STATE OF NEW JERSEY
BERGEN COUNTY
BOROUGH OF MONTVALE
PLANNING BOARD

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IN RE:

WAYPOINT RESIDENTIAL SERVICES, LLC
127 SUMMIT AVENUE
BLOCK 1002, LOT 7

Applicant.

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COMPUTERIZED TRANSCRIPT of the stenographic notes of the proceedings in the above entitled matter as taken by DENISE L. SWEET, a Certified Court Reporter and Registered Professional Reporter, with all parties appearing via ZOOM VIDEOCONFERENCE, on Tuesday, December 1, 2020, at a meeting that commenced at 7:30 in the evening.

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Darlene Green, PP
Lorraine Hutter, Board Secretary
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(Application commenced at 8:06 p.m.)

CHAIRMAN DePINTO: The next continued public hearing we have is on Block 1002, Lot 7, Waypoint Residential Services, LLC, 127 Summit Avenue. I'm going to ask counsel for the applicant to please identify himself.

MR. WOLFSON: Good evening, Mr. Chairman, Board members, Board professionals. Peter Wolfson of Day Pitney here on behalf of the applicant.

CHAIRMAN DePINTO: Okay. Thank you. And, Mr. Wolfson, you have experts with you, I believe, this evening that you would like to have testify?

MR. WOLFSON: I do, Mr. Chairman.

CHAIRMAN DePINTO: And could you identify your experts?

MR. WOLFSON: Yes, I have with me for some cleanup Patricia Ruskin, our project engineer. I have Dan King, our architect. I have Corey Chase, our traffic engineer. And I have Richard Preiss, our planner.

CHAIRMAN DePINTO: Very good. Thank you. And I believe that you received a copy,

Mr. Wolfson, of a letter that was addressed to me dated November 23, 2020 from the Summit Ridge Condominium Association and the author of the letter is Peter Kurshan, Esquire. Do you have a copy of that letter?

MR. WOLFSON: I do, Mr. Chairman.

CHAIRMAN DePINTO: Okay. Thank you. And I also understand that your office prepared a response to that letter; is that correct?

MR. WOLFSON: Yes, Mr. Chairman, by letter dated November 27, we responded in detail to that letter.

CHAIRMAN DePINTO: Okay. And before we go on with this application, I do see that Mr. Kurshan is in attendance at the meeting. Mr. Kurshan, can you unmute yourself, please? Good evening, sir.

MR. KURSHAN: Good evening, Mr. Chairman.

CHAIRMAN DePINTO: Mr. Kurshan, I did read your letter and thank you for taking the time to go through the details that you have gone through. But, first, I do have a question of you with regard to the Summit Ridge Condominium Association. Have you presented this to us as

attorney for the association or as an interested homeowner living within the subject properties?

MR. KURSHAN: I present it to you on behalf of the board of Summit Ridge Condominium Association of which I am a member. So, this is a letter from the board which I signed on behalf of the board. I also happen to be an attorney.

MR. REGAN: Mr. Chairman, can I ask, Mr. Kurshan, has the entirety of the board approved the letter that you submitted? Have they seen it before, before you sent it in?

MR. KURSHAN: Yes, sir.

MR. REGAN: Thank you.

CHAIRMAN DePINTO: And, Mr. Kurshan, I do believe and I can't find it that quickly, that you do refer to the possibility of bringing in your own experts with respect to the application; is that correct?

MR. KURSHAN: Yes, sir.

CHAIRMAN DePINTO: And are they in attendance this evening or are you seeking to have them participate at a future date?

MR. KURSHAN: I am seeking to have them participate at a future date.

CHAIRMAN DePINTO: Okay. I think

this is a little bit out of the ordinary, but what is the policy of the Montvale Planning Board is to give the public and to give interested parties and the association, obviously, by virtue of this letter is an interested party and there are members including yourself that did appear before us in past public hearings with regards to this application. I believe before we can continue with the application, there may be a difference of opinion which would regulate who could participate in this hearing, more specifically, with regard to Mayor Ghassali. In detail, if, in fact, it is decided that D variances are associated with the application, the Mayor would not be eligible to participate in this hearing.

So, I do believe that, Mr. Wolfson, if you take a different position on this, I do believe we have to address the question of D variances before we can continue with anything else so we can determine who would be eligible to participate. Do you have any difficulty with that, Mr. Wolfson?

MR. WOLFSON: None at all, Mr. Chairman.

CHAIRMAN DePINTO: Okay. Thank you. And, Mr. Kurshan, this would be your

opportunity, well, number one, for the record, please identify yourself and I'm going to ask that you state the association's position with regard to the need for D variances.

MR. KURSHAN: I'll identify myself first, Peter Kurshan. My home address is 106 Gelnaw Lane, Montvale.

The condominium association's position with regard to D variances, the fact that the zoning ordinance, section 400-40, that are not addressed and we submit are violated by the proposal that was submitted by the applicant and specifically at least those issues which need to be addressed by a D variance go to the maximum building length, where 160 feet is allowed and it's proposed 338.15 feet. In addition to D variances required because the maximum number of dwelling units, 12 is permitted, 157 are proposed. As well as the maximum building height, which we have some dispute concerning.

We claim and we believe the facts would support that the maximum building height is well beyond 35 feet, because the first level or what the applicant is calling a garage is simply not correct. There is storage area, fire and water

facilities in that area. This is not being used as a garage. Plus, (inaudible) a four-story building and even if the triangular piece of the roof has been approved in drawings through the October drawings, all of that has not been made clear by the applicant. The second set of drawings call for the mid-roof line is somewhere in excess of 47 feet and that we submit would require a D variance. In addition to which, because you have 157 units spread over three floors or approximately 50 units per floor, you do not have the ability for cross ventilation, which is required and it's required in townhouses. And, for that reason, the layout of the apartments that are shown on the applicant's floor plan depicts units which do not have two or more exposed side and, thus, lack cross ventilation. Most importantly, they do not have access to a street or roadway.

In addition, with regard to planned residential uses, planned residential communities, zoning AH-6 with regard to parks and playgrounds, we submit that it is simply not permitted under the AH-6 zone to have access by the public to areas of the applicant's lot.

There are additional reasons why a

D variance is required and not simply a series of C bulk variances. And, most importantly, it goes to the overall size and dimension of this proposed building, some 338 feet in length, 157 units spread over approximately two acres and placed, placed immediately adjacent to the eastern boundaries of the Summit Ridge Condominium Association.

And the fact that the applicant, it doesn't create a hardship, the applicant is creating its own hardship by placing the property and placing the size of the proposed building in that location. Many of the variances, perhaps, would not be necessary if the size were reduced. However, that was not, that was not your question, Mr. Chairman. And I'm going to go back to what I was speaking of earlier with regard to the D variances.

And I realize that counsel for the applicant has taken issue, however, I take umbrage and respectfully take umbrage at the ad hominem attack that the applicant, and I'm not saying the applicant's attorney, but the applicant has pointed to Summit Ridge and accused Summit Ridge of making a false statement in this submission. There is not a single word in this submission that the Summit Ridge Condominium Association submitted that was false.

They disagree with our interpretation what we believe is clear, black letter law of the Borough of Montvale and what the zoning ordinance says, but there is nothing false about what we have submitted.

CHAIRMAN DePINTO: Thank you. Very good. Thank you. Mr. Wolfson, your response to Mr. Kurshan and the comments that he has set forth on the record, both in his letter from the association, as well as what's placed on the record now?

