

HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN

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SPECIAL MEETING OF THE HOBOKEN :Tuesday 7 pm
ZONING BOARD OF ADJUSTMENT :December 22, 2015
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Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

Chairman James Aibel
Commissioner Antonio Grana
Commissioner Diane Fitzmyer Murphy
Commissioner John Branciforte
Commissioner Owen McAnuff
Commissioner Frank DeGrim

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

Eileen Banyra, Planning Consultant

Jeffrey Marsden, PE, PP
Board Engineer

Patricia Carcone, Board Secretary

PHYLLIS T. LEWIS
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1 CHAIRMAN AIBEL: Good evening,
2 everyone.

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

11 Please join me in saluting the flag.

12 (Pledge of Allegiance recited)

13 CHAIRMAN AIBEL: We are at a Special
14 Meeting of the Hoboken Zoning Board of Adjustment.

15 There are a couple of administrative
16 matters that we have, after we do the roll call.

17 MS. CARCONE: Okay. Commissioner
18 Aibel?

19 CHAIRMAN AIBEL: I'm here.

20 MS. CARCONE: Commissioners Greene,
21 Cohen, and DeFusco are absent.

22 Commissioner Grana?

23 COMMISSIONER GRANA: Here.

24 MS. CARCONE: Commissioner Marsh is
25 absent.

1 Commissioner Murphy?

2 COMMISSIONER MURPHY: Here.

3 MS. CARCONE: Commissioner Branciforte?

4 COMMISSIONER BRANCIFORTE: Here.

5 MS. CARCONE: Commissioner Fisher is
6 absent.

7 Commissioner McAnuff?

8 COMMISSIONER MC ANUFF: Here.

9 MS. CARCONE: Commissioner DeGrim?

10 COMMISSIONER DE GRIM: Here.

11 CHAIRMAN AIBEL: Great.

12 (Discussion held off the record)

13 CHAIRMAN AIBEL: The first
14 administrative matter we have is a withdrawal from
15 Daniel Pearlman. He is withdrawing an application
16 for 725 Park Avenue that was submitted on April 23,
17 2015.

18 Do we need a motion to accept the
19 withdrawal?

20 MR. GALVIN: Yes.

21 COMMISSIONER BRANCIFORTE: Motion to
22 accept the withdrawal of 725 Park Avenue.

23 MR. GALVIN: Is there a second?

24 COMMISSIONER MC ANUFF: Second.

25 COMMISSIONER BRANCIFORTE: Should we do

1 it with prejudice or without prejudice?

2 MR. GALVIN: No, without prejudice.

3 Always without.

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: Nay.

10 MR. GALVIN: Okay. So that does that
11 one.

12 CHAIRMAN AIBEL: The second matter is
13 not on the agenda, but it is the last meeting of the
14 2015 Zoning Board of Adjustment for the year.

15 I just wanted to say very, very quickly
16 that 2015 was a busy year. We had 30 meetings, 41
17 projects submitted, nine withdrawn, 38 decisions.
18 That was after 2014, in which 22 meetings were held,
19 40 projects submitted, seven withdrawn, and 33
20 decisions.

21 I am saying that to thank my members,
22 Owen and John, whose terms come to an end, but we
23 are hopeful that maybe we will see them again in
24 2016.

25 I also want to thank all of our

1 professionals who have done a terrific job
2 supporting an enormous amount of work, and most of
3 all to our unsung heroes or heroines, Phyllis and
4 Pat in particular, so thank you all.

5 (Applause)

6 Now, we can move on with some
7 resolutions, and then we will turn to the hearings,
8 which we will hear in the order of 618 Adams, 703
9 Bloomfield, followed by 536 Bloomfield.

10 So, Dennis, our first matter -- which
11 one do you want to do?

12 MR. GALVIN: Let's do 1420 Willow --
13 no, wait. Let's do 26 Willow Court first.

14 CHAIRMAN AIBEL: Fine, good.

15 MS. CARCONE: Voting on this are
16 Commissioner Aibel, Commissioner Grana, Commissioner
17 Murphy and Commissioner Branciforte.

18 So I guess we need a motion to approve
19 26 Willow.

20 COMMISSIONER GRANA: Motion to approve
21 26 Willow.

22 COMMISSIONER MURPHY: Second.

23 MS. CARCONE: Commissioner Grana?

24 COMMISSIONER GRANA: Yes.

25 MS. CARCONE: Commissioner Murphy?

1 COMMISSIONER MURPHY: Yes.

2 MS. CARCONE: Commissioner Branciforte?

3 COMMISSIONER BRANCIFORTE: Yes.

4 MS. CARCONE: Commissioner Aibel?

5 CHAIRMAN AIBEL: Yes.

6 MS. CARCONE: Okay. Done.

7 (Continue on next page)

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HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN
CASE: HOZ-15-17

- - - - - X
RE: 1420 Willow Avenue : SPECIAL MEETING
APPLICANT: 1420 Willow Hoboken, LLC : December 22, 2015
Preliminary & Final Site Plan Review : Tuesday 7:15 p.m.
C & D Variances :
- - - - - X

Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

- Chairman James Aibel
- Commissioner Antonio Grana
- Commissioner Diane Fitzmyer Murphy
- Commissioner John Branciforte
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8 99 S. Wood Avenue
9 Iselin, New Jersey 08830
10 (732) 476-2770
11 BY: MERYL A.G. GONCHAR, ESQ.,
12 Attorney for the Applicant.

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1 CHAIRMAN AIBEL: Want to do 1420?

2 MR. GALVIN: Oh, okay, yes. Let's do
3 1420.

4 Meryl, Ms. Gonchar?

5 MS. GONCHAR: Are you sure you want me
6 to warm you up?

7 (Laughter)

8 MR. GALVIN: Yes. Bob is happy you are
9 going first. Dennis is on the prowl tonight, let me
10 tell you.

11 (Laughter)

12 Listen, I think what happened here, and
13 I just want the Board to be aware in the normal
14 course of my practice, I usually get my resolutions
15 done within a couple days of the night of the
16 hearing.

17 Once I think I have what I consider to
18 be the draft, I normally send it to the attorney
19 that represented the applicant, if it is an
20 approval, or to the objector, if it is a denial to
21 get their input to get some changes for it.

22 In this case, Mr. Bijou is in a hurry
23 to get this resolution done. It has been 30 days.
24 I have 45 days to do a resolution in accordance with
25 the statute.

1 Normally, we were talking about all of
2 the cases we had this year, with very few
3 exceptions, all of the resolutions have been done in
4 30 days. You may not have realized it, but that has
5 been the case.

6 In this one I gave Meryl the resolution
7 within a night, I guess she had 24 hours, and I was
8 here at an ARC meeting, and it made it impossible
9 for me to consider her changes. She gave me about
10 40 changes. I can't agree to do 40 changes.

11 However, she has made an impassioned
12 plea for one item, which I have no problem in making
13 a change.

14 Is there anything else that you think
15 is absolutely critical?

16 If you tell me to make the A's capital
17 letters, I am going to be very --

18 MS. GONCHAR: No. The only other thing
19 I would point out to you is in the initial
20 "Whereas," about halfway down, it speaks about a
21 partial fourth level with a vestibule area, storage
22 and bathrooms.

23 That had all been taken out before we
24 came before the Board, so there really -- other than
25 the elevator. I mean, you are approving a fourth

1 level in the language that isn't really there. I
2 point that out to you. We are not building that --

3 MR. GALVIN: Well, no, not if I agree
4 with you, and we take that out.

5 So if we take that language out, and we
6 are going to take out the language that there would
7 be a maximum occupancy of 150 and replace it with
8 this much more benign language of: On a busier
9 Saturday in the evening, there might be 50 or 60
10 individuals, but the facility could accommodate a
11 hundred to 150 people engaged in climbing and
12 bouldering.

13 I would never use the word
14 "Bouldering," but, you know, I will for you.

15 MS. GONCHAR: Use "climbing. It's just
16 what they were using. I am just quoting the
17 transcript.

18 MR. GALVIN: So is that good?
19 Is there anything else that was
20 critical?

21 MS. GONCHAR: No. If the client needs
22 other changes, we will have to come back to the
23 Board and ask for changes to it later.

24 If they are satisfied with those two
25 changes, we will publish and start the appeal.

1 MS. CARCONE: What page is that on?

2 MR. GALVIN: The first one is on the
3 very first page.

4 MS. CARCONE: I got that one.

5 MR. GALVIN: Hold on a second. I got
6 it.

7 MS. GONCHAR: 5 of 17, the bottom of
8 the page.

9 MS. BANYRA: Meryl, we are looking at
10 your other older version, so maybe not.

11 MS. GONCHAR: I'm sorry. I apologize.
12 I just realized that the pages would be different.
13 It is 7F, if that helps.

14 MR. GALVIN: I agree. 7F. Don't worry
15 about what page it's on.

16 MS. CARCONE: Okay.

17 MS. BANYRA: We are going to add that
18 language.

19 MS. CARCONE: You're going to amend
20 that.

21 CHAIRMAN AIBEL: That's internal
22 occupancy?

23 MR. GALVIN: Yes. It is referring to
24 the gym. I don't know how it transmorphed into a
25 maximum occupancy of 150, but that is our fault. We

1 shouldn't have done that, but it is going to be
2 controlled by the building code, no matter what, so
3 we are not granting you an occupancy load. The
4 occupancy load, it's probably the fire department
5 that's going to do that.

6 MS. GONCHAR: Those were Mr. Kovalcik's
7 words. He said, you know, whatever the fire
8 occupancy is. That was actually what's in the
9 transcript.

10 MR. GALVIN: Okay.

11 MS. GONCHAR: And then follows with the
12 150 --

13 MR. GALVIN: Okay. I made a mistake.
14 Okay.

15 COMMISSIONER MURPHY: Can we talk about
16 occupancy for the roof?

17 COMMISSIONER DE GRIM: We did talk
18 about that.

19 MR. GALVIN: Really what we are doing
20 here, if you guys read the resolution, the
21 resolution is 15 pages long, so --

22 COMMISSIONER MURPHY: Okay. That's
23 fine. I just wanted to make sure that that's not
24 where it's confused --

25 MR. GALVIN: -- it's in between the

1 applicant anticipates a moderate amount of bike
2 traffic along with pedestrian traffic. It is just
3 the general language that came from Mr. Kovalcik.

4 MS. GONCHAR: Kovalcik.

5 THE REPORTER: How do you spell
6 Kovalcik?

7 MS. GONCHAR: K-o-v-a-l-c-i-k, and I am
8 quoting your transcript, so if it is wrong there,
9 it's still wrong.

10 (Laughter)

11 COMMISSIONER DE GRIM: It is
12 consistent.

13 (Board members talking at once)

14 MR. GALVIN: I'm sure I do somewhere
15 else.

16 COMMISSIONER MURPHY: Right. I'm
17 just -- that's all -- I just was --

18 COMMISSIONER BRANCIFORTE: Well, you do
19 mention that the roof deck is no more than 2500
20 square feet. I am guessing the original design was
21 5000, correct, and we cut it in half?

22 MS. GONCHAR: It was cut in half,
23 correct.

24 COMMISSIONER BRANCIFORTE: And at 5000,
25 the occupancy was a hundred, so I am guessing it was

1 going to be cut down to 50, so it should be all
2 right.

3 MR. GALVIN: It's okay, guys?
4 Everybody is good?

5 COMMISSIONER GRANA: Dennis, is there
6 anything substantially different from what we voted
7 on?

8 MR. GALVIN: No, or that I showed you
9 in the resolution. I have given everybody the
10 resolution, and what Meryl is addressing, she has a
11 bunch of things she would like to change, most of
12 them are stylistic.

13 These two were critical. I think the
14 maximum occupancy, I agree with her, I wouldn't want
15 somebody later on saying, oh, no, you can't only
16 have 150. It is whatever the occupancy load is --

17 COMMISSIONER GRANA: Okay. But other
18 than those things, what Ms. Gonchar is really
19 bringing up is just stylistic or language --

20 MR. GALVIN: You know, I mean, we can
21 go back and forth over other things. I don't want
22 to hold up this resolution and hold up this project.
23 I don't think the things that we might disagree on
24 are really going to be material in the future. The
25 plan is the plan.

1 COMMISSIONER GRANA: As long as it's
2 not material.

3 MR. GALVIN: If we go to court, I give
4 you absolute certainty that I can defend this
5 resolution.

6 COMMISSIONER GRANA: Great. Thank you.

7 MR. GALVIN: How about that? You don't
8 get that every day.

9 You are on my side. How do I lose?

10 (Laughter)

11 CHAIRMAN AIBEL: Okay. Are we ready
12 for a motion?

13 MR. GALVIN: Yes.

14 MS. CARCONE: Okay. So it's
15 Commissioners Grana, Murphy, Branciforte and
16 Commissioner Aibel --

17 CHAIRMAN AIBEL: No --

18 MS. CARCONE: -- oh, no, you're not?
19 I'm sorry.

20 COMMISSIONER GRANA: Motion to approve
21 1420 --

22 MR. GALVIN: Only those voting in favor
23 of the resolution can vote on the memorialization.

24 MS. CARCONE: That's right. I am
25 sorry. I did that wrong.

1 So Commissioners Grana, Murphy and
2 Branciforte.

3 COMMISSIONER GRANA: Motion to approve
4 1420 Willow.

5 COMMISSIONER BRANCIFORTE: Second.

6 MS. CARCONE: Commissioner Grana?

7 COMMISSIONER GRANA: Yes.

8 MS. CARCONE: Commissioner Murphy?

9 COMMISSIONER MURPHY: Yes.

10 MS. CARCONE: Commissioner Branciforte?

11 COMMISSIONER BRANCIFORTE: Yes.

12 MS. GONCHAR: Thank you.

13 Have a good holiday.

14 COMMISSIONER GRANA: You, too.

15 (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 testimony 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: 12/28/15
 This transcript was prepared in accordance with
 NJAC 13:43-5.9.

HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN

----- X
RE: 901 Bloomfield Street :
APPLICANT: 901 Bloomfield St., LLC :December 22, 2015
Minor Site Plan Review and C & D :Tuesday 7:25 pm
Variances :
----- X

Held At: 94 Washington Street
Hoboken, New Jersey

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1 CHAIRMAN AIBEL: Okay.

2 Mr. Matule, 901 Bloomfield. We have a
3 resolution.

4 MR. MATULE: Good evening, Mr.
5 Chairman, and Board Members.

6 Robert Matule appearing on behalf of
7 the applicant.

8 I have previously corresponded with Mr.
9 Galvin concerning some of the conditions that were
10 set forth in the resolution. I believe there is a
11 total of about 28, but --

12 MR. GALVIN: Yes, but six or seven of
13 them were my standards.

14 MR. MATULE: There are three conditions
15 that the applicant is objecting to, and one
16 condition that we just want to clarify.

17 In the resolution, Condition 17 talks
18 about the space in the tower being limited to 144
19 square feet, and I just want to make it clear and
20 make sure we are all on the same page. That is the
21 space that is accessed from Unit 5, from the roof
22 deck area of Unit 5. Because in the basement, if
23 you will, in the base of the tower, there is a
24 lavatory, and I believe on the second floor before
25 the tower comes up out of the principal structure,

1 there is also a lavatory space in there, and I
2 wouldn't want this to be misinterpreted as from the
3 basement to the top of the roof, there could only be
4 one space in there, so I just wanted to clarify that
5 point.

6 I mean, that is the way the plans were
7 from the very beginning, the way they were presented
8 to the Board. That was the architect's testimony,
9 so again, I just wanted to clarify that point.

10 Three other conditions. Condition
11 number 13, which requires that the applicant post a
12 performance bond for the historic restoration work,
13 that, and respectfully, is totally unacceptable to
14 the applicant.

15 There are quite a few safeguards built
16 in here. I think Condition 9 talks about the fact
17 that the building is to be constructed as described,
18 and in the event of any change in the plans for any
19 reason, this approval shall be null and void.

20 I think that is pretty strong language.

21 The applicant has done other projects
22 in town. He certainly has the financial wherewithal
23 to do this, but to ask him to post a performance
24 bond, it is just not reasonable.

25 The other specific objection is the

1 Board Engineer's firm is to monitor all exterior
2 construction of all elements on the historic
3 preservation.

4 You know, here again, we have a
5 building department. We have a zoning officer. We
6 have safeguards built into the resolution already
7 regarding the work being done as specified to the
8 Historic Commission and as presented to this Board.

9 Mr. Marchetto is the architect of
10 record, and he has done these projects before.
11 Certainly, if the Board wants to have the engineer
12 go out and check the work, that is the Board's
13 prerogative, but certainly not on my applicant's
14 dime.

15 And number 24, where we talk about the
16 deed restriction being recorded prior to the
17 issuance of a building permit, we are already
18 required to record the resolution prior to the
19 issuance of a building permit, and the applicant has
20 no objections to recording the deed restriction
21 prior to the issuance of a certificate of occupancy
22 since it talks about preservation of the
23 architectural character and the facade of the
24 building post renovation. But to report it now
25 before we start doing the work is not in our opinion

1 reasonable, especially in light of the fact that the
2 resolution is going to be recorded.

3 So those three conditions are
4 problematic for the applicant, and the applicant
5 objects to them being included in the resolution.

6 CHAIRMAN AIBEL: So, Dennis, let me ask
7 you to comment.

8 And, Mr. Matule, I assume we will just
9 walk through the conditions that you are objecting
10 to.

11 MR. MATULE: Sure.

12 MS. CARCONE: Does anybody need copies?

13 MR. GALVIN: Do you have a photo
14 inventory of the complete building, do you have
15 that?

16 MR. MATULE: That has not been
17 submitted yet, so I am assuming that the plans and
18 the resolution would be held until that is
19 submitted.

20 MR. GALVIN: Bob, which condition says
21 that we are recording the resolution?

22 MR. MATULE: I believe it is like --

23 MS. CARCONE: It's 24 -- oh, wait,
24 no --

25 MR. MATULE: -- just bear with me, and

1 I will point it out.

2 MR. GALVIN: Okay.

3 MR. MATULE: Condition number 18, the
4 second sentence.

5 MR. GALVIN: Okay. I kind of agree
6 with Mr. Matule on that point. Okay.

7 Are you guys following?

8 Where is Allen?

9 Allen, are you paying attention?

10 Where are you?

11 UNIDENTIFIED VOICE: He's back here.

12 MR. GALVIN: I can't see him. Come on
13 up.

14 Mary, come up. Come up.

15 Are you guys okay?

16 I just want to make sure everybody is
17 hearing what we are doing.

18 Did you hear what --

19 MR. KRATZ: I heard Mr. Matule's
20 objections.

21 MARY: I will wait over here, too.

22 MR. GALVIN: All right. That's why I
23 asked you up. Okay?

24 MARY: Okay.

25 MR. GALVIN: Did you understand what he

1 is saying is that we are going to record the
2 resolution, so I think the resolution is going to be
3 quite binding. I don't even know if we need the
4 deed restriction beyond the resolution.

5 The reason why we would want the deed
6 restriction is so that it will bind future owners in
7 an extra special way, so I think the CO is fine.

8 MR. MATULE: Yes.

9 My sense of the purpose was that going
10 forward as a condo association or whatever, they
11 will have an ongoing obligation and be bound by that
12 by a deed restriction. But I don't know what
13 purpose it serves in having it recorded before a
14 building permit is issued.

15 MR. GALVIN: Okay.

16 So how do you want to take this, Mr.
17 Chairman?

18 CHAIRMAN AIBEL: Let's take it from the
19 top. Condition 13 is the performance bond, but --

20 MR. GALVIN: What I am going to say to
21 the Board, and I have said to the members of the
22 public outside of the hearing of the Board, that I
23 am concerned about the enforceability of the
24 performance bond in this particular case.

25 I have two concerns: One, that the

1 applicant could take their approval, go to court and
2 get the condition excscinded, which I had happen to
3 me in a case for the Planning Board, where we got a
4 little overboard and put too many conditions in.

5 Then the second concern I have was that
6 there is a tipping point in this case, not that it
7 is my place to talk about the tipping point, but we
8 all want to preserve the building, and I don't want
9 to push this applicant to a point where this is the
10 tipping point, and then we don't save the building
11 in the fashion that we are all working so hard to
12 save it. I don't want our efforts to go up in
13 smoke, so...

14 CHAIRMAN AIBEL: I would only add that
15 Condition 10 also provides some additional comfort
16 to us, because the applicant will provide a
17 geotechnical report to the Board's Engineer for his
18 review and approval prior to commencement of any
19 construction.

20 So perhaps, you know, real problems
21 will be ferreted out in that process obviating the
22 need for a performance bond.

23 MR. MATULE: And the applicant is not
24 objecting to that condition.

25 CHAIRMAN AIBEL: That's fine.

1 So do we have any other comments, Board
2 members?

3 Can you live without a performance bond
4 that may not be enforceable?

5 COMMISSIONER GRANA: I don't have a
6 strong view on the performance bond. Let me put it
7 like that, and that's probably a lack of experience
8 in terms of, you know, what the performance bond
9 actually delivers and how enforceable it really is.

10 We seem to, you know, to the point that
11 we make often on this Board is that what is
12 enforceable are the conditions in the resolution.
13 That's what's enforceable, so I don't have a strong
14 view on it one way or the other.

15 In other words, I will take guidance.
16 If it is your guidance, that it's --

17 MR. GALVIN: I want to avoid --

18 COMMISSIONER GRANA: -- superfluous --

19 MR. GALVIN: -- if Mr. Matule was
20 offering it, I want it. Okay?

21 COMMISSIONER GRANA: Yeah.

22 MR. GALVIN: But it is not being
23 offered. It is being suggested that it is the, you
24 know, it's the poison pill that is going to kill
25 this thing, and I don't want that to happen.

1 COMMISSIONER GRANA: I see that point.

2 MR. GALVIN: And if I could tell you
3 that we have a hundred percent legal ground or that
4 we could -- even if we could enforce this, even if
5 we could say, do this condition, and the judge
6 didn't take it out, then it wouldn't stop this
7 applicant from changing the plan and going back to
8 his Plan B, which is to take the building down, and
9 nobody thinks that that is likely to happen, it
10 probably won't happen, but you never know. I don't
11 know.

12 COMMISSIONER GRANA: But it can happen.

13 MR. GALVIN: Could happen.

14 COMMISSIONER GRANA: Certainly could
15 happen.

16 MR. GALVIN: Could happen. It is in
17 the realm of possibility. It's unlikely.

18 I still think that with the conditions
19 we have, it gets get done, and I'm a subordinate.

20 MR. KRATZ: Allen Kratz, A-l-l-e-n,
21 K-r-a-t-z.

22 The thought behind the performance bond
23 was to avoid a situation in which the conversion and
24 the adaptive reuse, which is certainly
25 understandable proceeds, but then the money runs out

1 for the facade restoration. That is a sequencing
2 issue that was the rationale for asking that some
3 money be set aside, so that there was that money to
4 finish the starting aspect of the project. That was
5 the rationale.

6 If there is some better means of doing
7 it, I think the neighbors would certainly be open to
8 that, but I just wanted to put that rationale on the
9 record.

10 MR. GALVIN: I mean, if there is a
11 failure, it might be an epic failure. If they pull
12 the building down, then they are pulling the
13 building down, and then they are not going to have
14 an approval, and they are going to have to start
15 over.

16 We didn't give them anything -- in
17 other words, we didn't give them anything, based on
18 what I saw during the hearing, their Plan B that
19 they are not building, we are not giving them
20 anything extra. What we are doing is we are
21 cooperating to preserve the facade of the building.

22 MR. KRATZ: I appreciate that, and I
23 understand that this Board has made great effort to
24 do that, and I just wanted to make sure that it does
25 proceed as we wish.

1 CHAIRMAN AIBEL: Well, I think the
2 answer is if they run out of the money, and they
3 have not completed the conditions of this
4 resolution, they will be back before this Board.

5 MR. KRATZ: Thank you.

6 COMMISSIONER DE GRIM: Yeah. I don't
7 know what a surety could do, if they do have
8 problems, so I agree.

9 COMMISSIONER MC ANUFF: It's just
10 taking away money from the project anyway.

11 MR. GALVIN: That might impair the
12 ability to do the project.

13 CHAIRMAN AIBEL: Let's see if we could
14 move on. I think number 19 is the last one, Mr.
15 Matule.

16 MR. MATULE: Yes, Mr. Chairman.

17 CHAIRMAN AIBEL: Let me just offer my
18 comments, Dennis, for what they are worth.

19 I would be comfortable that we change
20 the language to say the Board's Engineer may
21 monitor, and then strike out the additional escrow
22 sentence, so we have the right to monitor, but not
23 at the expense of the applicant.

24 What do you think?

25 MS. BANYRA: So can I just make a

1 suggestion on that?

2 So the Board professionals, it is not
3 unusual for the Board professionals to go out prior
4 to a CO to certify or verify that what was said was
5 going to be done was done.

6 So as long as there is some mechanism,
7 I don't know that -- and I think this condition came
8 about because I think I had suggested it, that the
9 zoning officer and the building department don't
10 necessarily -- the zoning officer happens to be very
11 interested in historic preservation.

12 However, that being said, the building
13 department doesn't usually doesn't care, and it is
14 not bad to have someone that's out there looking for
15 the historic preservation elements that have been
16 decided. So whether it is one or two times or three
17 times, I don't think you need him out there all of
18 the time, but I do think there should be a number of
19 monitoring, and yes, it's typically paid for by the
20 applicant.

21 MR. MATULE: I am only chuckling
22 because I think we are going to have a dozen people
23 monitoring the project and reporting back.

24 (Laughter)

25 MS. BANYRA: I'm going to say a non

1 biased, a non biased opinion, a third-party review
2 then, because I am sure we do have watchdogs in the
3 neighborhood, which, you know, would be helpful as
4 well, but that would be my recommendation.

5 There are many times I've been out,
6 where I have gone to the site, and I've gone to
7 inspect a building, and what was a resolution
8 condition or an augmentation or an accent to a
9 building was never put on.

10 Most of the time, I said, "This wasn't
11 added." And they go, "Oh, okay, we forgot."

12 But some of the other inspectors,
13 that's not what they're looking for. They weren't
14 at the hearing. They don't know the content or the
15 interplay of what the Board has asked and what the
16 public --

17 COMMISSIONER GRANA: I have a suspicion
18 it is not going to happen on this project, but that
19 is just a suspicion.

20 MR. GALVIN: What is going to happen?

21 COMMISSIONER GRANA: What Eileen is
22 describing is not going to happen.

23 MR. GALVIN: Okay.

24 COMMISSIONER GRANA: I have a suspicion
25 that there is going to be many eyeballs attached to

1 looking at the property and alerting the zoning
2 officer if there's an issue.

3 MR. GALVIN: So if we change this to
4 "The Board's Engineer may monitor," are you okay
5 with that, and we will take out the requirement for
6 an escrow, so then we can send Jeff out if we want
7 to. It will be on the --

8 COMMISSIONER GRANA: We send Jeff out
9 if we want to, but the only question is how do we
10 fund that.

11 MS. CARCONE: Well, there's going to be
12 escrow anyway for the bonding --

13 MS. BANYRA: Well, there is always
14 escrow for after approval -- post approval, there's
15 always escrow for post approval. So I don't know
16 what the question is about escrow or non escrow.

17 MR. GALVIN: Your client is worried
18 that we are going to create a --

19 MR. MATULE: Separate escrow --

20 MR. GALVIN: -- boondoggle.

21 MS. BANYRA: I think you could -- I
22 mean, you could probably limit it to like three
23 times, four times, you know, something.

24 I will tell you what ends up also
25 happening. A phone call comes in from somebody. It

1 is going to go to Pat. Pat is going to call the
2 zoning officer. The zoning officer calls me or
3 calls -- it ends up spreading like wild fire, and
4 now we don't have an escrow account, or we don't
5 know what even to do with that.

6 I would rather have somebody look at
7 that, just to -- it is nailed, it's done. There is
8 a clear path of travel, because otherwise the path
9 of travel is like a wild fire.

10 MR. MARSDEN: I was going to say if you
11 decide to put it like on call, where the Board hears
12 something, you know, then they wish my firm to send
13 the historic architect out to look at it, I mean,
14 there are a number of things that are important,
15 which is the windows, you know, preservation of the
16 windows and stuff --

17 COMMISSIONER MC ANUFF: You could get a
18 lot of calls for no reason --

19 COMMISSIONER DE GRIM: Yeah. You're
20 going to get a lot of calls.

21 MS. BANYRA: Well, you can get that any
22 time anybody calls, but I don't know. I would limit
23 it maybe, but personally -- the more -- the most
24 concern would be more the windows, I think than
25 anything else. I think that's a tough one.

1 COMMISSIONER GRANA: I have a question
2 for Mr. Matule --

3 COMMISSIONER MC ANUFF: Why don't you
4 just set milestones about the items that are of
5 concern, that he goes out when the windows are
6 removed or whatever --

7 MS. BANYRA: Whatever are the important
8 critical points.

9 COMMISSIONER MC ANUFF: -- and he goes
10 out for that stuff only?

11 MR. MATULE: I'm sorry?

12 MR. GALVIN: Mr. McAnuff is suggesting
13 that there's like, we set up like, you know, like a
14 construction financing, when this is done, when that
15 is done, just go out to make an inspection.

16 COMMISSIONER MC ANUFF: If there's
17 specific items that are of concern, let Jeff go out
18 for those items only, whatever --

19 MS. BANYRA: Well, it wouldn't be Jeff.
20 It would be a historic preservation, an architect
21 that's specifically trained in that, that could say
22 yes, that's seems to be -- that seems to be they did
23 that correctly, and maybe there is four points, Mr.
24 Matule, or something.

25 MR. MATULE: Well, again, you know, I

1 don't know how you put parameters on that.

2 I certainly can understand that if
3 there is a complaint that the project is not being
4 executed as represented, and one of the Board
5 professionals have to go out and investigate that,
6 and it turns out that that is true, then I could
7 certainly see the applicant having to pick up that
8 cost.

