

HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN

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SPECIAL MEETING OF THE HOBOKEN :
ZONING BOARD OF ADJUSTMENT OF THE : July 14, 2015
CITY OF HOBOKEN :Tuesday 7 p.m.
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Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

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

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

Eileen Banyra, Planning Consultant

Paul Winters, PE, PP
Acting Board Engineer

Patricia Carcone, Board Secretary

PHYLLIS T. LEWIS
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6 Acting Attorney for the Board.

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1 CHAIRMAN AIBEL: Good evening.

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

10 Please join me in saluting the flag.

11 (Pledge of Allegiance recited)

12 CHAIRMAN AIBEL: Good evening,
13 everybody.

14 We are at a Special Meeting of the
15 Hoboken Zoning Board of Adjustment. We have some
16 administrative matters that we will actually do at
17 the end of the hearings.

18 Why don't we do a roll call first and
19 then we'll get going.

20 MS. CARCONE: Commissioner Aibel?

21 CHAIRMAN AIBEL: Here.

22 MS. CARCONE: Commissioner Greene is
23 absent.

24 Commissioner Cohen is absent.

25 Commissioner DeFusco will be arriving

1 late.

2 Commissioner Grana?

3 COMMISSIONER GRANA: Here.

4 MS. CARCONE: Commissioner Marsh is

5 absent.

6 Commissioner Murphy?

7 COMMISSIONER MURPHY: Here.

8 MS. CARCONE: Commissioner Branciforte?

9 COMMISSIONER BRANCIFORTE: Here.

10 MS. CARCONE: Commissioner Fisher is

11 absent.

12 Commissioner McAnuff?

13 COMMISSIONER MC ANUFF: Here.

14 MS. CARCONE: And Commissioner DeGrim

15 is absent.

16 (Continue on next page)

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HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN

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RE: 136 Park Avenue : SPECIAL MEETING
 APPLICANT: 136 Park Ave, LP : July 14, 2015
 Review amendment authorized by the :Tuesday 7 p.m.
 Zoning Officer to approvals granted :
 on June 18, 2013 to eliminate the :
 accessory "Nanny" apartment to the :
 proposed four-story one-family :
 residential dwelling :
 ----- X

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I N D E X

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3 WITNESS

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5 JAMES MC NEIGHT

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8 E X H I B I T S

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10 EXHIBIT NO.

DESCRIPTION

PAGE

11

12 A-1

Comparison Zoning Chart

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13 A-2

Revised Plan

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14 N-1

Photograph

49

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1 CHAIRMAN AIBEL: So we are going to I
2 think proceed in the order of the agenda, which is
3 136 Park, followed by 118-120 Madison, followed by
4 525 Jackson, and we hope that everybody is
5 efficient, and we actually can get to 901
6 Bloomfield.

7 But with that, I guess, Mr. Matule, you
8 are up for 136 Park Avenue.

9 MR. MATULE: Good evening, Mr.
10 Chairman, and Board Members.

11 Robert Matule appearing on behalf of
12 the applicant.

13 Just by way of background with some
14 comments on the record, this was an application for
15 property at 136 Park Avenue. The matter was heard
16 by the Board on July 18th, 2013. At that time the
17 Board granted variances to construct a four-story,
18 one-family residential dwelling with an accessory
19 apartment.

20 That was memorialized in a resolution
21 adopted in July of 2013. A first certificate of
22 zoning compliance was issued by the zoning officer
23 in December of 2013, and on October 21st of 2014, an
24 amended first certificate of zoning compliance was
25 issued.

1 The applicant through his architect
2 approached the zoning officer and requested
3 permission to eliminate the accessory apartment in
4 the building. The zoning officer issued an amended
5 first certificate of zoning compliance to eliminate
6 the accessory apartment.

7 The dwelling was then constructed as to
8 further revised plans and amended first certificate
9 of zoning compliance. The only substantive change
10 to the exterior of the building was originally there
11 was a stairway coming down from the second floor to
12 a first floor landing to get into the backyard, and
13 because the nanny apartment, which was on the first
14 floor was now eliminated, access to the rear yard
15 could be directly from the first floor. That
16 reduced the lot coverage slightly.

17 A final zoning certificate was issued
18 on March 6th of this year. The house is finished.
19 And apparently on April 30th, I believe Mr. Evers
20 sent a communication to the City Council raising a
21 serious, to quote his letter, "a serious zoning
22 compliance issue regarding the revisions to the
23 originally approved project."

24 We were then requested to appear before
25 the Board on public notice to discuss the matter.

1 We have given notice. I have supplied
2 the jurisdiction of proofs to the Board Secretary,
3 and we are here.

4 I would just like to state for the
5 record, that we are appearing without prejudice to
6 any rights the applicant has vested in the fact that
7 he has constructed his building in accordance with
8 the zoning approvals and zoning certificates
9 previously issued, and that is pretty much all I can
10 say at this point.

11 I mean, none of the actions of the
12 zoning officer were appealed in a timely manner, and
13 so here we are tonight.

14 I have Mr. McNeight here in case there
15 are any specific questions, the architect, but --

16 MR. GIBBONS: Mr. Matule, you said the
17 actions or actions of the zoning official were not
18 appealed in a timely manner?

19 MR. MATULE: Correct.

20 As far as I know --

21 MR. GIBBONS: I didn't hear the word
22 "not." That's why --

23 MR. MATULE: -- no appeals were filed
24 within the 20-day time period --

25 MR. GIBBONS: Yeah, that is what my

1 understanding is as well.

2 MR. MATULE: -- you know, when either
3 the amended preliminary certificate of zoning
4 compliance or the final certificate of zoning
5 compliance were issued --

6 MR. GIBBONS: Okay. Thank you.

7 MR. MATULE: -- and I have put all of
8 this in a letter, and I believe the Board has copies
9 of all of those documents.

10 MR. GIBBONS: Yes. I am in receipt of
11 your letter.

12 Did you provide a copy of your April
13 30th letter to the Board, that you sent to the city
14 Council to the Board?

15 MR. MATULE: Mr. Evers' letter of April
16 30th?

17 MR. GIBBONS: Yes.

18 MR. MATULE: I don't believe I provided
19 it, but I believe the Board has it.

20 I have a copy here. I will be more
21 than happy to -- I don't know if you want to mark
22 that or if the Board doesn't have it --

23 MR. GIBBONS: No. I just --

24 MR. MATULE: I will look at my letter.
25 I can't recall if I attached it as an exhibit or

1 not.

2 MR. GIBBONS: No. I just wanted to
3 review it. At this point the matter is before the
4 Board.

5 I guess, Mr. Matule, you wanted -- you
6 have provided a factual background of the
7 application.

8 Before we start hearing any testimony,
9 are there any questions from the Board to me or
10 questions in general as to what has occurred or
11 other issues?

12 CHAIRMAN AIBEL: I think what I would
13 like to understand a little bit more clearly is what
14 the procedural posture is.

15 Is this a de facto appeal from the
16 first certificate or amended certificate of
17 compliance?

18 MR. GIBBONS: No. All this really is
19 in a sense, it's an amended application reflecting
20 the change that was made, that was not the subject
21 of a hearing previously before the Board. It is a
22 very narrow question. It is not a rehearing on the
23 entire application. Let me make that clear right
24 now.

25 The other evidence and items and

1 exhibits, which were previously before the Board,
2 still are there. If there are amended materials,
3 which have been filed, the Board can consider those.
4 I presume Mr. Matule has provided everything that he
5 is going to provide. So at that point the Board is
6 considering the narrow issue of the change that was
7 made, the change in the unit, and that is it.

8 So are there any questions with respect
9 to that?

10 COMMISSIONER GRANA: Yes.

11 CHAIRMAN AIBEL: Let me just ask Mr.
12 Matule first.

13 MR. MATULE: Yes. I was just going to
14 say, I am not disagreeing with counsel's
15 characterization of what we are here for.

16 I guess my sense of the underlying
17 question was: Was the change authorized by the
18 zoning officer, I guess within the scope of her
19 authority.

20 If it was, then I don't think there is
21 any further action for this Board to take. If the
22 Board feels it wasn't, then I guess the question is
23 again without prejudice to my client's situation,
24 does the Board then make an independent
25 determination that the nature of the change was

1 such, that it doesn't significantly impact the prior
2 approvals, and I guess ratify it.

3 MR. GIBBONS: Well, I believe that is
4 essentially what I said. It is a very narrow -- I
5 said this is a very narrow consideration as to
6 whether the change made was something that should
7 have been -- it would be my professional opinion,
8 having reviewed the materials, just so that the
9 Board is aware, I received plentiful materials from
10 your secretary, and I am most appreciative,
11 including the transcript from the hearing below and
12 all of the filings and exhibits.

13 I would take the position that the
14 Board should have considered -- should have had the
15 opportunity to consider the change.

16 As far as the underlying approval is
17 concerned, it is still valid, and what this is, it
18 is an amendment to that approval.

19 COMMISSIONER GRANA: One --

20 CHAIRMAN AIBEL: So I guess what -- I
21 will just say this, and I'll get to you, Antonio.

22 What I am understanding then is that we
23 don't have to worry about the scope of authority
24 issue, I prefer not --

25 MR. GIBBONS: That is a separate issue

1 that is not within the jurisdiction of this Board at
2 this point.

3 We have made a determination that -- we
4 have made a determination that we should have been
5 able to exercise jurisdiction over the change made
6 by the applicant, so we are in essence now
7 exercising that jurisdiction.

8 If there are questions or concerns or
9 issues with respect to actions taken or not taken by
10 the zoning official, this is not the forum in which
11 they would be heard.

12 I know at the last hearing, at a recent
13 hearing, where I substituted for Mr. Galvin in a
14 similar situation, I opined that, you know, what
15 were the options in that situation. If that comes
16 up, I am happy to say it again, but in essence, if
17 there is a concern about actions taken by the zoning
18 official, this is not the forum for actions taken
19 against her or against her position.

20 CHAIRMAN AIBEL: Mr. Grana?

21 MR. GIBBONS: Is that clear?

22 MR. MATULE: It's clear to me.

23 MR. GIBBONS: You had a question.

24 COMMISSIONER GRANA: I did have a
25 question.

1 So since we are not going to determine
2 whether or not the decisions made to amend by the
3 zoning officer really -- that is not going to be in
4 the scope of what we are going to discuss tonight.
5 This is my translation of what I heard.

6 What we are going to consider is: Was
7 the amendment, which is the change of the nanny unit
8 to being another unit in a building, that is the
9 entire scope of what we are considering tonight --

10 MR. GIBBONS: That is exactly right.

11 COMMISSIONER GRANA: -- and we are not
12 bringing all of the other variances --

13 MR. GIBBONS: No.

14 COMMISSIONER GRANA: -- that were
15 discussed in the full -- in the application as it
16 was originally approved?

17 MR. GIBBONS: The original application
18 as it was approved is approved as of record, as of
19 right. We are not rehearing that previous
20 application again.

21 COMMISSIONER GRANA: This has to do
22 with the nanny apartment change.

23 MR. GIBBONS: That is correct.

24 COMMISSIONER GRANA: Thank you.

25 CHAIRMAN AIBEL: So, Mr. Matule, do you

1 have some evidence to put in?

2 MR. MATULE: I can call Mr. McNeight
3 up, and he can testify as to what the changes were.

4 MR. GIBBONS: Mr. McNeight, you need to
5 be sworn.

6 Would you please raise your right hand?

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

10 MR. MC NEIGHT: I do.

11 J A M E S M C N E I G H T, having been duly
12 sworn, testified as follows:

13 MR. GIBBONS: Please state your name.
14 Spell your last name for the record.

15 THE WITNESS: James McNeight, M-c
16 N-e-i-g-h-t.

17 MR. GIBBONS: Thank you.

18 Mr. Matule?

19 MR. MATULE: Mr. McNeight, you were the
20 architect on this project from the outset?

21 THE WITNESS: I was, yes.

22 MR. MATULE: And you heard my brief
23 summary of what transpired here in terms of
24 eliminating the accessory apartment in the property.

25 Was that an accurate recap of the

1 history of the project?

2 THE WITNESS: Yes, it is.

3 MR. MATULE: And I have in my hand here
4 a handout. You prepared this for tonight's hearing.
5 It is the original zoning chart for the property as
6 it was originally presented and now a zoning chart
7 for the property as it currently exists?

8 THE WITNESS: Yes, sir.

9 MR. MATULE: Okay.

10 I guess I will mark this A-1.

11 (Exhibit A-1 marked.)

12 MR. MATULE: Exhibit A-1 is a
13 comparison zoning chart of the building as
14 originally approved versus the building as it
15 currently stands today.

16 I will give the original to the Board
17 Secretary that has been marked, and there are copies
18 for the Board members.

19 So while that is being passed around,
20 Mr. McNeight, could you just take the Board
21 through -- is this revised plan?

22 THE WITNESS: This is the revised plan.

23 MR. MATULE: Okay. So that is not in
24 the record, so we are going to mark that A-2.

25 (Exhibit A-2 marked.)

1 MR. GIBBONS: Mr. Matule, just let me
2 ask you about the context in which you are offering
3 this,

4 MR. MATULE: Well, I am going to have
5 him explain what the changes were between what the
6 plan as originally approved was and what the zoning
7 officer authorized, so if the underlying purpose of
8 this presentation is to have the Board decide
9 whether or not the amendments -- to ratify the
10 amendments, if you will, I just want to have it on
11 the record what those amendments were.

12 So if you could, Mr. McNeight, could
13 you just walk us through what changed?

14 THE WITNESS: Yes, sir.

15 The lot is seven and a half feet wide.
16 The bulk of the main building is 57 feet deep. It
17 is four stories above the design base flood
18 elevation.

19 The first floor is nothing but storage,
20 maybe concrete block walls, flood vents before and
21 after to let the water go through.

22 The stoop is the same as it was
23 originally proposed.

24 There is no parking on this property.

25 What used to be the apartment on the

1 first floor is now eliminated, so basically we have
2 an open first floor when you come into the door with
3 a dining room, kitchen and living room in the back,
4 a reduced sized deck that adds five percent to the
5 57 percent of the original building. So instead of
6 having 62 point something originally --

7 MR. MATULE: 62.4.

8 THE WITNESS: -- 62.4, we just now have
9 62 on the nose as far as lot coverage is concerned.

10 The second floor is a master bedroom in
11 the back and another bedroom in the front.

12 The third floor is two more bedrooms,
13 two more bathrooms, and the top floor is a fifth
14 bedroom and a big family room.

15 The roof has a condenser or I mean
16 three condensers and a generator, and that is
17 basically it.

18 MR. MATULE: So in terms of the overall
19 bulk of the building, other than the change in the
20 rear stairway coming down from the second floor to
21 the first floor and the stairs going into the rear
22 yard, nothing else has changed?

23 THE WITNESS: Nothing else has changed
24 except it is now one unit instead of two units.

25 MR. MATULE: And at the time these

1 changes were proposed, you presented revised plans
2 to the zoning officer?

3 THE WITNESS: I did.

4 MR. MATULE: And she issued a revised
5 first certificate of zoning compliance to eliminate
6 the accessory apartment?

7 THE WITNESS: Yes.

8 MR. MATULE: Based on that, you had the
9 revised plans approved by the Building Department?

10 THE WITNESS: Yes.

11 MR. MATULE: And, in fact, that is now
12 what has been built and in place there?

13 THE WITNESS: Correct.

14 MR. GIBBONS: Mr. Matule, could you
15 confirm for me through Mr. McNeight that there was
16 no new relief requested at the time the revised
17 plans were presented?

18 THE WITNESS: I'm sorry. Say that
19 again.

20 MR. GIBBONS: Was there any new relief
21 requested as a result of the changes made to the
22 plan?

23 In other words, were there any waivers
24 or variances or other relief, which might have been
25 necessary, or were you advised of any as such, yes

1 or no?

2 THE WITNESS: No. There was no extra
3 relief asked for.

4 MR. GIBBONS: Okay. I just wanted that
5 on the record.

6 So you were advised that in essence
7 what you proposed to do was not a -- did not
8 necessitate any different relief than that which had
9 been granted previously by the Board?

10 THE WITNESS: Correct.

11 MR. GIBBONS: Go ahead.

12 MR. MATULE: I don't really have any
13 further questions. That is pretty much it.

14 CHAIRMAN AIBEL: Board members,
15 questions for Mr. McNeight?

16 COMMISSIONER BRANCIFORTE: How many
17 square feet was that studio -- that nanny apartment?

18 THE WITNESS: Hum, I am sorry. I am
19 missing that page from this.

20 COMMISSIONER BRANCIFORTE: All right.

21 THE WITNESS: I believe it was 450,
22 something like that, if I remember correctly.

23 MR. MATULE: Let me see if I have it.

24 (Board members confer)

25 THE WITNESS: Studio apartment, 491.

1 COMMISSIONER BRANCIFORTE: So let's
2 just go over this one more time.

3 You were granted a height variance for
4 five stories -- four stories, where only three was
5 allowed?

6 MR. MATULE: We were granted a variance
7 for four stories.

8 COMMISSIONER BRANCIFORTE: Where three
9 is allowed?

10 MR. MATULE: 40 feet, I believe.

11 COMMISSIONER MURPHY: And lot coverage.

12 THE WITNESS: Four stories, yes.

13 COMMISSIONER BRANCIFORTE: Well,
14 according to the resolution --

15 MR. MATULE: I have the resolution --

16 COMMISSIONER BRANCIFORTE: -- it's four
17 where three is allowed, so --

18 MR. GIBBONS: That is what I
19 understand.

20 COMMISSIONER BRANCIFORTE: You know,
21 that's fine. I am done.

22 MR. MATULE: But nothing has changed in
23 the context of the height.

24 (Board members confer)

25 MR. MATULE: Yes. The resolution talks

1 about four stories, where three stories was the
2 maximum permitted, a height variance of 49 feet two
3 inches, where 40 feet is the maximum permitted.

4 COMMISSIONER BRANCIFORTE: But what
5 happens if the reason I voted for the height was
6 because I felt this studio apartment was necessary?

7 I mean, what do we do then?

8 MR. MATULE: Well, under the current
9 zoning ordinance, we could build this building as of
10 right, so I suppose if the Board doesn't ratify
11 this, besides all of the other legal avenues
12 available to the applicant, he could go file with
13 the zoning officer to build a 40 foot high,
14 four-story one-family house, since we don't limit
15 the number of stories any more, and you are allowed
16 to build 40 feet above the design flood elevation.

17 CHAIRMAN AIBEL: Okay.

18 MR. GIBBONS: Any questions?

19 COMMISSIONER GRANA: I have a question.

20 So maybe, Mr. McNeight, maybe you can
21 testify to this.

22 The building as constructed was -- the
23 application resulted in a variance for height for
24 stories at the time, and we know that has changed,
25 at that time stories and for lot coverage.

1 And you testified that the building was
2 built to the height that was approved?

3 THE WITNESS: Yes, it was.

4 COMMISSIONER GRANA: The stories that
5 were approved?

6 THE WITNESS: Correct.

7 COMMISSIONER GRANA: And the actual
8 only change to the mass of the structure is that the
9 lot coverage has been slightly reduced?

10 THE WITNESS: Correct.

11 COMMISSIONER GRANA: Thank you.

12 CHAIRMAN AIBEL: Anything else, Board
13 members, or professionals?

14 Okay. Let me open it up to the public,
15 questions for Mr. McNeight.

16 Please come forward.

17 State your name and address for the
18 record.

19 MS. HEALEY: Leah Healey, 806 Park
20 Avenue.

21 Mr. McNeight, how long have you worked
22 in Hoboken as an architect?

23 THE WITNESS: 30 years.

24 MS. HEALEY: How many times have you
25 appeared before the Zoning Board in that time?

1 THE WITNESS: I don't know the exact
2 number.

3 MS. HEALEY: A hundred?

4 MR. MATULE: What is the relevance?

5 He has been accepted as an expert
6 witness by the Board.

7 MR. GIBBONS: I am sorry. I was --

8 MR. MATULE: I am asking what the
9 relevance of going through Mr. McNeight's history as
10 an architect before this Board relative to the fact
11 that he has been accepted as an expert witness by
12 the Board.

13 MR. GIBBONS: Well, if it is a fact
14 question that he could answer readily, I don't see
15 any reason why there is a problem.

16 CHAIRMAN AIBEL: He doesn't know --

17 MR. MATULE: I still don't know what
18 the relevancy is, so I will maintain my objection.

19 MR. GIBBONS: I think it goes to the
20 experience of a professional doing business in the
21 city.

22 MR. MATULE: Move on.

23 My objection is noted.

24 MR. GIBBONS: Your objection is noted.
25 Overruled.

1 MS. HEALEY: You testified about the
2 new bottom floor being a flood -- instead of an
3 apartment, correct, a flood area instead of the
4 apartment?

5 THE WITNESS: Yes, the ground level.

6 MR. MATULE: Let's define "bottom
7 floor."

8 MS. HEALEY: The first floor of the
9 building -- the building that -- the floor that used
10 to be the nanny apartment, I guess is now a --

11 MR. MATULE: Okay.

12 MS. HEALEY: -- a flood zone area.

13 THE WITNESS: No. You misinterpreted
14 what I said.

15 MS. HEALEY: Okay. What is the first
16 floor then?

17 THE WITNESS: The first floor, the
18 ground floor at grade --

19 MS. HEALEY: Right. The ground floor
20 at grade --

21 THE WITNESS: -- is just a storage
22 area.

23 MS. HEALEY: So it is not habitable?

24 THE WITNESS: No, and it never was. It
25 was exactly the same when it was a two-family house.

1 MS. HEALEY: So where was the nanny
2 apartment located?

3 THE WITNESS: On the first floor, one
4 level up from that, at the top of the stairs.

5 MS. HEALEY: Okay.

6 Did you put all of the drawings --
7 prepare all of the drawings that were submitted to
8 the zoning officer?

9 THE WITNESS: Yes.

10 MS. HEALEY: And did you personally
11 deliver those drawings to her?

12 THE WITNESS: I don't remember.

13 MS. HEALEY: Did you have any
14 conversations with her when you delivered those
15 drawings to her?

16 THE WITNESS: I don't recall.

17 MS. HEALEY: Did you seek the advice of
18 Mr. Matule when you put these drawings in?

19 THE WITNESS: I did not.

20 MS. HEALEY: Did you have any
21 discussions with the zoning officer about the need
22 to comply with a prior zoning approval?

23 THE WITNESS: No.

24 MS. HEALEY: Were you aware of the
25 prior zoning approval?

1 THE WITNESS: Yes, I was. I was the
2 architect for it.

3 MS. HEALEY: So you testified before
4 the Board for that approval?

5 THE WITNESS: Yes, I did.

6 MS. HEALEY: So when you submitted
7 these plans, you were aware of the Zoning Board
8 approval?

9 THE WITNESS: Yes.

10 MR. GIBBONS: Ms. Healey, I am just
11 going --

12 MS. HEALEY: Is there a reason why --

13 MR. GIBBONS: -- Ms. Healey, I'm going
14 to interrupt you.

15 MS. HEALEY: Yeah.

16 MR. GIBBONS: I think to some degree
17 the points that are being made are maybe mooted,
18 because the reality is the application is back here,
19 so I ask you what the relevancy of the questioning
20 is.

21 I am not objecting. I want you to put
22 it on the record.

23 MS. HEALEY: Yeah.

24 I have a question about whether this
25 Board, if they are saying we are not saying the

1 zoning officer's approval is valid, or we are not
2 saying it is invalidity. It just is what it is.

3 My question is whether or not an
4 applicant can come forward for 15 minutes and
5 testify about changes to a plan like this,
6 considered an amendment.

7 The notice that went out was not the
8 same kind of notice that we normally would get for a
9 full hearing, so I am wondering why this applicant
10 gets to come before here, put up one witness about
11 some changes, and that is it.

12 MR. MATULE: Well, I am going to answer
13 that question for the record.

14 We are here because we were asked to
15 come here, and I agreed to come here without
16 prejudice. I don't think we need to be here. I
17 don't think we have to be here. I am trying to
18 cooperate with the Board rather than litigate the
19 issue.

