

CITY OF HOBOKEN
PLANNING BOARD

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REGULAR MEETING OF THE HOBOKEN : September 6, 2016
PLANNING BOARD : 7:07 p.m.
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Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

- Chairman Gary Holtzman
- Vice Chair Frank Magaletta
- Commissioner Caleb D. Stratton
- Commissioner Jim Doyle
- Commissioner Ann Graham
- Commissioner Caleb McKenzie
- Commissioner Ryan Peene
- Commissioner Tom Jacobson

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

- David Glynn Roberts, AICP/PP, LLA, RLA
Board Planner
- Michael J. O'Krepky, PE, CME
Board Engineer
- Patricia Carcone, Board Secretary

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1 CHAIRMAN HOLTZMAN: Good evening,
2 everybody. We are going to get started.

3 Could somebody in the back of the room
4 just close the door for us?

5 Thank you.

6 It is Tuesday, September 6th, 7:07 p.m.
7 This is the Hoboken Planning Board Meeting.

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

16 Pat, please call the roll.

17 MS. CARCONE: Commissioner Holtzman?

18 CHAIRMAN HOLTZMAN: Here

19 MS. CARCONE: Commissioner Magaletta?

20 VICE CHAIR MAGALETTA: Here.

21 MS. CARCONE: Commissioner Stratton?

22 COMMISSIONER STRATTON: Here.

23 MS. CARCONE: Commissioner Forbes is
24 absent.

25 Commissioner Doyle?

1 COMMISSIONER DOYLE: Here.

2 MS. CARCONE: Commissioner Graham?

3 COMMISSIONER GRAHAM: Here.

4 MS. CARCONE: Commissioner McKenzie?

5 COMMISSIONER MC KENZIE: Here.

6 MS. CARCONE: Commissioner Pinchevsky

7 is absent.

8 Commissioner Peene?

9 COMMISSIONER PEENE: Here.

10 MS. CARCONE: Commissioner Jacobson?

11 COMMISSIONER JACOBSON: Here.

12 MS. CARCONE: And Commissioner O'Connor

13 is absent.

14 CHAIRMAN HOLTZMAN: Right.

15 Thank you very much.

16 We have a couple of quick

17 administrative things. There were some resolutions

18 that appeared on a copy of our agenda at one point.

19 We just received those final drafts, so we are going

20 to carry those to the next meeting, if anybody was

21 getting ahead of the second curve there.

22 The second item is we have --

23 MR. GALVIN: I could explain that.

24 CHAIRMAN HOLTZMAN: -- is we have a

25 change on a previous resolution, which is for 133

1 Monroe. I will let Dennis give us an introduction
2 on this.

3 MR. GALVIN: All right.

4 I just had this clarified to me by
5 several people, and I'm very grateful for
6 everybody's assistance.

7 On 133 Monroe, I was under the
8 impression that there might be a green roof in this
9 case. I had our two standard conditions in my list
10 of conditions.

11 As we went through the hearing at the
12 very end, we clarified that there would be no green
13 roof on this building. I took those two conditions
14 out of my condition list. I did not read them to
15 you that night, and I moved them to the bottom of
16 the page.

17 When I moved them, instead of being
18 Conditions 9 and 10, they came down to the bottom of
19 the page and became Conditions 14 and 15. But I
20 didn't intend for them to be on that condition list
21 any more, but I didn't discard them because I
22 thought if the Board changed its mind and said, "You
23 know, I think we want a green roof," I wanted to be
24 able to just copy them back into the condition list.

25 Unfortunately, because I didn't delete

1 it completely, my staff carried over my notes
2 exactly the way they are supposed to, and they
3 included those two conditions.

4 Now, the applicant has -- so you don't
5 have to do any more research -- the applicant has
6 asked us to remove that because that will hold up
7 their project. People will be looking for a green
8 roof when none is required, so we should never make
9 any changes to these documents without getting the
10 Board's authorization, even when it's obvious and
11 logical, so I need a motion and a second to
12 delete --

13 CHAIRMAN HOLTZMAN: Because the green
14 roof does not appear on the plans, which at the end
15 of the day is really the most critical document.

16 MR. GALVIN: In my mind, it is not on
17 the plan. It's not on the plan that we approved.
18 But somewhere at the beginning of this process, at
19 the SSP, there must have been some discussion of a
20 potential green roof. There was some tick or
21 somebody raised it, and I put that on my condition
22 list out of an abundance of caution.

23 CHAIRMAN HOLTZMAN: Dave?

24 MR. ROBERTS: During the course of the
25 review, the plans were revised, that they didn't

1 need a green roof.

2 CHAIRMAN HOLTZMAN: Okay. So what do
3 we need here, Dennis, a motion to --

4 MR. GALVIN: Just a motion and a second
5 to amend that resolution and delete those two --

6 CHAIRMAN HOLTZMAN: Mr. Magaletta?

7 VICE CHAIR MAGALETTA: It was just a
8 scrivener's error. Is that what you're calling it?

9 MR. GALVIN: Yes. It's a non
10 material --

11 VICE CHAIR MAGALETTA: So I make a
12 motion to amend the resolution to reflect what was
13 described on the record.

14 MS. CARCONE: Should Frank vote on it
15 since he voted against it in the original?

16 MR. GALVIN: No. Somebody else will
17 have to make a motion.

18 (Laughter)

19 MS. CARCONE: Yes.

20 COMMISSIONER DOYLE: I will make the
21 motion since I voted in favor of this.

22 MS. CARCONE: You did not vote --

23 (Laughter)

24 MS. CARCONE: -- okay. Voting in favor
25 is --

1 COMMISSIONER STRATTON: I'll make a
2 motion.

3 CHAIRMAN HOLTZMAN: Mr. Stratton --

4 MS. CARCONE: -- Commissioner Stratton
5 and --

6 CHAIRMAN HOLTZMAN: -- are you making a
7 motion to make the adjustment on 133 Monroe --

8 COMMISSIONER STRATTON: Yes.

9 CHAIRMAN HOLTZMAN: -- and remove the
10 green roof information from the resolution, so that
11 it matches the plan?

12 MS. CARCONE: -- you voted in the
13 affirmative for it.

14 COMMISSIONER MC KENZIE: Yes, so I can
15 second.

16 MS. CARCONE: Yes.

17 CHAIRMAN HOLTZMAN: Caleb seconds. So
18 Caleb and Caleb as the team.

19 MS. CARCONE: All right. Do you want
20 an all in favor?

21 (All Board members answered in the
22 affirmative)

23 CHAIRMAN HOLTZMAN: Anyone opposed?

24 No. Great. Okay.

25 MR. GALVIN: It's so easy, a monkey can

1 do it.

2 (Laughter)

3 CHAIRMAN HOLTZMAN: Excellent. Okay.

4 The second administrative issue is we
5 have a note here from our conflict engineer, Boswell
6 Engineering, regarding the AT&T site at Washington
7 Street.

8 In the course of the folks doing the
9 work on the roof and the parapet wall, they needed
10 to basically extend the amount of the parapet wall
11 that they needed to repair.

12 It is inconsequential to what it was
13 that we approved, and the engineer has basically
14 signed off that it is really more of a construction
15 department issue than anything else, but we received
16 a letter on this.

17 MR. GALVIN: The same thing. This is
18 one of those issues where in other towns they might
19 have administratively made this change. I don't
20 believe in those. I think that is a mistake,
21 because once you make one small one, and someone
22 comes back and keeps asking for things that are
23 bigger and bigger, that is not what you want.

24 To make good government, it is better
25 for the Board to authorize this modification to the

1 proposal --

2 CHAIRMAN HOLTZMAN: Right.

3 So the Board Engineer --

4 MR. GALVIN: -- even when it's logical.

5 CHAIRMAN HOLTZMAN: -- so the Board's
6 Engineer reviewed it and said it doesn't change the
7 scope of the work that they're doing. They're just
8 making additional repairs to the building.

9 MR. GALVIN: So we just need a simple
10 vote on that clause --

11 VICE CHAIR MAGALETTA: Before we get to
12 that, so the front of the building is being done?

13 CHAIRMAN HOLTZMAN: I believe it's
14 actually the sides.

15 VICE CHAIR MAGALETTA: The sides, okay.

16 Because I remember during the hearing,
17 there was testimony about the impact on firefighters
18 coming up to the roof.

19 CHAIRMAN HOLTZMAN: Right.

20 No. This doesn't have anything to do
21 with egress or anything. It's just the side parapet
22 wall that some of the equipment is anchored to.

23 VICE CHAIR MAGALETTA: Thank you.

24 COMMISSIONER DOYLE: What is the
25 address again? I'm sorry.

1 CHAIRMAN HOLTZMAN: 627 Washington.

2 COMMISSIONER DOYLE: Okay. This is for
3 the cell tower.

4 CHAIRMAN HOLTZMAN: Yes. It's a cell
5 tower installation.

6 So is there a motion to accept the
7 change as required to keep the construction --

8 MR. GALVIN: Accept the recommendation
9 of our engineer.

10 COMMISSIONER DOYLE: Motion.

11 CHAIRMAN HOLTZMAN: Motion.

12 COMMISSIONER PEENE: Second.

13 CHAIRMAN HOLTZMAN: Second.

14 All in favor?

15 (All Board members answered in the
16 affirmative)

17 CHAIRMAN HOLTZMAN: Anybody opposed?

18 No. Okay. Great.

19 Thank you, folks.

20 The third item is we have a request
21 from our friends at -- what is this --

22 MR. GALVIN: Let me fill you in.

23 CHAIRMAN HOLTZMAN: -- Applied Monroe
24 Lenders is the name. I wanted to get it right.

25 MR. GALVIN: On the Applied Monroe

1 Lender case, we have a lot of money in escrow, like
2 \$40,000. I don't know how the escrow is that
3 number, but that's the number, right?

4 So they came to us. They filed their
5 application. We turned them down. We went to
6 court. The court affirmed us. We are now at the
7 Appellate Division.

8 There is nothing going on with their
9 money right now. We're not doing -- our engineer
10 and our planner have not worked on this file since
11 they have appeared before the Board. The monies
12 that I get paid come out of the general fund
13 regarding the litigation.

14 They has been asking me for the last
15 three months if they could have the return of the
16 escrow, and I made certain arguments that when I
17 considered them further, I don't think that they are
18 necessary to make. I don't see any reason why --

19 CHAIRMAN HOLTZMAN: Well, the potential
20 was that since the case -- the application and the
21 case was still alive, it might come back to us, at
22 which point our professionals would have additional
23 billings, so there was a logic to keeping the
24 escrow.

25 MR. GALVIN: Right.

1 VICE CHAIR MAGALETTA: Well, instead of
2 returning the whole thing, why can't we just retain
3 like \$5,000 or something like that?

4 MR. GALVIN: Well, I have a case,
5 Susine versus Woodbridge Township, which basically
6 says we don't have jurisdiction right now.

7 So my position is if they want to fight
8 with us, they would have to go to the Appellate
9 Division to get the escrow, and I got to tell you, I
10 don't think that that's sensible for the City of
11 Hoboken to pay over that battle, and there are other
12 issues with these guys, and I thought the correct
13 thing to do here is show a little -- do the right
14 thing, return the escrow.

15 If the court remands it to us, and they
16 come back, they will have to post the escrow, or we
17 are not going to proceed, and I will make sure I
18 take care of that.

19 Then after I said I would recommend
20 that we return the escrow, they asked for the return
21 of the application fee, and I promptly said no, we
22 can't do that, that is beyond our jurisdiction.

23 VICE CHAIR MAGALETTA: But the
24 application was made?

25 CHAIRMAN HOLTZMAN: That's correct.

1 MR. GALVIN: So I hope that you will
2 agree with me. I think it's responsible to return
3 the escrow at this point, and if they come back, or
4 when they come back --

5 VICE CHAIR MAGALETTA: I'll make a
6 motion to return the unused escrow.

7 CHAIRMAN HOLTZMAN: Okay. Is there a
8 second?

9 COMMISSIONER PEENE: Second.

10 CHAIRMAN HOLTZMAN: All in favor?

11 (All Board members answered in the
12 affirmative)

13 CHAIRMAN HOLTZMAN: Anyone opposed?

14 Thank you.

15 MR. GALVIN: It shows good faith.

16 MS. CARCONE: So we are not withdrawing
17 the project from the Planning Board?

18 MR. GALVIN: No. We're just returning
19 the escrow.

20 But if at some point they meet with the
21 governing body, and they now become the appointed
22 redeveloper, and they come back to us --

23 CHAIRMAN HOLTZMAN: Then we start over
24 again.

25 MR. GALVIN: -- they will have to post

1 new escrow.

2 All right.

3 MS. CARCONE: Okay.

4 CHAIRMAN HOLTZMAN: Thank you.

5 (Continue on next page)

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CITY OF HOBOKEN
HOBOKEN PLANNING BOARD
HOP-16-18

- - - - - X
RE: 502-510 Madison Street : September 6, 2016
Block 67, Lots 28, 29, 30, 31 & 32 :
Applicant: 502 Madison Street, LLC : 7:15 p.m.
Final Site Plan Review :
- - - - - X

Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

- Chairman Gary Holtzman
- Vice Chair Frank Magaletta
- Commissioner Caleb D. Stratton
- Commissioner Jim Doyle (Recused)
- Commissioner Ann Graham
- Commissioner Caleb McKenzie
- Commissioner Ryan Peene
- Commissioner Tom Jacobson

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

- David Glynn Roberts, AICP/PP, LLA, RLA
Board Planner
- Michael J. O'Krepky, PE, CME
Board Engineer
- Patricia Carcone, Board Secretary

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6 Attorney for the Board.

7 MC DONALD & ROGERS, ESQS.
8 181 W. High Street
9 Somerville, New Jersey 08876
10 BY: JOHN MC DONALD, ESQ.
11 Attorneys for the Applicant.

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1 CHAIRMAN HOLTZMAN: Moving on, Mr. Mc
2 Donald, are you ready?

3 MR. MC DONALD: We're ready.

4 CHAIRMAN HOLTZMAN: This is 502
5 Madison.

6 COMMISSIONER DOYLE: I will step out.

7 (Commissioner Doyle recused)

8 CHAIRMAN HOLTZMAN: Let the record
9 reflect --

10 MR. GALVIN: The record should reflect
11 that Councilman Doyle has stepped off the dais.

12 MR. MC DONALD: Yes.

13 Good evening, Mr. Chairman, and ladies
14 and gentlemen of the Board.

15 CHAIRMAN HOLTZMAN: I think we can do
16 this rather administratively, Mr. Mc Donald. Keep
17 the -- we don't need to walk through the whole
18 project. We know what this is.

19 MR. MC DONALD: Okay. If I may
20 first --

21 CHAIRMAN HOLTZMAN: Keep it off the
22 easel. Let's keep it simple.

23 MR. MC DONALD: You got it.

24 This is 502-510 Madison Street,
25 HOZ-16-18.

1 We received a height variance and
2 preliminary site plan approval on March 1st, 2016.

3 We are back before you, and thank you
4 for hearing us for final site plan approval.

5 There were two issues that kind of
6 remained open with the engineer. We were back and
7 forth, of course, with the professionals again.

8 One of them in the last letter, dated
9 August 30th, 2016, they removed as an exception, and
10 that is that wall, if you recall, we agreed to --
11 the neighbors wanted a wall, and we agreed to leave
12 it there.

13 We did get a structural engineer. He
14 came out and gave a report, and we gave it to your
15 engineers, and they said it is fine with them, and
16 they removed that as an exception.

17 If there are any problems going forward
18 in the building phase, we will take care of that
19 with the professionals, but that's another matter.

20 The only other matter that I think was
21 opened was Comment Number 12 on the Maser report,
22 dated August 30th, 2016. It said that our driveway
23 cuts, two of them should be ten feet.

24 We believe they should be -- we were
25 wrong at 16, but we believe they should be 12 feet

1 because it is a two-way driveway, and not a one-way
2 driveway.

3 CHAIRMAN HOLTZMAN: There are two
4 driveways. Is that correct?

5 MR. MC DONALD: Yes, and they are both
6 both ways, okay? So they should be --

7 CHAIRMAN HOLTZMAN: So we are some
8 place between ten and 12?

9 MR. MC DONALD: Well, it is
10 196-40.B(2) --

11 (Laughter)

12 CHAIRMAN HOLTZMAN: You know what my
13 next question is, right?

14 MR. MC DONALD: What?

15 CHAIRMAN HOLTZMAN: How about 11?

16 MR. MC DONALD: 11 --

17 COMMISSIONER STRATTON: Gary, I think
18 that there is a standard that City Council recently
19 passed, and I think it has been codified, and I
20 think that if you do a little bit of research,
21 you'll find it. I think the 12 feet is right.

22 MR. MC DONALD: It is 12.

23 CHAIRMAN HOLTZMAN: Okay.

24 COMMISSIONER STRATTON: So I think that
25 we should go with whatever the City Council and the

1 code requires.

2 CHAIRMAN HOLTZMAN: Great.

3 MR. MC DONALD: But we're not asking
4 for anything but what the code says.

5 CHAIRMAN HOLTZMAN: Right. The 16 we
6 know is wrong, though, right?

7 MR. MC DONALD: We're wrong, 16. 12
8 looks like the right number.

9 CHAIRMAN HOLTZMAN: Right.

10 COMMISSIONER STRATTON: I think 12 is
11 correct.

12 CHAIRMAN HOLTZMAN: You think 12 is
13 correct, so you are going to do your research and
14 double check with what the City Council has recently
15 reaffirmed?

16 MR. MC DONALD: Yes. 196-40.B(2).

17 CHAIRMAN HOLTZMAN: 12 feet?

18 MR. MC DONALD: 12 feet for two-way
19 driveways.

20 CHAIRMAN HOLTZMAN: Okay. So I guess
21 as we have been referring to the ten feet on the old
22 code --

23 MR. ROBERTS: For a one-way.

24 CHAIRMAN HOLTZMAN: -- for a one-way?

25 MR. ROBERTS: Right.

1 CHAIRMAN HOLTZMAN: Okay.

2 MR. MC DONALD: So those are all of the
3 issues. If you have any other questions --

4 CHAIRMAN HOLTZMAN: I know there was a
5 deed restriction on this as well.

6 MR. MC DONALD: Right.

7 We have given those, and they will be
8 continuing with the conditions --

9 VICE CHAIR MAGALETTA: I have a
10 question.

11 May I?

12 I'm sorry, Mr. Chair?

13 CHAIRMAN HOLTZMAN: Yes, please.

14 VICE CHAIR MAGALETTA: When we were at
15 the workshop, my question on the deed restriction is
16 that I think it is kind of vague, and I think it
17 still remains vague.

18 If you could reference in the deed
19 restriction to the plans, that would be fine. All
20 it says is you will maintain a rain garden, but it
21 didn't say the size or any kind of clarification of
22 what it actually is.

23 So I think if you could just put
24 reference back to the specifications, that would be
25 fine with me.

1 MR. MC DONALD: We will do that.

2 MR. GALVIN: I kind of hit this. This
3 was like the first one in Hoboken, okay?

4 And then after I got this, I had
5 thoughts about this, and I think we should be
6 attaching Exhibit A that defines the extent of the
7 garden and listing the botanicals as part of the
8 deed restriction.

9 MR. MC DONALD: Fine.

10 We will do that to your satisfaction --

11 MR. GALVIN: Okay.

12 MR. MC DONALD: -- so it will be a
13 condition of approval.

14 CHAIRMAN HOLTZMAN: Great.

15 MR. GALVIN: Sorry about that.

16 CHAIRMAN HOLTZMAN: Great.

17 Commissioners, any other additional
18 questions or comments?

19 Frank, anything else?

20 VICE CHAIR MAGALETTA: No.

21 CHAIRMAN HOLTZMAN: Okay.

22 Anything else, Mr. McDonald?

23 MR. MC DONALD: No.

24 CHAIRMAN HOLTZMAN: No. It is real
25 simple, right?

1 MR. MC DONALD: Yes.

2 CHAIRMAN HOLTZMAN: It should be.

3 MR. ROBERTS: Mr. Chairman, if it helps
4 with the deed restriction, the one place where the
5 rain garden is noted is on the Engineering and
6 Utility Site Plan, which appears to be -- the sheet
7 doesn't appear to be numbered, but that is the title
8 of it.

9 CHAIRMAN HOLTZMAN: You'll give Dennis'
10 office the reference.

11 MR. ROBERTS: Yes.

12 MR. GALVIN: Right.

13 So, in other words, I would say print
14 it out on an eight-and-a-half-by-11 sheet, and also
15 attach what those plans are going to be, so that ten
16 years from now somebody can go look where the plans
17 were supposed to be and what it was supposed to be
18 in case it all --

19 MR. MC DONALD: That is fine.

20 MR. GALVIN: All right.

21 COMMISSIONER PEENE: Motion to accept
22 the application for final site plan approval.

23 CHAIRMAN HOLTZMAN: Okay.

24 Is there a second?

25 COMMISSIONER JACOBSON: Second.

1 CHAIRMAN HOLTZMAN: All in favor --
2 well, let's call the roll. I'm sorry.
3 MS. CARCONE: Commissioner Magaletta?
4 VICE CHAIR MAGALETTA: Yes.
5 MS. CARCONE: Commissioner Stratton?
6 COMMISSIONER STRATTON: Yes.
7 MS. CARCONE: Commissioner Graham?
8 COMMISSIONER GRAHAM: Yes.
9 MS. CARCONE: Commissioner McKenzie?
10 COMMISSIONER MC KENZIE: Yes.
11 MS. CARCONE: Commissioner Peene?
12 COMMISSIONER PEENE: Yes.
13 MS. CARCONE: Commissioner Jacobson?
14 COMMISSIONER JACOBSON: Yes.
15 MS. CARCONE: Commissioner Holtzman?
16 CHAIRMAN HOLTZMAN: Yes.
17 Great.
18 Thank you, Mr. Mc Donald.
19 MR. MC DONALD: Thank you so much for
20 taking us early, too. I appreciate the courtesy.
21 Have a nice weekend.
22 (The matter concluded)

23

24

25

C E R T I F I C A T E

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

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

s/Phyllis T. Lewis, CCR, CRCR

 PHYLLIS T. LEWIS, C.C.R. XI01333 C.R.C.R. 30XR15300
 Notary Public of the State of New Jersey
 My commission expires 11/5/2020.
 Dated: 9/7/16
 This transcript was prepared in accordance with
 NJAC 13:43-5.9.

CITY OF HOBOKEN
HOBOKEN PLANNING BOARD
HOP-16-16

- - - - - X
RE: 527-529 Monroe Street : September 6, 2016
Block 67, Lots 14 and 15 :
Applicant: 527 Monroe Street, LLC : 7:20 p.m.
Minor Site Plan Review & Variances :
- - - - - X

Held At: 94 Washington Street
Hoboken, New Jersey

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WITNESS

PAGE

FRANK MINERVINI

33

1 (Commissioner Doyle present)

2 CHAIRMAN HOLTZMAN: So I think we
3 should do 527.

4 Mr. Matule, are you in the room here?
5 I can't see you.

6 MR. MATULE: Yes.

7 CHAIRMAN HOLTZMAN: There you are.
8 Thank you.

9 MR. GALVIN: Mr. Matule is in the
10 house.

11 CHAIRMAN HOLTZMAN: He's in the house.
12 527?

13 MR. MATULE: 527 Monroe.

14 Mr. Minervini.

15 CHAIRMAN HOLTZMAN: Please let the
16 record show that Councilman Doyle has returned to
17 the dais.

18 COMMISSIONER DOYLE: Just like
19 McArthur.

20 CHAIRMAN HOLTZMAN: Just like what?

21 COMMISSIONER DOYLE: McArthur.

22 CHAIRMAN HOLTZMAN: McArthur? That's
23 rather grandiose.

24 (Laughter)

25 Good evening, Mr. Matule.

1 MR. MATULE: Good evening, Mr. Chair,
2 and Board Members.

3 Robert Matule, appearing on behalf of
4 the applicant. While Mister --

5 (Audience speaking in the background.)

6 CHAIRMAN HOLTZMAN: Hold on a second.

7 MR. GALVIN: Hold on second. I'm
8 sorry. I couldn't hear you at all.

9 CHAIRMAN HOLTZMAN: Okay. Let's start
10 it from the top.

11 MR. MATULE: While Mr. Minervini is
12 setting up, just some opening comments.

13 This is the application for 527-531
14 Monroe. It is an application to construct eight
15 residential units on four floors over one floor of
16 parking with a commercial space on the ground floor.

17 You may recall we were here in June of
18 this year with a similar proposal. I think that
19 proposal had about 6 percent more lot coverage and a
20 smaller rear yard, and the application was not
21 looked upon favorably, and we are now with a new
22 application.

23 The plans have been revised to reduce
24 the footprint of the building, to get the lot
25 coverage down to approximately 62.1 percent.

1 We have submitted our jurisdictional
2 proofs already, so with that note we can have Mr.
3 Minervini sworn.

4 MR. GALVIN: Raise your right hand.

5 Do you swear or affirm the testimony
6 you are about to give in this matter is the truth,
7 the whole truth, and nothing but the truth?

8 MR. MINERVINI: I do.

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

11 MR. GALVIN: State your full name for
12 the record and spell your last name.

13 THE WITNESS: Frank Minervini,
14 M-i-n-e-r-v-i-n-i.

15 MR. GALVIN: Thank you.

16 CHAIRMAN HOLTZMAN: Good evening, Mr.
17 Minervini.

18 THE WITNESS: Good evening, Mr.
19 Chairman.

20 MR. GALVIN: Do we accept his
21 credentials?

22 CHAIRMAN HOLTZMAN: We will.

23 MR. GALVIN: Still.

24 THE WITNESS: Thank you.

25 CHAIRMAN HOLTZMAN: All right.

1 So we recently saw this application, so
2 I think -- I hope all of the Commissioners don't
3 need a full recap on this, and I would think that
4 you could go into an expedited presentation as to
5 what the changes were.

6 THE WITNESS: Yes, yes.

7 CHAIRMAN HOLTZMAN: Is that acceptable,
8 Mr. Matule, or did you want to --

9 MR. MATULE: I could not have phrased
10 it better, Mr. Chairman, so we will have Mr.
11 Minervini respond.

12 THE WITNESS: We are still the same
13 project in terms of the larger issues. Eight-unit
14 residential building -- eight-unit residential
15 building, four stories of residential above ground
16 floor commercial and parking, one 600 square foot
17 commercial space. That all remains the same.

18 What we have changed relative to the
19 application that was denied are really two things:

20 Our lot coverage, where we had 67
21 percent on the previous application, we are down to
22 62, and that includes a redevelopment, which I will
23 describe quickly, as well as a rear yard variance,
24 which was needed for the last project is no longer
25 needed. We accomplished that by reducing the size

1 of the rear balcony.

