

HOBOKEN BOARD OF ADJUSTMENT
CITY OF HOBOKEN

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RE: REGULAR MEETING OF THE HOBOKEN : Tuesday
ZONING BOARD OF ADJUSTMENT : January 15, 2013
BOARD BUSINESS :
----- X 7:10 p.m.

Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

- Acting Chairman Aibel
- Commissioner Joseph Crimmins
- Commissioner Nancy Pincus
- Commissioner Elliot H. Greene
- Commissioner Michael DeFusco
- Commissioner John Branciforte
- Commissioner Jay Boucher

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

- Elizabeth Vandor,
Planning Consultant
- Jeffrey C. Marsden, PE, PP
Board Engineer
- Patricia Carcone, Board Secretary

PHYLLIS T. LEWIS
CERTIFIED SHORTHAND REPORTER
CERTIFIED REALTIME REPORTER
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6 Attorney for the Board.

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I N D E X

1		
2		
3		PAGE
4		
5	Board Business	1
6		
7	108-110 Jefferson Street	17
8		
9	1404-1406 Grand Street	72
10		
11	626 Grand Street	84
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 ACTING CHAIRMAN AIBEL: Good evening,
2 everybody.

3 I would like to start off by wishing
4 everybody a happy new year.

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

13 It is 7:10, and we are at the Regular
14 Meeting of the Hoboken Zoning Board of Adjustment.

15 So without further adieu, we will start
16 this evening with some administrative matters in
17 the ordinary course of the first session of the new
18 year.

19 MR. GALVIN: I am going to do the roll
20 call.

21 ACTING CHAIRMAN AIBEL: Thank you.

22 MS. CARCONE: Commissioner Aibel?

23 VICE CHAIR AIBEL: Present.

24 MS. CARCONE: Commissioner Crimmins?

25 COMMISSIONER CRIMMINS: Here.

1 MS. CARCONE: Commissioner Greene?

2 COMMISSIONER GREENE: Here.

3 MS. CARCONE: Commissioner DeFusco?

4 COMMISSIONER DE FUSCO: Here.

5 MS. CARCONE: Commissioner Pincus?

6 COMMISSIONER PINCUS: Here.

7 MS. CARCONE: Commissioner Branciforte?

8 COMMISSIONER BRANCIFORTE: Here.

9 MS. CARCONE: Commissioner Boucher?

10 COMMISSIOENR BOUCHER: Here.

11 MR. GALVIN: We have a quorum.

12 (Board members confer)

13 ACTING CHAIRMAN AIBEL: We are going to
14 start the meeting, thank you, by saluting a virtual
15 flag.

16 (Laughter)

17 (Pledge of Allegiance recited)

18 ACTING CHAIRMAN AIBEL: We will start
19 off this evening with some administrative work in
20 the ordinary course. We begin our new year by
21 reorganizing the Board, and that constitutes an
22 election of new officers, a Chairman and Vice
23 Chairman, and appointment of our professionals, so I
24 would like to open it up to the Board members.

25 MR. GALVIN: Motion for the Chair?

1 ACTING CHAIRMAN AIBEL: Motion for
2 nominations for Chairman.

3 COMMISSIONER PINCUS: I would like to
4 make a motion to nominate Jim Aibel for the Chair.

5 COMMISSIONER DE FUSCO: I will second
6 it.

7 COMMISSIONER CRIMMINS: I will second.

8 MR. GALVIN: Any other nominations for
9 Chair?

10 MR. GALVIN: Seeing none, call the roll
11 call.

12 MS. CARCONE: Commissioner Crimmings?

13 COMMISSIONER CRIMMINS: Yes.

14 MS. CARCONE: Commissioner Greene?

15 COMMISSIONER GREENE: Yes.

16 MS. CARCONE: Commissioner DeFusco?

17 COMMISSIONER DE FUSCO: Yes.

18 MS. CARCONE: Commissioner Pincus?

19 COMMISSIONER PINCUS: Yes.

20 MS. CARCONE: Commissioner Branciforte?

21 COMMISSIONER BRANCIFORTE: Yes.

22 MS. CARCONE: Commissioner Boucher?

23 COMMISSIONER BOUCHER: Yes.

24 ACTING CHAIRMAN AIBEL: Just note I ran
25 unopposed.

1 Let me turn to --

2 (Applause)

3 CHAIRMAN AIBEL: -- thank you.

4 Let me turn now to the nomination for
5 Vice Chairman.

6 Do we have a motion?

7 COMMISSIONER CRIMMINS: I would like to
8 make a motion. I would like to nominate Elliott
9 Greene as Vice Chair.

10 COMMISSIONER DE FUSCO: I will second
11 that.

12 CHAIRMAN AIBEL: Okay.

13 MR. GALVIN: Any other nominations?

14 None.

15 We should call the roll.

16 CHAIRMAN AIBEL: Roll call.

17 MS. CARCONE: Commissioner Aibel?

18 CHAIRMAN AIBEL: Yes.

19 MS. CARCONE: Commissioner Crimmings?

20 COMMISSIONER CRIMMINS: Yes.

21 MS. CARCONE: Commissioner Greene?

22 COMMISSIONER GREENE: Yes.

23 MS. CARCONE: Commissioner DeFusco?

24 COMMISSIONER DE FUSCO: Yes.

25 MS. CARCONE: Commissioner Pincus?

1 COMMISSIONER PINCUS: Yes.

2 MS. CARCONE: Commissioner Branciforte?

3 COMMISSIONER BRANCIFORTE: Yes.

4 MS. CARCONE: Commissioner Boucher?

5 COMMISSIONER BOUCHER: Yes.

6 MR. GALVIN: Do we need a secretary,
7 other than a secretary to the Board, somebody who
8 signs the plans? No, right?

9 So there should be a motion to appoint
10 Pat Carcone as the secretary.

11 COMMISSIONER PINCUS: I will make the
12 motion to appoint Pat Carcone as Board Secretary.

13 COMMISSIONER CRIMMINS: I will second
14 it.

15 CHAIRMAN AIBEL: Roll call.

16 MS. CARCONE: Commissioner Aibel?

17 CHAIRMAN AIBEL: Yes.

18 MS. CARCONE: Commissioner Crimmins?

19 COMMISSIONER CRIMMINS: Yes.

20 MS. CARCONE: Commissioner Greene?

21 COMMISSIONER GREENE: Yes.

22 MS. CARCONE: Commissioner DeFusco?

23 COMMISSIONER DE FUSCO: Yes.

24 MS. CARCONE: Commissioner Pincus?

25 COMMISSIONER PINCUS: Yes.

1 MS. CARCONE: Commissioner Branciforte?

2 COMMISSIONER BRANCIFORTE: Yes.

3 MS. CARCONE: Commissioner Boucher?

4 COMMISSIONER BOUCHER: Yes.

5 (Applause.)

6 CHAIRMAN AIBEL: We can turn now to the
7 professionals and the court reporter.

8 The way we appoint our professionals is
9 we select a committee to review each of the RFPs for
10 each of the applications, and we have a few
11 professionals, the engineer, planner and the
12 attorney. So let's start with the engineer, and we
13 will start with the committee, who is Elliott.

14 COMMISSIONER DE FUSCO: The Vice Chair
15 and I reviewed a number of very qualified applicants
16 for the position of engineer. And after very hard
17 consideration, we had to take into account that we
18 were losing a significant professional from the
19 Board in Elizabeth in the role as our planner, and
20 with that transition, combined with the experience
21 of working in a complicated city environment that
22 our current engineer has provided with H2M, we
23 thought it be in the best interest of the city to
24 retain H2M

25 MR. GALVIN: I would like to add from

1 my perspective, I thought Mr. Marsden and his
2 company performed a terrific service for us last
3 year, and will provide the same level of service in
4 2013.

5 MR. MARSDEN: Thank you.

6 CHAIRMAN AIBEL: If the recommendation
7 is accepted, let me bring it to a vote.

8 Pat, roll call?

9 COMMISSIONER DE FUSCO: So that being
10 said, I would like to nominate H2M to act as a Board
11 Engineer for the 2013 year.

12 CHAIRMAN AIBEL: Second?

13 COMMISSIONER PINCUS: Second it.

14 MS. CARCONE: Commissioner Aibel?

15 CHAIRMAN AIBEL: Yes.

16 MS. CARCONE: Commissioner Crimmings?

17 COMMISSIONER CRIMMINGS: Yes.

18 MS. CARCONE: Commissioner Greene?

19 COMMISSIONER GREENE: Yes.

20 MS. CARCONE: Commissioner DeFusco?

21 COMMISSIONER DE FUSCO: Yes.

22 MS. CARCONE: Commissioner Pincus?

23 COMMISSIONER PINCUS: Yes.

24 MS. CARCONE: Commissioner Branciforte?

25 COMMISSIONER BRANCIFORTE: Yes.

1 MS. CARCONE: Commissioner Boucher?

2 COMMISSIONER BOUCHER: Yes.

3 CHAIRMAN AIBEL: Thank you very much,
4 Pat and Jeff.

5 Everybody knows we are losing a very
6 valuable person in Elizabeth Vandor. She has done
7 terrific work for us longer than any of us were
8 here.

9 (Laughter)

10 MS. VANDOR: Really, not that long.

11 CHAIRMAN AIBEL: Not me, Elizabeth.

12 MS. VANDOR: My dog.

13 (Laughter)

14 CHAIRMAN AIBEL: We have large shoes to
15 fill, so we reviewed our applications very
16 carefully, and John and I have -- we did some
17 interviewing, and John wanted to write out a
18 recommendation.

19 COMMISSIONER BRANCIFORTE: We received
20 four RFQ's, two from very large engineering firms
21 that had no experience in planning in Hudson County.

22 The other two were smaller firms that
23 actually worked on the master plan years ago.

24 But Eileen Banyra -- is that the way
25 you pronounce it -- stood out in her interview

1 because she had a very, great depth of knowledge of
2 Hoboken in general. She served for the last ten
3 years at least on the Planning Board, as the
4 Planning Board Planner, so I think it would be a
5 great asset for her to come over.

6 I would like to recommend Eileen Banyra
7 of EFB Associates.

8 CHAIRMAN AIBEL: My additional
9 endorsement of Eileen, she gave a terrific interview
10 and provided us with the benefit of her experience
11 representing applicants and developers, so that is
12 perhaps a new perspective that she will add to the
13 planning aspect.

14 I think she is just a perfect match,
15 and I am very confident that she will work very well
16 with Elizabeth during the transition, so I strongly
17 urge everyone to consider her favorably.

18 Motion?

19 COMMISSIONER GREENE: I will move the
20 Committee's recommendation.

21 CHAIRMAN AIBEL: Second?

22 COMMISSIONER CRIMMINS: I will second.

23 MR. GALVIN: Pat, call the roll.

24 MS. CARCONE: Commissioner Aibel?

25 CHAIRMAN AIBEL: Yes.

1 MS. CARCONE: Commissioner Crimmins?

2 COMMISSIONER CRIMMINS: Yes.

3 MS. CARCONE: Commissioner Greene?

4 COMMISSIONER GREENE: Yes.

5 MS. CARCONE: Commissioner DeFusco?

6 COMMISSIONER DE FUSCO: Yes.

7 MS. CARCONE: Commissioner Pincus?

8 COMMISSIONER PINCUS: Yes.

9 MS. CARCONE: Commissioner Branciforte?

10 COMMISSIONER BRANCIFORTE: Yes.

11 MS. CARCONE: Commissioner Boucher?

12 COMMISSIONER BOUCHER: Yes.

13 (Board members confer)

14 MR. GALVIN: We are going to do the
15 attorney and the court reporter.

16 CHAIRMAN AIBEL: The attorney for the
17 Board, Dennis Galvin, is running unopposed and for
18 very good reason. Dennis has done a terrific job
19 for us this past year. He gives us great guidance.
20 He is responsive.

21 Last year he accused me of being part
22 of his marketing defense, but you know, we are very
23 fortunate to have Dennis as our attorney, and I
24 recommend that we reengage Dennis, and working with
25 Eileen and Jeff, we will have very, very strong

1 professionals.

2 Motion?

3 COMMISSIONER BRANCIFORTE: Motion for
4 Galvin Associates, the Galvin Law Firm.

5 COMMISSIONER BOUCHER: I will second
6 that, second.

7 MS. CARCONE: Commissioner Aibel?

8 CHAIRMAN AIBEL: Yes.

9 MS. CARCONE: Commissioner Crimmins?

10 COMMISSIONER CRIMMINS: Yes.

11 MS. CARCONE: Commissioner Greene?

12 COMMISSIONER GREENE: Yes.

13 MS. CARCONE: Commissioner DeFusco?

14 COMMISSIONER DE FUSCO: Yes.

15 MS. CARCONE: Commissioner Pincus?

16 COMMISSIONER PINCUS: A big yes.

17 MS. CARCONE: Commissioner Branciforte?

18 COMMISSIONER BRANCIFORTE: Yes.

19 MS. CARCONE: Commissioner Boucher?

20 COMMISSIONER BOUCHER: Yes.

21 CHAIRMAN AIBEL: Now the court

22 reporter.

23 MR. GALVIN: Phyllis, state your full
24 name.

25 THE REPORTER: Phyllis T. Lewis.

1 CHAIRMAN AIBEL: Phyllis T. Lewis is
2 recommended to be reappointed as our court reporter.

3 Could I have a motion?

4 COMMISSIONER CRIMMINS: I will make a
5 motion to appoint Phyllis Lewis as our court
6 reporter.

7 COMMISSIONER PINCUS: I will second it.

8 MS. CARCONE: Commissioner Aibel?

9 CHAIRMAN AIBEL: Yes.

10 MS. CARCONE: Commissioner Crimmins?

11 COMMISSIONER CRIMMINS: Yes.

12 MS. CARCONE: Commissioner Greene?

13 COMMISSIONER GREENE: Yes.

14 MS. CARCONE: Commissioner DeFusco?

15 COMMISSIONER DE FUSCO: Yes.

16 MS. CARCONE: Commissioner Pincus?

17 COMMISSIONER PINCUS: Yes.

18 MS. CARCONE: Commissioner Branciforte?

19 COMMISSIONER BRANCIFORTE: Yes.

20 MS. CARCONE: Commissioner Boucher?

21 COMMISSIONER BOUCHER: Yes.

22 MR. GALVIN: We can go on to the main
23 agenda.

24 COMMISSIONER CRIMMINS: Congratulations
25 everybody.

1 (Applause.)

2 MR. GALVIN: We want to put on the
3 record that you are covering the meeting. The
4 record should reflect that Ms. Vandor is being our
5 planner for this evening.

6 CHAIRMAN AIBEL: Thank you.

7 (Continue on next page)

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HOBOKEN BOARD OF ADJUSTMENT
CITY OF HOBOKEN

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RE: 108-110 JEFFERSON STREET : Tuesday
Applicant: ERO Property Management :
Carried from November 27, 2012) : January 15, 2013
Appeal from Zoning Officer's decision-:
variance in the alternative :
----- X 7:20 p.m.

Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

- Chairman James Aibel
- Vice Chair Elliot H. Greene
- Commissioner Joseph Crimmins
- Commissioner Nancy Pincus
- Commissioner Michael DeFusco
- Commissioner John Branciforte
- Commissioner Jay Boucher

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

- Elizabeth Vandor,
Planning Consultant

- Jeffrey C. Marsden, PE, PP
Board Engineer

- Patricia Carcone, Board Secretary

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I N D E X

WITNESS	PAGE
RICHARD O'BRIEN	23
KENNETH OCHAB	32

E X H I B I T S

EXHIBIT NO.	PAGE
A-1	33
N-1	70

1 CHAIRMAN AIBEL: Mr. Matule, I believe
2 you are first up with 108-110 Jefferson Street.

3 MR. GALVIN: I wanted to remind the
4 Board, we had like several -- I'm sorry -- the
5 Shipyard matter, I didn't realize it was on.

6 (Board members confer)

7 MR. GALVIN: Thank you.

8 On 108 Jefferson street, we had a group
9 of cases that were appeals or interpretations, and
10 the Board had asked me to the best of my ability to
11 work some of those matters out, and this was in the
12 grouping.

13 What Mr. Matule has agreed to do is
14 rather than split hairs over the interpretation for
15 the appeal, they have elected to just request a
16 variance, so I wanted the Board to note that, and
17 refreshing your recollection that that occurred, and
18 also Mr. Matule reserves his right as to an initial
19 appeal and interpretation in the event that you were
20 to grant the variances sought.

21 MR. MATULE: Thank you, Mr. Galvin.

22 Good evening, Board Members, and
23 congratulations to our new Chair and Vice Chair and
24 Board professionals. We start another year.

25 Just by way of some background

1 information, this is a little bit different than the
2 normal.

3 MR. GALVIN: Hold on.

4 Is anybody here on the Shipyard matter?

5

6 That will not be heard tonight.

7 THE AUDIENCE: Sorry?

8 MR. GALVIN: That will not be heard

9 tonight.

10 THE AUDIENCE: What was the question?

11 MR. GALVIN: Were you here for the

12 Shipyard matter?

13 THE AUDIENCE: No.

14 MS. VANDOR: Is it being carried to

15 February?

16 MR. GALVIN: Yes. We're putting it on

17 the February agenda. They didn't notice, so that is

18 why we can't hear it.

19 MR. GALVIN: They are going to notice

20 it for February, and at this point we will hear it.

21 I tried everything possible to get the city and

22 developer to try to reserve it, and it can't happen.

23 MR. MATULE: As I was saying, the

24 genesis of this is a little different. You all may

25 be familiar with the site. It is an existing

1 commercial property at 108-110 Jefferson Street.

2 There is a pull down metal overhead
3 doors there. You don't have the typical site plan
4 we would submit with a typical application from
5 scratch, because this started out as a situation
6 where we were appealing the denial by the zoning
7 officer after first certificate of zoning compliance
8 to use the property as a retail delicatessen.

9 I don't want to get into all of the
10 legality of it, but sort of, if you will, a dispute
11 arose whether a property is zoned commercial, does
12 that include retail business or service or not.

13 The zoning officer's position was
14 because there was not two other retail businesses or
15 services on the same block as required by Section
16 19633, that a variance was required. We didn't
17 think a variance was required.

18 After discussing it with all of the
19 parties, it seemed that the most straightforward way
20 to deal with it would be to come before the Board
21 and ask for the variance from the condition of
22 Section 19633, which requires at least two other
23 retails on the same block frontage.

24 I have the property owner here, who is
25 going to briefly testify just about the history of

1 the use of the property, although I think in your
2 packages last time we were here, counsel
3 representing the zoning officer, Mr. Cucchiaro, in
4 his letter brief that he submitted pretty much -- I
5 think we stipulated that there is a long history of
6 the use of this property as commercial, but I just
7 want to have some testimony on the record for that.

8 Then I will have Mr. Ochab give his
9 professional opinion about the variance itself, so
10 with those opening remarks, if we could have Mr.
11 O'Brien sworn.

12 MR. GALVIN: Raise your hand.

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

16 R I C H A R D O ' B R I E N, having been duly
17 sworn, testified as follows:

18 MR. GALVIN: State your full name and
19 spell it.

20 THE WITNESS: Richard O'Brien,
21 O'B-r-i-e-n.

22 MR. GALVIN: Your witness.

23 MR. MATULE: Mr. O'Brien, are you the
24 principal of the LLC that currently owns the
25 property?

1 THE WITNESS: Yes.

2 MR. MATULE: 108-110 actually at one
3 time was two commercial spaces?

4 THE WITNESS: Correct.

5 MR. MATULE: Now combined into one?

6 THE WITNESS: Yes.

7 MR. MATULE: This property was in your
8 family for many years. Approximately how many
9 years?

10 THE WITNESS: Literally over 50 years.

11 MR. MATULE: Could you just tell the
12 Board, just by way of examples, of what kind of
13 retail uses have been in that space in the past?

