

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, January 11, 2018
Commencing at 6:20 p.m.

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

VICTOR M. GRULLON
MARGARITA GUTIERREZ
JOHN MEDINA
MIGUEL ORTIZ, (Arrived at 6:22 p.m.)
DAVID W. PRESSEY
LIBERO MAROTTA, Chairman

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

PETER C. DOUMAS, Alternate No. 4
JOSEPH D. BONACCI, Vice Chairman

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

CARLOS VALLEJO, Secretary to the Board
TOMAS R. PANEQUE, ESQ., Board Attorney
DAVID SPATZ, Consultant
Community Housing and Planning Associates

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

CARLOS RENDO, ESQ.,
Attorney for Applicant,
Jose R. Cabrera & Rosa Cabrera

ADOLFO L. LOPEZ, ESQ.,
Attorney for Applicant, New 604 11th Street, LLC

MICHAEL B. KATES, ESQ.,
Attorney for Applicant, Home Away, LLC

J. ALVARO ALONSO, ESQ.,
Attorney for Applicant, 541 42nd Street, LLC

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

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

BIANCA P. PEREIRAS, ESQ.,
Attorney for Applicant, Lidia Sevillano

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

BIANCA P. PEREIRAS, ESQ.,
Attorney for Applicant, MBP Hoist and Crane, LLC

BIANCA P. PEREIRAS, ESQ.,
Attorney for Applicant, CHJS Holdings, LLC

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

3 Please take notice that on Thursday,
4 January 11, 2018, at six p.m., a Regular Meeting
5 is scheduled for the Union City Zoning Board of
6 Adjustment, to be held in the Municipal Chamber,
7 located on the Second Floor, 3715 Palisade
8 Avenue, Union City, New Jersey.

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

11 Notice of this meeting setting forth time,
12 date, and location, and the agenda, to the extent
13 known, was forward to The Jersey Journal, The
14 Record, and The Hudson Reporter, has been posted
15 on the bulletin board in City Hall, and has been
16 made available to the public in the Office of the
17 Municipal Clerk.

18 Can everybody kindly rise to pledge
19 allegiance, please?

20

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

23

24 THE SECRETARY: Thank you.

25

1 **ROLL CALL:**

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

5 Mr. Marotta?

6 CHAIRMAN MAROTTA: Here.

7 THE SECRETARY: Mr. Bonacci is absent.

8 Mr. Grullon?

9 MR. GRULLON: Here.

10 THE SECRETARY: Ms. Gutierrez?

11 MS. GUTIERREZ: Here.

12 THE SECRETARY: Mr. Ortiz is on his way.

13 At this time is absent.

14 Mr. Pressey?

15 MR. PRESSEY: Here.

16 THE SECRETARY: Mr. Medina?

17 MR. MEDINA: Here.

18 THE SECRETARY: Mr. Doumas is absent.

19 We have a full -- full quorum. We have
20 five present.

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1 **APPROVAL OF PREVIOUS MEETING MINUTES:**

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3 (1) Special Meeting held on November 30, 2017
4 and Regular Meeting on December 14, 2017)

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6 THE SECRETARY: We are going to go to the
7 first application.

8 No, I'm sorry. Let me back it up.

9 Approval of Previous Meeting Minutes on
10 Special Meeting November 30, 2017 and Regular
11 Meeting on December 14, 2017.

12 Can I have a motion to approve the previous
13 meetings?

14 MR. GRULLON: Motion.

15 THE SECRETARY: Motion by Mr. Grullon.

16 MS. GUTIERREZ: Second.

17 THE SECRETARY: Second by Ms. Gutierrez.

18 Roll call on the motion.

19 Mr. Marotta?

20 CHAIRMAN MAROTTA: Yes.

21 THE SECRETARY: Ms. Gutierrez?

22 MS. GUTIERREZ: Yes.

23 THE SECRETARY: Mr. Grullon?

24 MR. GRULLON: Yes.

25 THE SECRETARY: Mr. Pressey?

1 MR. PRESSEY: Yes.

2 THE SECRETARY: Mr. Medina?

3 MR. MEDINA: Yes.

4 THE SECRETARY: Five in favor, motion
5 carries.

6 Thank you.

7

8 (Whereupon, Miguel Ortiz arrived at 6:22
9 p.m.)

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11 THE SECRETARY: Let the record reflect that
12 Mr. Ortiz arrive at 6:23. We have six members
13 now. Six present.

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1 **Jose R. Cabrera & Rosa Cabrera -**

2 **411 Palisade Avenue:**

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4 THE SECRETARY: First application on
5 tonight's agenda, Jose R. Cabrera and Rosa
6 Cabrera, 411 Palisade Avenue.

7 Mr. Rendo, please?

8 MR. RENDO: Good afternoon.

9 Carlos Rendo, representing the Cabrera
10 family.

11 I'm just going to approach counsel, provide
12 all the notices.

13 MR. PANEQUE: Thank you, Mr. Rendo.

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

16 MR. PANEQUE: The print is too small.

17 MR. RENDO: Getting old, huh?

18 MR. PANEQUE: Just remember who went to
19 school with who.

20 MR. RENDO: That's right. I am older.

21 MR. PANEQUE: All right.

22 For the record, I've been provided by Mr.
23 Rendo with the following documentation:

24 I've been provided with an Affidavit of
25 Service indicating that notice of tonight's

1 hearing was sent out to all property owners
2 within the 200 foot radius of the property
3 located at 411 Palisade Avenue, Union City, New
4 Jersey.

5 Said Affidavit is signed by Teresa Pacheco
6 and notarized by Mr. Alain Mulkay, attorney at
7 law.

8 I've also been provided with a copy of the
9 notice that was served on all property owners
10 within the 200 foot radius, as well as the copy
11 of the publication in the newspaper, giving
12 notice of tonight's hearing, January 11, for the
13 property in question, 411 Palisade Avenue.

14 The notice also comes with an Affidavit
15 from The Jersey Journal, which is dated December
16 14th, 2017.

17 I've also been provided with a copy of the
18 Tax Assessor's list, with a date of November 28,
19 2017.

20 Also, copies of the certified mail receipts
21 with a postmark date of December 6, as well as
22 the certified mail that has come back either
23 unclaimed or undeliverable.

24 Based on the information that's been
25 provided, this Board does have jurisdiction to

1 proceed and hear this matter.

2 MR. RENDO: At this point, I'd like to
3 request an adjournment to the next meeting to
4 allow our planner to attend the meeting.

5 MR. PANEQUE: Mr. Chairman?

6 CHAIRMAN MAROTTA: I didn't hear him.

7 MR. PANEQUE: There is a request for an
8 adjournment --

9 CHAIRMAN MAROTTA: Okay.

10 MR. PANEQUE: -- because the planner's not
11 available.

12 CHAIRMAN MAROTTA: Okay.

13 THE SECRETARY: Mr. Chairman, February 8 is
14 the next meeting.

15 Can I have a motion to adjourn this
16 application for February 8? No --

17 CHAIRMAN MAROTTA: So moved.

18 THE SECRETARY: -- new notice required?

19 MR. PANEQUE: No notice required.

20 THE SECRETARY: No notice required.

21 Chairman make a motion?

22 MR. GRULLON: Yes. And I second the
23 motion.

24 MR. VALELLA: What's the date of the
25 January --

1 THE SECRETARY: Motion by Mr. Chairman --

2 MR. PANEQUE: What's the new date, Mr.

3 Vallejo?

4 THE SECRETARY: Excuse me, sir?

5 MS. GUTIERREZ: February 8.

6 MR. PANEQUE: The new date for the --

7 MS. GUTIERREZ: Eight.

8 MR. PANEQUE: -- meeting?

9 MR. SPATZ: February 8.

10 THE SECRETARY: February 8.

11 MS. GUTIERREZ: February 8.

12 MR. VALELLA: Thank you.

13 THE SECRETARY: Mr. Marotta did the motion.
14 Right?

15 MR. PRESSEY: Yes.

16 CHAIRMAN MAROTTA: Yes.

17 THE SECRETARY: Second by Mr. Grullon.

18 Roll call on the motion.

19 Mr. Marotta?

20 CHAIRMAN MAROTTA: Yes.

21 THE SECRETARY: Ms. Gutierrez?

22 MS. GUTIERREZ: Yes.

23 THE SECRETARY: Mr. Grullon?

24 MR. GRULLON: Yes.

25 THE SECRETARY: Mr. Pressey?

1 MR. PRESSEY: Yes.

2 THE SECRETARY: Mr. Medina?

3 MR. MEDINA: Yes.

4 THE SECRETARY: Mr. Ortiz?

5 MR. ORTIZ: Yes.

6 THE SECRETARY: Six in favor. Motion
7 carries.

8 MR. RENDO: Thank you very much. Have a
9 good night.

10 THE SECRETARY: Thank you.

11 MS. GUTIERREZ: Good night.

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

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1 **New 604 11th Street, LLC - 604 11th Street:**

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3 THE SECRETARY: Next application on
4 tonight's agenda, New 604 11th Street, LLC, 604
5 11th Street.

6 Mr. Lopez, please?

7 MR. LOPEZ: Mr. Vallejo, if you could go on
8 to the next application. I'm waiting on my
9 planner.

10 THE SECRETARY: Yes.

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

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1 **Home Away, LLC - 100 Manhattan Avenue:**

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3 THE SECRETARY: Mr. Chairman, we are going
4 to go to number 3.

5 Okay?

6 CHAIRMAN MAROTTA: Okay.

7 THE SECRETARY: All right.

8 Change a little bit the order of tonight's
9 agenda.

10 Home Away, LLC, 100 Manhattan Avenue.

11 Mr. Kates, please?

12 MR. KATES: Attorneys are here. Planners
13 are not.

14 Mr. Kauker's on his way, so we're not
15 ready, but I need to clarify something with the
16 Chair.

17 At our last meeting, two of the members who
18 are here tonight were not present, Mr. Medina and
19 Mr. Ortiz.

20 Have they read the transcripts?

21 CHAIRMAN MAROTTA: I don't know.

22 MR. KATES: Are they prepared to vote?

23 MR. ORTIZ: Yes, we are.

24 MR. MEDINA: Yes.

25 MR. KATES: Great.

1 CHAIRMAN MAROTTA: Yes.

2 MR. KATES: Okay.

3 MR. MEDINA: I did. Yes. Carlos?

4 MR. KATES: Good. Then we'll have six.

5 That's fine. Just as soon as Mr. Kauker gets
6 here.

7 MR. PANEQUE: We'll also have certification
8 signed by the members who were not here, Mr.
9 Kates, indicating that they've read the
10 transcript --

11 MR. KATES: Perfect.

12 MR. PANEQUE: -- and are ready to vote on
13 your application.

14 MR. KATES: That's great.

15 Thank you.

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

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1 **541 42nd Street, LLC - 539-541 42nd Street:**

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3 THE SECRETARY: All right.

4 Going to change the order one more time.

5 We are going to 541 42nd Street, LLC,
6 539-541 42nd Street.

7 This matter has been remanded back by the
8 Judge of the Superior Court of State of New
9 Jersey.

10 Please note that we need to have the Board
11 state the reason for the approvals of the
12 Resolution approving the project on 539-541 42nd
13 Street, LLC. The resolution was memorialized on
14 December 8, 2016.

15 MR. PANEQUE: Yes.

16 THE SECRETARY: Mr. Paneque?

17 MR. PANEQUE: This is Mr. Alonso's case.

18 Mr. Chairman, members, ladies and gentlemen
19 of the Board, I had an opportunity to speak to
20 Mr. Alonso outside before the session was
21 started, as well as Mr. Larry Price.

22 Mr. Price was the one who challenged this
23 application and in our conversation, we came to
24 the realization that there's some confusing
25 language in the judge's order, in that the

1 judge's order seems to indicate that the matter
2 is being remanded back to the Board for
3 reconsideration and for a finding of conclusions
4 to be placed on the record.

5 Mr. Alonso's interpretation is that it's
6 not here for another vote or a new vote, that
7 it's only here to fix the Resolution.

8 Mr. Price --

9 If I paraphrase incorrectly, please clear
10 it up.

11 Mr. Price seems to read the order from
12 Judge Isabella as indicating that this Board has
13 to revote on the application.

14 So, what we agreed was that Mr. Alonso was
15 going to go back to Judge Isabella for a
16 clarification of that order, to see exactly what
17 Judge Isabella meant this Board to do.

18 And with that said, Mr. Alonso, do you have
19 a request of this Board?

20 And Mr. Price, if you have anything else to
21 add?

22 MR. ALONSO: Yeah, I mean I have no
23 objection if the matter gets carried so we can
24 get a clarification from the judge.

25 MR. PANEQUE: Okay.

1 CHAIRMAN MAROTTA: I -- I read the order
2 from the -- from the judge. And he concluded
3 that the Resolution was null and void.

4 To me, that means there has to be a new
5 vote.

6 MR. PANEQUE: Yes.

7 CHAIRMAN MAROTTA: Okay?

8 So, if Mr. Alonso's going back to the
9 court, I -- I would request that it be in
10 writing, whatever the judge states --

11 MR. ALONSO: Of course.

12 MR. PANEQUE: Well --

13 CHAIRMAN MAROTTA: -- be in writing.

14 MR. PANEQUE: Yes. It would be either a --

15 CHAIRMAN MAROTTA: An amended order.

16 MR. PANEQUE: -- a new order, an amended
17 order, or some sort of clarification. It would
18 have to be in writing.

19 CHAIRMAN MAROTTA: I -- I tend to agree
20 with Mr. Price in this one.

21 MR. PANEQUE: Okay.

22 MR. ALONSO: Oh, that would -- with all due
23 respect, would make no sense because it gives the
24 -- the objector a second bite at the apple.

25 The application was approved. The

1 Resolution was defective.

2 So, it's a new Resolution that has to be
3 prepared and voted upon. You don't get a second
4 bite at the apple to deny an application. So, --

5 MR. PANEQUE: That being said --

6 MR. ALONSO: -- we'll clarify that.

7 MR. PANEQUE: -- Mr. Alonso, it's your
8 request to have this matter put off until you get
9 a new or a clarification of the order.

10 MR. ALONSO: Yeah. I think, at the end of
11 the day, we will end up saving time by adjourning
12 it --

13 MR. PANEQUE: Okay.

14 MR. ALONSO: -- to -- to get a
15 clarification.

16 MR. PANEQUE: Is there a motion on the
17 floor?

18 CHAIRMAN MAROTTA: Motion to February 8th
19 meeting?

20 MR. PANEQUE: Well, I don't know if that's
21 going to be enough time for Mr. Alonso to get
22 Judge Isabella --

23 CHAIRMAN MAROTTA: Make it in --

24 MR. PANEQUE: -- to respond.

25 CHAIRMAN MAROTTA: -- March, then.

1 MR. PANEQUE: Okay.

2 MR. ALONSO: Why don't we do it for
3 February 8th? In the event that it's not --

4 MR. PANEQUE: We'll carry it.

5 MR. ALONSO: -- we'll carry it.

6 CHAIRMAN MAROTTA: Let's carry it till the
7 March meeting.

8 All right? Alonso, is that okay?

9 MR. ALONSO: That's fine.

10 MR. PANEQUE: That's fine?

11 CHAIRMAN MAROTTA: The only reason I say
12 that is because I don't know if the judge is
13 going to be able to give you an amended order in
14 time for the February meeting.

15 MR. ALONSO: Right. I don't know if he's
16 going to require a motion. I don't know if he's
17 going to require oral arguments.

18 CHAIRMAN MAROTTA: Right.

19 MR. ALONSO: Maybe he's just going to issue
20 a clarification.

21 CHAIRMAN MAROTTA: Or you want to adjourn
22 it without a date? It's up to you.

23 MR. PRICE: Can't do that because then --

24 MR. PANEQUE: No. We need a --

25 CHAIRMAN MAROTTA: Excuse me?

1 MS. GUTIERREZ: Can't do that.

2 MR. PANEQUE: We need a date.

3 MS. GUTIERREZ: You need a date.

4 MR. PANEQUE: I think --

5 MR. ALONSO: Why don't we just do it for
6 February and if -- and if it's not ready, then
7 we'll just push it off until March.

8 MR. PRICE: Yeah.

9 MR. PANEQUE: That's fine.

10 CHAIRMAN MAROTTA: Okay.

11 MR. PANEQUE: All right.

12 MR. ALONSO: February 8?

13 MR. PANEQUE: Is there a motion on the
14 floor?

15 CHAIRMAN MAROTTA: I'll make a motion,
16 February, I move this to February 8th.

17 THE SECRETARY: Motion to carry over to
18 February 8, 2018 by -- by Chairman Marotta.

19 Any second?

20 Second by Mr. Pressey.

21 MS. GUTIERREZ: I second.

22 THE SECRETARY: Roll call on the motion.
23 Mr. Marotta?

24 CHAIRMAN MAROTTA: 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: Mr. Ortiz?

9 MR. ORTIZ: Yes.

10 THE SECRETARY: Six in favor. Motion
11 carries. Next meeting, February 8th.

12 MR. PRICE: And you're going to --

13 MR. ALONSO: I'll speak --

14 MR. PRICE: -- email me a copy?

15 Oh, you're going to write the letter to the
16 judge or --

17 MR. ALONSO: It's either me or Greg.

18 MR. PRICE: What?

19 MR. ALONSO: Either me or Greg.

20 It's -- we'll -- we'll figure it out.

21 MR. PRICE: Well, just remember, I'm a
22 prevailing party on that case. Okay. So, I --

23 MR. ALONSO: Okay. Have a seat.

24 MR. PRICE: What?

25 MR. ALONSO: Have a seat.

1 MR. PRICE: Fine.

2 MR. ALONSO: It's over.

3 THE SECRETARY: It's over.

4 Thank you.

5 All right.

6 CHAIRMAN MAROTTA: What's -- what's the
7 problem?

8 MR. PRICE: What?

9 CHAIRMAN MAROTTA: What's the problem?

10 MR. ALONSO: There's no problem.

11 MR. PRICE: The problem is, who's going to
12 write the letter, and am I going to be cut in?

13 I mean, I hate to say this but I'm --

14 MR. ALONSO: You're a party to the case,
15 right? So you're obviously --

16 MR. PRICE: Not only that, I'm a prevailing
17 party.

18 MR. ALONSO: So, you're obviously --

19 MR. PRICE: So --

20 MR. ALONSO: -- going to be copied on
21 everything.

22 MR. PRICE: Oh, very good. That's what I
23 wanted to hear.

24 Thank you.

25 MR. ALONSO: We've done this a couple times

1 already.

2 Mr. -- Mr. Paneque, the next two on the
3 agenda are just votes.

4 MR. PANEQUE: Yes. I -- I'm being told
5 that.

6 MR. ALONSO: Yeah.

7 MR. PANEQUE: So, Mr. Chairman, Mr. Alonso
8 has two other matters which are just votes.
9 They've already been presented to the Board.

10 It's your call if you want to continue with
11 the numbers down?

12 CHAIRMAN MAROTTA: Well, we have number 5
13 now, isn't it?

14 MR. PANEQUE: Yeah. But we have to go back
15 to 2 and 3, which were bypassed because of the --

16 CHAIRMAN MAROTTA: Well, why don't we
17 continue with Mr. Alonso?

18 MR. PANEQUE: Okay.

19 MR. ALONSO: Thank you.

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

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3 THE SECRETARY: Okay.

4 Next application is a continuation of Juan
5 Vizqueta, 534 42nd Street.

6 Mr. Alonso, please?

7 MR. ALONSO: Thank you.

8 Members of the Board, if you may recall,
9 this is an application where my client has two
10 principal use structures. There's a two family
11 in the front and a one family in the back.

12 Our position is that it's always been used
13 as -- it's always been used as a three family in
14 the front and a two family in the rear.

15 The City has it as two and a one. We came
16 in to legalize it. The testimony has been
17 presented. It was carried just for a vote.

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

20 MR. ALONSO: Yeah. No, just waiting for a
21 vote.

22 THE SECRETARY: I know.

23 Mr. Chairman?

24 MR. ALONSO: Yeah.

25 MR. PANEQUE: Mr. Chairman?

1 CHAIRMAN MAROTTA: Yes.

2 MR. PANEQUE: Any questions or --

3 CHAIRMAN MAROTTA: Does anyone have any
4 questions on this?

5 Any member of the audience have any
6 questions?

7 I make a motion to approve it.

8 THE SECRETARY: Motion to approve the
9 application by Chairman Marotta.

10 Any second on the --

11 Second by Ms. Gutierrez.

12 Roll call on the motion to approve this
13 application.

14 Mr. Marotta?

15 CHAIRMAN MAROTTA: Yes.

16 THE SECRETARY: Ms. Gutierrez?

17 MS. GUTIERREZ: Yes.

18 THE SECRETARY: Mr. Grullon?

19 MR. GRULLON: Yes.

20 THE SECRETARY: Mr. Pressey?

21 MR. PRESSEY: Yes.

22 THE SECRETARY: Mr. Medina?

23 MR. MEDINA: Yes.

24 THE SECRETARY: Mr. Ortiz?

25 MR. ORTIZ: Yes.

1 THE SECRETARY: Six in favor.

2 Motion carries.

3 MR. ALONSO: 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 MR. ALONSO: Yes.

7 Members of the Board, you may recall that
8 this application started back in September. We
9 had a hearing in September, a hearing in -- in
10 November. And then, the Chairman had asked for
11 an adjournment to have Mr. Spatz available in the
12 event that you had any questions of Mr. Spatz.
13 So, he's here.

14 Just to remind you, this is a building that
15 my client purchased in 2006 as a four family
16 building. At the time, the zone permitted four
17 families.

18 The testimony was that the property was --
19 was constructed in 1900. We actually showed an
20 aerial photograph from 1930 that has the same
21 exact configuration with the two apartments in
22 the rear, and two apartments in the front.

23 So -- and the testimony from the architect
24 was that the construction in the interior is
25 consistent with very, very old apartments that

1 have been there for many, many years.

2 What happens is, in 2012, when the zone
3 changed, it eliminated the use as a four family.
4 So, the Building Department now -- is now saying,
5 well, it's really a two family.

6 The testimony is also that the -- it's
7 being taxed as a six family and it's registered
8 with the Rent Control as a four family. And it's
9 always been used as a four family.

10 So, we're basically here just to -- to
11 legalize it as the four family.

12 CHAIRMAN MAROTTA: Did you get approval
13 from the Building Department?

14 MR. ALONSO: Approval?

15 CHAIRMAN MAROTTA: Of the basement
16 apartments?

17 MR. ALONSO: No, no. There are no basement
18 apartments.

19 And I believe what happens is, when -- when
20 it's taxed as a six family, probably at some
21 time, there may have been two apartments in the
22 basement, because the four apartments are all at
23 grade level or above. There's no apartments in
24 the basement.

25 CHAIRMAN MAROTTA: How many families are

1 | there now?

2 | MR. ALONSO: Four.

3 | CHAIRMAN MAROTTA: And there's always been
4 | four?

5 | MR. ALONSO: It's always been four. My
6 | client is -- since he's owned it in 2006, it's
7 | always been four. He's never occupied the
8 | basement.

9 | CHAIRMAN MAROTTA: According to the memo
10 | from the Building Department, they say it was
11 | originally a two unit structure.

12 | MR. ALONSO: I understand that, and that's
13 | why we're before the Board.

14 | But the testimony was that in 1930, there's
15 | an aerial photograph. And the building, if you
16 | recall, there's two units in the front, and then,
17 | as you go halfway back, it kind of steps out a
18 | little bit and there's a set of stairs that goes
19 | up to the two apartments upstairs.

20 | That bump out was also reflected in the
21 | 1930 aerial photograph. So, it's always been
22 | like that, as far back as we know.

23 | And again, the -- the prior zone permitted
24 | the four family when it was -- when my client
25 | purchased it.

1 MR. PRESSEY: Um hum.

2 CHAIRMAN MAROTTA: Any questions from any
3 members of the Board?

4 Any questions from members of --
5 Mr. Price?

6 MR. PRICE: Question?

7 Larry Price, 1006 --

8 No, I wasn't sworn.

9 MR. DILLON: Please raise your right hand.
10 Do you swear the testimony you're about to
11 give this Board is the whole truth?

12 MR. PRICE: I do.

13 MR. DILLON: State your name for the
14 record.

15 MR. PRICE: Larry Price, 1006 Palisade.

16 In the legal ads on Monday, January 8th,
17 there was a notice of foreclosure, sheriff's sale
18 --

19 CHAIRMAN MAROTTA: Keep your voice up,
20 please.

21 MR. PRICE: I'm sorry.

22 There was a -- a notice of sheriff's sale
23 for this property. It's Wells Fargo versus
24 Franklin Medina, A.K. Logistics, so forth and so
25 on, to be auctioned on the first of February.

1 Now --

2 MR. ALONSO: Okay.

3 MR. PRICE: The --

4 MR. ALONSO: No but --

5 MR. PRICE: How do you grant -- you know,
6 variances -- well, no. This is a declaration of
7 conform -- nonconformity. You --

8 MR. ALONSO: But --

9 MR. PRICE: By the time the Resolution is
10 adopted, your client won't even own this
11 property.

12 MR. ALONSO: No. Because a -- a property
13 owner has the right -- automatic right to two
14 adjournments on the sheriff's sale.

15 And this is the first time I'm hearing
16 this, so I'm assuming that's the first one.

17 So --- and it ultimately could be resolved
18 with the bank -- until it's actually sold, you
19 could always redeem it.

20 So, as -- as we stand here before the
21 Board, my client is still the owner of the
22 property.

23 MR. PRICE: He's still the owner of the
24 property.

25 MR. ALONSO: Right.

1 MR. PRICE: The first of February, he may
2 not be the owner of the property any longer.
3 Wells Fargo --

4 MR. ALONSO: I'm assume -- I'm assuming if
5 the Board acts favorably upon this, that's going
6 to be adjourned.

7 MR. PRICE: Okay.

8 CHAIRMAN MAROTTA: In other words, what
9 you're saying, Mr. Price, is that there's a
10 sheriff's sale prior to the memorialization
11 Resolution.

12 MR. PRICE: That is correct.

13 CHAIRMAN MAROTTA: Should we approve this.

14 MR. PRICE: Right now -- this is beyond my
15 pay grade, but right now, according to the legal
16 notice, the sheriff's sale is scheduled for the
17 first of February. And this -- January 11th, so
18 the Resolution couldn't be adopted until --
19 unless it's already prepared, until February,
20 which would be after that date.

