

HOBOKEN ZONING BOARD OF ADJUSTMENT  
CITY OF HOBOKEN

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REGULAR MEETING OF THE HOBOKEN :Tuesday 7:22 pm  
ZONING BOARD OF ADJUSTMENT : January 19, 2016  
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Held At: 94 Washington Street  
Hoboken, New Jersey

B E F O R E:

- Chairman James Aibel
- Commissioner John Branciforte
- Commissioner Philip Cohen
- Commissioner Antonio Grana
- Commissioner Owen McAnuff
- Commissioner Diane Fitzmyer Murphy
- Commissioner Dan Weaver
- Commissioner Edward McBride
- Commissioner Cory Johnson
- Commissioner Frank DeGrim

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

- Eileen Banyra, Planning Consultant
- Paul J. Winters, PE, CME  
Board Engineer
- Patricia Carcone, Board Secretary

PHYLLIS T. LEWIS  
CERTIFIED COURT REPORTER  
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1           A P P E A R A N C E S:

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1                   CHAIRMAN AIBEL: Okay. Good evening,  
2 everybody. I am serving as an officer ex officio  
3 for the next 30 seconds or so. I will start with  
4 the public notice.

5                   I would like to advise all of those  
6 present that notice of this meeting has been  
7 provided to the public in accordance with the  
8 provisions of the Open Public Meetings Act, and that  
9 notice was published in The Jersey Journal and on  
10 the city website. Copies were provided in The  
11 Star-Ledger, The Record, and also placed on the  
12 bulletin board in the lobby of City Hall.

13                   Please join me in saluting the flag.

14                   (Pledge of Allegiance recited)

15                   CHAIRMAN AIBEL: So we are here on the  
16 first installment of the 2016 Zoning Board. We are  
17 welcoming some new members, and Dennis will do the  
18 swearing-in honors in a moment.

19                   We have Cory Johnson, Ed McBride, and  
20 Dan Weaver joining the Board.

21                   Owen McAnuff and John Branciforte are  
22 elevating themselves.

23                   We are very fortunate to have some  
24 great new Board members, and we are happy to have  
25 some additional four-year members. So with that, I

1           guess we can turn it to counsel for the swearing-in.

2                   MR. GALVIN: I would like to ask --

3                   CHAIRMAN AIBEL: Do you know what, do  
4 we need a roll call first?

5                   That was my fault.

6                   MR. GALVIN: Yes, do a roll call.

7                   MS. CARCONE: With the new members?

8                   MR. GALVIN: Even with the new members.

9           It's okay.

10                   MS. CARCONE: Commissioner Aibel?

11                   CHAIRMAN AIBEL: Here.

12                   MS. CARCONE: Commissioner Branciforte?

13                   COMMISSIONER BRANCIFORTE: Here.

14                   MS. CARCONE: Commissioner Cohen?

15                   COMMISSIONER COHEN: Here.

16                   MS. CARCONE: Commissioner Grana?

17                   COMMISSIONER GRANA: Here.

18                   MS. CARCONE: Commissioner Marsh is  
19 absent.

20                   Commissioner Murphy?

21                   COMMISSIONER MURPHY: Here.

22                   MS. CARCONE: Commissioner McAnuff?

23                   COMMISSIONER MC ANUFF: Here.

24                   MS. CARCONE: Commissioner Weaver?

25                   COMMISSIONER WEAVER: Here.

1 MS. CARCONE: Commissioner McBride?

2 COMMISSIONER MC BRIDE: Here.

3 MS. CARCONE: Commissioner Johnson?

4 COMMISSIONER JOHNSON: Here.

5 MS. CARCONE: Commissioner DeGrim?

6 COMMISSIONER DE GRIM: Here.

7 MS. CARCONE: Okay.

8 MR. GALVIN: Are you ready?

9 Okay. I would ask for Mr. Weaver, Mr.  
10 McAnuff, Mr. Branciforte, Mr. Johnson, Mr. McBride  
11 to all please stand and raise your right hand, and I  
12 am going to do this in an economical way that saves  
13 you a lot of inconvenience.

14 Do you solemnly swear that you will  
15 faithfully, impartially and justly perform all of  
16 the duties as a Zoning Board member for the City of  
17 Hoboken to the best of your ability, and that you  
18 will support the Constitutions of the United States  
19 and the State of New Jersey, and that you will bear  
20 true faith and allegiance to the same and to the  
21 governments established in the United States and in  
22 this state under the authority of the people?

23 (Newly appointed Board members answered  
24 in the affirmative.)

25 MR. GALVIN: Congratulations. Welcome

1           aboard.

2                           (Appause)

3                           CHAIRMAN AIBEL:   So the next order of  
4           administration is the nomination and election of  
5           officers for 2016, and we have to start with  
6           nominating an Acting Chair.

7                           Is there anyone who wants to make a  
8           motion and nominate somebody?

9                           COMMISSIONER MURPHY:   I would like to  
10          nominate you.

11                           COMMISSIONER WEAVER:   Second.

12                           COMMISSIONER GRANA:   Second.

13                           CHAIRMAN AIBEL:   Thank you.

14                           MR. GALVIN:   Do a roll call.

15                           MS. CARCONE:   So we're having our  
16          regular and one alternate voting on this.

17                           MR. GALVIN:   Okay.   To achieve seven.

18                           MS. CARCONE:   To achieve seven.

19                           MR. GALVIN:   Okay.   Very good.

20                           MS. CARCONE:   Commissioner Branciforte?

21                           COMMISSIONER BRANCIFORTE:   Yes.

22                           MS. CARCONE:   Commissioner Cohen?

23                           COMMISSIONER COHEN:   Yes.

24                           MS. CARCONE:   Commissioner Grana?

25                           COMMISSIONER GRANA:   Yes.

1 MS. CARCONE: Commisisoner Murphy?

2 COMMISSIONER MURPHY: Yes.

3 MS. CARCONE: Commissioner McAnuff?

4 COMMISSIONER MC ANUFF: Yes.

5 MS. CARCONE: Commissioner Weaver?

6 COMMISSIONER WEAVER: Yes.

7 MS. CARCONE: And Commissioner Aibel?

8 CHAIRMAN AIBEL: Yes.

9 Thank you for your confidence.

10 (Applause)

11 So let me celebrate being the nominated

12 Acting Chair for a moment.

13 (Laughter)

14 Do we have a motion or a nomination for

15 a Chairman?

16 COMMISSIONER BRANCIFORTE: I will

17 nominate Jim Aibel.

18 COMMISSIONER GRANA: Second.

19 CHAIRMAN AIBEL: Thank you.

20 MS. CARCONE: All right. Commissioner

21 Branciforte?

22 COMMISSIONER BRANCIFORTE: Yes.

23 MS. CARCONE: Commissioner Cohen?

24 COMMISSIONER COHEN: Yes.

25 MS. CARCONE: Commissioner Grana?

1 COMMISSIONER GRANA: Yes.

2 MS. CARCONE: Commisisoner Murphy?

3 COMMISSIONER MURPHY: Yes.

4 MS. CARCONE: Commissioner McAnuff?

5 COMMISSIONER MC ANUFF: Yes.

6 MS. CARCONE: Commissioner Weaver?

7 COMMISSIONER WEAVER: Yes.

8 MS. CARCONE: Commissioner Aibel?

9 CHAIRMAN AIBEL: Yes.

10 I do thank you.

11 May I have a nomination for Vice

12 Chairman?

13 COMMISSIONER WEAVER: John Branciforte.

14 CHAIRMAN AIBEL: Do we have a second?

15 COMMISSIONER MURPHY: Second.

16 COMMISSIONER GRANA: Can't we have

17 another one?

18 MR. GALVIN: Then we're going to have

19 another one.

20 CHAIRMAN AIBEL: Is there another

21 nomination?

22 COMMISSIONER GRANA: I would like to

23 nominate Commissioner Cohen.

24 COMMISSIONER MC ANUFF: Second.

25 MR. GALVIN: That is what you were

1 talking about. We did it last year.

2 MS. CARCONE: Who was the second on  
3 Branciforte?

4 COMMISSIONER WEAVER: I was.

5 MR. GALVIN: What do you think about  
6 doing it by secret ballot? Is that what you want to  
7 do, or do you want to do it out --

8 COMMISSIONER COHEN: That is fine.

9 MR. GALVIN: Secret ballot?

10 COMMISSIONER GRANA: Sure.

11 MR. GALVIN: Pistols at High Noon.

12 (Laughter)

13 Just get a piece of paper.

14 MS. CARCONE: A piece of paper?

15 COMMISSIONER MC ANUFF: Eeny, meeny,  
16 miny, moe.

17 MR. GALVIN: Yes, it is more polite I  
18 think.

19 (Board members confer)

20 MS. CARCONE: I am following her lead.  
21 I have never done this before.

22 MR. GALVIN: Yes, you might have, but  
23 you don't remember.

24 (Laughter)

25 (Board members confer)

1 MR. GALVIN: Get seven pieces of paper  
2 and the paper goes to the seven people who can vote.

3 MS. CARCONE: Seven. So, one, two,  
4 three, all right. Antonio and Owen and Phil. Here  
5 we go.

6 CHAIRMAN AIBEL: So we do have seven.

7 COMMISSIONER GRANA: One for me.

8 CHAIRMAN AIBEL: This is Hudson County.

9 MR. GALVIN: So fill it out.

10 All right. Who has the extra ballots?

11 (Laughter)

12 MS. CARCONE: Right here is the pile.

13 MR. GALVIN: So I have one, two, three,  
14 four, five, six, seven. Okay.

15 COMMISSIONER WEAVER: But it is  
16 Hoboken, you should have eight.

17 (Laughter)

18 MR. GALVIN: All right. Mr.  
19 Branciforte is the Vice Chairman.

20 COMMISSIONER BRANCIFORTE: Thank you.

21 COMMISSIONER GRANA: Congratulations.

22 (Applause)

23 CHAIRMAN AIBEL: We now have to elect a  
24 Secretary.

25 COMMISSIONER MURPHY: Pat.

1 COMMISSIONER WEAVER: Second.

2 MS. CARCONE: All in favor?

3 (All Board members answered in the  
4 affirmative.)

5 CHAIRMAN AIBEL: Do we have to appoint  
6 committees tonight?

7 MR. GALVIN: No. I think you can hold  
8 off on that --

9 CHAIRMAN AIBEL: Let me ask the  
10 Board --

11 MR. GALVIN: -- unless you want to.

12 CHAIRMAN AIBEL: -- we have a task in  
13 restructuring to appoint committees to evaluate  
14 professional resumes.

15 My suggestion, given the time and the  
16 agenda tonight, is to do that at our next session,  
17 and in the meantime, we will communicate to see if  
18 we can get takers for committee work. Is that okay?

19 COMMISSIONER GRANA: Yes.

20 COMMISSIONER MC ANUFF: Yes.

21 CHAIRMAN AIBEL: Okay. We need to  
22 approve the 2016 meeting schedule.

23 Should we do that by all in favor?

24 MR. GALVIN: Yes, I guess so.

25 COMMISSIONER AIBEL: Can we have a

1 motion to approve?

2 COMMISSIONER MURPHY: Motion to approve  
3 the schedule for this coming year.

4 COMMISSIONER MC ANUFF: Second.

5 MR. GALVIN: All in favor?

6 (All Board members answered in the  
7 affirmative)

8 MR. GALVIN: Anyone opposed?

9 CHAIRMAN AIBEL: Now we need to  
10 designate The Jersey Journal as our official  
11 newspaper, so may I have a motion to designate The  
12 Jersey Journal?

13 COMMISSIONER BRANCIFORTE: Motion to  
14 designate The Jersey Journal as our newspaper.

15 COMMISSIONER MC ANUFF: Second.

16 CHAIRMAN AIBEL: Michael.

17 MR. DE FUSCO: Good luck, everybody.

18 MS. CARCONE: Thank you.

19 MR. DE FUSCO: Congratulations.

20 MR. GALVIN: We will miss you, man.

21 (Laughter)

22 CHAIRMAN AIBEL: All in favor?

23 (All Board members answered in the  
24 affirmative.)

25 CHAIRMAN AIBEL: Thank you.

1                   There has also been a request or a  
2 suggestion that we post the annual calendar in The  
3 Hudson Reporter, and my suggestion is barring an  
4 inordinate expense, that would probably be a good  
5 idea, but I would like to have a motion to approve  
6 putting our annual calendar in The Hudson Reporter.

7                   COMMISSIONER MC ANUFF: Motion to  
8 approve putting the calendar in The Hudson Reporter.

9                   COMMISSIONER MURPHY: Second.

10                  CHAIRMAN AIBEL: All in favor?

11                  (All Board members answered in the  
12 affirmative)

13                  CHAIRMAN AIBEL: Great. Thanks,  
14 everybody.

15                  We can now turn to the resolutions.

16                  We have a resolution of denial for 710  
17 Hudson Street.

18                  MS. CARCONE: 710 Hudson voting to  
19 deny, so that is opposed to the approval, are Phil  
20 Cohen, Diane Murphy and John Branciforte.

21                  MR. GALVIN: Right.

22                  MS. CARCONE: That is a denial, right?

23                  MR. GALVIN: Yes.

24                  COMMISSIONER COHEN: Motion to  
25 approve --

1 COMMISSIONER BRANCIFORTE: The denial.

2 COMMISSIONER COHEN: -- the denial.

3 MS. CARCONE: Double negative.

4 And a second?

5 COMMISSIONER BRANCIFORTE: I will

6 second.

7 MS. CARCONE: Commissioner Branciforte?

8 COMMISSIONER BRANCIFORTE: Yes.

9 MS. CARCONE: Commissioner Cohen?

10 COMMISSIONER COHEN: Yes.

11 MS. CARCONE: Commissioner Murphy?

12 COMMISSIONER MURPHY: Yes.

13 MS. CARCONE: Okay.

14 CHAIRMAN AIBEL: We have a resolution

15 of approval for 618 Adams Street.

16 MS. CARCONE: Voting on that one are:

17 Commissioner Aibel -- this is to approve,

18 Commissioner Branciforte, Commissioner Murphy,

19 Commissioner McAnuff and Commissioner DeGrim.

20 COMMISSIONER MC ANUFF: Motion to

21 approve.

22 COMMISSIONER DE GRIM: Second.

23 MS. CARCONE: Commissioner Branciforte?

24 COMMISSIONER BRANCIFORTE: Yes.

25 MS. CARCONE: Commissioner Murphy?

1 COMMISSIONER MURPHY: Yes.

2 MS. CARCONE: Commissioner McAnuff?

3 COMMISSIONER MC ANUFF: Yes.

4 MS. CARCONE: Commissioner DeGrim?

5 COMMISSIONER DE GRIM: Yes.

6 MS. CARCONE: Commissioner Aibel?

7 CHAIRMAN AIBEL: Yes.

8 Are you sure I was --

9 MS. CARCONE: Yes.

10 (Board members confer)

11 CHAIRMAN AIBEL: We have a resolution  
12 of denial for 703 Bloomfield Street.

13 MS. CARCONE: Voting on that one is  
14 Commissioner Grana, Commissioner Murphy,  
15 Commissioner Branciforte, Commissioner McAnuff and  
16 Commissioner DeGrim and Commissioner Aibel.

17 COMMISSIONER MC ANUFF: Motion to deny.

18 COMMISSIONER GRANA: Second.

19 CHAIRMAN AIBEL: Motion to approve the  
20 denial.

21 MS. CARCONE: Motion to approve in  
22 favor of denial.

23 COMMISSIONER MC ANUFF: Motion to  
24 approve the denial.

25 MS. CARCONE: Who was the second?

1 COMMISSIONER GRANA: I was.

2 MS. CARCONE: Commissioner Branciforte?

3 COMMISSIONER BRANCIFORTE: Yes.

4 MS. CARCONE: Commissioner Grana?

5 COMMISSIONER GRANA: Yes.

6 MS. CARCONE: Commissioner Murphy?

7 COMMISSIONER MURPHY: Yes.

8 MS. CARCONE: Commissioner McAnuff?

9 COMMISSIONER MC ANUFF: Yes.

10 MS. CARCONE: Commissioner DeGrim?

11 COMMISSIONER DE GRIM: Yes.

12 MS. CARCONE: Commissioner Aibel?

13 CHAIRMAN AIBEL: Yes.

14 Is 536 Bloomfield still on?

15 MS. CARCONE: Excuse me?

16 CHAIRMAN AIBEL: Is 536 Bloomfield

17 still on?

18 MS. CARCONE: Yes. We have one more.

19 MS. CARCONE: 536.

20 CHAIRMAN AIBEL: Before Stevens?

21 MS. CARCONE: Yes.

22 CHAIRMAN AIBEL: Resolution of approval

23 for 536 Bloomfield Street.

24 MS. CARCONE: Voting is Commissioner

25 Grana, Commissioner Murphy, Commissioner

1 Branciforte, Commissioner McAnuff, and Commissioner  
2 DeGrim.

3 COMMISSIONER MC ANUFF: Motion to  
4 approve.

5 COMMISSIONER MURPHY: Second.

6 MS. CARCONE: Commissioner Branciforte?

7 COMMISSIONER BRANCIFORTE: Yes.

8 MS. CARCONE: Commissioner Grana?

9 COMMISSIONER GRANA: Yes.

10 MS. CARCONE: Commissioner Murphy?

11 COMMISSIONER MURPHY: Yes.

12 MS. CARCONE: Commissioner McAnuff?

13 COMMISSIONER MC ANUFF: Yes.

14 MS. CARCONE: Commissioner DeGrim?

15 COMMISSIONER DE GRIM: Yes.

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HOBOKEN ZONING BOARD OF ADJUSTMENT  
CITY OF HOBOKEN

- - - - - X  
 RE: Stevens Institute of Technology :  
 Academic Gateway Center :  
 APPLICANT: Stevens Institute of :  
 Technology :January 19, 2016  
 Preliminary & Site Plan Application : 7:30 p.m.  
 C & D Variances :  
 - - - - - X

Held At: 94 Washington Street  
Hoboken, New Jersey

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10                  (973) 596-4500  
11                  BY: JASON R. TUVEL, ESQUIRE  
12                  Attorneys for the Applicant.

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1 MR. GALVIN: Jason, come on up.

2 Because on the Stevens application,  
3 does the Board have any questions on what you have  
4 gotten so for?

5 COMMISSIONER COHEN: I have one.

6 MR. GALVIN: Sure, fire away.

7 COMMISSIONER COHEN: I noted a few  
8 small typos, which I guess on a 37-page resolution  
9 isn't surprising, but maybe I could say what they  
10 were and then have the one substantive question.

11 MR. GALVIN: Sure.

12 COMMISSIONER COHEN: On page 8, there  
13 is a reference to the Board making a motion to carry  
14 the application to a hearing on April 14th, but the  
15 next passage refers to a meeting on April 24th, so I  
16 think it should have been 24 instead of 14.

17 MR. GALVIN: Got it.

18 COMMISSIONER COHEN: On page 11,  
19 there's reference to some overhead wiring, which is  
20 described as "overheard" wiring.

21 MR. GALVIN: Which one is that?

22 COMMISSIONER COHEN: Page 11.

23 MR. GALVIN: I have it now on page 12.

24 MS. CARCONE: Page 12.

25 COMMISSIONER COHEN: "Overheard"

1 wiring.

2 (Laughter)

3 MR. GALVIN: Which paragraph?

4 COMMISSIONER COHEN: "W."

5 MR. GALVIN: I mean, you are not going  
6 to catch that on spell check, guys.

7 COMMISSIONER COHEN: So then on  
8 paragraph 11, below that, there is a reference to  
9 Sue Fragione, which should be Pragibon,  
10 P-r-a-g-i-b-o-n.

11 MS. CARCONE: Right, that is number 11.

12 COMMISSIONER COHEN: That's number 11.

13 And then on page 16, at least on my  
14 page 16, under letter "I", it refers to 39 parking  
15 spaces, where says "parking space" instead of  
16 "Spaces."

17 MR. GALVIN: I am having trouble  
18 locating that one.

19 COMMISSIONER COHEN: Paragraph "I," it  
20 is on my page 16, and maybe it's on your 17.

21 MR. GALVIN: Maybe we deleted it.

22 COMMISSIONER COHEN: The paragraph  
23 begins "39 parking space."

24 MR. GALVIN: What is the one before or  
25 after it?

1                   COMMISSIONER COHEN: Levels of  
2 service --

3                   MR. GALVIN: I am having trouble  
4 figuring it out.

5                   MS. CARCONE: What page was it on?

6                   COMMISSIONER COHEN: My page 16.

7                   MR. TUVEL: Oh, it's 18. It is at the  
8 bottom of 18.

9                   MR. GALVIN: Okay. Back to that, you  
10 said "39 parking spaces." Okay. Got it.

11                   COMMISSIONER COHEN: Actually I found  
12 one other on my page 31, paragraph number 14, there  
13 is a reference, it says: There will not be any  
14 chemical hoods.

15                   MS. BANYRA: That was correct.

16                   COMMISSIONER COHEN: It said hoods.

17                   MS. BANYRA: I caught that.

18                   MR. GALVIN: Which one was that?

19                   MS. BANYRA: I corrected that already.  
20 I think Tiffany corrected that.

21                   MR. GALVIN: Oh, I heard that part, but  
22 which page?

23                   COMMISSIONER COHEN: It was my page 31,  
24 paragraph number 14.

25                   So the one substantive question I have

1        maybe for Mr. Tuvel or maybe for the Board, I  
2        remembered that -- I remembered that at the final  
3        meeting before we voted, that there was a discussion  
4        as to whether during the construction whether Hudson  
5        Street -- there would be parking available during  
6        the construction phase on Hudson Street, and my  
7        recollection was that there was a representation  
8        that there would be parking available during the  
9        construction phase on Hudson Street, that the street  
10       would not be closed to parking during the  
11       construction, and maybe that's my --

12                    MR. TUVEL: Hudson, I don't believe  
13       would be closed.

14                    COMMISSIONER COHEN: -- I thought the  
15       representation was that, and I think it was in  
16       response to Commissioner Fisher's question about  
17       that, because she had talked about another project  
18       uptown that was being built, where all of the  
19       parking spots had been taken by -- well, it just had  
20       no parking signs up, and on-street parking was taken  
21       over by -- and my recollection was that in response  
22       to that question, that we were given a  
23       representation that, in fact, people would still be  
24       able to park on Hudson Street during the project's  
25       construction, and I thought that was a

1 representation that was made on the record, and I  
2 did not see in the resolution any commitment to do  
3 that, so I think that maybe that is missing.

4 MR. GALVIN: You know, just to be fair  
5 to everybody, I didn't have that in my list of  
6 conditions, and my conditions were circulated, you  
7 know, but that doesn't mean that we couldn't get  
8 that.

9 MR. TUVEL: There is no issue with  
10 that.

11 Just for the record, Jason Tuvel,  
12 Gibbons, attorney for Stevens.

13 Happy new year, everybody. Nice to see  
14 you.

15 (Laughter)

16 Just so she has it for the tape.

17 I'm just looking back at Mr. Maffia,  
18 who is going to be adding during construction,  
19 Hudson Street will not be closed, and there will be  
20 no parking taken from Stevens' construction on  
21 Hudson. Sixth Street will be closed obviously, but  
22 Hudson will not.

23 COMMISSIONER COHEN: So I think that is  
24 one additional condition.

25 COMMISSIONER MURPHY: I think I

1 remember that as well.

2 MR. GALVIN: So Hudson Street will not  
3 be closed --

4 COMMISSIONER COHEN: To resident  
5 parking.

6 MS. BANYRA: Hudson Street will not be  
7 closed, nor parking spaces be occupied by  
8 construction workers and/or equipment. All  
9 equipment and workers will park on site --

10 COMMISSIONER GRANA: Or on Sixth.

11 MS. BANYRA: -- or something on  
12 Sixth --

13 (Board members talking at once)

14 MRL. TUVEL: The hope is that they take  
15 public transportation, but to the extent that they  
16 don't --

17 CHAIRMAN AIBEL: All right.

18 MR. GALVIN: Okay. I have it. That  
19 will be Condition 33, and then the publication will  
20 become 34.

21 Now, I am working off the original  
22 resolution, not the two or three changes that you  
23 were looking for. All right.

24 MR. TUVEL: Okay.

25 Do any other Board members have any

1           comments before we --

2                       MR. GALVIN:  No.

3                       MR. TUVEL:  -- so just two minor  
4 things.  And, Dennis, thank you so much for turning  
5 this around and going back and forth --

6                       MR. GALVIN:  Let me say this:  I really  
7 had no problem with these last couple of changes  
8 that Mr. Tuvel was talking about, but I thought that  
9 they are things that the Board should hear and  
10 decide and I should make this change.

11                      MR. TUVEL:  That's fine.

12                      One is I guess more of a question for  
13 Eileen.  I just added, because there was testimony  
14 on variance or open space, there was, if you  
15 remember testimony between Ms. McKenzie and Mr.  
16 Steck, so I just added that variance and to the list  
17 of variances --

18                      MS. BANYRA:  The open space relative to  
19 the 50 percent that's required for the whole --

20                      MR. TUVEL:  Yes.

21                      MS. BANYRA:  -- okay, so I did put in  
22 two minors changes relative to that --

23                      MR. TUVEL:  Okay.

24                      MS. BANYRA:  -- and one clarified the  
25 50 percent coverage on the lot, and one talked about

1 the 50 percent coverage overall --

2 MR. TUVEL: Right, which we meet --

3 MS. BANYRA: -- yes, but I made that  
4 distinction also today, so I don't know if you saw  
5 that.

6 MR. TUVEL: That I didn't see, but  
7 that's fine. As long as it is in there, I just  
8 wanted to make sure that it was covered.

9 Then on page -- condition number 17 of  
10 the resolution, this is just more of a clarification  
11 just in terms of consistency. This has to do with,  
12 and everybody is well aware of the fact that the  
13 building classes will end at ten p.m. and there will  
14 be cleaning of the building from west to east until  
15 11.

16 But once the building was shut down,  
17 there was testimony, and it's in the resolution,  
18 that there will be some limited and authorized swipe  
19 card access for some faculty or police or cleaning  
20 crews, but just to make it clear that there will be  
21 some -- the classes will all be done, and this will  
22 not affect the lighting on Hudson Street, but just  
23 so there is no issues.

24 On 17, I just made some edits, and I  
25 sent them to Dennis late, so I know he may not have

1       them. So 17 in my version will read: All classes  
2       in the buildings shall terminate by ten p.m. At  
3       ten p.m. the building shall be closed, and the  
4       lights along Hudson Street shall be shut off along  
5       Hudson Street.

6                   And this is what I added: With limited  
7       authorized swipe card access, period.

8                   And then I left whatever else Dennis  
9       had in that condition. That was just more of a  
10      clarification and consistency with the testimony.

11                   MR. GALVIN: Wasn't there other stuff,  
12      too, Jason, or was that it?

13                   Is that all you need?

14                   MR. TUVEL: No. That was it.

15                   MR. GALVIN: Okay.

16                   What I would propose to do is I'll make  
17      these amendments tomorrow. I know you were hoping  
18      that we would have a clean copy tonight, but --

19                   MR. TUVEL: That's okay. As long as it  
20      is adopted, and we get a clean copy in the next day  
21      or so.

22                   MR. GALVIN: All right. So is the  
23      Board okay with that?

24                   COMMISSIONER MC ANUFF: Yes.

25                   MR. GALVIN: Does somebody want to make

1 a -- those voting in favor were Mr. Cohen, Mr.  
2 Grana, Ms. Murphy, Mr. Branciforte.

3 And Mr. DeFusco and Ms. Fisher have  
4 ascended to the council, and Mr. Aibel was opposed,  
5 so would somebody like to make a motion as amended?

6 COMMISSIONER GRANA: With the discussed  
7 amendments included, motion to approve Stevens  
8 Gateway.

9 COMMISSIONER COHEN: Second.

10 COMMISSIONER BRANCIFORTE: Second.

11 COMMISSIONER COHEN: I'm sorry.

12 MR. GALVIN: Mr. Cohen?

13 COMMISSIONER COHEN: Yes.

14 MR. GALVIN: Mr. Grana?

15 COMMISSIONER GRANA: Yes.

16 MR. GALVIN: Ms. Murphy?

17 COMMISSIONER MURPHY: Yes.

18 MR. GALVIN: Mr. Branciforte?

19 COMMISSIONER BRANCIFORTE: Yes.

20 MR. GALVIN: And that is it.

21 MR. TUVEL: Great.

22 Thank you very much. Take care,  
23 everybody.

24 MR. GALVIN: Call me tomorrow, so we  
25 get it --

1                   MR. TUVEL: I will. You know I am not  
2 shy.

3                   MR. GALVIN: I know, but this time I  
4 need you to call me, though.

5                   (Laughter)

6                   (The matter concluded)

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C E R T I F I C A T E

I, PHYLLIS T. LEWIS, a Certified Court Reporter, Certified Realtime Court Reporter, and Notary Public of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel to any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

s/Phyllis T. Lewis, CCR, CRCR

-----  
 PHYLLIS T. LEWIS, C.C.R. XI01333 C.R.C.R. 30XR15300  
 Notary Public of the State of New Jersey  
 My commission expires 11/5/2020.  
 Dated: 1/26/16  
 This transcript was prepared in accordance with  
 NJAC 13:43-5.9.

