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BOROUGH OF FAIR LAWN  
ZONING BOARD OF ADJUSTMENT  
MONDAY, May 18, 2015  
COMMENCING AT 8:25 P.M.

.....  
IN THE MATTER OF : TRANSCRIPT  
APPLICATION# 2015-05 : O F  
Interior Renovations Services, LLC : PROCEEDINGS  
4-24 Banta Place :  
BLOCK 3411, LOT 1, ZONE I-2 :  
.....

B E F O R E:

THE BOROUGH OF FAIR LAWN ZONING BOARD

THERE BEING PRESENT:

- RICH SEIBEL, CHAIRMAN
- BRIAN BLECHER, MEMBER
- YELENA PERCHUK, MEMBER
- JEANNE BARATTA, MEMBER
- SAMUEL RACENSTEIN, ALTERNATE I
- AVI NAVEH, ALTERNATE III
- MARK ZHARNEST, ALTERNATE IV

**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
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8 WEINER LESNIAK  
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10 629 Parsippany Road  
11 Parsippany, New Jersey 07054  
12 Counsel to the Applicants

13 A L S O P R E S E N T :

14 ANN PECK, Assistant Zoning Officer

15 CATHY BOZZA, Recording Secretary

16 KENNETH OCHAB, Board Planner

17 HAL SIMOFF, Board Traffic Engineer.

18 PAUL AZZOLINA, Board Engineer

19

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I N D E X

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ident/ Evid</u>
A-1	Site Plan for 4-24 Banta Place, PSE&G Warren Point Substation	10

1 MR. ROSENBERG: Mr. Blecher is recusing  
2 himself from the next application.

3 (Whereupon, Mr. Blecher is recused.)

4 CHAIRMAN SEIBEL: Okay. Thank you.

5 Now we're going to move on to new  
6 commercial business, Application No. 2015-05,  
7 Interior Renovations Services LLC, 4-24 Banta -- is  
8 that Place?

9 MR. ROSENBERG: Yes, that's Banta  
10 Place, Mr. Chairman.

11 CHAIRMAN SEIBEL: Block 3411, Lot 1,  
12 Zone 1-2.

13 MS. BOZZA: Fees have been paid and  
14 there's proof of service.

15 MR. KIENZ: I am Glenn Kienz, here on  
16 behalf of Public Service. I'm from Weiner & Lesniak.

17 This application is one that is kind of  
18 twofold, and your consultants have kind of called it  
19 out that way, too. What we're looking to do as a  
20 part of the project that you've already approved at  
21 Warren Point is to get some outside storage space.

22 And we need the outside storage space  
23 so we can keep moving ahead with the construction  
24 that this board approved probably over a year ago.

25 We have been trying to get before you

1 for a number of months. We talked to your staff, who  
2 has been very, very helpful, at the end of last year.  
3 This is the first we have been able to get on the  
4 calendar to get all teed up and everything else.

5 The application kind of goes in two  
6 different directions, though. The first is, we're  
7 requesting a temporary-use variance to be permitted  
8 to do outside storage of materials. The material  
9 isn't the little stuff, like copper wires and things;  
10 it's stuff that people can't steal unless they come  
11 in with cranes and heavy equipment. It's the steel  
12 and support structures that are a part of  
13 constructing this power station. There's a building  
14 on the site where we will be keeping other  
15 materials -- nothing toxic, nothing hazardous, but  
16 stuff that is more valuable -- and we can lock that  
17 building, which makes that pretty easy. We're going  
18 to fence in the yard.

19 The plans that are before you also show  
20 that there will be some other parking issues, so we  
21 had to actually delineate, based on all the reviews  
22 that we had gotten from Ann, we had to delineate what  
23 else could and couldn't take place on the site,  
24 because there is existing parking there, on that  
25 facility now, because right across Banta Place is an

1 industrial -- it's in your I-1, I-2 zone. I guess  
2 it's your I-2 zone, technically, but it's an  
3 industrial building that has existed since  
4 approximately the '50s. There have been a series of  
5 permits issued for tenants in that building over the  
6 many years, and Ms. Peck can certainly explain it  
7 better to you than me, because she's watched it live,  
8 up close, and personal.

9                   At any rate, my suggestion is that the  
10 best way to probably proceed with this application  
11 tonight is to talk about the interim temporary use  
12 variance first and then circle on back, because there  
13 were some additional items that were called up by  
14 your engineer and by your planner. But do that as  
15 the second part, because that use is already there.

16                   As a matter of fact, that use is so  
17 there, that there were letters written -- and  
18 Ms. Peck can certainly talk to that, too -- back in  
19 2012 talking about the fact that the uses were  
20 pre-existing and they could keep going.

21                   And the interesting thing in the chart  
22 is that there are a number of permits, because, as  
23 I'm sure many, if not all, of you know, there's a  
24 continuing Certificate of Occupancy that's required  
25 in this municipality -- not in every one, but in this

1 municipality, that has to be checked to see what  
2 exactly is and is not taking place on the property  
3 and whether or not it has to seek additional land use  
4 approvals, whether it's from this board or from the  
5 Planning Board. And the permits are attached to the  
6 chart. Again, Ms. Peck can talk about that much more  
7 articulately than I can.

8           What I do know is that given the uses  
9 that are currently in the building across the street,  
10 when we actually do the numbers and take everything  
11 into account, it becomes clear that at the present  
12 time there are 36 parking spaces required for uses  
13 across the street, and, as you'll hear, we're not  
14 looking to consume more than the site is able to  
15 handle; because right now, across the street there  
16 are three empty units.

17           So my suggestion, because it really is  
18 important to Public Service that we get moving  
19 forward on this, is to allow us to put the testimony  
20 in on the temporary use, tell you what it is, how  
21 many trucks are coming in and out, and that kind of  
22 thing, and then, if the board was so inclined, we  
23 would like you to make a decision on that tonight.

24           And then, if we have enough time, we'll  
25 continue with the other part of the application and

1 move forward.

2 CHAIRMAN SEIBEL: How do you feel about  
3 that?

4 MR. ROSENBERG: I think it makes a lot  
5 of sense, particularly in light of the engineer  
6 letter that we received this afternoon.

7 I just want to make sure Mr. Kienz  
8 understands he has six voting members this evening.  
9 He needs five affirmative votes on the issue of the  
10 (d) variances to permit the temporary use.

11 If he's prepared to proceed, I think  
12 that we will proceed.

13 MR. KIENZ: Mr. Chairman, I got it.  
14 There's no question. We were already warned that  
15 there was a pretty good chance that there would only  
16 be six tonight, so that's -- as they say in the  
17 business, that's not a complete surprise.

18 MR. ROSENBERG: Okay, that's fine.

19 CHAIRMAN SEIBEL: Anybody else have  
20 any... Okay. Let's go.

21 MR. KIENZ: Can I have my witness  
22 sworn, please?

23 CHAIRMAN SEIBEL: Sure.  
24  
25

1 B E R N A D E T T E L A F O N D ,

2 40 Cragwood Road, South Plainfield, New Jersey,

3 having been duly sworn, testifies as follows:

4 CHAIRMAN SEIBEL: State your name and  
5 address.

6 MS. LAFOND: Bernadette Lafond. My  
7 work address is 40 Cragwood Road, South Plainfield,  
8 New Jersey.

9 CHAIRMAN SEIBEL: And you are the?

10 MS. LAFOND: I am the PSE&G project  
11 manager of the Warren Point Substation Project.

12 CHAIRMAN SEIBEL: And have you  
13 testified in front of this board before?

14 MS. LAFOND: I have.

15 CHAIRMAN SEIBEL: And have you  
16 testified in front of other boards before?

17 MS. LAFOND: I have.

18 CHAIRMAN SEIBEL: Anybody have any  
19 questions.

20 MR. KIENZ: And you do remember when  
21 you testified before this board?

22 MS. LAFOND: Last week, and last year.

23 CHAIRMAN SEIBEL: The floor is yours.

24 MR. KIENZ: Thank you.

25

1 DIRECT EXAMINATION

2 BY MR. KIENZ:

3 Q. Bernadette, you heard my opening  
4 remarks, and my recollection is it's the custom of  
5 this board, even if we submitted something, to still  
6 mark it.

7 MR. KIENZ: So if it's all right, Mr.  
8 Chairman, I'd like to mark this on the back as A-1.

9 CHAIRMAN SEIBEL: Yes.

10 (Whereupon, Site Plan for 4-24 Banta  
11 Place, PSE&G Warren Point Substation is  
12 received and marked as Exhibit A-1 for  
13 Identification.)

14 Q. And for identification purposes, this  
15 is entitled what?

16 A. Block 3411, Lot 1, 4-24 Banta Place,  
17 Lay Down Site Plan, most revision date of 4/27/15,  
18 parking and trash --

19 MR. KIENZ: If I stand over here so  
20 that I'm closer to the board, is that all right, if I  
21 put this mic up? Can you hear me?

22 MR. ROSENBERG: It's very important  
23 that the court reporter be able to hear her. It's  
24 very important. She's got to speak up.

25 A. It's Block 34 --

1 THE REPORTER: I'm sorry, ma'am, to  
2 have to interrupt you, but can you re-read the  
3 caption into the record for me? Thank you.

4 THE WITNESS: Block 3411, Lot 1,  
5 4-24 Banta Place, Lay Down Site Plan. The most  
6 recent revision date of 4/27/15; parking count and  
7 trash bin.

8 Q. I've marked this as A-1. Would you  
9 just, briefly -- because some of the board members  
10 were not here for your original application, would  
11 you briefly summarize what's going on on the other  
12 sites that is in need of this lay down area?

13 A. Right. About a block-and-a-half to the  
14 north along Banta Place is a PSE&G Warren Point  
15 substation. It's not actually on this plot.

16 But if you see Ward Street, it's  
17 actually on the opposite side of Ward Street, so it's  
18 about a block-and-a-half north of this particular  
19 site. It presently exists as a 26 to 4kV substation.  
20 It's in the midst of being upgraded to 69kV to 4kV  
21 substation.

22 Construction started about this time  
23 last year. We've been in construction for a year.  
24 You'll notice we also have permission from the town  
25 to have transformers out along Banta Place. That's

1 all part of the construction. And then this  
2 particular property, what we're looking to -- well,  
3 we rented, and we're looking to use it as proposed  
4 lay down as we move forward with construction, for  
5 construction materials, as well as for contractor  
6 parking when needed.