9 But if it is just because somebody who
10 lives down the street thought it wasn't going that
11 way, I don't think my client should have to pay for
12 that, because I have a fear that there is going to
13 be a lot of those phone calls during the course of
14 this project --

15 COMMISSIONER GRANA: I have a question
16 for Mr. Matule. I'm sorry to interrupt.

17 Mr. Matule, I just want to get the
18 spirit of this, if I can use those words.

19 Is the objection from the applicant
20 based around not wanting to have an inspection done,
21 or is it more based around the applicant not wanting
22 to essentially potentially be funding another
23 engineer?

24 MR. MATULE: It is the latter. It is
25 the funding. It is not the inspections. They can

1 do all of the inspections they wish.

2 My client's concern is that this will
3 snowball, and it will be --

4 COMMISSIONER GRANA: So your applicant
5 has their own engineer, and they don't want to fund
6 another engineer?

7 I'm not trying to --

8 MR. MATULE: Correct. We have an
9 architect. We have an engineer. We have people who
10 are going to oversee this project and execute it the
11 way it has been represented.

12 If we are not executing it the way it's
13 represented, then the Board has a whole arsenal of
14 weapons to avail themselves of.

15 COMMISSIONER GRANA: I think the
16 concern is reasonable.

17 MR. GALVIN: How about we reserve, the
18 Board reserves its right to have an inspection of
19 the building?

20 That we can send, like in that number
21 19, you know, we could decide to send Jeff out if we
22 wanted him to go look at the status of the project?

23 CHAIRMAN AIBEL: And if there is money
24 in an escrow, in an existing escrow --

25 MR. GALVIN: We already have escrow, so

1 we're saying --

2 CHAIRMAN AIBEL: -- then if we wanted
3 to deploy it that way, that's fine. But it's the
4 additional escrow that I feel --

5 MR. GALVIN: Well, I mean --

6 COMMISSIONER MC ANUFF: A
7 third-party --

8 MS. BANYRA: I think that's fine --

9 COMMISSIONER GRANA: I am between --
10 I'm between -- I actually understand the applicant's
11 position that he doesn't want another engineer,
12 right?

13 MS. BANYRA: Yeah.

14 COMMISSIONER GRANA: But my concern is
15 there is no money for an inspection at all.

16 MR. GALVIN: Well, let me say this: If
17 we have routine monitoring, that is going to be a
18 big expense --

19 COMMISSIONER GRANA: Right.

20 MR. GALVIN: -- but if we reserve the
21 right to send Jeff because we become concerned, I
22 think we should have that right. And that's a hell
23 of a lot better than asking them to post a
24 performance bond, a one time shot of the engineering
25 firm going out and taking a look and saying --

1 taking a look under the hood and going, "Oh, this
2 project is going way off track," in which case we
3 got a problem, and we got to get you in here, or he
4 comes back and says, "I don't know what everyone is
5 talking about, it's fine. It is like it's close
6 enough, don't worry about it."

7 What do you think?

8 MR. MATULE: And obviously, the
9 applicant is going to pay for that?

10 MR. GALVIN: I don't know under what
11 circumstances we would send him.

12 Yes --

13 MR. MATULE: Okay.

14 MR. GALVIN: -- no different than if
15 somebody doesn't build what they are supposed to do,
16 and we send Jeff out to take a look, and you are
17 going to come back to the Board. You know, he
18 doesn't want to pay for, you know, a one time trip
19 out for the engineer, it's like a two-hour --

20 MS. BANYRA: We do routine inspections
21 anyway. I mean, it is not unusual for us to go do
22 an inspection, so --

23 MR. MATULE: We understand that, and
24 all I am looking for is some parameters on that.

25 MR. GALVIN: Me, personally, I'm

1 thinking, I don't know how long it takes H2M
2 engineers to get to Hoboken. Two hours back and
3 forth?

4 MR. MARSDEN: No. I have an office
5 with the historic architect in Manhattan, and it
6 takes him 20 minutes tops on the Path.

7 MR. GALVIN: Okay. So like two hours
8 to come here, take a look and be able to issue a
9 report, right?

10 MR. MATULE: I don't have a problem if
11 you want to put in language --

12 MR. GALVIN: Well, you know, a letter
13 saying something --

14 MR. MATULE: -- you say the applicant
15 will be responsible for the reasonable costs of same
16 or something to that effect. But, again --

17 MS. BANYRA: It is all about being --
18 it's about reasonable costs.

19 You don't want a money pit. Everybody
20 gets that. I think that's understood, and I don't
21 think that is really the intent. The intent is not
22 to open the door and have unlimited inspections.

23 MR. MATULE: I am sure that is never
24 the intent, but often that's the reality --

25 (Laughter)

1 -- so I am just trying to put some
2 parameters on it. That is all.

3 I understand, and I appreciate your
4 concern, and I am trying to find an equilibrium
5 here.

6 (Board members confer)

7 MR. GALVIN: But we got some other
8 language in here that is important, and I don't want
9 to lose all of it.

10 CHAIRMAN AIBEL: Well, you should keep
11 this in.

12 MR. GALVIN: No. I am saying the
13 Board's Engineer -- the Board reserves the right to
14 send its engineer during the construction to verify
15 the original historic character of the facade is
16 maintained.

17 If the Board's Engineer concludes the
18 construction of any element would risk the
19 destruction of the church facade, the applicant must
20 consult with the Board's Engineer to mitigate the
21 risk and ensure the public benefit.

22 So if Jeff goes out and finds or Jeff's
23 historic guy says, hey, you guys aren't putting the
24 brick up right, you are going to have a
25 consultation, and if you have to, you come back to

1 the Board and tell us what the salve is that we're
2 going to put on this to fix it --

3 MR. MATULE: I think that is a
4 reasonable --

5 MR. GALVIN: -- before we lose more
6 than 50 percent of the --

7 MR. MATULE: Yes.

8 (Laughter)

9 MR. GALVIN: -- okay. That's all. I'm
10 sorry.

11 Does that sound okay?

12 MR. KRATZ: Yes. Reserve the right is
13 good language.

14 MR. GALVIN: Okay, good.

15 CHAIRMAN AIBEL: Bingo.

16 MR. GALVIN: Good?

17 COMMISSIONER GRANA: Yep, good.

18 MR. GALVIN: Everybody else?

19 MARY: Did you clarify for Mr. Matule
20 on 17 --

21 THE REPORTER: I'm sorry. I can't hear
22 you.

23 MR. GALVIN: No. Listen. 17 might
24 have been -- I am not sure what we are doing with
25 17.

1 COMMISSIONER GRANA: Wouldn't the
2 submitted plans speak to 17?

3 MR. GALVIN: They do. Okay. You can
4 tell me why they don't. But one of the things that
5 I have learned since we worked on the resolution is
6 that there is 144 square feet on floors one, two,
7 three, four, and five in the tower, right?

8 MR. MATULE: No.

9 MR. GALVIN: Oh, good. I got it wrong
10 still.

11 Tell me.

12 MR. MATULE: There is -- because the
13 vestibule is part of that space. In the basement
14 unit --

15 MR. GALVIN: Skip the basement unit.

16 MR. MATULE: -- the basement unit --
17 again, it is in the footprint of the tower, there is
18 the lavatory.

19 The first floor in the footprint of the
20 tower is the vestibule.

21 The second floor in the footprint of
22 the tower is another lavatory.

23 The third floor, there's nothing. It
24 is open to below, so it is vaulted, so it's going to
25 have a 20 foot high ceiling in the lavatory.

1 MR. GALVIN: Okay.

2 (Laughter)

3 MR. MATULE: And then on the fifth
4 floor, there is that 144 square foot space that is
5 accessible by walking out the unit across the roof
6 deck and into that space.

7 MR. GALVIN: So the tower space is 144
8 square -- the limited area may be used for
9 residential purposes.

10 So just say the tower space on the
11 fifth floor.

12 MR. MATULE: That's fine.

13 MR. GALVIN: Does that make sense?

14 MARY: Right, but they are using more
15 than 144 square feet is what it's saying for the
16 lavatories.

17 MR. GALVIN: Yes. I got what you are
18 saying, but the lavatories, you know, they are going
19 to be bathrooms, right?

20 MR. MATULE: They are the same size,
21 144 square feet, but they're just on lower floors.

22 MR. GALVIN: What I'm saying, I think I
23 picked up -- I was concerned about the misuse of the
24 tower when I wrote that down. But if it's on the
25 plan, and everybody understands what the space is

1 he's using, then I am not really controlling or
2 correcting something by that language. Even if I'm
3 not -- I'm not even so sure that that needs to be a
4 condition.

5 MARY: Well, basically the whole tower
6 is being used except for the 20 feet in the one
7 unit.

8 MR. GALVIN: I got it. So that must be
9 what I meant, which was those other spaces are
10 either open or are being used for bathrooms.

11 This is the space that might actually
12 be used for habitation, so -- and we are saying that
13 that area is limited to 144 square feet.

14 COMMISSIONER GRANA: The question is,
15 is this condition more helpful or more confusing or
16 are the plans more helpful or more confusing?

17 MR. GALVIN: Personally, I think it is
18 more confusing. I think it is one of the conditions
19 I wrote down to help us, and that it is not
20 necessary, to be honest.

21 Is that okay?

22 MARY: That's right. It is not going
23 to help us.

24 COMMISSIONER GRANA: It's okay.

25 MR. GALVIN: So 17 we are going to

1 delete. Is that okay?

2 MR. MATULE: That makes it perfectly
3 fine.

4 (Laughter)

5 MR. GALVIN: I'm trying to get this
6 train into the station.

7 All right. Everybody good?

8 MR. KRATZ: Yes. Thank you very much.

9 MR. GALVIN: All right.

10 CHAIRMAN AIBEL: Thank you.

11 MR. GALVIN: Do we need a motion to
12 move this resolution?

13 Mr. Matule, great job.

14 Thank you.

15 MS. CARCONE: Grana, Branciforte, Frank
16 and --

17 MR. MATULE: I thank the Board, and I
18 appreciate the cooperation, because I would like to
19 see this building get built.

20 (Laughter)

21 MS. KELLEY: I did have a question, and
22 I apologize.

23 MR. GALVIN: Mary?

24 We don't generally open to the public,
25 Dan. I didn't do anything wrong.

1 Go ahead.

2 MS. KELLY: Mary Kelly, K-e-l-l-y, 925
3 Bloomfield.

4 MR. GALVIN: We made a lot of your
5 changes, not all of them.

6 MS. KELLY: Okay, great.

7 But with respect to the 12-by-12, that
8 was actually in response to a question that I had
9 raised. When Mr. Matule had suggested that that
10 area could be used as a studio or a bedroom or some
11 other space, but it had not been documented in the
12 plan as part of the residential space, so that was
13 why you had put it in, from what I recall during
14 our --

15 MR. GALVIN: Well, I was trying to
16 capture everything as best I could. I wrote
17 everything down.

18 But do you get what I am saying, that
19 the plans don't show that it's 144 square --

20 MR. MATULE: Well, the plans show the
21 space.

22 MR. GALVIN: Yeah, but sometimes the
23 testimony doesn't -- you know, at the time in the
24 heat of the battle --

25 MR. MATULE: Well, I think -- I think

1 Mr. Stieve, the second night of the hearing, talked
2 excessively about it, but --

3 MS. BANYRA: Mary, why don't you show
4 Bob what you are showing, so you guys can look at
5 the same thing?

6 MS. KELLY: It shows there's a
7 12-by-12 -- you had referenced that it was
8 approximately a 12-by-12 space. It appears to be
9 more like a 16-by-15 space. But I had marked that
10 as a studio based upon your --

11 MS. BANYRA: It sounds like it still
12 might be that.

13 MR. MATULE: Okay. I will wait until
14 you are done, and I will try to respond.

15 MS. KELLY: Yeah. It didn't appear to
16 be shown as residential space on the plan, and that
17 is why I did raise the question about it.

18 MR. GALVIN: Okay. But you are okay
19 with the outcome. We'll just take it as a
20 condition --

21 MS. KELLY: Okay. Good.

22 MR. GALVIN: Yes, Dan?

23 MR. THUMPSON: I just have one more
24 small comment, and that is that there are changes
25 that you are making to this resolution obviously.

1 Are you going to redo it with the
2 changes put in before it is passed, so people can
3 look at it and review it?

4 MR. GALVIN: The changes that I got
5 were from Mary. The changes today were from Mary.

6 MR. THUMPSON: Right. But I mean --

7 MR. GALVIN: No other changes were
8 made.

9 MR. THUMPSON: -- whatever ones that
10 are being incorporated --

11 MR. GALVIN: I've been trying to give
12 the copy --

13 MR. THUMPSON: -- and there is some
14 that Mr. Matule was recommending that you seem to
15 be --

16 MR. GALVIN: No, no, no, no, no, no.
17 Let me be clear.

18 MR. THUMPSON: Yeah.

19 MR. GALVIN: I have been trying to get
20 everything out to everybody, and that's hard to do,
21 okay? And I have, I think I have been accomplishing
22 it.

23 The only thing that I got today, which
24 was or in the last 24 hours was from Mary, and I
25 made changes, and I don't have it in front of me,

1 but I changed some of the things that she suggested,
2 and we ran it by Mr. Matule, so he knows what we
3 did. So we didn't take advantage of Mr. Matule, and
4 there's just changes to the body, technical -- you
5 know, just things that were said, that were
6 corrected --

7 MR. THUMPSON: No. But I meant aside
8 from anything else, you explained that Mary's ones
9 were passed on to Mr. Matule --

10 MR. GALVIN: But everything else before
11 that, we got things from Allen, that was given to
12 Bob, and Bob's were given to Allen, and there has
13 been a complete exchange, and Pat has had it in her
14 office the whole time, but I don't have to do that.

15 I don't have to do that at all because
16 the resolution is a deliberative document, which is
17 not disclosable to the public, but I have been
18 disclosing it completely, so everybody felt like I
19 was including everybody.

20 CHAIRMAN AIBEL: What I think Mr.
21 Thumpson's issue is: Are there changes that we
22 agreed on tonight going to be --

23 MR. GALVIN: Oh, yes. Then I didn't
24 understand, yes.

25 CHAIRMAN AIBEL: -- memorialized and

1 not voted on tonight, but circulated and then voted
2 on another night.

3 MR. GALVIN: No, no. We are going to
4 vote on it right now. We're going to amend it. I
5 will correct the resolution to reflect these couple
6 of changes.

7 MR. THUMPSON: Okay. The reason I am
8 suggesting that you do what you were indicating,
9 which is to memorialize it, but don't vote on it
10 until --

11 MR. GALVIN: No, that's --

12 MR. THUMPSON: -- we were able to
13 review it is because changes have been made, and it
14 is not necessarily clear what the combined result
15 is, and so you are passing a resolution that we are
16 not able to --

17 MR. GALVIN: No, I hear you. But,
18 again, it's the Board's document, not the public's
19 document. It is not like a hearing.

20 You are in it. You're in this process,
21 but you wouldn't normally be in the process.

22 I can repeat what the changes are, as
23 if you were a Board member, I could repeat them.

24 CHAIRMAN AIBEL: Why don't you do that,
25 Dennis? Start with 13.

1 MR. GALVIN: Okay. We are going to
2 delete 13 on the performance bond.

3 We are going to delete 17 on the tower
4 space limited to the use of 144 feet square feet.

5 We are going to change 19 to read: The
6 Board reserves the right to send its engineer during
7 the construction to verify the original historic
8 character of the facade is maintained.

9 The balance of 19 is going to be kept
10 in, which says: If the Board's Engineer concludes
11 the construction of any element would risk the
12 destruction of the church facade, the applicant must
13 consult with the Board's Engineer to mitigate the
14 risk and assure the public benefits of the
15 resolution are realized.

16 If the benefits cannot be assured by
17 reasonable means, this approval shall be void, and
18 the applicant shall cease work until an amendment to
19 this resolution is approved.

20 That's all still in the resolution.

21 And then Number 24, I am changing.

22 Instead of the "issuance of a building permit," I am
23 changing it to the "issuance of a CO," and the
24 reason why we are doing that is they are already
25 recording the resolution, so everything else in the

1 resolution is already protected because it's
2 recorded against the lot.

3 MR. MARSDEN: Dennis, I would like to
4 change that. Not "Board Engineer," because that
5 might cause some confusion, the "H2M's architect."

6 CHAIRMAN AIBEL: Well, we are not going
7 to identify a company.

8 MS. BANYRA: The Board's professional.

9 COMMISSIONER GRANA: The Board's
10 professional.

11 MR. MARSDEN: I just don't want people
12 to think I'm going to be doing this.

13 MR. GALVIN: Board's professionals.

14 MS. BANYRA: Put down "the Board's
15 professionals," and then I know who is going to be
16 doing it, so we will send out that person.

17 MR. GALVIN: "The Board's
18 professionals." Okay, Dan?

19 I understand where are you coming from.

20 MR. THUMPSON: No. It's just to be
21 able to review the final product --

22 MR. GALVIN: Tomorrow, we'll do it -- I
23 mean, the next day is Christmas Eve, but we'll get
24 it done very quickly, so within a day or two, you
25 should be able to call and get a copy of this.

1 MR. THUMPSON: No. I understand, but
2 if it's already done, then reviewing it won't make a
3 difference.

4 MR. GALVIN: We are reviewing it out
5 loud. We're all -- we're getting it done. Let's be
6 proactive. Let's move the ball.

7 MR. THUMPSON: Yeah. But you know what
8 I am saying? We have to come here and view it --

9 COMMISSIONER GRANA: I'm ready to make
10 a motion.

11 MR. THUMPSON: Okay. I made my point.

12 MR. GALVIN: Thank you.

13 Sometimes I would agree with you. This
14 time I didn't, but sometimes I would.

15 CHAIRMAN AIBEL: Okay. Ready for a
16 motion.

17 COMMISSIONER GRANA: I'd like to make a
18 motion to approve 901 Bloomfield with the amended
19 resolutions, including those we have heard
20 tonight --

21 CHAIRMAN AIBEL: Do we have second?

22 MR. GALVIN: Amended conditions.

23 COMMISSIONER GRANA: -- amended
24 conditions, excuse me, including those we have heard
25 tonight for the record.

1 COMMISSIONER DE GRIM: Second.

2 MS. CARCONE: Okay. Commissioner

3 Grana?

4 COMMISSIONER GRANA: Yes.

5 MS. CARCONE: Commissioner Branciforte?

6 COMMISSIONER BRANCIFORTE: No, I'm not

7 going to vote.

8 COMMISSIONER MC ANUFF: Hold on -

9 MR. GALVIN: Yeah --

10 (Everyone talking at once)

11 COMMISSIONER MC ANUFF: -- is he one of

12 the --

13 COMMISSIONER DE GRIM: I may have

14 spoken too soon.

15 Am I allowed to vote on this?

16 MS. CARCONE: You are.

17 COMMISSIONER DE GRIM: I thought I did.

18 MS. CARCONE: 901 Bloomfield is

19 Commissioner Grana, Commissioner Branciforte,

20 Commissioner DeGrim and Commissioner Aibel.

21 COMMISSIONER GRANA: So we have a

22 motion and a second.

23 COMMISSIONER BRANCIFORTE: All right.

24 Go ahead. We are ready.

25 MS. CARCONE: All right.

1 Commissioner Grana?

2 COMMISSIONER GRANA: Yes.

3 MS. CARCONE: Commissioner Branciforte?

4 COMMISSIONER BRANCIFORTE: Yes.

5 MS. CARCONE: Commissioner DeGrim?

6 COMMISSIONER DE GRIM: Yes.

7 MS. CARCONE: And, Commissioner Aibel?

8 CHAIRMAN AIBEL: Yes.

9 MS. CARCONE: Approved.

10 CHAIRMAN AIBEL: Thank you, everybody
11 who contributed to this application. I appreciate
12 it.

13 (Applause)

14 MR. GALVIN: Thank you.

15 MR. MATULE: Thank you.

16 Happy holidays.

17 CHAIRMAN AIBEL: Mr. Matule, you are
18 leaving us? You're leaving us?

19 (Laughter)

20 MR. MATULE: I have to phone my wife
21 and tell her to clear the house out.

22 Have a wonderful holiday.

23 Thank you. I appreciate your attention
24 to this matter.

25 Happy holidays.

1 CHAIRMAN AIBEL: Let's just take two
2 minutes and let the room cleared out.

3 (Recess taken)

4 CHAIRMAN AIBEL: Welcome back.

5 MR. GALVIN: We are back on the record.

6 I know you told me about the -- I said
7 something, like where are the photos, and you
8 said --

9 MR. MATULE: I said they had not
10 been -- as far as I know, Mr. Marchetto's office had
11 not done them yet.

12 What I was suggesting is that we hold
13 the plans and the resolution in Pat's office and
14 don't release anything until we submit them because
15 they are an exhibit.

16 MR. GALVIN: Yes.

17 Do you got that?

18 We are not releasing the resolution or
19 any plans until we get the photos, okay?

20 MR. MATULE: And I will follow up in
21 the morning with Mr. Marchetto.

22 MR. GALVIN: Thank you.

23 MR. MATULE: Thank you.

24 CHAIRMAN AIBEL: Thank you.

25 (The matter concluded)

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 testimony 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.
December 28, 2015
This transcript was prepared in accordance with
NJAC 13:43-5.9.

HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN
HOZ-15-12

- - - - - X
RE: 618 Adams Street :
Block 77, Lot 23 :
APPLICANT: John Sivo :December 22, 2015
C Variance :Tuesday 7:50 pm
- - - - - X

Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

- Chairman James Aibel
- Commissioner Antonio Grana
- Commissioner Diane Fitzmyer Murphy
- Commissioner John Branciforte
- Commissioner Owen McAnuff
- Commissioner Frank DeGrim

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

- Eileen Banyra, Planning Consultant
- Jeffrey Marsden, PE, PP
Board Engineer
- Patricia Carcone, Board Secretary

PHYLLIS T. LEWIS
CERTIFIED COURT REPORTER
CERTIFIED REALTIME COURT REPORTER
Phone: (732) 735-4522

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

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Attorney for the Board.

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I N D E X

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WITNESS

PAGE

JANINE GLATT, AIA

66 & 77

JOHN SIVO

75

CHARLES HEYDT

86

E X H I B I T S

EXHIBIT NO.

DESCRIPTION

PAGE

A-1

Photograph

68

A-2

Photograph

69

A-3

Photograph

70

1 that the benefit, which I think is fairly obvious to
2 the owners and to his family, but more importantly,
3 that there is no detriment to any surrounding
4 property.

5 So my first witness is the architect.

6 MR. GALVIN: Raise your right hand.

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

10 MS. GLATT:

11 MR. GALVIN: I can't hear you.

12 MS. GLATT: Yes, I do.

13 J A N I N E G L A T T, AIA, 235 Hudson Street,
14 Hoboken, New Jersey, having been duly sworn,
15 testified as follows:

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

18 THE WITNESS: Janine Glatt

19 MR. GALVIN: Could you spell your last
20 name?

21 THE WITNESS: G-l-a-t-t.

22 MR. GALVIN: All right, Janine. You're
23 going to have to speak up a little, kid.

24 THE WITNESS: We are proposing a --

25 MR. BURKE: Speak louder.

1 THE REPORTER: Yes. I can't hear you.

2 MR. BURKE: You are a licensed
3 architect in the State of New Jersey?

4 MR. GALVIN: I'm sorry. Could you give
5 us three Boards you have appeared before recently?

6 THE WITNESS: Guttenberg.

7 MR. GALVIN: You have to do it louder.
8 Come on, yell at me.

9 THE WITNESS: Guttenberg --

10 MR. GALVIN: Yes.

11 THE WITNESS: -- and the Planning Board
12 in Hoboken a couple months ago.

13 MR. GALVIN: Okay.

14 Mr. Chairman, do we accept her
15 credentials?

16 CHAIRMAN AIBEL: We do.

17 MR. GALVIN: We do. Go ahead.

18 MR. BURKE: Okay. So I just described
19 briefly that we are looking for a ten percent lot
20 coverage variance for a deck that consists of three
21 levels.

22 Before we talk about the deck, I want
23 you to describe the surrounding areas.

24 You have taken some photographs,
25 correct?

1 THE WITNESS: Yes.

2 MR. BURKE: This first photograph I am
3 pointing to, we will mark this as Exhibit A-1.

4 You took these, correct?

5 THE WITNESS: Yes.

6 MR. BURKE: And about how long ago?

7 THE WITNESS: About a couple of months
8 ago.

9 THE REPORTER: I can't hear you.

10 MR. BURKE: You got to speak up. You
11 got to speak up.

12 THE WITNESS: A couple of months ago,
13 September.

14 MR. BURKE: So several months ago, you
15 took this photograph. I am going to mark this as
16 A-1, and I am going to show this to you.

17 (Exhibit A-1 marked.)

18 This is the property immediately to the
19 south.

20 THE WITNESS: Yes.

21 MR. BURKE: Okay. This is the adjacent
22 property to the south.

23 MR. GALVIN: Who took it and when was
24 it taken?

25 MR. BURKE: Several months ago.

1 THE WITNESS: Several months ago.

2 MR. GALVIN: Who took it?

3 MR. BURKE: She's testified. She said
4 she did.

5 MR. GALVIN: All right.

6 MR. BURKE: All right.

7 So the deck that you are looking at,
8 that's the -- you modeled the deck that we proposed
9 on that deck, which is again immediately to the
10 south, correct?

11 THE WITNESS: Yes.

12 MR. BURKE: Okay.

13 And then this is also a photograph that
14 you took at the same time, several months ago?

15 THE WITNESS: Yes.

16 MR. BURKE: All right.

17 This is just other decks in the
18 neighborhood to the south of this site?

19 THE WITNESS: Yes.

20 MR. BURKE: All right.

21 I am going to mark this A-2 and hand
22 this around.

23 (Exhibit A-2 marked.)

24 All right. This is on the same side of
25 the street.

1 Then the last one, this is a photograph
2 that you took, and this is the property immediately
3 to the north, correct?

4 THE WITNESS: Correct.

5 MR. BURKE: Just describe this, and
6 then I will mark this as A-3 and pass this around as
7 well.

8 THE WITNESS: Basically they have 95
9 feet from the front to the back. They have a small
10 open space behind it, so it is almost a hundred
11 percent lot coverage. They also have the small deck
12 above that.

13 MR. BURKE: So this is a one-story
14 extension that has got 95 percent lot coverage. On
15 top of that, there is a deck, and on the top of that
16 there is a small, more or less a Juliet balcony-type
17 of deck, correct?

18 THE WITNESS: Yes.

19 MR. BURKE: Okay.

20 So I am going to mark this as A-3.

21 (Exhibit A-3 marked.)

22 MR. BURKE: All right. Pass that
23 around.

24 All right. And in back, what is
25 immediately to the west of this site?

1 Can you describe that?

2 You don't have a photograph that you
3 can describe that?

4 THE WITNESS: Hopes has a place there,
5 and there is a small church behind that.

6 MR. BURKE: All right.

7 And those are also basically
8 encroaching on what we would call the hole in the
9 donut almost a hundred percent lot coverage, right?

10 THE WITNESS: Yes.

11 MR. BURKE: The yard itself, though,
12 for our applicant is open, correct?

13 THE WITNESS: Yes.

14 MR. BURKE: About how big is that open
15 space right now?

16 THE WITNESS: 40 by 25.

17 MR. BURKE: So 40 by 25 is the hole in
18 the donut for this location.

19 The deck itself, you said it was going
20 to be three levels?

21 THE WITNESS: Three levels.

22 MR. BURKE: How wide?

23 THE WITNESS: 25 by 10.

24 MR. BURKE: 25 feet length --

25 THE WITNESS: By ten feet.

1 MR. BURKE: -- by ten feet wide.

2 And what will the material be made of?

3 THE WITNESS: Of metal.

4 MR. BURKE: So it's similar to the
5 first photograph that was passed around, correct?

6 THE WITNESS: Yes.

7 MR. BURKE: All right.

8 And then there is also some decorative
9 lighting and some other things?

10 THE WITNESS: There's two lanterns on
11 each pier, and they're 60 watt lanterns, so they are
12 not very bright.

13 MR. BURKE: All right.

14 And the access to the deck, can you get
15 to it from the ground level or do you have to get to
16 it from each of the levels?

17 THE WITNESS: Each of the units has
18 separate access to the back.

19 MR. BURKE: All right.

20 So there is no access from the deck
21 directly to the backyard. You would have to go
22 internally to a stairwell and down?

23 THE WITNESS: Yes.

24 MR. BURKE: Okay. And then these right
25 here are doors that would be created?

1 THE WITNESS: Yeah. This was a whole
2 column of windows, and we are taking the windows out
3 and just putting some doors in.

4 MR. BURKE: Okay. Very good.

5 In your opinion, based on what you see
6 in the surrounding area, and we will have a planner
7 discuss this as well, but do you see an impact to
8 the light and air to the adjacent properties?

9 THE WITNESS: No, not at all.

10 MR. BURKE: And why is that?

11 THE WITNESS: Because the southern
12 property is casting a shadow in that area already,
13 so -- and the shadow that would go -- would be on
14 the north side would be very minimal.

15 MR. BURKE: Okay.

16 Any questions?

17 COMMISSONER GRANA: You can go first,
18 John.

19 COMMISSIONER BRANCIFORTE: The
20 application that you submitted, this application,
21 you have some other photos in here. Do you have
22 those photos up there?

23 MS. CARCONE: That is on the elevation
24 certificate.

25 COMMISSIONER BRANCIFORTE: Okay. The

1 elevation certificate.

2 The reason I bring this up, there's no
3 page numbers -- on Page 4 I guess of the elevation
4 certificate, it shows -- well, there you go, the
5 rear elevation picture there in the center.

6 That shadow that is throwing on your
7 building -- that is your building in that picture,
8 right?

9 THE WITNESS: Yes, it is, and that is
10 the shadow from this to that.

11 COMMISSIONER BRANCIFORTE: From that.

12 That is a -- so that shadow, I am
13 supposing, is just going to be continued onto the
14 building, from your deck to the building to the
15 north?

16 THE WITNESS: Yes. You can see it on
17 the next -- on the northern property line --

18 MR. BURKE: You got to speak up.

19 THE WITNESS: -- so on the northern
20 elevation -- the northern property, you can see here
21 that the shadow is already cast into that property
22 from the north property -- I mean the south property
23 is casting a shadow on the north property.

