

BOROUGH OF FAIR LAWN

ZONING BOARD

MONDAY, JULY 27, 2015

COMMENCING AT 8:16 P.M.

.....

IN THE MATTER OF:	:	TRANSCRIPT
APPLICATION#2015-05, PSE&G,	:	OF
PSE&G/Property Owner is Interior	:	PROCEEDING
Renovations Services, LLC	:	
4-24 Banta Place, Block 3411, Lot 1	:	
Preliminary final site plan required	:	
as per Section 125-65A and use	:	
variances required as per Section	:	
125-57.D.(1)(d)(1) to divide the	:	
current property at 4-24 Banta Place	:	
Proposal is to permit a parking lot	:	
for Interior Renovations services,	:	
LLC, located at 4-19 & 4-21 Banta and	:	
for proposed temporary lay down	:	
parking area to support upgrades at	:	
PSE&G substation. Variance required	:	
per Section 125-28C(5) for outdoor	:	
storage of equipment and materials.	:	
Any and all other variances/or waivers:	:	
that may be required for this	:	
application.	:	

.....:

B E F O R E:

THE BOROUGH OF FAIR LAWN ZONING BOARD
THERE BEING PRESENT:

RICHARD SEIBEL, CHAIRMAN

KEVIN PUZIO, VICE CHAIRMAN
 JAMES LOWENSTEIN, BOARD SECRETARY
 SAMUEL RACENSTEIN, MEMBER
 YELENA PERCHUK, MEMBER
 BRADFORD POHLMAN, ALTERNATE I
 JEANNE BARATTA, ALTERNATE II
 AVI NAVEH, ALTERNATE IV

LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.
201-641-1812

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PAUL AZZOLINA, Board Engineer

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LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.
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HAL SIMOFF, Board Traffic Engineer

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CHAIRMAN SEIBEL: Now, in the matter of Application 2015-05, PSE&G. PSE&G/property owner is Interior Renovations Services, LLC, 4-24 Banta Place, Block 3411, Lot 1.

Gentlemen, if you will.

MR. SINISI: Thank you, Mr. Chairman. You gentleman all recall Mr. Kienz represented PSE&G in what was characterized as the first phase of the --

THE COURT REPORTER: Please state your name, sir, for the record.

MR. SINISI: Stephen Sinisi, The Law Offices of Stephen Sinisi, LLC, located at Two Sears Drive in Paramus.

THE COURT REPORTER: Thank you.

CHAIRMAN SEIBEL: Is that on.

MR. SINISI: I hope so.

CHAIRMAN SEIBEL: The blue light should be on.

MR. SINISI: Any better.

CHAIRMAN SEIBEL: A little.

MR. SINISI: Having entered my appearance, you should, perhaps, recall the gentleman to my left, who had appeared on May 18th in connection with what became a bifurcated application. First phase being the PSE&G application brought on behalf of PSE&G as part of its Willow Street or Willow substation project. I represent in this particular case the applicant Interior Renovations Services, LLC, and as well Mr. Carriero, the managing member of that

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entity. And we serve frankly as the co-applicant in this matter, as was disclosed in the application, as was disclosed in the public notice. And tonight this application will address the second phase of the application.

And you may recall, all of you at some point, I think it was about 10:20 on the evening of May 18th, counsel for the board asked for a proffer or a memorandum, which I prepared after reading the transcript I received.

And because of my familiarity with the co-applicant's portion of this application, which we've submitted to the board, and I'm told from the board attorney to its staff, and so with one exception, we will probably not stray from the exhibits that we attached to the proffer. There is one recent exhibit that we have gathered. You will all be given copies. It is not only an aerial photo of the two particular pieces of property that come into play in connection with the second phase of this application, but also some ground photos that will give you a real close up and snapshot of what is occurring presently.

Now, the way we have prepared to do this, because there is a contractual relationship called the "lease" between our client and PSE&G is I will present the application on behalf of Interior Renovations Services and call Mr. Carriero as our first witness, as I indicated in the proffer. Glenn will be recalling and examining ever so briefly, not to inhibit him from asking as many questions as he'd like.

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MR. KIENZ: Oh, you know me better than that.

MR. SINISI: Yes, we all do. We want to be able to get to the engineer to testify as to the site plan, which I call the non-salmon portion of the site plan, because throughout your procedure you were referring to the PSE&G component as the salmon portion. We're the non-salmon portion and I hope that you will find that testimony to be on the mark when it comes to what is depicted with respect to the parking lot at 4-24 Banta Place, which is the essence of our application.

And then finally, we are going to be calling, as the proffer indicates, our professional planner John McDonough who will go into the reasons and the justifications for the relief we seek.

So with your permission, unless Glenn would like to add anything at this point?

MR. KIENZ: Well, I just want to cover a couple of little procedural things, because that always gives me nightmares.

First off, this is a carried hearing. This is the second part of it. But as far as I'm concerned, counsel and I had -- Bruce and I had a chance to talk about it.

As far as I'm concerned, you're all hearing this part of the testimony for the first time. So I think everybody is qualified to vote. I just throw that out before we get started.

MR. ROSENBERG: Mr. Chairman, if I may, we did speak about the issue and procedurally I think that is correct.

In other words, we've all recognized that there are

two aspects to this application. So from my legal opinion all of you are hearing this for the first time and will be qualified to vote on the application.

MR. KIENZ: So, therefore, notice was in order, I think, because it was in order the first time --

MR. ROSENBERG: Yes.

MR. KIENZ: -- when we carried it forward. And, quite frankly, let's get on with it.

MR. ROSENBERG: If I may, Mr. Chairman, just one quick question for Mr. Sinisi, and that is just as part of your proffer that you gave the Board, as well as the testimony you're going to proffer now with your witnesses, may I respectfully ask, what is the purpose of your proffer?

In other words -- and I'm not being a wise guy, because I cite to your proffer and may I just read, so that we all understand, on the second page you say, either by the direct testimony of the aforesaid individuals or documentary evidence, the co-applicant respectfully submits that not only is use variance relief to permit 4-24 Banta Place to continue to be utilized for off-street parking warranted, but in view of the prior use of this property to service the commercial tenancies located directly across the street at 4-19 - 4-21 is not necessary. And that to me was sort of the gravamen of your proffer.

But if I may procedurally, Mr. Chairman and Members of the Board, I just want to hear directly from the co-applicant's

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attorney what you're asking the Board to act upon with the testimony that you're going to be giving.

MR. SINISI: Succinctly stated.

MR. ROSENBERG: Yes.

MR. SINISI: We want to be able to utilize or more accurately continue to utilize 4-24 Banta Place to service our tenancies and licensees at 4-19 - 4-21 Banta Place, which it has been using for decades.

MR. ROSENBERG: So just so we understand procedurally, is this a 40:55-68 application, Mr. Sinisi?

The Board is familiar with those.

MR. SINISI: Yes.

MR. ROSENBERG: We have heard applications before where applicants have come, they've proffered competent credible testimony, the history of the property and have asked for a certificate from the zoning official or actually from this board to authorize the zoning official to issue a certificate. I just want to understand what you think the application is about.

MR. SINISI: Well, what I think is one thing and what my experts will testify is also what I think --

MR. ROSENBERG: Sure.

MR. SINISI: -- but there is a variation that you will hear from our professional planner, which discusses the relief we seek in the alternative.

MR. ROSENBERG: Okay.

MR. SINISI: That is to say, that the argument and the proofs will demonstrate, as you can see, in the proffer that we are seeking to continue what has been a permitted non -- a pre-existing non-conforming use.

Alternatively, because we received correspondence from the zoning ordinance -- the Zoning Officer in July of 2012 indicating that future approvals should be made to the Board without conceding that point for our purpose and use, we thought that we wanted to err on the side of caution and bring the application as a total (d) variance application, very much like, for example, if this were only a (d) (1) with a (c) variance, the argument could be made that under Puleo or the Puleo case --

MR. ROSENBERG: Right.

MR. SINISI: -- it's subsumed --

MR. ROSENBERG: Right, it's subsumed. Right.

MR. SINISI: -- in the (d) variance.

So we wanted to hedge our bets and make sure that we left no one out in the cold, we wanted to pay homage to the Assistant Zoning Officer for giving us the direction to apply to the Board. We have our argument that you'll hear as to whether or not they're even necessary, but we believe the documentary evidence, which I referred to in the proffer --

MR. ROSENBERG: Yes.

MR. SINISI: -- and the testimony you'll hear will support the applicant's position.

MR. ROSENBERG: So there is both the proffer on the first aspect, which is grandfathering. And then there --

MR. SINISI: Correct.

MR. ROSENBERG: -- in the alternative is if for some reason the Board didn't find it, you're here for the (d) or whatever you describe, you and your planner describe and your witnesses describe?

MR. SINISI: We function on the lofty legal principal that sometimes it's best to pursue one-stop shopping in one night --

MR. ROSENBERG: Sure.

MR. SINISI: -- rather than consume the Board's time and agenda over many, many nights with many different applications.

You bifurcated it as a board and kudos to you for doing so, because I think it streamlines this application and gets us ready to tee it up for the testimony you should be hearing about 4-24 Banta.

MR. ROSENBERG: Thank you.

Mr. Chairman, thank you for allowing me to clarify that.

CHAIRMAN SEIBEL: Okay. So now you can clarify it for us.

MS. BARATTA: Mr. Chairman?

CHAIRMAN SEIBEL: Yes.

MS. BARATTA: If he's going to be doing some

clarification, one of the questions that I have is I'm not sure where PSE&G fits into this right now, and why is there a co-applicant when we've already dealt with that? I'm trying to understand where -- what this has to do with PSE&G at all, why they're here.

MR. KIENZ: We had an obligation, and I had stated that back in May when I first appeared, we had an obligation to bring forward this part of the application as a result of getting things from your Zoning Officer and others, so this was part of it.

I had gotten into a discussion with a number of board members, including Counsel to try and figure out how to do it.

So our engineer, Gene, who testified the last time, is here to testify to that part of it. It's our continuing obligation, but we thought it best, given everything that came out of the last hearing, to proceed in this fashion and besides it gave me a chance to get to know Mr. Sinisi, which was just fine.

MS. BARATTA: I'm not going to comment on that part, but -- so you're not requesting anything from this Board this evening? You're good.

MR. KIENZ: We're good. We're here to help on this application, which is our contractual obligation.

MR. ROSENBERG: And as I understand it really, as Mr. Sinisi said, your testimony is really limited to the site plan application, right.

MR. KIENZ: Yes. And you really already have that on the record. But we --

MR. ROSENBERG: But you're going to --

MR. KIENZ: We're going to freshen it up a little.

MR. ROSENBERG: The non-salmon colored portion, as
I recall --

MR. KIENZ: Right. And we had talked about that --

MR. ROSENBERG: Yes.

MR. KIENZ: But we're going to freshen it up a
little tonight, that's all.

MR. ROSENBERG: Understood.

So Ms. Baratta, I think that's exactly what their
role is, as sort of the technical aspects of site plan improvements.

MS. BARATTA: Okay.