21 So, you would be adopting in February a
22 Resolution on -- for an applicant who no longer
23 owns the property.

24 MR. PANEQUE: But Mr. Price, if I may?

25 What is the rationale behind you bringing

1 | this information to the Board, because this Board
2 | really doesn't entertain who the owner is,
3 | whether it's the current owner or the property
4 | gets sold in the transition, while the
5 | Resolution's being drawn?

6 | MR. PRICE: Well, if it were -- if it were
7 | for a variance, I would agree that the ownership
8 | is irrelevant because variances run with the
9 | land.

10 | But this is a declaration of nonconformity,
11 | as I understand it.

12 | MR. ALONSO: Which -- which runs with the
13 | land.

14 | MR. PANEQUE: But -- they run with the
15 | land. Once this Board finds that this is a
16 | nonconforming use that existed, as Mr. Alonso
17 | stated, back to 1930, any determination by this
18 | Board would run with the land. And whether the
19 | next owner is the bank or -- or the owner who
20 | currently has the property, redeems it -- I mean,
21 | I -- I don't understand what the rationale is or
22 | what you're trying to get this Board to imply by
23 | the fact that this gentleman is losing his
24 | property?

25 | MR. ALONSO: And what will happen,

1 | basically, is my client was in an innocent third
2 | party purchaser of a property that he believed
3 | was a legal four family, and always operated,
4 | until recently, when the -- when the Building
5 | Department indicated that it may be a two family.

6 | If this is -- it doesn't go forward, and
7 | the sheriff sale does go through, assuming it
8 | does, then the next arm's length transaction
9 | purchaser down the road is going to be in the
10 | same shoes my client is, and I'm going to be back
11 | here again, couple years from now, doing the same
12 | song.

13 | So, it makes no difference, I don't think.

14 | CHAIRMAN MAROTTA: Excuse me?

15 | MR. ALONSO: We're still the owner of the
16 | property.

17 | CHAIRMAN MAROTTA: Excuse me?

18 | This gentleman wants to say something?

19 | MR. PEROZO: For the record, my name is
20 | Jheisson Perozo.

21 | MR. DILLON: Stand in front of the mic,
22 | please.

23 | MR. PEROZO: Oh, no problem.

24 | MR. DILLON: All right.

25 | MR. PEROZO: For the record, my name is

1 Jheisson --

2 MR. DILLON: Well, please raise --

3 MR. PEROZO: -- Perozo.

4 MR. DILLON: Please raise your right hand.

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

7 MR. PEROZO: Yes.

8 MR. DILLON: Say your name and state --
9 spell it for the record.

10 MR. PEROZO: Name is Jheisson Perozo. It's
11 spelled J-H-E-I-S-S-O-N, P-E-R-O-Z-O, 1901 West
12 Street.

13 MR. DILLON: Thank you.

14 MR. PEROZO: What this sounds to me is, and
15 the defense of your client, you're saying a buy
16 and flip will be the best option for him?

17 MR. ALONSO: What are we talking about?

18 MR. PEROZO: You're telling me --

19 MR. ALONSO: I'm not telling you anything.

20 MR. PEROZO: You're not, but you're also
21 not -- by you not saying anything, you're also
22 saying something. You're telling me the bank's
23 going to buy the property --

24 MR. ALONSO: Me not saying something,
25 something saying -- what?

1 MR. PEROZO: You're trying to -- you're
2 trying to confuse me.

3 MR. ALONSO: No, no. You're confused.
4 What are talking --

5 MR. PEROZO: I'm not trying to confuse your
6 words. I'm -- this is what I'm trying to say.

7 You're telling me, for the best interest of
8 your client --

9 MR. ALONSO: Well, first --

10 CHAIRMAN MAROTTA: Excuse me?

11 What is your point? Please make your point
12 --

13 MR. PEROZO: My point is --

14 CHAIRMAN MAROTTA: -- to the Board.

15 MR. PEROZO: Larry Price is trying to do
16 your client a favor.

17 MR. ALONSO: Do you represent Larry Price?

18 MR. PEROZO: I'm his assistant.

19 MR. ALONSO: Okay.

20 Well, do you represent him? Because he's
21 speaking right now.

22 MR. PEROZO: Don't I have a right to speak?

23 MR. ALONSO: No, you do. But he had the
24 floor, so are you, Mr. Price, done?

25 MR. PRICE: No.

1 CHAIRMAN MAROTTA: Do you --

2 MR. ALONSO: Okay. Then, I think --

3 MR. PEROZO: I have nothing else to say.

4 I'll let --

5 CHAIRMAN MAROTTA: Do you have any comment
6 to make on this application?

7 MR. PEROZO: All I'm saying is, for the
8 best interest of the client, I think Mr. Price's
9 opinion should be highly considered.

10 That's it.

11 CHAIRMAN MAROTTA: Thank you.

12 Anything else --

13 MR. PRICE: The purpose, --

14 CHAIRMAN MAROTTA: -- Mr. Price?

15 MR. PRICE: -- by the way, is just my
16 making this comment is to put the Board on notice
17 that in February, you can -- you could be
18 adopting a Resolution for an applicant who is no
19 longer the owner of the property. That's --

20 MR. PANEQUE: But again, I -- I want to --
21 maybe I haven't placed my question to you
22 properly, but why should this Board take that
23 into consideration? Why should this Board -- I
24 mean, we're -- we're talking about the property,
25 not the applicant. We're talking about a

1 nonconforming use and a declaration of that
2 nonconforming use by this Board -- has existed
3 for well over -- if it's from the 1930s, as the
4 testimony, close to 90, 80 years.

5 So, whether -- is Mr. Medina the owner on
6 February, or somebody else in March, I think this
7 Board has the obligation to make a determination
8 so that this matter doesn't get revisited six
9 months, or -- or whatever.

10 The Building Department is going to have
11 the violation. According to their records, it's
12 only a two unit.

13 MR. PRICE: Yes.

14 MR. PANEQUE: So, we need to clear it up,
15 regardless of who the owner is, whether the
16 property's in foreclosure or not.

17 MR. PRICE: Okay.

18 MR. PANEQUE: And that's why I -- I think I
19 -- my question to you is, why was this
20 information relevant to the Board?

21 MR. PRICE: You still --

22 Okay.

23 Applications are made by applicants --

24 MR. PANEQUE: Yes.

25 MR. PRICE: -- regarding property.

1 You're saying, your only interest is the
2 property. But I'm saying, there's a whole host
3 of case law out there about an applicant, and the
4 interest, or whatever --

5 MR. ALONSO: Mr. Medina's currently the
6 owner of the property.

7 MR. PRICE: What?

8 MR. ALONSO: Mr. Medina is currently the
9 owner of the property.

10 MR. PRICE: Currently the owner of the
11 property.

12 MR. ALONSO: Okay.

13 MR. PRICE: Okay.

14 Whatever.

15 The -- the truth is, I don't know what the
16 case law would be, in terms of, let's say he
17 loses the property on February 1st, and you adopt
18 a Resolution where he was the applicant -- you
19 know, regarding this property. Okay. Is that
20 still permitted?

21 You're saying yes. I am not so sure.

22 MR. ALONSO: A -- a Resolution --

23 MR. PRICE: So, I'm just -- for -- for now
24 --

25 MR. PANEQUE: My --

1 MR. PRICE: -- the only purpose of my
2 comment --

3 MR. PANEQUE: Yeah.

4 MR. PRICE: -- is to put the Board on
5 notice that this is a property --

6 MR. PANEQUE: Yeah.

7 MR. PRICE: -- where your applicant may
8 disappear before you -- before you adopt a
9 resolution.

10 MR. PANEQUE: Well, I understand what
11 you're trying to relate to this Board, but from
12 my legal perspective, it's immaterial whether
13 this property's in foreclosure for this Board to
14 make a determination as to whether this is a
15 nonconforming use that has existed and should be
16 found to be such by this Board, regardless of
17 whether Mr. Medina's the owner today or whether
18 Mr. Medina's the owner three months from now.

19 Properties --

20 MR. PRICE: Okay.

21 MR. PANEQUE: -- get sold all the time
22 while -- after a -- a resolution is approved and
23 before the resolution is actually passed by the
24 Board. That happens all the time, there's a
25 change in ownership.

1 It does -- the -- what this Board finds
2 runs with the land, not with the property owner.
3 So, if this Board is now making a determination
4 that this is a legal four family structure, it's
5 going to run with that land whether Mr. Medina
6 owns it or whether the bank takes it over.

7 MR. PRICE: Okay. That would clearly be
8 the case with a variance. The case law on a
9 declaration of nonconformity, I'm -- whatever.

10 You're saying I don't know.

11 MR. PANEQUE: Okay.

12 MR. PRICE: I can't -- whatever. So, I
13 just -- the simple way for me is put you on
14 notice that there's a problem with your applicant
15 and let it go at that.

16 You're on notice, so --

17 CHAIRMAN MAROTTA: Mr. Paneque, let me ask
18 this.

19 Mr. Price raises a legal question as to
20 whether or not this Board could proceed to vote
21 on this because of the coming February 1 sheriff
22 sale.

23 Does that prevent us from -- in your
24 opinion, does that prevent us from voting on this
25 tonight?

1 MR. PANEQUE: It does not.

2 CHAIRMAN MAROTTA: Okay.

3 MR. PANEQUE: It does not.

4 CHAIRMAN MAROTTA: Thank you.

5 I make a motion to approve.

6 THE SECRETARY: Motion to approve the
7 application by Chairman Marotta.

8 MR. GRULLON: Second.

9 THE SECRETARY: Second by Mr. Grullon.

10 Roll call on the motion to approve this
11 application.

12 Mr. Marotta?

13 CHAIRMAN MAROTTA: Yes.

14 THE SECRETARY: Ms. Gutierrez?

15 MS. GUTIERREZ: Yes.

16 THE SECRETARY: Mr. Grullon?

17 MR. GRULLON: Yes.

18 THE SECRETARY: Mr. Pressey?

19 MR. PRESSEY: Yes.

20 THE SECRETARY: Mr. Medina?

21 MR. MEDINA: Yes.

22 THE SECRETARY: Mr. Ortiz?

23 MR. ORTIZ: Yes.

24 THE SECRETARY: Six in favor.

25 Motion carries.

1 MR. ALONSO: Thank you. Have a good
2 evening.

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

5 CHAIRMAN MAROTTA: Mr. Vallejo?

6 THE SECRETARY: Yes, sir.

7 CHAIRMAN MAROTTA: We passed on some -- is
8 Mr. Lopez ready with his?

9 THE SECRETARY: Yes, sir.

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1 **New 604 11th Street - 604 11th Street:**

2

3 THE SECRETARY: Next application tonight's
4 agenda --

5 MS. GUTIERREZ: 604 11th.

6 THE SECRETARY: -- New 604 11th Street,
7 LLC, 604 11th Street.

8 Mr. Lopez, please?

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

11 MR. LOPEZ: You ready?

12 MR. PANEQUE: Yes, Mr. Lopez.

13 MR. LOPEZ: Mr. Chairman, lady and
14 gentlemen of the Board, Adolfo Lopez, appearing
15 on behalf of the applicant.

16 Mr. Paneque, we propose -- jurisdictional
17 documents.

18 MR. PANEQUE: Thank you, Mr. Lopez.

19 For the record, I've been provided with the
20 following documentation:

21 I have an Affidavit of Service, which has
22 been executed by Adolfo Lopez and notarized by
23 Anna Noris, an attorney in his office, which
24 indicates that notice of tonight's application on
25 January 11th, with respect to the property at 604

1 11th Street, was sent out to all property owners
2 within the 200 foot radius, as well as published
3 in the newspaper.

4 I've been provided also with an Affidavit
5 of Publication from The Jersey Journal, with a
6 date of December 21st.

7 Said notice indicates that notice of
8 tonight's hearing, 11th of January at six o'clock,
9 with respect to the property at 604 11th Street,
10 was published in the paper on December 21st, 2017.

11 I've also been provided with a copy of the
12 notice that went out to all property owners
13 within the 200 foot radius, signed by Mr. Lopez.
14 Actually, just his signature line is in the
15 bottom, but it's just his name. As well as the
16 notice that was published in the newspaper, and a
17 list of certified owners provided by the Union
18 City Tax Assessor's Office, with a date of
19 December 12, 2017, for all properties within the
20 200 foot radius of 604 11th Street.

21 I've also been provided with the certified
22 mail receipts. I have a postmark date of
23 December 16th, 2017, as well as the green cards
24 that have come back and the unclaimed mail.

25 Based on the documentation that has been

1 provided, this Board has jurisdiction to proceed
2 and hear this matter.

3 MR. LOPEZ: Thank you, Mr. Paneque.

4 Should I proceed?

5 MR. PANEQUE: Yes, sir.

6 MR. LOPEZ: Mr. Chairman, members of the
7 Board, we have before -- you have before you an
8 application to -- officially, it's termed to
9 legalize an existing apartment.

10 The matter arose because there is a
11 discrepancy with the Building Department. The --
12 you'll hear the testimony of the architect, Alan
13 Feld, as well as the planner, Michael Kauker.

14 Mr. Feld will indicate to you that this
15 appears to be the original design of the
16 building. Somehow, over the years, a discrepancy
17 arose, but the plan proposes no changes, just a
18 legalization of an existing unit.

19 And I would call Mr. Feld as our first --
20 as our first witness.

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

23 MR. LOPEZ: Good evening.

24 Give us your name, please.

25 MR. FELD: Hi. Alan Feld.

1 MR. DILLON: Please raise your right hand.

2 MR. FELD: Yeah.

3 MR. DILLON: Do you swear the testimony
4 you're about to give this Board is the whole
5 truth?

6 MR. FELD: Yes.

7 MR. DILLON: State your name and spell it
8 for the record.

9 MR. FELD: Alan Feld, A-L-A-N, F-E-L-D.

10 MR. DILLON: Thank you.

11 MR. LOPEZ: Mr. Feld, you're a licensed
12 architect of the State of New Jersey.

13 MR. FELD: Yes, I am.

14 MR. LOPEZ: And you've testified previously
15 before this Board.

16 MR. FELD: I have.

17 MR. LOPEZ: And you've been admitted as a
18 wit -- as an expert witness as such.

19 CHAIRMAN MAROTTA: Accepted.

20 MR. LOPEZ: Is that correct?

21 MR. FELD: Yes.

22 CHAIRMAN MAROTTA: He's accepted.

23 MR. LOPEZ: Yeah.

24 Thank you.

25 Thank you.

1 Are you familiar with the project that's
2 proposed at 604 11th Street?

3 MR. FELD: Yes.

4 MR. LOPEZ: Were you -- did you prepare
5 this plan at the request of the applicant for its
6 application before this Board?

7 MR. FELD: Yes.

8 MR. LOPEZ: Could you give an overall
9 description of what it entails?

10 MR. FELD: Yes. So, this involves
11 legalizing an existing dwelling unit in this
12 existing building.

13 It's a three story building. Basically,
14 there are two apartments on each floor. Two
15 apartments on the first floor, two apartments on
16 the second floor, and two apartments on the third
17 floor.

18 And the discrepancy is that there on the
19 tax records that shows it as five dwelling units,
20 where in reality there are six dwelling units in
21 the building.

22 The -- the apartment in question is the one
23 in the front of the building facing the street.
24 Again, this is an existing apartment. It's a one
25 bedroom apartment, about 560 to 570 square feet.

1 | It's a one bedroom, living room, kitchen,
2 | bathroom apartment.

3 | MR. LOPEZ: I'm just going to clarify
4 | something you indicated, Mr. Feld.

5 | You said that the Tax Assessor's records
6 | showing -- show it as five units. It --
7 | actually, the Assessor's records show it as six,
8 | --

9 | MR. FELD: Oh.

10 | MR. LOPEZ: -- and the Building Department
11 | has it at five and --

12 | MR. FELD: Oh.

13 | MR. LOPEZ: -- that's why we're here.

14 | I'm going to show you the Tax Assessor's
15 | records, as maintained by the City of Union City.

16 | MR. FELD: That's correct. The taxes show
17 | six units and the Building Department has five --

18 | MR. LOPEZ: Oh.

19 | MR. FELD: -- units. That's right.

20 | MR. LOPEZ: In -- in reviewing this matter
21 | earlier, you indicated that you had been to the
22 | property and you believe that this seems to be
23 | the original layout of the building.

24 | Isn't that correct?

25 | MR. FELD: Yes.

1 MR. LOPEZ: The fact that the -- the layout
2 showing the stairs don't split the units as they
3 do on the upper floors, this is a -- the first
4 floor has a distinct layout.

5 Is that correct?

6 MR. FELD: It's -- it's different from the
7 other floors.

8 That's correct.

9 MR. LOPEZ: And given the -- the size,
10 overall, there is an indication that it would be
11 a massive apartment were it to be only one
12 apartment on that first floor.

13 Isn't that correct?

14 MR. FELD: That's correct.

15 MR. LOPEZ: All right.

16 And the layout that's shown on here, is it
17 fully compliant in terms of square footage as to
18 what the city requires --

19 MR. FELD: Yes.

20 MR. LOPEZ: -- for a one bedroom apartment?

21 MR. FELD: Yes.

22 MR. LOPEZ: The requirement is 550.

23 Correct?

24 MR. FELD: That's right.

25 MR. LOPEZ: And we have at least 565?

1 MR. FELD: That's correct.

2 MR. LOPEZ: All right.

3 Please go over the -- the details as to the
4 requirements and what is being provided here.

5 MR. FELD: So, this is in the R district,
6 low density residential. It's an existing
7 nonconforming use. And so, it's the same non --
8 existing nonconforming.

9 In this zone, 2500 square feet is required
10 for lot area. We have 2500 square feet.

11 The lot width requires 25 feet. We have 25
12 feet.

13 Lot depth requires a hundred feet. We have
14 a hundred feet.

15 Maximum height is 40 feet. This building
16 is 34 feet high.

17 Maximum height is three stories. We have
18 three stories.

19 The front yard is two and a half feet,
20 which is the prevailing setback on the street.
21 This is -- matches that requirement.

22 The side yards required are zero and we
23 have zero.

24 Oh, oh, I'm sorry.

25 Provide 25 percent of lot width, which

1 | would be -- which is again a preexisting
2 | nonconforming use. We have zero feet. So,
3 | that's a preexisting nonconforming.

4 | The lot depth is 25 feet of -- of the rear
5 | yard. And we have 31 feet, so we're conforming
6 | for the rear yard.

7 | The building coverage is 60 percent. We
8 | have 59 and a half percent. So, it's conforming.

9 | The lot coverage is 85 percent. This is
10 | 77, which conforming.

11 | And with parking, we'll be required for one
12 | parking space and we have zero parking spaces.
13 | So, that's a variance.

14 | MR. LOPEZ: Okay.

15 | And does the unit require any type of
16 | modification from its existing condition?

17 | MR. FELD: No.

18 | MR. LOPEZ: I have nothing else of Mr.
19 | Feld.

20 | CHAIRMAN MAROTTA: Any Board member have
21 | any questions of the witness?

22 | MR. GRULLON: Mr. Feld?

23 | Mr. Feld, could you clarify the parking
24 | requirement? You are referring to the one -- one
25 | unit addition, or that's the total --

1 MR. FELD: I'm --

2 MR. GRULLON: -- parking requirement for
3 the building?

4 MR. FELD: I'm -- I'm referring to the one
5 additional unit would be --

6 MR. GRULLON: What's the --

7 MR. FELD: -- one parking space.

8 MR. GRULLON: What's the parking
9 requirement for the --

10 MR. LOPEZ: The overall parking
11 requirement, based on the -- the structure as a
12 whole?

13 If you give us a few minutes, Mr. Feld
14 would have to calculate that. I could call him
15 back to give you that information.

16 That's correct, Mr. Grullon. There is an
17 overall requirement of the building. The
18 building has no currently available parking.
19 It's an existing condition.

20 MR. GRULLON: It's zero parking right now.

21 MR. LOPEZ: It's zero parking right now.
22 Correct.

23 MR. GRULLON: Existing zero. Okay.

24 MR. LOPEZ: Mr. Feld, based upon your
25 inspection of the property, how long is it -- and

1 based upon what the client advised, this unit
2 appears to be here for in excess of 25 years, at
3 the very minimum, in its current condition.

4 Is that correct?

5 MR. FELD: No. It's been the same tenant,
6 I understand, for about 25 years. He's lived in
7 that same apartment. So, I spoke with him.

8 MR. LOPEZ: But so, the apartment was
9 renovated and based upon the materials and -- and
10 the current condition, you would estimate
11 approximately 25 years ago, at least?

12 MR. FELD: Oh, at least. I mean, I -- I
13 think it was original the way it's laid out and
14 that's the way it was.

15 MR. LOPEZ: Is it fully Code compliant at
16 the present time?

17 MR. FELD: Yes.

18 MR. LOPEZ: Okay.

19 The property has been -- is registered as
20 six units with DCA.

21 Isn't that correct?

22 MR. FELD: That's correct.

23 MR. LOPEZ: And it has been inspected and
24 passed all inspections.

25 MR. FELD: That's correct.

1 MR. LOPEZ: Is that correct?

2 MR. FELD: Yes.

3 MR. LOPEZ: Mr. Feld, I'm going to -- in
4 order to answer Mr. Grullon's question, I'm going
5 to ask you to take a few moments. We'll bring
6 you back to testify as to the overall parking
7 requirements, if you can do some math on the fly
8 here.

9 MR. FELD: Okay.

10 MR. LOPEZ: Okay?

11 Thank you so much.

12 If there are any questions?

13 CHAIRMAN MAROTTA: Anybody else have any
14 questions of the witness?

15 Any member of the audience?

16 You have another witness?

17 MR. LOPEZ: Yes, I do.

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

20 MR. KAUKER: Good evening.

21 Happy New Year.

22 MR. GRULLON: Happy New Year.

23 MS. GUTIERREZ: Happy New Year.

24 MR. DILLON: Please raise your right hand.

25 Do you swear the testimony you're about to

1 give this Board is the whole truth?

2 MR. KAUKER: I do.

3 MR. DILLON: State your name and spell it
4 for the record.

5 MR. KAUKER: Michael F. Kauker, K-A-U-K-E-R.

6 MR. DILLON: Thank you.

7 MR. LOPEZ: Mr. Kauker, you're a licensed
8 planner of the State of New Jersey, are you not?

9 CHAIRMAN MAROTTA: Mr. Alonso (sic), he's
10 testified many times. He's accepted.

11 MR. LOPEZ: Thank you.

12 Thank you, Mr. Chairman.

13 You were asked to evaluate the proposed
14 project, from a land use perspective.

15 Is that correct?

16 MR. KAUKER: Yes, I was.

17 MR. LOPEZ: And in -- in anticipation of
18 today's meeting, did you have a chance to study
19 the site and provide us with your opinion?

20 MR. KAUKER: Yes, I did.

21 MR. LOPEZ: Can you --

22 MR. KAUKER: I had a chance to certainly
23 study the nature of the application and the site
24 plan maps before the Board.

25 MR. LOPEZ: And -- and you give us your

1 overall description, from a land use and planning
2 perspective.

3 MR. KAUKER: The nature of this application
4 is a D-2 variance, affirmation of a prior
5 nonconforming use, or an existing nonconforming
6 use that's not recognized by the community as a
7 -- as a legally valid housing unit.

8 The backdrop to the application relates to
9 the fact that also the total of the units present
10 on this site, which has been there for a number
11 of years, is also nonconforming.

12 So, this is a nonconforming use that this
13 applicant wishes to have recognized and
14 reaffirmed. And I -- I believe that it results
15 in it -- or is a D-2 variance, affirmation of an
16 existing nonconforming use, which would rely on
17 Coventry principles, in the Coventry case.

18 Essentially, the main test of an
19 application in the Coventry case is that --
20 emanates from the following question:

21 If the variance to accept this existing
22 housing unit on the site, on the first floor of
23 the building is contemplated and accepted by the
24 Board, question is, is that -- would that
25 approval of that variance render the use on a

1 | site inappropriate to be accommodated within the
2 | framework of -- of good planning practice?

3 | By virtue of the fact that this use has
4 | been there, apparently, for a number of years, is
5 | consistent and compatible with the size of the
6 | property, is certainly a residential use, but for
7 | the fact that it exceeds the densities of the low
8 | density residential district.

9 | The negative criteria aspect of the
10 | application focuses on the fact that there is no
11 | parking for the site. And that essentially is
12 | the only deviation from the seven, eight or nine
13 | criteria and requirements, the bulk requirements
14 | that have been testified to by Mr. Feld.

15 | I would take the conclusion to the Board
16 | that the grant of this variance would -- would
17 | result in the site remaining as physically
18 | appropriate to accommodate the proposed use, as
19 | has been in place for a number of years.

20 | And in that view, I -- I believe that the
21 | Board could consider this application under the
22 | D-2 Coventry variance proofs.

23 | MR. LOPEZ: Mr. Kauker, you're familiar
24 | with the downtown area of Union City, where this
25 | property is located.

1 MR. KAUKER: Yes, I am.

2 MR. LOPEZ: Are you?

3 And this is in an area between Bergenline
4 Avenue and Kennedy Boulevard, overall.

5 Isn't that correct?

6 MR. KAUKER: Yes, it is.

7 MR. LOPEZ: These are both major
8 thoroughfares in Union City.

9 Isn't that right?

10 MR. KAUKER: That's correct.

11 MR. LOPEZ: And both of these have
12 substantial public transportation.

13 Is that right?

14 MR. KAUKER: Yes, they do.

15 Yes, they do.

16 MR. LOPEZ: Would that be a factor, from
17 the planning perspective, for you to consider,
18 even though there's no parking, the fact that
19 there's wide public transportation available?

20 MR. KAUKER: That is a factor. And -- and
21 aside -- in addition to the fact that the
22 property itself is certainly located close to the
23 core area of the municipality, all the required
24 services which would tend to minimize the
25 necessity to make use of a vehicle, but for

1 | certainly individuals who might work out of town.

2 | MR. LOPEZ: And in terms of how this
3 | property fits in the area overall, this is quite
4 | a common type property to be found not only in
5 | this area, but in all downtown Union City.

6 | Isn't that correct?

7 | MR. KAUKER: Yes, it is. When -- when you
8 | take a view and a look at the façade of this
9 | structure, despite its years, and if you kind of
10 | were able to remove the -- the stairway, external
11 | stairway, which is important and necessary, this
12 | is a fairly good looking structure. And it's in
13 | good condition.