2 So if I go to Sheet Z-3, the difference
3 very simply between this project and the previous
4 project is at the ground floor on the previous
5 project, this was a one-story structure that was
6 used for an internal lobby and storage behind it.
7 That is the majority of the additional coverage that
8 was requested on the previous application.

9 The building above previously as now
10 was 60 percent lot coverage. So by reducing the lot
11 coverage on this floor, this building on the first
12 floor, as well as two, three, four, and five is at
13 60 percent.

14 The additional two percent - and I will
15 switch to the floor plan Z-6 - the additional two
16 percent comes from this requested rear balcony that
17 was eight feet in depth and is now five-feet-two.

18 So with that reduction, it reduces our
19 lot coverage to 62 percent. This is an additional
20 two above the 60 percent of the building, and it
21 also removes the rear yard variance.

22 Now, between the back of our balcony
23 and the rear property line, we have 30 feet, which
24 is the required distance, so in that case there is
25 no longer a rear yard variance.

1 CHAIRMAN HOLTZMAN: And this is the
2 project that there was a lengthy conversation about
3 the consideration for the building to the left.

4 THE WITNESS: Yes.

5 What has driven this design, and most
6 of the important decisions regarding this building
7 design floor plans is really the context.

8 So if you look at this photograph on
9 the bottom board, that I think you have as part of
10 your drawings, this five-story ten-unit residential
11 building is two feet ten inches off of the property
12 line.

13 So using the same sheet, Z-6, this is
14 our property line, a shared property line with the
15 building to our north, and the adjacent building at
16 five stories is two feet ten inches off the property
17 line. That is an odd condition. Even more so is
18 that that building has over 20 windows on its side
19 property -- its sidewall, so --

20 CHAIRMAN HOLTZMAN: Not only is it not
21 a good condition, it would technically be an illegal
22 condition.

23 THE WITNESS: We couldn't replicate
24 that these days if we were starting -- if we were
25 building a new building for sure.

1 CHAIRMAN HOLTZMAN: Right.

2 THE WITNESS: So this setback to the
3 side is completely a reaction to the existing
4 condition.

5 We could have, and it is permitted,
6 have our building come right to here, the full 60
7 percent, and then only allow two feet eight inches
8 between the edge of our building and those windows.

9 We thought being good neighbors, we
10 would give them an additional five feet in this
11 section and an additional eight and a half feet in
12 this section, so what we have done is only solely to
13 accommodate the windows next door. There is no
14 other reason for it.

15 The balconies we are requesting are a
16 small two percent. That allows outdoor spaces for
17 the building, and again, they are much reduced
18 relative to the previous application, and we no
19 longer need that rear yard variance.

20 CHAIRMAN HOLTZMAN: Great.

21 Commissioners, any questions for Mr.
22 Minervini?

23 VICE CHAIR MAGALETTA: I have a
24 question for you.

25 I know the neighbor's yard was

1 described on that building, but to the south, what
2 are the heights of those buildings?

3 THE WITNESS: So I will use the same
4 photo board.

5 This is the building directly to the
6 south --

7 VICE CHAIR MAGALETTA: Uh-huh.

8 THE WITNESS: -- and it actually --
9 I'll use the site plan. It extends, so it is three
10 stories here, and an additional one story extends
11 back to about halfway through our yard, so it is a
12 long building, but it's three stories in height --
13 I'm sorry -- I showed the wrong one. This is
14 actually it.

15 CHAIRMAN HOLTZMAN: Right.

16 MR. MATULE: Go to Z-1. You have a
17 street scape --

18 THE WITNESS: Yes.

19 MR. MATULE: -- to put it in context.

20 VICE CHAIR MAGALETTA: Oh, I didn't see
21 that.

22 Okay. Thank you.

23 THE WITNESS: It's better drawn than I
24 could have said.

25 VICE CHAIR MAGALETTA: All right.

1 Thank you.

2 COMMISSIONER JACOBSON: I am trying to
3 find the depth of the two protrusions on the front
4 elevation.

5 THE WITNESS: The bays.

6 COMMISSIONER JACOBSON: The bays.

7 THE WITNESS: Yes.

8 COMMISSIONER JACOBSON: There has been
9 some debate about what vernacular it will be for
10 the --

11 THE WITNESS: I am looking at in
12 particular Z-6 --

13 COMMISSIONER JACOBSON: Yes.

14 THE WITNESS: -- so we got two 12-inch
15 projections.

16 COMMISSIONER JACOBSON: Okay. Right.
17 Yes. I did just find it.

18 Thank you.

19 THE WITNESS: Okay.

20 CHAIRMAN HOLTZMAN: Anything else, Tom?

21 COMMISSIONER JACOBSON: No.

22 CHAIRMAN HOLTZMAN: Councilman?

23 COMMISSIONER DOYLE: You may recall
24 there was some discussion about the size of the
25 decks the last time around.

1 THE WITNESS: Yes.

2 COMMISSIONER DOYLE: What is the
3 thought process?

4 You have four backyard spaces. You
5 have four decks. You have two rooftops, so you have
6 ten outdoor spaces attached to eight units, and I
7 know where they are. I mean, I think 2B and 5B both
8 have a yard and a deck or a roof deck and a deck, is
9 that --

10 THE WITNESS: Correct.

11 COMMISSIONER DOYLE: And doubling up on
12 those two is just more is better or what --

13 THE WITNESS: Well, our thought was to
14 provide outdoor space to the units that don't have
15 access to the rear or the roof, we would then ask
16 for this lot coverage variance.

17 Once we are asking for that lot
18 coverage variance on those two floors, and that area
19 is taken up, why not give a portion or an additional
20 deck to an upper unit, and yes, more is better, if
21 our thought is that the negative impact is not there
22 for the consideration that we have already got these
23 two, which are needed.

24 COMMISSIONER DOYLE: Okay.

25 And was there a question on the

1 calculation of the green roof?

2 MR. ROBERTS: Yes.

3 COMMISSIONER DOYLE: Okay.

4 MR. ROBERTS: I guess I will -- since
5 the Councilman had asked, Frank, have you checked
6 the way we calculated the green roof?

7 We had a different calculation. I
8 think we came and calculated --

9 CHAIRMAN HOLTZMAN: Do you have a copy
10 of the professional report, Frank?

11 THE WITNESS: Yes, I do.

12 MR. ROBERTS: Because I wanted to make
13 sure before we were done that we talked about that.

14 THE WITNESS: Yes.

15 MR. ROBERTS: You are within maybe 30
16 square feet.

17 THE WITNESS: Right, and we will adjust
18 it.

19 MR. ROBERTS: Yes.

20 The question would be: Do they
21 increase the green roof or decrease the roof deck,
22 and the easiest thing to do would be to decrease it.

23 THE WITNESS: That's what we propose.
24 That's just a continuous conversation. But the
25 engineering report as well, we already addressed all

1 of the concerns. They were not done in time to hand
2 to this Board, or they were done too close, so if we
3 were lucky enough to be approved, we could very
4 quickly have the relatively minor --

5 CHAIRMAN HOLTZMAN: Do we need to make
6 a condition or some acknowledgement of the green
7 roof calculation, or how do we --

8 THE WITNESS: I'm sorry?

9 CHAIRMAN HOLTZMAN: -- do we need to
10 make some kind of a notation or a condition based
11 upon the green roof calculation?

12 Should we be --

13 THE WITNESS: Well, I --

14 CHAIRMAN HOLTZMAN: -- or do you think
15 it is something that is easily addressed -- I mean,
16 it was within a hundred square feet or something
17 like that --

18 MR. ROBERTS: Right. It was very
19 close. Maybe even closer than that.

20 But what I would suggest, Mr. Chairman,
21 is just that you can propose a condition that the
22 roof deck area be not more than 1,215 square feet.
23 That's exact --

24 THE WITNESS: Or 50 percent. Yes.

25 CHAIRMAN HOLTZMAN: All right.

1 THE WITNESS: Yes. We're happy to do
2 it.

3 CHAIRMAN HOLTZMAN: Okay. That makes
4 it easy. That makes it plain.

5 THE WITNESS: Yes.

6 MR. GALVIN: What was the number again?

7 MR. ROBERTS: 1,215 square feet.

8 MR. GALVIN: 215?

9 CHAIRMAN HOLTZMAN: 215. 1215.

10 MR. GALVIN: Got it.

11 COMMISSIONER DOYLE: And does that
12 explain the dimension of both the white roof
13 member -- the white roof and the green roof, because
14 a portion of the roof is not going to be a green
15 roof?

16 THE WITNESS: Correct, yes.

17 COMMISSIONER DOYLE: Okay.

18 CHAIRMAN HOLTZMAN: Okay.

19 COMMISSIONER DOYLE: I think that is
20 all.

21 COMMISSIONER JACOBSON: Can you clarify
22 the width of the curb cut?

23 THE WITNESS: 12 feet.

24 COMMISSIONER JACOBSON: It is 12 feet?

25 (Laughter)

1 THE WITNESS: It is.

2 MR. GALVIN: You can't get anything by
3 Frank.

4 (Laughter)

5 CHAIRMAN HOLTZMAN: Commissioners, any
6 additional questions or comments or anything else?

7 I'm sorry. Are there any members of
8 the public that have any questions for the architect
9 regarding 527 Monroe?

10 Okay. No public portion.

11 MR. ROBERTS: Mr. Chairman --

12 CHAIRMAN HOLTZMAN: Yes.

13 MR. ROBERTS: -- just one more thing
14 for Frank.

15 There are a couple additional spots in
16 the elevations where the balconies still show the
17 eight feet.

18 THE WITNESS: Yes.

19 MR. ROBERTS: So I just want to make
20 sure that by the time the plans are completely
21 final, that --

22 THE WITNESS: There are a couple
23 remnants -- I'm sorry to cut you off -- there are a
24 couple remnants from the previous application that
25 have already been adjusted, and they will come to

1 this Board very quickly.

2 CHAIRMAN HOLTZMAN: All right.

3 Thank you.

4 VICE CHAIR MAGALETTA: I'm sorry.

5 CHAIRMAN HOLTZMAN: Go ahead.

6 VICE CHAIR MAGALETTA: On the
7 commercial, is that -- from the prior plan, has the
8 commercial space changed at all?

9 THE WITNESS: No. 600 square feet in
10 the prior plan, and 600 square feet in this plan.

11 VICE CHAIR MAGALETTA: Thank you.

12 MR. MATULE: We have submitted a
13 revised planner's report to reflect these changes --

14 CHAIRMAN HOLTZMAN: It is part of the
15 record.

16 MR. MATULE: -- I have my planner here,
17 if you would like him to come and testify, but I
18 don't think it is necessary.

19 CHAIRMAN HOLTZMAN: I think we are
20 pretty comfortable. We have it on the record. We
21 have it in the documents.

22 Is there something, Mr. Peene?

23 COMMISSIONER PEENE: No.

24 I would just like to thank the
25 applicant for coming back with a plan that addresses

1 the needs of the neighbor to the north, and frankly,
2 with all of the work that you have put into it, the
3 additional two percent of lot coverage is pretty
4 much de minimus to me considering the improvements
5 that you have done.

6 CHAIRMAN HOLTZMAN: Great.

7 CHAIRMAN HOLTZMAN: Yes. I think this
8 is -- a personal opinion -- I think it is a good
9 answer to a bad situation that if the applicant and
10 their team was so inclined to be overly aggressive
11 would be really, you know, a detriment to the
12 neighbors, and I appreciate the consideration, even
13 though I think you guys were pretty close the last
14 time on the application, I think this is a better
15 project, and I appreciate the additional effort that
16 went into this as well.

17 Any other questions or comments,
18 Commissioners?

19 If not, I think there is one condition
20 or two conditions that Dennis has here.

21 MR. GALVIN: I would say: Subject to
22 the engineer's and planner's report, the one thing I
23 am amending I don't have is my prior notes.

24 I don't know if there were other
25 conditions that we were thinking about, but --

1 CHAIRMAN HOLTZMAN: Okay. You just
2 have the roof deck condition. Could you just read
3 that off for us?

4 MR. GALVIN: The roof deck is not to be
5 more than 1,215 square feet or 50 percent of the
6 roof --

7 COMMISSIONER DOYLE: 30 percent.

8 MR. GALVIN: -- 30 percent of the roof.

9 MR. MATULE: Apropos, I am assuming
10 we'll also have the standard conditions about the
11 deed notice for the maintenance of the green roof in
12 perpetuity --

13 MR. GALVIN: Okay.

14 MR. MATULE: -- and lot
15 consolidation --

16 MR. GALVIN: Is this just the deck or
17 is this like actual plants?

18 MR. MATULE: It is a tray system.

19 MR. GALVIN: Okay. Then, yes, then we
20 need that.

21 MR. MATULE: Yes.

22 MR. GALVIN: We need that, and we're
23 going to -- the attachment has to show the area of
24 the green roof and the initial botanicals to be
25 used.

1 MR. MATULE: Right.

2 I think there is a note on the plans,
3 but we will get a separate exhibit --

4 MR. GALVIN: Something that can be
5 attached as Exhibit A.

6 CHAIRMAN HOLTZMAN: Okay.
7 Councilman?

8 COMMISSIONER DOYLE: For Mr. Matule,
9 there was a mention of an alleyway easement. Could
10 you explain?

11 MR. MATULE: We raised this at the last
12 hearing.

13 At one time the property was owned by
14 two different people, so there was an easement. But
15 my understanding is when there is a burden and
16 benefited property that come into common ownership,
17 it basically negates these, so it is still out there
18 on the record, but --

19 COMMISSIONER DOYLE: It's in the middle
20 of the property --

21 MR. MATULE: -- it doesn't have any --

22 COMMISSIONER DOYLE: -- I thought it
23 was on the north side --

24 MR. MATULE: -- it doesn't really have
25 a beneficiary so to speak any more.

1 COMMISSIONER DOYLE: Okay. Thank you.

2 MR. GALVIN: Thank you.

3 CHAIRMAN HOLTZMAN: If there is nothing
4 further, is there a motion on the floor to accept
5 the application?

6 COMMISSIONER MC KENZIE: Yes, I will.

7 CHAIRMAN HOLTZMAN: Caleb makes the
8 motion.

9 Is there a second?

10 COMMISSIONER PEENE: Second.

11 CHAIRMAN HOLTZMAN: Mr. Peene seconds.

12 Call the roll.

13 MS. CARCONE: Commissioner Magaletta?

14 VICE CHAIR MAGALETT: Yes.

15 MS. CARCONE: Commissioner Stratton?

16 COMMISSIONER STRATTON: Yes.

17 MS. CARCONE: Commissioner Doyle?

18 COMMISSIONER DOYLE: Yes.

19 MS. CARCONE: Commissioner Graham?

20 COMMISSIONER GRAHAM: Yes.

21 MS. CARCONE: Commissioner McKenzie?

22 COMMISSIONER MC KENZIE: Yes.

23 MS. CARCONE: Commissioner Peene?

24 COMMISSIONER PEENE: Yes.

25 MS. CARCONE: Commissioner Jacobson?

1 COMMISSIONER JACOBSON: Yes.

2 MS. CARCONE: And Commissioner
3 Holtzman?

4 CHAIRMAN HOLTZMAN: Yes.

5 Excellent. Thank you, gentlemen.

6 MR. MATULE: Thank you for your
7 consideration.

8 CHAIRMAN HOLTZMAN: So we will take a
9 quick five minutes, and we will let these guys get
10 out, and we will let the next group get set up.

11 (The matter concluded at 7:35 p.m.)

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C E R T I F I C A T E

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

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

s/Phyllis T. Lewis, CCR, CRCR

 PHYLLIS T. LEWIS, C.C.R. XI01333 C.R.C.R. 30XR15300
 Notary Public of the State of New Jersey
 My commission expires 11/5/2020.
 Dated: 9/7/16
 This transcript was prepared in accordance with
 NJAC 13:43-5.9.

CITY OF HOBOKEN
HOBOKEN PLANNING BOARD
HOP-16-15

- - - - - X
RE: 302 Garden Street : September 6, 2016
Block 179, Lot 42 :
Applicant: 302 Garden Re LLC : 7:45 p.m.
Minor Site Plan Review & Variances :
- - - - - X

Held At: 94 Washington Street
Hoboken, New Jersey

B E F O R E:

- Chairman Gary Holtzman
- Vice Chair Frank Magaletta
- Commissioner Caleb D. Stratton
- Commissioner Jim Doyle
- Commissioner Ann Graham
- Commissioner Caleb McKenzie
- Commissioner Ryan Peene
- Commissioner Tom Jacobson

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

- David Glynn Roberts, AICP/PP, LLA, RLA
Board Planner
- Michael J. O'Krepky, PE, CME
Board Engineer
- Patricia Carcone, Board Secretary

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I N D E X

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WITNESS	PAGE
JOHN NASTASI	58
KENNETH OCHAB	128
RAUL MENARES	172

E X H I B I T S

EXHBIT NO.	DESCRIPTION	PAGE
A-1	Six-page handout	58

1 CHAIRMAN HOLTZMAN: All right.
2 Is everybody ready?
3 We got the team back here, and Mr.
4 Magaletta is over there. Okay, good.
5 Okay. We are going to get started.
6 Mr. Matule, Mr. Nastasi, are you ready
7 for us?
8 Good evening, Mr. Matule.
9 MR. MATULE: Good evening, Mr.
10 Chairman.
11 Robert Matule, appearing on behalf of
12 the applicant.
13 This is an application for the property
14 at 302-304 Garden Street.
15 (Audience speaking in the background)
16 MR. GALVIN: Hold on one second.
17 Hello.
18 Hello, everybody.
19 MS. CARCONE: Shush.
20 MR. GALVIN: It's on both sides of the
21 room.
22 Thank you.
23 Go ahead, Mr. Matule.
24 MR. MATULE: This is an application to
25 construct a new five-story building, a ground floor

1 commercial with two duplex residential units above.

2 The planner will go into more specific
3 detail, but we are requesting several C variances.
4 We have some preexisting conditions. It is an
5 undersized lot. We are slightly under the 2000
6 square feet at 1960, and we only have a 70 foot deep
7 lot, where we are required to have a hundred.

8 We are asking for a C height variance
9 of I believe three feet 11 inches above the DFE, and
10 Mr. Nastasi can go into more detail about that.

11 Our floor-to-floor heights are 9 feet 7
12 inches as opposed to ten feet.

13 And the commercial space, this is what
14 seems to be a gray area, but we are requesting a
15 parking variance for the commercial space because
16 (A) we have no place to put it, and we couldn't put
17 it there, if we wished to.

18 So the Board is aware, there was a
19 prior application before the Zoning Board on this
20 property. There was also an appeal of the zoning
21 officer's decision regarding the preexisting lot
22 coverage, somewhere between 90 and a hundred
23 percent. That appeal was withdrawn.

24 The application to put up one
25 commercial unit and three residential units at I

1 believe it was 75 percent coverage was denied by the
2 Zoning Board. I just wanted to put that out on the
3 record, so everyone is aware, and we put it in our
4 application.

5 We are going to have the testimony of
6 Mr. Nastasi and Mr. Ochab.

7 We have submitted our jurisdictional
8 proofs.

9 There is one other item. The plans
10 that have been submitted to everybody has a 30-inch
11 bay on the front of the building.

12 Subsequent to those plans being
13 compiled, we had conversations about the evolving
14 position regarding these bays. It has now been
15 reduced to a 12-inch bay.

16 I did not want to submit revised plans
17 on short notice with the holiday weekend to the
18 Board of Professionals, so Mr. Nastasi will talk to
19 that, but I am going to mark A-1, which is just a
20 handout consisting of one, two, three, four, five,
21 six pages, just showing sort of before and after
22 pictures of what the old bay and the new bay look
23 like. When Mr. Nastasi gets sworn, I'll have him
24 take the Board members through that.

25 (Exhibit A-1 marked.)

1 MR. GALVIN: Could you describe again
2 what is being changed?

3 The plan is to be revised to show what?

4 MR. MATULE: The front bay window has
5 been reduced from 30 inches deep, the box bay, to 12
6 inches, and these are just -- what A-1 is just
7 various renderings showing the difference in terms
8 of the mass and the shadowing of that bay.

9 COMMISSIONER DOYLE: Do we know what
10 sequence, because they are not identified.

11 MR. MATULE: Pardon?

12 COMMISSIONER DOYLE: There are no
13 numbers on the pages, so if you could just tell us
14 the sequence.

15 MR. MATULE: We are going to have Mr.
16 Nastasi testify and --

17 CHAIRMAN HOLTZMAN: He will walk us
18 through it, I'm sure.

19 Be patient, Mr. Doyle.

20 (Laughter)

21 MR. GALVIN: Ready?

22 MR. NASTASI: I'm ready.

23 MR. GALVIN: Do you swear or affirm the
24 testimony you are about to give in this matter is
25 the truth, the whole truth, and nothing but the

1 truth?

2 MR. NASTASI: I do.

3 J O H N N A S T A S I, having been duly sworn,
4 testified as follows:

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

7 THE WITNESS: John Nastasi,
8 N-a-s-t-a-s-i.

9 MR. GALVIN: Do we accept Mr. Nastasi's
10 credentials?

11 CHAIRMAN HOLTZMAN: We still do.

12 MR. GALVIN: Yes.

13 MR. MATULE: Okay. So before we get
14 into your main testimony, with specific reference to
15 what we just marked as Exhibit A-1, the six-page
16 color rendering of the building with a 30-inch bay
17 and the building with a 12-inch bay, could you
18 just -- is this the same thing --

19 THE WITNESS: Yes.

20 MR. MATULE: -- you have up here in a
21 large format?

22 THE WITNESS: Yes.

23 MR. MATULE: Could you just walk the
24 Board members through the six pages and --

25 THE WITNESS: The handout that I gave

1 out is three different views of the building. In
2 each of the three views, I am showing it with a
3 12-inch bay and a 30-inch bay.

4 So if you look here quickly, this is
5 the front facade, and the little short shadow is the
6 12-bay, and the much deeper shadow is the 30-inch
7 bay.

8 This is a view from the north looking
9 south. The detail of the lower level, a short
10 12-inch bay. Larger 30-inch bay.

11 And then the final view is from the
12 south looking north of the entire facade is with the
13 short 12-inch bay and the deeper 30-inch bay.

14 CHAIRMAN HOLTZMAN: But for all intents
15 and purposes, we are not discussing the 30-inch bay
16 really any more. We are on the 12-inch bay. Is
17 that correct?

18 THE WITNESS: That is correct.

19 CHAIRMAN HOLTZMAN: Okay.

20 MR. MATULE: Okay. Thank you.

21 CHAIRMAN HOLTZMAN: Do we have some
22 additional copies here?

23 Pat, it looks like we have additional
24 copies here. Can you hand them to Dan, if anybody
25 in the public wants to see those?

1 MR. MATULE: Mr. Nastasi, would you
2 please describe the existing site and the
3 surrounding area?

4 THE WITNESS: Yes.

5 We are at the corner of Third and
6 Garden Street, and our property is one parcel north
7 of the intersection, and what we are proposing on
8 that parcel is essentially a two-family house, which
9 are two duplexes on top of a commercial unit.

10 So looking at the front facade, we have
11 a commercial unit at grade, and then we have a
12 duplex unit and a duplex unit.

13 The building is being proposed at 60
14 percent depth, and it's also being proposed at 43
15 feet 11 inches high, which is three feet eleven
16 inches above the allowable height.

17 From the site and the intersection, you
18 see -- which is kind of unique to Hoboken, is we
19 have a series of taupe brick original buildings,
20 which I find really beautiful in their tonality, and
21 we are proposing a building that matches the two
22 historic buildings on the property and blends the
23 tonality of the projects that we have. So we have
24 limestone, zinc, mahogany, all tones that I think
25 esthetically tie the neighborhood together.

1 MR. MATULE: Can you talk a little bit
2 about the site plan itself in terms of the rear
3 yard, the landscaping you are going to have and the
4 stormwater detention?

5 THE WITNESS: Yes.

6 Because we are 60 percent lot coverage,
7 we will have a landscaped rear yard. If you go to
8 A-003, you can see the ground floor plan of the
9 commercial space. You can see the type of patio in
10 the backyard, landscaping, stormwater management, so
11 we are keeping intact this open and forest backyard.

12 MR. MATULE: And then why don't you
13 take us through the rest of the building with
14 particular reference to the roof?

15 THE WITNESS: Okay.

16 To move through the building quickly,
17 we have an 896 square foot commercial space at
18 grade, which seems to be a good number to attract a
19 decent retail or commercial space. We have a
20 residential core with an elevator, and as you move
21 up through the building --

22 CHAIRMAN HOLTZMAN: Can you just hang
23 on one second, John?

24 So I know there was something in some
25 of our professional review letters, just can you

1 bring that first sheet back with the grade level?

2 THE WITNESS: Yes.

3 CHAIRMAN HOLTZMAN: Thank you.

4 There was a question about the dry
5 floodproofing and wet floodproofing.

6 So it looks like with your colors,
7 maybe there is an indication that the cream color is
8 the wet, and the green color is retail space and the
9 dry?

10 THE WITNESS: Yes.

11 CHAIRMAN HOLTZMAN: Yes?

12 THE WITNESS: That is correct.

13 CHAIRMAN HOLTZMAN: Okay.

14 There was also a question, which there
15 is some concern about from an engineering and
16 building construction about that the wet
17 floodproofing have to go to 13 feet on this site, so
18 these walls need to be able to withstand that type
19 of, I think it is hydrostatic pressure?

20 THE WITNESS: Hydrostatic pressure.

21 CHAIRMAN HOLTZMAN: Because we don't
22 want to have a situation where we may potentially --
23 we don't want to have a scenario, where an applicant
24 comes to the Board. We have some kind of an
25 approval. You go downstream on further approvals,

1 and you have to circle back here because there is
2 some kind of a change in the construction, so I
3 would much rather get this right the first time.

4 THE WITNESS: I think we are perfectly
5 fine with complying with the requirements.

6 CHAIRMAN HOLTZMAN: Okay.

7 (Mr. O'Krepky confers with Chairman
8 Holtzman)

9 CHAIRMAN HOLTZMAN: Okay. Mike was
10 saying that -- go ahead, Mike.

11 MR. O'KREPKY: Comment Number 19 --

12 THE WITNESS: Which letter?

13 MR. O'KREPKY: -- of the engineering
14 letter --

15 CHAIRMAN HOLTZMAN: Of the engineering
16 report.

17 MR. O'KREPKY: -- dated September 1st.

18 THE WITNESS: Okay.

19 MR. O'KREPKY: There is an underground
20 detention shown, but we do not have calculations for
21 that.

22 THE WITNESS: We can submit those.

23 MR. O'KREPKY: Okay.

24 CHAIRMAN HOLTZMAN: Do we have any idea
25 what the size or scope of the detention system is?

1 I know we like to try to get it to a
2 minimum of two times the minimum, but I am seeing
3 that that is becoming an engineering challenge in
4 the context of the size of the lot and the size of
5 the building --

6 CHAIRMAN HOLTZMAN: It's often a
7 challenge when it is underneath with regards to the
8 piles, but they have a substantial backyard here,
9 which may come into play that could easily be put
10 into use.