CHAIRMAN SEIBEL: Before we take off, we're going
to hear -- the first part is going to be about the legal non-conforming
issue?

MR. ROSENBERG: Yeah. I think that's what Mr.
Sinisi's going to proffer.

CHAIRMAN SEIBEL: Is everybody okay? EVERYBODY?

MR. LOWENSTEIN: The housekeeping piece.

CHAIRMAN SEIBEL: Oh, the fees.

MR. LOWENSTEIN: As to this application, fees
totalling \$1450.00 were paid on -- the month is cut of, I'm guessing
it was February 26TH of this year.

Furthermore, the tax collector on February 4th
indicated as of that date taxes were paid current. There was at least

one more quarter maybe due, but I have no information on that.

MS. PECK: Mr. Lowenstein, this is a carry. So all the fees were put into the record in the last meeting.

MR. LOWENSTEIN: Oh, okay. So I'll stop.

MS. PECK: Thank you.

CHAIRMAN SEIBEL: All my experts are ready? Everybody's ready to go? Let it rip.

VICE CHAIRMAN PUZIO: Swear in our experts just in case.

MR. ROSENBERG: They are going to be testifying, swear them now.

CHAIRMAN SEIBEL: Okay. We can do them all at one time?

MR. ROSENBERG: Sure.

CHAIRMAN SEIBEL: Okay. Raise your hands.

Do you swear or affirm that the testimony you will be giving and the expert advice that you will be giving the board is true and accurate?

MR. OCHAB: Yes.

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

14-16 Fair Lawn Avenue, Fair Lawn, New Jersey,

having been duly sworn, testifies as follows:

MR. SIMOFF: Yes.

H A L S I M O F F,

2 Shunpike Road, Madison, New Jersey, having been duly

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sworn, testifies as follows:

MS. PECK: I do.

A N N P E C K,

8-01 Fair Lawn Avenue, Fair Lawn, New Jersey,

having been duly sworn, testifies as follows:

MR. AZZOLINA: I do.

P A U L A Z Z O L I N A,

30 Madison Avenue, Paramus, New Jersey, having been duly sworn, testifies as follows:

VICE CHAIRMAN PUZIO: State your names.

CHAIRMAN SEIBEL: State your names and place of business.

MS. PECK: Ann Peck, Assisting Zoning Officer for the Borough of Fair Lawn.

MR. AZZOLINA: Paul Azzolina, Azzolina & Feury Engineering, Zoning Board Engineer.

MR. SIMOFF: Hal Simoff, Traffic Engineer.

MR. OCHAB: Ken Ochab, Professional Planner.

CHAIRMAN SEIBEL: The floor is yours.

MR. SINISI: Thank you, Mr. Chairman.

I'd like the Board to swear in my first witness, who is the managing member of the co-applicant in this matter, Interior Renovations Services, LLC, Mr. Joel Carriero.

CHAIRMAN SEIBEL: If you'll raise your right hand and state your name.

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MR. CARRIERO: My name is Joel Carriero.

CHAIRMAN SEIBEL: And your address.

MR. CARRIERO: 4-21 Banta Place, Fair Lawn, New Jersey.

THE COURT REPORTER: Please spell your last name.

MR. CARRIERO: C-A-R-R-I-E-R-O.

CHAIRMAN SEIBEL: Do you swear or affirm that the testimony you're about to give is true and accurate.

MR. CARRIERO: Yes.

J O E L C A R R I E R O,

4-21 Banta Place, Fair Lawn, New Jersey,

having been duly sworn, testifies as follows:

MR. SINISI: Thank you, Mr. Chairman.

DIRECT EXAMINATION

BY MR. SINISI:

Q. Mr. Carriero, what is your relationship to Interior Renovations Services, LLC?

A. I am the owner of Interior Renovations Services, LLC.

Q. Does Interior Renovations Services own any property in the Borough of Fair Lawn? And if so, where?

A. Yes, 4-24 Banta Place, Fair Lawn, New Jersey.

Q. You are aware, are you not, that in that location has been prepared with your consent, not only on behalf of PSE&G, but on behalf of Interior Renovations Services, relating to the

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development of premises designated as Block 3411, Lot 1 and also known as 4-24 Banta Place?

A. Yes.

Q. The current phase of the pending application before the Board involves a request to utilize a portion of 4-24 Banta Place for the parking needs of tenants of 4-19 and 4-21 Banta Place; is that correct?

A. Yes.

Q. So that the record is clear, can you tell the board when you acquired title to 4-24 Banta Place?

A. Early July 2012.

Q. Now, I'm going to show you the face page of the deed, dated July 10, 2013.

Do you recognize this instrument?

A. Yes.

Q. Or at least the first page?

Does it indicate that this property that you refer to as 4-24 Banta Place was conveyed to Interior Renovations Services, LLC?

A. Yes.

MR. SINISI: Exhibit A--

MR. ROSENBERG: I think it would be --

MR. SINISI: Now, how are we going to do this.

MR. ROSENBERG: I think it would be helpful, Mr.

Sinisi, just for the record that we identify each exhibit, although

in your proffer.

MR. SINISI: Okay.

MR. ROSENBERG: -- let's just make it exhibit A-1 of this application --

MR. SINISI: Perfect.

MR. ROSENBERG: -- is perfectly fine.

MR. SINISI: Thank you.

MR. ROSENBERG: Thank you. A-1 is the deed, dated July -- is that 10th or 20th, 2013.

MR. SINISI: I have July 10th.

MR. ROSENBERG: July 10th, thank you, 1-0.

(Whereupon, Deed, dated July 10th, 2013 is received and marked as Exhibit A-1 for identification.)

BY MR. SINISI:

Q. Now, what is Interior Renovations Services, LLC's association, if any, with 4-19 and 4-24 Banta Place?

A. Simply, it has the same owner.

Q. And who is the owner of 4-19 - 4-21 Banta Place?

A. That's myself.

Q. Do you use a limited liability company that actually holds title for that purpose?

A. Both individually, yes.

Q. Would that be Interior Renovators, LLC?

A. Yes.

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Q. And you are a sole owner; is that correct?

A. Yes.

MR. SINISI: Mr. -- counsel, A-2.

MR. ROSENBERG: Yes.

MR. SINISI: And that's the deed that we've attached, dated November 8, 2004. It was attached to the proffer.

MR. ROSENBERG: Got it. A-2.

(Whereupon, Deed, dated November 8, 2004 is received and marked as Exhibit A-2 for identification.)

CHAIRMAN SEIBEL: That's the deed for which property?

MR. SINISI: That is 4-19 - 4-21 Banta Place.

Now, just to put things in perspective, if we could, and this is not an exhibit that we furnished with the proffer, but is a recently acquired exhibit.

It's an aerial photo of the premises, actually both premises to show you both 4-24 and it's position and proximity to 4-19 - 4-21.

And I have several copies to distribute to the Board and its staff and I'm going to ask -- I was going to ask Mr. McDonough to do it, but I thank you very much, I appreciate it.

At this point, Mr. Chairman, I'm asking only for the first page.

There is three pages. We'll be getting to the balance of these sheets, two additional sheets when Mr. McDonough

testifies.

MR. ROSENBERG: So, Mr. Sinisi, do you just want to characterize the first sheet as Exhibit A-3 and we'll mark the others later.

MR. SINISI: Correct, yes. We'll have to bump --

MR. ROSENBERG: This is figure one.

(Whereupon, Aerial Photograph is received and marked as Exhibit A-3 for identification.)

BY MR. SINISI:

Q. Mr. Carriero, you've reviewed this aerial photo, have you not?

A. Yes.

Q. What is its significance? What does it depict?

A. I'd like to simplify the location for the Board to understand the location of 4-19 - 4-21 across the street from the parking lot 4-24.

Q. Okay. And it is the configuration of the buildings across the street, as you mentioned, from Banta Place, which would be on the east side of Banta Place; is that correct?

A. Yes.

Q. That represents 4-19 - 4-21 Banta Place.

And the property that's directly across the street or on the west side with the rail line that is depicted is 4-24; is that correct?

A. Yes.

MR. SINISI: The Chairman has a question.

THE WITNESS: Yes.

CHAIRMAN SEIBEL: With regard to 4-19 - 4-21, that's basically the white building?

THE WITNESS: It's exactly where the yellow line starts here (indicating). So this is the building here --

CHAIRMAN SEIBEL: Right.

THE WITNESS: -- and it goes all the way to this (indicating).

CHAIRMAN SEIBEL: Oh, it goes all the way to the end.

THE WITNESS: All the way to the end. So it's actually exactly right across the street (indicating).

CHAIRMAN SEIBEL: So there's a new construction going on.

If you look in the picture, there's a new building that's being -- look at it.

THE WITNESS: Yes. Yes.

CHAIRMAN SEIBEL: That's not yours.

THE WITNESS: No.

CHAIRMAN SEIBEL: So you end right there (indicating).

THE WITNESS: Yes.

BY MR. SINISI:

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Q. Incidentally, how long have you been familiar with this property or associated with this property?

A. I've actually -- it's been with my family for 77 years. And I acquired the business about 25 years ago.

So I've been the managing member of actually 4-19 - 4-21, running a business, four generation business, out of that building for 25 years.

Q. You've made Fair Lawn your home; is that correct?

A. Pretty much, that's where I live.

Q. Incidentally, the business that you refer to that you've been running, what is that business?

A. That's called Master Kitchen and Bath. And it's been family owned and operated since 1938.

MR. ROSENBERG: I'm sorry, if I may, Mr. Chairman, I want to clarify, just so I understand the record.

Is your testimony that your family has owned 4-19 - 4-21 for 77 years?

THE WITNESS: Yes.

MR. ROSENBERG: Okay. Thank you. Thank you very much.

CHAIRMAN SEIBEL: How many tenants are in there?

MR. SINISI: We're getting to that, Mr. Chairman.

CHAIRMAN SEIBEL: Okay.

MR. SINISI: I have an exhibit that focuses on the eight that were existing at the time PSE&G and my client filed as

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co-applicants before this Board, and the two that were just recently given CCOs in July of this year.

CHAIRMAN SEIBEL: We'll get to --

MR. SINISI: So let us amplify that with the list that we've already provided as part of our proffer.

BY MR. SINISI:

Q. Mr. Carriero, what, if any, parking provisions exist at 4-19 - 4-21 Banta Place?

A. There are none.

Q. Is the building built at the property line, if I may ask you that question?

A. Yes, yes, the building is built right to the property line.

Q. Now, prior to your acquisition of 4-24 Banta Place, which is the subject of this application, can you tell us who owned the property and what it was used for?

A. Steve Hoeffner owned the property and Scholastic Bus Company used it, a trucking company used it and my family had owned -- rented it per month to park for the tenants and business of 4-19 - 4-21.

Q. Now, did Mr. Hoeffner give you a written lease?

A. No, it was month to month.

Q. Now, did there come a point in time when you approached the then owner of 4-24 Banta Place to acquire this property?

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A. Yes.

