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COUNTY OF BERGEN
BOROUGH OF MONTVALE
PLANNING BOARD
COUNCIL CHAMBERS
12 MERCEDES DRIVE
THURSDAY, JULY 17, 2018
COMMENCING 9:45 p.m.

BLOCK 1102, LOT 2.01 :
TSL PIKE DEVELOPMENT LLC :
110 SUMMIT AVENUE :
Amended Site Plan Application:
With Variances :
-----X
B E F O R E, BOROUGH OF MONTVALE,
PLANNING BOARD, THERE BEING PRESENT

JOHN DePINTO, CHAIRMAN

JIMMY D'AGOSTINO, MEMBER

JOHN CULHANE, MEMBER

WILLIAM LINTNER, MEMBER

DANTE TEAGNO, MEMBER

MARGARET O'NEILL, ALTERNATE

ANNMARIE RUSSO, ALTERNATE

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LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.
201-641-1812

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WITNESSES

JOSEPH BURGIS 10
Direct Examination by Mr. Vogel 10
Board Questions 26

DAVID WEINER 49
Direct Examination by Mr. Vogel 50

EXHIBITS

No.	Description	Ident./Evid
A-22	Environmental Impact Statement Prepared by MAP Engineering	5
B-3	Report by Ms. Green, 7/16/18	26
B-4	Report, Police Department 4/23/18	64
B-5	Fire Department Review Letter	65

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APPEARANCE:

ROBERT T. REGAN BOARD ATTORNEY
345 Kinderkamack Road #G
Westwood, New Jersey 07675
Attorney for Board

JEFFER, HOPKINSON & VOGEL
BY: JEROME A. VOGEL, ESQ
1600 State Route 208
Hawthorne, New Jersey 07506
(973) 423-0100
Attorney for the Applicant

ALSO PRESENT:

ANDREW HIPOLIT, BOROUGH ENGINEER
JEFFREY FETTE, CONSTRUCTION CODE OFFICIAL
DARLENE GREEN, PLANNER
DOREEN ROWLAND, ACTING BOARD SECRETARY

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(Open Public Meetings Act.)

CHAIRMAN DePINTO: Okay. The meeting
will come to order.

You can go.

(Whereupon, Mayor Ghassali recuses
himself and steps off the dais.)

CHAIRMAN DePINTO: Okay. The next item
on the agenda is Block 1102, LOT 2.01, TSL
Redevelopment, LLC, 110 Summit Avenue, application
for amended site plan approval along with necessary
variances.

Good evening, gentlemen.

MR. VOGEL: Good evening, Mr. Chairman,
members of the board, Jerome Vogel, Jeffer, Hopkinson
& Vogel, attorneys for the applicant.

You will recall on the occasion of the
last appearance here on June 21 we completed the
testimony of both the site engineer, Mr. Napolitano,
and the architect, Mr. Warr, and we have supplied you
with the transcript as you requested.

Attached to that transcript are all of
the documents that were marked into evidence during
that hearing.

So you have a complete record of that
testimony.

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<p style="text-align: right;">5</p> <p>1 For this evening, to round out our</p> <p>2 application, we have Mr. Joseph Burgis, professional</p> <p>3 planner to complete the testimony and hopefully that</p> <p>4 will fill out what is the basis for our application.</p> <p>5 The only bit of business that I have</p> <p>6 before introducing Mr. Burgis is the observation that</p> <p>7 your ordinance requires the filing of an</p> <p>8 Environmental Impact Statement.</p> <p>9 I have an Environmental Impact</p> <p>10 Statement that was prepared by MAP Engineering for</p> <p>11 this project. And I would like to have it marked</p> <p>12 into evidence as part of the record.</p> <p>13 MR. REGAN: I think we're up to A-23.</p> <p>14 CHAIRMAN DePINTO: Why don't we mark it</p> <p>15 into evidence as applicant exhibit, what is it?</p> <p>16 MR. REGAN: A-22.</p> <p>17 (Whereupon, Environmental Impact</p> <p>18 Statement prepared by MAP Engineering is</p> <p>19 received and marked as Exhibit A-22 for</p> <p>20 identification.)</p> <p>21 CHAIRMAN DePINTO: And has a copy of</p> <p>22 same been presented to Mr. Hipolit.</p> <p>23 MR. VOGEL: Yes, previously forwarded</p> <p>24 to the board.</p> <p>25 CHAIRMAN DePINTO: Okay. Mr. Hipolit,</p> <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p>	<p style="text-align: right;">7</p> <p>1 slipped through the cracks.</p> <p>2 MR. VOGEL: I have additional copies</p> <p>3 with me.</p> <p>4 CHAIRMAN DePINTO: Okay. If you could</p> <p>5 provide us with that.</p> <p>6 MR. REGAN: Is it an EIS or a waiver of</p> <p>7 the EIS.</p> <p>8 CHAIRMAN DePINTO: It's a request for a</p> <p>9 waiver.</p> <p>10 MR. VOGEL: Yes.</p> <p>11 MR. HIPOLIT: He calls it an EIS, but</p> <p>12 it's more, it covers -- so it covers in more detail,</p> <p>13 than a waiver, a lot of Environmental Impact issues,</p> <p>14 but I still think it falls under request for a</p> <p>15 waiver. I think they submit that document as in</p> <p>16 evidence. I have it.</p> <p>17 MR. LINTNER: We have it previously.</p> <p>18 CHAIRMAN DePINTO: This is from a prior</p> <p>19 package. You're right.</p> <p>20 MR. LINTNER: From a prior package,</p> <p>21 yes.</p> <p>22 CHAIRMAN DePINTO: You got it.</p> <p>23 MR. REGAN: Yeah. It's MAP</p> <p>24 Engineering, June 18th. I have it. Okay.</p> <p>25 MR. VOGEL: Yes.</p> <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p>
<p style="text-align: right;">6</p> <p>1 have you had an opportunity to review the subject</p> <p>2 document?</p> <p>3 MR. HIPOLIT: Yes.</p> <p>4 CHAIRMAN DePINTO: And do you find it</p> <p>5 acceptable?</p> <p>6 MR. HIPOLIT: I do.</p> <p>7 CHAIRMAN DePINTO: I'm sorry.</p> <p>8 MR. HIPOLIT: Yes, I do.</p> <p>9 CHAIRMAN DePINTO: And is it your</p> <p>10 recommendation to the board that the board accept</p> <p>11 that without revision?</p> <p>12 MR. HIPOLIT: Yes. I will accept it</p> <p>13 without revision and in the same case it's really</p> <p>14 more -- this is more of a waiver.</p> <p>15 MR. REGAN: Do we have a copy of that</p> <p>16 document?</p> <p>17 MR. VOGEL: Do I have it with me? Yes.</p> <p>18 MR. REGAN: I know but does the Board</p> <p>19 have it.</p> <p>20 MR. VOGEL: I did submit it to the</p> <p>21 Board. I submitted it to Lorraine some time ago.</p> <p>22 MS. ROWLAND: I don't have a copy of</p> <p>23 it.</p> <p>24 CHAIRMAN DePINTO: I think because of</p> <p>25 Lorraine's absence due to an illness it might have</p> <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p>	<p style="text-align: right;">8</p> <p>1 MR. REGAN: I have it.</p> <p>2 MR. VOGEL: I have it.</p> <p>3 MR. REGAN: I have it.</p> <p>4 CHAIRMAN DePINTO: Again, that same</p> <p>5 question, Mr. Hipolit, you are recommending that the</p> <p>6 board grant that waiver based upon the submission</p> <p>7 that has been made to the board?</p> <p>8 MR. HIPOLIT: Correct. And, again --</p> <p>9 CHAIRMAN DePINTO: And the reasons for</p> <p>10 that recommendation?</p> <p>11 MR. HIPOLIT: Right. The reasons are</p> <p>12 very similar to the last application.</p> <p>13 You have a commercial site, the</p> <p>14 commercial site is being converted to a residential</p> <p>15 site. The impacts of the pervious area, improved</p> <p>16 drainage and more landscaping is much less intense</p> <p>17 than the commercial site so you recommend a waiver.</p> <p>18 I think MAP describes it very well and</p> <p>19 they're very detailed on it, but, yeah. That's fine.</p> <p>20 I would definitely recommend it.</p> <p>21 CHAIRMAN DePINTO: Let me poll the</p> <p>22 board on acceptance of that request for waiver</p> <p>23 starting with Mr. Teagno?</p> <p>24 MR. TEAGNO: Yes. I agree.</p> <p>25 CHAIRMAN DePINTO: Thank you.</p> <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p>

Mr. Culhane.

MR. CULHANE: I agree.

CHAIRMAN DePINTO: Thank you.

Mr. Fette?

MR. FETTE: I agree.

CHAIRMAN DePINTO: Thank you.

Ms. Russo?

MS. RUSSO: I agree.

CHAIRMAN DePINTO: Thank you.

Mr. Lintner?

MR. LINTNER: I agree.

CHAIRMAN DePINTO: Thank you.

Mr. D'Agostino?

MR. D'AGOSTINO: I agree.

CHAIRMAN DePINTO: And Ms. O'Neill?

