

HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN

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REGULAR MEETING OF THE :
HOBOKEN ZONING BOARD OF :May 19, 2015
ADJUSTMENT :Tuesday 7 p.m.
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Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

- Acting Chair Elliot H. Greene
- Commissioner Philip Cohen
- Commissioner Michael DeFusco
- Commissioner Carol Marsh
- Commissioner Diane Fitzmyer Murphy
- Commissioner John Branciforte
- Commissioner Tiffanie Fisher
- Commissioner Owen McAnuff

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

- Eileen Banyra, Planning Consultant
- James Giuritano, PE, PP, CME
Acting Board Engineer
- Patricia Carcone, Board Secretary

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

10 Please join me in saluting the flag.

11 (Pledge of Allegiance recited)

12 ACTING CHAIRMAN GREENE: This is a
13 Regular Meeting of the Hoboken Zoning Board of
14 Adjustment.

15 Roll call, please.

16 MS. CARCONE: Okay. Commissioner Aibel
17 is absent.

18 MS. CARCONE: Commissioner Greene?

19 ACTING CHAIRMAN GREENE: Yes.

20 MS. CARCONE: Commisioner Cohen?

21 COMMISSIONER COHEN: Here.

22 MS. CARCONE: Commissioner DeFusco?

23 COMMISSIONER DE FUSCO: Here.

24 MS. CARCONE: Commissioner Grana is
25 absent.

1 Commissioner Marsh?

2 COMMISSIONER MARSH: Here.

3 MS. CARCONE: Commissioner Murphy?

4 COMMISSIONER MURPHY: Here.

5 MS. CARCONE: Commissioner Branciforte?

6 COMMISSIONER BRANCIFORTE: Here.

7 MS. CARCONE: Commissioner Fisher?

8 COMMISSIONER FISHER: Here.

9 MS. CARCONE: Commissioner McAnuff?

10 COMMISSIONER MC ANUFF: Here.

11 MS. CARCONE: Commissioner DeGrim is
12 absent.

13 ACTING CHAIRMAN GREENE: So we have a
14 quorum.

15 MS. CARCONE: Eight members.

16 ACTING CHAIRMAN GREENE: Excellent.
17 Do we have any housekeeping matters?

18 MS. CARCONE: There are no resolutions.
19 There's one waiver.

20 Do you want to do that now?

21 ACTING CHAIRMAN GREENE: Okay. Let's
22 do that now.

23 MR. GIURINTANO: Mr. Chairman, the
24 waiver request is 1420 Willow, Block 123, Lots 7
25 through 12 and 14.

1 A waiver is being requested for
2 checklist item 25 for major site plan, 27, 34, 35
3 and 36.

4 We have no objection to those waivers
5 being granted, provided that the checklist is
6 updated and resubmitted.

7 Also under D variances, Item 34, 36,
8 43, 44, and 45.

9 We recommend approval of those waivers,
10 and the checklist should be updated to reflect that
11 accordingly.

12 ACTING CHAIRMAN GREENE: Would somebody
13 like to move that?

14 COMMISSIONER BRANCIFORTE: I will make
15 a motion to accept.

16 COMMISSIONER COHEN: Second.

17 ACTING CHAIRMAN GREENE: Do you need a
18 roll call?

19 Do you want to do a roll call or we can
20 do all in favor?

21 MS. CARCONE: All in favor?

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

24 (Continue on next page)

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HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN

----- X
 RE: 259 FIRST STREET/256-258 NEWARK : May 19, 2015
 STREET, Block 22, Lots 5.10, 5.02 & 6 : 7:10 p.m.
 Applicant: 259 1st Street, LLC :
 Final site plan approval for :
 preliminary site plan, conditional use:
 & variance approval on 9/20/11 for a :
 mixed-use development in the R-1 Zone :
 (Continued from 4-21-15) :
 ----- X

Held At: 94 Washington Street
Hoboken, New Jersey

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- Commissioner Philip Cohen
- Commissioner Michael DeFusco
- Commissioner Carol Marsh
- Commissioner Diane Fitzmyer Murphy
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10 (201) 659-0403
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WITNESS

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JOHN LINDNER

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DAVID WURSTER

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JEFFREY WHITE

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JOHN NASTASI

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E X H I B I T S

EXHIBIT NO.

DESCRIPTION

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A-9

Brick

17

A-10

Brick

19

1 ACTING CHAIRMAN GREENE: Okay. First
2 on the agenda is 259 First Street/256-258 Newark
3 Street, an application for final site plan approval
4 carried from April 21st, and we have special counsel
5 with us this evening on this application.

6 MR. GIBBONS: Thank you, Mr. Chairman.

7 MR. MATULE: Good evening, Mr.
8 Chairman.

9 Good evening, Mr. Gibbons.

10 MR. GIBBONS: Good evening, Mr. Matule.

11 MR. MATULE: Nice to see you.

12 MR. GIBBONS: Nice to see you again.

13 MR. MATULE: Robert Matule appearing on
14 behalf of the applicants.

15 We were here -- this is the property at
16 259 First Street that goes through to 256-258 Newark
17 Street. We were here on April 21. We had requested
18 final site plan approval for the subject property.
19 What made this application somewhat different was
20 the request was post construction.

21 During the course of the testimony we
22 presented the architect and the applicant. There
23 was testimony given about the fact that the facade
24 of the two-story brick structure on Newark Street,
25 which I will just for the record refer to as the

1 former barber shop, collapsed, and under the
2 guidance of Mr. Nastasi's office, it was
3 reconstructed.

4 During the course of those hearings,
5 the Board voiced serious concerns regarding the
6 reconstruction and the brick that was used by the
7 applicant.

8 Since that meeting in April, the
9 applicant engaged the services of Mr. John Lindner
10 of Union Stone Cleaning and Restoration to try to
11 locate a supply of hundred-year-old brick, if there
12 was any available, or in the absence of
13 availability, a suitable replacement brick.

14 Some of you may be familiar with Mr.
15 Lindner's firm. He specializes in historic
16 restorations. He's actually done work in the city.
17 He's done work on City Hall.

18 What I would like to do is have Mr.
19 Lindner come up and be qualified and present some
20 testimony about his efforts to locate either
21 hundred-year-old brick or suitable replacement brick
22 because what the applicant is proffering at this
23 point is if it is the Board's pleasure, based on
24 their review of the two additional brick choices
25 that we are going to present, the applicant is

1 willing to do redo the facade on the building with
2 one of the bricks Mr. Lindner has found.

3 So if I could, I would like to call up
4 Mr. Lindner, just for the record.

5 ACTING CHAIRMAN GREENE: Mr. Matule, if
6 I could just interrupt you for a moment.

7 I would just like to state for the
8 record that I was not present for the last hearing,
9 but I have read the transcript and signed the
10 affidavit.

11 MR. MATULE: Thank you for putting that
12 on the record, Mr. Greene.

13 MR. MATULE: I have Mr. Lindner's
14 resume here. I could just present it or I could
15 have him testify as to it.

16 MR. GIBBONS: Why don't you bring him
17 up and qualify him on the record.

18 Madam Reporter, do you swear him in or
19 shall I?

20 THE REPORTER: You do.

21 MR. GIBBONS: As I said, I did not ask
22 Mr. Galvin that, but I know in past circumstances I
23 have done it myself.

24 Would you raise your right hand?

25 Do you solemnly swear that the

1 testimony you are about to give in this matter will
2 be the truth, so help you God?

3 MR. LINDNER: I do.

4 J O H N L I N D N E R, having been duly sworn,
5 testified as follows:

6 MR. GIBBONS: Please state your name,
7 and spell your last name for the record.

8 THE WITNESS: John Lindner,
9 L-i-n-d-n-e-r.

10 MR. GIBBONS: Thank you.

11 Mr. Matule, your witness.

12 MR. MATULE: Thank you.

13 Mr. Lindner, you are a principal of
14 Union Stone?

15 THE WITNESS: Yes. I'm the owner for
16 25 years.

17 MR. MATULE: Okay. And through your
18 company, you are familiar with historic
19 restorations?

20 THE WITNESS: Yes. That has been our
21 primary business for six years in our family-owned
22 business.

23 MR. MATULE: Can you give the Board
24 some examples of buildings you have done and
25 buildings you've worked on?

1 THE WITNESS: Local buildings we worked
2 on in the area were the front facade of the Hoboken
3 City Hall. We did the brownstone restoration 20
4 years ago.

5 About five years ago, we were
6 commissioned to restore the gold eagles. They were
7 taken out of archives somewhere. We repaired them,
8 we gilded them, we reinstalled them on the top.

9 We have been maintaining the building
10 for Stevens Institute of Technology for 30 years.

11 We were hired to find Sybil's Cave,
12 unearth it, create the monument in the front and
13 various other --

14 MR. MATULE: Did you work on the
15 firehouse?

16 THE WITNESS: Oh, I'm sorry, yes. We
17 received an award from the Historic Preservation
18 Group regarding the Observer Street firehouse that
19 was a local award we got from Hoboken.

20 We won two state preservation awards
21 for Prudential in Newark.

22 MR. MATULE: Could you just tell the
23 Board any professional boards that you may sit on
24 or --

25 THE WITNESS: Sure.

1 I am a New Jersey planning official
2 since 2009. I have been serving on an active
3 planning board since 2009.

4 I am a member of the Warren Township
5 Historical Sites Committee and served as Vice Chair
6 for two years.

7 I'm a member of the Association for
8 Preservation of Technology. I'm a member of the
9 International Concrete Restoration Institute.

10 I have several Columbia University
11 certificate program degrees for preservation.

12 In 2012, I was in the Jersey City
13 powerhouse stabilization project hired as a
14 consultant --

15 MR. MATULE: I think that is
16 sufficient.

17 I would ask --

18 THE WITNESS: -- and other buildings
19 that we've performed work on in the area.

20 MR. GIBBONS: All right. Are there any
21 questions in connection with the proffer of the
22 witness' testimony or his qualifications?

23 ACTING CHAIRMAN GREENE: I don't think
24 so.

25 MR. GIBBONS: Hearing none, Mr.

1 Chairman, I recommend we accept.

2 ACTING CHAIRMAN GREENE: Any
3 objections?

4 MR. MATULE: So you're familiar with
5 the building in question at 258 River Street?

6 THE WITNESS: Yes, I personally --

7 MR. MATULE: You personally examined
8 the replacement facade on it?

9 THE WITNESS: I did.

10 MR. MATULE: And were you requested by
11 the applicant to try to locate 100-year-old brick to
12 replace the original brick that was on the building?

13 THE WITNESS: I was.

14 MR. MATULE: And what was the outcome
15 of your search?

16 THE WITNESS: For the past 20 years, I
17 have been searching for that red pressed brick to do
18 spot replacements in Hoboken. It is extremely
19 difficult. Every time there is a fire in town, you
20 try to steal the brick. This time there was no
21 brick to be found, and we searched throughout the
22 country.

23 MR. MATULE: And finding none, did you
24 try to identify what, in your professional opinion,
25 would be a suitable replacement brick?

1 THE WITNESS: Yes, I did.

2 Serving on several historical
3 restoration boards, our guidelines are the National
4 Preservation Briefs. They're dictated by the
5 National Park Service.

6 Within those guidelines, we found two
7 modern substitutes. This is a Watsontown brick --
8 let me orientate it the right way -- this is a
9 Watsontown brick. It's currently manufactured by
10 the company Watsontown. It is called a retro brick.

11 "Retro" means they make it to match the
12 existing -- the standards of the old historic brick.
13 It has got the same color, but more importantly, it
14 has the same size. It is a two and a quarter inches
15 tall, which is a quarter inch bigger than brick made
16 today, and it's three-eighths of an inch longer, and
17 that is why when people try to replace bricks on row
18 houses in Hoboekn, the new bricks are smaller. They
19 don't fit right.

20 This was custom manufactured to be an
21 exact match to what was historically on the
22 buildings.

23 MR. MATULE: And just for the record, I
24 would like to mark this brick A-9. We are up to
25 Exhibit A-9.

1 (Exhibit A-9 marked.)

2 MR. GIBBONS: Thank you very much.

3 I note for the record, Applicant's
4 Exhibit, dated May 19th, 2015.

5 MR. MATULE: And so this is apparently
6 manufactured brick?

7 THE WITNESS: Correct.

8 MR. MATULE: And that is readily
9 available commercially?

10 THE WITNESS: It is readily available.

11 MR. MATULE: All right.

12 And did your search turn up any
13 other --

14 THE WITNESS: We did.

15 Going one step further, the original
16 brick used in Hoboken around that time was hand
17 pressed into wood molds.

18 In our past experience, we have had
19 hand pressed brick made in the past.

20 This was made about a week ago. It is
21 hand pressed from a wood mold. It is clay fired in
22 a coal furnace. It has all of the characteristics,
23 colors and textures of the original brick used.

24 MR. MATULE: I will mark this A-10.

25 THE WITNESS: The brick is made in

1 Tennessee.

2 (Exhibit A-10 marked.)

3 MR. MATULE: So that brick is made in
4 Tennessee.

5 Now, if the applicants were to use the
6 brick that we just marked A-10, would that have to
7 be custom made?

8 THE WITNESS: Since it's handmade in
9 wood molds, it does take around two months to
10 procure.

11 MR. MATULE: But it is available?

12 THE WITNESS: It is available.

13 MR. MATULE: And in your discussions of
14 the facade of this building with the applicant, has
15 he confirmed with you that he would be willing to
16 put either of these bricks on the facade to redo the
17 facade that is there now?

18 THE WITNESS: That's correct. He would
19 do either, if approved.

20 MR. MATULE: And the brick that is
21 there now, what is your opinion about the brick that
22 was put on by the applicant through the guidance of
23 Mr. Nastasi's office?

24 THE WITNESS: The brick there is
25 matching well in texture. It has a nice sand

1 finish. The shade of the brick is off a range or
2 so --

3 MR. MATULE: So --

4 THE WITNESS: -- and the quality and
5 the workmanship is fine, in my opinion.

6 MR. MATULE: But you think one of these
7 would be better?

8 THE WITNESS: One of these is more
9 historically accurate.

10 MR. MATULE: Very good.

11 Thank you.

12 I don't have any other questions,
13 unless the Board has questions.

14 MR. GIBBONS: Does the Board have any
15 questions?

16 COMMISSIONER BRANCIFORTE: Does the
17 brick come in different colors then? I mean, you
18 could get it darker, lighter?

19 THE WITNESS: It does. It does. We
20 felt this was the correct match for the brick row
21 houses in Hoboken. We can get brick in any color
22 that you would like.

23 COMMISSIONER BRANCIFORTE: That is
24 good.

25 THE WITNESS: We thought this was the

1 right match.

2 COMMISSIONER BRANCIFORTE: But if you
3 look at the board that is up there right now, the
4 two pictures, the picture on the left, the west
5 facade -- the western wall is a different color. It
6 is a dark brick, and then the right-hand picture --

7 THE WITNESS: Yes, I see it.

8 COMMISSIONER BRANCIFORTE: -- it was
9 replaced with that brick that you are holding that
10 you just displayed.

11 THE WITNESS: Referring to this common
12 brick here, the dark --

13 COMMISSIONER BRANCIFORTE: Yeah.

14 I mean, why didn't you guys try to
15 match that brick also?

16 THE WITNESS: We actually matched that
17 brick. It wasn't delivered to my facility yet.
18 That is a common brick. We procured in from the
19 Walter Loft areas in Hoboken. It is the same brick
20 that surrounds this courtroom in here. The common
21 brick for the sidewalls is an easy match, and we
22 have a replacement for that already.

23 COMMISSIONER BRANCIFORTE: Replacement,
24 as in you're taking down that wall and you're
25 replacing it with that brick?

1 THE WITNESS: Correct.

2 Our plan, if approved is to -- I will
3 go to this facade -- remove all of this brick 100
4 percent, put a proposed new brick, if approved, on,
5 12 inches back like the old building, and we will
6 start with the salvaged old backup brick, so it will
7 match this facade exactly.

8 COMMISSIONER BRANCIFORTE: Okay. I
9 totally missed this then. I thought you were
10 explaining what kind of brick is there now, the
11 existing brick on the facade --

12 THE WITNESS: No.

13 COMMISSIONER BRANCIFORTE: -- I thought
14 that was the brick that's on the existing.

15 THE WITNESS: No. This brick here is to
16 match the historic facade --

17 COMMISSIONER BRANCIFORTE: Okay. And
18 what's on there now --

19 THE WITNESS: -- what is currently in
20 place, the workmanship is fine. The texture is
21 fine. The range of color, in my opinion, is off a
22 little bit.

23 COMMISSIONER BRANCIFORTE: All right.
24 Now I get it.

25 So you will be replacing the brick on

1 the west wall with that dark stuff?

2 THE WITNESS: Correct, yes.

3 COMMISSIONER BRANCIFORTE: Okay.

4 That's fine.

5 Thanks.

6 ACTING CHAIRMAN GREENE: Any other
7 questions?

8 COMMISSIONER DE FUSCO: Mr. Chair.

9 I am a little perplexed why we are even
10 talking about replacing the brick because, in my
11 uneducated opinion here, this is fairly close to
12 what -- what exists now is fairly close to what you
13 have.

14 So, in your expert opinion, would you
15 not say that this is fairly historically accurate,
16 what we presently have?

17 THE WITNESS: It is fairly historically
18 accurate. It is a matter of eye. It is subjective.

19 COMMISSIONER DE FUSCO: Sure, it is
20 subjective, and that is why I am wondering why we're
21 asking -- why the applicant is even proffering
22 recreating a facade that already, in my opinion,
23 looks historically accurate.

24 So I guess my question to you as an
25 expert is: Beyond the texturing, you know, is it a

1 shade of color?

2 What is the supreme difference that we
3 are looking at here?

4 THE WITNESS: It is a slight shade of
5 color, and bricks come in a range.

6 When I put these up, because they are
7 handmade, you will see a range of bricks -- a range
8 of colors in the brick as well.

9 COMMISSIONER DE FUSCO: All right. A
10 couple of other questions.

11 The common brick that you referred to
12 in the existing -- in the structure that was there
13 before, that common brick is for supporting walls,
14 and then even a hundred ten years ago, the facade of
15 the building would be done in a prettier more
16 expensive brick, and that is what existed before the
17 collapse, correct?

18 THE WITNESS: That's correct.

19 COMMISSIONER DE FUSCO: So that's why
20 that line fairly demarcates it right there.

21 The way that the architect, in you
22 opinion, has rebuilt this building, it is missing a
23 couple, you know, it is missing a transom over the
24 door.

25 Would you agree that that is a historic

1 element that is lacking from a brick preservation
2 perspective, or would you think that what exists
3 currently in the rebuilt structure is quite frankly
4 historically accurate --

5 THE WITNESS: Good question --

6 COMMISSIONER DE FUSCO: Because we --

7 THE WITNESS: -- I understand the door
8 was moved to the left because of code and
9 guidelines --

10 COMMISSIONER DE FUSCO: Right.

11 THE WITNESS: -- National Preservation
12 Brief says that you have to comply with current
13 codes and guidelines because safety and life safety
14 is the ultimate importance.

15 So that being said, the door was moved
16 from here to this location here. Here you had a
17 wider column.

18 The eyebrow missing over this, I think
19 this is the correct way to do it. If you were to
20 squeeze in an eyebrow, it wouldn't have enough
21 distance on the side or we call it the shoulder of
22 an arch.

23 You would have a nice full arch
24 shoulder over here, but as it would go across, it
25 would die into the existing column and look out of

1 place, and it would be off balanced, and there's not
2 much shading because of your regulations for some
3 apparent --

4 COMMISSIONER DE FUSCO: The life
5 safety --

6 THE WITNESS: Yes.

7 COMMISSIONER DE FUSCO: -- updates to
8 the building to make it --

9 THE WITNESS: Current standards.

10 COMMISSIONER DE FUSCO: -- and
11 applicable to life safety.

12 All right. Thank you.

13 COMMISSIONER MC ANUFF: I have a
14 question.

15 ACTING CHAIRMAN GREENE: Please.

16 COMMISSIONER MC ANUFF: Following up on
17 Commissioner De Fusco's comment, you said the newer
18 brick or this proposed brick comes in a range of
19 colors, or there will be a range of shading when it
20 goes up.

21 Is that what existed previously on the
22 left-hand photograph, was there a range of shading
23 or was it pretty minimal --

24 THE WITNESS: Absolutely. Bricks are
25 made in a kiln, especially historic bricks. When

1 the brick is closer to the fire or closer to the
2 door, you get different temperature ranges,
3 especially a hundred years ago, so all brick is
4 known to have a range.

5 COMMISSIONER MC ANUFF: Did it have a
6 range on that left-hand photograph?

7 THE WITNESS: Yeah. That's pretty
8 obvious. It changes from here to here, and it's
9 very similar to what is in your courtroom here as
10 well.

11 COMMISSIONER MC ANUFF: It looks like
12 it has a range on the newer as well.

13 THE WITNESS: It does.

14 COMMISSIONER MC ANUFF: Thank you.

15 ACTING CHAIRMAN GREENE: Commissioner
16 Cohen?

17 COMMISSIONER COHEN: I think your
18 testimony was that it would take two months to get
19 these fired and handmade --

20 THE WITNESS: The handmade custom brick
21 from Tennessee.

22 COMMISSIONER COHEN: -- so it would
23 take two months for you to get these bricks on
24 order, and then how long would it take to dismantle
25 this facade?

1 Do you have any sense of -- in order
2 to --

3 THE WITNESS: It would be three weeks
4 construction after that.

5 COMMISSIONER COHEN: So It would be two
6 months, plus another three weeks construction?

7 THE WITNESS: You might as well say
8 three months to completion.

9 COMMISSIONER COHEN: Okay. Thank you.

10 COMMISSIONER MARSH: Mr. Chair?

11 ACTING CHAIRMAN GREENE: Yes, please.

12 COMMISSIONER MARSH: I just want to
13 back up for a second.

14 How long -- how many times have you
15 replaced bricks on a building in Hoboken?

16 THE WITNESS: Thousands.

17 COMMISSIONER MARSH: Thousands.

18 Have you ever worked with this
19 applicant before?

20 THE WITNESS: Pardon me?

21 COMMISSIONER MARSH: Have you ever
22 worked with this applicant before?

23 THE WITNESS: No, I haven't.

24 COMMISSIONER MARSH: But are you -- I
25 mean, if you worked on thousands of buildings, are

1 you generally known in the -- what I am asking is:
2 Is this a surprise that you could do this, because
3 the decision was made without -- the plan was
4 supposed to keep the facade. The facade was torn
5 down, and a decision was made to build with whatever
6 brick they had. Was there any effort to find a more
7 historically accurate brick?

8 THE WITNESS: I don't know.

9 COMMISSIONER MARSH: Okay.

10 THE WITNESS: I was on board at that
11 time. I am a restoration contractor, so I usually
12 come after the fact. I rarely work with brand new
13 developers putting up new buildings.

14 Once the building is up and once it
15 needs restoration and it's in disrepair, I am called
16 in typically.

17 COMMISSIONER MARSH: Okay. Thank you.

18 COMMISSIONER FISHER: This wasn't a new
19 building. It was a restoration.

20 ACTING CHAIRMAN GREENE: Anyone else?

21 (Board members confer.)

22 ACTING CHAIRMAN GREENE: Anything else?

23 MS. BANYRA: Can I ask a question?

24 ACTING CHAIRMAN GREENE: Please.

25 MS. BANYRA: Do you also get called in

1 to evaluate the material, and if there is any kind
2 of degradation of material, are you called in?