Q. What was your purpose in seeking to acquire this property?

A. It was to maintain and organize the parking situation on Banta.

Q. For whom?

A. For 4-19 - 4-21 tenants.

Q. Now, did you have any personal relationship with the then owner of 4-24 Banta Place?

A. No, solely tenant/landlord.

Q. Now, did you lease space or a portion of the space at 4-24 Banta Place from the then owner prior to acquiring title?

A. Yes.

Q. And for what purpose?

A. Parking for the tenants at 4-19 - 4-21 and business.

Q. Did there come a point in time when you approached the Borough of Fair Lawn in order to undertake your due diligence and investigation before purchasing this site?

A. Yes.

Q. Why don't you explain to the Board the circumstances that led you to include communications and/or contacts with the Borough of Fair Lawn to acquire this property?

A. I simply wanted to make sure that I was going to be able to do exactly what we've been doing for years and that would be to park cars for 4-19 and 4-21.

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Q. Now, sir, I'm going to show you a copy of a letter. In the proffer it was A-3, but now we're pushing it to A-4.

MR. ROSENBERG: A-4.

MR. SINISI: So forgive us for the hand-marking, dated July 12, 2012, addressed to Interior Renovators, LLC, regarding 3411, Lot 1, Zone I2, 4-24 Banta Place.

BY MR. SINISI:

Q. Do you recognize this correspondence, Mr. Carriero?

A. Yes.

Q. And you are the sole and managing member of Interior Renovators, LLC; is that correct?

A. Yes.

Q. And this letter was written to you by whom?

A. Ann Peck.

Q. And she is the Assistant Zoning Officer; is that correct?

A. Yes.

Q. Why don't you indicate to the Board what were the circumstances that led to the production of this correspondence?

A. Can you clarify that again, please?

Q. Why did she write this letter to you?

A. To ease my mind that I would be able to continue to use this parking lot as I've used it before.

Q. Did there come a point in time before this correspondence that you met with Ms. Peck and on the basis of any

meeting that you've had with Ms. Peck, did you have a level of assurance that this property could continue to be used for parking purposes for 4-19 - 4-21?

A. The letter -- the letter clarified that.

Q. Where -- where did it clarify that?

A. It said may continue.

Q. Would you read the whole sentence?

A. "The above uses can continue on this property. Any new tenants or use will need zoning approval and based on the nature of the business could require further approvals."

Q. Correct.

MR. SINISI: Now, can we move that as an exhibit.

MR. ROSENBERG: Exhibit A-4, I believe, yes.

(Whereupon, Letter is received and marked as Exhibit A-4 for identification.)

Q. Now, at the time you acquired 4-24, how was the property being used?

A. Simply for a parking lot. No other use for it besides that.

Q. Now, at the time you acquired 4-24, can you tell the Board how many tenants of 4-19 - 4-21 Banta Place did you have?

A. Eight.

Q. Eight. Can you tell the board how many tenants that presently occupy 4-19 - 4-21 Banta Place?

A. Currently, 10.

Q. Now, is it your testimony that two applications, which were pending at the time the application was filed, have now been approved?

A. Yes.

Q. And which tenants are those?

A. Pure Glass and Alive 12.

Q. Now, have you prepared a list of the tenants located at 4-19 and 4-21 Banta Place, indicating the nature of their tenancies, the number of employees, the hours of their operation, and the nature of their businesses, as well as the number of vehicles attributable to each tenant intending to utilize 4-24 Banta Place?

A. Yes.

Q. Sir, I'm going to show you that list. Do you recognize this list?

A. Yes.

Q. Did you prepare it?

A. Yes.

Q. Are those asterisks next to Pure Glass and Alive 12 indicating that these permits for those tenants issued by the Borough of Fair Lawn subsequent to the preparation of the original list that we gave to the Board?

A. Yes.

MR. SINISI: I'd like to have this marked A-5.

(Whereupon, List entitled "Tenant

Profiles of 4-19 - 4-21 Banta Place" is
received and marked as Exhibit A-5 for
identification.)

MR. ROSENBERG: And that's the list designated as
Exhibit D in the proffer, Mr. Sinisi?

MR. SINISI: Yes.

MR. ROSENBERG: It's entitled "Tenant Profiles of
4-19 - 4-21 Banta Place," correct?

MR. SINISI: Tenant Profiles of -- yes.

MR. ROSENBERG: Thank you.

BY MR. SINISI:

Q. Now, Mr. Carriero, before this present application
was filed, had you or your entities ever made an application to either
land use board in the Borough of Fair Lawn, for permission to use 4-24
Banta Place?

A. No.

Q. Have you now had the opportunity to review the
transcript of the hearing held on May 18th?

A. Briefly, I did.

Q. Was Scholastic Bus Company, which was discussed
during that application, ever a tenant of 4-19 - 4-21 Banta Place?

A. No.

Q. Was it ever a tenant of the prior owner of 4-24 Banta
Place?

A. Yes.

Q. And they are not at this location now obviously, are they?

A. No, they had moved.

Q. They moved?

A. Yes.

Q. Was an entity known as Just Four Wheels, which was also mentioned during the transcript of 5/18/2015 ever a tenant of yours at the 4-19, 4-24 (sic) Banta Place address?

A. 4-19 - 4-21, yes.

Q. Now, do you know what happened to that tenancy?

A. They vacated because they couldn't come up with a lease with the old owner of 4-24.

Q. So they were tenants of yours in the commercial building --

A. Yes.

Q. -- but not tenants of yours at 4-24, because you didn't own it at that time?

A. That's correct.

Q. Is it your testimony that they did not pursue any further rights to utilize 4-24, other than when the current owner of the property held it; is that correct?

A. Yes.

Q. Excuse me, the prior owner of the property held it; is that correct?

A. Yes.

Q. Did there come a point in time when you leased a portion of 4-19 - 4-21 Banta Place to an entity called 4 Diamond Transportation?

A. Yes.

Q. Now, what about parking their transportation vehicles at 4-24 Banta Place, did you allow them to do that?

A. Yes.

Q. Now, you received a violation or a summons for that, did you not?

A. Yes.

Q. Did you subsequently release the tenant from its lease obligations as a result of that summons?

A. Yes.

Q. Is this entity any longer a tenant of yours?

A. Nope.

Q. And how did that come about? Do you have any recollection of what prompted that summons?

A. Well, because in the past Scholastic was the primary user of that lot.

And when I was approached by 4 Diamond, I thought it would be okay that they would park there, being that they had a lot less buses than Scholastic, and being that they rented the lot. They rented a portion of the building in 4-19 - 4-21. So they had their offices at 4-19 - 4-21. And they had their parking for the buses at 4-24, a little portion of the corner, right in front of that

triangle area (indicating) to park 12 to 15 buses.

Q. But shortly after receiving the summons you had an opportunity to confer with the building department and the Zoning Officer and were made aware that this would constitute a violation; is that correct?

A. Yes.

Q. And on that basis you set out to file an application with this zoning board for variance and other relief; is that correct?

A. Yes.

Q. Now, at my request and in preparation for this hearing tonight, did you bring copies of CCOs and permits that you hold for the tenants at 4-19 - 4-21 Banta Place?

A. Yes.

MR. SINISI: I'd like to mark those collectively, and I've given you the ones he was able to gather because as you now know there is a long history here of ownership and tenant usage.

I'd like to have that marked collectively as A-6, the ones that are attached to our property.

(Whereupon, Copies of CCOs and Permits are received and marked as Exhibit A-6 for identification.)

Q. Now, sir, as the owner and managing member of both of these properties, do you believe that the parking proposed solely and exclusively for 4-24 Banta Place by this application will be sufficient to service your tenants' needs at 4-19 - 4-21 Banta Place?

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A. Yes.

MR. SINISI: I have no further questions for Mr. Carriero.

CHAIRMAN SEIBEL: I have a couple of questions. First, you mentioned that -- was it 4 Diamond.

THE WITNESS: Yes.

CHAIRMAN SEIBEL: They received a summons?

THE WITNESS: Yes.

CHAIRMAN SEIBEL: What was the summons for?

THE WITNESS: Parking buses on 4-24.

CHAIRMAN SEIBEL: And what ever happened with that?

THE WITNESS: I believe that's still pending.

MR. SINISI: The violation is pending, but stayed pending our appearance here this evening pursuant to the Municipal Land Use Law.

CHAIRMAN SEIBEL: How long ago did he get the --

MR. SINISI: Quite a while ago. It's been pending for sometime. And it's carried pending the formation of the application and the scheduling of hearings in this matter.

I have had the consent of the zoning office to continue to carry those -- that proceeding and to appear here this evening.

CHAIRMAN SEIBEL: What was checked off as the violation, do you remember? Just illegal parking.

MR. SINISI: I didn't bring that section of the

file, but Ms. Peck --

MS. PECK: The violation for 4 Diamond Bus Company was they applied for offices only at 4-19 or 4-21, I forget which is their office, and they were given a CO for office only, no bus parking.

They then proceeded to start parking across the street and up and down the streets causing some problems with the police. And they didn't have a CO to park across the street, the buses.

And I believe that the attorney for them withdrew his -- the violation has been resolved, once they vacated the property. So that's been resolved.

MS. BARATTA: Mr. Chairman, what is the date on that the first violation?

MS. PECK: I don't have the file.

MS. BARATTA: Or the only violation.

Are we talking about a month? A year? What are we talking about?

MS. PECK: Last fall.

THE WITNESS: It's been about a year.

MR. SINISI: Approximately one year. November.

CHAIRMAN SEIBEL: And you said you first purchased 4-19 and 4-21 -- well, that was in your family, right, 4-19 and 4-21?

THE WITNESS: Yes, but I purchased it from them.

CHAIRMAN SEIBEL: You purchased it.

THE WITNESS: I purchased it.

CHAIRMAN SEIBEL: -- the new deed, dated 2004.

MR. SINISI: 2004, 4-19 - 4-21.

CHAIRMAN SEIBEL: And then in 2012 you purchased the property across the street?

MR. SINISI: July, yes.

THE WITNESS: I'm sorry, but I believe that was a correction and that was 2013.

CHAIRMAN SEIBEL: 2013.

And they're on separate deeds?

THE WITNESS: Yes, sir.

CHAIRMAN SEIBEL: You never combined the deeds.

THE WITNESS: No.

MR. SINISI: They're not contiguous.

MR. ROSENBERG: Yeah, they're not contiguous, Mr. Chairman.

CHAIRMAN SEIBEL: But you can still combine them, right.

MR. ROSENBERG: No, you wouldn't.

CHAIRMAN SEIBEL: And you're the owner of the business at Interior Renovations.

THE WITNESS: Yes.

CHAIRMAN SEIBEL: And, obviously, you purchased the Scholastic Bus property for parking.

MR. SINISI: If I may, Mr. Chairman, just make one slight correction, I think in substance you're correct. It was the

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property Scholastic Bus used or leased, it was owned actually, as was testified by Mr. Stephen Hoeffner, H-O-E-F-F-N-E-R.

CHAIRMAN SEIBEL: Anybody have any questions?

MS. BARATTA: Sir, so your business that's at 4-19 and 4-21, how much of those buildings does your business take up?

Because you had eight and now you have 10 tenants in there. What would you say the square footage of your business would be?

