight. And while the evidence rules are lax, there are still evidence rules that  
238 apply even to quasi-judicial hearings. It's not as if we throw out all recognized rules related to evidence.  
239 The only thing this Board is permitted to consider under Ohio law is the evidence presented to this Board  
240 tonight.

241  
242 Mr. Trombley: He is correct in that assertion. I will get to it and we will verify what I said. If I am  
243 incorrect in my recollection of that, I hope to be corrected, I'm not trying to fool anyone but I want the  
244 BZA to have all the evidence available. But in the interest in trying to get thru this fast enough and trying  
245 to get everyone's mind wrapped around this, I don't want this broken up by testimony; we'll save that for  
246 the end so that everything that can be brought together for you and you can weigh everything accordingly.

247  
248 Mr. McCarthy: Mr. Trombley, if you could possibly develop this thru fact testimony from a witness, I  
249 think that would be more appropriate.

250  
251 Mr. Trombley: I can do that right now, and that would be fine. Before I bring them up, I would just like to  
252 establish what I'm trying to do in terms of understanding the noise, and I think the most important portion  
253 of understanding noise is where the truck is going to be located when it does the refueling because that's

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254 where it's going to be sitting most of the time when it's actually doing that and that's going to be the  
255 longest extent of the noise, so I'm going to bring up a witness.

256

257 Mr. Kuhl: This witness needs to finish his testimony and be subject to cross-examination. He cannot take  
258 a break in his testimony to call up witnesses willy-nilly. He needs to finish his presentation of evidence,  
259 subject to cross-examination, and then he calls his next witness.

260

261 Mr. Oster: Isn't his witness part of his evidence?

262

263 Mr. Kuhl: He has been testifying as to facts; he is a testifying witness. A witness testifies, the witness is  
264 then subject to cross-examination and then the appellant in this case, the proponent here, can call its next  
265 witness.

266

267 Mr. Trombley: As a quasi-judicial proceeding, we have flexibility.

268

269 Mr. McCarthy: I understand that. Counsel, again make your objection; Mr. Trombley, try and keep  
270 straight as to when you're testifying and when you're presenting witnesses.

271

272 Mr. Trombley: That's why I wanted to do it at the very end, so it would be very clear. I'll go thru this and  
273 if there's anything that contradicts what I said, he'll say so and you'll be able to figure it out and that way  
274 everything is clear. The diagram on the figure is for your own purpose to understand the math behind it.  
275 All you have to do is subject yourselves to the tables and look at the distances included in the site plans.  
276 Some of this is estimated, it's not going to be exact, but it gives you an idea of the math involved. I think  
277 it would be easier for you to do yourself, just take a look at the diagram and use your common sense to  
278 figure it out. The big thing here that I want you to process is what the actual wording is, the development  
279 plan says "no uses shall be located, no equipment shall be installed in such a way that's producing  
280 intense, earth shaking vibrations which are discernible without instruments at or beyond the property line  
281 of the subject premises". The site plan provides the property line; it's roughly right before the road, so the  
282 question is is there a use and what's a use? I argue that a refueling truck that comes every single day  
283 because it's necessary, it is equipment that will always be there every day, it's a necessary use for this  
284 business to function. There is no way to get around it. You have to get a truck to refill that station, that  
285 truck is going to make noise and that noise will extend beyond the property line. So I ask that you look at  
286 the distances, look at the decibels, refer back to the table yourself and remember the table says anywhere  
287 around the 70's is considered moderately loud. You can use your judgment on that at the property line.  
288 You can look at the figure, you can do the math, do the estimation and think about it from a common  
289 sense angle; are you going to hear that truck refueling that station when it's parked there for 30 minutes at  
290 night or whatever time of day it is. Next section....

291

292 Mr. Kuhl: I'm not going to belabor the point, but I ask for a standing objection as to this witness' testi-  
293 mony regarding light evaluation, headlight glare for the same basis that I said with respect to sound. He  
294 has not demonstrated he's qualified to offer expert opinion testimony regarding headlight glare, etc., and  
295 the materials on which he's relying are unauthenticated, there's been no indication that they're a reliable  
296 source of information, we have no idea who the authors are, what their qualifications were, etc., so I  
297 would like a standing objection as to the presentation by this witness of this type of expert testimony.

298

299 Mr. Trombley: Again, I respect the opposing counsel's objection and he is correct, I am not an expert, I  
300 don't pretend to be. I'm merely providing you the resources to which you can make a sound judgment  
301 based off this. The source at issue here is based off the Federal regulations. What I'm trying to get across  
302 is just for measurement to try and get an idea of how far the lights go. They talk about glare. Think about  
303 while you're going down the highway when someone's coming at you, at what point can you see them  
304 and the glare gets on you. The Federal regulations regulate glare to a certain extent; that's all based off of

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305 and explained in the attached regulations of how it got to that point, where it got to that number. I just  
306 want to use it as a proxy; everyone can use their common sense and understand how far headlights go and  
307 how far you can see headlights. The primary issue with car headlight glare, and I believe the Inspector did  
308 a good job looking at everything she was given. I don't believe this was an issue that was thought of  
309 during that inspection but the requirement of the Code is each building site shall have adequate exterior  
310 lighting for its intended use while minimizing glare without creating lighting that would disturb other  
311 sites. I think there's something particularly troubling about this site design, with this outward facing  
312 parking lot that creates, just looking thru the routes cars would go. They would turn in, it would always  
313 create this headlight issue, it's a gas station, it will be open during the night. This will be an exterior  
314 lighting issue that would cause glare into the residences and disturb the other sites. I will get more  
315 testimony about that from the residents. The grounds for the appeal, this is a violation of the front  
316 elevation requirement. The development plan states canopies and support columns associated with  
317 businesses as well as secondary structures within the development will need to adhere to the same  
318 architectural requirements as the main buildings. For example, the canopies are required to comply with  
319 the four-sided architectural require-ments and the peaked roof requirements of the zoning application, and  
320 these support columns or canopies shall be the same materials as the buildings itself. Any lot with  
321 frontage along 23 shall orient the proposed structures so their front elevations face US 23. Front elevation,  
322 and the term is proved in the notes there of the source, is called entry elevation. There's a lexicon of urban  
323 architecture that kind of gives you more of an idea. I suggest you peruse it when you get a chance to  
324 deliberate to get an idea what the word frontage means in the architectural world. I again don't try to be  
325 an expert, but I want you to use what you think the word means yourself, but I believe the front elevation  
326 is what by common sense you consider as your entry elevation; it's where the public enters your facility,  
327 the main point, the focal point of your building. That is where you are facing the road and people access  
328 your building. I know we talked about this issue in the variance meetings. The applicant proposed a  
329 variance to try and alleviate themselves from this requirement. I won't testify because I don't recall  
330 whether it was denied or they took it off the floor, but either way, it was not decided on. So they created a  
331 new site plan where they added another entrance on the side facing US 23. So the question is, is that new  
332 entrance they added considered a front elevation? Does that satisfy the requirement it's facing 23? I don't  
333 believe it does. You can use your common sense that whenever you go to a gas station, where you park,  
334 where you enter the building, what is the main focal point of that building? It's the gas canopy. I think it's  
335 kind of misleading to consider that the front elevation; I think it goes against the object and purpose of  
336 that regulation. If you really want to be a stickler and read into this law, it says that any canopies will  
337 need to adhere to the same architectural requirements as the main building. It says any lot with frontage  
338 along US 23 shall orient the proposed structures so their front elevation will face US 23, so you can  
339 maybe argue that that entrance facing US 23 is a front elevation, but it's going to be harder to argue that  
340 the canopy side is the front elevation of the canopy. Don't you have to apply the same rule to an  
341 accessory building to that structure? That's explicitly what it says in that rule. I believe if you reoriented  
342 it, and I'm not trying to say I've looked at every site plan that there are for gas stations in the United  
343 States, but if we could do an exhaustive research, I could find 100 of these to produce in support. If you  
344 do a simple search of this, you find the front elevation of gas station design and site plan. Look at the first  
345 one, front elevation at the canopy; the second one, front elevation at the canopy; same with the third,  
346 fourth and fifth. I believe this is understood in the industry. Again, I leave it up to you to determine what  
347 you think that means. Moving on to the next, what would it look like if this was strictly enforced and  
348 corrected? Flip around the site plan and you would see that the front, canopy would be facing toward 23  
349 and everything would be focused off toward 23. This actually has some ancillary benefits to it. Any  
350 refueling point would be the furthest away from where the residents would be; you would need to have  
351 that parking lot there.

352  
353 Mr. Kuhl: Again, I am going to object. We are here to evaluate the site plan that was approved by the  
354 Zoning Director in this case, and it is not proper for the Board to contemplate alternative site plans or

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355 arrangements. The issue is did Ms. Boni appropriately apply the Zoning Code to the application before it,  
356 period. This is wasting everyone's time and is totally irrelevant.

357 Mr. McCarthy: It is not an option for this Board to redesign or do anything other than do as Mr. Kuhl  
358 indicated, judge whether or not Ms. Boni did her job, that's it.

359  
360 Mr. Trombley: True, and I did not ask you to redesign because if they were to do that, there would be  
361 setback restrictions. This is not actually a design that is possible under the current, or at least in the way  
362 they have imagined, if I flipped it. I remember Mr. Oster from a previous meeting wanted to have a  
363 visualization of what that front would look like, and I wanted to provide a visual for the Board to imagine  
364 if it properly enforced the front elevation requirement, what that would look like. If the Board were to  
365 deny this permit based on that, the applicant can always come back with a revised site plan with variances  
366 or anything that is necessary. It's not like it would change, it would make it so it's not allowed. It would  
367 have to change and make it strictly enforced according to the Code. I believe a lot of the issues that were  
368 addressed previously in this would be helped if this was strictly enforced. In conclusion, all I ask of the  
369 BZA is to make a decision on these core issues. A lot of these are rough issues, you've got to read what  
370 the language says specifically. You've got to understand the broader picture. It's not just the site plan, it's  
371 a greater picture and this is what BZA's are uniquely designed for, to listen to the evidence, consider the  
372 evidence that has been put forth, consider the testimony, and make an advised decision that would be  
373 proper and necessary. All I ask is as you make your decision, please provide specifically for the record the  
374 basis of that decision, whether it's all three, two out of the three, none out of the three, so it's clear if there  
375 was any proceedings after this that the record is clear and everyone knows what the basis of the Board's  
376 decision was. It is a requirement that you have findings of fact that go along with that. I'm sure Mr.  
377 McCarthy will explain that when deliberations take place, and I would appreciate that as well for  
378 purposes of the record. At this point I cease my testimony and allow myself to be cross-examined. I will  
379 then take the role of attorney and get testimony for the record.

380  
381 Mr. Kuhl: Mr. Trombley, you graduated college with degrees in political science and economics; tell me  
382 if there was one more.

383  
384 Mr. Trombley: It's called the PPE, political science, philosophy and economics as an interdisciplinary  
385 degree.

386  
387 Mr. Kuhl: You graduated from college in 2014?

388  
389 Mr. Trombley: Yes.

390  
391 Mr. Kuhl: Do you have any degrees in engineering science?

392  
393 Mr. Trombley: No.

394  
395 Mr. Kuhl: Do you have degrees related to the architecture science?

396  
397 Mr. Trombley: No.

398  
399 Mr. Kuhl: Have you studied any courses related to the analysis of sound and its effect on buildings or  
400 vehicles?

401  
402 Mr. Trombley: No.

403  
404 Mr. Kuhl: Have you ever received any education in the study of light and its effects on site plans?  
405



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406 Mr. Trombley: No.

407

408 Mr. Kuhl: You don't hold yourself out to be an expert in the area of sound?

409

410 Mr. Trombley: I do not.

411

412 Mr. Kuhl: You don't hold yourself out to be an expert in the area of lighting?

413

414 Mr. Trombley: I don't.

415

416 Mr. Kuhl: You're an officer of the court being a member of bar, correct?

417

418 Mr. Trombley: Yes.

419

420 Mr. Kuhl: And you recognize that one of the tenets and canons of being an officer of the court is not to  
421 mislead the tribunal, correct?

422

423 Mr. Trombley: Yes.

424

425 Mr. Kuhl: You indicated that the site at issue, which is north of the McDonald's site, abuts the All  
426 Shepherds Lutheran Church. Do you recall that testimony?

427

428 Mr. Trombley: Yes.

429

430 Mr. Kuhl: But that in effect is not the law in this state of Ohio for purposes of evaluating the Zoning  
431 Code, right?

432

433 Mr. Trombley: You want me to make a legal opinion?

434

435 Mr. Kuhl: I want you to provide accurate testimony and not mislead the tribunal as to when evaluating  
436 whether a lot abuts another lot, there is any Ohio law that says you ignore an adjacent lot because it has  
437 yet to be developed.

438

439 Mr. Trombley: Correct. The proper statutory construction is abutting would be literally parcel next to  
440 parcel. When I say "in effect", I don't mean from a literal legal standpoint. I mean it in terms of the  
441 effects that would come from that site. I don't mean that in the legal science, and I do not want to mislead  
442 the Board. I apologize if I misled the BZA into thinking...

443

444 Mr. Kuhl: In other words, you have no legal basis to suggest to the BZA that as a matter of law the  
445 Friendship Village, the Buckeye Investment property abuts All Lutheran Church?

446

447 Mr. Trombley: I contest that when you do statutory construction, in looking at construction, I believe that  
448 it violates the object and purpose of the development plan, but I do not intend that the exact language  
449 where it sits, abuts, the restriction applies from an exact statutory standpoint.

450

451 Mr. Kuhl: In other words, you concede, under the Zoning Code, this property does not abut all Lutheran  
452 Church, correct?

