

HOBOKEN ZONING BOARD OF ADJUSTMENT  
CITY OF HOBOKEN

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REGULAR MEETING OF THE :  
HOBOKEN ZONING BOARD OF : April 16, 2013  
ADJUSTMENT : Tuesday 7:10 p.m.  
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Held At: 94 Washington Street  
Hoboken, New Jersey

B E F O R E:

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

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

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

PHYLLIS T. LEWIS  
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HOBOKEN ZONING BOARD OF ADJUSTMENT  
CITY OF HOBOKEN

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 300 WASHINGTON STREET :  
 Block 202, Lot 35 : April 16, 2013  
 Applicant: 300 Washington Street : Tuesday  
 Condo Association : 7:10 p.m.  
 Minor Site Plan :  
 C&D Variances :  
 ----- X

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Hoboken, New Jersey

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## I N D E X

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## E X H I B I T S

EXHIBIT NO.	DESCRIPTION	PAGE
A-3	"Facade Exterior Design Revisions,"	9

1                   CHAIRMAN AIBEL: Okay. We are calling  
2 the meeting to order.

3                   Good evening, everyone.

4                   It is about 7:10. You are at a Regular  
5 Meeting of the Hoboken Zoning Board of Adjustment.

6                   I would like to advise all of those  
7 present, that notice of this meeting has been  
8 provided to the public in accordance with the  
9 provisions of the Open Public Meetings Act, and that  
10 notice was published in The Jersey Journal and city  
11 website.

12                   Copies were provided in The  
13 Star-Ledger, The Record, and also placed on the  
14 bulletin board in the lobby of City Hall.

15                   If everybody would stand and join us in  
16 the salute to the flag.

17                   (Pledge of Allegiance recited.)

18                   CHAIRMAN AIBEL: Even though I'm  
19 probably going to be the first one to abuse the  
20 rule, please, all cell phones should be off now.

21                   If you have business that needs to be  
22 conducted, please take it out into the hall.

23                   Pat, do you want the call the roll?

24                   MS. CARCONE: Sure.

25                   Chairman Aibel?

1 CHAIRMAN AIBEL: Present.

2 MS. CARCONE: Commissioner Greene?

3 VICE CHAIR GREENE: Here.

4 MS. CARCONE: Commissioner Crimmins?

5 COMMISSIONER CRIMMINS: Here.

6 MS. CARCONE: Commissioner DeFusco?

7 COMMISSIONER DE FUSCO: Here.

8 MS. CARCONE: Commissioner Pincus?

9 COMMISSIONER PINCUS: Here.

10 MS. CARCONE: Commissioner Branciforte?

11 COMMISSIONER BRANCIFORTE: Here.

12 CHAIRMAN AIBEL: Okay. Ready to go?

13 MR. GALVIN: Yes. We have no

14 resolutions, so just jump right into it.

15 CHAIRMAN AIBEL: Mr. Burke, we have 300

16 Washington Street, Block 202, Lot 35.

17 MR. BURKE: Thank you, Mr. Chairman.

18 Thank you, Board.

19 Thank you for carrying this for --

20 MR. GALVIN: Let me stop you for one

21 second.

22 We marked the piece of paper that you

23 just handed me tonight on the revisions. What

24 number is that, Pat?

25 MS. CARCONE: A-1.

1 MR. BURKE: No. It should be A-3.

2 I will make an announcement about that  
3 because we have two other ones.

4 The original illustration was marked  
5 A-1, and the revised illustration is marked A-2, so  
6 that sheet of paper will be A-3.

7 MS. CARCONE: Okay.

8 (Exhibit A-3 marked.)

9 CHAIRMAN AIBEL: Mr. Greene apprised me  
10 and reminded me that we have to announce that 1312-  
11 1318 Adams, Block 113, has been adjourned to May  
12 21st, if I am not mistaken.

13 MR. GALVIN: We have to accept that  
14 adjournment.

15 Mr. Matule, are you here?

16 MR. MATULE: Yes, I am, Mr. Galvin

17 MR. GALVIN: Sorry about that.

18 Do you waive the time in which the  
19 Board has to act?

20 MR. MATULE: I had sent a letter into  
21 the Board Secretary, and I indicated in my letter  
22 that we are waiving the time until next month.

23 MR. GALVIN: I am just always safe.

24 MR. MATULE: No problem.

25 MR. GALVIN: Do we have a motion to

1 carry this?

2 What meeting are we carrying it to?

3 MR. MATULE: The regular meeting of May  
4 21.

5 MR. GALVIN: Is there a motion to carry  
6 that to May 21st?

7 COMMISSIONER CRIMMINS: I'll make a  
8 motion to carry 1312-1318 Adams Street to the May  
9 21st meeting without further notice.

10 MR. GALVIN: Is there a second?

11 All in favor?

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

14 Is anybody here on 1312 Adams?

15 No. Have a nice evening.

16 Thank you.

17 MR. MATULE: I have another one.

18 MR. GALVIN: You can still have a nice  
19 evening.

20 CHAIRMAN AIBEL: I'm sorry, Mr. Burke.  
21 Go ahead.

22 MR. BURKE: No problem.

23 In summary, we appeared last week and  
24 presented the application or part of it. The Board  
25 expressed concerns about the exterior look of the

1 building in light of the fact that it is a prominent  
2 spot on Third and Washington, and also in light of  
3 the fact that it is in the historic district.

4 I won't repeat the comments that the  
5 Board made verbatim, but there were comments such as  
6 the harmony between the glass and the brick was not  
7 quite what some Board members wanted.

8 There were concerns about the  
9 western -- I'm sorry -- the Third Street facade as  
10 far as having too much glass, and there was also  
11 some concerns about the types of materials being  
12 used, so Mr. Minervini took his best shot and he now  
13 has --

14 MR. GALVIN: Let me ask you one  
15 question before you get going.

16 MR. BURKE: Yes.

17 MR. GALVIN: So the percentage we had  
18 originally, the proposal, was where you were  
19 supposed to have 74 percent masonry, and the old  
20 drawing was showing 66 percent.

21 What is the new one going to show?

22 MR. MINERVINI: 75 percent.

23 MR. GALVIN: So we are going to  
24 eliminate that variance?

25 MR. BURKE: Correct.

1 MR. GALVIN: I think Mr. Minervini  
2 should proceed.

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

5 MR. BURKE: Okay. Thank you.

6 So, Mr. Minervini, please present to  
7 the Board, and we also handed out, which was marked  
8 as A-3, a summary sheet entitled "Facade Exterior  
9 Design Revisions," which Mr. Minervini will walk  
10 through.

11 I remind you that you are still under  
12 oath from last week.

13 THE WITNESS: Thank you.

14 You all got the revised drawings and I  
15 hope the summary list in essence of what have we  
16 changed, and I will go through that.

17 I also have the original rendering here  
18 for reference in case you need to see it.

19 But these comments, and I have  
20 revisions one through seven, were all responses to  
21 comments that the Board members had made.

22 So, number one: The size, spacing and  
23 the rhythm of the windows has changed to be more in  
24 keeping with the prevailing "Hoboken Aesthetic."  
25 The window sizes are more standard, three by six,

1 relative to some sections of the current wall in the  
2 first design.

3 So on both the Washington Street facade  
4 as well as the larger Third Street facade, we have  
5 large fields of brick with in essence windows  
6 reminiscent of a lot of the buildings in Hoboken and  
7 reminiscent of the building that was there prior.

8 CHAIRMAN AIBEL: Mr. Minervini, maybe  
9 you could just turn the easel a little bit sideways,  
10 so the gallery could see a little bit better. I  
11 think we all have plans.

12 THE WITNESS: Is that good?

13 CHAIRMAN AIBEL: Thank you. Excellent.

14 THE WITNESS: So number two, adding to  
15 those window locations, we introduced cast stone  
16 headers and sills, again, more in keeping with the  
17 traditional Hoboken look, although it wouldn't be  
18 cast stone originally, this is a good replication.

19 The fenestration at the bay  
20 projections, although still contemporary, is not as  
21 disjointed as before, where our -- we were trying to  
22 have a rhythm here that wasn't exactly asymmetrical  
23 at each level, here we have the same amount of glass  
24 and still contemporary, but it is a very simple  
25 straightforward three window bay section.

1           The color choices were revised, so our  
2 brick fields are Hudson River red, Hoboken red  
3 brick, with the accent band being gray. Before it  
4 was more of an orange-tan brick.

5           We -- one of the comments was to have  
6 the building actually set on its base, so what we  
7 have done, we extended these piers at the ground  
8 floor commercial level, so there is an iron spot, a  
9 gray brick accent to the piers, and we carried it  
10 down all the way to the ground, so it is a better  
11 connection between the building and the street.

12           The original design at the top fifth  
13 floor had terracotta panels. That was -- that took  
14 the space in between the windows, so the space in  
15 between the windows were proposed to be terracotta  
16 panels. Now, they are replaced with brick piers,  
17 with two colors, as I mentioned, to mimic what is  
18 going on at the base at the commercial level.

19           And importantly, and what has been  
20 mentioned, we did need a facade material variance  
21 for the Washington Street facade, and we no longer  
22 need that. We were proposing 66 percent masonry,  
23 but now we are proposing 75, which meets the  
24 ordinance.

25           One thing I don't have on this list is

1       that the cornice had been made more prominent, so  
2       again, that is something more in keeping with the  
3       building that was there prior as well as what we all  
4       come to think of as the "Hoboken aesthetic."

5                 No changes have been made to the floor  
6       plans. They are all as I described at the last  
7       meeting. This is in response to the Board's  
8       comments.

9                 I think that is it for the aesthetics.

10                MR. GALVIN: Let's stop there.

11                Okay, Board, what do you think?

12                COMMISSIONER CRIMMINS: I think it is a  
13       great improvement.

14                MR. GALVIN: Anybody else have  
15       questions or comments about that?

16                COMMISSIONER BRANCIFORTE: The same,  
17       no.

18                MR. GALVIN: Good?

19                Ms. Pincus?

20                COMMISSIONER PINCUS: Yes.

21                I mean, I would like to thank you  
22       because I know it probably was painful for you, but  
23       I think that you did a great job. I think you still  
24       have your modern -- you know, the building is a  
25       modern interpretation of the classic traditional

1 Hoboken style.

2                   You know, that was a beautiful design,  
3 but I think this one is way more compatible with  
4 the -- with its neighbors on the historic Washington  
5 Street, so I think you did a great job.

6                   MR. GALVIN: Okay.

7                   So then we really don't need any other  
8 architectural testimony because that was the whole  
9 key component, so you can move on.

10                  MR. BURKE: Correct. That was the  
11 presentation.

12                  COMMISSIONER GREENE: Do you want to  
13 open it up so much regarding the design --

14                  MR. GALVIN: I am just trying to -- I  
15 know we have a lot to do tonight, so I am trying to  
16 cut out whatever I can, but if it is important, by  
17 all means, ask it.

18                  COMMISSIONER GREENE: It is important.

19                  The one comment that I made in  
20 particular regarding the roof deck, have you made  
21 any changes regarding the uses on the roof?

22                  THE WITNESS: We have not changed that.  
23 It is as originally proposed.

24                  VICE CHAIR GREENE: The roof deck --  
25 recreational use on the roof deck?

1 THE WITNESS: Yes.

2 VICE CHAIR GREENE: Just out of  
3 curiosity, I know the answer, but I am going to ask  
4 you a question anyway.

5 Anywhere along Washington Street, other  
6 than some pocket illegal uses, do you know of any  
7 recreational roof uses from Second Street up to 15th  
8 Street on Washington?

9 THE WITNESS: I don't. I also don't  
10 think this Board has seen a new building in many  
11 years, at least certainly not a new residential  
12 building. The most recent building would have been  
13 the Applied offices, so this is the first  
14 residential building.

15 Again, as I mentioned last time, I  
16 think it is perfectly appropriate considering that  
17 it is the business zone and not a residential zone.

18 CHAIRMAN AIBEL: Let me just add my  
19 view on this one.

20 I am very concerned about the  
21 appearance looking south along Washington Street of  
22 the very prominent bulkhead stairs to the roof. I  
23 think we all understand it is going to be on the  
24 very north edge of the building. The buildings next  
25 to it -- north of it are, you know, considerably

1 lower, and my own standard of comparison is the  
2 building on 9th Street and Washington, which has a  
3 very large structure on the top of the roof, that I  
4 believe is not faithful to the roof form and slope  
5 of the buildings, and I am reading from the  
6 historical preservation portion of the code that we  
7 just had a chance to see, and it is a major issue in  
8 the visual appearance of the building, so I do have  
9 some significant concerns about the roof deck.

10 THE WITNESS: There is a difference  
11 between the two projects we have been discussing.

12 The building on 9th and Washington,  
13 that is a private stair that penetrates the roof to  
14 the apartment below.

15 The stair that we are proposing has to  
16 be there. It is now a construction code  
17 requirement, where then you were permitted to have a  
18 ladder to the roof. Now one of our stairs has to go  
19 to the roof, so regardless, one stair has to go to  
20 the roof, and that's the penthouse.

21 There is also an elevator penthouse,  
22 which does not have to be there, but the stair has  
23 to be there.

24 CHAIRMAN AIBEL: So what you are  
25 saying, Mr. Minervini, is that the bulkhead and the

1 structure that is going to be on top of the building  
2 is there irrespective of whether there is a roof  
3 deck?

4 THE WITNESS: No. I am saying that the  
5 stair bulkhead would be there. If the Board  
6 suggests strongly that the deck be removed, then the  
7 elevator no longer has to go to the roof, so that  
8 that elevator penthouse bulkhead becomes smaller.  
9 It will still have to be there about six or seven  
10 feet above deck, but it will be smaller than it is  
11 proposed right now.

12 The stair will have to be there in this  
13 form regardless, and that is a construction code  
14 requirement.

15 CHAIRMAN AIBEL: Well, I indicated my  
16 concern about it.

17 COMMISSIONER DE FUSCO: Go ahead.

18 COMMISSIONER BRANCIFORTE: Go ahead.

19 COMMISSIONER DE FUSCO: So the roof  
20 profile of the building, the cornice has changed  
21 slightly from the original one?

22 THE WITNESS: Yes.

23 COMMISSIONER DE FUSCO: Will that  
24 impact the sight lines from the street at all?

25 THE WITNESS: If you are referring to

1       this section here, with this design we are proposing  
2       the parapet to be a bit higher, and I guess the  
3       answer is yes, that it will allow less visual impact  
4       because there will be a bit more screening than we  
5       originally were proposing. I guess it helps our  
6       cause, and that is a result of purely the  
7       architecture.

8                   COMMISSIONER DE FUSCO: Because that  
9       bump-out, if you will, in the middle of the  
10      building, is right in line with where your proposed  
11      roof deck is and lines up with your shrubberies, as  
12      I recall, where they would be.

13                   So, in your opinion, would that  
14      minimize some of the Board's concern of the impact  
15      of the roof deck from the street level?

16                   THE WITNESS: It will, and with that in  
17      mind, we also had a planter with --

18                   COMMISSIONER DE FUSCO: Greenery.

19                   THE WITNESS: -- we talked about the  
20      exact species, but our thought was to screen all  
21      along Third Street.

22                   Back to Mr. Aibel, your comment. What  
23      I was referring to was this section, which is the  
24      elevator, can be made slightly smaller, if there is  
25      no elevator to the roof.

1                   This section to the stair cannot be  
2 smaller. We are required to have one stair for fire  
3 department access to the roof, so whether the deck  
4 is there or not, that stair has to go to -- has to  
5 go to the roof, I should say.

6                   COMMISSIONER BRANCIFORTE: Do you  
7 necessarily need an elevator that goes to the roof?

8                   THE WITNESS: If this deck is approved  
9 as designed, it's a common roof deck, and the  
10 elevator has to because we need ADA access and  
11 compliance.

12                   COMMISSIONER BRANCIFORTE: Can I ask  
13 two things?

14                   THE WITNESS: Sure.

15                   COMMISSIONER BRANCIFORTE: One was our  
16 planner mentioned the fact that, you know, if there  
17 is going to be furniture up here and umbrellas and  
18 stuff, how are they going to be secured, not just to  
19 mention a matter of securing them as in storing  
20 them.

21                   I mean, I don't want umbrellas flying  
22 off this roof, so either you figure out a way --  
23 actually I guess we are just going to have to ban  
24 umbrellas from the rooftop.

25                   THE WITNESS: That is what I would

1 suggest as part of the condo master deed.

2 COMMISSIONER BRANCIFORTE: There was a  
3 second point I wanted to make, and it slips my mind  
4 right now.

5 I think I am good, but I will remember  
6 what the point was in a second, I am sure.

7 CHAIRMAN AIBEL: Any other Board  
8 members?

9 MS. BANYRA: I have a question.  
10 Did you change the height of the  
11 building?

12 THE WITNESS: No.

13 MS. BANYRA: So the height, no matter  
14 what you did with the cornice or any treatment, the  
15 height remains the same?

16 THE WITNESS: It remains as it was.

17 COMMISSIONER PINCUS: Frank, if I am  
18 reading this correctly, this is the section for the  
19 bay impact, Sheet Z-7.

20 You actually don't have a sight line --  
21 but the sight lines to the bulkhead are limited to  
22 the opposite side of the street, is that --

23 THE WITNESS: Z-7 --

24 COMMISSIONER PINCUS: -- in other  
25 words, you would see them -- you wouldn't see them



1 and give your name and address?

2 MR. KRATZ: My name is Allen, A-l-l-e-n  
3 Kratz, K-r-a-t-z. I live at 1245 Bloomfield Street.

4 I have three questions for Mr.  
5 Minervini or questions about three of the pieces of  
6 testimony that he gave this evening.

7 Could I see A-1, please?

8 THE WITNESS: The original design.

9 MR. KRATZ: That is the original  
10 design.

11 Mr. Minervini, you mentioned that one  
12 of your changes was that you changed the  
13 fenestration from what you said in the original  
14 was -- you used the word "disjointed," and I think  
15 you said that now we can look at A-3, that is the  
16 newer plan, is that correct?

17 THE WITNESS: Yes.

18 MR. KRATZ: I think you drew the  
19 distinction, and you said instead of the windows  
20 being asymmetrical on A-1 originally, now they are  
21 lined up perfectly straight up and down on the new  
22 design. Is that correct?

23 THE WITNESS: Yes. I used the word  
24 "disjointed," because as I recall, one of the Board  
25 members used that word, so I used that again --

1 MR. KRATZ: So it is not a pejorative?

2 THE WITNESS: No.

3 MR. KRATZ: All right.

4 And, in fact, you also used the word  
5 "asymmetrical."

6 Can you put A-1 up again?

7 Is it not true that the effect of  
8 having an asymmetrical fenestration on the  
9 Washington Street elevation makes the building look  
10 a little shorter because you don't have the five  
11 stories up and down in a single line?

12 Is that a fair interpretation of your  
13 design consideration?

14 THE WITNESS: I agree to that.

15 MR. KRATZ: I wanted to turn to your  
16 comments -- your testimony about -- I think you  
17 called it Hudson River red brick. I don't have A-2  
18 in front of me. But the Hudson River red brick is  
19 what you chose because it is the more classical  
20 Hoboken building material of that era --

21 THE WITNESS: Correct.

22 MR. KRATZ: -- of what era was it that  
23 you are replicating?

24 THE WITNESS: Ah --

25 MR. KRATZ: Has the Board given you

1 their reaction on --

2 THE WITNESS: No. The comments of the  
3 Board were more of a general thing.

4 MR. KRATZ: So it wasn't a period of --

5 THE WITNESS: No.

6 MR. KRATZ: Well, would it be fair to  
7 say, and you said you replaced that -- I think you  
8 used Hudson River red brick instead of orange and  
9 tan. Is that correct?

10 THE WITNESS: Yes. I described it as  
11 orange and tan only because that is how the  
12 rendering shows it. It does have a bit of gold in  
13 it as well.

14 MR. KRATZ: And have you seen other  
15 buildings in Hoboken that have orange and tan?

16 THE WITNESS: We used this color on  
17 other buildings.

18 MR. KRATZ: And so Albert Beyer used  
19 this for the Hoboken Public Library --

20 THE WITNESS: Yes.

21 MR. KRATZ: -- and French Dixon  
22 (Phonetic) used it for the First Baptist Church at  
23 9th and Bloomfield, is that correct?

24 THE WITNESS: Yes.

25 MR. KRATZ: And how about the

1 Columbia --

2 THE REPORTER: Mr, Kratz, I can't hear  
3 you.

4 MR. KRATZ: -- done by French Dixon and  
5 Desel Dernick (phonetic) --

6 THE WITNESS: Correct.

7 MR. KRATZ: So it was a classic choice  
8 that you used --

9 THE WITNESS: In the original one.

10 MR. KRATZ: So let's go back to again  
11 A-1 -- I'm sorry --

12 THE WITNESS: I'm sorry. A-1 is --

13 MR. KRATZ: -- A-1, you pointed out  
14 terracotta?

15 THE WITNESS: -- the original design  
16 had terracotta panels that would separate it at the  
17 fifth top floor.

18 MR. KRATZ: Is terracotta a classical  
19 building design element in Hoboken?

20 THE WITNESS: It has been used in  
21 Hoboken, not necessarily on residential buildings,  
22 but certainly it has been used, the material we saw.

23 MR. KRATZ: It was used on the Colombia  
24 Club --

25 THE WITNESS: Yes.

1 MR. KRATZ: -- which is a  
2 residential --

3 THE WITNESS: Yes.

4 MR. KRATZ: It was used on the public  
5 library from 1897, and it was used on the First  
6 Baptist Church from 1892 --

7 MR. GALVIN: Are you asking or are you  
8 testifying?

9 THE WITNESS: I am agreeing --

10 MR. KRATZ: I'm asking --

11 THE REPORTER: Wait a second. You  
12 can't both speak at the same time.

13 MR. KRATZ: I am asking Mr. Minervini  
14 if he has observed this on other buildings that he  
15 observed in his practice of architecture.

16 THE WITNESS: Certainly there is a  
17 reason why we used the material on the original  
18 design.

19 MR. KRATZ: So what building style  
20 would you -- turning to A-3 now -- what style of  
21 architecture would you call A-3 now?

22 THE WITNESS: I don't know if I would  
23 call it a particular style, other than a -- we'll  
24 call it a contemporary interpretation of the  
25 building that was there prior.

1 MR. KRATZ: Thank you very much.

2 CHAIRMAN AIBEL: Anybody else have  
3 questions for the architect?

4 Come forward, please.

5 Name and address for the record.

6 MR. ALATI: Sergio, S-e-r-g-i-o, Alati,  
7 A-l-a-t-i.

8 MR. GALVIN: Street address?

9 MR. ALATI: Street address 32 Arthur  
10 Drive, and that is Rutherford, New Jersey. I work  
11 here. I don't live here.

12 So two questions: There is a building  
13 that is directly adjacent to your building. It is  
14 301 Bloomfield Street. It is a two-story building,  
15 and so my first question is:

16 How will this new building abut that  
17 building?

18 Have you taken that into consideration,  
19 and how will the building next to it therefore be  
20 protected from water infiltration from the joints  
21 and the tops and sides where those two buildings  
22 meet?

23 THE WITNESS: The construction drawings  
24 haven't been completed yet.

25 At the last meeting, I don't think you

1       were here, I agreed with Ron Russell, an architect,  
2       who is representing Stevens, I believe, to work with  
3       him as much as he needed and give them details prior  
4       to construction.

5                   MR. ALATI:    Okay.

6                   The only other question I had at this  
7       point was:  Will the building be placed on piles?

8                   THE WITNESS:  It will be placed on --  
9       well, the chances are it will be placed on piles.  
10       We have yet to receive the soil report telling us  
11       whether or not we have --

12                   MR. ALATI:  All right.

13                   THE WITNESS:  -- my best estimation is  
14       that it will be on piles at this point.

15                   MR. GALVIN:  Good.  Okay.

16                   Anybody else?

17                   CHAIRMAN AIBEL:  Seeing no one else.

18                   COMMISSIONER CRIMMINS:  I would like to  
19       make a motion to close the public portion.

20                   VICE CHAIR GREENE:  Second.

21                   CHAIRMAN AIBEL:  All in favor?

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

24                   MR. BURKE:  I will call my next  
25       witness.

1 MR. GALVIN: 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 MR. KOLING: Yes, I do.

6 E D W A R D K O L L I N G, having been duly sworn,  
7 testified as follows:

8 MR. GALVIN: State your full name for  
9 the record and spell your last name.

10 THE WITNESS: My name is Edward  
11 Kolling, K-o-l-l-i-n-g.

12 MR. GALVIN: Mr. Chairman, do you  
13 accept Mr. Kolling's credentials as a planner?

14 CHAIRMAN AIBEL: Yes, we do.

15 MR. GALVIN: You may proceed.

16 MR. BURKE: Thank you.

17 Mr. Kolling, you heard Mr. Minervini's  
18 testimony, and you are familiar with the site?

19 THE WITNESS: Yes, I am.

20 MR. BURKE: You prepared a report, and  
21 that report is dated December 27th, 2012?

22 THE WITNESS: Yes.

23 MR. BURKE: You also heard Mr.  
24 Minervini state that one variance that had been  
25 requested has been eliminated involving the facade.