HOBOKEN ZONING BOARD OF ADJUSTMENT  
CITY OF HOBOKEN  
HOZ-15-13

- - - - - X  
RE: 302 Garden Street :  
APPLICANT: 304 Garden Street, LLC :January 19, 2016  
Appeal & Minor Site Plan Approval :  
and C & D Variances :Tuesday 7:45 p.m.  
(Continued from 12/15/15) :  
- - - - - X

Held At: 94 Washington Street  
Hoboken, New Jersey

B E F O R E:

- Chairman James Aibel
- Vice Chair John Branciforte
- Commissioner Philip Cohen
- Commissioner Antonio Grana
- Commissioner Owen McAnuff
- Commissioner Diane Fitzmyer Murphy
- Commissioner Dan Weaver
- Commissioner Edward McBride
- Commissioner Cory Johnson
- Commissioner Frank DeGrim

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

- Eileen Banyra, Planning Consultant
  
- Paul J. Winters, PE, CME  
Board Engineer
  
- Patricia Carcone, Board Secretary

PHYLLIS T. LEWIS  
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## I N D E X

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3 WITNESS

PAGE

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5 FRANK MINERVINI

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6

7 KENNETH OCHAB

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## E X H I B I T S

11

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1                   CHAIRMAN AIBEL: Good evening,  
2 everyone.

3                   We are going to take up two  
4 applications. 302 Garden Street is carried from or  
5 continued from 12/15.

6                   MR. GALVIN: I have an important  
7 question. Were any of the new Board members able to  
8 read the transcript?

9                   You had summer reading.

10                  (Laughter)

11                  COMMISSIONER COHEN: Yes.

12                  MR. GALVIN: Do we have certifications  
13 for them to sign?

14                  MS. CARCONE: Mr. Grana was not in  
15 attendance at the last meeting, and he gave me a  
16 certification.

17                  MR. GALVIN: So you need one from Mr.  
18 Weaver?

19                  CHAIRMAN AIBEL: Mr. Weaver's.

20                  MS. CARCONE: Do I need certifications  
21 if they are not going to be voting, or is that just  
22 a good practice to have?

23                  MR. GALVIN: Why don't we take it  
24 anyway. We don't know for sure that he's not going  
25 to vote.

1 (Board members confer)

2 MS. CARCONE: Yes, that's true.

3 MR. GALVIN: I was saying that without  
4 even knowing, I was just guessing.

5 (Laughter)

6 MS. CARCONE: No. You are spot on,  
7 Dennis.

8 CHAIRMAN AIBEL: So while there is  
9 silence, I think we need as a group to make a new  
10 year's resolution, in particular for our wonderful  
11 court reporter, Phyllis, that we do our very best to  
12 speak one person at a time. That applies  
13 principally to the Board members who don't do that,  
14 and I include myself in that group, but we will also  
15 include counsel and our periodic witnesses.

16 (Board members confer)

17 MR. GALVIN: Are you hearing the  
18 whispering?

19 We have a lot of new Board members, and  
20 while I don't want to hear all of Mr. Minervini's  
21 voluminous credentials, it might be a good idea to  
22 at least give him the chance to have a little  
23 commercial.

24 MR. MATULE: Okay. We're ready to go.

25 Good evening, Board members.

1                   Robert Matule, appearing on behalf of  
2                   the applicant.

3                   Congratulations to our new members and  
4                   our elevated members.

5                   This is the application for 302-304  
6                   Garden Street. We were here last month, and we have  
7                   a substantially revised plan, so we will go back  
8                   through that after we qualify Mr. Minervini. But I  
9                   just wanted kind of to recap the overview of why we  
10                  are here and how we got here for the new Board  
11                  members as well.

12                  So, Mr. Minervini, you need to be  
13                  sworn.

14                  F R A N K   M I N E R V I N I, having been  
15                  previously sworn, testified further as follows:

16                  MR. GALVIN: Raise your right hand --  
17                  oh, you are still under oath, though. This matter  
18                  is still continuing.

19                  We just want you to put your  
20                  credentials on the record.

21                  MR. MATULE: All right. So if you  
22                  would --

23                  MR. GALVIN: Introduce yourself to the  
24                  new Board members.

25                  MR. MATULE: -- give the new Board

1 members the benefit of your professional license and  
2 your work experience, and your educational  
3 background.

4 THE WITNESS: Frank Minervini.

5 I am a licensed architect in the State  
6 of New Jersey since 1993.

7 I am a member of the American Institute  
8 of Architects and a principal of Minervini  
9 Vandermark Architecture, here in Hoboken, since  
10 2000.

11 I have appeared in front of this Board,  
12 as well as the Hoboken Planning Board dozens of  
13 times, and I've been accepted as an expert witness  
14 in architecture.

15 MR. MATULE: You also appeared before  
16 Jersey City and the County Planning Board --

17 THE WITNESS: Yes, all throughout the  
18 state in Hudson County, yes.

19 MR. GALVIN: All right. Good. That's  
20 awesome, just as much for you as it was for us.

21 (Laughter)

22 MR. MATULE: If I might just kind of  
23 recap, because as I said as when we were here in  
24 December, this is a multi-faceted application. This  
25 property has quite a convoluted history.

1                   What we have before the Board are three  
2 things. We have an appeal of the zoning officer's  
3 revocation of a first certificate of zoning  
4 compliance, after the rear of the existing building  
5 was demolished.

6                   We also were asking for a certificate  
7 of nonconformity concerning a preexisting 93.21  
8 percent lot coverage situation prior to the  
9 demolition.

10                  And thirdly, we are asking for a  
11 variance to add a third residential unit above the  
12 existing building, and we have now modified the  
13 application to create a 17 and a half foot deep rear  
14 yard, which in terms of percentage is 25 percent  
15 open space with 75 percent lot coverage on the  
16 ground floor only.

17                  The lot coverage on the upper floor for  
18 the principal structure will still be 60 percent as  
19 originally proposed and five percent for the fire  
20 escape.

21                  What we are trying to do is proceed  
22 with the variance application first with the thought  
23 in mind that the Board sees fit to grant that, then  
24 the other two aspects of the application go away.  
25 The appeal of the zoning officer's decision would be

1        withdrawn, and the request for the certificate of  
2        nonconformity would be withdrawn, and we won't have  
3        to go through all of that additional testimony this  
4        evening.

5                    When we were here last time, Mr.  
6        Minervini pretty much walked through the then  
7        application. At that point we were proposing 92.86  
8        percent lot coverage with a five foot rear yard.

9                    We filed an amended application, and  
10       Mr. Minervini will go through it for the Board  
11       members. Now, as I said in opening, that rear yard  
12       up to 17 and a half feet, so we have taken another  
13       12 and a half feet off the back of the proposed  
14       ground floor, which creates a 25 percent rear yard,  
15       where 30 percent is required.

16                   So having said that, I can have Mr.  
17       Minervini take you through the proposed plans. He  
18       has also prepared some new exhibits.

19                   In my transcript, the last exhibit we  
20       had was A-5, which was a survey. So for  
21       identification we will mark the -- how would you  
22       describe --

23                   THE WITNESS: This drawing is a board  
24       with three additional photographs of the conditions  
25       in the rear yard, as well as the site plan, showing

1 the location of where those photographs were taken  
2 from and additional dimensions on the site plan.

3 (Exhibit A-6 marked)

4 MR. MATULE: So that is showing the  
5 surrounding buildings for context?

6 THE WITNESS: Yes, three photographs.

7 MR. MATULE: And then we have a model  
8 here of some sort.

9 THE WITNESS: A computer generated  
10 model showing our building as well as four adjacent  
11 buildings for context, and the particular view was  
12 taken, so we will have a sense of what impact, if  
13 any, this rear yard -- this building will have.

14 MR. MATULE: All right. So we will  
15 mark that A-7 for identification.

16 (Exhibit A-7 marked.)

17 Mr. Minervini, I don't know if you want  
18 to start with the context and then go through the  
19 revised plan --

20 THE WITNESS: Yes.

21 MR. MATULE: -- but why don't you do  
22 that?

23 THE WITNESS: Just to add on to what  
24 Bob has said, starting to go back to the beginning,  
25 the ground floor of this building is going to be --

1 we are proposing a commercial office space with  
2 three residential units above.

3 The ground floor extends 70 percent --  
4 75 percent -- it extends 75 percent of the lot  
5 leaving 25 percent remaining as rear yard.

6 This is different from the original  
7 application, which only had a five foot rear yard  
8 and covered slightly less than 93 percent, and now  
9 we are proposing a 17 and a half foot rear yard.

10 So if I go to Board A-6, as I just  
11 described with Mr. Matule, here are some additional  
12 photographs of the conditions that you would see  
13 from this rear yard.

14 So photograph one, you can see is taken  
15 towards the east of our building, and that is here.

16 Photograph two is here taken from the  
17 opposite side looking at the building.

18 Photograph three is from our building  
19 looking towards the rear.

20 What additional information this  
21 drawing has is mostly dimensions. So we are  
22 proposing the main structure of the building, which  
23 is floors, one, two, three, and four minimally will  
24 cover 60 percent on two, three, and four,

25 The ground floor will cover 75 percent.

1       What that leaves us with is a 17 and a half foot  
2       rear yard, so in the previous version of the  
3       application, we had a five foot rear yard. We now  
4       extended that to 17 and a half feet.

5               We got the dimensions of the adjacent  
6       buildings for more context, and you see that our  
7       building doesn't go quite as far as the building to  
8       our north.

9               Also on the first floor, there is less  
10      than 18 inches remaining, so we don't extend as far  
11      as that building.

12              This is a very good drawing, but I  
13      think our 3D drawing tells the story a bit better.

14              The adjacent building at 306, this is  
15      302-304, ours, the corner building, and then the two  
16      structures as we go towards the west on Third  
17      Street.

18              So what is different compared to the  
19      previous application is that we have set that wall  
20      back 17 and a half feet from the rear lot line,  
21      where it was only five feet.

22              You see here we have got a wall  
23      section, and we are proposing, and one or two of the  
24      neighbors actually suggested that we do this, we  
25      keep the existing brick wall that is there. They

1 live here, and they have a garden attached to it.

2 There is a small section of a wall that  
3 has to be rebuilt because it was a wood frame, and  
4 that will be part of this application.

5 But I could pass this drawing around  
6 because it gives you a good sense of what our  
7 building will look like in context with the adjacent  
8 structure.

9 So the other side has a rendering of  
10 the front facade, which I explained at the last  
11 meeting.

12 That outdoor space would be used by the  
13 commercial space during business hours. It is  
14 landscaped, and the revised plans show permeable  
15 pavers as well as additional buffered landscaping.

16 Other than that, the project is the  
17 same. The residential portions of the building,  
18 which conform, are the same. We are not asking for  
19 a height variance.

20 As we heard from the Board at the last  
21 meeting, one of the main issues was the depth of  
22 that lower floor, so we think by reducing it  
23 substantially, and you can see what the actual  
24 effect is, it should be a more palatable  
25 application.

1                   MR. MATULE:  If I could, Mr. Minervini,  
2                   you said we are not asking for a height variance.

3                   Just for the record, what is the  
4                   proposed building height?

5                   THE WITNESS:  Yes.

6                   So our Sheet Z-7, the last sheet, shows  
7                   the building height at 36 feet above design flood  
8                   elevation, and we are permitted 40 feet above that.

9                   MR. MATULE:  And the ground floor of  
10                  the building will now be brought into compliance  
11                  with the flood ordinance?

12                  THE WITNESS:  Yes.

13                  This is a commercial space, and we have  
14                  to dry flood proof it, so that Sheet Z-7 shows the  
15                  flood barrier system that we are proposing.  This is  
16                  the same system that was approved by the DEP, as  
17                  well as the Hoboken Flood Plain Administrator.

18                  MR. MATULE:  So this has been reviewed  
19                  by the Flood Plain Administrator --

20                  THE WITNESS:  Yes.

21                  MR. MATULE:  -- and what you are  
22                  proposing is acceptable?

23                  THE WITNESS:  Correct, correct.

24                  MR. MATULE:  Okay.  I know you already  
25                  testified to it, but you also received the H2M

1 letters of 7/22 and 12/8, and you testified that you  
2 had no issues complying with same.

3 I don't believe there were any  
4 subsequent reports submitted that we are aware of.

5 MR. WINTERS: There was a January 12th  
6 report to that issue.

7 MS. BANYRA: From me as well.

8 MR. MATULE: You had that one, and no  
9 issues addressing --

10 THE WITNESS: No.

11 There was a question whether there  
12 would be on-site water retention, and because this  
13 is an existing structure, North Hudson Sewerage  
14 Authority will not require it. So what we'll  
15 testify to is that we will meet the requirements of  
16 the NHSA, so in this case we would have to get a  
17 letter of non-applicability from NHSA.

18 MR. MATULE: But you are going to use  
19 the existing sewer --

20 THE WITNESS: Correct. The existing  
21 sewer hookup is not proposed to change. That was  
22 one.

23 One of the other questions was where we  
24 are proposing bike storage for the residential  
25 units, and I think in this case bike storage would

1 be within the units.

2 MR. MATULE: Fine.

3 THE WITNESS: That was the -- those  
4 were the two issues that I thought should be  
5 addressed within the testimony. Everything else, I  
6 can certainly revise the drawings.

7 MR. MATULE: What has the commercial  
8 space, in terms of the size of the commercial space,  
9 what has it been reduced to?

10 THE WITNESS: Square footage?

11 MR. MATULE: Approximately, yes.

12 THE WITNESS: One second.

13 The commercial space will be 1,151  
14 square feet.

15 MR. MATULE: And I believe it was  
16 originally proposed at 1500 square feet?

17 THE WITNESS: Yes.

18 MR. MATULE: And you have a landscaping  
19 plan on your plans?

20 THE WITNESS: Yes. Sheet Z-6 shows our  
21 landscaping plan. As I mentioned, there is a  
22 planter that acts as a buffer along the west and  
23 southern property lines. The remaining area will be  
24 permeable stone pavers.

25 MR. MATULE: And the rear yard will

1 have drains in it, which will drain into the sewer  
2 system as well?

3 THE WITNESS: Correct, as shown on our  
4 Sheet Z-6.

5 MR. MATULE: Okay. I have no other  
6 questions at this time.

7 COMMISSIONER BRANCIFORTE: One quick  
8 question.

9 The date on your plans, 12/7/16, should  
10 it be 1/7/16 or --

11 THE WITNESS: Mine says 1/7/16.

12 MR. MATULE: Mine says 12/7/16.

13 THE WITNESS: It should be 1/7/16,

14 MR. MATULE: That might have been just  
15 on the --

16 THE WITNESS: Cover sheet.

17 MR. MATULE: -- you know what it was,  
18 it was a typo on the reduced sets because the large  
19 sets say 1/7/16.

20 THE WITNESS: Yes. I will certainly  
21 correct that for the smaller sets.

22 COMMISSIONER BRANCIFORTE: Okay.

23 MR. MATULE: But they are one and the  
24 same, correct?

25 THE WITNESS: Same drawing set.

1 CHAIRMAN AIBEL: Diane?

2 COMMISSIONER MURPHY: So what was the  
3 height of that back wall?

4 Are we still at 15 feet?

5 THE WITNESS: No.

6 We had reduced the height of the back  
7 wall to 12 feet, and that is Sheet Z-7, our rear  
8 elevation, has that dimension shown.

9 MR. MATULE: And if I can, Mr.  
10 Minervini, that was at the request of the neighbors  
11 to keep it that way, right?

12 THE WITNESS: Correct.

13 COMMISSIONER MURPHY: So I just want to  
14 understand, so on that one drawing that you have the  
15 whole -- that whole wall will be that height?

16 THE WITNESS: Oh, pardon me. I thought  
17 you had meant the back wall of this proposed  
18 structure.

19 COMMISSIONER MURPHY: No, no. The one  
20 where --

21 THE WITNESS: This wall is a bit taller  
22 than that, and the neighbors -- our original  
23 proposal was to bring it down to 12 feet. But I  
24 think the neighbors had suggested that we keep it as  
25 it was, which was a bit less than 15. We are happy

1 to do that.

2 Again, I should mention that this  
3 section that I am pointing to is currently not  
4 there. It is a wood frame section, so what we will  
5 do is there's other brick on the site and rebuild  
6 that wall section.

7 COMMISSIONER WEAVER: 15 foot tall?

8 THE WITNESS: It's a little less than  
9 15 feet tall.

10 COMMISSIONER WEAVER: Well, what are  
11 you proposing?

12 COMMISSIONER MURPHY: No. He wants to  
13 keep it at --

14 COMMISSIONER WEAVER: Z-7 shows it at  
15 six feet?

16 THE WITNESS: Pardon?

17 COMMISSIONER MURPHY: Right. Six feet.

18 THE WITNESS: Those are the two sides.  
19 It is the back wall that was the back of the  
20 building, and our proposal was originally to cut  
21 everything down. But they are here, so they can  
22 certainly speak for themselves. They had asked that  
23 we keep it as high as possible, so I am testifying  
24 that it is a bit less than 15 feet. It may be even  
25 slightly less than that once we make the wall even,

1 but that is purely a suggestion by the neighbors,  
2 and it makes their garden consistent.

3 MR. MATULE: The side walls are going  
4 to be lower?

5 THE WITNESS: The side walls will have  
6 to be stepped down to be lower. If the Board wants  
7 us to keep them as originally proposed at six feet,  
8 we would step them down to that six foot dimension.

9 COMMISSIONER BRANCIFORTE: In case of a  
10 fire, will people have a second egress to the front  
11 of the building, because in case of a fire, and they  
12 go down to the backyard, they are kind of trapped  
13 back there, aren't they, by a 12 foot brick wall?

14 THE WITNESS: That is how unfortunately  
15 on existing structures, that is -- you are allowed  
16 an area of refuge, and that is what this provides is  
17 an area of refuge.

18 COMMISSIONER BRANCIFORTE: Okay.

19 COMMISSIONER MC ANUFF: What other uses  
20 besides storage are permitted in that basement?

21 THE WITNESS: Just storage, and not  
22 have office space.

23 MR. MATULE: There are no utilities  
24 down there either?

25 THE WITNESS: The utilities have to be

1 above that DFE number as well, which will be on the  
2 second floor, which I think we addressed that.

3 COMMISSIONER MC ANUFF: Yes. I seen  
4 them on there, utilities, yes.

5 THE WITNESS: Mr. Matule just reminded  
6 me that, if you recall, in the original submission,  
7 when the first floor went back much further, we had  
8 a very large skylight, and that has since been  
9 removed once the first floor was made shorter.

10 COMMISSIONER BRANCIFORTE: Frank, on  
11 that wall, though, is the code six foot, and you are  
12 not allowed to have a fence larger than six foot in  
13 your backyard?

14 Isn't that code?

15 THE WITNESS: That's correct.

16 COMMISSIONER BRANCIFORTE: And you are  
17 going to be at 12 --

18 THE WITNESS: Yes, plus. It's an  
19 existing condition, and the photo board, to remind  
20 you, if you would like, actually the back -- this is  
21 that wall we were referring to on the side.

22 COMMISSIONER BRANCIFORTE: Right.

23 THE WITNESS: Again, our initial idea  
24 was to bring it down. It was the neighbors who  
25 suggested it was for them, and we are happy to do

1       it, keep it at a taller height and make it  
2       structurally sound.

3                   COMMISSIONER BRANCIFORTE:   So the  
4       Buidling Department might have the last say as to  
5       how high that wall can be, right, or not?

6                   MR. MATULE:   No.   You have the last say  
7       because you have to give us the variance --

8                   THE WITNESS:   Right.

9                   MR. MATULE:   -- of only about six feet.

10                  COMMISSIONER BRANCIFORTE:   Oh, okay.

11                  COMMISSIONER MURPHY:   On the wall, too?

12                  COMMISSIONER BRANCIFORTE:   So is there  
13       any way to keep one of those walls down to six feet,  
14       not necessarily the rear wall, but one of the side  
15       walls?

16                  I'm worried about -- frankly, I am  
17       worried about firemen getting over the wall, if they  
18       have to get access to the backyard from the  
19       neighbor's house.

20                  THE WITNESS:   Happily we will make the  
21       two side walls at six feet.   What I suggested was  
22       that there be a step-down from the taller 14 and  
23       change foot wall down to the six feet, so we can  
24       step that down.   So certainly there will be enough  
25       of a wall section to climb over, if that were the

1 case, if the firemen needed to get over it at six  
2 feet.

3 MR. MATULE: But just to be clear, Mr.  
4 Minervini, on A-7, the wall on the south side of the  
5 yard is flush against the building to our south,  
6 so --

7 COMMISSIONER BRANCIFORTE: That doesn't  
8 matter. It would have to be the north wall.

9 THE WITNESS: It would be this wall.  
10 It would be the wall to the north of the property  
11 line, but we can certainly do that.

12 COMMISSIONER MC ANUFF: The one that's  
13 landscaped on the opposite side?

14 THE WITNESS: We can certainly do that.  
15 It's landscaped.

16 So Sheet Z-7, and I am using the  
17 11-by-17, this is the western wall and the southern  
18 wall, so this is the one that's up against the  
19 adjacent building.

20 MR. MATULE: Just for the record,  
21 Frank, that is Z-6.

22 THE WITNESS: Oh, pardon me. Z-6, yes.

23 (Laughter)

24 COMMISSIONER MURPHY: So just to  
25 understand, the building to the north of it, which

1 is just going to be a tiny bit longer than your  
2 proposed building, then has an empty yard behind  
3 it --

4 THE WITNESS: Correct.

5 COMMISSIONER MURPHY: -- and that's  
6 their property, and it's like a hundred feet or  
7 whatever?

8 THE WITNESS: Yes. That's correct.

9 So the site plan, A-6, that you had  
10 seen at the last meeting, and I brought it to this  
11 meeting, this section shows that open yard of the  
12 building at 306 --

13 COMMISSIONER MURPHY: Thank you.

14 THE WITNESS: -- relative to our open  
15 yard.

16 MS. BANYRA: What plan is that, Mr.  
17 Minervni, because I am looking at A-6 -- Z-6, and I  
18 don't see the same thing that you're representing I  
19 don't think --

20 THE WITNESS: This is not Z-6. This is  
21 a new drawing.

22 MS. BANYRA: Oh, I'm sorry. Okay. It  
23 was an exhibit.

24 MR. MATULE: It's Exhibit A-7.

25 MS. BANYRA: A-7.

1                   So are you requesting a variance with  
2                   that height of the wall --

3                   THE WITNESS: Yes.

4                   MS. BANYRA: -- because the plans say  
5                   six feet, and there is a six-foot fence, and it's  
6                   actually masonry.

7                   Is that what the testimony was?

8                   THE WITNESS: Correct.

9                   MS. BANYRA: So it's not a fence, it's  
10                  a wall.

11                  MR. MATULE: We made that request at  
12                  the last meeting.

13                  MR. GALVIN: It would still be a fence,  
14                  though.

15                  MS. BANYRA: Yeah. I mean, it needs to  
16                  be then represented on the plan. Typically for us a  
17                  fence is wooden, so yeah, it just needs to be  
18                  shown --

19                  (Ms. Banyra and Mr. Galvin talking at  
20                  the same time)

21                  MR. GALVIN: It can be a wall under  
22                  certain circumstances --

23                  MS. BANYRA: It definitely can.

24                  MR. GALVIN: -- and it could be a  
25                  fence.

1 MS. BANYRA: It could be a fence. We  
2 just need to know what it is going to be and the  
3 height.

4 MR. GALVIN: Was it noticed for?

5 MR. MATULE: Pardon?

6 MR. GALVIN: Was it noticed for?

7 MR. MATULE: I don't think we  
8 specifically noticed for the rear wall, but I will  
9 check my notice. But we asked for any other  
10 variances that the Board deemed necessary --

11 THE WITNESS: And that --

12 MR. MATULE: -- because that evolved  
13 from comments from the neighbors during the hearing.

14 MR. GALVIN: Yeah, and that happens.  
15 We can grant variances that are related to the case.

16 MR. MATULE: But we have the omnibus,  
17 "And any other variances" --

18 MR. GALVIN: Right, but we couldn't let  
19 you put a hotel in. I mean, you know, there is a  
20 limit to what you can do with that omnibus language.

21 MR. MATULE: Yes, no, I understand.

22 MS. BANYRA: It's not represented --

23 MR. MATULE: If we had a D variance, I  
24 wouldn't --

25 MR. GALVIN: I think fences are

1 normally within the realm of what people -- well, on  
2 this one, though, that is a pretty high -- that's a  
3 pretty high --

4 THE WITNESS: To be clear, our drawing  
5 Z-5, does say, and you're correct, Eileen, six  
6 feet --

7 MS. BANYRA: Yeah.

8 THE WITNESS: -- and perhaps there is a  
9 mid dimension that would make the Board happier.

10 We could make it at 12 feet, which  
11 would be consistent with the back wall of the first  
12 floor of our building. That might make  
13 architectural sense.

14 MR. GALVIN: You know, and sometimes if  
15 we were at seven feet, we would be freaking out,  
16 from six to seven or four to six.

17 THE WITNESS: Again, the neighbors are  
18 here, and they can speak for themselves. They don't  
19 need me.

20 MR. GALVIN: Okay.

21 COMMISSIONER MC ANUFF: What is the  
22 issue, though? Is it the height or the egress you  
23 had a concern with?

24 You had a concern with egress more than  
25 the actual height --

1                   COMMISSIONER BRANCIFORTE: Well, I am  
2 more worried about there being a fire, and the  
3 fireman rushes back expecting to find a six foot  
4 wall or fence that he can climb over, and then  
5 finding out it's 12 feet, and he has to run back to  
6 get a ladder. That's the sort of thing I'm worried  
7 about.

8                   THE WITNESS: To get there, the firemen  
9 would have to go through this building or the  
10 adjacent building.

11                   COMMISSIONER BRANCIFORTE: Well, they  
12 do it.

13                   THE WITNESS: Yeah. Fair enough.  
14 However, it is a common condition that walls are  
15 taller or buildings are built on a platform.

16                   Having said that, we could certainly  
17 have a section of it to the north at six feet, which  
18 I think would alleviate that concern.

19                   (Unidentified voice from the audience  
20 speaking)

21                   MR. GALVIN: You can't speak. You  
22 can't do that. I don't know if you can hear me,  
23 though.

24                   All right.

25                   COMMISSIONER BRANCIFORTE: It would

1 alleviate some concerns of mine, yeah.

2 THE WITNESS: Happy to ensure that that  
3 wall is six feet.

4 CHAIRMAN AIBEL: Mr. Cohen?

5 COMMISSIONER COHEN: I just had a  
6 question about the basement. You said there were no  
7 utilities there, but on Z-6, it indicates there's  
8 existing gas meters that are there.

9 Is that a problem having existing gas  
10 meters in the flood zone?

11 THE WITNESS: We are not sure, because  
12 it's an existing condition. Whether the  
13 construction office and the Flood Plain  
14 Administrator would see it as new construction, my  
15 guess is that we can and should show it at the  
16 second floor just in case. If we are permitted to  
17 put it back into the basement, that is where we  
18 prefer it in the cellar, but I can show it on the  
19 second floor --

20 COMMISSIONER COHEN: But isn't the  
21 standard under the new ordinance, that it's more  
22 than half of 50 percent of the --

23 THE WITNESS: 50 percent --

24 COMMISSIONER COHEN: -- being  
25 reconstructed, then it needs to comply with the

1 flood ordinance?

2 THE WITNESS: Yeah. And to be clear,  
3 the gas meters were not initially included in them.  
4 Gas meters were permitted to be within the flood  
5 zone.

6 MR. GALVIN: Time out.  
7 What are we doing at the Planning  
8 Board?

9 THE WITNESS: Yes. Well, sure, that is  
10 why I said "initially" --

11 MR. GALVIN: That's the advantage of me  
12 being in both places --

13 THE WITNESS: -- that's what I said  
14 "initially" --

15 MR. GALVIN: -- so we are moving those  
16 gas meters up.

17 COMMISSIONER COHEN: I think that's a  
18 good idea.

19 THE WITNESS: Happy to do it.

20 MR. GALVIN: Okay.

21 CHAIRMAN AIBEL: Anything else?

22 Mr. Grana?

23 THE WITNESS: That's the basement plan,  
24 existing gas meters.

25 COMMISSIONER GRANA: Mr. Minervini, I

1 just wanted to confirm for the record, that we are  
2 not seeking any masonry or glazing variances.

3 THE WITNESS: No. This meets the  
4 requirements.

5 COMMISSIONER GRANA: Okay.

6 Just a quick question from an  
7 architectural point of view, I mean, the existing  
8 structure is an older structure.

9 Do you think that this is a block that  
10 has a lot of architectural consistency, or is there  
11 a lot of divergent architecture on this block?

12 THE WITNESS: I have a photo board, and  
13 I think this particular drawing shows a good --  
14 tells the story well just on the southern portion of  
15 the street.

16 You got a brick building. Ours was  
17 partially brick. This is stucco. This is stucco.

18 I think consistency is lot widths. I  
19 don't think there is any real architectural context  
20 that we should be working from.

21 That is often what we think as  
22 architects, that a new structure should be a new  
23 structure as opposed to making believe it's an old  
24 structure and looking look like an old structure,  
25 and that is for this Board to decide, of course --

1                   COMMISSIONER GRANA: No, and I  
2 understand that professional and philosophical  
3 perspective in the industry.

4                   I just wanted to relay it back, do you  
5 think from an architectural standpoint it promotes,  
6 enhances Hoboken's historic character on a block  
7 that has a lot of older buildings?

8                   THE WITNESS: Does it enhance a  
9 historic character? I don't necessarily agree that  
10 this street has a historic character.

11                   Having said that, if this Board does  
12 not like this facade, we can certainly take another  
13 look at it. I don't have any issue with that.

14                   COMMISSIONER BRANCIFORTE: Can you pass  
15 the board around?

16                   COMMISSIONER GRANA: Mr. Minervini, it  
17 would be your testimony that in your mind the block  
18 doesn't necessarily have a historic character?