MR. WOLFSON: Thank you, Mr. Chairman. Preliminarily I'd like to address the notice issues raised in the correspondence submitted by Mr. Kurshan. In that correspondence, it is contended, quote, there are defects and deficiencies in the application form in the notices issued and published by the applicant with respect to this matter which require remedial action before the public hearing can continue, end quote. The applicant rejects this contention as the applicant submitted materials and published and delivered notices were proper and duly compliant.

While the Summit Ridge letter notes that the Mayor and Council adopted ordinance number 2020-1485 on September 29, 2020, which ordinance recodified the ordinances of the Borough of Montvale

as Chapters 1 through 400, this recodification of the Borough code has no effect on any of the applicant's notices published and delivered prior to September 29, 2020 and does not render the applicant's most recent notice legally ineffective or insufficient.

NJSA 40:55D-11 states the following as to notice, contents of notice of hearing on application for development, notices pursuant to this act shall state the date, time and place of the hearing, the nature of the matters to be considered and in the case of notices pursuant to a provision of the act, irrelevant to this discussion, an identification of the property proposed for development by street address, if any, or by reference to lot and block numbers as shown on the current tax duplicate in the municipal tax assessor's office in the location and times in which any maps and documents for which approval is sought or available to be reviewed. The applicant is tasked with providing notice that includes a commonsense description of the application, such that a member of the public is reasonably on notice of what the proposed development entails.

That holding is found in Perlmart

v. Lacey Township Planning Board 295, NJ Super 234 at page 237. That's an Appellate Division case from 1996. See also Pond Run Watershed Association v. Township of Hamilton Zoning Board of Adjustment, 397 NJ Super 335, 352-53, also an Appellate Division case in 2008.

The applicant is entitled to rely on its notice so long as it complies with the Municipal Land Use Law and in this case it does. Although the numerical references to the code from which the applicant seeks bulk variances changed during the pendency of this application, the applicant's notices of hearing include heading references for each of the bulk variances sought that properly summarize the nature of the variance relief in a commonsense manner. Any member of the public would reasonably be on notice of what the applicant proposes and the variance relief sought by reviewing the respective published or delivered notices of hearing.

Further, the applicant maintains its position that there is no use variance relief or other D variance relief required as part of this application as Mr. Preiss will testify to in a moment. Thus, contrary to the assertions in the

Summit Ridge letter, the contents of applicant's notices of hearing were legally sufficient and the Board may continue to hear the applicant's case tonight.

As I referred to a minute ago, I'd like to call Mr. Preiss first for some very brief testimony on some of the planning issues that have been raised by Summit Ridge and then I'd like to call Mr. King, our architect, to address some of the issues raised regarding height by the Summit Ridge letter.

CHAIRMAN DePINTO: I would only ask, Mr. Wolfson, that you ask both of your witnesses to make their comments as pointed and brief as possible. And I am then going to go to Bob Regan to get Bob Regan's opinion with respect to notices and does he agree or disagree with your statement relative to the notices.

MR. WOLFSON: Thank you, Mr. Chairman. I'd like to first recall Mr. Preiss, who has testified earlier in this hearing and remains under oath.

CHAIRMAN DePINTO: Good evening, Mr. Preiss.

MR. PREISS: Good evening, Mr.

Chairman, members of the Board.

MR. WOLFSON: Richard, Summit Ridge's correspondence raised a coupled poignant issues that I'd like to review with you. First, Summit Ridge asserts in order to be permitted as a, quote, planned residential development, end quote, the applicant must strictly comply with all components of Chapter 440-40, planned residential developments, and that any deviations from Chapter 400-40 results in the need for a D1 use variance. Do you agree with this position?

MR. PREISS: No, Peter, I don't agree with this position and I don't believe that there's any merit to the Summit Ridge argument with respect to that. The applicant has acknowledged that it does require variance relief from Chapter 400-40, but in this case only bulk variance or C variances and design waivers are required. The applicant's proposal, essentially, is to build an apartment building within a planned residential development and that use is expressly permitted in the AH-6 zone in which the subject property is located.

So, in my opinion, no use variance or other D variance, for example, D6 height variance

or a conditional use variance, is required.

Just to be a little bit more specific in terms of what a variance is and how I interpret that, if you look at the Municipal Land Use Law under their definition section, that's NJSA 40:55D-7, a variance is defined as follows. Permission to depart from the literal requirements of a zoning ordinance. And, so, contrary to Summit Ridge assertions, all variances which don't meet the code do require a variance, but there are different types of variances and a D variance is specifically set forth later in the Municipal Land Use Law at NJSA 40:55D-70(d)1 where it says, a D variance is only required to, and I'll quote, allow a departure from regulations to permit, one, a use or principal structure in a district restricted against such use or principal structure. And there the key is the term, use or principal structure.

The applicant's deviations in this particular case do not seek a D1 variance, because the use is permitted in the AH-6 zone. And let me go directly to your code to be specific. Under Section 400-28 of the code, planned residential developments are a permitted use within the AH-6 zone. What Summit Ridge says is if you don't have

full compliance with all of Chapter 400-40 that, for planned residential developments, any deviation is a use variance and I totally disagree.

If you look at Chapter 400-40 there are several sections marked A through F, but only one of those sections is related to the use of the subject property and that's at 400-40(A) which sets forth the permitted uses within the planned residential development. And under that particular section, apartment buildings are permitted and that's exactly what we are.

So, there are other regulations in Chapter 400-40, but none of them are related to use. They're related to other aspects of the application and because the applicant is proposing an apartment within a planned residential development, no use variance is required under the Municipal Land Use Law.

MR. WOLFSON: So, Richard, alternatively, the Summit Ridge correspondence appears to argue that a planned residential development is akin to a conditional use in the AH-6 zone and that a failure to comply with all conditional requirements will result in a need for a D3 conditional use variance. Do you see any reason

why this application would require a D3 variance?

MR. PREISS: No. I'm very familiar with the zoning code for Montvale and there's a clear distinction in the code between uses that are permitted and uses that are only permitted as conditional uses.

First of all, if you go to Chapter 400-28, it's indicated that planned residential developments shall be a permitted use. The term permitted, term permitted use, is actually in the code. And then there are other provisions in the code if you look in other sections, there are separate lists of conditional uses. So, for example, if you go to the office and research district in Section 400-24(E), it has a list of conditional uses that are permitted within those districts.

Similarly, for example, in the B1 district, one of the conditional uses that is permitted is a residential apartment. So, if you look in Section 400-23(H)1 it states as follows, residential apartments shall be permitted as a conditional use within the B1 district subject to the conditions set forth below. So, clearly, the code has very specific language and very specific

sections which enumerate what conditional uses are as opposed to what permitted uses are.

In this particular situation, an apartment in a planned residential development in the AH-6 is clearly a permitted use and not a conditional use. So, I don't believe a D3 variance is required.

MR. WOLFSON: Summit Ridge also contends that the proposed nature trail requires a use variance, because it will be open to the public. Do you agree with that?

MR. PREISS: No, I don't believe that is the case. The nature trail, I think, can be characterized as a permitted accessory use. If you look in the code under Section 400-8, it says, one ordinarily incident or an accessory use is defined as follows, one ordinarily incidental to the principal use of a building, whether located within the principal structure or building or within an accessory structure or building or within the yard of the same lot as the principal use. So, it's clear to me that the nature trail, which is on this particular property, is accessory to the planned residential development. The nature trail is part of the facilities which are going to be for

residents and guests. It's a natural extension of the community, even though it's located on a separate portion of the property.

