

COUNTY OF BERGEN
BOROUGH OF WOODCLIFF LAKE

188 BROADWAY, LP; 188 BROADWAY)
BLOCK: 2701 LOT: 3 R-15 & S-O) TRANSCRIPT
ZONES,) OF
) HEARING
)
Applicant.)
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Special Meeting
Wednesday, June 16, 2021
7:30 p.m.
Via Zoom

B E F O R E:

THE ZONING BOARD OF ADJUSTMENT
OF THE BOROUGH OF WOODCLIFF LAKE

BOARD MEMBERS:

ROBIN MALLEY, Chairwoman
SANJEEV DHAWAN, Vice Chairman
DIANNA CEREJIO (Absent)
EMILIA FENDIAN (Absent)
CHRISTINA HEMBREE
MICHAEL KAUFMAN
LYNDA PICINIC

MEG SMITH, Board Secretary

LYNANN DRAGONE
CERTIFIED COURT REPORTER
54 STIRLING TERRACE
TOTOWA, NEW JERSEY 07512
(973) 519-9562
lynanna220@gmail.com

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

SALVATORE R. PRINCOTTO, ESQ.
Counsel for the Zoning
Board of Adjustment

EVAN JACOBS, Borough Engineer
BRIAN INTINDOLA, Board Traffic Consultant

KAUFMAN, SEMERARO & LEIBMAN, LLP
BY: PAUL C. KAUFMAN, ESQ. and
DANIELLE M. FEDERICO, ESQ.
Counsel for the Applicant

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>
RICHARD LaBARBIERA	
BY MR. KAUFMAN	9
MATTHEW CLARK	
BY MR. KAUFMAN	55
JOSEPH BURGIS	
BY MR. KAUFMAN	79

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CHAIRWOMAN MALLEY: Okay. Now onto the revised application of 188 Broadway, LP; 188 Broadway Block: 2701 Lot: 3 R-15 and the S-O Zone. Use variance to add 53 apartment units and to permit multi-family residential use in the S-O Zone, a variance for front yard setback of 34.1 feet where 35 feet is required, a variance for rear yard setback of 39 feet where 50 feet is required, a variance for building setback from the street centerline of 65.6 feet where 70 feet is required and a variance for deficient parking lot area landscaping where 185 square feet is proposed and 1,320 square feet is required.

Received 3/12/21; Deemed Complete by Board Engineer 4/5/21.

Time for decision was extended to 8/3/21.

Okay. Mr. Kaufman, do you want to...

MR. KAUFMAN: Good evening, Madam Chairwoman.

First, before we proceed, I just want to thank you and the board members for this special meeting.

Also, before I get into it, I just want to

1 state for the record that your board member,
2 Michael Kaufman, and I are not related and I say
3 that because Neglia Engineering had an engineer
4 whose last name was also Kaufman, I had to state
5 it every time I appeared in Edgewater, make the
6 same statement. Kaufman's a pretty common name,
7 but we're not related so we just want to have the
8 record reflect that.

9 This is a continuation of an application
10 that started on May 25th when we presented two
11 witnesses. We marked some exhibits into the
12 record and while this exhibit was touched upon and
13 testimony, it was not marked into the record, so
14 I'd just like to - a little housekeeping - I'd
15 just like to mark into the record as Exhibit A-11,
16 the fire department review letter dated
17 April 29th, 2021.

18 Now, I would like to make, if it's okay
19 before I call my first witness, I want to just
20 make a very, very brief statement and preserve our
21 rights, which is that we're going to call
22 witnesses as has been mandated by the board and we
23 just want to state for the record that we believe
24 that we have a right to call witnesses in the
25 order in which we think is appropriate, present

1 the case as we think is appropriate, and as I
2 said, I'm making this statement not to get into a
3 colloquy, your decision is your decision. We're
4 going to move forward based upon your decision.
5 But I just wanted to preserve the record and
6 preserve our rights by making that statement.
7 It's more set out in the letters that were
8 exchanged.

9 So with that, I just want to also proceed.

10 I just got reminded by Danielle that we
11 have to amend one exhibit, A-2. That's the Soil
12 Movement Plan that was prepared by MCB. We had
13 moved it in by stating that it was dated May 8th,
14 2018, last revised April 25th, 2019. Danielle has
15 reminded me that it was not revised April 25th,
16 2019. So the record should reflect that A-2, the
17 Soil Movement Plan prepared by MCB Engineering
18 Associates dated May 8th, 2018, consisting of two
19 sheets. So with that correction and that little
20 statement... You know what, Danielle's good at
21 reminding me.

22 We submitted the Affidavit of Service and
23 Proof of Publication to the board. It was noticed
24 on June 4th, I believe. Meg Smith has
25 acknowledged her receipt of the Proof of

1 Publication from The Record and a copy of the
2 publication.

3 So with that on the record, I'd like to
4 call the first witness, Rich LaBarbiera.

5 MR. PRINCIOTTO: Okay. Before you do that
6 and I don't want to get into a discussion about
7 it, however, for people that are viewing and
8 listening, they may not know what you were talking
9 about with regard to the witnesses, although this
10 did come up at the last meeting.

11 You sent a letter directed to Chairwoman
12 Robin Malley and I sent in a letter and she made a
13 decision, so all I'm going to do is read what her
14 decision was. I believe the issues were the order
15 of witnesses and also whether or not comments
16 submitted and/or questions, for that matter,
17 although that wasn't the issue at the time, could
18 be read. And you objected to any comments being
19 read in the record, however, I addressed that in
20 my letter and New Jersey Administrative Code
21 reference. So I'm just going to read Chairwoman
22 Robin Malley's decision so that everyone knows
23 what you're talking about.

24 "I have reviewed both letters. Mr.
25 Kaufman shall proceed in the usual manner and call

1 his witnesses first and he can ask questions of
2 the board's professionals when they testify. I
3 request that Mr. Kaufman state the witnesses that
4 he intends to call as part of the applicant's
5 presentation and when he expects them to testify
6 so we can properly schedule.

7 Comments and letters submitted by
8 residents shall be read.

9 As is our custom, Mr. Princiotto shall
10 swear witnesses and issue subpoenas, if necessary.

11 Robin Malley, Chairperson, Woodcliff Lake
12 Zoning Board of Adjustment".

13 Although the email doesn't say that
14 because it wasn't the issue, people can submit
15 questions as well if they would like in addition
16 to comments. Comments will be read at the end of
17 the case, which is when we take comments. But
18 they can send them in writing as well as be a
19 participant via Zoom.

20 Okay. Mr. Kaufman.

21 MR. KAUFMAN: Thank you, Mr. Princiotto,
22 but I would also like to add, for the record,
23 since you left something dangling in the
24 chairwoman's decision.

25 I did in fact within two days write to the

1 chairwoman and give her the response that she
2 requested, specifically, the witnesses in the
3 proposed order. I don't know if I gave the exact
4 order, but I did give her the witnesses that she
5 requested. So the record should reflect that I
6 did comply with her request.

7 MR. PRINCIOOTTO: Yes, you did.

8 CHAIRWOMAN MALLEY: Yes, you did.

9 MR. PRINCIOOTTO: And we thank you for
10 that.

11 MR. KAUFMAN: No thanks necessary, but
12 thank you.

13 I'd like to call Richard LaBarbiera as my
14 first witness.

15
16 R I C H A R D L A B A R B I E R A, 281
17 Dunkerhook Road, Paramus, New Jersey, having been
18 duly sworn, testified as follows:

19 MR. PRINCIOOTTO: Okay, Mr. Kaufman.

20

21 DIRECT EXAMINATION BY MR. KAUFMAN:

22 Q Could you please tell the board what your
23 educational and professional background is?

24 A I attended the U.S. Military Academy for a year

1 Q And since that time you became involved
2 yourself for your account as a developer?

3 A That is correct, as well as a contractor.

4 Q As a construction manager for other
5 development projects?

6 A That is correct. Construction manager and in that
7 capacity, since 2007, I've probably built a thousand
8 residential units together with millions of square feet
9 of retail mixed use, et cetera.

10 Q And one of your projects is you are a
11 principal of 188 Broadway?

12 A That is correct.

13 Q And in your professional capacity and both
14 as an engineer, as a builder, as a construction manager,
15 you have been involved in plans, construction drawings,
16 Site Plans, architectural plans. You deal with them on a
17 frequent basis if not every day?

18 A Every day, every minute, every hour of the day.

19 Q Okay. Now, you are familiar with the
20 architectural plans that were submitted in this
21 application, aren't you?

22 A That is correct.

23 Q And what was your role in the preparation
24 of the architectural plans?

25 A I actually directed the architect for all aspects

1 before transferring and then finishing up and receiving a
2 bachelor of science in civil engineering at NJIT.

3 I then later went on to get my professional
4 engineering license. I've now been a professional
5 engineer for 30 years.

6 I can't believe I just said 30 years, but yes.

7 Q Your license is still in full force and
8 effect?

9 A Yes, it is.

10 Q And Mike Neglia, Neglia Engineering, sat
11 behind you at NJIT?

12 A That is correct, as well as Matt Clark. And I
13 think Lou was in a couple of classes too.

14 Q Okay. Mr. LaBarbiera, after you graduated
15 and you became a licensed civil engineer, you became
16 involved with development?

17 A Correct, yes. After practicing engineering for
18 four years, I joined G Heller Enterprises in 1994 and I
19 was the Vice President of Construction and Planning
20 through 2007. Then 2007 I went into business for myself.

21 Q Okay. And -- I'm sorry, go ahead.

22 A During that tenure I was responsible for the
23 construction, development, planning for I would
24 guesstimate 10 million square feet of development
25 throughout Newark, New Jersey.

1 of his plans, which he then prepared and submitted. But
2 it was under my direction that he completed all aspects
3 of his plans.

4 Q So he was really a Scribner?

5 A I don't think he would want me to state that, some
6 might say a draftsman.

7 Q Okay. A draftsman. Lawyers are
8 Scribner's; architects are draftsmen. Is that fair?

9 A That's correct.

10 Q Can you briefly tell the board what the
11 differences are between the 2019 application and the
12 architectural plans and the pending application --

13 A Sure.

14 Q -- that presently --

15 A That's very simple.

16 There are two buildings that were proposed in 2019
17 and again in this current application. The footprint of
18 both of those buildings, Buildings 1 and 2, Building 1
19 being the existing building and Building 2 being the
20 proposed, the footprints are entirely unchanged from the
21 first version we saw in 2019 and the version we see today
22 with regards to Building 1 that is, again, the building
23 that exists today. The only difference is that there is
24 a change in the number of units that increase from 36 to
25 37 total units. The bedroom count is slightly different

1 and there's also an 800 plus square foot amenity that is
2 now provided within Building 1 and, again, Building 1 is
3 the existing building.

4 Building 2 is the building that is in the back of
5 the site as you look at it from Broadway, and the
6 footprint, again, is unchanged. As originally proposed
7 it was three stories and it was made up of 24 units and
8 had a flat roof.

9 The proposed building is now two stories having
10 the same footprint, the same unit layout, and is now
11 instead 16 units with the reduction from three to two
12 stories that eliminated one variance which was previously
13 being sought.

14 And also, I think it's important to note that on
15 the original application there was a flat roof and on
16 that flat roof there were the condensers in connection
17 with the HVAC, heating units, et cetera, within the 24 --
18 I'm sorry -- within the 24 units that were proposed under
19 the original development.

20 The current plans not only were they reduced to
21 two stories, but we now have a pitched roof which is much
22 more typical of a residential home, building, et cetera.
23 With that pitched roof there are no longer any condensers
24 that can be seen from above that were previously proposed
25 on the roof.

1 application, 28 one bedroom, eight two bedroom for
2 a total of 36.

3 As I previously described, that's 44 total
4 bedrooms in Building 1 under the original
5 application versus 41 today.

6 With regards to Building 2, Building 2 was
7 previously 24 units; 18 one bedroom and six two
8 bedroom. A floor was simply shaved off and those
9 units or a count was reduced by one third and
10 instead of 18 one bedrooms, it's now reduced to 12
11 one bedrooms and instead of six two bedrooms,
12 Building 2 now has four two bedrooms.

13 CHAIRWOMAN MALLEY: Weren't some of these
14 units supposed to be affordable housing units?

15 MR. KAUFMAN: Madam Chair, if the
16 application's approved and the developer elects to
17 build, provide the affordable housing on-site,
18 then this configuration will be changed.

19 CHAIRWOMAN MALLEY: Okay. I was not aware
20 that that was a choice at this point that you can
21 build on-site or buy it elsewhere.

22 MR. KAUFMAN: You can build it off-site as
23 long as it's within the town, within the borough.

24 CHAIRWOMAN MALLEY: Okay. I wasn't aware
25 that that was a choice at this point. Okay.

1 That's really a summary of all the changes.

2 Q I just have one more question. On
3 Building 1, the existing building, the original
4 application was for 36 total units, 28 one bedrooms, 8
5 two bedrooms. The revised, what's pending before the
6 board today, is actually one unit more, 37, but the one
7 bedrooms are increased to three, the three bedrooms are
8 decreased to four. You mentioned the number of bedrooms,
9 so even though the number of units increased, the number
10 of bedrooms actually decreased?

11 A It's decreased by three. Under the original
12 application it was a total of 44 bedrooms as compared to
13 41. So there's been a reduction in the overall bedroom
14 count, albeit one more unit.

15 MR. KAUFMAN: Okay. I have no further
16 questions, Madam Chairperson.

17 MR. PRINCIOTTO: Any board members have
18 questions?

19 CHAIRWOMAN MALLEY: What was the layout on
20 those bedrooms? How many units have how many
21 bedrooms?

22 MR. LaBARBIERA: The makeup of the
23 proposed application for Building 1 is 33 one
24 bedroom and four two bedroom. That's a total of
25 37 units. As compared to on the original

1 MR. PRINCIOTTO: Well, we'll look into
2 that further, but we do have the set aside and we
3 do have a settlement agreement with Fair Share
4 Housing counsel, so.

5 MR. KAUFMAN: For the record, we'll comply
6 with it. If it requires that the units be built
7 on-site, the configuration will be changed even if
8 it results in a reduction in the number of units.
9 But it will be changed. It will be complied with.

10 MR. PRINCIOTTO: Okay. We can go over
11 those requirements with the planners. I think
12 they're well versed.

13 MR. KAUFMAN: Well, let's see if we get
14 approved first. If we get approved first, we'll
15 address it. You can certainly make it a condition
16 of approval and, you know, we will comply with the
17 regulations.

18 MR. PRINCIOTTO: Okay. We'll let you know
19 what the requirements are.

20 Okay.

21 MR. LaBARBIERA: Can I just expand on my
22 last response?

23 The overall bedroom count now is 61 total
24 bedrooms versus originally 74 proposed and that is
25 reflective of the original 60 and 53 units

1 currently proposed; the 60 previously and 53
2 currently proposed.

3 CHAIRWOMAN MALLEY: Any other board
4 members have questions?

5 MR. PRINCIOOTTO: Yes, I have a few
6 questions.

7 Is there a visual of the pitched roof?

8 MR. LaBARBIERA: Excuse me while I go to
9 the exhibits.

10 Yes, if you go to drawing A-2.1, you can
11 see the pitched roof in all four elevations: The
12 west, north, south, and east.

13 And if you were to go back, I don't know
14 if you have the original application at your
15 disposal, but the drawing for Building 2 elevation
16 was A-2.1, where it was a flat roof with a parapet
17 around its perimeter.

18 MR. PRINCIOOTTO: I'm sorry, what page?
19 You said A, what was it?

20 MR. LaBARBIERA: 2.1. And that's in both
21 sets, the original set in 2019 and the current set
22 of plans.

23 I'd also point out that that pitched roof
24 will be a shingled roof very similar to a
25 residential home.

1 work?

2 MR. LaBARBIERA: Typically there's two for
3 a one bedroom and three for a two bedroom.

4 MR. KAUFMAN: Madam Chairwoman, would it
5 be helpful if Danielle posted this so everybody
6 can see what Mr. LaBarbiera is referring to?

7 CHAIRWOMAN MALLEY: Yes, it would.

8 MS. FEDERICO: Hold on one second.

9 MR. KAUFMAN: I don't know how to do this.
10 She's got to do it.

11 MR. LaBARBIERA: That's actually the
12 original application in 2019, which shows the flat
13 roof and the parapet around.

14 CHAIRWOMAN MALLEY: And that's Building 2?

15 MR. LaBARBIERA: Correct, Building 2 is
16 the new building in the rear of the property at
17 the base of the slope.

18 MS. FEDERICO: Let me just share this. I
19 apologize, I have more than one screen so if I'm
20 looking at different screens...

21 MR. LaBARBIERA: There you go.

22 The east elevation shows the pitched roof
23 and you can see clearly on the north and south the
24 peak that runs down the center in a north/south
25 direction. Very similar to a roof you would see

1 MR. PRINCIOOTTO: Now, with regard to the
2 HVAC units, where will they be located? You said
3 they will no longer be on the rooftop.

4 MR. LaBARBIERA: That's correct. Each
5 unit instead will have what's called a PTAC. A
6 PTAC is a through the wall unit which is also
7 represented in the elevation.

8 CHAIRWOMAN MALLEY: So they each have one
9 in their own, below the window is what you're
10 saying?

11 MR. LaBARBIERA: Correct, as compared to
12 having a system that's called a split system,
13 where you would have your condenser on the roof
14 and your heating unit within the unit itself.

15 MR. PRINCIOOTTO: And those through the
16 wall units, they would go out the rear of the
17 buildings?

18 MR. LaBARBIERA: No, they would actually
19 go out on wherever there's an exterior window. So
20 in all likelihood on at least the front and rear
21 elevation, yes.