1 THE WITNESS: Yes, I heard that.

2 MR. BURKE: With that information,  
3 please give the Board a summary of your report.

4 THE WITNESS: We all heard how the  
5 building has a new design, and I think everybody is  
6 familiar with the area. It's only a couple of  
7 blocks north of here, so I won't be redundant in  
8 that regard.

9 It does fall within the central  
10 business, the historic portion of the zone. So  
11 looking at the zoning and looking at the purpose of  
12 zoning, the CBD zone is to encourage the location of  
13 regional and city-wide services and commercial  
14 activities that facilitate the buildings for  
15 permanent and transient residents appropriate in  
16 proximity to the city's transportation terminal and  
17 to support the objectives of the city's historic  
18 district.

19 I think from what the previous  
20 testimony is that you heard, this building does  
21 that, the way the building was designed to try to  
22 fit into the historic area. It does have both  
23 residential and commercial uses and takes advantage  
24 of its location, not only within the CBD, but its  
25 proximity to the transportation center, the

1 Lackawana terminal.

2           The CBD the (h) section specifically  
3 says to preserve and enhance the best elements of  
4 the subdistrict's traditional character by  
5 architecture and other controls, and to protect  
6 against destruction of undesirable encroachment upon  
7 the area, and ensure that new structures and uses  
8 within the district will be in keeping with the  
9 character to be preserved and enhanced.

10           Again, I think you see that the  
11 building does that. We have uses that are  
12 permitted, both the residential and commercial.

13           The scale of the building replicates  
14 what the scale and character of the building was,  
15 and this is a contemporary interpretation, so I  
16 think we are consistent with the purposes of the  
17 zone district.

18           In terms of the variances, as I said,  
19 the uses are permitted within the district. We have  
20 two D variances. Both -- one is there for density  
21 and the other one is for height.

22           This building, we also have bulk  
23 variances for coverage and for rear yard, both in  
24 terms of the distance from the rear of the property  
25 line and the distance from the front property line,

1 and we have the roof coverage variance. The other  
2 variance has been eliminated.

3 In terms of the master plan, the master  
4 plan discusses this area as the southern Hoboken  
5 historic district, and among the recommendations are  
6 to encourage contemporary building designs for new  
7 construction that compliment Hoboken's historic  
8 building without mimicking them, and I won't say how  
9 we do it, but you heard all of the testimony that  
10 says how we do it.

11 To continue, to emphasize Washington  
12 Street's role as the city's railroad -- I'm sorry --  
13 retail spot -- I'm sorry, not railroad.

14 Again, we have replicated the uses, the  
15 ground floor commercial, as well as above, so we  
16 have continued with the retail uses.

17 Require buildings with commercial uses  
18 to be constructed up to the front property line,  
19 which we do.

20 Mandate street level retail and  
21 prohibit residential and non real estate uses in  
22 specified areas, which this would be that, so we are  
23 conforming to that recommendation as well.

24 And the other one is to maintain the  
25 unique character of Washington Street and other

1 commercial streets, which we do, in terms of the way  
2 the architecture and the uses are arranged.

3 So I think we are consistent with both  
4 what the master plan recommends in this area, as  
5 well as the purposes of the district.

6 In terms of the density variance, this  
7 property would be permitted only four units. You  
8 take the area, the lot area divided by 500, I think  
9 that this property can support the added density  
10 without detriment. I think it is well suited for  
11 that because of its close proximity to the Lackawana  
12 terminal, which has both the Path, it has heavy  
13 rail, it has light rail, and it has numerous buses,  
14 and the site always supported eight units since the  
15 19th century, and I believe without detriment.

16 So I think replicating that is a  
17 variance that can be granted because the property is  
18 appropriate for the added density and it will not  
19 result in a substantial detriment either to the  
20 zoned plan or to the public or the general welfare.

21 The height variance, you are looking at  
22 prevailing height. If you look at all of the  
23 different heights there, of course, there are some  
24 two-stories. There are some three-stories, and  
25 there are some other five stories. So If you took

1 an average, obviously this is taller, but the  
2 maximum height permitted is 50 feet because I think  
3 that the ordinance recognizes that there are  
4 five-story buildings here.

5 So notwithstanding the fact that we  
6 exceed the prevailing height, I think we are within  
7 the maximum, and I think it is in keeping with the  
8 character of the area, and that is also part of the  
9 idea of the historic district is to kind of  
10 replicate that character and maintain that  
11 character.

12 This building, this lot, this property,  
13 this corner always had a five-story building at  
14 least since the turn of the 19th century, and  
15 therefore, I think replicating it would be  
16 consistent with the character and could be done  
17 without again substantial detriment to the zoned  
18 plan or to the public welfare, so I think the D  
19 variances can be granted.

20 In terms of the rear yard, this lot is  
21 a little shorter. It always did extend to the rear  
22 property line. The shallowness of the lot does  
23 cause a bit of a hardship in terms of having that  
24 rear property line or the rear set back.

25 It is also a corner lot, so allowing

1 the building to turn the corner this way makes for  
2 continuous frontage on Third Street, and I think  
3 that is a better approach to urban design.

4 The upper stories are set back and  
5 almost exactly what was there before. So I think,  
6 again, if you look at what was there before and what  
7 we are asking for now, that building existed for a  
8 long period of time without substantial detriment.  
9 It is part of the character of the area, so I think  
10 allowing that would be really beneficial in terms of  
11 preserving the character of the area and  
12 accomplishing the purposes of the master plan and of  
13 the zoned plan.

14 That is the same thing as -- then you  
15 have the -- that also then results in the lot  
16 coverage. The lot coverage really follows one from  
17 the other. That is the way the property has  
18 already -- it has always been historically  
19 developed, and there is also the issue here for the  
20 lot coverage, that the older building was a walk --  
21 a five-story walk-up, and it did not comply with  
22 modern code standards.

23 So putting in the extra means of  
24 ingress and egress, the elevator, which now will  
25 meet the code standards for disability, requires a

1 little bit more building, but still it is being able  
2 to be done almost within the exact same envelope, so  
3 I think the benefits of providing the fire safety,  
4 the ADA, and accessibility, and all of those sort of  
5 things is a benefit that would outweigh any  
6 detriment from the minor increase in the coverage,  
7 and it would not result in any substantial detriment  
8 to either the zoned plan again or to the general  
9 welfare.

10 And finally, in terms of roof coverage,  
11 in this particular case because of the fact that the  
12 property is again a little smaller, the way the  
13 property has been developed historically, there has  
14 never been any availability for outdoor recreation  
15 space or the residents to be able to attain  
16 additional air, light, so that doing this, I think  
17 is an improvement in terms of the quality of life  
18 aspects of the building.

19 I think it provides for the ability to  
20 access more air and light, and given the location of  
21 the roof deck being set back from the edges, I don't  
22 think it would be visible nor result in a detriment,  
23 so again, I think that variance can be granted.

24 The project advances numerous purposes  
25 of the Municipal Land Use Law. The way that it is

1       designed, I think granting the variance would be a  
2       municipal action that would guide the appropriate  
3       use and development of this property in a way that  
4       promotes the general welfare, and this is because of  
5       the way it fits into the historic character,  
6       promotes the purposes of the master plan and also  
7       provides the ADA accessible units.

8                 It improves safety in the area because  
9       this new building is code compliant with the proper  
10      fire suppression and those types of aspects.

11                I think the proposed project,  
12      notwithstanding the fact that we have a density  
13      higher than what is permitted, is an appropriate  
14      density and is suitable for that density given its  
15      location in close proximity to the -- to the  
16      transportation network and to the services along  
17      Washington Street, and I think that also the project  
18      promotes a positive and visual environment.

19                It is a well designed building. It  
20      fits into the character. It is a contemporary  
21      interpretation of what was there prior to this, and  
22      comparing that especially to the vacant lot,  
23      obviously it promotes a desirable visual  
24      environment, and I think it supports conservation of  
25      the southern Hoboken historic district, which is

1       also a promotion of historic preservation which is a  
2       purpose of the Municipal Land Use Law.

3               So you have multiple things and  
4       beneficial aspects of the project, promotion of  
5       master plan, the zoned plan purposes, Municipal Land  
6       Use Law, and tying all of those things together and  
7       looking at what the possible detriments are, the  
8       detriments would be little or none, given the way  
9       that it has been designed to try to continue the  
10      types of uses and massing that was there prior, so  
11      if it has existed there for over a hundred years  
12      without substantial detriment, I can't see how it  
13      would result in one in the future.

14              MR. BURKE: One other question.

15              I think Ms. Banyra raised the issue of  
16      whether a parking variance was needed. Could you  
17      address that?

18              THE WITNESS: Right.

19              Typically, and I have been here for  
20      cases where parking has been interpreted as  
21      requiring a use variance, for instance, in the R-1  
22      district. R-1 districts restrict curb cuts, so that  
23      restriction of curb cuts has been interpreted as a  
24      restriction against parking, and so if you want  
25      parking, you need a use variance. That's the same

1 case here. Washington Street does not allow curb  
2 cuts, so therefore parking is not permitted in that  
3 regard.

4 Curb cuts are also restricted on  
5 east-west streets when the right-of-way is 50 feet,  
6 and where the travel lane is less than 14 feet, and  
7 in this case I have gone out and measured it myself.  
8 The curb-to-curb dimension is 25 feet, typical  
9 parking, parking spaces, it has parking on both  
10 sides for eight feet or using RIS standards is seven  
11 feet. So even using the lesser, that would be 14  
12 feet deducted from 25 would only give you an 11 foot  
13 travel lane, so therefore, curb cuts are not  
14 permitted on either Third Street or Washington  
15 Street in this area, and therefore, parking is not  
16 required, in fact, it is not even permitted.

17 MR. BURKE: Thank you.

18 I have no other questions.

19 Any questions of the Board?

20 COMMISSIONER CRIMMINS: No questions.

21 COMMISSIONER BRANCIFORTE: I have no  
22 questions.

23 VICE CHAIR GREENE: I agree with  
24 virtually every element of your report, Mr. Kolling,  
25 in terms of the bulk and the visual effect and the

1 interpretation of the historic preexisting building.

2 In the building that this is  
3 replicating, if you will, was there a use, a  
4 recreational use on the roof?

5 THE WITNESS: I don't know, but I would  
6 say probably not.

7 VICE CHAIR GREENE: Do you know of any  
8 recreational uses on Washington Street?

9 THE WITNESS: Hum, no. I don't think I  
10 ever participated in any other application.

11 MR. BURKE: Mr. Greene, the one I do  
12 recall, and I may be wrong, because I didn't  
13 represent the applicant, but I thought there was one  
14 on this block right down --

15 VICE CHAIR GREENE: In a commercial  
16 building --

17 MR. BURKE: -- in a commercial  
18 building.

19 VICE CHAIR GREENE: Yes, you are  
20 correct.

21 MR. BURKE: Okay. All right. That was  
22 the one I recall.

23 VICE CHAIR GREENE: I agree.

24 COMMISSIONER BRANCIFORTE: Just to  
25 follow up, I mean, you mentioned there is no

1       detriment to having the recreational use on the  
2       roof?

3                   THE WITNESS: Right.

4                   COMMISSIONER BRANCIFORTE: What would  
5       be detrimental, you know, what would be detrimental  
6       about having one somewhere?

7                   THE WITNESS: My opinion, and I do most  
8       of my work in urban areas, I think that using the  
9       roof for recreational purposes is a positive  
10      generally.

11                  I know this Board has an aversion to it  
12      under certain circumstances, but I find that  
13      utilizing a rooftop in a place that is very densely  
14      populated and has little open space is a way of  
15      getting an additional benefit out of what is  
16      otherwise an under-utilized or unused resource.

17                  COMMISSIONER BRANCIFORTE: That is the  
18      other side.

19                  I am asking you what could possibly be  
20      the down side of this.

21                  You said in general, it is a positive  
22      thing, but that means there has to be some negative  
23      thing there, too, because it is not an absolute  
24      positive. It is a general one.

25                  THE WITNESS: Well, I guess you could

1 say that recreation on the ground, you have a  
2 shorter distance to fall, if you happen to wander  
3 outside of the recreation area, so that would be a  
4 concern. So you definitely have to have the  
5 appropriate and code compliant restrictions or  
6 confinement areas, fencing or whatever else, to  
7 limit people's ability to access the edges.

8 COMMISSIONER BRANCIFORTE: I have no  
9 other questions.

10 CHAIRMAN AIBEL: Nancy, anything?

11 COMMISSIONER PINCUS: I'm good.

12 CHAIRMAN AIBEL: Professionals?

13 MS. BANYRA: I just have one question.

14 I just wanted to maybe correct the  
15 density, you know. I had down, Mr. Kolling, that  
16 the density that actually was permitted is three  
17 because the commercial takes up in the -- according  
18 to the ordinance, the commercial ends up taking up  
19 one residential space, so I just wanted to point you  
20 to --

21 THE WITNESS: I don't think that that  
22 is correct on Washington Street. There are certain  
23 streets, Washington Street, First Street, 14th  
24 Street that are principal commercial streets. You  
25 don't take a deduct for the commercial space, if I

1 am not mistaken.

2 MS. BANYRA: Let me look it up again.

3 Section 196-198C, and it's more just a  
4 point of clarification.

5 I wanted to know if that is correct, if  
6 you should just clarify or correct your testimony,  
7 but I will look that up as we are continuing.

8 THE WITNESS: Okay. Thank you.

9 CHAIRMAN AIBEL: Public, anybody in the  
10 public have questions for the planner?

11 Seeing none.

12 COMMISSIONER CRIMMINS: I will make a  
13 motion to close the public portion.

14 A VOICE: There is somebody in the  
15 back.

16 CHAIRMAN AIBEL: I'm sorry. I jumped  
17 the gun. I'm Sorry.

18 Please come forward.

19 State your name and address for the  
20 record.

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

23 I was just curious. I didn't actually  
24 come down here to ask about this, but you seem to  
25 be -- the first question -- is it three or four

1 units you are permitted under the zoning code?

2 THE WITNESS: Four.

3 MR. EVERS: How many are you proposing?

4 THE WITNESS: Eight.

5 MR. EVERS: I was wondering if you  
6 could explain the community benefits for having  
7 eight units, if the code says you can have four, the  
8 positive criteria. Excuse me.

9 THE WITNESS: The positive criteria is  
10 not explained. The benefits of the community is of  
11 the units. It is the benefit, the positive criteria  
12 is for a density variance, when you discuss how the  
13 site can accommodate the added units without  
14 detriment, and it is in keeping with the character  
15 of the area.

16 In this particular case, what I was  
17 saying is that this property has had eight units  
18 since probably 130 years or more, and that the site  
19 clearly has the ability to accommodate those units  
20 without detriment since they have been there that  
21 long, and the building has been constantly in use,  
22 and in fact, rehabilitated and made into condominium  
23 units over time, so I think it can accommodate those  
24 units without detriment.

25 Also, I think in terms of the character

1 of the area -- excuse me -- the block has multiple  
2 different heights and things, and most of them are  
3 residential uses above. You have both a combination  
4 of those, and this particular block is very close  
5 to --

6 MR. EVERS: So there are no positive  
7 benefits. That is my question.

8 THE WITNESS: Well, I answered that.

9 MR. EVERS: No. Okay.

10 No further questions.

11 CHAIRMAN AIBEL: Anybody else,  
12 questions for the planner?

13 MS. BANYRA: I think maybe you should  
14 just check that section again. I don't see where --  
15 you know, just in terms of correcting the record,  
16 Mr. Kolling, just maybe you could check that  
17 section, and it is Section 196-198C, and I don't see  
18 where there is a disclaimer for Washington Street  
19 there.

20 But, you know, if you point me to a  
21 different direction, you know, location, but in my  
22 report I cited that, and I didn't find anything else  
23 in the ordinance, so I think what the -- the way it  
24 reads is that the commercial gets applied towards  
25 one residential unit, so it would be three are

1 permitted, and eight are proposed because the  
2 commercial unit counts as one residential unit, so  
3 if you can look at it.

4 THE WITNESS: I will check it, but  
5 nonetheless --

6 MS. BANYRA: That will be great.

7 THE WITNESS: -- the property has had  
8 that same number of units, whether it was three or  
9 four.

10 MS. BANYRA: I am just trying to keep  
11 the testimony --

12 COMMISSIONER CRIMMINS: I'd like to  
13 make a motion to close the public portion for the  
14 planner.

15 COMMISSIONER DE FUSCO: I'll second  
16 that.

17 CHAIRMAN AIBEL: All in favor?

18 (All Board members answered in the  
19 affirmative.)

20 CHAIRMAN AIBEL: Mr. Burke?

21 MR. BURKE: I have no other witnesses,  
22 Mr. Chairman, and members of the Board.

23 I am pointing out to my clients, again,  
24 there are six Board members. I do see a former  
25 Board member who is on this side of the audience

1       where the person is at, but unfortunately, there are  
2       not seven up here.

3               So my only concern is there were Board  
4       members expressing concerns about the roof deck, and  
5       I am concerned that I don't want the tail to wag the  
6       dog in the sense that I think the Board likes what  
7       it sees as far as the changes, and we have --

8               MR. GALVIN: Let me ask you a question.

9               MR. BURKE: Yes.

10              MR. GALVIN: Would you be amenable if  
11       we bifurcated the vote on the rooftop deck?

12              Normally, I try to steer the Board away  
13       from doing that.

14              MR. BURKE: I would be amenable to  
15       that, yes.

16              MR. GALVIN: Okay.

17              One other thing, one other piece of  
18       housekeeping, the historical commission would like  
19       provide us some information, and I suggested to Mr.  
20       Somerville we would permit him --

21              (Board members confer.)

22              CHAIRMAN AIBEL: Is this a good time?

23              MR. GALVIN: Yes.

24              Raise your right hand.

25              Do you swear to tell the truth, the

1 whole truth, and nothing but the truth, so help you  
2 God?

3 MR. SOMERVILLE: I will affirm.

4 P A U L S O M E R V I L L E, having been duly  
5 affirmed, testified as follows:

6 MR. GALVIN: I am so sorry. I have to  
7 catch up on that.

8 State your full name for the record and  
9 spell your last name.

10 THE WITNESS: Paul Somerville,  
11 S-o-m-e-r-v-i-l-l-e,

12 MR. GALVIN: You are here on behalf of  
13 the Historic Commission. Is that correct?

14 THE WITNESS: Yes. Our Chairman, Joan  
15 Able, could not be here tonight, and she asked me to  
16 come on behalf of the Historic Preservation  
17 Commission just to give some clarity to how it is  
18 that we approved the design that subsequently has  
19 been changed.

20 The secretary of the interior  
21 standards, standards which have been part of the  
22 preservation portion of the ordinance for the City  
23 of Hoboken for many years, longer than I have been a  
24 commissioner, which is now 13 years, dictates that  
25 when you have a vacant lot, as you do here, there

1 are really only two choices for the applicant. They  
2 can rebuild as it was, which is almost impossible to  
3 meet the standards.

4 You would have to replicate in terms of  
5 material, line, construction details. You would  
6 only do that if it were a very important historic  
7 structure like the White House. You wouldn't do it  
8 for 300 Washington Street, so their other option was  
9 to create a modern building that is representative  
10 of its own time.

11 We thought that the architect had done  
12 a masterful job, and one of the things that informed  
13 our perspective on that structure is that the  
14 previous building, the one that unfortunately  
15 burned, was an Edwardian era building around 1910  
16 that probably was shocking just as much as this is  
17 to the people who lived in downtown at that time.

18 It would have been surrounded by  
19 federal era buildings, such as 1840, so a lot of  
20 70-year old structures in the neighborhood and then  
21 the Edwardian five-story building goes up. So we  
22 were thinking of that when we thought this was a  
23 very good representation of what should be there  
24 now.

25 We cannot create a false history, so

1 that was why we did not ask to see a Victorian  
2 structure on that site. We are forbidden, you know,  
3 if we are upholding the code that we were sworn to  
4 uphold, and so that was really how we got there.

5 You all I think received a letter from  
6 the Chairman of the Historic Preservation Commission  
7 in your packets tonight. There are really only four  
8 bullet points that are the most important part of  
9 that. I just wanted to read them into the record.

10 The property is being used as it was  
11 historically. The use of the previous building is  
12 being continued. The design is contemporary, does  
13 not mimic historic styles. The size, scale and  
14 proportion and massing are compatible with the  
15 existing environment, and the materials are  
16 appropriate.

17 Just as a point of clarification, a lot  
18 of reference was made earlier to red brick in  
19 historic districts, and we need to know that red  
20 brick in the 19th century was a very coarse  
21 material, and no sooner did those buildings go up,  
22 but they were painted or covered with a varnish  
23 coat. Red brick was not what people looked at.  
24 They were painted in all kinds of accretions of  
25 hardly toxic paint, black, brown, green and red, but

1       you did not see a whole lot of exposed bricks except  
2       on the better buildings.

3                       So when the 1907 or 1910 five-story  
4       structure went up with grayish-white brick, with its  
5       grayish-white terracotta details, with its copper  
6       details, that would have been alarmingly different  
7       than everything else around it, and not in a bad  
8       way, and I can't really speak on behalf of the rest  
9       of the Commissioners who did not have the benefit of  
10      seeing tonight's new design except to say that I  
11      think they would be in accord with me. This was an  
12      opportunity that is being missed now.

13                      The kindest thing I can say about the  
14      new design is that it's average.

15                      Thank you for hearing me.

16                      MR. GALVIN: Paul, just one question  
17      about the height.

18                      Do you think that that is a good  
19      element to try to be similar to the height that was  
20      there previously for the scale of the neighborhood?

21                      THE WITNESS: It is actually slightly  
22      shorter I think.

23                      MR. GALVIN: I'm saying it is still  
24      higher than the other buildings it surrounds,  
25      though. It's kind of --

1                   THE WITNESS: Well, several blocks up,  
2                   there are tall structures. It is not the only tall  
3                   building on that block. There are blocks that are  
4                   just --

5                   MR. GALVIN: I didn't mean it in a  
6                   negative way. I was trying to elicit from you that  
7                   it a good idea from a historical perspective to try  
8                   to get up in a similar height pattern to what was  
9                   there before.

10                  THE WITNESS: I don't think it is a  
11                  good or bad thing.

12                  The story of Washington Street is not a  
13                  cohesive historic preservation story. It is many  
14                  pages. You know, you got a city that had 300 years  
15                  of history, and maybe 150 of them are represented on  
16                  that street, so our historic district is not as  
17                  cohesive - the best word I could think of - as  
18                  others, where you really do have kind of a  
19                  monotonous disintegration of structures. We don't  
20                  have that here.

21                  You know, a few doors up from this is  
22                  the stationery store. Yes, I do. That is a 1840s  
23                  federal structure. A block south was the original  
24                  location of John J. Capastra's (phonetic) first  
25                  summer villa. Now it is Johny Rocket's.

1 (Laughter)

2 You would be impressed with who is now  
3 populating the Historic Preservation Commission. I  
4 am humble. I don't deserve to be on it. They know  
5 their stuff. They are urban planners, architects,  
6 archeologists, and when they are faced with, you  
7 know, a building like this, they don't make those  
8 decisions lightly.

9 I am sorry to say that what I think is  
10 probably going to be approved tonight is not very  
11 dynamic. It really has nothing to offer. It is  
12 part of a very bland emerging vernacular in Hoboken.

13

14 CHAIRMAN AIBEL: I will accept the  
15 comments, but I will ask, Mr. Burke, I assume you  
16 are still presenting this revised version as the  
17 application that you want to have decided tonight.

18 If you prefer to return to the  
19 original, the Board is perfectly willing to  
20 entertain it on an up or down basis, so I don't want  
21 to foreclose that possibility.

22 MR. BURKE: Thank you, Mr. Chairman,  
23 but my directive from my client was to present the  
24 alternative plan.

25 CHAIRMAN AIBEL: That having been said,

1 let me say this, and again, we will take this as an  
2 opportunity to have learned a lesson.

3           Personally I would have been better  
4 served by having the Commission prepare a more  
5 extensive written report for us, having your  
6 testimony or the testimony of the Commission on the  
7 original application when in effect a lot of the  
8 issues that resulted in the revised plan were  
9 discussed, so I think we lost that opportunity to  
10 fully consider the Commission's view and  
11 parenthetically, you know, our understanding is that  
12 the Commission's views are advisory to the Zoning  
13 Board.

14           Everybody here has listened to many  
15 applications, and we have our factors to consider,  
16 and they may not be exactly the same as the ones  
17 that you consider, but we have done our best in  
18 trying to honor our obligations under the code, and  
19 the next occasion we have, I am sure we will see a  
20 better process.

21           THE WITNESS: And to your point, a  
22 letter was requested by the applicant, a letter of  
23 support, which I think was part of your package at  
24 some point in this process.

