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1 ZONING BOARD OF ADJUSTMENT
CITY OF HACKENSACK
2 COUNTY OF BERGEN

3 IN RE: BERGEN PASSAIC LTACH
APPLICATION V# 23-08 SP# 21-08
4 329 PROSPECT AVENUE, HACKENSACK,
NEW JERSEY, BLOCK 344,
5 LOTS 3, 4, 5, 14,
ZONE R-75 AND R-3

6 -----
Wednesday, September 23, 2009
7 Council Chambers
65 Central Avenue
8 Hackensack, New Jersey
Commencing 7:00 p.m.
9 B E F O R E:

10 CAPTAIN JOHN CARROLL
FRANK RODRIGUEZ
11 WILLIAM DiMINNO, VICE CHAIRMAN
MICHAEL GUERRA, CHAIRMAN
12 GEORGE DIANA
HUMBERTO GOEZ
13 DAN GILMORE

14 RICHARD MALAGIERE, ESQ., BOARD ATTORNEY
MARCELLA SBARBARO, BOARD SECRETARY
15 GREGORY POLYNIAK, BOARD PLANNER
JOSEPH MELLONE, CONSTRUCTION OFFICIAL
16 FRANK A. MISKOVICH, PE, CME, BOARD ENGINEER

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

18 WINNE, BANTA, HETHERINGTON, BASRALIAN & KAHN, PC
BY: JOSEPH L. BASRALIAN, ESQ.
19 21 Main Street, Court Plaza South
Hackensack, New Jersey 07601
20 Attorneys for the Applicant

21 DIKTAS, SHANDLER, GILLMAN & MOREJON, ESQS.

BY: CHRISTOS J. DIKTAS, ESQ.
22 596 Anderson Avenue
Cliffside Park, New Jersey 07010
23 Attorneys for Objector, Anastasia Burlyuk

24 BETH W. CALDERONE & ASSOCIATES
Certified Court Reporters
25 (201) 288-0277
Reported By: Donna Lynn J. Arnold, C.C.R.

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3 A-24 Id. Site Plan prepared by Omland 47
Engineering Associates, Inc. Revised
4 through September 9, 2009 addressing
The stormwater management system changes

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A-25 Id. Stormwater Management Report prepared 47
6 By Omland Engineering Associates, Inc
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PREVIOUSLY MARKED EXHIBITS

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A-21 Id. Building, East Elevation 10

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17 A-20 Id. Site Plan Rendering 50

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1 EXHIBITS MARKED PREVIOUSLY

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3 A-1 Id. Certificate of Need dated 7/17/08

Issued by the New Jersey Department

4 Of Health and Senior Services

A-2 Id. Context Plan entitled "Bergen

5 Passaic LTACH" prepared by MPFP, LLC
 Dated 12/11/08
 6 A-3 Id. Colorized Site Plan prepared by
 MPFP, LLC, dated 12/11/08, Sheet 2
 7 A-4 Id. Building, South Elevation prepared
 By MPFP, LLC, dated 12/11/08,
 8 Sheet 17R
 A-5 Id. Building Program Diagram prepared
 9 By MPFP, LLC, dated 12/11/08,
 Sheet 21
 10 A-6 Id. Building Floor Plan, Ground Level
 Floor Plan prepared by MPFP, LLC,
 11 Dated 12/11/08, Sheet 14
 A-7 Id. Building Floor Plan, Second Floor
 12 Through Fourteenth Floor prepared by
 MPFP, LLC dated 12/11/08, Sheet 15
 13 A-8 Id. Building Floor Plan, Fifteenth
 Floor through Roof prepared by MPFP,
 14 LLC, dated 12/11/08, Sheet 16
 A-9 Id. Parking Floor Plans prepared by
 15 MPFP LLC dated 12/11/08, Sheet P1
 A-10 Id. Landscape Prospective 3, Plaza Drop
 16 Off Looking Towards the Water Fall
 prepared by MPFP, LLC dated 12/11/08,
 17 Sheet 5
 A-11 Id. Landscape Prospective 2, Park Open
 18 to Public prepared by MPFP, LLC,
 12/11/08, Sheet 4
 19 A-12 Id. Landscape Prospective 1, Driveway
 Ending on Summit Avenue prepared by
 20 MPFP, LLC dated 12/11/08, Sheet 3
 A-13 Id. Existing Conditions Plan, Bergen
 21 Passaic LTACH, Lots 3, 4, 5 & 14,
 Block 344, City of Hackensack prepared
 22 By Omland Engineering Associates, Inc.
 Dated 5/6/09
 23 A-14 Id. Site Plan, Bergen Passaic LTACH,
 Lots 3, 4, 5 & 14, Block 344, City of
 24 Hackensack prepared by Omland
 Engineering Associates, Inc.
 25 Dated 5/6/09

1 EXHIBITS CONTINUED

2

A-15 Id. Grading and Utility Plan, Bergen

3 Passaic LTACH, Lots 3, 4, 5 & 14,
Block 344, City of Hackensack prepared

4 By Omland Engineering Associates, Inc.

Dated 5/6/09

5 A-16 Id. Vehicles Turning Path Plan, Bergen

Passaic LTACH, Lots 3, 4, 5 & 14,

6 Block 344, City of Hackensack prepared

By Omland Engineering Associates, Inc.