22 MR. PRINCIOOTTO: Okay.

23 MR. LaBARBIERA: It's the east and west.

24 CHAIRWOMAN MALLEY: So one per unit of
25 those or is there one per room? How do those

1 on a home of many sort.

2 MR. PRINCIOOTTO: Are you familiar with
3 Cressfield Court?

4 MR. LaBARBIERA: No, I'm not.

5 MR. PRINCIOOTTO: And on that east
6 elevation that we see on the Exhibit A-2.1, what's
7 the date on that, Miss Federico, if I can trouble
8 you for that?

9 MR. LaBARBIERA: March 1st.

10 MS. FEDERICO: I have March 1st, 2021.

11 MR. PRINCIOOTTO: Okay.

12 MS. FEDERICO: It was marked Exhibit A-7.

13 MR. PRINCIOOTTO: Okay.

14 MS. FEDERICO: At the last hearing.

15 MR. PRINCIOOTTO: Thank you.

16 Are those dark rectangles, are those
17 indicative of the air conditioning units?

18 MR. LaBARBIERA: They're called PTAC units
19 and, yes, that is representative of where they
20 would be situated. And what you would be seeing
21 is the grill. The unit itself is within, the PTAC
22 unit itself projects into the unit itself. So the
23 only thing that would be on the outside is a grill
24 that is almost on the same surface, perhaps it
25 projects two inches beyond the adjacent siding.

1 MR. PRINCIOTTO: Okay. I don't have any
 2 other questions.
 3 MS. LEHENY: Madam Chairwoman, can I ask a
 4 couple of questions?
 5 CHAIRWOMAN MALLEY: Go ahead, Liz.
 6 MS. LEHENY: Actually, I think I need to
 7 be sworn in.
 8 MR. PRINCIOTTO: If you're going to
 9 testify about anything then, yes. If you just
 10 have questions...
 11 MS. LEHENY: Okay. I was going to do a
 12 little bit of both.
 13 MR. PRINCIOTTO: Just in case we'll swear
 14 you in.
 15
 16 (Whereupon, Elizabeth Leheny was sworn)
 17
 18 MR. PRINCIOTTO: Okay. And just introduce
 19 yourself and give us the benefit of your
 20 qualifications.
 21 MS. LEHENY: Sure.
 22 I'm Elizabeth Leheny. I'm partner at
 23 Phillips Preiss and I've been reviewing this
 24 application as Richard Preiss is heading towards
 25 retirement. So I'll be acting on the board's

1 MR. KAUFMAN: Rental.
 2 MR. LaBARBIERA: Rental. Thank you.
 3 MS. LEHENY: Okay. So the affordable
 4 housing zoning in Woodcliff Lake requires that for
 5 rental properties 15 percent of the units have to
 6 be affordable housing. So 15 percent of 53 equals
 7 eight units and my math, 20 percent of those, a
 8 maximum of 20 percent would be allowed to be one
 9 bedroom. So in this instance it would only allow
 10 to have one affordable one bedroom. You have to
 11 have a minimum of 20 percent three bedrooms. So
 12 in this instance there would have to be two three
 13 bedroom units and then the remainder can be two
 14 bedrooms units.
 15 MR. KAUFMAN: Liz, you know, I mean,
 16 that's consistent with the affordable distribution
 17 everywhere in the state. But let me ask you this.
 18 You're asking rental or for sale. Today it's for
 19 rent. What if it's approved and six months later
 20 in the middle of construction we decide for sale?
 21 When do you have to make that determination? I
 22 mean, that determination may not be made until the
 23 time you go for construction financing, for
 24 instance, depending upon market conditions.
 25 MS. LEHENY: Yes, I would just say I do

1 behalf in reviewing the application.
 2 MR. PRINCIOTTO: Okay.
 3 MR. KAUFMAN: Before she testifies, Mr.
 4 Princiotto, am I going to be able to question her?
 5 I mean, you said at the beginning that I would
 6 have the right to question her after she
 7 testifies.
 8 MR. PRINCIOTTO: I don't know if she's
 9 testifying.
 10 MR. KAUFMAN: Well, she said she was and
 11 that's why.
 12 MS. LEHENY: Well, this is the question.
 13 MR. KAUFMAN: A little bit of both and I
 14 don't care.
 15 MS. LEHENY: I was going to clarify what
 16 the affordable housing requirements are in
 17 Woodcliff Lake. I don't know if that's considered
 18 testimony or not. I mean, you can certainly
 19 cross-examine me on that.
 20 But if it's a --
 21 MR. KAUFMAN: I would question you rather
 22 than cross-examine.
 23 MS. LEHENY: Okay. All right. So I
 24 guess, Mr. LaBarbiera, do you know if the units
 25 would be rental or ownership?

1 not believe you would be able to get a certificate
 2 of occupancy if you didn't comply with the
 3 affordable housing ordinance.
 4 MR. KAUFMAN: Totally agree with you on
 5 that, but a certificate of occupancy would be two
 6 years down the road, not today.
 7 MS. LEHENY: I think, I guess maybe
 8 perhaps what I should ask Mr. LaBarbiera is would
 9 you promise to or would you agree to comply with
 10 the affordable housing requirements that are in
 11 the Woodcliff Lake code?
 12 MR. LaBARBIERA: We would comply.
 13 MS. LEHENY: Okay. And then the other
 14 question I had had to do with the grills.
 15 Sometimes these can be, you know, somewhat
 16 unsightly. Would you take any measures, let's say
 17 to paint the grills the same colors as the facades
 18 that they're affixed to or in some way not to make
 19 them as visually obtrusive.
 20 MR. LaBARBIERA: I was going to get into
 21 that before. We always paint the grills and we
 22 match the adjacent siding so that it blends in and
 23 we go as far as to actually get the color of the
 24 siding and we send and get a special paint made
 25 and you can put the grill next to the siding and

1 you wouldn't even take note of it.

2 MR. KAUFMAN: I just want to jump in, Liz,
3 on something. At the last application on
4 June 25th, 2019, Richard testified to the effect
5 that he would ask the developer to work with your
6 office. He said his office at the time. But your
7 office and the borough engineer to tweak the
8 architectural plan. So I just want to state, for
9 the record, that's something he said and it's
10 something that the developer is very much in
11 agreement with.

12 MR. LaBARBIERA: We always look for input
13 with regard to materials, color selections, et
14 cetera. We want to be consistent with the
15 neighborhood and the expectation of the
16 municipality.

17 MS. LEHENY: Okay. Thank you, Madam
18 Chairwoman. Sorry if I stepped in a little too
19 soon. Thank you. Those are all the questions I
20 have right now.

21 CHAIRWOMAN MALLEY: That's okay, Liz.

22 Do any of our other professionals have any
23 questions?

24 Can we get a motion to open to the public
25 for questions?

1 certainty the decibels, the switch systems with
2 the condensers on the roof throw off more noise
3 than the PTAC. The PTAC is within the unit and
4 obviously the sound is kept down.

5 I'd also point out that sound typically
6 travels with line of vision. If you don't see it,
7 you don't hear it as clearly. These PTAC units
8 would be directly facing what is the slope and no
9 adjacent building, where under the original
10 application you had the condensers that could
11 arguably be seen from the higher elevation that
12 were situated on the roof and whatever noise they
13 would make would obviously travel more freely
14 because when you see it, you typically hear it.

15 But with the PTACs, they are quieter units
16 and they would be facing the slope and I think you
17 would be hard pressed to see them from above.
18 When I say *above*, the properties located to the
19 east.

20 CHAIRWOMAN MALLEY: That would be
21 Cressfield Court.

22 MR. LaBARBIERA: Let me just make sure.

23 Cressfield Court, correct. That is the
24 dead end that is located at the top of the slope
25 to the east of the property.

1 BOARD MEMBER KAUFMAN: Robin, I have a
2 question going back before some points of concern
3 from some of the people.

4 Obviously, the design was changed to help
5 mitigate the visual effects and the other point of
6 I guess concern from the people are the noise
7 level, decibel level. And this is an engineer's,
8 I guess, question. So we're switching the type of
9 unit, we had the old style, I don't have the
10 notes, if anyone is able to pull them up from last
11 time. How many units were on the last building
12 and what was the decibel level because now we're
13 changing it to individual units and what's the
14 decibel rating for this, for these multiple units
15 that are going in because obviously the noise
16 level was a concern with everybody.

17 MR. KAUFMAN: May I respectfully suggest
18 that Mr. LaBarbiera just talk about the difference
19 in the noise generated by condensers on the roof
20 as opposed to a PTAC?

21 CHAIRWOMAN MALLEY: Sure.

22 MR. PRINCIOTTO: If he knows.

23 MR. KAUFMAN: Look, as an engineer and a
24 builder, he should know.

25 MR. LaBARBIERA: Without knowing with

1 MR. PRINCIOTTO: Do you know the
2 manufacturer of these PTAC units?

3 MR. LaBARBIERA: PTAC units are sold by
4 multiple manufacturers. What I typically use is
5 GE. It's a GE PTAC. I know Amana makes it. I've
6 installed Amana but for durability and reliability
7 I bet you the hundred percent of the PTACs I
8 installed over the last two to three years have
9 all been GE manufactured.

10 MR. PRINCIOTTO: You may or may not know
11 the answer to this question, but do you know how
12 many decibels they emit at the loudest level?

13 MR. LaBARBIERA: As I said before, I don't
14 know the exact decibels, but I would equate it to
15 perhaps a window unit, a window air conditioning
16 unit as compared to a condenser that's outside a
17 home. If you ever saw a home or if you've ever
18 gone to a home that has these condensers on the
19 outside with a big fan and so forth, typically,
20 they are much louder than these PTACs for the fact
21 that they are cooling and are greater tonnage.

22 MR. PRINCIOTTO: Okay. So looking at the
23 west elevation, can you tell me how many units
24 there would be that would face Cressfield Court,
25 the PTAC units?

1 MR. LaBARBIERA: The west elevation, none
2 of those units would face Cressfield Court.

3 MR. PRINCIOTTO: I'm sorry, I'm sorry, I
4 meant the east elevation.

5 MR. LaBARBIERA: The east elevation, no
6 problem.

7 Well, if there are 16 total units in
8 Building 2, there are now eight on the west
9 elevation and eight on the east elevation, four
10 per floor, so it would be a total of eight units
11 that would face east or west elevation.

12 MR. PRINCIOTTO: Eight on each floor or
13 eight altogether.

14 MR. LaBARBIERA: No, four. Four per
15 floor, eight total.

16 Your floor plate is made up of eight
17 units; four of which face the front and four of
18 which face the rear and you have two floors for a
19 total of 16 units in Building 2. Half those face
20 east; half of those face the west.

21 I must also point out that these units
22 don't run all the time. Obviously, during the
23 colder season the heat pump would be going on and
24 obviously, during the warmer season, the cooling
25 cycle would be operating and they would not be

1 LaBarbiera?

2 Motion to open to the public?

3 MS. HEMBREE: So moved.

4 CHAIRWOMAN MALLEY: Can we get a second?

5 BOARD MEMBER KAUFMAN: Second.

6 MS. SMITH: Can I just ask who gave the
7 second? I can't see them on the scree.

8 BOARD MEMBER KAUFMAN: Myself, Michael
9 Kaufman.

10 MS. SMITH: Thank you so much.

11 All in favor?

12 Any opposed?

13 Okay. Can I ask that we not share screen
14 so I can allow members of the public who have
15 raised their hands.

16 Thank you.

17 I have Craig Marson I believe raising his
18 hand. I'm going to allow him to talk.

19 MR. MARSON: Thank you. Good evening.
20 Can everybody hear me?

21 Thank you, Mr. LaBarbiera, for sharing
22 your time.

23 I just have a few quick questions. The
24 first, if I may, is what relevance is it to this
25 project whether you or the architect drew the

1 running 24/7.

2 CHAIRWOMAN MALLEY: And the heat pump is
3 part of that unit or the heat pump is something
4 separate?

5 MR. LaBARBIERA: It's all a packaged unit
6 and that's what a PTAC unit is. The heating and
7 cooling is provided by a single unit. It's
8 entirely electric.

9 CHAIRWOMAN MALLEY: Okay.

10 Do any of our board members have any other
11 questions?

12 Christina?

13 MS. HEMBREE: I do.

14 CHAIRWOMAN MALLEY: Go ahead.

15 MS. HEMBREE: You've requested a variance
16 for deficient parking lot area landscaping where
17 you propose 185 square feet where 1,320 square
18 feet is required. And that's no change. Is that
19 correct?

20 MR. LaBARBIERA: I would defer to the
21 engineer on that. I didn't offer any testimony on
22 that and I assume that's something that our
23 engineer would be better suited to address.

24 MS. HEMBREE: Okay.

25 CHAIRWOMAN MALLEY: Anything else for Mr.

1 plans?

2 MR. KAUFMAN: Relevance to the project?

3 MR. MARSON: Yes. In other words --

4 MR. KAUFMAN: It's not relevance to the
5 project. We needed somebody to testify as to the
6 changes in architectural plans. The questioning
7 went to his background and why he's qualified to
8 testify as to the architectural plans.

9 MR. MARSON: No, that's not my question.
10 My question is you did your very best to
11 apparently minimize the contribution of Mr.
12 Dattoli, the architect that was paid. So my
13 question again is what relevance is it to this
14 project whether Mr. LaBarbiera or Mr. Dattoli drew
15 the plans?

16 MR. KAUFMAN: Relevance to the project as
17 to who actually drew the plans, that's a legal
18 question. I'd say not --

19 MR. MARSON: You called Mr. Dattoli, in
20 effect, you were talking a Scribner. So, again --

21 MR. KAUFMAN: I'm not going to get into an
22 argument with you, Mr. Marson.

23 MR. MARSON: All right. Fine. Let me go
24 to my second question. Then again it follows up.
25 Why does it appear that you're apparently trying

1 to minimize the retained architect's contribution
 2 to the plans?
 3 MR. KAUFMAN: He's not going to answer.
 4 MR. MARSON: All right. Last thing to Mr.
 5 LaBarbiera.
 6 Would you consider yourself more of an
 7 architect or an investor on this project?
 8 MR. KAUFMAN: He's not going to answer
 9 that question either. He's testified who he is.
 10 MR. PRINCIOTTO: I think he already
 11 indicated that he was an investor or principal in
 12 this particular ownership of the property. So I
 13 think he answered that.
 14 MR. MARSON: I appreciate that but, again,
 15 there was an indication 24/7 full availability on
 16 the project. So the question is, are you the
 17 architect or are you straight a passive investor
 18 or an --
 19 MR. KAUFMAN: He's not going to answer the
 20 question.
 21 MR. MARSON: Thank you.
 22 MR. KAUFMAN: You're welcome.
 23 MR. PRINCIOTTO: Well --
 24 MR. KAUFMAN: He's already testified that
 25 he's a principal in a company. He's already

1 CHAIRWOMAN MALLEY: Thank you.
 2 Meg, do we have anyone else on Zoom?
 3 MS. SMITH: Yes, I'm going to ask Miss
 4 Levine to un-mute.
 5 MS. LEVINE: Thank you very much for
 6 taking my question.
 7 Mr. LaBarbiera and Mr. Kaufman said that
 8 if the project's approved and if there are
 9 affordable housing requirements, which there will
 10 be, they would comply, but they would then have to
 11 rearrange or reconfigure the bedrooms. My
 12 question is since they already know that
 13 15 percent must be affordable and certain numbers
 14 of bedrooms, why is it not being planned that way
 15 in the first place?
 16 MR. KAUFMAN: Because we want to retain
 17 our options on how we're going to comply. We're
 18 not required to commit today as to how we're going
 19 to do it, although we do have to commit that we
 20 will do it.
 21 MS. LEVINE: So you will do it, but you
 22 have not arranged the bedrooms to make that happen
 23 properly.
 24 MR. KAUFMAN: We want to explore all of
 25 our options and all of our possible ways to

1 testified. It's just an argumentative question
 2 and intended to be argumentative. Let's move on.
 3 MR. MARSON: No, I respectfully degree.
 4 No, you attempted Scribner. You used a very
 5 specific word to attempt to minimize the
 6 contribution of the original architect. So what
 7 is it?
 8 MR. PRINCIOTTO: Look, I think you asked a
 9 different question. You want to know what his
 10 role is in this particular project. Is he just an
 11 investor or principal in the entity that owns the
 12 property or is he going to be involved in
 13 construction management of this particular
 14 project. Is that your question?
 15 MR. MARSON: Fair enough. I'd like to
 16 better understand his role, that is correct.
 17 MR. KAUFMAN: He's a principal and the
 18 applicant. He's a builder. He's testified that
 19 he's a construction manager. That's his business.
 20 He also testified that Mr. Dattoli, through the
 21 plans, and he did it at his direction. I think
 22 that answers the questions.
 23 CHAIRWOMAN MALLEY: Mr. Marson, do you
 24 have any other questions?
 25 MR. MARSON: No, ma'am, thank you.

1 provide the affordable housing and address them at
 2 that time when we have to.
 3 MS. LEVINE: What other options would
 4 there be?
 5 MR. KAUFMAN: I really don't want to get
 6 into it. I don't think it's appropriate. I think
 7 what is appropriate is that there's a commitment
 8 that it will be addressed. It will be provided as
 9 your planner said and we fully agree with her.
 10 There will be no T.O.s unless we comply.
 11 MR. PRINCIOTTO: I think it's fair to say
 12 from the testimony and the comments by Mr. Kaufman
 13 that they've indicated a willingness to comply
 14 with our set aside ordinance, but they have not
 15 provided the details about how they will comply.
 16 MS. LEVINE: I was just curious what those
 17 options are that Mr. Kaufman is referring to.
 18 What options are there when 15 percent is
 19 required?
 20 MR. KAUFMAN: There might be 20. There
 21 might be 20 percent, which changes everything.
 22 MR. PRINCIOTTO: Yes, if they sell the
 23 units, although they're telling us as part of this
 24 application that they're rental units, if they're
 25 selling units.

