

City Hall
3715 Palisade Avenue
Union City, New Jersey

M E M B E R S P R E S E N T:

M E M B E R S A B S E N T:

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

TOMAS R. PANEQUE, ESQ.,
Board Attorney

DAVID SPATZ, Consultant
Community Housing and Planning Associates

A P P E A R A N C E S:

J. ALVARO ALONSO, ESQ.,
Attorney for Applicant, Gloria Restrepo

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1 MS. DILLON: Okay, Carlos, whenever you're
2 ready.

3 THE SECRETARY: Okay. May I have your
4 attention, please?

5 Please take notice that on Thursday,
6 February 11, 2016, at six p.m., a regular meeting
7 is scheduled for the Union City Zoning Board of
8 Adjustment to be held in the Municipal Chamber,
9 located on the second floor, 3715 Palisade
10 Avenue, Union City, New Jersey.

11 Can everybody kindly rise to salute the
12 flag, please?

13

14 (Whereupon, the Pledge of Allegiance was
15 said by all.)

16

17 THE SECRETARY: Thank you.

18 Notice of this meeting has been provided,
19 as follows:

20 Notice of this meeting setting forth the
21 time, date, location, and the agenda to the
22 extent known, was sent to The Jersey Journal, The
23 Record, and The Hudson Reporter, has been posted
24 on the bulletin board in the City Hall, and has
25 been made available to the public in the Office

1 of the Municipal Clerk.

2

3 **ROLL CALL:**

4

5 THE SECRETARY: Roll call for tonight's
6 meeting.

7 Andres Garcia? Absent.

8 Victor Grullon?

9 VICE CHAIRMAN GRULLON: Here.

10 THE SECRETARY: Margarita Gutierrez?
11 Absent.

12 Miguel Ortiz?

13 MR. ORTIZ: Present.

14 THE SECRETARY: David Pressey?

15 MR. PRESSEY: Here.

16 THE SECRETARY: Harlenny Javier? Absent.

17 Khaled Dardir?

18 MR. DARDIR: Here.

19 THE SECRETARY: John Medina? Absent.

20 Joseph Bonacci?

21 MR. BONACCI: Here.

22 THE SECRETARY: Elisa Flores? Absent.

23 Peter Doumas?

24 MR. DOUMAS: Here.

25 THE SECRETARY: Let the record indicate

1 that six Board members present. So, we have a
2 Board made up of six members to get this as a
3 full quorum to establish any decisions.

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1 **RESOLUTION:**

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3 (1) 2415-2417 Central Avenue, Block 135, Lots
4 19 & 20. Proposed poultry and fish market at
5 existing building. Application was denied on
6 12/10/2015.

7

8 THE SECRETARY: On tonight's agenda, we are
9 going to the first Resolution, and Mr. Paneque, I
10 think you have to --

11 MR. PANEQUE: Yes.

12 THE SECRETARY: -- recuse.

13 MR. PANEQUE: For the record, Tomas R.
14 Paneque, Attorney for the Board.

15 Mr. Vallejo, I'm going to be recusing
16 myself on this Resolution because of the conflict
17 of interest that was previously stated on the
18 record when this hearing took place.

19 So, I will recuse myself from --

20 THE SECRETARY: Very good, Mr. Paneque.
21 You --

22 MR. PANEQUE: -- participation in this
23 matter.

24 THE SECRETARY: -- are recused.

25 First Resolution, 2415-2417 Central Avenue,

1 Block 135, Lots 19 and 20. Proposed poultry and
2 fish market in existing building.

3 This application was denied on December 10,
4 2015 meeting.

5 Can I have a motion to approve --

6 VICE CHAIRMAN GRULLON: To adopt.

7 THE SECRETARY: -- the Resolution?

8 VICE CHAIRMAN GRULLON: Motion to adopt the
9 Resolution.

10 THE SECRETARY: Motion to adopt the
11 Resolution by Vice Chairman Victor Grullon.

12 Second?

13 Miguel Ortiz.

14 Roll call on the motion to adopt the
15 Resolution.

16 Vice Chairman Victor Grullon?

17 VICE CHAIRMAN GRULLON: Yes.

18 THE SECRETARY: Miguel Ortiz?

19 MR. ORTIZ: Yes.

20 THE SECRETARY: Khaled Dardir?

21 MR. DARDIR: Yes.

22 THE SECRETARY: Joseph Bonacci?

23 MR. BONACCI: Yes.

24 THE SECRETARY: That's it.

25 MS. DILLON: That's it.

1 THE SECRETARY: Motion carries. Four in
2 favor.

3 Mr. Paneque, you -- you can come back --
4 you know, return to the session.

5 MR. PANEQUE: Thank you, Mr. Vallejo.

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1 **RESOLUTIONS:**

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3 (2) Constantine & Marlene Hinova, 131 48th
4 Street, Block 278, Lot 30. Legalization of an
5 existing apartment. To go from a two-family to a
6 three-family. Application was approved on
7 1/14/2016.

8 (3) International Management, LLC, 4606 Hudson
9 Avenue, Block 273, Lot 24. Legalization of
10 existing multi-family three units to four units
11 and minor building extension. Application was
12 approved on 1/14/2016.

13 (4) 4310 Hudson Avenue, LLC - 4310-16 Hudson
14 Avenue, Block 253, Lot 21. Convert commercial
15 space into a residential unit with its own
16 driveway and curb cut. Application was approved
17 on 1/14/2016.

18 (5) Lauren Sosa, 1002 Central Avenue, Block 46,
19 Lot 2. Proposed carport and legalization of
20 ground floor apartment for a total of four units.
21 Application was approved on 1/14/2016.

22

23 THE SECRETARY: We have four Resolutions in
24 the next session.

25 Constantine and Marlene Hinova, 131 48th

1 Street. This application was approved on January
2 14, 2016 meeting.

3 Second Resolution, International
4 Management, LLC, 4606 Hudson Avenue. This
5 application was approved on the January 14, 2016
6 meeting.

