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BOROUGH OF FAIR LAWN
MUNICIPAL BUILDING
ZONING BOARD OF ADJUSTMENT
THURSDAY, JANUARY 21, 2016
COMMENCING AT 7:49 P.M.

.....
IN THE MATTER OF : TRANSCRIPT
: OF
APPLICATION #2015-27, VR II : PROCEEDING
20-19 FAIR LAWN AVE, LLC :
20-19 Fair Lawn Avenue :
Block 4701.01, Lot 1, Zone B-1 :
.....

B E F O R E:

BOROUGH OF FAIR LAWN ZONING BOARD OF ADJUSTMENT

- THERE BEING PRESENT:
- RICHARD SEIBEL, CHAIRWOMAN
 - KEVIN PUZIO, VICE-CHAIRMAN
 - JAMES LOWENSTEIN, SECRETARY
 - YELENA PERCHUK, MEMBER
 - JEANNE BARATTA, MEMBER
 - SAMUEL RACENSTEIN, MEMBER
 - AVI NAVEH, ALTERNATE II
 - MARK ZHARNEST, ALTERNATE III
 - JOSHUA REINITZ, ALTERNATE IV

LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.
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A P P E A R A N C E S :

THOMAS RANDALL, ESQUIRE
Counsel to the Zoning Board of Adjustment

ALAMPI & DE MARRAIS
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Counsel to the Applicant

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

ANN PECK, Assistant Zoning Officer
CATHY BOZZA, Recording Secretary

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I N D E X

<u>WITNESS</u>	<u>PAGE</u>
CALISTO BERTIN	10

<u>PUBLIC QUESTIONS AND COMMENTS</u>	<u>PAGE</u>
(None.)	

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVID</u>
	(No exhibits.)		

1 CHAIRMAN SEIBEL: Counselor, you'll
2 state your -- you look younger than you did the last
3 time I saw you.

4 MR. ALAMPI: Going in the right
5 direction here.

6 For the record, Chairman, Santo Alampi
7 on behalf of the applicant VR II, 20-19 Fair Lawn
8 Ave, LLC. As the name suggests, the subject property
9 is 20-19 Fair Lawn Ave. It's Application No.
10 2015-27. I have received the certifications from all
11 of the board members who missed meetings and read
12 transcripts, and, of course, I thank everybody for
13 doing that. I can't tell you how important that is
14 to the applicant. So thank you very much.

15 Last, the applicant was here, all of
16 the testimony has been submitted and we were here
17 back in December, over the holidays, we were
18 attempting to meet and discuss with the county. So
19 one of the issues that was being addressed at the
20 county was the traffic lights.

21 Unfortunately, in our discussion with
22 the county, the county has taken the position that
23 those traffic signals were revisited some 16 months
24 ago. They seemed to indicate that it had something
25 to do with the development of the Promenade on 208

1 and that the issue was looked at in one capacity or
2 another, and they're not inclined at this point to
3 revisit that issue.

4 The other issue that was raised was
5 with respect to the ingress/egress on Fair Lawn
6 Avenue. And the application, as it stands, is for
7 ingress and egress on to Fair Lawn Avenue.

8 Obviously this board had voiced some
9 concern regarding possibly the -- what I would
10 consider, the illegal left turn across Fair Lawn
11 Avenue, three lanes of traffic into the site. The
12 county seemed to share that concern, and the county
13 is looking at what I'll refer to as a pork chopping
14 of that inter -- or that ingress/egress a little more
15 expansive than what was before the board. They
16 seemed to want to angle it a little bit more and
17 really determine crossing across Fair Lawn Avenue and
18 making that hard left. So that will continue at the
19 county level. I anticipate they may make that
20 situation safer in their mind, probably in the
21 board's mind as well. But those conversations have
22 taken place. The county then seemed to indicate that
23 if we were unable to work that into -- or that
24 ingress/egress to the county's satisfaction, that it
25 would turn into an exit only onto Fair Lawn Avenue

1 making a right. So we would not actually access the
2 site from Fair Lawn Avenue.

