

1 PLANNING BOARD
 2 BOROUGH OF MONTVALE
 3 COUNTY OF BERGEN
 4 BLOCK 3201, LOT 4 :
 5 RIDGECREST REALTY ASSOCIATES, INC.:
 6 21 PHILIPS PARKWAY :
 7 Application for Conditional Use :
 8 And Variance Approval, Major Soil :
 9 Moving Permit Approval, Bulk :
 10 Variance Approval, EIS Approval :
 11 And Site Plan Waiver :
 12 -----X
 13 Tuesday, January 15, 2019
 14 Council Chambers
 15 12 Mercedes Drive
 16 Montvale, New Jersey
 17 Commencing 8:12 p.m.
 18 B E F O R E:
 19 JOHN DePINTO, CHAIRMAN
 20 FRANK STEFANELLI, VICE CHAIRMAN
 21 ROSE CURRY, COUNCIL PRESIDENT, absent
 22 JIMMY D'AGOSTINO, absent
 23 JOHN CULHANE
 24 WILLIAM LINTNER
 25 MAGGIE O'NEILL
 26 ROBERT ZITELLI
 27 ROBERT REGAN, BOARD ATTORNEY
 28 ANDREW HIPOLIT, BOROUGH ENGINEER
 29 LORRAINE HUTTER, BOARD SECRETARY
 30 JEFFREY FETTE, CONSTRUCTION CODE OFFICIAL
 31 DARLENE GREEN, PLANNER
 32 CHRIS GRUBER, BLDG. INSPECTOR/SUBCODE OFFICIAL
 33
 34 A P P E A R A N C E S:
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1 W I T N E S S E S

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1 CHAIRMAN DePINTO: Block 3201, Lot 4,
2 Ridgecrest Realty Associates, Inc., 21 Philips
3 Parkway, application for conditional use and variance
4 approval, application for major soil movement permit,
5 bulk variances approval and Environmental Impact
6 Statement approval.

7 With that said, good evening.

8 Okay. Mr. Del Vecchio, whenever you're ready.

9 MR. DEL VECCHIO: Thank you, Mr. Chairman.

10 Andy Del Vecchio, member of the firm, on behalf
11 of Beattie Padovano on behalf of the applicant
12 Ridgecrest Real Estate, LLC. We are here on continued
13 public hearings from, I believe, November 20th is when
14 we last appeared.

15 I do have supplemental submittals that have been
16 transmitted to the Board in advance of the hearing
17 that I would propose, with the Board's permission, to
18 mark as follows. And I believe we pick up with A-17.

19 A-17 is the form of ambulance agreement with On
20 Time Ambulance dated January 10, 2019.

21 A-18 is proposed to be the updated Minno & Wasko
22 architectural plans consisting of 9 sheets last
23 revised January 2, 2019.

24 And A-19 is the L2A site plan sheet labeled CO-4
25 bearing a last revision date of January 3, 2019.

1 So with that said, Mr. Chairman, with the
2 Board's permission, I would like to recall Bruce
3 Englebaugh.

4 CHAIRMAN DePINTO: Before we do that, Mr.
5 Del Vecchio.

6 Mr. Regan, I believe we have a few Borough
7 exhibits which I want to --

8 MR. REGAN: Mr. Chairman, my notes reflect
9 that we have not marked any Borough exhibits yet.

10 CHAIRMAN DePINTO: How about holding them?

11 MR. REGAN: Right now we have no Borough
12 exhibits.

13 CHAIRMAN DePINTO: So, therefore, Mr. Del
14 Vecchio, have your witness refrain from referencing
15 any of the technical review letters until such time as
16 we mark them into evidence.

17 MR. DEL VECCHIO: Mr. Chairman, the direct
18 testimony, while not -- I'm going to follow the normal
19 procedure, while not intended to touch upon some of
20 the issues that were commented on by the very nature
21 of the direct testimony, his testimony may cover them.

22 If the Board wishes to mark them, I have no
23 objection to marking them.

24 CHAIRMAN DePINTO: Then let's mark them
25 into evidence at the request of the applicant.

1 MR. REGAN: They will be Board exhibits.

2 CHAIRMAN DePINTO: Please.

3 MR. REGAN: I suggest that Board Exhibit 1
4 be the report of Mr. Hipolit dated January 11th.

5 B-2 would be the report of Ms. Green also dated
6 January 11th.

7 I have two reports, the Police and Fire.

8 Do you want to have them marked?

9 CHAIRMAN DePINTO: The first question is
10 of Ms. Green, Mr. Hipolit, in your review letters of
11 January 11th, did they incorporate the comments made
12 on --

13 Andy, in your case this is your technical review
14 letter No. 4.

15 Is it inclusive of your reviews that were shown
16 in Report 1, 2 and 3?

17 MR. HIPOLIT: Yes.

18 CHAIRMAN DePINTO: Bob, is it necessary --

19 MR. REGAN: I think we should just mark
20 the them.

21 CHAIRMAN DePINTO: The same question of
22 Ms. Green.

23 Ms. Green, your review letter No. 3, is that
24 inclusive of your technical review comments as set
25 forth in Review 1 and 2?

1 MS. GREEN: Yes, it is.

2 CHAIRMAN DePINTO: Okay. Mr. DeBlasio, I
3 believe he had two review letters.

4 Mr. Hipolit, do you have copies of Mr.
5 DeBlasio's review letters?

6 MR. HIPOLIT: I have his October 16th one.

7 MR. DEL VECCHIO: There's one dated
8 November 16th that I'm aware of. I'm not sure if it's
9 also October 16th by coincidence.

10 MR. HIPOLIT: No, I don't think so. No.
11 I have, I never had a copy of it.

12 MR. REGAN: Dated November 16th?

13 MR. ZITELLI: It is. Here's one dated --

14 MR. DEL VECCHIO: Actually, Mr. Hipolit,
15 is -- there are two landscape review letters, Mr.
16 Chairman. You are correct. By coincidence they are
17 dated October and November 16th respectively.

18 MR. HIPOLIT: Correct.

19 MR. DEL VECCHIO: I believe both of them,
20 though, are superseded by the subsequent filing of the
21 applicant of the revised plans.

22 CHAIRMAN DePINTO: Well, let's mark, let's
23 mark both the DeBlasio review letters. So one is
24 October 16 and the other one is --

25 MR. REGAN: November 16th.

1 CHAIRMAN DePINTO: November 16th.

2 MR. REGAN: That will be 3 and 4.

3 CHAIRMAN DePINTO: Of the Board exhibits.

4 MR. REGAN: Two reports on the table from
5 the Police Department.

6 CHAIRMAN DePINTO: Mr. Del Vecchio, do you
7 have copies of the police reports.

8 MR. DEL VECCHIO: I am checking my report
9 stack right now.

10 MR. REGAN: One is October 15th and the
11 other is January 4th.

12 MR. DEL VECCHIO: I do not have the
13 January one, that I'm positive of.

14 MS. HUTTER: I will make you a copy.

15 MR. HIPOLIT: Lorraine, I have a copy.
16 Hold on.

17 MR. REGAN: While they're doing that --

18 MR. HIPOLIT: January 14th letter from the
19 police, Lorraine?

20 MS. HUTTER: Yeah.

21 MR. REGAN: B-5 would be the October 15th
22 letter and B-6 January 4th.

23 CHAIRMAN DePINTO: Do we have a fire
24 report?

25 Mr. Del Vecchio, do you have a copy of the fire

1 report?

2 MR. DEL VECCHIO: I do not. July 3rd.

3 MR. REGAN: I make that B-7.

4 MR. HIPOLIT: July 3rd, 2018.

5 CHAIRMAN DePINTO: If there are no other
6 Board exhibits at this time. Okay. With that said,
7 Mr. Del Vecchio, please continue.

8 MR. DEL VECCHIO: We have recalled Mr.
9 Bruce Englebaugh who was previously sworn, qualified
10 and I remind him remains under oath.

11 Bruce is qualified in the field of architecture,
12 as an expert in the field of architecture and Bruce
13 was required and requested to come back as we have
14 updated the plans.

15 DIRECT EXAMINATION BY MR. DEL VECCHIO:

16 Q Bruce, let's just start with the obvious
17 which is the revised plans dated 8/18 which we marked
18 this evening as the updated architectural drawings.

19 They were prepared by you or under your
20 supervision?

21 A That is correct. Yes.

22 Q Can you provide the Board with an update
23 or review of what the changes are in this addition of
24 the drawings and what you did in these drawings?

25 A Sure. I think what I will do is I'll just

1 go through the plans.

2 Just looking at the cover sheet here basically
3 what we did is we modified some of the building plans
4 and elevations to amend these three last sheets which
5 is -- we added typical unit plans and then the trellis
6 detail. Actually, you saw that before but there is
7 some clarifications on that.

8 I'll start and run through the plans now.

9 Okay. We're looking at Sheet A1 which is the
10 basement floor plan and ground floor plan dated
11 January 2nd, 2019.

12 There were just some minor changes here in the
13 floor plan, in the admin area and we changed the mix.
14 I don't think there are any objections to any of that
15 from any of the review letters so the map, nothing
16 really changed on this sheet.

17 Q Bruce, is this the floor that had the size
18 of the lounge questioned for the staff that would make
19 some changes and improvements to?

20 A We didn't make any changes to that. The
21 question was this private dining room which is -- you
22 can see it right here, private dining room. I think
23 there was a concern about a lot of people going to
24 that space.

25 Basically it's just a big dining room about 170,

1 180 square feet so maybe 10 by 17. And it's meant for
2 families like if one of the residents has a birthday
3 maybe six, eight family members joining in.

4 It's not a big room at all. It's like a big
5 dining room. That's all it is.

6 I think there was a concern maybe with the cars
7 outside and parking but it's not a big event space at
8 all.

9 Q Yeah. That's the private dining.

10 And I think on the other side there was a staff
11 lounge and dining area which has been enlarged now
12 behind the administrative suite.

13 A Yeah. Over on this side, where I'm
14 pointing, there was a triangular shaped staff lounge.
15 It was a bit awkwardly shaped so we reshaped that
16 space.

17 Q Thank you.

18 One second before you change that sheet because
19 I know it's going to come up in an item we'll have to
20 address later on in the review letter.

21 The dimensions of the face of the sign, the
22 free-standing sign that's shown in the upper right
23 hand corner, the actual sign face itself, including
24 the trim work around the, I'll call it the rectangle.
25 It's not quite a rectangle that forms the sign, you

1 have it labeled as a dimension of 7 foot 4 inches by 4
2 foot 4 inches?

3 A Correct.

4 Q And that tallies to a square footage of
5 less than 32 square feet?

6 A Correct.

7 Q All right. You can proceed, if you can.

8 A Okay. The next exhibit we're looking at
9 is Sheet A2 dated January 2nd, 2019.

10 On the right-hand side you'll see the second
11 floor plan, on the left hand side you'll see the third
12 floor plan.

13 There were very few changes here. I think one
14 of the comments was we wanted to make the elevation,
15 the architectural elevations, the side elevations that
16 face Bears Nest a little bit nicer so we added some
17 gables here. You can see where those projections are.

18 When we get to the elevation sheets you'll see
19 the dormers.

20 There's projections, two of them here and two of
21 them over here. So the back side of the building
22 became more interesting.

23 We did shuffle some of the units around. That
24 was all in that unit mix chart.

25 I don't think there are any objections to that.

1 Q And, Bruce, just again, before you shift
2 off, we have designated with the striping or the
3 crosshatching on this floor plan which of the units
4 are dedicated to memory care.

5 A That is correct.

6 From this red line that I'll draw here to the
7 left of that is all memory care.

8 Q Okay. Please proceed.

9 A Just to review, there were 24 memory care
10 units.

11 The next sheet we're looking at is Sheet A3
12 dated January 2nd, 2019. This is basically the front
13 elevation looking here and the side elevation looking
14 towards, looks out towards Philips Parkway. There
15 were no real substantial changes on this.

16 You see up in the upper left corner there's a
17 tiny gable out here and those are the gables that are
18 on the rear facing elevations that we'll see on the
19 next exhibit.

20 For the most part, this didn't change.

21 Next drawing Sheet A4, again dated January 2nd,
22 2019.

23 If you look over in the right side here you'll
24 see a key plan that shows where the elevations are.

25 So the top one here is in the back looking at

1 say a 45 degree angle in the back of the building.
2 And you can see it's very subtle here but they are
3 highlighted in red. Those are the two gables on this
4 side and then over on the left side you can see two
5 more gables.

6 Now if you want to see a direct view of that
7 look at the Elevation NO. 3 directly below it. If you
8 look over to the key plan on the right-hand side
9 you'll see that you're looking at it this way. And
10 this is the way those two gables would look as you see
11 them straight on.

12 Q Bruce, before we come off this sheet, if
13 you can, at this point with the changes that you have
14 made to the, to these elevations, are they consistent
15 and essentially of the same level of detail as the
16 other sides of the building that you designed?

17 A Yes. I believe so.

18 And one thing to keep in mind, I was referring
19 to them as gables but they're more than gables,
20 they're actually projections, actually project out to
21 the facade of the building so there will be a nice
22 shadow that is produced from the facade as well and
23 that happens on each one of those.

24 The next exhibit is Sheet A5, again dated
25 January 2nd, 2019.

1 If you look up in the upper right you'll see the
2 key plan which shows where those elevations are taken.
3 Elevation 6 which -- I'm sorry. I need my glasses.

4 Elevation 5, I'm sorry, is the top one and this
5 is what faces the Empire Corporate Center. If you
6 look down at the lower one, No. 5, this is what faces
7 Bears Nest.

8 And, again, you'll see the two gables and I
9 guess I'll call them facade projections, that really
10 break up that elevation quite nicely, makes it look
11 very attractive.

12 Q Bruce, before you again flip off this
13 page, in the lower corner of the elevation, seems to
14 be a partial view of the covered patio area that forms
15 the corner.

16 Again, can you remind us what features are
17 located or proposed to be located in that area?

18 A That would be, like on nice days, you
19 could actually go out and have like a dining area
20 there.

21 Q Are there any permanent booking facilities
22 like grills or anything proposed out there in the
23 yard?

24 A I think we had discussed a grill there but
25 I'm not so sure. I have to look back in my notes on

1 that.

2 Does any team member know the answer to that?

3 No.

4 Q I don't believe we proposed anything out
5 there is my recollection.

6 A Okay. No grill is out there.

7 Q That's essentially a covered area to
8 provide a gathering place with some shelter from the
9 weather or the elements --

10 A Yeah.

11 Q -- for the residents is of limited size?

12 A Yes. It's -- I don't know the size of it
13 off the top of my head but it is limited.

14 Q Okay. Please proceed.

15 A The next exhibit we're looking at is Sheet
16 A6 dated January 2nd, 2019.

17 There's two drawings. Here, on the right-hand
18 side, is the roof plan, on the left side is a building
19 section.

20 If we look over on the roof plan on the right
21 side all we added here were two roof hatches, one on
22 each end of the building. These would be in the
23 stairwells so you come up to the top of the stair, on
24 the top floor, there would be a ladder on the wall,
25 take you up to a roof hatch.

1 I'm sure you have seen these in hotels before.

2 The left-hand side of the building section, we
3 didn't make any changes to that.

4 The only thing I would clarify, again, is the 43
5 feet 1 inch is not a building height. It just is a
6 dimension that we show from the ground floor to the
7 midpoint of the roof, that the civil engineer uses to
8 establish the building height.

9 The next exhibit Sheet A7. There were no
10 changes on this exhibit.

11 I did see one question on the review letters.
12 And that was questioning the, the surface that is
13 underneath this pergola, whether it is pervious. Yes,
14 it is pervious. There is no brick or concrete walkway
15 area under there.

16 Must have moved the video.

17 MR. HIPOLIT: You moved the camera.

18 MS. O'NEILL: They're in the background.

19 Proceed. Go ahead.

20 THE WITNESS: Will it catch up here?

21 MS. HUTTER: It should. This is new.

22 MR. DEL VECCHIO: I think you're back,
23 back on.

24 A Okay. Not the best focus but...

25 This next exhibit we're looking at is Sheet A8

1 and it is dated actually January 15th, 2019. And it
2 shows four unit plans.

3 Starting in the upper left hand corner, this
4 would be a one bedroom assisted living unit. And it
5 would be an interior corner on the second floor in the
6 back of the building.

7 CHAIRMAN DePINTO: I'm sorry. The plan
8 you identified as A8 --

9 THE WITNESS: Yes.

10 CHAIRMAN DePINTO: -- does not match the
11 plan stapled in your drawings as A8.

12 THE WITNESS: Yeah. And, I think that's
13 why the date on this is January 15th.

14 CHAIRMAN DePINTO: This is January 2 last
15 revised.

16 MR. DEL VECCHIO: Do you have the January
17 2 sheet we can work with?

18 MR. REGAN: The January 2nd, 2018 may be a
19 mistake.

20 THE WITNESS: I don't have that one.

21 MR. DEL VECCHIO: I do. This is the A8
22 set with a January 2, 2019 revision date.

23 A Okay. So in the upper left hand corner we
24 see a two-bedroom assisted living unit. Moving down
25 we have a two-bedroom memory care assisted living

1 unit. Moving to the right across the bottom we have a
2 one-bedroom memory car unit.

3 And then moving up on the upper right hand
4 corner we have a one-bedroom assisted living unit.

5 Q And these are typical units representative
6 of what's depicted on the overall floor plans on the
7 preceding sheets that you have gone through.

8 Correct?

9 A Correct. Yeah.

10 Q There are, obviously, some floor plate
11 dimensions shown in the earlier sheets that have
12 slightly odd configurations just because of the way
13 the building undulates with its exterior which will be
14 accommodated in the typical floor plate on a
15 case-by-case basis in the floor plan?

16 A That's correct.

17 Q And essentially they will have all of the
18 same ingredients of a typical floor plate that you
19 have gone through?

20 A Yes, they will.

21 Q Okay. Now there are some terraces
22 depicted on the elevation on the southwest?

23 A The facade elevations?

24 Q Yes.

25 I believe depicted on the engineering drawings

1 but also depicted on your elevation drawings.

2 A Are you talking about the terraces in the
3 rear or the front?

4 Q In the south, southwest, I believe,
5 corner, both entrance and along the rear, southwest of
6 the building. I think it's that large terrace area
7 that you were talking about in the back.

8 A Right here.

9 Q The terrace area. Those are one-story
10 amenities.

11 Is that correct?

12 A That is correct.

13 Q On the second and third floor there's no
14 floor area above that covered area?

15 A Well, there is.

16 If you look close, closest to what I'll call the
17 center line, runs at a 45 degree angle, the two spaces
18 that are closest to that are covered terraces and
19 there is floor area above that. But as you move
20 farther out to the outside corners, those two terraces
21 do not have cover --

22 CHAIRMAN DePINTO: I'm sorry. Moved to
23 the outside corners, those two units. I missed that.

24 THE WITNESS: These two terraces right
25 here, they do not have space built over the top of

1 to start with Ms. Green.

2 Ms. Green, you heard the testimony of the
3 architect this evening. You have done your technical
4 reviews.

5 Are there any questions that you have of this
6 witness or are there any unanswered questions relative
7 to architecture included in your technical review?

