

CITY OF HACKENSACK  
 ZONING BOARD OF ADJUSTMENT  
 THURSDAY, JULY 26, 2011  
 COMMENCING AT 6:25 P.M.

.....  
 IN THE MATTER OF: : TRANSCRIPT  
 Application V#23-08 SP# 21-08 : OF  
 Address 320 Summit Avenue/ : PROCEEDINGS  
 329 Prospect Avenue :  
 Block 344, Lots: 3,4,5,14 :  
 Zone R-75 & R-3 :  
 Applicant requests to demolish :  
 the existing structures and :  
 Construct a 19 story medical :  
 office building. :  
 .....

B E F O R E:

CITY OF HACKENSACK ZONING BOARD  
 THERE BEING PRESENT:

MICHAEL GUERRA, CHAIRMAN

GEORGE DIANA, MEMBER

FRANK RODRIGUEZ, MEMBER

JOHN CARROLL, MEMBER

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2 AL BORRELLI, ZONING OFFICER

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5  
6  
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I N D E X

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STAN LACZ, P.P.	20	
Cross Examination by Mr. Basralian:		21
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVID</u>
B-2	NFPA 55	144	

1 CHAIRMAN GUERRA: Please rise for the  
2 Pledge of Allegiance.

3 (Whereupon, everyone stands for a  
4 recitation of the Pledge of Allegiance.)

06:35PM 5 CHAIRMAN GUERRA: In accordance with  
06:35PM 6 Public Law 1975 Chapter 231, Open Public Meeting Act,  
06:36PM 7 the Zoning Board of Adjustment of City of Hackensack  
06:36PM 8 will conduct a public hearing, Tuesday, July 26,  
06:36PM 9 2011, in Council Chambers, City Hall, 65 Central  
06:36PM 10 Avenue, Hackensack, New Jersey at 6:00.

06:36PM 11 AUDIENCE MEMBERS: Yes. So where were  
06:36PM 12 you? Where were you?

06:36PM 13 CHAIRMAN GUERRA: The purpose of this  
06:36PM 14 meeting is to consider the below listed cases and, if  
06:36PM 15 possible, render a formal decision.

06:36PM 16 Roll call?

06:36PM 17 MR. BORRELLI: Mr. Carroll?

06:36PM 18 MR. CARROLL: Here.

06:36PM 19 MR. BORRELLI: Mr. Rodriguez?

06:36PM 20 MR. RODRIGUEZ: Here.

06:36PM 21 MR. BORRELLI: Mr. Diana?

06:36PM 22 MR. DIANA: Here.

06:36PM 23 MR. BORRELLI: Chairman Guerra?

06:36PM 24 CHAIRMAN GUERRA: Here.

06:36PM 25 Approval of the minutes from our May

06:36PM 1 24th meeting.

06:36PM 2 Was that done already? That's what I  
06:36PM 3 thought, it sounds familiar. Okay. We don't need to  
06:36PM 4 approve them.

06:36PM 5 But we do have an invoice we need to  
06:36PM 6 approve from our Court Reporter, Laura Carucci. And  
06:36PM 7 this is for our Thursday, June 16th, meeting.

06:37PM 8 Do you hear a motion to approve?

06:37PM 9 MR. DIANA: I'll make that motion.

06:37PM 10 MR. RODRIGUEZ: Second.

06:36PM 11 MR. BORRELLI: Mr. Carroll?

06:36PM 12 MR. CARROLL: Aye.

06:36PM 13 MR. BORRELLI: Mr. Rodriguez?

06:36PM 14 MR. RODRIGUEZ: Aye.

06:36PM 15 MR. BORRELLI: Mr. Diana?

06:36PM 16 MR. DIANA: Aye.

06:36PM 17 MR. BORRELLI: Chairman Guerra?

06:36PM 18 CHAIRMAN GUERRA: Aye.

06:37PM 19 I'll read in the application. It's

07:16PM 20 application V#23-08, SP#21-08, Address, 320 Summit  
07:16PM 21 Avenue/329 Prospect Avenue, Hackensack, New Jersey,  
07:16PM 22 Block 344, Lots 3, 4, 5, 14, Zone R-75 and R-3,  
07:16PM 23 Bergen Passaic Long Term Acute Care Hospital L.L.C.

24 Applicant requests to demolish the  
25 structures and construct a 19 floor medical office

1 building. The following were found to be deficient:

2 One, use variance required pursuant to  
3 40:55D(1).

4 Two, insufficient lot area, required  
5 30,000 square feet, proposed 20,000 square feet.

6 Three, insufficient lot width, required  
7 125 feet, proposed 100 feet.

8 Four, insufficient rear yard setback,  
9 required 40 feet, proposed zero feet to edge of R-3  
10 district.

11 Five, exceeds maximum lot coverage,  
12 permitted 30 percent, proposed 40.5 percent for R-3  
13 district.

14 Six, exceeds maximum height ratio  
15 side-yard, permitted 4 to 1, proposed 19 to 1.

16 Seven, insufficient buffer zone,  
17 required 6 feet, proposed zero feet to edge R-3  
18 district.

19 Eight, insufficient parking spaces,  
20 required 562, proposed 402.

21 Nine, insufficient driveway width,  
22 required 18 to 22 feet for two-way, proposed 10 feet.

23 Ten, no paving in side-yard.

24 Eleven; insufficient area for back up  
25 aisle spaces.

1 Twelve, exceeds maximum sign area,  
2 permitted 12 square feet, proposed 96 square feet.

3 Thirteen, insufficient sign setback,  
4 required 20 feet, proposed zero feet.

5 Fourteen, any other variance or waivers  
6 that may be required.

07:10PM 7 Counsellor?

07:10PM 8 MR. BASRALIAN: Good evening, Joseph  
07:10PM 9 Basralian for the Applicant.

06:37PM 10 I believe we left off on March 3rd with  
06:37PM 11 Mr. Lacz having concluded his direct testimony as a  
06:37PM 12 planner in opposition. And we are here to cross  
06:37PM 13 examine Mr. Lacz.

06:37PM 14 I believe after that has concluded, I  
06:38PM 15 have brought back Mr. Keller for the long awaited  
06:38PM 16 cross examination on his notes.

06:38PM 17 MR. MALAGIERE: Joe, project on the  
06:38PM 18 microphone.

06:38PM 19 MR. BASRALIAN: Okay.

06:38PM 20 MR. MALAGIERE: Thank you. Just really  
06:38PM 21 bellow into it so we don't have to go through that.

06:38PM 22 MR. BASRALIAN: Okay. I'm a calm  
06:38PM 23 person, I don't have to bellow.

06:38PM 24 And then I have Mr. Keller for the  
06:38PM 25 cross examination, limited to the minutes or his

06:38PM 1 notes, rather, excised as approved by the Court.

06:38PM 2 So that's, at least, the initial order  
06:38PM 3 of business.

06:38PM 4 So if we could have Mr. Lacz?

06:38PM 5 MR. MALAGIERE: Let me just, Mr.  
06:38PM 6 Chairman, with your permission, let me just have  
06:38PM 7 other counsel make their appearance.

06:38PM 8 Counsel?

06:38PM 9 MR. DIKTAS: Mr. Chairman, Members of  
06:38PM 10 the Board, Christos Diktas on behalf of Anastasia  
06:38PM 11 Burl yuk.

06:38PM 12 MR. MOSKOWITZ: Theodore Moskowitz on  
06:38PM 13 behalf of myself and my wife in our capacity as  
06:38PM 14 property owners at 307 Prospect Avenue, and for the  
06:39PM 15 Prospect Avenue Coalition.

06:39PM 16 Thank you.

06:39PM 17 MR. MALAGIERE: Thank you.

06:39PM 18 (Applause.)

06:39PM 19 MR. MALAGIERE: Mr. Basralian, the  
06:39PM 20 other item that's going to happen, hopefully this  
06:39PM 21 evening, is Mr. Polyniak is going to provide, I  
06:39PM 22 believe, his planning testimony, which I don't think  
06:39PM 23 we've ever had.

06:39PM 24 Mr. Polyniak, is that correct?

06:39PM 25 MR. POLYNIK: That's correct.



06:39PM 1 MR. MALAGIERE: Okay.

06:39PM 2 And you'll, of course, have an  
06:39PM 3 opportunity to question him after he does that.

06:39PM 4 MR. BASRALIAN: Absolutely.

06:39PM 5 MR. MALAGIERE: Okay. Mr. Diktas?

06:39PM 6 MR. DIKTAS: Just for a point of order,  
06:39PM 7 Mr. Chairman, in March there was an issue with Mr.  
06:39PM 8 Lacz paying his professional license. I call it tax,  
06:39PM 9 but there's a fee for professionals. That's been  
06:39PM 10 paid. I have submitted those documents to the Board,  
06:39PM 11 to the secretary, to the attorney, to my adversary.  
06:39PM 12 I'd just like Mr. Basralian to withdraw his motion as  
06:39PM 13 to the testimony of Mr. Lacz since he was a licensed  
06:39PM 14 planner -- engineer and architecture. He paid his  
06:40PM 15 fees and I have submitted the documents to the Board  
06:40PM 16 that we should go on from that point.

06:40PM 17 MR. BASRALIAN: Yeah, let me just state  
06:40PM 18 that with respect to his engineering license that has  
06:40PM 19 been reinstated as of today, about 4:30.

06:40PM 20 His planner's license still has not  
06:40PM 21 been reinstated. He may have paid fees, but there  
06:40PM 22 has to be a reinstatement of a license for him to be  
06:40PM 23 a licensed planner in the State of New Jersey, that  
06:40PM 24 has not occurred.

06:40PM 25 Now as of, on March the 3rd, when that

06:40PM 1 whole discussion came up with his licensing, Mr.  
06:40PM 2 Malagiere on behalf of the Board said and I quote on  
06:40PM 3 page 60, lines eight through 12:

07:59PM 4 "I think his opinions -- he'd have to  
07:59PM 5 stop short of offering an opinion as a  
07:59PM 6 professional engineer and professional  
07:59PM 7 planner."

06:40PM 8 Well, his engineering license has been  
06:40PM 9 reinstated as according to the state. His planning  
06:41PM 10 license has not. And I believe --

06:41PM 11 CHAIRMAN GUERRA: Did he testify as an  
06:41PM 12 engineer or a planner.

06:41PM 13 MR. MALAGIERE: I think he did both.

06:41PM 14 MR. BASRALIAN: All three, as an  
06:41PM 15 architect, an engineer and a planner.

06:41PM 16 CHAIRMAN GUERRA: As an architect too?

06:41PM 17 MR. BASRALIAN: And --

06:41PM 18 MR. MALAGIERE: I think -- I'm sorry.

06:41PM 19 MR. BASRALIAN: And as his license has  
06:41PM 20 not been reinstated as a planner, I would ask the  
06:41PM 21 Board to strike all of his planning opinions. All of  
06:41PM 22 his planning opinions because that was the ruling of  
06:41PM 23 the Board and the Applicant is entitled to rely on  
06:41PM 24 that. Nothing has transpired in nearly five months  
06:41PM 25 since that license application for reinstatement took

06:41PM 1 place that was going to happen in 30 days.

06:41PM 2 CHAIRMAN GUERRA: Mr. Moskowitz --

06:41PM 3 MR. MALAGIERE: Let me just, Mr.

06:41PM 4 Guerra, if I may -- -

06:41PM 5 CHAIRMAN GUERRA: Of course.

06:41PM 6 MR. MALAGIERE: What I would suggest,

06:41PM 7 Mr. Chairman, is we allow him to be cross examined,

06:41PM 8 counsel for the Applicant has indicated that we're

06:41PM 9 probably going to be in a situation where this

06:41PM 10 application is carried for summations. It's 24

06:41PM 11 meeting or thereabouts, which makes a lot of sense.

06:41PM 12 What I would suggest is that in the

06:41PM 13 summation, which I would suggest to the Chair be

06:42PM 14 offered in writing -- of course, Counsel can make

06:42PM 15 oral closings in a synopsis form -- that that issue

06:42PM 16 be raised at that time in writing, where it's easier

06:42PM 17 to digest. We don't burden the record with colloquy

06:42PM 18 and argument at this point. And we move on and try

06:42PM 19 and complete the hearing.

06:42PM 20 Mr. Chairman?

06:42PM 21 MR. DIKTAS: Just --

06:42PM 22 MR. BASRALIAN: I have --

06:42PM 23 CHAIRMAN GUERRA: I would just like to

06:42PM 24 know, is there a reason why this wasn't taken care

06:42PM 25 of?

06:42PM 1 MR. MALAGIERE: Mr. Chairman, let him  
06:42PM 2 put it in writing because at this point we'll take up  
06:42PM 3 a half hour with it when we could be --

06:42PM 4 CHAIRMAN GUERRA: How about a one  
06:42PM 5 sentence explanation Mr. Moskowitz is saying why that  
06:42PM 6 wasn't taken care of.

06:42PM 7 MR. MALAGIERE: It's not Mr.  
06:42PM 8 Moskowitz's witness.

06:42PM 9 CHAIRMAN GUERRA: I mean Mr. Diktas.

06:42PM 10 MR. DIKTAS: Diktas.

06:42PM 11 CHAIRMAN GUERRA: Yes.

06:42PM 12 MR. DIKTAS: It's Trenton.  
06:42PM 13 Everything's been paid. There's two people working  
06:42PM 14 on alternative Thursdays on months that don't end --

06:42PM 15 CHAIRMAN GUERRA: Okay. So this a  
06:42PM 16 formality at this point?

06:42PM 17 MR. DIKTAS: Yes, sir.

06:42PM 18 CHAIRMAN GUERRA: Okay.

06:42PM 19 MR. BASRALIAN: No, I disagree. It's  
06:42PM 20 not a formality --

06:42PM 21 MR. DIKTAS: Yes.

06:42PM 22 MR. BASRALIAN: -- automatically that  
06:42PM 23 -- for a person who was waived in and didn't take a  
06:43PM 24 planning test, that he automatically gets his license  
06:43PM 25 reinstated. It's now nearly five months.

06:43PM 1 The ruling was made in March. If we  
06:43PM 2 had had the other hearings that were cancelled he  
06:43PM 3 still wouldn't have had his license at all of those  
06:43PM 4 times.

06:43PM 5 He's here tonight. I would cross  
06:43PM 6 examine him on his architectural and engineering  
06:43PM 7 testimony, since that has been reinstated. He is not  
06:43PM 8 a licensed planner. The decision or the statement by  
06:43PM 9 your counsel, which I just read, that he has to stop  
06:43PM 10 short of rendering planning opinion. And everything  
06:43PM 11 he did as a planner was -- resulted in an opinion.

06:43PM 12 And I am not going to cross examine him  
06:43PM 13 for those things because he was not permitted to make  
06:43PM 14 those opinions, which he did do.

06:43PM 15 CHAIRMAN GUERRA: Okay.

06:43PM 16 MR. MALAGIERE: Well, then obviously I  
06:43PM 17 mean, Mr. Chairman, counsel takes the position that  
06:43PM 18 he's not going to cross examine at his own risk.

06:43PM 19 I mean ultimately we'll see what  
06:43PM 20 happens in the submissions --

06:43PM 21 MR. DIKTAS: Fine.

06:43PM 22 MR. MALAGIERE: -- and it goes where it  
06:44PM 23 goes and I understand Mr. Basralian's position.

06:44PM 24 But, if at the end of this it's the  
06:44PM 25 determination of this Board that he was properly

06:44PM 1 reinstated and, you know, you've then -- then his  
06:44PM 2 testimony goes without cross examination.

06:44PM 3 MR. BASRALIAN: Well, let me reply.

06:44PM 4 It was you who made the statement --

06:44PM 5 MR. MALAGIERE: No, I get it.

06:44PM 6 MR. BASRALIAN: And I read that into  
06:44PM 7 the record --

06:44PM 8 MR. MALAGIERE: Listen, listen, listen,  
06:44PM 9 I get it.

06:44PM 10 Mr. Chairman --

06:44PM 11 MR. BASRALIAN: I read the statement --

06:44PM 12 MR. MALAGIERE: Mr. Chairman, let them  
06:44PM 13 do it in writing.

06:44PM 14 MR. DIKTAS: Fine.

06:44PM 15 CHAIRMAN GUERRA: Let's go forward --

06:44PM 16 MR. BASRALIAN: No --

06:44PM 17 MR. MALAGIERE: -- the record speaks  
06:44PM 18 for itself, Joe. And I hear what you're saying. I  
06:44PM 19 don't mean to be disrespectful or discourteous, but  
06:44PM 20 we could go on about this. You have your call and it  
06:44PM 21 is what it is. And I get it.

06:44PM 22 MR. BASRALIAN: No, you have  
06:44PM 23 prejudiced, by this action, by saying go forward, if  
06:44PM 24 you don't do it, it's on your own risk. You have  
06:44PM 25 prejudiced the Applicant, who had a right to rely on

06:44PM 1 the opinion that you rendered on March 3rd that he  
06:44PM 2 has to stop short of rendering an opinion. And --

06:44PM 3 MR. MALAGIERE: You are prejudiced --

06:44PM 4 MR. BASRALIAN: -- and if --

06:44PM 5 MR. MALAGIERE: -- if you don't go  
06:44PM 6 forward.

06:44PM 7 MR. BASRALIAN: -- if, in fact -- if,  
06:44PM 8 in fact --

06:44PM 9 MR. MALAGIERE: Maybe.

06:44PM 10 MR. BASRALIAN: -- I cross examine him  
06:44PM 11 tonight on his opinions as a planner --

06:44PM 12 MR. MALAGIERE: Right.

06:45PM 13 MR. BASRALIAN: Then I'm opening a  
06:45PM 14 record which should not be opened because he wasn't,  
06:45PM 15 by your statement -- by the way, you know, we only  
06:45PM 16 have four members here.

06:45PM 17 MR. MALAGIERE: Yeah, we have a fifth  
06:45PM 18 gentleman coming who will, of course, read the  
06:45PM 19 transcript before the next hearing, Mr. Goez.

06:45PM 20 FEMALE AUDIENCE MEMBER: Next hearing?

06:45PM 21 MR. BASRALIAN: Why is it that, you  
06:45PM 22 know, four, nearly five months later, all of this is  
06:45PM 23 changed and nothing has changed about his licensing.

06:45PM 24 MR. MALAGIERE: Look, Mr. Basralian, I  
06:45PM 25 don't believe anything's changed. I understand your

06:45PM 1 position. The record is clear.

06:45PM 2 I think we move on with the testimony.

06:45PM 3 And you proceed as you deem appropriate. Your record  
06:45PM 4 is protected. You're taking the position that you  
06:45PM 5 think is appropriate. I think it's a reasonable  
06:45PM 6 position.

06:45PM 7 But at this point in time you can also  
06:45PM 8 choose to cross examine him as a planner on the  
06:45PM 9 chance that the Board takes his planning testimony  
06:45PM 10 because they believe, based upon written submissions,  
06:45PM 11 that it's a ministerial act that he's not reinstated.  
06:45PM 12 And they're going to accept his planning testimony.

06:45PM 13 You go forward as you deem appropriate.

06:45PM 14 MR. BASRALIAN: Well, I'm having a hard  
06:46PM 15 time understanding how you can change the position  
06:46PM 16 and say, well, now it's got to be on written  
06:46PM 17 submission.

06:46PM 18 MR. MALAGIERE: Mr. Chairman, I would  
06:46PM 19 ask that you --

06:46PM 20 MR. BASRALIAN: Excuse me.

06:46PM 21 MR. MALAGIERE: -- ask Mr. Basralian --  
06:46PM 22 hold on, Mr. Basralian.

06:46PM 23 Mr. Chairman, I would ask that you  
06:46PM 24 direct Counsel to proceed with testimony and order  
06:46PM 25 that this colloquy stop at this point. It's in the



06:46PM 1 written submissions, it will stand. The record will  
06:46PM 2 stand on its own. We need to finish -- we need to  
06:46PM 3 come to a conclusion of these hearings.

06:46PM 4 CHAIRMAN GUERRA: I agree.

06:46PM 5 MR. BASRALIAN: Mr. Chairman --

06:46PM 6 CHAIRMAN GUERRA: Let's --

06:46PM 7 MR. BASRALIAN: -- I've been here like  
06:46PM 8 you have for --

06:46PM 9 MR. MALAGIERE: Mr. Chairman, I'd ask  
06:46PM 10 that --

06:46PM 11 MR. BASRALIAN: -- 22 or more hearings.  
06:46PM 12 I even lost count.

06:46PM 13 MR. MALAGIERE: I think we need to go  
06:46PM 14 -- Mr. Chair, I would ask that we --

06:46PM 15 CHAIRMAN GUERRA: Let's proceed. Let's  
06:46PM 16 get going.

06:46PM 17 MR. BASRALIAN: I'm entitled - excuse  
06:46PM 18 me, if I go -- if I elect to go forward and cross  
06:46PM 19 examine, it is -- I'm reserving my right to have it  
06:46PM 20 all stricken from the record if the determination is  
06:46PM 21 that he should not have been able to testify or I  
06:46PM 22 reserve that right to appeal that issue that this  
06:46PM 23 Board allowed him to testify and took his planning  
06:46PM 24 opinions when he wasn't licensed as a planner, as  
06:47PM 25 opinion. It's one thing to make statements, which

06:47PM 1 Mr. Malagiere said he could do, but I just read the  
06:47PM 2 quote from the transcript. He has to stop short of  
06:47PM 3 rendering an opinion and he rendered at least 15 or  
06:47PM 4 20 or more planning opinions on March 3rd.

06:47PM 5 MR. MALAGIERE: Your record is  
06:47PM 6 protected. Your objections are noted. The logic is  
06:47PM 7 clear.

06:47PM 8 Please proceed. I understand, Mr.  
06:47PM 9 Basralian.

06:47PM 10 CHAIRMAN GUERRA: Let's proceed. Come  
06:47PM 11 on, Mr. Basralian, proceed.

06:47PM 12 MR. BASRALIAN: Well, for the record  
06:47PM 13 I'm reserving my right on appeal --

06:47PM 14 MR. MALAGIERE: You're already done it.

06:47PM 15 CHAIRMAN GUERRA: So noted.

06:47PM 16 MR. BASRALIAN: I'm reserving my right  
06:47PM 17 for --

06:47PM 18 CHAIRMAN GUERRA: Noted. Duly noted.

06:47PM 19 MR. BASRALIAN: -- even though, I may  
06:47PM 20 elect to cross examine on planning issues --

06:47PM 21 MR. MALAGIERE: Joe --

06:47PM 22 MR. BASRALIAN: -- I want it all struck  
06:47PM 23 if that's the determination.

06:47PM 24 CHAIRMAN GUERRA: Noted. Proceed.

06:47PM 25 MR. MALAGIERE: The record is clear,

06:47PM 1 Mr. Basralian.

06:47PM 2 CHAIRMAN GUERRA: It's all noted.

06:47PM 3 MR. BASRALIAN: I'll be right there.

06:47PM 4 CHAIRMAN GUERRA: I'm sorry.

06:47PM 5 MR. MALAGIERE: No, no, that's fine.

06:47PM 6 The record is clear.

06:47PM 7 Sir, please come forward, we're going  
06:47PM 8 to swear you in.

06:47PM 9 Chris?

06:47PM 10 MR. DIKTAS: What are we doing?

06:47PM 11 MR. MALAGIERE: I'm going to swear him  
06:47PM 12 in.

06:47PM 13 MR. DIKTAS: Is Mr. Basralian going to  
06:47PM 14 question him?

06:47PM 15 MR. MALAGIERE: We're going to swear  
06:47PM 16 him in to go forward.

06:47PM 17 MR. BASRALIAN: I'm not leaving.

06:48PM 18 MR. MALAGIERE: I think he's getting a  
06:48PM 19 glass of water.

06:48PM 20 MR. DIKTAS: I thought he left us.

06:48PM 21 MR. MALAGIERE: We're going to swear  
06:48PM 22 you in, sir. Welcome back.

06:48PM 23 MR. BASRALIAN: Your wish. Your wish.

06:48PM 24 MR. MALAGIERE: Sir, please put your  
25 left hand on the Bible, raise your right hand.

1 Do you swear the testimony you're about  
2 to give before this Board to be the truth, the whole  
3 truth and nothing but the truth, so help you God?

4 MR. LACZ: Yes.

5 S T A N L A C Z,  
07:14PM 6 53 Notch Road, Woodland Park, New Jersey, having  
07:14PM 7 been duly sworn, testifies as follows:

07:14PM 8 MR. MALAGIERE: Could you please  
9 identify -- Al, he's not going to use that.

10 Greg, give him that other one. Thank  
11 you.

12 Please identify yourself for the  
13 record, spell your last name and provide the capacity  
14 in which you will offer testimony, sir.

07:14PM 15 MR. LACZ: Stan Lacz.

07:14PM 16 MR. MALAGIERE: Okay. Mr. Lacz, spell  
07:14PM 17 your last name and provide us the capacity in which  
07:14PM 18 you will offer testimony.

07:14PM 19 MR. LACZ: L-a-c-z.

07:14PM 20 The capacity, I'm licensed as an  
07:14PM 21 architect/engineer.

06:48PM 22 It is my understanding of the state law  
06:48PM 23 that I can testify as a -- give planning testimony as  
06:48PM 24 an architect and engineer.

06:48PM 25 MR. MALAGIERE: Okay.

06:48PM 1 So, Mr. Basralian, please proceed.

06:48PM 2 CROSS EXAMINATION

06:48PM 3 BY MR. BASRALIAN:

06:48PM 4 Q. What is your understanding of the state  
06:48PM 5 law about giving planning testimony when you're  
06:48PM 6 unlicensed at this date?

06:49PM 7 A. I, as an architect and engineer, can  
06:49PM 8 give planning testimony. I can write Master Plans.  
06:49PM 9 I can give planning opinions. And such exception is  
06:49PM 10 in the law.

06:49PM 11 Q. I don't think you answered the  
06:49PM 12 question.

06:49PM 13 Can you testify as a planner, an a  
06:49PM 14 licensed planner, in the State of New Jersey?

06:49PM 15 A. I cannot call myself a planner.

06:49PM 16 Q. But you're prepared to render for your  
06:49PM 17 opinion or you rendered your opinions on March 3rd  
06:49PM 18 based upon your being, at that time, only a licensed  
06:49PM 19 architect and not a licensed engineer or planner?

06:49PM 20 A. That's correct.

06:49PM 21 Q. Okay. Thank you.

06:49PM 22 When you were -- first testified on  
06:49PM 23 March 3rd, you stated that you reviewed the  
06:49PM 24 architect's drawings including the most recent  
06:49PM 25 drawing of November 2009.

06:49PM 1 Did you also review all the engineering  
06:49PM 2 drawings, surveys, submitted in conjunction with the  
06:49PM 3 application?

06:49PM 4 A. I -- I listed those which I have  
06:50PM 5 examined and that includes the architect's drawings,  
06:50PM 6 the revised dated 12/11 2008, and engineer's drawing  
06:50PM 7 revised July 7, 2008.