7 Q. Let's just slow down.

8 The reason we're doing the upgrade was  
9 to --

10 A. Right, it's to increase reliability  
11 within the state, actually. It's BPU, which is the  
12 Board of Public Utilities, as well as PJM, which is  
13 the Pennsylvania, New Jersey, Maryland network that  
14 PSE&G is a part of, it's an upgrade project, actually  
15 at their directive. It's a statewide directive.  
16 We're upgrading -- not all of the 26kV sub -- 26kV  
17 stations, but some of the 26kV stations. And,  
18 actually, what we're instituting is we'll have two  
19 networks in New Jersey at that level, as opposed to  
20 previously we had one. So what it does is it  
21 increases the volume of electricity essentially  
22 available.

23 Q. And this board granted the use variance  
24 for that upgrade, did they not --

25 A. Yes, they did.

1 Q. -- the last time you were here?

2 And I believe the board even found it  
3 to be beneficial, or at least they found a special  
4 reason to grant the use variance, correct?

5 A. Correct.

6 Q. But I'm not so sure how many of those  
7 board members were there from that night. I think a  
8 couple, but not everyone was here.

9 All right. What's going on in this lay  
10 down area?

11 A. It's --

12 Q. First off, identify where it's located.

13 A. It is located at 4-24 Banta Place.  
14 You'll see on this map, there's an area in white, as  
15 well as an area in pink, or orange color. The  
16 pink-orange color is a proposed lay down area that  
17 PSE&G would use for approximately the next year  
18 during construction, for construction lay down  
19 (indicating). And then the white is the rest of the  
20 lot (indicating).

21 Q. Why don't we walk them around the lot.

22 So what are we showing here?

23 A. So we're showing, on the more northern  
24 side, double parking, double-stack parking, along the  
25 property line, as well as double-stack parking in the

1 middle, middle row, and some places three in a row.  
2 We also have four handicapped parking spaces  
3 annotated, as well as some oversized vehicle parking  
4 spaces annotated on the southern side (indicating).

5 Q. And we have a total of how many spaces  
6 shown on here?

7 A. There are 86.

8 Q. Eighty-six parking spaces are shown on  
9 the site. And you heard my opening remarks, that  
10 right now, given the uses of the building across the  
11 way on Banta, actually across to the east, that right  
12 now that building actually only requires 36 for its  
13 current tenanted level, although 54 is set aside for  
14 it. Is that correct?

15 A. Yes.

16 Q. Okay. So what are we -- tell us about  
17 the lay down area. What do we want to lay down?

18 A. Most likely, construction materials;  
19 most likely steel or other types of materials; some  
20 process, electrical process equipment at times.

21 There also is an existing building,  
22 sort of in the middle of the property, that would be  
23 part of the lay down area. There are two garage-type  
24 bays there that we would use for copper, rolls of  
25 wire, smaller materials, because of their ability to

1 be locked, so it actually adds an added security to  
2 the site for our materials, as well to the site  
3 overall.

4 Q. So that building will be secured.

5 Are we intending to put a fence around  
6 the lay down area?

7 A. Yes, there is an intended fence. It  
8 has two gates. The gates are intended to be 8 feet  
9 tall, and the rest of the fence would be 6 feet tall.

10 Q. Is there going to be any barbed wire on  
11 site?

12 A. No.

13 Q. And that fence, once we're done using  
14 the lay down area, that would be removed. Is that  
15 correct?

16 A. Correct.

17 Q. Are we showing some other improvements  
18 on the site?

19 A. Other improvements shown on the site  
20 are lighting as well as a trash bin (indicating).

21 Q. Okay. But that trash bin is not for  
22 us, and the lighting is actually not needed by us  
23 either. Is that correct? That's actually part of  
24 the --

25 A. That's correct.

1 Q. -- second set --

2 A. That's part of the overall site. It's  
3 not part of our lay down, per se.

4 Q. Now, will this be a secured site?

5 A. It will be secured in the fact that the  
6 gates will be locked, either by chain or with a lock,  
7 at all times, unless someone is using the gate.

8 Q. And what other uses would you expect  
9 might take place within this lay down area?

10 A. As I said, it would be lay down for  
11 construction equipment, some possible process  
12 equipment, as well as the contractors' work.

13 Q. Well, that's what I want to talk about,  
14 the contract part of it. How might that work?

15 A. As construction progresses, obviously  
16 the way it's generally done is civil is done first,  
17 that's material heavy. So a lot of times we deliver  
18 the materials. But in these particular sites, the  
19 upgrade of Warren Point is a GIF. It's here  
20 (indicating). The equipment is installed -- the  
21 equipment is delivered and installed, but then there  
22 are a few months where the majority of the physical  
23 work and the materials are all essentially installed,  
24 but there are quite a few number of -- quite a few  
25 months of electrical wiring, electrical testing, and

1 that's a lot more manpower intensive.

2 So an area that might be used for lay  
3 down for steel, once that steel is installed, there  
4 actually would be a need to have personnel parked  
5 there.

6 Q. And that personnel that would be  
7 parking there, that would be inside the -- I wish we  
8 could pick a different color -- the pink, salmon,  
9 buff color that we're showing (indicating). Is that  
10 correct?

11 A. Correct. It would be inside the pink,  
12 or inside our fenced off --

13 Q. Whatever the color is. Anything but  
14 white or yellow or tan.

15 A. Yes.

16 Q. The dumpster, is that for us or is that  
17 actually part of the second part of the site plan  
18 application?

19 A. The trash bin would actually be the  
20 second part.

21 Q. So that's really nothing to do with it,  
22 because we'll just take all our stuff away. Is that  
23 correct?

24 A. Right. Right now we have -- actually,  
25 we have dumpsters on -- physically on site. We have

1 other regulations from within PSE&G that we keep our  
2 trash on our property.

3 Q. Okay. Did you have a chance to look at  
4 the report prepared by the board's engineer?

5 A. I did.

6 Q. Did you have any problem with that as  
7 project manager?

8 A. I do not.

9 Q. Do you have any other testimony?

10 A. No, I do not.

11 CHAIRMAN SEIBEL: Let me -- I just want  
12 to clarify a few things.

13 The owner of the property is Interior  
14 Renovations Services, correct?

15 MR. KIENZ: Yes, sir.

16 CHAIRMAN SEIBEL: And they are going to  
17 lease this lot, or a portion?

18 MR. KIENZ: Just the colored portion,  
19 sir.

20 CHAIRMAN SEIBEL: They're going to  
21 lease a portion of the lot to Public Service,  
22 including the building?

23 MR. KIENZ: Yes, sir.

24 CHAIRMAN SEIBEL: The parking spaces in  
25 the front are being utilized by who?

1 MR. KIENZ: Can we -- just to keep the  
2 record clear, you're talking about the parking spaces  
3 along Banta Road --

4 CHAIRMAN SEIBEL: Yes --

5 MR. KIENZ: -- that are all in white --

6 CHAIRMAN SEIBEL: -- in the white.

7 MR. KIENZ: Is that correct?

8 CHAIRMAN SEIBEL: Correct.

9 MR. KIENZ: That is all for the owner.

10 CHAIRMAN SEIBEL: For the owner?

11 MR. KIENZ: Yes, sir.

12 CHAIRMAN SEIBEL: And the owner no  
13 longer -- he was -- so he's across the street?

14 MR. KIENZ: Yes, sir.

15 CHAIRMAN SEIBEL: He's across the  
16 street.

17 MR. KIENZ: And he's always been across  
18 the street.

19 CHAIRMAN SEIBEL: Oh, okay. So --  
20 because I would -- now, I would imagine that at some  
21 point he purchased this property to use it for his  
22 business, and this small building here, I don't know  
23 what he had going on.

24 MR. KIENZ: I don't think he had  
25 anything, because, actually, there were signs for

1 rent. So we're going to use it an interim basis for  
2 the purposes that Bernadette talked about -- right?

3 THE WITNESS: Yes.

4 MR. KIENZ: And then he will have to  
5 decide what he wants to do, and then he'll have to go  
6 to Ms. Peck Land to find out what in fact he is  
7 allowed to do and is not. And then she'll make  
8 decisions administratively, which, I guess, has been  
9 done for a number of years.

10 CHAIRMAN SEIBEL: So in the  
11 meanwhile --

12 MS. PECK: Swear me in.

13 A N N P E C K,

14 Having been duly sworn, testifies as follows:

15 MS. PECK: Ann Peck, assistant zoning  
16 officer for the Borough of Fair Lawn.

17 The prior use for that property was the  
18 Scholastic Bus site.

19 CHAIRMAN SEIBEL: Okay.

20 MS. PECK: That's why it seems  
21 familiar. That was the tenant -- there was an  
22 application after that for a company called Just For  
23 Wheels, which was a rental company of trucks, which  
24 never physically took over the site, never did any of  
25 the proposed improvements that the board had

1 approved, so that -- and I think that was the last  
2 tenant.

3 And at this time there is no permission  
4 for the owner who bought it to use it as a parking  
5 lot. The last use was either that of a truck rental  
6 or Scholastic Bus, whichever way you want to  
7 determine, because they never really moved into the  
8 site or did any of the changes.

9 So they never actually activated their  
10 approval; they just abandoned it before they moved  
11 in.

12 So the board had given them curbing and  
13 parking and striping, so it would revert back to  
14 Scholastic Bus's approval, right?

15 MR. ROSENBERG: I can't opine to this.  
16 I need background; I need resolutions; I need  
17 approvals.

18 MS. PECK: Yes. So currently --

19 MR. ROSENBERG: So Mr. Kienz, that's  
20 why he's bifurcated this application.

21 MS. PECK: Correct.

22 MR. ROSENBERG: Because Public Service  
23 is looking to use a portion of the lot for temporary  
24 storage. Anything else having to with what was  
25 approved in the past by the Zoning Board, what can be

1 done on the remainder of the lot, I really must  
2 investigate that. I'm sorry, I don't have any  
3 background before me. I'm not going to make opinions  
4 on the fly about what prior owner's approval called  
5 for, vis-à-vis I think the board needs to discreetly  
6 look at whether or not a use variance for the salmon  
7 colored part of this site plan can be used for  
8 temporary lay down storage by PSE&G. I think that's  
9 the application before the board.

