

CITY OF UNION CITY
 HUDSON COUNTY, NEW JERSEY
 ZONING BOARD OF ADJUSTMENT

REGULAR MEETING : TRANSCRIPT OF RECORDED
 :
 : PROCEEDINGS
 :
 _____ :

City Hall
 3715 Palisade Avenue
 Union City, New Jersey

Thursday, November 2, 2017
 Commencing at 6:15 p.m.

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

VICTOR M. GRULLON
 MARGARITA GUTIERREZ
 JOHN MEDINA, (Arrived at 6:16 p.m.)
 DAVID W. PRESSEY
 JOSEPH D. BONACCI, Vice Chairman
 LIBERO MAROTTA, Chairman

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

MIGUEL ORTIZ
 PETER C. DOUMAS, Alternate No. 4

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

CARLOS VALLEJO, Secretary to the Board
 TOMAS R. PANEQUE, ESQ., Board Attorney

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

J. ALVARO ALONSO, ESQ.,
Attorney for Applicant, Juan Vizueta

J. ALVARO ALONSO, ESQ.,
Attorney for Applicant, Franklin Medina

J. ALVARO ALONSO, ESQ.,
Attorney for Applicant, Bhado & Bhado Development

ALLYSON M. KASSETTA, ESQ.,
Attorney for Applicant, Sirius XM Radio, Inc.

BIANCA P. PEREIRAS, ESQ.,
Attorney for Applicant, Delta Savings, LLC

BIANCA P. PEREIRAS, ESQ.,
Attorney for Applicant, Alfred J. Alvarez

BIANCA P. PEREIRAS, ESQ.,
Attorney for Applicant, Nirvana Realty, LLC

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1 THE SECRETARY: May I have your attention,
2 please?

3 Please take notice that on Thursday,
4 November 2nd, 2017, at six p.m., a Regular Meeting
5 is scheduled for the City of Union City Zoning
6 Board of Adjustment, to be held in Municipal
7 Chambers, located on the Second Floor, 3715
8 Palisade Avenue, Union City, New Jersey.

9 Notice of this meeting has been provided as
10 follow:

11 Notice of this meeting has faxed to The
12 Jersey Journal, The Record, and The Hudson
13 Reporter, has been posted on the bulletin board
14 in City Hall, and has been made available to the
15 public in the -- in the Office of the Municipal
16 Clerk.

17 Can everybody kindly rise to salute the
18 flag, please?

19

20 (Whereupon, the Pledge of Allegiance was
21 said by all.)

22

23 THE SECRETARY: Thank you.

24

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1 **ROLL CALL:**

2

3 THE SECRETARY: Roll call for tonight's
4 meeting.

5 Mr. Marotta?

6 CHAIRMAN MAROTTA: Here.

7 THE SECRETARY: Mr. Bonacci?

8 VICE CHAIRMAN BONACCI: Here.

9 THE SECRETARY: Mr. Grullon?

10 MR. GRULLON: Here.

11 THE SECRETARY: Ms. Gutierrez?

12 MS. GUTIERREZ: Here.

13 THE SECRETARY: Mr. Ortiz, is absent.

14 Mr. Pressey?

15 MR. PRESSEY: Here.

16 THE SECRETARY: Mr. Medina is absent; he's
17 on the way.

18 We have a -- we have a full quorum, five
19 members.

20 Members present; Mr. Marotta, Mr. Bonacci,
21 Mr. Grullon, Ms. Gutierrez and Mr. Pressey.

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1 **ADOPTION OF MINUTES:**

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3 (1) Regular Meeting held on October 12, 2017

4

5 THE SECRETARY: Approval of previous
6 meeting minutes from October 12, 2017.

7 Can I have a motion to adopt this?

8 Mr. Bonacci, motion.

9 Second by?

10 Mr. Pressey.

11 Roll call on the motion.

12

13 (Whereupon, John Medina arrived at 6:16
14 p.m.)

15

16 THE SECRETARY: Mr. Bonacci?

17 VICE CHAIRMAN BONACCI: Yes.

18 THE SECRETARY: Mr. Grullon?

19 MR. GRULLON: Yes.

20 THE SECRETARY: Mr. --

21 Let the record indicate we have six
22 members. Mr. Medina joined the meeting.

23 Mr. Pressey?

24 MR. PRESSEY: Yes.

25 THE SECRETARY: Mr. Medina?

1 MR. MEDINA: Yes.

2 THE SECRETARY: To approve the previous
3 meeting minutes.

4 Four in favor, motion carries.

5 Thank you.

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1 **RESOLUTIONS:**

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3 (1) 800 Palisade Avenue, LLC, Block 186, Lots
4 15, 12.2. Propose to construct of a two family
5 dwelling. Approved on October 12, 2017 meeting

6 (2) Leonel Calvo, 709 New York Avenue, Block
7 36, Lot 5. Interior modification to an existing
8 building with three residential units and a new
9 front addition. Approved on October 12, 2017

10 meeting

11 (3) Dee Ferra, 614 Kennedy Boulevard, Block 31,
12 Lot 13. Legalization of basement apartment in an
13 existing three floor building. Denied on October
14 12, 2017 meeting

15 (4) New J. LLC, 1613-15 Summit Avenue, Block
16 83, Lot 5. Proposed changes to the variance
17 drawings originally resolution approved December
18 10, 2015. Approved on October 12, 2017 meeting

19 (5) Resolution to approve the Zoning Board of
20 Adjustment Schedule for the year 2018

21
22 THE SECRETARY: Resolution. We have five
23 Resolution on tonight's agenda.

24 Resolution number 1.

25 800 Palisade Avenue, LLC, 800 Palisade

1 Avenue.

2 Second Resolution.

3 Leonel -- Leonel Calvo, 709 New York
4 Avenue.

5 Third Resolution.

6 Dee Ferra, 614 Kennedy Boulevard.

7 Resolution number 4.

8 New J. -- New J., LLC, 1613-15 Summit
9 Avenue.

10 And the Resolution number 5.

11 Resolution to approve the Zoning Board of
12 Adjustment schedule for the year 2018.

13 Can I have a motion to adopt the five
14 Resolutions?

15 Mr. Marotta, for the schedule, 2018.

16 CHAIRMAN MAROTTA: Yes.

17 THE SECRETARY: The other four you abstain.
18 Right? That's correct?

19 CHAIRMAN MAROTTA: Yes.

20 THE SECRETARY: Oh, no. Sorry.

21 Can I have a motion, first?

22 By Mr. Bonacci.

23 Any second?

24 MR. GRULLON: Second.

25 THE SECRETARY: Mr. Grullon.

1 Roll call on the motion.

2 Mr. Marotta is going to say yes to
3 Resolution number 5, and the other four he
4 abstained.

5 Right?

6 CHAIRMAN MAROTTA: Right.

7 THE SECRETARY: Margarita Gutierrez?

8 MS. GUTIERREZ: Abstain.

9 THE SECRETARY: You can vote on number 5,
10 Mrs. Gutierrez.

11 MS. GUTIERREZ: Okay.

12 VICE CHAIRMAN BONACCI: The schedule.

13 THE SECRETARY: That mean number 5, yes,
14 and the other abstain.

15 MS. GUTIERREZ: Okay.

16 THE SECRETARY: Thank you.

17 MS. GUTIERREZ: You're welcome.

18 THE SECRETARY: Mr. Bonacci?

19 VICE CHAIRMAN BONACCI: Yes.

20 THE SECRETARY: Mr. Grullon?

21 MR. GRULLON: Yes.

22 THE SECRETARY: Mr. Pressey?

23 MR. PRESSEY: Yes.

24 THE SECRETARY: Mr. Medina?

25 MR. MEDINA: Yes.

1 THE SECRETARY: Four in favor on Resolution
2 1, 2, 3, and 4.

3 And five (sic) in favor on Resolution
4 number 5.

5 Motion carries.

6 Thank you.

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1 **14th Street Associates, LLC -**

2 **413-415-417 14th Street:**

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4 THE SECRETARY: First application on
5 tonight's -- tonight's agenda, 14th Street
6 Association (sic), LLC, 413-415-417 14th Street.

7 Mr. Paneque, please?

8 MR. PANEQUE: For the --

9 CHAIRMAN MAROTTA: Mr. Paneque, before
10 that, I'd like to make an announcement.

11 We'll take a break some time around eight
12 o'clock, and we will adjourn at ten o'clock. And
13 we'll see where we're at at that time.

14 Okay?

15 MR. PANEQUE: Thank you, Mr. Marotta.

16 With respect to the application by 14th
17 Street Associates, LLC, regarding the property at
18 413-417 14th Street, Union City.

19 We received a letter from the office of Mr.
20 Luis Diaz, the attorney for the applicant, with a
21 date of October 30th, indicating that his
22 applicant has decided to abandon the application,
23 and therefore, his application is being
24 withdrawn.

25 THE SECRETARY: Thank you, --

1 CHAIRMAN MAROTTA: Thank you.

2 THE SECRETARY: -- Mr. Paneque.

3 Okay.

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1 **Juan Vizqueta - 534 42nd Street:**

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3 THE SECRETARY: Next hearing, Juan Vizqueta,
4 534 42nd Street.

5 Mr. Alonso, please?

6 (Whereupon, there was a pause in the
7 proceedings.)

8 MR. PANEQUE: Let the record reflect that
9 I've been provided with the following
10 documentation by Mr. Alonso:

11 I've been provided with an Affidavit,
12 signed by Mr. Alonso, indicating that notice of
13 tonight's hearing, with respect to the property
14 located at 534 42nd Street, the applicant being
15 Juan Vizqueta, was sent out to all property owners
16 within the 200 foot radius on October 21st, 2017.

17 I've also been provided with an Affidavit
18 from The Jersey Journal, indicating that notice
19 of tonight's hearing was published in The Jersey
20 Journal on October 21st, 2017.

21 I've also been provided with a list from
22 the Tax Assessor's Office, with a date of October
23 12, 2017, listing all property owners within the
24 200 foot radius of the property located at 534
25 42nd Street, Block 244, Lot 10.

1 Mr. Alonso has also provided me with the
2 certified mail receipts dated October 21st, 2017.

3 Based on the documentation that's been
4 provided, this Board has jurisdiction to proceed
5 and hear this application.

6 MR. ALONSO: Thank you very much.

7 Good evening, Mr. Chairman, members of the
8 Board.

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

11 This is one of those peculiar properties
12 that we have in Union City where you have a
13 principal use structure in the front of the
14 property, and you have a principal use structure
15 in the rear of the property, with residential
16 units.

17 The Building Department does not recognize
18 all of the units. They do recognize the two
19 different principal use structures, but not all
20 of the units.

21 They believe -- they currently have it as a
22 two family in the front, and a one family in the
23 rear.

24 My client purchased it a number of years
25 ago. It was a three family and a two family.

1 The Building Department does not have any
2 records, even though this predates -- you know,
3 for many, many years.

4 So, what we're here to do is just to
5 legalize it. Hopefully, get a Resolution, so
6 that the Building Department can update their
7 records.

8 This evening, I have one witness, Mr.
9 Valella, the architect.

10 Unfortunately, our planner was not
11 available, but I at least want to get the
12 application started, so I'll have Mr. Valella
13 sworn in.

14 MS. DILLON: Please raise your right hand.

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

17 MR. VALELLA: I do.

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

20 MR. VALELLA: Sure.

21 Good evening.

22 My name is Orestes Valella, V-A-L-E-L-L-A.
23 I'm a registered architect in the states of New
24 York and New Jersey.

25 And my professional offices are at 5809

1 Madison Street in West New York, New Jersey.

2 MR. ALONSO: Thank you.

3 Mr. Chairman, Mr. Valella's been here
4 countless times. I would ask that his
5 qualifications in architecture --

6 Oh, I'm sorry.

7 CHAIRMAN MAROTTA: It's okay.

8 He's been -- he's been approved before.
9 He's qualified.

10 MR. ALONSO: Thank you.

11 Mr. Valella, this is a property that --
12 it's been around for a long time.

13 Correct?

14 MR. VALELLA: Yes.

15 MR. ALONSO: And you had an opportunity to
16 inspect it?

17 MR. VALELLA: Yes.

18 MR. ALONSO: Okay.

19 Before we get into the actual testimony
20 about the units, can you just describe the -- the
21 age of the units --

22 MR. VALELLA: Yeah.

23 MR. ALONSO: -- in general terms?

24 MR. VALELLA: This is not a recent
25 structure. This is an older home, both in the

1 front and in the rear. You know, decades ago.

2 There doesn't seem to have been any recent
3 work in the units in question performed. This
4 could go back 30, 40, 50 years.

5 So, as counsel mentioned, this is not a --
6 a current event that has occurred. This has been
7 here for awhile.

8 I can't give you an exact date. The
9 structures themselves are quite old. They're
10 probably from the '20s or -- or teens, but the --
11 the interiors -- you know, it's hard to date.
12 It's -- it's not a current event. It's not
13 current workmanship.

14 MR. ALONSO: Okay.

15 So, under the zoning, two principal use
16 structures are not permitted in the zone. But
17 they already exist, at least as recognized by the
18 Building Department as a two and a one. So, if
19 anything, we'd be asking for a D-2 variance,
20 which is an expansion of that preexisting
21 nonconforming use, as well as density variances,
22 because of the size of the units.

23 So, I'm going to ask Mr. Valella to review
24 the units as they exist with the Board, and start
25 with the front building.

1 MR. VALELLA: Sure.

2 The property in question is located on 42nd
3 Street, between Bergenline Avenue and Kennedy
4 Boulevard. It is Lot 10 and in Block 244, two
5 existing structures, one in the front, one in the
6 rear.

7 The property is 25 by 100. It's a very
8 typical -- 42nd Street has them, basically, all
9 lined up in a row. Everything about it is very
10 typical.

11 The ground -- the first unit, which I call
12 unit A, which is the front, is an existing three
13 family. The one in question is in the basement.

14 The ground floor has a two bedroom
15 apartment, which we call apartment number one,
16 and that has 710 square feet in ground floor
17 area.

18 Apartment number two, which is on the
19 second floor, is an existing three bedroom
20 apartment, and that again is 710 square feet.

21 The apartment in question on the front unit
22 is apartment number three. That is an existing
23 three bedroom apartment. And that is 690 square
24 feet in ground floor area.

25 Now, that apartment does have a deficiency,

1 | which we would correct at the Building Department
2 | stage. The ceiling height is 6.5, which is
3 | insufficient.

4 | So, I mean, when we do -- when we get these
5 | kinds of units legalized, what happens at the
6 | Building Department is we do the -- the
7 | construction documents, and we lower the slab so
8 | -- to obtain -- you know, Code compliant heights.

9 | So, it's -- it's a big improvement, I find.
10 | I mean, it's night and day. We do that.

11 | Also, your Township, or your City, requires
12 | us to sprinkler that unit and to isolate it from
13 | a fire rating standpoint from the structure
14 | above.

15 | All the electrical gets upgraded. All the
16 | smoke detection, all the carbon monoxide. You
17 | know, it's a -- windows get enlarged in the
18 | bedrooms for emergency access.

19 | So, what I find enjoyable about the process
20 | on these legalizations is I get to see them
21 | before and after, and it is quite an improvement
22 | to the quality of life.

23 | That's why I do them.

24 | The unit in the rear is an existing two
25 | family and one family is -- is recognized. That

1 unit has a duplex apartment, which has -- is 782
2 square feet in floor area. It is a three bedroom
3 unit. And that occurs on the ground and on the
4 second floor.

5 The basement has the unit in question,
6 which we call apartment number four, which has an
7 area of 282 square feet. And it is an existing
8 one bedroom apartment. And again, the -- the
9 ceiling height on that would be something that we
10 would rectify at the next -- at the next level.

11 That's basically it. We are not proposing
12 to do any work to the exterior. We're not
13 proposing to make the buildings any bigger, any
14 smaller, any wider, any longer. All the setbacks
15 and physical characteristics of the building
16 remain in place. Basically, it will not -- there
17 is no work to -- there's no impact -- visual
18 impact to the neighborhood. Everything that we
19 would be doing, as remedial work, would occur
20 inside the -- the two dwelling units in question.

21 So, none of the setbacks, the lot
22 coverages, or anything like that are impacted by
23 this application.

24 Mr. Attorney, do you want me to go through
25 the bulk?

1 MR. ALONSO: Yeah.

2 MR. VALELLA: Or the planner?

3 MR. ALONSO: Yeah. You could do that, just
4 for the Board's edification, at this point.

5 MR. VALELLA: Yeah. I mean, we're -- we're
6 having a planner, who would fill you in further
7 on that, but so that I can start the ball
8 rolling.

9 The district is the R zone, low density
10 residential. The lot area required would be
11 2500. We have 2500.

12 The lot width required would be 25 feet.
13 We have 25 feet.

14 The lot depth required is a hundred. We
15 have a hundred.

16 The front yard requirement would be ten
17 feet or the prevailing setback. We have seven
18 feet eight and it seems like all the homes on
19 that are reasonably within the same kind of
20 setback with each other.

21 Side yards are required two for one, and
22 five in total. We have two foot nine and four
23 foot three, and 0.7 and 0.7, the second.

24 The rear yard requirement is 25 percent of
25 the lot width. We have two percent, or 2.08

1 feet.

2 And again, these are existing
3 circumstances.

4 The permitted building coverage, the
5 maximum, is 60 percent. The property is at 58.

6 The maximum number of stories is three.
7 We're at two, two and a half.

8 The maximum height is 40. We average it
9 out to about 30.

10 The lot coverage is 85 percent and we're at
11 94 percent.

12 And the parking requirement would be ten
13 for the number of dwelling -- bedrooms that we
14 have. And there is no parking on the property.
15 I suspect there's never been and it's -- again,
16 I'm saying, this goes back -- the beginning of
17 these homes is probably in the -- in the teens or
18 '20s.

19 That's about it.

20 MR. ALONSO: Okay.

21 Mr. Chairman, I have no further questions
22 of the architect.

23 If the Board has any questions?

24 CHAIRMAN MAROTTA: Any -- any Board members
25 have any questions of the architect?

1 Any member of the public have any questions
2 of the architect?

3 I have no questions.

4 You have one -- I see Mr. Price has a
5 question.

6 MS. DILLON: Mr. Price, please raise your
7 right hand.

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

10 MR. PRICE: I do.

11 MS. DILLON: Name and address for the
12 record, please.

13 MR. PRICE: Larry Price, 1006 Palisade
14 Avenue.

15 MS. DILLON: Thank you.

16 MR. PRICE: Let me just ask questions.

17 In the front, there are five units total on
18 this property.

19 MR. VALELLA: Three -- three in --

20 MR. PRICE: Three in the front, two in
21 back.

22 MR. VALELLA: Yes, sir.

23 MR. PRICE: Okay.

24 You went through them quick -- let me go to
25 the back first.

1 There are two apartments.

2 MR. VALELLA: Yes.

3 MR. PRICE: One is a one bedroom in the
4 basement. It is 282 square feet?

5 MR. VALELLA: Two hundred and eighty-two
6 square feet.

7 MR. PRICE: Okay.

8 And then, there is a duplex, which is a --

9 MR. VALELLA: Seven hundred and eighty-two
10 square foot three bedroom.

11 MR. PRICE: Three bedrooms.

12 MR. VALELLA: Um hum. Do you want me to go
13 for the ground -- for the front, as well?

14 MR. PRICE: Yes, if you would.

15 MR. VALELLA: Sure.

16 The apartment to be legalized before you is
17 a three bedroom, and that is 690 square feet.

18 And the existing units are a two bedroom at
19 710, and a three bedroom at 710.

20 MR. PRICE: Okay. Very good.

21 Thank you.

22 MR. VALELLA: Okay.

23 CHAIRMAN MAROTTA: Any other questions?

24 Mr. Alonso, you said you will bring a
25 planner the next time.

1 MR. ALONSO: That's correct.

2 CHAIRMAN MAROTTA: I would like to ask you,
3 please have the applicant here also. I might
4 have some questions.

5 MR. ALONSO: I will.

6 VICE CHAIRMAN BONACCI: Mr. Chairman, I
7 just have something real quick to add.

8 CHAIRMAN MAROTTA: Excuse me?

9 VICE CHAIRMAN BONACCI: I just have a
10 question real quick.

11 CHAIRMAN MAROTTA: Oh, sure. Go ahead.

12 VICE CHAIRMAN BONACCI: The memo that we
13 have here from the Building Department, it states
14 that Block 244, 534 42nd Street, Lot 10, was
15 originally a two unit structure.

16 So, therefore, just to clarify this, we're
17 going from two unit structure to five.

18 MR. ALONSO: No, two is in the front.

19 VICE CHAIRMAN BONACCI: Just the front.

20 MR. ALONSO: And they also recognize one in
21 the rear.

22 VICE CHAIRMAN BONACCI: All right. I don't
23 have that here on the memo. I only have the two
24 unit structure. So, I'm assuming that that's
25 building A.

1 MR. ALONSO: Correct.

2 VICE CHAIRMAN BONACCI: It doesn't have any
3 mention here of building B.

4 MR. ALONSO: Okay. I'll try -- if you'd
5 like, I can try to get something from the
6 Building Department.

7 CHAIRMAN MAROTTA: You know, Mr. Alonso,
8 try to clear that up because the memo we
9 received, as Mr. Bonacci said, tells us that the
10 -- there's a two unit structure there. Makes no
11 reference to the rear building.

12 Can you clear that up, if you can?

13 MR. ALONSO: I will.

14 CHAIRMAN MAROTTA: And -- and if you get a
15 document, please give it to our Secretary, so we
16 could get it.

17 MR. ALONSO: Absolutely.

18 MR. PANEQUE: Mr. Alonso, is your planner
19 coming in later, or he's not coming in at all
20 tonight?

21 MR. ALONSO: No, not tonight. He'll be
22 coming at the next meeting.

23 CHAIRMAN MAROTTA: They need a new date
24 here, Tomas.

25 MR. PANEQUE: Okay.

1 Mr. Vallejo, when can we schedule this? It
2 may be into January.

3 THE SECRETARY: That would be January 11,
4 2018.

5 MR. ALONSO: January 11?

6 THE SECRETARY: 2018.

7 MR. ALONSO: So, I guess you just have to
8 announce it or --

9 MR. PANEQUE: Yeah. No. There's -- we
10 need a motion to carry the matter --

11 THE SECRETARY: One second.

12 MR. PANEQUE: -- to the January 11th
13 meeting.

14 MS. GUTIERREZ: I make a motion.

15 THE SECRETARY: Motion to adjourn this
16 application for January 11, 2018 by Ms.
17 Gutierrez.

18 Second the motion?

19 Mr. Bonacci.

20 Roll call on the motion.

21 Mr. Marotta?

22 CHAIRMAN MAROTTA: Yes.

23 THE SECRETARY: Mr. Bonacci?

24 VICE CHAIRMAN BONACCI: Yes.

25 THE SECRETARY: Ms. Gutierrez?

1 MS. GUTIERREZ: Yes.

2 THE SECRETARY: Mr. Grullon?

3 MR. GRULLON: Yes.

4 THE SECRETARY: Mr. Pressey?

5 MR. PRESSEY: Yes.

6 THE SECRETARY: Mr. Medina?

7 MR. MEDINA: Yes.

8 THE SECRETARY: Six in favor.

9 Motion carries.

10 No new notice required.

11 Thank you.

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1 **Franklin Medina, 522 4th Street:**

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3 THE SECRETARY: Next application on
4 tonight's agenda, Franklin Medina, 522 4th Street.

5 Mr. Alonso, please?

6 (Whereupon, there was a pause in the
7 proceedings.)

8 MR. ALONSO: Wasn't there an attorney
9 sitting in for you one day?

10 MR. PANEQUE: Unless there was a conflict,
11 but not on this one.

12 Okay.

13 Ready?

14 MR. ALONSO: All right.

15 Mr. Chairman, members of the Board, the
16 Board may recall that the -- this application was
17 commenced at a prior meeting.

18 Mr. Arencibia presented the testimony with
19 respect to the existing structure.

20 My client purchased the property back in
21 2006. At that time, there was already four --
22 four units.

23 Subsequently, several years later, we
24 received notice from the Building Department that
25 two of those units were illegal. He always

1 | believed that they were four units. Mr.
2 | Arencibia testified as to the age and the
3 | condition of those units, and we believe that
4 | they've been existing for quite some time.

5 | The Board had requested that Mr. Arencibia
6 | turn his phone off, and then provide --

7 | MR. ARENCIBIA: My apologies.

8 | MR. ALONSO: -- and provide revised plans,
9 | with respect to some additional information. And
10 | those plans were -- were filed with the Board.

11 | So, I'm going to ask Mr. Arencibia just to
12 | review those -- those modifications.

13 | MR. ARENCIBIA: Yes.

14 | MS. DILLON: Mr. Arencibia, let me swear
15 | you in.

16 | Please raise your right hand.

17 | Do you affirm the testimony you're about to
18 | give this Board is the whole truth?

19 | MR. ARENCIBIA: I do.

20 | MS. DILLON: Please state your name for the
21 | record.

22 | MR. ARENCIBIA: Albert Arencibia.

23 | MS. DILLON: Thank you.

24 | MR. ARENCIBIA: I'm licensed in New York,
25 | New Jersey, a few states.

1 VICE CHAIRMAN BONACCI: Accept your
2 qualifications.

3 MR. ARENCIBIA: I'm still licensed, as far
4 as I know.

5 MR. ALONSO: So, Mr. Arencibia, the last
6 time we presented to the Board, the Board had
7 requested that we present some revised plans to
8 include some additional information.

9 MR. ARENCIBIA: That's correct.

10 What happened was, we came here with the
11 plans, the same existing plans, and just showed
12 the layouts of the new proposed units we were
13 trying to legalize.

14 The Board requested that I add the existing
15 apartment layouts onto the plans, and also to put
16 some square footage numbers and dimensions on all
17 the spaces. And those are basically the extent
18 of the changes that were done on the plans.

19 Everything else, the units are exactly the
20 same. All we did was add the square footage
21 numbers and dimensions for the -- for the other
22 units.

23 MR. ALONSO: Okay.

24 So, could you just review that with the
25 Board?

1 MR. ARENCIBIA: Okay.

2 So, on Sheet A-100, we basically show like
3 in a bubbled circle the layouts of the existing
4 apartments that we basically did the layouts,
5 where we show exactly what the configuration of -
6 - the internal configuration of the apartments
7 are themselves, and as well as the additional
8 square footage numbers that we added, circled,
9 bubbled again. And we have dimensions on all the
10 rooms, as per the Board's requirements.

11 MR. ALONSO: Now, Mr. Arencibia, and just
12 to refresh the Board's recollection, at the last
13 meeting, last hearing, you testified that, based
14 on your opinion, the four units were constructed
15 as four units. They weren't two units that were
16 subdivided, subsequently.

17 Is that correct?

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

19 MR. ALONSO: Okay.

20 MR. ARENCIBIA: I mean, this -- this
21 structure has been here for a long time. The
22 units definitely show a great amount of age, been
23 there for many, many years.

24 You could see, by the pictures, even on the
25 -- on our drawings, that the siding is old -- you

1 know, older windows, sub-on (phonetic) windows
2 and things like that.

3 So, it definitely has been around for a
4 long time, so were the interior of the units. I
5 mean, they're in good shape, but they've been
6 around for a long time.

7 CHAIRMAN MAROTTA: That's finished?

8 MR. ALONSO: So, I have no further
9 questions of --

10 CHAIRMAN MAROTTA: Okay.

11 MR. ALONSO: -- Mr. Arencibia, if the Board
12 has any questions.

13 CHAIRMAN MAROTTA: Any members of the Board
14 have a question of the expert?

15 VICE CHAIRMAN BONACCI: I just have a
16 comment.

17 It was I believe at the meeting that we
18 had, yeah, in September, that there were some
19 things regarding square footage of units that
20 were not clear on the plans.

21 And Mr. Arencibia, you know, came through
22 with our request, and provided us the numbers
23 that we were looking for.

24 CHAIRMAN MAROTTA: Did you get them?

25 VICE CHAIRMAN BONACCI: We got them.

1 That's -- that's what we asked him for.

2 CHAIRMAN MAROTTA: Okay. Any --

3 VICE CHAIRMAN BONACCI: It just wasn't
4 clear on the original plans, now it is.

5 CHAIRMAN MAROTTA: Any members of the
6 public have any questions?

7 Larry?

8 MR. PRICE: I'm still sworn in. I'm still
9 Larry Price.

10 MS. DILLON: Just say it. That's all.

11 MR. PRICE: Okay.

12 MR. ARENCIBIA: I'm still Albert Arencibia.

13 MR. PRICE: Okay. The -- if I remember
14 this application, there are two apartments in the
15 front and two on the side.