06:50PM 8 Q. And were you also present at the  
06:50PM 9 hearing at which Mr. Burgis, the Applicant's planner,  
06:50PM 10 testified?

06:50PM 11 A. Yes.

06:50PM 12 Q. Were you present at the hearings during  
06:50PM 13 which the Applicant's architect testified?

06:50PM 14 A. I think -- I -- I -- my recollection I  
06:50PM 15 was there. I don't know if I was to all of them, I  
06:50PM 16 don't know if I was there for some of the redirect  
06:50PM 17 for the architect.

06:50PM 18 Q. Were you also present at the hearing in  
06:50PM 19 which the Applicant's engineer testified?

06:50PM 20 A. I don't recollect. I don't think so.

06:50PM 21 Q. Did you read any of the transcripts or  
06:50PM 22 listen to tapes of the hearing?

06:50PM 23 A. No.

06:50PM 24 Q. Thank you.

06:50PM 25 Did you review the minor subdivision

06:50PM 1 application and plat prepared by Franklin Glucker  
06:51PM 2 (phonetic) which was marked as exhibit A-18 pursuant  
06:51PM 3 to which the four lots in the application are  
06:51PM 4 combined into one, a reverse subdivision and that all  
06:51PM 5 the lot lines would be eliminated in accordance with  
06:51PM 6 what was filed with the Board.

06:51PM 7 A. No.

06:51PM 8 Q. Were you present when Mr. Burgis  
06:51PM 9 testified that all of the lot lines would be  
06:51PM 10 eliminated, so that the Applicant's property would  
06:51PM 11 constitute one lot of approximately 50,000 square  
06:51PM 12 feet fronting on Prospect Avenue and Summit Avenue  
06:51PM 13 resulting in a pass-through lot?

06:51PM 14 A. Yes.

06:51PM 15 Q. Is not a consolidation of lots,  
06:51PM 16 multiple lots into one lot permitted under the  
06:51PM 17 Municipal Land Use Law by way of a subdivision deed  
06:51PM 18 consolidation of otherwise?

06:51PM 19 A. Yes.

06:51PM 20 Q. Do you have A-3. I'm sorry. I should  
06:51PM 21 have pulled that out beforehand. Just bear with me  
06:52PM 22 as we pull up the exhibit.

06:52PM 23 While, I'm waiting to do that, you're  
06:52PM 24 familiar with the testimony that Mr. Burgis stated  
06:52PM 25 regarding consolidation and why you did not review

06:52PM 1 it, did you understand that it's one of the exhibits  
06:52PM 2 submitted and in conjunction with the application,  
06:52PM 3 that the Applicant sought to consolidate all four  
06:52PM 4 lots into one.

06:52PM 5 MR. DIKTAS: I'll object to the form of  
06:52PM 6 the question. It really wasn't clear.

06:52PM 7 Q. Do you understand that all of the four  
06:52PM 8 lots are consolidated into one in conjunction with  
06:52PM 9 this application?

06:52PM 10 A. Yes.

06:52PM 11 Q. Do you understand Mr. Burgis' testimony  
06:52PM 12 that all of those items were subsumed into the  
06:52PM 13 application for one lot?

06:52PM 14 A. Could you repeat the question please.

06:53PM 15 Q. Did you understand Mr. Burgis'  
06:53PM 16 testimony that the consolidation of the four lots  
06:53PM 17 into one was subsumed within the application for site  
06:53PM 18 plan approval which included the lot consolidation?

06:53PM 19 A. Yes.

06:53PM 20 Q. Would you go to what was marked as  
06:53PM 21 Exhibit A-3 by the Applicant.

06:53PM 22 Would you trace with your finger please  
06:53PM 23 the perimeter of the consolidated lots?

06:53PM 24 A. (Witness Indicating).

06:53PM 25 (Whereupon, Mr. Goetz is now present at



06:53PM 1 the meeting.)

06:53PM 2 MR. MALAGIERE: Let the record reflect  
06:53PM 3 that Mr. Goetz has joined us.

06:53PM 4 Thank you, Mr. Basralian.

06:53PM 5 THE WITNESS: Do you wish --

06:53PM 6 Q. Mr. Lacz?

06:53PM 7 A. Do you wish the exhibit be marked where  
06:53PM 8 I showed my finger?

06:53PM 9 Q. Only if you want, Mr. Lacz?

06:53PM 10 A. Okay. If you please give me a marker  
06:53PM 11 I'll mark it.

06:53PM 12 Q. I'm going to ask you a question.

06:53PM 13 Did you just, with your finger, outline  
06:53PM 14 the perimeter of the consolidated lots?

06:54PM 15 A. Yes.

06:54PM 16 Q. Thank you, on Exhibit A-3 marked by the  
06:54PM 17 Applicant initially in the first hearing.

06:54PM 18 In your testimony you referred that you  
06:54PM 19 also reviewed the ordinance in the City of  
06:54PM 20 Hackensack, Section 175.5.1(d) of the Hackensack  
06:54PM 21 ordinance states:

06:54PM 22 A through lot shall be considered as  
06:54PM 23 having two street frontages," I'm quoting,  
06:54PM 24 "both of which shall be subject to the front  
06:54PM 25 yard requirements of the zoning schedule in

06:54PM 1 this chapter".

06:54PM 2 Since the property is deemed a through  
06:54PM 3 lot because it has two frontages, and you testified  
06:54PM 4 that certain rear yard variances were necessary.

06:54PM 5 How can a lot which has only two street  
06:54PM 6 frontages be deemed under the -- and is deemed under  
06:54PM 7 the ordinance as a through lot, have even one rear  
06:54PM 8 yard?

06:54PM 9 A. Well, I'll just, if I may, go to the  
06:54PM 10 ordinance and show you where you're supposed to do  
06:55PM 11 the determination from the district line, not from  
06:55PM 12 the property line.

06:55PM 13 Q. Well, why don't you show me that  
06:55PM 14 section of the ordinance and see what it says.

06:55PM 15 Could you refer to --

06:55PM 16 THE WITNESS: May I show it to Counsel  
06:55PM 17 first?

06:55PM 18 MR. BASRALIAN: Sure.

06:55PM 19 MR. DIKTAS: You can't ask me a  
06:55PM 20 question.

06:55PM 21 THE WITNESS: No, I just want to show  
06:55PM 22 you (indicating).

06:55PM 23 Q. What section are you referring to?

06:55PM 24 A. (Indicating).

06:55PM 25 MR. DIKTAS: Read it into the record,

06:55PM 1 Mr. Lacz.

06:55PM 2 MR. BASRALIAN: Wait, hold on. I just  
06:55PM 3 asked a question --

06:55PM 4 MR. DIKTAS: You asked him a question,  
06:55PM 5 let him read it into the record.

06:55PM 6 MR. BASRALIAN: All right. Excuse me.

06:55PM 7 MR. DIKTAS: Let him read it into the  
06:55PM 8 record.

06:55PM 9 MR. BASRALIAN: Excuse me. When you  
06:55PM 10 get your chance on redirect you can ask him what you  
06:55PM 11 want.

06:55PM 12 Q. Would you show me the section that  
06:55PM 13 you're referring first, the section number?

06:56PM 14 MR. MALAGIERE: Mr. Lacz, just put it  
06:56PM 15 into --

06:56PM 16 MR. DIKTAS: Just put it into the  
06:56PM 17 record.

06:56PM 18 MR. MALAGIERE: Just read it into the  
06:56PM 19 record.

06:56PM 20 CHAIRMAN GUERRA: Just showing it  
06:56PM 21 doesn't show up on the record.

06:56PM 22 MR. MALAGIERE: Mr. Lacz, speak into  
06:56PM 23 the microphone the section that you're showing --

06:56PM 24 MR. BASRALIAN: I want to read --

06:56PM 25 MR. MALAGIERE: -- let him have the

06:56PM 1 book back.

06:56PM 2 MR. BASRALIAN: I have -- no, he can  
06:56PM 3 have the book back. I just want to pull out --

06:56PM 4 MR. MALAGIERE: Give him the book back,  
06:56PM 5 Mr. Basralian --

06:56PM 6 MR. BASRALIAN: Here you go.

06:56PM 7 MR. MALAGIERE: -- so he can respond  
06:56PM 8 into the record.

06:56PM 9 BY MR. BASRALIAN:

06:56PM 10 Q. What section are you reading from?

06:56PM 11 A. The section I'm referring to is  
06:56PM 12 175-5.1(g).

06:56PM 13 Q. Go ahead. And go ahead and read it.

06:56PM 14 A. "Lots located in more than one zone:  
06:56PM 15 If any lot which is located in more than one  
06:56PM 16 zone district all yard, bulk and other  
06:56PM 17 requirements shall be measured from the zone  
06:56PM 18 district boundary line, and not from the true  
06:56PM 19 lot line".

06:56PM 20 Q. Well, that only talks about lots  
06:56PM 21 located in more than one zone.

06:57PM 22 What I was referring to is the  
06:57PM 23 definition of interior lots and frontage on two  
06:57PM 24 streets, which provides that:

06:57PM 25 "An interior lot containing frontage

06:57PM 1           upon two improved and approved streets (a  
06:57PM 2           through lot) shall contain two required front  
06:57PM 3           yards and two required side yards."

06:57PM 4           That's on page -- I'll give you the  
06:57PM 5           exact section 175-5.3(2) -- (f)(2).

06:57PM 6           That talks about it being a through lot  
06:57PM 7           and all it has to have is two front yards and two  
06:57PM 8           side yards. It doesn't talk about the measurements  
06:57PM 9           that you refer to in 175-5.2 -- 5.1(g) which only  
06:58PM 10          talks about the property being in two zones, which  
06:58PM 11          this property is. But it doesn't talk about  
06:58PM 12          backyards.

06:58PM 13          If you go back and read the definition,  
06:58PM 14          if you would, that I referred you to --

06:58PM 15          MR. DIKTAS: Objection. There's no  
06:58PM 16          question.

06:58PM 17          Mr. Basralian is talking --

06:58PM 18          MR. BASRALIAN: I --

06:58PM 19          MR. DIKTAS: -- he hasn't presented one  
06:58PM 20          question in the last three minutes.

06:58PM 21          BY MR. BASRALIAN:

06:58PM 22                 Q.        Would you go back and review the  
06:58PM 23                 section I just read you on through lots and tell me  
06:58PM 24                 how many yards a lot -- a through lot is required to  
06:58PM 25                 have, both front and side?

06:58PM 1 A. Excuse me, could you give me the  
06:58PM 2 citation again please?

06:58PM 3 Q. Sure. Section 175-5 -- I'm sorry --  
06:58PM 4 175-5.3(d) -- I'm sorry (f)(2). It's on page 51 of  
06:59PM 5 the code.

06:59PM 6 A. It doesn't state what happens when  
06:59PM 7 you're in two zoning districts and which it is  
06:59PM 8 covered by the one I told you, 175-5.1(g). I think  
06:59PM 9 that governs.

06:59PM 10 Q. If you read this definition, again, it  
06:59PM 11 talks about a lot without distinguishing whether it  
06:59PM 12 is in two zones or one zone. It talks specifically  
06:59PM 13 as a through street (sic).

06:59PM 14 Are you interpreting this differently  
06:59PM 15 than --

06:59PM 16 A. Through lot.

06:59PM 17 Q. I'm sorry. It's a through lot, having  
06:59PM 18 two front yards and two side yards. That's all it  
06:59PM 19 says.

06:59PM 20 Are you now interpreting this to say  
07:00PM 21 that, well, it doesn't count if it's in two zones?

07:00PM 22 MR. DIKTAS: I'll object to the  
07:00PM 23 question. He's asked and answered. He's asked the  
07:00PM 24 same question four times. He doesn't like his  
07:00PM 25 answer.

07:00PM 1 MR. MALAGIERE: Okay. Did you  
07:00PM 2 understand --

07:00PM 3 MR. BASRALIAN: Oh, no, I like the  
07:00PM 4 answer.

07:00PM 5 Q. I'm asking you again --

07:00PM 6 MR. MALAGIERE: Do you understand the  
07:00PM 7 question?

07:00PM 8 THE WITNESS: I understand the -- the  
07:00PM 9 question is, is that we have -- if I may rephrase it.  
07:00PM 10 He wants to characterize that this particular lot  
07:00PM 11 does not have any interior rear setbacks and it does.

07:00PM 12 Q. How do you define it as having two  
07:00PM 13 interior setbacks when it is a consolidated lot that  
07:00PM 14 the Applicant seeks and the code section that we just  
07:00PM 15 referred to does not distinguish between a lot that's  
07:00PM 16 in one zone or two streets or two zones and two  
07:00PM 17 streets. It still defines it as a through lot.

07:00PM 18 How do you make that distinction and on  
07:00PM 19 what basis?

07:00PM 20 A. It says at the end of that one, not the  
07:00PM 21 true lot line.

07:00PM 22 Q. Which ones are you talking about?  
07:01PM 23 Certainly not the one I'm referring to.

07:01PM 24 A. I'm referring to 175-5.1(g).

07:01PM 25 Q. Correct.

07:01PM 1 Now, are you saying that supersedes the  
07:01PM 2 through lot definition, which this lot qualifies for?

07:01PM 3 A. No, I'm not. I'm not saying -- they  
07:01PM 4 both work together and one modifies the other.

07:01PM 5 Q. How do you conclude they both work  
07:01PM 6 together and that one modifies the other? Is that  
07:01PM 7 some standard that's written into the code here that  
07:01PM 8 says if the two -- one lot fits those two  
07:01PM 9 definitions, one supercedes the other?

07:01PM 10 A. It is going to be one lot, but since  
07:01PM 11 it's in two zoning districts it specifically states  
07:01PM 12 that:

06:56PM 13 "All yard, bulk and other  
06:56PM 14 requirements shall be measured from the zone  
06:56PM 15 district".

07:02PM 16 So in other words, there's a rear yard  
07:02PM 17 in -- in this particular instance, since it's in two  
07:02PM 18 zoning districts.

07:02PM 19 Q. And your conclusion is or your opinion  
07:02PM 20 is that notwithstanding the definition that I read  
07:02PM 21 for an interior lot frontage upon two streets, which  
07:02PM 22 only requires the lot to have two front yards and two  
07:02PM 23 side yards, that you still maintain it must have rear  
07:02PM 24 yards for both properties when it is one lot?

07:02PM 25 A. It's supposed to be interpreted and it



07:02PM 1 says here:

06:56PM 2 "Any lot which is located in more than  
06:56PM 3 one zone district all yard, bulk and other  
06:56PM 4 requirements shall be measured from the zone  
06:56PM 5 district boundary..."

07:02PM 6 The boundary goes at the -- at the --  
07:02PM 7 the rear -- at the property line or what would have  
07:03PM 8 been the rear property line, and as such you have a  
07:03PM 9 rear setback necessary.

07:03PM 10 Q. But you have --

07:03PM 11 AUDIENCE MEMBERS: Can't hear.

07:03PM 12 Q. -- but you have a through street (sic)  
07:03PM 13 -- a through lot, which is only required to have --

07:03PM 14 MR. MALAGIERE: Speak into the  
07:03PM 15 microphone.

07:03PM 16 MR. BASRALIAN: Excuse me.

07:03PM 17 MR. MALAGIERE: Mr. Basralian, speak  
07:03PM 18 into the microphone.

07:03PM 19 Q. But you have a through lot which is  
07:03PM 20 only required to have two front yards and two side  
07:03PM 21 yards.

07:03PM 22 So you're stating that irrespective of  
07:03PM 23 what that section says, in your opinion this  
07:03PM 24 prevails. And, therefore, this property must have  
07:03PM 25 two backyards?

07:03PM 1 A. And then besides two other side yards,  
07:03PM 2 two other front yards and a front yard on either  
07:03PM 3 side.

07:03PM 4 Q. So you're now stating that's it needs  
07:03PM 5 two variances for -- you're saying it needs a  
07:03PM 6 variance for each set of lots, even though it's one  
07:03PM 7 lot?

07:03PM 8 A. That's correct.

07:03PM 9 Q. So you have to have two backyards on  
07:03PM 10 the one lot then you have to have separate side yards  
07:03PM 11 on the lots in the R-75 zone and separate side yards  
07:04PM 12 on lots --

07:04PM 13 A. And that --

07:04PM 14 Q. -- on the R-3 zone?

07:04PM 15 A. On the R-75 the side yard is 12 feet  
07:04PM 16 for the building it's 10 foot in the ordinance.

07:04PM 17 But you have the footing underneath.

07:04PM 18 So technically speaking you need  
07:04PM 19 variances all the way around.

07:04PM 20 Q. Well, that's a good --

07:04PM 21 A. A total -- a total of eight variances.

07:04PM 22 Q. So if I understand what you're saying,  
07:04PM 23 you're saying, well, you need variances for the side  
07:04PM 24 yards for the properties in the two zones. And then  
07:04PM 25 you need variances for the footings that are below

07:04PM 1 grade that nobody sees.

07:04PM 2 And you've calculated that as eight  
07:04PM 3 variances?

07:04PM 4 A. Yes.

07:04PM 5 (Applause.)

07:04PM 6 Q. So it's a -- I must say that's a very  
07:04PM 7 unique approach to -- to zoning law and one which  
07:05PM 8 is --

07:05PM 9 A. Your term is unique, to me it's  
07:05PM 10 standard.

07:05PM 11 (Applause.)

07:05PM 12 Q. Well, apparently it's not standard to  
07:05PM 13 Mr. Burgis and it's not standard so fa to Mr.  
07:05PM 14 Polyniak because it wasn't outlined in his report,  
07:05PM 15 which was rather extensive, and I assume you reviewed  
07:05PM 16 --

07:05PM 17 A. No, I haven't seen his report.

07:05PM 18 Q. Okay. Well --

07:05PM 19 MR. DIKTAS: Mr. Malagiere, there's no  
07:05PM 20 reason for this. This is questions to a  
07:05PM 21 professional. The question was answered. We don't  
07:05PM 22 need the -- the commentary in between please.

07:05PM 23 MR. MALAGIERE: Mr. Basralian, do you  
07:05PM 24 have any other questions?

07:05PM 25 MR. BASRALIAN: Oh, yeah, I do. I do.

07:05PM 1 Q. In March -- would you agree that when  
07:06PM 2 you reviewed all the plans submitted including what  
07:06PM 3 was submitted but you didn't review the minor  
07:06PM 4 subdivision, that that application was to eliminate  
07:06PM 5 all the lot lines and create one lot.

07:06PM 6 I think you said yes, but I'd like you  
07:06PM 7 to confirm that that's the case?

07:06PM 8 A. Yes, it's the understanding that the  
07:06PM 9 lots will be consolidated.

07:06PM 10 Q. So for the purposes, however, of the  
07:06PM 11 testimony you just gave, you ignored the  
07:06PM 12 consolidation plan and created -- or determined that  
07:06PM 13 there were all these variances that were necessary;  
07:06PM 14 is that correct?

07:06PM 15 A. That's incorrect.

07:06PM 16 Q. Okay. Tell me how it's incorrect?

07:06PM 17 A. Well, you need -- it's my opinion you  
07:06PM 18 need variances -- eight variances all together with  
07:06PM 19 regard the yards and setbacks.

07:06PM 20 Q. Well, let me ask you something.

07:06PM 21 The Applicant asked for a number of  
07:06PM 22 variances which are outlined in this application, how  
07:07PM 23 -- and if the Board determines that these variances  
07:07PM 24 are in fact required because your interpretation of  
07:07PM 25 the ordinances are correct, how then does it affect

07:07PM 1 the application since the application spoke to all of  
07:07PM 2 these things, the engineering plans showed where the  
07:07PM 3 footings would be, showed where the garage would be,  
07:07PM 4 and shows the setbacks on its plan.

07:07PM 5 How has anything changed, other than to  
07:07PM 6 say, well, instead of one variance or none there  
07:07PM 7 should be eight variances?

07:07PM 8 MR. DIKTAS: I'm going to object to the  
07:07PM 9 form of the question.

07:07PM 10 Q. How has anything changed in the  
07:07PM 11 application by your determination that you believe  
07:07PM 12 there are eight variances required instead of what  
07:07PM 13 the Applicant and apparently the planner for the City  
07:07PM 14 determined were the appropriate number of variances?

07:07PM 15 A. I looked at the application drawings,  
07:07PM 16 looked at the ordinances and the State law and  
07:07PM 17 documentation, and that's my determination. The  
07:07PM 18 Zoning Ordinance speaks for itself.

07:07PM 19 Q. Well, we have a difference of opinion  
07:08PM 20 as to what those two sections say, but answer my  
07:08PM 21 question, if you would.

07:08PM 22 Here's the plan, it hasn't changed  
07:08PM 23 whether it has the 12 or fourteen variances that the  
07:08PM 24 Applicant said we're required, and the City said is  
07:08PM 25 required as part of this application, and the number

07:08PM 1 of variances that you now state are necessary, eight  
07:08PM 2 versus none that should have been --

07:08PM 3 A. All together there are about 53.

07:08PM 4 Q. Wait. I asked you about eight here?

07:08PM 5 A. Well --

07:08PM 6 Q. We'll get -- the eight here --

07:08PM 7 A. But I --

07:08PM 8 Q. We'll get to the other ones, if it's  
07:08PM 9 your desire to create a lot of variances so it  
07:08PM 10 appears that it's a horrendously bad application on  
07:08PM 11 variances alone, then -- then you can succeed if  
07:08PM 12 you're proved correct.

07:08PM 13 MR. DIKTAS: I'm going to -- there's no  
07:08PM 14 question --

07:08PM 15 Q. However, how -- I've asked you how has  
07:08PM 16 anything changed in the plan that's submitted by the  
07:08PM 17 Applicant whether it's eight variances or 53  
07:08PM 18 variances or ten variances, what has changed about  
07:08PM 19 the plan?

07:08PM 20 A. I don't understand your question.

07:08PM 21 Q. What has changed about the plan? We  
07:08PM 22 said there are ten variances. The City Planner said  
07:09PM 23 there were ten or eleven, whatever the number of  
07:09PM 24 variances were.

07:09PM 25 You've created 50 -- or said there are

07:09PM 1 53 variances, what has changed about the plan?

07:09PM 2 A. It is my understanding that we are  
07:09PM 3 looking at the same plan.

07:09PM 4 Q. Yes. We're looking at the same plan,  
07:09PM 5 but what is the impact of having -- if you're correct  
07:09PM 6 there are 53 variances, and I don't think you are,  
07:09PM 7 versus the variances that the Applicant and the City  
07:09PM 8 Planner state are required for this application.

07:09PM 9 What has changed about the plan at all?  
07:09PM 10 Has the Applicant changed the plan? Has the building  
07:09PM 11 got -- got wider or shorter? Has the garage  
07:09PM 12 expanded, contracted? Has the side yards changed on  
07:09PM 13 the plan at all?

07:09PM 14 A. I don't understand your question.  
07:09PM 15 We're looking at --

07:09PM 16 Q. The plan is --

07:09PM 17 A. We're looking at the same drawing.  
07:09PM 18 We're looking at the same Zoning Ordinance.

07:09PM 19 Q. Right.

07:09PM 20 Well, what is the impact of the number  
07:09PM 21 of -- what is the impact that your 53 variances that  
07:09PM 22 you say exist versus the number of variances the  
07:09PM 23 Applicant and the City says exist? What's the impact  
07:09PM 24 of that?

07:09PM 25 A. Impact on what?

07:09PM 1 Q. Impact on the application?

07:09PM 2 A. Well, again a question of law possibly,  
07:10PM 3 but I would say the Applicant has to reapply and  
07:10PM 4 start from the beginning.

07:10PM 5 (Applause.)

07:10PM 6 Q. Well, you the read the notice -- if you  
07:10PM 7 the read the notice it said it also included such as  
07:10PM 8 other variances as may be determined as necessary so  
07:10PM 9 it covered all of those things.

07:10PM 10 Is it your intent to persuade the Board  
07:10PM 11 that because your interpretation of the code requires  
07:10PM 12 53 variances that this whole application should fail  
07:10PM 13 and, therefore, should start again?

07:10PM 14 A. Absolutely.

07:10PM 15 (Applause.)

07:10PM 16 Q. Well, at least -- at least we know why  
07:10PM 17 you --

07:10PM 18 (Chairman Guerra uses the gavel to  
07:10PM 19 maintain order.)

07:10PM 20 Q. Would you agree that if the application  
07:10PM 21 is granted it's consolidated as one lot?

07:10PM 22 A. Yes.

07:10PM 23 Q. Thank you.

07:11PM 24 At Mr. Diktas' request you read to the  
07:11PM 25 Board Section 175-7.1 which states that:



07:11PM 1 "With accessory structures attached to  
07:11PM 2 the principal building it shall apply to  
07:11PM 3 all --

07:11PM 4 AUDIENCE MEMBERS: Wait, wait, wait.  
07:11PM 5 Oh, come on.

07:11PM 6 CHAIRMAN GUERRA: It's not his fault  
07:11PM 7 the batteries are dying or something.

07:11PM 8 MR. MALAGIERE: What's that?

07:11PM 9 CHAIRMAN GUERRA: The batteries are  
07:11PM 10 dying in the microphone.

07:11PM 11 MR. MALAGIERE: Al, is that gentlemen  
07:11PM 12 around or is he taking a break?

07:11PM 13 MR. BORRELLI: He might be in the  
07:11PM 14 building department over at --

07:11PM 15 MR. MALAGIERE: See if you can get him,  
07:11PM 16 make it work.

07:11PM 17 CHAIRMAN GUERRA: Let's proceed.

07:11PM 18 BY MR. BASRALIAN:

07:11PM 19 Q. Okay. Let me start with the question  
07:11PM 20 again then.

07:11PM 21 At Mr. Diktas' request you read to the  
07:12PM 22 Board Section 175-7.1 which states that with  
07:12PM 23 accessory structures attached to the principal  
07:12PM 24 building it shall comply in all respects with  
07:12PM 25 requirement of this ordinance as applicable to the

07:12PM 1 principal building including lot coverage.

07:12PM 2 Subsection D says:

07:12PM 3 "No accessory structure shall be placed  
07:12PM 4 nearer than 10 feet from any principal  
07:12PM 5 building".

07:12PM 6 Don't those sections really apply to  
07:12PM 7 surface buildings such as a home wherein you have an  
07:12PM 8 attached garage and the building must -- and the  
07:12PM 9 attached garage must comply with the requirements  
07:12PM 10 versus a detached garage which has to be at least 10  
07:12PM 11 feet away from the principal structure.

07:12PM 12 A. I think this is accessory structures  
07:12PM 13 regulation in a residential district that includes  
07:13PM 14 all residential districts.

07:13PM 15 Q. Okay. So in your interpretation  
07:13PM 16 because you determined something different, doesn't  
07:13PM 17 this really apply to residential structures, surface  
07:13PM 18 buildings?

07:13PM 19 A. No, it's applies to the instant case.