7 Dated 5/6/09

A-17 Id. Stormwater Management Report prepared

8 By Omland Engineering Associates, Inc.

Dated 5/6/09

9 A-18 Id. Minor Subdivision Plat prepared by

Gluckler & Den Bleyker dated 10/23/08

10 A-19 Id. Existing Conditions Aerial Map

Prepared by Omland Engineering

11 Associates, Inc., dated 5/6/09

A-20 Id. Site Plan Rendering prepared by

12 Omland Engineering Associates, Inc.

Dated 5/6/09

13

EXHIBITS MARKED JULY 22, 2009

14

A-21 Id. Building, East Elevation prepared

15 By MPFP, LLC dated 12/11/08 (Sheet 20R)

A-22 Id. Building, East Elevation, Detailed

16 Prepared by MPFP, LLC, dated 12/11/08

And revised through 7/22/09

17 (Sheets 20R1 and 20R2)

A-23 Id. Four (4) items

18 1.) Predominant material, exterior of
Building, precast concrete

19 2.) Terra-cotta panels

3.) Wood window

20 4.) Glass products

21 EXHIBITS MARKED SEPTEMBER 23, 2009

22 A-24 Id. Site Plan prepared by Omland Engineering
Associates, Inc. Revised through September

23 9, 2009 addressing the storm water
management system changes

24

A-25 Id. Storm water Management Report prepared by
25 Omland Engineering Associates, Inc revised
through September 9, 2009

7

1 CHAIRMAN GUERRA: Please rise for the

2 Pledge of Allegiance.

3 (Pledge of Allegiance and opening

4 statement.)

5 Roll call.

6 MS. SBARARO: Mr. Carroll.

7 CAPTAIN CARROLL: Here.

8 MS. SBARARO: Mr. Diana.

9 MR. DIANA: Here.

10 MS. SBARARO: Mr. Goez.

11 MR. GOEZ: Here.

12 MS. SBARARO: Vice Chairman DiMinno.

13 VICE CHAIRMAN DiMINNO: Here.

14 MS. SBARARO: Chairman Guerra.

15 CHAIRMAN GUERRA: Here.

16 Approval of the transcript of July 22nd, 2009

17 meeting.

18 Do I hear a motion.

19 VICE CHAIRMAN DiMINNO: I'll make a

20 motion.

21 MR. GILMORE: I'll second.

22 MS. SBARARO: Mr. Diana.

23 MR. DIANA: Here.

24 MS. SBARARO: Mr. Goez.

25 MR. GOEZ: Aye.

8

1 MS. SBARARO: Vice Chairman DiMinno.

2 VICE CHAIRMAN DiMINNO: Aye.

3 MS. SBARARO: Chairman Guerra.

4 CHAIRMAN GUERRA: Aye.

5 Okay. Do you need to read it all again? I

6 don't think you need to read it all again so long as

7 the Court Reporter can copy it over.

8 Is that okay?

9 "1.) Use Variance Required.

10 2.) Insufficient Lot Area Required 30,000

11 square feet Proposed 20,000 Square feet.

12 3.) Insufficient Lot Width Required 125',

13 proposed 100'.

14 4.) Insufficient Rear Yard Set Back, Required

15 40', Proposed 0' to Edge of R-3 District.

16 5.) Exceeds Maximum Lot Coverage, Required

17 30%, Proposed 40.5% for R-3.

18 6.) Exceeds Maximum height Ratio, Side Yard

19 Allowed 4:1, Proposed 19:1.

20 7.) Insufficient Buffer Zone, Required 6',

21 Proposed 0 to Edge of R-3 District.

22 8.) Insufficient Parking Spaces, Required 562,

23 Proposed 402.

24 9.) Insufficient Driveway Width, Required

25 18-22' For 2 Way, Proposed 10' for 2 Way.

9

1 10.) No Paving In Side Yard.

2 11.) Insufficient Area For Back up Aisle

3 Spaces.

4 12.) Exceeds Maximum Sign Area, Allowed 12

5 Square Feet, Proposed 96 Square Feet.

6 13.) Insufficient Sign Setback, Required 20

7 Feet, Proposed 0 Feet.

8 14.) Any Other Variance or Waivers That May Be

9 Required."

10 CHAIRMAN GUERRA: I'll just announce the

11 application.

12 Application V 23-08, SP-2108 address 320 Summit
13 Avenue, Hackensack, New Jersey, Block 344, Lots 3, 4,
14 5, 14, Zone R75 and R3, Bergen Passaic Long Term Acute
15 Care Hospital, LLC.
16 Counsel.