19                   I'm not trying to drag you into  
20 thinking --

21                   THE WITNESS: No. I understand that,  
22 but I don't think it has a historic character as we  
23 normally think of when we think of portions, other  
24 portions of Garden Street or other portions of  
25 Bloomfield, where there is a consistency.

1                   Character, in terms of the  
2                   architectural facades and massing, I don't think we  
3                   have that here. There are some smaller buildings  
4                   and some older buildings, some buildings in the  
5                   early part of the 19th century and some even older  
6                   than that.

7                   Do I think that we should be using that  
8                   as a contextual starting point for design?

9                   No.

10                  Again, if this Board has a different  
11                  opinion on this particular project, we are happy  
12                  to --

13                  (Counsel confers with witness)

14                  THE WITNESS: Okay. We have some more  
15                  photographs to pass around that might be helpful for  
16                  this.

17                  COMMISSIONER GRANA: Just to clarify,  
18                  Mr. Matule, I was just going to ask from an  
19                  architect's perspective and then --

20                  MR. MATULE: But all I was going to  
21                  say, Mr. Grana, is that in Mr. Ochab's planner's  
22                  report, which you all should have a copy of, there  
23                  are two pages of color photographs at the rear of  
24                  the report, which I think give a better look at what  
25                  that block looks like right there, than perhaps the

1 photos on Frank's photo board, and you can see that  
2 there are no two buildings that seem to have a  
3 common theme.

4 COMMISSIONER GRANA: Okay. Thank you.

5 MS. BANYRA: Chairman, can I ask a  
6 question?

7 Mr. Minervini, the -- I guess the --  
8 you don't have an elevator because it is not  
9 required?

10 THE WITNESS: Correct.

11 MS. BANYRA: And it's not required  
12 because we are considering this an existing,  
13 preexisting building?

14 THE WITNESS: Yes. Also because it is  
15 a three-family residential building. Once you are  
16 above families, no two spaces does not count towards  
17 that calculation. An elevator would require four  
18 units --

19 MS. BANYRA: So then the roof deck on  
20 top would be assigned to one of the units, is that  
21 correct?

22 THE WITNESS: It will be unified, yes.

23 MS. BANYRA: And would that be the  
24 upper unit?

25 THE WITNESS: Although it is accessed

1 via the common area, so it could theoretically be  
2 used by all of the building's occupants -- any of  
3 the building's occupants, I should say.

4 MS. BANYRA: I guess I thought that it  
5 would have to be ADA compliant in order that  
6 everybody either use it or it's assigned to one  
7 person --

8 THE WITNESS: An ADA compliant deck  
9 would have to be --

10 CHAIRMAN AIBEL: One person at a  
11 time --

12 THE WITNESS: -- if the building would  
13 have to be ADA compliant, the deck is not  
14 independent of the building.

15 CHAIRMAN AIBEL: Is there any reason  
16 you can't provide a conforming rear yard at 30  
17 percent, basically make the rear yard 21 feet?

18 THE WITNESS: Are you asking can it be  
19 designed that way?

20 CHAIRMAN AIBEL: Yes.

21 THE WITNESS: Certainly.

22 COMMISSIONER BRANCIFORTE: Do we  
23 need -- I'm sorry, Jim.

24 CHAIRMAN AIBEL: Go ahead

25 COMMISSIONER BRANCIFORTE: Do we need a

1 privacy -- some sort of a privacy screening around  
2 this deck?

3 I am not sure what the windows -- or  
4 what we are facing here on this deck.

5 THE WITNESS: On the roof deck?

6 COMMISSIONER BRANCIFORTE: Yeah. What  
7 is the window situation next door?

8 THE WITNESS: If you look at our  
9 photographs or even on the Sheet Z-1, we have our  
10 street elevation along with a bird's eye photograph  
11 of all of the buildings. We are at the same height  
12 as the building to our north and shorter than the  
13 building to our south, so I don't know what we'd be  
14 screening the roof deck from --

15 COMMISSIONER BRANCIFORTE: Yeah. I --  
16 I --

17 THE WITNESS: -- but the ordinance  
18 doesn't require it, by the way. It contemplates  
19 that people on the decks can also have a view. You  
20 can decide otherwise, of course.

21 COMMISSIONER BRANCIFORTE: You don't  
22 want to have a view inside somebody's bedroom window  
23 or bathroom. I mean, it is a little bit of an  
24 imposition on the neighbor --

25 THE WITNESS: I'd agree with that if

1 the proximity of the window was within a five or ten  
2 foot --

3 MR. GALVIN: Time out. Time out for a  
4 second --

5 COMMISSIONER BRANCIFORTE: That was my  
6 question --

7 MR. GALVIN: -- you know, Mr. Minervini  
8 is entitled to his opinion, but if you think it  
9 needs to be screened, and we have a lot of  
10 variances, and they will either screen it or they  
11 won't screen it, and you can talk about that when  
12 you get into deliberations.

13 COMMISSIONER BRANCIFORTE: Yeah. I  
14 think the photographs will probably convince me one  
15 way or the other --

16 CHAIRMAN AIBEL: So let's keep moving.  
17 Do we have any other questions for the  
18 architect?

19 COMMISSIONER MC ANUFF: Yes. I just  
20 have a quick one.

21 What would be the depth of the rear  
22 yard have to be --

23 THE WITNESS: Well, I think it's at 60  
24 feet -- I mean -- 60 percent, pardon me, would be --  
25 we would need 23 feet -- pardon me. Oh, I'm sorry.

1 It would be the same as the -- yeah, it would be the  
2 same as the -- 28 feet could comply, which would be  
3 the same --

4 MS. BANYRA: No --

5 MR. MATULE: And you needed 30 feet or  
6 30 percent, which is 21 feet.

7 THE WITNESS: That's right, yes. 21  
8 feet.

9 MS. BANYRA: 21, yeah.

10 COMMISSIONER MC ANUFF: Okay.

11 CHAIRMAN AIBEL: Okay. Board members,  
12 seeing no further questions, let me open it up to  
13 the public.

14 COMMISSIONER WEAVER: Oh, I have one --

15 CHAIRMAN AIBEL: Mr. Weaver?

16 COMMISSIONER WEAVER: -- just to follow  
17 up on John, so the north facade of the building on  
18 the corner, there are no windows on that north  
19 facade that would require to be filled in?

20 THE WITNESS: No. It would be this  
21 wall.

22 COMMISSIONER WEAVER: The north facade  
23 of the building on the corner --

24 THE WITNESS: I'm sorry, Commissioner.  
25 Are you referring to this building?

1 COMMISSIONER WEAVER: No. Over.

2 THE WITNESS: This one?

3 COMMISSIONER WEAVER: That one.

4 There are no windows on the north  
5 facade of that building --

6 THE WITNESS: It's directly on the  
7 property line. I don't believe there are any  
8 windows there.

9 COMMISSIONER WEAVER: You answered the  
10 question about the date on the drawings.

11 Question: There was a room mid landing  
12 on page Z-6, drawing number two, mid landing. What  
13 is that room?

14 THE WITNESS: Sprinkler valve. We have  
15 taken advantage of a landing that you would need  
16 from the stairs anyway, so we provided a closet for  
17 that sprinkler valve.

18 COMMISSIONER WEAVER: I think lastly,  
19 what is the -- why is the fire escape required to be  
20 22 feet wide?

21 THE WITNESS: It's not -- it certainly  
22 could be shorter. We do have to catch, for lack of  
23 a better term, both of the windows that it is  
24 serving.

25 So you can see that we could shrink it

1 up a bit, perhaps instead of three feet to four  
2 feet.

3 COMMISSIONER WEAVER: But you actually  
4 need to catch one of the windows, right?

5 THE WITNESS: Catch one of those  
6 windows, yeah -- I am not actually quite sure if  
7 that's true, but we certainly could shrink it  
8 without any issues.

9 COMMISSIONER WEAVER: Okay. That is  
10 all for me.

11 CHAIRMAN AIBEL: Thank you.

12 MR. MATULE: It is pulled in three feet  
13 from either side?

14 THE WITNESS: Yeah. So talking about  
15 Mr. Weaver's -- perhaps moving this --

16 THE REPORTER: Frank, I can't hear you.

17 THE WITNESS: Yes. I was just speaking  
18 to Mr. Matule, suggesting that we can make this a  
19 bit smaller, so that the edge of the fire escape  
20 would meet the center of the two windows on both the  
21 north and south of that rear facade, so that there  
22 is one operable window within each bedroom that can  
23 be -- that allows access to the fire escape.

24 COMMISSIONER WEAVER: Thank you.

25 CHAIRMAN AIBEL: My recollection of the

1 first hearing is that there was a proffer that you  
2 were going to reduce it substantially and not --

3 THE WITNESS: I don't remember that,  
4 but --

5 CHAIRMAN AIBEL: -- you know what, my  
6 apologies, a different Minervini application.

7 (Laughter)

8 Mr. Grana?

9 COMMISSIONER GRANA: I would make a  
10 proposal that the plans be revised.

11 (Witness and counsel confer)

12 COMMISSIONER BRANCIFORTE: The north --

13 COMMISSIONER GRANA: That seems to be  
14 the direction of the conversation that they're  
15 revising --

16 COMMISSIONER BRANCIFORTE: -- side,  
17 it's not a fence. It's a wall. It's a cinder block  
18 wall, so -- but, yeah, the north side would have to  
19 be at some point six feet high for -- at some point  
20 it would be six foot. I would rather just see the  
21 entire wall at six foot on the north side --

22 COMMISSIONER GRANA: There's two  
23 questions. There's now the wall and the fire  
24 escape --

25 THE WITNESS: This window --

1 MS. BANYRA: The answer is yes. The  
2 plans are going to have to be revised, if that's  
3 what you are discussing. The testimony was for a 12  
4 to 13 foot high wall, and the plans show six feet,  
5 so --

6 (Board members confer)

7 COMMISSIONER BRANCIFORTE: Yeah. And  
8 as far as that, that is my bad about the roof deck.  
9 Obviously it's on the roof. I thought it was on the  
10 rear deck. You have to excuse me for having night  
11 jitters --

12 (Laughter)

13 THE WITNESS: I don't believe that at  
14 all.

15 CHAIRMAN AIBEL: Okay. Board members,  
16 are we finished?

17 Professionals?

18 Let me open it up to the public.  
19 Anybody wish to question Mr. Minervini, please come  
20 forwards.

21 MS. HEALEY: Leah Healey, 806 Park.

22 MR. GALVIN: You may proceed.

23 MS. HEALEY: Mr. Minervini, I just  
24 wanted to be clear about the zoning. It is 60  
25 percent lot coverage in the zone, correct?

1 THE WITNESS: Correct.

2 MS. HEALEY: And so that would be 40  
3 percent of the property that you wouldn't be able to  
4 develop on?

5 THE WITNESS: That's correct --

6 MS. HEALEY: And so --

7 THE WITNESS: -- no, that's actually  
8 not correct -- yes, it is correct.

9 (Laughter)

10 MR. MATULE: We have to have a 30 foot  
11 rear yard or --

12 THE WITNESS: Or 30 percent --

13 MR. MATULE: -- of the yard deck,  
14 whichever is less --

15 THE WITNESS: -- that accounts for the  
16 possibility of a front yard setback, which we don't  
17 have, so your answer -- you are right, 40 percent  
18 must be open space.

19 MS. HEALEY: 40 percent must be open  
20 space and --

21 THE WITNESS: As per the ordinance.

22 MS. HEALEY: -- okay. And what you are  
23 providing is 25 percent?

24 THE WITNESS: Correct.

25 MS. HEALEY: And let me ask you: If

1       you were to comply with the zoning ordinance, what  
2       is the amount of square footage that you would lose  
3       on the building on that first floor?

4                   THE WITNESS:  Let's see.

5                   (Witness confers with counsel)

6                   THE REPORTER:  Is this on the record?

7                   THE WITNESS:  No.

8                   MR. GALVIN:  No.  They are having a  
9       sidebar I think.

10                  MR. MATULE:  Yes.  We are having a  
11       sidebar about what the math is.

12                  (Witness and counsel confer)

13                  THE WITNESS:  I think the question was  
14       the difference, right, the difference in square  
15       footage relative to that.

16                  One second.

17                  MR. MATULE:  182.5 minus 28 is 1470.

18                  THE WITNESS:  That is the requirement,  
19       and we are proposing 17.5.

20                  MR. MATULE:  17.5 times 28 is --

21                  THE WITNESS:  17 and a half, most  
22       likely 28.

23                  MR. MATULE:  For the rear yard, not  
24       the building?

25                  THE WITNESS:  Correct.

1 MR. MATULE: 17.5 times 28 --

2 (The witness and counsel confer)

3 THE WITNESS: Okay. So it's a little  
4 bit less than 300 square feet.

5 MS. HEALEY: 300 square feet --

6 THE WITNESS: Yes.

7 MS. HEALEY: -- has been lost?

8 THE WITNESS: Yes.

9 MS. HEALEY: And if you had to, looking  
10 at your drawing the way in which you have it  
11 configured for whatever the commercial use is, what  
12 is that preventing you from having in that  
13 commercial use as the way you have drawn it, if you  
14 take 300 square feet off the back of the building?

15 THE WITNESS: That additional space  
16 gives us a conference room, the requirements by the  
17 applicant, which is two offices, a reception area  
18 and a conference room. We would have to lose one of  
19 those in some sense --

20 MS. HEALEY: Okay. And if I looked at  
21 that drawing or whatever it is, A --

22 MR. MATULE: A-7.

23 MS. HEALEY: -- A-7, as I understand  
24 it, the wall that is going to go around the rear of  
25 the subject building is going to abut right up

1           against Lot 43.2, which is two over, Third Street I  
2           believe?

3                         THE WITNESS:  Yes, as it does  
4           currently --

5                         MS. HEALEY:  Is there any --

6                         THE WITNESS:  -- it will be cut down  
7           though --

8                         MS. HEALEY:  -- any space currently  
9           between the two buildings?

10                        THE WITNESS:  There is no space between  
11           the two buildings at that point --

12                        MS. HEALEY:  Are you sure about that?

13                        THE WITNESS:  -- other than there is a  
14           cutout -- pardon me -- we'll call it a light well.

15                        A better drawing to show you would  
16           be -- you can't see it as well, but there is a  
17           cutout here.

18                        The buildings touch at this point, and  
19           there is a cutout prior to that further towards the  
20           east.

21                        MS. HEALEY:  And are these solid  
22           buildings that touch right now, or are they  
23           individual accessory buildings that are attached to  
24           the main building?

25                        THE WITNESS:  What are you asking

1 about? I'm sorry. This building?

2 MS. HEALEY: You are saying that the  
3 existing buildings touched 204. Those were those  
4 structures that were on the rear of the main  
5 building?

6 THE WITNESS: Correct.

7 If you are referring to the property in  
8 question, the applicant's property, yes. Structures  
9 that were previously existing that were enclosed  
10 space.

11 MS. HEALEY: And they were all  
12 enclosed?

13 THE WITNESS: No. There was -- well,  
14 this is one of the questions for the Board.

15 We are representing now that there were  
16 no enclosed -- I'm sorry -- that there were no open  
17 areas, pardon me.

18 MS. HEALEY: Okay. Now, the wall that  
19 you propose to put around this structure of your  
20 building around the rear of it, what is that wall  
21 going to be made out of?

22 THE WITNESS: Brick.

23 MS. HEALEY: So it will be a solid  
24 brick wall?

25 THE WITNESS: Correct. There is a

1 section that has to be built because it is currently  
2 wood, but that is the wall that separates our  
3 property from the neighbors who were here and spoke  
4 at the last meeting. They wanted a continuous brick  
5 wall, which we are happy to do.

6 MS. HEALEY: And how thick is that  
7 wall?

8 THE WITNESS: It is -- it ranges from  
9 14 to 15 feet. Our initial plan had it as six  
10 feet --

11 MS. HEALEY: Thickness, not height,  
12 thickness.

13 THE WITNESS: -- it's 12 inches.

14 MS. HEALEY: And the side walls on the  
15 north and south, what are those made of?

16 THE WITNESS: They are brick as well.  
17 We will step them down, although for the purpose of  
18 the Commissioner's comments, which was a fair one,  
19 we will step it down from the 14 feet, if that is  
20 what this Board wants.

21 Remember, our drawings are proposing it  
22 only at six feet. Stepping it down to six feet at  
23 this section here, which would allow the fire  
24 department theoretically passing over that wall from  
25 the adjacent property.

1 MS. HEALEY: And how thick are these  
2 brick walls?

3 THE WITNESS: They range between eight  
4 and 12 inches as well.

5 MS. HEALEY: And there is no ingress  
6 and egress within these new walls that you are going  
7 to be constructing or the walls that you are going  
8 to be --

9 THE WITNESS: I'm not aware if there  
10 are any -- of any openings in the existing wall.  
11 There certainly will be no openings once we do our  
12 construction. If there is an opening, it will be  
13 closed. It is not permitted via the construction  
14 code.

15 MS. HEALEY: Are you aware of whether  
16 there's any egress from 204 Third to the back of the  
17 building, the back area of the building?

18 THE WITNESS: 204 Third, meaning Lot  
19 43.2?

20 MS. HEALEY: Correct.

21 THE WITNESS: Is there egress? I don't  
22 know if there's egress.

23 They are built on the property line. I  
24 don't know if they had used it as egress. They are  
25 not permitted to. However, the condition now is

1 made we think better by having a more open yard than  
2 what was prior --

3 MS. HEALEY: I'm just talking about  
4 egress. I'll get to --

5 THE WITNESS: -- well, they are the  
6 same thing. They're the same thing.

7 Egress has to go to somewhere, so they  
8 are one and the same.

9 MS. HEALEY: Okay.

10 Your commercial square footage, I  
11 believe you testified that it was going to be 1,151  
12 square feet.

13 THE WITNESS: Yes.

14 MS. HEALEY: Do you know whether there  
15 are any limitations in the R-1 Zone of a thousand  
16 square feet for commercial use on --

17 THE WITNESS: The customer service area  
18 is the limitation for -- of 1000 square feet.

19 We don't have a customer service area.  
20 It's not a service --

21 MS. HEALEY: What is a customer service  
22 area?

23 THE WITNESS: If this were a coffee  
24 shop, the actual area customers would use would be a  
25 customer service area. It is meant to be the space

1 on the other side of the counter that is not used by  
2 the staff. We don't have that condition here  
3 because it's not a service business.

4 MS. HEALEY: What business is it?

5 THE WITNESS: It's meant to be a real  
6 estate management office.

7 MS. HEALEY: So you won't see customers  
8 there?

9 THE WITNESS: No, no.

10 MS. HEALEY: What's a real estate  
11 management office?

12 THE WITNESS: This is an office for the  
13 applicant who owns real estate. This is not meant  
14 to have people who own property.

15 Having said that, I don't want to limit  
16 his option to do that. So my concern to represent  
17 and revise the drawings showing that customer  
18 service would be shown here, much less than 1,000  
19 square feet. This would allow the applicant the  
20 option to have someone come in --

21 MS. HEALEY: So that there's a  
22 potential for a realty office?

23 THE WITNESS: Not a realty office.  
24 It's not a real estate office. It's not sales here.  
25 This is a management office for somebody who owns

1 residential properties.

2 MR. MATULE: A business office.

3 THE WITNESS: A business office. Thank  
4 you.

5 MS. HEALEY: The landscape plan that  
6 you have, I believe you said you would have some  
7 planters and shrubs.

8 Do you have --

9 THE WITNESS: Yes, shown on Z4 -- I'm  
10 sorry -- on Z-6. Z-4 has the details, though, yes,  
11 correct.

12 MS. HEALEY: In the 17 and a half foot  
13 rear yard, what do you have planned for back there?

14 THE WITNESS: A two-foot planter, so to  
15 show you, I am looking at our Sheet Z-4. This is  
16 the northern portion of the property or to the north  
17 and to the south.

18 So we have an L-shaped planter box  
19 detailed here with landscaping, and this area would  
20 just have permeable stone pavers.

21 MS. HEALEY: So you have no trees  
22 planted back there?

23 THE WITNESS: Correct.

24 MS. HEALEY: And on the same A-7, the  
25 lowest -- I am assuming that is an accurate

1 depiction of Lot 43.2 with respect to the existing  
2 windows that face north?

3 THE WITNESS: Yes. As best we could  
4 measure when we were there recently, so these were  
5 measurable, and these weren't, but I don't think  
6 they are effective.

7 MS. HEALEY: Can you tell us in more  
8 detail how the roof of that commercial space backs  
9 up to that window, and what would be the interplay  
10 between the two?

11 What would somebody looking out that  
12 window see?

13 THE WITNESS: They would see, because  
14 it's -- approximately the edge of our wall is  
15 approximately at the middle of the window. So if  
16 they look a bit to their west, they would see our  
17 rear garden, as well as the adjacent rear garden.

18 If they looked towards the east, they  
19 would see the back wall of our building, as well as  
20 part of the roof section.

21 And we are -- I will testify to that  
22 that we will remain twelve inches away from the  
23 bottom of that window.

24 MS. HEALEY: And what's going to be on  
25 the roof deck commercial space?

1 THE WITNESS: This section?

2 MS. HEALEY: Yes.

3 THE WITNESS: Just roofing.

4 MS. HEALEY: And it's going to be what  
5 type of roofing?

6 THE WITNESS: It will be a rubber  
7 roof --

8 MS. HEALEY: No green roof?

9 THE WITNESS: -- no green roof.

10 MS. HEALEY: Is there any reason why  
11 you can't have bike storage within the commercial  
12 space downstairs?

13 THE WITNESS: If it is something that  
14 this Board wanted us to do, we could. It's not part  
15 of the application.

16 COMMISSIONER BRANCIFORTE: I'm sorry.  
17 Could you repeat that, please?

18 MS. HEALEY: Is there any reason why  
19 you can't have bike storage within the commercial  
20 space downstairs?

21 THE WITNESS: By reducing the size of  
22 the commercial area, you could put a small closet  
23 adjacent to the meters.

24 MR. GALVIN: Wait a minute. The meters  
25 are going to be on the second floor, right?

1 THE WITNESS: That is exactly right.

2 Pardon me.

3 Thank you, Bob.

4 Where we got shown as our meters, which  
5 are going to move to the second floor, that closet,  
6 I will represent, will remain and be used for  
7 bicycle storage.

8 (Counsel and witness confer)

9 THE WITNESS: I think we can square  
10 that off, perhaps four or five.

11 MS. HEALEY: And the building, 306  
12 Garden, Lot 41, the building seems to go back now  
13 sort of a little bit further than your new  
14 structure, your new commercial structure --

15 THE WITNESS: Correct.

16 MS. HEALEY: -- is that building a  
17 conforming structure to the zone?

18 THE WITNESS: It is not conforming.

19 MS. HEALEY: Okay.

20 And do you think that the commercial  
21 space that you have in the first floor would not be  
22 able to operate at all if you had to lose 300 square  
23 feet?

24 THE WITNESS: I don't know the answer  
25 to that. We were given the program by the

1 applicant, and this is the reduced version of that  
2 program.

3 MS. HEALEY: Thank you.

4 CHAIRMAN AIBEL: Anybody else have  
5 questions for the architect?

6 Sir?

7 COMMISSIONER BRANCIFORTE: If you want,  
8 you can ask questions from there, if you want.

9 MR. GALVIN: Now that I am up --

10 (Laughter)

11 MR. GALVIN: State your name for the  
12 record.

13 MR. HANS: James Hans.

14 MR. GALVIN: Street address?

15 MS. HEALEY: 206 Third Street.

16 MR. GALVIN: Thank you.

17 Just spell your last name.

18 MR. HANS: H-a-n-s.

19 MR. GALVIN: Thank you.

20 I would have inserted a D.

21 MR. HANS: Pardon me?

22 MR. GALVIN: I would have put a D in  
23 it.

24 MR. HANS: Yes, a lot of people do.

25 All right. My wife and I, Beverly, are

1 concerned because of the location of the  
2 adjoining --

3 MR. GALVIN: Mr. Hans, I am going to  
4 step out of order and let you both ask questions and  
5 testify, all right?

6 So could you raise your right hand for  
7 one second?

8 Do you swear or affirm the testimony  
9 you are about to give in this matter is the truth,  
10 the whole truth, and nothing but the truth?

11 MR. HANS: Yes.

12 MR. GALVIN: All right. Please  
13 proceed.

14 You can either ask questions or tell us  
15 what you think.

16 MR. HANS: All right.

17 Well, I think that the architect  
18 Vandermark mentioned that they were planning on  
19 saving the brick wall, and we are pleased with that,  
20 adjoining 302 Garden and our backyards.

21 And the one thing that was brought up  
22 was the space -- the brick wall doesn't go all the  
23 way adjoining the Third Street properties. There is  
24 a space there, like you mentioned, the prior -- just  
25 a -- right now presently, there is only boards, inch

1 wide, five foot area of boards that have a fence, a  
2 board fence. They could easily be gone through,  
3 broken down, and gone through that to get to 206  
4 Garden, if there was a fire and vice versa.

5 I just wanted to clarify that. I  
6 mentioned that since --

7 THE REPORTER: You mentioned that since  
8 what?

9 I can't hear you.

10 COMMISSIONER BRANCIFORTE: If I  
11 might --

12 MR. HANS: -- my concern --

13 COMMISSIONER BRANCIFORTE: -- well, my  
14 understanding is those boards that are there now,  
15 existing now, will be removed and cinder block walls  
16 will be replacing them --

17 MR. HANS: Yeah. We don't like the  
18 idea of the cinder block wall esthetically, and for  
19 that reason as well, so they would have to consider  
20 that, you know, changing that, you know, making it  
21 smaller or something.

22 THE WITNESS: I mistakenly thought at  
23 the last meeting you had asked for it to be brick.  
24 It certainly doesn't have to be, and our plans don't  
25 refer to it as brick. We will happily make some

1 accommodation with you, what you want it to look  
2 like. However, it cannot be operable.

3 COMMISSIONER WEAVER: If I might, you  
4 said brick, and he said cinder block.

5 (Everyone talking at once.)

6 THE WITNESS: I think we're saying the  
7 same thing --

8 MR. HANS: Right now, it is not cinder  
9 block. They were thinking of having cinder block  
10 and tearing down the wood.

11 This is not part of the brick wall.  
12 The existing brick wall, the length of it is fine  
13 for us. It doesn't have to be extended or cut down.  
14 It is fine esthetically and functionally for us.

15 But for that other little section of  
16 four or five feet, adjoining the neighbors on Third  
17 Street there, 204 and so forth, I can see a concern.

18 THE WITNESS: You prefer it to be wood?

19 MR. HANS: Well, it probably would be  
20 better to have it that way, you know, rather than  
21 cinder block. You wouldn't be able to get through  
22 there or the police or the fire people wouldn't be  
23 able to get through there, if it was cinder block.

24 THE WITNESS: Happily we would -- and  
25 again, I thought our plans showed that section as a

1 wood fence. We can happily change it back to a wood  
2 fence, other than replacing my previous testimony.  
3 Again, I mistakenly thought that you wanted us to  
4 continue that brick. That's the only reason why I  
5 even brought it up.

6 MR. HANS: Yeah. No, we didn't want it  
7 to be extended. We didn't see the necessity for  
8 that.

9 THE WITNESS: So then what we can do is  
10 we can -- that section we can have a six foot high  
11 wood fence, so that might alleviate some concern of  
12 getting over -- in terms of not being able to get  
13 over for the fire department access --

14 MR. HANS: It has to be better --

15 THE WITNESS: -- it has to be six.

16 MR. HANS: -- oh, it has to be six. I  
17 see.

18 COMMISSIONER BRANCIFORTE: No greater.

19 MR. HANS: You can get over a six  
20 foot -- they have done it.

21 THE WITNESS: Happily --

22 CHAIRMAN AIBEL: Anything else, Mr.  
23 Hans?

24 MR. HANS: That is it.

25 CHAIRMAN AIBEL: Excellent.

1 Thank you.

2 Anybody else with questions, please  
3 come forward.

4 MS. FALLICK: Am I doing the Jeopardy  
5 thing or am I testifying and asking questions?

6 MR. GALVIN: Well, I wanted to help Mr.  
7 Hans because I didn't want to make him get back up.  
8 You still have to put your planner on,  
9 right?

10 MR. MATULE: Yes.

11 MR. GALVIN: So just ask questions at  
12 this point.

13 MS. FALLICK: So the Jeopardy thing.  
14 Okay.

15 MR. GALVIN: Well, no, no, I mean, come  
16 on.

17 MS. FALLICK: I have to ask like a  
18 Jeopardy --

19 MR. GALVIN: No, no, you don't. If you  
20 want to tell him what you --

21 MS. FALLICK: -- I am not trying to be  
22 rude.

23 MR. GALVIN: -- no, no, listen. Hear  
24 me out.

25 If we are patient, what we are going to

1 do is we are going to finish with this witness, and  
2 then listen, we are going to listen to Mr. Ochab's  
3 testimony. After we ask him questions, and then let  
4 we are going to the public to tell us how they feel  
5 about the case, for or against it.

6 So why ask Jeopardy questions when you  
7 can just wait --

8 MS. FALLICK: No. Jeopardy questions  
9 are asking questions as opposed -- I think I  
10 understand what I need to do.