10 CHAIRMAN SEIBEL: So that's all we're  
11 concerned with, then; we're just concerned with the  
12 rear portion of the lot --

13 MR. KIENZ: As the first part of the --

14 MR. ROSENBERG: Yes, I understand.  
15 That's what -- that's why -- that's my legal issue.

16 MR. KIENZ: Mr. Chairman, and Ann, I  
17 tried to just lay out as best as I could --

18 MS. PECK: That's okay.

19 MR. KIENZ: -- so you weren't just  
20 absolutely at a loss.

21 Bruce summarized it correctly; the  
22 second part of it, we're going to need to get to.  
23 And that's why I went through the fact that there are  
24 at least -- there are two, four, six -- there are at  
25 least eight continuing COs here.

1                   But that's not for tonight. I just  
2 didn't want you to think anything was going on.

3                   MS. PECK: Eight on that property?

4                   MR. KIENZ: Yes, ma'am. I can give you  
5 all the permit numbers here.

6                   CHAIRMAN SEIBEL: Don't get too far  
7 ahead here.

8                   MR. KIENZ: I don't want to.

9                   MS. PECK: Let's skip that till later.

10                  CHAIRMAN SEIBEL: Okay. Mr. Naveh?

11                  MR. NAVEH: Thank you, Mr. Chairman.

12                  I'm seeing on this application that  
13 it's a temporary use. Is it my understanding that  
14 our approval, if we choose to approve this tonight,  
15 does that temporary use then continue even after  
16 PSE&G --

17                  MR. ROSENBERG: Okay. No, Mr. Naveh.  
18 That's exactly the way that I'm viewing the  
19 applicant's request.

20                  At the outset he said that this is for  
21 temporary lay down area for use exclusively by PSE&G  
22 as they upgrades the Warren Point substation, I  
23 heard, for about a year.

24                  I think that we're going to have to  
25 hold the applicant to a firmer date in the

1 resolution, if the board is inclined to grant an  
2 approval. Then I think that's absolutely one of the  
3 issues that the members of the board are going to  
4 have to establish with the applicant; what is the  
5 duration of the temporary use by PSE&G.

6 So, Mr. Naveh, actually, it's a very  
7 discrete use by PSE&G in the context of their Warren  
8 Point upgrade, and I think we have to establish with  
9 the applicant what the duration of this is going to  
10 be.

11 MR. KIENZ: I will put it on the record  
12 right now: April 1st.

13 CHAIRMAN SEIBEL: Of?

14 THE WITNESS: 2016.

15 MR. KIENZ: 2016.

16 Originally, it was about a year and  
17 three months, but as we got here, it got shorter and  
18 shorter, so...

19 CHAIRMAN SEIBEL: Jeanne?

20 MS. BARATTA: Thank you, Mr. Chairman.

21 So when you spoke about the salmon  
22 colored area, using it as a lay down area, you had  
23 also mentioned that at the end of that time there  
24 could be a parking use. Is that your second part or  
25 are we talking about that now --

1 MR. KIENZ: No --

2 THE WITNESS: Within -- within the  
3 timeframe that we would use it as a temporary inside  
4 the gate at the facility, until that time, we would  
5 use it for contract and parking as necessary.

6 We do have other areas secured for  
7 rental that we're presently using, but as we get more  
8 into the project, the demands of the need for  
9 personnel on-site, obviously the amount of cars they  
10 have changes over time. So that would be all part  
11 of -- within this time period.

12 MR. KIENZ: So I --

13 THE WITNESS: That is temporary.

14 MS. BARATTA: For what you're looking  
15 for now?

16 THE WITNESS: Yes.

17 MR. KIENZ: That's what we're looking  
18 for now. In the future, for the second part of the  
19 application that we're not talking about, there are  
20 parking spaces shown in that area for property owner.

21 MS. BARATTA: Thank you.

22 CHAIRMAN SEIBEL: So you're renting  
23 from landowner the rear portion of this site. As a  
24 proposed lay down area, when you say "lay down area,"  
25 that's for goods and supplies that are going to be

1 transported somewhere?

2 THE WITNESS: Construction materials,  
3 yes. They're there temporarily, but to be installed  
4 in the actual Warren Point substation.

5 CHAIRMAN SEIBEL: So the areas that are  
6 not covered are going to be used as parking spaces  
7 for your contractors?

8 THE WITNESS: Within this same salmon  
9 colored area, we will have -- yes, some lay down and  
10 some contractor parking. And as the lay down  
11 materials are installed, that would free up more  
12 space --

13 CHAIRMAN SEIBEL: I see.

14 THE WITNESS: -- for our contractor  
15 parking within that parcel.

16 CHAIRMAN SEIBEL: I see.

17 So where -- if this is filled up with  
18 lay down material, where are your guys parking?

19 THE WITNESS: Presently, I have three  
20 other rental properties, essentially along either the  
21 same block, or Morlot Avenue, that we have people  
22 parking at now.

23 CHAIRMAN SEIBEL: And I see there's a  
24 gate -- it looks like there's a double-door gate, two  
25 of them, on either side of the building for access.

1 I guess you could go one way in and one way out. How  
2 are you going to work that?

3 THE WITNESS: Most likely, if it's  
4 something with a delivery, which could be anything  
5 from a tractor trailer or we have a 20-foot truck for  
6 deliveries. If it was something larger, we actually  
7 could back it in. We most likely would maintain a  
8 small forklift on site to aid in offloading and  
9 reloading.

10 MR. KIENZ: And how many deliveries  
11 would you expect in a day or week?

12 THE WITNESS: The most would be two to  
13 three a day, in a day. But it's typically not  
14 delivered in a day. So there may be a day where you  
15 might get two to three trucks. But that would be the  
16 max. And then there will be plenty of days when you  
17 have nothing.

18 CHAIRMAN SEIBEL: And it's an  
19 industrial zone, so there's trucking activity going  
20 on all day long.

21 THE WITNESS: Yes, sir.

22 CHAIRMAN SEIBEL: What about the  
23 railroad tracks to the rear, is that -- that's the  
24 freight tracks?

25 THE WITNESS: The very western, along

1 where the green line is, those are active tracks.

2 CHAIRMAN SEIBEL: Those are active  
3 tracks. But the ones that directly -- that butt up  
4 against the subject property, it says "Existing  
5 Railroad Tracks."

6 THE WITNESS: I believe they are called  
7 out as active tracks, but I personally have never  
8 seen any trains on them. But they are -- I think  
9 it's the DOT or --

10 MR. KIENZ: Who, we'll find out from  
11 another witness.

12 The tracks are there. The property  
13 backs up to it, so it's going to be used for purposes  
14 for that, but we're certainly not training in any of  
15 this material; it's all coming in by truck.

16 CHAIRMAN SEIBEL: Is there a fence  
17 going up?

18 MR. KIENZ: The temporary fence that  
19 Bernadette talked about -- would you just trace that?

20 THE WITNESS: (Indicating).

21 MR. KIENZ: Thank you.

22 It would go along the back, and to the  
23 front and to the edge of the building, then start  
24 again at the other end of the building and go along  
25 to the backside as well.

1 CHAIRMAN SEIBEL: And all this is  
2 temporary till April 1, 2016. Is that your date?

3 MR. KIENZ: Yes, sir.

4 CHAIRMAN SEIBEL: Anything else? Sam?

5 MR. RACENSTEIN: I would like to get  
6 some clarifications.

7 As of April 1, 2016, when you're  
8 finished with the lay down area, all the material is  
9 gone; now that area reverts back to the Interior  
10 Renovations?

11 MR. KIENZ: Yes, sir.

12 MR. RACENSTEIN: He has that whole  
13 area?

14 MR. KIENZ: Yes, sir.

15 MR. RACENSTEIN: All right. Thank you.

16 CHAIRMAN SEIBEL: So your lease expires  
17 April 1, 2016. Is that right?

18 THE WITNESS: It actually expires in  
19 March of 2016, that way we can be sure that  
20 everything will be gone by April 1st.

21 CHAIRMAN SEIBEL: Okay. Anybody else?

22 MR. ROSENBERG: Can we have our  
23 professionals sworn, Mr. Chairman, and ask if they  
24 have any questions?

25 CHAIRMAN SEIBEL: Yes.

1 P A U L S . A Z Z O L I N A ,

2 Having been duly sworn, testifies as follows:

3 CHAIRMAN SEIBEL: State your name.

4 MR. AZZOLINA: Paul Azzolina,  
5 Azzolina & Feury Engineering, Zoning Board engineer,  
6 30 Madison Avenue, Paramus, New Jersey.

7 K E N N E T H O C H A B ,

8 Having been duly sworn, testifies as follows:

9 CHAIRMAN SEIBEL: Please state your  
10 name and address.

11 MR. OCHAB: Kenneth Ochab, O-C-H-A-B,  
12 professional planner, License No. 2149, 12-16 Fair  
13 Lawn Avenue, Fair Lawn.

14 I just have one very brief question for  
15 Ms. Lafond. The type of gates, are those swing gates  
16 or rolling gates?

17 THE WITNESS: We're planning swing  
18 gates.

19 MR. AZZOLINA: Okay. And I guess the  
20 fact that this site is not currently utilized by the  
21 existing industrial uses across the street, the swing  
22 gates would most likely not be a problem, but if  
23 they -- but if there were active parking on that  
24 site...

25 THE WITNESS: We can have them swing in

1 as well, if it's an issue.

2 MR. AZZOLINA: That would probably be  
3 the safer way to ensure that the easterly portion of  
4 this site could be utilized without impact to either  
5 tenant, so that's most likely the better way to go.  
6 Thank you.

7 CHAIRMAN SEIBEL: I think that's a very  
8 good idea, because it could get a little busy with  
9 cars pulling in and out, trucks come in. If those  
10 gates would swing in, it would make it a lot more  
11 easier to get around.

12 THE WITNESS: We're amenable to that.

13 CHAIRMAN SEIBEL: Yes?

14 MR. OCHAB: Yes, a question on, just  
15 for clarity purposes, the area in pink: Is that  
16 going to be new pavement or you're using the existing  
17 pavement?

18 THE WITNESS: The existing pavement.

19 MR. OCHAB: Okay. So the only new  
20 pavement will be along the most northern boundary  
21 line that's hashed out --

22 THE WITNESS: Right, that's hashed out.

23 MR. OCHAB: Also, what are the  
24 improvements that will be removed? Will any  
25 improvements be removed after you're done? Will the

1 fence be removed?