14 THE WITNESS: Way before my time, there
15 was a hardware store, also another hardware store
16 right after that.

17 Fast forwarding to the '80s, it was an
18 office for someone by the name of Curasik
19 (Phonetic).

20 Then it became the Hoboken Sign Shop
21 after that, and then after Ray left, it was pretty
22 much vacant all of that time.

23 MR. MATULE: You took out building
24 permits to renovate the space some years ago,
25 correct?

1 THE WITNESS: Correct.

2 MR. MATULE: At the time that you took
3 those permits out, was it the practice of the
4 building department to give you a building permit to
5 renovate it for a non specific purpose or in their
6 parlance, a plain vanilla box, until an end user was
7 identified?

8 THE WITNESS: That is correct.

9 MR. MATULE: Based on those permits,
10 you did renovate the place?

11 THE WITNESS: Yes.

12 MR. GALVIN: You have not identified
13 the end user?

14 THE WITNESS: Yes.

15 MR. MATULE: What would that end user
16 be?

17 THE WITNESS: Deli and grocery.

18 MR. MATULE: A deli and retail grocery
19 store?

20 THE WITNESS: Yes.

21 MR. MATULE: That is all I have.

22 If the Board has any specific questions
23 for him before we bring up Mr. Ochab.

24 VICE CHAIR GREENE: When did you say
25 the last time the space was used for what purposes?

1 THE WITNESS: Probably roughly -- give
2 or take the mid to late '90s.

3 VICE CHAIR GREENE: So it was vacant
4 now for 14, 15 years?

5 THE WITNESS: Before I started
6 renovating, probably around 11, 12.

7 COMMISSIONER DE FUSCO: Any idea why
8 the last tenant had left?

9 THE WITNESS: Yes. He found another
10 space, another spot.

11 COMMISSIONER DE FUSCO: And previously,
12 he was there how long? I hate to --

13 THE WITNESS: I am trying to -- I don't
14 want to give you any misinformation.

15 Roughly ten years.

16 COMMISSIONER DE FUSCO: Fairly
17 long-term?

18 THE WITNESS: Oh, yes.

19 COMMISSIONER DE FUSCO: Thank you.

20 COMMISSIONER PINCUS: Did you renovate
21 it as for any special functions, or you just
22 renovated it as a vanilla box?

23 THE WITNESS: I renovated it based on a
24 vanilla box. I wasn't sure what the end user was
25 who would kind of modify it.

1 CHAIRMAN AIBEL: Any other Board
2 members or the public?

3 MR. GALVIN: Anybody in the public have
4 questions of this witness?

5 A VOICE: This is my first meeting.
6 Bear with me.

7 MR. GALVIN: That is all right.

8 What we do at this part is ask
9 questions. They only have two witnesses, so you can
10 ask questions of what this witness testified to, and
11 then when the planner comes up, you can ask
12 questions of the planner.

13 When all of the questioning is done and
14 the witnesses are done, then we will listen to you,
15 if you don't like it --

16 A VOICE: Can I ask him a question?

17 MR. GALVIN: You can ask him a
18 question, but sometimes people try to tell us why
19 they don't like it.

20 If you are asking questions about what
21 he testified to, and then save your opinion for like
22 ten or 15 more minutes --

23 A VOICE: Okay.

24 MR. GALVIN: -- you can ask questions
25 like you are an attorney.

1 Cross-examine.

2 (Laughter)

3 MR. GALVIN: State your name and
4 address for the record.

5 MS. SMITH: Judy Smith.

6 MR. GALVIN: Street address?

7 MS. SMITH: 122 Jefferson.

8 Did you remediate your property after
9 the flood?

10 THE WITNESS: In terms of?

11 MS. SMITH: Remediate it from the
12 flood?

13 MR. GALVIN: Did you have any flooding?

14

15 THE WITNESS: Yes.

16 MR. GALVIN: Did you clean it up after
17 the flood?

18 THE WITNESS: Very much so.

19 MS. SMITH: Did you clean up the oil?

20 THE WITNESS: Yes.

21 MS. SMITH: From the oil spill?

22 MR. GALVIN: Okay.

23 THE WITNESS: It was.

24 MR. GALVIN: You have to wait to tell
25 us. You can ask him another question, if you want

1 to. You know now there was oil after there was
2 water, so do you have any other questions?

3 MS. SMITH: No.

4 MR. GALVIN: Okay.

5 MR. MATULE: You know what, let me ask
6 you some reexamination on that because I just want
7 to make it clear for the record.

8 That is why I was -- you know,
9 remediation is a word of art, and when a member of
10 the public asked about remediation, I would like to
11 flush it out.

12 MR. GALVIN: Might change the cleanup.
13 Go ahead.

14 MR. MATULE: When the recent flood
15 occurred as a result of Hurricane Sandy, did your
16 property suffer flood damage?

17 THE WITNESS: Correct.

18 MR. MATULE: And the member of the
19 public who came up asked about remediation.

20 Was there an oil spill that impacted
21 your property?

22 THE WITNESS: There was across the
23 street at the Boy's and Girls Club, I imagine.

24 MR. MATULE: Oil came across the street
25 and contacted your property?

1 THE WITNESS: Correct.

2 MR. MATULE: So the oil didn't emanate
3 from your property?

4 THE WITNESS: No, not at all.

5 MR. MATULE: But whatever oil contacted
6 your property was cleaned up?

7 THE WITNESS: Yes. I met with him
8 before I came here for final payment.

9 MR. MATULE: Was that an environmental
10 specialist who did that?

11 THE WITNESS: As far as I know.

12 MR. MATULE: Could you identify who it
13 was?

14 THE WITNESS: Gerald DeBar from
15 Advantage Construction.

16 MR. MATULE: What did he have to do to
17 remediate?

18 THE WITNESS: I have to talk to him.

19 MR. MATULE: Was there oil inside of
20 the space?

21 THE WITNESS: No, no. When he told me
22 that he took everything out that was oil damaged,
23 and everything underneath, so I have to talk to him.

24

25 MR. MATULE: Okay.

1 COMMISSIONER BRANCIFORTE: Since the
2 flood, did you have to remove the dry wall again or
3 the floor?

4 THE WITNESS: Yes. Floor board four
5 foot high, sub flooring, and some joists had to be
6 replaced.

7 COMMISSIONER BRANCIFORTE: So the dry
8 wall that was in there obviously along the wall,
9 four feet up was removed?

10 THE WITNESS: That is correct.
11 Everything was removed.

12 MR. GALVIN: That was done?

13 MR. MATULE: That was all done with
14 permits?

15 THE WITNESS: Yes.

16 MR. MATULE: Okay. I don't have any
17 other questions.

18 MR. GALVIN: Any follow-up questions to
19 that?

20 (No response)

21 MR. GALVIN: Next witness.

22 MR. MATULE: All right.

23 Mr. Ochab.

24 MR. OCHAB: Good evening.

25 MR. GALVIN: Happy near year.

1 Raise your right hand.

2 Do you swear to tell the truth, the
3 whole truth, and nothing but the truth so help you
4 God?

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

7 MR. GALVIN: State your full name and
8 spell it.

9 THE WITNESS: Ken Ochab, O-c-h-a-b,

10 MR. GALVIN: Mr. Chairman, do we accept
11 Mr. Ochab's credentials?

12 CHAIRMAN AIBEL: Yes.

13 MR. MATULE: Are you familiar with the
14 site and neighborhood in question?

15 THE WITNESS: Yes, I am.

16 MR. MATULE: And you were called in to
17 prepare a report with respect to this request for
18 variance relief?

19 THE WITNESS: That is correct, I did.

20 MR. MATULE: You prepared a letter
21 report, dated December 23, 2012?

22 THE WITNESS: Yes.

23 MR. MATULE: Could you go through your
24 report and give us the benefit of your opinion with
25 respect to the variance relief?

1 As usual, if you are referring to an
2 exhibit, we need to identify it for the record.

3 THE WITNESS: Yes.

4 I prepared a short report of three
5 pages for this application. It was submitted.

6 The nature of the report had to do with
7 the retail use. As you know, we are in the R-3 zone
8 here, and retail uses are permitted as long as they
9 meet certain conditions.

10 One -- two of the conditions include
11 that the retail space be on the first floor, which
12 it is, and that the customer service area not exceed
13 1000 square feet, which it does not. But the third
14 condition, which is that the retail store should be
15 on the block frontage with at least two other retail
16 stores does not meet that one condition, so
17 essentially we have a conditional use variance for
18 this application.

19 And as usual, I took photographs of the
20 site and the surrounding area.

21 MR. MATULE: Want to call that A-1,
22 photo board?

23 THE WITNESS: Sounds good.

24 (Exhibit A-1 marked)

25 MR. MATULE: You took these

1 photographs?

2 THE WITNESS: Yes, I did.

3 MR. MATULE: Approximately when?

4 THE WITNESS: Approximately a month
5 ago, December, early December.

6 MR. MATULE: So it was post Sandy?

7 THE WITNESS: Post Sandy. No evidence
8 of Sandy.

9 These are the photographs that I took.
10 They are in the letter that I prepared with this
11 application, as well the upper right photograph is a
12 photograph of the site itself. You can get the
13 frontage of the site on Jefferson.

14 As you see, there are roll-up doors
15 over all doors and a garage door, so it is clearly
16 some evidence of commercial or nonresidential
17 activity with respect to the property in the past.

18 The upper right photograph shows pretty
19 much the adjoining properties on the south and the
20 north. Again, the building is just about off center
21 to the right in question, and the building to the
22 south is a residential building, but the first floor
23 has a garage door and garage space on the first
24 level.

25 And then the building to the north is a

1 four-story residential building having its principal
2 access about midway across the building, old style
3 Hoboken. So these are the two adjoining properties,
4 and again, this is what the street scape looks like
5 immediately surrounding the property.

6 There is one commercial retail use on
7 the block, and it is at the corner of First and
8 Jefferson. This is what it looks like.

9 I can't tell exactly what it is, but it
10 is clearly commercial, maybe retail. It may not be
11 retail. There was work being done in the buildings,
12 so I couldn't really tell, but at least there is a
13 presence here of some commercial activity.

14 Then all the way at the other end of
15 the block at Second, almost at Second and Jefferson,
16 again, clearly residential, but pretty much most of
17 the block to the north has garage doors, which
18 clearly was old style Hoboken, where you have access
19 and driveways off Jefferson directly into the site.

20 So I would say from a conditional use
21 standpoint, that establishing retail use here, which
22 essentially is again, if you look here, we are at
23 just about mid block, is sound planning.

24 It had been commercial, retail or some
25 sort of commercial in the past, and establishing the

1 retail center would certainly add to the
2 neighborhood character here, provide a service for
3 residents that is not presently within the block or
4 the immediate area.

5 Also, just across the street is the
6 Jerry Malone Youth Center, so I don't know to what
7 extent that is going to also service that facility,
8 but it certainly could be.

9 But clearly, the area is mixed in terms
10 of the street scape in which there is a mixture of
11 garage doors and residential uses, so I think
12 overall, there is no -- clearly no negative impact
13 from a zoning standpoint in reestablishing the
14 retail center here. Certainly architecturally and
15 esthetically, it would convert what you see here to
16 a hopefully more presentable street front for the
17 retail use and add to the neighborhood context, so
18 that is basically it.

19 MR. MATULE: Thank you, Mr. Ochab.

20 (Witness shows plans to the audience)

21 CHAIRMAN AIBEL: Board, questions?

22 Ms. Pincus.

23 COMMISSIONER PINCUS: Would you happen
24 to know where there is a similar type of
25 establishment -- where would it be in relation to

1 the proposed -- is there another -- how close would
2 the nearest facility or places where a person could
3 go to buy a newspaper?

4 THE WITNESS: There is a convenience
5 store at First and Adams, which is the next block
6 over on first.

7 COMMISSIONER PINCUS: First and Adams,
8 is that --

9 THE WITNESS: On the corner of First
10 and Adams.

11 But from the site north, there is no
12 retail or convenience store in the northerly
13 direction.

14 COMMISSIONER PINCUS: Other than First
15 and Adams, are there any other eateries in the
16 neighborhood?

17 THE WITNESS: Not that I am aware of,
18 no.

19 VICE CHAIR GREENE: I take it the
20 second floor is a residential use?

21 THE WITNESS: I believe it is yes, but
22 you might want to ask the owner.

23 THE OWNER: One.

24 MR. GALVIN: We probably need to ask
25 you both questions, so just be prepared

1 COMMISSIONER DE FUSCO: The commercial
2 space on the corner is actually a wine distributor.
3 They got flooded out during the storm. I can
4 confirm from my own experience, that it is a
5 commercial wine study.

6 That being said, so, Mr. Ochab, the
7 other two criteria are filled in terms -- but the
8 other criteria we are talking about, there is not
9 two other similar commercial spaces within the
10 radius.

11 THE WITNESS: It has to be two other
12 retail uses within the same block frontage, so that
13 means frontage on Jefferson, and clearly doesn't
14 meet that requirement.

15 COMMISSIONER DE FUSCO: Got it.

16 In your opinion, is a delicatessen, a
17 deli, within the scope of the block, makeup of the
18 block?

19 THE WITNESS: I think it adds to the
20 character of the neighborhood by servicing the
21 people who live there,

22 From a planning perspective, I think it
23 does, yes.

24 COMMISSIONER DE FUSCO: Do you know the
25 proximity that you just mentioned, a block and a

1 half away, was that -- did you take that into
2 consideration as you made your comment there?

3 Do you think two delis should be in
4 such close proximity of each other?

5 THE WITNESS: The one at First and
6 Adams was more of a convenience type store, and I
7 didn't go in, so I don't know exactly what they do.
8 But this can clearly be a little different, and if
9 they are the same, I don't think that hurts the fact
10 that you have services in close proximity.

11 COMMISSIONER DE FUSCO: Is this a deli
12 where you will be making sandwiches and food?

13 MR. O'BRIEN: Yes.

14 COMMISSIONER DE FUSCO: That is
15 different than the deli a block and half away then.

16 COMMISSIONER CRIMMINS: I just have a
17 couple of questions.

18 Are you going to run a business?

19 MR. O'BRIEN: No.

20 COMMISSIONER CRIMMINS: Do you have a
21 tenant?

22 MR. O'BRIEN: Yes.

23 COMMISSIONER CRIMMINS: So is it more
24 of a grocery store? I think I want to follow up on
25 some of those questions.

1 Do you have any idea of your hours of
2 operation? Is it just food, you know, food, deli
3 sandwiches, is that what it actually is?

4 MR. O'BRIEN: Yes.

5 COMMISSIONER CRIMMINS:

6 Breakfast/lunchtime sandwiches?

7 MR. O'BRIEN: Yes.

8 COMMISSIONER CRIMMINS: Do you have an
9 idea of the type of hours? Is it 24 hours?

10 Do you have any idea?

11 MR. O'BRIEN: I spoke to the tenant.

12 He said he would open at six a.m. and approximately
13 closing by eight p.m.

14 COMMISSIONER CRIMMINS: All right.

15 So that was the only other questions
16 that I had on that.

17 Thank you.

18 COMMISSIONER BRANCIFORTE: That kind of
19 goes along the lines, will there be any seating
20 inside of the building or on the sidewalk?

21 MR. O'BRIEN: No seating.

22 COMMISSIONER BRANCIFORTE: Not even on
23 the sidewalk?

24 MR. O'BRIEN: No.

25 COMMISSIONER BRANCIFORTE: Is there a

1 curb cut there?

2 THE WITNESS: Not in front of the
3 property. There is actually a handicapped parking
4 space --

5 COMMISSIONER CRIMMINS: Isn't there a
6 curb cut? Did I see one after the garage?

7 THE WITNESS: There is a handicapped
8 space, but the handicapped space -- but it looks
9 like it actually is right in front of what might
10 have been the driveway at some point, just a little
11 bit of a drop curb. There is a handicapped space,
12 which means you can't park there unless one
13 handicapped person could park there.

14 COMMISSIONER BRANCIFORTE: Let me ask
15 Elizabeth.

16 If there is a curb cut there, and we
17 give out -- push it over from the D variance -- gets
18 proposed, do they then lose the curb cut?

19 MS. VANDOR: I think the only time we
20 even get into that is if the proposed use itself is
21 proposing parking, but it is a changing use. We
22 always say it doesn't get grandfathered if the use
23 is changing, and it would otherwise not be
24 permitted.

25 In this case they are not proposing to

1 have parking on the site, correct?

2 MR. O'BRIEN: So I don't think anything
3 happens automatically to that curb cut.

4 MR. MATULE: Mr. Branciforte, I don't
5 know if you can look at this photograph here, but
6 this is where the deli is going to go, where the
7 overhead doors are, and that appears to be a
8 handicapped space, but it does look like there is a
9 curb cut here or a lowered curb cut to get into the
10 garage door.

11 COMMISSIONER BRANCIFORTE: It looks to
12 me like it is blocked off with the striping on the
13 street.

14 MR. MATULE: But that is -- we don't
15 have anything to do with that. That is not the
16 subject of this application. We are talking about
17 this space.

18 COMMISSIONER BRANCIFORTE: That part
19 there?

20 MR. MATULE: Right, if that helps.

21 COMMISSIONER BRANCIFORTE: The only
22 other question, too, is about across the street is
23 the charter school, Hola, where the Boys and Girls
24 Club is, so would that put any restrictions on that
25 retail use as far as liquor stores go?

1 Because there is a charter school
2 across the street, would it put a restriction on it
3 for liquors?

4 MR. MATULE: I am vaguely aware that
5 there is something in the ABC regulations about
6 having a liquor licensed premises within so many
7 feet of a church or school. I think it is 200 feet
8 or 500 feet. I am not sure.

9 But as far as I know, the applicant is
10 not going to be licensed to --

11 COMMISSIONER BRANCIFORTE: Is that
12 something for the Zoning Board?

13 MS. VANDOR: Actually packaged liquor
14 stores are permitted in the retail category, but in
15 the past the Board has made specific exclusions when
16 they have approved particular retail sites, but it
17 is otherwise --

18 COMMISSIONER CRIMMINS: Ask the
19 question, "Is it part of their plan?"

20 COMMISSIONER BRANCIFORTE: You can ask
21 it.

22 (Laughter)

23 COMMISSIONER CRIMMINS: Is that part of
24 your plan?

25 MR. O'BRIEN: No.

1 COMMISSIONER PINCUS: Beer?

2 THE WITNESS: No.

3 COMMISSIONER BRANCIFORTE: I wonder if
4 the owner would have a problem with us putting a
5 restriction on alcohol sales there. That is the
6 question.

7 MR. MATULE: It is your call. I think
8 it is covered by the ABC ordinance, but you were
9 asking for a variance, as Mr. Galvin would say.

10 (Laughter)

11 COMMISSIONER CRIMMINS: Do you have any
12 idea?

13 MR. O'BRIEN: Whatever he wants to rent
14 it for.

15 MR. MATULE: You would have no
16 objection if they put a restriction, that the
17 premises could not be used for liquor sales without
18 coming back to the Board?

19 MR. O'BRIEN: No.

20 MR. GALVIN: If you to do that, it
21 means -- liquor stores are permitted in the zone.
22 This deli comes in. Somebody comes along with a
23 liquor store. Why they want to go there, I don't
24 know, but they won't be able to do that depending on
25 the ABC laws, but you would have to come back to get

1 permits.

2 MR. MATULE: We have no --

3 MR. GALVIN: I have hours of operation
4 shall be limited from six a.m. to eight p.m. I don't
5 know if eight p.m. is the right number.

6 COMMISSIONER CRIMMINS: I don't -- I
7 personally think, you know, I wouldn't want to see
8 it real late, but I think activity on the street,
9 you know, is a good thing.

10 I don't know how anybody else feels,
11 but eight o'clock is kind of limiting itself. Ten
12 o'clock I could live with. I don't know how anybody
13 else feels, but I think ten o'clock is okay, but you
14 would have to come back.

15 MR. GALVIN: We could bump it up to
16 ten.

17 I always take notes on what was
18 testified to, and in that instance you are not a
19 hundred percent.

20 The other two things: No seating in
21 the store or outside on the sidewalk, and the
22 property is not to sell alcoholic beverages, if you
23 are agreeable to those things.