16 MR. ARENCIBIA: Rear. Yes.

17 MR. PRICE: Rear. Okay.

18 MR. ARENCIBIA: Yes. Correct. Um hum.

19 MR. PRICE: Okay. You say they're in the
20 bubble, but -- you know --

21 MR. ARENCIBIA: They're not. What I said
22 was --

23 MR. PRICE: There are two apartments in the
24 front.

25 MR. ARENCIBIA: I'm sorry.

1 MR. PRICE: There's one on the first floor
2 and one on the second.

3 MR. ARENCIBIA: Correct.

4 MR. PRICE: The one on the first floor --

5 MR. ARENCIBIA: Yes.

6 MR. PRICE: -- what's the square footage?

7 MR. ARENCIBIA: Six hundred and forty-three
8 square feet.

9 MR. PRICE: Square feet. And it is a what?

10 MR. ARENCIBIA: Two bedroom.

11 MR. PRICE: Two bedrooms.

12 Okay, the one, I guess, upstairs from that,
13 would be --

14 MR. ARENCIBIA: Okay. That's 906 square
15 feet.

16 MR. PRICE: Okay.

17 MR. ARENCIBIA: And when we went --

18 MR. PRICE: And that is a what?

19 MR. ARENCIBIA: That is -- actually, when
20 we went inside, it's laid out as a one bedroom.
21 However, you could accommodate two, possibly
22 three bedrooms in there, if you'd like. But it
23 was laid out as a one bedroom.

24 MR. PRICE: One bedroom. Okay.

25 Then, to the rear, you have -- on the first

1 floor, you have the first part -- the third
2 apartment, I guess.

3 MR. ARENCIBIA: Correct.

4 MR. PRICE: That is what?

5 MR. ARENCIBIA: A three bedroom.

6 MR. PRICE: A three bedroom. And how large
7 is that?

8 MR. ARENCIBIA: Nine hundred and ninety-
9 eight square feet.

10 MR. PRICE: Nine hundred and --

11 MR. ARENCIBIA: Ninety-eight.

12 MR. PRICE: Ninety-eight.

13 MR. ARENCIBIA: Um hum.

14 MR. PRICE: Okay.

15 And the one upstairs?

16 MR. ARENCIBIA: Is also a three bedroom.
17 And it's 1,091 square feet.

18 MR. PRICE: Very good.

19 Thank you.

20 MR. ARENCIBIA: Sure.

21 CHAIRMAN MAROTTA: Any other members of the
22 public have a question?

23 Mr. Alonso, do you have a planner?

24 MR. ALONSO: I do.

25 Mr. Karlebach?

1 MR. KARLEBACH: Yes.

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

4 MS. DILLON: Mr. Karlebach, please raise
5 your right hand.

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

8 MR. KARLEBACH: I do.

9 MS. DILLON: If you would please state your
10 name and spell it for the record?

11 MR. KARLEBACH: David Karlebach,
12 K-A-R-L-E-B-A-C-H.

13 MS. DILLON: Thank you very much.

14 MR. ALONSO: Mr. Chairman, Mr. Karlebach
15 has been before this Board in the past, and has
16 been qualified. I'd ask that his --

17 CHAIRMAN MAROTTA: Qualified.

18 MR. ALONSO: Thank you.

19 Mr. Karlebach, did you prepare an analysis
20 with respect to this application?

21 MR. KARLEBACH: Yes, I have.

22 MR. ALONSO: Okay.

23 And can you please review that analysis for
24 the Board?

25 MR. KARLEBACH: Certainly.

1 I reviewed the Zoning Ordinance and the
2 Master Plan. And if you review the 2009 Master
3 Plan, it has an existing zoning map, which
4 indicates that this property, at that time, was
5 in an R zone. And the R zone, in 2009, permitted
6 four family homes. That was a permitted use.

7 The Zoning Ordinance was changed after that
8 date, somewhere between 2009 and 2012. I don't
9 know the precise date. I know the new zoning map
10 was adopted in March of 2012. And at that time,
11 four family homes were no longer permitted in the
12 R zone.

13 So, it's -- it's the applicant's contention
14 that this is a preexisting, nonconforming use.
15 The property was purchased in 2006. You heard
16 testimony from the architect that it has a
17 longstanding history of being a four family
18 structure. The owner -- I believe, the
19 owner/applicant is here and he can also provide
20 testimony in that regard, that for as long as
21 he's owned the property, it's been a four family
22 building.

23 So, it was legally existing before the
24 adoption, or I should say the amendment in 2012,
25 excising four families as permitted uses.

1 So, I believe the Board is empowered, under
2 40:55D-68 of the Municipal Land Use Law, to
3 recognize this as a legally existing
4 nonconforming use.

5 In the event the Board does not accept
6 that, I think there are sufficient reasons for
7 the granting of a D variance.

8 So, I guess, at this time, we should --

9 MR. ALONSO: Well, why -- why don't we just
10 go through the analysis for the D variances, and
11 then, we'll let the Board indicate how they want
12 to proceed.

13 MR. KARLEBACH: Certainly.

14 I reviewed aerial photography of this site,
15 dating back to the 1930s, and it doesn't appear
16 that there's been any physical changes to the
17 buildings on this property since 1930.

18 As I said, we heard testimony by the
19 architect that it's been a four family for some
20 time. Based on the factual evidence, I think
21 that certification can be granted, but it does
22 qualify for a D-1 use variance, also.

23 I believe that this application does
24 advance several important purposes of the
25 Municipal Land Use Law. This project provides

1 needed housing for a growing population. It
2 provides new housing stock in an area where most
3 of the dwellings are over 50 years old. As a
4 matter of fact, if you look at the 2009 Master
5 Plan, that document tells us that 69 percent of
6 all of the housing units in the city are over 50
7 years old. That's in your Master Plan.

8 This project promotes an efficient use of
9 the land, with a very easy retrofit of existing
10 space. There's no new construction proposed,
11 just retrofitting or refitting the interior.

12 The project promotes a desirable visual
13 environment, with no physical expansion and a
14 preservation of the existing building.

15 So, all of these purposes that I just cited
16 to you promote the Land Use Law in Paragraph A,
17 G, and I.

18 It also promotes the Smart Growth and State
19 Plan by redirecting population into the urban
20 core.

21 There are no substantial impacts that I've
22 identified. In terms of public impacts, all of
23 the units will be safe, convenient and
24 comfortable. The units are of ordinary size. We
25 heard testimony that they range in size between

1 six hundred and forty-something square feet to
2 1,091 square feet. Certainly, spacious enough to
3 accommodate normal dwellings.

4 The site has long sustained itself without
5 parking. And there are other modes of
6 transportation available, of course. There's
7 certainly a lot of bus lines that run nearby this
8 area.

9 I don't believe there's any public parking
10 garages that are available. I didn't undertake
11 that analysis. I know there's one at the
12 intersection of 6th and West Street, but there's
13 no parking permits available at that location.

14 There's another one at 8th and Central, but
15 that's on a first come, first serve basis. But
16 there is public parking available in this
17 neighborhood.

18 In terms of the zone impacts, the relief
19 does relate to a specific piece of property with
20 distinct characteristics and not the entire zone.

21 So, I'll conclude by saying this a very
22 straightforward application. It's a validation,
23 really, of a longstanding, nonconforming
24 condition.

25 The applicant has responded to the Board's

1 request by providing more information and updated
2 floor plans.

3 And I believe the proofs for legalization
4 or use relief are met, and approval is warranted.

5 CHAIRMAN MAROTTA: Any --

6 MR. ALONSO: I have no further testimony
7 from the planner.

8 CHAIRMAN MAROTTA: Any members of the Board
9 have questions of the planner?

10 Any members of the public?

11 Yeah, I might have a few questions.

12 First of all, Mr. Alonso, could you tell
13 me, I see two different addresses for the owner,
14 for the applicant.

15 MR. ALONSO: Okay.

16 CHAIRMAN MAROTTA: All right?

17 I -- I see an address -- address of the
18 owner here, Franklin Medina, 191 Nimitz Road,
19 Paramus. And then, I see an address of the
20 owner/applicant, Franklin Medina, 522 4th Street.

21 Where is it?

22 MR. ALONSO: He resides in Paramus.

23 CHAIRMAN MAROTTA: Okay. So --

24 MR. ALONSO: And -- and -- but he's the
25 owner.

1 CHAIRMAN MAROTTA: So, that's an error on
2 the application. Saying that he resided at 422
3 4th Street, is an error.

4 MR. ALONSO: He does not reside there.

5 CHAIRMAN MAROTTA: He doesn't. All right.

6 MR. ALONSO: No.

7 CHAIRMAN MAROTTA: He's an out -- out-of-
8 town landlord. Is that --

9 MR. ALONSO: Correct.

10 CHAIRMAN MAROTTA: Okay.

11 Is he here?

12 MR. ALONSO: He is here.

13 CHAIRMAN MAROTTA: Okay.

14 First, I'd like to ask the planner, you
15 made reference, I think, to Title 40:55D-2. I
16 think that's what you did.

17 MR. KARLEBACH: I think I referenced maybe
18 2 and 68. Two, right, two of the --

19 CHAIRMAN MAROTTA: And you said that it
20 meets the standards as set forth in 55D-2.

21 MR. KARLEBACH: Yes.

22 CHAIRMAN MAROTTA: Which ones?

23 MR. KARLEBACH: I think I mentioned A, G,
24 and I, promotion of the public welfare; I would
25 be promotion of a desirable visual environment.

1 And G is to provide sufficient space at
2 appropriate locations for a variety of land uses,
3 including residential, commercial, industrial, to
4 meet the needs of New Jersey citizens.

5 CHAIRMAN MAROTTA: Well, these buildings
6 are already there. So, how does that fit in?

7 MR. KARLEBACH: Well, as I said, one of the
8 goals of just about every urban center is to
9 provide new housing stock.

10 If you look at master plans in Hudson
11 County, just about every one says the same thing.
12 And as I said, I believe 69 percent of the
13 buildings are over 50 years old. And a vast
14 majority of buildings are not owner occupied.
15 Most of them are occupied by renters, not owners.

16 Any time we have an opportunity to provide
17 new housing that's safe and Code compliant, to
18 me, that's an extreme planning benefit in an
19 urban location, and we should embrace that
20 opportunity, as planners.

21 MR. ALONSO: And just keep in mind, this
22 application, we're not looking to create new
23 units, we're just looking to legalize them for
24 the purposes of the Building Department.

25 As indicated in the testimony by Mr.

1 | Karlebach, the -- the aerial photographs show
2 | that this structure, in its current condition,
3 | was there since the 1930s, and probably before
4 | that. Couple that with Mr. Arencibia's testimony
5 | that based on the layout, the side entrances,
6 | that this was always laid out as four units, as
7 | far back as --

8 | CHAIRMAN MAROTTA: Excuse me?

9 | MR. ALONSO: -- as anybody could tell.

10 | CHAIRMAN MAROTTA: Excuse me?

11 | How do you pronounce your name?

12 | MR. KARLEBACH: Karlebach.

13 | CHAIRMAN MAROTTA: Oh, sorry.

14 | You said that -- in your testimony, that
15 | this is a four family residence.

16 | Yes?

17 | MR. KARLEBACH: Yes.

18 | CHAIRMAN MAROTTA: The application I see
19 | before me, he's applying to convert a two family
20 | house to a four family house.

21 | MR. KARLEBACH: Right.

22 | CHAIRMAN MAROTTA: While utilizing two
23 | existing basement apartments.

24 | MR. KARLEBACH: Well, I think what --

25 | CHAIRMAN MAROTTA: Excuse me.

1 MR. KARLEBACH: Okay. I'm sorry.

2 CHAIRMAN MAROTTA: If you say it is a four
3 family, then why did he make the application that
4 he wants to convert a two family to a four
5 family?

6 MR. KARLEBACH: I think that was direction
7 that came from the Building Department.

8 I don't necessarily agree with the Building
9 Department. I think there's a disagreement
10 there.

11 So, we're really just putting forth the
12 application as directed. But as I come before
13 you tonight, I'm presenting an alternative
14 viewpoint.

15 CHAIRMAN MAROTTA: Okay.

16 Part of your sections of 40:55D-2, you said
17 was A. And you said to encourage municipal
18 action to guide the appropriate use of
19 development of all lands in this state, in a
20 manner which would promote public health safety
21 rules and general welfare.

22 MR. KARLEBACH: Right.

23 CHAIRMAN MAROTTA: How does it do that?

24 MR. KARLEBACH: Well, it's an appropriate
25 use because, as I said, it's -- it's a four

1 family home, and I believe it to be a legal four
2 family home. Okay. That certainly makes it
3 appropriate. We're not proposing anything that
4 was contrary to the Ordinance. Okay?

5 It's not a variance for a wholly new
6 nonconforming use that was never contemplated in
7 this zone. It was certainly contemplated in this
8 zone prior to 2012. So, that makes an
9 appropriate use.

10 How it advances the public welfare? As I
11 said; safe, comfortable, Code compliant housing,
12 in an area, as I said, serving an area that has a
13 need for additional housing.

14 CHAIRMAN MAROTTA: Okay. Let me ask you
15 this.

16 In your testimony, you said nothing about
17 off-street parking.

18 MR. KARLEBACH: Well, again, this -- this
19 property --

20 CHAIRMAN MAROTTA: Does this require off-
21 street parking, according to the Code?

22 MR. KARLEBACH: Well, according to the law,
23 and I'm -- excuse me, I'm not a legal scholar, if
24 the property never had parking, it then --

25 CHAIRMAN MAROTTA: That's not my question.

1 MR. KARLEBACH: Well --

2 CHAIRMAN MAROTTA: Excuse me. I don't like
3 to interrupt you.

4 MR. KARLEBACH: Go ahead.

5 CHAIRMAN MAROTTA: My question is, does
6 this property require off-street parking?

7 MR. KARLEBACH: It does not.

8 CHAIRMAN MAROTTA: It does not.

9 MR. KARLEBACH: Does not.

10 CHAIRMAN MAROTTA: Where do you -- what you
11 -- what's your authority for that?

12 MR. KARLEBACH: The authority is that if
13 the property, historically, never had parking,
14 and operated as such, and there's no opportunity
15 to provide parking, the applicant is not required
16 to provide parking.

17 CHAIRMAN MAROTTA: Can you give me
18 authority for that?

19 MR. KARLEBACH: That case --

20 CHAIRMAN MAROTTA: What are you --

21 MR. KARLEBACH: -- is called --

22 CHAIRMAN MAROTTA: Is there case law?

23 MR. KARLEBACH: Yes, there is. I'll give
24 you the name of the case.

25 It's called Ric-Cic, R-I-C --

1 CHAIRMAN MAROTTA: All I need is the cite.

2 MR. KARLEBACH: I don't have the -- I can
3 probably go to the Municipal Land Use Law and --
4 or excuse me -- my Cox manual, and provide you
5 the citation.

6 CHAIRMAN MAROTTA: Go ahead.

7 MR. KARLEBACH: Ric-Cic versus Bassinder is
8 the name of the case. And if you give me a
9 moment, I can present that to you.

10 It's going to take me a second or two.
11 Excuse me.

12 (Whereupon, there was a pause in the
13 proceedings.)

14 MR. KARLEBACH: The -- the cite is 252 N.J.
15 Super 334, Appellate Division, 1991.

16 CHAIRMAN MAROTTA: Thank you.

17 Now, you say that this case holds that if
18 there never was any parking, they don't have to
19 provide parking.

20 MR. KARLEBACH: If it --

21 CHAIRMAN MAROTTA: Basically.

22 MR. KARLEBACH: If it never had parking,
23 and there's no opportunity to provide parking on
24 the site, the applicant cannot be compelled to
25 provide parking. Correct.

1 CHAIRMAN MAROTTA: That's if an existing,
2 but now you want to increase it by -- by --

3 MR. KARLEBACH: Not --

4 CHAIRMAN MAROTTA: You want to increase two
5 more apartments, don't you?

6 MR. KARLEBACH: Not at all. It's four
7 apartments. It was always four apartments.

8 CHAIRMAN MAROTTA: Well, I find that you
9 want to increase two more apartments.

10 MR. KARLEBACH: Well, I don't know how to
11 respond to that, other than, I guess, we disagree
12 in that regard.

13 CHAIRMAN MAROTTA: Of course. Absolutely.

14 MR. KARLEBACH: It's the same amount of
15 square footage. There's no physical expansion of
16 the building.

17 CHAIRMAN MAROTTA: You have a question?

18 VICE CHAIRMAN BONACCI: Just --

19 Yeah, just to clear up the confusion.

20 You guys are seeking a parking variance for
21 the application.

22 Right?

23 MR. ALONSO: Conservatively, we would
24 request one.

25 VICE CHAIRMAN BONACCI: Right.

1 MR. ALONSO: But the testimony by Mr.
2 Karlebach is that we're not required to provide
3 it.

4 VICE CHAIRMAN BONACCI: Okay.

5 And if it was three -- I'm sorry. If it --
6 if it becomes a total of four units, then we're
7 talking about eight cars. The variance would
8 have to cover eight cars --

9 MR. ALONSO: Yes.

10 VICE CHAIRMAN BONACCI: -- total.

11 Okay.

12 CHAIRMAN MAROTTA: Okay.

13 Mr. Secretary, we don't have Mr. Spatz here
14 tonight.

15 THE SECRETARY: No, Mr. Spatz --

16 CHAIRMAN MAROTTA: He couldn't make it.

17 THE SECRETARY: Mr. Spatz do memo so --

18 CHAIRMAN MAROTTA: I spoke to Mr. Spatz on
19 the phone, and he told me if any question came up
20 by you, or by any member of the Board, relative
21 to one of the applications, just adjourn it until
22 he gets here, and we'll discuss it with him.

23 He is our expert -- our planning expert,
24 and I'm going to ask that this matter be carried
25 until the January meeting, when we could speak to

1 Mr. Spatz about it.

2 In addition -- but prior to that, if the
3 applicant is here, I'd like him to --

4 I have no more questions of the planner.

5 MR. ALONSO: Sure.

6 CHAIRMAN MAROTTA: I'd like the applicant
7 to --

8 MR. ALONSO: And if I can, if you can just
9 indicate what issues are pending, so that we
10 could --

11 CHAIRMAN MAROTTA: Well --

12 MR. ALONSO: -- possibly also prepare.

13 CHAIRMAN MAROTTA: We have a big issue here
14 with respect to parking. We have a big issue
15 here as to whether or not this is a two family or
16 a four family. And I think we're entitled to
17 have our expert review this.

18 MR. ALONSO: Okay. I'll call Mr. Medina
19 up.

20 (Whereupon, there was a pause in the
21 proceedings.)

22 MS. DILLON: Can you just stand right in
23 front of that?

24 MR. F. MEDINA: Sure.

25 MS. DILLON: Please raise your right hand.

1 MR. F. MEDINA: Sure.

2 MS. DILLON: Do you affirm the testimony
3 you're about to give this Board is the whole
4 truth?

5 MR. F. MEDINA: Yes.

6 MS. DILLON: Could you please state your
7 name and spell it for the record?

8 MR. F. MEDINA: Franklin Medina,
9 F-R-A-N-K-L-I-N, M-E-D-I-N-A.

10 MS. DILLON: Thank you.

11 MR. F. MEDINA: Sure.

12 MR. ALONSO: Mr. Medina, where do you
13 currently reside?

14 MR. F. MEDINA: 191 Nimitz Road, Paramus
15 New Jersey, 07652.

16 MR. ALONSO: Did you ever reside at this
17 property?

18 MR. F. MEDINA: Never.

19 MR. ALONSO: Okay.

20 So, to the extent that there's an error in
21 the application, we would amend the application

22 --

23 CHAIRMAN MAROTTA: Okay. I just wanted to

24 --

25 MR. ALONSO: -- to -- to correct the

1 address.

2 CHAIRMAN MAROTTA: -- clear that up. You
3 know?

4 MR. ALONSO: And Mr. Medina, you're the
5 owner of the property.

6 Correct?

7 MR. F. MEDINA: Correct.

8 MR. ALONSO: And how long have you -- when
9 did you purchase the property?

10 MR. F. MEDINA: I don't remember the exact
11 date, but around 2006 sometime.

12 MR. ALONSO: Okay.

13 MR. F. MEDINA: September of 2006, around
14 there.

15 MR. ALONSO: Okay.

16 In 2006, when you purchased the property,
17 how many units did you believe there to be?

18 MR. F. MEDINA: Four.

19 MR. ALONSO: Okay.

20 Since 2006, how many units have you used at
21 the property?

22 MR. F. MEDINA: Four.

23 MR. ALONSO: Okay.

24 Have you -- did there come a time when you
25 received notice from the Building Department that

1 some of the units may be illegal?

2 MR. F. MEDINA: Whenever I reached out to
3 you that -- you know, they sent me a -- a letter
4 saying that two of the units were illegal.

5 MR. ALONSO: Okay.

6 Might have been about two years ago?

7 MR. F. MEDINA: Yeah. Roughly.

8 MR. ALONSO: Okay.

9 And until that time, you never received any
10 violations or any notices from the Building
11 Department.

12 MR. F. MEDINA: Never. Never.

13 MR. ALONSO: Okay.

14 When you -- when you pay your -- your
15 taxes, do you know how the property's assessed?

16 MR. F. MEDINA: Well, it's assessed as a
17 four family property.

18 MR. ALONSO: Okay. Was it ever assessed
19 for more?

20 MR. F. MEDINA: I believe in the tax
21 records, it says a six.

22 MR. ALONSO: Okay.

23 And was it ever assessed as a two family?

24 MR. F. MEDINA: No. As far as I know, no.

25 MR. ALONSO: Okay.

1 So, I believe maybe the Chairman had some
2 questions?

3 MR. F. MEDINA: Sure.

4 CHAIRMAN MAROTTA: Are you finished?

5 MR. ALONSO: Yes.

6 MR. F. MEDINA: Yeah.

7 CHAIRMAN MAROTTA: You say, as soon as you
8 purchased this property, you had four rental
9 units.

10 MR. F. MEDINA: Correct.

11 CHAIRMAN MAROTTA: Are you subject to Rent
12 Control?

13 MR. F. MEDINA: I believe so, yes.

14 CHAIRMAN MAROTTA: Are you registered with
15 the Rent Control Office --

16 MR. F. MEDINA: I am.

17 CHAIRMAN MAROTTA: -- of the City?

18 MR. F. MEDINA: Yes.

19 CHAIRMAN MAROTTA: All right. I have no
20 more questions.

21 MR. F. MEDINA: Sure.

22 VICE CHAIRMAN BONACCI: I just have one
23 question.

24 MR. F. MEDINA: Sure.

25 VICE CHAIRMAN BONACCI: So, the tax

1 records, Mr. Medina, show this address as a six
2 unit dwelling.

3 MR. F. MEDINA: Correct. Yes.

4 VICE CHAIRMAN BONACCI: Do you have any
5 idea why they would -- if it's -- if you bought
6 it as a four you say, why -- where these other
7 two came from?

8 MR. F. MEDINA: I have no idea.

9 VICE CHAIRMAN BONACCI: Is it possible that
10 maybe before you purchased the property, the
11 previous owner was using it as a six? Renting it
12 out as six units? Is that possible, from the way
13 that things appeared --

14 MR. F. MEDINA: Not the way --

15 VICE CHAIRMAN BONACCI: -- at one point in
16 time?

17 MR. F. MEDINA: -- the property is laid
18 out. It would be pretty much impossible.
19 There's not enough space for that, --

20 VICE CHAIRMAN BONACCI: Okay.

21 MR. F. MEDINA: -- for another two units.

22 VICE CHAIRMAN BONACCI: All right.

23 Thank you.

24 MR. F. MEDINA: Sure.

25 MR. PRESSEY: Mr. Medina, do you have any

1 documentation regarding it being a six?

2 MR. F. MEDINA: Regarding being a six?

3 MR. PRESSEY: Yeah.

4 MR. F. MEDINA: No. No.

5 MR. ALONSO: What I do have is a printout
6 from the Tax Department, indicating that it was
7 taxed as six units.

8 I don't know where they got that
9 information from. The testimony has been from
10 all the witnesses consistently that it's laid out
11 as four units. It's always been used as four
12 units.

13 But somehow, it was taxed as six units, not
14 -- not as a two unit. So, I'll provide --

15 MR. PRESSEY: Could we -- yeah.

16 MR. ALONSO: -- this to counsel.

17 If you'd like to mark that as, I guess,
18 A-1?

19

20 (Whereupon, Tax Record was received and
21 marked as Exhibit A-1.)

22

23 VICE CHAIRMAN BONACCI: Mr. Medina, do you
24 have a basement here?

25 MR. F. MEDINA: There is a basement. Yes.

1 VICE CHAIRMAN BONACCI: Do you rent the
2 basement out now?

3 MR. F. MEDINA: Not at all. No.

4 VICE CHAIRMAN BONACCI: Is it possible that
5 the basement, at one time, was rented out, and
6 that's where the extra two apartments came from?

7 MR. F. MEDINA: Well, when I purchased it,
8 there was just an empty slab. You know, just an
9 empty basement. It wasn't set up -- there
10 weren't any walls up, in other words.

11 VICE CHAIRMAN BONACCI: Didn't look like
12 anybody was living down there.

13 MR. F. MEDINA: No, not at all.

14 VICE CHAIRMAN BONACCI: Okay. Okay.

15 CHAIRMAN MAROTTA: Any further questions?

16 MR. ALONSO: And -- and just so the record,
17 typically, the Tax Assessor's records get
18 updated, typically, one or two ways.

19 If somebody comes in and -- and applies for
20 permits to do construction, and the CO is issued,
21 then the Tax Assessor gets notified so that they
22 could update their records, and then include that
23 into the improvement part of the tax bill.

24 The other way is, when they do a -- a
25 reassessment, and they go around, sometimes, they

1 | actually do a visual inspection inside.

2 | Sometimes they go by and they count mailboxes.

3 | So, somewhere, somehow, they got
4 | information that it was more than two, but as far
5 | as the testimony's concerned, it's not physically
6 | possible to have been six. But all the testimony
7 | leads us to believe that at least as far as the
8 | '30s, if not earlier, it's been four. So --

9 | CHAIRMAN MAROTTA: Mr. Vallejo, we have a
10 | meeting in December?

11 | THE SECRETARY: Yes, but it's booked.

12 | CHAIRMAN MAROTTA: We have a meeting in
13 | December.

14 | THE SECRETARY: We have -- we have seven
15 | applications.

16 | CHAIRMAN MAROTTA: I'm going to make a
17 | motion that this matter be carried to the
18 | December meeting, to give us an opportunity to
19 | have our --

20 | THE SECRETARY: Yes, Mr. Chairman.

21 | CHAIRMAN MAROTTA: -- expert review.

22 | I don't want to delay -- we go into
23 | January, I don't want to delay it too long for
24 | the applicant.

25 | THE SECRETARY: Allow me one second.

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

3 THE SECRETARY: December 14, Mr. Marotta.

4 CHAIRMAN MAROTTA: December 14?

5 THE SECRETARY: Yes, sir.

6 CHAIRMAN MAROTTA: That's my motion.

7 MR. PANEQUE: Is there a second?

8 CHAIRMAN MAROTTA: Do I have a second?

9 THE SECRETARY: Motion -- motion by -- to
10 adjourn this application, no new notice required,
11 by Mr. Marotta.

12 VICE CHAIRMAN BONACCI: Second.

13 CHAIRMAN MAROTTA: Call the roll, please.

14 THE SECRETARY: Second by Mr. Bonacci.

15 Roll call on the motion.

16 Mr. Marotta?

17 CHAIRMAN MAROTTA: Yes.

18 THE SECRETARY: Mr. Bonacci?

19 VICE CHAIRMAN BONACCI: Yes.

20 THE SECRETARY: Ms. Gutierrez?

21 MS. GUTIERREZ: Yes.

22 THE SECRETARY: Mr. Grullon?

23 MR. GRULLON: Yes.

24 THE SECRETARY: Mr. Pressey?

25 MR. PRESSEY: No.

1 THE SECRETARY: Mr. Medina?

2 MR. MEDINA: Yes.

3 THE SECRETARY: Five in favor, one against.

4 Motion carries.

5 MR. ALONSO: Thank you.

6 MR. ARENCIBIA: Thank you.

7 MR. F. MEDINA: Thank you.

8 CHAIRMAN MAROTTA: Thank you.

9 MR. ARENCIBIA: Thank you, everyone. Have
10 a good night.

11 MS. GUTIERREZ: Good night.

12 MR. PRESSEY: Good night.

13 (Whereupon, there was a pause in the
14 proceedings.)

15 * * *

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1 **Sirius XM Radio, Inc., 114 33rd Street:**

2

3 THE SECRETARY: We are going to change a
4 little bit the order of tonight's agenda, by the
5 petition of Mr. Chairman.

6 Next application on tonight's agenda,
7 Sirius XM Radio, I-N-C, 114 33rd Street.

8 (Whereupon, there was a pause in the
9 proceedings.)