THE WITNESS: Okay. If you look -- if you look at the plan that we had given you, it's the entire beige portion of the building (indicating). You see the roof is a little discolored.

MS. BARATTA: So the strip to the left.

THE WITNESS: Yes, right, the strip to the left is Master Kitchen and Bath.

MS. BARATTA: So that's the only part of the building that -- the rest of it is completely leased out?

THE WITNESS: Yes, tenants.

MS. BARATTA: Thank you.

CHAIRMAN SEIBEL: Anyone else?

(NO RESPONSE.)

CHAIRMAN SEIBEL: How many square feet is the building at 4-19 - 4-21? Do you have any idea?

THE WITNESS: Approximately, 48,000 square feet.

CHAIRMAN SEIBEL: Any of our experts have any questions?

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MR. AZZOLINA: Of the 48,000 square feet would you have a rough idea of the breakdown between warehouse space and what would be used as office?

THE WITNESS: Yes, I could get that to you.

MR. AZZOLINA: I think that may be useful for the Board in formulating parking requirements for that building.

MR. ROSENBERG: We have seven voting members. Just let the record reflect that Mr. Racenstein is leaving the room.

CHAIRMAN SEIBEL: Mr. Racenstein is -- let it reflect that Mr. Racenstein has to leave for a bit.

(Mr. Racenstein steps off the dais.)

CHAIRMAN SEIBEL: If you could just review what you just said there.

MR. AZZOLINA: I had requested a breakdown of the 48,000 square feet, how much of it is dedicated to warehouse space, how much of it would be dedicated to office, and any other uses within the building that may fall within the categories in our code that define parking requirements. Warehouse is one per 900 or something to that effect. Office at one per 175 square feet.

So that basis will be helpful in determining how many spaces are necessary to accommodate those uses.

MR. SINISI: And, most respectfully, Mr. Azzolina, and this is more addressed to the board attorney, that may or may not be the case in terms of whether it is helpful or relevant, in fact, in terms of the actual square footage and the breakdown on subsequent

zoning ordinances or regulations that pertain to the square footage based formula given the nature of the use and it's existence and configuration for decades.

Nothing's changed and there's been no build out or build up. So I understand the question. I just did not want by my silence to appear to acquiesce as to what might be helpful and then, perhaps, mislead the board and have the board say, well, why didn't you object at the appropriate time as to relevancy. I'm going to let it go, because you're going to hear that portion of the testimony from our planner.

MR. AZZOLINA: Mr. Chairman, I do recognize that this building was in existence prior to the formation of the Borough code, so...

MR. SINISI: Thank you.

CHAIRMAN SEIBEL: Yes.

MR. SIMOFF: On your tenant profile you total 42 spaces. Is that -- how did you calculate that.

THE WITNESS: You mean, what's being used, currently.

MR. SIMOFF: Well, it just says number of parking. So that's the number of parking spaces that tenants use now.

THE WITNESS: Currently, yes.

MR. SIMOFF: Because it's not clear how that's calculated.

THE WITNESS: Okay.

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MR. OCHAB: One more question. You testified about --

MS. BARATTA: Excuse me, Mr. Chairman, I don't think he answered the last question. I didn't want to -- I'm sorry, I didn't want to -- you asked how it was calculated, correct?

MR. SIMOFF: My understanding is that's what his tenants use.

MR. SINISI: And he says yes.

MS. BARATTA: Thank you.

CHAIRMAN SEIBEL: Just so we're clear, so the tenants here, you're saying, use 42 parking spaces?

THE WITNESS: Currently, yes.

MR. OCHAB: I was going to just follow up on that by saying that's not what's required under the ordinance, that's just what your tenants are using at this point.

THE WITNESS: Yes.

MR. SINISI: And, Ken, for the same reason I interjected when Mr. Azzolina asked a question is going to be the same interjection about query whether, in fact, those regulations apply. But, yes, is the answer, those 42 spaces are what are currently used and have been disclosed on CCOs.

MR. OCHAB: Second question, on 4-24, can you tell us how long that lot has been used as a parking lot.

THE WITNESS: Ever since -- ever since I started occupying the space, my family since four generations.

MR. OCHAB: Well, give us a year.

THE WITNESS: Over 50 years.

MR. OCHAB: Well, if it's four generations --

THE WITNESS: Yeah, well, it's over 50 years and we're celebrating our 77th year now, so...

MR. SINISI: So approximately that long.

MR. OCHAB: And inside the building at 4-21, is it a single-story building throughout or is it two --

THE WITNESS: Majority of it is single and there's a portion of it that's a second-story.

MR. OCHAB: So that's where you're coming up with the 48,000?

THE WITNESS: Yes.

MR. OCHAB: Thank you, Mr. Chairman.

MR. ROSENBERG: Mr. Chairman, I'm sorry, may I ask clarification. Mr. Ochab asked how long 4-19 and 4-21 used the 4-24 lot for parking for 4-19 - 4-21.

THE WITNESS: It's been since -- it's been since we've been there since 1930.

MR. ROSENBERG: Just so I understand, but Scholastic Bus also used the lot for their parking; is that correct?

THE WITNESS: Yes.

MR. ROSENBERG: Can you just explain chronologically how you separate those in terms of usage over time, what percentage of the lot was used by Scholastic Bus? If you have

any information about when they began, and how much area of 4-24, 4-19 and 4-21 has used continuously for its parking purposes.

THE WITNESS: Okay. If you take a look at the aerial view, the higher portion, the higher portion of the building here (indicating), if you take that straight across, that would be the left part of the building area where we have the front of it.

MR. SINISI: That's 4-24.

THE WITNESS: At 4-24. The rear area back here (indicating) was for another tenant that the old owner used to rent to, which was a trucking company.

And then this side (indicating), the building was used as a bus terminal.

MR. SINISI: Is that the existing building.

THE WITNESS: Yes, the existing building was used as a bus terminal and then this whole side here (indicating) was where -- this whole side here was where the buses run.

MR. SINISI: Did that include any portion of the salmon-colored sections of the site plan that PSE&G is using.

THE WITNESS: You know what, actually, no, no, because the salmon portion is from the back of the building across where the trucks are parking here now, so that was always used for trucks.

And then the front portion goes straight across.

So actually the answer is -- yes, I'm going to correct myself. There's two garage doors on that side, so a little

portion of this part of the building is to repair their vans in there.

MR. ROSENBERG: So, in essence, the property was sort of separated in three distinct areas, is that fair to say?

THE WITNESS: It wasn't separated by a fence.

MR. ROSENBERG: No, no, I understand.

THE WITNESS: It was separated by --

MR. ROSENBERG: It was separated as a use, it was separated.

THE WITNESS: Yes, yes.

MR. ROSENBERG: And the front portion that you described was used historically by 4-19 and 4-21.

THE WITNESS: Yes.

MR. ROSENBERG: The back was leased out to various tenants who were not from 4-19, 4-21.

THE WITNESS: Right.

MR. ROSENBERG: Is that fair to say?

THE WITNESS: Yes.

MR. ROSENBERG: And then, forgive me, I don't have an orientation, I guess the easterly portion, east of the existing office building was used by Scholastic Bus and/or other tenants not affiliated with 4-19 - 4-21.

THE WITNESS: Right.

MR. ROSENBERG: And I don't want to put words in your mouth --

THE WITNESS: Yes.

MR. ROSENBERG: I'm just trying to understand.

THE WITNESS: This area, yes. So it was actually split in three, Scholastic, trucking and us (indicating).

MR. ROSENBERG: Okay. Thank you very much.

CHAIRMAN SEIBEL: When you were renting that area, were you -- did you sign a lease or was --

THE WITNESS: Month to month.

CHAIRMAN SEIBEL: Month to month.

THE WITNESS: The owner of the property did not give my uncle a lease.

CHAIRMAN SEIBEL: What about the other tenants.

THE WITNESS: That I have no idea what they did.

CHAIRMAN SEIBEL: All right. When you rented it, did you rent it like 20 parking spaces? How did you rent it.

THE WITNESS: It was per parking spaces, an area.

CHAIRMAN SEIBEL: So he was renting parking spaces.

THE WITNESS: Yes.

CHAIRMAN SEIBEL: That's all.

THE WITNESS: Yes, he had designated parking spaces.

CHAIRMAN SEIBEL: Anybody else have any questions?

(NO RESPONSE.)

CHAIRMAN SEIBEL: Experts?

(NO RESPONSE.)

MR. SINISI: Every body else in the audience, I

think, is either staff or our experts in case you need to know.

CHAIRMAN SEIBEL: If that's it from our experts and from the Board, then I'll open it up to landowners within 200 feet. Anybody?

(NO RESPONSE.)

CHAIRMAN SEIBEL: Seeing none. General public? Open it up.

(NO RESPONSE.)

CHAIRMAN SEIBEL: Seeing none.

MR. ROSENBERG: So Mr. Sinisi, your next witness is your planner.

MR. SINISI: No -- well, my next witness would be the planner, but Glenn's next in rotation and he'll be calling our -- very -- ever so briefly, our site engineer for the site plan.

MR. ROSENBERG: Then with all due respect, Mr. Chairman, I think it's important to hear from Mrs. Peck at this juncture before we're done, unless -- because you now have completed your proffer on the historic aspects, Mr. Sinisi? I don't want to -- it's your application. So you do it --

MR. SINISI: I really believe you should have the benefit of my full case on the record --

MR. ROSENBERG: Fine. Absolutely.

MR. SINISI: -- and then we will have -- at your call --

MR. ROSENBERG: Fine.

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MR. SINISI: -- Ms. Peck testify --

MR. ROSENBERG: Sure.

MR. SINISI: -- and we will have the opportunity to cross examine, will we not?

MR. ROSENBERG: That's fair. I think that's -- yes, Mr. Chairman, that makes sense. The totality of the application, Mr. Sinisi's application.

CHAIRMAN SEIBEL: We'll go that route.

I just want to -- we have one copy of the proffer here, so I'm passing it back and forth. So if anybody wants to see it.

MR. ROSENBERG: And just for the record, the proffers were e-mailed to all board members before the hearing.

MR. SINISI: And you did tell me that.

MR. ROSENBERG: Yes.

MR. SINISI: Because I called specifically --

MR. ROSENBERG: Yes.

MR. SINISI: -- to make sure in case extra copies were needed. You were kind enough to confirm that for me on Friday.

CHAIRMAN SEIBEL: And I'm getting old, so I knew that I was going to need a hardcopy.

MR. SINISI: We can make one available. I think I have an extra one in the file.

CHAIRMAN SEIBEL: I think we're good. If you have it, that would be helpful.

MR. SINISI: No, that's the same thing. He's talking about e-mail does things to the document.

CHAIRMAN SEIBEL: Your next witness.

MR. SINISI: I think I'm going to yield now to Glenn.

MR. KIENZ: It's my turn.

THE WITNESS: Are we done? Thank you.

MR. KIENZ: Your done, but not finished.

Hi, I have with me Gene Rotonda. He was put under oath the last time. I will remind him of one fact.