20 If the Board wants the opportunity to
21 take another look at what happened here and ratify
22 it, I am respecting that request, and that is why I
23 am here --

24 MS. HEALEY: I think you --

25 MR. MATULE: -- but my notice for the

1 record says: To discuss and review the amendment
2 authorized by the Zoning Officer to the original
3 approvals granted on June 18th, 2013 to eliminate
4 the accessory nanny apartment in the proposed
5 four-story one-family residential dwelling.

6 Applicant further requests any
7 variances or design waivers which the Board may deem
8 necessary for the elimination of said accessory
9 apartment.

10 The foregoing is without prejudice to
11 any vested rights the applicant has by virtue of its
12 reliance on the amended first certificate of zoning
13 compliance or the final certificate of zoning
14 compliance to construct the said one-family
15 residential dwelling.

16 I would submit that that is a
17 sufficient notice to cover what we are doing here
18 tonight.

19 MR. GIBBONS: I am actually in
20 agreement with that, because under the circumstances
21 the only thing, as I said, the narrow issue before
22 the Board is not the underlying -- it does not have
23 anything to do with the underlying approval. If
24 that was to be attacked, it was to be attacked at a
25 different time under different circumstances. The

1 law is very clear along those lines.

2 If there is an issue with respect to
3 what is before the Board now, which is the change,
4 and I think we already determined that the action
5 taken by the zoning official should not have been
6 taken, and the answer here is for us to review what
7 was taken to determine if it is appropriate.

8 MS. HEALEY: And I guess I would
9 suggest that if we are talking about an amendment,
10 that it appears to have occurred almost two years --
11 the amendment was issued almost two years after this
12 Board's approval. The applicant determined a
13 two-year period that he didn't need to come back
14 here, that two years later the building is up, and
15 we are here talking about amendments, and we are not
16 hearing full testimony about this building, that two
17 years ago this Board made a decision, weighed
18 evidence, and today we just get to sort of take it
19 as an amendment --

20 MR. GIBBONS: Well, this is an
21 amendment to the --

22 MR. MATULE: Well --

23 MR. GIBBONS: -- okay. Go ahead.

24 MS. HEALEY: -- and this gentleman says
25 he's here under duress --

1 MR. GIBBONS: He didn't say that. He
2 said he was asked to appear.

3 MR. MATULE: I said I was here
4 respecting a request of the Board.

5 MS. HEALEY: You didn't have to come.

6 MR. MATULE: The zoning resolution was
7 memorialized on July 16th, 2013.

8 The first certificate of zoning
9 compliance was issued December 6th, 2013. So by my
10 math, that is not two years. That is six months.

11 The amendment was done on October 2014,
12 which is approximately 15 months after the
13 resolution was memorialized, and the reason it was
14 done at that point in time was because the house was
15 under construction and a change was requested, so I
16 think your implication that somehow the applicant
17 sat on his rights for two years and then, all of a
18 sudden, went in and made a change, you know, that is
19 not an accurate restatement of the facts.

20 MR. GIBBONS: I do think that, you
21 know, clearly there is an issue -- you are before
22 this Board on the relief that you are seeking. The
23 underlying issue is that a decision was made about
24 the change that was -- may or -- well, that should
25 not have been made, and it was outside of the

1 jurisdiction of the official who made the decision.

2 Having done that, that does not
3 necessarily -- I don't want to even say
4 "Necessarily" -- it doesn't invalidate the approval
5 below. What it does mean is that the Board has to
6 have an opportunity to review that change and
7 determine if it's okay.

8 The Board has the right to vote either
9 way on it. I mean at the end of the day, you made
10 the comment about the sufficiency of evidence, but
11 if the Board doesn't believe the evidence is
12 sufficient, the Board can vote no, and at that point
13 the applicant will have to pursue its legal
14 remedies.

15 But if the purpose here is to attack
16 the approval below, I don't think that is before the
17 Board.

18 MS. HEALEY: That is not what is before
19 the Board, and I think under the Murray decision
20 that you already issued having this kind of split,
21 the zoning officer does one thing, and the Zoning
22 Board does another is something you are not to
23 tolerate, and I don't believe they should hear an
24 amendment to an application that is two years old by
25 just having the architect come up and testify

1 himself over a couple of changes.

2 MR. GIBBONS: Well, I will let the
3 applicant respond to that.

4 MR. MATULE: That was the amendment.
5 Should he testify about something that
6 wasn't part of the amendment?

7 CHAIRMAN AIBEL: Let me ask, does
8 anybody else have questions for the architect?

9 Please come forward.

10 MR. EVERS: Michael Evers, 252 Second
11 Street.

12 Mr. Chairman, can I ask to correct
13 certain, I am sure, unintentional misstatements of
14 facts made by Mr. Matule with regard to the history
15 of this application?

16 CHAIRMAN AIBEL: I think we can hear
17 that.

18 MR. GIBBONS: Yes.

19 MR. EVERS: Okay. Good.

20 Contrary to what Mr. Matule said, my
21 first attempted remedy regarding this building took
22 place --

23 MR. GIBBONS: Let me just -- are you
24 representing a particular party or are you appearing
25 on your own?

1 MR. EVERS: I am appearing on my own.

2 MR. GIBBONS: As far as I am concerned,
3 I think you are testifying, so let's do it right.

4 MR. EVERS: Okay. Oh, you want to
5 swear me in? Sure.

6 MR. GIBBONS: I most certainly do.
7 Please raise your right hand.

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 and spell your last name for the record.

14 MR. EVERS: Michael Evers, E-v-e-r-s.

15 My address is 252 Second Street,
16 Hoboken, New Jersey 07030.

17 Now, as was communicated in writing to
18 both the zoning officer and the corporation counsel
19 for the City of Hoboken on February 12th, I became
20 aware of the fact that this building, which was
21 supposed to be a two-family building, was not -- I
22 can provide you with documentation, Mr. Matule. It
23 was sent by fax.

24 MR. MATULE: Well, that is fine, but
25 that is not in the record. I don't have a copy of

1 it, and nobody has a copy of it.

2 MR. EVERS: If I may continue --

3 MR. GIBBONS: No, no, no, no, no. I
4 will not stand -- I mean -- there will be no
5 argumentative behavior in this room, and I will not
6 stand for that. I mean, I am here to try to have
7 this resolved. However, it is going to be resolved,
8 we are going to do it the right way.

9 Proceed.

10 MR. EVERS: Sure.

11 So written communications expressing
12 concern and objections to the fact this was now a
13 one-family house instead of a two-family house, not
14 to contend with any of the decisions the Zoning
15 Board made at the time of the June hearing, started
16 on February 12th.

17 The letter that Mr. Matule references
18 that was sent to the City Council after an extended
19 period of inaction by the zoning officer and the
20 corporation counsel, specifically references
21 correspondence from Ms. Luongo, the corporation
22 counsel, dated March 8th.

23 I have never received or questioned,
24 Mr. Matule, for any of that documentation. But I
25 would suggest that the contention that the first

1 time an issue was raised about this was April 30th.
2 If then my memory serves me, and that is in fact the
3 date you in fact gave in your testimony, Mr. Matule
4 is inaccurate.

5 MR. MATULE: Well, just for the record,
6 I wasn't testifying. It was my synopsis of the
7 history of this based on the information that has
8 been provided to me. Be that as it may.

9 MR. EVERS: My point in raising this
10 since the issue of timeliness was raised is that I
11 took action to seek a remedy on this matter,
12 literally two days after I discovered the problem,
13 which was in fact by accident. One of my hobbies is
14 to go to open houses in Hoboken. A lot of people do
15 that. This one had an open house.

16 I walked in. I wanted to see what it
17 looked like, and lo and behold, discovered that the
18 studio apartment that is supposed to be on the first
19 floor as per the zoning resolution was not there.

20 Okay?

21 Now, if I could --

22 CHAIRMAN AIBEL: Questions, please.

23 MR. EVERS: Do I decertify, or I'm
24 under oath still?

25 MR. GIBBONS: You are under oath as to

1 your testimony, and you can ask questions, and I
2 suggest that you go ahead and do it, ask the
3 questions respectfully and appropriately.

4 MR. EVERS: Thank you, sir.

5 I don't think I was being
6 disrespectful.

7 Mr. McNeight, you are aware as the
8 architect that the very first resolution of the
9 zoning resolution passed on June 18th, 2013 says
10 that the applicant shall be bound by all exhibits
11 introduced -- oh, I'm sorry -- there is one other
12 misrepresentation, the fact that Mr. Matule made and
13 it is very important one.

14 Mr. Matule said that he could as of
15 right come back to ask for the -- to build this
16 building.

17 That is not entirely accurate. Because
18 of the adjacency rule as it applies to this
19 building, it is in fact several feet higher than the
20 adjacent building to the south, as well as the
21 building to the north. So it is arguable that the
22 adjacency provision does apply, and that the
23 applicant, unless they plan on shortening the
24 building, would have to apply for a height variance.

25 Back to --

1 MR. GIBBONS: But that would not
2 preclude Mr. Matule from coming in and asking for --
3 are you taking the position that he couldn't come in
4 at all or that he --

5 MR. EVERS: Oh, not at all.

6 I am taking issue with his
7 representation --

8 MR. MATULE: I want to just make a --

9 MR. EVERS: -- that no variances were
10 required.

11 MR. GIBBONS: Go ahead.

12 MR. MATULE: -- I was responding to Mr.
13 Branciforte's question about what the alternatives
14 would be. Obviously I can't have 62 percent lot
15 coverage as of right.

16 I can't have a five foot front yard
17 setback now as of right because that was taken out
18 of the ordinance. As far as I know, the lower
19 building portions of the adjacency rule has also
20 been taken out of the ordinance, but I don't think
21 it is really relevant to this discussion other
22 than --

23 MR. EVERS: Mr. Matule, the adjacency
24 provisions were altered, but they were not
25 eliminated in the new zoning code. I don't know

1 as --

2 MR. MATULE: I didn't say "eliminated."

3 MR. EVERS: I think you did.

4 MR. MATULE: I think the portion that
5 refers to when you are between two lower buildings
6 wasn't --

7 MR. EVERS: No.

8 MR. MATULE: -- the portion --

9 CHAIRMAN AIBEL: You guys can dispute
10 this later in the hallway, but let's get going.

11 MR. EVERS: My point is simply that to
12 make a claim without support is not really
13 legitimate in a hearing like this.

14 Mr. McNeight, the first provision says
15 that the applicant shall be bound by all exhibits
16 introduced, all representations made, and all
17 testimony given before the Board at its meeting on
18 June 18th.

19 Would you agree on that?

20 THE WITNESS: You are reading from it,
21 you know --

22 MR. EVERS: Okay. So unless I am
23 lying, that is true?

24 THE WITNESS: Yes.

25 MR. GIBBONS: The resolution speaks for

1 itself.

2 MR. EVERS: Now, you just testified in
3 this hearing that when going back to the zoning
4 officer to ask for these changes, you did not
5 consult with Mr. Matule. Is that correct?

6 THE WITNESS: Not that I recall. I
7 believe that my client consulted with Mr. Matule and
8 also the zoning office.

9 MR. EVERS: So Mr. Matule was
10 consulted?

11 THE WITNESS: I do not know personally.

12 MR. EVERS: Mr. Matule, were you
13 consulted?

14 MR. MATULE: I don't recall.

15 MR. EVERS: Nobody recalls.

16 The point here is the reason I asked
17 the question, I would think as somebody who has been
18 before Zoning Boards and all of that, that if I had
19 a provision in a resolution that said I was legally
20 bound to do certain things, that I would want to
21 clear it with my attorney before deciding with a
22 zoning officer --

23 MR. MATULE: I'm going to object to
24 this whole thing. I don't know whether it is just
25 comment, argument, questions. But the reality is he

1 went to the zoning officer who is the gatekeeper and
2 cleared it with the zoning officer.

3 If the zoning officer made a mistake,
4 that is not my client's fault, and that's not the
5 architect's fault, so I don't know where we are
6 going with this.

7 MR. GIBBONS: I would like to know
8 where you are going with your questions, because
9 this is not going to be a lengthy --

10 MR. EVERS: I will be happy to answer
11 the question.

12 MR. GIBBONS: No, no. You are asking
13 the questions. I would like to know where you are
14 going with them.

15 MR. EVERS: Okay. But I am not trying
16 to play games --

17 MR. GIBBONS: I'm not either.

18 MR. EVERS: -- but you want me to
19 answer that question, correct?

20 MR. GIBBONS: Go ahead. Ask your
21 questions.

22 MR. EVERS: Oh, okay.

23 The question that comes to my mind is
24 that it is impossible for a disinterested third
25 party to believe that when you have provisions as

1 strict as the ones in this zoning resolution, that
2 you would not consult legal counsel, and that people
3 as experienced as the two of you --

4 MR. GIBBONS: What does that have to do
5 with the application before the Board?

6 MR. EVERS: Can I finish?

7 MR. GIBBONS: No. I am saying to you,
8 what does that have to do with the application
9 before the Board?

10 MR. EVERS: The question here is
11 whether the zoning officer's certificates of
12 compliance are valid. Is that correct?

13 MR. GIBBONS: The question is, it is
14 not involving whether the zoning officer's
15 certificate is invalid or valid.

16 It is a determination made by the Board
17 that the Board is in essence reviewing, yes. I
18 mean, they are reviewing what the zoning officer
19 did. But I keep getting the impression that you are
20 trying to go beyond that, and that is not part of
21 this.

22 MR. EVERS: Can I just phrase it as a
23 statement, and it will save us all time?

24 MR. GIBBONS: Why don't you reask the
25 question differently, yes.

1 MR. EVERS: The question in my mind is
2 whether the applicant and its professionals knew in
3 advance whether the zoning officer had the authority
4 to release them from the legal obligations they
5 assumed under the resolution passed by the Board.

6 MR. GIBBONS: What kind of a question
7 is that? Again, it is a --

8 MR. EVERS: That's the central question
9 of the hearing as far as I can see, sir.

10 MR. GIBBONS: Well, I think the
11 question is, it doesn't go to the facts and law
12 before this Board in terms of adjudicating this
13 application.

14 MR. EVERS: Okay.

15 MR. GIBBONS: You are asking them as to
16 their opinion, that is really not before the Board.

17 MR. EVERS: Well, it does have legal
18 authorities. Okay?

19 In a case called Silkowski versus the
20 Zoning Board of Adjustment in Lavellette, okay, it
21 was ruled that our cases have consistently held that
22 municipal action in the use and control field -- use
23 and control field taken in direct violation of law
24 or without legal authority is void ab initio and has
25 no legal efficacy. All right?

1 And the point is that these gentlemen,
2 I find it hard to believe that these gentlemen
3 thought that a zoning officer could absolve them of
4 the requirements of the --

5 MR. GIBBONS: Okay. This doesn't --
6 again, this doesn't go to the application, and I am
7 going to direct that you not give any further
8 questions in this connection.

9 I also want to say something else. In
10 terms of reliance on a zoning permit, this is not
11 for me to argue, but I know the law fairly well on
12 this, having done this for a few years, that an
13 applicant's good faith reliance on a permit, even
14 issued in error, can be sustainable in numerous
15 instances provided that there was an arguable basis
16 for the decision made or there was no bad faith. I
17 don't think you can necessarily prove either here.

18 Now, if as we have determined, we
19 believe that the zoning official acted outside of
20 her authority, that is fine, but that doesn't mean,
21 that is not a bad faith decision, nor is it
22 necessarily an error.

23 More importantly, nor is it something
24 that the applicant cannot necessarily rely on.

25 See, that is what I am -- you know, I

1 recognize the case you are citing, but I think you
2 missed a few.

3 MR. EVERS: May I continue my questions
4 in other areas?

5 MR. GIBBONS: You can, but we also want
6 to keep this --

7 MR. EVERS: Well, if people stop
8 interrupting me, I would have been done by now.

9 CHAIRMAN AIBEL: No. I don't think you
10 need to say that. Be a little more respectful, Mr.
11 Evers.

12 MR. EVERS: Okay.

13 Mr. McNeight, one of the other
14 provisions of this zoning resolution were that the
15 building that you built was to be -- was to match
16 the height of the building to the south, okay?

17 Now, here is a picture of the building
18 as it now exists. It clearly does not match the
19 height of the building to the south.

20 MR. GIBBONS: Did you take that
21 picture?

22 MR. EVERS: Yes, I did, sir.

23 MR. GIBBONS: All right. Would you
24 hand it to our reporter, so she can mark it into
25 evidence?

1 MR. EVERS: Absolutely. I would be
2 delighted to.

3 MS. CARCONE: Could you give me a
4 sticker over there?

5 MR. EVERS: Sure.

6 I need to show the second thing that's
7 in there, so do you want to --

8 MR. GIBBONS: That's correct.

9 MS. CARCONE: Do you want to do N-1?

10 MR. GIBBONS: N-1.

11 (Photograph marked N-1)

12 MS. CARCONE: Do you want it back,
13 Mike?

14 MR. EVERS: I need it back just to --

15 CHAIRMAN AIBEL: You have to show it to
16 Mr. Matule, please.

17 MR. EVERS: Mr. Matule, do we agree
18 that the height of the building to the south does
19 not match the height of the subject property?

20 MR. MATULE: I can't answer that
21 question.

22 MR. EVERS: Okay.

23 Mr. McNeight, as a trained architect,
24 would you say that the --

25 MR. MATULE: Which is the building to

1 the south, the one with the --

2 MR. EVERS: That is correct. That's
3 the building to the south.

4 MR. MATULE: And where does it say that
5 in the resolution?

6 MR. EVERS: I have to look through --
7 (Board members confer.)

8 MR. EVERS: -- while we are looking
9 through them, Mr. McNeight, we need to introduce the
10 second picture into evidence.

11 And if you want to know what this is
12 about, Counsel, it goes to the point of good faith.

13 Can we introduce this?

14 This is a picture of the drawings
15 presented, I believe, at the June 18th meeting

16 MS. CARCONE: I think this is from a
17 plan that the Board already has.

18 This is it. It looks like it is a copy
19 of the plan that the Board already had.

20 MR. MATULE: Did that come off Sheet
21 Z-2, Mr. Evers?

22 MR. EVERS: I believe so, but I took a
23 photograph of it, so I don't have the --

24 MS. BANYRA: It is Z-2.

25 MR. MATULE: That would be a block

1 frontage diagram of the existing conditions on the
2 block.

3 MR. GIBBONS: The Board already has
4 this in evidence.

5 MR. EVERS: My point is that the
6 reality represented in Exhibit N-2 does not -- is
7 not reflected in this drawing that was presented to
8 the Board supposedly in good faith in its argument
9 for why you should receive height variances and
10 numbers of floors, and this puzzles me.

11 MR. MATULE: Stop. You asked the
12 question --

13 MR. GIBBONS: No, no, no, wait.

14 MR. MATULE: -- now I get to ask a
15 question.

16 Are you saying that this is what the
17 applicant presented to the Board that the state of
18 affairs were going to be when this building was
19 built?

20 MR. EVERS: That is my understanding.

21 COMMISSIONER GRANA: Can I see it, Bob?

22 Thank you.

23 MR. MATULE: The only thing I could say
24 is you got to be kidding.

25 MR. EVERS: Well, if you would like,

1 Mr. Matule, I could refer you to the transcript
2 itself, where the witness discusses the relative
3 heights of the two buildings, and they are, from my
4 reading of it, represents it as being roughly the
5 same height.

6 There was extensive discussion both in
7 the architect's section and in the planner's
8 section.

9 MR. MATULE: But the variance was
10 granted to build a building 49 feet two inches tall,
11 correct?

12 MR. EVERS: I gather, if that is what
13 it says there.

14 MR. MATULE: Yes.

15 MR. EVERS: So how tall is the current
16 building?

17 MR. MATULE: Mr. McNeight?

18 THE WITNESS: The building was built as
19 per the height, 40 feet above the design base flood
20 elevation.

21 MR. EVERS: The reason I asked the
22 questions is that there have been many statements
23 here that don't turn out to be true, at least in my
24 view, and so the question goes to the issue of good
25 faith reliance on this application.

1 We have a very experienced attorney and
2 a very experienced architect who didn't know that
3 the zoning officer couldn't issue those kind of
4 zoning certificates.

5 MR. MATULE: I'm going to object to
6 that characterization.

7 MR. GIBBONS: Okay. Well, you're
8 jumping --

9 (People talking at once.)

10 MR. EVERS: How many --

11 MR. GIBBONS: -- gentlemen, your
12 objection is noted for the record.

13 As far as this is concerned, this is,
14 you are jumping from one thing to another.

15 First of all, unless I am completely
16 out of my mind, I heard you questioning a few
17 moments ago in connection with the previous -- with
18 the underlying approval as to height and some more
19 aspects of it.

20 The Board has made the determination
21 with respect to that application. That matter is
22 closed. There was an opportunity to appeal or
23 whatever. If you were disabused by the decision
24 that was made, an appeal could have been taken and
25 prosecuted, if you wished.

1 It did not. That application is now
2 approved and of record, so overturning that is not
3 before this Board.

4 MR. EVERS: It's not my intention.

5 MR. GIBBONS: Well, that is what it
6 sounds like.

7 MR. EVERS: Well, no, sir. Actually my
8 intention is to object to the fact --

9 MR. GIBBONS: This application is
10 before the Board.

11 MR. EVERS: Yes, I understand that.

12 MR. GIBBONS: Good.

13 MR. EVERS: And the issue here is that
14 I am arguing for bad faith on part of the applicant.
15 The applicant came in here and made a presentation
16 for which they got approvals, which I did not
17 contest, and I certainly know the procedure for
18 doing that.

19 Okay. They got a height variance and
20 at the time a number of floors variance based in no
21 small part on the fact that they were going to build
22 a studio apartment on the first floor of the
23 building.

24 They then took the height variance and
25 took the number of floors variance and built

1 something different, and that sets -- to allow that
2 to happen. It basically says that as long as you
3 get your variances, you can build whatever you want,
4 and that seems like a very dangerous precedent for
5 any Municipal Land Use Board to set -- I was going
6 to say "your Honor," but that is wrong, so I
7 apologize.

8 (Laughter)

9 MR. GIBBONS: You are very kind, but
10 no, I am not in that league. I wish I were.

11 MR. EVERS: The reason I am raising
12 this argument, "sir" - that will work - is that you
13 are suggesting that it is okay if they got a
14 defective certificate of zoning compliance and were
15 acting in good faith.

16 I am arguing that I would ask the
17 Commissioners to seriously consider whether the crew
18 here was acting in good faith.

19 MR. GIBBONS: I just want to note for
20 the record, I am not suggesting anything. I
21 discussed with the Board and advised the Board what
22 the law is and what the prevailing law is, as you
23 did.

24 I think Mr. Matule deserves an
25 opportunity to respond to what has been heard before

1 I say anything, and I would respectfully defer to
2 him.

3 MR. EVERS: Certainly.

4 MR. MATULE: My only comment is, first
5 of all, all of this speculation about who acted in
6 good faith and who didn't act in good faith, my
7 client and the architect, as far as I know, followed
8 the appropriate procedure.

9 They wanted to make an amendment to the
10 plans. They went to the zoning officer. They told
11 her what the amendment was, what they wanted to do.
12 She is the gatekeeper.

13 As I understand it, she said prepare
14 revised plans, submit them to me with a request for
15 an amended first certificate of zoning compliance,
16 and that is what they did. She issued an amended
17 certificate of zoning compliance.

18 They then went about their business and
19 built the house in accordance with that amended
20 certificate of zoning compliance.

21 I would also add just as a general
22 procedural matter in my experience, most zoning
23 officers and most zoning codes, it is pretty much a
24 given that if you have been approved to do
25 something, and you want to do something less within

1 the parameters of those approvals, you generally
2 don't have to come back to the Board.

3 If you get approvals to build a 40 foot
4 building, and now you only want to make it 35 feet
5 high, unless it goes to the heart of the approvals,
6 most towns will be handled at a local level by the
7 zoning officer.