24 MR. O'BRIEN: Yes.

25 MR. MATULE: We have no objection.

1 MR. MARSDEN: JD?

2 MR. GALVIN: We didn't go there yet.
3 We are not in deliberations, and I am not making
4 conditions yet.

5 CHAIRMAN AIBEL: I have a couple of
6 other concerns about the operation of a deli. It is
7 rather ambiguously defined.

8 One of my concerns is, however, is
9 having lots of school kids come in after school and
10 before school and making a lot of noise standing
11 outside. I don't know how the owner, the tenant,
12 will deal with parking for people pulling in this
13 handicapped spot getting coffee, how deliveries will
14 be made.

15 Is there some way that we can restrict
16 noise?

17 I am handicapped because we don't have
18 the tenant here, and the gentleman is being asked
19 how the tenant will run his business.

20 MR. MATULE: Yes.

21 Well, unfortunately, I was not able to
22 have him here. But I mean it is a typical retail
23 kind of a business. I mean things like, you know,
24 how are deliveries made, anywhere in Hoboken, you
25 know, in the center city, you know, the Frito Lay

1 guy pulls up in front of the place and double parks
2 like everybody else.

3 I think those are really more, if you
4 will, kind of enforcement issues. I mean any retail
5 business is going to be faced with the same issues
6 of how they get deliveries.

7 Typically I think the Board can
8 recommend the fact that businesses of this nature
9 are not having a Cisco tractor trailer pull up,
10 typically maybe the Boars Head guy or the milkman or
11 something, you know, obviously they would just have
12 to work that out.

13 Do you know who the handicapped spot is
14 for?

15 MR. O'BRIEN: It is for my parents.

16 MR. MATULE: They live in the building?

17 MR. O'BRIEN: Yes.

18 COMMISSIONER BRANCIFORTE: Usually I
19 thought that the city frowned upon putting retail in
20 the middle of the block, isn't that true?

21 MS. VANDOR: It is not a question of
22 the middle of the block. Really the only zoning
23 locational issue is that it is permitted, if there
24 are already two other similar retail uses, and
25 similar, that means a restaurant is not considered

1 retail, for example, so a restaurant wouldn't count
2 towards those two retail. It would be -- retail is
3 defined in our list of retail uses.

4 COMMISSIONER BRANCIFORTE: I always
5 thought there was some argument against putting
6 retail in the middle of the block, but I guess not.

7 MS. VANDOR: No. I, myself, might have
8 said it at some point, but it is not what the
9 regulations say.

10 VICE CHAIR GREENE: Elizabeth, could
11 you educate us on the genesis of the ordinance that
12 prohibits a standalone use on a block?

13 MS. VANDOR: I am going to stretch a
14 little bit here because, believe it or not, there
15 was a time before Elizabeth when it came to this
16 zoning ordinance.

17 I think the idea was that because
18 Hoboken is actually kind of unusual in having what
19 are called residential districts, but as you well
20 know, residential districts are actually mixed use.

21 Retail uses are actually a principal
22 permitted use within the zone, but it was seen as
23 not so much a conditional use as a principal
24 permitted use that had certain standards attached to
25 it.

1 I think the idea was if a block front
2 already had retail, it was okay to have more retail,
3 but if it was kind of a clean block, perhaps leave
4 it in its, you know, residential form.

5 So, as I said, I am not certain, but I
6 think that was the reasoning there.

7 I think going forward, that is an idea
8 that needs to be changed or clarified, but right now
9 I think -- the idea was to concentrate it where it
10 already existed and not start it where it didn't.

11 VICE CHAIR GREENE: Thank you.

12 CHAIRMAN AIBEL: Any other questions?

13 Mr. O'Brien, did they have the --

14 MR. O'BRIEN: No --

15 CHAIRMAN AIBEL: -- to reside in the
16 apartment?

17 MR. O'BRIEN: No. This gets them to
18 move closer to me.

19 MR. MATULE: If they moved away, the
20 handicapped space would go away?

21 MR. O'BRIEN: That is correct.

22 CHAIRMAN AIBEL: And the building to
23 the north, is that vacant right now?

24 Is it under construction?

25 It is a little hard to tell.

1 MR. O'BRIEN: What one?

2 MR. MATULE: This one?

3 CHAIRMAN AIBEL: The building to the
4 north.

5 MR. MATULE: With the garage?

6 CHAIRMAN AIBEL: No, the white one.

7 MR. O'BRIEN: I believe that those
8 condos occupied.

9 CHAIRMAN AIBEL: Any other Board
10 members, questions?

11 Okay.

12 MR. MARSDEN: Can I ask a question?

13 CHAIRMAN AIBEL: Sure.

14 MR. MARSDEN: You are planning on flood
15 proofing the building?

16 MR. O'BRIEN: Oh, yes.

17 MR. MARSDEN: Because I think that will
18 be a condition of a flood hazard.

19 CHAIRMAN AIBEL: Open it up to the
20 public. Questions of Mr. Ochab and then Mr. O'Brien
21 after their testimony.

22 A VOICE: No questions, just
23 statements.

24 CHAIRMAN AIBEL: We will get to your
25 statement in a minute.

1 Motion to close the public portion?

2 COMMISSIONER CRIMMINS: Motion to close
3 the public portion.

4 COMMISSIONER PINCUS: Second.

5 CHAIRMAN AIBEL: Okay.

6 Mr. Matule?

7 MR. MATULE: No public comment?

8 MR. GALVIN: We are going to do public
9 comment now. We are ready.

10 MR. MATULE: I will sum up after the
11 public comment or before?

12 MR. GALVIN: No. Public comment first.
13 It's just like in court, he goes last.

14 It is hard to hear with those loud
15 voices downstairs.

16 Raise your right hand.
17 Do you swear to tell the truth, the whole truth, and
18 nothing but the truth so help you God?

19 MS. SMITH: Yes.

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

22 MS. SMITH: Judy Smith.

23 My home and the homes on the block
24 between First and Second and Jefferson, we not only
25 got hit by hurricane significantly, but also by the

1 oil spill, by the city owned property at 123, the
2 Boys and Girls Club.

3 Many of the homes still are in
4 remediation. I tried to clean my home twice, and it
5 is to no avail. It hasn't been done, so the oil
6 still returns. Every time it rains, the oil comes
7 up from the foundation.

8 The oil is coming up through pavers
9 between First and Jefferson and coming up from the
10 sidewalk.

11 I understand that the property between
12 108 and 110 Jefferson did remediate, but I walked
13 down the property, and this weekend it rained, and
14 there is oil. There is oil there.

15 There is oil at the deli that they say
16 is on Adams. That property didn't open up because
17 there is so much oil there.

18 So the oil that spilled from the Boys
19 and Girls Club was significant. It impacted the
20 neighborhood. It is impacting the environment. It
21 is impacting our health. And to think that to put a
22 deli and to have children walking into that deli
23 without a vapor intrusion study and to talk about
24 variances, I think is, you know, really neglectful.

25 And I think everybody needs to walk

1 down 122 Jefferson between First and Jefferson
2 before you do anything, because this does not look
3 like that. It looks like this.

4 MR. GALVIN: Show Mr. Matule.

5 (Counsel views document)

6 MS. SMITH: That is oil. It doesn't
7 look clean like this.

8 MR. GALVIN: You have to stop for a
9 second.

10 MS. SMITH: That was this weekend.

11 MR. GALVIN: You still have to stop for
12 a second.

13 Do you have any objections to the
14 photos?

15 MR. MATULE: For whatever they are
16 worth, I am not certainly expert enough to tell
17 whether it's oil or water, whatever, but I would
18 point out that is not my client's property. That is
19 the city's property.

20 MR. GALVIN: Time out.

21 Who took the pictures?

22 MS. SMITH: I took them.

23 MR. GALVIN: When did you take them?

24 MS. SMITH: This weekend.

25 MR. GALVIN: Saturday, Sunday?

1 MS. SMITH: Yes.

2 MR. GALVIN: Mr. Matule, you are
3 suggesting that is not the applicant's property. I
4 didn't look at the picture.

5 MR. MATULE: All I am suggesting is
6 that all of the properties, not all of them, but the
7 majority of the properties, the face of the building
8 is at the property line. The sidewalk, everything
9 forward of the building is city property.

10 And, you know, I don't know what
11 happened at the Boy's Club or what the situation
12 was, but I can't imagine that the city is not
13 overseeing some resolution of the issue.

14 I mean, my client has testified that --

15 MR. GALVIN: Let me stop you.

16 Let's let Ms. Smith finish her
17 testimony.

18 The reason I interjected, Mr. Matule,
19 when we are in court, somebody is introducing
20 evidence, and the other side has a right to look at
21 the evidence before it comes in.

22 Why don't you tell the Board what you
23 want to tell them about the photos, and we will pass
24 them around.

25 MS. SMITH: It depends when you are

1 walking the street, so when it rains or snows,
2 anything that is underneath the foundation, the
3 sidewalk, it comes up.

4 What is underneath our sidewalks and
5 foundations, right now on Jefferson is oil. It
6 comes up in lawns, in my backyard. It comes up
7 through pavers. It is coming up through the
8 foundations, and it is coming up in everybody's
9 home, not only mine. It is coming up in the homes
10 on both sides of the street.

11 So when it rains, you just walk down
12 and you smell it.

13 I had the tax assessor in on Friday.
14 They came in, walked through the homes, asked what
15 that smell was. That smell is oil. It is a
16 problem -- problem on the whole block around
17 Jefferson Street because there was a major oil spill
18 in that area.

19 And as far as, you know, working on the
20 city, there is a process that you go through when
21 you have an oil spill, and it is a very, you know,
22 procedural process, and we are going through that
23 process.

24 But in the meantime, you know, this is
25 kind of what we are left with to deal with right

1 now.

2 MR. GALVIN: Okay.

3 Is that it?

4 MS. SMITH: Yes.

5 And it is not that the process of
6 having a store there is really an issue at this
7 point. It is just that it is just not the right
8 time right now.

9 MR. GALVIN: Okay.

10 MS. PINCUS: Thank you.

11 I have a question.

12 So you have oil you said coming up not
13 just outside, but where inside is the oil coming?

14 MS. SMITH: In my garage all the way
15 through and also in the backyard.

16 COMMISSIONER PINCUS: So you are on the
17 first floor, on the first -- it is not on grade,
18 right, you go upstairs?

19 MS. SMITH: It is like a cement slab,
20 and the first floor is like a tandem garage, and
21 then the second floor, third floor.

22 It is a condominium that shares a
23 walkway up, and it is a two percent condominium and
24 town home, and the condominium is to the right, so
25 it is a series of condominiums. So there are stores

1 in the middle and homes to the left, and there is a
2 series of condominiums that were built in the late
3 '90s to the right, and all of us have oil issues.

4 COMMISSIONER PINCUS: Do you actually
5 see the oil or just smell it?

6 MS. SMITH: You see it. It is coming
7 up on the concrete. It is coming up through the
8 sides of the foundation. Now it is coming up like
9 black ink spots coming through the foundation.

10 COMMISSIONER PINCUS: It is coming up
11 and visible on concrete?

12 MS. SMITH: Uh-huh.

13 COMMISSIONER PINCUS: What about does
14 anybody have floor tile or something in that area,
15 is it coming --

16 MS. SMITH: We have tile in our entry
17 way, and it is not coming through the vinyl -- no,
18 it is ceramic. It is not coming through the ceramic
19 tile.

20 COMMISSIONER PINCUS: Thank you.

21 COMMISSIONER BRANCIFORTE: I have a
22 question for Mr. O'Brien.

23 Do you have a basement in your
24 building?

25 MR. O'BRIEN: Yes.

1 COMMISSIONER BRANCIFORTE: You do.

2 Is it a full basement with a six feet
3 space or crawl --

4 MR. O'BRIEN: Four feet basement

5 COMMISSIONER BRANCIFORTE: That was
6 remediated also?

7 Do you have a concrete floor in the
8 basement?

9 MR. O'BRIEN: Underneath, yes.

10 COMMISSIONER BRANCIFORTE: That was
11 remediated?

12 MR. O'BRIEN: Yes. My contractor was
13 there, and he will be in there this week finishing
14 the floor.

15 COMMISSIONER BRANCIFORTE: I wonder
16 what we could do to make sure the place is cleaned
17 up properly before they start selling food.

18 MR. MARSDEN: Typically with that type
19 of a spill, I presume that is a building, and it
20 probably was a significant amount of fuel oil that
21 leaked out of the building.

22 There has to be a reported case, and it
23 has to have a reported case for DEP, and you need a
24 no further action letter from DEP.

25 Further, as far as that DEP required

1 the affected property to be cleaned up, I didn't
2 know that would be an issue in the case. I could
3 get some further information from the environmental
4 people.

5 MR. GALVIN: What would we need to
6 condition this?

7 COMMISSIONER BRANCIFORTE: Do we need a
8 no further action letter?

9 MR. MARSDEN: I don't know how you
10 could condition somebody else's property on a no
11 further action from a condition across the street.

12 MR. GALVIN: I would think the health
13 department -- your concerns are health. That if
14 there is oil in the store, that is a bad health
15 standpoint. You are not suggesting that this site
16 causes it. They are not changing oil or something.
17 That is what I am saying. I think it is easy to say
18 the applicant must satisfy the health department
19 that there is no oil residue within the building.

20 MR. MARSDEN: And could provide
21 information how it was quote, unquote, mitigated,
22 because mitigated means a specific thing in
23 environmental engineering, and the contractor saying
24 he mitigated it, you don't necessarily meet the
25 mitigation requirements.

1 MR. GALVIN: Would you be okay with
2 them bringing proof of that to you that --

3 MR. MATULE: A report from the
4 contractor as to what he did?

5 MR. MARSDEN: Yes.

6 MR. GALVIN: That no oil residue
7 remains.

8 MR. MARSDEN: That it was properly
9 mitigated, if he is going to tell them to use that
10 term. I think the term has to be used in the
11 condition.

12 MR. GALVIN: The applicant must provide
13 proof to the Board's engineer that the oil --

14 MR. MATULE: Oil residue?

15 MR. GALVIN: -- residue has been
16 properly mitigated.

17 COMMISSIONER BRANCIFORTE: Do you have
18 an oil tank on your property now?

19 MR. O'BRIEN: No, sir.

20 (Board members confer)

21 MR. GALVIN: He was suggesting also
22 about have you had oil in there before. Is there
23 oil in there, or was there oil in there?

24 MR. O'BRIEN: I have to check with my
25 contractor.

1 The answer is no, but I will check.

2 COMMISSIONER BRANCIFORTE: I was kind
3 of curious about the concrete floor in the basement
4 especially if the retail store will use it for
5 storing food down there.

6 MR. O'BRIEN: It is not going to be for
7 storage.

8 MR. MATULE: Maybe you can clarify it
9 is not a basement, but a crawl space.

10 MR. O'BRIEN: It is not a basement, but
11 a crawl space.

12 MR. MATULE: Four feet with
13 clearance --

14 MR. O'BRIEN: Yes. No storage.

15 VICE CHAIR GREENE: Where is the access
16 to the crawl space?

17 MR. O'BRIEN: The garage door, if you
18 are walking, in about 30 steps there is a door,
19 which the tenants won't have access to.

20 COMMISSIONER BRANCIFORTE: No storage
21 for the retail space in the basement.

22 MR. GALVIN: Wait a second.

23 This witness is still up.

24 MR. MARSDEN: What I suggest, I will
25 check with my environmental engineering specialist

1 that I have in my office, and I will get a list of
2 what they would need and send a copy to the Board
3 and Mr. Matule saying these are the type of issues
4 we would ask questions about, if that is good with
5 the Board.

6 MS. SMITH: Also, concerns with the
7 deliveries, if that will be managed in a
8 professional manner with the Boy and Girls Club -- I
9 mean the Hola School.

10 It is a residential block. It is a
11 short block, and so you have a short block with
12 parents dropping off children from, you know, a
13 period from like quarter to eight to 8:30, and
14 picking up children from three o'clock to four
15 o'clock.

16 Then you have the delivery trucks
17 trying to manage dropping off beverages, school
18 supplies, food, managing through that.

19 And now -- and that is a short block.
20 There were times we had fire trucks trying to get
21 through and not be able to manage to get through
22 because there is the fire station on the corner of
23 Second and Jefferson.

24 Now, there will be a retail
25 establishment in the middle of the block also with

1 delivery trucks.

2 COMMISSIONER DE FUSCO: Why do you call
3 it a short block between First and Second?

4 MS. SMITH: Shorter block you can go.
5 Second to Third is a longer block, but just walking
6 the streets of Hoboken, it tends to be a shorter
7 block than most.

8 MR. GALVIN: All right.

9 Any other questions?

10 Is this a question of this witness?

11 THE AUDIENCE: No. It is a question of
12 the process. So I had a question about your making
13 conditions, so it seems like the approval is already
14 coming.

15 MR. GALVIN: No. What we are trying to
16 do, if we were to approve it, what conditions would
17 we do, so I am collecting them from the beginning of
18 the hearing, and there are a lot of times when I
19 will have seven or eight conditions, and the Board
20 will deny it.

21 However, if the applicant was unwilling
22 to do some of these things, the Board might ask
23 different questions. And since he has been
24 agreeable to all of these reasonable conditions,
25 that is a factor that they will consider when they

1 go to vote on it.

2 THE AUDIENCE: The questions to the
3 conditions to have a contractor remediate or tell
4 you that it is being remediated, does the contractor
5 really have the expertise to do such a thing?

6 MR. GALVIN: We craft these conditions
7 in every instance. I don't believe we know what we
8 are going to do, so you are getting way ahead --

9 THE AUDIENCE: But --

10 MR. GALVIN: -- and also you have to
11 understand what the proofs are.

12 This case is a conditional use
13 variance, which means the use is otherwise
14 permitted, so we have to be accommodating. The only
15 thing the Board has to be focused on is whether or
16 not why there aren't two stores on this block.

17 They meet all of the other conditions
18 of this, so it is not that easy for us to say no
19 under these circumstances, although we have to
20 figure out whether or not if they can meet the
21 spirit of the zone by not having two uses.

22 It is also significant that this use
23 was here, and that building was used as a commercial
24 use for many years, and that was part of the appeal
25 that they had. They wanted to just get permission

1 without getting a variance.

2 The fact that we may hear about the oil
3 makes us want to help.

4 Now, we will ask the applicant to do
5 more than we might ask an ordinary applicant.

6 MS. SMMITH: When it was in use in
7 prior years, like I started when I bought my home in
8 1999 --

9 MR. GALVIN: Here is the thing. What
10 you are heading for is the doctrine of abandonment.
11 When a use isn't used for a while, it could be
12 abandoned, but there is an objective and subjective
13 test, which really boil down to what is the intent
14 of the property owner, even if you can have a lapse
15 of five years.

16 I just wrote the article on abandonment
17 about the pigs and horses, and I can't remember the
18 years, but in one case the pig owner took out the
19 space. In the other case the horse owner had the
20 paddocks there for 25 years, and the Court found it
21 was not abandoned, so five years is a long time, but
22 it gets more complicated because they went to the
23 city, and they gave him permission to remodel the
24 area.

25 So if we went to Court, there is not an

1 issue, but the Court will take into consideration
2 that he spent money to try to revamp it, but I think
3 you are bringing a good issue to the Board to
4 consider, which is what he wants to make sure if we
5 put a deli in there, it will be safe.

6 I am speaking out of turn, so everybody
7 understands the process. I thought -- I could go
8 one step further. I know you wanted a decision, but
9 I think we should give Jeff the opportunity to go
10 out and look at the site and come back and tell us
11 what he thinks.

