

HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN

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REGULAR BOARD MEETING OF THE :
HOBOKEN ZONING BOARD OF : February 18, 2014
ADJUSTMENT : 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
- Vice Chair Elliot H. Greene
- Commissioner Philip Cohen
- Commissioner Michael DeFusco
- Commissioner Antonio Grana
- Commissioner Diane Fitzmyer Murphy
- Commissioner John Branciforte
- Commissioner Tiffanie Fisher
- Commissioner Owen McAnuff

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

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

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1 CHAIRMAN AIBEL: Good evening,
2 everyone.

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

11 If everybody would me join in saluting
12 the virtual flag that Mr. Greene has.

13 (Pledge of Allegiance recited.)

14 CHAIRMAN AIBEL: Thank you,

15 We are at a Hoboken Zoning Board of
16 Adjustment Regular Meeting.

17 I would apologize, but I really have no
18 responsibility for us being in the balcony of city
19 hall. But for those of us who have been here
20 before, we do have some challenges. Our court
21 stenographer needs to hear everybody. The acoustics
22 are not that terrific, so I would ask everybody (a)
23 keep side bars in the audience to a minimum. If you
24 need to go downstairs to talk, great. And as
25 witnesses are speaking and as Board members are

1 speaking, please do your very best to speak loudly,
2 so Phyllis can hear.

3 I think we need a roll call.

4 MS. CARCONE: Commissioner Aibel?

5 CHAIRMAN AIBEL: Here.

6 MS. CARCONE: Commissioner Greene?

7 VICE CHAIR GREENE: Here.

8 MS. CARCONE: Commissioner Cohen?

9 COMMISSIONER COHEN: Here.

10 MS. CARCONE: Commissioner DeFusco?

11 COMMISSIONER DE FUSCO: Here.

12 MS. CARCONE: Commissioner Grana?

13 COMMISSIONER GRANA: Here.

14 MS. CARCONE: Commissioner Murphy?

15 COMMISSIONER MURPHY: Here.

16 MS. CARCONE: Commissioner Branciforte?

17 COMMISSIONER BRANCIFORTE: Here.

18 MS. CARCONE: Commissioner Fisher?

19 COMMISSIONER FISHER: Here.

20 MS. CARCONE: Commissioner McAnuff?

21 COMMISSIONER MC ANUFF: Here.

22 CHAIRMAN AIBEL: Great.

23 We are going to do a couple of business
24 items for the Board.

25 The first is we have a resolution

1 designating The Jersey Journal as the Zoning Board's
2 official newspaper for purposes of publication and
3 regular special meetings, general public hearing
4 notices, and notices of final decision, an action by
5 the Board.

6 We previously discussed this, so I
7 think we already made the motion. I think it has
8 been approved.

9 Does anybody remember that?

10 MS. CARCONE: Uh-huh.

11 CHAIRMAN AIBEL: So that will be signed
12 this evening.

13 MS. CARCONE: Okay.

14 CHAIRMAN AIBEL: We have two
15 resolutions of approval. The first is the
16 application of 88 Garden, LLC, In The Matter of
17 Garden 88, LLC, and those entitled to vote on the
18 application are Mr. Cohen, Mr. Grana, Mr. Greene,
19 Ms. Murphy, Ms. Fisher, and I will vote as well.

20 So I need a motion to approve.

21 COMMISSIONER COHEN: Motion with just
22 one comment on the resolution.

23 For those in favor, for Commissioner
24 Murphy, it omits her first name.

25 COMMISSIONER MURPHY: Yeah. I don't

1 know why they did that. They asked me if I wanted
2 to use just "Murphy," and I said fine. So when I
3 saw "Fitzmeyer Murphy," I have a new first name.

4 MS. CARCONE: Actually I changed that
5 on the final. I saw it tonight and fixed it.

6 CHAIRMAN AIBEL: If it reads "Diane
7 Murphy," would you care for "Fitzmeyer" as well?

8 COMMISSIONER MURPHY: No. "Diane
9 Murphy" is fine.

10 CHAIRMAN AIBEL: Okay, good.

11 COMMISSIONER COHEN: As amended, right?

12 MS. CARCONE: The signature copies are
13 amended.

14 VICE CHAIR GREENE: I will second.

15 CHAIRMAN AIBEL: Pat, we need a vote.

16 MS. CARCONE: Commissioner Greene?

17 VICE CHAIR GREENE: Yes.

18 MS. CARCONE: Oh, who seconded that?

19 VICE CHAIR GREENE: I did.

20 MS. CARCONE: Commissioner Cohen?

21 COMMISSIONER COHEN: Yes.

22 MS. CARCONE: Commissioner Grana?

23 COMMISSIONER GRANA: Yes.

24 MS. CARCONE: Commissioner Murphy?

25 COMMISSIONER MURPHY: Yes.

1 MS. CARCONE: Commissioner Fisher?

2 COMMISSIONER FISHER: Yes.

3 MS. CARCONE: Commissioner Aibel?

4 CHAIRMAN AIBEL: Yes.

5 The second resolution of approval is In
6 The Matter of Jefferson 401 Realty, LLC, and those
7 entitled to vote on this application are Mr. Cohen,
8 Mr. Grana, Mr. Greene, Ms. Murphy, and I will vote
9 as well.

10 We need a motion to approve.

11 COMMISSIONER COHEN: Motion to approve
12 with the same amendments.

13 CHAIRMAN AIBEL: It has been corrected.

14 COMMISSIONER COHEN: Great.

15 VICE CHAIR GREENE: I will second it.

16 MS. CARCONE: Commissioner Greene?

17 VICE CHAIR GREENE: Yes.

18 MS. CARCONE: Commissioner Cohen?

19 COMMISISONER COHEN: Yes.

20 MS. CARCONE: Commissioner Grana?

21 COMMISSIONER GRANA: Yes.

22 MS. CARCONE: Commissioner Murphy?

23 COMMISSIONER MURPHY: Yes.

24 MS. CARCONE: Commissioner Aibel?

25 CHAIRMAN AIBEL: Yes.

1 Then I would ask Mr. Cohen to give a
2 quick update on the process for reviewing
3 appointments for a Board Planner and a Board
4 Engineer.

5 COMMISSIONER COHEN: Thank you, Mr.
6 Chairman.

7 The committee for the RFQs for the
8 Zoning Board for professional engineering services
9 consisted of Commissioner Grana and myself.

10 We have interviewed four applicants for
11 the position, and we are doing some additional
12 consulting, and we should be in a position to make
13 recommendations to the Board at our next meeting in
14 two weeks. That took place last Friday.

15 This morning, Commissioner Fisher and
16 myself constitute the committee for reviewing RFQs
17 with respect to professional planning services for
18 the Zoning Board. Again, there were four applicants
19 that responded to the RFQs, and all four were
20 interviewed, and similarly we will be in the
21 position in the next two weeks to make a
22 recommendation --

23 VICE CHAIR GREENE: We have a Board
24 meeting in two weeks?

25 It is March 18th.

1 COMMISSIONER COHEN: -- the next four
2 weeks, at the next meeting.

3 CHAIRMAN AIBEL: March 18th, good,
4 excellent.

5 Phil, why don't you give us sort of a
6 heads-up on the Board Rules and Procedures?

7 COMMISSIONER COHEN: Okay.

8 So Pat Carcone has given everyone a
9 copy of a document entitled, "Rules of Procedure of
10 the Zoning Board of Adjustment of the City of
11 Hoboken," and it describes some basic guidelines and
12 guidance with respect to the functions and the
13 functioning of our Zoning Board.

14 It is largely taken from a version of
15 the Rules of Procedures of the Zoning Board that
16 existed a few years ago. Dennis Galvin and the
17 Board Chair and myself have given some edits to it.
18 Everyone should take a look at it, and if you have
19 any questions or comments, again, at our meeting we
20 will be in the position to have a vote on the
21 adoption of these rules.

22 For the new Commissioners, I think you
23 will find it a helpful document because it lays out
24 in plain English some very basic guidance and
25 guidelines as to how the Board functions.

1 Thank you.

2 CHAIRMAN AIBEL: Good.

3 So we will have everybody take a look
4 and be prepared to approve or reject them at our
5 next meeting.

6 Any other business anybody wishes to
7 raise?

8 Great.

9 (Continue on next page)

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HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN

- - - - - X
 118-120 Madison, Block 28, Lot 25 :
 Applicant: TST Madison, LLC : February 18, 2014
 (Continued from 2/11/14) : Tuesday 7:15 p.m.
 Minor Site Plan, C&D Variances :
 - - - - - X

Held At: 94 Washington Street
Hoboken, New Jersey

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WITNESS

PAGE

FRANK MINERVINI

16

E X H I B I T S

EXHIBIT NO.

PAGE

A-6

16

1 CHAIRMAN AIBEL: Okay. So we will
2 start the evening continuing the hearing of 118-120
3 Madison.

4 MR. MATULE: Good evening, Mr.
5 Chairman, and Board Members, Robert Matule appearing
6 on behalf of the applicant.

7 Just briefly, we were here last week,
8 the 11th, and we put in pretty much all of our
9 testimony with respect to this application,
10 renovating and expanding the industrial building,
11 the old Artillio Stove Building as some of us refer
12 to it.

13 We received a lot of input from the
14 Board during the hearing, and the architect has gone
15 back and revisited the plans and made some
16 adjustments.

17 Also, the Board had requested that the
18 architect prepare a photo board to get a better
19 sense of what the rear yard looked like. We have
20 that photo board here tonight --

21 MR. MINERVINI: An additional photo
22 board.

23 MR. MATULE: -- an additional photo
24 board.

25 I must confess, I don't know what

1 exhibit we left off at.

2 MS. CARCONE: We are up to A-5.

3 MR. MATULE: Thank you, Madam
4 Secretary.

5 So we will call this exhibit when Mr.
6 Minervini will be sworn --

7 MR. GALVIN: He is continuing under
8 oath.

9 MR. MATULE: All right.

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

12 MR. MATULE: Mr. Minervini, when you
13 were here last week, the Board had requested that
14 you prepare some photos of the rear yards and the
15 area behind the subject building, so they could get
16 a sense of the hole in the donut and what it
17 consisted of.

18 Have you in fact done that?

19 THE WITNESS: I have.

20 MR. MATULE: So we are going to mark
21 this Exhibit A-6.

22 (Exhibit A-6 marked.)

23 If you can tell the Board what it is
24 and when those photographs were taken.

25 THE WITNESS: This is a revised photo

1 board relative to --

2 MR. GALVIN: You should have brought a
3 flashlight.

4 (Laughter)

5 THE WITNESS: -- I took the photos
6 myself -- it was the day, last Wednesday, prior to
7 the snow. A couple Board members mentioned that I
8 probably should take the photos prior to the snow.

9 So two revisions here relative to the
10 last photo board: I went to the roof of our
11 building, 118 Madison Street, and took a panoramic
12 shot of all of the properties to the rear.

13 As part of my drawing, I will describe
14 in depth and yard depth, but I will bring out the
15 photo board and start with that.

16 So standing at the top of our building,
17 which in the back in this case is at the
18 three-stories, we are directly behind 121-123 -- I'm
19 sorry -- 121 and 119, adjacent to 123.

20 123, and you will see when I get to the
21 drawings, is a 60-foot deep building, so that means
22 that currently there is a 40-foot rear yard.

23 121 Monroe is in addition, it's 15 feet
24 less, so we got a 55-foot rear yard.

25 113 through 119 is an oil company.

1 It's 100 foot wide by 250 depth, one-story section,
2 the property that is adjacent to us is an empty
3 parking lot.

4 The purpose of this, and I am sure the
5 purpose of the questions, we were wondering what the
6 impact of our additional -- our fifth floor would be
7 to these properties.

8 Now, when I will get to the plans, I
9 think you will see I think that the buildings as
10 they are, are set very far back, and the impact
11 would be very, very minimal.

12 Also, one of the comments -- one of the
13 questions asked was: What do the buildings across
14 the street on Madison Street look like.

15 So these are photographs of each
16 building, semi-stitched together of what the
17 existing conditions are.

18 I could pass it around or --

19 VICE CHAIR GREENE: It's probably
20 better to pass it around, yes.

21 MS. BANYRA: Frank, did you take
22 pictures to either side of the back of the
23 buildings --

24 THE WITNESS: Either side --

25 MS. BANYRA: -- in terms of looking

1 into the yards from either, you know --

2 THE WITNESS: -- no. I really couldn't
3 get those, but I have measured those buildings, and
4 you can see the size of the yards on our first
5 sheet.

6 So perhaps I should go through the list
7 of revisions --

8 MR. MATULE: Sure.

9 THE WITNESS: -- the first and biggest
10 revision I think that we are proposing is to remove
11 an additional ten feet off the rear of the existing
12 structure, so the existing structure right now is
13 three stories, and it has a four foot nine rear
14 yard.

15 We are proposing to increase that rear
16 yard to 14 feet nine inches, in effect taking ten
17 feet off the existing building.

18 A few of the comments were, if
19 possible, can we add to or try to make more typical
20 the hole in the doughnut.

21 So if you look at Sheet Z-3, Z-3 is the
22 drawing to the right, and it reflects a revised
23 ground floor plan with the ten feet removed.

24 In fact, the end result is a 14 feet
25 point nine rear yard. With this design and the loss

1 of the space, we reduced our parking count from nine
2 to seven, still more than the ordinance requires,
3 and that was one of the results.

4 So let's look at Sheet Z-1. The
5 drawing on the top left corner, I think it is a very
6 effective drawing, so it shows all of the
7 properties, but on our block it shows each building
8 as it sits on the site as well as the height, so
9 that is a very good description of what the hole in
10 the donut may look like. So we have added ten feet
11 to what the hole would be.

12 MS. BANYRA: Frank, where did you get
13 that information?

14 THE WITNESS: This is all based off
15 Google Maps.

16 The building directly adjacent to ours,
17 we measured ourselves. So the buildings have the
18 measurements here, and you will see on that drawing
19 that a few of them do, and those were measured by my
20 office.

21 MS. BANYRA: Okay. So the Google Maps,
22 do you know what date -- or I don't know that they
23 give you a date as to when they were --

24 THE WITNESS: No. They don't give you
25 a date.

1 A few of the buildings I can give you
2 exact numbers on, because we designed them, and the
3 buildings that I measured there were measured by my
4 office.

5 MS. BANYRA: But it appears to be that
6 what you got from Google Maps appeared to be
7 accurate visually as you looked at?

8 THE WITNESS: They compared exactly to
9 my visual inspection.

10 MS. BANYRA: Okay.

11 THE WITNESS: Again, I guess we should
12 talk about all of the adjacent properties.

13 The building directly to our north on
14 Madison Street is a four-story structure. It is
15 four and a half stories in height because the ground
16 floor is raised off grade.

17 It has got a 40-foot rear yard, which
18 does not include the ten foot deck, so the actual
19 rear yard in that building is ten feet.

20 So the edge of our building, our fifth
21 floor will be aligned with the main structure
22 directly adjacent to us.

23 The building to our south is a
24 five-story height -- is a five-story height. We
25 match that in height. That building actually goes

1 back about seven or eight feet further than ours on
2 its main five floors, the ground floor is about 99
3 percent lot coverage on that building.

4 So that garage on the building directly
5 to our south goes just about to the property line,
6 and that reflects it --

7 MS. BANYRA: Frank, if I could just go
8 back on the one north, 124, you said there was a ten
9 foot rear yard --

10 THE WITNESS: The building itself is 60
11 feet, and then there is an additional ten foot deck.

12 MS. BANYRA: Right. But there's a 30
13 foot rear yard setback.

14 THE WITNESS: Right.

15 The building directly behind us, 123
16 Monroe, is a four-story building. It has a 40-foot
17 rear year. We designed that building.

18 Lot number 3, we measured between the
19 buildings, and I say approximately, because we used
20 the laser measure, and it is mostly accurate. So
21 you can see there the setbacks to Lot 3 -- Lot
22 number 10, which is part of the parking for the
23 one-story industrial building, which is Maher Oil,
24 it is an oil company still functioning. So then
25 Lots 7, 8, and 9 are one-story with parking perhaps

1 around Monroe and 10th. The photo board describes
2 that building pretty well, too, towards the rear.

3 So we removed a gross of 1200 square
4 feet from the building by taking that ten feet off
5 as well as removing two parking spaces.

6 If we go back to that same drawing,
7 Z-3, the next revision we have shown where the
8 cogeneration mechanicals will be located, that is at
9 the top of the drawing towards the west of that
10 left-hand corner. With that, one concern was how do
11 we vent that. That is --

12 VICE CHAIR GREENE: Excuse me.

13 THE WITNESS: Yes.

14 VICE CHAIR GREENE: I just wanted to
15 clarify something you said. You went from nine
16 parking spaces to seven. I thought it was eight to
17 seven --

18 THE WITNESS: I'm sorry.

19 Pardon me.

20 VICE CHAIR GREENE: And then also, if I
21 can go back one second, you were referring to Lot 3,
22 and I am not sure what lot that is.

23 THE WITNESS: Did I refer to Lot 3?

24 VICE CHAIR GREENE: I think you
25 referred to it twice, but I am not sure I see it.

1 THE WITNESS: I don't remember. If I
2 did, it is a mistake.

3 Just to recap, the industrial building
4 is Lots 7, 8, 9, and 10 -- I'm sorry -- it's what I
5 referred to as Lot 3 is actually a three-story, and
6 it is a Lot 11. That is what I mistakenly referred
7 to.

8 Back to that Z-3, showing the second of
9 our revisions and an addition showing the location
10 of the mechanicals and cogeneration unit.

11 Z-7 describes the revisions to the
12 upper roof deck. We removed the elevator access to
13 that roof, so this deck, if approved, will be only
14 for the use of the apartment beneath it.

15 We showed the location of the solar
16 panels. Mr. Chartier, our sustainability engineer,
17 has calculated that it would be 450 square feet to
18 meet the requirements as he outlined for the
19 platinum LEED certification, so they are located as
20 shown on the southern corner of the building as well
21 as the setbacks.

22 With that, my other question was how
23 high will the solar panels actually be.

24 We got this shop drawing from the
25 manufacturer, and this is on the top left corner of

1 the building, showing exact heights, including the
2 rack system off the roof, so it is actually a bit
3 less than I had thought. It is about what Mr.
4 Chartier had described. At its highest point it's
5 22 inches. That is relevant because our parapet is
6 42 inches, so you won't see that from the street.

7 Also, on Sheet Z-7, the revised deck
8 layout, where the deck did wrap around towards the
9 front is now rectangular in shape and a mixture of
10 extensive green roof, as well as some hard scape.

11 Mr. Chartier, who couldn't be here
12 tonight, asked that I mention that even beneath the
13 deck, there will be a reflective roof. So even
14 beneath the roof in the entire roof sections that
15 aren't seeded or planted will be a light reflective
16 roof.

17 MR. MARSDEN: Excuse me.

18 Do you know whether he gave
19 consideration to the staircase and the building
20 around it, you know, that is eight feet tall, and
21 you have solar panels directly to the east of that,
22 so any time the sun approaches the southwest, you
23 will have extensive shadows thrown there.

24 THE WITNESS: This, and I mentioned I
25 am answering for him, because I had the same

1 question, this drawing is a shop drawing from this
2 company who supplied them and who designed them
3 based on our roof layout, with those things
4 considered.

5 MR. MARSDEN: Okay.

6 And they are approximately nine
7 degrees --

8 THE WITNESS: I thought 15 degrees was
9 standard, but it may be less.

10 MR. MARSDEN: Okay.

11 THE WITNESS: This is the requirement,
12 as Mr. Chartier described, to get to the LEED plan,
13 and that's what this is about.

14 He also again asked me to mention what
15 I should be focusing on is the fact that it will be
16 a LEED platinum building. How we get there is still
17 sort of influx, whether we have it with the
18 cogeneration plan bigger or the solar panels are
19 bigger. What we chose to do is to show the worst
20 case scenario, and it is very possible there will be
21 less solar panels than I am describing.

22 MR. MARSDEN: If I may also, the
23 cogeneration plant will be mounted from the ceiling
24 of the parking garage at least one foot above flood
25 elevation?

1 THE WITNESS: Yes. I have the ceiling
2 height before he measured it, and it does work, so
3 that is the third of the revisions.

4 I have already spoken about the removal
5 of the elevator access to the roof.

6 The other comments, Sheet Z-8 is what
7 the subcontrol panels -- what they really look like.
8 I have manufacturer's detail as well as the
9 photographs showing what it looks like. It is shown
10 on the rendering that I will get to in a second, but
11 much more detail is shown here on Sheet Z-8.

12 Because we are removing ten feet off of
13 this building, we had to show a new rear facade.
14 Z-8 also shows a proposed rear facade. Relative to
15 the previous, the windows are larger, but it's still
16 a brick facade.

17 You will notice that we are proposing a
18 stair from that second floor apartment, so they have
19 access to the rear yard. That rear yard will be
20 deeded to that second floor apartment.