8 And just reference the date of your review.

9 MS. GREEN: Yes. My review letter is
10 dated January 11, 2019.

11 CHAIRMAN DePINTO: Which we have marked
12 into evidence?

13 MS. GREEN: As B-2.

14 MR. REGAN: B-2.

15 CHAIRMAN DePINTO: Okay. Please continue.

16 MS. GREEN: Yes. So my comments begin on
17 Page 7. The architect has answered Item No. 4. So
18 now we understand why there's a discrepancy between
19 the height indicated on the architectural plans versus
20 the site plans.

21 I will stick to architecture here.

22 Comment No. 15 on Page 9, my version of A-6 does
23 not show the roof hatches that were shown on the
24 board. So I'm unsure if that was a January 15th
25 revision that wasn't in our packet.

1 THE WITNESS: That's what I'm thinking.
2 It's dated January 2nd but, yeah.

3 So if you would like us to resubmit that we can
4 certainly do that.

5 MR. DEL VECCHIO: Yes. We'll actually
6 absolutely resubmit.

7 MS. GREEN: That answers my questions.
8 They show two hatches so that actually does answer
9 Item No. 15.

10 Their Sheet 8 partially answers Item No. 16
11 about the unit layouts. They have also added the very
12 facade on the rear that the Board asked them to do at
13 the last hearing.

14 But if we move forward to Page 11, Item No. 34
15 on affordable housing, one thing we asked for in all
16 three of our review letters is where are the
17 affordable units. And this has been a question that
18 we've asked every applicant that proposed affordable
19 housing in front of us because as we learn, as we go
20 through this process, especially after approval, some
21 applicants like to move the units or don't want to
22 comply with bedroom distribution.

23 And there are very specific rules under the
24 Mount Laurel doctrine and the COAH Rules about,
25 specifically for assisted living units and so I guess

1 what I'm wondering is where are the affordable housing
2 units and are any of those units two bedroom units.

3 MR. DEL VECCHIO: Why don't you go ahead
4 and then I'll add the legal twist.

5 THE WITNESS: Okay. To the best of my
6 knowledge the affordable units float. There are two
7 bedroom affordables.

8 MS. GREEN: What do you mean by float?

9 THE WITNESS: They can occur anywhere in
10 the building.

11 MS. GREEN: So they move depending on the
12 month?

13 MR. DEL VECCHIO: The proposal is -- it's
14 very difficult, even by deed restriction, because a
15 unit doesn't have, in assisted living arrangements a
16 unit doesn't have a meets and bounds description
17 associated with it that you can then slap a deed to
18 it.

19 What we're envisioning, and we're open to
20 suggestions if the Board or community wants to handle
21 it differently, is a blanket deed restriction on the
22 property that says at all times it needs to have X.,
23 Y. and Z. and X., Y. and Z. will be not only the split
24 between low and mod but also include the necessary
25 bedroom distribution in order to be UF qualified which

1 we understand we are fully prepared to qualify and to
2 comply with.

3 The other problem is, is you may have Unit 1, 2
4 and 3 which are dedicated affordable units that are
5 occupied by affordable folks and be at your maximum
6 limit and still have Unit 4 because we took somebody
7 in and put them in an affordable unit who qualified
8 but then we're over the maximum.

9 So we believe the best way to handle it is a
10 blanket deed restriction on the property to agree to
11 what we have said we would do and what the community
12 expects you to do so it's enforceable.

13 MR. REGAN: Isn't that complicated with
14 the Borough?

15 How do you assure compliance if these are going
16 to be floating units. Typically we have a unit number
17 that's designated an affordable unit.

18 MR. DEL VECCHIO: It's simple. We can
19 file a monthly report, quarterly report and say Unit
20 1, 2 and 3 are affordables and --

21 MR. REGAN: Do you know how problematical
22 that's going to be for the Borough in terms of who is
23 going to enforce it?

24 MR. DEL VECCHIO: The affordable housing
25 administrator whose job it is to monitor the units.

1 If you would like to handle it a different way
2 we're happy to do it. We're trying to be efficient.

3 MR. REGAN: The most efficient, from our
4 standpoint is a unit number. It's not that
5 complicated.

6 MS. GREEN: And that is how we did it with
7 our other applications. And I can tell you in one of
8 my other towns where we just approved an assisted
9 living facility we actually -- they didn't have unit
10 numbers when they filed their deed restriction so we
11 just asked them to mark the floor plan because they
12 just haven't figured out what the building number --

13 CHAIRMAN DePINTO: Mr. Del Vecchio.

14 MR. DEL VECCHIO: We're happy to comply.

15 CHAIRMAN DePINTO: We'll have to discuss
16 that.

17 MS. GREEN: Okay.

18 MR. REGAN: I think that should be
19 addressed, Mr. Chairman, as a condition of the
20 approval.

21 CHAIRMAN DePINTO: All right. Let's make
22 a note on that. We're going to have to revisit that
23 because I think that is a critical item and a question
24 of enforcement is what I'm concerned about.

25 Ms. Green, do you have any other comments

1 relative to the architecture?

2 MS. GREEN: No, I do not, Mr. Chairman.

3 CHAIRMAN DePINTO: Okay. Thank you.

4 Ms. O'Neill. I'm sorry. Questions of either
5 the witness or Ms. Green.

6 MS. O'NEILL: Sure. The witness.

7 On your roof mechanicals, has it changed -- A-6,
8 has this layout changed since the last time you
9 presented this?

10 I remember the last time we had this cut out in
11 the center to accommodate mechanicals. Has this
12 changed?

13 THE WITNESS: No.

14 MS. O'NEILL: On the elevations last time
15 we were concerned that you could see the space that
16 was cut out on the elevations and now you can't?

17 THE WITNESS: You can't.

18 MS. O'NEILL: So how has that changed that
19 if this plan hasn't changed, how have the elevations
20 changed to not be able to see it?

21 THE WITNESS: I think you may be getting
22 one of the earlier --

23 MS. O'NEILL: No. I'm thinking of the
24 earlier presentation to the Board where the roof plan
25 was presented as it is now and on those elevations you

1 could see the space in between and now you can't. So
2 I'm wondering if the elevations have changed, if that
3 plan has changed.

4 I have no problem with the way it's designed.
5 I'm just concerned -- I want to make sure it's
6 represented correctly.

7 THE WITNESS: I, I believe we may be
8 getting one of the presentations confused.

9 Earlier on this roof line in the back was lower
10 and you could see it. One of the comments was we
11 don't want to see that.

12 MS. O'NEILL: I said it.

13 THE WITNESS: I don't know who said it.

14 MS. O'NEILL: That's why I bring it up.

15 THE WITNESS: One of the comments was we
16 don't want to see the mechanical equipment and we just
17 raised this up and after we raised this up and this
18 was coordinated with that there were no changes.

19 MS. O'NEILL: So this has changed?

20 THE WITNESS: Not since the last hearing.
21 This is what was presented at the last hearing. The
22 hearing before you could see it.

23 MS. O'NEILL: Okay. As long as you could
24 not see it.

25 THE WITNESS: You cannot see it now. The

1 whole way around, the whole way around this perimeter
2 the mechanical units will sit, well, like that. And,
3 again, those mechanical units are for the common
4 spaces only.

5 The individual dwelling units would be handled
6 within each dwelling unit.

7 MS. O'NEILL: I have no further questions.

8 CHAIRMAN DePINTO: Mr. Lintner.

9 MR. LINTNER: I have no questions of the
10 architect.

11 CHAIRMAN DePINTO: Thank you.

12 Mr. Zitelli, of either the architect or Ms.
13 Green.

14 MR. ZITELLI: Question. Just the total
15 number of units is 75.

16 Is that correct?

17 THE WITNESS: That is correct.

18 MR. ZITELLI: 26 you said were -- how many
19 were for memory care?

20 THE WITNESS: There are 24 memory care and
21 51 assisted living. And 98 beds.

22 MR. ZITELLI: So the total number of
23 residents then would be potentially 98?

24 THE WITNESS: Correct.

25 MR. ZITELLI: Okay. Thank you.

1 CHAIRMAN DePINTO: Thank you.

2 Mr. Culhane.

3 MR. CULHANE: No comments, Mr. Chairman.

4 CHAIRMAN DePINTO: Thank you.

5 Mr. Fette.

6 MR. FETTE: Two comments while we're on
7 the subject of A-6 that you have up there, I think
8 what you did was screen the mechanicals is, is a good
9 design, especially taking into consideration the view
10 from the back of the building. Okay.

11 From a building construction point of view,
12 that's going to accumulate a lot of snow. Okay. And
13 I can see a situation similar to a large facade on the
14 front of a shopping center where they, they have a
15 pile up of snow because of drafting and drifting
16 conditions that create an extra heavy snow load
17 concentrated on the roof system. So certainly it's
18 something, should the plan be approved, we would
19 address it at the construction review level.

20 But my question is, what considerations have you
21 done preliminarily to address the heavy, wet snow
22 load?

23 THE WITNESS: Preliminarily, nothing more
24 than you see right now.

25 MR. FETTE: Okay.

1 THE WITNESS: I can tell you, because of
2 this concern about seeing mechanical equipment, we do
3 this very, very, very often.

4 MR. FETTE: Okay.

5 THE WITNESS: And we have to size the
6 trusses accordingly.

7 I totally concur with what you're saying. We do
8 have to size the trusses for the snow loads, the
9 interior roof drains clog up and we need a way to get
10 that water out there.

11 MR. FETTE: Okay. And my second question,
12 this goes back to last November's meeting which I did
13 not attend but I read the transcript and you were
14 talking about the, the entryway in the front, the
15 height of that being 11 feet 9 inches.

16 THE WITNESS: I think the civil engineer
17 testified to that.

18 Did I say that?

19 MR. FETTE: No, you're Bruce Englebaugh.

20 Right?

21 THE WITNESS: That's me.

22 MR. FETTE: It's you. I got it right
23 here.

24 THE WITNESS: I believe you.

25 MR. FETTE: And you talked about 11 feet 9

1 inches and Andy Hipolit made a couple comments later
2 on about signage.

3 THE WITNESS: Adding a clearance sign.

4 MR. FETTE: Clearance signage to that.

5 And my question is, I think 9 feet 11 would
6 accommodate an ambulance but any larger fire truck,
7 okay, that needs to get under there I think there's
8 going to be a problem.

9 Now generally in a fire response they stay, they
10 stay the height of the building away in case a wall
11 collapses, it doesn't fall on a piece of fire
12 apparatus. But if it's not a working fire where they
13 have to stay away from the building and someone is in
14 a larger, a larger truck than an ambulance, do we have
15 a situation where someone comes in there in an
16 emergency situation and takes down the canopy.

17 And how much higher do we have to make that
18 canopy to avoid that situation.

19 And that's my question.

20 MR. DEL VECCHIO: Just before the witness
21 answers, I just want to make sure the record is clear
22 the clearance is 11 feet 9. I think in the elongated
23 part of your sentence or your question you switched it
24 to 9 feet 11.

25 MR. FETTE: 11 feet 9. I stand corrected.

1 MR. HIPOLIT: Jeffrey, to have full
2 clearance it's got to be 16 feet so all vehicles can
3 clear 16 feet.

4 Anything below 16 on a roadway requires under
5 height signs. So right at the lowest point you have
6 to put a sign of what the actual height is.

7 MR. FETTE: Okay. All right. No further
8 comments, Mr. Chairman.

9 CHAIRMAN DePINTO: Thank you. Mr.
10 Stefanelli.

11 MR. STEFANELLI: No questions.

12 CHAIRMAN DePINTO: Thank you.
13 Mr. Hipolit.

14 MR. HIPOLIT: I just want, and I don't
15 know if the architect is the right person. I just
16 want to jump in a little bit on this terrace.

17 So on Sheet A1 and Sheet A2 in the rear of the
18 building we still have the ground floor terrace and
19 the covered terrace on both sides, kind of that
20 pinnacle corner where both pieces meet; and, on the
21 second floor, we have what you call Terrace D and E.

22 And, again, we're concerned about what's, what
23 are you going to do there, what's it programmed for,
24 why.

25 If you're marking it as a terrace you're going

1 to use it so what are we using it for and how is that
2 noise and use effecting the number of people out
3 there?

4 You designed this. What did you design it for?

5 THE WITNESS: Well, I'm not sure I'm the
6 best witness to answer that. Operations would
7 probably be better.

8 But I could tell you on the ground floor the
9 terrace, it's overflow areas for the dining.

10 Up top, on the second floor plan, we had a
11 multipurpose room and, occasionally, the way I
12 understand it, they would, they would have scheduled
13 events out there on days that were nice enough to use
14 the outside terrace.

15 MR. HIPOLIT: So am I correct in saying
16 that the downstairs is an extension of your dining
17 room in good weather.

18 THE WITNESS: That is correct. Yes.

19 MR. HIPOLIT: And I guess on Sheet A2 the
20 upstairs front which we'll call Terraces A., B. and C.
21 is for scheduled outdoor events in front of the
22 building.

23 What is Terraces D. and E. for upstairs?

24 THE WITNESS: So these occur over top of
25 spaces so it could either be roof. We decided to make

1 it a terrace that could be useable off of the units if
2 so desired.

3 MR. DEL VECCHIO: The applicant would
4 stipulate that Terraces D. and E. are not intended to
5 be used. They're decorative.

6 MR. HIPOLIT: So, decorative.

7 THE WITNESS: We can put a roof and
8 railing on it to make it effective.

9 CHAIRMAN DePINTO: Mr. Hipolit, do you
10 have any other questions?

11 MR. HIPOLIT: Not for the architect.

12 CHAIRMAN DePINTO: Okay. Just let's go
13 back to those terraces again.

14 So you're saying that you'll stipulate that
15 those two terraces will not be occupied, used for any
16 purpose.

17 What about the other terraces on the building?

18 MR. DEL VECCHIO: The front Terraces A.,
19 B. and C. are meant to provide a controlled outdoor
20 space where residents could sit and read, have a cup
21 of coffee, cup of tea. That's really, the intended
22 use is to provide a covered fresh air port which is
23 still confined to the building area.

24 CHAIRMAN DePINTO: And that's limited to
25 the terraces on the front of the building?

1 MR. DEL VECCHIO: Correct.

2 CHAIRMAN DePINTO: Facing Philips Drive.

3 MR. DEL VECCHIO: Correct.

4 CHAIRMAN DePINTO: The -- I share the
5 concern with regard to the height of that canopy. And
6 you've indicated that an ambulance would fit in that
7 11 foot 9 but anything larger than that would not or
8 should not be in that area.

9 Is that correct?

10 THE WITNESS: A fire truck would probably
11 not go under it.

12 CHAIRMAN DePINTO: And what about the UPS
13 driver or the FedEx truck or the Amazon?

14 THE WITNESS: I don't know those heights.
15 Maybe one of the team members would know.

16 I could provide that as follow-up information if
17 you need it.

18 MR. HIPOLIT: I could see that's, that's
19 like a really open-ended question because FedEx, UPS,
20 just those two entities, they have tractor trailers
21 all the way down to small vans so some of their trucks
22 would fit, some of them would not fit.

23 CHAIRMAN DePINTO: Well, what do we, do we
24 tell Mr. FedEx, only send your small trucks?

25 How do we do that?

1 MR. HIPOLIT: It has to be, if we -- as an
2 engineer I do everything as I would do a roadway and
3 for clearance we mark the under side of the
4 obstruction at the lowest point with a sign that says
5 11 feet 9 inches. Every driver would know to look for
6 that. That's a standard DOT marking on all under
7 sides.

8 CHAIRMAN DePINTO: I think we had some
9 discussion at the last meeting about delivery
10 vehicles.

11 Is there a designated area?

12 I guess we'll hear the testimony from some
13 engineer.

14 MR. DEL VECCHIO: Yeah. There is a
15 designated -- it was moved to accommodate our
16 neighbors but there is a designated delivery area on
17 the side of the building but a full loading zone and
18 delivery doors right into the building.

19 We don't envision anything more than a small UPS
20 or box truck. But in the case that any kind of larger
21 vehicle should visit the site to make a delivery,
22 there is a full designated loading zone on that side
23 of the building that can provide the access.

24 CHAIRMAN DePINTO: I think we're going to
25 have to look at that canopy very carefully.

1 THE WITNESS: There's also the bypass
2 drive there as well.

3 CHAIRMAN DePINTO: We just came off of a
4 holiday season and I don't know about where you live
5 but where I live I think all day long there were
6 trucks of all sizes, UPS, FedEx, but most of them were
7 Amazon.

8 And I don't even know how you would control it
9 without altering that canopy to the highest possible
10 point you could because of the variety of trucks that
11 are now making home deliveries.

12 Now we're putting 90 some odd, potentially 90
13 some odd residents not including the vehicles that are
14 needed to deliver supplies and, and products to the
15 facility.

16 Have we adequately planned for truck traffic
17 on-site?

18 MR. DEL VECCHIO: Our intention and I
19 think our prior testimony was to take all the
20 deliveries through the delivery doors and not have
21 them come in the front whether it be FedEx, UPS or,
22 you know, food product for the kitchen or paper plates
23 or whatever it may be. It's to come in from that side
24 door.

25 We really don't want the drop off area up front

1 to be occupied by a vehicle of any sort.

2 The entire layout of this front has parallel
3 parking to provide a very convenient place for people
4 to come in and out. That purpose gets frustrated when
5 you have a box truck, even a small Amazon truck parked
6 there for any point in time.

7 So our intent, and we have no problem accepting
8 restriction, that requires those deliveries to use the
9 designated loading area and we think that's the right
10 place to take it and it really resolves the problems.

11 And, you know, I think, over time, maybe Day 1
12 someone may have some confusion, the delivery drivers,
13 but Mr. and Mrs. Delivery Driver, by Day 2, know they
14 could only go to that delivery door on the side to
15 make those deliveries.

16 I've been here 30 years and I think I have the
17 same UPS driver that delivers to my office. He looks
18 like Schneider from one of the old TV commercials or
19 TV shows but he's the same driver day in and day out
20 so they figure it out pretty quickly.

21 MR. HIPOLIT: But if, let me jump in on
22 this, using Wegmans as an example. We have that
23 condition there. You can't deliver through the front
24 of the store. Initially it was a big problem and it
25 somewhat trailed off to where it's only happening once

1 in a while. But when it happens either Jeff Fette has
2 to be called and get out there if he's here. We're
3 not exactly -- we don't exactly have a full-time staff
4 looking to wait for delivery trucks that are in the
5 wrong spot or it just happens and they get away with
6 it. So it's going to be, somewhat be controlled by
7 the building owners. If the building owner is a good
8 community neighbor there will never be a problem but
9 if they're not, I don't know how we would control it.

10 MR. DEL VECCHIO: I guess good or bad,
11 Wegmans, who sits higher than this building and
12 opposite Mr. Fette's office, Mr. Fette's operational
13 terrace does overlook this site. He's got an eyeball
14 right into this site day in and day out. They'll be
15 on their best behavior.