11 THE WITNESS: What I would suggest is
12 when I direct George Glotty to do this design, I
13 will ask him to maximize, optimize, try to get as
14 much out of the site as possible, and I will work
15 through it --

16 CHAIRMAN HOLTZMAN: Okay. So we will
17 have to put some kind of a condition in there, that
18 you will work with our Board Engineer on that.

19 THE WITNESS: Fantastic. Yes.

20 CHAIRMAN HOLTZMAN: Great.

21 Thank you.

22 MR. MATULE: So why don't you continue?

23 THE WITNESS: Okay. I am now on Sheet
24 A-004, and you can see the second and third floor
25 plan, which is the lower duplex, and what we are

1 proposing is a three-bedroom duplex for the lower
2 half of the residential portion of the building.

3 And on Page 005, you see the upper
4 duplex, the fourth and fifth floor plan. Again, it
5 is a third-bedroom duplex on the upper half of the
6 residential portion of the building.

7 The upper duplex gets accessed to a
8 roof bulkhead and roof deck with a green roof, and
9 it is important to note that this roof plan fully
10 complies with the requirements of the Hoboken zoning
11 ordinance for roof decks and green roof and bulkhead
12 lot coverages.

13 CHAIRMAN HOLTZMAN: Okay.

14 MR. MATULE: And your plans indicate
15 you are going to have a Type II enclosure on your
16 mechanical equipment?

17 THE WITNESS: Yes, we will.

18 CHAIRMAN HOLTZMAN: Mr. Councilman, do
19 you have a question at this time?

20 COMMISSIONER DOYLE: On your A-4, I had
21 a question about the elevator.

22 It seems that on the ground floor that
23 you have a marking that indicates that it opens, but
24 on the second and third floor, it doesn't. Then on
25 the fourth and fifth, it does.

1 Is that because the elevator won't open
2 on the second and third floors?

3 THE WITNESS: The elevator is designed
4 to serve the upper duplex only.

5 COMMISSIONER DOYLE: Okay. Thank you.

6 COMMISSIONER PEENE: I have a question,
7 Mr. Chairman.

8 CHAIRMAN HOLTZMAN: Mr. Peene?

9 COMMISSIONER PEENE: Mr. Nastasi, about
10 how many square feet is each duplex?

11 I am trying to find it on the plans.

12 THE WITNESS: I don't have that
13 information on the plan.

14 VICE CHAIR MAGALETTA: On the first
15 page, you have a calculation.

16 COMMISSIONER PEENE: Oh, so five --

17 VICE CHAIR MAGALETTA: It's 1176 --

18 (Commissioner Peene and Vice Chair
19 Magaletta speaking at the same time.)

20 THE REPORTER: I'm sorry, what did you
21 say, Mr. Peene?

22 CHAIRMAN HOLTZMAN: One at a time,
23 guys.

24 I'm sorry.

25 THE WITNESS: The gross square footage

1 on each floor is 1176. You would have to assume
2 that the net to gross ratio on a building like this
3 is about 85 percent, so you are probably 85 percent
4 of 1176 times two.

5 COMMISSIONER PEENE: You get an A in
6 math.

7 (Laughter)

8 Thank you.

9 COMMISSIONER JACOBSON: I had a
10 question. I guess it relates to A-003.

11 The utility meters are shown as being
12 on the first floor.

13 Do we have any concern or issue with
14 the height of that equipment relative to the DFE or
15 some other --

16 THE WITNESS: The utilities on the
17 first floor are mounted above a specific height that
18 allows it to be compliant with FEMA codes and all
19 this --

20 CHAIRMAN HOLTZMAN: And I think you
21 might have to have a platform to get access to
22 those, right?

23 THE WITNESS: Yes, and we have done
24 that on other buildings.

25 CHAIRMAN HOLTZMAN: Because they are up

1 towards the ceiling --

2 THE WITNESS: Yes.

3 CHAIRMAN HOLTZMAN: -- which they are
4 allowed to be, but there needs to be an access
5 platform, so somebody doesn't have to use a ladder
6 to get to the utilities.

7 THE WITNESS: Yes, exactly.

8 CHAIRMAN HOLTZMAN: Okay.

9 COMMISSIONER JACOBSON: And
10 dimensionally, that is going to work in the space
11 that is available?

12 THE WITNESS: This utility closet on
13 the ground floor will have to go through the Hoboken
14 Building Department and meet the IBC codes and FEMA
15 codes, so it will be required to conform with all of
16 those codes.

17 So I think for clarification as opposed
18 to mounting that equipment here, we are probably
19 mounting them at five feet elevation, which is kind
20 of where your face is.

21 CHAIRMAN HOLTZMAN: I think there was
22 testimony on the record previously, Mr. Matule, that
23 this dry cleaner that was on this location was a
24 drop shop type operation only, and that there was no
25 dry cleaning processing going on at this location --

1 MR. MATULE: Correct.

2 CHAIRMAN HOLTZMAN: -- and was there
3 any type of documentation that we had on that?

4 MR. MATULE: We had submitted, I don't
5 know if it specifically speaks to that point, but we
6 had submitted a rather extensive Phase II,
7 sub-surface investigation report that was done --

8 CHAIRMAN HOLTZMAN: Okay.

9 MR. MATULE: -- it actually was not
10 done by the applicant. It was done by Wells Fargo
11 Bank as part of a financing review of the property,
12 and it got a -- I know Maser in their letter had
13 raised some questions about the extent of some of
14 the testing and stuff that they did, but, you know,
15 my understanding, and I am not an expert, is that,
16 you know, it met the required protocols, and there
17 were no issues.

18 CHAIRMAN HOLTZMAN: Mike, do you know
19 if there are any callouts or anything outstanding on
20 that?

21 MR. O'KREPKY: Essentially everything
22 shall remain -- it's my suggestion that everything
23 shall remain in a condition of approval, if the
24 Board is inclined to act that way.

25 These outstanding items, you know, some

1 of them can't be answered at this time. It doesn't
2 make sense. You would remedy them at a later time
3 during construction.

4 CHAIRMAN HOLTZMAN: But there's nothing
5 glaring?

6 MR. O'KREPKY: Nothing glaring that,
7 such as you described before, like mercury or
8 something along those lines. There's nothing like
9 that it states in here exactly.

10 (Laughter)

11 COMMISSIONER PEENE: So historic fill?

12 MR. O'KREPKY: Yes. Your standard run
13 of the mill contamination.

14 VICE CHAIR MAGALETTA: I have a
15 question.

16 The sampling process was part of the
17 question I thought that Andy raised.

18 MR. O'KREPKY: There is a list of them.
19 There is a list of questions.

20 Our LSRP that reviews these is very
21 detailed, and it is something that, you know, can
22 and should be done during construction. That is my
23 suggestion.

24 MR. GALVIN: You know, with the other
25 files that we had, your LSRP would come back and say

1 ordinance requirement of ten feet, yes.

2 MR. GALVIN: Well, there is math to
3 that, isn't there?

4 THE WITNESS: Yes.

5 MR. GALVIN: If we had four floors, and
6 they gave you another three inches, then they would
7 be looking at a D variance because they would be
8 exceeding the D-6 requirements, and they wouldn't be
9 before this Board.

10 COMMISSIONER DOYLE: Okay. I
11 understand, so --

12 MR. GALVIN: Do you agree?

13 THE WITNESS: I think I don't disagree
14 with your comments at all. It is a mathematical
15 exercise.

16 We also have, you know, it's a zero
17 some gain with the commercial space on the ground
18 floor, but we were looking at all of the factors
19 above, and if you don't have to get a D variance,
20 you don't get a D variance. You get a C variance.
21 It is a much more reasonable variance to request,
22 and maybe a less egregious increase in building
23 height because we want to put the commercial space
24 on the ground floor.

25 MR. GALVIN: Well, is this a flood

1 building also?

2 THE WITNESS: Sure.

3 MR. GALVIN: So you can put commercial
4 where you can't put residential, right?

5 THE WITNESS: That's correct.

6 MR. GALVIN: Okay. So it is a good use
7 of the first floor that couldn't be used for
8 residential.

9 THE WITNESS: Correct.

10 COMMISSIONER DOYLE: But the height
11 differential, five inches times four stories is --

12 CHAIRMAN HOLTZMAN: It would take him
13 over the ten percent spread.

14 COMMISSIONER DOYLE: So I mean, in
15 essence, this is, you know, a bit of forum shopping
16 you could say.

17 (Laughter)

18 COMMISSIONER GRAHAM: What shopping?

19 MR. GALVIN: Forum.

20 MR. MATULE: I don't know if I'd go
21 that far. I think it is trying to balance the
22 burden that the applicant has versus the negative
23 impact of the variances we are requesting.

24 We are talking about 9 feet 7, so we
25 are talking about 20 inches over five floors,

1 including one of those that is the commercial space.

2 I mean, the alternative would be to,
3 you know, have the first floor of the building up at
4 Elevation 13 or 14, whatever it has to be, with I
5 guess a six-foot dead space under the building, so,
6 you know, you are trying to balance all of those
7 competing interests.

8 CHAIRMAN HOLTZMAN: Right. And this
9 helps to keep the street scape, you know, activated
10 and you don't end up with a dead space.

11 COMMISSIONER DOYLE: Well, they could
12 go to the Zoning Board and seek a variance of 44 and
13 a half feet.

14 CHAIRMAN HOLTZMAN: They wanted to see
15 your smiling face, so they came here.

16 (Laughter)

17 COMMISSIONER DOYLE: But, I mean, other
18 than the building being 20 inches shorter, which I
19 guess is a good thing --

20 THE WITNESS: I think it is a good
21 thing.

22 COMMISSIONER DOYLE: Yeah, I agree.

23 But it doesn't sound like there's --
24 that -- you know --

25 CHAIRMAN HOLTZMAN: Do you think there

1 is any detriment to the lesser ceiling height to the
2 residents of this building?

3 Is that a potential concern?

4 COMMISSIONER DOYLE: No.

5 CHAIRMAN HOLTZMAN: Okay.

6 COMMISSIONER DOYLE: My concern is
7 just -- my question, not my concern, was, you know,
8 bringing it to be here as opposed to somewhere else.

9 THE WITNESS: But I will testify that
10 we are showing eight feet nine inches clear in each
11 of the four residential floors.

12 I don't think there is anything wrong
13 with that. As a matter of fact, I think it is
14 actually very good, and I don't think it should be
15 seen as a detriment. It is actually a very nice
16 clear height for a residential unit.

17 CHAIRMAN HOLTZMAN: Okay.

18 COMMISSIONER GRAHAM: Very nice clear
19 height, but that doesn't mean that it goes to what
20 it is supposed to be, and there are reasons for it
21 to be the other, so I am not quite sure what you
22 mean by that.

23 A couple other questions.

24 So the first duplex, the one below the
25 roof, the one that's not -- that doesn't have roof

1 access, they have no outside space?

2 THE WITNESS: They have access to the
3 backyard.

4 COMMISSIONER GRAHAM: The backyard.
5 Okay.

6 And what -- I am confused by what you
7 mean by the front lower roof deck.

8 MR. MATULE: The what?

9 COMMISSIONER GRAHAM: The front lower
10 roof deck.

11 THE WITNESS: I don't think I said
12 that.

13 Did I say that?

14 COMMISSIONER GRAHAM: No, you didn't
15 say that. But it is in Mr. Roberts' letter. I'm
16 not sure what that means.

17 MR. MATULE: I think I can clarify
18 that.

19 When we had the 30-inch bay --

20 COMMISSIONER GRAHAM: Yeah.

21 MR. MATULE: -- there was a deck on top
22 of that bay down one --

23 THE WITNESS: Which was essentially a
24 planter --

25 COMMISSIONER GRAHAM: Can you show me

1 what --

2 THE WITNESS: -- which was a planter
3 here when it was a 30-inch.

4 This was the 30-inch facade, right, and
5 this was a 30-inch deep planter, which would be
6 considered a terrace. But when we reduced the
7 bay --

8 COMMISSIONER GRAHAM: That went away?

9 THE WITNESS: -- that went away --

10 MR. MATULE: That went away because
11 there was originally on the plans you have on the
12 fourth or fifth floor, there are sliders --

13 COMMISSIONER GRAHAM: Right, okay.

14 MR. MATULE: -- that are now going
15 away.

16 CHAIRMAN HOLTZMAN: So that's
17 eliminated, and so was the request for a variance
18 for that.

19 THE WITNESS: Correct.

20 COMMISSIONER GRAHAM: Okay.

21 Was there some reason it was still on
22 your letter, David?

23 MR. ROBERTS: Well, we just found out
24 about this bay tonight.

25 COMMISSIONER GRAHAM: Okay. All right.

1 CHAIRMAN HOLTZMAN: Right. They came
2 in with the bay adjustment tonight.

3 COMMISSIONER GRAHAM: That's what you
4 were talking about. Okay.

5 CHAIRMAN HOLTZMAN: Yes.

6 COMMISSIONER GRAHAM: That's what was
7 confusing. Okay.

8 MR. ROBERTS: But that is a good catch,
9 because that wasn't really brought out in testimony.

10 COMMISSIONER GRAHAM: Because a front
11 lower roof deck to me is, hmmm...

12 CHAIRMAN HOLTZMAN: While we have got
13 Ms. Graham here, I wanted to point out an addition
14 that Dave has made to his professional letter, which
15 is to try to address some of the concerns of
16 Commissioner Graham, which is one, two, three, four,
17 five -- the sixth paragraph, which goes into the
18 calculation that I asked Dave to include in all of
19 his letters of the density calculation.

20 COMMISSIONER GRAHAM: Where is this
21 again?

22 CHAIRMAN HOLTZMAN: It's on Page 2 of
23 David's letter.

24 COMMISSIONER GRAHAM: Okay.

25 CHAIRMAN HOLTZMAN: It is the one, two,

1 three four, fifth, sixth paragraph for permitted
2 density.

3 COMMISSIONER GRAHAM: All right. Got
4 it. Right.

5 CHAIRMAN HOLTZMAN: So this goes into a
6 specific calculation as to how many units could be
7 built on this site given the site size and how many
8 that they are building, so I think this is a good
9 thing for us to take a look at.

10 COMMISSIONER GRAHAM: No, I appreciate
11 that.

12 CHAIRMAN HOLTZMAN: Can you just walk
13 us through that, Dave, real quickly?

14 MR. ROBERTS: Yes, sure.

15 Basically what we've done, most of
16 these applications have the same calculation, but
17 when you have a mixed-use, it gets a little more
18 complicated as to whether you can round up or not,
19 so what we have started out to put into all of the
20 letters now, and I think you will see, it's just a
21 general calculation for each project. So you take
22 that, and you divide by 660 and give the general
23 density --

24 COMMISSIONER GRAHAM: Okay. Wait. So
25 the 660 --

1 MR. ROBERTS: -- 660 lot area per --
2 you divide your total square footage by 660 to get
3 your number of units.

4 COMMISSIONER GRAHAM: Well, what does
5 the 660 mean?

6 CHAIRMAN HOLTZMAN: That's a number
7 that's in our --

8 MR. ROBERTS: It's in the code.

9 CHAIRMAN HOLTZMAN: -- municipal code.

10 COMMISSIONER GRAHAM: Oh, okay.

11 MR. ROBERTS: In other words, we don't
12 say it's 60 going in -- or we say it's 660 square
13 foot of lot area per dwelling unit, and then you
14 divide it into your total lot size --

15 COMMISSIONER GRAHAM: Okay.

16 MR. ROBERTS: -- but when there is a
17 commercial space added, then there is another
18 calculation that you go through. So in some cases
19 you will see that when there is a commercial space
20 like this application, in which case you are allowed
21 to round and --

22 COMMISSIONER GRAHAM: Because it is a
23 commercial space --

24 MR. ROBERTS: -- and whether it's with
25 a straight residential application, you would round

1 down if there's any kind of --

2 COMMISSIONER GRAHAM: Okay. I got that
3 from reading some of the other ones.

4 Okay. Thanks.

5 CHAIRMAN HOLTZMAN: Okay. Great.
6 Yes. It is a good addition to the
7 reports.

8 COMMISSIONER GRAHAM: Yeah, good.
9 So commercial space, you round up,
10 and residential --

11 MR. ROBERTS: Right. You have a
12 differential.

13 COMMISSIONER GRAHAM: Okay.

14 CHAIRMAN HOLTZMAN: Thank you, Dave.

15 Commissioners, any additional questions
16 for Mr. Nastasi?

17 We can certainly circle back with them.

18 Are there any members of the public
19 that have a question of the architect with regard to
20 the architecture of the building, not opinions at
21 this time. We will get to that at a later date, not
22 planning issues, but strictly architecture?

23 Sure. Come on up.

24 MR. TUMPSON: Okay. There's --

25 MR. GALVIN: I'm sorry, Dan.

1 State your full name for the record.

2 MR. TUMPSON: Daniel Tumpson.

3 MR. GALVIN: And could you spell it,
4 Dan?

5 MR. TUMPSON: T-u-m-p-s-o-n.

6 MR. GALVIN: Thank you.
7 Your street address?

8 MR. TUMPSON: 230 Park Avenue.

9 MR. GALVIN: Thank you so much.

10 Please proceed.

11 MR. TUMPSON: Okay. Let me see what I
12 was going to ask you.

13 Oh, yeah, about the patio. This was a
14 little ambiguous to me.

15 There is a patio in the backyard
16 specified -- yeah, there it is. There it is. Right
17 here. Private patio.

18 Okay. What is that exactly?

19 Is that just designated as grass there,
20 or is that a metal plate, and is it elevated above
21 the ground, or are you on the ground?

22 What is that?

23 THE WITNESS: On Page A-003, I am
24 showing the ground floor plan, and then the ground
25 floor plan with the rear yard --

1 MR. TUMPSON: Rear yard, yes.

2 THE WITNESS: -- and in the rear yard,
3 there is a private patio, and we have a brick
4 pattern on that patio, and it is flush with the
5 ground, and it is like --

6 CHAIRMAN HOLTZMAN: It's a brick -- is
7 it actual brick, John, or is a brick pattern?

8 COMMISSIONER MC KENZIE: Pavers.

9 CHAIRMAN HOLTZMAN: It's pavers or --

10 THE WITNESS: Pavers. It is a hard
11 surface pavers flush with the ground. The remainder
12 of the backyard is natural.

13 CHAIRMAN HOLTZMAN: It's, I'm sorry,
14 what?

15 THE WITNESS: Natural.

16 CHAIRMAN HOLTZMAN: Natural?

17 THE WITNESS: Not a paved surface.

18 MR. TUMPSON: Okay. So there are no
19 elevated patios or anything.

20 The only patio that's involved here is
21 on the very ground floor on the same level as the
22 ground?

23 THE WITNESS: That is correct.

24 MR. TUMPSON: Thank you.

25 CHAIRMAN HOLTZMAN: Is that it, Dan, or

1 do you got something else?

2 MR. TUMPSON: Well, I am not sure if
3 Mr. Doyle brought up something about the height
4 variances.

5 CHAIRMAN HOLTZMAN: You can talk about
6 that with the planner.

7 MR. TUMPSON: Or the comments at the
8 end.

9 CHAIRMAN HOLTZMAN: Yup, and the
10 planner.

11 MR. TUMPSON: What?

12 CHAIRMAN HOLTZMAN: And the planner.

13 THE WITNESS: The planner.

14 CHAIRMAN HOLTZMAN: The planner.

15 THE WITNESS: As opposed to the
16 architect.

17 MR. MATULE: We are going to have
18 planning testimony --

19 MR. TUMPSON: Oh, okay.

20 MR. MATULE: -- and when he testifies,
21 you may have questions about his testimony --

22 CHAIRMAN HOLTZMAN: About variances
23 and --

24 MR. MATULE: -- as it relates to that
25 height variance.

1 MR. TUMPSON: Okay. Yes.

2 CHAIRMAN HOLTZMAN: So keep your powder
3 dry.

4 We can come back, Dan.

5 MR. TUMPSON: Yeah, okay.

6 CHAIRMAN HOLTZMAN: We got other folks,
7 right?

8 MR. TUMPSON: I think that is probably
9 enough at this time.

10 CHAIRMAN HOLTZMAN: Okay.

11 MS. FALLICK: I don't know if this is
12 architect or planner, but I'll --

13 MR. GALVIN: That's all right. I will
14 stop you if it's not.

15 Name and address?

16 MS. FALLICK: Cheryl Fallick.

17 MR. GALVIN: And spell your last name.

18 MS. FALLICK: F, as in Frank, a- double
19 l, i-c-k, 204 Third Street.

20 MR. GALVIN: Thank you.

21 Please proceed, and we will evaluate
22 it.

23 MS. FALLICK: A couple of quick
24 questions first.

25 So, Mr. Nastasi, so there are no

1 balconies, other than the roof deck and the patio.

2 Is that correct?

3 THE WITNESS: That's correct.

4 MR. MATULE: But to be clear, there is
5 a stairway coming down --

6 MS. FALLICK: Yeah.

7 MR. MATULE: -- from the second floor
8 into the backyard --

9 MS. FALLICK: Thank you.

10 MR. MATULE: -- for access, so I don't
11 want there to be a misinterpretation --

12 MR. GALVIN: Okay.

13 MR. MATULE: -- there's no projections
14 on the back of the building.

15 MR. GALVIN: Okay.

16 MS. FALLICK: Okay. This is the
17 question that I am not sure of because I just heard
18 something about water tanks and pilings. Is that
19 you?

20 There was some discussion here about --

21 CHAIRMAN HOLTZMAN: No.

22 What I was alluding to is that
23 sometimes there is a very definite limit on how big
24 of a water detention system underground to detain
25 stormwater, which is a requirement of any new

1 building in town. There is frequently a limit to
2 how large that system can be when they put the piles
3 in for the support of the new building.

4 What I was pointing out to the
5 architect was in addition to underneath their
6 building for a stormwater detention system, they
7 also have a substantial backyard, and a lot of times
8 people will put the systems under the backyard, and
9 this is to collect rainwater off of the building,
10 off the gutters and downspouts --

11 MS. FALLICK: I understand.

12 May I cut you --

13 CHAIRMAN HOLTZMAN: -- okay -- before
14 it goes into the sewer.

15 MS. FALLICK: -- because it doesn't
16 sound like they were putting anything in the yard.
17 It sounds like you were talking about putting
18 something under the yard.

19 CHAIRMAN HOLTZMAN: No. I wasn't
20 talking. I was giving them a suggestion.

21 THE WITNESS: I actually would --

22 CHAIRMAN HOLTZMAN: He's going to come
23 up with a conclusion.

24 THE WITNESS: -- I would clarify that
25 A-003 has an arrow pointing in the backyard saying

1 "stormwater management report pending," and George
2 Glotty, who is a civil engineer, is designing that
3 system, and the backyard is part of his analysis for
4 stormwater collection.

5 MR. GALVIN: But you won't see it.

6 MS. FALLICK: Yeah. That's not what
7 I'm concerned about.

8 What I'm concerned about are, just so
9 everybody is not trying to guess here where my
10 concern is, but my concern is pilings.

11 CHAIRMAN HOLTZMAN: The pilings will be
12 under the building. There will be no pilings in the
13 backyard.

14 MS. FALLICK: But don't you have to
15 like drive something down -- remember, I am not an
16 architect. I'm just a person here that is concerned
17 about the stability of the properties that are
18 adjoining and pile driving.

19 I don't know if that is for Mr. Nastasi
20 or not.

21 MR. MATULE: It is for the building
22 department.

23 MR. GALVIN: What kind of --

24 MS. FALLICK: But if we have a
25 planning --

1 CHAIRMAN HOLTZMAN: Hold on. Hold on.

2 We're going to get you an answer.

3 MR. GALVIN: We are trying to help you.

4 What do you think?

5 What kind of pilings will go here

6 and --

7 THE WITNESS: Well, I will say that
8 this is the Planning Board, assuming there's a
9 Planning Board approval, I then do construction
10 drawings and have a structural engineer design the
11 piling systems.

12 Those piling systems have to conform
13 with the building department and vibration and all
14 of the other requirements of the International
15 Building Code, so the piles that will be driven
16 underneath this building will have to comply with
17 the things you are concerned about, vibration,
18 damage to neighbors, protection of all adjacent
19 equipment, just like any building that's being
20 built.

21 MS. FALLICK: But you are saying you
22 don't have really any thought on this yet. You are
23 waiting for the person to --

24 THE WITNESS: You don't -- yes -- you
25 don't design the piling system until you're in

1 construction. You don't design the foundation
2 system of a building until after you have your --

3 CHAIRMAN HOLTZMAN: Okay. Time out.

4 Mr. Matule, is there anything that you
5 can say to alleviate Ms. Fallick's concerns with
6 regard to -- slow down, take a deep breath --
7 potential liability on neighboring buildings and
8 things like that?

9 What is it that this applicant will be
10 doing in terms of insurance and things like that to
11 make sure that the neighbors are not affected?

12 MR. MATULE: What I can say is the
13 typical process, which is rigidly enforced by our
14 building department in Hoboken is before any work is
15 done, before any demolition is done, before any
16 excavation is done, before any pile driving is done,
17 notices go out to all the adjacent property owners
18 saying, we are going to commence this on a certain
19 date, and we are requesting permission to come into
20 your property and onto your property to examine it
21 and see if there are any steps we need to take to
22 preserve your property, and we ask for a license to
23 do that, "we" being the applicant.

24 The letter also says that if you don't
25 allow us to do that, that you're then responsible

1 for ensuring the safety of your own property, so it
2 is typically in everyone's benefit to permit that
3 access. But then depending on if piles need to be
4 driven and how many need to be driven, there is a
5 whole protocol to do that.

6 Lasers are set up along the sides of
7 the building. Vibration monitors are set up.
8 People go in and check your building for obvious
9 structural issues.

10 If there are structural issues, then
11 there is a conversation about what is the best way
12 to alleviate exacerbating them --

13 CHAIRMAN HOLTZMAN: And this property
14 owner would have some type of insurance policy?

15 MR. MATULE: Oh, absolutely.

16 But I mean, depending on what the facts
17 call for, I have seen them where they predrill a
18 certain depth before they drive the piles, so that
19 the vibration doesn't start until they are further
20 down into the ground.