17 MR. BASRALIAN: Good evening, Mr.
18 Chairman, members of the Board, Joseph Basralian for
19 the applicant.

20 We were on the cross-examination by Mr. Diktas
21 of our architect, Mr. Szerbaty.
22 He was the last person to, to have an
23 opportunity to cross-examine Mr. Szerbaty. So, we
24 ought to continue with that.

25 CHAIRMAN GUERRA: Before we start, Mr.

10

1 Malagiere, do we have announcement of time?

2 MR. MALAGIERE: Oh, okay. What was your
3 determination on that, Mr. Chairman?
4 The Chairman has indicated that he's going to
5 impose a time limitation on the public comment and/or
6 questioning. It does not apply to objector counsel
7 and it does not apply to the applicant's counsel of

8 three minutes.

9 We have a little timer up here. We will start
10 it and it's a general reminder when the three minutes
11 expires. The reason that we're doing this is,
12 obviously, just to, just to strike a balance between
13 hearing all public comment but, at the same time,
14 expediting these hearings.

15 Thank you very much.

16 CHAIRMAN GUERRA: Thank you.

17 MR. BASRALIAN: Mr. Szerbaty, you can
18 continue to be sworn.

19 MR. MALAGIERE: I just want to swear you
20 in again.

21 Do you swear the testimony you're about to give
22 before this Board to be the truth, the whole truth,
23 nothing but the truth, so help you God.

24 MR. SZERBATY: I do.

25 MR. MALAGIERE: Please identify yourself

11
M. Szerbaty - Cross - Mr. Diktas

1 for the record. We're not going to requalify you.

2 MR. SZERBATY: Michael Szerbaty.

3 MR. MALAGIERE: In what capacity are you

4 testifying?

5 MR. SZERBATY: Architect.

6 MR. MALAGIERE: Thank you, sir.

7 We're going to give you -- why don't you take

8 that mike, Mr. Szerbaty. You're going to be by the

9 drawing.

10 Mr. Diktas, if you could give us your

11 appearance, sir.

12 MR. DIKTAS: Thank you, Counselor.

13 Chris Diktas on behalf of Anastasia Burlyuk in

14 opposition to this application.

15 MR. MALAGIERE: Mr. Diktas.

16 MR. DIKTAS: Chris Diktas on behalf of

17 Anastasia Burlyuk in opposition to this application.

18 MR. MALAGIERE: Thank you.

19 MR. DIKTAS: Good evening, sir, Mr.

20 Chairman, members of the Board.

21 CROSS-EXAMINATION BY MR. DIKTAS:

22 Q At our last meeting, I had requested to

23 Mr. Szerbaty, I requested that you review the zoning

24 ordinance as to certain issues.

25 Do you remember that, sir?

12

M. Szerbaty - Cross - Mr. Diktas

1 A Yes.

2 Q Did you have an opportunity to review the

3 zoning ordinance?

4 A Yes, I did.

5 Q The question I presented to you was the

6 first question regarding Section 175-7.1 regarding

7 accessory structures, regulations and residential

8 districts regarding structures below grade having a

9 minimum rear and side yard not abutting a street of 5

10 feet.

11 Do you remember that, sir?

12 A Yes.

13 Q At the time your response to the question

14 was, on Page 135 of the transcript, Line 8, the answer

15 is, I'm not sure.

16 Do you remember an answer today, sir?

17 A Yes. Yes, I do.

18 Q Again, for the record, could you please

19 give us --

20 MR. BASRALIAN: Excuse me, since I would

21 --

22 Mr. Chairman, I would like to, to address this

23 issue since Mr. Szerbaty is not a planner nor a lawyer

24 on the interpretation of that Code.

25 I, too, have had the opportunity, since Mr.

13

M. Szerbaty - Cross - Mr. Diktas

1 Diktas raised it, to review the Code and I would like

2 to address the Board on that issue.

3 MR. DIKTAS: With all due respect, Mr.

4 Malagiere just stepped out.

5 This is cross-examination. This gentleman drew

6 the plans. It's his understanding of the plans, how

7 he drew them but, I'll wait a minute, Mr. Chairman --

8 MS. SBARARO: Wait for Mr. Malagiere.

9 MR. DIKTAS: -- until Mr. Malagiere comes

10 out.

11 CHAIRMAN GUERRA: Okay. Rich, we got a

12 question for you.

13 MR. MALAGIERE: Yep. Sorry.

14 CHAIRMAN GUERRA: A question on

15 cross-examination.

16 Do you guys want to --

17 MR. MALAGIERE: I apologize.

18 MR. DIKTAS: Counselor, that's okay. We

19 were waiting for you.

20 MR. MALAGIERE: Thank you.

21 MR. DIKTAS: The, at the last meeting I

22 presented a question to this gentleman, the architect,

23 regarding Section 175-7.1 regarding accessory

24 structure regulations in residential districts,

25 specifically the, the minimum rear and side yards when

14

M. Szerbaty - Cross - Mr. Diktas

1 abutting a street of 5 feet.