10 MR. PANEQUE: Ms. Kasetta, may I ask you a
11 question?

12 MS. KASSETTA: Sure.

13 MR. PANEQUE: I don't see the Affidavit of
14 Publication from The Jersey Journal.

15 MS. KASSETTA: We sent it in, but I have
16 another copy.

17 MR. PANEQUE: May I, please?

18 (Whereupon, there was a pause in the
19 proceedings.)

20 MS. KASSETTA: Do you need the original, or
21 is the copy --

22 MR. PANEQUE: Yes. The original posting.
23 That's the one.

24 MS. KASSETTA: That one page.

25 MR. PANEQUE: Thank you.

1 MS. KASSETTA: You're welcome.

2 Good evening, Mr. Chairman, members of the
3 Board.

4 Allyson Kasetta from the firm of Price,
5 Meese, Shulman and D'Arminio, appearing on behalf
6 of Sirius XM Radio.

7 MR. PANEQUE: Excuse me, one second.

8 MS. KASSETTA: Sure.

9 MR. PANEQUE: We have to establish
10 jurisdiction.

11 MS. KASSETTA: Sure.

12 MR. PANEQUE: For the record, I've been
13 provided with the following documentation by Ms.
14 Kasetta:

15 I have been provided with the copy of an
16 Affidavit of Mailing, signed by Jennifer Zeller,
17 indicating that notice of tonight's hearing, on
18 this application, was sent out on October 20th,
19 2017.

20 I've also been provided with a bunch of
21 certified mail receipts, with a date of October
22 20th, 2017.

23 I've also been provided with an Affidavit
24 of Publication from The Jersey Journal, dated
25 October 20th, indicating that notice of tonight's

1 hearing was published on The Jersey Journal, on
2 the 20th of October of this year.

3 I've also been provided with a copy of the
4 certified list that was provided by the Tax
5 Assessor's Office, with a date of October 2nd,
6 2017, listing all property owners within the 200
7 foot radius of the property located at 114 33rd
8 Street, Block 201, Lot 1.

9 I also have been provided with a copy of
10 the actual notice that went out to all property
11 owners within the 200 foot radius; that notice
12 has a date of October 19, 2017.

13 Based on the information that's been
14 provided, this Board has jurisdiction to proceed
15 and hear this matter.

16 Thank you, Ms. Kasetta.

17 MS. KASETTA: Thank you, counsel.

18 As I was saying, I'm here on behalf of
19 Sirius XM Radio, Inc. The application seeks
20 approval for a rooftop wireless
21 telecommunications facility at the property
22 located at 114 33rd Street. It's Block 201, Lot 1
23 on the tax map. And it's developed with an
24 existing four story building.

25 The property is located in the residential

1 -- I'm sorry -- the medium density residential
2 zone, which permits wireless facilities as a
3 conditional use.

4 We are seeking variances from two of the
5 conditional use requirements for setbacks, which
6 we'll talk in a little bit more detail about
7 later. And we're also seeking site plan
8 approval.

9 I know that the Board Secretary had asked
10 us to obtain a letter of denial from the Zoning
11 Officer. We did request that on September 18th.
12 Unfortunately, we still have not received it.
13 I've called a few times, including today, but
14 have not been able to get it.

15 Counsel, if you'd like a copy of our letter
16 requesting the letter of denial, I can give that
17 to you.

18 MR. PANEQUE: Okay. Let's put that as an
19 exhibit, please.

20 Let the record reflect that I've been
21 provided with a letter from the law firm of
22 Price, Meese, Shulman and D'Arminio, dated
23 September 18, addressed to Mr. Martin Martinetti,
24 with respect to the property in question.

25 "Enclosed please find a request for zoning

1 determination, one set of plans and our check in
2 the amount of \$20.00, payable to City of Union
3 City, to cover the application fee. Kindly issue
4 a zoning determination with respect to this
5 project, so that we may provide same to the
6 Zoning Board.

7 Thank you."

8 And attached to the letter is the actual
9 application for zoning determination.

10 MS. DILLON: I'll mark that.

11

12 (Whereupon, Letter dated 9/18/17 to Union
13 City Building Department was received and marked
14 as Exhibit A-1.)

15

16 MR. PANEQUE: And Ms. Kasetta, it's your
17 representation that the office has not responded
18 with a letter of denial.

19 MS. KASETTA: Correct.

20 MR. PANEQUE: Okay.

21 MS. KASETTA: And I've called a few times,
22 but for whatever reason, just haven't been able
23 to get it.

24 MR. PANEQUE: We would just make it a
25 condition that as soon as you receive it, that

1 letter is provided.

2 MS. KASSETTA: Of course.

3 MR. PANEQUE: Okay? Normally, the
4 application would not proceed without the letter
5 of denial. But we know that you're going to have
6 the letter because this project needs to go
7 through the zoning approval.

8 MS. KASSETTA: Of course.

9 MR. PANEQUE: So that would be a condition.

10 MS. KASSETTA: I will certainly provide it
11 as soon as we get it.

12 MR. PANEQUE: Thank you.

13 MS. KASSETTA: One other housekeeping
14 matter, the County Planning Board issued a site
15 plan exemption for this project on September 20th.

16 So, I can also give you a copy of that.

17 MR. PANEQUE: Okay.

18 MS. KASSETTA: I'm not sure if you have it.

19 MR. PANEQUE: We'll have this marked as
20 A-2.

21 VICE CHAIRMAN BONACCI: Did she get sworn
22 in?

23 MR. PANEQUE: Who?

24 MS. GUTIERREZ: No, not yet.

25 VICE CHAIRMAN BONACCI: The attorney?

1 MS. GUTIERREZ: Not yet.

2 MR. PANEQUE: Attorneys don't get sworn in.

3 VICE CHAIRMAN BONACCI: Right.

4 MS. GUTIERREZ: Oh, okay.

5 MR. PANEQUE: Let the record reflect I've
6 been provided with a letter from the County of
7 Hudson, Department of Parks and Community
8 Services, Division of Planning, dated September
9 20th, 2017, addressed to the law firm Price,
10 Meese, Shulman and D'Arminio, with respect to
11 this application.

12 It states:

13 "Dear Mr. Meese:

14 Please be advised that the Hudson County
15 Planning Board, application number 2017-61-SP was
16 declared exempt at the September 19th, 2017 Hudson
17 County Planning Board meeting.

18 If you have any questions, or need
19 additional information, please feel free to call
20 the Division of Planning during regular business
21 hours."

22 This letter is signed by Kevin Force,
23 Hudson County Division of Planning.

24 Thank you.

25 MS. KASSETTA: Thank you.

1
2 (Whereupon, Letter from County of Hudson
3 dated 9/20/17 was received and marked as Exhibit
4 A-2.)

5
6 MS. KASSETTA: And with that, our first
7 witness will be the project architect, Robert
8 Marsac.

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

11 MS. DILLON: Sir, please raise your right
12 hand.

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

15 MR. MARSAC: I do.

16 MS. DILLON: Would you please state your
17 name and spell it for the record?

18 MR. MARSAC: Robert Marsac. Last name's
19 spelled M-A-R-S-A-C.

20 MS. DILLON: Thank you.

21 MR. MARSAC: And it's of A Saxon Design
22 Group, at 26 Main Street in Toms River, New
23 Jersey, 08753.

24 MS. KASSETTA: Mr. --

25 Oh, I'm sorry.

1 MR. MARSAC: Go ahead.

2 MS. KASSETTA: If you would begin by giving
3 the Board the benefit of your educational
4 background and qualifications?

5 MR. MARSAC: I'm -- I'm a registered
6 architect in the State of New Jersey since 2004.

7 I've been working in the telecommunications
8 field since 2001. And I've previously testified
9 in front of this Board many, many years ago.

10 CHAIRMAN MAROTTA: Accepted.

11 MS. KASSETTA: Thank you, Mr. Chairman.

12 And your office prepared the site plan that
13 was submitted with this application.

14 Correct?

15 MR. MARSAC: Correct.

16 MS. KASSETTA: So you're fully familiar with
17 the proposed design.

18 MR. MARSAC: Yes.

19 MS. KASSETTA: Okay.

20 If you would, just give the Board a very
21 brief description of what exists on the property
22 today.

23 MR. MARSAC: Okay. There's an existing
24 four story commercial building on the property,
25 depicted by this line. And this is the lot line.

1 It's a triangular shaped lot, with a penthouse on
2 the roof, an existing penthouse.

3 And the proposal is to put three panel
4 antennas on the façade of this building, plus an
5 equipment cabinet mounted to that existing
6 penthouse, a wall mounted equipment cabinet, onto
7 that existing penthouse on the roof.

8 The panel antennas will be tucked
9 underneath; there's an existing overhang.

10 May I show you the page?

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

13 MR. MARSAC: The existing building has an
14 overhang that protrudes out from the wall of the
15 actual building. And these antennas are proposed
16 to be tucked underneath that overhang at all the
17 three locations.

18 And then, the equipment cabinet, as I
19 explained, is proposed to be mounted to the
20 existing penthouse on the roof.

21 The top of the roof is 36 feet. The top of
22 the antennas proposed are 34 feet. So, they're
23 two feet down.

24 From that existing face of the overhang,
25 the antenna proposed is seven inches back from

1 | that face, so it does not protrude beyond the
2 | face and of course, it's below the roof.

3 | Same thing goes for the equipment cabinet.
4 | The equipment cabinet is proposed to be seven
5 | feet off -- the top of the equipment cabinet will
6 | be seven feet off the -- the surface of the roof.
7 | And the penthouse is another one foot one above
8 | the top of the equipment cabinet.

9 | In addition to that, there is a small GPS
10 | antenna, that's going to be mounted to the
11 | equipment cabinet. If you're not familiar with
12 | that, it's -- it's just the size of a baseball on
13 | -- on a simple mount and it's mounted right to
14 | that. The top of that will not protrude above
15 | the existing penthouse either.

16 | And the panel antennas, there are three
17 | panel antennas. They're 20.5 inches high by --
18 | where is it -- 4.9 inches wide. And they weigh
19 | approximately six pounds each.

20 | MS. KASSETTA: So, was this facility
21 | designed to be as inconspicuous as possible,
22 | because it's in a residential zone?

23 | MR. MARSAC: Yes.

24 | MS. KASSETTA: And the antennas are going to
25 | be painted to match the building.

1 MR. MARSAC: Correct.

2 MS. KASSETTA: Correct?

3 MR. MARSAC: Every -- everything is going
4 to be painted to match.

5 MS. KASSETTA: And as far as utilities, what
6 service is provided for this facility?

7 MR. MARSAC: The services -- the telephone
8 line and the electric and a ground will be
9 conduits that will run down the side of the
10 building, and -- and tap into the existing
11 building services.

12 MS. KASSETTA: And no need for water or
13 sewer service.

14 MR. MARSAC: No.

15 MS. KASSETTA: Correct?

16 MR. MARSAC: No.

17 MS. KASSETTA: Any impact on storm water
18 management?

19 MR. MARSAC: No.

20 MS. KASSETTA: Any environmental impact?

21 MR. MARSAC: No.

22 MS. KASSETTA: And the facility will be
23 unmanned and monitored remotely.

24 Correct?

25 MR. MARSAC: Correct.

1 MS. KASSETTA: So, there's no need for
2 parking for, say, employees for this facility.

3 MR. MARSAC: No. It's a -- a site tech
4 usually comes to these sites, if there's a
5 problem, that's one. And two, if regular
6 maintenance could be anywhere, once every six
7 weeks, in that neighborhood.

8 MS. KASSETTA: But there will be no one
9 there on --

10 MR. MARSAC: No.

11 MS. KASSETTA: -- a regular basis.

12 MR. MARSAC: No. It's an unmanned site.

13 MS. KASSETTA: Mr. Chairman, those are all
14 the questions that I have for this witness.

15 CHAIRMAN MAROTTA: Anybody have a question?

16 MR. PRESSEY: I thought I heard, is it
17 residential or commercial?

18 MR. MARSAC: It's a residential zone.

19 MR. PRESSEY: Residential. Okay.

20 MR. MARSAC: Medium density.

21 MR. PRESSEY: Do you have any other sites
22 in this area, Union City?

23 MR. MARSAC: That will be a question for
24 the --

25 MR. PRESSEY: Oh, okay.

1 MS. KASSETTA: Our -- our next --

2 MR. PRESSEY: All right.

3 MS. KASSETTA: -- witness will be able to
4 answer --

5 MR. PRESSEY: Okay.

6 MS. KASSETTA: -- that question.

7 MR. MARSAC: Oh, should I go over the
8 variances?

9 MS. KASSETTA: Yeah. If you would just run
10 through --

11 MR. MARSAC: Okay.

12 MS. KASSETTA: -- what they are.

13 MR. MARSAC: Okay.

14 Just quickly, there's two setback
15 variances. One is -- was --

16 CHAIRMAN MAROTTA: Excuse me? Do you have
17 a planner?

18 MR. MARSAC: Oh, yeah.

19 MS. KASSETTA: We do.

20 MR. MARSAC: Okay. You can let him --

21 MS. KASSETTA: He'll -- he'll testify as to
22 the proofs.

23 Mr. Marsac was just going to state what
24 they are --

25 CHAIRMAN MAROTTA: Okay.

1 MS. KASSETTA: -- for the Board.

2 MR. MARSAC: It's just, number one is --
3 the requirement is a hundred feet from a
4 residential zone. And we are 8.3 feet.

5 And the second one is front yard setback,
6 which is required to be ten feet, and to our
7 antenna is 4.4 feet.

8 MS. KASSETTA: Thank you.

9 CHAIRMAN MAROTTA: Any other questions?
10 Any member of the public?
11 Larry?

12 MR. PRICE: Larry Price.

13 Question?

14 The conduits that go up the side of the
15 building --

16 MR. MARSAC: Yes.

17 MR. PRICE: How thick are the conduits?

18 MR. MARSAC: Conduits are usually two
19 inches in diameter each.

20 MR. PRICE: Is that what's planned here?
21 Two inches?

22 MR. MARSAC: Yes.

23 MR. PRICE: Okay.

24 Is it going to be front, side of the
25 building?

1 MR. MARSAC: That would be on -- it is -- I
2 might have to go to the CDs for that.

3 Let's see, that's this way. It's on the
4 side of the building. It's on this -- this side
5 of the building. And they would be painted to
6 match.

7 MR. PRICE: Okay.

8 But what would be next to it? What is --
9 do you know what's next to the building on that
10 side?

11 MR. MARSAC: Apparently, that's just open
12 space. Parking.

13 MR. PRICE: Parking.

14 Thank you.

15 CHAIRMAN MAROTTA: I have just maybe one
16 question for you.

17 Our Code requires that the antenna be 100
18 feet from the nearest lot line. You're
19 presenting it at 8.3 feet.

20 MR. MARSAC: That's correct.

21 CHAIRMAN MAROTTA: And our Code also says
22 that from the front, there should be a setback of
23 ten feet.

24 Could you tell me why a hundred feet and
25 ten feet? Is it a safety factor?

1 MR. MARSAC: That would probably be a
2 question for the --

3 CHAIRMAN MAROTTA: Planner?

4 MR. MARSAC: -- the RF.

5 MS. KASSETTA: Well, I think -- I think, Mr.
6 Chairman, if I understand your question, it was
7 why that --

8 CHAIRMAN MAROTTA: Yeah.

9 MS. KASSETTA: -- that requirement was put
10 in place.

11 CHAIRMAN MAROTTA: Why would that -- why
12 would it be a hundred feet? Would it be a safety
13 factor?

14 MS. KASSETTA: It's -- it's tough to answer
15 that, not being the author of the Ordinance.

16 MR. MARSAC: I -- I can't really --

17 CHAIRMAN MAROTTA: Answer.

18 MR. MARSAC: -- testify as an expert.

19 CHAIRMAN MAROTTA: Okay. Fair enough.

20 MR. MARSAC: But -- but I can tell you,
21 from my experience, from being over three or
22 4,000 telecommunication sites, personally, that
23 usually the distance is around 12 feet. That
24 sometimes on certain rooftops that I go to, they
25 have a daisy chain there. They don't want you to

1 get closer than 12 feet.

2 But that's -- it's -- it's more an RF
3 emissions.

4 CHAIRMAN MAROTTA: It sounds to me like a
5 safety factor. That's --

6 MR. MARSAC: Yeah.

7 CHAIRMAN MAROTTA: That's why I wanted to
8 know if you agree with me. That's all.

9 MS. KASSETTA: Our -- our next witness can
10 --

11 MR. MARSAC: Yeah.

12 MS. KASSETTA: -- speak to safety --

13 MR. MARSAC: Yes.

14 MS. KASSETTA: -- for sure. But --

15 MR. MARSAC: Yes.

16 MS. KASSETTA: -- actually, that makes me
17 think of just a follow up question for you.

18 Maybe you could show the Board the existing
19 building setbacks, because they are
20 nonconforming. And the setbacks of the antennas
21 really are a function of the building setbacks.

22 MR. MARSAC: Okay.

23 The existing front yard setback is point --
24 .83, I believe. Here it is, .58. Excuse me.
25 About six inches off the front yard setback is

1 the existing.

2 The rear is -- oh, there is no rear.

3 Sorry.

4 And the side is 7.88 feet.

5 MS. KASSETTA: So of course --

6 CHAIRMAN MAROTTA: Thank you.

7 MS. KASSETTA: -- if the building setbacks
8 were greater, the antenna setbacks --

9 MR. MARSAC: Yes.

10 MS. KASSETTA: -- would be greater.

11 Correct?

12 MR. MARSAC: Yes. And the only reason
13 they're -- they're greater is because they're
14 tucked under the overhang.

15 CHAIRMAN MAROTTA: I have no more
16 questions.

17 MS. KASSETTA: Thank you, Mr. Chairman.

18 Our next witness will be our radio
19 frequency engineer, Brian Damstrom.

20 (Whereupon, there was a pause in the
21 proceedings.)

22 MS. DILLON: Sir, please raise your right
23 hand.

24 CHAIRMAN MAROTTA: Counsel, before you
25 begin questioning, according to a memo here, you

1 have -- you're seeking a use variance.

2 MS. KASSETTA: No. We're seeking two
3 conditional use variances. So, the use is
4 permitted as a conditional use. It's just that
5 we deviate from two of the conditional use
6 standards, which are the setback requirements.

7 CHAIRMAN MAROTTA: Our -- our planner tells
8 -- tell us, as not all conditions are met, a use
9 variance is required.

10 Do you have a planner?

11 MS. KASSETTA: I do.

12 CHAIRMAN MAROTTA: Okay.

13 Thank you.

14 MS. KASSETTA: You're welcome.

15 MS. DILLON: Sir, please raise your right
16 hand.

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

19 MR. DAMSTROM: Yes.

20 MS. DILLON: Would you please state your
21 name and spell it for the record?

22 MR. DAMSTROM: It's Brian, B-R-I-A-N,
23 Damstrom, D-A-M-S-T-R-O-M.

24 MS. DILLON: Thank you.

25 MR. DAMSTROM: Office is at 1221 Avenue of

1 the Americas, New York, New York, is Sirius
2 headquarters.

3 MS. KASSETTA: If you would begin with an
4 overview of your educational background and
5 qualifications?

6 MR. DAMSTROM: Yeah.

7 I've been with Sirius XM since the end of
8 2001, as an RF engineer and a full time employee
9 since 2006. Basically, in charge of all the
10 design integration of all the sites throughout
11 the whole country.

12 We've designed and built over 700 sites,
13 probably, throughout the U.S. and Puerto Rico.
14 So, myself has been in charge of that.

15 My education is NJIT, New Jersey Institute
16 of Technology, science degrees from way back.

17 MS. KASSETTA: And have you testified as a
18 radio frequency ex -- excuse me -- engineer, and
19 been accepted by other land use boards, or this
20 one, as an expert in that field?

21 MR. DAMSTROM: Not at this one, but yes.
22 At several other in New Jersey, New York and
23 Connecticut.

24 CHAIRMAN MAROTTA: Accepted, counselor.

25 MS. KASSETTA: Thank you, Mr. Chairman.

1 First, will you confirm that Sirius has a
2 license issued by the FCC?

3 MR. DAMSTROM: Yes. Yes. We have a
4 license that we can transmit in our frequency.

5 MS. KASSETTA: And as far as the need for
6 the site, you prepared a letter dated April 27th,
7 2017, that was submitted with the application.

8 Correct?

9 MR. DAMSTROM: Yes.

10 MS. KASSETTA: If you would talk a little
11 bit about why this site is needed by Sirius?

12 MR. DAMSTROM: Basically, we have a small
13 gap in coverage along 495. And what this site
14 will do is cover that small area of coverage.

15 So, it's the local streets that are
16 adjacent 495 and also 495. There's a hole in
17 that area where it basically blocks satellites
18 and such, underpasses. So, as vehicles with
19 satellite radio will go through, Sirius and XM,
20 because we're one company right now, it will have
21 outages and it will be turning on and off,
22 basically, as they drive.

23 This site would basically -- it's a --
24 proposed as a low power site, it's only covering
25 a small area. And it would fill in that gap of

1 coverage.

2 And that gap is sort of by the ridge in
3 Weehawken, the blocked signal that's coming in
4 from Manhattan. It doesn't make it into that
5 area. And then, we have further sites further
6 out in North Bergen, and then in Jersey City.

7 MS. KASSETTA: And you have an exhibit to
8 show the Board where that gap is.

9 Correct?

10 MR. DAMSTROM: Correct.

11 MS. KASSETTA: Counsel, what are we up to?
12 A-3?

13 MR. PANEQUE: That would be --

14 MS. DILLON: Yes.

15 MS. KASSETTA: Do you want me to mark it?

16 MS. DILLON: Was that submitted?

17 MR. PANEQUE: Was that --

18 MS. KASSETTA: No.

19 MR. PANEQUE: -- part of your --

20 MS. KASSETTA: This was not.

21 MR. PANEQUE: It was not.

22 MS. DILLON: Okay.

23 MR. PANEQUE: Okay. Then we have to mark
24 it. Yes.

25 MS. KASSETTA: Right? This was not

1 submitted? Or was it attached to your report?

2 MR. DAMSTROM: I mean, it was -- I
3 submitted it over to your office.

4 MS. KASSETTA: Okay. Well, let's --

5 MR. DAMSTROM: I'm not sure --

6 MS. KASSETTA: Let's mark it to be safe.

7 MR. DAMSTROM: So, right here is the gap in
8 coverage that I mentioned.

9 MS. DILLON: Excuse me?

10 Could you just give me the details of the
11 exhibit?

12 MR. DAMSTROM: This is a Coverage Map.

13 MS. DILLON: Okay.

14 Is it dated?

15 MR. DAMSTROM: No. There is no date on it.

16 And I --

17 MS. DILLON: Okay.

18 CHAIRMAN MAROTTA: The front page, it might
19 be dated.

20 MS. DILLON: Let me just mark it, and then
21 you'll just need to leave it with Mr. Vallejo.

22 That's fine. I just need to mark it.

23 MR. DAMSTROM: Oh. Sorry.

24 MS. KASSETTA: Okay.

25 MR. DAMSTROM: So, it's three pages.

1 MS. DILLON: It's three pages?

2 MR. DAMSTROM: Um hum.

3 MS. DILLON: Okay.

4

5 (Whereupon, Coverage Map, Three Pages, was
6 received and marked as Exhibit A-3.)

7

8 MR. DAMSTROM: So, right here, is where we
9 have the gap. This is our proposed site that
10 we're having it, it's kind of right in the center
11 of the gap in coverage. You can see here is the
12 ridge that we have in Weehawken that's blocking
13 signal coming from over here. And here is our
14 closest site, which is a site that we have
15 transmitting going west from here. And that
16 site's in North Bergen. And then, further to the
17 south, we have some sites in Jersey City. We
18 have no sites in Union City at this time.

19 So, here is the gap that we have. And
20 we're looking to put in, basically, a three
21 sector site. And with that three sector is we
22 basically we -- transmitting east, west, and
23 south, coming off of that location. And this
24 would be the fill-in in coverage and it would
25 give us enough coverage that we would have along

1 the highway and --

2 MS. KASSETTA: And in this facility, there's
3 no satellite dish proposed, whereas usually there
4 is a satellite dish with one of these facilities.

5 Can you tell the Board a little bit about
6 that?

7 MR. DAMSTROM: Correct.

8 Yeah, this is actually one of our newer
9 sites that we're looking. Our typical designs
10 that we have are 200, 1,000 -- 200 watt, a
11 thousand watt and 2,000 watts.

12 Two thousand watts are used seldomly. We
13 have a few of those, but 200 watts is our typical
14 site, and we have those in -- in all the
15 surrounding areas and in Manhattan, 200 watt
16 sites.

17 Those require having two dishes; a receive
18 dish to receive the XM satellite, and then also a
19 larger VSAT dish, which is receiving the Sirius
20 signal from the satellite.

21 We're moving away from that to make it kind
22 of an easier, smaller installation. It's not as
23 powerful, it's only 20 watts. It's a 20 watt
24 repeater, so it's a smaller -- a much smaller
25 repeater and it doesn't require having dishes,

1 | because we found with -- being in front of boards
2 | a lot, the dishes is what people, lot of times,
3 | have problems with and it's hard to hide a VSAT
4 | dish.

5 | So, what this requires is basically a
6 | fiber, just a regular -- you know, small -- you
7 | know, digital fiber to the -- to the box, and
8 | from that, we can receive our Sirius and XM
9 | signal and retransmit from the fiber.

10 | So, we've just started these. And this is
11 | actually going to be like our third installation.

12 | MS. KASSETTA: So, in addition to the design
13 | aspects that Mr. Marsac talked about, the lack of
14 | a satellite dish also makes this facility more
15 | inconspicuous.

16 | Correct?

17 | MR. DAMSTROM: Correct.

18 | MS. KASSETTA: Because that's something that
19 | normally stands out when people are looking at
20 | it.

21 | MR. DAMSTROM: Correct. Yeah, I mean our
22 | dishes are typically 1.8 meter, which is six foot
23 | round. And the reason they're so large is
24 | because with the works in the Ku band, which is a
25 | small frequency, and with rain, you have rain

1 fade. So, it's like when your Direct TV and you
2 get a heavy rain, it comes in and your signal
3 goes out. That's because of the rain.

4 What we do is actually don't put a Direct
5 TV dish, because we couldn't really have a signal
6 transmitting on and off, on and off, it would
7 hurt us in the long term, basically, with the
8 rain fade. What we do is we put in a 1.8 meter
9 dish and that gives you bigger margin. And most
10 people don't want to put a 1.8 meter dish, six
11 foot round, on the side of their house to get TV.
12 So --

13 MS. KASSETTA: And last, but certainly not
14 least, the Board had some questions about safety,
15 especially because we are requesting setback
16 variances.

17 Can you talk a little bit about the
18 conclusions in your report on FCC compliance, and
19 how that impacts the safety of the facility?

20 MR. DAMSTROM: Okay. Yeah.

21 So, this is -- this is, again, a low power
22 site. We pose no issues. We're going to be well
23 within the FCC regulated standards that we -- we
24 -- that set.

25 We meet that all the time. We do a wand

1 testing on all rooftops regularly. When this
2 site is built, we're going to have an outside
3 company come and certify the site, and give us a
4 report, based upon that certification. And then,
5 we keep that for our records, per the FCC
6 requirements, that all the rooftops are walked
7 and deemed safe.

8 I know -- you know, at this power, and the
9 size of the antennas, and all that stuff, we
10 won't have any issues. We don't have an issue if
11 it was a 200 watt site. So, at -- it's 10 dB
12 down, 200 to 20, it's -- it won't have any
13 issues.

14 The setbacks will be well -- you know,
15 safe. There won't be any issues.

16 And then, the other -- why you would have
17 the setback is -- is you -- say another building,
18 say if it's eight feet away, we wouldn't put the
19 antenna pointing into another building. DC
20 (phonetic) antennas are above the other
21 buildings, because it would be wasted energy for
22 us. What we're trying to do is cover the street
23 around. So, we purposely not shoot into another
24 building. We're above the building. So, even
25 though, maybe, we're eight feet from the edge of

1 the property, we are more than eight feet away
2 from any other buildings. And we're not shooting
3 into anyone's windows, anything like that.

4 So, it's only the -- the adjacent -- I
5 mean, you would have to put your face up against
6 the antenna in order to really pose a danger,
7 which -- you know, we will put up signs and tell
8 people -- you know, not to -- we don't say that
9 specifically, but there are signs warning that
10 there is a transmission on the property. It's
11 like a regular RF sign that the FCC requires that
12 we put. And it basically says yes, those are
13 antennas, and they're transmitting.

14 MS. KASSETTA: And just to reinforce the
15 lack of a threat to anyone's safety, can you just
16 explain to the Board how the FCC standards are
17 conservative in nature, and what it really means
18 to be below their limit.