07:13PM 20 Q. Well, elsewhere in the ordinance it  
07:13PM 21 says, pardon me, that an accessory structure that is  
07:13PM 22 detached cannot be more than 15 high, but with  
07:13PM 23 respect to the side yard and rear yard the setbacks  
07:13PM 24 are set at one half of the setback requirements of  
07:13PM 25 the principal building.

07:13PM 1 Doesn't that seem to indicate it  
07:13PM 2 applies to a surface building? Remember we're  
07:13PM 3 talking about a 15 foot height?

07:13PM 4 A. Well, where -- where in the ordinance  
07:13PM 5 is that?

07:13PM 6 Q. I'll get it for you. Okay. Well,  
07:13PM 7 that's in 175-7.1, that's in the same section, so let  
07:14PM 8 me pull the exact one for you.

07:14PM 9 I made an error in writing down the  
07:14PM 10 section. You just have to bear with me to find it.

07:15PM 11 It's 175-7.1(e) in all residential  
07:15PM 12 districts, the height of accessory buildings shall  
07:15PM 13 not exceed one-and-a-half stories or 15 feet in  
07:15PM 14 height.

07:15PM 15 Doesn't that seem to mean that it  
07:15PM 16 applies to surface structures?

07:15PM 17 A. All surface structures in residential  
07:15PM 18 districts, yes.

07:15PM 19 Q. Okay. And we are in residential  
07:15PM 20 districts here?

07:15PM 21 A. Yes.

07:15PM 22 Q. Okay.

07:15PM 23 So you'd agree then that it does apply  
07:15PM 24 to residential structures and surface buildings?

07:15PM 25 A. Yes, that's accessorial. Surface, what

07:15PM 1 do you mean by "surface."

07:15PM 2 Q. A building that projects above the  
07:15PM 3 surface, it doesn't include the basement?

07:15PM 4 A. Yes, it does include the basement.

07:15PM 5 Q. Well, you're saying that the height --

07:15PM 6 A. You -- you --

07:16PM 7 Q. Excuse me. Excuse me.

07:16PM 8 You said, yes, it includes the  
07:16PM 9 basement, are you -- I'm asking you another question.

07:16PM 10 You're saying that the 15 foot height  
07:16PM 11 limitation on an assembly structure includes the  
07:16PM 12 basement?

07:16PM 13 A. No.

07:16PM 14 Q. Okay.

07:16PM 15 A. You measure the height from grade, but  
07:16PM 16 as an --

07:16PM 17 Q. But that's --

07:16PM 18 MR. DIKTAS: Let him answer the  
07:16PM 19 question.

07:16PM 20 MR. BASRALIAN: No, no. Excuse me.

07:16PM 21 THE WITNESS: Could I answer the  
07:16PM 22 question please?

07:16PM 23 MR. BASRALIAN: No. I asked a question  
07:16PM 24 you gave me the answer.

07:16PM 25 THE WITNESS: Well, and then you want

07:16PM 1 -- you want --

07:16PM 2 MR. BASRALIAN: I ask the questions,  
07:16PM 3 you give the answers.

07:16PM 4 THE WITNESS: Do you want me to answer  
07:16PM 5 it or not?

07:16PM 6 CHAIRMAN GUERRA: Gentlemen.

07:16PM 7 MR. BASRALIAN: Let me rephrase the  
07:16PM 8 question.

07:16PM 9 Q. When you measured the height of an  
07:16PM 10 accessory building, do you do you measure it from  
07:16PM 11 grade?

07:16PM 12 A. Yes.

07:16PM 13 Q. Thank you.

07:16PM 14 You mentioned elsewhere in your  
07:16PM 15 testimony that it's your position that underground  
07:16PM 16 structures have to be calculated in the definition of  
07:16PM 17 building coverage.

07:16PM 18 Have I stated that correctly?

07:16PM 19 A. Yes.

07:16PM 20 Q. Would you include in your coverage  
07:16PM 21 calculation below grade structures such as oil tanks  
07:17PM 22 or gasoline tanks?

07:17PM 23 A. What definitions are we working on?

07:17PM 24 Q. No, it's your definition. You said  
07:17PM 25 that all underground structures, all right, have to

07:17PM 1 be included in building coverage.

07:17PM 2 And I'm asking you when you defined  
07:17PM 3 building coverage in your testimony, would you  
07:17PM 4 include in that underground calculation, underground  
07:17PM 5 storage tanks and gasoline tanks?

07:17PM 6 A. Let me just refer to the ordinance and  
07:17PM 7 let me take a look at it please. (Pause).

07:18PM 8 The -- I see that the ordinance does  
07:18PM 9 not define coverage. And it would be my view point,  
07:18PM 10 without further study, that I probably have to change  
07:18PM 11 that in that you would have to include this.

07:18PM 12 Q. So you would include those, would you  
07:18PM 13 include septic systems which are a structure?

07:18PM 14 A. Unless it was considered as a de  
07:18PM 15 minimis imposition on the yard, you would definitely  
07:18PM 16 include it.

07:18PM 17 Q. Well, would you include underground  
07:18PM 18 detention/retention structures that have permanent  
07:18PM 19 installations?

07:18PM 20 A. Yes. According to the ordinance as  
07:18PM 21 it's written, it would be included.

07:18PM 22 Q. Would it also apply to piping for  
07:18PM 23 underground storage tanks, conduits, electric lines,  
07:18PM 24 sprinkler lines and all the other types of connection  
07:18PM 25 which are below grade?

07:18PM 1 A. I --

07:18PM 2 Q. It's your definition?

07:18PM 3 A. Some of these are -- are de minimis  
07:18PM 4 infringements and most likely would not be  
07:18PM 5 calculated.

07:19PM 6 Q. Well, where does it say in the  
07:19PM 7 ordinance that de minimus infringements are not  
07:19PM 8 included and where does it say in the ordinance you  
07:19PM 9 would include septic systems, gasoline tanks and  
07:19PM 10 anything else that's below grade in your calculation  
07:19PM 11 of building coverage, because that's what we're  
07:19PM 12 talking about.

07:19PM 13 A. Okay.

07:19PM 14 The ordinance doesn't define coverage,  
07:19PM 15 as I can see it, unless you can help me out with  
07:19PM 16 that.

07:19PM 17 From what I can see is that the  
07:19PM 18 ordinance in the front portion there is viewed as a  
07:19PM 19 permissive ordinance.

07:19PM 20 So, in other words, if there are any  
07:19PM 21 structures which should be included in that coverage  
07:19PM 22 calculation.

07:19PM 23 Q. Mr. Lacz, you represented a  
07:20PM 24 municipality, you said, as a planner or more than one  
07:20PM 25 municipality, did you draft ordinances that were

07:20PM 1 adopted by a Council that provided that all  
07:20PM 2 underground structures, whether or not they can be  
07:20PM 3 seen, should be included in the building coverage  
07:20PM 4 calculation?

07:20PM 5 MR. DIKTAS: Objection, relevancy.

07:20PM 6 MR. BASRALIAN: He just testified that  
07:20PM 7 in this City --

07:20PM 8 MR. MALAGIERE: He can answer the  
07:20PM 9 question.

07:20PM 10 MR. DIKTAS: I could make the  
07:20PM 11 objection. It wouldn't be the first one I got  
07:20PM 12 overruled on.

07:20PM 13 MR. BASRALIAN: Well, I'm going to  
07:20PM 14 respond to the objection, but he's been directed to  
07:20PM 15 answer.

07:20PM 16 THE WITNESS: Would you repeat the  
07:20PM 17 question please.

07:20PM 18 MR. BASRALIAN: Yes.

07:20PM 19 Q. You stated that -- you represented that  
07:20PM 20 you were a municipal planner, did you recommend in  
07:20PM 21 Master Plans or suggest to anybody, any Planning  
07:20PM 22 Board and ordinances that were adopted by any  
07:20PM 23 municipalities that included all underground  
07:20PM 24 structures whether they could be seen or not  
07:20PM 25 underground including the retention systems and



07:20PM 1 gasoline tanks and septic systems are to be included  
07:21PM 2 in surface building coverage calculations?

07:21PM 3 A. In my recollections I have discussed  
07:21PM 4 with committees and Council people about underground  
07:21PM 5 structures.

07:21PM 6 Q. Did they ever adopt any ordinance or  
07:21PM 7 any regulations in those municipalities for which you  
07:21PM 8 were a planner that included all those underground  
07:21PM 9 structures in the calculation of building coverage?

07:21PM 10 A. I have no knowledge to answer on that.

07:21PM 11 Q. Well, how about in what towns you might  
07:21PM 12 have done that?

07:21PM 13 A. (NO RESPONSE.)

07:21PM 14 MR. MALAGIERE: Can you answer that  
07:21PM 15 question?

07:21PM 16 Q. In what towns you might have done that  
07:21PM 17 in?

07:21PM 18 A. What towns?

07:21PM 19 Q. Yeah.

07:21PM 20 A. I don't recollect, probably Dumont, in  
07:21PM 21 Manahawkin.

07:21PM 22 Q. Well, the definition for lot coverage  
07:22PM 23 found in the Hackensack Ordinance at 175-2.2(1) says:

07:22PM 24 "Lot coverage, that portion of a  
07:22PM 25 lot which is occupied by buildings and

07:22PM 1 accessory buildings, but not including other  
07:22PM 2 areas of impervious coverage such as  
07:22PM 3 sidewalks, driveways, patios and open parking  
07:22PM 4 lots".

07:22PM 5 A. Okay.

07:22PM 6 Q. Now, how do you go from there to  
07:22PM 7 include all below grade structures as calculated in  
07:22PM 8 building coverage?

07:22PM 9 A. Could you please give me the reference  
07:22PM 10 there again?

07:22PM 11 Q. 175-2.2(1).

07:22PM 12 MR. DIKTAS: Page 23.

07:23PM 13 THE WITNESS: The question?

07:23PM 14 MR. BASRALIAN: Could you read the  
07:23PM 15 question back?

07:23PM 16 THE WITNESS: Oh.

07:23PM 17 MR. BASRALIAN: Let her read it back  
07:23PM 18 please.

07:23PM 19 (Whereupon, the Court Reporter reads  
07:23PM 20 back the requested portion.)

07:23PM 21 A. So, in other words this -- this defines  
07:23PM 22 the coverages and I will have to change my testimony  
07:23PM 23 with regard to those particular structures.

07:23PM 24 Q. Thank you.

07:23PM 25 Given that the building coverage is to

07:23PM 1 assure adequate light, air and open space, how does  
07:23PM 2 an underground garage or any structure below grade  
07:23PM 3 which is not seen interfere or inhibit the principles  
07:24PM 4 or adequate light, air and open space?

07:24PM 5 A. You're asking me a question with regard  
07:24PM 6 to the -- I think it was the article two of the Land  
07:24PM 7 Use Law. I think the second article about light,  
07:24PM 8 space and air.

07:24PM 9 Now, what we're talking about here is  
07:24PM 10 an underground structure in setbacks, in coverage.

07:24PM 11 Q. No, that's not the -- that's not the  
07:24PM 12 question I asked you.

07:24PM 13 A. I know -- I know --

07:24PM 14 Q. Excuse me. Excuse me. That's not the  
07:24PM 15 question.

07:24PM 16 A. In other words, you're trying --

07:24PM 17 Q. Excuse me. Excuse me. That's not the  
07:24PM 18 question I asked you. I asked you how does an  
07:24PM 19 underground structure, in this case a parking garage,  
07:24PM 20 or any place else where they have underground  
07:24PM 21 retention or storage tanks or any of the other things  
07:24PM 22 you said should be included, how do those things all  
07:25PM 23 below grade interfere with the principle or inhibit  
07:25PM 24 the principle of adequate light, air and open space?

07:25PM 25 A. And you're referring to that light, air

07:25PM 1 and open space as to the principles of the plan; is  
07:25PM 2 that correct?

07:25PM 3 Q. Well, I'm applying it towards --

07:25PM 4 MR. DIKTAS: I'm going to object to the  
07:25PM 5 question --

07:25PM 6 Q. -- any structures --

07:25PM 7 MR. DIKTAS: -- there's no -- there's  
07:25PM 8 no foundation. There's no proffer as to --

07:25PM 9 MR. MALAGIERE: No, you just need to  
07:25PM 10 answer the question as best you can, if you  
07:25PM 11 understand it.

07:25PM 12 If you don't understand it, please say  
07:25PM 13 so.

07:25PM 14 THE WITNESS: Okay.

07:25PM 15 A. Please clarify the question. What do  
07:25PM 16 you mean by space, light and air.

07:25PM 17 Q. Well, you're the one who said that  
07:25PM 18 there's a principle of light, air and open space.

07:25PM 19 And because there are underground  
07:25PM 20 structures here, i.e. the parking garages which --  
07:25PM 21 which you calculated as having an 80 percent plus  
07:25PM 22 coverage, building coverage calculation, that that  
07:25PM 23 interfered with the principals of air, light an open  
07:25PM 24 space.

07:25PM 25 My question is --

07:25PM 1 A. Wait, I did not say that.

07:25PM 2 Q. Well, you concluded, didn't you --  
07:25PM 3 well, I'll get to the question, but you concluded  
07:26PM 4 that coverage was somewhere around 88 percent on the  
07:26PM 5 Prospect Avenue lot and 81 percent on the -- on the  
07:26PM 6 lots fronting on -- on Summit Avenue --

07:26PM 7 A. That's correct.

07:26PM 8 Q. -- and you included all those below  
07:26PM 9 grade structures in building coverage --

07:26PM 10 A. Yes.

07:26PM 11 Q. -- correct?

07:26PM 12 Now, you also said that coverage is an  
07:26PM 13 important component of light, air an open space.  
07:26PM 14 Now --

07:26PM 15 A. Wait a second, I didn't say that.

07:26PM 16 Q. Well, what did you say then?

07:26PM 17 A. I -- it was -- I was questioning what  
07:26PM 18 that was meaning. And I'm asking you, in your  
07:26PM 19 question what do you mean by light, space and air?

07:26PM 20 Q. Well, we have a building, principal  
07:26PM 21 building which has a footprint of about 6600 square  
07:26PM 22 feet and represents about 12.7 percent of the total  
07:26PM 23 building coverage.

07:26PM 24 Everything else with respect to its  
07:26PM 25 parking structures is below grade. You talked about

07:27PM 1 the principle of air, light and open space.

07:27PM 2 And I am asking you --

07:27PM 3 A. You did. I didn't. I was wanting to  
07:27PM 4 know your interpretation of light, space and air so I  
07:27PM 5 could answer your question.

07:27PM 6 Q. No. I -- during the break I will look  
07:27PM 7 through the transcript and find that specifically.

07:27PM 8 But you talk about light, air and open  
07:27PM 9 space as being a component of good planning under the  
07:27PM 10 Municipal Land Use Law, did you not?

07:27PM 11 A. Yes.

07:27PM 12 Q. And I'm asking you how do underground  
07:27PM 13 structures affect -- adversely affect the concept of  
07:27PM 14 air, light and open space which is above ground?

07:27PM 15 A. It affects coverage.

07:27PM 16 So in other words --

07:27PM 17 Q. No, that's not the question. The  
07:27PM 18 question was how do underground structures which are  
07:27PM 19 not seen and aren't on the surface effect the concept  
07:27PM 20 of air, light and open space which is a surface  
07:27PM 21 principle?

07:27PM 22 A. Not necessarily, it also involves what  
07:28PM 23 is below the coverage. In this particular instance  
07:28PM 24 it includes the underground structures.

07:28PM 25 Q. Well, so you have opined as a planner

07:28PM 1 that that includes that, but I'm asking now, how does  
07:28PM 2 that impact light, air and open space? How do the  
07:28PM 3 underground structures affect light, air and open  
07:28PM 4 space?

07:28PM 5 A. And what you mean by --

07:28PM 6 MR. MALAGIERE: Sir, I think you have  
07:28PM 7 to answer that question.

07:28PM 8 You've admitted that you stated that  
07:28PM 9 light, air and open space is an element that a  
07:28PM 10 planner considers. And it's important. You agreed  
07:28PM 11 to that.

07:28PM 12 And it seems that the premise of the  
07:28PM 13 question has been things you testified to. Please  
07:28PM 14 answer the question.

07:28PM 15 I don't think Mr. Basralian needs to  
07:28PM 16 define something that you've articulated and opined  
07:28PM 17 to.

07:28PM 18 Can you answer the question?

07:28PM 19 THE WITNESS: Okay. If I may ask,  
07:28PM 20 where did I opine this?

07:28PM 21 MR. MALAGIERE: Well, no, you agreed to  
07:28PM 22 it, sir. I just heard you agree to it.

07:28PM 23 THE WITNESS: I said, yes, but in --

07:28PM 24 MR. MALAGIERE: Sir, I need you to  
07:28PM 25 answer the question.

07:28PM 1 THE WITNESS: Okay.

07:28PM 2 MR. MALAGIERE: If you can't answer the  
07:28PM 3 question, say so.

07:28PM 4 THE WITNESS: Would you repeat the  
07:29PM 5 question please.

07:29PM 6 MR. MALAGIERE: Please read the  
07:29PM 7 question back.

07:29PM 8 (Whereupon, the Court Reporter reads  
07:30PM 9 back the requested portion.)

07:30PM 10 MR. MALAGIERE: Could you answer the  
07:30PM 11 question please, sir.

07:30PM 12 THE WITNESS: Yes.

07:30PM 13 A. Buildings are also composed of space.  
07:30PM 14 So space underground also involves space, light and  
07:30PM 15 air.

07:30PM 16 Q. On the surface?

07:30PM 17 A. Underground is -- you have space. It's  
07:30PM 18 underground space; space, light and air. So it  
07:30PM 19 affects that, that there is a space underground.

07:30PM 20 Q. Isn't the concept of planning, which  
07:30PM 21 doesn't include structures themselves and design,  
07:30PM 22 really talk about light, air and open space on the  
07:30PM 23 surface when you put a building on the surface which  
07:30PM 24 may impact adjacent properties?

07:30PM 25 A. No, it doesn't say so in the -- in the



07:30PM 1 Land Use Law. It talks about space and space could  
07:30PM 2 be above ground or below ground.

07:30PM 3 Q. Mr. Lacz, you've been a planner by your  
07:30PM 4 own statement for 40 plus years. When we talk about  
07:30PM 5 light and space -- light, air and open space, do we  
07:31PM 6 not talk about the surface of the property and the  
07:31PM 7 impact of structures placed on those properties on  
07:31PM 8 adjacent properties?

07:31PM 9 A. The elements the planning include the  
07:31PM 10 dimensions in space which are three, besides time and  
07:31PM 11 use.

07:31PM 12 Q. Thank you. I don't understand it, but  
07:31PM 13 thank you.

07:31PM 14 You said in your testimony as you  
07:31PM 15 prepared that you reviewed Moskowitz Lindbloom's book  
07:31PM 16 The Latest Illustrated Book of Development  
07:31PM 17 Definitions published by the Center for Urban Policy,  
07:31PM 18 2004. By the Edward J. Bloustein School of Public  
07:31PM 19 Planning and Policy.

07:32PM 20 Would you say that that is probably or  
07:32PM 21 that is the most definitive publication on  
07:32PM 22 development definitions utilized in New Jersey?

07:32PM 23 A. Yes.

07:32PM 24 Q. Incidentally, do you -- are you  
07:32PM 25 familiar with who Judge Harris was in Bergen County?

07:32PM 1 A. No.

07:32PM 2 Q. All right. Well, I will tell you that  
07:32PM 3 he was the preeminent land use judge --

07:32PM 4 MR. DIKTAS: Objection, relevancy.

07:32PM 5 MR. MALAGIERE: Is there a basis for a  
07:32PM 6 question, Joe?

07:32PM 7 MR. BASRALIAN: Yeah, sure there is.

07:32PM 8 Q. -- that he was one of the preeminent  
07:32PM 9 land use attorney -- or sorry -- judge in Bergen  
07:32PM 10 County before he was elevated to the Appellate  
07:32PM 11 Division.

07:32PM 12 Would it surprise you that that book,  
07:32PM 13 the development -- The Latest Illustrated Book of  
07:32PM 14 Development Definitions was one of the Bibles that he  
07:32PM 15 kept under his desk for his land use planning cases?

07:32PM 16 MR. DIKTAS: I'm going to object.  
07:32PM 17 What's the proffer to Judge Harris keeping a book  
07:32PM 18 under the bench.

07:32PM 19 MR. BASRALIAN: I said would it  
20 surprise him as -- he's already said it's a  
21 definitive book in New Jersey.

22 MR. MALAGIERE: Mr. Basralian --  
23 BY MR. BASRALIAN:

24 Q. Does it surprise you?

25 MR. MALAGIERE: -- please ask him a

1 question --

2 MR. BASRALIAN: I did.

3 MR. MALAGIERE: -- based upon his --

07:33PM 4 Q. Would it surprise you that that book is  
07:33PM 5 one of the Bibles that he utilized --

07:33PM 6 MR. DIKTAS: I'm going to object as to  
07:33PM 7 relevancy.

07:33PM 8 MR. MALAGIERE: It's an improper  
07:33PM 9 question.

07:33PM 10 MR. BASRALIAN: Fine. I'll withdraw  
07:33PM 11 the question.

07:33PM 12 Q. According to Moskowitz and Lindbloom,  
07:33PM 13 their definition of building coverage is the ratio of  
07:33PM 14 a -- quote:

07:33PM 15 "The ratio of the horizontal area  
07:33PM 16 measured from the exterior surface of the  
07:33PM 17 exterior walls of the ground floor of all the  
07:33PM 18 principal and accessory buildings on a lot to  
07:33PM 19 the total area".

07:33PM 20 They go on to define -- you don't have  
07:33PM 21 to look it up, I have copies for you.

07:33PM 22 They go on to define ground floor as  
07:33PM 23 the first floor of a building, other than a cellar or  
07:33PM 24 a basement, where in that definition section do they  
07:33PM 25 calculate, for the purpose of ground coverage, on

07:33PM 1 underground facilities, be it a parking garage, a  
07:33PM 2 storage tank, a septic system, a sprinkler system, as  
07:33PM 3 part of ground coverage?

07:33PM 4 A. Okay. Let's start out with that  
07:34PM 5 definition -- you're talking about structures in  
07:34PM 6 buildings.

07:34PM 7 Q. I'm talking about their definitions of  
07:34PM 8 --

07:34PM 9 A. Okay.

07:34PM 10 Q. -- of two things. Ground coverage,  
07:34PM 11 okay, and ground floor.

07:34PM 12 A. May I answer the question?

07:34PM 13 Q. Well, you just asked me a question --

07:34PM 14 A. No. No, I'm saying.

07:34PM 15 Q. -- about what I was talking about.

07:34PM 16 A. I'm saying is that a building is a  
07:34PM 17 structure with a roof. And it says all principal and  
07:34PM 18 accessory buildings on the lot, "all". If it has a  
07:34PM 19 roof, it's considered. It is -- the garage has a  
07:34PM 20 roof. It has a the roof way up above. And it has a  
07:34PM 21 roof under the park area. After, therefore, it is  
07:34PM 22 considered in building coverage.

07:34PM 23 Q. They go on to define ground floor,  
07:34PM 24 okay, as the first floor --

07:34PM 25 A. Could you tell me where you're reading

07:34PM 1 from?

07:34PM 2 Q. Sure, in the definitional section.

07:34PM 3 Hold on a second. (Pause).

07:35PM 4 I don't have it -- I only have the

07:35PM 5 definition of ground floor here. (Pause). I

07:35PM 6 apologize I thought I had it with me. (Pause).

07:36PM 7 Ground floor, what is...

07:36PM 8 (Whereupon, a discussion is held off

07:36PM 9 the record.)

07:36PM 10 Q. Okay. On page 178 of the Moskowitz  
07:36PM 11 Lindbloom book, he defines ground floor as follows:

07:36PM 12 "The first floor of a building, other  
07:36PM 13 than a cellar or a basement".

07:36PM 14 MR. DIKTAS: What's the question?

07:36PM 15 MR. MALAGIERE: He's leading up to one.

07:36PM 16 Q. I said, are you familiar with that  
07:36PM 17 definition?

07:36PM 18 A. Yes.

07:36PM 19 Q. And does that definition of ground  
07:36PM 20 floor include below grade structures, as in this case  
07:36PM 21 you've indicated the garage ground floor should be  
07:37PM 22 considered a ground floor, bottom level of the ground  
07:37PM 23 floor?

07:37PM 24 A. I don't get the relationship between  
07:37PM 25 this (indicating) and the other definition of

07:37PM 1 coverage?

07:37PM 2 Q. Well, ground floor -- you talked about  
07:37PM 3 coverage. Now, ground floor is where you measured --  
07:37PM 4 you begin to measure the height of a building, do you  
07:37PM 5 not?

07:37PM 6 A. No.

07:37PM 7 Q. Where did you -- earlier on you said  
07:37PM 8 that with respect to the height of an accessory  
07:37PM 9 building you would measure from the surface.

07:37PM 10 Isn't the ground floor, as defined  
07:37PM 11 here, the surface?

07:37PM 12 A. No.

07:37PM 13 Q. What's the distinction then?

07:37PM 14 A. There's two different things.

07:37PM 15 Q. Okay. What are the distinctions?

07:37PM 16 A. There are two different things. In  
07:37PM 17 building coverage it says "all buildings" and that's  
07:37PM 18 above the grade and below the grade.

07:37PM 19 In first floor -- ground floor is only  
07:37PM 20 one floor. If you have another floor below it that  
07:37PM 21 extends out further, that would be included in the  
07:37PM 22 definition of building coverage.

07:37PM 23 Q. Would you show me in the definition  
07:37PM 24 book, which you studied in preparation for your  
07:38PM 25 testimony on March 3rd, where Moskowitz Lindbloom

07:38PM 1 include in their definition that you must include all  
07:38PM 2 below grade structures in ground coverage?

07:38PM 3 A. It simply says, very simply, all  
07:38PM 4 principal and accessory buildings, that means above  
07:38PM 5 grade and below grade.

07:38PM 6 Q. Would you show me in the code of the  
07:38PM 7 City of Hackensack where it says you include that?

07:38PM 8 A. Which?

07:38PM 9 Q. Below grade structures are included in  
07:38PM 10 building coverage.

07:38PM 11 A. It says, lot coverage. And that is in  
07:39PM 12 the definitions. It includes buildings and accessory  
07:39PM 13 buildings. And if a building is above grade or below  
07:39PM 14 grade, it's included.

07:39PM 15 Q. Well, I would suggest to you --

07:39PM 16 A. It's in -- in taking that in tandem  
07:39PM 17 with 175-1.3.

07:39PM 18 Q. Hold on let me get it please. 175 --  
07:39PM 19 I'm sorry.

07:39PM 20 A. 175-1.3.

07:39PM 21 Q. Do you have a page number? Just give  
07:40PM 22 me a page number.

07:40PM 23 MR. DIKTAS: Page 1.

07:40PM 24 A. Page 1.

07:40PM 25 Q. Oh, page 1. Okay. So page 175-1.3.

07:40PM 1 What are you referring to?