1 MR. KAUFMAN: That's today, Sal.
 2 MR. PRINCIOTTO: That's today, that's your
 3 application today. Okay.
 4 MR. KAUFMAN: Correct.
 5 MR. PRINCIOTTO: Rental units require
 6 15 percent. If they were selling the units, it
 7 would be a 20-percent requirement.
 8 MS. LEVINE: Okay. I see. Thank you for
 9 that explanation. I appreciate it.
 10 MR. PRINCIOTTO: You're welcome.
 11 MS. SMITH: I'm going to ask Ms. Borelli
 12 to address the board.
 13 MS. BORELLI: Hi, good evening, everyone.
 14 Can you hear me?
 15 CHAIRWOMAN MALLEY: Yes.
 16 MS. BORELLI: Okay. I have a couple of
 17 questions for Mr. LaBarbiera. I'm sure they're
 18 quick questions and they'll be quick answers, I
 19 assume.
 20 The first question is, talking about these
 21 PTAC units on the east side of the building which
 22 will be facing Cressfield Court. You say that we
 23 shouldn't be able to hear them. How can we be
 24 assured that after, if you guys are approved and
 25 it's built, what happens if we do hear them? What

1 static. I don't know what was going on.
 2 First of all, the PTAC units would not be
 3 facing Cressfield Court, instead they would be
 4 facing the slope. I just looked up while I was
 5 sitting here, each of these PTAC units operates at
 6 a maximum of 50 decibels. That is the rating. To
 7 equate 50 decibels, there's a chart. It simply
 8 says that 50 decibels is the equivalent of
 9 conversation, bear with me, which is slightly
 10 quieter than normal conversation level. So that's
 11 what 50 decibels represents. I would think that
 12 you would be hard pressed to hear a quiet
 13 conversation from the distance between the rear,
 14 the west elevation -- I'm sorry -- the east
 15 elevation of Building 2 and the homes on
 16 Cressfield Court.
 17 MS. BORELLI: Well, I have to disagree
 18 with you, Mr. LaBarbiera.
 19 MR. PRINCIOTTO: Well, you can't argue
 20 with the witness.
 21 MS. BORELLI: Okay. Sorry.
 22 MR. PRINCIOTTO: You can make a comment.
 23 Okay. Or you can testify later.
 24 MS. BORELLI: Okay. I do hear
 25 conversations. I mean, I don't hear every word

1 happens if we're sitting outside in our yard and
 2 we hear the hum of these PTAC units? What happens
 3 then?
 4 Also the thing is, you know, we have a lot
 5 of birds here and in the morning, you know,
 6 there's many, many birds, you know, one bird you
 7 hear and then you hear many birds and when you
 8 hear many birds it seems much louder. I don't see
 9 the birds, but I hear them. So I might not see
 10 the PTACs, but I might possibly hear them because
 11 it can travel up, you know, towards the street.
 12 So I don't typically understand how you can be so
 13 confident that sitting outside in our yards on
 14 Cressfield Court that we will not hear the hum of
 15 these PTACs.
 16 MR. LaBARBIERA: First of all, I'm going
 17 to try and answer.
 18 I want to point out, since Mr. Marson
 19 finished, I don't think I heard any of Gwenn's
 20 comments or questions. I'm getting a little
 21 background noise. Am I the only one? I guess I
 22 am.
 23 In any event, can everybody hear me?
 24 CHAIRWOMAN MALLEY: Yes.
 25 MR. LaBARBIERA: I was getting a lot of

1 they're saying, but I hear the hum of people
 2 talking two houses away, so I still don't
 3 understand how you can --
 4 MR. PRINCIOTTO: That's a comment. That
 5 would come --
 6 MS. BORELLI: I have another question.
 7 Mr. LaBarbiera, are you planning on
 8 building any other rental apartments in Woodcliff
 9 Lake?
 10 MR. LaBARBIERA: No, not at this time.
 11 MS. BORELLI: Are you planning on building
 12 53 apartments next door to your house?
 13 MR. KAUFMAN: Don't answer the question,
 14 Rich. Don't answer it.
 15 MR. LaBARBIERA: I don't live in Woodcliff
 16 Lake.
 17 MR. PRINCIOTTO: It doesn't have anything
 18 to do with this application, so I don't think you
 19 should ask that question.
 20 MS. BORELLI: I have no more questions.
 21 MR. LaBARBIERA: For the record, I don't
 22 live in Woodcliff Lake.
 23 MS. SMITH: I'm asking Miss Appelle to
 24 address the board.
 25 MS. APPELLE: Good evening, everyone.

1 Thank you for taking my comments and questions.

2 Is there a lot of feedback here?

3 MR. KAUFMAN: Yes, from you.

4 MS. APPELLE: Let me see if I can fix
5 that. Bear with me one second or take somebody
6 else.

7 Is that any better? Good. Because I was
8 working off two computers to make sure. I don't
9 know why. Just because it gives you --

10 CHAIRWOMAN MALLEY: Let's move on with
11 your questions.

12 MS. APPELLE: Okay. So I have a couple of
13 questions for -- well, I have one quick question
14 for Mr. Kaufman.

15 Mr. Kaufman, what is the 800-foot amenity
16 mentioned? I've never heard that mentioned
17 before.

18 MR. LaBARBIERA: I mentioned the
19 800-square foot amenity.

20 MS. APPELLE: Oh, I'm sorry, you did.

21 MR. LaBARBIERA: Yeah. That can be
22 anything from a lounge to a small gym to a
23 business center where people could come and gather
24 for any of those reasons.

25 MS. APPELLE: Okay. But right now it's

1 MS. APPELLE: Okay. Well, that question
2 led to what I was going trying to get at, how do
3 you know that there will be down time, but for you
4 that was a very important thing, why was it so
5 important that you wouldn't hear these things
6 because they would be off or they would be down
7 time. Why was that so important?

8 MR. LaBARBIERA: I think I was just giving
9 testimony as to the operation of the PTAC unit and
10 I know that as part of the first application there
11 was a sensitivity to any noise that might be
12 coming from Building 2 and, specifically, they had
13 concerns about the condensers that were located on
14 any flat roof, which has since been replaced in
15 its entirety with a pitched roof, no different
16 than a residential home and now instead had
17 through the wall units, PTACs.

18 MS. APPELLE: Okay. Thank you.

19 Now, you mentioned, Mr. LaBarbiera, that
20 this building is consistent with the neighborhood.
21 How do you come to that determination?

22 MR. PRINCIOTTO: I'm not sure he testified
23 to that.

24 MR. KAUFMAN: I think he said the roof was
25 consistent.

1 not planned for either building and the size, if
2 it ever were put in, would be 800 square feet.

3 MR. LaBARBIERA: Actually, there is an
4 800-square foot amenity shown on the plans in
5 Building 1, which is the existing building, and
6 that occurs on the first grade above the below
7 ground parking.

8 MS. APPELLE: Okay. Thank you. So
9 obviously these questions are all for you.

10 You know, some people run their heating
11 and air conditioning 24/7 because it's a very
12 individual decision, you would agree with that.
13 Correct? But how would you know --

14 MR. PRINCIOTTO: Is that a question? Do
15 you want an answer to that?

16 MS. APPELLE: Well, he can answer me.

17 MR. LaBARBIERA: I think everybody sets a
18 thermostat and depending on what the temperature
19 is outside and the differential, a heater or an
20 air conditioner will have to run until it hits
21 that temperature and then it shuts down. But I
22 don't think everybody arbitrarily runs their heat
23 or their air conditioning 24/7. While they have a
24 set temperature, yes, but I don't think their
25 intention is to run it non-stop.

1 MS. APPELLE: He didn't. If you go back
2 and listen. He said, how is this building -- I'm
3 saying, how is this building consistent with the
4 neighborhood? Mr. LaBarbiera said the building is
5 consistent with the neighborhood. I want to know
6 how he knows that.

7 MR. LaBARBIERA: Yeah, I don't think I
8 said that. The only reference to the adjacent
9 neighborhood or the area I referred to or intended
10 to refer to was with regards to the pitched roof
11 and then when I believe Liz had a few comments
12 regarding the exterior grill, I mentioned that we
13 would welcome input regarding the exterior
14 finishes, colors, et cetera so that we could be
15 consistent with the surrounding neighborhoods.

16 MS. APPELLE: Could be consistent.

17 MR. LaBARBIERA: With regard to finishes,
18 siding, brick.

19 MS. APPELLE: I'm sorry, maybe it was
20 just, you know, a mistake on my part and I
21 apologize if that's the case, however, if we play
22 it back and that's not the case, I still would
23 like to know how you consider this building part
24 of a residential community.

25 MR. KAUFMAN: That's not what he testified

1 to.
 2 MS. APPELLE: Okay. Thank you, Mr.
 3 Kaufman.
 4 Thank you, Mr. LaBarbiera.
 5 MR. KAUFMAN: Thank you.
 6 MS. SMITH: I have Mr. Alex Couto.
 7 MR. COUTO: Hi, good evening.
 8 MR. LaBARBIERA: How are you?
 9 MR. COUTO: Mr. LaBarbiera, I have a few
 10 questions for you.
 11 MR. LaBARBIERA: Sure.
 12 MR. COUTO: Are there any changes to the
 13 front yard of the building of the Building 1 in
 14 between Building 1 and the street?
 15 MR. LaBARBIERA: No. Building 1 is an
 16 existing building and with the current application
 17 there were no changes to any of the locations of
 18 either the existing or the proposed building or
 19 the parking, landscaping, drainage, sanitary,
 20 water, circulation, et cetera.
 21 MR. COUTO: Are any changes planned to the
 22 roof of Building 1?
 23 MR. LaBARBIERA: No, there are no changes
 24 proposed to Building 1 from the original
 25 application.

1 MR. COUTO: Are you aware of the Ordinance
 2 19-07, Woodcliff Lake Ordinance 19-07? Have you
 3 read through it?
 4 MR. LaBARBIERA: No, I have not.
 5 MR. COUTO: From what I understand, you
 6 said you were involved in the planning of the
 7 building of the plans, organizing the plans?
 8 MR. LaBARBIERA: I'm involved in the
 9 planning of all aspects of the building, not just
 10 the architecture.
 11 MR. COUTO: So could you tell me, like,
 12 details, dates that you met with the residents
 13 that live within 200, the homeowners that live
 14 within 200 feet of the property with their
 15 concerns? When did you meet with them?
 16 MR. LaBARBIERA: Mr. Couto, can you repeat
 17 that question? There's a little background noise.
 18 I'm sorry.
 19 MR. COUTO: I'm trying to see when you
 20 have met with the residents that live within
 21 200 yards of the building for their concerns?
 22 MR. KAUFMAN: For this application?
 23 MR. COUTO: Yes.
 24 MR. LaBARBIERA: I don't think I
 25 represented that I have and I have not so, no, I

1 have not.
 2 MR. COUTO: You have not.
 3 So I mean, typically when people come for
 4 zoning board variances they get their neighbors
 5 involved and get okay from the neighbors.
 6 MR. PRINCIOTTO: That's a comment. You
 7 can make that if you want at the end of the case.
 8 MR. COUTO: Okay. So I have another
 9 question.
 10 So relating to Ordinance 19-07. I
 11 submitted to the zoning board in case you want to
 12 use as an exhibit. There is a requirement for a
 13 particular type of roof and for any changes in
 14 this part of town. This ordinance applies being
 15 this is a new application I think everything in
 16 ordinance should apply to you.
 17 MR. LaBARBIERA: I'm not familiar with
 18 that ordinance, but I think that anything that is
 19 part of that ordinance would have been commented
 20 on by the professionals that reviewed the
 21 documents, so I'm not aware of the issues.
 22 MR. KAUFMAN: Let's just leave it this
 23 way, he's not aware of the ordinance so you can't
 24 question him about something he's not aware of.
 25 MR. COUTO: Okay. There's --

1 MR. KAUFMAN: And what was the
 2 Section 19-07?
 3 MR. COUTO: 19-07, yes.
 4 There's a couple of things that
 5 application is not in compliance and it looks like
 6 our --
 7 MR. KAUFMAN: I'm going to look it up.
 8 MR. COUTO: So I'm specifically, I have a
 9 question about, let me just go there.
 10 If you go to the landscaping and open
 11 space part of the ordinance. Item b says,
 12 "Required Open Space dedication on Larger
 13 Projects". It says, "The open space shall be at
 14 least 2,000 square feet. It may be of any shape".
 15 So can you tell us where this is addressed
 16 on your plans?
 17 MR. KAUFMAN: No, he's not testifying on
 18 the Site Plan. He's only testified as to the
 19 architectural plan.
 20 MR. LaBARBIERA: Correct.
 21 MR. COUTO: Okay. So on the architectural
 22 plan, if we go to the building design, they have
 23 the Roof Form and it says that buildings every
 24 50 feet have to be a break in the roof and has to
 25 be a mansard form.

1 So if you're doing any changes, I guess
 2 Building 1 is to comply to this?
 3 MR. PRINCIOTTO: Could you refer to a
 4 particular section that you're referring to?
 5 MR. COUTO: Yes, so Ordinance 19-07 and if
 6 you go down to Roof Form.
 7 MR. PRINCIOTTO: Right.
 8 MR. KAUFMAN: Go back up to the top
 9 because 19-07, it is in the S-O District, but it's
 10 Residentially-Inspired Site Layout. Okay.
 11 MR. COUTO: So if you go down to item 4,
 12 which is Roof Form. Then it says if the building
 13 is larger, it can't be flat. They need to be
 14 mansard. And also there is another section that
 15 says the roof has to be broken. Item 3 on
 16 Building Design.
 17 MR. KAUFMAN: It says here, "In order to
 18 minimize building height on taller buildings and
 19 increase the sense of stature on single-story
 20 buildings, flat roofs are prohibited."
 21 We don't have a flat roof.
 22 "Instead, a peaked or mansard roof form is
 23 required."
 24 MR. LaBARBIERA: Danielle, can you put
 25 A-2.1 again?

1 question for the planners. I mean, when you
 2 redevelop the property, do you have to comply with
 3 the ordinance. But we'll let the planners weigh
 4 in on that.
 5 MR. COUTO: So can the planner weigh in on
 6 that? I'll wait to hear from them.
 7 MR. KAUFMAN: I think it's kind of unfair
 8 to make her come up with something without having
 9 an opportunity to review it.
 10 MR. COUTO: Okay.
 11 MR. PRINCIOTTO: Well, it could be
 12 reviewed for the next meeting. We'll see.
 13 MR. COUTO: I have a couple of more
 14 questions, if you don't mind.
 15 Mr. LaBarbiera, are you aware of the
 16 zoning areas in Woodcliff Lake?
 17 MR. LaBARBIERA: That there is --
 18 MR. KAUFMAN: He's not testifying as a
 19 planner or zoning expert.
 20 MR. COUTO: Okay. Another question then.
 21 Could you tell us what was the apartment
 22 density of this market rate apartments if you
 23 calculate per acre?
 24 MR. KAUFMAN: The engineer and the planner
 25 can testify to that. He's only testifying as to

1 MR. KAUFMAN: So we have a peaked roof,
 2 don't we, Rich?
 3 MR. LaBARBIERA: Yeah, but I also think
 4 it's important to point out that there are breaks
 5 in the roof so that it is not a long flat roof. I
 6 don't have the benefit of the ordinance in front
 7 of me.
 8 MR. KAUFMAN: No, I looked it up online
 9 while we're talking.
 10 MR. PRINCIOTTO: If you take a look at
 11 A-2.1, you can see in the west and east elevation
 12 that there are breaks in the roof.
 13 MR. COUTO: But you're talking Building 2;
 14 I'm talking Building 1.
 15 MR. KAUFMAN: Building 1 is an existing
 16 building.
 17 MR. LaBARBIERA: Building 1 is an existing
 18 building.
 19 MR. KAUFMAN: Building 1 exists. There
 20 are no Site Plan issues with Building 1. Just
 21 use. Use is the only issue. Use is the only
 22 issue, not the design and he's not testifying as
 23 to the design of Building 1 anyway.
 24 MR. COUTO: Okay. Moving on.
 25 MR. PRINCIOTTO: This could be a good

1 the architectural plans, not a planning issue.
 2 MR. COUTO: Okay. From Broadway, are the
 3 air conditioning units going to be visible from
 4 Broadway?
 5 MR. KAUFMAN: The building's not going to
 6 be visible.
 7 MR. LaBARBIERA: There might be a very
 8 small sliver as you look down the driveway that
 9 you can perhaps see 24 feet of the building, the
 10 equivalent width, albeit, at a significant
 11 distance and grade differential.
 12 MR. COUTO: Okay. So Building 1 nothing
 13 is changing then. Where are the air conditioning
 14 units for Building 1?
 15 MR. LaBARBIERA: Building 1, the air
 16 condition units would be exactly where they are
 17 today, on the roof.
 18 MR. COUTO: Okay. Now on the application
 19 there you're applying for a couple of variances.
 20 Do you have an application for the variance for
 21 loading bay?
 22 MR. LaBARBIERA: The only variances I
 23 spoke --
 24 MR. KAUFMAN: No, the engineer and the
 25 planner will testify about that. He testified