MS. O'NEILL: I agree.

CHAIRMAN DePINTO: So we will accept that request for waiver.

MR. VOGEL: With your permission, I call Mr. Joseph Burgis.

May I have the witness sworn in?

MR. REGAN: Mr. Burgis, would you raise your right hand.

Mr. Burgis, do you swear or affirm the testimony you are about to give in this proceeding

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application. I reviewed the maps that have been submitted. I've been to the site and I have heard the testimony.

BY MR. VOGEL:

Q. Based upon that endeavor, would you describe to the board the conclusions that you reached?

A. Certainly.
Just very quickly a little background information so we all remember where we are in this application.

This is on Summit Avenue opposite Morgan Court. The property occupies an area of 11.47 acres, somewhat irregular in shape, about 238 feet of frontage on Summit Avenue and a depth of just about 1,200 feet.

There's an existing 82,000-square-foot three-story building on the property and at present there's 309 parking spaces.

Surrounding land uses are primarily office and office/research related. There are through residential streets in the immediate vicinity of the site including Morgan Court directly across the street.

The applicant, as you heard at the last LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.
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will be the truth so help you God?

MR. BURGIS: I do.

JOSEPH BURGIS,

25 Westwood Avenue, Westwood, New Jersey, having been duly sworn, testifies as follows:

MR. REGAN: State your full name.

MR. BURGIS: Joseph Burgis.

DIRECT EXAMINATION

BY MR. VOGEL:

Q. Mr. Burgis --

MR. REGAN: I was going to just have him state his name for the record.

MR. VOGEL: Thank you.

Q. Mr. Burgis, at the request of the applicant did you undertake to do a planning report with respect to this application?

MR. REGAN: Just for the record, Mr. Burgis has previously been before this board. I recommend he be qualified without any further testimony.

CHAIRMAN DePINTO: The Chair will accept the recommendation.

Counsel, please continue.

THE WITNESS: Thank you.

I did a planning analysis of the

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meeting, is an assisted living facility. It's proposed 205,600-square-foot building. It's comprised of 81 assisted-living units, 90 independent-living units and 32 memory-care units. And it's a four-story, 50-foot tall -- actually 49.87-foot-tall building.

The floor area ratio of the site exceeds your code. It's at 41 percent where a total of 170 parking spaces are being proposed. That includes 150 spaces to be constructed initially and then 20 spaces are identified for, as future parking spaces.

Now my role as planner is to talk specifically about the Master Plan and zoning issues associated with this application and then talk about how, my professional opinion, it would not be a burden to allow the board to grant the variance relief being requested.

I looked at both the 2008 last comprehensive Master Plan as well as the more recent 2016 Master Plan re-examination report.

The 2008 Master Plan designates the site for office/research use. The plan contains a certain number of goals, objectives and policy statements.

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<p style="text-align: right;">13</p> <p>1 Those that are pertinent to this case</p> <p>2 include those that talk about creating housing</p> <p>3 alternatives for residents of the community. It</p> <p>4 talks about specifically encouraging a more diverse</p> <p>5 range of residential occupancies for the change in</p> <p>6 population of the community. It talks about</p> <p>7 encouraging high-quality design and encouraging an</p> <p>8 increased taxable ratable base.</p> <p>9 The 2016 plan, excuse me,</p> <p>10 re-examination report reaffirms all of those goals</p> <p>11 and objectives.</p> <p>12 But what's interesting, it talks about</p> <p>13 the change in nature of office research development</p> <p>14 in the community.</p> <p>15 It recognizes there's been a number of</p> <p>16 changes overall in the community. And it actually</p> <p>17 raises the question about the viability of the office</p> <p>18 research districts based on all that has taken place</p> <p>19 between 2008 and the present.</p> <p>20 It also points out that in the very</p> <p>21 beginning of 2016 the zoning ordinance was amended to</p> <p>22 permit nursing homes in the O.R. zone. And because</p> <p>23 of that, it also makes the recommendation that</p> <p>24 assisted living facilities be identified as a</p> <p>25 permitted use in the O.R. zone. It, along with that,</p> <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p>	<p style="text-align: right;">15</p> <p>1 mentioned earlier, a floor area ratio of 41 percent</p> <p>2 in contrast to the code that permits up to 35</p> <p>3 percent.</p> <p>4 And in terms of the buffer requirement,</p> <p>5 they are required to have a 15-foot buffer on the</p> <p>6 perimeter of the site. In the rear portion of the</p> <p>7 site we do not have a buffer. The existing driveway</p> <p>8 comes right up against the rear property line and we</p> <p>9 are continuing that condition with -- with the use of</p> <p>10 that existing circulation aisle.</p> <p>11 In addition to those conditions of the</p> <p>12 conditional use, there are a number of -- four</p> <p>13 categories of noncompliance with the conventional</p> <p>14 area and bulk requirements. One relates to the</p> <p>15 structure height of an accessory structure. You're</p> <p>16 allowed to have a 12-foot height for accessory</p> <p>17 structure. We are proposing a 14.83-foot building</p> <p>18 height to that accessory structure.</p> <p>19 A retaining wall height is allowed to</p> <p>20 be 4 feet in height. We have a retaining wall,</p> <p>21 multiple-step retaining wall height that the total is</p> <p>22 13 feet in height.</p> <p>23 And then we have -- for signage we have</p> <p>24 three associated variance requests. One is regarding</p> <p>25 the freestanding sign, itself. The code permits a</p> <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p>
<p style="text-align: right;">14</p> <p>1 points out that one of the benefits of assisted</p> <p>2 living, not just the nursing homes, is that you can</p> <p>3 get affordable housing credits for assisted living</p> <p>4 facilities.</p> <p>5 The zoning ordinance is consistent with</p> <p>6 these Master Plan recommendations, the site is in the</p> <p>7 O.R. zone. The permitted uses include research labs,</p> <p>8 offices, medical labs and nursing homes and hospitals</p> <p>9 as a principal permitted use allowed as-of-right and</p> <p>10 it also identifies assisted living facilities as a</p> <p>11 conditional use provided 10 percent of the beds would</p> <p>12 be Medicaid beds, thereby enabling the municipality</p> <p>13 to get affordable housing credits for those beds.</p> <p>14 Now there are, in the zoning</p> <p>15 ordinances, 14 different conditions associated with</p> <p>16 assisted living facilities. We meet 11 of those</p> <p>17 conditions. We do not meet three of those</p> <p>18 conditions. And those three conditions relate to</p> <p>19 building height, FAR and a buffer requirement.</p> <p>20 The building height overage is not</p> <p>21 related to footage. It's related to storage. How</p> <p>22 the ordinance permits a three-story, 50-foot tall</p> <p>23 building. We are proposing a four-story,</p> <p>24 49.87-foot-tall building.</p> <p>25 In terms of floor area ratio, as I</p> <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p>	<p style="text-align: right;">16</p> <p>1 freestanding sign to be 32 square feet. Our sign,</p> <p>2 we're counting the entire base around the sign, is 92</p> <p>3 square feet. The sign height is 7.75 feet whereas</p> <p>4 you're allowed a 6-foot height.</p> <p>5 And your ordinance only permits two</p> <p>6 colors to a sign and we are proposing a total of six.</p> <p>7 There's a question about that because I think we have</p> <p>8 a stone base on two sides of the sign and I believe</p> <p>9 that was counted as part of the color, but it's just</p> <p>10 a basic stone wall.</p> <p>11 In addition to that, your code permits</p> <p>12 no more than 15 percent of the parking spaces</p> <p>13 proposed to be located in the front yard. We are at</p> <p>14 17 percent, basically five spaces in excess of what</p> <p>15 is permitted by code.</p> <p>16 Now in terms of the statutory code and</p> <p>17 I know this board is very familiar with that burden,</p> <p>18 interestingly enough there's quite a number of</p> <p>19 different issues associated with this particular</p> <p>20 application.</p> <p>21 In terms of the positive criteria one</p> <p>22 can argue either you're an inherently beneficial use</p> <p>23 or the site is particularly suited for the use.</p> <p>24 Obviously consistent with case law we</p> <p>25 are saying we are an inherently beneficial use. The</p> <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p>

1 Municipal Land Use Law defines an inherently
2 beneficial use as one that is universally considered
3 of a value to the community and one that
4 fundamentally serves the public good and promotes the
5 general welfare.

6 In terms of that, there is the negative
7 criteria of the statute. One has to show that
8 there's no substantial detriment to the public good
9 or substantial detriment to the variance and to the
10 intent and purpose of the Master Plan of the
11 community.

12 When one argues that they're an
13 inherently beneficial use there's the four-part Sica
14 test that one has to go through, and I'll go through
15 that in a moment.

16 In addition to that, as I mentioned
17 earlier, we do not comply with certain conditions of
18 the conditional use. The Coventry case comes into
19 play. And then other specific cases have to also be
20 addressed because we have the building height and the
21 FAR variance. And I'll get into each of them in a
22 moment.

23 In terms of special reasons, the courts
24 have said, if you're an inherently beneficial use
25 that alone accounts for your special reason. But you

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1 those two county's population will increase to close
2 to 1.5 million people.