And just to make it absolutely clear, if you look at Section 400-40(A)2, listed under planned residential developments it also indicates that the following nonresidential uses are permitted and it enumerates specifically parks and playgrounds. So, in my opinion, the nature trail is clearly a permitted accessory use within the district.

MR. WOLFSON: Because it's not a park or playground; correct?

MR. PREISS: Correct.

MR. WOLFSON: And, lastly, Summit Ridge asserts that the building height was calculated improperly and that the proposed building requires a D6 height variance for exceeding the maximum permitted height by more than 10 feet or 10 percent of the maximum permitted height. After reviewing the Borough code and consulting with the project architect, do you agree with that assertion?

MR. PREISS: No, and we've had several discussions inhouse about that and we've also had some dialog with your professionals and

consistently the opinion of all of those concerned is that a D6 variance is not needed. So, the reason why I say that is there is a partially below grade level, specifically in this case a cellar, and the architect will get into why we come to the conclusion that that partially below grade level is a cellar, but if it's devoted to parking, storage of utilities, the code allows you to exclude that calculation both with respect to the building height in feet and also from the calculation of the number of stories.

What I'm referring to is specifically Section 400-8(B) where there's the calculation of the number of stories and the code says the following. The on grade level and all cellar levels of a building devoted to the use of parking, including aisles, ramps, and maneuvering space, shall also be excluded. So, it's very clear language that basically says that that cellar level is excluded from that calculation in the number of stories.

And then under Section 400-40(D)2g, it says the maximum permitted building height is calculated, and I'm quoting from the code, exclusive of basement and cellar areas that may only be used

for parking and storage of utilities and the placement of mechanical equipment to service principal building. And as you've seen from the floor plans that the architect has prepared, the use of that level is restricted to those particular uses. So, clearly, that cellar level is excluded not only from the calculation of stories, but also the calculation of building height.

And then if you look at the definition of building height under Section 400-8(B) it generally requires that building height be calculated beginning at the average grade and in the AH-6 zone the maximum building height specifically excludes certain levels of the building and that is those levels which are devoted to parking, storage and permits the calculation to begin a different starting point.

So, in my opinion, because that cellar level is devoted to parking, storage, utilities and the placement of mechanical equipment, it's excluded both from the calculation of building height and with regard to the number of stories.

The other thing that Summit Ridge raises is, as part of their assertion that a D6 variance is needed, is where, how the height is

actually calculated. And, basically, what it says is that the applicant has failed to accurately calculate the height of the proposed building, because the applicant's calculations used an elevation that chose to be the midpoint of the roof. However, if you go to the definition of building height, in your definition section of the code, it explicitly requires that the building height be measured, and I'm quoting from the code now, in the case of sloping roofs to a point half the distance between the rafter plate and the uppermost point of the roof. In other words, the midpoint. And as you'll hear from our architect who will testify next, a sloping roof is proposed and so the applicant's measurement to the midpoint of that sloping roof is the area, is the point in which the height should be measured.

So, I disagree. I don't think a D6 variance is required in this particular case. And, in fact, based on plans that have been provided, revised plans, not only is a D6 variance not required, but a C variance for height is not required either.

MR. WOLFSON: Thank you, Richard. I have no other questions for Richard.

CHAIRMAN DePINTO: Thank you. I'm going to go to Darlene Green, who's the Borough planner. Ms. Green, you've heard the testimony of Mr. Preiss in response to the submission by Summit Ridge. With regards to the question of whether or not D variances are or should be sought in connection with this application, I'd like your opinion, please.

MS. GREEN: Sure. We reviewed the, we reviewed every submission that's been issued to the Board and there have been changes over the course of this project, no doubt. I know at one point there was space on the garage level that was removed in response to one of our letters. And after that space was removed, it did comply with the section that Mr. Preiss referred to, 400-40(D)2g, concerning maximum building height, because the garage level which becomes then a cellar is excluded from the height. So, I would agree with his testimony regarding that.

As for the questions raised by Summit Ridge regarding the accessory use and the assertion that they have to comply with all provisions -- I should say, let me take those separately.

We haven't had a chance to fully review both the Summit Ridge letter and the response letter from Mr. Wolfson. I was out on Wednesday and yesterday. Today was the first day that I was able to sort of skim them. My intention would be to issue a revised letter addressing all of the points, because the Summit Ridge letter is 52 pages long and there's a lot in there that I think needs to be reviewed and responded to, if that's what the Board would like me to do.

CHAIRMAN DePINTO: All right. As is always the practice of the Board, yes, we would want a technical review letter from you. But, generally speaking, based upon the testimony you heard this evening from Mr. Preiss, you are in agreement that there are no D variances associated with this application?

MS. GREEN: Based on the testimony, yes.

CHAIRMAN DePINTO: Okay. Thank you. And I'm going to ask the same question of Mr. Hipolit. Mr. Hipolit, you've heard the testimony of Mr. Preiss. Though you are employed by the Borough and by the Planning Board as a professional engineer, you, too, are licensed as a planner; is

that correct?
MR. HIPOLIT: I am.
CHAIRMAN DePINTO: And in your opinion, the testimony you've heard this evening from Mr. Preiss, are you in agreement or disagreement relative to the D use variances only?
MR. HIPOLIT: No, based on his testimony, I'm in agreement they don't need any D use variances.
CHAIRMAN DePINTO: Okay. Very good. And next I'm going to go to Mr. Regan. Mr. Regan, obviously, you are the one most familiar with the case and the variances and the codes of the Borough of Montvale. You've heard the arguments set forth or the positions set forth by Summit Ridge. You've heard the testimony of the applicant's planner. You've heard from Ms. Green and Mr. Hipolit. The Board would like your opinion as counsel to the Board.
MR. REGAN: Mr. Chairman, first addressing the issue of whether a D1 use variance is required by this application, a D1 use variance implicates a proposal for a use or structure in a zone in which that use or structure is not permitted. And if you go to our code, Section

400-40(A), permitted uses, in this particular district it talks about the uses being townhouses, townhouse duplex combination and apartment buildings. That's 400-40(A)1, A, B and C. It's clear to me that this proposal is for an apartment building. That's a permitted use. A D1 use variance should not be deemed required.
It seems that Summit Ridge's approach to this is that any of the multiple standards governing planned developments, if there is one standard that does not comply, that triggers a D1 use variance for the entire project, which I think flies in the face of what a D1 use variance is. A D1 use variance, again, relates to a principal use or structure that is not permitted in the zone. It's clear that apartment buildings are permitted in this district. I don't think anyone really disputes that. And I think that's the basis for my determination that a D1 use variance would not be required.
With respect to the D6 height variance issue, if it's a D6 variance, the height must exceed the permitted height by 10 feet or 10 percent of the permitted height. I'm relying on our Borough engineer and our Borough planner, because I

did not do, with any degree of precision, the calculations as to height. I know counsel for Summit Ridge says the height is 47 feet in its submission. I have not ruled that in or out. I'm relying on our own professional experts in terms of height calculation in terms of quantum of height.
CHAIRMAN DePINTO: Thank you. I'm sorry.
MR. WOLFSON: Mr. Chairman, to that point, can I call our architect up for some very, very brief testimony just to put it in the record?
CHAIRMAN DePINTO: Yes, you can and following that I'm going to go back to Mr. Kurshan for his comments.
MR. WOLFSON: Understood. Thank you, Mr. Chairman. I'd like to call Dan King, the project architect.
MR. REGAN: I don't believe he's been sworn; is that correct?
MR. WOLFSON: No, he's not.
MR. REGAN: Mr. King, would you raise your right hand, please? Do you swear or affirm that the testimony you will give in this proceeding shall be the truth, so help you God?
MR. KING: I do.