14 | The -- the unit itself is located on the
15 | first floor, and that facilitates access for
16 | individuals who might be handicapped, and I think
17 | that's a good feature of this particular
18 | application.

19 | MR. LOPEZ: I have no other questions, Mr.
20 | Chairman.

21 | CHAIRMAN MAROTTA: Any Board members have a
22 | question?

23 | Anybody from the audience?

24 | I have one question here.

25 | MR. KAUKER: Yes, sir.

1 CHAIRMAN MAROTTA: Mr. Lopez had you
2 testify as to this property. There are other
3 properties in the area that are similar to this
4 property.

5 Is that what you're saying?

6 MR. KAUKER: That's what he's suggesting.
7 Yes.

8 CHAIRMAN MAROTTA: And because of that,
9 then this should be approved.

10 Is that what you're saying?

11 MR. KAUKER: No, not solely. I think that
12 that's an added dimension to the application. I
13 think the core, most important aspect related to
14 the proofs emanates out of the Coventry case.

15 CHAIRMAN MAROTTA: The Coventry case says
16 that the Board focuses on the deviations and not
17 whether the proposed use is compatible with other
18 uses.

19 Isn't that correct?

20 MR. KAUKER: Yes, that's correct.

21 CHAIRMAN MAROTTA: So, the fact that
22 there's other uses makes no difference.

23 Right?

24 MR. KAUKER: I would agree with you. Yes,
25 sir.

1 CHAIRMAN MAROTTA: Okay.

2 Please tell me if this variance is granted,
3 tell me how it's consistent with the intent and
4 purpose of the Master Plan.

5 MR. KAUKER: The Master Plan contemplates
6 --

7 CHAIRMAN MAROTTA: And the Ordinance.

8 MR. KAUKER: -- as well as the Zoning
9 Ordinance that regulates the uses in the low
10 density residential zone, contemplates three
11 story structures. It contemplates of a certain
12 size of which these units on the site reasonably
13 comply.

14 CHAIRMAN MAROTTA: Excuse me?

15 MR. KAUKER: Yes.

16 CHAIRMAN MAROTTA: Where, in the Ordinance,
17 does it contemplate three story structures?

18 MR. LOPEZ: Yes. You're absolutely right.

19 CHAIRMAN MAROTTA: I have the Ordinance
20 here, if you want to look at it. I looked at it.
21 I don't find it.

22 MR. LOPEZ: Mr. Marotta, in the R zone,
23 generally, three story structures --

24 MR. KAUKER: Yeah. I --

25 MR. LOPEZ: -- are accepted.

1 MR. KAUKER: Mr. Marotta, I'm looking at
2 the -- we're on bulk table, on the -- on the map.
3 And it specifies three story structures.

4 CHAIRMAN MAROTTA: Okay.

5 Anybody have any questions?

6 Did you get an answer as to how many --

7 MR. LOPEZ: I will --

8 CHAIRMAN MAROTTA: -- parking spaces?

9 MR. LOPEZ: I will bring him up right now
10 to answer that --

11 CHAIRMAN MAROTTA: I'd like to know --

12 MR. LOPEZ: -- for the Board.

13 CHAIRMAN MAROTTA: -- how many parking
14 spaces.

15 MR. LOPEZ: Thank you, Mr. Kauker.

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

18 MR. LOPEZ: Mr. Feld, there was a question
19 earlier about what the overall parking
20 requirements would be to the structure.

21 Are you prepared to give us an answer?

22 MR. FELD: Yeah, from the Union City Zoning
23 Code, there is no category, actually, for this
24 type of building in the parking requirement. It
25 has for garden apartments and townhouses, which

1 | this really is neither.

2 | But in -- in both of those cases, for a two
3 | bedroom it would be two parking spaces per
4 | dwelling unit. So, that would be the -- I would
5 | assume the category you would --

6 | So, for the five existing two bedroom
7 | apartments, you would need ten parking spaces, if
8 | you were to apply for an application.

9 | CHAIRMAN MAROTTA: You're saying that this
10 | place requires ten parking spaces and provides
11 | none. Is that what you're --

12 | MR. FELD: Well, that's what the Union City
13 | zoning requirement is. That's right.

14 | MR. LOPEZ: That would be for a new
15 | application today. These are preexisting and we
16 | are giving what the overall requirements are for
17 | the building. But obviously, we're not adding
18 | anything at this point.

19 | Is that correct?

20 | MR. FELD: That -- that's correct. That's
21 | correct.

22 | CHAIRMAN MAROTTA: Mr. Spatz, I have a
23 | question.

24 | MR. SPATZ: Certainly.

25 | CHAIRMAN MAROTTA: This is an application

1 to expand a preexisting nonconforming use.

2 MR. SPATZ: That -- that's correct. To
3 legalize an existing apartment, but it is an
4 expansion.

5 CHAIRMAN MAROTTA: When we go to the ten
6 parking spaces requirement, do we have to go to
7 the ten?

8 MR. SPATZ: No. I think, to me, what you
9 need to look at is -- is if the ground floor had
10 one large apartment -- you know, and -- and
11 whether the difference is if it was divided into
12 a two -- two bedroom or one bedroom, or a three,
13 or perhaps even a four bedroom unit.

14 CHAIRMAN MAROTTA: Right.

15 MR. SPATZ: Which is what it would be if it
16 all became one apartment, then what is the change
17 in that? And it's less -- it's a fraction of a
18 parking space.

19 CHAIRMAN MAROTTA: Thank you very much.

20 MR. SPATZ: Right.

21 CHAIRMAN MAROTTA: Anyone else have any
22 questions?

23 I'll make a motion to approve the
24 application.

25 THE SECRETARY: Motion on the table to

1 approve the application by Chairman Marotta.

2 MR. GRULLON: Second.

3 THE SECRETARY: Seconded by Mr. Gullon.

4 Roll call on the motion to approve this
5 application.

6 Mr. Marotta?

7 CHAIRMAN MAROTTA: Yes.

8 THE SECRETARY: Ms. Gutierrez?

9 MS. GUTIERREZ: Yes.

10 THE SECRETARY: Mr. Gullon?

11 MR. GRULLON: Yes.

12 THE SECRETARY: Mr. Pressey?

13 MR. PRESSEY: Yes.

14 THE SECRETARY: Mr. Medina?

15 MR. MEDINA: Yes.

16 THE SECRETARY: Mr. Ortiz?

17 MR. ORTIZ: Yes.

18 THE SECRETARY: Six in favor. Motion
19 carries.

20 MR. LOPEZ: Thank you, Mr. Chairman, --

21 CHAIRMAN MAROTTA: You're welcome.

22 THE SECRETARY: Thank you.

23 MR. LOPEZ: -- Board members.

24 Thank you.

25 MS. GUTIERREZ: Okay.

1 CHAIRMAN MAROTTA: Is Mr. Kates ready?

2 MR. KATES: Yes, he's here. I think we're
3 ready to go.

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1 **Home Away, LLC - 100 Manhattan Avenue:**

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3 THE SECRETARY: Next application on
4 tonight's agenda, Home Away, LLC, 100 Manhattan
5 Avenue.

6 Mr. Kates, please?

7 MR. KATES: Good evening, Board.

8 Michael Kates, appearing on behalf of Home
9 Away.

10 Mr. Kauker's returning from the men's room
11 in a minute; I tried to pull him out.

12 This is a continuation hearing. We
13 presented the testimony of Catherine Marcos, the
14 proprietor of the daycare facility and Orestes
15 Valella, our architect.

16 They are both here tonight. If any
17 questions come up, they're prepared to answer
18 them, as well as questions to be addressed to our
19 planner, Mr. Kauker, who will be in in a minute.

20 Let me just begin by refreshing your
21 recollection as to what has transpired.

22 This is -- this is a location of a licensed
23 childcare facility, licensed by the State of New
24 Jersey, within the confines of The Doric
25 Apartments.

1 On the ground floor, substituting for space
2 that was previously a fitness center and an
3 office location, they are vacating that space, or
4 have vacated that space.

5 The child -- the State of New Jersey has
6 done an -- an audit, or a space audit, and has
7 determined that a license will be issued,
8 allowing up to 107 -- up to 101 youngsters. This
9 is a -- concentrating on toddler age
10 preschoolers.

11 In order to -- well, the client has
12 surveyed Union City and is established in Union
13 City.

14 This would be a third location for her --
15 facilities, and has determined, in a discussion
16 with The Doric, that the great percentage of
17 toddlers will be coming from that building.
18 There are a hundred or so families with children
19 of toddler age.

20 And, in fact, there will be probably be a
21 waiting list, because of the size of that
22 particular component.

23 In order to not discriminate, we can't
24 confine ourselves to Doric patrons, or Doric
25 owners, but the great majority will be coming

1 from that location.

2 In the words of Mr. Valella, our architect,
3 this is the perfect location for a childcare
4 facility. It's privatized; it has a separate
5 entrance, with a drive up facility.

6 This is all from the -- the record. I'm
7 not trying to testify here. I'm just relating
8 what I read in -- in the transcript.

9 It's privatized. Every childcare facility
10 must have an open space component for playground.
11 It exists in terms of a patio onsite. And in
12 terms of security, there's a separate entry with
13 the ability to lock and inspect anybody going
14 into the childcare facility.

15 Children will be dropped off at the private
16 entrance. Obviously, they're not coming on their
17 own. They're of tender age and will be driven to
18 a drop-off point. They will be met by the
19 teachers at the door, so that there'll be plenty
20 of security and safety, in terms of in and out.

21 That said, I'd like to introduce our
22 planner, Mr. Kauker, to give you testimony
23 concerning the variance.

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

1 MR. DILLON: You're still sworn, Mr.
2 Kauker.

3 No, you're good.

4 MR. KATES: Mr. Kauker, you're under oath.

5 MR. KAUKER: I --

6 MR. KATES: And we offer him as our expert
7 planner. I understand he has a history here.

8 CHAIRMAN MAROTTA: He's been approved.

9 MR. KATES: Okay.

10 Mr. Kauker, I'm going to let you do your
11 thing, but I want you to describe the childcare
12 center and what -- what its special standing is
13 under the law, in particular, and how this should
14 be approached by the Board.

15 MR. KAUKER: Childcare centers, first of
16 all, as a backdrop, for or within commercial
17 zones are recognized by Municipal Land Use Law as
18 automatically a permitted use.

19 MR. KATES: Residential zones.

20 I'm sorry.

21 CHAIRMAN MAROTTA: Permitted use in a --

22 MR. KATES: Commercial zones.

23 CHAIRMAN MAROTTA: -- in a residential
24 zone?

25 MR. KAUKER: In commercial zones.

1 MR. KATES: Commercial zones.

2 MR. KAUKER: In commercial zones.

3 MR. KATES: I interrupted him wrong.

4 MR. KAUKER: That's okay.

5 In commercial zones. That's a backdrop.

6 For some reason, the writers of the MLUL didn't
7 scratch their heads and think about whether or
8 not childcare centers would be just as
9 appropriate in residential zones.

10 Generically, from a point of view that
11 childcare centers serve a important and critical
12 societal need. They enable working individuals
13 to be able to, essentially, have accommodations
14 for their children, to enable them to come to and
15 from work.

16 They're recognized -- this use is
17 recognized as an inherently beneficial use,
18 because indeed, it does serve an important or
19 critical societal need. And as -- poses great
20 benefit within communities, particularly a
21 community as dense as Union City.

22 Therefore, I believe that the proofs
23 attributable -- are required for this application
24 to be considered by the Board would be the Sica
25 proofs.

1 Essentially, the Sica proofs require a four
2 part test.

3 The first test is to identify the public
4 interest at stake and the benefit that would
5 accrue as a result of a consideration of this
6 application.

7 The positive criteria that is usually
8 provided in a D-1 variance, pursuant to certain
9 cases, are not in play in this kind of an
10 application.

11 The public interest, I believe, that would
12 be served, again, is the benefit to the families
13 who live, and very particularly in this unique
14 circumstance, the families who live in this 23
15 story plus, 420 unit project, which is a very
16 noticeable and notable structure, located within
17 the Borough of Union City.

18 In the prior meeting, my reading of the
19 transcripts told me that members of the Board, in
20 particular Mr. Marotta, had great concern with
21 regard to the possibility that this application
22 might result in some negative impacts, by virtue
23 of the fact that it's located in a highly intense
24 traveled area.

25 The unique aspect of this application,

1 | where this facility is integrated and located
2 | within the framework of this very large project,
3 | I think is key to enable the Board to be
4 | comfortable with that -- with this -- with this
5 | application in its particular location, because
6 | of the fact that at least maybe 70, 80 percent of
7 | the individuals who would be served, the -- the
8 | very, very young infants and toddlers that would
9 | be accommodated in the four rooms, essentially,
10 | just have to get out of their beds and be lead
11 | downstairs and delivered to this facility.

12 | I've never really seen -- we've done a lot
13 | of daycare center applications, and a few
14 | particularly, in Union City, and I never see an
15 | application of this -- that has this unique
16 | characteristic to it.

17 | A second aspect of the -- so I would posit
18 | to you that there is, indeed, is a documentable
19 | need in Union City for this kind of service, and
20 | that's evidenced by the number of applications, I
21 | believe that have come before you over the last
22 | several years.

23 | A second test of -- of Sica is that the
24 | applicant has the burden to identify any negative
25 | impacts that might ensue pursuant to the

1 application, such as generation of traffic,
2 incompatibility with surrounding uses, other
3 types of impacts.

4 The impact associated potentially with this
5 application, because of the location of the
6 structure, again as identified by Mr. Marotta,
7 could -- could possibly be generation of too much
8 sensitive, young traffic, walking the streets in
9 this very intensely trafficked area, thereby
10 creating a safety hazard for the children.

11 And again, by virtue of the unique aspect
12 of this application, I believe that that is
13 minimized to a great degree.

14 This Board has, under the third plank of
15 Sica, a opportunity, prescribed by the law, and a
16 duty to mitigate, within reason, reasonably
17 mitigate any potential negative impacts that have
18 been identified by the Board in their review of
19 the application.

20 Several of those could relate to the safety
21 of access to outdoor recreation area. And I know
22 that the Board has questioned the applicant on
23 that particular aspect, from reading the
24 transcript.

25 The area that would be utilized for drop-

1 off is off-street, it's reasonably accessible,
2 and we know that the intensity of drop-offs,
3 because of the number of individuals coming from
4 the -- from the complex itself, would result in
5 minimal amount of traffic.

6 I do recall other applications that I've
7 testified before you where the drop-off issue has
8 been a very important, critical consideration.
9 And in several instances, the Board felt that
10 certain sites weren't appropriate. I do recall
11 that, a number of years ago.

12 This application is not that kind of an
13 application. I think it has great -- great bones
14 to it, from the point of view that the -- I think
15 it's a great idea, number one. Very simply. But
16 I think it is -- is being proposed in a place in
17 a moderate manner.

18 The total number of square feet that would
19 be utilized in the ground floor is 3174, not a
20 large area. And it can be integrated very easily
21 and efficiently within the framework of -- of
22 this existing high rise community.

23 The last aspect of the Sica proofs is the
24 balance -- to balance the negative and positive
25 aspects of the application.

1 I think by the benefit that would accrue,
2 in terms of providing for an expanding need
3 within a growing and revitalized Union City is
4 very, very important. And I find that this
5 application is -- is kind of an application that
6 would -- that fits within that category.

7 I don't believe that there are any negative
8 impacts that have been identified and discussed
9 by the Board, that out -- would outweigh the
10 benefits that would accrue as a product of the
11 Board giving consideration to this application.

12 That concludes my testimony.

13 MR. KATES: Nothing further.

14 CHAIRMAN MAROTTA: Any questions from
15 members of the Board?

16 Any members of the audience?

17 Let me ask you this --

18 MR. KATES: Mr. Price?

19 MR. PANEQUE: Chairman, we have a --

20 CHAIRMAN MAROTTA: Larry?

21 MR. PANEQUE: Mr. Price?

22 He didn't see your hand go up.

23 MR. PRICE: Yeah.

24 Mr. Kauker's gotten wider or I've gotten
25 more modest.

1 MR. KAUKER: You got thinner.

2 MR. PRICE: Possibly.

3 MR. KATES: Your hand -- your arm shrunk.

4 MR. PRICE: That -- that, too.

5 MR. KAUKER: Can I stand next to you?

6 MR. PRICE: One quarter.

7 Anyway, Larry Price, 1006 Palisade. I'm
8 still under oath.

9 Let me ask you a question about your
10 remarks about permitted use and whatever.

11 Let me -- I'm referring to Section 40:55
12 delta-66.6, which is entitled Childcare Centers.
13 Okay.

14 It says, childcare -- childcare centers for
15 which, upon completion, a license required from
16 the Department of Human Services, pursuant to ump
17 (phonetic), deump (phonetic), I assume that's the
18 case here, shall be a permitted use in all
19 nonresidential districts of a municipality.

20 MR. KAUKER: That's correct.

21 MR. PRICE: Okay. Now, this is a
22 residential use.

23 MR. KAUKER: Yes, it is.

24 MR. PRICE: So, it does not qualify under

25 --

1 MR. KAUKER: Right. We don't get a free
2 ride.

3 MR. PRICE: You don't -- a free ride.
4 Okay.

5 So, you have to prove that -- and it's a
6 nonconforming use and so -- okay. So, we're
7 looking for a D-1 use variance.

8 Correct?

9 MR. KAUKER: That's correct.

10 MR. PRICE: Okay.

11 Let me ask a second question, while we're
12 in the neighborhood.

13 Any childcare program -- this is same,
14 whatever, Section 66-7A, which says, any
15 childcare program approved by a local board of
16 Education and operated by the board or by an
17 approved sponsor in a public school before, after
18 -- whatever, so on, shall be deemed a permitted
19 use in all residential and nonresidential. But
20 that's --

21 MR. KAUKER: Not applicable.

22 MR. PRICE: This doesn't -- not applicable.
23 Okay.

24 So, we're down to a D-1 use variance.

25 MR. KAUKER: That's correct.

1 MR. PRICE: Very good.

2 Thank you very much, sir.

3 CHAIRMAN MAROTTA: Now, I have a --

4 MR. PRICE: And you can stand next to me
5 anytime.

6 MR. KAUKER: Happy New Year.

7 MR. PRICE: Felice Anno Nuovo.

8 CHAIRMAN MAROTTA: Mr. Kauker, you
9 testified that there's a need for this service in
10 Union City.

11 MR. KAUKER: Yes, sir.

12 CHAIRMAN MAROTTA: What is your -- what do
13 you rely upon to come up with that conclusion?
14 What study was made that you relied upon?

15 MR. KAUKER: I -- I'm aware of the nature
16 and intensity of development, by virtue of my own
17 experience having the pleasure of been before the
18 Board, that Union City is becoming a -- a more
19 desirable popular community.

20 CHAIRMAN MAROTTA: Excuse me?

21 I don't want to interrupt you, but my --

22 MR. KAUKER: Yes, sir.

23 CHAIRMAN MAROTTA: -- question was --

24 MR. KAUKER: I -- I --

25 CHAIRMAN MAROTTA: -- what study did you

1 make, or what did you rely upon to come with
2 that?

3 MR. KAUKER: The only study I made was to
4 look at the statistics emanating from the
5 decennial census, U.S. census. And the U.S.
6 census suggests that, first of all, there's been
7 a dramatic growth between 1990 and 2000 in this
8 community.

9 That growth tailed off around 2000, but is
10 beginning to pick up again. We don't have the
11 results of the 2020 census, so we can't close out
12 and come up with a number.

13 CHAIRMAN MAROTTA: Excuse me, Mr. Kauker.

14 MR. KAUKER: Yes?

15 CHAIRMAN MAROTTA: You keep going on and on
16 --

17 MR. KAUKER: I'm sorry.

18 CHAIRMAN MAROTTA: -- instead of answering
19 the question.

20 MR. KAUKER: Okay.

21 CHAIRMAN MAROTTA: Actually, you made no
22 study.

23 Is that correct?

24 MR. KAUKER: Well, that's the -- that's the
25 nature of the study that I did make.

1 CHAIRMAN MAROTTA: But you didn't go to any
2 specific study that Union City needs another
3 daycare center, did you?

4 MR. KAUKER: That is correct. I don't
5 think such --

6 CHAIRMAN MAROTTA: So, therefore, your
7 opinion is a net opinion, isn't it?

8 MR. KAUKER: Not as it relates to the
9 proofs.

10 MR. KATES: The proofs, Mr. Marotta --

11 CHAIRMAN MAROTTA: But in my opinion, your
12 opinion is a net opinion and we don't have to
13 take --

14 MR. KATES: Mr. Marotta, I challenge you on
15 that.

16 CHAIRMAN MAROTTA: I know. I know you do.

17 MR. KATES: Ms. -- well, Ms. --

18 CHAIRMAN MAROTTA: Of course you do.

19 MR. KATES: -- Marcos laid the groundwork
20 in her testimony, saying that there aren't any
21 daycare centers that really specialize in infants
22 and toddlers. It's on page 10 of the transcript.
23 And therefore, she, as an operator, familiar with
24 her population, was --

25 CHAIRMAN MAROTTA: Are you testifying now?

1 MR. KATES: I am relating the record, which
2 is the record of proceedings, and he read the
3 transcript, and that's the basis upon which he's
4 testified.

5 Now, to say that he didn't do a study
6 doesn't negate the fact that the record --

7 CHAIRMAN MAROTTA: Well my opinion --

8 MR. KATES: -- was established.

9 CHAIRMAN MAROTTA: -- he gave a net
10 opinion.

11 MR. KATES: Well, that's not correct.

12 CHAIRMAN MAROTTA: Okay. Yes, it is
13 correct because he can't give us a study upon
14 which he made his opinion. He cannot give us
15 that.

16 MR. KAUKER: Mr. Marotta, what if I told
17 you, I'm not aware --

18 CHAIRMAN MAROTTA: He talks about a census
19 that's not completed.

20 I've got another question for you.

21 MR. KAUKER: Okay.

22 CHAIRMAN MAROTTA: Did you make an inquiry
23 as to the number of children who lived -- who
24 reside in 100 Manhattan Avenue, in the age
25 bracket that would attend a daycare center?

1 MR. KAUKER: No, I did not.

2 CHAIRMAN MAROTTA: Well --

3 MR. KATES: But the State of New Jersey did
4 in license --

5 CHAIRMAN MAROTTA: Excuse me.

6 MR. KATES: The State of New Jersey did in
7 licensing this facility.

8 CHAIRMAN MAROTTA: Excuse me.

9 According to the testimony that was given,
10 this facility will handle up to 101 children.

11 MR. KAUKER: That's --

12 CHAIRMAN MAROTTA: Is that correct?

13 MR. KAUKER: That's the -- that's the
14 extent of the license.

15 CHAIRMAN MAROTTA: But we don't know how
16 many --

17 MR. KAUKER: The testimony was 80 by my
18 client.

19 CHAIRMAN MAROTTA: Well, I heard 101.

20 MR. KAUKER: That's -- that's --

21 CHAIRMAN MAROTTA: From -- from the --

22 MR. KAUKER: -- that's the number --

23 CHAIRMAN MAROTTA: -- applicant.

24 MR. KAUKER: That's the number of
25 individuals -- that's the maximum number of

1 individuals --

2 CHAIRMAN MAROTTA: Right.

3 MR. PRESSEY: Correct.

4 MR. KAUKER: -- pursuant to the license.

5 CHAIRMAN MAROTTA: And you cannot tell us,
6 of the 101, how many will come from The Doric.

7 MR. KAUKER: Eighty to 90 percent, and that
8 -- that's pursuant to the knowledge that my
9 client has, because she's in this business, and
10 she certainly wouldn't open up a -- and embark
11 upon this kind of an investment if she didn't
12 feel that it was desirable, marketable and
13 profitable.

14 CHAIRMAN MAROTTA: We're not dealing with
15 feelings about what's marketable or what she
16 thinks may happen.

17 MR. KAUKER: I take that word back.

18 CHAIRMAN MAROTTA: We have to deal with the
19 reality.

20 MR. KAUKER: That's correct.

21 CHAIRMAN MAROTTA: Okay?

22 We have 101 possible students, or
23 youngsters in this -- in this daycare center, and
24 you can't tell us how many come out of The Doric.

25 MR. KAUKER: Excuse me?

1 CHAIRMAN MAROTTA: You cannot tell us how
2 many come out of The Doric.

3 MR. KATES: The record of Ms. Marcos'
4 testimony was there are a hundred of them are
5 with families with young kids.

6 She did the survey. She talked to The
7 Doric. They worked together on this. She's
8 discounting tuition for Doric.

9 CHAIRMAN MAROTTA: One hundred young kids
10 could mean six months old, one year old, two
11 years old?

12 MR. KATES: These are her clientele.

13 CHAIRMAN MAROTTA: Okay? That doesn't mean
14 that there's 100 kids --

15 MR. KATES: The building said they would
16 help --

17 CHAIRMAN MAROTTA: Are you telling -- are
18 you telling the Board that right now there are a
19 hundred children in The Doric who could attend
20 this?

21 MR. KATES: Yes. That's the testimony.

22 CHAIRMAN MAROTTA: So, therefore, if you're
23 going to have a hundred, and your capacity is
24 101, all you could take is one other child who
25 doesn't live in The Doric.

1 Is that correct?

2 MR. KATES: And there will probably be a
3 waiting list.

4 CHAIRMAN MAROTTA: You say probably. What
5 do you base that upon?

6 MR. KATES: Her testimony.

7 CHAIRMAN MAROTTA: Wait a minute. Her
8 testimony?

9 MR. KATES: Yeah.

10 CHAIRMAN MAROTTA: You raised a question
11 about a safety factor, because Mr. Kates did --
12 did state in his position that because you cannot
13 discriminate, the daycare center would have to
14 take children who do not reside in 100 Manhattan
15 Avenue.

16 MR. KAUKER: That's correct.

17 CHAIRMAN MAROTTA: Now, that area is a
18 pretty dangerous area.

19 MR. KAUKER: Right.

20 CHAIRMAN MAROTTA: Would you agree?

21 MR. KAUKER: Yes.

22 CHAIRMAN MAROTTA: I mean, I live right
23 near there --

24 MR. KAUKER: Um hum.

25 CHAIRMAN MAROTTA: -- and -- and going down

1 | into Hoboken, into Jersey City, down to the
2 | viaduct to get into Hoboken, it gets pretty well
3 | tied up with cars.

4 | MR. KAUKER: Yes, it does.