3 Now that's interesting because -- and I
4 purposely used Passaic County in addition to Bergen
5 because the data shows that many Passaic County
6 residents end up in health care facilities in Bergen
7 County.

8 The data also indicates that by 2030
9 there will be a need for about 7,800 beds to serve
10 the population.

11 Right now the projection is, unless
12 there's a significant change, there will be about
13 5,500 beds available. So we are significantly -- we
14 will be significantly short of what the demand will
15 be.

16 The second prong of the Sica test is to
17 show what is the -- or identify the detrimental
18 effects that will accrue from this project if you
19 were to grant the variance.

20 And typically one argues the issues of
21 traffic when we talk about detrimental effects of the
22 use and intensity of use.

23 Well, in this particular -- with this
24 particular use the amount of traffic generating
25 potential is dramatically less than if the site were

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1 have to address that four-part Sica test. The first
2 prong of that test one has to show or identify the
3 public interest which is at stake.

4 In this instance, it's the ability to
5 address the needs of a growing, aging, frail
6 population in our region.

7 The demand in the region is increasing
8 according to DCA statistics. Assisted living demand
9 is anticipated to increase by 16 percent over the
10 next five years.

11 In terms of memory care, the demand is
12 supposed to increase by 18 percent in that five-year
13 period.

14 Interestingly enough, with the issue of
15 memory care, most of the memory care facilities that
16 exist in Bergen County today are 20-plus years in age
17 and they do not contain all the contemporary features
18 that are sought after in memory care today.

19 In terms of the demographic trends, we
20 are a continually aging population. The Department
21 of Health and Human Services estimates that there's
22 a -- 2 percent of the population over the age of 60
23 is in need of long-term care.

24 In addition to that, Bergen County and
25 Passaic County combined estimate by the year 2030

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1 to develop for maximum -- excuse me -- for permitted
2 principle use, offices, medical offices and the like.

3 So I don't think traffic generating
4 potential is an issue.

5 In terms of intensity of use, the
6 ordinance permits an impervious coverage of 38
7 percent whereas we're at only 17 -- excuse me. The
8 ordinance permits 50 percent impervious. We're at 38
9 percent. However, number of residential units are a
10 density basis. You permit 25 residential units per
11 acre. We're at only 17.69 units to the acre. So in
12 terms of intensity of use, we're much less than
13 what's contemplated by code.

14 The third prong of the Sica test says
15 you have to identify what reasonable conditions can
16 be imposed to address those negative effects that
17 you've just mentioned.

18 But in terms of the site design, as you
19 heard at the previous meeting, our circulation system
20 works well. The parking configuration works well,
21 the access out to the street and the visibility
22 looking left, right down Summit all works well.

23 So there's no need to do anything in
24 addition, to impose additional conditions to ensure
25 the reasonable use of this property at this location.

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<p style="text-align: right;">21</p> <p>1 And then, finally, the COAH -- excuse</p> <p>2 me, I do a lot of COAH work.</p> <p>3 The Sica test says you have to weigh</p> <p>4 the positive and the negative criteria and determine,</p> <p>5 on balance, whether there's a substantial detriment</p> <p>6 to the public good.</p> <p>7 And in this instance the public good</p> <p>8 obviously is affirmed by providing the assisted</p> <p>9 living and memory care and the related activities.</p> <p>10 The use is certainly compatible with the residential</p> <p>11 development across and down the street. There's less</p> <p>12 traffic from this using principal amenities</p> <p>13 as-of-right and the balance that we talk about in the</p> <p>14 end is a provision of a use that is needed in the</p> <p>15 community against the loss of one site for office use</p> <p>16 where you have a Master Plan that already says that</p> <p>17 office uses are no longer in vogue as they once were.</p> <p>18 In addition to all that, we have the</p> <p>19 issue of the FAR, the conditional use variance, that</p> <p>20 we're not meeting all the conditions and the height.</p> <p>21 So -- and for that, there is three different bases</p> <p>22 that come into play. There is the Coventry case, the</p> <p>23 Grasso case for height and the Randolph Town Center</p> <p>24 case for FAR. They all kind of blend together.</p> <p>25 What has happened is, quite a number of</p> <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p>	<p style="text-align: right;">23</p> <p>1 condition should become the law of the land for all</p> <p>2 conditional uses.</p> <p>3 Subsequently, that same rationale was</p> <p>4 applied to building height. You might not meet your</p> <p>5 building height, but the issue is, does the site</p> <p>6 function well irrespective of not compliant to code.</p> <p>7 And then the same issue or the same thought process</p> <p>8 was applied to FAR variances and in the Randolph Town</p> <p>9 Center case.</p> <p>10 So we have this philosophy that says</p> <p>11 when you don't meet these standards, does the site</p> <p>12 function well? Well, here we have a situation where</p> <p>13 the building is set back hundreds of feet from the</p> <p>14 street.</p> <p>15 So in terms of the building height --</p> <p>16 and we do comply to your footage height, it's just</p> <p>17 the story count that doesn't comply. Visually it</p> <p>18 won't have the impact that it would if the building,</p> <p>19 for example, were set 50 feet off of the street.</p> <p>20 The same holds true with the FAR.</p> <p>21 Given the modest increase of intensity of floor space</p> <p>22 area and what's permitted by code, given the fact</p> <p>23 that the building is set back 500 feet from the</p> <p>24 street, suggests that it ameliorates, to a large</p> <p>25 degree, the visual impression of that noncompliance.</p> <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p>
<p style="text-align: right;">22</p> <p>1 years ago in Westwood there is the Coventry case.</p> <p>2 Those who might not be familiar with it, actually I</p> <p>3 was the planner on the application, my client had</p> <p>4 proposed 360 units on Old Hook Road just west of the</p> <p>5 hospital where the bus depo used to be. We got an</p> <p>6 approval for 360 apartments. We did not meet one of</p> <p>7 the conditions of the conditional use. That</p> <p>8 condition was that we needed a front yard setback</p> <p>9 equal to one-third the depth of the lot.</p> <p>10 Now that's all well and good when you</p> <p>11 have 150 or 200 foot deep lot. My client's property</p> <p>12 was over 1,400 feet deep. We needed more than a 300</p> <p>13 foot front yard along Old Hook Road. And we argued</p> <p>14 that on the face of that that's kind of silly but,</p> <p>15 more importantly, we also argued that the site truly</p> <p>16 functioned well irrespective of not meeting that</p> <p>17 condition.</p> <p>18 Coventry Square, the apartment building</p> <p>19 across the street didn't want the competition of 360</p> <p>20 additional rental apartments, appealed the board</p> <p>21 approval. We lost at the lower court. He lost at</p> <p>22 the appellate court. The Supreme Court ruled that</p> <p>23 both again supported the application, but also said</p> <p>24 that the rationale that was offered that the site</p> <p>25 worked well irrespective of not complying with that</p> <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p>	<p style="text-align: right;">24</p> <p>1 One of the other issues that typically</p> <p>2 we would raise on these points is how we further the</p> <p>3 purposes of the Municipal Land Use Law. And in this</p> <p>4 instance -- excuse me -- of the Master Plan -- I have</p> <p>5 already touched upon four of the issues that we do</p> <p>6 affirm in the Master Plan.</p> <p>7 In terms of the negative criteria, I</p> <p>8 don't think there's a substantial detriment to the</p> <p>9 public good because the proposed use represents an</p> <p>10 enhancement to the public good for all the reasons</p> <p>11 that I've mentioned. And I don't think there's a</p> <p>12 substantial impairment to the intent of the Master</p> <p>13 Plan when you have a Master Plan that acknowledges</p> <p>14 that the O.R. zoning needs refinement because of the</p> <p>15 decrease in office space and office usage and the</p> <p>16 fact that the Master Plan made a specific</p> <p>17 recommendation that this use should be permitted in</p> <p>18 the O.R. zone.</p> <p>19 In terms of the bulk standards that we</p> <p>20 do not comply with, in nearly every instance it's a</p> <p>21 function of an existing condition and that we're just</p> <p>22 continuing, doesn't represent a new condition.</p> <p>23 The one area of new condition is that</p> <p>24 accessory structure. You're permitted 12 feet.</p> <p>25 You're allowed 14 and we're proposing 14.18 feet.</p> <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p>

1 But the reality is that accessory structure which is
2 serving as a community center inside the four walls
3 of the building, in the open space feature inside the
4 building, besides the accessory structure is never
5 seen from the -- you know, from the outside world.

6 So given all of that, I think that you
7 have enough to give consideration to an approving
8 vote on the application.

9 I would be happy to answer any
10 questions.

11 CHAIRMAN DePINTO: Very good. Thank
12 you.

13 Before I open up to board members for
14 questions of Mr. Burgis, I'm first going to go to
15 Ms. Green.

16 Ms. Green, you have heard the testimony
17 of Mr. Burgis. Do you have any questions of him with
18 regard to his testimony?

19 MS. GREEN: I do, Mr. Chairman.

20 MR. REGAN: Do we want to mark
21 Ms. Green's report.

22 CHAIRMAN DePINTO: We could.

23 MR. REGAN: Dated July 16th.

24 MS. GREEN: Yes.

25 MR. REGAN: B-3.

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1 the way of us moving forward.