8 So to the contrary of thinking I didn't
9 think the zoning officer had that approval, I
10 certainly thought to say we are going to change a
11 two-family house to a one-family house when there
12 was no variance to have a two-family house because
13 two families is allowed in that zone as of right,
14 didn't rise to the level of having to come back to
15 this Board.

16 MR. GIBBONS: I think it could be
17 argued that what you pointed out under the law,
18 there are proponents that concur with you, but there
19 was a material change made to the plans, and there
20 are many, many Boards, including this one, who when
21 a material change is made to the plans, there is a
22 referral of the matter back to the Board, which
23 should have been done here, and I don't think that
24 is an unreasonable thing to say.

25 For whatever reason, it did not happen.

1 We are addressing it through this proceeding, but
2 certainly it should have come back --

3 MR. MATULE: It apparently happened
4 because we --

5 MR. GIBBONS: -- and if the zoning
6 officer advised you to the contrary, she was
7 mistaken, and she should not have accepted
8 jurisdiction. It should have been referred to us.

9 CHAIRMAN AIBEL: So do you have a
10 question?

11 MR. EVERS: Yes.

12 The last question, can I address it to
13 Mr. Matule?

14 Am I allowed to do that?

15 Bob -- excuse me, Mr. Matule, the
16 zoning resolution specifically said that the
17 applicant agreed to build what it presented before
18 the Board that night, so to then argue --

19 MR. GIBBONS: The resolution speaks for
20 itself.

21 MR. EVERS: -- doesn't it seem contrary
22 to argue then that the zoning officer -- in good
23 faith, the zoning officer could waive all of those
24 requirements?

25 MR. MATULE: Well, first of all, the

1 zoning officer didn't waive all of those
2 requirements --

3 MR. EVERS: Just some.

4 MR. MATULE: -- she waived a
5 requirement relative to the accessory apartment.
6 She is the gatekeeper.

7 MR. EVERS: So you felt that the zoning
8 officer --

9 MR. MATULE: I didn't feel anything. I
10 didn't know anything about this until after the
11 fact, so what I felt or what I believed is really
12 not relevant.

13 I am of the opinion that she had the
14 authority to do what she did. Obviously, the Board
15 is of a different opinion, and that is their
16 prerogative. But be that as it may, my client went
17 through the proper channels and followed the
18 procedure he was directed to follow.

19 MR. EVERS: Last question.

20 Mr. Matule, do you feel that your
21 applicant and architect were negligent in failing to
22 consult?

23 MR. GIBBONS: Wait. No, no, no.
24 Sorry.

25 CHAIRMAN AIBEL: Thank you.

1 Do we have any --

2 MR. EVERS: I will withdraw the
3 question then.

4 MR. GIBBONS: Please. Thank you.

5 CHAIRMAN AIBEL: Anybody else have
6 questions for the architect, not argument, but
7 questions?

8 Seeing none, can I have a motion?

9 COMMISSIONER BRANCIFORTE: Motion to
10 close public portion.

11 COMMISSIONER GRANA: Second.

12 CHAIRMAN AIBEL: All in favor?

13 (All Board members answered in the
14 affirmative.)

15 COMMISSIONER BRANCIFORTE: I just do
16 have one question.

17 When were the changes made to the
18 studio apartment?

19 I mean, at what point did you go in and
20 take out the kitchenette and all of that and make
21 a --

22 MR. MATULE: My understanding is that
23 it was never -- it wasn't built and then taken out.
24 The house was under construction. It was being
25 framed out. A prospective buyer came to look at the

1 house --

2 COMMISSIONER BRANCIFORTE: And says,
3 get rid of the apartment, I don't need it?

4 MR. MATULE: -- said I don't need a
5 nanny apartment. I would rather have the space.

6 COMMISSIONER BRANCIFORTE: Right.
7 Good.

8 MR. MATULE: At that point then this
9 series of events were triggered. It is not like it
10 was there and then it was taken out. That never
11 happened.

12 MR. GIBBONS: Thank you.

13 CHAIRMAN AIBEL: Do you have any more
14 witnesses, Mr. Matule?

15 MR. MATULE: Pardon?

16 CHAIRMAN AIBEL: Do you have any more
17 witnesses, Mr. Matule?

18 MR. MATULE: I don't have any other
19 witnesses. I have the builder here, if the Board
20 has any questions of him, but I think we have
21 addressed them.

22 CHAIRMAN AIBEL: Board members, do you
23 need to hear anything else?

24 COMMISSIONER GRANA: No.

25 CHAIRMAN AIBEL: Okay.

1 So let me open it up to the public for
2 comment.

3 Anybody in the public wish to comment?

4 Ms. Healey?

5 MS. HEALEY: Leah Healey, 806 Park.

6 I am very troubled by this application
7 amendment as it has been characterized because I
8 feel like I am up -- well, certainly here every time
9 Mr. Gibbons is up here --

10 (Laughter)

11 -- as a result of partially a zoning
12 officer who doesn't seem to understand the
13 parameters of her job, and it strikes me as quite
14 odd, almost flabbergasted that Mr. McNeight, who I
15 know has been living up the street from me for over
16 30 years, can go in to the, quote, unquote,
17 gatekeeper and decide that because somebody's buying
18 this house and deciding they want a different house
19 than what is on the market, that they get to just
20 make changes to what the Zoning Board did.

21 Now, as far as the gatekeeper is
22 concerned, the gatekeeper originally sent this
23 application to the Zoning Board, so somehow that
24 gatekeeper didn't understand the second time it came
25 to her, that it wasn't supposed to be kept in her

1 gate.

2 So I don't buy that, and I didn't hear
3 any testimony tonight from either the lawyer or the
4 architect. It's silence or I do not recall the
5 specifics of this application and where it came from
6 and whether or not it was in good faith, so I don't
7 think the Board can presume it was done in good
8 faith, and the idea that something less is okay is a
9 very dangerous precedent to set.

10 I can think of many circumstances where
11 less isn't okay. So the idea that Mr. Matule should
12 just be able to go in and revise things because it
13 is less than what it was is not appropriate, and
14 that can really go awry when we are talking about
15 lot coverage, and we had that problem in this town,
16 particularly where the donut is affected, where, oh,
17 let's just do it a little bit less, but not bring it
18 into conformity when we are dealing with
19 nonconforming structures.

20 I have been up here before and was told
21 that the zoning officer would get a letter from this
22 Board, the city administration, and I wondered
23 whether or not that letter has gone out because
24 either it didn't go out, or it didn't go out strong
25 enough because this activity is still continuing.

1 I think this violates the Murray
2 decision also. This Board spent an awful lot of
3 time saying that the zoning officer doesn't get to
4 give us part of it and keep part of it, so I think
5 you have to look very closely at that.

6 And the last thing I would say is that
7 this is an amendment to an application, that is the
8 way I look at it, and the notice that went out
9 originally, there is a different house, there is a
10 different structure there, it is a different
11 occupancy there, and I don't think this Board should
12 take applications that, you know, were
13 inappropriately amended by the zoning officer and
14 just say, well, we will just take it in the
15 condition that it was after she acted on it, and we
16 will bless it afterwards.

17 I think what this Board should do with
18 this application is deny it and send it back to the
19 end of the line. There is plenty of other people
20 who are doing this the right way, and they should be
21 moving through this Board procedure, back to the end
22 of line, renotice, new application, new proofs.

23 And I am sorry that they built their
24 house without the appropriate approvals, but I
25 certainly think there is a question here as to

1 whether or not this gatekeeper was acting within her
2 authority and her actions were void or not, so there
3 couldn't be good faith reliance on a void action.

4 And finally, I think that another thing
5 this Board could consider as a result of this
6 continuing problem that we are having with
7 jurisdiction, I read your local zoning ordinance
8 power as having the ability of this Board to file a
9 complaint with the zoning officer, Chapter 196,
10 quite apart from any complaints that might be filed
11 by a member of the public in Superior Court or
12 whatever else.

13 I see that specifically in the statute,
14 and I say that that is appropriate in this instance,
15 where this Board acted, it had very specific
16 recommendations, and if such a complaint isn't filed
17 in this instance, you might as well just assume that
18 whenever you adopt a resolution, it may or may not
19 be complied with because it doesn't seem as if you
20 have a zoning officer who is willing to enforce your
21 resolution.

22 Quite apart from whether I want to
23 stand up here and make a problem or file a
24 complaint, because frankly, I don't want to file a
25 complaint. That is not my job, but it is your job,

1 as I read under Chapter 196, to file a complaint
2 against the zoning officer when your powers are
3 being violated, so I would suggest that you consider
4 that.

5 Thank you.

6 CHAIRMAN AIBEL: Thank you.

7 Anybody else have comments?

8 Please come forward.

9 MS. ONDREJKA: My first name is Mary,
10 last name, O-n-d-r-e-j-k-a.

11 I live at 159 Ninth Street.

12 This is the fourth instance that the,
13 quote, unquote, gatekeeper is the main topic. That
14 is kind of a creepy name, but the name is Ann
15 Holtzman, and I believe that after four times
16 hearing four different cases, that there is a
17 problem with our zoning officer.

18 I don't know if she is qualified for
19 it, but if you as a Board are relying on her to give
20 permits for demolition, doing what she wants to do,
21 that is a problem because this is going to happen if
22 it's not stopped at 530 Bloomfield. The house is
23 for sale. It is not in the flood zone. It is four
24 stories, and they told -- the zoning officer told
25 the prospective buyer, he could go up another floor,

1 which would now put that at five stories on the
2 block between Fifth and Sixth, which is not even in
3 the flood plain.

4 Now, if our zoning officer is giving
5 out that kind of information, and I am seeing here
6 as well as two other cases where she granted permits
7 for demolition, there is a problem.

8 Now, I don't know her background, but I
9 know it is not in zoning, and I would say get rid of
10 her because I can't trust her and nobody in this
11 room or anybody that knows what she is doing can
12 trust her. I have no problem saying this because I
13 have seen it. It is a problem --

14 MR. GIBBONS: I think I want to --

15 MS. ONDREJKA: -- now I can't do
16 anything about it obviously, because I am just a
17 peon. I am just one of the public, but I am seeing
18 what is happening in this office, in this -- up here
19 what she is granting --

20 CHAIRMAN AIBEL: No. But, you're, in
21 my humble estimation, you're before the wrong forum.
22 We are not her manager. As you are well aware, we
23 are a volunteer Board --

24 MS. ONDREJKA: Oh, I can tell the mayor
25 to fire her?

1 CHAIRMAN AIBEL: You can tell the mayor
2 to fire her.

3 UNIDENTIFIED VOICE: She won't.

4 MS. ONDREJKA: She won't.

5 CHAIRMAN AIBEL: No. This is not the
6 forum for us to discuss that.

7 MS. ONDREJKA: Well, How can you trust
8 her?

9 CHAIRMAN AIBEL: It's not a matter of
10 trust.

11 MS. ONDREJKA: You heard Mr. Matule say
12 "the gatekeeper," as though she was some woman of
13 power.

14 CHAIRMAN AIBEL: There are legal
15 remedies, and we are not her manager. We can't
16 discipline her. We can't sanction her, and we're
17 not here tonight to do that.

18 MS. ONDREJKA: I understand that, but
19 I'm putting it on the record --

20 THE REPORTER: Wait a second.

21 Only person can talk at a time.

22 CHAIRMAN AIBEL: You've done it, and
23 maybe other people in the room are frustrated as
24 well, maybe some of us sitting up here, but that is
25 not the purpose of this forum this evening.

1 So thank you for your comments. They
2 are understood, and they are on the record. I think
3 we really need to hear if there are any other
4 comments --

5 MS. ONDREJKA: I'm just saying, this
6 won't be the last time that her name will come up.
7 I may not say it, but there will be other
8 situations.

9 Thank you.

10 CHAIRMAN AIBEL: I understand.

11 Thank you.

12 Anybody else?

13 Please come forward.

14 MS. FALLICK: Good evening.

15 Cheryl, C-h-e-r-y-l, last name Fallick,
16 F, as in Frank, -a-l-l-i-c-k.

17 Do you need my address?

18 MR. GIBBONS: Yes.

19 MS. FALLICK: 204 Third Street.

20 I -- not that I don't completely concur
21 with the person that spoke just before me, but since
22 that is for some place else, I am stepping forward
23 to support what the person before her, Leah Healey,
24 said.

25 I think I understand the situation

1 here, but I am also very concerned that something
2 can pass, and then it comes back as an amendment,
3 and whatever it is, good faith, bad faith, whatever,
4 I believe that there should be some ramifications of
5 some sort, that is a ramification, start at the
6 beginning.

7 I heard Mike Evers say that he was at a
8 open house, and then I heard later the attorney say
9 that they had a buyer, and that is how this
10 happened.

11 So I guess maybe the deal fell through,
12 I don't know. That is not the point.

13 But, you know, having experienced some
14 things that didn't come this far, I am concerned
15 about the protocol, and I -- if you have no say
16 because you have nothing to do with personnel
17 matters, there still has to be something that
18 happens at this level, and that to me sounds like a
19 reasonable -- I mean, the two floors, the two units
20 may have been important to this Zoning Board, and it
21 is not what happened.

22 So that is where I am going with this.
23 I think it is in line with everything that is here,
24 start from scratch.

25 CHAIRMAN AIBEL: Thank you.

1 Anybody else wish to comment?

2 Please come forward.

3 MR. EVERS: I will be short.

4 CHAIRMAN AIBEL: Please.

5 MR. EVERS: Michael Evers, 252 Second
6 Street.

7 Everybody emphasized what Cheryl just
8 said, which is you had another contradictory set of
9 facts presented here. An open house existed here,
10 and yet supposedly there was a buyer that caused
11 them to change this building.

12 But this issue here that you have has
13 not much to do with this particular building, which
14 even though I think it is too tall, is attractively
15 built.

16 What it has to do with is whether the
17 rule of law as expressed by this Municipal Land Use
18 Board, which is a quasi-judicial body, means
19 anything, or whether it is just something that
20 people can gain to do what they want with in order
21 to increase their profits. There's nothing wrong
22 with making profits, but in my opinion, that is what
23 drives the whole thing.

24 They are doing this because they wish
25 to make more money, all right?

1 You have -- you passed a resolution
2 that was very specific. It had all sorts of
3 provisions. For you to rule in the favor of this
4 applicant's whatever -- it is not exactly clear what
5 is at issue here, but to release them from the
6 obligations to honor their agreements with you,
7 unless they are prepared to return the aspects of
8 the building that required a variance, okay, that is
9 the essential issue.

10 If you do not require them to do that,
11 either build a two-family property, they can modify
12 it without even shortening it, or conversely go
13 through the entire application process again, then
14 you are sending a signal that none of the
15 resolutions that you passed really matter because if
16 somebody can come up here and pretend that they
17 can't remember, and believe it or not, a very
18 experienced developer and a very experienced
19 architect never bothered to talk to their very
20 experienced attorney about whether they could be
21 released from the these legal items.

22 If you really believe that that is what
23 went on, then you should release them from their
24 existing obligations under the existing zoning
25 regulation.

1 If you don't believe that they acted in
2 good faith, if you think that there is a reasonable
3 doubt that they are trying to gain the system to
4 increase their profits, then you should deny this or
5 do whatever it is that says you have to build the
6 two-family house.

7 Now, you folks showed it is not easy to
8 do unpleasant things. I am very familiar with it.
9 It is not easy to do the unpleasant.

10 You showed very bright courage recently
11 in an application here, where you required the
12 developer to make restitution for failing to follow
13 a provision of the zoning resolution.

14 I'm referring to -- I don't know the
15 address, the one where you had them replace the
16 brick with authentic looking brick. I would
17 encourage you to do something similar here, because
18 at the end of the day, these folks walk away saying,
19 we made more money by gaining the system. Then you
20 are undermining the Municipal Land Use control,
21 okay?

22 The basis of their argument for the
23 additional floor, which translated into significant
24 additional square footage for that property, was the
25 need for the accessory apartment or the desire for

1 the accessory apartment.

2 Your resolution specifically cites that
3 accessory apartment as one of the reasons that you
4 granted the variances in the first place. So for
5 them to just make it disappear and ask for all of
6 the variances anyway is not a minor matter, and you
7 don't have to use too much imagination to picture
8 the way that sort of thing can cause troubles in
9 town. And if you ever doubt that, then ask yourself
10 when is the last time when you played tennis at the
11 tennis courts over at the Monarch development.

12 (Laughter)

13 Thank you very much.

14 CHAIRMAN AIBEL: Before you sit down,
15 Mr. Evers --

16 MR. EVERS: Want me to find it for you?

17 CHAIRMAN AIBEL: Yes.

18 MR. EVERS: Sure.

19 CHAIRMAN AIBEL: Anybody else?

20 Okay. Seeing no further comments --

21 COMMISSIONER GRANA: Motion to close
22 the public portion.

23 COMMISSIONER MURPHY: Second.

24 COMMISSIONER MC ANUFF: Second.

25 CHAIRMAN AIBEL: All in favor?

1 (All Board members answered in the
2 affirmative.)

3 CHAIRMAN AIBEL: Okay.

4 Mr. Evers is finding a provision for
5 me.

6 Mr. Matule?

7 MR. MATULE: Just some closing remarks,
8 if I may.

9 For such a stickler to detail, Mr.
10 Evers is playing fast and loose with the facts.

11 This application was presented from the
12 get-go as a one-family house. The resolution says
13 on Page 4, the applicant testified this building was
14 designed to provide adequate housing for families
15 that are outgrowing their two and three-bedroom
16 condos and would like to have a single-family home
17 in the city.

18 The accessory apartment is not intended
19 to be rented out, but is intended to be used as a
20 nanny or in-law suite.

21 I believe one of the conditions further
22 on specifically says that it can't be rented out or
23 used by third parties.

24 You know, where the profit motive is
25 coming from, I have not heard any testimony about

1 whether the building is worth more or less with or
2 without the nanny apartment in it, and the
3 application was always for a four-story one-family
4 house.

5 The only change in anything in terms of
6 what this Board granted in variances was the lot
7 coverage was slightly reduced. Nothing else has
8 changed. The volume of what was going to be built
9 has been built.

10 So, you know, I don't know what to say.

11 Obviously, I think the whole motivation
12 behind bringing this matter back to the Board and
13 insisting that it be brought back to the Board is
14 quite clear. There are people who are not happy
15 with the zoning officer, would like to see the
16 zoning officer removed, and this is the vehicle to
17 do it.

18 And even though the Chairman has made
19 it very clear, and counsel has made it very clear
20 that this is not the forum, you don't hire the
21 zoning officer, you don't fire the zoning officer,
22 you have little control over the zoning officer.

23 The reality is that the applicant built
24 what he was allowed to build, what was authorized to
25 be built. To somehow imply that we are gaining the

1 system, that we are all very experienced, and we
2 knew that Ann Holtzman didn't have the authority to
3 do this, but somehow we wink, wink, went to her
4 office and talked her into doing it is absurd.

5 She is a very qualified professional.
6 I don't always agree with her decisions. Sometimes
7 we have our differences of opinion, like we have our
8 differences of opinion here, but nevertheless, that
9 is not the issue.

10 The issue here is: Did the applicant
11 build substantially what the Board approved, and
12 does removing this accessory nanny apartment go to
13 the heart of the underlying approvals.

14 As I said at the outset, you know, we
15 came here as a courtesy to the Board because we were
16 asked to. My client has been a builder in this town
17 for many, many years. He has always had a good
18 relationship with the Boards and town officials, and
19 that is why we are here. Again, we are here without
20 prejudice.

21 We would rather have it resolved at
22 this level than in a courtroom, but I would submit
23 that if this went to the point of getting it to the
24 Appellate Division, it would be resolved in a four
25 word opinion, "Are you kidding me?"

1 That is all I have to say.

2 MR. GIBBONS: Thank you.

3 Public portion is closed.

4 MR. EVERS: I wanted to hand you the
5 documents.

6 CHAIRMAN AIBEL: Okay, please.

7 MR. GIBBONS: Okay.

8 MR. EVERS: Here is the resolution, and
9 I found, and you might find them useful, the
10 certificate of zoning compliance, which refers to it
11 as a two-unit house and a section of the transcript
12 from the last hearing where Mr. Matule referred to
13 it as a two-family house.

14 MR. GIBBONS: Well, the transcript is
15 already before the Board.

16 MR. MATULE: Why don't you read what
17 the zoning resolution says?

18 (Board members all talking at once.)

19 MR. GIBBONS: The resolution and all of
20 those were before the Board already.

21 MR. EVERS: Well, it refers to many --
22 but how do I --

23 CHAIRMAN AIBEL: Could you just for the
24 record tell me what provision I am supposed to look
25 at in the resolution?

1 MR. EVERS: Oh, sure.

2 Page 7, paragraph 19.

3 CHAIRMAN AIBEL: Thank you.

4 COMMISSIONER GRANA: Page 7, paragraph
5 19.

6 (Board members confer.)

7 CHAIRMAN AIBEL: All right.

8 I am going to raise with counsel a
9 procedural issue as well.

10 The city Board members who heard the
11 first application were Mr. Branciforte and Mr.
12 Aibel.

13 Who is entitled or who should be voting
14 on this application?

15 MR. GIBBONS: In my opinion, those two
16 because although I understand that other --
17 everybody had an opportunity to read the record from
18 the previous case, if you needed to do it, we could
19 do it that way, but I think it would be better if we
20 had those who voted on the previous application vote
21 on the amendment.

22 CHAIRMAN AIBEL: I guess it would be my
23 view, though, that the --

24 COMMISSIONER MURPHY: Can we just all
25 discuss it?

1 CHAIRMAN AIBEL: -- it would be my view
2 that the comments and opinions of the other
3 Commissioners would be relevant.

4 MR. GIBBONS: Well, at the end of the
5 day, at the end of the day, yes, I mean, they can do
6 it.

7 But I mean, if you want to have them
8 register -- let's put it this way: At the end the
9 day, if we ever were in a close call, close
10 situation, I think a Court, and I hate to put it in
11 those terms, but I think the Court would probably
12 look to those who voted before and then those who
13 voted later, or are voting at this time -- okay.
14 Go ahead.

15 COMMISSIONER GRANA: Yeah. But I think
16 what Chairman Aibel is suggesting that perhaps as
17 Mr. Branciforte and Mr. Aibel do vote, but that the
18 deliberations of the whole Board should be heard.

19 Is that correct?

20 CHAIRMAN AIBEL: That is correct.

21 MR. GIBBONS: I think that is
22 acceptable.

23 COMMISSIONER GRANA: Mr. Matule?

24 CHAIRMAN AIBEL: Let me open it up to
25 the Board.

1 Anybody wish to comment?

2 COMMISSIONER MURPHY: Well, I will
3 start.

4 CHAIRMAN AIBEL: Go on, Diane.

5 COMMISSIONER MURPHY: So when I read
6 the transcript, what I really took away from this
7 was that the accessory apartment was being granted.
8 That it was something that the Board was okay with,
9 and with that, the other variances were made, the
10 height, the stories, and the depth of the building,
11 even though they were moving it back, there was a
12 lot of discussion about the building being a little
13 shorter, and the developer really didn't want to do
14 that.

15 So I think that it is important that we
16 should have seen this to make the decision whether
17 the building should be built the way it was built or
18 not.

19 And just for the record, I am just
20 going to say that I have been on this Board for a
21 year and a half now, and I am in agreement with some
22 of our public that this has just been happening way
23 too much, and I feel that, you know if I am going to
24 give all of this time and effort on to this Board
25 and feel that decisions that we make are not

1 necessarily going to be followed, then, you know,
2 why are we doing this?

3 So I am just -- that is what I have to
4 say for now.

5 CHAIRMAN AIBEL: Thank you.

6 Anybody else?

7 COMMISSIONER GRANA: I --

8 CHAIRMAN AIBEL: That's all right, only
9 if you want to.

10 COMMISSIONER GRANA: -- I have a few
11 comments.

12 You know, I did read through all of the
13 resolutions, and I understand the component of the
14 nanny apartment. It was certainly not the only
15 element deliberated with this application.