5 | CHAIRMAN MAROTTA: And -- and if you're
6 | going to take people from Union City, that would
7 | have to be either from Palisade Avenue or the
8 | other areas. That means they're going to have to
9 | cross that traffic.

10 | MR. KAUKER: They will be -- the one
11 | consideration is that those individuals, the
12 | toddlers and -- and the other -- the younger ones
13 | will -- will certainly not be walking to this
14 | facility.

15 | CHAIRMAN MAROTTA: You say toddlers.

16 | MR. KAUKER: They will be driven.

17 | CHAIRMAN MAROTTA: You say toddlers.

18 | MR. KAUKER: Toddlers.

19 | CHAIRMAN MAROTTA: What age group do you
20 | mean by toddlers?

21 | MR. KAUKER: I really don't know because
22 | that's not my profession.

23 | CHAIRMAN MAROTTA: Well, then why did you
24 | use it?

25 | MR. KAUKER: Because the -- the term

1 toddlers is utilized in -- in -- by my client in
2 her presentation.

3 MR. PRESSEY: Um hum.

4 CHAIRMAN MAROTTA: Tell me, if there's a
5 safety problem, is that a danger?

6 MR. KAUKER: That's correct. I would
7 agree. It could be. Yes, sir.

8 CHAIRMAN MAROTTA: If the granting of a
9 variance presents a danger to the public,
10 shouldn't the variance be denied?

11 MR. KAUKER: If, that's a consideration
12 that the --

13 CHAIRMAN MAROTTA: You said it could be.
14 So, are you saying that because there could be a
15 danger, then the application should be denied?

16 Is that what you're saying?

17 MR. KAUKER: I'm -- I'm agreeing with your
18 statement, the foundation of your statement. I'm
19 not -- I'm not -- I have no basis upon which to
20 say to you, as a professional planner, that I
21 believe that there would be a safety issue,
22 mainly because this application is a classic
23 example of an application where absolutely any
24 safety issues are -- are minimized substantially,
25 if not to 90, 95 percent. There is very little

1 | chance that this facility, in The Doric, will
2 | result in identifiable safety hazard or
3 | conditions.

4 | CHAIRMAN MAROTTA: My concern is this,
5 | since this facility could accommodate -- we'll
6 | use the figure 100 -- 100 children, if there
7 | aren't enough out of The Doric, you have to --
8 | gonna go and advertise in the lower part of Union
9 | City to get other people there, because if you go
10 | into business, you're looking to make a profit.

11 | Okay?

12 | So, let's face it. You're going to look to
13 | bring in young people.

14 | It creates a problem for me because of the
15 | danger element.

16 | MR. KAUKER: The review, quite
17 | respectfully, of the record indicates otherwise.

18 | CHAIRMAN MAROTTA: What? What indicates
19 | otherwise?

20 | MR. KAUKER: That -- that there will be no
21 | lack of potential clients coming -- coming from
22 | The Doric. And that the number of individuals
23 | who would come from outside of The Doric are ten
24 | to 15 percent.

25 | CHAIRMAN MAROTTA: I -- I don't recall

1 testimony that -- I don't recall testimony that
2 The Doric could produce or provide up to 80
3 percent capacity for this.

4 MR. KAUKER: I believe it's in the record.

5 CHAIRMAN MAROTTA: So, if it's 80 percent,
6 then you're talking 20 children from Union City
7 that have to cross the roadway.

8 Is that what you're saying?

9 MR. KAUKER: They don't cross the roadway
10 because they're not pedestrians. They're --
11 they're one to two years old.

12 CHAIRMAN MAROTTA: Okay.

13 Anybody else have any questions?

14 Any other questions from members of the
15 audience?

16 MR. KATES: If I might just --

17 CHAIRMAN MAROTTA: I really have a problem
18 with this. I -- I could see the benefit of a
19 daycare center.

20 MR. KATES: If I might just say one thing
21 in summation, and it's this:

22 If there are 50 percent coming from The
23 Doric, there's a -- if there's a need for 50
24 percent coming from The Doric, and this
25 application is denied, that 50 percent has to get

1 in a car and go through this heavily trafficked
2 destination and find daycare somewhere else.

3 MR. PRESSEY: Um hum.

4 MR. KATES: So, you're satisfying --

5 CHAIRMAN MAROTTA: Mr. Kates, you didn't
6 let me finish. You interrupted me while I was
7 talking.

8 MR. KATES: I thought you were done.

9 CHAIRMAN MAROTTA: Okay?

10 I recognize that a daycare center is a good
11 idea. What disturbs me is that I don't have a
12 figure.

13 Now, I made some inquiries of my own in The
14 Doric, with respect to young people who would be
15 attending this.

16 Okay?

17 So, based upon my own inquiries, I'll make
18 a motion to approve the application.

19 THE SECRETARY: Motion to approve the
20 application by Chairman Marotta.

21 MS. GUTIERREZ: Second.

22 THE SECRETARY: Second by Ms. Gutierrez.

23 Roll call on the motion to approve this
24 application.

25 Mr. Marotta?

1 CHAIRMAN MAROTTA: 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: Mr. Ortiz?

11 MR. ORTIZ: Yes.

12 THE SECRETARY: Six in favor.

13 Motion carries.

14 Thank you.

15 CHAIRMAN MAROTTA: I'm going to suggest we
16 take a ten minute break now.

17 THE SECRETARY: Ten minute break by --

18 MR. PRESSEY: Ten minutes. Ten.

19 THE SECRETARY: -- Chairperson Marotta.

20 MR. PRESSEY: Ten. Only ten.

21

22 (Whereupon, the Board recessed from 7:43
23 p.m. to 7:54 p.m.)

24 * * *

25

1 **Lidia Sevillano - 424 8th Street:**

2

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

5 Next application on tonight's agenda, Lidia
6 Sevillano, 424 8th Street.

7 Mrs. Pereiras, please?

8 MS. PEREIRAS: Thank you.

9 First of all, Happy New Year to all.

10 MS. GUTIERREZ: Happy New Year.

11 MS. PEREIRAS: Thank you.

12 May it please the Board, Bianca Pereiras,
13 on behalf of the applicant, Lidia Sevillano, for
14 property located at 424 8th Street, Block 39, Lot
15 17.

16 We had previously submitted our proofs of
17 jurisdiction at the last meeting.

18 The Board may recall that we have
19 previously appeared before you on this property,
20 but for a somewhat different application.

21 Our application before was to legalize one
22 unit, where we thought we had three legal units.
23 It was brought to our attention, and to the
24 Board's attention as well, at that meeting, by
25 Mr. Price, that we, in fact, had to legalize two

1 units instead of one.

2 It looks like there was an Ordinance that
3 was passed by Union City, at some point in the
4 past, allowing certain people to legalize units,
5 as long as they brought those units up to Code
6 compliance.

7 Ms. Sevillano was one of those individuals.
8 She thought she had approval to legalize the
9 unit, went before the Building Department,
10 secured a contractor, secured permits, did
11 significant work to the property, and thought she
12 had a legal unit.

13 It looks like that Ordinance was later
14 appealed, so any approvals that were done were
15 null and voided.

16 As such, we're here again before you to
17 legalize two units.

18 We have two experts to testify before the
19 Board this evening. I'd like to begin with our
20 architect, Mr. Manuel Pereiras.

21 MR. DILLON: Please raise your right hand.

22 Do you swear the testimony you're about to
23 give this Board is the whole truth?

24 MR. PEREIRAS: I do.

25 Manny Pereiras, P-E-R-E-I-R-A-S, with

1 | Pereiras Architects Ubiquitous, 1116 Summit
2 | Avenue, Union City.

3 | MR. DILLON: Thank you.

4 | MS. PEREIRAS: And Mr. Pereiras has
5 | testified before this Board, and I ask that he be
6 | accepted --

7 | CHAIRMAN MAROTTA: He's -- he's --

8 | MS. PEREIRAS: -- as an expert.

9 | CHAIRMAN MAROTTA: He's fine.

10 | MS. PEREIRAS: Thank you very much.

11 | MR. PEREIRAS: Thank you, everyone. Happy
12 | New Year.

13 | MS. GUTIERREZ: Happy New Year.

14 | MR. MEDINA: Happy New Year to you.

15 | MS. PEREIRAS: Mr. Pereiras, are you
16 | familiar with the property located at 424 8th
17 | Street?

18 | MR. PEREIRAS: I am. We actually began
19 | working on this property back in 2012.

20 | MS. PEREIRAS: And can you please describe
21 | the application that is before the Board this
22 | evening?

23 | MR. PEREIRAS: I'd be very happy to.

24 | Counsel made a good representation of what
25 | took place.

1 Back in 2012, we prepared drawings for a
2 zoning application. It didn't go all the way to
3 the Zoning Board. Union City had the amnesty
4 program and what we did was we went and we pulled
5 permits for the rear unit, along the back of the
6 building.

7 The -- the applicant, wonderful, nice lady,
8 she did -- she got all her inspections done, all
9 the construction work done, in order to get that
10 approved. She had a CO. That CO is no longer
11 valid.

12 So, we're here in order to legalize that
13 and everything else in this building.

14 So, just to clarify a little bit what's
15 going on.

16 We have an existing lot. This is on 8th
17 Street. It's in the residential district. We
18 have a lot that's 35.33 feet wide and we have a
19 length of this lot that's 76.05 feet.

20 The existing structure, and there's a
21 photograph of it right here, we're not planning
22 to do any changes to the exterior of this
23 building whatsoever.

24 There has been four units within this
25 building since Ms. Sevillano can remember, in the

1 '80s, when she started living in that property.

2 The front of the building, this front
3 structure, houses three dwelling units currently,
4 and the rear structure houses one dwelling unit.

5 The Building Department only recognizes two
6 units in the front structure. So, when we come
7 here before this Board is, first and foremost,
8 that rear unit that went through that process
9 before. We're looking to legalize that. And the
10 lower level unit, the basement unit, in the front
11 structure.

12 As always, this legalization process gives
13 us an opportunity. It gives us an opportunity to
14 make this into a Code compliant building, because
15 when this building was erected, Codes were very
16 different. Codes are a lot more strict today.
17 So, now making it comply with today's Codes,
18 makes it a safer building for the inhabitants,
19 and for the neighboring structures, both for fire
20 safety, and all sorts of other Code related
21 items.

22 So, on the left hand side here, we see the
23 basement apartment as it is today. We will --
24 one of the things that we have to do, from a Code
25 perspective, is isolate the mechanical room from

1 the rest of the apartment. So, what we're doing
2 is we're creating a small vestibule along the
3 entrance from the rear, and we are keeping the
4 rest of it primarily the same.

5 One other thing that we're doing is we're
6 adding an egress window. So, the bedroom that's
7 located here, where I'm pointing to, will now
8 have a window that's going to be enlarged so that
9 someone, in case there's ever an emergency, could
10 escape through that window.

11 There's a lot of fire safety that's going
12 to go into this as well. There's going to become
13 -- be a two hour fire separation in the ceiling
14 that separates that unit from the rest of the
15 building.

16 There's also going to be a domestic line
17 sprinkler system added to this unit, so if there
18 ever was a fire in this unit, the sprinkler
19 system could handle that.

20 And there would be an alarm system that's
21 going to be added to this structure. There will
22 be a low voltage alarm system with a monitored
23 station, another wonderful feature.

24 The rear unit is treated a little
25 differently than what you would in the front.

1 Since it's an independent structure in the back,
2 it's -- it classifies a little differently in
3 Code. It doesn't require a sprinkler system, for
4 instance. But it does comply now with all those
5 requirements for egress safety.

6 That's a duplex apartment. It's actually
7 1,062 square feet. So, it's a nice size unit.

8 You walk in on the ground level. You have
9 a living room/dining room area and a nice large
10 kitchen, with coat closets and a half bath.

11 And you take the stairs up to a second
12 level, and you have two bedrooms, with a small
13 bathroom in between the two.

14 And that currently meets all Code
15 requirements because remember, we went already
16 through inspections with the Building Department
17 and we obtained a CO. While that's not valid,
18 all the work was done and was done properly, with
19 all the proper inspections.

20 So, after this -- if this Board sees fit to
21 approve this, we're going to actually go through
22 the entire process again, and -- but it should be
23 like a checklist thing. Yes, you did this; yes,
24 you did that. And the inspections should go very
25 smoothly in order to get a CO for that -- that

1 rear apartment.

2 Remember, Union City -- before Union City
3 adopted its last Ordinance, a four family was
4 permitted in this district. Essentially, this
5 used to be, when it existed, a conforming
6 structure.

7 So right now, we have a nonconforming
8 structure of the four units. We're asking you to
9 legalize those two units.

10 And that concludes my testimony.

11 Just to recap very quickly. We're not
12 changing anything to the exterior. We're
13 legalizing the basement, and we're legalizing the
14 rear structure.

15 CHAIRMAN MAROTTA: Any questions from
16 members of the Board?

17 MR. PRESSEY: So, no parking or additional
18 parking is being --

19 MR. PEREIRAS: So right now, a wonderful
20 thing about this property is that there is an
21 existing carport on the side of the building. I
22 should have mentioned that. I'm glad you brought
23 it up. It's nine and a half feet. It's a little
24 tight, but it's an existing carport with a gate
25 in front of it. And you could fit two cars

1 there.

2 So, whereas most of the applications we
3 have before you have zero parking, at least we
4 have two existing ones.

5 There's no way, because it's technically
6 infeasible to create more parking in this site,
7 so we're -- we're limited to those two parking
8 spaces, which does trigger another variance.

9 And just to go over the variances very
10 briefly. We have a variance in parking, because
11 in theory, we're expanding an existing
12 nonconformity.

13 We have a requirement of 7.8 cars, whereas
14 we only have two. And we're expanding that.

15 CHAIRMAN MAROTTA: Excuse me?

16 You're going through the variances. Isn't
17 that for the planner?

18 MR. PEREIRAS: Yes, we can do that.

19 CHAIRMAN MAROTTA: Yeah. The planner.
20 You're here as an expert in architecture, aren't
21 you?

22 MR. PEREIRAS: I am.

23 CHAIRMAN MAROTTA: Okay. We'll wait for
24 the planner.

25 MS. PEREIRAS: That's fine.

1 MR. PEREIRAS: That's fine.

2 MS. PEREIRAS: Okay.

3 CHAIRMAN MAROTTA: Any other questions?

4 You say that the -- that parking area is
5 five and a half feet wide.

6 MR. PEREIRAS: No. It's nine and a half
7 feet wide.

8 CHAIRMAN MAROTTA: Nine and a half feet.
9 Okay.

10 MR. PEREIRAS: And it's suitable for two
11 cars. In tandem.

12 CHAIRMAN MAROTTA: Yeah. I'm familiar.
13 It's around the corner from where I live.

14 MR. PEREIRAS: Yes. I know, sir.

15 CHAIRMAN MAROTTA: Any other questions from
16 anybody?

17 MR. GRULLON: Yes. I have a question, Mr.
18 Pereiras.

19 Are you doing any demolition inside,
20 rearranging the --

21 MR. PEREIRAS: We're not proposing any real
22 changes. The rear structure is as is exactly.
23 The downstairs, there's some minor stuff that
24 we're doing, and that's only in order to create
25 that vestibule and in order to create the -- the

1 window well to get out.

2 So, if you look at this plan here, we're
3 demolishing the wall that used to separate the
4 kitchen, so it becomes a little bit more open and
5 it gets closed off over here, for the vestibule.

6 So, now, you walk in, you have a door
7 entrance, a proper entry to the apartment, and
8 that's all open so it makes it feel a little bit
9 bigger.

10 MR. GRULLON: But you mentioned that you're
11 going to bring the building up to Codes, like
12 adding sprinkles.

13 MR. PEREIRAS: That is correct, sir. There
14 will be a limited area sprinkler system to the
15 lower level, fire separations throughout, in
16 order to make this a safe building. It has to
17 meet all current Codes.

18 MR. GRULLON: And no changes on the
19 outside.

20 MR. PEREIRAS: Correct.

21 MR. GRULLON: No more questions.

22 Thank you.

23 MR. PANEQUE: Mr. Pereiras, I have a
24 question for you.

25 CHAIRMAN MAROTTA: Any other questions?

1 MR. PANEQUE: If I may, Mr. Marotta?

2 CHAIRMAN MAROTTA: All right.

3 MR. PANEQUE: The -- you indicated that you
4 have two parking spots available in tandem, but
5 you're proposing a window well that's not there
6 now. Does that window well interfere with those
7 parking spots?

8 MR. PEREIRAS: It does not. And we've done
9 this plenty of times before right here, locally,
10 in Union City.

11 What we need to do in a window well is have
12 a system that could easily be operated, in case
13 if there's an emergency, that somebody could come
14 out.

15 So, what we designed is we, basically,
16 break the concrete and we create a small
17 retaining wall at grade, where the -- where the
18 -- the driveway is. And then we put an aluminum
19 grate on top of that, that sits on the curb, so
20 that it's strong enough that a car can roll over
21 it, yet it's light enough that if there ever was
22 an emergency, what they do is, and what we do is
23 we provide a casement window that opens inward.
24 We actually had -- believe it or not, we had
25 Pella design a window for Union City. So, I was

1 | able to talk to them and they designed a window
2 | for Union City.

3 | So, we have an egress window that opens in.
4 | And then, when you step in, and if you're
5 | escaping, you just push up and the grate opens
6 | and that gives you the safety.

7 | There is the horrible situation, as if
8 | there's a wheel on top of the grate that you
9 | can't open, but luckily the way we design it is
10 | that we put it in a way so that if -- the way we
11 | design the -- the window well, we located it so
12 | that the two cars are off of that window well.
13 | So we took that into consideration.

14 | So, the only way it would happen, and it's
15 | possible, but it would be very unlikely that a
16 | car would drive and park in -- within the two
17 | spots, and at an angle very close to the
18 | building.

19 | So, it's extremely unlikely that something
20 | like that can happen.

21 | MR. PANEQUE: Are there any other
22 | measurements you can take to section off that
23 | window well so that a vehicle cannot park over
24 | it, such as some kind of column at the corners of
25 | it, so that the vehicles would be obligated to

1 stay to the left of that window well?

2 MR. PEREIRAS: It would -- actually from --
3 I'm -- I'm going to pitch another idea out there,
4 from a Code perspective. And I don't think the
5 applicant would be worried about this. And I
6 think she'd be okay with this.

7 If this was, instead of a one bedroom
8 apartment, was a studio apartment, the entire
9 area would be considered a sleeping area, so that
10 that bedroom is not a bedroom.

11 In that case, the egress can be the main
12 door. And we don't -- from a Code perspective,
13 we would not have to worry about that window.
14 That's a possibility. And I could design it,
15 just as an extra safety measure, to include that
16 window well and since they're -- the bedroom does
17 not have a door, they could escape quickly
18 through the front in case of any issue. So, it's
19 one -- part of one larger space.

20 So, I think that solves it, from a Code
21 perspective, and it gives the Board the added
22 satisfaction that they have this second measure
23 of escaping in case there's an issue.

24 CHAIRMAN MAROTTA: Any other questions?

25 I have no further questions.

1 You have another witness?

2 MS. PEREIRAS: We do.

3 MR. PRICE: Wait a minute.

4 MR. PANEQUE: Open to the public.

5 MS. GUTIERREZ: Open to the public.

6 MR. PANEQUE: Mr. --

7 CHAIRMAN MAROTTA: Excuse me?

8 MR. PANEQUE: Open to the public.

9 CHAIRMAN MAROTTA: Yes. Any questions?

10 I'm sorry. Sorry, Larry.

11 MR. PRESSEY: Don't worry about it.

12 MR. PRICE: Larry Price, 1006. Still under
13 oath.

14 Question?

15 The lot is how wide?

16 MR. PEREIRAS: Thirty-three point -- no,
17 35.33 and its depth is 76.05, which gives it a
18 total of 2,702 square feet.

19 MR. PRICE: Okay.

20 MR. PEREIRAS: And if you do the math,
21 based on density, we would be at like 3.25 units,
22 but the argument, and our planner is going to
23 speak a lot more about this, is that this was a
24 four family zone, prior to when these units were
25 constructed. And -- and this is a preexisting

1 condition for at least 30 years that these have
2 been in place like that.

3 MR. PRICE: Since I've been doing this for
4 awhile, I would point out that the old Zoning
5 Ordinance, yes, had three and four families, when
6 it was 5,000 square feet.

7 MR. PEREIRAS: And that's very true, as
8 well.

9 MR. PRICE: One and two families when it
10 was 2500 square feet.

11 MR. PEREIRAS: That is accurate.

12 MR. PRICE: So, it's --

13 MR. PEREIRAS: Um hum. That's accurate.

14 MR. PRICE: But don't worry, I'll attack
15 Mr. Kauker.

16 Okay. You did the work on the rear
17 apartment.

18 MR. PEREIRAS: We did.

19 MR. PRICE: In 2012.

20 MR. PEREIRAS: 2012 was when we prepared
21 the drawings. I think it was shortly after the
22 amnesty was created, which I believe was 2014.

23 MR. PRICE: '13.

24 MR. PEREIRAS: '13. Okay. So, the work
25 was done somewhere along the end of 2013 to the

1 beginning of 2014.

2 MR. PRICE: Okay. Is that apartment
3 occupied?

4 MR. PEREIRAS: It's currently occupied.

5 MR. PRICE: It's been occupied since 2013.

6 MR. PEREIRAS: Yes.

7 MR. PRICE: Okay.

8 Okay. The apartment in the basement --

9 MR. PEREIRAS: Um hum.

10 MR. PRICE: -- this is a first time up for
11 that apartment.

12 Correct?

13 MR. PEREIRAS: Yes, it is. However, it's
14 been in existence since then as well. She has a
15 disabled son who currently lives in that
16 apartment.

17 MR. PRICE: So, it's -- and how long has
18 that apartment been occupied? It was --

19 MR. PEREIRAS: Forever.

20 MR. PRICE: Since it was built, which I
21 gather was 2013, as well?

22 MR. PEREIRAS: No. It was built she
23 believes in the '80s. And from the look of it, I
24 -- it seems perfectly reasonable. It hasn't --
25 it's not new construction. It's definitely from

1 the '80s.

2 MR. PRICE: Okay.

3 Okay. And it's -- you -- did you change --
4 is it going to be a studio now instead of a one
5 bedroom?

6 MR. PEREIRAS: I think a studio is the
7 proper thing to do. And it actually makes me
8 feel very comfortable.

9 So, we're -- and the only thing I'm doing
10 is instead of -- that wall would be removed.

11 MR. PRICE: Okay. Okay.

12 Thank you.

13 MS. PEREIRAS: Thank you.

14 CHAIRMAN MAROTTA: Any other questions?

15 You have another witness?

16 MS. PEREIRAS: At this time, I'd like to
17 call our planner, Mr. Michael Kauker.

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

20 MR. KAUKER: Evening, again.

21 MS. PEREIRAS: Mr. Kauker, would you kindly
22 describe this project from a planning
23 perspective?

24 MR. KAUKER: From a planning perspective,
25 the existing conditions on the site and

1 accommodating the four units represent an
2 existing nonconforming use.

3 Clearly, the improvements that are proposed
4 to be made, and the expansion of that well area,
5 obviously tell us that this is an expansion,
6 number one, and a reaffirmation of a longstanding
7 nonconforming use.

8 And that context, as with my first
9 testimony tonight, that would fall under a
10 classification of D-2 variance, which is governed
11 by Coventry.

12 The test of that case relates to the
13 question of whether or not, by virtue of a
14 possible grant of the variance to legalize the
15 additional two units, the site remains
16 appropriate to accommodate the proposed use.

17 I believe that's the case. In addition,
18 with regard to the recognition of the substantial
19 improvements for safety and Code aspects, site
20 not only remains appropriate, but becomes more
21 appropriate to accommodate the additional two
22 units.

23 The fact that there's two parking spaces on
24 the site, the fact that at one point in time the
25 use to accommodate four units was legally

1 consistent with the Zoning Code, which obviously
2 it's not now, rendered it -- in a sense, renders
3 it a prior nonconforming use in that context.

4 I believe in sum, that the improvements
5 that are proposed essentially achieve the goals
6 of the process that's been occurring for a number
7 of years, thanks to the due diligence of certain
8 concerned individuals and professionals in this
9 city.

10 I think it essentially helps upgrade and
11 provide a foundation for revitalization of the --
12 of the City's housing stock.

13 That concludes my observations and
14 testimony.

15 CHAIRMAN MAROTTA: Any questions from
16 members of the Board?

17 Members of the audience, any questions?
18 Larry?

19 MR. PRICE: Larry Price, 1006 Palisade.
20 What kind -- Mr. Kauker, what kind of
21 variance are you requesting?

22 MR. KAUKER: D-2.

23 MR. PRICE: A D-2. But a -- okay. That --
24 that's my -- my question.

25 A D-2 variance is for the expansion of a

1 non-permitted use.

2 MR. KAUKER: Correct.

3 MR. PRICE: Preexisting nonconforming use.

4 MR. KAUKER: Nonconforming condition.

5 MR. PRICE: Legally, this is a two family
6 house that's conforming.

7 MR. KAUKER: That's correct. But the
8 physical reality is it has accommodations for two
9 additional units.

10 MR. PRICE: But --

11 MR. KAUKER: That is the condition that
12 gives rise to the classification.

13 MR. PRICE: You've lost me there, because
14 only -- the only non-permitted use would be a
15 four family. But this is legally a two family,
16 which is a permitted use.

17 MR. KAUKER: Correct.

18 MR. PRICE: And even if it were to go to a
19 three family. That is still a permitted use.

20 MR. KAUKER: Up to two units are a
21 permitted use. I'll -- I'll agree with you
22 there. But the -- but the reality of the
23 condition on the site is such that there happen
24 to be four units there.

25 MR. PRICE: Well, but you --

1 MR. KAUKER: And that renders it
2 nonconforming.

3 MR. PRICE: But the point is that you are
4 going -- you're trying to change the legal status
5 from a legal permitted two family --

6 MR. KAUKER: That's correct.

7 MR. PRICE: -- to a four family.

8 MR. KAUKER: We agree.

9 MR. PRICE: Which would be permitted with
10 the grant of a D-1 variance, not a D-2 variance.

11 MR. KAUKER: I respectfully -- I can't -- I
12 can't arrive at that conclusion.

13 MR. PRICE: Well, then, I have to go back
14 to my original question and say, well, wait a
15 minute. A D-2 is the expansion of a
16 nonconforming use.

17 MR. KAUKER: That's correct.

18 MR. PRICE: And legally, it's two -- two
19 families right now. Reality may be that it's
20 four, but that's why you need some kind of
21 variance to go from two to four.