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

4000 Hadley Road, South Plainfield, New Jersey,
having been previously sworn, continues to
testify as follows:

DIRECT EXAMINATION

BY MR. KIENZ:

Q. Remember you were put under oath?

A. Yes.

Q. Remember you swore to tell the truth?

A. Yes.

Q. You're going to do that again tonight?

A. Yes.

MR. KIENZ: Is that acceptable, Mr. Chairman.

CHAIRMAN SEIBEL: Good for me.

Q. And, Gene, your license is still valid as of

tonight, is it not?

A. Yes, it is.

CHAIRMAN SEIBEL: Just state your name and spell it for the record.

THE WITNESS: Gene Rotonda, R-O-T-O-N-D-A, 4000 Hadley Road, South Plainfield, New Jersey.

Q. And you're employed by Public Service Electric and Gas?

A. By Public Service.

Q. As a permitting expert, but you were qualified as a licensed professional engineer and professional planner in the State of New Jersey; is that correct?

A. Yes.

CHAIRMAN SEIBEL: Anybody have any questions?

(NO RESPONSE.)

CHAIRMAN SEIBEL: Take it away.

MR. KIENZ: Mr. Chairman, and Board, this will be a little more tricky than I thought. Bruce will have to figure it out.

This is the same exhibit we used at the last hearing. We've already consumed A-1 tonight. This was marked A-1. So do you want to make it A-1 something else, Bruce, or what do you --

MR. ROSENBERG: No, I want to mark it A-7.

MR. KIENZ: Okay.

MR. ROSENBERG: Since we're continuing this

application, this will be A-7.

(Whereupon, Rendering is received and marked as Exhibit A-7 for identification.)

BY MR. KIENZ:

Q. Gene, you're familiar with the site?

A. Yes.

Q. And you have overseen a lot of the engineering on the site, although, you didn't actually prepare all the engineering, although you certainly assisted in it, did you not?

A. Yes.

Q. Could you please describe -- do you want to go up to the table?

MR. KIENZ: Or what works best for the Board?

Since he's got the one exhibit.

MR. KIENZ: This is the same exhibit that you had. Come on up here, Gene. I'll hold it and then we'll put the mic this way (indicating).

This is the same exhibit that we had the last -- you got to come over on this side, though, buddy?

Yeah, and I'll move the mic. Okay. That's not interfering. Right?

Q. This is the same exhibit that we had the last time, Gene?

A. Correct.

Q. And just for the record, just describe the site and

its location.

A. Okay. The existing site is known as 4-24 Banta Place across from 4-19 - 4-21.

It's on the west side of Banta Place. It's bordered by railroad siding to the west and south, basically a pie-shaped lot. To the north is a commercial building, industrial building essentially surrounding it by industrial uses.

The property right now is a paved parking area, a paved lot with an existing building, two -- one-and-a-half-story building. There is a -- two driveway curb cuts that exist, that are going to remain. I could explain as discussed at the prior hearing of approval, what's referred to as the salmon shape, it looks like a crescent shape --

MR. KIENZ: We're not going to talk about it much, I promise.

A. -- that's the area where the lay down was approved at the last hearing.

That's the area that 24 spaces in that approval and resolution are encumbered by that area as part of this application.

The total proposed project has 86 spaces. Out of those 86, 62 are outside of that salmon area. So there's 62 available.

Q. Today and the full 86 will be available once our lease is up in somewhat less than a year; is that correct?

A. That's correct. So at a minimum the 62 would be

available for the use of the landlord and tenants across the street.

CHAIRMAN SEIBEL: So there's 24?

THE WITNESS: Twenty-four are really occupied by the footprint of the fenced area as part of that approved lay down.

MR. KIENZ: This is nothing different, Mr. Chairman, from what you all approved the last time we were here, but in order to get to the final disposition of the lot we at least had to remind you about the temporary use and then that all becomes available again once we leave, again in less than a year.

MR. LOWENSTEIN: Mr. Chairman, for purposes of clarification, especially for myself who was not at the prior one, I want to make certain I understand what I'm looking at.

MR. KIENZ: Sure.

MR. LOWENSTEIN: If what I'm looking at matches what is being presented as A-7, and is that the lay down site plan, which was signed by, and pardon me as I'm entering in names, Himansu N. Patel --

THE COURT REPORTER: I'm sorry, by who?

MR. LOWENSTEIN: That's H-I-M-A-N-S-U, middle initial N, last name Patel P-A-T-E-L, on April 30th of 2015. Consigned by Shehzah C. Khan on April 29th, 2015.

MR. KIENZ: We don't have a signature on this one because it was mounted before they signed it, but if you go up to the box right above that, sir, there should be a last revision date of 4/27.

MR. ROSENBERG: Yes, that's the plan.

MR. LOWENSTEIN: And that name, just for our stenographer, the second name is S-H-E-H-Z-A-D, middle initial C, last name K-H-A-N. So we're now calling this A-7; is that correct?

MR. KIENZ: Yes, sir.

MR. LOWENSTEIN: Thank you.

MR. KIENZ: And, Mr. Lowenstein, just so you understand, because you didn't see it, as you said, this was the exhibit that we did use and it was based on the sheet, the plans that was before you too.

MR. LOWENSTEIN: Okay. It's A-1.

MR. KIENZ: Yes, sir. Now it's blown up and become A-7.

MR. LOWENSTEIN: Thank you.

BY MR. KIENZ:

Q. All right. So, Gene, you were describing the parking. You already located it. You talked about the parking in the salmon area that we have a temporary lease on that will eventually go back.

Could you describe the site plan on the pavement and the number of parking spaces and how you're showing them?

A. Yes, there are -- as I said, there's 86 spaces. There are two aisles on this drawing. The ones that are further to the north, is basically the center aisle, that acts as a gate for the temporary fence, but it's basically an aisle with a trash receptacle

at the west end, as well as tandem parking on the south side of the drive bar, essentially four handicap spaces, ADA compliant, and five oversized spaces on the furthest south side of that second aisle.

Q. Is there any lighting or is there going to be any additional lighting put on the site, Gene?

A. Yes, four 18-foot high light poles are proposed, with 250 watt high pressure sodium lights.

Q. How about signage?

A. There are some signs noted on here "reserved for tenant" signs throughout -- along here consistent with a signed parking lot.

Q. So those will go with the units at 19 and 21, so that people will know where they should and should not be parking; is that correct?

A. Correct.

Q. How about impervious coverage?

A. There's a slight increase of impervious along the northern property line. There was an area that was not paved, that was proposed to be paved, part of that overlaps the salmon area, approximately 1,010 square feet. It was discussed in Mr. Azzolina's report as de minimis, and I agree. It's a small area. There's a coverage increase from -- and the planner will talk more about that, a slight coverage increase as a result of the impervious coverage as a result of that.

Q. Are there any highlights in Mr. Azzolina's report

that you want to bring to the Board's attention? Do we have any problems meeting any of those?

A. Not really.

Q. No, because it's an existing facility, it's all paved, right?

A. Right.

Q. Do you have any other testimony, Gene?

A. No, that's all I really have.

It's pretty straight forward, basically a striping plan with lighting poles and a small impervious area.

CHAIRMAN SEIBEL: There's no problem with the lighting? Is there any residential -- well, I guess there's some further down the street, but that lighting doesn't interfere with any of the residences?

THE WITNESS: No, it's contained on the site. There's no residences nearby.

CHAIRMAN SEIBEL: Anybody else have any questions for the witness?

MS. BARATTA: Mr. Rotonda, you're giving testimony on the area that we already approved, correct?

THE WITNESS: Yeah. We actually discussed the whole plan, but you approved the use of the salmon area.

MS. BARATTA: And your testimony tonight is in reference to that area, correct.

THE WITNESS: That, as well as the rest of the

striping that's proposed.

MS. BARATTA: Thank you.

MR. KIENZ: And I think just to make -- you got it.

CHAIRMAN SEIBEL: How about our experts, questions for the witness?

MR. OCHAB: I do. Hi, Gene. In terms of the access into the site between the sidewalk and front property line, what is within that area?

THE WITNESS: It's basically -- it's basically all paved in that area.

MR. OCHAB: So it's paved right up to the sidewalk.

THE WITNESS: Yeah.

MR. OCHAB: Is there -- along the property line is there any proposed, like fencing or curbing or anything, to define where the front property line is.

THE WITNESS: Basically, the easterly edge of the striping for the parking lot will be on the property line.

So that you will know where it is out there, but that's about the best way to tell where it is. It's approximately -- it's about approximately 10 feet back from the curb.

MR. OCHAB: Okay.

So there's no demarcations then in terms of any physical structures of any kind between, let's say, parking spaces 1, 19, 37, 53, 67, which is the front parking spaces and the sidewalk area itself.

THE WITNESS: Yeah, you'll have the curb line and the sidewalk a couple feet beyond and a couple feet beyond that is going to be the striping for the parking lot starting on the property line.

MR. OCHAB: Do you know if there is a grass strip between the sidewalk and the street curbing.

THE WITNESS: I believe there was a --

MR. OCHAB: I just can't recall.

THE WITNESS: Yeah, there is a grass strip in that area. It's basically sidewalk, pavement and the grass strip between the sidewalk and the curb line.

MR. KIENZ: It's actually reflected on the aerials.

MR. OCHAB: Okay. Thanks. That's all, Mr.

Chairman.

MR. SIMOFF: What are the size of the spaces?

THE WITNESS: The parking spaces there are -- there are 9 by 18 spaces, the small ones, there's 77 of those. The handicap are standard handicap sizes. There are five that are 9 by 30.

MR. SIMOFF: And whose direction, I guess is the question, or how does the stacked parking work? They're two and three deep?

THE WITNESS: The spaces are going to be assigned to the tenants. So the tenants are going to know which space number they have. It's not a public parking lot. So it's really for tenants only and that's the purpose of the signs. So the individual -- the

landlord is going to police that and assign spaces to each tenant, from my understanding. And then they will, you know, be able to maintain their use to the tenants themselves. There's no one that arrives that goes to one of those tandem spots. You know, it's someone from the building.

CHAIRMAN SEIBEL: That's it?

MR. SIMOFF: And then as an example, space numbers five and six for the oversized vehicles, have you done a template of those?

THE WITNESS: There was -- yeah, I actually reviewed the template that was prepared by Himansu Patel that shows that they could get in and out of that, that's why there's extra width in that aisle in that area, it's pretty substantial in width. So it would take a maneuver, but it can get in there. There's approximately 70 feet, you know, straight back from the five and, you know, from six to the handicap is five feet, so there's a substantial area.

MR. SIMOFF: So let's talk about space number five, the truck would pull forward into the lot, back into the space, I would assume.

THE WITNESS: Yeah, I -- there's a fairly large curb there, so I think it would back into the space and then be able to pull out.

MR. SIMOFF: So he would have -- but it would take multiple maneuvers to get out, correct.

THE WITNESS: It would take maneuvers to get out,

because it's parallel to the lot line, yes. It can be done on site.

CHAIRMAN SEIBEL: Is that all you have?

MR. SIMOFF: Yes.

CHAIRMAN SEIBEL: Mr. Azzolina.

MR. AZZOLINA: Just a quick question regarding the quantity of spaces provided.