16 It is hard -- it is hard to say
17 whether, you know, John and Jim, you will have to
18 consider it, whether it was an essential or a
19 nice-to-have.

20 I will say that based on the testimony
21 we just heard from Mr. McNeight, that nothing about
22 the essential mass of the structure has been
23 significantly changed.

24 I don't -- we started this with saying
25 we weren't going to comment on the zoning officer,

1 but we heard a lot of comments about the zoning
2 officer. All I will say is simply that there are
3 concerns, maybe grievances. If they need to be
4 heard, they can and should be heard. This is not
5 the body for the grievances to be heard. That may
6 not be fully understood.

7 That being said, whether that decision
8 was correct or not, I don't believe as you folks are
9 considering that, that we should be taking the
10 position of punishing the applicant. That is just
11 my view.

12 The applicant took the opinion of the
13 Zoning Board, received the certificate and proceeded
14 with construction as approved. That is just my
15 point of view.

16 I think if there are issues related to
17 the zoning officer, they may need to be addressed.
18 I am not sure that the applicant on this particular
19 application is that dependent upon that issue
20 because I don't see a significant material change to
21 the structure.

22 Thank you.

23 CHAIRMAN AIBEL: Thanks.

24 COMMISSIONER MC ANUFF: I will say my
25 comments, and I'll be brief.

1 During the statements from the public
2 portion of the hearing, I didn't hear anything that
3 said that the change that was made is detrimental to
4 anything.

5 It seemed to be really the issue is
6 with the zoning officer, and as Commissioner Grana
7 said, I don't think it is fair in this case to
8 penalize the applicant for something that they have
9 nothing to do with.

10 CHAIRMAN AIBEL: Okay.

11 So I will ask one last procedural
12 question before Mr. Branciforte speaks.

13 Do we flip a coin on a tie breaker?

14 COMMISSIONER BRANCIFORTE: Or do we
15 wait -- or do we wait for --

16 MR. GIBBONS: A tie is a denial.

17 CHAIRMAN AIBEL: Thank you.

18 COMMISSIONER BRANCIFORTE: Okay.

19 MR. GIBBONS: A tie is a denial.

20 CHAIRMAN AIBEL: Do you want to
21 comment?

22 MR. GIBBONS: But I would say again to
23 the Board, I just want to offer it, again, your vote
24 is on the application. The vote is not on some of
25 the other items, which have been brought before the

1 Board, and it is important not to lose sight of
2 that, and I think you recall in a recent proceeding
3 I said the same thing, so we need to be consistent
4 here.

5 COMMISSIONER BRANCIFORTE: Okay.

6 So in my discussion, if I do go into
7 that area, would you please let me know?

8 MR. GIBBONS: Oh, of course. No, no.
9 You should feel free to discuss what you believe is
10 appropriate, but I want to make sure that the Board
11 understands that when the rubber hits the road, they
12 are voting on the application before them, not
13 anything else.

14 COMMISSIONER BRANCIFORTE: Okay.

15 You know, memory is a strange thing. I
16 remember one thing, and then I read the transcript,
17 and then it comes back that I remember -- and I said
18 something else, but I do remember as best as I can
19 remember, you know, I read the transcript, and I was
20 clearly against this nanny apartment from the
21 get-go.

22 I thought there was absolutely no
23 reason to add a 500 square foot apartment to this
24 building. In the transcript I say straight out,
25 lose the apartment and you can lose some lot

1 coverage, maybe you could even lose some height of
2 the building, and the owner said no.

3 I said, you know, it is quite a luxury
4 to have this, and I felt it was really maybe
5 imposing on the light and air of the neighbors for
6 the sake of a live-in nanny apartment.

7 And the owner/developer said, no, you
8 know, we had to get rid of our nanny because we
9 didn't have enough space in our house, and it is in
10 the transcript. I mean, I could read it verbatim,
11 but I won't.

12 And, you know, I thought to myself,
13 okay, so if you just lose the apartment, 500 square
14 feet of the apartment, and fold it into the rest of
15 the one-family house, you could lose 500 square feet
16 on the roof, maybe lose some height, set back the
17 top story, or something, and they said no, we need
18 the apartment. That is what it is.

19 Now, all of a sudden, it's, well, I
20 guess we don't need the apartment after all, and now
21 we are stuck with these variances for lot coverage
22 and everything else.

23 I am very peeved frankly. I'm very
24 peeved. I feel like, you know, you know for this to
25 come back now, I don't know. I just feel like we

1 are spending a lot of time reviewing old cases
2 lately.

3 Anyway, I don't know what our recourse
4 is anyway, you know, I don't know what our recourse
5 is here. We say -- I mean, what is the motion going
6 to be?

7 How would the motion be stated and what
8 are we voting on exactly?

9 MR. GIBBONS: Well, in essence, the
10 motion would be to -- I guess the cleanest way is to
11 say this is to ratify or approve not presumptuously,
12 but in essence after the fact the determination made
13 by the zoning officer with respect to the amendment,
14 and that is essentially -- that would be your
15 motion.

16 A resolution of approval, if it were to
17 be drafted, might indicate some of the factual
18 background that took place and why it ended up
19 before the Board, but at the end of the day you are
20 voting on whether you agree that this amendment was
21 appropriate, and that had it been before you, that
22 you would have approved it in essence.

23 I don't dispute, and I don't dispute
24 that this was -- this is another instance where an
25 application was taken out of the hands of the Board,

1 and clearly that is not acceptable, and it is
2 something that is going to have to be -- and we are
3 addressing. It is something that I think could be
4 the comments that nothing is being done are not --
5 are not accurate.

6 But I just think it is important to
7 understand the Board is clearly concerned about this
8 and is doing what it can do to address the issue,
9 and that is one of the reasons I think, Mr.
10 Chairman, you had called -- asked me to help out.

11 So, but, again, the motion itself would
12 be simply to -- the narrow question as to whether
13 that amendment was acceptable or not.

14 CHAIRMAN AIBEL: Okay. So I am going
15 to make a couple of comments, and then we will see
16 where we end up.

17 I don't think there could be any doubt
18 that nobody here is happy with the way this came
19 back to us. Nobody is happy with the process, the
20 procedure.

21 Everybody who commented was heard loud
22 and clear. It is not the first time, and we are not
23 happy about it.

24 I am hopeful that through this series
25 of hearings, the applicant, developer, community and

1 the public will be more sensitive, and, you know,
2 we'll hope that we won't be hearing these types of
3 things. We will be hearing positive applications.

4 That having been said, you know, we
5 have implicitly found that the zoning officer
6 exceeded her authority. We are taking that as an
7 assumption. We are hearing the merits.

8 On the merits, I was one of the couple
9 of people who actually sat through the hearing. I
10 will say that the nanny-friendly house was really
11 just another way of saying in my mind that it was a
12 family-friendly proposal that was to be encouraged
13 under the master plan, so my view is I thought
14 frankly an accessory nanny apartment was quite great
15 because it forwarded that purpose.

16 I think it is essentially the same
17 purpose as granting variances that would have
18 allowed family-friendly housing that we have
19 consistently now been approving, and I am not
20 suggesting that won't stop at some point to develop
21 the community, but the fact of the matter is we have
22 responded in the past to family-friendly pleas.

23 We can't find bad faith on the
24 application, so certainly there is no reason for us
25 to, you know, basically punish the developer and

1 send him back to the end of the line.

2 That having been said, I wish we
3 weren't in the position of having to do things after
4 the fact. I really hope that through public comment
5 to council people and to the appropriate
6 authorities, I know I am seeing some head waving, I
7 am not sure what else you expect a Zoning Board to
8 do. You know, we are up here trying to make our
9 best decisions. They are embodied in resolutions.

10 There is a process for people to look
11 at those resolutions, look at what their neighbors
12 are building, and what the developers are building,
13 and I encourage vigilance.

14 In this particular instance, it did get
15 back to us, so on the one hand, Mr. Evers is maybe
16 not happy that we are, you know, we would kick it
17 out of the ballpark, but we are here responding to a
18 complaint that we heard, and the developer to his
19 credit realized that it was a way to reach a result,
20 and he put it back to the Zoning Board, so here we
21 are.

22 We have a right to say no. Maybe it
23 will be a no, but in the meantime, again, I just
24 encourage everybody to be more vigilant and
25 understand that we are very, very mindful of these

1 issues, and we will do what we can in drafting
2 resolutions going forward to minimize any kind of
3 discretion that might be exercised, but that is a
4 long way of saying time for a vote.

5 COMMISSIONER BRANCIFORTE: Time for a
6 vote. So how --

7 CHAIRMAN AIBEL: I don't think we have
8 anything more to say.

9 COMMISSIONER BRANCIFORTE: Well, we
10 need to make a motion, and I am curious how to word
11 the motion.

12 CHAIRMAN AIBEL: I think Mr. Gibbons
13 said it well. Motion to ratify, approve the
14 plans --

15 MR. GIBBONS: The amendment of the plan
16 as presented by the applicant.

17 COMMISSIONER BRANCIFORTE: So I will
18 make that motion.

19 CHAIRMAN AIBEL: I'll second it.

20 MR. GIBBONS: Subject to our standard
21 conditions of approval. You know, I presume Mr.
22 Galvin does this, too. But I always have a standard
23 set that I apply to every resolution.

24 COMMISSIONER BRANCIFORTE: And those
25 are the only conditions that we are attaching to the

1 motion?

2 MR. GIBBONS: At this moment, the
3 applicant will be bound by all previous
4 recommendations in the resolution, which underlies
5 the approval. So what I would have is a condition
6 in there that would say the applicant will continue
7 to comply with any and all conditions of the under
8 previous approval.

9 COMMISSIONER BRANCIFORTE: Okay. That
10 is my motion.

11 CHAIRMAN AIBEL: I second it.

12 MS. CARCONE: Okay. Mr. Branciforte?

13 COMMISSIONER BRANCIFORTE: Yes.

14 MS. CARCONE: Mr. Aibel?

15 CHAIRMAN AIBEL: Yes.

16 Thank you everybody for your input.

17 We are now going to turn to 118-120

18 Madison.

19 (The matter concluded.)

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C E R T I F I C A T E

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

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

s/Phyllis T. Lewis, CCR, CRCR

 PHYLLIS T. LEWIS, C.C.R. XI01333 C.R.C.R. 30XR15300
 Notary Public of the State of New Jersey
 My commission expires 11/5/2015.
 This transcript was prepared in accordance with
 NJAC 13:43-5.9.

HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN

----- X
SPECIAL MEETING OF THE HOBOKEN :
ZONING BOARD OF ADJUSTMENT OF THE : July 14, 2015
CITY OF HOBOKEN : Tuesday 7 p.m.
----- X

Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

Chairman James Aibel
Commissioner Michael DeFusco
Commissioner Antonio Grana
Commissioner Diane Fitzmyer Murphy
Commissioner John Branciforte
Commissioner Owen McAnuff

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

Eileen Banyra, Planning Consultant

Paul Winters, PE, PP
Acting Board Engineer

Patricia Carcone, Board Secretary

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9 Hoboken, New Jersey 07030
10 (201) 659-0403
11 Attorney for the Applicant.

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1 (Recess taken)

2 CHAIRMAN AIBEL: Okay. We are back on
3 the record. We are going to quickly do --
4 everybody, we're back on the record.

5 Okay. We are going to do a couple
6 resolutions, but, Mr. Matule, do you have --

7 MR. MATULE: I just have a procedural
8 request, Mr. Chairman, on 118-120 Madison.

9 We would like to carry that matter this
10 evening because we don't have a full Board.

11 I don't know, the job is stopped, so I
12 don't know that we need to waive any time. If we
13 have to waive time, I will consent to waive the time
14 until when the Board has to act until we can --
15 what I would like to do is to pick another date
16 tonight and make an announcement.

17 MS. CARCONE: Going into August then,
18 like August 18th --

19 MR. MATULE: August 18th.

20 MS. CARCONE: -- is our regular meeting
21 date in August.

22 CHAIRMAN AIBEL: Grab it.

23 (Laughter)

24 COMMISSIONER BRANCIFORTE: Please don't
25 ask for another meeting in August.

1 MS. CARCONE: Yes. Right now I only
2 have the 18th and 25th, nothing additional in
3 August.

4 MR. GALVIN: Don't look at me. I am
5 not trying to cause problems.

6 MR. MATULE: If I may be so bold, can
7 we carry the meeting to August 18th with no further
8 public notice, since I just noticed for tonight, the
9 first time on?

10 MR. GALVIN: It is up to you guys. The
11 Board has to decide.

12 COMMISSIONER BRANCIFORTE: Should I
13 just make a motion?

14 MR. GALVIN: Yes.

15 COMMISSIONER BRANCIFORTE: Everybody
16 okay with that?

17 COMMISSIONER GRANA: Do we need further
18 notice or --

19 COMMISSIONER BRANCIFORTE: You are
20 saying that the only thing is the building is
21 stopped, right.

22 MR. MATULE: Right. The job is
23 stopped. This is the first time it has been on.

24 I gave notice last week, so I mean, it
25 is not like it is a stale notice.

1 COMMISSIONER BRANCIFORTE: I leave it
2 up to Dennis and Dennis' opinion.

3 MR. GALVIN: I don't think there is a
4 problem. I don't see that there's a problem with
5 that with carrying the notice --

6 COMMISSIONER BRANCIFORTE: Carrying
7 without notice.

8 MR. GALVIN: -- carrying without
9 notice, and in this particular instance.

10 Is anybody here on this case?

11 THE AUDIENCE: Which case is it?

12 MR. GALVIN: 118 Madison.

13 We are going to carry that to August.
14 That's what we're talking about

15 THE AUDIENCE: Is it going to be
16 renoticed?

17 MR. GALVIN: No. That's what we're
18 saying. We are going to tell you tonight what night
19 it is.

20 THE AUDIENCE: There are other people
21 who would be interested in doing it, and couldn't
22 make it. If it is not renoticed, then it is like
23 they're in the dark about it --

24 MR. GALVIN: Well, it is a standard
25 practice that we use all over the state.

1 THE AUDIENCE: I know it is a standard
2 practice, but I am saying --

3 MR. GALVIN: It's the Board's
4 decision. That's okay.

5 Thank you.

6 It is up to you guys. If you feel it
7 is an argument, if you are concerned about it, they
8 will renotice, if you want to renotice.

9 MR. MATULE: If I have to renotice, I
10 will. If the Board is more comfortable with me
11 renoticing --

12 COMMISSIONER BRANCIFORTE: I am not
13 going to make the motion unless I know the Board is
14 comfortable with it.

15 COMMISSIONER MURPHY: I think if
16 somebody is requesting that we notice, that we
17 should renotice, because --

18 MR. GALVIN: I think it is an important
19 case.

20 COMMISSIONER GRANA: I think it is an
21 important case, and I think we should renotice.

22 MR. MATULE: Okay.

23 MR. GALVIN: I am always sympathetic to
24 the fact that it is not the applicant's fault that
25 there are only six members right now, so I think

1 there has to be a balance of fairness. You are here
2 and people know, but maybe it's important enough
3 that you should renote.

4 COMMISSIONER MURPHY: We often don't
5 renote, but this is different I think.

6 CHAIRMAN AIBEL: Mr. Matule is
7 agreeing.

8 MR. MATULE: I concur.

9 MR. GALVIN: Okay. Make a motion.

10 COMMISSIONER GRANA: I make a motion to
11 carry 118-120 Madison with public notice to August
12 18th.

13 COMMISSIONER BRANCIFORTE: Second.

14 MR. GALVIN: Roll call.

15 MS. CARCONE: Commissioner DeFusco?

16 COMMISSIONER DE FUSCO: Yes.

17 MS. CARCONE: Commissioner Grana?

18 COMMISSIONER GRANA: Yes.

19 MS. CARCONE: Commissioner Murphy?

20 COMMISSIONER MURPHY: Yes.

21 MS. CARCONE: Commissioner Branciforte?

22 COMMISSIONER BRANCIFORTE: Yes.

23 MS. CARCONE: Commissioner McAnuff?

24 COMMISSIONER MC ANUFF: Yes.

25 MS. CARCONE: Commissioner Aibel?

1 CHAIRMAN AIBEL: Yes.

2 MR. MATULE: Thank you.

3 MR. GALVIN: Okay.

4 MR. MATULE: You will get a new
5 notice, but it is August 18th.

6 CHAIRMAN AIBEL: Okay. So we are going
7 to do couple of resolutions.

8 MR. GALVIN: The first one is Sprint
9 Spectrum, 631 Washington Street.

10 Ms. Murphy, Mr. McAnuff and Chairman
11 Aibel.

12 Can I have a motion?

13 COMMISSIONER MURPHY: Motion to accept
14 the resolution.

15 COMMISSIONER MC ANUFF: Second.

16 MR. GALVIN: Thank you.

17 Ms. Murphy?

18 COMMISSIONER MURPHY: Yes.

19 MR. GALVIN: Mr. McAnuff?

20 COMMISSIONER MC ANUFF: Yes.

21 MR. GALVIN: Chairman Aibel?

22 CHAIRMAN AIBEL: Yes.

23 MR. GALVIN: The next one is Gallione,
24 356 Third Street. This was decided a little while
25 ago, May 26th, so Mr. DeFusco, Mr. Grana, Ms. Murphy

1 and Chairman Aibel.

2 Do I have a motion?

3 COMMISSIONER GRANA: Motion to approve
4 356 Third Street.

5 MR. GALVIN: Do I have a second?

6 COMMISSIONER MC ANUFF: Second.

7 MR. GALVIN: Thank you.

8 Mr. DeFusco?

9 COMMISSIONER DE FUSCO: Yes.

10 MR. GALVIN: Mr. Grana?

11 COMMISSIONER GRANA: Yes.

12 MR. GALVIN: Ms. Murphy?

13 COMMISSIONER MURPHY: Yes.

14 MR. GALVIN: Chairman Aibel?

15 CHAIRMAN AIBEL: Yeah.

16 MR. GALVIN: All right. Moving on.

17 (Board members confer)

18 (Continue on next page)

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HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN

----- X
 RE: 525 Jackson Street : SPECIAL MEETING
 APPLICANT: 525 Jackson Street :
 Developers, LLC : July 14, 2015
 Minor Site Plan Review :Tuesday 8:30
 p.m. C & D Variances :
 ----- X

Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

Chairman James Aibel
 Commissioner Michael DeFusco
 Commissioner Antonio Grana
 Commissioner Diane Fitzmyer Murphy
 Commissioner John Branciforte
 Commissioner Owen McAnuff

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

Eileen Banyra, Planning Consultant

 Paul Winters, PE,
 Acting Board Engineer

 Patricia Carcone, Board Secretary

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14 Saddle Brook, New Jersey 07663
15 Attorney for Objector

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I N D E X

1

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3 WITNESS PAGE

4

5 JAMES MC NEIGHT 107

6

7 KENNETH OCHAB 147

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10 E X H I B I T S

11

12 EXHIBIT NO. DESCRIPTION PAGE

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14 A-1 Photo Board 149

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1 CHAIRMAN AIBEL: Mr. Matule, 525

2 Jackson.

3 Did we lose Mr. Matule?

4 (Laughter)

5 Okay. Application denied.

6 (Laughter)

7 (Robert C. Matule, Esquire present)

8 MR. MATULE: I apologize.

9 COMMISSIONER GRANA: It is over. He
10 already denied it.

11 (Laughter)

12 MR. MATULE: Did you call 525?

13 I was actually out in the hall talking
14 to the objector's attorney, but we can start.

15 (Board members confer.)

16 Can you give us one minute?

17 (Recess taken)

18 MR. GALVIN: Old zoning, new zoning,
19 could you give us like a one-minute thing on what
20 you're doing with that?

21 MR. MATULE: Sure.

22 CHAIRMAN AIBEL: Okay. Mr. Matule, 525
23 Jackson.

24 MR. MATULE: Good evening, Mr.
25 Chairman, Board members.

1 Robert Matule appearing for the
2 applicant.

3 This is an application with respect to
4 property at 525 Jackson Street.

5 There is currently a nonconforming
6 garage and curb cut on the property. The
7 application is to construct a new five-story, four
8 residential unit building, four over one.

9 I have Mr. McNeight here as the
10 architect, and Mr. Ochab, our planner, so if I
11 could, we will have Mr. McNeight sworn and go right
12 into his testimony.

13 MR. GALVIN: Raise your right hand
14 Do you swear to tell the truth, the
15 whole truth, and nothing but the truth so help you
16 God?

17 MR. MC NEIGHT: I do.

18 J A M E S M C N E I G H T, having been duly sworn,
19 testified as follows:

20 MR. GALVIN: State your full name for
21 the record and spell your last name.

22 THE WITNESS: James McNeight, M-c
23 N-e-i-g-h-t.

24 MR. GALVIN: Mr. Chairman, do we accept
25 Mr. McNeight's credentials?

1 CHAIRMAN AIBEL: Yes.

2 MR. GALVIN: You may now proceed.

3 MR. MATULE: Thank you.

4 Mr. McNeight, would you please describe
5 for the Board and any members of the public who are
6 here the existing site and the surrounding area?

7 If we are going to refer to anything
8 other than the plans you submitted, let me know, and
9 we will mark them as exhibits.

10 THE WITNESS: Okay. I only have the
11 plans that I submitted.

12 The subject site is on the east side of
13 Jackson Street between Fifth and Sixth Streets. It
14 is across the street from some of the projects in
15 the back end of town.

16 The existing lot, you can see from the
17 survey, has a block building all the way, a
18 one-story block building all the way on the back end
19 of the site.

20 As Mr. Matule said, there is an
21 existing curb cut on Jackson Street, and this is
22 used as a parking area for this one-story garage.

23 The proposal is to build a 60 foot deep
24 building that has four units in it. It is picked up
25 above the base flood elevation, and so basically

1 this is the entrance door and the front elevation.
2 This is the garage door. We are proposing a garage
3 on the lowest level of this to utilize the existing
4 curb cut. Above that is four individual units.

5 I will just go through the plans with
6 you here.

7 Z-3 shows two cars parked in the bottom
8 of that first floor. This is the flood plain floor,
9 where we have flood vents, front and back, to let
10 the water run through the building.

11 The only devices downstairs are the
12 sprinkler system and the gas meters.

13 Upstairs all four apartments look like
14 this basically, where they have an interior
15 stairway, three-bedroom apartment, and there is a
16 second means of egress stair in the back of the
17 building that takes the residents down to this
18 garage level and then connects it through the garage
19 back out to the right-of-way.

20 The roof is -- has the fire department
21 access to the roof as required and four condensers
22 or three condensers and one package unit sitting in
23 the center of the roof.

24 MR. MATULE: Now, on your plans you
25 show a white roof.

1 Is the applicant requesting that it be
2 amended?

3 THE WITNESS: Yes. The applicant would
4 like to amend, in addition to the white roof, to
5 make it a green roof.

6 MR. MATULE: A full green roof?

7 THE WITNESS: Correct.

8 MR. MATULE: And you testified that the
9 garage, that there is going to be parking for cars.
10 Is there going to be any car chargers in there?

11 THE WITNESS: Yes. We could amend the
12 application to supply those as well.

13 MR. MATULE: One car charger?

14 THE WITNESS: Yes.

15 MR. MATULE: How about bicycle
16 storage?

17 THE WITNESS: There is plenty of room
18 for bicycle storage as well.

19 MR. MATULE: And there is a rear fire
20 stair and deck on the property?

21 THE WITNESS: Yes, there is.

22 MR. MATULE: Approximately how much lot
23 coverage is that?

24 THE WITNESS: I can't read it. Hum,
25 60 -- the decks are 3.60 -- 3.6 percent for a total

1 of 63.6 percent.

2 MR. MATULE: So the building itself is
3 60 percent, and the deck that gets here it has to
4 get down into the --

5 THE WITNESS: That is the second means
6 of egress to come back down to the right-of-way.

7 MR. MATULE: Obviously the intention is
8 to remove the nonconforming garage at the rear of
9 the property?

10 THE WITNESS: Yes. We are going to
11 have a full landscaped 40 foot backyard with a paved
12 area in the center, fencing, landscaping.