21 I did mention that we are losing 1200
22 square feet relative to the previous design, as well
23 as our lot coverage going from 94 percent to 85
24 percent. In most cases the 94 percent didn't
25 include the existing stair because there is a stair

1 in the back of the building currently, and our 85
2 percent does as well, so our lot coverage goes from
3 94 to 85.

4 MS. BANYRA: I'm sorry, Frank. That
5 was inclusive or exclusive?

6 THE WITNESS: Previously it did not
7 include it. Previously the 94 percent did not, so
8 the reality, as I said, was more. I guess that was
9 the point I was trying to make.

10 That is the new rear facade.

11 So Sheet Z-9, we created a site plan
12 diagram showing what would be seen, what can be seen
13 and what cannot be seen regarding the street along
14 Madison Street. So if you are standing across the
15 street, you will notice the arrow based on a
16 six-foot high person, as well as on the west side of
17 the street. In both cases the screening will not be
18 seen.

19 Even if it is slightly visible, it is a
20 planting system, so you won't see the mechanicals
21 behind the planting system. There is a planting
22 system, and the details are on the drawing, and you
23 have seen it before.

24 Also, we superimposed the solar panel
25 shop drawing given to us by the manufacturer to the

1 height of our screen plantings. So the plantings --
2 the lowest structure of the planters is 42 inches,
3 and this does not include the height, of course, of
4 the plants.

5 MR. MATULE: Frank, maybe you testified
6 to it, but the sun control panels --

7 THE WITNESS: I just described it.

8 MR. MATULE: -- could you detail that a
9 little better?

10 THE WITNESS: Yes. I talked about
11 that.

12 It is shown on Z-8, and I just
13 described that one, Bob.

14 There was another comment that maybe
15 one or two of the Commissioners, and we absolutely
16 agreed with it, at the top of the building it looked
17 a bit heavy because of its dark color, and this is
18 the previous rendering, so we revised it to lighten
19 it up, and where there was lots of black, we changed
20 it to gray, and it is actually pretty effective in
21 making it less --

22 MR. MATULE: If I might, just for the
23 record, we will refer to that as A-7 --

24 THE WITNESS: Yes. This is a new
25 rendering, which you don't have.

1 MR. MATULE: -- which is the revised
2 rendering?

3 THE WITNESS: Yes.

4 COMMISSIONER GRANA: Can I see it?

5 THE WITNESS: Yes.

6 The original is on the rear of the
7 board for comparison.

8 COMMISSIONER FISHER: Do those
9 panels --

10 THE WITNESS: No, they are fixed.

11 Just for reference, two of the
12 apartments have decreased in size obviously because
13 we dropped ten feet off the building. So Unit 202,
14 which was 2,730 square feet, is now 2,293 square
15 feet.

16 Unit 302 was 2010 square feet, and it's
17 now 1758 square feet, so those are the revisions.

18 I think the majority or the biggest
19 one, of course, is the reduction of the actual
20 building. We removed 1200 gross square feet of the
21 existing building. Our fifth floor addition is 3000
22 total, so the difference there is 1800 square feet.

23 So what we are really here for -- it is
24 not fair -- but what we are here for in essence is
25 an additional 1800 square feet of the fifth floor.

1 I should also mention again that where
2 we are permitted seven units, we are proposing six
3 units, so the density is less. The apartments are
4 large. We have taken an old building not in very
5 good condition and are repurposing it to become
6 residential use, and we increased a bit the hole in
7 the donut.

8 MR. MATULE: That is it.

9 THE WITNESS: That is it.

10 CHAIRMAN AIBEL: Thank you.

11 Commissioners?

12 COMMISSIONER BRANCIFORTE: Can you pass
13 around the bigger board behind you, Bob?

14 CHAIRMAN AIBEL: Let me open it up to
15 the Commissioners for questions for the architect.

16 COMMISSIONER DE FUSCO: Frank, I have a
17 question.

18 Thank you for responding to the comment
19 about the intrusion into the donut.

20 Just a question: Is there a way that
21 you could potentially embed the external stair case
22 into the building to save that extra space there for
23 the green space that you proposed here for the
24 spiral staircase or --

25 THE WITNESS: We looked at that. The

1 spiral staircase, given that height, is not very
2 functional. It would work. But this being an open
3 stair, we thought the visual impact in that rear
4 yard is so little, that this is a better way to
5 handle it and then not have to lose more square
6 footage inside of that particular apartment. That's
7 the only reason.

8 COMMISSIONER DE FUSCO: My concern only
9 being -- again, actually I am thinking about the
10 neighbors in the rear and offering that kind of
11 green space in the privacy that the donut permits,
12 and the staircase is a little intrusive in that
13 respect, so would you be open to that, if that were
14 something --

15 THE WITNESS: I would certainly have to
16 ask the developer. One of them is here tonight, but
17 I understand --

18 COMMISSIONER DE FUSCO: Thank you.

19 COMMISSIONER GRANA: About the front
20 facade, I am sure you covered this last week, is the
21 plan to stabilize the facade and to use the facade,
22 or is the plan to produce something different --

23 THE WITNESS: The reality -- the front
24 facade is not in great condition. We are puncturing
25 it and making lots of conditional punctures of this

1 facade. What I testified to last week, and I think
2 this still holds true is we are going to keep the
3 chimney intact. We are going to keep as much wall
4 intact, but we will rebuild and use the existing
5 brick, so it will still look like it does now, I
6 think better, but we'll keep as much of the original
7 flavor as possible.

8 COMMISSIONER GRANA: Thank you.

9 CHAIRMAN AIBEL: Any more
10 Commissioners?

11 COMMISSIONER BRANCIFORTE: On the roof
12 now that you moved the solar panels, do you have a
13 doorway or a gateway that shows to the -- on Z-7?

14 THE WITNESS: Yes.

15 COMMISSIONER BRANCIFORTE: Is the fire
16 department going to have access to those panels in
17 that section of the roof? I mean, that gate is not
18 locked or --

19 THE WITNESS: It is not a locking gate.
20 It's just a screening gate.

21 COMMISSIONER BRANCIFORTE: Then the
22 furniture that you show on the roof deck, is that
23 furniture going to be fixed?

24 THE WITNESS: No. That is just for
25 graphic purposes for scale. It's not fixed.

1 There's no fixed furniture proposed.

2 COMMISSIONER BRANCIFORTE: Do you think
3 that you might consider that, fixed furniture up
4 there, so people don't put lightweight furniture
5 that blows off the roof?

6 THE WITNESS: It's something --

7 COMMISSIONER BRANCIFORTE: You've done
8 it in the past. I know you did it on Washington
9 Street, right, I think?

10 THE WITNESS: Yes, in a bit of a
11 different condition.

12 What we agreed to on Washington Street
13 was not to have any umbrellas or any of that sort
14 that could blow off.

15 This is low enough and beneath the
16 parapet, so we can certainly agree to any furniture
17 that would be beneath the parapet, but that makes
18 perfect sense. But having built-in furniture or
19 likely furniture may not exactly be practicable.

20 It is outdoor furniture. Chances are
21 that it is not going to be very, very heavy. But if
22 the Board tells us to, we will make sure it is
23 secure.

24 COMMISSIONER BRANCIFORTE: Yeah. That
25 is the only question I had.

1 CHAIRMAN AIBEL: Any questions?

2 VICE CHAIR GREENE: No, I don't.

3 CHAIRMAN AIBEL: Mr. Minervini, could
4 you just help me out on the stair bulkhead, and I am
5 assuming we will not see it from the front.

6 THE WITNESS: Yes.

7 If you look at the new drawing we
8 provided, the site line diagram, it shows both
9 bulkheads, the elevator bulkhead and the stair
10 bulkhead behind it, which is the dotted line. You
11 can see that that is not visible from the street.

12 CHAIRMAN AIBEL: So help me out from
13 the rear. What are we going to see from the rear?

14 THE WITNESS: Well, you probably will see
15 a portion of it from Monroe Street through
16 buildings, only because there is an empty lot there.
17 Where there are four-story buildings, you won't see
18 it.

19 If somebody is in the rear yard, you
20 may see a bit of it. But we limited that height as
21 much as possible, and we have reduced the elevator
22 bulkhead by removing that stop --

23 CHAIRMAN AIBEL: So how tall is the
24 stair bulkhead?

25 THE WITNESS: It doesn't have to be any

1 taller than seven feet.

2 CHAIRMAN AIBEL: How far from the rear
3 of the building will it be located?

4 THE WITNESS: Back to the -- let me
5 find the roof plan.

6 It is actually 12 feet 11 from the back
7 of the building, so it is substantially set back.
8 It is not, which I think would be your concern, it
9 is not at the rear wall.

10 CHAIRMAN AIBEL: Is there a need to
11 screen it with some greenery? I am not sure. I
12 know you have vents in front of it --

13 THE WITNESS: Perhaps instead of
14 screening it and screening it, along the parapet we
15 could have a small little green section of planting
16 grow up it, maybe to acknowledge it. I think the
17 developer would be happy to do that --

18 CHAIRMAN AIBEL: Something that
19 mitigated the --

20 THE WITNESS: -- that would help solve
21 that problem.

22 CHAIRMAN AIBEL: Okay, good.

23 Mr. Greene?

24 VICE CHAIR GREENE: I have some.

25 On Z-7, the square footage description

1 of Unit 501 still contains the old square footage of
2 the roof deck.

3 THE WITNESS: That was reduced as well,
4 and I will correct that. It is actually much less
5 now.

6 I think the roof deck now is 840 square
7 feet, where it was 1360. I will certainly revise
8 that number.

9 If you look at the roof deck plan,
10 drawing number two, it shows the 840 square feet
11 where it was 1360.

12 MS. BANYRA: What sheet are you on,
13 Frank?

14 THE WITNESS: Z-7.

15 CHAIRMAN AIBEL: And the metal access
16 door on the rear of the building is through the
17 garage?

18 THE WITNESS: There is an access door
19 from grade level. I believe that is really for
20 servicing and landscapers working back there.

21 The main access will be off, for the
22 people who will be using it, from the second floor
23 and a stair that connects them.

24 CHAIRMAN AIBEL: Okay.

25 Anything else, Board members?

1 Okay. Let me open it up to the public.

2 Any questions from the public of the
3 architect? We are in question mode here, not
4 opinion mode.

5 THE WITNESS: Thank you.

6 CHAIRMAN AIBEL: Seeing none.

7 COMMISSIONER COHEN: I make a motion to
8 close the public portion.

9 CHAIRMAN AIBEL: Thank you.

10 Go ahead.

11 COMMISSIONER GRANA: Commissioner
12 Aibel, I do have one more question. I think it is
13 for Mr. Galvin.

14 MR. GALVIN: Sure.

15 COMMISSIONER GRANA: So we heard from
16 the public about the importance of this structure to
17 the neighborhood as an adaptive reuse.

18 I have been back and looked at that
19 site. I am not challenging any plans here, but when
20 we vote on this, I guess my question is: How do we
21 ensure that what was heard here in testimony
22 actually occurs?

23 I have seen projects go up in town,
24 where there is an adaptive reuse project,
25 construction happens, and problems are found and

1 something changes, so how do we ensure that those
2 elements are --

3 MR. GALVIN: I am going to add a
4 condition that just says, and I don't have it here,
5 but I would add a condition that says, "The building
6 is to be constructed as shown to the Board."

7 Then if you find that it is not, then
8 we will have to reach out for the zoning official.

9 COMMISSIONER GRANA: Thank you.

10 COMMISSIONER BRANCIFORTE: Along those
11 lines again, Dennis, if the facade does collapse,
12 and they have to redesign the facade, they will have
13 to come back and ask us for permission on the
14 changes, correct?

15 MR. GALVIN: Well, I guess the answer
16 to that is maybe. It depends in this particular
17 situation, because at the end of the day if it looks
18 like this drawing, there is nothing historically
19 significant about the chimney, I would imagine you
20 would be able to reconstruct it, right?

21 THE WITNESS: Yes.

22 COMMISSIONER BRANCIFORTE: But I guess
23 what I am getting at is if they show up at the
24 zoning officer's office, and they say it is
25 structurally unsound, we have to take down the

1 building, I just want to make clear that they will
2 have to come back -- at that point they will have to
3 come back to the Board.

4 MR. GALVIN: If that is the desire of
5 the Board, yes, I will add that as an additional
6 condition.

7 I know what you are talking about. I
8 had those situations in the world where, you know,
9 somebody comes in and tells you a whole story, and
10 it is dependent on the building as it's built. And
11 then the building comes down during a process, the
12 Board might not have granted the variances based on
13 if they knew it was going to get all the way down to
14 zero, so I understand what you mean. We could try
15 to come up with something.

16 MR. MATULE: Yes. I was going to say,
17 just so the record is clear, Mr. Minervini's
18 testimony was that other than the existing chimney,
19 they are probably going to take down most of the
20 brick on the facade of the building and then rebuild
21 it using that old brick to look like what you have
22 been shown, so I am sure we can -- I think that is a
23 different situation than if the whole building has
24 to come down.

25 MR. GALVIN: Right. I mean, you have

1 to articulate for me what is significant about this
2 building, what is driving your approval that you
3 feel that if they had to rebuild some portion of the
4 building, that would be problematic.

5 COMMISSIONER BRANCIFORTE: No, it's
6 fine. I understand now. The facade basically, it's
7 their plan to rebuild the facade anyway.

8 MR. GALVIN: Yes, pretty much. They
9 said they are going to try to reuse the brick as
10 much as they can, but they are not going to be able
11 to keep it as is. There's going to be too many
12 punch-outs with the windows, right?

13 That was the testimony.

14 COMMISSIONER BRANCIFORTE: Reusing the
15 rest of the shell I think is important for myself.

16 MR. GALVIN: Okay.

17 Right, because what is the first floor
18 of this building?

19 MR. MATULE: Parking.

20 COMMISSIONER BRANCIFORTE: Parking.

21 MR. GALVIN: I know, but what is the
22 coverage?

23 THE WITNESS: It's 80 -- well, with
24 this revision, I think it is 85 --

25 MR. MATULE: 85 percent for the main

1 building, and 86.6 with the stair.

2 MR. GALVIN: I mean, that would be part
3 of the point. If you allow them to have that kind
4 of coverage because of the building structure and
5 then they were to take it down, you may say, no, we
6 don't want you to be 85. We're going to have a
7 clean slate.

8 You might have made it 60, right, so
9 that's the point.

10 So what do you want to say, any
11 substantial demolition has to be --

12 MS. BANYRA: Something about changes to
13 the plan.

14 MR. MATULE: I am thinking more in
15 terms of if during the course of construction, that
16 they determine that they can't reuse the existing
17 shell of the building, and they have to build a new
18 building, then we have to come back to the Board.

19 MS. BANYRA: Isn't it, John, what you
20 also want is that as it is presented, the
21 architecture as presented, and if there is changes
22 to that, then that comes back to the Board. I mean,
23 with the idea that the caveat is -- and something
24 maybe, Dennis, to the effect that they are using an
25 existing building. It is an adaptive reuse, and to

1 the extent that it replicates what has been shown to
2 the Board, you know, if it doesn't replicate it,
3 then it will be back before the Zoning Board,
4 something to that effect.

5 MR. GALVIN: But it's more than that.
6 He is talking about if you get out there and you
7 find out one of the walls is bad, so you take it
8 down. One wall is not so bad, but you start taking
9 down three walls --

10 MR. MATULE: Like the case down by you
11 in Seaside.

12 MR. GALVIN: Yes. That was a pro Board
13 decision.

14 THE WITNESS: If I may, what is more
15 likely to happen is that small sections of the
16 existing walls that are in the rear yard, which I
17 think you are referring to, will be cut out and
18 columns placed in there. That probably has to
19 happen, but the majority of that wall will stay.

20 COMMISSIONER FISHER: Didn't you also
21 say at the last meeting when we were talking about
22 how water seems to get in it, that you are
23 reinforcing all of the walls anyway to some degree
24 to ensure that water will not infiltrate on the
25 sides and the back --

1 THE WITNESS: We have to do that, yes.

2 COMMISSIONER FISHER: -- so they are
3 kind of taking something that may or may not have
4 structural issues and making it better anyway.

5 THE WITNESS: Exactly. We have to --
6 what is there now cannot support what we are
7 proposing, so it has to be reinforced, which is what
8 you're referring to.

9 VICE CHAIR GREENE: I have two
10 questions.

11 CHAIRMAN AIBEL: Go ahead.

12 VICE CHAIR GREENE: The flood panels,
13 they are also going to be proposed for the rear
14 yard?

15 THE WITNESS: They will be proposed
16 just at the door penetration of the rear yard. The
17 wall itself will serve the same function.

18 VICE CHAIR GREENE: Oh, I see.
19 Only go in front of the doors?

20 THE WITNESS: Correct.

21 VICE CHAIR GREENE: And in the garage
22 you show electric car charging stations at locations
23 one and two.

24 Are you proposing to run conduit to the
25 other locations, so that charging stations could be

1 added?

2 THE WITNESS: If the Board would like
3 us to, we certainly can. That would be for future
4 expansion.

5 VICE CHAIR GREENE: I would.

6 CHAIRMAN AIBEL: So let me just go back
7 half a step.

8 What I'm hearing is that the commitment
9 is to reuse the brick in rebuilding the brick
10 portion in the front of the structure.

11 THE WITNESS: Yes, and it will look
12 like the rendering we have shown.

13 COMMISSIONER GRANA: I just heard
14 something, either reuse the existing brick and
15 retain the chimney --

16 THE WITNESS: Correct. The chimney has
17 got a depth to it, so it is more structurally sound
18 than the rest of the walls that are there now, so --

19 COMMISSIONER GRANA: I just wanted to
20 clarify.

21 THE WITNESS: -- so I'm very confident
22 we could keep that.

23 COMMISSIONER BRANCIFORTE: Frank, just
24 one other thing.

25 You don't show any details for bicycle

1 racks over the cars.

2 THE WITNESS: I show bicycles racks in
3 a segregated area.

4 COMMISSIONER BRANCIFORTE: Right. You
5 know, in other buildings you've also set them over
6 the cars.

7 THE WITNESS: We normally do that if we
8 don't have a segregated area. If it's something
9 that this Board is asking for --

10 COMMISSIONER BRANCIFORTE: I think it
11 would be good, because there are only six bike racks
12 for the kids and the parents --

13 THE WITNESS: I don't think that's a
14 problem.

15 COMMISSIONER BRANCIFORTE: -- again,
16 those bike racks are to be put on the floor, I
17 appreciate that and everything, but I don't think
18 just for storage, they should be used for people
19 that commute down to the Path every day, and the
20 ones who want to store their bikes can throw them
21 over the car.

22 THE WITNESS: We will have to agree to
23 put one each behind -- in front of each parking
24 space.

25 COMMISSIONER BRANCIFORTE: Thank you.

1 CHAIRMAN AIBEL: Okay. Anything else
2 for the architect?

3 MR. MATULE: Pardon?

4 CHAIRMAN AIBEL: Okay.

5 MR. MATULE: I have the planner here,
6 but the only thing that has changed is the lot
7 coverage and the roof coverage have gone down, so I
8 don't really think there is any need to bring him
9 back for additional testimony, so that is really --

10 MS. BANYRA: I think the questions that
11 came up for the planner were related to the
12 existing -- the properties on either side, but the
13 planner didn't take the pictures, and the architect
14 already has testified to them. So to the extent
15 that you find that an improvement, I think it can go
16 with that.

17 MR. MATULE: I was not planning on
18 having Mr. Kolling present additional testimony. I
19 have him here, if there are specific questions, but
20 I didn't think it would be necessary in light of the
21 downsizing, if you will, of the variance.

22 COMMISSIONER MURPHY: I have a
23 question.

24 You are using the gray water for
25 flushing toilets and what-have-you. Where are they

1 collecting that water?

2 THE WITNESS: Every new building or
3 renovated to this extent building in Hoboken must
4 have a water retention system for stormwater, which
5 in this case, it will be a tank, and we showed them
6 on the drawings, a tank beneath the concrete slab
7 for parking. That water will also be used for gray
8 water. The tank will serve two functions.

9 MS. BANYRA: I think that contradicts a
10 little bit of Mr. Chartier.

11 Did he not say that they were using
12 rainwater?

13 THE WITNESS: I mean, that's the
14 next --

15 (Everyone talking at once, and this
16 portion could not be transcribed.)

17 MS. BANYRA: Oh, you said rainwater,
18 so --

19 COMMISSIONER MURPHY: So you're right.
20 You're right, so it's rainwater that will be
21 collected.

22 MS. BANYRA: So then it is going to go
23 into the tank below, and then it's going to be
24 pumped up.

25 THE WITNESS: As I understand it, I am

1 certainly not an expert on this, but that is how I
2 understand it, yes. There is a holding tank which
3 is beneath the slab.

4 MS. BANYRA: And the cistern wasn't
5 considered. Is it too heavy, Frank, for a design
6 treatment where it could be somehow --

7 THE WITNESS: I don't know much about
8 cisterns. I know that people who do know more than
9 me have not been using them, so if that answers the
10 question --

11 MS. BANYRA: Okay. Because I have seen
12 some really interesting ones that they have used,
13 and just as a design element, they were really --
14 you know, they were interesting, put it that way.