21 I have seen situations, where they use
22 screw piles or auger piles, so there's a lot of
23 variables. We don't know what that is yet, because
24 that is a very expensive process to figure all of
25 that out, and nobody wants to spend that money until

1 they know they have --

2 CHAIRMAN HOLTZMAN: Okay.

3 MR. GALVIN: And the final thing is
4 this is like a detour here, because we want to make
5 you feel comfortable. We may or may not have done
6 that, but that's beyond the scope of what the Board
7 can -- it is really not something that we should be
8 discussing. That's not --

9 CHAIRMAN HOLTZMAN: No. It is okay for
10 us to discuss it, but it's not within our
11 jurisdiction to say yes or no.

12 MS. FALLICK: In other words, it's for
13 the opinion part, but I heard the Chairperson
14 suggesting, you know, something in the yard, which
15 would, you know, that is all, but that is not a
16 question --

17 THE WITNESS: Ms. Fallick, I would also
18 add that I am an architect in town --

19 MS. FALLICK: I know who you are.

20 THE WITNESS: -- and when we start
21 construction drawings and we start working with the
22 structural engineer, I will welcome any
23 communication between you and I to talk about the
24 foundation system.

25 MS. FALLICK: I mean, I am not a

1 property owner. I mean, that was --

2 THE WITNESS: I will still talk to you
3 about the foundation systems.

4 (Laughter)

5 MS. FALLICK: No. That is good.
6 That's good.

7 MR. GALVIN: It's a rock solid answer.

8 MS. FALLICK: Okay. I don't -- this
9 didn't come up. I am actually speaking --

10 MR. GALVIN: Thank you.

11 MS. FALLICK: -- one of the reasons I
12 know that my neighbors are here, I don't know if
13 this is the time to discuss it, but the back wall --

14 MR. GALVIN: No.

15 COMMISSIONER MC KENZIE: No.

16 MR. GALVIN: Is it the back wall of the
17 building?

18 MS. FALLICK: No, the yard.

19 THE WITNESS: The back wall of the
20 property.

21 MS. FALLICK: Yeah.

22 THE WITNESS: There is an existing
23 masonry wall that lines the side and rear of the
24 property.

25 MR. GALVIN: Is that to remain?

1 MS. FALLICK: Yes.

2 MR. GALVIN: Is that to remain?

3 THE WITNESS: It depends on what we are
4 about to hear right now, but I think you would like
5 it to remain.

6 CHAIRMAN HOLTZMAN: What is the
7 applicant proposing?

8 THE WITNESS: I would say that if the
9 neighbors are interested in having that masonry wall
10 remain, we would go through all precautions to --

11 CHAIRMAN HOLTZMAN: Do we have any
12 photographs of what this is?

13 MS. FALLICK: Yeah.

14 THE WITNESS: The planner will present
15 that --

16 MR. GALVIN: Not yet. Not yet. We'll
17 get there.

18 Okay. We know what that is.

19 MS. FALLICK: Is that for later,
20 because I just didn't want to go --

21 MR. GALVIN: Yes, yes. No, no. You
22 are good now. Let's move on.

23 Do you have any other --

24 MS. FALLICK: Okay.

25 MR. GALVIN: Don't do the wall yet,

1 guys. Hold on to the paperwork. I promise, we will
2 get to the wall.

3 MS. FALLICK: Okay.

4 CHAIRMAN HOLTZMAN: Any other
5 architecture questions?

6 MS. ONDREJKA: I have --

7 CHAIRMAN HOLTZMAN: Come on up.

8 MR. GALVIN: Well, Mr. Evers would like
9 to go, too. He's in the back --

10 MR. EVERS: Go ahead.

11 MR. GALVIN: Full name.

12 MS. ONDREJKA: Mary, last name,
13 O-n-d-r-e-j-k-a. 159 9th Street.

14 I have a question about the height of
15 the rooms that are now going to be 9 point what?

16 THE WITNESS: The rooms?

17 MS. ONDREJKA: 9.7 instead of ten feet?

18 THE WITNESS: The floors will be 9 feet
19 7 inches as opposed to ten feet, which is what the
20 requirement is.

21 MS. ONDREJKA: Okay. Let me ask this:
22 How common is that because ten feet to me is not big
23 enough, and you obviously have to advertise that
24 they are less than the required ten feet for the
25 city, correct?

1 MR. MATULE: I think we need to draw a
2 distinction between the zoning ordinance and the
3 building code.

4 THE WITNESS: I was going to say the
5 eight feet is the required height for the
6 International Building Code, which we all conform to
7 in the United States, and we're at eight feet seven
8 floor to ceiling, so we already exceed the allowable
9 building heights as per the building code.

10 The ten foot floor to floor is the
11 zoning ordinance requirement. We are here for a C
12 variance request because we are not -- we're
13 requesting variance relief on the zoning
14 requirements, but we already do conform with the
15 International Building Code.

16 MS. ONDREJKA: Well, why is ten -- then
17 answer this -- why is ten feet in the ordinance now?

18 MR. MATULE: I don't think he can
19 answer that question.

20 CHAIRMAN HOLTZMAN: It is above his pay
21 grade.

22 MS. ONDREJKA: So then I am assuming
23 that there is various heights that are in these
24 buildings that come before this Board, that they're
25 not just all at ten feet.

1 You are asking for 9.7, correct --

2 THE WITNESS: Nine --

3 MS. ONDREJKA: -- this is not
4 uncommon --

5 MR. MATULE: Let me, if I can just
6 clarify a point.

7 We're talking about there is a
8 difference between the ceiling height and the
9 floor-to-floor heights.

10 I mean, the simple math is if you have
11 the floor at eight feet and a two foot joist system
12 between the next floor, there is your ten feet.
13 Now, sometimes --

14 CHAIRMAN HOLTZMAN: Mary -- Bob, I'm
15 going to stop you there because Mary's question I
16 don't think is really -- perhaps it is, but let me
17 ask this question.

18 Is your concern for the folks that are
19 living there that nine feet seven inches is not
20 going to be sufficient for them?

21 MS. ONDREJKA: Well, yeah --

22 CHAIRMAN HOLTZMAN: No, it isn't.
23 Let's not play games. Right?

24 MS. ONDREJKA: I think -- no, I
25 think --

1 CHAIRMAN HOLTZMAN: I wish I had nine
2 feet. I have eight foot ceilings.

3 MS. ONDREJKA: -- I wish I had nine
4 feet, too. But he's saying that there's two feet
5 that's included in the joists, so the height I
6 believe is eight feet?

7 CHAIRMAN HOLTZMAN: I have eight feet
8 two foot ceilings --

9 THE WITNESS: I will clarify that it's
10 eight feet seven inches for floor-to-ceiling height,
11 and eight feet is code --

12 MS. ONDREJKA: Okay. So they're
13 just -- so then this is just not an unusual thing
14 that you're doing, this 9.7?

15 CHAIRMAN HOLTZMAN: It is an unusual
16 thing in a brand new building.

17 MS. ONDREJKA: That is what I meant, in
18 a brand new building.

19 CHAIRMAN HOLTZMAN: In a brand new
20 building.

21 However, I would be willing to guess
22 that the overwhelming majority of us have eight foot
23 ceilings in Hoboken, and not an inch more.

24 MS. ONDREJKA: Okay. So then --

25 THE WITNESS: I would also say that

1 every modern high-rise --

2 MS. ONDREJKA: So they are actually
3 getting more, the newer --

4 THE WITNESS: -- yes -- every modern
5 high-rise that's built, concrete buildings, New York
6 City, New Jersey is eight foot ceilings. We have
7 eight foot seven -- we have nine inch ceilings --

8 MS. ONDREJKA: Okay. That answered my
9 question.

10 So you're actually in the newer
11 buildings giving more feet?

12 CHAIRMAN HOLTZMAN: That's correct,
13 than historically.

14 MS. ONDREJKA: Historically.

15 All right. That is all I have.

16 THE WITNESS: Thank you.

17 CHAIRMAN HOLTZMAN: Any other questions
18 for the architect?

19 MR. TEAKLE: Yeah.

20 David Teakle.

21 THE REPORTER: Could you spell your
22 name?

23 MR. TEAKLE: David Teakle, T-e-a, for
24 apple, k-l-e, and it's 208 Third Street.

25 MR. GALVIN: David.

1 MR. TEAKLE: So my concern is having
2 sort of a bohemian building.

3 So my worry is that the building is
4 going to a similar sized footprint to this one
5 because all of the sunlight comes basically through
6 these gaps.

7 So how far back does this building go,
8 and with this height, because I am looking at the
9 back, and I'm trying to compare it to what else is
10 around.

11 Is this height all the way back, so is
12 the height of this building more like this here, and
13 I couldn't actually see --

14 CHAIRMAN HOLTZMAN: Is there a parapet
15 or anything?

16 THE WITNESS: There is a section which
17 I could show you to clarify it. Hold on.

18 So on Sheet A-011, there's a section
19 for the building. The building goes 60 percent of
20 the lot depth.

21 CHAIRMAN HOLTZMAN: Which is how does
22 that compare to our building code, Mr. Nastasi?

23 THE WITNESS: The zoning ordinance
24 requires 60 percent lot coverage.

25 CHAIRMAN HOLTZMAN: It does not require

1 it. You can go up to it.

2 MR. MATULE: It allows up to 60
3 percent.

4 MR. GALVIN: Maximum.

5 CHAIRMAN HOLTZMAN: It doesn't require
6 it.

7 COMMISSIONER DOYLE: We haven't gotten
8 there yet.

9 THE WITNESS: It's a maximum 60 percent
10 lot coverage. Thank you.

11 And we are proposing 60 percent lot
12 coverage.

13 CHAIRMAN HOLTZMAN: So the lot coverage
14 does not require any variance.

15 THE WITNESS: Yes.

16 MR. MATULE: Go to A-003. I think you
17 could give him a better sense of what the backyard
18 looks like and how the building is set up on the
19 lot.

20 THE WITNESS: All right.

21 Back to 003, which is the ground floor
22 plan, the building is 60 percent of the lot, and
23 there is a large backyard here.

24 VICE CHAIR MAGALETTA: I'm sorry to
25 interrupt.

1 Are you giving him the actual number
2 how far back it goes?

3 THE WITNESS: 42 feet deep.

4 VICE CHAIR MAGALETTA: How far is the
5 neighbor to the north?

6 MR. TEAKLE: What is this neighbor?

7 CHAIRMAN HOLTZMAN: Now we are cooking.

8 So do we have a site plan --

9 MR. TEAKLE: I'm sorry. No. This one.
10 It's this one.

11 CHAIRMAN HOLTZMAN: -- John, on our
12 first page --

13 THE WITNESS: I don't think --

14 MR. TEAKLE: This one --

15 THE WITNESS: -- this building --

16 CHAIRMAN HOLTZMAN: One at a time,
17 guys.

18 THE WITNESS: -- this building goes
19 back 42 feet, and our building goes back 42 feet,
20 and this one I think goes back much deeper.

21 Our building will relatively align with
22 the neighbor to the north, which is also plus or
23 minus 42 feet.

24 So if you're looking into the backyard,
25 our building -- the depth of our building will align

1 with the neighbor to the north.

2 MR. TEAKLE: And as to this --

3 THE REPORTER: I'm sorry. I can't hear
4 you.

5 MR. TEAKLE: What is the height
6 relative to this building, which is -- what is that
7 2-0 --

8 THE WITNESS: This building is -- the
9 height that we are proposing is 43 feet 11.

10 The allowable is 40 feet. We are
11 asking for a three feet eleven inch variance, and
12 this building is significantly higher, so our
13 building is lower in height than this building.

14 MR. TEAKLE: So that's -- so this is --
15 this is actually the height here --

16 THE WITNESS: Yes. You can see that
17 our building --

18 CHAIRMAN HOLTZMAN: You got to give us
19 some indication of what guys are pointing to.

20 THE WITNESS: On Sheet A-011 in an open
21 town, you could see the roof of our building, and
22 beyond in the drawing you see the height of that
23 building that you are talking about, significantly
24 higher than our --

25 MR. GALVIN: Okay. Good?

1 CHAIRMAN HOLTZMAN: You got your answer
2 there.

3 Okay.

4 MR. GALVIN: Mr. Evers, come up.

5 CHAIRMAN HOLTZMAN: I'm sorry.

6 MR. EVERS: Can I ask the question
7 because I want to make sure I'm asking the right
8 question.

9 CHAIRMAN HOLTZMAN: Let's get you on
10 the record, Mr. Evers.

11 MR. EVERS: Oh, sure.

12 CHAIRMAN HOLTZMAN: You know the drill.

13 MR. EVERS: Yeah.

14 Michael Evers, 252 Second Street,
15 Hoboken, New Jersey.

16 CHAIRMAN HOLTZMAN: Keep the hand down
17 just yet.

18 (Laughter)

19 MR. EVERS: Okay.

20 Now I am not sure I should be
21 addressing this to the architect, so I'm asking
22 guidance --

23 MR. GALVIN: I am listening. Go ahead.
24 Fire away.

25 MR. EVERS: Okay.

1 I was reviewing the transcript of Evers
2 versus Second Street Developers, because this very
3 issue came up regarding an issue of density.

4 For the record, I would have to say at
5 2.97 when you do the density calculation, you have
6 to be a pretty mean and stingy Zoning Board, not to
7 give them the extra 300ths of a percent, but there's
8 a procedural issue here.

9 MR. GALVIN: We got a rep, you know.

10 MR. EVERS: What?

11 MR. GALVIN: The Zoning Board has got a
12 rep.

13 MR. EVERS: Which is a question that
14 I'm asking is who I should be asking this question
15 to.

16 I am familiar with the ordinance that
17 Maser's report refers to, and that is not an
18 interpretation that blew in court under a judge, and
19 I would -- that is why I want to ask the question --
20 how did you arrive at that conclusion, because I
21 believe it to be wrong, and I know Judge Gallipoli
22 believed it to be wrong because density was an issue
23 that came up in that case, so do I ask --

24 CHAIRMAN HOLTZMAN: Here is my
25 question --

1 MR. EVERS: -- should I ask the
2 architect --

3 CHAIRMAN HOLTZMAN: -- no, no --

4 MR. MATULE: I could answer that --

5 CHAIRMAN HOLTZMAN: -- is the density
6 calculation within what is permitted on this lot?

7 MR. ROBERTS: Yes, in this application.

8 MR. EVERS: How is --

9 CHAIRMAN HOLTZMAN: Hold on. I am in
10 charge.

11 MR. EVERS: That's true.

12 CHAIRMAN HOLTZMAN: Is the density
13 calculation by your calculation for what they are
14 planning to build within what is allowed?

15 MR. EVERS: No, it is not.

16 CHAIRMAN HOLTZMAN: Yes, it is, even
17 the difference in calculations, but --

18 MR. EVERS: The reason I raised the
19 question --

20 CHAIRMAN HOLTZMAN: File your lawsuit.

21 MR. EVERS: -- the reason I raised the
22 question has to do with whether the Zoning Board
23 should be hearing this to grant the minor variance,
24 or whether the Planning Board should be doing that.

25 I would point out to you that the last

1 time this went before a court, the judge ruled that
2 this would properly be a decision made by the Zoning
3 Board. All right?

4 So if you want to go on the record
5 saying that it does not merit having a legal review
6 of that --

7 CHAIRMAN HOLTZMAN: Mr. Matule, do you
8 wish to discuss this now, or do you want your
9 planner to address it?

10 MR. MATULE: Well, I think what I would
11 like to say is I think we are talking about apples
12 and oranges here in the context that in the Evers
13 case, there was no commercial component in that
14 building. There were just residential units.

15 The ordinance carves out a specific
16 exception, where there is a commercial component,
17 and my understanding of the law and of the ordinance
18 is that is specifically where the rounding up is
19 called out in the ordinance, where it says any
20 fraction shall be deemed a whole, as opposed to when
21 you have a purely commercial building --

22 CHAIRMAN HOLTZMAN: Purely
23 residential --

24 MR. MATULE: -- and you do the math, if
25 you get a point-something, you have to round down,

1 and I think that's the distinction between the two
2 applications.

3 MR. GALVIN: I'm not sure.

4 MR. ROBERTS: My understanding was the
5 Zoning Board application was for three units.

6 MR. MATULE: Pardon?

7 MR. ROBERTS: The Zoning Board
8 application was for three units.

9 MR. MATULE: Oh, for this particular
10 property, but I don't think that is what Mr. Evers'
11 point is.

12 Mr. Evers' point is that even though
13 you --

14 COMMISSIONER STRATTON: Gary?

15 MR. GALVIN: You can't round up.

16 MR. MATULE: -- with the commercial
17 unit, because you have a fraction, you have to round
18 down no matter what.

19 CHAIRMAN HOLTZMAN: One second.

20 MR. ROBERTS: Right.

21 MR. MATULE: And I don't think that's
22 what the law is.

23 CHAIRMAN HOLTZMAN: Hang on a second.

24 Mr. Stratton, you want to offer
25 something?

1 COMMISSIONER STRATTON: Rather than
2 debate this point, do we have a consensus from our
3 engineer as well as our counsel that we can act on
4 this and that that --

5 MR. GALVIN: No. I am not conceding
6 anything yet. I always listen when Mr. Evers makes
7 a suggestion, and I found that there are times when
8 he's right, and we need to be careful not to wind up
9 in needless litigation.

10 So I don't have listed as a variance
11 that we have a density, so I am relying on the
12 information that I've been given that we don't need
13 a density variance --

14 MR. ROBERTS: Mr. Chairman, we actually
15 looked at this situation very early on in this
16 application to make sure that was the case because
17 we were aware of the application previously to the
18 Zoning Board, and the difference is it is two units
19 with commercial as opposed to two units that makes
20 the difference as to density.

21 So we have actually indicated that two
22 residential units is the maximum that you are
23 allowed under the density standard, but with a
24 commercial space on the ground floor, you are able
25 to have that because you are able to round up, so I

1 think that is the difference between the two
2 applications.

3 MR. EVERS: Again, should I -- can I
4 ask a question --

5 CHAIRMAN HOLTZMAN: Fire away, Mike.
6 Go ahead.

7 MR. GALVIN: Go ahead. We are trying
8 to sort it out.

9 MR. EVERS: Okay, fine.

10 The actual language in that section of
11 the ordinance is that the percentage of deleting its
12 references as to whether it's a commercial unit, the
13 percentage of the total permitted floor area
14 occupied by the non residential use shall be applied
15 against the maximum number of dwelling units, and
16 the residential units shall be reduced. Any
17 fractions should be equivalent to a whole dwelling
18 unit.

19 Now, the interpretation, as I said, in
20 the litigation I was involved with is that --
21 because, remember, you are taking a floor area now.
22 You're not saying that -- you're saying take the non
23 residential use and calculate the floor area for it,
24 and figure out what percentage of the building it
25 is, okay?

1 If it turns out that that percentage of
2 that building is at point 85, the ordinance, it's my
3 understanding, means you count that as a unit.

4 In other words, you don't have a
5 situation, where a non residential use counts as
6 effectively as zero units, which is what effect, Mr.
7 Maser, in all due respect -- you are Mr. Maser?

8 MR. ROBERTS: No. That would be our
9 chief executive officer.

10 (Laughter)

11 MR. EVERS: Well, who are you then?

12 CHAIRMAN HOLTZMAN: He's Mr. Roberts.

13 MR. ROBERTS: Mr. Roberts.

14 MR. EVERS: In all due respect, Mr.
15 Roberts, okay, by your interpretation, that means
16 that any non residential use in this situation, the
17 legal number of units in this building that are just
18 residential is two. Okay?

19 And I would agree that it is a pretty
20 stingy Zoning Board that doesn't give you a little
21 extra to get it up to three. But by your
22 interpretation, the degree to which this non
23 residential use that occupies an entire floor of the
24 building is zero.

25 MR. ROBERTS: Well, no --

1 MR. EVERS: My interpretation would be
2 one.

3 MR. GALVIN: Well, you have to let Mr.
4 Roberts talk.

5 MR. ROBERTS: I'm sorry.

6 I think what we said in our letter is
7 the way we calculated it, which is when you
8 subtract -- that subtraction, as you said, you go
9 from 2.97 to 1.97, it allows -- the ordinance allows
10 you in that same section to go to the next whole
11 number, which is two, so that is why the conclusion
12 is that they are allowed two residential units --

13 MR. EVERS: And how do you get that out
14 of this ordinance, because that's a lot of extra
15 stuff in this ordinance.

16 MR. ROBERTS: No. I think I just
17 repeated what the ordinance says.

18 It says you round up in it. When you
19 have commercial development in a building, a
20 building like this, that when you make that
21 subtraction, you round to the next full number.
22 1.97 rounds up to two.

23 MR. EVERS: No. It actually just says
24 any fraction of the non residential use shall be
25 equivalent to a whole dwelling unit. It doesn't say

1 any of the things you just said.

2 MR. GALVIN: It says any fraction --

3 MR. ROBERTS: Any fraction.

4 MR. GALVIN: -- so any fraction would
5 mean it becomes a whole.

6 MR. EVERS: Well, this is why I asked
7 whether this has been reviewed by counsel because
8 the question in the language is: What does that
9 sentence refer to?

10 Does it refer to the non residential
11 use or all of the uses, and that's an important
12 issue because suddenly you have a situation in which
13 you have applications that involve the density
14 variances, even if they are de minimus ones, showing
15 up in front of the wrong Board for review. That's
16 all I'm talking about.

17 CHAIRMAN HOLTZMAN: So the long story
18 here on the calculation and the discussion is you
19 think this is inappropriate, this application at
20 this Board?

21 Is that the short answer?

22 MR. EVERS: Yeah, given its
23 jurisdiction, I think, you know --

24 MR. GALVIN: Let me just say this --

25 MR. EVERS: 2.97 to three, I can't

1 imagine being --

2 MR. GALVIN: -- based on Dave's
3 explanation, I understand that no density variance
4 is required.

5 What we did is we rounded down for the
6 residential, and we got two. There is a fraction of
7 commercial, which counts as one. We have one
8 commercial. We have two residential.

9 Mr. Roberts believes that we are
10 compliant and no variance is required, and that is
11 why I didn't consider the issue at any degree before
12 you raised it.

13 The question is: Is Mr. Evers'
14 interpretation correct or is Mr. Roberts'
15 interpretation correct.

16 So occasionally, you have to go roll
17 the dice, you know.

18 MR. MATULE: Also, if I might, I would
19 like to read the entire section --

20 (A Commissioner sneezes)

21 -- God bless you -- what it says is:
22 Where principal uses in addition to residential are
23 proposed for the subject building, such as retail or
24 office, the percentage of total permitted floor area
25 occupied by the non residential use shall be applied

1 against the maximum number of dwelling units, and
2 the residential units shall be reduced thereby.

3 Any fraction shall be the equivalent of
4 a whole dwelling unit --

5 MR. GALVIN: Right.

6 CHAIRMAN HOLTZMAN: And, Mr. Matule,
7 you're reading this straight out of the city's code?

8 MR. MATULE: Yes.

9 And so when you take the percentage,
10 which they're referring to, the percentage of total
11 floor area occupied by the nonresidential, and you
12 apply that against the maximum number of dwelling
13 units, the residential unit should reduce thereby,
14 so it comes out to 1.9 --

15 COMMISSIONER DOYLE: 97.

16 MR. MATULE: -- something, and it says:
17 Any fraction shall be the equivalent of a whole
18 dwelling unit --

19 CHAIRMAN HOLTZMAN: Any fraction.

20 MR. MATULE: Any fraction.

21 COMMISSIONER JACOBSON: Mr. Matule, am
22 I correct, that there is some text in the code
23 preceding any fraction that --

24 MR. MATULE: Except as specified
25 below --

1 COMMISSIONER JACOBSON: Okay.

2 MR. MATULE: -- and that refers to
3 dwellings on Washington Street, First Street or 14th
4 Street --

5 CHAIRMAN HOLTZMAN: So that doesn't --

6 MR. MATULE: -- shall not be deducted
7 from the maximum permitted, so it is not relevant to
8 this discussion.

9 COMMISSIONER JACOBSON: I want it to be
10 complete --

11 MR. MATULE: Absolutely.

12 So I'm comfortable with --

13 MR. GALVIN: So here is what --

14 CHAIRMAN HOLTZMAN: Hold on.

15 Dennis?

16 MR. GALVIN: -- here's where we are
17 going. We are going to proceed. We are going to
18 treat this as if there is no variance required.

19 I acknowledge what Mr. Evers is saying.
20 As usual, it is a very thoughtful review of the
21 ordinance.

22 If we found that he's correct, or if a
23 court were to find later on that he's correct in his
24 interpretation, we wouldn't have jurisdiction
25 because if you need any of the D variances, the

1 Planning Board can't hear this case. But at this
2 point, I think Mr. Roberts has the correct
3 interpretation.

4 I think there's some logic here also
5 about the first floor in this instance would be
6 unusable, if they decided to jettison the commercial
7 space in order to qualify, and I think that the
8 ordinance reflects what the intent of the ordinance
9 is. That if you have a commercial space like that,
10 it can make up the difference.

11 We are trying to limit the amount of
12 density in residential and the number of units, not
13 in the commercial.

14 MR. ROBERTS: And I think in fairness,
15 either the code was written before we had the issues
16 with flood, and there was I think at the time it
17 intended to try to encourage the retail, and that is
18 why the 14th Street and Washington Street areas are
19 exempt, that there would be no limitation on the
20 commercial in those areas, as opposed to other
21 residential areas, where retail is a permitted use
22 under the zone, and that is where the density -- it
23 was effectively a disincentive at the time.

24 Now that we had this situation with not
25 being able to use the lowest level, especially on

1 the lots that are small, I think it's, you know --

2 CHAIRMAN HOLTZMAN: Well, it becomes a
3 safety issue at the end of the day because the flood
4 ordinance is there so that we don't have somebody
5 living within the danger zone of potential
6 flooding --

7 MR. ROBERTS: Right.

8 CHAIRMAN HOLTZMAN: -- so the option is
9 to say that we have nothing happening within that
10 space, or we have an activated street scape, which
11 is always within the consistency of our master plan
12 which is to keep the street scape active.

13 A generation ago when garages started
14 getting built, whether they were drive-in garages or
15 parking at grade level, we ended up in a great many
16 neighborhoods losing the activation of the grade
17 level to a blank wall or a garage or a little
18 window, and you saw, you know, 50 cars parked inside
19 or something like that, and we lost the street scape
20 because it wasn't going to be habitable space
21 because it's not safe space to live in, and we
22 weren't sort of smart enough to get ahead of the
23 curve to make it and activate it as a retail
24 commercial space.

25 So this seems to solve that generation

1 of a problem like that occurred in the Northwest
2 Redevelopment Zone, where the grade level is dead,
3 so this seems to be, to my eye, consistent with, you
4 know, what we always try to do with the master plan.

5 MR. ROBERTS: As far as especially
6 recently with many other neighborhoods, mixed-use
7 development.

8 CHAIRMAN HOLTZMAN: Right.

9 Thank you, Mr. Evers.

10 Anyone else?

11 MR. EVERS: I have one last question.

12 CHAIRMAN HOLTZMAN: Yup.

13 MR. EVERS: Assuming that everything
14 that you said made appropriately good sense, and it
15 might even be possible that I agree with that, what
16 does that have to do with the issue of jurisdiction?