453

454 Mr. Trombley: Statutorily, you have a strict statutory interpretation of the Code.

455

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456 M. Kuhl: You've attached several materials or submitted several materials to the Board related to your  
457 presentation. One is a noise impact analysis of the Bloomington Truck Terminal prepared by LSA?  
458  
459 Mr. Trombley: Yes.  
460  
461 Mr. Kuhl: And that was prepared in 2013?  
462  
463 Mr. Trombley: Yes.  
464  
465 Mr. Kuhl: Who is LSA?  
466  
467 Mr. Trombley: I don't know.  
468  
469 Mr. Kuhl: Where are they located?  
470  
471 Mr. Trombley: I don't know.  
472  
473 Mr. Kuhl: Who are the authors of the study?  
474  
475 Mr. Trombley: I don't know.  
476  
477 Mr. Kuhl: What are their credentials?  
478  
479 Mr. Trombley: I don't know. It was a noise study, it's self-evident. You can read the report; it was a noise  
480 study based off of a construction zone.  
481  
482 Mr. Kuhl: Was it prepared on behalf of the applicant or was it prepared on behalf of the appellant or was  
483 it prepared on behalf of the Zoning Office?  
484  
485 Mr. Trombley: It was not prepared on behalf of anybody here.  
486  
487 Mr. Kuhl: Do you know why this noise impact study was prepared?  
488  
489 Mr. Trombley: It was prepared for the purpose that was stated in the report.  
490  
491 Mr. Kuhl: I'm asking if you know, without looking at it, why it was prepared?  
492  
493 Mr. Trombley: Not specifically.  
494  
495 Mr. Kuhl: In your PowerPoint presentation as to the issue of vibration and noise. Is this chart derived  
496 from that LSA report you just talked about?  
497  
498 Mr. Trombley: Yes.  
499  
500 Mr. Kuhl: You don't know who created it, what their credentials were, anything about it, correct?  
501  
502 Mr. Trombley: It's evident in the report.  
503  
504 Mr. Kuhl: But you don't know it?  
505  
506 Mr. Trombley: I don't.

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507 Mr. Kuhl: You don't know who wrote the report, correct?  
508  
509 Mr. Trombley: Not off the top of my head; it's in the report.  
510  
511 Mr. Kuhl: And you don't know their credentials?  
512  
513 Mr. Trombley: Not off the top of my head. Read the report.  
514  
515 Mr. Kuhl: And you have not spoken to anyone who authored the report to verify that they stand behind it,  
516 correct?  
517  
518 Mr. Trombley: No.  
519  
520 Mr. Kuhl: But you lifted this chart from that report and put it into the presentation to the Board, correct?  
521  
522 Mr. Trombley: Yes.  
523  
524 Mr. Kuhl: And I believe you indicated that trucks in this particular study are construction trucks?  
525  
526 Mr. Trombley: That was the context of the report, yes.  
527  
528 Mr. Kuhl: You're making an assumption that construction trucks have the same noise as the types of  
529 trucks that would be delivering fuel or food to this property, correct?  
530  
531 Mr. Trombley: Yes.  
532  
533 Mr. Kuhl: And you don't have any evidence to present to the Board that the fueling truck emits the same  
534 type of noise as a construction truck, do you?  
535  
536 Mr. Trombley: I do. I could provide evidence of the actual sounds of a semi truck on testimony provided  
537 today. As to this moment, no.  
538  
539 Mr. Kuhl: My question, do you have evidence of the decibel level of a fuel service truck as compared to a  
540 construction truck?  
541  
542 Mr. Trombley: Directly fuel service truck, no.  
543  
544 Mr. Kuhl: And according to this chart, it would appear that jackhammers have a decibel of 75 to 85,  
545 correct?  
546  
547 Mr. Trombley: Correct.  
548  
549 Mr. Kuhl: So your testimony to this Board is that a fueling truck has a greater decibel level than a  
550 jackhammer?  
551  
552 Mr. Trombley: Correct.  
553  
554 Mr. Kuhl: Have you ever been around a jackhammer?  
555

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556 Mr. Trombley: No, my testimony is not that. I did not testify to whether or not that is the truth; I merely  
557 provided the evidence, the report for this Board to make a determination based off of how they feel that  
558 report is written and the people behind it, what they believe with it.

559  
560 Mr. Kuhl: So you can't tell whether or not the chart contains truthful information?  
561

562 Mr. Trombley: The report itself, the methods they used, that's what a report is. It provides everything so  
563 that you, the reader, can make an informed decision based off what it says. I am not an expert, and I will  
564 not try to say I am, and I know that. I think everybody can use their common sense and understand this  
565 stuff but, just to provide greater context to the Board, this is helpful. That's what I believe and that's why  
566 I provided it.

567  
568 Mr. Kuhl: Turn to the gas tanker truck noise. Do you see that?  
569

570 Mr. Trombley: Yes.  
571

572 Mr. Kuhl: Correct me if I'm wrong, but your testimony to this Board is essentially that when a truck is  
573 there refueling the fuel center, based on this chart, which you don't know whether it contains truthful  
574 information or not, you have done a calculation that you determined what the decibel levels would be x-  
575 many feet away from the sound source, correct?

576  
577 Mr. Trombley: Correct.  
578

579 Mr. Kuhl: And in order to make that calculation, you used the website  
580 [www.sengpielaudio.com/calculator-distance.htm](http://www.sengpielaudio.com/calculator-distance.htm)?  
581

582 Mr. Trombley: Yes. I used it to verify it.  
583

584 Mr. Kuhl: Do you know who authored that website?  
585

586 Mr. Trombley: No.  
587

588 Mr. Kuhl: Do you know what their credentials were?  
589

590 Mr. Trombley: No.  
591

592 Mr. Kuhl: Do you know whether or not this calculator produces accurate information for the user of the  
593 information?  
594

595 Mr. Trombley: If you want to just note the reference, the formula that was provided, you can cross-check  
596 using common sense and see that the math lines up pretty easily.  
597

598 Mr. Kuhl: My question is, do you know whether or not this calculator, which you found on the internet,  
599 presumably using Google, correct?  
600

601 Mr. Trombley: Correct.  
602

603 Mr. Kuhl: So you Googled the distance calculator. Do you know in fact if the distance calculator you  
604 found on Google produces accurate results?  
605

606 Mr. Trombley: No, how could I?

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607 Mr. Kuhl: So you don't even know whether you are providing truthful testimony to this Board?

608

609 Mr. Trombley: I am not producing testimony to this Board; I am producing what other portions of other  
610 reports provide and what they can take away from them. I am merely providing them a basis by which  
611 they can understand it and make sense of it.

612

613 Mr. Kuhl: And you're providing information that you don't know the accuracy and can't verify?

614

615 Mr. Trombley: Not as an expert.

616

617 Mr. Kuhl: The Zoning Code says, "no uses shall be located and no equipment shall be installed in such a  
618 way as to produce intense, earth shaking vibrations which are discernible without instruments at or  
619 beyond the property line", correct?

620

621 Mr. Trombley: Correct.

622

623 Mr. Kuhl: I didn't hear in your testimony and you're not offering testimony that the sound is going to  
624 produce intense, earth shaking vibrations, are you?

625

626 Mr. Trombley: Not in my testimony, but in the testimony of people who are more experienced in the  
627 field, I will.

628

629 Mr. Kuhl: So you're not arguing to the Board or suggesting to the Board that the information you  
630 presented on Pages 8 and 9 provides information for the Board that the use of fuel trucks on this property  
631 is going to produce intense, earth shaking vibrations, correct?

632

633 Mr. Trombley: The purpose of my testimony is not to talk to the fact of earth shaking vibrations; I would  
634 use another testimony for that. Mine is purely about the decibels, whether or not that is discernible. That  
635 is the purpose of my testimony.

636

637 Mr. Kuhl: As to headlight glare, it says the foundation of this rule-making, at the bottom of this, it says  
638 the ADB Test Report; what is that?

639

640 Mr. Trombley: If you reference to Exhibit 4, I have a portion of when the Federal Register, when the  
641 Department of Transportation came out with this regulation; I didn't provide the entirety of the report, I  
642 just provided an excerpt right now for them to put a reference. It says the foundation of this rule-making  
643 is a set of glare limits specifying the amount of light that may be directed towards oncoming or preceding  
644 vehicles. The glare limits we propose are the same limits used in the ADB Report and presented earlier in  
645 this document, in Table 1 (oncoming glare limits) and Table 2 (preceding glare limits), except instead of  
646 regulating glare out to 239.9 m, we proposed to regulate glare out to 220 m.

647

648 Mr. Kuhl: Are you intending to present the ADB Test Report that is referenced in the document to the  
649 Board?

650

651 Mr. Trombley: The figures are included and referenced in Table 1 which was provided to the Board  
652 partially.

653

654 Mr. Kuhl: These Federal Regulations are not incorporated into the Orange Township Zoning Code, are  
655 they?

656

657 Mr. Trombley: No.

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658 Mr. Kuhl: And they are not incorporated in the development that is specific to this property, correct?

659

660 Mr. Trombley: No.

661

662 Mr. Kuhl: Turning to slide 12, it would appear you're attempting to tell the Board what the definition of  
663 front elevation should be, and you reference [www.hunker.com](http://www.hunker.com), correct?

664

665 Mr. Trombley: Correct.

666

667 Mr. Kuhl: What is hunker.com?

668

669 Mr. Trombley: It is an architectural website that provides blogs and such about architectures.

670

671 Mr. Kuhl: Do you know who authored this specific text that you're quoting?

672

673 Mr. Trombley: Not off the top of my head.

674

675 Mr. Kuhl: Do you know what that person's credentials were?

676

677 Mr. Trombley: No.

678

679 Mr. Kuhl: Do you even know whether that person is an architect or is trained in any building design  
680 related science?

681

682 Mr. Trombley: No.

683

684 Mr. Kuhl: Those are all the questions I have.

685

686 Mark Fowler, Assistant Prosecuting Attorney for Delaware County, here on behalf of Michele Boni,  
687 Zoning Inspector. Logan, you talked about how the developer made promises or described to the residents  
688 what the property would be used for, but there can be no argument that the Zoning Inspector holds to the  
689 four corners of the development plan and the Zoning Resolution, correct?

690

691 Mr. Trombley: Correct.

692

693 Mr. Fowler: And she would have no way to know what the developers told them anyway, correct?

694

695 Mr. Trombley: Correct.

696

697 Mr. Fowler: And even if she did, she still has to decide on the four corners of the documents?

698

699 Mr. Trombley: Correct.

700

701 Mr. Fowler: If the Board determines it's a permitted use, I know that's your first argument, if they do,  
702 every gas station in the world needs to have their tanks refilled, correct?

703

704 Mr. Trombley: Correct.

705

706 Mr. Fowler: So wouldn't it be reasonable at least to say that all attendant noises from a permitted use  
707 would also be permitted?

708

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709 Mr. Trombley: No, because there's specific use; there can be necessary uses out of it, but there are  
710 specific requirements. So you can have a gas station that has certain lights that cause problems or you can  
711 have any use that can still...what I'm trying to say is you can figure out ways to make it so that you can  
712 still have the use and not have that issue. Landscaping can be done, there's different ways that can be  
713 done to make it not an issue. It is not necessary that a use itself and restriction applied to it are always  
714 going to be linked together.

715  
716 Mr. Fowler: That's fair, but they would have to be required in the Zoning Code or the land development  
717 plan.

718  
719 Mr. Trombley: Right, but the specific rule has to be in the development plan. This is a specific  
720 development plan for a specific place, so that's the reason why they have these specific development  
721 plans devoted to a specific area, not necessarily for the broad country.

722  
723 Mr. Fowler: If the Board finds you're making one argument, the Zoning Inspector found it another way.  
724 The property owner, I believe, agrees with the Zoning Inspector, so if the Board finds there's ambiguity,  
725 that it could go either way, you have to agree that Ohio law requires all ambiguities in zoning to be  
726 decided in favor the property owner, correct?

727  
728 Mr. Trombley: I wouldn't say that; I would not provide that as a legal opinion right now without formal  
729 briefing. I wouldn't want be comfortable saying that.

730  
731 Mr. Fowler: That's all I have.

732  
733 Mr. McCarthy: Mr. Trombley, you want to proceed with witnesses, I believe.

734  
735 Mr. Trombley: Yes; I'd like to call Mr. Lee Beckman.

736  
737 A court reporter from Armstrong & Okey, Inc. administered the oath to Mr. Beckman.

738  
739 Lee Beckman, 1000 North Front Street, Fremont, Ohio.

740  
741 Mr. Trombley: Mr. Beckman, what company do you work for?

742  
743 Mr. Beckman: Beck Suppliers.

744  
745 Mr. Trombley: And what is your position at Beck's?

746  
747 Mr. Beckman: Construction Manager.

748  
749 Mr. Trombley: And how is Beck Suppliers related to Friendship?

750  
751 Mr. Beckman: Beck Suppliers is kind of the umbrella company for multiple divisions, and Friendship  
752 Food Stores is one of the divisions.

753  
754 Mr. Trombley: Friendship Foods Stores, is that a dba or is that the name of the company? Is it a  
755 trademark?

756  
757 Mr. Beckman: I couldn't tell you.

758  
759 Mr. Trombley: Have you been before this Board before?

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760 Mr. Beckman: Yes.  
761  
762 Mr. Trombley: How many times have you been before this Board?  
763  
764 Mr. Beckman: Two times.  
765  
766 Mr. Trombley: And what were the purposes each time.  
767  
768 Mr. Beckman: Applying for variances.  
769  
770 Mr. Trombley: And in those meetings, did you testify?  
771  
772 Mr. Beckman: Yes.  
773  
774 Mr. Trombley: Did you testify in both of them?  
775  
776 Mr. Beckman: Yes.  
777  
778 Mr. Trombley: Just a couple questions about the proposed site – what was your role in designing the  
779 proposed site plan?  
780  
781 Mr. Beckman: Part of my job is to come up with the initial design and concept of the property, so I  
782 evaluate the site for the best methods for a Friendship Food Store to be built there based on the  
783 surroundings and the property available.  
784  
785 Mr. Trombley: Do you do any architectural work on it?  
786  
787 Mr. Beckman: I assist.  
788  
789 Mr. Trombley: Are you an architect yourself?  
790  
791 Mr. Beckman: I have an architectural degree but I am not an architect.  
792  
793 Mr. Trombley: And what is the difference?  
794  
795 Mr. Beckman: I don't have a stamp.  
796  
797 Mr. Trombley: What's a stamp?  
798  
799 Mr. Beckman: It means I'm not legally allowed to sign off on engineering drawings.  
800  
801 Mr. Trombley: So is that like a certification process to get that stamp?  
802  
803 Mr. Beckman: Yes.  
804  
805 Mr. Trombley: And what is the process?  
806  
807 Mr. Beckman: You have to sit for a test for the State to get qualified to be able to stamp drawings.  
808  
809 Mr. Trombley: How long have you been working in the industry, just related to gas stations?  
810



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811 Mr. Beckman: 13 years.