3 THE WITNESS: All of the time.

4 MS. BANYRA: Again, in this particular
5 case that was not -- you weren't called in at that
6 time?

7 THE WITNESS: No. I am new to this
8 project.

9 MS. BANYRA: Pardon me.

10 THE WITNESS: I am new to this project.

11 MS. BANYRA: Okay. Thank you.

12 COMMISSIONER FISHER: I have a
13 question.

14 THE WITNESS: Yes.

15 COMMISSIONER FISHER: Have you in
16 projects similar to this, where you have some level
17 of fragility, it sounds like after the fact
18 hindsight was -- the facade seemed more fragile than
19 anticipated.

20 Have you been called in to figure out a
21 way to preserve the fragile -- the more fragile
22 facades or structures before?

23 THE WITNESS: Yes. Yes, I have.

24 And some local instances are the Garden
25 2 Loft and Hostess Buildings. I cut new doorways

1 into those buildings, and the CVS I think is in
2 there, Pharmacy.

3 They had some unstable walls that we
4 had to shore and bolt together and get new openings
5 in the windows, and make it up to current standards,
6 so it is possible.

7 The other example of that is the Clam
8 Broth House, which was knocked down seven to ten
9 years ago. I was brought in to stabilize that.

10 We did stabilize it ultimately by
11 cabling and strapping and all of these clamping of
12 boards, but that was a facade that was not able to
13 be saved. It was unstable.

14 Life safety is everything. You don't
15 want to injure somebody to save a facade. Human
16 live is worth more than brick masonry, so some you
17 can save, some you can't.

18 COMMISSIONER FISHER: Thanks.

19 COMMISSIONER MARSH: I'm sorry.

20 The first building you mentioned, when
21 was that?

22 When did you work on the building?

23 THE WITNESS: Which building?

24 COMMISSIONER MARSH: You said -- you
25 named two buildings --

1 COMMISSIONER FISHER: Garden --

2 THE WITNESS: The Garden Street Lofts,
3 that is about six or seven years ago. That is the
4 old Coconut Building.

5 MR. MATULE: The gray one as opposed to
6 the red brick one --

7 THE WITNESS: I did them both.

8 MR. MATULE: Just for the record, I
9 believe the red brick one on the corner is the
10 Hostess --

11 THE WITNESS: Hostess Building.

12 And the taller beige one is called the
13 Coconut.

14 MR. MATULE: Right.

15 ACTING CHAIRMAN GREENE: The desiccated
16 Coconut Building.

17 THE WITNESS: There you go. It was
18 painted that ugly silver color for years, and we
19 took all of that off.

20 (Laughter)

21 ACTING CHAIRMAN GREENE: Anyone else?

22 I guess we can open it up to the
23 public.

24 Does any member of the public have any
25 questions for this witness? A reminder, questions

1 Entertain a motion to close public.

2 COMMISSIONER COHEN: Motion to close
3 public portion for this witness.

4 ACTING CHAIRMAN GREENE: Second?

5 COMMISSIONER MARSH: Second, aye,
6 second.

7 COMMISSIONER FISHER: Second.

8 ACTING CHAIRMAN GREENE: All in favor?

9 (All Board members answered in the
10 affirmative.)

11 ACTING CHAIRMAN GREENE: Mr. Matule.

12 MR. MATULE: That is the only witness I
13 have. We had Mr. Nastasi testify last week. I have
14 him here, if there are any further questions, but,
15 you know, the focal point of the comments we were
16 hearing the last time we were here was the fact that
17 the building restoration, which we proffer was a
18 good faith effort and not a bad try, was troubling
19 to some of the Board members, and that is why we
20 engaged Mr. Lindner and had him try to find some
21 brick or find brick alternatives.

22 As he testified, the brick that was
23 used there, while the texture is acceptable in his
24 professional opinion, which is somewhat subjective,
25 there is a shading difference, and again, we are

1 just making a proffer to the Board how strongly they
2 feel about that. The applicant is willing to go
3 through that, if that is the Board's pleasure.

4 I would just add that the building has
5 been substantially constructed as it was originally
6 approved. While not part of the original approvals,
7 the applicant is obtaining a LEED certification for
8 the building.

9 I also understand that while there is
10 no bicycle storage in the building, the applicant
11 has paid the City of Hoboken to put seven bicycle
12 racks on First Street and Newark Street, and the
13 building is finished. There are multiple tenants
14 waiting to move in. It is primarily a commercial
15 building. I think there are 50 or 60 jobs that are
16 coming into the building.

17 We have incubator space in there, and
18 if it is the decision of this Board to ask the
19 applicant to replace the facade, which he is willing
20 to do, the only thing I would ask is that the Board
21 approve this with a condition that the city be
22 allowed to issue a temporary certificate of
23 occupancy for like 120 days or something to allow
24 them to obtain the brick and get the work done. I
25 believe pretty much everything else has been

1 addressed.

2 And as I said, we have a lot of tenants
3 waiting to move in, who I realize have nothing to do
4 with this, they have no control over it, but
5 nevertheless it is there.

6 MR. GIBBONS: That is understood.

7 I mean, you are allowed to state that,
8 but obviously that is not a factor in the Board's
9 determination.

10 MR. MATULE: I understand it.

11 MR. GIBBONS: The facts on the record
12 before the Board in connection with the application
13 are the operative facts.

14 (Board members confer.)

15 MS. BANYRA: Mr. Chair, can I ask one
16 question?

17 ACTING CHAIRMAN GREENE: Yes.

18 MS. BANYRA: Mr. Matule, I think you
19 were going to provide me a letter from the county
20 that had a list of conditions.

21 MR. MATULE: I requested it, and they
22 have not provided it because it is from 2011 and
23 2012, but there is, you know, there's nothing
24 outstanding that has not been addressed.

25 I think the resolution states about the

1 sidewalks and curbs being replaced, which either
2 have been or are being done.

3 MS. BANYRA: It just said that there
4 were two reports, one from the planning board
5 engineer --

6 MR. MATULE: Right.

7 MS. BANYRA: -- one from the principal
8 planner, and what you are saying is there are no
9 file copies of those?

10 MR. MATULE: Well, I do not have the
11 copy.

12 I have searched my old files, and I
13 have gone back to the Hudson County Planning Board
14 and asked them if they could provide me a copy, and
15 to date they have been unable to do so.

16 I will be there again tomorrow night.
17 I can renew my request, but --

18 MS. BANYRA: I don't know. Mr. Curley
19 was the Board, I guess, County Planning Board
20 attorney, and maybe -- it says they were attached as
21 exhibits and --

22 MR. MATULE: And they were not.

23 MS. BANYRA: -- yeah, apparently,
24 because I don't have them attached on mine either.

25 MR. MATULE: They were not, but I was

1 able to retrieve the one I think from the engineer,
2 and I think I provided that to you --

3 MS. BANYRA: I don't remember seeing
4 that one, Mr. Matule.

5 MR. MATULE: -- but I did not have the
6 one from the County Planner, or vice verse. I
7 either had the one from the planner and not from the
8 engineer. I know I had one of them and I produced
9 it.

10 MS. BANYRA: Maybe you could provide
11 those to Ms. Carcone then.

12 MR. MATULE: Sure.

13 COMMISSIONER BRANCIFORTE: Mr. Matule,
14 could you hand me the board, the picture board?

15 MR. MATULE: Exhibit A-4.

16 COMMISSIONER BRANCIFORTE: Yes.

17 Thanks.

18 (Board members confer)

19 MR. GIURINTANO: May I ask a question?

20 ACTING CHAIRMAN GREENE: Absolutely.

21 MR. GIBBONS: Absolutely.

22 MR. GIURINTANO: Mr. Matule --

23 MR. MATULE: Yes.

24 MR. GIURINTANO: -- do you have H2M's
25 comment letter, dated March 31st, 2015?

1 MR. MATULE: Yes, I do.

2 MR. WURSTER: Yes.

3 MR. GIURINTANO: Have you received it?

4 ACTING CHAIRMAN GREENE: Whoa, Whoa,
5 Whoa,

6 MR. MATULE: Wait. We have to get you
7 up here under oath.

8 MR. GIBBON: Have you been previously
9 sworn?

10 MR. WURSTER: No.

11 MR. GIBBONS: Mr. Matule, is this a
12 witness of yours?

13 MR. MATULE: Yes. He's one of the
14 architects on the project from Mr. Nastasi's office.

15 MR. GIBBONS: Okay. And he's never
16 been sworn.

17 All right. Please raise your right
18 hand.

19 Do you solemnly swear that the
20 testimony you are about to give in this matter will
21 be the truth, so help you God?

22 MR. WURSTER: I do.

23 D A V I D W U R S T E R, Nastasi Architects,
24 having been duly sworn, testified as follows:

25 MR. GIBBONS: All right.

1 Please state your name and spell your
2 last name for the record.

3 THE WITNESS: David Wurster,
4 W-u-r-s-t-e-r.

5 MR. GIBBONS: And just exactly what is
6 your capacity?

7 THE WITNESS: I'm an architect at John
8 Nastasi's office. I've been working on this project
9 for several years.

10 MR. GIURINTANO: I'm not going to be
11 able to hear expert testimony -- it's a simple
12 question about our common letter --

13 MR. GIBBONS: All right. That's fine.

14 MR. MATULE: If I could, just, for the
15 record, Mr. Wurster, you received Mr. Marsden's
16 review letter of March 31, 2015?

17 THE WITNESS: We have, yes.

18 MR. MATULE: And did you -- I am going
19 to show you an email, dated April 21, 2015, to Mr.
20 Marsden with a cover letter and attachments.

21 Did you respond to his letter?

22 THE WITNESS: Yes. We responded back
23 to Jeff's letter, Jeff Marsden's letter, on April
24 21st, a series of comments, and supplied him with a
25 site plan that he requested from Steiger & Paragoya,

1 engineer.

2 MR. GIURINTANO: I apologize, Mr.
3 Chairman.

4 I do not have a copy of those drawings
5 in my file. I cannot speak on behalf of Mr.
6 Marsden, as he is the Board's engineer.

7 The last correspondence that I have is
8 March 31st, so I was just going to stipulate. Have
9 you or will the applicant address all of our
10 comments in the letter?

11 THE WITNESS: Yes.

12 MR. GIURINTANO: Yes.

13 Have you filed for either a
14 jurisdictional determination or an individual permit
15 from the NJDEP?

16 THE WITNESS: We already received it.

17 MR. GIURINTANO: You received it?

18 THE WITNESS: Yes.

19 MR. GIURINTANO: And that was in your
20 21st correspondence back to us?

21 THE WITNESS: Yes.

22 MR. GIURINTANO: And what was the
23 outcome?

24 THE WITNESS: Oh, it's approved.

25 MR. GIURINTANO: Do you have the IP?

1 THE WITNESS: We have the IP, and it is
2 filed, and that's a copy --

3 MR. GIURINTANO: That's a copy --

4 MR. MATULE: It is an exhibit to the
5 application.

6 MR. GIURINTANO: Thank you.

7 MR. GIBBONS: Just one note.

8 If the Board, and this is not in any
9 way stating what the Board will do, but if in fact
10 the Board made a determination, it would be subject
11 to a condition of approval and you would need to
12 comply with everything set forth in that letter.

13 THE WITNESS: Yes.

14 MS. BANYRA: So, Mr. Matule, also I
15 don't know that my questions were addressed either
16 relative to the lighting or landscaping plan.

17 I don't know, Mr. Wurster, if they were
18 updated relative to my letter, dated April 20th,
19 2015.

20 I think there is landscaping that was
21 supposed to be trailing off the top of the building.
22 There was a fence growing up I think --

23 THE WITNESS: Yes -- I don't know if I
24 saw that.

25 MR. MATULE: Well, I think on Sheet

1 ASP-1 on the site plan that was provided to Mr.

2 Marsden --

3 THE WITNESS: We show the landscaping
4 for the rear yard --

5 MS. BANYRA: Correct.

6 THE WITNESS: -- I think we noted there
7 was no landscaping on the streets themselves, other
8 than two trees, a tree on Newark Street and a tree
9 on First Street.

10 MS. BANYRA: I think the original
11 representation had landscaping trailing off the top
12 of the building, and I think it shows up in some of
13 the renderings --

14 THE WITNESS: I think --

15 MS. BANYRA: -- as an example --

16 THE WITNESS: -- there was a
17 conversation that I think happened. I am not aware
18 of it, between maybe yourself and Ann Hoff, the
19 landscape designer --

20 MS. BANYRA: Yeah. That was the vine
21 growing up --

22 THE WITNESS: Growing up, yes.

23 MS. BANYRA: -- and there was something
24 coming down.

25 THE WITNESS: I don't recall.

1 MS. BANYRA: Okay. I don't think that
2 there's -- and I guess the only other comment I have
3 may have been addressed with Mr. Marsden was
4 regarding that the site plan date appeared to
5 precede the survey and flood plain certification,
6 was that addressed?

7 THE WITNESS: I could find out. I
8 think what happened was there was a survey done at
9 the end of the project after the building was
10 constructed, which is dated after the drawings
11 because it was done --

12 MS. BANYRA: Right. That's right --

13 THE WITNESS: -- but we may just have
14 to coordinate the dates. That is the final site
15 plan.

16 MS. BANYRA: That's it, Mr. Chair.

17 ACTING CHAIRMAN GREENE: Okay.

18 Do any Board members have any
19 additional questions of any of the prior witnesses?

20 Anything that they would like to have
21 clarified? Questions only.

22 COMMISSIONER MURPHY: I thought one of
23 the issues that we were discussing was the fact this
24 building was built before they got final site plan
25 approval, you know.

1 Are we just dismissing that for someone
2 that has been building in this town for all of these
3 years, or since it has been a rule for pretty many
4 years now?

5 ACTING CHAIRMAN GREENE: In my opinion,
6 maybe counsel should respond to it.

7 MR. GIBBONS: That's certainly within
8 the Board's -- those are within the facts that are
9 before the Board. I mean, I reviewed the previous
10 transcripts.

11 I think the Board can consider the fact
12 that this occurred, and the reasons why. Based on
13 my review of the materials, it does not appear that
14 any additional construction took place with the
15 approval of the Board, okay, and that is a matter of
16 record. That's not -- I don't think the applicant
17 disagrees with that.

18 In terms of questions related to that,
19 and we can certainly get into that, it is my
20 understanding that there may have been or was
21 approvals granted by the administrative officer,
22 which did not reach this Board, and that is an issue
23 the Board certainly can consider in terms of how it
24 adjudicates this case.

25 I am going to give you an opinion as

1 to, you know, what I think the law is on that as
2 well, but I figured I was going to wait until we got
3 all done. But just preliminarily, yes, you are
4 allowed to consider all of those factors.

5 In addition, one thing -- one thing we
6 don't have before us, and I think Mr. Galvin pointed
7 this out at the last meeting, there have been some
8 questions in terms of, you know, actions taken in
9 connection with or against actions taken by the
10 zoning official. That is not within the
11 jurisdiction of this Board. That is another issue.
12 We can address that separately, but that does not
13 impact upon, you know, the application itself.

14 The facts before the Board are the
15 history of the application, what decisions were
16 made, ultimately whether they were appropriate, but
17 also what recourse does the Board have if in fact
18 they are not in agreement with what ultimately came
19 out.

20 As I said, I will be happy to give you
21 a legal opinion on any or all of those items.

22 So, yes, the short answer to your
23 question is you can consider it in toto as far as
24 the case in chief is concerned, as far as the
25 applicant's case is concerned.

1 MR. MATULE: Mr. Gibbons, if I may, and
2 I believe it is in the record from last month, and I
3 just want the record to be clear, that the applicant
4 did obtain a first certificate of zoning compliance
5 from the zoning officer to begin construction.
6 Whether that was the appropriate procedure or not is
7 another issue, but I just want the record to be
8 clear that my client didn't unilaterally just decide
9 to put up a building without going through the
10 proper administrative channels, although the zoning
11 officer should have said, "Come back to the Zoning
12 Board."

13 MR. GIBBONS: Oh, no, no. Mr. Matule,
14 I have been provided with the information. You
15 know, as far as that is concerned, it is clear to me
16 that you were, indeed, issued -- those pleadings are
17 part of the record, but in addition to deciding this
18 application, we are also, you know, scrutinizing the
19 process by which it came or didn't come to this
20 Board and whether that was appropriate or not.

21 So as a result of that, I think it
22 would be unwise not to -- I understand the position
23 on behalf of your client, but there is a matter of
24 serious concern here because in essence this was
25 taken out of the Board's hands and --

1 MR. MATULE: I fully understand that --

2 MR. GIBBONS: -- and I am not trying to
3 cast aspersions on anybody, you or anybody else, but
4 the reality is, is that for the Board not to
5 consider that, I think is, you know, would be an
6 incomplete handling of the matter.

7 MR. MATULE: Let me just say this. I
8 respect your opinion, and I don't think this is the
9 forum to debate that issue.

10 MR. GIBBONS: Right, right.

11 MR. MATULE: I just wanted the record
12 to be clear from our side, which I think it is, and
13 you obviously have to advise your Board as you see
14 fit.

15 MR. GIBBONS: Right. And no -- and you
16 have put in what your case in chief -- you are going
17 to be asked soon, because you are going to be asked
18 to do a summation, if and when you are finished, but
19 your job is to put in your full case in chief in
20 support of the relief that you seek, so I understand
21 you have to do that, too.

22 COMMISSIONER FISHER: Can I ask a
23 question?

24 I think you said, and correct me, if I
25 am wrong --

1 MR. GIBBONS: Can you speak up just a
2 little bit?

3 COMMISSIONER FISHER: -- sorry.

4 I think what you said, and correct me
5 if I am wrong, that we ultimately have to determine
6 whether or not we are okay with -- with what they
7 ultimately did build without approval, and I guess
8 the struggle I have is --

9 ACTING CHAIRMAN GREENE: No comments.
10 Questions.

11 COMMISSIONER FISHER: -- so the
12 question I have is: How do we -- how do we compare
13 it to a decision that was made based on certain
14 conditions occurring?

15 Those conditions didn't occur, so how
16 do we look at the final output relative to an
17 analysis that required certain things that were not
18 delivered?

19 It is like an apple and an orange, or
20 is it an apple and an orange?

21 How do we do that?

22 MR. GIBBONS: Okay. Here is what
23 ultimately is the dilemma that faces the Board,
24 and again, I don't want us to get bogged down in one
25 issue. Eventually the Board has got to make a

1 decision on what is before the Board. But I want to
2 make sure that the Board understands that you got
3 to -- it is a very difficult question, okay?

4 But one of the problems you are going
5 to run into is that the fact that the applicant went
6 ahead and built the building in apparent and
7 reliance upon -- good faith reliance upon what's
8 called the apparent authority of the zoning official
9 is a problem, okay?

10 So from a legal standpoint,
11 notwithstanding that the Board may not agree that
12 this is completely like what was approved, and
13 certainly the facts indicate that, there may not be
14 a lot the Board can do to ask for that to be
15 provided, ask for an alternative view, for example,
16 or something like this.

17 The reality is that it was built and,
18 you know, we have what we have, so in essence you
19 are asking -- you're determining whether the
20 applicant built something that is acceptable or not.

21 The fact that there were approvals made
22 without your knowledge or without your ability to
23 scrutinize them does, you know, does come into
24 your -- does come into your purview, but at the end
25 of the day, you have to consider the matter on the

1 facts provided before you --

2 COMMISSIONER MARSH: I have a question.
3 I am not sure --

4 MR. GIBBONS: -- there are a number of
5 issues. I think one of the problems is there is a
6 number of issues, and I don't want us to get to the
7 point that we are in 50 different directions, and I
8 am going to, you know, counsel the Board in
9 connection with that in terms of making sure it does
10 what it is supposed to do legally.

11 We obviously have other issues to
12 discuss in the course of how this has come about,
13 but I am trying to make sure that you have enough
14 information as you can without bogging you down too
15 much.

16 Go ahead.

17 ACTING CHAIRMAN GREENE: Commissioner?

18 COMMISSIONER MARSH: What did you do
19 with the old brick?

20 I mean, I saw a picture with some brick
21 on the ground. We just heard testimony that this is
22 very rare this brick.

23 What did you do with the old brick?

24 MR. MATULE: I can call the applicant
25 up or the architect and try to get an answer for

1 that question.

2 Just for the record, Mr. White was
3 previously sworn. He's a representative of the
4 applicant.

5 MR. GIBBONS: He was previously sworn.

6 You remain under oath, sir.

7 MR. WHITE: Yes.

8 J E F F R E Y W H I T E, having been previously
9 sworn, testifies further as follows:

10 MR. MATULE: Did you hear the question,
11 "What was done with the old brick?"

12 THE WITNESS: Yes.

13 I presume it was carted off with other
14 debris on the site.

15 In terms of value of brick, at that
16 point the relative value of it, I don't know what it
17 was.

18 COMMISSIONER MARSH: Do you have the
19 picture of the facade that you showed us?

20 THE WITNESS: Which facade?

21 COMMISSIONER BRANCIFORTE: This one,
22 Carol?

23 COMMISSIONER MARSH: Yeah, that one --
24 no, the one where it showed the bricks on the
25 ground.

1 COMMISSIONER BRANCIFORTE: Oh, that, I
2 don't have.

3 THE WITNESS: I don't think so --

4 COMMISSIONER MARSH: There was a
5 picture that you showed us as justification for
6 tearing down the facade.

7 THE WITNESS: I don't recall that
8 picture.

9 COMMISSIONER MARSH: Does anybody else
10 recall that picture?

11 COMMISSIONER BRANCIFORTE: Well, it had
12 to be one of the exhibits that's --

13 COMMISSIONER FISHER: I think John --
14 didn't John have it --

15 COMMISSIONER MARSH: I think there was
16 one --

17 MR. MATULE: I am going to look at the
18 exhibit list --

19 COMMISSIONER MARSH: -- I mean, you
20 said you have done adaptive reuses before.

21 THE WITNESS: Yes.

22 COMMISSIONER MARSH: So you must have
23 dealt with old brick before.

24 THE WITNESS: Yes.

25 COMMISSIONER MARSH: I am curious, if

1 you asked anybody if the brick was worth anything.

2 THE WITNESS: I have never asked anyone
3 before if brick was worth anything.

4 COMMISSIONER MARSH: But you have done
5 adaptive reuses --

6 THE WITNESS: Yes.

7 COMMISSIONER MARSH: -- and you didn't
8 ever have occasion to deal with old brick?

9 THE WITNESS: Yeah. What I have done
10 in the past is similar to what I have done here,
11 find a similar brick that matches as closely as
12 possible to what I am filling or patching or fixing.

13 COMMISSIONER MARSH: What's worth
14 filling in, what percent?

15 THE WITNESS: What's worth?

16 Whatever needs filling in, I don't
17 know.

18 COMMISSIONER MARSH: So if ten percent
19 of the facade fell down, would that be worth filling
20 in?

21 If you had to replace -- if you had an
22 old facade and you needed to replace ten percent, is
23 that still -- is that a positive thing to do?

24 What percent of the bricks needing to
25 be replaced do you decide to tear the whole thing

1 down?

2 THE WITNESS: I don't think there is a
3 set percentage.

4 I think looking back, if I could turn
5 the clock back, and knowing that Mr. Lindner existed
6 and that his restoration possibilities existed, I
7 certainly would have considered things differently.

8 But at the time with the instability of
9 the wall, and we were rebuilding and adding so much,
10 it just seemed like the right thing. With my
11 professionals, we tried to match the brick as
12 closely as possible and build a stable, proper
13 building.

14 COMMISSIONER MARSH: And it never
15 occurred to you that you -- you have done adaptive
16 reuses before, and it never occurred to you to reuse
17 the old brick from the facade?