17 CHAIRMAN HOLTZMAN: It doesn't --

18 MR. GALVIN: Oh, I can tell you. In
19 this instance -- I'm sorry. Do you want me to do
20 it?

21 CHAIRMAN HOLTZMAN: Go ahead. Yeah,
22 no.

23 MR. GALVIN: That's what you are paying
24 me to do.

25 Which is Mr. Roberts says it doesn't

1 need a density variance. Once we make that
2 conclusion, we have jurisdiction.

3 If we had agreed with your
4 interpretation that the rounding that is going on
5 here has been done incorrectly, then we would need a
6 density variance, this Board would not have
7 jurisdiction and we'd be going home.

8 MR. EVERS: So your interpretation as
9 counsel for the Board is that Mr. Roberts'
10 interpretation is correct?

11 MR. GALVIN: You know, he happens to be
12 one of the leading planners in the state and
13 extremely competent, and I haven't really seen him
14 make very many mistakes, and I'm betting on him this
15 time.

16 MR. EVERS: So you are providing advice
17 to the Planning Board to follow his
18 recommendation --

19 MR. GALVIN: Yes.

20 MR. EVERS: -- as their counsel?

21 MR. GALVIN: Yes.

22 CHAIRMAN HOLTZMAN: I would like to ask
23 you a question just to get it on the record, because
24 I don't think I heard a yes or a no on that.

25 Do you think Dave Roberts' calculation

1 is correct?

2 MR. GALVIN: Yes. I would have liked
3 to have known about this before tonight, so I could
4 have cogitated on this. But since I can't, and I
5 have to make this decision on the spot, I'm doing
6 the best I can, and the answer is: I'm agreeing
7 with Mr. Roberts.

8 CHAIRMAN HOLTZMAN: Great.

9 Anything else, Mr. Evers?

10 MR. EVERS: No. Thank you.

11 CHAIRMAN HOLTZMAN: Thank you.

12 Okay.

13 COMMISSIONER DOYLE: Mr. Matule, could
14 you just provide us with the citation --

15 MR. MATULE: Sure.

16 COMMISSIONER DOYLE: -- so that --

17 CHAIRMAN HOLTZMAN: Dan, is your
18 question about architecture?

19 MR. TUMPSON: It is consistent with
20 what is being discussed now. It's one quick
21 question.

22 CHAIRMAN HOLTZMAN: Sure. Please keep
23 it tight.

24 MR. TUMPSON: Again, Dan Tumpson.

25 MR. MATULE: 196--

1 CHAIRMAN HOLTZMAN: Hang on one second,
2 please.

3 MR. TUMPSON: Sure.

4 MR. MATULE: -- 196-14(8)(a)(3).

5 COMMISSIONER DOYLE: Thank you.

6 CHAIRMAN HOLTZMAN: Go ahead.

7 MR. TUMPSON: You're talking about
8 the --

9 MR. MATULE: 196-14 -- I'm sorry, Dan,
10 Subsection (8), subparagraph (a), subsection (3).

11 CHAIRMAN HOLTZMAN: Okay.

12 MR. MATULE: Sorry.

13 CHAIRMAN HOLTZMAN: Dan has the floor.

14 MR. TUMPSON: It's just very brief.

15 This density calculation that you did,
16 you divided the area of the lot by 660 and came up
17 the number slightly less than three, and then the
18 conclusion is that that implies that you can have
19 two residential plus one commercial, right?

20 MR. GALVIN: Correct.

21 MR. TUMPSON: That is what we came
22 to --

23 MR. GALVIN: Right.

24 MR. TUMPSON: Here's the question, a
25 very simple one, and this is something I do not

1 understand. There are actually four floors above
2 the commercial floor, so that means that you are
3 counting, and this is a gimmick that's being used,
4 which is to call a duplex one unit, and therefore,
5 you only have two residential units even though they
6 had occupy four floors.

7 That's what I'm wondering about is --

8 CHAIRMAN HOLTZMAN: Well, you say
9 "Gimmick." That implies that --

10 MR. TUMPSON: Yes, yes. Well --

11 CHAIRMAN HOLTZMAN: -- somebody is
12 pulling something on --

13 MR. TUMPSON: -- no, no. The reason I
14 said "gimmick" --

15 CHAIRMAN HOLTZMAN: -- the applicant is
16 fooling somebody --

17 MR. TUMPSON: -- the reason I said
18 "Gimmick" is because it seems to me that you could
19 have tri-plexes or whatever you want, and then add
20 stories --

21 MR. GALVIN: Yes.

22 CHAIRMAN HOLTZMAN: You can't add
23 stories --

24 MR. GALVIN: You can't go beyond 40
25 feet.

1 CHAIRMAN HOLTZMAN: -- and you got to
2 build it within the 40 feet.

3 MR. TUMPSON: Right. Okay. Okay.

4 But my -- yes, and the ten feet may --
5 without saying what you have done here by calling
6 two floors a duplex, and therefore, one unit is --
7 it allows you to get beyond this density variance.
8 Whereas if you had to interpret every floor of
9 residential units as a separate residential unit,
10 then we would be talking about four residential
11 units, not two, so that the -- that's why I called
12 it a "gimmick," because it's a way that you can call
13 two floors --

14 CHAIRMAN HOLTZMAN: Okay. I think we
15 got your point.

16 MR. TUMPSON: You understand my point?

17 CHAIRMAN HOLTZMAN: I do understand
18 your point.

19 CHAIRMAN HOLTZMAN: Mr. Nastasi, there
20 are two residential units to your understanding of
21 architecture in this building?

22 THE WITNESS: Yes.

23 CHAIRMAN HOLTZMAN: I'm going to be
24 really specific about this.

25 There are two residential kitchens?

1 THE WITNESS: Yes.

2 CHAIRMAN HOLTZMAN: One for each of
3 those duplex apartments?

4 THE WITNESS: Correct.

5 CHAIRMAN HOLTZMAN: And those
6 apartments could not be, unless you did something
7 completely illegally, in the future somebody
8 couldn't break this into making each floor a
9 separate apartment?

10 THE WITNESS: Correct. Only two
11 families can live in this building.

12 CHAIRMAN HOLTZMAN: And if you put four
13 families in this building and one on each floor, and
14 you added two additional kitchens and bathrooms and
15 everything else that go along with that, that would
16 be completely illegal?

17 THE WITNESS: I think we would have a
18 violation of the zoning code and a violation of the
19 building code.

20 CHAIRMAN HOLTZMAN: Okay.

21 Thanks, Dan.

22 MR. TUMPSON: Okay. But you see my
23 point.

24 CHAIRMAN HOLTZMAN: I do.

25 UNIDENTIFIED VOICE: And he's ignoring

1 it, Dan.

2 CHAIRMAN HOLTZMAN: No. I'm not
3 ignoring it. I disagree with it, but it's not my --
4 that's only my personal -- I disagree with your
5 calculation. I agree with our planner's
6 calculation.

7 Mr. Matule, where do we go from here?
8 Where are we?

9 MR. GALVIN: The next witness.

10 MR. MATULE: I guess we can close the
11 public portion for the architect, and I will bring
12 up the planner.

13 CHAIRMAN HOLTZMAN: Yes, that is
14 correct.

15 MR. GALVIN: Raise your right hand.

16 Do you swear or affirm the testimony
17 you are about to give in this matter is the truth,
18 the whole truth, and nothing but the truth?

19 MR. OCHAB: I do.

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

22 MR. GALVIN: State your full name for
23 the record and spell your last name.

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

25 MR. GALVIN: Mr. Chairman, do we accept

1 Mr. Ochab's credentials?

2 CHAIRMAN HOLTZMAN: We do.

3 MR. MATULE: Thank you, Mr. Chairman.

4 Mr. Ochab, you are familiar with the
5 master plan and the zoning ordinance of the City of
6 Hoboken?

7 THE WITNESS: Yes, I am.

8 MR. MATULE: And you are familiar with
9 this project --

10 THE WITNESS: I am.

11 MR. MATULE: -- as recently amended to
12 take away the lower floor roof deck?

13 THE WITNESS: Yes.

14 MR. MATULE: And you prepared a
15 planner's report, dated June 15th, 2016, in support
16 of the requested variance relief?

17 THE WITNESS: I did.

18 MR. MATULE: Could you go through your
19 report and give us your professional opinion
20 regarding the requested variance relief?

21 THE WITNESS: Yes.

22 So we are in the R-3 zone, and we have
23 several variances, all of which are C variances in
24 this case. The variances include two non conforming
25 conditions, which are lot area. We have 1960 square

1 feet as opposed to the 2,000 square feet, and we
2 have a lot depth of 70 feet here as opposed to 110
3 feet that's typically required.

4 We have a building height variance of
5 43.9 feet, where 40 feet is allowed.

6 We have a floor-to-floor height
7 variance for 9 feet 7 inches as opposed to ten feet,
8 and we have an off-street parking variance for three
9 spaces that are required for the retail, the
10 proposed retail use, and we're not providing any
11 parking at all.

12 With respect to the non conforming
13 conditions, again, the lot is an existing lot. It
14 is 28 feet in width by 70 feet in depth. It's near
15 the corner of Third Street, and the issue with the
16 lot configuration is that the Third Street lots,
17 which front on Third Street, basically come into the
18 center block and over the course of history has
19 basically resulted in a deficient lot of depth.

20 So as opposed to the typical hundred
21 foot lot, because the Third Street lots are coming
22 in at that corner area, we have a 70 foot lot.
23 Nothing can be done about that. They are
24 preexisting and non conforming conditions, and they
25 set the stage for the bulk requirements that we need

1 to comply with, such as lot area and side yard, rear
2 yard setback requirements.

3 With regard to the building height
4 area, it has been discussed that some of them have
5 from a planning perspective the additional height
6 has to do with adequate and functional use of the
7 first floor because we have a certain flood
8 elevation on that first floor.

9 The additional building height is
10 essentially make a functional use of the first
11 floor. This is not new. We have seen this before.
12 Otherwise, we would be left with a space between the
13 ground level and the first floor of the residential
14 area, which would be like an unusable Noman's Land,
15 basically used for storage or what have you.

16 So in this case, we had a preexisting
17 retail facility on this lot. We can by adding the
18 additional number of feet to the building height, we
19 can make a functional use by restoring the retail
20 use in that building and then building above.

21 We obviously do not do residential at
22 the ground level because we can't put residential
23 uses below the flood elevation, so we are basically
24 restoring what we have and then building above it.

25 That also plays into the 9 foot 7 inch

1 ceiling height, which John spoke of at some length,
2 and that essentially is to try to meet the standard
3 of ten feet, but also not get into a situation where
4 we have a building that's too high with respect to
5 the surrounding neighborhood.

6 So in this case we have a building
7 that's 43.9 feet in height, just under the 44 foot
8 ten percent threshold that would put us into a
9 different category of variance.

10 And with respect to the 9 foot 7 inch
11 building or ceiling height, my view, together with
12 John, that this is a functional space, to see a
13 floor, a ceiling space within a living space is
14 totally adequate, and it's more or less a
15 conventional ceiling height.

16 The last variance has to do with
17 off-street parking. Whenever we have a retail
18 facility, no matter what zone we're in, we are
19 required to have off-street parking. Three spaces
20 are required. Obviously we don't have any spaces
21 because we don't have any area to provide those
22 spaces. It would be prohibited in any case because
23 we don't have the lot width in order to provide a
24 parking lot. The master plan prohibits and
25 definitely discourages curb cuts in residential

1 zones, and this is a pedestrian neighborhood as is
2 most of Hoboken in any case, so --

3 CHAIRMAN HOLTZMAN: I think that
4 another point, Mr. Ochab, is also there has been
5 retail on this location --

6 THE WITNESS: Absolutely.

7 CHAIRMAN HOLTZMAN: -- so that's not
8 like that is a new change or an additional burden.
9 It is keeping things even in terms of what's been
10 happening on the site.

11 THE WITNESS: Right.

12 But when we come with a new
13 application, we apply the ordinance word for word,
14 and that results in the variance.

15 CHAIRMAN HOLTZMAN: Sure.

16 THE WITNESS: So with the exception of
17 the nonconforming conditions, which are C-1 hardship
18 variances, because they obviously cannot be
19 remedied, the variance is essentially C-2 variances
20 where the benefits of granting these variances
21 outweigh any detriment with respect to again the
22 retail -- restoring the retail space, allowing the
23 additional height variance, and of course, the
24 off-street parking as well.

25 From the negative criteria standpoint,

1 again, two prongs always to the negative criteria.
2 One is whether or not those variances would have any
3 detriment to the public good.

4 What that means is: What's the impact?

5 Is the impact substantial on the
6 surrounding area?

7 And my view with respect to these
8 variances is that, no, they would not be detrimental
9 or substantially detrimental, and the Board needs to
10 find that they would not be substantially
11 detrimental.

12 The building height, as John showed you
13 on the plan, is consistent with the building height
14 to the south and also to the building height to the
15 north, two buildings to the north, which is a
16 five-story building. It's a much higher one than
17 we're proposing here, and again, it's a C variance.

18 And with respect to obviously parking
19 and the like, there would be no detriment with
20 respect to not providing parking due to the fact
21 again that it's a pedestrian area, and we discourage
22 that.

23 So I will just add for the record that
24 I reviewed Dave's calculation for density. I am in
25 concurrence with his calculation for density, and my

1 view on how you treat the ordinance with respect to
2 density and retail uses has been consistently the
3 same for the past 15 years. And Dave has a
4 calculation, and he reviews mine, and we pretty much
5 have the same methodology that we have used, and I
6 will say that prior to Dave, when Elizabeth Vandor
7 was the planner here, again, we used the same
8 methodology with respect to retail uses and how we
9 factored in those retail uses into the density
10 calculation.

11 CHAIRMAN HOLTZMAN: Thank you, Mr.
12 Ochab.

13 Mr. Roberts, any question or comments
14 for Mr. Ochab?

15 MR. ROBERTS: Yes. I guess really the
16 only question -- I think really the issues that you
17 described came about --

18 CHAIRMAN HOLTZMAN: Dave, can you just
19 talk the other way, so that Phyllis can hear you?

20 MR. ROBERTS: Yes.

21 The issues about the lot are
22 self-explanatory, the lot size, width and the
23 size --

24 THE WITNESS: I can hear you.

25 MR. ROBERTS: -- it's the same. It

1 can't change.

2 I think the only question I would have
3 would be the -- and I think the parking is
4 self-explanatory having this issue before with the
5 undersized lots. But the height, again, you are
6 talking about the 3.9 foot differential.

7 I am wondering if what the result would
8 be if you had a building conforming with the height
9 limitation, in other words, if you are going to need
10 a certain height for the retail, and then if you
11 went from that point up to 40 foot, would that --
12 effectively you would end up losing a story, and I
13 am wondering whether -- in other words, you wouldn't
14 be able to do 40 feet. It would have to be
15 something like 30 some odd feet, and you would end
16 up with a gap of a certain size of height that would
17 be allowable that you couldn't use.

18 I'm just wondering if that is another
19 way of -- I am trying to get to the heart of it.

20 THE WITNESS: Yeah. I think the answer
21 would be yes, that if you needed to conform to the
22 40 feet, and also including the fact that you
23 wouldn't have retail on that ground floor, you would
24 lose a story because you would never be able to get
25 the ceiling height on that top floor.

1 The more likely answer would be you
2 would lose the retail because it's probably -- you
3 would wind up with a ceiling height at the ground
4 level of approximately five feet or five and a half
5 feet, which would be totally unusable for retail
6 purposes, so here you have --

7 CHAIRMAN HOLTZMAN: You also couldn't
8 get into the building.

9 THE WITNESS: Right, and you couldn't
10 get into the building, so you have --

11 CHAIRMAN HOLTZMAN: That is not a
12 feasibility -- that's not a feasible thing.

13 THE WITNESS: Correct.

14 MR. ROBERTS: So the benefit of the
15 additional 3.9 feet is the functional retail is your
16 conclusion?

17 THE WITNESS: Yes.

18 COMMISSIONER DOYLE: I am sorry. You
19 lost me at the end of this train.

20 You could take a floor off this
21 building and have a duplex and a one floor apartment
22 and the retail, two apartments, retail. The
23 building would be 37 feet tall, whatever it is, and
24 it would be conforming, and we would only be here
25 talking about the non conforming lot, which doesn't

1 require a variance.

2 CHAIRMAN HOLTZMAN: Right.

3 THE WITNESS: The planning conundrum
4 here is that because of the flood elevation issues,
5 and it is consistent with 80 percent of the
6 applications before both Boards is that you are
7 winding up with this space at the ground level, at
8 the street level, which you have to deal with what
9 to do with that space, and sometimes that elevation
10 is five feet. Sometimes it's eight feet, so it is
11 what to do with that space. If you can't use it for
12 some functional purpose, it affects the street
13 scape. It affects the esthetic neighborhood
14 appearance, because you need to deal with how to use
15 that space.

16 COMMISSIONER DOYLE: Well, I would
17 agree, but --

18 THE WITNESS: In this case we are
19 saying, okay, we can use it for retail. We can
20 restore the retail use at that level, and the effect
21 of that is 3.9 feet.

22 COMMISSIONER DOYLE: No, but I don't
23 know that you can have it both ways, because I fully
24 appreciate the fact that in order to get an eight
25 foot nine inch retail space for the height -- but

1 this is all predicated on four stories above it.
2 You are not even considering a universe in which
3 there would be three stories above it.

4 And so what I am saying is, yeah, you
5 have that problem, and we have seen over and over
6 the 42, 43 foot variances here.

7 But you happen to be in a place, a
8 location where the DFE is low enough. It's short
9 enough that you need in order to have the workable
10 space in the lowest level, you need to go above 44,
11 and apparently -- so you are saying it is dictated
12 by making the lowest floor tall enough. That is why
13 you have to get the height variance. But then in
14 the same sentence, you're saying but we have to
15 reduce the heights of the other ones just to avoid
16 the compliance with the ordinance, and so that is
17 the part that I am having a lot of trouble with.

18 THE WITNESS: It is really more or less
19 a design issue. Again, from a planning perspective,
20 if an architect is talking to me about, okay, how
21 high should I make this building.

22 My advice to them is we should have
23 retail on the first floor because it is good
24 planning to do that, okay?

25 And then above that, try to make your

1 building above that, so that it doesn't exceed the
2 ten percent, because there is a different threshold
3 of proof there. It's not necessarily consistent
4 with the neighborhood, so it's not necessarily, you
5 know, let's just put up a 40 foot building and
6 design it, so that we can maximize it.

7 COMMISSIONER DOYLE: Three stories on
8 top of the retail would not exceed it, correct?

9 CHAIRMAN HOLTZMAN: Correct.

10 THE WITNESS: Yes.

11 CHAIRMAN HOLTZMAN: Yes.

12 COMMISSIONER DOYLE: And so --

13 THE WITNESS: It is more complicated
14 than just, well, let's just do this, and then we
15 will maximize our floor to floor --

16 CHAIRMAN HOLTZMAN: So, Mr. Doyle, is
17 your point -- I think --

18 COMMISSIONER DOYLE: You keep saying
19 that --

20 CHAIRMAN HOLTZMAN: -- no, no. I just
21 wanted to reiterate, and it comes out a little
22 differently maybe.

23 I think my take-away from you is you
24 like the idea that the retail at grade level is
25 better than having an empty space. Is that a

1 fair --

2 COMMISSIONER DOYLE: Uh-huh.

3 CHAIRMAN HOLTZMAN: Right.

4 And that on top of that, you could put
5 three floors of residential, have them comply with
6 the ten foot floor to floor and be below the
7 40-foot, thereby eliminating any of the variance
8 requests.

9 COMMISSIONER DOYLE: They wouldn't be
10 here or --

11 CHAIRMAN HOLTZMAN: Well, they would be
12 here, but there would be no variances on the table.

13 COMMISSIONER DOYLE: Okay. Yes.

14 Thank you for the correction.

15 CHAIRMAN HOLTZMAN: Correct, right?

16 COMMISSIONER DOYLE: Right, or --

17 CHAIRMAN HOLTZMAN: So that is a
18 possible world.

19 They have chosen obviously to try to
20 put a couple more lawyers in the case.

21 COMMISSIONER DOYLE: Or they could go
22 to a different Board --

23 CHAIRMAN HOLTZMAN: They could go to a
24 different Board, right --

25 COMMISSIONER DOYLE: -- and get what

1 they want --

2 CHAIRMAN HOLTZMAN: -- but they chose
3 to -- they did that before obviously. It's on the
4 record. It is not a hidden fact. They did that
5 before, and it didn't work out, so they have
6 adjusted it, and they put another layer in a little
7 bit bigger cake, and I guess --

8 COMMISSIONER DOYLE: Some of the icing
9 is not quite as thick.

10 (Laughter)

11 CHAIRMAN HOLTZMAN: Right. Some of the
12 layers of the seven-layer cake here are not as
13 thick, but it is still within the ten percent
14 variance that is permitted for us to review at this
15 Board on the overall height.

16 COMMISSIONER DOYLE: Yup.

17 CHAIRMAN HOLTZMAN: So that is the
18 trade-off, whether we think that is, you know, a
19 fair trade-off.

20 COMMISSIONER JACOBSON: I think my
21 thoughts are well aligned with Commissioner Doyle's
22 on this.

23 To the point that attaching a hardship
24 to these variances is an argument that I think I
25 don't agree with, that I don't think that the lot

1 creates a hardship requiring the applicant to come
2 forward with the project as proposed requesting the
3 flexible variances that they have proposed, and I
4 think that might set a dangerous precedent by saying
5 that this lot, which is not dissimilar to many other
6 lots in a residential zone as a hardship, so I would
7 like to hear more from Mr. Ochab to frame it as a
8 question --

9 THE WITNESS: There is a distinction --

10 COMMISSIONER JACOBSON: -- I do not
11 understand the nature of your hardship.

12 THE WITNESS: -- there is a distinction
13 here, though. The hardship argument was made
14 only --

15 CHAIRMAN HOLTZMAN: Hang on a second,
16 Mr. Ochab.

17 Dennis?

18 MR. GALVIN: Are you asking for a C-1
19 variance?

20 THE WITNESS: We have C variances. I
21 am arguing the hardship --

22 MR. GALVIN: No, no. But I'm saying
23 there are two ways to get a variance. One is a C-1
24 because you have a hardship. I'm talking to
25 Mohammad, right?

1 (Laughter)

2 So C-2 is special reasons --

3 THE WITNESS: No. The C-1 argument
4 applies to the lot, the existing nonconforming
5 circumstances on the lot, which is the lot area and
6 the lot depth. There is a hardship because they
7 exist, and they can't be remedied. There is no
8 additional land area in order to remedy those
9 conditions, okay, so that is clearly within the --

10 MR. GALVIN: All right. So stop there.

11 Now, what we are really -- what the
12 Board is testing you on isn't that. They are
13 testing you on the floor-to-floor ceiling height of
14 9.7.

15 THE WITNESS: Right. And for those
16 other variances, all of the other variances, I
17 argued that the C-2 criteria applies, which is that
18 the benefit of granting those variances would
19 outweigh the detriments. I say that based on the
20 argument that we have, the issue of the flood
21 elevation, which in itself is in a sense a hardship,
22 but we have the issue of what to do with that space.
23 We had a preexisting retail use on the property. We
24 are trying to reestablish that retail use.

25 This is good planning. It conforms to

1 the neighborhood fabric. It had been a retail use
2 at some point, and so the argument there is that the
3 retail use is actually a benefit, but the benefit
4 requires the passing or granting of the C-2 variance
5 for 3.9 feet.

6 CHAIRMAN HOLTZMAN: Mr. Jacobson, do
7 you disagree with Mr. Ochab?

8 COMMISSIONER JACOBSON: No. I just was
9 looking for clarification on the nature of the
10 hardship.

11 So what is indicated on Page 4 of the
12 application is that the hardship applies and is
13 relevant only to lot size and the depth.

14 THE WITNESS: Correct.

15 CHAIRMAN HOLTZMAN: Okay.

16 MR. GALVIN: Good?

17 CHAIRMAN HOLTZMAN: Great.

18 THE WITNESS: Because there is no
19 hardship on the, you know, variances. They are
20 completely unique and --

21 MR. GALVIN: Stop.

22 CHAIRMAN HOLTZMAN: Mr. Stratton?

23 COMMISSIONER STRATTON: I mean, I think
24 it comes down to our decision that if they were to
25 build to the design flood elevation, which is four

1 feet above grade, they could build four stories on
2 top of that for two duplexes. So they are allowed
3 that by density, and as of right they wouldn't
4 exceed the height variance.

5 What we should consider, what I
6 consider is that is there a benefit to having a
7 retail space on grade and activating that street
8 space, and I think that that is enough of a benefit
9 that the variances they are requesting are
10 warranted.

11 CHAIRMAN HOLTZMAN: Excellent.

12 COMMISSIONER DOYLE: Yeah.

13 But my point would be the variance, if
14 it is a height variance, a D variance, they could
15 get a D variance. But if they use a different C
16 variance to change the D variance from a D to a C,
17 you know --

18 COMMISSIONER STRATTON: Are they
19 circumventing the appropriate Board --

20 COMMISSIONER DOYLE: Yes.

21 COMMISSIONER STRATTON: -- by
22 requesting that.

23 COMMISSIONER DOYLE: Right.

24 So somebody else can give them the
25 relief that you're talking about, and they, you

1 know --

2 COMMISSIONER STRATTON: And if the
3 relief that they are requesting is --

4 COMMISSIONER DOYLE: Is it 44 --

5 COMMISISONER STRATTON: -- it's the
6 purview of this Board that we are able to grant a
7 variance to 9.7 inches over ten inches, I mean, that
8 is a legal question.

9 I mean, are we allowed --

10 MR. GALVIN: Yes. We are allowed to,
11 and somebody might argue that we prefer to grant C
12 variances over D variances.

13 I mean, you're right that that's
14 like -- it could be done in a way for purposes of
15 forum shopping, but that's not -- you have
16 jurisdictions before the Board, and you consider the
17 variances. If they make a reasonable proposal, you
18 approve it.