MR. REGAN: And for the record, state your full name and spell your last name, please.
MR. KING: It's Dan King, K-I-N-G.
MR. REGAN: Thank you.
MR. WOLFSON: Good evening, Dan. Can you give us your professional affiliation, please?
MR. KING: Yeah, I'm a registered architect in a number of states, including New Jersey, for several years. I work for an architecture firm called Meyer, M-E-Y-E-R, been there for 26 years and I'm a principal architect there overseeing the living studio.
MR. WOLFSON: Can you give us the benefit of your educational background?
MR. KING: Sure. I have a bachelor of architecture from Kent State University and I've been practicing for about 30 years now.
MR. REGAN: Mr. King, in the interest of time, have you previously been qualified in the field of architecture before any land use boards in New Jersey?
MR. KING: Many. At least a dozen, if not more.

MR. REGAN: Mr. Chairman, I think his qualifications can be accepted in the field of architecture.

CHAIRMAN DePINTO: Chair will accept recommendation of counsel. Please continue, Mr. Wolfson.

MR. WOLFSON: Thank you, Mr. Chairman. Dan, did you prepare the architectural plan submitted to the Board last revised October 16, 2020?

MR. KING: Yes.

MR. WOLFSON: Did you have a chance to review the Summit Ridge correspondence dated November 23, 2020?

MR. KING: I did.

MR. WOLFSON: Could you please take us through the building height calculation?

MR. KING: Sure. Absolutely. We're really trying to establish two things, number of stories and the building height and both of those are dependent on the definition of what that lower level is, which, as Mr. Preiss has indicated, is really a cellar. And the reason why we say that is, the grade level of that garage is at 407, elevation 407 feet. We took elevation, established elevation

markers at each part of the building and averaged them together for 11.79 feet. So, that's almost five feet of grade above the lower level. When you have a story that half of its floor to ceiling height is below the average level of the adjoining ground, then you have a cellar. Therefore, because there's parking and it's used for storage, we excluded it. Therefore, it's a three-story building. And we measure the height, because, as Mr. Preiss indicated, since we're excluding that level of the building, we need to find a new starting point, which practically would pick the first floor above grade, and then measuring from that first floor to the mean level of the roof you have 35 feet. So, that's where we come up with that calculation.

MR. WOLFSON: Okay. To confirm, the pyramid hip roof was significantly lowered on the most recent set of plans submitted to the Board and does not exceed the roof line and remainder of the building; is that correct?

MR. KING: That's right. That was a comment and we took that roof, brought it down, so now it's in line with the other roofs on the community.

MR. WOLFSON: Thank you. Turning to the Summit Ridge correspondence, is it accurate to say Summit Ridge reviewed a prior version of the architectural renderings and arguing that the maximum height should be calculated to the top of the pyramid hip roof?

MR. KING: Yes, that appears to be the case.

MR. WOLFSON: Thank you. I have no other questions for Dan.

CHAIRMAN DePINTO: Thank you. Mr. Hipolit, with respect to the testimony of Mr. King and how he determined the height of the building, are you in agreement with that methodology?

MR. HIPOLIT: I am.

CHAIRMAN DePINTO: And, therefore, you find it not to be a variance with our code exceeding the maximum permissible height?

MR. HIPOLIT: Yes, I do not.

CHAIRMAN DePINTO: Thank you. Mr. Kurshan, you've heard testimony from both applicant's representatives, as well as Board representatives. I'd like to hear your comments now, please.

MR. KURSHAN: May I ask questions

of Mr. Preiss and Mr. King?

CHAIRMAN DePINTO: Yes, you may.

MR. KURSHAN: I'll start with Mr. King. Mr. King, you've indicated -- good evening. You've indicated that you looked at the Summit Ridge letter; correct?

MR. KING: I have, yes.

MR. KURSHAN: And with regard to the Summit Ridge letter you also looked at what is noted as page 16, excuse me, page six, footnote 17 and 18; correct?

MR. KING: That is correct. I would have read it, yes, I don't have it in front of me.

MR. KURSHAN: And you recall that where we referenced the pyramid hip roof of 59 feet above base floor elevation? It was a footnote referring to the June 26 drawings; correct?

MR. KING: Okay.

MR. KURSHAN: And you also recall that when the point of the roof slope was measured at 54.6 feet that was also based on the June 26 drawing; correct?

MR. KING: All right, yes.

MR. KURSHAN: After all, you said

you looked at the letter, so I'm sure you recall the references to where those numbers came from.

MR. KING: I can tell you that in the exhibits we will present later this evening that our building shows a hipped roof at the entrance that is in line with the rest of the roofs across the building.

MR. KURSHAN: So, the October 16 drawings that you will talk about later show the roof midpoint as being 47 feet above 407 feet grade; correct?

MR. KING: It will show it at 35 feet from the first level which is where you are to measure it based on the zoning ordinance.

MR. KURSHAN: And the 35 feet starts above the cellar grade; correct?

MR. KING: Right.

MR. KURSHAN: And just so everybody's clear, the garage level that you refer to based on your drawings contains parking spaces; correct?

MR. KING: It does.

MR. KURSHAN: It contains parking for the lobby also; correct?

MR. KING: Well, the parking is for

the resident units.

MR. KURSHAN: And it specifically contains parking for those entering the lobby; doesn't it?

MR. KING: There is a security lobby that people will enter through to get to the elevators.

MR. KURSHAN: And it also contains storage areas for tenants?

MR. KING: Correct.

MR. KURSHAN: Contains a maintenance room; correct?

MR. KING: Yup.

MR. KURSHAN: And it contains fire and water facilities, including facilities for the pool; correct?

MR. KING: Yes.

MR. KURSHAN: It also contains tenant lockers; correct?

MR. KING: Which are considered storage, yes.

MR. KURSHAN: Lockers; correct?

MR. KING: Yes.

MR. KURSHAN: You call them lockers in your plans; correct?

MR. KING: They are storage lockers.

MR. KURSHAN: It also contains trash facilities?

MR. KING: There is a trash room, yes.

MR. KURSHAN: And it contain an MBF room, MBF?

MR. KING: It's part of the utilities, yes.

MR. KURSHAN: What does the acronym MBF stand for?

MR. KING: I'm not exactly sure, but it's for the telecommunications to come into the building.

MR. KURSHAN: And it also includes electrical charging stations for electric vehicles; is that correct?

MR. KING: Yes, it does.

MR. KURSHAN: And the midpoint of the roof, based on your testimony, is 35 feet above the top of the first floor above the garage level; correct?

MR. KING: From the first floor level, yes.

MR. KURSHAN: And the renderings that you've prepared show a building consisting of four stories; correct?

MR. KING: By definition it is three stories based on the zoning ordinance.

MR. KURSHAN: But, if you look at the sets of windows and floors in those renderings, you see four stories; is that right?

MR. KING: Not necessarily in all three elevations or all four elevations, no.

MR. KURSHAN: If you're looking from the south, do you see four stories?

MR. KING: You see a garage level and then you see three stories of residents units.

MR. KURSHAN: And you assume the garage level is a story, for purposes of my question of course, you would see four stories looking from the south?

MR. KING: You would see four levels, yes.

MR. KURSHAN: And if you're looking from the east, you would also see four stories; correct?

MR. KING: From the east, not, again, you know, it's sitting in the hill side, so

the slope, the grade slopes along the side of the building, so it's not consistently. It's a variable.