24 MR. BURKE: Not -- our client's
25 property and the property adjacent to the north?

1 THE WITNESS: Yes.

2 MR. BURKE: So the shadow goes on to
3 the subject property and the property one up on
4 the --

5 THE WITNESS: Yes.

6 MR. BURKE: Okay.

7 COMMISSIONER BRANCIFORTE: And this is
8 a one-family, correct?

9 MR. BURKE: It's a two-family.

10 MR. SIVO: There's one bedroom.

11 MR. BURKE: It's a two-family, where
12 there's a one-bedroom apartment, but the family --
13 who occupies the one-bedroom --

14 MR. GALVIN: You can't do that. Guys,
15 you can't do that.

16 MR. BURKE: I will bring John up.

17 This is John Sivo who is going to
18 answer the question. That's S-i-v-o.

19 MR. GALVIN: Raise your right hand.

20 Do you swear or affirm the testimony
21 you are about to give in this matter is the truth,
22 the whole truth, and nothing but the truth?

23 MR. SIVO: I do.

24 J O H N S I V O, having been duly sworn, testified
25 as follows:

1 MR. BURKE: All right. The question
2 was --

3 MR. GALVIN: State your full name for
4 the record. State it anyway. Redo it again. State
5 your name.

6 THE WITNESS: Oh, John Sivo.

7 MR. GALVIN: Spell your last name.

8 THE WITNESS: S-i-v-o.

9 MR. GALVIN: I know we did it.

10 Okay. Thank you.

11 Go ahead.

12 MR. BURKE: All right.

13 The question was: It is a two-family
14 but there's also -- a two-family that's small with a
15 one-bedroom apartment?

16 THE WITNESS: Yes. My daughter
17 renovated. There were three apartments. My
18 daughter renovated one of the apartments and took
19 half of it, so there is a one-bedroom apartment
20 facing just the street. The people -- the person
21 that rents that apartment has no access to the
22 decks.

23 MR. BURKE: And other than that,
24 there's two units --

25 THE WITNESS: I live on the first

1 floor --

2 MR. BURKE: -- a duplex --

3 THE WITNESS: -- she lives on the
4 second and third floor, and a one-bedroom apartment
5 on the second floor.

6 MR. BURKE: All right. So two full
7 units and a one-bedroom apartment?

8 THE WITNESS: It's a two-family
9 house --

10 MS. BANYRA: It is three units. That's
11 three units. Yeah, it doesn't matter how many
12 bedrooms. It's three units.

13 THE WITNESS: It's basically a family
14 operated house. We own it.

15 MR. BURKE: Thank you.

16 J A N I N E G L A T T, AIA, having been previously
17 sworn, testified further as follows:

18 COMMISSIONER BRANCIFORTE: Are
19 three-family units allowed in this zone?

20 MS. BANYRA: It's a 2500 square foot
21 lot, so it would meet the density requirements.

22 COMMISSIONER BRANCIFORTE: Okay.

23 The only other thing I have a question
24 about is on Exhibit 1A, the photo, 1A.

25 I guess it's there -- the right-hand

1 neighbors with decks?

2 I mean, you have that -- the deck that
3 you are proposing is basically the same as the deck
4 to the north --

5 THE WITNESS: Yes --

6 COMMISSIONER BRANCIFORTE: -- I mean to
7 the south.

8 MR. BURKE: To the south.

9 THE WITNESS: -- yes.

10 COMMISSIONER BRANCIFORTE: If I look
11 further down, I see buildings not so much with
12 decks, but smaller balconies.

13 Is there any way you can just sort of
14 shrink these up and maybe push them away from the
15 property line a little bit, so it won't cast such a
16 big shadow on all of the other properties to the
17 north?

18 I mean, do we want -- I guess the
19 question is --

20 THE WITNESS: You would want it to
21 start further over?

22 COMMISSIONER BRANCIFORTE: -- if you
23 push them in and made them less large 25 foot decks,
24 maybe we would -- if we shortened them from 25 feet
25 to whatever, maybe that would help cut down on the

1 amount of shadow being cast to the north.

2 Do you think that is possible?

3 MR. BURKE: Janine, I think you looked
4 at that, and didn't it end up cutting off windows?
5 It was difficult moving the windows --

6 THE WITNESS: He wanted the access to
7 be off the bedroom.

8 MR. BURKE: So that presented a problem
9 as far as cutting them back, because you looked at
10 that, correct?

11 THE WITNESS: Yes.

12 MR. BURKE: And it didn't work because
13 of the alignment of the windows and having access to
14 the decks from what would become a door from the
15 previous window?

16 THE WITNESS: We only got a couple of
17 feet here to be able to do that. It is a very
18 minimal amount of space with shadows being cast --

19 COMMISSIONER BRANCIFORTE: I can't
20 hear. I'm sorry.

21 THE WITNESS: -- it's a very minimal
22 amount of shadow that would be cast, if you
23 shortened the deck here.

24 COMMISSIONER BRANCIFORTE: I know Owen
25 is biting at the --

1 COMMISSIONER MC ANUFF: No. I am
2 asking. The question is: You want something
3 similar to what is shown on Z-3, the south deck, the
4 south existing deck, where it is a little bit off
5 the property line, whether it's a foot or two feet
6 or something?

7 COMMISSIONER BRANCIFORTE: Well, in the
8 past -- I know in the past, sometimes we asked for
9 the decks to be shortened up and moved away from the
10 property lines for a lot of different reasons. One
11 is privacy.

12 COMMISSIONER MC ANUFF: Right.

13 COMMISSIONER BRANCIFORTE: I don't know
14 if privacy really applies in this, because the deck
15 is on both sides to begin with.

16 The other is, I always liked the idea
17 of creating less shadow.

18 COMMISSIONER MC ANUFF: Right. I agree
19 with you. I think it can be done.

20 I mean, it looks to me like on the rear
21 elevation on Z-4, that that is enough space between
22 the window and the edge of the building to pull the
23 deck in, maybe if it's even a foot might help.

24 COMMISSIONER BRANCIFORTE: On what --

25 COMMISSIONER MC ANUFF: On Z-4, the

1 rear elevation.

2 COMMISSIONER DE GRIM: Yeah. And on
3 Z-2, you can see the space --

4 COMMISSIONER BRANCIFORTE: You know, let
5 me --

6 COMMISSIONER DE GRIM: -- before you
7 get to the door --

8 COMMISSIONER BRANCIFORTE: -- this is
9 less than the question. I will try to state this as
10 a question as best I can --

11 MR. GALVIN: But let me jump in here.

12 Maybe I am wrong, but this is somewhat
13 of a simple case. Isn't it simple?

14 I always blow it when I think it is
15 simple. But if it is, why don't we just tell them
16 what we want them to do and let them make the
17 adjustment?

18 COMMISSIONER MC ANUFF: I think what
19 John is asking for is doable based on what I'm
20 looking at on the plans.

21 If he is saying pull it in a little
22 bit, whether -- you could pull it in a foot on each
23 side, so you have a 23 foot deck.

24 COMMISSIONER BRANCIFORTE: And that
25 might help somewhat with shadows. I'm not convinced

1 it's going to help entirely as much as I want.

2 COMMISSIONER MC ANUFF: I don't think
3 you are going to get any more because of the windows
4 and the doors.

5 COMMISSIONER BRANCIFORTE: Well, I am
6 just thinking maybe instead of covering all four
7 windows, it just covers two, or it just covers the
8 three to the north -- or the south rather, and the
9 window to the north is left without a deck access.

10 COMMISSIONER MC ANUFF: I don't know
11 the layout of the interior to say.

12 CHAIRMAN AIBEL: Can I just interrupt
13 for a moment?

14 COMMISSIONER BRANCIFORTE: Go ahead.
15 I'm sorry.

16 CHAIRMAN AIBEL: Can you tell me how
17 the decks, the proposed decks will align with the
18 decks to the south?

19 Are they going to be exactly at the
20 same level?

21 THE WITNESS: They have one level at
22 the bottom that is up a couple of feet, and then
23 they have three decks above that, so --

24 COMMISSIONER DE GRIM: Is that to the
25 south or to the north?

1 THE WITNESS: This is the south side.

2 COMMISSIONER DE GRIM: Okay.

3 What is your question, to the south or
4 the north?

5 CHAIRMAN AIBEL: Yes.

6 THE WITNESS: They wouldn't align
7 perfectly. They would be two feet below each
8 level --

9 MR. BURKE: Because of the window --

10 THE WITNESS: -- and you would have
11 staggered tiered decks on both sides.

12 MR. BURKE: So they couldn't match,
13 right, is what you're saying?

14 THE WITNESS: Right. They wouldn't be
15 aligned. It's right in the mid point --

16 CHAIRMAN AIBEL: Well, the levels --

17 COMMISSIONER MC ANUFF: Oh, the floor
18 levels, no, they're not going to align.

19 COMMISSIONER DE GRIM: The elevation
20 of --

21 CHAIRMAN AIBEL: No, and I think that
22 is a good thing for privacy.

23 COMMISSIONER MC ANUFF: Yes.

24 COMMISSIONER BRANCIFORTE: I don't have
25 any more questions.

1 COMMISSIONER DE GRIM: I have a
2 question.

3 To the south, there is one deck
4 sticking out. How wide is that deck?

5 THE WITNESS: It would be ten feet, so
6 it would be the same as that dimension.

7 MR. BURKE: The difference is there is
8 a ground floor level, and the proposed deck does not
9 have that on our site, right?

10 THE WITNESS: Right.

11 CHAIRMAN AIBEL: So the deck to the
12 north is ten feet as well?

13 THE WITNESS: It is exactly the same
14 dimension.

15 COMMISSIONER DE GRIM: Yeah, all of the
16 decks.

17 CHAIRMAN AIBEL: No. There is a deck
18 to the north.

19 MR. BURKE: Mr. Chairman, I don't know,
20 but I think she was referring to the southern deck.
21 The northern deck --

22 THE WITNESS: The southern deck is this
23 one.

24 The northern decks --

25 MR. BURKE: You're talking here?

1 CHAIRMAN AIBEL: That's right, Mr.

2 Burke.

3 THE WITNESS: -- starts at ten feet and
4 then there is another level above that.

5 CHAIRMAN AIBEL: Is the higher level
6 ten foot?

7 MR. BURKE: Does this measure ten feet,
8 this deck here?

9 THE WITNESS: It is a little -- yes,
10 roughly it would be about ten feet.

11 CHAIRMAN AIBEL: Board members,
12 anything else from the architect?

13 COMMISSIONER MC ANUFF: I am good.

14 CHAIRMAN AIBEL: Mr. Grana?

15 COMMISSIONER GRANA: I have a few
16 questions, but I think everybody else's questions --

17 CHAIRMAN AIBEL: Okay. Let me open it
18 up to the public.

19 Anybody in the public have questions
20 for the architect?

21 Seeing none.

22 COMMISSIONER MC ANUFF: Motion to close
23 the public portion.

24 CHAIRMAN AIBEL: All in favor?

25 (All Board members answered in the

1 affirmative.)

2 MR. GALVIN: I can feel the energy
3 there, guys. That's great.

4 (Laughter)

5 MR. BURKE: I do have a planner who
6 will be very brief, but I would like to bring him
7 up.

8 CHAIRMAN AIBEL: Okay. Thank you.

9 (Board members confer)

10 MR. GALVIN: Raise your right hand,
11 sir.

12 Do you swear or affirm the testimony
13 you are about to give in this matter is the truth,
14 the whole truth, and nothing but the truth?

15 MR. HEYDT: I do.

16 C H A R L E S H E Y D T, having been duly sworn,
17 testified as follows:

18 MR. GALVIN: State your full name for
19 the record and spell your last name.

20 THE WITNESS: Charles Heydt, spelled
21 H-e-y-d-t.

22 MR. GALVIN: Thank you.

23 CHAIRMAN AIBEL: Thank you, Mr. Heydt.

24 Now, could you give us three boards
25 you've appeared before recently as a planner?

1 THE WITNESS: Sure. My first
2 appearance here. I appeared before Morristown,
3 Parsippany, Hackensack, North Bergen, and Paramus --

4 MR. GALVIN: Time out. That's good.

5 MR. BURKE: That's more than three.

6 MR. GALVIN: Mr. Chairman, what do you
7 think?

8 CHAIRMAN AIBEL: No Board in Hudson
9 County?

10 (Laughter)

11 That's all right.

12 THE WITNESS: Well, North Bergen.

13 MR. GALVIN: What's your --

14 CHAIRMAN AIBEL: North Bergen. Thank
15 you.

16 MR. GALVIN: I was going to say what's
17 your planner's license number?

18 No, I'm kidding.

19 THE WITNESS: 6211, full dues, full
20 dues.

21 (Laughter)

22 CHAIRMAN AIBEL: Well done.

23 MR. GALVIN: That's cool, cool.

24 All right. We accept his credentials.

25 Go ahead.

1 MR. BURKE: You have heard the
2 testimony of the architect and you've heard the
3 questions of the Board.

4 I would like you to describe just the
5 benefits that this might provide, and more
6 importantly, to the neighbors, any detriment.

7 THE WITNESS: Certainly.

8 So as it was detailed a little bit
9 earlier by the photos, the site has some outside
10 constraints on it. There is decks to the south of
11 the property.

12 The property to the north of the site
13 has full lot coverage of an existing first floor.

14 To the rear of the property, there is
15 an existing Hopes building, and that has a five foot
16 rear yard setback. So even in the rear of the
17 property, there is constraints.

18 The applicant is trying to provide some
19 outdoor resource on the multiple levels of the
20 building to provide added light and air to the
21 overall development and the existing residential
22 building.

23 So essentially, there is a lot coverage
24 because as the zoning ordinance requires, decks
25 which are permitted to be counted towards the

1 principal coverage on the site, the justifications
2 for a variance of a lot coverage is a bulk variance.

3 You have to identify either the C-1 or
4 C-2 proofs. For this, I offer that the benefits
5 outweigh the negatives. There is added light, air,
6 and open space use for this property, and that there
7 aren't negative impacts that are substantial to
8 adjacent property owners, and that the welfare isn't
9 going to be substantially impaired, also that the
10 zoning ordinance and the zone plan isn't going to be
11 substantially impaired.

12 So those are the positive and negative
13 proof criteria, and I offer that the application is
14 justified and can be granted.

15 MR. BURKE: Thank you.

16 Any questions?

17 CHAIRMAN AIBEL: Board members?

18 COMMISSIONER BRANCIFORTE: So even
19 though this deck is going to cast a shadow on the
20 building to the north and then the next building to
21 the north, so two buildings are going to cast a
22 bigger shadow from this, that is not a substantial
23 impact to the neighbors to the north.

24 The impact for your client, their gain
25 of light and air, because of this deck, kind of

1 outweighs the loss of light and air to the two
2 buildings to the north?

3 THE WITNESS: Well, the building to the
4 north has a full first floor coverage, so they have
5 an extended area and balcony extended off the second
6 floor. And I can take a look, the architect spoke
7 to the shadow coverage, and it wasn't that intense.

8 I mean, this is the west facing wall,
9 and there wasn't going to be that much shadow impact
10 with this proposed deck without it because of the
11 existing conditions on that west elevation.

12 COMMISSIONER BRANCIFORTE: Okay. Now,
13 let me ask you this: The deck goes 25 feet from
14 side to -- property line to property line.

15 If we cut off five feet from the
16 northern side of it, so only the first three
17 windows, we have the door -- maybe you want to
18 switch over to Z-2.

19 THE WITNESS: Okay.

20 COMMISSIONER BRANCIFORTE: Z-2. So now
21 we have four windows -- three windows and a door,
22 one, two three windows.

23 Let's say we cut off the balcony at
24 that third -- instead of going all the way to the
25 third window, it only goes over to the second window

1 now, so the balcony ends say eight feet short.

2 Is that going to substantially lessen
3 your client's benefit of light and air?

4 THE WITNESS: I can't really speak to
5 the structure of it.

6 You know, this has to be built in a way
7 that is fire resistant according to the code and
8 building code of New Jersey, so there is three posts
9 that run horizontal -- vertically up. I don't know
10 if cutting it back impacts any of the structural
11 design, so I wouldn't be the one to --

12 COMMISSIONER BRANCIFORTE: I'm not
13 asking you about structural design.

14 I'm asking you about the impact on
15 your -- on what you testified to about the
16 substantial benefits, the benefits to your client of
17 light and air.

18 THE WITNESS: Yeah.

19 COMMISSIONER BRANCIFORTE: So are they
20 going to get just as much light and air, if the deck
21 is cut five or six feet short on the north side?

22 THE WITNESS: Yeah. I think we are
23 talking about a minimal event when the sun passes
24 just over the western elevation of the building.

25 But then after a certain point, they

1 are going to have full exposure, so there is really
2 only a small window. I don't know the exact number.
3 I didn't do any shadow calculations or whatnot, and
4 I don't think that is warranted in this case because
5 of the small minority of shadow that would be
6 occurring, but it would be from like the 12 o'clock
7 hour into the -- I don't even want to say a number,
8 because I don't know, but --

9 COMMISSIONER BRANCIFORTE: Yeah. I am
10 not really getting an answer to my question.

11 I am just asking if we cut off eight
12 feet, is somehow your client going to lose light and
13 air to their building, are they going to lose
14 substantial benefit of having a balcony out there.

15 THE WITNESS: You know, with five feet,
16 without five feet, there's no way for me to say if
17 they're going to --

18 MR. BURKE: That is a question for the
19 architect, but --

20 MR. GALVIN: No, no. Time out. Time
21 out.

22 Mr. Branciforte, if I am in the wrong
23 place, you stop me.

24 At some point I think the Board's
25 concern with what you're proposing is too large --

1 MR. BURKE: Too large.

2 MR. GALVIN: -- and they want you to
3 make a minor or at least a contributory change, and
4 I think what he is asking the planner is if you take
5 five feet or eight feet off the deck, if I am right,
6 does that change your planning testimony, or would
7 it improve the --

8 THE WITNESS: It wouldn't change my
9 planning testimony. It is still the same.

10 MR. GALVIN: It would lessen the
11 negative impact on the surrounding property owners,
12 right?

13 THE WITNESS: It would, but by how
14 much? Is it a foot?

15 Are you also talking about the, you
16 know, the depth of it --

17 MR. BURKE: Let me say this. The
18 applicant is obviously open minded to making a
19 change to the volume of the deck.

20 But, Commissioner, you made a remark
21 about the shadow for the property to the north and
22 then the property beyond that.

23 The only testimony tonight from the
24 architect was that the southern decks already cast a
25 shadow, and that the additional shadow would be

1 minimal to the property to the north, not one
2 further. So you may believe that, you know, in your
3 mind, but that is not what the testimony was.

4 COMMISSIONER BRANCIFORTE: I guess the
5 testimony I heard was a little different.

6 MR. BURKE: Yeah. Okay.

7 But nevertheless, you know, if the
8 volume or mass of the deck is too large, then the
9 applicant will consider that.

10 MR. GALVIN: Very good.

11 COMMISSIONER BRANCIFORTE: Okay.

12 MR. GALVIN: Mr. Chairman, does anybody
13 else have questions for the planner?

14 COMMISSIONER MC ANUFF: No.

15 MR. GALVIN: Anybody?

16 Everybody good?

17 Do you want to open it up to the
18 public?

19 CHAIRMAN AIBEL: Let me just make a
20 question slash comment.

21 I am not sure I am seeing the benefit
22 to the neighborhood or community. It is a benefit
23 to the owner for sure, but we are working with a
24 zoning code that says 60 percent lot coverage, and I
25 just wanted to make it very clear that, you know, we

1 are very, very mindful of lot coverage variances, so
2 I am struggling, and there may be reasons on this
3 particular case to, you know, veer or move from what
4 is ordinarily our decision to keep as close as
5 possible to the 60 percent lot coverage.

6 That having been said, I am not sure
7 you can tell me why there is a benefit to the
8 community or the neighborhood from these decks.

9 THE WITNESS: There is consistency in
10 this neighborhood.

11 You know, the fact of the matter is
12 that it is an irregular block, you know, especially
13 on this site with what is surrounding it.

14 So to uphold the area wide standard on
15 a site and the surrounding properties that is
16 irregular isn't necessarily an appropriate -- you
17 know, it doesn't fit the mold so to speak.

18 CHAIRMAN AIBEL: Understood. Thank
19 you.

20 Anybody else?

21 Okay. Professionals, any questions?

22 MS. BANYRA: No. I don't have any
23 questions.

24 CHAIRMAN AIBEL: No. Okay.

25 Let me open it up to the public.

1 Does anybody in the public have
2 questions for planner?

3 Please come up.

4 MR. ENGLAND: My name is Richard
5 England.

6 MR. GALVIN: Richard, raise your -- can
7 I put him under oath?

8 CHAIRMAN AIBEL: If you want to.

9 MR. GALVIN: I am going to put you
10 under oath, Mr. England.

11 Do you swear or affirm the testimony
12 you are about to give in this matter is the truth,
13 the whole truth, and nothing but the truth?

14 MR. ENGLAND: I do.

15 MR. GALVIN: You may proceed.

16 MR. ENGLAND: Richard England, 620
17 Adams Street.

18 I adjoin Mr. Sivo's house to the north.
19 I have known Mr. Sivo for approximately 50 years. I
20 think what he is asking for is a continuation of
21 what his neighbors have, and I on the north will get
22 the shadow, but apparently I don't foresee any
23 problem.

24 Thank you.

25 MR. GALVIN: Good. Thanks.

1 CHAIRMAN AIBEL: Thank you, sir.
2 Anybody else?
3 Please come forward.
4 MR. GALVIN: Raise your right hand.
5 Do you swear or affirm the testimony
6 you are about to give in this matter is the truth,
7 the whole truth, and nothing but the truth?
8 MR. VUONSANTO: Yes.
9 MR. GALVIN: You may proceed.
10 State your full name for the record.
11 MR. VUONSANTO: Anthony Vuonsanto,
12 MR. GALVIN: Spell your last name.
13 MR. VUONSANTO: V-u-o-n-s-a-n-t-o.
14 MR. GALVIN: Thank you.
15 Street address?
16 MR. VUONSANTO: 616 Adams Street. I am
17 the property to the south, and I have no objections
18 to the proposal what the Sivos are submitting, so I
19 have no problem with the whole situation.
20 MR. GALVIN: So they are good
21 neighbors, huh?
22 MR. VUONSANTO: They're good neighbors.
23 We all get along.
24 MR. GALVIN: Thank you.
25 CHAIRMAN AIBEL: Thank you. That is

1 great.

2 MS. BANYRA: Chairman Aibel, can I just
3 make one comment?

4 Just on Page Z-3, I don't know if you
5 saw that nobody testified to, there is a percentage
6 of lot coverage that shows what is happening on the
7 adjacent properties, just for your information.

8 I don't know if that is relevant or
9 not, but it's certainly I think relative to the
10 testimony.

11 COMMISSIONER BRANCIFORTE: Which is the
12 subject property here, Lot 23?

13 MS. BANYRA: Right in the middle, yes.

14 COMMISSIONER MC ANUFF: Says proposed.

15 MS. BANYRA: It says, yes, proposed on
16 it.

17 CHAIRMAN AIBEL: Thank you.

18 MR. GALVIN: We already opened it up to
19 the public.

20 Is there anybody else in the public
21 that wants to --

22 CHAIRMAN AIBEL: Does anybody want to
23 comment?

24 I think we have gotten comments.

25 Mr. Burke?

1 MR. GALVIN: Well, before we do this --

2 COMMISSIONER MC ANUFF: You have to
3 close public portion.

4 MR. GALVIN: Yes.

5 Let's close the public portion. Can we
6 do that?

7 COMMISSIONER MC ANUFF: Motion to close
8 the public portion.

9 COMMISSIONER MURPHY: Second.

10 CHAIRMAN AIBEL: All in favor?

11 (All Board members answered in the
12 affirmative.)

13 MR. GALVIN: Somebody help me, if you
14 could, and I'm sorry if I'm speaking out of turn.

15 I have no clue what you want to do with
16 this deck. I don't know if we want to -- I am
17 getting the sense that the Board wants to make it a
18 little smaller, if you are in favor of this case, so
19 somebody should tell Mr. Burke before he wraps up.

20 COMMISSIONER MC ANUFF: I am actually
21 in favor of the way the deck is now.

22 I don't think it's going to be --
23 keeping it at 25 feet is not going to -- or reducing
24 it is not going to really be any benefit to the
25 light and air and everything.

1 I feel the width of it, keeping it this
2 width is consistent with the neighbors, and it's the
3 right thing to do esthetically.

4 MR. GALVIN: Does anybody feel
5 differently than that?

6 CHAIRMAN AIBEL: I think it should be
7 moved a foot off the property line on either side.

8 COMMISSIONER MC ANUFF: Okay. I don't
9 think it's --

10 COMMISSIONER DE GRIM: I will agree to
11 a foot on the property line --

12 COMMISSIONER MC ANUFF: -- yeah, on
13 a --

14 COMMISSIONER MURPHY: I agree --

15 COMMISSIONER DE GRIKM: -- because I
16 think that a foot off the property line looks like
17 it would be consistent certainly with --

18 COMMISSIONER MC ANUFF: With the deck
19 on the south.

20 COMMISSIONER DE GRIM: -- correct.

21 COMMISSIONER MC ANUFF: Okay. I'm fine
22 with that.

23 CHAIRMAN AIBEL: Does anybody see the
24 need for a privacy screen?

25 COMMISSIONER MURPHY: No.

1 COMMISSIONER MC ANUFF: No.

2 COMMISSIONER DE GRIM: No. They all
3 seem to get along.

4 MS. BANYRA: The neighbors are both
5 here saying that they are okay.

6 COMMISSIONER DE GRIM: If they want
7 privacy screens, they can deal with it.

8 MR. GALVIN: The only thing I would say
9 to you for the future is this case is it's perfect
10 and it's great, but you always have to consider that
11 people move and change, and there might be other
12 situations where even though the neighbors love each
13 other, that you should do something because you have
14 to think about the future. I am not saying that is
15 this case. Okay?

16 COMMISSIONER DE GRIM: Okay.

17 MR. GALVIN: Mr. Burke, are you okay
18 with that change of taking off a foot on either side
19 of the deck?

20 MR. BURKE: The applicant has agreed to
21 that.

22 MR. GALVIN: All right.

23 Do you have any other closing statement
24 to make?

25 MR. BURKE: I do not.

1 I mean, it's a simple matter. You have
2 heard from the neighbors, and the applicant is
3 willing to compromise to reduce the volume.

4 MR. GALVIN: It's up to the Board then.

5 CHAIRMAN AIBEL: Okay.

6 COMMISSIONER MC ANUFF: Motion to
7 approve with the condition of one foot from either
8 side.

9 CHAIRMAN AIBEL: Can I have a second?

10 COMMISSIONER DE GRIM: Second.

11 MS. CARCONE: Commissioner Grana?

12 COMMISSIONER GRANA: No.

13 MS. CARCONE: Commissioner Murphy?

14 COMMISSIONER MURPHY: Yes.

15 MS. CARCONE: Commissioner McAnuff?

16 COMMISSIONER MC ANUFF: Yes.

17 MS. CARCONE: Commissioner DeGrim?

18 COMMISSIONER DE GRIM: Yes.

19 MS. CARCONE: And Commissioner Aibel --
20 did I miss somebody -- Commissioner Branciforte?
21 I'm sorry.

22 COMMISSIONER BRANCIFORTE: Yes.

23 MS. CARCONE: And Commissioner Aibel?

24 CHAIRMAN AIBEL: So we have four yes?

25 MS. CARCONE: We have four yes.

1 COMMISSIONER MC ANUFF: We have four
2 yeses.

3 CHAIRMAN AIBEL: And I will be a no.

4 MS. CARCONE: So four yeses, two nos.
5 It's approved.

6 MR. BURKE: Thank you very much.

7 MS. BANYRA: Mr. Burke, we are going to
8 need revised plans, though, reflecting that.

9 MS. CARCONE: You didn't read the
10 conditions.

11 COMMISSIONER BRANCIFORTE: Would you
12 read the conditions?

13 MS. CARCONE: There are none. Sorry,
14 John.

15 MR. BURKE: Thank you.

16 (The matter concluded.)

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C E R T I F I C A T E

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2

3 I, PHYLLIS T. LEWIS, a Certified Court

4 Reporter, Certified Realtime Court Reporter, and

5 Notary Public of the State of New Jersey, do hereby

6 certify that the foregoing is a true and accurate

7 transcript of the proceedings as taken

8 stenographically by and before me at the time, place

9 and date hereinbefore set forth.

10

11 I DO FURTHER CERTIFY that I am neither

12 a relative nor employee nor attorney nor counsel to

13 any of the parties to this action, and that I am

14 neither a relative nor employee of such attorney or

15 counsel, and that I am not financially interested in

16 the action.

17

18 s/Phyllis T. Lewis, CCR, CRCR

19 - - - - -

20 PHYLLIS T. LEWIS, C.C.R. XI01333 C.R.C.R. 30XR15300

21 Notary Public of the State of New Jersey

22 My commission expires 11/5/2020.

23 Dated: 12/29/15

24 This transcript was prepared in accordance with

25 NJAC 13:43-5.9.

HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN
HOZ-15-32

- - - - - X
RE: 703 Bloomfield Street :
Block 206, Lot 2 :
APPLICANT: Gerald P. Heimbuch :December 22, 2015
Variance Review :Tuesday 8:40 pm
- - - - - X

Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

- Chairman James Aibel
- Commissioner Antonio Grana
- Commissioner Diane Fitzmyer Murphy
- Commissioner John Branciforte
- Commissioner Owen McAnuff
- Commissioner Frank DeGrim

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

- Eileen Banyra, Planning Consultant
- Jeffrey Marsden, PE, PP
Board Engineer
- Patricia Carcone, Board Secretary

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10 Attorney for the Applicant.

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I N D E X

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3 WITNESS

PAGE

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5 OSVALDO MARTINEZ, RA

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6

7 GERALD P. HEIMBUCH

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E X H I B I T S

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11 EXHIBIT NO.