07:40PM 2 A. It says here:

07:40PM 3 "Which is not listed as permitted,  
07:40PM 4 accessory or conditional use as specified  
07:40PM 5 herein".

07:40PM 6 So, in other words, would have to  
07:40PM 7 specify specifically that such underground buildings  
07:40PM 8 are excluded.

07:40PM 9 Q. Tell me where you're reading from.  
07:40PM 10 You're talking about legislative  
07:40PM 11 intent, is that what you're saying?

07:40PM 12 A. Yes.

07:40PM 13 Q. You're reading legislative intent  
07:40PM 14 provision.

07:40PM 15 Okay. While you have your zoning book  
07:41PM 16 out let's look at Section 175-5.4, maximum lot  
07:41PM 17 coverage, section B, which states --

07:41PM 18 MR. DIKTAS: What page, Mr. Basralian?

07:41PM 19 MR. BASRALIAN: Page 53.

07:41PM 20 Q. Which states:

07:41PM 21 "Where a lot is developed for use by  
07:41PM 22 three or more families, the maximum coverage  
07:41PM 23 of a schedule of district regulation shall  
07:41PM 24 apply solely to the principal building.  
07:41PM 25 (Accessory buildings are limited to 15 percent



07:41PM 1 coverage) provided however, that accessory  
07:41PM 2 buildings constructed below the grade of the  
07:41PM 3 primary street shall be excluded when  
07:41PM 4 determining the maximum percentage of land  
07:41PM 5 coverage".

07:41PM 6 Now, that may apply to residential, how  
07:41PM 7 is that different than what is being proposed by the  
07:41PM 8 Applicant where the below grade structure is not  
07:41PM 9 included in the calculation of coverage?

07:41PM 10 A. Let me read that.

07:41PM 11 Q. Sure.

07:42PM 12 A. (Pause).

07:42PM 13 This is for dwelling units.

07:42PM 14 Q. And how would that -- well, it applies  
07:42PM 15 for three or four dwelling units, it would apply to  
07:42PM 16 mid-rise and high-rise buildings as well, would it  
07:42PM 17 not?

07:42PM 18 A. Yes.

07:42PM 19 Q. All right. Do you believe that the  
07:42PM 20 City of Hackensack intended to provide a different  
07:42PM 21 calculation of coverage for a non-residential  
07:42PM 22 building than it provides for mid-rise and high-rise  
07:43PM 23 buildings?

07:43PM 24 A. You're asking me about the legislative  
07:43PM 25 intent of the governing body?

07:43PM 1 Q. Well, let's think about it another way,  
07:43PM 2 then, so if you don't want to answer that way.

07:43PM 3 Here's a building that you're allowed  
07:43PM 4 to, if you're a high-rise building top have  
07:43PM 5 underground parking garage and it's specifically  
07:43PM 6 excluded from building coverage.

07:43PM 7 Why would you not apply or why would  
07:43PM 8 that be different for a building that isn't  
07:43PM 9 residential?

07:43PM 10 A. Well, this is a hypothetical.

07:43PM 11 Q. Well, here is -- this isn't a  
07:43PM 12 hypothetical here. Here it's specifically  
07:43PM 13 excluded --

07:43PM 14 A. Well, your question is a hypothetical.

07:43PM 15 Q. Right. Why would you alter that --

07:43PM 16 A. Okay.

07:43PM 17 Q. Why would you alter that, when in the  
07:43PM 18 code it doesn't say anywhere that underground  
07:43PM 19 structures for a non-residential building are to be  
07:43PM 20 included in ground coverage -- in building coverage?

07:43PM 21 A. I don't understand the question, if you  
07:43PM 22 could rephrase the hypothetical.

07:43PM 23 Q. Okay. Here it says -- it's clear what  
07:43PM 24 it says, the garage is for three or more --  
07:43PM 25 residential buildings of three or more units which

07:43PM 1 includes mid-rises and high-rises, the underground  
07:43PM 2 garage is specifically excluded from determining  
07:44PM 3 maximum percentage of land coverage, correct?

07:44PM 4 A. No, I don't see where it says garage  
07:44PM 5 area. Can you point it out?

07:44PM 6 Q. "All accessory buildings constructed  
07:44PM 7 below grade of the primary street shall be  
07:44PM 8 excluded in determining their percentage of  
07:44PM 9 ground coverage."

07:44PM 10 A. Okay. Now, this is talking about an  
07:44PM 11 accessorial building. The building in the instant  
07:44PM 12 case clearly is a primary structure. It's a primary  
07:44PM 13 building. So it would not be applicable in any way  
07:44PM 14 to this particular clause.

07:44PM 15 Q. You testified that the underground  
07:44PM 16 garage was an accessory structures and, therefore,  
07:44PM 17 did not meet --

07:44PM 18 A. No, I didn't say that.

07:44PM 19 Q. Well, you did, you said it didn't meet  
07:44PM 20 the requirements of section -- I'll give you the  
07:45PM 21 section again because it's what you said, Section  
07:45PM 22 175 --

07:45PM 23 A. Please find where I said that. It's  
07:45PM 24 not what I said.

07:45PM 25 Q. Well, did you not call this an

07:45PM 1 accessory building?

07:45PM 2 A. No.

07:45PM 3 Q. You --

07:45PM 4 A. It is an accessory use, but a primary  
07:45PM 5 building.

07:45PM 6 Q. Well, how does an accessory structure  
07:45PM 7 for a garage, because it's not precluded for  
07:45PM 8 residential high-rises, not constitute an underground  
07:45PM 9 garage that isn't included in the percentage of the  
07:45PM 10 ground coverage?

07:45PM 11 A. I don't understand the question.

07:45PM 12 Q. Well, in that section that we just have  
07:45PM 13 been referring to, underground structures are not to  
07:45PM 14 be included in the calculation of ground coverage.

07:45PM 15 A. Underground accessorial. It's not  
07:45PM 16 applicable to the instant case.

07:45PM 17 Q. Well, let me ask you then, is an  
07:45PM 18 underground garage for a high-rise an accessory use?

07:46PM 19 A. It's an accessorial or accessory use.  
07:46PM 20 In this instance it's connected and attached. And in  
07:46PM 21 the ordinance it says, so that it is a primary  
07:46PM 22 structure.

07:46PM 23 Q. Now, if the accessory garage is  
07:46PM 24 connected and attached to a high-rise building, are  
07:46PM 25 you saying then that the City should calculate the

07:46PM 1 underground garage as part of the coverage  
07:46PM 2 calculation?

07:46PM 3 A. Yes.

07:46PM 4 Q. Do you know that the City has ever done  
07:46PM 5 that in any instance?

07:46PM 6 A. I haven't done an investigation of  
07:46PM 7 that.

07:46PM 8 Q. But you're saying -- this is your  
07:46PM 9 interpretation, your opinion as a planner, that all  
07:46PM 10 underground structures that are not an accessory use,  
07:46PM 11 even though parking is an accessory use, is -- must  
07:46PM 12 be calculated in ground coverage?

07:46PM 13 A. That's not what I said.

07:46PM 14 Q. I thought that's what I heard.

07:46PM 15 A. No. Please be correct.

07:46PM 16 No, I said that the use is accessorial.  
07:46PM 17 The structure is primary. It's a primary structure  
07:47PM 18 underneath the high-rise building or medium-rise  
07:47PM 19 building. And the use is accessorial.

07:47PM 20 Q. Why is it a primary structure --

07:47PM 21 FEMALE AUDIENCE MEMBER: It's attached.

07:47PM 22 Q. -- if it's underneath the building, the  
07:47PM 23 same way a garage would be for a high-rise building?

07:47PM 24 A. It's attached.

07:47PM 25 Q. Solely because it's attached, you're

07:47PM 1 saying --

07:47PM 2 A. That's what the ordinance says.

07:47PM 3 Q. Well, it doesn't say that vis-a-vis  
07:47PM 4 underground structures anywhere that they're to be  
07:47PM 5 calculated in the calculation in -- in ground  
07:47PM 6 coverage.

07:47PM 7 In fact, the section we've just been  
07:47PM 8 referring to says quite the opposite.

07:47PM 9 A. Well, it says quite clearly if the  
07:47PM 10 structures are attached, they touch in any way below,  
07:47PM 11 above, side, whichever way, it becomes a primary  
07:47PM 12 structure.

07:47PM 13 Q. Well --

07:47PM 14 CHAIRMAN GUERRA: Mr. Chairman, my  
07:47PM 15 client's gone for an hour and 40 minutes, would it be  
07:47PM 16 fair to take a break right about this point?

07:47PM 17 MR. RODRIGUEZ: Actually I could take a  
07:47PM 18 break.

07:48PM 19 MR. DIKTAS: Please, if the Chair so  
07:48PM 20 determines.

07:48PM 21 CHAIRMAN GUERRA: I was going to go to  
07:48PM 22 eight, but...

07:48PM 23 MR. DIKTAS: Well, he's going an hour  
07:48PM 24 and 40 minutes already.

07:48PM 25 CHAIRMAN GUERRA: All right.

07:48PM 1 MR. DIKTAS: Now, we started at 6:30,  
07:48PM 2 an hour and --  
07:48PM 3 MR. NIX: I can't -- I can't hear him.  
07:48PM 4 CHAIRMAN GUERRA: Okay.  
07:48PM 5 MR. DIKTAS: I said it's time for a  
07:48PM 6 break, an hour and 20 minutes straight.  
07:48PM 7 CHAIRMAN GUERRA: Okay.  
07:48PM 8 MR. NIX: Let's take a break.  
07:48PM 9 CHAIRMAN GUERRA: Lenny says we're  
07:48PM 10 going to take a break. Let's break for five minutes  
07:48PM 11 please.  
07:48PM 12 (Whereupon, a short recess is taken.)  
08:07PM 13 CHAIRMAN GUERRA: Let's get started  
08:07PM 14 again.  
08:07PM 15 Please be seated.  
08:08PM 16 MR. MALAGIERE: Please be seated,  
08:08PM 17 please.  
08:08PM 18 CHAIRMAN GUERRA: Thank you.  
08:08PM 19 FEMALE AUDIENCE MEMBER: Did you get  
08:08PM 20 the microphone fixed?  
08:08PM 21 MR. MALAGIERE: We're trying, that's  
08:08PM 22 all we can do.  
08:08PM 23 Thank you.  
08:08PM 24 Mr. Basralian, the Chair, with your  
08:08PM 25 permission, please proceed.

08:08PM 1 CHAIRMAN GUERRA: Please.

08:08PM 2 MR. MALAGIERE: Sir, you're still under  
08:08PM 3 oath.

08:08PM 4 BY MR. BASRALIAN:

08:08PM 5 Q. Mr. Lacz, you testified that after you  
08:08PM 6 reviewed the plans you observed that there were about  
08:08PM 7 20 parking spaces underground because they're all  
08:08PM 8 underground where the cars would be parking in the  
08:08PM 9 side yard.

08:08PM 10 In your calculation of 53 variances  
08:08PM 11 being required for the application, did you count  
08:08PM 12 each one of those 20 spaces, that in your opinion  
08:08PM 13 intruded into the side yard, as separate variances?

08:08PM 14 A. That's not the way I calculated it.

08:08PM 15 Q. Well, I'm asking you the question. So  
08:08PM 16 I am asking you how you calculated it. And that's  
08:08PM 17 fine.

08:08PM 18 A. I took the number of floors and I took  
08:08PM 19 the driveways, and those that -- between the number  
08:09PM 20 of floors and those which impinged on the yards, I  
08:09PM 21 calculated them that way.

08:09PM 22 Q. What did you do with the parking  
08:09PM 23 spaces? Did you take all the parking spaces which  
08:09PM 24 might have been in the side yard, in your opinion,  
08:09PM 25 did you count that as one variance for all of the



08:09PM 1 parking spaces?

08:09PM 2 A. I said parking in yards, I said, eight.  
08:09PM 3 There's eight variances necessary for parking in the  
08:09PM 4 yards, that's front yard, side yards. And then for  
08:09PM 5 the driveways in the yards there was 20.

08:09PM 6 Q. So your observation that there were 20  
08:09PM 7 parking spaces that were in the side yard were  
08:09PM 8 treated as one violation, not as multiple one --

08:09PM 9 A. No.

08:09PM 10 Q. -- one -- one variance, rather than --  
08:09PM 11 not multiple ones?

08:09PM 12 A. No, I took -- I took the side yard and  
08:10PM 13 all the cars in that particular side yard I counted  
08:10PM 14 as one variance.

08:10PM 15 So in other words, that's why there are  
08:10PM 16 eight impingements on parking because you have eight  
08:10PM 17 sides; four on each lot. And then the lot, as  
08:10PM 18 determined by that article, and that also there are  
08:10PM 19 driveways impinging, and the number of floors so  
08:10PM 20 each --

08:10PM 21 Q. Hold it, let me just -- let me just  
08:10PM 22 understand you for the parking.

08:10PM 23 MR. DIKTAS: Let him finish his answer  
08:10PM 24 to your question.

08:10PM 25 MR. MALAGIERE: No, I asked him about

08:10PM 1 parking. And he's gone a foot.

08:10PM 2 Now, I just want to understand now  
08:10PM 3 there are levels of parking in the garage.

08:10PM 4 A. Yes.

08:10PM 5 Q. Did you count as a separate variance  
08:10PM 6 each garage level or all of them as one variance?

08:10PM 7 A. In other words, on one side of the  
08:10PM 8 property all of them as one variance.

08:10PM 9 Q. And on the other side of the property  
08:10PM 10 as one variance?

08:10PM 11 A. Same.

08:10PM 12 Q. And then, apparently, in the front you  
08:11PM 13 counted it as a variance?

08:11PM 14 A. And the other front.

08:11PM 15 Q. And in the rear --

08:11PM 16 A. Yes.

08:11PM 17 Q. Or the other front, yes, the other  
08:11PM 18 front, not the rear.

08:11PM 19 A. Yes.

08:11PM 20 Q. The other front as one variance?

08:11PM 21 A. Yes. And then --

08:11PM 22 Q. So as for parking you counted four  
08:11PM 23 variances; is that correct?

08:11PM 24 A. Eight.

08:11PM 25 Q. So you counted -- how did you count

08:11PM 1 eight? Let's start with the parking variances, so  
08:11PM 2 you have the front on Prospect Avenue is one, you  
08:11PM 3 said, correct?

08:11PM 4 A. Yes. You want me to go over to the  
08:11PM 5 drawing --

08:11PM 6 Q. No.

08:11PM 7 A. -- and I'll -- can I point it out on  
08:11PM 8 the --

08:11PM 9 Q. Excuse me. Let me ask the question  
08:11PM 10 please.

08:11PM 11 So you counted one for the front on  
08:11PM 12 Prospect Avenue. You counted one for the Summit  
08:11PM 13 Avenue side parking variance, correct?

08:11PM 14 A. May I point it out?

08:11PM 15 Q. No, I'm asking you. It's your  
08:11PM 16 testimony --

08:11PM 17 A. I could give --

08:11PM 18 Q. No, I'm not asking you to show me. I'm  
08:11PM 19 asking you to tell me what you did.

08:11PM 20 A. Okay. I'll tell you what I did.

08:11PM 21 Q. Now, let me -- am I correct in the one  
08:11PM 22 on Prospect Avenue --

08:11PM 23 (Audience outburst.)

08:11PM 24 CHAIRMAN GUERRA: Please.

08:11PM 25 (Chairman Guerra uses the gavel to

08:12PM 1 maintain order.)

08:12PM 2 MR. BASRALIAN: Mr. Chairman, I've been  
08:12PM 3 here 22 times. I haven't been disrespectful of  
08:12PM 4 anybody out here, at least let me ask my questions.

08:12PM 5 CHAIRMAN GUERRA: Ask the questions.  
08:12PM 6 We're been here 22 times too.

08:12PM 7 FEMALE AUDIENCE MEMBER: You asked him  
08:12PM 8 already.

08:12PM 9 Q. Did you count as a parking space --  
08:12PM 10 excuse me -- parking variance the Prospect Avenue  
08:12PM 11 side for parking?

08:12PM 12 A. Yes.

08:12PM 13 Q. Did you count --

08:12PM 14 A. That's the front.

08:12PM 15 Q. Right. Did you -- so you counted that  
08:12PM 16 as the front. Okay. Did you count the Summit Avenue  
08:12PM 17 side as a front variance?

08:12PM 18 A. Yes.

08:12PM 19 Q. Did you count the south property line  
08:12PM 20 on the Summit Avenue side as a variance?

08:12PM 21 A. Which one, the south as you point out?

08:12PM 22 Q. The one closest, going towards Essex  
08:12PM 23 Street?

08:12PM 24 Here (indicating), referring only for  
08:12PM 25 -- only for this purpose, referring to Exhibit A-5.

08:12PM 1 This is the south side (indicating).

08:12PM 2 A. South side.

08:12PM 3 Q. Yes.

08:12PM 4 A. One, two, three, four, five, six,  
08:12PM 5 seven, eight (indicating).

08:12PM 6 (Applause).

08:12PM 7 Q. Ah, so you counted, in addition,  
08:13PM 8 because each property is in a different zone -- in  
08:13PM 9 addition, you counted two rear setbacks?

08:13PM 10 A. That's correct.

08:13PM 11 Q. Okay. I understand.

08:13PM 12 Well, there's no rear yard in my  
08:13PM 13 opinion, but in your's there is; is that correct?

08:13PM 14 A. Yes, that's according to the ordinance  
08:13PM 15 --

08:13PM 16 Q. Thank you. Thank you.

08:13PM 17 A. -- according to the ordinance, that's  
08:13PM 18 the way it reads.

08:13PM 19 Q. Thank you. Thank you.

08:13PM 20 There's a provision in the ordinance  
08:13PM 21 that says that underground parking garages can be  
08:13PM 22 within 5 feet of a property line and this one -- this  
08:13PM 23 underground garage is not closer than 5 feet.

08:13PM 24 A. Could you point that out?

08:13PM 25 Q. Sure.

08:13PM 1 Section 175-7.2(b) says:

08:13PM 2 "Accessory structure below grade shall  
08:13PM 3 have a minimum rear yard setback, when not  
08:13PM 4 abutting any street of 5 feet".

08:13PM 5 A. Is that on the non-residential  
08:13PM 6 districts.

08:13PM 7 Q. It's on the residential side.  
08:13PM 8 It says -- it talks about in the R-3  
08:13PM 9 zone?

08:13PM 10 A. Could you repeat that again? It says  
08:13PM 11 175- what?

08:13PM 12 Q. 175-7.2(b).

08:14PM 13 MR. DIKTAS: What page?

08:14PM 14 A. 7.2(b) on the top it reads:

08:14PM 15 "Accessorial structure regulations in  
08:14PM 16 non-residential districts".

08:14PM 17 Q. I'm having more problems finding them.  
08:14PM 18 Yes, 175-7.2(b), accessory structures  
08:15PM 19 below grade shall have a minimum rear or side yard,  
08:15PM 20 but not abutting a street, of 5 feet.

08:15PM 21 A. And that's for non-residential  
08:15PM 22 districts.

08:15PM 23 Q. It says in non-residential districts.

08:15PM 24 A. So this is a residential district in  
08:15PM 25 the -- and the section that applies would be 175-7.1

08:15PM 1 on the prior page.

08:15PM 2 Q. All right. And in your knowledge is  
08:15PM 3 there a provision in the code that says -- that says  
08:15PM 4 that differently, says something differently for  
08:15PM 5 residential districts in the high-rise, in the RB-3  
08:15PM 6 zone? Is there a different -- is there a different  
08:15PM 7 calculation for that?

08:15PM 8 A. I don't understand your question.

08:15PM 9 Q. Well, it states that in Section  
08:15PM 10 175-7.1(a)(4) the same thing, accessory structures  
08:15PM 11 below grade shall have a minimum rear yard setback,  
08:15PM 12 but not abutting a street of 5 feet.

08:15PM 13 A. In (a) it does say accessory structures  
08:16PM 14 which are not attached to a principal structure.

08:16PM 15 So, therefore, that does not apply in  
08:16PM 16 the instant case.

08:16PM 17 Q. Well, we differ about whether or not  
08:16PM 18 this is -- on the definition of the accessory  
08:16PM 19 structures for this, but does it not permit  
08:16PM 20 structures below grade to have a minimum of 5 feet  
08:16PM 21 setback, when not abutting a street?

08:16PM 22 A. The ordinance speaks for itself, but it  
08:16PM 23 applies to not -- it does not apply to principal  
08:16PM 24 structures. And the garage structure is a principal  
08:16PM 25 structure, since it's attached to the principal

08:16PM 1 building.

08:16PM 2 Q. That's your opinion. I'm asking you --

08:16PM 3 A. No, that's what the ordinance says that  
08:16PM 4 besides --

08:16PM 5 Q. No, that's your interpretation --

08:16PM 6 A. -- that's besides my opinion.

08:16PM 7 Q. That's your interpretation of the  
08:16PM 8 ordinance, but that should be saved for some place  
08:16PM 9 else --

10 FEMALE AUDIENCE MEMBER: Oh, come on.  
11 Come on.

12 Q. -- if you insist on -- you know --

13 CHAIRMAN GUERRA: Please.

14 (Chairman Guerra uses the gavel to  
15 maintain order.)

08:16PM 16 Q. -- we can have a difference of opinion.  
08:16PM 17 You're here to express your opinion.

08:16PM 18 MR. MALAGIERE: Mr. Basralian, please  
08:16PM 19 ask --

08:16PM 20 Q. -- my opinion --

08:16PM 21 CHAIRMAN GUERRA: Please.

08:16PM 22 MR. MALAGIERE: Mr. Basralian, please  
08:16PM 23 ask a question, don't instruct the witness.

08:16PM 24 MR. BASRALIAN: Okay.

08:16PM 25 Q. It does say that accessory structures



08:16PM 1 below grade shall have a minimum rear or side yard  
08:17PM 2 when not abutting a street of 5 feet.

08:17PM 3 Does it not say that? Would you  
08:17PM 4 concede that that's what it says?

08:17PM 5 A. Yeah, that's what it says.

08:17PM 6 Q. Thank you.

08:17PM 7 A. But it does not apply to the instant  
08:17PM 8 application.

08:17PM 9 Q. Thank you for the adder.

08:17PM 10 FEMALE AUDIENCE MEMBER: Thank you.

08:17PM 11 Q. I'm going to go back to something I had  
08:17PM 12 asked earlier.

08:17PM 13 FEMALE AUDIENCE MEMBERS: Oh, come on.  
08:17PM 14 Come on.

08:17PM 15 Q. I thought over the break of your  
08:17PM 16 definition of light, air and open space. And I want  
08:17PM 17 to ask you that since you don't see below grade  
08:17PM 18 structures as you walk or drive by, and it doesn't  
08:17PM 19 affect the surface light, air and open space, how can  
08:17PM 20 this structure, below grade structures affect light,  
08:17PM 21 air and open space on the surface?

08:17PM 22 A. The Land Use Law uses the term "space".  
08:18PM 23 Space is positive space and negative space. It's  
08:18PM 24 also interior space and exterior space.

08:18PM 25 It says to -- to have the association

08:18PM 1 of space, light and air in the garage is space.

08:18PM 2 Q. Do you believe in your experience, in  
08:18PM 3 your testimony, that boards that you've appeared  
08:18PM 4 before, advised you the below grade structures as  
08:18PM 5 affecting light, air and open space and don't they  
08:18PM 6 usually have coverage requirements because of the  
08:18PM 7 grade surface and structures above the grade level?

08:18PM 8 MR. DIKTAS: Objection to form of the  
08:18PM 9 question.

08:18PM 10 A. I don't understand the question.

08:18PM 11 Q. For all the boards you've advised have  
08:18PM 12 all of them interpreted light, air and open space to  
08:18PM 13 include not just the surface building, but also the  
08:18PM 14 structures below the surface?

08:18PM 15 A. Not with regard to boards. I advised  
08:18PM 16 and testimony in Superior Court of this similar  
08:19PM 17 topic. I -- I don't know the exact reference. It's  
08:19PM 18 precedential or it was in Passaic, perhaps 25 years  
08:19PM 19 ago, with regard to parking structures and high-rise  
08:19PM 20 buildings.

08:19PM 21 Q. I asked you about --

08:19PM 22 A. And it was the same testimony that it  
08:19PM 23 was part of the primary structure, to my  
08:19PM 24 recollection, and it had to conform with the  
08:19PM 25 setbacks.

08:19PM 1 Q. Okay. If the septic system was  
08:19PM 2 attached, that would be included, by your definition  
08:19PM 3 of light, air and open space? They'd have to  
08:19PM 4 consider that as well, even though it's below grade,  
08:19PM 5 correct?

08:19PM 6 A. No.

08:19PM 7 Q. It's attached to the building?

08:19PM 8 A. It's attached by pipes, but it's not --

08:19PM 9 Q. But if it's attached -- it's a -- it's  
08:19PM 10 -- for example it's attached it's still under your  
08:19PM 11 definition anything that's attached it doesn't have  
08:19PM 12 to be -- a pipe is an attachment --

08:19PM 13 A. It doesn't have -- it doesn't have a  
08:19PM 14 roof.

08:19PM 15 Q. Well, the garage doesn't have a roof  
08:19PM 16 that protrudes above grade either, does it? Not this  
08:19PM 17 garage.

08:19PM 18 A. This garage has a roof.

08:19PM 19 Q. Does it protrude above grade?

08:19PM 20 A. No, it doesn't have to.

08:19PM 21 Q. Well, this is the first time we're  
08:19PM 22 hearing you say that a below grade structure --  
08:20PM 23 because you did say the septic system and some other  
08:20PM 24 of those functions would have to be included in the  
08:20PM 25 calculation.

08:20PM 1 Now you're saying --

08:20PM 2 A. No. No. No. I'm -- may I eliminate  
08:20PM 3 that. Let me change that.

08:20PM 4 Q. So you're changing your testimony?

08:20PM 5 A. I saw the definition.

08:20PM 6 Q. So you're changing your testimony?

08:20PM 7 A. No, the -- the thing is that it deals  
08:20PM 8 with detached buildings.

08:20PM 9 (Whereupon, a discussion is held off  
08:20PM 10 the record.)

08:21PM 11 THE WITNESS: Repeat the question.

08:21PM 12 Q. You stated that you were changing your  
08:21PM 13 interpretation that where previously you said that  
08:21PM 14 some of the structures I enumerated early on would be  
08:21PM 15 deemed underground structures and included in ground  
08:21PM 16 calculation, I think your statement was now that  
08:21PM 17 you're changing that because they don't have a roof.

08:21PM 18 A. That's correct.

08:21PM 19 Q. So that the large underground storage  
08:21PM 20 tank and all the lines now you say would not be  
08:21PM 21 calculated as -- even though they're below ground,  
08:22PM 22 calculated in coverage?

08:22PM 23 A. Right. Don't forget we're calculating  
08:22PM 24 buildings in the definition in the ordinance which  
08:22PM 25 you pointed out to me it said occupied buildings and

08:22PM 1 accessory buildings.