7 4310 Hudson Avenue, LLC, 4310-16 Hudson
8 Avenue. This application was approved on the
9 January 14, 2016 meeting.

10 Lauren Sosa, 1002 Central Avenue, Block 46,
11 Lot 2. This application was approved on January
12 14, 2016.

13 Can I have a motion to adopt these
14 Resolutions?

15 VICE CHAIRMAN GRULLON: Make a motion to
16 adopt the Resolutions.

17 THE SECRETARY: Motion to adopt these
18 Resolution by Vice Chairman Victor Grullon.

19 Any second?

20 Second by Miguel Ortiz.

21 Roll call on the motion to adopt these
22 Resolutions.

23 Vice Chairman Victor Grullon?

24 VICE CHAIRMAN GRULLON: Yes.

25 THE SECRETARY: Miguel Ortiz?

1 MR. ORTIZ: Yes.

2 THE SECRETARY: Khaled Dardir?

3 MR. DARDIR: Yes.

4 THE SECRETARY: Joseph Bonacci?

5 MR. BONACCI: Abstain.

6 THE SECRETARY: Abstain.

7 Peter Doumas?

8 MR. DOUMAS: Yes.

9 THE SECRETARY: David Pressey?

10 MR. PRESSEY: Yes.

11 THE SECRETARY: Motion carries. Five in
12 favor, and one -- one abstention.

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1 **Gloria Restrepo, 4115 Palisade Avenue:**

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3 THE SECRETARY: All right. We follow the
4 agenda. We have only one application on
5 tonight's meeting.

6 Gloria Restrepo, 4115 Palisade Avenue.

7 Mr. Alonso, please?

8 MR. ALONSO: Good evening, Mr. Chairman,
9 members of the Board.

10 For the record, Alvaro Alonso, Alonso
11 Navarette, on behalf of the applicant.

12 Providing counsel with proof of publication
13 and notices for jurisdiction purposes, which he's
14 reviewing at this time.

15 (Whereupon, there was a pause in the
16 proceedings.)

17 MR. PANEQUE: Let the record reflect that
18 I've been provided by Mr. Alonso with the
19 following items:

20 The certified mail receipts dated January
21 29th, 2015, a set of return receipts to match
22 those certified mail receipts; a list of all
23 owners within the 200 foot radius for the
24 property located at 4115 Palisade Avenue done by
25 the Union City Tax Assessor which is dated

1 January 20th, 2016; a copy of the notice that went
2 out to all owners within the 200 foot radius; an
3 affidavit that notices went out pursuant to
4 statute, signed by Mr. Alonso; and a copy of the
5 Affidavit of Publication which has a copy in it
6 of the notice that was published in The Jersey
7 Journal.

8 Said notice was published on January 30th,
9 giving notice of tonight's meeting, February 11,
10 2016 for the property owned by Gloria Restrepo,
11 4115 Palisade Avenue.

12 It appears that all the notices are
13 adequate, and therefore, this Board has
14 jurisdiction to hear this matter.

15 VICE CHAIRMAN GRULLON: You may proceed,
16 Mr. Alonso.

17 MR. ALONSO: Thank you very much.

18 Members of the Board, what we have here is
19 an application, initially, for an appeal, not a
20 variance but an appeal under Subsection 70A of
21 the statute.

22 What happens is, my client purchased the
23 property in 2000, and has always had six units
24 and a commercial space.

25 Last year, the Building Department issued

1 my client a violation for having two illegal
2 units. We believe that those units were legal.

3 We went to Municipal Court on those
4 violations.

5 I also filed an appeal with the Hudson
6 County Construction Board of Appeals.

7 As a result, the City, through their
8 attorneys and I, we discussed it, we reviewed the
9 proofs that we had, and we entered into a
10 Settlement Agreement.

11 The Settlement Agreement, basically, says
12 that they're willing to accept those apartments,
13 however we need to come to this Board.

14 The Building Department does not have the
15 legal authority to just change the property card
16 and -- and grant two units, if they think that
17 they were illegal.

18 So, we're here is -- we're appealing their
19 determination that those apartments were illegal.

20 So, I have some documents, preliminarily,
21 that I'm going to provide to you, and enter into
22 -- into evidence.

23 I'm going to ask the Board to first
24 consider the appeal. In the event that the
25 appeal is not successful, then we could consider

1 | whether or not the variances should be granted to
2 | legalize those units.

3 | So, the -- and I've marked them, just for
4 | -- for ease this evening, marked Exhibit 1 is the
5 | Settlement Agreement that was entered into
6 | between my client and the City of Union City.
7 | Again, indicating that we have the -- the right
8 | to come before the Board to get a determination
9 | with respect to the legality of the units.

10 | I also have here marked some additional
11 | documents.

12 | Now, I represented my client back in 2000,
13 | when the -- when they first purchased the
14 | property. And we did our due diligence. And
15 | based on our due diligence inquiry, it was
16 | determined that there were six legal units.

17 | Unfortunately, for that type of building,
18 | they do not issue a Certificate of Occupancy on
19 | the transfer of title.

20 | So, we did our due diligence. It was
21 | determined there were six units and a commercial.
22 | We purchased the property. We never had a
23 | violation until last year.

24 | In 2001, after my client registered the
25 | building with the Department of Community

1 Affairs, we received our Certificate of
2 Inspection indicating that the City -- that the
3 State went, they did their inspection and
4 everything passed.

5 So, I have marked as Exhibits 2, 3, and 4,
6 the -- what's called the green card, or the
7 Certificate of Inspection.

8 Exhibit 2, which is dated from 2001.

9 Five years later, is Exhibit 3, which is
10 2006.

11 Five years later, 2011, which is Exhibit 4,
12 again, all indicating six residential units.

13 In 2009, my client went and did a refinance
14 of the property. Again, they went, they obtained
15 an appraisal. The appraisal report looked at all
16 -- all the documents that they could look at.