DESCRIPTION

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Rendering

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1 CHAIRMAN AIBEL: Mr. Cherami, did I say
2 it right?

3 MR. CHERAMI: Yes. It's Cherami.
4 That's fine.

5 CHAIRMAN AIBEL: Cherami. Thank you.
6 703 Bloomfield Street.

7 MR. CHERAMI: What's that?

8 CHAIRMAN AIBEL: Yes, we're up. 703
9 Bloomfield Street.

10 MR. CHERAMI: Yes, we are.

11 COMMISSIONER GRANA: Okay. We're back
12 on the record?

13 CHAIRMAN AIBEL: We're back on the
14 record.

15 MR. CHERAMI: All right.

16 Nicholas Cherami appearing for the
17 applicant, Gerald Heimbuch.

18 This is 703 Bloomfield Avenue.

19 Some quick notes about the case before
20 I introduce our architect.

21 The applicant is really looking for an
22 addition placed on the top of the property. It is
23 an existing single-family property, three stories.
24 We are looking for a fourth story, and the architect
25 will talk a little bit more about the nuts and bolts

1 of it, but really it is going to be the upper roof
2 deck, as well as a second bedroom in the home.

3 We have got a number of variances
4 before you, but as you will see during the course of
5 the application, the variances really stem from the
6 fact that we have got a conforming use on a
7 nonconforming undersized lot.

8 It is a small house, and it really
9 takes up a hundred percent of the lot itself. The
10 lot is really cut by adjacent properties. The lot
11 itself is small and undersized, and really the only
12 thing that the applicant can do to improve the size
13 and nature of the property is go up. There is
14 really nowhere else to go.

15 What the applicant is proposing here is
16 just that, to build that extra addition on the top
17 of the property, create some green space and some
18 roof deck up there, and give the property a second
19 bedroom.

20 We have available to us this evening,
21 Osvaldo Martinez, who is the applicant's architect,
22 and he's very familiar with the project.

23 If necessary, we have the applicant as
24 well to answer some questions.

25 I think without further adieu, I will

1 call Mr. Martinez, and we will begin.

2 MR. MARTINEZ: Good evening.

3 MR. GALVIN: Raise your right hand.

4 Do you swear or affirm the testimony
5 you are about to give in this matter is the truth,
6 the whole truth, and nothing but the truth?

7 MR. MARTINEZ: I do.

8 O S V A L D O M A R T I N E Z, RA, Icom Architects,
9 LLC, 80 Park Avenue, Hoboken, New Jersey, having
10 been duly sworn, testified as follows:

11 MR. GALVIN: State your full name for
12 the record and spell your last name.

13 THE WITNESS: Osvaldo Martinez,
14 M-a-r-t-i-n-e-z.

15 MR. GALVIN: Could you spell your first
16 name also?

17 THE WITNESS: O-s-v-a-l-d-o.

18 MR. GALVIN: Thank you.

19 And you are an architect?

20 THE WITNESS: Yes, I am.

21 MR. GALVIN: Licesed in New Jersey?

22 THE WITNESS: Yes, I am.

23 MR. GALVIN: Could you kindly give us
24 three Boards you have appeared before recently?

25 THE WITNESS: Here in Hudson County,

1 Jersey City, North Bergen, West New York, Union
2 City.

3 MR. GALVIN: Mr. Chairman, do you
4 accept his credentials?

5 CHAIRMAN AIBEL: We do.

6 MR. GALVIN: Thank you.

7 You may proceed.

8 THE WITNESS: Thank you.

9 MR. CHERAMI: Mr. Martinez, you are
10 familiar with this particular project?

11 THE WITNESS: Yes, I am.

12 MR. CHERAMI: And you are familiar with
13 the architect and some of his goals in creating the
14 additional space on the roof --

15 THE WITNESS: With the owner, yes.

16 MR. CHERAMI: -- oh, with the owner,
17 I'm sorry, I'm sorry, I'm sorry, with the owner.

18 (Laughter)

19 THE WITNESS: Yes.

20 MR. CHERAMI: Okay. Without further
21 adieu, I am just going to ask you to describe as
22 best you can the project for the Board.

23 THE WITNESS: Okay. First of all, this
24 report prepared by EFB Associates is really
25 comprehensive, and it is a really good report. It

1 just about covered everything.

2 MR. GALVIN: Thank you.

3 (Laughter)

4 THE WITNESS: So with that said, I --

5 MR. GALVIN: Oh, wait a minute.

6 (Laughter)

7 THE WITNESS: -- that is my whole
8 presentation.

9 (Laughter)

10 THE WITNESS: No, seriously, it is very
11 well done.

12 Basically we can do this.

13 Again, just to reiterate, I will try to
14 make it as quick as possible. The existing
15 single-family building does cover 100 percent of the
16 lot.

17 I direct your attention to Z-2. Again,
18 three existing stories, and we are proposing a
19 fourth additional story, which will encompass a new
20 master bedroom with a powder room and a shower, and
21 a small roof terrace in the rear.

22 Above that, we propose to have a new
23 roof deck with some green roof area as well.

24 Again, we are just proposing to go
25 straight up on this small, I believe it is 464

1 square foot. The building does cover 100 percent of
2 the lot, but there is no other -- there's no other
3 place for where this can go.

4 CHAIRMAN AIBEL: Mr. Martinez, can I
5 jump in here?

6 THE WITNESS: Yes.

7 CHAIRMAN AIBEL: If you weren't asking
8 for an upper roof deck setback variances on masonry
9 and glazing, you could build as of right?

10 THE WITNESS: No.

11 MR. CHERAMI: No, no. The fact that
12 any construction at all is going on at the top
13 activates a number of the other variances necessary,
14 so we'd be here anyway.

15 CHAIRMAN AIBEL: Okay. So let me just
16 make sure I understand what variances are being
17 sought.

18 MR. CHERAMI: Okay.

19 CHAIRMAN AIBEL: Expansion of a
20 nonconforming use.

21 MR. CHERAMI: Right.

22 CHAIRMAN AIBEL: And what else?

23 MR. CHERAMI: Well, the use itself is
24 conforming, but the expansion of a use on a
25 nonconforming lot is what's going on. Yes, it's a

1 smaller lot area --

2 CHAIRMAN AIBEL: But you are within the
3 height?

4 MR. CHERAMI: Yes --

5 CHAIRMAN AIBEL: You're not seeking
6 height.

7 MR. CHERAMI: -- and we waited on this
8 particular application, because Hoboken was going
9 through an ordinance change based on the height, so
10 this application is, you know, strategically before
11 you today rather than before you prior to the
12 ordinance change, and you can see the submission
13 date.

14 CHAIRMAN AIBEL: Good. I'm sorry to
15 interrupt.

16 THE WITNESS: No problem.

17 Along with the plans that you have in
18 front of you, we also prepared a rendering, and I'll
19 put this before you, so that you see what it would
20 actually look like with actual colors and materials
21 as proposed.

22 MR. CHERAMI: I will just interject.
23 If the Board wants to take a closer look, I will
24 mark it and pass it around.

25 MS. CARCONE: What are you going to

1 mark it?

2 MR. CHERAMI: I will mark it A-1.

3 (Rendering marked Exhibit A-1)

4 THE WITNESS: Do you want to pass it
5 around?

6 COMMISSIONER MC ANUFF: Thank you.

7 MR. GALVIN: All right.

8 Time out. I am sorting myself out.

9 I want to make sure that everybody
10 agrees with me and understands.

11 I am trying to come up to speed, and I
12 was lost for a second. I am going, wow, where is
13 the D variance in this, and there isn't any D
14 variance.

15 MR. CHERAMI: There isn't any D
16 variance.

17 MR. GALVIN: Okay. Here is the thing:
18 Most of the buildings that we see in Hoboken are
19 three or more units. If it was three or more units,
20 and you needed a C variance, it would need a site
21 plan. If it needs site plan, it would go to the
22 Planning Board.

23 MR. CHARAMI: Correct.

24 MR. GALVIN: In this instance, since it
25 is a single-family home, it doesn't require a site

1 plan, but it does need a C1 variance for the relief
2 that they're seeking and multiple Cs for different
3 reasons --

4 MR. CHERAMI: For various reasons.

5 MR. GALVIN: -- but no D really at all,
6 so it would be a majority vote.

7 COMMISSIONER GRANA: I'm sorry.

8 MR. GALVIN: Yes?

9 COMMISSIONER GRANA: But the Cs are
10 really being triggered by the fact that the building
11 itself is covering a hundred percent of its lot, and
12 it's an undersized lot.

13 THE WITNESS: Mostly, yes.

14 MS. BANYRA: Yes.

15 MR. CHERAMI: Yes.

16 THE WITNESS: Correct.

17 COMMISSIONER GRANA: Well, I will ask
18 that as a question then, not as a statement.

19 COMMISSIONER BRANCIFORTE: What was
20 that?

21 MR. GALVIN: I'm not sure about that.

22 MS. BANYRA: You know what, I think the
23 best -- you are probably better to ask that of the
24 planner when he comes up. I mean, I can answer it,
25 but let's let them do their own testimony.

1 COMMISSIONER GRANA: Okay.

2 MR. GALVIN: But any change to this
3 building at a minimum requires a C variance for an
4 expansion of a nonconforming structure.

5 COMMISSIONER GRANA: Right, because it
6 is already covering a hundred percent of its lot.

7 MR. GALVIN: Go ahead.

8 Sorry I interrupted.

9 MR. CHERAMI: Oh, no, that's okay.

10 MR. GALVIN: I wanted to settle myself,
11 so hopefully I helped other people.

12 MR. CHERAMI: Yes, right. It is a
13 plethora of C variances basically because what we
14 are doing knocks us into the box on a bunch of other
15 things.

16 It is a small house. The only place we
17 can go is up, and kind of reading between the lines,
18 it is a one-bedroom house, and we are looking just
19 to add a second bedroom.

20 MS. BANYRA: Mr. Martinez, can you
21 describe -- you have a masonry variance, so can you
22 describe the choice of materials on the top floor
23 that you are adding?

24 THE WITNESS: We wanted to change it
25 up, and it is a design choice. We wanted to use

1 some -- we are thinking some sort of a vertical
2 Hardie Plank, possibly some metal that we are
3 showing there, some sort of an oxidized metal look.

4 MR. GALVIN: You know, when you come
5 before a Board, you have to be certain. You have to
6 have your mind made up as to what you are doing.
7 You are describing it, but it is not something
8 that's still in flux, right?

9 THE WITNESS: Not a hundred percent.
10 It will be --

11 MR. GALVIN: Well, that is what I am
12 saying. Architects always want to hold back because
13 they might get a better idea, but we want to know.
14 We are the Zoning Board. We're granting you
15 variances. We got to know exactly what you are
16 going to do.

17 THE WITNESS: But I think to answer
18 your question, what happens is we are keeping the
19 existing facade, and so this parapet comes up above
20 the first floor, and in order to keep that and keep
21 the cornice and keep the integrity of the existing
22 building, we don't have such a large facade
23 addition.

24 (Board members confer)

25 COMMISSIONER BRANCIFORTE: Is it all

1 right if we just --

2 (Board members confer)

3 MR. GALVIN: The facade is not going to
4 change --

5 MS. BANYRA: The front facade, yes,
6 they are adding -- they have changed the facade
7 masonry material, so the proportions -- we have a
8 requirement that indicates there is a certain
9 proportionality. So when they added this, now they
10 have changed that proportionality, so they do need
11 variances for that, so that is really what the
12 nature of the question was.

13 THE WITNESS: Yes. It's 75. You asked
14 for 75, and we are at 57.

15 COMMISSIONER BRANCIFORTE: Well, you
16 are at 57 for brick, I guess, 21 for the other
17 material, glazing?

18 THE WITNESS: For glazing,

19 COMMISSIONER BRANCIFORTE: And that
20 leaves 22 percent, something like that I think.

21 THE WITNESS: Yes.

22 COMMISSIONER BRANCIFORTE: What is the
23 other 20 percent?

24 I'm lost here. You have glazing, which
25 is the glass, correct?

1 THE WITNESS: Correct.

2 COMMISSIONER BRANCIFORTE: That's 21
3 percent.

4 THE WITNESS: Yes.

5 COMMISSIONER BRANCIFORTE: The wood or
6 whatever you're thinking about there --

7 MS. BANYRA: Hardie Plank is on the
8 plan.

9 COMMISSIONER BRANCIFORTE: -- is
10 60-something percent?

11 MS. BANYRA: 57 percent.

12 THE WITNESS: 57 percent.

13 COMMISSIONER BRANCIFORTE: 57 percent.

14 So that gives us 78 percent, and that
15 leaves 22 percent unaccounted for.

16 I mean, how do we account for the other
17 22 percent of the facade that is not either brick or
18 masonry or glazing?

19 MS. BANYRA: I mean, masonry is wood --
20 excuse me -- it is obviously like a stone-type
21 material, stone, so maybe there is some wood. I
22 mean, you are asking me. I don't know, John, what
23 the other materials there --

24 THE WITNESS: The other materials would
25 be the cornice, the stone around -- the wood around

1 the window, all of the other materials.

2 COMMISSIONER GRANA: I have a question,
3 just kind of following up on Commissioner
4 Branciforte's question -- I think it is following
5 up.

6 Is there a reason why -- well, I will
7 pose it this way.

8 If you look at the block in the context
9 on A-1, right?

10 THE WITNESS: Yes.

11 COMMISSIONER GRANA: I see this picture
12 up here on the upper right-hand corner, and it gives
13 a pretty good photographic, you know, display of the
14 building and the buildings that are near it.

15 Is there a reason why -- would you
16 agree that the majority of these buildings are all
17 masonry material and probably conform?

18 THE WITNESS: Yes.

19 COMMISSIONER GRANA: So is there a
20 reason why the top floor of this new structure -- I
21 mean, just what is the architectural benefit to not
22 having it conform from a masonry standpoint?

23 THE WITNESS: It's a design element to
24 try to match that brick and then have brick again
25 above that existing cornice in consultation with the

1 owner and the design --

2 COMMISSIONER GRANA: I'm sorry. So
3 this material here, is this -- is this clear on the
4 plans --

5 MS. BANYRA: The plans say it's Hardie
6 Plank.

7 COMMISSIONER MC ANUFF: It's Hardie
8 Plank.

9 COMMISSIONER GRANA: This is Hardie
10 Plank?

11 MS. BANYRA: Yes.

12 COMMISSIONER GRANA: And the cornice at
13 the top, the second cornice?

14 MS. BANYRA: I think you should direct
15 that question to --

16 THE WITNESS: That would be a wood or
17 wrapped in --

18 COMMISSIONER GRANA: So this is wood,
19 and this is Hardie Plank?

20 THE WITNESS: -- and an additional
21 wood cornice, yes.

22 COMMISSIONER GRANA: Okay. And that's
23 what is driving the masonry variance is this Hardie
24 Plank?

25 THE WITNESS: Yes.

1 COMMISSIONER GRANA: Okay. Thank you.

2 MS. BANYRA: Mr. Martinez, is there an
3 issue moving the cornice?

4 Is that also one of the questions why
5 you chose to -- you are keeping the lower level and
6 defining it by that cornice line, and then adding
7 the upper level?

8 If you added another level of brick on
9 top of that, would you be looking to moving the
10 cornice, or what would you do with the cornice?

11 This is more of a question.

12 THE WITNESS: That is a good question.

13 When we analyzed the design of the
14 building, we thought that just adding brick above
15 this, above the cornice, just in our opinion,
16 wouldn't be a good design, in my opinion, it just
17 wouldn't look right.

18 You would have the brick, then you have
19 this cornice, and then you would have brick again.

20 The Hardie Plank is a cementitious
21 board. It technically qualifies as concrete.

22 COMMISSIONER DE GRIM: Does it come in
23 different colors?

24 THE WITNESS: Yes.

25 COMMISSIONER DE GRIM: Is there a

1 reason why it is such a distinctly different color
2 than the masonry?

3 THE WITNESS: It is a design choice,
4 and I have to say that when we do these renderings,
5 we try to be as photo realistic as possible, but
6 there is always something lost when it gets plotted
7 out --

8 COMMISSIONER MC ANUFF: I have a
9 question.

10 On the proposed third floor plan, am I
11 to understand that you face it onto the rear roof
12 terrace and the stair bulkhead and go up to the
13 fourth -- the third deck, you have to go outside to
14 access the roof deck, correct?

15 THE WITNESS: Yes.

16 COMMISSIONER MC ANUFF: Okay.

17 That being said, is there an
18 opportunity to, since the stair is essentially an
19 exterior stair at that point, to remove that stair
20 bulkhead so it is not as obtrusive?

21 THE WITNESS: The stair bulkhead, this
22 here?

23 COMMISSIONER MC ANUFF: Right.

24 How high is it?

25 THE WITNESS: This here?

1 COMMISSIONER MC ANUFF: Yes.

2 THE WITNESS: That's about nine feet.

3 COMMISSIONER MC ANUFF: But since the
4 stair is really an exterior stair, can you just have
5 a railing around the opening and not enclose it, so
6 you don't have that piece sticking up?

7 THE WITNESS: Well, this stair going up
8 is part of the stair going down, and then we would
9 have to -- if it's open, we would have to drain it,
10 and it would it be a problem, if that stair was
11 open --

12 COMMISSIONER DE GRIM: You could --

13 THE WITNESS: -- there would be a hole
14 in our roof, and then it would be going down into
15 our stair tower.

16 COMMISSIONER MC ANUFF: Not if the
17 stairs are -- I don't see how that would happen
18 because you're having --

19 THE WITNESS: The stairs going down --

20 COMMISSIONER MC ANUFF: -- right, but
21 it's underneath the one that's going up. So why
22 don't you construct it in a way, so that you don't
23 have that obtrusive thing there?

24 I think that would make it more
25 palatable.

1 THE WITNESS: I don't know how we
2 could, unless we did stairs out of fiberglass or
3 something and completely seal that.

4 MS. BANYRA: Mr. McAnuff, maybe the
5 question is: How far back from the front of the
6 building is the tower also.

7 THE WITNESS: The tower is actually at
8 the rear of the building.

9 MS. BANYRA: Right.

10 So what is the setback, though, in
11 terms of that, because it looks very prominent on
12 the front.

13 THE WITNESS: No. This is the rear,
14 and this is the front. You actually wouldn't see it
15 from the front --

16 MS. BANYRA: So how far is it back from
17 the front parapet --

18 THE WITNESS: -- and it is a glass
19 structure.

20 MS. BANYRA: -- how many feet back is
21 it?

22 THE WITNESS: That would be about a
23 good 15 feet. And then, again, it is four stories
24 up, 15 feet back, so you wouldn't see it from the
25 rear street.

1 CHAIRMAN AIBEL: Who will see it from
2 the rear?

3 THE WITNESS: Yes. You might see a
4 small piece here because this does have a 42-inch
5 parapet.

6 The roof deck has a 42 inch parapet, so
7 at no point will you see the whole thing. You will
8 see four feet of it.

9 CHAIRMAN AIBEL: You are about five
10 feet above the parapet?

11 THE WITNESS: Yes, correct.

12 COMMISSIONER MURPHY: They have a
13 really deep yard behind it --

14 COMMISSIONER BRANCIFORTE: So say it
15 out loud, so everyone can hear it.

16 COMMISSIONER MURPHY: Yes.

17 According to this, the 7th Street yards
18 go back giving it a pretty deep --

19 THE WITNESS: Yes.

20 COMMISSIONER BRANCIFORTE: On Z-1.

21 COMMISSIONER MURPHY: -- part of the
22 donut behind their little piece of property.

23 COMMISSIONER BRANCIFORTE: Yeah.

24 THE WITNESS: This.

25 COMMISSIONER BRANCIFORTE: Hum, yeah.

1 From what I see on your plans on Z-2, it looks like
2 that is only pushed back about 14 feet.

3 In upper left-hand corner, you have a
4 seven foot --

5 THE WITNESS: This piece here?

6 COMMISSIONER BRANCIFORTE: Yeah.

7 The seven foot, that represents where
8 the penthouse starts, the bulkhead starts --

9 THE WITNESS: It is about 14.

10 COMMISSIONER MC ANUFF: 14 feet from
11 the front of the building. I don't know. I just
12 think it is going to be --

13 COMMISSIONER BRANCIFORTE: No. I
14 agree. I mean, it's --

15 COMMISSIONER MC ANUFF: -- it's a
16 visible element I think.

17 COMMISSIONER BRANCIFORTE: -- we are
18 taking a big chance here, because it is such a
19 beautiful block, that that thing sticking up, you
20 say it is not going to be seen from Bloomfield
21 Street --

22 THE WITNESS: No.

23 COMMISSIONER BRANCIFORTE: -- yeah, but
24 that's usually fake for us because it looks like it
25 will be. I mean, I can't --

1 THE WITNESS: No. I understand your
2 concern, because I do show it here. But there is no
3 way that a six foot person, and this is eight feet
4 here, an average six foot person --

5 COMMISSIONER MURPHY: I think you're
6 going to have a problem seeing it. I mean, you'll
7 have a problem seeing it right at Bloomfield, but
8 where you won't have a problem is 7th Street, you
9 know, from the opposite side of the street looking
10 up from the corner.

11 THE WITNESS: Yeah. I don't see you
12 will see it anywhere from Bloomfield.

13 COMMISSIONER GRANA: Could I ask a
14 question for the Board of the architect?

15 We should be very clear on what we are
16 proposing will or will not be seen.

17 What structure will or will not be seen
18 from the street?

19 What part of the structure will or will
20 not be seen, is that what we're --

21 THE WITNESS: The whole thing will not
22 be seen from the street.

23 COMMISSIONER GRANA: Well, we're saying
24 the entire addition will not be seen from the
25 street?

1 THE WITNESS: No, no, no, no --

2 COMMISSIONER MC ANUFF: The bulkhead,
3 the bulkhead.

4 COMMISSIONER GRANA: Just so I'm
5 clear --

6 THE WITNESS: -- maybe I misunderstood.
7 I thought we were just talking about the glass stair
8 enclosure.

9 COMMISSIONER GRANA: Okay. Okay.
10 Thank you.

11 The glass stair enclosure will not be
12 seen from the street.

13 THE WITNESS: Correct.

14 COMMISSIONER GRANA: Thank you.

15 COMMISSIONER BRANCIFORTE: I don't
16 know. You know, it is funny because the other day I
17 was walking down Bloomfield between Third and
18 Fourth, and on the west side of the street somebody
19 just put up a third story much like this building,
20 and it looks beautiful, and I looked at it when I,
21 you know -- I thought it is really nice because it
22 is more traditional. It's not as modern as this.
23 You know, it fits in better with the neighborhood.

24 So I think -- I can't speak for anybody
25 else on the Board, but I think I am hearing that

1 some people may have a problem with the Hardie Board
2 on this, on the character of the street.

3 I understand that you want to kind of
4 make it look a little bit different and make it look
5 maybe a little bit more mod, but that huge pane of
6 glass right there is a big problem.

7 COMMISSIONER GRANA: Can I just follow
8 up on what you said with the question?

9 I was going to ask the question
10 eventually.

11 You are obviously familiar with the
12 block. Would you characterize this block as being
13 of fairly similar architectural styles or a variety
14 of architectural styles?

15 THE WITNESS: Similar.

16 COMMISSIONER GRANA: Would you
17 characterize the block as having similar elements
18 that would comply with, for example, the other
19 buildings on the street, would probably comply with
20 the masonry requirement?

21 Would you say that most of the other
22 buildings on this block will comply and are similar
23 materials or not?

24 THE WITNESS: They do comply. They're
25 all similar materials, yes.

1 COMMISSIONER GRANA: Okay.

2 Would it be possible that this
3 addition, separate from whether there's a hardship
4 or not, whether this addition would stick out as a
5 distinct architectural style?

6 THE WITNESS: Not distinct.

7 We have all seen in Hoboken it could
8 have been copper. We wanted to do something a
9 little bit different and just slightly. The
10 distinction, yes, just a little.

11 COMMISSIONER GRANA: You answered my
12 question.

13 MR. GALVIN: Good.

14 COMMISSIONER GRANA: Okay. Thank you.

15 CHAIRMAN AIBEL: Okay. We sequed
16 quickly into the questions.

17 Are you finished, Mr. Martinez, on your
18 principal testimony?

19 THE WITNESS: Yes.

20 CHAIRMAN AIBEL: Anybody else have
21 questions for the architect?

22 Okay. I just have one quick question.

23 Where is your -- you are saying that
24 the building is going to be 38 feet above what? I
25 am not sure.

1 If the buildings were 40 feet, would it
2 in effect leave about three feet of the bulkhead
3 above what the code allows right now?

4 THE WITNESS: Could you repeat that?

5 CHAIRMAN AIBEL: Yes.

6 I am trying to figure out where 40 foot
7 would align on your proposed drawing.

8 THE WITNESS: Okay.

9 If you look here from grade to the roof
10 level, we have 38 feet, and then there is another
11 three foot six, so 40 feet would be somewhere here.

12 COMMISSIONER MC ANUFF: It is 41 feet
13 six to the top of the new cornice.

14 COMMISSIONER DE GRIM: Right.

15 CHAIRMAN AIBEL: I am looking at your
16 report, Eileen --

17 MS. BANYRA: Yes.

18 CHAIRMAN AIBEL: -- and I am just
19 confused.

20 MS. BANYRA: That's permitted, and 38
21 is what he is has on his plan.

22 CHAIRMAN AIBEL: Okay. So I am losing
23 where the 38 is.

24 THE WITNESS: The 38 is -- well, by
25 definition, roof height is to the top of the flat

1 roof --

2 MS. BANYRA: Right. To the flat roof,
3 exactly. So we are here, which is the flat roof --

4 THE WITNESS: -- which is here the flat
5 roof --

6 MS. BANYRA: -- the cornice is not --

7 THE WITNESS: -- so we are here, which
8 is the flat roof --

9 CHAIRMAN AIBEL: Okay. That should --

10 THE WITNESS: -- from grade to the flat
11 roof, and this is a parapet, it is a 42-inch
12 parapet --

13 COMMISSIONER DE GRIM: And the parapet
14 is being the deck, is that correct?

15 THE WITNESS: Yes.

16 COMMISSIONER BRANCIFORTE: And, again,
17 how tall is the bulkhead?

18 THE WITNESS: The bulkhead from the top
19 of the flat roof or the deck level is an additional
20 nine feet, eight and a half.

21 COMMISSIONER BRANCIFORTE: And that is
22 as low as you can go by code is nine feet?

23 THE WITNESS: We can reduce it by a
24 foot.

25 COMMISSIONER MURPHY: That would be --

1 THE WITNESS: We could reduce that,
2 sure. If that was the Board's pleasure, we don't
3 have a problem with that as long as we get the --

4 CHAIRMAN AIBEL: I'm sorry.

5 COMMISSIONER BRANCIFORTE: Oh, I asked
6 how high the bulkhead was from the roof up, and it
7 was nine feet, and I asked if he could lower it by a
8 foot, and he said he could lower it to eight foot --

9 THE WITNESS: Yes.

10 COMMISSIONER BRANCIFORTE: -- so that
11 would be helpful.

12 CHAIRMAN AIBEL: Mr. DeGrim?

13 COMMISSIONER DE GRIM: Okay. Actually
14 following up from a question before.

15 The stairs go from an exterior deck to
16 an exterior roof terrace. Is that correct?

17 THE WITNESS: Correct. An exterior
18 deck, an exterior roof terrace to a roof deck.

19 COMMISSIONER DE GRIM: Okay.

20 So couldn't those stairs be
21 waterproofed in a manner that wouldn't require them
22 to be covered by the --

23 COMMISSIONER MC ANUFF: That's what I
24 asked --

25 COMMISSIONER DE GRIM: -- I know --

1 old plan. Thank you.

2 THE WITNESS: Yes.

3 MS. BANYRA: Okay. I just realized
4 when I looked at yours, that I have the old plan in
5 front of me.

6 Thank you.

7 (Board members confer)

8 MR. GALVIN: Any other questions from
9 the Board?

10 CHAIRMAN AIBEL: No more questions
11 from the Board?

12 COMMISSIONER GRANA: Not for this
13 witness.

14 MR. MARSDEN: One quick question.

15 CHAIRMAN AIBEL: Okay. Go ahead.

16 MR. MARSDEN: What's the date, the
17 revision date on that plan?

18 THE WITNESS: On this one?

19 MR. MARSDEN: Yeah.

20 THE WITNESS: November 30th.

21 MR. MARSDEN: Okay.

22 CHAIRMAN AIBEL: Let me open it up to
23 the public.

24 Does anybody have questions for the
25 architect?

1 Seeing none.

2 COMMISSIONER MC ANUFF: Motion to close
3 public portion.

4 COMMISSIONER GRANA: Second.

5 CHAIRMAN AIBEL: All in favor?

6 (All Board members answered in the
7 affirmative)

8 CHAIRMAN AIBEL: Thanks.

9 MR. CHERAMI: I'm trying to keep this
10 as straightforward as possible.

11 We can certainly call the applicant if
12 you have any questions specifically for the
13 applicant.

14 MR. GALVIN: You don't have a planner?

15 MR. CHERAMI: We don't have a planner.

16 MR. GALVIN: Okay.

17 (Board members confer)

18 MR. GALVIN: All right. Can I have a
19 one-minute recess without anybody moving?

20 CHAIRMAN AIBEL: Sure.

21 MR. GALVIN: All right. Excuse me.

22 (Recess taken)

23 CHAIRMAN AIBEL: Okay. We are back on
24 the record.

25 MR. CHERAMI: I am going to call the

1 applicant just so he can discuss the project a
2 little bit.

3 CHAIRMAN AIBEL: That's fine.

4 MR. CHERAMI: Are we back on?

5 CHAIRMAN AIBEL: Yes.

6 MR. CHERAMI: Oh, okay. All right.

7 I am just going to call the applicant,
8 Jerry Heimbuch, to the stand. He's a long-time
9 resident of Hoboken, and I'll let him discuss the
10 project a little bit and some of his needs and wants
11 with it, and certainly allow the Board to ask him
12 some questions.

