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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

LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.
CERTIFIED COURT REPORTERS
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AL BORRELLI, ZONING OFFICER

3

GREGORY POLYNIAK, P.P., P.E., NEGLIA ENGINEERING

4

FRANK MISKOVICH, P.E., BIRDSALL ENGINEERING

5

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201-943-8020

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I N D E X

<u>WITNESS</u>	<u>SWORN</u>	<u>PAGE</u>
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 Burljuk.

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. Goetz.

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

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the meeting.)

MR. MALAGIERE: Let the record reflect that Mr. Goez has joined us.

Thank you, Mr. Basralian.

THE WITNESS: Do you wish --

Q. Mr. Lacz?

A. Do you wish the exhibit be marked where I showed my finger?

Q. Only if you want, Mr. Lacz?

A. Okay. If you please give me a marker I'll mark it.

Q. I'm going to ask you a question.

Did you just, with your finger, outline the perimeter of the consolidated lots?

A. Yes.

Q. Thank you, on Exhibit A-3 marked by the Applicant initially in the first hearing.

In you testimony you referred that you also reviewed the ordinance in the City of Hackensack, Section 175.5.1(d) of the Hackensack ordinance states:

A through lot shall be considered as having two street frontages," I'm quoting, "both of which shall be subject to the front 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,

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Mr. Lacz.

MR. BASRALIAN: Wait, hold on. I just asked a question --

MR. DIKTAS: You asked him a question, let him read it into the record.

MR. BASRALIAN: All right. Excuse me.

MR. DIKTAS: Let him read it into the record.

MR. BASRALIAN: Excuse me. When you get your chance on redirect you can ask him what you want.

Q. Would you show me the section that you're referring first, the section number?

MR. MALAGIERE: Mr. Lacz, just put it into --

MR. DIKTAS: Just put it into the record.

MR. MALAGIERE: Just read it into the record.

CHAIRMAN GUERRA: Just showing it doesn't show up on the record.

MR. MALAGIERE: Mr. Lacz, speak into the microphone the section that you're showing --

MR. BASRALIAN: I want to read --

MR. MALAGIERE: -- let him have the

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book back.

MR. BASRALIAN: I have -- no, he can have the book back. I just want to pull out --

MR. MALAGIERE: Give him the book back, Mr. Basralian --

MR. BASRALIAN: Here you go.

MR. MALAGIERE: -- so he can respond into the record.

BY MR. BASRALIAN:

Q. What section are you reading from?

A. The section I'm referring to is 175-5.1(g).

Q. Go ahead. And go ahead and read it.

A. "Lots located in more than one zone: If any lot which is located in more than one zone district all yard, bulk and other requirements shall be measured from the zone district boundary line, and not from the true lot line".

Q. Well, that only talks about lots located in more than one zone.

What I was referring to is the definition of interior lots and frontage on two streets, which provides that:

"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

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says here:

"Any lot which is located in more than one zone district all yard, bulk and other requirements shall be measured from the zone district boundary..."

The boundary goes at the -- at the -- the rear -- at the property line or what would have been the rear property line, and as such you have a rear setback necessary.

Q. But you have --

AUDIENCE MEMBERS: Can't hear.

Q. -- but you have a through street (sic) -- a through lot, which is only required to have --

MR. MALAGIERE: Speak into the microphone.

MR. BASRALIAN: Excuse me.

MR. MALAGIERE: Mr. Basralian, speak into the microphone.

Q. But you have a through lot which is only required to have two front yards and two side yards.

So you're stating that irrespective of what that section says, in your opinion this prevails. And, therefore, this property must have 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 far 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?

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A. I --

Q. It's your definition?

A. Some of these are -- are de minimis infringements and most likely would not be calculated.

Q. Well, where does it say in the ordinance that de minimus infringements are not included and where does it say in the ordinance you would include septic systems, gasoline tanks and anything else that's below grade in your calculation of building coverage, because that's what we're talking about.

A. Okay.

The ordinance doesn't define coverage, as I can see it, unless you can help me out with that.

From what I can see is that the ordinance in the front portion there is viewed as a permissive ordinance.

So, in other words, if there are any structures which should be included in that coverage calculation.

Q. Mr. Lacz, you represented a municipality, you said, as a planner or more than one 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?

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A. No.

Q. All right. Well, I will tell you that he was the preeminent land use judge --

MR. DIKTAS: Objection, relevancy.

MR. MALAGIERE: Is there a basis for a question, Joe?

MR. BASRALIAN: Yeah, sure there is.

Q. -- that he was one of the preeminent land use attorney -- or sorry -- judge in Bergen County before he was elevated to the Appellate Division.

Would it surprise you that that book, the development -- The Latest Illustrated Book of Development Definitions was one of the Bibles that he kept under his desk for his land use planning cases?

MR. DIKTAS: I'm going to object. What's the proffer to Judge Harris keeping a book under the bench.

MR. BASRALIAN: I said would it surprise him as -- he's already said it's a definitive book in New Jersey.

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

Q. Does it surprise you?

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.