17 They determined and provided to the bank an
18 appraisal report, again indicating six apartments
19 and one commercial unit.

20 The last document, which I marked as
21 Exhibit 6, is a copy of the -- the tax bill. And
22 my client is being taxed by the City as six
23 units, plus -- plus the commercial.

24 That's just the documentation that I have
25 to basically support the position.

1 I also provided Mr. Vallejo with a series
2 of photographs, which you're free to look at.
3 And you could see, and Mr. Arencibia is going to
4 be testifying with respect to the unit, at this
5 time.

6 You can see that it's a -- it's a brick
7 building, and the whole lower level is a
8 commercial store in the front, facing Palisade
9 Avenue, and then the two lower units appear to
10 have been there for quite some time.

11 And Mr. Arencibia will provide some
12 forensic architectural testimony with respect to
13 the -- the types of material and the age of the
14 units.

15 So, with that said, I'm going to have Mr.
16 Arencibia come up, get sworn in.

17 MR. PANEQUE: Mr. Alonso, before we
18 proceed, are you asking that the photographs be
19 marked as one packet?

20 MR. ALONSO: Yes.

21 MR. PANEQUE: Okay.

22 We'll have those -- and just so that the
23 record is clear, each of your exhibits are being
24 marked A-1, A-2, A-3, A-4, A-5, A-6. And now,
25 this would be as a packet of photographs, A-7.

1 MS. DILLON: Yes.

2 Carlos, do you have a paper clip?

3 MR. PANEQUE: Just give us one second while
4 they get marked.

5 MR. ALONSO: Sure.

6 MS. DILLON: Mr. Alonso, do you know how
7 many photographs are here?

8 If not, I'll count them.

9 MR. ALONSO: I can count them.

10 (Whereupon, there was a pause in the
11 proceedings.)

12 MR. ALONSO: Twelve photographs.

13 MS. DILLON: Okay.

14 MR. ALONSO: Thirteen. I'm sorry.

15 And those are 13 photographs of existing
16 building and the surrounding area.

17

18 (Whereupon, Settlement Agreement, Dated
19 10/29/15, was received and marked as Exhibit
20 A-1.)

21

22 (Whereupon, DCA Card, Dated 2001, was
23 received and marked as Exhibit A-2.)

24

25 (Whereupon, DCA Card, Dated 2006, was

1 received and marked as Exhibit A-3.)

2

3 (Whereupon, DCA Card, Dated 2011, was
4 received and marked as Exhibit A-4.)

5

6 (Whereupon, NIJ Appraisal Network Report,
7 Dated 10/5/09, was received and marked as Exhibit
8 A-5.)

9

10 (Whereupon, Tax Bill was received and
11 marked as Exhibit A-6.)

12

13 (Whereupon, Photograph Package, 13
14 Photographs, was received and marked as Exhibit
15 A-7.)

16

17 MS. DILLON: Mr. Arencibia, please raise
18 your right hand.

19 Do you affirm the testimony you're about to
20 give this Board is the whole truth?

21 MR. ARENCIBIA: I do.

22 MS. DILLON: Please just state your name
23 and spell it for the record.

24 MR. ARENCIBIA: Albert Arencibia,
25 A-R-E-N-C-I-B-I-A.

1 MS. DILLON: Thank you.

2 MR. ALONSO: Mr. Chairman, Mr. Arencibia's
3 qualifications have been --

4 VICE CHAIRMAN GRULLON: Yes.

5 MR. ALONSO: -- accepted in the past.

6 VICE CHAIRMAN GRULLON: We accept --

7 MR. ALONSO: Thank you very much.

8 MR. ARENCIBIA: Thank you.

9 VICE CHAIRMAN GRULLON: -- his
10 qualifications.

11 MR. ALONSO: Mr. Arencibia, initially, we
12 are presenting this as an appeal. So, I'm going
13 to ask you to provide some forensic architectural
14 testimony with respect to the lower units that
15 are behind the commercial space.

16 And those units -- because this is a corner
17 property, those residential units actually front
18 on 42nd Street. It's not like you have to go down
19 an alleyway and get to the back.

20 Is that correct?

21 MR. ARENCIBIA: That's correct.

22 MR. ALONSO: Okay. So, I'm going to ask
23 you to please provide, based on your knowledge of
24 visiting the site, what those units are, how many
25 bedrooms, whether or not they appear to have been

1 | in existence for quite some time. Based on the
2 | testimony that they've been there for at least 20
3 | years, if not more, if you could tell us, in
4 | terms of the age of the materials and the type of
5 | architecture, if you can make some kind of
6 | determination with respect to their age.

7 | MR. ARENCIBIA: Sure.

8 | Yes. I basically went out to the site, and
9 | took a look at the -- the existing units. I
10 | mean, it was clear that these units have been
11 | there for quite some time.

12 | What I've done on my drawings that I
13 | prepared before the Board, I actually labeled the
14 | areas as the way they're being utilized, because
15 | the configuration of the units are a little bit
16 | awkward. Like I said, at the time, things were
17 | done quite differently than they are now.

18 | For instance, the unit at the rear of the
19 | property itself, you go into a living room, and
20 | then access off of a dining area right behind
21 | there, and it has a small little access to a
22 | small little kitchen.

23 | And then, there's a bathroom is through the
24 | kitchen itself, and both of the bedrooms actually
25 | will have to -- one bedroom actually goes through

1 another bedroom to go into the bathroom.

2 So, the -- the way the layout here is a
3 little awkward, but presently, that unit in the
4 rear is configured as a two bedroom unit. The
5 kitchen is a very small little kitchen. It
6 basically has a small little sink, with a little
7 stove, and a little like work area.

8 Again, there's a little exhaust fan and a
9 small window in the rear.

10 All of the window trims, all of the
11 molding, all of the doors, the ceiling, the
12 floor, you could tell it's over 30 years old.
13 So, it's been there for quite some time.

14 And the configuration of the other unit,
15 too, which is between the business and the -- the
16 last unit I was just speaking about, it's also a
17 little strange.