18 THE WITNESS: In the past, what I
19 reused, usually we go and try to find a brick, like
20 I said, to patch, if I am trying to fill something
21 in.

22 If there is brick there, and I need to
23 fill a small piece, that has been done in the past.

24 COMMISSIONER MARSH: Okay.

25 COMMISSIONER MURPHY: I have a

1 question. I think it is a question for John
2 Nastasi.

3 I think, John, if you can refresh my
4 memory about where you found the brick that you did
5 use and what you went through to get that?

6 MR. MATULE: I am just going to ask for
7 the record, Mr. Nastasi was previously sworn, and
8 he's still under oath.

9 MR. GIBBONS: Obviously, you remain
10 under oath, Mr. Nastasi.

11 So please, you may want to repeat the
12 question.

13 J O H N N A S T A S I, having been previously
14 sworn, testified as follows:

15 THE WITNESS: Could you repeat the
16 question?

17 MR. GIBBONS: You have been asked the
18 question, but I want to make sure, did you hear and
19 understand the question?

20 THE WITNESS: I heard the question.

21 My client, who just spoke, went to the
22 prevailing brick manufacturers in the industry,
23 showed them photos of the existing building,
24 requested samples of sample bricks. There is only a
25 few major brick companies.

1 Brought samples to my office, and we
2 selected the bricks from a short set of options
3 based on the brick manufacturer's preselections.

4 COMMISSIONER MURPHY: Okay.

5 And where did they come from again?

6 I think you told us. That is why I am
7 asking.

8 THE WITNESS: The manufacturers of the
9 brick company?

10 (Witness confers.)

11 THE WITNESS: I believe it's Glen-Gery,
12 which is a major manufacturer.

13 I know one thing I will say, though, is
14 this handmade brick in a wood mold is \$18 a brick.
15 There is not a builder, architect or engineer in the
16 tri-state that would off the cuff pay \$18 a brick
17 unless they were doing an authentic restoration.

18 So this -- John Lindner is an expert,
19 and I have been working with him for 30 years, and I
20 worked with his father. This is the world of brick
21 restoration. If you are restoring a building
22 authentically, John Lindner can go find the brick
23 that was used, and this is custom made in a wood
24 mold, cured. This is brick restoration.

25 Glen-Gery produced brick samples that

1 were brick matches, which would be more suitable for
2 an adaptive reuse, not as stringent as authentic
3 preservation.

4 COMMISSIONER MURPHY: Thank you.

5 COMMISSIONER DE FUSCO: Mr. Chair, may
6 I?

7 ACTING CHAIRMAN GREENE: Go ahead.

8 COMMISSIONER DE FUSCO: Mr. Nastasi,
9 just to recap a couple questions I had for you at
10 the meeting for the benefit of some of my
11 colleagues.

12 I asked you the question: Why couldn't
13 you reuse the bricks from that location, and you had
14 mentioned that -- just could you answer that
15 question?

16 Why couldn't you reuse the various
17 bricks to rebuild the facade?

18 THE WITNESS: The brick facade -- the
19 board is back there somewhere -- the brick facade
20 that was existing, if I could go back and reiterate
21 some things that we spoke about last month.

22 This brick facade is a one brick thick
23 facade with an infill panel here of different brick,
24 so this was probably a carriage house door at some
25 point, so these bricks didn't match. These were

1 cracked.

2 And when this partially collapsed, and
3 we were notified, and this thing was structurally
4 unstable, life safety was at risk, this came down.

5 There is not a lot -- when you start
6 removing the bricks that were damaged, the cracks.
7 There was not a major unit of brick that you could
8 rebuild with. So it is like if you tear your oak
9 floor up in your Brownstone, you can tear your oak
10 floor up, but if you want to put an oak floor down,
11 you won't use 25, 30 percent of damaged old oak and
12 then try to match it. You want a consistency, so
13 sometimes the consistency is more esthetically
14 pleasing than a patchwork.

15 And this facade showed different
16 conditions of patchwork, and you don't want
17 patchwork, so I think when the brick facade came
18 down, there was damaged brick. There was cracked
19 brick. There was infilled brick. My client and the
20 contractor made the decision that they were going to
21 look for a new batch to match the facade.

22 And if you see from these photographs,
23 this is not landmark preservation, but it is a very,
24 very, very close match of the brick, and I think
25 well within the realm of adaptive reuse.

1 COMMISSIONER DE FUSCO: I will just ask
2 you the same question I asked the brick expert.

3 In your opinion, as an academic and as
4 well as an architect, do you feel that the brick
5 that was used is a fairly, if not almost precise
6 replacement, for what had fallen?

7 THE WITNESS: I think it is a fairly
8 good replacement.

9 Here are two photographs. I took this
10 photograph. I took that photograph unretouched in
11 the photo shot. I think the eye shows you the
12 texture John Lindner said that the texture was spot
13 on. The color tint was slightly off. This will get
14 your color tint post on.

15 This 18-dollar brick is the brick that
16 was built a hundred years ago. It is Philadelphia
17 hand pressed, wood mold brick. This is the brick
18 that was actually used, and John Lindner has sourced
19 that, so that is the industry.

20 The industry, very close match, these
21 two are even closer. It depends on what level of
22 resolution you want to achieve.

23 COMMISSIONER DE FUSCO: Then just one
24 quick question off of bricks.

25 Even if you were to redo the facade

1 with the Philadelphia 18-dollar brick, the door
2 would need to remain where it is now based on life
3 safety equipment that was mandated for the building?

4 THE WITNESS: Yes.

5 As we mentioned last month, because of
6 the FEMA regulations, there is a transfer switch to
7 get the electrical service up above Hoboken base
8 flood elevation. You cannot have electric service
9 in the flood plain anymore.

10 Mario Petruno, the building inspector,
11 even though we had pulled a construction permit,
12 insisted that we -- hopes to comply with FEMA, so
13 midway through construction, we had to plan to get
14 the electrical service up here. So there is a
15 transfer switch in there, in order to fully comply
16 with FEMA.

17 COMMISSIONER DE FUSCO: And there was
18 no way of doing it on the side wall of the building
19 to avoid that impact to the facade?

20 THE WITNESS: There was no way, and we
21 looked at it very closely.

22 COMMISSIONER DE FUSCO: Thank you.

23 ACTING CHAIRMAN GREENE: Commissioner
24 Fisher?

25 COMMISSIONER FISHER: Yeah.

1 John, you mentioned that you worked
2 with the Lindner family and that company for 30
3 years. You have done a lot of restorations before?

4 THE WITNESS: I have not done a lot of
5 restorations, but I worked with John's father and I
6 have worked with John.

7 COMMISSIONER FISHER: Do you feel like
8 any more could have been done to keep the facade of
9 that property than what was done in advance?

10 THE WITNESS: Well, when I prepared my
11 construction drawings, we did not downplay that we
12 wanted to save that facade. I wanted to save that
13 facade. I walked by that barber shop every day for
14 25 years, right?

15 COMMISSIONER FISHER: Uh-huh.

16 THE WITNESS: So we put a full plan in
17 to save the facade.

18 The owner was supportive. The
19 contractors were supportive, and then when
20 demolition, pile driving, gray beams, when all of
21 that stuff happened, the facade became destabilized.

22 COMMISSIONER FISHER: Right.

23 THE WITNESS: I don't think there was a
24 person who didn't love that facade.

25 The whole design of the building folds

1 up and over the brick facade, so I think the effort
2 was really there --

3 COMMISSIONER FISHER: I don't -- the
4 question is -- I guess I have is -- we questioned
5 at the last meeting and speculated that we have seen
6 restoration of what appeared to be very fragile
7 structures previously and successfully done, and was
8 enough done around this facade to be able to save
9 it, and we now have an expert here tonight that
10 basically said more probably could have been done to
11 save it.

12 So, you know, it's -- I guess that is
13 basically the basis of my question. It is
14 unfortunate the facade fell. It is not questioning
15 people's intent. It's just whether or not they had
16 the right expertise to do it.

17 As we think about this going forward,
18 you know, this raises a lot of questions maybe about
19 the expertise that we would require, you know, for
20 restoration as we start seeing these facades being
21 ripped down, since this isn't the only one right
22 now. Okay.

23 ACTING CHAIRMAN GREENE: Anyone else?

24 I have a couple of questions, Mr.
25 Matule. You might want to direct this either to Mr.

1 White or Mr. Nastasi.

2 MR. MATULE: Why don't you come up
3 instead, Jeff?

4 MR. WHITE: Yes.

5 ACTING CHAIRMAN GREENE: So I have the
6 transcript from September 20th, 2011, which was the
7 hearing in which you received approvals for the
8 various variances that you asked for, and in reading
9 this, and I am going to quote, if you'd like, I will
10 go forward to give it more context.

11 Mrs. Vandor, who was our planner,
12 towards the end of the hearing, somebody questioned
13 something about landscaping, and she said: I just
14 wanted to point that this -- point out that this
15 project will have to come back ultimately for final
16 site plan approval, so we will have a second bite at
17 this apple, so we don't just ask for limited time to
18 work it out. I already have some solutions in mind.

19 The point being that she is stating
20 within the transcript, reminding you essentially,
21 that you have to come back for final site approval.

22 Going further, I am looking at the
23 resolution of approval. Item 12 is the Board
24 determined that this adaptive use of this building
25 revitalizes the structure while preserving the

1 underlying history of the Eureka Theater.

2 And then lastly, when Commissioner
3 Smith moved for approval -- oh, I am sorry -- I'm
4 going back to the transcript.

5 When Commissioner Smith moved for
6 approval, she said: My reasons being, first of all,
7 I really like the adaptive reuse of the buildings
8 there that are already there, that we are using
9 historical buildings, maybe not preservation-wise
10 historical, but historical to the landscape of the
11 town.

12 So throughout the transcript, the
13 motion to approve and the resolution, it is --
14 numbers of things are emphasized. Primarily the
15 preservation of the building, the adaptive reuse of
16 the building, a remainder that approval has to come
17 here before you start building.

18 I don't know how to phrase this, but I
19 want to ask you: What were you thinking, starting
20 construction before you came back and followed the
21 process?

22 MR. WHITE: Yes.

23 MR. MATULE: If you can answer.

24 MR. WHITE: I can answer on several
25 things.

1 Commissioner Smith had mentioned that
2 it wasn't historical, and that preserving the
3 architecture. 75 percent of the building is
4 preserved, which can actually still be seen at the
5 site. It is exposed. It's been left exposed. It's
6 in the stairwells. We took significant pains to
7 keep as much of the structure as we could.

8 So the answer to that question, that
9 was a very big part, and is also part of the history
10 and the original plan for the building.

11 I loved the building for what it was
12 and adapted and reused the structure, as well as the
13 architecture within the building that is here now.

14 As far as the order being out of place
15 to build this building, the building is built
16 exactly as was preliminarily approved except for
17 this facade --

18 MR. GIBBONS: That is not the question.

19 MR. WHITE: Excuse me?

20 MR. GIBBONS: That's not the question.

21 MR. WHITE: Well, he asked me how I got
22 to that point.

23 MR. GIBBONS: Right, and you answered
24 the building is built. That wasn't -- his question
25 was how did -- you know, how did you do it, given

1 all of the prior information.

2 MR. WHITE: It was a miss. It was a
3 miss on my part, my professionals, the city's part,
4 the county's part, the state's part.

5 I've gotten -- it is not like anything
6 was done to be built -- there is not an extra
7 apartment. There is not an extra floor on the
8 building. Nothing was done to hide anything. The
9 building is two blocks from City Hall. I have had
10 15 to 20 building inspections. I had six zoning
11 approvals. Like I said, county, state, FEMA,
12 every -- so nothing -- it was just a miss.

13 And the funny thing about it -- it's
14 not really funny -- but my professionals didn't
15 think about -- they didn't charge me for a second
16 appearance before the Board, and it wasn't like I
17 was going to do it without coming before the Board.

18 I hadn't built a new building before
19 the Board here in many years. I have done some
20 other rehabs, but nothing that required final Board
21 approval.

22 And the old procedure in the last
23 building I did was under the old procedure of
24 getting preliminary site plan approval, first
25 certificate of zoning compliance, building permits,

1 build the building. When it is substantially
2 complete, come back to the Board, just as this
3 procedure is now.

4 Now, I understand that ordinance was
5 changed in 2003. However, I was still -- there was
6 still buildings being built in '6, '7, and '8. I
7 believe the last ones I did in that town were under
8 that guideline, so it was just a miss by so many
9 different people, it is incredible.

10 But I want to emphasize how the
11 building is built according to the preliminary plan.

12 ACTING CHAIRMAN GREENE: You
13 represented yourself as the developer of this
14 project, is that correct?

15 MR. WHITE: Yes.

16 ACTING CHAIRMAN GREENE: What is your
17 definition -- what was your role?

18 What is your definition of a developer?

19 What does that mean exactly?

20 MR. WHITE: My vision for what the
21 building would be ultimately, the idea of what the
22 use will be, what the architecture will look like,
23 and hiring all of the professionals to achieve that
24 end.

25 ACTING CHAIRMAN GREENE: Now, there was

1 a comment or a question I think from Commissioner
2 Branciforte at the last hearing regarding building
3 inspections.

4 Now, when you acquired -- you purchased
5 the building?

6 MR. WHITE: Yes.

7 ACTING CHAIRMAN GREENE: Now, before
8 you purchased it, did you have a professional
9 engineer or inspector look at it on your behalf?

10 MR. WHITE: Not before I purchased it,
11 I don't think so.

12 ACTING CHAIRMAN GREENE: So you
13 basically bought it sight unseen?

14 MR. WHITE: No. I saw it. I brought
15 architects through, but I don't know if I had a --
16 I don't recall if I had a physical structural
17 inspection at that point --

18 ACTING CHAIRMAN GREENE: Okay. Thank
19 you.

20 MR. WHITE: -- I don't think I did.

21 MR. GIBBONS: I don't want to -- I just
22 had a couple of questions.

23 Again, I am stepping into Mr. Galvin's
24 shoes. I may approach this slightly differently,
25 but just because I want to make sure I know as I am

1 advising you.

2 Mister -- actually this is -- Mr.
3 Matule is your attorney, who I have known for many,
4 many years. At the time you got the approval in
5 2011, correct?

6 MR. WHITE: Yes.

7 MR. GIBBONS: I see that from reading
8 the transcripts, and I want you to confirm it.

9 Now, Mr. Matule is a longstanding
10 member of the bar and highly knowledgeable in land
11 use matters, and he knows the time of application
12 rule, and he knows also the old saw, ignorance of
13 the law is no excuse, so I know that he would have
14 consulted -- I am sure -- I know that he would have
15 advised you.

16 Did you consult with him at all after
17 you got the approval?

18 MR. WHITE: I believe so. I consulted
19 with all of my professionals, all of them, the
20 architects, the attorney, every one of them, and the
21 team I had then is the team I have now. Nothing has
22 changed.

23 MR. GIBBONS: And yet you went ahead --
24 and yet you went ahead and built anyway and just
25 bypassed the whole -- and, again, I understand there

1 is another officer involved in this, but I mean, no
2 one on your team knew what the law was?

3 MR. WHITE: I don't know.

4 MR. GIBBONS: I know Mr. Matule knew
5 what the law was, so I find it hard to believe that
6 you would have consulted with him, and he would have
7 given you the wrong advice, and I know because I've
8 been doing this a long time and --

9 COMMISSIONER DE FUSCO: Excuse me.

10 I thought this was -- isn't this
11 supposed to be questions and not statements?

12 ACTING CHAIRMAN GREENE: Excuse me,
13 Commissioner.

14 COMMISSIONER DE FUSCO: I just think it
15 is a little improper to be, you know, making
16 statements, Mr. Chair, when there's questions --

17 MR. GIBBONS: I am asking questions.

18 COMMISSIONER DE FUSCO: No. I think
19 you are making a point.

20 MR. GIBBONS: No. I am asking
21 questions, and in my capacity as Board Attorney,
22 I'm permitted to do that.

23 COMMISSIONER DE FUSCO: Go ahead.

24 So ask your question.

25 MR. GIBBONS: I just asked it.

1 COMMISSIONER DE FUSCO: No. It was a
2 statement actually. It was an exclamatory
3 statement.

4 ACTING CHAIRMAN GREENE: Commissioner
5 DeFusco.

6 COMMISSIONER DE FUSCO: I'm sorry. Go
7 ahead, Mr. Chair.

8 MR. WHITE: I'm sorry.

9 What was the exact question again?

10 MR. GIBBONS: Did you -- so you went
11 ahead and built the building, and you didn't really
12 check with anybody or nobody knew this?

13 MR. WHITE: I checked with everyone,
14 all of my professionals. My professionals have to
15 fill out paperwork for submission.

16 We submitted to the zoning officer for
17 a first letter of zoning compliance. We all, my
18 entire team, relied upon that, not realizing it was
19 out of step with procedure.

20 We applied for permits. We received
21 full permits, full inspections, multiple of all
22 kinds from all sorts of municipal agencies.

23 MR. GIBBONS: And all of your
24 professionals and all of the members of your team
25 work frequently in Hoboken, I presume.

1 MR. WHITE: Yes.

2 MR. MATULE: May I make a statement?

3 MR. GIBBONS: You may.

4 And I want to state for the record, I
5 mean, as the Board Attorney, I am in a position
6 where I should be able to counsel the client or make
7 a statement, so I mean, I disagree with the
8 statements of the Commissioner.

9 MR. MATULE: I am not objecting to
10 anything that you are saying.

11 I just don't want to be put in the
12 position -- we're making some broad statements here
13 about the team, and I just don't want to be put in
14 the position where I am now going to become a fact
15 witness --

16 MR. GIBBONS: No, no, no.

17 MR. MATULE: -- in this case, and the
18 fact that I am not saying anything, I just don't
19 want anybody on the Board to draw any negative
20 inferences --

21 MR. GIBBONS: That's correct, and I --

22 MR. MATULE: -- because I would like to
23 say a lot, but I can't --

24 COMMISSIONER COHEN: Let me just say, I
25 don't think it is Mr. Gibbons' intention to

1 disqualify Mr. Matule, correct?

2 MR. GIBBONS: No, not by any means, and
3 I'm not questioning -- I thought I said specifically
4 to the contrary --

5 MR. MATULE: I'm not suggesting --

6 COMMISSIONER COHEN: Because I don't
7 think you want to invite testimony of the lawyer
8 against his client or the client against his
9 lawyer --

10 MR. GIBBONS: No, no, no.

11 I'm merely asking -- in fact, I
12 never -- all I said was, and I say this based upon
13 my own experience as a fellow officer of the court,
14 I think I know what an attorney would have advised
15 his client.

16 So I mean, when I heard the client say,
17 I checked with all the members of my team, I frankly
18 had questions about that, so I followed up
19 accordingly.

20 COMMISSIONER COHEN: And we have
21 already disqualified one attorney on this case, I
22 don't know if we want to disqualify a second one.

23 (Laughter)

24 So maybe we can move to the public and
25 see if they have any questions.

1 MR. GIBBONS: Well, does the Board have
2 any other questions for the witnesses?

3 COMMISSIONER BRANCIFORTE: I do.

4 Mr. Matule, there is a letter that you
5 wrote to Mr. Galvin on April 14th, 2015 --

6 MR. MATULE: Yes.

7 COMMISSIONER BRANCIFORTE: -- it was
8 included in our packet, and this is the question I
9 have. I will let you find it first.

10 MR. MATULE: I have it.

11 COMMISSIONER BRANCIFORTE: Do you have
12 it?

13 MR. MATULE: Should we mark it for the
14 record?

15 MS. CARCONE: It was distributed to the
16 Board.

17 MR. GIBBONS: I have a copy of it. I
18 think it may be in the record.

19 COMMISSIONER BRANCIFORTE: It was in
20 the packet, so --

21 MS. CARCONE: Yeah.

22 COMMISSIONER BRANCIFORTE: So the
23 2014 -- the 2015 letter, April 14th, at the bottom,
24 the paragraph that starts "With respect to the
25 fact" --

1 MR. MATULE: Yes.

2 COMMISSIONER BRANCIFORTE: -- you know,
3 you might as well just read the entire thing, so the
4 entire Board can --

5 MR. MATULE: Okay.

6 COMMISSIONER BRANCIFORTE: -- look at
7 it.

8 "With respect to the fact" --

9 MR. MATULE: No, I understand. I want
10 to just look at the preceding paragraphs --

11 COMMISSIONER BRANCIFORTE: I'm sorry,
12 go ahead.

13 MR. MATULE: -- and see if anything
14 needs to be contextualized.

15 COMMISSIONER BRANCIFORTE: Take your
16 time. I'm sorry, Mr. Matule. Take your time.

17 MR. MATULE: Okay. So it says:

18 "With respect to the fact that the
19 building permits were issued and the building was
20 constructed prior to final site plan approval,
21 please bear in mind that the original approvals in
22 this matter were given on December 20, 2011.

23 'Historically it had been the practice of the Zoning
24 Office and the Building Department to issue a first
25 certificate of zoning compliance and building

1 permits after preliminary approval with the
2 Applicant coming back to the Board for final site
3 plan approval after construction was completed.
4 While most professionals interacting with the city
5 at this point realize this is no longer the
6 practice, this particular application appears to be
7 one that was initiated during' this 'transition
8 period.' To that end, I am enclosing a copy of the
9 first certificate of zoning compliance issued by the
10 Zoning Officer on May 29, 2012, which specifically
11 states, 'No certificate of occupancy shall be issued
12 until final site plan approval has been obtained
13 from the ZBA,'" Zoning Board of Adjustment.

14 COMMISSIONER BRANCIFORTE: Okay. Two
15 questions. One for our planner.

16 Now, this law, the ordinance was first
17 changed in 2003, and then changed again -- amended
18 in 2006, I think, 2008?

19 MS. BANYRA: I know it was changed in
20 2003, John. I don't know that it was changed again
21 in 2000 -- because it was inconsistent with the
22 Municipal Land Use Law, so it was changed in 2003.

23 COMMISSIONER BRANCIFORTE: So this is
24 my question, Mr. Matule, for you.

25 When you talk about a transition period

1 at the end of that first paragraph, what do you mean
2 by "transition period"?

3 The law had been in the books for --
4 since 2003, so what was in transition at this
5 period?

6 MR. MATULE: I am not a first party
7 witness to any of the things that went on, so I was
8 opining to Mr. Galvin that this is presumably why
9 the zoning officer acted in the manner she acted.

10 I am not saying this is the law. This
11 is not a factual statement. I was just trying to
12 express -- speculate, if you will, how this
13 occurred, because admittedly, I found it unusual
14 also.

15 And the fact that even the first
16 certificate of zoning compliance what was issued
17 specifically said that you have to come back for
18 final site plan approval before you get your CO.

19 So obviously, somebody was thinking
20 about the final site plan approval process. I just
21 don't know that they necessarily had the order in
22 which these things are supposed to occur correct.

23 But, you know, frankly Mr. Branciforte,
24 you know, it is what it is, you know, and I am not
25 being dismissive. What happened, happened. We now

1 are here just trying to straighten it out.

2 COMMISSIONER BRANCIFORTE: Right.

3 No. I was just -- but you answered my
4 question, so I am good.

5 The question of the "transition
6 period," I thought you had some insight as to what
7 happened.

8 MR. MATULE: No.

9 COMMISSIONER BRANCIFORTE: Okay.

10 I don't think I have anything else.

11 ACTING CHAIRMAN GREENE: Anyone else
12 before we open it up to the public?

13 Professionals?

14 MS. BANYRA: No.

15 ACTING CHAIRMAN GREENE: Okay.

16 MR. GIBBONS: We are still on
17 questions.

18 ACTING CHAIRMAN GREENE: We are still
19 on questions. If anybody in the public has any
20 questions for any of Mr. Matule's witnesses.