19 MR. DAMSTROM: Yeah. I mean, they're set
20 in place to protect the general public and -- and
21 the numbers are -- they're more strict than they
22 really have to be, but it's -- they're safe. I
23 mean, I don't -- I don't think -- yeah.

24 MS. KASSETTA: Okay.

25 MR. DAMSTROM: They're -- I mean we're

1 going to be so well -- we're -- we're going to be
2 much below any of those limits, the thresholds
3 for all.

4 MS. KASSETTA: Thank you.

5 Mr. Chairman, no further questions.

6 CHAIRMAN MAROTTA: Any members of the Board
7 have any questions of this --

8 Any members of the public?

9 Larry?

10 MR. PRICE: Yeah. Mr. Damstrom, I'm a
11 little confused about one thing. We get cell
12 phone applications --

13 MR. DAMSTROM: Um hum.

14 MR. PRICE: -- all the time. Those are two
15 way transmissions.

16 MR. DAMSTROM: Correct.

17 MR. PRICE: Okay.

18 Sirius is a, for want of a better word, a
19 radio network. You're not -- I can get a Sirius
20 radio channel on my radio.

21 MR. DAMSTROM: Um hum.

22 MR. PRICE: That if I paid my bill, I would
23 get it. But I can't talk to Sirius. It talks to
24 me.

25 MR. DAMSTROM: Correct.

1 MR. PRICE: Now, what exactly is this
2 antenna doing? Broadcasting to people in cars or
3 going by?

4 MR. DAMSTROM: Well, I mean, in cars. I
5 mean, it could be -- you can have a radio in your
6 house. People have portable radios. They have
7 an antenna in their house, they can listen to
8 Sirius XM.

9 So yeah. So, basically, what we transmit
10 is in the terrestrial band. We also have
11 satellites that are transmitting.

12 In more of an urban environment, what
13 happens is, you don't -- if you -- if you're
14 standing somewhere and you look straight up, and
15 you don't have a good visibility of the sky, most
16 likely you're not going to get good satellite
17 signal, because of the -- you're blocked. You
18 need to have line-of-sight with satellite. It's
19 a QPSK signal and how QPSK works is, basically,
20 you need to have your antenna here, and your
21 satellite up here. And the two have to see each
22 other.

23 If there's anything kind of blocking the
24 two, you will lose signal.

25 I mean, even leaves, during the summertime,

1 you'll have a lot more blockage going on in the
2 Palisades Parkway and all the other highways
3 that, in the wintertime, you have perfect
4 coverage. It's all just because of the leaves
5 that come on.

6 What we're introducing here is what is a
7 terrestrial signal, what we use is a COFDM
8 signal, COFDM signal, it's a wide band signal
9 that we're transmitting. And what that does is
10 it penetrates and reflects. It works as a multi-
11 path signal. It works different than a QPSK
12 signal.

13 So, basically, it's reflecting off the
14 different buildings around. So, even though you
15 don't have clear line-of-sight, you don't see the
16 antennas on our proposed building. You could be
17 three blocks away, much lower. But because this
18 --

19 MR. PRICE: On 495.

20 MR. DAMSTROM: Yeah. Or 495, or -- or in
21 the interior of Union City. When you're over
22 there, what will happen is you'll still get
23 signal. It's just the nature of how that
24 frequency works.

25 Yes. We don't have a reverse link. This

1 is a forward link only. We do not talk back.

2 But that's just how our system works. We don't
3 have a cellular and for that reason, we don't
4 have to worry about your car or your radio
5 talking back to this. It's only going down.
6 It's a down link only.

7 MR. PRICE: Okay. Okay.

8 So, basically, it's a supplemental network
9 that you're putting in, so that your users have
10 reception all the time.

11 MR. DAMSTROM: Exactly. Now, when you
12 drive in that area, people are used to seeing --
13 when you can look up and you have good visibility
14 in the signal, you want to have it to work. And
15 when you're blocked, you want it to work.

16 So, they -- I mean, honestly, when you go
17 into the Lincoln Tunnel, we don't have coverage
18 through the Lincoln Tunnel, but that's because we
19 can't cover the Lincoln Tunnel.

20 But everywhere else, we can cover. And
21 what we do is, we have basically sites
22 continuously from -- Manhattan's our core, all
23 the way out through Queens, so -- to the border
24 of Long Island. And we also have it all the way
25 out to Little Ferry. And that's kind of our core

1 circle, 40 miles from Manhattan core, so that we
2 have them all the way up to Woodcliff Lake in
3 Pearl River.

4 MR. PRICE: Just out of curiosity, how many
5 installations like this does it require to
6 service that area?

7 MR. DAMSTROM: I believe right now we have,
8 in that area, there's around 79.

9 MR. PRICE: Okay.

10 Thank you.

11 CHAIRMAN MAROTTA: Any other questions?

12 I have no questions.

13 MS. KASSETTA: Thank you.

14 Our final witness will be our planner,
15 David Karlebach.

16 MS. DILLON: Mr. Damstrom?

17 MR. DAMSTROM: Oh, sorry. Taking it home.

18 (Whereupon, there was a pause in the
19 proceedings.)

20 MS. DILLON: Mr. Karlebach was previously
21 sworn.

22 MS. KASSETTA: Mr. Chairman, I heard the
23 Board accept Mr. Karlebach as an expert. I hope
24 the Board will do so again.

25 CHAIRMAN MAROTTA: He's testified.

1 MS. KASSETTA: Thank you.

2 MR. KARLEBACH: As part of my planning
3 analysis, I examined all of the application
4 materials, including the site plan drawings. I
5 have visited the site and the surrounding areas.
6 I reviewed the City Zoning Ordinance and Master
7 Plan. And I prepared computer photo simulations
8 of what this facility would look like if it were
9 approved and installed.

10 First, I'd like talk a little bit about the
11 site.

12 It's a triangular parcel. It contains 5106
13 square feet. It has two roadway frontages. One
14 along Marginal Road, one on 33rd Street.

15 The site contains a four story masonry
16 multi-family building. There's parking beneath
17 the building. There's also parking at-grade,
18 outside of the building.

19 This building is 36 feet high, to the roof
20 surface, and it's 44 feet one inch to the top of
21 the penthouse structure.

22 In terms of the surrounding land uses,
23 they're varied in this neighborhood. This is a
24 high density, high trafficked area, predominantly
25 multi-family residential uses.

1 The RM zone permits a variety of housing
2 types. The purpose of this zone is to permit
3 medium density residential uses, in locations
4 accessible to major roadways, commercial
5 surfaces, and public facilities.

6 You heard the engineer describe exactly
7 what's being proposed. I won't get into that.

8 As I said, this is the RM zoning district.
9 and pursuant to Section 223-44, of the Ordinance,
10 wireless telecommunications antennas are
11 permitted conditional uses, in the zone, subject
12 to conditions.

13 And I reviewed the conditions and I'll tell
14 you exactly which ones we comply with, which ones
15 we don't comply with.

16 Microwave dishes, cones or other antennas
17 are expressly prohibited and no dish antenna is
18 proposed, so that's satisfied.

19 Platform mounted or side arm mounted
20 antennas are prohibited. None are proposed, so
21 we comply with that.

22 Subject to the siting priority set forth in
23 the above paragraphs, wireless telecommunications
24 antennas may be flush mounted on existing
25 buildings, provided that -- and then it goes into

1 further requirements -- that it not exceed the
2 height of the building or exceed the height
3 that's permitted in the zone. We comply with
4 that requirement.

5 It shall not extend beyond the height
6 limitations for such towers. That's not
7 applicable. That refers to towers. This is not
8 a tower.

9 And antennas shall be constructed, finished
10 and painted, or camouflaged to blend in with
11 their background, to minimize the visual impact
12 on the landscape. That's being complied with.
13 We are painting the antennas to match the surface
14 of the building.

15 And then, paragraph F has certain setback
16 requirements. And we comply with many of the
17 setback requirements, however, one requirement is
18 that the minimum setback from the nearest lot
19 line of a one family, two family or three family
20 home shall be a hundred feet. It does not
21 comply. The facility is located 8.3 feet from
22 the nearest home to the east. And that's on Lot
23 2, and that contains a three family dwelling.

24 Another requirement is that no wireless
25 telecommunications technology shall -- shall be

1 | located in the required setbacks of any lot. We
2 | don't comply with that requirement.

3 | The minimum front yard setback on Marginal
4 | Road is ten feet, .3 feet is existing and 4.4
5 | feet is proposed. So, there's no further
6 | encroachment onto the setback.

7 | Also, the front yard setback on 33rd Street
8 | is ten feet, .58 feet is existing, and 4.7 feet
9 | is proposed. So, that requires a variance. But
10 | again, no further encroachment over what exists
11 | currently. So, a D-3 variance is required.

12 | As the Board knows, the proofs required for
13 | an applicant seeking a conditional use variance
14 | are less burdensome than applicants seeking a
15 | D-1, or a D-2 variance.

16 | The Supreme Court annunciated a modified
17 | version of the traditional negative and positive
18 | criteria standard, tailored specifically for the
19 | conditional use context.

20 | And the court opined that conditional uses,
21 | even when they do not comport with a conditional
22 | use criteria, are nonetheless essentially
23 | compatible uses in the zone.

24 | So, the focus on the Board, and considering
25 | a variance application, is not whether the

1 proposed use is compatible with the other uses in
2 the zone, the governing body has already
3 determined that it is.

4 Rather, the focus of the Board must be on
5 the site and the context of the total
6 development, and whether or not it is
7 particularly suited for the use.

8 A conditional use applicant must show that
9 the site will accommodate the problem associated
10 with the use, even though the proposal does not
11 comply with the conditions of the Ordinance
12 established to address those problems.

13 Now, I believe the site is, or I should say
14 remains appropriate for the use for the following
15 reasons:

16 This site is centrally located within
17 Sirius Radio's service deficiency area. It
18 enables the applicant to remedy that deficiency,
19 utilizing an existing building, which is
20 preferred by Ordinance.

21 This site possesses all of the requisites
22 for the successful deployment of a wireless
23 communications facility. It has adequate access,
24 a tall structure, sufficient space on the
25 rooftop. Well, I shouldn't say on the rooftop,

1 on the building for all of its equipment and the
2 antennas.

3 It requires very little site modification.
4 There's certainly no additional building area or
5 impervious area proposed. There's no regrading
6 or site clearing. All of the work is confined
7 within the building. So, it's an extremely
8 efficient operation.

9 The fact this -- that this property is
10 located within a hundred feet of a residential
11 building makes it no less appropriate for the
12 use.

13 I don't know why we have this hundred foot
14 setback. I wasn't present at the Council meeting
15 when that Ordinance was adopted. If the
16 Ordinance is designed to protect residents from
17 potential harmful health effects, it is plainly
18 invalid. This is superceded by federal law.

19 If the proximity clause is aimed at
20 promoting a desirable visual environment, the
21 applicant has addressed that concern by flush
22 mounting the antennas and painting them to match
23 the building, so there is no change in the visual
24 quality of the site.

25 In terms of the negative criteria, the

1 courts have found that generally the negative
2 criteria pertaining to wireless communications
3 facilities implicates aesthetics.

4 And there is no visual impact created by
5 the attachment of antennas onto the side of the
6 building.

7 I have three boards, which I believe the
8 Board already has in their packets. Do we need
9 to enter them into evidence anyway?

10 MR. PANEQUE: They're in the packet.

11 MR. KARLEBACH: They're in the packet. So,
12 I'll just review them with the Board.

13 This exhibit, or all of the exhibits have
14 -- have the same format.

15 Photograph on the left represents the
16 existing conditions of the site. Photograph on
17 the right has been enhanced to show you the
18 proposed antennas and equipment.

19 The first view is 1 and 1A. That's from
20 the intersection of South Marginal Highway and
21 33rd Street, approximately 140 feet northwest of
22 the site. And you can see, in slide 1A, that one
23 panel antenna tucked under the eave of the
24 building.

25 Photographs 2 and 2A are a view from 33rd

1 Street, approximately 120 feet south of the site.

2 And again, you can see that one small panel
3 antenna mounted to the side of the building.

4 And finally, photographs 3 and 3A are a
5 view from the intersection of South Marginal
6 Highway and Pleasant Avenue, approximately 270
7 feet east of the site. And from that location,
8 you can see one panel antenna and the one
9 equipment cabinet that's located on the side of
10 the penthouse structure.

11 These antennas are very small in size and
12 when they're painted, it's really going to
13 minimize or obscure their visibility.

14 This streetscape contains billboards along
15 both sides of Interstate 495, which is a major
16 transportation artery, and there are several
17 other rooftop wireless facilities in plain view
18 of this site. If you stand in front of this
19 site, you can see the antennas at 3300 Hudson
20 Avenue, at 3315 Pleasant Avenue and at 3322
21 Hudson Avenue. They're all within view.

22 Any perceived impact resulting from the
23 attachment of three panel antennas does not rise
24 to the level of a substantial impact. And that's
25 the test, Board members. The impact must be

1 substantial.

2 Additionally, this facility does not
3 generate any noise, vibration, smoke, odors,
4 dust, glare or any other objectionable
5 influences. It's an unmanned facility, therefore
6 there's no increase in population or employment
7 at the site.

8 The site requires no increased demand on
9 municipal services, such as sewer service or
10 water supply. And there's virtually no traffic
11 impact associated with this use. It's a
12 completely benign use.

13 The benefit achieved by locating antennas
14 on an existing building in the RM zone, far
15 outweigh any impact associated with the required
16 setbacks.

17 And as I said, the applicant has mitigated
18 any perceived impact by flush mounting the
19 antennas and color coding them to the building.

20 I don't believe there's any substantial
21 impairment of the zone plan. This is a
22 conditionally permitted use, it satisfies all of
23 the conditions, except for the setback
24 requirements.

25 And Section 223-44B of the Ordinance

1 directs carriers to existing buildings, in the RM
2 zone, as a priority location.

3 The front yard setback encroachments
4 already exist. They're not being worsened.

5 The required setback distance to a one,
6 two, or three family dwelling applies to all
7 wireless telecommunications technology. It
8 doesn't matter whether it's a 200 foot high
9 tower, or three panel antennas affixed to the
10 side of the building. It's the same setback.
11 So, I would suggest to the Board members that
12 because this is such a small facility, it
13 warrants a relaxation of that standard.

14 And I say that because these facilities,
15 obviously, that I just mentioned, have vastly
16 different impacts.

17 The innocuous nature of the use renders it
18 inherently compatible with the surrounding
19 neighborhood. And this use that's proposed is
20 far less intensive than the permitted uses in the
21 zone, which included assisted living facilities,
22 and nursing homes as permitted uses. And the
23 zone also conditionally permits places of worship
24 and schools.

25 So, I'll just conclude by saying I believe

1 | there are sufficient reasons for the granting of
2 | the D-3 variance. I think this is a very good
3 | application.

4 | CHAIRMAN MAROTTA: Any members of the Board
5 | have a question?

6 | Members of the public?

7 | All right.

8 | Our planner has set forth that the
9 | applicant shall provide testimony regarding the
10 | ability of the roof to support the proposed
11 | facilities.

12 | MS. KASSETTA: Mr. Chairman, I just want to
13 | --

14 | CHAIRMAN MAROTTA: Can you give us
15 | something --

16 | MS. KASSETTA: -- check my file.

17 | CHAIRMAN MAROTTA: Maybe the architect
18 | could handle that.

19 | MR. MARSAC: Okay. So, we submitted a
20 | structural --

21 | MS. DILLON: Just -- just come forward, Mr.
22 | -- Mr. Marsac. Just come forward to this
23 | microphone --

24 | MR. MARSAC: Oh, yes. Yes. Okay.

25 | MS. DILLON: -- here.

1 MR. KARLEBACH: Speak into that.

2 MS. DILLON: No, no, no.

3 MR. MARSAC: Sure.

4 MS. DILLON: He can --

5 MR. KARLEBACH: No? You can use that one.

6 MS. DILLON: Let him stand right here.

7 MR. MARSAC: Yeah. Okay.

8 We submitted a letter stating that the
9 building is structurally sufficient --

10 CHAIRMAN MAROTTA: Okay.

11 MR. MARSAC: -- to carry --

12 CHAIRMAN MAROTTA: Fine. I just wanted --

13 MR. MARSAC: -- to carry the loads. And
14 the antenna weighs about six pounds.

15 CHAIRMAN MAROTTA: Okay.

16 MR. MARSAC: So --

17 CHAIRMAN MAROTTA: Great. And for the
18 planner.

19 MR. KARLEBACH: Yes.

20 CHAIRMAN MAROTTA: Our planner tells us
21 that a use variance is required. Okay?

22 Now, you said you don't know why there's a
23 hundred foot setback. I don't know why, either.
24 Okay? And a ten foot setback in the front, but
25 it's there. We're living with that. This is

1 | what we live with. Okay?

2 | Now, with respect to the hundred foot
3 | setback, we're talking about a 91 percent
4 | deficiency. And as to the other one, we're
5 | talking about maybe a 55 -- 56 percent
6 | deficiency.

7 | MR. KARLEBACH: Um hum.

8 | CHAIRMAN MAROTTA: Now, these are quite
9 | substantial, these deficiencies.

10 | How do you say that -- with these
11 | deficiencies, how do you say that you satisfy the
12 | negative criteria?

13 | MR. KARLEBACH: Well, if I had a better
14 | understanding of why we have that hundred foot
15 | setback requirement, I think I'd be better
16 | equipped to address that issue.

17 | But I've addressed it from two
18 | perspectives. One, from the perceived health and
19 | safety impact. And one from a visual impact.
20 | Because in my estimation, those can be the only
21 | two reasons why you would have that setback
22 | requirement. I can't think of any other reason
23 | why.

24 | And I think I've addressed both of those
25 | issues. In terms of potential harmful effects

1 from the radio frequency emissions, I've already
2 stated that the Board is superceded by federal
3 regulation in that regard.

4 And if it helps the Board, I'll give you a
5 citation. I'm citing a case now that's called
6 Sprint versus Ringwood, that's a 2005 case. And
7 the Court said, an ordinance based on that
8 motivation, meaning potentially harmful
9 environmental effects, contravenes 47 U.S.C.A.
10 332C7B4, which expressly forbids local regulation
11 of the placement of personal wireless service
12 facilities, on the basis of the environmental
13 effect of radio frequency emissions.

14 So, I -- we can eliminate that as a
15 concern, what -- you know, whether that hundred
16 foot setback is there to address potential
17 harmful effects.

18 So, that leaves me with my only other
19 concern, which be -- which be a potential visual
20 impact. And as I said, that hundred foot
21 regulation would apply to a new 200 foot tower,
22 or an installation such as this. It applies to
23 both.

24 Since this is such a small facility, and
25 requires only three panel antennas, it's -- it's

1 not going to be impactful in any way visually.

2 And I say that because you have to look at
3 it in the context of the entire neighborhood.
4 Look what this neighborhood contains, giant
5 billboards, huge. You drive down I-495, and what
6 captures your attention? It's those billboards,
7 it's not a small antenna. I guarantee you that.

8 So, in that regard, I think this does not
9 cause damage to the character of the
10 neighborhood. And I'll remind the Board member
11 -- members again, the impact must be substantial.
12 And look at the photo simulations and judge for
13 yourself. I don't think it rises to the level of
14 substantial.

15 CHAIRMAN MAROTTA: You have to agree that
16 91 percent and 55 percent is a substantial impact
17 on the Code.

18 MR. KARLEBACH: I don't agree with that,
19 and I think I just presented the reasons to the
20 Board why I don't think it's substantial.

21 VICE CHAIRMAN BONACCI: Mr. Chairman,
22 because we heard testimony that the equipment
23 weighs about six pounds --

24 CHAIRMAN MAROTTA: Yeah.

25 VICE CHAIRMAN BONACCI: -- that kind of

1 | alleviates some of the detriment of the hundred
2 | feet. Okay.

3 | CHAIRMAN MAROTTA: Yeah. I was -- I was
4 | pleased --

5 | VICE CHAIRMAN BONACCI: If we were talking
6 | about 50 to a hundred pounds --

7 | CHAIRMAN MAROTTA: Yeah. I was pleased to
8 | hear that testimony myself.

9 | VICE CHAIRMAN BONACCI: It's six pounds.

10 | CHAIRMAN MAROTTA: Right.

11 | Are we finished?

12 | MS. KASSETTA: Yes.

13 | CHAIRMAN MAROTTA: I have no more
14 | questions.

15 | I'll make a motion to approve the
16 | application.

17 | MR. PANEQUE: Before we do that, Mr.
18 | Chairman, any other members of the public want to
19 | --

20 | CHAIRMAN MAROTTA: Oh, yeah.

21 | MR. PANEQUE: -- ask questions?

22 | CHAIRMAN MAROTTA: I -- I thought I asked
23 | that question.

24 | MR. PANEQUE: No, but not after the
25 | planner.

1 CHAIRMAN MAROTTA: Okay.

2 MR. PANEQUE: You can make your motion.

3 CHAIRMAN MAROTTA: Make a motion to
4 approve.

5 THE SECRETARY: Motion to approve the
6 application by Mr. Marotta.

7 Second by Mr. Bonacci.

8 VICE CHAIRMAN BONACCI: Chairman?

9 MS. GUTIERREZ: Going to -- two minute
10 break?

11 VICE CHAIRMAN BONACCI: Libero?

12 MR. PANEQUE: Mr. Marotta?

13 THE SECRETARY: Roll call on the motion to
14 --

15 CHAIRMAN MAROTTA: I'm sorry.

16 VICE CHAIRMAN BONACCI: Break after this?

17 THE SECRETARY: -- approve this
18 application.

19 CHAIRMAN MAROTTA: Approve the application.

20 THE SECRETARY: Yes.

21 MR. PRESSEY: Yes.

22 THE SECRETARY: Mr. Marotta to approve this
23 application?

24 CHAIRMAN MAROTTA: Yes.

25 THE SECRETARY: Mr. Bonacci?

1 VICE CHAIRMAN BONACCI: Yes.

2 THE SECRETARY: Ms. Gutierrez?

3 MS. GUTIERREZ: Yes.

4 THE SECRETARY: Mr. Grullon?

5 MR. GRULLON: Yes.

6 THE SECRETARY: Mr. Pressey?

7 MR. PRESSEY: Yes.

8 THE SECRETARY: Mr. Medina?

9 MR. MEDINA: Yes.

10 THE SECRETARY: Six in favor.

11 Motion carries.

12 Thank you.

13 MS. KASSETTA: Thank you all for your time
14 this evening.

15 MS. GUTIERREZ: All right.

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

18 CHAIRMAN MAROTTA: We'll take a break right
19 now. It's about eight.

20 MR. PRESSEY: Five minutes?

21 CHAIRMAN MAROTTA: Ten.

22 THE SECRETARY: Five minute break.

23 CHAIRMAN MAROTTA: Ten minute break. Ten
24 minutes.

25

1 (Whereupon, the Board recessed from 7:58
2 p.m. to 8:10 p.m.)

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1 **Bhado & Bhado Development - 1705 Palisade Avenue:**

2

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

5 Next application on tonight's agenda --

6 MS. DILLON: Carlos?

7 THE SECRETARY: -- Bhado and Bhado
8 Development, LLC.

9 VICE CHAIRMAN BONACCI: Carlos?

10 MR. PANEQUE: Carlos?

11 MS. DILLON: You got to turn around to do
12 that.

13 THE SECRETARY: Oh, I'm sorry. One more
14 time.

15 May I have your attention, please?

16 Next application on tonight's agenda, Bhado
17 and Bhado Development, LLC, 1701 Palisade Avenue.

18 Mr. Alonso, please?

19 MR. ALONSO: Thank you.

20 Members of the Board, for the record,
21 Alvaro Alonso, Alonso Navarette, on behalf of the
22 applicant.

23 I've provided counsel with my proof of
24 publication and notices for jurisdictional
25 purposes.

1 MR. PANEQUE: Thank you, Mr. Alonso.

2 For the record, I've been provided by Mr.
3 Alonso with the following:

4 Been provided with an Affidavit, signed by
5 Mr. Alonso, indicating that notice of tonight's
6 hearing, with respect to 1701-05 Palisade Avenue,
7 was sent to all property owners within the 200
8 foot radius on October 21st, 2017.

9 I've also been provided with a --

10 CHAIRMAN MAROTTA: Thank you.

11 MR. PANEQUE: -- Affidavit of Publication
12 from The Jersey Journal, indicating that notice
13 of tonight's hearing was published on October
14 21st, 2017.

15 I've also been provided with a copy of the
16 notice that went out to all property owners, as
17 well as the certified mail receipts with a
18 postmark date October 21st, 2017.

19 I've also been provided with a tax list,
20 with a date of October 2nd, 2017, from the Union
21 City Tax Assessor's Office, with respect to all
22 properties within the 200 foot radius of 1701-05
23 Palisade Avenue.

24 Based on the documentation that has been
25 provided, this Board has jurisdiction to proceed

1 and hear this matter.

2 MR. ALONSO: Thank you.

3 Mr. Chairman, members of the Board, this
4 property has a bit of a history. Most recently,
5 the Board approved a 28-unit multi-family
6 building at this site.

7 That -- that approval was up on appeal in
8 the Superior Court. During the pendency of that
9 appeal, my client agreed to come back and file a
10 new application and reduce it from the 28 units
11 down to 12 units.

12 So, we're here now -- and there was never a
13 determination in the Superior Court. It was
14 never overturned, the Board's --

15 CHAIRMAN MAROTTA: Was it withdrawn?

16 MR. ALONSO: It was withdrawn. So,
17 basically, my client had agreed to come back and
18 -- and do a 12 unit building, as opposed to the
19 28 unit building that this Board approved.

20 With that said, I have three witnesses --
21 excuse me -- this evening.

22 First, I'm going to call Mr. Valella.

23 (Whereupon, there was a pause in the
24 proceedings.)

25 MS. DILLON: Mr. Valella was previously

1 sworn.

2 MR. ALONSO: Thank you.

3 And also, previously qualified this
4 evening.

5 Mr. Valella, the -- the plans before the
6 Board were prepared by Jose Carballo.

7 Correct?

8 MR. VALELLA: Yes.

9 MR. ALONSO: And you've had an opportunity
10 to review these plans with -- with Mr. Carballo,
11 myself, the client, and the witnesses, in order
12 to prepare for this evening.

13 Correct?

14 MR. VALELLA: Yes.

15 MR. ALONSO: So, I'm going to ask you to
16 review the proposal with the Board.

17 MR. VALELLA: Sure. Be happy to.

18 As counsel mentioned, this is a significant
19 reduction from the previous approval.

20 The property is on the corner of Palisade
21 Avenue and 17th Street. It is a 75 by 100 foot
22 property, and at the moment, it's vacant.

23 What we're proposing is an apartment
24 building with the ground floor having the
25 entrances, the lobby and the garage. It's a one

1 story garage.

2 Above that, we have three residential
3 floors. So, the building itself is four stories,
4 and there are four units per floor, four
5 apartments per floor, for a total of 12
6 apartments.

7 The breakdown of the apartments is six two
8 bedroom apartments, and six one bedroom
9 apartments. And they -- you can see that on the
10 typical residential floor. And the building
11 itself has a total height of 45 feet.

12 So, the way this breaks down is the -- on
13 the corner, you can see, on the first floor, on
14 17th Street is where we have the elevator,
15 garbage, utilities, and the lobby. And then, at
16 the corner of Palisade and 17th is where we have
17 the entrance to the lobby, which is the natural
18 place.

19 And the driveway entrance to the garage is
20 on Palisade Avenue, kind of in the middle of the
21 property where the curb cut occurs. There, you
22 have 17 parking spaces, and those parking spaces
23 average eight foot four, by 17 foot in -- in
24 depth, and the driveway in the middle. So,
25 basically, the driveway in the middle and then

1 parking spaces on either side.

2 In addition to that, one of the parking
3 spaces is ADA compliant, meaning for the handicap
4 to park.

5 You can walk in from the garage into the
6 lobby, or as I mentioned previously, from the
7 corner, enter the lobby, go up the elevator,
8 which, again, is an ADA compliant elevator, and
9 that would give you access to the residential
10 floors.

11 Of course, there are also two means of
12 egress from each level, which are the fire stairs
13 that discharge onto 17th Street.

14 The garbage room is also on the ground
15 floor.

16 As you come up, you have the four
17 apartments per floor. Unit number one is a two
18 bedroom unit. It is 1,019 square feet in floor
19 area.

20 Unit number two is a two bedroom unit, as
21 well, and it is 1,173 square feet.

22 Unit number three, in the rear, is a one
23 bedroom apartment, and it is 852 square feet.

24 And unit number four, in the rear again,
25 but facing 17th Street, at this point, is a one

1 bedroom, 948 square foot apartment.