25           The person who replaced me as the Chair

1 is perhaps not as loquacious as I am, and so it may  
2 have not gone far enough with a lot of the esoteric  
3 things that I brought into my presentation tonight.

4 MR. GALVIN: There will be discussions  
5 between our Board and the historical commission  
6 trying to improve the process, but right now we  
7 should leave that and get on with the hearing.

8 You should ask if anybody has questions  
9 of this witness.

10 CHAIRMAN AIBEL: Board members, anybody  
11 have questions?

12 COMMISSIONER CRIMMINS: No,

13 COMMISSIONER BRANCIFORTE: No.

14 COMMISSIONER DE FUSCO: I do have a  
15 question.

16 So besides your personal take on the  
17 current building, which I certainly respect, do you  
18 feel that it fits in with the historic district's  
19 character, or will it adversely affect the historic  
20 district?

21 THE WITNESS: I think there would be a  
22 very large reaction with a building like this.

23 THE AUDIENCE: Which one?

24 THE WITNESS: The previous design.

25 COMMISSIONER DE FUSCO: I am referring

1 to the proposed one in front of the Board tonight.

2 Do you think that the new proposal  
3 would adversely affect the historic district in your  
4 eyes as a community member, but not necessarily as a  
5 commissioner on the preservation board?

6 THE WITNESS: I think that the new  
7 design adversely affects the historic district in  
8 that an opportunity is missed, and this was the  
9 homerun, in my opinion, the first design.

10 COMMISSIONER DE FUSCO: As always, your  
11 views are informative, well stated and much  
12 appreciated. I do wish the process was ironed out,  
13 but, as always, you give a great deal of insight to  
14 the character of the city.

15 THE WITNESS: Thank you.

16 CHAIRMAN AIBEL: Nancy?

17 COMMISSIONER PINCUS: Paul, so I have  
18 a question: Do you view the revised design as  
19 mimicry, or do you view it as a modernized  
20 interpretation of some of the classic Hoboken style?

21 THE WITNESS: I don't know that there  
22 is a classic Hoboken style.

23 I heard that thrown about tonight a  
24 little bit. You know, we have so many influences,  
25 which is, again, part of the rich history of the

1 city.

2 You have immigrants from all parts of  
3 Europe. You know, look at the Willow Terrace  
4 houses. They were influenced by the glass region,  
5 worker housing, and they were never intended to  
6 survive, and they were supposed to be torn down once  
7 the city was built up. They were essentially  
8 trailers of their day.

9 Row houses, you know, were a Dutch  
10 concept, which then, you know, went to England and  
11 ultimately made it across the pond to the United  
12 States.

13 Tenement living was something that was  
14 considered to be the lowest class that only French  
15 people would do. So when it came to the United  
16 States, it took a lot to get people out of private  
17 homes into multi-family buildings, and the building  
18 that unfortunately burned was a good example of how  
19 somebody, who owned that property, wanted to  
20 capitalize on it and make a multi-family home that  
21 probably had the same level of detail lavished upon  
22 it as a private home would have.

23 I don't know that I answered your  
24 question.

25 COMMISSIONER PINCUS: No, but it was

1 interesting. I enjoyed it.

2 Okay. Thank you.

3 (Laughter)

4 MR. SOMERVILLE: Any other questions?

5

6 CHAIRMAN AIBEL: Public, any questions  
7 of this witness?

8 Seeing none.

9 COMMISSIONER CRIMMINS: I'll make a  
10 motion to close the public portion.

11 COMMISSIONER PINCUS: I'll second it.

12 CHAIRMAN AIBEL: All in favor?

13 (All Board members answered  
14 affirmatively)

15 MR. SOMERVILLE: Thank you.

16 CHAIRMAN AIBEL: Thanks.

17 Mr. Burke?

18 MS. BANYRA: Mr. Chairman, can I just  
19 make one -- I know the Board was talking about roof  
20 decks on Washington, and I wanted to just while we  
21 were sitting here just thinking about that, the  
22 Planning Board has approved one for Toll Brothers up  
23 on Washington between 14th and 15th, so I just  
24 wanted to add that to the pool, so to speak.

25 VICE CHAIR GREENE: I actually was

1       aware of that. I don't consider -- that section of  
2       Washington is not part of the historical section and  
3       it's not part of the central business district --

4               MS. BANYRA: Yeah, but it is  
5       Washington, though, so I just wanted to clarify that  
6       for the record.

7               VICE CHAIR GREENE: Thank you.

8               MR. BURKE: Mr. Chairman, and Board, I  
9       have no other witnesses. If I may, I would like to  
10      reserve any comments until after I hear the public  
11      comments.

12              CHAIRMAN AIBEL: Is that okay?

13              MR. GALVIN: Yes, that is the right way  
14      to go.

15              CHAIRMAN AIBEL: Okay. Thanks.

16              Now is the time for the public to speak  
17      up, if anybody has an opinion or a view, a comment  
18      that he or she would like to make, please step  
19      forward.

20              MR. GALVIN: All right. Raise your  
21      right hand.

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

25              MR. ALATI: I do.

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

3                   MR. ALATI: Surgio Alati, A-l-a-t-i.

4                   MR. GALVIN: And you still live  
5 wherever that is?

6                   MR. ALATI: Rutherford, yes, I do. I  
7 do, although some might argue that I live in three  
8 buildings in Hoboken and one in Jersey City.

9                   So mid January I was hired to be the  
10 head of schools for Stevens Cooperative School  
11 starting right before the beginning of the summer,  
12 and then on February 19th, I got a phone call from  
13 our business director, who told us about the fire  
14 that took place at the adjacent building to our  
15 building at 301 Bloomfield.

16                   So one of my charges as head of the  
17 school for the first year was to reopen the 301  
18 Bloomfield Street building. It is a two-story  
19 building that continues and will hold the same  
20 capacity as previously, and that is on the first  
21 floor a class of two-years-olds, a morning session  
22 and an afternoon session, which basically runs from  
23 8:30 to 3:30.

24                   On the second floor, it offers  
25 technology and science classes to first to eighth

1 graders, and also a big important lifeline for us,  
2 our business office which is on the second floor.

3 So one of my charges this year has been  
4 to reopen that building. I am happy to announce  
5 that hopefully we may actually have final inspection  
6 coming up in the next few days, so we have spent an  
7 inordinate amount of time and positive energy and  
8 additional costs on our part to make sure that this  
9 building and the remediation project is brought to  
10 completion in the way that we are really excited  
11 about, so you can imagine as we reopen this  
12 building, and we have a ribbon cutting potentially  
13 in the next couple of weeks.

14 The purpose of my visit this evening is  
15 one of understanding and prioritizing safety in  
16 terms of what we see and what we would like to  
17 learn, sort of asking about communication, and what  
18 that would look like, and also one of partnership.  
19 I would hope that we would be able to partner with  
20 everybody involved in this project.

21 I would like to go on the record that  
22 our concerns at some point would be responded to  
23 before the release of permits, and that this should  
24 be I hope a condition of zoning approval.

25 I would like to read some questions and

1        comments that the Board of Trustees and myself put  
2        together, if you felt that those were appropriate to  
3        share at this time.

4                    MR. GALVIN: I think you have to start,  
5        and I will just have to weigh them out as to whether  
6        they are okay.

7                    MR. BURKE: My only comment would be  
8        provided they pertain to the variances and the  
9        application, not to the building issue that may come  
10       up.

11                   MR. GALVIN: Why don't you let him  
12       start, and then I will back you up on that.

13                   MR. ALATI: Yes.

14                   So there was a reason Ron Russell was  
15       here last week. He is on the Board of Trustees, and  
16       he is actually an architect.

17                   So a lot of these have to do with the  
18       construction process and really protection of our  
19       students and teachers during the process.

20                   I asked about building on piles  
21       partially because we feel that if that is the case,  
22       we don't have a basement, and we are not on piles,  
23       so we have a significant concern about how  
24       construction is going to undermine the integrity of  
25       our building.

1                   We would like to have any work that is  
2                   required of our building during construction to be  
3                   reviewed and approved, and we have concerns about  
4                   waterproofing to the east facing wall that could be  
5                   exposed during construction.

6                   You know, we have questions that  
7                   obviously would come later on about how long the  
8                   construction would last, what does it look like,  
9                   what are the hours, would this take place during the  
10                  school day, how would that affect our school.

11                  You know, there was a comment made  
12                  about all the scaffolding on Third Street, how far  
13                  would that go towards Bloomfield, and how would that  
14                  affect our ability to be able to have families  
15                  actually walking down that block, how would work be  
16                  monitored, and really what would the process look  
17                  like, should there be an agreement that provides a  
18                  clear path to a resolution, if something goes wrong,  
19                  so really just, you know, what is the way we will  
20                  communicate with each other successfully, and should  
21                  that be a, you know, really forefront thought that  
22                  we all have.

23                  Is there a thought about doing any  
24                  preconstruction surveys to document conditions of  
25                  that area both before, during and after

1 construction.

2 And probably last, I was reading an  
3 article that just talked about neighbors to big  
4 remediation projects or big building projects, and  
5 one of the things they talked about was being added  
6 to your adjacent neighbor's insurance policy, so I  
7 have questions about that.

8 I now have questions after tonight  
9 about the roof deck, and what kind of things will be  
10 on the roof deck that under a storm, like Super  
11 Storm Sandy, would be considered to breathe that  
12 could be permitted to fly into the roof of our  
13 building, because our building I believe is going to  
14 be -- our roof is lower than where the roof deck  
15 would be, so there are a number of concerns that do  
16 revolve around safety.

17 MR. GALVIN: Let me say this.

18 In Hoboken by its nature, they  
19 routinely have buildings that are removed and are  
20 somehow magically fit in between two other  
21 buildings, and they know how to do it. And our  
22 building department does what it has to do to make  
23 sure that all of the concerns that you have -- not  
24 all of them probably because you thought of a few  
25 really good ones there -- but a good percentage of

1       them, they do this on a routine basis. They know  
2       what to do, and they execute it regularly. It is  
3       not something that the Zoning Board gets involved  
4       with.

5                If we were to give them approval for a  
6       building, a building is going to go there, no matter  
7       whether we approve this project or a more conforming  
8       project, the building would go there, and the  
9       impacts on your building would be the same from the  
10      construction. You will either have to talk to the  
11      building department about what they do and how they  
12      institute it.

13              I could ask Mr. Minervini to respond to  
14      it, but he is not going to be able to tell you too  
15      much more than what I just said to you.

16              The one point that you made that is a  
17      good one is about the roof deck. I think the Board  
18      is still trying to figure out what it wants to do  
19      with the roof deck.

20              So the question, Mr. Burke is: What  
21      kind of things would be on the roof deck.

22              MR. BURKE: I am not prepared to  
23      answer. We could take a moment and do that, but we  
24      have not discussed furniture.

25              I know one comment, and I agree, there

1           should be no umbrellas. I guess it has to be cast  
2           iron or something that is not going to move, but I  
3           am not prepared to state that on the record unless  
4           my architect or the client authorizes me.

5                       MR. GALVIN: Anything else?

6                       MR. ALATI: So I wanted to thank all of  
7           you for listening to the comments I am making.

8                       Just so I am clear in terms of the next  
9           step in prioritizing what it is we are thinking  
10          about as a school, you would suggest that we speak  
11          to the building department?

12                      MR. GALVIN: Just to find out what  
13          their normal procedure is, and, you know, Mr. Burke,  
14          do you have a few minutes afterwards?

15                      MR. BURKE: I would be happy to work  
16          with you to address those. I will give you my card,  
17          and you can call me and make sure that you are kept  
18          up to speed on every step.

19                      MR. ALATI: Sounds good.

20                      Thank you.

21                      CHAIRMAN AIBEL: Any other comments?

22                      Come forward.

23                      MR. GALVIN: Mr. Kratz, you are already  
24          under oath. You have already been sworn.

25                      MR. KRATZ: Last week.

1                   My name again is Allen Kratz. I am a  
2 member of the community. I lived here for nearly 30  
3 years.

4                   Both by vocation and avocation, I am  
5 involved in government service, and I very much  
6 appreciate the time that I know that each of you  
7 spend preparing for these meetings, attending these  
8 meetings, listening to testimony, and raising  
9 questions.

10                  Government service is, in my way of  
11 thinking, a very high call, and I very much  
12 appreciate all that you do to review applications  
13 for zoning variances and applying the master plan,  
14 and the historic preservation ordinance and all of  
15 the other regulations that come before you.

16                  One of the things that I find most  
17 difficult in government service, and I will speak  
18 about my vocation is I always challenge my -- people  
19 who report to me. I tell them that I expect to make  
20 mistakes because if they are not making mistakes,  
21 they are not really pushing the edge of the envelope  
22 enough to serve the members of the public that our  
23 agency serves.

24                  On the board in Hoboken in which I  
25 serve, I challenged myself, first of all, and I

1       challenged my colleagues on the board to go to the  
2       periphery, to go to the edge, to really push  
3       themselves in ways that we can serve our  
4       constituency in the most forward thinking in a  
5       fiduciarly responsible way, and it is a tough thing  
6       to do because it forces us to go beyond our comfort  
7       zone. It forces us as trustees, as board members,  
8       as government employees to do things that we might  
9       not do. It forces us to think of things to get rid  
10      of old myths and think of new realities. It forces  
11      us to get beyond the comfort zone and really take  
12      heat in some cases from people who might like the  
13      tried and the true.

14                 I say that in response to the design  
15      that we have here in front of us tonight, which is  
16      A-1, and I understand that is no longer in play.

17                 I think that is very regrettable for  
18      the reasons that I alluded to. A hearing is not the  
19      best way in which a quasi-judicial pros -- process  
20      is not the best way to provide the education that I  
21      think Commissioner -- Chairman Aibel earlier tonight  
22      indicated would have been very helpful here.

23                 It is really not the best environment  
24      for having a sort of discussion. I am hoping there  
25      is another way around that in the future, because

1       there will be other construction opportunities along  
2       Washington Street and in other places in the  
3       historic district.

4                   One of the things that I think, and  
5       Chairman, I understand your concern that you didn't  
6       feel that you were properly briefed, or it wasn't  
7       sufficient information that came before this Board  
8       tonight, and there might have been a different  
9       outcome, if there had been.

10                   I think it is also incumbent upon those  
11       of us in government services -- when we think that  
12       there are omissions or things that are not being  
13       said or more information, it is really our  
14       opportunity for those of us who are leaders in the  
15       community to seek out that information.

16                   So I am hoping that in the future,  
17       there will be this opportunity. I think this is a  
18       very significant loss because we had a very talented  
19       architect here in Hoboken, who has gone beyond the  
20       comfort zone of many people, but is really just as  
21       the Edwardian architect in 1905 in designing a  
22       building that I think is on the other rendering  
23       here -- I have the historic photo on -- I think it's  
24       Z-3.

25                   That was, as Commissioner Somerville

1       said, shocking in its own day. We, I think, as  
2       government leaders have to be prepared to shock  
3       ourselves and shock the people who trust in us --  
4       who trust in us to be creating landmarks for the  
5       future, to be creating an environment that people  
6       can admire in the future.

7                   I regret that that is not the case  
8       tonight, and I do hope this is something that all of  
9       us, whether we are citizens, whether we are property  
10      owners, attorneys, government officials, I am hoping  
11      that we can work on that in the future.

12                   Thank you very much.

13                   CHAIRMAN AIBEL: This is not the time  
14      for debate. I won't debate you, Mr. Kratz, but I  
15      must tell you that I think the Board did everything  
16      that it could do with the facts in front of it. I  
17      think irrespective of additional education, I am not  
18      sure that the result would have been any different.  
19      Again, we have not approved anything thus far.

20                   MR. KRATZ: I understand.

21                   MR. GALVIN: I believe that we can  
22      improve the process, and if you would allow me, I  
23      would like to --

24                   CHAIRMAN AIBEL: I am all for improving  
25      the process, but I don't think tonight was the night

1 for criticism of this Board, and I note that  
2 everybody was very, very faithful to our obligations  
3 under the regulations that we follow.

4 We listened very carefully. We came to  
5 a conclusion that might have been different from the  
6 one that the Historical Commission reached. Maybe  
7 that the foresight that you would like us to apply  
8 perhaps needs to be embodied in some better more  
9 clearer way,

10 I looked at the Historical Commission's  
11 rules and regulations this evening about  
12 reconstruction or construction on new property, and  
13 as I read through it, I still have trouble accepting  
14 the view of the commission on this one.

15 So, again, had there been perhaps more  
16 information, and I am not saying it would have made  
17 a difference, but certainly Mr. Galvin will work  
18 with the commission to improve the process, but I  
19 don't think, and I am going to say this without  
20 trying to be defensive, that we feel that we did not  
21 fulfill our obligations completely, so again, my  
22 apologies to everybody for taking the time.

23 Let's move forward.

24 MR. KRATZ: I did not intend and I  
25 began my comments tonight with a very sincere and I

1 think lengthy appreciation for all that you do. I  
2 certainly did not mean any criticism of this Board.  
3 I was offering ideas about how we could improve the  
4 process.

5 CHAIRMAN AIBEL: Thank you.

6 MR. KRATZ: That was the spirit I  
7 intended it, and I hope the members of the Board  
8 took that it way.

9 CHAIRMAN AIBEL: Accepted.

10 Thank you.

11 Come forward, please.

12 MR. GALVIN: Raise your right hand.

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

16 MR. COHEN: Yes.

17 Phil Cohen, 206 Eleventh Street,  
18 Hoboken.

19 CHAIRMAN AIBEL: Don't make us all  
20 recuse ourselves.

21 (Laughter)

22 MR. COHEN: I wasn't part of the  
23 process of this, but just a very brief reaction I  
24 had, I thought the new plan was nice. I think the  
25 original plan was also a valid and good plan, but I

1 think the second plan is a good and viable  
2 alternative, and I just wanted to say that I think  
3 it is a good plan.

4 CHAIRMAN AIBEL: Thank you, Mr. Cohen.  
5 Anybody else?

6 Come forward.

7 MR. GALVIN: Raise your right hand, Mr.  
8 Evers.

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

12 State your full name for the record.

13 MR. EVERS: Michael Evers, 252 Second  
14 Street.

15 I only come up here because I was --  
16 been listening to the dialogue about the roof deck,  
17 and we had an acknowledgement by the attorney that  
18 certain stuff shouldn't be up there because it could  
19 be dangerous, and I don't even live in this area. I  
20 live in Hoboken, but this is the busiest street in  
21 Hoboken. This has more foot traffic than any place  
22 else in Hoboken. It has a school next to it. It  
23 has a McDonald's that a lot of moms use, and I would  
24 really encourage the Board to seriously ask whether  
25 they want roof decks from which things can fall or

1 be thrown off at the busiest pedestrian area of  
2 Hoboken.

3 It is great that the owner is willing  
4 to agree to things like no umbrellas or no whatever,  
5 but practically speaking, that is going to be very  
6 difficult for you to enforce.

7 So I would just for the sake of safety  
8 ask you to consider that feature when you make your  
9 decision.

10 COMMISSIONER DE FUSCO: Mr. Chairman, I  
11 have a question for Mr. Evers.

12 CHAIRMAN AIBEL: Sure.

13 COMMISSIONER DE FUSCO: I know you  
14 weren't here the first meeting when the architect  
15 went over the floor plans for the roof deck, but are  
16 you aware that there is a 15-foot setback, a 10-foot  
17 setback, and a five-foot setback?

18 MR. EVERS: Am I aware? No, I'm not  
19 aware of that --

20 MR. GALVIN: I think he was trying to  
21 say would that change your opinion.

22 MR. EVERS: -- no, not really, because  
23 I have a roof, and things can be picked up and blown  
24 off of it, okay?

25 The real concern would be, you know,

1 consider what if you have 30 or 40 mile an hour  
2 winds up there, do you want to depend on the  
3 maintenance crew to remember to take down the  
4 umbrella that wasn't supposed to be up there, but it  
5 was? And yes, the owner would pay a fine, but  
6 somebody could be in the hospital. That's the only  
7 thing.

8 It just seems -- whatever else could be  
9 said for this building, I don't exactly wonder why  
10 you would want to create safety hazard or a  
11 potential safety hazard.

12 COMMISSIONER DE FUSCO: Thank you.

13 CHAIRMAN AIBEL: Any further comments  
14 from the public?

15 COMMISSIONER CRIMMINS: I'll make a  
16 motion to close the public portion.

17 COMMISSIONER DE FUSCO: Second.

18 CHAIRMAN AIBEL: All in favor?

19 (All Board members answered in the  
20 affirmative.)

21 CHAIRMAN AIBEL: Mr. Burke?

22 MR. BURKE: Thank you, Board.

23 First, again, thank you for the special  
24 meeting because I know you are backed up, and we  
25 appreciate that you gave us an entire night.

1                   CHAIRMAN AIBEL: You should thank them.

2                   MR. BURKE: Also thank you for the  
3 quick follow-up.

4                   Mr. Minervini addressed your concerns.  
5 The proofs for the variances have been submitted,  
6 and we believe that they justify the variances  
7 requested in the approval.

8                   Several comments, though. What should  
9 be emphasized here is that a number of people in the  
10 audience last year on February 19th were displaced  
11 because of a fire, so hopefully this process is the  
12 beginning of a rebuilding of the building and  
13 allowing people to move back into the City of  
14 Hoboken where they had lived, and between the  
15 architectural discussions, I just wanted to  
16 emphasize that there is a community human element to  
17 this application beyond the proofs, which were  
18 submitted, which I do believe again justify  
19 variances that were requested.

20                   Mr. Minervini just mentioned to me that  
21 if the Board sees fit, and I appreciate Mr. Galvin's  
22 suggestion, to bifurcate the vote, if the Board sees  
23 fit to approve a rooftop, a deck, then the furniture  
24 would be built into the deck. There would be  
25 nothing lost, so beyond that I can't testify except

1 to that one statement, and I thank the Board.

2 CHAIRMAN AIBEL: Thank you, Mr. Burke.

3 Board members, anybody want to start  
4 off with comments?

5 COMMISSIONER CRIMMINS: Well, I will  
6 start off.

7 You know, I think that the new design  
8 of the building is very good.

9 What I have heard here is I think we  
10 all agree on the new design of the building. I  
11 think nobody here from what I have heard has any  
12 problems with the height of the building or  
13 anything, but I have heard problems concerned with  
14 the roof deck.

15 I personally have not made any  
16 comments. In general, I never like approving roof  
17 decks. We have seen abusive roofs in Hoboken. We  
18 have seen abusive roofs in Hoboken on Washington  
19 Street. The only benefit to the roof deck is the  
20 occupants of the building. There is no benefit to  
21 the neighborhood. If anything, it is a detriment to  
22 the neighborhood.

23 If there are parties, and yes, we will  
24 be told there are enforcement issues, but it is also  
25 noise to the neighborhood. There is debris that

1       could come down. There is nothing good, no benefit  
2       to the community in allowing a roof deck, so I would  
3       think it would be wise for, you know, Mr. Burke and  
4       company to really, you know, consider as we go over  
5       this, we have six board members, and I have heard  
6       several concerns about the roof deck component, and  
7       I am sure he is probably going to hear a couple of  
8       more, but I don't think building of the furniture  
9       into the roof is the only problem.

10                It is the crowd that could be up there,  
11       the parties that could be up there, and the other  
12       things that could impact the neighborhood, so that  
13       is my general concern.

14                COMMISSIONER BRANCIFORTE: Well, I  
15       can't disagree.

16                You know, I asked the applicant's  
17       planner what is the negative side, the down side to  
18       having a roof deck, and he -- I don't believe he  
19       told me there was any. He could not mention one  
20       down side, and you just mentioned three that I am  
21       concerned about, noise, safety and basically  
22       enforcement.

23                And, you know, we heard that this is  
24       going to be an owner occupied building. That is  
25       wonderful. There is no way to enforce it. There's

1 no way to keep these people from making it into a  
2 rental building, and having a bunch of kids up there  
3 partying on the weekend, so I don't like roof decks  
4 either.

5 So, look, I live in a building with  
6 massive roof decks. We have a 24-hour maintenance  
7 service, and they can't keep up with sudden wind  
8 gusts that start blowing furniture around, so I will  
9 leave it at that.

10 As far as the design goes, I really  
11 didn't have a big problem with the original design.  
12 I thought it was interesting, but at the same time,  
13 you know, Mr. Kratz called it average, and I agree  
14 that sometimes you have to push the limits a little  
15 bit, have a leap of faith that the architect knows  
16 what he is doing, and I do enjoy going around town  
17 looking at the buildings that we've approved, and  
18 saying, well, I guess that is as nice as the  
19 architect promised to begin with.

20 But one thing I am scared about 300  
21 Washington is sitting on the corner, waiting to  
22 cross the street and hearing two people behind me  
23 looking up and saying, "How did that building ever  
24 get approved?"

25 And I just don't want to hear that from

1 people in the neighborhood. But I do agree it is a  
2 nice building, and it would fit in well, but just  
3 not on Washington Street, so I will leave it at  
4 that.