21 ACTING CHAIRMAN GREENE: I was pointing
22 in the general direction. By all means, you will go
23 next.

24 MR. GIBBONS: You will go next.

25 MS. HEALEY: Leah Healey, 806 Park.

1 You mentioned other permit applications
2 that you got.

3 Do any of those permit applications
4 that you applied for and got approval for require as
5 a precondition to getting those permits that you
6 have final site plan approval?

7 MR. WHITE: No.

8 MS. HEALEY: And do you know
9 specifically who on your --

10 MR. WHITE: Excuse me one second.

11 MR. MATULE: Just for the record, I
12 want to be clear. I think, again, we are getting in
13 very broad terms here.

14 Can we get more specific about what
15 kind of permits we are talking about?

16 MS. HEALEY: Yes, I will.

17 You said -- well, he mentioned --

18 MR. WHITE: None that I am aware of.

19 MS. HEALEY: You mentioned a County
20 Planning Board approval?

21 MR. WHITE: Yes.

22 MS. HEALEY: Does the County Planning
23 Board approval, did it require you to have Zoning
24 Board approval from this local Board before you got
25 your County Planning Board approval?

1 MR. WHITE: I believe so, yes.

2 MS. HEALEY: You mentioned DEP
3 approval, State approval?

4 MR. WHITE: Yes.

5 MS. HEALEY: Was that approval, did
6 that require you to have local Zoning Board approval
7 before that would -- before that approval would
8 issue, or was it conditioned on that approval?

9 MR. WHITE: I am not exactly sure.
10 That has to do with the flood remediation and the
11 current FEMA codes, and if the building complies.

12 I presume, although I am not a hundred
13 percent sure, you would have to have a building that
14 is approved, preliminarily approved, in order to
15 apply for that. I think the procedure was
16 preliminary approval, not final.

17 I think that actually makes a condition
18 from the engineers of this Board for final --

19 MS. HEALEY: Okay.

20 MR. WHITE: -- I believe that is the
21 process. Maybe Eileen --

22 MS. BANYRA: Well, it sounds like you
23 are speaking about third-party approval, which
24 typically is a follow-up on Board approval, because
25 you can't condition an application -- the attorney

1 can correct me if I am wrong -- but an application
2 gets approval by the local Board, and DEP could take
3 a couple of years, so it is usually after the fact.

4 MS. HEALEY: Okay.

5 MR. GIBBONS: Subject to other
6 approvals as a condition of approval.

7 MS. HEALEY: It could be that all of
8 your other approvals are subject to this Board's
9 approval and were stated as such. Is that possible?

10 MR. WHITE: In terms of?

11 MS. HEALEY: Requiring as a condition
12 of those approvals, that you eventually get a local
13 site plan approval --

14 MR. WHITE: Could be.

15 MS. HEALEY: -- final approval.

16 And can you tell us who, which one of
17 your professionals, applied for the first
18 certificate of zoning compliance?

19 MR. WHITE: I believe it was my
20 architect.

21 MS. HEALEY: He would have signed that
22 paperwork?

23 MR. WHITE: I don't know if there is a
24 signature on the application, but there is
25 submissions, there's plan submissions.

1 MS. HEALEY: Thank you.

2 MR. WHITE: Is there a signature on the
3 application?

4 COMMISSIONER DE FUSCO: Can I share
5 with him the first certificate?

6 ACTING CHAIRMAN GREENE: Sure.

7 MR. WHITE: Oh, we have it.

8 MR. GIBBONS: It was in the applicant's
9 packet, was it not?

10 ACTING CHAIRMAN GREENE: Yeah, uh-huh.

11 (Board members confer.)

12 ACTING CHAIRMAN GREENE: Any other
13 questions from the public?

14 MR. GIBBONS: This gentleman in the
15 back.

16 ACTING CHAIRMAN GREENE: Oh, yes, Mr.
17 Evers.

18 MR. GIBBONS: Again, these are
19 questions. This is not the time for comments yet.

20 MR. EVERS: Michael Evers, 252 Second
21 Street, Hoboken, New Jersey.

22 MR. GIBBONS: If you are just asking a
23 question, you don't need to be sworn.

24 MR. EVERS: Oh, how embarrassing.
25 okay.

1 This is a question for the applicant.

2 Currently, if I am wrong, but the
3 resolution provided you with the variances for this
4 project include certain stipulations regarding
5 preservation of the building, correct?

6 MR. WHITE: I believe -- I don't know
7 if that was in -- yes, sections of the building to
8 be preserved, yes. An adaptive reuse I think was
9 the term.

10 MR. EVERS: You effectively made an
11 agreement with the Zoning Board --

12 MR. GIBBONS: Ask a question.

13 MR. EVERS: I'm getting it into a
14 question.

15 ACTING CHAIRMAN GREENE: There will be
16 a question mark at the end?

17 MR. EVERS: Given that you effectively
18 entered an agreement with the Zoning Board, and the
19 circumstance came up that prevented you from
20 completing part of that agreement, how is it that
21 the first thing you didn't do, as I would think one
22 would do with many business partners, is to go back
23 to the Zoning Board and ask for their guidance on
24 how you should proceed since the original agreement
25 couldn't be fulfilled?

1 I wonder why, he questions, I wonder
2 why that was done instead of building the almost
3 entire building and then finally coming back.

4 MR. MATULE: Don't answer the question.

5 Just for the record, I have to object
6 to the premise. I think the resolution speaks for
7 itself. There are conditions in the resolution,
8 nine to be exact, and other than the saying, "The
9 applicant shall be bound by all exhibits introduced
10 and representations made in testimony," there is no
11 specific language in here about preservation,
12 restoration, other than the fritted glass that is
13 going to be part of the facade, so I am just
14 questioning the premise.

15 MR. GIBBONS: Well, I think you might
16 want to tailor your question a little differently
17 because his objection -- I read the conditions at
18 length myself. I didn't see that in there, and if
19 it is something I am missing, I would like to know.

20 MR. EVERS: Well, then may I ask the
21 developer these plans and representations that you
22 are bound by according to the words that Mr. Matule
23 just read, did they not include representations that
24 you were going to preserve these things, and didn't
25 the oral testimony at the hearings provide these

1 things?

2 I asked this, because I don't
3 understand -- if something happens and you can't
4 complete an agreement, those things happen, but I
5 must ask you: Why wasn't the first thing that you
6 did to go back to the entity who you had an
7 agreement with to discuss that pre facto, so to
8 speak?

9 MR. GIBBONS: I want to interject for a
10 moment, because there is a point, and the resolution
11 does state this as really do resolutions of both
12 Boards routinely, that the applicant is bound by all
13 representations made, including those set forth in
14 exhibits and plans.

15 Mr. Matule, I know you are familiar
16 with that --

17 MR. MATULE: I called it out.

18 MR. GIBBONS: -- standard forms and
19 conditions -- yes. I am just saying, so any
20 representations made by you in that connection would
21 have, in my professional opinion, bound you --

22 MR. MATULE: And there's no question
23 that the representations made at the hearing was the
24 applicant's intention to reuse that building and
25 preserve it. I don't think there is any argument

1 about that.

2 MR. GIBBONS: Okay. All right. I just
3 wanted to --

4 MR. WHITE: To adaptive reuse.

5 MR. EVERS: So given that there is no
6 argument about that, when you were unable to
7 complete that condition in the manner in which
8 certainly everybody here -- my impression is people
9 assume -- how is that your first step was not to go
10 back to the Board and seek guidance?

11 MR. WHITE: Well, we kept approximately
12 75 percent of the original building in terms of
13 adaptive reuse, so that was -- I felt that was all
14 compliant all the way through, and we reused as much
15 as we could.

16 When this facade came down, since we
17 were rebuilding so much of the building and adding
18 to it, it just seemed at the time, and again, I said
19 before, if I could turn the clock back now and
20 realizing that there was replacement, exact
21 replacement brick, instead of having a patchwork,
22 that would have been there, and to ameliorate a
23 short term dangerous and patchwork situation, the
24 decision was made to rebuild it exactly as possible
25 and recreate it.

1 MR. EVERS: So, again, I am trying to
2 get an answer my question.

3 So you are saying basically that you
4 didn't feel it was necessary to go back to the
5 Zoning Board because you were fulfilling the
6 obligations you assumed or -- that is the question I
7 would like to have answered.

8 MR. WHITE: At the time there was no
9 process that I was aware of in place to have to come
10 back to the Zoning Board for something like this.

11 MR. EVERS: Did you make inquiry with
12 the Zoning Board professionals about that?

13 MR. WHITE: It is my understanding now
14 or recently or currently?

15 MR. EVERS: Well, I am asking you about
16 an event that happened in the past. Did you make
17 inquiry in the past?

18 MR. WHITE: I did not come back to this
19 Board for that issue, no.

20 MR. EVERS: Thank you.

21 ACTING CHAIRMAN GREENE: Is there
22 anyone else?

23 MR. GIBBONS: From the audience?

24 Yes, sir.

25 MR. WELNER: I have a question actually

1 of the Board --

2 MR. GIBBONS: Could you -- could you
3 identify yourself and give your address?

4 I'm sorry, but that's --

5 MR. WELNER: No, no, of course.

6 My name is Alan Welner, A-l-a-n,
7 W-e-l-n-e-r, 53 First Street.

8 MR. GIBBONS: And your address?

9 MR. WELNER: I'm sorry?

10 MR. GIBBONS: And your address?

11 MR. WELNER: 53 First Street, Hoboken.

12 I am the immediate neighbor of this
13 property.

14 I was at the preliminary meeting asking
15 some questions, pointed questions, and I would like
16 to at some point tell the Board --

17 ACTING CHAIRMAN GREENE: You will have
18 an opportunity to do that, but right now we are in
19 questions.

20 MR. WELNER: Can I do it now?

21 ACTING CHAIRMAN GREENE: No. You will
22 have an opportunity.

23 MR. WELNER: Well, that was my
24 question.

25 (Laughter)

1 MR. GIBBONS: Okay.

2 Ma'am?

3 MS. ICKLAN: Hi.

4 Susan, Icklan, I-c-k-l-a-n, 1030
5 Bloomfield Street.

6 It seems -- let me just ask the
7 question -- that the one thing that is slightly
8 different than the original approvals is this
9 facade, and it is the facade.

10 MR. WHITE: Yes.

11 MS. ICKLAN: It's not a structural part
12 of the building.

13 MR. WHITE: It is a percentage of one
14 elevation facade, yes.

15 MS. ICKLAN: And one other thing that I
16 heard you speaking about was that in constructing
17 this building and in moving the door and putting the
18 electric above, the building is now much more flood
19 proof than it was before --

20 MR. WHITE: Yes, it is fully --

21 MS. ICKLAN: -- particularly on Newark
22 Street?

23 THE WITNESS: Yes.

24 MS. ICKLAN: That's all.

25 ACTING CHAIRMAN GREENE: Thank you.

1 Anyone else?

2 State your name for the record.

3 MR. PRANSES: Terry, T-e-r-r-y,
4 Pranses, P-r-a-n-s-e-s, 730 Park.

5 And this is I think a question to the
6 city inspectors, et cetera, not to the architect or
7 to the developer.

8 At the prior hearing there was a great
9 deal of discussion about the height of this building
10 versus the height of the adjacent building.

11 We heard assertions that it is, that
12 the roof line is the same height in spite of the
13 appearances in some photographs, et cetera.

14 Will the city inspect that and measure
15 that, or has the city already made sure that it is
16 no higher than the adjacent building?

17 ACTING CHAIRMAN GREENE: I will take
18 that as a question, and the architect can respond to
19 that, if that's --

20 MR. NASTASI: In response to your
21 question, at the last meeting last month, there was
22 some question about the approved height versus the
23 as-built height.

24 So the past month we went back and
25 shooting lasers and transits, we measured each floor

1 of the building to determine the height that the
2 building was actually built.

3 This is the set of drawings from the
4 approval in 2011 calling for a 40 foot roof level,
5 40 feet zero inches.

6 In measuring the building floor to
7 floor, to floor, to floor, to get from the ground
8 all the way to the roof, the building is built at 40
9 feet exactly.

10 Now, that is not easy to do, but the
11 building is exactly 40 feet, and it was approved at
12 40 feet.

13 MR. PRANSES: So that is their purview,
14 not the city's, to make sure that this has actually
15 happened?

16 Given that to the eye, it seems to be
17 at a different height and the windows actually seem
18 as high as the adjacent building.

19 ACTING CHAIRMAN GREENE: We can't speak
20 for the city --

21 (Everyone talking at once.)

22 COMMISSIONER BRANCIFORTE: Mr. Nastasi,
23 did we discuss something about the windows having to
24 be changed or something, the top windows, the row
25 windows had to be changed?

1 MR. NASTASI: We discussed the height
2 of the head of the top window in relationship to the
3 design of the facade, how much white freeze was
4 showing.

5 What I was referring to is the height
6 of the roof off of the street level, and based on my
7 office, my licensed architects, our equipment, we
8 measured it at exactly 40 feet.

9 COMMISSIONER BRANCIFORTE: So when
10 somebody looks at that building, they may not see
11 the roof line at 40 feet. They will see the --

12 MR. NASTASI: Parapet.

13 COMMISSIONER BRANCIFORTE: -- parapet
14 being a little bit higher than 40 feet --

15 MR. NASTASI: 42 inches.

16 COMMISSIONER BRANCIFORTE: -- so that
17 could give -- 42 inches?

18 MR. NASTASI: Yes.

19 COMMISSIONER BRANCIFORTE: -- so that
20 could give the impression, like to a neighbor, that
21 the building is actually built bigger than it was --

22 MR. NASTASI: Right.

23 So here's the drawings from 2011.
24 That's the parapet. That's the roof height, and
25 that's the neighbor, and that height is dimensioned

1 as 40 feet. It's at 40 feet right now.

2 MR. PRANSES: And the height of the
3 window, the top of the windows, is at what height?

4 MR. NASTASI: On this zoning drawing,
5 the head of the window is not dimensioned. I think
6 we determined last week that the head may be
7 slightly different, but it is just the height of the
8 glass in relationship to the facade, not the height
9 of the building. The building structure is 40 feet
10 high.

11 MR. PRANSES: Interesting.

12 Thank you.

13 COMMISSIONER BRANCIFORTE: Just, if I
14 may, just to clarify --

15 ACTING CHAIRMAN GREENE: Okay.

16 COMMISSIONER BRANCIFORTE: -- this is a
17 discussion I often have is when people come in front
18 of the Zoning Board and say, I am putting the
19 building at 40 feet, that is fine. That is the
20 technical 40 feet. But what we don't talk about is
21 the height of the parapet, which makes the building
22 seem -- the appearance of the building seem higher,
23 so when the neighbors think it's going to be 40
24 feet, it's actually the parapet that makes it
25 higher.

1 MR. NASTASI: Right. And based on the
2 language of the ordinance, we measure roof height in
3 Hoboken to the roof, not the parapet.

4 COMMISSIONER BRANCIFORTE: Right.
5 Thank you.

6 ACTING CHAIRMAN GREENE: Thank you.
7 Anyone else?

8 MS. HEALEY: Are we allowed to ask a
9 question of the architect?

10 I thought we were only asking questions
11 of Mr. White.

12 I have a question for the architect.

13 ACTING CHAIRMAN GREENE: Okay.

14 MR. GIBBONS: Please come forward.

15 MS. HEALEY: Leah Healey, 806 Park.

16 Mr. Nastasi, you had said the
17 construction drawings that you submitted were to
18 save the facade.

19 Who do you submit construction drawings
20 to?

21 MR. NASTASI: The construction office.

22 MS. HEALEY: So this is separate than
23 the application for the first certificate of zoning
24 compliance?

25 MR. NASTASI: Two different sets of

1 drawings.

2 MS. HEALEY: Okay.

3 And when did you submit these
4 construction drawings?

5 MR. NASTASI: I don't recall, but
6 sometime after zoning approval.

7 So you get a first certificate of
8 zoning approval first --

9 MS. HEALEY: Right.

10 MR. NASTASI: -- once that approval --
11 once you have that approval in your hands, you then
12 complete the construction drawings and file for
13 construction permits.

14 MS. HEALEY: And was the construction
15 officer aware of whether or not you had gotten final
16 site plan approval?

17 MR. NASTASI: I don't know the answer
18 to that question.

19 But it is very clear that in the first
20 certificate I think Mr. Matule or somebody read,
21 there was very specific instructions in the first
22 certificate of zoning approval, that prior to
23 certificate of occupancy, Jeff White needed to come
24 back for final site plan, and it was very
25 specifically read in that first certificate of

1 zoning approval, very clear --

2 MS. HEALEY: Right.

3 But notwithstanding --

4 MR. NASTASI: -- and those steps --
5 those steps had been followed, and that is why Jeff
6 is here now to get a final site plan approval.

7 MS. HEALEY: -- so even though the
8 Board required final site plan approval prior to
9 construction --

10 MR. NASTASI: I don't know if that is
11 actually the case --

12 MS. HEALEY: -- I heard that in the
13 resolution --

14 MR. NASTASI: -- because -- we may be
15 getting into a longer discussion.

16 MS. HEALEY: Okay.

17 ACTING CHAIRMAN GREENE: Thank you.

18 Anyone else?

19 Entertain a motion to close.

20 COMMISSIONER COHEN: Motion to close
21 the public portion for all of the witnesses.

22 COMMISSIONER MURPHY: Second.

23 COMMISSIONER DE FUSCO: Succeed.

24 ACTING CHAIRMAN GREENE: All in favor?

25 (All Board members answered in the

1 affirmative.)

2 ACTING CHAIRMAN GREENE: Okay.

3 MR. GIBBONS: Public comment.

4 ACTING CHAIRMAN GREENE: Now it's
5 public comment.

6 MR. GIBBONS: Public portion.

7 ACTING CHAIRMAN GREENE: Okay. Now, we
8 can hear your comments.

9 MR. GIBBONS: Please come forward and
10 give your address and your name.

11 ACTING CHAIRMAN GREENE: And you get
12 sworn.

13 MR. WELNER: Good evening.

14 Alan Welner is my name. 53 First
15 Street.

16 MR. GIBBONS: Please raise your right
17 hand.

18 Do you solemnly swear that the
19 testimony you are about to give in this matter will
20 be the truth, so help you God?

21 MR. WELNER: I do.

22 MR. GIBBONS: Thank you.

23 State your name again.

24 MR. WELNER: Alan Welner, W-e-l-n-e-r.
25 I am the owner of this building here.

1 This is brick. This is the garage here, and the
2 building beyond it, and so I am the immediate
3 neighbor to this project.

4 I have owned this building for 30 years
5 or so, and some of you may know the previous owner
6 of this. Ron Hein was my neighbor for that time.

7 This, of course, did not exist. This
8 structure or something very similar to it did exist,
9 and in between in this space here, was nothing, a
10 garden, quite a beautiful garden.

11 So during the first hearing for this, I
12 was notified by mail. I came, and I was, I would
13 say, somewhat hostile and upset with the fact that
14 Ron had sold this building. He was a friend, still
15 is a friend, and that this open space and the
16 tenants who live here would be deprived of that
17 light. And I was frankly given the history of
18 development in this town, pretty fearful of what I
19 would see, and I questioned Mr. White and his
20 professional people about what they would do.

21 I would say I was fairly hostile and
22 anxious about that. In fact, I think I asked him to
23 stipulate during that time that he would -- on this
24 wall here, the wall that faces these windows and it
25 had an open, unrestricted view of light and sun,

1 sunsets right in here. This was really a beautiful
2 green space back here. Ron took very, very good
3 care of it.

4 I think we have in that original plan a
5 stipulation that he would plant something on this
6 wall, something green, that would eventually cover
7 that blank space. I think it is in there.

8 Anyway, the anxiety I felt, I think
9 many of you who have been in this town have seen
10 some absolute grotesque things pass former Boards,
11 really criminal.

12 There is a building less than a block
13 away that has hundreds of apartments that went up.
14 I received no notice about that at any time, so you
15 know the kind of hostility and suspicion that exists
16 in this town and people who have seen these things
17 happen really is very understandable, and I am glad
18 to see the Board taking such care to ask and really
19 put pressure on the folks that are building to be as
20 careful as they can.

21 Anyway, a couple of years in process,
22 you can imagine -- I think you can imagine, maybe
23 some of you have experienced the tremendous
24 disruption that even a small, relatively small
25 building like this, produces on the daily basis.

1 My car is in this garage, so I would
2 say I was on this property three, four, five, six
3 times a week, and I was in constant contact with the
4 construction people, construction managers, not with
5 Mr. White, but with the people who were working on
6 site.

7 The pile driving, all of that stuff,
8 parking, as you can imagine, this is a narrow
9 street. This is not a street where there is even
10 two lanes. One truck, any kind of vehicle will just
11 close off that street and back it up to Washington
12 Street, so it was a difficult time, and I was, you
13 know, there really on the case as much as I could.

14 I have to say that any problem that I
15 had, and there were many issues, were addressed
16 very, very quickly, and over a period of time I came
17 to understand that this building was done about as
18 well as it could be done in terms of neighbors.

19 In fact, I was there the morning I took
20 my car out of this garage while the people were
21 working on this wall, which is a very thin, almost a
22 veneer of a wall, and I was really anxious that
23 something would happen to it. I didn't see where
24 the structure to support that would allow it to
25 continue. But after a few weeks, it appeared to be

1 going well.

2 A couple of hours later, I came to park
3 the car, and I found bricks on the sidewalk, and I
4 was told by the workmen that there had been some
5 collapse there, and to tell you the truth, I was
6 suspicious about that at the time.

7 It seemed like such an arduous task to
8 do what they were doing that I could easily see them
9 just being less than careful and just getting it
10 over with somehow.

11 So when I saw those bricks there, that
12 is exactly what I thought. I thought, well -- and I
13 asked people in the neighborhood if they had seen
14 it, and there was a bit of a buzz, a suspicion of
15 different kinds.

16 But subsequently, as it was rebuilt,
17 and in fact, I spoke to Jeff about that, and I asked
18 him what had happened, and he explained what had
19 taken place.

20 And I said, well, let's see, because
21 that's a really an important part of the culture of
22 that block, and it is kind of a test of the
23 integrity of the builder, and it's something that
24 all of us who are aware of it really had our eyes
25 on.

1 And gradually things, you know, got
2 built, and they got built in a good way. And, as I
3 said, every problem that I had was resolved almost
4 immediately. I never got the run-around. I felt I
5 was being dealt with very, very straightforwardly by
6 his workmen, by his construction supervisor, and I
7 never really had an issue.

8 In fact, I have been in this building
9 and the previous building, I have been, as I said, a
10 friend and neighbor of Ron's, and I got some of the
11 old photographs as well, and perhaps I should have
12 brought them here.

13 I was really very impressed and very
14 happy with what happened here. It made the block
15 better, and it also showed me that, you know, how
16 prejudiced I was, I believe with good reason based
17 on the experience of the construction in this town
18 previously, almost all of it, and I was unhappy with
19 how it has turned out.

20 I understand sitting in this meeting
21 and listening to some of these questions, that there
22 are issues involved in this particular case that I
23 was unaware of until I got here tonight. I am not
24 sure exactly what they are, but I have a feeling of
25 what they may be, and I am not going to address that

1 obviously.

2 But I do want to say that I am very
3 more than pleased with how it has turned out. There
4 is a few things that I may speak to Mr. White about
5 to make it even better in some way, but I have been
6 at this meeting, not recently, but 20, 25, 30 years
7 ago, and the difference is astounding in terms of
8 the care and the holding a developer's feet to the
9 fire. I only wish that this happened decades ago.
10 We would really have been spared a tremendous amount
11 of grief and ugliness.