2 MS. GREEN: Okay. Just so everyone
3 understands, there's a lot of questions to understand
4 what has and hasn't been changed.

5 CHAIRMAN DePINTO: We could deal with
6 that. I just need a copy.

7 MS. GREEN: So if the board turns to
8 Page 4, that's where we begin.

9 CHAIRMAN DePINTO: Did we mark this?

10 MR. REGAN: We marked it as B-3.

11 And, Darlene, before you begin, I know
12 Mr. Burgis addressed the (d)(3) conditional use and
13 you call out the (d)(1) use variance because the
14 independent living is not included within the
15 assisted living definition.

16 I think we need to hear some testimony
17 from you or Mr. Burgis pertaining to the (d)(1) use
18 variance. A lot of it may be the same as -- as how
19 we testified in connection with the (d)(3) relief,
20 but I think the (d)(1) needs to be discussed a little
21 bit.

22 CHAIRMAN DePINTO: Why don't we have
23 Mr. Burgis walk through that testimony.

24 THE WITNESS: I'm sorry. I have spoken
25 to my client --

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1 (Whereupon, Report by Ms. Green,
2 7/16/18 is received and marked as Exhibit B-3
3 for identification.)

4 MS. GREEN: Mr. Chairman, one thing I
5 think the board and its professionals are at a little
6 bit of a disadvantage this evening because I
7 discovered earlier today that the applicant submitted
8 revised site plans. And they, unfortunately, did
9 not -- they were not distributed.

10 So I think some of the conflicts that I
11 see in reviewing my letter comparing it to
12 Mr. Burgis's testimony is that we haven't had the
13 benefit of the revised site plan.

14 CHAIRMAN DePINTO: Those plans have not
15 been distributed you just said.

16 Correct.

17 MS. GREEN: I just received it when I
18 walked in this evening.

19 CHAIRMAN DePINTO: So your review is
20 based on prior submission.

21 MS. GREEN: Correct.

22 CHAIRMAN DePINTO: Their response would
23 be either they will comply with the request or they
24 have complied as shown on the revised plans.

25 So I don't think that should stand in

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1 MR. REGAN: The issue is, you discussed
2 the (d)(3) conditional use variance relief that is
3 required. There's also a (d)(1) use variance because
4 of the independent living component --

5 THE WITNESS: Yes.

6 MR. REGAN: -- of the use.

7 THE WITNESS: I just turned to my
8 attorney and said, did I cover every one of the
9 variances. I thought I missed -- I thought I missed
10 the sign variance.

11 MR. REGAN: Unless I didn't hear it.

12 THE WITNESS: No. The benefit of
13 having independent living, the assisted living and
14 memory care is the continuum of care this project
15 affords. That's the direction that this aging health
16 care is going in today. And more and more often you
17 are seeing this combination of categories of health
18 care and related activities to provide the residents
19 with that continuum of care as they age and get more
20 and more frail for lack of a better word. They can
21 stay on-site and they move from one part of the
22 structure to another. And that's the rationale for
23 that.

24 CHAIRMAN DePINTO: Okay. And why don't
25 we then move on to Ms. Green's review letter of July

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1 16th.

2 Could you please summarize your letter?

3 MS. GREEN: Yes, Mr. Chairman.

4 So on Page 4, Mr. Burgis, I identified

5 a (d)(3) conditional use variance for building

6 height. And your testimony tonight you said that you
7 only need it for the number of stories.

8 But I just verified the most recent
9 submission of the architectural plans and it is still
10 showing you above the 50 feet.

11 MR. VOGEL: We have, we made a
12 commitment to reduce it to below 50 feet.

13 MS. GREEN: So you will comply with 50
14 feet.

15 MR. VOGEL: The revised plans will show
16 such.

17 CHAIRMAN DePINTO: And I believe the
18 testimony of Mr. Burgis who has 49 --

19 THE WITNESS: 49.87 feet. I believe
20 that is shown on the engineer's drawing.

21 CHAIRMAN DePINTO: Okay.

22 MS. GREEN: Thank you.

23 CHAIRMAN DePINTO: Please continue.

24 MS. GREEN: Yes.

25 Moving along, on Page 5 we identified a

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1 spaces that we're providing. We are providing 20

2 parking spaces as future so we can leave that

3 landscape, that area as landscape.

4 Presumably it will be permanent

5 landscaping because we don't think that will ever be
6 needed. We thought concentrating on landscape future
7 together represents a benefit.

8 CHAIRMAN DePINTO: Ms. Green, correct
9 me if I'm wrong, the intent -- and I guess Mr.

10 Hipolit as well, with the 5 percent landscape island
11 requirement was to eliminate the appearance of a sea
12 of blacktop.

13 MR. HIPOLIT: Correct.

14 CHAIRMAN DePINTO: Is that not correct?

15 MR. HIPOLIT: That's correct.

16 CHAIRMAN DePINTO: Could this site
17 accommodate that requirement of the code?

18 MS. GREEN: I think they lose parking
19 spaces by installing the islands. I know what --

20 MR. HIPOLIT: I don't think so.

21 I mean the site is set kind of existing

22 and they are making improvements that help reduce

23 impervious. Because -- because of the way the site

24 is dimensioned long-wise without encroaching into the

25 front yard and disturbing the front yard, they can't

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1 series of (c) variances. One of those was for the
2 screening of parking areas.

3 We had noted that the parking is not
4 entirely screened from adjacent parcels.

5 Is that being -- is that variance being
6 eliminated.

7 THE WITNESS: We are providing some
8 additional landscape amenity on that side.

9 MS. GREEN: So they will comply?

10 THE WITNESS: Yes.

11 MR. REGAN: So --

12 CHAIRMAN DePINTO: So the variance is
13 no longer required.

14 THE WITNESS: Correct.

15 MS. GREEN: Okay. Then there is a
16 variance called out for landscaped islands. They're
17 asking for 5 percent of the parking area.

18 Will this be complied with?

19 THE WITNESS: No. I thought -- I
20 didn't touch upon that.

21 Initially we had thought that by
22 providing the landscaping around the perimeter of the
23 parking lot that that would suffice.

24 What we are trying to do is ensure the
25 appropriate amount of parking. We have 150 parking

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1 claim that space to keep the same amount of parking
2 spaces.

3 So if, in fact, they're not complying,
4 I would recommend to the board to preserve a variance
5 because the front yard green is crucial with respect
6 to residential in the street.

7 CHAIRMAN DePINTO: Do you agree with
8 that?

9 MS. GREEN: I would agree.

10 CHAIRMAN DePINTO: Mr. Burgis, you said
11 it was your intent to supplement the landscape on the
12 perimeter of the property in lieu of doing the
13 islands.

14 THE WITNESS: I was talking about the
15 20 spaces that we are not paving and in all
16 likelihood will not need to pave it to accommodate
17 parking demand.

18 MR. HIPOLIT: You don't know that,
19 though.

20 THE WITNESS: The experience is such.

21 CHAIRMAN DePINTO: Where the board has
22 waived the requirement for the landscape islands,
23 they increase requirements on the screening of
24 parking areas in the perimeter.

25 MR. HIPOLIT: Correct.

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1 CHAIRMAN DePINTO: Has that been
2 achieved?
3 MR. HIPOLIT: They're saying they're
4 going to do that in their revised plans.
5 CHAIRMAN DePINTO: So we'll see a
6 revised landscape plan and DeBlasio is going to
7 review that and give a separate report on that.
8 MR. HIPOLIT: Yes.
9 CHAIRMAN DePINTO: Prior to the next
10 hearing.
11 MR. HIPOLIT: Yeah. We'll have three
12 letters by this time.
13 CHAIRMAN DePINTO: Thank you.
14 Please continue, Ms. Green.
15 MS. GREEN: Moving along, No. 5, at the
16 last hearing we heard that there were going to be two
17 14-passenger shuttle busses to be parked overnight.
18 The ordinance does not allow the overnight parking of
19 vehicles. So that's another variance you'll need to
20 seek.
21 THE WITNESS: Yes.
22 One of the previous witnesses actually
23 addressed that at the last meeting.
24 MS. GREEN: They -- they said that
25 there would be two vans on-site.