5 The other thing, too, usually I would  
6 have a problem with density, a density requirement,  
7 but I will let it slide this time because of the  
8 history of the building, and that is the only reason  
9 I am letting that slide.

10 I am done.

11 Thanks.

12 VICE CHAIR GREENE: No.

13 CHAIRMAN AIBEL: Nancy?

14 COMMISSIONER PINCUS: I don't have  
15 issues with the density of the building. In fact, I  
16 do have a question.

17 Is it an intact condo association and  
18 the former owners are attorneys, is that correct?

19 MR. BURKE: Yes, they are the  
20 applicant --

21 COMMISSIONER PINCUS: Actually there  
22 are eight, so we are approving eight dwelling units,  
23 and there are actually eight owners --

24 MR. BURKE: -- correct.

25 COMMISSIONER PINCUS: -- that are

1 planning to come back, and that is why I believe the  
2 architect told us last week that the envelopes, the  
3 apartments are not being shown with the layout  
4 because people will have their own layout, correct?

5 MR. BURKE: Correct.

6 And there was a question about  
7 insurance proceeds, so they may not be covering the  
8 entire reconstruction costs, and they are allowing  
9 individuals to redesign the interior.

10 COMMISSIONER PINCUS: But actually  
11 there are eight people now that are vested in  
12 returning to that building, correct?

13 MR. BURKE: Correct.

14 COMMISSIONER PINCUS: Okay.

15 I am curious, Dennis, with that --  
16 well, I don't have an issue with the density, but  
17 there are eight owners that are coming back.

18 MR. GALVIN: Generally you are not  
19 supposed to consider personal hardship when you are  
20 granting a variance, so if you are saying -- but  
21 understand, we all understand --

22 COMMISSIONER PINCUS: Okay. But they  
23 are owners, correct? They have a stake in the  
24 building.

25 MR. GALVIN: If you were to take a very

1 hard position and say, no more than four, they would  
2 be owners of a four-unit building.

3 I am not suggesting that is what you  
4 should do --

5 COMMISSIONER PINCUS: I got you.

6 MR. GALVIN: -- but I think the  
7 argument has been pretty well made about the  
8 historical fact that this building has been eight  
9 units for a considerable amount of time, and I think  
10 you could take that into consideration as to the --  
11 one of the things that we you have to do when you're  
12 reviewing density and height is you have to evaluate  
13 whether or not the building can accommodate the  
14 increase in density and the increase in height.

15 Since these have been existing for a  
16 hundred years, I think it shows that it can  
17 accommodate the site, but it is something that you  
18 have to ultimately determine for yourself.

19 COMMISSIONER PINCUS: Okay.

20 As far as the design goes, I think  
21 that -- well, I don't have to repeat my comments,  
22 but I like the design and actually some of the  
23 features that Mr. Kratz, who I respect and who is a  
24 friend of mine, probably considers -- I don't want  
25 to assume I know what you are thinking -- but

1 probably, you know, sees as detriments on the design  
2 of building, I actually see as a positive, and I  
3 think that, you know, at some point it is subjective  
4 what is visionary and what is in the spirit of the  
5 historical context of the street. So, you know,  
6 that is neither here nor there.

7 On the roof decks, actually the  
8 persuasive -- I don't think noise is so much of an  
9 issue on Washington Street. It is a noisy street.  
10 You have a lot of street traffic. I am concerned  
11 about projectiles and things flying off the roof, so  
12 I am -- I would like the owners to have some outdoor  
13 space, but I am concerned about the safety of the  
14 community, so that is my comments.

15 MR. BURKE: May I interrupt one second?

16 My client has informed me that they  
17 will withdraw the request for a rooftop variance,  
18 which also means that the elevator housing will be  
19 reduced as well.

20 CHAIRMAN AIBEL: Thank you.

21 COMMISSIONER DE FUSCO: That being  
22 said, I will start from the roof deck --

23 (Laughter)

24 -- here's the thing. I don't disagree  
25 with the roof deck being removed from this building,

1 but we need to look at roof decks as a benefit to  
2 the community moving forward in the following way:

3 That is, that people come to Hoboken  
4 looking for an outdoor space. Hoboken is a  
5 community that is dynamic, that is urban, but also  
6 that offers green space, and I believe this roof  
7 deck, as well as other roof decks, will offer that.

8 I don't believe there will be any of  
9 the negative effects on this roof deck that we  
10 talked about. I don't believe that any of the  
11 neighbors, if one neighbor was having a party, would  
12 be okay with that neighbor throwing a monstrous  
13 party on the roof, call it a generation gap, call it  
14 what you will. I don't think roof decks are a bad  
15 thing.

16 I totally respect everything that  
17 everybody has said up to this point on the roof  
18 deck, but just please, moving forward, let's  
19 consider roof decks as a benefit to the community by  
20 offering potential and current residents something  
21 that they don't currently have as a reason to come  
22 to the community and become involved with the  
23 community. As it is, we don't have enough parks in  
24 town.

25 The design of this building, at first I

1 was not bought into it. The very persuasive Mr.  
2 Krats and Mr. Somerville led me to believe that this  
3 is a corner that should have something that was a  
4 little more notable. I don't necessarily know if  
5 that design was that, so I am okay with this. But I  
6 do think that we should push ourselves on this Board  
7 to consider the makeup of the streets and push  
8 ourselves a little more to push the city forward.

9 Density and height, I already began  
10 saying at the last meeting that this building, if it  
11 hadn't been knocked down, would have been entitled  
12 by right to have all of the things that they are  
13 asking for save the doomed roof deck. I don't  
14 believe it to be a detriment to the surrounding  
15 neighborhood. I do encourage the applicant to work  
16 with the co-op school behind it to be a good  
17 neighbor, and I would like to probably see that as  
18 one of the points in the -- in our final approval,  
19 if that should end up being the decision of the  
20 Board, and that is it.

21 I am happy to see that this, you know,  
22 that the applicant has put forward something that is  
23 going to give everybody a home again and add  
24 something to the dynamic of Washington Street.

25 CHAIRMAN AIBEL: Thank you.

1                   VICE CHAIR GREENE: I believe that the  
2 revised application is far superior to the original  
3 application. I think it is a testament to Mr.  
4 Minervini's talent that he was able to make this  
5 change so quickly and retain the intent --

6                   MR. BURKE: He is going to start  
7 raising his rates --

8                   VICE CHAIR GREENE: -- I understand  
9 that.

10                   (Laughter)

11                   MR. GALVIN: We don't pay him.

12                   (Laughter)

13                   VICE CHAIR GREENE: -- and maintain the  
14 integrity of the interior. It would take various  
15 views here. Obviously we are not of one mind when  
16 it comes to esthetics. The look of a property is  
17 very subjective, and I think we have all taken our  
18 own personal views, looked at the test that had to  
19 be met and come to the conclusion that this is worth  
20 our -- worthy of our positive consideration.

21                   I am certainly in favor of it,  
22 particularly in light of the withdrawal of the roof  
23 deck.

24                   I think roof decks are terrific in  
25 various places. This is not one of those places,



1 the bays, doesn't it require city approval?

2 MS. BANYRA: Yes.

3 MR. GALVIN: Okay. So the bay --

4 MS. BANYRA: I think Washington Street  
5 extends into the public right-of-way and requires  
6 city council approval.

7 COMMISSIONER BRANCIFORTE: Do we need  
8 to mention that there is no utility room down in the  
9 basement that has become storage for the unit?

10 MR. GALVIN: What do you want to call  
11 that?

12 MS. BANYRA: I think they testified to  
13 that.

14 VICE CHAIR GREENE: It is in the plan.

15 MR. GALVIN: Oh, if it's in the plan,  
16 we --

17 COMMISSIONER BRANCIFORTE: The plan  
18 still shows a utility room I thought.

19 MR. GALVIN: -- okay. So the plan  
20 needs to be revised to relabel the utility room --

21 MR. MINERVINI: May I?

22 MR. GALVIN: Yes. Let's get it right.

23 MR. MINERVINI: It is a utility room  
24 and storage.

25 MR. GALVIN: Okay. The plan needs to

1 be revised to relabel the utility room to storage  
2 slash utility room.

3 (Board members confer.)

4 MR. GALVIN: Go ahead. Say it.

5 MS. BANYRA: Then the pro rata share  
6 for all off-track improvements as deemed necessary  
7 or as deemed appropriate by the Board of Adjustment  
8 engineer, and that I think we also discussed the  
9 possible second, another street tree subject to the  
10 Shade Tree Commission on Washington Street.

11 MR. GALVIN: I don't like to miss so  
12 much. Let's focus on something else.

13 (Board members confer.)

14 MS. BANYRA: I believe the roof is a  
15 white roof also. Is that correct?

16 Is it labeled as a white roof?

17 MR. MINERVINI: I don't know, but we  
18 will add it, if it is not.

19 MS. BANYRA: That is all I have.

20 Any questions?

21 MR. MARSDEN: No.

22 CHAIRMAN AIBEL: Does Jeff need  
23 anything?

24 MS. BANYRA: No.

25 MR. GALVIN: A soda or anything, a

1 drink, or a bottle of water?

2 (Laughter)

3 CHAIRMAN AIBEL: Ready for a vote?

4 MR. GALVIN: Yes.

5 CHAIRMAN AIBEL: Do I hear a motion?

6 VICE CHAIR GREENE: I will move  
7 approval of the variances requested.

8 VICE CHAIR AIBEL: Second?

9 COMMISSIONER PINCUS: I'll second.

10 CHAIRMAN AIBEL: Thank you.

11 Pat?

12 MS. CARCONE: Commissioner Greene?

13 VICE CHAIR GREENE: Yes.

14 MS. CARCONE: Commissioner Crimmins?

15 COMMISSIONER CRIMMINS: 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 Aibel?

23 CHAIRMAN AIBEL: Yes.

24 MR. BURKE: Thank you all very much.

25 MR. GALVIN: We will take five minutes.

1                   CHAIRMAN AIBEL: Yes. We will take a  
2           seven-minute break, and we will resume at 8:45.

3                   (The matter concluded.)

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C E R T I F I C A T E

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

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

s/Phyllis T. Lewis, CCR, CRCR

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

Notary Public of the State of New Jersey

My commission expires 11/5/2015. Dated: 4/17/13

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

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HOBOKEN ZONING BOARD OF ADJUSTMENT  
CITY OF HOBOKEN

----- X  
 206 Eleventh Street, Block 252, Lot 47:  
 Applicants: Philip Cohen & Rebecca : April 16, 2013  
 Kramnick : Tuesday 8:55 p.m.  
 D Variance :  
 ----- X

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

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

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

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12                  Attorneys for the Applicants.

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1                   CHAIRMAN AIBEL: Okay. We are back.  
2                   It is five of nine. We are going to take 136 Park.  
3                   We will then turn to 206 Eleventh Street.

4                   MR. GALVIN: No. We are switching it  
5                   around.

6                   CHAIRMAN AIBEL: My apologies. We are  
7                   taking 206 Eleventh Street next, and then we will go  
8                   to 136 Park, and we will reach 1300 Park this  
9                   evening, so we are going to try to, you know, work  
10                  as hard and as efficiently as we can, so --

11                  MR. GALVIN: Are you okay? We are  
12                  going to do 206 Eleventh Street.

13                  MR. MATULE: As long as we are going to  
14                  get on.

15                  MR. GALVIN: You're getting on. You're  
16                  getting on. You're getting on.

17                  MR. MATULE: Then I will yield the  
18                  floor to Mr. Cohen.

19                  CHAIRMAN AIBEL: That was my  
20                  discretion. You can blame me, please.

21                  MS. COHEN: Good evening.

22                  My name is Eleonore Cohen. I'm from  
23                  the firm of Kraemer Burns, and I am here to  
24                  represent Philip Cohen and Rebecca Kramnick in their  
25                  application to be granted a D-6 variance.

1                   Rebecca Kramnick and Philip Cohen are  
2                   making this application to the Zoning Board of  
3                   Hoboken for a height variance for their brownstone  
4                   home at 206 Eleventh Street in Hoboken.

5                   Ms. Kramnick and Mr. Cohen have lived  
6                   in Hoboken for 26 years. The family has lived at  
7                   206 Eleventh Street for 13 years.

8                   The Kramnick-Cohen family wishes to  
9                   excavate the basement at the premises, so the  
10                  basement area will no longer be used for storage and  
11                  mechanical space, but will be used as a family  
12                  recreation room, a bathroom, storage and mechanical  
13                  space, making the basement level of their home of  
14                  greater utility to the family.

15                  When viewing the exterior of the  
16                  property, after the proposed work is completed,  
17                  there will be no change whatsoever. When viewed  
18                  from the street at the end of the work, the house  
19                  exterior will be the same as it is now. The only  
20                  changes that will be done will be done to the  
21                  interior of the home.

22                  This application for a height variance  
23                  is made due to a technicality that requires a height  
24                  variance application, although the height of the  
25                  Kramnick-Cohen residence will remain the same.

1                   Because the applicant seeks to dig down  
2                   one and a half feet into their basement level, their  
3                   home will no longer be a three-story home over a  
4                   basement, but will become a four-story home, which  
5                   requires a D variance.

6                   The witnesses for this application are  
7                   our architect, Carrow Thibault, and our planner, Dr.  
8                   Harvey Moskowitz.

9                   May I please call our architect?

10                   CHAIRMAN AIBEL: Thank you, Ms. Cohen,  
11                   yes.

12                   MS. COHEN: Mr. Thibault.

13                   MR. GALVIN: Raise your right hand.

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

17                   MR. THIBAUT: I do.

18                   C A R R O W   T H I B A U L T, having been duly  
19                   sworn, testified as follows:

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

22                   THE WITNESS: Carrow Thibault, T-h-i-b,  
23                   as in boy, a-u-l-t.

24                   MR. GALVIN: Mr. Chairman, do you  
25                   accept Mr. Thibault's credentials?

1 (Chairman and Mr. Galvin confer.)

2 MR. GALVIN: Could you give us just a  
3 couple of Boards that you appeared before in the  
4 last few months?

5 THE WITNESS: I have not actually been  
6 qualified or sworn in or appeared before a Board,  
7 but I have been involved in many presentations and,  
8 you know, the work --

9 MR. GALVIN: Are you a licensed  
10 architect in the State of New Jersey?

11 THE WITNESS: Yes. I am licensed in  
12 New Jersey.

13 MR. GALVIN: Have you ever appeared  
14 before a Board and testified?

15 THE WITNESS: No, I have not.

16 MR. GALVIN: Okay. Well, this is your  
17 first time. Welcome to Hoboken.

18 THE WITNESS: Thank you.

19 (Laughter)

20 CHAIRMAN AIBEL: We will be very  
21 gentle. We will accept your qualifications.

22 MS. COHEN: Thank you.

23 I am going to show you, Mr. Thibault,  
24 these plans.

25 Did you prepare these plans?

1 THE WITNESS: I did.

2 MS. COHEN: And they have your seal?

3 THE WITNESS: Yes.

4 MS. COHEN: And it is the architectural  
5 plans entitled, "Residence 206 Eleventh Street,  
6 Hoboken, New Jersey 07030," and they are A-1, A-1.1  
7 and A-2?

8 THE WITNESS: Yes.

9 MS. COHEN: I would like to --

10 MR. GALVIN: We are fine.

11 MS. COHEN: Okay. And we already  
12 marked these.

13 I would like Mr. Thibault to please  
14 testify to A-1.1. Do you have yours?

15 THE WITNESS: Yes.

16 MS. COHEN: A-1.1 is the one that shows  
17 the inside of the property and what is happening  
18 there.

19 THE WITNESS: Well, actually A-1.1  
20 shows the street elevation as well as the 200-foot  
21 notification.

22 MS. COHEN: But I would like us to deal  
23 with the basement construction plan and the front  
24 elevation.

25 THE WITNESS: That would be A-2.

1 MS. COHEN: Thank you.

2 Mr. Thibault, the plans indicate that  
3 the property is above the base flood elevation.

4 Have you confirmed that the plans  
5 respond to the new flood plain elevation map and  
6 verified all flood plain issues with the plan  
7 engineer?

8 THE WITNESS: Yes, I have. Both the  
9 current and the advisory hazard areas are outside of  
10 this property.

11 MS. COHEN: Thank you.

12 MR. GALVIN: So digging down one and a  
13 half feet won't put you below the base flood  
14 elevation?

15 THE WITNESS: Well, actually the  
16 current one or the proposed --

17 MR. GALVIN: Mr. Marsden will help you.

18 MR. MARSDEN: Just for the record --

19 MR. GALVIN: Let me say this first. It  
20 is relative. You know, we are only looking at one  
21 single variance, and the issue is the basement, so  
22 we need to understand that to make this decision I  
23 think.

24 Go ahead.

25 MR. MARSDEN: Because of this

1 application, I contacted two people I know well in  
2 DEP, and they verified -- the gentleman who wrote  
3 the ordinance verified that if the outside flood --  
4 if your outside grade is above flood, then they  
5 don't consider you in the plain flood, and you don't  
6 need an individual permit to excavate your basement.

7 You will need to follow the building  
8 codes and so forth because you have a combined sewer  
9 system, so the drains in the basement need one main  
10 valve and so forth, but that is all handled by the  
11 construction department, the building department.

12 So they do not need, from what I  
13 understand, a permit from DEP to do that.

14 MR. GALVIN: So you are going to  
15 excavate the basement, is that correct?

16 THE WITNESS: Yes.

17 MR. GALVIN: How much are you going to  
18 excavate?

19 THE WITNESS: 18 inches.

20 MR. GALVIN: Okay. And what is that  
21 going to leave as your floor level in the basement  
22 area?

23 THE WITNESS: The new floor level will  
24 be at elevation 10.17.

25 MR. GALVIN: Okay. Is there going to

1 be any change to the exterior of this building as a  
2 result of this proposal?

3 THE WITNESS: No, there will not.

4 MR. GALVIN: Okay. I don't know how  
5 much more testimony we need to have on this.

6 How does the Board feel?

7 COMMISSIONER CRIMMINS: I have no  
8 questions.

9 COMMISSIONER BRANCIFORTE: No  
10 questions.

11 MR. GREENE: No.

12 MR. GALVIN: He is going to try very  
13 hard to keep giving us information.

14 MS. COHEN: I thank you very much. We  
15 are very happy.

16 MR. GALVIN: Let's go to the planner.

17 MS. COHEN: I would like to call Dr.  
18 Harvey Moskowitz, please, our planner

19 MR. GALVIN: World renown.

20 MS. COHEN: Absolutely. We're  
21 fortunate. He wrote the book.

22 (Laughter)

23 MR. GALVIN: I am sorry. I'm sorry. I  
24 made a mistake.

25 Mr. Thibault, stay. I'm sorry.

1 Does anybody in the public have  
2 questions of this witness?

3 MS. COHEN: Does anybody on the Board  
4 have questions?

5 COMMISSIONER CRIMMINS: I will make a  
6 motion to close the public portion.

7 COMMISSIONER GREENE: Second.

8 CHAIRMAN AIBEL: All in favor?

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

11 CHAIRMAN AIBEL: Proceed, please.

12 MR. GALVIN: Raise your right hand, Mr.  
13 Moskowitz.

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

17 MR. MOSKOWITZ: I do.

18 H A R V E Y M O S K O W I T Z, having been duly  
19 sworn, testified as follows:

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

22 THE WITNESS: My name is Harvey  
23 Moskowitz, M-o-s-k-o-w-i-t-z.

24 MR. GALVIN: Mr. Chairman, do you  
25 accept Mr. Moskowitz's credentials?

1 CHAIRMAN AIBEL: We do.

2 MS. COHEN: Thank you.

3 MR. GALVIN: You may proceed.

4 MS. COHEN: I am going to show you a  
5 letter that we have here from -- first of all, is  
6 this your plan, Dr. Moskowitz?

7 THE WITNESS: This is the memorandum  
8 that I prepared for this application.

9 MS. COHEN: Yes, and it has been  
10 submitted with our application. Is that correct?

11 THE WITNESS: That's correct.

12 MS. COHEN: Okay.

13 Now, I have to get over to the next  
14 part of this. You went so quickly.

15 Have you visited the home at 206  
16 Eleventh Street?

17 THE WITNESS: Yes, I have.

18 MS. COHEN: And will the proposed  
19 variance have any impact on the preexisting  
20 nonconforming regulations?

21 THE WITNESS: None at all.

22 MS. COHEN: And I know that you  
23 reviewed Ms. Banyra's letter, and is there any  
24 change you want to make to your plan?

25 THE WITNESS: Ms. Banyra prepared a

1 report for the Board. The Board has that report.

2 My report said there was no -- this is  
3 a preexisting use, preexisting zoning, and it  
4 specifically said, my original report said the  
5 structure is fully conforming with the R-1 zoning  
6 regulations.

7 That was a mistake on my part, as Ms.  
8 Banyra pointed out. It is fully conforming in terms  
9 of land use, but preexisting nonconforming in terms  
10 of lot area, depth, front yard setback, lot coverage  
11 and rear yard, and these are specifically spelled  
12 out in Ms. Banyra's report.

13 MS. COHEN: Thank you.

14 In your professional opinion as a  
15 planner, what would be the basis for the Board to  
16 grant the D variance?

17 THE WITNESS: I have to make a comment,  
18 if you will excuse me. At one time I served as a  
19 consultant to Hoboken many, many, many decades ago,  
20 I might add, and this was a very difficult  
21 application to put together because there are no  
22 issues.

23 (Laughter)

24 What you have is an applicant who  
25 proposes to excavate part of his cellar 18 inches,

1 in order to -- and because of a decision made, I  
2 think about five years ago, which I had an  
3 opportunity to read, it is now considered a, quote,  
4 use variance. Use variances have two criteria. One  
5 are the special reasons, which deal with the  
6 objectivity of planning as spelled out, and the  
7 other are the negative criteria, which talk about  
8 whether or not the impact of the proposed use,  
9 proposed variance on the neighborhood, if you will,  
10 and the impact and the intent and purpose of the  
11 zoned plan and zoning ordinance.

12 It was difficult coming up with a  
13 two-page memorandum to submit on this case because  
14 in all situations, there is no impact whatsoever.

15 You have an applicant who is proposing  
16 to maintain the same use on the -- in the property  
17 as now, who lived there for over 11 years as well.

18 The objectives of the Hoboken master  
19 plan, I spelled out fully in my report that are  
20 being met, and of course, the objectives of the  
21 State and Municipal Land Use Law as they apply are  
22 also being met.

23 It is all positive. There is  
24 absolutely nothing negative about this particular  
25 application.

1 MR. GALVIN: So the site can  
2 accommodate the deviation from the height standard  
3 of the ordinance?

4 THE WITNESS: Absolutely.

5 I might add that there was a memorandum  
6 prepared by the Board of Adjustment in 2009, which  
7 recommended as a result of the court decision, that  
8 the ordinance be amended to accommodate this kind of  
9 an application, no exterior changes, and the only  
10 thing that takes place is on the interior.

11 MS. COHEN: So in your professional  
12 opinion, Dr. Moskowitz, does the Kramnick-Cohen  
13 application for a variance, is that in line with the  
14 intent and purpose of the master plan and the zoning  
15 ordinance?

16 THE WITNESS: No question. This is a  
17 residential area, and what is taking place in the  
18 building is an improvement to that residential  
19 nature of the neighborhood.

20 MR. GALVIN: I suggest we open up the  
21 witness for questions.

22 CHAIRMAN AIBEL: Board members,  
23 questions?

24 COMMISSIONER CRIMMINS: No questions.

25 COMMISSIONER BRANCIFORTE: The only

1 question I have is I would like to see the letter,  
2 if we have that on file somewhere, the letter from  
3 the Zoning Board to the City Council recommending  
4 the change in 2009.

5 THE WITNESS: I have that copy right  
6 here.

7 MR. GALVIN: That is in the annual  
8 report --

9 COMMISSIONER BRANCIFORTE: Oh, that is  
10 fine. I don't need to see it, if it is part of the  
11 annual report.

12 MR. GALVIN: -- and I can tell you  
13 that, you know, yes, I am sure it is going to be in  
14 the 2010 report when we get it also.

15 COMMISSIONER BRANCIFORTE: Thank you.

16 No questions.

17 CHAIRMAN AIBEL: It is.

18 COMMISSIONER BRANCIFORTE: The 2010  
19 report we got.

20 CHAIRMAN AIBEL: Public, any questions  
21 of this witness?

22 Seeing none, can I have a motion?

23 COMMISSIONER CRIMMINS: I'll make a  
24 motion to close the public portion.

25 COMMISSIONER BRANCIFORTE: Second.

1 CHAIRMAN AIBEL: All in favor?

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

4 MR. GALVIN: Always a pleasure.

5 THE WITNESS: Thank you.

6 I just wanted to make one comment that  
7 the Planning Board, when I was a consultant, held  
8 their meetings at three o'clock in the afternoon  
9 until five at which time they then adjourned to The  
10 Clam Broth House for dinner.