12 I think, again, I am not addressing the
13 underlying issue here, which some other people will,
14 I am just addressing the brick.

15 I find Mr. Lindner, I think was his
16 name, describing this brick in such detail, telling
17 me these are 18-dollar bricks here on my garage --

18 (Laughter)

19 MR. LINDNER: Not on the side wall.

20 (Laughter)

21 MR. WELNER: -- this is a wonderful
22 thing for our block, and in the years that this has
23 been going on, I have changed my mind from extreme
24 prejudice to really an appreciation of this kind of
25 thing being done in Hoboken.

1 So I think perhaps based on the degree
2 and intensity of some of the questioning about the
3 brick, I think the pendulum, which has really let
4 anything go in this town may be approaching perhaps
5 another extreme. I think maybe some of these
6 questions are influenced by underlying issues, which
7 I am not going to speak of now --

8 ACTING CHAIRMAN GREENE: Mr. Welner,
9 Mr. Welner, if I may --

10 MR. WELNER: -- yeah.

11 ACTING CHAIRMAN GREENE: -- we would
12 like to leave the opportunity for others to speak.

13 MR. WELNER: I'm done.

14 ACTING CHAIRMAN GREENE: You have made
15 your point, and we appreciate it very much.

16 MR. WELNER: Let me just check and
17 see --

18 ACTING CHAIRMAN GREENE: If you could
19 summarize --

20 MR. WELNER: I am done.

21 ACTING CHAIRMAN GREENE: -- conclude
22 Thank you.

23 MR. WELNER: I wish there was more of
24 this kind of reconstruction in town, and I think we
25 would all be better off.

1 ACTING CHAIRMAN GREENE: Thank you.

2 Anybody else?

3 Step forward.

4 MS. FALLICK: I have to be sworn in.

5 MR. GIBBONS: Yes, ma'am.

6 Do you solemnly swear that the
7 testimony you are about to give in this matter will
8 be the truth, so help you God?

9 MS. FALLICK: I do.

10 MR. GIBBONS: Please state your name
11 and spell your last name, please.

12 MS. FALLICK: Sheryl Fallick, F, as in
13 Frank, a-l-l-i-c-k.

14 MR. GIBBONS: And your address?

15 MS. FALLICK: 204 Third Street,
16 Hoboken.

17 MR. GIBBONS: Thank you.

18 MS. FALLICK: I see why some folks
19 asked me and suggested that I come tonight. I
20 wasn't actually terribly familiar with this project,
21 so I can't speak to the history of, you know, what
22 was there and all of that stuff. But some of the
23 things I heard tonight have concerned me a lot.

24 It sounds like you folks are in the
25 position where you are giving a variance after the

1 building was built, which is difficult. I'm not
2 saying, you know, whether you should grant it or
3 not, but as a member of the community, I would never
4 want to be in a situation where my opportunity to
5 comment --

6 MR. GIBBONS: Just to correct you, we
7 are not asked to give a variance at this point.
8 That is not what we are being asked.

9 MS. FALLICK: You are approving
10 something after it was built.

11 MR. GIBBONS: That's closer to it, yes.

12 MS. FALLICK: Okay. You're approving
13 something after it was built or not, whatever you
14 do.

15 For the residents in this public
16 portion, we generally want -- this sort of public
17 comment, we want to do before you approve something,
18 and I think I heard during tonight's discussion that
19 there was some sort of zoning certificate granted,
20 something was split in two.

21 So some construction -- I could be
22 wrong -- but some construction happened before it
23 came to the Zoning Board, and that was a process
24 that was changed in 2003 and maybe -- and over time
25 maybe we are getting used to it, and that zoning

1 certificate was issued in 2011, and it is an
2 internal thing that we are not supposed to discuss
3 tonight. But just what you are talking about is
4 happening in my backyard at 302-304 Garden.

5 So whatever the practice is that we are
6 not really supposed to talk about tonight, that is
7 making it difficult for the citizens to have
8 comments or for the Board to approve something, it
9 is still going on with the first zoning certificate
10 that was given in February 2015, so that is my
11 concern regardless of what you do for this.

12 Thank you.

13 MR. GIBBONS: All right. Thank you.

14 I don't think we said anything -- I
15 don't think we said we wouldn't discuss anything
16 particularly on the record. If there is some
17 concern about that, please --

18 VICE CHAIRMAN GREENE: I think her
19 concern has nothing to do with this application, but
20 rather something that's going on that we probably
21 have no knowledge of. In fact, I am not even aware
22 that we had any applications for those addresses --

23 MS. FALLICK: It is coming to --

24 ACTING CHAIRMAN GREENE: It's coming,
25 so you are commenting before we get a chance to look

1 at it. We'll look at it when it gets here. All
2 right.

3 MS. FALLICK: -- but it is building --
4 it's building --

5 ACTING CHAIRMAN GREENE: Okay.

6 Anybody else?

7 MR. MOSS: Do I have to be sworn in?

8 ACTING CHAIRMAN GREENE: Yes, you do.

9 MR. GIBBONS: Yes. A lady had also --
10 we have not forgotten you. We'll get there. Okay.

11 Please raise your right hand.

12 Do you solemnly swear that the
13 testimony you are about to give in this matter will
14 be the truth, so help you God?

15 MR. MOSS: I do.

16 MR. GIBBONS: Please state your name,
17 spell your last name and give your address, please.

18 MR. MOSS: Drew Moss, M-o-s-s.

19 92 Garden Street.

20 I can see the Zoning Board has a long
21 night ahead of it, so I will be brief, but I
22 appreciate the opportunity to share my opinion about
23 what I think is a great project.

24 So clearly being on Garden Street
25 downtown, this is part of my neighborhood. I have

1 lived in town a long time. I actually, like another
2 speaker, I have been excited to see a lot of greater
3 development, more thoughtful development come up,
4 quite adventurous, inventive, and interesting, and I
5 think Jeff's property is one of those.

6 Jeff invited me to take a look around.
7 I couldn't contain my enthusiasm because I think it
8 is the kind of development that we need, commercial,
9 residential, retail. It is really going to
10 invigorate First Street, which after Sandy was just
11 really destroyed.

12 So I am very, very excited. I can see
13 that the Board has difficult decisions to make as
14 far as protocol.

15 And the one thing I wanted to say from
16 a personal standpoint is that I have had business
17 dealings with Jeff. I bought a property from him.
18 I felt that in my dealings with him, he was very
19 fair, open and honest.

20 So I see the underlying sensitivity
21 about things that have gone on, and all I can say is
22 that I believe there is no nefarious intent in this
23 whole process. To me, it just seems like an
24 unfortunate misunderstanding and a misunderstanding
25 about protocol.

1 So in closing, you know, I hope that as
2 the Board is dealing with these very complicated
3 issues that it will see, you know, the greater
4 opportunity for something like this to be in our
5 neighborhood.

6 We really need it, and we need the
7 jobs, and we need great interesting architecture,
8 and I think this building will provide that.

9 So thank you.

10 ACTING CHAIRMAN GREENE: Thank you.

11 MR. GIBBONS: Actually ladies first.
12 There was a lady behind you.

13 Please come up and I'll swear you in.

14 Good evening.

15 Could you raise your right hand,
16 please?

17 Do you solemnly swear that the
18 testimony you are about to give in this matter will
19 be the truth, so help you God?

20 MS. HALLIBURTON: I do, sir.

21 MR. GIBBONS: Please state your name,
22 spell your last name, and give your address, please.

23 MS. HALLIBURTON: My name is Cindy
24 Halliburton, H-a-l-l-i-b-u-r-t-o-n.

25 323 Park Avenue.

1 I will be brief and concise.

2 I am a real estate photographer in
3 town. I had the pleasure of photographing this
4 awesome building, and I would just like to say it is
5 so amazing given that this neighborhood between
6 Newark and First Street has literally been dragged
7 through the mud through hurricanes Irene and Sandy,
8 and to have this life breathed into this
9 neighborhood and awesome new businesses coming, and
10 this is such a great thing, it would be such a shame
11 to see anything get in the way of that.

12 And I photograph a lot of buildings,
13 and I see a lot of really ugly bricks, and this is
14 just not one of them. It is so beautiful. It's a
15 beautiful marriage of the old and new, and we can't
16 wait for all of our new neighbors to be in.

17 That's it.

18 ACTING CHAIRMAN GREENE: Can I just ask
19 you a question?

20 What brought you to photograph the
21 building?

22 Were you asked to by the building, or
23 is this a project of your own?

24 MS. HALLIBURTON: Exactly, by the
25 builder. I photograph a lot of real estate in town.

1 ACTING CHAIRMAN GREENE: Thank you.

2 COMMISSIONER BRANCIFORTE: But were you
3 paid by the developer to photograph the building?

4 MS. HALLIBURTON: No. I was not paid
5 by the developer, no.

6 COMMISSIONER BRANCIFORTE: Thanks.

7 MR. GIBBONS: Sir, please come forward.

8 MR. SOARES: Anthony Soares, 551
9 Observer Highway --

10 MR. GIBBONS: Okay. Let me swear you
11 in.

12 Could you please raise your right hand?

13 MR. SOARES: Oh.

14 MR. GIBBONS: Do you solemnly swear
15 that the testimony you are about to give in this
16 matter will be the truth, so help you God?

17 MR. SOARES: Yes.

18 MR. GIBBONS: Okay. Please, you stated
19 your name.

20 Give your address.

21 MR. SOARES: 551 Observer Highway.

22 MR. GIBBONS: Thank you.

23 MR. SOARES: I lived in Hoboken since
24 1991. When I commuted to the city, I walked past
25 Ron Hein's building, which is what I called Hoboken

1 poverty for 20 years.

2 I have the unique position of being on
3 this side, and also being in your city.

4 I started coming to public meetings
5 because Alan Welner, who is here, registered me to
6 vote for the council then, so I blame him for my
7 involvement in politics.

8 (Laughter)

9 However, I also always loved this
10 building, and the day that I saw that facade wasn't
11 there, I remember calling up John Nastasi and
12 saying, you know, I have been in this position, I
13 know what it's like. You tell us we're going to do
14 one thing, and you go and do another.

15 And I like John, and I believe John is
16 not one of those architects that, you know, oops, we
17 backed the truck into it, and then they come and
18 they do something out of yellow brick and white
19 Anderson ugly windows, and it looks nothing like it.

20 So John actually, you know, introduced
21 me to Jeff, and we went through the building, and
22 this is an important thing I think people have to
23 think about here.

24 What's going in that building and
25 what's waiting to go into that building beyond the

1 facade, which are incubator spaces, silver LEED, if
2 I am correct on that, from what I remember from what
3 I was told, and if you see the model that John had
4 done, it looks pretty much exactly like it. I mean,
5 if you squint your eyes, it's definitely exactly
6 like it.

7 I asked him about the door. He gave me
8 his explanation, but it's up to you to decide on
9 that.

10 But I want to say, it meets -- and I
11 was at the mayor's business breakfast this morning.
12 Everything that was spoken about is distilled into
13 this application and into this building. The
14 processes in Hoboken have been a mess for years,
15 and they're going to continue. This isn't going to
16 be for -- not for anybody's misdeeds here, or sins
17 or anything. Just, you know, it is taking the
18 administration a long time to get all of this back
19 in shape.

20 What I am going to ask you to do
21 tonight is what I would suggest, given the
22 conditional approval and with that facade, scaffold
23 around it, let the tenants move in, because there
24 are people in this town, as a real estate agent -- I
25 am not the real estate agent on this property just

1 to be clear -- but I will say there are people
2 desperate for retail space, desperate for incubator
3 space, desperate for apartments. This has all of
4 that.

5 And while the process, you know, you
6 are asking and you have a right to questions, and I
7 think is a good thing for the future, we can't put
8 the genie back in the bottle, so what do you do?

9 Do you hold up all of these tenants who
10 are going to lose their leases in other locations?

11 I mean, you have to think about that,
12 too, and the use of the building. And the use of
13 the building is going to be great, and the use of
14 the building is still what you want it to be, and
15 the height of the building is what you want it to
16 be.

17 I would say, just in my calculation, at
18 least 75 percent of the facade is exactly what you
19 wanted it to be. So the brick off and the door is
20 off, you know, I mean, but I think that is fixable.
21 But I think what's not fixable is for people to move
22 out of where they're already leaving, and can't move
23 into a new home.

24 Imagine if this was your neighbor's
25 house, and it was a brownstone, where the facade

1 fell off, and they recreated it. You know, you
2 would want them to get back in.

3 I think, you know, businesses need a
4 home, too, and I think it's important.

5 I think you are right to question the
6 actions of every applicant, but I think at this
7 point in time, this is obviously, at least from what
8 I obviously listened to tonight, and I spoke to John
9 prior to this for the past couple of months, it was
10 sincere.

11 But I also ask, go through these
12 buildings before you -- when you go in for these
13 final site plans and approvals, looking at things in
14 a vacuum, which this Board does a lot, and it needs
15 to -- I mean, it's unfortunate because of time. It
16 is important that you experience what the building
17 is going to do and what kind of purpose it is going
18 to serve. Again, it is not the historic district,
19 but I've been in the building, and the original
20 building is all still there.

21 This isn't just a movie set, like, you
22 know, just a little facade. The brick facade veneer
23 has changed, and the door was moved. But the
24 original walls are all still exposed brick, the
25 beams. You will see the building that Ron Hein made

1 his pottery out of when you are in that building.

2 Thank you.

3 ACTING CHAIRMAN GREENE: Thank you, Mr.
4 Soares.

5 Anybody else?

6 MR. GIBBONS: Any other members of the
7 public?

8 Good evening.

9 Could you raise your right hand,
10 please?

11 Do you solemnly swear that the
12 testimony you are about to give in this matter will
13 be the truth, so help you God?

14 MS. LISIMACHIO: I do.

15 MR. GIBBONS: Please state your name
16 and spell your last name and give your address,
17 please, for the record.

18 MS. LISIMACHIO: Sure.

19 Jennifer Lisimachio,

20 L-i-s-i-m-a-c-h-i-o.

21 320 and a half Webster Avenue, and that
22 is in Jersey City.

23 I am speaking as a hopeful tenant
24 pending approval.

25 I am first and foremost very connected

1 to Hoboken. I have two children. One of my sons is
2 a graduate from Elysian Charter School, and I have
3 another son who is currently at Hudson School. I
4 used to live in Hoboken, and I really love Hoboken.

5 As a potential tenant, I am really
6 looking forward to this place.

7 I work a lot in the community in
8 Hoboken. I am an IBCLC, so that is a very small
9 specialty in breast feeding medicine, so I am
10 internationally board certified.

11 So that basically means that I work, I
12 have the best job in the world. I work with mommies
13 and babies every single day. You know, I have been
14 in nonprofit, particularly in Hoboken, for about 12
15 years, and I am a co-owner of Mahala Lactation and
16 Perinatal Services, so I work -- you know, a hundred
17 percent of my job is home visits, working with
18 post-partum and perinatal time with the mothers and
19 the babies.

20 A lot of them do have a lot of health
21 issues, and this is going to give me a place to, you
22 know, expand for me to do the day-to-day business
23 grind that I can't do in my car basically as I am
24 driving from home to home to visit these mommies
25 immediately post-partum, so I'm really looking

1 forward to this space.

2 The fact that it is green is wonderful
3 because that is what I do, too.

4 And, you know, I am just here in
5 support and hopefully getting into this beautiful
6 space, and I hope you guys come visit and see just
7 the pride that Mr. White has put into this building
8 to really make it, you know, just a better asset for
9 the community, and I do hope that that gets there.

10 Thank you.

11 ACTING CHAIRMAN GREENE: Thank you.

12 Anybody else?

13 Ms. Healey?

14 You will be next.

15 MR. GIBBONS: You will be next.

16 Do you solemnly swear that the
17 testimony you are about to give in this matter will
18 be the truth, so help you God?

19 MS. HEALEY: Yes.

20 MR. GIBBONS: Please state your name
21 and spell your last name and give your address for
22 the record.

23 MS. HEALEY: Leah Healey, H-e-a-l-e-y,
24 806 Park Avenue, Hoboken.

25 This is the second hearing I have heard

1 about the stuff that went on or didn't go on before
2 this got to the Board, and it is just bringing home
3 to me the complete dysfunction of our zoning office,
4 and I had some personal experience with that. But
5 it sounds like it was a combination of that and
6 applications being made before the zoning officer
7 that were inappropriate.

8 So the zoning officer had a duty to do
9 what she was supposed to do correctly, but the
10 applicant also has a responsibility to make
11 applications that they know are correct and to
12 probably discuss with that zoning officer those
13 approvals.

14 So one of my responses to, you know,
15 the fact that this building has been built, and
16 there are people that want to move into it is there
17 is a thing called builder's risk, which is if you
18 don't have all of your ducks in a row, and you can
19 go ahead and build, that is not the Zoning Board's
20 problem.

21 On the other hand, I can see that this
22 is -- I don't live in this neighborhood, and this is
23 probably best left to their judgment about whether
24 or not they think this is good for their block, but
25 I do want to speak to the whole concept of your

1 resolutions in the future.

2 I mean, I think this application
3 demonstrates a lot of things, that there is not a
4 clear understanding by applicants or the Board about
5 what we mean by terms that we throw around, like
6 preservation, adaptive reuse, rehab. And so if this
7 Board is looking for a building to be preserved, you
8 can't talk about just allowing the applicant to say,
9 "I am going to keep 75 percent of the masonry,"
10 because quite frankly, the interior masonry of the
11 building doesn't make much difference to most people
12 walking by on the street.

13 What makes the difference to the people
14 walking by on the street is what the front of the
15 building looks like, and that is what I think the
16 original people that were involved in this
17 application back in 2011 were worried about, and
18 that wasn't preserved.

19 So if you are going to do a resolution,
20 where you actually are looking to have a building
21 preserved, I suggest that the resolution has got to
22 say those words specifically, "The building as it
23 exists needs to be preserved in the following
24 manner." So that is my first suggestion.

25 And the other is that, if this Board is

1 going to receive applications, maybe some of the
2 things it should be talking to the applicant about
3 is, "Do you have any existing permit approvals or
4 applications before our zoning officer with respect
5 to this very same property," because that's going on
6 all over town, folks.

7 The zoning office feels that, number
8 one, it has the authority that you have, and you
9 might have thought you put that to bed with the
10 Murray decision, but I don't think you have.

11 The zoning officer also has ideas about
12 nonconforming structures and her authority there, so
13 I would suggest that in order to avoid somebody
14 getting an approval from the zoning office that you
15 don't know about, or that is completely inconsistent
16 with your approvals, that the time to find that out
17 is when the application is made and make it the
18 burden of the applicant to disclose that to you.

19 And then what happens, if things
20 change, you wanted the building preserved as it is,
21 and something happens out in the field.

22 The zoning office seems to feel that it
23 has the ability to issue demolition permits or
24 change what is going to be built or not built, and
25 so I would suggest that your resolution in the case

1 of preservation needs to talk about things like your
2 approval will be void, if you take down this
3 building or you change this building in any manner
4 without coming back before us, and what I am
5 striving here for is deterrence.

6 What we discovered in Hoboken is now
7 what was completely unheard of five, ten years ago,
8 is now par for the course, that is tear-down of
9 existing buildings.

10 And when we have a zoning master plan
11 that talks about attempting to preserve some of
12 Hoboken, I think we need to give that some serious
13 consideration.

14 One other point I wanted to make, there
15 is not only a problem with the zoning office issuing
16 approvals that may be inconsistent with you on this
17 thing, but also what is called -- what I would have
18 deemed to be a hybrid approval, and I am just asking
19 you to look for it, because I consider it to
20 somewhat in this application, where the zoning
21 officer gives a partial approval on a property, and
22 then sends the balance to you.

23 That happened on 926 Garden. If you
24 may recall that application, where the zoning
25 officer gave an approval, and then they came here

1 looking for the rest. You actually denied that
2 thankfully. But if the neighbors hadn't showed up
3 and brought it to your attention, you might never
4 have known.

5 That happened to me on 258, personally
6 happened to me on 258 8th Street, where an approval
7 was given by the zoning officer completely outside
8 of her authority, and it was only after a lawsuit
9 that the applicant was forced to come back here to
10 you.

11 I would suggest to you that is
12 happening again on what Ms. Fallick spoke about
13 earlier, which is 302 Garden, where a first
14 certificate of zoning compliance has been issued and
15 an application is presently before you, which you
16 have not heard yet.

17 So this is a dysfunction that I
18 understand that you all think you have no power over
19 because you don't enforce the zoning officer, but
20 unless your resolutions are very tight, and unless
21 you enforce the Murray decision, which specifically
22 stated you can't break up applications and send
23 parts to us and leave parts there, that we are going
24 to continue to have this kind of dysfunction, and it
25 will end up in these types of things happening.

1 So one last thing I want to say, with
2 respect to the adaptive reuse, you know, this thing
3 was a movie theater historically, and then it was a
4 pottery studio and a home, and I understand that you
5 can make an adaptive reuse and introduce new uses
6 into an old building, and that is kind of what I
7 thought of when I think of adaptive reuse, putting a
8 new use into an old building. That is completely
9 different than the concept of preserving a building
10 as it stands in some shape or form.

11 So I implore you to, number one, get a
12 better handle on what is going on in that zoning
13 office.

14 And, two: Make your resolutions as
15 ironclad as possible, so that we don't have another
16 one of these situations again.

17 Thank you.

18 ACTING CHAIRMAN GREENE: Thank you.

19 MR. GIBBONS: These are statements for
20 the record.

21 ACTING CHAIRMAN GREENE: Anybody else?

22 MR. GIBBONS: Please try to keep it
23 relatively brief, because we are in the position
24 where there are other items on the docket and --

25 COMMISSIONER DE FUSCO: Didn't we say

1 that lady was next?

2 I'm sorry.

3 ACTING CHAIRMAN GREENE: You are
4 correct.

5 MR. EVERS: Okay, I'm sorry.

6 MR. GIBBONS: No. The lady in the back
7 is next.

8 (Everyone talking at once.)

9 MS. ICKLAN: I had a question.

10 MR. GIBBONS: All right.

11 Do you solemnly swear that the
12 testimony you are about to give in this matter will
13 be the truth, so help you God?

14 MS. ICKLAN: I do.

15 MR. GIBBONS: Please state your name
16 and spell your last name and give your address.

17 MS. ICKLAN: Susan Icklan, I-c-k-l-a-n.

18 I have lived in Hoboken since about
19 1994. For quite a while I lived on First and
20 Willow.

21 My office is on Hudson and Newark.

22 I live at 1030 Bloomfield.

23 I walk up and down either First or
24 Newark or drive either way pretty much every day
25 because my daughter goes to school in town.

1 I have seen particularly Newark Street,
2 just it is starting to revitalize in that little
3 section right there. It is nice to see the building
4 on the corner. It is nice to see this building
5 bringing some life, and there will be more
6 pedestrian traffic, and hopefully at some point
7 something will happen on the corner. The flooding
8 down there, it is nice to be able to see that there
9 will be a building that everybody is not going to
10 get knocked out, because there is, you know, a
11 rainstorm.

12 And I am not talking, you know a
13 hurricane, I am talking that that spot floods down
14 there, if you have a heavy thunderstorm, so it is
15 good to be able to see that.

16 From the street scape when you walk
17 down, you feel like you are still walking in old
18 Hoboken. You don't feel like you are walking past
19 this massive structure of hundreds of units. It is
20 nice to have that feel that it's a small building
21 from the street scape. I feel it helps preserve
22 what is unique about Hoboken.