- 1 about the architectural plans on Building 2 and
2 that's what he's going to answer.
- 3 MR. COUTO: Okay. Thank you very much.
4 Much appreciated.
- 5 MR. KAUFMAN: Okay. Thank you.
- 6 MS. SMITH: I'm going to lower all hands.
7 If there's anybody else who would like to make a
8 comment from Zoom, please raise your hand again.
9 And I also want to give the phone number to the
10 public that are on television to call in with any
11 questions. The number's (201) 391-4977, Extension
12 203.
- 13 I do not have any other attendees at the
14 Zoom meeting raising their hand, so Zoom has no
15 more questions.
- 16 MS. LEHENY: Can I ask one followup
17 question?
- 18 CHAIRWOMAN MALLEY: Yes.
- 19 MS. LEHENY: Mr. LaBarbiera.
- 20 MR. LaBARBIERA: Please, Rich. Thank you.
- 21 MS. LEHENY: Because it's unknown right
22 now what the tenancy of the building would be
23 whether it would be rental or ownership so that
24 obviously dictates how many affordable housing
25 units you'll be required to provide, is there a

- 1 Okay.
- 2 Your next witness, is that Matt Clark.
- 3 MR. KAUFMAN: Yes, Madam Chairperson.
4 Thank you.
- 5 MR. LaBARBIERA: Thank you, everybody, for
6 your time.
- 7 MR. KAUFMAN: Thank, Rich.
- 8
- 9 M A T T H E W C L A R K, 11 Furler
10 Street, Totowa, New Jersey, having been duly
11 sworn, testified as follows:
12
- 13 DIRECT EXAMINATION BY MR. KAUFMAN:
- 14 Q Mr. Clark, could you give the board your
15 educational and professional background and training?
- 16 A I have a bachelor degree and a master's degree in
17 civil engineering from NJIT.
- 18 I'm a licensed professional engineer in the State
19 of New Jersey, have been since 1996.
- 20 I've been qualified as an expert in civil
21 engineering since I've been a PE.
- 22 Q And you attended NJIT with Mr. LaBarbiera
23 and Mr. Neglia?
- 24 A Yes, I did.
- 25 Q Mr. Clark, you've been qualified before as

- 1 potential that the number of overall units would
2 change depending on their tenancy? You know,
3 would it increase potentially?
- 4 MR. LaBARBIERA: The overall number of
5 units, no.
- 6 MS. LEHENY: No. Okay. And would the
7 prints of the building change?
- 8 MR. LaBARBIERA: No, we're fixed.
- 9 MS. LEHENY: Okay. Thank you.
- 10 MR. KAUFMAN: I just want to say that
11 depending upon the number of units, where they
12 are, the configuration if there's any change,
13 we're going to come back to you anyway. We'll
14 come back to the board.
- 15 MS. SMITH: Okay. Ms. Malley, I do not
16 have any calls coming in and I do not have any
17 hands raised on Zoom. So if you like we can take
18 a motion to close the meeting.
- 19 CHAIRWOMAN MALLEY: Yes, let's get a
20 motion to close.
- 21 MR. PRINCIOOTTO: To the public.
- 22 MS. HEMBREE: So move.
- 23 BOARD MEMBER KAUFMAN: Second.
- 24 CHAIRWOMAN MALLEY: All in favor?
25 Any opposed?

- 1 an expert, including the Woodcliff Lake Zoning Board.
2 Isn't that correct?
- 3 A That's correct.
- 4 MR. KAUFMAN: Mr. Princiotto, are you
5 okay? Do you want me to go further on his
6 background? You've accepted him before.
- 7 MR. PRINCIOOTTO: No, I'll ask the board,
8 new board members if they have any questions on
9 his qualifications they can ask him.
- 10 MR. KAUFMAN: Sure.
- 11 MR. PRINCIOOTTO: Any questions on the
12 qualifications?
- 13 BOARD MEMBER PICINIC: No.
- 14 MR. PRINCIOOTTO: Okay.
- 15 MR. KAUFMAN: Thank you.
- 16 Q Mr. Clark, you prepared the engineering
17 Site Plan on this application?
- 18 A Yes, I did.
- 19 Q Okay. And this is the same engineering
20 Site Plan that you prepared for the 2019 application for
21 the 60 units?
- 22 A Correct.
- 23 Q Okay. I'm just going to call it *60-unit*
24 *application* for ease of reference.
25 So this is the same. Correct?

- 1 A That's correct.
- 2 Q All right. Now, you sent a review letter
- 3 April 5, 2021, from Neglia Engineering?
- 4 A Yes.
- 5 Q And this is essentially the same as the
- 6 August 20, 2018, review letter which reviewed the Site
- 7 Plan in the context of the 60-unit project. Correct?
- 8 A Correct.
- 9 Q There are several differences though. I
- 10 refer you to Section 3.3.4.
- 11 MR. PRINCIOTTO: Could you hold up one
- 12 minute. I just want to get that. You're talking
- 13 about the Neglia review letter?
- 14 MR. KAUFMAN: I'm talking about the
- 15 April 5th, 2021 review letter, the most recent
- 16 one.
- 17 MR. PRINCIOTTO: Okay. Just one second.
- 18 Okay. I'm sorry. I have it. Thank you.
- 19 Q Mr. Clark, if you take a look at 3.3.4,
- 20 the change in the 2021 letter is just an observation that
- 21 the building height variance is no longer applicable and
- 22 no further action required. Correct?
- 23 A Correct, yes.
- 24 Q Section 4.15 is new and provides, "The
- 25 Applicant shall revise the engineering plans to indicate

- 1 the location of all building doors and access points."
- 2 And the applicant will agree to do that. Isn't
- 3 that correct?
- 4 A Yes.
- 5 Q Okay. And Section 5.21 is new. And this
- 6 section says, "The Applicant indicates that the existing
- 7 utility service connections and laterals are to be
- 8 reused. Prior to construction, the Applicant shall
- 9 demonstrate that all existing utilities to be reused have
- 10 adequate capacity are in acceptable condition for reuse.
- 11 The Applicant shall clean and televise all existing
- 12 sanitary and storm sewer piping to be reused."
- 13 That's a new comment. Correct?
- 14 A Yes.
- 15 Q The applicant agrees to that as a
- 16 condition. Correct?
- 17 A Correct.
- 18 Q Now, have you testified in 2019 as to the
- 19 remainder of Mr. Jacobs' comments and your testimony at
- 20 that time was what, just in general?
- 21 A We will comply with the technical --
- 22 Q You will comply.
- 23 Okay. And Mr. Jacobs noted that testimony. Isn't
- 24 that true? Isn't that correct?
- 25 A Yes.

- 1 Q And that's, again, that's June 25th, 2019.
- 2 MR. PRINCIOTTO: I'm sorry, what's the
- 3 question?
- 4 MR. KAUFMAN: I said Mr. Jacobs
- 5 acknowledged the testimony of Mr. Clark that the
- 6 applicant will comply with the conditions in his
- 7 letter and stated that it was acceptable. That's
- 8 what he testified.
- 9 MR. PRINCIOTTO: Now or in the prior
- 10 application or both?
- 11 MR. KAUFMAN: In the prior application.
- 12 But my point is if the testimony of Mr. Clark was
- 13 acceptable to Mr. Jacobs in June of the 2019, is
- 14 there any reason why it's not acceptable to Mr.
- 15 Jacobs today? It's the same Site Plan.
- 16 MR. PRINCIOTTO: Well, we have to ask Mr.
- 17 Jacobs.
- 18 MR. KAUFMAN: Yes, we will. That's
- 19 exactly why I wanted to call him as a witness, Mr.
- 20 Princiotto.
- 21 MR. PRINCIOTTO: Well, we'll get to Mr.
- 22 Jacobs.
- 23 MR. KAUFMAN: Okay.
- 24 MR. PRINCIOTTO: Why don't you stick with
- 25 Mr. Clark right now.

- 1 Q Mr. Clark, can you just briefly address
- 2 the variances and waivers that were noted?
- 3 A Sure.
- 4 On our Site Plan we note the variances based on
- 5 our understanding of the zoning ordinance. As we stated,
- 6 the building height, the number of stories was removed.
- 7 The remaining variances are for the use. There was a
- 8 variance also minimum interior parking lot landscaping
- 9 requirement is 1,320 square feet and we're requesting
- 10 0 square feet. There was some commentary about, I think
- 11 it was like 180 square feet at one time. If the board
- 12 remembers the fire official asked us to take away the
- 13 landscaping from the few islands that we did have and
- 14 make them mountable islands and by doing such that
- 15 landscaping had to be removed so that's why it went from
- 16 184, whatever it was, down to 0. So we need that
- 17 variance.
- 18 Q The variances are the response to the fire
- 19 department?
- 20 A Correct.
- 21 Q And the fire department approved the
- 22 application?
- 23 A Correct.
- 24 MR. PRINCIOTTO: No, the fire department
- 25 doesn't approve the application.

1 MR. KAUFMAN: Well, okay. I'm sorry, the
2 fire department approved the Site Plan with
3 conditions which are set forth in the April 29th
4 letter which is A-11.

5 MR. PRINCOTTO: The letter speaks for
6 itself.

7 MR. KAUFMAN: I apologize for giving
8 anybody the impression that the fire department
9 reviews the application itself.

10 Q Thank you, Mr. Clark.
11 Please proceed.

12 A Sure.

13 There are two design waivers that we're seeking.
14 One is the maximum main approach grade to walkways. The
15 requirement is four percent max, we're requesting five
16 percent. And there is another design waiver for the
17 minimum swale grade, two percent required, one percent
18 requested.

19 There are two existing non-conformities associated
20 with Building 1 and that's for the front yard setback to
21 the property line and the front yard setback to the
22 street center line and there are no deviations required
23 from the RSIS.

24 That's my understanding of the variances and the
25 design waivers to the project.

1 condition of approval.

2 MR. PRINCOTTO: We didn't mark the review
3 letter, so why don't we mark them.

4 MR. KAUFMAN: Generally, we typically
5 don't, but it's fine with me.

6 MR. PRINCOTTO: Okay. We'll mark it so
7 we know what we're talking about.

8 MR. KAUFMAN: We'll mark it as A-12.

9 MR. PRINCOTTO: We'll mark it WCL-1.

10 MR. KAUFMAN: I'm okay with A-12.

11 Whatever you want, WCL-1.

12 MR. PRINCOTTO: Just for the record,
13 that's an originally dated February 19, '21 and
14 revised April 5th, 2021, as revision number 1.

15 And that was authored by Evan M. Jacobs.

16 CHAIRWOMAN MALLEY: Do we have questions
17 for Mr. Clark? Any members of the board.

18 Any of our professionals?

19 Evan? Yes, I figured you did.

20 MR. JACOBS: Apologies. Can you hear me
21 now?

22 CHAIRWOMAN MALLEY: Yes.

23 MR. JACOBS: Good evening, everybody.

24 Mr. Clark, I have a quick question for
25 you.

1 Q And the basis for them in your expert
2 opinion? What's your opinion on it?

3 A My opinion from a design, from a civil engineering
4 design perspective, there's no issue with the deviations.

5 The main approach grade, five percent is the
6 requirement for ADA standards so there's no issue with
7 going to five percent at all. It meets all ADA standards
8 and as far as the swale is concerned, it's for a small
9 portion at the rear of Building 2. It's not a long
10 drainage swale that you'd have maybe running along the
11 roadway or a ditch in that regard, so there's no issue as
12 far as any detriment from going two to one percent.

13 As far as the existing non-conformities, they deal
14 with Building 1, which is a condition that's not being
15 increased, so that's staying as is.

16 Our planner will talk about the use.

17 And as you mentioned, the interior landscaping we
18 did have some to the extent where we could provide it but
19 based on the fire department wanting those to be
20 mountable islands, we had to remove those things.

21 So that's really my understanding of why these
22 variances can be justified.

23 Q Thank you.

24 Just so no misunderstandings, all the comments
25 raised in the engineering report will be addressed as a

1 There was a previous exhibit provided and,
2 I apologize, it was from the previous application
3 which showed a fire truck turning template
4 clipping separate parking stalls on the site. I
5 understand the fire department has approved, for
6 lack of a better term, the Site Plan but has there
7 been any thoughts how they're going to be
8 addressing the traffic conflicts on the site?

9 MR. CLARK: The traffic conflicts, did you
10 say?

11 MR. JACOBS: Yeah, there was a truck
12 turning template that was brought through a
13 previous hearing that showed a fire truck turning
14 radius actually clipping several parking stalls,
15 not by much, but they were conflicting with those
16 parking stalls there. Is there any provisions to
17 the plan that may address that?

18 MS. CLARK: Those exhibits were
19 represented by Lou Luglio at the original hearing
20 and it's my understanding that our Site Plan has
21 incorporated all the mitigation to alleviate that,
22 including the fire department comments.

23 MR. JACOBS: Okay.

24 MR. KAUFMAN: If I may? The letter from
25 the fire department dated April 29th says, "The

1 current Site Plan shows changes that include all
2 our previous turns and comments and reference to
3 the proposed Site Plan."

4 MR. JACOBS: Well, my comment.

5 MR. PRINCIOTTO: Let's not minimize Mr.
6 Jacobs' qualifications as to --

7 MR. KAUFMAN: Oh, I'm not. I don't, I
8 certainly don't minimize the qualifications of Mr.
9 Jacobs at all. However, the issue is with the
10 fire department.

11 MR. PRINCIOTTO: It's not. It's a Site
12 Plan issue. I mean...

13 MR. KAUFMAN: Okay. All right.

14 MR. PRINCIOTTO: Highly regard --

15 MR. KAUFMAN: Listen, I'm not going to get
16 into an argument with you, so let's move on.

17 Matt, you can answer the question, if you
18 can.

19 MR. CLARK: Lou, I know he's available.
20 He created those exhibits but like I said, I
21 believe we've incorporated not only the fire
22 department comments, but I believe the concerns
23 that you might have had. I do believe Lou
24 provided all those exhibits. We provided the
25 loading area, the necessary area to back up and

1 agreeing to address our letter and that addresses
2 my concerns at this time.

3 Thank you.

4 MR. CLARK: Thank you.

5 CHAIRWOMAN MALLEY: Any other questions?
6 Sal?

7 Members of the board?

8 Professionals?

9 Okay. Do we want to open to the public at
10 this point?

11 MR. PRINCIOTTO: Yes.

12 CHAIRWOMAN MALLEY: Motion?

13 MS. HEMBREE: So moved.

14 CHAIRWOMAN MALLEY: Second?

15 MR. DHAWAN: Second.

16 CHAIRWOMAN MALLEY: Meg, can we get a...

17 MS. SMITH: All in favor?

18 Any opposed?

19 Okay. I'll provide the number for anybody
20 watching on TV. The phone number to call in is
21 (201) 391-4977, Extension 203. And if there are
22 any of the members of the public watching on Zoom
23 they can raise their hand to question Mr. Clark on
24 his testimony.

25 I have Mr. Alex Couto on Zoom. I'm going

1 that. So I think we've taken care of those items.

2 CHAIRWOMAN MALLEY: I'd like to see those
3 at some point, whether it's tonight or the next
4 meeting. So if we can get those provided, I
5 appreciate that. Thank you.

6 MR. CLARK: Maybe Lou can amend what he
7 did onto the new Site Plan so that we can make
8 sure there's no issue then.

9 CHAIRWOMAN MALLEY: I see him shaking his
10 head, so I'm assuming there's an agreement.

11 Thank you.

12 MR. PRINCIOTTO: I mean, Mr. Clark, did
13 you prepare that Site Plan or did Mr. Luglio?

14 MR. CLARK: I prepared the Site Plan; Mr.
15 Luglio prepared the exhibits showing the turning
16 templates.

17 MR. PRINCIOTTO: Okay. So what we're
18 going to do is take our Site Plan, give him our
19 CAD file. We can superimpose the templates again
20 to confirm that we're not conflicting with any of
21 Neglia's concerns.

22 CHAIRWOMAN MALLEY: And, Evan, that way
23 you'll get your question answered, which I think
24 is very important.

25 MR. JACOBS: Yes, between the applicant

1 to un-mute so he can address the board.

2 CHAIRWOMAN MALLEY: Okay.

3 MR. COUTO: Hi, how are you? It's me
4 again. I'm sorry to bother you.

5 So I was told that some of the questions I
6 had previously should be to the engineer. So I
7 have a couple of questions.

8 So on Building 1 to rent, to make
9 apartments, were they requiring construction or
10 will be as it is?

11 MR. CLARK: As far as the building's
12 concerned, we do the site design, we don't get
13 involved in the design of the building, the units,
14 the renting, anything along those lines. We deal
15 with the grading, the drainage, utilities outside
16 the building.

17 MR. COUTO: So my question is a generic
18 question. You can tell me yes or no. So to rent
19 apartments, does any construction have to happen
20 inside the building or not?

21 MR. CLARK: Are you asking me to rent the
22 units does any construction inside the building
23 have to take place?

24 MR. COUTO: Yeah, to convert from offices
25 to rental apartments, is there any construction

1 happening in Building 1?

2 MR. CLARK: First, I didn't testify to any
3 of that.

4 And number two, I can't answer your
5 question.

6 MR. KAUFMAN: Let me answer it. Yes, the
7 building is right now configured as an office
8 building. It's got to be retrofitted to create
9 the apartments. You have to add in the kitchens
10 and the bathrooms to make it habitable.