08:22PM 2 Q. Does it say they have to have roofs?

08:22PM 3 A. Well, by definition if you go to the  
08:22PM 4 front -- or you go to the Land Use Law and the  
08:22PM 5 alternate, building is a combination of materials to  
08:22PM 6 form a construction adapted to permanent, temporary  
08:22PM 7 or continuous occupancy and having a roof.

08:22PM 8 It's in the ordinance on page 8.

08:22PM 9 Q. Does occupancy include a garage  
08:22PM 10 because --

08:22PM 11 A. Absolutely.

08:22PM 12 Q. -- because that's not occupied?

08:22PM 13 A. Absolutely.

08:22PM 14 Q. Well, how about an -- a bomb shelter  
08:22PM 15 that's underground, is that considered occupancy?

08:22PM 16 A. It has a roof and it would be  
08:22PM 17 classified under coverage, yes.

08:22PM 18 Q. Doesn't anything underground have a  
08:23PM 19 roof or a top cover to prevent the ground from  
08:23PM 20 falling in?

08:23PM 21 A. No, septic system doesn't, pipes don't.

08:23PM 22 Q. Well, something prevents them from  
08:23PM 23 coming -- how about large fuel oil storage tanks that  
08:23PM 24 heat building or that supply gas and gasoline service  
08:23PM 25 stations. They don't have roofs you say, but put

08:23PM 1 they're enclosed.

08:23PM 2 A. Yes, they're -- there -- they need a  
08:23PM 3 roof. They're a structure. They fall in the  
08:23PM 4 definition of a structure, but they don't have a roof  
08:23PM 5 so, therefore, they don't fall into the coverage  
08:23PM 6 calculation.

08:23PM 7 Q. Well, there is no specific definition  
08:23PM 8 of roof, you have the top side and the bottom, isn't  
08:23PM 9 that a structure?

08:23PM 10 A. I -- I think there are...

08:23PM 11 Q. Well, what about in the ordinance, what  
08:23PM 12 is it -- you're referring to the ordinance, what does  
08:23PM 13 the ordinance say about roofs?

08:24PM 14 MR. MALAGIERE: Is the question to ask  
08:24PM 15 him to look at the ordinance, I'm sorry.

08:24PM 16 MR. BASRALIAN: No.

08:24PM 17 Q. Just the ordinance, I said don't look  
08:24PM 18 -- yeah, just the ordinance for the definition not  
08:24PM 19 definition here.

08:24PM 20 A. I don't -- I don't think the -- there's  
08:24PM 21 a definition of roof in the ordinance.

08:24PM 22 Q. Thank you.

08:24PM 23 A. Well --

08:24PM 24 Q. No further questions on that.

08:24PM 25 A. I'll take a look. Hold on, please.

08:24PM 1 Q. Okay. (Pause).

08:24PM 2 MR. MALAGIERE: I'm sorry, do you have  
08:24PM 3 an answer, sir?

08:24PM 4 THE WITNESS: There's -- there's no  
08:24PM 5 definition -- from what I can find there's no  
08:24PM 6 definition of roof in the ordinance?

08:24PM 7 MR. MALAGIERE: Thank you, sir.

08:24PM 8 Mr. Basralian?

08:24PM 9 MR. BASRALIAN: Thank you.

08:24PM 10 Q. What is the maximum height of a  
08:25PM 11 building permitted in the R-3 zone?

08:25PM 12 A. Well, there's two guidelines --

08:25PM 13 Q. No, excuse me. What's the maximum  
08:25PM 14 height permitted in the R-3 zone?

08:25PM 15 A. My answer is there's two ways to  
08:25PM 16 calculating it.

08:25PM 17 Q. What is the maximum height for a  
08:25PM 18 building measured in accordance with the ordinance  
08:25PM 19 which is 6 feet from the foundation upwards? What's  
08:25PM 20 the maximum height permitted in the Zoning Ordinance?

08:25PM 21 A. Now, which question do you want me to  
08:25PM 22 answer.

08:25PM 23 Q. Well, under the ordinance to measure  
08:25PM 24 height it's measured from 6 feet out from -- on grade  
08:25PM 25 from the foundation. Okay? And you measure upward

08:25PM 1 from there.

08:25PM 2 Now, what is the maximum height that's  
08:25PM 3 permitted in the R-3B zone?

08:25PM 4 A. You mean the R-3 zone?

08:26PM 5 Q. R-3 zone. I'm sorry. R-3 zone.

08:26PM 6 A. There is two standards shown on the  
08:26PM 7 schedule on page 177, 280 feet. And the ratio of  
08:26PM 8 four-to-one.

08:26PM 9 Q. No, the height -- maximum height  
08:26PM 10 permitted in the R-3 zone is 280 feet.

08:26PM 11 A. That's if you have a wide enough and  
08:26PM 12 big enough lot.

08:26PM 13 Q. Excuse me. What is the maximum height  
08:26PM 14 permitted in the zone according to the ordinance, do  
08:26PM 15 you say 280 feet?

08:26PM 16 A. Your hypothetical is nice. Tell me the  
08:26PM 17 size of the lot.

08:26PM 18 Q. Irrespective of the lot, what is the  
08:26PM 19 maximum height permitted in the zone?

08:26PM 20 (Audience outburst.)

08:27PM 21 A. I can't answer your question.

08:27PM 22 Q. Well, it's 280 feet. Let me go on.

08:27PM 23 Let me ask you a question, you  
08:27PM 24 testified the height variance was necessary --

08:27PM 25 MR. DIKTAS: He's arguing with the



08:27PM 1 witness.

08:27PM 2 Q. -- a height variance was necessary?

08:27PM 3 (Chairman Guerra uses the gavel to  
08:27PM 4 maintain order.)

08:27PM 5 CHAIRMAN GUERRA: Gentlemen --

08:27PM 6 Q. -- that the height variance was  
08:27PM 7 necessary --

08:27PM 8 CHAIRMAN GUERRA: Gentlemen, speak in  
08:27PM 9 civil tongues.

08:27PM 10 Q. You testified that a height variance is  
08:27PM 11 necessary because the Applicant did not meet the side  
08:27PM 12 yard setback?

08:27PM 13 A. Right.

08:27PM 14 Q. However, the ordinance provides for the  
08:27PM 15 measurement of a height -- a side yard setback  
08:27PM 16 measured by the height, it does not measure the  
08:27PM 17 height of the building by the side yard setback.

08:27PM 18 MR. DIKTAS: Objection to the form of  
08:27PM 19 the question.

08:27PM 20 MR. NIX: I can't hear. You got to get  
08:27PM 21 the mike.

08:27PM 22 MR. DIKTAS: Objection to the form of  
08:27PM 23 the question.

08:27PM 24 MR. NIX: Thank you.

08:27PM 25 CHAIRMAN GUERRA: Thank you.

08:27PM 1 MR. MALAGIERE: Do you understand the  
08:27PM 2 question, sir?

08:27PM 3 Q. Isn't the side yard ratio of the  
08:28PM 4 ordinance utilized solely to determine the width of  
08:28PM 5 the side yard and not the height of a building that's  
08:28PM 6 permitted in a zone?

08:28PM 7 A. No.

08:28PM 8 Q. Show me why and where it says that the  
08:28PM 9 side yard --

08:28PM 10 A. You have a diagram I'll draw a diagram.

08:28PM 11 Q. No, no, I'm asking to show me in the  
08:28PM 12 ordinance where it says that?

08:28PM 13 A. I just said where. It says two  
08:28PM 14 instances.

08:28PM 15 Q. Give me the section.

08:28PM 16 A. Page 177. Maximum height ratio, you  
08:28PM 17 have maximum height, 280 feet. There's two things  
08:28PM 18 and then it states later --

08:28PM 19 Q. Excuse me. Could you --

08:28PM 20 A. -- the building.

08:28PM 21 Q. I'm sorry. Excuse me. You just said  
08:28PM 22 page 177?

08:28PM 23 A. Yes.

08:28PM 24 Q. What -- what section?

08:28PM 25 A. (Witness indicating).

08:28PM 1 Q. There are various sections here?

08:28PM 2 A. (Witness indicating).

08:28PM 3 Q. Okay.

08:28PM 4 A. The 280 feet.

08:28PM 5 Q. Okay.

08:28PM 6 A. And then the ratio.

08:28PM 7 Q. Okay.

08:28PM 8 A. Below it you see the ratio.

08:28PM 9 Q. But that deals with the calculation of  
08:29PM 10 the side yard, not the height. It's a four-to-one --

08:29PM 11 FEMALE AUDIENCE MEMBERS: We can't hear  
08:29PM 12 you.

08:29PM 13 Q. -- ratio that sets forth in the  
08:29PM 14 ordinance --

08:29PM 15 MR. NIX: I cant's hear you.

08:29PM 16 Q. -- to determine the width of the side  
08:29PM 17 yard setback. It doesn't determine the height of the  
08:29PM 18 building.

08:29PM 19 FEMALE AUDIENCE MEMBER: Yes, it does.

08:29PM 20 A. I don't understand your question and  
08:29PM 21 your mathematics.

08:29PM 22 (Applause).

08:29PM 23 Q. Minimum height side yard ratio, you  
08:29PM 24 have to use four-to-one to calculate the side yard.  
08:29PM 25 Is it not the side yard -- well, you already answered

08:29PM 1 no, but the side yard is dictated by the ratio not  
08:29PM 2 the height of the building?

08:29PM 3 A. You have a small side yard you have a  
08:29PM 4 lower building. If you have a greater side yard, you  
08:29PM 5 have a higher building.

08:29PM 6 Q. Isn't it just the opposite. The height  
08:29PM 7 of the building determines the width of the side  
08:29PM 8 yard --

08:29PM 9 AUDIENCE MEMBERS: No. No.

08:29PM 10 A. The mathematics one is predicated on  
08:29PM 11 the other, with the factor of four or 25 percent.

08:30PM 12 Q. It doesn't say that anywhere in the  
08:30PM 13 ordinance and all it says is to determine the width  
08:30PM 14 of the side yard you measure -- you use the  
08:30PM 15 four-to-one ratio vis-a-vis height?

08:30PM 16 A. It says it right here on page 177. Do  
08:30PM 17 I have to point it out to you again?

08:30PM 18 Q. It talks about -- it talks about -- it  
08:30PM 19 talks about height, rear; height, side; height,  
08:30PM 20 front.

08:30PM 21 It doesn't talk -- and that's to  
08:30PM 22 determine the width of the side yard. It says  
08:30PM 23 nothing about saying that side yard determines the  
08:30PM 24 height of the building. It doesn't say that.  
08:30PM 25 Minimum height ratio front, four-to-one. Minimum

08:30PM 1 height ratio rear, zero. Minimum height ratio side,  
08:30PM 2 four-to-one for the determination of the size of the  
08:30PM 3 -- of the side yard or front yard or rear yard  
08:30PM 4 setback.

08:30PM 5 It doesn't go to a side yard  
08:30PM 6 determining the height. It goes the height -- does  
08:30PM 7 it not go to the height of the building to determine  
08:30PM 8 the side yard?

08:30PM 9 A. They're integrated, one is predicated  
08:30PM 10 on the other.

08:30PM 11 FEMALE AUDIENCE MEMBERS: Yeah. Right.

08:30PM 12 A. (Continuing) it's a ratio of  
08:30PM 13 25 percent.

08:31PM 14 MR. NIX: Not true. Well, straighten  
08:31PM 15 him out.

08:31PM 16 Q. Well, I must tell you that --

08:31PM 17 AUDIENCE MEMBERS: Shut up.

08:31PM 18 Q. -- that's a determination which  
08:31PM 19 heretofore hasn't been utilized by this Board  
08:31PM 20 irrespective of what you say it is.

08:31PM 21 MR. DIKTAS: Objection. He's making a  
08:31PM 22 comment, instead of a question --

08:31PM 23 MR. BASRALIAN: Yes, it's --

08:31PM 24 MR. DIKTAS: -- to the witness.

08:31PM 25 MR. BASRALIAN: It is a comment because

08:31PM 1 --

08:31PM 2 MR. NIX: He's got to talk into the  
08:31PM 3 mike. And I don't want to be laughed at because I  
08:31PM 4 don't hear.

08:31PM 5 MALE AUDIENCE MEMBER: Shut up.

08:31PM 6 MR. DIKTAS: I object. There's no --

08:31PM 7 MR. NIX: I don't want to be laughed at  
08:31PM 8 because --

08:31PM 9 MALE AUDIENCE MEMBER: I said shut up.

08:31PM 10 MR. NIX: -- I can't hear.

08:31PM 11 CHAIRMAN GUERRA: Not tonight. Stop.

08:31PM 12 MR. NIX: I got to put up with that?

08:31PM 13 CHAIRMAN GUERRA: Everybody top.

08:31PM 14 MALE AUDIENCE MEMBER: Can't you behave  
08:31PM 15 you idiot.

08:31PM 16 CHAIRMAN GUERRA: He has every right to  
08:31PM 17 be here --

08:31PM 18 MR. NIX: Thank you.

08:31PM 19 CHAIRMAN GUERRA: -- just as you sir,  
08:31PM 20 but we're not going to start arguing, Lenny.

08:31PM 21 MR. NIX: I do not want to be  
08:31PM 22 humiliated because of my disability.

08:31PM 23 FEMALE AUDIENCE MEMBER: Nobody's --

08:31PM 24 MR. NIX: And if they're so rude  
08:31PM 25 because I can't hear, they got to make fun of me and

08:31PM 1 call me an idiot as the Chairman I'd throw him out  
08:31PM 2 because if I called him an idiot you'd throw me out.  
08:31PM 3 You got to start running the meeting like a meeting.

08:31PM 4 FEMALE AUDIENCE MEMBER: Nobody made  
08:31PM 5 fun of you.

08:31PM 6 CHAIRMAN GUERRA: Continue.  
08:31PM 7 Speak in the microphone.

08:31PM 8 MR. MALAGIERE: Mr. Basralian --

08:31PM 9 CHAIRMAN GUERRA: Everybody.

08:32PM 10 MR. MALAGIERE: -- I'd ask that -- I'm  
08:32PM 11 sorry, Mr. Chairman.

08:32PM 12 CHAIRMAN GUERRA: Go ahead.

08:32PM 13 MR. MALAGIERE: Mr. Basralian, I'd ask  
08:32PM 14 that you just pose questions please.

08:32PM 15 Thank you.

08:32PM 16 MR. DIKTAS: Thank you.

08:32PM 17 BY MR. BASRALIAN:

08:32PM 18 Q. The ordinance says in the same section  
08:32PM 19 you were reading:

08:32PM 20 "Whenever the minimum yard area  
08:32PM 21 specified by the minimum yard requirement  
08:32PM 22 differs from the yard required by using the  
08:32PM 23 minimum height ratio the regulation requires  
08:32PM 24 that the greater yard shall apply".

08:32PM 25 That section doesn't say you adjust the

08:32PM 1 height downward. It says you must apply the ratio  
08:32PM 2 for the side yard which must be greater.

08:32PM 3 How did you come up with your  
08:32PM 4 definition that the side yard size determines the  
08:32PM 5 height of the building?

08:32PM 6 A. Simple mathematics ratio takes two  
08:32PM 7 numbers -- two numbers, one on each side. If one is  
08:32PM 8 one the other is .25. If the one is 100, it's 25.

08:33PM 9 Q. But that's not the way the code is  
08:33PM 10 interpreted in the City of Hackensack --

08:33PM 11 FEMALE AUDIENCE MEMBER: No.

08:33PM 12 Q. -- and if that's the case then -- and  
08:33PM 13 they have acquired ratio for side yard it would --  
08:33PM 14 the ordinance just said it is side yard -- excuse me.

08:33PM 15 MR. BASRALIAN: I'll withdraw that  
08:33PM 16 question.

08:33PM 17 MR. DIKTAS: That's --

08:33PM 18 MR. BASRALIAN: Okay?

08:33PM 19 Q. This provision of the ordinance I just  
08:33PM 20 read to you utilizes the ratio to determine the side  
08:33PM 21 yard, not the height.

08:33PM 22 How do you have a different opinion  
08:33PM 23 than the provision I just read to you?

08:33PM 24 A. My opinion is the same as that in the  
08:33PM 25 ordinance. And I think you were reading from page



08:33PM 1 190, that's note 11; is that correct?

08:33PM 2 Q. That's correct.

08:33PM 3 MR. BASRALIAN: No, that's not what I  
08:33PM 4 was reading from...

08:33PM 5 MR. MALAGIERE: Use your microphone,  
08:34PM 6 Joe, when you're ready.

08:34PM 7 MR. BASRALIAN: That was page 199, by  
08:34PM 8 the way, yes, not page 190.

08:34PM 9 MR. MALAGIERE: Was there a question  
08:34PM 10 pending, Mr. Basralian?

08:34PM 11 MR. BASRALIAN: Yes. I said, this note  
08:34PM 12 indicates that when you have the differential it's  
08:34PM 13 for the determination of the side yard, not the  
08:34PM 14 determination of the height of the building.

08:34PM 15 And Mr. Lacz's testimony back on  
08:34PM 16 March 3rd was that we need a height variance because  
08:34PM 17 the side yard width determines the height of the  
08:34PM 18 building. So you have to reduce the height of the  
08:34PM 19 building to match your side yard.

08:34PM 20 MR. MALAGIERE: Is there a question for  
08:34PM 21 him in connection with that?

08:34PM 22 BY MR. BASRALIAN:

08:34PM 23 Q. That's the -- that's the statement that  
08:34PM 24 you made, is that still your position that that's the  
08:34PM 25 requirements under this code of the City of

08:34PM 1 Hackensack?

08:34PM 2 A. Absolutely.

08:34PM 3 Q. Thank you.

08:35PM 4 MR. BASRALIAN: Exhibit 33, just bear  
08:35PM 5 with me. Exhibit 33 was marked into evidence. It's  
08:35PM 6 the exhibit which demonstrates the calculation of the  
08:35PM 7 front yard setback.

08:35PM 8 Q. Mr. Lacz, upon the board is Exhibit 33  
08:35PM 9 the Applicant's exhibit 33, using the four-to-one  
08:35PM 10 ratio of the front setback, does not the building  
08:35PM 11 meet the minimum setback requirements for stories one  
08:35PM 12 through 12, 40 feet?

08:35PM 13 MR. MALAGIERE: I'm going to ask you to  
08:36PM 14 come back to the microphone before you testify. Take  
08:36PM 15 your time at the exhibit, but please come --

08:36PM 16 MR. DIKTAS: I'll just move it up.

08:36PM 17 MR. MALAGIERE: I don't think you can.

08:36PM 18 Could we have a small --

08:36PM 19 CHAIRMAN GUERRA: The wireless.

08:36PM 20 MR. MALAGIERE: Hold on. Hold on.

08:36PM 21 CHAIRMAN GUERRA: Let's try this one.

08:36PM 22 MR. MALAGIERE: Let's try the Dean

08:36PM 23 Martin one.

08:36PM 24 Hold on, sir, we're going to get you  
08:36PM 25 the microphone.

08:36PM 1 MR. DIKTAS: Try that.

08:36PM 2 THE WITNESS: Hold on I just want to  
08:36PM 3 check that.

08:36PM 4 MR. MALAGIERE: Yes, if you would, Mr.  
08:36PM 5 Lacz, when you're ready just use that microphone.

08:36PM 6 Q. Forty feet at stories one through 12,  
08:37PM 7 Mr. Lacz.

08:37PM 8 A. (Pause).

08:38PM 9 MR. MALAGIERE: Okay. Is there a  
08:38PM 10 question pending?

08:38PM 11 MR. BASRALIAN: Yes, there was. I said  
08:38PM 12 where -- where does the -- the building on floors one  
08:39PM 13 through 12 not meet the 40-foot setback?

08:39PM 14 A. The setback -- that's a hypothetical  
08:39PM 15 question because in this particular instance the line  
08:39PM 16 the setback it predicated on one-on-four would be  
08:39PM 17 back here (indicating). This whole building should  
08:39PM 18 be back that much further (indicating).

08:39PM 19 Q. Well, floors one through --

08:39PM 20 A. All this -- all this -- this is  
08:39PM 21 projecting into the front (indicating) including this  
08:39PM 22 (indicating). This whole line goes straight down  
08:39PM 23 here (indicating).

08:39PM 24 Q. Well, Mr. Lacz, if this were a 12 story  
08:39PM 25 building, would it not meet the setback requirements

08:39PM 1 for a 12 story building at 40 feet?

08:39PM 2 A. How many -- how high would the 12 story  
08:40PM 3 building be?

08:40PM 4 Q. Well, it's shown there. The height is  
08:40PM 5 shown on the plan just look at the 12 stories.

08:40PM 6 A. That's not... (Pause).

08:40PM 7 Q. Look, Mr. Lacz, I'm going to make it  
08:41PM 8 easy. I'll withdraw that question, okay? Mr. Lacz?  
08:41PM 9 Mr. Lacz?

08:41PM 10 MR. MALAGIERE: Mr. Lacz, we have a new  
08:41PM 11 question for you, sir.

08:41PM 12 MR. BASRALIAN: I'll withdraw the  
08:41PM 13 question.

08:41PM 14 Q. Mr. Lacz, modern cities, aren't  
08:41PM 15 setbacks for modern buildings in cities set back like  
08:41PM 16 the wedding cake design, that you described, in order  
08:41PM 17 to meet the setback requirements?

08:41PM 18 A. You're talking about a hypothetical.

08:41PM 19 Q. No. In modern buildings in cities of a  
08:41PM 20 wedding cake design to meet the setback requirements  
08:41PM 21 wherein there's a ratio of the building goes up  
08:41PM 22 higher.

08:41PM 23 MR. BASRALIAN: Objection, relevancy.

08:41PM 24 MR. MALAGIERE: He can answer.

08:41PM 25 MR. BASRALIAN: He testified it was a

08:41PM 1 wedding cake design.

08:41PM 2 MR. MALAGIERE: It's overruled.

08:41PM 3 Answer.

08:41PM 4 A. I -- I didn't do a study of all  
08:41PM 5 different cities and their Zoning Ordinance. I can't  
08:41PM 6 answer that question.

08:42PM 7 Q. Irrespective of all the buildings that  
08:42PM 8 are set back like wedding cakes in New York City that  
08:42PM 9 you can see from Hackensack?

08:42PM 10 A. Some are set back that way.

08:42PM 11 MR. DIKTAS: Objection. Asked and  
08:42PM 12 answered.

08:42PM 13 Q. I'm sorry. You answered some are set  
08:42PM 14 back that way?

08:42PM 15 A. Some are, some aren't.

08:42PM 16 Q. Is there any provision in the  
08:42PM 17 Hackensack code which prohibits the application of  
08:42PM 18 the wedding cake design and setback the way it's been  
08:42PM 19 measured by the Applicant and testified to by its  
08:42PM 20 architect?

08:42PM 21 A. Yes.

08:42PM 22 Q. Show me please.

08:42PM 23 A. I refer to the same place that you  
08:43PM 24 referred to, page 199, note 11.

08:43PM 25 Q. That's your position is that the

08:43PM 1 language there that says that the way the minimum  
08:44PM 2 yard -- area specified by the minimum yard  
08:44PM 3 requirement differs from the yard using -- by using a  
08:44PM 4 minimum height ratio, the regulation required the  
08:44PM 5 greater area shall apply?

08:44PM 6 A. That's correct.

08:44PM 7 Q. And those words say that you can't use  
08:44PM 8 the calculation that -- that was testified to by the  
08:44PM 9 architect since the building always meets the setback  
08:44PM 10 requirement at each height elevation?

08:44PM 11 A. Yes. The -- in my opinion you can't  
08:44PM 12 use that.

08:44PM 13 Q. Thank you.

08:44PM 14 You also testified to the -- with  
08:44PM 15 respect to the proposed loading dock along the  
08:44PM 16 northerly boundary line that it didn't comply with  
08:44PM 17 the code because it could be seen going south on  
08:44PM 18 Prospect Avenue.

08:45PM 19 Since you've reviewed the plan you know  
08:45PM 20 that the loading dock is set back in about 20 feet  
08:45PM 21 and is elevated into the building and is elevated  
08:45PM 22 slightly from Prospect Avenue.

08:45PM 23 When you made that determination, did  
08:45PM 24 you do a line of sight test to determine that someone  
08:45PM 25 could see the loading dock as they were driving south

08:45PM 1 on Prospect Avenue?

08:45PM 2 A. No, I didn't do a line of sight.

08:45PM 3 Q. So it was just an assumption on your  
08:45PM 4 part?

08:45PM 5 A. No, it was not an assumption.

08:45PM 6 Q. Well, if you didn't do a line of sight  
08:45PM 7 test to determine that it could be seen while driving  
08:45PM 8 south on Prospect Avenue then how could you make that  
08:45PM 9 assumption?

08:45PM 10 A. The ordinance requires that truck  
08:45PM 11 parking, overall parking, needs screening in a  
08:45PM 12 residential district. In addition, it also needs  
08:45PM 13 landscaping.

08:45PM 14 Q. Well, as you're aware since you read  
08:45PM 15 the -- since you saw the plans, you inspected the  
08:45PM 16 site that will know that there's a screen that's  
08:45PM 17 provided by the -- in the drawings which stops  
08:46PM 18 slightly short of the loading dock, if that screen  
08:46PM 19 were carried forward along with the landscaping  
08:46PM 20 that's proposed already on the plan, to a point east  
08:46PM 21 of the loading dock, would that not solve the  
08:46PM 22 problem?

08:46PM 23 A. You would have to show me.

08:46PM 24 Q. Well, if the entire loading dock was  
08:46PM 25 screened by a 6 foot screen, which is what is

08:46PM 1 permitted under the ordinance, wouldn't that solve  
08:46PM 2 the problem?

08:46PM 3 A. If you complied with the ordinance,  
08:46PM 4 yes.

08:46PM 5 Q. Thank you.

08:46PM 6 You testified also that you visited the  
08:46PM 7 site. Did you do that more than once?

08:46PM 8 A. I was there once, yes.

08:46PM 9 Q. Okay. Did you inspect the properties  
08:46PM 10 on either side as part of your inspection that are on  
08:46PM 11 --

08:46PM 12 A. Yes.

08:46PM 13 Q. -- on Prospect Avenue?

08:46PM 14 A. Yes.

08:46PM 15 Q. Did you observe that at 321 Prospect  
08:46PM 16 Avenue that parking lot to the apartment building  
08:46PM 17 abuts right up against the property line and that no  
08:46PM 18 buffer exists in the yard -- no buffer exists as  
08:46PM 19 required by the ordinance?

08:46PM 20 A. Yes.

08:46PM 21 Q. Did you also observe that the garbage  
08:47PM 22 dumpster is located in the same area adjacent to the  
08:47PM 23 property line?

08:47PM 24 A. No, I didn't observe that.

08:47PM 25 MR. DIKTAS: Objection, relevancy.



08:47PM 1 MR. BASRALIAN: Let me get to the  
08:47PM 2 question.