19 I mean, we really don't want to
20 encourage people either for density or for height --

21 COMMISSIONER STRATTON: Right.

22 MR. GALVIN: -- to be going to the
23 other Board, if we can keep them -- but they have to
24 be legitimately in front of us, and the variance for
25 the height, and I think the interpretation of the

1 ordinance --

2 COMMISSIONER STRATTON: Jim, I think I
3 would agree with you if it was egregious, the
4 request, but I think that this is within the margin
5 of what --

6 COMMISSIONER DOYLE: Well, and I would
7 agree --

8 CHAIRMAN HOLTZMAN: Hang on. Ann wants
9 to jump in.

10 Ann?

11 COMMISSIONER GRAHAM: No. I'm just
12 saying -- go ahead. Finish your thought, Jim.

13 MR. GALVIN: Remember, we have Mr.
14 Ochab who is still testifying also.

15 (Laughter)

16 COMMISSIONER DOYLE: Okay.

17 Well, my point was like to some of the
18 questions that we heard from the public. I think it
19 is very clear that 9.7 is adequate to have a
20 ceiling, so I think, you know, the ten foot floor to
21 floor is more than generous. So it is not question
22 of that being a problem. For me, it is precedent
23 and it's --

24 CHAIRMAN HOLTZMAN: There are no
25 precedents here.

1 COMMISSIONER DOYLE: -- I hear that
2 over and over again, and I don't accept it. But,
3 you know, there is a lesson out there that other
4 people will learn. I'm not saying it's a precedent
5 meaning it's legally precedential and we have to
6 grant this, but if people start doing it, then as we
7 have --

8 COMMISSIONER STRATTON: So I am not as
9 familiar with this.

10 What is the difference between the D
11 variance and the exceedance of the height threshold,
12 and -- I just want to understand --

13 MR. GALVIN: It's not --

14 CHAIRMAN HOLTZMAN: So there is a ten
15 percent addition to the 40 feet that --

16 UNIDENTIFIED VOICE: That's a safe
17 harbor.

18 COMMISSIONER STRATTON: It's provided
19 to allow the --

20 CHAIRMAN HOLTZMAN: It's a safe harbor,
21 so you can go between 40 to 44 feet and still just
22 be a C variance, which would be within this full
23 Board's jurisdiction.

24 If you exceed the 44 feet, then you end
25 up with a D variance, and you are before the Zoning

1 Board.

2 MR. GALVIN: It is a different
3 standard. You have to accommodate the deviation
4 from the height standard when you do that.

5 CHAIRMAN HOLTZMAN: And very often we
6 have often seen it, you know, when people need a
7 foot or two or something like that, because of a
8 handicapped van accommodation on the grade level and
9 other types of things, so that is why there is like
10 that fudge factor built in, so that it is not a hard
11 and fast 40 feet or else.

12 MR. GALVIN: The Zoning Board would
13 normally consider the adjacent buildings, where you
14 have -- you know, you want to accommodate the
15 deviation and we are going to be considering what
16 the impact is on the street scape of the deviation
17 from the height variance --

18 CHAIRMAN HOLTZMAN: I think we are kind
19 of getting in the -- Mr. Ochab, did you have
20 anything else, or was your testimony fairly
21 concluded?

22 THE WITNESS: I had concluded.

23 CHAIRMAN HOLTZMAN: Thank you.

24 COMMISSIONER GRAHAM: Can I just ask
25 Commissioner Doyle a question?

1 So do you believe that this application
2 is before the appropriate Board?

3 COMMISSIONER DOYLE: No, no. I agree
4 with Dennis entirely.

5 COMMISSIONER GRAHAM: Okay. You do. I
6 wasn't sure.

7 COMMISSIONER DOYLE: We have
8 jurisdiction, you know, assuming that Mr. Roberts is
9 correct, but --

10 COMMISSIONER GRAHAM: Okay.

11 COMMISSIONER DOYLE: -- it's more of a
12 question of a creative way of, you know --

13 COMMISSIONER GRAHAM: I understand,
14 but I don't --

15 COMMISSIONER DOYLE: -- we are so much
16 more judicious and reasonable.

17 (Laughter)

18 COMMISSIONER GRAHAM: Well, I just have
19 a question for the planner.

20 The box where he has density,
21 residential, some of the numbers seem different than
22 what --

23 MR. ROBERTS: Yeah --

24 COMMISSIONER GRAHAM: -- and I am not
25 sure I --

1 MR. ROBERTS: -- we pointed that out in
2 our earlier reports as well.

3 They had said three -- we had said that
4 the residential density is two -- so I believe -- I
5 don't know if the table was corrected, but we
6 pointed that out in our report.

7 COMMISSIONER GRAHAM: Okay. All of
8 these numbers are getting confusing. I'm not sure
9 which is right and which is wrong.

10 MR. ROBERTS: I think part of the
11 confusion is whether you call -- we had a little bit
12 of this with a prior application a couple of months
13 ago, where there was a retail space on the ground
14 floor, is that a unit --

15 COMMISSIONER GRAHAM: Yeah.

16 MR. ROBERTS: -- or is it just the
17 residential dwelling units that are -- that is what
18 you measure density usually --

19 CHAIRMAN HOLTZMAN: Okay.

20 Did we get an answer to Commissioner
21 Graham's question?

22 COMMISSIONER GRAHAM: Not really.

23 CHAIRMAN HOLTZMAN: She is pointing out
24 the fact that there is a discrepancy on there.

25 COMMISSIONER GRAHAM: Yes.

1 CHAIRMAN HOLTZMAN: Has the discrepancy
2 been cleared up?

3 COMMISSIONER GRAHAM: Not in the zoning
4 table --

5 MR. ROBERTS: Well, we pointed it out
6 in our letter that the table should be corrected --

7 CHAIRMAN HOLTZMAN: Mr. Ochab, has the
8 discrepancy been cleared up yet?

9 THE WITNESS: Yes.

10 COMMISSIONER GRAHAM: Well, not on your
11 report it isn't, though, right?

12 CHAIRMAN HOLTZMAN: But it's not on the
13 plan, or it's not in his report?

14 MR. ROBERTS: I don't know if it's
15 still in Mr. Ochab's report, but I believe it was
16 the first -- maybe the first iteration of it.

17 MR. GALVIN: Point 85, is that what
18 was -- in his letter, he had something about point
19 85 --

20 CHAIRMAN HOLTZMAN: Mr. Matule, is
21 there any --

22 COMMISSIONER GRAHAM: I'm trying to
23 understand the 2.51 --

24 CHAIRMAN HOLTZMAN: -- of the pointed
25 out discrepancies that you folks disagree with from

1 Mr. Roberts' report?

2 MR. MATULE: No. I think --

3 CHAIRMAN HOLTZMAN: So it's a matter of
4 just getting the right numbers in the right place?

5 MR. MATULE: -- they're all on the same
6 page.

7 I think where the deviation started was
8 when the architect originally did the calculation
9 and came up with 2.96, they rounded that up to three
10 before they did the math, as opposed to applying the
11 percentage against the 2.96, and then doing the
12 rounding.

13 CHAIRMAN HOLTZMAN: Okay.

14 MR. MATULE: Wrong methodology,
15 correct --

16 CHAIRMAN HOLTZMAN: Ann, are you okay
17 with this now?

18 COMMISSIONER GRAHAM: Yes.

19 CHAIRMAN HOLTZMAN: Right. I think
20 it's just a matter of -- yeah, too many shortcuts,
21 but we think we got the right number.

22 COMMISSIONER GRAHAM: Okay.

23 CHAIRMAN HOLTZMAN: Okay.

24 Any other questions for Mr. Ochab from
25 the Commissioners at this time?

1 We can circle back. No problem.

2 Any members of the public that wish to
3 ask the planner a question?

4 Mr. Dan, come on up.

5 MR. TUMPSON: Okay. I am responding to
6 Mr. Doyle's questions.

7 My understanding when this law was
8 revised to take in account the base flood elevation
9 that's set forth, that I don't know if you recall
10 this, but it used to be that there was a maximum of
11 three stories allowed under the zoning law.

12 Now, with the base flood elevation
13 issue, the law is revised, so that now you can go up
14 to four stories, which is 40 feet and a minimum of
15 ten feet per story gives you four stories.

16 MR. GALVIN: We eliminated the story
17 criteria --

18 MR. TUMPSON: Yes, you did. You
19 eliminated it, and I'm saying that the consequence
20 of a minimum of ten feet meant that 40 feet could
21 include four floors, which increased the number of
22 floors by one, and my understanding at that point
23 was that that was done in response to the fact that
24 because of the flooding issue and the base flood
25 elevation was above street grade, that this allowed

1 you, the owners to take into account the fact that
2 they had lost the use of property below base flood
3 elevation. So they were given in exchange, and
4 based on the additional floor, so the 40 feet could
5 include four floors --

6 MR. GALVIN: I don't know if I agree
7 with that because it has to go from the design base
8 flood --

9 CHAIRMAN HOLTZMAN: So you don't want
10 people to be penalized because they are complying
11 with the flood --

12 MR. TUMPSON: That's my -- that was my
13 understanding of what --

14 CHAIRMAN HOLTZMAN: Okay.

15 MR. GALVIN: Dan, we are going to need
16 a question at some point.

17 MR. TUMPSON: -- it could go from three
18 stories to four stories --

19 CHAIRMAN HOLTZMAN: You got it
20 straight. You got it. You got it.

21 MR. GALVIN: Sorry.

22 MR. TUMPSON: Okay.

23 So what I am getting at --

24 MR. GALVIN: Question?

25 MR. TUMPSON: -- there seems to be --

1 if that's the intent of the law, that was my
2 understanding of the intent of the law, that what we
3 have just witnessed here in this case, and I have
4 seen it in other cases, where there are minor
5 adjustments, in this case --

6 MR. GALVIN: Time out. Time out.

7 MR. TUMPSON: Yes. What?

8 MR. GALVIN: Here is where we are at
9 right now. Don't get mad at me.

10 We are going to do comments like in ten
11 minutes, but right now we are asking questions of
12 Ken Ochab.

13 So if you are warming up for a
14 question, okay. But it has to be a question here to
15 Ken, or you have to wait a few minutes, if you want
16 to tell us what we are not doing right. Okay?

17 MR. TUMPSON: Well, I just -- this was
18 an ongoing --

19 MR. GALVIN: But there's not a
20 dialogue. It has to be questions of Ken --

21 CHAIRMAN HOLTZMAN: No. There's --

22 COMMISSIONER DOYLE: Opinions later.

23 CHAIRMAN HOLTZMAN: Opinions later, and
24 it is a fair opinion -- I don't want to cut it off,
25 but here is the thing.

1 Is there a question for their planner
2 about anything that he testified about?

3 MR. TUMPSON: No. Okay. Then I will
4 try to put it as a question --

5 MR. GALVIN: But I am saying if you
6 wait two minutes, I will put you under oath, and you
7 will be able to tell us what you're telling us. I
8 just want to finish with this witness, questions of
9 this witness.

10 CHAIRMAN HOLTZMAN: Right.

11 MR. TUMPSON: Well, just that there's
12 all of this discussion of fairness and everything.
13 What concerns me --

14 CHAIRMAN HOLTZMAN: We will come back
15 to you. We're not going anywhere. Don't worry.

16 MS. FALLICK: If you have a question,
17 ask it, but I think you're talking --

18 MR. TUMPSON: Okay. I'll leave --

19 CHAIRMAN HOLTZMAN: Okay. We'll see
20 you in a bit --

21 MR. TUMPSON: -- I don't think that
22 there is anything that --

23 CHAIRMAN HOLTZMAN: -- no problem.
24 We'll get back to you.

25 MR. GALVIN: Dan, don't try to

1 manufacture -- just let's get through this witness,
2 if we can.

3 CHAIRMAN HOLTZMAN: Are there questions
4 of the planner?

5 MR. GALVIN: Go ahead.

6 MS. FALLICK: Cheryl Fallick.

7 The reason I said there is a question
8 is because somebody up there said the wall was for
9 the planner, so I am here to ask --

10 CHAIRMAN HOLTZMAN: Mr. Matule?

11 MR. MATULE: Yes.

12 (Laughter)

13 CHAIRMAN HOLTZMAN: Do we need to read
14 you back the testimony?

15 MR. MATULE: No. I think --

16 CHAIRMAN HOLTZMAN: Because Ms. Fallick
17 would like to know about the wall. She was asked to
18 save her wall questions of the planner, so now we're
19 here.

20 MR. MATULE: I think the thing about
21 the planner was -- did he have picture of a wall?

22 The architect already testified that if
23 the neighbors wanted to keep the wall, we'll keep
24 the wall. But lo and behold, I think we do have a
25 picture of the wall.

1 CHAIRMAN HOLTZMAN: We do or don't, Mr.
2 Ochab?

3 COMMISSIONER DOYLE: It's not in his
4 report.

5 THE WITNESS: I don't have it printed,
6 but I have it on my iPad, so --

7 MR. GALVIN: And you're going to supply
8 it to the Board?

9 THE WITNESS: -- I'm sorry. It is in
10 my report.

11 CHAIRMAN HOLTZMAN: It's in your
12 report, right?

13 THE WITNESS: Yes.

14 COMMISSIONER DOYLE: It is not.

15 CHAIRMAN HOLTZMAN: How tall is this
16 wall?

17 MS. FALLICK: Tall.

18 THE WITNESS: I would approximate it at
19 eight feet.

20 CHAIRMAN HOLTZMAN: You know what our
21 zoning code is, and it is --

22 THE WITNESS: Yes, and it is six
23 feet --

24 CHAIRMAN HOLTZMAN: Ms. Fallick, your
25 question is what?

1 MS. FALLICK: My question is: Are they
2 willing to leave it and --

3 CHAIRMAN HOLTZMAN: Do you
4 understand --

5 MR. MATULE: The architect testified
6 that they were.

7 CHAIRMAN HOLTZMAN: Do you like it in
8 its present form?

9 MS. FALLICK: Yeah. Oh, absolutely. I
10 mean there's ivy on there and it's pretty, and it's
11 a remnant of another time --

12 CHAIRMAN HOLTZMAN: So, you know, just
13 to play fun here, you do understand now that that
14 wall now requires a variance because it is above six
15 feet?

16 MS. FALLICK: So they are not asking
17 for it, so it's not on the --

18 CHAIRMAN HOLTZMAN: We are having a
19 conversation here.

20 MR. MATULE: If I can join in the
21 conversation for a minute, I am told the wall is
22 eight feet high.

23 CHAIRMAN HOLTZMAN: Uh-huh.

24 If the neighbors would like us to keep
25 the wall at eight feet high, then we have to amend

1 our application and ask for a variance --

2 CHAIRMAN HOLTZMAN: I think the Board
3 gets a vote in there, too, Mr. Matule.

4 MR. MATULE: Pardon?

5 CHAIRMAN HOLTZMAN: I said I think the
6 Board gets a vote in there the last time I checked
7 also.

8 MR. MATULE: Absolutely.

9 CHAIRMAN HOLTZMAN: Okay.

10 MR. MATULE: But I don't think the
11 Board can vote on a variance to let us have an eight
12 foot wall unless we amend our application and ask
13 for it. That's what I'm saying.

14 VICE CHAIR MAGALETTA: It's more of a
15 fence than a wall.

16 MS. FALLICK: No. It's a brick wall.

17 CHAIRMAN HOLTZMAN: It's a masonry
18 wall --

19 MS. FALLICK: So my understanding
20 correctly is it's not going to stay there, even
21 though everybody here seems to be saying they will
22 do it, it's not on the table, so that means --

23 MR. GALVIN: Whoa, whoa, whoa.

24 CHAIRMAN HOLTZMAN: We are having a
25 conversation about it. Don't say that there's

1 nothing on the table yet.

2 MS. FALLICK: It's not in the variance
3 request.

4 MR. GALVIN: However --

5 CHAIRMAN HOLTZMAN: That is correct.

6 MR. GALVIN: -- however, it's there.
7 My opinion is fences, and like Frank was saying,
8 fences, walls, that's something that Boards can
9 generally grant as part of an application, even
10 though it's not spelled out as a specific variance.

11 Any problems, questions, anybody?

12 Okay. So I think that we can grant
13 that variance --

14 CHAIRMAN HOLTZMAN: We got a lot of
15 people up here.

16 MR. GALVIN: -- if we want to.

17 MS. FALLICK: Yeah. What's going on?

18 (People talking at once)

19 CHAIRMAN HOLTZMAN: One at time.

20 Dennis has the floor.

21 One at time there, guys. Take it easy,
22 everybody.

23 MR. GALVIN: I know we pushed it to the
24 planner. When we pushed it to the planner for a
25 picture of the wall, we got it. Just hang on for

1 one more second.

2 Let me finish Mr. Ochab. Let me clear
3 him out. We are going to clear up on this wall.

4 CHAIRMAN HOLTZMAN: We ain't going to
5 forget about the wall.

6 MR. GALVIN: Okay.

7 CHAIRMAN HOLTZMAN: Okay.

8 Anybody else who has questions about
9 the testimony that Mr. Ochab gave?

10 Mr. Evers?

11 Again, I'm sorry. I defer to the
12 Chairman.

13 CHAIRMAN HOLTZMAN: You are doing a
14 great job.

15 (Board members confer)

16 CHAIRMAN HOLTZMAN: Do you want to make
17 a motion on this, Mr. Stratton?

18 MR. EVERS: Do you want to swear me in?

19 MR. GALVIN: No.

20 (Everyone talking at once)

21 MR. EVERS: Mr. Ochab --

22 CHAIRMAN HOLTZMAN: Hey, Pat, it's
23 freezing in here.

24 MS. CARCONE: They put a lock on the
25 thermostat, so if you would like to be the one to

1 break it --

2 CHAIRMAN HOLTZMAN: Don't offer.

3 (Laughter)

4 MR. EVERS: -- you mentioned in your
5 testimony that it had been the policy of the
6 planners -- of the Planning Board to recommend the
7 interpretation being used at this meeting, is that
8 correct?

9 THE WITNESS: I said I had experience
10 with Ms. Vandor as well.

11 MR. EVERS: Okay. So for many years --

12 MR. GALVIN: I want to interrupt for a
13 second.

14 I hate that testimony. I hated it when
15 you said it, and I hate it now.

16 I want to hear that you agree with Mr.
17 Roberts' mathematical interpretation of that
18 ordinance --

19 CHAIRMAN HOLTZMAN: Or not.

20 MR. GALVIN: -- or not.

21 THE WITNESS: I did say that.

22 MR. GALVIN: What's that?

23 MR. EVERS: Mr. Ochab, do you agree
24 with Mr. Roberts' mathematical interpretation or
25 not?

1 THE WITNESS: Yes, I do.

2 MR. GALVIN: Because the ordinance says
3 that you can use fractions, right?

4 THE WITNESS: Correct.

5 MR. EVERS: Mr. Ochab, you are familiar
6 with the fact that the planner -- the prior planner
7 of Hoboken for many years interpreted that the
8 affordable housing ordinance and the municipal code
9 of the City of Hoboken was not applicable or
10 legal --

11 MR. GALVIN: Don't answer that.

12 MR. MATULE: I object to the question
13 as to relevance --

14 CHAIRMAN HOLTZMAN: Mike, can we start
15 on --

16 MR. EVERS: There's a very key point
17 here, which is you are depending on the
18 interpretation of professionals who were
19 consistently overturned in court later on --

20 MR. GALVIN: Let me say this. I am
21 not. I'm not. I'm relying on Mr. Roberts, but I
22 have also read this repeatedly, and I have now
23 reached the conclusion that I felt more comfortable
24 than I did before, that we are allowed to use
25 fractions. It says so specifically, and as a matter

1 of statutory interpretation, it has got to be
2 correct if it's in plain language.

3 MR. EVERS: Well, I think that the
4 whole point is a question about how clear the
5 language is.

6 But the point I was going to make by
7 asking a series of questions is the Municipal Land
8 Use Law -- don't the Municipal Land Use -- I am
9 asking this question:

10 Don't the Municipal Land Use Boards in
11 Hoboken have an unfortunate history of interpreting
12 their codes and deciding what's legal, and then
13 finding out that they were wrong?

14 CHAIRMAN HOLTZMAN: No.

15 MR. GALVIN: That is a rhetorical
16 question.

17 COMMISSIONER STRATTON: Gary, I'm not
18 sure if this is relevant --

19 COMMISSIONER GRAHAM: I know. It's
20 not --

21 MR. GALVIN: It is not.

22 COMMISSIONER STRATTON: -- and I don't
23 know that we need this --

24 MR. EVERS: Well, I will argue that it
25 is.

1 CHAIRMAN HOLTZMAN: Mr. Evers, is there
2 a question for Mr. Ochab?

3 MR. EVERS: Yes.

4 The question is simply: You are
5 relying on the decision -- Mr. Ochab, you're relying
6 on the judgment of yourself and this planner, okay?

7 Is it not correct --

8 CHAIRMAN HOLTZMAN: Asked and answered.
9 Yes. He answered yes.

10 MR. EVERS: Good, good.

11 Is it not correct that similar reliance
12 was placed on the interpretation of rounding up
13 residential units for many years in Hoboken?

14 CHAIRMAN HOLTZMAN: Mr. Ochab, please.
15 There's no need for you to answer these provocative
16 questions from Mr. Evers.

17 Any there other questions relative to
18 this application, Mr. Evers?

19 MR. EVERS: Well, I would argue that
20 these are relevant. I will save them for comments
21 since the Chair is not choosing to give me the
22 courtesy of answering my questions.

23 CHAIRMAN HOLTZMAN: Thank you.

24 MR. ONDREJKA: My name again is Mary,
25 and the last name is O-b-d-r-e-j-k-a.

1 159 9th Street.

2 Mine is not a provocative question.

3 (Laughter)

4 MR. GALVIN: What's your favorite
5 color?

6 MR. MATULE: I don't mind saying so
7 myself.

8 (Laughter)

9 MR. ONDREJKA: Mr. Ochab, you had
10 mentioned about retail -- about the commercial at
11 the bottom, and I didn't hear a few things you had
12 said about the parking.

13 You don't have to provide parking
14 obviously, right, because my question is: How is
15 that determined when they put all of these little
16 commercials in these buildings because there is no
17 parking spaces for them, and I think you had said
18 something is based on the size of the lot?

19 THE WITNESS: No. The ordinance
20 requires parking for retail uses --

21 MR. ONDREJKA: Yes.

22 THE WITNESS: -- as a general scheme,
23 so it doesn't matter where the retail is if you have
24 a retail use.

25 There's a parking requirement because

1 that's how the ordinance was written. So the
2 argument is, you can't provide parking here because
3 (A) the master plan encourages that no parking be
4 provided and no curbing cuts be allowed in
5 residential zones, and (b) that with a 28 foot lot
6 width, where the building is, there it no room for
7 parking anyway, so that the notion of having that
8 requirement should be a variance condition that
9 should be granted by the Board.

10 That was the simple answer.

11 MR. ONDREJKA: Okay.

12 THE WITNESS: The ordinance is written
13 generally, so it doesn't matter where the retail is
14 because you got a commercial zone in this case --

15 MR. ONDREJKA: I see. It is applicable
16 to all the properties.

17 THE WITNESS: Correct.

18 MR. ONDREJKA: I see.

19 What kind of commercial space -- do you
20 have any idea what this is going to be?

21 THE WITNESS: I don't personally know.

22 MR. ONDREJKA: You don't know?

23 THE WITNESS: No.

24 MR. ONDREJKA: Is it bigger than the
25 prior, in square footage, than the other commercial

1 space?

2 THE WITNESS: I think it is actually
3 smaller because the old building sort of meandered
4 towards the rear of the property, and at one point
5 was almost 90 percent building coverage on the first
6 floor, so this is much less than that at 60 percent.

7 MR. ONDREJKA: So the commercial will
8 be --

9 THE WITNESS: Smaller

10 MR. ONDREJKA: And what is it?

11 How much is the percentage of the
12 commercial, 60 percent?

13 THE WITNESS: Well, 60 percent lot
14 coverage, so --

15 CHAIRMAN HOLTZMAN: He means the
16 building covers 60 percent of the lot.

17 MR. ONDREJKA: That's what I'm asking.

18 THE WITNESS: The actual square footage
19 is less than 900 square feet.

20 MR. ONDREJKA: Okay. That's fine.
21 That was my question.

22 Thank you.

23 CHAIRMAN HOLTZMAN: Thank you.

24 Any other questions for Mr. Ochab?

25 Okay. We'll close the public portion.

1 Mr. Matule, any other --

2 MR. MATULE: No. No other witnesses,
3 unless I'm just reserving, in case I have to bring a
4 representative of the applicant up vis-a-vis the
5 wall.

6 CHAIRMAN HOLTZMAN: There seems to be a
7 wall discussion, yes.

8 Can somebody enlighten us about this?

9 MR. MENARES: May I?

10 CHAIRMAN HOLTZMAN: Who is this person?

11 MR. MATULE: You have to get sworn in,
12 Raul.

13 MR. GALVIN: Now, is this your witness?

14 MR. MATULE: Yes, he's my witness.

15 MR. GALVIN: Okay.

16 Raise your right hand.

17 Do you swear or affirm the testimony
18 you are about to give in this matter is the truth,
19 the whole truth, and nothing but the truth?

20 MR. MENARES: Yes, I affirm.

21 R A U L M E N A R E S, 400 Poe Avenue, Westfield,
22 New Jersey, having been duly affirmed, testified as
23 follows:

24 MR. GALVIN: All right.

25 MR. MATULE: Now --

1 CHAIRMAN HOLTZMAN: Who is this?

2 MR. MATULE: Raul, please state your
3 name and address for the record.

4 THE WITNESS: It's Raul, R-a-u-l,
5 Menares, M-e-n-a-r-e-s. 400 Poe Avenue, Westfield,
6 New Jersey.

7 MR. MATULE: And you are here tonight
8 as a representative of the applicant?

9 THE WITNESS: Correct.

10 MR. MATULE: You work as basically a
11 construction foreman among other things for the
12 applicant?

13 THE WITNESS: Correct, correct.

14 MR. MATULE: And you are familiar with
15 this wall in the back of the property?

16 THE WITNESS: Yes, I am.

17 MR. MATULE: Could you give the Board a
18 better sense of what is there, and what you're
19 proposing to do with it?

20 CHAIRMAN HOLTZMAN: So this masonry
21 wall --

22 THE WITNESS: What existed --

23 CHAIRMAN HOLTZMAN: -- hold on.

24 THE WITNESS: Okay.

25 CHAIRMAN HOLTZMAN: The masonry wall is

1 on the property, 100 percent of the property of this
2 application?

3 Is that a yes?

4 I thought you nodded. I wasn't sure.

5 THE WITNESS: I thought you --

6 MR. MATULE: Oh, I wasn't answering the
7 question.

8 THE WITNESS: Yes.

9 CHAIRMAN HOLTZMAN: Okay. So this is
10 on your property?

11 THE WITNESS: Yes.

12 This is the rear, on the rear of the
13 backyard. It divides our property with the
14 neighbor's property to our west.