16 MR. HIPOLIT: I don't know. It's a tough
17 thing to do.

18 MR. REGAN: You're not going to get a
19 hundred percent compliance.

20 CHAIRMAN DePINTO: No, it won't.

21 But, but we have the opportunity, because this
22 is not a rehabilitation of an existing building and we
23 have to deal with a building and how it sits on a
24 project, this is a brand new development. We have the
25 opportunity to design, in a new development,

1 appropriate means of accepting deliveries or shipping
2 product or whatever it might be. I'm not quite sure
3 if we're addressing it with that one little loading
4 area in the back, not based upon the truck traffic on
5 my little street alone, this past holiday season. It
6 was incredible.

7 MR. HIPOLIT: If they're getting a
8 delivery --

9 CHAIRMAN DePINTO: No. No. No.

10 MR. HIPOLIT: If three FedEx guys come at
11 the same time --

12 CHAIRMAN DePINTO: Where are you going to
13 put these vehicles?

14 MS. O'NEILL: Also that, I don't --
15 correct me if I'm wrong, is there directional signage
16 proposed for the site that would include the delivery
17 entrance because Amazon does have a contract carrier,
18 it's not going to be the same UPS guys, not the same
19 FedEx guys, it's different, they have different times
20 of the day.

21 MR. DEL VECCHIO: As you imagine, we're
22 very sensitive to putting any additional sign on the
23 property but we'll put any and all directional signs
24 that the Board or its professionals deem appropriate.
25 If you want us to raise that front area --

1 CHAIRMAN DePINTO: It's the adequacy of
2 what's proposed there.

3 MR. DEL VECCHIO: I understand and I'm
4 offering, if the concern is that area and we want to
5 have a secondary place where a delivery could happen,
6 in the off chance, we can raise the roof of the porte
7 cochere. It may make the front elevation look a
8 little disproportionate but we can raise it and
9 provide a secondary area, kind of a back up, if you
10 will.

11 CHAIRMAN DePINTO: All right. To be
12 revisited.

13 Any other questions or comments?

14 MS. O'NEILL: No.

15 CHAIRMAN DePINTO: Hearing none, the Chair
16 will entertain a motion to open to the public.

17 MS. O'NEILL: So move.

18 MR. CULHANE: Second.

19 CHAIRMAN DePINTO: Seconded Mr.Culhane.

20 All in favor?

21 (Aye)

22 Members of the public that are here, this is
23 your opportunity to ask questions of either the
24 Borough Planner, Darlene Green, or the architect who
25 testified.

1 It's not your opportunity to offer your
2 comments. Questions, yes. Comments, no.

3 We will accept your comments at the end of this
4 hearing and you might say I love it, I hate it or
5 somewhere in between. But we can't do that until we
6 reach that point.

7 Before we do go to the public, counsel is here.
8 I'm going to ask that he identifies himself for the
9 record and please state your intentions.

10 MR. WISS: Raymond Will, Wiss & Bouregy,
11 PC. I have actually no questions for the architect.
12 Thank you.

13 CHAIRMAN DePINTO: Thank you, Mr. Wiss.
14 Who are you representing?

15 MR. WISS: I am representing the Bears
16 Nest Condominium Association.

17 CHAIRMAN DePINTO: Okay. Thank you very
18 much.

19 Any members of the public here that have an
20 interest in asking him questions of either the
21 architect or planner or our Borough Engineer?

22 None.

23 The Chair will entertain a motion to close to
24 the public.

25 MS. O'NEILL: So move.

1 MR. STEFANELLI: Second.

2 CHAIRMAN DePINTO: By Ms. O'Neill,
3 seconded Mr. Stefanelli.

4 All in favor?

5 (Aye)

6 CHAIRMAN DePINTO: Okay. Mr. Del Vecchio,
7 your next witness.

8 MR. DEL VECCHIO: Yes, I would like to
9 recall Mike Dipple.

10 MR. REGAN: Mr. Dipple, you were
11 previously sworn and remain under oath.

12 THE WITNESS: Okay.

13 CONTINUED DIRECT EXAMINATION BY MR. DEL VECCHIO:

14 Q Mike, you prepared the drawings that
15 underlie the engineering drawings for this project as
16 well as the Sheet CO-4?

17 A That's correct.

18 Q And can you explain to us why Sheet CO-4
19 was advanced and the revision date?

20 A So we issued just sheet CO-4 site plan
21 dated January 3rd, 2019.

22 There were two changes to the drawing. The
23 first one had to do with the height of the building.

24 I should point out and I was distracted a little
25 bit during Mr. Englebaugh's testimony, there is no

1 discrepancy between the plans on the height. Mr.
2 Englebauch gives the height from the finished floor to
3 the proper elevation on the roof.

4 And because your ordinance requires the average
5 grade we pick it up from there and then calculation of
6 appears in Note 1 and gives all the average grade
7 elevations and the, and the calculations as Mr.
8 Englebaugh's height to come up with a height per your
9 ordinance of 45.29 feet. So it's not a discrepancy.
10 It's just making sure the plans actually match each
11 other.

12 The other item that we changed was a correction
13 to the signage table. We had an incorrect permitted
14 sign area which was throwing off the table. We have
15 corrected it since. And we have -- so the signage
16 table is amended.

17 I think they were the only changes.

18 We worked with, again, with Minno & Wasko to
19 make sure that everything that they were doing were
20 incorporated into the plan correctly.

21 Q Mike, I did show you the Police and Fire
22 Department comments that were redistributed and marked
23 this evening.

24 Have you had a chance to look at them?

25 A I, I did. I believe that the police

1 comments with respect to the sidewalk may have been
2 addressed in this plan revision because the letter is
3 dated October 15th. The initial letter which
4 discusses sidewalks and how they would like to see the
5 sidewalks go through the site, this plan was reissued
6 on November 9th, 2018 and on January 14th Lieutenant
7 McDowell issued another letter stating that I am
8 unable to see my concerns from the last review were
9 addressed. However, I believe they were.

10 And I think we stand by the sidewalk and
11 pedestrian flow around the building. It comes in off
12 of Philips, comes in the right side of the driveway
13 which is, I believe, what the comment is, a crosswalk
14 to the front of the building and then it encircles the
15 building, closest to the building.

16 CHAIRMAN DePINTO: Excuse me one second.

17 Are you referencing Board Exhibit 5 dated
18 October 15?

19 THE WITNESS: Yes, I believe I am.

20 CHAIRMAN DePINTO: Parking stalls.

21 The Police Department said building needs more
22 parking stalls for vehicles.

23 THE WITNESS: I'm sorry. I'm looking at
24 October 15th from Lieutenant McDowell, Montvale Police
25 Department -- oh, yes. He says the building needs

1 more parking stalls.

2 I'm sorry. I skipped to the sidewalk portion.

3 Regarding parking, in the, in the prior revision
4 we went from 38 spaces to 43. We added five spaces
5 with a new parking lot configuration.

6 Again, this complies with your ordinance of half
7 a space per unit. It also complies with Residential
8 Site Improvement Standards which agrees with your
9 ordinance at half a space per unit.

10 So we believe there is adequate parking. We
11 discussed how many employees would be here and we
12 talked and there was testimony about the shift change
13 and not only, not only do we think it complies with
14 the ordinance but we think it's adequate for the site
15 to function properly.

16 Q Mike, you have also had an opportunity
17 just to conduct an informal survey of other assisted
18 living facilities in the area just to double check how
19 they operate with their parking and do you find this
20 plan to be consistent with those other facilities?

21 A Yes. We did a, we did a study of just
22 dwelling units which is easily accessible, one of them
23 was here approved in Montvale so we have the
24 resolution with the Unit Numbers. We looked at the
25 amount of spaces. We not only looked at Google Earth

1 but went to a few of the sites where it was unclear
2 and we counted the spaces and we think that this falls
3 right in line. I think this is a parking ratio of
4 .57.

5 Now this is something we have electronically not
6 on the board so we can bring up, we can bring up this
7 table. But, yes, this falls kind of right in the
8 middle of where these assisted living facilities range
9 in terms of parking per dwelling unit. We saw some
10 that were .51, .52. This is .57 if I'm not incorrect.
11 Some of them do include independent living which does
12 throw off the calculation a little bit. We did study
13 some that offer independent living if that's the
14 correct terminology which just allows people to be
15 there and, and likely have a vehicle. That parking
16 ratio and some was a little bit higher, not much
17 higher but, but we think, based upon the industry your
18 ordinance and Residential Site Improvement Standards
19 that adequate parking is provided.

20 Q And with regard to the Fire Department
21 comments?

22 A The Fire Department commented again about
23 the parking and they have an extensive discussion
24 about how this would work. I think our testimony
25 disagrees with some of the comments by the Fire

1 Department.

2 And, and then, of course with the loading
3 there's, there was some concern in the Fire
4 Department's letter about monitoring the loading and
5 whether or not that would be available. I don't know
6 if they plan to actually monitor it but deliveries
7 would come, as we discussed, once a week in a box
8 truck, 26 load box truck is a very common size. The
9 back truck has no hinge. It's a single unit with
10 essentially a box on the back of it, very common.

11 Mr. Hahn testified that, that the one typically
12 used for this size facility would be 26 feet. That is
13 a very common size.

14 So I think that there will be deliveries. There
15 will be seasonal deliveries as has been discussed
16 earlier but to provide this large 90 foot wide and 60
17 foot wide on its narrower side loading space at the
18 doors would service the building, we believe,
19 adequately in order to properly manage this facility
20 with deliveries and loading.

21 MR. HIPOLIT: Andy, can I jump in on the
22 parking? I did talk to Lieutenant McDowell on the
23 parking issue.

24 They agree that the ratio you have somewhat
25 works for what is in the area. And the issue that I

1 think the Police Department has, this is from them,
2 unlike another site in town, this site is such a small
3 size site which is significantly under the 10 acres
4 required and there is nowhere for overflow parking if
5 you were to have an event other than our public
6 streets. So their concern is, one, Philips is an
7 emergency access street for our police department.
8 They come up and down or they can go another way but
9 this is one way they come.

10 In the big event, where do you go?

11 You can't start parking in your fire lanes
12 around the building. So what are you going to do, bus
13 them in from another site?

14 MR. DEL VECCHIO: The parking standard
15 both in the ordinance and RSIS calls for a standard.
16 And, you know, it doesn't design to a peak, it doesn't
17 design to a valley. Supposedly it's, the design goal
18 is to hit that middle sweet spot.

19 And just like busy holidays seasons at the mall,
20 you're going to have peak demand and parking would be
21 harder to find in those instances and in the middle of
22 winter when nothing happens, parking would be easier.

23 MR. HIPOLIT: I think the question is
24 what's your plan? So we know that in the every day
25 operation of this facility it's not an issue. All

1 these facilities are like that. They all have limited
2 parking. Nobody is ever there except for 10 percent
3 of the year or less.

4 When you have an event you have to have some
5 plan for it. You can't be, hey, we're going to just
6 pack Montvale streets and just park on Grand Avenue,
7 on Mercedes, it doesn't work.

8 MR. DEL VECCHIO: Our intent on special
9 events and we have thought about a comment, above and
10 beyond what the ordinance and RSIS requires.

11 If we know we're having a planned event we're
12 happy to put together a valet plan where we can valet
13 some of the cars on site, increase the parking
14 capacity on a temporary basis.

15 And if the valet isn't sufficient, then we can
16 look to make, we can look to have an arrangement with
17 one of the neighboring property owners where one, this
18 facility is likely to experience a higher demand, a
19 Sunday like Mother's Day.

20 All of the adjacent office uses are probably at
21 the lowest of their demands and use so we would be
22 happy to talk to our neighbors about coming up with a,
23 I'll call it, an overflow parking plan in the
24 instances that they're needed.

25 MR. HIPOLIT: Here's where my concern

1 comes from. It comes from personal issues. So my mom
2 and dad were in a facility. I'm up here in North
3 Jersey. They're down in Cape May. Maybe I'm not a
4 great son but I go down on all the big holidays;
5 Mother's Day, Father's Day, Christmas, New Years, you
6 do what we got to do and I travel down there and
7 there's no parking there in those couple days. My
8 sister's like, there's parking there all the time,
9 don't worry about it. I get there and there's no
10 parking.

11 The place my parents are in down in Cape May
12 they literally had a plan, they had a site that is a
13 half mile away, they directed you with signs there.
14 You went and parked there. They had a van that
15 brought you over, brought you back. The place was
16 packed for one day. They had food on their terraces
17 outside. The same -- I mean everyone here has been to
18 these facilities. They have their limited days.

19 I think, from a Board perspective, specifically
20 if the size is probably smaller, there needs to be
21 something in this testimony on file here that gives
22 the Board some, some, and the Police Department some
23 comfort that it's not going to be okay, we're going to
24 wait. It's going to be China shipping or the next
25 building, somewhere where you have an agreement so you

1 can park 50 cars or so, shuttle them back and forth.

2 I think it has to be part of what you're doing
3 here. It's a concern that is valid.

4 MR. DEL VECCHIO: It is not an item that
5 is required in the ordinance. Let's start with that.
6 Let me just --

7 MR. HIPOLIT: I get that.

8 MR. DEL VECCHIO: Let's start with that.

9 However, we hear your point. So, I mean if, as
10 a condition of Board approval, we need to come up with
11 an emergency or an overflow parking plan that's
12 acceptable to the Police Department for those events
13 that we're likely to have it. One of the nice things
14 is, we are proposing to have an on-site van, for lack
15 of a better word, that is available to, you know -- on
16 the days that it's busy folks are not likely going to
17 be needing the van to go to a doctor's appointment.
18 On Mother's Day most places are closed. That van can
19 be dual purpose, to provide transportation if it isn't
20 directly next door to walk to one of the adjacent
21 sites and we're happy to enter into an agreement with,
22 subject to the Police Department approval, that they
23 find acceptable and this Board finds acceptable.

24 MR. HIPOLIT: Darlene, how does that work
25 with approval before the Board if they do propose an

1 agreement with off site parking if it's off site
2 parking.

3 Technically, it's not required but they're
4 proposing it to make us more comfortable with what's
5 happening on those five or six major holidays.

6 Shouldn't we see that here before?

7 MS. GREEN: Well, I think it ties back
8 into some of the proofs that have to be put on to
9 prove their application. I mean one of the conditions
10 to an assisted living facility is a minimum site of 10
11 acres. If you go back and read the Master Plan
12 re-exam that, that started this whole discussion on
13 this assisted living is we picked a large minimum lot
14 size to accommodate all of the items that are
15 associated with an assisted living facility. And we
16 wanted to ensure we had sufficient space for not only
17 the building but all the accessory uses and all the
18 activities that go along with an assisted living
19 facility.

20 So I think it's something that the Board has to
21 weigh with all the other evidence the applicant is
22 presenting.

23 MR. HIPOLIT: And the one --

24 MR. DEL VECCHIO: And, Mr. Preiss will
25 comment. But let's just be clear, lot size and

1 parking overflow are not connected. Because if you
2 wanted more parking you would build into your
3 ordinance -- just because somebody has 10 acres
4 doesn't mean they're going to build more parking above
5 and beyond the minimum called for in the ordinance.
6 That's just -- there's no linkage between acreage and
7 size, at least in the ordinance or the Master Plan
8 because the ordinance calls out a specific parking
9 requirement.

10 One would assume, and maybe that's incorrect but
11 one would assume the parking requirement as selected
12 by the ordinance is one that would accommodate the
13 problems that the use was envisioned to occur.
14 Whether it be on an emergency basis --

15 CHAIRMAN DePINTO: Let me say something.
16 As we all know, the sections of an ordinance
17 controlling the development do not necessarily stand
18 alone. They're intertwined, lot size, FAR, bulk
19 requirements, parking, they all have to fit together.

20 I think what's being discussed right now is that
21 this property is substantially undersized based upon
22 the ordinance requirement of 10 acres.

23 The question was being deferred to Mr. Dipple
24 earlier relative to FAR and I believe it was in
25 reference to the terraces.

1 Mr. Dipple, do your calculations for FAR include
2 the terraced areas?

3 THE WITNESS: They include the floor of
4 the terrace, yes. They do. They -- yeah.

5 On every floor it's, it's the, you know,
6 walkable floor area if you want to just put it that
7 way.

8 CHAIRMAN DePINTO: And you're seeking a
9 variance from this Board relative to FAR because you
10 are substantially exceeding the maximum permitted by
11 our code.

12 Is that correct?

13 THE WITNESS: That's correct.

14 CHAIRMAN DePINTO: Okay. For the members
15 of the public that are here who want to ask, I'm going
16 to ask Mr. Hipolit.

17 Mr. Hipolit, could you please give the public,
18 obviously the Board Members know, a definition of FAR
19 and how it relates to proposed development.

20 MR. HIPOLIT: I have to get that. Can you
21 let him -- I'll pull it up and read it.

22 MR. REGAN: I have it here.

23 CHAIRMAN DePINTO: Why don't we just read
24 it from here, please.

25 MR. REGAN: Well, first you have to define

1 floor area.

2 For the purpose of this ordinance the aggregate
3 area of all floors using the outer side wall, the
4 dimensions of all buildings including the basement and
5 cellar area. To the extent that the basement space
6 with the building is used for mechanical equipment
7 such as heating and ventilating apparatus or dead
8 storage and is not devoted to the principal use of the
9 building or to the extent that the on-ground level or
10 basement or cellar levels of a parking garage were
11 devoted to off-street parking such floor areas
12 including aisles, ramps and maneuvering space shall be
13 excluded.

14 Then the definition of floor area ratio follows
15 with maximum floor area of all buildings on the lot
16 expressed as a percentage of the total lot area.

17 CHAIRMAN DePINTO: Okay. If in fact this
18 development were designed to comply with FAR, would
19 there be any issues relative to parking?

20 THE WITNESS: I -- if we kept -- I think,
21 Mr. Chairman, what you're saying, if we kept the 43
22 spaces and if we shrunk the building down to .35 which
23 is the FAR requirement would there be any parking
24 issues.

25 Am I correct?

1 CHAIRMAN DePINTO: Correct.

2 THE WITNESS: Well, it's predicated on do
3 I think there are any parking issues my testimony is,
4 I don't believe so.

5 CHAIRMAN DePINTO: No, I understand that.

6 THE WITNESS: I don't believe so.

7 So I just -- it would, it would clearly improve
8 the parking situation because my ratio would come
9 down. If we shrunk the building that significant
10 which would be, off the top of my head, you know,
11 maybe 25 percent, let's say, 25 to 30 percent we would
12 have to shrink the building to get from .52 to .35 and
13 someone could check my math, you would lose a lot of
14 residential units. We couldn't shrink the unit itself
15 or the amenity base or, they kind of all shrink
16 together.

17 So, yeah, I guess the answer is that leaving the
18 43 spaces it would improve the parking situation if
19 you really felt that there was, there was a problem.

20 CHAIRMAN DePINTO: And if you brought the
21 FAR into code compliance would that have an impact on
22 coverage?

23 THE WITNESS: It would likely have an
24 impact on coverage.

25 Now in terms of coverage, our maximum lot

1 coverage is allowed to be 50 and we're at just shy of
2 52. So by shrinking the floor area one would assume
3 that you would now comply with coverage.