11 (Laughter)

12 MR. GALVIN: They sure knew how to do  
13 it in the old days.

14 THE WITNESS: It was a wonderful  
15 client.

16 MS. COHEN: Rather than go into a long  
17 closing based on the reports, I request that the  
18 zone -- that the D-6 variance be granted, and I  
19 appreciate what you people are doing tonight.

20 Thank you very much.

21 CHAIRMAN AIBEL: Any public comment?

22 Seeing none, close the public portion.

23 COMMISSIONER CRIMMINS: I'll make a  
24 motion to close the public portion.

25 VICE CHAIR GREENE: I will second that.

1 CHAIRMAN AIBEL: Okay. Ready for a  
2 motion?

3 COMMISSIONER BRANCIFORTE: Motion to  
4 approve the application.

5 COMMISSIONER PINCUS: Second.

6 CHAIRMAN AIBEL: Pat?

7 VICE CHAIR GREENE: Any conditions?

8 (Laughter)

9 MR. GALVIN: No. I think this one is  
10 unconditional.

11 MS. CARCONE: Commissioner Greene?

12 COMMISSIONER GREENE: Yes.

13 MS. CARCONE: Commissioner Crimmins?

14 COMMISSIONER CRIMMINS: Yes.

15 MS. CARCONE: Commissioner DeFusco?

16 COMMISSIONER DE FUSCO: Yes.

17 MS. CARCONE: Commissioner Pincus?

18 COMMISSIONER PINCUS: Yes.

19 MS. CARCONE: Commissioner Branciforte?

20 COMMISSIONER BRANCIFORTE: Yes.

21 MS. CARCONE: Commissioner Aibel?

22 CHAIRMAN AIBEL: Yes.

23 Thank you very much.

24 MS. COHEN: Thank you very much.

25 (The matter concluded.)

C E R T I F I C A T E

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

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

s/Phyllis T. Lewis

- - - - -

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

Notary Public of the State of New Jersey

My commission expires 11/5/2015.

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

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HOBOKEN ZONING BOARD OF ADJUSTMENT  
CITY OF HOBOKEN

----- X  
 136 PARK AVENUE, Block 34, Lot 18 :  
 Applicant: 136 Park Avenue, LP : April 16, 2013  
 C&D Variances : Tuesday 9:20 p.m.  
 ----- X

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 (Recused)  
Commissioner John Branciforte

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

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

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7                   ROBERT C. MATULE, ESQUIRE  
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9                   Hoboken, New Jersey 07030  
10                  Attorney for the Applicant.

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1 CHAIRMAN AIBEL: Mr. Matule?

2 COMMISSIONER DEFUSCO: Mr. Chairman, I  
3 need to recuse myself from the next application,  
4 136 Park Avenue.

5 CHAIRMAN AIBEL: Would you be able to  
6 remain for 1300 Park?

7 COMMISSIONER DE FUSCO: I will. I will  
8 be in the viewing area.

9 (Commissioner DeFusco recused.)

10 CHAIRMAN AIBEL: 136 Park Avenue.

11 MR. MATULE: Good evening, Mr.  
12 Chairman, and Board members.

13 Robert Matule appearing on behalf of  
14 the applicant, 136 Park Avenue.

15 This is the application of 136 Park  
16 Avenue. We previously appeared before the Board in  
17 October, if you recall, with an application to  
18 construct a two-family house at the property at 136  
19 Park Avenue with on-site parking, a four-story  
20 house, two units, with on-site parking. It was  
21 presented simultaneously as the project at 134 Park  
22 Avenue. The application was denied.

23 We have now filed a new application for  
24 a four-story, two-family building with no parking.  
25 We have several variances. The property is

1 currently improved with a nonconforming two-family  
2 house built at the rear property line with parking  
3 in the front yard.

4 I note we only have five Board members  
5 here.

6 CHAIRMAN AIBEL: Hang on one second.  
7 Mr. Matule, one second.

8 (Board members confer)

9 MR. GALVIN: All right. Not only do we  
10 have five, but Elliot's son lives within 200 feet.  
11 Now, he doesn't own property. He is a tenant. In  
12 the prior case, I had him recuse himself just in an  
13 abundance of caution. I think if you live within  
14 200 feet, or is it own within 200 feet, so I think I  
15 have to think about this for one second.

16 I think it is ownership within 200 feet  
17 that causes you to have a conflict.

18 If we do have a conflict, we wouldn't  
19 be able to proceed tonight because we would only  
20 have four, or we could hear it with four people and  
21 then have the fourth Planning Board member that will  
22 have to come over and review the transcript.

23 MR. MATULE: Yes.

24 Here is the practical dilemma that we  
25 are faced with. I don't know if you recall the

1 hearing for 134 Park Avenue. We have that applicant  
2 here tonight. As I understand it, his house is  
3 leaning against our house, or our house is leaning  
4 against his house, and they have to be torn down  
5 together because when they take one down,  
6 the other one is going to --

7 COMMISSIONER PINCUS: Fall.

8 MR. GALVIN: I was going to say it's a  
9 good thing your comments are coming later, because  
10 if they had been before 300 Washington, that might  
11 have created a problem --

12 (Laughter)

13 MR. MATULE: So I am only --

14 MR. GALVIN: -- so much for all of that  
15 crap. I'm telling people that we don't have to  
16 worry about the house next door.

17 MR. MATULE: -- even though the  
18 applicant at 134's project was approved in October,  
19 he is sort of handcuffed until we deal with this. I  
20 guess if you want to take a minute to think about  
21 it, I certainly don't --

22 MR. GALVIN: I won't need long. I just  
23 want to look for one thing.

24 No, not if it is an actual conflict. I  
25 just have to check something.

1 (Board members confer)

2 CHAIRMAN AIBEL: I don't know what he  
3 is looking for on ESPN, but --

4 (Laughter)

5 MR. GALVIN: Yes. The Yankees are...

6 Okay. I'm reading from Mr. Cox'  
7 treatise, and what we have to get from it is what is  
8 not stated.

9 He is talking about the fact that on  
10 Page 63 incorporated in the legislature's  
11 determination that owners of property within 200  
12 feet of the property to be affected by a Zoning  
13 Board proceeding have an interest.

14 What it says there is "owner." Your  
15 son is not an owner. He is just a tenant.

16 MR. GREENE: Correct.

17 MR. GALVIN: However, it goes on to  
18 say: Hence, a Board member who owns property within  
19 the 200 foot zone is disqualified and may not sit  
20 with the Board.

21 Then it went on to cite Care of Tenafly  
22 finding that a Board member's mother's ownership of  
23 a parcel within 200 feet of the applicant's property  
24 required disqualification.

25 Again, there is no ownership, so

1           therefore, he doesn't really have an interest in the  
2           property, and therefore, I am going to rule that  
3           there is no conflict, and it has been disclosed.

4                         Does anybody have an objection to Mr.  
5           Greene sitting on this matter?

6                         No?

7                         MR. MATULE:  No, certainly not.  I am  
8           familiar with that case.  I think it involved  
9           Shop-Rite or something, in the case where the mother  
10          was involved.

11                        MR. GALVIN:  They didn't give us that  
12          much, but --

13                        MR. MATULE:  Okay.  So we have five  
14          members.

15                        VICE CHAIR GREENE:  Thank you.

16                        MR. MATULE:  Thank you, Mr. Greene, by  
17          the way, for bringing that to our attention and  
18          making it clear on the record.  I wouldn't want  
19          anything to come up as a surprise after the fact.

20                        MR. GALVIN:  The other thing I will  
21          point out, too, is there is a D variance involved  
22          here --

23                        MR. MATULE:  Yes.

24                        MR. GALVIN:  -- so we need all five  
25          Board members to vote affirmatively, so --

1                   MR. MATULE: So having gotten through  
2 that, can we have Mr. McNeight sworn and proceed?

3                   MR. GALVIN: Do you swear to tell the  
4 truth, the whole truth, and nothing but the truth,  
5 so help you God?

6                   MR. MC NEIGHT: Yes.

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

9                   MR. GALVIN: State your full name for  
10 the record and spell your last name.

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

13                  MR. GALVIN: Mr. Chairman, do we accept  
14 Mr. McNeight's credentials?

15                  CHAIRMAN AIBEL: Yes, we do.

16                  MR. GALVIN: You may proceed.

17                  MR. MATULE: Mr. McNeight, you  
18 previously appeared before this Board in October  
19 with respect to this application, correct?

20                  THE WITNESS: That is correct.

21                  MR. MATULE: Can you describe for the  
22 Board members the existing site and surrounding  
23 area, and then go through your proposed revised plan  
24 of the structure?

25                  THE WITNESS: Yes, sir.

1                   This is a 17 and a half foot wide by a  
2 hundred foot deep site on the west side of Park  
3 Avenue between First and Second.

4                   It is in this photograph at the top of  
5 my drawing here that you are looking at on Z-1, it  
6 is the building all the way on the right of those  
7 three existing old buildings that are set back all  
8 the way on the back side of the property.

9                   On that particular block, there is a  
10 new building in the center of the block that has  
11 been brought forward to make it conform to the  
12 zoning.

13                   As Mr. Matule stated previously, six  
14 months ago, the building at 134 was approved to also  
15 be a new structure pretty much on the front property  
16 line.

17                   In this case, we have a four-story  
18 structure with two families in it. The first being  
19 a relatively small studio apartment on the first  
20 floor, and then there is a triplex apartment on the  
21 upper three floors.

22                   Being in the flood plain, the first  
23 floor was picked up to 13 feet above sea level,  
24 which in this case is seven and a half feet above  
25 the sidewalk, so the building has a stoop that leads

1 up to the front door.

2           There is an approximately six and a  
3 half foot tall story underneath the building that  
4 can't be used for any purpose other than storage  
5 because of the flood plain. There won't be any  
6 utility connections down there, other than the  
7 sewer, and there wouldn't be any habitable use for  
8 that particular level.

9           Let me turn to the third page.

10           So as I stated before, we have a studio  
11 apartment on the first level, the entry to the  
12 triplex. The upper floors is also on the first  
13 level in the rear. There is a deck that leads from  
14 what will be a family room on that lowest first  
15 floor level that leads down to the deck.

16           The upper three floors, the top two  
17 floors are bedrooms for the family,

18           The second floor will be the  
19 living/dining/kitchen area. It also has connections  
20 to part of the deck system that will lead the family  
21 back down to the rear yard for their outdoor space.

22           Turning to Z-4, you will see the front  
23 and back elevations.

24           As I stated before, the first floor  
25 level is 13 feet above sea level as per the latest

1 FEMA regulations, so we have 40 feet, plus the extra  
2 one foot, so we are 41 feet above the 12-foot base  
3 flood elevation.

4 The building as far as what it is  
5 constructed of is two different kinds of brick, a  
6 painted metal cornice on the top, relatively large  
7 windows, semi-traditional lintel sills on those  
8 windows.

9 On the back, as I said, there is a  
10 two-story deck that leads down to the yard.

11 And then on the last page you will see  
12 that the yard is landscaped, demarcated by a  
13 six-foot high wooden fence that is going to have its  
14 good side pointing outward towards the adjacent  
15 properties.

16 The yard has a paved area in the center  
17 and then a generous amount of landscaping around its  
18 peripheral three sides and little bit of lawn all  
19 the way in the back.

20 The front of the yard is going to have  
21 a street tree since there is no driveway in this  
22 design, and the area along where the gate line is on  
23 this particular street is going to be landscaped.

24 MR. MATULE: Mr. McNeight, the main  
25 building itself will have how much lot coverage?

1 THE WITNESS: 60 percent.

2 MR. MATULE: We are asking for a  
3 variance for 5.4 percent lot coverage for that rear  
4 deck and stair?

5 THE WITNESS: Correct.

6 MR. MATULE: And the rear deck and  
7 stair is only on the first and second floors?

8 THE WITNESS: Correct.

9 MR. MATULE: And that's specifically to  
10 provide a way of egress out to the rear yard?

11 THE WITNESS: Correct, for the family.

12 MR. MATULE: And then the front yard  
13 setback is set back two feet?

14 THE WITNESS: Yes, it is.

15 MR. MATULE: And there is a fence line  
16 on the street now, correct?

17 THE WITNESS: Yes, there is.

18 MR. MATULE: And the building will be  
19 fully fire suppressed?

20 THE WITNESS: Yes. It has to be since  
21 it is a four-story.

22 MR. MATULE: And you received Mr.  
23 Marsden's report with respect to the review?

24 THE WITNESS: Yes, I have.

25 MR. MATULE: Can you address all of the

1 issues raised in his report?

2 THE WITNESS: Yes. I think the major  
3 one was bringing this building up to the latest FEMA  
4 standards.

5 MR. MATULE: I know there were minor  
6 details about a saw cut detail, and if the Board  
7 were to approve this on any resolution set of plans,  
8 you could make those corrections?

9 THE WITNESS: Yes, sir.

10 MR. MATULE: And this building,  
11 assuming the Board approves it, you would have to  
12 apply to North Hudson to see what kind of on-site  
13 detention system they would want?

14 THE WITNESS: Yes.

15 MR. MATULE: And whatever they  
16 required, you would comply with, correct?

17 THE WITNESS: That's correct.

18 MR. MATULE: I think that is all I have  
19 of Mr. McNeight.

20 CHAIRMAN AIBEL: All right.

21 CHAIRMAN AIBEL: Finished?

22 MR. MATULE: Yes.

23 I have no further questions.

24 CHAIRMAN AIBEL: Board members, any  
25 questions?

1 COMMISSIONER CRIMMINS: No questions.

2 VICE CHAIR GREENE: What is the yard?

3 What is the length of the yard from the  
4 rear of the deck to the rear of the property?

5 THE WITNESS: Thirty feet.

6 VICE CHAIR GREENE: So there is no  
7 variance required for that?

8 THE WITNESS: Not a rear yard variance,  
9 we don't need, correct.

10 VICE CHAIR GREENE: The 44-foot height,  
11 which I think is four feet higher than the adjacent  
12 property, how much of that is a result of the new  
13 FEMA map?

14 THE WITNESS: Three feet. It changed  
15 from where you had to be at ten, you have to be at  
16 13.

17 VICE CHAIR GREENE: Thank you.

18 COMMISSIONER BRANCIFORTE: That was my  
19 question anyway, so I am good.

20 CHAIRMAN AIBEL: Nancy, anything?

21 COMMISSIONER PINCUS: Well, I just have  
22 a question.

23 What is this portion here? What is on  
24 that side of the yard?

25 THE WITNESS: I'm sorry?

1                   COMMISSIONER PINCUS:  What is here and  
2                   there?  It says something -- there was a wall or  
3                   something, an existing wall?

4                   THE WITNESS:  Well, currently there is  
5                   a one-story building to the north, so there is no  
6                   yard on that side.

7                   The building on Second Street comes  
8                   halfway across, so you have a solid wall here and a  
9                   solid wall all the way down here, and this is the --  
10                  going to be the rear yard of the new building  
11                  proposed next door, and then this is the yard of  
12                  that building that I spoke about on Second Street.

13                  COMMISSIONER PINCUS:  Okay.

14                  Thank you.

15                  COMMISSIONER BRANCIFORTE:  Is this  
16                  building any deeper than the building we approved  
17                  next door?

18                  THE WITNESS:  I don't remember that  
19                  exact plan, but I think it is not any deeper, no.

20                  CHAIRMAN AIBEL:  Mr. Matule, can you  
21                  help us?

22                  THE WITNESS:  I am told it is shorter,  
23                  but as I said, I don't have those other plans with  
24                  me.

25                  MR. MATULE:  I am going to look and

1 see. I may have a set.

2 If you want to bear with me a minute,  
3 Mr. Branciforte, I will try to get an answer to your  
4 question.

5 (Board members confer)

6 I have a copy of the plans for 134  
7 Park, the resolution set, which I believe -- well, I  
8 will let Mr. McNeight look at the numbers.

9 You are the architect. You answer the  
10 question.

11 THE WITNESS: Hum, the building  
12 approved is 62 feet deep with a five-foot front  
13 yard, so ours would be shorter because we have a  
14 60-foot building and a two-foot front yard, so we  
15 should be about four or five feet less than the  
16 adjacent building to the south.

17 CHAIRMAN AIBEL: Is it 65 feet to the  
18 rear of the building, or is it with a deck?

19 THE WITNESS: It's 62 feet, plus it's  
20 five feet set back to begin with, so it is 67 and a  
21 half feet back.

22 MR. MATULE: The rear wall is 67 and a  
23 half feet from the front property line?

24 THE WITNESS: Correct.

25 CHAIRMAN AIBEL: And yours is?

1 THE WITNESS: 62 feet.

2 MR. MATULE: From the front property  
3 line?

4 THE WITNESS: From the front property  
5 line.

6 CHAIRMAN AIBEL: So would it be fair to  
7 say that the deck or balcony in the back would sort  
8 of align with the rear wall of the building to the  
9 south?

10 THE WITNESS: Yes, within six inches.

11 VICE CHAIR GREENE: That doesn't add  
12 up, if it is 62 and 70, and he is 67, that is three  
13 feet.

14 MR. MATULE: I think our deck might be  
15 six inches --

16 THE WITNESS: Further west.

17 MR. MATULE: -- further back.

18 VICE CHAIR GREENE: Isn't it three  
19 feet? Isn't it three --

20 MR. MATULE: Here is how I --

21 VICE CHAIR GREENE: 62 and five is 67,  
22 and 60 feet and two and eight is 70.

23 MR. MATULE: Our deck is, as I  
24 understand it, our deck is --

25 THE WITNESS: Eight feet deep.

1                   MR. MATULE:  -- eight, and our building  
2                   is 68.  So our deck, the rear of our deck is at 70  
3                   feet.

4                   VICE CHAIR GREENE:  Right.  And the  
5                   rear of their building is at 67?

6                   MR. MATULE:  The rear of this building  
7                   is at --

8                   THE WITNESS:  67.

9                   MR. MATULE:  -- 67 and a half, but then  
10                  it has some kind of a rear stairway also.  But the  
11                  actual rear wall, maybe we will go from the other  
12                  direction.  There is 33 feet from the rear lot line  
13                  to the rear wall of the building next door, and  
14                  there is 30 feet from our rear lot line to our deck.

15                  VICE CHAIR GREENE:  That is the same  
16                  three feet.

17                  UNIDENTIFIED VOICE:  They have a deck  
18                  as well.

19                  MR. MATULE:  Yes, yes.  But we are just  
20                  talking about building the building.  The building  
21                  next door has a deck besides --

22                  VICE CHAIR GREENE:  Okay.

23                  CHAIRMAN AIBEL:  So how do those decks  
24                  align in the rear?

25                  THE WITNESS:  I should have brought my

1 microscope.

2 MR. MATULE: Well, let me see if I  
3 could answer that by looking at the plans.

4 The rear deck, their rear deck is eight  
5 feet wide also, but it doesn't look like it goes all  
6 the way across the back of the building like ours  
7 doesn't go all the way across the back of the  
8 building.

9 COMMISSIONER BRANCIFORTE: Because  
10 usually in the past, we usually try to move that  
11 away from the lot line, don't we, the property line?

12 VICE CHAIR GREENE: It is set back.

13 MR. MATULE: But their deck goes up  
14 higher, you know, also four floors.

15 I don't know. We have the property  
16 owner here, if you want to -- we can have him sworn  
17 in and ask him.

18 MR. GALVIN: If the Board needs it,  
19 then we will to it, but --

20 VICE CHAIR GREENE: It is clear that  
21 the previously approved one encroached more into the  
22 donut than this does, so --

23 CHAIRMAN AIBEL: Nancy?

24 COMMISSIONER PINCUS: A final question  
25 for the architect.

1                   The building to me looks very -- I  
2                   guess because it is not a wide building, it appears  
3                   very tall, especially when I see it on this  
4                   elevation. It just accentuates the height because  
5                   it's narrow.

6                   Just a question: Would you consider  
7                   setting the top floor back just a few feet and maybe  
8                   cut down on the appearance of the --

9                   THE WITNESS: We will have to ask our  
10                  client.

11                  COMMISSIONER PINCUS: Just a question.

12                  To me, it just, you know, if you are  
13                  asking for a height variance, and it is really tall.

14                  THE WITNESS: Well, that is pretty much  
15                  a function of the new federal rules.

16                  COMMISSIONER PINCUS: No. I  
17                  understand. I understand.

18                  THE WITNESS: The new landscape is  
19                  eight feet up off the ground, so...

20                  COMMISSIONER BRANCIFORTE: Yeah. You  
21                  know, the thing I am worried about now with the new  
22                  FEMA maps, we're raising this -- just to show how we  
23                  had to raise the building compared to the building  
24                  that we approved before Sandy, I am more and more  
25                  worried about the blank facade, the blank facades

1 that are going to start appearing all over town.

2 THE WITNESS: Well, it isn't blank.

3 COMMISSIONER BRANCIFORTE: Well, it is  
4 not a lot of life. I am afraid of what is going to  
5 happen to the street scape. That is not a  
6 reflection on this application specifically, but  
7 just in general, I am starting to worry about it.

8 MS. BANYRA: You know, I just have a  
9 question for the architect.

10 Mr. McNeight, if you could actually  
11 lower the building by -- since one of the apartments  
12 is four stories, you could actually take six inches  
13 probably off each floor.

14 I know that you tend to like to have  
15 ten-foot clearance, but could you not lower the  
16 height of the building by just reducing some floor  
17 space interior-wise especially if the building next  
18 to you is 40 feet and -- well, it is a two-part  
19 question, so maybe wait for the second question.

20 The second one is: If the new FEMA  
21 regulations, if the other building next door isn't  
22 built, than they are at a 40-foot height, so are you  
23 saying that they are not actually going to be able  
24 to build that because of the new regulations?

25 THE WITNESS: I would ask Mr. Marsden

1 that question.

2 MR. MARSDEN: My question, Bob, would  
3 be: What date was the approval for the adjacent  
4 building?

5 MR. MATULE: October 16th, 2012, but  
6 that building also has parking at grade. It doesn't  
7 have habitable space at grade.

8 MR. MARSDEN: Yeah. The habitable  
9 space is still above 13.

10 MR. MATULE: The first habitable floor  
11 is above the new requirement.

12 MR. MARSDEN: Yes. I just wanted to  
13 clarify that that building would not have to be  
14 raised because the first habitable floor is above  
15 that.

16 The parking level would need an  
17 individual permit from DEP, which they have been  
18 issuing for parking below the flood plain, so I  
19 think there is not a problem with that.

20 MS. BANYRA: No. My question really  
21 goes to: If that building is 40, why can't this  
22 building be 40 or 42? I mean, why is it 44? That  
23 is the question.

24 MR. MATULE: Well, I think the  
25 ordinance contemplates 40 feet above base flood

1 elevation. The problem is the base flood elevation  
2 has been a constantly moving target. First it was  
3 nine, then it was nine plus one, and now it is 12  
4 plus one, and that is what keeps driving it up. You  
5 know, I suppose the architect and my client and I  
6 could discuss it. I don't know what the ceiling  
7 heights are in there.

8 What are they, nine-foot ceilings now,  
9 if I might ask?

10 A VOICE: I believe that they are, yes.  
11 I have no problem having 40 feet over the base  
12 flood.

13 MR. MATULE: Well, I think that is  
14 basically where we are at now.

15 THE WITNESS: We are at 41.

16 VICE CHAIR GREENE: No. I guess there  
17 is one foot --

18 MR. MATULE: Oh, okay. But even if  
19 we --

20 MS. BANYRA: I am mostly just asking  
21 questions. There is no direction other than I am  
22 asking a question regarding that.

23 The second question I had was the deck  
24 that is on the first floor, the first floor  
25 apartment isn't served by an outdoor deck, so to

1 speak --

2 THE WITNESS: That's correct.

3 MS. BANYRA: -- it all goes to the  
4 other apartment --

5 THE WITNESS: The bigger unit.

6 MS. BANYRA: -- so that has two decks,  
7 and the studio apartment has no deck.

8 THE WITNESS: Correct.

9 (Board members confer)

10 MS. BANYRA: I actually have one more  
11 question.

12 Mr. McNeight, we have talked about the  
13 number of steps going into a building.

14 Is there a way, and this design, your  
15 prior application, there were less steps because the  
16 building was lower.

17 Is there a way to push the steps into  
18 the building somehow, so that you kind of lose that  
19 length and pull it back from the street, because it  
20 does extend beyond your fenced-in area by, I don't  
21 know, a foot and a half I think?

22 THE WITNESS: Yes. This particular  
23 design we do have that ability to slide that stoop  
24 into the body of the building.

25 MS. BANYRA: Which I think would make a

1 big difference in terms of the look because then you  
2 lose some of those steps, and I think that is part  
3 of the problem with some of the designs that as you  
4 go around town, there are these long steps as  
5 opposed to having like a stoop that you could kind  
6 of sit on, and we noted in some of the designs that  
7 the architects are pushing them in, so the effect is  
8 there is still that many steps, but from the street,  
9 it is a nicer look I want to say.

10 Do you not agree?

11 THE WITNESS: Yes, that is true.

12 MS. BANYRA: And it would also take the  
13 potential, I am going to call it a trip hazard with  
14 the extra sidewalk sticking out beyond the fence  
15 line. It would pull it back a little, so there is  
16 an opportunity to do that, so I am just pointing  
17 that out to the Board.