2 THE WITNESS: The fence will be  
3 removed. It will be a temporary fence that will be  
4 removed.

5 MR. OCHAB: In its entirety?

6 THE WITNESS: In its entirety.

7 MR. KIENZ: Just the temporary fence --

8 THE WITNESS: The temporary fence that  
9 we install, we will remove.

10 MR. OCHAB: And this temporary fence  
11 will be 6 feet in height?

12 THE WITNESS: The fence, 6 feet and  
13 then 8 feet.

14 MR. OCHAB: Okay. No barbed wire,  
15 right?

16 THE WITNESS: That's correct.

17 MR. OCHAB: Because the report had  
18 something, but that's been revised.

19 THE WITNESS: Right, no barbed wire.

20 MR. OCHAB: All right. Thank you,  
21 Mr. Chairman.

22 CHAIRMAN SEIBEL: Mr. Naveh?

23 MR. NAVEH: You said that the fence is  
24 being removed. Are any of the lights, signs, or  
25 anything else staying on the property after this?

1 THE WITNESS: The lights are an  
2 improvement that -- the lights are an improvement for  
3 the overall plan and not our temporary plan.

4 MR. NAVEH: Oh, okay. So it's not part  
5 of this.

6 THE WITNESS: There's enough lighting  
7 in there for our lay down purposes.

8 MR. NAVEH: Okay.

9 THE WITNESS: We don't plan to install  
10 additional lighting for the lay down.

11 MR. NAVEH: Okay.

12 MR. ROSENBERG: Mr. Chairman, members  
13 of the public have a right to ask questions.

14 CHAIRMAN SEIBEL: If there's any  
15 property owners within 200 feet who would like to ask  
16 questions of the witness?

17 (NO RESPONSE.)

18 CHAIRMAN SEIBEL: Any property owners,  
19 any members of the public who would like to ask  
20 questions?

21 (NO RESPONSE.)

22 CHAIRMAN SEIBEL: Seeing none, I'll  
23 close it.

24 Do you have another witness?

25 MR. KIENZ: I do, but can I ask the

1 board to indulge me and give me a 5-minute break?

2 Would that be all right?

3 CHAIRMAN SEIBEL: Sure. Take a  
4 5-minute recess.

5 (A recess was taken.)

6 CHAIRMAN SEIBEL: We're back. Roll  
7 call, please.

8 (Ms. Peck conducted roll call.)

9 MR. KIENZ: Mr. Chairman, thank you for  
10 the time. Some issues came up that I certainly was  
11 surprised at them, but we'll address them as best as  
12 we can and we'll figure out where we're going.

13 CHAIRMAN SEIBEL: Sure.

14 MR. KIENZ: I would like to have Gene  
15 Rotonda sworn in, please.

16 CHAIRMAN SEIBEL: Sure.

17 G E N E R O T O N D A,

18 4000 Hadley Road, South Plainfield, New Jersey,  
19 having been duly sworn, testified as follows:

20 CHAIRMAN SEIBEL: State your name.

21 MR. ROTONDA: Gene Rotonda, 4000 Hadley  
22 Road, South Plainfield, New Jersey.

23 CHAIRMAN SEIBEL: And you've been  
24 before this board before?

25 MR. ROTONDA: Yes, I have been accepted

1 as a professional engineer and professional planner.

2 CHAIRMAN SEIBEL: And you're in good  
3 standing?

4 MR. ROTONDA: Yes.

5 THE REPORTER: Excuse me, may I  
6 please -- I was just going to say, speak up a bit,  
7 please.

8 MR. KIENZ: Gene, why don't you sit  
9 down, this way we can stay at the mic.

10 DIRECT EXAMINATION

11 BY MR. KIENZ:

12 Q. Okay. Gene you're familiar with the  
13 site, are you not?

14 A. Yes --

15 CHAIRMAN SEIBEL: Just one thing:  
16 Before we get started, I just want to inform everyone  
17 that at 10 o'clock, that's it. We don't take any new  
18 testimony.

19 MR. KIENZ: Understood.

20 CHAIRMAN SEIBEL: So go right ahead.

21 MR. KIENZ: Thank you.

22 Q. Gene, you're familiar with the site,  
23 are you not?

24 A. Yes, I am.

25 Q. And you've helped in the preparation of

1 the plans, and you've met a number of times with  
2 staff, and you've done a number of things in  
3 preparing this application to be submitted, have you  
4 not?

5 A. Yes, I have.

6 Q. Where would you like to start your  
7 testimony? Do you want to start with the exhibits in  
8 front of you?

9 A. Yes. I have a transmittal with two  
10 documents that I have copies for the board on it, and  
11 the professionals. They are the Fair Lawn letter  
12 dated July 12, 2012, regarding parking lot use of  
13 4-24 Banta Place. That's a letter signed by Ann  
14 Peck, Assistant Zoning Officer, reference to  
15 4-24 Banta Place.

16 And then there is also a table, which  
17 is actually Attachment K in the application, but it's  
18 an updated version that actually adds in permit  
19 numbers for COs and has a little more information on  
20 the tenant and the nature of the business.

21 Q. Okay.

22 MR. ROSENBERG: Mr. Kienz, why are  
23 these being proffered as part of your application,  
24 for use of the salmon colored area for temporary lay  
25 down parking for PSE&G?

1                   MR. KIENZ:   Our opinion was that in  
2                   order for the board to just understand what the site  
3                   is, what the pre-existing conditions are, that we  
4                   ought to just give some background to it so that the  
5                   board at least had a picture, and the letter that he  
6                   just talked about is what I had referenced.

7                   And, obviously, I can't testify, so the  
8                   thought was at least we could give you a feel for  
9                   what the uses were and to show you that in fact there  
10                  was sufficient space for what we wanted, and that in  
11                  fact the property owner is in conformance, or, as we  
12                  could tell, based on the limited records that we had,  
13                  that they were in conformance with the items going  
14                  on.

15                  This document -- and if I could,  
16                  Counsel, I just would make a proffer so that you  
17                  could look at it as legal counsel.

18                  MR. ROSENBERG:   So just so I understand  
19                  procedurally there, again, I want us all to  
20                  understand what you're asking the board to vote on  
21                  this evening, if we get that far, because you said at  
22                  the beginning, you agreed that the purpose of tonight  
23                  is to act on the proposed lay down area with respect  
24                  to Public Service Electric & Gas, who --

25                  MR. KIENZ:   Step 1.

1 MR. ROSENBERG: Right, Step 1.

2 Step 2 is an application for the owner  
3 of the property involving preliminary and final site  
4 plan and other improvements.

5 MR. KIENZ: But it's all -- it's all  
6 one application.

7 MR. ROSENBERG: Yes.

8 MR. KIENZ: But I think in any  
9 application going before a board, you can always  
10 break it down into different pods and different  
11 pieces --

12 MR. ROSENBERG: Right.

13 MR. KIENZ: -- and I just thought that  
14 this was the straightforward way of doing this.  
15 Because if I didn't have this -- as I said the other  
16 night, as I'm sitting up there, if I didn't have  
17 this, how would you know that in fact there's  
18 sufficient space on the property for your lay down  
19 area?

20 MR. ROSENBERG: Sure.

21 MR. KIENZ: Well, there is, based on  
22 the records that we have to show, that the uses only  
23 consume -- Gene, is it 54?

24 THE WITNESS: Thirty-six.

25 MR. KIENZ: Thirty-six. But then you

1 eliminate some. And we eliminated some to get to the  
2 36. And then any further uses that come up, based on  
3 the letter that Ann wrote from July 12th of 2012,  
4 they have to come back to make sure that it just  
5 keeps going. It seemed to me that that was the most  
6 straightforward way that I could think to do it.

7 CHAIRMAN SEIBEL: Jeanne?

8 MS. BARATTA: Counsel, just for some  
9 clarification --

10 MR. KIENZ: Sure.

11 MS. BARATTA: -- in your capacity at  
12 this moment, who are you representing; are you  
13 representing PSE&G or Interior Renovations Services?

14 MR. KIENZ: Both. Because -- here's  
15 what was struck, and it's a little odd for a utility:  
16 PSE&G agreed to make the application for the lay down  
17 area, and, as part of the agreement, also agreed to  
18 represent the landowner.

19 And we have counsel here -- and if I  
20 misstate something, you're allowed to jump up and say  
21 something.

22 COUNSEL FOR LANDOWNER: Thank you.

23 MR. KIENZ: So we're representing the  
24 owner also.

25 MS. BARATTA: But we're only looking at

1 this in pieces, right? Because there's a lot of  
2 background and history on this site that our board  
3 attorney doesn't have and the rest of the members of  
4 this board are not privy to right now --

5 MR. ROSENBERG: Or our professionals.

6 MS. BARATTA: And our professionals.

7 Thank you.

8 So I think we can only really look at  
9 the one aspect, and that's the area in salmon.

10 MR. KIENZ: That's fine. I think this  
11 justifies how I get to the area in salmon, though --  
12 I'm glad you finally gave it a color -- how this  
13 justifies the area in salmon and the fact that I am  
14 not -- based upon at least past practices, I am not  
15 stepping over any line and taking over any  
16 property --

17 MS. BARATTA: We're getting close,  
18 though.

19 MR. KIENZ: It's the best way I could  
20 think of actually doing this. I mean, I would have  
21 loved to have been before you a number of months ago.  
22 I wasn't, so I'm trying to get it so that she's got  
23 space, and I'm trying to uphold my contractual  
24 responsibilities to the property owner, too. I want  
25 to --

1           MR. ROSENBERG: My concern, Counsel, is  
2 as follows: You're about to give documents to the  
3 board, you're about to give them to our Assistant  
4 Zoning Official. We're going to give them to our  
5 board professionals. I'm not going to allow the  
6 board to act on PSE&G's application for a proposed  
7 lay down area and then have a "gotcha," whereby  
8 anyone says, well, certainly the property owner has  
9 the right to the remainder for these multiple uses,  
10 because we gave you a letter from our zoning  
11 official, tonight, together with a proffer of other  
12 COs that you also have, when we don't have the  
13 opportunity for the zoning official to investigate  
14 that.