08:47PM 3 Q. Did you observe that three -- that's on  
08:47PM 4 the south and on the north side did you observe that  
08:47PM 5 354 Prospect Avenue, the building to the north, the  
08:47PM 6 property -- that the parking for that building butts  
08:47PM 7 up against the side -- subject -- the property line  
08:47PM 8 of that property, and the northerly property this  
08:47PM 9 line without -- the northerly line of the Applicant's  
08:47PM 10 property without a buffer?

08:47PM 11 A. I didn't survey the property line  
08:47PM 12 that's for sure, but it's close by, yes.

08:47PM 13 Q. Well, if there were a fence there would  
08:47PM 14 you assume that to be the property line by chance?

08:47PM 15 A. It could be.

08:47PM 16 Q. Okay. Would it be your opinion then  
08:47PM 17 that those -- that that parking doesn't meet the  
08:47PM 18 requirements of the code?

08:47PM 19 A. I hadn't analyzed it. I couldn't give  
08:47PM 20 you an answer.

08:48PM 21 Q. Well, there's a setback requirement, is  
08:48PM 22 there not, which is being imposed on this property  
08:48PM 23 you testified a setback requirements does -- has not  
08:48PM 24 been complied with. If parking on either side of  
08:48PM 25 this property was paved right to the property line

08:48PM 1 would that not be a violation of the building code or  
08:48PM 2 the -- the side plan code?

08:48PM 3 A. Again, I can't answer it. I don't know  
08:48PM 4 when --

08:48PM 5 MR. DIKTAS: Objection, isn't that the  
08:48PM 6 Zoning Ordinance violation not the site plan code?

08:48PM 7 MR. BASRALIAN: I'm sorry. My mistake.  
08:48PM 8 Thank you for correcting me.

08:48PM 9 Q. Of the site -- of the Zoning Ordinance  
08:48PM 10 which prohibits parking in the side yard.

08:48PM 11 A. You -- this could have been constructed  
08:48PM 12 many years ago and there might have been variances  
08:48PM 13 involved. I cannot answer that question.

08:48PM 14 Q. Well, you also testified -- did you  
08:48PM 15 also observe when you were at that property 365 that  
08:48PM 16 there are garbage dumpsters --

08:48PM 17 MR. DIKTAS: Objection, relevancy. We  
08:48PM 18 haven't gotten to the point the question is relevant  
08:48PM 19 to this application. We have a building that's  
08:48PM 20 adjacent that's built in another time, another era,  
08:49PM 21 maybe another Zoning Ordinance.

08:49PM 22 What's the relevancy? If Mr. Basralian  
08:49PM 23 could put a proffer of the record before we waste any  
08:49PM 24 more time, Counsellor, I would appreciate it.

08:49PM 25 (Applause).

08:49PM 1 MR. BASRALIAN: I will because this  
08:49PM 2 witness testified that the imposition of the loading  
08:49PM 3 dock and the dumpster on this property would have an  
08:49PM 4 adverse impact on the property to the north.

08:49PM 5 Under those circumstances since the  
08:49PM 6 property to the north and the south as well have  
08:49PM 7 garage dumpsters and parking right against the  
08:49PM 8 property line or near the property line, if you  
08:49PM 9 prefer, isn't that as much of an imposition on this  
08:49PM 10 property as you suggest that the -- the compactor for  
08:49PM 11 this property is on the property to the north.

08:49PM 12 MR. DIKTAS: I'll object to relevancy.  
08:49PM 13 The ordinance speaks for itself. He said it needs a  
08:49PM 14 variance. The other two buildings were built, as I  
08:49PM 15 said, at another time, place and perhaps a different  
08:49PM 16 Zoning Ordinance.

08:49PM 17 What's the relevancy.

08:49PM 18 MR. MALAGIERE: Can you answer the  
08:50PM 19 question, sir?

08:50PM 20 A. Okay. Repeat the question?

08:50PM 21 Q. Since to the north, we'll take that  
08:50PM 22 one, has its parking and its dumpsters right against  
08:50PM 23 the property line adjacent to the proposed building,  
08:50PM 24 wouldn't -- doesn't that, the location of the parking  
08:50PM 25 and the dumpster, have as much as adverse impact on

08:50PM 1 the -- the Applicant's property and its projected  
08:50PM 2 construction as does its dumpster on the or near the  
08:50PM 3 property line to have an impact on the property to  
08:50PM 4 the north?

08:50PM 5 A. I don't specifically get the question.  
08:50PM 6 I think you're trying to compare --

08:50PM 7 Q. Is this a property --

08:50PM 8 MR. BASRALIAN: I'll rephrase it. I'll  
08:50PM 9 try to make it simple and excuse me for not making it  
08:50PM 10 that way.

08:50PM 11 Q. If the adjacent property to this one  
08:50PM 12 has its parking right against the property line and  
08:50PM 13 its dumpsters on the property line, isn't that an  
08:50PM 14 adverse impact on the existing residential dwelling  
08:50PM 15 and any building that's built on that site?

08:51PM 16 A. That's a hypothetical.

08:51PM 17 Q. Sure. It's a hypothetical?

08:51PM 18 MR. NIX: Nah, that's true.

08:51PM 19 A. The -- the dumpster, it does have an  
08:51PM 20 impact because it's on the site. I don't -- it is --  
08:51PM 21 it will have some impact on that site.

08:51PM 22 Q. And how about the parking right against  
08:51PM 23 the property line?

08:51PM 24 A. This is to which property line?

08:51PM 25 Q. It's -- it's to the Prospect Avenue

08:51PM 1 side, there -- either side of the property --

08:51PM 2 A. The site in question or the neighbor's  
08:51PM 3 property.

08:51PM 4 Q. The site in question, the neighboring  
08:51PM 5 properties on the south and the north --

08:51PM 6 A. Uh-huh.

08:51PM 7 Q. -- have their parking right against  
08:51PM 8 this -- the Applicant's property line as well as the  
08:51PM 9 dumpsters, doesn't that have an adverse impact on the  
08:51PM 10 exists dwelling and what's being proposed for it?

08:51PM 11 A. Existing site or...

08:51PM 12 Q. Existing site which has a dwelling on  
08:51PM 13 it.

08:51PM 14 A. Oh, the existing site which has a  
08:51PM 15 dwelling on it?

08:51PM 16 Q. Right.

08:51PM 17 A. All right. The answer is yes. And I'm  
08:51PM 18 saying as a hypothetical.

08:51PM 19 Q. Sure. And as a hypothetical, would it  
08:52PM 20 not have an adverse impact of some degree on the  
08:52PM 21 Applicant's project if it was constructed or were  
08:52PM 22 constructed because of the dumpsters and the parking  
08:52PM 23 against its property line?

08:52PM 24 A. Again, this is a hypothetical?

08:52PM 25 Q. Sure.

08:52PM 1 A. Then new construction is supposed to  
08:52PM 2 take that into account. That's the way planning  
08:52PM 3 goes.

08:52PM 4 Q. So are you suggesting that it had no  
08:52PM 5 impact at all, had no adverse impact by having  
08:52PM 6 property against --

08:52PM 7 A. I think it has the Applicant in this  
08:52PM 8 instant case, if this is adverse condition he should  
08:52PM 9 address it on his own site.

08:52PM 10 MR. MALAGIERE: Well, you have to  
08:52PM 11 answer the specific question.

08:52PM 12 The question's been posed to you, you  
08:52PM 13 have to answer the specific question.

08:52PM 14 A. Well, could you repeat that specific  
08:52PM 15 question?

08:52PM 16 MR. NIX: Oh, come on.

08:52PM 17 MR. MALAGIERE: Can you read the  
08:52PM 18 question back?

08:52PM 19 (Whereupon, the Court Reporter reads  
08:52PM 20 back the requested portion.)

08:53PM 21 MR. MALAGIERE: Do you understand the  
08:53PM 22 question?

08:53PM 23 THE WITNESS: Yes.

08:53PM 24 MR. MALAGIERE: Can you answer the  
08:53PM 25 question?

08:53PM 1 THE WITNESS: The answer is yes, but to  
08:53PM 2 finish off the question, is the present developer  
08:53PM 3 should address those adverse effects.

08:53PM 4 MR. MALAGIERE: Okay. Thank you.

08:53PM 5 MR. BASRALIAN: Thank you.

08:53PM 6 BY MR. BASRALIAN:

08:53PM 7 Q. In response to a question asked by Mr.  
08:53PM 8 Diktas, you said that the three properties on the  
08:53PM 9 Summit Avenue side, if they were separate properties,  
08:54PM 10 but they're being combined into one, had total of six  
08:54PM 11 -- I'm sorry -- have three property lanes, would you  
08:54PM 12 describe what you meant by three property lanes or  
08:54PM 13 what a property lane is on that property?

08:54PM 14 A. On the Summit side you have three  
08:54PM 15 driveways, I think that's what I was referring to.  
08:54PM 16 If you point to the testimony, I might be able to  
08:54PM 17 give a better answer.

08:54PM 18 Q. So the three existing driveways are  
08:54PM 19 property lanes, if this property project is approved  
08:54PM 20 those three driveways would disappear, it's one lot,  
08:54PM 21 would we still have three property lanes?

08:54PM 22 A. Oh, I didn't understand your question  
08:54PM 23 could you re -- the prior questions is the existing  
08:54PM 24 conditions?

08:54PM 25 Q. No, no. You said in your testimony

08:54PM 1 that --

08:54PM 2 MR. DIKTAS: I'll object. The witness  
08:54PM 3 asked Mr. Basralian to show him the citation in the  
08:55PM 4 transcript.

08:55PM 5 MR. BASRALIAN: No, he didn't.

08:55PM 6 MR. DIKTAS: Yes, he did.

08:55PM 7 MR. BASRALIAN: No, he didn't.

08:55PM 8 MR. DIKTAS: To show him the transcript  
08:55PM 9 -- he asked you to show him the lines in the  
08:55PM 10 transcript so he could answer the question properly.

08:55PM 11 MR. MALAGIERE: I think he's  
08:55PM 12 formulating another question and see if he needs the  
08:55PM 13 transcript.

08:55PM 14 Go ahead, Joe.

08:55PM 15 BY MR. BASRALIAN:

08:55PM 16 Q. You stated that the properties have  
08:55PM 17 three property lanes, I was asking you what you meant  
08:55PM 18 by a property lane.

08:55PM 19 A. Could you please give me the copy of  
08:55PM 20 the transcript and point it out to me please.

08:55PM 21 MR. NIX: Objection.

08:55PM 22 Q. I'll tell you what I'll have someone  
08:55PM 23 look it up and I'll come back to that question so we  
08:55PM 24 don't waste time doing it?

08:55PM 25 MR. BASRALIAN: Gentlemen, would you



08:55PM 1 take care of that. Thanks.

08:55PM 2 Q. In response to another question Mr.  
08:55PM 3 Diktas asked as to whether buildings can be  
08:55PM 4 constructed across zoning lines and your response was  
08:56PM 5 no.

08:56PM 6 In so responding you referred to  
08:56PM 7 Section 175-5.1(g) that buildings cannot be built  
08:56PM 8 across zoning direct lines.

08:56PM 9 Isn't it correct that that section  
08:56PM 10 states that:

08:56PM 11 "For any lot which is located in more  
08:56PM 12 than one zone district all yard, bulk and  
08:56PM 13 other requirements shall be measured from the  
08:56PM 14 zone district boundary line and not the true  
08:56PM 15 lot line"?

08:56PM 16 A. That's what it says.

08:56PM 17 Q. Where does it say that buildings, in  
08:56PM 18 this case the underground parking garage, cannot be  
08:56PM 19 built across the zone line?

08:56PM 20 A. It says that that all yard, so in other  
08:56PM 21 words, the rear yard, taken from the original lot  
08:56PM 22 line, the district line, it's supposed to be counted  
08:57PM 23 and if you can't build in the rear yard, you can't  
08:57PM 24 built a building across the zoning district.

08:57PM 25 Q. Would you read me specifically where it

08:57PM 1 says that in the code?

08:57PM 2 A. I'll read it again to you.

08:57PM 3 "Lots located in more than one zone.

08:57PM 4 For any lot which is located in more than one

08:57PM 5 zone district, all yard, bulk and other

08:57PM 6 requirements shall be measured from the zone

08:57PM 7 district boundary line and not the true lot

08:57PM 8 line".

08:57PM 9 Q. But where does it say that you can't

08:57PM 10 build or construct across a zone line?

08:57PM 11 A. That says it.

08:57PM 12 Q. That's an interesting interpretation.

08:57PM 13 MR. DIKTAS: Objection to the

08:57PM 14 commentary.

08:57PM 15 MR. MALAGIERE: Objection noted.

08:57PM 16 Q. You also indicated that because the

08:58PM 17 property is located in two zones that there were

08:58PM 18 separate use variances required for each zone, rather

08:58PM 19 than the one applied for, since a use variance is

08:58PM 20 required in both zones.

08:58PM 21 Did you calculate two variances as part

08:58PM 22 of the 53 that you -- that you indicated are required

08:58PM 23 for this project?

08:58PM 24 A. Yes.

08:58PM 25 Q. If a property --

08:58PM 1 MR. BASRALIAN: This went dead.

08:58PM 2 MR. MALAGIERE: There you go.

08:58PM 3 Q. So let me understand this, you're  
08:58PM 4 saying that even though it's one application with a  
08:58PM 5 consolidated property, four lots being consolidated  
08:58PM 6 into one, because it stretches into two zones it  
08:58PM 7 requires two separate use variances?

08:58PM 8 A. Yes.

08:58PM 9 Q. Let me ask you for all of the variances  
08:58PM 10 that the Applicant applied for and for all the  
08:58PM 11 variances that you say that you built up to 53, does  
08:59PM 12 an applicant under the Municipal Land Use Law have a  
08:59PM 13 right the request these variances?

08:59PM 14 A. Yes.

08:59PM 15 Q. So the Applicant in this case is in the  
08:59PM 16 right forum, the Board of Adjustment, for the use  
08:59PM 17 variances whether it's one, two, three or ten, this  
08:59PM 18 is the right forum for it, is it not?

08:59PM 19 A. As I understand the State and Municipal  
08:59PM 20 Land Use Law, yes.

08:59PM 21 Q. Thank you.

08:59PM 22 For the purposes of a hypothetical in  
08:59PM 23 the question, if for your -- for your determination  
08:59PM 24 there was no underground parking garage, the  
08:59PM 25 footprint of the building on the consolidated lot

08:59PM 1 comes to 17 -- 12.7 percent, did you review the  
08:59PM 2 application to determine that that fact, if it was a  
08:59PM 3 hypothetical, the building only encompasses 12.7  
09:00PM 4 percent footprint of the entire consolidated lot of  
09:00PM 5 50,000 square feet.

09:00PM 6 A. I didn't calculate that, no.

09:00PM 7 Q. Well, if it's 6600 square feet over  
09:00PM 8 50,000 comes to pretty close to 12.7 percent, doesn't  
09:00PM 9 it?

09:00PM 10 A. I'll do the mathematics, you want me to  
09:00PM 11 calculate two numbers?

09:00PM 12 Q. Sure. It's --

09:00PM 13 A. Just give me the numbers again please  
09:00PM 14 and I'll calculate it.

09:00PM 15 Q. Sixty-six-hundred square feet divided  
09:00PM 16 by 50,000.

09:00PM 17 A. Sixty-six-hundred.

09:00PM 18 Q. Yes. That's the square footage of the  
09:00PM 19 footprint of the building, the LTACH building.

09:00PM 20 A. I don't think so. The building size is  
09:00PM 21 80 by a hundred and...

09:01PM 22 Q. Well, what's 12.7 percent of  
09:01PM 23 50,000 square feet, do it the other way?

09:01PM 24 A. Wait a second.

09:01PM 25 It's 160 feet, I guess. I need a

09:01PM 1 magnifying glass.

09:01PM 2 So it's 80... 80... it's 12,800 square  
09:01PM 3 feet, that's the outside of the building.

09:01PM 4 Q. No, I'm talking the footprint of the  
09:01PM 5 first floor of the building.

09:01PM 6 A. No. You have to take into account  
09:01PM 7 what's above it. You mean you can have a footprint  
09:01PM 8 of one foot and you can have 100 foot wide building  
09:01PM 9 above it?

09:01PM 10 Q. Isn't the footprint of the building  
09:01PM 11 have the -- the issue that I asked you what the  
09:01PM 12 square footage -- what is the percentage --

09:01PM 13 A. No, the building -- in other words,  
09:01PM 14 you're confusing what is the area to be calculated.  
09:01PM 15 The calculation -- the building up above it is a lot  
09:01PM 16 larger and that's what you calculate for coverage.

09:01PM 17 Q. It still comes to 6600 square feet or  
09:02PM 18 12.7 percent of the total area.

09:02PM 19 A. The lot area is what?

09:02PM 20 Q. Fifty-thousand square feet.

09:02PM 21 A. Not the lots combined. (Pause).

09:02PM 22 MR. MALAGIERE: Hold on, sir. Let's  
09:02PM 23 see if there's a question pending.

09:02PM 24 Joe, is there a question pending?

09:02PM 25 MR. BASRALIAN: Yes. I said the -- let

09:02PM 1 me rephrase it.

09:02PM 2 The architect testified it was  
09:02PM 3 approximately 6600 square foot footprint of the  
09:02PM 4 building. That represents 12.7 --

09:02PM 5 A. That is incorrect. It's shown on his  
09:02PM 6 drawings as --

09:02PM 7 Q. Thank you. Then we'll refer to the  
09:02PM 8 drawings in the future.

09:02PM 9 You asked me, by the way, where I could  
09:02PM 10 find where the issue is on the property lane and I  
09:02PM 11 will read it to you. It is on page 108 --

09:02PM 12 MR. DIKTAS: Wait, Stan, here.

09:02PM 13 Q. -- lines 14, 15. You're talking about  
09:03PM 14 a variance and you said:

09:05PM 15 "You have three property lanes on each  
09:05PM 16 side, it'll be a total of six," referring to  
09:03PM 17 variances.

09:03PM 18 A. What page is that again?

09:03PM 19 Q. Page 108?

09:03PM 20 A. And what line does it start out with?

09:03PM 21 Q. Line 14.

09:03PM 22 A. Yes. That's what I testified.

09:03PM 23 Q. Okay. What's the property lane -- I'm  
09:03PM 24 sorry, a -- yes, what's a property lane?

09:03PM 25 A. Where does it say property lane?

09:03PM 1 Q. Line 14, "you have three property lanes  
09:03PM 2 on each side, it'll be a total of six".

09:04PM 3 A. It's supposed to be property lines.

09:04PM 4 Q. Okay. Three property --

09:04PM 5 A. Yeah, I'll show you --

09:04PM 6 Q. Excuse me. Don't -- don't --

09:04PM 7 MR. MALAGIERE: That's okay. Let him  
09:04PM 8 ask the questions.

09:04PM 9 Q. If it's a typographical error what  
09:04PM 10 three property lines were you talking about?

09:04PM 11 MR. MALAGIERE: Joe, use the mike.

09:04PM 12 MR. BASRALIAN: Okay.

09:04PM 13 Q. If it's a typographical error what  
09:04PM 14 three property lines were you talking about?

09:04PM 15 A. I'll show you.

09:04PM 16 Q. No, just tell me, don't show me.  
09:04PM 17 Please just tell me.

09:04PM 18 A. There is a property line that goes --  
09:04PM 19 I'm saying sides. The property line goes across,  
09:04PM 20 down and over (indicating). That's three on- one  
09:04PM 21 side. And three on the other side, for six property  
09:04PM 22 -- six property lines.

09:04PM 23 Q. Ah, is it your position that because  
09:04PM 24 there a two property lines on either side of the  
09:04PM 25 Summit Avenue property, and they come in to, I

09:04PM 1 believe, the 100-foot width, of the property width of  
09:05PM 2 the Prospect Avenue side, that you determined there  
09:05PM 3 are six separate variances required for side yard.

09:05PM 4 Is that what -- is that what your  
09:05PM 5 position was?

09:05PM 6 A. No, for buffer.

09:05PM 7 Q. For buffer. So six -- six separate  
09:05PM 8 variances for buffer?

09:05PM 9 A. That's correct.

09:05PM 10 Q. Okay. So that would clarify the  
09:05PM 11 property lanes are -- should be property lines?

09:05PM 12 A. Lines, yes.

09:05PM 13 MR. BASRALIAN: The, Stenographer,  
09:05PM 14 maybe you want to correct that for the transcript for  
09:05PM 15 the future.

09:06PM 16 Q. Exhibit 11. Now, this -- okay. You  
09:07PM 17 talked about the project not providing for open space  
09:07PM 18 and air and light when you reviewed the plan.

09:07PM 19 And I'm referring to Exhibit 11, which  
09:07PM 20 is from the Summit Avenue side, which you see is the  
09:07PM 21 LTACH building in the rear and the proposed parkland  
09:07PM 22 and drives in the front.

09:07PM 23 Isn't that a rather pleasant picture of  
09:07PM 24 open air, light and open space (indicating)?

09:07PM 25 MR. DIKTAS: Objection. Relevancy.



09:07PM 1 Pleasant? What is the definition of pleasant? Is  
09:07PM 2 that in the ordinance or the Land Use Law?

09:07PM 3 MR. MALAGIERE: Can you answer the  
09:07PM 4 question, sir?

09:07PM 5 CHAIRMAN GUERRA: Yeah.

09:07PM 6 Q. Can you answer the question?

09:07PM 7 A. It's a pretty picture, yes.

09:07PM 8 Q. Don't toy with the issues, that's  
09:07PM 9 what's proposed to be built. If it was built just  
09:07PM 10 like that, isn't that a rather "pleasant" view for a  
09:07PM 11 park?

09:07PM 12 A. As a hypothetical, yes.

09:08PM 13 Q. Thank you.

09:08PM 14 MALE AUDIENCE MEMBER: It's ugly.

09:08PM 15 Q. We're getting near the end here. You  
09:08PM 16 were asked by Mr. Diktas if you reviewed the fire  
09:08PM 17 codes and whether you had determined if the architect  
09:08PM 18 for the Applicant incorrectly designed the building  
09:08PM 19 vis-a-vis the administrative code.

09:08PM 20 And you referred to the modification of  
09:08PM 21 the code in Section 503-2.4.

09:08PM 22 And you talked about turning radiuses  
09:08PM 23 having a minimum of 25 feet to the access road.

09:08PM 24 Since you reviewed the plans, did you  
09:08PM 25 not see that the turning radiuses for the driveways

09:08PM 1 are 33.5 feet on the south and 33 -- 35 feet on the  
09:09PM 2 north?

09:09PM 3 A. There's a difference, I didn't observe  
09:09PM 4 that on the --

09:09PM 5 Q. Excuse me. Excuse me. Did you observe  
09:09PM 6 that on the plan?

09:09PM 7 A. No, I didn't observe that.

09:09PM 8 Q. Did you look at the plans?

09:09PM 9 A. I --

09:09PM 10 Q. Did you look at the -- excuse me --

09:09PM 11 A. Yes, I looked at the plans.

09:09PM 12 Q. Did you look at the plan?

09:09PM 13 And are you saying --

09:09PM 14 A. And the --

09:09PM 15 Q. -- that you did not see those turning  
09:09PM 16 radiuses on the plans?

09:09PM 17 A. I didn't observe them.

09:09PM 18 Q. Thank you.

09:09PM 19 You also read Section 5.03-2.4 of the  
09:09PM 20 administrative code, but it seems that you should  
09:09PM 21 have or might have gone further to 5.03-1.1 which  
09:09PM 22 says that through fire apparatus access roads shall  
08:50PM 23 be provided -- facility or a portion of the building  
09:09PM 24 thereafter constructed... within the jurisdiction.

09:09PM 25 It says that the Fire Code of -- the

09:09PM 1 Fire Code?

09:10PM 2 MR. DIKTAS: I'm going to object. Does  
09:10PM 3 Mr. Basralian have what he's reading --

09:10PM 4 MR. BASRALIAN: Excuse me.

09:10PM 5 MR. DIKTAS: No, let me put an  
09:10PM 6 objection on the record.

09:10PM 7 MR. MALAGIERE: Go ahead.

09:10PM 8 CHAIRMAN GUERRA: He's reading and  
09:10PM 9 you're not letting him read what you're asking. You  
09:10PM 10 asked him a question --

09:10PM 11 MR. BASRALIAN: I will show --

09:10PM 12 MR. DIKTAS: -- you're reading from the  
09:10PM 13 administrative code. Do you have a copy of the code  
09:10PM 14 for the witness so he can read it in its entirety.

09:10PM 15 MR. BASRALIAN: Absolutely.

09:10PM 16 MR. DIKTAS: Thank you.

09:10PM 17 MR. BASRALIAN: I will show it after  
09:10PM 18 I've read my question, and then give him a copy of  
09:10PM 19 the code. Okay?

09:10PM 20 Q. The code goes on to say that if fair  
09:10PM 21 apparatus cannot be installed because of the location  
09:10PM 22 on the property, topography and waterways alternate  
09:10PM 23 means of protection can be provided.

09:10PM 24 And those alternate means of protection  
09:10PM 25 include among other things a suppression system,

09:10PM 1 which if you reviewed the plans you would find that  
09:10PM 2 it's contained in the testimony or on the plans as  
09:10PM 3 being fire suppressed.

09:10PM 4 Did you review those other sections of  
09:10PM 5 the Fire Code?

09:10PM 6 A. Could you show them to me please?

09:10PM 7 Q. Yes.

09:11PM 8 A. Did you see it?

09:11PM 9 Q. No, it's the section, I specifically --  
09:11PM 10 Could you refer to the section?

09:11PM 11 A. Yes.

09:11PM 12 Q. That would help, you want to go to  
09:11PM 13 Section 5.03. Here you go.

09:11PM 14 MR. DIKTAS: May I have one please?

09:11PM 15 Q. These are the sections that were  
09:12PM 16 referred to. And you read 5.03 which were the  
09:12PM 17 changes to the code, correct?

09:12PM 18 And Section 5.03-1.1 says that building  
09:12PM 19 facilities shall be deleted in the text section --  
09:12PM 20 shall be deleted and the following text shall be  
09:12PM 21 added 5.03 -- 5.03-1.1, Fire Code -- right here  
09:12PM 22 (indicating). The Fire Code official may require and  
09:12PM 23 designate private fire -- public or private fire  
09:12PM 24 lanes as being necessary for the efficient and  
09:12PM 25 effective operation of fire apparatus, access to

09:12PM 1 building openings by firefighters or egress of  
09:12PM 2 occupants.

09:12PM 3 In your testimony you seem to imply  
09:13PM 4 that the -- the architect had mis-designed the  
09:13PM 5 building because he didn't take that into  
09:13PM 6 consideration.

09:13PM 7 A. Absolutely.

09:13PM 8 Q. Okay. Are the Fire Codes -- are the  
09:13PM 9 fire -- does the Board of Adjustment have the  
09:13PM 10 authority to regulate fire codes or is that covered  
09:13PM 11 under the Uniform Fire Code which is administered by  
09:13PM 12 the Fire Code Official of the City?