18 You -- you walk in, you have a little
19 entrance foyer. And then, you have a bedroom
20 right off of the entrance foyer, and then, you
21 walk into a living room space, which has a small
22 little counter, a refrigerator against the
23 counter, and again, the sink and the stove and a
24 small little work area.

25 Again, all of these fixtures have been

1 | there for quite some time. All the doors are all
2 | the -- the knobs on the doors have been there for
3 | quite some time.

4 | So, there's nothing -- these units
5 | definitely have not been recently built -- you
6 | know, by a long shot.

7 | MR. ALONSO: Now, Mr. Arencibia, even
8 | though the -- the building's address is 4115
9 | Palisade Avenue, do those apartments have their
10 | own addresses?

11 | MR. ARENCIBIA: Yes, they do.

12 | MR. ALONSO: And 301 and 307 42nd Street?

13 | MR. ARENCIBIA: That is correct. Yes.

14 | MR. ALONSO: And they have their own
15 | entrance doors.

16 | MR. ARENCIBIA: They have their own
17 | entrance off the side, and they also have a
18 | little step at the front. So, basically these
19 | units have been elevated and have been there for
20 | quite a bit.

21 | MR. ALONSO: Okay.

22 | And based on the testimony, or
23 | conversations you had with the client, it appears
24 | that based on what tenants have said, that those
25 | have been rented for at least 20 years before my

1 client purchased the property.

2 Correct?

3 MR. ARENCIBIA: Yes. That's correct.

4 MR. ALONSO: Mr. Chairman, with respect to
5 the appeal portion of this application, I have no
6 further questions, in terms of the existence of
7 those units for 30, 40 years.

8 If the Board has any questions, we can
9 entertain those at that -- at this time.

10 VICE CHAIRMAN GRULLON: Do we have to --

11 MR. PANEQUE: The procedure which Mr.
12 Alonso is asking for is one where this Board can
13 make a determination on whether these apartments
14 are legal, based on the testimony that's been
15 presented.

16 And -- and that would be the basis of his
17 appeal.

18 If this Board, based on the information
19 that has been presented, comes to a conclusion
20 that those apartments have been in existence, and
21 were, in fact, legal from the time that they were
22 established or made, then that would end the
23 session, and he would not have to go forward and
24 present his case for a request for a use
25 variance.

1 MR. ALONSO: And I also -- I also do want
2 to make this representation that, as a result of
3 the Municipal Court case that we had, and the
4 Construction Board of Appeals case that we had, I
5 requested certain discovery. And the discovery
6 included a copy of the file and all the records
7 with respect to this building.

8 You can tell by this -- by the photographs
9 that this is a very old building, and there
10 should be a file.

11 There is no file. So, basically, the
12 Building Department, because there is a lack of a
13 file, is indicating that they're illegal, where
14 if anything, they could say the entire building
15 is legal.

16 So, there is no -- there is nothing really
17 that they can indicate, other than the 1973 --

18 VICE CHAIRMAN GRULLON: Yes.

19 MR. ALONSO: -- tax records that says -- you
20 know, it is -- it is what it is. But that's a
21 tax record, that's not a Building Department
22 record.

23 So, it's the Building Department records
24 which would -- which would control.

25 MR. PANEQUE: Now Mr. Alonso, in my review

1 of the tax records, from the 1973 assessment, it
2 indicates that they only found four units.

3 MR. ALONSO: That's correct.

4 MR. PANEQUE: Okay.

5 VICE CHAIRMAN GRULLON: According to the
6 tax record, it was -- the information that we
7 have in front of us here from the Building
8 Department, from the Tax Assessor Department, it
9 shows there were four legal units and one -- one
10 commercial.

11 MR. ALONSO: Right.

12 VICE CHAIRMAN GRULLON: Four residential
13 and one commercial.

14 MR. ALONSO: Right. That's -- right. And
15 therein lies the problem, because the Building
16 Department is not relying on Building Department
17 records.

18 VICE CHAIRMAN GRULLON: Right.

19 MR. ALONSO: They relied on Tax Assessor
20 records.

21 VICE CHAIRMAN GRULLON: Yes.

22 MR. ALONSO: And one of the documents that
23 I provided you, A-6, is a tax bill which says
24 that they're being charged for six units.

25 So, at some point, okay, these six units

1 | were legal units, and they were acknowledged by
2 | the -- you know, like the conversation I always
3 | have with the Building Department, you can't
4 | accept the tax records from one year, and not tax
5 | records from the other year.

6 | If you're going to accept the tax records,
7 | you have to accept them all.

8 | So, at some point, it was -- it went from a
9 | four unit, in the tax records, to a six unit in
10 | the tax record.

11 | And the way it normally works is if we
12 | apply for permits to -- to construct an
13 | apartment, and the permits are issued, with or
14 | without zoning approvals, depending on whether or
15 | not they're needed, the -- a copy of that CO
16 | would then go to the Tax Assessor's Office. The
17 | Tax Assessor then updates the records.

18 | The Tax Assessor's records were clearly
19 | updated, because we're being charged for the six
20 | units.

21 | The question is, since the Building
22 | Department has no records, we don't know what
23 | happened and when it happened, but it happened.
24 | And -- and by looking at this building, it's an
25 | old building. It's been in existence for a very

1 long time.

2 So, and that's why we entered into the
3 Settlement Agreement with the City, so that we
4 could just come here and say, look, everything's
5 in existence. The Building Department can't just
6 now create a record retroactive, and say, okay,
7 we'll accept that they existed. We need you to
8 adopt a Resolution to tell them that they can do
9 that.

10 So that's why we're here.

11 VICE CHAIRMAN GRULLON: Yes. Since -- I
12 mean, you present enough evidence, but we still
13 have concern because we see another document here
14 that shows four units.