2 MR. MALAGIERE: Okay.

3 MR. DIKTAS: I asked him, did he have a

4 chance to review the ordinance. He reviewed the

5 ordinance. His answer was, he was not sure. His

6 question, I asked him, could you please give us his

7 position regarding this ordinance vis-a-vis this plan

8 and the design of this plan since he is the architect

9 and he acknowledged that he reviewed the ordinance

10 extensively so he could prepare the plans.

11 Mr. Bazralian has an objection. It's his turn.

12 MR. BASRALIAN: No. I didn't say I have

13 an objection. I would like to address the issue.

14 MR. MALAGIERE: Just let me -- you can put

15 your objection on the record. I'm just going to
16 caution you, Counselor, not to imply or, or answer the
17 question.

18 I'm just not quite sure what the question is, at
19 this point.

20 MR. BASRALIAN: The question was whether
21 his interpretation of the ordinance.

22 MR. MALAGIERE: Okay.

23 MR. BASRALIAN: My statement, when you --

24 MR. MALAGIERE: Well, the question was
25 specifically what is his interpretation of the

15
M. Szerbaty - Cross - Mr. Diktas

1 ordinance?

2 MR. BASRALIAN: Right. Right.

3 MR. MALAGIERE: Okay. What's the
4 objection to that question?

5 MR. BASRALIAN: Well, my statement, that
6 is before you were called out or while you were called
7 out is that he was neither planner nor an attorney.

8 MR. MALAGIERE: Right.

9 MR. BASRALIAN: And, so, his
10 interpretation doesn't have the validity and weight

11 that the Board would give to it or you or I or a
12 planner and that I want wanted to address that issue
13 because I believe the ordinance, in and of itself, is
14 vague and doesn't answer the question as to --

15 MR. MALAGIERE: Well, you're implying a
16 response.

17 Sir, can you answer the question as posed to
18 you?

19 Are you capable of answering the question?

20 MR. SZERBATY: Yes, I can.

21 MR. MALAGIERE: Answer the question.

22 MR. DIKTAS: Excuse me, Mr. Basralian.

23 A First, could you go back, because the
24 question had many -- you know, seemed like more than
25 one or two issues in it.

16
M. Szerbaty - Cross - Mr. Diktas

1 Q We'll start from the beginning. That's
2 fine.

3 You testified that there are six subterranean
4 decks.

5 Correct?

6 A Correct.

7 Q And, you testified that the decks were
8 built to what dimensions subterranean, subterranean to
9 this property?

10 A Approximately 70 feet to the, to the high
11 point of the grade of the property.

12 Q Now can we go to your, your A-5, please.

13 Now I show you A-5 for the record. And, we have
14 the five subterranean decks, is that correct,
15 including the equipment rooms --

16 A That's correct.

17 Q -- and, the ramp.

18 On A-5, can you please, for the record, tell us,
19 this Board and this audience, what are the side yard
20 measurements to this property, to these five
21 subterranean decks?

22 A Well, you're pointing to a drawing that
23 the side yard is not indicated on.

24 Q Okay. Well then show me one.

25 A This is the front. These are to the

17
M. Szerbaty - Cross - Mr. Diktas

1 street. It's a through lot.

2 Q It's a through lot?

3 A That's a street and that's a street.

4 Q Okay. And, what about the side yards,

5 what are the side yards then on the none, on the other

6 end of this Summit or Prospect?

7 A What is the dimension?

8 Q The underground -- does the parking deck

9 run to the property line?

10 A No, it does not.

11 Q Okay. What is the setback underground?

12 A At a minimum, 5 feet.

13 Q 5 feet?

14 A Um-hum.

15 Q Okay. With that 5 feet, I then direct

16 your attention again to the question, in Section

17 175-7.1 regarding accessory structures having a

18 minimum side yard not abutting a street.

19 Have you read the ordinance?

20 A Yes.

21 Q Last month you testified that you did not

22 know the answer.

23 What is the answer tonight, if you know it?

24 A It's the dimension from the side yards to

25 the underground structure is, at a minimum, 5 feet.

18

M. Szerbaty - Cross - Mr. Diktas

1 Q So your position is that the zoning

2 ordinance calls for 5 feet, 5 foot, excuse me,

3 setback, underground and that's what you meant?

4 A Yes.

5 Q I present a hypothetical to you.

6 If you are incorrect, and you're an expert so I

7 can could that, if you are incorrect and your side

8 yards underground are not 5 feet, what would be the

9 result of shrinking the parking decks to meet the

10 proper side yard requirements of the 15 feet?

11 A I don't know that because our

12 interpretation is that we're meeting the requirements

13 for the zoning to be a minimum of 5 feet.

14 Q That is your position?

15 A Yes.

16 Q What is the elevation height of the roof,

17 sir?