MR. KURSHAN: The grade is sloping down from west to east; correct?

MR. KING: That's right.

MR. KURSHAN: So, more of the building's side structure will be visible on the easternmost side; correct?

MR. KING: Correct.

MR. KURSHAN: So, if you're looking at the building from the east, you will see four levels; correct?

MR. KING: Away from Summit Ridge, yes, that is correct.

MR. KURSHAN: And if you're looking at the building from the north on the easternmost side you would see four levels, but as the land slopes you're going to see a sloping upwards. So, part of that bottom level becomes obscured in the topography of the land; correct?

MR. KING: That's right.

MR. KURSHAN: And then if you're looking at the building from the west, you will also see the top of the garage level on which three

levels are added; correct?

MR. KING: You don't see much of the garage level on the west side.

MR. KURSHAN: But, you see some part of it. You know it's there.

MR. KING: You won't know it's there, no.

MR. KURSHAN: Don't you see the windows from the garage? Aren't those visible from the western side?

MR. KING: From the western side, no, it's fully in ground at that point.

MR. KURSHAN: And then on top of that you have three additional stories?

MR. KING: Yes.

MR. KURSHAN: Okay. And from that level of the ground on the westernmost side, your height to the midpoint of the roof is 35 feet; correct?

MR. KING: That's right.

MR. KURSHAN: And measuring the, from the ground level on the easternmost side looking from the east from the ground level to the midpoint of the roof is 47 feet; correct?

MR. KING: Yes.

MR. KURSHAN: And the ground level of the building is approximately 2,500 square feet?

MR. KING: The ground level of the building?

MR. KURSHAN: Ground level, the bottom most level, 2,500 square feet?

MR. KING: No.

MR. KURSHAN: What's the size of the ground level?

MR. KING: The garage is at 88,000 square feet, plus or minus.

MR. KURSHAN: So, the ground level is 88,000 square feet.

MR. KING: Yes.

MR. KURSHAN: Somewhere in excess of two acres in size.

MR. KING: Yes.

MR. KURSHAN: Assuming an acre is 40,000 square feet?

MR. KING: 42,256, yes.

MR. KURSHAN: And is the ground level all tenant accessible?

MR. KING: It is.

MR. KURSHAN: And you've indicated that the applicant is no longer seeking to build a

pyramid hip roof; is that correct?

MR. KING: There's a hip roof, but it is much lower.

MR. KURSHAN: A pyramid hip roof?

MR. KING: Yes.

MR. KURSHAN: Is there still a pyramid hip roof?

MR. KING: There is, but it is now down below the top ridge line.

MR. KURSHAN: So, the pyramid hip roof is no more than 47 feet above 407 feet grade?

MR. KING: Above the 407 elevation, correct, yes.

MR. KURSHAN: Would you agree or do you know that the maximum permitted building height in an AH-6 zone is 35 feet or two stories?

MR. KING: I'm sorry. Repeat the question?

MR. KURSHAN: Would you agree that the maximum permitted height in an AH-6 zone is 35 feet and two stories?

MR. KING: Yes.

MR. KURSHAN: Would you also agree that if a building has a height exceeding 38.4 feet, a variance can only be granted under NJSA

40:55D-70(6), paren six, close paren?
MR. KING: I don't have that section in front of me.
MR. REGAN: Mr. Kurshan, can you restate that statutory section?
MR. KURSHAN: Yes, sir. NJSA 40:55D, as in David, dash 70, paren six, close parens.
MR. REGAN: Wouldn't it be 70(d)6? I'm just a little confused with the reference to 76.
MR. KURSHAN: 70(d), lower case, six, yes sir, I believe it is.
MR. REGAN: It's small D, parenthesis six; right?
MR. KURSHAN: Yes, sir.
MR. REGAN: I thought you said 76. Okay. Thank you.
MR. KURSHAN: Mr. King, if the building height exceeds 38.4 feet, would that require a D variance, assuming it did? I understand you disagree with the calculation, but if it exceeded 38.4 and if this Board were to consider the lower level as a story, would you agree that would require a D variance or is that something you cannot opine to?

MR. KING: That would be 10 percent greater than 35 feet, so if that's what triggers a D variance, then yes.
MR. KURSHAN: Thank you. Mr. Chairman, I have no more questions for Mr. King.
CHAIRMAN DePINTO: All right. Thank you. Did you also state that you had questions for Mr. Preiss?
MR. KURSHAN: Yes, I did.
Mr. Preiss, good evening.
MR. PREISS: Good evening.
MR. KURSHAN: You've indicated a D use variance is not needed for this application; correct?
MR. PREISS: Correct.
MR. KURSHAN: You're familiar with the uses permitted in AH-6 zone --
MR. PREISS: Yes.
MR. KURSHAN: -- as set forth in section 400-28 of the Montvale code?
MR. PREISS: Yes.
MR. KURSHAN: And under, in AH-6, AH-7, AH-8 and AH-9, in all those zones, would you agree that no building structure shall be used in whole or in part for anything other than the uses

specified in that Section 400-28; do you agree with that?
MR. PREISS: Yes.
MR. KURSHAN: And under Section 400-28 of the Montvale code, permitted uses require that the Planning Board find and determine that all requirements pertaining to planned residential developments as set forth in Section 400-40 have been met; would you agree with that?
MR. PREISS: Yes.
MR. KURSHAN: And for a planned residential development to be permitted in an AH-6 zone, just so I'm clear, the applicant's proposed development is an AH-6 zone; is that right?
MR. PREISS: Yes.
MR. KURSHAN: So, for a planned residential development in an AH-6 zone, the Planning Board must find that the applicant has met all of the requirements in Section 400-40; right?
MR. PREISS: Unless a variance is requested and they would have to opine whether the variances meet the proofs required under the Municipal Land Use Law and case law.
MR. KURSHAN: Would you also agree, I understand, know that you're familiar with AH-6

zone, but there are additional design criteria that governs the development of planned residential developments including (inaudible).
MR. PREISS: I didn't hear the whole question, but, yes, there are additional standards required of planned residential developments. I agree with that.
MR. KURSHAN: And in a planned residential development, the building length, in this case 338.16 feet, would be a deviation under Section 400-40; correct?
MR. PREISS: Yes, in my opinion and as we've noticed that's a C variance, because that's a standard not relating to use but to bulk. So, it's a C variance.
MR. KURSHAN: Is it also your opinion that with regard to the maximum number of dwelling units, the zone permits 12 and while, as 157 are being proposed here, that also does not require a D variance, even though that would be considered a gross deviation of 400-40?
MR. PREISS: It's a C variance and that's consistent with how this Board interpreted a similar application on the balance of the property, which was also planned, the Reserve at Montvale,

which was also a planned residential development also in the AH-6 zone and variances, both for the length of building and number of units was determined to be C variances and those were granted. So, it's consistent with that.

MR. KURSHAN: Was the Reserve at Montvale 157 unit, four-story apartment building?

MR. PREISS: It was not.

MR. KURSHAN: And how many units were in the Reserve at Montvale?

MR. PREISS: The initial application was for a hundred units. After a denial and a settlement, it was 80 units in total, but that was a different, it was stacked townhouses, so completely different kind of project. This is an apartment.

MR. KURSHAN: And that was also considered, that was also called the Delven (phonetic) property; am I right?

MR. PREISS: It's part of a 45 acre property which was originally known as the Delven property. The Reserve at Montvale was part of it and this is the second part of it.

MR. KURSHAN: And the Reserve at Montvale did not have building heights of 47 feet

above grade; did it?