15 CHAIRMAN HOLTZMAN: Okay. Right. I
16 got you.

17 THE WITNESS: Which the owners are
18 right here.

19 UNIDENTIFIED VOICE: The east.

20 COMMISSIONER DOYLE: That's north.

21 UNIDENTIFIED VOICE: We're west.

22 THE WITNESS: Correct. You're west of
23 the property --

24 CHAIRMAN HOLTZMAN: Mr. Nastasi, can
25 you help us out and get us an overhead site plan

1 view here, so we can point where this wall is and on
2 what --

3 MR. NASTASI: If you look, there is a
4 dashed line -- it's right here on the survey on
5 A-001.

6 CHAIRMAN HOLTZMAN: So it's across the
7 back of the lot?

8 MR. NASTASI: Yes.

9 CHAIRMAN HOLTZMAN: Does it come down
10 the sides at all?

11 MR. NASTASI: It returns down the
12 east --

13 THE WITNESS: Yes.

14 MR. NASTASI: -- the north side of the
15 property, so it's west and north.

16 CHAIRMAN HOLTZMAN: West and north.

17 Is there anything to the south?

18 MR. NASTASI: There is a building.

19 CHAIRMAN HOLTZMAN: So the answer is:
20 There is no wall to the south?

21 MR. NASTASI: Right.

22 CHAIRMAN HOLTZMAN: Okay.

23 MR. NASTASI: Now, that photograph that
24 Mr. Doyle is holding up is the rear wall, and the
25 north wall is to the right.

1 CHAIRMAN HOLTZMAN: To the right.

2 And this wall we've got that it is
3 approximately ten feet high?

4 THE WITNESS: Yes.

5 COMMISSIONER JACOBSON: I just want to
6 point out, if I may, in the documentation of the
7 denial by the Zoning Board, I believe --

8 CHAIRMAN HOLTZMAN: Yup.

9 COMMISSIONER JACOBSON: -- on Page 4,
10 it indicates the proposed wall is more than twice
11 the code's maximum.

12 CHAIRMAN HOLTZMAN: So that's over 12
13 feet, since the code says six feet is the maximum
14 for a wall, okay? That's good to know.

15 COMMISSIONER DOYLE: Unless they made a
16 mistake.

17 CHAIRMAN HOLTZMAN: So it's 12 feet --
18 it's certainly significantly over the six feet
19 limitation of a normal wall or a fence. Okay.

20 MR. NASTASI: To be clear, six feet is
21 set at that height for life safety reasons, because
22 that is where the firemen can scale with gear. That
23 is why the six feet --

24 CHAIRMAN HOLTZMAN: Okay. And does
25 anybody know the stability of this wall?

1 It is in good shape, it's not in good
2 shape?

3 THE WITNESS: It is in very good shape.

4 CHAIRMAN HOLTZMAN: Okay.

5 THE WITNESS: And I have pictures here
6 that basically show our neighbor's yard --

7 CHAIRMAN HOLTZMAN: Right.

8 THE WITNESS: -- and the fence and
9 plantings that they have.

10 CHAIRMAN HOLTZMAN: So this is on the
11 back side of your wall?

12 THE WITNESS: Correct.

13 CHAIRMAN HOLTZMAN: And the people have
14 done a great job gardening. They have ivy growing
15 all over it. It's pretty, right?

16 THE WITNESS: Yes.

17 So basically what we would like to do
18 is try to figure out a way where we could keep this
19 wall for our neighbors, just the back wall, whether
20 it would be feasible either to, one, maybe put a
21 door, an access door, a fire rated door or some type
22 of door, where in case of fire, there would be
23 access to their backyard, and then the north wall,
24 the brick wall, we would bring it down to the six
25 feet.

1 CHAIRMAN HOLTZMAN: Okay.

2 THE WITNESS: But we would like to try
3 as much as possible to try to keep this beautiful
4 wall that they have.

5 CHAIRMAN HOLTZMAN: Okay. I never
6 heard of an exception of any kind of an access door.

7 I mean, you know, the architect quickly
8 pointed it out and the significance of having a
9 maximum of a six foot wall for safety issues is
10 really critical especially, you know, in such a
11 tight area like these multiple backyards.

12 THE WITNESS: Yes.

13 Right now -- right now, the wall -- if
14 you look at the picture that the gentleman of the
15 Board had looked at it --

16 CHAIRMAN HOLTZMAN: Yeah, we got it.

17 THE WITNESS: -- okay.

18 To the left-hand side of that
19 picture --

20 MR. MATULE: To the south?

21 THE WITNESS: -- yeah, to the south
22 part of the wall, you will see that there is a
23 wooden slat fence there, which at some point I guess
24 they took down or maybe never existed, the brick
25 wall, so there is an opening there.

1 So my question would be: If we kept
2 the twelve-foot wall that you see in the picture
3 that is existing, if that area where they have the
4 wood slat wall that goes back to the backyard, in
5 that area maybe we could bring that down to maybe
6 six feet, and then also the north wall that existed
7 right now, if we brought that to six feet --

8 CHAIRMAN HOLTZMAN: I will tell you
9 what also, you know, if we're looking at this
10 picture closely, what also I see that is troubling
11 is the left-hand side brick wall, which is obviously
12 half -- mostly disassembled, you know, looks --
13 certainly we have no idea of the structure of this.
14 That also has got to be part of the concern is the
15 left-hand side of the wall has obviously already
16 been demolished.

17 THE WITNESS: Can I just make a comment
18 about that, because you are looking at it wrong,
19 because that wall that you see that is taken down is
20 actually a wall that used to run east and west that
21 was taken down.

22 Basically the wall that runs in the
23 rear yard is the brick wall, and then it's the slat
24 wood wall on the south side of it.

25 That little piece that you see that's

1 brick, that was an old wall that used to run
2 east-south.

3 CHAIRMAN HOLTZMAN: Commissioners, any
4 questions?

5 COMMISSIONER GRAHAM: You represent the
6 applicant, correct?

7 THE WITNESS: Yes.

8 COMMISSIONER GRAHAM: Okay. So --

9 THE WITNESS: But I just happened to
10 know Beverly and --

11 COMMISSIONER GRAHAM: Okay. No --

12 THE WITNESS: -- and the neighbors
13 and --

14 COMMISSIONER GRAHAM: -- so the
15 architect then -- has the architect then taken this
16 into consideration?

17 I am not sure how this fits together.

18 MR. NASTASI: For clarify, the rear
19 property wall is not attached to this building. It
20 is literally on the back of the property like a
21 fence would be on a normal property --

22 COMMISSIONER GRAHAM: Okay, okay.

23 MR. NASTASI: -- so I am meeting the
24 neighbors and hearing their concerns tonight for the
25 first time.

1 COMMISSIONER GRAHAM: Okay.

2 MR. NASTASI: And what I said to the
3 Board was that if we are going to keep that wall, we
4 have to make sure we meet the fire codes, because I
5 understand the code is six feet because of firemen
6 access, so we are going to have to do something to
7 make sure the fire department has access to the
8 backyard.

9 COMMISSIONER GRAHAM: Has access.

10 Okay. All right.

11 So you are amenable to that?

12 MR. NASTASI: Of course.

13 COMMISSIONER STRATTON: I mean, it's
14 only a 12 foot wall on one side. I mean, if it's
15 six foot on the other side and six foot on the other
16 side, they can go over that way and not try to --

17 MS. FALLICK: It's six --

18 CHAIRMAN HOLTZMAN: One at a time.

19 Hold on.

20 Mr. Stratton, you've got the floor.

21 COMMISSIONER STRATTON: -- I just think
22 that the likelihood of that wall failing when you
23 punch a hole in it for the door is going to be more
24 likely than it being preserved if you were to just
25 keep it the 12 foot wall, which would be my

1 preference, because it would preserve the existing
2 wall and satisfy the desire of the neighbors I
3 think, and I would offer that to the Board to leave
4 that wall in place and that access to the backyard
5 can happen.

6 CHAIRMAN HOLTZMAN: Well, I think it is
7 rather interesting that we often deal with, and I
8 think correctly so, light and air is a serious
9 consideration that we try to take into account, and
10 we took into account in a very significant way that
11 previous application that we saw tonight was
12 initially rejected because of its proximity to a
13 neighboring building.

14 And now, all of a sudden, we want to
15 keep 12 foot high walls in the backyard, which I
16 must say I find to be rather hypocritical from, you
17 know, this whole thing.

18 I think the idea of keeping the fence
19 because it is also a nice benefit to the neighbors
20 that adjoin the property is nice, and it is a nice
21 consideration for the property owner, but I think it
22 being at six foot is a more appropriate thing when
23 you're talking about a solid masonry wall.

24 This is not even a wall where we have
25 seen in some of the more modern buildings that might

1 have some kind of a slat where light and air can
2 travel through it.

3 I think keeping the wall sounds like a
4 great idea. I personally think it should be at six
5 feet and meet our zoning code, so that this
6 applicant also doesn't have to request another
7 variance.

8 COMMISSIONER STRATTON: Well, my point
9 being if the intent of preserving the donut is to
10 keep a 40 foot structure out of that rear yard to
11 allow sunlight and light, I agree with you.
12 but if the intent is to preserve that space as
13 access for neighbors, I mean, we have the neighbors
14 here in front of us before this Board, and it is
15 their backyard that they want to preserve, I mean, I
16 think that we should take their opinions under
17 consideration.

18 CHAIRMAN HOLTZMAN: We should take
19 their opinions under consideration, and these are
20 the neighbors that are there living there today in
21 2016, and we should also be taking into
22 consideration the long-term impact of a 12 foot
23 masonry wall in the middle of the donut that we all
24 fight like heck to preserve, and every time we have
25 an opportunity to inch somebody's building back,

1 this Board is very aggressive about that --

2 COMMISSIONER JACOBSON: I think --

3 COMMISSIONER STRATTON: But, again, we
4 are not talking about a building. We're talking
5 about a --

6 MR. GALVIN: Don't interrupt the
7 Chairman --

8 COMMISSIONER STRATTON: -- a wall.

9 MR. GALVIN: -- it's not a good idea.

10 COMMISSIONER STRATTON: I agree with
11 you, Gary.

12 CHAIRMAN HOLTZMAN: Mr. Jacobson?

13 COMMISSIONER JACOBSON: I did just want
14 to add to the conversation that on a prior
15 application, specifically 502-510 Madison Street,
16 there was a very similar set of circumstances, where
17 there was -- I believe it was a former garage, and
18 the neighbors had put up gardening along the rear
19 wall of that. And in the resolution of approval, we
20 said that the existing 15 foot wall would be cut
21 down to approximately 12 feet and will need to be
22 stabilized.

23 CHAIRMAN HOLTZMAN: And in that case it
24 was a wall that was like a freestanding element,
25 where there was access also around the sides of the

1 wall. It did not have a corner that turned back
2 like in this, where they're creating -- there is an
3 "L" shape existing condition.

4 COMMISSIONER GRAHAM: Can I see the
5 picture of the wall?

6 CHAIRMAN HOLTZMAN: Yes. It is in your
7 planner's report.

8 COMMISSIONER GRAHAM: No, I know.
9 Wait -- I think you have the picture -- I don't have
10 the other --

11 VICE CHAIR MAGALETTA: Actually in the
12 other application --

13 (Commissioner Graham and Vice Chair
14 Magaletta speaking at the same time.)

15 CHAIRMAN HOLTZMAN: A two foot elbow.

16 VICE CHAIR MAGALETTA: And if it came
17 down, then they had to put it back up.

18 COMMISSIONER GRAHAM: So can I just ask
19 a question?

20 (Commissioners talking at once)

21 THE REPORTER: Wait. You all can't
22 talk at once.

23 CHAIRMAN HOLTZMAN: This one goes all
24 the way along the whole length of the property.

25 MR. GALVIN: Hold on.

1 COMMISSIONER GRAHAM: Can I ask a
2 question then?

3 So the concern -- I just want to know
4 is the concern of the neighbors that they created
5 this very pretty space here, and they don't want to
6 lose that pretty space, is that correct, because
7 they put a lot of effort into making that a nice
8 backyard?

9 THE WITNESS: Yes. And what I would
10 like to clarify is that that back wall does not run
11 28 feet across our backyard. I believe it goes --
12 look at the picture -- let's say 20 feet of it. The
13 other eight feet is taken up by the wooden slat wall
14 on the south side, and this is where I had asked you
15 whether we take that slat and we bring that to six
16 feet --

17 COMMISSIONER GRAHAM: This wall --

18 THE WITNESS: -- to get to the west
19 backyard, and on the north side we take it down to
20 the six feet, then basically you still have access
21 to the neighbor's yard on the west side, and so
22 basically you end up with a 20 foot wide wall --

23 CHAIRMAN HOLTZMAN: Mr. Nastasi, as the
24 architect on this job here, do you have any input or
25 dialogue for us from a special relations issue?

1 MR. NASTASI: What I was going to
2 suggest is I can talk to the building inspector, see
3 if we could preserve the brick wall for the 20 feet,
4 and in the last eight feet of width get something
5 that meets code and allows fire department access
6 into the backyard, so that the neighbors are happy
7 and everybody is happy, and more important we meet
8 the fire department access for the backyard.

9 If we can meet all of those conditions,
10 I think we should try to do that for the neighbors.

11 COMMISSIONER GRAHAM: Well, can you
12 change this, or you can put a door in here or bring
13 some of this --

14 MR. NASTASI: I don't think you need a
15 door for fire department access. You need six feet
16 in height max, and they will go over the fence.

17 COMMISSIONER GRAHAM: Okay.

18 Maybe this sounds stupid, but I'll just
19 go for it.

20 The brick wall is very pretty, but I'm
21 concerned about the other issue, about the light and
22 the air. By taking the brick wall down and putting
23 a wall that is more open, like we talked about,
24 light and air, but then replanting some of the ivy,
25 so that it still has the same effect, but it's not

1 the brick.

2 CHAIRMAN HOLTZMAN: I mean, I am sure
3 this applicant, if asked, would also --

4 COMMISSIONER GRAHAM: I think it's
5 beautiful, but --

6 CHAIRMAN HOLTZMAN: -- help out the
7 neighbors if there was a replanting issue.

8 COMMISSIONER GRAHAM: Right.

9 CHAIRMAN HOLTZMAN: If let's say as an
10 option to throw it on the table, is if the wall came
11 down to six feet across the board and the folks
12 needed a hand --

13 COMMISSIONER GRAHAM: Replanting --

14 CHAIRMAN HOLTZMAN: -- replanting or
15 doing something on their side, I would assume the
16 applicant would make that work.

17 THE WITNESS: Of course.

18 COMMISSIONER GRAHAM: Well, that would
19 make more sense to me. Okay.

20 CHAIRMAN HOLTZMAN: All right. That
21 wasn't easy.

22 Commissioners, any additional questions
23 about this wall?

24 I am not sure if this wall is resolved.

25 Mr. Matule, anything else for us? Do

1 you have any additional remarks?

2 MR. MATULE: No.

3 I guess to summarize the wall, as I
4 understand it, the 12 foot portion that goes across
5 the rear of the property goes for 20 feet, and then
6 there is an eight foot section that has a wooden
7 slat fence or something.

8 My understanding is that assuming the
9 building department agrees that wooden fence would
10 be replaced with a continuing masonry wall, but
11 would be only six feet high, so they have the fire
12 access.

13 COMMISSIONER GRAHAM: Maybe it
14 shouldn't be masonry.

15 MR. MATULE: We want to try to be a
16 good neighbor, but we also, you know, understand we
17 are at the -- I don't want to say mercy of the
18 Board, but maybe that's what I should say --

19 (Laughter)

20 -- and so, you know, we will try to be
21 good neighbors and make everybody happy, but you
22 have to tell us what you think.

23 CHAIRMAN HOLTZMAN: Mr. Magaletta, any
24 wall opinions that you would like to share?

25 VICE CHAIR MAGALETTA: I mean, call it

1 a wall, I call it a fence. Keeping the neighbors
2 happy, I think there's a limit to that. I think the
3 limitation on light and air, is that limited,
4 because it's only going to be 12 feet high, you
5 know, in the middle you are still going to have the
6 donut, and you're still preserving it. If you can
7 make it happen, make it happen.

8 CHAIRMAN HOLTZMAN: So the current last
9 conversation, Mr. Nastasi, can you just join us for
10 this also, is that across the rear of the property,
11 the rear of the property is 28 feet wide.

12 MR. NASTASI: Correct.

13 CHAIRMAN HOLTZMAN: There is a 29 foot
14 section that is approximately 12 feet high.

15 MR. NASTASI: Correct.

16 CHAIRMAN HOLTZMAN: Then there is an
17 eight foot, which you're going to put a new fence
18 in?

19 MR. NASTASI: Yeah. It's code
20 compliant, six feet high.

21 CHAIRMAN HOLTZMAN: And then on the
22 right-hand side, which is the north wall, that
23 currently has a brick wall on it also, but you are
24 going to knock that -- you're going to cut that
25 down --

1 MR. NASTASI: We'll lower that to six
2 feet --

3 CHAIRMAN HOLTZMAN: -- to six feet --

4 MR. NASTASI: -- and cap it with stone.

5 VICE CHAIR MAGALETTA: And also help to
6 stabilize the rear wall?

7 MR. NASTASI: Of course.

8 CHAIRMAN HOLTZMAN: Okay. So that's
9 where we are with that.

10 Any additional comments or questions
11 for that?

12 Okay. I think we are good.

13 Thank you very much, Mr. Menares.

14 Thank you.

15 CHAIRMAN HOLTZMAN: Okay.

16 All right. Mr. Matule, any closing
17 remarks?

18 MR. MATULE: Do we still have to have
19 public comment?

20 MR. GALVIN: We do.

21 (Laughter)

22 CHAIRMAN HOLTZMAN: Yes, I'm sorry.

23 MR. MATULE: I would prefer to reserve
24 my closing remarks until after the public comments.

25 CHAIRMAN HOLTZMAN: I'm sorry. Yes.

1 We are going to come back and do public
2 questions and opinions, but we are going to take a
3 quick five or ten-minute break here.

4 (Recess taken)

5 CHAIRMAN HOLTZMAN: Mr. Matule, are you
6 ready to continue?

7 Mr. Matule, are we still vacationing
8 over there, or let's get back on the program.

9 Aye, aye, sir.

10 MR. MATULE: Interesting comments.

11 (Laughter)

12 CHAIRMAN HOLTZMAN: Okay. We are back
13 on the record. We are going to open it up to the
14 public portion for questions, comments, opinions.

15 Ms. Fallick, would you like to start us
16 off?

17 The snacks are finished. Snack time is
18 over.

19 Yes, go ahead.

20 MS. FALLICK: What?

21 CHAIRMAN HOLTZMAN: Go ahead.

22 MR. GALVIN: Now raise your right hand.

23 MS. FALLICK: Oh.

24 MR. GALVIN: Do you swear or affirm the
25 testimony you are about to give in this matter is

1 the truth, the whole truth, and nothing but the
2 truth?

3 MS. FALLICK: Yes.

4 MR. GALVIN: All right. You may
5 proceed.

6 MS. FALLICK: Okay.

7 MS. FALLICK: Cheryl Fallick.

8 MR. GALVIN: Spell your last name.

9 MS. FALLICK: F-a- double l, i-c-k.

10 MR. GALVIN: Thank you.

11 MS. FALLICK: Cheryl first name.

12 204 Third.

13 The first thing I wanted to put on the
14 record, I know everybody knows this already came
15 before the Zoning Board --

16 MR. GALVIN: Time out for one second.

17 Just swallow for one second because the
18 court reporter is trying to like -- are you good?

19 MS. FALLICK: Okay. Yeah.

20 MR. GALVIN: Go ahead.

21 MS. FALLICK: This was before the
22 Zoning, and now it is here.

23 Around that time, and I am just putting
24 this on the record because everybody could already
25 probably already tell that I have been concerned

1 about the construction aspects of this, that I know
2 it isn't this Board, but I wanted it on the record.

3 They had to put a stop work order on
4 this building three times already.

5 The first time because they didn't
6 abate the building. The second time because of
7 this -- because I had said, the lot didn't have 90
8 or a hundred percent lot coverage, and I made a
9 stink because I have been looking at the backyard
10 for 34 years, and I knew that it didn't have 90 or a
11 hundred percent lot coverage, no matter how many
12 times they said it.

13 And then the third time, and this is
14 secondhand, but -- so I can't say for sure this is
15 what I know, I was told this secondhand, that they
16 were over-excavating the building, so that is why I
17 am so concerned because over-excavating, and not
18 being an architect sounds to me like they were
19 digging a little too deep and maybe risking the
20 buildings on either side, so I am very, very worried
21 about this.

22 I know that is not kind of what you
23 hear, I just wanted to put that on the record.

24 The second thing is: The wall -- I
25 know that you discussed it, and I don't know what

1 you are going to rule. These folks are obviously
2 comfortable leaving what is there, but I do have to
3 say that to talk about light and air on a 12-foot
4 wall when we are putting a 43-story building that is
5 really blocking the light and air is the most
6 ludicrous thing I ever heard. Ludicrous.

7 But there is nobody getting trapped in
8 their yard. There is an eight foot wood fence, and
9 they said that they could do something with that to
10 make it code, but it really isn't about light and
11 air so much as their privacy.

12 I think it is also ludicrous to say we
13 have to think about the people who are going to live
14 here ten or twenty years from now.

15 We also really have to think about the
16 people who live here now, and I am in a joint --
17 like this building right here, 300 Garden Street, is
18 a laundromat, that is actually a 100 percent lot
19 coverage building. It is actually like Building A
20 and B, but they're actually connected on the inside,
21 the first building on Third Street, and that is me.

22 So my back window to look out over the
23 yard of what is it, 302-304 Garden. I do want to
24 say that I appreciate the fact that we are now
25 talking about 60 percent lot coverage, so I am not

1 saying too much about that. There's a tree.

2 Are you listening?

3 MR. GALVIN: Yes, ma'am.

4 MS. FALLICK: Okay. It is not my
5 taste. I did kind have some -- it is confusing to
6 me that we are being told that this is -- we are
7 being given something because of retail on the
8 ground floor on this new building because that is
9 what was there.

10 To me, it is a big tall building, so it
11 is blocking a lot of light and air in yards,

12 The gentleman who left early, he is in
13 208, and the building that is there now barely, it
14 is going to be torn down, is probably about the
15 height of this building right here, this gray
16 building.

17 This is taller -- with the exception of
18 this building that you see, the rest of this block
19 is very low rise. So this is an oddity, and this is
20 the corner, and now this is like let's start
21 destroying the character of that lot by the height.

22 I know you can't do anything about it.
23 You know, like I said, it is not really in the
24 character of the building, but I have been to -- of
25 the street -- of the existing street scape, but I

1 have been to enough Zoning and Planning Board
2 meetings to know that the next time somebody comes
3 and they want to make this building really big and
4 tall, or the one here, or the one here, or the one
5 here, they are going to go, "Oh, but it matches the
6 character of the street," and they're going to point
7 to that, and that is what is happening.

8 So I don't know how much that is on the
9 Planning Board side, but that is one hell of a tall
10 building, and it is five stories, you know.

11 And I saw a Board Member, Councilman
12 Doyle, shaking his head when Dan Tumpson was up here
13 saying that the reason the zoning was rounded up to
14 four was because people were losing the flood plain,
15 the lower floor of their building, the garden level,
16 the street level because of the flood plain.

17 That might not have been the only
18 reason, but that was certainly discussed at the
19 Council.

20 And then the last thing I want to say
21 is, and, again, it doesn't seem like it is this
22 builder or this developer, but climate change,
23 notwithstanding I think our flood zoning -- our
24 flood ordinance or whatever it is -- is like
25 absurdly hysterical, and to risk really old

1 buildings by telling somebody to drive
2 unnecessarily -- on unnecessarily pilings into the
3 yard, suggesting that where you might actually put
4 other buildings at risk is absurd.

5 I lived there during Sandy. The
6 building that is here that is going down did not
7 flood.

8 This building did not flood.

9 The building I live in did not flood.

10 The folks who were here with the wall,
11 their building did not flood.

12 This building did not flood.

13 Those two below ground units flooded.

14 So let's not be hysterical here,
15 because none of these buildings flooded.

16 I think that is everything that I have
17 to say.

18 Thank you.

19 It's too tall for me.

20 CHAIRMAN HOLTZMAN: Dan?

21 MR. TUMPSON: Okay. Sorry, I was
22 saying stuff --

23 MR. GALVIN: No. You are fine. You go
24 now.

25 Raise your right hand.

1 CHAIRMAN HOLTZMAN: Take your time.

2 MR. GALVIN: Do you swear or affirm the
3 testimony you are about to give in this matter is
4 the truth, the whole truth, and nothing but the
5 truth?

6 MR. TUMPSON: Yes, I do affirm that.

7 MR. GALVIN: Thank you.

8 And re-spell your last name again.

9 MR. TUMPSON: Daniel Tumpson,
10 T-u-m-p-s-o-n.

11 Okay. Well, first of all, I allude
12 back to what I was discussing earlier, which is the
13 fact that the previous zoning ordinance had a limit
14 of three stories, and in my understanding from being
15 at the hearings for the new zoning ordinance upon
16 which this hearing is based was that the reason it
17 went to 40 feet and four stories was to deal with
18 the fact that there was --

19 CHAIRMAN HOLTZMAN: No --

20 MR. TUMPSON: -- above flood plain --

21 CHAIRMAN HOLTZMAN: -- but you also
22 agree that you know the word "stories" is removed
23 from that.

24 MR. TUMPSON: Yes. You are right.

25 Okay. When I say four stories, I

1 mean --

2 CHAIRMAN HOLTZMAN: Well, it is not
3 "Stories." It is 40 feet.

4 MR. TUMPSON: It is 40 feet, but I am
5 saying four stories can be fit into 40 feet now. It
6 used to be three stories was the limit.

7 So the number of stories permitted was
8 extended to four. That is what I am getting at.

9 Now, the reason that I understand that
10 that was done, and that is above base flood
11 elevation was because that allows people to make up
12 for a loss of having property below base flood
13 elevation that when they rebuilt, they were not
14 allowed to build below base flood elevation.

15 Now, obviously what we are experiencing
16 in this case here is a few of what appear to be
17 minor variances, and in fact, they are so minor,
18 they are only ten percent beyond what is permitted,
19 and therefore, are C variances, which is why it is
20 before you.

21 The reason that's happening is because
22 of the fact that there are obviously ways that they
23 can manipulate to make it a very small variance.

24 Here we went from 40 feet to 43 feet 11
25 inches, and that -- but that translates into going

1 to five stories.

2 The four foot base flood elevation,
3 plus the 25 inches that you have got because the
4 height of the stories was reduced from ten feet to 9
5 feet 7 inches, that is 25 inches, and then subtract
6 that from 50 feet, and you get down to 43 feet 11
7 inches, and that allows you to come before this
8 Board and get a C variance for height.

9 My point is: I think that this is an
10 example, a good example of the ordinance that allows
11 the standards for increasing height, density and so
12 forth, those criteria have weakened to the point
13 where now people are building five-story buildings
14 when three stories was the limit.