15 THE WITNESS: Perhaps we can propose
16 something like that, where we are not asking for a
17 fifth floor addition.

18 I think the concern that you and the
19 Board normally has is what the visual impact would
20 be, so the next one, hopefully we don't have a
21 visual impact issue, and we can do that.

22 MS. BANYRA: Hide the staircase in it
23 or something.

24 CHAIRMAN AIBEL: Mr. Marsden?

25 MR. MARSDEN: Mr. Minervini, we had

1 talked about the flood walls. I would like to put
2 in a condition that a cut of the actual flood wall
3 that will be used will be provided to the Board --

4 THE WITNESS: Yes.

5 MR. MARSDEN: -- because I have done a
6 lot of investigation over the last two years, and
7 there are significant differences in the type of
8 flood walls, how they work. Some have to be
9 supported by graphics that they drive into the
10 sidewalk. Some of them have brackets behind them,
11 and the walls have to be placed four or five feet
12 outside of the building, so there are a lot of
13 different ways they do that, so I think it would be
14 appropriate to just provide the cut.

15 THE WITNESS: Mr. Marsden and I had a
16 conversation. His concern was that any brackets
17 that are required would be on the outside of the
18 building impeding the sidewalk, but we came to the
19 conclusion that since we are proposing a good
20 portion of planters, that the flood barrier will be
21 in the front of the planter, and any structural
22 elements would be going back to the building and not
23 impeding the walkway, so yes, I'll give you that --

24 MS. BANYRA: Wouldn't it make sense,
25 Mr. Marsden, to then recommend that, so it would

1 become something almost included in the zoning
2 ordinance, that there is a consistent element that
3 everybody uses, and is that how it works?

4 MR. MARSDEN: Well, the difference is
5 that if you only have two feet of water, it is a
6 completely different system because then you don't
7 need a brace and you don't need a lot of things that
8 you need. For six feet, seven feet or eight feet of
9 water, the structural integrity is what rules what
10 it is going to look like. Some of them look like
11 I-beams going straight up, and then they have panels
12 that are like a foot.

13 MS. BANYRA: But it depends on what
14 part of town you are in. It's almost like if you
15 are in "zone this," this is what you use. If you
16 are in "zone this," this is what you use.

17 CHAIRMAN AIBEL: But tonight I think we
18 to -- it's a good debate or a good intellectual
19 conversation, but let's get to the public --

20 MS. BANYRA: I'm sorry.

21 CHAIRMAN AIBEL: -- I'm going to open
22 it up to the public for any comments. It's time for
23 you to say you like the project or you don't. I
24 guess there is probably in between, too, but --

25 VICE CHAIR GREENE: Seeing nobody, I

1 move to close the public portion.

2 COMMISSIONER COHEN: Second.

3 CHAIRMAN AIBEL: All in favor?

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

6 CHAIRMAN AIBEL: Board members, open it
7 up for deliberation.

8 COMMISSIONER DE FUSCO: So I will kick
9 it off.

10 I think this is a beautiful readaptive
11 reuse of a building. I think that the green
12 benefits are substantial.

13 I think I made no secret about the lot
14 coverage issue that I have with the project. If
15 this were any other lot perhaps in other parts of
16 town, and we saw 86.5 percent lot coverage, we would
17 be all over that, and that would become an issue. I
18 think that this lot, this entire block, is one that
19 is in transition, and that was part of the
20 testimony.

21 So I am kind of at a juncture here,
22 where, you know, I am considering that the benefits
23 to the building and the overall block in terms of
24 the green aspects and in terms of the architecture,
25 and the benefits of the architecture do actually

1 outweigh impeding into the donut, especially now
2 that it's been reduced substantially, I do feel
3 strongly, however, about that external stair.

4 You know, I am being very cognizant of
5 the neighbors and where this block can go in the
6 future, and I would like to see that probably
7 embedded into the building to further reduce lot
8 coverage. But I'm very interested in hearing what
9 the other Commissioners have to say about the entire
10 project.

11 CHAIRMAN AIBEL: Mr. Greene?

12 VICE CHAIR GREENE: I think this is an
13 interesting readaptive reuse of a potentially
14 adverse use of a light industrial use in the middle
15 of really what has become a residential area taking
16 that out of the equation.

17 I would like the design elements, the
18 green elements -- bless you -- and the rear stair
19 doesn't bother me so much. In fact, it doesn't
20 bother me at all.

21 CHAIRMAN AIBEL: Any other comments?

22 Mr. Cohen?

23 COMMISSIONER COHEN: First, I want to
24 compliment the architect for the quick turn-around.
25 We did this a week ago. We had a lot of comments,

1 clearly a lot of work went into addressing our
2 questions, and I think he addressed certainly all of
3 mine, and I think he addressed all of the
4 Commissioners' comments, so thank you for that.

5 I think it is great to see that it is
6 more than just a hat tip I think to the industrial
7 history of the city, but it's actually preserving
8 the most interesting part of that industrial use,
9 which is the chimney that is very distinctive, and I
10 appreciate the commitment made to trying to maintain
11 the integrity of the historic bricks, the historic
12 structure in the chimney and the incorporation of
13 green elements. I think it does fit into the height
14 of the block, and I appreciate the fact that there
15 was essentially no donut with respect to this
16 property, and now there is going to be some.

17 I agree with Commissioner Greene that
18 the stairway in the back does not give me any pause,
19 so I would support this project.

20 COMMISSIONER BRANCIFORTE: I have two
21 quick questions.

22 One is: You know, Tom Chartier spoke
23 about during power outages, they are still going to
24 have power, and they are going to provide extension
25 cords or whatever for charging stations for the

1 neighborhood. I don't know how we can hold him to
2 it.

3 MR. GALVIN: We are not even going to
4 try.

5 (Laughter)

6 MR. MATULE: Well done.

7 MR. GALVIN: That was just nice stuff.

8 COMMISSIONER BRANCIFORTE: So I just
9 wanted to bring it up, if any of the
10 Commissioners --

11 (Commissioners talking at once, and
12 this portion could not be transcribed.)

13 (Laughter.)

14 COMMISSIONER BRANCIFORTE: The other
15 thing, too, I would like to see the umbrellas fixed.
16 Just make a point that the umbrellas should be
17 fixed, somehow weighted down and closed when not in
18 use.

19 Besides that, I am happier with this
20 project now that they have given us some land in the
21 back, some landscaping and soil in the back versus
22 the last plan, and I always had a soft spot for
23 green LEED buildings, so I think that the positives
24 here with the green building will outweigh any other
25 detriments, even though, of course, the height is

1 always a problem for me, but I am willing to look
2 the other way at this time.

3 Thanks.

4 CHAIRMAN AIBEL: Thank you.

5 Anybody else wish to comment?

6 CHAIRMAN AIBEL: I guess it's time for
7 a motion.

8 MR. GALVIN: I would like to go over
9 the conditions. Is that all right?

10 CHAIRMAN AIBEL: Yes, please.

11 MR. GALVIN: Here is the thing. The
12 first thing I had written down was: The applicant
13 is to obtain city authorization for the use of the
14 sidewalk for the flood walls.

15 I can remove that, right?

16 MR. MARSDEN: No, because he doesn't
17 know right now where it is going to go, so I would
18 leave that.

19 MR. GALVIN: Then two, I have something
20 about garage doors.

21 MS. BANYRA: Yes. He has to have
22 panels that you can see through. I think he revised
23 the plan --

24 THE WITNESS: We revised the drawings.

25 MS. BANYRA: -- to show that.

1 MR. GALVIN: But if it's on the plan,
2 do I really need to put it down?

3 MS. BANYRA: No.

4 But, Dennis, going back to the
5 sidewalk, the landscaping is in the front yard, so
6 they have to go to the city for approval on anything
7 that's projecting from the front yard.

8 MR. GALVIN: Okay. For the flood walls
9 and the landscaping.

10 MS. BANYRA: And I think there is
11 awnings or something.

12 MR. GALVIN: Right.

13 All right. Ready? Here we go --

14 COMMISSIONER BRANCIFORTE: Let me ask
15 you, would he have to do something about -- just one
16 other thing I didn't realize --

17 MR. GALVIN: But I am not done yet. Go
18 ahead. You can firm it up, but --

19 COMMISSIONER BRANCIFORTE: About the
20 driveway, you know, I wish we could do something
21 else about the driveway.

22 Can we at least put in that the
23 residents won't be allowed to back out, they have to
24 pull out head first?

25 MR. GALVIN: How are we going to you

1 control that?

2 COMMISSIONER BRANCIFORTE: Just put it
3 in the deed, and they will have to put it in the --

4 MR. GALVIN: They are supposed to do
5 what? What did you say?

6 COMMISSIONER BRANCIFORTE: They are not
7 allowed to back out into the driveway. They have to
8 go out head first.

9 CHAIRMAN AIBEL: Let me just make sure.
10 Is that achievable?

11 THE WITNESS: That is absolutely fine
12 because there is enough back-up room that the car
13 can go out nose first.

14 CHAIRMAN AIBEL: Great.

15 COMMISSIONER FISHER: Even the ones
16 that are parked straight in the back?

17 THE WITNESS: 20 foot is a requirement,
18 and we have that.

19 MR. GALVIN: So let's say it a
20 different way. What are we saying?

21 The cars must exit --

22 THE WITNESS: Exit front first.

23 MR. GALVIN: -- front first. Okay.

24 Two: The applicant agreed to have the
25 building certified platinum under the LEED program,

1 and the applicant has committed to install the
2 following features within the structure:

3 (A) The building will have a solar
4 array and a cogeneration unit;

5 (B) The building is to have an
6 electrical vehicle charging station;

7 (C) The building will have bicycle
8 storage;

9 (D) All of the exposed roof will have a
10 white reflective material, and a minimum of 50
11 percent of the roof will be vegetated;

12 (E) The building will have a stormwater
13 retention system to capture rainwater which will be
14 used to flush toilets;

15 (F) The building is to be airtight with
16 fresh air circulated in the building;

17 (G) The solar array shall consist of no
18 more than 13 solar panels, and at the highest point
19 will not exceed 22 inches and will be located as
20 shown to the Board on Sheet Z-7.

21 3: The applicant is to construct a
22 rooftop deck as shown to the Board.

23 4: The walls will be structurally
24 enhanced to comply with FEMA regulations.

25 5: The applicant will install a pump

1 in the building.

2 6: The plan is to be amended to show
3 parapet setback on the roof to screen the solar
4 array and bulkheads --

5 THE WITNESS: We did that already.

6 MR. GALVIN: -- you did that, okay.

7 6: In consideration of this approval,
8 the applicant agrees to abandon the prior
9 nonconforming industrial use.

10 7: The building is to be constructed
11 as shown and explained to the Board at time of the
12 hearing.

13 8: This approval is for an adaptive
14 reuse.

15 I just added something here. See if
16 it's okay with you: Not more than 50 percent of the
17 building may be demolished.

18 Is that okay with everybody?

19 Okay.

20 If it doesn't, you have to come back to
21 the Board.

22 9: The applicant committed to reuse
23 the existing brick and to maintain the chimney. The
24 Board found the chimney to be a significant design
25 element.

1 10: The applicant is to submit the
2 flood wall cut to the Board for their review and
3 approval, okay, the Board engineer.

4 MR. MARSDEN: Yes.

5 MR. GALVIN: Okay.

6 11: The stairs to the rear of the
7 building -- all right. I didn't have a conclusion
8 on that.

9 Do you want the stairs in the rear of
10 the building --

11 MS. BANYRA: Can I ask a question?

12 Is it possible to turn the stairs from
13 the second unit into where the bike area is and kind
14 of like no harm, no foul?

15 What is the big space in there, because
16 it is going from Unit 2, correct?

17 THE WITNESS: This way?

18 MS. BANYRA: No. The stairway is for
19 Unit 2's use to get into that --

20 THE WITNESS: Yes.

21 MS. BANYRA: -- so could it go into the
22 garage and then come out back that way?

23 THE WITNESS: Here.

24 MS. BANYRA: I am looking at your Unit
25 2, and I am thinking if you turn the stairway from

1 the unit above, which is one of your bigger units,
2 could you put the stairway down and make it --

3 THE WITNESS: Here?

4 MS. BANYRA: -- like right there,
5 Frank. Does that work or not really?

6 THE WITNESS: I don't understand the
7 question.

8 MS. BANYRA: If you made it parallel to
9 your middle wall there, so right to the left, you
10 took that stairway and you just turned it right
11 where your finger just was.

12 THE WITNESS: Here?

13 MS. BANYRA: Yeah, and it went down
14 into that space.

15 Is that something that works?

16 THE WITNESS: Mr. DeFusco had mentioned
17 that as well in essence in bringing it into the
18 building --

19 MS. BANYRA: Right -- I didn't know if
20 he meant to -- just sliding it sideways. I thought
21 there is a gap right next to the bike rack, and I
22 thought if it went into the garage, like right into
23 that space, can it come down in that area?

24 THE WITNESS: If the Board tells us to.
25 I think we like the design as it is because I think,

1 really think that the impact is minimal on the
2 outside of the building.

3 COMMISSIONER DE FUSCO: I not going to
4 harp on it. But one question I have is: Is there a
5 platform that they can stand outside and put a grill
6 or anything of that nature out on --

7 THE WITNESS: No. The platform is just
8 wide enough -- it's three feet wide, so you walk out
9 and then down.

10 It has a very nice garden, so hopefully
11 they won't need a platform.

12 COMMISSIONER DE FUSCO: Unless it is
13 snowing outside.

14 How does the proposed stairwell affect
15 the deck next door to the south?

16 THE WITNESS: The deck -- and I will
17 use the first sheets, which shows the main portion
18 of the building is 60 feet as well as ours.

19 It actually goes past our deck on our
20 structure on the upper floors, but down below we are
21 significantly past that.

22 The building is right about here, and
23 the deck at 60 feet, but we are not anywhere really
24 near the location of their deck. They are set
25 further back, and their building depth is only 60

1 feet.

2 COMMISSIONER DE FUSCO: I'm not going
3 to hold this up unless somebody else agrees that
4 this is adversely affecting lot coverage. I think
5 that the addition of the green space in the back
6 more than compensated for my concern.

7 MR. GALVIN: I will delete the
8 condition then. Is that all right?

9 THE WITNESS: Thank you.

10 MR. GALVIN: Thanks.

11 11: If roof umbrellas are used, they
12 are to be secured to the roof.

13 12: This approval is subject further
14 to the Board's professionals' most recent reports.

15 And finally, the cars leaving this
16 building must exit front end first.

17 VICE CHAIR GREENE: The only other
18 thing you missed, Dennis, is you talked about the
19 two charging stations. They also agreed to prewire
20 the other locations for future charging stations.

21 CHAIRMAN AIBEL: I am not sure I got my
22 greenery to soften the stair bulkhead.

23 MS. BANYRA: Green screen --

24 COMMISSIONER FISHER: Greenery around
25 the stairwell --

1 (Everyone talking at once, and this
2 portion could not be transcribed.)

3 THE WITNESS: On the western side of
4 the bulkhead.

5 MS. BANYRA: Yes.

6 MR. GALVIN: All right.

7 COMMISSIONER BRANCIFORTE: Dennis, did
8 you include the thing about the bicycle racks and
9 the bike racks on the walls above the cars?

10 MR. GALVIN: No. Well, I kind of did
11 in the sense that when I went through the list of
12 what they are going to do, I did put bicycle racks
13 and I did put charging stations. I am not meeting
14 the level of detail that you guys are suggesting,
15 but we will get it.

16 COMMISSIONER BRANCIFORTE: The thing
17 about the umbrellas and the cars, I mean, I was
18 hoping that would go into the condo bylaws.

19 MR. GALVIN: We don't know if it is
20 going to be a condo.

21 COMMISSIONER BRANCIFORTE: That is
22 true.

23 (Board members all talking at once, and
24 this portion could not be transcribed.)

25 MR. GALVIN: I'm sorry.

1 What was the bicycle racks --

2 COMMISSIONER BRANCIFORTE: For the
3 common documents --

4 MR. GALVIN: No, no. Do the bicycle
5 racks.

6 COMMISSIONER BRANCIFORTE: Oh --

7 MS. BANYRA: Wall mounted bicycle racks
8 will be provided in front of all of the cars.

9 COMMISSIONER MURPHY: But you will
10 still have ground ones because when you get old --

11 MS. BANYRA: Yes.

12 MR. GALVIN: Wall mounted bicycle
13 racks --

14 MS. BANYRA: Seven wall mounted bicycle
15 racks will be located in front of the vehicles.

16 The plan is going to be revised to
17 reflect this anyway, right, Frank? I mean, we will
18 get a revised plan to reflect this anyway.

19 COMMISSIONER FISHER: I have a
20 clarifying question.

21 MR. GALVIN: Sure. Go ahead.

22 COMMISSIONER FISHER: I think it's your
23 first one where you mentioned solar panels and the
24 co-gen.

25 Did you say "and" or "or"?

1 MR. GALVIN: I said "and."

2 COMMISSIONER FISHER: Is it "and" or is
3 it "or"?

4 MR. GALVIN: It's "and." It's both
5 They are going to do the solar arrays, and they are
6 going to have a cogeneration unit.

7 THE WITNESS: If I may, I think "or" is
8 more appropriate because we committed to LEED
9 platinum, and if we can get there without providing
10 one or the other --

11 MR. GALVIN: I am just going to say
12 this. It's "and" because that is what was said at
13 the last meeting. If you want to say it's "or" --

14 THE WITNESS: I think Mr. Chartier at
15 the last meeting said "or" --

16 MR. GALVIN: We can go to the
17 transcript --

18 THE WITNESS: That's fine.

19 He committed to the cogeneration, if we
20 needed the solar panels --

21 MR. GALVIN: Time out, time out. It is
22 up to the Board, not me. I just write it down, but
23 I am pretty sure I got it right. All right?

24 So if it is "or," are you okay with it
25 being "or"? I mean, I went to a lot of trouble to

1 make sure I --

2 CHAIRMAN AIBEL: What was the
3 commitment --

4 MR. GALVIN: -- what the solar arrays
5 were going to be like --

6 MR. MATULE: The commitment is to have
7 a LEED platinum building and use cogeneration.

8 MR. GALVIN: Here's the thing. A LEED
9 platinum building means absolutely nothing to this
10 Board in the sense that we can't enforce it. We
11 like it --

12 THE WITNESS: It should mean everything
13 to the Board as --

14 MR. GALVIN: Well, how do I enforce it?

15 COLMMISSIONER FISHER: Well, but
16 it's --

17 MR. GALVIN: Let me finish. The pause
18 wasn't a gap. It was a pause.

19 I have been saying this every time we
20 have one of these LEED buildings. I don't want to
21 waste this meeting tonight, but as far as I am
22 concerned, something that we get certification on
23 eight months or ten months or a year after the
24 building is up, there's nothing that -- why put it
25 down as a condition? It is a nice thing. I think

1 it is important.

2 If you say these are the elements that
3 I am going to commit to, these are the environmental
4 items I am going to commit to, now I have something
5 tangible. Whether you ever get LEED platinum or
6 not, I still get solar array, electric vehicle
7 charging, bicycle storage, all of the things that we
8 are valuing when we say, okay, it's great that we
9 are getting LEED platinum. So that is what I want
10 you guys to provide me with is a list of what we are
11 going to get. Then if you want to do other things
12 to get to LEED platinum, great, do it.

13 THE WITNESS: I think the question is
14 we have a maximum amount of area for the solar
15 panels shown. It's very likely we won't need that
16 much for this certification.

17 So I guess we could commit to the solar
18 panels, but perhaps not necessarily this maximum
19 number, perhaps less.

20 COMMISSIONER FISHER: I thought that is
21 what he said. I thought -- I thought it was you are
22 putting the solar panels on to the maximum amount
23 because they had not yet determined if they could
24 solve the cogeneration.

25 MR. GALVIN: But they can't do that.

1 They have to tell us what they are doing. They have
2 to commit --

3 (Commissioner Fisher speaking over Mr.
4 Galvin, so this portion could not be transcribed.)

5 THE REPORTER: Wait. You can't all
6 talk at the same time.

7 COMMISSIONER MURPHY: They could do
8 less --

9 MR. GALVIN: Let me just say this: It
10 doesn't matter what he said. It matters what you
11 want to approve.

12 So if you want to give him the option
13 to have that control, we will change it so he has
14 that control. But the more options we give people,
15 then why do we have it as a condition, because we
16 can't enforce it.

17 MR. MARSDEN: I believe I looked at my
18 notes, and my notes indicate that they will generate
19 50 percent of the electricity necessary for the
20 building, so in some way, shape or form they have to
21 do that.

22 MS. BANYRA: What is the metrics?

23 MR. MARSDEN: If that is the condition,
24 I think that should be added to the conditions.

25 COMMISSIONER FISHER: I guess -- I

1 about angling.