2 So, these are -- you know, handsomely sized
3 apartments. And they go up, they repeat for
4 three stories.

5 The floor to floor height on the
6 residential will give approximately nine and a
7 half, to potentially nine foot eight ceilings. A
8 typical ceiling is an eight foot ceiling. So,
9 this is a very handsome ceiling height, which
10 gives -- Mr. Carballo has also added larger
11 windows, in -- in conjunction with the greater
12 ceiling height will give a very attractive
13 environment to live in. More daylight, a feeling
14 of -- of space.

15 So, the combination of generous apartment
16 sizes and a generous ceiling height, I think,
17 will give this a very good feeling for its
18 inhabitants.

19 The building itself is on the corner. The
20 facades, you can see on the upper part of the
21 sheet, Mr. Carballo is proposing brick on the 17th
22 Street and the Palisade Avenue. Combination of
23 brick and metal panels, and a split face stone at
24 the base of the building.

25 The building is a contemporary modern

1 building. It's quite handsome. The windows, I
2 -- I like quite a bit. They're large and I think
3 it will be a real asset aesthetically to the --
4 not only the area, but the whole city.

5 The setbacks and so forth, we can get into
6 that or our planner can.

7 You want me --

8 MR. ALONSO: We could have the planner
9 testify, because in terms of the bulk
10 requirements, they're all subsumed within the D-1
11 variance.

12 MR. VALELLA: Yeah.

13 So, I mean, I'm not the author of the
14 building, but I am a strong fan. I think Mr.
15 Carballo has done a wonderful building here. It
16 sits well on the property.

17 It does the fundamental thing correctly.
18 You put the entrance to the building on the
19 corner, and then, the vehicular access is to the
20 side. And the services are to the other.

21 You enter, it's a well organized parking
22 garage. You go in, you have parking spaces on
23 either side. It's understandable. It's -- it's
24 easily read.

25 You go up to the apartments. They're ample

1 size. They're good healthy sizes for the
2 different apartments. And then you have the
3 larger than normal -- the total of the normal
4 apartment, which compliments the larger sizes.

5 So, it's a very well done building.

6 MR. ALONSO: Mr. Chairman, I have no
7 further questions.

8 CHAIRMAN MAROTTA: Any members of the Board
9 have questions of the architect?

10 Any members of the public?

11 I have maybe one or two questions.

12 Could you tell me, as an architect, could
13 you design buildings for this site which conform
14 to the Code?

15 MR. VALELLA: It would be -- everything is
16 possible. Yes, you can.

17 CHAIRMAN MAROTTA: You can, right?

18 MR. VALELLA: Yes, you can. But it would
19 not be economically feasible.

20 CHAIRMAN MAROTTA: Excuse me?

21 MR. VALELLA: The reason --

22 CHAIRMAN MAROTTA: Excuse me?

23 You want to go into economics, I'll go into
24 it with you.

25 MR. VALELLA: That's okay.

1 CHAIRMAN MAROTTA: All right?

2 My question was, could you do it? And you
3 answered yes.

4 MR. VALELLA: Yes.

5 CHAIRMAN MAROTTA: Let me ask you this.

6 If you know, why is there no front yard
7 setback?

8 MR. VALELLA: I do not have an answer for
9 that. I do think that bringing the building
10 towards the street frontage is an aesthetic
11 asset, it's not a detriment.

12 It makes for a more urban feel. It
13 provides a textured wall along the streetscape.
14 I think that's an asset, that's not a detriment.

15 A VOICE: It was to make the parking more
16 --

17 CHAIRMAN MAROTTA: And why is the rear yard
18 15 feet less than the Code?

19 MR. VALELLA: Because there's competing
20 interests. One is, we want to provide side yards
21 and rear yards, and we are doing it here. We
22 have a five foot side yard, and we have a ten
23 foot rear yard.

24 But also, we want to provide parking on the
25 premises, so that we keep the cars out of the

1 street, so we -- it's a -- it's a judgement call
2 as to the amount of cars that we put in, and the
3 yards that we provide.

4 CHAIRMAN MAROTTA: Well, you're not putting
5 -- you're not keeping all the cars on building,
6 are you? You're putting cars on the street,
7 aren't you?

8 MR. VALELLA: We are parking 17 vehicles on
9 the property. Yes, sir.

10 CHAIRMAN MAROTTA: And how many do you
11 require?

12 MR. VALELLA: You require 23.

13 CHAIRMAN MAROTTA: Isn't it a fact that the
14 reason you have -- we're short a rear yard, and
15 you have no front ten foot setback, so that you
16 could get more apartments in the building?

17 MR. VALELLA: No, not necessarily.

18 CHAIRMAN MAROTTA: In other words, if you
19 had a 25 foot rear yard, and a ten foot setback,
20 you could still get the same number of apartments
21 at the same size.

22 MR. VALELLA: Well --

23 CHAIRMAN MAROTTA: Is that what you're
24 telling us?

25 MR. VALELLA: The rear yard at the garage

1 is ten feet. However, when you go up to the
2 residential levels, it's actually 20 feet.

3 CHAIRMAN MAROTTA: Let me ask you this
4 question.

5 The Code requires a nine by 18 space, car
6 space.

7 You didn't draw these plans.

8 Correct?

9 MR. VALELLA: No, my good friend, Mr.
10 Carballo, did.

11 CHAIRMAN MAROTTA: Yeah. It's a little
12 difficult.

13 If you know only, only if you know.

14 MR. VALELLA: I wouldn't guess, I --

15 CHAIRMAN MAROTTA: If you don't know,
16 please don't -- don't --

17 MR. ALONSO: Let him ask the question and
18 see if you can answer.

19 MR. VALELLA: Yes. Absolutely.

20 CHAIRMAN MAROTTA: If you know.

21 MR. VALELLA: Don't feel -- don't be shy
22 about it.

23 CHAIRMAN MAROTTA: If -- if the requirement
24 is nine feet by eight (sic), why would he design
25 an eight -- eight and a quarter by 18?

1 MR. VALELLA: Again, architectural -- it's
2 -- it's an art and a science. It's all competing
3 interests.

4 We want to provide the greatest amount of
5 parking indoors. We want to provide the greatest
6 side yards and setbacks possible.

7 So, you have to make judgement calls on
8 some of these things. That is the professional
9 nature of the practice.

10 CHAIRMAN MAROTTA: In other words, to
11 provide more parking spaces.

12 MR. VALELLA: And to provide greater
13 setbacks.

14 No, it's not just -- if I wanted to provide
15 the maximum number of cars, I would provide -- I
16 would propose zero setbacks. It's a competing.
17 It's trying to give one and the other.

18 CHAIRMAN MAROTTA: If the Code requires a
19 24 foot circulation aisle, why a 23 foot
20 circulation aisle?

21 MR. VALELLA: Again, it's the same
22 response. We want to provide a five foot setback
23 on the side yard, and we want to provide
24 vehicles. So, it is a compromise.

25 CHAIRMAN MAROTTA: I have --

1 MR. VALELLA: For exam --

2 CHAIRMAN MAROTTA: I -- I have no more
3 questions.

4 MR. VALELLA: Okay.

5 Thank you.

6 MR. ALONSO: If no further Board member has
7 any questions, I'll call Mr. Staigar.

8 (Whereupon, there was a pause in the
9 proceedings.)

10 MS. DILLON: Mr. Staigar, please raise your
11 right hand.

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

14 MR. STAIGAR: Yes, I do.

15 MS. DILLON: Please state your name and
16 spell it for the record.

17 MR. STAIGAR: Yes. My name is Joseph
18 Staigar, S-T-A-I-G-A-R.

19 MS. DILLON: Thank you.

20 MR. ALONSO: Mr. Chairman, Mr. Staigar has
21 been before this Board. I would ask that his
22 qualifications, as a traffic engineer, be
23 accepted.

24 CHAIRMAN MAROTTA: Is it traffic? Is it a
25 traffic?

1 MR. ALONSO: Traffic, yes.

2 CHAIRMAN MAROTTA: I've heard him in
3 Guttenberg.

4 MR. ALONSO: Thank you.

5 Mr. Staigar, what was the scope of the
6 report that you prepared?

7 MR. STAIGAR: I prepared a traffic impact
8 study.

9 MR. ALONSO: Okay. And I'm going to ask
10 you if you could please review the report with --
11 with the Board?

12 MR. STAIGAR: Yes.

13 I'm involved with this property quite --
14 quite awhile now, actually, since 2004. Done
15 interim studies, traffic counts, and so forth.
16 So, pretty intimately knowledgeable about the
17 area and traffic volumes.

18 We've taken traffic counts back in 2004,
19 2015, and more recently, in September 2017, to
20 get the general feel for -- for the traffic
21 volumes and the operational conditions in the
22 area.

23 We're strategically located between two
24 traffic signal systems. We're on 17th Street,
25 which is a one way westbound, originating at

1 Palisade Avenue. We have an offset intersection
2 on -- to the north at 18th Street. Another offset
3 intersection that's also signalized; 18th and 16th
4 Street are both signalized.

5 So, it's sandwiched in between two signals,
6 which is a good thing in terms of unsignalized
7 intersections in the interim, because those
8 signals, as they stop traffic, and let traffic
9 go, create gaps in traffic, artificial gaps in
10 traffic that allow turning movements to and from
11 this site.

12 Both signals are -- are 90 second cycles,
13 so they -- for an hour, they're 40 times that it
14 turns green, yellow, red, just to give you an
15 idea of how many -- how many cycles per hour.
16 And I'll relate that to the trip generation.

17 Twelve units, during the peak hours,
18 morning peak hour, which is between 7:30 to 8:30,
19 and then five to six p.m., in the p.m. peak hour,
20 will generate four trips in the morning, five
21 trips in the evening peak hour, for 12 units.
22 And the reason why there's -- there seems to be a
23 disparity between those low volumes, with the
24 number of units, is that the -- the timeframe
25 that residents leave for work, or come home from

1 work, pretty much a three hour, sometimes a three
2 and a half hour window. Some people leave at six
3 in the morning, some people don't leave until
4 nine, 9:30 in the morning. And the reverse is in
5 the p.m.

6 So, residential uses are rather low trip
7 generators.

8 When -- when you have the ability -- the
9 driveway has the ability of turning left or
10 turning right, traveling north or south, we're
11 going to add two or three trips to either one of
12 those signalized intersections per hour, which is
13 -- which is a nominal amount. Considering that
14 the cycle turns 40 times per hour, we're going to
15 add, at most, maybe three per hour. We're
16 talking one additional car every -- every 12
17 times that the cycle turns green.

18 So, just to give it from a laymen's terms,
19 what the nominal impacts that -- that may be.

20 The amount of parking.

21 We are asking for a de minimis exception to
22 the RSIS standards. RSIS does absolutely
23 recognize, within the document itself, that one
24 size does not fit all. Parking requirements in -
25 - in urban areas, such as Union City, are not

1 going to be the same as they may be in Warren
2 County, Hunterdon County, out in the -- in the
3 rural and suburbs area.

4 We're asking for a deviation on the number
5 of parking spaces. You heard from Mr. Orestes
6 that -- Mr. Vierra (sic) -- from Orestes that --
7 that we need 23 spaces. I concur with that, per
8 RSIS. We're providing 17. That's a ratio of 1.4
9 spaces per unit.

10 What I did was -- and again, RSIS allows
11 for that deviation if you're an urban area, if
12 you have mass transit availability, if local
13 conditions dictate or -- or seem to comport that
14 less parking is needed.

15 Again, we are in an urban area. We do have
16 mass transit availability in the immediate area.

17 U.S. Census data has, for Union City, has
18 vehicles available for per rental unit in the
19 City, in City of Union City. That ratio is .6
20 vehicles per unit.

21 So, what we're finding here that, for
22 rental units in the City of Union City, that the
23 vehicle availability per unit is .6; rather low
24 number. We're providing 1.4. So, there's a
25 local standard that seems to -- can justify that

1 less parking is needed.

2 So, we meet all of those requirements or
3 recommendations of RSIS, to allow for that
4 deviation from -- from their standard.

5 And then, in terms of the size of the
6 parking spaces, as was pointed out by Mr.
7 Marotta, we are asking for a deviation on the
8 size, and RSIS allows for that deviation, as
9 well, if it -- again, if it can be shown that
10 it's appropriate.

11 This is not an open space. This is a
12 garaged space. It will be used by the residents.
13 They'll be coming in and using the same parking
14 space, getting in and out.

15 My recommendation that for -- at least for
16 units that do have cars, that at least one -- one
17 of those parking spaces be -- be designated for
18 one unit. So, we have 12 units, 12 parking
19 spaces, at most, would be designated for 12
20 units. And then, the remainder could be used as
21 open space for -- for whomever.

22 So, those residents will be cognizant that
23 the spaces are a little bit tighter than might be
24 normal. But again, we're in a garaged area.
25 It's going to feel like a constrained area.

1 They'll use judgement in -- in making these
2 maneuvers.

3 I took at look at and analyzed each and
4 every one of these parking spaces. The average
5 large car can easily get in and out of each one
6 of these spaces.

7 The -- the deviation from the RSIS
8 standards are -- are minor. It's eight inches in
9 the width and one foot in the length, and -- and
10 in the aisle -- aisle width, as well.

11 So, it's not -- it's not an overly tight
12 space, but they -- they can allow for easy and
13 convenient maneuverability for average large
14 cars.

15 The driveway is designed appropriately for
16 access to and from the site. We have levels of
17 service A and C. The driveway will operate level
18 of service A for movements coming into the --
19 into the driveway, and level of service C coming
20 out. As in grade school, A through F, we're in
21 the upper range of A through C, acceptable levels
22 of service.

23 So, I believe the site will operate safely,
24 efficiency, and without any detrimental impact to
25 traffic conditions in the area.

1 MR. ALONSO: So, have you formed an opinion
2 with respect to whether or not there will be any
3 degradation in the levels of service?

4 MR. STAIGAR: No appreciable. I mean, you
5 -- any time you add one more vehicle, you're
6 going to have some level of degradation. But in
7 terms of, I pointed out, or talked to you about
8 two or three cars per hour that will be added to
9 the intersection of 16th Street, intersection of
10 18th Street, when you have 40 cycles per -- per
11 hour, that's one additional car every ten or 12
12 cycles.

13 So, you can imagine, if there's just one
14 more vehicle, every time the light turned green
15 12 times, it's going to be a minimal impact. You
16 know, it's something that can't be measurable.

17 MR. ALONSO: Right.

18 And I think the Chairman also asked a
19 question with respect to the -- the drive aisle
20 inside the garage being 23 feet, where 24 feet is
21 required.

22 Can you form an opinion with respect to the
23 -- the drive aisle?

24 MR. STAIGAR: Yes. And again, there are
25 other standards, and I'll -- I'll say that the

1 ITE, the Institute of Transportation Engineers,
2 recognizes that with -- with users of those
3 parking spaces are going to be the same users,
4 they're going to be familiar with the conditions.

5 And also, these are low turnover, meaning
6 that primarily, you may have one each -- each
7 parking space vacated in the morning, and then
8 filled up in the evening. So, it's not turning
9 over ten, 12 times a day with people who are not
10 familiar with the conditions in that drive -- in
11 that garage.

12 There are turning templates that traffic
13 engineers use, and I used it to analyze the --
14 the parking spaces, so to make sure that vehicles
15 can get in and can get out. They can easily do
16 that.

17 MR. ALONSO: I have no further questions.

18 CHAIRMAN MAROTTA: Any members of the Board
19 have any questions?

20 MR. GRULLON: Mr. Staigar, going -- going
21 back to the parking.

22 Parking 11 and 12; are they handicap
23 accessible?

24 MR. STAIGAR: Yeah. Number 12 is a
25 designated handicap space, but 11 could be

1 utilized as one, as well, if it's needed.

2 MR. GRULLON: Yeah. And I mean, what are
3 the sizes of those two --

4 MR. STAIGAR: Yeah.

5 MR. GRULLON: -- spaces?

6 MR. STAIGAR: You need 16 feet. Eight --
7 technically, eight feet for the striped area.

8 MR. GRULLON: Yes. Um hum.

9 MR. STAIGAR: And eight -- eight feet for
10 the -- for the parking space. We have 16 feet
11 eight inches. So, we're a little bit bigger than
12 what the standard is for handicap.

13 MR. GRULLON: And the undersized parking,
14 are they all undersized, or do you have some --
15 some of the parking that are regular, normal
16 size? Because I see that you have 8.4 is some of
17 them, and some of it, they don't have any
18 numbers.

19 MR. STAIGAR: The -- well, you could see
20 some of them, we've accounted for columns.
21 There's a -- there's a one foot column space in
22 -- let's say, in between space three and four,
23 and six and seven, as well as 15 and 14.

24 So, that -- the parking space itself, if
25 you didn't -- if you didn't discount the column,

1 | would -- would have an additional foot. So, that
2 | would -- that would be compliant, in terms of --
3 | no, that would -- that would be -- no, that would
4 | be eight foot ten, then it still would not be
5 | compliant.

6 | MR. GRULLON: I mean, my question is
7 | because I see parking 13, 14 -- I mean, 13 -- 13
8 | through 17 --

9 | MR. STAIGAR: Yeah.

10 | MR. GRULLON: -- you had no --

11 | MR. STAIGAR: Oh, dimensions?

12 | MR. GRULLON: -- numbers. Yes.

13 | MR. STAIGAR: No, but they -- you can --
14 | they're -- they're mirror image.

15 | MR. GRULLON: Are they mirror?

16 | MR. STAIGAR: Yeah.

17 | MR. GRULLON: Okay.

18 | MR. STAIGAR: The two end spaces, 17 and
19 | 10, they are a little bit bigger. I'm reading
20 | nine foot four inches.

21 | So, they're on the end, and it's going to
22 | be a little -- little bit harder to pull out
23 | because -- because you're right along the wall
24 | there, but they're a little bit wider to ease
25 | that maneuverability.

1 MR. GRULLON: Okay.

2 MR. STAIGAR: But no, all the spaces are
3 eight foot four, except for those two end ones on
4 the 10 and 17 that are nine foot four.

5 MR. GRULLON: Okay.

6 Thank you, Mr. Staigar.

7 MR. STAIGAR: You're welcome.

8 CHAIRMAN MAROTTA: Any other questions?

9 Any members of the public have a question?

10 That's it.

11 MR. ALONSO: I have a --

12 Mr. Kauker?

13 Mr. Chairman, Mr. Staigar needs to be at
14 another Board, so I'm going to excuse him unless
15 the Board needs him.

16 CHAIRMAN MAROTTA: I have no more questions
17 for him.

18 MR. ALONSO: Okay.

19 MR. STAIGAR: Okay.

20 Thank you.

21 MR. PRESSEY: Thank you.

22 MS. GUTIERREZ: Okay.

23 Good night.

24 (Whereupon, there was a pause in the
25 proceedings.)

1 MS. DILLON: Please raise your right hand.

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

4 MR. KAUKER: I do.

5 MS. DILLON: If you could please state your
6 name and spell it for the record?

7 MR. KAUKER: Michael F. Kauker, that's
8 K-A-U-K-E-R.

9 MR. ALONSO: Thank you.

10 Mr. Chairman, Mr. Kauker has testified
11 before this Board and qualified as a planner.

12 CHAIRMAN MAROTTA: He's qualified.

13 MR. ALONSO: Thank you.

14 Mr. Kauker, as you heard me say that
15 there's been a bit of a history to this project.
16 Also Mr. Staigar testified that he has counts
17 going back to 2004, with respect to this
18 property. And you also were part of the prior
19 application.

20 Is that correct?

21 MR. KAUKER: That's correct.

22 MR. ALONSO: Okay.

23 And the application before the Board now is
24 for a 12-unit multi-family building. So, I'm
25 going to ask you to provide the planning

1 testimony for this application. And to the
2 extent that you need to rely on prior
3 applications, you can do that -- do so also.

4 MR. KAUKER: I'd be pleased to.

5 First, this application still requires a D-
6 1 use variance, a C variance for a height
7 deviation, and a -- a D-5, density variance.

8 Property, as the Board might recall, even
9 though that was 2005, is located in the R low
10 density residential zone. That zone requires a
11 minimum lot area of 2500 square feet.

12 The subject site, which is vacant, and has
13 been for a reasonable period of time, is 7500
14 square feet in area, three times the minimum lot
15 size.

16 The zone provides for and allows from one
17 to three units on each, two 2500 square foot lot.
18 So, essentially, as a matter of right, one could,
19 Mr. Marotta, construct nine multiple family units
20 on the site, without a density variance, and/or
21 the D-1 use variance.

22 We're proposing only three units more than
23 that nine unit total. You certainly could
24 construct nine units on the site. However, the
25 problem is, is that the units, all of a sudden,

1 | become too big and not reasonably usable and
2 | marketable, and you'll note that we have a mix of
3 | one and two bedroom units, half six one bedroom
4 | and six two bedroom units.

5 | In that context, it would change the
6 | character and the nature of -- of the site
7 | itself.

8 | As per my prior testimony, I believe that
9 | this site, because it's located on a major
10 | collector road, Palisades Ave., in addition to
11 | the fact that it's three times the minimum lot
12 | area that's required, and by virtue of the fact
13 | that it is eminently developable without any
14 | environmental constraints.

15 | In addition to that, as a point of
16 | comparison, across the street, 17th Street to the
17 | south, is located a longstanding five story
18 | multiple apartment dwelling, which is in very
19 | good shape. It's been there for a number of
20 | years, and that particular density essentially
21 | establishes the -- the character of the use at
22 | the intersection of 17th and Palisades Ave. We're
23 | on the northwesterly corner of that intersection.

24 | I'd like to briefly compare -- so I believe
25 | that those particular conditions, which still

1 remain on the site, as compared to the prior
2 application, still provide a foundation --
3 foundational basis to be able to assert that the
4 site's particularly suited to accommodate the
5 additional units and the additional height, as
6 proposed.

7 I'd like to compare the physical
8 characteristics, major physical characteristics
9 of this proposal to the prior proposal, which
10 received the Board's approval back in 2005, 2004.

11 Firstly, the building is substantially
12 lower than the building that was approved by the
13 Board in a prior application. The height goes
14 from 63.23 feet, as approved originally, to 42
15 feet, which essentially is only two feet higher
16 than the 40 feet allowed in the R low density
17 zone. That's a reduction of 21 feet.

18 And I would respectfully observe that that
19 is a substantial improvement to the nature of the
20 application, as it relates to the -- the
21 building's relationship to surrounding uses,
22 notwithstanding the five story building across
23 the street. All the other uses are essentially
24 two and three stories.

25 We're asking to permit and propose and fit

1 within 42 feet, a four story structure. And the
2 purpose of that particular deviation is to allow
3 for the first story, which is dedicated to
4 parking, with the three stories of residential
5 above.

6 The second point of comparison is the
7 building coverage, which has been reduced
8 substantially. The original application had a
9 98.84 percent coverage. We're proposing 68.46
10 percent, which is a 30.38 percent reduction.

11 That, indeed, has allowed for greater
12 setbacks, particularly in the rear yard. The
13 original rear yard setback was .02 feet. We are
14 providing a ten foot rear yard, which provides
15 some light and air between the building adjacent,
16 on the westerly-most -- to the west of the
17 subject site.

18 In terms of the side yard setbacks, in the
19 prior application, there was, essentially, zero
20 feet. We're proposing five feet and 1.5 feet,
21 which indeed is more than the original
22 application.

23 The front yard setback has been maintained
24 at zero, because of the wide sidewalk on
25 Palisades Ave. That, essentially, stays the

1 same.

2 I respectfully observe that the increase of
3 density, while if you do the math, it's about a
4 30 percent increase, that would seem to be
5 substantial, but in light of the mix of uses in
6 the surrounding area, 12 units compared to nine
7 units, number one, provides a more adaptable and
8 marketable size unit, which is more than likely
9 more affordable and more cost efficient than if
10 you provided an oversized unit within that
11 particular neighborhood environment.

12 The C variance for height, I think, is
13 de minimis. It certainly doesn't rise to the
14 level of being a D height variance. I believe
15 the two feet, essentially, is -- is somewhat de
16 minimis, because if you look at it from the
17 streetscape, and look at the design of the
18 building, with the nine foot ceilings, it really
19 provides for a --more than adequate design, but
20 also that two feet is barely noticeable from the
21 streetscape, and it's sort of balanced by the
22 five story building across the street.

23 I respectfully observe that the impact and
24 the bottom line difference between the prior
25 application and this application is -- provides a

1 much better plan, more compatible with the
2 surrounding neighborhood conditions, and a less
3 -- lesser degree, substantially lesser degree of
4 deviation from the zoning requirements that were
5 approved originally in 2004.

6 And the kind of setbacks, building
7 coverage, notwithstanding the fact that there is
8 a variance requested for -- for lot coverage.
9 We're at 68 percent, where the maximum for
10 building coverage is 60 percent. So, we're only
11 eight percent over that, as opposed to the
12 original 98 percent.

13 I believe that this would provide a
14 positive statement of revitalization and in-fill
15 on a vacant lot, and that if the Board could
16 consider approving this application, that there
17 would be no substantial detriment to the public
18 good, or a substantial detriment to the purpose
19 and intent of the zone plan, recognizing the fact
20 that you could put nine units on this site, on a
21 three lot basis, with separate buildings, which I
22 don't believe would be an appropriate development
23 of the site, given its location on the major
24 collector road of Palisades Ave.

25 That concludes my observations and

1 | opinions. I'd certainly be happy to answer any
2 | questions you may have.

3 | MR. ALONSO: Well, Mr. -- Mr. Kauker, I
4 | just want to ask you a couple questions, because
5 | you indicated that nine units would be permitted
6 | on this -- on this site.

7 | MR. KAUKER: That's correct.

8 | MR. ALONSO: And that's because in the R
9 | zone, you're permitted to have a three family, on
10 | a 25 by 100 lot.

11 | Is that correct?

12 | MR. KAUKER: That's correct.

13 | MR. ALONSO: Okay.

14 | So, we could go and we could -- and this
15 | goes to Mr. Marotta's point, the question to Mr.
16 | Valella, as to whether or not we can put
17 | something that's conforming and permitted on the
18 | site.

19 | So, in order to do that, we'd be before the
20 | Planning Board, not the -- not the Zoning Board.

21 | MR. KAUKER: Yes, you would, and you'd also
22 | have more driveway cuts, particularly at this
23 | intersection, certainly everyone knows that
24 | Palisades Ave. is a very highly traveled --

25 | MR. ALONSO: Right.

1 MR. KAUKER: -- north/south artery.

2 MR. ALONSO: But not only do we have nine
3 units, compared to the 12 proposed units, but the
4 nine units would have 27 bedrooms.

5 Correct?

6 MR. KAUKER: That's correct.

7 MR. ALONSO: And we're proposing only 18
8 bedrooms.

9 MR. KAUKER: That is correct, so that's a
10 substantial reduction.

11 MR. ALONSO: So, in terms of also the
12 intensity of the use, a -- a single bedroom unit
13 would have a less intense unit -- use than one
14 unit that has three bedrooms, because you would
15 have a -- a family and school aged children.

16 MR. KAUKER: Absolutely.

17 MR. ALONSO: All right.

18 And -- and like you indicated also, we have
19 one curb cut here. With three, three families, we
20 would have three curb cuts.

21 MR. KAUKER: You would.

22 MR. ALONSO: Okay.

23 And you would also have a tandem parking
24 scenario on each of the three curb -- curb cuts.

25 Correct?

1 MR. KAUKER: That's correct. Because you
2 got drive -- driveway and -- and garage backing
3 up on one another.

4 MR. ALONSO: Okay.

5 So, from a -- a planning perspective, and a
6 better zoning alternative, would you -- do you
7 have an opinion as to whether this is a better
8 zoning alternative, or the permitted use of
9 three, three family houses?

10 MR. KAUKER: I believe in the light of this
11 location, on a major roadway, in addition to the
12 character of the use across the street being a
13 substantial, very high density, five story
14 dwelling, or a multiple unit apartment building,
15 that the better planning would be served by
16 providing the building that is proposed before
17 the Board tonight.

18 One last plank in support of that, in terms
19 of the height of the building, is that the 2009
20 Master Plan provided for, in the R zone, a
21 building height range of four to five stories.
22 And we're at the lower end of that range.

23 MR. ALONSO: Okay.

24 I have no further questions, if the Board
25 has any questions.

1 CHAIRMAN MAROTTA: Any members of the Board
2 have a question of Mr. Kauker?

3 Any members of the public?

4 I might have a few.

5 MR. KAUKER: Yes, sir.

6 CHAIRMAN MAROTTA: First of all, you did a
7 lot of comparison between the original
8 application and this application.

9 MR. KAUKER: Yes.

10 CHAIRMAN MAROTTA: And I don't think it
11 takes a rocket scientist to determine that a 62
12 unit building is larger than a nine unit
13 building. Okay? We understand that.