15 So what I am saying is you have to
16 be -- given the fact that the law has been weakened
17 in this way, you can no longer just say, oh, all we
18 want is a three foot 11 inch variance, and we just
19 want to wiggle a little five inches off the -- those
20 things are being used to translate the height in
21 stories of this building to five stories and
22 increase the density of our city, which is lower
23 than the -- so this is something that you won't have
24 to take into account, that even though the
25 individual variances may look minor, in fact,

1 because of the changes in the zoning law and the way
2 the law is structured now, and also this thing that
3 given 40 foot four stories above base flood
4 elevation, here we also have used the fact that if
5 it is commercial, then you can build below base
6 flood elevation.

7 So if you add all of these things
8 together, we now have a five-story building. It is
9 an increase in density, which is, in my opinion,
10 detrimental to the city. We are increasing the
11 density.

12 So I hope that you will take into
13 account the fact that even though these variances
14 look minor and are technically so minor, that only C
15 variances are required, that nevertheless the total
16 consequences of this is that we now have a
17 five-story building, and we have to worry about the
18 precedence that will be set if this goes forward and
19 this is approved, and this will happen over and over
20 again. It is a new way to jack up the height of our
21 town in a way that's detrimental to the people.

22 Thank you.

23 CHAIRMAN HOLTZMAN: Thank you, Dan.

24 Anyone else wish to speak?

25 Sure. Come on up.

1 MR. GALVIN: Raise your right hand,
2 please.

3 Do you swear or affirm the testimony
4 you are about to give in this matter is the truth,
5 the whole truth, and nothing but the truth?

6 MS. ONDREJKA: I do.

7 MR. GALVIN: Thank you.

8 MS. ONDREJKA: Mary Ondrejka. That's
9 O-n-d-r-e-j-k-a.

10 159 9th Street.

11 I was also at the Zoning Board that
12 this lot came forward, and I give a clear message,
13 if you can't pass it at the Zoning Board, you got to
14 come to the Planning Board.

15 I do agree that there will be
16 precedence here, which I think Jim Doyle mentioned
17 that on this Board.

18 If you can't get it one way, you can
19 figure out another way to get one of those tall
20 buildings.

21 What is happening all over town is
22 panic because of the flooding, which I agree with
23 Cheryl on the -- they say everything floods, and it
24 does not. But there is this hysteria that caused
25 the changing of the law because a few people, yes,

1 did have issues because they were in low lying
2 areas. We had an unusual storm that will most
3 likely never happen again in our lifetime, so we are
4 now changing the town for this type of structure.

5 It is a large building over the three
6 stories. We are not getting any benefit from two.
7 Two families will live there, and they can't even
8 park their cars.

9 Now, I don't know how long those kind
10 of people will come into town, and the retail, and
11 you know, they always put retail in these buildings,
12 and they are not much of a benefit to us. But, once
13 again, that is what happens.

14 As far as the pilings that do go into
15 the ground, my understanding is now they have a
16 better way of doing it, and I only hope that they
17 continue this with an auger type instead of the
18 pounding because buildings are very fragile all
19 around. And apparently when you are going up so
20 high now, you need to do the pilings everywhere, so
21 everybody is at risk unless they are done carefully
22 without the vibration, which I was told that they
23 do, and my understanding is they will do it on this
24 building, so that I will be glad to hear.

25 You know, I can't stop it. I am sorry

1 to see it. It is just my opinion. The town is
2 getting very dense, and you all know it, and by
3 going up higher, it does jeopardize what was once
4 there because the building that is in between there
5 will go, too, and that will go up high, and it has
6 got the precedence from this new building because it
7 already had another one, but we got the excuses of
8 the flood.

9 And I am so tired. I know a lot of
10 times you get tired of hearing people say the same
11 thing. The one thing that I hate being crammed down
12 my throat is the flooding. It is just -- it is
13 going to be moot anyway in the end.

14 So, like I said, I can't stop it. I
15 don't like it. But they just went to another Board,
16 and they are going to get it passed.

17 Thank you.

18 CHAIRMAN HOLTZMAN: Okay. Any other
19 members of the public?

20 Mr. Evers.

21 MR. GALVIN: Now you can raise your
22 right hand.

23 Do you swear or affirm the testimony
24 you are about to give in this matter is the truth,
25 the whole truth, and nothing but the truth?

1 Judgment.

2 MR. EVERS: I do.

3 My objections are not addressed so much
4 towards the building as they are towards the process
5 that is going on here and what looks to me like a
6 repetition of a series of errors that these
7 quasi-judicial bodies make, both in terms of the
8 bodies collectively and their tendency to rely on
9 professionals, who whatever their good faith,
10 nonetheless overstep their authority in their areas
11 of expertise.

12 A perfect example of that could be
13 drawn from the Zoning Board, where the zoning
14 officer has been repeatedly called down for
15 exceeding her authority, okay?

16 The questions I was interrupted in
17 asking went towards the affordable housing
18 ordinance, which similar experts decided it was not
19 legal or applicable, but the Appellate Court
20 disagreed and said they were wrong, and those
21 matters are still in litigation.

22 For many, many years the practice of
23 the Zoning Board and the Planning Board when it
24 periodically heard density variances, even though it
25 wasn't supposed to, ruled that the common practice

1 according to the plain language of the zoning code
2 was to round all density calculations upwards until
3 the judge disagreed with them.

4 Now, I came down here tonight to raise
5 a simple question, which is: Why in an arguably
6 gray area the Planning Board wants to put itself in
7 the position of risking, exceeding its authority
8 when it doesn't have to, okay?

9 In a gray area, in fact, Dennis Galvin
10 is famous and has an article published concerning
11 what happens in gray areas. You always, and he can
12 certainly reply and tell me if I quoted him wrong,
13 your default is to pass it to the higher authority.

14 So if you are a municipal officer, like
15 a zoning officer, for example, and it is not
16 entirely clear whether you do or don't have the
17 authority, you refer it up to the line in that case
18 to a Zoning Board, and similarly there is no
19 legitimate question here, I would contend, as to
20 whether this should be before this Board or not.

21 And by way, I don't particularly object
22 to the building. It seems --I don't like four
23 stories either. I think that was a big error on the
24 part of the City Council, but you are not the City
25 Council. You are the Planning Board, and they have

1 the right to build that building.

2 That said, one of the reasons this gray
3 area that I am bringing up matters is I would
4 contend that -- and keep in mind, this is the same
5 applicant that was swatted down for making claims
6 regarding lot coverage, that the other land use
7 board disagreed with, okay?

8 In this case, I would argue that they
9 are in effect venue shopping. They have adjusted
10 this application to make it fit within the
11 parameters of the Planning Board's venue, okay?

12 So what I am telling you or suggesting
13 to you is you have a gray area regarding this
14 density issue.

15 And, by the way, if they were heard by
16 the Zoning Board, I couldn't imagine, even somebody
17 as disagreeable as me, saying you can't have your
18 three-tenths of a -- or 3 percent of, you know,
19 leeway to get three units in there. That is not the
20 issue.

21 The issue is to avoid the continual
22 repetition by these quasi-judicial bodies and by the
23 professionals employed by them to exceeding their
24 authority rather than simply playing it safe and
25 deferring it to an authority that there is no

1 question they would have jurisdiction over the
2 matter. All right?

3 I think these are sound things that
4 would save you guys a whole bunch of litigation,
5 grief and pain. There are, for example, 450 units
6 in town that are still in litigation five years
7 after the process started, and it would seem to me
8 that it would be in the interest of the Planning
9 Board, whatever the other merits of this project, to
10 take a conservative approach and encourage everybody
11 to adhere to the straight and narrow of the law.

12 Thank you.

13 CHAIRMAN HOLTZMAN: Any other members
14 of the public?

15 Okay. We will close the public
16 portion.

17 Commissioners, I would like to start
18 off on something.

19 I think there is a fair debate about
20 the methodology of getting X --

21 MR. GALVIN: Well --

22 CHAIRMAN HOLTZMAN: -- I'm sorry. Go
23 ahead.

24 MR. GALVIN: Mr. Matule said he wanted
25 to wait until the public was done.

1 CHAIRMAN HOLTZMAN: Oh, I'm sorry.

2 He's sitting down. I almost lost him there.

3 (Laughter)

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

5 MR. GALVIN: It wasn't like he jumped
6 up and was waiving his hands.

7 CHAIRMAN HOLTZMAN: No, no. I'm sorry
8 about that.

9 Go ahead, Mr. Matule.

10 MR. MATULE: I was trying not to
11 interrupt. I just have a few closing comments.

12 As Mr. Ochab testified, the lot size
13 and the lot depth issues are preexisting conditions.

14 I do just have to say on the record I
15 object to the insinuation that because the applicant
16 has tried to make this a more conforming
17 application, that somehow that is a bad thing and
18 it's forum shopping.

19 I mean, really it is complicated. It
20 is not simple. It is not black and white, and we
21 are trying to balance a lot of competing interests
22 here, and I appreciate Mr. Doyle's comments that we
23 could just simply take one residential floor off the
24 building, and all the problems would go away. But
25 in the real world, if something has to give, what is

1 going to go is the commercial space on the ground
2 floor. It's that simple. That is really what's in
3 play here at the end of the day.

4 We think that by trying to shave
5 corners here and shave corners there, we are trying
6 to get everything into one package in a meaningful
7 and thoughtful way that worked for everybody and is
8 a more beneficial project for the city.

9 The current use of the property is two
10 residential and one commercial. I know we could go
11 on ad infinitum about whether it's 91 percent lot
12 coverage or 90 percent lot coverage or 96, or as my
13 client alleged, a hundred, but the bottom line is we
14 are now down to 60, which is a substantial
15 difference.

16 We are not at the Planning Board
17 because we were trying to forum shop. We are at the
18 Planning Board because we have modified the project,
19 so that the variance relief we are asking for is
20 much less severe, and the lift isn't as high, and
21 the standards are not as high.

22 This is a classic C-2 flexible
23 variance. You know, is the benefit of what we are
24 proposing here, does that outweigh any detriment?

25 I would venture to say in the context

1 of the neighborhood the fact that we are three feet
2 11 inches higher than the ordinance permits, I'm not
3 going to say it is de minimus, but it's pretty
4 inconsequential especially relative to the
5 surrounding buildings, which is the argument Mr.
6 Ochab would be making, if we were in front of the
7 Zoning Board asking for a D height variance.

8 The standard there is not as high as a
9 D-1 use variance. It's more like a conditional use
10 variance standard, so I just have a problem with the
11 whole implication that we are trying to do something
12 underhanded here.

13 We are really trying to come up with a
14 better solution for you and for us and for the city,
15 and having that commercial space down on the ground
16 floor really is a better alternative, and again, the
17 implication that somehow manipulating the ordinance
18 to get this fifth story when we really only should
19 have three, it has no foundation in fact or in what
20 the ordinance says.

21 There are no stories any more. The
22 ordinance says we can have 40 feet above the design
23 flood elevation, and oh, by the way, if the
24 ordinance otherwise permits, in that space that's
25 below the design flood elevation, you can have

1 commercial space, and the ordinance does otherwise
2 permit, and that is why we are asking for it.

3 So having said that, I would like you
4 to pass the application subject to whatever your
5 pleasure is for the rear wall.

6 CHAIRMAN HOLTZMAN: Thank you, Mr.
7 Matule.

8 I think that Mr. Doyle brings up some
9 very good and considerate points with regard to how
10 many layers you get in a cake. And if somebody was
11 attempting to get four apartments in this building,
12 I would be very inclined to support the disagreement
13 part of your argument.

14 On the other hand, there are two
15 apartments in this building, and I think that that
16 is the significant difference in terms of it does
17 not increase the apartment count that has existed
18 here. It doesn't increase the -- you got one retail
19 store still and two apartments. Granted, these are
20 obviously larger apartments than what is currently
21 existing or existed, but we still only have two
22 apartments. So it is another one of those abstract
23 arguments about what density means in terms of
24 apartment size and things like that.

25 I think it is considerate that the

1 building adheres to our lot coverage. I think it is
2 very important, and I will reiterate again, to keep
3 the street scape activated with retail spaces or
4 other types of things.

5 I know when they first had their first
6 work session with us with the three foot bay
7 windows, that I think they already knew that they
8 had probably overreached. We didn't offer an
9 opinion on it previously, so it was kind of
10 interesting that they came back and made that
11 adjustment already, which then eliminated the
12 outdoor deck area, balcony area, whatever you want
13 to call it, so I think that is a good adjustment, so
14 that that's not a consideration.

15 So I think it is a rather creative way
16 to get the most out of the space that they are
17 allowed, but that for all intents and purposes
18 within the boundaries of this Board's jurisdiction,
19 they have shoe horned a whole heck of a lot of
20 building into that, and I think the benefits
21 outweigh the relatively small variance request in my
22 opinion.

23 Anybody else?

24 COMMISSIONER GRAHAM: Can I just -- I
25 just want to say I agree with the members of the

1 public about density concerns in this town. I think
2 it is a real problem, but to address that, we are
3 going to have to change the zoning code, and we
4 can't change that here, as much as I wish we could,
5 but I wish that that would be something that the
6 city would take up and take it up soon.

7 The problem is that, you know, if we
8 didn't look at this building, and they didn't come
9 to the Planning Board or the Zoning Board or
10 whatever, they could go build a building as of right
11 up to 40 feet without any of your comments being
12 relevant, without any of our comments, you know,
13 being taken into account, without the wall being
14 carefully looked at and preserved as much as
15 possible. All of that would be irrelevant, and they
16 would just get their building and do whatever they
17 want up to 40 feet. So I think that we have to try
18 to balance, you know, what we can and cannot do
19 here.

20 As much as I am concerned about
21 density, I do agree with the Chair that there are
22 still two units here, and that's better than four or
23 five, but, you know, maybe more people in those two
24 buildings, and the parking is an issue, but
25 that's -- and I also think it is important to say

1 something about the flooding. It is going to happen
2 again.

3 I am not a climate scientist, and I
4 don't think that any one of you are either. It is
5 going to happen again. It is going to happen within
6 our lifetime more than likely, so to not be worried
7 about the flooding in your own little neighborhood
8 to me is, that is not thinking about the whole of
9 the city, and I think that we have to do that, and
10 flooding is a major concern in this town, especially
11 in the back where it's going to be coming up. It's
12 not the rain coming down necessarily. It's what is
13 coming up.

14 So that's my comments.

15 CHAIRMAN HOLTZMAN: Thank you,
16 Commissioner.

17 Anyone else care to have an opinion?

18 Mr. Peene?

19 COMMISSIONER PEENE: Gary, I concur
20 with a lot of what you said, and I can't understate
21 the importance of having an upgraded, newer, fresher
22 retail location in a residential neighborhood. A
23 lot of them, including on Bloomfield and Garden, are
24 antiquated. They are not desirable towards the
25 marketplace right now, and anything that we can give

1 our residents, whether uptown or downtown, within
2 walking distance, I think is a win for the
3 community.

4 CHAIRMAN HOLTZMAN: Thank you.
5 Mr. Doyle?

6 COMMISSIONER DOYLE: Well, to Mr.
7 Matule's point, I want to make it clear that I, and
8 I somewhat regret whatever term I used for rigging
9 or something, that I am not saying -- I am not
10 intending to disparage, you know, as I mentioned to
11 Commissioner Graham earlier, there is nothing
12 untoward that you are doing here.

13 You are parsing through the ordinance
14 and figuring out a creative way to apply for this
15 relief is entirely appropriate. You know, it is
16 above-board, so I didn't mean to imply that you are,
17 you know, sneaking around the back door procedure or
18 whatever.

19 As far as the density, I mean, I keep
20 hearing it, and I don't know whether you mean
21 density or bulk, because every time I hear certain
22 members of the public talking about density, I
23 assume you are not talking about the number of
24 units. You are talking about the bulk, the area of
25 space which provides the larger the area, the more

1 human beings will be in this town --

2 CHAIRMAN HOLTZMAN: Perhaps square
3 footage is a better term.

4 COMMISSIONER DOYLE: Yes.

5 So the density has not changed and the
6 density won't change.

7 I am concerned, and this has nothing to
8 do with this application, about the number of
9 four-bedroom units over, and over, and over that
10 we're seeing --

11 COMMISSIONER GRAHAM: Me, too.

12 COMMISSIONER DOYLE: -- and it's a
13 problem, and if the pendulum had swung in the other
14 direction, I feel that that is something that I hope
15 we can address, "we", the City Council.

16 You know, the flooding, 80 percent of
17 the city was under water, so I think it's
18 insensitive, if nothing else, to say that it is not
19 really an issue.

20 But as far as getting to the point, I
21 appreciate the candor of both the planner and the
22 architect in saying, you know, 9 feet 7 inches is
23 what will get us here essentially as opposed to
24 somewhere else.

25 I was initially -- Mr. Matule made very

1 good points at the end, but I still think that when
2 the ordinance was changed from 40 feet or three
3 stories to 40 feet, it was not intended, at least in
4 some people's mind, that every application would be
5 42 feet or 43 feet or 41 feet, so I feel somewhat
6 strongly just sticking to the ten foot.

7 The variance for that, there was no
8 testimony that I heard to justify it, other than to
9 be in one forum versus another, and so I am having a
10 hard time seeing, you know, what detriment or what
11 benefit allowing a variance would apply to that
12 somewhat seemingly insignificant portion of the
13 code.

14 CHAIRMAN HOLTZMAN: Thank you.

15 Anyone else?

16 COMMISSIONER STRATTON: Gary, in my
17 opinion, the benefits of an activated street scape
18 in an acoustic flood plain is a challenging issue
19 both from a compliance standpoint for the existing
20 regulations that are in place for occupying space
21 below the design flood elevation and administering a
22 zoning code that was changed to try and accommodate
23 the activation of the street scape.

24 For that reason I believe that the
25 administration has taken a very measured approach to

1 flood rescue management, where you have absent a
2 comprehensive solution, you have to recognize the
3 risk that comes with living in a place like Hoboken
4 and appropriately designed buildings and streets and
5 neighborhoods because of that, so for that reason, I
6 think that the benefits of this project outweigh the
7 detriments because of how we are -- or how this
8 Board is reviewing this project, and what we are
9 getting, and what the trade-offs are, which is the
10 activation of the street scape in a unique -- I
11 don't necessarily believe this would be appropriate
12 everywhere in town. I don't believe that this is
13 precedence setting. I don't believe that by acting
14 upon this application, we are opening door for
15 additional variances or any of those other things,
16 because I think that we have to review this on a
17 case-by-case basis.

18 And in this instance, I prefer
19 commercial space on the ground floor versus empty
20 space or an unactivated street scape.

21 CHAIRMAN HOLTZMAN: Thank you.

22 Mr. Galvin, you have some comments?

23 MR. GALVIN: Yes.

24 You know, coming into tonight, I wasn't
25 giving density any consideration whatsoever. You

1 know, we didn't have it listed as a variance, and if
2 I thought that there was a density or a height
3 variance, I would absolutely instruct you not to
4 proceed on this and to do exactly what has been
5 referenced, which is to take a more conservative
6 approach and allow it to go to the Zoning Board and
7 let them make the call on this.

8 I am aware of the fact that the
9 Assignment Judge no less has made a ruling on part
10 of this section that says when we come up with a
11 fraction, and it is less than the whole, we round
12 down, not up.

13 With that said, Section 3 does contain
14 the language that says: Any fraction shall be
15 equivalent to a whole dwelling unit.

16 It is my opinion that the ordinance,
17 while not perfect, is somewhat clear that you are
18 supposed to do the mathematical calculation that
19 Dave has done here, and that that commercial space
20 gets that benefit of the doubt because any fraction
21 shall be the equivalent to a whole dwelling unit,
22 which is different than what happens in Sections 1
23 and 2.

24 Now, I will say this: I might be
25 wrong. I can't be right every single time I give

1 advice. I do my best. I think that this is a solid
2 view of the ordinance, and I suggest that you go
3 forward.

4 The other thing is that I think both
5 Boards have made significant progress in trying to
6 improve the development process in Hoboken, and I
7 think we have acquitted ourselves well. We may have
8 made some mistakes, but I think on a whole during
9 this administration, we really have been conscious
10 of what the ordinance is or improving the ordinance,
11 and there is still a lot of room in this ordinance.
12 There are a lot of things in this ordinance that
13 could be done better, and hopefully we will achieve
14 it.

15 Thank you for your patience.

16 CHAIRMAN HOLTZMAN: Thank you, Mr.
17 Galvin.

18 Do you have a couple of conditions that
19 you have --

20 COMMISSIONER JACOBSON: Can I just --

21 CHAIRMAN HOLTZMAN: Oh, I'm sorry, Mr.
22 Jacobson.

23 COMMISSIONER JACOBSON: -- could I just
24 opine on my thoughts on the wall?

25 CHAIRMAN HOLTZMAN: Sure, absolutely.

1 Go ahead.

2 COMMISSIONER JACOBSON: I am fully
3 supportive of the reuse of that wall. Although we
4 are not, you know, an architectural review board and
5 should not be, one of the things we strive for is
6 some variety in the design of our buildings, and
7 applying the same thought, we shouldn't have
8 cookie-cutter backyards. And where there is a
9 12-foot wall that is historic brick that has been
10 used by some of the neighbors, that they wish to
11 continue using it, we can use it a way that can be
12 made compliant with the standard for fire access, I
13 am wholly supportive of that.

14 CHAIRMAN HOLTZMAN: Thank you.

15 Excellent question -- excellent
16 remarks.

17 Mr. Galvin, your conditions?

18 MR. GALVIN: Here we go: The plan is
19 to be revised to show the front bay windows are to
20 be reduced to 12 inches from 30 inches.

21 Two: The applicant is to meet or
22 exceed the NHSA standard. The applicant agreed to
23 work with the Board's engineer to maximize
24 stormwater retention on site.

25 Three: The rear masonry wall is to

1 remain as it exists at 12 feet in height for a
2 distance of 20 feet. The balance of the wall is to
3 be compliant with the ordinance at a height of six
4 feet provided the fire officials permit this
5 configuration.

6 CHAIRMAN HOLTZMAN: Do you want to add
7 something to that, Tom?

8 COMMISSIONER JACOBSON: Well, I was
9 just going to say the actual measurement I don't
10 think has been fully confirmed.

11 CHAIRMAN HOLTZMAN: That's correct.

12 COMMISSIONER JACOBSON: The denial said
13 approximately two times the current maximum, so --

14 CHAIRMAN HOLTZMAN: Why don't we be
15 specific here.

16 The rear masonry wall, meaning the
17 western masonry wall, is approximately -- is to
18 remain at approximately -- at its current height,
19 its existing condition.

20 COMMISSIONER JACOBSON: Yes.

21 MR. GALVIN: Oh, okay.

22 CHAIRMAN HOLTZMAN: Right. We don't
23 know that it is at exactly 12 feet. That's the
24 problem, so let's not say it is 12 feet.

25 COMMISSIONER JACOBSON: And then for

1 the remainder --

2 MR. GALVIN: See, I was looking to chop
3 it down to 12 feet, if it was higher.

4 (Laughter)

5 MR. NASTASI: I would say no more than
6 12 feet.

7 MR. GALVIN: But no more than 12 feet.

8 COMMISSIONER DOYLE: I thought the
9 whole point is it has ivy growing all over it, and
10 if you take two feet off the top, you're going to --
11 why don't we just leave it the way it is, and let
12 the fire department --

13 CHAIRMAN HOLTZMAN: Leave it the way it
14 is. Agreed.

15 MR. GALVIN: Leave it the way it is,
16 everybody agrees?

17 COMMISSIONER MC KENZIE: Yes.

18 CHAIRMAN HOLTZMAN: If there is a major
19 problem with construction or anything else, I am
20 sure you folks will come back and revisit us.

21 COMMISSIONER JACOBSON: And then I
22 think the second part would be in compliance --

23 CHAIRMAN HOLTZMAN: Let's be specific
24 about that the northern wall is to be reduced to six
25 feet.

1 COMMISSIONER JACOBSON: Maximum of six
2 feet?

3 CHAIRMAN HOLTZMAN: Maximum. That way,
4 at least that wall we know is compliant.

5 COMMISSIONER MC KENZIE: Compliant.

6 MR. GALVIN: Right.

7 CHAIRMAN HOLTZMAN: Right.

8 MR. GALVIN: On one side.

9 Provided the fire officials permit this
10 configuration.

11 CHAIRMAN HOLTZMAN: Okay. Do you want
12 to just read that again, just so we memorialize it?

13 MR. GALVIN: The western masonry wall
14 is to remain at its current height for a distance of
15 20 feet.

16 The northern wall is to be reduced to a
17 maximum height of six feet, provided the fire
18 officials --

19 CHAIRMAN HOLTZMAN: Permit this
20 configuration.

21 MR. GALVIN: -- right.

22 CHAIRMAN HOLTZMAN: Okay.

23 Is there a motion to accept this
24 application with the three conditions as read by Mr.
25 Galvin?

1 COMMISSIONER PEENE: So moved.

2 CHAIRMAN HOLTZMAN: Motion to accept.

3 Is there a second?

4 COMMISSIONER MC KENZIE: I second.

5 CHAIRMAN HOLTZMAN: Caleb seconds it.

6 Pat, please call the vote.

7 MS. CARCONE: Commissioner Magaletta?

8 VICE CHAIR MAGALETTA: Yes.

9 MS. CARCONE: Commissioner Stratton?

10 COMMISSIONER STRATTON: Yes.

11 MS. CARCONE: Commissioner Doyle?

12 COMMISSIONER DOYLE: Yes.

13 MS. CARCONE: Commissioner Graham?

14 COMMISSIONER GRAHAM: Yes.

15 MS. CARCONE: Commissioner McKenzie?

16 COMMISSIONER MC KENZIE: Yes.

17 MS. CARCONE: Commissioner Peene?

18 COMMISSIONER PEENE: Yes.

19 MS. CARCONE: Commissioner Jacobson?

20 COMMISSIONER JACOBSON: Yes.

21 MS. CARCONE: And Commissioner

22 Holtzman?

23 CHAIRMAN HOLTZMAN: Yes.

24 Thank you, gentlemen.

25 MR. MATULE: Thank you very much. I

1 appreciate your time.

2 CHAIRMAN HOLTZMAN: Is there any other
3 business for the Board this evening?

4 If there is none, is there a motion to
5 close our meeting?

6 COMMISSIONER GRAHAM: So moved.

7 COMMISSIONER PEENE: Second

8 CHAIRMAN HOLTZMAN: All in favor?

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

11 CHAIRMAN HOLTZMAN: Thank you.

12 (The meeting concluded at 11 p.m.)

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C E R T I F I C A T E

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

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

s/Phyllis T. Lewis, CCR, CRCR

 PHYLLIS T. LEWIS, C.C.R. XI01333 C.R.C.R. 30XR15300
 Notary Public of the State of New Jersey
 My commission expires 11/5/2020.
 Dated: 9/8/16
 This transcript was prepared in accordance with
 NJAC 13:43-5.9.