22 MR. KAUKER: Yeah. It's a D.

23 MR. PRICE: But --

24 MR. KAUKER: It's a D-2. It's -- it's not
25 the introduction of a new non-permitted use on

1 the site. There is a history related to the
2 additional two units that is a little bit
3 convoluted because so many things have occurred.
4 It was rendered as a four family. It used to be
5 permitted, but the -- the zoning regulations
6 changed, which essentially make it a prior
7 nonconforming use.

8 Correct?

9 MR. PRICE: It has -- by the way, no it did
10 -- that is not correct, because one of the tests
11 for a preexisting nonconforming use be that it be
12 legally established. And this basement apartment
13 was never legally established. So, no, that
14 doesn't work. Not at all.

15 By the way, I would also tax you a little
16 bit. You say it was a -- really a four family,
17 and that was a permitted use under the old -- it
18 was only a permitted use -- three and four family
19 was only a permitted use if you had a 5,000
20 square foot lot.

21 MR. KAUKER: Okay.

22 MR. PRICE: This is 2700 square feet.

23 MR. KAUKER: Okay.

24 MR. PRICE: That was one and two families,
25 under the old Zoning Ordinance. So, it is really

1 a bit incorrect to say that -- that this was a
2 permitted use.

3 MR. KAUKER: I accept that.

4 MR. PRICE: Okay.

5 MR. KAUKER: But wouldn't you agree with me
6 that the conditions on the site would render this
7 application a nonconforming condition? Two units
8 aren't permitted.

9 MR. PRICE: No. No. No. Because -- I
10 mean, you know, I don't think you wanted to go
11 this route because -- but any way.

12 The test for preexisting nonconforming use
13 is that the use must have been legally
14 established -- legally established. And then, be
15 obsoleted by the change in a --

16 MR. KAUKER: That's correct.

17 MR. PRICE: -- in -- in a Zoning Ordinance,
18 so it becomes a preexisting nonconforming use.

19 MR. KAUKER: I -- I concede that.

20 MR. PRICE: Okay.

21 MR. KAUKER: But it is nonconforming.

22 MR. PRICE: Not legally, because it's -- it
23 was -- it's a legal two family. It always was a
24 legal two family, which is a permitted use. Is a
25 legal use.

1 But the question is, how do we get from two
2 to four? I would submit that it's not a D-2
3 variance, it's a D --

4 MR. KAUKER: You would think it's a D-1.

5 MR. PRICE: It's a D-1 because you're
6 having to establish a use that is not permitted
7 in the zone now. And D-2 just doesn't work
8 because that's from a legally establish -- what
9 was legally established here is clearly two
10 family. The four family was never legally
11 established.

12 MR. KAUKER: Um hum.

13 MR. PRICE: So, you're going from a two
14 family to a four family. The -- the adoption of
15 the zone -- the Land Development Ordinance in
16 2012 did not obsolete anything. It's a -- it was
17 legal before as a two family and it was legal
18 afterwards. The -- the adoption of the --

19 So, what you're really doing is going from
20 two to four. Four is not permitted. D-1
21 variance is required.

22 MS. PEREIRAS: Because there is some kind
23 of confusion on the record, can we defer to Mr.
24 Spatz as to whether this is a D-1 or a D-2, in
25 your opinion?

1 MR. SPATZ: Certainly.

2 I believe that it is a D-1 variance because
3 it is not -- it is a permitted use now, legal two
4 family, and it's being turned into a four family,
5 which is not a permitted use.

6 So, I think it is a D-1 variance. If it
7 was already a four, and they were making a fifth,
8 that would be expanding a nonconforming use. But
9 this is, I think, a new nonconforming use,
10 regardless of whether it existed prior to that,
11 that's part of the testimony that the Board has
12 to weigh, and then doing it. But I think it is a
13 D-1 use variance.

14 MS. PEREIRAS: Mr. Kauker, based on that
15 interpretation by the Board's planner, would you
16 feel comfortable presenting to this Board as a
17 D-1 use variance?

18 MR. KAUKER: At this point in time, I would
19 not.

20 MS. PEREIRAS: Okay.

21 Counsel, if this matter could be carried,
22 we'd like to have an opportunity to continue
23 discussing this with Mr. Kauker.

24 Mr. Kauker was retained very recently, so
25 I'd like to give him an opportunity to explore

1 | this matter further.

2 | MR. PANEQUE: Mr. Marotta, the --

3 | CHAIRMAN MAROTTA: So, they're requesting
4 | an adjournment.

5 | MR. PANEQUE: -- the request is to adjourn.

6 | MS. PEREIRAS: We are.

7 | MR. PANEQUE: Yes.

8 | CHAIRMAN MAROTTA: Okay. I'll make a
9 | motion to adjourn.

10 | THE SECRETARY: Motion to adjourn this
11 | application for February the 8th, 2018, by Mr.
12 | Marotta.

13 | Second by Mr. Pressey.

14 | Roll call on the motion to adjourn this
15 | application for February the 8th, 2018.

16 | Mr. Marotta?

17 | CHAIRMAN MAROTTA: Yes.

18 | THE SECRETARY: Ms. Gutierrez?

19 | MS. GUTIERREZ: 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: Mr. Ortiz?

2 MR. ORTIZ: Yes.

3 THE SECRETARY: Six in favor.

4 Motion carries.

5 MS. PEREIRAS: Thank you.

6 THE SECRETARY: No new notice required.

7 Thank you.

8 MR. PRICE: It's February 8th.

9 MS. PEREIRAS: February.

10 MS. GUTIERREZ: February 8th.

11 Right?

12 MR. MEDINA: Yeah.

13 MR. PRICE: Thank you.

14 MS. PEREIRAS: Yes.

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

17 * * *

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1 **Nirvana Realty, LLC - 2105 Bergenline Avenue:**

2

3 THE SECRETARY: Next application on
4 tonight's agenda, Nirvana Realty, LLC, 2105
5 Bergenline Avenue.

6 Mrs. Pereiras, please?

7 MS. PEREIRAS: Again, Bianca Pereiras, on
8 behalf of the applicant.

9 This is for property located at 2105
10 Bergenline Avenue.

11 The Board previously heard from our expert
12 architect. I'd like to ask, at this point, if
13 the Board remembers the meeting back in November?
14 If you had an opportunity to review the
15 transcript, so that you are prepared to proceed
16 with the planner, and not hear additional
17 testimony from the architect?

18 Unless the Board would like a brief
19 synopsis from our professional architect.

20 MR. PANEQUE: Before we have an answer to
21 that, application was presented on November 2nd.

22 MS. PEREIRAS: Um hum.

23 MR. PANEQUE: That's when your expert
24 testified, Ms. Pereiras?

25 MS. PEREIRAS: That's correct.

1 MR. PANEQUE: All right.

2 Mr. Vallejo, would you happen to know which
3 members were here on November 2nd, so that we can
4 have a poll to see which members can participate
5 in tonight's hearing?

6 THE SECRETARY: November 2nd. Good
7 question.

8 Can you allow me two minutes?

9 MR. PANEQUE: Yes.

10

11 (Whereupon, the Board recessed from 8:23
12 p.m. to 8:25 p.m.)

13

14 MR. PANEQUE: Let me know when we're on.

15 MR. DILLON: Back on the record.

16 MR. PANEQUE: All right.

17 While we were off the record, it was
18 determined that at the November 2nd application,
19 the members that are here tonight, with the
20 exception of Mr. Ortiz, were present.

21 So, Ms. Pereiras is going to have her
22 architect represent the application for the
23 benefit of Mr. Ortiz, and for the refreshment of
24 the other members' recollection, so that we can
25 have a vote tonight with the most precious

1 presentation available.

2 Thank you.

3 MS. PEREIRAS: Thank you very much.

4 Mr. Pereiras, are you familiar with the
5 property, 2105 Bergenline Avenue?

6 MR. PEREIRAS: I am.

7 MS. PEREIRAS: And were you actually also
8 the architect of record for properties
9 immediately adjacent to this property, 2103 and
10 2107 Bergenline Avenue?

11 MR. PEREIRAS: I was.

12 MS. PEREIRAS: And did those previously
13 come before this Board on similar, identical
14 applications?

15 MR. PEREIRAS: That is correct.

16 MS. PEREIRAS: And all -- both of those
17 applications were approved by this very same
18 Board.

19 MR. PEREIRAS: Yes.

20 MS. PEREIRAS: Correct?

21 MR. PEREIRAS: They were.

22 MS. PEREIRAS: Would you kindly walk us
23 through the application that's before the Board
24 this evening?

25 MR. PEREIRAS: I'd be happy to. And just

1 | for purposes of the record, I am still under oath
2 | from previous testimony.

3 | As counsel said, we're -- we're talking
4 | about a property on the west side of Bergenline
5 | Avenue. It's between 21st and 22nd Street.

6 | I'm really glad to come before this Board
7 | because this is the missing piece on that block.
8 | We already had an approval for the exact same
9 | building on this lot. We have approvals for a
10 | similar building on that lot. They're both --
11 | and these are all sister buildings. So, the
12 | facades are going to look very similar, and it's
13 | going to be a continuation of the street.

14 | So, we're presenting the very same project
15 | to you before this Board. And hopefully, if
16 | things go well, these two are already under
17 | construction, this could tie up into it and it
18 | makes the process a lot easier because the
19 | excavation, the moving of dirt, the footings, it
20 | could all work very well.

21 | So, there's a lot of hope -- hope behind
22 | this presentation and this application. It
23 | really will beautify the City and make it a very
24 | strong block.

25 | We have the lot that's slightly shy of 25

1 feet wide. It's 24.7. And it's a full depth.
2 And since we are in the CN district, there's no
3 side yards required, so we're right on the side
4 yards on both sides. It keeps that continuity of
5 the street.

6 We're providing a rear yard that's 20 feet
7 to the building, with a fire stair that protrudes
8 into that and leaves 12 foot six of clear open
9 space along the back.

10 We are, for the most part, compliant.
11 Well, let me talk -- and the reason we're before
12 this Board, even -- because this is a CN
13 district, you're permitted to have mixed use.
14 The City encourages residential above. It
15 encourages commercial on the ground level.

16 The reason we're before this Board and not
17 the Planning Board is because, due to Code
18 regulations and other factors, and I'm going to
19 get into it, we cannot keep the ground floor
20 completely commercial.

21 Number one, because it's almost impossible
22 to rent a full ground floor to commercial. The
23 mom and pops can't afford it. It creates a great
24 deal of vacancies in the neighborhood.

25 The second reason is that when you have

1 four units or more above, our Ordinance is
2 encouraging us to have apartments upstairs, you
3 need ADA compliance.

4 If we were to add an elevator on this
5 building, which is the right size, in order to be
6 compliant for residential units, it would eat up
7 a great deal of space, that would make these
8 unusable units.

9 So, what we're proposing is a unit on the
10 ground floor behind the commercial space. And
11 that's what triggers the use variance and we're
12 here before this Board.

13 And our planner's going to speak at length
14 and give all the -- the testimony and all the --
15 the reasons for that variance.

16 Beyond that, we're in compliance with our
17 front yard. The width of the site, 25 is
18 required in the district. We're slightly shy of
19 that, but that's typical along the street.

20 So, therefore, our area is only 2,470
21 square feet. So, that's a little bit shy and
22 that triggers another variance.

23 Beyond that, we're compliant, except for
24 parking. And of course, we all understand
25 Bergenline Avenue. We do not want to provide a

1 | curb cut on Bergenline Avenue. That would really
2 | destroy the cityscape and destroy the pedestrian
3 | traffic. So, there is no parking provided, which
4 | is typical of the units approved north and south
5 | of this, and typical across Bergenline Avenue.

6 | What we're proposing is very simple.
7 | There's a basement, which houses all the
8 | mechanical units, storage for the commercial
9 | space, and because of current Codes, the storm
10 | water management system, which actually occupies
11 | a great deal of that basement. So, there will be
12 | a storm water management system in there, in
13 | order to not overburden our -- our sewer systems.

14 | The ground floor shows a commercial space
15 | along the front of 688 square feet. And a one
16 | bedroom apartment towards the rear.

17 | You enter through the same door as everyone
18 | else. You walk past the stairwell and you enter
19 | into this apartment. It's a one bedroom, opening
20 | to a living/dining room area, very modern,
21 | contemporary design. There's a full ADA bathroom
22 | and a bedroom. And like I said before, it's a
23 | fully compliant unit. The kitchen is ADA
24 | compliant. The bathroom is ADA compliant, which
25 | creates -- it satisfies a great need that we have

1 | in our community.

2 | We have a lot of housing stock, but we
3 | don't have housing stock that's compliant, ADA
4 | compliant, for people with disabilities. So,
5 | this helps satisfy that. It's definitely a need
6 | in our community.

7 | And then, when you take the stairs and you
8 | go upstairs, it's divided very simply. There's
9 | an apartment towards the rear and an apartment
10 | towards the front. And there's two levels
11 | exactly the same. They are all two bedroom
12 | apartments, and the square footage of each of
13 | them is the one in the front is 750 square feet,
14 | and the one in the rear is 763 square feet. And
15 | they all are very similar in design. It's a
16 | contemporary design. All open space. Small
17 | kitchen, small bathroom and then two bedrooms,
18 | which fits very nicely and meets all Code
19 | criteria.

20 | The rear of the building has a fire stair,
21 | in case of emergency to escape.

22 | And then, let's talk about the façade. We
23 | were able to design, in my opinion, a beautiful
24 | building, but all my babies I feel are beautiful.
25 | This is a small three story building. We have

1 brick as -- you know, to keep the continuity of
2 Union City that we love brick so much. And it's
3 very similar to the buildings to the north and to
4 the south. So, it's very important to keep that
5 -- that streetscape. The -- the horizontal bend
6 along the first level is broken by a canopy.
7 That canopy provides signage to the building, to
8 the commercial space. We have as much open glass
9 as possible to keep that commercial space lively
10 and open. And then, there's large double hung
11 windows along the floors above.

12 It's topped off with a very simple metal
13 cornice, all in compliance with the requirements
14 and the Ordinances here in Union City.

15 MR. DILLON: Excuse me.

16 CHAIRMAN MAROTTA: Anybody have any
17 questions?

18 MR. DILLON: Manny, the battery in that mic
19 died.

20 MR. PEREIRAS: Oh.

21 MR. DILLON: Sorry to interrupt.

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

24 MR. PEREIRAS: I'll speak from here in the
25 meantime.

1 MR. DILLON: Yeah.

2 Thank you.

3 CHAIRMAN MAROTTA: Anybody have any
4 questions?

5 Anybody from the audience have any
6 questions?

7 Larry?

8 MR. PRICE: Just a quick question.

9 There are two apartments on each floor.

10 MR. PEREIRAS: Correct.

11 MR. PRICE: They are both two bedroom
12 apartments.

13 MR. PEREIRAS: Correct.

14 MR. PRICE: What -- what is the size of
15 each apartment?

16 MR. PEREIRAS: Seven sixty-three for two of
17 them and 750 for two of them.

18 MR. PRICE: Okay. So they --

19 MR. PEREIRAS: They're compliant. They
20 make it.

21 MR. PRICE: Barely.

22 Very good.

23 Thank you.

24 CHAIRMAN MAROTTA: Anybody else have any
25 questions?

1 I just have a comment to make. You made a
2 -- you mentioned the fact that there are similar
3 buildings to the south and to the north of this
4 property.

5 Correct?

6 MR. PEREIRAS: Actually, I'm going to make
7 that even further.

8 Identical building to the south. Very
9 similar to the north. Proposed, approved by this
10 Board and --

11 CHAIRMAN MAROTTA: You know --

12 MR. PEREIRAS: -- under construction.

13 CHAIRMAN MAROTTA: Excuse me? Excuse me?

14 I'd appreciate it if you would not go into
15 planning when you testify.

16 MR. PEREIRAS: I believe I have --

17 CHAIRMAN MAROTTA: Okay?

18 MR. PEREIRAS: -- not done any planning.

19 CHAIRMAN MAROTTA: Because --

20 MR. PEREIRAS: It's --

21 CHAIRMAN MAROTTA: Because whether or not
22 there are other buildings that are similar to
23 this or exactly like this in the area, in Union
24 City, makes no difference.

25 Okay?

1 What we're concerned with is how this
2 applies to our Zoning Ordinance.

3 All right?

4 MR. PEREIRAS: I understand, Mr. Marotta.

5 CHAIRMAN MAROTTA: Anybody have any --

6 MR. PEREIRAS: I appreciate that. But let
7 me say why it is very important.

8 I designed those buildings and I designed
9 this one. And as part of the design, it's
10 important to understand that it's very similar,
11 because it's representing the façade and what I'm
12 trying to get approved here.

13 So, it's critical to the architecture, not
14 the planning, what the design is.

15 But thank you, Mr. Marotta.

16 CHAIRMAN MAROTTA: You next witness.

17 MS. PEREIRAS: Sure.

18 I'd like to call our planner, Mr. Michael
19 Kauker.

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

22 MS. PEREIRAS: Mr. Kauker, did you have an
23 opportunity to review the drawings prepared by
24 the architect?

25 MR. KAUKER: Yes, I have. And I had an

1 opportunity to drive by the site.

2 MS. PEREIRAS: And would you kindly
3 describe this project to the Board from a
4 planning perspective?

5 MR. KAUKER: This project is located in the
6 CN district. The number of units that are
7 proposed are in compliance. However, the reality
8 of the fact that commercial is mandated on the
9 first floor and residential is not permitted on
10 the first floor. So, we need a -- to proffer a
11 D-1 use variance, to enable Board's consideration
12 of the ADA required compliant unit on the site.

13 The established condition of the
14 neighborhood is such that three stories prevail.
15 It certainly would not be consistent with that
16 surrounding land use pattern to go to an elevator
17 building. That's for sure. So, ADA compliance
18 essentially is dictated for the first floor,
19 which is at grade. Site's narrow, enables a
20 passageway from the street entrance for the
21 residential, small ADA unit to the rear.

22 The site, in effect, in that context, is
23 particularly suited to accommodate the additional
24 very small residential component.

25 In this instance, you have an example, in

1 order to achieve full ADA compliance, where the
2 ADA specifications require it to be on-grade, are
3 a little bit at odds with the intent of the
4 Ordinance.

5 So, in this context, from this use variance
6 point of view, we're proposing somewhat of a
7 compromise between the two.

8 The component that is proposed for the
9 commercial space is about 60 percent of the total
10 first floor area. So, it's in the -- it's in the
11 majority -- it's majority use and that's a good
12 thing, because it brings it closer to conformity
13 with the intent of a hundred percent.

14 The unit, ADA to the rear of the building
15 is designed to be a -- a one bedroom, very
16 limited accessible unit that essentially provides
17 a positive criteria aspect of the use variance,
18 in that it provides a need, establishes a need
19 for ADA housing within the City.

20 In terms of particular suitability, the
21 requirements and special reasons, the
22 requirements of the MLUL, as it relates to
23 density, as it relates to compatibility with
24 surrounding uses, as it relates to creating
25 light, air and open space which essentially is

1 very -- at minimum and at premium in this
2 particular neighborhood. But in the CN zone,
3 zero yard requirement certainly is consistent
4 with the zoning requirement.

5 So, in balance, I feel this is a
6 constructive compromise, to be able to reconcile
7 the need for an AD (sic) unit, which provides a
8 positive benefit to this property, as well as the
9 City's zone plan and Zoning Ordinance, while
10 substantially accommodating the objective of the
11 Ordinance to provide some form -- meaningful form
12 of commercial use activity.

13 That concludes my comments.

14 CHAIRMAN MAROTTA: Any questions from
15 members of the Board?

16 Members of the audience, any questions?

17 I have a question or two.

18 You said that this project creates light
19 and air and open space.

20 MR. KAUKER: Certainly, the front and the
21 back.

22 CHAIRMAN MAROTTA: Well, actually, it gives
23 us a rear yard of 12.6 feet.

24 MR. KAUKER: Yes, it does.

25 CHAIRMAN MAROTTA: When the -- when the

1 Ordinance requires a 20 foot rear yard.

2 MR. KAUKER: You're absolutely correct.

3 CHAIRMAN MAROTTA: So, therefore, if it was
4 built according to the Ordinance --

5 MR. KAUKER: We'd have more.

6 CHAIRMAN MAROTTA: -- you'd have more light
7 and air.

8 Right?

9 MR. KAUKER: Yes, we would. Yes, we would.

10 CHAIRMAN MAROTTA: So, this project --

11 MR. PEREIRAS: Building coverage is 78
12 percent. Eighty percent required, so it's the
13 same.

14 CHAIRMAN MAROTTA: You want to testify?

15 MR. PEREIRAS: I'd be happy to.

16 Our -- it's -- it's somewhat deceiving. The
17 numbers are a little bit deceiving.

18 So, the building coverage that's permitted
19 in the district is -- and I'm speaking strictly
20 on the architecture. The building coverage
21 that's permitted is 80 percent. We're at 78
22 percent. The reason the rear yard is a little
23 bit smaller and the reason we have it is because
24 Bergenline has a really odd condition that the
25 front yard of Bergenline, in the Ordinance it

1 | says zero feet is required --

2 | CHAIRMAN MAROTTA: Are you testifying as an
3 | architect or as a planner?

4 | MR. PEREIRAS: Strictly as an architect.

5 | The -- I'm sorry, Mr. Marotta. Does this
6 | upset you?

7 | CHAIRMAN MAROTTA: It's frustrating.

8 | MR. PEREIRAS: Strictly as an architect.

9 | The front -- and -- and knowing Union City
10 | intimately, I could say this, the front line
11 | setback permitted in the district is zero feet on
12 | Bergenline Ave. The reality is that all the
13 | buildings that we see on Bergenline Avenue are
14 | actually set back two feet. The property line
15 | goes two feet forward.

16 | So, our entire building is shifted back,
17 | which allows us to be in conformance with the
18 | open and air requirements of the City, because
19 | you're not looking at just a rear yard. That
20 | doesn't qualify and encompass everything. It's
21 | what really the building -- the building coverage
22 | is.

23 | And our building coverage is 78 percent.
24 | So, that means we're two percent more than what
25 | the Ordinance even requires.

1 So, to answer the question about open and
2 air, yes, we fully comply and we're two percent
3 more.

4 CHAIRMAN MAROTTA: You need his help --
5 whenever you need his help, let us know.

6 Let's get back to this.

7 It's a fact, isn't it, that if you had a 20
8 foot rear yard --

9 MR. KAUKER: We'd have more light, air --

10 CHAIRMAN MAROTTA: -- that the Ordinance --

11 MR. KAUKER: -- and open space.

12 CHAIRMAN MAROTTA: You'd have more light
13 and air.

14 MR. KAUKER: Yes, we would.

15 CHAIRMAN MAROTTA: Isn't that correct?

16 MR. KAUKER: Yes, we would.

17 CHAIRMAN MAROTTA: And also, I can, through
18 you, let the architect know that the Supreme
19 Court of New Jersey said, we're not concerned
20 with other similar buildings in the area. We've
21 got to be concerned with how this effects our
22 Code.

23 Correct?

24 That's the Coventry case.

25 MR. KAUKER: That's the focus. You're

1 absolutely right.

2 CHAIRMAN MAROTTA: Okay. Let's clear that
3 up.

4 MR. KAUKER: But it is compatible with --

5 CHAIRMAN MAROTTA: So --

6 All right.

7 MR. KAUKER: -- surrounding -- that's --
8 that's a part of --

9 CHAIRMAN MAROTTA: Let me ask you this.

10 MR. KAUKER: -- negative criteria.

11 CHAIRMAN MAROTTA: This proposed use, it's
12 not one that inherently serves the public good,
13 is it?

14 MR. KAUKER: That's correct. So, special
15 reasons in Medici --

16 CHAIRMAN MAROTTA: Well, tell me --

17 MR. KAUKER: -- certainly apply.

18 CHAIRMAN MAROTTA: Tell me how this
19 promotes the general welfare, because the site is
20 particularly well suited for that use.

21 MR. KAUKER: Well, it's suited because the
22 generic reality of the zone permits residential,
23 but for the fact that it's not allowed on a first
24 floor in a CN to encourage maintenance,
25 preservation and operation of commercial services

1 within the CN.

2 I totally understand that.

3 But it does promote the general welfare by
4 the introduction and addition of a -- of a needed
5 ADA designed unit, and I think that's a benefit.

6 CHAIRMAN MAROTTA: Excuse me?

7 Isn't the test that it promotes the general
8 welfare because the site is particularly well
9 suited?

10 MR. KAUKER: That's correct.

11 CHAIRMAN MAROTTA: That's the test.

12 MR. KAUKER: That's correct.

13 CHAIRMAN MAROTTA: So tell me how it --

14 MR. KAUKER: And I had -- and I had
15 mentioned that initially. The singular point of
16 particular suitability relates to the fact that
17 the site is physically level and we're able to
18 accommodate on the first floor the kind of ease
19 of access to the AD (sic) unit that indeed is
20 required.

21 So, it enables us to provide the benefit
22 that emanates from the introduction of the AD
23 (sic) unit on the site.

24 CHAIRMAN MAROTTA: Tell me this, Mr.

25 Kauker, what are the unique characteristics of

1 | this site?

2 | MR. KAUKER: It's level. Simply, that's
3 | it.

4 | CHAIRMAN MAROTTA: What?

5 | MR. KAUKER: It's -- it's level. It's not
6 | sloped.

7 | CHAIRMAN MAROTTA: That's unique?

8 | MR. KAUKER: That's correct. It's
9 | accessible. That's -- that's a singular special
10 | reason.

11 | CHAIRMAN MAROTTA: Let me ask you this.

12 | The Code does not permit apartments on the
13 | street level.

14 | Correct?

15 | MR. KAUKER: That is correct.

16 | CHAIRMAN MAROTTA: Could this building be
17 | constructed pursuant to the Code?

18 | MR. KAUKER: Yes, it could.

19 | CHAIRMAN MAROTTA: And if it's constructed,
20 | the applicant will not suffer any undue hardship
21 | if it's constructed?

22 | MR. KAUKER: It could, but it would not be
23 | compliant with the State requirement.

24 | CHAIRMAN MAROTTA: What's the State --

25 | MR. KAUKER: That's -- that's --

1 CHAIRMAN MAROTTA: -- requirement?

2 MR. KAUKER: That that -- that AD (sic)
3 unit -- ADA units are required, number one. And
4 they're required to be accessible. And we don't
5 have an elevator building. So, in that context,
6 we have a hardship.