MR. PREISS: I think in some cases, I don't remember specifically, there were similarly deviations relating to height. I think ultimately in the same way that it was calculated here variances were granted for stories, but not for the building height itself, but some of those buildings I recall were substantially taller than 35 feet, but only to the way in which the Montvale ordinance allows height to be calculated. It either fell within, it's either, it was either 35 feet or a little bit beyond that and it was classified as a C variance. I think ultimately it was classified as permitted with regard to height, but not number of stories.

MR. KURSHAN: And you were the Montvale Board's planner at that time, is that right, with regard to that application?

MR. PREISS: That is correct.

MR. KURSHAN: And you testified extensively in that case; didn't you?

MR. PREISS: I did.

MR. KURSHAN: And you offered an opinion in that case; didn't you?

MR. PREISS: I did.

MR. KURSHAN: And you opposed the granting of variances in that case; correct?

MR. PREISS: In the initial application I wasn't personally opposed. It was not my job as the planner. But, I raised the issues with regard to the variance proofs and ultimately the Board denied the application. I don't have the resolution and I can't remember what the basis of that was, but following the settlement a number of those variances, despite the reduction in number of units, a number of those variances were granted and in that particular situation I believe that those variances should be granted and the Board ultimately agreed and those variances were granted. Not dissimilar to what happened here.

MR. KURSHAN: But, you offered opinions in that case opposing the granting of variances, because there was no benefit shown by the developer to the community; correct?

MR. PREISS: I don't recall my exact testimony as I indicated before. The job as a municipal planner is not to oppose a particular project, but to evaluate it and point out the strength and weaknesses of the argument. And it is true that in the initial application when the

variances were requested and argued for, I felt there to be a number of weaknesses in those arguments and I pointed them out in my testimony.

MR. KURSHAN: And you also testified in that case that you believed the variances being sought by the applicant were avoidable and that the size of the project could have avoided some of the variances being sought; is that correct?

MR. REGAN: Mr. Chairman, can I just interrupt here? If we're going to get involved in interpreting what this Board did in a prior resolution, I think the Board members should have the resolution, which I can, I'm happy to provide rather than have questions from Mr. Kurshan to Mr. Preiss. This is an application that occurred back in 2012, I believe. So, it's quite sometime ago. If we're going to get into that, I think we should have the actual resolution that this Board considered and voted on rather than conjecture.

MR. WOLFSON: Mr. Chairman, if I might speak to that, while Richard did make a reference to this other project, I would suggest that each project is unique and stands on its own particular facts and perhaps it would be better

served by process to deal with this application and this proposed project.

CHAIRMAN DePINTO: Let's go back. Mr. Kurshan, you had one last thing to say? I'm sorry.

MR. KURSHAN: May I just be heard on that, Mr. Chairman?

CHAIRMAN DePINTO: Sure.

MR. KURSHAN: My reason for asking Mr. Preiss those questions, Mr. Chair, and the Board attorney, Mr. Regan, is as follows. Mr. Preiss gave extensive testimony in July and August of 2011 concerning the variances and the fact that in his opinion they were avoidable as the Board's planner. And I believe since Mr. Preiss has offered not only opinions as to the law here, and I'm not sure how this Board accepts those, but Mr. Preiss's credibility as a witness for the applicant is certainly at issue here and if he has testified with a distinguishable or not concerning variances on the Delven property and whether they were appropriate or whether they were necessary or whether they were warranted, I think his testimony there as concerns his credibility. I understand it's a different project.

MR. REGAN: Mr. Kurshan, I don't see how you raise this issue, though, without the basis for your question, which is a resolution itself. You could have called me up. I would have given you a copy of the resolution. It has a prominent place in my office. It's 230 pages long.

MR. PREISS: The other thing, Mr. Chairman, if I may be heard?

CHAIRMAN DePINTO: Mr. Preiss, hold on. Mr. Kurshan, please.

MR. KURSHAN: Mr. Regan, I have, excuse me, Regan. Regan.

MR. REGAN: Regan.

MR. KURSHAN: I apologize. I have no objection to Mr. Preiss being shown the resolution at all and I will be glad to show Mr. Preiss his testimony, if the Chair permits that, but I'm making a proffer, Mr. Chairman, as to why I am asking these questions. And I don't mean to be argumentative about it. I'm telling you why I'm asking the question. I understand the objection, but that's why I've raised it.

CHAIRMAN DePINTO: Okay. I do understand. Mr. Preiss, and what is your comment, please?

MR. PREISS: I haven't testified on the variances yet. We're only talking about an interpretation. So, I mean, Mr. Kurshan can raise those issues after I testify and set forth on the record the reasons why the variances should be granted. It's immaterial to the interpretation with regard to whether D variances are required or not.

CHAIRMAN DePINTO: I think that's what we have to roll it back to, because we're still trying to determine eligibility of members because of the question of whether or not there are D variances. Your professionals have offered their opinions, Mr. Wolfson, and correct me if I'm wrong, that their interpretation of the municipal ordinance would lead them to state that no D variances are required in connection with the application as last revised and pending before this Board; is that correct?

MR. WOLFSON: Absolutely correct.

CHAIRMAN DePINTO: Okay. And with respect to the Board professionals, Ms. Green, you are in agreement that there are no D variances in your professional opinion in connection with the application as amended currently before the Board?

MS. GREEN: I'm in agreement.

CHAIRMAN DePINTO: Okay. And, Mr. Hipolit, your opinion as well?

MR. HIPOLIT: I'm in agreement.

CHAIRMAN DePINTO: And, finally, with Mr. Regan, Mr. Regan, you are the most knowledgeable of all with respect to this. You, in fact, did prepare the resolution that Mr. Kurshan has referenced. You are familiar with that case. You were involved in the litigation. You've been involved in this case since its filing. What is your professional opinion with respect to whether or not there are D variances connected with it?

MR. REGAN: It's clear to me that there's no D1 use variance. My opinion regarding the issue of the height variance is relying on Mr. Hipolit and Ms. Green. I did not do an independent calculation as to the quantum of height.

CHAIRMAN DePINTO: And I think therein lies the problem that I'm having right now in getting past this point. Because, Mr. Hipolit, you stated that you have not had the time, because of receipt of Mr. Kurshan's letter and the receipt of the response to that letter, to confirm that the changes that were made to the plan did not set it at variance with our code; is that correct?

MR. HIPOLIT: It is. You know, in these letters, I was off two days also. So, I've only been working two days since the letters came in. And I have to go through them and confirm whether or not this is actually a fact. I can tell you based on the testimony, it's pretty obvious that there's no D variances regarding specifically with respect to height.

CHAIRMAN DePINTO: Which is based on testimony, but not your office's technical review; is that what you're saying?

MR. HIPOLIT: Correct. Correct.

CHAIRMAN DePINTO: So, there is my question, Mr. Regan, with respect to that, can we proceed with this open-ended question of whether or not there are D variances if we cannot get a definite opinion from Board professionals?

MR. REGAN: Mr. Chairman, ordinarily this issue would have been raised at the initial public hearing, which, by my records, occurred on March 3 of this year. That's the time this issue should have been raised, because it's a threshold issue, who participates in the consideration of the application. If D variances are implicated Class I, the mayor, and Class III,

the council member, are ineligible to participate as a matter of law. Only seven members can vote on the application. So, I don't think this application can go much further until this issue is resolved. It should have been resolved, it should have been raised, quite frankly, last October or last March or April when this application started. Now we're seven months or eight months later. You know, it's really a late issue to raise at this, at this time. I mean, the Board has already had, I think, five public hearings.