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1 eliminated?
2 THE WITNESS: It is being eliminated.
3 CHAIRMAN DePINTO: They are going to
4 plant plantings 8-feet tall.
5 MS. GREEN: All right. Moving along,
6 Page 10, there is a --
7 CHAIRMAN DePINTO: Wait a minute. We
8 skipped over variance for number of colors on the
9 sign.
10 MS. GREEN: They need a variance.
11 CHAIRMAN DePINTO: The ordinance
12 permits two colors, three colors where black or white
13 is used.
14 Mr. Burgis, you said there are six
15 colors in the sign.
16 THE WITNESS: They've been identified
17 as six colors.
18 CHAIRMAN DePINTO: Do you have a
19 rendering of the sign?
20 THE WITNESS: Yes. Do you have color
21 --
22 MALE AUDIENCE MEMBER: It's part of the
23 record.
24 MR. VOGEL: It's part of the transcript
25 and it is --

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1 THE WITNESS: Yes.
2 MS. GREEN: Okay.
3 CHAIRMAN DePINTO: And they are going
4 to be parked in designated spaces, I presume.
5 THE WITNESS: That's what was testified
6 to, yes.
7 CHAIRMAN DePINTO: And those designated
8 spaces are going to be in locations that are not
9 visible from the perimeter of the property.
10 THE WITNESS: Correct.
11 MS. GREEN: No. 7, at the bottom of
12 Page 5, it continues over to Page 6, the landscaping
13 to screen the loading area was not 8-feet tall.
14 Do you know if that variance has been
15 eliminated?
16 THE WITNESS: I thought --
17 MR. VOGEL: It will be addressed.
18 THE WITNESS: -- it was addressed at
19 the last meeting.
20 MR. REGAN: That variance is not being
21 offered.
22 THE WITNESS: Pardon me?
23 MR. REGAN: That variance is not being
24 offered?
25 CHAIRMAN DePINTO: Is it being

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1 MR. REGAN: A-6, according to my notes.
2 MR. VOGEL: A-6. Correct.
3 A-6 is part of the transcript we have
4 submitted.
5 MR. LINTNER: It's this --
6 MR. VOGEL: The back of the...
7 CHAIRMAN DePINTO: Street signature
8 detail.
9 And where -- where are the six colors.
10 THE WITNESS: If you look in the
11 left-hand side it identifies the six colors.
12 Interestingly enough, for example,
13 color No. 5 is the white masonry, itself, which is
14 the --
15 CHAIRMAN DePINTO: Well, excluding --
16 excluding the stonework or brickwork how many colors
17 are there to the sign?
18 MR. REGAN: On the actual rectangle.
19 CHAIRMAN DePINTO: Yeah.
20 THE WITNESS: I would say there are --
21 MR. REGAN: Three.
22 THE WITNESS: Three.
23 CHAIRMAN DePINTO: Three colors.
24 MR. REGAN: And one of them is white?
25 CHAIRMAN DePINTO: And one of the three

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1 are white.
 2 THE WITNESS: Right.
 3 CHAIRMAN DePINTO: Is that correct?
 4 THE WITNESS: That is correct.
 5 CHAIRMAN DePINTO: So it looks like
 6 a -- I don't know whether it's a blue on white.
 7 Is that the color?
 8 MR. REGAN: It looks like a light blue.
 9 THE WITNESS: I am embarrassed to say I
 10 am color blind. All the dark colors look the same to
 11 me.
 12 CHAIRMAN DePINTO: Does anyone out
 13 there have a Crayola box so we can determine what
 14 this is.
 15 MR. LINTNER: It looks like two shades
 16 of blue on gray.
 17 MS. O'NEILL: I see purple, blue, gray,
 18 black.
 19 MR. REGAN: It's not white on mine.
 20 MS. RUSSO: Purple and blue on gray.
 21 MS. GREEN: Yes, I agree.
 22 THE WITNESS: With a black --
 23 Mr. Chairman.
 24 CHAIRMAN DePINTO: Yeah. I would like
 25 to reduce the number of colors.

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1 THE WITNESS: And we're going to.
 2 Item No. 2, which I'm told is a light
 3 blue, will be the same color as the writing of the
 4 lettering, excuse me, and the dark L-shaped feature
 5 separating what I'll call the sign from the monument
 6 upon which it's located. So when we do that and the
 7 other item we talked about a moment ago, you would
 8 have three colors.
 9 CHAIRMAN DePINTO: In compliance with
 10 the color requirements of the code.
 11 MR. REGAN: It's not you're -- you
 12 don't have --
 13 CHAIRMAN DePINTO: Is there a white?
 14 MR. REGAN: You don't have a black.
 15 You have gray.
 16 CHAIRMAN DePINTO: So specifically what
 17 colors are you proposing to amend the application.
 18 THE WITNESS: We will keep --
 19 CHAIRMAN DePINTO: To bring it into
 20 compliance at least, what color?
 21 THE WITNESS: The --
 22 CHAIRMAN DePINTO: The font will be
 23 what color?
 24 MR. VOGEL: Black.
 25 Right?

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1 MALE AUDIENCE MEMBER: The font and
 2 this background color will be the same so it will be
 3 the same.
 4 CHAIRMAN DePINTO: Purple.
 5 MALE AUDIENCE MEMBER: This needs to be
 6 white.
 7 MR. HIPOLIT: Just tell us what the
 8 colors are.
 9 THE WITNESS: It will be a white
 10 background, the letters will be on a white
 11 background. The letters and the squish will be a
 12 purple.
 13 MALE AUDIENCE MEMBER: A violet-type
 14 color.
 15 CHAIRMAN DePINTO: So white background,
 16 violet font.
 17 And what's your third color?
 18 THE WITNESS: The masonry will be white
 19 as well or stone.
 20 CHAIRMAN DePINTO: Or stone more of a
 21 grayish color.
 22 THE WITNESS: Right.
 23 CHAIRMAN DePINTO: And those are what
 24 constitute your three colors?
 25 MR. VOGEL: Gray is correct.

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1 MR. REGAN: White background, violet
 2 letters and gray masonry.
 3 CHAIRMAN DePINTO: The 1,200, I
 4 presume, would match to the font color.
 5 THE WITNESS: Yes.
 6 CHAIRMAN DePINTO: Okay. So that
 7 brings you into compliance with number of colors.
 8 Let's talk to the issue of the size of
 9 the sign. I think you testified, Mr. Burgis, that
 10 the sign is about three times bigger than the code
 11 requires.
 12 THE WITNESS: Yes.
 13 CHAIRMAN DePINTO: Why do we need such
 14 a big sign?
 15 THE WITNESS: It's actually an
 16 aesthetic issue. The lettering, itself, would be A
 17 box-style, does comply.
 18 It's the stone, the cream colored stone
 19 identified as No. 5. That adds a lot to the size of
 20 the sign as does that purple L-shaped feature.
 21 CHAIRMAN DePINTO: Again, it's a very
 22 attractive sign, but can the whole thing shrink
 23 proportionately?
 24 THE WITNESS: It would be difficult to
 25 do so, quite frankly, because then you find it -- you

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<p style="text-align: right;">41</p> <p>1 have to change where it says "independent living" and 2 "assisted living." 3 CHAIRMAN DePINTO: Darlene, can this 4 sign shrink a little? 5 MS. GREEN: I think there could be some 6 trimming done. 7 I understand their concern probably 8 because of the patrons that would be using the site 9 specifically have, you know, decreased vision. 10 So I'm sure they would want to have a 11 sign of a certain size to make sure they make a turn 12 in adequate time. 13 THE WITNESS: If I could add to that, 14 remember that building is set back 500 feet from the 15 street so you do not see this building. So when 16 you're driving down Summit the only thing you have is 17 the sign. 18 CHAIRMAN DePINTO: Okay. 19 MR. HIPOLIT: You really cannot see 20 this building. 21 CHAIRMAN DePINTO: No, I understand 22 with the building, but it's the size of the sign in 23 relationship to the other freestanding signs within 24 that zone. And I don't want to be that far out of 25 what typically has been done in that zone. <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p> </p>	<p style="text-align: right;">43</p> <p>1 between now and the next time we see you to address 2 ourselves to the sign. 3 CHAIRMAN DePINTO: Okay. Very good. 4 Thank you. 5 Why don't we continue, Item 8? 6 MS. GREEN: Mr. Chairman, if you 7 forward over to Page 10, affordable housing, we have 8 not heard any testimony on the key 25 units of 9 affordable housing that are being provided here. I 10 have a series of questions. 11 Hopefully Mr. Burgis can address those. 12 CHAIRMAN DePINTO: Okay. So, 13 Mr. Burgis, Page 10 of 12 of Ms. Green's report, can 14 you address those questions in order to verbalize 15 them? 16 THE WITNESS: Obviously 10 percent 17 pursuant to your code would be set aside as Medicaid 18 beds. 19 I do have -- I do take exception to one 20 issue where you talk about low and moderate income, 21 residents cannot be charged any up front fees. This 22 is in the Third Round Rules in the COAH regulations, 23 that those Third Round Rules were never adopted. And 24 the Supreme Court's 2015 decision said that except 25 for certain specified items in their decision we are <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p> </p>
<p style="text-align: right;">42</p> <p>1 This is a very large sign. 2 MR. VOGEL: The actual sign aspect of 3 it is compliant. It's the -- 4 CHAIRMAN DePINTO: The support. 5 MR. VOGEL: -- the masonry base 6 essentially. 7 CHAIRMAN DePINTO: Right. 8 MR. VOGEL: And the only reason for 9 that is because of the distance that the building -- 10 I mean just, the building is 500 feet 11 back, Without some kind of masonry structure it would 12 simply be a sign without any architectural benefit. 13 And that's what the intent is. 14 CHAIRMAN DePINTO: I'm not arguing the 15 design, nor am I arguing the setback of the building 16 and the lack of visibility from the road. 17 But I am familiar with the other signs 18 in the zone which are compliant with the zone for the 19 most part. And this one far exceeds that size. 20 So I'm only asking, not that it would 21 be eliminated, the request for a variance be 22 eliminated, but reduce the size of the sign closer to 23 what the zone would permit. 24 MR. VOGEL: We hear you loud and clear. 25 Give us -- give us the opportunity <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p> </p>	<p style="text-align: right;">44</p> <p>1 still to follow the Second Round Rules, and the 2 Second Round Rules did not contain any such 3 provision. 4 MS. GREEN: So Mr. Vogel raised this 5 question to me earlier today and because we're in 6 this state of limbo where there's no COAH, I reached 7 out to the Fair Share Housing Center because if 8 anyone would raise an issue about it, it would be 9 them. 10 Luckily, they did get back to me. 11 However, the answer is not really immensely helpful. 12 Adam Gordon responded at 4:49 today 13 saying that some facilities of this type essentially 14 have one-time initial fee in addition to monthly fees 15 and such fees can't be charged to the affordable 16 units. I haven't had this question come up before 17 though, so I haven't researched the history of it. 18 So I think before the board makes a 19 final decision on this, I would like the opportunity 20 to go back to Mr. Gordon from the Fair Share Housing 21 Center, ask him to do additional due diligence so we 22 get the correct answer. 23 CHAIRMAN DePINTO: Okay. Did you 24 attempt to communicate with Mike Edwards or Jeff 25 Sorinian (phonetic) on this? <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p> </p>