812

813 Mr. Trombley: What did you do before that?

814

815 Mr. Beckman: I was project engineer at Capital Aluminum & Glass, designed commercial glazing.

816

817 Mr. Trombley: Where did you get your degree?

818

819 Mr. Beckman: From Terra Community College.

820

821 Mr. Trombley: Where is that?

822

823 Mr. Beckman: Fremont, Ohio.

824

825 Mr. Trombley: Is that a four year degree or a two year degree?

826

827 Mr. Beckman: A two year degree.

828

829 Mr. Trombley: And that's related to?

830

831 Mr. Beckman: Associates in architecture.

832

833 Mr. Trombley: I would like to understand how does a gas station get refueled? How does it get gas?

834

835 Mr. Beckman: A transport brings fuel in, they park next to the tanks, connect the hoses for dropping and  
836 vapor recovery, and they proceed to drop fuel.

837

838 Mr. Trombley: How long does that typically take?

839

840 Mr. Beckman: I couldn't tell you.

841

842 Mr. Trombley: So you've never personally seen it?

843

844 Mr. Beckman: I've seen the connections, the disconnections, but I've never stood and waited for it to be  
845 completed.

846

847 Mr. Trombley: Is there anybody here you brought with you today that would be able to testify to that  
848 specifically?

849

850 Mr. Beckman: I couldn't tell you.

851

852 Mr. Trombley: What time during the day does the refueling take place usually, according to business  
853 practices?

854

855 Mr. Beckman: I don't know those processes.

856

857 Mr. Trombley: Did you ever provide testimony to the Board before about this issue?

858

859 Mr. Beckman: I provided testimony on the design of how the transport would be handled, but nothing to  
860 do with times. The only thing I said in the past was there are a variety of times; could be day, night. There  
861 was no specific times.

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862 Mr. Trombley: Do you have any idea what route the truck would take in order to get to....  
863  
864 Mr. Beckman: Yes.  
865  
866 Mr. Trombley: If you're looking at the current site plan, you can refer to a figure or just from your  
867 memory, where would this refueling take place?  
868  
869 Mr. Beckman: The refueling happens on the elevation or at the edge of the site closest to Route 23 at the  
870 front of the building.  
871  
872 Mr. Trombley: Do you know if a truck orients itself over top of the pump or tanks, or does it go to the  
873 side?  
874  
875 Mr. Beckman: It sits off to the side of the tanks.  
876  
877 Mr. Trombley: In the figure that is in front of you, is that accurate to the best of your knowledge?  
878  
879 Mr. Beckman: No.  
880  
881 Mr. Trombley: How would you explain that?  
882  
883 Mr. Beckman: The truck would pull parallel to 23.  
884  
885 Mr. Trombley: Do you know of a proposed route the truck would take or have any idea how that's even  
886 regulated? Does the fuel truck driver have a pre-regulated route that he's given to take the fuel?  
887  
888 Mr. Beckman: No.  
889  
890 Mr. Trombley: Is there a standard in the industry?  
891  
892 Mr. Beckman: No.  
893  
894 Mr. Trombley: How is that determined?  
895  
896 Mr. Beckman: For the driver himself, I have no idea. I can tell you how I designed it. When I look at a  
897 property for design, I look at existing truck traffic, and I try to follow that pattern. The existing truck  
898 traffic comes down Coal Bend. Right now 90% of it turns to the right; that figure is my wildest guess.  
899 Truck traffic comes down Coal Bend, makes deliveries to multiple commercial locations along the  
900 northern side. Our truck would instead turn left, go down Artesian, come thru the back of the lot and  
901 around the building to park parallel along 23.  
902  
903 Mr. Trombley: So you would say that the route depicted on the figure is accurate except for where it  
904 would park parallel to 23?  
905  
906 Mr. Beckman: Definitely.  
907  
908 Mr. Trombley: You do not know how long the entire process takes?  
909  
910 Mr. Beckman: No.  
911  
912 Mr. Trombley: You don't know what time of day it would take place?

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913 Mr. Beckman: No, transport handles it; it is operational 24 hours a day, that I know. I can definitely tell  
914 you fueling does not happen daily because if the fueling is happening daily, we didn't design it right.

915  
916 Mr. Trombley: How often does it occur?

917  
918 Mr. Beckman: Tank sizes are based on requirements and it could be 3 days, it could be 5 days, it just  
919 depends. I get told what size of tank they need to have. I know those sizes are based on how much  
920 product they're figuring on selling. If the truck is in there daily, they're losing money; they only want  
921 them there every so often.

922  
923 Mr. Trombley: Do they typically use times, is there an industry practice to use a time of day or night?

924  
925 Mr. Beckman: No.

926  
927 Mr. Trombley: So it could be any time of night?

928  
929 Mr. Beckman: Or day.

930  
931 Mr. Trombley: What's the plan for the convenience store? What's the hours?

932  
933 Mr. Beckman: I couldn't tell you; that's not my decision.

934  
935 Mr. Trombley: Do you know from Friendship what the industry practice is?

936  
937 Mr. Beckman: We have stores that are open, I am guessing, from 6:00 to 10:00. I know we have stores  
938 that are open 24 hours.

939  
940 Mr. Trombley: And you don't know whether this is going to be a 24 hour or 6:00 to 10:00?

941  
942 Mr. Beckman: No.

943  
944 Mr. Trombley: When you get the design, do you consider the residential properties?

945  
946 Mr. Beckman: Yes. When I work on design with our architect, I consider all that.

947  
948 Mr. Trombley: Explain your thought process, with the change of site plan to try to alleviate any  
949 inconvenience to residents.

950  
951 Mr. Kuhl: I'm going to object. We are here to talk about the site plan that is at issue in this case and  
952 whether it meets the Zoning Code, and everything that is being discussed right now has nothing to do  
953 with that. There are specific requirements in the Zoning Code, and the question here is do they meet it?  
954 Now we are going to get into the thought process by which this was designed. What he was thinking,  
955 what I was thinking, what anybody was thinking is totally irrelevant to what is the design, what is the  
956 Zoning Code, and do they meet it. We are completely going into irrelevant testimony to the issues before  
957 the Board, and this Board has an obligation to provide my client with a fair and orderly hearing under  
958 Ohio law and to delve into all this frolic and detour testimony that is totally unrelated to the very specific  
959 issue before the Board is a waste of everyone's time and does not provide any useful or probative  
960 testimony for the Board in making its determination. I ask that this line of questioning be prohibited and  
961 that we continue on with questions related to the issues that are before this Board. My client has due  
962 process rights, and his due process rights entitle him to be treated fairly and that the proceeding be  
963 conducted orderly pursuant to the rules under Ohio law and limited to the issues that are before this Board

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964 to the zoning in play, and that's not what is occurring here, and the longer this goes on, the more my  
965 client's rights are being violated and the more exposure this Township is creating for itself.

966

967 Mr. Trombley: Out of respect for counsel, I will withdraw the question. But, if we are going to talk about  
968 due process, I will ask, did you get notice of this hearing? Did your company get notice of this hearing?

969

970 Mr. Beckman: Yes.

971

972 Mr. Trombley: Will you have the opportunity later in this meeting, through counsel or yourself, to  
973 present its case.

974

975 Mr. Beckman: I have no idea.

976

977 Mr. Trombley: Do you know if this gas station is going to be just a gas station or does it plan to have  
978 diesel as well?

979

980 Mr. Beckman: There is auto diesel.

981

982 Mr. Trombley: What is auto diesel?

983

984 Mr. Beckman: There is a distinct difference between truck diesel and auto diesel in how it's delivered to a  
985 vehicle.

986

987 Mr. Trombley: By truck diesel do you mean pickup truck or a semi truck?

988

989 Mr. Beckman: Semi truck, buses, things like that. They will be offering auto diesel..

990

991 Mr. Trombley: I have no further questions.

992

993 Mr. Kuhl: I will not cross examine my own witness.

994

995 Mr. Trombley: To wrap up the presentation, I want to call up some of the residents in the area. First I'd  
996 like to call up Stephanie Schatz.

997

998 A court report with Armstrong & Okey, Inc. administered the oath to Ms. Schatz.

999

1000 Stephanie Schatz, 6653 Old Ironside Lane, Delaware, Ohio.

1001

1002 Mr. Trombley: Stephanie, can you orient the Board just using the map to let them know where your house  
1003 is located?

1004

1005 Ms. Schatz: "This" is my house "here".

1006

1007 Mr. Trombley: When did you buy your home?

1008

1009 Ms. Schatz: We closed on the home in January, 2014.

1010

1011 Mr. Trombley: What were you told about the home when you purchased it in terms of the commercial  
1012 district across the street? Did anyone tell you about that when you purchased it?

1013

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1014 Ms. Schatz: We were told that no 24 hour anything could be built on that lot, that it could not be a service  
1015 station such that would have oil change facilities, a gas station or any kind of service station, body  
1016 anything, anything of the like.

1017  
1018 Mr. McCarthy: Mr. Trombley, what relevance does this have to the three points you raised in your brief?  
1019

1020 Mr. Trombley: It's just background. I'll strike that question. How much of the site can you see from your  
1021 home?

1022  
1023 Ms. Schatz: Almost the entire area. What I see is mostly the side of the site which, if I'm not mistaken, is  
1024 where the gas canopy resides.

1025  
1026 Mr. Trombley: In your experience, estimating, how far do you think if a car is parked with its headlights  
1027 on, from your experience, do you think standing from it would bother you and get in your eyes and make  
1028 you uncomfortable?

1029  
1030 Ms. Schatz: I can't tell you a certain number of feet but I can tell you, for context, the intersection of 23  
1031 and Lewis Center Road, which effectively becomes Coal Bend, if a car is parked facing my residence on  
1032 Lewis Center and the headlights were facing my residence, I cannot see that. However, once a car is  
1033 approaching the intersection of Coal Bend and Artesian, if I am outside of my house, I can see that  
1034 headlight.

1035  
1036 Mr. Trombley: You can't see inside thru your windows?

1037  
1038 Ms. Schatz: I can on my second floor but on my ground floor, I cannot.

1039  
1040 Mr. Trombley: Does it disturb you at all?

1041  
1042 Ms. Schatz: It disturbs my son more than myself because his room is up on the second floor of our home.

1043  
1044 Mr. Trombley: Have you ever frequented a gas station?

1045  
1046 Ms. Schatz: Yes.

1047  
1048 Mr. Trombley: And how many times a week would you frequent gas stations?

1049  
1050 Ms. Schatz: Once, sometimes twice, depending on travel.

1051  
1052 Mr. Trombley: Describe just your visual pattern whenever you go to a gas station, where you fill your car,  
1053 how you enter.

1054  
1055 Ms. Mundy: I'm going to object at this point. This has nothing to do with the issue before the Board. Her  
1056 usual practices with respect to how she fills her gas tank on a weekly basis has nothing to do with the  
1057 three issues before this Board.

1058  
1059 Mr. Trombley: I'll ask that you answer the question.

1060  
1061 Mr. Oster: Answer the question.

1062  
1063 Ms. Schatz: When I am in a gas station, I pull beneath the gas canopy, refuel my vehicle, then walk  
1064 directly across into the front door of the station where I may purchase snacks, a drink. Usually now I pay

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1065 with a credit card at the pump, so I am not often having to go into the store. When I am, I'm going in for a  
1066 very quick purchase, then I'm right back in my car and then leave.

1067  
1068 Mr. Trombley: That's all I have

1069  
1070 Mr. Oster: Cross examination.

1071  
1072 Ms. Mundy: Are you an expert with respect to headlight lighting?

1073  
1074 Ms. Schatz: No, I am not.

1075  
1076 Ms. Mundy: Are you an expert with respect to how cars would traverse the road or property at issue or the  
1077 surrounding roads?

1078  
1079 Ms. Schatz: Are you asking if I am an expert in knowing how a car will enter the lot or how a car would  
1080 navigate the lot?

1081  
1082 Ms. Mundy: Are you a traffic engineer?

1083  
1084 Ms. Schatz: No.

1085  
1086 Ms. Mundy: Are you an expert architect?

1087  
1088 Ms. Schatz: No.

1089  
1090 Ms. Mundy: Are you an expert in how fuel service stations are specifically laid out?

1091  
1092 Ms. Schatz: No.

1093  
1094 Ms. Mundy: And how their customers enter and exit?

1095  
1096 Ms. Schatz: No.

1097  
1098 Ms. Mundy: So you are offering your subjective opinion tonight with regard to this property; is that  
1099 correct?

1100  
1101 Ms. Schatz: That is correct.

1102  
1103 Ms. Mundy: No further questions.

1104  
1105 Mr. McCarthy: Any questions from the Board?

1106  
1107 None

1108  
1109 Mr. Trombley: Everything will be subjective opinion. There are residents that will testify specific to them,  
1110 how it will disturb them.

1111  
1112 Mr. Kuhl: Did I just hear counsel for the appellant say that all the additional testimony that he's going to  
1113 present is subjective opinion?

1114  
1115 Mr. Oster: I believe you did.

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1116 Mr. Kuhl: Is that accurate, Mr. Trombley?

1117

1118 Mr. Trombley: It is.

1119

1120 Mr. Kuhl: Then I would direct the court to our brief wherein there are numerous Ohio case laws that say it  
1121 is absolutely prohibited that this Board consider subjective opinions based on public comment. The  
1122 witnesses that the Board is permitted to consider need to have relevant, probative evidence and the law is  
1123 explicitly clear that subjective opinion by the public in a meeting such as this are impermissible for the  
1124 Board to consider. And to the extent this is all the appellant has left in this case, which he just conceded it  
1125 was, then the appellant needs to rest his case before we inject further error in these proceedings.