18 MR. MATULE: I have just discussed that  
19 with the applicant, and we have no problem pulling  
20 the steps back, so they are within the gate line.

21 MS. BANYRA: Yes. It just minimizes all  
22 of that mass.

23 MR. MATULE: I think we had that on  
24 another project recently. I think 626 Grand Street,  
25 we pushed the whole thing back.

1 THE WITNESS: Into the building, right.

2 MS. BANYRA: A couple feet would be  
3 much better.

4 MR. MATULE: So we have no issue doing  
5 that.

6 CHAIRMAN AIBEL: Can the height be  
7 reduced by a foot?

8 MR. MATULE: Pardon me?

9 CHAIRMAN AIBEL: Can the height be  
10 reduced by a foot?

11 MR. MATULE: I will see if we can take  
12 six inches --

13 (Counsel confers)

14 MR. MATULE: Yes. We can take six  
15 inches per floor out --

16 A VOICE: No. It is four floors, so  
17 one foot off, so it would be three inches per floor.

18 MR. MATULE: Three inches per floor.  
19 That is why I am a lawyer and not an  
20 architect.

21 (Laughter)

22 CHAIRMAN AIBEL: We have our CFO here,  
23 so --

24 MR. MATULE: But, yes, we could bring  
25 the height -- now, just so we are all -- because I

1 find this now with the advisory base flood and the  
2 plus one, as I understand it, and Mr. McNeight, why  
3 don't you confirm this --

4 THE WITNESS: Yes, sir.

5 MR. MATULE: -- that we are going to be  
6 47 feet six inches from grade because this is the  
7 only way it works in my head, so by pulling a foot  
8 off, now we will be 46-6 above grade to the roof  
9 slab?

10 THE WITNESS: Yes, correct. Take a  
11 foot out of it.

12 MR. MATULE: Which would be 39 plus  
13 the --

14 THE WITNESS: We are still going to be  
15 seven foot six above grade where the first floor is,  
16 but only 39 feet above that to the roof.

17 MR. MATULE: Okay.

18 So, yes, we can do that. We can reduce  
19 the overall building height by a foot, which would  
20 make it 43 feet above -- 39 feet above the ABFE,

21 MR. GALVIN: That is why I don't like  
22 to let my Board members repeat the conditions.

23 THE WITNESS: Correct.

24 MR. MATULE: Thank you.

25 CHAIRMAN AIBEL: Anything else from for

1 Mr. McNeight?

2 The public, opening it up to questions  
3 of the architect.

4 Please come forward.

5 Name and address, please.

6 MR. EVERS: Michael Evers, 252 Second  
7 Street, Hoboken.

8 Hum, just so I make sure I understand  
9 it, above grade, how high is this building actually  
10 now that we --

11 THE WITNESS: The way it was drawn, we  
12 have to be seven and a half feet up to meet this 13  
13 feet above sea level.

14 This drawing shows 40 feet above that  
15 to the roof, and we were just saying we could take a  
16 foot out of that by taking three inches out of each  
17 of the four floors.

18 MR. EVERS: And how high is the  
19 cornice?

20 THE WITNESS: The cornice, let's see --

21 MR. EVERS: It says 50.4 feet.

22 THE WITNESS: -- yes, so it would be 49  
23 feet four inches.

24 MR. EVERS: So it is 49 feet above the  
25 sidewalk?

1 THE WITNESS: Correct.

2 MR. EVERS: Now, I noticed when I  
3 looked at the plans that this is -- you got two  
4 height variances, one listed as a D, which is for  
5 the number of floors, and then you have a height  
6 variance listed as a C variance for the height  
7 variance, I guess above grade or above base flood  
8 elevation. What is --

9 MR. MATULE: I have to interrupt.

10 I don't know what plans you are looking  
11 at, but it is the plans that have the revision date  
12 of 4/1/13, because they are listed as a D variance  
13 44 feet above, but of course, now that we agreed to  
14 take a foot off, we are down to 43, which --

15 MR. GALVIN: That would make it a C  
16 variance.

17 MR. EVERS: I can save you time, if I  
18 can ask the questions.

19 MR. GALVIN: Fire away.

20 MR. EVERS: The height of the building  
21 to the north of it is 33 feet, correct?

22 (Cell phone rings)

23 MR. EVERS: I think that was a yes?

24 THE WITNESS: I don't know if I -- I  
25 mean, it appears to be approximately 33 feet. I

1 didn't measure it.

2 MR. EVERS: You testified to that  
3 effect at the last hearing on the same building.

4 THE WITNESS: Okay.

5 MR. EVERS: The height of the building  
6 to the south is how high?

7 THE WITNESS: The existing building or  
8 the --

9 MR. EVERS: The one you determined  
10 zoning conditions from, isn't it?

11 MR. MATULE: I think that calls for a  
12 legal --

13 THE WITNESS: Yes, that is a legal  
14 question.

15 MR. GALVIN: I missed it.

16 MR. MATULE: The question was: What is  
17 the height of the existing building to the south.  
18 Mr. McNeight asked the existing building, implying  
19 or the improved building, and Mr. Evers' response  
20 was, well, isn't the existing building the one you  
21 determined the current zoning conditions on,  
22 and I don't think that's a question for the  
23 architect --

24 MR. GALVIN: Oh, for the average  
25 building. I don't know.

1                   MR. EVERS: We don't know whether we  
2                   are using the real building that's to the south or a  
3                   hypothetical building?

4                   MR. GALVIN: Dennis Galvin doesn't  
5                   know. I don't know if our professionals know.

6                   MR. EVERS: So nobody knows the answer  
7                   to that in this room?

8                   MR. GALVIN: I don't know that -- but I  
9                   am saying I don't know that. I remember the  
10                  question from the last case.

11                  MR. EVERS: Which raises the next  
12                  question of why, you know, without commenting on the  
13                  merits of the building, why we didn't simply make a  
14                  representation based on the findings of fact in the  
15                  resolution of denial for this same site, if there  
16                  was in fact a variance required based on the  
17                  adjacent roof lines?

18                  I am just curious for the reason for  
19                  not doing it that way.

20                  THE WITNESS: That is a legal response.

21                  MR. GALVIN: No, no. Time out for a  
22                  second.

23                  Mr. Matule has a planner. The planner  
24                  hasn't gotten up yet. This is just laying the  
25                  architectural. This is what they would like to do,

1 and the planner has to give us the justification for  
2 what they are doing.

3 MR. EVERS: But the questions I am  
4 asking goes to the nature of the variances being  
5 asked for. There is a D variance being asked for  
6 for the number of floors. I understand that. I was  
7 involved in the lawsuit --

8 MR. GALVIN: Correct.

9 MR. EVERS: -- okay, but the question  
10 now is in terms of the height variance.

11 On all of the documents that I have  
12 seen to date, including the ones that were in the  
13 office this afternoon, the notice says that it is a  
14 variance of 44 feet above base flood elevation  
15 versus 40 above base flood elevation. That is the  
16 public notice that went out, and I am not suggesting  
17 to delay the hearing because of that --

18 MR. GALVIN: Right. But they have the  
19 provision --

20 MR. EVERS: -- the fact is that we  
21 don't know how much the height variance is. The  
22 height variance requested for this project would be  
23 22 feet, okay --

24 MR. GALVIN: Okay.

25 MR. EVERS: -- that is not a minor

1 point given the amount of litigation surrounding  
2 this very issue, and I was just curious as to how,  
3 particularly since I mean it is discussed in the  
4 resolution of denial why this wasn't examined.

5 MR. MATULE: I am frankly lost by the  
6 whole question. I don't understand it.

7 MR. GALVIN: What Mr. Evers is saying  
8 is that the ordinance has a provision in it that  
9 talks about you have to use the average height of  
10 the buildings, and no effort has been made here to  
11 determine --

12 MR. MATULE: I don't think it is  
13 average height. I think the adjacency provision  
14 says if you are between two smaller buildings, you  
15 can go to the height of the smaller of the two.

16 Our legal position is since this Board  
17 granted the people at 134 a variance from that  
18 provision of the ordinance, and the new building  
19 that is going to be built there is going to be 40  
20 feet high, the adjacency provision no longer  
21 applies, number one.

22 Number two: At that hearing the Board  
23 planner also opined that the underlying purpose of  
24 the adjacency provision was to maintain a consistent  
25 cornice line on the street frontage, and the fact

1       that these building are all nonconforming structures  
2       built on the rear property line really made the  
3       adjacency provision inapplicable.

4                So I mean, we can certainly amend our  
5       application, if the Board thinks we need a variance  
6       from the adjacency provision to ask for it, but I  
7       don't think we do.

8                MR. GALVIN: Mr. Evers is pointing out  
9       that in the resolution of denial, I didn't reference  
10      it, but I don't remember at the moment.

11              MR. EVERS: I have it right here.

12              MR. GALVIN: No, I believe you.

13              MR. EVERS: Okay. And My question  
14      is -- it is Banera --

15              MS. BANYRA: It's Banyra.

16              MR. EVERS: -- Banyra, sorry.

17              MS. BANYRA: That's okay.

18              MR. EVERS: She asked a very valid  
19      question, if the building next door is torn down and  
20      built, okay?

21              So, again, you know, not to go through  
22      all of the history, I am just curious as to why this  
23      isn't a 20 foot -- 22 foot height variance rather  
24      than being represented to the public as effectively  
25      a one foot height variance.

1                   THE WITNESS: As I said, it is a legal  
2 discussion. Perhaps the planner --

3                   MR. EVERS: So you didn't have anything  
4 to do with that, the attorney made that decision --  
5 well, because you filled out the form. Where did  
6 you get the info to do that?

7                   THE WITNESS: I didn't fill out the  
8 form.

9                   MR. EVERS: Did you do the drawings  
10 here?

11                  THE WITNESS: I did the drawings here,  
12 yes.

13                  MR. EVERS: And how much did the  
14 drawings say there needs to be a height variance?  
15 Does it say that? Because in the zoning application  
16 it says one foot, correct?

17                  THE WITNESS: Correct.

18                  MR. EVERS: Well, you know, no point in  
19 beating it to death, but I am in the question phase.  
20 I wonder if I find it troubling.

21                                 (Laughter)

22                  MR. EVERS: Just to get this clear, the  
23 base flood elevation is now seven feet above grade  
24 there?

25                  THE WITNESS: The base flood

1 elevation --

2 MS. BANYRA: Z-4.

3 THE WITNESS: -- it's 6-6 above grade.

4 MR. EVERS: Uh-huh, okay. All right.

5 Next question -- well, this would be  
6 for the lawyer. I was asked to ask these questions,  
7 so I will for somebody.

8 Was Mohsen Hossein given notice of this  
9 meeting, because he claims he wasn't.

10 Is he on the list of certiores?

11 He is the president of the condo  
12 association across the street.

13 MR. MATULE: What is his address?

14 MR. EVERS: 137 Park

15 MR. MATULE: 137-139 Park Avenue Condo  
16 Association, in care of Emily Rodriguez, 137-139  
17 Park Avenue, Unit A.

18 MR. EVERS: Okay.

19 I will get through this, so you can get  
20 on.

21 The height of this building being as  
22 high as it is is partly a function of the rental  
23 unit on the first floor, is that correct, Mr.  
24 McNeight?

25 THE WITNESS: Yes.

1                   MR. EVERS: How much of the three  
2 floors of residential space, the fourth floor is  
3 actually used by them for residential?

4                   THE WITNESS: Say that question again,  
5 please.

6                   MR. EVERS: How much of the first floor  
7 is used by the upper unit?

8                   MR. GALVIN: The triplex?

9                   MR. EVERS: Yeah.

10                  THE WITNESS: 18 feet, plus the entry  
11 hallway, so it looks to be perhaps 40 percent of  
12 first floor, I am guessing, but --

13                  MR. EVERS: So is it reasonable to say  
14 that part of the cause of this building to require  
15 four floors and the D variance is a rental unit?

16                  THE WITNESS: Hum, well, certainly that  
17 is part of the building.

18                  MR. EVERS: So then the rental unit is  
19 being used to produce income, correct?

20                  MR. GALVIN: You don't have to comment  
21 on it.

22                  MR. MATULE: No. I can have the  
23 applicant testify why it is in the building. This  
24 is all speculation that it is going to be a rental  
25 unit.

1 MR. EVERS: Oh, okay.

2 The last question has to do with the  
3 setback.

4 At the previous hearing, the applicant  
5 agreed to move the unit back to five feet away from  
6 the sidewalk or five foot feet away from the lot  
7 line, okay?

8 What would the effect of doing that on  
9 this building have on the overall layout of the  
10 thing?

11 THE WITNESS: It would make the rear  
12 yard not conforming, and it would also --

13 MR. EVERS: Why would that be?

14 THE WITNESS: Because of the deck in  
15 the back, if you pushed the whole building back, the  
16 deck would be to the last 30 feet of the hundred  
17 foot site --

18 MR. EVERS: By how much?

19 THE WITNESS: Depending on how much you  
20 push it back, if it was going to go to five, it  
21 would diminish it by three feet.

22 MR. EVERS: So that would mean you  
23 would have to be five foot wider rather than eight  
24 feet wider, is that correct?

25 THE WITNESS: Well, that is the problem

1 with this skinny site. You can't just have a simple  
2 stairway down. You need the kind of stair that I  
3 drew here.

4 MR. EVERS: So the reason -- well, the  
5 reason that we need to have an eight-foot wide deck  
6 in the back, and therefore, push the building up and  
7 the part of a variance in the front is to make it  
8 possible for the people in the triplex to get down  
9 to the yard, is that correct?

10 THE WITNESS: That is correct.

11 MR. EVERS: And that is because when  
12 they have 18 feet in the back devoted to their  
13 living space, the combination of that and the  
14 five-foot deck requires you even more space to go  
15 down to the yard?

16 THE WITNESS: Is that a question?

17 MR. EVERS: Yes. I can only ask  
18 questions.

19 THE WITNESS: Well, I don't understand  
20 the question.

21 MR. EVERS: You are saying that the  
22 reason that you need an eight-foot wide deck in the  
23 back is to accommodate the staircase to enable and  
24 make it possible for the people living there to get  
25 into the backyard. But you already told me that

1       they also have, in addition to the eight-foot deck  
2       sticking off the back of their building, they  
3       have -- is it 18 feet?

4                     Did I get the number right of interior  
5       residential space within the building that they  
6       could also utilize?

7                     I assume, I have seen staircases inside  
8       buildings to get them down to the backyard, right?

9                     THE WITNESS: Hum, well, is your  
10      question could I put the stairway in there?

11                    MR. EVERS: Is it possible?

12                    THE WITNESS: It's possible.

13                    MR. EVERS: I have no further  
14      questions.

15                    COMMISSIONER BRANCIFORTE: Well, may I  
16      comment on this?

17                    CHAIRMAN AIBEL: Sure.

18                    COMMISSIONER BRANCIFORTE: I mean, it  
19      does bring up a good point. You have exclusive use  
20      of the back yard already, do you really need decks?

21                    If they are individual units, I could  
22      see everybody, you know, you could make an argument,  
23      but since you have an exclusive one unit using the  
24      back yard, do you really need the additional outdoor  
25      space as far as decks go that is?

1                   THE WITNESS: Well, the point is that  
2                   that lowest level of the building can't be used for  
3                   habitable space, so you wouldn't be able to walk  
4                   through. You would make that habitable space, if  
5                   you made that stairway inside, so that is why the  
6                   stairway is outside of the body of the building.

7                   MR. MATULE: With the Chair's  
8                   permission, may I just have the architect clarify a  
9                   point?

10                  CHAIRMAN AIBEL: Sure.

11                  MR. MATULE: In Mr. Evers' testimony,  
12                  he kept talking about the eight foot wide deck.

13                  How deep is the actual deck portion of  
14                  that landing and stairway?

15                  THE WITNESS: This part of it is four  
16                  feet wide, and then it goes through this sort of  
17                  spiral stair that has been squared off, that is  
18                  twice that width. It is eight feet wide, so half of  
19                  the deck is, you know, eight feet deep, and the rest  
20                  of the deck is four feet deep.

21                  MR. MATULE: In designing that, are you  
22                  faced with certain constraints in terms of  
23                  individual widths?

24                  THE WITNESS: Yes. The width has to be  
25                  three feet wide. This is an exterior stairway. You

1 know, there is certain depth of the riser and the  
2 treads that has to be maintained for public reasons,  
3 so this is the tightest kind of a stair I could put  
4 on the back of this building to facilitate them  
5 getting into the backyard.

6 VICE CHAIR GREENE: Are you saying that  
7 the width of the lot creates a hardship?

8 THE WITNESS: Well, it's not a  
9 hardship. It's just the reality that, you know, a  
10 stairway that is going to drop that far, if it was a  
11 straight stairway, would be 14 feet long, and then  
12 you need three feet on both sides of it, you know,  
13 so that is 20 feet wide.

14 VICE CHAIR GREENE: If the lot was 25  
15 feet wide, would you need this kind of apparatus to  
16 exit?

17 THE WITNESS: No. If it was a 25 foot  
18 lot, then you would have the ability just to have a  
19 straight run stair up against the building.

20 VICE CHAIR GREENE: So the fact that it  
21 is a 17 foot wide lot creates a hardship?

22 THE WITNESS: Yes, it does, as far as  
23 the stairway is concerned.

24 CHAIRMAN AIBEL: Any other questions  
25 from the public?

1           Seeing none, is there a motion?

2           COMMISSIONER CRIMMINS: I will make a  
3 motion to close.

4           CHAIRMAN AIBEL: Second?

5           VICE CHAIR GREENE: I will second.

6           CHAIRMAN AIBEL: Good.

7           All in favor?

8           MS. SPEVACK: I don't know if my  
9 question is for the architect or not.

10          CHAIRMAN AIBEL: Why don't you come up  
11 and give us your name and address, please.

12          MS. SPEVACK: Donna Spevack, 137 Park.  
13 I actually live directly across from  
14 the building.

15          My first question is: Is there a  
16 protocol that we are supposed to be informed of  
17 these meetings beforehand, or like -- because the  
18 previous person asked before if he had informed us  
19 or informed --

20          MR. GALVIN: The procedure is to  
21 send -- they receive a notice from the Tax  
22 Assessor's Office of everybody who owns property  
23 within 200 feet, and then they send a certified  
24 letter to all of those people telling them about  
25 this hearing, and they also publish a notice in The

1 Jersey Journal that they are having it.

2 COMMISSIONER CRIMMINS: But in the  
3 event of the condominium, only the president gets  
4 the notice, not every individual condominium owner.

5 MR. GALVIN: That is what the Municipapl  
6 Land Use Law calls for.

7 COMMISSIONER CRIMMINS: Yes, but I  
8 don't think she understands that.

9 MR. SPEVACK: So only the condo  
10 association?

11 MR. GALVIN: Right. So then  
12 theoretically the condo association should then tell  
13 you that we are having a meeting.

14 MS. SPEVACK: So it says to Emily  
15 Rodriguez?

16 MR. MATULE: Well, that's just in care  
17 of. It was sent to 137-138 Park Avenue Condominium  
18 Association.

19 We put an actual person's name off the  
20 tax list on it because if we just send it to the  
21 condo association, our experience is that they  
22 generally come back as undeliverable unless there is  
23 a separate mailbox in the building in the name of  
24 the condo association, so by putting a resident's  
25 name on it, we feel that we enhance the likelihood

1 of somebody actually getting the letter.

2 CHAIRMAN AIBEL: Your address is what?

3 MS. SPEVACK: My address is 137 Park  
4 Avenue, Unit 1, so I am just curious because I know  
5 they were talking about 134 previously, and I am new  
6 to Hoboken relatively, but I was here for that, and  
7 I wasn't informed of that one either, so I was  
8 curious of the protocol, so I can understand how I  
9 can get informed of these in the future.

10 MR. MATULE: Well, I think they advised  
11 that the protocol is to send the notice to the condo  
12 association, who should then notify the owners in  
13 the building of the meeting.

14 Did you just happen to be here by  
15 happenstance tonight?

16 (Laughter)

17 MS. SPEVACK: Well, no. I actually  
18 drove. But at five o'clock, I happened upon two  
19 people who were discussing it.

20 MR. MATULE: I am being factitious. I  
21 certainly understand your question. It is a fair  
22 question, and we are just trying to answer it.

23 MR. GALVIN: I think the important  
24 question is if they didn't comply with the notice  
25 requirements, then we can't hear their case tonight,

1 and then we can't approve them tonight, so it is  
2 very important that they did everything properly.

3 Now, I believe that they did everything  
4 properly. It is just that it doesn't mean that  
5 because you are a condo owner, it didn't get to you,  
6 but it is not that we didn't follow procedure  
7 properly, in my opinion.

8 Do you have a question of the  
9 architect?

10 MS. SPEVACK: Yeah, I do.

11 MR. GALVIN: Yeah, awesome.

12 MS. SPEVACK: I guess I didn't  
13 understand when he was talking about how far back is  
14 it -- so what is the actual -- what is the actual  
15 ordinance for how far back it needs to be from the  
16 curb I guess?

17 THE WITNESS: The actual ordinance says  
18 it should have a minimum front yard of five or a  
19 maximum of ten.

20 MS. SPEVACK: So how far back does it  
21 go?

22 THE WITNESS: Two.

23 MS. SPEVACK: Okay. Maybe you could  
24 answer this: How wide is that?

25 THE WITNESS: We are trying to maintain

1 the rear yard at its required depth of 30 feet, and  
2 we are also trying to line up with the new building  
3 that is going to be built just to the south of this  
4 building.

5 MS. SPEVACK: How far back is that one  
6 set?

7 THE WITNESS: That one is a little  
8 further back than ours, but you know, more or less  
9 the decks are going to line up with each other.

10 MS. SPEVACK: The decks in the back or  
11 the front?

12 THE WITNESS: The deck. Yes, the deck  
13 in the back.

14 MS. SPEVACK: How does that help in the  
15 front?

16 THE WITNESS: Well, how does it help in  
17 the front?

18 Well, it was either ask for a front  
19 yard variance or a rear yard variance, and because  
20 of that new building that's in the middle of the  
21 block has a varying front yard, we sort of like  
22 split the difference and brought the building  
23 forward to line up, you know, with that newer  
24 building down on the street.

25 MS. SPEVACK: So you are creating a

1 zigzag then in the line in order to make it  
2 aesthetic?

3 THE WITNESS: Well, you know, I mean as  
4 far as, you know, pushing in and out two feet, I  
5 mean in addition to that, we are going to have a  
6 stoop sticking out, so you know, it will look  
7 esthetically pleasing even if it doesn't line up.

8 I mean, the new building in the middle  
9 of the block has an undulated facade, where it goes  
10 from being zero on the property line to some depth  
11 back.

12 MS. SPEVACK: Okay. Then to clarify  
13 then, because I guess I am getting at light issues,  
14 so that is where I am going.

15 The height of the building on either  
16 side, the one that will be built on the south side  
17 and the one that is on the north side, how is this  
18 in relation to those?

19 MR. GALVIN: Why don't you show her  
20 Z-2?

21 THE WITNESS: This is the proposed  
22 building. This is the one on the corner, and this  
23 gray area is the facade of the one that was  
24 approved.

25 MS. SPEVACK: You said the one in the

1 past was built -- that one is the -- that was  
2 according to the zoning code, the 40 foot above  
3 grade?

4 THE WITNESS: The ordinance says you  
5 could build a building 40 feet above the base flood  
6 elevation, and the base flood elevation --

7 MS. SPEVACK: Has risen.

8 THE WITNESS: -- has risen, right.

9 So that is it. 12 foot above sea level  
10 is the base flood elevation, but the actual surface  
11 of the first floor has to be a foot above that. So  
12 if, you know, the flood waters come, it tickles the  
13 bottom of the joist, not the top.

14 MS. SPEVACK: Okay.

15 So can you not still have a building  
16 that is built there with one floor less and then  
17 still be the same as the one next door and not have  
18 to get higher?

19 THE WITNESS: You could, sure.

20 MS. SPEVACK: How would -- how high  
21 above it -- will it be above grade --

22 THE WITNESS: The first floor?

23 MS. SPEVACK: -- no, the tall -- the  
24 height of the building.

25 THE WITNESS: The entire height of the

1 building is going to be 49 feet four inches to the  
2 top of the cornice, but you measure buildings to the  
3 roof slab, not to the cornice.

4 MS. SPEVACK: The one to the left is  
5 how high?

6 THE WITNESS: The new proposed  
7 building?

8 MS. SPEVACK: Yes.

9 THE WITNESS: I am not sure.

10 MR. MATULE: Well, based on the plan --  
11 well, here, why don't you look at the plan and read  
12 it off the plan and figure it out?