18 A Of the tower of the building?

19 Q Yes, sir.

20 A The elevation height is 276 feet 6 inches

21 above mean, above the sea level.

22 Q And, what is the height of the parapet?

23 A 4 feet.

24 Q Okay. And, the height of the building,

25 above the curb line of Summit, is what?

19

M. Szerbaty - Cross - Mr. Diktas

1 A Summit varies in elevation from the one

2 curb, one corner, that's from 78 feet to 75 feet.

3 So --

4 Q Just give me the median.

5 A The building would be approximately 281.

6 Q 281 feet?

7 A Um-hum.

8 Q And, how many stories is that per your

9 drawing?

10 A 24.

11 Q What is the approximate overall height of

12 the neighboring buildings on the north of Prospect?

13 Do you know that?

14 A Not exactly, no.

15 Q If I told you it was 11 stories or 110

16 feet, for the sake of this question, what would be the

17 difference in height between the proposed building and

18 the building to the north at 110, 110 feet?

19 A 280 less 110.

20 Q Which is, just for the record, sir?

21 A 170 feet.

22 Q So the difference is 170 feet?

23 MR. MALAGIERE: All right. Hold on,

24 please.

25 Mr. Szerbaty is being questioned. You will have

20

M. Szerbaty - Cross - Mr. Diktas

1 your chance to question him.

2 Q Do you know what the overall height of the

3 neighboring building to the south on Prospect Avenue

4 is?

5 A No, not exactly.

6 Q If I told you it was seven stories or

7 approximately 70 feet for the sake of this question --

8 A Um-hum.

9 Q -- could you do the math again, please?

10 A 210.

11 Q Thank you.

12 So based on the hypothetical I presented to you,

13 the building to the north, your building would be

14 almost 2 1/2 times higher.

15 Is that correct?

16 A Approximately, yes.

17 Q What is the approximate height of the

18 ridges of the residences on Summit Avenue?

19 A That, I don't know. But, I think the

20 zoning ordinance is around 30 or 35 feet maximum

21 height.

22 Q 30 feet.

23 So then the hospital building would be seven

24 times higher than the average 35 foot home on Summit

25 Avenue.

21

M. Szerbaty - Cross - Mr. Diktas

1 Is that correct?

2 A Yes.

3 Q In your proposed plans, what is the floor

4 to floor height of each floor?

5 A It is 11 feet 3 inches for the most part.

6 Most of the floors, 80 percent of the floors are 11

7 feet 3 inches floor to floor.

8 Q And, that's different than an average

9 height of a high-rise building.

10 Isn't that correct?

11 A It depends what type of high-rise.

12 Q Would you say about 10 feet for

13 residential?

14 A Yeah, that's common.

15 Q So, based on the differential that you

16 have of 11 feet 3 inches versus 10 feet, your building

17 is approximately 20 percent more in floor space than

18 the, an average building having 10 foot?

19 A Not in floor space, no.

20 MR. DIKTAS: Mr. Basralian, did you pick

21 up my papers on the zoning ordinance?

22 MR. BASRALIAN: I have no idea.

23 MR. MALAGIERE: Come on, Joe.

24 MR. DIKTAS: I'm an old lawyer, too.

25 That's off the record, Donna.

22

M. Szerbaty - Cross - Mr. Diktas

1 Q Are you aware of the zoning requirements

2 pertaining to height ratio in this municipality?

3 A Yes.

4 Q Okay. And, why don't you tell us your

5 understanding of the height ratio in this zone first

6 and then we'll talk about how the height ratio effects

7 your building, the proposed building I should say.

8 Excuse me.

9 A The tower in the R3 zone has a height

10 ratio, as expressed, 4 to 1 which means for every one

11 foot set back from the lot line, from the street,

12 property line, you go up 4 feet.

13 Q Does your building meet that criteria?

14 A Yes, it does.

15 Q So, it's your position that the 4 to 1

16 ratio is not 15 feet times 4 foot so that it's 70, a

17 70 foot total area surround that your footprint has to

18 fall within?

19 A You will have to be much more specific,

20 parking in front yard, side yard.

21 Q I'm talking about all the yards.

22 A Well, you can't --

23 Q It says the 4 to 1 ratio, which means that

24 for so many feet of building height, as specified by

25 the figure higher than a magnitude of 4 on the ratio

23

M. Szerbaty - Cross - Mr. Diktas

1 should me so many feet in front.

2 Do you understand that's from the ordinance?

3 A Yes.

4 Q Okay. So how many feet in front?

5 A From the, from Prospect Avenue where the

6 building starts at 40 feet back from Prospect Avenue.

7 Q 40 feet back?

8 A Right. It starts up vertically from that

9 point.

10 Q Let's talk about the side yards. What are

11 the side yards?

12 A The side yards are 4 to 1 ratio as well.

13 Q And, how many feet is that?

14 A How many feet?

15 Q You set back --

16 A Yes, setbacks.

17 Q Your envelope, does your envelope of the

18 building meet the criteria of the height ratio?