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Section 175-7.2(b) says:
"Accessory structure below grade shall have a minimum rear yard setback, when not abutting any street of 5 feet".
A. Is that on the non-residential districts.
Q. It's on the residential side. It says -- it talks about in the R-3 zone?
A. Could you repeat that again? It says 175- what?
Q. 175-7.2(b).
MR. DIKTAS: What page?
A. 7.2(b) on the top it reads:
"Accessorial structure regulations in non-residential districts".
Q. I'm having more problems finding them. Yes, 175-7.2(b), accessory structures below grade shall have a minimum rear or side yard, but not abutting a street, of 5 feet.
A. And that's for non-residential districts.
Q. It says in non-residential districts.
A. So this is a residential district in 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

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building.
Q. That's your opinion. I'm asking you --
A. No, that's what the ordinance says that
besides --
Q. No, that's your interpretation --
A. -- that's besides my opinion.
Q. That's your interpretation of the
ordinance, but that should be saved for some place
else --
FEMALE AUDIENCE MEMBER: Oh, come on.
Come on.
Q. -- if you insist on -- you know --
CHAIRMAN GUERRA: Please.
(Chairman Guerra uses the gavel to
maintain order.)
Q. -- we can have a difference of opinion.
You're here to express your opinion.
MR. MALAGIERE: Mr. Basralian, please
ask --
Q. -- my opinion --
CHAIRMAN GUERRA: Please.
MR. MALAGIERE: Mr. Basralian, please
ask a question, don't instruct the witness.
MR. BASRALIAN: Okay.
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

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from there.

Now, what is the maximum height that's permitted in the R-3B zone?

A. You mean the R-3 zone?

Q. R-3 zone. I'm sorry. R-3 zone.

A. There is two standards shown on the schedule on page 177, 280 feet. And the ratio of four-to-one.

Q. No, the height -- maximum height permitted in the R-3 zone is 280 feet.

A. That's if you have a wide enough and big enough lot.

Q. Excuse me. What is the maximum height permitted in the zone according to the ordinance, do you say 280 feet?

A. Your hypothetical is nice. Tell me the size of the lot.

Q. Irrespective of the lot, what is the maximum height permitted in the zone?

(Audience outburst.)

A. I can't answer your question.

Q. Well, it's 280 feet. Let me go on.

Let me ask you a question, you testified the height variance was necessary --

MR. DIKTAS: He's arguing with the

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witness.

Q. -- a height variance was necessary?

(Chairman Guerra uses the gavel to maintain order.)

CHAIRMAN GUERRA: Gentlemen --

Q. -- that the height variance was necessary --

CHAIRMAN GUERRA: Gentlemen, speak in civil tongues.

Q. You testified that a height variance is necessary because the Applicant did not meet the side yard setback?

A. Right.

Q. However, the ordinance provides for the measurement of a height -- a side yard setback measured by the height, it does not measure the height of the building by the side yard setback.

MR. DIKTAS: Objection to the form of the question.

MR. NIX: I can't hear. You got to get the mike.

MR. DIKTAS: Objection to the form of the question.

MR. NIX: Thank you.

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

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that --

MR. DIKTAS: I'll object. The witness asked Mr. Basralian to show him the citation in the transcript.

MR. BASRALIAN: No, he didn't.

MR. DIKTAS: Yes, he did.

MR. BASRALIAN: No, he didn't.

MR. DIKTAS: To show him the transcript -- he asked you to show him the lines in the transcript so he could answer the question properly.

MR. MALAGIERE: I think he's formulating another question and see if he needs the transcript.

Go ahead, Joe.

BY MR. BASRALIAN:

Q. You stated that the properties have three property lanes, I was asking you what you meant by a property lane.

A. Could you please give me the copy of the transcript and point it out to me please.

MR. NIX: Objection.

Q. I'll tell you what I'll have someone look it up and I'll come back to that question so we don't waste time doing it?

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

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Fire Code?

MR. DIKTAS: I'm going to object. Does Mr. Basralian have what he's reading --

MR. BASRALIAN: Excuse me.

MR. DIKTAS: No, let me put an objection on the record.

MR. MALAGIERE: Go ahead.

CHAIRMAN GUERRA: He's reading and you're not letting him read what you're asking. You asked him a question --

MR. BASRALIAN: I will show --

MR. DIKTAS: -- you're reading from the administrative code. Do you have a copy of the code for the witness so he can read it in its entirety.

MR. BASRALIAN: Absolutely.

MR. DIKTAS: Thank you.

MR. BASRALIAN: I will show it after I've read my question, and then give him a copy of the code. Okay?

Q. The code goes on to say that if fair apparatus cannot be installed because of the location on the property, topography and waterways alternate means of protection can be provided.

And those alternate means of protection 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.

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09:23PM 25

Q. Okay.

It was a hypothetical because you don't know where the water table is?

A. It's -- this board should know -- I don't know where it is. You don't know where it is.

Q. Excuse me.

A. And this Board should know where the water table is.

Q. Excuse me. You're making an assumption that is not correct, necessarily. But what I'm trying to ask you and you've just --

A. I'm trying to answer the question.

Q. Excuse me. When you talked about the water table, if it were at 40 feet, it was a hypothetical that you discussed --

MR. MALAGIERE: He answered that question. Please move on.

MR. BASRALIAN: No, but he's then come back and said --

MR. MALAGIERE: Sir, he's added stuff to it, but he answered your question.

Just ask another question please.

Q. If the wall had to be thicker and it adversely affected the -- the interior driveway -- 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.

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: _____