09:13PM 13 A. The Board of Adjustment has the -- my  
09:13PM 14 understanding has a large area to cover questioning.  
09:13PM 15 And often they want to know how the fire engine's  
09:13PM 16 going to get there. And how the people who are up in  
09:13PM 17 the beds and patients there can get out.

09:13PM 18 And a 12-foot driveway, they're not  
09:13PM 19 going to get in and out.

09:13PM 20 Q. Well, if you were here for the  
09:13PM 21 testimony, you heard the Applicant's state that the  
09:13PM 22 driveways on the Summit Avenue side were widened at  
09:13PM 23 the request of the fire department and was that --  
09:14PM 24 and were made to a width that satisfied the fire  
09:14PM 25 department.

09:14PM 1 Do you recall that?

09:14PM 2 A. No.

09:14PM 3 Q. Well, if that is the fire department's  
09:14PM 4 requirement, and that of the Fire Code Official,  
09:14PM 5 don't their requirements or don't their objectives  
09:14PM 6 for fire safety take precedence over what the Board  
09:14PM 7 of Adjustment may think is appropriate for a fire  
09:14PM 8 width or for a fire lane?

09:14PM 9 A. The -- the -- the Board has a -- the  
09:14PM 10 right, if it so wishes to investigate what the fire  
09:14PM 11 official said and to cross examine his determination,  
09:14PM 12 as well as the other interested parties.

09:14PM 13 Q. Well, would you -- are you saying you  
09:14PM 14 disagree that the Fire Code Official's decision of  
09:14PM 15 width of the fire lane and the use of a suppression  
09:14PM 16 system has precedence over the end determination by  
09:14PM 17 the Board of Adjustment on the site plan review?

09:14PM 18 A. I didn't say that.

09:15PM 19 I'm saying that --

09:15PM 20 Q. Then --

09:15PM 21 A. -- that I have read the Fire Code, and  
09:15PM 22 I've looked at it. And I have designed for many  
09:15PM 23 years according to this and listened to testimony.  
09:15PM 24 It's my opinion that a 12-foot driveway is not going  
09:15PM 25 to make it with regard to an emergency egress from

09:15PM 1 this building. And you're not going to be able to  
09:15PM 2 get a -- people coming out and people going in in  
09:15PM 3 this particular instance. It is too narrow. And  
09:15PM 4 there's diagrams in the Fire Code which shows how  
09:15PM 5 wide those driveways should be.

09:15PM 6 Q. Then if the fire department, the Fire  
09:15PM 7 Code Official determined that it was appropriate in  
09:15PM 8 terms of width of driveway, would that not take  
09:15PM 9 precedence over your opinion as a planner as to what  
09:15PM 10 should be utilized for these particular driveways?

09:15PM 11 A. That's hearsay. I don't know who said  
09:16PM 12 what. I haven't questioned him. I don't know what  
09:16PM 13 his opinion is. I certainly can't answer that  
09:16PM 14 question.

09:16PM 15 Q. Well, would you suggest that their  
09:16PM 16 opinions are not as good as your as to what the fire  
09:16PM 17 lanes should be given their knowledge of the site?

09:16PM 18 A. I -- I suggest and would recommend and  
09:16PM 19 if I were a consultant to the Board, ask the fire  
09:16PM 20 official to come here and to testify with regard to  
09:16PM 21 12 foot wide driveways.

09:16PM 22 Q. Well, let me ask you, you said you  
09:16PM 23 walked up and down Prospect, you visited the site,  
09:16PM 24 you saw other structures on Prospect Avenue, none of  
09:16PM 25 them had an access to Summit Avenue or a secondary

09:16PM 1 access. All of them required access from Prospect  
09:16PM 2 Avenue. If they -- if this Prospect Avenue side did  
09:16PM 3 not exist the sole access would be from the front of  
09:16PM 4 the building, correct?

09:16PM 5 A. Well, that's a hypothetical again.

09:17PM 6 Q. Well, you walked up and down the  
09:17PM 7 street.

09:17PM 8 Did you see the building there?

09:17PM 9 A. This may be an inappropriate site to  
09:17PM 10 put a hospital in the first place.

09:17PM 11 Q. That's the reason --

09:17PM 12 (Applause).

09:17PM 13 (Chairman Guerra uses the gavel to  
09:17PM 14 maintain order.)

09:17PM 15 Q. -- the reason why we're before the  
09:17PM 16 Board is because we're seeking a variance to be here.  
09:17PM 17 That's an opinion by you that it's an inappropriate  
09:17PM 18 location.

09:17PM 19 What I was talking about was all the  
09:17PM 20 buildings on Prospect Avenue, none of which have  
09:17PM 21 access to Summit Avenue, all of which have fire  
09:17PM 22 access only through the front of the building.

09:17PM 23 A. And I don't --

09:17PM 24 Q. Excuse me. How -- how is -- how are  
09:17PM 25 those buildings better situated than a structure that



09:17PM 1 is proposed like this which has fire access from two  
09:17PM 2 sides?

09:17PM 3 A. This is a hospital. We have --

09:17PM 4 Q. Doesn't make a difference?

09:17PM 5 A. We have a different type of population  
09:17PM 6 within the building.

09:17PM 7 Q. Well --

09:17PM 8 A. We have people that aren't ambulatory.  
09:17PM 9 We have people that --

09:17PM 10 Q. Are you aware of --

09:17PM 11 A. -- we have people that are in beds.

09:17PM 12 Q. Are you aware of how big the structures  
09:18PM 13 are on Prospect Avenue? How many apartments they  
09:18PM 14 contain?

09:18PM 15 A. No, I haven't counted them.

09:18PM 16 Q. Well, if they have seven or 800  
09:18PM 17 apartments they're a pretty densely populated  
09:18PM 18 structure versus a 120 bed long term acute care  
09:18PM 19 hospital?

09:18PM 20 MR. DIKTAS: I'll object to relevancy  
09:18PM 21 we're not -- we're talking about a hospital and then  
09:18PM 22 we're talking about a --

09:18PM 23 MR. BASRALIAN: Wait a second he raised  
09:18PM 24 -- he raised -- excuse me.

09:18PM 25 MR. MALAGIERE: Okay.

09:18PM 1 MR. BASRALIAN: He raised the relevancy  
09:18PM 2 saying it's a high intensity --

09:18PM 3 MR. MALAGIERE: You can answer the  
09:18PM 4 question.

09:18PM 5 Go ahead.

09:18PM 6 A. The question please?

09:18PM 7 Q. There are buildings on Prospect Avenue  
09:18PM 8 with 700 apartments in them, aren't they more --

09:18PM 9 AUDIENCE MEMBERS: No. No. No.

09:18PM 10 Q. -- densely populated?

09:18PM 11 AUDIENCE MEMBERS: No. No. No.

09:18PM 12 (Audience outburst.)

09:18PM 13 (Chairman Guerra uses the gavel to  
09:18PM 14 maintain order.)

09:18PM 15 Q. Aren't they more densely populated --  
09:18PM 16 wouldn't they be more densely populated than a 120  
09:18PM 17 bed long term acute care hospital?

09:18PM 18 A. It's not a comparative analysis. This  
09:18PM 19 is a with a different type of occupancy. This is a  
09:18PM 20 hospital. It's medical care. This is altogether  
09:18PM 21 different than a residence.

09:18PM 22 Q. Are you aware of the type of fire  
09:18PM 23 suppression system supplied for this type of  
09:18PM 24 facility?

09:18PM 25 A. They're required in all buildings of

09:19PM 1 this nature, sure.

09:19PM 2 Q. And does it not have a fire suppression  
09:19PM 3 system intended to -- through the garage as well,  
09:19PM 4 intended to deal with all fires?

09:19PM 5 A. It's the same as all the other  
09:19PM 6 buildings there, the residential buildings do require  
09:19PM 7 fire sprinkler -- suppression, sprinklers throughout.

09:19PM 8 Q. Starting what year were they required  
09:19PM 9 to install fire suppression systems?

09:19PM 10 A. Oh, I don't know exactly when the  
09:19PM 11 present code was required.

09:19PM 12 Q. We have buildings going back to the  
09:19PM 13 early '60s on Prospect Avenue.

09:19PM 14 MR. DIKTAS: I'll object to buildings  
09:19PM 15 in 1960 and fire suppression systems, what's the  
09:19PM 16 relevancy?

09:19PM 17 MR. MALAGIERE: His statement was that  
09:19PM 18 -- his statement was that all buildings are required  
09:19PM 19 to have fire suppression systems and I'm saying on  
09:19PM 20 Prospect Avenue there are any number of buildings  
09:19PM 21 that don't.

09:19PM 22 THE WITNESS: I always said it was a  
09:19PM 23 contemporary code.

09:19PM 24 Q. If you were here for the testimony or  
09:20PM 25 read the transcripts that the driveway was widened on

09:20PM 1 the Summit Avenue side at the request of the fire  
09:20PM 2 department. And did you hear the testimony or read  
09:20PM 3 the transcript by which the architect testified that  
09:20PM 4 the reduction of the buffers came as a result of the  
09:20PM 5 widening of the driveway as requested by the fire  
09:20PM 6 department?

09:20PM 7 A. No, I didn't read that. I didn't read  
09:20PM 8 that in the transcripts, nor do I recollect -- I only  
09:20PM 9 read partial of his testimony.

09:20PM 10 Q. And isn't it correct that the fire  
09:20PM 11 department, the Fire Code Official is the only body  
09:20PM 12 or entity that has the right to provide -- to grant  
09:21PM 13 waivers to the codes that we just referred to, the  
09:21PM 14 Fire Code we just referred to?

09:21PM 15 A. No, there's two, one is the Fire Code  
09:21PM 16 related to the building code.

09:21PM 17 Q. Uh-huh.

09:21PM 18 A. And then you have the Fire Chief or  
09:21PM 19 another individual, most likely in this community,  
09:21PM 20 which would make these determination.

09:21PM 21 Q. Right. Those are the only two parties  
09:21PM 22 that have a right to make determination?

09:21PM 23 A. No, just the one.

09:21PM 24 Q. Okay. Well --

09:21PM 25 A. The one related to the fire department.

09:21PM 1 Q. One for one and one for the other.

09:21PM 2 Those are the only --

09:21PM 3 A. Yes.

09:21PM 4 Q. -- individuals that have the right to  
09:21PM 5 waive any provisions --

09:21PM 6 A. Yeah, and sprinklers are determined by  
09:21PM 7 the building department, the Department of Community  
09:21PM 8 Affairs.

09:21PM 9 Q. You talked about the thickness of walls  
09:21PM 10 that would be required if, for example, the water  
09:21PM 11 table was at 40 feet on this property.

09:21PM 12 Do you know what the water table is on  
09:21PM 13 this property?

09:21PM 14 A. No.

09:21PM 15 Q. So that your discussion about the  
09:22PM 16 thickness of walls that the water table is 40 feet  
09:22PM 17 was a hypothetical?

09:22PM 18 A. At some point --

09:22PM 19 Q. Wait. Excuse me --

09:22PM 20 A. No, no, no.

09:22PM 21 Q. -- wasn't it you -- excuse me. If you  
09:22PM 22 don't know where the water table is, then your  
09:22PM 23 discussion of saying if it were at 40 feet the walls  
09:22PM 24 would have be "X" inches wide was a hypothetical?

09:22PM 25 A. Could it be, yes.

09:22PM 1 Q. Okay.

09:22PM 2 It was a hypothetical because you don't  
09:22PM 3 know where the water table is?

09:22PM 4 A. It's -- this board should know -- I  
09:22PM 5 don't know where it is. You don't know where it is.

09:22PM 6 Q. Excuse me.

09:22PM 7 A. And this Board should know where the  
09:22PM 8 water table is.

09:22PM 9 Q. Excuse me. You're making an assumption  
09:22PM 10 that is not correct, necessarily. But what I'm  
09:22PM 11 trying to ask you and you've just --

09:22PM 12 A. I'm trying to answer the question.

09:22PM 13 Q. Excuse me. When you talked about the  
09:22PM 14 water table, if it were at 40 feet, it was a  
09:22PM 15 hypothetical that you discussed --

09:22PM 16 MR. MALAGIERE: He answered that  
09:22PM 17 question. Please move on.

09:22PM 18 MR. BASRALIAN: No, but he's then come  
09:22PM 19 back and said --

09:22PM 20 MR. MALAGIERE: Sir, he's added stuff  
09:22PM 21 to it, but he answered your question.

09:22PM 22 Just ask another question please.

09:22PM 23 Q. If the wall had to be thicker and it  
09:22PM 24 adversely affected the -- the interior driveway --  
09:23PM 25 parking numbers when it was determined that that had

09:23PM 1 to be the case, and this application were granted,  
09:23PM 2 wouldn't the Applicant have to come back to the Board  
09:23PM 3 of Adjustment if there were any change in the site  
09:23PM 4 plan that was approved vis-a-vis --

09:23PM 5 A. Yes.

09:23PM 6 Q. Thank you.

09:23PM 7 You also indicated that you knew of a  
09:23PM 8 building, to your actual knowledge, that had leaned  
09:23PM 9 over because of a drop in water table two blocks away  
09:23PM 10 from where it actually occurred.

09:23PM 11 Do you recall that testimony?

09:23PM 12 A. Yes. My recollection, my testimony is  
09:23PM 13 that it was in Perth Amboy where they were putting in  
09:23PM 14 storm lines, they dropped the water table and this  
09:23PM 15 building which was over 100-year old, tilted over and  
09:24PM 16 leaned on the neighbor's building. They had a 3 foot  
09:24PM 17 wide alleyway.

09:24PM 18 Q. Did you know if that building had a  
09:24PM 19 foundation?

09:24PM 20 A. Yes, it did.

09:24PM 21 Q. Did it have a brick foundation or a  
09:24PM 22 stone foundation being over 100 years old?

09:24PM 23 A. Had a brick foundation.

09:24PM 24 Q. Was it constructed with concrete?

09:24PM 25 A. It was masonry walls.

09:24PM 1 Q. Masonry walls.

09:24PM 2 Did it have -- you said it was a brick  
09:24PM 3 -- a brick foundation?

09:24PM 4 A. Yes.

09:24PM 5 Q. Are a brick foundations typically used  
09:24PM 6 today in the construction of new homes?

09:24PM 7 A. No.

09:24PM 8 Q. Do you have any knowledge whether or  
09:24PM 9 not the building was built on a bog or over an  
09:24PM 10 underwater stream?

09:24PM 11 A. It was built on a landfill which was  
09:24PM 12 underwater, when the dropped the water table, the  
09:24PM 13 organics rotted and the building settled.

09:24PM 14 Q. Was that materially different than what  
09:24PM 15 is being projected here, this is not being built on a  
09:24PM 16 landfill?

09:24PM 17 A. Do you know that? We don't have soils  
09:25PM 18 investigation to show that.

09:25PM 19 Q. Oh, yes, we do. So that is part of the  
09:25PM 20 file that was submitted. So it's not a landfill.  
09:25PM 21 But you can see that it's probably not a landfill on  
09:25PM 22 Summit Avenue and Prospect Avenue?

09:25PM 23 A. We don't know if there's any limestone  
09:25PM 24 under there?

09:25PM 25 Q. But we know it's not a landfill, don't



09:25PM 1 we? We know its not a bog?

09:25PM 2 A. How deep are those borings?

09:25PM 3 Q. You're not willing to concede that it  
09:25PM 4 appears not to be -- maybe it appears not to be built  
09:25PM 5 on a landfill that all the other houses and buildings  
09:25PM 6 next to it --

09:25PM 7 A. Let's put it this way, any intelligent  
09:25PM 8 developer would have done borings first off. We  
09:25PM 9 would have had it at this meeting. At that --

09:25PM 10 Q. Mr. -- Mr. Lacz, you just testified  
09:25PM 11 that the building, to your own knowledge, was over  
09:25PM 12 100 years old, built with a brick foundation, which  
09:25PM 13 is not used today, and built on a bog. And you  
09:25PM 14 utilized that --

09:25PM 15 A. Not on a bog. It was -- it was a  
09:25PM 16 landfill.

09:25PM 17 Q. I'm sorry. A landfill, where the  
09:25PM 18 organic material had deteriorated?

09:25PM 19 A. Got -- air got to it and --

09:26PM 20 Q. Okay.

09:26PM 21 And you sort of used that as an analogy  
09:26PM 22 that if the water table dropped here, maybe it could  
09:26PM 23 affect this building, did you not?

09:26PM 24 A. Yes, I've been in instances where you  
09:26PM 25 dropped the water table and even on this -- if it was

09:26PM 1 within close location of the building ou had a  
09:26PM 2 failure which I understand the engineering reports  
09:26PM 3 are being kept confidential, but somewhere the  
09:26PM 4 subsurface has failed.

09:26PM 5 Q. But you don't know that that's the  
09:26PM 6 case. You don't know what the report --

09:26PM 7 A. I don't know --

09:26PM 8 Q. -- what the reports say?

09:26PM 9 A. I don't know, but that's why this Board  
09:26PM 10 should know, should ask --

09:26PM 11 Q. But you didn't --

09:26PM 12 A. -- geological studies, finding out  
09:26PM 13 what's underneath this to maybe whatever the -- the  
09:26PM 14 soils engineer says maybe 200 feet, I don't know.

09:26PM 15 Q. Let me ask you, you don't know where  
09:26PM 16 the water table is, though, do you?

09:26PM 17 A. Well, there's a water table there. And  
09:26PM 18 the water table --

09:26PM 19 Q. Excuse me --

09:26PM 20 A. Wait.

09:26PM 21 Q. Do you know where the water table is  
09:26PM 22 and at what level?

09:26PM 23 A. No, but I know there's one.

09:26PM 24 Q. Have you --

09:26PM 25 A. There's a water table there.

09:26PM 1 Q. But you don't know where it is?

09:26PM 2 A. I don't know where it is --

09:27PM 3 Q. Thank you.

09:27PM 4 A. -- but it's there.

09:27PM 5 Q. Thank you. Excuse me. I asked you if  
09:27PM 6 you know where the water table is, the answer is no.

09:27PM 7 CHAIRMAN GUERRA: We answered it, let's  
09:27PM 8 go.

09:27PM 9 MR. NIX: Should have never made a  
09:27PM 10 statement.

09:27PM 11 MALE AUDIENCE MEMBER: I got a water  
09:27PM 12 table 30 feet under my building. You want water  
09:27PM 13 tables, I'll show you.

09:27PM 14 (Chairman Guerra uses the gavel to  
09:27PM 15 maintain order.)

09:27PM 16 Q. You're aware that the certificate of  
09:27PM 17 need has been issued to the Applicant for 80 beds and  
09:27PM 18 that he testified that if the application is approved  
09:27PM 19 the certificate of need for the LTACH will increase  
09:27PM 20 the number of beds.

09:27PM 21 Were you here for that testimony?

09:27PM 22 A. I wasn't listening. I was here, yes.

09:27PM 23 Q. But a hospital is an inherently  
09:27PM 24 beneficial use?

09:27PM 25 A. Yes.

09:27PM 1 Q. Okay.

09:27PM 2 And the testimony was for the 68 seats  
09:27PM 3 in the -- for the dialysis center, would you deem  
09:27PM 4 that an inherently beneficial use?

09:27PM 5 A. Yes.

09:27PM 6 Q. And the adult daycare -- adult medical  
09:28PM 7 daycare given the statistics of how few seats or  
09:28PM 8 slots are available in Bergen County, in Hackensack  
09:28PM 9 and the surrounding area, would you concede that  
09:28PM 10 that's an inherently beneficial use?

09:28PM 11 A. Yes.

09:28PM 12 Q. Okay. So what we're talking then is  
09:28PM 13 solely the negative criteria, since the use, itself,  
09:28PM 14 is inherently beneficial?

09:28PM 15 A. Yes.

09:28PM 16 Q. Correct?

09:28PM 17 And it's the responsibility of the  
09:28PM 18 Applicant to carry the burden for inherently  
09:28PM 19 beneficial use?

09:28PM 20 A. Right. He has the --

09:28PM 21 Q. Thank you.

09:28PM 22 Excuse me. Yes or no. Is it yes?

09:28PM 23 A. Yes.

09:28PM 24 Q. Is it yes or no?

09:28PM 25 A. I'm answering the question.

09:28PM 1 MR. MALAGIERE: No, no, no. It's a yes  
09:28PM 2 or no question.

09:28PM 3 MR. NIX: Yes or no.

09:28PM 4 Q. It's a yes or no question.

09:28PM 5 A. I can't answer it yes or no.

09:28PM 6 MR. MALAGIERE: You just did.

09:28PM 7 MR. BASRALIAN: I said --

09:28PM 8 Q. One last question at this point, the  
09:28PM 9 Applicant is in the proper forum for all of the  
09:28PM 10 variances requested whether it's the -- the ones  
09:29PM 11 listed on the application and addressed by the  
09:29PM 12 planner in his many response letters or the 53 that  
09:29PM 13 you say -- 53 variances that you say exist, the  
09:29PM 14 Applicant is in the right place to address all those  
09:29PM 15 variances, is it not?

09:29PM 16 A. The Board of Adjustment.

09:29PM 17 Q. The Board of Adjustment is the right  
09:29PM 18 place being the Board of Adjustment?

09:29PM 19 A. Yes. Yes.

09:29PM 20 Q. All right. Thank you.

09:29PM 21 MR. BASRALIAN: I have no further  
09:29PM 22 questions at this point.

09:29PM 23 MR. MALAGIERE: Mr. Diktas?

09:29PM 24 MR. DIKTAS: I have a few.

09:29PM 25 MR. NIX: Mr. Chairman, how many dead

09:29PM 1 roads are we going to go down.

09:29PM 2 MR. DIKTAS: I just have a few, Mr.

09:29PM 3 Lacz.

09:29PM 4 REDIRECT EXAMINATION

09:29PM 5 BY MR. DIKTAS:

09:29PM 6 Q. The last series of questions Mr.  
09:29PM 7 Basralian asked you about the inherently beneficial  
09:29PM 8 use and asked -- and you answered for a yes or no  
09:29PM 9 question. And you tried to expound on your answer  
09:30PM 10 and you were not permitted.

09:30PM 11 Can you please address the -- what you  
09:30PM 12 wanted to finish the answer before you were cut off  
09:30PM 13 by Mr. Basralian?

09:30PM 14 MR. NIX: What was the question?

09:30PM 15 Q. For the record, what are you reading  
09:30PM 16 from?

09:30PM 17 A. The New Jersey Land Use Law in the  
09:30PM 18 powers of the Board of Adjustment, hence this Board  
09:30PM 19 here. It's -- it's 40:55(d)-70. And it goes into  
09:30PM 20 paragraph, it says about -- can be granted without  
09:30PM 21 substantial detriment to the public good and would  
09:30PM 22 not substantially impair the intent and purpose of  
09:30PM 23 the Zone Plan and Zone Ordinance.

09:31PM 24 Q. So what was the answer you wanted to  
09:31PM 25 finish before you were cut off?

09:31PM 1 A. It does not comply. It substantially  
09:31PM 2 violates the Zone Plan and the Zone Ordinance.

09:31PM 3 Q. Thank you. Mr. --

09:31PM 4 MR. NIX: What bank is that?

09:31PM 5 Q. Mr. Basralian went in great detail  
09:31PM 6 about the Fire Codes and you testified that you  
09:31PM 7 reviewed the NFPA55; is that correct?

09:31PM 8 A. Yes.

09:31PM 9 Q. Just to rehash, because it's been a  
09:31PM 10 long evening, you've been on your feet for, with the  
09:31PM 11 break, three hours. We've been here for  
09:31PM 12 three-and-a-half. Just what is the NFPA, just so we  
09:31PM 13 can get that on the record as we proceed?

09:31PM 14 A. Well, it discusses the installation of  
09:31PM 15 oxygen storage tanks.

09:31PM 16 MR. MALAGIERE: You want to mark it?

09:31PM 17 MR. DIKTAS: Yes, we should.

09:31PM 18 MR. MALAGIERE: What's your marking?

09:31PM 19 MR. DIKTAS: I have no idea.

09:32PM 20 MR. BASRALIAN: Excuse me, I didn't ask  
09:32PM 21 him about oxygen storage tanks and the like --

09:32PM 22 MR. DIKTAS: You asked about -- about  
09:32PM 23 fire codes.

09:32PM 24 MR. BASRALIAN: Yes, but I didn't ask  
09:32PM 25 him about oxygen storage tanks. We talked about the

09:32PM 1 fire codes specifically as it related to suppression  
09:32PM 2 buildings.

09:32PM 3 This is something that should have been  
09:32PM 4 on direct and not on cross examination.

09:32PM 5 MR. DIKTAS: He opened the door.

09:32PM 6 MR. BASRALIAN: I didn't open the door.  
09:32PM 7 I asked about specific things --

09:32PM 8 MR. MALAGIERE: Mr. Basralian, he's  
09:32PM 9 going to ask questions and you'll have a chance to  
09:32PM 10 recross.

09:32PM 11 We'll mark this B-2 with today's date,  
09:32PM 12 which is 7/26.

09:32PM 13 (Whereupon, NFPA 55 is received and  
09:32PM 14 marked as Exhibit B-2 for Identification.)

09:32PM 15 MR. DIKTAS: There should be an extra  
09:32PM 16 one for the Court Reporter too I brought ten.

09:33PM 17 MR. NIX: Mr. Chairman, can the public  
09:33PM 18 see that?

09:33PM 19 MR. DIKTAS: Can I give it to him, Mr.  
09:33PM 20 Chairman.

09:33PM 21 MR. NIX: Mr. Chairman, can the public  
09:33PM 22 see that?

09:33PM 23 MR. DIKTAS: Can I give it to him, Mr.  
09:33PM 24 Chairman.

09:33PM 25 MR. NIX: Mr. Chairman, can the public



09:33PM 1 see it?

09:33PM 2 CHAIRMAN GUERRA: Yes, pass it around.  
09:33PM 3 Everybody enjoy this.

09:33PM 4 MR. NIX: Thank you.

09:33PM 5 Q. You went to great detail as to the fire  
09:33PM 6 and fire codes and NFPA is one of the Fire Codes that  
09:33PM 7 the State of New Jersey follows; is that correct?

09:33PM 8 A. Yes.

09:33PM 9 Q. And this effects the oxygen and bulk  
09:33PM 10 unit tanks; is that correct?

09:33PM 11 A. Yes.

09:33PM 12 Q. And this an architect and engineering  
09:33PM 13 issue; is that correct?

09:33PM 14 A. Yes.

09:33PM 15 Q. Based on your review of the NFPA  
09:33PM 16 pertained to oxygen and bulk units, have you done the  
09:33PM 17 research to determine what the code says in regard to  
09:33PM 18 the location of sidewalks, vehicles, public places of  
09:33PM 19 assembly, wood frame structures, nearest opening in  
09:33PM 20 walls or other structures, in regards to an oxygen  
09:33PM 21 bulk unit which we have in this situation; is that  
09:33PM 22 correct?

09:33PM 23 A. Yes.