23 That it is.

24 ACTING CHAIRMAN GREENE: Thank you.

25 Now, Mr. Evers.

1 MR. EVERS: Are you sure?

2 MR. GIBBONS: Yes.

3 ACTING CHAIRMAN GREENE: Yes.

4 He and I agree, so it is okay.

5 (Laughter)

6 MR. EVERS: Do I swear this time?

7 MR. GIBBONS: I'll swear you in.

8 Do you solemnly swear that the
9 testimony you are about to give in this matter will
10 be the truth, so help you God?

11 MR. EVERS: I do.

12 MR. GIBBONS: Please state your name,
13 spell your last name, and give your address.

14 MR. EVERS: Michael Evers, E-v-e-r-s,
15 252 Second Street, Hoboken, New Jersey.

16 MR. GIBBONS: Very good.

17 MR. EVERS: This is kind of a Grand
18 Hotel Situation. I don't know if any of you have
19 ever seen that movie, but it has an interesting line
20 there, that you don't kill a man for stealing a
21 wallet.

22 Now, I am not suggesting that the
23 applicant has stolen anything. But the point is
24 that there is a transgression, and there is a
25 consequence to that transgression.

1 Now, the fact is that, as you have seen
2 from a whole bunch of other people that came up here
3 to testify about situations in town, there is a
4 problem in which it seems, whether intentionally or
5 unintentionally, applicants are coming into this
6 Board. They are walking out with resolutions, and
7 they are selectively observing them.

8 Now, this is where the not killing the
9 guy for stealing your wallet comes in. The reason
10 they do that is the same reason that all of us
11 occasionally speed.

12 I am sure that you never speed, but
13 occasionally speed, and the reality is that we are
14 restrained from speeding and creating hazards to our
15 fellow motorists because we are concerned with
16 negative consequences, right? That's what goes on
17 here.

18 Now, what we have here is a situation
19 in which a developer came up, an experienced
20 developer, with the assistance of two extremely
21 experienced professionals, and they are basically
22 saying that they didn't know that they had to go
23 back before a Board to get an opinion, when there
24 was a substantial change in the project.

25 There is also a side argument that is

1 manifesting itself in many other applications as
2 well, but in this one also, that, well, gee, the
3 zoning officer said it was okay.

4 Now, that sounds good. But for that to
5 be a credible argument for why was okay, why these
6 people, whose good faith cannot be questioned, you
7 would have to believe that people as experienced as
8 Bob Matule who may or may not have been consulted,
9 of course, but certainly the architect who signed
10 the amendment -- the zoning application -- excuse
11 me -- the certificate of zoning compliance knew
12 this, we are under the impression that a zoning
13 officer can unilaterally override what a Zoning
14 Board of appeal rules, and that they can
15 unilaterally release an applicant from legally
16 binding obligations incurred as a result of a zoning
17 hearing.

18 You know, I don't know these gentlemen.
19 They seem like good guys. You built affordable
20 housing or tried to, so you got points from me for
21 that. But the fact is personally speaking, and I
22 can only speak personally, I don't find that
23 credible that all of these really experienced
24 professionals just didn't know.

25 I think a more credible interpretation

1 is they made a practical judgment that said, well,
2 you know, let's do it, and if we get caught, what
3 happens? There is no negative consequence.

4 I think the question you have to ask
5 yourselves, again keeping in mind the fact that you
6 don't shoot a man for stealing your wallet, is what
7 are the negative consequences that should arise from
8 this sort of thing, because if there are no negative
9 consequences, you are going to see a continued
10 pattern of developers taking bulk variances, getting
11 whatever they need to get a building permit, which
12 depends absolutely on getting that first certificate
13 of zoning compliance, I can tell you that from
14 experience, okay, and building pretty much what they
15 feel like building, as opposed to what you told them
16 to build or you told them they could build. That
17 goes to the direct heart of municipal land use
18 control.

19 So I think it sounds like a very nice
20 project. It's an attractive looking building. All
21 of the people with a financial stake in the building
22 think it is wonderful, as do some of the neighbors.
23 I really think you got to give some thought, if all
24 that comes out of this is, gee, well, you can be
25 sure the next person that does something like this,

1 well, we will look at real close again, you have
2 done nothing. It is toothless.

3 Thank you.

4 ACTING CHAIRMAN GREENE: Thank you, Mr.
5 Evers.

6 MR. GIBBONS: I believe there was
7 someone before you.

8 Yes, this gentleman, and then you.

9 MR. PRANSES: Terry Pranses,
10 P-r-a-n-s-e-s.

11 I live at 730 Park.

12 MR. GIBBONS: Raise your right hand.

13 Do you solemnly swear that the
14 testimony you are about to give in this matter will
15 be the truth, so help you God?

16 MR. PRANSES: Yes, yes.

17 MR. GIBBONS: You've given your name.
18 Please give your address.

19 MR. PRANSES: Terry Pranses, 730 Park.

20 The precedent of this case and other
21 cases like it is the most important thing for you to
22 consider.

23 This is not the only case in town,
24 where there have been variances awarded for
25 maintaining at some level a historic structure, and

1 then the structure falls somehow during
2 construction, and it is replaced with something
3 different, something close, in this case closer than
4 some of the others, but the idea that the variances
5 are tied to --

6 MR. GIBBONS: This is not a variance
7 application. This is a site plan application.

8 MR. PRANSES: Pardon?

9 MR. GIBBONS: This is not a variance
10 application. I think this is for final site plan
11 approval.

12 MR. PRANSES: So --

13 MR. GIBBONS: I don't mean to interrupt
14 you, but I wanted to make sure that the audience and
15 the Board members don't misunderstand.

16 MR. PRANSES: Okay.

17 So what we have is not what was
18 promised, and what happened in between was not
19 re-reviewed with the Board.

20 So as has been stated by others, there
21 either has to be a penalty or there has to be some
22 level of enforcement, or this will happen again and
23 again.

24 So the concept of preserving is
25 something that we all like. It is in the master

1 plan, and we have to be sure that however you
2 construct your resolutions, they have those teeth,
3 or you will be seeing this again, and the citizens
4 will again lose what they thought they were getting
5 in all trade-offs and the initial hearings.

6 Thank you.

7 ACTING CHAIRMAN GREENE: Thank you.

8 MR. GIBBONS: Thank you.

9 Raise your right hand.

10 Do you solemnly swear that the
11 testimony you are about to give in this matter will
12 be the truth, so help you God?

13 MR. PRANSES: Yes.

14 MR. GIBBONS: Please state your name,
15 spell your last name and give your address.

16 MR. FIGUEROA: Nelson Figueroa,
17 F-i-g-u-e-r-o-a.

18 The address is 513 South Broad Street
19 in Elizabeth.

20 Now, I am not a resident of Hoboken. I
21 am actually one of the hopeful tenants of the space
22 actually, in the retail space, where the facade is.

23 Now, I do understand that there is
24 mixed reviews of the citizens, when it comes to you.
25 Some agree to it. Others do not look fondly upon

1 it, but I would like everybody to also look into the
2 eyes of the tenants.

3 Now, it was mentioned, the gentleman
4 before, that some of us have leases that expire. I
5 am one of those tenants, so right now it is
6 affecting my business, the fact that I am
7 practically mobile or working out of a home office.

8 It is one of those things that honestly
9 affects tremendously, not only me, but my family as
10 well. I just want everybody to also keep that in
11 mind.

12 I do understand there are some things
13 that might have been done, and some things that
14 might not have been done.

15 I just want everybody to understand the
16 fact that it is also something that is affecting
17 other people, the fact that we might be looking at
18 some things, again, if they might have been done, or
19 might have been done, it is just I would feel that
20 maybe we could look at those things, maybe we could
21 live and learn. Maybe we live and learn from those
22 experiences.

23 But you also have to keep in mind that
24 it is affecting us, the tenants, and I am pretty
25 sure any other tenants that are here agree with me

1 on that, that really these things -- I am not saying
2 that they are small things. I am not knocking on
3 anybody, and I am not an expert in any of this at
4 all. This is the first time I am even coming to any
5 of these meetings, but it's just I want you guys to
6 understand that. I just want you guys to really
7 keep that in mind, that it is affecting us big time.

8 And, again, the reason why in my case I
9 chose Hoboken to bring my insurance office here is
10 because I would like to create new jobs here. I
11 want to keep -- in a city that is really prospering,
12 and it keeps growing, and I want to just add to
13 that, and I just want you guys to keep that in mind.

14 Thank you.

15 ACTING CHAIRMAN GREENE: Thank you.

16 MR. GIBBONS: Thank you.

17 Somebody in the back, please.

18 Raise your right hand.

19 Do you solemnly swear that the
20 testimony you are about to give in this matter will
21 be the truth, so help you God?

22 MS. DI PIETRO: I do.

23 MR. GIBBONS: Please state your name,
24 spell your last name and give your address for the
25 record.

1 MS. DI PIETRO: Jennifer D-i capital
2 P-i-e-t-r-o.

3 30 Houston Lane, Staten Island, New
4 York.

5 I just wanted to come up and do
6 practically the same thing you just did, so I just
7 want to kind of piggyback on that as well.

8 I am one of the future tenants of the
9 building. This is my first go at my own business,
10 and I am pretty excited, and I also am not a
11 resident currently, but I am so excited to be in
12 Hoboken. I have friends and family here. I have
13 always come to the restaurants and nightlife, and
14 all of that good stuff, so I am familiar with
15 Hoboken.

16 It was the only place I wanted to open
17 up my business, and I understand there is so much
18 going on obviously above me here, but I wanted to
19 put a face to some of the names of the businesses
20 coming in, and it is affecting us, and hopefully the
21 final site selection can be done, so we can start to
22 come into the community and do good, because I
23 myself will be creating jobs of local artists, 7 to
24 10 local artists in the neighborhood, studio
25 managers for my space.

1 Additionally, I want to immerse myself
2 in this community, become a part of the community,
3 and give back to the community as well, doing fund
4 raisers, nonprofit organizations, giving back
5 whenever I can.

6 And I looked at a lot of spaces in
7 Hoboken, and the reason why I chose this building,
8 one, it is beautiful. It is green, as I mentioned
9 before, and I like that as well.

10 And quite honestly, when I met Jeff, he
11 was so excited to show me the building. He
12 explained the history of the building that he did
13 want to keep that, that he has been part of Hoboken,
14 and he got me so excited for choosing Hoboken to
15 start my life as well, and I just wanted to say that
16 it is because of that excitement and him talking
17 with me, and how he felt about this community, that
18 I said I needed to be there.

19 So I just wanted to, like I said, put a
20 face to the name, and I appreciate your time.

21 COMMISSIONER COHEN: Can I just ask her
22 a question?

23 ACTING CHAIRMAN GREENE: Yes, sure.

24 COMMISSIONER COHEN: Just one question.
25 You said there was an artist space that

1 My address is 16 North Hillside Avenue,
2 Livingston, New Jersey.

3 I have been an optometrist in town here
4 for about 30 years. I am one of the perspective
5 tenants. I am sincerely hoping this gets approved
6 because I have to vacate my current space at the end
7 of the lease, but that is actually not what I was
8 going to say at this moment.

9 One of the things that I heard as sort
10 of an undercurrent throughout the night sounded like
11 there was some questioning of Jeff's intent and his
12 honesty.

13 After I first met him, I was also very
14 impressed with his passion for the building, for how
15 it was designed, but more importantly, something was
16 mentioned a little while ago about in an event like
17 this, there is no penalty for what happened.

18 I have to tell you after your last
19 meeting, which I was not present, the next day I got
20 a call from Jeff telling me that there was an issue
21 with the building. The first thing he said was, "If
22 you want to back out of the lease, you know, you
23 have my permission."

24 I took that as something that proved
25 his honesty, because I am probably at this point the

1 major tenant in the building in terms of rent, so
2 his penalty could have been, I could have said I am
3 leaving. He would have lost the substantial amount
4 of money that I am going to pay over the next five
5 to eight years as a tenant of the building.

6 So in hearing this sort of undercurrent
7 that he did something intentionally or underhanded,
8 I just see no evidence of that, and I feel he was
9 completely honest in how he dealt with me.

10 MR. GIBBONS: I think you can
11 appreciate the Board's obligation of doing some due
12 diligence --

13 MR. KANSKY: Oh, absolutely.

14 MR. GIBBONS: -- finding that out,
15 there were many players in this matter, so this is
16 why we are doing this.

17 MR. KANSKY: I do understand that.

18 ACTING CHAIRMAN GREENE: Thank you.

19 Anyone else?

20 COMMISSIONER COHEN: Motion to close
21 public portion.

22 COMMISSIONER BRANCIFORTE: Second.

23 ACTING CHAIRMAN GREENE: All in favor?

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

1 VICE CHAIR GREENE: We are going to
2 take a ten-minute break, so the court reporter can
3 refresh herself and others.

4 (Laughter)

5 (Recess taken)

6 ACTING CHAIRMAN GREENE: Okay. It is
7 now 9:50, and we are back, and we have one
8 administrative matter to deal with before we
9 continue this hearing.

10 Counselor?

11 MS. GONCHAR: Meryl Gonchar. I am
12 representing the applicant for 1410 Grand, Adams,
13 which I understand will not be reached this evening.

14 ACTING CHAIRMAN GREENE: Correct.

15 MS. GONCHAR: So we have discussed, if
16 we can confirm with Pat, June 9th as a carry date,
17 and we ask that you carry that with an announcement
18 no further notice is required.

19 ACTING CHAIRMAN GREENE: And you will
20 waive whatever it is you have to waive?

21 MS. GONCHAR: We will give you an
22 extension through that date in writing.

23 ACTING CHAIRMAN GREENE: Excellent.
24 Thank you.

25 We will see you on the 9th.

1 If anybody is here regarding 1410
2 Grand, we are carrying it to June 9th without any
3 further notice.

4 MS. GONCHAR: Same time, same place.

5 ACTING CHAIRMAN GREENE: 7 o'clock on
6 the 9th.

7 MS. GONCHAR: Thank you.

8 ACTING CHAIRMAN GREENE: Do you need a
9 motion to do that? I guess we do.

10 COMMISSIONER BRANCIFORTE: Motion to
11 carry without further notice to June 9th.

12 COMMISSIONER MURPHY: Second.

13 ACTING CHAIRMAN GREENE: All in favor?

14 (All Board members voted in the
15 affirmative.)

16 ACTING CHAIRMAN GREENE: Mr. Matule.

17 MR. MATULE: Thank you, Mr. Greene.

18 I know it has been a long hearing, and
19 we had a lot of comments, so I just would like to
20 make a few remarks.

21 The first thing I would like to say is,
22 as you know probably too well, I am here on a
23 regular basis. There were a lot of comments made
24 about the Board, and how they are doing their job,
25 and I probably know better than anybody else in this

1 room that what happened in this case is not
2 happening any more, that the resolutions are being
3 drawn with much more specificity.

4 There are safety checks being built in
5 with percentages and a number, et cetera, so --

6 MR. GALVIN: I'm sorry. Just one
7 thing.

8 600 Harrison, do you have something on
9 600 Harrison?

10 MS. BANYRA: We have a plan signing.

11 MR. GALVIN: Discuss North Hudson
12 Sewerage Authority approval required for final
13 approval of 600 Harrison Street.

14 Are you guys going to handle that
15 administratively tonight?

16 ACTING CHAIRMAN GREENE: It's not on
17 the agenda.

18 MS. CARCONE: James, are you ready to
19 discuss that?

20 MR. GIURINTANO: They are required to
21 get a TWA because the flow is greater than 8,000
22 gallons a day, so they are going to have to apply to
23 North Hudson and the State to get approval.

24 MR. MATULE: No. I think, if I might,
25 because I am the attorney for that --

1 (Laughter)

2 MR. GALVIN: It just so happens.

3 MR. MATULE: -- the issue there was
4 getting the sewer hookup permit prior to the plans
5 being signed. It is a \$250,000 -- \$264,000 check my
6 client has to write, and what we were asking is that
7 if some language could be put in that, obtaining
8 that permit would be a post approval condition
9 either before a CO is issued or something down the
10 line, because it is way premature to have to get
11 that at this point, where we haven't even had our
12 plan review by the building department, and that is
13 all we are asking.

14 MR. GIURINTANO: I am not sure if we --
15 if this is the right forum right now, but
16 technically North Hudson is requiring for the
17 connection fee. They are requiring it prior to
18 approval at TWA, not a timely connection.

19 MR. MATULE: Okay. They approved our
20 stormwater management plan --

21 MR. GIURINTANO: Has the State approved
22 it?

23 Do you have a treatment works approval
24 from the DEP?

25 MR. MATULE: Only Mr. Nastasi can -- do

1 we have a treatments works approval for --

2 MR. NASTASI: We have an approval from
3 the sewerage authority, but the document that comes
4 from that sewerage approval, we submit it to say
5 they don't release it without paying the \$257,000
6 fee.

7 MR. MATULE: Okay.

8 MR. GIURINTANO: I'm not familiar with
9 that. I have to defer to Mr. Marsden.

10 His discussion with me is that
11 basically you need a TWA approval. I am not sure if
12 he was aware that they were -- so they are not even
13 releasing the resolution.

14 MR. WURSTER: We need one signed by
15 the --

16 MR. GIURINTANO: By the sewerage
17 authority to forward down to the State --

18 MR. GALVIN: Time out.

19 We are meeting next week, right?

20 Put this back on the agenda for next
21 week. You find out from Jeff, and we need a
22 suggestion as to how to solve -- if we can do
23 anything to solve the problem, all right,
24 good?

25 MR. MATULE: Thank you, Mr. Galvin.

1 MR. GALVIN: See you guys.

2 ACTING CHAIRMAN GREENE: You were
3 saying, Mr. Matule?

4 MR. MATULE: May I continue?

5 Yes. Well, I think in all fairness to
6 the Board, and the Board members and the Board
7 attorney, that should be made clear that perhaps not
8 to everybody's satisfaction, but things definitely
9 have tightened up, a bit tightened up.

10 And, again, I don't want to repeat all
11 of the testimony. Obviously, we all know that what
12 happened shouldn't have happened. The sequence of
13 how it happened shouldn't have happened.

14 Ironically when you normally give final
15 site plan approval, it is based on drawings. You
16 don't get to see the end results. In this case we
17 have the finished product.

18 And, as I said, you know hindsight is
19 always 20/20. It could have been done differently.
20 It should have been done differently, but I would
21 please ask the Board not to lose sight of what has
22 been done correctly here.

23 You know, 95 percent of the building
24 has been built exactly as it was represented it
25 would be built.

1 The facade on the Newark Street side
2 that was replaced, a good faith effort was made to
3 emulate what was there. Frankly, at that point that
4 is all that could have been done.

5 We have now tried to take that a step
6 further and come in with different brick. If it is
7 really that much of an issue, the applicant is
8 willing to undertake that additional burden and do
9 that. But, you know, I just would ask the Board
10 that, you know, they don't throw the baby out with
11 the bath water here.

12 I realize there are much larger issues
13 interwoven in this case that have nothing to do with
14 this Board or my client, and I don't think this is
15 the forum to resolve those. But, on the other hand,
16 I also would ask that my client not become the brunt
17 of whatever issues there may be regarding certain
18 administrative procedures in the city.

19 At the end of the day, the city is
20 getting substantially what they bargained for, and
21 there is no question it is a terrific improvement to
22 First Street and to Newark Street, and if it is the
23 Board's desire to have the facade rebuilt, and then
24 I would renew my request that some type of temporary
25 certificate be allowed, so the tenants who have been

1 waiting very patiently, and frankly, who
2 unfortunately, it is not their fault, you know, that
3 the situation is what it is, can get into the
4 building.

5 Thank you.

6 ACTING CHAIRMAN GREENE: Thank you.

7 (Board members confer)

8 MR. GIBBONS: Mr. Matule, are you
9 finished?

10 MR. MATULE: I am done.

11 MR. GIBBONS: Okay. He rested his
12 case.

13 MR. MATULE: I rest.

14 MR. GIBBONS: The Board can now conduct
15 a discussion with respect to the application.

16 ACTING CHAIRMAN GREENE: Who would like
17 to start?

18 COMMISSIONER BRANCIFORTE: I guess I
19 will jump in.

20 You know, listening to the comments of
21 the public, first, we talked about how, whether or
22 not Mr. White kept the interior of the building as
23 best he could. We don't know if he did or not. We
24 weren't -- I don't know if we were ever invited in
25 to see the interior, just to, you know, put that out

1 there to the public. So what is on the interior, we
2 have no idea.

3 I am mostly concerned about with what
4 is on the exterior. At the last hearing, I said,
5 okay, it is no huge -- I am disappointed that the
6 brick isn't quite as historic as it could be. It's
7 not the end of the world. That was before I
8 understood that there is actual brick out there that
9 could be much more historical.

10 I was inside of this building years and
11 years ago on an artist tour when Ron Hein had a
12 studio in there, and I was floored when I walked in
13 and saw the interior of this old theater, and I
14 think we should work hard to preserve it as best we
15 can.

16 I think we should give the temporary C
17 of O, if we can, as Mr. Matule suggested, but I also
18 think that the brick should be redone as
19 historically possible as it can be.

20 That is my comment on that.

21 ACTING CHAIRMAN GREENE: Okay.

22 Mr. Cohen?

23 COMMISSIONER COHEN: I think that the
24 concern -- a few points.

25 One is I do think we are doing a better

1 job in terms of drafting our resolutions. This came
2 down in 2011. I guess Mr. Galvin was a pup, you
3 know, working with us. He has made an effort to
4 make it stronger.

5 I think what Mr. Matule said is
6 accurate, that we are doing a better job in terms of
7 saying, if the historic integrity of the building is
8 important and it's compromised, you must come back
9 to us, do not pass go. And there will be no
10 discretion for a zoning officer or anyone, and there
11 will be no ambiguity about it, and that is the way
12 we are going forward, number one.

13 Number two: I think to suggest that
14 the applicant is not being punished by the mistakes
15 that he has made is clearly not true. I mean, you
16 know, these hearings don't come cheap. This has not
17 been a short hearing. This is the third time we had
18 discussions about this one on a final site plan
19 approval, which are typically a routine
20 administrative proceeding.

21 We have heard testimony about how he
22 had to contact all of his tenants to let them know
23 that they could leave their building, and he's
24 offering to make an improvement after three months
25 of ordering construction materials, rebuilding his

1 front facade. I don't think that anybody could
2 suggest that is a slap on the wrist. I think it is
3 a fairly significant penalty frankly for not
4 following the rules.

5 Finally, I had the unique experience of
6 visiting a built project tonight before the meeting.
7 I never had that before. I only seen plans. I have
8 never seen a built project before having a final
9 vote. I hope I never have to have that happen
10 again. I hope it will be the one and only time I've
11 ever done it, but it was really a nice building.

12 And, you know, I was one of the few
13 Commissioners that are here that voted on that, and
14 I think that while what was built wasn't precisely
15 what was approved, it certainly captured the spirit
16 of what was approved, and that I don't really think
17 this was an intent -- a lot of people analogize to
18 other projects, where people acted in bad faith and
19 built things that bore no relation to what was
20 approved. That's not what we are dealing with here.
21 We are dealing with someone who tried to build what
22 we approved and essentially did.

23 There is another example of an another
24 application, where somebody built something without
25 approval, trying to get something through that never

1 got through the Zoning Board. That was approved by
2 a zoning officer, a prior zoning officer, that the
3 entire neighborhood hated and was up in arms about
4 and had massive litigation about because it was much
5 higher than was legally permitted in the district.
6 That is not this application.

7 This is an application, where the
8 height matches, where it is an improvement, and it
9 really is consistent with the spirit of what was
10 originally approved.