4 But, again, we're only over by 2 percent.

5 CHAIRMAN DePINTO: But those are two
6 variances that would be eliminated if in fact in a
7 redesign or an amendment to the proposed design
8 brought those two items into compliance.

9 THE WITNESS: That's correct.

10 CHAIRMAN DePINTO: Would other bulk
11 variance requests be eliminated if in fact you reduced
12 your FAR to meet the Code requirement?

13 THE WITNESS: There is one other
14 technicality which is the fact that we have 2.9979
15 acres and not 3 acres and we have 75 dwelling units.

16 CHAIRMAN DePINTO: No, I understand that.

17 THE WITNESS: Well, that's the only one
18 that I see. I believe we meet yard requirements,
19 height requirements, parking.

20 There's a discussion on the sign yet to be had.

21 CHAIRMAN DePINTO: But, obviously, you
22 have no control over the size of your property.

23 THE WITNESS: That's correct.

24 CHAIRMAN DePINTO: Nor do you have any
25 control over the location of your property.

1 THE WITNESS: That's correct.

2 CHAIRMAN DePINTO: It is where it is.

3 But you do have control over the design of what
4 you're proposing to build on your property.

5 THE WITNESS: I agree with that.

6 CHAIRMAN DePINTO: Part of that design you
7 determine that an FAR, relief from the FAR
8 requirements are necessary and what was that dictated
9 by? Was it dictated by the uncontrollable aspects,
10 the size and location or was it dictated by the number
11 of housing units?

12 What dictated the need to go from 35 to 53?

13 THE WITNESS: It's not and it wasn't
14 dictated by, by me, personally.

15 I will say that the building clearly, to go to
16 .35 the building would be small, the number of units
17 would be small, the project may not be economically
18 feasible to add all the other amenities that go with
19 it and, and to produce this number of units would
20 probably make this project a non starter.

21 But, I was not part of the decision making as to
22 whether --

23 CHAIRMAN DePINTO: So it's not a technical
24 point but more of a business point?

25 The economics of the project may not work if in

1 fact you had to comply with code requirements.

2 THE WITNESS: I think that is a big part
3 of it.

4 MR. DEL VECCHIO: I think that is a big
5 part of it. I think Mr. Preiss, our planner, is also
6 prepared to testify to these items, a lot of which you
7 are raising through your questions in the context of
8 the planning proofs.

9 And, I just underscore, remind everybody of the
10 obvious. This is an affordable housing project and
11 those affordable housing units have to be subsidized
12 in some way in order to produce that housing as is
13 recognized.

14 CHAIRMAN DePINTO: Let's just bear in
15 mind, it's the 10 pounds of sugar in the five pound
16 bag. It could be, you know -- can you exceed the
17 capacity of the five pound bag? Maybe a little bit.
18 But can you exceed that capacity to the extent that
19 we're talking about without negatively impacting the
20 surrounding area and the intent and purpose of the
21 zone plan and the ordinances?

22 And this has been triggered, in my mind, by the
23 discussions that we had earlier relative to the
24 adequacy of the parking so they all kind of weave
25 together. And I believe we can't lose sight of that.

1 Okay. Let's move on from that point.

2 Mr. Del Vecchio, on direct any further questions
3 of Mr. Dipple?

4 MR. DEL VECCHIO: A few, if I can.

5 CONTINUED DIRECT BY MR. DEL VECCHIO:

6 Q Mr. Dipple, there were some concerns about
7 where the on-site van would park.

8 Is it the applicant's intention to park it in
9 the back of the building and the seven spaces, if you
10 will, towards the rear?

11 A Yes.

12 Q Which has a retaining wall in front of it
13 to kind of obscure visibility of the property lines?

14 A Yes. The van would be in the back and
15 you're correct, there is a retaining wall and parking
16 spaces on the low side of the retaining wall and
17 behind that retaining wall there is a natural grade
18 change or a berm, a natural berm which runs to the
19 back of the property.

20 Q The generator that is located on the site,
21 that is an emergency use only generator?

22 A That's correct.

23 Q And any testing or maintenance of that
24 generator would occur in the daytime hours only?

25 A Yes. Generators typically self-test

1 themselves -- self-test about once a week usually in the
2 middle of the day. And I can't tell you how much
3 maintenance this thing would need but I'm sure there
4 will be times in which someone will come out and do
5 some regular maintenance on the generator to make sure
6 it's operating.

7 Q Now, as far as you're aware, all of the
8 improvements that are proposed, whether they be
9 building or parking or lamp post or light post are all
10 outside of the 15 foot buffer area as required on the
11 site?

12 A That's correct.

13 Q And based upon your review of your
14 drawings, there was a comment or a request or
15 suggestion made that some additional bollards be
16 placed around the transformer and dumpster area.

17 Are you prepared to incorporate those on behalf
18 of the applicant?

19 A Yes, we are.

20 Q Are there any other changes that you
21 envision refining the plans with in order to make them
22 comply with the comment or review letters that we
23 receive?

24 A Regarding the comments there are a few
25 minor comments.

1 For instance, fences, just making sure we have
2 the proper details, a fence at the top of the small
3 retaining wall. I think our plans right now are
4 showing a guide rail or it may not be indicated but
5 there is a retaining wall at the end of the four
6 spaces on the east side of the site so that needs to
7 be clarified. Perhaps a fence needs to be installed
8 per Mr. Hipolit's comments at the top of the retaining
9 wall behind the seven spaces if there is a significant
10 drop just to protect anyone who errantly may be coming
11 through there, you know, in a dark situation.

12 Other than that, I don't know if there were any
13 specific comments. There are some cleanup items that
14 we would agree to do in order to protect the plants.

15 One other one was the spillway in front of the
16 basin. We're going to work with Mr. Hipolit's office
17 to try to move that so it doesn't directly discharge
18 onto Philips Parkway. I am a little bit challenged by
19 grade but perhaps we can move it in slightly and move
20 it over toward the driveway and that inlet prior to
21 just going off of Philips Parkway. But that is an
22 emergency spillway. A lot has to fail for that to
23 happen.

24 MR. HIPOLIT: Right. The spillway and
25 also on some of the stuff, Andy, you were questioning

1 Mike on, there are, in your January 11th letter that
2 does require Mike or Mr. Dipple to make plan changes.

3 CHAIRMAN DePINTO: To make what? I'm
4 sorry.

5 MR. HIPOLIT: To make planning changes to
6 comply with the letter and at some point we'll get to
7 go to you it but we need to see a full set of plans
8 prior to --

9 CHAIRMAN DePINTO: Let's hold off on that.

10 Mr. Del Vecchio, any more questions of Mr.
11 Dipple on direct?

12 MR. DEL VECCHIO: I have one more
13 question --

14 CHAIRMAN DePINTO: Please.

15 MR. DEL VECCHIO: -- one area of questions
16 to ask him about, maybe two. My question is related
17 to landscaping.

18 Q There was some concern about a tree
19 removal permit and compliance with Chapter 119 of the
20 Borough code as it relates to tree removal. It is the
21 applicant's position that Chapter 119(a) does not
22 apply to this application.

23 Is that correct?

24 A I believe so. Yes.

25 Q And that is because, in particular,

1 119(a)-3(b) would exempt this project from compliance
2 with that chapter?

3 A Yes. I believe that's correct. Yes.

4 Q And there were some changes to the
5 landscape plan that are required.

6 And you have a colored drawing?

7 A Yes. I'll put this up on the board.
8 Hopefully we can see it through the camera. I hope
9 that's clear.

10 Q Mike, was this previously marked?

11 A No, this needs to be marked. This is a
12 new exhibit. It's a, it's a rear yard landscaping
13 exhibit. It's, it's numbered CO-4. It, we'll make it
14 today's date.

15 A What's the exhibit number, Andy.

16 Q A-20?

17 A A-20, and today's date is January 15th,
18 2019.

19 So Mr. Livingston, who is the applicant, has
20 coordinated with some of the people who live in the
21 back and in the Bears Nest complex and has had some
22 correspondence and discussions with them. And in that
23 what came out of it is perhaps to provide a, a varying
24 and more beefy landscape buffer toward the rear of the
25 property.

1 So what our office did today was to increase the
2 number of evergreen trees primarily at the southeast
3 corner of the property.

4 And the purpose that would serve for the
5 development is that, as vehicles travel southbound
6 around the east side of the building, which I'm
7 tracing with my pen, any headlight glare then has a
8 much beefier landscape buffer to get through in order
9 to potentially reach the Bears Nest facility or, or
10 development in the back.

11 I should say that this dark green area is
12 existing vegetation which would remain but it is the
13 wintertime and most of it is deciduous so having these
14 evergreens, you know, kind of beefing up the corner
15 there, we think that that should solve the problem.
16 And we extended that a little bit further as you
17 continue to the west so that as a vehicle travels
18 around the corner the headlight glare, again, doesn't
19 impact properties to the rear and then what we did is
20 we kind of changed the pattern of the landscaping
21 through some of the suggestions that we heard from the
22 Bears Nest population there and we've included some
23 other species which we would like to coordinate with
24 Maser's landscape architect because he hasn't seen
25 this, Mr. DeBlasio hasn't seen this yet. But we think

1 there would be some Norway spruce and other, other
2 trees that would do well with a little bit of a canopy
3 over the top of them and then we still have some of
4 the Green Giant arborvitaes spread throughout which is
5 very dense and columnar.

6 We are able to save some of the white pines and
7 we show some of the white pines that are existing. I
8 think they're only in the north -- I'm sorry, the
9 southwest corner of the site.

10 So that was another change that didn't, that
11 came up after the plans were submitted on the 3rd and
12 that that exhibit was actually finalized today.

13 MR. DEL VECCHIO: I have no further
14 questions of Mr. Dipple.

15 CHAIRMAN DePINTO: Thank you.

16 Before I open it up to the Board for questions,
17 I'm going to go to Mr. Hipolit.

18 Mr. Hipolit, I would like for you to summarize
19 your review letter of January 11 which has been marked
20 into evidence as Board Exhibit 1. And highlight any
21 concerns that you have that have not been addressed by
22 the applicant's engineer up to this point.

23 MR. HIPOLIT: Okay. So looking at what is
24 Exhibit B-1 or my letter dated January 11th, starting
25 at Page 4. So at Page 4 the first comment would be

1 Comment 3. This would be the, having vehicles on-site
2 and you're testifying that they're going to have one
3 vehicle and they're going to park it in the rear. So
4 I think, from a Board perspective, you have to have
5 some condition that makes it clearly as one vehicle in
6 that location and can't be multiple vehicles.

7 Comment No. 4.

8 CHAIRMAN DePINTO: Mr. Dipple, did you
9 agree?

10 THE WITNESS: I agree. I think the
11 applicant is only proposing one. I'm sorry. If I
12 understood it correctly there would be a condition
13 that only allows one vehicle.

14 Is that correct, Mr. Hipolit?

15 MR. HIPOLIT: Correct.

16 Comment 4, I'm not sure if it's the right
17 comment for you. We have heard testimony about a
18 different number of employees.

19 What is the total number of employees?

20 THE WITNESS: The largest -- I can answer
21 it. The largest shift would be 21. It would be the
22 midday shift.

23 I think it's important to note that the
24 overnight shift is not 21. It's, it's a lot fewer
25 than 21 during the overnight shift. But the maximum

1 shift would be 21. And that has all the dining people
2 and the administrative people, the people that come in
3 in the morning and leave in the afternoon, the office
4 personnel.

5 MR. HIPOLIT: Comment 5, we kind of
6 discussed what would be the holiday parking. The way
7 it's going to be held, that's something we need more
8 detail on.

9 THE WITNESS: Well, the holiday parking,
10 as Mr. Del Vecchio mentioned, not only the valet in
11 case there's a large event but, again, some of the off
12 site parking. I don't know if we have a site selected
13 yet but that's something that we think could be a
14 condition of the approval, to come with some kind of
15 agreement as to where staff could park in order to
16 provide very convenient parking for any visitor who
17 came during one of those events.

18 MR. HIPOLIT: Comment 6 really hones in on
19 what they talked about which is the
20 generator/transformer and the bollards for the garbage
21 area. They have agreed to bollards.

22 The issue we still have is with testing of the
23 generator and whether the generator will require some
24 type of sound attenuation. Generators can come with
25 enclosures. They have Type 1, 2 and some have a Type

1 3.

2 Now there is residential homes behind us in
3 another municipality. We would recommend either
4 whatever type of generator you pick, Type 2 if that's
5 their highest sound enclosure or Type 3.

6 I don't know if you agree with that.

7 MR. DEL VECCHIO: I believe we can agree
8 to comply with the noise code and that if that
9 requires a Type 3 generator, Type 3 enclosure, Type
10 2 --

11 MR. HIPOLIT: The problem with generator,
12 the problem with generators, we do allow them for
13 municipalities. The State noise code is based on
14 duration. So if somebody was to come in and just test
15 this under full load for a very short duration it
16 probably would meet the weighted standards of the
17 State code.

18 What we do in our municipalities, because we
19 like to hold to higher standards, we either use,
20 depending on the manufacturer, a Type 2 which is their
21 highest sound enclosure or Type 3 which would allow us
22 to have a conversation at the level I'm talking now
23 while the generator is running.

24 MR. DEL VECCHIO: Yes, we can consent.

25 MR. HIPOLIT: Okay. No. 9 discussed,

1 we're going to require you to mark, if you change the
2 height, to mark it on the underside in accordance to
3 the State standards for marking the underpass.

4 THE WITNESS: I would agree.

5 MR. HIPOLIT: So Comment 12 I could defer
6 to Mr. Fette or Mr. Regan. You do have a new tree
7 ordinance. Mr. Del Vecchio said it doesn't apply to
8 this site.

9 MR. REGAN: Because it's affordable. I
10 want to confirm that. I want to have that as part of
11 my land use ordinance.

12 MR. DEL VECCHIO: I have the section.

13 MR. REGAN: I'll, I'll review it during
14 the break, on-line.

15 MR. HIPOLIT: Item 13, build into what Mr.
16 Dipple provided in the extra landscaping plan. We're
17 going to need some lighting standards or lighting
18 photometrics that show the mature site versus the non
19 mature site so we can make sure we're not getting
20 anything off-site and then you'll have hot spots. On
21 some sites it is a problem. With some of the existing
22 sites that are built, they're landscaped to start and
23 they're under lit because the landscaping takes over
24 the lights.

25 So we need to see some coordination between your

1 foot candles and your photometrics and landscaping to
2 make sure one doesn't shade out the other one, doesn't
3 shade and causes hot spots on the site.

4 THE WITNESS: If I could just add a little
5 testimony to that per one of the earlier comments by
6 Maser, the landscaping was pushed back 10 feet away
7 from the ring road and the light falls within that 10
8 feet.

9 MR. HIPOLIT: I think if you agree to work
10 with Mr. DeBlasio we're okay.

11 THE WITNESS: I'm fine working with anyone
12 on any of these comments, Mr. Hipolit.

13 Just because you mentioned the final plans I
14 would say that we can, we can clearly comply with
15 that.

16 MR. HIPOLIT: I agree.

17 THE WITNESS: Okay.

18 MR. HIPOLIT: That kind of addresses 14.

19 The same for 15, just looking at that in your
20 final plan.

21 We've kind of talked about 17 which is the
22 dining room space you have testified, the architect
23 testified to that.

24 Building height calculations, we are now at a
25 building height of 45.29.

1 THE WITNESS: 45.29 is correct based upon
2 your ordinance and how it's calculated.

3 MR. HIPOLIT: Okay. Then we agree with
4 that.

5 I'm now on Page 9. Not that it's important to
6 what you're talking about but we still need to go over
7 deed restrictions.

8 THE WITNESS: Understood.

9 MR. HIPOLIT: Public improvements, No. 25,
10 we have to identify what they are and they eventually
11 have to be bonded, the improvements.

12 THE WITNESS: Correct.

13 MR. HIPOLIT: No. 27, 28 are really
14 somewhat of a combined comment. Where we have this
15 sewer line to the rear of the property we're going to
16 want some confirmation of size, direction, flow and
17 potentially have it videoed as part of it because
18 you're probably going to connect to it, I believe.

19 THE WITNESS: We are connecting to it. It
20 has very little flow in it. It runs from west to east
21 and it is 36 inches and it is made out of reinforced
22 concrete.

23 MR. HIPOLIT: Would you agree to video it,
24 post.

25 THE WITNESS: I, I can tell you that we

1 have photographs, we have it. It is clear. There's
2 nothing in it at all. I don't, you know, the
3 condition of it, it really has had almost no flow in
4 it for a long time.

5 MR. HIPOLIT: Right. So I would say if
6 you were to make your connection to it, rely on the
7 video, make sure it's good, the video is done, we're
8 good.

9 THE WITNESS: I think that's a fair deal.

10 MR. HIPOLIT: Item 38 talks about response
11 type issues, issues still exists as far as elevations
12 and drop offs.

13 Item 39, I guess you're now doing fire striping
14 so we're okay but you have your bus --

15 Are we going to just, on the, on the seven
16 spaces in the back, are you going to just park in the
17 spaces available or mark one for it?

18 THE WITNESS: For the van? We can do it
19 either way. We're assuming it would be the southern
20 most space. It's kind of tucked into the retaining
21 wall the most. So we assumed that it would be the
22 southern most space of the seven.

23 MR. HIPOLIT: For the Board, I think if
24 you park back there, park on-site, it's the right
25 place. I tend -- because I think parking, on bigger

1 holidays, is going to be a little tighter. It's not
2 marked for a van because they could use it if the van
3 wasn't there. But, there needs to be a deed
4 restriction to make sure the van is parked there.

5 But, you guys decide what you want.

6 Can you give us a little testimony on my comment
7 Number 45 on your pervious asphalt that you're using.

8 THE WITNESS: So we have a coverage table
9 and I'm just going to refer to Sheet CO-4 because it's
10 handy, the one that we submitted. And we show
11 existing and proposed conditions.

12 On the proposed conditions we have -- we just
13 show it as asphalt area. It's included in the
14 impervious coverage.

15 Is that where you're going?

16 MR. HIPOLIT: Yes. Okay.

17 THE WITNESS: It's included in the
18 impervious calculation however, we did add pervious
19 pavement and that equates to the amount that we're
20 over the coverage. That's something we did in a prior
21 application and, and we used pervious.

22 MR. HIPOLIT: Hold on. Hold on. The
23 gravel walkway now, if you go to CO-4, that gravel
24 walkway, is that included?

25 THE WITNESS: No, it's included in the

1 pervious.

2 MR. HIPOLIT: And how do you get a
3 wheelchair across that?

4 THE WITNESS: It's compacted, it's a Q.P.,
5 quarter processed stone. It's a soft surface. It
6 really wasn't meant to avoid any impervious coverage
7 or anything like that. We are exceeding it. It was
8 just meant to be a soft, softer surface, a lot of
9 walking paths are made of that in municipal parks.

10 MR. HIPOLIT: Why couldn't you use
11 pervious pavement with a ruberized surface.

12 THE WITNESS: We could use that. I think
13 that would count for the impervious and I would have
14 to change my numbers right now. We did the number
15 real quick just in case it was -- I mean, it's gotten
16 a lot more attention than I taught it would, to be
17 honest with you. I apologize. Where we would be at
18 52.75 impervious it would change that to an impervious
19 surface which I think would be any kind of pervious
20 paver or anything like that would still be impervious.