11 MR. GALVIN: If you have a question, a  
12 bona fide question about the testimony, then you  
13 should ask it.

14 MS. FALLICK: I do have bona fide  
15 questions.

16 MR. GALVIN: Okay, fine.

17 THE REPORTER: I just need your name.

18 MS. FALLICK: Oh, I'm sorry. Cheryl  
19 Fallick.

20 Do you need a spelling?

21 MR. GALVIN: Yes, ma'am.

22 MS. FALLICK: C-h-e-r-y-l, F, as in  
23 Frank, a-l-l-i-c-k. 204 Third Street.

24 MR. GALVIN: Okay. Terrific. Ask your  
25 questions.

1 MS. FALLICK: Mr. Minervini, hi.

2 THE WITNESS: Hello.

3 MS. FALLICK: I am going to start with  
4 easy stuff.

5 THE WITNESS: And work your way into  
6 it?

7 (Laughter)

8 MS. FALLICK: I'm going to start off  
9 nice.

10 I am not sure if you can answer this or  
11 not, but you were talking about the utilities, which  
12 is apparently now going up into -- up out into the  
13 crawl space --

14 THE WITNESS: Yes.

15 MS. FALLICK: -- are you able to speak  
16 to what is -- currently it was a dirt crawl space,  
17 can you speak to what is happening below the first  
18 story and how that might impact --

19 THE WITNESS: It wasn't dirt when I  
20 walked through this building. It was a very minor  
21 amount, two inches or so, of very old concrete.

22 But as far as the reconstruction, it  
23 would be an actual concrete slab --

24 MS. FALLICK: So it was flat on the  
25 street is what you're saying --

1 THE WITNESS: No, no.

2 It was below sidewalk. Now flat on the  
3 street as was in the past was the commercial space,  
4 again a commercial space.

5 MS. FALLICK: But it was concrete, the  
6 very shallow crawl space, is that what you're  
7 saying?

8 THE WITNESS: Yes. The lowest cellar  
9 area was concrete.

10 MS. FALLICK: All right.

11 Is it going to be any deeper now?

12 THE WITNESS: No.

13 MS. FALLICK: Okay. Are you aware --  
14 you might not be -- but are you aware that there  
15 was -- I'm not sure what it was, some kind of soil  
16 testing in the yard of 302-304 Garden before they  
17 did any -- before -- are you aware of that --

18 THE WITNESS: Yes.

19 Soil testing was to determine the soil  
20 bearing capacity for the new structure.

21 MS. FALLICK: And can you -- do you  
22 know where they put the apparatus to test the soil?

23 THE WITNESS: I don't know.

24 MS. FALLICK: Okay. So you are not  
25 aware that that was in the open space between the

1 back of 204 Third Street and the makeshift  
2 structures?

3 THE WITNESS: It would have to be on  
4 this property.

5 MS. FALLICK: It was definitely on this  
6 property.

7 THE WITNESS: Yes.

8 MS. FALLICK: But I guess my question  
9 is -- my question is: How come you keep saying that  
10 302-304 Garden abutted 204 Third Street?

11 That's my question.

12 THE WITNESS: Because at some points it  
13 did. In some areas it did.

14 MS. FALLICK: Can you tell me what  
15 areas?

16 THE WITNESS: I don't have the previous  
17 survey.

18 Actually we have an existing site plan,  
19 which does show where it connects at one point. The  
20 back section here along the western facade --

21 MS. BANYRA: Mr. Minervini, can you  
22 refer to the map and describe it, so the Board can  
23 follow along?

24 THE WITNESS: Sure. Pardon me.

25 Sheet Z-2, you have an existing site

1 plan, and our survey shows it as well.

2 So I can hand this to you, if you want.

3 MS. FALLICK: Can you walk me through  
4 it? Is that allowed?

5 THE WITNESS: Sure.

6 This is the open area that you had  
7 testified to that was previously existing at the  
8 last meeting.

9 This was covered, and this was covered,  
10 so it touched here and it touched here, and our  
11 survey reflects the same --

12 MS. FALLICK: Okay --

13 THE WITNESS: -- as well as --

14 MS. FALLICK: -- this is the open  
15 space, this gray area here?

16 THE WITNESS: Correct.

17 MS. FALLICK: Okay. So where is 204  
18 Third Street? Can you --

19 MR. MINERVINI: Here.

20 MS. FALLICK: This is 204 Third Street?

21 THE WITNESS: Yes.

22 MS. FALLICK: Okay. So when was this  
23 created?

24 THE WITNESS: This is based on this  
25 survey --

1                   MR. MATULE:    Just for the record, this  
2                   survey was done on October 15th, 2014 by Carl  
3                   Sheldon, by Area Surveying.

4                   Also as part of the package is a survey  
5                   Caulfield did in 2012.  This area and this area is  
6                   the same.

7                   The later survey by Area Surveying  
8                   showed this area here as covered, where as  
9                   Caulfield's survey is only showing part of that as  
10                  covered, and this is 302, 43.2.

11                  So this one-story frame structure,  
12                  that's where the wooden fence is abutted it, and  
13                  this covered section abutted it.

14                  MS. FALLICK:  This was done in 2012?

15                  MR. MATULE:  Correct.

16                  MS. FALLICK:  And I see the word cover  
17                  here, and then I see a dotted line --

18                  MR. MATULE:  Correct.

19                  MS. FALLICK:  -- and then I don't see  
20                  the word covered there.

21                  MR. MATULE:  Right, because it's --

22                  THE WITNESS:  And that's a one-story  
23                  frame --

24                  (The witness and counsel speaking at  
25                  the same time)

1                   MR. MATULE:  -- according to this  
2                   survey, this was open, and this white thing is open  
3                   space.

4                   MS. FALLICK:  Okay.  So -- so -- so do  
5                   we both agree that here on this white space, there  
6                   was no building that touched it as far as we know  
7                   of?

8                   MR. MATULE:  When the applicant --  
9                   well, we don't know.  We have an expert who has got  
10                  Sanborn maps going back to 1900, and we will  
11                  hopefully not have to go through that, but we will,  
12                  if we have to --

13                  MR. GALVIN:  We are not doing that part  
14                  of the case at the moment.

15                  MR. MATULE:  -- but the point is --

16                  MR. GALVIN:  We may not need to reach  
17                  it.

18                  MR. MATULE:  -- that the applicant  
19                  conceded that as between the two surveys, he was  
20                  going with the Caulfield survey, which showed  
21                  approximately 98 point something lot coverage as  
22                  opposed to a hundred percent lot coverage.

23                  MR. GALVIN:  Okay.

24                  MR. MATULE:  That is what the context  
25                  was when this application was brought in.

1                   We have now -- and then we agreed to  
2 pull that back five feet to get below that 98,  
3 whatever it was, to approximately I think --

4                   THE WITNESS: 93.

5                   MR. MATULE: -- 93 percent lot  
6 coverage.

7                   We have now stepped that back to 75  
8 percent lot coverage all without prejudice to  
9 anything that may have been a preexisting condition  
10 in the hopes that we can avoid getting to those  
11 other two steps of the process.

12                   So to answer Ms. Fallick's question,  
13 for purposes of presenting this application, we are  
14 acknowledging that the Caulfield survey showed  
15 approximately whatever it is Mr. Minervini can  
16 testify to --

17                   MR. GALVIN: If we ever -- if this were  
18 to be turned down, and we were to move into the next  
19 part of this case, then they are going to put  
20 testimony on that, and then you would ask them  
21 questions about that at that time, so you are kind  
22 of asking -- you're getting into the -- I don't know  
23 if you're doing it on purpose, but you're asking the  
24 questions as if -- as if we -- let's finish this  
25 first. Let's, if the Board -- and I have no idea

1 what the Board is going to do.

2 And if the Board -- the fact that they  
3 want variances, regardless of what exists, if they  
4 want any variances, they have to come through the  
5 Board. It doesn't matter what exists. It only  
6 matters what the Board will allow.

7 MS. FALLICK: If we get there. Okay, I  
8 understand.

9 MR. GALVIN: So if for some reason --  
10 but, you know, then we would get to that issue of  
11 what was there, and what do they think they are  
12 entitled to, and do we think that the zoning officer  
13 made the right call here.

14 MS. FALLICK: Okay.

15 I have three more questions, and they  
16 are in the scope of this, and I think that Mr.  
17 Minervini can probably answer them.

18 Did you say that -- do you know what  
19 the lot size is at 306? I don't know the lot  
20 number.

21 THE WITNESS: 306, yes.

22 306, well, I don't have it fully shown  
23 in width on the survey from the Caulfield one. It  
24 does look to be about 100 feet deep.

25 MS. FALLICK: Okay. All right.

1                   And is there a particular -- my  
2                   understanding is that this fire escape is wider than  
3                   a traditional fire escape.

4                   Can you explain the need for that?

5                   THE WITNESS: I already testified that  
6                   we will reduce the size of it, so that it is just  
7                   large enough to catch the two windows it needs to  
8                   catch.

9                   MS. FALLICK: I'm talking about width,  
10                  not length. I know you --

11                  THE WITNESS: You're talking about  
12                  depth --

13                  MR. MATULE: Width and length are the  
14                  same.

15                  (Laughter)

16                  MS. FALLICK: -- depth from the  
17                  building to the edge.

18                  MR. MATULE: Right, that's depth.

19                  MS. FALLICK: I think it is more depth  
20                  than traditional -- traditional --

21                  THE WITNESS: It is six inches larger  
22                  than it needs to be. I don't have an issue reducing  
23                  the size of that.

24                  MS. FALLICK: Okay. All right. Okay.

25                  And then you also talked about the

1 street scape on Garden between I guess Third and  
2 Fourth?

3 THE WITNESS: Well, specifically, the  
4 context in terms of facades and historical  
5 facades --

6 MS. FALLICK: Facades, right.

7 Are you aware of any other --  
8 regardless of whether something has been designated  
9 historic -- I mean, to me, that is a perception  
10 question, so, you know -- unless something is  
11 designated historical.

12 So my question to you is: Are there --  
13 that you are aware of, on that one block, are there  
14 any new buildings?

15 When I say "new," I mean any building  
16 that was built more recently than within the last 20  
17 years.

18 THE WITNESS: Not that I'm aware of.

19 MS. FALLICK: That is it.

20 Thank you.

21 CHAIRMAN AIBEL: Thank you.

22 Please come forward.

23 MR. GALVIN: Full name for the record.

24 MS. ONDREJKA: Mary Ondrejka,  
25 O-n-d-r-e-j-k-a. 159 9th Street.

1 MR. GALVIN: Thank you.

2 MS. ONDREJKA: Mr. Minervini, I believe  
3 you alluded to a space of some sort between the  
4 building on the corner and 204 Third Street,  
5 Garden --

6 THE WITNESS: Are you referring to the  
7 light well?

8 MS. ONDREJKA: We call it a light well?

9 THE WITNESS: No. That's what the  
10 surveyors call it.

11 MS. ONDREJKA: Yes.

12 Why is there a light well there?

13 THE WITNESS: I am imagining there are  
14 windows there.

15 MS. ONDREJKA: That is correct. There  
16 are windows there, and you're -- may I see that?

17 THE WITNESS: This drawing?

18 MR. MATULE: A-7.

19 MS. ONDREJKA: Yes.

20 So the balconies are going to butt up  
21 to the light well according to this, and then the  
22 fire escape --

23 THE WITNESS: Yes --

24 MS. ONDREJKA: -- is going to butt up  
25 to that light well, correct?

1 THE WITNESS: No --

2 MS. ONDREJKA: Not exactly, but I mean  
3 it's going to be --

4 MR. MATULE: Let's let Mr. Minervini  
5 answer the question and then you can go on --

6 THE WITNESS: As originally shown and  
7 here, it is three feet off of that property line.  
8 We are proposing to move it in approximately another  
9 three feet, so it would be about six feet off of  
10 that property line.

11 Right now it is shown as three feet  
12 off, and I think the floor plans might help you with  
13 that a bit better.

14 Looking at Sheet Z-6.1, we originally  
15 had it at three feet. We are going to bring it in  
16 an additional three feet.

17 MS. ONDREJKA: The extension of your  
18 building, does that go into any of that area of that  
19 light well? I can't really tell from that.

20 THE WITNESS: Does the extension --

21 MS. ONDREJKA: I am saying -- let me  
22 point it out.

23 THE WITNESS: Yes.

24 MS. ONDREJKA: How much of it is  
25 getting into this light well?

1 THE WITNESS: 2.2 feet, and I'm looking  
2 at Sheet A-6. We measured it.

3 MS. ONDREJKA: Two point --

4 THE WITNESS: Now that is -- yes. I  
5 should be clear, 2.2 feet on floors two, three, and  
6 four, which conforms. This is 60 percent. We go  
7 past the entire light well, and it would be the  
8 first floor --

9 MS. ONDREJKA: That's right.

10 So 60 percent lot coverage for the  
11 second, third and fourth floor does go two feet past  
12 the light well?

13 THE WITNESS: That's correct.

14 MS. ONDREJKA: That wasn't existing --  
15 was it -- has it always been at that point into the  
16 light well?

17 THE WITNESS: No. The building's depth  
18 is being added to it by about ten feet.

19 So previously existing, this building  
20 for you and for the Board members, for sure, so we  
21 are increasing this, so it then conforms --

22 MS. ONDREJKA: Let me see how I could  
23 word this.

24 The existing structure never reached  
25 the light well.

1                   THE WITNESS: On the other floors,  
2                   that's correct.

3                   MS. ONDREJKA: But that's what I'm  
4                   getting to. It never reached the light well.

5                   THE WITNESS: Correct.

6                   MS. ONDREJKA: Okay. The lot coverage,  
7                   60 percent is allowed. You're asking for 75, but  
8                   then -- let me ask you this question -- your square  
9                   footage on the first floor management office is  
10                  1,151?

11                  THE WITNESS: Yes.

12                  MS. ONDREJKA: All right.

13                  And that requires the extra extension  
14                  into the back for the -- as the other -- Leah asked  
15                  about 300 feet -- square feet would be -- if you  
16                  didn't go -- rather if you stuck to the 60 percent,  
17                  you would lose 300 square feet of that management  
18                  office?

19                  THE WITNESS: Yeah. The quick  
20                  calculation was a bit less than 300, but just for  
21                  ease of understanding --

22                  MS. ONDREJKA: All right. So that  
23                  would mean --

24                  THE WITNESS: -- I testified --

25                  MS. ONDREJKA: -- let's just say it was

1           300. If you take that from the 1,151, that comes  
2 out to 850 square feet for the management office?

3                   THE WITNESS: Uh-huh.

4                   MS. ONDREJKA: And you said that they  
5 would not have customers coming into that place  
6 because it wasn't a real estate office.

7                   THE WITNESS: That is not exactly what  
8 I said.

9                   I said that it is not a real estate  
10 office, so there wouldn't be the customers that Ms.  
11 Healey was imagining, sales, but then I amended my  
12 comment to say that we would like the applicant to  
13 have the option to have clients or business  
14 associates come in, so I would revise the plan and  
15 show the dimension, that the customer service area  
16 is much less than 1,000 square feet.

17                   MS. ONDREJKA: In your opinion, at 851  
18 square feet, would that suffice for a management  
19 office for two offices, a front room and an extra  
20 little room for conferencing?

21                   THE WITNESS: I don't think I could  
22 give you an answer. It depends on the --

23                   MS. ONDREJKA: I'm just asking your  
24 professional opinion.

25                   THE WITNESS: -- yeah, and I don't

1 think I can give you an answer for that because it  
2 may work for particular businesses, and it may not  
3 work for others. It wasn't certainly the program  
4 that we were given by this applicant.

5 MS. ONDREJKA: Because I was wondering  
6 about the law of the 60 percent lot coverage when a  
7 building is right next to the corner, it is  
8 unfortunately eating into the area, so I was just  
9 wondering, isn't there any kind of guidelines so  
10 that there is more open space because you are  
11 restricted on Garden by buildings, because you're  
12 asking -- you're going 15 feet beyond the 60  
13 percent --

14 THE WITNESS: Yes, I understand.

15 MS. ONDREJKA: -- and you're affecting  
16 the light well and the -- my understanding is the  
17 first floor is going to actually block the light  
18 well off, as shown in that diagram, correct?

19 THE WITNESS: Yes, and it's a condition  
20 that previously existed as well as well. Here is a  
21 copy of the survey showing that.

22 So here's the light well --

23 MS. ONDREJKA: The first floor was  
24 blocking the light well --

25 THE WITNESS: -- yes, only on the first

1 level.

2 MS. ONDREJKA: Only on the first floor.

3 Okay. And this wall here, I am not  
4 sure, that is not existing now or is it?

5 THE WITNESS: There is some semblance  
6 of a wall there, yes.

7 MS. ONDREJKA: Is that going to be  
8 replaced --

9 THE WITNESS: It will have to be made  
10 structurally sound.

11 MS. ONDREJKA: What is it now?

12 MR. MINERVINI: It is -- and I've got a  
13 photograph. One of these photographs show it.

14 Partially a brick wall on the south --

15 MR. MATULE: Isn't this it?

16 THE WITNESS: Oh, thank you, Bob. Yes.

17 So it's a brick wall now, but it will  
18 have to be made structurally sound, and it will be  
19 brought down to six feet in height.

20 MS. ONDREJKA: Thank you.

21 CHAIRMAN AIBEL: Any other questions?

22 Please come forward

23 Mr. Evers, let's go.

24 MR. EVERS: This is the Planning Board,  
25 right?

1 (Laughter)

2 MR. GALVIN: Is it playing like the  
3 Planning Board?

4 (Laughter)

5 State your name for the record.

6 MR. EVERS: Michael Evers, 252 Second  
7 Street, Hoboken, New Jersey.

8 MR. GALVIN: E-v-e-r-s?

9 MR. EVERS: Yes.

10 MR. GALVIN: Terrific. We're good to  
11 go.

12 MR. EVERS: Good evening, Mr. Minervini

13 THE WITNESS: Good evening, Michael.

14 MR. EVERS: As I understand it, please  
15 confirm for me, the principal reason for this lot  
16 coverage variance is that the owner would like to  
17 have an office on the first floor of a certain size.  
18 Is that correct?

19 THE WITNESS: Yes.

20 MR. EVERS: So there is no other  
21 reason, other than the owner's desire to have an  
22 office of a certain size?

23 THE WITNESS: I don't know

24 MR. EVERS: Not that you are aware of?

25 THE WITNESS: Not that I'm aware of.

1       Actually I don't know the answer.

2                   MR. EVERS:   Have you ever designed an  
3       office before?

4                   THE WITNESS:  Of course.

5                   MR. EVERS:   And do you know if an  
6       office -- I've just reviewed the number -- the size  
7       of an office that would not require a lot coverage  
8       variance would be approximately how much there, 800  
9       and change --

10                   MR. MATULE:   Respectfully, I think  
11       that these questions have been asked and answered  
12       several times, so I just don't know where we are  
13       going.

14                   MR. GALVIN:   I didn't hear the  
15       question.  Sorry.

16                   MR. EVERS:   I will ask the question,  
17       and then you can object to it, okay?

18                   MR. MATULE:   I thought you did.

19                   (Laughter)

20                   MR. EVERS:   Have you ever designed an  
21       office for general office work for the kind that  
22       would fit into that 800 and change size?

23                   THE WITNESS:  Yes, of course.

24                   MR. EVERS:   So there is no compelling  
25       reason that you can't design an office of that size

1 for either a real estate management firm --

2 MR. GALVIN: I will jump in here.

3 I think Mr. Minervini has made it clear  
4 that he has been directed to create that size space,  
5 not that he can't do it. I think that is already a  
6 fact that's in evidence.

7 MR. EVERS: So what you are saying is  
8 the only thing that's causing this space to be the  
9 size is the directions of the owner of the property  
10 rather than hardship --

11 MR. GALVIN: I am just telling you what  
12 was on the record.

13 MR. EVERS: Thank you, Counsel.

14 I have no further questions.

15 CHAIRMAN AIBEL: Thank you.

16 Sir, come forward.

17 MR. GALVIN: State your full name for  
18 the record.

19 MR. TUMPSON: My name is Dan Tumpson,  
20 T-u-m-p-s-o-n.

21 MR. GALVIN: Street address?

22 MR. TUMPSON: 230 Park Avenue.

23 MR. GALVIN: Thank you.

24 MR. TUMPSON: Is there going to be any  
25 kind of kitchen facilities on this first floor

1 commercial space?

2 THE WITNESS: Yes.

3 MR. TUMPSON: Yes?

4 THE WITNESS: It would be a kitchen, a  
5 small kitchen, used for the occupants of the office,  
6 not a commercial -- and we are calling it a  
7 kitchenette, so it is a six foot counter with a sink  
8 and a refrigerator beneath it.

9 MR. TUMPSON: Well, that raises the  
10 concern that this might possibly be shifted to a  
11 residential space.

12 Would you all be willing, or your  
13 client, I should say, be willing to accept the  
14 condition that the first floor will never be used  
15 for a residential space, that it will remain as  
16 commercial space?

17 THE WITNESS: Of course.

18 MR. TUMPSON: Thank you.

19 CHAIRMAN AIBEL: Anyone else?

20 COMMISSIONER COHEN: Motion to close  
21 public portion for this witness.

22 COMMISSIONER MC ANUFF: Second.

23 CHAIRMAN AIBEL: All in favor?

24 (All Board members answered in the  
25 affirmative.)

1                   COMMISSIONER MURPHY: Before Frank  
2 goes, can I ask him a question?

3                   CHAIRMAN AIBEL: Late on the draw, but  
4 go ahead, Diane.

5                   COMMISSIONER MURPHY: Well, only  
6 because it was brought up, but can you tell me where  
7 the windows are on the corner building?

8                   Are they facing the back, or do they  
9 face north --

10                  THE WITNESS: This is the --

11                  COMMISSIONER MURPHY: -- because we  
12 can't --

13                  (The witness and Commissioner Murphy  
14 speaking at the same time)

15                  THE WITNESS: -- I can pass this to  
16 you --

17                  COMMISSIONER MURPHY: -- I understand  
18 that in the air shaft --

19                  COMMISSIONER WEAVER: The light well.

20                  COMMISSIONER MURPHY: -- light well --

21                  THE WITNESS: Oh, yes. Let me see if  
22 it shows in the photographs.

23                  Ken, do your photographs show that?

24                  MR. OCHAB: No.

25                  (Board members confer.)

1 MR. MATULE: Here we go. You can  
2 partially answer the question.

3 THE WITNESS: I can partially answer  
4 the question.

5 There are windows on the wall facing  
6 west.

7 COMMISSIONER MURPHY: West.

8 THE WITNESS: I can't tell from the  
9 other side, but there are certainly windows here.  
10 There's three of them shown.

11 COMMISSIONER MURPHY: Great.

12 Thank you.

13 COMMISSIONER WEAVER: Hey, guys. One  
14 more question. Sorry, sorry.

15 CHAIRMAN AIBEL: All right.

16 COMMISSIONER WEAVER: Frank, the 3D  
17 diagram that you have, the rendering --

18 THE WITNESS: A-7.

19 COMMISSIONER WEAVER: -- it appears  
20 that it is missing a roof and a bulkhead.

21 THE WITNESS: Here?

22 COMMISSIONER WEAVER: Yes.

23 THE WITNESS: Yes. I didn't show that.

24 COMMISSIONER WEAVER: Why?

25 THE WITNESS: No particular reason.

1 The bulkhead is required for the stair, and there is  
2 a deck there as well.

3 COMMISSIONER WEAVER: But the roof is  
4 completely gone, right, and you are not even showing  
5 the roof?

6 THE WITNESS: We're showing the parapet  
7 around it, but this -- you are correct, the proper  
8 graphics would show this up a bit higher --

9 COMMISSIONER WEAVER: Yeah, because you  
10 are showing a two and a half foot parapet?

11 THE WITNESS: Yes, this. I could  
12 certainly revise that, if it is a problem.

13 CHAIRMAN AIBEL: Mr. Matule, do you  
14 have another witness?

15 MR. MATULE: I do. Hopefully only one  
16 more.

17 MR. OCHAB: Good evening.

18 MR. GALVIN: Do you swear or affirm the  
19 testimony you are about to give in this matter is  
20 the truth, the whole truth, and nothing but the  
21 truth?

22 MR. OCHAB: I do, yes.

23 K E N N E T H O C H A B, having been duly sworn,  
24 testified as follows:

25 MR. GALVIN: State your full name for

1 the record and spell your last name.

2 THE WITNESS: It's Ken Ochab. That's  
3 O-c-h-a-b.

4 MR. GALVIN: Mr. Chairman, do we accept  
5 Mr. Ochab's credentials as a planner?

6 CHAIRMAN AIBEL: We do.

7 MR. MATULE: Mr. Ochab, good evening.  
8 How are you?

9 THE WITNESS: Good.

10 MR. MATULE: You are familiar with the  
11 zoning ordinance and the master plan of the City of  
12 Hoboken?

13 THE WITNESS: I am, yes.

14 MR. MATULE: And you are familiar with  
15 this project?

16 THE WITNESS: Yes, I am.

17 MR. MATULE: You are familiar with  
18 what the applicant proffers with the three existing  
19 site conditions before the back of the building was  
20 demolished?

21 THE WITNESS: Yes.

22 MR. MATULE: Did you prepare a  
23 planner's report, dated March 3rd, 2015, in support  
24 of this application?

25 THE WITNESS: I did, yes.

1                   MR. MATULE: And you are aware that the  
2 application has now been amended to increase the --  
3 originally there was -- it was 98 point something  
4 percent lot coverage, and then it was reduced to  
5 have a five foot rear yard, and now it's been  
6 reduced to have a 17 and a half foot rear yard --

7                   THE WITNESS: That's correct.

8                   MR. MATULE: -- bringing the rear yard  
9 to 25 percent --

10                  THE WITNESS: Yes, I am.

11                  MR. MATULE: -- and the lot coverage to  
12 75 percent?

13                  THE WITNESS: Yes, I'm aware of that.

14                  MR. MATULE: All right.

15                         So with those revisions in mind, could  
16 you go through your report for the Board and give us  
17 your professional opinion regarding the variance  
18 relief the applicant is requesting?

19                  THE WITNESS: Okay.

20                         I believe I testified partially at the  
21 last meeting or at least my exhibits were brought up  
22 at the last meeting. But in the back of the report,  
23 I usually do take photographs.

24                         So on the first floor, I have a set of  
25 photographs of the front of the building, so I will

1 just go through them from left to right.

2 I took these photographs myself.

3 MR. MATULE: Can I just mark them?

4 So this board, even though they are in  
5 your report, we will mark that A-8.

6 (Exhibit A-8)

7 MR. MATULE: Thank you.

8 THE WITNESS: I took these photographs,  
9 and I can tell it was last winter because there is  
10 snow on the ground.

11 I have been back since, obviously with  
12 the recent conditions, which have not changed  
13 principally from what you see on the board.

14 So what we have in the upper left photo  
15 is a photograph of the existing building in the  
16 center of the photograph, which shows again the  
17 existing retail space on the ground floor and two  
18 floors above that as well.

19 It also partially shows the adjacent  
20 buildings, the one to the south, which also has a  
21 retail use on the bottom floor and four stories  
22 above -- three stories above, sorry, three stories  
23 above.

24 And then just to the north an existing  
25 three-story residential building.

1           The upper right photograph shows more  
2           of a street scape going to the north, so what you  
3           see -- on the left side, you see the building in  
4           question, which is located on the left side of the  
5           photograph, and then the buildings going to the  
6           north on Garden, and principally they are a mix of  
7           three -- and one, two, three, four, five-story  
8           buildings, which is two lots away from us, and so  
9           that is the condition that you see in the north.

10           The bottom right-hand south is again  
11           our existing building, and then the corner building  
12           at Third and Garden, which again shows retail on the  
13           first floor and then three stories above.

14           And then across Garden, we have the  
15           school building, which is a big building. It  
16           occupies about a third of the block, so that is the  
17           general context of where we are at with respect to  
18           that.

19           The other thing I did was to go to the  
20           back of the building and -- this might have been  
21           marked into evidence last time.

22           MR. MATULE:    Let me just check the  
23           transcript because that might have been marked  
24           during the last hearing.

25           So A-4 was a photo board.

1                   THE WITNESS: This is A-4. It was used  
2 at the last meeting, and obviously the purpose of my  
3 going through the back was because I was -- I  
4 typically wanted to review what was back there under  
5 the existing conditions, and then how would that  
6 change to not only the property itself, but to the  
7 adjoining properties as result of the proposed  
8 application. So this is just three photos showing  
9 the back area.

10                   The photo on the left shows the  
11 building that actually fronts on Third, but backs up  
12 to the rear portion of our property, the property in  
13 question here, and that would be --

14                   MR. MATULE: Just to put it into  
15 context, that would be this Lot 43.2 on A-7?

16                   THE WITNESS: Yes, 43.2.

17                   MR. MATULE: Okay.

18                   THE WITNESS: And then it shows over on  
19 the left side of the photograph the air shaft,  
20 partial photograph of the air shaft with the windows  
21 on the north side of the air shaft.

22                   The upper right photograph shows the  
23 building to the north of us, so I am looking from  
24 our property across the wall here to our building to  
25 the north of us, which is again a three-story

1 residential building, a fire escape, but it doesn't  
2 show that the first story of that building comes out  
3 further than what shows here. I can't take a  
4 photograph of that because I can't get over the wall  
5 to do it.

6 But if you look at, I believe it's Z-2,  
7 on Z-2 it does show the extension of that building  
8 here coming out.

9 Then beyond that, you see this big sort  
10 of white facade. It is just the way that the photo  
11 is taken, but this is the five-story residential  
12 building, which is just further to the north. So  
13 from the rear yard, this is what you see.