13 MR. MATULE: And if this project is
14 approved, will the applicant have on-site detention?

15 THE WITNESS: Yes.

16 MR. MATULE: To satisfy North Hudson's
17 requirements?

18 THE WITNESS: Correct. It is located
19 underneath the building.

20 MR. MATULE: Did you receive the H2M
21 letter, last revised March 23rd, 2015?

22 THE WITNESS: Yes, I did.

23 MR. MATULE: Any concerns addressing
24 any of the issues raised in that letter?

25 THE WITNESS: Non.

1 MR. MATULE: And what is the finish
2 going to be on the building?

3 THE WITNESS: It has got brick -- let's
4 go to that page.

5 If you look on Z-4, you see the front
6 elevation. It's a combination of brick and aluminum
7 clad face, and then the bottom course has limestone
8 rustification.

9 MR. MATULE: Are you asking for a
10 variance from the facade requirements?

11 THE WITNESS: Yes.

12 We are asking for a variance for
13 masonry because the bay windows can't be made out of
14 masonry because they are projected, so that throws
15 the masonry factor instead of having 25 percent
16 other than masonry material, we have 62 percent
17 because of the aluminum on the front of the
18 building.

19 MR. MATULE: And what is the overall
20 building height above the design flood elevation?

21 THE WITNESS: It is 42 feet eight
22 inches above the design elevation -- I'm sorry --
23 that is above the 12 feet, so it is 16 inches less
24 than that. So it is about -- it should be 40 feet
25 eight inches above the design flood elevation.

1 MR. MATULE: The design flood elevation
2 is 14 or --

3 MR. GALVIN: Eileen's got 41.6.

4 THE WITNESS: Okay.

5 MR. GALVIN: Is that correct?

6 THE WITNESS: It all depends on what
7 the freeboard is. In this kind of a situation the
8 freeboard is 18 inches thick.

9 MR. MATULE: Rather than 12 inches?

10 THE WITNESS: Yes.

11 MR. MATULE: Will there be the usual
12 flood vents and things in the ground floor?

13 THE WITNESS: Yes, front and back on
14 the ground floor.

15 MR. MATULE: So did you say 16 inch
16 freeboard or 19 inch freeboard?

17 THE WITNESS: 18-inch.

18 MR. MATULE: So you are going to be 18
19 inches above elevation 13?

20 THE WITNESS: Correct.

21 MR. MATULE: Okay. So you will be -- I
22 just wanted to confirm we are all on the same page
23 now. We have 40 feet from Elevation 14 on the plan,
24 so we have 40 -- 41 feet or 41 feet six inches?

25 THE WITNESS: 41-6 with -- above 13.

1 MR. MATULE: Okay. And there will be
2 one new street tree?

3 THE WITNESS: Yes, that is correct.

4 MR. MATULE: And as far as the driveway
5 goes, there are pedestrian warning devices?

6 THE WITNESS: Yes. Whenever the door
7 opens, there will be a flashing.

8 MR. MATULE: The typical flashing
9 overhead light?

10 THE WITNESS: Yes.

11 MR. MATULE: If it was the Board's
12 pleasure, would the applicant consider also putting
13 LED strips in the sidewalk or door entry way to warn
14 pedestrians?

15 THE WITNESS: I am sure that wouldn't
16 be a problem.

17 MR. MATULE: Okay.

18 MR. GALVIN: Is that a yes?

19 THE WITNESS: Yes.

20 MR. MATULE: That is a yes.

21 You know, otherwise the building will
22 be all new sprinklers to supply with all the code
23 requirements?

24 THE WITNESS: Correct.

25 MR. MATULE: Okay. That is all of the

1 questions I have of Mr. McNeight.

2 (Board members confer)

3 MR. MATULE: I have no further
4 questions.

5 CHAIRMAN AIBEL: Board members,
6 questions for Mr. McNeight?

7 COMMISSIONER GRANA: Mr. McNeight --

8 THE WITNESS: What's up?

9 COMMISSIONER GRANA: -- hi.

10 You said 12 versus 18 inches, and I
11 didn't quite hear the word. Did you say "rebar" or
12 something different?

13 THE WITNESS: Freeboard.

14 COMMISSIONER GRANA: Oh, freeboard.

15 THE WITNESS: Yes.

16 COMMISSIONER GRANA: All right.

17 There is basically a 2.5 percent
18 variance on the lot coverage, roughly for the second
19 means of egress.

20 Is that second means of egress also
21 used as the word "rear decks"?

22 So I just wanted to be clear what the
23 intended use is. Is it for an exit, or is it for
24 exit and a --

25 THE WITNESS: No. It's for an exit,

1 strictly for the exit. It is not designed for any
2 kind of recreational purpose.

3 COMMISSIONER GRANA: Thank you very
4 much.

5 CHAIRMAN AIBEL: Board members?

6 COMMISSIONER DE FUSCO: So with the
7 recent changes in the zoning ordinance, why couldn't
8 this building fit within the more liberal standards
9 that have been outlined?

10 THE WITNESS: I'm sorry. Give me that
11 question again.

12 COMMISSIONER DE FUSCO: So with the
13 recent changes to the zoning ordinance, that allows
14 40 feet over design flood elevation, I think we are
15 a foot and a half, a little over a foot and a half
16 over that. From a design perspective, what is that
17 foot and a half getting us -- getting you as the
18 designer?

19 THE WITNESS: Basically it is getting
20 us enough room to walk into the building without
21 having a stoop on the front of the building.
22 Because of the flood regulations, stoops that stick
23 out on to the right-of-way during flooding
24 situations, you know, block floating debris and
25 things like that. So the latest design wish list is

1 to eliminate those kinds of large stoops in the
2 flood zone. So basically that is why I picked the
3 building up that extra 18 inches, just so I had
4 enough head room to walk into the building on the
5 first level.

6 COMMISSIONER DE FUSCO: So that 18
7 inches is almost -- it's propping the building up,
8 so you can avoid that protrusion into the public
9 right-of-way?

10 THE WITNESS: Correct. Because when
11 stoops get that high, they have to go up, you know,
12 nine feet or whatever, and they get very large.

13 COMMISSIONER DE FUSCO: And what about
14 the exit stair, that is coming close to what is
15 permitted by ordinance now as well.

16 Is there a possibility you can size
17 that back?

18 What are you getting by the exit stair
19 being just slightly over what is permitted?

20 THE WITNESS: Well, if you drag that
21 exit stair into the 60 foot bulk of the building,
22 you know, the apartments would be obviously smaller.

23 COMMISSIONER DE FUSCO: Okay.

24 MR. MATULE: If I might, Mr. DeFusco,
25 and maybe Ms. Banyra can weigh in on this, my

1 understanding of the ordinance change is that the
2 exit stair is only allowed from the second floor.
3 These go all the way up to the back of the building,
4 so I don't think they would fall under that
5 exception.

6 MS. BANYRA: Yeah. I believe that is
7 correct.

8 COMMISSIONER DE FUSCO: Thanks for
9 clarifying.

10 MR. MATULE: Could they be made
11 smaller?

12 THE WITNESS: No. That is about as
13 tight as you can get.

14 COMMISSIONER DE FUSCO: No. The reason
15 I asked is because this is one of the first
16 applications that I've heard since the recent
17 changes in the zoning ordinance, so I am more
18 interested as a point of edification from an
19 architectural perspective why, you know, so close,
20 but just slightly over.

21 THE WITNESS: Yes.

22 COMMISSIONER DE FUSCO: Thank you very
23 much.

24 COMMISSIONER BRANCIFORTE: You said
25 about the stoop. You said it is a regulation, or is

1 it a recommendation?

2 THE WITNESS: I am just going by what I
3 was told by the zoning officer.

4 (Laughter)

5 I have some new applications that I am
6 trying to fit entirely within the realm of what is
7 allowable, and I had a stoop on the front of this
8 building, and she told me she doesn't want stoops in
9 the flood zone.

10 COMMISSIONER BRANCIFORTE: But this is
11 a problem, because the Zoning Board -- well, I can
12 only speak for myself. I can't speak for the Board.
13 I prefer stoops because they are an important part
14 of the neighborhood.

15 So I don't know if it's a regulation.
16 I think we should look into this. If it is a
17 regulation, like you said it was, or if was a
18 recommendation, so I think that is an important
19 distinction.

20 The other thing, too, about the two-car
21 garage --

22 MR. GALVIN: Let me just say --

23 COMMISSIONER BRANCIFORTE: I'm sorry.

24 MR. GALVIN: -- I have talked to the
25 flood plain administrator about it, and it is not

1 something that is mandated. In that case that we
2 got hung up on the stoop, she was recommending that
3 it not be there, and she had some reasons for it,
4 but it is not a requirement. You can go either way.

5 COMMISSIONER BRANCIFORTE: Okay.

6 You got that, right?

7 THE WITNESS: Uh-huh.

8 COMMISSIONER BRANCIFORTE: Okay. So
9 the other question, too, about the two-car garage --

10 (Board members confer)

11 COMMISSIONER BRANCIFORTE: What's that?

12 In the basement, we show two cars on
13 the --

14 COMMISSIONER GRANA: Show two.

15 COMMISSIONER BRANCIFORTE: Two cars --
16 I can't believe, and you have to convince me of
17 this, that those cars are not going to back out of
18 the garage.

19 THE WITNESS: They are going to back
20 out of the garage or else back in.

21 COMMISSIONER BRANCIFORTE: Okay. So
22 you understand why the Board might have a problem
23 with that and how we are we going to get around
24 this?

25 THE WITNESS: I understand that the

1 Board has a problem with that, yes, but that is the
2 case on a 25 foot wide building. It is not enough
3 room to turn around.

4 COMMISSIONER BRANCIFORTE: I have no
5 other questions right now, Mr. Chair.

6 Thanks.

7 CHAIRMAN AIBEL: Anybody else, Board
8 members?

9 Professionals?

10 MS. BANYRA: John, just to your
11 question, they do a require variance for that.

12 COMMISSIONER BRANCIFORTE: Right.

13 MS. BANYRA: The parking is, you know,
14 in the 25 foot curb cut, even though they have an
15 existing garage, they are moving everything, so they
16 are asking for a variance to allow parking. That is
17 my understanding.

18 COMMISSIONER BRANCIFORTE: Okay.
19 Thanks.

20 COMMISSIONER GRANA: To clarify, a
21 variance needs to be sought to allow parking?

22 MS. BANYRA: Correct, on a 25 foot --

23 COMMISSIONER GRANA: On a 25 foot
24 structure, right. Got it.

25 COMMISSIONER BRANCIFORTE: Not in the

1 zone, just a 25 foot wide lot.

2 COMMISSIONER GRANA: Right. So it's
3 not --

4 COMMISSIONER BRANCIFORTE: It is not
5 the zone, but it's the width of the buildings.

6 COMMISSIONER GRANA: Thank you.
7 Anybody else?

8 MR. WINTERS: I just wanted one
9 clarification. I just wanted to make sure whether I
10 heard this correctly or not.

11 Did you say there was going to be a
12 green roof for this building?

13 THE WITNESS: Yes. The applicant is
14 putting forth the proposal that he would like to put
15 a green roof on it.

16 MR. WINTERS: Okay. Then I would just
17 note for the record, that since it wasn't part of
18 the original plan submission, we need to see that on
19 the revised submission.

20 MR. GALVIN: Yes. What I did was I
21 made a note: The applicant is to provide a full
22 green roof, which is to be approved and reviewed by
23 the Board at the time of the memorialization.

24 So I am assuming we are going to have
25 it ten days in advance of that, so the engineer and

1 planner can take a look at it.

2 MS. BANYRA: Yes.

3 MR. WINTERS: Thank you.

4 CHAIRMAN AIBEL: Okay. Seeing nothing
5 else here, let me open it up to the public.

6 Questions for Mr. McNeight.

7 State your name and address.

8 MS. HEALEY: Leah Healey, 806 Park.

9 What is the exact size of the deck?

10 THE WITNESS: It is 16 feet wide and 8
11 feet deep, and then it has a couple of diagonals to
12 allow the -- because the sliding glass door gives
13 access to that deck.

14 MR. MATULE: Could you estimate the
15 size of those diagonals, in terms of square footage?
16 I think that is the question that Ms. Healey was
17 asking for square footage.

18 THE WITNESS: They're four and a half
19 feet each.

20 MR. MATULE: Square feet, so that would
21 be nine square feet and 128 for the main deck?

22 THE WITNESS: The body of it, correct.

23 MR. MATULE: So it is 137 square feet?

24 THE WITNESS: Correct.

25 MS. HEALEY: Did you say there were

1 sliding doors out to it?

2 THE WITNESS: Yes. There is sliding
3 doors off the living room. That is how you get to
4 the egress stair.

5 MS. HEALEY: Would you say sliding
6 doors off a living room is more conducive to a deck
7 that is going to be used rather than simply one door
8 to exit the staircase?

9 THE WITNESS: The sliding doors is just
10 to provide lots of light into the living area.

11 MS. HEALEY: How wide is the staircase
12 that goes down to the --

13 THE WITNESS: Three feet wide.

14 MS. HEALEY: Do you have to have a
15 16-by-8 foot deck on top of a three-foot-five
16 staircase in order to provide an exit from a
17 building?

18 THE WITNESS: Yes.

19 MS. HEALEY: Why?

20 THE WITNESS: X amount of risers that
21 you need to fit into the staircase, and I am pulling
22 it in four foot six off both sides of the property
23 for privacy issues with neighboring buildings.

24 MS. HEALEY: I am not sure I understand
25 your question.

1 What is the minimum sized top to a
2 staircase that you could have for the staircase to
3 function as an exit?

4 THE WITNESS: What you see in the
5 drawings.

6 MS. HEALEY: The minimum?

7 THE WITNESS: Uh-huh.

8 MS. HEALEY: And are you familiar with
9 the adjoining properties?

10 THE WITNESS: Yes.

11 MS. HEALEY: Do any of them have
12 stoops?

13 THE WITNESS: The one to the left of
14 us -- the one to the right does, yes. I mean the --
15 the southerly neighbor has a stoop.

16 The building to the north has an
17 at-grade entrance.

18 MS. HEALEY: And have you -- are you
19 familiar with this Board's recommendation on other
20 applications to provide a portion of the stoop
21 outside, and then when it gets higher, bring it
22 inside to the building to make it go all the way up
23 to where you need it to go?

24 THE WITNESS: Yes. I have done that on
25 buildings before.

1 MS. HEALEY: And would you be able to
2 do that on this building?

3 THE WITNESS: Yeah, you could do that
4 on this building.

5 MS. HEALEY: On the rear deck and
6 staircase, is it possible to have the percentage of
7 your coverage that you exceed the coverage brought
8 inside of the building?

9 THE WITNESS: It is possible.

10 MS. HEALEY: Thank you.

11 CHAIRMAN AIBEL: Any other questions
12 for the architect?

13 Please come up.

14 MS. ONDREJKA: Mary, last name is
15 O-n-d-r-e-j-k-a.

16 Yes, Mr. McNeight, this is a 25 foot
17 wide building, correct?

18 THE WITNESS: Yes.

19 MS. ONDREJKA: And there is two parking
20 spaces below?

21 THE WITNESS: Correct.

22 MS. ONDREJKA: And there are two
23 structures, one north and one south of this
24 existing?

25 THE WITNESS: Yes.

1 MS. ONDREJKA: When I first moved here,
2 my understanding was that you couldn't put garages
3 below buildings of that width or height. This is
4 four stories I think -- well, really it is going to
5 be five. I thought that was against -- is that what
6 one of the variances is for, so you could put the
7 garages in?

8 THE WITNESS: Yes.

9 MS. ONDREJKA: I thought that this was
10 discouraged because of the neighbors and the fumes
11 and things like that. A perfect one was on
12 Bloomfield Glik's (phonetic) Lane between Ninth and
13 Tenth, and I've never seen them built since.

14 MR. GALVIN: You are asking him a
15 question, right?

16 MS. ONDREJKA: Right. I don't
17 understand.

18 Is this something that is -- I am
19 really stunned that this is being requested, a
20 garage below a 25 foot wide building.

21 Have you been -- has this been
22 happening all along, and I just didn't notice this?

23 THE WITNESS: There are many buildings,
24 25 foot buildings in Hoboken, that have a garage
25 below them --

1 MS. ONDREJKA: So then has the zoning
2 law -- has it always been on the books you could do
3 this with a variance, and the Board never allowed it
4 before?

5 MR. GALVIN: No. I will answer that.

6 MS. ONDREJKA: Please answer that
7 because --

8 MR. GALVIN: There is a longstanding
9 ordinance that says that you can't do that.

10 MS. ONDREJKA: You can't do that.

11 MR. GALVIN: Right. But they are
12 asking for a variance. They can ask for a variance,
13 and it doesn't mean that we're going to grant it.
14 We don't know what we're going to do yet.

15 MS. ONDREJKA: Fair enough.

16 MR. GALVIN: They're making a request.
17 They could ask for ten stories, you know.

18 MS. ONDREJKA: Okay. This is --
19 because I thought this was taboo.

20 I am just asking, because is this
21 something that is now cropping up again?

22 MR. GALVIN: Let me tell you why I
23 think we are going to see a request for it --

24 MS. ONDREJKA: A lot of these?

25 MR. GALVIN: -- and I am seeing it in

1 other communities.

2 The reason is that with the new flood
3 regulations, you have this space that is basically
4 used for storage and for parking.

5 So say if you are in another community
6 somewhere, and you had a larger lot, you would want
7 to make use of that space, so you are going to see a
8 lot of that where people are going to put the garage
9 underneath the house because the only things that
10 can be in that flood space are cars and storage, but
11 let's not get ahead of ourselves. Ask questions of
12 the witness --

13 MS. ONDREJKA: No. I am just really
14 stunned because I remember years ago --

15 MR. GALVIN: You are kind of
16 commenting. The Board --

17 MS. ONDREJKA: Well, I am going by past
18 history.

19 MR. GALVIN: It is a request for
20 relief, which they may or may not get, so let's ask
21 questions. Let's get through the hearing and let's
22 let the Board make a decision.

23 MS. ONDREJKA: Okay. So then the cars
24 would come in frontwards or backwards --

25 MR. GALVIN: He has actually already

1 said that they would go both.

2 MS. ONDREJKA: I wanted to hear it
3 again. Backwards -- oh, both?

4 MR. GALVIN: When they've said it once,
5 they don't have to say it again.

6 MS. ONDREJKA: So then would you have
7 to put like a sign, so people know walking --

8 MR. GALVIN: They have already agreed
9 that they would put in a flashing strip and a claxon
10 over the garage door.

11 MS. ONDREJKA: And my understanding,
12 and this is the last question, is that the zoning
13 officer discourages stoops.

14 THE WITNESS: I'm sorry. The question
15 is?

16 MS. ONDREJKA: The zoning officer
17 discouraged stoops.

18 THE WITNESS: In the flood plain.

19 MS. ONDREJKA: Why?

20 THE WITNESS: My understanding from
21 what she told me is because stoops act as debris
22 catchers under flooding conditions, so anything in
23 the right-of-way that sticks out is going to snag
24 floating debris.

25 MS. ONDREJKA: And you believe

1 everything that she says?

2 (Laughter)

3 MR. GALVIN: Wait a minute. Time out.

4 Time out.

5 MS. ONDREJKA: No. I am just saying --

6 MR. GALVIN: I've already advised --

7 MS. ONDREJKA: -- I never seen -- I
8 never seen that occur, but if that is the case --

9 MR. GALVIN: -- you have to let me
10 talk. You have to let me talk.

11 They got a design. They are showing us
12 a design. They are making a representation.

13 I can go on a limb here and say that he
14 is not far from what the zoning officer's official
15 position is. I have seen it in other files.

16 However, I talked to the zoning
17 official, and it is not a requirement, so if the
18 Board prefers a stoop, we can ask for a stoop, and
19 if that applicant wants to get an approval, they're
20 probably going to make a modification and put the
21 stoop --

22 MS. ONDREJKA: I just never heard that
23 was the reason that they were discouraged because of
24 debris.

25 Thank you.

1 MR. MATULE: If I could, just for the
2 record, when those recommendations were made, they
3 are made by the flood plain administrator, who also
4 happens to be the zoning officer, but they are being
5 made in her capacity --

6 MR. GALVIN: A professional, who has
7 been trained in that area.

8 CHAIRMAN AIBEL: Okay.

9 Any further questions for Mr. McNeight?
10 Counsel?

11 MR. MULDER: William Mulder here on
12 behalf of Fred Rodriguez, who is 527 Jackson, the
13 house next door.

14 We have a couple of concerns.

15 CHAIRMAN AIBEL: We are asking
16 questions now.

17 MR. GALVIN: Questions at this point.

18 MR. MULDER: Yes.

19 MR. GALVIN: If I knew you were here, I
20 would have asked you to come up first to try to help
21 everybody else out.

22 MR. MULDER: No problem.

23 Mr. McNeight, in the plans have there
24 be any provisions made for the neighboring
25 structure, which has windows and doors on the side

1 of the building that is going to be --

2 THE WITNESS: No.

3 MR. MULDER: Have you been to the site?

4 THE WITNESS: Yes.

5 MR. MULDER: So you are aware that the
6 windows are there?

7 THE WITNESS: Yes.

8 MR. MULDER: And they were there, to
9 your knowledge, were they there prior to your client
10 purchasing the property?

11 THE WITNESS: I imagine so.

12 MR. MULDER: In regards to the garage
13 in the rear of the building, are you familiar with
14 that garage?

15 THE WITNESS: Yes.

16 MR. MULDER: Are you of the opinion
17 that that is two separate structures?

18 THE WITNESS: The garage?

19 MR. MULDER: Correct, between 527 and
20 525.

21 THE WITNESS: Two separate structures,
22 I really have not looked at the construction of that
23 garage.

24 You are saying it is built in two
25 different sections?

1 MR. MULDER: No. I am asking you, in
2 your opinion, is it one structure?

3 THE WITNESS: According to the survey,
4 it is one structure.

5 MR. MULDER: So --

6 MR. GALVIN: Hold on one second.

7 MR. MATULE: I just want to make sure
8 because I'm not understanding the question.

9 Is your question: Is the garage that's
10 on 525 and the garage that's on --

11 MR. MULDER: 527.

12 MR. MATULE: -- 527 one structure?

13 MR. MULDER: Correct.

14 MR. MATULE: Is the survey --

15 THE WITNESS: That, I don't know.

16 I mean, the survey shows a line at the
17 property line between the two buildings.

18 MR. MULDER: Are you familiar with the
19 background behind this particular property?

20 THE WITNESS: No.

21 MR. MULDER: So would it surprise you
22 if 525 and 527 were one lot at some point?

23 THE WITNESS: No. Any co-joined lot
24 becomes one lot if it is, you know, adjacent to
25 another lot owned by the same person.

1 MR. MULDER: Would it surprise you that
2 the owner of 525 and 527 simply did a deed
3 separating those two lots?

4 THE WITNESS: Would it surprise me?
5 I don't think it would surprise me.

6 MR. MATULE: Just for the record, are
7 you saying that there has been an illegal
8 subdivision here?

9 Is that where we are going with this?

10 MR. MULDER: There quite possibly could
11 have been an illegal subdivision here.

12 My client had ownership of 525 and 527.
13 He simply did a quick claim deed for himself to 525,
14 went down to the tax office and split the tax bill.

15 MR. MATULE: And it was a separate tax
16 lot at the time he did it, wasn't it?

17 MR. MULDER: He paid one tax bill prior
18 to putting the deed together.

19 MR. MATULE: Well, I understand that.

20 Do you have the bill here if you are
21 raising it as an issue?

22 MR. GALVIN: Who is the owner of the
23 property?

24 MR. MATULE: 525?

25 MR. GALVIN: Yes.

1 MR. MATULE: The applicant, my client.

2 MR. GALVIN: Are you saying he is not?

3 MR. MATULE: The man next store sold
4 it, I suppose.

5 MR. MULDER: The property was acquired
6 through a sheriff's sale.

7 MR. MATULE: Foreclosure?

8 MR. MULDER: Correct, for 525.

9 MR. MATULE: Was your client -- I'm
10 kind of going in reverse order here, but was your
11 client the defendant in the sheriff's sale?