15 And the Board, I think, we would like to
16 hear the -- to proceed with the case, and hear
17 the opinion of the architect and especially for
18 --

19 MR. PANEQUE: Well, Vice Chairman Grullon,
20 I believe this Board has to take a vote with
21 respect to Mr. Alonso's request for the appeal
22 determination.

23 And the Board can then vote whether the
24 appeal is denied or granted.

25 If the Board denies his appeal to legalize

1 | these units, in a vote, then the second stage
2 | would be to proceed on his application for a use
3 | variance, and present his case in chief.

4 | Okay. Now, Mr. Alonso --

5 | MR. ALONSO: That's correct.

6 | MR. PANEQUE: Okay. Do you have anything
7 | else to present --

8 | MR. ALONSO: In terms of --

9 | MR. PANEQUE: -- on the vote of the appeal?

10 | MR. ALONSO: No. No. My client is here.
11 | Basically, she would indicate the same thing as I
12 | said, which they've owned the property since
13 | 2000, and -- and it's always been rented.

14 | But other than that, I have nothing further
15 | in terms of the appeal.

16 | MR. ORTIZ: Mr. Alonso, so your client been
17 | paying taxes for six units since 2000?

18 | MR. ALONSO: Since 2000, yes.

19 | MR. DOUMAS: That was the same question I
20 | have.

21 | MR. ALONSO: Right.

22 | MR. BONACCI: Yeah. My question was it was
23 | never four and then six adjusted during the
24 | period where she owned the property.

25 | Right?

1 MR. ALONSO: Never. There's never -- and
2 again, that goes back to the due diligent inquiry
3 that -- that we did when we purchased the
4 property. And every indication was that it was
5 six units. And we've never had any issue with
6 the Building Department, with a tenant, or
7 anybody, in terms of the legality of the units,
8 until --

9 MR. BONACCI: Last year.

10 MR. ALONSO: -- this past year, when they
11 went ahead and just issued the violation
12 indicating that they're illegal.

13 VICE CHAIRMAN GRULLON: When did they
14 purchase the unit? The building?

15 MR. ALONSO: 2000.

16 VICE CHAIRMAN GRULLON: 2000. They been
17 paying for six units since then?

18 MR. ALONSO: Yes.

19 MR. BONACCI: So, that's 16 years, no
20 violations. And then, like on year 15,
21 violation.

22 MR. ALONSO: Right.

23 MR. DOUMAS: And paying taxes --

24 MR. BONACCI: And you were paying taxes --

25 MR. DOUMAS: -- on six units.

1 MR. BONACCI: -- on six units the whole
2 time.

3 MR. ARENCIBIA: Right.

4 MR. BONACCI: Okay.

5 So, the building -- it seems as though the
6 Building Records Department --

7 VICE CHAIRMAN GRULLON: Yeah.

8 MR. BONACCI: -- kind of dropped the ball
9 on this.

10 MR. ARENCIBIA: Well, they have --

11 MR. BONACCI: That's my opinion.

12 MR. ARENCIBIA: They have no records.

13 MR. BONACCI: Yeah.

14 VICE CHAIRMAN GRULLON: And why did they
15 issue the violation? What did they find -- what
16 -- what kind of document support do you have to
17 state that --

18 MR. ALONSO: Nothing. They just -- they
19 just issued --

20 Basically, what happens is, periodically,
21 they do inspections, and then they look at their
22 records.

23 So, they went to their records and says,
24 oh, we notice that we don't have a copy of CO for
25 these apartments, so we're going to issue you the

1 -- what they call UCC violations.

2 And those are the violations that were
3 appealed onto the Construction Board of Appeals,
4 which resulted in the Settlement Agreement.

5 And again, it's because they don't have
6 records for the building at all, that they say,
7 well -- you know, those units, as far as we're
8 concerned, based on a 1973 tax assessment, those
9 units don't exist.

10 But they ignored the more current tax
11 records, at least to 2000 which showed six units
12 did exist.

13 MR. PANEQUE: I have a question for the
14 architect, with the Board's permission.

15 Mr. Arencibia, based on your inspection of
16 the premises, both the two units that are in
17 question here tonight, did you also inspect the
18 rest of the building?

19 MR. ARENCIBIA: I did not.

20 MR. PANEQUE: You did not. Okay.

21 Therefore, you cannot answer my question,
22 which would have been if the construction in
23 these two units is different from the
24 construction in the rest of the building.

25 MR. ARENCIBIA: No, I can't.

1 MR. PANEQUE: Okay. And I'm talking about
2 such things as window frames, doorframes and
3 stuff like that.

4 MR. ARENCIBIA: That is correct. These --
5 but these -- but you can actually clearly see
6 from the pictures, these window frames have been
7 there for many, many years. I mean, they're --

8 MR. PANEQUE: Well --

9 MR. ARENCIBIA: Yes.

10 MR. PANEQUE: We know that they're not
11 there in 1973. That much is a given because of
12 the tax assessment record that says that in 1973,
13 there's only four units.

14 So, some time between 1973 and, let's say,
15 two thousand and -- 1999, --

16 MR. ARENCIBIA: Right.

17 MR. PANEQUE: -- right before your clients
18 purchased, these units came into existence.

19 MR. ARENCIBIA: Yeah.

20 MR. PANEQUE: Okay.

21 MR. ARENCIBIA: I wouldn't say 1999,
22 because they're too --

23 MR. PANEQUE: Too old.

24 MR. ARENCIBIA: Too old to --

25 MR. PANEQUE: But it was be --

1 MR. ARENCIBIA: -- be 1999.

2 MR. PANEQUE: That's the time span that
3 we're looking at.

4 MR. ARENCIBIA: Yes.

5 MR. PANEQUE: '74 --

6 MR. ARENCIBIA: Correct.

7 MR. PANEQUE: -- to the '90s.

8 MR. ARENCIBIA: Um hum.

9 MR. PANEQUE: Okay.

10 MR. ARENCIBIA: Yeah.

11 MR. PANEQUE: And -- and from what we can
12 gather, the construction official's office has no
13 records of them ever coming in to apply for
14 permits to build these units. Or those records
15 do not exist, or cannot be found.