09:33PM 24 Q. What is the area distance required, the  
09:34PM 25 minimum area distance required under the statute for

09:34PM 1 a public sidewalk from an oxygen bulk unit?

09:34PM 2 A. The public sidewalk is ten feet.

09:34PM 3 Q. What does the Applicant propose?

09:34PM 4 A. It is quite far back from the sidewalk

09:34PM 5 on Prospect.

09:34PM 6 Q. So he meets that criteria?

09:34PM 7 A. Yes, he did.

09:34PM 8 Q. Okay. The second one is parked

09:34PM 9 vehicles, how far is parked vehicles?

09:34PM 10 A. Ten feet.

09:34PM 11 Q. Does the Applicant meet 10 feet?

09:34PM 12 A. No.

09:34PM 13 Q. Okay. The third one is a place of

09:34PM 14 public assembly --

09:34PM 15 A. Fifty feet.

09:34PM 16 Q. -- the park -- for a park or whatever,

09:34PM 17 does the Applicant meet --

09:34PM 18 A. Yes.

09:34PM 19 Q. Okay. Wood frame structures --

09:34PM 20 A. No.

09:34PM 21 Q. -- does the Applicant meet wood frame

09:34PM 22 structures?

09:34PM 23 A. No. Right above it is a wood screen

09:34PM 24 constructed on a buildings, it doesn't comply.

09:34PM 25 Q. And how many feet is the differential

09:34PM 1 from the oxygen bulk unit to the wood frame  
09:34PM 2 structure?

09:34PM 3 A. Oh --

09:34PM 4 Q. No, I mean what's in the statute? What  
09:34PM 5 is that?

09:34PM 6 A. In the statute, it requires 50 feet.

09:34PM 7 Q. Okay. Does it meet that requirement,  
09:34PM 8 yes or no?

09:34PM 9 A. No.

09:34PM 10 Q. And the next issue is oxygen bulk unit  
09:35PM 11 from the nearest opening in the wall or other  
09:35PM 12 structures, how many feet is that?

09:35PM 13 A. It doesn't comply. It's slightly --

09:35PM 14 Q. That's not my question. My question is  
09:35PM 15 the statute says how many feet away is the minimum  
09:35PM 16 distance between the oxygen bulk unit and the nearest  
09:35PM 17 opening in the wall or other structures?

09:35PM 18 A. Ten feet.

09:35PM 19 Q. Does the Applicant meet the 10 feet?

09:35PM 20 A. No.

09:35PM 21 Q. Okay. So as an architect and an  
09:35PM 22 engineer in review of the NFPA 55 which is one of the  
09:35PM 23 state codes for building requirements and compressed  
09:35PM 24 gases, which we have in this situation, the Applicant  
09:35PM 25 doesn't meet those requirements based on the building

09:35PM 1 as it's been constructed; is that correct?

09:35PM 2 A. Yes.

09:35PM 3 Q. To your knowledge is there any  
09:35PM 4 applications to the appropriate Fire Codes or to the  
09:35PM 5 DCA for waivers or deviations from the NFPA for this  
09:35PM 6 building, to your knowledge?

09:35PM 7 A. I don't know that.

09:35PM 8 Q. Okay. So the answer is you have no  
09:35PM 9 knowledge?

09:36PM 10 A. I have no knowledge.

09:36PM 11 Q. Okay. And I'm sorry, on B-2 is -- the  
09:36PM 12 oxygen bulk units to the nearest nonambulatory  
09:36PM 13 patient, that applies here, right? We have a  
09:36PM 14 building full of people who are really sick, correct?

09:36PM 15 A. Yes.

09:36PM 16 Q. And what is the distance between the  
09:36PM 17 bulk oxygen to the nearest nonambulatory patient?

09:36PM 18 A. Fifty feet.

09:36PM 19 Q. Does the applicant meet that  
09:36PM 20 requirement based on the plans that B-3 that he  
09:36PM 21 shows, the nearest unit. The plan that you reviewed.  
09:36PM 22 You're looking at B-3 (sic); is that correct?

09:36PM 23 A. Yes. It's here and right here  
09:36PM 24 (indicating).

09:36PM 25 Q. I'm sorry. A-3.

09:37PM 1 A. A-3, yes.

09:37PM 2 The storage is there (indicating) and  
09:37PM 3 the ambulatory and nonambulatory patients are right  
09:37PM 4 next to it?

09:37PM 5 Q. Can you speak louder. The answer  
09:37PM 6 wasn't heard by everyone.

09:37PM 7 A. The oxygen storage tank, bulk oxygen  
09:37PM 8 storage tank is right next to where  
09:37PM 9 ambulatory/nonambulatory patients and people can be.

09:37PM 10 MR. DIKTAS: I have no further  
09:37PM 11 questions.

09:37PM 12 MR. MALAGIERE: Thank you.

09:37PM 13 Mr. Basralian?

09:37PM 14 And granted, the Chairman has indicated  
09:37PM 15 to me that the Chair and the Board are cognizant that  
09:37PM 16 although these questions are loosely relevant to the  
09:37PM 17 Board's consideration, this Board is not going to  
09:37PM 18 pass items that are governed by the DCA, building  
09:37PM 19 department, the Fire Code Official and the like.

09:37PM 20 With that, Mr. Basralian.

09:37PM 21 MR. NIX: We're not going to take care  
09:38PM 22 of every code, international code on this application  
09:38PM 23 too, are we?

09:38PM 24 MR. MALAGIERE: Mr. Basralian, please  
09:38PM 25 proceed.

09:38PM 1 CHAIRMAN GUERRA: Go ahead, Mr.

09:38PM 2 Basralian.

09:38PM 3 RECROSS EXAMINATION.

09:38PM 4 BY MR. BASRALIAN:

09:38PM 5 Q. With the statement that was just made  
09:38PM 6 by the Chairman, briefly, doesn't a solid wall  
09:38PM 7 surrounding the oxygen tank negate all of those  
09:38PM 8 issues. And in any case all the -- the installation  
09:38PM 9 of this tank is required. This requires approval of  
09:38PM 10 both the DCA and the Fire Code Official?

09:38PM 11 A. I got two question there.

09:38PM 12 Q. Okay.

09:38PM 13 Doesn't a solid wall surrounding the  
09:38PM 14 oxygen tank negate the issues that -- on distance  
09:38PM 15 here?

09:38PM 16 A. No.

09:38PM 17 Q. Do you know that as a -- what is --  
09:38PM 18 what is the basis of your opinion?

09:38PM 19 A. The opinion is shown on Figure A.9.3.2  
09:38PM 20 of NFPA 55.

09:38PM 21 Q. Is this what I'm looking at here, what  
09:39PM 22 was just given to me (indicating)?

09:39PM 23 Well, I asked you, does not a solid  
09:39PM 24 surrounding wall, a wall surrounding the oxygen tank  
09:39PM 25 not negate these issues which are subject to the Fire

09:39PM 1 Code and DCA's approval?

09:39PM 2 A. No.

09:39PM 3 Q. Well, if the oxygen tank is installed  
09:39PM 4 and whatever the methodology is with Fire Code and  
09:39PM 5 DCA approval, would that not negate any issues that  
09:39PM 6 you may have raised here, once they have those  
09:39PM 7 approvals?

09:39PM 8 A. Yes.

09:39PM 9 MR. BASRALIAN: Okay. Thank you.

09:39PM 10 No further questions.

09:39PM 11 MR. DIKTAS: No redirect.

09:39PM 12 MR. MALAGIERE: Okay.

09:39PM 13 Mr. Chairman, this witness it

09:39PM 14 completed.

09:39PM 15 MR. DIKTAS: Released?

09:39PM 16 MR. MALAGIERE: I'm sorry?

09:39PM 17 MR. BASRALIAN: Yes.

09:39PM 18 MR. DIKTAS: Released?

09:39PM 19 MR. BASRALIAN: I have no further  
09:39PM 20 questions for him.

09:39PM 21 MR. MALAGIERE: Mr. Chairman?

09:39PM 22 MR. BASRALIAN: I have Mr. Keller  
09:39PM 23 available.

09:39PM 24 CHAIRMAN GUERRA: Unless the Board has  
09:39PM 25 any questions.

09:39PM 1 MR. DIKTAS: I'll bring him back.

09:39PM 2 That's okay.

09:39PM 3 CHAIRMAN GUERRA: You will?

09:39PM 4 MR. DIKTAS: Yes.

09:40PM 5 CHAIRMAN GUERRA: Okay. Then we're  
09:40PM 6 good.

09:40PM 7 MR. MALAGIERE: Then bring him back.

09:40PM 8 CHAIRMAN GUERRA: We're good.

09:40PM 9 MR. MALAGIERE: Mr. Chairman, you had  
09:40PM 10 indicated that --

09:40PM 11 MR. NIX: The Board has no questions?

09:40PM 12 MR. MALAGIERE: Mr. Chairman, you had  
09:40PM 13 indicated to me you were going to discuss how you  
09:40PM 14 wanted to proceed with the balance of the witnesses.

09:40PM 15 As I understand it, there's two  
09:40PM 16 witnesses left. There is Mr. Keller.

09:40PM 17 Welcome back, Mr. Keller.

09:40PM 18 There is Mr. Keller, for limited cross  
09:40PM 19 examination and limited redirect.

09:40PM 20 CHAIRMAN GUERRA: Right.

09:40PM 21 MR. MALAGIERE: And there is Mr.  
09:40PM 22 Polyniak with regard to his engineering and planning  
09:40PM 23 testimony.

09:40PM 24 And, of course, any cross examination  
09:40PM 25 or redirect that may come from that.



09:40PM 1 Now how --

09:40PM 2 MR. DIKTAS: And they also have a  
09:40PM 3 rebuttal witness.

09:40PM 4 MR. MALAGIERE: You have a rebuttal  
09:40PM 5 witness?

09:40PM 6 MR. BASRALIAN: Yes, I may.

09:40PM 7 MR. MALAGIERE: Okay. And Mr.  
09:40PM 8 Basralian has a rebuttal witness.

09:40PM 9 Do you know who that is? Do you want  
09:40PM 10 to identify him or not?

09:40PM 11 MR. BASRALIAN: Yes, I know who it is,  
09:40PM 12 but it's -- I haven't made a determination --

09:40PM 13 MR. MALAGIERE: Oh, sure.

09:40PM 14 MR. BASRALIAN: -- whether I'm going to  
09:40PM 15 do it.

09:40PM 16 MR. MALAGIERE: All right.

09:40PM 17 Mr. Diktas, do you have any further  
09:40PM 18 witnesses.

09:40PM 19 MR. DIKTAS: No, sir.

09:40PM 20 MR. MALAGIERE: Mr. Moskowitz, do you  
09:40PM 21 have any further witnesses?

09:40PM 22 MR. MOSKOWITZ: Yes, I just --

09:40PM 23 MR. MALAGIERE: Mr. Basralian, please  
09:40PM 24 yield the microphone.

09:40PM 25 Thank you

09:41PM 1 MR. MOSKOWITZ: Yes, we just wanted to  
09:41PM 2 respectfully remind the Board that at the completion  
09:41PM 3 of one of our earlier sessions, I would have the  
09:41PM 4 citation, had I known we would be speaking of this  
09:41PM 5 tonight, but that Mr. Pineles has not been released  
09:41PM 6 as a witness.

09:41PM 7 MR. MALAGIERE: Okay.

09:41PM 8 MR. MOSKOWITZ: And I do have in some  
09:41PM 9 further questions for Mr. Pineles.

09:41PM 10 MR. MALAGIERE: Well, let's look at it  
09:41PM 11 this way. I would anticipate that on rebuttal it  
09:41PM 12 potentially would be Mr. Pineles.

09:41PM 13 Of course, Mr. Basralian, you can call  
09:41PM 14 whoever you like.

09:41PM 15 So why don't we blow that bridge up  
09:41PM 16 when we come to it.

09:41PM 17 If Mr. Basralian does not call  
09:41PM 18 Mr. Pineles on rebuttal then the Chairman can address  
09:41PM 19 your issue which is, I guess, to bring him back. If  
09:41PM 20 he comes back as a rebuttal witness the issue is  
09:41PM 21 moot.

09:41PM 22 Would you agree with that?

09:41PM 23 MR. MOSKOWITZ: Well, if he comes back  
09:41PM 24 as a rebuttal witness --

09:41PM 25 MR. MALAGIERE: I just said that.

09:41PM 1 Would you agree with that?

09:41PM 2 MR. MOSKOWITZ: Then I -- only if I can  
09:41PM 3 continue the cross examination beyond the scope of  
09:41PM 4 the rebuttal.

09:41PM 5 MR. MALAGIERE: All right, but in broad  
09:41PM 6 strokes that may or may not be necessary, depending  
09:41PM 7 upon what he testifies to on rebuttal.

09:42PM 8 Work with me on this, Mr. Moskowitz.

09:42PM 9 MR. MOSKOWITZ: Well, I'll -- I  
09:42PM 10 certainly -- it's obvious to me that despite their  
09:42PM 11 possible wishes neither the Board, its Chair or its  
09:42PM 12 Counsel have tried to shut anybody out.

09:42PM 13 MR. MALAGIERE: That's right.

09:42PM 14 So work with me on this, maybe it's  
09:42PM 15 moot. May be it's not.

09:42PM 16 If it's not I would ask the Chair to  
09:42PM 17 deal with it at that time.

09:42PM 18 But, the record is preserved.

09:42PM 19 MR. MOSKOWITZ: I understand that.  
09:42PM 20 It's an old ruling from a ways back. What I would  
09:42PM 21 tell you, Counsel, and Board Chair, is that this  
09:42PM 22 isn't an apropos time for me to begin my continued  
09:42PM 23 cross examination --

09:42PM 24 MR. MALAGIERE: Understood. Thank you.

09:42PM 25 MR. MOSKOWITZ: -- of Mr. Keller.

09:42PM 1 MR. MALAGIERE: Mr. Chairman -- I  
09:42PM 2 appreciate that.

09:42PM 3 Mr. Chairman has indicated, I don't  
09:42PM 4 mean to be discourteous or rude to you, sir, but the  
09:42PM 5 Chairman has indicated to me how he wants to proceed.  
09:42PM 6 And I think that he wants to move forward with the  
09:42PM 7 carrying of this application so that we can have Mr.  
09:42PM 8 Keller back, complete his cross examination.  
09:43PM 9 Hopefully complete Mr. Polyniak. And, hopefully,  
09:43PM 10 have Mr. Basralian produce his rebuttal witness which  
09:43PM 11 I imagine would be Mr. Pineles. And, hopefully,  
09:43PM 12 we'll allow you further examination of Mr. Pineles  
09:43PM 13 based upon the scope of his rebuttal. But all that  
09:43PM 14 has to proceed.

09:43PM 15 But I think we're all in agreement at  
09:43PM 16 this point in time that we're going to have Mr.  
09:43PM 17 Keller back for limited cross.

09:43PM 18 MR. BASRALIAN: Excuse me. You know  
09:43PM 19 that is not --

09:43PM 20 MR. MALAGIERE: Hold on one second.

09:43PM 21 MR. BASRALIAN: We --

09:43PM 22 MR. MALAGIERE: We're going to have Mr.  
09:43PM 23 Keller back for limited cross subject to whatever  
09:43PM 24 objection you want to put on the record. We're going  
09:43PM 25 have Mr. Polyniak to testify and be cross examined on

09:43PM 1 his planning and engineering testimony.

09:43PM 2 Mr. Basralian is going to produce a  
09:43PM 3 rebuttal witness who we anticipate is Mr. Keller  
09:43PM 4 (sic) but may not. And Mr. Moskowitz is going to  
09:43PM 5 seek to the ave Mr. -- I'm sorry. We anticipate  
09:43PM 6 would be Mr. Pineles, who may not. Mr. Moskowitz is  
09:43PM 7 going to attempt to examine Mr. Pineles further at  
09:43PM 8 that point.

09:43PM 9 CHAIRMAN GUERRA: He may or may not.

09:44PM 10 MR. MALAGIERE: Having said that, Mr.  
09:44PM 11 Basralian, what's your objection, sir.

09:44PM 12 MR. BASRALIAN: Yes, I had brought Mr.  
09:44PM 13 Keller back two times when Mr. Moskowitz was unable  
09:44PM 14 to attend. And I brought him back another time. We  
09:44PM 15 were going to start at six o'clock. We didn't. We  
09:44PM 16 were a few minutes late for scheduling issues.

09:44PM 17 I have Mr. Keller here. Is there any  
09:44PM 18 reason why we can't start with Mr. Keller. His cross  
09:44PM 19 examination is limited to the -- his -- his own  
09:44PM 20 handwritten notes excluding those things that were  
09:44PM 21 excised.

09:44PM 22 MR. MALAGIERE: I'm sorry. I'm sorry  
09:44PM 23 to cut off.

09:44PM 24 The Chairman has told me he's not going  
09:44PM 25 to take any further testimony when quarter of ten

09:44PM 1 came around. We're at quater to ten.

09:44PM 2 So that's the response to that request.

09:44PM 3 MR. BASRALIAN: Well, I'd ask the Board  
09:44PM 4 to at least go to 10:30 so we can get the full four  
09:44PM 5 hours --

09:44PM 6 CHAIRMAN GUERRA: Absolutely not. Not  
09:44PM 7 happening.

09:44PM 8 MR. MALAGIERE: Okay.

09:44PM 9 So having dealt with that, the issue  
09:44PM 10 now --

09:44PM 11 MR. NIX: We're going to drag it out  
09:44PM 12 forever.

09:44PM 13 MR. MALAGIERE: -- comes up to when can  
09:44PM 14 we carry this to another meeting.

09:45PM 15 Mr. Chairman?

09:45PM 16 CHAIRMAN GUERRA: We also want to  
09:45PM 17 address when we're going to open, how we're going to  
09:45PM 18 open this up to the public so they're aware of -- so  
09:45PM 19 the public is aware of how we're going to handle  
09:45PM 20 that.

09:45PM 21 MR. MALAGIERE: Sure. Go ahead, Mr.  
09:45PM 22 Chairman.

09:45PM 23 CHAIRMAN GUERRA: After everybody  
09:45PM 24 testifies at that point we're going to open up to the  
09:45PM 25 public. We're going also limit the amount of public

09:45PM 1 -- the time on any kind of questioning to two or  
09:45PM 2 three minutes I mean we --

09:45PM 3 MR. NIX: You can't. You can't do  
09:45PM 4 that.

09:45PM 5 CHAIRMAN GUERRA: -- have been --

09:45PM 6 MR. MALAGIERE: Yes, he can.

09:45PM 7 MR. NIX: You can't do that. How do  
09:45PM 8 you figure that.

09:45PM 9 CHAIRMAN GUERRA: We can and we will.

09:45PM 10 MR. MALAGIERE: The reality -- okay the  
09:45PM 11 issue is this, the Chair has indicated to me --

09:45PM 12 MR. NIX: No way.

09:45PM 13 MR. MALAGIERE: -- that what will  
09:45PM 14 happen is --

09:45PM 15 CHAIRMAN GUERRA: That's what's we're  
09:45PM 16 going to do.

09:45PM 17 MR. MALAGIERE: -- that these last few  
09:45PM 18 individuals and pieces of testimony will be completed  
09:45PM 19 probably over a meeting or two.

09:45PM 20 At the end of their testimony, cross  
09:45PM 21 examination and Board questioning, these witnesses  
09:45PM 22 will be made available to the public for the public  
09:45PM 23 to ask questions.

09:46PM 24 MR. BASRALIAN: Excuse me. We had all  
09:46PM 25 the public -- you're talking about the witnesses that

09:46PM 1 have yet to testify?

09:46PM 2 CHAIRMAN GUERRA: Yes.

09:46PM 3 MR. MALAGIERE: Yes.

09:46PM 4 MR. BASRALIAN: Okay. All right.

09:46PM 5 MR. MALAGIERE: Yes.

09:46PM 6 MR. BASRALIAN: Not the ones I've  
09:46PM 7 already called.

09:46PM 8 MR. MALAGIERE: To the extent that the  
09:46PM 9 testimony that has not been subject to public  
09:46PM 10 inquiry.

09:46PM 11 CHAIRMAN GUERRA: Exactly.

09:46PM 12 MR. MALAGIERE: These witnesses will be  
09:46PM 13 made available.

09:46PM 14 MR. BASRALIAN: All right.

09:46PM 15 MR. MALAGIERE: And at that time also  
09:46PM 16 the public can make comments.

09:46PM 17 And the Chair has indicated that that  
09:46PM 18 will be the final public comment on the application.  
09:46PM 19 Whether it be questions or comments.

09:46PM 20 And the Chair, of course, reserves its  
09:46PM 21 right to limit the time for each individual member of  
09:46PM 22 the public.

09:46PM 23 MR. NIX: I've never heard of that  
09:46PM 24 before.

09:46PM 25 MR. MALAGIERE: So that is -- that is



09:46PM 1 ultimately what the situation is going to be.

09:46PM 2 Having said that, Mr. Chairman, how do  
09:46PM 3 you propose we carry this application forward.

09:46PM 4 CHAIRMAN GUERRA: Well, August is going  
09:46PM 5 to be a tough month, I think, for a lot of the  
09:46PM 6 members. So I believe we're looking at a date in  
09:46PM 7 September now.

09:47PM 8 MR. MOSKOWITZ: May we submit dates to  
09:47PM 9 you as we did before?

09:47PM 10 CHAIRMAN GUERRA: No, I think it should  
09:47PM 11 be at this point tonight.

09:47PM 12 MR. BASRALIAN: Well, I have to get a  
09:47PM 13 date for Mr. Keller tonight not when --

09:47PM 14 MR. MALAGIERE: No.

09:47PM 15 CHAIRMAN GUERRA: No, we're going to do  
09:47PM 16 it tonight. I'm telling you it's going to be --

09:47PM 17 MR. BASRALIAN: I need to know when  
18 he's available.

19 MR. MALAGIERE: Well, he's the next one  
20 up on the hit parade.

21 MR. BASRALIAN: Right.

22 MR. MALAGIERE: So nothing is going to  
23 get in the way.

09:47PM 24 MR. BASRALIAN: So just for the purpose  
09:47PM 25 of --

09:47PM 1 MR. BORRELLI: You want the open dates?

09:47PM 2 MR. MALAGIERE: Sure.

09:47PM 3 MR. BORRELLI: I have in September open

09:47PM 4 dates are September 8th, the 15th and the 27th, seem

09:47PM 5 to be open.

09:47PM 6 MR. BASRALIAN: Say those again?

09:47PM 7 MR. MALAGIERE: Eight, 15 and 27.

09:47PM 8 MR. BORRELLI: Eighth, 15th and 27th.

09:47PM 9 CHAIRMAN GUERRA: When's our regular

09:47PM 10 meeting?

09:47PM 11 MR. BORRELLI: Our regular meeting is

09:47PM 12 the 22nd.

09:47PM 13 MR. BASRALIAN: I'm sorry, eighth, 15th

09:47PM 14 and 27th?

09:47PM 15 MR. MALAGIERE: And the 27th.

09:47PM 16 MR. BASRALIAN: The eighth, 15th and

09:47PM 17 29th are Thursdays.

09:47PM 18 MR. MALAGIERE: It's the 27th, the

09:47PM 19 Tuesday.

09:48PM 20 Mr. Chairman, what's your pleasure.

09:48PM 21 CHAIRMAN GUERRA: Well, whatever the

09:48PM 22 Board wants. I mean does anyone have any conflicts.

09:48PM 23 MR. RODRIGUEZ: I'm okay on the 15th.

09:48PM 24 CHAIRMAN GUERRA: You're good on the

09:48PM 25 15th of September?

09:48PM 1 Let's see what they have to say. What  
09:48PM 2 works for everybody?

09:48PM 3 MR. BORRELLI: The 15th is good for our  
09:48PM 4 professionals.

09:48PM 5 CHAIRMAN GUERRA: The 15th is good?

09:48PM 6 MR. MALAGIERE: Right.

09:48PM 7 CHAIRMAN GUERRA: How about opposition  
09:48PM 8 Counsel.

09:48PM 9 MR. DIKTAS: I'm okay.

09:48PM 10 MR. MALAGIERE: Mr. Moskowitz?

09:48PM 11 CHAIRMAN GUERRA: Mr. Moskowitz.

09:48PM 12 MR. DIKTAS: Ted, are you good on the  
09:48PM 13 15th?

09:48PM 14 MR. MOSKOWITZ: Excuse me?

09:48PM 15 MR. DIKTAS: Are you good on the 15th?

09:48PM 16 MR. BASRALIAN: The 15th is the only  
09:48PM 17 date that's good for Mr. Keller so...

09:48PM 18 CHAIRMAN GUERRA: It's got to be the  
09:48PM 19 15th.

09:48PM 20 Mr. Moskowitz, you all right with that?  
09:48PM 21 Mr. Moskowitz?

09:48PM 22 (Whereupon, off the record discussion.)

09:50PM 23 CHAIRMAN GUERRA: Let's go on the  
09:50PM 24 record. Mr. Moskowitz, please. You're the only one  
09:50PM 25 who didn't respond.

09:50PM 1 Is the 15th good for you?

09:50PM 2 MR. MOSKOWITZ: Yes, it appear to the  
09:50PM 3 good.

09:50PM 4 CHAIRMAN GUERRA: All right.

09:50PM 5 MR. MALAGIERE: This application is  
09:50PM 6 carried without further notice to the Thursday  
09:50PM 7 September 15, 2011, special meeting, these chambers,  
09:50PM 8 7:00 p.m.

09:50PM 9 Mr. Basralian, we would ask that you  
09:50PM 10 extent the time in which the Board may act until that  
09:50PM 11 meeting.

09:50PM 12 MR. BASRALIAN: Yes.

09:50PM 13 MR. MALAGIERE: Mr. Chairman, it's been  
09:50PM 14 carried.

09:50PM 15 CHAIRMAN GUERRA: Motion adjourn?

09:50PM 16 MR. RODRIGUEZ: Motion.

09:50PM 17 MR. DIANA: Second.

18 MR. MALAGIERE: All those in favor?

19 (Whereupon, all present members respond  
20 in the affirmative and the meeting is  
21 adjourned. Time noted 9:51 p.m.)

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C E R T I F I C A T E

I, LAURA A. CARUCCI, C.C.R., R.P.R., a Notary Public of the State of New Jersey, Notary ID. #15855, Certified Court Reporter of the State of New Jersey, and a Registered Professional Reporter, hereby certify that the foregoing is a verbatim record of the testimony provided under oath before any court, referee, board, commission or other body created by statute of the State of New Jersey.

I am not related to the parties involved in this action; I have no financial interest, nor am I related to an agent of or employed by anyone with a financial interest in the outcome of this action.

This transcript complies with regulation 13:43-5.9 of the New Jersey Administrative Code.

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LAURA A. CARUCCI, C.C.R., R.P.R.  
License #XI02050, and Notary Public  
of New Jersey #15855, Notary  
Expiration Date March 1, 2014,

Dated: \_\_\_\_\_