19 A On the side yards, it does not. We're

20 looking -- we're seeking a variance for that.

21 Q Could you build a building to meet the

22 criteria of this height ratio without a variance?

23 Design it -- I take that back. Could you design

24 it that way?

25 A Not the building that we're working with

24

M. Szerbaty - Cross - Mr. Diktas

1 the client to do. We'll get to the program and

2 prescribed --

3 Q So you cannot? Is that correct? You

4 cannot --

5 MR. DIKTAS: It's this gentleman with

6 the --

7 If he could just step back a little bit, sir.

8 MALE SPEAKER: Why?

9 MR. DIKTAS: Because your feed back.

10 MALE SPEAKER: What?

11 MR. DIKTAS: We're getting feedback.

12 Could you read that question back, please.

13 VICE CHAIRMAN DiMINNO: Marcella, maybe

14 that's microphone behind you.

15 MS. SBARARO: If you could close your

16 mike.

17 MALE SPEAKER: Counselor, that's why the

18 system is not --

19 MR. MALAGIERE: We're trying the best we

20 can. We try.

21 CHAIRMAN GUERRA: We're trying to get a
22 read back here on the question, the last question,
23 Counselor.

24 MR. MALAGIERE: The question said, it's
25 not good enough --

25
M. Szerbaty - Cross - Mr. Diktas

1 CONTINUED BY MR. DIKTAS:

2 Q Sir, would you agree with the ordinance
3 that we just read, the building height standard of 1
4 to 4 calls for a side maximum building height of 280
5 feet?

6 A Again, you have to clarify that because
7 you're asking about side yard height ratios and then
8 you're also mixing that in with maximum height of a
9 building. They are two separate and distinct matters.

10 Q I understand that. But, we have a height
11 ratio.

12 Correct?

13 A Yes.

14 Q And, you just testified that your building
15 does not meet the side yard height ratio.

16 Is that correct?

17 A Yes.

18 Q Is that for one side yard or two side

19 yards?

20 A Two side yards, each of the side yards.

21 Q Could we meet the front yards --

22 A Yes.

23 Q -- since we have two front yards?

24 A Two front yards?

25 Q Isn't that a front yard, technically --

26

M. Szerbaty - Cross - Mr. Diktas

1 A Yes.

2 Q -- since we have frontage on both streets?

3 A Yes.

4 Q Do you meet the height ratio on the front

5 yards?

6 A Yes.

7 Q So your building envelope is larger than

8 permitted by the height ratio section of the

9 ordinance.

10 Correct?

11 A On the side yards.

12 Q But, it's larger.

13 Correct?

14 A Yes.

15 Q Can you answer the question then, what

16 would the height be of the building conforming to the

17 height ratio standard of this ordinance, if you know

18 the answer?

19 A The height of the building, if you

20 combined all the ratios established, side yard, front

21 yard and rear, you would have a building that could be

22 200 feet tall.

23 Q And, that's approximately 92 feet smaller

24 than you're presenting this evening.

25 Correct?

27

M. Szerbaty - Cross - Mr. Diktas

1 A 80 feet.

2 Q Approximately 80 feet?

3 A Um-hum.

4 Q This may not be to you. If you know the

5 answer, then I would appreciate the answer.

6 Have you been involved in the shadow study

7 pertaining to this project?

8 A No.

9 Q Okay. So you have done no shadow

10 analysis.

11 Is that correct?

12 A No. From a purely technical analysis, no.

13 Q Have you done any shadow analysis?

14 A Yes, we have.

15 Q Okay. And, your shadow analysis, that

16 you've done, what is the shadow envelope that will be

17 generated by this building?

18 How far of a range do we have, let's say, in the

19 summertime when the sun is at its highest point?

20 MR. MALAGIERE: Could I just interrupt?

21 Could you just give a proffer to the Board on

22 what shadow analysis is?

23 MR. DIKTAS: Sure.

24 A shadow analysis is that we have a proposed

25 building here on, on this exhibit number A-5 and then

28

M. Szerbaty - Cross - Mr. Diktas

1 the architect or the engineer will then do a study of

2 the sun at the four highest points of each season and

3 then they will have, similar to a zoning map, you have

4 a circle around the 200 feet. They would show the

5 extent of the shadow from this structure if it was
6 built at the four highest points of the sun in each
7 respective season.

8 CHAIRMAN GUERRA: The size of the shadow?

9 MR. DIKTAS: And the cover of the shadow.

10 CHAIRMAN GUERRA: With no exhibits to show
11 that, you're saying, no, we don't have it?

12 We don't have that.

13 Right?

14 MR. SZERBATY: No, we have not undertaken
15 a technical study that has all the actual data but we
16 have looked at it in terms of how the sun moves across
17 the building and what its impact has. But, it's
18 nothing, nothing scientific, so-to-speak.