11 MR. COUTO: Okay. Thank you very much for
12 your answers.

13 MR. KAUFMAN: So there is construction,
14 yes.

15 MR. COUTO: The only reason I ask is
16 because on Ordinance 19-07 Site Plan is like on
17 item A Site Planning and they have all ordinances
18 like eight pages.

19 MR. KAUFMAN: That's Site Planning. The
20 site is not changing. These plans for the
21 construction within the existing building are
22 subject to the Uniform Construction Code. That's
23 what they're reviewed by. It's all interior,
24 there's nothing exterior except the facade and
25 what it looks like.

1 Department. They're reviewed by the sub code
2 officials. They're ultimately reviewed by the
3 construction code officials, but not the planning
4 board or the zoning board.

5 MR. PRINCIOTTO: Mr. Couto, we don't have
6 a market rate multiple dwelling zone, so that's
7 part of the issue here. So it's not a particular
8 specific ordinance that applies to market rate
9 multiple dwellings because we don't have a zone in
10 this town for that.

11 MR. COUTO: Okay. I have another
12 question.

13 So are you familiar with the bay
14 requirements, the loading bay requirements?

15 MR. CLARK: We are providing the loading
16 bay. We do provide one.

17 MR. COUTO: So you provide one.

18 From what I understand, I think you
19 misread the ordinance. It's supposed to provide
20 one. Maybe you have to change the plans a little
21 bit. You want me to refresh what ordinance?

22 MR. PRINCIOTTO: Can you clarify your
23 question? Is your question whether or not the
24 loading bay's in compliance?

25 MR. COUTO: Yes, I'm questioning from the

1 MR. COUTO: So the question is, so what
2 zoning laws, Woodcliff Lake zoning laws, is this
3 subject to?

4 MR. KAUFMAN: None, other than the use.
5 Other than the use, the Woodcliff Lake zoning laws
6 don't apply to the existing building.

7 MR. COUTO: And the construction laws
8 don't apply either?

9 MR. KAUFMAN: No, the construction, the
10 Uniform Construction Code applies. It's a
11 statewide code that's enforced by the Building
12 Department and the Department of Community
13 Affairs.

14 MR. COUTO: So from your understanding,
15 the ordinance do not apply to this project,
16 Ordinance 19-07.

17 MR. KAUFMAN: Look, the building exists.
18 It's not a Site Plan application for that
19 building. If we didn't propose the second
20 building, we would be able to come in, here's the
21 Site Plan of what exists a hundred percent and all
22 we would want to do is change the use. We would
23 give the architectural plans and the floor, the
24 existing building but construction drawings.
25 Construction drawings go to the Building

1 loading bays the Borough Code 292-27, Off Street
2 Loading Requirements. And it says for apartment
3 buildings, if you have 20,000 square feet you're
4 required one berth. If you get a hundred
5 thousand, you're required two berths. And then it
6 says the Comments, anything halfway, if you read,
7 the second one applies on the star.

8 So, I mean, whoever read the zoning didn't
9 read it properly. It's at least one and a half
10 will apply, two might apply if you read it
11 properly.

12 Would you like me to provide this so you
13 can read or somebody can?

14 MR. PRINCIOTTO: Could you give us the
15 section again, Mr. Couto?

16 MR. COUTO: Section 292-27. It's called
17 Off Street Loading Requirements.

18 MR. PRINCIOTTO: Okay. And which
19 paragraph?

20 MR. COUTO: Then if you go down to
21 apartment buildings, Table VI-6, if you go down to
22 apartment buildings, first berth 20,000 square
23 feet; second berth a hundred thousand square feet.
24 And then they have an asterisk on second berth.
25 If you read the asterisk it says an additional

1 berth shall be required for each additional month
2 as square feet as indicated in between the two.

3 So the project is about 56,000 square
4 feet, so at least one and a half berths are
5 required.

6 MR. KAUFMAN: What's the section again,
7 292-27?

8 MR. COUTO: 292-27.

9 MR. KAUFMAN: Okay. It's a design
10 standard. The planner, Mr. Burgis, will testify
11 as to the standards for a waiver of a design
12 standard.

13 MR. COUTO: I mean, it's a waiver of
14 berths.

15 MR. KAUFMAN: This is not a zoning
16 ordinance; it's not a variance. 292 is a Site
17 Plan ordinance, Article 6 is design standards.
18 This is not a variance. No variance is required.
19 It's a waiver. The enforcement, the standard is
20 impracticality of the ordinance section. The
21 planner can -- I'll ask Mr. Clark.

22 How many apartment buildings have you been
23 the engineer for in the last ten years?

24 MR. CLARK: Gosh, hundreds.

25 MR. KAUFMAN: Hundreds of apartment

1 loading bay for tractor trailer size trucks, not
2 in my experience. Definitely not in the last ten
3 years. And your ordinance is very similar to
4 other ordinances that we dealt with in Bergen
5 County.

6 MR. KAUFMAN: Go ahead.

7 MR. CLARK: My understanding of the read
8 of the ordinance was that one was required, I
9 don't believe it was commented in any of the
10 professionals' letters that two were required. So
11 we're confident in that.

12 The other reason that that loading space
13 is required, if you remember from the first
14 application, it also provides a backup for
15 vehicles to get out of the site. So it provides a
16 little additional for that and it provides access
17 to the refuse enclosure in the back. But as far
18 as the --

19 MR. KAUFMAN: Mr. Clark, 53-unit building,
20 how many move ins, once the building is occupied,
21 after the first six months, how many move ins do
22 you generally experience per year?

23 MR. CLARK: You know, to be honest, maybe
24 Lou can answer better than I could.

25 MR. KAUFMAN: Ten?

1 buildings. Did it have loading docks like this?

2 MR. PRINCIOTTO: Were they in Woodcliff
3 Lake? I mean, we have our own ordinance.

4 MR. KAUFMAN: No, listen -- excuse me.
5 Let him answer the question first and then you can
6 go.

7 But it's a design standard. The
8 impracticality of a design standard's the same no
9 matter where you are.

10 Mr. Clark --

11 MR. PRINCIOTTO: You can ask him.

12 MR. KAUFMAN: -- do apartment buildings
13 generally have loading docks?

14 He's an expert.

15 Mr. Clark, do apartment buildings
16 generally have loading docks?

17 MR. CLARK: My experience, no, they do not
18 have dedicated loading docks.

19 MR. KAUFMAN: And why is that?

20 MR. CLARK: Typically, you know, the move
21 ins are not the tractor trailers that you see.
22 They're usually smaller vans. They're regulated,
23 if anything, a space is provided for like a UPS
24 truck or a Fed Ex truck to come in so they take up
25 a parking stall. But to have a dedicated 50-foot

1 MR. CLARK: I do not think it's that
2 frequent, to be honest. After the first six
3 months, my experience involved in applications
4 it's done during that time.

5 MR. KAUFMAN: If every unit turns over in
6 the first year, 53 units would be four and a half
7 units turning over every month which would be four
8 and a half people coming in and four and a half
9 people going out. Correct?

10 MR. CLARK: Correct.

11 MR. KAUFMAN: So it makes sense to build a
12 loading dock for nine move ins and move outs?

13 MR. CLARK: No.

14 MR. KAUFMAN: And you know and we all know
15 that it's never going to happen.

16 MR. PRINCIOTTO: You're saying "loading
17 docks".

18 MR. KAUFMAN: It's never going to happen.
19 Loading berths.

20 MR. PRINCIOTTO: Well, loading area the
21 way our ordinance says.

22 MR. KAUFMAN: Mr. Princiotto, you know,
23 let me ask my questions and he'll answer it. You
24 want clarification, you can ask him.

25 MR. PRINCIOTTO: Well, I object to your

1 questions. I mean, you're asking him about
 2 loading docks. I think it should be clear our
 3 ordinance doesn't say *loading docks*. Okay. And
 4 it's not like a loading dock for a tractor
 5 trailer. It's a loading area.
 6 MR. KAUFMAN: It says "a berth". "A
 7 berth". That's the word it used. It uses "a
 8 berth".
 9 MR. PRINCIOTTO: Well, it says "off
 10 street".
 11 MR. KAUFMAN: All right. It also says
 12 each "loading space", uses the word "loading
 13 space", uses the word "berth". Bottom line, it
 14 makes no sense because you're not getting turnover
 15 like that. It's not like an industrial building.
 16 Any other questions?
 17 MR. PRINCIOTTO: I'll let the
 18 professionals weigh in on that at the appropriate
 19 time.
 20 MR. KAUFMAN: I'm happy if they weigh in.
 21 MR. PRINCIOTTO: Thank you.
 22 Mr. Couto, are you still there?
 23 MR. COUTO: Yes, I'm still here. I'm just
 24 trying to figure out what ordinances will apply to
 25 this project. It looks like nothing applies to

1 this project. Could you tell what ordinances
 2 apply?
 3 MR. PRINCIOTTO: You raised a valid point,
 4 which is a loading area. They say that they're
 5 requesting a waiver from that and we may hear some
 6 more testimony about that.
 7 MR. COUTO: And the other question is the
 8 Ordinance 19-07 I mean suddenly doesn't apply
 9 because if I change a bathroom in my house, I'm
 10 going to have to apply to any ordinance.
 11 MR. PRINCIOTTO: At the appropriate time
 12 I'll have our planner weigh in on it because it
 13 does say design standards and it does mention
 14 special office district. So I would think that
 15 this ordinance has some application and you raise
 16 a point and the planners will weigh in on that on
 17 the application of this Ordinance 19-07.
 18 MR. COUTO: So we're going to hear from
 19 the planners later on in this hearing?
 20 MR. PRINCIOTTO: Yes.
 21 MR. COUTO: Okay. Thank you very much. I
 22 just wanted to make sure.
 23 MR. PRINCIOTTO: You're welcome.
 24 CHAIRWOMAN MALLEY: Thank you.
 25 MS. SMITH: I have no nobody else on Zoom

1 raising their hand with the question and the phone
 2 has not rang from the public who's watching on TV.
 3 CHAIRWOMAN MALLEY: Okay. Can we get a
 4 motion then to close to the public?
 5 BOARD MEMBER KAUFMAN: Motion to close to
 6 the public.
 7 CHAIRWOMAN MALLEY: Can we get a second?
 8 MR. DHAWAN: Second.
 9 CHAIRWOMAN MALLEY: All in favor?
 10 MS. SMITH: Any opposed?
 11 Okay.
 12 MR. KAUFMAN: All right. Thank you.
 13 I'd like to call Joseph Burgis.
 14
 15 J O S E P H B U R G I S, 25 Westwood
 16 Avenue, Westwood, New Jersey, having been duly
 17 sworn, testified as follows:
 18
 19 MR. PRINCIOTTO: All right. Well, I think
 20 you're known to a number of members of the board
 21 but not all the members of the board so, Mr.
 22 Kaufman, I will turn it over to you.
 23 MR. KAUFMAN: All right.
 24
 25 DIRECT EXAMINATION BY MR. KAUFMAN:

1 Q Mr. Burgis, can you please give the board
 2 your educational and professional training and
 3 background?
 4 A I have a master's degree in city and regional
 5 planning from Rutgers University.
 6 I've been licensed as a professional planner in
 7 the state since 1980 or '81.
 8 My firm represents about 50 municipalities
 9 throughout the state and we represent a lot of developers
 10 making these kind of applications.
 11 In addition to that, we do a lot of affordable
 12 housing work, including the fact that I'm a Special
 13 Master for a number of judges on affordable housing
 14 issues. So I know there were a few questions about that
 15 issue so I, hopefully, will be able to answer that.
 16 MR. PRINCIOTTO: Anybody have any
 17 questions on the --
 18 MR. KAUFMAN: I just want to ask him -- I
 19 just want to ask him.
 20 Q Your license is still valid and in full
 21 force and effect?
 22 A My license is valid and current.
 23 Q And was there a point in time when you
 24 were the planner for the Borough of Woodcliff Lake?
 25 A Yes, there was, back in the early 2000s I believe

1 it was.

2 Q Okay. And you were replaced by Richard
3 Preiss, I believe?

4 A Yes.

5 Q Okay. Thank you.

6 MR. KAUFMAN: And, you know, we're
7 obviously offering Mr. Burgis as an expert.

8 MR. PRINCIOFFO: All right. So now I'll
9 ask the question, any questions on Mr. Burgis's
10 qualifications as the planner?

11 CHAIRWOMAN MALLEY: No. I think we can
12 accept him. I think most of us have seen him,
13 know him.

14 MR. BURGIS: Thank you.

15 MR. KAUFMAN: Thank you. Thank you very
16 much.

17 Go ahead, Joe.

18 MR. BURGIS: What I'd like to do is focus
19 on three or four particular issues. I think
20 everybody knows the property that is being
21 proposed, so I'll go right into the issue of some
22 of the Master Plan documents of the municipality
23 and I want to do that because that goes to the
24 heart of one prong of the negative criteria, which
25 I'll get into later, then I'll talk a little bit

1 and reinforcing or reaffirming, excuse me, the 210
2 feet sloped area along the easterly portion of the
3 site adjacent to abutting residential. So we're
4 creating effectively a 210-foot buffer zone
5 separating any development on the site from the
6 nearest residential development.

7 MR. PRINCIOFFO: I'm sorry, Mr. Burgis,
8 but I'm going to interrupt you for a minute.

9 Mr. Kaufman, I want to place my objection
10 on the record in the sense to reserve all rights
11 with regard to the board because the issue here
12 initially res judicata and although I'm certainly
13 going to permit you to have the testimony, it's
14 not to redo the prior application. It is for a
15 determination initially whether res judicata
16 applies. So I would object insofar as it would be
17 testimony to redo the prior application and that
18 expected --

19 MR. KAUFMAN: We're not redoing the prior
20 application, number one.

21 Number two, it's a different application
22 because it's been modified.

23 Your objection is on the record. We don't
24 agree with it, but your objection is on the
25 record.

1 about the zoning regulations that apply here and
2 then the basis, identify the statutory criteria
3 under which we are operating and then talk about
4 how we meet that criteria.

5 So there are quite a number of Master Plan
6 documents that have been adopted over the years
7 that I think apply. The last comprehensive Master
8 Plan of the municipality actually goes back to
9 2002 and it identifies the site, the westerly part
10 of the site is in the special office land use
11 designation; the easterly half of the site is in
12 the medium density residential land use category.

13 Now, there are a quite a number of goals
14 and objectives which form the basis for land use
15 recommendations. There are five here that I think
16 merit attention.

17 The first one that I'd like to talk a
18 little bit about is the one that says the goal is
19 to preserve and protect existing residential by
20 restricting incompatible land uses from
21 established residential areas. And I believe we
22 are consistent and compatible with that goal for a
23 very simple reason. We are placing, the
24 residential buildings are entirely in the office
25 zone portion of the site and we are establishing

1 MR. PRINCIOFFO: Okay. Just --

2 MR. KAUFMAN: Okay.

3 MR. PRINCIOFFO: Any attempt to relitigate
4 an application that would depend on the board's
5 determination.

6 MR. KAUFMAN: Let him finish.

7 MR. PRINCIOFFO: I will, I will. I just
8 want --

9 MR. KAUFMAN: It might be a little
10 different than you think.

11 MR. PRINCIOFFO: Well, I said I would
12 allow it. I'm putting my objection and
13 reservation on the record.

14 MR. KAUFMAN: And I said fine.

15 MR. PRINCIOFFO: Okay. All right.

16 MR. KAUFMAN: We disagree with your
17 objection and that's on the record too.

18 MR. PRINCIOFFO: Okay.

19 MR. BURGIS: Sal, this is the first time
20 we disagreed, but because we have a number of new
21 board members I think it's important to give some
22 little background for them and that's principally
23 why I'm doing this.

24 But also there's a fact given that there
25 are 11 percent fewer units being proposed in

1 contrast to the prior application, I don't think
2 the issue of res judicata applies anymore. I
3 think that represents a significant modification
4 to the plans in and of itself.

5 But I would like to continue with the
6 discussion about the Master Plan so the newer
7 board members can understand what the Master Plan
8 says and particularly when we get into the issue
9 of the negative criteria of the statute, because
10 we still have to touch upon that, and then this
11 gives them the context to understand what the
12 negative criteria is all about.

13 And when we talk about the negative
14 criteria, one of the issues is is there a
15 substantial impairment to the intent of the plan.
16 So I hate to use the word *older board members*, but
17 the board members who have been around a little
18 longer than the newer ones understand that, but I
19 think it's very important for the newer board
20 members to understand it as well.

21 Typically, the focus is the roles and
22 objectives of the Master Plan. So I mentioned
23 that one and I mention how we're establishing this
24 210-foot deep landscaped feature and that actually
25 encompasses 44 percent of the three and a half

1 are providing the required setbacks.

2 When you look at the proposed development,
3 it's 19 percent building coverage less than --
4 it's 19 percent building coverage that's
5 significantly less than the 30 percent that's
6 permitted by code and when we talk about
7 impervious coverage, we are proposing a project
8 that's 43 percent impervious versus permitted by
9 code, which is 60 percent impervious. So
10 consequently, we feel that we meet these goals and
11 objectives.

12 Other goals that the Master Plan talks
13 about is encouraging linkage to the train station
14 and within that context we talk about the State
15 Plan and the State Plan very clearly says that a
16 goal of the state is to encourage higher density
17 development near a train station and the Master
18 Plan supports the State Plan. It says it in I
19 believe the 2008 reexamination report which
20 reaffirmed all of the goals that I just mentioned
21 but it also recommended one additional goal and
22 that goal was to discourage development from
23 intruding into steep slope areas. So they became
24 a little more environmentally aware and sensitive
25 and that particularly focuses when this site,

1 acre site and that is significant in that I can
2 only tell you and I hope Elizabeth would say the
3 same thing later, I don't know that I've ever seen
4 a 210-foot landscape buffer physically separating
5 one form of residential from another. Actually, I
6 can think of one municipality in all my travels
7 and I've testified in probably 150 municipalities
8 throughout New Jersey and New York State. I can't
9 think of one that had a 200-foot buffer and that
10 was it.