1126

1127 Mr. Trombley: In terms of his basis, subjective evidence, in terms of when that actually gets denied in  
1128 courts, it is more on the basis of when people are trying to make assertions or opinions in a general  
1129 situation based off of their subjective opinions. I'm not trying to elicit what their opinion is on the  
1130 general, just what their personal experiences are from living right there. What we are trying to do is if a  
1131 glare will disturb the residents from another site, which is the requirement, it is important to know where  
1132 they live, what angle they will see the glare from, their entire experience of where that glare is located at  
1133 so they know, and it's important for the BZA to know that. It is not subjective opinion of where it is. It is  
1134 an objective fact of their experience and it is important based on this. I'm not bringing up people from  
1135 across the street to testify on this. These are the people that live it every day, that will be affected by it  
1136 every day, and it is their objective experience, not their opinion, that I'm bring up or trying to elicit.

1137

1138 Mr. McCarthy: Counsel, I would say or request that how many times someone buys gas, whether they  
1139 buy something in the store or not, that is not in any way relevant to what the Zoning Inspector did if, in  
1140 fact, applying the Code correctly.

1141

1142 Mr. Trombley: I believe it has a lot of relevance in terms of how do you define what you would consider  
1143 the front elevation. We discussed before the front elevation is where the public primarily enters the shop.  
1144 Based on....

1145

1146 Mr. McCarthy: I'm sure the gentleman will address front elevation.

1147

1148 Mr. Trombley: It goes to the front elevation issue; I just want to relate people and their experience.

1149

1150 Mr. Kuhl: I would direct the Board to Ohio Supreme Court, Fritz v. Messer where the Court held that the  
1151 zoning decisions cannot rest upon, quote, subjective opinions. I further direct the Court to the case of  
1152 AT&T Wireless Service v. City of Streetsboro, 11<sup>th</sup> District, Portage No. 97-P-0070, legal matters such as  
1153 zoning variance decisions must be determined by facts, not subjective beliefs, citing Libis v. Board of  
1154 Zoning Appeals, 33 Ohio App. 2d94, 1972, 9<sup>th</sup> District. The law is the law, and we are entitled to be  
1155 treated, and this hearing should be directed to the law. Counsel has conceded that all we are going to hear  
1156 from remaining witnesses is their subjective belief as to how they think this gas station, or how people  
1157 might use it, where they might park, or how that might, in their subjective opinion, do something, and that  
1158 is not permissible evidence. I think counsel is confusing the concept of standing. No one is arguing that  
1159 homeowners that are adjacent to this property have standing to bring this appeal. However, their standing  
1160 has to be based on fact and evidence. I understand no one here wants a gas station; that's not the issue. I  
1161 understand they don't like the gas station but the fact of the matter is the gas station is a permitted use,  
1162 and we're entitled to have our gas station be evaluated under the Zoning Code and not the subjective  
1163 opinions of the public. The opportunity for that was when this development plan was enacted by the  
1164 Township Trustees. We are not here to rewrite the Zoning Code and the Board of Zoning Appeals has no  
1165 authority to do so. At this point, to the extent that all we are going to hear is testimony regarding  
1166 subjective opinions, then I think the Board needs to exclude the testimony and we need to move forward.

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1167 Mr. Trombley: I don't believe that the testimony I'm trying to offer is subjective opinion. When I say  
1168 subjective facts, facts of a personal experience is related to the issues at hand. I respect the legal  
1169 precedents put forth but I don't believe he's applying it correctly; I think it's misleading to judge it that  
1170 way. The way that's typically done in these cases is when people come up and pontificate about opinions  
1171 that they don't have any basis for, they haven't provided any evidence for, but their personal experience is  
1172 valid fact. It may be my personal experience subjective to me. That doesn't make it an opinion. This is  
1173 what I do and this is my life, and that is fact.

1174 Ms. Jordan: How many more witnesses do you plan to present?

1175  
1176 Mr. Trombley: I will only present a couple more so we can argue about this....  
1177

1178 Ms. Jordan: I was just curious how many you would like to present.

1179  
1180 Mr. Trombley: I'll just present one more at this point to expedite this process. Everyone understands what  
1181 is trying to be done here.

1182  
1183 A court reporter from Armstrong & Okey, Inc. administered the oath to Mr. Schatz.  
1184

1185 Kevin Schatz, 6615 Old Ironside Lane, Delaware, Ohio.  
1186

1187 Mr. Trombley: Do you have personal experience with semi trucks in that area?

1188  
1189 Mr. Schatz: I do have experience working on them.  
1190

1191 Mr. Trombley: Can you describe that experience?  
1192

1193 Mr. Schatz: They are quite loud, the air brakes are loud, and you have to wear earplugs.  
1194

1195 Mr. Trombley: Can you describe what your line of work is that brings you to...  
1196

1197 Mr. Schatz: I do professional auto and recreational detailing, so I am at many different freight companies  
1198 from time to time.  
1199

1200 Mr. Trombley: Prior to the hearing, did you conduct just a test for yourself on how loud a semi truck is?  
1201

1202 Mr. Schatz: I did a number of trucks, buses mostly to try to relate it to the fuel tanker trucks because there  
1203 were fuel tanker trucks at the repair center when we were there.  
1204

1205 Mr. Trombley: Specifically explain what process you used.  
1206

1207 Mr. Schatz: I recorded from about 50 feet all the way up to about 150 feet away.  
1208

1209 Mr. Trombley: I don't want to hear the recording; I just want to know at 150 feet out, did you hear the  
1210 rig?  
1211

1212 Mr. Schatz: Yes.  
1213

1214 Mr. Trombley: How would you describe that?

1215 Mr. Schatz: It was very loud. I could feel more the vibration than the noise.  
1216

1217 Mr. Trombley: At 50 feet, did you feel any vibration?



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1218 Mr. Schatz: Yes, both.  
1219  
1220 Mr. Trombley: Describe that vibration.  
1221  
1222 Mr. Schatz: It was like the ground shaking, like there was a bass car stereo system at an auto show. It was  
1223 just sitting there vibrating. You get up to them real close, and your clothes will be shaking a little bit.  
1224  
1225 Mr. Trombley: And when you work with trucks, you use ear plugs?  
1226  
1227 Mr. Schatz: Yes.  
1228  
1229 Mr. Trombley: Why do you do that?  
1230  
1231 Mr. Schatz: Because of the noise.  
1232  
1233 Mr. Trombley: No further questions.  
1234  
1235 Mr. Oster: Would you like to cross examine?  
1236  
1237 Ms. Mundy: Yes. Mr. Schatz, you said you conducted a sound study; is that correct?  
1238  
1239 Mr. Schatz: Yes.  
1240  
1241 Ms. Mundy: When did you do that?  
1242  
1243 Mr. Schatz: About 2 weeks ago.  
1244  
1245 Ms. Mundy: Where did you do it?  
1246  
1247 Mr. Schatz: At Peterbuilt.  
1248  
1249 Ms. Mundy: What is that?  
1250  
1251 Mr. Schatz: A trucking company here. We were servicing a truck there.  
1252  
1253 Ms. Mundy: How many trucks were there when you were conducting the test?  
1254  
1255 Mr. Schatz: I didn't count them; there were several.  
1256  
1257 Ms. Mundy: Were they all on at the same time?  
1258  
1259 Mr. Schatz: No.  
1260  
1261 Ms. Mundy: What type of trucks were they?  
1262  
1263 Mr. Schatz: There was a Mack, a Peterbuilt; there were all kinds.  
1264  
1265 Ms. Mundy: What engines did they have in them?  
1266  
1267 Mr. Schatz: I'm not an engineer or anything that works in that detail.  
1268

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1269 Ms. Mundy: So there's no way of knowing that the trucks you were observing, listening to, would be  
1270 trucks that would frequent the property?  
1271  
1272 Mr. Schatz: No, but there's fuel trucks that are similar that I saw, big oil trucks, at Marathon right up the  
1273 road.  
1274  
1275 Ms. Mundy: But that wasn't the truck you used for your study, correct?  
1276  
1277 Mr. Schatz: No.  
1278  
1279 Ms. Mundy: What kind of equipment did you use to perform your study?  
1280  
1281 Mr. Schatz: A phone.  
1282  
1283 Ms. Mundy: What kind of phone do you have?  
1284  
1285 Mr. Schatz: An iPhone. I'm not a professional recorder.  
1286  
1287 Ms. Mundy: Does it have a decibel rating on it?  
1288  
1289 Mr. Schatz: No, I'm not an engineer of any kind.  
1290  
1291 Ms. Mundy: Was your phone at all calibrated to figure out the decibel level you were listening to?  
1292  
1293 Mr. Schatz: It's not my job.  
1294  
1295 Ms. Mundy: You're testifying, so if you can just answer my question.  
1296  
1297 Mr. Schatz: You're asking relative questions, but no.  
1298  
1299 Ms. Mundy: And your phone is not calibrated to measure the decibel level?  
1300  
1301 Mr. Schatz: No, it's not a decibel level phone.  
1302  
1303 Ms. Mundy: I have no further questions.  
1304  
1305 Mr. Trombley: I'm going to wrap it up and do the closing. Just 3 issues, we had some testimony to that  
1306 effect. I think a lot of this really revolves on the BZA. Just read the language, use your judgment from  
1307 your experience and the testimony given to make the factual decision on this area. That's your job here.  
1308 Don't make it more complicated than it is. Can you hear a truck? Do you know it from your experience?  
1309 Do you know headlights from your experience? So you know, how do you treat gas stations? The only  
1310 thing I want to end with is that if you know the objective purpose of this development plan and if you  
1311 apply the objective purpose, the specific language of it, at the very least to the front elevation issue, you  
1312 can see that there was a very specific effort to control and to orient away from the residences. It's not a  
1313 coincidence that it was facing US 23, that the main entrance, the front elevation that everyone understands  
1314 a front elevation is like a front porch, the main entrance of a building, is pointing away from the  
1315 residences. The focal point of the building is pointing away from the residences with the highest setback,  
1316 with the specific restriction on the canopy saying that that also has to have an elevation there as well. I  
1317 think the BZA needs to consider the language, the objective purpose and the facts given today.  
1318  
1319 10 minute recess.

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1320 Mr. Oster called the meeting back to order.

1321

1322 Mr. Fowler called Michele Boni to the stand.

1323

1324 A court reporter from Armstrong & Okey, Inc. administered the oath to Ms. Boni.

1325

1326 Mr. Fowler: Would you state your name for the record.

1327

1328 Ms. Boni: Michele Boni; I am the Zoning Director of Orange Township, 1680 E. Orange Road, Lewis  
1329 Center, Ohio.

1330

1331 Mr. Fowler: How long have you been employed in your position.

1332

1333 Ms. Boni: In my position, 1-1/2 years.

1334

1335 Mr. Fowler: And how long have you been employed by the Township?

1336

1337 Ms. Boni: Over 3 years.

1338

1339 Mr. Fowler: What did you do before you were the Planning and Zoning Director?

1340

1341 Ms. Boni: I was a Planning and Zoning Officer.

1342

1343 Mr. Fowler: And you are obviously familiar with the application?

1344

1345 Ms. Boni: Yes.

1346

1347 Mr. Fowler: Did you prepare anything in anticipation of this appeal?

1348

1349 Ms. Boni: I provided a response letter addressed to the Board of Zoning Appeals on my justification of  
1350 the decision I made for the commercial zoning permit.

1351

1352 Mr. Fowler: Do you have that in front of you today?

1353

1354 Ms. Boni: I do, and additional copies.

1355

1356 Mr. Fowler: It is my plan, as long as there is no objection from counsel, to let you give a narrative. You  
1357 don't have to read that document you submitted to the Board, but if you could paraphrase and generally  
1358 describe that letter you sent to the Board.

1359

1360 Ms. Boni: My letter is based on the 3 criteria that the appeal application is arguing. The first argument is  
1361 whether or not a gas station is permitted. We believe, I and staff, that a gas station is permitted as it is not  
1362 on a lot abutting All Shepherds Lutheran Church; therefore, a gas station is a permitted use. The second  
1363 argument is whether or not it complies with Section 14.07 (c), (f) and (g) in relation to light, noise and  
1364 odor. Given that a gas station is a permitted use in this district, I believe the use implies this type of light,  
1365 noise or odor will be acceptable. In addition, staff reviewed the lighting plan and lighting levels are all in  
1366 compliance with Article 21 of the general standards. The lighting output is within the 2.0 foot candle  
1367 measures and do not exceed the property line. The light poles are the same within the height require-  
1368 ments. As far as odor goes, we did require screening of the dumpsters, that was part of the approval, and  
1369 we did review the screening plans. As far as the front elevation goes, even though there is no definition on  
1370 what determines the front elevation in the development plan, which is Case #18517, staff believes that

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1371 given that the front elevations have the same four sided architecture on all four sides, that, yes there's an  
1372 entrance off of Coal Bend Road, there is an entrance off of 23, and it is replicating the same architectural  
1373 features, thus we determined it is a permitted front elevation.

1374

1375 Mr. Fowler: I have no further questions.

1376

1377 Mr. Trombley: Do you have any architecture background?

1378

1379 Ms. Boni: I have a city planning background; I do not have an architecture degree.

1380

1381 Mr. Trombley: And what was that city planning degree?

1382

1383 Ms. Boni: I received my under grad in Planning at Florida Atlantic University and my graduate master's  
1384 in City and Regional Planning at Ohio State University.

1385

1386 Mr. Trombley: When you determined what front elevation meant or interpreted it, did you consult any  
1387 sources or any materials.

1388

1389 Ms. Boni: No.

1390

1391 Mr. Trombley: So what, in your mind, is the definition that you used when you interpreted front  
1392 elevation?

1393

1394 Ms. Boni: Given that there was no definition in the plan district text, we found that an ambiguous terms,  
1395 so with the materials that we received in the site plan, we thought the plan was able to be approved.