12 MR. MATULE: If that is the Board's
13 pleasure.

14 You know, frankly, this is the first I
15 am hearing of this, and you know, the applicant is
16 just as much a victim of whatever this oily water is
17 that emanated from the Boy's Club as everybody else
18 is on the block, so --

19 MR. GALVIN: I agree, but I want your
20 applicant to have a fair decision, and I think the
21 Board will be concerned that it is not safe for a
22 deli if it has oil, so we need to know if it has
23 oil, how much oil, is it safe to operate as a deli.

24 So I think if you gave him an
25 opportunity, he probably could tell you in ten

1 minutes.

2 MR. MATULE: But as I understand it,
3 this was not -- this was, you know, if you will,
4 oily water. It wasn't like an oil tank went through
5 and filled up his store with heating oil, but
6 whatever, Jeff, will be the ultimate arbiter.

7 MR. GALVIN: I don't know. However the
8 Board feels.

9 CHAIRMAN AIBEL: I think we need to
10 hear if there is a case that was opened.

11 MR. MATULE: I have --

12 A VOICE: The DEP called me.

13 MR. MARSDEN: There is a data base of
14 all cases. You can get when it was filed and what
15 the conditions are, and if I knew ahead of time, I
16 could have investigated it, but I didn't have an
17 opportunity --

18 MR. MATULE: Is the Boys Club doing
19 anything in your property?

20 A VOICE: The Boys Club property is not
21 going to remediate my problem. The Boy's Club was
22 remediated. Marcus Berg from the DEP in Trenton
23 called me tonight, so there is a case, and the Boys
24 and Girl Club was remediated twice, once in November
25 and December.

1 MR. MATULE: Just so I understand, that
2 is where the oil came from, correct?

3 A VOICE: Yes.

4 MR. MATULE: Are they taking care of
5 everybody's property?

6 A VOICE: They are not the owners.

7 MR. MATULE: Who are the owners on
8 their property?

9 A VOICE: They are leasing.

10 COMMISSIONER CRIMMINS: The city I
11 guess.

12 MR. MATULE: The City of Hoboken.

13 (Laughter.)

14 MR. GALVIN: We don't know at this
15 point. You have pictures from the outside. We have
16 Mr. O'Brien's testimony that he hired somebody, and
17 they remediated. He is not saying anything that
18 there is any smell or oil in there, so we will send
19 our person to take a look. Even if there is oil in
20 the street doesn't mean there is oil in that
21 building.

22 MR. MATULE: Okay. We are fine.

23 Mr. Marsden can go out and check it
24 out. If somebody from the City wants to check it
25 out, we will come back next month.

1 MR. GALVIN: You reserve your closing
2 argument. If there is something else that you can
3 do, do it. If not, do a closing argument, and then
4 we will vote on it.

5 Does that seem fair?

6 COMMISSIONER CRIMMINS: I'll make a
7 motion to carry it to the February hearing.

8 COMMISSIONER DE FUSCO: Second.

9 COMMISSIONER CRIMMINS: Without any
10 further notice.

11 MR. MATULE: Just for the record,
12 because there are members of the public here, can
13 the secretary tell us exactly what date that is in
14 February?

15 MS. CARCONE: February 19th.

16 MR. MATULE: February 19th, okay.

17 (Board members confer.)

18 MS. CARCONE: Commissioner Aibel?

19 CHAIRMAN AIBEL: Yes.

20 MS. CARCONE: Commissioner Crimmings?

21 COMMISSIONER CRIMMINS: Yes.

22 MS. CARCONE: Commissioner Greene?

23 VICE CHAIR GREENE: Yes.

24 MS. CARCONE: Commissioner DeFusco?

25 COMMISSIONER DE FUSCO: Yes.

1 MS. CARCONE: Commissioner Pincus?

2 COMMISSIONER PINCUS: Yes.

3 MS. CARCONE: Commissioner Branciforte?

4 COMMISSIONER BRANCIFORTE: Yes.

5 MS. CARCONE: Commissioner Boucher?

6 COMMISSIONER BOUCHER: Yes.

7 MR. GALVIN: Mr. Matule, I will enter
8 this into evidence as Neighbor 1. Mark it N-1 for
9 Neighbor 1.

10 (Exhibit marked N-1).

11 (The matter concluded at 8:20 p.m.)

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C E R T I F I C A T E

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

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

s/Phyllis T. Lewis, CCR, CRCR

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

HOBOKEN BOARD OF ADJUSTMENT
CITY OF HOBOKEN

- - - - - X
 RE: 1404-1406 GRAND STREET : Tuesday
 Applicant: 1404-1406 Grand Street :
 Final Site Plan Approval : January 15, 2013
 - - - - - X 8:20 p.m.

Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

Chairman James Aibel
 Vice Chair Elliot H. Greene
 Commissioner Joseph Crimmins
 Commissioner Nancy Pincus
 Commissioner Michael DeFusco
 Commissioner John Branciforte
 Commissioner Jay Boucher

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

Elizabeth Vandor,
 Planning Consultant

 Jeffrey C. Marsden, PE, PP
 Board Engineer

 Patricia Carcone, Board Secretary

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

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8 70 Hudson Street
9 Hoboken, New Jersey 07030
10 Attorney for the Applicant.

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I N D E X

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WITNESS

PAGE

FRANK MINERVINI

78

1 CHAIRMAN AIBEL: Mr. Matule, 1404-1406
2 Grand Street.

3 MR. MATULE: Robert Matule, appearing
4 on behalf of the applicant.

5 We are requesting final site plan
6 approval for 1404-1406 Grand Street.

7 If the Board recalls, we were here back
8 in May. We received preliminary site plan approval
9 to construct, I believe it was, a 15-unit building
10 on the corner of 14th and Grand, right where all of
11 the viaduct renovations are going on right now.

12 Subsequent to appearing before this
13 Board, we had to go to the county for county site
14 plan approval -- I stand corrected. It is ten
15 residential units.

16 We appeared before the county, and one
17 of the things that was presented to the Board was,
18 and it was called out specifically, that it would be
19 subject to the approval of the county, as we had
20 some planters in front of the building on 14th
21 Street and some street trees.

22 As it turned out, the county does not
23 want those planters there and in the plans submitted
24 by Mr. Minervini's office, they have been
25 eliminated. We will still have hanging planters

1 from the second floor. The county was okay with
2 that.

3 And fortuitously for my client, the
4 county will pick up all of the street improvement on
5 14th, sidewalks, curbs and planting. Their only
6 proviso was they wanted us to have our building
7 finished before they got to that stage of the
8 project, which I don't think will be for another two
9 years, so we told them we would do our best to do
10 that.

11 So basically we have gotten county
12 approval. We have gotten, you know, will serve
13 letters. We have our soil erosion and received the
14 control plan approval, so really we are just here to
15 get the Board to sign off on it.

16 I have Mr. Minervini here, if there are
17 any specific questions about the project, but it
18 remains unchanged. We have not made any changes.

19 I know Mr. Marsden has sent us a
20 letter, and he wanted a note on the plans that --
21 and this is with respect, I would assume, to the
22 Grand Street side of the project, that when it came
23 down to repair the road, they would contact the city
24 engineer to oversee that.

25 I have spoken to Mr. Minervini, and he

1 will put that on the signature set of plans, if the
2 Board is so --

3 MR. MARSDEN: The Zoning Board
4 Engineer.

5 MR. MATULE: -- Zoning Board Engineer,
6 Mr. Marsden.

7 I think that was the only issue. He
8 just wanted that because everything else on the
9 corner of 14th Street will be handled by the county,
10 so we can certainly make that note on the plans.

11 MR. MARSDEN: Excuse me.

12 There was also I think additional
13 grades required, but I am having trouble reading the
14 note.

15 The detention -- was detention required
16 by NHSA? Anything mentioned about NHSA and
17 detention?

18 MR. MATULE: No.

19 Frank, is there going to be storm
20 water --

21 MR. MINERVINI: I didn't hear you.

22 MR. MATULE: -- does North Hudson
23 require --

24 MR. MINERVINI: We do show --

25 MR. GALVIN: Wait. Raise your right

1 hand.

2 F R A N K M I N E R V I N I, having been duly
3 sworn, testified as follows:

4 MR. GALVIN: State your full name for
5 the record and spell your last name.

6 THE WITNESS: Frank Minervini,
7 M-i-n-e-v-r-i.

8 MR. GALVIN: You may proceed.

9 MR. MINERVINI: Yes, there will be.
10 Prior to obtaining building permits, we need that
11 approval as well.

12 The application is already into North
13 Hudson Sewer Authority.

14 MR. MARSDEN: Can you show me copy of
15 the report?

16 MR. MINERVINI: Sure.

17 MR. MARSDEN: There were additional
18 grades somewhere.

19 MR. MARSDEN: Proposed grades must be
20 shown in all building corners to show where the
21 grades get off, but the county will be doing those
22 improvements?

23 MR. MATULE: Right.

24 MR. MARSDEN: Then I am good.

25 MR. MATULE: Okay.

1 MR. GALVIN: Need to make it subject to
2 your letter?

3 MR. MARSDEN: Yes, I think so just for
4 the record.

5 CHAIRMAN AIBEL: Ms. Vandor, do you
6 have any issues, any issues that you would like to
7 raise?

8 I note that maybe in your report --
9 maybe this is an old report -- you had a couple of
10 comments in black. I am not sure if they are
11 still --

12 MS. VANDOR: No. Pretty much by the
13 time final comes, I sign it over to Jeff, and I
14 think there was -- the issue with the planting -- I
15 forget what we called it --

16 THE WITNESS: There was a question of
17 what the actual species of the hanging plants would
18 be, and I mentioned to Ms. Vandor the landscape
19 architect working on it had chosen a cascading ivy,
20 which won't stick to the building. That was her
21 concern.

22 MS. VANDOR: It wasn't really my
23 concern as in approval or disapproval, but rather it
24 might be something that they might want to consider,
25 so they resolved that.

1 MR. GALVIN: Okay.

2 CHAIRMAN AIBEL: Board members?

3 COMMISSIONER PINCUS: I think I read
4 something in here about this large outdoor area on
5 the second floor possibly being split -- I mean
6 access to provide --

7 THE REPORTER: Ms. Pincus, I'm sorry,
8 but I can't hear you.

9 MR. MINERVINI: The question came up at
10 the meeting, but I don't think we are proposing to
11 change it.

12 COMMISSIONER PINCUS: Okay.

13 COMMISSIONER BRANCIFORTE: You know, I
14 have to say something about the bicycles.

15 CHAIRMAN AIBEL: Fine, John.

16 COMMISSIONER BRANCIFORTE: I appreciate
17 that.

18 MR. GALVIN: You might have to retire
19 your Armstrong jersey.

20 (Laughter)

21 COMMISSIONER BRANCIFORTE: No. The
22 only thing I have to say is hopefully there is some
23 way for the bicycles to be locked, not just stored.

24 MR. MINERVINI: Typically what we
25 specify is the wall mounted mechanism that goes on

1 the nose of the car, and you can provide your own
2 lock, and we will provide the drawings --

3 COMMISSIONER BRANCIFORTE: They have to
4 be secured to something solid. That is the only
5 thing I have to say.

6 That is it.

7 Thank you.

8 MR. MATULE: Okay.

9 THE WITNESS: Okay, thank you.

10 CHAIRMAN AIBEL: Any Board members have
11 questions on this?

12 I guess we need a motion to approve.

13 COMMISSIONER CRIMMINS: Motion to
14 approve the final site plan for 1404-1406 Grand
15 Street.

16 COMMISSIONER DE FUSCO: I will second
17 that.

18 MS. CARCONE: Okay.

19 Commissioner Crimmins?

20 COMMISSIONER CRIMMINS: Yes.

21 MS. CARCONE: Commissioner Greene?

22 COMMISSIONER GREENE: Yes.

23 MS. CARCONE: Commissioner DeFusco?

24 COMMISSIONER DE FUSCO: Yes.

25 MS. CARCONE: Commissioner Pincus?

1 COMMISSIONER PINCUS: Yes.

2 MS. CARCONE: Commissioner Branciforte?

3 COMMISSIONER BRANCIFORTE: Yes.

4 MS. CARCONE: Commissioner Boucher?

5 COMMISSIONER BOUCHER: Yes.

6 MS. CARCONE: Commissioner Aibel?

7 CHAIRMAN AIBEL: Just for the sake of
8 consistency, I didn't see any --

9 THE REPORTER: I'm sorry, but I can't
10 hear you, Mr. Aibel.

11 CHAIRMAN AIBEL: -- for consistency, I
12 will vote no because that is the way I voted the
13 first time.

14 Thanks.

15 MR. MATULE: Thank you.

16 MR. GALVIN: Subject to compliance with
17 Mister --

18 MR. MATULE: We will send him the
19 report that was submitted to North Hudson for the
20 detention system, and also we will submit a revised
21 signature set of plans with a couple of notes that
22 he wanted called out on.

23 MR. GALVIN: Awesome. Thank you.

24 (The matter concluded)

25

C E R T I F I C A T E

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

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

s/Phyllis T. Lewis, CCR, CRCR

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

HOBOKEN BOARD OF ADJUSTMENT
CITY OF HOBOKEN

----- X
 RE: 626 GRAND STREET : Tuesday
 Applicant: T & C Manageent, LLC :
 Minor Site Plan Approval : January 15, 2013
 C&D Variances :
 ----- X 8:30 p.m.

Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

Chairman James Aibel
 Vice Chair Elliot H. Greene
 Commissioner Joseph Crimmins
 Commissioner Nancy Pincus (Recused)
 Commissioner Michael DeFusco
 Commissioner John Branciforte
 Commissioner Jay Boucher

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

Elizabeth Vandor,
 Planning Consultant

 Jeffrey C. Marsden, PE, PP
 Board Engineer

 Patricia Carcone, Board Secretary

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6 Attorney for the Board.

7 ROBERT C. MATULE, ESQUIRE
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10 Attorney for the Applicant.

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I N D E X

WITNESS	PAGE
JAMES MC NEIGHT	88
KENNETH OCHAB	113

E X H I B I T S

EXHIBIT NO.	PAGE
A-1	88
A-2	114

1 CHAIRMAN AIBEL: 626 Grand Street.

2 MR. MATULE: Robert Matule, appearing
3 for T&C Management.

4 This is an application for property at
5 626 Grand Street. Maybe there may be one or two of
6 you that were here for 622-628 Grand Street.

7 We previously received approvals to
8 build four over one, an eight-unit building at
9 621-628 Grand Street. In the intervening period,
10 the property at 628 Grand Street was foreclosed on,
11 and it became complicated, so my client withdrew
12 from this situation, and now we are coming to the
13 Board to build a standalone sort of typical
14 four-story, four-unit building at 628 Grand Street.

15 I have two witnesses, Mr. McNeight, who
16 is the architect for the project, and Mr. Ochab, who
17 is the planner.

18 So with no further adieu, I submitted
19 my jurisdictional proofs.

20 So, Mr. McNeight, if you want to come
21 up and be sworn and qualified.

22 MR. GALVIN: Do you swear to tell the
23 truth, the whole truth, and nothing but the truth so
24 help you God?

25 MR. MC NEIGHT: I do.

1 MR. GALVIN: State your full name for
2 the record and spell your last name.

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

5 MR. GALVIN: Mr. Chairman, do you
6 accept Mr. McNeight's credentials as an architect?

7 CHAIRMAN AIBEL: We do.

8 MR. MATULE: Mr. McNeight, could you
9 describe for the Board and for any members of the
10 public who are here, the existing site, the existing
11 site conditions?

12 Again, if you refer to exhibits, we
13 have to have them marked.

14 THE WITNESS: I have one exhibit.

15 MR. MATULE: Okay. A-1.

16 What is that?

17 THE WITNESS: It's a colored elevation.

18 MR. MATULE: Want to put it on the
19 back?

20 (Exhibit A-1 marked.)

21 MR. MATULE: Could you describe for the
22 Board the current site conditions, and then if you
23 wish to go into the proposed construction.

24 THE WITNESS: Sure.

25 This is a typical Hoboken lot. In this

1 part of town, this site is located behind the A&P
2 food market. It is a typical 25 by a hundred foot
3 deep site.

4 The existing conditions are this is a
5 one-story building that has a mysterious front porch
6 that is five feet below grade. It always intrigued
7 me, this building.

8 (Laughter)

9 Next to it to the south is the parking
10 lot of the tavern that is a little bit further
11 south. And to the north, there is the existing
12 building that Mr. Matule spoke about, which is an
13 existing two-story building, I believe.

14 And then to the north of the block is a
15 relatively new apartment complex called Lexington.

16 CHAIRMAN AIBEL: One second.

17 Is anybody from the public here for 626
18 Grand Street?

19 If you would like to pull your chair
20 around, so you could see this.

21 THE AUDIENCE: I will stand over here.

22 THE WITNESS: What we propose to put up
23 is a four-story building.

24 This is a color rendering of the
25 elevation.

1 MR. MATULE: That is A-1.

2 THE WITNESS: A-1, which the Board
3 members can look at more carefully while I am
4 talking, it is the same drawing that appears here,
5 just in color.

6 The building is a four-story, four-unit
7 building that is picked up, so that the first floor
8 is ten feet above sea level. There is one apartment
9 per floor.

10 It has one interior stair case that
11 leads to the street, and it has an exterior stair on
12 the rear section of the building that takes -- that
13 is the second means of egress for the structure. It
14 takes people down to grade, and there is a hallway
15 that leads from the rear yard to the front yard to
16 the city right-of-way. That is required by the
17 code.

18 The rear structure, that is the fire
19 escape, is not the full width of the building. It
20 is set in four feet on the south side and three feet
21 on the north side.

22 The backyard is -- has paving ten feet
23 beyond that eight foot deep fire stair, and the
24 balance of the yard is surrounded by fence, and has
25 plantings around the perimeter of the three sides.

1 MR. MATULE: Just while you are on the
2 subject of the backyard, you got Mr. Marsden's
3 latest review letter?

4 THE WITNESS: Yes.

5 MR. MATULE: One question he had, was
6 there any lighting in the backyard.

7 THE WITNESS: Just emergency lights on
8 the stairway, but no lights in the backyard.

9 MR. MATULE: Okay.

10 And one of the variances that we are
11 asking for is a height variance of 41 feet,

12 Above the base flood elevation, where
13 the zoning ordinance permits 40 feet above the base
14 flood elevation, is that additional -- why don't you
15 tell the Board what that additional one foot is
16 driven by?

17 THE WITNESS: For the longest time in
18 Hoboken, we always set the first floor at base flood
19 elevation.

20 Mr. Marsden has educated us over the
21 last several months, in fact, that we should be 12
22 inches above the base flood elevation. So the
23 ordinance is written as if we should be at nine feet
24 above sea level. Then you could build 40 feet above
25 that, but in effect, you lost a foot because it is

1 really -- the bottom of your first floor structure
2 should be at base flood elevation and the finished
3 floor should be 12 inches up from that, so the
4 ordinance is generating its own variance in this
5 case.

6 MR. MATULE: And --

7 MR. GALVIN: Let me ask. The new regs,
8 where nine feet was before, depending on where we
9 are in Hoboken, it may have gone up to 12 foot.

10 MR. MARSDEN: Again, the advisory flood
11 elevation just issued by FEMA, that is not obviously
12 regulatory. They have not been, you know, made into
13 law at this point, indicates that your base flood
14 elevation went up to three feet to elevation 12 for
15 a point one storm and the 200 storm goes up to
16 almost elevation 18.

17 (Laughter.)

18 MR. MARSDEN: That is what the -- I
19 have the map here --

20 MR. GALVIN: Your insurance will go
21 through the roof if you don't at least comply with
22 the 12 feet. That is going to happen.

23 MR. MARSDEN: I don't disagree, but it
24 is not regulatory at this point, so it is their
25 choice.

1 MR. GALVIN: It is not required, but it
2 is a bad choice because you will wind up having to
3 pay an extra amount of increased insurance.

4 MR. MATULE: Well, since Mr. Aibel said
5 why don't we get started, what I would like to do,
6 if the Board wants to, is take a break for five
7 minutes. It makes sense.