7 CHAIRMAN MAROTTA: Tell me, the Code -- the
8 statute has the purposes of the Municipal Land
9 Use Act.

10 MR. KAUKER: Yes.

11 CHAIRMAN MAROTTA: Could you tell me how
12 this proposed use fits in with the statute?

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

15 MR. KAUKER: It meets several of the
16 purposes of the Act --

17 CHAIRMAN MAROTTA: Tell me which ones?

18 MR. KAUKER: 40:55D-2. Obviously, do you
19 have that in front of you? Subsection A.

20 CHAIRMAN MAROTTA: Subsection which? A?

21 MR. KAUKER: A.

22 CHAIRMAN MAROTTA: A.

23 MR. KAUKER: Small A. It's 40:55D-2,
24 Purposes of the Act.

25 CHAIRMAN MAROTTA: How does that -- how

1 | does this use fit into Section A?

2 | MR. KAUKER: Because it promotes public
3 | health, safety, morals and general welfare. This
4 | is a well designed, contemporary, a new building
5 | that would essentially -- not withstanding the
6 | variance, result in a benefit to the
7 | neighborhood.

8 | CHAIRMAN MAROTTA: You're not -- you're not
9 | serious, are you, that this building promotes the
10 | public health of the City? You're not serious
11 | about that, are you?

12 | MR. KAUKER: Well, yes, it does, to a
13 | minimum --

14 | CHAIRMAN MAROTTA: The proposed --

15 | MR. KAUKER: -- extent because of the
16 | provision --

17 | CHAIRMAN MAROTTA: And it -- and it
18 | promotes --

19 | MR. KAUKER: -- of the handicapped unit.

20 | CHAIRMAN MAROTTA: It promotes the morals
21 | of the City.

22 | Is that correct?

23 | MR. KAUKER: No. Not directly. That --
24 | that part -- it doesn't have to meet each and
25 | every one of those objectives.

1 CHAIRMAN MAROTTA: What else? Is there
2 anything else besides A?

3 MR. KAUKER: To encourage good civic
4 design, certainly.

5 CHAIRMAN MAROTTA: Which -- which section?

6 MR. KAUKER: That is to promote a desirable
7 -- that's Subsection I, promote a desirable
8 visual environment.

9 CHAIRMAN MAROTTA: Through creative
10 development techniques.

11 MR. KAUKER: That's correct.

12 CHAIRMAN MAROTTA: What are the creative
13 development techniques here?

14 MR. KAUKER: I believe that the rendering
15 speaks for itself. That is a very well designed
16 façade, which is -- which enhances the area.

17 CHAIRMAN MAROTTA: I asked you about the
18 creative development techniques. You say that
19 that picture speaks for itself. It doesn't tell
20 me it's creative.

21 MR. KAUKER: Well, that's my impression and
22 that's my opinion.

23 CHAIRMAN MAROTTA: Okay.

24 MR. KAUKER: It certainly -- the piteous in
25 that realm can be in the eye of the beholder,

1 | that's for sure.

2 | CHAIRMAN MAROTTA: Anything else? Any
3 | other section?

4 | MR. KAUKER: To provide sufficient space in
5 | appropriate locations for a variety of uses.

6 | CHAIRMAN MAROTTA: Which section? Tell me
7 | which section.

8 | MR. KAUKER: That is -- I'm sorry -- is G.

9 | CHAIRMAN MAROTTA: Which one?

10 | MR. KAUKER: G.

11 | CHAIRMAN MAROTTA: G?

12 | MR. KAUKER: G.

13 | CHAIRMAN MAROTTA: To provide sufficient
14 | space.

15 | MR. KAUKER: In appropriate --

16 | CHAIRMAN MAROTTA: Over here, you're taking
17 | space away.

18 | MR. KAUKER: Well, yeah, but we're
19 | replacing it with a -- a very beneficial ADA unit
20 | use.

21 | CHAIRMAN MAROTTA: Tell me how the MLUL
22 | would be advanced by granting this variance?

23 | MR. KAUKER: Well, I'm citing the sections
24 | that enable me to represent that it does. That's
25 | the Burbridge case.

1 Isn't it, Mr. Marotta?

2 CHAIRMAN MAROTTA: Yeah.

3 MR. KAUKER: Yeah, it is.

4 CHAIRMAN MAROTTA: Not the way I read it.

5 MR. KAUKER: To promote the -- item E --

6 CHAIRMAN MAROTTA: Okay. I have no more
7 questions.

8 MR. KAUKER: Okay.

9 Sorry.

10 CHAIRMAN MAROTTA: Anybody else have any
11 questions?

12 Have any other witnesses?

13 MS. PEREIRAS: No. That would conclude our
14 --

15 CHAIRMAN MAROTTA: Is the --

16 MS. PEREIRAS: -- experts.

17 CHAIRMAN MAROTTA: -- applicant here?

18 MS. PEREIRAS: The applicant --
19 representative of the applicant is here.

20 CHAIRMAN MAROTTA: I'd like to have that
21 person.

22 MS. PEREIRAS: Sure.

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

25 MR. DILLON: Please raise your right hand.

1 Do you swear the testimony you're about to
2 give this Board is the whole truth?

3 MR. VARGAS: Yes, sir.

4 MR. DILLON: State your name and spell it
5 for the record.

6 MR. VARGAS: Edwin Vargas, first name
7 E-D-W-I-N. Last name's Vargas, V as in Victor,
8 A-R-G-A-S.

9 MR. DILLON: Thank you.

10 MR. VARGAS: You're welcome.

11 CHAIRMAN MAROTTA: Okay. You're a
12 representative of the applicant?

13 MR. VARGAS: Yes, sir.

14 CHAIRMAN MAROTTA: In what capacity?

15 I'll wait.

16 MR. VARGAS: I'm his realtor.

17 CHAIRMAN MAROTTA: What?

18 You're -- you're his realtor?

19 MR. VARGAS: Yes, sir. And general
20 contractor.

21 CHAIRMAN MAROTTA: Let me ask you this. If
22 you know, if you don't know, you'll tell me you
23 don't know.

24 Did the applicant know, prior to purchasing
25 this property, what the zoning was?

1 MR. VARGAS: He wasn't a hundred percent
2 sure. He was going according to what was
3 approved next door to the right and to the left.

4 CHAIRMAN MAROTTA: No. That's not
5 answering my question.

6 MR. VARGAS: He did not know.

7 CHAIRMAN MAROTTA: He did not know.

8 MR. VARGAS: No, sir.

9 CHAIRMAN MAROTTA: He was not told by you
10 or by the attorney what the zoning requirements
11 are?

12 MR. VARGAS: No, sir.

13 CHAIRMAN MAROTTA: Why is he putting an
14 apartment on the ground floor, if you know, when
15 it's not permitted?

16 MR. VARGAS: Like I don't know if it's
17 conflict of interest, but we're going by what was
18 done on the two units -- property adjoining --
19 adjoined to this property.

20 CHAIRMAN MAROTTA: In other words --

21 MS. PEREIRAS: If I may?

22 CHAIRMAN MAROTTA: -- you're saying that
23 because the other properties have it, that's why
24 you did it?

25 MS. PEREIRAS: No. Mr. Marotta, this

1 applica -- and I did not represent this buyer on
2 this purchase, this application has been -- was
3 submitted and purchased during the onset
4 following our submission.

5 So, I think they were -- they took on the
6 application after the fact.

7 CHAIRMAN MAROTTA: Well, what disturbs me
8 is the base -- is the ground floor apartment.

9 Number one, we have a -- an extended --
10 you're taking away -- you need 20 foot rear yard.
11 You don't have it.

12 MS. PEREIRAS: Um hum.

13 CHAIRMAN MAROTTA: That's number one.

14 Number two, we need ten parking spaces. I
15 didn't even raise that with the -- with the
16 planner.

17 MS. PEREIRAS: Sure.

18 CHAIRMAN MAROTTA: Because -- because he
19 couldn't answer that.

20 All right?

21 And -- and still, that doesn't disturb me
22 too much. What disturbs me more is the apartment
23 on the ground floor.

24 Our Zoning Ordinance doesn't require it and
25 I feel that that's not consistent with the Zoning

1 Ordinance.

2 MS. PEREIRAS: And as you heard from the
3 testimony, one of our --

4 CHAIRMAN MAROTTA: That's why I want to
5 know if you -- if the applicant was here, I would
6 ask the applicant if he would give up the street
7 level apartment.

8 MS. PEREIRAS: Well, there's two issues
9 that -- that we feel we cannot give it up.

10 The first, we don't want to create any
11 vacancies on Bergenline Avenue. Unfortunate --
12 we all know it, there are many vacancies; Summit
13 Avenue, Bergenline Avenue.

14 Why? Because these commercial areas are so
15 large that it's very difficult to rent. So,
16 we're trying to provide enough space to have a
17 good business there, without making it too
18 excessive.

19 And again, I think a commercial space,
20 completely overtaking that ground floor, is too
21 much.

22 We also want to comply with federal law.
23 And there's a federal law that says we require to
24 provide an ADA compatible building. In order to
25 provide an ADA compatible building, our only

1 option is to create a ground floor apartment.

2 CHAIRMAN MAROTTA: You know what disturbs

3 --

4 MS. PEREIRAS: So, for those two major
5 components --

6 CHAIRMAN MAROTTA: I'm sorry.

7 MS. PEREIRAS: -- that's why we have this
8 --

9 CHAIRMAN MAROTTA: I'm sorry to interrupt
10 you.

11 MS. PEREIRAS: -- application before the
12 Board.

13 CHAIRMAN MAROTTA: What disturbs me here --

14 MS. PEREIRAS: Um hum.

15 CHAIRMAN MAROTTA: -- is -- and that's why
16 I wanted the applicant, is that I -- I think the
17 basement -- the ground floor apartment is to give
18 him additional income. I think that's why he
19 went with the ground floor apartment.

20 MS. PEREIRAS: I think we know commercial
21 spaces --

22 CHAIRMAN MAROTTA: And if that's so, I'm
23 against it.

24 MS. PEREIRAS: That's definitely not the
25 case. If it was a --

1 CHAIRMAN MAROTTA: Well, I don't --

2 MS. PEREIRAS: -- commercial space --

3 CHAIRMAN MAROTTA: He's not here.

4 MS. PEREIRAS: -- and we were to rent a
5 very large commercial space, we could probably
6 rent it for significantly more.

7 Mr. Vargas is a realtor. He would be --

8 MR. VARGAS: Yes.

9 MS. PEREIRAS: -- able to give us knowledge
10 as to what a commercial space rents for,
11 especially in Union City.

12 MR. VARGAS: A lot more than a -- than an
13 apartment, but it will cause --

14 MS. PEREIRAS: So, it's definitely not --

15 MR. VARGAS: -- hardship -- it will cause
16 hardship to the landlord with its vacancy.

17 MS. PEREIRAS: I don't think we want to
18 drive down Bergenline Avenue, or walk down
19 Bergenline Avenue and see an empty business
20 storefront. And that's what we would be creating
21 if we have this massive commercial space on the
22 ground floor.

23 That is our thoroughfare. That is our most
24 important thoroughfare in this town, with very
25 pedestrian friendly. We like to see people

1 walking down that street and seeing businesses
2 and seeing it alive.

3 CHAIRMAN MAROTTA: In other words, what
4 you're saying is that the -- the property to the
5 north and south of this property --

6 MS. PEREIRAS: Yes.

7 CHAIRMAN MAROTTA: -- have street level
8 apartments?

9 MS. PEREIRAS: Yes. I didn't say that, but
10 yes that is correct.

11 New construction requires you to provide an
12 ADA compatible building. So, in order to comply
13 with that, this is our --

14 CHAIRMAN MAROTTA: Evidently I wasn't --

15 MS. PEREIRAS: -- only option.

16 CHAIRMAN MAROTTA: -- here when that --
17 when those applications were made.

18 MS. PEREIRAS: Um hum.

19 CHAIRMAN MAROTTA: I'll approve -- make a
20 motion to approve the application.

21 THE SECRETARY: Motion to approve the
22 application by Chairman Marotta.

23 MS. GUTIERREZ: I'm seconding.

24 THE SECRETARY: Second by Ms. Gutierrez.

25 Roll call on the motion to approve this

1 application.

2 Mr. Marotta?

3 CHAIRMAN MAROTTA: Yes.

4 THE SECRETARY: Ms. Gutierrez?

5 MS. GUTIERREZ: Yes.

6 THE SECRETARY: Mr. Grullon?

7 MR. GRULLON: Yes.

8 THE SECRETARY: Mr. Pressey?

9 MR. PRESSEY: Yes.

10 THE SECRETARY: Mr. Medina?

11 MR. MEDINA: Yes.

12 THE SECRETARY: Mr. Ortiz?

13 MR. ORTIZ: Yes.

14 THE SECRETARY: Six in favor.

15 Motion carries.

16 MS. PEREIRAS: Thank you all, very, very
17 much.

18 Thank you.

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

21 * * *

22

23

24

25

1 **MBP Hoist and Crane, LLC - 1221 New York Avenue:**

2

3 THE SECRETARY: Next application on
4 tonight's agenda, MBP Hoist and Crane, LLC, 1221
5 New York Avenue.

6 Mrs. Pereiras, please?

7 MS. PEREIRAS: Thank you, Mr. Vallejo.

8 Again, Bianca Pereiras, on behalf of the
9 applicant, MBP Hoist and Crane, LLC, for property
10 located at 1221 New York Avenue.

11 We previously submitted our proofs for
12 jurisdiction at the last meeting and jurisdiction
13 was established then.

14 MR. PANEQUE: That is correct.

15 MS. PEREIRAS: We have not presented any
16 testimony, so I'd like to begin with our
17 architect, Mr. Manuel Pereiras.

18 Very briefly, we have a similar mixed use
19 building. We are looking to propose five
20 residential units, with one commercial.

21 Mr. Pereiras?

22 MR. PEREIRAS: I recognize I am still under
23 oath.

24 MS. PEREIRAS: Mr. Pereiras, are you
25 familiar with the property at 1221 New York

1 Avenue?

2 MR. PEREIRAS: I am.

3 MS. PEREIRAS: And did you prepare the
4 drawings that are before the Board this evening?

5 MR. PEREIRAS: I -- I have.

6 MS. PEREIRAS: And would you kindly walk us
7 through the application?

8 MR. PEREIRAS: I'd be very happy to.

9 I'm very intimately familiar with this
10 because I entered that establishment pretty much
11 every day of my life, growing up. So, I am very
12 familiar with the area.

13 And every application stands a hundred
14 percent on its own, not influenced by other
15 applications. But this is almost the same thing
16 as the last one, except a lot better for various
17 reasons.

18 We have less variances and we're
19 introducing something new here, parking. We have
20 an amazing situation that we are on the corner of
21 13th and New York Avenue. And since we are on a
22 corner, we have additional space along the rear
23 that allows us to have a curb cut, which is
24 actually an existing curb cut, and we can provide
25 parking for two cars along that back.

1 And we don't have the issue that we have on
2 Bergenline Avenue, where we can't comply with the
3 front yard setback, where it's like weird and
4 stepped back, so we comply with a zero foot
5 setback there.

6 So, we have a 20 foot rear yard. We have
7 zero on the front, zero on the sides as
8 compliant. And we have the same exact situation,
9 except we have also slightly better, as well,
10 from the last one, that we have a full 25 foot
11 width.

12 So, we removed a variance for the lot width
13 and we removed the variance for the lot -- the
14 lot area, because now we have a full 2500.

15 So, it's similar to the last application,
16 except two variances less and our parking
17 variance is significantly less.

18 Just to go over the plan design. The other
19 thing that makes this significantly better is
20 because it's on a corner, it gives me a lot of
21 opportunity to make a lot more design choices
22 that makes the building even more attractive.

23 We have two facades to play with.
24 Actually, three, because even the rear one is
25 exposed. And that allows me to play with larger

1 windows, greater windows and create a rhythm, and
2 it allows me to wrap that storefront to the side,
3 which makes it extremely attractive. And it
4 allows me to separate the entrance, so that the
5 front of the building isn't shared between
6 residential and commercial.

7 I kept the commercial on New York Avenue.
8 So, you have a full storefront there. When the
9 building wraps the corner, you have a full
10 storefront along -- along the front of the
11 building. And then all the residential entry to
12 the building happens further towards 13th Street.
13 So, it's a complete isolation between the
14 residential component and the commercial
15 component.

16 So, in this situation where we have our ADA
17 compliant unit, it's accessed independently
18 through the residential area and completely
19 separate from the commercial.

20 So, we're keeping the commercial unit along
21 the front. It's 711 square feet. It works
22 really well because it's a nice large square. It
23 makes it more attractive for any commercial
24 potential tenant.

25 And then, the ADA unit, along the back, you

1 have access directly from the street, with ADA
2 kitchen, ADA bathroom, ample space to move
3 around, the bedrooms are ADA compliant, as well.

4 And then, you have the same layout above,
5 where you have two bedrooms on each side. The
6 bedroom to the rear is actually larger than the
7 previous application. It's 827 square feet in
8 this case, and 784. And that's because the lot
9 is bigger. It's wider and we gain those two feet
10 along the front.

11 And then, the floor above is exactly the
12 same thing. And it's an open layout. You have
13 open kitchen, dining room, living room space.
14 And then, the two bedrooms along the rear.

15 But what makes this even better is because
16 we have the windows along the sides. So, it
17 gives us that wonderful opportunity. It will be
18 a building that's compliant with federal
19 guidelines for ADA accessibility.

20 Those aren't guidelines -- it's not even
21 Union City, it's not even New Jersey, it's the
22 federal government is telling us we need ADA unit
23 in this building, and that's why we have that
24 unit on the ground floor. And it's allowing us
25 to make it a unit that someone could actually

1 rent. That building has forever had two
2 commercial units. The existing building that's
3 there.

4 And that second unit in the back has been
5 forever empty. He would get a tenant. They
6 would be there for two months. They couldn't pay
7 rent. He would get them out.

8 For as long as I remember, that has been
9 this case in there, which kind of proves the
10 point why it's important to have a smaller
11 commercial unit along the front, and then the
12 residential in the back, as well as the federal
13 government telling us, hey, you need to do this.

14 So, that concludes my testimony. I could
15 go into more detail, but I don't think it's
16 necessary.

17 CHAIRMAN MAROTTA: Anybody have any
18 questions?

19 Anybody from the audience have any
20 question?

21 MR. GRULLON: I have a question.

22 Mr. Pereiras, on the site plan, you're only
23 providing two parking spaces?

24 MR. PEREIRAS: Yes. So, the only ability
25 that we have is to have two. We have a 25 foot

1 wide. We want sufficient area to contain all the
2 garbage for the building. So, that's located
3 along the rear. And then, the two parking spaces
4 there.

5 So, obviously, we have a parking variance,
6 but you know, we're still -- we don't want to
7 have a curb cut on New York Avenue. We can't
8 have more parking within the building, because we
9 need to comply with that apartment on the ground
10 floor, and we need to have the commercial space
11 in order to comply.

12 MR. GRULLON: And the requirement is 12
13 parking spaces?

14 MR. PEREIRAS: Yes.

15 MR. GRULLON: And according to the existing
16 condition, you have three spaces?

17 MR. PEREIRAS: You -- I don't know why it's
18 referenced as three spaces. They really weren't,
19 because one of the spaces was behind an existing
20 light pole. So, there were two spaces, and then
21 the third space, a car would have to like back,
22 back, forward in order to get to the third space.

23 So, I don't think it's fair to say that
24 there were three spaces. There really were two.
25 I know we show three there.

1 MR. GRULLON: And what's existing there
2 right now?

3 MR. PEREIRAS: In what --

4 MR. GRULLON: How many apartments?

5 MS. PEREIRAS: I don't know.

6 MR. PEREIRAS: I believe there's one large
7 one. The -- the former owner, the -- he used to
8 be a Planning Board member, wonderful gentleman.
9 I believe he lived there on his own.

10 I don't know what the -- the record's at.

11 MR. GRULLON: But it's not an empty lot
12 right now.

13 MR. PEREIRAS: No, it's not. There's an
14 existing structure there. There's two commercial
15 units and there's residential above. I believe
16 it's just one unit.

17 MR. GRULLON: I have no more question.

18 Thank you, Mr. Pereiras.

19 CHAIRMAN MAROTTA: Any more questions?

20 From the audience, any questions?

21 Call your next witness, please.

22 MS. PEREIRAS: Of course.

23 Mr. Kauker?

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

1 MR. KAUKER: Back again.

2 MS. PEREIRAS: Mr. Kauker, are you familiar
3 with the property located at 1221 New York
4 Avenue?

5 MR. KAUKER: Yes, I am.

6 MS. PEREIRAS: And have you had an
7 opportunity to review the drawings prepared by
8 the architect?

9 MR. KAUKER: I have.

10 MS. PEREIRAS: And would you kindly
11 describe this project from a planning
12 perspective?

13 MR. KAUKER: This property, as with the
14 last application, located in the CN district. It
15 -- the application, in effect, pursuant to David
16 Spatz's July 17, 2017 report, essentially
17 requires a use variance.

18 There is an addition to that use variance,
19 which is under Medici, the Puleio case which has
20 determined that any bulk deviations are subsumed
21 within the use variance.

22 In this instance, Puleio is -- is really
23 only applicable to the one out of ten
24 requirements that we do not adhere to, or conform
25 to, and that's the parking requirement.

1 I think that that, to some extent, is
2 minimized by the ability to have two spaces on
3 the site.

4 The -- the D-1 use variance that is before
5 you is essentially to enable a deviation from the
6 Ordinance whereby residential units are not
7 permitted on the first floor, only commercial
8 activities.

9 In this instance, we have a situation where
10 the breakdown between the -- the commercial space
11 and the proposed two bedroom unit to the rear is
12 somewhat flip flop. The commercial, at 711
13 square feet, is for the commercial space.
14 However, one distinguishing characteristic of
15 this application is that because the commercial
16 façade frames the corner on -- on both -- both
17 streets, 13th and New York Ave., the commercial
18 space essentially reads as a very nicely
19 designed, discreet, separate commercial space.
20 It's a very long and narrow building as it faces
21 the street, on 13th Ave., which essentially is
22 ideally suited to accommodate the separation,
23 visually and physically between the residential
24 portion to the rear and the commercial two façade
25 -- a portion to the front.

1 The entry is certainly to the residential
2 ADA unit on the first floor is concentrated and
3 focused on the rear, which is closer and
4 certainly compatible to the residential
5 environment to the interior.

6 So, the fact that this property is on the
7 corner, I think, is a distinguishing
8 characteristic and one, a special reason for this
9 particular use variance application.

10 In terms of negative criteria, I believe
11 that because the commercial space, which is a
12 principal objective of the Ordinance is
13 maintained, notwithstanding the fact that the
14 residential portion is certainly not permitted,
15 that this application poses certain benefits that
16 outweigh any of the detriments to the purpose and
17 intent of the Ordinance, because indeed, we're
18 maintaining a -- a substantial 711 square feet
19 commercial component.

20 That concludes my observations and
21 opinions.

22 Thank you for your time.

23 CHAIRMAN MAROTTA: Any questions of Mr.
24 Kauker?

25 Anybody from the audience any questions?

1 Yeah. I might have one or two.

2 Mr. Kauker, there's nothing unique about
3 this southwest corner of 13th and New York Avenue.

4 MR. KAUKER: Other than the fact that it's
5 a corner property and it has those
6 characteristics as differentiated from the -- you
7 know, just --

8 CHAIRMAN MAROTTA: In other words, if you
9 went to the southwest corner of --

10 MR. KAUKER: From any other corner.

11 CHAIRMAN MAROTTA: -- 14th Street --

12 MR. KAUKER: You're absolutely right.

13 CHAIRMAN MAROTTA: Nothing unique about it.
14 Right?

15 MR. KAUKER: As it relates to the layout of
16 Union City. You're absolutely right.

17 CHAIRMAN MAROTTA: Let me ask you this.

18 Are you familiar with the residential
19 parking, on-street parking in Union City?

20 MR. KAUKER: Generally, yes.

21 CHAIRMAN MAROTTA: Well, tell me why you're
22 -- tell me about --

23 MR. KAUKER: Well, it's -- it's one of the
24 main challenges that an urban area, as dense as
25 Union City, constantly faces.

1 CHAIRMAN MAROTTA: When you say main
2 challenges, do you mean that --

3 MR. KAUKER: It's -- it's a problem that --

4 CHAIRMAN MAROTTA: -- it's difficult to
5 park.

6 MR. KAUKER: It's -- it's --

7 CHAIRMAN MAROTTA: Is that what you mean?

8 MR. KAUKER: It's a big problem.

9 CHAIRMAN MAROTTA: It's difficult to park.

10 MR. KAUKER: It's a --

11 CHAIRMAN MAROTTA: It's a big problem.

12 Right?

13 MR. KAUKER: It's a big problem.

14 CHAIRMAN MAROTTA: I mean, you've been
15 around Union City now for quite a few years.

16 MR. KAUKER: Absolutely.

17 CHAIRMAN MAROTTA: Right?

18 MR. KAUKER: Absolutely.

19 Not as long as you.

20 CHAIRMAN MAROTTA: Yeah. You know -- you
21 know that the City adopted an Ordinance to permit
22 parking in bus stops.

23 You know that, don't you?

24 MR. KAUKER: I -- I'm aware of that. Yes.

25 CHAIRMAN MAROTTA: Because of the parking

1 situation.

2 Correct?

3 MR. KAUKER: Yes.

4 CHAIRMAN MAROTTA: Now, this here
5 application, you're required 12 parking spaces.

6 MR. KAUKER: That's correct.

7 CHAIRMAN MAROTTA: And you're providing
8 two.

9 MR. KAUKER: Yes.

10 CHAIRMAN MAROTTA: In other words, you're
11 giving us 16 percent of what we need.

12 MR. KAUKER: That's correct.

13 CHAIRMAN MAROTTA: Or you're giving us 84
14 percent less. That's quite substantial, isn't
15 it?

16 MR. KAUKER: Absolutely. Absolutely.

17 CHAIRMAN MAROTTA: Are you aware of the
18 fact that on 13th Street, between New York and
19 Bergenline Avenue, maybe a stone's throw from
20 here, there's an eight story building that's near
21 completion?