14 Then finally, from the property looking  
15 again north to the adjacent property to our rear, it  
16 appears that this is a single-family home, at least  
17 that is what the tax records indicate, and this  
18 shows whatever distance it is, 12 to 15 foot wall,  
19 and then a small section in front of that, which  
20 needs to be reconstructed, and Frank went through  
21 that in some detail as to how that would be done, so  
22 those are the general conditions that are on the  
23 property.

24 From my perspective, from a planning  
25 perspective, I generally thought it was a good plan

1 approach to reduce the size of the building, open up  
2 that rear yard. We always talked about opening up  
3 the open space and the block center, and certainly  
4 when you look at A-7, you know, again, coming from  
5 my perspective, which was to look at what was there  
6 at one point, which was at least 90-some-odd percent  
7 coverage, that I thought it was a good idea to jet  
8 that back.

9           And the 75 percent coverage at the  
10 lower level at least matched the building to the  
11 north of us, as shown on A-7, but also allowed a  
12 view from Lot 43.2 to our rear yard open area. So  
13 there would be some advantages to the properties  
14 adjacent to us, as well as to rebuild this wall,  
15 reconstruct part of the wall on the rear line to  
16 also provide some privacy to Lot 44. So in general,  
17 I thought it was a decent idea to do this, also to  
18 stay within the 60 percent coverage of the lot on  
19 the upper floors.

20           So a result of the revisions that were  
21 made last time, we still have several variances. We  
22 still have a D variance for density, where two units  
23 are permitted, and three are proposed.

24           We still have a lot coverage variance  
25 for the first floor, which 75 percent is proposed,

1 and 60 percent is permitted.

2 Then on the upper floors, where we have  
3 60 percent for building coverage, but the excess  
4 percent is where we are going to put the fire escape  
5 area, which I can't calculate because Frank was  
6 talking to too fast, and I can't do it that quickly.

7 (Laughter)

8 So in any case, we have that, and then  
9 we still have the rear yard variance, where 17 and a  
10 half feet is proposed to the first floor building  
11 area, and 21 feet is provided, but I do believe that  
12 we do meet the setback with the upper floors, two,  
13 three, and four, so that is what we have.

14 Concerning the density application  
15 here, again, two units are permitted under the  
16 ordinance. Three are proposed, and we used the  
17 Coventry criteria, basically Coventry versus  
18 Westwood essentially, which is to look at the  
19 surrounding densities and to see whether what we are  
20 doing is generally consistent with that.

21 Also, we look at whether or not the  
22 problems that are associated with the increased  
23 density can be accommodated on the site, and then  
24 finally whether there is a negative impact as a  
25 result of the additional unit.

1                   So with respect to the -- how the  
2                   density measures up to the surrounding area, again,  
3                   look at -- I put the chart in my table -- in my  
4                   report, and generally if we look at the immediate  
5                   area, if we look to the building to the south, it  
6                   has one retail unit on the first floor and three  
7                   units above it, so it is three over one, and we are  
8                   proposing actually three units over one retail  
9                   commercial space.

10                   So we are consistent with what is  
11                   already existing to the south of us on the corner.

12                   With respect to that lot also, that  
13                   corner lot has less area than we have. That lot has  
14                   1170 square foot, where as we have 1,960 square  
15                   feet. So in terms of intensity of use, they are  
16                   just slightly more intense than we are.

17                   The building that we are opening up the  
18                   rear yard, and that would have an advantage of 43.2,  
19                   that lot is only 650 square feet in size. It is a  
20                   very small lot. It is that way because of the way  
21                   the lot configuration was done.

22                   The depth of the Garden Street lot  
23                   basically cut off the depth of the Third Street lot,  
24                   making this a square lot and calculating that to 650  
25                   square feet according to the tax records.

1                   We have three units in that building,  
2                   so we have three units and 670 square feet of lot  
3                   area. Again, I think we are pretty much consistent  
4                   with that as well.

5                   The property to our north here is a  
6                   little bit larger. It's 2400 square feet, and they  
7                   have three units, and so we are a little bit more  
8                   intense than that, but I guess significantly not.

9                   And then finally, as I showed you the  
10                  five-story building just to the north of Lot 41,  
11                  that property has 3,000 square feet of space, but it  
12                  has 12 residential units in it, so it comes to about  
13                  160 percent higher than what the typical -- what the  
14                  zoning ordinance would permit. We are basically at  
15                  50 percent higher than what the zoning ordinance  
16                  would permit.

17                  So if we look at just that immediate  
18                  area, I would certainly say that we conform  
19                  consistent with what the density is, the general  
20                  density in this area, and we would meet the Coventry  
21                  criteria.

22                  The additional unit doesn't require any  
23                  additional height in terms of the permitted height  
24                  of the building. We are allowed to have a 40 foot  
25                  building over DFE. Our building is 36 and a half

1 feet, so we are not asking for a height variance, so  
2 the building can actually accommodate one additional  
3 unit without the typical height variance request.

4 You certainly recall in the past that a  
5 typical location is for an additional unit and an  
6 additional height of ten feet. It seems to be -- it  
7 seems to have been the pattern over the past several  
8 years. But in this case we don't need to do that  
9 because we have sufficient building area, and that  
10 is to accommodate the additional unit.

11 Then with respect to how the unit  
12 measures up, the additional unit measures up to the  
13 surrounding buildings in terms of impact. Again, we  
14 are just at the same height as the building to our  
15 south, so there's no impact there, and then we're  
16 slightly above the -- actually one story above the  
17 building to the north, as you can see here again on  
18 A-7.

19 But, again, there is no roof deck or  
20 roof activity on the building to the north, so the  
21 impact in terms of the additional unit, I don't  
22 think would be significant in this instance. So  
23 that is it on the density aspect of the application.

24 With respect to lot coverage, here,  
25 again, my perspective was that going from a

1 coverage, which was essentially 97 or 98 percent  
2 back to 75 percent, and a result of that, we were  
3 opening up the rear yard as open space, conforming  
4 to the master plan objectives with respect to that,  
5 and also just to reduce the intensity of the retail  
6 space down to 1151 square foot, which I thought was  
7 reasonable.

8 Can it be less?

9 I guess so. I guess it can be less,  
10 but I don't particularly know the owner's desire or  
11 needs in terms of retail space.

12 I would only say that the retail space  
13 next to us next door and that building next door  
14 covers a hundred percent of the lot, because it is a  
15 corner lot, so again, I don't know what the retail  
16 space is on that property, because I can't get in  
17 there to measure it, but it is certainly more  
18 than -- and I would suspect that it's about --  
19 again, the size of that lot is 1170 square feet, so  
20 probably close to 1100 square feet -- yeah, probably  
21 close to 1100 square foot on that particular lot.

22 But from a planning perspective, I  
23 thought it was a good approach to try to match the  
24 building to our north, which we are doing, the first  
25 floor building to our north, which I want to say, we

1 can't see them, and they can't see us. But to sort  
2 of pull that back line on the first floor, and then  
3 move the second, third and fourth back, so that we  
4 don't proceed or extend beyond the building to the  
5 north, which we don't, and then also to try to just  
6 open up -- keep open that air shaft area.

7 So I thought it was an interesting  
8 approach, and certainly I think the benefits that  
9 are derived from this approach certainly would offer  
10 up the C2 variance criteria and the benefits of  
11 doing that in terms of open space and allow us to do  
12 that -- would prevail.

13 As far as the rear yard area is  
14 concerned, here, again, we have 17 and a half feet  
15 to the rear first floor, and it requires 21 feet,  
16 and I am working on 21 feet with the second, third  
17 and fourth story, which is essentially the impact  
18 area when we look at rear yard setback distances.  
19 And, again, we are opening up this whole area to the  
20 building at 43.2 and provide some open space there.

21 So I do think that one of the  
22 interesting conditions here is that we do have a  
23 lot, which is 28 feet in width, and that is very  
24 unusual. We don't get a lot that's 28 feet in  
25 width, but we only have a lot that's 70 feet in

1 depth, so we have an odd-shaped lot here,  
2 constrained by the lots around us, so we can't  
3 increase that lot size.

4 So as a result, the 70 feet of lot  
5 depth actually constrained where the building could  
6 go, and that we want to get up to the 60 percent, if  
7 we can, then that results in -- or the 75 percent  
8 coverage for the first floor, then that results in a  
9 rear yard variance.

10 Typically we have a hundred foot lot.  
11 We can typically -- and a 30 foot rear setback, we  
12 can typically get a 70 foot building and a 30 foot  
13 rear yard. So here, we can't do that because of the  
14 existing conditions of the property.

15 So with respect to all of those things,  
16 I do think that we certainly have come a long way in  
17 going from what we had under the existing conditions  
18 to a new design, a new approach, one extra unit, a  
19 lot more open area, more conducive to the neighbors.

20 It may not be a hundred percent the  
21 best thing ever, but it is certainly an  
22 accommodation to them and still allows the property  
23 to be developed in the manner in which the program  
24 suggests and offers, in terms of the retail space or  
25 the office space that is required and the three

1 residential units.

2 I only want to say one other thing  
3 respectfully on the density issue, which is when you  
4 have retail space, and I will just throw this out  
5 there -- when you have a retail space, the  
6 provisions in the ordinance allow you to calculate  
7 the density based on subtraction of the retail  
8 space. And then when you have a fraction left over,  
9 you can actually in this case round up. So we were  
10 very close to it. I think we were at one point 6-9  
11 or 9-6, so we were very close to the 2.00 number.

12 If we had gone over the 2.0 number, we  
13 would have actually been permitted to do three units  
14 as a result of the reading of that section of the  
15 ordinance. I don't recall the section number.  
16 Maybe Eileen is looking it up.

17 (Laughter)

18 So with respect to density, we  
19 certainly are adding one more unit, but I don't want  
20 to say it is like a typical residential application  
21 where our permitted density is 2.1, and we are doing  
22 three units, which would not be permitted.

23 If we were at 2.1 or a little over two,  
24 we wouldn't actually be allowed to do that, so I  
25 would just ask you to consider that the ordinance

1 gives some incentive to having retail or office  
2 space on the first floor, and then allows the  
3 calculation to be done a little differently.

4 So, Mr. Chairman, I will stop there,  
5 and I'll answer your questions,

6 COMMISSIONER MC ANUFF: Could you look  
7 at the board for a second?

8 Could you hold it up?

9 This goes to something that was asked  
10 before.

11 The shaft there, is there a duct in  
12 there?

13 THE WITNESS: There is a pipe in there.

14 COMMISSIONER MC ANUFF: So it is fair  
15 to say that there are not windows on that west wall?

16 THE WITNESS: No. There's no windows  
17 on the west, just on the north side --

18 COMMISSIONER MC ANUFF: Okay. Because  
19 somebody asked that question before, and now we have  
20 it answered.

21 CHAIRMAN AIBEL: Board members --  
22 I'm sorry.

23 THE WITNESS: -- that's on the east  
24 wall. I stand corrected.

25 COMMISSIONER BRANCIFORTE: You didn't

1 mention the --

2 CHAIRMAN AIBEL: John, one second.

3 COMMISSIONER BRANCIFORTE: -- I'm  
4 sorry.

5 CHAIRMAN AIBEL: Do we have a question  
6 and answer going?

7 MR. MATULE: No.

8 MR. GALVIN: Mr. Ochab is done. He's  
9 ready to be questioned by the Board, right?

10 So we are going to go around the Board  
11 and ask questions.

12 CHAIRMAN AIBEL: John?

13 COMMISSIONER BRANCIFORTE: So in the  
14 list of variances that were mentioned, do we need to  
15 mention something about the wall being 12 foot high  
16 or not?

17 MR. GALVIN: It needs a variance.

18 MR. MATULE: Well, at this point we  
19 are proposing a six foot high wall unless based on  
20 the testimony or the commentary from the neighbors,  
21 they want that wall higher, and then we leave it up  
22 to the Board in terms of how high and --

23 MR. GALVIN: Yeah, I think that is  
24 okay --

25 MR. MATULE: -- we will ask for the

1 variance --

2 MR. GALVIN: -- but if you were to --  
3 if you were to -- right now you may or may not be  
4 seeking the variance for the fence. But what would  
5 be your special reasons for the fence?

6 THE WITNESS: Well, it would be a C  
7 variance, so...

8 MR. GALVIN: No, no. But give me your  
9 special -- what value does the fence have to the  
10 overall community?

11 THE WITNESS: Well, I think if you look  
12 at the height of the fence that is being suggested  
13 here, 12 feet or 15 feet, the adjacent property is a  
14 single-family home, which is rare, so I think to  
15 provide the type of privacy that that deserves, that  
16 the single-family home deserves, would certainly  
17 encourage a wall that would be higher than six feet.

18 MR. GALVIN: So that meets the standard  
19 of light, air and open space?

20 THE WITNESS: Right.

21 MR. GALVIN: All right. That's a good  
22 question.

23 CHAIRMAN AIBEL: So let's do it this  
24 way. Let's run around the table this way.

25 MR. GALVIN: Any questions, guys?

1 CHAIRMAN AIBEL: Any questions?

2 COMMISSIONER MURPHY: I am okay at the  
3 moment.

4 COMMISSIONER WEAVER: I am okay.

5 MS. BANYRA: Can I just qualify two  
6 things with Mr. Ochab before you ask questions?

7 Mr. Ochab, I think, you know, that  
8 rounding up, I thought -- and Mr. Evers probably is  
9 here and can confirm it -- I thought that was  
10 basically thrown out in court that the rounding up  
11 was not permissible or maybe Mr. Matule could --

12 MR. MATULE: My understanding is that  
13 is in a purely residential situation, where you are  
14 backing out for the commercial, the ordinance  
15 specifically states you round up --

16 MS. BANYRA: Okay. I'm looking at the  
17 C language for the commercial --

18 MR. MATULE: -- and I think that there  
19 is a distinction Judge Gallipoli made.

20 MS. BANYRA: -- but they actually made  
21 that distinction. Okay.

22 MR. MATULE: I believe.

23 MS. BANYRA: And then the other  
24 question I had was relative to -- Mr. Ochab, you  
25 made a comment that it would be permissible to have

1 a building 70 foot in depth, and that wouldn't be  
2 70 -- on a hundred foot lot, that would be a 70  
3 percent lot coverage, which while it may meet the  
4 rear yard setback, it wouldn't meet the lot coverage  
5 requirement.

6 THE WITNESS: Right. But I probably  
7 should have said that a portion of your building  
8 could be 70 feet. I mean, let's say you didn't  
9 design a square building, it could be 70 feet deep  
10 with a 30 foot backyard --

11 MS. BANYRA: So you would meet the rear  
12 yard, in terms of rear yard, but not necessarily  
13 coverage --

14 THE WITNESS: Right. You could  
15 still --

16 MS. BANYRA: -- that's the only  
17 distinction I wanted to make. Okay

18 THE WITNESS: -- have a coverage issue  
19 there.

20 CHAIRMAN AIBEL: Gentlemen, questions  
21 for Mr. Ochab?

22 COMMISSIONER GRANA: Me, I am up?

23 CHAIRMAN AIBEL: Anybody, yes.

24 COMMISSIONER GRANA: Mr. Ochab, I asked  
25 Mr. Minervini a question, and I just wanted to ask

1       you.

2                   The master plan asks us to promote and  
3       enhance Hoboken's historic character and design  
4       image. Do you think this application supports that?

5                   THE WITNESS: I know it is a good  
6       question.

7                   Certainly, when you look at the street  
8       scape here, the context is of an older pattern,  
9       certainly a more -- I don't want to say historic  
10      pattern, but you could characterize it that way.

11                  It is not necessarily the building  
12      heights, but the way in which the fenestration on  
13      the building is. Some of them have cornices, so  
14      there definitely is an old Hoboken appearance to it.

15                  You know, on the other hand, again, not  
16      from Mr. Minervini's perspective, but from a  
17      planning perspective, new buildings don't  
18      necessarily need to follow that pattern. You know,  
19      there is sort of a principle in planning and design  
20      that says don't mirror, don't try to mirror the  
21      architectural character of it, and I think the  
22      master plan also refers to that. It says don't try  
23      to copy it. Don't try to match it.

24                  So I think you have two things going on  
25      there, but I certainly understand the point that you

1 are making.

2 COMMISSIONER GRANA: Okay. Thank you.

3 Is this building, did we classify this  
4 as new construction?

5 MR. MATULE: Mr. Minervini I think  
6 should be the one to answer that.

7 MR. MINERVINI: The construction code  
8 will classify it as a rehabilitation with an  
9 addition.

10 COMMISSIONER GRANA: So it's an  
11 addition to a nonconforming structure or it's brand  
12 new construction?

13 MR. MINERVINI: Well, nonconforming is  
14 purely a zoning term.

15 COMMISSIONER GRANA: Yeah. I mean it's  
16 nonconforming on its lot --

17 MR. MINERVINI: It's nonconforming --

18 COMMISSIONER GRANA: Yeah --

19 (Commissioner Grana and the witness  
20 speaking at the same time)

21 THE WITNESS: -- the construction code,  
22 but that is not how the construction code classifies  
23 buildings.

24 COMMISSIONER GRANA: Well, I'm just --  
25 actually I am trying to be unconfused.

1 Chairman Aibel asked actually on the  
2 15th of December, so I just wanted to verify, we  
3 are -- are we demolishing the residential floors and  
4 constructing new structures, but leaving the base --  
5 the first floor --

6 THE WITNESS: Yes --

7 COMMISSIONER GRANA: -- alone -- what  
8 are we leaving -- maybe I should have asked this  
9 earlier, but -- what are we leaving behind --

10 MR. MINERVINI: There's two answers.  
11 For this Board's purposes, this is a new building,  
12 and this is based on what I learned in previous  
13 applications.

14 If we are speaking through a  
15 construction code, it is not quite as clear, but for  
16 this Board, it is absolutely a new building, and our  
17 drawings reflect that on floors two, three, and four  
18 are new, and the other existing ones will be  
19 removed.

20 COMMISSIONER GRANA: Thank you.

21 Lastly, Mr. Ochab, you didn't testify  
22 to this, but just a question.

23 Since this is, quote, unquote, an  
24 odd-shaped lot, are you testifying that that  
25 presents a hardship to the applicant or is that part

1 of the -- I didn't hear it in the justification. I  
2 didn't know if that is what we were seeking.

3 THE WITNESS: My predominant argument  
4 here was the C2 argument, that there are benefits in  
5 making the modifications we made --

6 COMMISSIONER GRANA: Yeah, okay.

7 THE WITNESS: -- I mentioned it because  
8 I think the Board, if it wants to, can take  
9 cognizance of the fact that it is an odd-shaped lot  
10 with a 70 feet depth.

11 COMMISSIONER GRANA: Okay. But C2 is  
12 the focus of your testimony.

13 Okay. Thank you.

14 CHAIRMAN AIBEL: Anybody else,  
15 gentlemen?

16 Mr. Ochab, you know, very quickly, how  
17 do you square the request for increased density with  
18 the land use recommendations to maintain the lower  
19 densities and heights in residential zones that's in  
20 the master plan?

21 THE WITNESS: Yeah. I mean, I am  
22 certainly cognizant of the language in the master  
23 plan, and -- however, we need to also be cognizant  
24 of what the criteria is for the increase in density.

25 So in my perspective, if the density

1       that we're proposing is consistent with the  
2       surrounding properties, then there is a rationale to  
3       be, you know, to approve that, that type of density.

4                I think the master plan might be  
5       talking more about potential zoning modifications as  
6       well as in general about what the density should be  
7       and looking forward to some review of the existing  
8       density patterns and what the zoning should allow  
9       with respect to that.

10               But this is an individual case, and I  
11       think that Coventry is more apropos than would be  
12       the master plan language.

13               CHAIRMAN AIBEL:  Thanks.

14               COMMISSIONER BRANCIFORTE:  Do we have  
15       any evidence that really supports this idea that the  
16       rest of the neighborhood is at the same density?

17               THE WITNESS:  It is in my report.  
18       There is a table in my report where I go through  
19       each property and then measure the density --

20               COMMISSIONER COHEN:  Pages five and six  
21       of the report.

22               THE WITNESS:  -- and it is what it is.

23               (Laughter)

24               COMMISSIONER BRANCIFORTE:  That is  
25       fine.

1                   CHAIRMAN AIBEL: So there is no  
2                   argument, though, from your perspective, that the  
3                   office business space is a benefit to the community  
4                   as perhaps a retail 7-Eleven would be -- might be  
5                   depending on who you are next to --

6                   THE WITNESS: Office -- the office  
7                   space is a permitted use as far as I am concerned.  
8                   It is the additional residential unit, which is the  
9                   issue here.

10                  But, you know, the master plan talks  
11                  about that as well as about additional commercial,  
12                  retail space in an existing neighborhood, and I  
13                  think that this is right directly on point with  
14                  that.

15                  CHAIRMAN AIBEL: Thanks. Okay.

16                  Professionals, anything else?

17                  Let me open it up to the public, and we  
18                  really want to get to a vote tonight, so be very  
19                  efficient, please.

20                  MS. HEALEY: I'm sorry. I just have  
21                  two many papers to stand up.

22                  Leah Healey.

23                  I just want to look at that picture  
24                  that you showed on A -- this one right here, A-4.

25                  Do you know what this structure is that

1 is off the rear of that building, which is 304  
2 Garden?

3 THE WITNESS: Well, that structure is  
4 the one on the photograph to the right.

5 MS. HEALEY: Do you know whether that  
6 is where the exit is for that building, when you  
7 went to look at it?

8 THE WITNESS: I couldn't make it out as  
9 that. It looked to me like it had been part of the  
10 structure, but I didn't realize it was an exit.

11 MS. HEALEY: I believe that you said  
12 that it was good in your view to reduce the building  
13 coverage and open up the open space in the block and  
14 match the building to the north, and you felt that  
15 was advantageous in accordance with the master plan.

16 Do you think the same is true if the  
17 building is 300 square foot less into the backyard?

18 THE WITNESS: Yes.

19 MS. HEALEY: Are buildings on the  
20 corners of blocks typically higher than those that  
21 are on the middle of the block in Hoboken?

22 THE WITNESS: Typically higher? It is  
23 hard to say --

24 MR. MATULE: I am only going to ask  
25 what is the relevance of the question in the context

1           that we're within the permissible height parameters.

2           We're not asking for a height variance.

3                       MS. HEALEY: Well, my next question was  
4           going to be with regard to density, and I believe  
5           you pointed to the surrounding building, the corner  
6           building, as supportive for your rationale for a  
7           density increase --

8                       MR. MATULE: Fair enough. I will  
9           withdraw my objection.

10                      MR. GALVIN: Good. I didn't want to  
11           have to rule on it.

12                      MS. HEALEY: I believe you said that  
13           opening the rear yard and reducing it from 98  
14           percent comes to 75, and it was conforming with the  
15           master plan.

16                      Can you tell me why you think that  
17           reduction is conforming to the master plan?

18                      THE WITNESS: It was a statement that I  
19           made concerning the elimination of the building  
20           coverage.

21                      MS. HEALEY: What does the master plan  
22           say about that?

23                      THE WITNESS: The master plan doesn't  
24           speak specifically about that particular instance,  
25           but the master plan talks about providing open space

1 in the center block areas and maintaining that open  
2 space, and so this is in conformance with --  
3 consistent with that master plan objective.

4 MS. HEALEY: Have you reviewed the  
5 master plan and the master plan reexamination in  
6 preparation for your testimony?

7 THE WITNESS: I have.

8 MS. HEALEY: So you are familiar with  
9 the building and site design recommendations of the  
10 master plan?

11 THE WITNESS: In general, yes.

12 MS. HEALEY: On the land use element?

13 THE WITNESS: Yes.

14 MS. HEALEY: Are you familiar with the  
15 provision that deals with open space on the interior  
16 blocks, Paragraph 6 of the master plan?

17 THE WITNESS: I didn't memorize it, but  
18 you are going to read it to me, so --

19 MS. HEALEY: I sure am.

20 It says: The typical Hoboken block is  
21 a donut with a hole in the middle comprised of rear  
22 yards behind buildings. The existing residential  
23 zone regulations prohibit development in rear yards  
24 through setbacks and building coverage requirements,  
25 but either through variances or illegal intrusions

1 into the rear yards, some buildings have been  
2 permitted to cover the entire lot. The cumulative  
3 effect of this type of development is to take away  
4 some of what little open space is provided in many  
5 residential blocks.

6 And this is the key sentence that I'm  
7 sure you have reviewed: "Variances from these  
8 requirements should be few and far between, if  
9 granted at all."

10 How does your opinion square with that?

11 THE WITNESS: Well, I agree a hundred  
12 percent with that statement.

13 I am talking about a new building and a  
14 new set of circumstances on a vacant piece of  
15 property. But here, we have an existing structure  
16 or structures that include a 90-some percent or 98  
17 percent of the property. I thought certainly those  
18 objectives were met when we reduced the size of the  
19 building and opened up that space, so I think we are  
20 right on point with what the master plan is  
21 suggesting here.

22 MS. HEALEY: So your opinion somewhat  
23 relies on this Board buying the nonconforming  
24 structures, the legal structures?

25 THE WITNESS: You know, I don't go by

1       that. I have a survey, which shows that there are  
2       existing buildings on the property, and then I move  
3       from that survey to our proposed plan. And my  
4       conclusion is reducing the overall building  
5       coverage, and that generally from a planning  
6       perspective is a positive aspect of this  
7       application.

8                   MS. HEALEY: So you believe that even  
9       though variances shouldn't be granted at all with  
10      respect to this, that we should give you an  
11      exception to that because of your lot coverage in  
12      the past?

13                   THE WITNESS: No. I said the  
14      circumstances are completely different than the  
15      image that is being portrayed, the example that's  
16      being portrayed in the master plan.

17                   MS. HEALEY: Because this only applies  
18      to new structures?

19                   THE WITNESS: I believe it principally  
20      applies to new development.

21                   MS. HEALEY: Is there any language in  
22      here that indicates that?

23                   THE WITNESS: I think it is implicit in  
24      the language you are reading.

25                   MS. HEALEY: You heard Mr. Minervini

1 testify about the rear yard and the fact that  
2 there's going to be some planters in there.

3 Do you have any opinion about the rear  
4 yard and the planters that are going to be out  
5 there, whether they conform to the master plan?

6 THE WITNESS: No, I don't.

7 MS. HEALEY: Should you have an opinion  
8 about that?

9 THE WITNESS: As long as it's open and  
10 green space and can be used for recreational  
11 purposes, I am okay with that.

12 MS. HEALEY: Are you familiar with the  
13 master plan reexamination, paragraph 9, with regard  
14 to rear yard trees?

15 THE WITNESS: I know I read it, but you  
16 can read it to me again.

17 MS. HEALEY: Okay.

18 Require the provision of rear yard  
19 trees, as Hoboken is limited in open space, any  
20 additional green space and vegetation can have a  
21 significant impact. In addition to street trees,  
22 additional trees should be considered in the rear  
23 yard area.

24 Are you aware of that section?

25 THE WITNESS: I am, and I think we are

1 open to whatever the Board would like us to do.

2 MS. HEALEY: You also testified about  
3 the 12 foot wall as providing privacy, and I believe  
4 you answered yes, in meeting the standards of light  
5 and air.

6 How does a 12 foot -- a 12-inch brick  
7 wall provide light and air?

8 THE WITNESS: It provides privacy.  
9 The wall is there now, so I think there are special  
10 circumstances around what the adjoining property  
11 owner would like us to do with that wall, which is  
12 to maintain it in place. It provides them the  
13 privacy that they believe they desire and would --

14 MS. HEALEY: Is there any other way to  
15 provide privacy?

16 THE WITNESS: Sure. There's lots of  
17 different ways --

18 MS. HEALEY: Thank you.

19 THE WITNESS: -- but why change what is  
20 there, if the adjoining owner really wants to do it  
21 in that particular direction?

22 MS. HEALEY: And does that explain why  
23 you would want a 12 foot concrete wall on the side  
24 yard also --

25 THE WITNESS: That's not --

1 MS. HEALEY: -- I mean a six foot  
2 high -- I'm sorry -- a six foot high wall -- a six  
3 foot, 12-inch deep concrete wall on the side yard,  
4 is that good for light and air?

5 MR. MATULE: I believe Mr. Minervini's  
6 testimony was it was a brick wall, not a concrete  
7 wall, and his testimony was that it was going to be  
8 brought down to six feet on the side, on the north  
9 side and stepped down, assuming the Board wants that  
10 high wall in the back, and the six feet is what is  
11 permitted in the zone --

12 MS. HEALEY: Let me ask the question  
13 because --

14 MR. MATULE: -- I don't understand the  
15 question --

16 MS. HEALEY: -- let me ask the question  
17 because I am asking the planner for his opinion on  
18 light and air and whether a solid brick wall  
19 provides as much light and air as a 12-inch brick  
20 wall.

21 THE WITNESS: I have no opinion about  
22 that.

23 MS. HEALEY: Okay. Thank you.

24 CHAIRMAN AIBEL: Questions?

25 Okay. Please come forward, Ms.

1 Fallick.

2 MS. FALLICK: Cheryl Fallick.

3 CHAIRMAN AIBEL: Don't get too  
4 comfortable, though.

5 (Laughter)

6 MS. FALLICK: No, I wasn't.

7 I don't remember your name, I'm sorry.

8 THE WITNESS: Ken.

9 MR. GALVIN: Ken Ochab.

10 MS. FALLICK: Can I call you Ken?

11 THE WITNESS: Absolutely. Ochab is way  
12 too --

13 (Everyone talking at once.)

14 CHAIRMAN AIBEL: Okay. Go ahead.

15 MS. FALLICK: Ken, you talked about --  
16 there was a technical question about the air shaft  
17 or the light shaft or whatever that is.