8 I would just like the opportunity to
9 discuss with the architect and my client and maybe
10 we will amend the height.

11 MR. GALVIN: That would be height
12 compliance with the --

13 MR. MATULE: It might make some sense.
14 I just need a couple of minutes to see if it would
15 be a viable amendment to make because even if it is
16 not required, it might be the better thing to do.

17 MS. VANDOR: Excuse me, Dennis.

18 But can I ask Jeff, how historically,
19 how closely matching are the advisory to the adopted
20 regulations?

21 MR. MARSDEN: This was the result of
22 Sandy, and there has been nothing like Sandy since
23 recorded history, so they have not responded to
24 major storms that way in the past.

25 They have just gone, well, we will go

1 from elevation nine to -- because of a change in
2 their data, they may have changed certain areas
3 because of the GPS and all of the new elevations are
4 much better controlled than they used to be.

5 They might have changed some areas of
6 New Jersey based on that, but I don't have any
7 recall of any time that they made a major flood
8 elevation, if it wasn't a model bus, a bus in the
9 hydraulic models and stuff, so I don't know how long
10 it will take the Government to make this regulatory,
11 if that is your question.

12 MS. VANDOR: Right.

13 So I mean because then this is going to
14 be an issue on every project that comes before us in
15 terms of height, right?

16 MR. MARSDEN: Yes, I agree.

17 COMMISSIONER CRIMMINS: Yes.

18 MR. GALVIN: If you don't come up to --

19 MS. VANDOR: Does the Board want to
20 start the new year off by essentially anticipating
21 that on each project, that we alert the applicant to
22 what the advisory regulations state, and then
23 consider a variance for that height level and will
24 they have wiggle room to come back down, or how will
25 you handle that?

1 MR. GALVIN: I don't know where I got
2 my information, so at the moment I am a little
3 lacking.

4 But I am 95 percent certain that
5 although the regulations are not imposed, like you
6 don't have to follow that 12 foot height, but if you
7 don't, the way they are going to force you into this
8 is your insurance rates will be really significant,
9 if you don't do it.

10 It also makes sense from the standpoint
11 of the reason why we have the height is because we
12 know how high the water came up, and we want to keep
13 oil and other things out of the homes. It makes
14 sense to come up for two feet. If they are asking
15 for a variance for two feet, it is a good reason to
16 grant a height variance, if you don't feel that the
17 overall height is too much in the first place.

18 MR. MARSDEN: It would be one foot
19 above the advisory.

20 MR. MATULE: What is the advisory?

21 MR. MARSDEN: Elevation 12, so you
22 would be at elevation 13 for your first floor.

23 MR. MATULE: What are we at now, ten?

24 THE WITNESS: 7.4.

25 MR. MATULE: The first floor?

1 THE WITNESS: At ten.

2 MR. MATULE: So you would have to pick
3 up the first floor three foot.

4 MR. GALVIN: Sometimes you can take
5 out --

6 COMMISSIONER CRIMMINS: First floor.

7 MR. MATULE: We are talking about where
8 the ground floor will start.

9 MR. GALVIN: Any community, not just
10 Hoboken, you have to consider that when we created
11 the height restriction, we didn't consider that we
12 may have to start the building two or three feet
13 higher than we do now, and this is your opportunity
14 to do -- if you were to grant this, it makes a lot
15 of sense to grant it at a level where in the next
16 storm, you won't be affected.

17 In Point Pleasant Beach, we had a lot
18 of homes that had to comply. A lot of them were not
19 touched by Sandy. The homes we lost were the older
20 homes that didn't comply with the standard.

21 MR. MATULE: If you could give us a
22 couple of minutes because we have to see how viable
23 it is from a design perspective also.

24 MR. MARSDEN: Do you have a copy of
25 this?

1 CHAIRMAN AIBEL: Okay. Let's take
2 seven or eight minutes. We will start at ten of
3 nine.

4 (Recess taken)

5 CHAIRMAN AIBEL: Back on the record,
6 Phyllis.

7 We are back on the record.

8 MR. GALVIN: Back on the record, I
9 wanted to point out for the record that Ms. Pincus
10 has been recused from this matter, so now we only
11 have six board members.

12 I explained it to Mr. Matule. My
13 recommendation to the Board is we should give Mr.
14 Matule the option at the conclusion of the hearing
15 to proceed to a vote with six or to carry it to
16 another night when there will be a seventh member of
17 the Board able to vote on it.

18 THE AUDIENCE: Any reasons why she
19 recused herself?

20 MR. GALVIN: I don't have an obligation
21 to reveal them. But I am understanding they are
22 personal in that she is expecting some people in the
23 audience to be opposed that she has a relation --

24 THE AUDIENCE: Did you advise her to?

25 MR. GALVIN: I advised her to based on

1 the facts that she supplied me. Okay.

2 The same thing will apply to the same
3 case as well, all right?

4 THE AUDIENCE: I will state my case.

5 MR. GALVIN: Okay, no problem.

6 MR. MATULE: Mr. Chairman, thank you
7 for the break.

8 During the break I did discuss with Mr.
9 McNeight and the applicant the feasibility of
10 raising the property up to these new projected
11 levels, the first floor which I think would be what,
12 14 feet, Mr. McNeight?

13 THE WITNESS: Yes.

14 MR. MATULE: Which then generates a
15 whole bunch of other issues in terms of the entrance
16 way and the front steps, and how you would have to
17 have a stoop with stairs running the whole width of
18 the face of the building, et cetera, et cetera.

19 So it may not address the issue a
20 hundred percent, but what we can do is raise the
21 first floor to two feet above the base flood
22 elevation, which would make the first floor at 11
23 feet, but then that would require a height variance
24 to be 42 feet above the base flood elevation, rather
25 than 41 feet, so we would ask to amend our

1 application accordingly. It would still be a C
2 variance.

3 MS. VANDOR: I'm sorry. You are
4 amending it to 42 above?

5 MR. MATULE: Yes. So it would be two
6 feet above the permissible 40 feet, which is still
7 less than ten percent.

8 So, Mr. McNeight, did I accurately
9 describe that?

10 THE WITNESS: Yes, perfectly.

11 MR. MATULE: Thank you.

12 Could you just go through the rest of
13 the building for the Board?

14 I think we kind of stopped there. We
15 were talking about the height variance.

16 THE WITNESS: Correct.

17 I would be referring to Page Z-3, which
18 just shows the plans.

19 Basically in this generic setting of a
20 four-unit building on a 25 foot block, as I stated
21 before, this second means of egress that comes down
22 into the backyard leads to this door and corridor
23 that brings you right back out to the right-of-way
24 of Grand Street.

25 This is a two-bedroom apartment on the

1 first floor because of the space that goes from the
2 common area, all of the shaded area, common area.

3 The upper floors would be three-bedroom
4 layouts, one interior stair and one exterior stair.

5 The rooftop would have the required
6 four by four. In this case we have a three by five
7 Bilco hatch that allows the fire department access
8 to the roof, and there is one HVAC package unit on
9 the roof and three condensers for the three lower
10 apartments.

11 MR. MATULE: And you are within the ten
12 percent maximum roof coverage?

13 THE WITNESS: Yes, we are.

14 MR. MATULE: You anticipate that North
15 Hudson will require on-site detention?

16 THE WITNESS: Yes.

17 MR. MATULE: And if this were approved,
18 you would submit an appropriate engineering report
19 to them?

20 THE WITNESS: Correct.

21 MR. MATULE: And the other question Mr.
22 Marsden raised in his report was about trash and
23 recycling.

24 Do you know how that would be dealt
25 with?

1 THE WITNESS: Similar buildings, each
2 of the four occupants or occupiable spaces would
3 just bring their garbage down and put it on the curb
4 after nine o'clock on the appropriate night, so we
5 wouldn't have a general storage area for refuse.

6 MR. MATULE: And the building would be
7 elevated?

8 THE WITNESS: The first floor is going
9 to be elevated to, as you said, two feet above the
10 base flood elevation, so we will pick up a few more
11 steps.

12 But the proposed stoop on this building
13 is the jurisdiction of the city council since it is
14 on city property, so both the bay window and the
15 stoop would have to have council approval.

16 MR. MATULE: Either easement ordinance
17 or qualify for the exception in the streets and
18 sidewalk ordinance?

19 THE WITNESS: Correct.

20 MR. MATULE: You have the rear fire
21 stair, which is the second means of egress, what are
22 the approximate dimensions?

23 THE WITNESS: It is set in four feet on
24 the south and three on the north. It is 18 -- 8
25 feet deep off the building and 18 feet long.

1 MR. MATULE: And obviously it is a new
2 building, and it will be up to code?

3 THE WITNESS: It's not a fire escape,
4 it is an exterior stairway that has the same treads
5 and risers as --

6 MR. MATULE: But it serves as the
7 second means of egress?

8 THE WITNESS: Yes.

9 MR. MATULE: I have nothing further,
10 Mr. McNeight, unless the Board members have any
11 questions.

12 CHAIRMAN AIBEL: Board members?

13 COMMISSIONER DE FUSCO: Mr. Chair, so
14 there is no actual layout of the apartment, the
15 units, the layout of the units, so the first floor
16 is two-bedroom and the third -- third and fourth are
17 three-bedrooms?

18 THE WITNESS: Yes --

19 COMMISSIONER DE FUSCO: What is the
20 rough square footage of the bedrooms you are looking
21 to put in?

22 My concern being that I want to make
23 sure that these are actually units that a whole
24 family could live in.

25 THE WITNESS: Right here. It is a

1 little hard to read.

2 The first floor has a square footage of
3 1,146 square feet.

4 The three upper floors have 1,409
5 square feet each.

6 COMMISSIONER DE FUSCO: Would that give
7 the units three bedrooms or two bedrooms that are
8 large enough, in your opinion, large enough for a
9 family of -- say in three bedrooms, a family of four
10 to live in?

11 THE WITNESS: Yes. The 1400 square
12 feet for the three-bedroom layout is a nice sized
13 apartment. They make very nice apartments.

14 COMMISSIONER DE FUSCO: All right.

15 You were quite honest. This is a deck,
16 and it will be used at such?

17 THE WITNESS: Yes.

18 COMMISSIONER DE FUSCO: So that is
19 definitely part of the application, habitable decks?

20 THE WITNESS: Yes.

21 COMMISSIONER DE FUSCO: Thank you.

22 THE WITNESS: Thank you.

23 COMMISSIONER BOUCHER: I had a question
24 about the setback.

25 Is there a setback from the street?

1 THE WITNESS: In this case the main
2 facade, not the bay window, but the main facade is
3 zero on the property line, and we will be asking for
4 a variance for a front yard.

5 COMMISSIONER BOUCHER: Was there a
6 reason that you couldn't have the setback and have
7 the bay window go up to the lot line?

8 THE WITNESS: Well, the rest of the
9 block, everything is parked on zero on the property
10 line, so --

11 COMMISSIONER BOUCHER: Every building
12 on the entire block?

13 THE WITNESS: Yes. So it is conforming
14 to the neighborhood more or less.

15 COMMISSIONER BOUCHER: Except for the
16 bay extension.

17 Are there other bay extensions on the
18 rest on the buildings on the block?

19 THE WITNESS: Yes. Several cases, yes.

20 COMMISSIONER BOUCHER: Okay. That is
21 it.

22 CHAIRMAN AIBEL: Mr. Crimmins,
23 questions?

24 COMMISSIONER CRIMINS: No.

25 CHAIRMAN AIBEL: Vice Chair Greene?

1 VICE CHAIR GREENE: Okay.

2 Speaking of the bay windows, since they
3 do intrude on the right-of-way, can you describe the
4 necessity of the bay windows as opposed to flat
5 windows?

6 THE WITNESS: It is just relieves the
7 facade, you know, it gives the facade some shadow.
8 You know, the shadows show up like in this
9 rendering, the bay sticking forward just sticks
10 forward 30 inches. Just life convenience or life
11 convenience, the facade with some shadow lines that
12 a flat building with punched windows doesn't have.

13 CHAIRMAN AIBEL: Any other Board
14 members?

15 CHAIRMAN AIBEL: Let me ask you, Mr.
16 McNeight --

17 THE REPORTER: Keep your voice up,
18 please.

19 CHAIRMAN AIBEL: -- I will put it in
20 terms of a statement.

21 I guess I am looking at this as a very
22 wide lot at 25 feet. I am not sure that I see the
23 actual necessity for building a full 60 percent for
24 the full building, and then adding another 6 percent
25 for an outdoor deck, which will extend, according to

1 the diagram on Z-1 significantly beyond the
2 two-story building that exists.

3 So can you describe or, Mr. Ochab, how
4 the rear of the building relates to the other
5 buildings in the donut in the backyard?

6 THE WITNESS: I will leave it to Mr.
7 Ochab to talk about that. But basically this deck
8 in the back, you know, it looks out -- well, we will
9 leave it to the planner. He will show you what is
10 in the backyard up and down that block.

11 But for a 60-foot building to lose the
12 square footage of the second stairway, with making
13 it into a two-bedroom unit, and you know, take away
14 the availability of making the family-friendly
15 oriented unit a three-bedroom --

16 CHAIRMAN AIBEL: I appreciate it. We
17 need to address the impact on the neighbors because
18 our zoning code still says 60 percent, and we --

19 THE WITNESS: -- and it's --

20 CHAIRMAN AIBEL: -- culminate that it
21 in a fire escape as six feet, this is not intended
22 as a fire escape, but a full deck, so let's hear
23 about it from Mr. Ochab.

24 Any other Board members?

25 MS. VANDOR: May I?

1 CHAIRMAN AIBEL: Sorry, Ms. Vandor.

2 MS. VANDOR: Yes.

3 I had indicated in my report when we
4 saw the project after the review committee meeting,
5 it was only set back five feet, and we had thought
6 given the context of the block, that it would look
7 better at the front lot line. And in terms of the
8 bay, our zoning encourages bay windows or stacks of
9 bay windows, you know, to give a textural difference
10 in the facade.

11 CHAIRMAN AIBEL: Is the bay included in
12 the lot coverage calculation?

13 MS. VANDOR: Not if it is beyond the
14 lot line, but in actual fact, if you put the
15 required front yard, it is also not considered lot
16 coverage in order to encourage it.

17 CHAIRMAN AIBEL: Okay.

18 I think it is time to open it up to the
19 public -- I'm sorry -- I didn't mean to neglect Mr.
20 Marsden.

21 MR. MARSDEN: You got my letter, dated
22 the 8th?

23 THE WITNESS: Yes.

24 MR. MARSDEN: Do you have any problems
25 with it?

1 THE WITNESS: No. I looked through the
2 whole thing.

3 MR. MARSDEN: Front and rear yard
4 drain?

5 THE WITNESS: Yes. That is not a
6 problem because we will have the retention system,
7 yes.

8 MR. MARSDEN: Okay.

9 Thank you very much.

10 CHAIRMAN AIBEL: Okay.

11 Questions from the public?

12 Questions of the architect?

13 Yes, come forward.

14 MS. MARKLE: Rosemary Markle, 60 Grand
15 Street.

16 I'm 52 years there, so I know a lot
17 more than is shown on the plans.

18 Now we are going for two feet more in
19 height, right?

20 Is that correct?

21 MR. GALVIN: Yes.

22 MS. MARKLE: Two feet more in height
23 because that was your suggestion.

24 Does that fit in with the master plan
25 to now extend it to 42 feet instead of 40?

1 MR. GALVIN: Well, I think bringing the
2 building up, so it is more out of the flood zone.

3 MS. MARKLE: I understand what you are
4 saying.

5 MR. GALVIN: Just because you have to
6 start higher doesn't mean you have to go all the way
7 within the max --

8 MS. MARKLE: Does that fit into the
9 master plan of Hoboken to go 42 feet instead of 40?

10 MR. GALVIN: The Municipal Land Use Law
11 permits a height variance.

12 MS. MARKLE: Still not --

13 COMMISSIONER DE FUSCO: You are talking
14 for the planner --

15 MR. GALVIN: I don't know why I am
16 answering.

17 (Laughter)

18 (Everybody talking at once)

19 MR. GALVIN: I am trying to provide --

20 THE REPORTER: You can't all be talking
21 at the same time.

22 MR. GALVIN: I appreciate what Mr.
23 DeFusco said. I am trying to give you the
24 information.

25 Let me back up one more second. You

1 are not asking a question that is appropriate for
2 this witness.

3 MS. MARKLE: So who do I ask? This is
4 the Zoning Board that conducts variances.

5 MR. GALVIN: Time out, time out.

6 I really want you to think I am a nice
7 guy. Give me a chance.

8 MS. MARKLE: Telling them to raise it
9 two more feet puts a dent in my whole atmosphere.

10 MR. GALVIN: You have to be patient.
11 They have a witness. They have an architect.

12 When the architect is done speaking,
13 you will cross-examine him like you are a lawyer.

14 When you are done asking questions,
15 then they will bring up the planner, and the planner
16 will suggest to us the reasons why we should approve
17 variances, and he will be able to answer your
18 question about the master plan.

19 MS. MARKLE: Now, the extra -- what are
20 we looking for, six feet back, is that what it was?

21 MR. GALVIN: All questions should be
22 directed to this person standing to your left.

23 MS. MARKLE: So the extra six feet is
24 for a deck?

25 THE WITNESS: Eight feet --

1 MS. MARKLE: 8 -- 65.8 -- point eight
2 percent on the letter I received home, so now we
3 made it eight feet more over 60, is that what you
4 are saying?

5 THE WITNESS: It is not the full width
6 of the property.

7 MS. MARKLE: Talking about --

8 MR. MATULE: Can I interject, so the
9 record doesn't get convoluted?

10 There is a different recommendation
11 between how many feet deep it is and what percentage
12 of lot coverage it generates.

13 The notice that you got talked about
14 the percentage of lot coverage that was being
15 generated. That is a function of the dimensions of
16 that deck. And I guess Mr. McNeight was alluding to
17 that by virtue of the fact that he said while it is
18 eight feet deep, it is not 25 feet wide, so if you
19 squeeze it in --

20 MS. MARKLE: Not talking about the
21 width.

22 So the actual property, the building
23 itself, would be 60 percent lot coverage?

24 MR. MATULE: Yes.

25 MS. MARKLE: Then the part after that

1 would be another 5.8 feet?

2 MR. MATULE: I have to object to the
3 terminology, but the deck will be eight feet by
4 approximately 18 --

5 THE WITNESS: Yes, but more than half
6 of that --

7 MS. MARKLE: How many feet are you
8 talking about out from the building?

9 MR. MATULE: Eight feet.

10 MS. MARKLE: Eight feet more.

11 I think I had one other question.

12 Okay. So if we brought the building to
13 meet the 60 feet, which is what the law allows, you
14 are saying that would make it only a two-bedroom
15 apartment, correct?

16 THE WITNESS: If we -- if we decided to
17 keep that same deck arrangement, and it pulled it
18 within 60 feet, it would knock out one of the
19 bedrooms, correct.

20 MS. MARKLE: Okay. All right. I will
21 save the rest of my questions and comments for
22 later.

23 Thank you.

24 CHAIRMAN AIBEL: Anybody else from the
25 public?

1 Seeing none, motion to close the public
2 portion.

3 COMMISSIONER CRIMMINS: I will make a
4 motion to close the public portion.

5 VICE CHAIR GREENE: Second.

6 CHAIRMAN AIBEL: Thank you.

7 Mr. Matule?

8 MR. MATULE: Mr. Ochab.

9 MR. GALVIN: Raise your right hand.

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

13 MR. OCHAB: Yes, I do.

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

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

18 THE WITNESS: Ken Ochab, O-c-h-a-b.

19 MR. GALVIN: Mr. Chairman, do you
20 accept Mr. Ochab's credentials?

21 CHAIRMAN AIBEL: Yes.

22 MR. MATULE: Mr. Ochab, you are
23 familiar with the zoning ordinance and the master
24 plan of the City of Hoboken?

25 THE WITNESS: Yes.

1 MR. MATULE: You are familiar with the
2 proposed site and the surrounding area?

3 THE WITNESS: Yes.

4 MR. MATULE: You prepared a report,
5 dated August 12, 2012 in support of the requested
6 variance relief?

7 THE WITNESS: I did.

8 MR. MATULE: Would you go through your
9 report and give the Board your professional opinion
10 regarding the variances, and obviously you have a
11 picture board, so we will have to mark that A-2.