The plan depicts 86, the current usage is 42 for the building across the street. So basically you have a surplus of 44 spaces. I don't know if this expert is the person to ask.

Is there any contemplation as to who would be using -- what would the need be for that additional quantity of spaces?

MR. KIENZ: I think the task was more or less -- and, Gene, correct me, the task was more or less to show what could fit on the site.

So any other use, as far as I understand it, would -- if somebody came in, they couldn't go out and rent it. So if they have abundant parking, that's pretty good, especially since -- especially since there's limited parking on the street.

So it just seemed to me -- I've never heard of a town where if they had a parking lot and you had extra parking, you looked at it badly. I'm not suggesting that you're doing that at all, Mr. Azzolina. The fact is we were happy to find extra parking there.

MR. AZZOLINA: No, I'm saying -- I understand the reasons for laying it out that way. Just so that the Board is aware that there is, perhaps, the ability to lease out parking to other than

tenants of the properties across the street or this garage structure that's on this site once the Public Service lease expires.

You know, just if there needs to be some future control over that space as part of any condition if the Board were to approve the application, just so that everybody is fully understanding of what this plan depicts. That's the reason for my question/comment.

MS. BARATTA: Mr. Chairman?

CHAIRMAN SEIBEL: Yes.

MS. BARATTA: To what Mr. Azzolina was saying, that's exactly what I was thinking. Mr. Rotonda, you may not be able to answer the question, you may not be the right, proper witness for this, because you said there's going to be assigned spaces. So I'm assuming, and I may be incorrect, that the spaces are not assigned as of now.

THE WITNESS: Well, because they're not approved, but the intent is --

MS. BARATTA: People are parking there, though.

THE WITNESS: Well, I'm not sure about that part, but I'm saying is these spaces are set up for tandem spaces that they will be assigned to the specific tenants in the building.

Currently, I think the testimony was 42 spaces that have been assigned, there really is -- when you take away the handicap and the oversize, there's 51 that are left outside the fenced area that's the leased area that PSE&G is using. So they will be assigned

spaces.

MS. BARATTA: They will be assigned. And I think by some witness tonight a question that I would like to know is exactly what Mr. Azzolina said, in the past the previous owner of 4-24 was leasing out spots. And I would like to know if that is going to be continued, because there are, like you said, you have an abundance of parking there for the people that are across the street and we'd like to know if there will be leasing out of parking spaces.

MR. KIENZ: Mr. Chairman, Mr. Sinisi will address that issue.

MS. BARATTA: I saw him nodding his head. I'm sure he will. Thank you.

CHAIRMAN SEIBEL: Anybody else.

MR. SIMOFF: I just had -- I'd like to add one comment. On the west side of Banta Place the parking is two-hour parking, on this side -- on the side where the lot is. On the other side it's no parking and it's marked for a loading zone in front of the building.

MR. KIENZ: Yeah, that was exactly my point, Hal. You have a neighborhood where there isn't much parking because you have one side out of play, the other side is two hour, whether you enforce it or not, that's not the issue. You could get a ticket at two hours and one minute.

So having this lot is certainly beneficial.

CHAIRMAN SEIBEL: I understand the concern here

that are you -- are you running a parking lot business here like Downtown Manhattan.

MR. KIENZ: The answer is, I'll give you my answer, but then Mr. Sinisi will either smack me or say you did okay. The answer is no, we are not. But you can ask that again when counsel gets up to respond to your question.

CHAIRMAN SEIBEL: Mr. Rotonda, how typical -- and my experts also, how typical are these tandem spots, these stacked parking?

THE WITNESS: Tandem is very typical, especially when you have either valet or assigned parking.

It's only when you have a parking lot where the general public is coming and going that you don't really see those. But it's a very efficient way of doing it, as long as it's managed and assigned or in terms of a valet.

CHAIRMAN SEIBEL: Do you guys agree?

MR. OCHAB: Well, I'll weigh in on this first. In suburban locations, which Fair Lawn is, it's not all that typical, but it's more typical in urban environments where you have a lack of space, lack of area, and you have densities which still need to accommodate parking.

Tandem spaces work when they're assigned. And that's the important key here. When they're assigned to specific tenants, they do work. And here you have an unusual set of circumstances to be sure. So, you know, my view would be -- I would

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be okay with the tenant spaces as long as the provisory is that they're used for the tenants in the building of 4-21, 4-19. And they also are assigned to the specific tenants.

CHAIRMAN SEIBEL: And what happens when they're not assigned?

MR. OCHAB: When they're not assigned --

MR. SIMOFF: You get fist fights.

MR. OCHAB: -- chaos rains, because you get trapped into the third space and wind up having to look for the owners of the other vehicles to move them. It doesn't work. It will never work.

MR. KIENZ: Mr. Chairman, I say this with a smile, I sit on that side of the table a lot to represent also some restaurants and some towns that have had this exact issue. And the answer is on the tandems that we've put in when I've sat over there where Bruce is, the first guy in always makes sure if it's not assigned, as Ken is talking about, that he doesn't go to the back, he goes into the front spot, if, in fact, there's going to be -- so that you wouldn't have the fist fights that Hal was talking about. We have a restaurant that was just set up in Sparta that had a parking issue. We have our employees -- and that's where I represent the restaurant, our employees park in those tandems, because that way we know that it's your car and your car (indicating) and hopefully as employees you'll all get along pretty well. And you'll move the car if you're blocking the other person. And it works very, very nicely.

CHAIRMAN SEIBEL: Do they use the valet?

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MR. KIENZ: Not for the employees, but when it's busy at night, they absolutely, positively use valet and it works like a charm also.

We did the same thing in Jefferson Township where I represented the board and we had valet, so that we could have more parking on a restaurant site also.

CHAIRMAN SEIBEL: Because without these tandem spots, you would lose how many spots?

MR. KIENZ: A significant -- I think a significant number is the answer.

THE WITNESS: Approximately 45 would be the exact number but --

CHAIRMAN SEIBEL: It doesn't have to be --

THE WITNESS: It's over 40.

CHAIRMAN SEIBEL: Over 40.

THE WITNESS: Depending on how you configure it.

CHAIRMAN SEIBEL: So that would leave you with 46.

And the tenants use 42. All right.

We have to hear from the public, right?

MR. ROSENBERG: Yes, to cross examine Mr. Rotonda, if there are questions?

CHAIRMAN SEIBEL: That's it from the board?

Yes, Mr. Lowenstein.

MR. LOWENSTEIN: Just maybe Mr. Azzolina could assist me, any comment about the 98 percent impervious coverage,

concerns for the area?

MR. AZZOLINA: I recognize it to be an existing condition. I'm not aware of any flooding in the area.

I believe in connection with the prior Just Four Wheels application they actually installed a seepage pit on this site that does control a portion of the runoff. So the fact that it's already there, I'm accepting of it.

MR. LOWENSTEIN: As far as the seepage pit operating, it operates as intended.

MR. AZZOLINA: Yes.

MR. ROSENBERG: Mr. Chairman, let the record reflect that Mr. Racenstein has left.

CHAIRMAN SEIBEL: Mr. Racenstein has left.

MR. SIMOFF: I have one more quick question for Gene.

CHAIRMAN SEIBEL: Yes.

MR. SIMOFF: Did you do a layout without the tandem parking?

THE WITNESS: No, I don't believe that I've seen one. From the beginning it was tandem to try to maximize the parking.

MR. SIMOFF: Because if one were to, perhaps, add another curb cut, you might not lose 30 spaces.

MR. KIENZ: I'm confused with -- I would just like to ask a question. I'm confused as to why when you have a neighborhood that has very, very limited, even non-existent on-street parking and

you come up with a solution that is just sensitive to responding to a building that predates the zone, why would we be concerned with tandem, when the tandem really becomes the issue for the landlord, for Mr. Sinisi, because it's going to be used in conjunction with the building, with the tenants who will sign it appropriately and it becomes his problem and maybe he becomes an additional valet for his tenants.

CHAIRMAN SEIBEL: So you're saying this lot is only going to be used for this building across the street, that's it.

MR. KIENZ: And -- and don't forget about there's a building on the site too, there's a building here too (indicating), but I think that's what you're saying.

MR. SINISI: Yes, I intend to re-call Mr. Carriero to confirm the questions Mr. Azzolina has asked for the benefit of the board member, who likewise wants an answer. And it's yes to both questions.

CHAIRMAN SEIBEL: Life is all about making decisions with too little information. And we're trying to get as much information as we can.

MR. KIENZ: Understood.

And I hope you didn't think I was being short with you, because I wasn't. Absolutely, parking is becoming the issue that we're dealing with on all kinds of applications like this.

CHAIRMAN SEIBEL: I agree, but let's keep it moving.

Now we're at the 200 feet within the subject property. Any property owners wish to speak to the -- ask questions of the witness?

(NO RESPONSE.)

CHAIRMAN SEIBEL: Seeing none.

Property owners in general, the general public, if they have questions for this witness?

(NO RESPONSE.)

CHAIRMAN SEIBEL: Seeing none.

Now, one thing I would like to just remind everyone, we'll go to 10:00 with the witnesses, so we won't be taking any new witnesses past 10:00. Of course, we have other stuff that we have to do.

MR. SINISI: Let me just simply say for the benefit of those professionals who asked the questions and the board member who asked for confirmation, my client can be re-called, he remains under oath.

And he is basically saying this is not a commercial parking lot. This is for 4-19 - 4-21. Those are the tenancies that will be utilizing this space and --

CHAIRMAN SEIBEL: That's good to hear.

MR. SINISI: -- I suspect that that is what you wanted to hear formally. Do you want it from my client under oath or can I make that as his representation.

MR. ROSENBERG: As just a clarification, Mr.

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Sinisi.

MR. SINISI: Sure.

MR. ROSENBERG: Just so we all understand, based upon the tenant profile that has been entered into the record --

MR. SINISI: Yes.

MR. ROSENBERG: -- is it that there are 12 tenants identified on this list, so now within this parking area to be used by 4-19 and 4-21 the question is: Is it 12 tenants? Is it less than that? Would it ever be more than that?

And from my perspective, I mean, I -- or is your proffer that within the envelope of 4-19 - 4-21, you are legally entitled under 40:55(d)68 to have an unlimited number of tenants within that space? And I'm not being a wiseguy. I really -- I just need to, for purposes of understanding what your proffer is, based upon the record that's tonight, I just need to know an answer. I think the board needs to know and the experts need to know.

MR. SINISI: I'll make it as a general proposition as I can and make everybody comfortable, the parking that we hope to authorize and permit to be used at 4-24 is exclusively for tenants of 4-19 and 4-21 Banta Place. Whether it's the existing, whether I have two more, because I think you'll see on the list, there are two that are not, I don't have them yet.

MR. ROSENBERG: Right. That's the number of 12, though.

MR. SINISI: Yes. Well, right, although a tenant

may move out, there may be an alteration of space, there may be some interior fit-out to spaces. If two tenants move out and their adjoining, maybe it gets chopped up with some typical fit-out movements.