21 MR. HIPOLIT: Okay.

22 THE WITNESS: So if we change that to a
23 hard surface it would be 52.75 not 51.99.

24 MR. HIPOLIT: On Comment 49 did you
25 include your pavers under the pergolas as part of your

1 impervious calcs?

2 THE WITNESS: Yes. Whether it has a roof
3 above it or not is impervious.

4 MR. HIPOLIT: Comment No. 50, we want
5 on-site stockpile moved away from the residential
6 properties at Bears Nest.

7 THE WITNESS: Yes. We can comply with
8 that but, yes.

9 MR. HIPOLIT: 51, we believe you should
10 have fencing on the top of these walls.

11 I know it's a building code requirement. I
12 would say, if you agree to work with Mr. Fette and our
13 office, we could probably eliminate that.

14 THE WITNESS: I agree.

15 MR. HIPOLIT: Snow storage. I, I haven't
16 heard any testimony on snow storage.

17 What do you propose?

18 THE WITNESS: We did provide a snow
19 storage plan on C-10 so we presented this type of plan
20 in front of this Board in the past. It's, it's a way
21 to kind of quantify the best that we could come up
22 with for a 6 inch snow even. We could pile two feet
23 of snow which would be barely up to the top of this --
24 to the bottom of this table and we would have adequate
25 area if we had a 6 inch snow event to clear all

1 streets and parking and sidewalks and that's how the
2 calculation was done.

3 And, again, we pushed the landscaping back 10
4 feet behind the curb to provide area for snow storage.

5 MR. HIPOLIT: I'm okay, I'm okay with the
6 plan. I mean the Board could ask you questions on it
7 honestly but I think that there should be some
8 restriction that, in those areas, if we have a snow
9 storm big enough, you have to be able to handle it,
10 then you are required to truck it off site because you
11 can't hinder parking.

12 THE WITNESS: I would agree with that. We
13 want the site to function also if, if we had a major
14 event, other means and methods would have to take
15 place in order to get it out of there.

16 MS. GREEN: Actually, can I jump in
17 because --

18 MR. HIPOLIT: Go.

19 MS. GREEN: There are three areas where
20 you're not 10 feet off. There is not 10 feet of clear
21 space. One of them is right behind your gravel trail.

22 On your landscape plan you propose a lot of
23 shrubs there and I'm afraid if you push snow there
24 you're going to plow your shrubs right out.

25 THE WITNESS: Okay. We still have a lot

1 of opportunities but I can clean that up. I think
2 you're right, if we modify the landscape plan and
3 probably in our haste we didn't modify this.

4 MS. GREEN: Yes. That the area by the
5 gravel trail and then out in front on either side of
6 those handicapped spaces, those ends, you got
7 landscaping as well.

8 THE WITNESS: Yes. Okay.

9 MS. GREEN: I think you might have to do a
10 little amending.

11 THE WITNESS: We could amend this plan.
12 We could say 2 1/2 feet of snow storage, 30 inches.
13 But, again, I think, I think the idea behind the plan
14 is that it has been thought of and we have provided
15 areas where we think that snow storage can take place
16 on the site. And we modify the plan per your
17 comments.

18 MR. HIPOLIT: Right. I'm okay with the
19 plan so long as you agree, over the top of that
20 storage area you can't stack any more, you agree to
21 take it off site. And if you agree, I'm okay with it.

22 THE WITNESS: We agree.

23 MR. HIPOLIT: If we jump down to Page 15,
24 Item 63, we have a concern on the exhaust for the
25 kitchen areas. Right now I think you're exhausting

1 through the side of the building unless that's been
2 changed in your plans.

3 THE WITNESS: I'm going to have to defer
4 to Mr. Englebauch.

5 MR. HIPOLIT: Before you defer, just some
6 more experience with the urban area kitchen exhaust
7 near residential areas can provide smells that
8 sometimes are friendly, sometimes are not friendly.
9 And they do make devices now, one of the devices, not
10 that you have to use it, is called the Smog-Hog, I
11 would like something similar to that go on the end of
12 these exhaust fans that do require maintenance that
13 really scrub that air so you don't smell it at all.

14 We think, because of the close proximity to the
15 residential properties in the area that you should
16 provide one of those on any exhaust fan.

17 MR. DEL VECCHIO: I ask Mr. Englebaugh,
18 where is the exhaust proposed.

19 MR. ENGLEBAUGH: We haven't gotten with a
20 kitchen designer but we can tell you it would be
21 somewhere on the kitchen wall here, the offset stairs
22 that go down to the basement.

23 MR. DEL VECCHIO: And we would agree to
24 Mr. Hipolit's suggestion.

25 MR. HIPOLIT: Okay. Employee parking,

1 Comment 65, what's the proposal for where employees
2 would park at night? Because that would be really the
3 only traffic on-site.

4 THE WITNESS: So our nighttime employees
5 would park in the seven spaces to the rear of the site
6 which are behind the retaining wall or they could,
7 they could park in the front of the building next to
8 the porte cochere but we believe they will be directed
9 toward the back seven spaces. We think that's the
10 best place.

11 MR. HIPOLIT: From our perspective, we
12 want to, again limit the impact to the residential
13 properties. There's no activity on Philips Parkway
14 during the night. It's limited at best. So the more
15 we can keep employee parking out of the rear at night
16 I think it's better for the residential properties.

17 MR. DEL VECCHIO: If you would prefer them
18 to happen in that front bank of 10, we're amenable to
19 making that a policy.

20 MR. HIPOLIT: Okay. I mean, what I guess
21 we could do probably is, you could say that after
22 11:00 or 10:30, or pick a time, all employee parking
23 because there's nobody visiting the site after a
24 certain time, that all employee parking should be at
25 the front except for that van.

1 I'm not going to bore the Board with Comment 66.
2 We can work those details out together.

3 THE WITNESS: Thank you.

4 MR. HIPOLIT: Item 67, I'll just say Item
5 67, I am concerned and we have never permitted an
6 emergency overflow across a public sidewalk. I know
7 it only happens in the case of emergency but in New
8 Jersey we have had a number of emergencies in the last
9 25 years and it could happen. So we prefer that
10 emergency overflow going in a direction that's not
11 across a public sidewalk or to our public road to
12 prevent, hopefully not interfering with emergency
13 traffic and things of that nature.

14 THE WITNESS: Understood. I don't have a
15 solution yet. I'll work with you on it.

16 MR. HIPOLIT: That's all I have, Mr.
17 Chairman.

18 CHAIRMAN DePINTO: Okay. Thank you.

19 Before I open it up to Board Members for
20 questions of Mr. Dipple or Mr. Hipolit we're going to
21 take about a five minute break and then following
22 Board questions we will open it to the public.

23 MR. REGAN: Mr. Chairman, one condition
24 came about to the applicant, the tree removal
25 ordinance.

1 CHAIRMAN DePINTO: Yes.

2 MR. REGAN: Section 119(a)-3, that exempts
3 any property which is in a zone which requires
4 affordable housing, the ordinance does not apply.

5 CHAIRMAN DePINTO: Okay. Thank you.

6 (A recess is taken at 9:35 p.m. to 9:48
7 p.m.)

8 CHAIRMAN DePINTO: I was going to open the
9 meeting to the Board for questions of either Mr.
10 Dipple or Mr. Hipolit or Ms. Green.

11 And I guess I'm starting with Mr. Lintner.

12 MR. LINTNER: Thank you, Mr. Chairman.

13 Mr. Dipple, just a couple questions, I don't
14 need an answer right now because I'm going to ask you
15 to do some numbers for me so perhaps in your next
16 testimony.

17 I just want to review the floor area ratio
18 calculation. It looks like you have a gross floor
19 area of about 68,000 square feet on CO-4.

20 THE WITNESS: I would agree to that. Yes.

21 MR. LINTNER: Okay. And a, the property
22 is 3 acres so it's approximately 130,000 square feet?

23 THE WITNESS: It is. It's listed in the
24 top, yes.

25 MR. LINTNER: My question is, and I'm

1 certainly not suggesting that the 35 percent is the
2 goal here but for presentation to the Board, could you
3 determine how the 35 percent can be accomplished with
4 either eliminating a floor or what happens to the size
5 of the building?

6 Again, I don't need an answer now.

7 THE WITNESS: I don't know if I'm the best
8 expert to testify to that. Mr. Englebaugh designed
9 the building. Perhaps.

10 MR. LINTNER: Just the square footage.
11 Right now your ground floor is about 27,000 square
12 feet.

13 THE WITNESS: So it would have to be --
14 again, I was trying to do the percentages on the fly
15 during my testimony but --

16 MR. LINTNER: It's about 2/3s, I believe.

17 THE WITNESS: 2/3s so maybe 33 percent of
18 the building would have to come down. The easiest way
19 would be to knock off a floor. But I think what
20 happens is the amenity space and the room count, the
21 amenity space all get smaller, the office space gets
22 smaller altogether so knocking off the floor would
23 knock off all the residential units and not the
24 amenity space or the amenity space would be adjusted.

25 So, again, I don't know if I'm the best but I

1 think it's a little more complicated than that.

2 MR. LINTNER: Okay. But the elimination,
3 the elimination of a floor would keep the building the
4 same physical dimensions but it would accomplish the
5 floor area, essentially accomplish the floor area
6 ratio.

7 THE WITNESS: I, I would say it would be
8 pretty close.

9 MR. LINTNER: Thank you.
10 Nothing in addition.

11 CHAIRMAN DePINTO: Mr. Zitelli.

12 MR. ZITELLI: Can I talk about landscaping
13 or we're not going to do that one?

14 I'm just looking at some of the comments that
15 are in here. It doesn't sound like we addressed some
16 of them.

17 CHAIRMAN DePINTO: Yeah. You're
18 referencing which Board exhibit?

19 MR. ZITELLI: It is No. 2.

20 I guess -- do we want to talk about that or
21 should I wait on that one?

22 CHAIRMAN DePINTO: No. You could talk.

23 MR. ZITELLI: So on No. 2, this is the one
24 from, I think from Darlene Green, right, January 11th.
25 I just, right away --

1 CHAIRMAN DePINTO: Wait. I'm sorry.
2 We'll cover that under Darlene's report.

3 I thought you were talking about Gus DeBlasio's.

4 MR. ZITELLI: All right. Mr. Hipolit, he
5 had went through so many things I don't really have
6 anything to add to what he did so, at this point, no.

7 CHAIRMAN DePINTO: Very good.

8 Mr. Culhane.

9 MR. CULHANE: The same as various members
10 have suggested. I would like to see those numbers to
11 see what the options are available to the Board to
12 consider.

13 No other comments at this time.

14 CHAIRMAN DePINTO: Thank you.

15 Mr. Fette.

16 MR. FETTE: No comments, Mr. Chairman.

17 CHAIRMAN DePINTO: Thank you.

18 Mr. Stefanelli.

19 MR. STEFANELLI: No comments.

20 CHAIRMAN DePINTO: Thank you.

21 And Ms. O'Neill.

22 MS. O'NEILL: I have no comments.

23 CHAIRMAN DePINTO: Thank you.

24 With that said, the Chair will entertain a
25 motion to open the meeting to the public.

1 MR. CULHANE: So move.

2 MS. O'NEILL: Second.

3 CHAIRMAN DePINTO: Mr.Culhane, second Ms.
4 O'Neill.

5 All in favor?

6 (Aye)

7 CHAIRMAN DePINTO: Counsel.

8 MR. WISS: Thank you.

9 CROSS-EXAMINATION BY MR. WISS:

10 Q You indicated that you had conducted a
11 study on parking count.

12 The Board -- what went into that study?

13 A So we looked for some assisted living
14 facilities in the area, in the general area that the
15 Board may be familiar with, one of which was the
16 Bristal Assisted Living in Woodcliff Lake and another
17 one was called the TSL Pike redevelopment or
18 predevelopment, I'm not sure if that's correct, that
19 was in Montvale, and then there's one in Emerson,
20 there's one in Paramus and one in Midland Park and the
21 data for the number of rooms is readily available
22 through the websites. We have resolutions on a couple
23 of them for approval.

24 The unit count and the parking was looked at
25 through Google Earth photography and some of the sites

1 were visited to clarify some of the questionable
2 areas.

3 Q Okay. When you conducted that study did
4 you just compare parking or did you compare other
5 aspects?

6 A It was flat dwelling units to parking and
7 the table which -- I don't know if it was marked.

8 MR. DEL VECCHIO: You need to mark it at
9 this point, I believe.

10 MR. REGAN: A-21.

11 THE WITNESS: I don't have a hard copy of
12 it.

13 MR. HIPOLIT: You need to submit that so
14 we have it.

15 MR. DEL VECCHIO: We'll submit a paper
16 copy by email.

17 Q Am I correct that there was no study on
18 lot size?

19 A No. That's correct.

20 Q And let's just refer to your plan CO-4.

21 At the top right corner there's an indication of
22 some of the bulk requirements that are there and some
23 of the variances that are required.

24 So am I correct there was no study on lot size?

25 A That's correct.

1 Q Was there a study conducted on minimum lot
2 coverage?

3 A No, only dwelling units and parking.

4 Q Was there a study on FAR?

5 A Only dwelling units.

6 Q Was there a study on, I'll stipulate, only
7 dwellings and apartments?

8 A Yeah.

9 Q You had mentioned that you had looked at
10 Google Earth.

11 What day of the week was that?

12 A What day of the week?

13 Q What day of the week?

14 A I don't know. We, we did do the study in
15 one day. We looked at different units when we looked
16 at Google Earth.

17 Q How many days did you look at Google
18 Earth?

19 A I don't know.

20 Google Earth photographs are from a specific
21 time period. It could have been from two years ago.

22 Q Is there any indication on the Google
23 Earth as to what day of the week that would have been?

24 A It gives you a month and a year in which
25 the photograph was taken. It's not a streaming image.

1 It's a still image.

2 Q Would you agree with me that there would
3 be more visitors to the facility on a weekend than a
4 weekday?

5 A I don't know.

6 Q Okay. Well, you had reviewed testimony in
7 this matter I believe and let me just get the
8 appropriate person -- were you here -- did you review
9 Miss Johnson's testimony?

10 A I was here.

11 Q Okay. And Miss Johnson had testified
12 during the November 20th hearing about different
13 people that would be visiting a facility, an assisted
14 living facility.

15 Correct?

16 A I believe she did.

17 Q She mentioned that there would be
18 overlapping shifts.

19 Correct?

20 A That's correct.

21 Q She mentioned that there were residents
22 that would visit?

23 A There would be visitors visiting
24 residents, yes.

25 Q Thank you for that correction.

1 There would be doctors that would be visiting?

2 A From time-to-time.

3 Q There would be spouses that would be
4 visiting?

5 A Spouses would include visitors. That
6 would, I assume, be a visitor.

7 Q Now on your plan, I'm correct there are 43
8 proposed parking spaces.

9 Is that correct?

10 A That's correct.

11 Q And the midday shift, I believe your
12 testimony was, 21 staff members were present at the
13 facility.

14 Correct?

15 A 21 and it's listed on the plan, that's the
16 maximum shift.

17 Q Okay. Does that 21 account for doctors
18 that would be visiting?

19 A I don't believe it does.

20 Q Does it count for spouses and other family
21 members that would be visiting?

22 A They're not on shift so I would say no.

23 Q Does it account for the fact that there
24 would be overlapping shifts within that 21?

25 A There was some testimony. I did not give

1 the testimony. The maximum shift is 21 at a time and
2 there was testimony by someone else as to how the
3 overlapping shifts would work.

4 Q You had reviewed -- I believe this is
5 marked, it's the Montvale Planning Board from the Fire
6 Department.

7 Is that accurate?

8 A I think that's B-7. What's the date?

9 MR. REGAN: It is --

10 MR. WISS: It is B-7.

11 MR. REGAN: July 3rd.

12 MR. WISS: 7/3/2018.

13 Q In the middle of the page that, it
14 indicates that a shift change, a staff of 19, would
15 require close to all available non handicapped spaces.

16 Do you agree with that?

17 A No, I don't.

18 Q Why don't you agree with that?

19 A Because the testimony was that the shift
20 change would take place over a period of time so some
21 shift members would leave maybe 20 minutes before the
22 hour, half an hour before the shift change was
23 scheduled, some would leave a little bit later and
24 then past the actual shift change time some additional
25 ones would leave.

1 I believe the testimony was that they couldn't
2 leave patients, just 21 people get up and 21 people
3 come in because there's, there's constant care.

4 Q Okay. And you had mentioned some. Can
5 you quantify that number for the Board?

6 A I don't remember the specific number. I
7 don't believe it worked out exactly.

8 Q And so I'm correct that you would then be
9 relying on Ms. Johnson's testimony?

10 A Primarily, yes.

11 Q Turning back to CO-4, am I correct that
12 the, in the back of the facility the width between the
13 loading bay and the parking line is depicted as 20
14 feet?

15 A The loading bay?

16 Q I'm sorry. I'll point out on the side of
17 the building where the loading bay is on the
18 right-hand side?

19 A Yeah. That's, that's the drive aisle
20 width, 20 feet. Yes.

21 Q Did you account in any way for the fact
22 that a truck, a loading truck might back up to unload
23 heavy objects into the loading dock?

24 A It's possible. Sure. That they may go
25 in, come past it and then go backwards.

1 Q Did you account for the fact that that
2 would block access to emergency vehicles and other
3 folks within that lane?

4 A I, I didn't account for that. I think
5 that would be extremely unlikely.

6 Q Okay. But it wasn't accounted for?

7 A No.

8 Q There was some testimony about floor area
9 ratio and some questions that were asked of you. I'm
10 just going to defer to some of those calculations when
11 you come back in a minute.

12 With respect to FAR, have you read the report of
13 the Borough's planner?

14 A I have, yes.

15 Q Okay. Am I correct that there are five D
16 Variances -- I'm sorry. Let me make sure I got this
17 right.

18 There are seven D Variances and five bulk
19 variances that are required?

20 A I didn't, I didn't count them. I think we
21 have a question --

22 MR. DEL VECCHIO: I'm just going to object
23 for a second.

24 First of all, this witness didn't talk about
25 variances. It's outside the scope of his expertise

1 and it assumes that we agree with the variance list
2 that is listed in Ms. Green's report which we don't
3 entirely do.

4 CHAIRMAN DePINTO: Thank you.

5 What we will do is, when I close the meeting to
6 the public and we hear testimony of the applicant's
7 planner, we then will hear from the Borough planner
8 and we can address that question at that time.

9 MR. WISS: Thank you.

10 And, just for the record, I was only referring
11 to that as indicated on the plan CO-4. There are a
12 list of bulk requirements indicating permitting and
13 existing.

14 CHAIRMAN DePINTO: That's fine. Thank
15 you.

16 MR. WISS: Thank you, sir.

17 Q In the back of the building where the 20
18 foot wide sanitary sewer easement is on CO-4, would a
19 berm be permitted back there?