12 MR. MULDER: Correct.

13 MR. MATULE: It was his mortgage that
14 was being foreclosed on?

15 MR. MULDER: Correct.

16 So the lot was subdivided by my client
17 without subdivision from a Board. He just went down
18 to the tax office and split the bill.

19 MR. MATULE: Well, I am going to
20 suggest, and I can't answer the question tonight,
21 because I don't have the information in front of me,
22 but typically if they are fully conforming lots, the
23 tax assessor generally doesn't merge the lots. He
24 keeps the two lots on the same bill.

25 MR. GALVIN: Typically in Hoboken.

1 MR. MATULE: Obviously, if they sold
2 off one of the lots to himself, I might add, and had
3 the bill split, I would proffer that it was not an
4 illegal subdivision because -- you know --

5 MR. GALVIN: But it is even more
6 complicated because now you had a sheriff's sale,
7 where the sheriff is taking an official action
8 selling it to a bona fide third party, so I think a
9 court, and I don't want to go that far, because if
10 we have to go to court, we have to go to court, but
11 I think that a Court could easily find that the
12 person who bought it at the sheriff's sale is
13 protected in the purchase.

14 MR. MULDER: To go a step further with
15 the taxes, which is not a question for Mr. McNeight,
16 so I am not sure I can present it --

17 MR. GALVIN: Well, you can put in your
18 case after their case is concluded, if you have
19 something to put in, but I am not so sure this is
20 something that -- they have a sheriff's deed. I
21 think we rely on that. I think if you want to
22 challenge that, you go to court.

23 MR. MULDER: I understand that is an
24 option he has.

25 MR. GALVIN: Normally it would be

1 the -- did you check the law, too, on an illegal
2 subdivision?

3 It is normally the city that advances
4 the argument that it was improperly subdivided.

5 MR. MULDER: I was under the impression
6 it was improperly subdivided until a few moments
7 ago, so that is why I am raising it at this point
8 without doing more research.

9 MR. GALVIN: Gotcha.

10 All right. Let's keep moving forward,
11 and let's see where --

12 MR. MULDER: I wanted to go back to the
13 garage issue.

14 So you are not aware if the garage
15 structure is one structure or two structures?

16 THE WITNESS: No, I am not aware of it.

17 MR. MULDER: But your proposal is to
18 take down the portion of the garage that is on 525?

19 THE WITNESS: Correct.

20 MR. MULDER: And if those are -- if
21 that structure is one structure in the same, what
22 provisions are going to be made for the remaining
23 structure on 527?

24 MR. GALVIN: Let's just stop for a
25 second. I think that is a really important

1 question, right?

2 MR. MATULE: Yes.

3 MR. GALVIN: Everybody agree?

4 COMMISSIONER GRANA: Yes.

5 MR. GALVIN: And Mr. Winters was

6 raising that in the H2M report.

7 THE WITNESS: Uh-huh.

8 I imagine a new bearing wall, I don't
9 know the conditions of the party wall between those
10 two structures, but I imagine if that is not a
11 bearing wall on that property, it will be the
12 applicant's responsibility to create one, so that he
13 can remove that block garage and the one-story block
14 mentioned on the survey can still exist on the 525
15 property.

16 MR. MULDER: So that is something that
17 you would have to examine and get back to us?

18 THE WITNESS: Correct.

19 MR. MULDER: Is that correct?

20 THE WITNESS: Correct.

21 MR. GALVIN: And your property owner is
22 527?

23 MR. MULDER: 527.

24 MR. GALVIN: So the applicant agreed to
25 be responsible to rebuild the bearing wall utilized

1 by 525 Jackson and 527 Jackson.

2 MR. MATULE: If necessary. I am saying
3 "If necessary," because I am looking at the survey.
4 I don't know if you have a copy of the survey there,
5 but it would appear to my eye that there is an
6 encroachment at best of this -- it says common wall
7 usage, but it looks like actually the bearing wall
8 is on 527, and this garage was built onto that
9 bearing wall, so I'm not an architect, but that is
10 like you could probably take this down and just
11 leave the bearing wall there, so that is why I am
12 saying "if necessary," if it is required --

13 MR. GALVIN: That's the Board's call.

14 MR. MATULE: -- if it is required, the
15 applicant will do it. If it is not required, I
16 don't think there is any point in taking the wall
17 down and putting it up again. That's all I'm
18 suggesting.

19 MR. GALVIN: Yes. We don't want it to
20 look bad, right?

21 MR. MATULE: The applicant is a mason
22 contractor, so it won't look bad.

23 (Laughter)

24 MR. MULDER: That's all of the
25 questions I have for Mr. McNeight.

1 CHAIRMAN AIBEL: Thank you.

2 MR. MATULE: I just want to redirect
3 one.

4 Mr. McNeight, the neighbor next door's
5 attorney raised a question about the windows and the
6 door on the side of the property.

7 Am I correct in understanding that lot
8 line windows are not permitted or they are not,
9 quote, unquote, legal?

10 THE WITNESS: That is correct.

11 MR. MATULE: And if this application is
12 approved or frankly, if any application were
13 approved to build a structure adjacent to this
14 property, is it typically the custom that the
15 applicant would close up those windows at their own
16 expense, assuming that the neighbor allowed them
17 access to the property to do so?

18 THE WITNESS: That is typically what
19 happens.

20 MR. MATULE: And would the applicant be
21 willing to do that in this case?

22 THE WITNESS: Yes, he would.

23 MR. MATULE: Thank you.

24 MR. MULDER: Can I go back?

25 MR. GALVIN: Sure.

1 MR. MULDER: I just have a concern
2 regarding the structure coming up. Is there going
3 to -- is that going to be a single wall with 527, is
4 there going to be a gap?

5 What is the plan with that?

6 Because I believe the same developer
7 built on the other side and left a four-inch gap in
8 between the buildings.

9 THE WITNESS: We are proposing to build
10 zero on the property line, so there would be no gap
11 between the two buildings.

12 MR. MULDER: No gap.

13 And will that wall be in accordance
14 with building standards, the wall that is going to
15 be prepared properly from --

16 THE WITNESS: Yes.

17 I mean, once you get zoning approval,
18 you have to go to the building department, where all
19 of those questions have to be answered about the
20 construction of the building, but basically you are
21 going to have a concrete block wall against the
22 frame house of your client.

23 MR. MULDER: Thank you.

24 CHAIRMAN AIBEL: Any other questions
25 for the witness?

1 Seeing none --

2 MR. WINTERS: I am sorry, Mr. Chairman,
3 but I just wanted to reiterate one item, which was
4 in our letter, only because it came up in the
5 discussion a moment ago from the Board.

6 I just want to reiterate, it's a
7 comment on the H2M letter, which I think you
8 indicated you would be complying with, that meters
9 and utilities must be raised above the base flood
10 elevation, and right now there are several meters
11 that are in that lower level, so I understand you
12 will be addressing our letter.

13 THE WITNESS: Yes. The meters would
14 have to be up on the --

15 MR. WINTERS: Okay. I just wanted to
16 get that point of clarification on that particular
17 item.

18 Thank you.

19 COMMISSIONER BRANCIFORTE: Well, the
20 reason I would like that brought up, and I'd like to
21 see that in the plans is because we came across
22 another application recently, where the facade
23 changed, the design of the facade changed because
24 the panels had to be moved up one floor, and I just
25 want to make sure you are not going to come back to

1 us later and say, well, we had no choice, we had to
2 change the facade because, you know --

3 THE WITNESS: No, the facade won't
4 change.

5 MR. MATULE: If I might, Mr.
6 Branciforte, I think you are talking about the
7 application on First Street and Newark Street --

8 COMMISSIONER BRANCIFORTE: Yes.

9 MR. MATULE: -- I think that was
10 because that was a much larger commercial building,
11 and Public Service required them to put some kind of
12 a transfer switch in. It had to be so many feet off
13 the ground. I don't think that is applicable to a
14 residential project like this, but I'll let Mr.
15 McNeight --

16 COMMISSIONER BRANCIFORTE: I don't
17 think the meter is going to be -- you can't put
18 meters inside of the flood zone.

19 MR. MATULE: No. But I am just saying
20 in that case --

21 COMMISSIONER BRANCIFORTE: Okay. It
22 was bigger --

23 MR. MATULE: -- it wasn't about the
24 meters. It was this big electrical device that they
25 had to put in, a transfer switch, I think it was

1 called, but that had to be in a separate concrete
2 room above a certain elevation.

3 COMMISSIONER BRANCIFORTE: But Mr.
4 McNeight has made clear that the facade is not going
5 to change. What we see now is what we're going to
6 get, even though he --

7 MR. MATULE: Only if he puts a stoop on
8 it.

9 (Laughter)

10 COMMISSIONER BRANCIFORTE: All right.
11 That's true.

12 CHAIRMAN AIBEL: Eileen, go ahead.

13 MS. BANYRA: So, Mr. McNeight, I don't
14 see any identification above the lower part of the
15 building. It looks like block, but it's not
16 identified what that material is.

17 THE WITNESS: It's going to be
18 limestone.

19 MS. BANYRA: So you are going to revise
20 your plan to show that?

21 THE WITNESS: Yes, certainly.

22 MS. BANYRA: The other item that we had
23 indicated is that you have landscaping, but there is
24 no bed there. There's no definition, no fencing in
25 the public right-of-way, that you don't have that

1 defined, so we need to have that enclosed and fenced
2 in maybe next year's stoop, I don't know.

3 THE WITNESS: Okay.

4 (Laughter)

5 COMMISSIONER GRANA: Motion to close
6 public portion.

7 COMMISSIONER BRANCIFORTE: Second.

8 CHAIRMAN AIBEL: All in favor?

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

11 MR. MATULE: I am just raising a
12 question for Mr. McNeight in reference to
13 Ms. Banyra's, if a stoop goes on the building that
14 is partially recessed, I think we are probably going
15 to lose most of the landscaping in the front of the
16 building, so...

17 MS. BANYRA: We'll see where the
18 parking goes, and then we can maybe reclaim it, or
19 not.

20 CHAIRMAN AIBEL: Okay. Ready for Mr.
21 Ochab?

22 MR. MATULE: Yes, I am.

23 MR. GALVIN: Raise your right hand

24 Do you swear to tell the truth, the
25 whole truth, and nothing but the truth so help you

1 God?

2 MR. OCHAG: I do.

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

5 MR. GALVIN: State your full name for
6 the record and spell your last name.

7 THE WITNESS: Ken Ochab, that's
8 O-c-h-a-b.

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

11 CHAIRMAN AIBEL: We do.

12 MR. MATULE: Mr. Ochab, you are
13 familiar with the zoning ordinance and the master
14 plan of the City of Hoboken?

15 THE WITNESS: Yes, I am.

16 MR. MATULE: And you are familiar with
17 the project that Mr. McNeight has just testified to?

18 THE WITNESS: I am, yes.

19 MR. MATULE: And you prepared a
20 planner's report originally dated August 4th, 2014?

21 THE WITNESS: Correct.

22 MR. MATULE: And you subsequently
23 amended it on March 15th, 2015?

24 THE WITNESS: I did, yes.

25 MR. MATULE: And that report is in

1 support of the requested variance relief that is
2 presently before the Board, correct?

3 THE WITNESS: Correct.

4 MR. MATULE: Could you go through your
5 report and give us your professional opinion
6 regarding the requested variances?

7 THE WITNESS: The report was last
8 amended in March. That was just prior to the new
9 ordinance changes being made, and I know there was a
10 request to look at this application with using the
11 new zoning standards, so what I will do is I will
12 just go through the new zoning standards as they
13 apply to the application.

14 In terms of the variances, we have a
15 lot coverage variance. Even though we have 60
16 percent building coverage, we have the stairway in
17 the rear, which is the access stairway at 63.6
18 percent. And I know Mr. McNeight agreed to modify
19 that, but nevertheless, there still is a variance
20 under the new zoning ordinance.

21 We do have a density variance. We have
22 density variance because under the old ordinance and
23 the new ordinance, this property can support 3.79
24 residential units. We are proposing four
25 residential units. That is a density variance we

1 can't round up as you know. We round down to three,
2 so we have a D variance.

3 We no longer have a building height
4 variance for number of stories because that has been
5 eliminated.

6 We do have a building height variance
7 for physical, the physical height of the building at
8 41 feet six inches, where 40 feet is allowed above
9 the design flood elevation.

10 And we don't have any other front,
11 side, rear yard variances, no roof coverage
12 variance, but we do have a variance for, as was
13 discussed at some length, the curb cut and the
14 parking on the lot, lower level of the lot because
15 we have a 25 foot lot width, which does not allow us
16 under the ordinance to have parking or curb cuts.
17 That is under the old ordinance.

18 So we have three variances, one of
19 which is a D variance.

20 So as is typical of my review, I took
21 photographs of the site and the surrounding area.

22 MR. MATULE: Just one?

23 THE WITNESS: Just one.

24 MR. MATULE: A-1.

25 (Exhibit A-1 marked.)

1 THE WTINESS: A-1 is a series of four
2 photographs. These photos are in my report as well,
3 so you can look in the report or see them here.

4 The upper left photograph is a
5 photograph of the site in question right in the
6 center of the photograph.

7 Again, it is a commercial industrial
8 yard with a garage, nonconforming use in the R-3
9 zone, so certainly that is something that you want
10 to try to be more conforming, and we are showing, of
11 course, the two adjacent homes on either side of the
12 property. Again, these are older structures.

13 Again, you can see the one side with
14 the windows, and the other side, again, with the
15 iron doors and the stoops, so there is only one
16 stoop on the south side. The building on the north
17 side does not have a stoop.

18 The upper right photograph shows again
19 the adjacent building just to the south, again
20 showing the street scape there, and then a newer
21 constructed five-story building with parking at the
22 lower level, at grade level.

23 The lower left photograph again is
24 looking from the site north, again, the building
25 just to the north of us, and of course, just to the

1 north of that, a fairly new building, a multi-family
2 building, which encompasses the rest of the block,
3 and that has parking at the lower level as well.

4 And finally, just a shot of the Hoboken
5 Housing Authority development on the opposite side
6 of Jackson for some context.

7 So with respect to the density
8 argument, we generally go by two cases, the Grubbs
9 versus Rahway case and also Coventry versus
10 Westwood. Essentially the test is to measure the
11 requested density with respect to the surrounding
12 area, and I have done that. I have shown in my
13 report a table, which goes through the adjacent
14 properties to look at what the densities are of the
15 adjacent area.

16 So in terms of our deviation, our
17 variance from the density provision, at 3.79, which
18 I am using at the base, we are 5.6 percent above
19 that density, that allowable density.

20 So if you look at the adjoining houses
21 on either side, these are older houses. They are
22 exceeding the density by 5.6 percent as well.

23 If you look at the newer development to
24 the south, the five-story building, that is also at
25 5.6 percent in terms of its deviation from the

1 density, which would be allowable under the R-3
2 zone.

3 The building to the north is much
4 greater than the 5.6 percent, basically 40 percent
5 and change in terms of its deviation above the
6 allowable density.

7 So if you look at the street scape
8 here, even if we don't count the older structures,
9 which in some cases we wouldn't actually look at
10 because of the nature of when it was constructed and
11 how it was constructed, the new development both
12 north and south is either exactly as the density
13 deviation that we are proposing or greatly exceeds
14 the density provision that we are proposing as well.

15 So with respect to that, then we could
16 be consistent with not only the older density, which
17 I really don't like to use that much, but with the
18 newer density on newer construction that has been
19 there. When I say "newer," this is post 2000
20 construction. These buildings were built in 2008,
21 both in 2008, so with respect to that we are
22 consistent.

23 So the other question with respect to
24 density is whether or not there are problems, which
25 cannot be accommodated with respect to the density,

1 and here again, my opinion is that we are asking for
2 0.21 residential units greater than what would
3 typically be allowed under the ordinance, which in
4 my view is de minimis.

5 These buildings, the newer buildings
6 are all five stories in height, four over one. We
7 are proposing again a four-story building here with
8 parking at the lower level, so a five-story
9 building, four over one, so it is very consistent in
10 terms of the height and in terms of type of
11 development.

12 The kicker here is the parking, and of
13 course, we have variances for parking because of the
14 width of the lot, which does not permit us to
15 typically have parking.

16 And Mr. Galvin basically said exactly
17 what I would have said, which is the issue here is
18 the conundrum of having a large space under the
19 first floor of the building in the flood plain, what
20 to do with that space. We could use it for storage
21 or we can try to get some relief to the on-street
22 parking demand and put a couple of cars in it.
23 Notwithstanding the fact that we certainly have to
24 be respectful of safety issues with regard to
25 pedestrians and with devices, such as the warnings

1 lights and LED, we will have to do that.

2 So with that in mind, I would say that
3 from a negative standpoint for negative criteria,
4 there is no substantial impact for the density
5 provision or of the lot coverage or parking, request
6 for parking, and driveway to the adjoining
7 properties or to the neighborhood in general, nor do
8 I think it is a substantial impairment to the zone
9 plan with respect to that.

10 The density provision is, again, we had
11 this issue before, less than a quarter of a unit
12 away from being compliant. We are consistent with
13 both the older and the new developments along this
14 block on Jackson Street.

15 MR. MATULE: One other question.

16 When you called out the variances
17 before, I don't believe you mentioned there is also
18 a variance for the facade materials.

19 THE WITNESS: Yes, there is.

20 I thought Mr. McNeight basically
21 addressed that, but I don't typically do that. But,
22 as I understand it, it is because of the nature of
23 the window construction, which again would be a C-2.

24 MR. MATULE: I'm just calling it out
25 for the record as part of your testimony.

1 Thank you.

2 CHAIRMAN AIBEL: Board members,
3 questions for Mr. Ochab?

4 COMMISSIONER GRANA: Mr. Ochab, you are
5 familiar with the Hoboken master plan?

6 THE WITNESS: Yes.

7 COMMISSIONER GRANA: Does the Hoboken
8 master plan state that stoops and stoop life are a
9 quality of life to be preserved in the City of
10 Hoboken?

11 THE WITNESS: It does.

12 COMMISSIONER GRANA: Mr. McNeight has
13 testified that we have not introduced a stoop here.
14 Over discussion, you know, it's not clear that there
15 should not be a stoop, but there is not a regulation
16 that says you should not build a stoop here?

17 THE WITNESS: Correct.

18 I think when we looked at it, we looked
19 at the street scape on the side of Jackson, but
20 recalling correctly, there is only one existing
21 stoop, and that is on the adjoining property to the
22 south.

23 The newer construction does not have
24 any stoops at all, and I think that is a result of
25 each new project having parking at grade level, so

1 with respect to that, we decided that we would
2 follow suit with respect to the newer construction
3 and not try to reinstitute the stoop design at this
4 point, being the fact that maybe in the future these
5 other buildings adjacent to us would somehow at some
6 point be redeveloped, and they would be redeveloped
7 with or without stoops.

8 COMMISSIONER GRANA: So I am trying to
9 frame this as a question.

10 It is not your opinion -- well, one
11 point of view -- I will state as an opinion in the
12 form of a question -- one could say yes, if one
13 built a stoop, it does set potential precedents for
14 building codes. But is it your opinion that it
15 would become incongruous with the other development
16 on the block?

17 THE WITNESS: I think it would become
18 incongruous with the other development on the block,
19 but I understand what the Board's objective is and
20 what the master plan's goals and recommendations
21 are. And if the Board is strongly leaning towards
22 the stoop, I thought I heard Mr. McNeight indicate
23 that he could design it as such.

24 COMMISSIONER GRANA: Thank you.

25 CHAIRMAN AIBEL: Board members?

1 COMMISSIONER BRANCIFORTE: Can you go
2 with the calculation again on the density, three
3 versus four?

4 THE WITNESS: Go over it again?

5 COMMISSIONER BRANCIFORTE: Well, right
6 now the calculation would give you a number of 3.84
7 you said?

8 THE WITNESS: 3.79.

9 COMMISSIONER BRANCIFORTE: 3.79. And
10 you are asking for four.

11 Yeah, you know, I don't really have any
12 questions on this right now.

13 COMMISSIONER MC ANUFF: Me neither.

14 CHAIRMAN AIBEL: Mr. Ochab, on the
15 building to the south, there appears to be -- there
16 is a building immediately adjacent with the metal
17 doors, and then there seems to be a building south
18 of that that does not appear to have a curb cut.
19 It looks like a 25 foot building.

20 THE WITNESS: This is --

21 CHAIRMAN AIBEL: The one with the bays.

22 THE WITNESS: This building to the
23 south of the adjacent building is actually one
24 development. It looks a little odd because the roof
25 structure is altered here, but it is listed on the

1 property, on the tax rolls as one property, so that
2 is the design of the building, but there is a garage
3 on the other side of the tree.

4 CHAIRMAN AIBEL: Is it a 75 foot
5 frontage?

6 THE WITNESS: It is 75 footage, yes.

7 CHAIRMAN AIBEL: Arguably, the first 25
8 feet does not have a curb cut or a garage --

9 THE WITNESS: No question, yes.

10 CHAIRMAN AIBEL: Are you finished?

11 MS. BANYRA: No. My only question was
12 relative to how many curb cuts are there on the
13 block.

14 CHAIRMAN AIBEL: John?

15 COMMISSIONER BRANCIFORTE: The
16 question, Eileen, you mentioned that 2008, the
17 buildings you are going by the density of the
18 standard in 2008. You said you are comparing these
19 buildings, the density of this building to buildings
20 that were built in 2008?

21 THE WITNESS: Correct.

22 COMMISSIONER BRANCIFORTE: Okay. My
23 question is: Had the City Council downgraded or
24 shrunk the size since 2008?

25 MS. BANYRA: No. All of the changes

1 occurred in the late '90s.

2 COMMISSIONER BRANCIFORTE: Okay. So no
3 changes since 19 --

4 MS. BANYRA: 2002 was the last
5 four-story to three-story, and density 2002 as well,
6 when we began dividing by 660. So anything built
7 after that would have been a Zoning Board --
8 typically I ask how old the development is, and I
9 think Mr. Ochab knows that, so he said he wasn't
10 going to count old buildings.

11 THE WITNESS: That is a strike against
12 me.

13 (Laughter)

14 COMMISSIONER BRANCIFORTE: No. I heard
15 that, too. That's not a problem. I was just
16 curious about the change since 2008.

17 CHAIRMAN AIBEL: Okay.

18 Any more questions from the Board for
19 Mr. Ochab?

20 Okay. Let me open it up to the public.
21 Anybody have questions for Mr. Ochab?

22 Please come forward, state your name
23 and address.

24 MS. HEALEY: Leah Healey, 806 Park.

25 The five-story building to -- I believe

1 is across the street from this building?

2 THE WITNESS: Yes. I showed it on the
3 photograph.

4 MS. HEALEY: Do you know what is on the
5 north end of Jackson Street, Sixth and Jackson?

6 Are you familiar with what is over
7 there?

8 THE WITNESS: You can refresh my
9 memory.

10 MS. HEALEY: The Jubilee Center.

11 THE WITNESS: Pardon me?

12 MS. HEALEY: The Jubilee Center.

13 THE WITNESS: Okay.

14 MS. HEALEY: Where after school,
15 children from the affordable housing projects that
16 we have frequent every single day.

17 Do you think back-out parking is a good
18 idea when you have that situation?

19 THE WITNESS: You know what, I will
20 leave that to the Board's decision-making process.
21 I understand what you are saying, though.

22 MS. HEALEY: I just have one question
23 about the stoop.

24 Do you have any opinion about whether
25 or not a stoop is a bad idea because it is a debris

1 catcher?