CHAIRMAN DePINTO: Mr. Mayor, did you want to comment on this?

MAYOR GHASSALI: Mr. Chairman, so there was a 13 page letter from Summit Ridge and five or six page letter from the applicant in response to the 13 page letter and nothing came, nothing else from our professionals. I don't know how you're going to have your Board go through this not hearing from the professionals and give them, you know, time to go through the 19 page back and forth. I don't know how much time you need, Andy, to do this, but I think if I don't have anything in front of me and I'm sure the other Board members would concur what the professionals see in these

letters and their response, I don't know how you would go forward. I don't know how much time you need for this.

MR. HIPOLIT: I can have a letter out. We can take the plans, dissect them and have a letter out by next week, but I need time. Like I said, I've only been at work for two days, yesterday and today.

MR. REGAN: Mr. Chairman, can I ask Mr. Kurshan a question? Because this has been in my mind all night. Why is this issue regarding D variances only be raised now? Because you've been involved in the public hearings on the application, I think since last March or April. Why are we only hearing this in late November?

MR. KURSHAN: Because the issue first came to my mind more recently than March or June or July and I decided to look into it.

MR. REGAN: Why wasn't it raised last summer then? We're in winter.

MR. KURSHAN: Sir, I can't give you an answer that I thought about it and decided not to raise it. I raised it when it came to a point that I believed it was appropriate to put before this Board and when I could articulate what I set forth

in the letter. It's a jurisdictional issue. It's a jurisdictional issue that has to be resolved.

MR. REGAN: You're right, but it's not fair to the Board, who are volunteers, it's not fair to the applicant, although they're not volunteers, they're getting paid, to go through a hearing and then have this issue raised, maybe not at the eleventh hour, but at the eighth or ninth hour. I just think it's grossly unfair.

MR. KURSHAN: If I am correct, the applicant should have raised it in his application initially.

MR. REGAN: They don't think D variances are implicated nor do I, but you do, but you're only raising it at the eighth and ninth hour.

CHAIRMAN DePINTO: Okay. We have to move on. First, I'd like to mark into evidence, because there's been reference made to the Summit Ridge Condominium Association letter dated November 23. It's addressed to me as Chairman and to the members of the Montvale Planning Board to the attention of Ms. Lorraine Hutter and it's signed by Peter J. Kurshan, Esquire. And, Mr. Regan, how would you suggest this be marked into evidence?

MR. REGAN: I guess Objector Summit

Ridge One. I think that's the first exhibit.
CHAIRMAN DePINTO: SR-1, is that what we're going to call it?
MR. REGAN: That's fine.
CHAIRMAN DePINTO: And the response to, the reply from Mr. Wolfson, shouldn't that be marked into evidence?
MR. REGAN: I think it should. I think Mr. Wolfson would also want it marked.
MR. WOLFSON: Yes.
MR. REGAN: We would be up to A-26 according to my notes.
MR. WOLFSON: That's what I have, Bob, as well.
CHAIRMAN DePINTO: Mr. Kurshan, do you have any objection as to marking either or both of these letters into the record?
MR. KURSHAN: I do not have any objection.
CHAIRMAN DePINTO: Now let's go back to my earlier question with respect to your opportunity to bring professionals in. You've heard opinions that were given by the applicant's professionals and, I guess, preliminary opinions from Board professionals. Do you want the time to

bring your professionals in?
MR. KURSHAN: I want the opportunity to bring my professionals in, yes.
CHAIRMAN DePINTO: Okay.
MR. WOLFSON: Mr. Chairman, if he's going to present expert testimony as to these threshold issues, can he be made to do it in a timely manner?
CHAIRMAN DePINTO: Yeah, I see no reason why we couldn't proceed that way. Mr. Regan, do you have any problems with that?
MR. REGAN: I mean, I guess timeliness is for interpretation. But, I would suggest when the next public hearing is on this application, whenever that will be. I assume it will be in January.
CHAIRMAN DePINTO: I don't know how we can move forward with the application and listen to the applicant's witnesses relative to the C variances, if, in fact, we don't reach a final decision if there are any Ds in connection with this.
MR. REGAN: You're absolutely correct, because we don't know who can participate in the public hearing. If it's a D variance, the

mayor can't even participate and he's here tonight.
CHAIRMAN DePINTO: And I think it's very disrespectful of all of us, of the mayor's time and energy, sitting here listening to all of this if, in fact, he is not eligible to participate. And to go any further this evening to discuss the other elements or attributes of the plan, I think is discourteous. I have a real problem. Mr. Wolfson, do you agree or disagree?
MR. WOLFSON: Well, we, of course, would like to proceed and we do join in the comments that have been made as to the inappropriateness of the timing of the dropping of this tome and it's regretful and in light of those circumstances, in talking about fairness, as we have been, I think that the objector is, can be fairly required to present any experts at the next hearing to talk about these threshold issues and that would be the end of it. I would also ask Mr. Kurshan if he has any further cross examination of the two witnesses we've presented for these threshold issues.
CHAIRMAN DePINTO: Mr. Kurshan, do you?
MR. KURSHAN: I have finished my examination of Mr. King on this threshold issue. I

had a couple of more questions with regard to height for Mr. Preiss on the threshold issue and I would be prepared, at least at this juncture, to put aside any discussions of Mr. Preiss's prior testimony until the next hearing as long as Mr. Preiss is available at that time.
MR. WOLFSON: We would renew our objection as it being irrelevant to --
CHAIRMAN DePINTO: I understand. Mr. Kurshan, our next regularly scheduled meeting is the first Tuesday of January.
MR. REGAN: January 5.
MS. HUTTER: January 5.
CHAIRMAN DePINTO: January 5. And in an effort to address this threshold question, could you comply with that date to communicate with your professionals and have them prepared to address the questions relative to this, there being D variances associated with this application?
MR. KURSHAN: I can't make that commitment right now, but I would advise the Board immediately, let's say within one week, if I can make that commitment.
CHAIRMAN DePINTO: Okay.
MR. WOLFSON: Mr. Chairman, again,

respectfully, if the objector cannot get its act together to have experts available that they have previewed and they can find experts, there's no indication that they've retained experts yet, they can retain them and they can make sure that they're there for the fifth.

MR. REGAN: Mr. Chairman, this Board needs to move on this application and the thing is, we're not getting a commitment from the objector that they can be prepared to address this issue at the January 5 meeting. My suggestion is that's a drop dead date. If they don't raise the issue at that or address the issue at that time the Board will make a determination on whether D variances are required.

CHAIRMAN DePINTO: Okay. I'm going to poll the Board, I'm going to poll the Board to see if the Board is in agreement to carry the matter to the first meeting in January allowing Mr. Kurshan to produce witnesses, whoever on that date, and, Mr. Kurshan, unfortunately, if you are not prepared to have your witnesses that evening, we will have to make a final decision relative to how we will proceed with this application. I think that gives you a month to try to put it together, which I think

is sufficient time. Yes? Yes, Mr. Kurshan?

MR. KURSHAN: Are you requesting that I have witnesses available on the D variance or all of my experts on all issues at that time?

CHAIRMAN DePINTO: The D variance, because I can't move off of the D onto the Cs and onto the site plan application until we reach that point.

MR. WOLFSON: And, Mr. Chairman, again if I might respectfully?

MR. KURSHAN: I would agree to that.

MR. WOLFSON: Mr. Chairman, I would request a tweak to that and if he's going to have the experts there for his nonprofit condominium association, I would respectfully request that they be prepared to present testimony to the extent we finish ours.