16 MR. ALONSO: They don't have any records.

17 MR. PANEQUE: They don't have any records.
18 Okay.

19 So, the question for this Board really is,
20 does this Board want to accept those units as
21 legal units under the facts that have been
22 presented, or does this Board want to go to the
23 next step and have the use variance application
24 presented, so that they can make a determination
25 on it?

1 MR. ALONSO: And -- and I just want to add
2 that, legally, it's a very significant decision
3 that you need to make.

4 And because, again, we are -- we've entered
5 into a Settlement Agreement with the City. We --
6 I believe that they're waive -- I don't recall,
7 but I believe that they're waiving the penalties
8 and the fines.

9 But it makes a determination as to whether
10 or not those tenants that have always been there
11 have been residing legally or illegally, which
12 then --

13 (Whereupon, there was an interruption in
14 the recording and the proceedings were paused.)

15 MS. DILLON: Okay. I apologize.

16 MR. ALONSO: That's okay.

17 MS. DILLON: You can continue.

18 MR. ALONSO: Thank you.

19 So, some -- the legal significance with
20 this vote is, first and foremost, with the
21 landlord/tenancy issues that I'm indicating.

22 If the application for the appeal is
23 denied, and ultimately, even the variance
24 application is denied, then we would have two
25 illegal apartments.

1 We would have to vacate those apartments,
2 we'd have to do something with -- with the space
3 anyway. We'd have to come back and do something
4 with it. You can't just leave it empty.

5 But those tenants then have rights, under
6 the -- the landlord/tenancy rules, we would have
7 to reimburse them six months rent, each
8 apartment, plus the cost of relocation.

9 So, it's very expensive to the client in
10 the event that the appeal is denied.

11 In addition, if we were to go for the
12 variance application, then we are losing a right
13 that we believe that we have. And now, we have
14 to try to justify it to get an approval.

15 The problem with that is then, we would
16 have to justify certain things, like a density
17 variance, so where your new Ordinance creates
18 minimum sizes of apartments, these units don't --
19 don't comply with that.

20 So, I requested a -- a density variance, in
21 the event that we have to go that route. We have
22 to now to meet the current standards for an
23 apartment that's already in existence.

24 So, we're not asking to create these
25 apartments, we're just asking you to acknowledge

1 | that they've existed and they're legal.

2 | So, there's a lot of legal significance in
3 | saying, you know what, let's forget about this
4 | appeal, let's just go right to the variance.

5 | So, I'm asking that based --

6 | VICE CHAIRMAN GRULLON: Yes. Yes.

7 | MR. ALONSO: -- on some of the records --

8 | VICE CHAIRMAN GRULLON: There was a --
9 | maybe where I was go -- where I was going, but by
10 | the evidence that you provide and the testimony
11 | that you just said, you answered most of the
12 | questions that I have. And I also asked the
13 | question, if it's okay for us to still ask
14 | questions of the -- to your architect.

15 | MR. ALONSO: Absolutely.

16 | VICE CHAIRMAN GRULLON: And I would just
17 | decide what you just answered for me, are the two
18 | -- the two apartments are rented. And I have one
19 | more question.

20 | The square footage for that area there, do
21 | you know, more or less?

22 | MR. ARENCIBIA: Of which one?

23 | VICE CHAIRMAN GRULLON: Of the -- the two
24 | illegal units there.

25 | MR. ARENCIBIA: It's about -- the one in

1 the rear is probably about 700 square feet.

2 And the one in the front is probably about
3 seven and a quarter, something to that.

4 And they're basically two bedrooms
5 apartments, but their configuration, like I said,
6 are very, very strange.

7 Like for instance, the one apartment --

8 VICE CHAIRMAN GRULLON: Like if you -- if
9 you didn't have those units there, it would be
10 like -- I mean, illegal lot. I mean, the
11 dimension of the lot would be illegal --

12 MR. ALONSO: Well, it would be about 1400
13 square feet for the two apartments.

14 MR. ARENCIBIA: The two apartments. Yes.
15 Um hum.

16 MR. ALONSO: Of empty space that we would
17 have.

18 ACTING CHAIRPERSON GRULLON: Yeah.

19 MR. PANEQUE: Just as a point of
20 clarification, Mr. Arencibia, the apartment which
21 you've marked as apartment 2, that apartment is
22 on the ground floor of the existing --

23 MR. ARENCIBIA: One story.

24 MR. PANEQUE: -- three story building.

25 MR. ARENCIBIA: No. One -- one story.

1 MR. PANEQUE: One story?

2 MR. ARENCIBIA: Correct.

3 MR. PANEQUE: Okay. So, both -- both of
4 these apartments --

5 MR. ARENCIBIA: Well --

6 MR. PANEQUE: -- are in the rear extension?

7 MR. ARENCIBIA: No. One of the -- one of
8 -- part of the one apartment is in the actual
9 three story building. The other one -- most of
10 the two apartments are --

11 There's a bedroom, and the entrance foyer
12 is actually, for the first apartment, behind the
13 commercial space is in the three story building.

14 But, from thereon, if you look at the plan
15 --

16 MR. PANEQUE: Okay.

17 MR. ARENCIBIA: -- that actually -- that
18 little section where it kind of gets a little
19 narrower, that's the back of the front building.
20 And then, from there on, it gets wider. That's
21 the back of the -- you know.

22 MR. PANEQUE: Okay.

23 Because according to what you have here on
24 these plans, apartment 2 is 801.74 square feet.

25 MR. ARENCIBIA: Correct.

1 MR. PANEQUE: And apartment 1 is 812.70
2 square feet.

3 MR. ARENCIBIA: Okay. Okay. Yes.

4 And to answer your question, yeah. The
5 apartment -- the apartment immediately behind is
6 actually in the three story building. Yes.