20 A It -- I don't think it's, I don't think
21 that the Borough would want a berm back there.

22 MR. HIPOLIT: Yeah, would not.

23 A I don't know if it would be permitted.

24 MR. HIPOLIT: It would not.

25 Q Was your testimony earlier that the

1 overnight staff would be parking in the front of the
2 building as opposed to the rear of the building?

3 A I think we landed on that the overnight
4 staff, it might be better to park in the front of the
5 building. We had discussed that it's a possibility to
6 leave the seven spaces in the rear but I think, in
7 discussion with the Board, the front is the better
8 option.

9 Q Am I correct that the road that provides
10 access to the facility is not a county road?

11 A That is correct.

12 Q Turning back to the comments of the Fire
13 Department in the 7/3/18 letter.

14 A Okay.

15 Q Did you account for the fact the all, in
16 CO-4, that the road is not a County road?

17 A Did I -- I'm sorry. With respect to this
18 letter, I mean it's not a County road.

19 I don't know if I understand your question.

20 Q Okay. Let me get more specific. The
21 CO-4, am I correct, is a horse shoe that depicts a
22 one-way mode of traffic around the side of the
23 building?

24 A It's a one-way ring road if you want to
25 call it that. It goes counterclockwise, clockwise

1 rather.

2 Q Along the side of that ring road is
3 depicted no parking fire lanes.

4 Is that correct?

5 A That's correct. Yes.

6 Q I believe there was a snow plan that you
7 had marked or is marked into evidence and showing the
8 Board.

9 Am I correct that the snow plan, the snow would
10 be stacked above the no parking fire lane around the
11 perimeter of the building?

12 A No. No, it's not.

13 Q And why is that?

14 A It's on the lawn. The snow, all the snow
15 storages were shown on the lawn, I believe.

16 But these are recommended snow storage areas.

17 Where they put the snow is probably, you know,
18 for the lack of better term, game day decision,
19 wherever they can put it. But we're showing that
20 there is ample snow removal area so that we wouldn't
21 have to lose any parking spaces.

22 Q Right. And it wasn't my intention of the
23 question to say that it was going to be in the fire
24 lane but the snow removal plan is depicted, if you
25 will, just above the no parking fire lane?

1 A That's behind the curb.

2 Q Behind the curb?

3 A Yes.

4 Q As we go around the no parking fire lane
5 I'm correct that there's a 20 foot wide gap between
6 the edge of the no parking lane inclusive of the no
7 parking lane to the front of the loading dock.

8 Correct?

9 A There is a 20 foot wide drive aisle, as I
10 testified before, and that runs from the curb to the
11 front or the outer part of the loading dock, yeah.
12 That's 20 feet.

13 Q Within the loading zone, how many vehicles
14 were anticipated to be, to be parked within the
15 loading zone at one time?

16 A Really just one but it depends on the size
17 of the vehicle. It's 60 feet long. The truck that
18 they expect to bring food deliveries here as a, is a
19 26 foot box truck. That's the size of the box. So
20 the truck we estimate is anywhere between 10 and 12
21 feet longer so that's, you know, 38 feet in total
22 length. It's 60 feet on its shortest dimension, I
23 believe.

24 So if a small truck came in behind it, the guy
25 wasn't loading off the back of the truck, he could

1 pull in there temporarily, if it was a small FedEx
2 van, and get out so one to two tops.

3 Q And there was some testimony earlier that,
4 in addition to that type of loading, there would be
5 deliveries that were -- I believe your testimony was
6 you were going to try to keep them exclusively in the
7 back.

8 Correct?

9 A That's correct. And we can provide
10 signage, directional signage to make sure all
11 deliveries continue around that ring road to the back,
12 the loading area.

13 Q How many handicapped parking spaces are
14 there within the 43 spaces?

15 A Four.

16 Q And how many spaces would be occupied by a
17 facility owned van?

18 A One.

19 Q Within the valet service that you
20 indicated might apply to this, would there be staff
21 that would have to staff the valet service in order to
22 remove those cars inside and outside the facility?

23 A During that day it's possible, yes.

24 Q Am I correct that plan has not been
25 submitted yet as to where those cars would go?

1 A That's correct.

2 MR. WISS: I think that's all the
3 questions I have, sir. Thank you.

4 CHAIRMAN DePINTO: Thank you.

5 Anyone from the public have any questions of
6 either Mr. Dipple or Mr. Hipolit or Ms. Green? No.

7 The Chair will entertain a motion close the
8 meeting.

9 MR. STEFANELLI: So move.

10 MS. O'NEILL: Second.

11 CHAIRMAN DePINTO: Mr. Stefanelli,
12 seconded by Ms. O'Neill.

13 All in favor?

14 (Aye)

15 CHAIRMAN DePINTO: Mr. Del Vecchio.

16 MR. DEL VECCHIO: Yes. I would like to
17 call Mr. Preiss.

18 MR. REGAN: Do you swear or affirm that
19 the testimony you will give in this proceeding shall
20 be the truth, so help you God.

21 THE WITNESS: I do.

22 MR. REGAN: For the record, state your
23 full name.

24 THE WITNESS: Richard M. Preiss, P R E I S
25 S.

1 MR. REGAN: As the Board is aware, Mr.
2 Preiss has been here before. I recommend he be
3 qualified as a professional planner without any
4 further testimony.

5 CHAIRMAN DePINTO: The Chair will accept
6 the recommendation of Counsel.

7 Please continue.

8 THE WITNESS: Thank you very much.

9 DIRECT EXAMINATION BY MR. DEL VECCHIO:

10 Q Mr. Preiss, you have either reviewed the
11 testimony or been present for all the testimony that
12 preceded you in this application?

13 A I have.

14 Q You made yourself familiar with the
15 property which is the subject matter to this
16 application?

17 A Yes.

18 Q The neighborhood in which the property
19 sits?

20 A Yes.

21 Q You have had an opportunity to re-review
22 the Borough of Montvale ordinance, the Master Plan and
23 land use documents as they might apply to this case?

24 A I have.

25 Q You have undertaken the necessary

1 background research to perform a planning analysis for
2 the site?

3 A I have.

4 Q Were there any retention constraints
5 placed on the retention of your services on the
6 required outcome after your review?

7 A No.

8 Q Could you tell the Board what you did, how
9 you did it and the conclusions you reached?

10 A Yes. I think, as I've indicated in the
11 prior questioning, I have looked at the site, the
12 architectural plans, the application, visited the
13 site, the neighborhood, reviewed the Master Plan, the
14 zoning ordinance.

15 I also have been substantially involved in the
16 design and worked with the engineer or architect and
17 other professionals with regard to the development of
18 the plan and I have attended prior hearings and seen
19 the Board's prior review letters.

20 Also, specifically for this evening's testimony,
21 I reviewed the letters of Ms. Green dated 1/11/19
22 which is B-2 and Andrew Hipolit's review letter of
23 1/14/19 designated as Exhibit B-1.

24 I think, I don't need to go through a
25 description of the site, the surrounding uses and the

1 proposed development. I think, based on the prior
2 testimony, the Board is very aware of that.

3 I will, however, note that the land uses in the
4 established environment which, in which the
5 application sits is decidedly one of an office
6 development. We have aspects of such development
7 north, east and west along Philips Parkway, the Kidde
8 Fire Training, prior shipping and prior holdings of
9 the corporation. This municipal complex is just a
10 short distance away as is the Wegmans development to
11 the west of the site.

12 The one residential development that potentially
13 would be impacted is the Bears Nest town home
14 development which is located behind it to the south of
15 the site in Park Ridge.

16 So that really is the context for this
17 application.

18 And I'd like to start by reviewing the zoning
19 compliance based on your planner's latest review
20 letter, that's Darlene Green's review letter of
21 January the 11th just to set the extent of compliance
22 and the nature of the variances.

23 First, with regard to the D Variances, I see
24 that we have five D Conditional Use Variances and one
25 floor area ratio variance.

1 Insofar as the D Variances are concerned, two of
2 the D Variance, three D Variances, the one which is
3 the requirement to be on a County road, Philips
4 Parkway is not and to have the minimum lot size of 10
5 acres, we're at 3 acres.

6 As the Chairman pointed out, these are
7 conditions that cannot be complied with. You can't
8 change the location and increase the lot size so in
9 that context those are hardship related.

10 One other of the variance is, in my opinion, non
11 substantial, that's the impervious coverage
12 development with a maximum permitted is at 50 percent
13 and we're slightly under 52 percent. It turned out
14 that, if we're, based on this evening's discussion, if
15 that gravel walkway is changed to an impervious
16 coverage it may be around 52.7. To me, on a site of
17 this size, given the complexity, given the amount of
18 open space, given the improvements that is not a
19 substantial violation of that particular variance.
20 But it is a D3 variance so I will acknowledge that.

21 With regard to the, the two other D3 variances,
22 these are more in the nature of design waivers that,
23 that are D Variances and to some extent I don't know
24 whether these variances are actually required. One is
25 the planting buffer in the front of the eastern

1 property line. I think we are compliant with the 15
2 foot requirement.

3 The question really is whether that vegetation
4 is 6 feet in height. I think the ordinance indicates
5 that the Board may require that it be 6 feet tall. I
6 don't know that it is a mandatory requirement so I'm
7 not sure that that is a variance in and of itself. I
8 think that, and I'll get to the testimony, the
9 vegetation, the planting that's proposed is
10 appropriate. But, in any respect, that is a, more of
11 a design waiver even though the way that the ordinance
12 is written it's part of the conditional use
13 requirements so it's characterized as a D3 Variance
14 but it's certainly not a substantial variance in my
15 opinion.

16 With regard to the monument sign, I think we do
17 comply with your ordinance. I don't agree with the
18 calculation of your planner.

19 When I was the planner here and in prior
20 applications it was the face of the sign including the
21 framing that was included in the measurement of the
22 sign area.

23 There were pillars or other portions of
24 structures which held up the sign, those weren't
25 included. So her calculation is 64 square feet.

1 I think based on, on my understanding of how the
2 ordinance is interpreted and has been interpreted in
3 prior applications we do comply with that 32 square
4 feet maximum permitted size so I don't believe that
5 that a variance is required.

6 Moreover, it's more, as I've said, more in the
7 nature of a design waiver than a D3 Variance.

8 With regard to the D5 Variance, it's really a
9 function of a rounding issue. That's the site size in
10 terms of acreage.

11 At 130,590.11 square foot, that's 2.9979 acres
12 which typically, in cases that I've been involved in
13 as a municipal planner, you round up with the second,
14 to a second decimal point. That's a hundredth of an
15 acre.

16 So the site really is, in my opinion, 3 acres
17 and 75 units would be 25 units per acre which is
18 compliant.

19 I think the notion that one has to round to the
20 fifth decimal point and creates a density variance is
21 really, I think, overstating the situation.

22 So, in my opinion, even if that, the Board
23 decides to characterize that as a, as a D5 Variance
24 it's of such a de minimus extent that, you know, it's
25 obviously something that we have to address but it's

1 not something that's substantive.

2 The only D Variance, in my opinion, and I think
3 the Board has focused on it tonight and I would agree,
4 the only D Variance that is of substance from a
5 planning point of view is the FAR variance. You do
6 have .35 as required as the maximum and we're at .52.
7 So that clearly is a fairly large violation of that
8 requirement.

9 With regard to the list of C Variances, again
10 those are more in the nature of design waivers than
11 actually violations of your bulk variances. In
12 Montvale we have a situation where your site design
13 standards are located in your zoning ordinance so
14 those are characterized as C Variances.

15 There are many municipalities, most that I'm
16 aware of, that have those design, those standards in a
17 site plan design, those would be design waivers. In
18 Montvale they would be called C Variances. And for
19 that I acknowledge that they are required; a retaining
20 wall height, the addition of the access drive from the
21 building, the height screening in the parking lot,
22 landscaping and shade trees with the parking lot. And
23 even those I think there are some areas for
24 interpretation with regard to that.

25 The fifth one which has been called out is the

1 shuttle van parking lot not being screened. But I
2 think, if you read the entire regulation, it talks
3 about that being screened from a public roadway and
4 the location of the shuttle van parking is in the rear
5 yard so it would be blocked by the building. They are
6 certainly, for overnight parking, it certainly won't
7 be visible from the street as the ordinance requires.
8 So I don't think that that even should be called out
9 as a C Variance.

10 So, in, in summary, if you're looking at the
11 compliance, I know that our objecting attorney has
12 tried to make a big deal about the fact that we have
13 so many D Variances and bulk variances but if you look
14 at the application's non-conformity, most of them are
15 more of a detail design nature rather than anything
16 else and rather than a substantive violation of your
17 use or bulk requirements of the ordinance. So as far
18 as I'm concerned, from a planning point of view, even
19 though this is a permitted use, the only substantial
20 departure that you would have from your regulations
21 and the potential for impact is the FAR variance.

22 Now the, the case law, I'm going to be quoting a
23 lot about case law and it is a little bit complicated
24 insofar as this variance is concerned because, A.,
25 we're dealing with an inherently beneficial use and

1 also because we're not dealing with a D1 use variance.

2 So in the case of the D3 conditional use
3 variance, the traditional D1 use variance proofs are
4 modified. The stricter, what we refer to as the
5 Medici enhanced quality of proofs, that is case law
6 based on Medici versus North Plainfield, a case
7 decided back in 1986. Essentially the court indicated
8 that in the use variance, the Medici proofs apply, you
9 have to indicate that the site is particularly suited
10 to the proposed use and, moreover, the Board, on the
11 negative criteria, has to reconcile the granting of a
12 variance for uses that the governing body has
13 prohibited through zoning.

14 Those two standards of proof do not apply in a
15 D3 Variance.

16 The -- this is because the proposed use is
17 permitted in the zone. Assisted living facilities are
18 permitted in this particular zone albeit that it
19 doesn't comply with all the conditions under which
20 it's permitted.

21 In the inherently beneficial the case which
22 essentially sets forth the proofs is known as Coventry
23 versus Westwood, a case from 1980. And basically that
24 case says that the special reasons, the positive
25 criteria are satisfied if the applicant could prove

1 that the site can accommodate the problems associated
2 with the use even though the proposal does not comply
3 with conditions, the ordinance as established to
4 address such problems.

5 So that's the affirmative criteria.

6 Essentially both of the prongs of the negative
7 criteria apply. You have to demonstrate there would
8 be not a substantial detriment to the public good or
9 to the zone plan.

10 With regard to the D4 and the D5 variances,
11 that's the FAR and the density variances, the courts
12 have also held essentially that the Coventry standards
13 would apply.

14 And with regard to the FAR variance, the case
15 the I'm citing is Randolph Town Center versus Randolph
16 where essentially the courts indicated that where
17 there's a violation of FAR, similar to the Coventry
18 case, you have to prove that despite the fact that the
19 ordinance, the proposal does not comply with the floor
20 area ratio that the site can accommodate problems
21 associated with it.

22 And so, too, with regard to the density variance
23 there's a case known as Grubbs versus Slothower and
24 essentially it says that Coventry proofs apply where
25 you have a density variance.

1 And, as I've indicated before, if a density
2 variance is a result of rounding out to the fifth
3 decimal point then, you know, that variance would
4 apply.

5 So in, in all of the instances where we have the
6 D, D Variances, the D3, the D4 and the D5, the
7 applicant need not show that the site is particularly
8 suited for an assisted living facility. This is
9 because it's a permitted use in the zone. It just has
10 to demonstrate that the site can accommodate the
11 potential problems that may be associated with not
12 meeting the conditional use requirements, not
13 complying with the floor area ratio or density that is
14 permitted.

15 I would also note, and as Ms. Green indicated,
16 that the FAR and the density requirements are also
17 listed as conditional use requirements if the zoning
18 ordinance, and as she put it, those two variances are
19 really subsumed within the D3 conditional use
20 variance.

21 So my first order of business will be to address
22 the D3, D4 and D5 variances in conjunction with one
23 another.

24 I mentioned that the case is complicated,
25 further complicated by the fact that we're dealing

1 with an inherently beneficial use. So it's slightly
2 different than a straight forward D3 conditional use
3 variance, a D4 FAR variance and D5 density variance
4 because an assisted living facility has been deemed by
5 the courts to be an inherently beneficial use.

6 I'm referring to a case known as Sunrise versus
7 Madison. And there was a recent case in Franklin
8 Lakes, Sunrise versus Franklin Lakes which is recently
9 decided. It was not a reported decision but in both
10 instances the court recognized that assisted living
11 facilities are inherently beneficial.

12 Q If I can just interject for a second, your
13 determination of analysis of inherently beneficial is
14 essentially exclusively predicated on the existing
15 living nature of the use. You have not added any
16 factor or ingredient for the fact that this is an
17 inclusionary project with affordable housing proposed?

18 A Correct.

19 And I'll just refer to, there is case law that
20 includes inclusionary developments in themselves are
21 not inherently beneficial and I agree with that.

22 I do think that the inclusion, particularly in
23 this case, of 20 percent of the beds as, as being
24 affordable elevates the nature of the inherently
25 beneficial use but I'll get to that in a minute. But

1 I'm predicating the, my review of the fact that this
2 is an inherently beneficial use based solely on the
3 fact that assisted living facilities have been deemed
4 as such by the courts in New Jersey.

5 When it comes to inherently beneficial uses, the
6 Supreme Court in the case of SICA versus Wall
7 Township, this is a case that was decided in 1992,
8 said that rather than going through the traditional
9 special reasons and negative criteria test that you
10 apply what is known as the four part SICA test.

11 And the focus really, in this particular
12 situation, is not on the affirmative proofs. The
13 court basically said, because the use is an inherently
14 beneficial it benefits the public to such an extent
15 that you don't even have to do address special
16 reasons. The special reasons, the extent to which it
17 serves the public good is automatically satisfied by
18 reason of the nature of the use itself.

19 So the focus really is more on the negative
20 criteria and as is the case in the D3, D4 and D5
21 variance.

22 And essentially the court said the Board and the
23 applicant should undertake a review based on what is
24 known as the four part SICA test.

25 Step 1 is to determine the public interest at

1 stake.

2 Step 2 is to determine whether there would be
3 any detriments if the variance were granted.

4 Step 3 is to determine whether the imposition of
5 reasonable conditions would ameliorate or eliminate
6 those detrimental impacts that might ensue if the
7 variance were granted.

8 And Step 4 is what is known as the balancing
9 test where you have to weigh the positives to the
10 extent to which the public interest is advanced. And
11 you have to look at the negative criteria, potential
12 detrimental impacts assuming the imposition of
13 reasonable conditions. And if the positives outweigh
14 the negatives, then the variance must be approved.

15 If the negatives outweigh the positives, then
16 the Board has the reason to deny the application.

17 So in this particular context, because we have
18 an inherently beneficial use which requires us to go
19 through the four part SICA test and also because the
20 D3 conditional use variance, the D4 FAR variance and
21 the D5 Variance has a substantially lesser burden of
22 proof required per Coventry, I think, in this
23 particular situation, the focus of the Board should be
24 not upon the impact of the use but the impact of the
25 deviation.

1 The court essentially said in Coventry that the
2 governing body authorizing the proposed use as a
3 conditional use has already determined the use is
4 compatible in the zone so the focus of the Board is on
5 the impact of the deviation not on the use itself.