13 MR. GALVIN: Or not, if we don't want
14 to.

15 MR. CHERAMI: Or not.

16 (Laughter)

17 MR. HEIMBUCH: That is fine with me.

18 MR. GALVIN: Raise your right hand.

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

22 MR. HEIMBUCH: I do.

23 G E R A L D P. H E I M B U C H, having been duly
24 sworn, testified as follows:

25 MR. GALVIN: State your full name for

1 the record and spell your last name.

2 THE WITNESS: Gerald Heimbuch,
3 H-e-i-m-b-u-c-h.

4 MR. GALVIN: And your street address?

5 THE WITNESS: 703 Bloomfield.

6 MR. GALVIN: All right. You'd be
7 surprised.

8 (Laughter)

9 THE WITNESS: Okay.

10 So I think, you know, the idea behind
11 the design, which is I think where we are having the
12 difficulty was first to preserve the integrity and
13 the esthetics of the existing structure, right?

14 We didn't want to mess with that, and
15 that is why we left the cornice the way it was while
16 putting the addition considerably distinct from the
17 existing building.

18 If the Board has difficulty with the
19 material that we have chosen to surround the
20 glazing, we are open for that, if that is the major
21 issue.

22 MR. CHERAMI: Jerry, just a little bit
23 about your motivation behind doing this project.

24 THE WITNESS: Sure. It is very simple.
25 Laurie and I both come from large

1 families of six, and we have a lot of visitors, and
2 we would like to have a comfortable place for them
3 to stay with us.

4 MR. CHERAMI: How many bedrooms do we
5 have in the house now?

6 THE WITNESS: One.

7 (Laughter)

8 MR. CHERAMI: How many are we looking
9 for?

10 THE WITNESS: Another one.

11 MR. CHERAMI: Another one.

12 (Laughter)

13 CHAIRMAN AIBEL: I don't think anybody
14 up here is objecting to the gentleman's desire.

15 MR. CHERAMI: I understand.

16 THE WITNESS: I mean, if it's strictly
17 an esthetic issue with the way we designed it, we
18 are flexible on that.

19 CHAIRMAN AIBEL: Did you give any
20 thought to a Mansard front, something that would be
21 more compatible with the neighborhood, because
22 counsel made a good comment earlier. He said that
23 might fit perfectly well on some other block. We're
24 not so sure perhaps that it fits well in this --

25 THE WITNESS: Is a very traditional

1 block, so I think one of the things we could do and
2 it would kind of make it disappear is if the
3 cementitious material here was red brick rather than
4 a gray, I think it would have the same effect.

5 COMMISSIONER GRANA: I think the
6 struggle is with -- we are not really in
7 deliberations yet, but I think the struggle is with
8 the masonry variance. I think that's --

9 COMMISSIONER BRANCIFORTE: You know, a
10 lot of times we start getting our hands into the
11 design aspects --

12 MR. GALVIN: Yeah. We don't want to.
13 I agree. We don't want to design --

14 COMMISSIONER BRANCIFORTE: -- of it,
15 and we could go on forever talking about what colors
16 and stuff like that.

17 COMMISSIONER GRANA: But I am speaking
18 to the masonry variance. That is what's driving
19 this --

20 COMMISSIONER BRANCIFORTE: And
21 that's -- you know --

22 COMMISSIONER GRANA: -- the design
23 element --

24 COMMISSIONER BRANCIFORTE: -- people
25 will stop me on the street and say, "Well, the

1 Zoning Board has no, absolutely no say in the design
2 of a facade."

3 And I say, then why do we have glazing
4 and, you know, facade variances.

5 So we do have some say as to what the
6 look is going to be like.

7 I don't think it is in the character of
8 the rest of the neighborhood. That's for sure.
9 Perhaps if it wasn't gray.

10 I understand what the architect is
11 saying, that brick above the cornice might not look
12 great --

13 MR. GALVIN: But, you know, what I was
14 suggesting to counsel is that you might want to go
15 take another look, you know, rather than have us go
16 to a vote, that you might want to -- we don't really
17 have that luxury too often, because we are so busy,
18 that we have to decide everything up or down.

19 And if you want us to vote on it, I
20 think we can, but I think, you know --

21 CHAIRMAN AIBEL: Could the cornice be
22 moved to the top of the building?

23 MR. MARTINEZ: Well, we thought about
24 that, but again, it would disrupt the scale of the
25 existing building, and we did a drawing like that,

1 but it looked rather odd actually, if you moved the
2 cornice up --

3 COMMISSIONER MC ANUFF: I think it
4 would become an issue, too, with you have to restore
5 what's behind it. You're never going to get that
6 brick to match.

7 MR. GALVIN: Here's the thing. Here's
8 the thing. We have to figure out what we are doing.

9 Are we trying to give the applicant
10 direction to go back and redesign their plan and
11 come back, or at some point we should go into
12 deliberations and make the call.

13 You know, do you see what I am saying,
14 guys? I need your help to balance it out. It's
15 like --

16 COMMISSIONER GRANA: The struggle --

17 MR. GALVIN: -- same thing --

18 COMMISSIONER GRANA: -- the struggle --
19 I mean, the struggle -- I'm not speaking for the
20 Board, I'll just add that the struggle is around the
21 masonry on the top.

22 MS. BANYRA: Mr. Grana, is it also --

23 MR. MARTINEZ: The masonry composition
24 over --

25 COMMISSIONER GRANA: I think -- look,

1 let me just say this, and we're not really
2 deliberating, but the block is in the R-1 District.
3 It is a very conservative district. The block is
4 very contiguous and consistent in its architecture
5 style up and down, on the cross streets, and this is
6 a very different design material, and it will I
7 think certainly stick out on the block. I am only
8 one person, but I think that that is the debate
9 that's going on.

10 COMMISSIONER BRANCIFORTE: Could you
11 hand me that -- I don't know if you want to put it
12 in evidence or not.

13 MR. GALVIN: It is already in evidence.
14 It's in evidence.

15 MR. CHERAMI: You know, if it's
16 appropriate, we could certainly propose a condition.

17 MR. GALVIN: No. Here are your two
18 choices: We are going to vote on it the way it is,
19 or you guys have to go back and reconsider it and
20 come back to the Board. That's fair, right?

21 I am giving you a fair shot.

22 MS. BANYRA: I think, Mr. Grana, if I
23 can just paraphrase or just maybe amplify, I think
24 what you're -- the block consistency is not just the
25 masonry. It's also the patterning of windows. It's

1 counsel said then, you know, in terms of coming --
2 you know, that's not been represented to us in terms
3 of a look.

4 Hypothetically maybe the windows are
5 different than the bigger glass thing. I don't
6 vote. I am just adding --

7 MR. MARTINEZ: I understand.

8 MS. BANYRA: -- I'm trying to give some
9 clarification. That is not being shown to the
10 Board, so --

11 MR. GALVIN: Let me just say where we
12 are at.

13 Do you have anything else you want to
14 say?

15 THE WITNESS: I am good.

16 MR. GALVIN: Okay.

17 Does anybody else have any questions of
18 this witness?

19 COMMISSIONER DE GRIM: Actually I do,
20 and it's following up on questions that Ms. Banyra
21 asked --

22 MR. GALVIN: Go ahead.

23 Mr. Heimbuch, you are still under oath.
24 They have questions for you.

25 THE WITNESS: I'm sorry.

1 COMMISSIONER DE GRIM: I want to follow
2 up on questions that Mr. McAnuff and I have asked.

3 With regard to this glass bulkhead
4 around the stairwell, I understand that the stairs
5 go all the way down, therefore, they cannot be
6 waterproofed.

7 Is there any reason why they can't end
8 at the roof terrace and at the other end of the roof
9 terrace say, a circular stairway or something could
10 be put there that would not require this glass
11 bulkhead at the top and just a railing so as to
12 diminish the visual impact?

13 It would take a little bit out of the
14 roof terrace, but it would still give you all of the
15 deck that you are going to have at the top.

16 THE WITNESS: Yes. We would be open to
17 that.

18 COMMISSIONER DE GRIM: Okay. Thank
19 you.

20 CHAIRMAN AIBEL: Let me open it up to
21 the public.

22 Are there any questions for the
23 applicant?

24 Seeing none.

25 COMMISSIONER MC ANUFF: Motion to close

1 public portion.

2 COMMISSIONER BRANCIFORTE: Second.

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

5 MR. CHERAMI: Thank you.

6 MR. GALVIN: If you want to go forward,
7 closing argument, and then we'll vote --

8 MS. BANYRA: No, no. We didn't take
9 the planner -- oh, you don't have a planner. I'm
10 sorry.

11 (Laughter)

12 MR. GALVIN: No. But you're doing the
13 right thing.

14 MR. CHERAMI: No planner. Fair enough.

15 I mean, I think we have heard extensive
16 testimony from the architect as well as from the
17 applicant.

18 Certainly the applicant feels strongly
19 about this and certainly wants to create that second
20 bedroom on the property, and given the nature of
21 this particular piece of property, the hundred
22 percent lot coverage, the small lot, for lack of a
23 better word, and really having this as the only
24 place he could go, that the applicant really feels
25 strongly about proceeding this evening. Hopefully

1 the Board will agree.

2 Thank you.

3 CHAIRMAN AIBEL: Thank you.

4 Let me open it up.

5 COMMISSIONER BRANCIFORTE: Well, you
6 know, I think the agreement was that they would drop
7 that bulkhead down by a foot, which I think is good
8 news.

9 But you know what's interesting?

10 I really like the rear view facade much
11 better than I like the front view.

12 You know, if we are going to get to
13 design stuff, and I don't know if the Chairman and
14 rest of the Board wants to go there tonight, but my
15 problem is it just doesn't fit in. I'm afraid it
16 doesn't fit in with the character of the block.

17 However, I do see that, you know, I
18 guess there would be some benefit to letting him do
19 something a little bit different, so I am torn. I
20 am up in the air about it. I could go either way
21 right now.

22 MR. GALVIN: No. It doesn't work like
23 that once we go into deliberations. That's what I
24 was trying to --

25 COMMISSIONER MURPHY: And I am pretty

1 torn as well, because I totally understand the need
2 for the addition and the dropping of that stairwell
3 by a foot. It is great, but I know in town that
4 there are additions that have been put up above the
5 cornices. And at first, I can remember thinking
6 that they weren't so -- like they were just too
7 different, like kind of a little Mary Poppins or
8 something like that, but then, you know, they have
9 grown on me because there is a few of them.

10 So I don't know if this would be
11 something that would grow on me as well or if it's
12 just too, too much out of character in the
13 neighborhood.

14 It is a nice building, but the block is
15 more traditional, so I am torn. I don't know.

16 CHAIRMAN AIBEL: Does anybody else wish
17 to comment?

18 COMMISSIONER MC ANUFF: Yes.

19 I think my problem with the project is
20 not the addition. I would be behind the addition.

21 I have a real problem with the
22 esthetics of it. I need to see something more in
23 keeping with the neighborhood, perhaps a slate clad
24 Mansard with dormers on it.

25 And as far as the stair bulkhead, I

1 think that can be eliminated, and a spiral staircase
2 put on the back to go up to the roof. I don't think
3 there's a need for the bulkhead, so I would not
4 support the project in its current form.

5 CHAIRMAN AIBEL: Does anybody else wish
6 to comment?

7 COMMISSIONER GRANA: I'll go.

8 I think the applicant has a very
9 straightforward hardship case, and I think a
10 hardship case is made, and I think that, you know,
11 that certainly from the standpoint of the addition,
12 that's not an issue.

13 I am struggling with the masonry
14 variance on this application, considering its
15 specific location on this block, so I will put that
16 on the record.

17 COMMISSIONER DE GRIM: I have the
18 comments of Commissioner McAnuff especially with
19 regard to the unnecessary stair bulkhead.

20 MR. GALVIN: I need a motion for or
21 against.

22 COMMISSIONER MC ANUFF: Jim, do you
23 have a comment?

24 CHAIRMAN AIBEL: Yes. I am stammering.

25 COMMISSIONER GRANA: Let me ask you a

1 question, Dennis. I'm sorry, Jim, may I?

2 CHAIRMAN AIBEL: Go ahead.

3 COMMISSIONER BRANCIFORTE: Because this
4 isn't a D variance, usually if we see a project and
5 we turn it down, they are not allowed to come back
6 without substantial changes.

7 Does that only apply to D variances or
8 C variances?

9 MR. GALVIN: That applies to all
10 variances, but in this situation, if they change the
11 dynamics of the plan, that is a substantial change.

12 And I'm going to tell you this: Even
13 from my lessons over 20 years of doing this, that if
14 I have a res judicata case, I should still hear it
15 first and then decide if it is res judicata.

16 But in my opinion, if they came back
17 showing three windows or two windows or a Mansard
18 roof or something else on that floor, I think that
19 would be enough of a change that it would not be res
20 judicata.

21 You know, the other thing I will say to
22 you is: If we approve something that is a bummer,
23 we are stuck with it. But if we turn something
24 down, they can come back with another plan, and you
25 can approve it.

1 COMMISSIONER BRANCIFORTE: I'm going to
2 throw this out there, too.

3 Would it be cheaper for them just to
4 withdraw the application at this point and come
5 back?

6 MR. GALVIN: No. Let me just say this.
7 We are to the point where we're voting, and we're
8 voting.

9 Okay. If you are going to stop in
10 deliberations, or they were going to change their
11 mind during deliberations, I think it is a mistake.
12 So once you go into deliberations, there's no hope.
13 You got to make a call, but I wouldn't be that
14 concerned with a negative vote. I wouldn't think
15 that it would stop them from coming back with a new
16 project.

17 CHAIRMAN AIBEL: So I will just add
18 that I would very much like to get behind the
19 project, and I think everybody here expressed what
20 my concerns are as well, though, so let me ask for a
21 motion.

22 COMMISSIONER GRANA: I'll make a motion
23 to deny 703 Bloomfield.

24 COMMISSIONER MC ANUFF: Second.

25 MS. CARCONE: All right. Commissioner

1 Grana?

2 COMMISSIONER GRANA: Yes.

3 MS. CARCONE: Commissioner Murphy?

4 COMMISSIONER MURPHY: Yes.

5 MS. CARCONE: Commissioner Branciforte?

6 COMMISSIONER BRANCIFORTE: Yes.

7 MS. CARCONE: Commissioner Mc Anuff?

8 COMMISSIONER MC ANUFF: Yes.

9 MS. CARCONE: Commissioner De Grim?

10 COMMISSIONER DE GRIM: Yes.

11 MS. CARCONE: Commissioner Aibel?

12 CHAIRMAN AIBEL: Yes.

13 MS. CARCONE: Denied.

14 CHAIRMAN AIBEL: Thank you.

15 (The matter concluded.)

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C E R T I F I C A T E

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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.
This transcript was prepared in accordance with
NJAC 13:43-5.9.

HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN
HOZ-15-30

- - - - - X
RE: 536 Bloomfield Street :
Block 192, Lot 24 :
APPLICANT: 155 6th Realty, LLC :December 22, 2015
D Variance :Tuesday 9:30 pm
- - - - - X

Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

- Chairman James Aibel
- Commissioner Antonio Grana
- Commissioner Diane Fitzmyer Murphy
- Commissioner John Branciforte
- Commissioner Owen McAnuff
- Commissioner Frank DeGrim

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

- Eileen Banyra, Planning Consultant
- Jeffrey Marsden, PE, PP
Board Engineer
- Patricia Carcone, Board Secretary

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1 CHAIRMAN AIBEL: Okay. Mr. Burke?

2 MR. GALVIN: Wait a minute. Time out.

3 I never got to say this before. No, I
4 won't say it on the record.

5 Go off the record.

6 (Discussion held off the record.)

7 CHAIRMAN AIBEL: We're ready to go,
8 Phyllis.

9 MR. BURKE: Mr. Chairman, is this the
10 last matter of the year for this Board?

11 CHAIRMAN AIBEL: It is.

12 MR. BURKE: Well, I'm sorry that I'm
13 bringing this one to you, because this is a very
14 confusing matter.

15 CHAIRMAN AIBEL: Oh, no.

16 (Laughter)

17 MR. BURKE: All right?

18 But I am going to present what I
19 believe we should be presenting, and then Dennis and
20 the Board can react, all right?

21 This is a commercial condo, and my
22 client is going to come forward in a minute, but he
23 has had a very difficult time renting it to anybody
24 because there seems to be confusion on what
25 occupation or what use could be in the space. I

1 have done a lot of digging. It's not for lack of
2 effort, but it is still confusing because the zoning
3 officer has taken certain positions, and I am just
4 going to play this out. But trust me, this has been
5 one for the books, and I think Eileen and Kristin
6 and Dennis would agree.

7 Mike, would you please step up?

8 This is Mike Caracappa.

9 MR. GALVIN: Mike, raise your right
10 hand.

11 Do you swear or affirm the testimony
12 you are about to give in this matter is the truth,
13 the whole truth, and nothing but the truth?

14 MR. CARACAPPA: I do.

15 M I C H A E L C A R A C A P P A, having been duly
16 sworn, testified as follows:

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

19 Michael Caracappa, C-a-r-a-c-a-p-p-a.

20 MR. GALVIN: Okay. Your witness.

21 MR. BURKE: Just a couple of questions.
22 You purchased this commercial condo
23 about when, what was the year?

24 THE WITNESS: In 2014.

25 MR. BURKE: All right. And have you

1 had any tenants in there from that time on?

2 THE WITNESS: I had one tenant in there
3 that was a florist, and they couldn't get the
4 certificate of occupancy because they said it wasn't
5 zoned properly. It was retail.

6 MR. BURKE: Okay.

7 And then there was a second tenant that
8 was an arts class studio-type --

9 THE WITNESS: Yeah, an arts class
10 studio --

11 MR. BURKE: -- right?

12 And that is actually when we made this
13 application. It was the same issue, that you could
14 not get a CO for that use.

15 And so there has never been a tenant in
16 that building?

17 THE WITNESS: Right.

18 MR. BURKE: All right. So you have
19 been carrying that building and nothing has
20 happened?

21 THE WITNESS: Right.

22 MR. BURKE: Okay. All right.

23 Thank you.

24 That's all I have.

25 Any questions of the owner?

1 COMMISSIONER BRANCIFORTE: So it was
2 vacant when you bought it?

3 THE WITNESS: Excuse me?

4 COMMISSIONER BRANCIFORTE: It was
5 vacant when you bought the property?

6 THE WITNESS: The property was a yarn
7 store. They sold yarn. Originally it was an
8 office, and then they sold yarn there, and then they
9 moved out. The property came up for sale, and I
10 negotiated and I bought it.

11 MR. GALVIN: When was that?

12 THE WITNESS: I don't have the exact
13 date --

14 MR. GALVIN: No, no, no --

15 THE WITNESS: This was in 2014.

16 MR. GALVIN: -- 2014.

17 THE WITNESS: Yeah, the beginning of
18 2014.

19 MR. GALVIN: All right. So let me stop
20 you for a second.

21 So the resolution that we have been
22 talking about, the prior approval, you don't know
23 anything about that, right?

24 MR. BURKE: You did not know about the
25 resolution that we discovered?

1 THE WITNESS: No.

2 I had a zoning certificate from Steve
3 Spector when I bought it. It was commercial. It
4 was office and retail. That's what it was zoned
5 for.

6 When I bought it, that was the
7 presumption I bought it under.

8 COMMISSIONER BRANCIFORTE: Gotcha.

9 MR. BURKE: All right.

10 I have a copy of that, so I could hand
11 this to the Board, and I starred the -- and I'll
12 read it into the record:

13 This is a certificate of continuing
14 use. It says: "Continuing use of the commercial,
15 retail, office condo at the above referenced
16 location," and there is other verbiage on it, but
17 that leads me -- and any questions of this
18 witness --

19 MR. GALVIN: No. We still want him for
20 a second. We are still asking him questions.

21 MR. BURKE: -- I will mark this as
22 Exhibit A.

23 I did submit this as part of our
24 package --

25 MS. CARCONE: I have it already.

1 MR. GALVIN: No, that's okay.

2 MR. BURKE: -- I will still submit it
3 as Exhibit A.

4 MR. GALVIN: Let's bring that up and
5 take a look.

6 (Exhibit A-1 marked.)

7 MR. BURKE: So any questions?

8 MR. GALVIN: Now, describe the
9 building -- where is the space that we are
10 particularly focused on?

11 Is the basement space?

12 THE WITNESS: It's the whole unit,
13 upstairs and downstairs. There was upstairs -- this
14 is upstairs, and this is downstairs.

15 MS. CARCONE: We got to mark that.

16 THE WITNESS: When you walk in, there
17 is a mezzanine, and then you got an upstairs with a
18 bathroom and a downstairs.

19 COMMISSIONER DE GRIM: Is the facade
20 with the glass?

21 THE WITNESS: The facade is all glass,
22 but you can see both floors.

23 COMMISSIONER DE GRIM: Right, okay.

24 (Board members confer.)

25 MS. BANYRA: So just for clarification,

1 I think the question was: What are you here about,
2 right here.

3 And I think what you are here about
4 right now is the cellar use, is that not correct?

5 THE WITNESS: Yes.

6 MR. BURKE: Well, hang on, hang on.
7 Let me get to that.

8 MS. BANYRA: Okay, okay.

9 MR. GALVIN: No, no. But the reason
10 why I am trying to peel the union maybe a little
11 different than you were expecting --

12 MR. BURKE: Okay.

13 MR. GALVIN: -- but, you know, that is
14 why I'm saying, I want to try to figure out what --
15 what it is, how do you use it now, how are you using
16 it, or how do you intend to use it, that is no
17 problem, like the second floor you can do retail,
18 office ---

19 MR. BURKE: Call it a mezzanine,
20 because it's not a second floor, and that's
21 important as a distinction. So it is one floor with
22 a mezzanine, and there is a cellar. But if I can
23 continue, I think I can --

24 MR. GALVIN: No, no. Just answer my --
25 answer my -- just stay with me. I am trying to help

1 property. He told me it could be commercial, office
2 or retail, so that opened me up --

3 COMMISSIONER GRANA: Okay.

4 MR. GALVIN: Well, if he was wrong, you
5 know, if he's wrong, it's his problem --

6 THE WITNESS: Right.

7 MR. GALVIN: -- you know, you might
8 have an argument, a legal argument with him, not
9 with the Board. Just because he tells you something
10 doesn't mean that that's what you have.

11 MR. BURKE: No, no. But I think you
12 missed the first half of the question.

13 He produced the continuing CO, which is
14 what I submitted as an exhibit.

15 MR. GALVIN: Okay.

16 COMMISSIONER GRANA: I was just trying
17 to ascertain when this was produced, how it was
18 produced, you know, how -- how it was produced --

19 MR. GALVIN: 2012 when he bought the --
20 yeah -- was that for you or -- is that --

21 (Commissioners talking at once.)

22 MR. GALVIN: -- you said you bought it
23 in '14.

24 THE WITNESS: Well, all right.

25 What happened was, when I got the

1 florist in, he moved in, and it was his obligation
2 to get the certificate of occupancy.

3 When he went down to file it, they said
4 it is only office. Now -- and --

5 MS. BANYRA: Wait a minute.

6 Where was that particular use -- where
7 was the florist kept?

8 Can you show me on the plans where the
9 florist was?

10 THE WITNESS: Yeah. He had like both
11 floors. He had like a walk-in. He had like a
12 counter --

13 MS. BANYRA: Okay.

14 THE WITNESS: -- and then he had
15 upstairs with all the floral decorations --

16 MS. BANYRA: And then the mezzanine.

17 THE WITNESS: -- yeah. And then he had
18 plants downstairs.

19 MS. BANYRA: In the cellar?

20 THE WITNESS: In the cellar, yes.

21 MS. BANYRA: Okay. Gotcha.

22 Thank you.

23 Keep going then.

24 MR. GALVIN: Now, in the resolution and
25 I am looking at it, and in the second "whereas," it

1 says that you are expanding the existing commercial
2 office space at the rear of the first floor of the
3 premises into the cellar space below.

4 MR. BURKE: Correct.

5 MR. GALVIN: So that means commercial
6 office space.

7 What do you want? Is that the way you
8 want to use the cellar?

9 MR. BURKE: Well, I believe that
10 when -- and this gets into some exhibits that I have
11 and so forth, but in an R-1 District, retail is a
12 permitted use.

13 I have the definition of retail,
14 business or service. All of these florists,
15 everything is permitted. So if you meet the
16 criteria, 196-33, which is a three-prong test, then
17 all of these uses should be permitted, so when
18 the --

19 MR. GALVIN: I don't agree with that.

20 COMMISSIONER GRANA: No, I don't agree
21 with it.

22 MR. GALVIN: Sorry.

23 COMMISSIONER GRANA: If you are quoting
24 196-33, are there other commercial properties on the
25 block?

1 MR. BURKE: Well, see, there has to be
2 an Adam and Eve. You know, there has to be a couple
3 on the block to go from, and they were COs for
4 commercial retail, so I don't think we have to go
5 through that -- we met the test by the CO. That's
6 what I believe, because there has to be -- in other
7 words, it would never end.

8 Every time you had a tenant vacating a
9 spot, you would say, well, now you have to go back
10 because you have a vacancy. It's what the CO reads,
11 and what the zoning certificate reads, and that
12 reads commercial, retail or office.

13 MR. GALVIN: The resolution says
14 commercial -- the resolution here says commercial,
15 office. It doesn't -- the word "retail." It's not
16 there.

17 Now, I am going to say this, so
18 everybody understands it, and I've been trying to
19 tell this to Mr. Burke -- listen, let me finish.
20 One second.

21 The call is not Dennis Galvin's. The
22 call is the Board's. Okay?

23 I don't agree, though, generally with
24 the argument that -- it may be that the Board
25 intended retail in this location, but I don't know

1 if I agree with the interpretation that Mr. Burke is
2 putting forth as to the use of commercial, retail
3 and office --

4 COMMISSIONER GRANA: I just --

5 MR. GALVIN: -- and let me just give
6 you another shortcut.

7 If you thought it was reasonable to
8 have retail here, whether it's permitted or not, you
9 could grant them a variance for retail use --

10 COMMISSIONER GRANA: You could.

11 MR. GALVIN: -- and we can bypass the
12 aggravation --

13 COMMISSIONER GRANA: We could.

14 What resolution are we referring to?

15 MR. GALVIN: The one from --

16 MS. BANYRA: The use variance, the
17 resolution --

18 MR. GALVIN: -- 2009.

19 COMMISSIONER GRANA: The use variance
20 resolution from 2009. Okay.

21 It specifies office --

22 MR. GALVIN: Commercial, office. It
23 doesn't say "retail."

24 MS. BANYRA: In the cellar.

25 COMMISSIONER GRANA: -- commercial,

1 office, not retail --

2 MS. BANYRA: In the cellar, in the
3 cellar.

4 COMMISSIONER GRANA: -- in the cellar.

5 MR. GALVIN: In the cellar, so it says
6 specifically that the cellar is going to be used.

7 CHAIRMAN AIBEL: That was the issue.

8 MR. BURKE: I'm not sure that that's
9 the issue. I'm not sure if the issue is the
10 existing 500 feet and the cellar of 300 feet or
11 whether it's the entire the 800 feet --

12 MS. BANYRA: Can I --

13 CHAIRMAN AIBEL: It's an application to
14 expand the existing commercial office space.

15 MR. BURKE: Well, that is what the
16 applicant -- Mr. Chairman, that's what the
17 application was, but that was done months before
18 some of these things were discovered. But let me
19 point out one thing.

20 In the definition in the ordinance of
21 commercial use, it says: "This use category
22 includes retail and personal services and
23 establishments."

24 So the retail use subsumed in
25 commercial.

1 MR. GALVIN: It's the Board's call,
2 not mine, and Eileen has --

3 MS. BANYRA: I have done a lot of
4 research. We have had a lot of conversations on
5 this, so maybe I can kind of summarize a few things.

6 CHAIRMAN AIBEL: Please.

7 MS. BANYRA: So the resolution from I
8 think it was 2009, the applicant came in with a core
9 use variance. And why they came in for a use
10 variance was because they wanted to use the cellar
11 for something other than storage. That is what the
12 resolution said. That is what -- a cellar is not
13 allowed to be used for anything except storage.

14 The resolution reads they got approval
15 to put an office in the cellar. Any use put down
16 there would require a use variance.

17 When Mr. Burke came to us on this
18 application, he is in the R-1 District, the R-1 does
19 permit retail. It does permit -- and "retail" is
20 defined, includes offices and other things in that
21 definition.

22 When he came to -- when we spoke with
23 him on it, I said to him that I thought that he had
24 to go back to the Board because what they want to do
25 is use the cellar for something other than --

1 broaden the category to office. Now, while the
2 defi --

3 MR. BURKE: No, not -- you said "to
4 office." You meant "from office."

5 MS. BANYRA: From office, excuse me.

6 MR. BURKE: Right.

7 MS. BANYRA: So while retail is
8 permitted in the R-1 zone, an office is permitted in
9 the R-1, nothing is permitted in the cellar.

10 Why they have the cellar use as office
11 and why it's permitted is because it's permitted by
12 a use variance.

13 They are here before us now because
14 they want to broaden that, I'm going to say,
15 category from office to let's just say retail, so
16 the whole building -- say the whole first floor
17 could be office or the whole first floor and cellar
18 could be retail.

19 That to me is in a nutshell what we're
20 doing tonight. It's whether or not -- because
21 nothing is permitted. Yes, the definition goes back
22 and forth. But the minute we change what the
23 definition said from office, I think it is a
24 conservative call maybe, but I don't think you can
25 just put retail in there, especially when it was

1 approved by a use variance, so that is why -- so
2 that's why you're listening to this tonight.

3 COMMISSIONER GRANA: Okay.

4 MR. GALVIN: And there are two ways for
5 the applicant to get what they need. One is you
6 agree that retail was intended in this original
7 approval, or two, you could grant them a variance to
8 have retail in that space.

9 MS. BANYRA: Retail in that space,
10 yeah.

11 MR. BURKE: And along those lines, I am
12 going to read some of the provisions in the
13 resolution. This is Page 3, Paragraph 4:

14 "The applicant has requested a D-1
15 variance to permit expansion of existing commercial
16 slash office space" --

17 MR. GALVIN: What was it? What was it
18 at the time?

19 MR. BURKE: At the time it was a talent
20 office, one of those talent scout offices and a
21 commercial real estate office. They shared space,
22 so it was an office at the time. But when they made
23 the application, it said "expand existing
24 commercial/office space at the rear."