3 With that being said, the application
4 is as presented this evening. Obviously, it's
5 subject to county approval. What I would ask is if
6 the board were to look favorably upon the application
7 that the board allow the county to dictate how that
8 egress/ingress gets determined off of Fair Lawn
9 Avenue. It's going to the pork chop for the county
10 specifications, and it will be a pork chop
11 egress/ingress if the county determines that they
12 want it to be an exit only, then it's going to be an
13 exit-only situation.

14 So I would just ask that the board
15 consider that in its deliberation, and if the board
16 were to vote favorably upon the application, that
17 that work its way into the resolution. This way if
18 the board were to approve the application and go onto
19 county approval, they're not back in front of the
20 board interfering with other business.

21 You do have a written report from not
22 only the county, but the board's traffic consultant,
23 Mr. Miskovich. So there's an incorrect statement in
24 both of those reports that it was going to be ingress
25 only onto this site off of Fair Lawn Avenue. When,

1 in fact, it was talking about exiting the site from
2 Fair Lawn Avenue. So it was picked up by both in our
3 subsequent conversations with the county.

4 It's been made clear that if we cannot
5 rework that driveway for ingress and egress to the
6 county's satisfaction, that it would be an exit-only
7 making a right onto Fair Lawn Avenue heading towards
8 Borough Hall.

9 Chairman, other than that, I do give a
10 summation probably as long as the hearing itself. I
11 can assure the board that this application was well
12 vetted. I know that the board sat through it, those
13 of you who have read the transcripts. The attorney
14 who I'm subbing for is very thorough and tends to
15 cover all points multiple times. So with that, I
16 won't go through the long testimony. And I have
17 Mr. Bertin here if the board has any questions that
18 I'm unable to address, regarding what I just spoke
19 about, as Mr. Bertin was also involved in the
20 conversations with the county planner.

21 CHAIRMAN SEIBEL: Thank you.

22 Now, if we have questions for
23 Mr. Bertin, that means we have to open it back up,
24 right?

25 MR. RANDALL: Well, I mean, the hearing

1 is closed.

2 If there's information, trying to
3 gather some information from Mr. Bertin, it's fair to
4 ask him -- if anyone wants to ask questions on that.
5 Technically, the record is closed for the hearing,
6 but for the purpose of the time we got the letter,
7 since we came here, which is kind of -- well, which
8 is important to the board's consideration in their
9 analysis. So if there's a question for
10 clarification, it's appropriate to ask a question.

11 CHAIRMAN SEIBEL: Yes.

12 MR. NAVEH: Mr. Chairman, I'm just
13 curious, the changes -- I mean, I know this is just a
14 discussion between us, but does this affect the
15 application in any way if there is issues with the
16 county roads and they need to effect the site at all?
17 I'm just not sure what, if we need to, opening up to
18 discuss that or is that something --

19 CHAIRMAN SEIBEL: Hold that thought.

20 MR. NAVEH: Okay.

21 CHAIRMAN SEIBEL: Hold that thought for
22 one second. Now, I want -- this letter came after
23 the session was closed.

24 MR. RANDALL: Correct.

25 CHAIRMAN SEIBEL: So how does that

1 affect anything? I mean --

2 MR. RANDALL: Well, when you're voting
3 you're bound by the record. This is a -- this is a
4 record that's prepared under oath. Everything you're
5 supposed to decide is based on the record.

6 Now, you received additional
7 information from the reports, which may clarify some
8 issues for you from the county. One of the questions
9 of the board -- two issues that Mr. Miskovich covers
10 in his letter is one factor if there was an issue of
11 the pork chop, addressing how ingress and egress
12 would affect Fair Lawn Avenue, which may be at odds
13 with what the present plan was before this board and
14 considered by the board and testified to. A second
15 one which I don't think has been touched upon in his
16 report also has to do with the timing of the lights
17 at any signalization, which I can't -- I know it was
18 a question the board wanted addressed, how that
19 factors into the board's decision is part of any
20 discussions you may have on the subject.