6 And as before, just to summarize, the applicant
7 only need to show that the site will accommodate the
8 problems associated with the use even though the
9 proposal does not comply with the conditions
10 established in the ordinance to do address their
11 problems.

12 So now going to the four part SICA test, step
13 No. 1.

14 So the court in the SICA decision basically said
15 not all inherently beneficial uses advance the public
16 interest to the same degree. Some do it to a greater
17 extent, some to a lesser extent.

18 So the first part of the test is really to
19 determine on the scale of inherently beneficial uses
20 where assisted living facilities and where this
21 particular assisted living facility ranks. Well, as
22 indicated, the assisted living facilities have been
23 deemed by the courts to be inherently beneficial.

24 I will also note that senior community housing
25 construction, which is essentially what an assisted

1 living facility is, is one of the 13 purposes of the
2 Municipal Land Use Law and in fact it's one of the
3 very few specific uses that is actually mentioned in
4 the purpose section of the Municipal Land Use Law.

5 So, in my opinion, that's substantially notable.
6 There's not too many uses listed in that section of
7 the statute that is under NJSA 40:55(d)2, Item No. 13.

8 In addition, the Municipal Land Use Law and the
9 case law, as this community well knows, is that it
10 calls for the adequate provision of affordable housing
11 including and especially housing for seniors. And I
12 would note and I mentioned this in the introduction,
13 even though I wouldn't characterize this project by
14 itself by virtue of the inclusion of affordable
15 housing makes it inherently beneficial, I think that,
16 under the current New Jersey law, in the case of
17 assisted living facilities, 10 percent of the units
18 are required to be eligible or affordable.

19 But, in this particular situation, 20 percent or
20 double the number mandated by law is being provided.

21 So, to me, the fact that not only do you have an
22 inherently beneficial use but essentially the
23 inclusion of 20 percent of the beds is being
24 affordable as opposed to the 10 percent requirement
25 under the New Jersey law elevates the extent to which

1 this particular project will serve the public good.

2 It's going to help this community meet its
3 affordable housing obligation whether that be in the
4 third round or in the fourth round and they're surely
5 coming in the not too distant future.

6 So I think you take all of those factors into
7 consideration, the case law, the purpose of the
8 Municipal Land Use Law, the provision of affordable
9 housing, the fact that you have 20 percent of the beds
10 being affordable to me that makes this particular
11 assisted living facility rank high on the scale of
12 inherently beneficial use. In other words, by the
13 very existence this assisted living facility will, to
14 a very large extent, advance the public welfare.

15 The second step of the SICA test is to determine
16 if there are any detriments that would ensue if the D
17 Variances were granted. And I'm going to deal with
18 each of the D Variance categories. The first one is
19 the D3 conditional use, the potential detriments
20 itself.

21 The first thing is, noted is the uses permitted
22 in the zone. As to the conditions which the proposed
23 development violates those are access, lot area, FAR
24 and density, these all share the intent to create an
25 efficient, compact, accessible development on the site

1 leaving sufficient space to separate buffer and
2 protect the adjacent uses from on-site activity and
3 traffic associated with the use. If you look at all
4 of those conditions which are violated, essentially
5 the intent of those requirements is really, you know,
6 to provide an efficient compact development on the
7 property leaving sufficient space to separate it from
8 the adjacent areas and also to limit the amount of
9 traffic or parking impacts to the extent that those
10 would be problematic.

11 So, in that regard, I'll address each of the D3
12 Variances in terms of how the site can accommodate the
13 problems.

14 So the first is the fact that this property is
15 not on a County road. It is on Philips Parkway.
16 While it's not a County road it is a major roadway
17 providing access to a lot of existing office and
18 institutional uses nearby.

19 I think you have heard, from the testimony
20 that's provided, the assisted living facility does not
21 generate a substantial amount of traffic. Certainly
22 if you compare it to the kinds of uses that are
23 permitted in the zone such as office uses, it doesn't
24 create a lot of traffic particularly at rush hour.
25 The traffic is mostly limited to employees and

1 occasionally to visitors.

2 So, in my opinion, the strict conformance to the
3 condition that access only be from a County road not
4 only is it not problematic it's certainly not feasible
5 in this case. You know, this site is something not on
6 a County road. However, I would note that this site
7 in this location is perfectly suitable for an assisted
8 living facility.

9 Philips Parkway is the only existing roadway
10 that provides access to the site. There are no County
11 roads which are located in proximity to the site. So,
12 I believe the fact that it's not located on a County
13 road, A., this is a condition that can't be overcome.
14 And I don't think, because of the way that access is
15 provided and the nature of the surrounding uses, the
16 lack of access directly to a County road would create
17 any problems for this particular use.

18 With regard to lot size, certainly at 3 acres,
19 it's below the 10 acres required. However, I think
20 when you look at development it can be fully and
21 appropriately accommodated on this lot given the lot
22 size, its shape and notwithstanding the lot being
23 undersized, they're still able to comply with the
24 setback requirements.

25 Additionally, much of the existing root cover of

1 the remaining trees will remain undisturbed. New
2 landscaping will be provided along the perimeter where
3 the site is disturbed. As such, in my opinion, there
4 is sufficient separation and buffer from the adjacent
5 properties.

6 So, even though the site is 3 acres and not 10
7 acres, I believe that the overall intent and purpose
8 of that will, will be met through the design and will
9 not create problems.

10 I'll be addressing some of the remaining aspects
11 as related to FAR and density next. Obviously, that
12 lot size has something to do with it.

13 And, in fact, with respect to FAR and density as
14 I noted before with respect to density, if the, if the
15 site were just 90 square foot larger or if the Board
16 determined that rounding up to 100 decimal points is
17 adequate in terms of determining the compliance with
18 the density requirements then no density variance
19 would be required.

20 With regard to the floor area ratio, in, in my
21 opinion I think floor area ratio is an appropriate
22 tool to be used in planning in certain cases.
23 Certainly when it comes to some kind of non
24 residential uses, when you talk about office
25 development, when you talk about light industrial

1 development, even when you talk about single family
2 uses, FAR is a useful tool because, in that instance,
3 you're, you're regulating the intensity of development
4 on the property.

5 When it comes to assisted living facilities, I
6 know you have this in your ordinance, I think it's a
7 less suitable means of, of controlling density. And,
8 that's because assisted living facilities, by their
9 very nature are very benign uses. I will get into
10 this a little bit more later on when I'm talking about
11 the negative criteria.

12 And, essentially, it's a function of the number
13 of beds and the amount of staff which have to, you
14 know, be, be utilizing this facility. And in this
15 particular situation, having 98 beds on a site of, of
16 3 acres, even though the FAR in this particular
17 situation is violated, is not going to cause impacts
18 related to the intensity of development.

19 I would also note that the reason why assisted
20 living facilities are, are large is related to the
21 fact that they require significant space for shared
22 amenities.

23 You have smaller rooms for individual residents
24 but you have large areas of common space. You have
25 dining rooms. You have libraries. You have activity

1 rooms, you have spas, you have lobbies, reception
2 areas, wellness centers and so forth.

3 In those of a higher quality have a greater
4 variety and quality of physical spaces and services
5 that are provided.

6 In, in the case of assisted living facilities,
7 all the ones that I've been involved in, and I've been
8 involved in assisted living facilities both as a
9 planner representing developers and as representing
10 municipalities since, going back to 19--, the 1980s,
11 but in the recent 10 to 15 years I've never seen an
12 assisted living facility that has less than 70 to 75
13 units.

14 And the reason is because, in the case of
15 assisted living facilities is a very substantial cost
16 in providing the common facilities and common areas
17 that have to be provided and, also, in providing the
18 services that are needed for the residents such as
19 meals and laundry service and cleaning and
20 transportation and health care. You have --

21 There is a critical number of people that have
22 to be able to pay for and, and subsidize that space
23 and that number of employees to make it economically
24 feasible.

25 One of our clients who we represent throughout

1 the State is Sunrise. Their facilities typically
2 start at 75 units and go up from there.

3 And, in fact, in my experience in New Jersey, in
4 Bergen County as well, is that assisted living
5 facilities range in size from between 75 to 125 units
6 as standalone facilities, that is where they're not
7 paired with independent units or nursing homes.

8 And so, in this particular situation, this
9 assisted living facility at 75 units is on the lower
10 end of the scale.

11 And I did take a look at assisted living
12 facilities which are in a five mile radius. I was
13 able to obtain information on the lot size that
14 they're provided, and the number of beds and able to
15 calculate the density. The one part of the
16 information that I was not able to obtain is the floor
17 area ratio.

18 Let me just run through the examples that I came
19 up with.

20 As indicated, just to provide context and the
21 other thing I did is, in comparing assisted living
22 facilities it's difficult to do it on an, and I don't
23 think it's viable to do it on a per unit basis because
24 some have a lot of two beds, a lot of, some of them
25 have more one beds so I think you looking, looking at

1 it in terms of its intensity, one has to look at the
2 number of beds. That's really the common denominator
3 as a basis of comparison.

4 So in this particular situation we have 3 acres.
5 We have 98 beds. That works out to 32.7 beds per
6 acre.

7 The Bristal at Woodcliff Lake is on a site of
8 4.34 acres, has 160 beds. That's 36.9 beds per acre.
9 So that is, it's on a slightly larger site but it has
10 higher density in terms of bed per acre.

11 The Sunrise at Woodcliff Lake is at 3.4 acres,
12 has 116 beds. That's at a density of 33.3 beds per
13 acre. So that is substantially comparable in terms of
14 lot size. The density is slightly higher as well.

15 Brighton Gardens of Saddle River is on a site of
16 3.85 acres, has 132 beds, the density works out at
17 34.3 beds per acre. So it, too, has a higher density.
18 The Jewish Assisted Living of River Vale is on 4.81
19 acres, 124 beds, that works out to a density of 25.8
20 beds per acre so that's slightly lower.

21 And the The Sunrise of Old Tappan is 3.91 acres,
22 has 108 beds and it's at 27.6 beds per acre.

23 So in terms of the, the comparables, we're at 3
24 acres. They range in size from 3.4 acres to slightly
25 over 4 acres. So in that context when assisted living

1 facilities, it's a fact that we are on 3 acres and not
2 10 acres to me is not a substantial departure from the
3 norm.

4 Moreover, when we're talking about the number of
5 beds and the level of intensity that is created by the
6 number of people that will live there, four out of
7 the, three out of the five are at a higher density,
8 two are slightly lower. So we're certainly within the
9 median or middle range of the density when it comes to
10 a comparison to assisted living facilities.

11 When I look at those assisted living facilities
12 and I've been by them a number of times and am
13 familiar with some of them being the planner in some
14 of those communities, they don't seem -- they seem to
15 be in pristine condition. I don't see that they cause
16 substantial detriments to the neighboring uses or to
17 the community as a result of their density or, or
18 their size and the fact that they're located on lots
19 which are 3 or, 3 to 4 acres in size.

20 So with respect to -- going back to the Montvale
21 standard of .35 FAR I think that was -- you know, I
22 can't be sure but my understanding, based on the fact
23 that the site that was chosen in the settlement, the
24 fair share housing to be an assisted living facility
25 was a larger site, was almost 11 acres.

1 There the idea was to provide both an assisted
2 living facility and a senior care facility. And that
3 was rezoned over as part of the overall housing
4 settlement. The TSL Pike Redevelopment application,
5 it's a larger facility with more units.

6 And in that case, because of that fact, the
7 average square foot or gross foot of square footage
8 per unit could be less.

9 And the reason why is because you certainly have
10 the same range of common facilities that are provided.
11 Where you have a larger number of units, where you
12 have the 200 units, the proportion of the common space
13 to resident space is much less.

14 So, in that situation, you can have a, you know,
15 an assisted living facility where only 30 percent of
16 the space is devoted to the common facilities and 70
17 percent of the space can be devoted to the resident
18 facilities.

19 In this situation where you have a standalone
20 assisted living facility, where all of that common
21 space has to be provided, the ratio of common space to
22 resident space is closer to about 40 to 50 percent of
23 the area devoted to common space and then 50 to 60
24 percent of the space devoted to all the residents.

25 So when you build an assisted living facility

1 which is added, kind of the lowest number where you
2 can feasibly provide all of those common facilities
3 and services that make it a quality facility and meet
4 the needs of the residents, you are going to end up
5 with a facility which is of the size that you do have
6 in this particular situation.

7 So I've heard about suggestions about, you know,
8 perhaps reducing the FAR by eliminating units or
9 taking the floor off the unit, in my opinion it's not
10 a question of, of economics, you won't make as much
11 money, it's simply infeasible, in my experience and I
12 have never seen it done where you build an assisted
13 living facility of higher quality where you have, you
14 know, the two levels and it's around, you know, well,
15 45,000 square foot which would comply with the 3.5
16 FAR.

17 And I think that the most important factor to
18 bear in mind in this particular situation is does the
19 level of FAR, does the 68,000 square foot really
20 create a situation where you have problems off site.
21 Does it create problems related to controlling the
22 intensity of the development.

23 And when I look at the surrounding uses,
24 certainly the assisted living facility is an
25 attractive development. It, you know, architecturally

1 it, it's very nicely designed, fits in well, I think,
2 and is compatible with the town house development
3 which is the only residential development to the rear.
4 It's certainly compatible with all of the office
5 developments in the vicinity.

6 Yes, the building is slightly taller and larger.
7 But in office developments you have a greater need for
8 parking so the FAR, the amount of square footage that
9 is provided on the site is less and you have larger
10 parking areas, in this situation the proportion of the
11 site which is devoted to the building and the building
12 itself is larger proportion to the parking because you
13 have less parking.

14 But we can provide, as the testimony in the
15 prior applications in this evening has been indicated,
16 we can provide a perfectly function, functional and
17 viable assisted living facility that can provide for
18 all of the needs of its residents in a very high
19 quality environment without creating impacts on the
20 adjacent uses.

21 Certainly the parking can be accommodated on a
22 daily basis.

23 I've been involved in assisted living
24 facilities. And there's a reason why the .5 spaces
25 per unit is the, is the number which most

1 municipalities adopt and which the Residential Site
2 Improvement Standards have adopted because on a, on a
3 day-to-day basis assisted living facilities can
4 operate very, very well with that number of parking.
5 Most of the parking is provided for the employees,
6 very few of the residents drive.

7 The visit, you know, on the shift change,
8 particularly in this situation, you won't have all of
9 the staff leaving and, and coming at the same time.

10 And in terms of visitors visiting, visitation is
11 typically in the evening so it's not substantial on
12 the weekends, again not substantial.

13 So the only times that you run into -- and there
14 are no events. It's not like a school play or an
15 event that's held in a library or institutional
16 facility, as Andy has indicated and he's absolutely
17 right, there's a few occasions in the year; Mother's
18 Day, Father's Day, Christmas, Easter and so forth
19 where, Thanksgiving, where you do have a number of
20 visitors.

21 And as we've indicated, rather than create the
22 need for additional parking on the site or reduce the
23 size of the building because on three or four times a
24 year you can't accommodate the parking, you can
25 accommodate it on a daily basis, you can clearly put a

1 plan in place where visitors can be brought to the
2 site and, and from the site in a very feasible and
3 viable manner. It's done all the time with assisted
4 living facilities given the nature of the surrounding
5 uses and the fact that typically on those days those
6 offices are closed. There's ample opportunities for
7 that kind of plan to be put in place.

8 So the fact that you have, I think, higher FAR
9 than is permitted in my mind does not create the
10 parking problem. I think it's a completely separate
11 problem.

12 The setbacks can all be provided. Buffering and
13 open space can be provided for this particular
14 property.

15 Assisted living facilities, typically there's
16 very little use of outdoor space. So essentially the
17 outdoor areas essentially are walking trails is more
18 than sufficient. The perimeter of the site could be
19 buffered. You're not going to have any activity in
20 those particular areas.

21 The extent of the outdoor activity, there will
22 be a few seniors and people sitting on the outdoor
23 terraces from time-to-time, even that is a limited
24 amount of time. There is certainly no noise or other
25 impacts which are going to be felt off site.

1 So the, you know, in, in terms of the impact on
2 the adjacent uses, there are very few uses likely
3 living facilities where the impacts on the adjacent
4 community are less benign than this particular
5 situation. It's certainly not going to have any
6 impact on the adjacent uses including the Bears Nest.

7 And, as indicated before, discussions with the
8 Bears Nest have indicated some changes to the site
9 plan which the applicant is more than willing to do.
10 And with that in place, I don't think it would be any
11 impact.

12 So, at the end of the day, when you look at the
13 violation of the FAR, as I said before, first of all
14 the FAR, to me, in the case of an assisted living
15 facility, is really not the most appropriate way to
16 limit the intensity of development. I think the, you
17 know, the density in terms of beds per acre, building
18 coverage, setbacks, those kind of things, those are
19 far more important.

20 And to a very large extent, the height of the
21 building, the building coverage, the setbacks, those
22 have all, and the parking have all been accommodated
23 on the site. So the intensity of the site has been
24 managed and does comply with the overall purpose and
25 intent of your ordinance.

1 And the fact that the FAR is violated, even to
2 the extent which it is, to me does not create problems
3 which can't be accommodated by this site.

4 So, to me, the FAR is really, will not cause a
5 detriment to the surrounding properties and will allow
6 this particular facility, with the common spaces, with
7 the facilities that it services, operate on a very
8 high level and would be a very high quality facility
9 that can satisfactorily address all of the needs of
10 its residents.

11 And, as indicated, I don't want to make too much
12 of this but certainly to the 20 percent of the beds
13 which are going to be devoted to affordable that, that
14 also takes that into consideration.

15 In terms of the excess of density, it's so de
16 minimis I think, in the context of this overall
17 application, the fact that we're .017 units per acre
18 above the permitted density, is certainly not going to
19 create problems. The site could accommodate the fact
20 that the density is slightly violated.

21 So the last two are the, is the screening.
22 Essentially it's a D3 Variance. The fact that you
23 don't have 6 foot tall landscaping, certainly the
24 landscaping that is proposed is appropriate,
25 particularly you don't have to have 6 foot screening

1 for the kind of use that we're talking about here,
2 particularly in the context that you have office
3 developments in the area.

4 The screening is heaviest in the rear portion of
5 the property adjacent to Bears Nest. I don't know if
6 that is even necessary but it's something that has
7 been worked out. So I don't think any problems are
8 associated with that.

9 With regard to the signage, as I've said before,
10 I think we do comply with the, with the size of the
11 monument sign. To me that's more of a design waiver.

12 To the extent that the Board interprets it as a
13 larger sign, there's two things that could be done.
14 One is the Board could look at it and say, well,
15 include the area of the posts adjacent to the sign.
16 That's an esthetic improvement. So there that's an
17 added benefit.

18 To the extent that the Board says that we are
19 going to interpret it that way, that could be, those
20 areas could be eliminated. I would see it as
21 diminishing the attractiveness of the monument sign
22 but if the Board approved it as is, certainly in the
23 context of this particular community and the fact that
24 both Parkway is mostly office developments and the
25 municipal complex that sign is not going to have,

1 create any problems associated with it.