11 So, you know, while I am not a hundred
12 percent on board with the idea that he needs to go
13 through three months of expense and delay, and I
14 will hear what the other Commissioners say, but I do
15 think that we should permit this to go forward, and
16 I certainly think no matter what we do, I agree with
17 Commissioner Branciforte, that we permit the C of O
18 to issue, if we feel it is necessary to go for 18
19 dollars a brick, and get it hand fired in Tennessee
20 and do everything else that he is willing to do in
21 order to occupy this building.

22 COMMISSIONER BRANCIFORTE: Phil, when
23 you said you did a site visit, it wasn't on this
24 building, was it?

25 COMMISSIONER COHEN: Yes. I walked

1 four blocks away --

2 ACTING CHAIRMAN GREENE: He walked past
3 it --

4 COMMISSIONER COHEN: -- four blocks
5 away -- no. I went to -- the part of the building
6 that you're most concerned about, the outside,
7 that's what I looked at.

8 COMMISSIONER BRANCIFORTE: I was
9 wondering if you went inside.

10 COMMISSIONER COHEN: No.

11 ACTING CHAIRMAN GREENE: Commissioners?

12 COMMISSIONER FISHER: So I think this
13 is a -- I think the Board is in a really difficult
14 portion. I, as a Board member, feel in a very
15 difficult position mainly because although I wasn't
16 part of the original approval a couple years ago, I
17 really feel that this type of activity really
18 undermines the entire Zoning Board and the decisions
19 that we make.

20 And I just -- I agree a lot with what
21 Commissioner Branciforte and Commissioner Cohen said
22 in terms of what the outcome of this building is.

23 I actually am not as concerned about
24 the brick, and I don't know that they would need to
25 necessarily replace the brick, but just really,

1 really concerned about the process and how my own
2 view of how this developer contributed to that
3 process.

4 He is a very experienced developer. He
5 has said that. He has developed a lot of properties
6 in Hoboken very well -- very aware of the lot.

7 He came -- his professionals submitted
8 materials to get the initial zoning certificate, and
9 I believe they had five or six zoning certificates,
10 so they went back to the well a number of times, and
11 every single one of those times that entire team of
12 professionals just said it is okay to act outside of
13 the law.

14 Regardless of what the zoning officer
15 did, the zoning officer make a mistake, or you know,
16 there is views on how she approaches her role as
17 well, but this is not a first time developer. This
18 is somebody very experienced, and that is very
19 frustrating, because the people who come in front of
20 this Board, the developers that come in front of
21 this Board, the teams and professionals around them,
22 you know, we kind of base -- you know, we have to
23 rely on the fact that they are telling us the truth,
24 that they are doing things the right way, and that
25 they are being honest, open, et cetera.

1 And when they don't, and it ends up
2 feeling like they circumvented the process, that
3 really -- you know, it makes you wonder like why do
4 you have a Zoning Board, right, if we they can just
5 go to a zoning officer and get whatever approval and
6 build whatever they want, so it's very frustrating
7 to me.

8 I don't disagree with Commissioner
9 Cohen, that there has been some penalty. But at the
10 end of the day, if we give a temporary C of O, and
11 the building opens, and all of these wonderful
12 tenants that have come up and said you have these
13 businesses open, he's really no worse for the ware,
14 and I think this is precedent setting, so I am very
15 frustrated. I was frustrated last week.

16 I have to tell you, listening to his
17 testimony tonight and throwing all of his
18 professionals under the bus and not apologizing
19 didn't help. It only made me feel even more
20 frustrated, so you know, I am not supportive, and I
21 won't be supportive of this application, because I
22 do think it sets a bad precedent, and I think there
23 should be more that this developer needs to do
24 before he gets approvals for this building, so
25 that's all I have to say.

1 ACTING CHAIRMAN GREENE: Thank you.

2 Mr. DeFusco?

3 COMMISSIONER DE FUSCO: Yes. Very well
4 said, as always, Tiffanie.

5 I will tell you why it is not precedent
6 setting, because we are not going to let it become a
7 precedent. And as we said before, as Phil said, Mr.
8 Matule has said, I call it the collapse clause. It
9 is in every resolution, that if a brick falls off,
10 they have to return to this Board, and I want the
11 entire public to know that.

12 We have been adding these teeth in
13 there to protect the historic architecture that we
14 all know and love about Hoboken. This was done five
15 years ago, and we have made changes since then, so
16 it is not a precedent because it will not happen
17 again. We won't let it happen. Not one person on
18 this Boards will.

19 I sat on this application. I was
20 enamored by the historic preservation aspect of it.
21 I loved that building. I lived around the corner
22 from it at the time. I am in the neighborhood, but
23 now I'm more distant away.

24 I think that the intent is there with
25 this current building. I was alarmed when the

1 initial collapse happened, and I was confused as to
2 why we weren't being looped in.

3 I am in no way advocating that a zoning
4 officer should usurp the power of the Board, but I
5 think what it comes down to right now is the benefit
6 of this building inherently the intent that we
7 approved, you know, we approved the initial one with
8 it, and I believe it is.

9 I don't think we need the new brick. I
10 certainly like the brick. I think that it is a de
11 minimus change, and I think my neighbors down at
12 that end of the First Ward would not necessarily
13 like three months of traffic congestion, and it was
14 already testified that, you know, traffic is a
15 concern there, and the one-way road, and that
16 traffic will just continue for another three months
17 during a very busy season.

18 I think that the mixed-use structure is
19 a vibrant opportunity for us to do what we all know
20 and feel strongly about.

21 So I will be supportive of this, but I
22 just want everybody to know that, you know, I think
23 we can't just use this as an isolated instance. It
24 is up to all of us in the future to continue to
25 enforce our resolutions, to make sure that we get

1 what we want out of it, so --

2 COMMISSIONER FISHER: Well, I guess the
3 question I would have, if you don't mind, and to all
4 of you is the other half of this, which is the
5 concern with the controls around the zoning officer,
6 you know, how do we -- how do we -- if it is not our
7 jurisdiction, how do we ensure that that half of
8 this doesn't repeat, unless we hold one of these,
9 you know, these applications -- it is a denial and
10 something comes out of it, and it is raised that
11 there is an issue on both sides like.

12 Like how do we --

13 COMMISSIONER DE FUSCO: You know, it's
14 almost colloquial -- you know, Mike Evers said it
15 the best. Like you don't want to -- you don't want
16 to, you know, shoot a man for stealing a wallet. I
17 don't think that is the right answer to this --

18 ACTING CHAIRMAN GREENE: By the way, I
19 don't think that is really an appropriate analogy
20 just for the record.

21 (Laughter)

22 COMMISSIONER FISHER: Yeah, I agree --
23 I agree, but I have -- I do have a view that there
24 was a little bit more -- that this developer is more
25 complicit in it, and kind of failed in his role as

1 an experienced developer, so this case may be
2 different from some of the other ones I seen.

3 Like we have had bad behavior on both
4 sides, so you know, maybe because of the quality of
5 the building and because of the conditions or the
6 considerations that the public has raised and the
7 potential tenants, that there is a lot of positive
8 aspects to it.

9 But if we do approve it, then this side
10 gets a free pass or what I think is more of a light
11 touch, but how does the other side get impacted?

12 Notwithstanding, we have these great
13 resolutions, and this resolution wasn't a terrible
14 one, but we still have a zoning officer situation
15 where there is no resource to her.

16 COMMISSIONER DE FUSCO: Yeah. You're
17 right --

18 ACTING CHAIRMAN GREENE: Can we stop
19 for just a second?

20 Would you like to chime in?

21 MR. GIBBONS: I would like to --

22 COMMISSIONER DE FUSCO: Please go
23 ahead.

24 MR. GIBBONS: Okay. A couple of
25 things.

1 First of all, the discussion of
2 precedent has come up, and, you know, the good faith
3 statement you make means a heck of a lot because it
4 shows intent, but legally nothing that this Board
5 with respect to one application applies to the next.
6 Every application sits on its own merits.

7 If this Board has been approving or
8 denying applications based upon what has been done
9 up the street or in some other ward or area of the
10 city, the courts have never sustained that, and that
11 is really not the way the Board should operate.

12 I know Mr. Galvin well enough that I
13 know that he would give you the same advice, so I'm
14 sure this is something you all understand --

15 ACTING CHAIRMAN GREENE: And he has.

16 MR. GIBBONS: -- so I think you
17 shouldn't worry about the issue of precedent. It is
18 not really something that is going to come up, okay?
19 I feel like I wanted to hit that first.

20 Secondly, with respect to the zoning
21 officer and any and all actions that may have been
22 taken, I reviewed everything.

23 On the face of things, yes, it does
24 appear and improperly that the authority of the
25 Board was taken away.

1 Was it the right thing to do?

2 No. It was not the right thing to do,
3 and it was outside of the jurisdiction of the zoning
4 official, and there are issues that come up with
5 that.

6 There has been discussion in the record
7 in terms of what recourse the Board has.

8 The recourse the Board should not
9 employ is to take its displeasure out, and it is
10 clear there is displeasure, but you don't take that
11 out on the applicant. At the end of the day, the
12 applicant comes in and deserves the same treatment
13 that any other applicant gets from a substantive or
14 procedural standpoint. That doesn't excuse what may
15 be considered, you know, wrongdoing or whatever.

16 You got to take that in the mix, but
17 what you mustn't do is indicate your displeasure
18 with the zoning officer or her actions and say,
19 well, you know, we are going to send a message by
20 doing that.

21 That is very unwise.

22 ACTING CHAIRMAN GREENE: You're talking
23 about a message to the zoning officer?

24 MR. GIBBONS: Yes, or to anyone, yes,
25 exactly. You are simply not going to do that.

1 It's --

2 COMMISSIONER COHEN: Is that unwise
3 because it is illegal to do that?

4 MR. GIBBONS: Well, certainly a court
5 would find it is illegal, yes. But, you know, it
6 doesn't violate a statute necessarily, but it
7 certainly violates the interpretations of the
8 Municipal Land Use Law in connection with this, and
9 so that's what we're working with.

10 COMMISSIONER FISHER: Just to be clear,
11 I mean, I was -- my decision is based on the actions
12 of the -- but as part of the overall discussion as
13 we are thinking about the implications, it has an
14 implication on both sides. But my decision is
15 solely based on my view of the applicant.

16 MR. GIBBONS: Right.

17 I am trying to frame this, so you know,
18 everyone has the same -- everybody is in the same
19 boat. Everyone is in the same boat in terms of
20 making a decision.

21 If you have a concern, and clearly you
22 do, and candidly rightfully so, you have a concern
23 with the actions taken by the zoning officer outside
24 of the scope of her jurisdiction, then this is what
25 you should do.

1 First of all, you have to determine, if
2 you do, unanimously you should, some type of
3 communication should be provided to, you know, there
4 are arguments as to who would get what, but I would
5 say to the city administrator and to the department
6 head who oversees the zoning official, you have to
7 do that formally.

8 I don't think under the -- just so you
9 understand, this Board does not have authority to
10 discipline a statutory officer. That is not within
11 your jurisdiction.

12 However, you can certainly bring to the
13 attention of those in the administration who are in
14 the position to take action.

15 As a personnel -- as a member of the
16 city personnel, that certainly is going to have to
17 be considered and a decision made. A letter or some
18 other kind of expression of concern will be in the
19 file of the officer, and frankly, there may be a
20 proceeding that will take place that will result in
21 some form of disciplinary action or some form of
22 corrective action taken against the zoning official,
23 so that is your recourse.

24 And it is a separate track -- with all
25 of the stuff happening lately in Philadelphia, I

1 hate to talk about trains -- but it is a separate
2 track. The track you're on -- yeah, the track for
3 this application -- when you consider this
4 application, you set aside all of that stuff. You
5 do it on the facts. Whatever the facts are that you
6 are seeing, but the reality is, is that you don't
7 hold the applicant responsible for a decision or an
8 error or whatever that was wrongfully made or
9 incorrectly made by one of our own personnel.

10 Are there any questions?

11 I am going to turn the debate back, but
12 those two issues I think had to be made clear.

13 If you have any questions, I'm happy to
14 answer them.

15 COMMISSIONER BRANCIFORTE: Who would be
16 it best to write this communication to Brady Forbes,
17 the city administrator, or the mayor's office --

18 ACTING CHAIRMAN GREENE: We'll have to
19 have that conversation.

20 COMMISSIONER COHEN: Well, it sounds
21 like a resolution that would have to come
22 unanimously from the body, and somebody would have
23 to draft a resolution for consideration of the
24 body --

25 MR. GIBBONS: It would be a resolution

1 or it could be a letter. It could be a letter
2 written on behalf of the Board. I understand Mr.
3 Galvin has expressed an issue with respect to a
4 potential conflict of interest. He made a right
5 decision because it's not an objective determination
6 as to a conflict. It's an appearance of
7 impropriety, could somebody determine that he might
8 have -- and he made the exact correct decision.

9 I could write such a letter. The
10 Chairman or Vice Chairman could write such a letter,
11 you know, however you want to do it, or a resolution
12 could be done. That I think, that is not a decision
13 you need to make right this second, but the offering
14 of a communication, preparation and proffering of a
15 communication to city staff is the appropriate way
16 to do this.

17 At this point -- at that point they are
18 either going to take it up, or they're not going to
19 take it up. But the reality is the clock starts --
20 you know, I don't say the clock starts -- but the
21 expression has been made, and it's official.

22 ACTING CHAIRMAN GREENE: We will take
23 that under consideration, but I think we should move
24 forward with our discussion regarding this
25 applicant.

1 MR. GIBBONS: Right.

2 COMMISSIONER BRANCIFORTE: One thing I
3 think that needs to be discussed that I didn't bring
4 up before was the fact that when this Board
5 approved -- now, I wasn't here the night they
6 approved it. But when the Board approved it, we
7 gave the applicant 100 percent lot coverage, and I
8 wonder if some of the people on the Board that voted
9 that night didn't say, well, I will give them a
10 hundred percent lot coverage, because we are going
11 to save this building, and we're going to do some
12 kind of historic -- I'm going to say this --
13 historic building, so I will grant them the hundred
14 percent lot coverage. You know, that -- I just
15 wanted to bring it up.

16 You know, there is a reason why --

17 ACTING CHAIRMAN GREENE: You're
18 stepping on my comments --

19 COMMISSIONER BRANCIFORTE: Well, go
20 ahead. Broadway Theater, I don't want to step on
21 any --

22 ACTING CHAIRMAN GREENE: I'm going to
23 go last.

24 Commissioners, comments, debate,
25 discussion?

1 COMMISSIONER MURPHY: I don't really --
2 I mean, I feel that we heard our lawyer, so I am not
3 going to really comment on that part of it, although
4 I find it hard, like Tiffanie, that this builder
5 who, you know, the first time he came to us last
6 month was, you know, how he has been building here
7 for so many years, you know, didn't follow the
8 rules.

9 But putting that aside for now, I think
10 that the building should get the occupancy. I think
11 it is a beautiful building, and I think it has a
12 nice mix of old and new. I appreciate the fact that
13 the builder would like to change the facade, if that
14 would please us. I am not really sure where I feel
15 about that, but I appreciate that effort, and I
16 think it would be a good addition to First Street
17 and Newark.

18 ACTING CHAIRMAN GREENE: Do you have
19 anything to add?

20 You don't have to --

21 COMMISSIONER MARSH: No.

22 ACTING CHAIRMAN GREENE: -- but knowing
23 you --

24 (Laughter)

25 COMMISSIONER MARSH: I listened a lot

1 to what Commissioner Fisher said, and I have to say
2 that it resonates better with me than anybody else.

3 I find it very uncomfortable this
4 notion that we are supposed to -- okay, so now we
5 are going to say if one brick falls, then come back
6 to the Board. But that doesn't mean that there
7 won't be something else that we didn't think to put
8 in the resolution.

9 You know, at some level you rely on
10 people's testimony, and they said they were going to
11 give him 100 percent of the building. You know, and
12 when that didn't happen, I don't know what the
13 spirit of the Board members were.

14 I don't say everything that I am
15 thinking. We would all be here for the rest of
16 eternity, if all we said everything that we thought
17 the whole time.

18 I can't support this. I can't.

19 ACTING CHAIRMAN GREENE: Any comments?

20 COMMISSIONER MC ANUFF: I am not voting
21 tonight, but I will say, if I were, I would support
22 the application. Regardless of what happened
23 between the zoning commission or the zoning office,
24 that is not the -- this is not the forum to discuss
25 it, as counsel has said.

1 As far as replacing the brick, I think
2 a good effort was made by the developer and the
3 architect to restore it to what it was. I
4 personally don't see the need to replace it with
5 another brick at this point. I think it would be a
6 waste of time and effort. It is not a landmark or a
7 special structure, where a certain brick is needed,
8 and I think they made a good faith effort.

9 (Applause)

10 ACTING CHAIRMAN GREENE: Please.

11 Any other comments?

12 I will put my two cents in.

13 First, since I did sit on the original
14 application, along with Commissioner DeFusco and
15 Commissioner Cohen, and I voted for it, and to the
16 point that Mr. Moss and Mr. Soares made, that is why
17 we approved it, because we thought that this
18 building would be, as described in testimony, would
19 be an excellent addition to the neighborhood and
20 provide all of the things that we now hear it is
21 going to provide.

22 For me, the issue is we granted 11 or
23 so variances based on the testimony. Those
24 variances included 100 percent lot coverage for a
25 through building. There was no rear yard, and quite

1 frankly, if it weren't for the statement of the
2 preservation of the historic theater, I am not
3 certain that those variances would have been
4 granted.

5 I am concerned about the integrity of
6 the process. I believe that somebody with this
7 developer's and his professionals' experience should
8 have known better, and I am conflicted in the sense
9 that ultimately what we have is either 75 or 95
10 percent of what we expected, depending on the
11 testimony you subscribe to, but I think that the
12 process perhaps is the most important issue here,
13 and I am not convinced that I am going to support
14 this.

15 COMMISSIONER DE FUSCO: Mr. Chairman,
16 if I may.

17 ACTING CHAIRMAN GREENE: You may.

18 COMMISSIONER DE FUSCO: So I just
19 quickly Google imaged the block, and that particular
20 block, and it could have been testified five years
21 ago to this, is basically all covered by buildings,
22 so there is no green donut as we might expect in the
23 R-1 zone. So I don't know if that necessarily may
24 impact your decision one way or another, that the
25 hundred percent lot coverage is kind of the format

1 of the block as it stood and as it stands,
2 so just something to think about.

3 ACTING CHAIRMAN GREENE: No. I
4 understand that, but it also could have been the
5 opportunity to create that space.

6 There was an empty lot that was built
7 over for the addition on the one side, so there were
8 lots of things that I can't -- I couldn't read your
9 mind. I certainly read the other Commissioners'
10 minds, but I know what was going through mine, and
11 I think the process has been violated, and I think
12 the applicant should have known better.

13 Again, I don't know whether you throw
14 out the baby with the bath water, but I think we
15 have to enforce the process, but I respect your
16 opinions.

17 I do think the conversation, the
18 questioning, and the public's participation has been
19 very helpful and very professional.

20 MR. GIBBONS: Mr. Chairman, you had
21 asked something -- you know, the issue with the baby
22 with the bath water, I took the liberty of
23 researching --

24 ACTING CHAIRMAN GREENE: You Googled
25 it?

1 (Laughter)

2 MR. GIBBONS: No, no, no. I researched
3 the issue when I was asked to come aboard. Again,
4 this may be something that Mr. Galvin discussed with
5 you, but I wanted to do it my own way.

6 The case law in New Jersey is -- I
7 don't want to say it's conflicted, but if an
8 applicant has relied in good faith or even to some
9 legitimate extent on a statutory officer, there is a
10 certain amount of deference that's given, and if an
11 application results in a property that is built
12 illegally or built improperly, while the courts will
13 admonish, they will criticize, they'll correct, they
14 are rarely going to make somebody tear a building
15 down, and I think it is important to understand the
16 distinction.

17 Yes. There is a builder's risk, and
18 sometimes that risk is very great, but if the thing
19 is carried out to completion, the instances where a
20 building has had to be destroyed or dismantled,
21 those instances are not plentiful. So I feel that
22 the Board has to have that additional amount of
23 knowledge in terms of making a decision, whatever
24 decision it is going to make.

25 That doesn't mean in making your

1 decision, you can't have a few things to say about
2 the concerns you have in connection with the
3 applicant's activity in the course of the
4 application either.

5 You know, if you vote no, it would be
6 my opinion that the law would not compel the
7 applicant to tear down that building and start over
8 again.

9 COMMISSIONER BRANCIFORTE: Well, I
10 don't know if we are talking about tearing down the
11 entire building as much as we're talking about the
12 facade, so --

13 MR. GIBBONS: Right.

14 But at the end of the day, what we
15 would be talking about, you know, is a major change,
16 so that's all I am saying.

17 I just wanted to make sure the Board
18 has all of the information in its authority -- in
19 its hands.

20 ACTING CHAIRMAN GREENE: But should the
21 applicant, if the application is denied, and the
22 applicant pursues this in court, which I expect they
23 would, then it would be up to the court to decide
24 what the remedy would be. That remedy could be to
25 leave it as it is, and confirm the building or

1 something more drastic --

2 MR. GIBBONS: Oh, yes. The court would
3 make the decision. It would be up to the court, and
4 courts are not necessarily always going to do
5 something the way you think. They make a decision
6 based on the merits. But based on my research, this
7 is what I had determined.

8 COMMISSIONER DE FUSCO: But I think
9 there is a way to make our voices heard through
10 issuing a letter to the zoning officer and issuing
11 it to the office of the mayor in stopping a project
12 that the community almost unanimously is supporting,
13 and my neighbors are out here asking for this to go
14 forward.

15 I agree that this Board should not ever
16 have, you know, to lose its power to the zoning
17 officer, but we can address that.

18 I think we are taking an issue, and
19 we're blowing it out of proportion. I am just
20 asking -- I have a great deal of respect for
21 everybody on this Board.

22 Think about what we are here to do and
23 the positives of this application and whether or not
24 this de minimus end result of the actual building
25 facade is worth stopping this building for what is

1 probably going to amount to a good deal of time and
2 slow down progress in our neighborhood. I just
3 leave it at that in terms of --

4 COMMISSIONER MARSH: Chairman, may I?
5 Oh, go ahead.

6 COMMISSIONER MURPHY: No. Go ahead.

7 COMMISSIONER MARSH: I want to take
8 issue with one thing you said, which is about going
9 forward.

10 The projects that have come back that
11 we heard in various stages of, you know, they got
12 here because somebody put in a tremendous amount of
13 effort.

14 My experience with life is that
15 consequences happen to your actions. You know, we
16 didn't get rid of one attorney. An attorney had a
17 conflict and stepped down because that is life.
18 I mean, that's what happens. We didn't do anything.
19 He is the one who said he had a conflict, not me.

20 People have written letters, and, you
21 know, they have talked to people, and this is a
22 two-way street.

23 I mean, the applicant -- I just cannot
24 believe that the professionals didn't know. I just
25 don't believe it.

1 COMMISSIONER BRANCIFORTE: Well, you
2 know, going along with that, the huge problem for me
3 is when the applicant comes to the Board and says,
4 I'm going to save the facade, but I didn't ask an
5 engineer if it could be saved or not.

6 I'm like, shaking my head, thinking how
7 could you come up here and promise us that when you
8 didn't even know if it could be saved in the first
9 place.

10 So I'm like I just can't wrap my head
11 around that, and that is a huge problem for me.

12 COMMISSIONER DE FUSCO: There were
13 certainly some missteps, and it's up to this Board
14 to decide whether those missteps equal, you know, to
15 stopping this project as a whole.