7 It is behind -- it would be like behind the
8 commercial space on the existing building.

9 MR. PANEQUE: Okay. So there --

10 MR. ARENCIBIA: And then the other -- the
11 other apartment, the rear apartment is basically
12 in the one story -- one story space.

13 VICE CHAIRMAN GRULLON: And the --

14 MR. PANEQUE: Okay.

15 ACTING CHAIRPERSON GRULLON: The entrance
16 for both apartment, is that 307?

17 MR. ALONSO: 301 and --

18 MR. ARENCIBIA: 301 and --

19 MR. ALONSO: -- 307.

20 MR. ARENCIBIA: -- 307. Yes.

21 VICE CHAIRMAN GRULLON: They have --

22 MR. ALONSO: Each apartment has its own
23 address.

24 MR. PANEQUE: Look at another photograph
25 there, that has the main building.

1 MR. ARENCIBIA: If you look at the fixtures
2 (sic), you can see basically, the last unit,
3 basically, has two large picture windows and a
4 door in between. That's basically the one story
5 building, and that's the one apartment.

6 MR. PANEQUE: That's the one apartment
7 that's 812 square feet.

8 MR. ARENCIBIA: Correct.

9 MR. PANEQUE: The other apartment, which is
10 on the ground floor of the three story building,
11 that's 801.74 square feet. And that was probably
12 what was a part of the commercial space.

13 MR. ARENCIBIA: I would think so. Yes.

14 MR. PANEQUE: Okay.

15 MR. ARENCIBIA: Makes sense.

16 MR. PANEQUE: So, at one point, when the
17 Tax Assessor assessed this in 1973, the entire
18 ground floor must have been a commercial space,
19 and that rear addition, either didn't exist or
20 was some type of --

21 MR. ARENCIBIA: Converted --

22 MR. PANEQUE: -- garage.

23 MR. ARENCIBIA: -- or something like that.
24 Right.

25 Because like I -- I thought it was a

1 garage, too, but there's actually an elevation
2 there. If you look at the pictures, it actually
3 steps up.

4 MR. PANEQUE: Okay.

5 MR. ARENCIBIA: So, that's why I would say
6 it wasn't a garage.

7 It was probably an extension to the
8 commercial space, or the business space, whatever
9 was on the ground floor before.

10 MR. ALONSO: And while I accept the
11 representations that the -- what was contained in
12 the '73 assessment is what it is, my experience,
13 and I've been doing this for many years, in
14 different towns in North Hudson, what happens a
15 lot of time, they just carry over the information
16 from before, the prior tax assessment.

17 Sometimes, they -- they would hire high
18 school students, whatever, just to go around and
19 just count mailboxes, or whatever.

20 And we've been able to determine, in a lot
21 of cases, that the information that was contained
22 in that tax assessment wasn't actually correct.

23 So, but for purposes of this hearing, I
24 will accept it, with that little caution.

25 VICE CHAIRMAN GRULLON: Mr. Arencibia, my

1 | last question is, if I'm looking at the building,
2 | I notice that that portion of the apartments,
3 | those two apartments is at least 20 years old,
4 | your opinion, you said, would you support that?

5 | MR. ARENCIBIA: Absolutely.

6 | VICE CHAIRMAN GRULLON: Is --

7 | MR. ARENCIBIA: More than 20 years old.

8 | Yes.

9 | VICE CHAIRMAN GRULLON: And when your --
10 | when your client purchased that property, that
11 | was existing.

12 | MR. ALONSO: That was already there.

13 | VICE CHAIRMAN GRULLON: I don't have any
14 | more questions.

15 | Do you have any questions?

16 | MR. PRESSEY: When you say how -- about how
17 | old would you say the building is?

18 | MR. ARENCIBIA: The building or the units?

19 | The units are prob -- I would say that
20 | probably the units were built sometime back in
21 | the late '70s, I would think -- you know, early
22 | '80s.

23 | MR. BONACCI: And the whole -- the whole
24 | construction?

25 | MR. ALONSO: The building?

1 MR. BONACCI: Yeah.

2 MR. ARENCIBIA: The building itself? Is
3 probably a hundred years old, something like
4 that, I would think.

5 MR. BONACCI: Okay.

6 MR. ARENCIBIA: We're getting old.

7 MR. PRESSEY: How long -- how long have the
8 people who, in those two existing units, how long
9 have they been living there?

10 MR. ARENCIBIA: I --

11 MR. ALONSO: I could ask my client.

12 You can just -- you can just stand right
13 there.

14 Just stand right in front of the
15 microphone.

16 MS. DILLON: Right in front of the --

17 MS. RESTREPO: Okay.

18 MS. DILLON: -- microphone.

19 Please raise your right hand.

20 Do you affirm the testimony you're about to
21 give this Board is the whole truth?

22 MS. RESTREPO: Yes.

23 MS. DILLON: Please state your name and
24 spell it for the record.

25 MS. RESTREPO: Gloria Restrepo,

1 R-E-S-T-R-E-P-O.

2 MS. DILLON: Thank you.

3 MS. RESTREPO: Okay. Basically, my husband
4 bought the unit ten years ago. He passed away a
5 couple of years ago, so we took over.

6 According to -- and I think you had a copy
7 of one of the leases from a tenant being there
8 for 20 years, one of our tenants.

9 He has said that before they move in, there
10 was somebody else living there.

11 And the other tenant been there for about
12 ten years. And I guess my husband rented to him
13 and -- but he been there for a long time.

14 MR. ALONSO: I have copies of the leases
15 and we can -- I didn't include it, but I could
16 show you, and we could provide it to the Board.

17 You have provided me with these two leases.
18 One, the landlord at the time was Joseph Labib,
19 which was not your husband, and the tenant was
20 Gilberto Guerra, from 1992.