11 The second goal talks about guiding the
12 appropriate use of land and here we have a site
13 that's directly across the street from a train
14 station and consistent with the State Plan, some
15 planning criteria would always suggest that
16 providing multi-family housing near a train
17 station represents good planning. I believe Mr.
18 Preiss supported that position at the previous
19 hearing.

20 Thirdly is the issue of a goal that
21 provides for light air and open space. We already
22 talked about the one feature, which is a
23 significant open space feature but in addition to
24 that is the fact that we are in fact complying to
25 all the setback requirements to the code, so we

1 because that sloped area that I was talking about,
2 that landscaped feature is steep and it is a steep
3 slope, causing a steep slope category and
4 reaffirming the ability to protect that steep
5 slope.

6 Now, the results the 2008 Broadway Study,
7 the Corridor Study, now, that was never a Master
8 Plan document but it's often been referred to and
9 one of the things it talks about is recognizing
10 this Corridor potential to accommodate changing
11 market conditions.

12 You heard a lot from our real estate
13 person at the previous meeting where he talked
14 about the declining office market. I'll talk
15 about that more in a moment. While, on the other
16 hand, multi-family housing market has been
17 increasing in demand. So we feel that although
18 it's not a Master Plan document, we are generally
19 consistent with the philosophy behind that 2008
20 Broadway Corridor Study.

21 Now, separate and apart from all of that
22 is the municipality's housing plan. Now, someone,
23 I forget who mentioned it, it might have been you,
24 Sal, that you do in fact have your judgment of
25 compliance and repose from the Courts, but that

1 doesn't mean you're off scot-free, so to speak.

2 You have an obligation of 19 units, which
3 you're dealing with. You had a prior obligation
4 of 170 units. And a third round obligation of 386
5 units. You are addressing a portion of that
6 because you're a fully developed municipality and
7 you just don't have enough land to address
8 entirety of that obligation. But settlement
9 agreements typically talk about addressing the
10 portion of your obligation that you can, which
11 you're doing, but then there's this unmet need
12 that you're not addressing but you should be able
13 to give a fair effort to try to address at least a
14 portion of that unmet need and this project can
15 help you do that and you have significant unmet
16 need between your prior round vacant land
17 adjustment and your third round vacant land
18 adjustment, you have a 439-unit unmet need. Now,
19 this is just a small shift in that total. But it
20 helps you meet a portion of that unmet need
21 obligation.

22 Now, more recently the planning board
23 adopted a new reexamination report in 2019 and it
24 continues with the same designation for this site,
25 but it also continues to talk about supporting the

1 Five of them relate to issues of particular
2 suitability. One, an overriding one, talks about
3 hardship. The first one talks about the fact that
4 we further a number of the purposes of the state's
5 Municipal Land Use Law and all zoning technically
6 is predicated on the MLUL and the purposes of the
7 Act. One of the purposes of the Act talks about
8 encouraging municipal action which will guide the
9 appropriate use of land. As I said earlier,
10 placing multi-family near a train station from my
11 perspective and the State Plan's perspective is
12 consistent and complimentary to that purpose. Not
13 only have I said that, your own planner, Mr.
14 Preiss, said that at the last go around.

15 MR. PRINCIOTTO: You know, I don't want
16 you to --

17 MR. KAUFMAN: Mr. --

18 MR. PRINCIOTTO: I don't want you to
19 quote.

20 MR. KAUFMAN: Mr. Princiotto, let him
21 finish his testimony.

22 MR. PRINCIOTTO: Well, no --

23 MR. KAUFMAN: If you want to question him
24 about it when he's finished, question him. But --

25 MR. PRINCIOTTO: No.

1 State Plan, which I just mentioned a moment ago,
2 places you in what's called a planning area one,
3 which specifically promotes diversity of housing
4 choice and housing type. That's what this adds to
5 your housing stock, additional housing choice for
6 people. So within the context of all of that, I
7 mean it's safe to conclude that the prime of the
8 negative criteria that says there shouldn't be a
9 substantial impairment to the intent of the Master
10 Plan, we clearly affirm that prong of the statute.

11 Now, we are in a split zone. The S-O Zone
12 in the westerly portion of the site; the R-15 Zone
13 on the easterly portion of the site and you heard
14 I think it was Mr. Clark went through the
15 variances that we are required to address. Now,
16 the statutory criteria is very straightforward.
17 The positive criteria says we have to show special
18 reasons. What makes the site either particularly
19 suitable for the use or what's the hardship that
20 doesn't enable us to comply. And then the
21 negative criteria talked about the one prong. The
22 other prong is is there a substantial detriment to
23 the public good.

24 So in our assessment we find that there's
25 six special reasons to support this application.

1 MR. KAUFMAN: You're not an adversary here
2 and please let him finish without being
3 interrupted.

4 MR. PRINCIOTTO: No, I can object and I
5 object to these general comments that Mr. Preiss
6 agreed to in his testimony without any reference
7 to the record and they're general comments and I
8 object to it. I'm also going --

9 MR. KAUFMAN: Instead of objecting, why
10 don't you ask him what portion of the transcript?

11 MR. PRINCIOTTO: I will.

12 MR. BURGIS: I'm ready to give it to you.

13 MR. KAUFMAN: Let him finish his
14 testimony, please.

15 MR. PRINCIOTTO: I will.

16 And I want to reiterate my objection to
17 all his testimony that has, you know --

18 MR. KAUFMAN: Joe, please continue.

19 MR. PRINCIOTTO: -- what basis, okay, and
20 it's nothing to do with res judicata.

21 MR. KAUFMAN: That's your opinion.

22 MR. PRINCIOTTO: That's my objection.

23 MR. KAUFMAN: You're entitled to your
24 opinion, but you're not an adversary here. You're
25 supposed to give legal guidance to the board, not

1 be an adversary and not to question and interrupt
2 the witness and prevent him from testifying
3 because you don't understand what he's saying.

4 MR. PRINCIOTTO: I understand what he's
5 saying.

6 MR. KAUFMAN: Mr. Burgis, will you please
7 continue.

8 MR. PRINCIOTTO: And this is --

9 MR. KAUFMAN: Are you going to prevent me
10 from putting on my case? Let's put that on the
11 record too.

12 MR. PRINCIOTTO: Why don't you keep
13 interrupting me?

14 MR. KAUFMAN: Are you going to prevent me
15 from putting on my case? You've already objected
16 to the way I want to call a witness. You dictated
17 to me how I'm supposed to present the case. I'm
18 presenting Mr. Burgis now and now you're
19 interrupting him and you're not letting him
20 testify.

21 CHAIRWOMAN MALLEY: Mr. Kaufman, this is
22 the way we run our meetings. This is the way I
23 want it run. Okay.

24 MR. KAUFMAN: Madam Chairperson, I have a
25 right to present my case. It's as simple as that.

1 already heard and decided.

2 MR. KAUFMAN: If you let him finish
3 instead of interrupting him, it's not the same.

4 MR. PRINCIOTTO: Well --

5 MR. KAUFMAN: Mr. Burgis, will you please
6 continue.

7 MR. PRINCIOTTO: We'll hear what he has to
8 say how it's not the same.

9 MR. BURGIS: Thank you.

10 MR. KAUFMAN: Will you please continue,
11 Mr. Burgis, with your testimony?

12 MR. BURGIS: This is a changed application
13 because of a reduction of number units. I said
14 that earlier. It's an 11-percent reduction in
15 number of units.

16 You also heard that the volume of traffic
17 at peak hour is reduced by at least 14 percent and
18 one of the peak hours it was closer to, I think it
19 was 18 percent. This represents significant
20 changes to a project that I believe indicates that
21 res judicata would not apply from my planning
22 perspective and enables this application to go
23 forward.

24 I would also say that given the change in
25 nature of the composition of this board, it's

1 MR. PRINCIOTTO: Well, I just want to make
2 it abundantly clear that this testimony is with
3 reservation of our rights and appears to be
4 re-litigation of issues that weren't decided.

5 Although, it will be taken conditionally, because
6 the board has to make a determination and at the
7 beginning of this case there was a motion and that
8 carried that it would be heard for the basis of
9 determining whether res judicata applies.

10 I just want to make that clear.

11 I'll let you continue, Mr. Kaufman.

12 MR. KAUFMAN: With all due respect, thank
13 you, but with all due respect, you don't take
14 testimony conditionally. You take testimony and
15 you can either accept it and if you have a valid
16 basis, not to accept it. But you can't take it
17 conditionally, so let's just finish.

18 MR. PRINCIOTTO: I disagree with you
19 because there's an issue as to whether or not res
20 judicata applies, okay, and that, you know, you're
21 being given some latitude with regard to the
22 testimony --

23 MR. KAUFMAN: Latitude?

24 MR. PRINCIOTTO: -- in which the
25 application is, but not to relitigate what was

1 imperative to identify what the special reasons
2 are for this project because without that,
3 particularly, the new board members will really be
4 operating in a vacuum and they need to understand
5 what this case has been all about in order to make
6 an informed decision.

7 So as I was saying, and previously I
8 talked about five special reasons and now I'm
9 talking about six, having an issue of hardship.
10 But before I get into that I just want to finish
11 the discussion about how we are furthering the
12 number of purposes of the Municipal Land Use Law.
13 I talked about one.

14 The second one is similar to one of the
15 goals of the municipality's own Master Plan, it
16 talks about light air and open space. And as I
17 said, there's been a significant reduction in
18 impervious coverage, from 60 percent -- excuse me
19 -- there's a significant difference between the
20 impervious coverage that's proposed at 42 percent
21 versus the 60 percent that's permitted and the
22 building coverage, which is at 19 percent in
23 contrast to 30 percent, which is permitted.

24 So this project in some respects
25 represents a much less intense use of this

1 property than the ordinance contemplates.
 2 The third purpose of the Municipal Land
 3 Use Law talks about promoting the establishment of
 4 appropriate population densities.

5 Now, originally, this application came in
 6 at 16.97, basically 17 units to the acre. We are
 7 now at 14.9 units to the acre. I did not figure
 8 out that percentage decline. But when I look at
 9 other multi-family zones in the municipality, I
 10 find that what we are proposing is generally
 11 consistent with other multi-family zones that we
 12 have here. For example, the AH-2 Zone just to the
 13 north of us on Broadway allow a maximum of 16
 14 units in a 100 percent affordable project on a .9
 15 acre property. And if you do the math, that
 16 indicates a density of 17.7 to the acre.

17 CHAIRWOMAN MALLEY: That's fully
 18 affordable housing is what you are saying?

19 MR. BURGIS: Your multi-families, you are
 20 correct, are basically affordable housing zones.
 21 So the veterans affordable housing overlay zone is
 22 12 units to the acre or 14.9 to the acre. The
 23 ARAHO Zone is 12 units to the acres. The ARHO-2
 24 Zone is at 20 units to the acre. That's the Teva
 25 site --

1 Municipal Land Use Law talks about promoting a
 2 desirable visual environment to create a
 3 development technique.

4 We're here taking a vacated office
 5 building and aesthetically enhancing the design of
 6 the site by virtue of what the architect can
 7 testify to and I guess what was touched on earlier
 8 this evening.

9 And then, finally, another purpose of the
 10 Municipal Land Use Law is to promote the
 11 conservation of open space. And, again, we're
 12 taking 44 percent of this property and retaining
 13 it as open space.

14 Now, in addition to that, we also feel
 15 that we're furthering the purposes of smart
 16 growth. The Smart Growth Principles of the state
 17 are ten in number, but I just want to focus on the
 18 handful of them just to touch base on this issue.
 19 One talks about encouraging compact building
 20 design, particularly, around train stations.
 21 That's exactly what we're doing here. One talks
 22 about preserving critical environmental areas.
 23 That's exactly what we're doing here. One talks
 24 about encouraging diversity of housing opportunity
 25 and choice. That is what we are doing here. All

1 MR. KAUFMAN: Joe, can I ask you a fast
 2 question?

3 MR. BURGIS: Sure.

4 MR. KAUFMAN: In an affordable housing
 5 zone, the use is multi-family residential, isn't
 6 it?

7 MR. BURGIS: Correct.

8 MR. KAUFMAN: The only difference between
 9 affordable housing multi-family use and a market
 10 rate use is the economics of the residents.

11 MR. BURGIS: I'm sorry, I lost the last
 12 part.

13 MR. KAUFMAN: Is that a fair statement?

14 I said the only difference between a
 15 multi-family affordable housing use and a
 16 multi-family market rate use are the economics of
 17 the residents and what they can afford to pay. Is
 18 that correct?

19 MR. BURGIS: Correct.

20 MR. KAUFMAN: So it's the same use,
 21 whether it's affordable or market rate, it's still
 22 a multi-family residential use.

23 MR. BURGIS: Yes, that's entirely correct.

24 MR. KAUFMAN: Thank you.

25 MR. BURGIS: Another purpose of the

1 around the train station, which the State Plan
 2 talks about, is the appropriate location for a
 3 multi-family housing.

4 So in many respects, I think there's a
 5 number of purposes as the Municipal Land Use Law
 6 and other special reasons that support this
 7 application.

8 Now, in terms of the issue of economic
 9 hardship. You heard from our real estate
 10 consultant at the previous meeting and he talked
 11 about how in northern New Jersey there is a
 12 19.6 percent vacancy rate of office buildings. 26
 13 million square feet of office space in the state;
 14 19.6 percent of it is vacant. And then he focused
 15 on the Montvale, Woodcliff Lake, Park Ridge
 16 community and found that within that area, and the
 17 grade A office space that we have, 41 percent of
 18 office space is vacant. Extraordinarily high.

19 We're the planners out for may
 20 municipalities in Morris County, including
 21 Parsippany. Even Parsippany's numbers, they have
 22 a lot of office space and a lot of vacancy. I
 23 don't think they're at 41 percent. I know they're
 24 not at 41 percent.

25 So within that context, I think there is

1 strong support to say that this application and
2 the change from an office zoning to a multi-family
3 residential use can be addressed because there is
4 this hardship issue.

5 What's also interesting is we only have
6 one use that's permitted on this site for your
7 zoning and that is business professional and
8 executive office use.

9 Now, somebody had suggested, well, how
10 about a medical office, because we see Urgent Care
11 facilities popping up all over the place. Well,
12 we have a pretty significant size building that no
13 medical facility would take this size building,
14 but beyond that, when you look at your ordinance,
15 that's not even a permitted use here. When you
16 look at your ordinance you'll find that there are
17 a number of zoned districts that specifically
18 identify office use and then separate and distinct
19 from that they identify medical office uses
20 permitted in certain zones. That's not done in
21 this zone and the fact that your ordinance
22 identifies medical office in certain zones but not
23 here clearly suggests that that use is not
24 permitted.

25 So we are down to one and only one and our

1 MR. BURGIS: Right, I do recall that.

2 MR. KAUFMAN: Thank you.

3 I'm looking up the exact quote to satisfy
4 Mr. Princiotto.

5 MR. BURGIS: Well, that's another factor
6 that distinguishes this application from that
7 application. It's called changed circumstance.
8 And that's another way they address the issue of
9 res judicata if there's changed circumstance.
10 That was pre-COVID, pre-pandemic, and the world
11 has significantly changed. I mean, the office
12 market was bad to begin with but, you know --

13 MR. PRINCIOTTO: You know what, this is
14 going beyond his expertise and it's not even
15 consistent with the testimony of your real estate
16 witness.

17 MR. BURGIS: I disagree with that.

18 MR. PRINCIOTTO: I disagree with you.

19 Okay. And you're not being called --

20 MR. KAUFMAN: Well, first of all, how do
21 you know his expertise?

22 MR. PRINCIOTTO: He's a planner.

23 MR. KAUFMAN: You said it's beyond his
24 expertise.

25 MR. PRINCIOTTO: He's appeared before this

1 real estate expert seems to have proven the case,
2 at least in my view, that there is no office
3 market for this kind of facility.

4 MR. KAUFMAN: Can you just address that in
5 terms of the Medici case which provides that if a
6 property is not reasonably adopted to form a use
7 it would require the requirement of special
8 reasons of the results and the Medici words is
9 "economic and utility".

10 MR. BURGIS: Well, that is precisely the
11 conclusion to be drawn. That testimony indicated
12 the magnitude of the problem of the office market
13 today and then tied into that is the fact that
14 office use is the only permitted use allowed in
15 this zone. And there's no market for it. And if
16 there's no market for it and it's the only use
17 they're allowed, you basically zoned the site into
18 economic and utility.

19 MR. KAUFMAN: And do you recall Mr.
20 Preiss's testimony June 25, 2019, that the
21 application that was before them in 2019 was not a
22 hardship case?

23 MR. BURGIS: Correct.

24 MR. KAUFMAN: You do recall that
25 testimony?

1 board many times.

2 MR. KAUFMAN: You don't know what he
3 knows. Ask him questions about his expertise
4 before coming to a conclusion.

5 MR. PRINCIOTTO: You qualified him as an
6 expert, an expert in the planning not in the real
7 estate market.

8 MR. BURGIS: But I'm entitled --

9 MR. KAUFMAN: Why don't you ask him if
10 planning also includes knowledge of market
11 conditions.

12 MR. PRINCIOTTO: Well, when you're done
13 with your direct examination, I'll ask him
14 questions that are more appropriate.