25 So I believe the intent of the

1 resolution of the Board at that time was not to
2 limit the cellar 300 feet to office, but to include
3 other uses that were permitted uses.

4 So I would agree with Ms. Banyra. If
5 we were asking to expand a nonconforming use, but
6 we're asking just to allow the permitted uses that
7 are allowed in the R-1 Zone to be included in the
8 cellar. That is why we are here.

9 CHAIRMAN AIBEL: But the certificate of
10 continuing use that you provided us, Mr. Burke,
11 basically states that the continuing use of the
12 commercial, retail, office condo at the
13 above-referenced location at the Drake Talent
14 Booking Office, City Life Realty will remain as a
15 co-tenant in this space. No alteration shall be
16 made. There is no change to the existing uses in
17 the building.

18 I think that is reasonably clear that
19 certainly the zoning officer at the time allowed the
20 continuing use of an office.

21 MR. BURKE: Correct.

22 COMMISSIONER MURPHY: Right.

23 MR. BURKE: But, Mr. Chairman, as I
24 said, office is one of the uses of retail. It's one
25 of the permitted uses --

1 CHAIRMAN AIBEL: No --

2 MR. BURKE: -- so, you know, I guess my
3 belief, and maybe this is where we need to discuss
4 this issue, my belief is that if you go in with any
5 of those uses under retail, you do not have to come
6 before a Board. You just have to go and get a CO,
7 because if not, every time there is a tenant change,
8 whether it's a florist, a candlestick maker, a
9 dental office, that person has to file an
10 application, and I don't believe that is the intent
11 of the ordinance.

12 I believe the intent of the ordinance
13 is to say retail is a permitted use in the R-1 Zone
14 subject to three conditions.

15 This application meets those
16 conditions. It's less than a thousand square feet
17 of service area. It is on one floor and a cellar,
18 which is also allowed, and it is originally a
19 commercial unit, so it does not have to meet the
20 third prong of two existing retail uses on the
21 block.

22 MR. GALVIN: Let me just say this. Oh,
23 I'm sorry. I don't want to cut you off.

24 COMMISSIONER MURPHY: No. Isn't it
25 more than a thousand square feet?

1 MR. BURKE: Not service area. I mean,
2 we will have somebody testify to that, but not
3 service area. It has to be service area, so if you
4 have a bathroom or a reception area or anything like
5 that, it doesn't count as service area.

6 CHAIRMAN AIBEL: So is a yoga studio, a
7 movement center for children, anything at all that
8 this applicant wants to put in, you are claiming is
9 permissible under this continuing use?

10 MR. BURKE: I am claiming that that
11 applicant would have to go to the zoning office and
12 submit plans showing that those three criteria were
13 met, and that is what is says in 196-33.

14 MR. GALVIN: You know what, one other
15 thing. I do understand your argument, Jim.

16 One of the things that I am disagreeing
17 with you on is when we -- I think we have seen this
18 tonight with something else, too. When we change --
19 when we grant a D variance, we are not rezoning the
20 property. You know, it is a specific --

21 CHAIRMAN AIBEL: Specific use.

22 MR. GALVIN: -- it's a specific grant,
23 and in this case you are not supposed to have
24 anything in this basement.

25 MR. BURKE: Right.

1 MR. GALVIN: So, you know, I am saying
2 even if your argument is -- could have some merit
3 that on the first floor or in another building, you
4 know, a commercial retail office are all of the same
5 thing, you can do any one of those three things. In
6 this instance it is a question of what did the Board
7 intend when it granted this resolution to give you
8 the right to go into the cellar space, which you
9 guys don't know what the intent is really because
10 you didn't --

11 MR. BURKE: Correct. There is no
12 tenant at hand.

13 MR. GALVIN: So the Board has to make a
14 call on their interpretation of that, and I would
15 suggest to them that they be careful and
16 conservative.

17 Then the next question comes: If we
18 were to put that question aside for a second, should
19 we allow retail uses in the cellar.

20 MR. BURKE: Just before you address
21 that, just for the Chairman's sake, because I said
22 something earlier, I am looking at 196-33 in the
23 ordinance, and it says: Upon issuance of a CO by
24 the building inspector subsequent to his finding
25 that the three-prong test is met.

1 So that would be the checks and
2 balances on the uses that would go in there.

3 COMMISSIONER BRANCIFORTE: Dennis, I
4 want to show you something that I don't know if it's
5 even relevant or not, but I mean, this paragraph at
6 the top.

7 (Counsel views document)

8 MR. GALVIN: Oh, yes. I think that is
9 very relevant.

10 MS. BANYRA: That is the ordinance.

11 COMMISSIONER BRANCIFORTE: No. If you
12 start reading on the first page.

13 MS. BANYRA: It says basically that
14 that's use for storage, right?

15 MR. GALVIN: Where the cellar space
16 shall be used exclusively for storage or installed
17 building equipment, and the applicant proposes to
18 use the cellar as office space.

19 MS. BANYRA: Right.

20 MR. GALVIN: It is the second sentence
21 that is --

22 MS. BANYRA: Yeah. But elsewhere in
23 here it says that it was office space, and the
24 architect testified to office space in the cellar.

25 Where I think Mr. Burke and I disagree

1 is that he keeps going to 196-33, which I think is
2 irrelevant -- relative to the cellar space --
3 relative only to the cellar space.

4 The upper space, yes, I would go with
5 you on that, but the cellar space I think is not
6 relevant, Jim.

7 MR. BURKE: Okay. For the sake of
8 clarity, the zoning officer is not here. I would
9 like the Board, you know, however we go on the
10 cellar, to at least confirm that retail could be
11 used on the upper floor in the mezzanine, because I
12 am not sure if that is what the zoning officer
13 believes --

14 MS. BANYRA: The zoning ordinance says:
15 If you are in the R-1 District, retail use is a
16 permitted use in the R-1 District.

17 So I don't know what the zoning
18 officer -- I can read -- permitted use retail right
19 there. So I don't know what she believes or not,
20 but that is a permitted use. The cellar is where
21 everything breaks down, and when you tie them
22 together, if you want to do retail on the first, and
23 office in the back, that is what it sounded like.
24 Maybe you are allowed to do it. But as a condo,
25 maybe you can't do that. I don't know. Maybe that

1 is where it is breaking down for her.

2 But to me, to put retail and continue
3 that retail to the basement is why you are here.
4 That is why you are here tonight.

5 And 196-33 is about a conditional use
6 and has three different -- no, it's not a
7 conditional use, excuse me. It is a use that has
8 three different, you know, issues relative to it, so
9 that is not relevant to this.

10 MR. BURKE: I agree with you, but I
11 also would ask again, respectfully, that there be
12 some clarification that retail is permitted in that
13 upper part.

14 MS. BANYRA: Mr. Burke, I think that is
15 your job. The Board doesn't go and ask the zoning
16 officer whether or not this is permitted or not
17 permitted. I mean, right? I mean, that's really
18 -- you're here --

19 MR. BURKE: In fairness, the problem is
20 office has a separate definition, even though it is
21 a use under retail, so I think -- you know, I
22 think --

23 MS. BANYRA: Got it --

24 MR. BURKE: -- it's fair to ask the
25 Board to say, you know, retail on that floor is

1 clear, so the zoning officer has direction.
2 Because, look, these definitions all don't work.
3 There are contradictions. There's inconsistencies,
4 so I don't think what I am asking is unfair because
5 nothing has been in there since he's owned this
6 property.

7 MS. BANYRA: What you are asking is for
8 the Board to -- if they make a ruling in a favorable
9 fashion for you, that it is clear to the zoning
10 officer what they are approving, yes?

11 MR. BURKE: That's it, yes.

12 MS. BANYRA: Yes. Okay. Gotcha.

13 (Board members confer)

14 COMMISSIONER BRANCIFORTE: Question,
15 and it's a pretty basic question for you.

16 What is exactly the definition of
17 retail? What can go in?

18 Restaurants can't go in?

19 Bars can't go in?

20 MR. GALVIN: There's a conditional --

21 MR. BURKE: I copied the retail
22 definition. I could hand it out. It's from the
23 ordinance, but we don't have to mark it in because
24 it is part of the ordinance.

25 COMMISSIONER BRANCIFORTE: Okay.

1 (Board members conferring)

2 (Mr. Galvin and Ms. Banyra conferring)

3 MS. BANYRA: John, that is in the
4 definitions.

5 COMMISSIONER MC ANUFF: Here you go.

6 COMMISSIONER BRANCIFORTE: Thanks.

7 MS. BANYRA: So retail business or
8 service. This use category shall include retail or
9 personal services, such as appliance -- appliance
10 sales and services, banks, bakeries, food stores,
11 supermarkets, barber shops, beauty parlors,
12 pharmacies, books, cards, stationery, candy,
13 tobacco, dry goods, variety, department stores,
14 clothing, florists, garden supply, hardware,
15 newspaper and periodical vendors, business and
16 professional offices, liquor stores, everything,
17 tailors --

18 MR. GALVIN: All right. Hold on a
19 second.

20 MS. BANYRA: -- wait. Let's just see
21 if it says restaurants, John. It doesn't say --

22 COMMISSIONER GRANA: Restaurants is
23 separate --

24 MS. BANYRA: -- retail and personal,
25 da, da, da, da, da. Dry cleaning is something a

1 little bit different.

2 Okay. Now you want to look at 196-33?

3 MR. GALVIN: No, no, no, I don't.

4 Now I want to look at --

5 (Ms. Banyra and Mr. Galvin confer)

6 MR. GALVIN: I don't see it there.

7 MS. BANYRA: Office was in the back.

8 (Board members confer.)

9 MS. BANYRA: But in the retail sale and
10 business, office is permitted --

11 MR. GALVIN: No, no --

12 MS. BANYRA: -- but not in the
13 office --

14 MR. GALVIN: -- no, no.

15 What I'm saying is: A rectangle -- a
16 square is a rectangle, but a rectangle is not
17 necessarily a square. Offices can be in retail.

18 It is common to have an office, a back
19 office for the supermarket, the bakery, but an
20 actual office defined in this other place says --

21 MS. BANYRA: Not retail --

22 MR. GALVIN: -- yeah, where no retail
23 sales are offered, where no manufacturing, assembly
24 or fabricating takes place.

25 We are defining retail, and we're

1 defining office in different ways within the same
2 ordinance, so --

3 MR. BURKE: That is why I am saying
4 that I think --

5 MR. GALVIN: -- I don't think it
6 automatically follows that because you get office,
7 that you get retail.

8 I think you could get office, if you
9 get retail, but I don't know that you get retail, if
10 you get office.

11 MR. BURKE: In the cellar.

12 MS. BANYRA: In the cellar --

13 MR. GALVIN: And the cellar is a
14 different -- a different --

15 MR. BURKE: No, no. You have to say
16 it, because it's permitted, so we don't have to --
17 retail is permitted in the R-1 Zone --

18 MR. GALVIN: But not in a basement --

19 MR. BURKE: That's what I'm saying. It
20 is a cellar. Let's call it a cellar --

21 MR. GALVIN: -- and offices aren't
22 permitted in the basement.

23 MR. BURKE: -- it's a cellar --

24 MR. GALVIN: Right. In the cellar, so
25 I am saying the cellar.

1 But I'm saying the mere fact that the
2 Board granted permission for an office in the
3 cellar, the question that the Board has to resolve
4 is: Did that give you a right to retail.

5 I am saying that I think that we could
6 make the argument that office is a different
7 classification than retail, even though retail would
8 include offices in some situations.

9 The question is -- why don't you tell
10 us -- I think that our time would be better served
11 if you told us why you want to use the cellar now
12 for retail purposes.

13 THE WITNESS: This wouldn't have been
14 an issue, if I would have been told this. I mean, I
15 got \$70,000 I lost here. If they told me that your
16 offices goes down the basement, it would have been
17 done.

18 MR. GALVIN: It has taken a whole team
19 to figure out the cellar and the resolution --

20 (Everyone talking at once)

21 THE WITNESS: It took me eight months
22 to get this, so I mean, any time that I went down
23 there, nothing was explained to me, and --

24 MR. GALVIN: Okay. But that is not the
25 question.

1 What do you want to do now?

2 What do you want to do now?

3 THE WITNESS: I'll put the office and
4 retail upstairs --

5 MR. BURKE: No. Do you want -- so we
6 don't have to come back to the Board, do you want
7 some retail opportunity in the cellar?

8 THE WITNESS: Yeah, if I could get it,
9 yeah. I mean, it would be great.

10 MR. GALVIN: I mean, your position is
11 you think you are entitled to it, but you think that
12 the resolution gave it to you, and you think the
13 cellar gave it to you. But if it didn't, then the
14 Board could grant you permission for that.

15 MR. BURKE: In the alternative, yes.

16 MR. GALVIN: Right.

17 MR. BURKE: Yes.

18 THE WITNESS: To make retail off of
19 Washington Street. It's powerful, because the
20 people -- you go off Washington -- I'm here -- I'm
21 living here eight years. People go in and out of
22 business. They can't pay the rents.

23 Anything that you could see from
24 Washington Street, you know, look down to Garden
25 and stuff like that, it's like the city. You find

1 all of these nice little shops, you know what I
2 mean?

3 MR. GALVIN: Diane?

4 COMMISSIONER MURPHY: So the basement
5 you are saying has office.

6 What -- there are other uses for spaces
7 in the R-1, such as instructional.

8 Are you just looking for retail or do
9 you want to use it in another way?

10 MR. BURKE: Do you want it for retail
11 or also instructional --

12 MR. GALVIN: Everything except for
13 storage is prohibited in the cellar. But it is
14 clear that this resolution gave him permission to
15 have an office. Normally everything would be
16 prohibited except for storage.

17 MS. BANYRA: Storage.

18 And it's a cellar. So keep using that
19 word "cellar" because it is defined, and it's a
20 certain percent below grade, and blah, blah, blah.

21 COMMISSIONER GRANA: May I ask a
22 question that may be relevant?

23 MS. BANYRA: Sure. Try.

24 (Laughter)

25 COMMISSIONER GRANA: There is almost

1 catty-corner -- it's not -- it's 536 Bloomfield, but
2 the piece we are looking at is kind of on Sixth,
3 right?

4 If I take the corner of Bloomfield, if
5 I lived catty-corner to this, there is a retail
6 facility that is below grade.

7 MS. BANYRA: Is it in a cellar?

8 COMMISSIONER GRANA: I don't know.

9 MS. BANYRA: It might be in a basement.

10 COMMISSIONER GRANA: I don't know. But
11 I'm just saying it's below grade.

12 I would also offer that at the end of
13 the very same block on the Sixth Street, there is
14 yet another retail establishment that is also below
15 grade

16 COMMISSIONER MC ANUFF: What businesses
17 are they?

18 COMMISSIONER GRANA: One is maybe a dry
19 cleaners.

20 For the record, I am looking at Google.

21 One is a dry cleaners on Bloomfield
22 Street, and the other one is some kind of an office
23 or retail that is at the corner of Garden and Sixth.

24 COMMISSIONER BRANCIFORTE: That is the
25 old Lepore's chocolate place --

1 COMMISSIONER GRANA: That's the old

2 Lepore's chocolate --

3 COMMISSIONER BARNCIFORE: -- which is

4 now Boutique Realty.

5 COMMISSIONER GRANA: -- so I just

6 wanted to point out that there are two below grade

7 retail and office --

8 MS. BANYRA: But regardless, so what I

9 am going to say to you, Mr. Grana, is if they are in

10 the cellar, regardless of how -- maybe they had use

11 variances. Maybe they're in a basement. They may

12 not be at this below -- when you look at this, it

13 goes down. It's actually in a cellar.

14 That by ordinance -- and that's really

15 what we're doing --

16 COMMISSIONER GRANA: So I'm -- I'm --

17 MS. BANYRA: -- that by ordinance

18 requires a use variance because nothing is permitted

19 except storage, so they got a use variance once for

20 this. They are in here looking for a modification

21 and/or --

22 COMMISSIONER GRANA: So we either --

23 MS. BANYRA: -- so either you agree

24 that maybe he could use it for retail, and then that

25 would be open for retail and office, I guess,

1 Dennis, then?

2 MR. GALVIN: He already got approval
3 for office, and if you --

4 MS. BANYRA: So you could open it up or
5 not --

6 COMMISSIONER GRANA: Okay. So what
7 we're debating is it open for office and retail in
8 the cellar --

9 MS. BANYRA: -- Yes.
10 Do you agree that you want to allow
11 that?

12 MR. GALVIN: Then they have other
13 proofs to put in before you vote, but --

14 COMMISSIONER BRANCIFORTE: Was it
15 entered into evidence?

16 MR. GALVIN: No, we are okay. We'll
17 enter it.

18 COMMISSIONER MURPHY: I just wanted to
19 understand that the basement --

20 MS. BANYRA: The "cellar."

21 COMMISISONER MURPHY: -- all right --
22 excuse me -- the cellar -- the cellar --

23 MR. GALVIN: There you go.

24 COMMISSIONER DE GRIM: Not to be
25 confused with buyer.

1 (Laughter)

2 MR. GALVIN: Oh, that's my stich.

3 That's good.

4 (Laughter)

5 THE WITNESS: Yes.

6 COMMISSIONER MURPHY: Okay. So this
7 space underneath it, you don't really see from the
8 street as much.

9 I mean, I walk by that a lot, so I see
10 something and then I see up here --

11 MS. BANYRA: This is above grade, and
12 this is below grade, so you have maybe two feet
13 above grade is what it looks like, right, about
14 that?

15 COMMISSIONER MURPHY: Yeah.

16 COMMISSIONER GRANA: Yeah.

17 COMMISSIONER MURPHY: Right. So it's
18 underneath this. This is the mezzanine.

19 COMMISSIONER BRANCIFORTE: Yeah. I
20 mean, I remember sitting in the audience for this,
21 and I remember --

22 MS. BANYRA: You got up and asked
23 questions. You are in the resolution --

24 COMMISSIONER BRANCIFORTE: I know --

25 MS. BANYRA: -- about parking you

1 asked --

2 COMMISSIONER BRANCIFORTE: -- about
3 parking.

4 But I remember the conversation being
5 what is a mezzanine. I think I remember that.

6 Is it truly two floors or is it a
7 mezzanine?

8 I am not going through that resolution
9 to try to find it, so -- you know, I mean, the
10 only -- the only solution I can think of this is
11 lower than that floor and make it into a true
12 basement. Then you have one floor, but I don't
13 know --

14 MS. BANYRA: Or you can say it is okay.

15 COMMISSIONER GRANA: It's okay --

16 COMMISSIONER BRANCIFORTE: -- I'm not
17 suggesting that, but --

18 MS. BAYER: -- or you can say it's
19 okay. You don't have to lower floors. You can say
20 yes or no.

21 COMMISSIONER MURPHY: Well, what --
22 what would be the reasoning for not being able to
23 have something in the cellar, other than --

24 MS. BANYRA: Because it is below grade.
25 I am just going to hypothetically --

1 MR. GALVIN: Flooding.

2 MS. BANYRA: -- flooding, fire --

3 COMMISSIONER MC ANUFF: Air.

4 MS. BANYRA: -- getting people out of

5 air, light. You know, you don't put people

6 generally in a base -- in a cellar area, and it is a

7 little -- it's a little bit, I'm going to say, less

8 desirable in retail probably.

9 You wouldn't really -- I mean, you

10 don't have any street view, and people have to bend

11 and look into a window. So from a retail

12 perspective, not a great retail space. However,

13 when you combine it with something else, maybe it's

14 fine.

15 COMMISSIONER MURPHY: Well, right,

16 because it could be combined with the mezzanine at

17 the top, so --

18 MS. BANYRA: Well, that's what he's

19 asking --

20 COMMISSIONER MURPHY: Right. They're

21 not --

22 MS. BANYRA: -- but -- but you're not

23 allowing that by ordinance because there's other

24 issues relative to a cellar that you usually

25 don't -- I mean, you are asking me what -- what is

1 the intent, and I am going to say safety --

2 MR. GALVIN: Safety is a high level.

3 MS. BANYRA: -- nine out of ten of
4 those are safety things.

5 COMMISSIONER BRANCIFORTE: Is there a
6 second egress from this or is there just one egress,
7 one stairway?

8 MR. BURKE: The architect --

9 MR. GALVIN: Let's put him under oath.
10 Now you see where we generally --

11 MR. BURKE: Yeah, I know.

12 MR. GALVIN: -- sorry, we had to flush
13 it all out.

14 Raise your right hand.

15 You are saying these people are nuts.

16 (Laughter)

17 Do you swear or affirm the testimony
18 you are about to give in this matter is the truth,
19 the whole truth, and nothing but the truth?

20 MR. MELIA: I do.

21 A D R I A N M E L I A, RA, 360 Fourteenth Street,
22 Hoboken, New Jersey, having been duly sworn,
23 testified as follows:

24 MR. GALVIN: State your full name for
25 the record and spell your last name.

1 THE WITNESS: First name Adrian,
2 A-d-r-i-a-n, last name Melia, M-e-l-i-a.

3 CHAIRMAN AIBEL: And you are an
4 architect?

5 THE WITNESS: Yes.

6 MR. GALVIN: Are you a New Jersey
7 licensed architect?

8 MR. BURKE: He is with the firm of
9 Mienrvini and --

10 (Everyone talking at once.)

11 MR. GALVIN: No, no, no, time out, time
12 out, time out -- thank you.

13 THE WITNESS: Yes.

14 MR. GALVIN: And give me three boards
15 that you appeared before recently.

16 THE WITNESS: Jersey City Zoning,
17 Jersey City Planning, Union City Zoning, Hudson
18 County Planning --

19 MR. GALVIN: All right. Did I say
20 three?

21 Do we accept his credentials?

22 CHAIRMAN AIBEL: We do.

23 MR. BURKE: Everybody keeps going. You
24 say three, and people keep going.

25 MR. GALVIN: Because they are trying to

1 search up where they have been recently, and they're
2 just fired up. Their brain is working hard. I
3 understand that.

4 So we accept your credentials.

5 Tell us about the space, what it's
6 safety, and how you are going to get in and out.

7 THE WITNESS: Typically you need a
8 second means of egress, if you exceed a certain
9 occupancy. Based on the square footage of this
10 space, you wouldn't require more than one way out.

11 I will just talk about the square
12 footages.

13 Z-2, the total area for both the upper
14 level at grade and the cellar inclusive of walls and
15 everything, a bathroom and auxiliary spaces and the
16 stairs is 1,165 square foot.

17 The actual customer service area is
18 only 803 square feet, so the amount of occupancy you
19 would actually get in the cellar, which is only
20 about 300 square feet, would be limited to about
21 ten. Regardless of what the use was, that would
22 only require one way out under the code. There
23 really wouldn't be room for an additional stair out.

24 COMMISSIONER BRANCIFORTE: But if for
25 whatever reason, let's say you came back a year from

1 now or two years from now, and said we want to put a
2 restaurant in there, you would have to come for a
3 different use, right? Change of use --

4 MS. BANYRA: Yeah. It doesn't fall
5 under that. It doesn't appear to fall under the
6 same category. I don't know. John, I would have to
7 look into that --

8 COMMISSIONER BRANCIFORTE: Okay --

9 MS. BANYRA: -- because I didn't. I
10 was only concerned --

11 COMMISSIONER BRANCIFORTE: -- well, the
12 reason -- the reason I ask is because if some day
13 they decide to put a kitchen down there or
14 something, I would expect you to have to come back
15 and ask permission for that, and that is what I am
16 thinking about, a second egress would probably be
17 more important.

18 THE WITNESS: If we were to get a
19 different use, a more intensive use, like a
20 restaurant approved, then that would require a
21 second way out --

22 COMMISSIONER BRANCIFORTE: Yeah,
23 because your capacity goes up --

24 THE WITNESS: -- then we would be
25 required, when we go to the building department or

1 the building code official to review the drawings,
2 specifically an occupancy drawing to establish an
3 occupancy, and then they determine whether or not a
4 second means would be required.

5 COMMISSIONER BRANCIFORTE: Okay.

6 MR. BURKE: Okay.

7 Any other questions of the architect?

8 COMMISSIONER GRANA: No.

9 MR. GALVIN: Well, I have a question.

10 The front of the building, you know,
11 you have the white area. That is the store, right?

12 COMMISSIONER BRANCIFORTE: No. That's
13 a residence down there on the first floor.

14 THE WITNESS: The glass aluminum
15 store --

16 CHAIRMAN AIBEL: It sits on the side
17 street --

18 THE WITNESS: -- it's all open --

19 MR. GALVIN: Oh, it's on the side --

20 CHAIRMAN AIBEL: It's on Sixth.

21 THE WITNESS: -- it's all glass.

22 MR. GALVIN: Yeah, I see it. I was
23 there. I saw that. I was like --

24 MS. BANYRA: And that little white to
25 the left of the glass, is that part of this --

1 THE WITNESS: No, no. This is -- it
2 has its little own windows. It's part of the
3 residential component.

4 MS. BANYRA: Oh, okay.

5 MR. GALVIN: So it is where the glass
6 area is now?

7 THE WITNESS: Yeah.

8 MR. GALVIN: That's interesting.

9 I got nothing then.

10 But if anybody else wants to --

11 COMMISSIONER BRANCIFORTE: Do you have
12 a planner coming up?

13 MR. BURKE: We do have a planner, yeah.

14 MR. GALVIN: And you have nothing now
15 in that glassed area?

16 There's no businesses in there now?

17 MR. CARACAPPA: No. I couldn't -- we
18 didn't know what -- no, with zoning I couldn't
19 get -- figure out what to do with it. Nobody would
20 give me an answer.

21 MR. GALVIN: See, I think the only
22 other thing that we might be struggling with is, you
23 know, some things might go good there, like a book
24 store or art, but other things might not be so --

25 MR. CARACAPPA: Well, there was a yarn

1 store --

2 MR. GALVIN: -- what I'm saying is, you
3 know, there are other things that might not be as
4 good there.

5 MR. CARACAPPA: -- there was a yarn
6 store, right.

7 MR. GALVIN: Or they might be more
8 dangerous -- you know, like --

9 MR. BURKE: I understand, and I don't
10 think we would have any objections if certain uses
11 were eliminated, you know. But the problems is it's
12 a tough one to figure that out.

13 MR. GALVIN: Right. This would be a
14 lot easier if you had a use that you knew exactly
15 that you wanted to put in there.

16 MR. BURKE: Right. The problem is
17 again he said this twice, he can't get anyone in
18 there because it doesn't seem like anything works
19 because it's so confusing, so we needed to come here
20 for clarity sake and to allow at least a clear
21 definition of what could go into that space.

22 MR. GALVIN: Even if we gave you some
23 room, and then if you had a problem, you could
24 always come back again. I'm sorry. I know you
25 don't want to do that, but no one does, but we can't

1 give you unlimited control. Like you can't have a
2 restaurant in there, and there might be other
3 things -- I don't know what the Board --

4 MS. BANYRA: It has to be a conditional
5 use --

6 COMMISSIONER GRANA: I don't think
7 that's --

8 MR. GALVIN: I know. That certainly
9 wouldn't be --

10 COMMISSIONER GRANA: -- what the use is
11 being requested --

12 MR. GALVIN: -- certainly wouldn't
13 be -- yeah. But I am saying, I just don't know.

14 Like I said, I can see where a
15 little -- any kind of chachkis or antiques or a book
16 store would probably be cute to go down and up,
17 but --

18 COMMISSIONER GRANA: But I think that
19 what's being asked for is essentially to declare
20 that the cellar can be had used for office and
21 retail. That's what is being asked for -

22 MR. GALVIN: Yeah --

23 MS. BANYRA: Yeah --

24 COMMISSIONER GRANA: -- not restaurant.
25 Retail.

1 COMMISSIONER DE GRIM: Because the
2 top -- the first floor is retail, so it is just to
3 match the first floor --

4 COMMISSIONER GRANA: It's to match the
5 first floor or to provide a different option --

6 COMMISSIONER MC ANUFF: At the same
7 time if the retail component is not approved of the
8 cellar, the property is still not unrentable.

9 MR. GALVIN: No. Because there could
10 still be an office in the basement.

11 COMMISSIONER DE GRIM: Right.

12 COMMISSIONER DE GRIM: And retail on
13 the first floor --

14 MR. GALVIN: And retail on the first
15 floor, right. Or it could be a retail business that
16 has their office on the first floor -- I mean in
17 the -- in the cellar, in the cellar --

18 COMMISSIONER GRANA: But I think Mr.
19 Burke is asking on behalf of his applicant that we
20 clarify exactly what the uses are allowable both on
21 the first floor and in the cellar.

22 MR. GALVIN: Right. I just wouldn't
23 want you to reach -- I don't want you to reach the
24 determination that he's asking you, that office
25 includes retail -- you know --

1 (Everyone talking at once.)

2 COMMISSIONER MC ANUFF: Is the property
3 now unable to be rented or --

4 MR. GALVIN: That's their testimony.

5 COMMISSIONER GRANA: That's what
6 they're saying.

7 MR. GALVIN: They're saying because
8 they are uncertain -- because of their uncertainty,
9 they haven't been able to rent it.

10 You don't have the cooperation of the
11 zoning officer right now for it --

12 MR. BURKE: Well, I mean, look, I won't
13 say that, but I will say the two uses that he
14 brought to the zoning officer, which was a florist,
15 and what was the second --

16 MR. CARACAPPA: The art studio, the art
17 classes --

18 MR. BURKE: -- right -- the art
19 class --

20 MR. GALVIN: On the first floor or in
21 the cellar?

22 MR. CARACAPPA: Both areas.

23 MS. BANYRA: Both areas.

24 COMMISSIONER DE GRIM: Both areas.

25 (Everyone talking at once)

1 COMMISSIONER DE GRIM: So that's why --
2 it wasn't proper to have those in the cellar --

3 COMMISSIONER MC ANUFF: If someone came
4 to him tomorrow and said, I want to use the first
5 floor as retail and the mezzanine as retail, and I
6 need to use the cellar as storage, there would be no
7 problem.