15           So while the board can act on the issue  
16 of your temporary lay down area, I think we have to  
17 have the ground rules very clear; that if the board  
18 acts on the proposed lay down area for PSE&G's use,  
19 that is a finding discrete and isolated to the use by  
20 PSE&G for the proposed lay down area and is not --  
21 because that's Phase 1 --

22           MR. KIENZ: And only for --

23           MR. ROSENBERG: And only for PSE&G --

24           MS. BARATTA: For one year.

25           MR. KIENZ: For one year.

1                   MR. ROSENBERG:  And only for PSE&G,  
2                   only for one year.

3                   MR. KIENZ:  That's right.  That's  
4                   right.

5                   MR. ROSENBERG:  So I think if you want  
6                   to give the background documents that's fine, but  
7                   it's with the understanding that if the board acts on  
8                   this this evening, and votes favorably, it is with  
9                   the understanding by you in your capacity as counsel  
10                  for both PSE&G and the property owner, that that's  
11                  not necessarily a finding by the board with respect  
12                  to anything that's occurred on the property in the  
13                  past, or the letters from Ms. Peck, or the COs that  
14                  you have permit numbers for, or anything else that  
15                  the board hasn't had the opportunity, or its  
16                  professionals or Ms. Peck, hasn't had the opportunity  
17                  to investigate.  I think that's really very  
18                  important.

19                  MR. KIENZ:  I think -- I understand.  I  
20                  understand.  I understand.

21                  I need to take care of this; I need to  
22                  take care of that.

23                  We certainly -- after the first one, as  
24                  far as I was concerned, you still had to make the  
25                  rest of your findings.  And the findings were

1 somewhat disassociated, but they were somewhat  
2 associated, too, because if I just came in and said,  
3 Hey, folks, what I'd like to do is get this salmon  
4 area, and I'd like to use it, the first question that  
5 these guys, having worked with them, would say is,  
6 How do we know that it's even available? And that's  
7 what we were trying to show. That's the good-faith  
8 showing that we were trying to do, and that's stuff  
9 that we talked about before we got here.

10 And we sat and talked to Mr. Simoff,  
11 too. And they all just listened to us and said,  
12 You're going to have to go to the board. And they --  
13 it's all as it should be.

14 MR. ROSENBERG: If we have ground  
15 rules, Mr. Chairman, I have no problem with them  
16 handing out the documents and we can look through  
17 them.

18 And, again, if the board wants to act,  
19 they can; if the board wants adjourn it at  
20 10 o'clock, they can. That's the board's decision  
21 that they can make.

22 CHAIRMAN SEIBEL: I'm going with my  
23 counsel, obviously.

24 But one thing that bothers me is that  
25 -- and I don't know if it should bother me, but that

1 now I'm finding out that you are counsel for Public  
2 Service and you're also counsel for the property  
3 owner, and we're just finding out about this now, at  
4 20 minutes after 9:00.

5 But also, on the application, I don't  
6 know who -- where the typo came from, but on the  
7 application it says, the Application 2015-05,  
8 "Interior Renovations Services LLC."

9 MR. ROSENBERG: Is that how it was  
10 filed, Ms. Peck?

11 MS. PECK: Or it's my error.

12 MR. ROSENBERG: We just want to -- we  
13 see various documents, so we were just curious.

14 MS. PECK: Um...

15 CHAIRMAN SEIBEL: And I'm also  
16 wondering if this should have been two separate  
17 applications.

18 MR. ROTONDA: We have the application.  
19 I have --

20 MS. PECK: On the zoning permit, it was  
21 put in as "Interior Services" when they first were  
22 denied. And the application is... I believe it's in  
23 here.

24 (Pause)

25 MR. KIENZ: Well, you've been sworn in.

1 You can --

2 THE WITNESS: I can explain what's in  
3 the application. Most of the board members should  
4 have this. It's actually a bound copy of the  
5 application. There were some updates with a plan  
6 revision.

7 If you look at the application, there  
8 is an Attachment C, which is the letter of denial,  
9 and that was addressed to -- that's December 22,  
10 2014. That was addressed to myself at PSE&G in  
11 reference to the request for zoning permit, or zoning  
12 denial. And that was the zoning denial letter.

13 If you go further back, the next one is  
14 Attachment D, which is the Fair Lawn application,  
15 which shows it's care of my name, and it has the name  
16 of the person who created the application as myself.  
17 So it's basically a one-page application.

18 The next one is the public notice,  
19 obviously. And, as we continue, there's an  
20 Attachment F, which is an inspection permission;  
21 Attachment G, which is our development plan, which  
22 you see on the board here --

23 CHAIRMAN SEIBEL: All right. So this  
24 Interior Renovations --

25 MS. PECK: The application, itself, is

1 Public Service; the original zoning denial was  
2 Interior Renovations.

3 So I guess it would be on behalf of  
4 both, the property owner -- I don't know how...

5 The actual portion on the agenda, we  
6 typed, but the actual application, their portion that  
7 they submitted, was Public Service. If that's the  
8 question you're asking me, yes.

9 MR. KIENZ: There is an Affidavit of  
10 Owner's Consent from Interior Renovations that was  
11 attached to the application too, Bruce.

12 MR. ROSENBERG: Yeah, I understand. I  
13 think for purposes of this first aspect of the  
14 application, I think clearly the applicant is PSE&G.

15 MR. KIENZ: Right.

16 MR. ROSENBERG: Would you agree with  
17 that, Mr. Kienz?

18 MR. KIENZ: Absolutely.

19 CHAIRMAN SEIBEL: So now we're going to  
20 go on to the salmon portion of the site. And Public  
21 Service is temporarily leasing the site until  
22 April 1, 2016. That's what we're dealing with here,  
23 correct?

24 MR. ROSENBERG: Yes.

25 CHAIRMAN SEIBEL: That's it.

1 MR. KIENZ: Yes.

2 CHAIRMAN SEIBEL: Okay. Let's go.

3 Where are we?

4 BY MR. KIENZ:

5 Q. Gene, what other things can you testify  
6 to, or what other things can you bring to the board's  
7 attention?

8 A. Shall we explain this (indicating)?

9 Q. No, I don't think they -- Attachment K,  
10 this was part of that application --

11 MR. KIENZ: He just asked should we  
12 explain Attachment K, which is part of the  
13 application, and that's what I was referring to,  
14 which just gets you the number of parking spaces --

15 MR. ROSENBERG: Right.

16 MR. KIENZ: -- so I'm a little betwixt  
17 and between as to whether that's needed on the  
18 record.

19 And the method to the madness was to  
20 show you that on Attachment K there were 54 parking  
21 spaces for the uses in the building.

22 Based on the information that we have,  
23 if you take out the three that are vacant, which was  
24 the framing -- the bus company and two other units,  
25 that eliminated 2, 12, and 4 spaces; so you took that

1 off the 54, that meant that 36 spaces were needed on  
2 the surface for that, and that there was sufficient  
3 space on the property for the Public Service lay down  
4 area. That's the whole purpose of this.

5 CHAIRMAN SEIBEL: That makes sense.

6 Okay. Is there a date on yours? I  
7 don't have a date on mine.

8 MR. KIENZ: No, it's an undated  
9 document. Good catch, Mr. Chairman. The handwritten  
10 one is in the application we had --

11 THE WITNESS: There's a fax date. I  
12 don't know if that's really accurate, but it's  
13 handwritten on the document. I think, yeah, the  
14 other one is just a typed-in note.

15 CHAIRMAN SEIBEL: And where did this  
16 come from?

17 THE WITNESS: From the property owner.

18 CHAIRMAN SEIBEL: From the property  
19 owner, which is Interior Renovations?

20 MR. KIENZ: Yes, sir.

21 THE WITNESS: Correct.

22 CHAIRMAN SEIBEL: And so these are his  
23 records. Okay. Okay.

24 MR. KIENZ: And the permit number, just  
25 for the record, refers to the permit number in Fair

1     Lawn.  And I have representative -- I have four  
2     copies -- I have four different permits that were  
3     submitted, and it's got the permit numbers on them.  
4     I don't have the others, but I understand.  I just  
5     want to tell you what I have.

6                   CHAIRMAN SEIBEL:  That was not  
7     presented to us prior, so...

8                   MR. KIENZ:  That's correct.

9                   CHAIRMAN SEIBEL:  Yes?

10                  MS. PECK:  Mr. Chairman, just to set  
11     the record straight on that document that we're  
12     discussing, these tenants are the tenants of the  
13     building across the street, 4-19 and 4-21.  The  
14     parking lot that we're discussing doesn't have  
15     permission for them to park on it, and we're going to  
16     get into that.  And these parking calculations --

17                  MR. ROSENBERG:  That's exactly my  
18     point.

19                  MS. PECK:  Exactly.  The parking  
20     calculations were done by the property owner, not in  
21     accordance with the borough parking schedule.

22                  MR. ROSENBERG:  That's the point,  
23     Mr. Kienz.

24                  MR. KIENZ:  Well, if that's the point,  
25     then that I'm confused, because on the application

1 form --

2 MS. PECK: Which --

3 MR. KIENZ: I'm not arguing --

4 MS. PECK: No, but which application  
5 form?

6 MR. KIENZ: On the application form  
7 that you have to submit in order to get a CCO --

8 MS. PECK: But those CCOs are for 4-19  
9 and 4-21.

10 MR. KIENZ: And you also have to show  
11 the number of parking spaces.

12 MS. PECK: Because Banta doesn't have  
13 any parking. There's only like four -- there's very  
14 few parking spaces for this lot. 4-24 is not  
15 attached to this property.

16 MR. KIENZ: I know that, but anybody --  
17 this is --

18 MS. PECK: That's okay, I'll bear with  
19 you.

20 MR. KIENZ: You can help me.

21 When I go across the street, over to  
22 here (indicating), and I come in for a CCO, one of  
23 the things on your application packet is how many  
24 parking spaces are available, and you fill in your  
25 number, 2, 4, 8, 12, whatever it is.

1                   And then the people that had applied  
2 for them -- and I have four of them, as I said, in  
3 front of me -- the people that had applied for them  
4 had that number on their permits. And they were  
5 granted a --

6                   MS. PECK: Some of them are very old.

7                   MR. KIENZ: -- a CCO. Right.

8                   MS. PECK: For that property, not for  
9 parking on Banta, on 4-24.

10                  MR. KIENZ: Okay. But there's no  
11 parking across the street.

12                  MS. PECK: Correct. There's a lot of  
13 no parking on Banta. It's an existing condition.

14                  MR. KIENZ: So if I put -- this is --  
15 please, help me.

16                  MS. PECK: No, because there's  
17 probably -- we probably don't have a parking variance  
18 for 4-21 and 4-19 because the building is so old.

19                  MR. KIENZ: Okay. But if I fill out  
20 this CCO -- and, again, I'm not being argumentative;  
21 I'm just trying to understand.