12 (Exhibit A-2 marked.)

13 THE WITNESS: Yes.

14 We are in the R-2 zone on this
15 particular piece of property, which is 2500 square
16 feet in size, 25 feet of street frontage, and we are
17 proposing a four-story building with four-units.
18 And when we compare that proposed development
19 against the zoning ordinance for the R-2 criteria,
20 the proper variances are necessary.

21 You need a variance for density, where
22 3.78 units are permitted under the ordinance, and we
23 are proposing four units.

24 As you know, we can't round up, so in
25 this case we are requiring a D variance for density.

1 We are also requiring a height variance
2 for 42 feet, where as 40 feet is required. That is
3 actually a C variance for physical height, but we do
4 also require D variance for height where three
5 stories are permitted and four stories are proposed
6 in this case.

7 We are asking for a front yard
8 variance, which is a C variance, where we are
9 providing no setback, zero setback from the front
10 yard, where five or ten feet is required.

11 We are requiring also a lot coverage
12 variance, which is also a C variance, where we have
13 60 percent coverage for the building itself, and an
14 additional 5.8, according to Mr. McNeight, for the
15 fire stairs.

16 VICE CHAIR GREENE: The same table I am
17 looking at shows a five foot front yard setback, so
18 that was amended?

19 THE WITNESS: Yes, it has.

20 If you look in my report, the report
21 has changed.

22 VICE CHAIR GREENE: This is premeeting?

23 THE WITNESS: Yes. I didn't have the
24 opportunity to refile the report. Okay. So as far
25 as the -- we need a front yard setback.

1 The side yard is okay.

2 The rear yard -- yard is actually okay.

3 We are providing -- 30 feet is required. We are
4 providing 40 feet to the building itself, and 32
5 feet to the back end of the fire stairs. So in
6 either case, we would meet the rear yard setback.

7 Okay. So on the variances, we have the
8 two D variances, the density variance and the
9 building height in terms of number of stories.

10 These two variances are based on --
11 proofs of these variances are based on Coventry
12 criteria, the Municipal Land Use Law and
13 essentially, as you know, because we did this many
14 times, the proof is whether or not what we are
15 proposing is consistent with the general pattern of
16 development in the area with respect to density and
17 also with respect to the building height, number of
18 floors.

19 In that respect, of course, I have a
20 photo board that I provided.

21 Should we mark it?

22 MR. MATULE: Mark it A-2.

23 Just for the record, you took those
24 pictures?

25 THE WITNESS: Yes.

1 MR. MATULE: Approximately when?

2 THE WITNESS: August of last year, so
3 these photographs are also in my report.

4 The upper left photograph is a
5 photograph of the site in question, showing the
6 building frontage and showing the adjacent building
7 to the north.

8 And there is a parking lot to the
9 south, which is 50 feet wide, so it is a
10 single-story building with a basement. Actually it
11 will be removed, if approved, and a new building is
12 being placed here.

13 The photograph in the upper left
14 corner -- upper right corner is a photograph looking
15 north from the site.

16 Here on the extreme left side is the
17 site in question, and adjacent to us is a two-story
18 building, a garage at the first level and occupancy
19 for residents, I suppose, on the second level.

20 Adjacent to that is a four-story
21 building, one, two, three, four-story building, with
22 a front stoop, and adjacent to that to the north,
23 which goes to the corner, is a five-story building
24 that looks like a newly approved within the last
25 decade or so. So we have a one, two, three, four,

1 five-story building.

2 To the lower left, we are looking at
3 the adjacent property to the south, which is a
4 parking lot, surface parking lot, very unusual for
5 Hoboken.

6 Then in the rear, we are looking at the
7 back street property facing the rear of the site in
8 question, which is a five-story building, one, two,
9 three, four, five, and that building occupies a
10 great distance of frontage along the back area, so
11 its presence is striking to the rear yard
12 environment.

13 Then the photograph to the lower right
14 is a photograph of the northern property. That is
15 these properties here on the upper right photograph
16 and the rear again showing the property to
17 immediately the north, which is this building here,
18 which actually covers the entire site, so we have a
19 hundred percent coverage, although only at the first
20 floor level up all the way to the rear.

21 And then the building next to that,
22 which is the four-story building, which is about, I
23 would say, 50 feet in depth, and the fire escape,
24 and then five stories on the building beyond that.

25 So that is the context that we are in

1 with respect to what we are looking at on the
2 property.

3 With respect to the building height
4 issue, as you have seen in the photographs - I will
5 hold them up again - the height, the building -- the
6 highest building to the north is the four-story
7 building, two doors away from us, and the five-story
8 building away from that, so we are proposing four
9 stories where we have five and four-story buildings.

10 To the rear, we are looking at the
11 five-story building, which has presence to the rear
12 yard area.

13 To the south, which I didn't show, but
14 have calculated, there is a mixture of two, three,
15 four, and five-story buildings, as we go to the
16 south, and I can delineate exactly what those
17 buildings are, if you need to see them.

18 So in that context, we are certainly
19 within a four-story environment here, where I think
20 four stories is probably the predominant height,
21 building height, and certainly with the most recent
22 construction, we are more or less at five stories
23 showing the building on the corner and the building
24 to the rear and what have you.

25 So I think with respect to the

1 character of the neighborhood here, four stories is
2 the most predominant building height, and we have
3 been consistent with that.

4 Problems with a four-story building
5 typically would include what is the impact of that
6 fourth story.

7 Here, I don't think the impact is
8 significant with respect to what it is, because our
9 adjacent properties are the two-story building,
10 which is I understand not occupied, but which covers
11 a hundred percent of the property, and, of course,
12 the parking lot to the south, which is again 50 feet
13 in width, so there shouldn't be any impact with
14 respect to that.

15 With respect to the density
16 calculations, here again in my report, I have gone
17 through what I normally do, which is to do an
18 extensive review of the surrounding densities.

19 And here, again, if you look at the
20 property to the north with the exception of this,
21 with the exception of this building here, which, of
22 course, is unoccupied, the two buildings here exceed
23 the density that we are proposing on the property.

24 Here, you know, I will just say that
25 our density projection on the project site is five

1 and a half percent over the allowable density where
2 the four-story building to the north is at 117
3 percent of the density.

4 And the five-story building beyond that
5 is at 32 percent over density, so we are certainly
6 less dense than those properties, and the same can
7 be said to the south.

8 To the south, the densities range from
9 five and a half percent, which is what we are
10 proposing, to 32 percent as we move from the north
11 site to the south.

12 On the west of the project site, which
13 are the two -- two buildings, this one is a
14 five-story, and the four-story building just to the
15 south of that, and again, both new construction, and
16 those two buildings are at -- one is at 118 percent
17 of the required density, and the other one is 32
18 percent over density, so we are at five and half
19 percent over the required density.

20 So in terms of the criteria, which is
21 the Coventry and Grasso criteria, we are looking at
22 a situation where we are consistent with the
23 established density of the area by and large. There
24 is only maybe three or four properties, which are
25 less dense than we are, and those are basically the

1 two and three-story buildings to the south of us.

2 And, again, the detriment or
3 substantial impact of allowing the additional
4 density, I don't see that there is any substantial
5 impairment to the zoned plan or to the immediate
6 area as a result of the proposed density that we are
7 looking at here.

8 With respect to lot coverage, of
9 course, the front yard was mentioned earlier, so let
10 me deal with that.

11 The front yard requirement was a C
12 variance. I believe C-2 criteria is appropriate,
13 which is zero, which matches our front building wall
14 with the building walls of the properties to the
15 north and to the south, with the exception of the
16 parking lot, which has no yard at all. So I think
17 that would be a good planning and design criteria
18 here with respect to how the building relates to the
19 neighborhood.

20 With respect to the lot coverage,
21 again, we are proposing 60 percent lot coverage, and
22 a 40 foot rear yard with a 5.8 percent deck. So the
23 5.8 percent deck takes us over the 60 percent lot
24 coverage and takes us back from the front of the
25 property to the rear to 65.8 feet, so one of the

1 issues here is that if we would comply with the
2 front setback requirement of five feet, and then had
3 a 60 foot building, which is 60 percent coverage,
4 which would be allowable under the R-2 ordinance, we
5 would be at 65 feet from the front yard, so that
6 would only be .8 from where we are today.

7 In terms of lot coverage vis-a-vis how
8 it relates to planning, moving the building up, we
9 need to have access in any case to the rear yard.
10 We are only like .8 percent, if you are looking at
11 how it affects the rear yard, only at .8 percent --
12 where we would be if we followed strict R-2 zoning
13 criteria.

14 With respect to the rear deck, I know
15 that the architect indicated the size. We have
16 eight feet. It is eight foot wide by 18 feet in
17 width, so we have a 25-foot wide lot, so the stairs
18 are inserted into the building. They are not even
19 to the edge or property line to property line, and
20 of the 18 feet, if you look at the plans,
21 approximately half of the 18 feet is utilized for
22 the stairs themselves, so it only has basically half
23 of the deck area, required deck area, for any kind
24 of use.

25 Of that one half, there is a platform

1 area, where you need to turn the stairs, so that,
2 you know, I am not going to guess how much usable
3 and functional area there is to this deck, but it is
4 not an 18 foot wide by an 8 foot deck for enjoyment
5 of the private open space. It is a much less than
6 that, and I would say probably, you know, at least
7 half of that, if not clearly less than that, and I
8 am not certain at this time as to how much open
9 space that would actually create as a result of
10 this.

11 In any case, there is access to the
12 rear yard, so we have a 40-foot rear yard because we
13 have 40 feet underneath the staircase and
14 landscaping that would be close to that area, which,
15 of course, would be suitable for private open space
16 here.

17 The only thing I didn't touch on, which
18 I should, which is the building height variance for
19 physical height in feet, so two feet over 40 feet
20 required, and as discussed, the reason for that is
21 because we are setting the flood elevation on the
22 first floor one foot above the flood -- suggested
23 flood elevation, and that I think is certainly a
24 positive aspect of the application and certainly
25 qualifies the C-2 criteria for the benefit of doing

1 that without any detriment.

2 I would point out, if you look at
3 particularly the building to the north, if you look
4 at the five-story building on the corner, again, we
5 can estimate that that building is 48 to 50 feet in
6 height, and the building adjacent to it, which is
7 certainly an older four-story building, is only a
8 few feet smaller or lower than that, so I would
9 approximate that building at maybe 45 feet high.

10 We are at 42 feet, which should be --
11 call it more or less the same height as the building
12 to the north.

13 So I think I answered the variances
14 more or less from a negative criteria.

15 I don't think there is any substantial
16 detriment to the surrounding area as a result of the
17 variances being requested based on the photo
18 analysis and the density and the height analysis
19 that I conducted, and I don't believe again there
20 would be any substantial impairment to the zoned
21 plan or the zoning ordinance with respect to
22 granting these variances, and they are consistent
23 with the character, existing character, of the
24 neighborhood.

25 MR. MATULE: Just a couple of

1 questions.

2 Under the zoning ordinance right now,
3 the ordinance permits the rear wall of the building
4 to be at 70 feet from the front property line?

5 THE WITNESS: Yes, it does.

6 MR. MATULE: That would contemplate a
7 ten foot yard setback and ten foot building --

8 THE WITNESS: Correct. Because under
9 the ordinance, the front yard set back is either
10 five or ten feet, so if you went back ten feet and
11 had a 60-foot building, which would constitute
12 basically 60 percent coverage, we would be at 70
13 feet, and the ordinance prohibits going beyond 70
14 feet.

15 MR. MATULE: Is it fair to say it
16 prohibits going on beyond 70 feet to preserve the 30
17 foot rear yard requirement --

18 THE WITNESS: Absolutely correct.

19 MR. MATULE: And you heard the
20 testimony of the architect, that one of the reasons
21 for structuring this rear fire stair slash deck on
22 the back of the building was to take that space out
23 of the 60 foot -- 60 percent lot coverage floor
24 plate to be able to create two and three-bedroom
25 apartments on the upper floors?

1 THE WITNESS: I did.

2 MR. MATULE: In your professional
3 opinion, does the benefit of being able to have that
4 third bedroom outweigh any possible negative impact
5 of the five or the .8 percent lot coverage, 5.8
6 percent lot coverage you are asking for?

7 THE WITNESS: I think so, because the
8 additional bedroom would allow for larger families,
9 family sizes and family units and additional space,
10 which every family requires nowadays.

11 And the impact of the additional five
12 and a half or 5.8 percent coverage is really
13 governed towards the back of the -- center of the
14 back of the building, so I don't think that just the
15 fire stairs themselves would have any substantial
16 impact certainly to the immediate properties and, of
17 course, the further away you get from those
18 immediate properties, the less that requirement
19 becomes.

20 MR. MATULE: Thank you.

21 I have no further questions of Mr.
22 Ochab.

23 CHAIRMAN AIBEL: Board members,
24 questions?

25 VICE CHAIR GREENE: I do have a

1 question.

2 Your point about five feet back,
3 60-foot building, if you add an eight foot deck to
4 that, wouldn't you then meet the rear yard variance?

5 I am trying to compare apples to
6 apples.

7 THE WITNESS: No.

8 To my understanding, with respect to
9 the rear yard calculation, the rear yard calculation
10 is to the wall of the building, so the deck doesn't
11 necessarily count as for setback purposes, but it
12 conforms for building coverage purposes.

13 VICE CHAIR GREENE: All right.

14 COMMISSIONER BRANCIFORTE: I need to
15 point out and ask you something, something that I
16 always seem to point out on every plan.

17 How high -- you are talking about the
18 building being 45 feet high?

19 THE WITNESS: 42.

20 COMMISSIONER BRANCIFORTE: 42 to the
21 roof line.

22 So we don't include the parapet on top.
23 The top of the parapet is another three feet. Now
24 we are talking about the building being up to 40 --
25 47 feet 7 inches from what I see --

1 THE WITNESS: You see it on the plan --

2 MR. MATULE: Do you want me to get Mr.
3 McNeight?

4 COMMISSIONER BRANCIFORTE: I want to
5 know how this is going to compare.

6 When you talk about the buildings to
7 the north of this building, and you speak about
8 their height, are you talking about the height to
9 the roof line or the height to the top of the
10 parapet?

11 THE WITNESS: The building immediately
12 to the north does not have a parapet.

13 COMMISSIONER BRANCIFORTE: To the roof
14 line?

15 THE WITNESS: Yes.

16 COMMISSIONER BRANCIFORTE: To the top
17 of the facade let me say.

18 THE WITNESS: What was your question?

19 COMMISSIONER BRANCIFORTE: The building
20 to the north, how tall is that, and where do you
21 measure it to from the -- from the grade to --

22 THE WITNESS: I didn't actually
23 physically measure it to the north, but visually
24 looking at it, our building is certainly not as high
25 as that.

1 (Board members all talking at once.)

2 MR. MC NEIGHT: We have to block that.

3 COMMISSIONER BRANCIFORTE: You are
4 going back to the same thing talking about a
5 building 42 feet high, but we still have to add on
6 three feet for the parapet on top.

7 THE WITNESS: Are you on Z-2?

8 Then you can see our building height
9 with respect to the buildings to the north.

10 COMMISSIONER BRANCIFORTE: It says not
11 to scale, so I don't trust it.

12 THE WITNESS: I can't help you with
13 that.

14 (Laughter)

15 COMMISSIONER BRANCIFORTE: All right,
16 sir.

17 It is the same old story. We are
18 always talking about to the roof line rather than
19 the top of the facade.

20 MR. MATULE: Well, that is what the
21 zoning ordinance -- is what the zoning ordinance
22 calls for to measure the top of the roof line --

23 COMMISSIONER BRANCIFORTE: When we are
24 talking about esthetics on the rest of the block --

25 THE WITNESS: I have to discuss it in

1 terms of how the ordinance defines the building
2 code, that is the way. But I see your point.

3 COMMISSIONER BRANCIFORTE: It is fine
4 when they say it will fit in with the rest of the
5 block, but if you are talking about the zoning
6 planning aspect, don't talk about --

7 THE WITNESS: I am looking at Mr.
8 McNeight's Z-2 street profile. Based on the
9 information --

10 COMMISSIOENR BRANCIFORTE: -- I always
11 feel that you need to point it out.

12 You always have to talk about being
13 misled, that the building is only 42 feet high --

14 (Everybody talking at once.)

15 CHAIRMAN AIBEL: Would it help if we
16 had a scaled diagram?

17 MS. VANDOR: He --

18 CHAIRMAN AIBEL: I am asking Mr.
19 Branciforte if it would be helpful to him to have a
20 scaled diagram to get assurance that the building
21 height was not in excess of those to the north.

22 COMMISSIONER BRANCIFORTE: You know, I
23 am undecided --

24 THE WITNESS: Just to comment, if you
25 look at the building to the north, the first one on

1 Z-2, there are at least four full --

2 COMMISSIONER BRANCIFORTE: Well,
3 anyway --

4 THE WITNESS: -- and a half story to
5 the basement, so if you consider ten foot floors,
6 and then a half floor, that is 45 feet.

7 COMMISSIONER BRANCIFORTE: -- okay.
8 Okay. I am fine, Mr. Chair.

9 Thank you.

10 CHAIRMAN AIBEL: Any other Board
11 members?

12 Okay. Mr. Ochab, obviously one of my
13 concerns is the impact of the decks in the back of
14 the building.

15 Are there other properties nearby with
16 outdoor decks?

17 THE WITNESS: Hum, no.

18 CHAIRMAN AIBEL: Are there any decks on
19 the property to the west of your property?

20 THE WITNESS: It looks like there are
21 balconies, but they are smaller. They relate
22 basically to one window opening, one sliding glass
23 door opening, but it looks like those balconies are
24 perhaps eight feet wide by, you know, if you want me
25 to get -- on the photograph I can't tell.

1 CHAIRMAN AIBEL: This may have been
2 something that the architect already addressed, so I
3 apologize.

4 But who has access to the back yard?

5 THE WITNESS: That might be a question
6 for Mr. McNeight.

7 CHAIRMAN AIBEL: Is it a common area?

8 MR. MATULE: I don't know. I don't
9 think we addressed that. We could ask.

10 The answer is the first floor, whoever
11 the occupant of the first floor is, would have
12 access to the backyard.

13 CHAIRMAN AIBEL: So it wouldn't be
14 accessible by the fire escape by other apartments?

15 MR. MATULE: Only for emergency egress
16 in an emergency.

17 CHAIRMAN AIBEL: Okay. I am okay.

18 Mr. Boucher?

19 COMMISSIONER BOUCHER: Looking at these
20 photographs, I was not clear what this is to the
21 north in the backyard.

22 THE WITNESS: To the north?

23 COMMISSIONER BOUCHER: Yes.

24 Is that a fence or a building?

25 THE WITNESS: That is actually a

1 building here. This line here is on the lower right
2 photograph of A-2, yes, that line is the roof line.

3 The white bar is the roof line of the
4 building. To immediately the north, there is a
5 hundred percent coverage on the lot.

6 COMMISSIONER BOUCHER: Do you know if
7 that it a residence or storage?

8 THE WITNESS: That is the building that
9 was under foreclosure. I believe it was abandoned,
10 but the front of the building has a garage door, so
11 it leads me to believe there was some nonresidential
12 use going on at that level in the past.

13 COMMISSIONER BOUCHER: Okay, thanks.

14 CHAIRMAN AIBEL: Okay.

15 COMMISSIONER BRANCIFORTE: I'm sorry.

16 One of the questions, and this is
17 probably for the architect, on Z-1 in the backyard
18 it says paver patio, and then it has like a little
19 square or a note. What is that?