21 But back to your original question,
22 you're bound by the record. This is informational.
23 This is information for us, but we're not taking
24 additional testimony, so we're not reopening the case
25 at this point.

1 CHAIRMAN SEIBEL: Okay. If we could
2 talk to -- I have -- I think part of what you're
3 asking could be answered by the traffic expert -- the
4 engineer.

5 MR. ALAMPI: I don't know what the
6 question -- is there a specific question?

7 MR. NAVEH: Well, I was simply looking
8 at the letter and the report from the county, and I'm
9 trying to understand, like, these changes, like, if
10 they're either modified versus -- or taken as they
11 are, like, the changes that they say you can't make a
12 left turn. Does it affect the site at all? Will it
13 affect any changes on the site if you had to modify
14 now the road configuration?

15 I'm just trying to understand how this
16 effects the application we're voting on.

17 MR. ALAMPI: Interior on the site,
18 you're saying?

19 MR. NAVEH: Yeah.

20 MR. ALAMPI: Interior? Within the
21 site?

22 MR. NAVEH: Yeah, within the site, is
23 there anything you could change due to what the
24 county is now asking you to do?

25 CHAIRMAN SEIBEL: And you're sworn in.

1 Just state your name.

2 C A L I S T O B E R T I N ,

3 having been previously sworn, testifies as

4 follows:

5 MR. BERTIN: Calisto Bertin,

6 C-A-L-I-S-T-O B-E-R-T-I-N.

7 Many of the county's comments are just
8 things to fill out their checklist. It would not
9 affect the internal circulation. It will not affect
10 the internal site plan. What we're down to is just
11 the configuration of the driveway. And that is
12 common in all of the county -- in all applications on
13 the county road, they control the driveways. And so
14 that's -- that's the only change.

15 MR. NAVEH: Does it affect, like, the
16 entry or exiting of any of the delivery vehicles? If
17 the recommendations of the county have to followed
18 and there's no way to compromise that, will that
19 change at all?

20 MR. BERTIN: In this regard, as
21 Mr. Alampi said, the -- the two letters are incorrect
22 in that if there's going to be one driveway one way,
23 it's going to be an exit. So --

24 MR. ALAMPI: Onto Fair Lawn Avenue.

25 MR. BERTIN: Onto Fair Lawn Avenue, a

1 right turn exit only. And that's what was proposed.

2 So the only change in that, I mean,
3 everybody who enters the site would enter from
4 Pollitt. Our truck template show that trucks can --
5 we show them both ways; they could enter from either
6 road. So they would enter from Pollitt. All the
7 vehicles would enter from Pollitt, anyone coming from
8 -- you know, from the east heading -- well, heading
9 towards Borough Hall or heading towards Route 208,
10 would just make a right turn on Pollitt and a right
11 turn into the site.

12 MR. RANDALL: Mr. Chairman, just in
13 terms -- what I was saying is looking for an
14 explanation. We're not explaining the testimony. We
15 have to understand what it says. I want to be clear
16 that if there were anything that were to be proposed
17 and done, even if this were to be approved by the
18 board, if it would materially affect anything beyond
19 what be considered as a field change, as far as any
20 of the bulk requirements, or trigger any other issue
21 to the plan, that's something they have to come back
22 for.

23 So whatever -- whatever -- if it is --
24 it is not considered -- this is not intended as a --
25 as expanding any approval beyond what is before us,

1 subject to whatever may be, you know, considered by
2 our engineer as a field change. So we're not going
3 to grant any further variances or deviation from the
4 zoning requirements by virtue of what might be a
5 widened pork chop. Discuss what the county might do
6 with it.