22                  If I fill out the CCO and I say four  
23 parking spaces on that application form, on page 5,  
24 Item No. 6, if I fill that out and I say four parking  
25 spaces, and I get a CCO, it, at least seems to me,

1 that this is where those people were supposed to have  
2 been parking.

3 MS. PECK: Not necessarily true.  
4 Mr. Carrera (phonetic) was told that that parking lot  
5 across the street was not authorized as an overflow  
6 parking lot. He's been using it that way. He's  
7 under violation, and that's going to open a whole  
8 'nother ball game that's going to convolute your  
9 Public Service application right now.

10 MR. ROSENBERG: And that's exactly why  
11 we're not going there --

12 MS. PECK: Yeah.

13 MR. ROSENBERG: -- because I'm not  
14 going to allow you to now cross-examine Ms. Peck on  
15 the issue of what rights the property owner has to  
16 use. You're here on Public Service.

17 MR. KIENZ: That was not -- Bruce, you  
18 know me better than that. That was not my intention,  
19 and I would never cross-examine Ann at all. That's  
20 not where I'm coming from.

21 MR. ROSENBERG: But you see my problem,  
22 because we have a history here, and that history is  
23 going to have to be fleshed out in many different  
24 ways --

25 MS. PECK: Yeah.

1 MR. ROSENBERG: -- and I think the only  
2 thing here that the board can consider is your  
3 proposed lay down area, which is before the board  
4 right now.

5 MR. KIENZ: Gene, do you have anymore  
6 testimony?

7 THE WITNESS: Not really, no.

8 MR. KIENZ: You know, I didn't even  
9 have to look at him for him to answer it that way.

10 CHAIRMAN SEIBEL: How about our  
11 professionals?

12 MR. OCHAB: No questions, sir, for this  
13 witness.

14 MR. AZZOLINA: No.

15 CHAIRMAN SEIBEL: I should swear you  
16 in, Mr. Simoff.

17 MR. SIMOFF: Yes.

18 H A L S I M O F F,

19 Having been duly sworn, testifies as follows:

20 CHAIRMAN SEIBEL: Please state your  
21 name and your occupation.

22 MR. SIMOFF: Hal Simoff, and I'm the  
23 appointed substitute traffic engineer.

24 CHAIRMAN SEIBEL: Do you have any  
25 questions for the witness?

1 MR. SIMOFF: After what just went on,  
2 none.

3 CHAIRMAN SEIBEL: Okay.

4 Anyone from the board, did I ask for  
5 the board, questions?

6 (NO RESPONSE.)

7 CHAIRMAN SEIBEL: Nothing.

8 How about within 200 feet of the  
9 property, anyone from the public have any questions,  
10 comments?

11 (NO RESPONSE.)

12 CHAIRMAN SEIBEL: Seeing none, I'll  
13 close it.

14 Anyone from the public in general have  
15 any questions for the witness?

16 (NO RESPONSE.)

17 CHAIRMAN SEIBEL: Seeing none, I'll  
18 close it.

19 And now where are we at?

20 MR. ROSENBERG: You're at Mr. Kienz is  
21 deciding if he wants to sum up.

22 MR. KIENZ: Well, I wondered -- I have  
23 a planner, for about five or ten minutes --

24 MR. ROSENBERG: For your application,  
25 yes.

1                   MR. KIENZ: Yes, it's my application.  
2           D A V I D   K A R L E B A C H,  
3           38 East Ridgewood Avenue, Ridgewood, New Jersey,  
4           having been duly sworn, testified as follows:

5                   CHAIRMAN SEIBEL: State your name and  
6           your profession.

7                   MR. KARLEBACH: David Karlebach. I'm a  
8           licensed professional planner, and my business  
9           address is 38 East Ridgewood Avenue, Ridgewood, New  
10          Jersey.

11                  CHAIRMAN SEIBEL: And you've testified  
12          in front of this board before?

13                  MR. KARLEBACH: Yes, I have.

14                  CHAIRMAN SEIBEL: And you're in good  
15          standing?

16                  MR. KARLEBACH: Yes.

17                  CHAIRMAN SEIBEL: Anyone have any  
18          objection to entering him as an expert?

19                  (NO RESPONSE.)

20                  CHAIRMAN SEIBEL: No.

21                  Okay, the floor is yours.

22                  MR. KARLEBACH: Thank you.

23          DIRECT EXAMINATION

24          BY MR. KIENZ:

25                  Q.       Your license is valid as of tonight.

1 Is that correct?

2 A. Yes.

3 Q. David, I think this significantly cuts  
4 down on the testimony you need to provide.

5 So the board has already accepted you.  
6 You understand now that we're just talking about the  
7 lay down area, and we're just talking about the  
8 outdoor storage, which is not a permitted use in that  
9 zone. Is that correct?

10 A. That's correct.

11 Q. Go ahead, Dave.

12 A. Well, I'm not going to talk anymore  
13 about the site, because I think it's been described  
14 in great detail.

15 I think the most outstanding feature of  
16 the site is that it does have that small, vacant  
17 building. It's approximately 1,100 square feet. It  
18 will be used by PSE&G, as was stated, for bathrooms  
19 and storage, but that's the extent of it.

20 On the site there's no  
21 clearly-articulated circulation pattern or parking.  
22 There are some painted stripes, but certainly it's a  
23 somewhat disorganized arrangement currently. And  
24 virtually the entire lot is paved over, and there is  
25 no landscaping.

1           Q.        Dave, I think they got the proposed  
2 use, and I think they understand the total number of  
3 parking spaces on the site, because the plans speak  
4 for that. Is there anything else that you want to  
5 talk about under the proposed use for zoning?

6           A.        No, I think that's it. I think I just  
7 would like to talk about zoning and the statutory  
8 criteria for the granting of a (d) variance.

9                    So this property is located in the I-2  
10 zone. As was stated, outside storage is not a  
11 permitted use in the borough's industrial zones. The  
12 planner did note a (d)(2) variance for the expansion  
13 of a nonconforming use, but I think that more relates  
14 to the other portion of this application, which  
15 involves 4-19 and 4-21 Banta Place.

16                   There were some (c) variances that were  
17 noted in the planner's report. There's an impervious  
18 coverage area variance, where 80 percent is  
19 permitted, 95 percent of lot coverage exists today,  
20 and 98 percent is proposed, off-street parking, not  
21 on the same lot as the building.

22                   And, again, that relates to the other  
23 portion of the application.

24           Q.        But the fact is we're also -- we ought  
25 to be absolutely frank. Based on Bernadette's

1 testimony, there will be some off-street parking that  
2 ties in with what we're doing, so I don't know  
3 whether that triggers something. I'm not so sure  
4 that it does, but I don't want anybody to think we're  
5 trying to slip something by.

6 We're going to park some vehicles there  
7 for staff on an as-needed basis, and it's primarily  
8 for storage?

9 MR. ROSENBERG: And it's within the  
10 salmon colored area?

11 MR. KIENZ: Yes, sir.

12 MR. ROSENBERG: Thank you.

13 THE WITNESS: And off site. But it's  
14 very closely related to the substation.

15 As was stated, it's only about a  
16 block-and-a-half away, so we're not traveling across  
17 town. Tandem parking spaces are not permitted by  
18 ordinance. And I believe there were certain design  
19 waivers that were also requested.

20 Now, in terms of the granting the (d)  
21 variance, I'm going to characterize this use as an  
22 inherently beneficial use. And the Borough made a  
23 recent determination that PSE&G's facilities do  
24 qualify as an inherently beneficial use when they  
25 were here just last week.

1                   Now this isn't --

2                   Q.       That was a different -- just for the  
3 record, that was a different application. But we  
4 have been found to be inherently beneficial.

5                   A.       Oh, okay. So it does qualify as  
6 inherently beneficial.

7                   Now, this, itself, is not a public  
8 utility, but it is accessory to a public utility.  
9 And I'll just cite this one lower case: The  
10 Scholastic Bus Company versus Zoning Board. And in  
11 that case, the Court found that a facility for  
12 maintaining and storing school buses is inherently  
13 beneficial insofar as it necessarily -- or, excuse  
14 me, as it is necessarily accessory to the school  
15 buildings themselves.

16                  Q.       All right. Let's just clarify the  
17 record. We're not doing anything with school busses,  
18 but this case is similar on point to keeping the  
19 trucks or our workers' cars there. Is that correct?

20                  A.       Right. It's a logical extension of  
21 what that case provides. This is an accessory use to  
22 the substation.

23                         Now, in deciding (d) variance  
24 applications for inherently beneficial uses, the  
25 Court has directed the Board of Adjustment to use a

1 four-step balancing test. And the first step of the  
2 test is to determine the public interest at stake.  
3 And I think what the Court is saying here is that  
4 certain inherently beneficial uses are more  
5 compelling than others.

6 And in this case, I would rank a public  
7 utility use, such as an electric substation, as being  
8 very high on that list of inherently beneficial uses,  
9 because it serves the entire population; whereas, if  
10 you had another type of inherently beneficial use,  
11 like a head trauma center or affordable housing, it  
12 serves a much smaller section of the population. So  
13 I think this is a very important use.

14 The second step of the balancing test  
15 is to identify the detrimental effects that would  
16 ensue from the granting of the variance.

17 Now, this application is not going to  
18 generate any excessive noise, vibrations, odors,  
19 glare, dust, fumes, or any other objectionable  
20 influences beyond what you would expect in an  
21 industrial zone. This I-2 zone is one of the least  
22 restrictive zones in the borough. And the staging of  
23 equipment is a far less intensive use than some of  
24 the other permitted uses in the zone. And some of  
25 those permitted uses include manufacturing and

1     warehousing. This zone also permits hospitals,  
2     nursing homes, and bus parking lots as conditional  
3     use.

4                     This site has a documented history as  
5     usage as a parking facility, and we are going to  
6     provide that data to the board. So there's no  
7     foreign use being introduced on the property. It's  
8     currently -- or, I should say, it has been used  
9     historically as a parking lot, and it will be in the  
10    future, if this application is approved.

11                    So as planners, we don't have to  
12    envision what would be the impact of parking at this  
13    location. We already know what the impacts are. And  
14    if there is any detriments, or perceived detriment,  
15    it's not so substantial as to change the character of  
16    the neighborhood. And that's the test: It must be a  
17    substantial detriment. Again, any perceived  
18    detriment is going to be temporary in nature. This  
19    facility is only planned for usage for about one  
20    year.