1 MS. GREEN: No, I did not.
 2 CHAIRMAN DePINTO: Why don't you reach
 3 out to Mr. Sorinian or Edwards?
 4 MS. GREEN: I'm going to see them
 5 tomorrow.
 6 CHAIRMAN DePINTO: That is right,
 7 you're going to be at the compliance hearing. So why
 8 don't you check with them and get back to everybody.
 9 MR. VOGEL: Just with respect to all of
 10 what is on Page 10 of the report with respect to
 11 affordable housing, we have made the commitment to
 12 have 25 affordables and whatever the regulations are
 13 that are applicable to that, we are compelled to
 14 satisfy.
 15 And, so, all that's in here, whatever
 16 is applicable as a matter of law will be complied
 17 with so as to provide the 25 affordable units that we
 18 have committed to.
 19 CHAIRMAN DePINTO: And the resolution
 20 will reflect that.
 21 Correct.
 22 MR. REGAN: Yes. And Paragraph 19 will
 23 be met.
 24 CHAIRMAN DePINTO: Ms. Green, are there
 25 any other unanswered questions now that counsel has

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1 made that statement which will be included in the
 2 record.
 3 MS. GREEN: Not for this witness.
 4 However, upon our review of the revised
 5 plans, there may still be some outstanding items.
 6 CHAIRMAN DePINTO: Okay. Well, that's
 7 fair.
 8 Okay. And with that said, members of
 9 the board have questions? I'll start with
 10 Mr. Teagno.
 11 MR. TEAGNO: In fact, Mr. Chairman, the
 12 only question is, is the old Butler Aviation sign
 13 still out front, the monument or whatever.
 14 The previous tenant, is their sign
 15 still out front?
 16 CHAIRMAN DePINTO: Andy is going to
 17 look it up.
 18 MR. HIPOLIT: Just a second.
 19 MR. TEAGNO: What size is that whole
 20 structure?
 21 CHAIRMAN DePINTO: Yeah.
 22 MR. TEAGNO: Because that's got the
 23 same restriction.
 24 THE WITNESS: The existing sign is
 25 still up.

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1 MR. VOGEL: We haven't touched the site
 2 so...
 3 MR. TEAGNO: I'm just wondering how big
 4 that sign is compared to what you're asking for.
 5 CHAIRMAN DePINTO: We'll have Andy
 6 check it. Okay.
 7 MR. TEAGNO: It may not be that much
 8 past what's existing.
 9 CHAIRMAN DePINTO: Do you have anything
 10 else?
 11 MR. TEAGNO: No. That's it.
 12 CHAIRMAN DePINTO: Mr. Culhane?
 13 MR. CULHANE: Yeah. I have one
 14 question dealing with the height and recognizing that
 15 they have to go up 40 feet, my question last week was
 16 the average grade and the engineer was going to
 17 provide the calculations. And I was wondering was
 18 that done and did they verify it?
 19 MR. HIPOLIT: No.
 20 They submitted -- they submitted some
 21 plans, but they need to make -- maybe need to make
 22 revisions based on this, resubmitting to us by Friday
 23 the latest and we'll verify it.
 24 MR. CULHANE: It's still open.
 25 MR. HIPOLIT: They -- I'm assuming --

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1 MR. CULHANE: Revised plan, 150 feet.
 2 MR. HIPOLIT: I have not verified.
 3 CHAIRMAN DePINTO: Okay. Thank you.
 4 Mr. Fette?
 5 MR. FETTE: No questions at this time.
 6 CHAIRMAN DePINTO: Thank you.
 7 Ms. Russo?
 8 MS. RUSSO: No questions at this time.
 9 CHAIRMAN DePINTO: Mr. Lintner?
 10 MR. LINTNER: I have no question at
 11 this time.
 12 I need to advise that I was not at the
 13 previous meeting. I did read the transcript in
 14 detail and signed that I was -- that I had read it so
 15 I am eligible to continue with this hearing.
 16 CHAIRMAN DePINTO: Very good.
 17 Mr. D'Agostino?
 18 MR. D'AGOSTINO: No questions.
 19 CHAIRMAN DePINTO: Thank you.
 20 Ms. O'Neill?
 21 MS. O'NEILL: In the original hearing
 22 we asked if they would consider revisiting some of
 23 the materials that were presented.
 24 Do you know if that was ever
 25 considered?

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1 THE WITNESS: That I would have to
2 defer to the architect on.
3 CHAIRMAN DePINTO: I believe the
4 clapboard was the question.
5 MS. O'NEILL: It was the clapboard, the
6 vinyl, they had an EFIS.
7 CHAIRMAN DePINTO: They had the EFIS.
8 MS. O'NEILL: And I believe there was
9 one other one.
10 MR. VOGEL: I have, if you would like
11 to visit that issue, at this point I do have another
12 witness who is a principal of the applicant who would
13 be prepared to address the issue.
14 CHAIRMAN DePINTO: Okay. Why don't you
15 introduce him?
16 MR. VOGEL: All right. May I have the
17 witness sworn?
18 MR. REGAN: Do you swear or affirm that
19 the testimony you will give in this meeting will be
20 the truth, so help you God.
21 MR. WEINER: I do.
22 D A V I D W E I N E R,
23 Having been duly sworn, testifies as follows:
24 MR. REGAN: State your full name and
25 spell it.

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1 **A. Yes, I did.**
2 **Q.** Would you provide the board with your
3 response?
4 **A. Sure.**
5 **I understand that there was a request**
6 **made for changing the vinyl siding.**
7 **At this time I would urge the board to**
8 **reconsider that request.**
9 **I've done numerous projects. One**
10 **benefit of vinyl siding versus the cement fiber**
11 **siding is there's no maintenance involved with vinyl**
12 **siding. It's a product that's guaranteed for finish**
13 **for 50-some-odd years.**
14 **The cement fiber siding does need to be**
15 **repainted on a regular basis of approximately seven**
16 **to 10 years so there is additional maintenance that**
17 **is required.**
18 **We've done multiple projects. It's**
19 **very difficult from a visual point of view to tell**
20 **the difference between the two projects. And I**
21 **believe from observing some of the buildings in the**
22 **nearby area that it's consistent with what's being**
23 **used in the town of Montvale at this time.**
24 MS. O'NEILL: And the EFIS.
25 THE WITNESS: The EFIS is, at the

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1 MR. WEINER: David Weiner, W-E-I-N-E-R.
2 DIRECT EXAMINATION
3 BY MR. VOGEL:
4 **Q.** Mr. Weiner, how are you affiliated with
5 the applicant?
6 **A. I am the managing member of the**
7 **development group as well as the managing member of**
8 **the general contractor who will be building the**
9 **project.**
10 MR. REGAN: The general contractor not
11 the applicant.
12 THE WITNESS: Both.
13 MR. REGAN: Okay.
14 BY MR. VOGEL:
15 **Q.** Have you been involved in the
16 construction of assisted- and independent-living
17 facilities previously?
18 **A. Yes, I have.**
19 **Q.** And both with respect to the ownership
20 and the construction as well?
21 **A. That's correct.**
22 **Q.** All right. There's been a question
23 asked about the materials.
24 Are you familiar with that question?
25 You heard it when it was addressed?

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1 request of the board at a preliminary meeting, use of
2 different materials to break up the facade.
3 I would strongly, again, urge the board
4 to consider their stance on EFIS. It's a product
5 that I can understand if it was the majority of the
6 facade that you would have a concern with. These are
7 highlights to the facade versus using plaster.
8 I've checked with the American Plaster
9 Association. They will tell you, that if you use
10 that product in the northeast, it's not a matter of
11 if it will crack, it will definitely crack because it
12 does not stand up to the thermo expansion and
13 contraction in this climate.
14 So the EFIS is a product that's
15 attempted to simulate a plaster-look in a portion of
16 the building. It's a small portion of the building.
17 We have used it on multiple projects with great
18 success.
19 And, again, we would ask that you would
20 reconsider that request.
21 MR. VOGEL: The front of the building
22 is all brick.
23 THE WITNESS: The front of the building
24 facing Summit Avenue will not have any EFIS or vinyl
25 siding. It's going to be all stone and brickwork.