2 THE WITNESS: If I may, what you
3 perhaps could write is that we will not exceed the
4 height of the parapet.

5 MR. GALVIN: But I thought that is what
6 you were giving me a dimension of, height --

7 THE WITNESS: I did --

8 MR. GALVIN: -- so I know it doesn't
9 exceed --

10 MR. MATULE: It is on the plan --

11 MR. GALVIN: What does it show?

12 MR. MATULE: The bottom dimension is
13 10, and the top dimension is 22 inches.

14 MR. GALVIN: So if I put "will not
15 exceed 22 inches over the height of the building,"
16 we're okay, right?

17 (Everyone is talking at once, and this
18 portion could not be transcribed.)

19 CHAIRMAN AIBEL: We got to get going
20 here.

21 MR. MARSDEN: Solar panels, depending
22 on where you are, can regulate from nine to 20 plus
23 degrees, so I think the height is what should rule.
24 As you have it listed, I think that that is the
25 better way.

1 CHAIRMAN AIBEL: Okay.

2 COMMISSIONER FISHER: I have one final
3 question. I'm sorry.

4 Is there ever a scenario where you just
5 have cogeneration without solar panels, because
6 that's what I thought I heard him say. I could be
7 wrong, but that's what I thought I heard him say.

8 THE WITNESS: I don't think that is
9 likely given this sized building.

10 CHAIRMAN AIBEL: Okay. We're coming
11 out that there will be cogeneration and a flexible
12 number of solar panels.

13 THE WITNESS: Yes.

14 MR. GALVIN: Okay. So it is "and." We
15 are going to have both.

16 THE WITNESS: Yes.

17 MR. GALVIN: So the building will have
18 a solar array, and I am not really dictating what
19 the amount of it, no more than 13, and the
20 cogeneration unit.

21 VICE CHAIR GREENE: When we say, "no
22 more than 13," are we going to dictate the maximum
23 size, because the panels --

24 MR. GALVIN: Yes, we did. Not maximum
25 height, length or width, but they can't be higher

1 than 22 inches off the roof.

2 VICE CHAIR GREENE: No. I am talking
3 about the physical dimensions of the panels --

4 THE WITNESS: The roof plan mentions
5 the area, so I would suggest that --

6 (Everybody talking at once, and this
7 portion could not be transcribed.)

8 CHAIRMAN AIBEL: As shown on the plans.

9 MR. GALVIN: And I have: The applicant
10 is to construct the rooftop deck as shown to the
11 Board. I would include everything that is up there
12 in that statement.

13 CHAIRMAN AIBEL: Yes, okay.

14 MR. MARSDEN: Did you add the pump -- I
15 would say as spec'd by the manufacturer in the flood
16 wall to handle any leakage because flood walls
17 leak --

18 MR. GALVIN: Okay.

19 MR. MARSDEN: -- I don't know what you
20 have to --

21 MR. GALVIN: I just put "pump in the
22 building."

23 MR. MARSDEN: Okay.

24 MR. GALVIN: You also have it in your
25 report, right?

1 MR. MARSDEN: No. I don't have it in
2 my report.

3 MR. GALVIN: Okay. Say it again, Jeff.

4 MR. MARSDEN: That the pump for the
5 leaking of the flood wall will be sized according to
6 the manufacturer of the flood wall because he knows
7 how much it will --

8 THE WITNESS: Yes.

9 MR. GALVIN: I'm good, Jim.

10 MS. BANYRA: I have to make one more --
11 I'm sorry.

12 The roof plan shows the panels right in
13 the center. It says 22 to 36. It's different than
14 the cut, so if it goes above 22 inches --

15 THE WITNESS: Understood. With the cut
16 we got directly from the manufacturer.

17 MS. BANYRA: -- okay, so then you might
18 just have to correct that.

19 THE WITNESS: Fine.

20 VICE CHAIR GREENE: Also, Dennis, on
21 Z-7, he was going to correct the square footage of
22 Unit 501 to reflect the revised deck square footage
23 and also spell "access" correctly.

24 THE WITNESS: As Mr. Cohen said, we
25 were under a tight time frame, and we made some

1 mistakes.

2 MR. GALVIN: Z-7 is to be amended to --
3 say it again.

4 VICE CHAIR GREENE: To Unit 501 -- that
5 the dimensions of Unit 501 are to be amended to
6 reflect the 840 square foot of proposed roof deck.

7 CHAIRMAN AIBEL: You may have been
8 working on your plans, but we were out there at the
9 engineer's school.

10 (Laughter)

11 CHAIRMAN AIBEL: I think we are ready
12 to go here. I think we are finished with the
13 conversation.

14 COMMISSIONER BRANCIFORTE: Motion to
15 approve.

16 COMMISSIONER GRANA: Second.

17 COMMISSIONER DE FUSCO: Second

18 (Laughter)

19 CHAIRMAN AIBEL: Okay, Pat?

20 MS. CARCONE: Commissioner Greene?

21 VICE CHAIR GREENE: Yes.

22 MS. CARCONE: Commissioner Cohen?

23 COMMISSIONER COHEN: Yes.

24 MS. CARCONE: Commissioner DeFusco?

25 COMMISSIONER DE FUSCO: Yes.

1 MS. CARCONE: Commissioner Grana?

2 COMMISSIONER GRANA: Yes.

3 MS. CARCONE: Commissioner Murphy?

4 COMMISSIONER MURPHY: Yes.

5 MS. CARCONE: Commissioner Branciforte?

6 COMMISSIONER BRANCIFORTE: Yes.

7 MS. CARCONE: Commissioner Aibel?

8 CHAIRMAN AIBEL: Yes.

9 MR. MATULE: Thank you.

10 CHAIRMAN AIBEL: Before we break up, we
11 are going to hear 1300.

12 Anything else, Mr. Matule?

13 MR. MATULE: No. I just need to talk
14 to my client about the third matter.

15 CHAIRMAN AIBEL: Okay.

16 (The matter concluded at 8:25 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, CSR, CRR

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

Notary Public of the State of New Jersey

My commission expires 11/5/2015.

Dated: 2/22/14

This transcript was prepared in accordance with NJ ADC 13:43-5.9.

HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN

- - - - - X
 1300 PARK AVENUE, Block 117, Lot 11 :
 Applicant: 1300 Park, LLC : February 18, 2014
 (Carried from 1/28/14) : Tuesday 8:30 p.m.
 Conditional Use :
 - - - - - X

Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

- Chairman James Aibel
- Vice Chair Elliot H. Greene
- Commissioner Philip Cohen
- Commissioner Michael DeFusco
- Commissioner Antonio Grana
- Commissioner Diane Fitzmyer Murphy
- Commissioner John Branciforte
- Commissioner Tiffanie Fisher
- Commissioner Owen McAnuff

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

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

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10 BY: JEFFREY KANTOWITZ, ESQ.
11 Attorney for the Applicant.

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I N D E X

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WITNESS

PAGE

RUSSELL BODNAR

93

1 CHAIRMAN AIBEL: Thank you, everybody.

2 1300 Park Avenue, Mr. Kantowitz.

3 MR. KANTOWITZ: Yes. Good evening,
4 Chairman, and members of the Board.

5 My name is Jeffrey Kantowitz. I
6 represent the applicant, 1300 Park, LLC.

7 We are here tonight for an application
8 in order to gain permission to introduce a full
9 kitchen service into the premises at 1300 Park, LLC,
10 along with bathrooms and what has been shown on your
11 plans in the basement.

12 By way of a very brief background, and
13 I think it is just necessary because I see several
14 attorney faces and several new faces to the Board,
15 this application has been in front of -- this
16 premises has been in front of the Board in recent
17 history since about late July of 2012.

18 That process extended over a year from
19 the time we were denied a first certificate of
20 zoning compliance to introduce the use we are
21 looking to do tonight, and we proceeded with several
22 appeals.

23 This Board finally heard us last year,
24 and in resolution adopting a decision from July, a
25 resolution adopted in August, found that this

1 premises had indeed established that we were a
2 preexisting prior nonconforming use as a bar at this
3 premises.

4 I attached the resolution I think to
5 the application, so I don't want to go into the
6 details because I know this Board generally comes
7 well prepared and well informed. But essentially it
8 says you are preexisting, you're entitled to
9 operate, go ahead.

10 At the time, as the members who sat on
11 that application heard, and then anybody who read
12 the transcripts, although we didn't provide them, I
13 will admit there was some neighborhood concern and
14 opposition because the bar was seen as noisy and as
15 otherwise not, if you will, a good neighbor so to
16 speak.

17 In fact, during the course of the
18 hearing, although it wasn't relevant to the
19 determination this Board ultimately came to in our
20 favor, people said, well, you know, why can't you
21 bring in some food or something like that, with the
22 obvious sensible implication that if you introduce
23 some full service food service into an establishment
24 like this, the result will be people will be coming
25 in for meals, less turnover, and it just won't be a

1 bar, so to speak. Because what we were granted
2 permission to do through the proofs we presented,
3 and it is in the resolution, and we understand that,
4 was to operate a bar in the manner that it was
5 operated, which was as determined by the phrase,
6 "Light fare," not cooking, you know, stuff warmed in
7 warmer drawers and microwaves and stuff like that,
8 but not a full service kitchen that would allow for
9 full service dining use, we are here tonight to ask
10 the Board's approval, seek the Board's approval with
11 the appropriate proofs to operate with a full
12 service kitchen, so that we can have cooked meals
13 and the like.

14 The reason we are here, and the reason
15 why we can't just walk into the Building Department,
16 the Zoning Officer, and get our approvals is
17 twofold:

18 Number one: Because the preexisting
19 use was determined to be light fare, but primarily
20 because the customer service area that we proposed
21 to use -- God bless you -- the customer service area
22 that we proposed to use for this premises exceeds a
23 thousand square feet.

24 Hoboken's ordinances, which take some
25 parson to go through, but essentially say a bar is a

1 conditional use, so we are permitted to be there,
2 and that is important to understand, and I will talk
3 about that in terms of the standard use. We are
4 permitted as a conditional use, if we were going to
5 meet all of the conditions. We are not prohibited.
6 We are permitted in this zone.

7 However, it turns out, we don't meet
8 every one of the conditions because you have to
9 demonstrate, and the testimony will show, that this
10 use is not within 500 feet of a school. You have to
11 demonstrate that there are two other retail uses on
12 the block front. You have to demonstrate that.

13 What we can't demonstrate is that we
14 meet all the conditions of a retail use, which is
15 the third prong of the conditional use for a bar.

16 What do I mean by that?

17 I am jumping around from Section 196-38
18 to 196-33 and so forth. One of the conditions of
19 retail use that this governing body and its zoning
20 ordinance has adopted is that you are limited to a
21 customer service or sales area of a thousand square
22 feet. You will hear testimony from our architect
23 shortly.

24 What that means by your definition is
25 that the area where sales takes place, where the

1 service takes place, and in a bar it would be where
2 you have table service, where the bar is, where you
3 conduct transactions, wherever the cash register is,
4 where there is a display of liquor and the like,
5 that area can only total 1000 square feet. That is
6 what the governing body has said.

7 In our case, as it turns out, and you
8 will hear testimony, we are just over that, not by a
9 lot, we're just over that, so that is why we have to
10 be here. That customer service doesn't count
11 toilets. It doesn't count kitchen area and the
12 like, but that is why we are here.

13 So with that said, I will call upon our
14 witness in a moment. But with that said, what we
15 are looking to do is introduce a full service
16 kitchen. I think it is responsive to what the
17 concerns were expressed during our prior hearings,
18 namely, trying to rotate us a little bit away from
19 just an exclusive bar use.

20 You will also hear testimony that is
21 consistent with the master plan reexamination, which
22 was done in 2010, which was designed to reinforce
23 the idea of an urban village, mixed uses. The
24 building is a mixed-use building, so that you can
25 walk and have a restaurant for use right around the

1 corner in the neighborhood, even in an R-1 Zone.

2 It is also consistent even with a very
3 interesting comment in the master plan that you will
4 hear testimony about later. That master plan
5 recommendation calls for these uses to be at the
6 corners, not at mid block. It is a very interesting
7 planning concept. But as you all know, this is at a
8 corner. We are not mid block. We are at the
9 corner.

10 Finally, what is very important, and
11 you will hear testimony a little bit later, is that
12 the R-1 Zone, the R-1 Zone seeks to harmonize
13 residential uses with nonresidential uses. In
14 contrast, the purpose of the R-2 Zone, as set forth
15 in your ordinance, speaks as a purpose in an R-2
16 Zone to try to, if you will, convert nonresidential
17 uses that are not permitted to permitted uses and
18 residential uses.

19 So the purpose of the R-1 Zone is
20 different, and that factors in, we believe, in the
21 testimony and the presentation you will hear tonight
22 as far as why we should be permitted to do what it
23 is we are doing.

24 A couple of just preliminary points I
25 want to make. We think we tried to be responsive to

1 the concerns we heard in coming forward with this
2 application. Nonetheless, we recognize we are a
3 prior existing nonconforming use that this Board has
4 approved and not looking to shrink or back slide
5 from anything that we are allowed to do at that
6 point.

7 With that said, I will very briefly set
8 forth what the legal standard is, and then I will
9 turn to the testimony, so you know what the legal
10 standard is that we are going to try to demonstrate
11 to you. We think we have the proofs to do so, and
12 then you will hear the testimony.

13 Since at least -- since 1994, in the
14 case of Coventry Square versus Westwood, the Supreme
15 Court determined that when you are a conditional
16 use, but you need a variance because we are
17 deviating from a standard, you don't have to meet
18 the very high standard of a non permitted use under
19 Medici and under Sica. What you have to show is
20 that whatever potential problem might be associated
21 with your deviation from that standard, in this
22 case, a deviation from a thousand square foot
23 limitation to customer use, whatever potential
24 problems might be associated with it, your site can
25 address. Okay?

1 It is a much lower standard, and
2 certainly your counsel can speak to that. That is
3 the positive criteria, so I don't have to show
4 special reasons. I don't have to demonstrate that
5 it is inherently beneficial or anything like that.

6 On the negative side, the negative
7 criteria, I have to show that there is not a
8 substantial detriment to the public, to the public
9 good. I don't have to have an enhanced quality of
10 proof, and that was determined in a recent case in
11 2013, TSI versus East Brunswick, where there was
12 somewhat of an open question, what is the standard
13 of proof on the negative criteria.

14 The Supreme Court said since this is a
15 conditional use of otherwise permitted, even though
16 you are not meeting all of the standards, the level
17 of proof is accordingly lower, and it made
18 explicit --

19 (Background pounding noise)

20 -- did I say something?

21 (Laughter)

22 Does anybody know the Morse code?

23 (Laughter)

24 So since the Supreme Court in the TSI
25 case made explicit that the proof, the level of

1 proof with the negative criteria, namely, that it is
2 not substantially detrimental to the public good and
3 it does not substantially impair the intent and
4 purposes of the zoned plan and the master plan is
5 once again much lower and to demonstrate almost what
6 a regular C variance is. Namely, that we don't
7 create a problem. I don't have to show enhanced
8 proofs or anything like that.

9 I do have to demonstrate that what is
10 going on here doesn't harm what the governing body
11 did say that it was supposed to be a limitation of a
12 thousand square feet. You will hear proof that
13 there are many, many establishments, including bars
14 and restaurants and other establishments as well,
15 that exceed the thousand square foot limitation, and
16 you will hear the rationale from our witness as to
17 why that is the case and why it harmonizes again
18 with the master plan of creating a live, vibrant,
19 urban village for Hoboken in this zone. That's the
20 frame work.

21 With that said, I have a witness, Mr.
22 Bodnar.

23 CHAIRMAN AIBEL: We are ready for you
24 to proceed.

25 MR. GALVIN: I read the TSI case also,

1 and I read it slightly different. I agree with you
2 that it stands for the proposition that we don't
3 consider the master plan. All right?

4 MR. KANTOWITZ: Okay.

5 MR. GALVIN: We don't consider the
6 master plan because if a conditional use -- if a
7 conditional use that otherwise complies with all of
8 the conditions is considered a permitted use, it
9 would go to the Planning Board, and it wouldn't be
10 heard by the Zoning Board, so I agree with your
11 statement as to the positive.

12 I agree with your statement on TSI as
13 to the impact on the master plan and the zoning
14 ordinance, again, because it would be compliant.
15 However, the negative impact on the surrounding
16 property owners is not --

17 MR. KANTOWITZ: Almost --

18 MR. GALVIN: -- no, but the way you
19 characterized it, and maybe you didn't mean to do
20 this, you characterized it, what the Board has
21 charge to do under Coventry Square is to find out
22 whether the site can accommodate the deviation from
23 the condition.

24 So if the condition is we had to be
25 more than a thousand feet, you have to look at it

1 and see in this instance, can this property owner
2 accommodate that deviation. What was the purpose of
3 having a thousand feet, and having less than a
4 thousand feet, well, how bad will that be and can
5 they make it work.

6 The last thing, though, is: They have
7 to consider the negative impact on the surrounding
8 property owners. That didn't go away by TSI --

9 MR. KANTOWITZ: No, no. Thank you.

10 I was about to just quote the language,
11 which is to say that in addressing the negative
12 impact, and I will quote exactly from the TSI case
13 which was rendered in 2013. The comment: The Board
14 must evaluate the impact of the proposed conditional
15 variance upon the adjacent properties and determine
16 whether or not it will cause such damage to the
17 character of the neighborhood as to constitute a
18 substantial detriment to the public, quoting Medici,
19 and then they go on and say you have to reconcile
20 the master plan.

21 So we have to show to you, we have to
22 prove to you, that if we exceed the thousand square
23 foot limitation, that we have not caused a
24 substantial detriment of the public good by way of
25 some sort of substantial detriment --

1 MR. GALVIN: Substantial impact on the
2 adjacent surrounding properties.

3 MR. KANTOWITZ: -- on the adjacent
4 surrounding properties.

5 Yes, I fully concur with what your
6 counsel said.

7 Do you have any questions about that?

8 MR. GALVIN: I am good.

9 MR. KANTOWITZ: With that said, I will
10 turn to Mr. Bodnar.

11 MR. GALVIN: Raise your right hand.

12 Do you swear to tell the truth, the
13 whole truth, and nothing but the truth, so help you
14 God?

15 MR. BODNAR: Yes, I do.

16 R U S S E L L B O D N A R, having been duly sworn,
17 testified as follows:

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

20 THE WITNESS: Yes. My name is Russell
21 Bodnar. My last name is spelled B-o-d-n-a-r.

22 I reside at 52 Long Hill Road in Long
23 Valley, New Jersey.

24 MR. GALVIN: And your expertise is?

25 THE WITNESS: Architecture. I appeared

1 in front of this Board and other Boards in Hoboken
2 several times.

3 MR. GALVIN: Do you accept Mr. Bodnar's
4 credentials?

5 CHAIRMAN AIBEL: Yes.

6 MR. GALVIN: Please proceed.

7 MR. KANTOWITZ: Mr. Bodnar, just for
8 the record, by whom are you employed?

9 THE WITNESS: Well, I'm actually
10 self-employed, Bodnar Associates.

11 MR. KANTOWITZ: And what kind of work
12 do you do?

13 THE WITNESS: I --

14 MR. GALVIN: Hey, guys, we accepted his
15 credentials to speed the hearing along.

16 MR. KANTOWITZ: Okay. Let's move right
17 along.

18 Let's go right to the plan you prepared
19 that is shown on the board. Is that a copy of what
20 was submitted to this Board for purposes of this
21 hearing?

22 THE WITNESS: Yes, it is.

23 MR. KANTOWITZ: Could you please
24 describe for the Board making reference to each of
25 the three sheets and by reference to the number on

1 the sheet, what it is that you're referring to?

2 THE WITNESS: Yes.

3 On Sheet ZN-1, we have a survey, a
4 zoning chart, a 200-foot radius map, and the rest of
5 the neighboring people that we notified.

6 And on Sheet ZN-2, we have floor plans,
7 basically floor plans. The first floor plan, which
8 is the main area we are talking about, the approved
9 plan.

10 And on ZN-3, we have some elevations
11 and some lighting details and basically how the
12 building sits today and what we would be adding to
13 it.

14 MR. KANTOWITZ: Mr. Bodnar, can you go
15 into some further detail?

16 I spoke a moment ago that we are here
17 because we are varying from the D-3 limitation of
18 1,000 square foot customer service area.

19 With reference to going to ZN-2, could
20 you describe the customer service area and what has
21 been shown on the plan?

22 MR. GALVIN: Time out.

23 The Board is concerned -- no offense, I
24 apologize for interrupting. In our planner's
25 report, we talk about the planner meaning we usually

1 have a planner's report. You asked for a waiver of
2 a planner's report --

3 MR. KANTOWITZ: Yes.

4 MR. GALVIN: -- and it is creating a
5 bit of a thing here.

6 I don't see any reason why Mr. Bodnar
7 can't continue the architectural, and when we get to
8 the planner --

9 MR. KANTOWITZ: I am not going to bring
10 a planner. He is going to speak to the planning
11 issues.

12 MR. GALVIN: Well, after --

13 MR. KANTOWITZ: I will explain why he
14 is qualified, and I'll be happy to make a proffer on
15 that.

16 MR. GALVIN: You may have to do that
17 now then --

18 MR. KANTOWITZ: Excuse me?

19 MR. GALVIN: -- you may have to do that
20 now then --

21 MR. KANTOWITZ: Okay.

22 MR. GALVIN: -- just so everybody is on
23 the same page.

24 MR. KANTOWITZ: Let me explain, so it
25 is not legal gobbledygook. Whenever anybody

1 brings -- it's my burden. The applicant has the
2 burden to make the proofs.