14 But what we're dealing here with is not
15 comparisons. We have an application here.

16 MR. KAUKER: Separate application.

17 CHAIRMAN MAROTTA: A separate application.

18 MR. KAUKER: That's correct.

19 CHAIRMAN MAROTTA: The fact that there was
20 a prior application has nothing to do with it.
21 And to comparisons, I throw out the window.

22 Likewise, with respect to the leading
23 questions from counsel, that if you built three,
24 three story houses, then you got more rooms than
25 you have --

1 But you're not. The Code doesn't say you
2 have to build three story houses, does it? You
3 could build three one family houses. Right? Or
4 three two family houses.

5 Correct?

6 MR. KAUKER: Not likely to happen.

7 CHAIRMAN MAROTTA: Well --

8 MR. KAUKER: One physically could build it
9 --

10 CHAIRMAN MAROTTA: No, my question --

11 MR. KAUKER: It is not --

12 CHAIRMAN MAROTTA: My question --

13 MR. KAUKER: It is not a --

14 CHAIRMAN MAROTTA: Mr. Kauker, please.

15 MR. KAUKER: Not likely to happen.

16 CHAIRMAN MAROTTA: My question is, does the
17 Code permit construction of a one, two or three
18 family on the --

19 MR. KAUKER: Yes, it does.

20 CHAIRMAN MAROTTA: Okay.

21 So, someone built the two family homes --
22 three, two family homes, his argument goes out
23 the window.

24 Right?

25 MR. KAUKER: If modified somewhat.

1 CHAIRMAN MAROTTA: Come on, Mr. Kauker.
2 You know it goes out the window.

3 MR. KAUKER: It's modified somewhat. Yes.

4 MR. ALONSO: Well, it doesn't go out the
5 window.

6 MR. KAUKER: No, it doesn't.

7 MR. ALONSO: Because you still have --

8 CHAIRMAN MAROTTA: Go ahead.

9 MR. ALONSO: -- you still have the three
10 curb cuts, you still have the scenario of tandem
11 --

12 CHAIRMAN MAROTTA: You know --

13 MR. ALONSO: -- parking spaces on all three
14 properties. You still have the -- the high
15 intensity uses per apartment, where you have --

16 CHAIRMAN MAROTTA: Are you testifying as a
17 witness?

18 MR. ALONSO: No, I'm advocating as an
19 attorney.

20 CHAIRMAN MAROTTA: What are you advocating?

21 MR. ALONSO: A position.

22 CHAIRMAN MAROTTA: Go ahead.

23 MR. ALONSO: The same scenario applies.
24 The only difference is that you have three less
25 apartments. Okay? But you still have three sets

1 of curb cuts, still the same. Three sets of
2 tandem parking spaces, still the same, which you
3 have to be backing out onto -- onto a otherwise
4 busy roadway. You still have two, four, six
5 three bedroom apartments, for a total of 18
6 bedrooms, which is what we have.

7 But you do a comparison between eight -- 18
8 apartments in three, two family houses, to 18
9 apartments, which is a one and two bedroom units,
10 is a much more high intensity of use in the two
11 family houses, than there is in the -- in the
12 multi-family building, because the two family
13 houses are going to have families and school aged
14 children.

15 So, the -- the impact on the --

16 CHAIRMAN MAROTTA: You're not advocating
17 now.

18 MR. ALONSO: -- on the services --

19 CHAIRMAN MAROTTA: You're testifying.

20 MR. ALONSO: Well, I'm advocating --

21 CHAIRMAN MAROTTA: And you didn't take the
22 oath.

23 MR. ALONSO: I'm advocating -- no. I'm
24 arguing based on the testimony that was presented
25 by the witnesses.

1 CHAIRMAN MAROTTA: Okay.

2 MR. ALONSO: So, what happens is, in terms
3 of the -- the services that are provided by the
4 municipality, is going to increase; police, fire,
5 and all those other things. School aged children
6 go to school. Tax implications are increased
7 because it costs \$16,000.00 to educate a student,
8 where you have no -- no school aged children in a
9 multi-family building.

10 So, in terms of the intensity of use in a
11 zoning perspective, which is what the testimony
12 was, it doesn't change. It's the same intensity
13 of use.

14 CHAIRMAN MAROTTA: You finished?

15 MR. ALONSO: I am.

16 CHAIRMAN MAROTTA: Thank you.

17 MR. ALONSO: You're welcome.

18 CHAIRMAN MAROTTA: Now, Mr. Kauker, you
19 made reference, you stated across the street
20 there's a five story --

21 MR. KAUKER: Apartment building.

22 CHAIRMAN MAROTTA: -- apartment house.

23 MR. KAUKER: Yes, sir.

24 CHAIRMAN MAROTTA: Why? Why'd you mention
25 that?

1 MR. KAUKER: Because it establishes -- it's
2 an existing physical condition, and it -- it's
3 part of the character of the neighborhood. And
4 when you promulgate and support a use variance,
5 part of that negative criteria aspect is, what
6 impact is it going to have on the surrounding
7 neighborhood?

8 CHAIRMAN MAROTTA: Are you telling --

9 MR. KAUKER: And -- and my answer is,
10 because the impact is minimal, because it's
11 consistent with the mixed use character
12 immediately surrounding the site.

13 CHAIRMAN MAROTTA: You know that's a
14 preexisting building. You know that, don't you?

15 MR. KAUKER: It's a very good looking
16 building.

17 CHAIRMAN MAROTTA: It's a preexisting --

18 MR. KAUKER: Yes, it is.

19 CHAIRMAN MAROTTA: -- nonconforming use.

20 MR. KAUKER: Absolutely.

21 CHAIRMAN MAROTTA: All right.

22 MR. KAUKER: Yes.

23 CHAIRMAN MAROTTA: Are you saying that
24 because across the street, there's a preexisting
25 nonconforming use, that allows you to build a

1 nonconforming use over here?

2 MR. KAUKER: No.

3 CHAIRMAN MAROTTA: Is that what you're
4 saying?

5 MR. KAUKER: I'm saying it establishes a
6 character and a physical surrounding condition
7 that enables the consideration, construction of a
8 higher density project on the subject site,
9 without substantial detriment or impact. That's
10 what I'm saying.

11 CHAIRMAN MAROTTA: Well, what if I tell you
12 that the Board must focus on the deviations from
13 the Code, from the standards, and not whether the
14 proposed use is compatible with other uses in the
15 zone?

16 Would you agree with that?

17 MR. KAUKER: Not necessarily, not with
18 regard to a use variance.

19 CHAIRMAN MAROTTA: All right.

20 Now, tell me what's your authority for what
21 you told us before about the -- because of the
22 character of the --

23 What -- what's your authority?

24 MR. KAUKER: Well, my authority is the
25 Medici case.

1 CHAIRMAN MAROTTA: The what?

2 MR. KAUKER: Medici. Medici.

3 CHAIRMAN MAROTTA: Medici case?

4 MR. KAUKER: Yes. But we're substantially
5 consistent with the Master Plan and we meet the
6 test of negative criteria.

7 CHAIRMAN MAROTTA: Would you -- would you
8 get that part of the case for me and cite it?
9 Read it to me.

10 I read the Medici case. I didn't see that
11 in there.

12 MR. KAUKER: Medici case requires enhanced
13 proofs. You're obviously --

14 CHAIRMAN MAROTTA: Yeah.

15 MR. KAUKER: -- well aware of that.

16 CHAIRMAN MAROTTA: Right. Enhanced proof.
17 We have --

18 MR. KAUKER: And I think that -- I think
19 it's an apt fit to this particular application.

20 CHAIRMAN MAROTTA: Okay.

21 Let me ask you this.

22 On these multi-family dwellings, like this
23 one, the tenants usually get visitors, don't
24 they?

25 MR. KAUKER: Yes.

1 CHAIRMAN MAROTTA: And is there a provision
2 for parking for their visitors?

3 MR. KAUKER: I -- the parking requirements,
4 the parking ratios that are established take into
5 account the potential of some spaces being
6 available for visitors.

7 If not, then all visitor parking would have
8 to be on-street.

9 CHAIRMAN MAROTTA: Now, Mr. Kauker, I still
10 haven't heard any proof satisfying the -- the
11 positive criteria or the negative criteria.
12 Okay?

13 MR. KAUKER: At the outset, respectfully,
14 Mr. Marotta, I talked about the special reasons
15 in support of the D-1 use variance.

16 CHAIRMAN MAROTTA: All right. Let's look
17 at something.

18 (Whereupon, there was a pause in the
19 proceedings.)

20 CHAIRMAN MAROTTA: Since we have no setback
21 on the front yard --

22 MR. KAUKER: That's correct.

23 CHAIRMAN MAROTTA: -- that's a hundred
24 percent deficiency.

25 Correct?

1 MR. KAUKER: It's a hundred percent --

2 CHAIRMAN MAROTTA: A hundred percent
3 deficiency.

4 MR. KAUKER: Coverage. As it relates to
5 the front yard. Front yard's fully occupied.

6 CHAIRMAN MAROTTA: My question is, the fact
7 that there is no setback, when there's a
8 requirement of a ten foot setback, that means
9 there's a deficiency in the Code to extent of 100
10 percent.

11 Right?

12 MR. KAUKER: That's correct. That's
13 correct.

14 CHAIRMAN MAROTTA: Right. Okay.

15 The fact that you have a rear yard of ten
16 feet, rather than what the Code requires --

17 MR. KAUKER: However, if you look at --

18 CHAIRMAN MAROTTA: -- 25 feet, that --
19 Please allow me to finish first.

20 MR. KAUKER: Okay.

21 CHAIRMAN MAROTTA: That gives us a 60
22 percent deficiency.

23 Correct?

24 MR. KAUKER: Yes.

25 CHAIRMAN MAROTTA: Substantial?

1 MR. KAUKER: You might call it that.

2 CHAIRMAN MAROTTA: You might call it that?

3 MR. KAUKER: Yeah.

4 CHAIRMAN MAROTTA: Let me ask a question.

5 If your salary was decreased, annual
6 salary, by 60 percent, would you say you might
7 call it a substantial --

8 MR. KAUKER: It is substantial, but it's
9 consistent with the character of the
10 neighborhood, as with the front yard setback,
11 which effectively all along Palisades Ave. is
12 more than -- often than not zero setback.

13 CHAIRMAN MAROTTA: Your off-street parking
14 --

15 MR. ALONSO: Can -- can I just follow up
16 with a question?

17 The fact that something is substantial,
18 does that automatically mean it's a substantial
19 negative impact?

20 MR. KAUKER: No.

21 MR. ALONSO: Okay.

22 CHAIRMAN MAROTTA: What's your criteria for
23 that? What's your authority for that?

24 MR. KAUKER: You have to look at the
25 physical --

1 CHAIRMAN MAROTTA: No. Give me --

2 MR. KAUKER: -- effect.

3 CHAIRMAN MAROTTA: -- authority for the
4 statement that your counsel made. In a leading
5 statement to you, he --

6 MR. ALONSO: It's not only -- well --

7 CHAIRMAN MAROTTA: I want the authority.

8 MR. KAUKER: I am not an attorney, I'm a
9 planner. I --

10 CHAIRMAN MAROTTA: Yeah. But --

11 MR. KAUKER: I -- I testified with regard
12 to established planning principles.

13 CHAIRMAN MAROTTA: Mr. Kauker, he presented
14 a leading question to you, and you said yes.

15 Now, I'm asking you what's your authority
16 for the yes? Because if you have no authority,
17 it's only a net opinion of yours.

18 MR. KAUKER: No, it's not a net opinion.

19 CHAIRMAN MAROTTA: And if it's only a net
20 opinion of yours, we have no right to accept that
21 net opinion.

22 MR. ALONSO: No. But I'm just going to --
23 the line of questioning is totally improper,
24 because, Mr. Kauker, you have to determine as to
25 whether or not there's -- or this Board, would

1 have to determine whether or not there's a
2 substantial negative impact.

3 Correct?

4 MR. KAUKER: That's correct.

5 MR. ALONSO: Okay.

6 So, just because there's a substantial
7 deviation, does that mean that it's a substantial
8 negative impact?

9 MR. KAUKER: They're two different things.

10 MR. ALONSO: Two different things.

11 Correct?

12 MR. KAUKER: That's correct.

13 MR. ALONSO: So, you don't need a legal
14 authority to -- to --

15 MR. KAUKER: No.

16 MR. ALONSO: -- to cite that.

17 MR. KAUKER: It's -- it's a logical,
18 commonsense comparison.

19 MR. ALONSO: Thank you.

20 CHAIRMAN MAROTTA: The Ordinance -- our
21 Ordinance, are you familiar with this Ordinance?

22 MR. KAUKER: Say again.

23 CHAIRMAN MAROTTA: Are you familiar with
24 the Union City Ordinance?

25 MR. KAUKER: Yes, I am.

1 CHAIRMAN MAROTTA: Okay.

2 And at the very beginning, in Section 223-
3 2, gives the purpose, the purpose of our
4 Ordinance; to establish a pattern for the use of
5 land and buildings, based on the land use element
6 and Master Plan.

7 And then it goes, Subsection A, regulate
8 the use of land within zoning districts.

9 And Section B, limit and restrict buildings
10 and structures to specified zones.

11 MR. KAUKER: Absolutely.

12 CHAIRMAN MAROTTA: This violates it,
13 doesn't it?

14 MR. KAUKER: Of course it does, and that's
15 why we're before a board --

16 CHAIRMAN MAROTTA: Yeah.

17 MR. KAUKER: -- of adjustment.

18 CHAIRMAN MAROTTA: So, you're violating our
19 Ordinance here.

20 MR. ALONSO: Well, every application that
21 you hear violates your Ordinance. Every single
22 one. The ones that you approve. The ones that
23 get affirmed in the Superior Court, the Appellate
24 Division, and even in the Supreme Court --

25 CHAIRMAN MAROTTA: I didn't --

1 MR. ALONSO: -- they all violate your
2 Ordinance.

3 CHAIRMAN MAROTTA: I didn't hear anything
4 from you with respect to the positive criteria
5 concerning the site is particularly suitable for
6 the proposed use.

7 MR. KAUKER: That -- that testimony
8 occupied about a quarter of my testimony. And it
9 was -- it was proffered and -- and presented to
10 the Board at the beginning of my testimony.

11 VICE CHAIRMAN BONACCI: Mr. Chairman, if
12 you will allow me?

13 CHAIRMAN MAROTTA: Oh, you have a question?

14 VICE CHAIRMAN BONACCI: Yeah.

15 CHAIRMAN MAROTTA: Okay.

16 VICE CHAIRMAN BONACCI: Okay. Well, I'm
17 just going based off of what Mr. Spatz left us
18 here in his memo, because you guys know that we
19 pretty much swear by that stuff. He's not here,
20 but he has a memo here for us.

21 He did mention the Medici case that you
22 brought up earlier. However, he also brings up
23 this Coventry Square versus Westwood case, and
24 I'm just going to read it.

25 It says that the case held, however, that a

1 D-3 variance, when a conditional use does not
2 meet all applicable standards, is to be the
3 subject of a modified review. A Board, as the
4 Chairman is saying, a Board must focus on the
5 deviations from those standards, not whether the
6 proposed use is compatible with other uses that
7 are in the zone.

8 So, I think that that, right there, touches
9 upon what the Chairman said, and both what you
10 were bringing up, as well.

11 MR. ALONSO: But Mr. Bonacci, that doesn't
12 apply in this case. We're not -- we're not
13 asking for a D-3 conditional use variance. It's
14 a D-1 variance, which is the Medici case.

15 VICE CHAIRMAN BONACCI: Okay.

16 MR. ALONSO: So, that -- that seems to be
17 boilerplate language that he has on all of his
18 reports. So, if -- depending on the variances
19 that are being applied for, he already has that
20 --

21 VICE CHAIRMAN BONACCI: Right.

22 MR. ALONSO: -- criteria in there. So, the
23 Board doesn't need to consider Coventry.

24 VICE CHAIRMAN BONACCI: You guys are asking
25 for a D-1 and a D-5.

1 MR. KAUKER: That's correct. And Medici --
2 your planner is absolutely correct, that Medici
3 is a -- a key proof in a D-1 use variance case.

4 VICE CHAIRMAN BONACCI: Okay. I just
5 wanted to shed light on that.

6 MR. ALONSO: Yeah.

7 MR. KAUKER: No, thank you for that.

8 VICE CHAIRMAN BONACCI: Just because it's
9 here. Mr. Spatz left it for us, and it touches
10 upon what you were saying with the
11 characteristics of the neighborhood, and also
12 what Chairman Marotta was mentioning before, with
13 what else could we put in that area if not this?

14 CHAIRMAN MAROTTA: I have no more
15 questions.

16 MR. KAUKER: Thank you.

17 CHAIRMAN MAROTTA: Larry has a question.

18 MR. PRICE: I have a comment.

19 CHAIRMAN MAROTTA: Comment?

20 All right.

21 MS. DILLON: Just name and address for the
22 record, please.

23 MR. PRICE: Larry Price, 1006 Palisade.

24 And I'm still sworn in.

25 I would like to endorse this application.

1 Okay. I have a number of reasons for doing so.

2 One is a perfect selfish one. As Mr.
3 Alonso stated at the beginning, there was a
4 previous application for 28 units, which was --
5 went into litigation. I was the litigator.

6 That -- it's -- as they say, it's
7 complicated, but that application was -- is
8 really in limbo right now. It's not good, but
9 it's -- it wasn't vacated either.

10 Now, I think you would agree with -- okay.
11 So, it's complicated.

12 Anyway, the reason I would endorse it,
13 first of all, I think it's -- it's a nice
14 project. I rarely agree with Mr. -- in fact, I
15 never agree with Mr. Kauker, but --

16 But there are four alternatives for this
17 site.

18 One is it could stay vacant. I'm tired of
19 looking at the weeds, so --

20 Number two.

21 We could build three, three family houses.
22 I don't think that's -- this is a good site for
23 three, three family houses.

24 First of all, it fronts on Palisade Avenue.
25 I live on Palisade Avenue. It's a busy street.

1 You don't want three family houses fronting on
2 that street.

3 Number -- the -- the other thing is, 17th
4 Street has a rise to it, so you would -- the back
5 of this site is eight feet higher than the front
6 of the site. So, you'd be building a house here,
7 and the road would be going up, which is not a --
8 not a good arrangement.

9 And -- and I just detest three family
10 houses. I don't think they work. They don't --
11 you know, they -- three, three family houses
12 would provide six real parking spots. This will
13 provide 17. It's not enough, but it -- it's a
14 lot more than six. Okay.

15 The third alternative, nothing, three,
16 three family houses, this project, or
17 unfortunately, the truth is that the 28 units is
18 still a live possibility. If Mr. Alonso takes
19 the 28 units, the lords, and gets it revived, I
20 mean, that could be, theoretically, is still a --
21 not a very real possibility, but it is a
22 possibility.

23 Of those three, I find this attractive. It
24 -- it meets -- you know, it -- it's a good
25 building. It's well designed. It's not

1 | permitted, I think everybody concedes that, but
2 | it -- it fits the site.

3 | So, I think of the four alternatives that
4 | we have, this is the one that works. And I would
5 | endorse the application.

6 | Open to questions.

7 | CHAIRMAN MAROTTA: That's it?

8 | Thank you.

9 | MR. PRICE: Okay.

10 | Thank you.

11 | CHAIRMAN MAROTTA: Mr. Paneque, as a member
12 | of the Board, I want to testify.

13 | MR. PANEQUE: Mr. Marotta, it wouldn't be
14 | testimony. You can give your opinion, but it's
15 | an opinion for the other Board members to take
16 | into consideration when they're making their
17 | decision on how they're going to vote on this
18 | application.

19 | CHAIRMAN MAROTTA: Yeah, but I could give
20 | testimony.

21 | MR. PANEQUE: Well, you want to call it
22 | testimony, we'll call it testimony, but it's --
23 | it's an opinion of a Board member, in this case,
24 | the Chairman.

25 | MR. ALONSO: But if it's testimony --

1 CHAIRMAN MAROTTA: No, no. I'm -- no.

2 MR. ALONSO: -- I could cross examine him
3 but --

4 CHAIRMAN MAROTTA: It's not an opinion.
5 It's testimony that I want to give. I want to
6 give some evidence about this case.

7 MR. ALONSO: Well, I think --

8 MR. PANEQUE: I don't know if -- if
9 testimony is the correct word, Mr. Marotta,
10 because how are you qualifying yourself as an
11 expert?

12 MR. ALONSO: I think if he's going to
13 testify, he's testifying, giving --

14 CHAIRMAN MAROTTA: There's a Cox -- the Cox
15 edition, all right, Section 18, 3.2., if there
16 are facts within -- which are within the
17 knowledge of members of the Board, then it is
18 their duty to testify and make a statement of
19 such facts so that they would be part of the
20 record.

21 I want to give testimony so it's part of
22 the record. If I make comments, it's not part of
23 the record.

24 MR. PANEQUE: Well, I --

25 MR. ALONSO: Comments is part of the

1 record.

2 MR. PANEQUE: Comments are part of the
3 record.

4 CHAIRMAN MAROTTA: Okay.

5 MR. PANEQUE: All right. So, whether we
6 call it testimony or we call it an opinion, it's
7 still part of this record, and it's still --

8 CHAIRMAN MAROTTA: All right.

9 MR. PANEQUE: -- being heard by the Board.
10 So, if you want to call it testimony, Mr.
11 Marotta, that --

12 CHAIRMAN MAROTTA: Okay.

13 MR. PANEQUE: -- that's acceptable. Now --

14 MR. ALONSO: I just think if it's going to
15 testimony, then he needs to be sworn in. He
16 would come down here, and then -- and if he's --

17 CHAIRMAN MAROTTA: I got a microphone here.

18 MR. ALONSO: And is subject to cross
19 examination.

20 CHAIRMAN MAROTTA: Of course. Swear me in.

21 MS. DILLON: Do you affirm the testimony
22 you're about to give this Board is the whole
23 truth?

24 CHAIRMAN MAROTTA: Yes.

25 MR. ALONSO: And --

1 MS. DILLON: State your name for the
2 record, please.

3 CHAIRMAN MAROTTA: Libero Marotta, 311 9th
4 Street, Union City.

5 MR. ALONSO: And one other legal point; to
6 the extent that he's testifying as a witness will
7 preclude him, I believe --

8 MR. PRESSEY: Right.

9 MS. GUTIERREZ: Yeah.

10 MR. ALONSO: -- from voting.

11 MR. PRESSEY: Yeah.

12 MS. GUTIERREZ: Yes.

13 MR. PRESSEY: That's right.

14 MR. ALONSO: So, I just want to put that on
15 the record.

16 MR. PRESSEY: Right.

17 CHAIRMAN MAROTTA: Where -- where do you
18 find that?

19 MR. ALONSO: Well, if you're -- if you're
20 testifying as a witness --

21 MR. PRESSEY: You can't vote.

22 MR. ALONSO: -- then you're no longer a
23 Board member you're testifying as a witness.

24 MS. GUTIERREZ: Yeah, you can't vote.

25 MR. PRESSEY: Correct.

1 VICE CHAIRMAN BONACCI: Why don't you just
2 state your opinions, and it will be on the
3 record? You don't need to swear yourself in.

4 MR. PRESSEY: Correct.

5 CHAIRMAN MAROTTA: Okay. We'll do it that
6 way. We'll state the opinion.

7 MS. DILLON: Okay. Well, what --

8 VICE CHAIRMAN BONACCI: He's just going to
9 make the opinion. He's not going to --

10 MR. PANEQUE: All right.

11 VICE CHAIRMAN BONACCI: He's not going to
12 testify.

13 MS. DILLON: But I already swore him, so is
14 that an issue?

15 MR. ALONSO: Can you unswear him?

16 VICE CHAIRMAN BONACCI: Can we strike that?

17 MR. ALONSO: Not tell a lie.

18 MR. PANEQUE: Well, Mr. Marotta, aside from
19 being the Chairman of this Board, also happens to
20 be an attorney at law in the State of New Jersey,
21 and -- and an esteemed one, at that.

22 So, you're under oath, all the time.

23 CHAIRMAN MAROTTA: Okay. I'll give my
24 opinion.

25 MR. PANEQUE: Okay? So --

1 CHAIRMAN MAROTTA: Okay.

2 Thank you.

3 MR. PANEQUE: I would request that instead
4 of testimony, it's your opinion to the Board.

5 CHAIRMAN MAROTTA: Okay.

6 MR. PANEQUE: As any member of this Board
7 can give their opinion on any application that
8 comes before it.

9 MS. GUTIERREZ: Um hum.

10 MR. PANEQUE: Now, when you give your
11 opinion, I think we have to give the applicant,
12 through his counsel, the opportunity to respond
13 --

14 CHAIRMAN MAROTTA: Right.

15 MR. PANEQUE: -- and answer --

16 CHAIRMAN MAROTTA: Okay.

17 MR. PANEQUE: -- to whatever opinion is
18 given to the Board --

19 CHAIRMAN MAROTTA: Yes.

20 MR. PANEQUE: -- because due process
21 requires that they be allowed to either answer
22 that opinion --

23 CHAIRMAN MAROTTA: Okay.

24 MR. PANEQUE: -- or give their own counter
25 to that opinion.

1 CHAIRMAN MAROTTA: Fine.

2 MR. PANEQUE: Okay? So, even though --

3 CHAIRMAN MAROTTA: Accepted.

4 MR. PANEQUE: -- Mr. Marotta's been sworn

5 --

6 CHAIRMAN MAROTTA: Accepted.

7 MR. PANEQUE: -- the --

8 CHAIRMAN MAROTTA: I'll give you my
9 opinion.

10 MR. PANEQUE: It would be an opinion.

11 CHAIRMAN MAROTTA: Right.

12 MR. PANEQUE: Correct.

13 CHAIRMAN MAROTTA: I was born and raised in
14 Union City, and with the exception of two years
15 in the military, I have lived here all my life,
16 which is in excess of 80 years.

17 This property's located in the West Hoboken
18 section of Union City. I have lived all my life
19 in the West Hoboken section of Union City.

20 In all these years, I've been very active
21 socially in the city, extremely active
22 politically in the city, and also as part of the
23 governing body of the city. So, I'm familiar
24 with what's happened and been happening in the
25 city, these past 50 or 60 years.

1 Right now, we have a -- in my opinion,
2 because I live in the West Hoboken section, a
3 serious parking problem for the residents of the
4 city.

5 The City Commissioners had to introduce,
6 several years ago, an Ordinance permitting
7 parking in bus stops because there's no parking
8 on the streets.

9 I ride the -- I ride the city every day. I
10 walk the city downtown, and the West Hoboken
11 section. Cars have to park in bus stops. They
12 have to park in crosswalks. They park on
13 sidewalks. They park in fire zones. And they're
14 not ticketed because there's no parking in the
15 city.

16 In my opinion, to permit construction of
17 this building, without adequate off-street
18 parking, you're going to put another seven cars,
19 in fact, you're going to cut away part of the --
20 part of the curb cut to put a driveway in there,
21 taking away a parking space, too.

22 So, I find there's going to be more
23 congestion. We are congested now, and if we
24 continue this way, with this, there's more
25 congestion, especially within the immediate

1 neighborhood, which is a danger to the people in
2 the neighborhood.

3 Those are my comments.

4 MR. ALONSO: And I'd just like to respond
5 briefly, because a lot of this was already
6 provided through the testimony of our witnesses.
7 It appears that Mr. Marotta's concern is the
8 impact on the parking. And although I haven't
9 lived here for 80 years, I remember, as a kid, in
10 the late '60s, my grandmother lived in an
11 apartment building across the street from Emerson
12 High School, where the gym is now. So, I
13 remember growing up quite -- back then.

14 With that said, the RSIS provides for the
15 parking requirements. And as Mr. Staigar said,
16 it's -- you know, it's the same requirement
17 whether you're in Hudson County, or whether
18 you're in Warren County, out in the farms.

19 And obviously, the parking requirement is
20 going to be a lot more in the farms, because you
21 need to get -- buy milk, you need to get in the
22 car and -- and you need to -- you need a car out
23 in Warren County. You don't necessarily need a
24 car here.

25 So, the deviation is only six vehicles, and

1 he provided the -- the requirements in order to
2 deviate, which has been deviated from, basically,
3 in every application.

4 Now, if you compare the multi-family
5 building to the three, three families that was
6 already testified to, this is a much -- much
7 better application, for purposes of parking.

8 Mr. Marotta was concerned about the one
9 curb cut that this project is going to -- to
10 require. When you compare that to the three curb
11 cuts of the three, three families, that it
12 appears that he's in favor of, obviously, his
13 proposal will be much worse in terms of the
14 parking requirement.

15 Also, the -- the three, three families,
16 you'll have four parking spaces. You have three,
17 three bedroom apartments, with four parking
18 spaces, in a tandem condition.