1396

1397 Mr. Trombley: Do you believe that with four sided architecture there is only one front elevation or  
1398 multiple elevations?

1399

1400 Ms. Boni: Since there was no definition on what a four sided architecture means, I believe it can have  
1401 more than one front elevation. If you want to have four entrances, an entrance on all four sides,  
1402 determining what is the front elevation may be a challenge.

1403

1404 Mr. Trombley: So you did not look to see what the definition would have meant in the field for four sided  
1405 architecture?

1406

1407 Ms. Boni: Correct; I only referenced what was stated in the planned district text.

1408

1409 Mr. Trombley: You did not consult any materials or ask the opinion of anyone else what front elevation  
1410 meant?

1411

1412 Ms. Boni: You're correct.

1413

1414 Mr. Trombley: Would you say then that your interpretation was solely based off of the ambiguity of the  
1415 term and you just made the decision based on ambiguity?

1416

1417 Ms. Boni: That's correct.

1418

1419 Mr. Trombley: Did you, in your determination, consider any fuel truck noise considerations?

1420

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1421 Ms. Boni: I did not. Knowing that the gas station is a permitted use on the site, I think we all knew a fuel  
1422 truck would be there.

1423 Mr. Trombley: No further questions.

1424

1425 Mr. Kuhl: I'm going to hand you what we have marked as Exhibit A and if you could, identify for  
1426 purposes of the record that is the site plan with the Township's approval stamp indicated upon it.

1427

1428 Ms. Boni: Yes, and I personally approved it on March 8 2019.

1429

1430 Mr. Kuhl: And for purposes of the record, I'm going to hand you what has been marked as Exhibit E; can  
1431 you identify this as the letter that you submitted to the Board of Zoning Appeals related to your review  
1432 and evaluation of the grounds set forth in the appeal?

1433

1434 Ms. Boni: That is correct. I put the letter together on April 23, 2019 for the Board of Zoning Appeals.

1435

1436 Mr. Kuhl: For purpose of the record, I'm handing you what has been marked as Exhibit C; can you  
1437 identify that as your transmittal letter with the approval of the zoning certificate that brings us here  
1438 tonight?

1439

1440 Ms. Boni: That is correct. This is the zoning permit approval letter that I issued on March 8, 2019.

1441

1442 Mr. Kuhl: I know those materials were submitted to the Board; I just wanted for purposes of the record to  
1443 make sure that they were identified. Would it be fair to say the applicant in this case, Buckeye  
1444 Investments, worked with your office throughout the development process in order to develop a site plan  
1445 that was compliant with the Orange Township Zoning Code?

1446

1447 Ms. Boni: Yes, very diligently.

1448

1449 Mr. Kuhl: In fact, there were numerous phone calls and meetings with your office?

1450

1451 Ms. Boni: Yes, I believe we started this a year ago.

1452

1453 Mr. Kuhl: And in prior iterations for this site plan, Buckeye Investments would have required variance as  
1454 to certain requirements in the Code, correct

1455

1456 Ms. Boni: Correct.

1457

1458 Mr. Kuhl: Ultimately, Buckeye Investments modified all of these plans to not require any variances to the  
1459 Orange Township Zoning Code

1460

1461 Ms. Boni: As far as the building and site layout go. I believe there may be a couple for signage, but that  
1462 being the land...

1463

1464 Mr. Kuhl: But for the zoning certificate which is being appealed here tonight, the Buckeye Investments  
1465 property did not require any variances from Orange Township, right?

1466

1467 Ms. Boni: Correct.

1468 Mr. Kuhl: Your office reviewed all the plans that were submitted to ensure compliance with the Zoning  
1469 Code?

1470

1471 Ms. Boni: Yes.

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1472 Mr. Kuhl: And the development text applicable to this site?  
1473  
1474 Ms. Boni: Yes.  
1475  
1476 Mr. Kuhl: Including whether or not a gas station is a permitted use?  
1477  
1478 Ms. Boni: Correct.  
1479  
1480 Mr. Kuhl: You determined it was a permitted use?  
1481  
1482 Ms. Boni: Yes.  
1483  
1484 Mr. Kuhl: You considered whether or not this passenger automobile gas station would constitute a bus or  
1485 truck terminal?  
1486  
1487 Ms. Boni: I did.  
1488  
1489 Mr. Kuhl: It doesn't, does it?  
1490  
1491 Ms. Boni: Correct.  
1492  
1493 Mr. Kuhl: Nor would your office consider this convenience store/gas station as an appropriate or feasible  
1494 fueling center for trucks or for commercial buses?  
1495  
1496 Ms. Boni: Correct.  
1497  
1498 Mr. Kuhl: And that's because of the canopy height and site orientation and other things, correct?  
1499  
1500 Ms. Boni: Yes.  
1501  
1502 Mr. Kuhl: And does this site plan have a drive-thru component to it?  
1503  
1504 Ms. Boni: It does not.  
1505  
1506 Mr. Kuhl: Does it have a drive-up window component to it?  
1507  
1508 Ms. Boni: It does not.  
1509  
1510 Mr. Kuhl: And your office reviewed the lighting plan for the property?  
1511  
1512 Ms. Boni: Correct.  
1513  
1514 Mr. Kuhl: And there were extensive materials submitted to your office concerning the lights that will be  
1515 installed at this facility?  
1516  
1517 Ms. Boni: Yes, we reviewed for the metrics and the lighting cut sheets.  
1518 Mr. Kuhl: And based on your review of those plans and your experience and expertise, you determined  
1519 that the light plan for the property meets Code?  
1520  
1521 Ms. Boni: Correct.  
1522

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1523 Mr. Kuhl: Based on your experience and expertise, you concluded that the application met all of the  
1524 requirements of the Zoning Code and development text for the property?  
1525  
1526 Ms. Boni: Correct.  
1527  
1528 Mr. Kuhl: We've heard the appellant's counsel raise issues or arguments regarding noise, light and odor  
1529 which he claims violate 14.07 of the Zoning Code.  
1530  
1531 Ms. Boni: Yes.  
1532  
1533 Mr. Kuhl: Have you considered those issues?  
1534  
1535 Ms. Boni: We looked at that as part of our review but, given that a gas station is a permitted use, we  
1536 figured the light, noise and odor would be acceptable in the type of use of it.  
1537  
1538 Mr. Kuhl: Would it be fair to say that because a gas station is a permitted use under the development text  
1539 and pursuant to the Zoning Code, it necessarily implies that the light, noise and odor typically associated  
1540 with a gas station are also acceptable under the Zoning Code?  
1541  
1542 Ms. Boni: Correct.  
1543  
1544 Mr. Kuhl: And these requirements that are set forth in 14.07 apply to all gas stations in Orange  
1545 Township?  
1546  
1547 Ms. Boni: Correct.  
1548  
1549 Mr. Kuhl: Regardless of whether or not the gas stations were developed thru some other planned  
1550 development district?  
1551  
1552 Ms. Boni: Correct.  
1553  
1554 Mr. Kuhl: Are you aware has Orange Township ever had to issue a zoning violation notice or order  
1555 finding any gas station in violation of the Zoning Code with respect to odor, noise, light or vibration?  
1556  
1557 Ms. Boni: To my recollection, I have never seen a violation of that kind.  
1558  
1559 Mr. Kuhl: The Zoning Code and the development text for this site requires the site layout, the front  
1560 elevation faces US 23 or oriented toward US 23.  
1561  
1562 Ms. Boni: Correct.  
1563  
1564 Mr. Kuhl: The Zoning Code has no definition for the term front elevation, correct?  
1565  
1566 Ms. Boni: Correct.  
1567 Mr. Kuhl: In fact, under the prior plan, the store had more of a faux front door look, so it had  
1568 architectural features similar to what a front of a store would look like but had no entrance door, do you  
1569 recall that?  
1570  
1571 Ms. Boni: I do.  
1572

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1573 Mr. Kuhl: When you were evaluating that site plan, you weren't sure whether or not my client would have  
1574 been required to seek a variance because of the lack of definition for front elevation?

1575  
1576 Ms. Boni: Correct.

1577  
1578 Mr. Kuhl: And you asked that they submit a variance out of an abundance of caution?

1579  
1580 Ms. Boni: Yes.

1581  
1582 Mr. Kuhl: In fact, when you were here before the BZA meeting, you told the Board that this language was  
1583 "so ambiguous you weren't able to determine how to interpret the front elevation requirement"?

1584  
1585 Ms. Boni: Correct.

1586  
1587 Mr. Kuhl: As an experienced Zoning Officer, you're familiar with the concept under Ohio law that  
1588 requires any ambiguity in the Zoning Code to be resolved against restriction and in favor of the use by the  
1589 landowner, correct?

1590  
1591 Ms. Boni: Correct.

1592  
1593 Mr. Kuhl: Ultimately this building has been redesigned such that the east elevation facing 23 is almost  
1594 identical to the elevation facing Coal Bend.

1595  
1596 Ms. Boni: Correct.

1597  
1598 Mr. Kuhl: And the east elevation facing US 23 and the north elevation facing Coal Bend each contain  
1599 architectural features typical of an entrance for a front elevation in your experience, correct?

1600  
1601 Ms. Boni: Correct.

1602  
1603 Mr. Kuhl: Given this change made by my client to the east elevation and the language of the Code, you  
1604 and your office concluded the site plan conforms to the Code, correct?

1605  
1606 Ms. Boni: Correct.

1607  
1608 Mr. Kuhl: You mentioned in your response to a question by counsel for the appellant what you  
1609 considered or looked at when determining the front elevation, and you do mention or discuss your  
1610 justification for the front elevation determination in the last paragraph of your letter to the Board, correct?

1611  
1612 Ms. Boni: Correct.

1613  
1614 Mr. Kuhl: And you conclude that, given there is no definition of what determines a front elevation in  
1615 either the development plan or Zoning Resolution, staff decided the site was in compliance because it has  
1616 similar building elevations for both US Route 23 and Coal Bend, correct?

1617  
1618 Ms. Boni: Correct.

1619  
1620 Mr. Kuhl: And because each elevation has an entrance and similar architectural features, correct?

1621  
1622 Ms. Boni: Correct.

1623



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1624 Mr. Kuhl: I have no further questions.  
1625  
1626 Mr. Trombley: Did you consider the front elevation question or did you apply any of the actual archi-  
1627 tectural requirements to the canopy itself, by itself?  
1628  
1629 Ms. Boni: We reviewed the architectural elements to the canopy, and it's the same on all four sides as far  
1630 as the structure goes.  
1631  
1632 Mr. Trombley: Are you saying that, not the length, but did you determine what the front elevation of the  
1633 canopy was?  
1634  
1635 Ms. Boni: We believe this was the same interpretation as the building replicates similar architectural  
1636 features on all four sides.  
1637  
1638 Mr. Trombley: But did you make that determination whether or not the canopy front elevation was  
1639 oriented toward US 23?  
1640  
1641 Ms. Boni: The canopy itself I understand is not facing 23, but as far as an elevation goes, I believe all four  
1642 sides are the same, so it doesn't matter if it faces 23 in our opinion.  
1643  
1644 Mr. Trombley: Don't you believe there's only one front elevation, not four front elevations?  
1645  
1646 Ms. Boni: Because there's no definition in the zoning text or our resolution.  
1647  
1648 Mr. Trombley: But there's a definition in architecture, right? This is not a term that was made up out of  
1649 thin air by Orange Township as far as I know.  
1650  
1651 Ms. Boni: Correct.  
1652  
1653 Mr. Trombley: That's all I have.  
1654  
1655 Mr. Kuhl: As to the concept of front elevation, there are many different views on what constitutes a front  
1656 elevation, correct?  
1657  
1658 Ms. Boni: Correct.  
1659  
1660 Mr. Kuhl: There is no commonly accepted term for front elevation?  
1661  
1662 Ms. Boni: Correct.  
1663  
1664 Mr. Kuhl: And that's why the Code is ambiguous as to front elevation, correct?  
1665  
1666 Ms. Boni: Correct.  
1667  
1668 Mr. Kuhl: Mr. Trombley discussed glare related to headlights associated with customer traffic on the  
1669 property. Is there any Code specifications as to any use of any property with respect to commercial or  
1670 customer vehicle traffic?  
1671  
1672 Ms. Boni: No.  
1673

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1674 Mr. Kuhl: Mr. Trombley also discussed concerns about noise from delivery trucks. Is there anything in  
1675 the Zoning Code or development text anywhere in the entire Orange Township Zoning Code that places  
1676 regulations on commercial delivery trucks that are going to provide services to any type of use in all of  
1677 Orange Township?

1678  
1679 Ms. Boni: In regards to noise, no.

1680  
1681 Mr. Kuhl: At this time, we call Greg Ehrlich as our first witness.

1682  
1683 A court reporter from Armstrong & Okey, Inc. administered the oath to Mr. Ehrlich.

1684  
1685 Greg Ehrlich, my business address is 1000 North Front Street, Fremont, Ohio.

1686  
1687 Mr. Kuhl: What is your position and title at Beck Suppliers?

1688  
1689 Mr. Ehrlich: President.

1690  
1691 Mr. Kuhl: Please provide the Board a brief summary of your background and experience as it relates to  
1692 the convenience store and consumer fueling industry.

1693  
1694 Mr. Ehrlich: I have been in the industry my entire life, started with my family business in Massachusetts  
1695 in 1958 while I was going to college. I worked in that business for 12 years in all sorts of different  
1696 faculties, ultimately serving as the Vice President of Marketing and Operations. I went to finish my  
1697 Master's Degree in marketing, took a little bit of break from the industry, then moved to Ohio about ten  
1698 years ago. Since then I have been in this industry as Chief Operating Officer of Certified Oil and Vice  
1699 President of Retail Operations for Englefield Oil Duchess Shops. When I was with Certified, they  
1700 operated about 85 retail outlets. Englefield operates 120 Duchess Shops. I have also consulted with the  
1701 industry on topics concerning business strategies, operations and retail concept development, and for  
1702 about the last 2-1/2 years as President for Beck Suppliers.