MR. PREISS: Mr. Chairman, I also have one other thing. I may not be able to make that meeting. So, I would request that Mr. Kurshan finish his cross examination of myself this evening in case I'm not able to make it.

CHAIRMAN DePINTO: But, the cross examination, if it's limited to your opinion,

Richard, as to the D variances that he's concerned about, I don't have a problem, but I think we were crossing over that bridge going into the site plan and the Cs and the history of your involvement with the Borough on other applications.

MR. PREISS: I would agree, Mr. Chairman.

CHAIRMAN DePINTO: I don't think we can go there at this point, quite frankly. Mr. Kurshan?

MR. PREISS: I agree.

CHAIRMAN DePINTO: I believe you want to go beyond these D questions; is that correct?

MR. KURSHAN: With regard to Mr. Preiss's credibility as I indicated earlier, yes, sir.

CHAIRMAN DePINTO: Okay. And I don't think now, Mr. Preiss, will be the appropriate time for it. So, with that said, I do want to poll the Board members, seeking their opinion as to moving forward with this application. I believe, Mr. Regan, it would be your advice that we reach a final determination as to whether or not there are D variances associated with the application to

determine eligible membership and it would be your recommendation to carry to January?

MR. REGAN: And I just would note for the record that would be January 5, which is ten months after this application began. So, we're dealing with a threshold issue ten months into the application, which I've never seen in the 40 years I've been representing land use boards. This issue to be raised at this late of day is really unfair to the Board, but that's my recommendation, January 5 is the latest.

MR. HIPOLIT: John, can I interrupt? If he, if Mr. Kurshan is going to have professionals, if they're going to produce reports in excess of what he's already given us, we need them by the 16th of December. We can't get them later than that. We've got two holidays in there. We have multiple days off in there.

CHAIRMAN DePINTO: But, I believe it will be at his option whether or not to have his witnesses produce written reports or just, he has the right just to present witnesses who we'll swear under oath to whatever it is that they're going to discuss.

MR. HIPOLIT: I'm okay, but if he's

go to give reports in, he can't turn them in after the 16th.

CHAIRMAN DePINTO: I have no problem with that. Mr. Kurshan?

MR. KURSHAN: I can't tonight commit to serving any reports within ten days of today. I don't know if there will be reports. I hear what Mr. Hipolit's issue is and I'm not going to try to obstruct his ability to review them in a timely fashion.

MR. WOLFSON: Mr. Chairman, I think Mr. Hipolit's suggestion is absolutely appropriate and the objector is not entitled to deference to produce reports after that date by which the Board professionals can review them.

CHAIRMAN DePINTO: I'm going to ask the Board secretary to call the Board members in a polling to determine if they are in agreement with Mr. Regan's recommendation that the meeting be carried to the fifth. And, Mr. Wolfson, I presume you will grant any extensions that may be required to carry the meeting minimally to that date?

MR. WOLFSON: To that date, yes, Mr. Chairman.

CHAIRMAN DePINTO: Yes, thank you.

And either Ms. Hutter or Ms. Davenport to call the Board members to poll them if, in fact, they agree with the recommendation of Bob Regan.

MS. HUTTER: Yes, Chairman. Mr. Culhane?

MR. CULHANE: I agree.

MS. HUTTER: Ms. Cudequest?

MS. CUDEQUEST: I agree.

MS. HUTTER: Mr. Gruber?

MR. GRUBER: I agree.

MS. HUTTER: Mayor Ghassali?

MAYOR GHASSALI: I agree.

MS. HUTTER: Mr. Lintner?

MR. LINTNER: I agree.

MS. HUTTER: Mr. Stefanelli?

MR. STEFANELLI: I agree, but I've got a question. So, are we going to have reports from Andy and Darlene and Bob? Because I'd like to see them before we hear testimony.

CHAIRMAN DePINTO: Yeah, I believe it was stated earlier that they did not have an opportunity to do technical reviews of the subject correspondence. Mr. Hipolit, when would you expect your office and, Ms. Green, when would you expect your office to produce them and not only provide

copies to the Board secretary and Board members, but also to Mr. Wolfson and Mr. Kurshan?

MR. HIPOLIT: We normally would have had them out to you within two weeks of tonight, which would have been the 18th. Giving Mr. Kurshan a chance to produce a report by the 16th, we can have our reports out by the 23rd, understanding that we're, Maser is off the 24th, 25th, 26th obviously. So, we're going to get them out the 23rd respective of anything they submit.

CHAIRMAN DePINTO: And Ms. Green?

MS. GREEN: I can have a letter out within two weeks covering the points in the two letters that we just received in the past week, but just as Mr. Hipolit advised, if we receive something else, then I can do a follow-up letter covering any additional information received.

CHAIRMAN DePINTO: That's understood. And, Mr. Stefanelli, anything else on that?

MR. STEFANELLI: No, I'm good, Mr. Chairman, and I agree to move it to the fifth.

CHAIRMAN DePINTO: Okay. Please continue.

MS. HUTTER: Mr. Teagno?

MR. TEAGNO: Yes, I agree.

MS. HUTTER: Mr. Zitelli?

MR. ZITELLI: I have a legal question here for us. If these are, if D variances are required, let's just pretend for a second here, does that prohibit the Mayor and Ms. Curry from actually sitting in and asking questions or does it just prohibit them from voting?

MR. REGAN: They can't participate with the Board, so they can't ask questions as a Board member.

MR. ZITELLI: So, they can't even sit in on it is what you're telling me?

MR. REGAN: They can't sit on the remote dais I guess I would call it.

MR. ZITELLI: I got it. All right. Okay. So, I agree with moving it to January as we're talking about.

MS. HUTTER: Ms. O'Neill?

MS. O'NEILL: Yes, I agree.

MS. HUTTER: Mr. Huysenov? Mr. Huysenov?

MR. HUYSENOV: Yes. Can you hear me? I agree.

MS. HUTTER: And Chairman DePinto?

CHAIRMAN DePINTO: Yes. Okay. With that said --

MR. WOLFSON: Mr. Chairman?

CHAIRMAN DePINTO: -- I would like, Mr. Wolfson, if you would convey to your client our apologies for the delay in the processing of his application, but I do believe that it's the appropriate route to take in light of these questions which have to be addressed. I'm sorry. Please, continue.

MR. WOLFSON: Yeah. Mr. Chairman, in light of the delay effect from Summit Ridge's timing here we'd ask for a special meeting in the month of January as well. We know how hard this Board works and we know how crowded your docket is, but to go into a second year with an objector perhaps presenting witnesses, we would respectfully request a special meeting in addition to the fifth.

CHAIRMAN DePINTO: I think that's reasonable and please contact Lorraine Hutter and she'll see if she can find a date that works for everyone.

MR. WOLFSON: Thank you, Mr. Chairman.

CHAIRMAN DePINTO: Okay. Thank

you. Have a good evening and good holiday.

MR. WOLFSON: Mr. Chairman, this is continued without further notice until January 5 at 7:30 p.m.?

CHAIRMAN DePINTO: That's what I was supposed to say.

MR. WOLFSON: I'm sorry, Mr. Chairman.

CHAIRMAN DePINTO: But, thank you for reminding me.

MR. WOLFSON: Thank you, Mr. Chairman.

CHAIRMAN DePINTO: All right. Everybody have a good evening.

MR. WOLFSON: Happy holidays.

CHAIRMAN DePINTO: And to you also. Thank you.

(Application adjourned at 9:30 p.m.)

C E R T I F I C A T E

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