19 CHAIRMAN GUERRA: As an example, how many
20 feet would it throw, maximum, summer?

21 MR. SZERBATY: Well, I think the question
22 is relative to the building to, directly to the north,
23 the apartment building.

24 MR. DIKTAS: It will be to all the
25 buildings, my client's apartment building but we're

1 discussing this entire area.

2 A Well, the building to the north is

3 impacted, the only one that would be impacted.

4 Q The only building that would be impacted

5 at the high points of each of the four seasons?

6 A Yes.

7 Q Okay. And, based on your recollection of

8 your informal study, what would be the impact on the

9 building to the north?

10 How many hours a day will there be shade on the

11 building say in the summertime?

12 A There would be a moving shadow across the

13 building, the south, the south facade and part of the

14 east and west facades of the building to the north

15 from approximately 10:00 a.m. to 2:00 p.m. over the

16 course of the day.

17 Q So there will be no sunlight, direct

18 sunlight. There will be shadow?

19 A Shadow, yes.

20 Q What about any of the, the building to the

21 south, you say there is no-- there is zero impact

22 based on the your, your shadow, informal shadow

23 analysis?

24 A Yeah, but the sun doesn't --

25 Q Well, it goes from the east and sets in

30

M. Szerbaty - Cross - Mr. Diktas

1 the west. But, it's not a true east to west?

2 A That's correct, I understand.

3 Q It's a southwest traveling point of the

4 sun?

5 A Yes. Yes, there's none.

6 Q There's none?

7 A No.

8 Q Does the zoning ordinance require a

9 planted buffer strip on each side of the building?

10 A Yes, it does.

11 Q Do you provide one?

12 A Yes, we do. There are areas that it is

13 not meeting the zoning requirement.

14 Q So you need a variance?

15 A That's correct.

16 Q Do you know why you did not put a buffer

17 when you're building a building 292 feet adjacent to

18 the properties?

19 A Because of the footprint of the building

20 and the related driveways needed, needing access.

21 Q So the footprint is too big to meet the

22 buffer requirements?

23 A No, there's much more to it than, than

24 just the footprint of the building.

25 Q Then please tell us.

31

M. Szerbaty - Cross - Mr. Diktas

1 A The structure of the parking below, how

2 that, how that system works, the module of it, you

3 know, drives where and how the entry ramp can access

4 the parking garage below, off of Prospect, which also

5 has an impact on where the building is on the site,

6 the tower portion of the building on the site, which

7 also has an impact on the service drive to the, to the

8 north.

9 So all of these modules and all of these items

10 added up locked us in within the 100 foot wide site

11 that we have given.

12 Q Another hypothetical.

13 So, if the building was built to the 200 feet

14 permitted, what would the side yards be?

15 A Probably it would be the same.

16 Q The same?

17 A Um-hum.

18 Q Do you also have a planning license?

19 A No, I do not.

20 MR. DIKTAS: I have no further questions.

21 Just for the record, Counselor, the, the -- my client
22 and our experts will stand by our position at the July
23 meeting, which was concurred by your engineer,
24 regarding the zoning ordinance interpretation of
25 Section 17, 175-7.1 regarding accessory structures.

32

1 We're of the opinion that the, this gentleman is
2 incorrect in his analysis, respectfully, that the
3 tying in of the side yards underground would
4 substantially reduce the number of cars by the
5 reduction of the number of vehicles, reduces the
6 overall size of the building and they're all tied
7 together.

8 So, if they met the requirements
9 subterraneously of the parking decks and the
10 engineering rooms and our proffer, our position is
11 that, and we can substantiate that later on with

12 expert testimony, but your own expert opined to that

13 last month, that it is required, those tie-in and

14 correlate directly to parking requirements and height.

15 Thank you.

16 MR. MALAGIERE: Thank you, Counselor.

17 Mr. Basralian.

18 MR. BASRALIAN: I was going to address it

19 earlier on the interpretation which I feel is

20 incorrect but, since our planner will ultimately

21 testify, and I would address those questions to him on

22 the interpretation.

23 MR. DIKTAS: Thank you, Mr. Chairman.

24 MR. BASRALIAN: I find it incorrect

25 because of your ordinance and upon reviewing how vague

33

M. Szerbaty - Redirect - Mr. Basralian

1 it is, the garage is an integrated portion of the

2 building. It is not an accessory building. It

3 doesn't fall within the definition of the section that

4 Mr. Diktas referred to nor does it measure in any

5 other way.

6 In fact, all accessory buildings are measured

7 from the height, if you look at the section to which

8 he referred, the various subsections, it talks about
9 the accessory buildings being three stories high when
10 measured against the principal dwelling.

11 This is an integrated one. But, I will address
12 that question by the planner and Board to render an
13 interpretation.

14 Even if our interpretation is incorrect and Mr.
15 Diktas is correct, then we would ask for that
16 variance. And, we have already noticed for all of the
17 variances that may be necessary.