13 THE WITNESS: The building next door is  
14 even taller. It is approximately 51 feet high.

15 MS. SPEVACK: So you are saying this  
16 one is shorter --

17 THE WITNESS: This will be shorter.

18 MS. SPEVACK: -- than the one on the  
19 left?

20 THE WITNESS: Correct.

21 MS. SPEVACK: Have you looked how it  
22 will affect the light, like how many days of the  
23 year will it affect the sunlight that comes from the  
24 building across from it?

25 THE WITNESS: Well, that is why, you

1 know, Park Avenue is 65 feet wide, so the height of  
2 the buildings on one side of the street will  
3 affect -- I mean, you may have a 50 -- I don't know  
4 how tall. It is even bigger.

5 The one in the middle of the block is  
6 going to be at least five feet taller than what this  
7 one is going to be, so you know, the effect of  
8 whatever that building is doing to the sun, but  
9 obviously every day of the year it will affect -- it  
10 will throw a shadow, if you are going to put up a  
11 49-foot tall building.

12 MS. SPEVACK: I happen to be on the  
13 ground level, so you're saying that it's going to  
14 throw a shadow on my unit?

15 THE WITNESS: It all depends what time  
16 of the year, what time of the day. I can't say  
17 offhand.

18 MS. SPEVACK: Is it safe to assume that  
19 if the building that is the 50 foot one to the  
20 south, the one that is going to have an undulating  
21 facade --

22 THE WITNESS: Right.

23 MS. SPEVACK: -- throws a shadow that  
24 at 5:30 this evening completely if -- hum, on the  
25 building that was adjacent to mine, there was

1 absolutely no light in the lower unit that my unit  
2 was directly next to it is going to have the same  
3 effect on this building?

4 THE WITNESS: Similar effect, yes.

5 MS. SPEVACK: Do you think that the --  
6 I guess the zigzag effect that you have, or that you  
7 are proposing to create, will affect the sidewalk  
8 and the children?

9 I mean, there is -- I don't know if you  
10 know, but there is a temple there where children  
11 walk on both sides of the street to get to the  
12 temple with the moms and all of the carriages. Is  
13 that sidewalk going to be affected because we all  
14 walk to take our kids to school.

15 THE WITNESS: No, because on that side  
16 of the street there is a gate line that sticks out  
17 nine feet into that sidewalk, so this building is 11  
18 feet back from that gate line, so it sort of has a  
19 demarcated front yard that is going to be  
20 landscaped, but the usable width of that sidewalk  
21 the way it is today will be unchanged.

22 MS. SPEVACK: So the only thing that  
23 will be affected is the light, not usable play  
24 space?

25 THE WITNESS: Correct.

1 MS. SPEVACK: Okay. Thank you.

2 THE WITNESS: You are welcome.

3 CHAIRMAN AIBEL: Mr. McNeight, how is  
4 the proposed building going to align with the front  
5 facade of the building to the north?

6 THE WITNESS: The building to the north  
7 is zero on the property line, so this will be two  
8 feet. The face of the building will be two feet  
9 back from that existing building on the corner.

10 COMMISSIONER BRANCIFORTE: See, now I  
11 am a little bit worried, because we approved the  
12 garage door right next to your building, and then I  
13 am worried that your two foot -- your building being  
14 two foot closer to the sidewalk in the front may  
15 create some sort of blind spot for people pulling  
16 out of the garage.

17 THE WITNESS: Well, given the nine foot  
18 gate line, I think you have ample opportunity to  
19 make sure that you will not have any problem backing  
20 up.

21 COMMISSIONER BRANCIFORTE: I am not  
22 sure what you mean by a "nine foot gate line."

23 THE WITNESS: Off the actual property  
24 line of this building towards the east, there is an  
25 existing gate line on that whole block that is nine

1 feet out. It has extremely broad sidewalks, and  
2 there is still about eight feet of sidewalk beyond  
3 that, so --

4 COMMISSIONER BRANCIFORTE: Got you,  
5 okay.

6 MR. MATULE: Mr. Branciforte, I can  
7 certainly make the proffer that if that is a real  
8 concern, even though the building on the corner  
9 is -- I know that was a concern at the last hearing  
10 when we wanted to have parking, you were concerned  
11 that there would be a blind spot with the building  
12 on the corner.

13 COMMISSIONER BRANCIFORTE: Right.

14 MR. MATULE: Part of that went into  
15 sort of splitting the difference between two feet  
16 and five feet, the building next to us, you know,  
17 you just have to kind of step up to the corner.

18 We have no objections to pushing the  
19 building back at five feet, if that is what the  
20 Board would rather see it back at five feet, but  
21 bearing in mind that that is going to just eliminate  
22 the front yard variance and generate a rear yard  
23 variance. We can go either way. We are not really  
24 wedded to one or the other.

25 MR. GALVIN: The second thing that we

1 are struggling with, on Z-2, there is imagery of the  
2 proposed building at 134 Park in that upper  
3 right-hand corner --

4 THE WITNESS: Yes.

5 MR. GALVIN: -- and do you think the  
6 proposed building looks lower than it should?

7 THE WITNESS: Yes.

8 I didn't have the actual plans, but the  
9 approved building has a big triangular shape on the  
10 top of it, which we didn't draw on here. We were  
11 just drawing the, you know, rectangle of the  
12 building, but it has a ten-foot high triangular  
13 gable on the top of it that will bring it higher  
14 than ours.

15 MR. GALVIN: I mean, we need to know in  
16 testimony whether or not both buildings would be of  
17 similar height.

18 THE WITNESS: Well, similar, this one  
19 is going to be approximately five feet taller.

20 MS. BANYRA: Which one?

21 THE WITNESS: The approved one at 134.

22 MR. GALVIN: Oh, the other one then.

23 This is 136.

24 THE WITNESS: Yes.

25 MR. GALVIN: You are saying the other

1 one is going to be taller?

2 THE WITNESS: This gentleman's building  
3 behind me here will be taller than --

4 MR. GALVIN: But it is certainly not  
5 reflected on the picture you are showing.

6 THE WITNESS: No. Well, I didn't have  
7 these drawings.

8 MR. GALVIN: But it makes a difference  
9 in the adjacency provision that Mr. Evers is citing.

10 You could argue over whether or not we  
11 should be taking it from the existing buildings or  
12 the buildings that are to come.

13 THE WITNESS: Well, the adjacency has  
14 two possibilities, either you are dealing with two  
15 buildings that are lower than what is approved -- I  
16 mean, what is the requirement in the neighborhood or  
17 they are taller.

18 The first one is a negative thing,  
19 where you can't go higher than the taller of the two  
20 shorter ones, or it is a benefit if you got two  
21 six-story buildings, and you want to put a building  
22 in between.

23 So in this case, if, indeed, you are  
24 taking the building that was approved as a reality,  
25 it is not either taller -- well, it is taller than

1       what is allowed in the neighborhood given its  
2       variances, so you are not -- you're not between two  
3       shorter ones, you are not between two taller ones.  
4       You are between a taller one and a shorter one, and  
5       there is nothing in the code that brings that  
6       adjacency into play, if that is the case.

7                   MR. MATULE:  Any other questions?

8                   (Board members confer)

9                   MR. GALVIN:  We are considering  
10       carrying you to another night.

11                   CHAIRMAN AIBEL:  Do you want a special  
12       meeting?

13                   VICE CHAIR GREENE:  I am running out of  
14       Tuesday nights.

15                   MR. MATULE:  Is that the 14th of May?

16                   CHAIRMAN AIBEL:  We still have Mr.  
17       Ochab to get through.

18                   MR. MATULE:  Yes.

19                   MR. GALVIN:  We may not finish the next  
20       case either, but we want to give them a good solid  
21       hour.

22                   MR. MATULE:  I understand.  We had some  
23       conversations about a special meeting on May 14th.

24                   MS. BANYRA:  That is correct.

25                   (Board members confer)

1                   MS. BANYRA: We have a lot of  
2 applications, but we don't have as many on the 21st,  
3 but we kind of cued everybody up assuming that we  
4 got through all of these tonight. I think we kind  
5 of recognized that we may not get through 1300 Park,  
6 but we thought we would get through most of the  
7 applications tonight.

8                   So if this got moved to the 14th, then  
9 one of the ones on the 14th, and none of these  
10 people have noticed yet, would be moved to the 21st  
11 then I guess. We could do that, so --

12                   (Board members confer.)

13                   MS. BANYRA: -- no one has noticed it,  
14 but we internally talked about it, but it's up to  
15 you, whatever. We can do whatever the Board  
16 would --

17                   MR. MATULE: If I might, Mr. Chairman,  
18 I was just talking to my planner. The 14th would be  
19 better. He was supposed to be at another meeting  
20 tonight, which he had to postpone, and he is  
21 supposed to be there next month on the third  
22 Tuesday, so the second Tuesday would certainly be  
23 more accommodating.

24                   And frankly, if I were going to have  
25 one of my other matters, my newer matters on the

1 14th, I would rather push one of those to the 21st,  
2 just so we could finish this.

3 MS. BANYRA: Right.

4 I mean, it is normal when you are  
5 carrying an application to carry it to the next  
6 meeting, and a new application starts at the  
7 following meeting, but I don't believe any of them  
8 have noticed yet because we have been juggling the  
9 schedule based on tonight.

10 MR. GALVIN: Are we all done with Mr.  
11 McNeight's testimony? Did we close the public?

12 (Board members confer.)

13 MR. GALVIN: We did, and I missed it?

14 COMMISSIONER BRANCIFORTE: I didn't  
15 hear Joe make a motion.

16 CHAIRMAN AIBEL: Why don't you stand  
17 up, please.

18 MR. HOSSEIN: Mohsen Hossein,  
19 M-o-h-s-e-n, H-o-s-s-e-i-n.

20 I live at 137 Park Avenue, number 2.

21 I am the president of the condo  
22 association, and I was not informed about this  
23 meeting. I had to hear about it from my neighbor  
24 that there was a meeting, which is directly  
25 impacting my property also, so that is one

1 question -- one comment.

2 A question that I have for the  
3 architect, you just mentioned that these two  
4 constructions, one which was approved, and the new  
5 one, which we are discussing tonight, needs to be  
6 done simultaneously.

7 The buildings are relying on each  
8 other?

9 THE WITNESS: That is what I heard,  
10 too. That wasn't my testimony.

11 MR. HOSSEIN: So there is no  
12 engineering report stating it. It is just you threw  
13 that out?

14 THE WITNESS: I didn't throw it out,  
15 not to my knowledge.

16 MR. HOSSEIN: All right.

17 Thank you.

18 CHAIRMAN AIBEL: Seeing no further  
19 comments from the public, do we have a motion to  
20 close the public portion?

21 COMMISSIONER CRIMMINS: I will make a  
22 motion to close the public portion.

23 VICE CHAIR GREENE: I will second it.

24 CHAIRMAN AIBEL: All in favor?

25 (All Board members voted in the

1 affirmative.)

2 Do we have motion to adjourn this  
3 without notice?

4 MR. MATULE: To the 14th.

5 COMMISSIONER CRIMMINS: I'll make a  
6 motion to carry this hearing to the May 14th special  
7 meeting with no further notice required.

8 COMMISSIONER PINCUS: I will second it.

9 MS. BANYRA: I should just maybe point  
10 out, that that meeting may be at the Rue School. Is  
11 that correct?

12 We are trying to get the location. It  
13 will either be here or at the Rue School.

14 (Board members confer.)

15 CHAIRMAN AIBEL: This gentleman can  
16 call Pat Carcone at the Zoning Board Office, and she  
17 can advise you where the hearing will be held on the  
18 14th of May, okay?

19 A VOICE: Okay.

20 CHAIRMAN AIBEL: Okay.

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

22 MR. GALVIN: Can we have a motion and a  
23 second to carry it without notice to that date?

24 COMMISSIONER CRIMMINS: We already did.

25 MR. GALVIN: All right. All in favor?

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

3                   MR. GALVIN: Mr. Matule, do you waive  
4 the time in which the Board has to act?

5                   MR. MATULE: Yes, until May 14th.

6                   Thank you.

7                   (The meeting concluded.)

8                   (Hearing to be continued on May 14,  
9 2013 at 94 Washington Street, Hoboken, New Jersey)

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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 NJ ADC 13:43-5.9.

HOBOKEN ZONING BOARD OF ADJUSTMENT  
CITY OF HOBOKEN

1  
 2  
 3     - - - - - X  
 1300 PARK AVENUE, Block 117, Lot 11     :  
 4     Applicant: 1300 Park, LLC             :     April 16, 2013  
       Appeal, Interpretation, Cert. Of     :     Tuesday 10:25  
 5     p.m. Non-Conformity.                 :  
       - - - - - X

Held At: 94 Washington Street  
Hoboken, New Jersey

B E F O R E:

13     Chairman James Aibel  
 14     Vice Chair Elliot H. Greene  
 15     Commissioner Joseph Crimmins  
       Commissioner Nancy Pincus  
 16     Commissioner Michael DeFusco  
       Commissioner John Branciforte

A L S O     P R E S E N T:

18             Eileen Banyra, Planning Consultant  
 19  
               Jeffrey Marsden, PE, PP  
 20             Board Engineer  
 21  
               Patricia Carcone, Board Secretary

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

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## 1           A P P E A R A N C E S:

2                   DENNIS M. GALVIN, ESQUIRE  
3                   730 Brewers Bridge Road  
4                   Jackson, New Jersey 08527  
5                   (732) 364-3011  
6                   Attorney for the Board.

7                   LAW OFFICE OF ABE RAPPAPORT  
8                   195 Route 46 West  
9                   Totowa, New Jersey 07512  
10                  BY: JEFFREY KANTOWITZ, ESQ.  
11                  Attorney for the Applicant.

12                  MICHAEL S. RUBIN, ESQ.  
13                  14 Forest Avenue  
14                  Caldwell, New Jersey 07006  
15                  973-364-9500  
16                  Attorney for Claire McNulty.

17                  WEINER LESNIAK, LLP  
18                  629 Parsippany Road  
19                  Parsippany, New Jersey 07054  
20                  BY: JEANNE ANN MC MANUS, ESQ.  
21                  Attorneys for the Zoning Officer.

22

23

24

25

1                   CHAIRMAN AIBEL: It is 10:25. We are  
2 back on the record.

3                   Thank you, 1300 Park, for sitting  
4 through the rest of the evening.

5                   It is now up to you.

6                   MR. KANTOWITZ: Thank you.

7                   Good evening, Mr. Chairman, and members  
8 of the Board.

9                   My name is Jeffrey Kantowitz. I'm with  
10 the law firm of Abe Rappaport. We represent 1300  
11 Park, LLC, which is a condominium unit located on  
12 the first floor of the building at 1300 Park, the  
13 corner of 13th and Park in Hoboken, New Jersey.

14                   We are here tonight on appeal, and the  
15 appeal is a three-part appeal as is described in our  
16 notice of this hearing.

17                   This is an appeal from a January 2nd,  
18 2013 letter decision rendered by the zoning officer  
19 revoking a November 11th, 2008 first certificate of  
20 zoning compliance.

21                   It is also -- excuse me -- it is also  
22 an application for a certificate that we seek from  
23 this Board certifying that the use and structure of  
24 the premises at 1300 Park Avenue as a bar and a  
25 restaurant existed before the adoption of the

1 current zoning ordinance and rendered the use as a  
2 conditional use and/or was a permitted use prior to  
3 the cessation of this bar/tavern/restaurant use in  
4 May of 2007 well before the February 2008 zoning  
5 certificate.

6 And in addition, we are appealing the  
7 July 5, 2012 denial of zoning certification for this  
8 property for the use of the bar and restaurant that  
9 was issued by the current zoning official.

10 As we indicated in the notice, and I  
11 will just summarize, but I ask you to look at the  
12 notice as to specific relief, we seek a  
13 determination, ultimately seek a determination by  
14 this Board reversing those determinations and  
15 directing the issuance of zoning certification along  
16 with a finding that the Board certified the use as a  
17 bar/restaurant that existed before the adoption of  
18 the current zoning ordinance, and it was a permitted  
19 use prior to the cessation of its use in May of 2007  
20 and before February 2008, issuance of the first  
21 certificate of zoning of April 2008, issuance of the  
22 construction permit and, of course, in November 2008  
23 a first certificate.

24 I am going to try to organize my  
25 thoughts and my presentation in three parts because

1       there is -- it is complicated, and there are a lot  
2       of facts and dates, and I will try to walk us  
3       through it in a direct and simple way.

4                The first thing we feel we can prove  
5       and have evidence to prove to you, and that evidence  
6       consists of documentary evidence. We believe from  
7       our understanding the historical recollection of  
8       members of this Board who have known and lived in  
9       Hoboken for many, many years going back before '79,  
10      that this use, this property, has always been a bar  
11      slash tavern restaurant commercial use on that  
12      property at the first floor.

13               Okay.

14               Let me repeat that. We feel, and we  
15      are going to go through the evidence we presented  
16      and so forth, that this use has always been a  
17      bar/restaurant going back many, many years predating  
18      1979.

19               What we have to show that are not just  
20      private writings between two people saying, hey, it  
21      is a bar/restaurant. We have a raft of documents  
22      presented in the files of this city and its  
23      governmental officials, and we -- I will walk  
24      through that with you.

25               So that it is something that this town

1 through its official government offices, not once,  
2 not twice, not three times, but we think at least a  
3 dozen or more times going over at least a 25 or  
4 26-year period has articulated that this  
5 bar/restaurant exists here.

6 So the only and the first indication of  
7 any question as to its use arose when the zoning --  
8 officially by the town when the zoning officer  
9 January 2nd revoked a four and a half, four-year-old  
10 zoning certificate.

11 So the first thing we are going to  
12 discuss, and I will get to it in a moment is the  
13 fact that this has always been a  
14 bar/restaurant/tavern use, and there is no reason to  
15 change horses at this point or think differently  
16 that it wasn't and shouldn't be allowed to continue  
17 that way.

18 I should point out, and this is very  
19 important, too, that we have researched this, and  
20 our research so far in looking at different types of  
21 bar/restaurant uses in Hoboken reveals the  
22 following:

23 Bar/restaurant use is a permitted use  
24 only in the CBD district, the Commercial Business  
25 District in town, in the R-1 district, for example,

1 and I think even in the I-1 district, the waterfront  
2 district, it is a conditional use.

3 Our research has shown that there are  
4 about we think six, seven and possibly as many as  
5 eight other bar/restaurants operating existing in  
6 Hoboken tonight as we convene, that are in the same  
7 boat as we are. Namely, from records that we have  
8 reviewed in the city's files, they stand in the same  
9 place as we stand. Namely, they have certificates  
10 of compliance, et cetera, but not as the zoning  
11 officer's January 2nd letter indicates, no evidence  
12 of a resolution permitting their use as conditional  
13 uses.

14 So one of our arguments is, Look, if  
15 other people are operating that way, we should be  
16 treated similarly.

17 Second: We also are going to show to  
18 you, because this issue has come up, and we think it  
19 is part of the first issue about existing uses, that  
20 there never has been an abandonment of this use as  
21 the term "abandonment" is understood and applied in  
22 the law.

23 So when I use the word "abandonment," I  
24 am using it as a legal term. The legal term  
25 "Abandonment" as the case law describes and as your

1       counsel has written and published articles and  
2       certainly can ably advise you, requires that there  
3       be two things:

4                A: An intent to abandon, and secondly,  
5       overt acts showing an intent to abandon.

6                You have to have both of those, and if  
7       we can show through all of the evidence that we can  
8       present that there was not an intent to abandon, and  
9       that there weren't overt acts showing an intent to  
10      abandon, then there could be no finding of  
11      abandonment, and that is simply because the property  
12      is not now being used as a bar/tavern/restaurant,  
13      namely, what the law calls cessation of use. It  
14      stopped being used for that simply because a  
15      property has stopped being used as a use doesn't  
16      equate to abandonment as the law understands  
17      abandonment,

18               It is very important point. I will  
19      just mention it one more time.

20               Abandon means based on all of the  
21      evidence that we can show you, that there was no  
22      subjective intent to abandon and no overt act. We  
23      have to show both, so just because there may have  
24      been acts -- and it is a totality of evidence,

25               We are going to show you that the

1       totality of the evidence except for two small, small  
2       instances, and we will explain those ably to you  
3       when there was not -- when there was a -- 4A went a  
4       different direction -- there never has been -- you  
5       can't find an abandonment. The Board's finding of  
6       fact and application of a legal standard is that  
7       there never has been an abandonment of the use. All  
8       right?

9                       And finally, our third point, excuse  
10       me, is that the zoning officer's decision of January  
11       2nd can't stand as a matter of fairness, can't stand  
12       as a matter of equity in front of us, and we would  
13       ask you to reverse it because there is no basis for  
14       it for something that was a regularly issued  
15       document on its face, and we should point out the  
16       following and this is important.

17                      We were here first in November. We  
18       thought we would get started. I think we opened and  
19       then adjourned and then we came back on December  
20       19th.

21                      We had -- what we thought we had worked  
22       out were certain stipulations to resolve this  
23       matter, those of you who were on the Board at the  
24       time we were here. That wasn't the case, and we got  
25       zoning officer's letter of January 2nd.

1                   We are here because we are exhausting  
2 remedies, but we are preserving all of the rights  
3 that have proved to us from what we felt happened on  
4 the 19th and what subsequently took place through  
5 the zoning officer's letters.

6                   This is in a sense exhaustion of remedy  
7 at the administrative remedy as any court of law  
8 would tell us to do, but we are reserving all of our  
9 rights, which would flow from the events of December  
10 19 and thereafter.

11                   Now, having said that, let me turn, and  
12 I know you have a raft of papers in front of you,  
13 but papers are important because as I just a moment  
14 ago said, so much of this is paperwork generated  
15 coming out from the offices of Hoboken.

16                   Excuse me.

17                   If you look at the exhibits that are  
18 set forth in Exhibit 2 of the attachment, and this  
19 is the attachment that was submitted back on January  
20 22nd, but it is under tab Exhibit 2. I have a  
21 written statement and documents, and there I  
22 attached what I list are 13 different documents of  
23 evidence of what the use was and has been for the  
24 longest time.

25                   I want to just spend a moment walking

1 us through that, because this is crucial for me to  
2 demonstrate that for 25 years and more, this has  
3 been a bar/tavern/restaurant use. It has been so at  
4 the hand of various officials of the City of  
5 Hoboken, be they the zoning officer, the tax  
6 assessor, whoever that might be, and all comes from  
7 Hoboken, and that is important for me to establish.  
8 Okay?

9 MR. GALVIN: Let's stop for a second  
10 because Mr. Rubin stood up.

11 MR. KANTOWITZ: Okay.

12 MR. GALVIN: I would say what you had  
13 so far is like an opening, kind of like an opening  
14 argument.

15 MR. KANTOWITZ: Because I want to lay  
16 out where I'm going with all of this.

17 MR. RUBIN: I am not sure what  
18 documents he's referring to --

19 MR. GALVIN: Well, he hasn't put his  
20 case in yet.

21 MR. RUBIN: -- no, no, no. He is about  
22 to read from a document, and I'm not sure --

23 MR. KANTOWITZ: I'll put it --

24 MR. RUBIN: -- but second of all, I  
25 can't cross-examine documents, and he is not a

1 competent witness.

2 It seems to me that if he is going to  
3 put proofs in on this, it has to be through  
4 testimony --

5 MR. KANTOWITZ: All business records --

6 MR. RUBIN: -- he has to put in  
7 testimony. He cannot stand here. I can't  
8 cross-examine documents. There has to be live  
9 testimony or otherwise there is a deprivation of due  
10 process --

11 MR. GALVIN: I don't think so --

12 MR. RUBIN: -- these are all --

13 MR. GALVIN: -- business records --

14 MR. RUBIN: -- but he can't testify to  
15 what they mean or say.

16 MR. GALVIN: He has a client --

17 MR. RUBIN: Yes. He's got a client.

18 Put the client up and go through the documents --

19 MR. GALVIN: -- Shush, don't do it.

20 Don't interrupt me.

21 MR. RUBIN: -- all of these documents,  
22 I believe, were attached to Mr. Pascarell's  
23 certification, and Mr. Pascarell is here.

24 I can't cross-examine a certification,  
25 but I can certainly cross-examine him, if he is put

1 under oath.

2 If he is going to put these documents  
3 into evidence, it should be through Mr. Pascarell  
4 and not through a certification.

5 MR. GALVIN: But all Mr. Pascarell  
6 would have to do is say, this is a Government  
7 record, here it is.

8 MR. RUBIN: But he has to tell us what  
9 that Government record is. He is the one who  
10 applied for those permits. He knows why those  
11 permits were applied for. He knows what they were  
12 seeking to do. He knows the time --

13 MR. GALVIN: You know, your position is  
14 premature. I think I have to listen to the  
15 testimony as it develops.

16 MR. RUBIN: What testimony?

17 Whose testimony?

18 Mr. Kantowitz' testimony?

19 Do I get to cross-examine Mr.

20 Kantowitz?

21 MR. GALVIN: Over what?

22 MR. RUBIN: That is the question, over  
23 the documents that he is trying to put before this  
24 Board and asking the Board --

25 MR. GALVIN: I will ask you for a

1 favor. I do expect to be respected, and I expect  
2 this Board to be respected. And if I make a ruling  
3 and you don't agree with it, you can object, and you  
4 can do what you have to do, but I am telling you at  
5 this point that the Government records exception to  
6 the hearsay rule permits those kinds of documents to  
7 come in.