21                    Now, regarding the (c) variances --

22                    CHAIRMAN SEIBEL: Is the board going to  
23    accept -- and I think they need your help, Counsel --  
24    that they are subsumed under the use variance --

25                    MR. ROSENBERG: I think under

1 Palαιο (phonetic), Mr. Kienz.

2 CHAIRMAN SEIBEL: So I think that kind  
3 of covers it as far as the positive proofs, so we can  
4 turn to the negative proofs.

5 THE WITNESS: That's fine. I think we  
6 can -- I'm sorry.

7 CHAIRMAN SEIBEL: One question from  
8 Jeanne?

9 MS. BARATTA: I just want to clarify  
10 something you just said. You said about the parking  
11 here, in the future, if this application is approved.  
12 We're only talking about one year for the salmon  
13 colored, correct? So you just misspoke.

14 THE WITNESS: Right, for the period of  
15 one year it will continue.

16 Now, the board, of course, in its  
17 resolution will, you know, make findings and  
18 determine what is appropriate on this property for  
19 the length of time.

20 MS. BARATTA: Thank you.

21 THE WITNESS: As far as the detriments,  
22 I don't find that there are any substantial  
23 detriments. It requires a very small increase in  
24 impervious area. It's what I would consider to be  
25 a de minimis variance, and it's going to be virtually

1 imperceptible to passersbys. And this is a remote  
2 location; it's far removed from resident areas.

3 That small increase in impervious area  
4 is not going to dramatically change stormwater runoff  
5 or infiltration. It certainly does not change the  
6 visual quality of the site in any way.

7 And as far as the tandem parking is  
8 concerned, it's not very different than inventory  
9 parking you would see from an auto dealership.  
10 Tandem parking can be very effective and very  
11 efficient when it's properly managed.

12 The third step in the balancing test is  
13 the board may impose reasonable conditions to  
14 mitigate any of the detrimental effects. And I find  
15 that the impacts are minimal, or non-existent, so  
16 there really are no mitigating measures being  
17 proposed. As I said, any detriment that may exist is  
18 only temporary.

19 And then, finally, the board is to  
20 determine on balance whether the public benefits that  
21 are conferred outweigh those detriments. And, as I  
22 said, there's no disruption to the character of this  
23 neighborhood, which is industrial. The benefits that  
24 are derived are providing continued, reliable  
25 electric service to New Jersey citizens, which far

1       outweighs any perceived detriment.

2                       Finally, there's no substantial  
3       impairment to the zone plan. No principal use is  
4       being proposed, no permanent use is being proposed,  
5       and no new building area is proposed. Although  
6       outdoor storage is prohibited in this industrial  
7       zone, it should be noted that public utility  
8       facilities are a permitted use in this zone.

9                       Now, I know it was determined at the  
10       onset of this application that this doesn't qualify  
11       as a public utility facility, and the Fair Lawn  
12       ordinance actually does not define what that is, but  
13       I have consulted other sources, and I don't think  
14       it's unreasonable for somebody to conclude, a prudent  
15       person to conclude, that this application relates  
16       very closely to the definition of a public utility  
17       facility.

18                      But nonetheless, just as a  
19       belt-and-suspenders approach, we are asking for a (d)  
20       variance, nonetheless.

21                      So therefore, there can't be a  
22       substantial detriment to the zoned plan when you have  
23       a use that's so similar, so akin, to the one that's  
24       being proposed; it means that this use, or something  
25       very similar to it, was contemplated by the governing

1 body, and they made a determination that it is  
2 appropriate in the zone. So it doesn't really differ  
3 that much. Even though it's a non-permitted use,  
4 it's not a vast departure from what is permitted.  
5 There's no substantial detriment to the public good.

6 As I stated, it's actually a detriment  
7 is being removed. You're providing an essential  
8 service in making sure it's safe, reliable,  
9 efficient, and serves the population. So there is no  
10 detriment to the public good.

11 And that's the extent of the testimony.  
12 I believe there are sufficient reasons for the  
13 granting of the (d) variance, and I find that there  
14 are no detriments to this application, only benefits.

15 CHAIRMAN SEIBEL: Thank you.

16 What are some uses in the I-2 zone?

17 THE WITNESS: What would be permitted  
18 in the I-2 zone?

19 CHAIRMAN SEIBEL: What are the  
20 permitted uses?

21 THE WITNESS: Let me just pull out the  
22 ordinance right now.

23 (Pause)

24 Manufacturing -- that's the I-1 and I-2  
25 zone, permitted uses are manufacturing

1 establishments; offices; public utility facilities,  
2 except antenna towers; warehouses. And conditionally  
3 permitted are hospitals and nursing homes and bus  
4 parking lots.

5 CHAIRMAN SEIBEL: Any members have any  
6 questions? Mr. Naveh?

7 MR. NAVEH: Mr. Chairman, I guess for  
8 my benefit, and perhaps others, why is there a  
9 rationale behind prohibiting outdoor storage of  
10 equipment and materials in the I-2 zone? I'm just  
11 curious.

12 CHAIRMAN SEIBEL: I can't answer that.

13 MR. KIENZ: I can tell you that almost  
14 every I zone that I look to -- I think Bruce would  
15 tell you the same thing -- they're no different.

16 MR. ROSENBERG: Yes.

17 MR. KIENZ: They just don't want  
18 outside storage.

19 MR. ROSENBERG: Yes.

20 MR. KIENZ: They want as much as  
21 possible to be kept inside the building. And that's  
22 the way it rolls.

23 Right, Bruce.

24 MR. ROSENBERG: Yes, I would agree with  
25 that.

1                   MR. OCHAB: From my perspective, too,  
2 typically in the industrial zone, you typically want  
3 to have building construction as opposed to sites  
4 which have complete outdoor storage type uses, and so  
5 it doesn't add to the rateable base of the  
6 municipality when you allow extensive outdoor  
7 storage. So it's pretty common, actually.

8                   MR. NAVEH: I was really concerned  
9 whether there's any safety or environmental reason.  
10 But if it's just prohibited and no one can answer,  
11 that's fine.

12                   CHAIRMAN SEIBEL: Correct me if I'm  
13 wrong, but it may also have to do with the  
14 maintenance of the area, that outdoor storages can  
15 get a little rustic.

16                   MR. KIENZ: Albeit, even untidy.

17                   CHAIRMAN SEIBEL: Anyone else?

18                   Seeing nothing, I will open it up to  
19 the public. And anyone within 200 feet --

20                   MR. SIMOFF: Actually, I have one  
21 comment.

22                   CHAIRMAN SEIBEL: Yes?

23                   MR. SIMOFF: Mr. Karlebach, in his  
24 testimony, said there's no residential in the area,  
25 and you have to go through residential to get to this

1 site, through trucking, either from Route 4 or from  
2 Morlot. Once you're at the site and you want to go  
3 back and forth to the transfer -- or, to the station,  
4 there's no impact. But I think that the board should  
5 consider hours of delivery.

6 CHAIRMAN SEIBEL: Well, Ann, what are  
7 our hours of operation for the I-2?

8 MS. PECK: I think it falls under the  
9 noise ordinance, which I think is 10 o'clock.

10 CHAIRMAN SEIBEL: 10 o'clock.

11 MS. PECK: But that's just noise. I  
12 don't really remember.

13 MR. KIENZ: I don't think that you have  
14 any prohibition in a light manufacturing zone for  
15 truck traffic. And I think we also had testimony on  
16 the record that at most there would be three trucks  
17 making deliveries to the site. So I don't know if  
18 that's consistent with an I-1 or I-2 zone, which are  
19 pretty intense in Fair Lawn.

20 CHAIRMAN SEIBEL: And there would be  
21 other properties in the area. They wouldn't be the  
22 only one operating in the area.

23 MS. PECK: No, we have other  
24 commercial --

25 MR. SIMOFF: I'm just putting it out

1 for the board's deliberation.

2 CHAIRMAN SEIBEL: Good point.

3 MR. ROSENBERG: Does the planner have a  
4 comment for their...

5 MR. OCHAB: I do agree with  
6 Mr. Karlebach's assessment on the inherently  
7 beneficial use. And Emerson -- Rolf versus Emerson,  
8 which is the case involving the school bus operation  
9 relative to inherently beneficial, supports an  
10 educational use. This is pretty much a parallel to  
11 that.

12 If you look at the I-2 zone, public  
13 utilities are permitted, so theoretically, we could  
14 have gone in that direction.

15 But I think an outdoor storage was the  
16 most conservative approach, in terms of the variance  
17 issues here.

18 But nevertheless, I think there's  
19 sufficient basis to say that this proposed use, which  
20 is, of course, temporary, supports the inherently  
21 beneficial use of the Public Service generator  
22 station, so Rolf is right on point here, I think,  
23 here. So that's it.

24 CHAIRMAN SEIBEL: Very good. Thanks.

25 And anyone else?

1 (NO RESPONSE.)

2 CHAIRMAN SEIBEL: Did I do the  
3 200 feet?

4 Property owners within 200 feet, if you  
5 have any comments or questions for witness, come  
6 forward?

7 (NO RESPONSE.)

8 CHAIRMAN SEIBEL: Seeing none, any  
9 property owners, any residents who wish to speak or  
10 ask questions of the witness, come forward.

11 (NO RESPONSE.)

12 CHAIRMAN SEIBEL: Seeing none. I  
13 guess...

14 MR. ROSENBERG: You can sum up if you  
15 have no other witnesses.

16 MR. KIENZ: I have no other witness,  
17 Mr. Chairman.

18 You've heard the testimony. We are  
19 requesting a use variance on the salmon. It's for  
20 one year and would expire on April 1st, if so  
21 granted. That was the testimony.

22 I think through the testimony of my  
23 project manager, my permit coordinator and engineer,  
24 along with David, I think we've proven the  
25 affirmative and negative criteria for a use variance,

1 and I would ask you to please consider it.