But so that it's clear, we're not looking to turn this into a commercial parking lot for those that do not use or do not lease 4-19 or 4-21. I thought that was the nature of the question, right, Mr. Azzolina.

MR. AZZOLINA: Yes.

MR. SINISI: Thank you.

VICE CHAIRMAN PUZIO: There's one other piece, 4-24 has a building on it. So that would also be included.

THE WITNESS: Yes.

VICE CHAIRMAN PUZIO: The tenant of that building would also park on 4-24?

MR. SINISI: Yes.

VICE CHAIRMAN PUZIO: So you have three properties parking on 4-24?

MR. SINISI: Right.

CHAIRMAN SEIBEL: And based on the testimony of the owner of the property, the property has a history, a long history of renting spaces on the property to other owners of the property or other tenants. So we're looking at it closely. We just want to make sure of everything.

MR. SINISI: Understood, Mr. Chairman.

CHAIRMAN SEIBEL: So where do we go now.

MR. SINISI: I'd like to call up our planner because those rates are very expensive. I'd like to be able to get him done, if I could, if I could.

CHAIRMAN SEIBEL: Not as expensive as the parking spot.

MR. SINISI: Everywhere.

CHAIRMAN SEIBEL: Sure. Bring him up.

MR. SINISI: I'd like to have Mr. John McDonough sworn, please, as our professional planner.

CHAIRMAN SEIBEL: If you'll raise your right hand and state your name and spell it for the record, please.

MR. McDONOUGH: Yes. Hello, everyone. My name is John McDonough. That's spelled M-c D-O-N-O-U-G-H.

CHAIRMAN SEIBEL: And your address.

MR. McDONOUGH: 101 Gibraltar Drive, Morris Plains, New Jersey.

CHAIRMAN SEIBEL: Please raise your right hand. I'll swear you in. Do you swear to tell the truth, the whole truth and nothing but the truth.

MR. McDONOUGH: Yes, I do.

J O H N M c D O N O U G H,

101 Gibraltar Drive, Morris Plains, New Jersey,

having been duly sworn, testifies as follows:

DIRECT EXAMINATION

LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.
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BY MR. SINISI:

Q. Sir, state your profession.

A. I'm a licensed professional planner here in the State of New Jersey. I'm also a member of the American Institute of Certified Planners, which is a national certification.

Q. How long have you been so licensed?

A. We're talking decades tonight, so over two decades.

Q. And is your license in good standing as you stand before this Board tonight to give testimony?

A. Yes, it is.

Q. How long have you been associated with John McDonough & Associates, LLC, and what is your relationship to the firm?

A. I'm a principal in the firm for over five years now.

Q. Have you worked on comparable kinds of projects like the one before the Board this evening?

A. This is what I do. For better or worse, this is what I do on a nightly basis.

Q. My condolences.

A. And in courts as well.

Q. Have you been qualified as an expert in planning to appear and present testimony on behalf of clients of your firm before land use boards or agencies and courts in the State of New Jersey?

A. Yes, in courts. Yes, also in front of land use boards. My practice gives me a nice cross-section -- I've been

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accepted in front of this Board as well.

Q. I was going to get there, the last question.

MR. SINISI: Do you accept his qualifications.

CHAIRMAN SEIBEL: I accept his qualifications.

And everybody accepts him.

MR. SINISI: Thank you, sir.

BY MR. SINISI:

Q. Please indicate to the Board the scope of your engagement in connection with this application?

A. Well, we were contracted to perform a planning analysis specifically with respect to the second part of the application, the bifurcated application, bearing in mind we've heard about the salmon-colored area, which has already been vetted by the board and has been approved for the lay down for PSE&G. That use variance is, let's say, off the table this evening.

We're here specifically to talk about the offsite parking variance that's before you and the associated bulk relief as well.

Just a point of clarification, Mr. Sinisi did say at the outset that the salmon-colored area is not part of the application. In fact, it actually is. I think you just heard from Mr. Rotonda that it's really a phase-in. You got the one part when PSE&G is there, and then ultimately when they're gone, we're going to open it up for more parking on-site.

Q. Now, have you reviewed the Master Plan and the

Zoning Ordinances in the Borough of Fair Lawn?

A. I have. I've gone back to the '92 Master Plan, all the way up to the current 2014, the re-exams back in '98, '04 and '10.

Q. Have you physically inspected the property?

A. I have.

Q. And the surrounding area to undertake their engagement?

A. Yes, I have.

Q. Have you reviewed the site plans which are now in evidence as A-1 and A-7?

A. Yes, I have.

Q. Describe the site.

A. So you have the benefit of the exhibit, which I put together, and I think that pictures of course speak a lot of words, but I can't remember what we marked this as.

Q. That was, I believe, A-3.

MR. ROSENBERG: Yes, that was the --

MR. SINISI: The aerial photo.

MR. ROSENBERG: Yes.

A. I'll start with A-3 just for reference purposes. I know you've had some testimony on it thus far, but for purposes of orientation and preparation, I, in fact, did prepare this. I put the yellow lines on there and the labels that you see.

And, again, for orientation purposes, north is going to be to the left in this particular photograph, to the left.

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So east would be to the top. West would be to the bottom. And south would be to the right (indicating).

We're looking at a property here that is in the southern end of town, near the border with Elmwood Park.

We've labeled the surrounding road, which includes Banta Place. That's, I'll call it, a connect-a-road between Broadway and Morlot Avenue and we got Route 208, which is off this photograph, but it is nearby as well (indicating). So we got some nice connectivity with the regional highway system as well.

Street parking, as Mr. Simoff said, is allowed on the west side of the street only. That would be the side of the subject property. It is, in fact, heavily used. I don't think you get a clear sense of that from this particular photograph, but you will, when you see my ground photograph (indicating). And, in fact, there is a two hour limitation that has been imposed on this side of the street. So that also is indicative of the demand for parking in this particular area.

Surrounding land uses we've labeled in yellow. You can see we're looking at industrial on all sides (indicating). Of course, the main property in question is the one on the opposite side of the street, which is not part of the application, per se, but which is, I'll say, the beneficiary of the application that's before you.

We know we have well-established case law that says when we have an existing building with no parking, that the parking requirement is zero. So there's actually no parking requirement over

at 4-19 and 4-21 Banta Place. Again, that building on the other side of the street, not asking for any relief whatsoever related to the parking count here. And I think that's important. Every parking space that the applicant pulled onto its property for the benefit of that across the street is an enhancement, is an alleviation or a relief valve, if you will, for parking on street.

Historic photographs. I've gone back and looked at historic photographs of the subject property. I looked at 12 different aerial photographs and this one shows you the most recent (indicating), but, importantly, going all the way back to 1930 -- well, actually, in 1930 I see nothing but raw land here. It's a little bit of a fuzzy photograph, so I can't tell if it's farmland or what.

But in the 1950s as I work through the series of photographs we do essentially see the arrangement that you see in this particular photograph on 4-24 (indicating), the subject property and 4-19 and 4-21 (indicating) on the opposite side of the street.

Interestingly, to go back to our applicant's testimony, that's corroborated by my review of the aerial photographs that this shows scattered parking throughout the site on every one of those 12 aerial photographs, but for the 1930, when we're looking at farmland or open space.

Again, as for the area, predominantly industrial. We also do have some residential as you can see in the bottom of the photograph. Really not evident or impacted by the subject use here.

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We've got the rail line dividing. We've got some outdoor storage adjacent. We got a nice woodland buffer that creates a nice divide between those residential uses and the subject property.

Q. Briefly describe the project.

A. Okay. So the project, itself, is simply a re-stripe, as you heard from Mr. Rotonda's testimony. We're looking to take what's there, it's an adaptive reuse application, re-stripe it for more efficiency. Right now we see some hazardous parking on the premises, taking advantage of what's there, working within that somewhat challenging triangular shape that you can see on this piece of property and interestingly we do have some generous area here. We're looking at a property that's more than five times the zoning requirement. So it does lend itself for some additional parking.

Q. Could we not just rush through that. I'd like the Board to hear that again. What is the area involved here?

A. We're looking at a triangular piece of property, but it is an oversized lot that is almost six times the zoning requirement.

Bear in mind 5,000 square foot lots are what are permitted in the zone. We're looking at something that's almost 30,000 square feet.

Q. And what zone is this property located in?

A. We're in the I-2 zone, which is your -- one of two industrial zones that you have here in the community. This is the more permissive of the two. The other is a more restricted business or industrial district. But --

Q. If it was the applicant's intention not to go with parking, what could the applicant build as of right on this property?

A. Well, there's a number of uses that can go here. Again, it's a very permissive use. We're looking at manufacturing, we're looking at offices, we're looking at public utilities uses here. We're looking at warehouses as well. Those are all principal permitted uses.

And, of course, we have conditional uses as well, including bus parking lots. I understand there's some history with that use here. And hospitals as well.

Q. Would you please indicate for the record what you found to be the specific variance relief that is implicated by this application?

A. Well, I'm fully prepared to go down use variance relief in the form of (d) (1) or (d) (2). There is going to be a little crossroad first that the Board -- and I think Counsel explained that well in terms of subsection 68, to validate the existing or historic use of the property. And I'll touch upon that first, go down (d) (1), (d) (2), and we have some interrelated (c) variances pertaining to coverage, as you heard through, I believe it was Mr. Ochab, that it's slightly above what's there right now and also relief related to the tandem parking that Mr. Simoff talked about.

Q. Let's get to the nub of the issue. In your professional opinion, can the applicant demonstrate or validate the use of this property as a pre-existing non-conforming use?

A. Sure.

So that goes back to our fact pattern that's been established by our applicant here and the historic use of the premises.

First, we established the use and I go back to my testimony and the testimony of the applicant, that aerial photographs and, in fact, the town tax records reveal that 4-24, our subject triangular piece of property has been used for offsite parking since at least the 1940s. If I go by the 77 year number that our applicant gave us, actually 1938. So I say since the '40s. We go back to the '30s by the applicant.

So the commencement of the use is late '30s, early '40s in terms of the offsite parking utilization.

My understanding, through the applicant, is that was an unlimited allow. There was no restriction on the number of vehicles that this applicant's business can park there four generations ago.

Additionally, we look at the continuation of the use, that there was no break in the use over that period of time or any abandonment.

Again, I fall back on the fact pattern and the sworn testimony by our witness, our operator, our applicant that for four generations it has been allowed to continually use this property without limitation for off-street -- for offsite parking purposes.

So from a planning standpoint, the establishment of

use dates to the late 1930s, early 1940s. The next thing we look at is the operative date of your zoning ordinance.

And through my colleague, David Karlbach, who testified here at the last hearing actually did some research, I believe, with Ms. Peck at the town and found that 1954 was the operative date of zoning in Fair Lawn.

So obviously the 1938, 1940s commencement of the use and continuation of the use predates 1954.

So from a fact pattern standpoint, and the test for validation of that pre-existing use under subsection 68, can be reasonably met from a planning standpoint.

BY MR. SINISI:

Q. But what if it wasn't? Then the applicant had to appear here to demonstrate special reasons to obtain a (d) variance relief?