8 You don't have to bring in the draft of  
9 a Government document, so he could be  
10 cross-examined.

11 MR. RUBIN: I am not suggesting that he  
12 does, sir.

13 I am only suggesting that Mr. Kantowitz  
14 can't testify about those documents.

15 MR. GALVIN: He can make a legal  
16 argument about the documents, yes, he can.

17 Why would you even --

18 MR. KANTOWITZ: I --

19 MR. GALVIN: -- why would you even go  
20 there, to even say --

21 MR. KANTOWITZ: -- because I need to  
22 correct a misstatement and keep the record clear.

23 The documents I am now referring to are  
24 Government records that I said were attached to our  
25 written statement submitted under Exhibit 2, not

1 Exhibit 3 to the application, Exhibit 2, and which  
2 were initially supplied under a statement, dated  
3 December 5, I believe, 2012, and they are each  
4 Government records.

5 MR. GALVIN: The only other thing I am  
6 going to note, too, is that the Rules of Evidence  
7 also require some sort of certification, doesn't it,  
8 that it is a Government record?

9 MR. KANTOWITZ: I will be happy --  
10 well, you mean an authentication from the office or  
11 whether this Board will be --

12 MR. GALVIN: There is a procedure that  
13 has to be followed to enter public records.

14 MR. KANTOWITZ: Well, if the Board and  
15 counsel demands that, I will undertake it --

16 MR. GALVIN: I don't know how you are  
17 going to put your case in yet. That's what I'm  
18 saying.

19 I am trying to understand Mr. Rubin's  
20 objection.

21 MR. KANTOWITZ: Let me respond, so that  
22 the Board, Counsel, and Mr. Rubin are clear.

23 The first thing I want to talk about  
24 are the 14 different Government records --

25 MR. GALVIN: You know what? Let me

1           just -- I think the first question that the Board  
2           needs to know is: Is the bar a valid preexisting  
3           nonconforming use.

4                         So I don't want to mess up your case,  
5           but I think we need to know that.

6                         MR. KANTOWITZ: That is where I am  
7           going. That's exactly what I am trying to respond  
8           to.

9                         MR. GALVIN: Okay.

10                        MR. KANTOWITZ: The way I am going to  
11           respond to that is to show you that I have  
12           Government records going back starting as early as  
13           1988 or so --

14                        MR. GALVIN: Do you have any testimony  
15           that is going to be elicited about the use of the  
16           facility?

17                        MR. KANTOWITZ: Right now I have  
18           witnesses lined up because of the uncertainty of  
19           whether we could go tonight, they are not available.  
20           But I understand that there are members of the Board  
21           who have historical memories and know that this has  
22           been a bar/restaurant for many, many, many, years  
23           going way back.

24                        COMMISSIONER CRIMMINS: Mr. Galvin, can  
25           I ask you a question, if you don't mind?

1 MR. GALVIN: Sure.

2 COMMISSIONER CRIMMINS: When we had one  
3 of these last hearings a couple of months ago, I was  
4 born and raised at 1310 Garden Street, and I spent  
5 my 18th birthday there, and many happy days after  
6 that.

7 (Laughter)

8 I was born there in 1958. It was a bar  
9 until I was long married in the mid 1980s. From the  
10 1050s, it was always a bar.

11 It was a bar under many different  
12 owners, over many different years, going all the way  
13 back to the early sixties.

14 MR. GALVIN: Okay.

15 So then the question that the Board  
16 would then have to deal with was: Was it -- did it  
17 predate all zoning?

18 COMMISSIONER CRIMMINS: I could tell  
19 you in the sixties, if the zoning is before the  
20 sixties, I don't know.

21 If it was after the sixties,  
22 absolutely. I turned 18 in 1975 when we had some  
23 party in there. That is all I can tell you.

24 (Laughter)

25 That is all I can tell you.

1                   MR. GALVIN: Well, do you have any  
2 evidence that the bar was legal at that time period?

3                   MR. KANTOWITZ: What I can tell you is  
4 this: I consulted the following 14 places to obtain  
5 a zoning ordinance that predates your 1979  
6 ordinance.

7                   I consulted the City Clerk under an  
8 OPRA request for the ordinances that predated your  
9 1979 ordinance. He had no responsive documents.

10                  I consulted an OPRA request of your  
11 zoning officer, Planning Board and Zoning Board, and  
12 they had no responsive documents.

13                  I consulted the Hudson County Planning  
14 Board and the Planning Department for these  
15 documents, namely, evidence of ordinances prior to  
16 1979 for zoning. No records of requested  
17 ordinances.

18                  I consulted the Hudson County  
19 Engineering Department. No records of those  
20 requested ordinances.

21                  I consulted and contacted the Hudson  
22 County Board of Chosen Freeholders and made an OPRA  
23 request. No responsive records.

24                  I consulted the Hoboken Library. No  
25 records of requested ordinances.

1                   I contacted Rutgers Law School in  
2 Newark. No records of the requested ordinances.

3                   I contacted the New Jersey State Law  
4 Library seeking records of those documents, and no  
5 such records were in their files.

6                   I consulted The Jersey City, New Jersey  
7 Library, their Jersey City -- their New Jersey Room.  
8 No records of ordinances that predate 1979 in  
9 Hoboken.

10                  I contacted the Hoboken Historical  
11 Museum. No records of those requested documents.

12                  I contacted Philips, Price & Reidel,  
13 planners and authors of your 2004 master plan. No  
14 records that they have those documents, ordinances  
15 that predate 1979.

16                  I contacted Elizabeth Vandor, the  
17 former planner for this Board. She had no record of  
18 those ordinances prior to 1979.

19                  I contacted Birdsall Engineering,  
20 authors and drafters of the current Hoboken Zoning  
21 Map, revised as December of '02 and December 2003,  
22 now known as the Birdsall Services Group. They had  
23 no record of the requested documents.

24                  I contacted the Regional Planner's  
25 Association, and they had no record of reported

1 documents.

2 So I have looked high, low, hither,  
3 yonder and then some for anything that would  
4 indicate or show me what is the zoning for the  
5 Hoboken city prior to 1979, and I just recited to  
6 you 14 different places, and I came up empty in  
7 trying to find that, so I am left --

8 MR. GALVIN: Are you submitting that by  
9 way of certification?

10 MR. KANTOWITZ: I will prepare a  
11 certification and submit that. I am happy to do it.  
12 I have it as notes, but I am happy to submit that as  
13 part of it.

14 So I have looked everywhere that I  
15 could possibly think of between contacting a lawyer  
16 or two in town who has been practicing a while, and  
17 nobody has what is prior to 1979.

18 So I am left -- I am left with hobbling  
19 together based upon repeated Government utterances  
20 by way of written documents and official documents  
21 of this Government and its offices to show that this  
22 is what has been the case since many years ago, as I  
23 believe Mr. Crimmins just said certainly going back  
24 to --

25 MR. GALVIN: Let's stop there.

1                   Mr. Rubin, do you want to comment on  
2 this topic?

3                   MR. RUBIN: On the existence of the  
4 zoning ordinance prior to 1979?

5                   MR. GALVIN: Yes.

6                   MR. RUBIN: I am not aware of any.

7                   MR. GALVIN: You are not aware of any.

8                   I mean, what is -- do you have an  
9 impression, a comment, a view?

10                  MR. RUBIN: I think that they are  
11 serious questions as to whether or not there was a  
12 bar operating there on August 1st, 1979, and we have  
13 records that will raise doubts about that, August  
14 1st, 1979 being the effective date of the most  
15 recent or perhaps only Hoboken zoning ordinance.

16                  MR. GALVIN: Go ahead.

17                  MR. KANTOWITZ: Okay.

18                  Having said that, let me speak to the  
19 Government records that demonstrate a continuing  
20 chain of use showing this bar/restaurant use of the  
21 property.

22                  There is tax assessment lists for 1979  
23 that classified this as a commercial use, and I  
24 should point out to you there is a case that I  
25 presented as part of my memorandum, Euneva,

1 E-u-n-e-v-a, Euneva -- give me a second and I will  
2 get the cite for you -- 407 New Jersey Super 432,  
3 Euneva versus Keansberg Planning Board of  
4 Adjustment, 407 New Jersey Super 432, it was  
5 mentioned in one of my memorandum of law.

6 MR. RUBIN: Can I just stop you there  
7 for a second?

8 I have copies of everything that was  
9 submitted back in July of 2012.

10 I never received copies of anything  
11 that has been submitted since then.

12 If Mr. Kantowitz knew I have been in  
13 this case since November, submitted documents to  
14 this Board and didn't copy me on them and didn't  
15 even alert me to the fact that he made these  
16 submissions, it seems to me I should be entitled to  
17 see them before we go any further.

18 MR. KANTOWITZ: Well, I --

19 MR. RUBIN: When I wrote my letter to  
20 Mr. Galvin, I copied Mr. Kantowitz on that --

21 MR. GALVIN: He did. That's correct.

22 MR. RUBIN: -- I have not seen anything  
23 that Mr. Kantowitz has submitted to this Board,  
24 other than what was submitted back in July of 2012.

25 MR. KANTOWITZ: Counsel, after the

1 stipulation the case was over.

2           Thereafter, I filed a new application  
3 based upon the denial of January 2. That new  
4 application was duly filed exactly as I am required  
5 to do so.

6           It was filed. It was noticed properly.  
7 I am not under an assumption that there was going to  
8 be a continuing objection --

9           MR. GALVIN: Time out, time out.

10           We have three counsel here also. Anne  
11 has counsel here also.

12           But I respect both of you gentlemen,  
13 and I am looking forward to the completion of this  
14 hearing, but it is not going to be completed  
15 tonight, you know. I want everybody to have every  
16 fair possibility.

17           I want -- it is not fair that Mr. Rubin  
18 has not seen the documents. No matter what it is,  
19 there is an argument that maybe you could have come  
20 and checked the file, or whatever, but I do think  
21 you are entitled to the courtesy.

22           I understand Mr. Kantowitz' argument  
23 also, but I think let's do the honorable and fair  
24 thing, let's make sure you have a chance to look at  
25 those documents.

1 MR. KANTOWITZ: Then I will --

2 MR. GALVIN: The second thing:

3 I think if you have some people to  
4 testify, don't build this case completely on one of  
5 my Board member's comments. Bring some other  
6 testimony in. It doesn't have to be voluminous.  
7 One person, two people, somebody who has been there  
8 and saw it.

9 MR. KANTOWITZ: Okay.

10 MR. GALVIN: Is there anything else  
11 that you want to discuss procedurally?

12 MR. RUBIN: No.

13 I have no problem with -- Jeff and I go  
14 way back, so we were former partners, so I am not  
15 going to step on his toes. I want to give him as  
16 much leeway as I can, but I believe that there needs  
17 to be competent evidence presented to the Board, and  
18 I agree with Mr. Galvin in that regard.

19 MR. GALVIN: I would say, and the other  
20 thing I want you to think about, I think it is  
21 appropriate, and it's been done before me many times  
22 in the last 20 years, that in this kind of a case,  
23 an interpretation and appeal, these are legal  
24 decisions, legal determinations that we are making  
25 and to have an attorney enter the legal documents to

1 make this case without going through the fiction of  
2 having to have the client say yes, this is this  
3 document, it is a normal -- the rules of evidence  
4 are relaxed before a Board, and it is a Government  
5 document, and they go to make the point in the case,  
6 so --

7 MR. RUBIN: I don't disagree with that.

8 The problem is that, as you well know,  
9 the idea as to whether or not this is a legal  
10 nonconforming use goes to what was happening as of  
11 August 1st, 1979.

12 So there may be documents that say, and  
13 I agree, I think it was called "My Tavern" or  
14 something like that, that existed before 1979. But  
15 I think there are records that we have been able to  
16 acquire that suggest that that tavern wasn't  
17 operating as of August 1st, 1979. So it seems to me  
18 that documents in and of themselves also could be  
19 misleading, if not supported by competent testimony.

20 So to simply say here are the  
21 documents, this proves everything, and I don't have  
22 the ability to cross-examine those documents leaves  
23 me and my client at a terrible disadvantage --

24 MR. GALVIN: I don't agree with that.

25 I didn't see the documents yet, and I am not saying

1 I didn't see them, but they have not been presented  
2 yet in this case, and as they are presented you will  
3 be able to make arguments about it, and then we will  
4 have to make a decision.

5 MR. RUBIN: I just think that what  
6 needs to be kept in mind by this Board is that the  
7 burden of proof relies on the applicant to prove  
8 that they are a legal nonconforming use, that they  
9 existed as of the date that the ordinance was  
10 enacted that made this use a conditional use, and it  
11 also needs to be kept in mind by this Board that  
12 they have never received a conditional use permit  
13 from the Planning Board. There seems to be no  
14 dispute about that.

15 MR. GALVIN: Well, let's just get clear  
16 on the law.

17 In my view, and I am speaking for the  
18 Board, they would need it -- they wouldn't need it  
19 if they were a valid existing nonconforming use --

20 MR. RUBIN: I agree.

21 So their only avenue of relief here is  
22 to say that we are a legal nonconforming use, which  
23 means we existed as of August 1st, 1979, and have  
24 not abandoned that use since that time. And  
25 documents alone can't make those proofs, and that is

1       what I --

2                   MR. GALVIN:  I respectfully -- I am not  
3 going to disagree with you, but -- yes, I am going  
4 to disagree with you.

5                   I am going to disagree with you to the  
6 extent that it draws a conclusion that we couldn't  
7 rely on those documents.

8                   I think it depends.  We haven't heard  
9 the case yet.  We need to hear the case.  So when we  
10 hear it, we'll make the --

11                   MR. RUBIN:  I'm just saying --

12                   MR. GALVIN:  -- and you will renew your  
13 arguments, but I think it is totally appropriate for  
14 him to say, hey, look, here is a CO from 1982.

15                   It is totally appropriate.  We are  
16 going to draw whatever conclusion that we want to  
17 from that.

18                   We had another case with three door  
19 bells that I found very instructive, so we would  
20 probably like to see some personal testimony, but we  
21 have to examine the facts, and we don't have them  
22 yet.  So when we have them, we will -- and we have  
23 May 14th, so --

24                   MR. KANTOWITZ:  No.  I am out of the  
25 box on the 14th.  It is a Jewish holiday.  I can't

1 be there.

2 MS. MC MANUS: Excuse me.

3 MR. GALVIN: Sure.

4 MS. MC MANUS: My name is Jeanne Ann  
5 McManus, and I'm from the firm of Weiner Lesniak,  
6 and we represent the City of Hoboken on certain  
7 matters, and I am here on behalf of the zoning  
8 officer.

9 If I understand correctly, the hearing  
10 this evening and your notice was for several  
11 different types of relief, and the testimony that --  
12 or the presentation -- I'm sorry --

13 MR. GALVIN: That's great.

14 MS. MC MANUS: -- that is going on  
15 right now has to do with one of those forms of  
16 relief, which is a request for a certificate of  
17 preexisting nonconforming use.

18 MR. GALVIN: It really would solve  
19 everything. Maybe that might not be what Mr.  
20 Kantowitz is thinking. But if the Board were to  
21 conclude that it was a valid preexisting  
22 nonconforming use, it kind of resolves the whole  
23 matter, so that is what we should do judicially.

24 If we find that it is not a valid  
25 preexisting nonconforming use, then other results

1 occur.

2 MR. RUBIN: You have to take the next  
3 step, was it abandoned.

4 MR. GALVIN: We didn't get there yet,  
5 but --

6 MR. RUBIN: No, no, but it doesn't  
7 solve the whole question as to whether or not it was  
8 a preexisting nonconforming use. That does not  
9 solve the whole question.

10 Then the next question is: Was that  
11 use abandoned.

12 MR. GALVIN: Okay. I agree with that.

13 MS. MC MANUS: My position was going to  
14 be, can we resolve the appeal issue without this  
15 because it is separate?

16 MR. GALVIN: I think --

17 MS. MC MANUS: The appeal issue is:  
18 Was there a valid certificate of conditional use  
19 granted.

20 MR. GALVIN: You know, my position is  
21 that I want to be fair to everybody, and I think  
22 that to make Mr. Kantowitz take that case and order  
23 to do that appeal first because even if the -- even  
24 if it was inappropriately issued, the fact that it  
25 is a valid preexisting nonconforming use would

1           override it --

2                   MS. MC MANUS:   Well, that is true --

3                   MR. GALVIN:   -- but if it's not --

4                   MS. MC MANUS:   -- but it does not  
5           override the appeal --

6                   MR. GALVIN:   -- yes, it would.

7                   MS. MC MANUS:   -- because the appeal is  
8           of a denial of a zoning permit for a conditional  
9           use.

10                  MR. GALVIN:   No, because if we grant  
11           them -- because it moots it, because if we grant him  
12           a certificate of nonconforming use, he could go  
13           right down to the building department and pull  
14           whatever he's --

15                  MS. MC MANUS:   Yes.

16                  MR. GALVIN:   -- and provided we don't  
17           find that it has been abandoned along the way --

18                  MS. MC MANUS:   Absolutely.

19                  MR. GALVIN:   -- so actually the appeal  
20           is kind of last almost.

21                  We are going to solve the appeal by  
22           learning about the existence, whether or not this  
23           thing was valid or not.  Then we don't have to get  
24           to the issue of whether or not the prior zoning  
25           officer did her job properly or not.

1 MS. MC MANUS: Okay. But I think --

2 MR. GALVIN: But it is Mr. Kantowitz'  
3 appeal, not the zoning officer's appeal, so we can't  
4 force him to do that first.

5 MS. MC MANUS: I realize that. I  
6 realize that. But it just seemed that this is the  
7 nut of the issue, whether or not this is a  
8 preexisting nonconforming use, and whether or not it  
9 was abandoned, and that is what is going to resolve  
10 this whole --

11 MR. GALVIN: Possibly. We didn't hear  
12 the case yet. But when we hear it, the question is:  
13 The prior zoning officer, did she have the authority  
14 to issue what she issued.

15 I don't know. We don't know enough  
16 about the underlying use to make that determination.

17 MS. MC MANUS: Okay.

18 Thank you.

19 MR. GALVIN: So when are we carrying  
20 this to?

21 MR. KANTOWITZ: Can I just close? The  
22 hour is growing late. I see you want to leave. You  
23 worked hard.

24 Can I just add two points of  
25 housekeeping, and you can have the discussion as to

1           how and when we will resume?

2                         The two points are: I will prepare and  
3           furnish to Mr. Rubin, if not tomorrow, the day  
4           after, the entire packet that constituted my appeal  
5           filed on the January 2nd --

6                         MR. GALVIN: Oh, and could you provide  
7           it also to --

8                         MR. KANTOWITZ: It has been provided  
9           because Ms. Holtzman was served as part of 34-17.  
10          If counsel wants it --

11                        MR. GALVIN: Counsel would like a  
12          courtesy copy.

13                        MR. KANTOWITZ: -- I'll make another  
14          copy.

15                        If that was required under your  
16          ordinance, that the appeal go to the zoning officer  
17          and 16 copies go to the zoning board, so I will do  
18          that.

19                        Reciprocally, if Mr. Rubin has evidence  
20          that he claims that he and his client never knew of  
21          things going on, I would like to see that evidence.  
22          What is fair is fair.

23                        I am turning over the evidence I have.  
24          If he has documentary evidence saying he found  
25          different things showing that it wasn't operating as

1 a bar, I would like to see his proffer of his  
2 documentary evidence. What is fair is fair.

3 MR. RUBIN: I am only asking what he  
4 submitted and was a matter of public record because  
5 it was submitted to this Board.

6 I never heard of discovery in a Board  
7 hearing before.

8 MR. GALVIN: I agree with Mr. Rubin,  
9 though. I do agree with him, because really what  
10 you are doing in effect is he would bring things in  
11 the future as impeachment, and those kind of  
12 documents don't have to be exchanged in the  
13 beginning.

14 Do you agree with that?

15 MR. KANTOWITZ: I will tell you now, I  
16 will ask for a continuance to examine the document  
17 whether it's for impeachment or --

18 MR. GALVIN: We may not grant you --  
19 the Board is the final decider of whether or not we  
20 are going to grant it, so I would tread lightly on  
21 that.

22 MR. KANTOWITZ: I understand.

23 MR. RUBIN: I am going to consult with  
24 my client. I am not telling you that I will not do  
25 what Mr. Kantowitz --

1                   MR. GALVIN: We are trying to get to  
2 the truth. If you guys can eliminate having three  
3 or four nights of hearings, if you can figure it out  
4 in the hallway --

5                   MR. RUBIN: I just need to consult with  
6 my client before I do what I don't necessarily have  
7 to do.

8                   MR. GALVIN: Okay. I am back to my --  
9 are you done?

10                  MR. KANTOWITZ: No. I just want to  
11 respond to the one question you raised about  
12 Government records, because I want to be clear on  
13 what I do or don't have to do between now and the  
14 next hearing in terms of satisfying the Board and  
15 Mr. Rubin.

16                   Records such as tax card --

17                  MR. RUBIN: Property record?

18                  MR. KANTOWITZ: -- some property tax  
19 assessment --

20                   (Everyone talking at once.)

21                  MR. GALVIN: Listen to this:

22                   If we were in the Law Division, you  
23 could put that in, but I think there is something  
24 that you have to -- like there's a certification or  
25 something that you have to put in to use it in the

1 Superior Court, and I would probably use, if we were  
2 at a trial, you probably would use your client to  
3 enter those documents, even though you wouldn't be  
4 cross-examining them, but --

5 MR. RUBIN: How they were obtained.

6 MR. GALVIN: -- but this is more in the  
7 nature of appellate arguments, so I think it is okay  
8 for him to say those are Government documents --

9 MR. RUBIN: When I raised my objection  
10 before, it dealt with many of the documents that are  
11 attached to Mr. Pascarell's certification. I didn't  
12 know there was a whole slew of other documents that  
13 were obtained from this municipality that he  
14 submitted with his most recent application.

15 I suspect that I won't object to those  
16 documents being presented to the Board, or if even  
17 if they may require, but I haven't seen them, so I  
18 can't speak to that --

19 MR. KANTOWITZ: Here is what I will do  
20 to cut it short. I am going to contact -- I'm going  
21 to send everything I got to Mr. Rubin, and I'm going  
22 to contact him, and we will go through document by  
23 document and decide what he has to do --

24 MR. RUBIN: That's okay with me.

25 MR. KANTOWITZ: -- and we will do our

1 homework outside of the Board. We don't have to  
2 take up the Board's time.

3 VICE CHAIR GREENE: That will be  
4 terrific.

5 MR. KANTOWITZ: I mean, all of the  
6 procedural and evidential stuff, we will try to get  
7 as much as we can resolved or agreed to or disagreed  
8 to before we come back here.

9 All right?

10 MR. GALVIN: Yes, sir.

11 MR. SZCAESNY: I'm sorry to interrupt.

12 THE REPORTER: What is your name?

13 MR. SZCZ: Peter Szczesny,

14 S-z-c-z-e-s-n-y.

15 I am not sure if you sent the  
16 notification to everybody in the association. I  
17 am --

18 MR. KANTOWITZ: My dear friend, Ms.  
19 Carcone will be happy to show you 147 certified  
20 green and white receipts showing that I postmarked  
21 that notice to 147 different entities, including the  
22 names of all of the ones given to me by law by the  
23 tax assessor for purposes of this hearing, and you  
24 can determine who on the 147 is or is not noticed --

25 MR. SZCZESNY: That's what I was

1 advised, but thank you.

2 MR. KANTOWITZ: That is what I am  
3 required to do.

4 MR. GALVIN: No problem.

5 Jeff is very thorough. I would be very  
6 surprised if he didn't do it.

7 So we are going to carry this matter to  
8 May 21st. Both counsel can make it?

9 MR. KANTOWITZ: Yes.

10 No further notice required.

11 MR. GALVIN: Extension of time?

12 MR. KANTOWITZ: Through May 21st, yes,  
13 sir.

14 MR. GALVIN: We need a motion and a  
15 second to carry that --

16 MR. KANTOWITZ: And no further notice  
17 is required of anybody.

18 MR. GALVIN: That is what I just said.

19 VICE CHAIR GREENE: I'll move that.

20 MR. GALVIN: Is there a second?

21 VICE CHAIR GREENE: Speak up.

22 (Laughter)

23 COMMISSIONER PINCUS: Second.

24 CHAIRMAN AIBEL: All in favor?

25 (All Board members voted in the

1 affirmative.)

2 MR. GALVIN: All right. May 21st.

3 (The meeting concluded at 11:10 p.m.)

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I, PHYLLIS T. LEWIS, a Certified Court Reporter, Certified Realtime Court Reporter, and Notary Public of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the 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, CSR, CRR

- - - - -

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

Notary Public of the State of New Jersey

My commission expires 11/5/2015.

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