15 MR. KAUFMAN: Okay. So then that's fine.
16 Then let me finish.

17 MR. PRINCIOTTO: I think if he stayed
18 within his area of expertise.

19 MR. KAUFMAN: Now you're telling him what
20 he can't testify to.

21 MR. PRINCIOTTO: No, I think that's
22 fair --

23 MR. KAUFMAN: You've made a conclusion.
24 You've made a conclusion as to what his area of
25 expertise is without asking him any questions on

1 his expertise.

2 MR. PRINCIOTTO: Did you find Mr.
3 Preiss --

4 MR. KAUFMAN: Just like you said that Mr.
5 Bernhaut, who has 34 years in the office building
6 market business and is Executive Vice Chairman of
7 a 40,000 person company had - quote - very limited
8 experience.

9 MR. PRINCIOTTO: I'll clarify that later.
10 Let's stick to this subject.

11 Do you have Mr. Preiss's testimony?

12 MR. KAUFMAN: Let him finish.

13 MR. BURGIS: I am finished on the issue of
14 use.

15 I believe I've addressed the issue of
16 special reasons.

17 I believe I've addressed the issue of
18 negative criteria, that there is no substantial
19 impairment of the intent of the Master Plan.

20 And I believe I've addressed the issue of
21 that prong of the criteria that talks about no
22 substantial detriment to the public good. In this
23 instance, one is entitled to rely on the expertise
24 of others to draw certain conclusions and in terms
25 of negative criteria, that prong of the negative

1 So, consequently, there's room in the
2 school system to accommodate the handful of kids
3 that may come out of this project and the traffic
4 testimony indicates that this represents a more
5 beneficial use in contrast to the theoretically
6 zoned amount of development that would occur here.

7 So within all that, I think I completed my
8 testimony on the use variance issue.

9 MR. KAUFMAN: Do you have an opinion, have
10 you come to an opinion, Mr. Burgis?

11 MR. BURGIS: I have and I think it's
12 obvious that --

13 MR. KAUFMAN: Well, it may be obvious but
14 I'd like you to state it anyway.

15 MR. BURGIS: I think that based on all
16 that I've testified to, the applicant has
17 affirmatively addressed the positive and negative
18 criteria of the statute and the Medici test and
19 enables this board to approve this project
20 irrespective of the fact that I once or twice
21 mentioned Mr. Preiss's prior testimony.

22 MR. KAUFMAN: Okay. Just as to the, page
23 73 of the June 25th, 2019, transcript to recall
24 Mr. Preiss testifying as follows:

25 "Well, as I've indicated, there's no

1 criteria, the testimony of the traffic consultant,
2 the amount of peak hour flow coming out of this
3 project versus office development that
4 theoretically is zoned for is lesser than what is
5 coming out of this project. So consequently I
6 think from that issue alone there's no substantial
7 detriment to the public good.

8 In addition to that, I know in many
9 instances municipalities and boards are concerned
10 about the issue of impact on the local school
11 system, but we have found here is that enrollments
12 have been steadily declining. For example, at the
13 Woodcliff Lake school, enrollments in 2009 are 830
14 students, ten years later we're down to 735.

15 Pascack Hills enrollments are slightly
16 lower; 841 in 2009 to 818 ten years later.

17 What's interesting though is when you look
18 at your population as a whole, the borough
19 population under five has been steadily declining
20 going back to the year 2000 and between 2000,
21 yeah, between 2000 and 2018, population under age
22 5 has dropped by 33 percent. That's significant
23 and it leaves a lot of openings in the school
24 system. For the age 5 through 17 age category
25 it's dropped by 11 percent.

1 evidence on the record that you have" --

2 MR. PRINCIOTTO: Where are you reading,
3 please?

4 MR. KAUFMAN: I'm asking him a question.

5 MR. PRINCIOTTO: It's an improper
6 question.

7 MR. KAUFMAN: So let me ask the question.

8 Mr. Burgis, do you recall --

9 MR. PRINCIOTTO: I object to this
10 entirely.

11 MR. KAUFMAN: Do you recall Mr. Preiss
12 testifying as follows on page 73, June 25th, 2019,
13 hearing. "Well, as I've indicated, there's no
14 evidence on the record and you haven't made the
15 argument that this is a hardship case and it's up
16 to the board to make a determination."

17 Do you recall that testimony?

18 MR. BURGIS: I do, yes.

19 MR. KAUFMAN: And does that not make your
20 testimony, your presentation of this and Mr.
21 Bernhaut's testimony a completely different case
22 than the one that presented in 2019?

23 MR. BURGIS: Yes, because as I said
24 earlier, we're now predicating a lot of this case
25 on the issue of hardship and the testimony of the

1 real estate expert and my recollection is that
 2 there has been no testimony that refuted his
 3 expert testimony and opinion and a planner can
 4 rely on other testimony to draw certain
 5 conclusions relative to the manner in which an
 6 application may or may not have affirmed statutory
 7 burden.

8 MR. KAUFMAN: Okay. But my question is,
 9 it's now a different case than 2019, isn't it,
 10 because the whole basis of the case is different?

11 MR. BURGIS: Correct.

12 MR. PRINCIOTTO: Objection.

13 MR. KAUFMAN: Thank you.

14 MR. BURGIS: You're welcome.

15 CHAIRWOMAN MALLEY: Do board members have
 16 questions?

17 BOARD MEMBER KAUFMAN: Mr. Burgis, just a
 18 couple of points of review with regards to the
 19 real estate expert that spoke at the last meeting
 20 that you referenced to and the statistics that
 21 were referenced are generalities there in
 22 Woodcliff Lake. Is that correct?

23 MR. BURGIS: That is correct --

24 BOARD MEMBER KAUFMAN: And they are based
 25 on Class A office buildings?

1 presentation. Does that make it a new case,
 2 because you're adding new arguments? You're
 3 adding statements that were not made earlier, is
 4 that what you're saying?

5 MR. BURGIS: Yeah, but not in and of
 6 itself. There's the issue of the reduction in
 7 number of units and then the associated reduction
 8 in traffic volume that have been discussed and in
 9 addition to that there's the issue of changed
 10 circumstances and that relates to, you know, the
 11 bottom is really falling out of the office market
 12 since we were last before the board.

13 CHAIRWOMAN MALLEY: Can you state that
 14 again? I missed that. You cut out.

15 MR. BURGIS: The changed circumstance also
 16 relates to the fact that the office market has
 17 really fallen apart since we were here back in
 18 2019, as had been testified to by our real estate
 19 expert.

20 CHAIRWOMAN MALLEY: I'm not sure that's
 21 what he testified. I'm sorry, because what I was
 22 just looking for in his testimony, I thought he
 23 said his statistics were prior to the pandemic. I
 24 don't know if somebody else had picked up on that,
 25 but I thought his numbers were prior to the start

1 MR. BURGIS: -- as per Mr. Kaufman at best
 2 he focused on the tri-town region that I mentioned
 3 Montvale, Woodcliff Lake, Park Ridge.

4 BOARD MEMBER KAUFMAN: And you did say
 5 Class A office buildings. Correct?

6 MR. BURGIS: Pardon me?

7 BOARD MEMBER KAUFMAN: You mentioned Class
 8 A properties, that's the statistics that you were
 9 quoting.

10 MR. BURGIS: Yes.

11 BOARD MEMBER KAUFMAN: And I believe your
 12 expert did not classify this building as a Class A
 13 building. Correct?

14 MR. BURGIS: That is correct. He did
 15 offer some testimony about that type of building
 16 and particularly this location and its ability to
 17 survive in today's market.

18 BOARD MEMBER KAUFMAN: Okay. Thank you.
 19 I appreciate that.

20 MR. BURGIS: Thank you.

21 MR. DHAWAN: I have a question. The last
 22 portion of your testimony you made a statement
 23 about hardship and if your case is being presented
 24 with new arguments for the same or very similar
 25 project, you're saying that it's a new

1 of the pandemic.

2 MR. BURGIS: He offered some numbers prior
 3 to, but then also talked about since February
 4 of 2020.

5 BOARD MEMBER PICINIC: I thought the
 6 numbers hadn't specifically changed that
 7 significantly after the pandemic was his
 8 testimony.

9 MR. BURGIS: What I took from his
 10 testimony was that things might have been
 11 difficult before, they become much more difficult
 12 today and it's a function of a couple of different
 13 things. One, office workers are not going to the
 14 office any longer, so it's another indication that
 15 that space is no longer needed. I know many
 16 people who are looking or have been looking to
 17 reduce the amount of office space they have
 18 because they understand that a lot of employees, I
 19 notice it's in my office as well, a lot of the
 20 employees have become very comfortable working
 21 from home and I'm scratching my head wondering why
 22 do I need all the office space that I have for my
 23 staff because it's working well with people
 24 working from home and that's a dilemma for these
 25 spaces.

1 CHAIRWOMAN MALLEY: Mr. Burgis, I'm
2 curious if you're testifying to that or...
3 Because I know I looked at the building next door
4 and they are full. They have no space right now.

5 MR. BURGIS: But that may be for a variety
6 of reasons. There may be long-term leases. I
7 don't know if you looked into that. And, you
8 know, sometimes, you know, finding one or two
9 examples doesn't solidify a conclusion. And I
10 know there had been a lot of questions to him
11 about the fact that he indicated that certain
12 office buildings did in fact sell or had gained
13 some occupancy, but that doesn't affect or inform
14 the overall trend in the industry today.

15 CHAIRWOMAN MALLEY: We're just talking one
16 building and I'm just specifically asking you, you
17 know, the neighboring building is full. I'm
18 curious why this building couldn't be full.

19 MR. BURGIS: What I understand, the
20 quality of the building is not quite the same. I
21 don't know what else to say to you on that front.

22 CHAIRWOMAN MALLEY: Okay. Chris,
23 question? Take your mute off. I'm sorry, it's
24 getting late.

25 MS. HEMBREE: Okay. Mr. Burgis, you

1 that the limited amount of landscape island space
2 that was being proposed, the fire department asked
3 it be removed to facilitate their access to the
4 property.

5 MS. HEMBREE: I still don't understand the
6 44 percent increase. I don't understand that.
7 What is that?

8 MR. BURGIS: I never said it's increasing.
9 44 percent of the site in the eastern most part of
10 the property, there's an area of 210-foot depth by
11 435 feet in length I think it is that's wooded
12 today. It's woodland. It's that 44 percent of

13 the property that is not being touched. So --

14 MS. HEMBREE: Don't touch it.

15 MR. BURGIS: I'm not saying we're creating
16 new additional open space, but through this site
17 design we're ensuring that none of it is being
18 intruded into.

19 BOARD MEMBER HEMBREE: In other words, it
20 stays the same?

21 MR. BURGIS: Yes, and serves as a very
22 good solid protective feature for the residents to
23 the east of that.

24 MS. HEMBREE: It doesn't give the
25 residents of your two-story building any space to

1 referenced an increase in open space on this
2 property by 44 percent. Is that what you
3 testified to?

4 MR. BURGIS: It's not an increase because
5 the open space exists, but what I'm saying is
6 44 percent of the site is vacant and this project
7 ensures that that will continue to be the case.
8 That we're not intruding at all into that
9 44 percent of the site that's characterized by,
10 you know, heavily wooded features.

11 MS. HEMBREE: But it's a parking lot
12 that's the open space. Correct?

13 MR. BURGIS: No.

14 MS. HEMBREE: Where's the open space? You
15 still have a variance for deficient parking lot
16 area landscaping. Where's that?

17 MR. BURGIS: Well, that's different from
18 what I'm talking about. Your ordinance requires
19 that within the interior of the parking lot it
20 requires open -- excuse me -- landscape amenities,
21 basically, landscaped islands at the end of rows
22 of parking, which is typical.

23 We're not providing that. And then as you
24 heard from the engineer, while we've been
25 conformed to begin with, the fire department asked

1 be outside in a green space or in a flower or in a
2 landscaped space?

3 MR. BURGIS: Correct. That's not atypical
4 in a small multi-family residential project such
5 as this. You don't see significant recreation
6 amenities on smaller projects. Usually you'll
7 start to see such features when a project is
8 roughly 80 to 100 units, then you're going to
9 start to see that kind of feature, but not for a
10 project of this size.

11 MS. HEMBREE: Okay.

12 CHAIRWOMAN MALLEY: You spoke about the
13 Master Plan and how this is, I'm going to say good
14 for the Master Plan for lack of a better term.
15 Master Plan hasn't been changed since, I should
16 not say it that way, the Master Plan has been
17 looked at a number of times. There have been
18 revisions to it. It is being totally redone now.

19 MR. BURGIS: Yes.

20 CHAIRWOMAN MALLEY: But this area that
21 we're talking about has not been changed. The
22 mayor and council has kept it the same all along.
23 Doesn't that suggest something to you that they
24 don't want to make a change to that area.

25 MR. BURGIS: Not necessarily, because the

1 bottom line to the whole discussion on the Master
2 Plan, you have an old Master Plan. Goes back to
3 2002. Now, back then you're obligated to prepare
4 a new reexamination report every six years and
5 then the law was changed to make it every ten
6 years. So you did one in 2008, a reexamination in
7 2008 and then in 2019. You really are due for a
8 new Master Plan.

9 Going back to 2002, you know, a lot has
10 changed. The residential market has changed. The
11 interest in multi-family occupancy has changed --

12 CHAIRWOMAN MALLEY: But they reexamined in
13 2019 that was --

14 MR. BURGIS: -- in 2002, and consequently
15 that has represented a wholesale change in terms
16 of, you know, any retail corridors that we have
17 here in Woodcliff Lake.

18 So dramatic change has taken place. So
19 you're due. Doing a Master Plan reexamination
20 report is not a Master Plan.

21 CHAIRWOMAN MALLEY: Agreed.

22 MR. BURGIS: You're just looking at an old
23 document and seeing if it represents a current
24 contemporary plan that needs change.

25 In 2019 I think the bottom conclusion was

1 MR. BURGIS: No, what he said has been
2 corroborated in a number of other municipalities
3 where --

4 MR. PRINCIOTTO: Well, I'm not asking you
5 that.

6 MR. BURGIS: Let me finish answering.

7 MR. PRINCIOTTO: You're not answering my
8 question. I want you to answer my question.

9 MR. KAUFMAN: Let him answer the question.
10 I mean, you asked him a question. He's giving you
11 the best answer he can and you interrupt him.

12 MR. PRINCIOTTO: I want a responsive
13 answer to the question.

14 MR. BURGIS: I'm giving you a responsive
15 answer.

16 MR. KAUFMAN: Sir, this is not a trial.

17 This is not a trial. Don't treat it as a trial.

18 Let him answer it.

19 MR. PRINCIOTTO: Am I entitled to have an
20 answer to my question, not something else?

21 MR. KAUFMAN: He's answering the question
22 to the best of his ability. When he finishes his
23 answer, if you don't like it, ask him again.

24 Phrase it differently.

25 MR. PRINCIOTTO: No.

1 I think there's a lot that needs changing and as
2 you just said, they're about to embark on that.

3 But that's all you have so that's the only
4 thing that we can look at and some of the goals
5 are still pertinent. You know, I said I get five
6 in particular, you have a lot more in the plan. I
7 thought five were pretty much spot on in terms of
8 this application.

9 CHAIRWOMAN MALLEY: Sanjeev, did you have
10 a question or were you just waving?

11 No. Okay.

12 Sal, I know you had a question.

13 MR. PRINCIOTTO: Any board members have
14 any other questions? No. Okay.

15 Yeah, I have some questions.

16 Your testimony with regard to what the
17 market conditions are or I should say your
18 conclusions about the market conditions, that's
19 based upon the testimony of the real estate expert
20 that testified for the applicant. Is that
21 correct?

22 MR. BURGIS: Yes.

23 MR. PRINCIOTTO: Okay. You didn't do any
24 independent research on your own. Isn't that
25 correct?

1 MR. BURGIS: As I said, based on his
2 testimony, which I'm entitled to do as an expert
3 but I also in response to your question was
4 letting you know that I've heard similar
5 conclusions about the office market in many other
6 instances throughout northern and central Jersey,
7 you know, in my practice.

8 So it just seems to be if so many experts
9 are all saying the same thing and living in this
10 area and knowing the office market, not as an
11 expert, per se, but knowing what's happening with
12 the office market, I think it's a safe conclusion
13 for me to make.

14 MR. PRINCIOTTO: Well, do you know that
15 the real estate expert said that there were no
16 forecasts for the office market based upon the
17 pandemic? Did you hear that testimony?

18 MR. BURGIS: Yes, I did.

19 MR. PRINCIOTTO: Yeah. So you're not
20 going to make a decision or should the board make
21 a decision on some temporary situation
22 potentially?

23 MR. BURGIS: No, I would agree with you.

24 But you're saying it's temporary, because the
25 reality is, he had indicated that even

1 pre-pandemic, you know, the statistics that he
2 gave were only slightly higher than when it
3 occurred prior to.

4 This has been a depressed office market
5 for some time. So he said I'm not making
6 forecasts because it's difficult to make forecasts
7 given the unusual nature of the pandemic and its
8 impact. But the trend has been very consistent
9 from well before the pandemic.