3 The way that is usually done in front
4 of Boards, such as this, you bring in somebody who
5 is, quote, expert in a field and can speak with
6 expertise more so than a layman. It is defined
7 under the rules of evidence that an expert is
8 somebody who has knowledge superior to that of a lay
9 person.

10 Mr. Bodnar is here, and while he's
11 licensed as an architect, I could ask him some more
12 questions as to whether he has come before this and
13 other Boards and talked about planning criteria.

14 The reason I don't have a professional
15 planner with a P.P. next to his or her name is
16 because the particular nature of the variance I am
17 seeking, the D-3, relates to interior space and
18 relates to issues that he as an architect, I
19 believe, is qualified to testify to.

20 Under the rules of evidence, under the
21 rules of evidence, an expert can be qualified by a
22 Board on a topic based upon study, specialized study
23 in a field, as well as based upon knowledge and
24 experience simply gained through working in the
25 field.

1 For example, there are people who are
2 world class bird experts, who never spent a day in a
3 university studying ornithology.

4 Why?

5 Because they are bird watchers. They
6 have experience and extensive experience working in
7 the field, and they become expert, and the law of
8 evidence in the State of New Jersey recognizes them
9 as experts. In this respect, and this is not having
10 to do with side yards, setbacks, planning criteria
11 about reconciling zoned use, what we are looking for
12 is the interior determination. The deviation is the
13 interior space of the customer service area and what
14 its effect on the adjacent properties are.

15 As an architect, I offer to you as to
16 why he is qualified to speak to this is that he can
17 design and speak to the effects not only of how much
18 is in there and what and how the interior operates
19 as an architect, but he can also speak to what the
20 effect is associated with this interior use.

21 That is my proffer based upon his
22 learning and his experience.

23 Is he a planner?

24 No. I am not going to represent he is
25 a planner.

1 COMMISSIOENER COHEN: Can I just say --

2 MR. GALVIN: Go ahead.

3 But you might want to hear from me,
4 though.

5 COMMISSIONER COHEN: Okay. Go ahead.

6 MR. GALVIN: Because one of the things
7 I was going to say to you is that the Hoboken Zoning
8 Board has a planner on every single case, but that
9 is not the way it is throughout the rest of the
10 state. If you are in the C-1 or C-2 variance
11 situation or in like D-4s in Summit, we don't
12 require planners for those types of testimony.

13 As the case he was citing to you, TSI,
14 was talking about reconciliation of the master plan.
15 Any time we are talking about the master plan and a
16 reconciliation of use, clearly a D-1 and D-2 have to
17 have a planner.

18 On a D-3, I think it depends on the
19 facts of the case. In this case they are suggesting
20 that they don't need it. They are the ones that are
21 taking the risk, though, by not having that expert.

22 Go ahead. I just wanted you to have
23 the benefit of it.

24 COMMISSIONER COHEN: Here is my
25 question. I mean, my understanding is that our

1 practice, I don't question the qualifications of
2 your expert. My concern is that when we had D
3 variances, we had planner's reports submitted. That
4 is part of the zoning Board. When we get an
5 application for a D variance, we get a planner's
6 report.

7 My understanding of this application is
8 that the negative criteria relates to the
9 neighboring properties. It's not purely an internal
10 function as to the space that is within this
11 property, but particularly in an application like
12 this, where we have had neighbors who have expressed
13 concerns about the impact that this property is
14 going to have on the neighboring properties, that it
15 is not just a question of architecture, but it's a
16 question of planning.

17 And if the extra customer service space
18 is going to create an impact of additional customers
19 that are going to spill out in the neighborhood, I
20 would be interested in knowing from a planner a
21 professional view from that planner as to whether
22 there is a positive or negative impact with respect
23 to the variances being sought.

24 So my question is not to this
25 architect's competence, but my question is: Do we

1 actually need a planner's report for a reason with
2 respect to this applicant.

3 MR. GALVIN: No, I don't think so. I
4 think in the end, if you are talking about the
5 master plan and the impact of the master plan and
6 how it works, I think then you absolutely need a
7 planner's testimony.

8 If you are going to the issue of
9 whether it has a substantial negative impact on
10 surrounding property owners, you ultimately are
11 going to make the decision. Now, you are going to
12 depend on the testimony.

13 If they had, if they wanted to bring in
14 an expert, and again, no offense to Mr. Bodnar, but,
15 you know, in Summit just to use that as an example,
16 I can have three cases in a night that are all D-4
17 variances, where I only have an architect because it
18 is all about the physical structure of the building,
19 and probably you really don't need a planner to
20 testify to that.

21 The same thing here with this new case
22 that came down, TSI, the Supreme Court is making
23 clear that we are not probing the master plan, but
24 they have to show you that this site can accommodate
25 it. If you don't feel that the evidence is there,

1 then you rule against it.

2 I think that Ms. Banyra has done the
3 right thing to point out to you that they have to
4 request a waiver because we normally have a planner,
5 and I think it is a good practice to have a planner
6 whenever possible, but --

7 COMMISSIONER COHEN: Right.

8 The only thing is Ms. Banyra's report
9 says that the Board should address the waiver issue
10 first as it's determinational as the applicant
11 either continues or to be carried, so I just wanted
12 procedurally for us to address her concern.

13 MR. GALVIN: And I misunderstood. I
14 didn't realize Mr. Bodnar was going to offer you
15 that testimony. That's why I stopped him, and now
16 we should resolve it.

17 MS. BANYRA: Can I also just add in
18 terms of -- anybody can always request a waiver from
19 anything that they are submitting, whether to make
20 an application complete or not, and it's not for me
21 to then -- if somebody says, I am requesting a
22 waiver because I don't think I need a planner's
23 report, then I take that as, okay, and I don't check
24 off, that okay, they submitted a planner's report,
25 but I check off that now they have to ask somebody

1 else, and it is not me. So that is why I called it
2 out, because they said we are not submitting one.

3 I said, Okay, then you have to ask for
4 the waiver.

5 MR. KANTOWITZ: If I may address your
6 concerns, and I am talking to the entire Board,
7 The peculiar nature of this deviation, which has to
8 do, and you will hear him talk about how the
9 interior space operates when it exceeds a thousand
10 square feet, okay?

11 I think it is peculiar to something
12 that he as an architect can speak to. For example,
13 I will proffer, and you will hear him talk about
14 patronage turnover, number of people using it,
15 in-and-out frequency. It is something that once you
16 hear him, I mean, you'll tell me, "Kantowitz, I
17 think you're deficient. Give us a planner."

18 But I hope you will be persuaded or at
19 least understand that this is something certainly
20 within the ambit of his expertise and that resonates
21 with all of your common senses about how something
22 works.

23 As compared to, I will say this, there
24 are, for example, conditional uses that have all
25 sorts of criteria with spacing from a similar use or

1 spacing on a block or height, or all sorts of other
2 bulk variances that are classically the kinds of
3 things you hear planners talk about in terms of
4 urban and architecture -- and land use planning.

5 This is more particularized to what are
6 the problems associated with being over a thousand
7 square feet. Okay?

8 MR. GALVIN: Here is what I recommend.
9 I recommend that if you are okay with waiving the
10 planner's report, that somebody make a motion and a
11 second, and we vote, but strictly all we are doing
12 is there is not going to be a planner. It doesn't
13 confer any rights on them whatsoever, and it is
14 going to go to the weight of the evidence. You are
15 going to listen to the whole case and you're going
16 to make your determinations.

17 COMMISSIONER COHEN: Okay. I will make
18 a motion to waive the requirement for a planner's
19 report.

20 CHAIRMAN AIBEL: Thank you.

21 MR. GALVIN: Is there a second?

22 CHAIRMAN AIBEL: I will second it.

23 MR. GALVIN: Roll call, Pat.

24 MS. CARCONE: Commissioner Greene?

25 VICE CHAIR GREENE: Yes.

1 MS. CARCONE: Commissioner Cohen?

2 COMMISSIONER COHEN: Yes.

3 MS. CARCONE: Commissioner DeFusco?

4 COMMISSIONER DE FUSCO: Yes.

5 MS. CARCONE: Commissioner Grana?

6 COMMISSIONER GRANA: Yes.

7 MS. CARCONE: Commissioner Murphy?

8 COMMISSIONER MURPHY: Yes.

9 MS. CARCONE: Commissioner Branciforte?

10 COMMISSIONER BRANCIFORTE: No,

11 MS. CARCONE: Commissioner Aibel?

12 CHAIRMAN AIBEL: Yes.

13 Okay. Please proceed.

14 MR. KANTOWITZ: Thank you.

15 THE WITNESS: Okay.

16 COMMISSIONER FISHER: Are yours

17 numbered different than ours?

18 THE WITNESS: The second sheet in.

19 COMMISSIONER FISHER: Mine say like A-1

20 or something.

21 All right. My apologies. Go ahead.

22 VICE CHAIR GREENE: Could you start off

23 by telling us how many feet we are talking about?

24 THE WITNESS: Yes.

25 Right now if you look simply look at

1 the plan itself with the bar seating area, or the
2 entire bar and eating establishment as well, we are
3 looking at 1,033 square feet of that area is going
4 to be used as primary customer service.

5 There is a back little area that we are
6 considering for display space, as I talked to Jeff
7 earlier, behind the bar, considering that if that is
8 part of the overall space, we will consider that 150
9 square feet, so 50 to a hundred, so we are looking
10 at 1133 square feet total in terms of service area.

11 MR. KANTOWITZ: You are deriving that
12 based upon the definition in the Hoboken code of
13 customer service area set forth in 196-6?

14 THE WITNESS: Correct.

15 MR. KANTOWITZ: And that excludes
16 kitchens. It excludes toilet area, and it excludes
17 storage areas and the like.

18 So based upon your determination as an
19 architect drawing those plans, you determined that
20 the customer service area complying with the Hoboken
21 code comes out to about 1133 --

22 THE WITNESS: 1133 square feet.

23 VICE CHAIR GREENE: Can I stop you for
24 just a second?

25 MR. KANTOWITZ: Yes.

1 VICE CHAIR GREENE: Ms. Banyra?

2 MS. BANYRA: Yes.

3 VICE CHAIR GREENE: In your report you
4 refer to a 1795 square foot as customer service
5 area?

6 MS. BANYRA: That's in the -- I believe
7 that was on the application that was submitted. In
8 the application, the forms themselves, I believe
9 there is a number here that says 1700 -- yes. On
10 page -- the third page I guess of the application,
11 or the fourth page, it gives a section to the
12 ordinance of what they are seeking relief from, and
13 it says requirements, maximum 1,000, and it says
14 proposed 1795.

15 So when I saw the 1795 and I saw the
16 1033, I was like, okay, you got to come up with the
17 right number. I don't know which one is correct,
18 but whatever it is, tell us.

19 THE WITNESS: Yes. I could see how
20 that happened.

21 So on the bottom of the page here, it
22 says the total square footage of the entire
23 footprint of the entire structure. It was actually
24 1975. Somebody actually made a mistake and decided
25 to take that entire envelope and make that the

1 restaurant.

2 Obviously, when you first walk in, this
3 is a multi-story building. On the right-hand side,
4 there are stairs going to the upper structure, so
5 that would be part of the area as well.

6 And when you consider the walls
7 themselves, the actual masonry perimeter walls were
8 not being considered part of the customer service
9 area, so between that and the bathroom and the
10 kitchen area and the interior staircase, when you
11 take those out, you end up with the 1133 square
12 foot.

13 When I did it earlier, I did a
14 computerized -- around the entire bar -- I didn't
15 take the display space, and then when we started
16 talking about it at a side bar before this meeting,
17 I said, you know what, let's say that that display
18 space behind this section of the bar in that area
19 would be considered a display area in terms of the
20 Hoboken exact code, and we ended up saying, let's
21 just put a hundred square feet on that making it
22 1133.

23 VICE CHAIR GREENE: So when you say
24 display area, you're talking about the back bar?

25 THE WITNESS: Well, you can see the

1 bottles and the bar and what-have-you, and I said,
2 you know what, let's consider that as well.

3 VICE CHAIR GREENE: Okay.

4 MR. KANTOWITZ: And that's because your
5 definition, your code definition of customer service
6 area, that is the thousand square foot live-in, it
7 says 1,000 square feet of customer service area.
8 Your code defines customer service area to be, and I
9 quote: The floor area of retail establishments and
10 retail businesses and services, eating and drinking
11 places in retail food service establishments in
12 which customers assemble to receive food or services
13 offered in which goods are displayed in sales
14 transactions, from those bar transactions, over the
15 bar itself, and you have liquor and other things
16 displayed on the rear wall --

17 VICE CHAIR GREENE: I got it.

18 MR. KANTOWITZ: -- so I asked Mr.
19 Bodnar, aside from his calculation of the service
20 and seating and standing area to add in, if you
21 will, the display area, and he came up with about
22 another hundred or so square feet --

23 VICE CHAIR GREENE: I get it. Thank
24 you.

25 MR. KANTOWITZ: -- so that is why what

1 we are asking for is probably in excess by about, if
2 my calculation is right, about --

3 THE WITNESS: 133 --

4 MR. KANTOWITZ: -- eleven percent above
5 what your standard is, okay? So I want you to focus
6 on 1130 or so square feet --

7 THE WITNESS: 1133 square feet.

8 MR. KANTOWITZ: -- where a thousand is
9 allowed. It is about 13 percent above what your
10 standard calls for. We are not looking to, you
11 know, blow this out and have a hundred percent, you
12 know, increase over what is allowed.

13 All right. Go ahead, Mr. Bodnar.

14 THE WITNESS: So as you can see here,
15 it is actually a corner property. We are on Park
16 and we're on 13th.

17 The two other, as we said earlier, we
18 have two other retail spaces in the area. On 13th
19 Street on the end here there is a gas station, and
20 obviously 14th and Park, there is the Malibu Diner,
21 which is on our other side there as well. That is
22 actually how we meet that part of the conditional
23 use.

24 What we are actually doing here is we
25 are using some space in the basement for storage and

1 additional bathrooms. We are actually not in the
2 flood zone, so we can actually go down to the
3 basement and actually use our basement. Even during
4 the storm, we did not actually incur any water or
5 very, very little water in that space, so we feel
6 that it is a safe spot, and we're doing some
7 waterproofing on some of the interior walls down
8 there.

9 So basically what we really wanted to
10 do was bring in more from just being a bar into like
11 a bar with a full service kitchen, so we would have
12 less impact. We understood that when we, you know,
13 went to the last meeting, that everybody was a
14 little bit up in arms about it just being a bar. A
15 bar with a restaurant-like seating or even actually
16 like a full service kitchen and a series of tables
17 is going to have a far less amount of people in this
18 situation than it is in terms of having just a
19 regular bar.

20 I mean, just in terms -- I mean, in
21 terms of the Building Code, which is the IBC, the
22 old formal BOCA code, you look at that and go, okay,
23 you are allowed seven square foot per person
24 standing, but when you have tables and chairs, you
25 have 15, so you only have about half as many people

1 occupying the same amount of space. So we feel like
2 that is a better use of this building in terms of
3 what we want to do here.

4 And also, people won't be coming in and
5 out. When people go to a bar, you might have one
6 drink or two drinks and run in and out, and there
7 are a lot of people coming and going a lot. But
8 when you're looking at a bar and a place to eat as
9 well, people are sitting down having dinner, so
10 they're substantially --

11 MR. KANTOWITZ: Mr. Bodnar, can you
12 summarize by saying two things?

13 Number one: At times it is being used
14 for dining purposes, fewer people in it?

15 THE WITNESS: Correct.

16 MR. KANTOWITZ: And second, less
17 turnover, meaning patrons will come in, and in the
18 course of an evening, if people are sitting down for
19 dinner as compared to going in for drinks, less
20 patron turnover, less foot traffic coming in and
21 out, and in and out, and in and out?

22 THE WITNESS: That's correct.

23 I feel like, you know, the place has
24 been sitting vacant for a couple of years. Now, we
25 actually have an approval to do this, but somehow it

1 was a problem. But years ago, we came in, and we
2 had a client, and the client backed out on taking
3 the space, so the place is sitting empty, and it is
4 always good to have something on the corner,
5 especially in Hoboken, that adds a little bit of
6 life to something in terms of people coming and
7 going, and there is some activity at night.

8 When you notice that there's a corner
9 that's dark, and the building is kind of empty, it
10 becomes a little dark --

11 MR. KANTOWITZ: Mr. Bodnar, in your
12 understanding, if -- if the amount of people in this
13 space at any one time were a problem because the
14 space is larger than a thousand square feet, would
15 introducing a restaurant use -- not a restaurant
16 use -- a full kitchen service with tables address or
17 ameliorate any problem, if there is any, with the
18 number of people in the space at any one time?

19 THE WITNESS: Well, right now, if we
20 are going from the bar to a restaurant, we obviously
21 are bringing in far less people.

22 MR. KANTOWITZ: And would having a full
23 kitchen service and table service, if there were a
24 problem with the number of people coming in and out
25 from the turnover that would be associated with just

1 a bar use change because we are introducing a full
2 kitchen service, would that also be an issue that
3 would be accommodating at this site by virtue of the
4 table service, even though the proposal exceeds
5 1,000 feet of customer service?

6 THE WITNESS: Yes. We are obviously
7 exceeding the square footage by about 133 square
8 feet. I feel that since the tables and chairs are
9 being brought in, we are actually reducing the
10 amount of volume coming in and out because of the
11 restaurant slash -- the bar/restaurant is now less
12 impactful than it would be if it was just a standard
13 bar as we already have an agreement to have.

14 MR. KANTOWITZ: Now, let's talk about a
15 couple of other issues.

16 Can you describe, for example, what
17 accommodation has been made to address the kitchen
18 use that may have cooking smells and the like that
19 have to be addressed?

20 THE WITNESS: Well, in all kitchens you
21 have the main hood that sits above the grills and
22 any kind of fryer, thing of that nature, that we'll
23 have in the restaurant area, that full service
24 kitchen space.

25 That hood then goes to a series of

1 ductwork that will go from the duct on the lower
2 level through a Cleantron through a series of what I
3 call the Cleantron. It's a unit that actually takes
4 the air and circulates the air and changes the air
5 from being an odor to a non odorless system by a
6 series of filters, and that ends with a series of
7 ductwork in the facade of the building to the roof,
8 and then that's expelled on the rooftop. This way
9 you are not adding any smells or odors to the space
10 outside of the building, so this way you are
11 essentially not making an area in your neighborhood
12 odorous, that has a lot of odors.

13 MR. KANTOWITZ: Two questions.

14 If introducing a full kitchen service
15 created an odor issue, if it did, would this
16 proposal of this duct system and filter system
17 address any potential issue of odor being emitted
18 from the use because of the introduction of a full
19 service kitchen?

20 THE WITNESS: Yes, yes.

21 MR. KANTOWITZ: Okay. And second, in
22 relation --

23 (Loud background noise)

24 -- I'm sorry. And second with regard
25 to the system you described, is that -- as an

1 architect, is that a recognized industry-wide used
2 system that you are familiar with as an architect in
3 designing kitchens, commercial kitchens, that
4 require venting and dispersal and elimination of
5 odors?

6 THE WITNESS: Yes. Most of the
7 kitchens in Hoboken that were done recently, you
8 know, that were done before a certain date, have now
9 been institutionalized to have this type of system,
10 a system where the odors are expelled at a higher
11 level or an area or a system of filters that expel
12 that odor out, so this way you are not adding to
13 smells in the neighborhood.

14 MR. KANTOWITZ: Okay. Any issue of
15 noise of fans or any other mechanical items that are
16 attained as part of this system?

17 THE WITNESS: There will be fans
18 obviously, but the fans are like actually even
19 quieter than your condenser fans that you have in
20 your apartments. Let's say, you have in an
21 apartment, you have a split system, which is an
22 air-conditioner for a restaurant or room. This
23 system, the fan is actually even more quiet since it
24 is on a series of buffers in terms of this detail
25 down here, a series of compressing vents that will

1 actually stop any migration from coming through from
2 one to the next.

3 MR. KANTOWITZ: By the way, even if
4 this were a thousand square feet or less, and a full
5 service kitchen were introduced, you would still
6 need the same, and you would recommend to use the
7 same venting system for this, right?

8 The fact that we are 11 -- 130 or so
9 square feet over the limitation that the Hoboken
10 code posts wouldn't change the fact that you use the
11 same venting system to vent this full service
12 kitchen?

13 THE WITNESS: Yes. We would be venting
14 definitely no matter what. If you have a kitchen,
15 this would be the recommendation. If you went to
16 the Hoboken Building Department, they are going to
17 recommend that we have a system that does not allow
18 us to dispel any odor into the neighboring
19 properties.