7 CHAIRMAN SEIBEL: Anybody have any
8 questions?

9 MS. BARATTA: Chairman, for our
10 attorney, just to go further on the explanation that
11 you just gave, for instance, if widening of the
12 driveway is going to change the site in any way, they
13 would have to come back to this board?

14 MR. RANDALL: If it was going to have a
15 material effect on the change --

16 MS. BARATTA: Maybe parking?

17 MR. RANDALL: Absolutely. Absolutely.
18 Because we have nothing in front of us.

19 MS. BARATTA: Correct.

20 MR. RANDALL: We're being -- basically
21 what he's leaning towards more is a concept possible
22 different alternate to we have no input on, no
23 evidence on and quite frankly, he's trying to avoid
24 having to come back.

25 And so if that's what he wants to do,

1 and the board, you know, in whatever consideration
2 you may get to that, may or may not find that
3 acceptable, may not feel -- may not have a
4 comfortable level with that information and you can't
5 go that way.

6 So that's why I'm trying to stress to
7 the board that this is not testimony. This is by way
8 of explanation of a letter, because I want it to go
9 on record of what we have before us.

10 MS. BARATTA: Because our record is
11 closed?

12 MR. RANDALL: Yes. And just to give an
13 understanding that if there was a request that there
14 might be a different concept, which would not --
15 which would be essentially something that the would
16 not amount to anything more than a field change or a
17 design change of no consequence by the counsel -- by
18 the board rather or the engineers, which often
19 happen, small changes. That might be something
20 acceptable.

21 But, again, it comes down to whether
22 the board is comfortable with the concept and what
23 would happen if it were to do anything, trigger any
24 -- any magnitude, they would have to come back.

25 MS. BARATTA: Thank you. That

1 clarifies it.

2 CHAIRMAN SEIBEL: Yes?

3 MR. NAVEH: I just want to point out
4 then something I've read in the county's report on
5 page four, point 15:

6 "Discuss no maneuvering into or out of
7 a parking stall, would be permitted within 20
8 feet of the right-of-way line along the
9 entrance lane. Interior layout modifications
10 may be required."

11 So that's talking about something
12 within the -- within the property, which is why I was
13 concerned, like if this is something that's going to
14 have to be addressed and there is a change in the
15 parking situation. That's my question.

16 MR. ALAMPI: Yeah, there's no question
17 that if we lose a parking space, we have to redesign
18 the internal layout of the site, that's this board's
19 jurisdiction and we'll have to come back to this
20 board. I guess all that I was trying to inform the
21 board was, I was trying to be candid with the board,
22 that these conversations have taken place with the
23 county. That while we're trying to accomplish this
24 pork chop as the entranceway on Fair Lawn Avenue,
25 there is a possibility that we're going to lose the

1 ability to enter the site on Fair Lawn Avenue. It
2 may become an exit-only situation.

3 If the county were to make that change
4 and the application was approved at the county with
5 an exit only, then Counsel is correct.

6 The question becomes is that a material
7 substantial change to the application that requires
8 this board to reconsider it? Or is it a field change
9 that the engineer can say, I've looked at this, you
10 don't need to go back to the board, it's a field
11 change.

12 I just want the board to understand
13 that because we've already spoken to the county, we
14 know this. And it's possible.

15 Usually what happens is I come before
16 the municipal court, I get an approval, I go to the
17 county, and then the county says, well, this isn't
18 going to work. You can't do this, in which case we
19 come back to the board.

20 In this situation, we've already
21 interfaced with the county and have this guidance
22 from the county.

23 So I don't want the board to think that
24 the applicant is misleading the board, or has, you
25 know, any ill intention here.

1 That's a possibility, and if it
2 happens, then we'll either come back to the board or
3 we'll deal directly with the engineer on what the
4 engineer has determined to be a field change. In
5 which case the boards that I represent will ask me a
6 lot of the time after the fact, well, we approved
7 this as a two-way driveway, now it's a one-way
8 driveway, how did this happen? And it's because the
9 board professional determined that it was a field
10 change and that it was appropriate after interfacing
11 with the other professionals in the county. So it
12 was merely to inform the board and clarify some of
13 the letters that the board had because we've had this
14 interaction.