8 MR. GALVIN: No problem.

9 Even office space to --

10 COMMISSIONER DE GRIM: Even office
11 space to run the business --

12 MR. GALVIN: -- because of this prior
13 resolution --

14 COMMISSIONER MC ANUFF: Okay.

15 MS. BANYRA: Except honestly, if the
16 office isn't tied to the retail, you have to go
17 through the --

18 COMMISSIONER MC ANUFF: No. I get
19 that. I get that. I'm just trying to get why the
20 property has been vacant for so long. Okay.

21 COMMISSIONER BRANCIFORTE: So basically
22 the only thing this place was ever used for was a
23 yarn store and the realtor's office.

24 MR. CARACAPPA: It was -- yeah -- the
25 yarn store and a real estate. That's all I know.

1 MS. BANYRA: And a florist you said,
2 no?

3 COMMISSIONER DE GRIM: But properly
4 used for it --

5 MS. BANYRA: Oh, okay.

6 CHAIRMAN AIBEL: And a booking office,
7 a talent booking office.

8 MR. BURKE: Talent booking office.

9 COMMISSIONER BRANCIFORTE: A bookie's
10 office, but that's off the record.

11 (Laughter)

12 MR. GALVIN: You might want to call
13 your planner now.

14 MR. BURKE: Okay.

15 The gentleman you had spoke to
16 before --

17 MR. GALVIN: Is there anybody here in
18 the public?

19 I don't think that there's anybody at
20 all, but you should still do that.

21 Raise your right hand.

22 Do you swear or affirm the testimony
23 you are about to give in this matter is the truth,
24 the whole truth, and nothing but the truth?

25 MR. HEYDT: I do.

1 C H A R L E S H E Y D T, having been duly sworn,
2 testified as follows:

3 MR. GALVIN: State your full name for
4 the record and spell your last name.

5 THE WITNESS: Charles Heydt, H-e-y-d-t.

6 MR. GALVIN: Mr. Chairman, Mr. Heydt
7 has appeared before this Board before. I suggest we
8 accept his credentials.

9 (Laughter)

10 THE WITNESS: I got three. I got three
11 I wanted to say and Hoboken.

12 (Laughter)

13 CHAIRMAN AIBEL: That's okay.

14 Proceed.

15 THE WITNESS: So I think the Board has
16 a handle on some of the unclarified issues on this
17 application.

18 The prior approval wasn't necessarily
19 descriptive in that office use. We know that over
20 time, there have been multiple types of office uses,
21 and they may have been a back office use at one
22 point for an existing retail use on the mezzanine
23 level, and also there have been a separate and
24 distinct use as a booking agency, and with a
25 retail -- a real estate office on top, two separate

1 uses, two professional offices that are both
2 permitted.

3 So I just want to clarify, we did read
4 off the listing of the permitted uses in the R-1
5 Zone, residential buildings and retail businesses
6 and services. That is an open-ended use, that
7 retail businesses and services, and it is the
8 Board's ability to interpret that.

9 I say it's open ended, because as your
10 planner started reading the list, it is very
11 inclusive of a lot of businesses and services that
12 are common to neighborhoods.

13 You have a myriad of uses. I won't go
14 through them, but you can read it, if you haven't,
15 but it ends with "and similar uses."

16 So it really is at the first level of
17 check that the zoning officer could say, well, is
18 this a similar use.

19 And if she is that uncertain if a
20 restaurant is proposed, she would say this isn't a
21 similar use to the ones explicitly stated. I have
22 to defer you to the Zoning Board.

23 I think in this application, the
24 applicant has submitted a florist that was denied,
25 so that kind of shows that the zoning officer

1 doesn't have a good handle on what's permitted as a
2 retail business or services, so I think we are here
3 tonight to provide that clarity as we said earlier.

4 CHAIRMAN AIBEL: Can we just refine
5 that a little bit?

6 She said you couldn't do retail in the
7 cellar. Did she deny your ability to do retail on
8 the first floor?

9 THE WITNESS: In the cellar, yeah. So
10 I will continue, and you are correct.

11 She denied the cellar use of the
12 florist.

13 So I will jump into -- so that is a
14 little bit of the zoning history that we all
15 discussed. I will jump into the prior approval.

16 The prior approval was granted under a
17 D-1 use variance, which permitted a cellar space to
18 be used for other than storage and building
19 equipment. That was really what it was approved
20 for.

21 At that time the applicant knew what
22 the proposed use was, and they were offering to the
23 Board, we are intending to use it as an office.

24 It is still vague, but they could have
25 said, we were intending to use it for a florist,

1 which is a permitted use, so the Board at that time
2 had the decision. We have a cellar space. The
3 applicant is proposing a use that's not permitted.
4 It's not storage. It's not building equipment.
5 They approved that use, that other use in their
6 approval. So we can take that and use that as their
7 intent to know that they contemplated another use,
8 and it just so happens that offices is a permitted
9 use in the retail business and services.

10 So they didn't have to battle if
11 offices were permitted or if florists were permitted
12 or any other use is permitted, because they were
13 just contemplating is the cellar space -- can this
14 particular cellar space be suitable for another use,
15 a permitted use. So that's my couch on reading the
16 prior approval.

17 I would then say the Board has the
18 ability to interpret -- the zoning ordinance has the
19 ability to interpret the uses listed under retail
20 business and services. They have the ability to
21 amend prior applications and provide a more clear
22 definition, which is provided in the zoning
23 office -- zoning ordinance.

24 So whenever a zoning officer can
25 approve or deny a use, they can refer back to this

1 general use of retail business and services. And
2 then if she has an issue where it's not similar
3 enough, she can -- she refers it back to you. But
4 those are for uses that were brought up for
5 restaurant use. That might have an occupancy issue,
6 or industrial uses or other general uses that aren't
7 really intended for this zone. Not for florists,
8 which are permitted. Not for -- she doesn't have to
9 deny other uses, such as book stores, as hardware
10 stores, as card stationery stores, as candy and
11 tobacco shops. She doesn't have to make those
12 decisions if you let her -- if you give her -- him
13 or her, I don't know -- if you give him or her the
14 ability to define what's permitted in this cellar
15 space as what's permitted in the zone.

16 So that's my angle to the Board, that
17 you have the ability to make that interpretation and
18 prepare a resolution to amend the prior approval,
19 and provide the applicant a better clarity going
20 forward with going forward with his business
21 operation.

22 MR. BURKE: Retail is permitted. So I
23 mean, talk to the proofs involved if the Board
24 decided that a D-1 expansion is required and --

25 THE WITNESS: Certainly.

1 In a D-2 use variance of expansion of a
2 non permitted or a nonconforming use, it would
3 require both the positive and negative criteria of
4 case law. The Burbridge case versus Mine Hill
5 Township said that in respect to the positive
6 criteria, you have to identify that it supports the
7 purposes of the Municipal Land Use Law.

8 With respect to that, I said that, one,
9 it meets the goals and objectives of the R-1 zoning
10 ordinance. You are provided permitted uses in a
11 space that was previously granted for uses other
12 than cellar.

13 And then also that it doesn't -- it
14 tries to fit within the confines of an existing
15 building. It doesn't try -- this application isn't
16 expanding forward. It isn't bumping out the rear.
17 It isn't adding levels.

18 It advances the purposes of the MLUL.
19 It furthers purpose (g). It provides a sufficient
20 space for a variety of land uses in appropriate
21 locations. I think this is an existing building.
22 It was previously used as retail and office. The
23 Board previously approved a use other than storage
24 in the cellar are.

25 It is a variety -- the applicant is

1 trying to provide an additional retail use or
2 commercial or office use in this space.

3 It also furthers the purpose (i), to
4 promote a desirable visual -- visual environment, to
5 create a design that meets in good civic design. I
6 think, again, they are keeping within the confines
7 of an existing building. They're not changing
8 anything. There's not a major overall of the
9 architectural on the outside. And as you see from
10 the architectural plans, the floor plan is
11 sufficient enough to provide amenities within both
12 spaces.

13 I'll move on to the negative criteria.
14 Again, there's case law, Kingwood that says that
15 with an extension of a nonconforming use, you can
16 view the negative criteria with greater liberty --
17 liberality, because we don't have a wholly new use.
18 It's an existing use. It was a previously approved
19 use.

20 So the negative aspects of what the
21 applicant is proposing, a permitted use, but for the
22 sake of the proof standards, there isn't as much of
23 a negative detriment to the zone plan, because it's
24 a permitted use. It's -- it may be a cellar space
25 that's now being permitted as a retail and office

1 space.

2 And, again, it doesn't provide a
3 substantial detriment to the public good, as we
4 heard from the architect, only one egress is needed.
5 It's sufficient space provided, and that addresses
6 the negative criteria.

7 So in conclusion, I think those were
8 the proofs provided.

9 I welcome any questions.

10 COMMISSIONER BRANCIFORTE: You had the
11 board before with pictures of the facades. I don't
12 know where it is.

13 So this is my problem --

14 MS. CARCONE: Did you mark that board?

15 COMMISSIONER BRANCIFORTE: I don't
16 think we did.

17 MR. GALVIN: We need to mark the board.
18 And who took the pictures and when were they taken?

19 MR. MELIA: The pictures were taken by
20 a staff architect from our office in October of this
21 year.

22 THE REPORTER: They were taken by what?

23 MR. GALVIN: Repeat your last sentence.

24 MS. BANYRA: She couldn't hear you.

25 MR. MELIA: They were taken by a staff

1 architect from our office in October of this year.

2 MR. BURKE: I think we are up to A-3.

3 MS. CARCONE: A-2.

4 MR. BURKE: Okay. A-4.

5 MS. CARCONE: Well, we had the
6 certificate and what else?

7 MR. GALVIN: The resolution should be
8 marked.

9 COMMISSIONER MURPHY: What else did you
10 have numbered?

11 MR. BURKE: I had the --

12 MR. GALVIN: Pat, it's whatever you say
13 it is.

14 MS. CARCONE: I said A-2. I don't have
15 anything else.

16 MR. BURKE: That's what I thought.

17 MR. GALVIN: So let's change that to
18 A-2.

19 (Exhibit A-2 marked.)

20 MR. BURKE: No. You said you had
21 two --

22 MS. CARCONE: No, I have one. I just
23 have the certificate of continuing use.

24 MR. BURKE: A-2 it is.

25 COMMISSIONER BRANCIFORTE: Okay. This

1 is my problem with giving -- I was going to say
2 it -- I don't think there is any room. It's late.
3 I just want to say it.

4 This is my problem with giving you a
5 blanket retail establishment, okay, green light. I
6 look at the facade. It's pure glass.

7 My question is, you know, let's say a
8 convenience store decides, well, it is retail, and
9 it fits the zone, so I'm going to move my
10 convenience store in there. And they set up the
11 lights as they are, you know, permitted to do under
12 the code, and now they decide they want to stay open
13 24 hours a day, and now we have these bright lights
14 shining into the neighborhood, into a residential
15 neighborhood.

16 That's my problem. I don't want
17 something going in there that is going to be a
18 disturbance to the neighborhood, and --

19 MR. BURKE: Understood.

20 COMMISSIONER BRANCIFORTE: -- my
21 understanding was that when they gave permission to
22 this place, it was for very limited uses, and I
23 don't know, you know, that is the thing.

24 I just can't see any retail going in
25 there that might be a disturbance to the

1 neighborhood especially with those big glass
2 windows.

3 MR. BURKE: Okay. But let's
4 understand, this is a two-tier approach.

5 Retail is a permitted use.

6 COMMISSIONER BRANIFORTE: Yes.

7 MR. BURKE: So the applicant is only
8 asking to allow retail to be expanded into the
9 cellar. So your concern, while valid, would have to
10 be addressed in another manner.

11 In other words, if I wanted to operate
12 a convenience store, and I wanted it to be 24 hours
13 a day and lights were glaring, there would have to
14 be other mechanisms to shut me down, because you as
15 this Board cannot deny that because it's a permitted
16 use.

17 CHAIRMAN AIBEL: Go ahead.

18 COMMISSIONER GRANA: I want to clarify
19 that.

20 If I wish to go into the first floor of
21 this property right now, and open a 24 hour
22 convenience mart, would I be allowed to?

23 MR. BURKE: Subject to the hours, I
24 can't say whether the hours --

25 COMMISSIONER GRANA: Okay. Let me

1 phrase it another way.

2 Can I put a convenience mart on the
3 first floor of this property?

4 It is a retail use. It would be
5 allowed.

6 CHAIRMAN AIBEL: That's happening all
7 over town.

8 MR. GALVIN: Our planner thinks --

9 COMMISSIONER GRANA: The point I'm
10 making is I understand what we are really just
11 talking about is the cellar, and, you know, it could
12 very much be the case that somebody could come in
13 and say, you know what, I am actually going to rent
14 out, you know, retail or no retail, and put a couple
15 of options down, I'm going to put a convenience mart
16 on the top floor.

17 So, in other words, I don't think
18 approving or not approving retail in the cellar is
19 going to change whether or not you would get a
20 retail store that's shining their lights.

21 COMMISSIONER MC ANUFF: On the first
22 floor, that's correct.

23 COMMISSIONER GRANA: The first floor is
24 already --

25 MR. BURKE: I will say this, and I

1 don't have an answer for you on this, but this is
2 part of a condominium, so I know in the master deed
3 there are certain restrictions and so forth on what
4 can be done here, but that's separate from what this
5 body --

6 MR. GALVIN: Who owns the building?

7 MR. BURKE: Individual unit owners.

8 COMMISSIONER MURPHY: Oh, it's a condo.

9 MR. GALVIN: Who owns this commercial
10 space?

11 MR. BURKE: The applicant.

12 MR. GALVIN: So you just raised an
13 issue that makes it a little harder for me.

14 So what do the condo documents permit?

15 MR. BURKE: They allow commercial
16 space. But I'm saying as far as hours of operation,
17 I don't know if there are restrictions within that.

18 COMMISSIONER GRANA: Let me clarify,
19 Mr. Burke.

20 I really wasn't trying to hit on the
21 24-hour piece --

22 MR. BURKE: I understand.

23 COMMISSIONER GRANA: -- I just wanted
24 to say there was a concern raised that this could be
25 retail market and in fact retail is allowed, at

1 least on the upper floor, it's going to be a
2 convenience mart. There's nothing restricting that
3 from happening.

4 MR. BURKE: That's correct, except if
5 there's something in the master deed of the condo --

6 MR. GALVIN: Let me ask you: During
7 Super Storm Sandy, was there any water in this
8 building?

9 MR. CARACAPPA: No. I live right
10 around the corner. I live on Sixth Street, 615.
11 That's literally around the corner from here, so --

12 MR. GALVIN: Well, I was asking about
13 this building particularly.

14 MR. CARACAPPA: No, no.

15 MR. GALVIN: Did it have any water?

16 MR. CARACAPPA: No, it didn't.

17 MR. GALVIN: Okay.

18 MR. MARSDEN: Do you have an elevation
19 cert for this property or not?

20 MR. CARACAPPA: Excuse me?

21 MR. MARSDEN: An elevation
22 certification for this property?

23 MR. BURKE: No, because it wasn't
24 subject to the application.

25 MR. MARSDEN: I was just curious.

1 MR. BURKE: No, we don't.

2 MS. BANYRA: John, relative to your
3 issue of glare, just so you know, relative to the
4 issue of glare --

5 COMMISSIONER BRANCIFORTE: Yes.

6 MS. BANYRA: -- under the definition of
7 commercial uses, it prohibits -- the definition
8 shall not include any use that generates noise,
9 traffic, fumes, glare, maintenance, storage
10 problems. That is what a commercial use -- under
11 the commercial use definition.

12 COMMISSIONER BRANCIFORTE: Yeah. But
13 if you keep reading on, storage problems, different
14 in kind or degree from commonly expressed --

15 MS. BANYRA: Experienced --

16 COMMISSIONER BRANCIFORTE: -- impact --

17 MS. BANYRA: -- experienced the
18 impact --

19 COMMISSIONER BRANCIFORTE: -- of the
20 above included users.

21 So I'm guessing what that means is,
22 every -- every, you know, convenience store is going
23 to put up the same fluorescent lighting --

24 MS. BANYRA: No, no. This Board
25 approved it --

1 COMMISSIONER BRANCIFORTE: Right.

2 MS. BANYRA: -- and if it's going to be
3 putting glare out onto a street, for example, and
4 hypothetically that the Board -- I think that the
5 zoning officer could ask for a mechanism for that.

6 COMMISSIONER BRANCIFORTE: Okay.

7 COMMISSIONER GRANA: But I would offer
8 that the cellar probably won't produce light --

9 MS. BANYRA: That's true, so we're good
10 on the cellar.

11 (Laughter)

12 COMMISSIONER GRANA: We're good on the
13 cellar.

14 (Laughter)

15 COMMISSIONER BRANCIFORTE: Yeah. I
16 guess what I am not convinced is that when the Board
17 approved this years ago, they approved it solely
18 with the idea it was going to be a realtor's office,
19 and they were sold that, and perhaps I am wrong, the
20 evidence might show differently in the transcripts
21 and in a resolution, but, you know --

22 MR. BURKE: Well, I think that was the
23 current use at the time they asked for the expansion
24 of office into the cellar. I don't think that was
25 the use the Board voted to approve. It was just for

1 that part of it.

2 Again, the CO says that it's retail,
3 office, commercial, so when that was initially
4 CO'ed, the uses were all in inclusive.

5 CHAIRMAN AIBEL: Under your
6 interpretation, wouldn't every cellar in a similar
7 circumstance be open to a retail use?

8 MR. BURKE: Should every cellar be
9 open?

10 I think it is case sensitive. I think
11 first you need proof. Second, you need the size of
12 it. I think you need the location, but the Board
13 approved that obviously --

14 CHAIRMAN AIBEL: Well, it approved an
15 office use.

16 MR. BURKE: Yes.

17 CHAIRMAN AIBEL: But what are the
18 special reasons for expanding retail use?

19 MR. BURKE: Well, I think the planner
20 touched upon that. Maybe you need to elaborate a
21 bit.

22 MR. HEYDT: Yes.

23 So special uses for it's an existing
24 building, the layout of it. It's not converting
25 residential into retail or office. It is designed

1 to function as an office -- a retail space, so that
2 goes to providing a variety of uses within a
3 location that's appropriate. In this area, it is
4 the short end of the block.

5 At the corner you have retail business,
6 service. It's a business and professional office.
7 It's a real estate office, and the building itself
8 constitutes a second residential use.

9 So that and the fact there's two
10 retail -- I misspoke, not residential -- the second
11 retail use along that block, so that in and of
12 itself meets the first requirement of retail
13 business and services, so it is expanding that into
14 the cellar area.

15 It also meets the square footage
16 requirement. It's less than 1,000 square.

17 Third is that, retail business and
18 services can only be located in the first floor
19 basement levels, but, you know, this has obviously
20 been couched in the cellar, so I think it meets the
21 intent of that requirement as well.

22 CHAIRMAN AIBEL: So, Eileen, retail
23 would be allowed in a basement?

24 MS. BANYRA: Under -- yes, I think so.
25 Yeah, I think so, because I am looking at, you know,

1 under Chapter 196-33, when it does ask for, you
2 know, three different things that you have to do on
3 the block, and one is you have to have two other
4 uses.

5 The other one says: If located in a
6 building with two or more stories, retail business,
7 service, except otherwise specified, can be located
8 on the ground floor or basement of the building with
9 a separate exterior entrance way permitting access
10 only to the retail area.

11 I guess that, you know, because of the
12 basement, maybe it's asking for a separate access,
13 too.

14 CHAIRMAN AIBEL: That's what I'm
15 assuming, yes.

16 MS. BANYRA: For the basement, so --

17 MR. HEYDT: I could offer that the
18 existing design of this function, it has functioned
19 to require an applicant to redesign this whole
20 frontage to have two exits, one for the mezzanine
21 level, and one for the basement level wouldn't
22 necessarily be a good planning alternative because
23 it functions appropriately and the uses work. They
24 have worked. They have been approved. It's just
25 clarifying what uses are permitted in that zone --

1 CHAIRMAN AIBEL: But the zoning seems
2 to make a distinction, and as part of the
3 distinction, it's requiring a separate entrance
4 maybe. Maybe that's an issue. I don't know.

5 MS. BANYRA: To the basement. That's
6 talking about the basement.

7 MR. HEYDT: But that is why we are
8 requesting the D-2 expansion of a nonconforming, so
9 it is your decision.

10 CHAIRMAN AIBEL: All right.

11 MR. BURKE: Just bear in mind, I think
12 we did get into the details. It is a 300 square
13 foot area we're talking about, so it is not a
14 tremendous size.

15 300 feet, we can worry about different
16 things, but it's not a big area. It is probably no
17 bigger than the areas defined by the table and the
18 railing.

19 CHAIRMAN AIBEL: This would be a lot
20 easier if we were focused on a use.

21 My difficulty is just not understanding
22 what could go in under this theory and unintended
23 consequences is a real issue.

24 MR. BURKE: I understand that, Mr.
25 Chairman, but from the applicant's point of view, he

1 hasn't been able to find anyone that seems to fit
2 the bill. So we're here for two reasons: To
3 clarify what can be done and to ask to allow the
4 office on the ground floor and the cellar to be used
5 for other purposes, which would be permitted uses,
6 not unpermitted uses.

7 We're not asking for a noncompliant
8 use. We're asking for only permitted uses to be
9 allowed in there as well as the office to continue.

10 COMMISSIONER MC ANUFF: The reason for
11 the florist not taking the space was because they
12 were not allowed to use the 300 square feet --

13 MR. CARACAPPA: He took the space.

14 COMMISSIONER MC ANUFF: He took the
15 space.

16 MR. CARACAPPA: He moved in. I had to
17 give him his money back, and I had to relocate him
18 because he couldn't get the certificate of
19 occupancy. The building department -- the zoning
20 department said no, so the building department --

21 MR. BURKE: And I don't know what the
22 reason is --

23 MR. CARACAPPA: -- and asked him for
24 the certificate of occupancy because produced in my
25 lease, it was up to him. He was obligated to get

1 that.

2 COMMISSIONER MC ANUFF: Right.

3 And was he using the cellar at that
4 time as part of his retail space or --

5 MR. CARACAPPA: Yeah, he had --

6 COMMISSIONER MC ANUFF: -- was he using
7 it as storage?

8 MR. CARACAPPA: He had an office -- he
9 had a desk down there, and then he had, yeah, he had
10 plants down there.

11 COMMISSIONER MC ANUFF: So in theory, a
12 customer came in, had access to the first floor, the
13 mezzanine, and would also go down the cellar to do
14 shopping in his store?

15 MR. CARACAPPA: Yeah. His customers
16 would go --

17 MR. BURKE: I was not involved, and I
18 can't say whether that was the only issue.

19 MR. CARACAPPA: Well, at that point
20 they told him it was only office.

21 MR. BURKE: The whole space?

22 MR. CARACAPPA: The whole building.

23 COMMISSIONER MC ANUFF: So if that was
24 the case, and he took his retail out of the cellar,
25 he would have been allowed to stay there and gotten

1 a C of O?

2 MR. BURKE: No.

3 MR. CARACAPPA: No. As far as I knew,
4 you know, when I went down to find out, they said,
5 no, it's only offices, not retail.

6 COMMISSIONER MC ANUFF: Right. That id
7 what I mean.

8 If he had taken his retail, part of his
9 establishment out of the cellar and only confined
10 it --

11 COMMISSIONER MURPHY: Well, that's what
12 he's saying, so --

13 (Everyone talking at once)

14 COMMISSIONER MURPHY: -- but only
15 office, the whole thing --

16 COMMISSIONER MC ANUFF: Oh, I got you.

17 MR. CARACAPPA: That's right.

18 COMMISSIONER MURPHY: So then -- so to
19 go back, though, we had asked were you just talking
20 about the cellar part, but now I'm hearing the
21 clarity covers the whole thing.

22 MR. BURKE: Well, I think I said this,
23 and I'll say it again --

24 COMMISSIONER MURPHY: Okay.

25 MR. BURKE: -- there's two tiers. One

1 is we wanted clarity on what could be used in the
2 non cellar space, because that seems to have been an
3 issue.

4 And then we were also asking to allow
5 the cellar, the 314 feet or so to be used for
6 something other than office, to be used for
7 retail --

8 COMMISSIONER MURPHY: Right.

9 MR. BURKE: -- which was a permitted
10 use.

11 So it was really a two-step process
12 that we were here for.

13 COMMISSIONER DE GRIM: And do you have
14 any prospects?

15 Are you negotiating with anybody who is
16 saying, you know, if I can get in, I want to
17 lease --

18 MR. CARACAPPA: I had an artist that
19 hung on for like six months, and then she finally
20 walked.

21 I told Liberty Realty, forget it, take
22 it off. I don't even know what it's for, because
23 everybody that's coming in, I don't know what to
24 say. You know, am I allowed for this, am I allowed
25 for that, so --

1 COMMISSIONER MC ANUFF: Just to
2 clarify, what is the current zoning office currently
3 allowing for the first floor and the mezzanine?

4 What is that use, retail?

5 MR. CARACAPPA: From what --

6 COMMISSIONER MC ANUFF: What are you
7 being told now?

8 If you had to rent the space --

9 MR. CARACAPPA: From what I understand
10 now, I can have an office downstairs and I can have
11 retail on the top, from what I'm understanding.

12 MR. BURKE: No, no.

13 What is the zoning officer telling you?

14 MR. CARACAPPA: I gave up with the
15 zoning officer.

16 COMMISSIONER MC ANUFF: Okay. But
17 what --

18 MR. CARACAPPA: I keep saying it to the
19 Zoning Board. I mean --

20 COMMISSIONER MC ANUFF: -- no, I'm
21 having -- I'm having -- why did the -- the florist
22 moved out because retail wasn't permitted at all in
23 the building?

24 MS. CARCONE: No, no denials --

25 MR. CARACAPPA: That's what she said.

1 COMMISSIONER MC ANUFF: Okay. And even
2 though on the first floor and the mezzanine it was
3 not permitted?

4 MR. BURKE: I wasn't inquiring, but
5 that's what he said --

6 (Everyone talking at once.)

7 MS. BANYRA: Mr. Burke, do you have a
8 denial from the zoning officer?

9 MR. BURKE: I do not.

10 MS. BANYRA: Did you have a denial from
11 the zoning officer when the florist went in --

12 MR. BURKE: Letter of denial --

13 MR. GALVIN: No, but they don't have to
14 have that --

15 MS. BANYRA: No, I know they don't.

16 But they went specifically to the
17 zoning officer and asked to use the use there. They
18 don't have to get it to come to us. But I'm just
19 asking if anybody had anything written from her that
20 tells us -- because we are all talking
21 hypothetically with what the zoning officer did.

22 Jim, have you gone and spoken with Ann?

23 MR. BURKE: I did. I did.

24 So what I believe happened according
25 to -- when I found this resolution --

1 MR. GALVIN: I'm sorry. I want to
2 interject. I am being asked a question, and you
3 can't hear it.

4 MR. BURKE: Okay.

5 MR. GALVIN: Someone is asking me, one
6 of the Board members has given me the side bar of
7 what are we being asked.

8 And what we are being asked for is
9 permission to use the entire space, cellar and first
10 floor for retail, or office space cellar and first
11 floor, right?

12 MR. CARACAPPA: Right.

13 MR. GALVIN: And the question is what
14 kind of retail.

15 If we granted retail, we are not
16 really -- we are not retaining any control unless we
17 define it --

18 COMMISSIONER DE GRIM: Unless the
19 condominium association has to exercise control.

20 COMMISSIONER GRANA: That would be
21 fine.

22 MR. GALVIN: That's a whole other
23 issue. If the condominium association doesn't
24 permit the use of the cellar space or doesn't permit
25 certain uses, that's a different issue for them.

1 Whether we grant it or not, we can't override the
2 condo documents.

3 COMMISSIONER DE GRIM: Right.

4 COMMISSIONER BRANCIFORTE: However, the
5 condo association could always get together and say,
6 let's allow them to go beyond what's -- what we
7 usually allow --

8 COMMISSIONER MC ANUFF: They can amend
9 their bylaws.

10 COMMISSIONER BRANCIFORTE: Yeah. They
11 can amend their bylaws. Exactly.

12 MR. GALVIN: So I don't think we should
13 be concerned with the condo at the moment, because
14 we are not really changing the physical structure of
15 the space.

16 We're are not really changing the
17 condominium itself. Although normally it should
18 be -- this case should normally be the condo
19 association, not the applicant -- and I am only
20 realizing it now, but you know, normally it would
21 have to be the condo, not the unit owner.

22 So at some point we would need to
23 know -- that's what we should have here, too, is
24 like permission from the condo association or
25 support from the condo association for this.

1 MR. BURKE: I am not sure because it's
2 a commercial unit and so he has rights to rent the
3 commercial unit or sell the commercial unit.

4 MR. GALVIN: Right.

5 But what I've done in other situations
6 is if I wanted an individual unit owner to appear as
7 opposed to the condo association, sometimes what I
8 have them do is get a letter from the condo
9 association saying they support the application.

10 MR. CARACAPPA: Yeah. I can get your
11 letter. I mean, if these absentee --

12 MR. BURKE: It is individual unit
13 owners.

14 MR. CARACAPPA: Yeah.

15 MR. BURKE: It's an association, but
16 it's not owned by one person.

17 MS. BANYRA: So the other thing just
18 for the Board members, you know, I think if the
19 Board was inclined to grant a retail use as a
20 permitted use -- you know, retail in the cellar
21 space, maybe the way to -- I'm going to tighten it
22 up, because if you're afraid that you may open it up
23 to a use that has some kind of nuisance things, then
24 maybe you specifically indicate that, you know,
25 retail uses are permitted subject to the zoning

1 officer's evaluation regarding nuisance issues,
2 i.e., light, air or code official -- or code
3 violation, you know, something like that.