19 So, obviously, those -- those three, three
20 families are going to have a higher parking
21 demand than the parking that's being provided.

22 You have a total of 12 parking spaces for
23 27 apartments (sic) -- for 27 bedrooms, compared
24 to 17 parking spaces for 18 bedrooms.

25 So, I think that clearly, if -- if the

1 concern of the Board is parking, this is a
2 substantially better application than what is
3 permitted in the zone.

4 So, that -- that would be my -- my comments
5 and I believe that it was already addressed
6 through the witnesses.

7 MR. PANEQUE: Thank you.

8 CHAIRMAN MAROTTA: Anyone else?

9 MR. GRULLON: I have a question for the
10 architect.

11 I know he did -- he did not design this.
12 This is -- this was provided by Mr. Carballo, but
13 I -- I feel that these site plans are incomplete,
14 and I don't see any landscaping here. I don't
15 see any -- you know, area for the mechanical
16 equipment. And I see railing on top of the
17 building. I don't know if you're proposing
18 anything to be on top of the building?

19 MR. VALELLA: No, the railing is there.

20 MR. GRULLON: Do you have a -- is there
21 another site plan?

22 MR. VALELLA: No, no.

23 MR. GRULLON: Or this is it?

24 MR. VALELLA: I called Mr. Carballo. This
25 is the -- the submittal.

1 The reason for the railing, I can explain.
2 It's not that there's anything on the roof, it's
3 that, at certain points, he has not built a
4 parapet, a solid parapet. But he has then
5 introduced railings to keep the safety of anybody
6 --

7 MR. GRULLON: Are you proposing any
8 landscaping around the building or lighting?

9 MR. VALELLA: Yes. There will -- it's not
10 shown, but I can -- I can --

11 MR. ALONSO: Yeah.

12 MR. VALELLA: I can represent, because I
13 know Mr. Carballo and I know his work, there will
14 be exterior light fixtures provided. They will
15 be at the garage entrances. They will be at the
16 lobby. They will be at the emergency doors. At
17 all entry points, there will be exterior lighting
18 supplied.

19 In addition, although not shown on the
20 drawing, I am -- I can attest -- I can represent
21 that there will be a new sidewalk built as part
22 of this construction, and we -- I think we can
23 provide five street trees that would compliment
24 the building, as well.

25 It's not shown, but I -- I think it's --

1 | it's appropriate; five street trees, the new
2 | sidewalk and the exterior lighting.

3 | There is no proposed use for the roof,
4 | i.e., the railings. The railings are there for
5 | the design. Sometimes the wall stops short and
6 | the -- and the railings make up for the --

7 | MR. GRULLON: Are you planning to have
8 | mechanical equipment on the --

9 | MR. VALELLA: There is --

10 | MR. GRULLON: -- the roof?

11 | MR. VALELLA: -- mechanical equipment.

12 | Their utilities are shown. There's a mechanical
13 | room at the ground floor behind the garbage room.

14 | MR. GRULLON: And what about like air
15 | conditioning units?

16 | MR. VALELLA: I don't know how it will be
17 | done. There are different ways of doing it. He
18 | could have condenser units on the roof and a
19 | ducted system. He could have through the wall,
20 | or he could have --

21 | I don't know is the answer. I don't want
22 | to guess on how he anticipates.

23 | MR. ALONSO: The mechanicals haven't been
24 | designed, at this point.

25 | MR. VALELLA: No. Normally, they're not.

1 Normally, that's done as part of the engineering
2 of the construction documents.

3 CHAIRMAN MAROTTA: Any other questions?
4 Any other --

5 MR. GRULLON: Thank you, Mr. --

6 MR. VALELLA: No problem.

7 CHAIRMAN MAROTTA: Okay.

8 If there are no other questions, I'm going
9 to make a motion, and I'll give my reasons for my
10 motion.

11 My motion is to deny the application. The
12 evidence we have here we find is a hundred
13 deficiency as to the front yard setback, a 60
14 percent deficiency as to the rear yard setback, a
15 24 percent deficiency as to off-street parking,
16 and a 25 percent deficiency with respect to
17 stories. The Code says three, they're giving us
18 four.

19 I find -- also, we heard testimony that
20 this property can be developed pursuant to the
21 Code. We heard that from the architect. Okay?

22 I find that the positive criteria and
23 negative criteria have not been satisfied. Also,
24 that there's -- I find that the off-street
25 parking is inadequate, that the same would create

1 significant congestion, especially in the
2 immediate neighborhood of 17th Street and Palisade
3 Avenue.

4 And for these reasons, I make my motion to
5 deny this application.

6 THE SECRETARY: Motion on the table to deny
7 the application by Chairman Marotta.

8 Any second on the motion?

9 Second by Mr. Bonacci.

10 Roll call on the motion to deny this
11 application.

12 Mr. Marotta?

13 CHAIRMAN MAROTTA: Yes.

14 THE SECRETARY: Mr. Bonacci?

15 VICE CHAIRMAN BONACCI: Yes.

16 THE SECRETARY: Ms. Gutierrez?

17 MS. GUTIERREZ: Yes.

18 THE SECRETARY: Mr. Grullon?

19 MR. GRULLON: No.

20 THE SECRETARY: Mr. Pressey?

21 MR. PRESSEY: No.

22 THE SECRETARY: Mr. Medina?

23 MR. MEDINA: No.

24 THE SECRETARY: Mr. --

25 MR. PANEQUE: That's it.

1 THE SECRETARY: -- three in favor, three
2 against.

3 Mr. Paneque?

4 MR. ALONSO: So, we need a new motion.

5 MR. PANEQUE: It's a tie. On this, we're
6 looking for --

7 MR. ALONSO: If the motion doesn't pass --

8 MR. PANEQUE: Motion doesn't pass.

9 MR. ALONSO: So, you need a -- I don't
10 know, a different motion.

11 MR. GRULLON: It's going to be tie again.

12 MR. ALONSO: Not necessarily.

13 MR. PANEQUE: Is there another motion on
14 the table?

15 MR. GRULLON: I will make a motion to grant
16 the application. I will -- I will --

17 THE SECRETARY: Motion to grant --

18 MR. GRULLON: I will state --

19 THE SECRETARY: -- the application --

20 MR. GRULLON: I will just state the reason,
21 my reason.

22 I -- I feel that this application will
23 satisfy better the parking needs for the area.
24 Building three, three family houses, with 27
25 bedroom, is going to bring a higher density to

1 the area, and more car -- you know, tandem
2 parking, which is not convenient for the
3 Palisades street.

4 MR. PRESSEY: Um hum.

5 MR. GRULLON: I will make a motion to grant
6 this application, with 17 parking space, and the
7 condition to bring new site plans, with
8 landscaping and lighting.

9 MS. GUTIERREZ: I'm --

10 THE SECRETARY: Motion on the table to
11 grant this application by Mr. Grullon.

12 Any second?

13 MS. GUTIERREZ: I'm seconding.

14 THE SECRETARY: Second by Margarita
15 Gutierrez.

16 Roll call on the motion to approve this
17 application.

18 Mr. Marotta?

19 CHAIRMAN MAROTTA: No.

20 THE SECRETARY: Mr. Bonacci?

21 VICE CHAIRMAN BONACCI: No.

22 THE SECRETARY: Ms. Gutierrez?

23 MS. GUTIERREZ: Yes.

24 THE SECRETARY: Mr. Grullon?

25 MR. GRULLON: Yes.

1 THE SECRETARY: Mr. Pressey?

2 MR. PRESSEY: Yes.

3 THE SECRETARY: Mr. Medina?

4 MR. MEDINA: Yes.

5 VICE CHAIRMAN BONACCI: It's a majority,
6 now.

7 THE SECRETARY: Motion -- don't pass,
8 motion.

9 MR. PANEQUE: It doesn't pass.

10 MR. GRULLON: Well, with the conditions.

11 THE SECRETARY: It doesn't pass.

12 MR. PANEQUE: It doesn't pass.

13 THE SECRETARY: It doesn't go through.

14 MR. GRULLON: Oh, no?

15 THE SECRETARY: It's tie, three/three.

16 MR. PANEQUE: No, it's not. It's four/two.

17 MS. GUTIERREZ: It's not.

18 THE SECRETARY: Four/two?

19 MR. PANEQUE: It's four/two.

20 MS. GUTIERREZ: Yeah.

21 MR. PANEQUE: But you need a super
22 majority.

23 THE SECRETARY: Wait, wait, wait.

24 VICE CHAIRMAN BONACCI: Margarita voted --

25 MR. PANEQUE: It's four/two.

1 VICE CHAIRMAN BONACCI: -- for the
2 application.

3 THE SECRETARY: Yes.

4 MS. GUTIERREZ: For the application.

5 VICE CHAIRMAN BONACCI: He voted for the
6 application.

7 MS. GUTIERREZ: He voted. He voted, and he
8 voted.

9 VICE CHAIRMAN BONACCI: So did Victor, and
10 so did Medina.

11 CHAIRMAN MAROTTA: You got four yeses; you
12 need five.

13 THE SECRETARY: Oh, four. Four -- Medina
14 voted yes.

15 VICE CHAIRMAN BONACCI: It was me and
16 Libero who voted.

17 THE SECRETARY: Okay. I'm sorry. Four --
18 only four. Motion doesn't pass, then.

19 MR. GRULLON: Doesn't pass?

20 CHAIRMAN MAROTTA: You need five.

21 THE SECRETARY: You need a super majority.

22 MR. PANEQUE: Yeah.

23 THE SECRETARY: Sorry.

24 CHAIRMAN MAROTTA: You need five.

25 MR. PANEQUE: There's your vote.

1 MR. ALONSO: Okay.

2 CHAIRMAN MAROTTA: Application is --

3 MR. ALONSO: Thank you.

4 CHAIRMAN MAROTTA: -- denied.

5 MR. ALONSO: Have a good evening.

6 (Whereupon, there was a pause in the
7 proceedings.)

8 MS. DILLON: Off the record.

9 THE SECRETARY: Off the record.

10

11 (Whereupon, the Board recessed from 9:23
12 p.m. to 9:25 p.m.)

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1 **Alfred J. Alvarez - 412 23rd Street:**

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3 MS. DILLON: On the record.

4 THE SECRETARY: Next application on
5 tonight's agenda, Alfred J. Alvarez, 412 23rd
6 Street.

7 Mrs. Pereiras, please?

8 MR. PANEQUE: For the record, I've been
9 provided with the following documentation:

10 I have a certification as to publication
11 with respect to tonight's application for 412 23rd
12 Street, signed by attorney Bianca Pereiras.

13 I've also been provided with an Affidavit
14 of Publication from The Jersey Journal, in which
15 notice of tonight's hearing was published on
16 October 21st, 2017.

17 I've also been provided with a copy --
18 well, the certified mail receipts dated October
19 23rd, 2017.

20 I'm just counting the days.

21 MS. PEREIRAS: We're good, because there
22 are 31 days in October, so we're good.

23 MR. PANEQUE: Yeah. That's what -- October
24 23rd would give us eight days in October and today
25 would be the second day. Just made it.

1 MS. PEREIRAS: We're good.

2 MR. PANEQUE: You're good.

3 I've also been provided with a list from
4 the Tax Assessor's Office, with a date of October
5 20th, with all property owners within the 200 foot
6 radius of 412 23rd Street.

7 Based on the documentation that's been
8 provided, this Board has jurisdiction to proceed
9 and hear this matter.

10 MS. GUTIERREZ: Counsel, I have to recuse
11 myself.

12 MR. PANEQUE: Okay. We have a request from
13 Ms. Margarita Gutierrez indicating to the Board
14 that she is within the 200 foot radius of this
15 property?

16 MS. GUTIERREZ: I live at 820 23rd Street.

17 MR. PANEQUE: Did you receive a notice, Ms.
18 Gutierrez, for this property?

19 MS. GUTIERREZ: No.

20 MR. PANEQUE: No? Okay, 820 --

21 MS. GUTIERREZ: 23rd Street.

22 MR. PANEQUE: -- 23rd. Then she would be
23 within the --

24 MS. GUTIERREZ: I'm right there.

25 MR. PANEQUE: Well, this is 412.

1 (Whereupon, there were multiple speakers.)

2 MR. GRULLON: No, no. No, that's -- that's

3 --

4 MS. GUTIERREZ: That doesn't --

5 MR. GRULLON: -- between New York and
6 Bergenline.

7 THE SECRETARY: Where she live?

8 MS. GUTIERREZ: Oh, it's on the other side?

9 MR. GRULLON: It's on the other side.

10 MS. PEREIRAS: Yes. I don't believe --

11 MR. MEDINA: -- between --

12 MS. GUTIERREZ: Okay. I'm okay, then.

13 MR. PANEQUE: 412, that's --

14 MS. GUTIERREZ: I was -- I was counting
15 812.

16 MR. MEDINA: -- New York and Bergenline.

17 THE SECRETARY: She live between Kerrigan
18 and -- and Summit Avenue.

19 MR. MEDINA: No, no, no, Bergenline, New
20 York.

21 THE SECRETARY: You're okay to stay in the
22 meeting.

23 MS. GUTIERREZ: I was -- I was counting --

24 THE SECRETARY: Let me give you an
25 application.

1 MS. GUTIERREZ: -- 812. I got it in my
2 head.

3 MR. PRESSEY: No problem.

4 MR. PANEQUE: Proceed, Ms. Pereiras.

5 MS. PEREIRAS: Thank you, counsel.

6 Good evening, counsel, Mr. Chairman,
7 members of the Board.

8 May it please the Board, Bianca Pereiras,
9 on behalf of Alfred and Daniel Alvarez.

10 The application before the Board this
11 evening is to legalize a basement apartment for
12 the owner's own personal use.

13 We have one expert, as well as the
14 applicant is here. He would like to testify
15 before this Board.

16 I'd like to call up our first expert, Mr.
17 Manuel Pereiras.

18 MS. DILLON: Please raise your right hand.

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

21 MR. PEREIRAS: I do.

22 Manny Pereiras, P-E-R-E-I-R-A-S, with
23 Pereiras Architects Ubiquitous, 1116 Summit
24 Avenue, Union City.

25 MS. PEREIRAS: For purposes of the record,

1 Mr. Pereiras has been qualified by this Board
2 before as an expert, and I ask that he be
3 accepted as an expert today.

4 VICE CHAIRMAN BONACCI: We accept your
5 qualifications.

6 Thank you.

7 MR. PEREIRAS: Thank you. Thank you, Board
8 members. I'm happy to be here.

9 MS. PEREIRAS: Mr. Pereiras, are you
10 familiar with the property located at 412 23rd
11 Street?

12 MR. PEREIRAS: I am.

13 MS. PEREIRAS: And did you prepare the
14 drawings that are before the Board this evening?

15 MR. PEREIRAS: I did.

16 MS. PEREIRAS: And would you kindly walk us
17 through the application?

18 MR. PEREIRAS: So, we're between Bergenline
19 and New York Avenue. We're on the north side of
20 the street. It's a typical 25 by 100 lot, so
21 we're complying in lot width and lot depth. And
22 there is a preexisting building on this lot.
23 It's a wood frame, three story structure. So,
24 we're compliant with height and we're compli --
25 and the building sits nine foot seven inches from

1 the front yard. So, there is a preexisting
2 nonconformity there, a few inches away from being
3 the ten foot that's required on the Board.
4 However, that's an existing nonconformity, and
5 it's also the same as every other house on the
6 block.

7 There is a side yard deficiency, as well.
8 There is two foot five inches on one side, and
9 one foot four inches on the other. Again, this
10 is another preexisting nonconformity. However,
11 the -- the way the houses are designed on this
12 block, is a little bit -- well, we see this some
13 places in Union City, where the houses are
14 actually staggered and they share their side
15 yard. So, the -- the little side yard is
16 actually shared between the two houses, and
17 there's about three feet between every house.
18 And that's typical along that neighborhood.

19 What we're proposing to do is that right
20 now, there's three stories and there's an
21 apartment in each of those three stories. There
22 is a base -- there was a basement apartment that
23 was partially extending above -- above the
24 ground. And we're looking to legalize that
25 before this Board right now.

1 So, the apartment was in existence for many
2 years, and it looks like it was there -- I can't
3 date it with any precision, but it was definitely
4 there for many years. I'd say probably -- it
5 pretty easily predates the '80s, from the look of
6 the tile and everything that was there. However,
7 it was removed as a part of a request from the
8 City, and we're looking now to legalize that.

9 I'm turning now to the second page of our
10 -- my documents, and these are the same documents
11 that were submitted before the Board.

12 Now, to Sheet Z02, and Sheet Z02, we see
13 the floor plans for each of the floors. Basement
14 is the darkest level, which is what I
15 highlighted, because we're reconfiguring the
16 interior in order to make it into a safe, good
17 apartment.

18 So, what was there, we're demo-ing it out,
19 removing it, and making it into a one bedroom,
20 good apartment. It was a two bedroom, which was
21 undersized. So, we're making it into a good
22 apartment.

23 So, we're proposing a bedroom near the
24 back, which is ten feet by nine foot eight. And
25 what's interesting about this is that now, since

1 | it's four units, it has to comply with ADA
2 | standards. So, the bathroom is an ADA bathroom.
3 | It's a nice size bathroom. It's six foot eight
4 | by eight feet in size. The kitchen is an ADA
5 | adaptable kitchen. And then, the living area is
6 | nine foot nine by 14 -- by 15 feet, basically, in
7 | length, plus the kitchen space. So, it's like a
8 | nice open layout.

9 | This creates a very unique opportunity,
10 | that I always say, it's -- it contributes to the
11 | positive criteria, which is that we're correcting
12 | an existing negative condition, and we're making
13 | it into a very safe apartment. It's an
14 | opportunity to provide all the proper fire
15 | ratings, in order to make this -- and meet all
16 | life safety standards, not just for this
17 | apartment, but for the rest of the apartments in
18 | the building, and for the neighbors.

19 | So, there's a much less -- a decrease in
20 | the possibility of fires, because we are
21 | providing and meeting all Code criteria.

22 | In addition, the most significant aspect
23 | that we always talk about in -- in -- before this
24 | Board and the Planning Board in Union City, as a
25 | lifelong resident myself, is parking. And since

1 parking is such a huge issue, we tried to address
2 that with this application.

3 I'm turning back to Sheet Z01 and we notice
4 that the adjacent house, a little bit to the
5 east, the immediate house at least to the east,
6 has a parking spot with a curb cut immediately
7 next to it. And that curb cut is existing in
8 front of the house. And that's a condition
9 that's actually very typical along this
10 neighborhood.

11 What we're looking to do also, with this
12 Board, is that along with legalizing this
13 basement apartment, making it to a four family,
14 is to legalize the parking spot, so that we can
15 do the same thing that's happening in this block,
16 so that we could take a car off the street, in
17 theory. Because we could put one car on the
18 apron, and one car parked in the street. So, it
19 alleviates a little bit of the pressure of the
20 neighborhood, which I think is a very strong and
21 important aspect of this application, that
22 wouldn't otherwise happen if this wasn't
23 legalized.

24 So, that -- I wanted to keep it nice and
25 short, and I'm open for all your test -- all your

1 | questions, and I'm ready to answer anything you
2 | may ask.

3 | CHAIRMAN MAROTTA: Anybody have any
4 | questions?

5 | VICE CHAIRMAN BONACCI: Okay. Mr.
6 | Pereiras, there is -- there's already an existing
7 | parking spot at this residence.

8 | Right?

9 | MR. PEREIRAS: There is not an existing
10 | parking spot at this residence. The existing
11 | parking spot in the next -- residence next to it.

12 | So, on the site plan that I drew, this is
13 | our building and this is our lot. We made it
14 | nice and dark and bold so that you could see
15 | what's -- what we're talking about.

16 | And then, I'm showing both the adjacent
17 | properties, because I thought it was extremely
18 | relevant to understand that we're asking for the
19 | same parking, the same situation as the neighbors
20 | are. So the way the parking is in that house, we
21 | want to do the same parking at this house.

22 | We're keeping the same porch, creating the
23 | same parking space, and providing a new curb cut
24 | that's going to be 12 feet in order to fit.

25 | And -- and the way I worked the curb cut is

1 | that I spaced it in a way so that we could still
2 | fit another car between the two curb cuts in the
3 | street, to maintain as much parking as possible
4 | for the residents, and basically try to reduce
5 | the -- the parking impact on the neighborhood.

6 | So, we're still asking for a variance on
7 | parking, because the building has an existing
8 | nonconformity, as well as since the apartment
9 | that we have requires 1.8 parking spaces. Well,
10 | it's Union City, we know, we're living with this
11 | condition. The good thing is that we're
12 | basically creating two spaces. One in the apron,
13 | and one in the street that is going to alleviate
14 | at least one car off the street. And that's what
15 | we're trying to do here.

16 | VICE CHAIRMAN BONACCI: Okay.

17 | CHAIRMAN MAROTTA: Any other questions?

18 | MR. PEREIRAS: And the applicant is here,
19 | if you have any questions of him. He wants to
20 | live here himself.

21 | CHAIRMAN MAROTTA: My own question, if you
22 | know, is -- is this subject to Rent Control?

23 | MR. PEREIRAS: I don't know.

24 | CHAIRMAN MAROTTA: Is the applicant here?

25 | MR. ALVAREZ: Yes.

1 CHAIRMAN MAROTTA: Could you --

2 MS. PEREIRAS: I'm happy --

3 CHAIRMAN MAROTTA: -- ask the applicant?

4 MS. PEREIRAS: I'm happy to call him up.

5 CHAIRMAN MAROTTA: Yeah.

6 MS. PEREIRAS: He actually wanted to
7 address the Board.

8 Mr. Alvarez?

9 MS. DILLON: Just right in front of that
10 microphone --

11 MR. ALVAREZ: Okay.

12 MS. DILLON: -- Mr. Alvarez.

13 Please raise your right hand.

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

16 MR. ALVAREZ: Yes.

17 MS. DILLON: Please state your name and
18 spell it for the record.

19 MR. ALVAREZ: Daniel Alvarez, A-L-V-A-R-E-Z.

20 MS. DILLON: Thank you.

21 MR. ALVAREZ: You're welcome.

22 CHAIRMAN MAROTTA: Sir, you do not live in
23 this property.

24 Right?

25 MR. ALVAREZ: No, not currently.

1 CHAIRMAN MAROTTA: Is it subject -- did you
2 -- is this filed with the Rent Control Board in
3 Union City?

4 MR. ALVAREZ: At the moment, no, it isn't.
5 I'm -- I believe that only four families have to
6 register.

7 CHAIRMAN MAROTTA: Well, you just recently
8 purchased this in June, didn't you?

9 MR. ALVAREZ: A year and a half ago.

10 CHAIRMAN MAROTTA: A year and a half.

11 MR. ALVAREZ: Right.

12 CHAIRMAN MAROTTA: And you never -- never
13 submitted it to the Rent Control Board?

14 MR. ALVAREZ: I don't think it's subject to
15 Rent Control.

16 CHAIRMAN MAROTTA: Why?

17 MR. ALVAREZ: Because it's a three family.

18 CHAIRMAN MAROTTA: It's four family now.

19 MS. PEREIRAS: Hopefully.

20 MR. ALVAREZ: Well, it would -- it would
21 be.

22 CHAIRMAN MAROTTA: If we approve this, it
23 becomes four family.

24 MR. ALVAREZ: Right. Yeah. Some --

25 CHAIRMAN MAROTTA: Would you then submit

1 it?

2 MR. ALVAREZ: Yes.

3 MS. PEREIRAS: Well, Mr. Alvarez, if -- if
4 it's something that --

5 CHAIRMAN MAROTTA: Okay.

6 MS. PEREIRAS: -- that --

7 CHAIRMAN MAROTTA: But, right now, it's
8 not.

9 MS. PEREIRAS: -- would be required --

10 MR. ALVAREZ: No.

11 MS. PEREIRAS: It's not.

12 CHAIRMAN MAROTTA: Okay.

13 MR. ALVAREZ: At the moment, no.

14 MS. PEREIRAS: It's a three family. You
15 would not be required to -- to submit to Rent
16 Control.

17 VICE CHAIRMAN BONACCI: My concern about
18 the parking spot is that we're basing this on
19 what the neighbor has. And we don't know if what
20 the neighbor has was legal.

21 CHAIRMAN MAROTTA: What park -- would you
22 explain that again?

23 MR. PEREIRAS: I recommend that you do not
24 base this on the neighbor.

25 CHAIRMAN MAROTTA: Excuse me?

1 Habla despacio.

2 MR. PEREIRAS: Con mucho gusto.

3 MR. MAROTTA: Por favor.

4 MR. PEREIRAS: We -- we'd like you to not
5 base this on the neighbor's. This application
6 should stand on its own.

7 That said, the character of the
8 neighborhood, in general, is important in judging
9 this application on its own merits.

10 I recommend that you -- you approve this
11 because we're taking a car off the street. That
12 should be the criteria and that's what you should
13 be concerned of.

14 We're taking a car on the street because
15 we're putting one in the apron and one in the
16 street. That should be your criteria to do it.

17 As supporting evidence is that the
18 neighborhood is consistent with this. It's not
19 something -- and sometimes, it's a big deal
20 because if we're asking for a parking space and
21 none of the neighbors have it, it makes a block
22 look ugly. But when it's a typical condition,
23 then it just creates more to that uniformity, and
24 then it makes sense to.

25 And what we do know is that it is an

1 existing condition. There a curve on the street.
2 It's officially done. It's striped by the City
3 all the time, and it's there. And it's typical
4 on the block.

5 And that's what we ask you to have as part
6 of your judgement.

7 CHAIRMAN MAROTTA: Okay.

8 Thank you.

9 Any other questions?

10 MR. PANEQUE: I have a question for the
11 architect.

12 On the depiction that you have here,
13 there's a utility pole where your driveway is
14 intended to have an entrance.

15 MR. PEREIRAS: Yes. If you look at the
16 angle of the picture, it's a little deceiving. I
17 -- I ask you to refer to the site plan, where it
18 actually locates the existing light pole. And as
19 you can see, it's basically right on the property
20 line, and we're proposing the curb cut off to the
21 side of it. So, it's sufficient in order to get
22 a car in and out.

23 So, I'm pointing to the light pole right
24 here, and the curb cut is adjacent to it.

25 MR. PANEQUE: So, you've done the

1 measurements and the light pole does not have to
2 be moved.

3 MR. PEREIRAS: Correct.

4 MR. PANEQUE: All right. The reason I ask
5 is because it could be very expensive to move a
6 light pole.

7 MR. PEREIRAS: It's not only expensive --

8 MR. PANEQUE: And we don't want to approve
9 something, and then it become unfeasible from a
10 financial perspective.

11 MR. PEREIRAS: Yes. Yes. We understand
12 that. But it's -- the parking space is -- we
13 measured it. We looked at it, and there's space
14 in order to put the -- the parking space, in
15 comparison to the light pole.

16 MS. GUTIERREZ: Okay.

17 VICE CHAIRMAN BONACCI: I don't have any
18 more --

19 MR. GRULLON: Mr. Pereiras, could you
20 explain again the existing use and the condition
21 of the basement?

22 MR. PEREIRAS: Yes.

23 So, there was an apartment there that was a
24 two bedroom apartment. It was asked to be
25 removed by the City. The applicant wants to

1 | comply with everything, so he removed it.

2 | So, right now, there is no stove down
3 | there, it was removed. The shower was removed.
4 | So, now, there is framing, there is the remnants
5 | of what obviously was an apartment, but it's not
6 | in use and it's completely vacant right now.

7 | So, what we're proposing to do is to
8 | demolish all of that, and we're going to make a
9 | new apartment that complies with all new Codes,
10 | the way we show in this drawing.

11 | CHAIRMAN MAROTTA: In other words, the new
12 | apartment you're going to put there will be in
13 | conformity with the Code.

14 | MR. PEREIRAS: Yes, sir.

15 | CHAIRMAN MAROTTA: Okay. All right.
16 | Anybody else?

17 | MS. GUTIERREZ: No.

18 | CHAIRMAN MAROTTA: I'll make a motion to
19 | approve.

20 | THE SECRETARY: Motion to approve the
21 | application by Chairman --

22 | MR. PANEQUE: Well, no.

23 | MS. GUTIERREZ: Second.

24 | THE SECRETARY: -- Marotta.