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1 And, again, there is a substantial
2 amount of brickwork and stone on the other facades as
3 well.

4 MS. O'NEILL: So in the past a lot of
5 our concerns with EFIS have been that it is flammable
6 as well as vinyl siding both of which I recognize
7 that the EFIS doesn't need to be functional to be
8 flammable, but for demonstration purposes, in my
9 professional life, have lit EFIS on fire. It is --
10 once it goes up, it spreads dramatically.

11 THE WITNESS: Well, again, from the
12 point of view of fire, the building is, the exterior
13 walls is a two-hour rated stone so fire within the
14 building shouldn't be an issue. It's a two-hour
15 rated assembly and a fully sprinklered building.

16 Given the setback from other buildings
17 in the area and, again, given the small portion of
18 EFIS that's on this building, I -- I don't think that
19 it would be a concern. If it were, I wouldn't use
20 it.

21 MS. O'NEILL: What is a small portion
22 of the building?

23 THE WITNESS: I don't know off the top
24 of my hand the exact percentages. I would guess it's
25 under 20 percent of the exterior facade. I could

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1 you will be returning to the board.

2 THE WITNESS: Yes.

3 CHAIRMAN DePINTO: Please investigate
4 alternative products that you may be able to use. I
5 know EFIS, a few years ago, got a bad rap because of
6 the chemical content and I presume that's been cured
7 over the years.

8 But, I'd like to see something that you
9 could present to the board which may refute what
10 Ms. O'Neill is saying with the flammability. Maybe
11 there's something -- another product other than EFIS
12 that you may be able to use.

13 With respect to the vinyl siding, I
14 have seen a number of examples of vinyl siding. They
15 come in in various grades, you know, Hardie board
16 which is composite, that there are others other than
17 Hardie board which are -- which are vinyl.

18 THE WITNESS: I used it on many
19 projects. It's a very good product. It's a very
20 attractive product. And we would be that --
21 something of that quality we would certainly be
22 willing to use.

23 CHAIRMAN DePINTO: I think if you could
24 come in with a product similar to that I think that
25 may address your concerns.

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1 give you a better estimate of that.

2 MS. O'NEILL: So if it's under 20
3 percent wouldn't it really make a decent amount of
4 sense to just use the better material.

5 THE WITNESS: Well, the EFIS, I don't
6 know what better material I could use.

7 MS. O'NEILL: What about traditional
8 stucco?

9 THE WITNESS: It's going to crack.
10 It's not made to -- to stand up to this thermal
11 expansion.

12 MS. O'NEILL: I have not had any issues
13 professionally.

14 THE WITNESS: I have done multiple
15 projects. I contacted the American Plaster
16 Association. The exact quote from the gentleman I
17 spoke to was "as sure as the sun rises and sets, if
18 you use natural plaster in this area, even with using
19 sprinklers to cure it, it's not going to withstand
20 the thermo expansion and contraction. It will crack
21 over time."

22 MS. O'NEILL: Various historic
23 districts have been using plaster for hundreds of
24 years will disagree.

25 CHAIRMAN DePINTO: Well, why don't --

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1 MS. O'NEILL: Yes.

2 One of the concerns with the vinyl is
3 that we couldn't -- we didn't know the grade, what
4 gauge?

5 CHAIRMAN DePINTO: Right. Okay.

6 THE WITNESS: I would be happy to
7 review both those items with our designer.

8 CHAIRMAN DePINTO: Very good. Thank
9 you.

10 Mr. Teagno?

11 MR. TEAGNO: Nothing further.

12 CHAIRMAN DePINTO: Mr. Culhane?

13 MR. CULHANE: Nothing further.

14 CHAIRMAN DePINTO: Okay. I think I
15 have got everybody.

16 Okay. We have to open to the public.

17 The Chair will entertain a motion to
18 open to the public.

19 MR. CULHANE: So move.

20 CHAIRMAN DePINTO: Mr. Teagno, seconded
21 Mr. Culhane.

22 All in favor?

23 (Whereupon, all board members respond
24 in the affirmative.)

25 CHAIRMAN DePINTO: Anyone from the

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1 public have any questions of the witnesses that
 2 testified before the board?
 3 (No response.)
 4 CHAIRMAN DePINTO: Hearing none, the
 5 Chair will entertain a motion to close the meeting to
 6 the public.
 7 MR. CULHANE: So move.
 8 CHAIRMAN DePINTO: Mr. Culhane,
 9 seconded Ms. O'Neill?
 10 All in favor?
 11 (Whereupon, all board members respond
 12 in the affirmative.)
 13 MR. VOGEL: So this concludes the
 14 testimony from witnesses.
 15 We have some questions to -- and
 16 inquiries to respond to. We will in short order
 17 provide revised drawings with respect to the site and
 18 the architectural and be prepared at the next
 19 meeting to respond to any questions that may exist
 20 either as raised this evening or as a function of the
 21 revised drawings.
 22 I would hope -- and I have become aware
 23 of your very heavy agenda, I would hope that you have
 24 a spot for us when we could hopefully put this all
 25 together at an early meeting.

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1 wrap on this application just as you would and we do
 2 have a very, very heavy agenda over the next couple
 3 of months.
 4 I would like to get you into the next
 5 meeting subject to you submitting plans and further
 6 subject to the representations that I believe you
 7 have made on the record or witnesses have made on the
 8 record that you are going to comply with the
 9 requirements of our Borough Engineer and his
 10 technical reviews and the borough planner and her
 11 reviews.
 12 Mr. Regan, beyond the compliance with
 13 those issues, where are we with police, fire?
 14 MS. ROWLAND: The police reviews and
 15 fire I think was distributed previously.
 16 MR. REGAN: Yeah.
 17 Another thing, Mr. Chairman, we're
 18 waiting for, Lorraine advised me in an email today
 19 that the applicant's proposed contact ambulance
 20 services has been forwarded to Tri-Boro for review.
 21 CHAIRMAN DePINTO: Ambulance services
 22 have been --
 23 MR. REGAN: There is a proposed
 24 contract with New Jersey Mobile Health Care to
 25 provide ambulance service to the development.

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1 CHAIRMAN DePINTO: Well, let's go back
 2 to the plans that were submitted today, I understand,
 3 revised plans submitted today.
 4 Ms. Green?
 5 MS. GREEN: They weren't submitted
 6 today, they were discovered today.
 7 MR. HIPOLIT: They were submitted over
 8 a week ago.
 9 CHAIRMAN DePINTO: They were submitted
 10 a week ago.
 11 MS. ROWLAND: The July 6th.
 12 CHAIRMAN DePINTO: But discovered
 13 today.
 14 MS. ROWLAND: Yes and distributed
 15 today.
 16 CHAIRMAN DePINTO: And distributed
 17 tonight. Okay.
 18 Are you anticipating further revisions?
 19 MR. VOGEL: There will probably be some
 20 minor -- they wouldn't be major, but they would be, I
 21 think, consistent with the comments by both
 22 Mr. Hipolit and Ms. Green and the questions raised
 23 this evening. And I could get them in in short
 24 order.

CHAIRMAN DePINTO: We'd like to get a
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1 CHAIRMAN DePINTO: And it's been
 2 forwarded to Tri-Boro.
 3 MR. REGAN: Lorraine said she did
 4 forward it to Tri-Boro.
 5 CHAIRMAN DePINTO: And does it outline
 6 what Tri-Boro's responsibilities would be.
 7 MR. REGAN: Tri-Boro is not mentioned
 8 at all in this but I would like to see if they have
 9 any input on it.
 10 CHAIRMAN DePINTO: Can we get some
 11 testimony on the record with respect to the private
 12 ambulance service?
 13 MR. VOGEL: Yes, not this evening but I
 14 can.
 15 What I did was I obtained that
 16 contract, was negotiated and as I indicated in my
 17 letter when I sent it in, we're prepared to sign it
 18 if it's found to be acceptable to the board.
 19 MR. REGAN: Mr. Vogel, one item in the
 20 contract. I know, Paragraph 1 talks about the
 21 contract regarding Mobile Health Care would provide
 22 senior living residents a service in accordance with
 23 drive senior living patients terms of care.
 24 I think we probably need to see a
 25 document as to what the plans of care are, just to

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1 have that because, otherwise, I think this is
 2 incomplete without us seeing that.
 3 MR. VOGEL: Well, there's two ways to
 4 do this. I can bring someone next time, of course,
 5 and I can try to remedy any inadequacies in that on
 6 the one hand and on the other hand if and when the
 7 board is ready to vote, if it's going to vote
 8 favorably it could make it a condition of the
 9 approval.

10 MR. REGAN: Well, it would be but what
 11 I'm saying, there's a reference to Thrive's senior
 12 living patients plans of care as transmitted to the
 13 contractor, I think we need to see that or it should
 14 be attached as an exhibit.