20 MR. KANTOWITZ: And it's the same
21 system that would be used whether it was a thousand
22 square feet or the 1130 square feet?

23 THE WITNESS: No matter what it would
24 have.

25 MR. KANTOWITZ: Okay, good.

1 VICE CHAIR GREENE: Where exactly is
2 the kitchen?

3 THE WITNESS: The kitchen would be on
4 the first floor. If you look behind the bar, the
5 kitchen is right there.

6 MR. KANTOWITZ: Let's be very specific.
7 You are pointing to Sheet Z-2 --

8 THE WITNESS: Z-2 --

9 MR. KANTOWITZ: -- ZN-2 --

10 THE WITNESS: -- the first floor
11 page --

12 MR. KANTOWITZ: -- and there is a
13 diagonal about middle of -- the drawing in the
14 middle, there is a diagonal showing circles there?

15 THE WITNESS: And a series of bar
16 stools.

17 MR. KANTOWITZ: And right above it, you
18 see something that looks like a stove from above
19 with six burners on top?

20 THE WITNESS: Right next to the new
21 stairs going down to the lower level.

22 VICE CHAIR GREENE: Okay. Got it.

23 CHAIRMAN AIBEL: How is the venting --

24 THE WITNESS: The venting goes through
25 here and out through the back wall and up through

1 the back of the building.

2 I think you can see here, the upper
3 back of the building through this ductwork and over
4 on top of the roof, and then in about ten or 15
5 feet. That is what they are recommending in Hoboken
6 for the property line.

7 MR. KANTOWITZ: Mr. Bodnar, is this a
8 system that you would be prepared to demonstrate or
9 show and work through with the appropriate building
10 code official in Hoboken, so that that official or
11 that office in Hoboken is satisfied that this meets
12 its standards and industry standards for venting any
13 odors coming from the kitchen?

14 THE WITNESS: Yes.

15 When I go to the Building Department
16 for permits, I can show them exactly how we are
17 doing this venting, and show them cut sheet
18 information to say this is what we will be using,
19 and obviously --

20 CHAIRMAN AIBEL: This is a condo
21 building, correct?

22 MR. KANTOWITZ: Excuse me?

23 CHAIRMAN AIBEL: This is a condo
24 building, correct?

25 MR. KANTOWITZ: This is a condo

1 building, yes.

2 CHAIRMAN AIBEL: So are there any
3 issues involved running up because of the
4 ventilation?

5 THE WITNESS: No, because I am not
6 going to be going near the fire escape nor am I
7 going in front of these windows or anything, so it
8 is just going to be alongside.

9 MR. KANTOWITZ: We are not aware that
10 this impinges upon anybody else's condominium
11 ownership elements as far as we know.

12 COMMISSIONER GRANA: If I could ask you
13 a question. It could be not only the individual
14 owners, but are you impinging on a common element,
15 and therefore, do we have any concerns from the
16 association with regard to that?

17 MR. KANTOWITZ: Let me ask the
18 question.

19 (Counsel confers.)

20 MR. KANTOWITZ: I am advised, but I
21 think it is a very well taken point, I am advised
22 that under the bylaws of the condominium, they allow
23 for running of ductwork because when this was
24 originally established as a condominium, and that
25 was touched on at one of the prior hearings, if you

1 recall the public offering statement spoke to the
2 fact that it was intended to be used, this
3 commercial space, as a commercial restaurant-type
4 area.

5 I am advised that the bylaws provided
6 that this commercial unit owner on the ground floor
7 can run ductwork in the common areas, and that is
8 part of the bylaws.

9 If you want us to produce that for you,
10 you know, these are all questions that you are
11 certainly entitled to assure that the public
12 interests are being protected, and that we are not
13 running afoul of anything. Obviously, if it is not
14 allowed, we need to get permission from the
15 association to run it.

16 COMMISSIONER COHEN: I would request
17 either a copy of the bylaws or a statement from the
18 condo association, one or the other.

19 COMMISSIONER GRANA: I would agree.

20 COMMISSIONER DE FUSCO: Mr. Bodnar, is
21 there an oven in the kitchen?

22 THE WITNESS: Yes. There's actually a
23 range-type oven, and the grill is here and under the
24 grill --

25 (Commissioners talking at once, and

1 this portion could not be transcribed.)

2 COMMISSIONER DE FUSCO: The only reason
3 I ask is because it seems -- I counted 62 table
4 seats and then 24 stools at the bar, even though 87
5 seats are noted on the plan.

6 So this seems like a very small kitchen
7 to service such a medium-sized restaurant at peak
8 dinner hours, and then on top of that, the proposal
9 indicates patio seating. So can you just walk me
10 through your thinking in terms of the size of the
11 kitchen verus the proposed seating plan?

12 THE WITNESS: Well, right now as you
13 can see there, if you look back here, we do have an
14 area for obviously an oven. We have the char-grill,
15 and we have a deep fryer, and we have a pasta thing
16 right next to it, so that is a decent amount of
17 equipment. Obviously, it is a full kitchen, but it
18 is not going to be, I don't think we are going, you
19 know, when we actually did this, this is exactly
20 what they were asking us --

21 COMMISSIONER DE FUSCO: My further
22 concern is that from a planning perspective, you are
23 talking about this, you know, offering a community
24 benefit, and the fact that it is a dining
25 establishment. My fear being that this kitchen is

1 indicative of a bar kitchen, where hamburgers and
2 that sort of thing would be made, not necessarily a
3 cafe, where you would require a larger kitchen with
4 cooks to do active work.

5 THE WITNESS: You know, actually you
6 have about eight to ten feet of actual equipment,
7 and you also have a prep area and all of the other
8 tables on this side as well, so it is a substantial
9 amount of equipment being in this.

10 I mean, I have a friend that owns a
11 diner, and they do a substantial amount of work, and
12 their kitchen is not much bigger. It's only about
13 twice as big as this, and they put out 200 seats.

14 COMMISSIONER DE FUSCO: Got it.

15 I guess the only other question I have,
16 is it 87 seats at the bar or 24 --

17 MS. BANYRA: I think you're wrong --

18 THE WITNESS: No. It's 87 seats total.

19 MS. BANYRA: -- I think it is 88. I
20 added it up a couple times. I think it is 88.

21 THE WITNESS: Probably, yes. I was
22 trying to get it close, you know, because you never
23 know if something gets lost in the shuffle. I tried
24 to keep it down to a certain amount of seats, and I
25 figured there will be a little bit of people

1 standing around by the bar. Before we were already
2 at a 175 level, I am thinking it would be less than
3 that, you know, in terms of --

4 COMMISSIONER DE FUSCO: Not to occupy
5 too much time, but, Eileen, I have a question for
6 you.

7 (Board members talking at once, and
8 this portion could not be transcribed.)

9 THE REPORTER: I'm sorry, but you have
10 to speak one at a time, and I can't hear you.

11 COMMISSIONER DE FUSCO: -- that is part
12 of this application, correct?

13 MS. BANYRA: Yes and no. It is
14 outside -- they are representing it, and I think
15 when they came to us last year, I think it was
16 discussed like if anything ever came back, the
17 ordinance got changed about a year and a half ago,
18 so that is not actually part of the zoning ordinance
19 anymore.

20 So while they are showing it, and I
21 appreciate they are showing it, because I think the
22 Board should see it, and if they didn't show it, I
23 think the zoning officer could issue a permit based
24 on whether or not they meet the ordinance, and that
25 is related to taking things in, shutting it down,

1 you know, at a certain time. There is certain
2 criteria, so it is outside the boundary of the
3 property as well, so I think it is not really within
4 our jurisdiction.

5 COMMISSIONER DE FUSCO: Thank you.

6 MS. BANYRA: It was, but it's not any
7 more.

8 MR. KANTOWITZ: I want to follow up on
9 the Commissioner's question.

10 Would this be the same kitchen
11 apparatus even if you were a thousand square foot,
12 and not looking for a variance, in terms of
13 servicing this number of patrons that --

14 THE WITNESS: Yes. I don't think I
15 would be going any less in terms of the amount of
16 the equipment that we have here.

17 Obviously, we needed a three-part sink.
18 We need a hand sink, and a prep sink, all of them
19 are requirements by the health department as it is,
20 and then we have some additional sinks in the
21 basement as well for cleaning, in terms of
22 dishwashing and that kind stuff like that.

23 MR. KANTOWITZ: You are satisfied that
24 any kitchen or food preparation -- I will use the
25 word "problem" because the case law speaks of

1 problem -- but if there were any food preparation
2 problem associated with the introduction of this
3 kitchen, that your design that you have shown, the
4 spacing of the kitchen, the venting of the kitchen
5 and the location of the kitchen, all address any
6 problem that you can perceive in terms of the
7 introduction of the full service kitchen in these
8 premises?

9 THE WITNESS: Yes. I think we have
10 enough ample area and space to provide a nice, you
11 know, a nice restaurant.

12 MR. GALVIN: Can I ask a simple
13 question?

14 THE WITNESS: Yes.

15 MR. GALVIN: We are talking about 133
16 square feet, right?

17 THE WITNESS: Yes.

18 MR. GALVIN: As it exists now?

19 THE WITNESS: It exists now.

20 MR. GALVIN: So we are changing the
21 nature of this from just a bar to a restaurant and a
22 bar. A restaurant and bar would be a permitted use
23 providing they were 1000 square feet.

24 Theoretically, if you were to turn 133
25 square feet into a closet --

1 THE WITNESS: Yes.

2 MR. GALVIN: -- then you would be able
3 to go downstairs and pull a building permit and
4 avoid the entire process.

5 THE WITNESS: Correct.

6 MR. GALVIN: So we are really only
7 fighting over that 133 square feet, right?

8 THE WITNESS: Right.

9 MR. KANTOWITZ: Thank you for getting
10 to the number of what I was trying to say earlier --

11 MR. GALVIN: You know, everyone is
12 trying to figure out what we're doing here, so that
13 is really what you are trying to do. Are we going
14 to allow them to use the 133 feet?

15 (Loud talking in the background)

16 MR. GALVIN: What they have to show --
17 hey, guys downstairs, do you want to get a little
18 louder?

19 (Laughter)

20 COMMISSIONER BRANCIFORTE: You have to
21 speak up, too, because I didn't hear what you just
22 said.

23 MR. GALVIN: What I am pointing out is
24 that the case is about this 133 square feet. They
25 have it now. It currently exists. It is a bar now.

1 If we were to turn them down, it would
2 still be a bar, or they could get rid of that 133
3 square feet and make it a closet, and then they can
4 go down to the zoning officer and get a permit
5 because then it would be conforming for a bar and a
6 restaurant.

7 So the question you really have is:
8 Are we better off with 133 -- this extra 133 square
9 feet for being a restaurant or for just being
10 strictly a bar.

11 What you have to do is you have to
12 determine under the Coventry Square standard whether
13 this property can accommodate that deviation from a
14 thousand square feet. Maybe if they were asking for
15 2000 square feet, that would be crazy, but you have
16 to weigh out of 133 --

17 COMMISSIONER MURPHY: But it could be a
18 full service kitchen no matter what?

19 We're only just talking about --

20 MR. GALVIN: Not "no matter what,"
21 provided if they got rid of 133 square feet, so they
22 would have to close it off, make it a cloak room,
23 something that the customer service area got reduced
24 to a thousand --

25 COMMISSIONER FISHER: And they have the

1 ability to put substantial ductwork up the side of
2 the building that --

3 MR. GALVIN: That, I don't know. We
4 have to put a condition, because there was a condo
5 association, and what I have is: The applicant is
6 to provide proof by means of a letter from the condo
7 association -- I'm sorry -- wait, I'm talking --
8 confirming that the proposed ductwork is authorized
9 by the association, or it shall supply the governing
10 documents proving to the satisfaction of the Board's
11 attorney that the applicant may add the proposed
12 ductwork.

13 COMMISSIONER FISHER: Dennis, that was
14 one of my questions.

15 The other part of the question isn't so
16 much the condo association, but putting something
17 that is not necessarily attractive up the side of
18 the building and its impact on the neighborhood, is
19 that something we should be concerned --

20 MR. GALVIN: Yes. You are not
21 limited --

22 (Commissioners talking at once, and
23 this portion could not be transcribed.)

24 MR. GALVIN: What's that?

25 You can't all talk at once.

1 THE REPORTER: You have to speak one at
2 a time.

3 MR. GALVIN: One at a time. One at a
4 time, please.

5 I do want to answer your question. Did
6 I answer your question?

7 COMMISSIONER FISHER: Yes. You said
8 yes.

9 MR. GALVIN: Okay. Go ahead.

10 COMMISSIONER MURPHY: But doesn't
11 anything that comes off the outside of the building
12 have to go to city council?

13 MS. BANYRA: It is on the property
14 line.

15 COMMISSIONER MURPHY: Okay, got you.

16 MR. GALVIN: So, yes, we deal with it,
17 but also if it is in excess of the property line,
18 the governing body deals with it also. We don't
19 defer to them. They have to go there to get
20 permission.

21 COMMISSIONER FISHER: Coming back to my
22 question, if they were at a thousand square feet,
23 then we don't have the opportunity -- they could
24 just --

25 MR. GALVIN: We wouldn't have

1 jurisdiction --

2 (Commissioner Fisher speaking over Mr.
3 Galvin, and this portion could not be transcribed)

4 COMMISSIONER FISHER: -- so they could
5 get their building permit, and they could put the
6 thing on the outside of the building?

7 MR. GALVIN: Right. Once we have
8 jurisdiction, you get to exercise some control.

9 COMMISSIONER FISHER: Got it.

10 VICE CHAIR GREENE: I got a question
11 for Eileen.

12 What makes the thousand feet the magic
13 number in the ordinance?

14 Why wasn't it 15 or five or any other
15 number?

16 MS. BANYRA: You know, I will give you
17 my best shot on that because it has been there a
18 long time.

19 From what I understood from Elizabeth,
20 was the customer service area and some of our
21 earlier codes predated Elizabeth Vandor, but some of
22 them -- the customer service area I think also you
23 will note that we have a thousand square foot
24 limitation in terms of retail.

25 It was trying to maintain a

1 neighborhood scale type of thing. Hoboken, even for
2 Washington Street, was trying to avoid the big box
3 stores. I am going to use generic names, like The
4 Gap or any of those stores coming in just because it
5 would change us and make us more homogenous, similar
6 to other communities, so that was kind of decided
7 early on just to kind of make it a more boutiquey
8 and small, so I think that is where that came from,
9 but that is my understanding.

10 VICE CHAIR GREENE: So going over that
11 by ten percent doesn't really have any impact on
12 that, would you say --

13 MR. GALVIN: Wait a minute. Time out.
14 You have to make that decision. That is your
15 decision.

16 She can say that as a planner, but
17 ultimately that is what you have to say. You have
18 to determine whether or not 133, and maybe it's not
19 de minimis, but do you feel that it is reconcilable
20 or it can be accommodated. It is a deviation of the
21 circumstances that is reasonable, but that is for
22 you to make that call. Eileen will give you her
23 opinion, if you want.

24 VICE CHAIR GREENE: Yes. That's why I
25 was asking. I wasn't asking her to vote for me, but

1 I am asking her what she thought as a professional,
2 because I respect her professional opinion.

3 MS. BANYRA: Well, I think the
4 character of the area -- the building is already
5 established. The character of the area is
6 established. The space is there and the space is a
7 bar. I didn't disagree with the testimony that was
8 provided, and I think, as was correctly pointed out
9 by the attorney, if we added another bathroom, then
10 they wouldn't be here. I don't see this impacting
11 negatively the intent of the ordinance at all.

12 VICE CHAIR GREENE: Thank you.

13 MR. KANTOWITZ: Mr. Bodnar, are there
14 any other problems that you can perceive of in your
15 experience with this area that are associated with
16 this proposal that exceeds by about 130 square feet
17 the allowable standard of this --

18 THE WITNESS: No. I don't see anything
19 here that would --

20 MR. KANTOWITZ: And just to put the
21 comment in context, that venting pipe is in the rear
22 of the building?

23 THE WITNESS: Yes. It will also be in
24 a color to match the building.

25 MR. KANTOWITZ: Okay. As an architect,

1 who is experienced in esthetics, in your
2 professional opinion, will that duct pipe, if you
3 will, have any discernible negative -- will it have
4 a substantial detrimental effect on the public good?

5 THE WITNESS: No. I think actually we
6 have a fire escape out there as well on that side,
7 so it is really kind of actually somewhat blocking a
8 little bit of the fire escape, which is an
9 unattractive thing also --

10 MR. GALVIN: Can I ask a question?

11 The duct pipe will be, did you say,
12 colored?

13 THE WITNESS: It will match the color
14 of the building, which was recently redone in 2006,
15 the building.

16 MR. GALVIN: I have another question.

17 The venting, I missed some of that.
18 The applicant agreed to vent the cooking smoke, so
19 that it will not give off odors?

20 THE WITNESS: That's correct. It will
21 not give off any kind of --

22 MR. GALVIN: Is there a better way to
23 say it?

24 THE WITNESS: Hum, substantial --
25 that's a really like a substantial -- because it's

1 a --

2 MR. GALVIN: What are you doing to get
3 the odor not to come?

4 What's the --

5 THE WITNESS: The filtration system --

6 A VOICE: Scrub basically --

7 MR. GALVIN: You're going to install a
8 filtration system --

9 VICE CHAIR GREENE: With scrubbers,
10 aren't they?

11 THE WITNESS: Yes.

12 MR. GALVIN: -- to eliminate odors.

13 I got it.

14 Please proceed.

15 MR. KANTOWITZ: Mr. Bodnar, insofar as
16 we exceed that standard, are you familiar or aware
17 of other bar slash restaurant establishments in the
18 town and in the R-1 Zone that exceed the thousand
19 square feet?

20 MR. GALVIN: I am going to stop him
21 there. I think that is planning testimony. I don't
22 think it is necessary to your case.

23 THE WITNESS: I have been to many bars,
24 though. I can tell you the --

25 (Laughter)

1 (Everyone talking at once, and this
2 portion could not be transcribed.)

3 THE WITNESS: -- that is fine)

4 MR. KANTOWITZ: Mr. Bodnar, as an
5 architect, who has worked in Hoboken substantially
6 and based upon your professional experience in
7 designing these types of proposals, okay, do you
8 have an opinion as to whether this proposal impairs
9 the intent of the zone plan?

10 MR. GALVIN: No. That is planning
11 testimony. It is a D-3 variance. We already said.
12 You don't have to answer that question because of
13 TSI.

14 MR. KANTOWITZ: Okay.

15 I will ask you: Do you have any
16 opinion as to whether any of the problems associated
17 with this can't be reconciled with the --

18 MR. GALVIN: No. We are not going to
19 listen to that.

20 MR. KANTOWITZ: You're not going to
21 listen to that either?

22 MR. GALVIN: I think your expert has
23 put enough information in actually. If you want to
24 keep going --

25 MR. KANTOWITZ: No. If that is the

1 case, I have nothing further.

2 MR. GALVIN: We have some questions
3 that we want to get --

4 CHAIRMAN AIBEL: Board members, any
5 questions?

6 VICE CHAIR GREENE: I have a few.

7 You testified that the traffic, if you
8 will, people coming and going will be less in a
9 restaurant use than in a bar use. Is that a
10 scientific --

11 THE WITNESS: No.

12 VICE CHAIR GREENE: -- I mean, what was
13 the basis of you making that statement?

14 THE WITNESS: I'm thinking in terms of
15 if you go and you have one or two drinks and you
16 don't eat anything, if you go into a place where you
17 are sitting down and eating food, you obviously have
18 to wait for the food to be cooked, and you have to
19 wait for the time to elapse and getting the food and
20 eating, and then have a drink before and then maybe
21 have a drink afterwards at the bar itself. So you
22 will be there for a substantially longer time than
23 if you just came in with a couple of people and had
24 a drink, and said, let's go to the next place. This
25 place isn't really, you know, not happening --

1 VICE CHAIR GREENE: This place is not
2 happening.

3 THE WITNESS: Exactly.

4 (Laughter)

5 VICE CHAIR GREENE: That is a good
6 promotion.

7 As you have laid out the tables, now, I
8 assume this will be subject to a C of O, which will
9 indicate what the occupancy allowed is, correct?

10 THE WITNESS: Correct.

11 VICE CHAIR GREENE: In your opinion,
12 the way you laid this out, is that going to
13 approximate what your C of O is going to allow?

14 THE WITNESS: Yes. Our C of O will be
15 a little bit higher. Obviously you are going to
16 have some people standing at the bar, so you are
17 probably, you know, looking at -- I will work the
18 numbers again by about 120 as opposed to 175 --

19 VICE CHAIR GREENE: I'm sorry -- 120 --

20 THE WITNESS: -- as opposed -- 175 we
21 are granted right now, so we will be substantially
22 lower than that as the max allowable, and that's --

23 VICE CHAIR GREENE: I see. Okay.

24 So you are actually reducing, if you
25 will, you are reducing the capacity of the space by

1 converting it to a restaurant?