18 THE WITNESS: Yes.

19 MS. FALLICK: You talked about  
20 windows -- yeah, windows on 300 Garden.

21 If I told you that I live in this  
22 building, 204 Third Street, and that there are  
23 windows facing east on that building, would you  
24 believe me?

25 MR. MATULE: Why not?

1 THE WITNESS: I would believe you, yes.

2 MS. FALLICK: Just because you said  
3 there weren't --

4 THE WITNESS: Yeah -- I only have  
5 one --

6 MS. FALLICK: -- I just wanted to get  
7 that out --

8 THE WITNESS: -- angle, so yes.

9 MS. FALLICK: -- I understand. Yeah.  
10 So let's see.

11 You talked about the benefits and the  
12 conduciveness to this building. I am going to  
13 narrow this a little bit.

14 Is there anything conducive about  
15 having a window with a roof that is parallel to the  
16 base of your window sill?

17 Would you consider that a positive  
18 thing for the person who lived in the building that  
19 literally somebody could step into the window from  
20 that roof, if somebody were on it?

21 THE WITNESS: Well, I am moving from  
22 the perspective of, again, like almost a hundred  
23 percent coverage back to 75.

24 So when I do that, and I am looking  
25 at -- this is your building, right? This is your

1 building. So when I'm looking at that, I am saying,  
2 well, that is a good thing because --

3 MS. FALLICK: Because at one time there  
4 was a hundred --

5 MR. GALVIN: Whoa.

6 THE WITNESS: -- right -- now all of  
7 these units can go down on the green area instead  
8 of --

9 MS. FALLICK: -- you actually talked  
10 about that, Ken, several times about the 90 percent  
11 and 100 percent lot coverage.

12 Am I correct, that this is your  
13 position as opposed to what actually might be the --  
14 have been the reality before the demolition happened  
15 on that building?

16 THE WITNESS: I think I explained that,  
17 how I proceed in these types of applications when  
18 someone gets a survey, which shows me where the  
19 buildings are and then the site plan survey --

20 MS. FALLICK: Okay. So you are just --  
21 you're basing that on a survey, not necessarily what  
22 really did exist there?

23 THE WITNESS: Correct, because I don't  
24 know that.

25 MS. FALLICK: Hum, let's see, hum.

1                   Hum, and this building takes up the  
2 full width as opposed to depth, right, from corner  
3 to corner?

4                   THE WITNESS: Right.

5                   MS. FALLICK: I know that there was  
6 some concern about egress.

7                   Are you aware that -- I actually think  
8 that we can see it on the picture.

9                   Are you aware that there actually is an  
10 egress out of that space now, hum...

11                   THE WITNESS: I'm sorry. You have to  
12 just identify the picture by number.

13                   MS. FALLICK: Yeah, the upper right.

14                   THE WITNESS: A-4?

15                   MS. FALLICK: A-4 upper right.

16                   Are you aware -- I think this is it --  
17 this is --

18                   THE WITNESS: That is on the north  
19 side --

20                   MS. FALLICK: -- right. This is --  
21 this is the -- are you aware that that's a door --

22                   THE WITNESS: Hum --

23                   MR. MATULE: To where?

24                   MS. FALLICK: To the other yard.

25                   MR. MATULE: Just so I am clear --

1 THE WITNESS: I don't think -- to go to  
2 this yard?

3 MS. FALLICK: Yes.

4 MR. MATULE: Well, the architect  
5 testified if there was, it would have to be close --

6 MS. FALLICK: Right.

7 MR. MATULE: -- but I'm wondering what  
8 the relevance of the question --

9 MS. FALLICK: Just because -- I can  
10 tell you, if I'm allowed. There was a lot of --

11 MR. GALVIN: Well, you can argue why  
12 your question is valid. Go ahead.

13 MS. FALLICK: Well, there seemed to be  
14 a lot of concern about closing people into that  
15 yard, so currently right now, I think Mr. Hans  
16 talked about space between the two buildings, and I  
17 am just demonstrating or asking him if he also is  
18 aware that there are two ways out of that yard right  
19 now.

20 Is that a question I can't ask you --

21 MR. GALVIN: No. You can ask that.

22 MR. MATULE: Well, the issue I had  
23 with this whole line of questioning is we had  
24 testimony from the architect (a) that the building  
25 code doesn't permit that.

1                   And (b) unless we have evidence of an  
2                   easement or some, you know, I am not understanding  
3                   what the relevance of the law is because a hundred  
4                   years ago somebody made a hole in the wall, I just  
5                   don't see what it has to do with this application.

6                   MR. GALVIN: All right.

7                   MS. FALLICK: So we have to be --

8                   MR. GALVIN: No, no, no --

9                   MS. FALLICK: -- I guess I don't  
10                  understand --

11                  MR. GALVIN: -- you don't get to rebut  
12                  because I am not agreeing with Mr. Matule, so --

13                  MS. FALLICK: Thank you.

14                  MR. GALVIN: -- what was the answer?

15                  THE WITNESS: I am not aware of that.

16                  MR. GALVIN: Okay. That's the answer.

17                  MS. FALLICK: Okay. That is all I  
18                  needed.

19                  Yeah, so, let me just -- I think that  
20                  might be --

21                  MR. GALVIN: I mean, that's what I tell  
22                  my Board members --

23                  MS. FALLICK: -- yeah, I think that is  
24                  all the questions I have.

25                  CHAIRMAN AIBEL: Thank you.

1                   MR. GALVIN:  -- just so you know,  
2                   that's what I try to tell my Board members, if I  
3                   could just have a moment.  I'm trying to explain to  
4                   my Board members, and this is a teaching opportunity  
5                   that sometimes asking a witness to reverse himself  
6                   is not the best way to go.

7                   Sometimes the best way to do this is to  
8                   wait until it's your turn to talk, and then you tell  
9                   us why you think there should be an opening and why  
10                  you disagree with the plans as developed, and the  
11                  same thing with the Board.

12                  If you don't like the plan, then at  
13                  some point you say why you don't like it.  You don't  
14                  have to have the expert witnesses agree with you.  
15                  They may never agree with us because they are hired  
16                  by the applicant.

17                  CHAIRMAN AIBEL:  In a teaching moment,  
18                  it would be great, but not with the need for a  
19                  bathroom break.

20                  This is my proposal.  We have some  
21                  additional questions --

22                  MS. ONDREJKA:  I have some questions --

23                  MR. GALVIN:  The Chairman has the  
24                  floor.

25                  CHAIRMAN AIBEL:  Yes.  I have the

1 floor.

2 We all need to take a break --

3 MR. EVERS: They are going to hear you  
4 better if they don't have to pee.

5 (Laughter)

6 COMMISSIONER WEAVER: Yes, Mike.

7 CHAIRMAN AIBEL: -- you will have a  
8 chance to ask the questions that you have. We will  
9 then going to get to final arguments, and everybody  
10 will get a chance to comment, but we have to keep it  
11 moving so we can get to a vote tonight.

12 Mr. Matule, do you have another matter  
13 sitting around?

14 MS. CARCONE: Yes, 75-77 Madison --

15 MR. MATULE: I do. I have the  
16 matter --

17 MS. CARCONE: -- that's been carried  
18 three times already.

19 CHAIRMAN AIBEL: I know.

20 MR. MATULE: -- as the agenda says,  
21 carried from 11/17, 11/30 and 12/15.

22 COMMISSIONER WEAVER: Without  
23 prejudice.

24 (Laughter)

25 MR. MATULE: But I think it is pretty

1 clear that we are not going to get to that matter  
2 tonight.

3 CHAIRMAN AIBEL: I am going to throw  
4 this out. If --

5 MR. MATULE: My client was so anxious  
6 to write the reporter a check, but anyway --

7 (Laughter)

8 CHAIRMAN AIBEL: -- I don't know how  
9 long we are going to take to complete this  
10 application.

11 Is it worthwhile to start the other one  
12 and then come back another night?

13 MR. MATULE: No. I think in all  
14 fairness, I would be happy if we have a vote by  
15 eleven o'clock, and so I don't think there is any  
16 reasonable likelihood of proceeding with that other  
17 matter.

18 CHAIRMAN AIBEL: I was concerned for  
19 that matter.

20 MR. MATULE: So while we are talking  
21 about that, can we talk about the February agenda?

22 MS. CARCONE: Yeah. We can put it on  
23 first on February 16th, and we have a few other  
24 matters scheduled, but we'll --

25 MR. MATULE: The applicant consents to

1 the time in which the Board has to act to February  
2 16th, and I would respectfully request no further  
3 public notice.

4 CHAIRMAN AIBEL: Okay. We need a  
5 motion to carry 75-77 Madison to February 16th  
6 without further notice.

7 COMMISSIONER MC ANUFF: Motion to carry  
8 75-77 Madison Street to February 16th without  
9 further notice.

10 CHAIRMAN AIBEL: Do we have a second?

11 COMMISSIONER GRANA: Second on the  
12 motion.

13 CHAIRMAN AIBEL: All in favor?

14 (All Board members answered in the  
15 affirmative.)

16 CHAIRMAN AIBEL: Okay. A ten-minute  
17 break. Please everybody back at five after. Ten  
18 minutes.

19 (Recess taken)

20 CHAIRMAN AIBEL: Gentlemen, okay. We  
21 are back on the record.

22 Mr. Ochab.

23 Do we have questions for the planner?

24 MS. ONDREJKA: Mary Ondrejka,  
25 O-n-d-r-e-j-k-a, 159 9th Street.

1 THE WITNESS: Hi.

2 MS. ONDREJKA: Mr. Ochab, first of all,  
3 you said the lot was -- how -- it was -- the figure  
4 was 600-something, the whole lot, the existing lot.  
5 What was the figure again?

6 THE WITNESS: I'm sorry. Say that  
7 again.

8 MS. ONDREJKA: You were talking about  
9 600-something square feet, the lot coverage for the  
10 building that was there.

11 THE WITNESS: Not on the lot in  
12 question, no.

13 MS. ONDREJKA: Well, you named --  
14 something was 600 feet.

15 THE WITNESS: 600 square feet.

16 MS. ONDREJKA: Yes. What was 600  
17 square feet?

18 THE WITNESS: 600 square feet was the  
19 lot on which the building on A-4, left side, was  
20 sitting on, 670 square feet.

21 MS. ONDREJKA: I'm sorry. Which  
22 building? Show me.

23 THE WITNESS: Lot 43.2 is on a lot that  
24 is 650 square feet.

25 MS. ONDREJKA: You mentioned that your

1 lot on Garden -- I'm sorry -- yes, on Garden -- was  
2 an odd-shaped lot. It was 28 feet wide, correct?

3 THE WITNESS: Yes.

4 MS. ONDREJKA: Which is approximately  
5 three feet wider than maybe the average at 25 feet?

6 THE WITNESS: Well, to meet the  
7 requirement here is 20 feet --

8 MS. ONDREJKA: So it's a wide lot --

9 THE WITNESS: -- so it would be eight  
10 feet wider.

11 MS. ONDREJKA: -- okay. That is pretty  
12 wide.

13 Now, how deep is the lot?

14 THE WITNESS: 70.

15 MS. ONDREJKA: 70, okay.

16 Also the lot on the corner, which is  
17 the one on Garden that is higher, that is the  
18 laundromat on the bottom, that takes up quite a bit  
19 of -- it has no rear yard obviously.

20 It is coming up, butting up to 204  
21 Third, correct?

22 THE WITNESS: Yes.

23 MS. ONDREJKA: Okay.

24 Now, wouldn't you say because that is  
25 such a tight enclosure there, and with the width of

1 the building at 28 feet, that actually what it loses  
2 in depth, it has gained in width is a -- is pretty  
3 good for that particular lot? You are getting more  
4 space there, correct, because it is right next to a  
5 corner?

6 THE WITNESS: Well, you know, 60  
7 percent coverage is 60 percent coverage. So you  
8 have a 75 foot width lot, you have less depth to go  
9 to achieve that number, and if you have a narrower  
10 lot of 15 feet, then you have to go deeper to  
11 achieve that number.

12 MS. ONDREJKA: You said the length of  
13 the lot was limited by the properties on Third,  
14 correct?

15 THE WITNESS: Yes. At some point, you  
16 know, when the lots were configured, this is how it  
17 wound up.

18 MS. ONDREJKA: Right.

19 Well, wouldn't you say that is because  
20 it's right in the corner there?

21 THE WITNESS: Absolutely, no question.

22 MS. ONDREJKA: Yeah, okay.

23 You keep referring to the lot coverage  
24 was 97 percent --

25 THE WITNESS: Correct.

1 MS. ONDREJKA: -- correct?

2 Okay. Were you ever on that property  
3 before it was demolished, the backyard?

4 THE WITNESS: No.

5 MS. ONDREJKA: So what are you basing  
6 that 97 percent on?

7 THE WITNESS: The survey.

8 MS. ONDREJKA: A survey. A survey that  
9 somebody else did?

10 THE WITNESS: Right. Well, two things  
11 actually, the survey and then aerial photographs off  
12 the Google Map program, it still shows the --

13 MS. ONDREJKA: So you have no personal  
14 knowledge that that lot coverage could actually have  
15 been a roof covering over a breezeway --

16 THE WITNESS: Well, I mean, I have been  
17 on the site --

18 MS. ONDREJKA: -- after the  
19 demolition --

20 THE WITNESS: -- well, I have seen  
21 structural elements, which are still there. I  
22 looked at the aerial photograph, and it didn't look  
23 like a breezeway to me --

24 MS. ONDREJKA: I am using that word  
25 because there was a corrugated roof on top of the

1 area that was open, which I am getting at the fact  
2 that I would say that you really have no knowledge  
3 that it was 97 percent coverage.

4 THE WITNESS: From a zoning  
5 perspective, if a structure has a roof on it, no  
6 matter what the structure is, it is considered  
7 coverage.

8 MS. ONDREJKA: Illegal coverage.

9 (Laughter)

10 THE WITNESS: Well, that is a question  
11 I can't answer.

12 MS. ONDREJKA: Well, I just don't --  
13 personally I think as a planner, I think it is  
14 unfair to keep saying it was covered 97 percent,  
15 because you are, I believe, using that as a basis to  
16 feel like you are giving the public a little bit  
17 more open space than the 97 percent because you are  
18 cutting it back to 75 when in reality it was never  
19 covered at 97 percent.

20 MR. MATULE: I am going to object --

21 MS. ONDREJKA: You can object all you  
22 want. I will stop.

23 MR. MATULE: -- well, no. You can  
24 stop or not stop. That's not the point. I'm just  
25 trying to protect the record. You are not making a

1 speech. Do you have --

2 MS. ONDREJKA: I asked a question --

3 MR. MATULE: -- do you have a survey  
4 that is different than this survey?

5 MS. ONDREJKA: No. I don't have a  
6 survey --

7 MR. MATULE: Okay, fine. Then  
8 what's --

9 MS. ONDREJKA: -- I was telling you  
10 from experience in being in the building at 204  
11 Garden, that it was not 97 percent --

12 (Ms. Ondrejka and Mr. Matule talking at  
13 the same time)

14 MR. MATULE: -- don't exist either --

15 MS. ONDREJKA: -- from my experience --  
16 okay --

17 MR. MATULE: -- this is the survey.  
18 All of Mr. Ochab's testimony, when you asked him the  
19 questions or when Ms. Healey asked the questions,  
20 everybody was asking the question, he said here is  
21 how I work. I get a survey, and that is my starting  
22 point. That's my premise that I work from --

23 MS. ONDREJKA: And I asked --

24 MR. MATULE: -- that is what his  
25 testimony is.

1 MS. ONDREJKA: -- and I asked: Was he  
2 actually physically in that backyard to say that it  
3 was covered 97 percent, and he was just relying on a  
4 survey that could be possibly wrong --

5 MR. MATULE: Asked and answered several  
6 times.

7 MS. ONDREJKA: -- that the survey could  
8 be wrong --

9 MR. GALVIN: No, I think --

10 MS. ONDREJKA: Okay. Forget it. Let's  
11 move on,

12 MR. MATULE: Please.

13 MS. ONDREJKA: Hum, now the -- in your  
14 survey, you're saying it is 97 percent coverage,  
15 that you're basing on structures that were there,  
16 and using those structures that were most likely in  
17 my opinion --

18 MR. GALVIN: All right. I am going to  
19 stop you --

20 MS. ONDREJKA: -- and you say --

21 MR. GALVIN: -- Mary, I'm stopping the  
22 testimony.

23 I think that you should -- I think he  
24 has already answered that whole line of questioning  
25 about what was there, and how he determined what the

1 building is, and it is a statement he is making to  
2 try to encourage the Board to see it his way. When  
3 you --

4 MS. ONDREJKA: Obviously.

5 MR. GALVIN: -- when you get to comment  
6 in about ten minutes, you will be able to tell us  
7 that you disagree with that.

8 MS. ONDREJKA: Well, one question I was  
9 going to ask is: Can you use nonconforming  
10 structures as a basis for this, for extending out  
11 into the backyard donut?

12 MR. GALVIN: No. I think Mr. Minervini  
13 agreed that it will be a new structure, so the Board  
14 has to weigh whether or not they want to approve 75  
15 percent on the first floor. That is it.

16 MS. ONDREJKA: I understand that.

17 MR. GALVIN: Okay. So the fact that  
18 there was something -- if we -- I don't know what is  
19 there at the moment.

20 If the Board turns it down, I don't  
21 know what is going to happen to what is there.

22 MS. ONDREJKA: Would you agree, Mr.  
23 Ochab, that if the back rear yard lost 300 feet, it  
24 could still serve as a retail space?

25 THE WITNESS: In general?

1 MS. ONDREJKA: In general.

2 MR. GALVIN: Could you have a 700  
3 foot -- are you talking about a 700 --

4 MS. ONDREJKA: 850 square foot  
5 commercial office retail space, in your opinion --

6 THE WITNESS: No, I think the answer  
7 has been yes all along. The question was that the  
8 owner required --

9 MS. ONDREJKA: No, I didn't answer  
10 that. I just said do you --

11 THE WITNESS: Well, that's the program.  
12 That is why we are at where we are at.

13 I am not talking about a generic retail  
14 space.

15 MS. ONDREJKA: There is no difference  
16 between retail and commercial. It is the same? Two  
17 different words, retail use meaning sale, and  
18 commercial could be office that --

19 MR. GALVIN: Did you misspeak?

20 THE WITNESS: Yes, I did. I'm sorry

21 MS. ONDREJKA: I'm sorry?

22 THE WITNESS: I'm sorry. It should be  
23 commercial space.

24 MS. ONDREJKA: That is what I thought.  
25 It is not a retail space.

1                   MR. GALVIN:  Rather than have him  
2           trying to defend an accident --

3                   THE WITNESS:  Thank you very much.

4                   MS. ONDREJKA:  That's all I have.

5                   MR. GALVIN:  Thank you.

6                   CHAIRMAN AIBEL:  Thank you.

7                   Come forward, please.

8                   MR. TUMPSON:  Dan Tumpson, 230 Park  
9           Avenue.

10                   Is it true that if you extend this to  
11           75 percent, the ground floor to 75 percent, that  
12           this -- where's the picture here --

13                   THE WITNESS:  Here.

14                   MR. TUMPSON:  -- no.  This one here.

15                   That the windows down at the bottom  
16           here, the extension will partly cover that up?

17                   THE WITNESS:  I think that has been  
18           attested to that if the extension goes to halfway  
19           across the opening --

20                   MR. TUMPSON:  Yeah, so it will  
21           partially --

22                   THE WITNESS:  -- I'm sorry.  The first  
23           story will go all the way across on the first floor.

24                   MR. TUMPSON:  All the way across.

25                   THE WITNESS:  On the first floor, yes.

1 MR. TUMPSON: All right. Okay.

2 So that the window -- so this is  
3 potentially detrimental to that building in the  
4 sense that it will block the light and air.

5 THE WITNESS: Well, it does that today,  
6 so those conditions will not change, whatever  
7 existed --

8 MR. TUMPSON: You just said that this  
9 would extend beyond the -- the --

10 THE WITNESS: I am saying the new  
11 construction portion, but the existing conditions  
12 already had that element to it where it extended  
13 across the first floor and the entirety of the --  
14 the existing building conditions --

15 MR. TUMPSON: I guess I don't  
16 understand that.

17 THE REPORTER: Wait a second. I can't  
18 hear you over here.

19 THE WITNESS: Sorry.

20 MR. TUMPSON: I guess I don't  
21 understand that.

22 What I'm asking is: Will this, the  
23 extension to 75 percent lot coverage, the  
24 lengthening of the building, will that extend --

25 MR. MATULE: The shortening of the

1 building.

2 MR. TUMPSON: What?

3 MR. MATULE: The shortening. I am  
4 teasing.

5 (Laughter).

6 MS. FALLICK: They're pretending it's  
7 something that's not, Dan, that's why they're  
8 saying --

9 MR. GALVIN: Stop.

10 CHAIRMAN AIBEL: Okay. Mr. Tumpson,  
11 ask your question.

12 MR. TUMPSON: Okay. Sorry.

13 What I am asking is, and I think I  
14 heard you say that this was the case, that if you  
15 extended the building to 75 percent lot coverage on  
16 the first floor, that that would cover up part of  
17 the -- part or all of the space of that window  
18 shaft -- yes, yes, there you go. Thank you.

19 That is very good.

20 He has pointed out that that is exactly  
21 what it does. Okay.

22 Then that --

23 THE WITNESS: So the answer is yes.

24 MR. TUMPSON: The answer is yes, and  
25 that is a potential detriment to that building.

1 Thank you.

2 CHAIRMAN AIBEL: Thank you.

3 Mr. Evers?

4 MR. EVERS: Do I need to identify  
5 myself again?

6 MR. GALVIN: Yes, you do. Sorry.

7 MR. EVERS: Michael Evers, E-v-e-r-s.  
8 252 Second Street, Hoboken, New Jersey.

9 Before I ask the actual question, I was  
10 going to ask, Mr. Ochab, you mentioned earlier that  
11 there was a provision in the zoning code that allows  
12 for rounding up in the case of commercial units.

13 Are you aware that you misinterpreted  
14 that code?

15 It is specifically 196-14 -- I should  
16 have wrote that part down because it is hard --  
17 196-14 -- 196-14(a)(8) -- 196-14(a)(8)(3), and what  
18 that -- and are you aware that what that particular  
19 section of the zoning code says is that if a retail  
20 or a commercial space exceeds the number used to  
21 calculate density, which in this case is 660 square  
22 feet, that the additional fraction, say in this  
23 case, what is it, 1100 square foot?

24 THE WITNESS: Yes.

25 MR. EVERS: Okay. That would count as

1 two units in terms of calculating the density. Now,  
2 how many units are in this building?

3 THE WITNESS: Three.

4 MR. EVERS: How many are you asking  
5 for?

6 THE WITNESS: How many units are in the  
7 existing building?

8 MR. EVERS: No, I'm sorry. The  
9 proposed building.

10 THE WITNESS: We're asking for three  
11 residential units.

12 MR. EVERS: Three residential units and  
13 a commercial space.

14 THE WITNESS: One commercial space.

15 MR. EVERS: Which, because it exceeds  
16 660 square feet would be two units, correct?

17 THE WITNESS: I am going to answer your  
18 question by saying, yes, but that is not my  
19 understanding of that section of that ordinance.

20 My understanding is that when you  
21 calculate the density after subtracting out at least  
22 a percentage of the retail space, that you are  
23 allowed to then round up.

24 MR. EVERS: Let me phrase this question  
25 then: According to the specific provision of the

1 zoning code, it says: Where a principal use is in  
2 addition to residential are proposed for the subject  
3 building, such as retail or office, the percentage  
4 of total permitted floor area occupied by the non  
5 residential use shall be applied against the maximum  
6 number of dwelling units, and the residential units  
7 shall be reduced thereby except as specified below,  
8 which refers to Washington Street and First Street.

9 The following sentence then says: In  
10 fraction, it shall be the equivalent to a whole  
11 dwelling unit.

12 THE WITNESS: Correct.

13 MR. EVERS: Now, if you divide the  
14 number of square footage of the proposed commercial  
15 space by 660, what number do you get offhand?

16 Is it greater than one?

17 THE WITNESS: No, but that's not how  
18 you do it --

19 MR. EVERS: Well, then --

20 THE WITNESS: -- how you calculate it  
21 is clearly stated in the plans that were submitted  
22 to the Board on this application.

23 You take the retail space that is  
24 proposed, and you divide it by the total space that  
25 would be allowed within the property, that is --

1 MR. EVERS: In units.

2 THE WITNESS: -- no, no. I don't mean  
3 units. I mean square footage. I mean lot size  
4 times 60 percent times three stories equals a  
5 number. You take that percentage, retail divided by  
6 that number, by that total number, that percentage  
7 gets deducted from the 660 divided by the lot size,  
8 and then you could round up from there.

9 It is all pretty clearly spelled out in  
10 the zoning code --

11 MR. EVERS: Well, I agree that it's  
12 clearly spelled out. But what is clearly spelled  
13 out here is that the density calculation is far  
14 simpler than you describe.

15 It seems to me -- I have to ask it as a  
16 question -- it seems to be far simpler than you  
17 described, that basically says you treat the  
18 commercial space, you can towards the number of  
19 dwelling units, and then the number -- and then if  
20 the square footage of that spaces exceeds one unit,  
21 you round up to the next unit. That makes two units  
22 for the retail space.

23 Now, how many units did you say were  
24 permitted in this building based on the density  
25 calculation?

1 THE WITNESS: Two.

2 MR. EVERS: Two. Okay. So you are  
3 asking for four additional spaces.

4 THE WITNESS: No. One.

5 MR. EVERS: How many total units will  
6 be there in the building?

7 THE WITNESS: Three.

8 MR. EVERS: Does that include the  
9 commercial space?

10 THE WITNESS: No. Three residential  
11 units plus the retail space.

12 MR. EVERS: That would be five  
13 according to this provision of the zoning code,  
14 wouldn't it, sir?

15 MR. MATULE: Who is on first?

16 THE WITNESS: You know what, I'm not  
17 going to answer that way.

18 All I'm going to say to you is that  
19 when I first started to review this section of the  
20 ordinance, I consulted with the city's planners, and  
21 this is how we discussed that it should be done,  
22 exactly how it is laid out in the zoning table.  
23 That is what we have been doing for the past ten  
24 years.

25 MR. EVERS: And would it surprise you,

1 Mr. Ochab, to know that when this topic, and I am  
2 perfectly happy to provide the trial transcript we  
3 discussed during Edwards versus Second Street  
4 Developers, Judge Gallipoli's interpretation of this  
5 particular provision of the zoning code, which was  
6 discussed during the trial, was exactly what I just  
7 told you?

8 MR. MATULE: I'm going to object to  
9 that, because I think that what Judge Gallipoli --

10 MR. EVERS: -- There was --

11 MR. MATULE: --- there was no  
12 commercial space in that building that was the  
13 subject of that lawsuit, was there?

14 MR. EVERS: -- there was no commercial  
15 space --

16 MR. GALVIN: Well --

17 MR. EVERS: -- and I'm answering your  
18 question --

19 MR. MATULE: -- it is across the  
20 Street. You should know, yes or no --

21 MR. GALVIN: -- no, no. Mr. Evers  
22 isn't under oath at the moment. He's just asking  
23 questions.

24 MR. EVERS: -- and in order to --

25 (Everyone talking at once)

1                   MR. EVERS:  -- approval, you are  
2                   correct, there was no residential space.  However,  
3                   the applicant attempted to use exactly this  
4                   provision of the code --

5                   MR. MATULE:  I am aware of that because  
6                   up to that point, the then planner for the city  
7                   applied the rounding up section that applies when  
8                   there is a commercial space to straight residential  
9                   buildings, and that is what Judge Gallipoli said you  
10                  could no longer do.

11                  MR. EVERS:  The fact of the matter is  
12                  that the way that code reads in the clear, plain  
13                  language, is that if a commercial unit exceeds the  
14                  unit's actual density, you round up, which means  
15                  that one and a half commercial units count as two  
16                  for density.  It's not the other way around.

17                  MR. MATULE:  No.  1.92 units allows  
18                  you to build two units, but that is a legal decision  
19                  for the Board to make.

20                  MR. EVERS:  I would submit to you, Mr.  
21                  Chairman, that it might be useful to actually review  
22                  what Judge Gallipoli said about this matter.  It's  
23                  easily accessible.  It is matter of public record.  
24                  You don't have to count on my reading, but you are  
25                  miscalculating density, I would suggest to you.

1                   The next area, and I promise to go  
2                   away.

3                   Mr. Ochab, you had mentioned that one  
4                   of the virtues of the new proposed plan is that the  
5                   upper floors conform with the 60 percent lot  
6                   coverage that is the standard applied in the zoning  
7                   code, correct, sir?

8                   THE WITNESS: Absent the fire escapes.

9                   MR. EVERS: Absent the fire escapes.

10                  Why do you feel that is a virtue?

11                  THE WITNESS: Because that is 60  
12                  percent coverage, the building is -- the depth of  
13                  the building is such that it still provides light  
14                  access to the building to the south, particularly  
15                  the indenture of the south building, and it doesn't  
16                  extend beyond the building to the north.

17                  MR. EVERS: Um-hum.

18                  You don't feel, though, that the  
19                  virtues of the 60 percent lot coverage on the upper  
20                  floor somehow with the same virtues, it just  
21                  wouldn't apply to 60 percent lot coverage on the  
22                  first floor?

23                  THE WITNESS: No, because the first  
24                  floor, looking at the building particularly to the  
25                  north is also at 75 percent -- well, I'm sorry --

1           this also extends in depth the same distance that we  
2           are proposing from the street line.