1703  
1704 Mr. Kuhl: I hand you what we have marked as Exhibit D. Can you identify that document for the Board?

1705  
1706 Mr. Ehrlich: This is an affidavit that I produced responding to some of the topics covered today and the  
1707 three topics that deal with the appeal.

1708  
1709 Mr. Kuhl: Does the affidavit that's been marked as Exhibit D reflect the sworn testimony that you have in  
1710 the matter?

1711  
1712 Mr. Ehrlich: Yes.

1713  
1714 Mr. Kuhl: Did it set forth the facts which you know and the opinions that you hold?

1715  
1716 Mr. Ehrlich: Yes.

1717  
1718 Mr. Kuhl: Just for everyone here, can you briefly describe the Friendship Store that's intended to be  
1719 constructed pursuant to the approved development plan on the site?

1720  
1721 Mr. Ehrlich: There's been a lot of talk today about this gas station. I don't want a gas station. We're  
1722 building retail that looks like Panera, and that's the same type of customer we get into our stores. We built  
1723 new stores in Elyria and Olmstead, and the architecture and design is something you guys will be proud  
1724 of. We're a small company, we have 26 stores, and we care about our communities. Everything is

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1725 designed so that it looks very modern, not modern and gaudy, but modern and tasteful. If it was near me,  
1726 and I hope one day there is one close to me, I'd be very proud of it. I think that's how it's designed, that  
1727 was the intent. We hired a Columbus-based design firm to make sure of that. We are not a big oil  
1728 company, the company is fourth-generation family started by a farmer in 1950 to supply other farmers  
1729 with fuel. When his grandson graduated from college, he took a job working at a convenience store, and  
1730 his father asked if he liked doing that. His father was Beck Suppliers; this was back in 1986. Brian said  
1731 yeah, so he said, let's add this to our business. They picked the name Friendship because they wanted to  
1732 be with the community. And this hurts to think you guys think we're coming here to do something that  
1733 you guys don't want, and I hope we earn your trust and this turns out well. It's a relationship, and we  
1734 support every community and we are good neighbors. I think if you talk to us, you're going to find out  
1735 who we are.

1736  
1737 Mr. Trombley: I place a standing objection to that testimony in terms of its relevance.

1738  
1739 Mr. Kuhl: The site at issue here on Coal Bend is a little over 3 acres, correct?

1740  
1741 Mr. Ehrlich: Correct.

1742  
1743 Mr. Kuhl: How does a Friendship Village Store on a 3 acre site compare to, for example, your  
1744 competitors, like Speedway or others? Can you provide a little explanation as to how the site layout at  
1745 issue is at this location?

1746  
1747 Mr. Ehrlich: We always try to put buffer zones between any residences and our property. In this case we  
1748 have a lot of green space in the back of the property which, for commercial, is a much larger property  
1749 than is typical. You could get the same exact facility probably on 1-1/4 but certainly 1-1/2 acres. We have  
1750 3.

1751  
1752 Mr. Kuhl: Who are the target customers for Friendship Food and Gas Station stores?

1753  
1754 Mr. Ehrlich: Again, this isn't designed to be a convenience store. It's designed to be restaurant. Our  
1755 business model is not to be in the fuel and convenience industry. That's a model that existed for the '70's  
1756 and '80's and it's evolved into turning the restaurant industry that happens to sell fuel and convenience  
1757 items. But we're designing stores to look like and serve as restaurants, so anybody that eats, anybody that  
1758 is motoring down 23 who wants to stop, needs to refuel, get a drink or whatever.

1759  
1760 Mr. Kuhl: Is this Friendship Store designed or intended to operate as a truck or bus terminal.

1761  
1762 Mr. Ehrlich: No.

1763  
1764 Mr. Kuhl: Is this Friendship Store intended to provide refueling services to buses or trucks?

1765  
1766 Mr. Ehrlich: Absolutely not.

1767  
1768 Mr. Kuhl: And why not? What are the practical difficulties for a truck or bus to refuel at that site?

1769  
1770 Mr. Ehrlich: Typically, if you have a truck refueling facility, it's a separate high speed, the dispensers are  
1771 different. A typical consumer dispenser dispenses fuel between 8 and 10 gallons per minute; a diesel  
1772 dispenser for trucks, which have a much large fuel tank, dispenses fuel at about 60 gallons per minute.  
1773 First off, a truck couldn't navigate to the pumps; the lanes aren't wide enough. Second, the dispensers are  
1774 not equipped and truck drivers wouldn't come near this to buy fuel.

1775

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1776 Mr. Oster: You're referring to Class 8 diesel trucks?  
1777  
1778 Mr. Ehrlich: Yes.  
1779  
1780 Mr. Oster: What class of diesel trucks does your fuel go to?  
1781  
1782 Mr. Ehrlich: We call it automotive diesel, so it's anything that's small, box trucks, pickup trucks.  
1783  
1784 Mr. Oster: You don't know the class of vehicle? It could be a larger truck, just not the Class 8 tractor?  
1785  
1786 Mr. Ehrlich: Yes; I couldn't tell you the class.  
1787  
1788 Mr. Kuhl: Will the store have a drive-thru window?  
1789  
1790 Mr. Ehrlich: No.  
1791  
1792 Mr. Kuhl: Will the store have drive-thru operations?  
1793  
1794 Mr. Ehrlich: No.  
1795  
1796 Mr. Kuhl: We heard testimony with respect to noise, light, vibration and odor concerns. Pursuant to  
1797 Zoning Code Section 14.07, based on your experience and expertise, will the Friendship Store at this site  
1798 produce intense, earth shaking vibrations?  
1799  
1800 Mr. Ehrlich: It will not.  
1801  
1802 Mr. Kuhl: We heard testimony about concerns over the refueling of the station. Do you expect to receive  
1803 fuel deliveries every single day?  
1804  
1805 Mr. Ehrlich: We do not.  
1806  
1807 Mr. Kuhl: As was suggested by appellant's counsel, do fuel deliveries always occur at 3:00 a.m.?  
1808  
1809 Mr. Ehrlich: They don't; they vary depending on demand and supply.  
1810  
1811 Mr. Kuhl: We heard concerns about the noise associated with refueling operations. How long does it  
1812 typically take to refuel the fuel source for gas?  
1813  
1814 Mr. Ehrlich: From the time the transport arrives at the site until it leaves the site is about 30 minutes, and  
1815 that's not all the fueling part. They're checking the contents of the underground storage tanks to make  
1816 sure the product ordered fits in the space that's provided.  
1817  
1818 Mr. Kuhl: During this time, where there is refueling of the master tanks, is the delivery truck running that  
1819 entire time?  
1820  
1821 Mr. Ehrlich: No; it's shut off.  
1822  
1823 Mr. Kuhl: Based on your experience and expertise, will the Friendship Store produce noise that exceeds  
1824 Ohio Environmental Protection Agency Standards?  
1825  
1826 Mr. Ehrlich: No.

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1827  
1828 Mr. Kuhl: Has there ever been any Friendship Store across your entire operation that has ever been cited  
1829 by any jurisdiction under a noise or vibration ordinance?  
1830  
1831 Mr. Ehrlich: No.  
1832  
1833 Mr. Kuhl: We also heard some concerns about lighting and glare. Based on your experience and  
1834 expertise, does the operation of a Friendship Store produce intense light or heat such as those associated  
1835 with high temperature processing or welding?  
1836  
1837 Mr. Ehrlich: No.  
1838  
1839 Mr. Kuhl: Will there be any high temperature processing or welding taking place in your facility?  
1840  
1841 Mr. Ehrlich: There will not.  
1842  
1843 Mr. Kuhl: Has Beck Suppliers taken measures to ensure that its lighting plan for this site complies with  
1844 the applicable Zoning Code?  
1845  
1846 Mr. Ehrlich: Yes.  
1847  
1848 Mr. Kuhl: And what did you do?  
1849  
1850 Mr. Ehrlich: We made sure that we complied with the Zoning Code; the lighting plan is typical and meets  
1851 all the requirements.  
1852  
1853 Mr. Kuhl: Has Beck Suppliers or any of the Friendship Stores across its entire portfolio had a citation  
1854 issued by any zoning or regulatory authority relating to excess light emitted from your operations?  
1855  
1856 Mr. Ehrlich: No.  
1857  
1858 Mr. Kuhl: We also heard concerns about odors or at least it was suggested in the appeal. Does Beck  
1859 Suppliers take any measures to control and eliminate odors associated with store operations?  
1860  
1861 Mr. Ehrlich: On the store side we have air conditioning systems which filter the air and exhaust outside  
1862 the building. From the fuel side, any vapors that are collected in the storage, during the fueling process,  
1863 the tanker that comes to deliver the fuel actually takes the vapors back and brings them back to the  
1864 terminal.  
1865  
1866 Mr. Kuhl: To your knowledge, has any Friendship Store across the entire portfolio ever been cited by any  
1867 governmental or regulatory enforcement agency as it relates to odors or excessive odors from its store  
1868 operations?  
1869  
1870 Mr. Ehrlich: No.  
1871  
1872 Mr. Kuhl: Those are all the questions I have.  
1873  
1874 Mr. Trombley: How long have you been in the gas industry, gasoline station industry?  
1875  
1876 Mr. Ehrlich: 32 years.  
1877

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1878 Mr. Trombley: Have you been involved at all in the architectural design of a Friendship Gas Station? Do  
1879 you have any hands on in the process for the specific site plan?

1880  
1881 Mr. Ehrlich: Do you mean aesthetics or do I stamp the drawings? Those are 2 different things.  
1882

1883 Mr. Trombley: No, I mean any. Could be the aesthetics. What is your input?  
1884

1885 Mr. Ehrlich: I review every plan, I participate in the design and branding the architecture as far as the  
1886 selection of materials, participate in a process like this when necessary.  
1887

1888 Mr. Trombley: Were you involved in the process of the change of the site plan after the variances were  
1889 eliminated?  
1890

1891 Mr. Ehrlich: Yes.  
1892

1893 Mr. Trombley: What was your input in that process?  
1894

1895 Mr. Ehrlich: Pertaining to what?  
1896

1897 Mr. Trombley: In terms of there was a site plan and it changed. The big thing, they added the door and  
1898 entrance on the other side. Were you involved in that decision to change that?  
1899

1900 Mr. Ehrlich: Sure.  
1901

1902 Mr. Trombley: Who drew up and who actually stamped the site plan?  
1903

1904 Mr. Ehrlich: That I don't know. I would assume it was our architect who would do the final stamping of  
1905 the plan.  
1906

1907 Mr. Trombley: Did you provide instructions to that architect to make the site plan comply with the front  
1908 elevation requirement?  
1909

1910 Mr. Ehrlich: I think that was generally understood, that there were requirements that we needed to comply  
1911 with and we adjusted the plan to comply with the current Zoning Bylaws so that we wouldn't require  
1912 variances.  
1913

1914 Mr. Trombley: How many site plans have you been involved with in your career, give or take?  
1915

1916 Mr. Ehrlich: 25.  
1917

1918 Mr. Trombley: In your experience, have you ever come across this issue before with the front entrance  
1919 and the canopy issue before?  
1920

1921 Mr. Ehrlich: I'm not sure what you mean by that.  
1922

1923 Mr. Trombley: In your experience with 25 site plans, any site plan that required that the front elevation be  
1924 oriented towards a certain road? Has that requirement ever crossed your path?  
1925

1926 Mr. Kuhl: Objection, relevance.  
1927

1928 Mr. Ehrlich: Can I answer?

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1929 Mr. Kuhl: Yes.

1930

1931 Mr. Ehrlich: I think there are a lot of sides to the building. There's a fuel entrance, a store entrance, and  
1932 different buildings have different entrances. Typically the front entrance is the entrance that faces the  
1933 main road. If there's a primary entranceway it is architecturally designed to appear and act as the front  
1934 entrance. That the front entrance in our industry. As we've migrated and became more convenient and our  
1935 store footprints have grown, we've moved more toward the food industry, it requires more store front  
1936 parking and on multiple sides of the building. Basically it would be considered the front, but typically it's  
1937 the side that faces the main road.

1938

1939 Mr. Trombley: Does a Friendship Store typically have 2 entrances?

1940

1941 Mr. Ehrlich: Almost all of our stores have multiple entrances now, multiple front entrances and multiple  
1942 primary entrances, a fuel entrance and a store entrance.

1943

1944 Mr. Trombley: Have you ever done a customer study based on what the main entrance that is used, the  
1945 food storage or the gas canopy?

1946

1947 Mr. Ehrlich: It really depends on the balance. You're talking about which one has more traffic?

1948

1949 Mr. Trombley: Yes.

1950

1951 Mr. Ehrlich: It's almost usually going to be the entrance without the fuel pumps because most people pay  
1952 at the pump, so the people that are paying at the pump are going to pay, and that's 60% of the business.  
1953 People that are looking to get into the store want to park closest to get in the store without having to  
1954 navigate thru the pumps. That's the way we design the store locations today.

1955

1956 Mr. Trombley: When you design the locations, do you design so the pump is easiest or access to the food  
1957 store is easiest?

1958

1959 Mr. Ehrlich: We try to cater to both guests, so the customer who is coming for fuel, they're looking for  
1960 access to the dispensers. The customers who are looking to just come to the store don't want to go thru  
1961 the fuel pumps; they tend to go around to an entrance where they don't have to back up into people  
1962 behind them that are fueling their vehicles.

1963

1964 Mr. Trombley: Is it your testimony from your experience in the industry that the primary entrance people  
1965 go to to enter the store front itself is the food side more so than the canopy side?

1966

1967 Mr. Ehrlich: It depends on the use. You're asking a question that I can't answer because it depends on  
1968 why you came to the facility. If you came for fuel and fuel only, you go to the fuel side. If you came for  
1969 the store and the store only, you probably go to the store side; it's more convenient.

1970

1971 Mr. Trombley: You don't know, you have never done a customer analysis of this that you know?

1972

1973 Mr. Ehrlich: No.

1974

1975 Mr. Trombley: That's all the questions I have.

1976

1977 Mr. Oster: Isn't it true when you originally came with your design, you only had 1 entrance and it was not  
1978 facing 23?