15 MR. VOGEL: Okay.

16 CHAIRMAN DePINTO: Let's see if we get,
 17 hone this down.

18 When could you deliver to the borough
 19 revised plans incorporating changes that have been
 20 agreed to by the applicant so that we could schedule
 21 the carry of this hearing to a meeting.

22 When do you think we would get those?

23 MR. VOGEL: I'll get them within days.

24 I mean, if you give me a date --

25 MR. HIPOLIT: How about Friday?

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1 we get the revised landscaping for buffering to
 2 review.

3 CHAIRMAN DePINTO: So you'll have
 4 Mr. Deblasio take care of that.

5 MR. HIPOLIT: Yes. Let me see the rest
 6 of the my notes.

7 CHAIRMAN DePINTO: And you can forward
 8 his report directly to the applicant in interests of
 9 saving time.

10 I didn't mean to -- I think if we all
 11 work along those lines -- you're shaking your head
 12 this way, Mr. Vogel.

13 MR. VOGEL: I believe, the 7th, I
 14 believe, I've been reminded, I think there was a
 15 police report review. They had no comment but I will
 16 check that and make sure.

17 MR. HIPOLIT: Then the only thing,
 18 Mr. Chairman, is my notes from public meetings now.
 19 We're going to look for the applicant to commit on
 20 the record at the next meeting not tonight that
 21 they're going to clean out that detention basin back
 22 to its original condition because right now it's
 23 overgrown. So it's just --

24 MR. VOGEL: Our commitment is that that
 25 has to be brought up to snuff and it's got to be

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1 MR. VOGEL: Pardon me?

2 MR. HIPOLIT: How about by Friday?

3 MR. VOGEL: Friday of this week? Yes,
 4 I'll get you a set of plans.

5 CHAIRMAN DePINTO: So if you get the
 6 plans in by the 7th -- I'm sorry, by this Friday.

7 MR. HIPOLIT: The 20th.

8 CHAIRMAN DePINTO: Which is the 20th.
 9 We could carry you to the 7th. And I believe that
 10 that would give the borough adequate time to do its
 11 reviews and the borough professionals could recommend
 12 to the board to be forward with the preparation of a
 13 resolution of approval.

14 Is there anything outstanding?

15 We talked about the materials from
 16 Ms. O'Neill which you will address.

17 Is there anything, anyone else, beyond
 18 what's already been put on the record, believes would
 19 be required?

20 We're still waiting on -- I'm sorry.

21 MS. ROWLAND: The police review.

22 CHAIRMAN DePINTO: The police review.

23 And other agencies, fire or the -- and
 24 landscape, Mr. Hipolit.

25 MR. HIPOLIT: I have a note on that so

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1 compliant with whatever its design criteria are.

2 MR. HIPOLIT: Okay.

3 CHAIRMAN DePINTO: Did you get a copy
 4 the Fire Department report, Mr. Vogel.

5 MR. VOGEL: Yes.

6 CHAIRMAN DePINTO: We have not marked
 7 it into evidence. -- oh, we do have the police
 8 response. Yeah.

9 Why don't we mark the Police Department
 10 dated April 23rd, and I'll read it into the record.

11 MR. REGAN: B-4.

12 CHAIRMAN DePINTO: And mark it as Board
 13 Exhibit-4.

14 MR. REGAN: 4/23.

15 (Whereupon, Police Department Report,
 16 4/23/18 is received and marked as Exhibit B-4
 17 for identification.)

18 CHAIRMAN DePINTO: And it's dated 4/23.
 19 It reads:

20 "Review of this application reveals
 21 nothing that is of concern to the Montvale
 22 Police Department in terms of impeding public
 23 safety or any of the other enumerated areas of
 24 review at this time. And then we have a Fire
 25 Department review letter."

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<p style="text-align: right;">65</p> <p>1 MR. REGAN: B-5.</p> <p>2 CHAIRMAN DePINTO: We'll mark it into</p> <p>3 evidence as B-5.</p> <p>4 (Whereupon, Fire Department Review</p> <p>5 Letter is received and marked as Exhibit B-5</p> <p>6 for identification.)</p> <p>7 CHAIRMAN DePINTO: And it reads:</p> <p>8 "We have noted that all the driveways</p> <p>9 on-site are 24-feet wide. For proper access</p> <p>10 of fire apparatus we recommend that all</p> <p>11 interior roadways comply with the 2015</p> <p>12 International Fire Code, Appendix D, with</p> <p>13 26-feet-wide access roads.</p> <p>14 "The utility plan shows the water main</p> <p>15 branching into two deadened mains, terminating</p> <p>16 at the southeast and southwest corners of the</p> <p>17 building. We recommend that these two</p> <p>18 branches be interconnected across the south</p> <p>19 end of the building to improve fire flows."</p> <p>20 Does that sound like a feasible --</p> <p>21 MR. VOGEL: Yes.</p> <p>22 CHAIRMAN DePINTO: -- thing to do?</p> <p>23 And what about this 25 feet versus 26</p> <p>24 feet?</p> <p>25 Mr. Hipolit, are you aware of that</p> <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p>	<p style="text-align: right;">67</p> <p>1 ladder truck.</p> <p>2 MR. HIPOLIT: Again, our Fire</p> <p>3 Department is very reasonable. I think it's worth it</p> <p>4 to ask the question.</p> <p>5 CHAIRMAN DePINTO: Yeah. Could you</p> <p>6 research that and get that.</p> <p>7 I mean, at this point, I would not</p> <p>8 particularly want to redraft a plan of these roadways</p> <p>9 if, in fact, we could live with the 24 feet</p> <p>10 particularly in light of the fact that you are</p> <p>11 unaware of that requirement.</p> <p>12 MR. HIPOLIT: We have never done it</p> <p>13 anywhere else.</p> <p>14 MR. REGAN: I don't recall making that</p> <p>15 recommendation.</p> <p>16 CHAIRMAN DePINTO: So let's check into</p> <p>17 that.</p> <p>18 MR. HIPOLIT: Okay.</p> <p>19 CHAIRMAN DePINTO: Can you think of</p> <p>20 anything else? Can anybody think of anything else?</p> <p>21 (No response.)</p> <p>22 CHAIRMAN DePINTO: No?</p> <p>23 Okay. So with that said, this meeting</p> <p>24 will be carried to our August, is it the 7th meeting?</p> <p>25 No further notice will be provided to</p> <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p>
<p style="text-align: right;">66</p> <p>1 code?</p> <p>2 MR. HIPOLIT: No. I actually have</p> <p>3 never heard of that requirement. And Mr. Fette may</p> <p>4 chime in on this. They're doing an excellent job.</p> <p>5 Twenty-four for us is standard</p> <p>6 everywhere.</p> <p>7 CHAIRMAN DePINTO: Jeff, do you know</p> <p>8 anything about this?</p> <p>9 MR. FETTE: I don't.</p> <p>10 MR. HIPOLIT: I never heard of this</p> <p>11 before. I could call the Fire Department.</p> <p>12 CHAIRMAN DePINTO: But in your opinion</p> <p>13 as an engineer, and you are familiar with the</p> <p>14 equipment that the Borough of Montvale uses, do you</p> <p>15 believe that the proposed roadways, interior roadway</p> <p>16 of 24 feet is adequate to accommodate our vehicles?</p> <p>17 MR. HIPOLIT: I do.</p> <p>18 The really big ladder truck that they</p> <p>19 have, I don't know the width of it when the</p> <p>20 extensions come out, I don't know if somebody else</p> <p>21 knows that. Maybe that's why.</p> <p>22 MS. RUSSO: That may be what they're</p> <p>23 asking because usually that's the main complaint in a</p> <p>24 regular standard turnaround, they usually end up</p> <p>25 having a problem being able to turn the fire, the</p> <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p>	<p style="text-align: right;">68</p> <p>1 the public other than this announcement.</p> <p>2 And it is subject to us receiving</p> <p>3 revised plans in a timely manner and subject further</p> <p>4 to the board professionals preparing technical review</p> <p>5 letters or amended technical review letters which</p> <p>6 they will share with you prior to the meeting so</p> <p>7 that, hopefully, we could get a wrap on this at that</p> <p>8 time.</p> <p>9 MR. VOGEL: All right. Thank you.</p> <p>10 CHAIRMAN DePINTO: Thank you. Have a</p> <p>11 good evening.</p> <p>12 MR. VOGEL: I appreciate the time, I</p> <p>13 appreciate being heard on short order and we will get</p> <p>14 the plans in by Friday.</p> <p>15 CHAIRMAN DePINTO: Okay. Thank you.</p> <p>16 (Whereupon, this matter will be</p> <p>17 continuing at a future date. Time noted:</p> <p>18 11:00 p.m.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812</p>

C E R T I F I C A T E

I CERTIFY that the foregoing is a true and accurate transcript of the testimony and proceedings as reported stenographically by me at the time, place and on the date herein before set forth.

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

DONNA LYNN J. ARNOLD, C.C.R.
LICENSE NO. XI00991
MY COMMISSION EXPIRES 08/04/19

LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.
201-641-1812

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