2 So talking about the, with respect to Step 2 of
3 the SICA test which is, are there substantial
4 detrimental impacts associated with the development
5 and under the Coventry standard can the site
6 accommodate the problems associated with the
7 violations of those requirements to me that there, the
8 site can accommodate those problems very adequately.
9 I don't think it's overdeveloped and I don't think the
10 intensity of the development would have any impact on
11 the surrounding area.

12 Getting back to the negative criteria, the two
13 prongs, the public good and the zone plan, first with
14 regard to the public good, from a land use point of
15 view, again it's a permitted use. I have mentioned
16 assisted living facilities are very benign in terms of
17 their activity. Really most of the activity is
18 employees coming and going from the site. That is
19 over a period of time. That's not all at once.
20 There's not a substantial amount of movement certainly
21 if you compare that to office development where you
22 have peak hours, people coming and going it's
23 substantially less.

24 You have extensive landscaping, tree covers,
25 buffers to screen and shield the development from the

1 surrounding uses, particularly the Bears Nest to the
2 south.

3 So from a land use point of view, there's
4 certainly no impacts.

5 In terms of the visual impact, the building
6 design incorporates vertical and horizontal
7 articulation to break up the mass of the building. It
8 complies with the design requirements set forth in the
9 conditional use requirements. A greater attention has
10 been paid to the design of the facades and compelling
11 architectural detail, the use of materials which is
12 common to the community and using a traditional
13 architectural style that is compatible with the
14 residential use of which it has the potential to have
15 the greatest impact, certainly it's compatible with
16 the office development in the area.

17 The architectural design I think would be a
18 substantial improvement from the existing vacant
19 building and the proposed design setbacks, buffering
20 and landscaping certainly will have a positive impact
21 on the esthetic characteristics of the immediate area.

22 With regard to traffic and parking, we've had
23 testimony with regard to that. Those are problems
24 that the site can accommodate. Parking is sufficient
25 with the proviso that we work out a plan for those

1 heaviest peak uses on special e occasions.

2 We do exceed the minimum number of parking
3 spaces that are required both by RSIS and your
4 ordinance. On-site circulation, I think, is
5 appropriate for garbage pickup, deliveries and
6 emergency vehicles. And I think those, the changes
7 that have been made recently certainly indicate that
8 contact circulation is not a problem.

9 In terms of the environmental impact, there's
10 not any sensitive environmental considerations here.
11 I would say that a redevelopment project conserves
12 precious land resources by building on an already
13 developed site and the majority of thee mature trees
14 and vegetation can remain undisturbed. The detention
15 basin, the detention facilities can handle the storm
16 water on the property.

17 So from an environmental point of view, there's
18 no impacts.

19 In terms of municipal services and taxes, the
20 facility, by its very nature, provides virtually all
21 of the services and needs that the residents will
22 require. There will be very little reliance or use of
23 municipal services. At the same time, because there
24 are no school children that would add substantially to
25 the tax base of Montvale and as indicated earlier this

1 evening, emergency transportation will be provided
2 through private ambulance service so that will not be
3 a burden on the municipality.

4 So if you look at the potential negative
5 detriments, land use, visual, traffic, parking and
6 environmental municipal services and taxes, to me,
7 none of those, there's no substantial detriments.

8 With regard to your zone plan and your Master
9 Plan, the zoning ordinance already allows the proposed
10 use obviously provided it meets conditional use
11 standards. But essentially, the failure of the
12 proposed use to meet the required conditions, as I've
13 indicated, will not create any problems such as
14 intensity of use or inadequate separation and
15 buffering.

16 So with the grant of those variances, would
17 really reconcile the governing bodies intent to limit
18 such impacts.

19 In addition, I think the use directly advances
20 several State goals of the year 2008, the Master Plan
21 which were reaffirmed, in subsequent re-examinations.
22 The first being to increase the Borough's ratable
23 base.

24 As mentioned before, the Master Plan says
25 residential uses which reduce school children result

1 in a positive fiscal impact on the Borough.

2 Assisted living facilities are certainly high
3 valued uses, don't require much municipal services,
4 don't generate school children so it wouldn't
5 contribute substantially to the tax base.

6 The other goal is diversity of housing stock.
7 There's a mention in the Master Plan of, especially
8 addressing allowing seniors to remain in the
9 community, assisted living facilities will certainly
10 provide that. And, also, the fact that you're
11 providing 15 affordable beds support the Borough's
12 fair share housing element.

13 So, in my opinion, with regard to the second
14 prong of the negative criteria would there be a
15 substantial detriment to the Master Plan or zone plan,
16 I don't think there would be.

17 So in context, in looking at the second part of
18 the SICA test which is are there any substantial
19 detrimental impacts, I don't believe there are any.
20 Can the site accommodate the problems associated with
21 the fact that you don't meet the requirements of the
22 D3 conditional use variance, the fact that there's a
23 D4 FAR variance and a D5 density variance I believe
24 that if the variance is granted there would not be a
25 substantial detriment to the public good or zone plan.

1 On the contrary, I believe the development
2 serves the public welfare, advances the goals of the
3 Municipal Land Use Law, the Borough's Master Plan and
4 housing element and the Fair Share Plan and conforms
5 to the intent and purpose of the Master Plan.

6 Step 3 of the SICA test is the Board can impose
7 reasonable conditions where they believe substantial
8 negative impacts would occur. So, to a large extent
9 the failure of the project to be on a County road and
10 on a 10 acre site cannot be ameliorated so the Board
11 can't really impose conditions with respect to those
12 items.

13 With respect to the density, the violation is so
14 de minimus that I don't see there, it being necessary
15 for the Board to impose a condition there. You know,
16 for example, to lower the overall density of units or
17 beds per acre.

18 In terms of the violation of the coverage,
19 again, it's not a substantial violation and doesn't
20 result in any substantial impacts.

21 As Mr. Dipple indicated, the applicant is
22 willing to provide pervious cover such that to the
23 extent that the impervious coverage limitation is
24 violated, the actual area of the hard impervious
25 coverage where storm water runs off will remain under

1 15 percent which is in compliance with the purpose and
2 intent of that particular regulation. And, it's
3 something which has been applied and utilized in other
4 facilities, memory lifetime facilities. It was
5 utilized, I believe, Wegmans facility, that was a
6 permitted and utilized to compensate for the
7 impervious coverage.

8 To me the fact that you're violating the FAR,
9 permitted FAR it, it is necessary, in this particular
10 situation and it's not unusual when you look at
11 assisted living facilities, that are provided in the
12 surrounding areas, to have them on lots of a similar
13 size and have them with the same number of beds per
14 acre.

15 I haven't been able to obtain the floor area
16 ratios for those but my, my guess is that the floor
17 area ratios are closer to the 50 percent level than
18 the 35 percent which is mandated.

19 I would note also that the other assisted living
20 facility and the TSA, Pike Redevelopment, they also
21 were, requested an FAR variance not one which was
22 substantial as this one. I believe it was .41. But
23 as I've indicated, it's a larger site. It had a lot
24 more independent units. So it's slightly a different
25 animal. Assisted living facilities tend to be

1 standalone, assisted living facilities tend to be a, a
2 larger animal. But, despite this violation, I don't
3 believe that it's overly large and I don't believe
4 that it's overly intense for this site.

5 So I really don't see it as being necessary for
6 the Board to set as a condition either lowering the
7 FAR or the density or trying to cut back on the number
8 of units or the area devoted to common facilities, I
9 just think it diminishes the extent to which the
10 facility is able to provide high quality services and
11 common areas for the development itself.

12 Throughout the course of the hearings there have
13 been conditions which the Board has mentioned and
14 certainly, I know Mr. Williams has been taking note as
15 is Mr. Del Vecchio.

16 I think those mentioned are sufficient to reduce
17 the impacts and assure the surrounding area that there
18 would be no impacts on them and if the variance is
19 granted. I can't think of any other conditions that
20 are necessary because there are certainly not
21 substantial negative impacts if the variance was
22 granted as is.

23 So that leaves me with the final part of the
24 SICA test, the balancing test where you weigh the
25 positives and negatives.

1 So going back to the Step 1, in terms of the
2 public interest at hand, I've indicated that an
3 assisted living facility, particularly this one, by
4 its very nature and the fact that it has 20 percent of
5 the beds are devoted for affordable, are going to be
6 affordable for residents, I think ranks higher on the
7 scale of inherently beneficial uses.

8 On the other hand, my analysis is that there are
9 no real substantial detriments if the applicant is
10 approved. And I don't believe beyond what the Board
11 has indicated, no additional reasonable conditions
12 appear to be necessary to ameliorate or eliminate the
13 impacts.

14 So coming to the weigh test, if you weigh the
15 high level of public interest against the absence of
16 detrimental impacts indicates that the positive
17 impacts substantially outweigh the detriments and the
18 D3, D4 and D5 variances should be granted.

19 So very quickly, I know the hour is late, I'll
20 just talk about the C Variances.

21 As I mentioned before, there's a question as to
22 even whether, you know, they are necessary. However,
23 I would say that these are not typical bulk variances
24 like, you know, building coverage or setback. These
25 are in the nature of design requirements.

1 The first being retaining walls exceeding a
2 permitted height of 6 feet. There's a couple of
3 instances where the proposed height exceeds it by as
4 much as 2 feet. However, given its location, it would
5 not cause a visual detriment to the adjacent property
6 due to tree cover and landscape covers around the
7 perimeter of the property. And, I don't believe that
8 there are any other negative impacts associated with
9 that.

10 The other one is the, the height of the
11 screening within the buffer area. I believe what's
12 been proposed is appropriate given the nature of
13 what's being screened. I don't believe that a 6 foot,
14 for example, a 6 foot high screening in the front of
15 the property is necessary or appropriate. I think
16 what's being proposed adequately screens and buffers
17 the property. It won't cause visual detriments to any
18 of the adjacent properties particularly the Bears Nest
19 behind.

20 With regard to the distance between the building
21 and the building, I believe that generally the 10 foot
22 distance is complied with. There are instances where
23 there may be walkways or, or landscaping which is
24 between the building and, and the adjacent roadway
25 area. That's very typical of developments like, like

1 this. I don't believe that there's any significant
2 detriment. I believe that the area around the
3 building is adequately landscaped and that the
4 driveway is sufficiently distanced from the building
5 not to cause any problem.

6 With regard to landscaping within the parking
7 lot, I think the intent of the, of that ordinance is
8 to ensure that where you have very large areas of
9 parking you want to break it up by having a certain
10 amount of landscaped islands and some shade trees
11 within them. Where you have the type of design here
12 which is essentially a ring road off which there is
13 some parking spaces, you're having the shade trees and
14 the landscaping on the perimeter of the property
15 outside of the parking areas is really the right way
16 to go.

17 I really don't see the need to have planting
18 islands located anywhere within the areas where
19 they're not being provided.

20 And then, the last one is, as I've indicated,
21 the, which was called out as a, as a C Variance, shall
22 not be adequately screened, it is going to be parked
23 in a space in the rear yard. For all intents and
24 purposes it could be invisible to the public roadway
25 and therefore not a major impact.

1 So, in my opinion, the C Variances are more in
2 the nature of a, of a design waiver and I certainly
3 think that in the instances where they do exist, what
4 has been proposed is certainly adequate to meet the
5 need and to the extent that the Board believes those
6 variances are necessary I believe there's a sufficient
7 basis to grant them.

8 Thank you.

9 Q Thank you, Mr. Preiss.

10 CHAIRMAN DePINTO: Mr. Del Vecchio,
11 anything further on direct --

12 MR. DEL VECCHIO: No, Mr. Chairman.

13 CHAIRMAN DePINTO: -- of this witness.

14 Obviously, the hour is late. I was hoping to
15 conclude this matter this evening. However, we've yet
16 to hear any testimony from the Borough Planner. We've
17 yet to hear questions from Board Members and we've yet
18 to hear questions from the public.

19 So this matter is going to have to be carried.
20 The question is, with our agenda being as busy as it
21 is, the only --

22 MR. REGAN: Mr. Chairman, can I make a
23 comment before you go into scheduling?

24 CHAIRMAN DePINTO: Sure.

25 MR. REGAN: I always enjoy hearing Mr.

1 Preiss testify. I think he started his testimony
2 tonight around 9:59. It's now 11:15. It really would
3 have been helpful to me and maybe to the Board if we
4 had a written report instead of him just reading his
5 report into the record. It's kind of unfair to the
6 Board. That's my own personal opinion.

7 Ms. Green provided a written report. I just
8 don't see, Mr. Del Vecchio, why we don't get a written
9 report on an application this significant with
10 significant deviations that, of relief that are
11 sought.

12 Again, I have the highest regard for Mr. Preiss.
13 I know if he was authorized and directed to provide a
14 written report he would, I'm sure, he would have done
15 so. But just to have him read his report into the
16 record, I challenge him to take copious and accurate
17 notes for the past hour and 15 or hour and 20 minutes.
18 I tried the best I could.

19 But, you know, Mr. Del Vecchio, you may think
20 that gives you some advantage in the process, I don't
21 know. I think it would have been helpful to the Board
22 to have a report in writing rather than just us
23 sitting here attempting to take notes and try to take
24 it all in.

25 That's my opinion.

1 MR. ZITELLI: Is that, that some -- that
2 Mr. Del Vecchio would provide to us, he just read the
3 report. If you're willing to tell us verbally why
4 wouldn't you give it to us in writing.

5 MR. DEL VECCHIO: What Mr. Preiss provided
6 was an outline of his testimony. You will get a
7 written transcript of everything and every word that
8 is said.

9 MR. REGAN: That's true. But if we had
10 the report tonight or a few days before like we had
11 Ms. Green's report.

12 CHAIRMAN DePINTO: Okay. I think it's
13 well-noted. Let's get back to the mundane scheduling.

14 MR. REGAN: Yeah.

15 CHAIRMAN DePINTO: The only available
16 dates. There's a possibility of February 19th or
17 probably March 5th.

18 I'm sorry. What?

19 VICE CHAIRMAN STEFANELLI: Mr. Chairman,
20 it's tough to hear the testimony then remember two
21 weeks later.

22 CHAIRMAN DePINTO: I recognize that.

23 MR. REGAN: That's why I made my comments.

24 CHAIRMAN DePINTO: I don't imagine the
25 Board wants to go another hour and a half.

1 VICE CHAIRMAN STEFANELLI: No, I agree.

2 CHAIRMAN DePINTO: Starting at 11:15 to go
3 into questions.

4 I know I have a number of questions of Mr.
5 Preiss and I have questions of Ms. Green as well.

6 So to start that now, I don't think it's fair to
7 anyone, to our professionals, our Board Members and
8 most importantly the public.

9 So, Mr. Del Vecchio, is your testimony available
10 for February 19 or --

11 MR. DEL VECCHIO: It would have to be
12 March 5th, Mr. Chairman.

13 CHAIRMAN DePINTO: Which, obviously, would
14 give adequate time for you to have the transcript of
15 this hearing prepared and distributed.

16 Members of the public that are here, we
17 apologize for the lateness of the hour. However, the
18 testimony that we heard this evening from the
19 applicant's professionals was very informative, very
20 detailed. It is a very detailed application.

21 It's the policy of the Montvale Planning Board
22 that, that we listen as intently as we possibly can to
23 give the applicant the opportunity to present their
24 case to us.

25 We, in turn, want that same opportunity to

1 answer questions. And that will happen. But,
2 unfortunately, it won't happen until March 5th.

3 No further notice of this meeting will be
4 provided to you other than this announcement. But
5 please feel free to contact Lorraine Hutter to confirm
6 that and please feel free to share with your neighbors
7 the opportunity to come back to the hearing on March
8 5th if they have any questions or would like to hear
9 the Board's questions of the applicant as well.

10 I thank you for coming to the meeting and
11 apologize for the lateness of the hour.

12 MR. CULHANE: The one thing I would like
13 to make sure of I'm assuming but is the transcript
14 that Mr. Preiss read it before it's sent to the Board
15 so if there's any changes he wants to make.

16 CHAIRMAN DePINTO: I think that's
17 reasonable.

18 MR. DEL VECCHIO: I was going to offer and
19 in the instances where we usually do accommodate it as
20 in pending applications that Mr. Preiss is involved
21 in, I'm happy to have Mr. Preiss submit a written
22 report in advance of March 5th essentially
23 encapsulating his testimony from this evening.

24 He'll be back. He can supplement and
25 authenticate that report when he's here if that's

1 helpful to the Board. We're happy to do it. We're
2 also happy to update the drawings to reflect the
3 compliance items reflected in both of the Board's
4 professionals' reports in advance of the 5th since
5 there is adequate time to make that happen at this
6 point.

7 So we offer both up to the Board. We're happy
8 to accommodate any way we can.

9 CHAIRMAN DePINTO: Okay. Thank you. And
10 the Board does appreciate that.

11 And for the benefit of the members of the public
12 that are here that may have an interest in this
13 application, when would you be expecting to deliver
14 copies of that document to the Board.

15 MR. PREISS: I'm going to need the
16 transcript so I know what I said.

17 I believe it will definitely be in two weeks in
18 advance.

19 CHAIRMAN DePINTO: Members of the public,
20 so we're carrying to March 5th. I guess around the
21 15th to the 20th of February, if you contact Ms.
22 Hutter, I'm sure she would be able to send you a PDF
23 of the either the transcript or of the testimony of
24 Mr. Preiss so that you will have the same information.

25 MR. WISS: Thank you, sir.

1 CHAIRMAN DePINTO: Okay. Thank you Mr.
2 Del Vecchio, Mr. Preiss.

3 Anything else?

4 MR. DEL VECCHIO: So we're carried to
5 March 5th, no further notice.

6 CHAIRMAN DePINTO: Carried to March 5th
7 and when we open on March 5th I'm going to expect to
8 hear the report starting with the report of Ms. Green,
9 any questions from Board Members of Ms. Green and Mr.
10 Preiss, then open to the public.

11 Mr. Del Vecchio, do you anticipate bringing in
12 any other witnesses that have not already testified?

13 MR. DEL VECCHIO: Not at this time, Mr.
14 Chairman. No.

15 CHAIRMAN DePINTO: And do you expect to
16 return with your witnesses that were here this
17 evening?

18 MR. DEL VECCHIO: I was planning on
19 returning with Mr. Dipple. I'm not sure there is
20 anything left open on the architectural. If there is,
21 I will ask Mr. Englebaugh to come back. But my notes
22 seem to reflect that that is pretty clean other than
23 showing the hatches that are on the roof now.

24 If the Board is willing to accept either a
25 representation that there will be or we'll give you a

1 plan showing them without his testimony. I don't plan
2 to bring him back.

3 CHAIRMAN DePINTO: Well, submit the plan
4 and we'll advise you as to whether or not we believe
5 he should.

6 MR. DEL VECCHIO: Fair enough. Thank you,
7 Mr. Chairman.

8 CHAIRMAN DePINTO: Very good. Thank you
9 and good evening.

10 MR. WISS: Thank you and good evening.

11 CHAIRMAN DePINTO: Let's close up this
12 meeting.

13 (The hearing adjourns at 11:25 p.m.)

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1 C E R T I F I C A T E

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

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

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

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