22 MR. KAUKER: Vaguely. Vaguely familiar
23 with that. Yes.

24 CHAIRMAN MAROTTA: Um hum.

25 Let me ask you this.

1 That -- that building, that eight story
2 building that's near completion, that does not
3 have adequate off-street parking either. In
4 other words, that's lacking in --

5 MR. KAUKER: It's short.

6 CHAIRMAN MAROTTA: -- parking.

7 MR. KAUKER: Yes.

8 CHAIRMAN MAROTTA: And over here, we got
9 another ten lacking.

10 Right?

11 MR. KAUKER: You're absolutely correct.

12 You know --

13 CHAIRMAN MAROTTA: Now, let me ask you this
14 question.

15 MR. KAUKER: Sure.

16 CHAIRMAN MAROTTA: Because of the problems
17 we have in Union City with parking, do you think
18 putting more cars on the street, sort of
19 endangers the people in the City?

20 MR. KAUKER: It -- it doesn't help to solve
21 the parking --

22 CHAIRMAN MAROTTA: It doesn't.

23 MR. KAUKER: -- demand problem.

24 CHAIRMAN MAROTTA: It doesn't help solve
25 it.

1 Right?

2 MR. KAUKER: Doesn't help.

3 CHAIRMAN MAROTTA: It hurts it, though --

4 MR. KAUKER: We, on this --

5 CHAIRMAN MAROTTA: Excuse me?

6 MR. KAUKER: Yeah.

7 CHAIRMAN MAROTTA: Excuse me?

8 It doesn't help solve it.

9 MR. KAUKER: That's correct.

10 CHAIRMAN MAROTTA: But it does hurt it.

11 MR. KAUKER: Yes, that's correct.

12 CHAIRMAN MAROTTA: I have no more
13 questions.

14 MR. KAUKER: Thank you.

15 CHAIRMAN MAROTTA: Anybody else, any
16 questions?

17 MS. PEREIRAS: And if I --

18 CHAIRMAN MAROTTA: Okay.

19 MS. PEREIRAS: Mr. Marotta, if I can just
20 address one of your comments?

21 I believe the eight story building that
22 you're referencing is one that we actually worked
23 on ourselves. And I think, if Mr. Pereiras
24 recalls the project, he can give us a little more
25 testimony on that.

1 MR. PEREIRAS: The parking requirement was
2 satisfied in that building. There is no --

3 CHAIRMAN MAROTTA: I didn't hear you.

4 MR. PEREIRAS: The parking requirement was
5 satisfied in that building.

6 CHAIRMAN MAROTTA: Okay.

7 MR. PEREIRAS: You mentioned the adjacent
8 property, I think it's just as important --

9 CHAIRMAN MAROTTA: All right. Okay.

10 MR. PEREIRAS: -- to understand that it was
11 satisfied completely.

12 CHAIRMAN MAROTTA: All right.

13 MR. PEREIRAS: And there were extra spaces
14 left over, which when completed, will be rented
15 to the neighborhood, which will greatly improve
16 parking in that area.

17 CHAIRMAN MAROTTA: Thank you very much.

18 MR. PEREIRAS: You're welcome.

19 CHAIRMAN MAROTTA: Now, I'm familiar with
20 this area because I live close by to this area.
21 I don't believe the applicant has proved its
22 case, either the positive criteria or the
23 negative criteria.

24 According to our Code, the purpose of our
25 zoning is to regulate the use of land within

1 zoning districts; secure safety from fire, flood,
2 panic, and other natural and manmade disasters.
3 Automobile accidents are manmade disasters.

4 We have the -- on -- if you're familiar
5 with it, if you drive down 13th Street, you see
6 that building that's near completion. How many
7 more cars are we going to put on the streets of
8 Union City?

9 I find the off-street parking -- in
10 addition to the fact that they haven't proved the
11 negative or positive criteria, I find the off-
12 street parking to be inadequate, I find it would
13 create significant congestion, as well as being a
14 safety hazard, and would have a detrimental
15 effect, not only on the community, but
16 specifically on that area.

17 So, therefore, I make a motion to deny this
18 application.

19 THE SECRETARY: Motion on the table to deny
20 the application by Chairman Marotta.

21 MR. GRULLON: I second the motion --

22 THE SECRETARY: Second by?

23 MR. GRULLON: -- to deny the application.

24 THE SECRETARY: By Mr. Grullon.

25 Roll call on the motion to deny this

1 application.

2 Mr. Marotta?

3 CHAIRMAN MAROTTA: Yes.

4 THE SECRETARY: Mr. --

5 Ms. Gutierrez?

6 MS. GUTIERREZ: Yes.

7 THE SECRETARY: Mr. Grullon?

8 MR. GRULLON: Yes.

9 THE SECRETARY: Mr. Pressey?

10 MR. PRESSEY: Yes.

11 THE SECRETARY: Mr. Medina?

12 MR. MEDINA: Yes.

13 THE SECRETARY: Mr. Ortiz?

14 MR. ORTIZ: Yes.

15 THE SECRETARY: Six in favor.

16 Motion carries. The appli --

17 MS. PEREIRAS: Counsel, if I may?

18 And I wasn't given a moment to --

19 THE SECRETARY: Application has been
20 denied.

21 MS. PEREIRAS: -- do a summation or to react
22 to any of the comments made by Mr. Marotta.

23 I object to this motion being made at this
24 time. There was reference to another application
25 that the representation to the Board, from a very

1 Board member, was incorrect as to the parking.

2 And I don't think that is a fair basis to make a
3 determination.

4 So, I voice my objection on the record.

5 MR. PANEQUE: Your objection is noted. And
6 my recollection is that Mr. Marotta just
7 mentioned that there was a project going up in
8 the area.

9 MS. PEREIRAS: He mentioned that there was
10 an eight story building on that street.

11 MR. PANEQUE: Correct.

12 MS. PEREIRAS: And that it had insufficient
13 parking.

14 MR. PANEQUE: I --

15 MS. PEREIRAS: And the parking seems to be
16 the major concern here. Again, it's the only --

17 MR. PANEQUE: Yeah.

18 MS. PEREIRAS: -- variance we're seeking
19 besides a use variance.

20 MR. PANEQUE: I don't have a perfect
21 recollection, so I can't tell you that Mr.
22 Marotta said that there was insufficient parking
23 on that project. I -- I recall --

24 MS. PEREIRAS: That was a --

25 MR. PANEQUE: -- him saying there was a

1 project and he did mention that there's
2 insufficient parking in general in Union City.

3 Mr. Marotta, do you want to respond to
4 that?

5 CHAIRMAN MAROTTA: I remember when there
6 was an application made for that project.

7 Okay?

8 My position is that we do have a very
9 serious parking problem in Union City, for
10 residents of Union City. And that to give those
11 -- 16 percent of what we need is out of -- out of
12 sight. And I believe that this would create a
13 hazard to the City, and particularly to the
14 people in that area.

15 MS. PEREIRAS: And again, I think the eight
16 unit building, and that's why I focus on that,
17 because that had several applications before this
18 Board in the past.

19 There was a previous applicant. An
20 application was approved. That was appealed. We
21 came back with a much better application that
22 provided significant parking to the rear of it,
23 to the side of it, and within the building.

24 So, that's why I take offense to those
25 comments.

1 And again, I don't think I had an
2 opportunity to address those additional concerns
3 made by Mr. Marotta. So, I think the motion was
4 untimely.

5 CHAIRMAN MAROTTA: Assuming -- assuming
6 that that eight story building, or seven or eight
7 story building, has sufficient parking, still we
8 have a problem here with -- with the parking
9 situation here.

10 MR. PANEQUE: Mr. Marotta, the objection,
11 as I understand it, by Ms. Pereiras, is that she
12 was not given an opportunity to address the Board
13 at the conclusion of your comments.

14 Okay. You are the Chairman, you run this
15 Board, you call for a motion. It's your call.

16 CHAIRMAN MAROTTA: We -- we voted already.
17 That's it.

18 MR. PANEQUE: Ms. Pereiras?

19 CHAIRMAN MAROTTA: Look --

20 MR. PANEQUE: At this point --

21 CHAIRMAN MAROTTA: Mr. Paneque?

22 MR. PANEQUE: Yes.

23 CHAIRMAN MAROTTA: Anybody who's
24 dissatisfied with a decision of this Board, they
25 know where they could go.

1 MR. PANEQUE: Correct.

2 Ms. Pereiras, I was -- I was going to state
3 your recourse would be --

4 MS. PEREIRAS: Sure.

5 MR. PANEQUE: -- to the courts.

6 MS. PEREIRAS: And just in my experience
7 with this Board, we are given a final opportunity
8 to address this Board --

9 MR. PANEQUE: Um hum.

10 MS. PEREIRAS: -- and I expect that in --
11 in all applications.

12 MR. PANEQUE: Noted.

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1 CHJS Holdings, LLC - 320 38th Street:

2

3 THE SECRETARY: Next application on
4 tonight's agenda, CHJS Holding, LLC, 320 38th
5 Street.

6 Ms. Pereiras, please?

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

9 THE SECRETARY: Go ahead, Mrs. Pereiras.

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

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

15 I have a certification as to publication
16 and service indicating that notice of tonight's
17 meeting, with respect to the property located at
18 320 38th Street, Union City, New Jersey, was sent
19 out to all property owners within a 200 foot
20 radius, as well as published in the local
21 newspaper.

22 Said certification indicates it was
23 published December 30th, 2017.

24 I've also been provided with an Affidavit
25 from The Jersey Journal, indicating that notice

1 of tonight's hearing for January 11th, with
2 respect to the property at 320 38th Street was
3 published in The Jersey Journal on December 30th,
4 2017.

5 I've also been provided with a copy of the
6 Tax Assessor's list, indicating all property
7 owners within the 200 foot radius of 320 38th
8 Street. Said list was done on December 27th,
9 2017.

10 I've also been provided with the certified
11 mail receipts with a postmark date of December
12 30th, 2017, as well as the green cards and
13 envelopes that have come back to date.

14 Based on the documentation that's been
15 provided by Ms. Pereiras, this Board has
16 jurisdiction to proceed and hear this matter.

17 THE SECRETARY: Thank you, Mr. Paneque.

18 MS. PEREIRAS: Again, Bianca Pereiras on
19 behalf of CHJS Holdings, LLC, for property
20 located right here, 320 38th Street.

21 As you all know, this property is located
22 right next to this Municipal Building, that we
23 have a one story garage located onsite. What we
24 are looking to do is to create a second and third
25 story addition for use by a mixed media company.

1 We have two experts to testify before the
2 Board this evening, and I'd like to begin the
3 presentation with our architect, Mr. Manuel
4 Pereiras.

5 MR. PEREIRAS: I recognize I am still under
6 oath.

7 MS. PEREIRAS: Mr. Pereiras, are you
8 familiar with the property in question?

9 MR. PEREIRAS: I am.

10 MS. PEREIRAS: And did you prepare the
11 drawings before the Board?

12 MR. PEREIRAS: I have.

13 MS. PEREIRAS: And would you kindly walk us
14 through the application?

15 MR. PEREIRAS: I'd be happy to.

16 Right around the corner, we have an
17 existing building. It's a brick structure. You
18 could see the photograph of it right here.

19 It currently occupies the full site. It's
20 on the property line along the front, property
21 line along the sides.

22 And housed within that is a mix media lab,
23 a studio. What is that? Okay. We all know like
24 -- and this is a very simple explanation of it,
25 but we all know like little YouTube videos, and

1 | things of that nature that get filmed, well they
2 | get filmed in a place like this.

3 | And the requirements in order to make these
4 | things happen are becoming a little bit more and
5 | more sophisticated. You need full sound
6 | isolation, and in order to have full sound
7 | isolation, it takes up a lot of wall space, and
8 | also they need a lot more volume. So, they need
9 | large voluminous spaces, because these things are
10 | getting more and more sophisticated to film.

11 | So, the same company that's operating there
12 | now needs more space. So, we're not -- we're
13 | proposing to make two addition -- a two level
14 | addition to this building, but we're not
15 | proposing to change the number of people working
16 | there in any way, the -- the amount of business
17 | that's happening, it's the same work, just being
18 | done a lot more comfortably. And we're proposing
19 | two story addition in order to make that happen.

20 | And we were very considerate in how we're
21 | doing this two story addition.

22 | The current building is currently on the
23 | property line, where you have two structures to
24 | the side. One of them is only three feet away
25 | from the property line, and the other one is --

1 is seven feet away.

2 In order to make this very comfortable and
3 appealing to the eye, we stepped our second floor
4 seven feet so it matches the condominium building
5 to the side of it.

6 So, our second floor, and I'm referring to
7 the rendering here, this is the condominium
8 building. We're in-line with it on our setback
9 along there. And in order to comply with more
10 open and air space along the rear of the
11 property, we're stepping that back also ten feet
12 from the top level, as well.

13 So, we have these two protruding back on
14 each side, but we're stepping it back ten feet
15 there.

16 Our planner's going to go into the details
17 of the -- of the variances that we seek in a lot
18 more detail, but just so that you understand
19 simply how this space is, we have very voluminous
20 spaces. So, this studio, along the rear, is
21 really a large two story space. And that's what
22 we're doing here with this space.

23 The front of the building, we're using
24 those garage doors in order to make it wider and
25 be able to have parking for four cars within the

1 building, which satisfies those needs right now
2 of how they operate. It would be the same number
3 of employees today as it will be when this
4 addition would be constructed.

5 And we're simply providing all the -- the
6 basic infrastructure necessary in order to have
7 this three story structure.

8 There's a small -- small elevator,
9 wheelchair lift actually, and stairs, two sets of
10 stairs, and just a simple kitchenette and other
11 simple things in order to run the business.

12 If you turn to the next page, you
13 understand the volume of how this operates. So,
14 this becomes a large volume studio and then we
15 have multiple studios in order to do different
16 parts of their business.

17 When we construct this, we're basically
18 going to be constructing very sophisticated sound
19 studios. The walls are going to be double
20 layered, basically you create a shell within a
21 shell in order to isolate sound. And I -- I
22 mention that, because it's very important because
23 anything that happens in there, does not disturb
24 any neighbors anywhere outside. It's completely
25 contained within the structure of this building.

1 Why? Because it's important to them not to get
2 any outside noise. So, they take extreme care
3 and extreme money goes into this, creating this
4 shell, in order to isolate the sound, which is
5 great for the neighboring resident -- residential
6 along the -- the east side.

7 Concludes my testimony. I could speak more
8 at length at this, but I'm open to your
9 questions.

10 CHAIRMAN MAROTTA: Any questions from
11 members of the Board?

12 MR. GRULLON: Mr. Pereiras, those studios,
13 do they -- what's the use for the balcony? Just
14 for the sight purposes or --

15 MR. PEREIRAS: So, there's a lot of outdoor
16 photography that happens, and that allows for
17 that to happen.

18 MR. GRULLON: Okay.

19 MR. PEREIRAS: A lot of natural sunlight
20 shots for like objects and things of that nature.

21 MR. GRULLON: Because as you know, sometime
22 balconies are used for -- as storage -- you know,
23 eventually, and we don't want --

24 MR. PEREIRAS: Right.

25 MR. GRULLON: And that's the reason why

1 sometimes the Board -- the Board doesn't feel
2 comfortable approving applications with
3 balconies.

4 MR. PEREIRAS: We totally understand that.
5 And -- and the good thing is that this isn't a
6 residential application, so you're not going to
7 see like a barbecue out there. You're not going
8 to see like the typical residential storage that
9 we see.

10 This is a commercial application and it
11 serves a very specific commercial purpose.

12 MR. PRESSEY: Okay.

13 CHAIRMAN MAROTTA: Any other questions?
14 Any members of the audience?

15 Larry?

16 MR. PRICE: Larry Price, 1006 Palisade.

17 The mixed media company, are they working
18 at this location today?

19 MR. PEREIRAS: Yes.

20 MR. PRICE: How long have they been there?

21 MR. PEREIRAS: I don't know the length of
22 time.

23 A VOICE: At that particular building?
24 Closing -- June, July.

25 MS. PEREIRAS: Just a few months ago.

1 A VOICE: Yeah.

2 MR. PRICE: What was the answer? You'll
3 have to --

4 MR. PEREIRAS: Since --

5 MR. PRICE: -- repeat it.

6 MR. PEREIRAS: Since July.

7 MR. PRICE: Of 2017?

8 MR. PEREIRAS: Yes.

9 MR. PRICE: What was the use prior to that?

10 MR. PEREIRAS: I think it was a --

11 CHAIRMAN MAROTTA: Keep your voice up,
12 please.

13 MR. PRICE: What?

14 CHAIRMAN MAROTTA: Keep your voice up.

15 MR. PRICE: Okay.

16 Sorry.

17 What was the use prior to --

18 MR. PEREIRAS: It's actually had multiple
19 uses. I know that for a fact that it was an HVAC
20 manufacturing. They were tin knockers. They
21 were making ducts.

22 I think, at some point, it was a mechanic
23 shop. I'm not exactly sure what the last use
24 was. It might be a mechanic shop, but I'm not
25 comfortable saying that on the record. But it

1 has had a mechanic shop, it has had HVAC,
2 industrial fabrication, all those uses have been
3 there.

4 MR. PRICE: Okay. Very good.

5 Thank you.

6 CHAIRMAN MAROTTA: Anyone, any other
7 questions?

8 MR. GRULLON: I'm not sure if the question
9 is for you, but parking requirement for the --
10 for these --

11 MR. PEREIRAS: Right. So --

12 MR. GRULLON: -- commercial space.

13 MR. PEREIRAS: So, the way Union City does
14 their parking count, it's 300 square feet; 300 --
15 one parking space per 300 square feet.

16 So, if you take the full square footage of
17 the proposed building that we have, you would
18 require 14 cars in total. We're providing four.
19 However, the four today is adequate, and they're
20 not seeking to have any more employees. It's not
21 going to grow the business any -- in any way.
22 They just need the space in order to operate
23 their preexisting building.

24 CHAIRMAN MAROTTA: Any other questions?

25 Call your next witness.

1 MS. PEREIRAS: Sure.

2 Mr. Kauker?

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

5 MS. PEREIRAS: Mr. Kauker, are you familiar
6 with the property located at 320 38th Street?

7 MR. KAUKER: Yes, I am. I pass it every
8 time I visit your esteemed Board.

9 MS. PEREIRAS: And you've had a chance to
10 review the drawings prepared by the architect.

11 MR. KAUKER: Yes.

12 MS. PEREIRAS: And can you please describe
13 this project from a planning perspective?

14 MR. KAUKER: Firstly, I'm very familiar
15 with this 38th Street corridor, as I travel it on
16 -- on many occasions.

17 This property is located in the R, low
18 density residential zone. The existing use mix
19 on the site, both existing in -- in prior years,
20 is nonconforming. It borders on a more heavy and
21 intense commercial, light -- /light industrial
22 use, which essentially is atypical and sort of a
23 dying breed, all to a good end, in Union City, as
24 many applications have attempted to receive
25 approval, to make this transition from the old

1 service oriented shops on residential streets to
2 newer and better uses.

3 Obviously, the use mix in the surrounding
4 area is a -- probably substantially residential,
5 but there are many instances of commercial
6 activity along this part of 38th Street.

7 The new use that is proposed would be a
8 upgrade, substantially, from the current use
9 activity that more than likely generates a good
10 deal of traffic in and out when -- when the uses
11 are automobile repair related uses from time to
12 time.

13 The proposed additional height of the
14 building would essentially make the building more
15 consistent and compatible with buildings in the
16 immediate area, many of which are three stories.

17 I believe that the mixed use character of
18 the area sets a reasonable foundation to view
19 this site as particularly suited to accommodate
20 the nature of the use as proposed.

21 I feel that the -- the use as a art and
22 socially serving related sophisticated use that
23 would bring added interest and attractability to
24 this entryway street.

25 It produces minimal traffic, from a point

1 of view that the four spaces would reasonably
2 accommodate the -- I think the total was --

3 Was eight employees?

4 MR. PEREIRAS: Yes.

5 MS. PEREIRAS: Yes.

6 MR. KAUKER: -- on the site. So, in that
7 context, the -- the new use would have more than
8 likely a lesser negative impact on the
9 surrounding area and the streetscape because of
10 -- as -- as might result from the deviation from
11 the Ordinance, which requires 14 spaces, while we
12 only have four spaces.

13 Most importantly, the fabric -- the
14 fragmented use patterns in this neighborhood are
15 in -- in a era of being redeveloped and
16 revitalized to establish a more homogeneous look
17 in the neighborhood.

18 Certainly, aesthetically, this project has
19 distinctly positive benefits. It is not another
20 residential use that essentially would have
21 greater impacts, in terms of the parking
22 deficiency.

23 I think that's a major aspect of the
24 application. And it fits within this general
25 neighborhood.

1 I believe the special reasons in support of
2 this application that emanate out of the
3 Municipal Land Use Law, better civic design, and
4 the dramatic visual improvement that this would
5 have on the neighborhood is a positive aspect; as
6 well as the section that talks about providing
7 for all categories of uses.

8 This, in a sense, is kind of a hybrid.
9 It's kind of a new use that relates to the arts
10 and the evolution in communication services.
11 Under that context, I believe that planning and
12 zoning policy should provide a positive response
13 to these kinds of uses, which essentially benefit
14 the general neighborhood, as well as the
15 reputation of Union City as an -- as an
16 interesting place that accommodates a broad
17 mixture of -- of uses and services.

18 That concludes my observations and opinion
19 with regard to this application.

20 CHAIRMAN MAROTTA: Anybody have any
21 questions?

22 MR. GRULLON: I have a question, Mr.
23 Kauker.

24 MR. KAUKER: Yes, sir.

25 MR. GRULLON: I know that you mentioned

1 | that they only have -- they're going to maintain
2 | the four employees they have.

3 | MR. KAUKER: Yes.

4 | MR. GRULLON: But increasing the -- the
5 | business, the clientele, how often, how many
6 | clients will they see? Will that generate
7 | traffic to the area?

8 | MR. KAUKER: I --

9 | MS. PEREIRAS: And if I may, just to
10 | clarify one aspect?

11 | There are three employees. Two of them
12 | being the owners that will always be there.

13 | MR. GRULLON: Yes.

14 | MS. PEREIRAS: At most, capacity is roughly
15 | about eight individuals.

16 | MR. GRULLON: Yes. But clientele, like
17 | business coming to --

18 | MS. PEREIRAS: That's exact --

19 | MR. GRULLON: -- the area.

20 | MS. PEREIRAS: Exactly. At most, they
21 | would have eight individuals, including
22 | themselves in the building.

23 | The applicants are here if the Board would
24 | like to hear additional testimony from them,
25 | because I think it is an interesting business.

1 MR. GRULLON: If it's okay with the
2 Chairman, I think I would like to hear from the
3 applicant.

4 CHAIRMAN MAROTTA: Yes.

5 MR. GRULLON: To describe the type of
6 business.

7 MS. PEREIRAS: Absolutely.

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

10 MR. DILLON: Please raise your right hand.

11 MR. SCHLUSSER: Yes, sir.

12 MR. DILLON: Do you swear the testimony
13 you're about to give this Board is the whole
14 truth?

15 MR. SCHLUSSER: Yes, sir.

16 MR. DILLON: State your name and spell it
17 for the record.

18 MR. SCHLUSSER: Jason Schlusser. Last name
19 is S as in Sam, C-H-L-U-S as in Sam, S as in Sam,
20 E-R.

21 MR. DILLON: Thank you.

22 MR. SCHLUSSER: Sure.

23 MS. PEREIRAS: Mr. Schlusser, would you
24 tell us a little bit about the operations and the
25 type of business that you --

1 MR. SCHLUSSER: Sure.

2 MS. PEREIRAS: -- do there?

3 MR. SCHLUSSER: Did anybody hear about that
4 five year old kid that just made \$11 million with
5 the YouTube video?

6 Literally. Just -- it was in the papers
7 last week. So, there's a --

8 I -- I have children. They watch YouTube.
9 And one of the things they watch is kids playing
10 with videos, these videos. And they have
11 millions and millions and millions of views. And
12 there's a five year old kid that has generated
13 \$10 million doing that.

14 So, the landscape -- media landscape has
15 changed. Right? It's not oh, NBC, CBS, that
16 sort of thing. It's all going online. It's --
17 it's Netflix, It's Hulu, it's YouTube.

18 I started, years ago, in the arts and also
19 owning consulting company, IT consulting company
20 now for like 20 years. So, my whole life has
21 been a merger of arts, technology and that sort
22 of thing.

23 So, as time went on, we started to get more
24 and more requests from businesses to help people
25 either do photography or videography, for

1 | websites, to do background music for things and
2 | to produce more content for online viewing.

3 | So, the space requirement is pretty much
4 | best exemplified, if I can imagine, if you wanted
5 | to watch a video of somebody playing a grand
6 | piano, a room this size is about just enough to
7 | get a good shot of somebody playing a 12 foot
8 | grand piano.

9 | So, the amount of space that we need and
10 | the quality of that space to -- to do this type
11 | of production -- things, lights, cameras,
12 | microphones, it just -- stuff takes up a lot of
13 | room.

14 | And -- and as we've gone on, we've started
15 | to partner with and work with other people that
16 | are very excited about our ability to merge the
17 | -- the arts and -- and the technology.

18 | So, for instance, one of our advisors is
19 | Emmy winning composer for Pokémon. Another guy
20 | is a Grammy winner for Carlos Santana.

21 | So like, we have significant people that --
22 | like, hey, well, if you can build that space and
23 | -- you know, you're going to give us enough room
24 | and we can go into new media and -- you know, we
25 | -- we can bring -- you know, new exciting artists

1 and creators and producers here to come work with
2 us, for -- for us to be able to take this
3 material, digitize it, get it out onto all new
4 media streams.

5 MS. PEREIRAS: And when you --

6 MR. SCHLUSSER: I hope that answers the
7 question you had.

8 MS. PEREIRAS: And when you have clients
9 visit the establishment, how many clients would
10 you have at one time?

11 MR. SCHLUSSER: I -- I think eight would
12 probably be it. Like in the case of -- let's
13 say, our partner wants to bring in a string
14 quartet, he's doing a soundtrack, string quartets
15 are four or five people. He would be there, and
16 one of us would be there. So, that's like six or
17 seven people.

18 Photography shoots are usually -- you know,
19 photography model, PA assistant, and then
20 somebody from us. Again, so that's like eight.