4 COMMISSIONER GRANA: Wouldn't that
5 exist anyway?

6 MS. BANYRA: Well, I think, you know,
7 relative to even what John said, like just say glare
8 or a noise thing, you know, if it's open -- a lot of
9 uses are permitted in this zone, you know, under
10 retail, a lot of things. But if there's some in
11 particular that you're not interested in down there,
12 then maybe you should put that in, or if you're not
13 interested, I'm just going to say -- say it was a
14 restaurant is a permitted use, and it's not, it's a
15 condition, but say it was a restaurant.

16 What's the issue with a restaurant that
17 you don't want?

18 Well, there's too many people. There's
19 people standing outside, or it's noise, or it's
20 hours, so maybe you tighten it up with a little bit
21 of that or allow her to tighten it up, should she
22 need to go in that direction.

23 I don't know, okay. I'm trying to come
24 up with something.

25 MR. GALVIN: I think it's too hard. I

1 think you're --

2 COMMISSIONER GRANA: I think it's too
3 hard, and now we're navigating what --

4 MR. GALVIN: Right. You either know
5 what -- you either know what the use is --

6 COMMISSIONER GRANA: -- then we're
7 regulating what they can have --

8 MR. GALVIN: -- yeah, I think you're
9 right. I think you either know what the use is, and
10 you're granting a specific use or a specific type of
11 use --

12 MS. BANYRA: And we don't have that.

13 MR. GALVIN: -- or you're granting
14 retail in general, and you just let the chips go as
15 they will.

16 COMMISSIONER BRANCIFORTE: Well, that
17 is the problem that I have with it is, you know,
18 they were talking about a real estate agency when
19 they granted this thing. I mean, it seems that way,
20 and real estate agencies have certain hours. They
21 don't produce a lot of waste. They don't produce a
22 lot of noise or smells, so...

23 MR. GALVIN: Right.

24 But I think the point was made earlier,
25 which was a good point, which is if the first

1 floor -- if the basement -- if the cellar -- not
2 basement, cellar -- if the cellar was used for
3 strictly storage, those things would still occur on
4 the first floor, and we wouldn't have any regulatory
5 control.

6 COMMISSIONER GRANA: Exactly.

7 COMMISSIONER MURPHY: Right.

8 MR. GALVIN: And the main reason why I
9 think cellars aren't used is for safety. And if you
10 don't find -- and there are other parts of the city,
11 where you just could not have a cellar because it
12 might flood, or FEMA regulations would prohibit it
13 and it would be storage.

14 COMMISSIONER GRANA: If this was
15 considered a basement, okay, there are two
16 commercial properties in less than a block from this
17 one that look like basements, that are commercial or
18 retail property -- retail use --

19 COMMISSIONER MURPHY: They might not be
20 as deep as this, too.

21 COMMISSIONER GRANA: They may not be as
22 deep, but I think -- but I think we heard from their
23 architect that the occupancy is set. It's only 300
24 square feet, and the secondary means of egress isn't
25 required.

1 COMMISSIONER RMURPHY: I have a
2 question.

3 COMMISSIONER MC ANUFF: Just going back
4 to what you just said that we're not able to
5 regulate the first floor, what we just said a few
6 minutes ago is that what they are asking for is the
7 building to be -- the entire building to be approved
8 for retail, not just the basement.

9 MR. GALVIN: Correct.

10 COMMISSIONER MC ANUFF: So we do have
11 an opportunity to say we are approving the first
12 floor, but with certain conditions.

13 MR. GALVIN: No. We are approving the
14 cellar with certain conditions.

15 COMMISSIONER MC ANUFF: Well, what we
16 just said a few minutes ago was that he was asking
17 for the entire building to be approved as retail or
18 the entire first floor with the cellar as an office.

19 And when I asked before why when the
20 florist was there, why he just didn't take his stuff
21 up to the first floor and mezzanine, he said it
22 wasn't a permitted use, so that's --

23 MR. BURKE: We are dealing with
24 somebody who is not in the room, which is the zoning
25 officer, so -- and that's difficult.

1 But what I'm asking for -- I believe,
2 you know, and I've read this, I believe that on the
3 first floor mezzanine absolutely you can do
4 anything, any retail use you want.

5 The problem is I am not sure if the
6 zoning officer concurs, so we are asking for a
7 clarification on that, and then we are asking to
8 allow -- it's two tier -- we are asking to allow the
9 basement -- the cellar to be used as retail as well.

10 MR. GALVIN: Let me -- I am sorry --
11 I'm worried about us going around and around and
12 around and never coming to an end.

13 But go ahead, Diane.

14 COMMISSIONER MURPHY: I have a
15 question.

16 Let's just say we okay this for retail.
17 It would be as the building stands now, the
18 floors --

19 MR. GALVIN: Correct.

20 COMMISSIONER MURPHY: -- like the
21 mezzanine --

22 MR. GALVIN: No, within the space
23 that -- they have an extra problem, Diane.

24 Because it's a condo, they can't be
25 changing the square footage or the percentage of

1 that space without going back to the condo and
2 changing the condo documents.

3 So in addition to having a problem with
4 us, and they would need a site plan to do that,
5 okay?

6 So what's the total square footage of
7 both the first floor and the cellar area?

8 Can I have the square footage of the
9 first floor and the square footage of the cellar?

10 COMMISSIONER DE GRIM: Is there a
11 mezzanine, or is it just the first floor --

12 MR. MELIA: The first floor has two
13 tiers. It's six steps from the level that you enter
14 the street up to the other level.

15 COMMISSIONER DE GRIM: Okay. So then --

16 MR. MELIA: The mezzanine typically --
17 (Everyone talking at once)

18 MR. MELIA: -- something they --
19 (Everyone talking at once)

20 COMMISSIONER DE GRIM: So it's --

21 THE REPORTER: Wait a second. You
22 can't all talk at the same time.

23 MR. GALVIN: Shush. Who is talking and
24 shouldn't be?

25 Mr. DeGrim was going.

1 COMMISSIONER DE GRIM: Okay. Excuse
2 me. Just for clarification then.

3 You come in the door. You go up six
4 steps to the first floor, and then you go down how
5 many steps to the cellar?

6 MR. MELIA: The photographs are a
7 better indication.

8 When you enter off the street, here is
9 the entry door.

10 COMMISSIONER DE GRIM: Right.

11 MR. MELIA: You are looking at this
12 reception area.

13 If you turn to your right, you walk up
14 six steps to an elevated portion on that floor, or
15 you go down this flight of stairs into the cellar.

16 COMMISSIONER DE GRIM: Into the cellar.
17 You know, where that reception desk is,
18 behind there, is that a space?

19 MR. MELIA: It's just a bathroom.

20 COMMISSIONER DE GRIM: Okay. Fine.

21 MR. GALVIN: All right. Now I want to
22 come back to where I was.

23 On that first floor, do you have a
24 calculation?

25 There are really three levels, right?

1 So we need a calculation for all three levels.

2 MR. MELIA: I don't have --

3 CHAIRMAN AIBEL: Or do you have it as
4 cellar and the first floor?

5 MR. MELIA: Yes.

6 MR. GALVIN: Give me the first floor.

7 MR. MELIA: The first floor is 770
8 square feet.

9 MR. GALVIN: 770 square feet.

10 Then give me the cellar space.

11 MR. MELIA: It's 458 square feet.

12 MR. GALVIN: So one of the first things
13 I would say to the Board is: I'll make a condition
14 that says this is limited to either retail or office
15 with no more than 770 on the first floor and 458 in
16 the cellar.

17 MR. MELIA: Those are gross square
18 footages. They include walls, so the customer
19 service area would be smaller than that --

20 MR. BURKE: It would be under a
21 thousand square feet?

22 MR. MELIA: Yeah.

23 COMMISSIONER MURPHY: 850 --

24 COMMISSIONER BRANCIFORTE: Now, in the
25 original resolution --

1 MR. GALVIN: You don't have to feel
2 bound by it, though.

3 COMMISSIONER BRANCIFORTE: Oh, okay.

4 MR. GALVIN: You can use it. You can
5 stay with it, but you don't have to.

6 COMMISSIONER BRANCIFORTE: 714 square
7 feet of customer service area on the first floor,
8 I'm guessing, and 320 square feet to be used as
9 office space --

10 MR. GALVIN: No. We are probably
11 expanding that by this approval, if you really want
12 to get into the --

13 MR. MELIA: Just to clarify the
14 discrepancies in the numbers --

15 COMMISSIONER BRANCIFORTE: Yes.

16 MR. MELIA: -- the numbers I read, 458
17 square feet for the cellar, that includes all --

18 COMMISSIONER BRANCIFORTE: Mechanicals.

19 MR. MELIA: -- when you subtract that,
20 you end up at 303 feet -- square feet of retail
21 area.

22 So whenever that was written, and the
23 work was going or occurring at the basement walls,
24 it could be ten square feet up the walls and the
25 difference -- the 458 number counts all of this wall

1 that's used for the condo docs, and it's a much more
2 conflated number than the actual --

3 MR. GALVIN: Okay.

4 The space is limited to retail or
5 office use within 707 gross -- 707 square feet of
6 gross area on the first floor and 458 square feet in
7 the cellar. This space is not to be expanded.

8 MS. BANYRA: I think you should put
9 down that's gross, Dennis. That's gross square
10 feet, you know, gross area.

11 MR. GALVIN: I'm doing it wrong. Okay.
12 Measured as gross area.

13 MS. BANYRA: Okay.

14 MR. GALVIN: Now, do we want to say --
15 we don't want to say anything else.

16 Can they do retail and office and split
17 it up?

18 We don't care what they do. Whatever
19 they got to do to rent this space, right?

20 Is that where we're at?

21 (All Commissioners talking at once)

22 MR. GALVIN: Not "whatever," not
23 "Whatever." I don't want to say "whatever" --

24 COMMISSIONER GRANA: That's what's been
25 asked for.

1 COMMISSIONER MC ANUFF: Yes.

2 MR. GALVIN: Okay.

3 Do you have anything else for the good
4 of the cause?

5 MR. BURKE: No, no, I don't.

6 COMMISSIONER BRANCIFORTE: But there
7 was talk about how do we make clear to the zoning
8 officer that she has some power --

9 MR. GALVIN: Listen, one of the things
10 that we have been saying to the zoning officer is be
11 restrained, to have doubt, and to send stuff to us.

12 It is possible that if they went there,
13 that this might have been kicked back to us. Maybe
14 they've done some investigation that caused them to
15 go down this path.

16 COMMISSIONER BRANCIFORTE: Do we need
17 to include any language to that?

18 MR. GALVIN: No, no. I don't think --
19 I think they have a right to come here and request
20 our interpretation, or request a variance.

21 If you grant a variance for the use in
22 this fashion, the zoning officer will have to honor
23 it. I don't think there is anything involving the
24 zoning officer.

25 If we had sent them to the zoning

1 officer, and she denied them, she might be
2 considering reversing her, but you know, again, I
3 think the best path, and I would like to see it
4 followed, and I'm not sure if this is a D-2, it
5 might be a D-1 in the cellar area, but regardless, I
6 think the proofs are adequate, and we can make a
7 resolution work if you went in that direction.

8 I prefer to see you not make an
9 interpretation or a ruling on retail uses and grant
10 a variance, if you're so inclined to grant a
11 variance to permit retail and office the way I'm
12 describing.

13 MR. CARACAPPA: May I say something?

14 MR. GALVIN: No. You really shouldn't,
15 unless you got something that's going to really,
16 really help, but I can't think of it. I just helped
17 you by what I said.

18 (Everyone talking at once)

19 MR. GALVIN: Wait a minute, wait a
20 minute.

21 MS. BANYRA: I mean, we don't even
22 know. It might be in the flood zone for her, too,
23 you know, the basement.

24 MR. GALVIN: Is it in the flood zone?

25 MR. MELIA: Yes. Yes, it is.

1 MR. GALVIN: Then you can't use retail
2 in the basement -- you can't use retail in the
3 cellar -- it can only be storage. You can't -- we
4 can't give you a use if you're -- you're kidding, we
5 went this whole time, and now you are going to tell
6 us that?

7 COMMISSIONER BRANCIFORTE: So the
8 public is not allowed to go into the basement if
9 it's retail?

10 MR. GALVIN: No. You're not allowed to
11 use, if you're FEMA, and you're below the base flood
12 elevation --

13 MR. MELIA: You know, we should check
14 with the latest flood map because --

15 MS. BANYRA: How about --

16 MR. GALVIN: Time out --

17 MR. MELIA: -- we feel it's right on
18 the --

19 MR. GALVIN: -- time out, time out.

20 My recommendation to you is carry it.
21 Carry it, and you guys double check that and come
22 back to us, because it will be that simple. You
23 won't like it, but it will be that simple, because
24 we can't override FEMA, and that might be why the
25 zoning officer --

1 MS. BANYRA: That's maybe why she said
2 no.

3 MR. GALVIN: -- because she is
4 generally very flexible for businesses. She wants
5 to help businesses.

6 COMMISSIONER BRANCIFORTE: She's also
7 the Flood Plain Administrator.

8 MR. GALVIN: She's the Flood Plain
9 Administrator, so she knows.

10 MR. MELIA: When we do that --
11 (Everyone talking at once)

12 MR. GALVIN: Under the federal, under
13 FEMA, which is the Federal Emergency Management
14 Agency, they have the flood regulations.

15 Any area that's below the base flood
16 elevation can be storage and parking, but it cannot
17 be any active use. It's can't be retail, and it
18 can't be office.

19 MS. BANYRA: But, Dennis, since the
20 rules are very finite, and we could approve it
21 subject to -- if it's below the flood, it's subject
22 to the zoning officer's decision relative to the
23 flood, so that they don't -- because they can't do
24 it anyway. We're not going to overrule FEMA, so
25 even if we approved it tonight, if it's in the flood

1 zone, it's in the flood zone, and it's game over.

2 Either way, right?

3 COMMISSIONER GRANA: So, Eileen, you're
4 saying no harm, no foul?

5 MS. BANYRA: You know, I'm thinking,
6 yeah. So if they're in -- that if this is all for
7 nought --

8 COMMISSIONER GRANA: So then we'd
9 use --

10 MS. BANYRA: -- if they're out, then
11 we're done, if we go in that direction.

12 COMMISSIONER GRANA: Yeah. But then
13 if -- if it isn't, then this is all for nought and
14 they have to come back. I mean, that seems --

15 MS. BANYRA: I'm sorry?

16 MR. GALVIN: They don't come back, if
17 they --

18 COMMISSIONER GRANA: -- look, if it is
19 not going to be permitted, right --

20 MS. BANYRA: Because of flooding, then
21 it's game over.

22 COMMISSIONER GRANA: -- then they are
23 not going to come back.

24 MS. BANYRA: They don't need to come
25 back.

1 COMMISSIONER GRANA: But if we don't
2 vote tonight, and it would be permitted, then they
3 have to come all the way back and do it all over
4 again.

5 COMMISSIONER MURPHY: Right. That's
6 what she said.

7 MS. BANYRA: Then they have to come
8 back.

9 COMMISSIONER GRANA: So it just seems
10 to me --

11 MS. BANYRA: -- that's why I'm
12 wondering if we should -- right, Dennis --

13 COMMISSIONER GRANA: -- make our own
14 decision --

15 MS. BANYRA: -- I think let Ann make
16 the decision on the flood, and let them have
17 either -- if you agree with that -- do whatever
18 we're going to do tonight and get it over with, and
19 then if it's subject to flood, it's subject to
20 flood, and we can't override -- and we can even put
21 something in our resolution that says that, you
22 know, subject to the zoning officer, flooding or
23 whatever it is.

24 COMMISSIONER GRANA: Yeah.

25 That could be a condition.

1 MS. BANYRA: Yeah.

2 MR. MARSDEN: That's probably the
3 easiest way to go.

4 MS. BANYRA: That's the easiest way to
5 go.

6 MR. MARSDEN: I won't make that call --
7 (Everyone talking at once, and this
8 portion could not be transcribed.)

9 MR. MELIA: Down Harrison Street, all
10 of those retail uses that are approved on the first
11 floor are probably below the level of this --

12 MR. GALVIN: Yeah, but they're
13 existing --

14 COMMISSIONER GRANA: But they're
15 existing --

16 MR. MELIA: No. The ones that are
17 going to the Board as uses on the first floor
18 level --

19 MS. BANYRA: But they are first floor
20 level, right?

21 So there are different doors that can
22 come out and --

23 COMMISSIONER MC ANUFF: Different flood
24 proofing.

25 MS. BANYRA: -- there's different flood

1 proofing, and I think that's the --

2 MR. MELIA: They have flood barriers,
3 but I'm just making the comment --

4 MS. BANYRA: Yeah, understood.

5 MR. MELIA: -- that this is higher than
6 a lot of the first floor level ones that --

7 MR. GALVIN: That's what I thought,
8 too. This area of town was higher, so that is why
9 it wasn't immediately coming to me that that was the
10 problem. That's why I kept saying safety and
11 flooding, and no one is saying anything, right?

12 MR. MELIA: You're asking is it in the
13 flood plain.

14 Those maps change every month.

15 MR. GALVIN: Well, they do that in
16 Point Pleasant Beach also. We got to pay attention.

17 MR. MARSDEN: If I may, though, the
18 town adopted -- the city adopted a flood elevation,
19 which makes me believe it may be within that flood
20 elevation, so even if it's in the --

21 (Everyone talking at once)

22 MR. MARSDEN: -- zero to one
23 possibility of water.

24 That is why I asked if you had an
25 elevation. I just looked up your address in FEMA

1 and it says, you are right in that transition zone,
2 so that's why I just thought you might be able to,
3 you know -- if we put that as a condition, I think
4 that would work, you know, because then they don't
5 have to come back.

6 All they have to do is go to Ann, and
7 say is this okay.

8 MR. BURKE: The point would be --
9 again, to clarify that the upper part of this unit
10 can be used for retail.

11 MR. GALVIN: I'm doing that, Jim.

12 MR. BURKE: No, no. I'm saying so
13 irrespective of what happens with the cellar, it is
14 still something positive for Mike going forward.

15 MR. MARSDEN: There are tons of ways to
16 waterproof and dry flood proof, and that's what a
17 lot of these applications are. There's a lot of
18 important stuff --

19 (Everyone talking at once)

20 COMMISSIONER BRANCIFORTE: So --

21 MR. GALVIN: You got to keep it on the
22 record, guys.

23 What do you want --

24 COMMISSIONER BRANCIFORTE: So if we
25 make a motion --

1 MR. GALVIN: Well, there's two -- let
2 me just interject. There are two ways to go.

3 One is: We can carry this one meeting.
4 You know, I'm not at the top of my game tonight.
5 I'm telling you that flat out, okay? I spent
6 everything on the first few items.

7 I think this would work. If you guys
8 want to do this, it works.

9 Here's the conditions:

10 1: Space is limited to retail or
11 office use within 700 square feet of the first floor
12 and 458 square feet in the cellar measured as gross
13 area. This space is not to be expanded.

14 2: This approval is subject to the
15 review and approval of the Flood Plain
16 Administrator.

17 If the area in the cellar is below the
18 base flood elevation and can only be used for
19 storage, the use of the cellar would be limited to
20 storage for the office/retail use on the first
21 floor, and that covers your second point about
22 having clarification on the first floor.

23 Eileen is fairly convinced that you
24 have a right to do it with or without this, but
25 we're going to put it in anyway, okay?

1 MR. BURKE: Yeah, only because of the
2 confusion --

3 COMMISSIONER MC ANUFF: About the
4 mezzanine --

5 MR. GALVIN: What's that?

6 Well, I'll try to explain that in the
7 resolution.

8 COMMISSIONER MC ANUFF: Uh-huh.

9 MR. GALVIN: I intend that mezzanine to
10 mean the whole first floor.

11 If that 707 square feet includes the
12 reception area and the steps and then up, that's the
13 way it was described, right?

14 Do you agree?

15 MR. MELIA: There's only six steps --

16 MR. GALVIN: Six steps.

17 (Everyone talking at once)

18 COMMISSIONER DE GRIM: The entry, the
19 stairs, and the first floor are 700 what?

20 MR. MELIA: 700-something.

21 COMMISSIONER MC ANUFF: Seven.

22 COMMISSIONER DE GRIM: Okay, that's it.

23 MR. GALVIN: Or you wait, and you find
24 out, and we get some more -- we check with Ann
25 Holtzman and find out what she's thinking.

1 COMMISSIONER MC ANUFF: You'll have a
2 new Board here in January, so --

3 MR. GALVIN: I'm okay either way.

4 CHAIRMAN AIBEL: Let me just say, Mr.
5 Burke, the fact that there is confusion over the
6 first floor is concerning to me. I don't know why
7 there is confusion.

8 MR. BURKE: Let me say this. I have to
9 go by what Mike has told me.

10 Now, when I did find this resolution
11 and I met with Ann, she said to me that the cellar
12 is limited to office, right?

13 So I was not a part of the
14 conversations about the florist or anything else, so
15 I am not sure if that was her final word or if this
16 was the end result of a dialog.

17 So I am not confused, and I don't know
18 if Ann is still confused, but that is why I am
19 asking for it, so we don't have to come back, and
20 Mike, whatever happens with the cellar, can at least
21 move forward and say to his prospective tenants this
22 is what you can do in this space.

23 MR. GALVIN: My recommendation to you
24 is you guys should make a motion.

25 COMMISSIONER GRANA: Yeah. Are we done

1 deliberating or are we --

2 MR. GALVIN: I think I had enough.

3 (Laughter)

4 COMMISSIONER GRANA: I think so.

5 Are we ready for a motion?

6 COMMISSIONER MC ANUFF: So a motion.

7 MR. GALVIN: It's up to you guys.

8 COMMISSIONER GRANA: Are we agreed

9 we're going to make a motion tonight?

10 Well, I'm just making it. I am going
11 to make a motion -- I still want to have comments,
12 but I won't -- I'm going to make a motion --
13 everybody is sitting looking at the clock. I'm
14 going to make a motion to approve with said
15 conditions.

16 COMMISSIONER MC ANUFF: Second.

17 MR. GALVIN: Roll call.

18 MS. CARCONE: Okay. Antonio Grana,
19 Comissioner Grana?

20 COMMISSIONER GRANA: Yes.

21 MS. CARCONE: Commissioner Murphy?

22 COMMISSIONER MURPHY: Hum.

23 MR. GALVIN: You can do it.

24 (Laughter)

25 COMMISSIONER MURPHY: Abstain.

1 MR. GALVIN: You can't. Don't you dare
2 do that.

3 COMMISSIONER MURPHY: This is a D
4 variance?

5 MR. GALVIN: Yes. It requires five
6 affirmative votes.

7 COMMISSIONER MURPHY: Yes.

8 MS. CARCONE: Commissioner Branciforte?

9 COMMISSIONER BRANCIFORTE: I am going
10 to say no.

11 MS. CARCONE: Colmmissioner McAnuff?

12 COMMISSIONER MC ANUFF: Yes.

13 MS. CARCONE: Commissioner DeGrim?

14 COMMISSIONER DE GRIM: Yes.

15 MS. CARCONE: Commissioner Aibel?

16 CHAIRMAN AIBEL: No.

17 MR. BURKE: Can I say one thing before
18 we adjourn?

19 MR. GALVIN: Are you going to say thank
20 you?

21 MR. BURKE: Well, I was going to ask if
22 you could bifurcate the votes just for the clarity
23 point, so that Mike at least can say to prospective
24 tenants, it is retail --

25 MR. GALVIN: It is in my conditions.

1 MR. BURKE: But it was denied.

2 MR. GALVIN: It was just approved.

3 MS. CARCONE: No, it was denied.

4 COMMISSIONER MC ANUFF: No, it was
5 denied.

6 COMMISSIONER GRANA: It was denied.
7 You didn't get five.

8 (Everyone talking at once)

9 MR. GALVIN: Okay. Sorry. I'm sorry.
10 I didn't hear it right.

11 CHAIRMAN AIBEL: You were tired
12 tonight.

13 MR. GALVIN: Yes, I told you I was.

14 So does the Board want to make a ruling
15 on the first floor space?

16 COMMISSIONER BRANCIFORTE: Now, this is
17 something that has to be debated.

18 May I explain my no vote at this point?

19 MR. GALVIN: You could have explained
20 it at any time. I'm sorry. I didn't want to keep
21 you --

22 COMMISSIONER BRANCIFORTE: I am okay
23 with the first floor being retail. That's all I am
24 going to say. I'm okay with the first floor being
25 retail. I am not necessarily sold on the cellar

1 being retail.

2 MR. GALVIN: So is it okay with the
3 Board -- so the people who voted no, are you okay
4 with modifying your decision or bifurcating that
5 second part about the first floor?

6 COMMISSIONER DE GRIM: And just make a
7 motion -- move as to the first floor?

8 MR. GALVIN: The 707 square feet on the
9 first floor.

10 COMMISSIONER DE GRIM: That it can be
11 retail?

12 MR. GALVIN: Right.

13 COMMISSIONER BRANCIFORTE: I would be
14 okay with that.

15 CHAIRMAN AIBEL: Well, I'm -- well,
16 then we have five.

17 COMMISSIONER GRANA: Then you have
18 five.

19 CHAIRMAN AIBEL: Then I don't have
20 to --

21 MR. GALVIN: So let's make a motion
22 modifying the prior decision and continuing the
23 denial as to the cellar, but approving the first
24 floor as to the 700 -- the same thing about the 700
25 square feet as measured as gross area.

1 COMMISSIONER BRANCIFORTE: I hate to
2 ask, but at that point what could the cellar be used
3 for?

4 MR. GALVIN: Storage --

5 COMMISSIONER DE GRIM: Storage.

6 COMMISSIONER GRANA: Storage.

7 COMMISSIONER MURPHY: Or office?

8 MR. GALVIN: Or office --

9 MS. BANYRA: Or office --

10 MR. GALVIN: -- maybe or office --

11 COMMISSIONER BRANCIFORTE: Storage or
12 office --

13 COMMISSIONER MC ANUFF: Depending on
14 the flood decision.

15 (Everybody talking at once)

16 COMMISSIONER BRANCIFORTE: What's that?

17 MR. BURKE: We didn't get what we want,
18 but let's not roll it back.

19 (Laughter - everyone talking at once)

20 COMMISSIONER MC ANUFF: Well, what
21 about the --

22 MR. GALVIN: Depending on the flood --

23 (Everyone talking at once)

24 MR. BURKE: Well, the flood is a
25 different issue --

1 MS. BANYRA: That's a different issue.

2 MR. BURKE: -- as far as the zoning
3 goes, it is still permitted.

4 COMMISSIONER BRANCIFORTE: It could be
5 used as storage or as office space for the retail
6 above.

7 MR. BURKE: Depending on the flood
8 regulations.

9 COMMISSIONER BRANCIFORTE: Of course.
10 Okay. I am all right with that.

11 MR. BURKE: Okay.

12 COMMISSIONER GRANA: So should I go
13 again?

14 MR. GALVIN: No. Let John do it.

15 COMMISSIONER GRANA: I'll let John do
16 it.

17 MR. GALVIN: Because he's modified
18 it --

19 COMMISSIONER BRANCIFORTE: So do we
20 need new conditions or anything?

21 MR. GALVIN: I have: The space is
22 limited to a retail or office use within the 700
23 square feet of the first floor. The 458 square feet
24 in the cellar is limited to --

25 MS. BANYRA: Prior approved office

1 space?

2 MR. GALVIN: -- is limited to storage
3 or previously approved office space measured as
4 gross area. This space is not to be expanded.

5 Approval is subject to review and
6 approval of the Flood Plain Administrator. If the
7 areas in the cellar are below the base flood
8 elevation, it can only be used for storage. The use
9 of the cellar will be limited to storage.

10 COMMISSIONER GRANA: Or office.

11 MR. GALVIN: Well, no --

12 COMMISSIONER DE GRIM: Not if it's
13 below the flood plain.

14 MR. GALVIN: -- if you're below the
15 flood plain, you can't.

16 COMMISSIONER GRANA: Oh, if it's below
17 flood, sorry, I'll take it back. I'll take it back.

18 COMMISSIONER BRANCIFORTE: So are we
19 ready for a motion at this point?

20 COMMISSIOENER GRANA: Yeah.

21 COMMISSIONER MC ANUFF: You have to
22 make a motion to repeal --

23 MR. GALVIN: We have a motion.

24 Is there a second?

25 COMMISSIONER MC ANUFF: Second.

1 COLMMISSIONER GRANA: Second.

2 MR. GALVIN: Who is going to go?

3 Mr. McAnuff is the second.

4 MS. CARCONE: Commissioner Grana?

5 COMMISSIONER GRANA: Yes.

6 MS. CARCONE: Commissioner Murphy?

7 COMMISSIONER MURPHY: Yes.

8 MS. CARCONE: Commissioner Branciforte?

9 COMMISSIONER BRANCIFORTE: Yes.

10 MS. CARCONE: Commissioner McAnuff?

11 COMMISSIONER MC ANUFF: Yes.

12 MS. CARCONE: Commissioner De Grim?

13 COMMISSIONER DE GRIM: Yes.

14 MS. CARCONE: Commissioner Aibel?

15 CHAIRMAN AIBEL: No.

16 MR. BURKE: Thank you.

17 MS. CARCONE: It's approved.

18 MR. BURKE: Now I can thank you.

19 (Everyone talking at once)

20 MR. GALVIN: Motion to close the

21 meeting.

22 CHAIRMAN AIBEL: First of all, happy

23 new year, happy holidays.

24 MR. GALVIN: Happy holidays, Merry

25 Christmas.

1 COMMISSIONER GRANA: I'll make a motion
2 to have a happy new year.

3 CHAIRMAN AIBEL: Thank you everybody
4 for a great year. It was well done.

5 MR. GALVIN: See you next year. For
6 those of you who want to move up, move up.

7 (Everyone talking at once)

8 MR. GALVIN: Hold on.

9 COMMISSIONER BRANCIFORTE: Motion to
10 close.

11 COMMISSIONER GRANA: Motion to close.

12 COMMISSIONER MC ANUFF: Second.

13 MR. GALVIN: I want those fingers to
14 stop typing.

15 COMMISSIONER GRANA: All in favor?

16 (All Board members voted in the
17 affirmative)

18 (The meeting concluded at 11 pm)

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C E R T I F I C A T E

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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: 12/29/15
This transcript was prepared in accordance with
NJAC 13:43-5.9.