2 CHAIRMAN SEIBEL: Thank you.

3 I do have a question for you, Bruce.

4 MR. ROSENBERG: Sure.

5 CHAIRMAN SEIBEL: This being a  
6 temporary occupancy, temporary -- what's the term I'm  
7 looking for?

8 MR. RACENSTEIN: Usage.

9 CHAIRMAN SEIBEL: Temporary use.

10 MR. ROSENBERG: Yes.

11 CHAIRMAN SEIBEL: It will run with the  
12 land only until the temporary occupancy runs out.

13 MR. ROSENBERG: That's correct.

14 CHAIRMAN SEIBEL: So those property  
15 rights will no longer exist --

16 MR. ROSENBERG: Correct.

17 CHAIRMAN SEIBEL: -- after 4/1 --

18 MR. ROSENBERG: That's correct; it has  
19 a temporal time limitation, and that covers each  
20 variance for the time duration approved by the board,  
21 if the board approves the application.

22 By its very nature, in the absence of  
23 the applicant returning to the board for an extension  
24 of that time, then it absolutely does expire on  
25 April 1, 2016 and lapses.

1                   CHAIRMAN SEIBEL: Does everybody  
2 understand that?

3                   So does anybody have any questions?  
4 Our experts, any discussion?

5                   MR. ROSENBERG: Mr. Kienz, I just want  
6 to confirm one thing in the description of the relief  
7 that you're requesting.

8                   As part of this first phase, you need  
9 the bulk variances for the impervious coverage in  
10 their totality. Is that correct? In order to enable  
11 them to use the salmon colored area, you need to -- I  
12 just want to clarify that.

13                  MR. KIENZ: No, that's all right.

14                  The answer is, if you look at --

15                  MR. ROSENBERG: Half, you need half.

16                  MR. KIENZ: My suggestion, Counsel --  
17 and I know right where you're coming from -- I would  
18 say that the action is based on the salmon colored  
19 portion.

20                  MR. ROSENBERG: Okay.

21                  MR. KIENZ: Because that's how your  
22 plans are all marked up.

23                  CHAIRMAN SEIBEL: This is going to be a  
24 little bit of a tricky motion. So I'm looking for a  
25 motion --

1 MS. BARATTA: I'm make it.

2 CHAIRMAN SEIBEL: Jeanne?

3 MS. BARATTA: Counselor, bear with me  
4 on this one.

5 Application No. 2015-0505, PSE&G:

6 "Application proposes to utilize a  
7 portion of the property as a 'temporary' lay  
8 down and park together support upgrades at the  
9 PSE&G Warren Point Substation...

10 "As the 'temporary' use (outdoor  
11 storage of equipment and materials) is a  
12 prohibited use in the I-2 zone. The applicant  
13 is applying for a use variance in accordance  
14 with section 125-57.D.(1)(d)[1] the required  
15 maximum impervious coverage is 80 percent  
16 where 98 percent is proposed and as such the  
17 applicant is applying for a bulk variance as  
18 per Section 125-12 schedule of area yard and  
19 building requirements."

20 This expires April 1, 2016. And I  
21 believe Mr. Azzolina wanted swinging gates? All  
22 right. So that's --

23 MR. AZZOLINA: Yes. So, yes, swinging  
24 gates.

25 MS. BARATTA: -- to be added to the

1 interior fence.

2 Is there anything else that we needed  
3 to add to that?

4 MR. ROSENBERG: In the impervious  
5 coverage that is shown in the salmon colored area.

6 MS. BARATTA: In the impervious  
7 coverage that is shown in the salmon colored area of  
8 the plan.

9 I'll make a motion to approve that  
10 application.

11 MR. RACENSTEIN: I second that.

12 CHAIRMAN SEIBEL: Hold on. Who was  
13 that?

14 MR. ROSENBERG: Nothing -- that's fine,  
15 Mr. Chairman, seconded.

16 MS. PECK: Who seconded that?

17 CHAIRMAN SEIBEL: Sam.

18 MS. PECK: Sam? Okay.

19 (A vote was held, with unanimous ayes.)

20 MS. PECK: Okay, motion approved.

21 CHAIRMAN SEIBEL: Okay. Thank you.

22 MR. KIENZ: Okay. Thank you for your  
23 time and patience. A couple of clean-up items, I  
24 think.

25 First off, given the nature of the

1 application, and given the fact that we had to wait a  
2 while to get here, is the board willing to allow us  
3 to waive our right to receive a favorable form of  
4 resolution so we can begin to get this thing ready  
5 and begin to use it? Because the project is on,  
6 going like gangbusters.

7 MR. ROSENBERG: Ms. Peck, historically  
8 we have -- the board had indicated the willingness to  
9 allow an applicant to proceed before the  
10 memorialization of a resolution, at their risk.

11 MS. PECK: Yes. And the construction  
12 official will require a written letter from the  
13 attorney stating that all risk will be at the  
14 applicant's portion.

15 MR. KIENZ: Do you have a form with  
16 that -- how do I do that?

17 MS. PECK: I think we have some kind of  
18 a temporary -- but I don't know if it addresses a  
19 commercial application. But basically you're going  
20 to state that's your full responsibility until your  
21 appeal is up.

22 CHAIRMAN SEIBEL: Yes.

23 MR. ROSENBERG: Yes.

24 MR. KIENZ: Okay.

25 MS. PECK: And if you present that with

1 the permit, it will come to me. I'll sign off, and  
2 we'll take it from there.

3 MR. KIENZ: And you want it on my  
4 letterhead, not my client's?

5 MS. PECK: It should be, yes, on the  
6 attorney, yes.

7 MR. KIENZ: Okay.

8 MR. ROSENBERG: Does the board  
9 understand what the applicant is asking for, that  
10 because the resolution will not be adopted until the  
11 June 22nd meeting and their need to move forward, at  
12 their risk, they're asking whether or not they can do  
13 so. And historically the board has not had a problem  
14 with that, again, as Ms. Peck says, as long as the  
15 applicant puts it in writing, that they understand  
16 that if anyone were to file for an appeal, for  
17 example, after the adoption of resolution, the  
18 improvements they made, or the use they put the  
19 property to would have to be unwound and undone?

20 CHAIRMAN SEIBEL: Everyone got that?

21 MS. PECK: So are we prepared to carry  
22 this application to June 22nd for the other half or  
23 go to July?

24 MR. KIENZ: June 22nd is a fourth  
25 Monday?

1 MS. PECK: Yes. Or it can go to the  
2 July 27th meeting. And you have to grant the board  
3 an extension of time.

4 MR. KIENZ: The extension of time is on  
5 the record. And if I can just take a quick look at  
6 the calendar?

7 MS. PECK: Sure. The 22nd and 27th of  
8 July are both Mondays. July 27th.

9 I would probably suggest that you go to  
10 July, because our professionals will need all the  
11 additional information 30 days before the meeting to  
12 review it, and I don't know if we'll have enough time  
13 to get it to them in time for June 22nd.

14 MR. KIENZ: And you're saying it's  
15 July 27th?

16 MS. PECK: Correct.

17 (Pause)

18 MR. KIENZ: All right, July 27th. You  
19 have an extension.

20 Because -- and I'm looking to you now,  
21 Counsel.

22 MR. ROSENBERG: Yes.

23 MR. KIENZ: And I think I'm okay on  
24 this one, and we'll see.

25 Because we didn't start the hearing on

1 that, it appears that there is some disconnect in  
2 information, or whatever, my request -- and I think  
3 it's appropriate, even under the case law, because we  
4 really didn't do much, would be that we be allowed to  
5 meet with certainly you, maybe your engineer,  
6 certainly Ann, to get records and stuff.

7 MR. ROSENBERG: Oh, you don't need to  
8 meet with the engineer and me. If you need to get  
9 records, you can go right to the zoning.

10 MR. KIENZ: All right. But if we have  
11 to have conversations -- normally, you know, if we  
12 don't have those conversations, it kind of closes  
13 down and there's all kinds of stuff. I just want my  
14 people to talk to your people.

15 MS. PECK: I just have -- if they're  
16 going to go that route, then they should have to be  
17 noticed. If they want to continue the application  
18 and carry it, then there would be no written new  
19 notice.

20 MR. KIENZ: No, I don't have to do a  
21 new notice just to carry an application that I didn't  
22 start --

23 MS. PECK: But if you're -- well,  
24 that's the point. If you want to back out and say we  
25 didn't start yet, we want to start here --

1                   MR. KIENZ: Well, you told me I didn't  
2 start that tonight, Bruce.

3                   MR. ROSENBERG: We didn't start that  
4 aspect, Phase 2.

5                   MS. PECK: Right.

6                   MR. ROSENBERG: But, Counselor, I'm  
7 going to ask for a legal memo before July 27th on the  
8 issues of whatever proffer you're going to make at  
9 the July 27th meeting -- and I need that, because, as  
10 we discussed, you're asking for opinions about uses,  
11 rights, possible grandfathered approvals, use of the  
12 permits that you have, and I would really like, as a  
13 courtesy, to have it all in one proffer from you  
14 before the 27th, if I can, please.

15                   MR. KIENZ: Yes, sir.

16                   MR. ROSENBERG: All right. But I don't  
17 think you need to re-notice, Mr. Kienz.

18                   MR. KIENZ: All right. Thank you. And  
19 I did grant you an extension on time.

20                   MR. ROSENBERG: If you want to make an  
21 announcement, that in the matter of...

22                   CHAIRMAN SEIBEL: This application will  
23 be carried to the meeting of July 27th without  
24 further notice.

25                   MR. KIENZ: We can talk to Ms. Peck?

1 MR. ROSENBERG: Yes, you can talk to  
2 Ms. Peck.

3 MS. PECK: After vacation.

4 MR. KIENZ: Are you going to be back  
5 this calendar year?

6 MS. PECK: I'll be back June 1st.

7 CHAIRMAN SEIBEL: Okay, that's it.  
8 We're going to call a recess for a quick two minutes  
9 and then continue with other business.

10 (This matter will be continuing at a  
11 later date. Time noted: 10:00 p.m.)

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I, LAURA A. CARUCCI, C.C.R., R.P.R., a Notary Public of the State of New Jersey, Notary ID. #15855, Certified Court Reporter of the State of New Jersey, and a Registered Professional Reporter, hereby certify that the foregoing is a verbatim record of the testimony provided under oath before any court, referee, board, commission or other body created by statute of the State of New Jersey.

I am not related to the parties involved in this action; I have no financial interest, nor am I related to an agent of or employed by anyone with a financial interest in the outcome of this action.

This transcript complies with regulation 13:43-5.9 of the New Jersey Administrative Code.

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LAURA A. CARUCCI, C.C.R., R.P.R.  
License #XI02050, and Notary Public  
of New Jersey #15855, Notary  
Expiration Date March 1, 2019

Dated: \_\_\_\_\_