21 And this is not everyday. This is not -- I
22 mean, I wish it was, I'd be -- I'd be --

23 MR. GRULLON: In your --

24 MR. SCHLUSSER: -- permanently retired, if
25 that was the case. But --

1 MR. GRULLON: In your opinion, is that
2 going to require like trucks coming to the site?

3 MR. SCHLUSSER: Oh, no, no.

4 MR. GRULLON: Where you're going to -- it's

5 MR. SCHLUSSER: Yeah. Everything's on --
6 permanently onsite.

7 MR. GRULLON: A big piano -- you know, to
8 -- to be delivered to the site.

9 MR. SCHLUSSER: Oh.

10 MR. GRULLON: Things like that?

11 MR. SCHLUSSER: Yeah. Oh, you mean, like
12 in and out everyday?

13 MR. GRULLON: Yeah.

14 MR. SCHLUSSER: A big piano? No, no. The
15 -- I just used that as an example of why you
16 would need a large amount of space to film a
17 simple -- simple thing.

18 No. All of our stuff is going to be
19 permanently -- you know, installed. Lighting
20 fixtures installed, cameras, microphones, that
21 sort of thing.

22 Not too dissimilar from like what you would
23 see like maybe in a TV studio, that sort of
24 thing.

25 MR. GRULLON: Thank you.

1 MR. SCHLUSSER: Thank you.

2 MR. PRESSEY: Thank you.

3 CHAIRMAN MAROTTA: Mr. Kauker come back.

4 (Whereupon, there was a pause in the
5 proceedings.)

6 MR. KAUKER: Yes, sir?

7 CHAIRMAN MAROTTA: Mr. Kauker, this site is
8 in the R zone.

9 MR. KAUKER: Yes. Low density,
10 residential.

11 CHAIRMAN MAROTTA: Excuse me.

12 I -- I see here that the requirement for
13 parking is 15 and they're providing four.

14 MR. KAUKER: I thought it was 14, but I
15 won't disagree with you.

16 CHAIRMAN MAROTTA: According to our
17 planner, 15 are required.

18 MR. KAUKER: Okay.

19 CHAIRMAN MAROTTA: Okay?

20 And 15 and the -- and that gives us -- my
21 mathematics is that we're 73 percent less than
22 what we need.

23 MR. KAUKER: That's correct.

24 CHAIRMAN MAROTTA: That's quite a bit,
25 isn't it?

1 MR. KAUKER: Yes, it is. Yes.

2 CHAIRMAN MAROTTA: And -- and the situation
3 with these 11 additional -- you know, this is on
4 38th Street, between New York and Palisade Avenue.

5 MR. KAUKER: That's correct.

6 CHAIRMAN MAROTTA: We're sitting here right
7 on the building of -- on the corner --

8 MR. KAUKER: Right.

9 CHAIRMAN MAROTTA: -- 38th and Palisade.

10 MR. KAUKER: Yes.

11 CHAIRMAN MAROTTA: It's a pretty busy area
12 because people come to City Hall, they come to
13 court. Will these additional 11 cars, that
14 you're going to put on the streets, doesn't help
15 the situation, doesn't it?

16 MR. KAUKER: Yeah, I understand.

17 Although the nature of this use is not --
18 not quite as demanding or -- or numerous. It's
19 kind of a unique use that generally would not
20 produce the kind of 15 space demand that the
21 Ordinance does. Understandably.

22 CHAIRMAN MAROTTA: Why -- why do you say
23 that?

24 MR. KAUKER: Because of the testimony and
25 -- and the fact that -- that the space is needed

1 to accommodate the -- more to accommodate the
2 process that -- that goes on in the studio as
3 opposed to accommodating or becoming a -- an
4 attraction for -- for a number of people which
5 would equate to the 15.

6 So, we do have an operation here that
7 generally will demand less parking than the
8 Ordinance criteria requires, because it's kind of
9 a unique special art related use.

10 CHAIRMAN MAROTTA: The existing building is
11 a preexisting nonconforming use, isn't it?

12 MR. KAUKER: Yes, it is. And that's one of
13 the -- I think one of the benefits of -- of the
14 application, that the nature of this use is --
15 is, I think, superior.

16 CHAIRMAN MAROTTA: And the building now
17 covers a hundred percent of the property.

18 MR. KAUKER: Oh, yes, it does. Small lot.

19 CHAIRMAN MAROTTA: Of the land.

20 MR. KAUKER: That's correct. That's why --
21 that's why we need the additional volume.

22 CHAIRMAN MAROTTA: Let me ask you this.

23 In your opinion, could this site be
24 utilized to conform with the Ordinance?

25 MR. KAUKER: Yes, it would, but I think

1 | because of the size of the site, it would not
2 | generate a redevelopment return for residential
3 | that would be necessary to support, because of
4 | the smallness of the site.

5 | Although I think that that's a -- that's a
6 | limiting factor.

7 | CHAIRMAN MAROTTA: You know, you earlier
8 | testified as the need for residence, the need for
9 | --

10 | MR. KAUKER: Well, that's correct.

11 | CHAIRMAN MAROTTA: -- residential units.
12 | Right?

13 | MR. KAUKER: True.

14 | CHAIRMAN MAROTTA: So, this is a low
15 | residential unit. What you're doing is you're
16 | preventing a low residential unit.

17 | Is that correct?

18 | MR. KAUKER: That's correct.

19 | CHAIRMAN MAROTTA: And you think that's
20 | good?

21 | MR. KAUKER: I think the use fits within
22 | the neighborhood.

23 | MS. PEREIRAS: Mr. Kauker, just to clarify,
24 | are we removing a residential unit from this
25 | site?

1 MR. KAUKER: No.

2 CHAIRMAN MAROTTA: Can you tell -- tell me,
3 is this site particularly fitted or suited for
4 this use?

5 MR. KAUKER: Yes, I do.

6 CHAIRMAN MAROTTA: Why?

7 MR. KAUKER: Because of the limited size
8 and a design solution that's been put before you,
9 it presents a least impact use that fits the
10 existing use mix in the neighborhood. Certainly
11 not in compliance with the Ordinance, but it is
12 compatible with the existing use mix, because you
13 do have evidence of -- of many commercial service
14 activities --

15 CHAIRMAN MAROTTA: We have a --

16 MR. KAUKER: -- in this corridor.

17 CHAIRMAN MAROTTA: We have a lot size here
18 25 by a hundred feet.

19 Right?

20 MR. KAUKER: Right.

21 CHAIRMAN MAROTTA: Well, you can go
22 anyplace in the city, 25 by a hundred feet --

23 MR. KAUKER: That --

24 CHAIRMAN MAROTTA: -- can't you?

25 MR. KAUKER: That's correct. There's a

1 number of --

2 CHAIRMAN MAROTTA: So, it's not unique for
3 this area. It could be built anyplace.

4 Right?

5 MR. KAUKER: The size is not unique.

6 CHAIRMAN MAROTTA: Yeah.

7 MR. KAUKER: That's correct.

8 CHAIRMAN MAROTTA: I have no further
9 questions.

10 Anybody have questions?

11 Anybody from the audience have questions?

12 Larry, do you have any questions?

13 MR. PRICE: I have a comment.

14 CHAIRMAN MAROTTA: Go ahead.

15 Come on Larry, please.

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

18 MR. PRICE: I'll make a comment about --

19 You know, for some reason, Union City has
20 started to attract uses which are really kind of
21 weird, I get -- for want of a better word, I'll
22 use that.

23 In Union City today, we have two large,
24 very technically -- whatever, photographic
25 operations. I don't mean -- you know, free

1 passport pictures for ten bucks. I mean, these
2 are very sophisticated photography operations.

3 We have a sound studio now at 20th Street.
4 Maybe because of our location, maybe because we
5 have -- whatever reason, we're starting to
6 attract these uses.

7 They don't fit very well in our Land
8 Development Ordinance, to be honest. The three
9 uses I just mentioned are all located in
10 residential zone.

11 But you know, those uses, I think, make
12 Union City a more interesting place. This
13 application doesn't fit too well in the R zone.
14 But you know what? I think it would be a welcome
15 addition to Union City's landscape, and I would
16 urge you to -- I think it deserves support.

17 You're entitled to ask questions, by the
18 way. Cross examine me.

19 Okay.

20 MR. GRULLON: Thank you.

21 MR. PRICE: Thank you.

22 MR. PRESSEY: Anyone else?

23 CHAIRMAN MAROTTA: Anybody have any
24 questions?

25 MR. PEROZO: I would just like to make an

1 additional comment.

2 I am a lover of the arts, as well. But the
3 only concern I really have about this particular
4 setup is more of a fire issue. I don't care if
5 it's eight people or 12 people, those are lives
6 that -- that come into play.

7 They're big -- they're big pieces of
8 equipment. There's electrical -- there's
9 electrical, so that increases the -- the fire
10 risk.

11 I'm not a firefighter. I'm just stating
12 the obvious.

13 That's the only concern that I have about
14 this, other than that I love it.

15 That's it.

16 CHAIRMAN MAROTTA: Thank you.

17 MS. PEREIRAS: If I can have the architect
18 address the public's concern about --

19 CHAIRMAN MAROTTA: Excuse me?

20 MS. PEREIRAS: -- safety.

21 CHAIRMAN MAROTTA: I didn't hear you.

22 MS. PEREIRAS: If I can have the architect
23 address the audience's concern about fire safety?

24 CHAIRMAN MAROTTA: Okay.

25 MS. PEREIRAS: Thank you.

1 MR. PEREIRAS: Just to be clear, our Code
2 system is a wonderful system in this country.
3 It's a great record of our mistakes. We try not
4 to make the same mistake twice.

5 And the Codes, particularly for a studio of
6 this -- of this type, are very strict, and we
7 will be in complete compliance with it. There's
8 Fire Safety Code, there's Electrical Codes,
9 Plumbing Codes, Building Codes, and we will be in
10 complete compliance with everything, making it a
11 safe building.

12 In addition to that, it would have to be a
13 suppressed building.

14 There are significant factors that make
15 this extremely safe, as well as one of the
16 reasons that this particular use makes it even
17 safer than a residential use, is that it -- they
18 want it to be masonry or concrete because they
19 want that density.

20 So, the exterior walls are going to be
21 concrete or masonry, concrete CMUs, and that is
22 wonderful against fire safety. It doesn't let a
23 fire spread from this unit out to another one, or
24 from another unit into this one.

25 So, from a safety standpoint, this is as

1 safe as it gets. Much more than the typical
2 residential 5A construction wood house.

3 CHAIRMAN MAROTTA: Thank you.

4 Anybody else any comments?

5 Okay.

6 MS. PEREIRAS: And Mr. Marotta, just to
7 address your concern before about parking.

8 The owners, as I mentioned, are two of the
9 three employees that would be onsite. They live
10 nearby. They have no need to drive to their
11 location.

12 The spots within the building can be
13 reserved for the clientele. And as we mentioned
14 earlier, at most, you're having four or five
15 additional clients, probably no need for even the
16 four spots that we have within the building.

17 So, we believe that we have suitable
18 parking within the building for our particular
19 use.

20 CHAIRMAN MAROTTA: Excuse me?

21 How many -- how many employees would --

22 MS. PEREIRAS: One additional besides the
23 two owners. So, three maximum. And they
24 wouldn't be there everyday, all the time.

25 CHAIRMAN MAROTTA: As you Board members

1 know, I'm very much concerned about parking,
2 because we do have a serious -- very serious
3 problem in the City.

4 Mr. Kauker, in his testimony, said that he
5 believes that this use will not generate a lot of
6 traffic, but he didn't give us a basis for that
7 opinion. It was like a net opinion of his,
8 although I think he said from -- from what --
9 from what the testimony you heard from the
10 applicant.

11 I'm really disturbed because of the parking
12 situation.

13 MS. PEREIRAS: Mr. Marotta, would you allow
14 me some additional time to --

15 CHAIRMAN MAROTTA: Sure.

16 MS. PEREIRAS: -- address that even --

17 CHAIRMAN MAROTTA: Sure.

18 MS. PEREIRAS: -- further?

19 Mr. Kauker, if I could ask you a few
20 questions?

21 Mr. Kauker, as we mentioned, this is a
22 business. As far as hours of operation and times
23 that cars would need to be parking, could you
24 please elaborate a little bit on that?

25 MR. KAUKER: Yeah. Businesses operate

1 during the day, when the residents are at work,
2 so the streets are a little bit more
3 accommodating.

4 Obviously, the residential neighborhood,
5 the crunch comes when everyone's home in the
6 evening.

7 So, that fact alone, I think, substantially
8 mitigates the understandable parking crunch
9 situation. It has significant -- for that
10 reason, has a substantially less impact on the
11 parking issue and the parking problem, because
12 during this -- during the day, when the demand
13 for parking for businesses, particularly this
14 business, would be operational, as opposed to the
15 evening, there are more spaces available on the
16 street.

17 So, I think the -- the Board should take
18 that into account if you would. I think that's a
19 mitigating factor.

20 CHAIRMAN MAROTTA: You know, Mr. Kauker, I
21 got to take issue with that.

22 You know, I live in the City. And in the
23 evening, there aren't more spaces available.
24 When my family comes to visit me, sometimes they
25 have to park four, five, six --

1 MR. KAUKER: Well, I understand.

2 CHAIRMAN MAROTTA: -- blocks away.

3 MR. KAUKER: That's my point. In the
4 evening, that's maximum demand time. The --

5 CHAIRMAN MAROTTA: They come to visit in
6 the evening, they can't find a spot to park.

7 MR. KAUKER: You're absolutely right, but
8 minimum demand is -- is during the -- during the
9 daytime, when everyone's at work.

10 MS. PEREIRAS: And Mr. Kauker, we also --
11 I'm sorry.

12 MR. PRESSEY: They could also use the
13 municipal parking.

14 Correct?

15 MR. KAUKER: That's correct.

16 MR. PRESSEY: Thank you.

17 MR. KAUKER: That's correct.

18 Thank you.

19 MR. PANEQUE: If I may, Mr. Chairman, as
20 long as we have Mr. Kauker up?

21 I have a couple of questions for you, Mr.
22 Kauker.

23 Mr. Kauker, this is an existing site with a
24 building on it.

25 MR. KAUKER: That's correct.

1 MR. PANEQUE: And that building, as Mr.
2 Marotta brought to the Board's attention, takes
3 up a hundred percent of the lot.

4 MR. KAUKER: Yes, it does.

5 MR. PANEQUE: Okay.

6 Now, that building, can you -- are you
7 aware of what the -- the prior uses to that
8 building were?

9 MR. KAUKER: Generally.

10 MR. PANEQUE: Okay.

11 Could you --

12 MR. KAUKER: Without -- without --

13 MR. PANEQUE: -- please tell this Board
14 what those prior uses were?

15 MR. KAUKER: I think it was an auto body
16 shop.

17 MR. PANEQUE: Okay.

18 MR. KAUKER: Auto repair.

19 MR. PANEQUE: Mechanic?

20 MR. KAUKER: HVAC fabricating. More --
21 more toward the end of -- entering into a light
22 industrial use category.

23 MR. PANEQUE: Okay.

24 That light industrial, mechanic, HVAC use,
25 in your professional opinion as a planner, is

1 | that a more -- let's, for lack of a better word
2 | --

3 | MR. KAUKER: Intense.

4 | MR. PANEQUE: -- intense use than what's
5 | being proposed now?

6 | MR. KAUKER: Yes, it is.

7 | MR. PANEQUE: Okay.

8 | MR. KAUKER: Substantially.

9 | MR. PANEQUE: And -- and there's nothing
10 | forbidding the applicant from continuing with
11 | that use.

12 | Correct?

13 | MR. KAUKER: That's correct. That's
14 | correct.

15 | MR. PANEQUE: Okay.

16 | So, it's your opinion that going from that
17 | light industrial to what this -- to use Mr.
18 | Price's terminology, another weird use now, we're
19 | moving into a new word, but this -- this proposed
20 | use that's being now presented to the Board, less
21 | intensive?

22 | MR. KAUKER: Less intensive, more
23 | compatible with the identity of the zone as a
24 | residential zone. Particularly, when Mr.
25 | Pereiras mentioned the nature of construction for

1 | this unique kind of a use, being concrete. Even
2 | if it were a sound studio, for example, this --
3 | this use is totally sealed from the surrounding
4 | area.

5 | MR. PANEQUE: Yeah.

6 | I'm actually somewhat familiar with this --
7 | the property, because I represented owners,
8 | probably two owners back, when they bought it.

9 | MR. KAUKER: Um hum.

10 | MR. PANEQUE: The property, when we -- when
11 | my client acquired it, was actually being used --
12 | it was owned by the owner of Mike and Son Supply,
13 | right around the corner. It was one of his
14 | warehouses.

15 | MR. KAUKER: Um hum.

16 | MR. PANEQUE: And from there, it went into
17 | a mechanic shop, which was what my client used it
18 | for, for years. And then, it continued in that
19 | use.

20 | So, the property -- you say it's all --
21 | it's going to be block.

22 | MR. KAUKER: That's correct.

23 | MR. PANEQUE: But it's actually a brick
24 | structure now.

25 | Correct?

1 MR. KAUKER: Yes, it is. It's masonry.

2 MR. PANEQUE: Okay.

3 And it -- as I just want to point out to
4 the Board, it could continue to be used in the
5 way it's been used, which was a more intensive
6 use.

7 MR. KAUKER: Yes, it can.

8 Thank you.

9 CHAIRMAN MAROTTA: Okay.

10 You know, I am very concerned about the
11 parking, but a little bug in me tells me that
12 probably it will not generate that much traffic.

13 MR. PANEQUE: Yeah.

14 CHAIRMAN MAROTTA: So, I'm going to make a
15 motion to approve the application.

16 THE SECRETARY: Motion to approve the
17 application by Chairman Marotta.

18 MS. GUTIERREZ: I'm seconding.

19 THE SECRETARY: Second by Ms. Gutierrez.

20 Roll call on the motion to approve this
21 application.

22 Mr. Marotta?

23 CHAIRMAN MAROTTA: Yes.

24 THE SECRETARY: Ms. Gutierrez?

25 MS. GUTIERREZ: Yes.

1 THE SECRETARY: Mr. Grullon?

2 MR. GRULLON: Yes.

3 THE SECRETARY: Mr. Pressey?

4 MR. PRESSEY: Yes.

5 THE SECRETARY: Mr. Medina?

6 MR. MEDINA: Yes.

7 THE SECRETARY: Mr. Ortiz?

8 MR. ORTIZ: Yes.

9 THE SECRETARY: Six in favor.

10 Motion carries.

11 Thank you.

12 MS. PEREIRAS: Thank you, all, very much.

13 MR. PEREIRAS: Thank you, everyone.

14 MS. PEREIRAS: Have a good night.

15 MS. GUTIERREZ: Good night.

16 MR. PEREIRAS: See you next month.

17 MS. PEREIRAS: See you next month.

18 MS. GUTIERREZ: Good night.

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1 **RESOLUTIONS:**

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3 (1) Edward Briosso, 1304-06 Kennedy Boulevard,
4 Block 68, Lot 18. Legalize an existing apartment
5 converting the building into two residential
6 units with one commercial space. Approved

7 (2) T-Mobile Northeast, LLC, 711-715 Sip
8 Street, Block 107, Lots 8 and 9. Install a FCC
9 licensed rooftop wireless telecommunication
10 facility on the existing apartment building.

11 Approved

12 (3) T-Mobile Northeast, LLC, 2017-19 Summit
13 Avenue, Block 107, Lots 8 and 9. Install a FCC
14 licensed rooftop wireless telecommunications
15 facility on the existing apartment building.

16 Approved

17

18 THE SECRETARY: Now we are going to -- we
19 are going to go for Resolutions now.

20 MR. PRESSEY: All right. Let's make it
21 quick. We've got seven minutes.

22 MR. MEDINA: Got seven minutes.

23 CHAIRMAN MAROTTA: Before ten o'clock.

24 THE SECRETARY: One second please,
25 gentlemen and ladies.

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

3 THE SECRETARY: Adoption of Resolutions.

4 MR. MEDINA: Okay.

5 MS. GUTIERREZ: Okay, let's go.

6 THE SECRETARY: We have six Resolutions on
7 tonight's agenda.

8 We are going to go first, second and third
9 Resolution right now.

10 The first one, Edward -- Edward Briosso,
11 1304-06 Kennedy Boulevard.

12 Second Resolution.

13 T-Mobile Northeast, LLC, 711-715 Sip
14 Street.

15 Third Resolution.

16 T-Mobile Northeast, LLC, 2017-19 Street.

17 Can I have a motion to adopt these
18 Resolution?

19 Motion by Mr. Pressey.

20 MS. GUTIERREZ: Second it.

21 THE SECRETARY: Second by Ms. Gutierrez.

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

24 Mr. Marotta?

25 CHAIRMAN MAROTTA: Yes.

1 THE SECRETARY: Ms. Gutierrez?

2 MS. GUTIERREZ: Yes.

3 THE SECRETARY: Mr. Grullon?

4 MR. GRULLON: Yes.

5 THE SECRETARY: Mr. Pressey?

6 MR. PRESSEY: Yes.

7 THE SECRETARY: Mr. Medina?

8 MR. MEDINA: Yes.

9 THE SECRETARY: Mr. Ortiz?

10 MR. ORTIZ: Yes.

11 THE SECRETARY: Six in favor.

12 Motion carries.

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1 **RESOLUTIONS:**

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3 (4) 111 35th Street, LLC, 111 35th Street, Block
4 208, Lots 44, 45 and 46. Applicant proposes to
5 construct a new multi-family building consisting
6 of 12 units and 13 parking spaces. **Denied**

7
8 THE SECRETARY: Now, we are going to
9 adoption of the deny Resolution, number 4.

10 Four -- I'm sorry -- 111 35th Street, LLC,
11 111 35th Street.

12 This application was denied at the previous
13 meeting.

14 Can I have a motion to approve the deny
15 Resolution?

16 CHAIRMAN MAROTTA: So moved.

17 THE SECRETARY: Moved by Chairman Marotta.

18 MS. GUTIERREZ: I'm seconding.

19 THE SECRETARY: Second by Ms. Gutierrez.

20 Roll call on the motion to approve the deny
21 Resolution.

22 Mr. Marotta?

23 CHAIRMAN MAROTTA: Yes.

24 THE SECRETARY: Ms. Gutierrez?

25 MS. GUTIERREZ: Yes.

1 THE SECRETARY: Mr. Grullon?

2 MR. GRULLON: Yes.

3 THE SECRETARY: Mr. Pressey?

4 MR. PRESSEY: Yes.

5 THE SECRETARY: Mr. Medina?

6 MR. MEDINA: Yes.

7 THE SECRETARY: Mr. Ortiz?

8 MR. ORTIZ: Yes.

9 THE SECRETARY: Six in favor.

10 Motion carries.

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1 **REVISED RESOLUTIONS:**

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3 (1) Leonel Calvo, 709 New York Avenue, Block
4 36, Lot 5. Interior modification to an existing
5 building with three residential units and a new
6 front addition. Resolution was memorialized on
7 October 12, 2017.

8 (2) Ashraf Soliman, 3200 Kennedy Boulevard,
9 Block 204, Lot 1, 34-38. Proposed a gas station,
10 auto repair and convenience store. Resolution
11 was memorialized on September 14, 2017.

12

13 MR. PANEQUE: Mr. Vallejo, in the next
14 Resolutions, I'd just like to give an explanation
15 to the Board.

16 Resolution number 5.

17 This was the Resolution that approved the
18 work that was to be done to the gas station at
19 3200 Kennedy Boulevard that was approved by this
20 Board.

21 When I drafted the Resolution, there were
22 -- there was an entire line left in that did not
23 belong to that Resolution, which the applicant's
24 attorney brought to my attention.

25 I have revised the Resolution to remove

1 | that line, and that is the Resolution that the
2 | Board is voting on tonight.

3 | It's -- it's basically a correction of a --
4 | it's not a typo, it's a very large typo. Because
5 | of the way we do things today, with cut and
6 | paste, it was pasted but not cut out. And I'll
7 | take the -- the blame on that.

8 | Resolution number 6.

9 | The applicant presented a Resolution for
10 | the approval of three residential units. The
11 | Resolution, when drafted, was not a hundred
12 | percent clear that the Board was approving the
13 | three residential units. So, it's been reworded
14 | to make sure that there is no -- that it's
15 | unequivocal that this Board approved three
16 | residential units and that is the Resolution that
17 | the Board is voting on tonight.

18 | I did go over the transcript, as well as
19 | the plans, and it was clear that the Resolution
20 | approved for 709 New York Avenue was for three
21 | residential units.

22 | THE SECRETARY: Can I have a motion to
23 | approve the revised Resolutions, 5 and 6?

24 | MR. GRULLON: Motion.

25 | THE SECRETARY: Motion by Mr. Grullon.

1 MS. GUTIERREZ: Second it.

2 THE SECRETARY: Second by Ms. Gutierrez.

3 Roll call on the motion to approve these
4 revised Resolution 5 and 6.

5 Mr. Marotta?

6 CHAIRMAN MAROTTA: Yes.

7 THE SECRETARY: Ms. Gutierrez?

8 MS. GUTIERREZ: Yes.

9 THE SECRETARY: Mr. Grullon?

10 MR. GRULLON: Yes.

11 THE SECRETARY: Mr. Pressey?

12 MR. PRESSEY: Yes.

13 THE SECRETARY: Mr. Medina?

14 MR. MEDINA: Yes.

15 THE SECRETARY: Mr. Ortiz?

16 MR. ORTIZ: Yes.

17 THE SECRETARY: Six in favor.

18 Motion carries.

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1 **ADJOURNMENT:**

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

6 CHAIRMAN MAROTTA: So moved.

7 THE SECRETARY: Motion by Mr. Pressey.

8 MS. GUTIERREZ: Second it.

9 THE SECRETARY: Second by?

10 MS. GUTIERREZ: Second it.

11 THE SECRETARY: By Mr. Ortiz.

12 All in favor?

13

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

15

16 THE SECRETARY: The ayes have it.

17 Thank you.

18 Have a good night.

19 Let the record show up the meeting has
20 ended.

21 Good night, everyone.

22

23 (Whereupon, the proceedings were concluded
24 at 9:58 p.m.)

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1 STATE OF NEW JERSEY :

2 :

3 COUNTY OF ESSEX :

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6 I, DEBRA A. KASZNIAK, assigned transcriber,
7 do hereby affirm that the foregoing is a true and
8 accurate transcript in the matter of the REGULAR
9 MEETING of the UNION CITY ZONING BOARD OF
10 ADJUSTMENT heard on Thursday, January 11, 2018
11 and digitally recorded.

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24 Monitored by: Kevin Dillon, Jr.

25 Proofread by: Deborah Dillon