1979

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1980 Mr. Ehrlich: Correct.  
1981  
1982 Mr. Oster: And then you changed it to add another front entrance on the side?  
1983  
1984 Mr. Ehrlich: Correct.  
1985  
1986 Mr. Oster: So with the initial application, you only had one front entrance?  
1987  
1988 Mr. Ehrlich: I believe that's correct.  
1989  
1990 Mr. Kuhl: Just to follow up, you actually have never attended any meeting related to this application prior  
1991 to this one, correct?  
1992  
1993 Mr. Ehrlich: Correct.  
1994  
1995 Mr. Kuhl: That's all I have. At this time we call Randy Schafer.  
1996  
1997 A court reporter with Armstrong & Okey, Inc. administered the oath to Mr. Schafer.  
1998  
1999 Randy Schafer, 309 Monroe Street, Monroeville, Ohio 44847.  
2000  
2001 Mr. Kuhl: Mr. Schafer, what is your occupation?  
2002  
2003 Mr. Schafer: Project Manager.  
2004  
2005 Mr. Kuhl: And for whom do you work?  
2006  
2007 Mr. Schafer: Janotta & Herner.  
2008  
2009 Mr. Kuhl: What is the business of Janotta & Herner?  
2010  
2011 Mr. Schafer: Janotta & Herner is a design/build contractor.  
2012  
2013 Mr. Kuhl: How long have you worked for Janotta & Herner?  
2014  
2015 Mr. Schafer: Just over 22 years.  
2016  
2017 Mr. Kuhl: Can you describe the various roles and responsibilities that you have had with Janotta &  
2018 Herner over that 22 years?  
2019  
2020 Mr. Schafer: I have about 1-1/2 years experience in the field, went back to school, got an architectural  
2021 design degree, associate degree, and I have about 10 years of design experience and another 10 years of  
2022 estimating and project management.  
2023  
2024 Mr. Kuhl: So in the past 10 years of design experience, would that include design and layout of retail  
2025 properties?  
2026  
2027 Mr. Schafer: Yes.  
2028  
2029 Mr. Kuhl: Would that also include the design and layout of gas stations?  
2030



## Board of Zoning Appeals

2031 Mr. Schafer: Yes.

2032

2033 Mr. Kuhl: In your 10 years as a designer working in project management, in project management have  
2034 you also dealt with design, layout, etc.?

2035

2036 Mr. Schafer: Yes, and specifically design of Friendship Foods Stores and project management of  
2037 Friendship Food Stores.

2038

2039 Mr. Kuhl: I'd like to hand you what we have marked as Exhibit E. If you could, please identify Exhibit E  
2040 for the record.

2041

2042 Mr. Schafer: It is an affidavit prepared in reference to this evening's meeting.

2043

2044 Mr. Kuhl: Does this affidavit reflect your sworn testimony to this matter?

2045

2046 Mr. Schafer: Yes.

2047

2048 Mr. Kuhl: Does it set forth facts of which you have personal knowledge and opinions that you hold?

2049

2050 Mr. Schafer: Yes.

2051

2052 Mr. Kuhl: Describe for the Board your involvement in the specific application that we are here about this  
2053 evening.

2054

2055 Mr. Schafer: As a project manager for Janotta & Herner, I oversee the design, which is with the design  
2056 department of engineers, architects and designers. I specifically oversee that process, meet with the  
2057 zoning and help produce the design documents that, in the end, get stamped and submitted for approval.

2058

2059 Mr. Kuhl: Does your work involve working, for example, with the Township Zoning Office to ensure  
2060 compliance with the Township Zoning Regulations?

2061

2062 Mr. Schafer: Yes.

2063

2064 Mr. Kuhl: And did you work with the Township Zoning Office in order to develop the zoning plan that  
2065 was compliant for the Friendship Store plan for this site we are here to talk about today?

2066

2067 Mr. Schafer: Yes, multiple meetings with Michele and phone calls.

2068

2069 Mr. Kuhl: Attached as Exhibit A to your affidavit, can you identify that as the site plan submitted and  
2070 approved by the Township Zoning Officer?

2071

2072 Mr. Schafer: Yes it is.

2073

2074 Mr. Kuhl: And in creating the plans, did you create them in order to comply with the Zoning Regulations  
2075 and the development text application to the property?

2076

2077 Mr. Schafer: Yes.

2078

2079 Mr. Kuhl: Based on your experience and expertise, do you have an opinion whether or not your site plan  
2080 complies with the Township Zoning Regulations and the development text applicable to this property?

2081

## Board of Zoning Appeals

2082 Mr. Schafer: Yes. We reviewed the Code extensively, and we would meet with the Zoning Director and  
2083 provide plans in reference to that for approval.

2084  
2085 Mr. Kuhl: As a part of your review and design, did you review the applicable lighting requirements for  
2086 this site?

2087  
2088 Mr. Schafer: Yes.

2089  
2090 Mr. Kuhl: Were the plans submitted and approved by the Township Zoning Office designed to be  
2091 compliant with the Township's lighting regulations?

2092  
2093 Mr. Schafer: Yes.

2094  
2095 Mr. Kuhl: We've heard testimony relating to the front elevation. To your knowledge, does the Orange  
2096 Township Zoning Code provide a definition for the term front elevation?

2097  
2098 Mr. Schafer: It does not.

2099  
2100 Mr. Kuhl: In your experience, what is your understanding of that meaning or term?

2101  
2102 Mr. Schafer: Front elevation would include architectural features designed with glass, entrance elements,  
2103 parking and those types of features.

2104  
2105 Mr. Kuhl: Based on your expertise and experience, does the east elevation, the elevation facing US 23,  
2106 have all the traditional architectural features for a front elevation?

2107  
2108 Mr. Schafer: Yes.

2109  
2110 Mr. Kuhl: Including entrance doors, correct?

2111  
2112 Mr. Schafer: Yes.

2113  
2114 Mr. Kuhl: Windows?

2115  
2116 Mr. Schafer: Yes.

2117  
2118 Mr. Kuhl: Signage?

2119  
2120 Mr. Schafer: Yes.

2121  
2122 Mr. Kuhl: Lighting?

2123  
2124 Mr. Schafer: Yes.

2125 Mr. Kuhl: Customer parking?

2126  
2127 Mr. Schafer: Yes. One clarification, when we submitted initially, the building did have 2 entrances.

2128  
2129 Mr. Oster: Not a double door. Your main entrance, was what you submitted?

2130  
2131 Mr. Kuhl: Point of procedure.

2132

## Board of Zoning Appeals

2133 Mr. Oster: My question was before you submitted that, so I touched upon it again.  
2134  
2135 Mr. Kuhl: Mr. Oster asked Mr. Ehrlich whether or not the site that was previously submitted to the Board  
2136 only had 1 customer entrance. Do you recall that testimony?  
2137  
2138 Mr. Schafer: Yes.  
2139  
2140 Mr. Kuhl: And Mr. Oster said that the prior plan only had the customer entrance; do you recall that?  
2141  
2142 Mr. Schafer: Yes.  
2143  
2144 Mr. Kuhl: Is Mr. Oster's recollection of the site plan accurate.  
2145  
2146 Mr. Schafer: No.  
2147  
2148 Mr. Kuhl: No further questions.  
2149  
2150 Mr. Oster: I deem that a front entrance, not only one entrance, just to correct you.  
2151  
2152 Mr. Schafer: It had 2 entrances.  
2153  
2154 Mr. Oster: It had 1 side door, I believe. That was 2 on the other side  
2155  
2156 Ms. Mundy: Not in the front though.  
2157  
2158 Mr. Oster: I'm talking the other on the west side of the building, it had a double door. Did it have a  
2159 double door?  
2160  
2161 Mr. Schafer: It had an entrance there.  
2162  
2163 Mr. Oster: Did it have a steel door, a double door, glass?  
2164  
2165 Mr. Schafer: Aluminum and glass.  
2166  
2167 Mr. Kuhl: Objection to the harassing nature of that question. Will you please respect my witness and at  
2168 least allow him to answer your question?  
2169  
2170 Mr. Schafer: They had an aluminum and glass entrance door. I don't recall if it was a double door, a  
2171 single door, and I don't know if the Code specifies that 1 is a main entrance or a second entrance, that  
2172 type of thing. It was on the west side of the building and the north side of the building.  
2173  
2174 Mr. Oster: It didn't look like a typical door that a customer is going to venture thru.  
2175  
2176 Mr. Schafer: No, it was truly; it came in and was directly adjacent to the point of sale system.  
2177  
2178 Mr. Kuhl: Any further questions by members of the Board?  
2179  
2180 Mr. McCarthy: Counsel, anything further?  
2181  
2182 Mr. Kuhl: Nothing further.  
2183

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2184 Mr. Trombley: I direct your attention to Page 2 of the affidavit that you provided. Your testimony, “In my  
2185 experience, a front elevation has the architectural features and characteristics of the front, or entrance, of a  
2186 building. These characteristics include entrance doors, windows, signage, lighting, parking, and other  
2187 similar characteristics”.

2188  
2189 Mr. Schafer: Yes.

2190  
2191 Mr. Trombley: I have in my presentation packet the actual language of the development plan. If you go  
2192 past the PowerPoint, it’s labeled 0003 on the top right; this is an excerpt from the actual development  
2193 plan. It reads “Canopies and support columns associated with the businesses, as well as any secondary  
2194 structures within the development, will need to adhere to the same architectural requirements as the main  
2195 buildings”. Let me direct your attention to Page 7 of the affidavit; it’s a picture of the site plan. What  
2196 would you describe this structure as?

2197  
2198 Mr. Schafer: The structure is the roof canopy over the fuel.

2199  
2200 Mr. Trombley: This entire structure, including the top, the columns, what would you describe that as?

2201  
2202 Mr. Schafer: The fuel canopy.

2203  
2204 Mr. Trombley: And it says, “Any lot with frontage obviously should orient the proposed structure as their  
2205 front elevation”. Then your opinion of the term front elevation is an architectural term, correct?

2206  
2207 Mr. Schafer: Front elevation is referencing, in my opinion, the front of the building.

2208  
2209 Mr. Trombley: I’m saying that’s an architectural requirement, right?

2210  
2211 Mr. Schafer: Can you explain what an architectural requirement is?

2212  
2213 Mr. Trombley: A front elevation, would you deem interpreting these terms that are in here that the  
2214 requirement that the front elevation shall orient itself is an architectural requirement? Is that a fair  
2215 interpretation? How did you interpret that when you looked at it?

2216  
2217 Mr. Schafer: We interpreted that as the front elevation of the building.

2218  
2219 Mr. Trombley: I’m not talking about the building; I’m talking about the canopy.

2220  
2221 Mr. Schafer: This specifically says the canopy?

2222  
2223 Mr. Trombley: “Canopies and support columns associated with businesses, as well as any secondary  
2224 structures within the development, will adhere to the same architectural requirements as the main  
2225 buildings”. So the question is do you think that the front elevation facing toward US 23 is an architectural  
2226 requirement?

2227 Mr. Schafer: The front elevation, an architectural requirement is, in my opinion, the same materials at the  
2228 columns and the canopy and the roof material.

2229  
2230 Mr. Trombley: Don’t you say in this, “In my experience, the front elevation has the architectural features  
2231 and characteristics of a front entrance to the building”? Doesn’t that mean front elevation is an  
2232 architectural feature regarding architecture?

2233  
2234 Mr. Schafer: Architectural features are what is on the front elevation.

## Board of Zoning Appeals

2235 Mr. Trombley: Right, but isn't the front elevation a way to describe an architectural requirement? If I say  
2236 something is oriented a certain way, you don't use the front elevation, you are going to use any other  
2237 word. I can say the façade, I don't even say elevation. I can say characteristics associated with the front  
2238 entrance of a building need to be oriented toward US 23. Wouldn't that be an architectural requirement?  
2239

2240 Mr. Schafer: No.

2241  
2242 Mr. Kuhl: The question is argumentative, compound and the Code speaks for itself.  
2243

2244 Mr. Trombley: Fair enough, it does speak for itself. My question then to you is does this canopy, if you  
2245 go back to the picture of it, can you enter that canopy from all 4 sides?  
2246

2247 Mr. Schafer: There's access to the fuel pumps from all 4 sides.  
2248

2249 Mr. Trombley: So I can come at it from the side?  
2250

2251 Mr. Schafer: You can pull in from the end and turn and there's open fuel pumps at all sides of the canopy.  
2252

2253 Mr. Trombley: Is there any sign on the canopy?  
2254

2255 Mr. Schafer: Yes, there are signs.  
2256

2257 Mr. Trombley: What side are the signs on, the long side or the short side?  
2258

2259 Mr. Schafer: On the 2 short sides, the short side and the long side facing the north.  
2260

2261 Mr. Trombley: Would an oncoming customer enter more likely from the side or from the short side or the  
2262 long side? What is more likely to happen?  
2263

2264 Mr. Kuhl: Objection to the scope of the question. Continued objection.  
2265

2266 Mr. Trombley: Fair enough. So when you were making a determination on whether or not this building  
2267 complied with zoning, did you consider the canopy's front elevation? Did you consider that question  
2268 specific to the canopy, not to the whole building?  
2269

2270 Mr. Schafer: No. Front elevation is, in our opinion, the front of the building, and with the Zoning Code,  
2271 there's no definition for front elevation.  
2272