3                         MR. EVERS:   So you are saying that it  
4           doesn't matter as much because the other buildings  
5           are nonconforming, and therefore, it's okay for this  
6           one to be nonconforming?

7                         THE WITNESS:  Well, I don't want you  
8           testify for me because I said a lot things, and that  
9           wasn't it.

10                        MR. EVERS:  I am asking you a question.  
11           So you disagree with it?

12                        THE WITNESS:  I don't disagree with  
13           that, but that's not what I said.

14                        MR. EVERS:  Well, I am asking you now,  
15           is that a rationale that you would use?

16                        THE WITNESS:  In part, yes.

17                        MR. EVERS:  In part.

18                        Which part?

19                        THE WITNESS:  Well --

20                        MR. GALVIN:  You said "in part."  Don't  
21           look at me.

22                        THE WITNESS:  -- no, no.  In the part  
23           that my argument was much more complex than just  
24           that, and it stems back from the existing building  
25           conditions to where we are today.

1                   MR. EVERS: I have no further  
2                   questions.

3                   MR. GALVIN: Thank you.

4                   CHAIRMAN AIBEL: Thank you.

5                   MR. GALVIN: Anybody else have  
6                   questions?

7                   CHAIRMAN AIBEL: Questions?

8                   Nobody. Seeing none.

9                   COMMISSIONER MC ANUFF: Motion to close  
10                  public portion.

11                  COMMISSIONER GRANA: Second.

12                  CHAIRMAN AIBEL: All in favor?

13                  (All Board members answered in the  
14                  affirmative.)

15                  MR. GALVIN: I think we should go to  
16                  Ms. Banyra for some comments on that last --

17                  MS. BANYRA: So I can't comment on the  
18                  Judge Gallipoli part --

19                  MR. GALVIN: No, no, no.

20                  MS. BANYRA: -- but I'll say that on  
21                  the bottom of the plan, there is a calculation that  
22                  Mr. Minervini did a calculation that we reviewed,  
23                  and that has been typically the way that I was told  
24                  by Elizabeth Vandor how we reviewed the ordinance,  
25                  and that has been classically done in the city, and

1 the way to calculate --

2 MR. GALVIN: But --

3 MS. BANYRA: -- and in reading the  
4 ordinance, that makes -- there's some logic to that.

5 So I am saying that is what we have  
6 been doing, and I don't necessarily disagree with  
7 the way it has been shown on the plans.

8 MR. GALVIN: When you read it, you  
9 think that that is the correct way to do it.

10 If you are going to rely on what  
11 Ms. Vandor said, then I think I need to look at  
12 Judge Gallipoli's decision --

13 MS. BANYRA: Okay. Well, I'm going to  
14 say that it's loosely worded. It's loosely worded,  
15 so there's other -- so you probably could come up  
16 with other interpretations. But I think the  
17 calculation, when I reviewed that, it makes sense to  
18 me the way it has been proffered and the way it's  
19 represented on the plans.

20 MR. GALVIN: Okay.

21 MS. BANYRA: Short of an  
22 interpretation, you know, I think then that is  
23 something else.

24 CHAIRMAN AIBEL: Okay.

25 I think it is up to you, Mr. Matule.

1 MR. MATULE: Pardon?

2 CHAIRMAN AIBEL: I think it's your  
3 turn.

4 MR. MATULE: I am going to save my  
5 closing remarks, but my only comment --

6 MR. GALVIN: You got public comment  
7 yet --

8 CHAIRMAN AIBEL: Yes, my apologies.

9 MR. MATULE: -- to this point, we  
10 should not lose sight of the fact that the building  
11 as it currently sits is zoned for one commercial and  
12 two residential units, and that is why we are asking  
13 for the density variance for the third residential  
14 unit.

15 CHAIRMAN AIBEL: Okay.

16 MR. GALVIN: Okay. I got it. I  
17 understood that logic.

18 CHAIRMAN AIBEL: Now it's time for  
19 public comment.

20 Anybody wish to comment?

21 I'm sorry?

22 Public comment, please.

23 MS. FALLICK: Now I can --

24 MR. GALVIN: Now you got to raise your  
25 right hand.

1                   Do you swear or affirm the testimony  
2                   you are about to give in this matter is the truth,  
3                   the whole truth, and nothing but the truth?

4                   MS. FALLICK: I do.  
5                   Cheryl Fallick.

6                   MR. GALVIN: All right. Proceed.

7                   MS. FALLICK: This was started with a  
8                   different Zoning Board, so I don't know how for  
9                   people who are voting how --

10                  MR. GALVIN: The way the zoning law  
11                  works is that if you read the transcript, and you  
12                  sign a certification that you read the transcript,  
13                  you can sit and vote on it.

14                  MS. FALLICK: Got it. Thank you.

15                  MR. GALVIN: So we have a full Board,  
16                  and we are prepared to take action tonight.

17                  MS. FALLICK: Thank you.

18                  Members of the Zoning Board: I live at  
19                  204 Third Street, which is one of the buildings that  
20                  was in that drawing, and I have some concerns about  
21                  this variance, and I would like to just give  
22                  everybody a little background, so you can hear.

23                  I have -- well, you all saw my next  
24                  door neighbors, the couple that was here, and I also  
25                  have a disabled neighbor downstairs, whose windows

1 are the ones that are of most concern.

2 And my downstairs neighbor keeps a  
3 diary, and one day he called me and he said: I  
4 don't know what is going on, but they are nailing  
5 plywood to some structures in the backyard of this  
6 building.

7 Neither one of us understood why  
8 anybody would be doing that --

9 MR. GALVIN: But wait a minute. Time  
10 out.

11 MR. MATULE: I just want to ask: Did  
12 you observe this?

13 MS. FALLICK: No. I said my downstairs  
14 neighbor called me.

15 MR. MATULE: Okay. So we're getting  
16 hearsay, and I object

17 MR. GALVIN: Yes. We can't take that  
18 testimony because it's hearsay testimony.

19 You can tell us what you see, what you  
20 saw, but the other thing --

21 MS. FALLICK: Okay. I didn't see --

22 MR. GALVIN: -- the other thing --  
23 listen -- listen -- I'm so sorry -- the other thing  
24 that we are trying to do is we're trying to make a  
25 decision as to the variances.

1                   So if the Board votes yes on this case,  
2                   then the second part of this case goes away. But  
3                   you know there is a second part of the case, where  
4                   you guys are concerned about how the building got to  
5                   where it is today, okay, and that is not really  
6                   before the Board right now.

7                   We are looking at the variance request,  
8                   the 75 percent, the density and, you know --

9                   MS. FALLICK: I understand that, but  
10                  there has also been people here who keep trying to  
11                  say that this is at 90 percent or under --

12                  MR. GALVIN: That's fair.

13                  MS. FALLICK: -- the lot coverage based  
14                  on -- based on surveys, and I'm here to tell you  
15                  that I've looked at that the yard for 33 and a half  
16                  years, and that is so far off base, it is not even  
17                  funny. Okay?

18                  There is nothing close to 80 percent.  
19                  I look at it, and I am so angry when I hear this.

20                  No. The building did not abut the  
21                  building I live in, it did not abut it.

22                  There was an area from our building to  
23                  some corrugated roof thing. There was a back  
24                  building over here. There is the shed, which you  
25                  can see in that picture. There was an overhang, and

1       there was awful lot of open air space. My  
2       downstairs -- and yes, I did see. Gee, there is  
3       some people in the backyard, Cheryl, looking at that  
4       building. This was before it was purchased.

5                I looked out the window. I do believe  
6       that one of those people was Mr. Minervini.

7                If that lot had 90 percent or 100  
8       percent lot coverage, I couldn't have seen the three  
9       gentlemen, and one guy was saying, and this I heard,  
10      "Oh, this is going to be your area over here."

11              So there was a lot more area of that  
12      yard that wasn't covered.

13              Now, for some reason, we are actually  
14      trying -- I am a little confused, because on the one  
15      hand, folks keep talking about how this had 90  
16      percent and a hundred percent, and on the other  
17      hand, we're not supposed to pay any attention to  
18      that.

19              So I don't know how to articulate it,  
20      other than I'm concerned, I'm very concerned, that  
21      we are actually trying to pretend this lot had more  
22      than it did, and I am concerned that it's going to  
23      impact the vote, because it didn't.

24              There is no roof that abuts the  
25      building that somebody could step into somebody's

1 window. That's a big concern for my downstairs  
2 neighbor who can't come out on a night like this.  
3 He's got terrible asthma, so I am speaking for the  
4 area.

5 I don't see any reason -- you know,  
6 there is a light shaft. It is not in any way  
7 blocked. I look out one of those windows. This is  
8 off the corner. The building like -- there's --  
9 there's egress, you know, there is two ways to  
10 egress from that yard. Not that I would ever be  
11 there, but that shed, that crappy little shed,  
12 that's a way for us to get out, not that we would  
13 need to, the building we live in now.

14 So -- but beyond that, I am very  
15 concerned, beyond all of that, because I don't want  
16 this to be granted because of something that wasn't  
17 there that you are not supposed to be considering.  
18 It took a lot of effort, and I took pictures, and I  
19 sent them to the city showing that it didn't have 90  
20 or a hundred percent lot coverage.

21 I had to fight really hard. I had to  
22 take hours, and hours and hours of my time insisting  
23 to meet with the mayor, insisting to meet with the  
24 zoning officer because we had a lot of folks.

25 We had the couple that was here,

1       myself, Mary, my downstairs neighbor. We could all  
2       attest, just like I did here, to the fact that that  
3       yard did not have anywhere near 90 percent lot  
4       coverage. There was a back building and a front  
5       building that was very short, and anything else in  
6       there was crap that you pick up from the junkyard  
7       and slap together, like little pieces of wood slab  
8       and corrugated -- you know, a little bit of garbage  
9       here and there. But even with that garbage here and  
10      there, it was far from 90 percent, far from it.

11                   And while I didn't see anybody nailing  
12      it, I did look out there.

13                   And I also wanted to point out, and  
14      Frank Minervini testified to the fact that they were  
15      doing soil testing. If this lot had so much  
16      coverage, how could they put the huge 15 foot, hum,  
17      hum, hum, tripod in there to test the soil?

18                   That's because there was no building  
19      there --

20                   MR. MINERVINI: They took it down.

21                   MS. FALLICK: -- that's why.

22                   Beyond that, we had a situation where  
23      demolition happened before abutting neighbors were  
24      notified. We had a situation where there was no  
25      abatement done, none. And, you know, I live in the

1 building. I have a cat, and my downstairs neighbor  
2 had a cat, and we got mice, and that's because  
3 somebody wasn't following the regulations. Somebody  
4 wasn't following the law as I understand it.

5 I am not a construction professional,  
6 but I was told that there was supposed to be  
7 abatement beforehand, and there was supposed to be  
8 notification of demolition, and these things did not  
9 happen, and that building has had a stop work permit  
10 on it three different times, not just because of  
11 this -- hum -- it didn't have a hundred percent lot  
12 coverage. It had a stop work order because of the  
13 no abatement, and it had a stop work order, and this  
14 is not something that I know directly, but because  
15 somebody was concerned about the excavation under  
16 the building. That is what I am told.

17 So I also have a concern for the  
18 abutting buildings for whatever you approve, a lot  
19 of concern for the abutting buildings, and we talked  
20 about it at the last meeting.

21 Everybody said, well, you go to the  
22 city. That is not under the purview of the Zoning  
23 Board. But I want it on the record, if my building  
24 collapses, and it is a legitimate fear, because, you  
25 know, this is nonsense. So as far as I'm concerned,

1 I hope I've covered everything -- as far as I'm  
2 concerned, but don't want a roof that's abutting a  
3 window that somebody can step into.

4 If you do grant it, and somebody is  
5 inches away from somebody's window, there's got  
6 to -- before there's a certificate of occupancy,  
7 there has got to be some kind of protection to that  
8 window to that neighbor. You know, people deserve  
9 to be protected.

10 Our light and air shouldn't be  
11 impacted, so I pose this for a couple of reasons,  
12 and I don't really know which way you are looking at  
13 it, whether you are granting it because this is what  
14 used to be there or because you should because they  
15 are asking for it.

16 If it's based on what used to be there,  
17 what used to be there is not what is being testified  
18 to.

19 If you're basing your vote on, well, we  
20 just want a bigger building to make more money or  
21 whatever it is, I don't see any benefit to the  
22 neighborhood.

23 MR. MATULE: Wait a minute, Cheryl.  
24 You don't get to go yet. Now I get to ask you  
25 questions, okay?

1 MS. FALLICK: Oh, sure.

2 MR. MATULE: So I'm going to show you  
3 what's been marked A-6, which is a photo board.

4 Photo number three, does this show the  
5 building that was in the rear corner of the  
6 property, which is shown on the survey here, a  
7 one-story brick building?

8 MS. FALLICK: Yeah, this shows that.

9 MR. MATULE: And then this little  
10 building with the ventilator hood on top, would that  
11 be that building?

12 MS. FALLICK: That's -- well, I am not  
13 exactly sure I would call that a building, but a  
14 makeshift structure.

15 MR. MATULE: Okay. That makeshift  
16 structure, that you don't think counts as lot  
17 coverage.

18 Now, this is your building, right?

19 MS. FALLICK: Correct.

20 MR. MATULE: Is this structure abutting  
21 your building?

22 MS. FALLICK: No.

23 MR. MATULE: Okay. What does "abut"  
24 mean to you?

25 Does it mean alongside?

1 MS. FALLICK: It means it's sitting  
2 right next to it.

3 MR. MATULE: Okay. So is this --  
4 maybe point out what I am missing in this picture --

5 MS. FALLICK: Oh, wait, I'm sorry. I  
6 didn't understand --

7 MR. MATULE: -- isn't this abutting  
8 this building?

9 MS. FALLICK: Yes.

10 MR. MATULE: This is abutting, right?

11 MS. FALLICK: Right. This little  
12 makeshift structure --

13 MR. MATULE: That little makeshift  
14 structure --

15 MS. FALLICK: -- that's a back door  
16 that's about to be covered.

17 MR. MATULE: -- okay. I got it.

18 Now, you talk about a back door.  
19 There's a door in the wall of this building --

20 MS. FALLICK: There is some kind of a  
21 thing that's a window or a door or -- yes --

22 MR. MATULE: -- and it comes out into  
23 the next door neighbor's yard?

24 MS. FALLICK: Yeah, it does.

25 MR. MATULE: How do you do that?

1                   How does one do that legally?

2                   MS. FALLICK: How does one have -- how  
3 does one have that structure --

4                   MR. MATULE: That's how it was built,  
5 who knows --

6                   MS. FALLICK: -- who -- maybe this is  
7 our lot -- maybe this is my landlord's lot --

8                   MR. MATULE: -- but my point is that  
9 you keep talking about egress. How does one have  
10 egress to someone else's property?

11                   This property, it is not part of this  
12 building, is it?

13                   MS. FALLICK: I was talking about it  
14 because they were talking about fire codes.

15                   MR. MATULE: All right.

16                   Now, let's talk about the air shaft.

17                   You said the air shaft -- there's  
18 windows on this side also?

19                   MS. FALLICK: Absolutely.

20                   MR. MATULE: Okay.

21                   So the windows would be what, would  
22 they be to the south of this big vent pipe?

23                   Is this big vent pipe more to the  
24 north --

25                   MS. FALLICK: Which way is the south?

1 Which way is the south?

2 MR. MATULE: South is going towards  
3 Third Street. North is going towards Fourth Street.

4 This is going east, and that is going  
5 west, and that is going south.

6 So are the windows behind this pipe?

7 MS. FALLICK: They're to the south --  
8 they are not behind that pipe. They're certainly  
9 not --

10 MR. MATULE: Well, I mean, when I say  
11 behind, they're inset further into the air shaft?

12 MS. FALLICK: Yeah.

13 MR. MATULE: Okay.

14 And do those windows go all the way  
15 down to the ground floor?

16 MS. FALLICK: I don't know about the  
17 ground floor. I don't think so because these  
18 buildings are connected.

19 MR. MATULE: So they are just for the  
20 residential apartments above?

21 MS. FALLICK: Correct.

22 MR. MATULE: Okay. So if this is  
23 sticking out beyond that shaft, as this is being  
24 proposed, and it is below these windows, then it is  
25 not blocking anybody's windows, is it?

1 MS. FALLICK: I don't know. I think  
2 it's a fire escape blocking the windows in that  
3 picture.

4 MR. MATULE: Okay.  
5 I have no further questions.

6 Thank you.

7 CHAIRMAN AIBEL: Thank you.

8 Anybody else wish to comment?

9 Ladies first.

10 MS. ONDREJKA: Do I have to state my  
11 name again?

12 MR. GALVIN: Yes, Dear.

13 MS. ONDREJKA: Mary Ondrejka,  
14 O-n-d-r-e-j-k-a, 159 9th Street.

15 MR. GALVIN: Raise your right hand.  
16 Do you swear or affirm the testimony  
17 you are about to give in this matter is the truth,  
18 the whole truth, and nothing but the truth?

19 MS. ONDREJKA: I do.

20 MR. GALVIN: Thank you.

21 MS. ONDREJKA: I would like to say that  
22 the part of the project that I oppose and most  
23 admittedly is the lot coverage on that first floor.

24 I believe this whole project from the  
25 very beginning was bungled by the zoning officer,

1 and therefore, it caused Cheryl to go into the realm  
2 that she did to stop what was happening. But  
3 because so much has happened since then, we should  
4 stick to the facts, and the fact is 60 percent lot  
5 coverage is more than ample for a management office.

6 The donut has been encroached upon for  
7 literally years. I see it, because I am on 9th and  
8 face the donut, and I see all of the extensions.  
9 They are ten feet approximately based upon the, say  
10 the shed that is back there, which they are often to  
11 go, but that ten foot shed was only one story, and  
12 these extensions go up three to four feet, ten feet  
13 out, three to four floors ten feet out.

14 So we are getting a raw deal here on  
15 the donut. You are allowed to go out that shed  
16 length, but they can go up. So then everybody is  
17 now enclosing in on your space. And personally with  
18 my space, because of the underground stream, the  
19 pumps are working more, and there is more problems  
20 because the water is being squeezed into the area,  
21 and we are losing open space everywhere.

22 There is no reason to give more than 60  
23 percent lot coverage on this structure. It is not a  
24 residence. It is a business that he has more than  
25 enough space for it.

1                   You heard the zoning rule and law. You  
2                   are not to grant variances only in very rare  
3                   occasions. Yet, I have seen for literally decades  
4                   this Board with different people grant variance,  
5                   after variance, after variance, after variance that  
6                   is encroaching upon the people's lives that live in  
7                   the donut.

8                   Now, we have so little space in this  
9                   city. Density is an issue. This is more dense than  
10                  it has to be. It is going up higher and longer.

11                  It already has a width of 28 feet,  
12                  which is granted a large wide building considering  
13                  many of them are far narrower, so they got that  
14                  going for them.

15                  The fact that they are sitting -- this  
16                  building is sitting one in from the corner where  
17                  it's a very tight squeeze, because I live two in  
18                  from the corner, and I know how the people on the  
19                  corner are enclosed in. If you extend out on their  
20                  open side, you are squeezing in so much and taking  
21                  away so much of the light and air.

22                  In this case, like I said, it was  
23                  bungled from the beginning, and people should take  
24                  responsibility for that, and the fact is that was  
25                  not 97 percent coverage, and you should not use that

1 as a guideline. I know you weren't there to see it.  
2 You relied on the testimony of a survey, which can  
3 be, believe it or not, foul. It is not perfect.  
4 It's not. It can be wrong because perhaps maybe  
5 they got it wrong, and that is the problem here.

6 We can't just assume everything is so  
7 right, that we can just extend it out without any  
8 detriment to the public, and this is detrimental to  
9 the public. It's detrimental because a roof will be  
10 below the first -- the second floor tenant.

11 This is outrageous. Please, as a  
12 Board, you take responsibility for the law that  
13 should be followed, and I truly believe that there  
14 could be some more following of the law, so more of  
15 us do not have to come here and fight for what  
16 little air and space we have.

17 Thank you.

18 MR. MATULE: I have a few questions.

19 MS. ONDREJKA: Of course.

20 MR. MATULE: Yes. I just have a  
21 couple of questions because maybe I misunderstood  
22 you, and I just want to make it clear for the  
23 record.

24 The upper floors of this building are  
25 at 60 percent.

1 MS. ONDREJKA: That's correct.

2 MR. MATULE: Do you understand that  
3 that's permissible?

4 MS. ONDREJKA: I'm perfectly -- I am  
5 fine with that.

6 MR. MATULE: Okay. That is all.

7 CHAIRMAN AIBEL: Thank you.

8 MS. ONDREJKA: My issue was the 60  
9 percent should be also on the first floor.

10 CHAIRMAN AIBEL: Understood.

11 Mr. Evers?

12 MR. EVERS: Do I swear in or --

13 MR. GALVIN: Yes, yes, I'm sorry.

14 (Laughter)

15 Do you swear -- I'm still like  
16 (Indicating).

17 MR. EVERS: Okay.

18 MR. GALVIN: Do you swear or affirm the  
19 testimony you are about to give in this matter is  
20 the truth, the whole truth, and nothing but the  
21 truth?

22 MR. EVERS: I do.

23 MR. GALVIN: Okay.

24 Name and address.

25 MR. EVERS: Oh, Michael Evers,

1 E-v-e-r-s. 252 Second Street, Hoboken, New Jersey.

2 When I came here tonight, I didn't  
3 realize we were going to have another one of those  
4 procedural legal problems that crop up, but I would  
5 very strongly caution the Board to take a very  
6 careful reading of the provision of the zoning code  
7 that I read to you before.

8 The reference back to the much hated  
9 case of Evers versus Second Street Developers, which  
10 Mr. Matule was not present for during the case, the  
11 fact is that Judge Gallipoli kept referring back to  
12 the plain language of the law.

13 Now, we listened to Ms. Banyra talk  
14 about calculations provided by Mr. Minervini, I'm  
15 sure in good faith, okay, in terms of how these  
16 numbers were done, but they don't conform with a  
17 very straightforward simple sentence in the zoning  
18 code.

19 In that particular lawsuit, the subject  
20 had to do with rounding of density for residential  
21 units, and the judge looked at it and said we should  
22 use the plain language of the zoning code, and I  
23 would strongly recommend that you do that here.

24 Now, I raise that issue not because I  
25 have any strong opinions about the number of units,

1       which should be sitting in this particular building,  
2       but I do have very strong opinions about the Zoning  
3       Board following proper procedures, as you are  
4       possibly aware.

5                If you do the density calculations  
6       based on the lot size, the calculation is 2.96.  
7       That means they can build two units without a  
8       variance. So if you are going to grant them the  
9       zoning variance, I would encourage you to stipulate  
10      (A) exactly how many units you are granting a  
11      variance for, and (b) straightening out what I would  
12      argue very strongly is a misinterpretation of that  
13      provision of the zoning code.

14               I would suggest you look at the  
15      transcripts of those trials because that issue did  
16      come up during the case. It was not the central  
17      issue, but that section of this particular section  
18      of the zoning code was used to justify these  
19      rounding up.

20               Now, enough of that. Just let me  
21      finish, and I will go away. You have been very  
22      kind.

23               The basic issue of this case is we have  
24      a building that is larger than the zoning code  
25      required, and the question that you really need to

1 ask yourself is why is that, why do we need to have  
2 more than 60 percent lot coverage, not counting fire  
3 escapes, in this building.

4 The argument I've heard so far is that  
5 we need it because the owner wants to have a big  
6 office on the first floor.

7 Now, there is nothing wrong with big  
8 offices, but you also heard a lot of testimony from  
9 the neighbors who are substantially concerned about  
10 the impact that this has.

11 The applicant has also argued that,  
12 well, you know, it's all okay because we had this  
13 really nonconforming building there.

14 But that building isn't there any more,  
15 is it?

16 Okay. So the argument really is: Why  
17 are you going to perpetuate a nonconforming building  
18 condition that has a negative impact on the  
19 neighbors in terms of light and air.

20 And the argument for why you should do  
21 that appears to be that the owner of the building  
22 would like to have a slightly larger office than the  
23 zoning code would allow on the first floor. And I  
24 would suggest to you that that is really not a good  
25 reason to be granting a variance in my opinion, nor

1 is it a good reason to be violating the concepts of  
2 the master plan that suggests that you shouldn't be  
3 filling up the interior of the donut with blocks.

4 I thank you for your opportunity.

5 CHAIRMAN AIBEL: Thank you.

6 COMMISSIONER COHEN: Excuse me.

7 Could I just ask a question of Mr.  
8 Evers before he goes?

9 MR. GALVIN: Yeah.

10 COMMISSIONER COHEN: You mentioned that  
11 the language that you talked about from Judge  
12 Gallipoli's decision in your case wasn't really the  
13 central focus of his decision, that it was something  
14 that he referred to.

15 MR. EVERS: It was an argument raised  
16 by the defense.

17 COMMISSIONER COHEN: So would it be  
18 fair to say that the language you're referring to  
19 would be considered dicta as opposed to the holding  
20 of the decision?

21 In other words, was the basis of his  
22 decision that he came down on not based on that part  
23 of the statute that you're concerned with, but a  
24 different part of the statute?

25 MR. EVERS: That's correct, yes.

1 COMMISSIONER COHEN: Okay. Thank you.

2 CHAIRMAN AIBEL: Okay, Ms. Healey?

3 MS. HEALEY: Thank you.

4 MR. GALVIN: Do you swear or affirm the  
5 testimony you are about to give in this matter is  
6 the truth, the whole truth, and nothing but the  
7 truth?

8 MS. HEALEY: I do.

9 MR. GALVIN: State your full name for  
10 the record and spell your last name.

11 MS. HEALEY: Leah Healey, H-e-a-l-e-y.

12 MR. GALVIN: Street address?

13 MS. HEALEY: 806 Park.

14 MR. GALVIN: Thank you.

15 MS. HEALEY: I am not going to repeat  
16 everything that happened because I know it's late,  
17 but I did want to bring your attention to the fact  
18 that this is a very unusual provision that I read  
19 earlier during the questioning of the expert about  
20 the rear yard, and it is unusual, and it's important  
21 for you to understand for not only this application,  
22 but I regret not raising it earlier for other  
23 applications, and that is, this is one of the few  
24 places in the master plan that actually provides  
25 direction to the Zoning Board, because it uses the

1 word "variances" from the requirements of this  
2 should be few and far between, if granted at all.

3           You are not going to find that  
4 direction to variance granting almost anywhere else  
5 in this plan, so I think you need to understand that  
6 the way I read that is you need to protect this rear  
7 yard. You need to protect this donut, and so when  
8 you have a situation where somebody is asking you to  
9 extend their building coverage beyond what's  
10 allowed, because they are going to fill in a piece  
11 of the donut that's irregular and make the donut  
12 more uniform, that's not what the master has  
13 envisioned.

14           So I don't think that that is an  
15 argument that you should be buying, that we are  
16 going to make the line straighter and get rid of  
17 these pockets of rear yard.

18           And that is one of the basic reasons  
19 why I think this application should be denied,  
20 because I don't think this planner has provided any  
21 basis for violating this provision other than  
22 relying on the nonconforming structures. And I'm  
23 assuming this Board is not relying on nonconforming  
24 structures in coming to their opinion.

25           The other thing is, I would ask -- this

1 is a 28 wide foot building, so there is additional  
2 square footage that's being provided to this  
3 building by virtue of being wider than the other  
4 buildings, so they are gaining the square footage  
5 that other buildings that are only 20 foot wide,  
6 which is predominantly in this zone, don't have, so  
7 they are already getting that benefit.

8 And this is not a not nonconforming lot  
9 any more. They are getting 60 percent of the lot.  
10 The new zoning amendments have made this a  
11 conforming lot. They get a percentage development  
12 rather than certain feet.

13 And I would also say that I am a little  
14 concerned about this wall versus bench issue, and I  
15 think it needs to be addressed perhaps in the  
16 zoning, but I would ask you to look at it. I  
17 consider a foot width wall, that is a brick wall, to  
18 be creating a structure in the rear yard that's not  
19 a fence. Most of the fences have the ability to --  
20 they're restricted in height, and a lot of them have  
21 the ability to have light and air. So if we are  
22 going to create true walls around our rear yard, I  
23 think we're going to create a much different donut  
24 than what I think the master plan envisions, which  
25 is really open space with a provision of light and

1 air.

2 Now, I understand one of the reasons  
3 why the neighbors are asking for the 12 foot wall is  
4 that it's there and it has vines all over it,  
5 and I think walls like that can be brought down to  
6 better heights and still preserve those vines and  
7 still provide privacy. Maybe it's an eight foot  
8 wall. But when you get into a 12 foot wall that  
9 begins to me, particularly when it's brick, to be  
10 more of a structure than just something that's  
11 trying to create privacy, so I am really worried  
12 about that in the future, and I appreciate your  
13 time.

14 CHAIRMAN AIBEL: Thanks, Ms. Healey.

15 Anyone else wish to comment?

16 Mr. Tumpson.

17 MR. GALVIN: Raise your right hand.

18 Do you swear or affirm the testimony  
19 you are about to give in this matter is the truth,  
20 the whole truth, and nothing but the truth?

21 MR. TUMPSON: Yes.

22 MR. GALVIN: Thank you.

23 Full name.

24 MR. TUMPSON: Daniel Tumpson, 230 Park  
25 Avenue.

1                   Basically a lot of people who have  
2 spoken before me have indicated this in different  
3 ways, but this is the bottom line. It's a zoning  
4 law. You're not supposed to give variances if the  
5 variances create a negative impact on the public.