A. And I just noticed two other little points that I wanted to make on that.

Q. All right.

A. Further, this further affirms by some permits that have been issued subsequent to the application and also the letter that was referenced under A-4 that was issued when the property owner took over the property in 2012 allowing offsite parking on the premises.

Okay. All right. So now onto the (d) (1), we're going down the Medici Doctrine, which talks about special reasons on

the positive side, particular suitability, then we've got the negative criteria, which looks at the impact on the area, as you saw in the photograph and in the zone as a whole, we know the I-2 zone runs down the length of Banta Place. So from a zone plan standpoint we're looking at Banta Place. We also have that reconciliation under Medici as to why the governing body continues to omit this use from this particular location.

So we'll start with the positive criteria. We look at purposes of zoning that are advanced here, and I'll start with Purpose A, the promotion of the public welfare, which is certainly going to be advanced by the better definition of parking, the safety and the efficiencies that Mr. Rotonda testified to in his direct testimony.

4-24, the triangular piece that is particularly suited for this use by virtue of it's historic use for similar purposes and its proximity right across the street, it lines right up with 4-19 and 4-21.

It's safe. It's convenient. It's easily accessible for the occupants of that building right across the street.

4-24 is also well-suited, because, as I said, it's oversized, it implies a higher intensity of use. It easily accommodates this additional parking thereon.

I also see the advancement of Purpose G, which is the planning goal to provide for a variety of uses and appropriate locations. This location is appropriate for parking given the

context and the fact that it does provide or respond to a demand over at 4-19 and 4-21.

I also see the advancement of Purpose M, which is the planning goal to provide for efficient use of land.

This is essentially, as I said, an adaptive re-use application, taking what's there, making it better. And in that regard requiring very little site disturbance, very little land clearing. It is essentially a lot that is clear and flat and ideally suited to accommodate this use.

Additionally, we look at the advancement of Purpose I, the promotion of a desirable, visual environment. Certainly, the site in its current condition has a haphazard appearance. By new striping, cleaning the edge of the property, with related to that additional impervious coverage we're going to give a nicer edge. It's going to provide for a more organized appearance on the property, certainly a much better managed facility, which will certainly improve the image and the identity of this particular site.

And then, of course, finally, the promotion of the free flow of traffic, Purpose H. By relieving some of that congestion on the street and pulling it offsite, so that goal is also met. Those are the special reasons on the positive side.

With respect to the negative criteria and the tiers of the negative criteria, certainly nothing about this application is going to put anyone in harm's way. There are no substantial safety or security concerns, no fire issues or the like and certainly this

land use is less intense than permitted uses within the zone.

From a performance standpoint, there are no substantial health impacts in terms of pollution, air pollution, water pollution, solid waste, it's a very benign form of land use.

And then finally, the so-called nuisance criteria. There was a good question about the impacts of glare on the adjacent properties. I think those ground photographs that we provided show that there's a nice visual divide and a buffering between us and the surrounding property.

Lastly, we look at the impacts on the zone plan and ordinance and this is not going to impair the vision or the integrity of the zone as articulated in your Master Plan. It constitutes only a very small portion of the overall zone.

So in that regard the applicant or the board in granting an approval would not be acting in the capacity of the governing body and granting something that is tantamount to a complete rezone.

It also advances the Master Plan goals to provide for a stable commercial base. That's a very broad planning goal, but there is actually a very specific reference to Banta Place in the Master Plan.

Q. What does it say?

A. It's the only place that I see a reference to Banta Place. And it says:

"The I-2 zone along Banta Place is

contained and overall appears to be adequately maintained. Improvements should continue to be made to the sites, signage, sidewalk and landscaping in the area."

Again, the upgraded site, I think, is right on point with that language in the Master Plan.

So from a planning standpoint in terms of impact on the Master Plan or zone plan, I see no planning purpose that's articulated or implied that's impaired by this application.

Q. Is it fair to say that there is no substantial detriment related to this application?

A. Correct.

Q. Is it fair to say from a planning perspective that this application satisfies the suitability test from the MLUL?

A. Yes, it does.

Q. Is it fair to say that this application reconciles with the Master Plan of this community as far as it's not only broad, but also specific objectives to Banta Place?

A. Correct. It hits all the statutory requirements for grant of relief for (d) (1) under the Medici standard if, in fact, the Board finds that it's not a pre-existing nonconforming use.

Q. Thank you for that caveat.

As to the (c) variances, give us your benefit of your evaluation and justification for granting them.

A. Sure.

In brief, the coverage variance is de minimus in scale. We're looking at relief of three percent over that which presently exists.

Presently, we're at 95 percent. The applicant is looking to clean up the common boundary with the property immediately to the north and you could see from my aerial photograph that they're parking over that area now anyhow (indicating). So it's a combination of weeds and dirt as is. It's not what I would call high quality pervious coverage.

So this will square off the site (indicating), it will make the site safer, more efficient and certainly will not have a significant environmental or functional impact on the property. So the (c) (2) balancing is met.

To a certain extent, there's a hardship related to (c) (1) and the physical condition of the property. I'll fold that in as well as a practical difficulty that satisfies the (c) (1) standard.

The last relief relates to the fact that the applicant is looking to have tandem parking here. We ran through the numbers overall. But the planning rationale is that otherwise we would have efficient use of space. We have overly wide aisles. It's better from a planning standpoint. Particularly, when there's a need across the street to provide for additional parking, I believe this works. And I think the testimony of Mr. Ochab, which I agree as well, is that it all comes down to management and the fact that an applicant

provides for a single user with those tandem spaces. It really falls upon the policing of the site and self-policing by the occupants themselves. That's where this type of arrangement works.

I think the applicant is committed to that and in that regard the benefits of tandem parking here substantially outweigh any detriments. So the (c)(2) balancing is met there as well.

I think that's it in terms of direct testimony. We've heard the (d), the (c), and the 68.

MR. SINISI: And in the interest of time, knowing we're getting close to the bewitching hour, Mr. Chairman, I won't repeat the stereotypical questions of the professional planner as to whether or not special reasons exist.

He's testified to that in his direct testimony, as well as whether the two prongs of the negative criteria have likewise been met. He's answered yes to both.

THE WITNESS: I affirm.

MR. SINISI: Thank you.

MR. ROSENBERG: Mr. Sinisi, just for housekeeping, I want to make sure for the record, A-8 will be page two of Mr. McDonough's photographs and A-9 will be page three.

(Whereupon, Photograph, page two, is received and marked as Exhibit A-8 for identification.)

(Whereupon, Photograph, page three, is

received and marked as Exhibit A-9 for
identification.)

MR. SINISI: Thank you.

MR. ROSENBERG: Just so we have it on the record,
Mr. Chairman.

Thank you.

CHAIRMAN SEIBEL: Any questions from the board for
this witness?

MR. ROSENBERG: Have him come back for cross.

CHAIRMAN SEIBEL: We're going to make a motion to
adjourn and come back with a fresh head. And maybe we can think of
some good questions to ask, but after 9:30 it's a little foggy.

But if that's okay with you, that's how I would like
to handle this.

MR. SINISI: 10:00, we abide by your curfew, Mr.
Chairman.

MR. LOWENSTEIN: Mr. Chairman, may I ask through
you to the applicant, how many more witness are you intending to call?

MR. SINISI: Actually, I only had potentially one
other witness as a rebuttal witness who's been a tenant in 4-19 since
the early '80s, I believe, if needed.

I think our direct testimony is not going to be
contradicted, but I have that one witness as a rebuttal. I'm
effectively concluded, subject to the right to recall my witnesses
based upon what I hear from board professionals.

LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.
201-641-1812

MR. LOWENSTEIN: The other counsel, anybody further from you?

MR. KIENZ: No, I have no one.

And I just want to make sure, you're done with the planner for tonight, right? And done, done? There are no questions of him anymore; is that correct?

MR. ROSENBERG: No, I don't think that at all.

MR. KIENZ: That was a question. That wasn't a statement.

MR. ROSENBERG: No, I believe that --

MR. KIENZ: Because we're trying to schedule meetings.

MR. ROSENBERG: Yeah, sure. I think he's going to be subject to cross by our professionals and members of the board.

MR. KIENZ: Oh, I thought there were no questions.

What dates do we have to carry this to?

You have no more witnesses, except that one rebuttal. I have no more witnesses, so the case is done.

MR. ROSENBERG: I believe our planner has questions.

MR. OCHAB: I actually wanted to hear from Ann as well on the --

MR. ROSENBERG: Yes, she has to testify as well.

MR. OCHAB: So, and I have some questions as well.

MR. KIENZ: You have questions of John.

MR. OCHAB: The planner, the planner, yes.

MS. PECK: We're going to carry it.

CHAIRMAN SEIBEL: Yes.

MS. PECK: August 24th.

VICE CHAIRMAN PUZIO: We have MJRL is also carried on the 24th.

CHAIRMAN SEIBEL: There's three.

MS. PECK: Yeah, they'll just keep getting bounced.

MR. SINISI: Excuse me, was that August 24th.

MS. PECK: Yes.

MR. KIENZ: Would this application be the first on.

MS. PECK: For commercials, yes.

MR. KIENZ: So the answer is no, we probably wouldn't get on until 8? We're just trying to do scheduling. We have lots of places to go.

MS. PECK: I only have one residential on for August. I tried to keep it light in lieu of the commercials we have backing up. So I would say maybe 7:30, quarter to 8 you'd get on. I would say be here for like 7, because I don't know how fast the application is going to be. It's not that big of an application.

MR. KIENZ: John, as long as you know what it's going to be. We might have to get out by 8:30, 9:00.

MR. McDONOUGH: Do you want me to put this on the record here? I have to be in Cranford at 8:15.

MR. KIENZ: That's not going to happen.

MR. McDONOUGH: But I'm not testifying first, so...

MR. PECK: Or September 28th.

MR. SINISI: Can I just ask, is there an alternate date to the 24th?

MS. PECK: Well, our next regular meeting is August 24th and then after that our next regular meeting after that is September 28th.

MR. KIENZ: That's not going to work, because you'll probably be back in Cranford that day.

8:15 is the start up time?

MR. McDONOUGH: They start late, yes. They start late and I testify fourth.

MR. SINISI: If we could, Mr. Chairman, book it at 8/24, 7:00, first commercial.

MS. PECK: Yeah, it's going to be closer to the 7:30, because there's one residential.

MR. SINISI: Sure.

CHAIRMAN SEIBEL: We'll do what we can. Thank you.

MR. SINISI: Thank you, sir.

MR. KIENZ: So for the record, this application is being carried to August 24th at 7:00, no further public notice will be required.

MS. PECK: An extension of time is granted.

MR. KIENZ: I'm just thinking if we need it. Yeah, you need it. Yes, extension of time is granted.

CHAIRMAN SEIBEL: Thank you very much.

MR. KIENZ: Thank you, Mr. Chairman, Members of the
Board.

MR. SINISI: Goodnight everyone.

CHAIRMAN SEIBEL: Goodnight.

(Whereupon, the matter is continuing at
a future date. Time noted 10:04 p.m.)

C E R T I F I C A T E

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

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

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

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

Dated: _____