2273 Mr. Trombley: What was your architectural experience again?  
2274

2275 Mr. Schafer: Two year degree, architectural design.  
2276

2277 Mr. Trombley: Where was that?  
2278

2279 Mr. Schafer: Terra Community College.  
2280

2281 Mr. Kuhl: Just a few follow ups. The height of the canopy, is it the same on all 4 sides?  
2282

2283 Mr. Schafer: Yes.  
2284

2285 Mr. Kuhl: The materials, the roofing materials, the size of the roof, is it the same on all 4 sides?

## Board of Zoning Appeals

2286  
2287 Mr. Schafer: Yes.  
2288  
2289 Mr. Kuhl: The columns, are they the same on all 4 sides?  
2290  
2291 Mr. Schafer: Yes.  
2292  
2293 Mr. Kuhl: Which way do the fuel pumps point? Do they face US 23 or do they face Coal Bend?  
2294  
2295 Mr. Schafer: 23.  
2296  
2297 Mr. Kuhl: Is there any difference, other than the dimension for the canopy, other than the length and  
2298 width, between the east elevation, west elevation, north elevation and south elevation?  
2299  
2300 Mr. Schafer: No difference in the canopy.  
2301  
2302 Mr. Trombley: I thought you said on 1 side there wasn't a sign, right? There were signs on 1 side and on  
2303 the 1 side on the front?  
2304  
2305 Mr. Schafer: As far as the canopy construction, not signs, there's stripes on the canopy; stripes are a sign.  
2306  
2307 Mr. Trombley: Stripes are a sign?  
2308  
2309 Mr. Schafer: On the canopy, on the fascia of the canopy.  
2310  
2311 Mr. Trombley: So you're saying the side facing the road, is there a sign on that.  
2312  
2313 Mr. Schafer: The north side and east side; stripes, signs, or both.  
2314  
2315 Mr. Trombley: What is the purpose of those signs?  
2316  
2317 Mr. Schafer: To break up the plain face of the façade.  
2318  
2319 Mr. Trombley: To present itself right towards the road, would that be the reason behind that?  
2320  
2321 Mr. Schafer: It could be; it's opinion.  
2322  
2323 Mr. Trombley: It's not there for no reason; what was your reason behind putting it there?  
2324  
2325 Mr. Schafer: In order to keep it from looking like a plain front.  
2326  
2327 Mr. Trombley: That's all I have.  
2328  
2329 Mr. Fowler: I have no questions.  
2330  
2331 Mr. Kuhl: Nothing further for this witness. That concludes the presentation of our evidence. I would like  
2332 to make a brief argument, as was afforded the appellant's counsel. And for purpose of the record, I want  
2333 to introduce the exhibits that we have marked as A thru E.  
2334  
2335 Mr. Oster: Counsel, could you list the number and title of the exhibits?  
2336

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2337 Mr. Kuhl: Exhibit A is the approved Zoning Application along with the development plan that were  
2338 submitted and approved by the Township Zoning Office. Exhibit B is the Orange Township Zoning  
2339 Department's Planning and Zoning Director's letter to this body explaining the rationale for her approval.  
2340 Exhibit C is the transmission letter to the applicant with the approved plans. Exhibit D is the affidavit of  
2341 Greg Ehrlich. Exhibit E is the affidavit of Randy Schafer. I would also ask that the brief that was  
2342 submitted to counsel in advance of the meeting be included in any record of these proceedings.

2343  
2344 Mr. Oster: Yes. We did not have any in print.

2345  
2346 Mr. Kuhl: I will go ahead and for purposes of the record mark that as Exhibit F. Obviously this is an  
2347 important issue, not only for the homeowners who are disappointed that the Zoning Code says what it  
2348 says, but that's ultimately what this comes down to, is that the objectors to the appeal are opposed to the  
2349 fact that the Zoning Ordinance and the development text for the property permits a gas station. We have  
2350 heard uncontroverted evidence that a gas station is a permitted use for this site, and so the sole question  
2351 before the Board tonight is whether or not the appellant, who has the burden in this case, has put forth  
2352 credible, reliable evidence and expert testimony that contradicts the findings of the Township Zoning  
2353 Director who concluded there was a permitted use, who concluded that it meets this front elevation  
2354 requirement, who concluded that it will not cause a violation of nay noise, odor, vibration or lighting  
2355 requirements as set forth in the development text for this property as set forth in the Orange Township  
2356 Zoning Code or as set forth in Section 14.07 which was identified by the appellant. In fact, the testimony  
2357 has been uniformly that it meets all of those requirements. This Board's role is limited to an evaluation of  
2358 did Ms. Boni appropriately apply the Zoning Code when evaluating the application and, in doing that  
2359 evaluation, Ms. Boni has the same obligation that you do, and that is, any ambiguity in the Township  
2360 Zoning Code was construed in favor the applicant and against the restriction. Zoning is a derivation of the  
2361 common law. It is hundreds of years of Supreme Court precedent that requires bodies like this, that  
2362 requires Ms. Boni, that requires any governing body over zoning decisions to interpret and apply any  
2363 ambiguity in the Zoning Code in favor the applicant. And what do we hear? The Zoning Case has  
2364 absolutely no definition for front elevation. We submitted a plan that had a front elevation. We thought it  
2365 was permissible and, in an abundance of caution, we heard Ms. Boni testify because this is so ambiguous  
2366 I can't interpret it, I ask you at least go thru the variance process. We went thru the variance process. It  
2367 was clear the variance would not be granted, so in order to address the concerns of the Township and the  
2368 Board, we modified the plan so as to have a front entrance with all the architectural features of a front  
2369 elevation. It's got signage, parking, parking bollards, 2 doors, lighting, everything that is associated with  
2370 the elevation facing Route 23 is consistent with the front elevation and there's nothing in the Code to  
2371 suggest otherwise. What the appellant is asking you to do in this case is to read in requirements into the  
2372 Zoning Code that simply do not exist. This body is not permitted to modify the 2017 Code on the fly.  
2373 That holds for the front elevation, for permitted uses, for lighting, odors, vibration, all of those things.  
2374 There's been no expert testimony regarding sound, vibrations, lighting other than the Township's expert  
2375 and the applicant's expert. All we heard was subjective opinions based on things that were Googled from  
2376 the internet, things that were Googled where we have no idea what the credentials of the authors were,  
2377 whether it was peer reviewed, whether it is commonly accepted in the industry, whether it's reliable,  
2378 whether it's accurate, whether it's truthful. The appellant is asking this Board to jump to conclusions, to  
2379 equate construction trucks and jackhammers to the sounds associated with the refueling at a gas station.  
2380 There's no credible testimony or evidence that has been presented to you that would allow you to find that  
2381 Ms. Boni misapplied the Township Zoning Code and, therefore, based on the evidence, based on the  
2382 testimony, including the testimony of Ms. Boni, this Board can only come to one lawful conclusion in this  
2383 case, and that is the zoning certificate that was approved by Ms. Boni satisfies all of the requirements for  
2384 the zoning and the development text applicable to the property, and on behalf of my client, I would ask  
2385 that you affirm Ms. Boni's decision and deny the appeal.

2386  
2387 Mr. Oster: In this bus or truck terminal or refueling, does the reference stand on its own?

## Board of Zoning Appeals

2388 Mr. McCarthy: Truck terminal or refueling, there is no punctuation.  
2389  
2390 Mr. Oster: I find it vague and ambiguous.  
2391  
2392 Mr. McCarthy: I would argue on behalf of Ms. Boni when she made the decision. It couldn't prohibit all  
2393 refueling because otherwise there would be no need to say no gas stations allowed next to All Lutheran  
2394 because if refueling was completely prohibited, there is no need for that lower part, so there must be  
2395 refueling of some type permitted.  
2396  
2397 Mr. Oster: I figured that would be if not abutting. This could apply if it's not abutting. This would apply if  
2398 it is abutting the property directly.  
2399  
2400 Mr. Fowler: Yes, but there would be no need to address abutting if the refueling was completely  
2401 prohibited. That would be my interpretation of that. It couldn't mean all refueling is prohibited. Or, like I  
2402 said, if there's ambiguity, then you go back to ambiguities are construed.....  
2403  
2404 Mr. Oster: Right.  
2405  
2406 Mr. Shipley: When we talk about abutting, perhaps I missed it, but that particular property, there's two  
2407 separate properties, one next to the church and this one here.  
2408  
2409 Mr. Oser: They split it, so now they're saying even though it's undeveloped, it's not abutting.  
2410  
2411 Mr. McCarthy: The text is lots. If you look at the zoning development plan, it's lots, not developed lots or  
2412 anything else.  
2413  
2414 Mr. Shipley: Exactly because it's two lots.  
2415  
2416 Mr. Oster recessed the hearing.  
2417  
2418 Mr. Oster called the hearing back to order. Again, ask for anybody's view or opinions on the matter of the  
2419 3 issues the appellant has brought forward.  
2420  
2421 Ms. Jordan: I believe that for the gas station/convenience store as a permitted use, based on what is in the  
2422 Code, it cannot be a bus or truck terminal or as far as refueling or driving related, this particular facility  
2423 doesn't seem to be any of those. The site plan that abuts All Shepherds Lutheran Church, I think we've  
2424 established there is a vacant lot in between the facility and the church; it does not abut the church. The  
2425 exterior lighting, if it's all within the Code and it's been approved as being compliant with the Code, I  
2426 don't know that there's anything else to say about that. And the front elevation, as I understand all the  
2427 conversation, there's a question as to whether the front elevation is required, is required to be where the  
2428 canopy is. From what I understand, does the front elevation have to be where the canopy and the actual  
2429 pumps are, or can the front elevation be an entrance and the canopy be on another side with a separate  
2430 entrance? Again, the Code seems to uphold Ms. Boni's determination that the Friendship Kitchen is in  
2431 compliance with the Orange Township Zoning Code.  
2432  
2433 Mr. Shipley: I second.  
2434  
2435 Ms. Boni: A motion made by Ms. Jordan to uphold the Zoning Director's decision.  
2436  
2437 Vote on Motion: Mr. Oster-yes, Ms. Jordan-yes, Mr. Trefz-yes, Mr. Shipley-yes  
2438



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2439 Motion carried

2440

2441 Hearing adjourned at 9:40 p.m.

2442

2443 Minutes prepared by Cindy Davis, Zoning Secretary

2444

2445 On June 20, 2019, Mr. Trefz moved to approve the meeting minutes of the Orange Township Board of  
2446 Zoning Appeals dated April 24, 2019 for Appeals Application #AP-19-11, Buckeye Investments NOW,  
2447 Inc., with the following corrections:

2448

- 2449 • Runfola Reporters should be changed to Armstrong & Okey, Inc. throughout the entire document
- 2450 • Line 49: The sentence should read: "...Zoning Permit Application ZC-18-04..."
- 2451 • Line 78: The sentence should read: "...appellant's counsel needs to be sworn in..."
- 2452 • Line 86: The sentence should read: "...he needs to be sworn in..."
- 2453 • Line 295: The sentence should read: "...there's been no indication that they're a reliable..."
- 2454 • Lines 304 and 305: The sentence should read: "The Federal regulations regulate glare to a certain extent; that's all  
2455 based off of and explained in the attached regulations of how it got to that point, where it got to that number."
- 2456 • Line 363: The sentence should read: "...visualization of what that front would look like..."
- 2457 • Line 391: The sentence should read: "Do you have any degrees in engineering science?"
- 2458 • Line 420: The sentence should read: "...one of the tenets and canons of being an officer..."
- 2459 • Line 573: The sentence should read: "...there refueling the fuel center..."
- 2460 • Lines 618-619: The sentence should read: "...earth shaking vibrations which are discernible without instruments  
2461 at or beyond the property line"
- 2462 • Line 633: The sentence should read: "The purpose of my testimony is not to talk to the fact..."
- 2463 • Line 687: Building Inspector should read Zoning Inspector
- 2464 • Line 701: The word "fist" should read "first"
- 2465 • Line 733: The sentence should read: "... you want to proceed with witnesses..."
- 2466 • Line 807: The sentence should read: "you have to sit for a test for the State..."
- 2467 • Line 866: The sentence should read: "...you can refer to a figure..."
- 2468 • Line 899: The word "make" should be "makes"
- 2469 • Line 944: The sentence should read: "...do you consider the residential properties?"
- 2470 • Line 977: The sentence should read: "...going to be just a gas station or does it plan to have..."
- 2471 • Line 1012: The sentence should read: "Did anyone tell you about that when you purchased it?"
- 2472 • Line 1090: The sentence should end with a question mark instead of >
- 2473 • Line 1109: The sentence should read: "There are residents that will testify specific to them..."
- 2474 • Lines 1129-1130: The sentence should read: "I'm not trying to elicit what their opinion is on the general, just what  
2475 their personal experiences are from living right there."
- 2476 • Line 1134: The word "no" should read "not".
- 2477 • Line 1139: The word "but" should read "buy"
- 2478 • Line 1142: The word "relevance" should read "relevant"
- 2479 • Line 1152: The sentence should read: "...I further direct the Court to the case of..."
- 2480 • Line 1160: Take out the second "gas station" from the sentence.
- 2481 • Line 1202: The sentence should read: "...o try to relate it to the fuel tanker trucks because there..."
- 2482 • Line 1306: The sentence should read: "I think a lot of this really revolves on the BZA."
- 2483 • Line 1314: The word "point" should read "pointing"
- 2484 • Line 1362: The word "in" should read "on"
- 2485 • Line 1394: The word "division" should read "definition"
- 2486 • Line 1646: The sentence should read: "...Because there's no definition in the zoning text or our resolution."
- 2487 • Line 1748: The word "large" should read "larger"
- 2488 • Line 2245: The sentence should read: "...can you enter that canopy from all 4 sides?"
- 2489 • Line 2325: The word "plan" should read "plain".
- 2490 • Line 2352: The word "afford" should read "afforded"

## Board of Zoning Appeals

- 2491 • Line 2360: The word “has” should read “was”
- 2492 • Line 2374: The sentence should read: “There’s been no expert testimony regarding sound, vibrations, lighting...”
- 2493 • Lines 2406-2407: The sentence should read: “When we talk about abutting, perhaps I missed it, but that particular
- 2494 property, there’s two separate properties, one next to the church and this one here.”
- 2495 • Line 2409: The word “Oser” should read “Oster”
- 2496 • Line 2411: The sentence should read: “...if you look at the zoning development plan, it’s lots...”
- 2497 • Line 2414: The sentence should read: “Exactly because it’s two lots.”

2498

2499 Seconded by Ms. Jordan.

2500

2501 Vote on Motion: Mr. Oster-yes, Mr. Miller-abstain, Ms. Jordan-yes, Mr. Trefz-yes, Mr. Shipley-yes

2502

2503