10 MR. PRINCIOTTO: But you were here at the
11 last application, right, for all the testimony?

12 MR. BURGIS: Yes, I think so. Yes.

13 MR. PRINCIOTTO: All right. And you heard
14 the testimony of Mr. Oppler, another real
15 estate --

16 MR. KAUFMAN: Mr. Oppler's testimony is
17 not germane.

18 MR. PRINCIOTTO: Well, that's what you
19 say.

20 MR. KAUFMAN: I'm not --

21 MR. PRINCIOTTO: Let me do my
22 cross-examination, Mr. Kaufman.

23 MR. KAUFMAN: It's not germane. It was
24 two years ago. It was two years ago. It doesn't
25 reflect conditions today. The issue is conditions

1 Mr. Oppler -- Mr. Kaufman, don't cut me off, it's
2 rude. I'm trying to ask a question.

3 Mr. Burgis, do you recall Mr. Oppler's
4 testimony when he testified in 2019 that he could
5 rent it as office space? Do you recall that?

6 MR. BURGIS: No, there was one meeting
7 that I missed and I hate -- that might have been
8 the meeting I missed.

9 MR. PRINCIOTTO: Okay.

10 MR. KAUFMAN: That's convenient. Thank
11 you. But I just want to object on the record to
12 the whole line of questioning about Mr. Oppler's
13 testimony. It's irrelevant to this application.

14 MR. PRINCIOTTO: Well...

15 MR. KAUFMAN: But, go ahead. Ask your
16 question. What else? He doesn't recall the
17 testimony.

18 MR. PRINCIOTTO: All right. Did you look
19 at any specific data with regard to Woodcliff
20 Lake, Montvale, or Park Ridge with regard to
21 market conditions?

22 MR. BURGIS: No, I relied on the expert
23 testimony.

24 MR. PRINCIOTTO: Now, you understand
25 there's a difference between Class A office

1 today, not two years ago. And as Mr. Preiss
2 himself said on page 73 of his testimony that
3 there is no evidence on the record. You haven't
4 made the argument that this is a hardship case so,
5 therefore, Mr. Oppler, whatever he testified to,
6 is irrelevant.

7 MR. PRINCIOTTO: Well, you may not have
8 proven your hardship case. Okay.

9 MR. KAUFMAN: That's your opinion.

10 MR. PRINCIOTTO: The last time. Let me
11 conduct my cross-examination. Don't interrupt me.
12 Let me do my cross-examination. You had your
13 testimony.

14 MR. KAUFMAN: We have different positions
15 here, Mr. Princiotto.

16 MR. PRINCIOTTO: Right.

17 MR. KAUFMAN: You're legal counsel to the
18 board. You're not supposed to be an adversary.

19 MR. PRINCIOTTO: I'm supposed to try to
20 create an accurate record, okay, for everyone's
21 benefit. Accurate record, okay, is what I'm
22 after. Okay.

23 MR. KAUFMAN: Well, there are some
24 issues --

25 MR. PRINCIOTTO: Mr. Burgis, do you recall

1 buildings and Class C office buildings. Correct?

2 MR. BURGIS: Yes.

3 MR. PRINCIOTTO: So we're not talking
4 about a Class A office building.

5 MR. BURGIS: That is correct.

6 MR. PRINCIOTTO: And do you know the prior
7 uses for that building at 188 Broadway?

8 MR. BURGIS: You mean the occupants?

9 MR. PRINCIOTTO: Yes.

10 MR. BURGIS: No.

11 MR. PRINCIOTTO: No.

12 Now, we don't have a market rate multiple
13 dwelling zone, apartment zone in Woodcliff Lake.
14 Isn't that true?

15 MR. BURGIS: I believe that's correct. I
16 think all your, based on all your multi-families
17 are inclusionary zoning and one hundred percent
18 affordable housing, maybe two.

19 MR. PRINCIOTTO: Bear with me one second.

20 MR. BURGIS: Okay.

21 MR. PRINCIOTTO: Now, I believe you have
22 -- are you there, Mr. Burgis?

23 I believe in your prior testimony you
24 acknowledged that after extensive public hearings
25 in 2017, the mayor and council and the planning

1 board decided to scrap the Broadway Corridor
2 Ordinance proposed because it was decided that
3 Woodcliff Lake was not an apartment town or
4 multi-family town and it did not favor residential
5 and the Broadway Corridor. Do you remember giving
6 that testimony?

7 MR. BURGIS: Something to that effect,
8 yes.

9 MR. PRINCIOTTO: And this isn't a transit
10 oriented development. Right? It's really transit
11 related. Correct?

12 MR. BURGIS: To a certain extent that's
13 splitting hairs. The reality is we are across the
14 street from a train station and the fact that the
15 council may have abandoned the zoning of an entire
16 corridor doesn't preclude the fact that a zoning
17 board is entitled to grant a use variance if they
18 conclude that special reasons exist and the
19 negative criteria have been met. And here we've
20 shown not only the previously testified to special
21 reasons, but we now talked about a whole new
22 issue, i.e., hardship. That's just the argument
23 and you've heard how we meet the negative
24 criteria, so I'm not going to repeat that.

25 MR. PRINCIOTTO: Now, Mr. Kaufman --

1 MR. PRINCIOTTO: Thank you.

2 MR. BURGIS: No, let me finish giving my
3 thought.

4 It, you know, an applicant is always
5 entitled to make an application and a zoning board
6 is always obligated to hear it and make a
7 decision.

8 I've been involved in Master Plans that
9 has taken as much as three years to come to its
10 conclusion and adoption. You cannot be suggesting
11 that all applications just get put on hold for an
12 extended period of time. Knowing the quality of
13 the work that Phillips Preiss firm, they're going
14 to go through it in-depth and I'll be shocked if
15 it takes less than a year. And the Courts have
16 never upheld the idea that a zoning board can shut
17 down for a year while a Master Plan goes through
18 the entire process of getting adopted.

19 I trust Elizabeth understood that that was
20 a compliment.

21 MR. PRINCIOTTO: Well, we'll see if the
22 time estimates hold true.

23 Okay. I don't have any further questions.

24 I think we should try to finish this
25 witness and open to the public.

1 MR. KAUFMAN: Yes.

2 MR. PRINCIOTTO: -- mentioned the Medici
3 case.

4 MR. KAUFMAN: I thought you were
5 questioning me, Mr. Princiotto. I'm sorry, I
6 didn't mean to interrupt you. You started with
7 "Mr. Kaufman", I was like, okay, yes.

8 MR. PRINCIOTTO: Doesn't the Medici case
9 stand for the proposition that it's better to zone
10 by ordinance rather than variance?

11 MR. BURGIS: Yes.

12 MR. PRINCIOTTO: Yes. And --

13 MR. BURGIS: It doesn't preclude a board
14 from granting a variance; hearing the case and
15 granting it.

16 MR. PRINCIOTTO: And you understand that
17 the borough is in the process of updating its
18 Master Plan. Correct?

19 MR. BURGIS: I've been told that, yes.

20 MR. PRINCIOTTO: All right. And that's a
21 better form of planning, doing it by way of an
22 updated Master Plan rather than by variance,
23 wouldn't you agree?

24 MR. BURGIS: Well, actually I would,
25 however --

1 CHAIRWOMAN MALLEY: Anybody else have
2 questions?

3 Liz?

4 MS. LEHENY: Yeah, I do, actually.

5 I know, you know, we talked about this a
6 little bit, a few other people asked questions
7 but, you know, I understand that the real estate
8 expert when I read his transcript he admitted, I
9 mean, as we've all admitted tonight, that the
10 office vacancy rate has been in the vicinity of 18
11 to 20 percent for awhile in northern New Jersey.
12 And, you know, you talked about changed
13 circumstances and I believe that the real estate
14 expert admitted that we don't really know what the
15 effect is of the changed circumstances is on the
16 real estate market at this time, meaning, we're
17 still coming out of the pandemic and there's still
18 a question I'm not sure any of us can answer. And
19 I guess I'm trying to lead to a question to you
20 because I know I'm supposed to be asking you a
21 question. But can you say for certain that this
22 type of office space that would be impossible in
23 this type of building doesn't have a market under
24 these changed circumstances?

25 MR. BURGIS: It appears, you know, you've

1 heard me give my answer on that already. I like
 2 to think that given the nature of this building,
 3 the way it was initially described, and given the
 4 nature of the changes that we have seen in the
 5 office market, that coupled with the fact that
 6 having a site directly across the street from a
 7 train station represents a golden opportunity for
 8 the municipality to affirmatively address a
 9 portion of its unmet affordable housing
 10 obligation. The site makes sense for that use.
 11 It's in a good location for that use and you have
 12 a whopping 430-something unit unmet need and
 13 you're hard pressed to address that anywhere else.
 14 Here's an opportunity.

15 And when you talk about on a scale of 1 to
 16 10, what's important in terms of the State Plan,
 17 case law, and the constitution where you have a
 18 use that's been identified as a constitutional
 19 obligation to address, this is about as good as
 20 you're going to get to address that.

21 MR. KAUFMAN: Hey, Joe, do you have a
 22 crystal ball?

23 MR. BURGIS: I think I left it at the
 24 office.

25 MR. KAUFMAN: Do you? None of us can say

1 usually addressed by overlay zones and almost
 2 never, except maybe in one town that I've worked
 3 in did the potential units, affordable units on
 4 these overlay sites equal what the unmet need was.
 5 Meaning, you know, yes, we do have an unmet need
 6 in excess between 300 and 400 units. But Fair
 7 Share Housing Center and the Court have signed off
 8 on the mechanisms that we have in place, including
 9 overlay zones on several sites. And so, I mean, I
 10 understand what you're saying, yes, the more, kind
 11 of the more the merrier, but there's really no
 12 constitutional obligation for us especially given
 13 the Courts signing off and Fair Share signing off
 14 on us providing affordable units on this site.

15 MR. BURGIS: Let me answer that two ways.

16 One, I think having a site that meets the
 17 criteria for affordable housing site and given how
 18 the property is currently zoned, I think the
 19 applicant has affirmatively addressed the
 20 statutory burden for the use. And I don't think
 21 it's appropriate for the board to turn around and
 22 simply say, we don't need affordable housing
 23 because we have our judgment of compliance in the
 24 code, so good-bye. That's not planning. There's
 25 an opportunity for the borough to plan.

1 for certainty about anything in the future, can
 2 we?

3 MR. PRINCIOTTO: That sounds like a
 4 summation comment, Mr. Kaufman.

5 MR. KAUFMAN: No, it's a question.

6 MR. PRINCIOTTO: Let's finish this
 7 witness.

8 MS. LEHENY: Hold on. I have a couple of
 9 followup questions and the first actually is. I
 10 agree with Mr. Kaufman. None of us really know.
 11 We don't know. Do you have any evidence or has
 12 there been any testimony that given these changed
 13 circumstances that the owner has tried to market
 14 the building or lease the building as office space
 15 in this new environment?

16 MR. BURGIS: You should have asked him
 17 that when he was testifying. I know in my own
 18 conversations with him --

19 MR. PRINCIOTTO: It's hearsay, but go
 20 ahead.

21 MR. BURGIS: He had said he can't market
 22 it. I forget if he said that on the record.

23 MS. LEHENY: Okay. The followup question
 24 I have is, as I'm sure you're well aware because
 25 you're a Special Master that the unmet need is

1 Recognize, this is going to sound terrible, but
 2 unless the state legislature changes the rules of
 3 the game come 2025, your unmet need is going to
 4 become your prior realm obligation and that's
 5 going to be a very, very bitter pill to swallow if
 6 you're told you have to address the entirety of
 7 that unmet need, because now prior obligation and
 8 in some way if you could help chip away at that,
 9 that might go a long way towards letting the
 10 Courts know that you at least made an effort
 11 because I've been in enough courts as Special
 12 Master and it's just representing that
 13 municipalities on this issue that the Courts
 14 become a bit more lenient with you when you show
 15 you've done something. And Fair Share Housing
 16 Center becomes a little more lenient with you when
 17 you show you've made some effort.

18 I mean, you are right. You are under no
 19 obligation to address the entire of your unmet
 20 need. You're under no obligation to do more than
 21 what your settlement agreement now says. You
 22 identified two overlay zones and you have a
 23 mandatory set aside ordinance and a few other
 24 things. But this is an opportunity to get
 25 probably more units than you'll ever have an

1 opportunity to do so again. And knowing Fair
 2 Share Housing Center as I know them they will be
 3 taking notes on all these municipalities as to how
 4 they treat sites during this period from now up
 5 until 2025. And I know that for a fact because
 6 I've spoken to some who tell me for fun they just,
 7 because of Zoom hearings, they're just listening
 8 in to hearings all over the state seeing what's
 9 going on. I know that doesn't sound nice and I
 10 certainly don't mean to suggest it as a threat,
 11 but I think that's a reality. And I don't think
 12 the legislature has the nerve to really come up
 13 with a new set of regulations between now and 2025
 14 to help better address this whole issue.
 15 MS. LEHENY: Madam Chairwoman, I have no
 16 other questions at this time.
 17 CHAIRWOMAN MALLEY: Okay. Anyone else?
 18 Anyone from the board? It's getting late.
 19 All right. We'll get a motion to open to
 20 the public.
 21 Chris?
 22 BOARD MEMBER HEMBREE: No.
 23 CHAIRWOMAN MALLEY: Can we hold off on the
 24 public until next?
 25 MS. HEMBREE: I think so. I mean, I'm

1 getting a little cranky after 10:00.
 2 MR. KAUFMAN: I think we all are.
 3 MR. PRINCIOTTO: I'd like to finish it
 4 tonight, if we could.
 5 MR. KAUFMAN: I defer to Mr. -- I'm tired
 6 too, but I'll defer to Mr. Princiotto on this.
 7 MS. HEMBREE: Okay. So I'll make the
 8 motion to open the meeting.
 9 MR. KAUFMAN: Listen, I'm perfectly fine
 10 with, you know, as long as Joe is, but the problem
 11 is if I recall that he wasn't available on the
 12 22nd. That's why we had the meeting tonight, if I
 13 recall correctly.
 14 MR. BURGIS: Let me see if my calendar's
 15 changed. I just don't know.
 16 CHAIRWOMAN MALLEY: We have somebody on
 17 the agenda already.
 18 MR. PRINCIOTTO: I know, but that's not
 19 going to take the whole meeting.
 20 MR. BURGIS: I can be available. Somebody
 21 else in the office had a cancellation, so I can
 22 send them to my other matter.
 23 MR. PRINCIOTTO: Meg, is there any way to
 24 tell how many hands are raised or can we ask
 25 participants that have any questions to raise

1 their hands to see how many we have? I mean, if
 2 we only have three, we can probably do it. If we
 3 have 20, then maybe we can't do it.
 4 MS. HEMBREE: I see three.
 5 MS. SMITH: Right now on Zoom we have 14
 6 attendees and three of them are raising their
 7 hands. That doesn't account for any phone calls I
 8 that may come in. I have four now.
 9 MR. PRINCIOTTO: We haven't had any phone
 10 calls all night.
 11 MS. SMITH: Correct.
 12 MR. PRINCIOTTO: So four hands.
 13 MS. SMITH: Four hands right now out of 14
 14 attendees.
 15 MR. PRINCIOTTO: Robin?
 16 CHAIRWOMAN MALLEY: And our questions were
 17 taking a half hour each. My preference is to hold
 18 them until the next meeting.
 19 MS. HEMBREE: I agree with you.
 20 CHAIRWOMAN MALLEY: It's been a long day.
 21 Sal --
 22 MS. SMITH: I have five hands now.
 23 MR. KAUFMAN: I agree with you, Madam
 24 Chairperson. I agree with you, it's been a long
 25 day for all of us.

1 MR. PRINCIOTTO: All right. I thought if
 2 it was only three hands, but now as we talk the
 3 number of hands are getting greater.
 4 MR. KAUFMAN: As the evening goes on, we
 5 get crankier and crankier.
 6 MR. PRINCIOTTO: Well, it's not my call
 7 and we've heard from Chairwoman Robin Malley.
 8 CHAIRWOMAN MALLEY: Let's hold that off
 9 until the next meeting. Do we have to do anything
 10 on scheduling for the next meeting?
 11 MR. PRINCIOTTO: We'll make a notification
 12 now. Testimony will be continued at the next
 13 meeting, which is June 22nd.
 14 We do have another application.
 15 CHAIRWOMAN MALLEY: That's correct, yes.
 16 MR. PRINCIOTTO: But we'll spend some time
 17 on that one and we'll spend some time on this one.
 18 MR. KAUFMAN: Thank you very much.
 19 MR. PRINCIOTTO: Okay. We'll see you next
 20 week.
 21 MR. KAUFMAN: We appreciate everybody's
 22 time and if anybody's interested, the Yankees won
 23 3 to 2. I know Danielle's interested.
 24 MS. FEDERICO: I just want to make sure
 25 that notice is preserved, Mr. Princiotto.

1 MR. PRINCIOTTO: I did make an
2 announcement this will be continued on June 22nd,
3 so.

4 MS. FEDERICO: Okay. Perfect.

5 MR. KAUFMAN: All right. Great. Thank
6 you very much. Have a great night, everybody.

7 MS. FEDERICO: Thank you.

8 CHAIRWOMAN MALLEY: Can we get a motion to
9 adjourn.

10 MS. HEMBREE: So moved.

11 BOARD MEMBER KAUFMAN: Second.

12 MS. SMITH: All in favor?

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14 (Whereupon, the proceedings concluded at

15 10:44 p.m.)

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C E R T I F I C A T E

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5 I, LYNANN DRAGONE, License No. XIO1388, a
6 Certified Court Reporter and Notary Public of the State
7 of New Jersey, certify that the foregoing is a true and
8 accurate transcript of the hearing at the time and the
9 date hereinbefore set forth.

10 I further certify that I am neither attorney
11 nor Counsel for, nor employed by any of the parties to
12 the action in which this hearing was taken.

13 I further certify that I am not an employee of
14 anyone employed in this case, nor am I financially
15 interested in this action.

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