20 MR. MARSDEN: French drain. That was
21 one of my questions.

22 MR. MC NEIGHT: What are you referring
23 to?

24 MR. MATULE: The "FD" in the middle.
25 This says "FD." Is that a drain?

1 MR. MC NEIGHT: Yes, floor drain.

2 COMMISSIONER BRANCIFORTE: Thank you.

3 While you are asking, can I ask a quick
4 question?

5 The survey shows a wall in the rear
6 yard encroaching. Will that be remaining or --

7 MR. MC NEIGHT: Currently there is a
8 curb there just to stop the cars.

9 The backyard of this property is
10 approximately a foot higher than that property, so
11 when we, you know, the proposed final, we will go --
12 most likely we will leave that alone and just put
13 the --

14 MR. MARSDEN: So the wall will remain?
15 That was my question.

16 MR. MC NEIGHT: Yes.

17 VICE CHAIR GREENE: Mr. McNeight, can
18 you address the issue of the trash and recycling?

19 You said each unit would be responsible
20 for taking out their own trash to a central
21 collection point.

22 Is that fairly typical of a building
23 like this in town?

24 MR. MC NEIGHT: Yes, yes.

25 I mean, living in town, I lived in town

1 for 30 years, and that is what I do. You know, you
2 bring the garbage down after nine o'clock on the
3 appropriate night, put the bag on the curb, and they
4 come an hour later.

5 CHAIRMAN AIBEL: Any other Board
6 members?

7 I'll open it up to the public for
8 questions of the planner.

9 MS. MARKLE: I had a question.

10 CHAIRMAN AIBEL: Come up,
11 Rosemary Markle, 60 Grand Street.

12 The question I had before, two extra
13 feet, does that fit into the master plan with
14 Hoboken?

15 I understand -- I am not asking about
16 variances. What about the master plan?

17 THE WITNESS: The master plan doesn't
18 specifically talk about the height. It relies on
19 the zoning ordinance to do that, and so the zoning
20 ordinance specifies the height, and then there is
21 criteria -- if you don't meet the height, there is
22 specific -- which I talked about use the Land Use
23 Law, which gives the Board information how to use
24 that --

25 MS. MARKLE: So it is 40 feet, but

1 maybe it is not because there was a lot of mumbo
2 jumbo that I didn't understand, but we will just let
3 it go.

4 So you are saying that the variances --
5 am I allowed to go along these --

6 MR. GALVIN: As long as you are asking
7 questions. I am being careful and monitoring --

8 MS. MARKLE: Thank you, because I know
9 none of you will be happy with me.

10 MR. GALVIN: Why?

11 MS. MARKLE: Your reason in asking for
12 these variances, I want to make sure I get it
13 straight, is because it was given to other buildings
14 in the neighborhood, because it doesn't actually
15 enhance the neighborhood. It doesn't help the
16 neighbors who live there.

17 MR. GALVIN: Now you are straying. Now
18 you are telling us something. You can tell us soon,
19 okay?

20 MS. MARKLE: Is that your reasoning?

21 THE WITNESS: No.

22 MS. MARKLE: That is the only reason I
23 heard.

24 MR. GALVIN: Now you have to let him
25 answer.

1 MS. MARKLE: Go ahead.

2 THE WITNESS: I have to answer.

3 The basic reasoning is the basic Land
4 Use Law and case law that governs the variances,
5 allows the Board to act. I believe what we are
6 proposing is consistent with the character of the
7 neighborhood, so that is why I testified about the
8 building heights in the area and the density per
9 unit per building in the area.

10 And my conclusion based on the analysis
11 I did was that both of them with respect to height
12 and with respect to the number of units equals a
13 density consistent with the existing character of
14 the neighborhood.

15 MS. MARKLE: Okay. Right.

16 But on your proposed property, there
17 are these decks, fire escapes, but that is not
18 within any -- right, you admitted nobody in that
19 area has those, the decks?

20 THE WITNESS: Right. We are proposing,
21 like it was mentioned, an eight-foot deep fire
22 stairs by 18 feet wide, which is set back four feet
23 from each side, so that they are in the center of
24 the building. But, yes, we still need a variance
25 for that because it exceeds our coverage.

1 MS. MARKLE: But there is nobody else
2 in the immediate vicinity that has any, correct?

3 THE WITNESS: That is what I said.

4 MS. MARKLE: There were things I wanted
5 to clarify, but that is not my job to do.

6 MR. GALVIN: Go ahead.

7 MS. MARKLE: You asked about balconies.

8 MR. GALVIN: Ask him.

9 MS. MARKLE: I was going to tell him he
10 didn't know how to clarify that.

11 MR. GALVIN: Just hang in there.

12 MS. MARKLE: He answered my question
13 because you answered it for me.

14 CHAIRMAN AIBEL: Any other questions of
15 the planner from the public?

16 Seeing none, motion?

17 COMMISSIONER CRIMMINS: Motion to close
18 the public portion.

19 COMMISSIONER BOUCHER: Second.

20 CHAIRMAN AIBEL: Open to the public
21 comment.

22 MS. MARKLE: I wanted --

23 MR. GALVIN: Wait a minute.

24 Raise your right hand because now you
25 are testifying.

1 Do you swear to tell the truth, the
2 whole truth, and nothing but the truth so help you
3 God?

4 MS. MARKEL: Yes.

5 MR. GALVIN: State your full name for
6 the record and spell your last name.

7 MS. MARKEL: Rosemarie Markel,
8 M-a-r-k-e-l, 60 Grand Street.

9 MR. GALVIN: Thank you.
10 Tell us whatever you want about this
11 case.

12 MS. MARKLE: In my opinion, the answer
13 he was giving was because of the community in large,
14 and I fought every property against me because I
15 feel it is absurd.

16 Those back decks, you know, for
17 whatever you want to say, they will be party decks.
18 You have three-bedroom apartments, and waht nobody
19 here mentioned is there was a bar 50 feet away,
20 Willy McBride.

21 There is not one family in this world
22 that will stay in the apartment because I live on
23 the block, and I know what it like to live next to
24 the bar. I call the cops almost every weekend.

25 So to say to me we can't bring the

1 properties back, you will not get families, to get
2 the excuse in is what we did in the past does not
3 help the community.

4 This is where I have lived for 52
5 years, and yet he said my house is more dense than
6 the rest. Sorry for that. I can't do it. I owned
7 it since 1924, and it has been in my family. It
8 doesn't help my community.

9 We are talking about three bedrooms,
10 three -- 12 more cars on the block without any
11 parking.

12 So far as balconies, there are no
13 balconies in the back buildings. Those are just
14 like a little fancy thing with a French door that
15 opens up.

16 I fought the building because it is
17 three feet above my head, because they have complete
18 access to my roof, and they use their roof. I don't
19 know if this roof will be used because we are told
20 one thing, and when they build it, it's a whole
21 other story.

22 They are asking for 65.8 feet when the
23 property next to it, which is abandoned, and that
24 used to be a garage on the ground floor, which is
25 falling apart, and then they come in and say we want

1 72 feet because you gave him 65.

2 I have been here more times here
3 fighting properties. I fought Lexington for five
4 years, and yet we came here, and they allowed them
5 to go higher, 501, whatever he has over there.

6 Half of those apartments are empty by
7 the way, so I am asking you to take me and my
8 thinking into consideration.

9 My tenants were there 30 years. That
10 is what we deal with. The bar, that will not be
11 families that live in the apartments.

12 He is directly butted up against that
13 bar who have the side doors open every weekend.
14 These people will be in and out of them.

15 Are these condominiums or rentals?

16 MR. MATULE: I think they will probably
17 be condominiums. It really depends on the market.

18 MS. MARKLE: Maybe a condo owner will
19 say it may be not.

20 I hope you take it into consideration
21 because I was here more times than I could shake a
22 stick at, but I always lose.

23 Thank you for your time.

24 VICE CHAIR GREENE: Can I ask you a few
25 questions based on your testimony?

1 MS. MARKLE: I live --

2 VICE CHAIR GREENE: I take it that you
3 live at --

4 MS. MARKLE: -- the beige white one.

5 VICE CHAIR GREENE: The four-story?

6 MS. MARKLE: The old one.

7 VICE CHAIR GREENE: You occupy the
8 floor --

9 MS. MARKLE: I live on the top floor.
10 They are not ten foot floors. I am setting the
11 record straight.

12 VICE CHAIR GREENE: I understand from
13 what you said that you oppose any new building
14 taking place on the block?

15 MS. MARKLE: That goes above what the
16 law allows.

17 VICE CHAIR GREENE: So for comparative
18 purposes, if the applicant that was here, or perhaps
19 he is not even here, because he is building a
20 compliant building, so his building would be 40 feet
21 high, three stories, three apartments, it would not
22 have -- it would either be shorter and have decks or
23 be --

24 MS. MARKLE: Well --

25 VICE CHAIR GREENE: -- and not have

1 decks.

2 How is this proposal more impacted on
3 you than what I just described?

4 What is the differential to you on your
5 lifestyle, on your view of your vision of the block?

6 What is the difference?

7 MS. MARKLE: The difference is you have
8 more height.

9 I have to tell you that since the
10 property went up around me, I used to have sun in my
11 yard until five or six --

12 VICE CHAIR GREENE: Talking about the
13 property --

14 MS. MARKLE: -- that created --

15 VICE CHAIR GREENE: -- you are on the
16 top floor, and this building will not be as high as
17 your building --

18 MS. MARKLE: Can I state something?

19 That is what she said. I have been
20 here. I watched it go up and approve one thing and
21 build it differently. I have seen it too many
22 times. Lexington was supposed to be the height of
23 my building, but it is not. It is above me. The
24 roof line is above me.

25 VICE CHAIR GREENE: Do you have

1 windows?

2 MS. MARKLE: No. I was told I can't
3 have them.

4 VICE CHAIR GREENE: Because they are
5 lot line and you can't have windows on the lot
6 line --

7 MS. MARKLE: When you have decks on any
8 building, you will have people out there all night.
9 It's bad enough I have to live with the bar. I try
10 to open my back windows, but it is impossible.

11 VICE CHAIR GREENE: So it is
12 impossible --

13 MS. MARKLE: Sure. Do you think it
14 will make it better?

15 VICE CHAIR GREENE: Will it make it
16 worse?

17 MS. MARKLE: Yes.

18 VICE CHAIR GREENE: But if you can't
19 open them now, what is --

20 MS. MARKLE: I have side windows. When
21 it is nice, I try to open them up.

22 VICE CHAIR GREENE: You think that
23 these decks wouldn't allow you to --

24 MS. MARKLE: I am sure when people get
25 out yelling and screaming, very little -- not that

1 anybody sees it that way. You are putting me on the
2 stand now because you know you are arguing. I live
3 there. These people here do not live here.

4 MR. GALVIN: You are under oath.

5 VICE CHAIR GREENE: We are here trying
6 to judge the circumstances and determine whether or
7 not the application is worthy of consideration. You
8 are here to tell us why you think it isn't.

9 I am trying to understand.

10 MS. MARKLE: So if you build what you
11 just said, maybe those decks wouldn't be so bad
12 because he would be behind instead of out, if they
13 build within the parameters.

14 I don't understand why anybody comes
15 here and says they want a variance. Why can't they
16 build within the law?

17 I wouldn't be here. I couldn't say a
18 damn thing, could I?

19 VICE CHAIR GREENE: In your opinion,
20 nobody should be able to seek relief because their
21 property requires under the circumstances --
22 required -- in other words, your building could not
23 have been built. The building that you are in under
24 current code would have required a variance. Do you
25 understand that?

1 MS. MARKLE: Yes. My building is over
2 a hundred --

3 VICE CHAIR GREENE: I am not trying to
4 complicate it. I am trying to understand.

5 MS. MARKLE: I understood why variances
6 were given in the past was because Hoboken needed to
7 be developed, but it went out of control.

8 VICE CHAIR GREENE: So at the end of
9 the day, if you had your druthers, you would prefer
10 the building and the building next --

11 MS. MARKLE: No. They are rat infested
12 buildings. They were vacant since 2005.

13 Build them under the law is what I am
14 asking.

15 VICE CHAIR GREENE: Thank you.

16 UNIDENTIFIED VOICE: Is it open to
17 questions?

18 MR. GALVIN: Stand up.

19 Do you swear to tell the truth, the
20 whole truth, and nothing but the truth so help you
21 God?

22 MS. MENITILLO: Yes.

23 MR. GALVIN: State your name full name
24 and spell your last name for the record.

25 MS. MENITILLO: Teresa Menitillo,

1 M-e-n-i-t-i-l-l-o, 811 Bloomfield Street.

2 Okay. I am just wondering, there are
3 ordinances that they say 50 percent lot coverage and
4 height minimums that builders are allowed to build.
5 Yet, I am I wondering who has the burden of proof.

6 MR. GALVIN: They have the burden of
7 proof. We are the judge reasoning to the fact --

8 MS. MENITILLO: What they want is more
9 important than the residents of the building.

10 MR. GALVIN: No, that is not a fair
11 understanding.

12 They have to show that the benefits --
13 in most instances they have to show that the
14 benefits outweigh the detriments. They do have to
15 take into consideration and explain how the
16 improvements, what the effect will be on the
17 surrounding property, so it is important criteria,
18 and we are listening very carefully.

19 MS. MENITILLO: So you get to decide
20 who made a better argument?

21 So they have a planner, an architect
22 and an attorney speaking on their behalf, and you
23 have just a resident who lives around the corner?

24 MR. GALVIN: Someties we have nobody,
25 more times than not,

1 MS. MENITILLO: You are saying they
2 have the burden to convince you what they want, but
3 they are coming armed with all professionals.

4 MR. GALVIN: You have the same right to
5 bring an attorney, and you could put on a case, an
6 opposing case.

7 MS. MENITILLO: Do you represent the
8 city?

9 MR. GALVIN: The Zoning Board

10 MS. MENITILLO: I don't feel that you
11 are representing me as a property owner.

12 MR. GALVIN: What you are saying to me
13 is kind of beyond the scope.

14 We are not like the Council. We are
15 like the Municipal Court Judge. We are listening to
16 the case and we decide for or against it based on
17 our understanding of the facts and the law that
18 applies in the case.

19 MS. MENITILLO: Then you don't
20 represent the ordinances of the city?

21 MR. GALVIN: We do. We are the
22 guardians of the ordinances and should be careful
23 not to grant variances, but when the applicant comes
24 in and makes a case that is in accordance with the
25 law, that is what variances are there --

1 MS. MENITILLO: This is my first
2 meeting. Forgive me for being so naive.

3 I do feel that any argument that a
4 builder could make is readily accepted.

5 MR. GALVIN: I think you guys have been
6 very unfair to us. The first case --

7 (Ms. Menitillo talking at the same time
8 as Mr. Galvin.)

9 THE REPORTER: You have to speak one at
10 a time.

11 MR. GALVIN: I am responding --

12 MS. MENITILLO: But I didn't finish the
13 sentence.

14 MR. GALVIN: Finish your sentence --

15 MS. MENITILLO: The burden of proofs,
16 it is much harder on the residents and people who
17 actually do live on the block or next to the
18 property that are being discussed.

19 MR. GALVIN: Are you finished?

20 MS. MENITILLO: Yes.

21 MR. GALVIN: So far tonight we didn't
22 decide a case. We carried it to another night, so
23 therefore, we made no decision.

24 The second case was a site plan case
25 that was administrative because we previously

1 granted variances. They had to go to other outside
2 agencies to get approvals.

3 Once they get them, they come back and
4 we voted yes.

5 This is the third application we had on
6 tonight. You have not heard the Board deliberate --

7 MS. MENITILLO: But I hear there are
8 ordinances and they set the tone of the building.

9 So far I lived in the city close to 25
10 years, and I see over-development and the density of
11 all of the new things being done, and I see what is
12 happening on my block.

13 I see residents trying to come in and
14 explain the impact on one person because you will
15 not get ten or 20 people out in the evening,

16 I feel as if --

17 MR. GALVIN: We don't count heads.

18 MS. MENITILLO: -- I feel that the
19 weight is not evenly distributed.

20 MR. GALVIN: I think you are making
21 that conclusion way too quickly with insufficient
22 information.

23 These are very hard working people.
24 They are here at least two nights a month giving up
25 their time all night long --

1 MS. MENITILLO: I appreciate it.

2 MR. GALVIN: -- and they are being very
3 careful about the variances that they give, but the
4 law requires us to give fair consideration to an
5 applicant.

6 What if it was your house?

7 What if you decided you needed a change
8 in your house?

9 You would look to us to give you a fair
10 shot.

11 MS. MENITILLO: Again, I see there are
12 rules and regulations and ordinances, and I believe
13 that that is where the city needs to be. I feel
14 that the city and the Board needs to dictate under
15 ordinary circumstances --

16 MR. GALVIN: That is not the law --

17 MS. MENITILLO: -- I think if you
18 listened or the residents were listened to, more of
19 the impact that over-development is having on the
20 city in general, I believe it would -- it should
21 make a difference --

22 MR. GALVIN: I respect your opinion.

23 Thank you.

24 CHAIRMAN AIBEL: Let me just comment

25 You need the right body to be appealing

1 to. In that context it's the city council --

2 MS. MENITILLO: Who would that be?

3 CHAIRMAN AIBEL: If you have a council
4 member, you should approach that --

5 MS. MENITILLO: To change ordinances or
6 ask for greater support of the ordinances? Sorry.

7 CHAIRMAN AIBEL: -- if it would be to
8 express your view of the way the ordinances are
9 currently structured, and maybe you will see our
10 Board in operation in a couple of minutes, and how
11 we assess the criteria.

12 But as counsel said, we have a code we
13 try to enforce, but variance relief is part of the
14 legal right of an applicant who holds property, and
15 we are listening to that case trying to make a fair
16 decision.

17 So I think what you just expressed is a
18 point of view that everybody here heard and will
19 take into consideration as we deliberate.

20 MS. MENITILLO: Thank you.

21 CHAIRMAN AIBEL: Any other public
22 comments?

23 Mr. Matule?

24 COMMISSIONER CRIMMINS: Motion to close
25 the public portion.

1 VICE CHAIR GREENE: Second.

2 CHAIRMAN AIBEL: Mr. Matule?

3 MR. MATULE: I thought Ms. Vandor
4 wanted to be recognized.

5 MS. VANDOR: Can I make a comment
6 before Mr. Matule speaks, because I assume it will
7 be his closing.

8 MR. MATULE: I will make some comments
9 and close, yes.

10 MS. VANDOR: I just wanted to clarify
11 something about building height on the record both
12 for the Board members and the members of the public,
13 and it does relate to the master plan and what the
14 zoning ordinance currently says.

15 The master plan in 2004, which did not
16 result in a lot of zoning amendments, recommended
17 keeping the general building height at 40 feet above
18 base flood elevation. However, you should
19 understand what it means.

20 Base flood elevation is an elevation
21 above the apparent grade of a site, like the
22 sidewalk grade that is developed by other agencies.
23 It is a meeting point because it relates to where
24 floods are likely to happen, and it determines the
25 point below which you cannot construct a residential

1 floor.

2 In Hoboken, because of its former life
3 as marshland and an island, within a single block
4 front you could have a variance of ten or more feet.
5 So every individual site is entitled to construct
6 the building where the building itself contains 40
7 feet of structure above whatever that designated
8 point is.

9 Now, in recent, very recent history
10 because of Sandy and other major storm events, those
11 agencies which determine where that so-called base
12 flood elevation point is have raised it, okay?

13 The intent of the master plan and the
14 zoning ordinance as it is written is to being fair
15 to the individual property owners, so everybody who
16 wants to build a building gets to have 40 foot of
17 structure, and nobody is penalized for the part
18 where you cannot build, which is the part below base
19 flood elevation.

20 The project tonight started out
21 initially requesting 40-foot above base flood
22 elevation. Our engineer pointed out the number they
23 were using was not correct. It is too complicated
24 to discuss nine feet versus ten feet, so 41 feet, it
25 was corrected to 41 feet above BFE, which only

1 to that?