21 MS. RESTREPO: Yeah. He's there. He's
22 still there.

23 MR. ALONSO: He's still there. This is
24 from 1992, before you purchased the property.

25 And which apartment is this?

1 MS. RESTREPO: The 307.

2 MR. ALONSO: So, the -- this one story.

3 MS. RESTREPO: It is. Yes.

4 MR. ARENCIBIA: Right

5 MS. RESTREPO: Um hum.

6 MR. ALONSO: And then, there's --

7 MS. RESTREPO: Oscar Sanchez.

8 MR. ALONSO: Oscar Sanchez. This is from
9 2011.

10 MS. RESTREPO: Okay.

11 MR. ALONSO: Okay. And --

12 MS. RESTREPO: That was after my husband
13 bought it.

14 MR. ALONSO: Right. So, I'm just going to
15 provide these to -- to the Board for the record.

16 You can mark them as A-8 and A-9.

17

18 (Whereupon, Lease Between Landlord, Louis
19 O. Restrepo, and Tenants, Oscar A. Sanchez and
20 Leydin M. Molina was received and marked as
21 Exhibit A-8.)

22

23 (Whereupon, Lease Between Landlord, Joseph
24 Labib, and Tenant, Gilberto Guerra was received
25 and marked as Exhibit A-9.

1
2 (Whereupon, there was a pause in the
3 proceedings.)

4 VICE CHAIRMAN GRULLON: Thank you, Ms.
5 Restrepo.

6 MS. RESTREPO: Thank you.

7 MR. ALONSO: Thank you.

8 ACTING CHAIRPERSON GRULLON: Any -- any
9 other questions?

10 At this time, I'm just going to open it to
11 the public. Open to the public.

12 Mr. Price?

13 MS. DILLON: Mr. Price, please raise your
14 right hand.

15 Do you affirm the testimony you're about to
16 give this Board is the whole truth?

17 MR. PRICE: I do.

18 MS. DILLON: Please state your name and
19 address for the record.

20 MR. PRICE: Larry Price, 1006 Palisade.

21 Mr. Arencibia?

22 MR. ARENCIBIA: Yes.

23 MR. PRICE: You inspected the two
24 apartments.

25 Did you inspect the commercial space in the

1 front of the building?

2 MR. ARENCIBIA: No, I did not.

3 MR. PRICE: You did not.

4 Okay.

5 Thank you.

6 MR. ALONSO: You don't dispute that it's a
7 commercial space, though.

8 MR. ARENCIBIA: Right. Yes.

9 Well, it's a hair salon.

10 MR. PRICE: It's --

11 MR. ARENCIBIA: It's a --

12 MR. PRICE: But you didn't -- you didn't
13 look at the hair salon to --

14 I mean, this -- the building's a hundred
15 years old.

16 MR. ARENCIBIA: Right.

17 MR. PRICE: At least a hundred years old.

18 MR. ARENCIBIA: Right.

19 MR. PRICE: It was probably a bar when it
20 started out, and it went all the way through.
21 Okay.

22 And the question -- then, we put a couple
23 apartments in. And probably at the same time, we
24 put a commercial space in the front of the
25 building, which is now a hair salon.

1 My question is, but you can't answer it, is
2 how old is the hair salon look, or that
3 commercial space?

4 You don't know.

5 MR. ARENCIBIA: No, I don't.

6 MR. PRICE: No.

7 Okay.

8 VICE CHAIRMAN GRULLON: Any other member of
9 the public?

10 Closed to the public.

11 Considering all the evidence and -- and the
12 testimony from -- from the architect, and -- and
13 the photos that shows that the building is
14 existing for at least 25, 30 years, I make a
15 motion to grant the appeal.

16 THE SECRETARY: Motion to grant the appeal
17 by Acting Chair -- by Vice Chairman Victor
18 Grullon.

19 MR. BONACCI: Second.

20 THE SECRETARY: Second by Mr. Bonacci.

21 Roll call to grant this appeal.

22 Victor Grullon?

23 VICE CHAIRMAN GRULLON: Yes.

24 THE SECRETARY: Miguel Ortiz?

25 MR. ORTIZ: Yes.

1 THE SECRETARY: David Pressey?

2 MR. PRESSEY: Yes.

3 THE SECRETARY: Khaled Dardir?

4 MR. DARDIR: Yes.

5 THE SECRETARY: Joseph Bonacci?

6 MR. BONACCI: Yes.

7 THE SECRETARY: Peter Doumas?

8 MR. DOUMAS: Yes.

9 THE SECRETARY: Motion carries.

10 MR. ALONSO: Thank you very much.

11 VICE CHAIRMAN GRULLON: Thank you.

12 MR. ARENCIBIA: Thank you very much.

13 Appreciate it.

14 VICE CHAIRMAN GRULLON: Mr. Arencibia --

15 MR. ALONSO: Have a good evening. Stay
16 warm.

17 MR. ARENCIBIA: Thank you.

18 Have a nice President's week, everybody, or
19 President's Day.

20 MR. PANEQUE: I thought you were going to
21 wish me a Valentine's.

22 * * *

23

24

25

1 **ADJOURNMENT:**

2

3 THE SECRETARY: There being no other
4 application on tonight's agenda, can I have a
5 motion to close tonight's meeting?

6 Motion by Mr. Pressey.

7 Second by?

8 Mr. Miguel Ortiz.

9 MS. RESTREPO: Thank you very much.

10 Good night.

11 THE SECRETARY: All in favor?

12

13 (Whereupon, there was a chorus of ayes.)

14

15 THE SECRETARY: The ayes have it.

16 Thank you, gentlemen. Have a good night.

17

18 (Whereupon, the proceedings were concluded
19 at 7:00 p.m.)

20

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22

23

24

25

1 STATE OF NEW JERSEY :

2 :

3 COUNTY OF ESSEX :

4

5

6 I, DEBRA A. KASZNIAK, assigned transcriber,
7 do hereby affirm that the foregoing is a true and
8 accurate transcript in the matter of the REGULAR
9 MEETING of the UNION CITY ZONING BOARD OF
10 ADJUSTMENT heard on Thursday, February 11, 2016
11 and digitally recorded.

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25 Monitored and proofread by: Deborah Dillon