2 THE WITNESS: Correct.

3 VICE CHAIR GREENE: To me, that would
4 be a better argument than the other one.

5 MR. KANTOWITZ: To phrase it perhaps a
6 little differently, the introduction of a full
7 kitchen that allows for table service means that the
8 occupancy based upon the appropriate occupancy code
9 may be less this way as compared to what we now have
10 had. We're up to 175 at this point now --

11 COMMISSIONER FISHER: You said some
12 numbers earlier, like -- not people per square foot,
13 can you just say those again?

14 THE WITNESS: Yes.

15 Let's say if you have people standing,
16 you're at seven people per square foot. If you have
17 tables and chairs, you are only allowed 15, so it is
18 about half as many with the tables and chairs.

19 VICE CHAIR GREENE: Also, too, if I
20 recall correctly, and I may not, the testimony
21 during the earlier hearings was that you might
22 introduce music along with bar use. Now, will this
23 eliminate that?

24 MR. KANTOWITZ: No. Our position is
25 none of the conditions or provisions attach to the

1 use of the premises will change. We are simply
2 introducing the full service kitchen use so as to
3 allow for meal service instead of just being a bar.

4 In terms of having music as part of the
5 experience in this premises, nothing changes from
6 what was previously determined to be allowed and
7 permitted.

8 VICE CHAIR GREENE: Okay.

9 COMMISSIONER BRANCIFORTE: You are
10 asking for a D variance --

11 MR. KANTOWITZ: I'm asking for a D-3
12 variance, which is a deviation from a conditional
13 use --

14 COMMISSIONER BRANCIFORTE: -- because
15 it's a D variance, sort of everything is on the
16 table when the D variance is discussed --

17 MR. KANTOWITZ: I respectfully --

18 (Everyone talking at once, and this
19 portion could not be transcribed.)

20 MR. GALVIN: No, no. Talk to me.
21 Let's clarify.

22 What do you mean?

23 COMMISSIONER BRANCIFORTE: Well, in the
24 past when people come for a D variance, we pretty
25 much open it up for discussion on any topic, like

1 how many speakers are you going to have --

2 MR. GALVIN: You can discuss that, yes.
3 You're right. You can impose reasonable conditions
4 on a D-3 variance, correct.

5 COMMISSIONER BRANCIFORTE: So when
6 we're talking about a silence system, like Mr.
7 Greene did, I don't know what Mr. Greene's question
8 was --

9 VICE CHAIR GREENE: My question was: I
10 was asking if they were proposing to eliminate that
11 use, if there was still going to be music now that
12 it is a restaurant. Mr. Kantowitz said maybe --

13 MR. KANTOWITZ: No. Our position is
14 that if the Board is inclined to impose conditions
15 that restrict the current use of the premises as
16 this Board has found us to be allowed to use it,
17 then we may either withdraw the application or
18 simply not choose to exercise it and maintain it as
19 a preexisting nonconforming use as a bar as it was
20 approved by the Board.

21 We are not here, and we may agree to
22 disagree on this, but I am being very
23 straightforward, as I think I try to be with this
24 Board and every Board I stand in front of, we are
25 not here to scale back what use we have of the bar

1 now in terms of music and experience, et cetera, by
2 introducing a full service kitchen with the hope and
3 expectation that it will create an additional
4 opportunity for the use of this space.

5 But if the Board's intention is to
6 frankly say, well, we will grant you this D-3
7 variance to have another 130 square feet on your
8 premises with a kitchen, but we are going to impose
9 a condition eliminating music or whatever conditions
10 you may feel are justifiable within your ambit, we
11 will just, you know, either walk away and withdraw
12 the application, carry it and make the decision or
13 we will simply not exercise it --

14 MR. GALVIN: So what conditions would
15 you like?

16 COMMISSIONER BRANCIFORTE: Well, I was
17 going with Mr. Greene's --

18 VICE CHAIR GREENE: I wasn't suggesting
19 a condition. I was just asking whether or not there
20 was going to be a change.

21 MR. GALVIN: We asked things the last
22 time like would there be dancing there.

23 Is there going to be dancing?

24 MR. KANTOWITZ: I don't anticipate and
25 I will reiterate exactly --

1 VICE CHAIR GREENE: On the tables --

2 (Everyone talking at once, and this
3 portion could not be transcribed.)

4 MR. KANTOWITZ: -- I will reiterate
5 exactly --

6 MR. GALVIN: Let's hope not.

7 MR. KANTOWITZ: I'm sorry?

8 MR. GALVIN: He said "on the tables."

9 MR. KANTOWITZ: -- I will reiterate
10 exactly what I said the last time in terms of this
11 exists as a bar, and I think what I said, and I
12 think I put this stuff down properly, and Ms. Lewis
13 probably has as good of a recollection as mine, is
14 the experience that we all have in a bar that on
15 occasion somebody gets up, if there is music
16 playing, and it's their favorite song or a
17 sentimental song of theirs and dances --

18 MR. GALVIN: No. That's not what we
19 are worried about, Jeff.

20 (All Commissioners talking over one
21 another, and this portion could not be transcribed.)

22 THE REPORTER: Please speak one at a
23 time.

24 CHAIRMAN AIBEL: Okay. One at a time.
25 Let's go.

1 MR. KANTOWITZ: I want to be clear.
2 The applicant owns the property. The applicant --

3 MR. GALVIN: With all due respect,
4 you're interfering with the Board -- let's control
5 the argument a little bit.

6 The Board has a right to impose
7 reasonable conditions. You are asking for a
8 variance for this 133 square feet. If we are going
9 to grant it to you, and we want to impose
10 conditions, we are going to do it. And if you don't
11 want to activate it, then you could turn that into a
12 bathroom, and then you're good to go.

13 MR. KANTOWITZ: Or I could not choose
14 that --

15 MR. GALVIN: You know what? The Board
16 has to decide what they think they need to do and
17 also --

18 COMMISSIONER BRANCIFORTE: Why don't we
19 just throw out the conditions, and if you find them
20 unreasonable, you can say so, and then we can
21 discuss it that way?

22 MR. GALVIN: Okay. That's fair --

23 (Everyone talking at once, and this
24 portion could not be transcribed.)

25 MR. KANTOWITZ: My point is, though,

1 that as I understand the law, we have the ability
2 either to withdraw the application, if we find the
3 conditions not to our liking, or to simply not
4 exercise approval and maintain --

5 CHAIRMAN AIBEL: Mr. Kantowitz, I want
6 to ask a couple of questions and then we --

7 (Everyone talking at once, and this
8 portion could not be transcribed.)

9 COMMISSIONER FISHER: Wait, wait,
10 wait --

11 (Everyone talking at once.)

12 CHAIRMAN AIBEL: You will defer to me?

13 COMMISSIONER BRANCIFORTE: Yes. That's
14 fine.

15 CHAIRMAN AIBEL: I am older than you
16 are.

17 COMMISSIONER BRANCIFORTE: You are also
18 the Chair, so --

19 CHAIRMAN AIBEL: That's very kind of
20 you.

21 MR. GALVIN: He is 39 like Jack Benny.

22 (Laughter)

23 CHAIRMAN AIBEL: Thank you very much.

24 Does the bar use today allow the gated
25 area in the front of the building to be used --

1 MR. KANTOWITZ: I'm sorry. Do you mean
2 the outdoor gated area?

3 CHAIRMAN AIBEL: Yes.

4 MR. KANTOWITZ: I don't know the
5 answer. I think so, but I am not certain.

6 CHAIRMAN AIBEL: Well, here is one of
7 my concerns.

8 Your plans say that you got a gated
9 area for cafe seating --

10 MR. KANTOWITZ: Yes.

11 CHAIRMAN AIBEL: -- so are we
12 introducing a loud element on the sidewalk --

13 MR. KANTOWITZ: No, no, I think for two
14 reasons:

15 Number one, As Ms. Banyra said earlier,
16 I think that that is regulated separately under your
17 sidewalk --

18 MS. BANYRA: The new sidewalk --

19 (Ms. Banyra and Mr. Kantowitz talking
20 at the same time, and this portion could not be
21 transcribed.)

22 MR. KANTOWITZ: -- the sidewalk cafe
23 ordinance, number one.

24 Number two: One of the conditions is
25 also -- well, I should say that is regulated under

1 the cafe ordinance, whatever provisions in the cafe
2 ordinance, that would have to be subject to.

3 That is the answer. I don't know
4 whether this particular -- I don't think this is
5 part of this application --

6 THE WITNESS: There is a whole slew of
7 things that have to go into that in terms of noise,
8 in terms of when they operate, what time they close,
9 and how things are stored. There is a lot that goes
10 into the cafe ordinance.

11 CHAIRMAN AIBEL: I guess my general
12 comments is you are asking for an extension for the
13 amount of customer service space.

14 You seem to have squeezed a bunch of
15 tables in here, and I am concerned about
16 intensification, that you are going to have a bunch
17 of tables when food is not served, there are going
18 to be people, you know, on the tables and drinking,
19 so I don't know whether you need all of these tables
20 or whether there is some way that you can mitigate
21 the effect of having the extra 130 square feet.

22 THE WITNESS: Well, I think the tables
23 actually help in terms of the amount of people.
24 There's no where really to put the tables. Once you
25 are kind of done with them, you're not going to like

1 stack them up in a corner and have dancing. We're
2 not going to do that. The person that's running the
3 establishment won't want to go through that ordeal
4 every night.

5 CHAIRMAN AIBEL: Okay.

6 John, go ahead.

7 COMMISSIONER BRANCIFORTE: Well, you
8 know, we had this problem on Madison a couple of
9 years ago. I really don't remember, but where I
10 think the Madison wanted to, after dinner service
11 was over, move the tables off into the corner and
12 increase their occupancy for the bar --

13 THE WITNESS: Correct. I lived here in
14 Hoboken for years --

15 COMMISSIONER BRANCIFORTE: What is
16 that?

17 THE WITNESS: -- I lived in Hoboken for
18 years.

19 COMMISSIONER BRANCIFORTE: I can't even
20 remember how that was, but all I know is that he
21 still has the tables for --

22 (Everyone talking at once, and this
23 portion cannot be transcribed.)

24 COMMISSIONER BRANCIFORTE: -- so that
25 is a true problem, and bar owners have tried to do

1 that in the past, so it's nothing --

2 THE WITNESS: Right.

3 COMMISSIONER BRANCIFORTE: -- so it's
4 not something unreasonable to think that could
5 happen.

6 But my question is regarding -- I
7 wasn't here for the last meeting when the vote was
8 taken on the conditional use as a bar, but what kind
9 of sound is in the ceilings?

10 Are the ceilings soundproof so we
11 won't --

12 THE WITNESS: Yes. In fact, we already
13 have a series of like heavy duty soundproofing
14 already put in.

15 This building was actually a
16 renovation, and then they stopped doing it, and then
17 they put a lot of soundproofing in, and then we now
18 have to reapply even some additional soundproofing
19 and then --

20 (Commissioner Fisher speaking over the
21 witness, and this portion could not be transcribed.)

22 MR. KANTOWITZ: Let me add one quick
23 comment.

24 The record shows from the hearing last
25 time that the introduction of the soundproofing in

1 that space was evidence of the owner's continuing
2 interest and desire to use the space and therefore
3 not abandon it, so that is a very well taken point.

4 COMMISSIONER BRANCIFORTE: Fine.

5 Where are we going to put the garbage
6 at night?

7 THE WITNESS: Well, obviously we have
8 this lower area now in terms of the basement area,
9 so a lot of the garbage will be down there first,
10 and then it will be -- you have these back doors
11 that come out in the backyard, that will be brought
12 up in the morning and dropped off, so that's how
13 they are going to be bringing the garbage out.

14 COMMISSIONER BRANCIFORTE: Now, you may
15 not know this, but I'm going to ask, is there a fire
16 hydrant there nearby or something, where you can
17 just dump it next to the fire hydrant, rather than
18 quite frankly putting the garbage down next to the
19 parked cars, where they're just going to drag the
20 garbage bags right over the top of the cars --

21 THE WITNESS: I think there is a curb
22 cut there, right --

23 A VOICE: There is.

24 THE WITNESS: -- yes. So there is a
25 curb cut there, so technically they wouldn't be

1 allowed to be parked there as it is right behind the
2 building itself, so they will be able to put the
3 garbage right at the curb cut. That's where you're
4 talking about.

5 In the back and the front, there is a
6 back and rear yard of the property that is really
7 not used for anything right now. There is no
8 parking ability there, but there is a curb cut there
9 and nobody parks in that space.

10 CHAIRMAN AIBEL: Do the bylaws permit
11 the use that you are contemplating?

12 MR. KANTOWITZ: Pardon?

13 CHAIRMAN AIBEL: Do the bylaws allow
14 you to store your garbage out in the back of the
15 building?

16 THE WITNESS: Well, you won't be
17 storing the garbage. You will be storing it inside
18 and then bring it out, you know, in the morning time
19 when you're --

20 CHAIRMAN AIBEL: So you're not going to
21 be using the back yard?

22 THE WITNESS: We're not going to be
23 storing stuff in the back yard obviously because
24 there's won't be that much -- there's room, but not
25 enough room to start-- you wouldn't want to start

1 doing that.

2 COMMISSIONER BRANCIFORTE: Does the
3 condo association have a no smoking policy, about
4 smoking outside in the common areas or outside?

5 Is that going to apply to your cafe
6 seating?

7 THE WITNESS: I don't know --

8 (Everyone talking at once, and this
9 portion could not be transcribed.)

10 COMMISSIONER BRANCIFORTE: The reason I
11 asked is because I really don't want to see 20
12 people lined up outside smoking outside under
13 people's bedroom windows every night. I don't know
14 what you can do about it. I hate to see you guys
15 walk away --

16 (Everyone talking at once, and this
17 portion could not be transcribed.)

18 THE WITNESS: Well, the cafe
19 ordinance --

20 COMMISSIONER BRANCIFORTE: That's a
21 good question. I don't know if the cafe laws in
22 Jersey --

23 COMMISSIONER FISHER: Yeah, but --

24 COMMISSIONER BRANCIFORTE: -- you can't
25 smoke inside, I don't think you can smoke inside the

1 gated area --

2 THE WITNESS: I think there was
3 something that was actually put in --

4 MS. BANYRA: I think we had this
5 conversation on another application, 800 Jackson,
6 and I want to say that you weren't allowed to smoke
7 outside within a certain distance.

8 MR. GALVIN: Can you find it?

9 MS. BANYRA: I don't have that
10 ordinance here. It's in a different section. It is
11 not in the zoning ordinance.

12 MR. GALVIN: I am worried that that is
13 not the case, that --

14 MR. KANTOWITZ: I'm sorry?

15 MR. GALVIN: -- I am worried that there
16 is no prohibition on smoking outside.

17 MR. KANTOWITZ: In the cafe area or
18 beyond the cafe area?

19 MR. GALVIN: In the cafe area.

20 MS. BANYRA: Well, I'm pretty sure it
21 is State law, and I think it was testified to on a
22 different application, but maybe we could find that
23 or --

24 MR. GALVIN: I'm working on another
25 case where --

1 MS. BANYRA: Yeah.

2 MR. GALVIN: -- where it referenced
3 somewhat the cafe ordinance --

4 VICE CHAIR GREENE: I can tell you from
5 my experience, and I will say it's pretty extensive
6 experience, that people don't smoke outside in cafes
7 and restaurants in Hoboken. So whether it is law or
8 just practice, but from my experience, people don't
9 smoke. They step outside of the fence and they
10 smoke.

11 COMMISSIONER BRANCIFORTE: Would it be
12 unreasonable to put a condition that there is no
13 smoking allowed in the cafe area outside?

14 MR. KANTOWITZ: I would tell you --

15 COMMISSIONER BRANCIFORTE: The
16 restaurant owners have control over it, I would
17 think --

18 (Everybody talking at once, and this
19 portion could not be transcribed.)

20 MR. KANTOWITZ: -- the point is I don't
21 know the answer to that without talking to the
22 applicant, as I said, number one.

23 Number two: Just as a matter of law,
24 plainly that is something that your legislature has
25 already spoken to as far as no smoking inside -- as

1 far as being silent on not banning smoking in the
2 cafe area, if that's the case of the sidewalk cafe
3 ordinance --

4 COMMISSIONER BRANCIFORTE: I am lost.

5 All I want is I don't want people
6 hanging out in front smoking cigarettes.

7 MR. KANTOWITZ: When you say "in
8 front," do you mean inside the cafe area or --

9 COMMISSIONER FISHER: It says -- it
10 says --

11 (Everyone talking at once, and this
12 portion could not be transcribed)

13 THE REPORTER: Wait. You can't all
14 talk at the same time if you want this on the
15 record.

16 COMMISSIONER BRANCIFORTE: That's fine.

17 CHAIRMAN AIBEL: Okay.

18 Any other questions of the architect?

19 COMMISSIONER BRANCIFORTE: Yes. I have
20 a couple of other questions.

21 What's the story with parking on this?
22 Is there a parking problem to become a restaurant --

23 (Commissioner Fisher talking over
24 Commissioner Branciforte, and this portion could not
25 be transcribed.)

1 MS. BANYRA: No.

2 COMMISSIONER BRANCIFORTE: Do you show
3 any refrigeration --

4 THE WITNESS: No. We have
5 refrigeration -- talking about under counter
6 refrigeration in terms of under the bar, but the
7 rest will be on the lower level, so what you will do
8 is bring up the --

9 COMMISSIONER BRANCIFORTE: So every
10 time that the chef gets an order for a hamburger, he
11 has to run downstairs to get a hamburger?

12 THE WITNESS: No. You will still have
13 some under counter refrigeration under the bar, that
14 goes underneath the bar, where you can draw from,
15 and then you also will have the larger freezer
16 downstairs.

17 COMMISSIONER BRANCIFORTE: So the
18 hamburgers will be stored next to the beer bottles?

19 THE WITNESS: No. You would have other
20 ones for beer bottles. You would have ones for --
21 they wouldn't all be stored in the same spot,
22 different things for different items.

23 COMMISSIONER BRANCIFORTE: Yeah. I
24 think that is really -- that is all I have.

25 Oh, the only other thing is now we have

1 a restaurant, do you need additional tonnage of AC
2 on the -- additional AC --

3 THE WITNESS: Actually you'll probably
4 need less, because you will have less people, but we
5 already have it I think partially installed already,
6 but we wouldn't be required as much because we have
7 less people --

8 COMMISSIONER BRANCIFORTE: That's fine.

9 And the lighting, you talked about --
10 there is two goosenecks of lighting, goosenecks on
11 the side -- what did you call it, soffit --

12 MS. BANYRA: Well, yeah -- it's down
13 soffits. It's like underlighting.

14 You know, the reason I raised that was
15 because for a while the city was recommending
16 goosenecks along Washington, and every single
17 application, and when the historic ordinance got
18 changed, there was a big discussion about the
19 lighting --

20 COMMISSIONER BRANCIFORTE: So I'm just
21 curious, which produces less light in the
22 neighborhood, a soffit or a gooseneck?

23 MS. BANYRA: I would say the
24 underlighting, because this one --

25 THE WITNESS: Soffit.

1 MS. BANYRA: -- well, this one is
2 out -- well, you know what it looks like --

3 THE WITNESS: It's in a small area --

4 COMMISSIONER BRANCIFORTE: No more
5 questions, Mr. Chair.

6 (Everybody talking at once.)

7 CHAIRMAN AIBEL: Okay. Anybody else?
8 Board members, any other questions?

9 Let me open it up to the public.

10 Anybody in the public wish to ask
11 questions of the architect?

12 Seeing none.

13 COMMISSIONER COHEN: Motion to close
14 the public portion.

15 COMMISSIONER BRANCIFORTE: Second.

16 CHAIRMAN AIBEL: All in favor?

17 (All Board members answered in the
18 affirmative.)

19 CHAIRMAN AIBEL: Okay. Thanks.

20 MR. KANTOWITZ: I will just sum up.

21 I think we made out our case. I am
22 happy to respond to questions about the conditions,
23 but you heard our position, and I will draw a
24 negative inference, namely, that the last time we
25 were here about the bar only, there was considerable

1 public participation of neighbors and many spoke
2 opposed, including someone who came with an
3 attorney.

4 Nobody is here tonight. It sounds as
5 if the introduction of this kind of an additional
6 full kitchen service either doesn't bother people or
7 is approved by people. I'm just drawing a negative
8 inference. You may think differently, but plainly
9 you saw the number of people who were out at several
10 meetings when we were here the last time for the
11 bar.

12 CHAIRMAN AIBEL: Have the owners
13 reviewed the plans with any of the --

14 MR. KANTOWITZ: Pardon me?

15 CHAIRMAN AIBEL: -- have the owners
16 reviewed the plans or the lessees revived the plans
17 with the condo owners?

18 MR. KANTOWITZ: I am not aware, because
19 I did not receive any calls -- I received one phone
20 call, one phone call from an attorney, who was
21 representing a potential buyer of one of the units,
22 and he asked me what was going on.