25 | Second by --

1 MR. PANEQUE: Wait. Wait.

2 MS. DILLON: I'm sorry.

3 MR. PANEQUE: Wait.

4 MS. DILLON: Did you open it to the public,
5 Mr. Marotta?

6 CHAIRMAN MAROTTA: Excuse me?

7 MS. DILLON: I didn't hear. Did you open
8 it to the public?

9 CHAIRMAN MAROTTA: There was no public.

10 MR. MEDINA: They come the last meeting.

11 MR. PANEQUE: Actually --

12 CHAIRMAN MAROTTA: I didn't open it because
13 there was no one there.

14 MR. MEDINA: There was nobody there.

15 MS. GUTIERREZ: There was nobody there.

16 CHAIRMAN MAROTTA: Larry, do you want to
17 speak on this?

18 VICE CHAIRMAN BONACCI: Yeah. Larry --
19 Larry just walked in.

20 MR. MEDINA: He just came.

21 MR. PANEQUE: Yeah. But Mr. Dillon was --

22 MS. DILLON: No, I know, but he walked in.

23 CHAIRMAN MAROTTA: Thank you. Thank you.

24 VICE CHAIRMAN BONACCI: No problem.

25 CHAIRMAN MAROTTA: But when I looked up --

1 MR. PRICE: I -- I feel hurt.

2 CHAIRMAN MAROTTA: -- he's the invisible
3 man.

4 MS. DILLON: I have your back, Mr. Price.

5 CHAIRMAN MAROTTA: Okay. My motion stands.
6 He doesn't want to speak.

7 THE SECRETARY: Motion to approve the
8 application by Chairman Libero Marotta.

9 VICE CHAIRMAN BONACCI: Second.

10 THE SECRETARY: Second by Mr. Bonacci.

11 Okay. Let me go over. Let me get closer.

12 All right.

13 Roll call on the motion to approve this
14 application.

15 Mr. Marotta?

16 CHAIRMAN MAROTTA: Yes.

17 THE SECRETARY: Mr. Bonacci?

18 VICE CHAIRMAN BONACCI: Yes.

19 THE SECRETARY: Ms. Gutierrez?

20 MS. GUTIERREZ: Yes.

21 THE SECRETARY: Mr. Grullon?

22 MR. GRULLON: Yes.

23 THE SECRETARY: Mr. Pressey?

24 MR. PRESSEY: Yes.

25 THE SECRETARY: Mr. Medina?

1 MR. MEDINA: Yes.

2 THE SECRETARY: Six in favor. Motion
3 carries.

4 MS. PEREIRAS: Thank you all very much.

5 MR. ALVAREZ: Thank you, guys.

6 MS. GUTIERREZ: Okay. All right.

7 CHAIRMAN MAROTTA: The Chair will entertain
8 a motion to adjourn.

9 MS. PEREIRAS: I have two more matters.

10 CHAIRMAN MAROTTA: Oh, you finished?

11 MS. PEREIRAS: I have two -- I have two
12 matters.

13 CHAIRMAN MAROTTA: Are you --are you
14 through?

15 MS. PEREIRAS: I have two other matters.

16 CHAIRMAN MAROTTA: Oh, okay. I'm sorry.

17 MS. PEREIRAS: It's all right.

18 * * *

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1 **Delta Savings, LLC - 531 3rd Street:**

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3 THE SECRETARY: Next application on
4 tonight's agenda, Delta Savings, LLC, 531 3rd
5 Street.

6 Mrs. Pereiras, please?

7 CHAIRMAN MAROTTA: Which one is this?

8 MS. PEREIRAS: Number six.

9 MR. MEDINA: Number six.

10 On the bottom.

11 CHAIRMAN MAROTTA: Delta Savings. Is that
12 it?

13 MR. MEDINA: Yeah.

14 MR. PANEQUE: For the record, I've been
15 provided with a certification as to publication
16 and service by Ms. Pereiras, indicating notice of
17 tonight's hearing was sent out --

18 CHAIRMAN MAROTTA: Thank you.

19 MR. PANEQUE: -- on October 23rd.

20 VICE CHAIRMAN BONACCI: Thank you.

21 MR. PANEQUE: I've also been provided with
22 an Affidavit of Publication indicating that
23 notice of tonight's hearing was published in the
24 newspaper on October 21st, with respect to
25 tonight's hearing.

1 I also have copies of the certified mail
2 receipts, dated October 23rd, and a tax list from
3 the Tax Assessor, with a date of October 20th, for
4 all property owners within the 200 foot radius.

5 I've also been provided with the green
6 receipts that have come back to date.

7 Based on the documentation provided, this
8 Board has jurisdiction to proceed and hear this
9 matter.

10 MS. PEREIRAS: Thank you very much.

11 Again, Bianca Pereiras, on behalf of the
12 applicants.

13 The property in question is -- is
14 incredibly interesting and difficult, I think,
15 sometimes to understand. So, I'm going to let
16 the architect describe it with the drawings.

17 What we have is a mixed use building.

18 I apologize.

19 MR. PANEQUE: Ms. Pereiras, I apologize for
20 interrupting you, but I do have to place on the
21 record that you've also provided us with a tax
22 list from the City of Jersey City --

23 MS. PEREIRAS: Yes.

24 MR. PANEQUE: -- as apparently this
25 property is within the 200 foot radius of the

1 border with --

2 MS. PEREIRAS: That is correct.

3 MR. PANEQUE: -- the City of Jersey City.

4 So, for the Board's edification, I do have
5 that she has complied with providing notices to
6 all property owners within the 200 foot radius,
7 including those in the City of Jersey City, our
8 neighboring city.

9 MS. PEREIRAS: Thank you, counsel.

10 MR. PANEQUE: Thank you.

11 MS. PEREIRAS: As I was mentioning, we have
12 a mixed use building. There is an area of this
13 site that is labeled or considered industrial by
14 the Building Department. When my client
15 purchased this property, back in 2015, there were
16 two apartments here that definitely looked like
17 they were there for some time.

18 This client went to the Building Department
19 to renovate it, and at that point discovered that
20 those apartments were not legal and, in fact, the
21 Building Department considered industrial.

22 So, we are here to make sure that those
23 apartments are now legal.

24 We have one expert to testify before the
25 Board, and that is Mr. Pereiras.

1 MR. PEREIRAS: I recognize that I am still
2 under oath and I'm still Manny Pereiras.

3 MS. PEREIRAS: Mr. Pereiras, are you
4 familiar with the property at 531 3rd Street?

5 MR. PEREIRAS: I am.

6 MS. PEREIRAS: And did you prepare the
7 drawings before the Board this evening?

8 MR. PEREIRAS: I have.

9 MS. PEREIRAS: And would you kindly
10 describe this project to the Board?

11 MR. PEREIRAS: Be happy to.

12 For us Union City old timers, this is the
13 old American Shuffleboard building.

14 MR. PRESSEY: Oh.

15 MR. PEREIRAS: It's a really strange kind
16 of lot.

17 We have Paterson-Plank Road going this way.
18 We have 3rd Street going this way.

19 MR. PRESSEY: Umm.

20 MS. GUTIERREZ: Um hum.

21 MR. PEREIRAS: And our building sits in
22 between it, sandwiching all this. And it's a
23 bunch of different lots and it goes into
24 different levels, and it's kind of a hodge-podge
25 of things going on there.

1 So, the corner piece of the property, that
2 Laundromat, that's not included. It's this
3 portion that's here.

4 Now, it's -- it's hard to describe this
5 building because it has entrances on all
6 different sides. It's got -- right now, there's
7 a dental supply company that's managing the
8 majority of the building there. There are
9 work/live lofts that are legal and approved by
10 this Board. There's three of them in this
11 portion over here.

12 What we're concerned with today is this
13 little dark square right in the middle. And if
14 you look from 3rd Street, and you look towards the
15 building -- so this is a photograph taken on 3rd
16 Street, looking towards the building. You see
17 this portion up here? That's the portion we're
18 talking about.

19 And then, I went on the roof and I took a
20 picture of the building from the roof. And I
21 think this is important because it looks to me,
22 and -- and this is pure speculation, but if I'm
23 looking at the building from an architectural
24 standpoint, it looks like this was constructed,
25 what -- how most buildings in the turn of last

1 century were done in Union City. This building
2 was probably built in like the late -- early
3 1900s. And it was probably the original building
4 on this site, that was a three story structure,
5 located here. And at some point, throughout its
6 history, people started building around it,
7 building a lower industrial building in front of
8 it, and they basically wrapped this building.

9 So, if you could see the photograph, it
10 looks like a front façade of a building, it looks
11 like everything, and everything was wrapped
12 around it.

13 So, I believe, to my -- to the full extent
14 that what -- the apartments that were there, were
15 probably there for over a hundred years. And
16 they were on two floors, located on second and
17 third floor.

18 And I'm turning now to the -- the floor
19 plan. You have a stair that leads you -- first,
20 from 3rd Street, you walk through a hallway, and
21 you go into a stair, and that stair leads you up
22 to two apartments that were exactly the same.
23 And those apartments that were there were
24 actually two bedroom apartments.

25 The way this wall split, and there was an

1 apartment here, and an apartment here, and then,
2 the same thing on the floor above.

3 We're under the square footage for a two
4 bedroom. We're only at 558, so I convinced the
5 applicant to make it into one bedroom units.

6 So, right now, he's reconstructing that and
7 going to make -- and he's proposing one bedroom
8 apartments that are 558 square feet. You have a
9 living room/dining room area, you have a kitchen
10 along this portion. We -- we redesigning the
11 bathrooms, and you have a bedroom that's 10.7 by
12 14.

13 And it's the same thing. One on top of the
14 other, sandwiched.

15 There's an emergency escape from these.
16 You walk out into the roof and there's a fire
17 escape that leads you off the roof.

18 Just to talk a little bit about the
19 variances that we have. Everything is an
20 existing nonconformity. We're not proposing any
21 changes to the structure. We're not proposing
22 anything. And one of the key things with this
23 application, just so you understand, it's 17,264
24 square feet.

25 So, the reason we're before this Board is

1 | because of the industrial use that's below the
2 | commercial use. The residential is actually
3 | permitted in this zone. And that's what we're
4 | here to approve, two preexisting units that we'd
5 | like to get this Board to recognize as -- as
6 | always being there, and to legalize it today.

7 | I could go into more details, but I think
8 | that's enough for the application. I know it's
9 | getting late.

10 | CHAIRMAN MAROTTA: Any Board member have
11 | any --

12 | MR. PEREIRAS: I'm open for your questions.

13 | CHAIRMAN MAROTTA: -- questions?

14 | I don't have any questions.

15 | MR. MEDINA: No.

16 | CHAIRMAN MAROTTA: Any member of the public
17 | have any questions?

18 | MR. MEDINA: No.

19 | CHAIRMAN MAROTTA: I'll make a motion to
20 | approve this.

21 | THE SECRETARY: Motion to approve the
22 | application by Chairman --

23 | MS. GUTIERREZ: Second.

24 | THE SECRETARY: -- Marotta.

25 | Second by?

1 MS. GUTIERREZ: By me.

2 THE SECRETARY: Margarita Gutierrez.

3 Roll call on the motion to approve this
4 application.

5 Mr. Marotta?

6 CHAIRMAN MAROTTA: Yes.

7 THE SECRETARY: Mr. Bonacci?

8 VICE CHAIRMAN BONACCI: Yes.

9 THE SECRETARY: Ms. Gutierrez?

10 MS. GUTIERREZ: Yes.

11 THE SECRETARY: Mr. Grullon?

12 MR. GRULLON: Yes.

13 THE SECRETARY: Mr. Pressey?

14 MR. PRESSEY: Yes.

15 THE SECRETARY: Yes?

16 MR. PRESSEY: Yes.

17 THE SECRETARY: I'm sorry.

18 Mr. Medina?

19 MR. MEDINA: Yes.

20 THE SECRETARY: Six in favor.

21 Motion carries.

22 MS. PEREIRAS: Not bad.

23 Thank you all very much.

24 MR. PANEQUE: One more?

25 MS. PEREIRAS: Okay. Let me -- let me run.

1 CHAIRMAN MAROTTA: That's it.

2 Now I'll entertain a motion to --

3 No?

4 MR. PEREIRAS: No, one more.

5 MS. GUTIERREZ: One more.

6 THE SECRETARY: One more.

7 MR. PANEQUE: One more.

8 THE SECRETARY: One more.

9 CHAIRMAN MAROTTA: One more.

10 MR. PEREIRAS: One more.

11 CHAIRMAN MAROTTA: Oh, my God.

12 MR. PEREIRAS: You want to go.

13 THE SECRETARY: Can you put together my --

14 my --

15 MS. GUTIERREZ: Not yet.

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1 **Nirvana Realty, LLC - 2105 Bergenline Avenue:**

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3 THE SECRETARY: Next application on
4 tonight's agenda, Nirvana Realty, LLC, 2105
5 Bergenline Avenue.

6 Mrs. Pereiras, please?

7 CHAIRMAN MAROTTA: Which one is this?

8 MR. GRULLON: Number eight, that's the
9 last.

10 MS. GUTIERREZ: The one in the back. In
11 the back.

12 CHAIRMAN MAROTTA: Which one is this?

13 (Whereupon, there was a pause in the
14 proceedings.)

15 MR. PANEQUE: Let the record reflect that
16 I've been provided with --

17 CHAIRMAN MAROTTA: Excuse me?

18 MR. PANEQUE: -- the following
19 documentation:

20 CHAIRMAN MAROTTA: I'm going to close at
21 ten o'clock.

22 MS. PEREIRAS: We only have one expert.
23 This should be -- this should be short.

24 CHAIRMAN MAROTTA: This is going to last.
25 I'm telling you, it's going to go past -- I'm

1 going to close it at ten o'clock.

2 MR. PEREIRAS: Okay.

3 MS. PEREIRAS: Understood.

4 CHAIRMAN MAROTTA: And it's not going to be
5 over.

6 MS. PEREIRAS: Understood. I understand.

7 MR. PEREIRAS: Okay.

8 CHAIRMAN MAROTTA: If that's okay with you?

9 MS. PEREIRAS: Absolutely.

10 CHAIRMAN MAROTTA: Okay.

11 MS. PEREIRAS: I know you're tired.

12 CHAIRMAN MAROTTA: All right.

13 MS. PEREIRAS: I understand.

14 MR. PANEQUE: For the record, I've been
15 provided with the following documentation:

16 I have a certification as to publication
17 and service, signed by Ms. Pereiras, indicating
18 that notice of tonight's hearing was -- was sent
19 out on October 23rd, with respect to the property
20 located at 2105 Bergenline Avenue.

21 I've also been provided with an Affidavit
22 of Publication which was -- the article was
23 published on October 21st, with respect to
24 tonight's hearing, giving notice of said hearing.

25 I've also been provided with the certified

1 mail receipts, with a postmark date of October
2 23rd.

3 I've also been provided with a list from
4 the Tax Assessor's Office, with a date of October
5 18, 2017, as well as the copy of the notice that
6 went out to all property owners within the 200
7 feet, as well as the green cards that have come
8 back to date.

9 Based on the documentation provided, this
10 Board has jurisdiction.

11 MS. PEREIRAS: Thank you very much.

12 Again, Bianca Pereiras, on behalf of the
13 applicant.

14 This is an application to construct a mixed
15 use building to replace a mixed use building that
16 was fire damaged.

17 We have one expert, Mr. Pereiras.

18

19 (Whereupon, Manuel Pereiras, architect,
20 previously sworn, testified as follows:)

21

22 MR. PEREIRAS: The Board is very familiar
23 with this. Why? Because on this site, there's a
24 building right to the -- to the north, and a
25 building to the south that this Board approved,

1 and it's the same building. It's exactly the
2 same thing. So, this is actually -- I'm glad to
3 present this. This is the missing piece between
4 the two.

5 So now, you're going to have three sister
6 buildings that are going to work and be the same
7 thing. And what we're proposing to do is exactly
8 what the Master Plan is asking for us. It's
9 commercial on the ground floor, and then
10 residential above. Exactly how the Master Plan
11 does.

12 The problem is, and the reason we're before
13 this Board, is that when you have four
14 residential units, which is what we do and what
15 the Master Plan is encouraging us to do, you have
16 to provide ADA access. And the only way of
17 providing ADA access is providing an elevator,
18 which we don't have the space to do, because
19 we're a little bit under 25 feet, or providing an
20 apartment on the ground floor.

21 So that's what we're doing, providing an
22 apartment on the ground floor, and an apartment
23 on the ground floor isn't permitted. It's a use
24 variance because we want commercial.

25 So, what we do is, we're providing a

1 commercial along the front of the building, and
2 we're putting a small one bedroom apartment in
3 the rear.

4 Everything else is compliant. The one
5 bedroom would be compliant to density standards.
6 And what -- and the -- the only variances that we
7 do have is the use, because of the apartment on
8 the ground floor, and a small technicality.
9 Instead of being 25 feet wide, it's 24.75,
10 something like that. It's 24.7. So, it's
11 slightly shy and that triggers two variances; one
12 is for lot width and one is for lot area, because
13 we don't meet the 2500. But that's typical of
14 the neighborhood.

15 And that concludes my testimony. I could
16 answer anything else you may -- you may have.

17 MR. PRESSEY: Okay.

18 MR. PEREIRAS: It's the same thing that the
19 Board approved.

20 MS. GUTIERREZ: First time you be so quick.

21 MR. PEREIRAS: Yeah.

22 CHAIRMAN MAROTTA: Do you have a planner?

23 MS. PEREIRAS: We do not.

24 If the Board would like to hear from a
25 planner, we --

1 CHAIRMAN MAROTTA: Because according --

2 MS. PEREIRAS: -- may provide that.

3 CHAIRMAN MAROTTA: -- to Mr. Spatz, you
4 need a use variance.

5 MS. PEREIRAS: We do have a use variance.
6 As explained by Mr. Pereiras, the only reason we
7 have a use variance is because we have to comply
8 with Building Code requirement that requires to
9 have an ADA accessible apartment.

10 And the only way to provide an ADA
11 accessible apartment is to include them on the
12 ground floor.

13 MR. PRESSEY: Right. Um hum.

14 CHAIRMAN MAROTTA: I think you need a
15 planner.

16 What do you think, Tomas?

17 MR. PANEQUE: The Board --

18 CHAIRMAN MAROTTA: According to --
19 according to the --

20 MR. PANEQUE: Yeah.

21 CHAIRMAN MAROTTA: -- memo from Mr. Spatz.

22 MR. PANEQUE: We have -- I have seen the
23 memo, Mr. Marotta.

24 As indicated by Mr. Pereiras, he presented
25 the same application on either side of this

1 | property. So, this would be the third one. I'm
2 | assuming that it's three different owners.

3 | MS. PEREIRAS: That is correct.

4 | MR. PEREIRAS: Correct.

5 | MR. PANEQUE: And that's why they -- you
6 | didn't do them all at the same time.

7 | MR. PEREIRAS: That is correct.

8 | MR. PANEQUE: Okay.

9 | Now, if my recollection serves me, I
10 | believe in those applications, there was no
11 | planner provided, and this Board found that the
12 | application, by way of applicant of the architect
13 | was sufficient, and the Board approved both of
14 | those applications.

15 | CHAIRMAN MAROTTA: Yeah, but in this
16 | application, this is on Bergenline Avenue.

17 | MR. PANEQUE: Those were --

18 | CHAIRMAN MAROTTA: Which does not permit
19 | residences on a street level.

20 | MR. PANEQUE: Mr. --

21 | CHAIRMAN MAROTTA: Because of that, we need
22 | a planner.

23 | MR. PANEQUE: Mr. Marotta, they had the
24 | exact same application.

25 | Now, I -- you're the Chairman of the Board,

1 I cannot dictate to you how you should run your
2 Board.

3 I'm only indicating that the same
4 application has been presented with the
5 properties right next door. This is 2105, that
6 one was 2103, and 2107.

7 Correct?

8 MR. PEREIRAS: Correct.

9 CHAIRMAN MAROTTA: Well, I wasn't here on
10 those.

11 MR. PANEQUE: You were not. You may have
12 been a member of the Board at that time, I --

13 MR. PEREIRAS: I think, for one of them you
14 were, Mr. Marotta.

15 MR. PANEQUE: For one of them you were.

16 MS. GUTIERREZ: Yeah, one of them.

17 MR. PANEQUE: But in any case --

18 CHAIRMAN MAROTTA: I have no recollection
19 of it.

20 MR. PANEQUE: The -- I do have a
21 recollection of -- of these applications, because
22 I specifically recall that the reason we're
23 putting an apartment, or the applicant is putting
24 an apartment in the rear is because the testimony
25 was that the size of the store was of -- if they

1 | did not have that apartment, the size of the
2 | store was of such dimension that it would become
3 | very difficult to find a tenant.

4 | And the best use for the property was to
5 | split the ground floor into a commercial and a
6 | residential in the rear. And also, by providing
7 | that residential apartment in the rear, they were
8 | compliant with the ADA requirements.

9 | Am I paraphrasing --

10 | MR. PEREIRAS: That is perfectly correct.

11 | CHAIRMAN MAROTTA: You know?

12 | MR. PANEQUE: Okay.

13 | CHAIRMAN MAROTTA: All right. You know
14 | what I'm going to ask? Unfortunately, Mr. Spatz
15 | is not here. All right?

16 | I'm going to ask, will you mind, we carry
17 | this until the December meeting, and then I could
18 | at least speak to Mr. Spatz about this?

19 | MR. PEREIRAS: We would be happy to, with
20 | -- I just want it to look fair and everything,
21 | because we had two applications that were
22 | approved under the same grounds. And I'm just so
23 | worried that that might not --

24 | MR. PANEQUE: Well --

25 | MR. PEREIRAS: Your recommendation.

1 MR. PANEQUE: Mr. Pereiras, and your
2 counsel will advise you that this Board has to
3 look at every application on its own merits.

4 MR. PEREIRAS: Yes, sir.

5 MR. PANEQUE: So, even though I've made all
6 those comments about similar applications, the
7 fact that this is a separate parcel and it's its
8 own application, and sits in a different
9 geographical zone, albeit only one lot to each
10 side, makes this Board have to make a
11 determination on this application's merits, not
12 taking into account what has transpired in the
13 past with the neighbors.

14 Okay?

15 MR. PEREIRAS: Understood.

16 MR. PANEQUE: Now, the Board is well aware
17 of what they've done, and they're well aware of
18 what your presentation has been in the past. And
19 I think we brought out the relevant points of it.

20 But the Chairman is requesting that we
21 carry it, in order to have Mr. Spatz make any
22 comments that he wants.

23 CHAIRMAN MAROTTA: Yeah.

24 MR. PANEQUE: Mr. Chairman, are you going
25 to impose on the applicant the obligation to

1 bring a planner for the next meeting?

2 CHAIRMAN MAROTTA: You know, I'll speak to
3 Mr. Spatz, he'll be in next week, and I'll ask
4 him.

5 MR. PANEQUE: Okay.

6 CHAIRMAN MAROTTA: And he -- if he says no,
7 then I'll -- I'll call you and let you know.

8 MS. PEREIRAS: I would appreciate that.

9 CHAIRMAN MAROTTA: But right now, my own
10 feeling, I think they should have a planner.
11 That's my own feeling. But I'll -- I'll go by
12 what Mr. Spatz says.

13 MR. PANEQUE: Yes. And you are absolutely
14 correct that on a request for a use variance, a
15 planner is an appropriate witness to have from --
16 by the applicant. And, in fact, it's required.
17 Okay?

18 Now, this Board has deemed, in the past, to
19 waive that requirement, which is within the --
20 the authority of the Board, and the -- the sister
21 applications that the applicant had, based on --
22 on what was presented by form of testimony by Mr.
23 Pereiras. Even though he's not a planner, he
24 testified as to the -- the justifications as to
25 why this application, and the previous

1 applications, should have been granted.

2 All right?

3 CHAIRMAN MAROTTA: Okay.

4 MR. PANEQUE: But we'll proceed that way.

5 CHAIRMAN MAROTTA: I feel more secure by --

6 MR. PANEQUE: Well, you're the Chairman.

7 CHAIRMAN MAROTTA: Okay?

8 MR. PEREIRAS: Understood.

9 CHAIRMAN MAROTTA: All right?

10 Thank you very much.

11 MR. PANEQUE: So, motion to carry the
12 application?

13 CHAIRMAN MAROTTA: Motion to carry, yes.

14 THE SECRETARY: Motion to --

15 MS. GUTIERREZ: I'm second.

16 THE SECRETARY: -- carry the application
17 to?

18 MS. GUTIERREZ: Second.

19 MR. PANEQUE: December.

20 CHAIRMAN MAROTTA: December. The December
21 meeting.

22 THE SECRETARY: December 14.

23 MR. PANEQUE: Yes.

24 CHAIRMAN MAROTTA: And -- and --

25 MS. GUTIERREZ: Yes.

1 CHAIRMAN MAROTTA: I would suggest you put
2 it on number one.

3 MS. PEREIRAS: Thank you, Mr. Marotta.

4 MR. PEREIRAS: Thank you.

5 MR. PRESSEY: Bless you.

6 MS. GUTIERREZ: Bless you.

7 THE SECRETARY: Motion to carry this
8 application --

9 CHAIRMAN MAROTTA: Salud.

10 MR. GRULLON: Thank you.

11 MR. MEDINA: Bless you. Bless you.

12 THE SECRETARY: -- to December 14, 2017, no
13 further notice required, by Mr. Marotta.

14 CHAIRMAN MAROTTA: Yes.

15 THE SECRETARY: Second by?

16 MR. MEDINA: Ten o'clock

17 THE SECRETARY: Second by Margarita
18 Gutierrez.

19 Roll call on the motion to adjourn this
20 application.

21 Mr. Marotta?

22 CHAIRMAN MAROTTA: Yes.

23 THE SECRETARY: Mr. Bonacci?

24 VICE CHAIRMAN BONACCI: Yes.

25 THE SECRETARY: Ms. Gutierrez?

1 MS. GUTIERREZ: Yes.

2 THE SECRETARY: Mr. Grullon?

3 MR. GRULLON: Yes.

4 THE SECRETARY: Mr. Pressey?

5 MR. PRESSEY: Yes.

6 THE SECRETARY: John Medina?

7 MR. MEDINA: Yes.

8 THE SECRETARY: Six in favor.

9 Motion carries.

10 CHAIRMAN MAROTTA: Finished.

11 THE SECRETARY: No new notice required.

12 MR. GRULLON: Ten o'clock.

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1 **ADJOURNMENT:**

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

6 Motion by Mr. Pressey.

7 MS. GUTIERREZ: Second.

8 THE SECRETARY: Second by Margarita
9 Gutierrez.

10 MR. PRICE: I have one -- one --

11 THE SECRETARY: Roll call on the motion.

12 MR. PRESSEY: Amen.

13 MR. PRICE: One comment, first.

14 I had to go move my car. I came back,
15 found every door in this building --

16 VICE CHAIRMAN BONACCI: Locked.

17 MR. PRICE: -- locked.

18 By the way, and all the restrooms are now
19 locked.

20 You know, this is a public meeting. Has to
21 be open. Someone should mention to --

22 MS. GUTIERREZ: Mr. --

23 MR. PRICE: -- management --

24 VICE CHAIRMAN BONACCI: He's right.

25 MS. GUTIERREZ: Mr. -- the one in the back

1 is open.

2 MR. PRICE: Oh, it is?

3 MS. GUTIERREZ: Yeah.

4 THE SECRETARY: We will communicate this to

5 --

6 MS. GUTIERREZ: No. The --

7 THE SECRETARY: -- to Mr. (sic) Alicia

8 Morejon --

9 MR. PRICE: Well, the one right here is --

10 MS. GUTIERREZ: No, the other one is open.

11 THE SECRETARY: -- who run the building.

12 MS. GUTIERREZ: The other one -- the one in
13 the back is open.

14 MR. PRICE: But the front door has got to
15 be open --

16 THE SECRETARY: Yes.

17 MR. PRICE: -- during a public -- you know
18 --

19 MS. GUTIERREZ: Okay. Okay.

20 THE SECRETARY: You are correct.

21 MS. PEREIRAS: Thank you all very much.

22 THE SECRETARY: A hundred percent correct,
23 Mr. --

24 MS. PEREIRAS: Thank you.

25 MR. PEREIRAS: Thank you, everybody.

1 MS. GUTIERREZ: All right. All right. All
2 right.

3 THE SECRETARY: All in favor to the motion
4 to end tonight's meeting --

5 MS. GUTIERREZ: Good night.

6 THE SECRETARY: -- say aye?

7

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

9

10 THE SECRETARY: The ayes have it.

11 Thank you.

12 Have a good night, everyone.

13 MS. GUTIERREZ: Good night.

14

15 (Whereupon, the proceedings were concluded
16 at 10:00 p.m.)

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1 STATE OF NEW JERSEY :

2 :

3 COUNTY OF ESSEX :

4

5 I, DEBRA A. KASZNIAK, assigned transcriber,
6 do hereby affirm that the foregoing is a true and
7 accurate transcript in the matter of the REGULAR
8 MEETING of the UNION CITY BOARD OF ADJUSTMENT
9 heard on Thursday, November 2, 2017 and digitally
10 recorded.

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25 Monitored and proofread by: Deborah Dillon