6                   A lot of testimony has been given here  
7 by the neighbors and so forth about the intrusion  
8 and blockage of light and air in that light shaft  
9 and endangering them by putting a roof that allows  
10 access to their windows and also filling in light  
11 and air in the donut.

12                   I don't have to go through that again,  
13 but I am saying it's very simple and very  
14 straightforward, that the zoning law should not --  
15 the Zoning Board should not be giving variances, if  
16 it causes harm to the public, and this will, so  
17 please don't.

18                   CHAIRMAN AIBEL: Thank you, Mr.  
19 Tumpson.

20                   Okay. Seeing no further comments, I  
21 guess we can close the public comments.

22                   Thank you

23                   COMMISSIONER MC ANUFF: Motion to close  
24 public portion.

25                   COMMISSIONER COHEN: Second.

1 CHAIRMAN AIBEL: All in favor?

2 (All Board members answered in the  
3 affirmative)

4 Mr. Matule, last words.

5 MR. MATULE: Thank you, Mr. Chairman.

6 It has been a very interesting evening.

7 First of all, I just would like to make  
8 an overall comment that we heard a lot of talk about  
9 the master plan saying you shouldn't grant  
10 variances. Variances are perfectly acceptable.  
11 They are legal entitlements. There is nothing  
12 negative about them.

13 If an applicant can make his case, he  
14 is entitled to his variance. That is the way the  
15 Land Use Law is written. So to come out of the box  
16 that because an applicant is asking for a variance,  
17 this is somehow a negative or bad thing, I think is  
18 inappropriate.

19 And the standard is substantial harm,  
20 not harm. Anything you build anywhere is going to  
21 have some impact on light or air or whatever or  
22 people just don't like change. Be that as it may,  
23 the standard is substantial harm.

24 I realize we are not dealing with the  
25 second or the third part of this case, that is the

1 appeal of the zoning officer's decision, which  
2 permitted the existing buildings to be demolished or  
3 to be the history of this property. But I find it  
4 fascinating with all of this talk about the donut,  
5 when clearly, with anyone's viewing of these  
6 documents, whether you call them shacks, sheds,  
7 structures, buildings, garages, whatever, there is  
8 substantial improvements on this property along the  
9 rear property line in the rear yard.

10 There was no donut here. There was a  
11 hole, admittedly there was a hole in some portion of  
12 this building in the middle of the building.

13 When we first came here, we came here  
14 with the idea that there was 90-some percent lot  
15 coverage and taking that hole out of the middle of  
16 the building and putting it across the backyard by  
17 making a five foot rear yard where there never was  
18 anything was a better alternative.

19 After hearing comments from the  
20 neighbors, we went back. We revisited it. The  
21 architect and I had some serious discussions with  
22 the applicant, and we came back to bring you what  
23 you have here now, which we think is a substantial  
24 alteration to what was originally approved. You now  
25 have a 17 and a half foot rear yard, which is 25

1       percent. The lot coverage on the ground floor is 75  
2       percent. Considering the fact that we have an  
3       undersized lot that's really not an overly  
4       oppressive application, in my opinion, we have  
5       substantially opened up the donut, as opposed to  
6       encroaching on it.

7               The ordinance says you can have -- they  
8       put a limit at 70 feet. It says: The rear wall of a  
9       building can't be more than 70 feet deep.

10              Now, I realize that applies to a 100  
11       foot deep lot, but our whole lot is only 70 feet  
12       deep.

13              This is a much better zoning  
14       alternative than to either what was there or what  
15       was originally proposed. And to dismiss the  
16       applicant as being greedy, or he just wants what he  
17       wants, and why can't he just make it 300 feet  
18       smaller, he's already made it 17 feet smaller than  
19       when he bought this property, and that's what was  
20       there, and he got his first zoning certificate, he  
21       fully expected to put his business office there and  
22       have a hundred percent lot coverage.

23              Things have changed. The zoning  
24       officer revoked the certificate. More information  
25       was produced. The certificate was reissued. Now

1       it's been revoked again. But the point is I do  
2       think, not from the point of view of you have to let  
3       that be the basis of your decision, but from  
4       understanding the sense of expectation the applicant  
5       had when he paid the money he paid for this  
6       property, was that he could have a 100 percent lot  
7       coverage at grade.

8                   He has now pulled that back 25 percent,  
9       and I think that is a substantial concession, and  
10      frankly, we are working to try to make these other  
11      issues go away. The impact on the neighbors is  
12      negligible. We do live in an urban environment, so  
13      I suppose if someone wants to climb over someone  
14      else's roof and try to break into their apartment,  
15      they can do that, but they can do that in any  
16      building.

17                   And for the record, I advise Ms.  
18      Fallick that if the person who lives in that  
19      apartment wants burglar bars put on his windows, the  
20      applicant would be happy to do that, if that's a  
21      concern.

22                   There is no light and air issue at  
23      grade, because there is a commercial store down  
24      there on the corner building, and apparently with a  
25      hundred percent lot coverage, that is not impacted.

1                   The density also, we are asking for one  
2 additional residential unit. We think that is a  
3 better plan. Frankly, we could duplex the two  
4 floors, if the Board approves that, and not have the  
5 density variance. I think it's kind of a  
6 distinction without a difference.

7                   Mr. Ochab has produced substantial  
8 documentary evidence about the density in the  
9 neighborhood and the fabric of the neighborhood, and  
10 I think we meet the legal parameters for that.

11                   The rear wall, again, we are happy with  
12 a six foot rear wall. We were trying to accommodate  
13 the couple who lived in the back. They liked it.  
14 They had ivy growing up it, which creates a nice  
15 outdoor space for them, and we were happy to  
16 accommodate them. If the wall is 12 feet high, if  
17 the wall is eight feet high, if the wall is six foot  
18 high, we are happy to build whatever everyone is  
19 happy with.

20                   If they want a wooden wall for the  
21 south section, we can do that, too. We have no  
22 strong feelings about that. We were really just  
23 trying to do what would make the neighbors happy,  
24 trying to be good neighbors.

25                   I think this is a much better zoning

1 alternative for the site, and it also would obviate,  
2 because the potential is still out there, depending  
3 on what this Board decides in Phase II, and what the  
4 Court decides in Phase III, that there could be  
5 substantially more lot coverage here.

6 I realize that's speculative, and this  
7 is not speculative. This is what you see is what  
8 you're going to get, and the applicant has proffered  
9 to withdraw those other matters and be happy with  
10 this application. So I think it gives the Board a  
11 lot of alternatives and an opportunity, and whose  
12 fault it is, I don't think is relevant, but it's a  
13 mess right now.

14 The building is half torn down. It's  
15 been sitting that way for eight or nine months  
16 deteriorating frankly, and if the Board doesn't  
17 grant this application, then I guess that situation  
18 will continue as we continue down this road.

19 So having said all of that, I don't  
20 think it's really nearly as negative of an  
21 application as the members of the public who are  
22 here tonight would have you think.

23 Thank you.

24 CHAIRMAN AIBEL: Thanks, Mr. Matule.

25 Okay. Board members, time to have some

1 conversation.

2 Anybody want to kick off?

3 COMMISSIONER BRANCIFORTE: Well, I'll  
4 start if I could have something -- I just want to  
5 start a conversation here and hopefully come back to  
6 it later.

7 First, I think we need to agree -- I'm  
8 going to ask the Board if we can agree that anything  
9 made, anything that projects out of the ground and  
10 that's made of masonry should be called a wall, not  
11 a fence. That is just my --

12 MR. GALVIN: No, but then -- okay. Let  
13 me stop you then.

14 Then, Eileen, if you could look for the  
15 definition of fence.

16 MS. BANYRA: Okay. I will look it up.  
17 I don't know if they --

18 MR. GALVIN: Wall, I mean, for purposes  
19 of the ordinance, I understand what you are saying  
20 that there is a difference in the structural  
21 integrity of a wall versus a fence, and that, you  
22 know, I also understood the argument. I thought  
23 that was a fascinating argument about whether or not  
24 the wall constitutes a structure, but then you have  
25 to go back to look at the definition of a structure

1 because there is not really --

2 COMMISSIONER BRANCIFORTE: Okay.

3 We'll do that and see if we can agree on it or not.

4 I understand where you are going with this.

5 MR. GALVIN: -- yeah, I don't think  
6 it's -- and I actually had a case where people,  
7 there was an ordinance that talked about a fence,  
8 and there were contiguous trees that basically  
9 constituted a fence. They had to be trimmed to six  
10 feet in height.

11 COMMISSIONER BRANCIFORTE: Anyway, one  
12 thing I would love to see, no matter what the Board  
13 decides tonight, is that the wall on the north side  
14 that runs north -- east-west on the north side of  
15 the building be six foot tall continuously all the  
16 way across.

17 And the other thing, too, is I guess on  
18 the west wall, they're talking about replacing some  
19 wood planks that cover over a hole right now, that  
20 that hole when it's filled in, just filled in to six  
21 feet, and that's just for safety reasons, my own  
22 safety reasons, so firemen could access the wall  
23 from the west, if they had to, so they wouldn't have  
24 to climb over a 12 foot fence or wall, whatever the  
25 hell it is, on that side, so there would be some

1 kind of access, six foot access for the firemen on  
2 the west.

3 COMMISSIONER MC ANUFF: I think it was  
4 testified before that the neighboring property  
5 wanted it to be a non masonry fence, it is called  
6 that --

7 COMMISSIONER BRANCIFORTE: Yeah. I am  
8 just confused with where we are going with Mr. Hans,  
9 to tell you the truth. You know, we can discuss it.

10 COMMISSIONER MC ANUFF: All right.

11 COMMISSIONER BRANCIFORTE: As far as  
12 the lot coverage goes, this is the way I feel about  
13 it. If it was 90 percent, a hundred percent,  
14 whatever it was, as they argue, I -- correct me if I  
15 am wrong, I feel as though the second they ripped  
16 that down, they demolished it and took it out, they  
17 lost their right to say it is 95 percent and to  
18 replace it at 95 percent.

19 That is the way I feel about it, and I  
20 don't think that the donut is being saved at all  
21 with this.

22 However, with the lot coverage, I am  
23 not convinced that not given the lot coverage is  
24 going to affect their business. They made no  
25 testimony saying, look, if we don't get the lot

1 coverage, we can't do business, so that goes a long  
2 way with me, and that is just to start the  
3 discussion.

4 MR. GALVIN: When you have a  
5 preexisting nonconforming condition, you have a  
6 right -- if they have -- it has to be valid, so one  
7 of the underlying arguments is, the percentage that  
8 was out there wasn't really valid. It wasn't really  
9 a structure. It really didn't get there the way it  
10 was supposed to.

11 COMMISSIONER BRANCIFORTE: Right.

12 MR. GALVIN: So if we have to advance  
13 to the next part of this case, they are going to  
14 have to prove that it was valid and that it was  
15 constructed properly.

16 Assuming a structure is substantially  
17 removed, like substantially damaged or substantially  
18 removed, at some point you could lose the right to  
19 rebuild it, but the case law is kind of back and  
20 forth on it.

21 But the most recent case is the Motley  
22 case, and in that case they took the entire -- they  
23 basically took the whole building down, and the  
24 Court said -- on the facts of that case, the Board  
25 said you don't have a right to rebuild anything that

1 was there. But where you still have -- I see the  
2 front of the building is still there, right, the  
3 facade of the building is still there, so it would  
4 be fact sensitive as to what they could rebuild or  
5 not rebuild.

6 You know, I understand what you are  
7 saying. I'm not saying -- if it was never built, we  
8 don't have that information in front of us right now  
9 because we didn't get into that, so we don't know if  
10 it was built validly. But if it turned out that it  
11 was built validly, they may have some right to rehab  
12 it.

13 COMMISSIONER BRANCIFORTE: Okay.

14 COMMISSIONER MURPHY: So part of my  
15 problem with this whole thing is that the testimony  
16 has said that it is going to be a new building.

17 So what I'm looking at is we are  
18 starting with a new building on this lot regardless  
19 of whatever was there before --

20 MR. GALVIN: Okay.

21 COMMISSIONER MURPHY: -- so -- and I  
22 feel like it's just made this whole thing drag out  
23 way longer than what might have been necessary that  
24 came here with the idea that they are going present  
25 this to us this way, but yet everything keeps coming

1 back to us from what happened before or what could  
2 possibly happen later.

3 So anyway with this said, I am still  
4 always wondering why if we are starting from new,  
5 and it is new, why can't it stay within the laws of  
6 the percentage of lot coverage, and I do believe  
7 that we are always pushing the envelope for that  
8 little bit more, and that the donut is, you know,  
9 encroached on, and it shouldn't be.

10 I feel in this case, too, the fence  
11 kind of wafting, it's a little bit of an  
12 encroachment in a certain sense, too. So it already  
13 kind of creates a difference in air and space and  
14 what have you.

15 I also don't like the idea of covering  
16 up any windows, and I don't think that we are  
17 covering windows up, but the first floor clearly  
18 blocks some of that light and air in that air shaft,  
19 if it were to be built the way it is.

20 So, you know, I would have to hear some  
21 of the other arguments from other members to be in  
22 favor of this.

23 COMMISSIONER MC ANUFF: Just one point.

24 I think we heard testimony that there  
25 is no window at that first level in the shaft, so it

1 is not getting covered by the --

2 COMMISSIONER MURPHY: But we heard that  
3 there wasn't a window in the corner building, but we  
4 did hear there was a window in the Third Street  
5 building the one that's covering --

6 COMMISSIONER MC ANUFF: I am talking  
7 about the shaft specifically.

8 COMMISSIONER MURPHY: -- right, but  
9 they share that.

10 COMMISSIONER MC ANUFF: Yeah, but there  
11 is one on one side of it at the first floor --

12 COMMISSIONER MURPHY: That's what we  
13 heard --

14 COMMISSIONER WEAVER: I thought we  
15 heard testimony that that's --

16 COMMISSISONER MURPHY: -- from the  
17 person that has asthma.

18 COMMISSIONER WEAVER: -- in fact, you  
19 really wouldn't build that shaft to go all the way  
20 down, if there wasn't a window there. There would  
21 be no point. There would just be --

22 MR. GALVIN: Time out.

23 Is that correct?

24 MR. MINERVINI: There are no windows at  
25 that first floor section of that shaft --

1 MR. GALVIN: I was pretty sure about  
2 that --

3 MR. MATULE: Ground floor --

4 MR. MINERVINI: -- at the ground floor,  
5 sorry --

6 COMMISSIONER MURPHY: On either side?

7 MR. MINERVINI: On either side.

8 COMMISSIONER MC ANUFF: Okay.

9 COMMISSIONER MURPHY: Oh. So then why  
10 are we having this whole discussion about into  
11 windows?

12 CHAIRMAN AIBEL: I think the windows  
13 they're concerned about --

14 COMMISSIONER MURPHY: Are the ones  
15 up --

16 COMMISSIONER MC ANUFF: If someone  
17 stood on that roof of the building --

18 COMMISSIONER MURPHY: -- I got you --

19 COMMISSIONER DE GRIM: You could get  
20 from the first floor, you could get from the first  
21 floor --

22 COMMISSIONER MURPHY: -- I got you --  
23 nothing down --

24 COMMISSIONER DE GRIM: -- to the --

25 COMMISSIONER MC ANUFF: Yeah, I don't

1 think it is a light and air issue.

2 COMMISSIONER MURPHY: Okay.

3 CHAIRMAN AIBEL: All right. Anybody --

4 COMMISSIONER BRANCIFORTE: One other  
5 quick question.

6 When we give them the right to use the  
7 backyard for their commercial space, if it says --  
8 say it's a clothing store that goes there, a  
9 boutique goes in there next, does the boutique have  
10 the right to have like wine and cheese parties back  
11 there during operating hours?

12 Do they have the right to use it for  
13 whatever they want as long as it's not show space --  
14 showroom space?

15 (All Commissioners talking at once.)

16 COMMISSIONER MURPHY: They could have a  
17 client party, you know --

18 COMMISSIONER WEAVER: A building  
19 management party.

20 MR. GALVIN: I mean, let's just --  
21 building management, he wants to have a picnic with  
22 the people -- I don't know. Do you want to restrict  
23 it?

24 COMMISSIONER BRANCIFORTE: Because I  
25 fear that, you know, some day Mr. Martin decides

1 he's going to move his business out of there and  
2 rent it to a clothing boutique, and they decide they  
3 are going to have wine and cheese parties every  
4 Saturday --

5 MR. GALVIN: I think what we should  
6 think about -- I think what we should think about is  
7 a building that is completely conforming, you know,  
8 two residential and a commercial on the first floor,  
9 and they have a backyard.

10 Would they be allowed to go into the  
11 backyard and use that space?

12 I don't know.

13 Like if it was in the front -- if you  
14 were going to use the sidewalk --

15 COMMISSIONER WEAVER: Yes -- how could  
16 you keep them from it, it's their right. It is  
17 their property, I mean, and we have laws in place  
18 that protect people. You know, there are noise  
19 ordinances. There's, you know, I don't know if  
20 there are, but there should be ordinances for, you  
21 know, fumes from cooking exhaust and things like  
22 that. So you can't really, you know, that's their  
23 property. They should be able to use it.

24 COMMISSIONER MURPHY: But they could  
25 have made --

1                   COMMISSIONER BRANCIFORTE: But once  
2 they start creating a nuisance --

3                   COMMISSIONER WEAVER: When it's a  
4 nuisance, then you deal with that through a  
5 different mechanism.

6                   COMMISSIONER BRANCIFORTE: That's fine.  
7 Thank you.

8                   COMMISSIONER WEAVER: Yeah. I am going  
9 to go back to my colleague.

10                   I mean, they said it. The applicant  
11 said it. This is a new structure. And if it's a  
12 new structure, then maybe we should look at applying  
13 current zoning to it, right?

14                   And then we can say, well, you want a  
15 variance because you want another unit on top.

16                   Well, then we can evaluate it for that,  
17 you know, but their planner even said 60 percent is  
18 60 percent, and they are actually asking us for more  
19 than that, right?

20                   And we started this conversation, we're  
21 talking about the building, and does the building  
22 fit into the architectural character of the street,  
23 and it is clearly a modern building. But yet, you  
24 know, there is a very, in my evaluation, a very  
25 handsome brick building there, and it's not like

1       they even tried to, you know, even adaptive reuse.  
2       You know, keep part of the brick facade. You know,  
3       keep, you know, something that has some sort of  
4       relationship to Hoboken.

5                 Just because the buildings, quite  
6       frankly, to the north are an abomination, they have  
7       been re-facaded, they're stucco, what have you, you  
8       know, doesn't mean that there is no excuse to try to  
9       modify this one.

10                So yet, it is a new structure, but they  
11       want to latch on to all of these other things that  
12       they have, the larger footprint, the hundred percent  
13       lot coverage, what have you, and so that is one  
14       thing.

15                The other one is -- there's two more.  
16       There's the -- I see the customer service area is in  
17       excess of a thousand square feet, and there is no  
18       way to define the customer service area as less,  
19       because if it's a broker, if it's a nail salon, if  
20       it's anything, the customer service area could be  
21       that entire area, minus the toilet room, right?  
22       Minus maybe the kitchenette, so that's one problem  
23       of the excess customer service area.

24                And, finally, you know, in relation to  
25       the 60 percent lot coverage and the donut, you know,

1 Mr. Matule himself said, you know, we live in an  
2 urban environment. Like you should expect this,  
3 it's an urban environment.

4 But then Ms. Healey, you know, a very  
5 good point, the donut is very important, and in  
6 fact, the donut is actually our counter point to  
7 that dense urban environment that we have on the  
8 sidewalk. So I think it's very important for us to  
9 preserve that.

10 If this was an adaptive reuse project,  
11 and we were going to try to keep, you know, parts of  
12 this building, you know, keep the facade and work on  
13 that, then maybe there would be arguments that we  
14 could support for, you know, reflecting the previous  
15 claims to, you know, floor area, but I don't see  
16 that happening today.

17 CHAIRMAN AIBEL: Thank you.

18 Mr. McAnuff?

19 COMMISSIONER MC ANUFF: I agree with  
20 most of what I heard.

21 I will say as far as the three units  
22 above, I would rather see what was proffered and  
23 make the top a duplex to cut down on some of the  
24 density.

25 My big problem is it is a new building,

1 and I didn't hear any, as everybody did, I didn't  
2 hear any hardship stories about why it should take  
3 up more than 60 percent of the lot, and I think  
4 there's an opportunity, given the nature of the  
5 building that is proposed -- the nature of the  
6 business that's proposed to be there, to scale it  
7 back and make it 60 percent.

8 I don't have a problem with the  
9 esthetics of the building. I think it looks fine  
10 the way it is.

11 COMMISSIONER BRANCIFORTE: I agree that  
12 maybe they should make a duplex --

13 COMMISSIONER MC ANUFF: It would cut  
14 down on the density --

15 COMMISSIONER BRANCIFORTE: -- and get  
16 rid of the two extra cars -- an extra car on the  
17 street.

18 CHAIRMAN AIBEL: Well, right now we  
19 have an application before us, and I think my  
20 suggestion is we are going to vote it up or down as  
21 is.

22 Mr. Grana?

23 COMMISSIONER MC ANUFF: As it is, I am  
24 not going to support it.

25 CHAIRMAN AIBEL: Mr. Grana?

1                   COMMISSIONER GRANA: I'll add a couple  
2 of things.

3                   I mean, much of this has been shared by  
4 the other Commissioners.

5                   I do want to -- I guess I can't help  
6 but make a comment that there was a lot of  
7 discussion back and forth, and I can't resist  
8 agreeing that, you know, the applicant has probably  
9 experienced some hardship in the whole process of  
10 getting to this point, and whether or not you agree  
11 with that or not, you know, the applicant does -- I  
12 am saying that my points have nothing to do with  
13 other than I feel applicants have a right to come  
14 and request variance relief or make a case, if they  
15 see fit, but I don't think it is relief in this  
16 case.

17                   We talked about whether this is a  
18 hardship case, and we've probably well established  
19 their testimony, this is not a C1 one argument.

20                   As far as the modifying a preexisting  
21 structure of expansion, I guess the modification or  
22 renovation of that preexisting structure, you know,  
23 I did review the Motley case, and in, you know, in  
24 there what we have, you know, countervailing  
25 testimony that basically said, but it's a new

1 structure.

2 So we are not saving something that is  
3 existing, and so I don't think it applies.

4 So it really gets us back to C2, and I  
5 think the Commissioners, including myself, talked in  
6 a couple of areas about, you know, how -- how and  
7 where this would really advance the Municipal Land  
8 Use Law, and I don't think we have heard the  
9 testimony that supports that.

10 So I think, you know, the density is an  
11 issue I'm not going to comment on, but I think on  
12 the C2, I don't think the case has been made.

13 CHAIRMAN AIBEL: Thanks.

14 Anyone else?

15 Mr. Cohen?

16 COMMISSIONER COHEN: I wanted to sort  
17 of pick up on one theme of Commissioner Grana, which  
18 is talking about the rights of applicants to rely on  
19 certain things as part of the process.

20 I think one example would be when you  
21 talk to the neighbors and you try to accommodate  
22 them by preserving walls, I don't think they should  
23 be -- they should be encouraged to try and comfort  
24 neighbors that are concerned about the project  
25 rather than suggest it's a deficiency in the plan

1       that they're putting up a structure that neighbors  
2       that we're trying to accommodate are doing something  
3       that's inconsistent with the code.

4                I mean, you're damned if you do, you're  
5       damned if you don't, and I don't think that it is  
6       fair, number one.

7                Number two, with respect to  
8       calculations on density again, I think that the  
9       testimony is clear that the applicant relied on the  
10      city, and our planner agreed, that the calculations  
11      that were used were commonly used.

12              We heard a lot of criticism about the  
13      calculations and suggestions that perhaps in dicta a  
14      decision, not upholding a decision of Judge  
15      Gallipoli that we should use a different set of  
16      calculations. Again, I think that applicants should  
17      be entitled to rely on our past practices when  
18      putting together proposals for the consideration of  
19      the Board and not be punished by possible  
20      alternative calculations at the 11th hour or 13th  
21      hour, I mean, way beyond the 11th hour. So, again,  
22      I think that that is fair.

23              I also think it's reasonable, and I  
24      think the testimony is clear that, you know, you  
25      might not think it was 97 percent lot coverage, but



1 people into doing adaptive reuse, if that's not  
2 really what they're committed to do, because they  
3 are going to suffer the consequences if they don't  
4 properly adaptively reuse the property.

5 With respect to the neighbor who has a  
6 window that's going to be on the same level as the  
7 roof, I mean, you know, you have a corner in  
8 Hoboken, where you have these accesses. I assume we  
9 would allow access to the roof for maintenance  
10 purposes only. We are not putting a deck up there.  
11 We're not giving people access, so they are going to  
12 be peaking in off the roof. It's just going to be  
13 an uninhabited structure, that's going to be not  
14 blocking the window, but below it.

15 But that being said, I don't think  
16 there has been a case made to go beyond 60 percent  
17 into this backyard as on the plan.

18 You know, I'm sympathetic to everybody  
19 involved. It sounds like it's been a torturous  
20 process for the objectors as well as the applicant,  
21 and you know, obviously this is not the way that we  
22 want people to feel like they are being treated,  
23 whether you are a neighbor or whether you're an  
24 applicant. It has been a bad process all the way  
25 through, and that goes for the Zoning Board as well.

1                   We have been here four and a half hours  
2                   tonight. This is the only application we are going  
3                   to hear, and that is not good for all of the other  
4                   people who were hoping to get -- we put off an  
5                   application tonight that has been put off four times  
6                   before tonight, and we're not even going to be able  
7                   to start it. So, you know, this has been a very  
8                   frustrating process for everybody involved,  
9                   including us, but I would not support this  
10                  application.

11                  Thank you.

12                  CHAIRMAN AIBEL: Thank you.

13                  Anybody else wish to comment?

14                  New members, nobody is obliged to  
15                  comment, but you're not barred either so...

16                  MR. GALVIN: I think it is usually good  
17                  to observe the first couple of meetings and see --

18                  (Laughter)

19                  CHAIRMAN AIBEL: There you go. Words  
20                  of wisdom.

21                  COMMISSIONER BRANCIFORTE: I have to  
22                  agree with what Owen said. I think based on the  
23                  density, I can't support it.

24                  CHAIRMAN AIBEL: I am only going to add  
25                  this because everybody has said everything.

1                   You know, my sense is the fact that  
2                   there was no testimony that any of the structures in  
3                   the rear of this building were usable for anything,  
4                   to me demonstrates that this was not a reasonable  
5                   expectation that there would be a hundred percent  
6                   lot coverage allowance for this property.

7                   So, again, my starting point as usual  
8                   is, you know, what does the ordinance provide. On  
9                   lot coverage, it is too much. On density it's too  
10                  much, and I think probably the other comment is the  
11                  density calculations that Mr. Ochab provided also  
12                  may have been arrived out under prior codes.

13                  You know, over the years, we have  
14                  consistently reduced the need for the density  
15                  requirements or limits, so I am not so sure that  
16                  testimony supported the higher density requested in  
17                  this case.

18                  And finally, I guess to me, the  
19                  inconsistency with the master plan on both density  
20                  and lot coverage on the donut are the detriment that  
21                  I see.

22                  So with that, I guess we are ready for  
23                  a motion.

24                  COMMISSIONER MC ANUFF: Motion to deny.

25                  COMMISSIONER GRANA: Second.

1 MS. CARCONE: Who is the second?

2 COMMISSIONER GRANA: I was the second.

3 MS. CARCONE: Commissioner Branciforte?

4 COMMISSIONER BRANCIFORTE: Motion to  
5 deny, yes.

6 MS. CARCONE: Commissioner Cohen?

7 COMMISSIONER COHEN: Yes.

8 MS. CARCONE: Commissioner Grana?

9 COMMISSIONER GRANA: Yes.

10 MS. CARCONE: Commissioner Murphy?

11 COMMISSIONER MURPHY: Yes.

12 MS. CARCONE: Commissioner McAnuff?

13 COMMISSIONER MC ANUFF: Yes.

14 MS. CARCONE: Commissioner Weaver?

15 COMMISSIONER WEAVER: Yes.

16 MS. CARCONE: Commissioner Aibel?

17 CHAIRMAN AIBEL: Yes.

18 Thank you, Mr. Matule.

19 Thank you, everybody.

20 COMMISSIONER MC ANUFF: Motion to  
21 adjourn.

22 MS. CARCONE: Wait a minute.

23 The next meeting is February 16th.

24 We're not having a meeting next week. Just hang  
25 onto that material, the application that was carried

1           tonight, 75-77, and actually there was an appeal  
2           packet with 302 Garden that was submitted to the  
3           variance part. It was like two parts to it. Hang  
4           on to your 302 Garden stuff.

5                           (Everyone talking at once.)

6                           CHAIRMAN AIBEL: I think we need a  
7           motion to adjourn.

8                           COMMISSIONER GRANA: Motion.

9                           COMMISSIONER MC ANUFF: Second.

10                          CHAIRMAN AIBEL: All in favor.

11                          (All Board members voted in the  
12           affirmative.)

13                          (Discussion held off the record)

14                          (Meeting concluded at 11:45 p.m.)

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C E R T I F I C A T E

I, PHYLLIS T. LEWIS, a Certified Court Reporter, Certified Realtime Court Reporter, and Notary Public of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel to any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

s/Phyllis T. Lewis, CCR, CRCR

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 PHYLLIS T. LEWIS, C.C.R. XI01333 C.R.C.R. 30XR15300  
 Notary Public of the State of New Jersey  
 My commission expires 11/5/2020.  
 Dated: 1/26/16  
 This transcript was prepared in accordance with  
 NJAC 13:43-5.9.