18 I have three rebuttal, four rebuttal questions
19 or questions on redirect.

20 MR. MALAGIERE: Redirect?

21 MR. BASRALIAN: Redirect. Sure.

22 REDIRECT EXAMINATION BY MR. BASRALIAN:

23 Q Just a clarification since I don't think
24 it came through clearly.

25 Under the ordinance of the City of Hackensack,

34

M. Szerbaty - Redirect - Mr. Basralian

1 how do you measure the height of the building?

2 A It's from the grade elevation within 6

3 feet around the base of the structure. That's your

4 starting point.

5 Q So the height is not measured from the
6 street, the curb line of the street, it's from that
7 area 6 feet around the average area?

8 A Exactly.

9 Q And, that building falls within the
10 permitted height restriction of the City of Hackensack
11 based upon its ordinance and measurements?

12 A It does.

13 Q You also indicated that it's a moving
14 shadow between 10:00, or there's a shadow between
15 10:00 a.m. and 2:00 p.m. of the building, effecting
16 the building to the north.

17 Did you mean it's a moving shadow or it's a
18 constant shadow?

19 A Moving, continuously moving.

20 Q Thank you.

21 You also -- Mr. Diktas asked you about the side
22 yard setback and the, and the landscape buffer.

23 Are you familiar with the building to the north
24 and to the south?

25 A Yes.

1 Q Are there landscape buffers on those
2 properties separating the property lines?

3 A No.

4 Q Are they paved right to the property line?

5 A Yes, they are.

6 MR. BASRALIAN: Thank you.

7 I have no further questions of this witness at
8 this time.

9 Thank you.

10 MR. MALAGIERE: Redirect, Mr. Diktas?

11 MR. DIKTAS: No, sir. Thank you.

12 MR. MALAGIERE: Mr. Chairman, if I may, we
13 carried this witness from the July meeting after his
14 direct testimony.

15 Mr. Diktas graciously waited to cross-examine
16 after the public had a chance to ask questions of this
17 witness and cross-examine this witness.

18 So I would offer that this witness be deemed
19 complete and not be made available to the public any
20 further.

21 CHAIRMAN GUERRA: We've already done that.

22 MR. MALAGIERE: And that we move on to the

23 next witness.

24 Now I heard someone had an issue with that.

25 Counsel, did you want to make a statement on

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T. Moskowitz -

1 that?

2 MR. MOSKOWITZ: Yes.

3 MR. MALAGIERE: Please. I'm recognizing

4 an attorney who I've dealt and he'll make his

5 appearance.

6 I understand he's not here representing any

7 clients. But, I do offer, Mr. Chairman, that you hear

8 his comments and objections as he is an attorney in

9 the State of New Jersey.

10 Sir.

11 MR. MOSKOWITZ: Thank you, Counselor

12 Malagiere.

13 My name is Theodore Moskowitz. I am an attorney

14 at law of the State of New Jersey. I am representing

15 my wife and myself. We live at 307, who live and own

16 a condo unit at 307 Prospect.

17 We own a condo unit at 307 Prospect Avenue.

18 MR. MALAGIERE: Thanks.

19 MR. MOSKOWITZ: And, I think that it only
20 fair to ask some additional questions that are based
21 upon some of the testimony that this witness has
22 given. I will, of course, be brief but I have some
23 limited questions.

24 I think a matter such as of this importance
25 requires the fullest type of hearing which Chairman

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T. Moskowitz -

1 Guerra and the, and the Zoning Board of Adjustment
2 have been giving us but there were some comments that
3 were made by Mr. Szerbaty that, I think, require some
4 rebuttal.

5 You can't keep popping up and down and trying to
6 be a, too hard, too much time but certainly this is an
7 important enough matter to ask some questions of a
8 pretty limited nature that could be important.

9 MR. MALAGIERE: Mr. Chairman, I would have
10 to agree with Counsel, that to the extent he can limit
11 his questions and comments to the testimony elicited
12 on cross and redirect, at this hearing, that I think
13 that that's, that's an appropriate area.

14 And, since Mr. Moskowitz is an attorney, I would

15 suggest and offer that he not be limited to three

16 minutes.

17 Mr. Basralian, do you want to be heard on this?

18 MR. BASRALIAN: A couple things, Mr.

19 Moskowitz.

20 Did you previously question Mr. Szerbaty?

21 MR. MOSKOWITZ: No.

22 MR. MALAGIERE: He didn't.

23 MR. BASRALIAN: You keep utilizing your

24 position as an attorney.

25 Are you representing yourself as an individual

38

M. Szerbaty - Cross - Mr. Moskowitz

1 or yourself or your wife as an attorney?

2 Just to be clear for the record, it's you and

3 your wife you're representing as, as individuals

4 rather than an attorney at law.

5 Correct?

6 MR. MOSKOWITZ: Well, I could hardly not

7 be an attorney at law when I, I am an attorney at law.

8 I think it only fair and proper that you know,

9 that the Board knows, that your witness knows that I

10 am an attorney and I am representing myself and my