2 THE WITNESS: I have no opinion about
3 that.

4 CHAIRMAN AIBEL: Any other questions
5 for Mr. Ochab?

6 Please come forward.

7 MS. FALLICK: Cheryl Fallick.

8 I just have one question, if you don't
9 mind.

10 3.79 floors, and you mentioned that
11 that is -- or stories --

12 THE WITNESS: 3.79 residential units.

13 MS. FALLICK: But so it was like .21
14 percent over.

15 THE WITNESS: Right. We were deficient
16 by .21 units. A quarter of a unit basically, if you
17 do the calculation.

18 MS. FALLICK: You are a quarter of a
19 unit over what is permitted?

20 THE WITNESS: Correct.

21 MS. FALLICK: Have you ever seen a
22 quarter of a unit?

23 Is there really such a thing as a
24 quarter of a unit?

25 THE WITNESS: It is a mathematical

1 calculation because the ordinance requires us to
2 make that calculation.

3 MS. FALLICK: I understand.

4 So -- but if the calculation is 3.79
5 that is permitted, 3.79 units for all intents and
6 purposes, wouldn't you say that is really three?

7 THE WITNESS: I would say it is de
8 minimus in terms of the level of deficiency.

9 MS. FALLICK: Okay.

10 But if 3.79 units are permitted without
11 any sort of variance, what does that end up with?

12 THE WITNESS: Well, according to the
13 ordinance, you can't round up. You have to round
14 down, so we round down to three.

15 MS. FALLICK: Thank you.

16 CHAIRMAN AIBEL: Please come forward.

17 MS. ONDREJKA: I don't know if you can
18 answer this --

19 MR. GALVIN: You have to give your name
20 every time. Sorry.

21 MS. ONDREJKA: Mary O-n-d-r-e-j-k-a.

22 The two parking spaces that are within
23 this building, is this a rental or a condo unit?

24 THE WITNESS: I wouldn't know that.

25 MS. ONDREJKA: I'm just curious because

1 how many units are in there and how are the spaces
2 going to be allotted out, because not everybody
3 could get parking space.

4 THE WITNESS: Correct.

5 MS. ONDREJKA: So I am assuming that it
6 would be deeded parking?

7 THE WITNESS: I think your answer is
8 coming.

9 MR. MATULE: I am sorry. I didn't
10 hear the question.

11 MS. ONDREJKA: The parking, how many
12 units is the structure for?

13 How many units?

14 MR. MATULE: Well, there are four units
15 in the building proposed. I would assume the
16 parking will be on a first-come first-serve basis,
17 whoever the occupants are of the building,

18 MS. ONDREJKA: Okay. So --

19 MR. MATULE: The applicant doesn't have
20 any objections, and I know this Board sometimes puts
21 in a restriction that the parking spaces can only be
22 occupied by residents of the building --

23 MS. ONDREJKA: So that hasn't been
24 determined --

25 MR. MATULE: -- that is the builder's

1 intention, so we wouldn't object to a condition that
2 said that.

3 MS. ONDREJKA: Okay. But it hasn't
4 been determined who would get that parking?

5 MR. MATULE: Of course not.

6 MS. ONDREJKA: So anybody in the
7 building could use it?

8 MR. MATULE: Well, anybody up to two
9 units -- up to two parking spaces could use it --

10 MS. ONDREJKA: Right. What I'm saying
11 is that --

12 MR. MATULE: -- so it may be that I
13 think it will be on a first-come first-serve basis.
14 That is how it is typically done.

15 MS. ONDREJKA: Well, I know that may be
16 true, but usually if you have a unit with condos,
17 they will have parking allowed for everybody in that
18 building. Here you're --

19 MR. MATULE: Well, not if we only have
20 two parking spaces.

21 MS. ONDREJKA: I know. And then that
22 means you are not going to be sure who is going to
23 be coming and going and knows to back in or --

24 MR. MATULE: No. It will be an
25 occupant of the building.

1 MS. ONDREJKA: Right. But it has not
2 been determined who is going to get that?

3 MR. MATULE: I am not understanding
4 the question --

5 MS. ONDREJKA: Well, I mean --

6 MR. MATULE: -- who you mean by who?
7 Do you mean an actual person we can
8 identify?

9 MS. ONDREJKA: -- well, usually it's
10 deeded.

11 MR. MATULE: If it is a condo, it would
12 be deeded.

13 MS. ONDREJKA: Are these condos?

14 MR. MATULE: We don't know yet,
15 wherever the market is.

16 MS. ONDREJKA: Parking spaces are prime
17 real estate here. I mean, if you have four units
18 with only two parking spaces, I think that is
19 problematic to begin with.

20 MR. GALVIN: Now you are arguing,
21 and --

22 MS. ONDREJKA: I'm just saying he's
23 not answering my question of who --

24 MR. GALVIN: He is. He actually has --

25 MS. ONDREJKA: -- but he doesn't know

1 the answer.

2 MR. GALVIN: No, no. We do know
3 answer, that they don't know exactly what they are
4 going to do. But if we were to agree to this, we
5 would require them that parking spaces would be used
6 by an occupant of the building.

7 Now, how they would be used, whether
8 they would be rented or deeded, that would depend on
9 the nature of the building going forward, but that
10 is a level of detail we are not ready to get to yet.

11 MS. ONDREJKA: Okay.

12 I am assuming that each of these units
13 are the same size?

14 MR. MATULE: I guess that is really a
15 question for Mr. McNeight.

16 MR. MC NEIGHT: Yes, they are all
17 identical.

18 MS. ONDREJKA: They're all identical.

19 So then first come first serve on the
20 parking I guess, if it was deeded?

21 MR. GALVIN: I don't know. We don't
22 know what they are going to do.

23 CHAIRMAN AIBEL: Anybody else have
24 questions for the architect?

25 Sir?

1 MR. GALVIN: He meant for the planner.

2 (Laughter)

3 CHAIRMAN AIBEL: Thank you.

4 MR. MULDER: Were you the party that
5 puts the --

6 THE REPORTER: You just have to state
7 your name for the record.

8 MR. MULDER: I'm sorry.

9 William H. Mulder, attorney for Freddie
10 Rodriguez, 527 Jackson Street.

11 Were you the party that put together
12 the actual application that was submitted to the
13 Board?

14 THE WITNESS: No.

15 MR. MULDER: Do you know who that party
16 was?

17 THE WITNESS: Mr. Matule.

18 MR. MATULE: Me.

19 MR. MULDER: Part of that package --
20 can I ask you a question?

21 MR. MATULE: Sure.

22 MR. MULDER: With part of that package,
23 did you submit a tax requirement that the taxes had
24 to be paid?

25 MR. MATULE: We typically submit it to

1 the tax collector at the time we file. I can look
2 through my file and see if one was submitted. I
3 can't say for sure.

4 (People talking at once.)

5 THE REPORTER: I'm sorry, but I can't
6 hear you.

7 MR. MATULE: If you know the taxes are
8 not paid, why don't you just tell us?

9 (Laughter)

10 MR. MULDER: The tax bill was part of
11 a -- one mortgage for 527 and 525, and it appears
12 that the taxes for 525 have continued to be paid by
13 the mortgage company for my client, Wells Fargo.

14 We would submit that we submitted a
15 bill that was paid, and he knows he hasn't paid the
16 taxes, and that would be an erroneous application.

17 MR. MATULE: I can call the applicant
18 up and ask him, but the applicant was telling me
19 that Mr. Rodriguez doesn't own this building any
20 more. Bank of America foreclosed on it.

21 MR. MULDER: That's not true --

22 MR. MATULE: Okay. Then we could have
23 him come up and testify under oath.

24 MR. GALVIN: At this point those are
25 allegations. We need more than that. I mean, you

1 are allowed to ask questions of the witness, and I
2 do a lot of this work, and I think you are
3 presenting me with a very challenging angle.

4 MR. MULDER: It is a very unique
5 situation.

6 MR. GALVIN: But you may have to come
7 back and give me a brief almost on what your
8 position is, because I just have a gut feeling that
9 the way you are pursuing it, that you are not right,
10 at some point that the person who is the bona fide
11 purchaser is not going to have these obligations
12 that you are placing on them.

13 MR. MULDER: Well, he has an obligation
14 to pay the taxes in town to bring forth an
15 application.

16 MR. GALVIN: That is true, although if
17 you read the law on this stuff, what happens in many
18 cases is we have to grant approvals subject to them
19 paying taxes. They'll have nothing. If they don't
20 pay the taxes, they will have nothing.

21 MR. MULDER: My question is if he filed
22 an application that said he paid taxes when in fact
23 he had just been --

24 MR. GALVIN: But we don't have the
25 other side of the story. You know, I'm sorry, I am

1 digressing.

2 Sometimes as lawyers, we have to rely
3 on the information that we have, okay, and if it is
4 paid, even if it was paid by somebody else, we might
5 represent that it was paid and not know that.

6 MR. MULDER: I am not making any
7 accusations towards counsel.

8 MR. MATULE: And I am not taking it
9 that way.

10 I submitted the form to the tax office.
11 I don't know if they ever filled it out and sent it
12 up to zoning or not. I'm not in a position to
13 answer the question. I can certainly go online --

14 MR. MULDER: I have a statement from
15 the City of Hoboken that shows that Wells Fargo was
16 paying the taxes for both 525 and 527.

17 So if the owner of 525 does not have a
18 mortgage with Wells Fargo, then he is not paying the
19 taxes for 525.

20 MR. MATULE: Does Mr. Rodriguez have a
21 mortgage with Wells Fargo?

22 MR. MULDER: Yes, he does.

23 MR. MATULE: All right. Well, if
24 Wells Fargo -- I don't know why they would be paying
25 taxes on both lots, but it's something we have to

1 look into.

2 MR. GALVIN: Wait a minute, guys.

3 Again, I understand where you are
4 coming from, but your position seems illogical
5 because if the lot was sold at sheriff's sale, why
6 would the mortgage company still be paying taxes on
7 a lot that went to foreclosure?

8 MR. MULDER: I can explain it, because
9 the original mortgage from Wells Fargo was against
10 525 and 527.

11 Then Mr. Rodriguez had another mortgage
12 company take a mortgage out on 525, and they
13 submitted a modification to Wells Fargo removing
14 525, which Wells Fargo signed, and it was recorded,
15 removing 525 from the legal description. That only
16 removed it in the county.

17 As far as the escrow records are
18 concerned, Wells Fargo has continued to pay the
19 taxes as it was set up originally with the original
20 mortgage.

21 MR. GALVIN: But from my perspective as
22 the community, the taxes are paid. There is a
23 dispute between your client and their client maybe
24 for reimbursement or with the bank to get
25 reimbursement.

1 (Board members confer)

2 MR. GALVIN: Let's move along.

3 MR. MATULE: Well, ironically, it
4 appears the taxes are paid.

5 (Laughter)

6 I don't know who paid them, but they
7 are paid.

8 MR. MULDER: We're not disputing they
9 are paid, but we are making a point that an
10 application was submitted --

11 MR. GALVIN: I wanted to say also, I
12 don't know how much of this work you do, but there
13 are some things that the Zoning Board can't act on,
14 but that doesn't mean that you lose the right to
15 make that argument at the next level, so I get your
16 point.

17 MR. MULDER: Thank you.

18 MR. MATULE: And I will say for the
19 record, I will look into it, and obviously if Wells
20 Fargo was paying taxes on the wrong property, they
21 can apply for a refund, and they will have to do
22 whatever they have to do.

23 MR. GALVIN: I think we should try to
24 complete the hearing. I think that is what a Court
25 would want me to do, and I think that is what we

1 should do.

2 If there are -- some of these things
3 are at another level, so they have to be worked out.

4 If the applicant is not the owner of
5 this property properly, or if the applicant has some
6 other defect here as a matter of title, then they
7 will not be able to do anything with an approval, if
8 they were to receive one.

9 CHAIRMAN AIBEL: Okay.

10 Any further questions for the planner?

11 Seeing none.

12 COMMISSIONER GRANA: Motion to close
13 public portion.

14 COMMISSIONER BRANCIFORTE: Second.

15 CHAIRMAN AIBEL: All in favor?

16 (All Board members answered in the
17 affirmative.)

18 (Board members confer)

19 CHAIRMAN AIBEL: Mr. Matule?

20 MR. MATULE: Just as a point of
21 information, I pulled back, and it looks like on
22 December 28th, 2014, the tax records from the county
23 which shows that the property is in the name of 525
24 Jackson Street Developers, LLC, who the applicant in
25 this application is, and under the bank code, where

1 they typically would have a code if a bank was
2 getting the tax bill, it just has a zero, so I don't
3 know what that means. But according to the county
4 tax records, the property is in my client's name.

5 MR. GALVIN: Do you want to look at
6 that?

7 MR. MULDER: Sure. But according to
8 the City of Hoboken, 525 Jackson Street Developers
9 is getting a check from Wells Fargo, Wells Fargo,
10 Wells Fargo, Wells Fargo --

11 MR. MATULE: Okay.

12 MR. MULDER: -- this came from Hoboken
13 who is receiving --

14 MR. MATULE: I understand, but I don't
15 think it is dispositive on whose account Wells Fargo
16 was paying them, so we will have to look into it.

17 MR. GALVIN: Okay.

18 Where are we at?

19 MR. MATULE: Mr. Ochab is finished, I
20 believe.

21 CHAIRMAN AIBEL: Any further witnesses?

22 MR. MATULE: I don't have any further
23 witnesses.

24 Public portion.

25 CHAIRMAN AIBEL: Time to open it up to

1 the public. Anybody have comments on the
2 application?

3 MS. HEALEY: Leah Healey, 806 Park.

4 I think the architect testified that
5 there is not a problem moving the stoop in, and
6 there is not a problem moving the back deck in, and
7 while I --

8 MR. MATULE: I'm sorry. You said there
9 was not problem doing what?

10 MS. HEALEY: Moving the back deck
11 inside.

12 MR. MC NEIGHT: I think I said divided
13 is possible.

14 MS. HEALEY: Possible.

15 MR. MATULE: I think he said it would
16 reduce the size of the units.

17 MS. HEALEY: Both are possible and
18 reduce the size of the units.

19 I wanted to concentrate first on the
20 stoop -- well, let me concentrate on the back.

21 I am not quite sure, I believe that a
22 deck that is as large as I think is called for is as
23 large as it needs to be in order to provide an exit,
24 and I have feeling this will be used more as a deck
25 than just an exit to the building, in which case we

1 are allowing density, a coverage increase for the
2 sake of providing additional density inside of a
3 house, and I don't think there has been testimony by
4 the planner that that kind of detriment is
5 justified, gaining private space at the expense of
6 our coverage ordinance particularly in the donut.

7 While I do see that there is a
8 something to be gained from this application from
9 not having a garage sitting in the back of this lot,
10 and would now have open space, so perhaps that is
11 something to consider.

12 But with respect to the front of the
13 building, I think the zoning ordinance has a reason
14 for allowing garages in lots that are larger than
15 this, and one of those things I think is because it
16 allows there to be enough room for vehicles to
17 appropriately exit the building, and I think that is
18 really important in a residential neighborhood,
19 particularly like this one, where there are quite a
20 few people that are passing back and forth between
21 the housing projects and the Jubilee Center on a
22 daily basis, particularly at night, because after
23 Jubilee Center, all of the children are fed at
24 night, so in the wintertime when it is dark, the
25 kids go back and forth, so I think we have to look

1 at this in the context of the neighborhood.

2 And I think one of the reasons why I
3 object to the parking in this building is that
4 backing out, particularly next to a building that
5 has a stoop, is going to make that parking less
6 visible at least on the southern side where you have
7 a building that already has a stoop.

8 And I think you should give serious
9 consideration to whether or not we want to upend our
10 parking ordinance just for the sake of two spaces,
11 and I think that is really why we have the
12 requirement to have wider lots to have these parking
13 spaces, and I certainly don't think I heard any
14 testimony that says it is going to greatly alleviate
15 the parking conditions on the street if you have two
16 spaces.

17 So I don't know what -- I didn't hear
18 the testimony about what the existing garage does
19 and what kind of parking is allowed there, so I
20 don't know whether it is an improvement or not an
21 improvement, or whether people who are parking there
22 now are not going to park there. But I have not
23 heard any testimony that I think gets us over the
24 idea of taking away a stoop and introducing a
25 condition, which I consider to be a detriment, and I

1 think at the very least, the stoop should be
2 preserved and in a way that it allows it to go into
3 the building when it goes too high, so that it could
4 be consistent with the design that is south of it.

5 Overall, I don't think we should just
6 decide that stoops should be gotten rid of because
7 other buildings on the block got rid of their
8 stoops. I have a feeling these were Zoning Board
9 applications, and we know what was going on with the
10 Zoning Board back in 2008, and the question is
11 whether or not that should be precedent in any way
12 as to how this Board measures this application.

13 So I would suggest to deep six the
14 parking and restore the stoop.

15 Thank you.

16 CHAIRMAN AIBEL: Anybody else wish to
17 comment?

18 Please come up.

19 MS. ONDREJKA: Mary Ondrejka,
20 O-n-d-r-e-j-k-a.

21 MR. GALVIN: Oh, I'm sorry. Raise your
22 right hand.

23 Do you swear to tell the truth, the
24 whole truth, and nothing but the truth so help you
25 God?

1 MS. ONDREJKA: I think so.

2 MR. GALVIN: Okay. Hold on a second.

3 Do me a favor. Come on back up and
4 raise your right hand. You caught me not paying
5 attention.

6 Do you swear to tell the truth, the
7 whole truth, and nothing but the truth, so help you
8 God?

9 MS. HEALEY: I did tell the truth, the
10 whole truth, and nothing but the truth, so help me
11 God.

12 MR. GALVIN: Thank you.

13 (Laughter)

14 MS. ONDREJKA: I thought this was
15 public portion for our opinion.

16 MR. GALVIN: What's that?

17 MS. ONDREJKA: I thought this was
18 public portion for our opinion.

19 MR. GALVIN: It is, and now you are
20 testifying.

21 MS. ONDREJKA: I have to bring up the
22 stoops, too.

23 The logic that the zoning officer
24 suggested that would stop all of this massive debris
25 would only work if you had no stoops and all of the

1 debris would flow down somewhere to the end of town.
2 But since we do have stoops, you either have to get
3 rid of all of the stoops for that to work, or have
4 stoops, because already the stoop on the south is
5 going to collect, quote, unquote, all of this
6 debris, which actually I think is not a bad idea
7 because then it will contain it, and you can take it
8 and throw it out. But I don't think this is such a
9 big issue because I think stoops are important more
10 than having two parking spaces.

11 The reason I say this, it has been said
12 they don't know who would get the parking spaces,
13 but anybody who gets a parking space in a four-unit
14 building, that would mean if I am coming home late,
15 and I say, I got to really get there quickly,
16 because I want that parking space before my
17 neighbor, I may not be as attentive to the
18 residents, the residents around there or the
19 children because there is the Jubilee Center, and I
20 thought about it, too, before Leah said it, but you
21 would be trying to get the space. Try to get there
22 with my car. I have to get home quickly to get a
23 parking space.

24 So that is an issue because only two
25 parking spaces for a four-story -- or a four-unit

1 building is not -- it's really wasted. It is
2 worthless because you never are going to get an
3 agreement there, unless you pay for it. And since
4 all of the units are the same size, and know about
5 this bigger space, that maybe they are allowed this
6 parking space, that I don't know how you would
7 equalize that out or fairly do it without some
8 resentment.

9 But the issue with stoops, I think they
10 should be maintained, not gotten rid of. Many, many
11 stoops have been gotten rid of through the years,
12 and a lot of the street life was lost.

13 Many of the Board members years ago
14 regretted what had happened because of this strange
15 twilight zone area of just cars below buildings, and
16 there was no life. And if you go to the back in
17 town when a lot of those buildings were built in the
18 2000 -- maybe late '90s some of them, probably 2000,
19 2005 -- 2002, you go back there, and it is kind of
20 weird and eerie because there is no life on the
21 street. So I think we should encourage the
22 maintaining of stoops. That's important in my
23 opinion.

24 Thank you.

25 MR. GALVIN: Thank you.

1 CHAIRMAN AIBEL: Anybody else wish to
2 comment?

3 Come forward.

4 MR. GALVIN: Raise your right hand.

5 Do you swear to tell the truth, the
6 whole truth, and nothing but the truth, so help you
7 God?

8 MS. FALLICK: I do.

9 MR. GALVIN: Thank you. You're good.

10 MS. FALLICK: Cheryl Fallick.

11 Just presuming everybody is listening
12 to the public, I thought I would come up and
13 reiterate the same thing.

14 CHAIRMAN AIBEL: I hope not. We were
15 listening.

16 (Laughter)

17 MS. FALLICK: Well, I hope you are. I
18 speak at Council meetings a lot, and sometimes it's
19 just an exercise in my vocal cords.

20 CHAIRMAN AIBEL: We actually listen.

21 MS. FALLICK: Yeah, okay.

22 Good, only because we guess we have
23 lost a lot of street life in Hoboken. It's in the
24 master plan, I guess. I don't think any of the ugly
25 architecture that happened in the last decade or so

1 should be the model for what goes forward, and I
2 actually think it's maybe a good thing for stoops to
3 collect debris, so it stays out of the sewer, so --

4 (Laughter)

5 CHAIRMAN AIBEL: Thank you.

6 Sir, come forward.

7 MR. GALVIN: Raise your right hand.

8 Do you swear to tell the truth, the
9 whole truth, and nothing but the truth, so help you
10 God?

11 MR. BOGEANOS: I do.

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

14 MR. BOGEANOS: Constantine Bogeanos,
15 B-o-g-e-a-n-o-s.

16 MR. GALVIN: Street address?

17 MR. BOGEANOS: 711 Monroe Street. I
18 live in the neighborhood.

19 Two things: One is that is a very
20 unique neighborhood. As you go down Jackson Street,
21 the only way you can really get out is to go to 7th
22 Street, and you have to make a right.

23 On the way there, you pass the Jubilee
24 Center. You pass a future park, Pinos. You pass
25 the Monroe Movement Center, which is where all

1 children wind up after school as well as weekends,
2 dance class, arts class, and all of these wonderful
3 things they do.

4 Then you go past Hoboken Catholic
5 Academy. Within two blocks, you have two churches.
6 You have Jubilee Center. You have the Monroe
7 Movement Center, and you have Hoboken Catholic
8 Academy, there are tremendous amounts of children.

9 Not to mention the ballpark one block
10 down on Jackson Street. Within the next three to
11 four years, that is consecutive, if everything comes
12 to fruition, I think that it will be wonderful.

13 On my block, there are stoops. I don't
14 have one. There is a stoop north and a stoop south.
15 As far as all of this debris dangling, it never
16 happens, and I was here for Sandy, so I take it with
17 a grain of salt, and I love diversity.

18 Jim McNeight, a wonderful building. I
19 took a picture of the rendering. I thought it was
20 absolutely lovely, but my concerns really are with
21 the parking. There was no testimony saying they
22 would be made safe. We'll try to make it not as
23 dangerous. It is ridiculous.

24 Too many kids, 25 by a hundred, unless
25 you want it all to look like Jefferson Street, where

1 it is nothing but curb cuts, it's a dangerous
2 precedent to set.

3 There are still buildings there to be
4 built, and what will it be with children coming back
5 and forth? True safety concern.

6 Density, I think we have enough
7 density.

8 We have Larry Bijou doing lovely work,
9 but building and proposing to build even more
10 buildings and more units a block away.

11 It is only an extra unit.

12 Well, I was told that larger spaces are
13 in. It's a family-friendly neighborhood. This is
14 not lending itself to a family-friendly
15 neighborhood.

16 What to do with the space underneath?

17 Well, the garage if it was just that
18 simple, then all of the mini storage places in town
19 wouldn't be packed making a fortune. There is a lot
20 of things. Bikes and wagons that belong downstairs
21 for storage.

22 Just to fill it with a car, so it can
23 bang in and out, where children are playing right
24 now and will be playing is ridiculous.

25 Love the building. I think it would be

1 an improvement to the neighborhood with a little
2 tweak here and there. Parking, dangerous.

3 I live in that neighborhood. The only
4 way to get out in the morning and in the evening, by
5 the way, is to go past schools, churches, day care
6 centers. You really got to be careful on this
7 block.