2 Whatever elevation DEP or FEMA sets,
3 they want the first floor -- the top of your surface
4 of the first floor to be one foot above it. That
5 was the difference between 40 and 41 feet. They do
6 that because of the elevation depth of girders at
7 homes, and all mechanicals or electricals are run
8 within that distance.

9 If you set the first floor at the base
10 flood elevation, when it hits the hundred-year
11 storm, your electricals and mechanicals, everything
12 within the twelve inches will be destroyed, so they
13 say build it one foot above, so when you get base
14 flood, you don't have to replace all of the
15 mechanical and electrical devices within that
16 distance.

17 MR. GALVIN: The other thing,
18 Ms. Markle, I have a question.

19 MS. MARKLE: Yes.

20 MR. GALVIN: Did you have any flooding
21 in the Sandy hurricane?

22 MS. MARKLE: Sure, I did.

23 What a question to ask. Even
24 Lexington --

25 MR. GALVIN: Well, most of it did. I

1 just wanted to ask that. That is all.

2 That was my reasoning. I apologize for
3 bringing up a need for the variance, but I am
4 concerned with trying to do things that are good
5 zoning, that are smart, so we can try to lower the
6 risk. But if there was no planning at all, I would
7 say something else.

8 CHAIRMAN AIBEL: I think we are ready
9 to hear from Mr. Matule.

10 MR. MATULE: Thank you, Mr. Chair.

11 Just by way of some general comments, I
12 can certainly appreciate, and I mean no disrespect,
13 but from a lay person's point of view, maybe this
14 process looks different.

15 You know, I am here every month.
16 Dennis Galvin, the Board attorney, is here every
17 month or in other towns. That is what we do for a
18 living. And I just from time to time, I always have
19 to come back to the quote of Judge Harris, that a
20 zoning variance is a full fledged right of an
21 applicant as long as he could meet his burden of
22 proof.

23 There seems to be sometimes just
24 negative connotations that a variance is a bad
25 thing, and we are asking for variance, you are

1 asking for six variances rather than three, so that
2 means there is a less favorable application.

3 A lot of it is dictated by the facts on
4 the ground, so I just don't think that it is not an
5 adversarial proceeding like a trial, but we still
6 have the burden of proof, and that is why we bring
7 in an architect and a planner to try to present the
8 facts in the context of the law and the zoning
9 ordinance.

10 I heard, and my client has heard you
11 going back and forth here about this lot coverage,
12 this additional lot coverage for the rear.

13 Basically what we are wrestling with
14 is, and you know, if I had input into the ordinance,
15 there would be some, like I think in some zones,
16 there is ten percent additional for access required
17 structures allowed, or there used to be, so you
18 could have a freestanding garage, and maybe we need
19 something like that in our ordinance to address it,
20 because there is an inherent -- between having to
21 have a family-friendly unit by building it within a
22 24 or 25 foot box.

23 So, you know, I have spoken to the
24 architect. I have spoken to the client, and we
25 really would like to keep those units three-bedroom

1 units, and of course, what weighs on that is having
2 these rear fire stairs.

3 After consulting with the architect, he
4 tells me the minimum we can shrink that down to make
5 it a workable fire stair in terms of the code and
6 everything to make in terms in egress would be 14
7 feet wide and 7 feet deep, which would result in a
8 98 square footprint, if you will, which is I think
9 93 percent lot coverage based on the 7 by 14.

10 So what we would like to do is amend
11 our application to reduce the size of that deck to 7
12 by 14, so it really becomes a -- you know,
13 unquestionably its primary function is as a second
14 means of egress.

15 Will there be a little space at each
16 end?

17 Yes, I guess if somebody goes out there
18 to smoke a cigar in the summertime.

19 Otherwise this building is a pretty,
20 you know, it is a forward based building. It is 42
21 feet high because of these zoning issues that we
22 have to address. It is what the zoning ordinance
23 contemplates.

24 Many of you have been on Boards long
25 enough to know that it always was the intention of

1 the ordinance to round it up, always round it up to
2 four, because of Judge Galipoli's decision that is
3 now a variance, and hopefully that will be fixed in
4 the zoning ordinance as will the three floors versus
5 four floors. But that is the deck of cards, the
6 hand we are dealt, and that is what we have to work
7 with now. Otherwise, we think this is a very good
8 application.

9 I certainly appreciate Ms. Markle's
10 concerns, but I don't think this building will
11 impact her. This is about as, you know, a plain
12 vanilla four-family, four-story house as you can
13 get. Frankly, it started out a lot bigger, and
14 after we reviewed the application, we made some
15 changes to try to address those concerns.

16 What has happened in the past in your
17 neighborhood, I can't say, but I don't think this by
18 any stretch of the imagination is pushing the
19 envelope.

20 And the planner's testimony I think was
21 very strong that based on the existing density and
22 existing size of the structures in the neighborhood,
23 it is certainly consistent with the neighborhood
24 pattern.

25 So with that amendment, I would ask

1 that the Board grant the requested variance approval
2 and minor site plan approval.

3 I will also ask that in light of -- I'm
4 sorry, I'm drawing a blank -- in light of the one
5 Board member recusing herself, to carry the vote to
6 next month. I would like a full seven-member vote
7 on it, talking about Ms. Pincus.

8 (Board members confer)

9 MR. GALVIN: That is what we said at
10 the beginning of the hearing and we won't deliberate
11 at this point. Your deliberations will be kept
12 until --

13 CHAIRMAN AIBEL: Here is my concern.
14 We have no assurance that we will have a
15 seven-member Board any time soon.

16 MR. GALVIN: Then we will have to keep
17 carrying it.

18 COMMISSIONER CRIMMINS: Or they can go
19 forward.

20 CHAIRMAN AIBEL: Let me ask you this:
21 Should we have deliberations and --

22 MR. GALVIN: You are the boss. You
23 can, if you want to.

24 MR. GALVIN: Also from the perspective,
25 if you were suggesting changes, and that would give

1 them the opportunity to make the changes.

2 CHAIRMAN AIBEL: I am inclined to think
3 we should have a conversation to air the issues.
4 Whoever reads the transcript will have the benefit
5 of the process, thought process, of the Board
6 members here, but that is my point of view.

7 Let me ask my colleagues: Would you
8 want to deliberate this evening, make a record for
9 the next Board member on the Board who would read
10 the transcript and be in the position to vote?

11 Is that agreeable?

12 COMMISSIONER BOUCHER: Yes, I agree.

13 COMMISSIONER DE FUSCO: I think the
14 Chairman said it best.

15 There is still uncertainty when the
16 seven-member Board could be here, and as long as
17 that is made clear to the applicant that that could
18 be more than a month from now, I am okay with it.
19 But I think we should make abundantly clear that we
20 don't know when the seventh person --

21 VICE CHAIR GREENE: We are waiting for
22 the --

23 (Everyone talking at once.)

24 MR. GALVIN: No. I am almost against
25 it. You can say how you feel about it, and then the

1 applicant can judge.

2 If there is something that you don't
3 like and want to --

4 COMMISSIONER CRIMMINS: I am fine with
5 going forward.

6 (Board members all talking at once)

7 CHAIRMAN AIBEL: We will make a record,
8 and your applicant will have time for a decision,
9 and we will decide when we have a new seventh board
10 member.

11 MR. GALVIN: No. We will carry it.

12 My recommendation is to carry it to the
13 February meeting because then they would have to
14 notice.

15 Then what we will do, if we have the
16 seventh person, we can elect whether to keep it on
17 the agenda or carry it to another night.

18 COMMISSIONER BRANCIFORTE: Based on
19 what we heard tonight, the applicant may or may not
20 say fine. I will go with who is here. We always
21 have the option.

22 MR. MARSDEN: Can I ask if we were
23 doing it, request that he make the modifications on
24 his plans that we proposed, so we have a new set of
25 plans?

1 MR. MATULE: Sure. We would have them.

2 COMMISSIONER CRIMMINS: That was just
3 the fire steps --

4 MR. MARSDEN: Elevation.

5 COMMISSIONER CRIMMINS: -- elevation
6 and the fire steps.

7 CHAIRMAN AIBEL: Ms. Vandor --

8 MS. VANDOR: I can't hear you. I'm
9 sorry. Start again, please.

10 VICE CHAIR GREENE: -- as long as we
11 have the benefit of you being here, I have a
12 question regarding the facade variance, masonry.

13 MS. VANDOR: Yes.

14 VICE CHAIR GREENE: I would like you to
15 comment on the proposed facade versus what would be
16 required under the ordinance.

17 MS. VANDOR: First of all, since you
18 asked me, I happen to think it is a very nice
19 looking facade. Because of the way the calculation
20 is done, the windows provided are particularly
21 large, and I think they are on this building, and I
22 happen to like large windows, It leaves a smaller
23 amount of material, smaller amount of the hard
24 materials of the facade itself.

25 The rest of the calculation, which

1 compares masonry to non masonry is, of course,
2 relative percentages of that material, the non
3 fenestration material, if the architect uses metal,
4 and I think that is your primary non masonry
5 material, which again, I happen to find attractive
6 and modern looking. It happens to be a material
7 that wasn't identified as -- I wrote the ordinance,
8 so blame me for being unimaginative.

9 At that point the whole town was
10 stucco, so we were trying to prevent too much
11 stucco, the fake stucco, so it became masonry, non
12 masonry.

13 From my point of view, in a situation
14 like this, it is not the number so much that you
15 need to look at, but the facade itself, and do the
16 esthetics of the chosen materials appeal to you, so
17 that you can justify that difference, which that is
18 really what it is about, masonry versus non masonry,
19 and metal was just not identified.

20 VICE CHAIR GREENE: Thank you.

21 CHAIRMAN AIBEL: Anyone who wishes to
22 start off?

23 COMMISSIOENR BRANCIFORTE: I'm sorry.

24 I am listening to the argument of the
25 neighbor, Ms. Markle, and I have to agree with her.

1 It has always been a point of
2 contention to me, a building like Lexington, and
3 they asked for variance ten years ago. They had
4 special considerations. They had special reasons.
5 They were -- their criteria must have been very
6 different than now, so I always think it is not the
7 greatest thing of the Board that we see a building
8 to go up on the corner to deny a D variance for
9 height, and then we consider that.

10 You know, as part of the height of the
11 entire block, when we look at this project, I just
12 always have been very shaken on that. But the idea
13 of being a family-friendly building, I am not sure
14 what "family-friendly" is. It seems like it has
15 such a vague definition, that it doesn't even mean
16 anything to me.

17 But this is what I know about
18 family-friendly units, not having kids, but living
19 in a building on Garden Street, I was on what you
20 consider the third floor.

21 Every person in the 12 years that I
22 lived there, the second they got pregnant was, "I am
23 not carrying kids up three or four flights of
24 stairs," and that is exactly what will happen to
25 this building.

1 See, this being a family-friendly
2 building doesn't quite make it. I start thinking
3 about moms carrying kids up to the fourth floor, and
4 the family-friendly thing goes right out the window
5 for me.

6 If you are making the deck smaller, it
7 makes it a little bit more palatable, but I am going
8 to listen to the rest of the Board on what they have
9 to say before I state anything else.

10 Thank you, Mr. Chair.

11 CHAIRMAN AIBEL: Mr. DeFusco?

12 COMMISSIONER DE FUSCO: Let me start by
13 saying this is a block in transition.

14 I want to be -- I am very cognizant of
15 setting a standard here that could be followed by
16 future Boards, and you know, become, you know, a
17 detriment to the community as outlined by the
18 community that is present tonight.

19 I don't believe that this particular
20 construction constitutes an adverse effect on this
21 block. The first factor that makes me say that is
22 the hundred percent lot coverage of the building
23 next to it.

24 Granted, it is, you know, it is, quote,
25 unquote, rat infested. It is still there, and it is

1 not going to be impacted by the 63 percent lot
2 coverage. To the left of it, there was a parking
3 lot, so that is completely open.

4 By generating 63 percent lot coverage,
5 I am actually, as I said, cognizant of the fact that
6 this could set the standard for any building that is
7 built to the left or right of it.

8 I just don't know -- what 63 percent is
9 detrimental. Combined with the fact that there is
10 no construction directly across the street, I
11 believe is the case where the A&P is, we are not
12 impacting light or air here. It is not as tall as
13 the other buildings,

14 Family-friendly, I guess I agree with
15 John saying that, what is that. But a three-bedroom
16 certainly does offer somebody willing to carry a
17 baby up two or three flights of stairs, and I don't
18 have a family either, and I don't know if I would
19 mind traversing a couple of flights of stairs to
20 live in a desirable neighborhood in a city that we
21 all know and love.

22 I think we need to consider this one.
23 In my opinion, this is a good construction. It is
24 not pushing boundaries to the point of other
25 applications that we heard, and the fact that the

1 applicant is willing to size back the deck is always
2 problematic for neighbors is certainly a positive
3 benefit, so I would like to hear what everybody else
4 has to say.

5 COMISSIONER BOUCHER: Yes.

6 I felt the application -- the variances
7 that were requested were minimal. I didn't see the
8 proposed plans previously, so I imagined they were
9 shooting for the moon.

10 And looking at this, one of my big
11 concerns is always the street scape and the setback
12 from the street, sort of the sidewalk, walkability
13 of being able to have sunlight and not have it
14 blocked out for buildings to go all the way to the
15 edge of their lot. This building does, but the
16 reset of the buildings on their block does also.

17 I think the decks in the back, the fact
18 that they are sort of tapered and brought in lessen
19 the foot of the building, and now they are getting
20 smaller. Whether they are party decks or fire
21 escapes, I don't know. But I don't look at them
22 unfavorably, and they are within lot coverage, and I
23 think the light is reasonable.

24 CHAIRMAN AIBEL: Thanks.

25 Mr. Crimmins?

1 COMMISSIONER CRIMMINS: This building
2 is not unreasonable. It is really not.

3 When you look at it, the height is not
4 unreasonable.

5 The deck is not a deck. I am glad it
6 was shortened, but there is a fire stair in the
7 middle. Without the fire stair, it would be a deck.

8 Could I say that nobody would ever be
9 out there?

10 No, I can't, but it is not a deck. You
11 won't be able to get a table in the middle of it and
12 be hanging over the end because you have a stairway
13 there.

14 This is as close to being acceptable
15 and allowable as anything probably we have ever
16 seen.

17 I know Ms. Markle my whole -- Rose
18 Markle my whole life. I think the argument was
19 unrealistic --

20 A VOICE: Sorry.

21 COMMISSOINER CRIMMINS: -- I think this
22 building fits.

23 CHAIRMAN AIBEL: I think this --

24 (Everyone talking at once.)

25 A VOICE: Can't get it. He can recuse

1 himself --

2 (Everyone talking at once.)

3 MR. GALVIN: Ever been to Thanksgiving
4 dinner at his house?

5 MS. MARKLE: Not with Nancy either.

6 (Everybody talking at once)

7 VICE CHAIR GREENE: Mr. Crimmins took
8 the words out of my mouth. I review requests for
9 variances almost as close to de minimus as you can.

10 I believe the proofs have been met. I
11 am glad that you offered to reduce the size of the
12 stairs in the back to make them fire escapes, a
13 second means of egress -- for a second means of
14 egress, but I don't find anything about this
15 application that doesn't work for me.

16 I respect the neighbors to the extent
17 that they don't want anything impacting, but when
18 they described everything was being impactful, it is
19 hard to blame this development for the rest of the
20 world's ills. I for one wouldn't do it. Each
21 application stands on its own, and I believe this
22 one has merit.

23 CHAIRMAN AIBEL: I will add two things.

24 First of all, this will set the tone
25 for the rest of the development in the area between

1 this lot and the -- so we have to be sensitive to
2 that. I agree with my colleagues that great stride
3 was taken by reducing the deck, which I do think was
4 too large. But I still want to challenge the
5 architect on the seven-foot deck because I think it
6 was just last month we heard six feet was what the
7 fire code or ordinance requires.

8 So I would feel comfortable if it was
9 clearly a fire escape, fire stair. It would be
10 consistent with the building that Ms. Markle lives
11 in. I think it would a set reasonable tone to the
12 rest of the development. I think I could get by on
13 the application, if that were the case.

14 That having been said, please make your
15 amendment. It is not a deck. It is a fire escape
16 or fire stairs, if that is okay with the applicant.

17 MR. MATULE: I will revise it that to
18 the extent, you know, I know I was told you have to
19 have railings and things, plus certain width treads.
20 We will revise that before we come back.

21 MR. GALVIN: Thank you.

22 CHAIRMAN AIBEL: Thank you.

23 MR. GALVIN: Motion to carry to the
24 February meeting.

25 VICE CHAIR GREENE: So moved,

1 COMMISSIONER CRIMMINS: Second.

2 CHAIRMAN AIBEL: Should we do a roll
3 call or a vote?

4 MR. GALVIN: All in favor.

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

7 MR. GALVIN: Anybody opposed to
8 carrying it to February?

9 (No response.)

10 CHAIRMAN AIBEL: It is 10:35, and a
11 number of people have been here for 812 Bloomfield.

12 Subject to my professionals, I would
13 like to get started. We will lay off, try to end at
14 eleven or 11:15, once we get started on the
15 application.

16 (Board members confer.)

17 MR. GALVIN: We are on the record.

18 Mr. Matule, my game plan was to do 812,
19 but we have reasons not to do that, and one of them
20 is that the court reporter can stay a little longer,
21 but she has a major project to do tonight, and we
22 didn't get started yet, so --

23 MR. MATULE: You want to carry it to
24 February?

25 MR. GALVIN: -- that is my plan,

1 MR. MATULE: No further notice.

2 MR. GALVIN: We can carry it on a
3 regular basis anyway.

4 CHAIRMAN AIBEL: We will put it on for
5 February 19th.

6 MS. VANDOR: Talking about 812?

7 MR. GALVIN: We will be cleaning up
8 this agenda and have Shipyard on --

9 MS. VANDOR: You might as well because
10 you know one of the things we have shouldn't take
11 very long, so yes, February is fine.

12 MR. GALVIN: At some point we need a
13 catch-up meeting to catch up.

14 MR. MATULE: February 19th.

15 CHAIRMAN AIBEL: It will be carried to
16 February 19th.

17 MR. MATULE: With no further notice.

18 MR. GALVIN: Do you waive the time?

19 MR. MATULE: Yes.

20 MR. GALVIN: Motion and a second to
21 carry.

22 COMMISSIONER BRANCIFORTE: Motion to
23 carry it to the February meeting without notice.

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

1 MR. MATULE: And I would just like to
2 say good-bye and good luck to our planner. We are
3 going to miss her.

4 MS. VANDOR: Thank you.

5 (All Board members talking at once.)

6 COMMISSIOENR BRANCIFORTE: We are
7 making a motion to accept the calendar for the year
8 2013.

9 MR. GALVIN: Roll call.

10 MS. CARCONE: Commissioner Crimmins?

11 COMMISSIONER CRIMMINS: Yes.

12 MS. CARCONE: Commissioner Greene?

13 COMMISSIONER GREENE: Yes.

14 MS. CARCONE: Commissioner DeFusco?

15 COMMISSIONER DE FUSCO: Yes.

16 MS. CARCONE: Commissioner Pincus?

17 MS. CARCONE: Commissioner Branciforte?

18 COMMISSIONER BRANCIFORTE: Yes.

19 MS. CARCONE: Commissioner Boucher?

20 COMMISSIONER BOUCHER: Yes.

21 MS. CARCONE: Commissioner Aibel?

22 CHAIRMAN AIBEL: Yes.

23 Ms. Vandor, we can adjourn the meeting

24 so --

25 (Everyone talking at once.)

1 MR. GALVIN: We are fine. We are in
2 the public, and we will be here.

3 (Board members confer.)

4 MR. GALVIN: Motion to close.

5 VICE CHAIR GREENE: Motion to close.

6 COMMISSIONER CRIMMINS: I will second.

7 All in favor?

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

10 (The meeting concluded at 10:45 p.m.)

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C E R T I F I C A T E

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

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

s/Phyllis T. Lewis, CCR, CRCR

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