23 I explained to him, and his comment to
24 me, and then he hung up very appropriately, was
25 "Good, okay, thank you."

1 CHAIRMAN AIBEL: Okay. All right.

2 Thank you.

3 I will open it up to the Board -- I'm
4 sorry -- actually I should open it up to the public.

5 Anybody in the public wish to comment
6 on the application?

7 VICE CHAIR GREENE: Seeing no one, I
8 move to close public portion.

9 COMMISSIONER COHEN: Second.

10 COMMISSIONER BRANCIFORTE: Second.

11 CHAIRMAN AIBEL: All in favor?

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

14 CHAIRMAN AIBEL: Okay.

15 Board members, anybody want to kick off
16 a discussion?

17 COMMISSIONER DE FUSCO: I'll kick it
18 off.

19 I think it's -- I certainly believe in
20 the planning testimony, that this is a less dense,
21 if you will, use of the space. Tables certainly
22 take up a lot of room. I think that encourages a
23 community-type establishment for the neighborhood.

24 I was initially concerned about the
25 kitchen or kitchenette acting as a guise for another

1 purpose, but I do believe this is a very functional
2 kitchen that would service the restaurant well.

3 I completely agree with John's
4 condition about sound attenuation. We've all lived
5 next to loud places, where sound is coming through
6 the walls, brick and otherwise, so I feel strongly
7 that that should be included as a condition. But
8 otherwise, I think it is an overall positive
9 improvement from the bar that was allowed in the
10 summer.

11 (Board members all talking at once.)

12 CHAIRMAN AIBEL: Anyone else?

13 John Branciforte?

14 COMMISSIONER BRANCIFORTE: First, we
15 have to check to see if the owner agrees with the
16 conditions about the garbage and the lighting, and I
17 don't know what other thing you said, but maybe
18 because it is a restaurant, maybe they will keep the
19 music down a little bit more as people try to dine,
20 and they won't be blasting, you know, music all
21 night. Perhaps it might even help to keep the music
22 down a little bit.

23 But, you know, I think back to Ted &
24 Joe's and how much fun it was to go there, a
25 neighborhood place where I would see Phil and I

1 would see Jim and the rest of the crew in the
2 neighborhood, and it became sort of a hangout for
3 us, so that might be a positive. But I also
4 remember at Ted & Joe's at three in the morning when
5 the bar let out, and people were screaming outside
6 of my window because they couldn't find their car,
7 so, you know, there are pluses and minuses for this.
8 But if they agree to the conditions, then I have no
9 problem.

10 CHAIRMAN AIBEL: Mr. Cohen?

11 COMMISSIONER COHEN: I concur with Mr.
12 Branciforte's comments. I think it is better that
13 this establishment have food in it than not. I
14 think that it is going to be a bar either way. We
15 can't stop that from happening. In fact, we
16 approved it as a prior nonconforming preexisting
17 use. So I think adding a kitchen is a net positive.
18 It's a small additional space to the extent that the
19 applicant is willing to accept the reasonable
20 conditions, and I commend it and encourage it to do
21 so.

22 VICE CHAIR GREENE: I just think it is
23 ironic. I recall some of the testimony and some of
24 the discussions back and forth about when it was a
25 bar and it was operated as a bar, they didn't have

1 food, except I think the phrases were, except for
2 hot dogs and hot pockets or something like that, and
3 so we seem to be going full circle.

4 (Laughter)

5 I do think that this will be a less
6 intense use and a more neighborhood friendly use
7 than just a pure bar application.

8 I think that the extra 130 feet doesn't
9 really diminish the intent of the zoning ordinance.

10 COMMISSIONER BRANCIFORTE: I think you
11 owe it to Tom Kennedy to dedicate a stool to him at
12 the bar for his testimony at the last meeting.

13 (Laughter)

14 CHAIRMAN AIBEL: Anybody else?

15 COMMISSIONER GRANA: I realize that
16 with a D variance, all goes on the table. I don't
17 want to oversimplify the application. I think it is
18 for 130 square feet for a use that would be
19 approved, if that were a closet.

20 I do want to add that I do think we
21 need to understand what the condo association's
22 bylaws say about the type of common elements, so as
23 long as we account for that, I don't know if we have
24 an update on smoking or not.

25 MS. BANYRA: Well, yeah, I -- I --

1 MR. GALVIN: We confirmed it. There is
2 a condition of the sidewalk cafe where it's sub
3 section (n) that says no smoking.

4 COMMISSIONER FISHER: On the outside --

5 A VOICE: In the gated area --

6 COMMISSIONER FISHER: -- in the gated
7 area --

8 MR. KANTOWITZ: Gated area, that means
9 to be clear, if somebody steps out onto the sidewalk
10 three feet off of the gate, and she does what she
11 does --

12 COMMISSIONER GRANA: If I could finish
13 the topic, that is ruled by that ordinance --

14 COMMISSIONER FISHER: The only thing I
15 would add, as I mentioned a second ago, is nothing
16 is obligating them to put the tables in and operate
17 it as a restaurant, right?

18 This is really an option for them.
19 They could run it -- to your point, Phil, they could
20 run it as a bar whenever they feel like it. That's
21 really -- they may operate --

22 COMMISSIONER COHEN: I think we are
23 approving this plan with these tables as it is --

24 MR. KANTOWITZ: Yes. But under the
25 law, my position is, if we don't exercise this

1 approval, nothing diminishes our preexisting
2 nonconforming use --

3 COMMISSIONER COHEN: But that's not
4 what we are voting on. We are voting on your
5 proposal which includes tables --

6 MR. KANTOWITZ: But under Martinetti
7 versus Price, I think it is, unless and until I
8 exercise a C of O, I am not losing my use.

9 COMMISSIONER COHEN: Okay. I am just
10 addressing Commissioner Fisher's question, which I
11 think is that this plan does contemplate there being
12 tables --

13 MR. KANTOWITZ: Correct.

14 COMMISSIONER COHEN: -- if you do not
15 go forward with this plan, that is not addressing
16 the question that I think I am.

17 MR. KANTOWITZ: Yes.

18 (Board members all confer and talking
19 at once.)

20 CHAIRMAN AIBEL: All right.

21 Do you want to do the conditions?

22 MR. GALVIN: When you're ready, I will
23 do the conditions.

24 MS. BANYRA: Oh, you have the duct
25 pipe. Great.

1 CHAIRMAN AIBEL: Okay. Mr. Galvin?

2 MR. GALVIN: If the applicant exercises
3 this approval, the applicant gives up its prior
4 nonconforming use, correct?

5 MR. KANTOWITZ: Exercises by definition
6 pulling a C of O.

7 MR. GALVIN: Pull a C of O, right.

8 One: The applicant agreed to install a
9 filtration system to eliminate odors resulting from
10 cooking activities;

11 Two: The applicant is to provide proof
12 by means of a letter from the condo association
13 confirming that the proposed ductwork is authorized
14 by the association or it shall supply the governing
15 documents proving to the satisfaction of the Board's
16 attorney, that the applicant may add the proposed
17 ductwork;

18 Three: The duct pipe will match the
19 color of the building;

20 Four: The garbage will be stored at
21 the curb cut --

22 VICE CHAIR GREENE: Not stored.

23 MR. GALVIN: -- the garbage will be --

24 MR. KANTOWITZ: Placed for collection.

25 MR. GALVIN: -- placed for

1 collection --

2 MS. BANYRA: Stored in the basement?

3 MR. GALVIN: You want it stored in the
4 basement, is that important?

5 MS. BANYRA: Yes, it is important.

6 MR. KANTOWITZ: I'm sorry. What?

7 MR. GALVIN: Placed for collection --

8 MR. KANTOWITZ: What? You don't want
9 it stored in the basement?

10 CHAIRMAN AIBEL: Stored.

11 COMMISSIONER MC ANUFF: I thought it
12 would be brought at the end of the operation, and at
13 the end of the night it would be taken out --

14 (Everyone talking at once, and this
15 portion could not be transcribed.)

16 MR. BODNAR: Store it in the
17 basement --

18 MR. KANTOWITZ: Well, why don't you ask
19 the Board to provide us the opportunity to store it
20 in an area delineated in the area of the curb cut
21 when it's going to be picked up --

22 MS. BANYRA: No. It is public
23 property. You know, that's --

24 MR. BODNAR: The place you could store
25 it is in the rear yard.

1 Where is the garbage right now?

2 (People conferring.)

3 MR. KANTOWITZ: We ask for a condition
4 that it be stored somewhere out, as an alternative,
5 instead of only in the basement, that it be able to
6 be stored somewhere on the property consistent with
7 the governing documents of the condo association.

8 It is a property of the building, so
9 there is no reason not to allow us to do what every
10 other property owner in Hoboken is entitled to do.

11 COMMISSIONER BRANCIFORTE: I just want
12 the garbage in one place that it's going to be for
13 the garbage men and not be strewn into the
14 neighborhood --

15 MR. BODNAR: We do have a little area
16 in the back behind the gate.

17 MR. KANTOWITZ: I'm sorry?

18 VICE CHAIR GREENE: Where do other
19 restaurants store their garbage?

20 Isn't most of it -- don't they have
21 walk-in boxes where they keep it until they throw it
22 out --

23 MS. BANYRA: They keep it cold, and
24 then they wheel it out, so you don't have smells in
25 the sidewalks.

1 COMMISSIONER FISHER: Once you put it
2 out --

3 MS. BODNAR: Once you put it out, you
4 put a container outside, but I'm saying normally it
5 is in the basement.

6 MR. KANTOWITZ: I propose it near the
7 basement or on the property --

8 MS. BANYRA: Let me make a suggestion.
9 Why don't we -- to check your -- I don't know what
10 your association is, and if you are going to be
11 coming back with something, we will review it prior
12 to the resolution?

13 We should have something that they
14 can -- and we will decide if that is acceptable or
15 not, because I think trying to wing it right now, I
16 mean, and I would suggest to you that if you could
17 keep it in your freezer, like most other places do
18 and wheel it out when it's not, then there is no
19 smells, or there's no harm, no foul. And if you
20 have a big basement, and that would be better than
21 having a two cubic yard dumpster now that you're
22 introducing food in the back yard.

23 CHAIRMAN AIBEL: I just can't imagine
24 the condo owners wanting that.

25 MR. KANTOWITZ: We will examine it and

1 make a proposal, a concrete proposal, to the Board
2 addressing what you just said.

3 CHAIRMAN AIBEL: Fine. Excellent.
4 Anything else, Dennis?

5 MR. GALVIN: There is no gooseneck
6 lighting --

7 MR. KANTOWITZ: Well, they said they
8 want to put -- excuse me -- do you want it in the
9 basement?

10 MR. GALVIN: No. You know what, to be
11 honest, it seems like the most logical place to put
12 it, but you got to put your garbage some place, so
13 what is your plan?

14 You know, we're saying we will give you
15 to the next meeting to decide what your plan is,
16 but --

17 MR. BODNAR: I am just telling these
18 guys, you have to know what you are doing with the
19 condominium already stated, like in a garage --

20 MR. GALVIN: So the applicant will
21 provide a plan for their garbage to be reviewed and
22 approved by the Board at the time of
23 memorialization, so come up with something that --

24 MS. BANYRA: Submit it ahead of time so
25 we can hand it out for the Board members' approval.

1 MR. GALVIN: That's all we are looking
2 for. We want to know where you are putting it, so
3 we can double check it. Okay?

4 CHAIRMAN AIBEL: I guess, Board
5 members, we are ready for somebody to make a motion.

6 VICE CHAIR GREENE: I make a motion for
7 approval subject to the conditions as stated.

8 COMMISSIONER DE FUSCO: I'm sorry to
9 interrupt.

10 Did we mention sound attenuation?

11 MR. GALVIN: No.

12 (Board members conferring.)

13 COMMISSIONER DE FUSCO: What is the
14 standard for the --

15 MS. BANYRA: The requirements in the
16 ordinance for a bar require that there is some sound
17 attenuation at the door. Since they are a bar
18 already, they are supposed to be held to that
19 standard, and I think that is a subjective standard
20 by whoever is walking past and reviewing it, whether
21 it's the zoning officer or somebody else. But there
22 is a requirement in our ordinance for a bar.

23 MR. GALVIN: The sidewalk cafe
24 ordinance has something like that also, something
25 about they can't be heard 50 feet away.

1 COMMISSIONER DE FUSCO: Do you think
2 that covers the neighbors?

3 MR. GALVIN: I really do. I don't
4 think there's anything extra that we can add here.

5 I mean, we had the other case recently,
6 where they were going to do the -- what was the
7 place, Phil, that we had that was -- the pork place.
8 We did stuff with the speakers, but that was a
9 different operation. It was much larger than this,
10 right?

11 COMMISSIONER DE FUSCO: The only reason
12 that covers any of this is that the neighbor next
13 door on Park, she went through the brick wall, and
14 she testified that she heard the music coming
15 through the wall, so --

16 MR. GALVIN: I mean, technically that
17 would probably be a violation of the sound
18 ordinance, too, because you are not supposed to be
19 above, you know, 50 dbs at night. And if she could
20 hear it coming through the wall, it probably is.

21 COMMISSIONER DE FUSCO: All right.
22 So I will defer to the ordinance as well.

23 MR. KANTOWITZ: We will also do the
24 following: Since it was testified to during that
25 hearing back a few months ago that there was sound

1 attenuation as installed as a demonstration of no
2 intent to abandon, we will provide a document of
3 what exactly was done, so the Board has it on
4 record, that the sound attenuation devices have been
5 installed, so you know as a matter of construction
6 what was done, and the Board will have a record of
7 that.

8 COMMISSISONER BRANCIFORTE: Frankly, I
9 would like to see no speakers attached to that
10 common wall between the building, but I'm not going
11 to go crazy here.

12 CHAIRMAN AIBEL: Whatever it is, it is.

13 COMMISSIONER BRANCIFORTE: I'm not
14 going to go crazy here.

15 MR. KANTOWITZ: Whatever it is, it is.

16 CHAIRMAN AIBEL: Do we have a second?

17 COMMISSIONER GRANA: Second.

18 CHAIRMAN AIBEL: Thank you.

19 Okay, Pat?

20 MS. CARCONE: Commissioner Greene?

21 VICE CHAIR GREENE: Yes.

22 MS. CARCONE: Commissioner Cohen?

23 COMMISSIONER COHEN: Yes.

24 MS. CARCONE: Commissioner De Fusco?

25 COMMISSIONER DE FUSCO: Yes.

1 MS. CARCONE: Commissioner Grana?

2 COMMISSIONER GRANA: Yes.

3 MS. CARCONE: Coommissioner Murphy?

4 COMMISSIONER MURPHY: Yes.

5 MS. CARCONE: Commissioner Branciforte?

6 COMMISSIONER BRANCIFORTE: Yes.

7 MS. CARCONE: Commissioner Aibel?

8 CHAIRMAN AIBEL: Yes.

9 MR. KANTOWITZ: Thank you very much.

10 (The matter concluded at 9:55 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, CSR, CRR

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

Notary Public of the State of New Jersey

My commission expires 11/5/2015.

Dated: 2/22/14

This transcript was prepared in accordance with NJ ADC 13:43-5.9.

HOBOKEN ZONING BOARD OF ADJUSTMENT
CITY OF HOBOKEN

- - - - - X
 1312-1318 Adams Street :
 Block 113, Lot 23 :
 Applicant: 1323 Adams, LLC : February 18, 2014
 (Carried from 1/28/14) : Tuesday 10:10
 p.m. Preliminary Site Plan, C&D Variances :
 - - - - - X

Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

Chairman James Aibel (Recused)
 Vice Chair Elliot H. Greene
 Commissioner Philip Cohen
 Commissioner Michael DeFusco
 Commissioner Antonio Grana
 Commissioner Diane Fitzmyer Murphy
 Commissioner John Branciforte
 Commissioner Tiffanie Fisher
 Commissioner Owen McAnuff

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

Eileen Banyra, Planning Consultant

 Jeffrey Marsden, PE, PP
 Board Engineer

 Patricia Carcone, Board Secretary

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

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1 CHAIRMAN AIBEL: Everybody, it is five
2 of ten. We need a break.

3 My suggestion, and I don't know if
4 counsel is here, Mr. Matule, I will be handing the
5 reins over to Mr. Greene, and we will leave it to
6 you and Mr. Greene and counsel to see if you want to
7 proceed or how you want to proceed.

8 MR. MATULE: Okay.

9 CHAIRMAN AIBEL: Give us a five-minute
10 break.

11 MR. MATULE: Sure.

12 (Recess taken.)

13 VICE CHAIR GREENE: Ready?

14 All right. We are back in session.

15 Chairman Aibel has recused himself, so I
16 will be Al Hague, and I'll be in charge.

17 (Laughter)

18 MR. GALVIN: So Jim is unable to hear
19 this case.

20 VICE CHAIR GREENE: Jim is unable to
21 hear this case.

22 MR. MATULE: Good evening, Vice Chair,
23 Counsel, and Board members.

24 Robert Matule appearing on behalf of the
25 applicant.

1 This is the application for what we are
2 commonly referring to as 1312 Adams Street. This is
3 a rather large project, and we have a lot of
4 witnesses, and I understand from counsel that at the
5 most we would go to is 10:30.

6 Under the circumstances, rather than
7 starting and doing it in a -- you know, just getting
8 a little bit of testimony in, we would prefer to go
9 to the March 18th meeting.

10 I spoke with Ms. Banyra, and she said
11 we would be listed as first on the agenda, and that
12 we would get at least an hour and a half to at least
13 get a big chunk of testimony in, because we have the
14 applicant. We have the architect. We have a
15 planner. We have a traffic person, so I don't know
16 that we will be able to finish in one night, but I
17 think if we can get an hour and half to two hours,
18 we could get a large chunk of the case in, and I
19 think it would be more comprehensive for the Board
20 members to do it that way.

21 MR. GALVIN: What night did you say?

22 VICE CHAIR GREENE: March 18th.

23 MR. MATULE: That's the next regular
24 meeting, and I would request that, you know, there
25 be no further notice required.

1 MR. GALVIN: I request that you waive
2 the time in which the Board has to act.

3 MR. MATULE: I have reports in my file
4 from Ms. Vandor, so yes, I will waive the time in
5 which the Board has to act.

6 (Laughter)

7 MR. GALVIN: Just in case there is a
8 reviewing court, last year we were shorthanded, and
9 it was in the applicant's best interest for us to
10 carry it into 2014, so they could have seven board
11 members to hear it. We only had six members
12 throughout most of 2013.

13 MR. MATULE: We consent to the time in
14 which the Board has to act through March 18th.

15 VICE CHAIR GREENE: Could I have a
16 motion to carry without notice?

17 MR. GALVIN: Yes.

18 Would somebody like to make that
19 motion?

20 Would somebody like to make that motion
21 for us?

22 COMMISSIONER DE FUSCO: Motion to carry
23 the application without notice to the March 18th
24 meeting.

25 VICE CHAIR GREENE: Is there a second?

1 COMMISSIONER GRANA: Second.

2 VICE CHAIR GREENE: Thank you.

3 MR. GALVIN: All in favor?

4 (All Board members voted in the
5 affirmative.)

6 MR. GALVIN: Just for the public, we
7 have a plan from Ms. Bishop. There has been a lot
8 of communication back and forth. I could provide
9 that to anybody who wants a copy of it.

10 A VOICE: Our attorneys have already
11 reviewed it.

12 MR. GALVIN: Correct. So you got it,
13 and you are on top of it. Good.

14 MS. BANYRA: Can I also just --
15 Chairman, if we could -- we will probably have a
16 second meeting in March also.

17 I think, Pat, that date is what?

18 MS. CARCONE: March 25th.

19 MS. BANYRA: March 25th, so it is the
20 second meeting. It is usually a scheduled Board
21 meeting. We don't always use it, but I would
22 suggest that we are going to probably need two
23 meetings next month, and then hopefully we will be
24 back to one meeting in April hopefully, but maybe
25 not. But then after that, we will clear it out. I

1 think it will be starting to clear it out.

2 MR. GALVIN: I think it will be cleared
3 out.

4 MS. BANYRA: It might. We'll see. We
5 are trying.

6 VICE CHAIR GREENE: So if everybody
7 would put a note in your calendars, the additional
8 meeting on March 25th.

9 MR. MARSDEN: We are not having an
10 additional meeting in February?

11 VICE CHAIR GREENE: No. This is the
12 last meeting in February. It was suggested and then
13 rejected.

14 MR. MARSDEN: Okay.

15 VICE CHAIR GREENE: Any further
16 business?

17 Motion to adjourn?

18 COMMISSIONER GRANA: Motion to adjourn.

19 VICE CHAIR GREENE: Second?

20 Anybody?

21 COMMISSIONER MURPHY: Second.

22 VICE CHAIR GREENE: Anybody opposed?

23 MR. GALVIN: You guys want to hang out
24 all night?

25 VICE CHAIR GREENE: We are adjourned.

1 Thank you all.

2 MR. MATULE: Thank you.

3 (The meeting concluded at 10:10 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, CSR, CRR

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

Notary Public of the State of New Jersey

My commission expires 11/5/2015.

This transcript was prepared in accordance with NJ ADC 13:43-5.9.

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