8 Thank you.

9 CHAIRMAN AIBEL: Thank you.

10 COMMISSIONER GRANA: Thank you.

11 CHAIRMAN AIBEL: Anybody else wish to
12 comment?

13 COMMISSIONER MURPHY: Motion to close
14 public portion.

15 COMMISSIONER BRANCIFORTE: Second.

16 CHAIRMAN AIBEL: All in favor?

17 MR. GALVIN: Hold on one second.

18 Counsel, did you have a closing
19 argument?

20 MR. MULDER: Yes.

21 MR. GALVIN: We're okay. We closed the
22 public, but now we are going to have closing
23 arguments.

24 Everybody agree that we closed the
25 public?

1 CHAIRMAN AIBEL: Aye.

2 (Board members answered in the
3 affirmative.)

4 MR. MULDER: I just wanted to go back
5 to the two original points I made with regard to the
6 windows and the door that are facing that side of
7 the building. I believe those should be addressed
8 and not just a building put up in front of those
9 items, and the garage really needs to be looked at
10 further in the back, not the garage that we are
11 talking about with these cars, but the structure in
12 the rear of the building.

13 We believe that is a one structure
14 building, and that dividing wall is not sufficient,
15 and if removed, and it's made to be sufficient, it
16 should than made esthetically pleasing and sealed,
17 so that is not exposed to the elements.

18 Thank you.

19 CHAIRMAN AIBEL: Thank you,

20 Mr. Matule?

21 MR. MATULE: Well, where to begin.

22 I think Mr. McNeight testified that the
23 property is currently used as an industrial use.
24 There's industrial equipment stored there, and it
25 goes in and out. I know that is what my applicant

1 does. He is a masonry contractor and he stores his
2 equipment there.

3 He did, while everybody else was
4 testifying, do a calculation about the rear stairs.
5 They could be narrowed down -- did you say seven
6 feet, Mr. McNeight?

7 MR. MC NEIGHT: Yes. Seven feet deep
8 and 18.

9 MR. MATULE: And 18.

10 So if they became a foot wider in each
11 direction, they have could be pulled in a foot,
12 which would reduce it to 126 square feet, where
13 before I think it was 137 square feet, so it would
14 reduce it down somewhat, and that would reduce the
15 lot coverage.

16 As far as a stoop goes, again, if that
17 is the Board's pleasure, obviously the applicant is
18 getting conflicting direction, but since the flood
19 plain administrator doesn't get to vote on the
20 application, if the Board would prefer a stoop, that
21 could be arranged.

22 As far as the wall of the garage in the
23 back and the side of the neighbor's house, the
24 applicant has proffered that he would address those
25 in an appropriate manner.

1 The testimony about the Jubilee Center,
2 I believe the Jubilee Center is up on the corner of
3 7th and Jackson. The Housing Authority properties
4 are across the street.

5 I would hope that the children who are
6 going from the Housing Authority to the Jubilee
7 Center go down to 7th Street on their side --

8 UNIDENTIFIED VOICE: It's Sixth.

9 MR. MATULE: -- I'm sorry -- on Sixth,
10 whatever, either side, I would hope they would cross
11 at a intersection at the Jubilee Center.

12 Also, they are walking past other
13 driveways where cars are pulling out, but the
14 applicant has been pulling in and out of here with
15 trucks and compressors and all kinds of industrial
16 equipment for as long as he has owned the property,
17 and it doesn't seem to be an issue.

18 As far as the 126 square feet of
19 additional lot coverage for those rear egress
20 stairs, we are taking down a block garage that right
21 now probably covers, I can't say, but looks like it
22 is at least 35 feet deep, and it is on the rear
23 property line, so this would open up a tremendous
24 hole in the donut of 40 feet, which I think is a
25 fair trade-off for having 126 square foot balcony

1 out there -- not balcony -- a fire stair.

2 As far as the taxes go, you know, we
3 will have to look into that, because I don't have
4 enough information right now.

5 But if the curb cut didn't already
6 exist, and there were not already a history of
7 parking here, we wouldn't be asking for the parking.
8 I think the fact that it exists, and it has been in
9 use for many years seemingly without problem, I
10 don't think will have a substantial negative impact.

11 And frankly, I would presume if people
12 are going to live here, some of them are going to
13 have cars, and whether they park in the garage or
14 park them on the street, you're still going to have
15 traffic going past all of the facilities Mr.
16 Bogeanos says were good enough to bring to our
17 attention.

18 As far as this concern about people
19 rushing home to get into the parking space, I don't
20 think the person who was testifying understands how
21 this works. It is not like whoever can get into the
22 garage first gets the parking space.

23 If you are a tenant or an owner, you
24 will get the exclusive right to use one of the two
25 parking spaces to the exclusion of the other people

1 in the building, so you don't really get the -- have
2 to drive like a crazy person to get your parking
3 spot at the end of the day.

4 All things considered, it is a
5 tremendous esthetic improvement to the neighborhood.

6 I can only suspect that the houses on
7 either side of us at some point in time are going to
8 be built up and similar kind of buildings are going
9 to be built, albeit without parking, and the issue
10 of the lot line windows, as the Board understands
11 what that is, and the applicant is really willing to
12 deal with that.

13 So, you know, all things considered, I
14 think the variances we are asking for are not so
15 substantial that the Board can't grant the requested
16 relief, and I would ask that you do.

17 CHAIRMAN AIBEL: Thanks, Mr. Matule.

18 Okay, Board members?

19 COMMISSIONER DE FUSCO: Mr. Chair --
20 that is okay.

21 CHAIRMAN AIBEL: Go ahead.

22 COMMISSIONER DE FUSCO: You could argue
23 that, you know, recessing the exit stair inside of
24 the building, eliminate that variance, would then
25 take away livable space, limit the density variance,

1 but, you know what, we are the Zoning Board, so we
2 have to figure out whether or not these are
3 variances that we are able to grant or not.

4 I don't really have problem with the de
5 minimus height, the de minimus density or the lot
6 coverage.

7 What I do have a significant problem
8 with is the parking and not for the safety reasons
9 that everybody talked about. That is certainly
10 concern of mine. More so, that I don't think we
11 should take two spots or a spot and a half off the
12 public right-of-way and add them to a private space.
13 I just don't.

14 You could argue if this was connected
15 to another building, you know, putting five spots in
16 there, that is fine. Not necessarily fine, but that
17 is an opportunity that we can discuss when it
18 arises. But this will set a slippery slope for
19 buildings on either side of this particular
20 building, which have yet to be developed, each
21 saying, look at 525, look what they did, and then
22 have three driveways right in a row.

23 So I am not at all indicating the way I
24 am going to vote on this, but that is my concern
25 with this project, and I would be curious to hear

1 what the rest of the Board has to say.

2 COMMISSIONER MURPHY: So from --

3 MR. GALVIN: Well, hold on one second.

4 The normal procedure is as follows:

5 When we go into deliberations, it is all over.

6 There was plenty of scuttlebutt to make changes to
7 this application before we went to the
8 deliberations.

9 MR. MATULE: Okay.

10 COMMISSIONER DE FUSCO: I mean, can we
11 just hear what he has to say because --

12 MR. GALVIN: It is up to your fellow
13 Board members, but I think as a general --

14 COMMISSIONER BRANCIFORTE: I don't want
15 to hear it.

16 MR. GALVIN: -- as a general rule it is
17 not a good idea for people to wait until we start to
18 say whether we like vanilla or chocolate and then
19 they want to change the plan.

20 I want them to change the plan and take
21 the pressure off of you.

22 COMMISSIONER DE FUSCO: Fair enough.

23 CHAIRMAN AIBEL: We are at
24 decision-making.

25 Diane?

1 COMMISSIONER MURRAY: So I kind of echo
2 your feelings.

3 I also feel if we go ahead and say a 25
4 foot building can have parking in it, not only in
5 this zone, in other zones, people are going to be
6 wondering why they can't put parking in, and there
7 is plenty of 25 foot buildings that would probably
8 like to have parking more than they like to have
9 that extra little apartment downstairs. So with
10 that said, it is the biggest negative I have.

11 The other one is a lot more simple, but
12 Mr. McNeight has said that the bay windows can't
13 have masonry on them, and I have -- the last time
14 this came up, I have kind of driven around town, and
15 I am absolutely amazed at how many bay windows have
16 masonry that don't go all the way down to the
17 ground, and many of them are, you know, not just one
18 floor, like my house, but multiple floors, so I am
19 thinking that I don't know if that is really true or
20 not. And in one case we talked about it might be
21 stucco in some cases, which I don't know if that is
22 the same as masonry or not --

23 MS. BANYRA: No.

24 COMMISSIONER MURRAY: -- but anyway, so
25 I am a little bit concerned about that idea because,

1 you know, we have these rules to kind of -- or I
2 should say the master plan speaks to them because
3 that is what, you know, we want.

4 And also, I do believe that not having
5 the stoop there allows for more projects to say we
6 don't want a stoop, and I know that sometimes some
7 streets work better with stoops. This may or may
8 not be one of those streets since there is only one
9 other stoop there, but it's a characteristic that I
10 think is really important in Hoboken.

11 CHAIRMAN AIBEL: Thank you.

12 Anybody else?

13 COMMISSIONER BRANCIFORTE: Yeah.

14 I mean, I think the first question
15 tonight for me was, you know, convince me that
16 allowing people to back out or back in across the
17 sidewalk isn't going to be a hazard, and I didn't
18 hear anybody to say that.

19 So everything else, the density, the
20 height, the lot coverage, whatever, it is a
21 non-starter for me because the parking situation is
22 just too dangerous, flat out.

23 CHAIRMAN AIBEL: Mr. McAnuff?

24 COMMISSIONER MC ANUFF: Yes.

25 I don't think I can support this

1 project. I just find on these projects where we
2 start off with a blank slate, and you could make
3 this work within the zoning resolution. I just
4 don't see a need to approve any of these variances.
5 I don't think there is a hardship or anything of
6 that nature.

7 I think the parking situation was not
8 well thought out at all, and like I said, I don't
9 think I will be behind this one.

10 CHAIRMAN AIBEL: Mr. Grana?

11 COMMISSIONER GRANA: I think it's a
12 very -- I think it is a perfectly nice building and
13 it certainly improves the conditions of the lot
14 producing a donut in the rear, and I think that most
15 of my other Commissioners, and maybe that wasn't
16 stated specifically, but may or may not feel that
17 way.

18 The building, there are some variances.
19 I think they are, as Mr. Ochab said, they're very de
20 minimus, and I would agree with that.

21 I must admit I come from a biased point
22 of view. I take young children down the streets
23 every day. There is Mamma Johnson field, followed
24 by Jubilee, followed by Monroe, which is really
25 highly oriented towards children now. I think that

1 the idea of promoting rear exit parking is a bad
2 precedent to set and particularly on a 25 foot lot,
3 and if we are going to invoke stoops, that is going
4 to further block people's line of sight.

5 So just as I voted elsewhere, I think
6 just abandoning the stoop because we say we are
7 going to abandon the stoop is not the right answer.

8 CHAIRMAN AIBEL: Did everybody get a
9 chance?

10 Yes. Thanks.

11 So two quick comments: I think the
12 parking at the building has worked effectively to
13 now thankfully, because there is no building at the
14 lot line, so that is certainly a huge difference,
15 and I think allowing the curb cuts here will in
16 effect eventually result in three successive curb
17 cuts across three 25 foot buildings, which is I
18 think is unacceptable.

19 So I think we are ready for a motion.

20 COMMISSIONER GRANA: I'll make the
21 motion to deny 525 Jackson Street.

22 COMMISSIONER MC ANUFF: Second.

23 CHAIRMAN AIBEL: Pat?

24 MS. CARCONE: Commissioner De Fusco?

25 COMMISSIONER DE FUSCO: A yes vote is a

1 no -- is a vote to deny, correct?

2 MR. GALVIN: Correct.

3 COMMISSIONER DE FUSCO: Yes.

4 MS. CARCONE: Commissioner Grana?

5 COMMISSIONER GRANA: Yes.

6 MS. CARCONE: Commissioner Murphy?

7 COMMISSIONER MURPHY: Yes.

8 MS. CARCONE: Commissioner Branciforte?

9 COMMISSIONER BRANCIFORTE: Yes.

10 MS. CARCONE: Commissioner McAnuff?

11 COMMISSIONER MC ANUFF: Yes.

12 MS. CARCONE: Commissioner Aibel?

13 CHAIRMAN AIBEL: Yes.

14 Thank you.

15 MR. MATULE: Thank you.

16 (The matter concluded at 10:40 p.m.)

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C E R T I F I C A T E

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

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

s/Phyllis T. Lewis, CCR, CRCR

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.
 This transcript was prepared in accordance with
 NJAC 13:43-5.9.

HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN

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SPECIAL MEETING OF THE HOBOKEN :
ZONING BOARD OF ADJUSTMENT OF THE : July 14, 2015
CITY OF HOBOKEN :Tuesday 10:42
p.m. ----- X

Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

Chairman James Aibel
Commissioner Michael DeFusco
Commissioner Antonio Grana
Commissioner Diane Fitzmyer Murphy
Commissioner John Branciforte
Commissioner Owen McAnuff

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

Eileen Banyra, Planning Consultant

Paul Winters, PE, PP
Acting Board Engineer

Patricia Carcone, Board Secretary

PHYLLIS T. LEWIS
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10 (201) 659-0403
11 Attorney for the Applicant.

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1 CHAIRMAN AIBEL: So we are at 10:10.

2 MS. CARCONE: That's the wrong time.

3 COMMISSIONER DE FUSCO: It's 10:42.

4 MS. CARCONE: That clock is off again.

5 (Everyone talking at once.)

6 CHAIRMAN AIBEL: Let's keep going.

7 10:42? No, I have changed my opinion.

8 As much as I would like to get to 901,

9 and I assume there are people here for 901

10 Bloomfield, it is quite late.

11 Do you have your architect here?

12 UNIDENTIFIED VOICE FROM THE AUDIENCE:

13 Keep going.

14 MR. MATULE: I have my architect here.

15 He could be ready in a few minutes, if you want to

16 start.

17 CHAIRMAN AIBEL: You know what --

18 MR. MATULE: I certainly prefer to have

19 a full Board.

20 COMMISSIONER MURPHY: Can we just have

21 the architect?

22 CHAIRMAN AIBEL: Well, let me be very

23 direct. I respect everybody who came out tonight to

24 listen to a long evening of applications.

25 You know, we are all tired. Some of us

1 have physical nicks and dings that we are trying to
2 rehab, and I will claim that I am the one who is the
3 first one who is punking out tonight, which is not
4 what I usually like to do. But unless there is an
5 absolute outcry of objection, I think we would be
6 better off rescheduling, starting fresh, and that
7 would be my suggestion.

8 MS. MURCKO: I don't know how to --

9 CHAIRMAN AIBEL: Why don't you stand
10 up, so we can hear you?

11 MS. MURCKO: -- I asked this
12 question --

13 THE REPORTER: I'm sorry. Can you
14 state your name?

15 MS. MURCKO: What?

16 THE REPORTER: Can you state your name
17 for me?

18 MS. MURCKO: Susan Murcko, M-u-r-c-k-o.
19 I live at 157 9th Street.

20 I became aware around midnight last
21 night that some of the neighbors who live further
22 away from 901 Bloomfield received notices of
23 something regarding this proceeding tonight.

24 But we, my husband and I, live at 157
25 did not, and I wondered what the rules are or the

1 process is.

2 MR. GALVIN: It depends on where the --
3 what happens is the applicant for every application,
4 they have to make a request of the tax assessor to
5 provide them with a list of everybody within 200
6 feet of the property. If you are within the 200
7 feet of the property, you have to receive notice.

8 MS. MURCKO: Well, I --

9 MR. GALVIN: -- and it's their
10 obligation -- let me finish -- it is their
11 obligation to mail it more than ten days in advance
12 of the hearing. Okay?

13 So without knowing more, I don't know.
14 Are you saying you weren't on the list or you were
15 on the list?

16 MS. MURCKO: I don't know if we were on
17 list.

18 MR. MATULE: Can I ask if she lives in
19 a condominium?

20 MR. GALVIN: Do you live in a
21 condominium?

22 MS. MURCKO: No. We live in a
23 single-family house.

24 MR. GALVIN: What's your street --

25 MR. MATULE: 157 9th Street --

1 MR. HILL: 157, diagonal from the
2 property in question.

3 MR. MATULE: 157 9th Street. Let's
4 see. I see 157 9th Street, Michael Hill and Susan
5 Murcko.

6 MR. HILL: Correct.

7 MR. MATULE: Yes.

8 MR. HILL: But we did not receive a
9 certified letter.

10 MR. MATULE: Well, I have the proof of
11 mailing from the United States Post Office. It was
12 mailed on July 22nd.

13 I am sorry. Maybe you want to check
14 with your postman, but I have no control over what
15 happens to the letter once I put it into the mail,
16 but you were on the list, and you were notified.

17 MS. TORRES: I didn't receive a letter
18 either.

19 THE REPORTER: What is your name?

20 MS. TORRES: Gail Torres, T-o-r-r-e-s.

21 MR. MATULE: Gail Torees, you are on
22 the list.

23 MS. TORRES: I didn't receive it.

24 CHAIRMAN AIBEL: So, Mr. Matule, if
25 we --

1 (Audience talking at once)

2 CHAIRMAN AIBEL: -- guys --

3 MR. GALVIN: We want you to be in the
4 game, so you know what we're doing.

5 CHAIRMAN AIBEL: Counsel is making a
6 suggestion that we reschedule and we ask the
7 applicant to renotify.

8 COMMISSIONER MURPHY: Don't you have
9 the card? Don't they have to be certified?

10 MR. MATULE: Well, I guess we can. It
11 costs 370-something dollars of postage, but I guess
12 we can do that for a project of this magnitude.

13 COMMISSIONER AIBEL: It's a big
14 project.

15 MS. CARCONE: You have the
16 certification --

17 MS. BANYRA: Did you get the cards
18 back, too? Do you have the green cards?

19 MR. MATULE: We don't use them. We
20 are not required to do return receipt requested.

21 MS. CARCONE: They're not required to
22 use the cards.

23 COMMISSIONER MURPHY: Why?

24 MS. CARCONE: Because it's not
25 required --

1 MR. MATULE: So when are you scheduling
2 it to?

3 MR. GALVIN: Right --

4 CHAIRMAN AIBEL: Pat?

5 MR. GALVIN: -- under the --

6 COMMISSIONER GRANA: Under the spirit
7 of everybody knowing what is going on and a fuller
8 Board and a time to hear all of the testimony --

9 MR. GALVIN: Do you have something you
10 want to tell us or --

11 MR. HULING: I was just going to ask
12 this --

13 THE REPORTER: I'm sorry. Who are you?

14 MR. HULING: Bill Huling, 938
15 Bloomfield Street. H-u-l-i-n-g is the last name.

16 Could we please be put first on the
17 docket next time?

18 MR. GALVIN: Listen, the developer
19 would like to be first also, but we have no idea. I
20 don't even know where I'm carrying it yet, guys.
21 I don't know.

22 COMMISSIONER BRANCIFORTE: We have to
23 pick a date first and figure this out, the agenda
24 for the evening.

25 MS. CARCONE: Do you want it the 25th

1 of August?

2 MS. BANYRA: You could be the first
3 application that night.

4 (Board members confer)

5 MR. GALVIN: By the way also, let me
6 just say, that I don't think there is any way that
7 we would have been able to finish this tonight. As
8 you have seen, these cases are taking like an hour
9 and a half. We would be here at midnight trying to
10 get this finished, and we probably would have wound
11 up getting there, and you would have been tired, and
12 we would have carried it to finish it, so this is a
13 much better plan to carry.

14 A VOICE: Well, our daughter's plane is
15 delayed until two a.m., so we thought if we hung out
16 with you guys --

17 (Everyone talking at once.)

18 (Laughter)

19 MR. MATULE: My planner is not
20 available --

21 MR. GALVIN: You think like I do. It's
22 very scary.

23 MR. MATULE: -- my planner is not
24 available on the 28th.

25 MS. CARCONE: The 25th?

1 MR. MATULE: Oh, the 25th.

2 MR. GALVIN: You are not available on
3 the 25th?

4 MR. OCHAB: Yes.

5 CHAIRMAN AIBEL: What is the next date?

6 COMMISSIONER MURPHY: I am not around
7 on the 25th either.

8 (Board members confer about scheduling)

9 THE REPORTER: Do you want this on the
10 record because everyone is talking at once?

11 MR. GALVIN: It's just chatter. Just
12 put in chatter.

13 (Board members confer.)

14 MS. CARCONE: Do you want to go into
15 September?

16 We may have to go into September.

17 MR. MATULE: Whatever.

18 COMMISSIONER MURPHY: One meeting you
19 have to --

20 CHAIRMAN AIBEL: Do you want this on
21 the record?

22 (Board members confer.)

23 COMMISSIONER MURPHY: Do it on the 11th
24 instead of the 25th because I have a feeling that is
25 like close to the end of the summer, and last year

1 we had to cancel that meeting. I mean, it's just
2 something to think about.

3 (Board members confer)

4 MR. GALVIN: Time out. Time out.
5 Everybody be quiet for a second. We are going off
6 the record to spare the court reporter.

7 (Discussion held off the record)

8 MR. GALVIN: Are your witnesses
9 available on August 11th?

10 MR. MATULE: August 11th, my witnesses
11 would be an available on August 11th.

12 A VOICE: I have a question.

13 MR. GALVIN: Go ahead. Speak up.

14 (Audience all talking at once.)

15 MR. GALVIN: Hello?

16 Just keep it down a little.

17 Yes, ma'am.

18 MARY: My name is Mary.

19 CHAIRMAN AIBEL: We are not talking
20 about the merits, are we?

21 MARY: Well, I don't know. I have a
22 question. I'm not sure --

23 MR. GALVIN: Let her start asking the
24 question, and I will tell you if we can't answer it.

25 MARY: Okay. Thank you.

1 The representations have been that the
2 facade is going to be maintained, and people are
3 concerned about the facade because like urban weed
4 trees are growing and things, and I don't know --

5 MR. GALVIN: That's something that we
6 will discuss at the hearing.

7 MARY: That's what I assumed as much,
8 but I wanted to at least ask the question.

9 MR. GALVIN: Mr. Matule might be able
10 to discuss that with you for one minute.

11 Okay. Here is the game plan.
12 Everybody ready?

13 Everybody has worked hard here.
14 Instead of having a meeting late in August, we are
15 going to move it to August 11th.

16 So August 11th, it will be the first
17 matter on, and we will require renotice, okay, under
18 the theory that maybe something went awry here,
19 okay?

20 So is the Board okay with that and
21 would somebody like to make motion to carry this in
22 that manner?

23 MS. CARCONE: Do we have to carry when
24 we are renoticing?

25 MR. GALVIN: We have to make this

1 motion anyway.

2 MS. CARCONE: Okay.

3 COMMISSIONER BRANCIFORTE: Are we
4 renoticing?

5 CHAIRMAN AIBEL: Yes.

6 COMMISSIONER BRANCIFORTE: Motion to
7 carry 901 Bloomfield to the August 11th meeting,
8 with notice.

9 MS. CARCONE: Second?

10 COMMISSIOENR GRANA: Second.

11 MS. CARCONE: All in favor?

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

14 MR. GALVIN: Don't move.

15 Mr. Matule, I know you are distracted,
16 but do you waive the time in which the Board has to
17 act?

18 MR. MATULE: I waive the time in which
19 the Board has to act through August 11th, 2015.

20 MR. GALVIN: Good.

21 Now you can adjourn.

22 CHAIRMAN AIBEL: Motion to adjourn,
23 please.

24 COMMISSIONER BRANCIFORTE: Motion to
25 adjourn.

1 COMMISSIONER GRANA: Second.

2 CHAIRMAN AIBEL: All in favor?

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

5 (The meeting concluded at 11:15 p.m.)

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C E R T I F I C A T E

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

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

s/Phyllis T. Lewis, CCR, CRCR

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PHYLLIS T. LEWIS, C.C.R. XI01333 C.R.C.R. 30XR15300
Notary Public of the State of New Jersey
My commission expires 11/5/2015.
This transcript was prepared in accordance with
NJAC 13:43-5.9.

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