16 COMMISSIONER BRANCIFORTE: Again, I
17 don't object that we give a C of O to allow the
18 people to move in and get business rolling here.

19 COMMISSIONER DE FUSCO: And if you feel
20 strongly about the brick, I don't think it's going
21 to make a huge difference, but I would support the
22 brick. Whatever we can do to make this building,
23 you know, more attractive in the interest of how it
24 was originally approved, I would be for.

25 I just think that the positives here

1 are so overwhelming, that it would be a serious
2 shame not to see this move forward, and I understand
3 everyone's concerns, and I respect everyone's
4 concerns, but I think we just need to look forward
5 and what we can do moving forward, not what happened
6 five years ago. I think this is a good project.

7 ACTING CHAIRMAN GREENE: Well, one, it
8 didn't happen five years ago. It happened much more
9 recently, and I am not sure that the violation of
10 the process in my mind is de minimus.

11 I agree, perhaps, that the end result
12 is minimally different from what we had expected,
13 other than we had expected the original facade to be
14 there, and that's not what we got, and there was no
15 conversation once the realization took place.

16 To John's point, you have a
17 professional developer who comes and makes promises,
18 there should be some substance behind the promise.

19 Apparently we heard that there was no
20 inspection, that there was just, you know, just an
21 assumption. I don't know that you reward that
22 behavior --

23 COMMISSIONER COHEN: I think the
24 testimony was there was no inspection before he
25 purchased it. I don't know if he said there was

1 never an inspection with respect to the property,
2 but --

3 ACTING CHAIRMAN GREENE: Well, if they
4 did an inspection --

5 COMMISSIONER COHEN: -- he testified
6 that he was building structures in 2006 and 2007
7 that had been approved in the prior regime, and that
8 did not require him to return.

9 I'm not making excuses for him, but I
10 mean, I don't think it's fair to infer bad faith.

11 You know, Commissioners, I don't -- I
12 also don't think he has dealt with bad faith with
13 his neighborhood.

14 I think the testimony of his next door
15 neighbor, who was a lot more interested in this
16 project than this Board, who was very critical of
17 the way this was developed, who was on it on a daily
18 basis, testified that he was prejudiced against the
19 project at the beginning of the project, that he was
20 won over, and at the end of the project he was
21 happily surprised and supportive of it.

22 That's important to me. Again, if the
23 neighborhood was up in arms about this project and
24 said this was a developer who is acting in bad
25 faith, who has abused the community, I would feel

1 very differently right now. But I think that, you
2 know, I just caution, I don't think that we should
3 be taking out our frustration on the process on this
4 applicant based on the record that we have on this
5 application. You heard a lot about other properties
6 in other parts of the city and other issues with
7 other developments that were not this one, and I
8 don't think we should be confusing those issues.

9 We should be focused on this
10 application, and I think the merits of this
11 application are worthy of support.

12 You know, I think we should condition
13 an approval on granting the CO and requiring the
14 brick restoration, as disruptive as it would be to
15 First Street to have that and for the additional
16 cost, I mean, there are enough Commissioners who
17 want to see that facade done that way, and that's
18 how it should go.

19 COMMISSIONER DE FUSCO: And, listen,
20 the other side of this, I will just stop after this,
21 is that, you know, the term that keeps on singing to
22 me is the apparent authority of the zoning official.

23 They were issued five -- you know, a
24 packet of zoning certificates -- first certificates
25 of zoning compliance. They kept on going back and

1 back, and the zoning official had the authority to
2 keep on giving it to them.

3 Listen, they are very seasoned
4 professionals --

5 MR. GIBBONS: She did not have the
6 authority to give it to them.

7 COMMISSIONER COHEN: -- okay. She did
8 not have the authority, but she issued --

9 MR. GIBBONS: She had the apparent
10 authority.

11 COMMISSIONER DE FUSCO: -- she had the
12 apparent authority -- the perception of the
13 authority --

14 MR. GIBBONS: Well, no --

15 COMMISSIONER DE FUSCO: -- the
16 perception of the authority, which the applicant
17 decided to be blinded or not blinded, you know,
18 pursued --

19 MR. GIBBONS: -- you're absolutely
20 correct, because no, that is a legal concept,
21 because apparent authority is something that can be
22 relied on, and yes, it is a problem here. I know
23 that is --

24 COMMISSIONER DE FUSCO: -- so they --
25 they chose -- if you want to argue it this way,

1 the math has changed on this?

2 And he just went like this, well, the
3 zoning officer said it was okay.

4 You know, that's all I know.

5 So I mean, I was looking at this guy,
6 thinking really? You just can't get away with it.
7 You know what the law is, and you can't just say I'm
8 going to walk out of here. She gave me the permit.
9 I'm not going to say anything.

10 MR. GIBBONS: Well, the whole point of
11 that, though, is that the zoning officer is legally
12 constrained to act within the limit of her
13 jurisdiction. If he or she goes outside of that,
14 the actions they take at that point are certainly
15 voidable.

16 The problem here is that you have what
17 is called estoppel. I think anyway, you had a
18 reliance to the detriment of the applicant upon the
19 statements made by the zoning official which, you
20 know, if this thing went to court, the applicant
21 would be -- we could -- we could find that the
22 zoning officer made X, Y, Z mistakes. We could also
23 find that the applicant was not, if you will say,
24 was not virginal in this, that it made its own
25 mistakes or negligence.

1 But the bottom line is: There is
2 enough -- if there was enough credibility that could
3 have been relied upon in the zoning officer's
4 actions, that the applicant would be given, in my
5 opinion, would be given the benefit of the doubt,
6 and this would probably go through.

7 One of the hard things in this business
8 is having to tell the client what they may not
9 necessarily want to hear, but you asked me to call
10 it the way I've seen it, and I've looked at every
11 piece of paper that has been produced on this, and
12 that's where I'm coming down on it, so I want to
13 make sure the Board is aware of, you know, of that.

14 I am not sure anybody's hands are clean
15 in this, but not our hands -- but we contributed,
16 the city contributed. There's no question about it.

17 ACTING CHAIRMAN GREENE: If there is no
18 further discussion, we'll entertain a motion.

19 COMMISSIONER DE FUSCO: So I will make
20 a motion to approve this with the tenancy brick
21 option.

22 (Laughter)

23 COMMISSIONER BRANCIFORTE: And the C of
24 O.

25 COMMISSIONER DE FUSCO: Oh, and

1 permitting a certificate of occupancy while the
2 exterior masonry is being replaced.

3 MR. GIBBONS: Subject to all of your
4 standard conditions of approval, which I presume Mr.
5 Galvin puts in every resolution.

6 MS. BANYRA: And there are prior
7 approvals from earlier ones that need to be I guess
8 included also.

9 MR. GIBBONS: All right.

10 Subject to compliance with all prior
11 approvals with respect to the property, I can
12 coordinate that with Mr. Matule as well, or, you
13 know, Mr. Galvin may want to prepare it. I haven't
14 discussed that with him, but I expect I will prepare
15 it.

16 ACTING CHAIRMAN GREENE: So we have a
17 motion.

18 Do we have a second?

19 COMMISSIONER BRANCIFORTE: Second.

20 ACTING CHAIRMAN GREENE: Roll call,
21 please.

22 MS. CARCONE: Commissioner Cohen?

23 COMMISSIONER COHEN: Yes.

24 MS. CARCONE: Commissioner De Fusco?

25 COMMISSIONER DE FUSCO: Yes.

1 MS. CARCONE: Commissioner Marsh?
2 COMMISSIONER MARSH: No.
3 MS. CARCONE: Commissioner Murphy?
4 COMMISSIONER MURPHY: Yes.
5 MS. CARCONE: Commissioner Branciforte?
6 COMMISSIONER BRANCIFORTE: Yes.
7 MS. CARCONE: Commissioner Fisher?
8 COMMISSIONER FISHER: No.
9 MS. CARCONE: And Commissioner Greene?
10 ACTING CHAIRMAN GREENE: No.
11 COMMISSIONER BRANCIFORTE: What was the
12 vote?
13 (Board members confer)
14 ACTING CHAIRMAN GREENE: The vote is
15 four to three, so the resolution has passed.
16 MR. MATULE: Thank you. I appreciate
17 that.
18 (Applause)
19 MR. GIBBONS: Mr. Galvin and I will
20 coordinate the preparation of the resolution.
21 (The matter concluded.)
22
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25

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
 Dated: 5/25/15
 My commission expires 11/5/2015.
 This transcript was prepared in accordance with
 NJAC 13:43-5.9.

HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN

----- X
REGULAR MEETING OF THE :
HOBOKEN ZONING BOARD OF :May 19, 2015
ADJUSTMENT :Tuesday 10:30
p.m. ----- X

Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

- Acting Chair Elliot H. Greene
- Commissioner Philip Cohen
- Commissioner Michael DeFusco
- Commissioner Carol Marsh
- Commissioner Diane Fitzmyer Murphy
- Commissioner John Branciforte
- Commissioner Tiffanie Fisher
- Commissioner Owen McAnuff

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

- Eileen Banyra, Planning Consultant
- James Giuritano, PE, PP, CME
Acting Board Engineer
- Patricia Carcone, Board Secretary

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6 Acting Attorney for the Board.

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1 ACTING CHAIRMAN GREENE: So, do we have
2 a date that we can carry it to?

3 MS. CARCONE: We're going to carry
4 502-504 Monroe to June 9th.

5 MR. MATULE: We extend the time in
6 which the Board has to act until the 9th, and we're
7 carrying it with no further public notice.

8 ACTING CHAIRMAN GREENE: Yes.

9 Do I have a motion?

10 COMMISSIONER COHEN: Motion to carry
11 502-504 Monroe with no further notice.

12 COMMISSIONER BRANCIFORTE: Second.

13 ACTING CHAIRMAN GREENE: All in favor?

14 (All Board members answered in the
15 affirmative.)

16 MR. MATULE: Thank you for your
17 attention.

18 ACTING CHAIRMAN GREENE: No. So let's
19 talk about our communication with the
20 administration.

21 I presume the appropriate person to get
22 the letter is Brandy --

23 MR. GIBBONS: I would say so --

24 ACTING CHAIRMAN GREENE: -- with a copy
25 to the mayor?

1 MR. GIBBONS: Yes, and a copy to the
2 administrator.

3 ACTING CHAIRMAN GREENE: Well, we are
4 going to engage you to draft the letter.

5 I guess appropriately, would you be
6 sending it on behalf of the Board, or should I as
7 Acting Chairman sign it, or should somebody else
8 sign it?

9 What would be the --

10 MR. GIBBONS: Well, if the Board
11 authorizes me to send it and authorizes the form and
12 content, I can send it under my own letterhead --

13 COMMISSIONER COHEN: Can we see a draft
14 of it before?

15 MR. GIBBONS: Of course. No, I would
16 be remiss in any way --

17 ACTING CHAIRMAN GREENE: Perhaps you
18 could circulate that by email, or Pat can circulate
19 that by email, so that we can have an option to
20 opine, not that anybody here has an opinion.

21 (Laughter)

22 COMMISSIONER COHEN: I think everybody
23 knows to keep things confidential.

24 COMMISSIONER MURPHY: Well, it doesn't
25 say confidential --

1 MS. BANYRA: Can I speak to the
2 attorney about that?

3 If you are going to have the
4 conversation --

5 (Everyone talking at once.)

6 THE REPORTER: Is this on the record?
7 You should do this off the record
8 because everyone is talking at the same time.

9 MS. BANYRA: It's on the record.

10 (Everyone continues to talk at once.)

11 MR. GIBBONS: Everybody, one person at
12 a time, okay? I am sorry.

13 That's it.

14 ACTING CHAIRMAN GREENE: He finally
15 takes control.

16 MR. GIBBONS: It's the Irish in me.
17 What can I tell you?

18 (Laughter)

19 COMMISSIONER COHEN: So the issue that
20 has been raised is the confidentiality of the draft,
21 if it could be emailed, or whether that's a bad
22 idea.

23 MR. GIBBONS: It's a bad idea to email
24 it because then it becomes discoverable.

25 COMMISSIONER BRANCIFORTE: It becomes

1 public record. That's why I suggest, maybe we
2 should just have it next week on the 9th, and we
3 hand it out.

4 ACTING CHAIRMAN GREENE: Well, next
5 week is the 26th.

6 COMMISSIONER BRANCIFORTE: Oh, I'm
7 sorry.

8 COMMISSIONER MURPHY: Whenever he could
9 get it ready, and then it can either be mailed to us
10 or handed out, and then we can schedule a time to
11 talk about it.

12 COMMISSIONER COHEN: If it's handed
13 out, isn't that discoverable, too?

14 MR. GIBBONS: Well, it could be handed
15 out to the Board marked "attorney/client privileged
16 document," and then you are all, you know, in
17 essence, it is you and me, you know, the members and
18 me.

19 COMMISSIONER COHEN: And none of us can
20 forward it to anybody outside of the Board.

21 ACTING CHAIRMAN GREENE: Correct.

22 MR. GIBBONS: No. And I would say that
23 would be the most common sense way to do it.

24 The other way to do it, if you want to,
25 and I don't care for this method, somebody said

1 something about a resolution.

2 In essence, you would be taking a
3 resolution to censure your zoning official, and I
4 don't think that necessarily does any good. All
5 right? I don't think you do that.

6 I mean, I have worked in towns where
7 that has been done. It never is a good idea, but
8 you need to know the other option.

9 So a letter will be prepared.

10 COMMISSIONER FISHER: I think --

11 THE REPORTER: Tiffanie, I'm sorry, but
12 I can't hear you over here.

13 MR. GIBBONS: Yes. You've got to speak
14 up.

15 COMMISSIONER FISHER: I think you start
16 with what we are talking about, which is really
17 delivering a message, and if there is no action on
18 that, then maybe it becomes something more, you
19 know, if we start seeing this continue for the next
20 year, at that point you do it --

21 COMMISSIONER COHEN: But it sounds like
22 what action is taken after we read the letter is not
23 our jurisdiction. It is our jurisdiction to write
24 the letter, to make our expression --

25 MR. GIBBONS: Once that happens --

1 COMMISSIONER COHEN: -- and then it's
2 in the hands of the administration --

3 COMMISSIONER FISHER: Oh, yeah. No,
4 I'm just saying like if we -- if we're effectively
5 filing a complaint, saying we are concerned about
6 these activities, and we would like to see a change,
7 we can't determine the change, we would like to see
8 a change. But if we didn't see the change, our next
9 complaint maybe something more akin to what -- maybe
10 that point it's an ordinance or --

11 MR. GIBBONS: All right. Okay. I
12 don't mean to interrupt you.

13 Procedurally you are not filing a
14 complaint. This is an expression of concern.

15 At that point the person who would file
16 the complaint, if they were going to file a
17 complaint would be either the department head or the
18 or the administrator.

19 Jurisdictionally, you have no authority
20 to file a complaint, nor would anything that you
21 send out be construed as commencing a formal
22 complaint.

23 It is a very complex matter, because
24 when you take action against a statutory officer, it
25 can very easily become a case in the office of

1 administrative law, because -- and I haven't
2 defended zoning officers, it can be -- you know,
3 depending on what happens, if things are
4 particularly egregious, that is where that goes.

5 But, no, in essence, what you're doing,
6 though, as a Board en banc you are saying, we are
7 not happy with her, and that's really what you are
8 doing, and that carries a lot of gravitas.

9 I mean, if it was to be ignored --

10 COMMISSIONER FISHER: You know, I mean,
11 some of it, I am not sure it has to be directed to
12 her specifically.

13 The way that role is set up, there is
14 no checks and balances. So where as you exist for
15 us, right, we have a whole discussion, and we have
16 advice from counsel on decisions. We have
17 questions. We have a debate.

18 She is kind of an office of one with no
19 checks and balances, no legal guidance on her
20 decisions. So therefore, I am not sure that she is
21 purposely making these misses. She is making
22 misses, but there is nobody there to check to see if
23 there was a miss until after the fact, and it's too
24 late.

25 So I think it is more as embedded in

1 the messages, we want to see more checks and
2 balances, whether it's, you know, consulting with
3 counsel, whether it's consulting with the counsel on
4 the Zoning Board or some sort of legal counsel,
5 something like that --

6 COMMISSIONER COHEN: Well, maybe the
7 point is we want this to be constructive --

8 COMMISSIONER FISHER: Yeah, yeah.

9 COMMISSIONER COHEN: -- feedback rather
10 than --

11 ACTING CHAIRMAN GREENE: Yeah, no. I
12 agree, and I don't think anyone's intention is to
13 punish anybody, but to really change the behavior.

14 COMMISSIONER FISHER: Yeah, I agree.

15 COMMISSIONER MARSH: Can I make a point
16 because I want Mr. Gibbons to listen because I am
17 not sure I am right.

18 ACTING CHAIRMAN GREENE: Make a note of
19 that, would you please?

20 MR. GIBBONS: Carol, you are always
21 right.

22 (Laughter)

23 COMMISSIONER MARSH: You can call my
24 husband and tell him, but you really should call my
25 son.

1 In towns where zoning laws are much
2 more strictly kept, there is actually much less need
3 for the oversight of the zoning officer.

4 They do talk to the construction code
5 official. They, you know, they do typically have --
6 they typically have a relationship with the Boards,
7 and there is less reason for oversight.

8 When you are in the position where the
9 zoning -- it is almost in Hoboken, like variances
10 have become the norm, and so the officer is in this
11 position where there is a lot more questions to ask,
12 and so I think they need to be particularly
13 cautious, but that is me.

14 ACTING CHAIRMAN GREENE: In Ringwood,
15 speaking from personal experience, the code
16 official, the zoning official used the same
17 secretary as the Boards did, and she was the expert,
18 and she was the one who would say, well, you can do
19 that, or no, you shouldn't do that, it has to go
20 here or there. And she was the most powerful person
21 in town.

22 COMMISSIONER MARSH: But I think
23 there's a lot more defaulting to the Board, partly
24 because the Board has an attorney sitting at their
25 elbow. I think that is part of the decision of the

1 zoning officer is they send it to some place where
2 there is, you know, Dennis or Cliff.

3 MR. GIBBONS: Well, sometimes, and your
4 point is well taken, because sometimes the official
5 literally becomes because, again, he or she outlasts
6 all of the members and all of the attorneys and
7 everybody else. They know where all of the bodies
8 are buried, and that is both good and bad because it
9 can seem as if, you know, sometimes surreptitiously
10 they may recommend, well, don't grant this variance,
11 or do grant that variance, and the Board, which it
12 shouldn't do, defers to this person.

13 So, you know, it is important that
14 every -- that the whole team be on the same page,
15 and there may be a problem with that here.

16 Maybe for reasons that I don't know
17 about, you know, people are simply deferring and
18 saying, well, the zoning official says this. Okay,
19 that's gold.

20 Well, it may be appropriate that her
21 actions and decisions are questioned from time to
22 time or much more often because here, the thing
23 about this one was that, you know, I went and looked
24 at this thing. I went and looked at the documents,
25 and some of that stuff was pretty material. I mean,

1 it really as a practical matter had to come back
2 here, but we addressed the issue.

3 COMMISSIONER FISHER: I've been out for
4 a couple of weeks. I know that, Pat, you circulated
5 the -- Ann had put up some recommended changes to
6 the zoning procedures, and you circulated it to
7 everyone for our comments?

8 MS. CARCONE: Are you talking about the
9 ordinance.

10 (Everybody talking at once.)

11 COMMISSIONER FISHER: Is that already
12 done?

13 Everybody has gotten their comments in
14 on it?

15 ACTING CHAIRMAN GREENE: I don't know
16 that we had comments --

17 (Everyone talking at once.)

18 THE REPORTER: I don't think I can do
19 this anymore, because you keep talking at once.

20 (Laughter)

21 COMMISSIONER FISHER: So my question
22 was: What is the status of that, and have people
23 reviewed it and provided feedback?

24 MS. CARCONE: It goes to the Planning
25 Board in June for their review and recommendations,

1 and then it will go back to counsel --

2 COMMISSIONER FISHER: I think Jim said
3 he was going to try to get feedback to give some
4 sort of input on that.

5 Is that not going to happen now?

6 MS. CARCONE: I'm not aware of that
7 conversation, so --

8 ACTING CHAIRMAN GREENE: Wouldn't they
9 just have to look at the annual report, because they
10 are among the recommendations, aren't they?

11 COMMISSIONER FISHER: But these are
12 different things.

13 These are like -- if you ever went
14 through it, there is some specific changes that she
15 is recommending that may not necessarily be
16 consistent with some of what we are talking about
17 here, where we want to see more checks and balances.
18 She is asking for less checks and balances, for
19 example, when you read it, so it was --

20 ACTING CHAIRMAN GREENE: Actually I
21 didn't interpret it that way. I interpreted that
22 they --

23 COMMISSIONER FISHER: -- and there's
24 some positive --

25 ACTING CHAIRMAN GREENE: -- were doing

1 away with the need for some variances, and we spent
2 a great deal of time talking about it, and then
3 basically giving approval, you know, on a pro forma
4 basis because they make sense --

5 COMMISSIONER FISHER: I agree.

6 MR. GIBBONS: But why are -- unless you
7 change the ordinance to remove the need for a
8 variance --

9 ACTING CHAIRMAN GREENE: That's what
10 these are.

11 COMMISSIONER FISHER: Yeah. That is
12 what these are.

13 MR. GIBBONS: -- we -- you know, you or
14 the Planning Board should be granting the variances.
15 Administrative officers should not be granting
16 variances unilaterally.

17 MS. BANYRA: That is not the situation.

18 So the situation is --

19 MR. GIBBONS: Are you sure?

20 MS. BANYRA: -- there is a couple of
21 variances -- I mean, there's a couple of ordinance
22 changes, for example, that are relative to things
23 that come before the Board all the time. Front yard
24 setbacks, and then there is a few things, and I
25 think, maybe, Tiffanie, this is maybe you're going

1 with the nonconforming structure issue.

2 So that if it is nonconforming -- if
3 it's a preexisting and nonconforming lot or a
4 nonconforming structure, that comes before us right
5 now, and that would be then taken out of the Board's
6 review.

7 COMMISSIONER COHEN: 55 percent of all
8 properties in Hoboken fit into that category.

9 MS. BANYRA: Well, then some of them
10 because of front yard setback. I mean, we have
11 gotten rid of a few of those types of things.

12 Nonconforming in terms of lot area,
13 that is one thing, but then I think the ordinance
14 now reads: If you are conforming in terms of all of
15 the setback requirements, but you have a
16 nonconforming lot, then you know, the zoning
17 officer, the administrative officer, can sign off on
18 that, so I think that might be one of the areas.
19 Maybe that is what you are looking at.

20 So I mean, it's not giving her -- she
21 can't grant variance approval. That's not
22 statutorily permitted, so...

23 ACTING CHAIRMAN GREENE: Good.

24 Do we have anything else to add to
25 counsel's letter?

1 I will entertain a motion to adjourn.

2 COMMISSIONER BRANCIFORTE: Can we
3 discuss the motion to adjourn first?

4 ACTING CHAIRMAN GREENE: Sure.
5 What would you like to discuss?

6 (Laughter)

7 COMMISSIONER BRANCIFORTE: Motion to
8 adjourn.

9 COMMISSIONER COHEN: Second.

10 ACTING CHAIRMAN GREENE: Thank you.

11 (The meeting concluded at 10:45 p.m.)

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C E R T I F I C A T E

I, PHYLLIS T. LEWIS, a Certified Court Reporter, Certified Realtime Court Reporter, and Notary Public of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the 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 11/5/2015.
Dated: 5/25/15
This transcript was prepared in accordance with
NJAC 13:43-5.9.

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