15 With that, the application is as it
16 stands. And if the board -- if something happens
17 with the county and the board professional feels that
18 I have to come back to the board, I'll come back to
19 the board.

20 MR. NAVEH: Thank you.

21 CHAIRMAN SEIBEL: It's a pickle. The

22 --

23 VICE CHAIRMAN PUZIO: One quick --

24 CHAIRMAN SEIBEL: Yes.

25 VICE CHAIRMAN PUZIO: -- question I

1 have, so as part of this the county recommended
2 modifying the driveway. Have you already looked at
3 doing that to make the pork chop larger?

4 MR. ALAMPI: Yes. Yes.

5 VICE CHAIRMAN PUZIO: What exactly
6 would that entail?

7 CHAIRMAN SEIBEL: Now we're getting
8 into --

9 VICE CHAIRMAN PUZIO: Okay.

10 MR. RANDALL: It's a fair question.

11 MR. ALAMPI: It's a fair question. The
12 question, really in my mind, comes down to whether or
13 not we can do it. I would imagine the -- you know,
14 the testimony that anybody would hear is we made this
15 change to curbing, etcetera, etcetera to -- to do
16 this. I don't think it impacts planning, I don't
17 think it impacts zoning.

18 Planning maybe from a safety
19 standpoint, but, you know, if the board felt that
20 that design was more desirable as the county may
21 feel, that would be a better thing. It makes the
22 site that much safer with regard to the concern, I
23 think, at that inter -- with that point of egress or
24 ingress.

25 CHAIRMAN SEIBEL: Yes?

1 MR. NAVEH: Can we, in our resolution,
2 state what we consider a material change?

3 MR. RANDALL: Well --

4 MR. NAVEH: Like just --

5 MR. RANDALL: No, I know what you're
6 asking.

7 MR. NAVEH: Okay.

8 MR. RANDALL: And I'm just wondering to
9 what extent the board wants to go there. I think,
10 you know, you have -- I go back to my original point,
11 is you really have to have a comfort level. Try to
12 imagine what's going to happen here.

13 MR. NAVEH: Yeah.

14 MR. RANDALL: And you have plans before
15 you and the timing and just to be fair, I know
16 counsel trying to do everything he can for his
17 client. The timing and the fact of going to the
18 county, I think that's fair in asking for a vote is
19 not this board's, you know, doing.

20 I mean, I realize it's a holiday season
21 where there's things the county couldn't get to, but
22 the fact that it's kind of in limbo at this point is
23 not something that's put on this board.

24 This board's heard the application and
25 dealt with the testimony as is and the plans were

1 submitted. So if there's a problem, and there's
2 ambiguity or some doubt, the board can only go so far
3 in trying to resolve it.

4 CHAIRMAN SEIBEL: We've done our part
5 in that we've had a full, fair and robust public
6 hearing, that we heard all the testimony. It just so
7 happens that this letter came after we had concluded
8 our testimony.

9 Now I guess what we can do, before I
10 forget, I mean, this -- one of the first things --
11 well, do you want to have a discussion between the
12 members of the board, just to talk this over.

13 MR. LOWENSTEIN: Sure.

14 Mr. Chairman, if I may address the
15 applicant's counsel.

16 CHAIRMAN SEIBEL: Sure.

17 MR. LOWENSTEIN: Mr. Alampi, I just
18 want make -- get it clear in my mind, that as
19 submitted your application seeks a two-way, an egress
20 and an exit -- an entrance and exit on Fair Lawn
21 Avenue. Is that correct? As currently submitted?

22 MR. ALAMPI: That is correct, that is
23 the application.

24 MR. LOWENSTEIN: Okay. Thank you.

25 CHAIRMAN SEIBEL: Anybody else? Would

1 you like to talk about it between the board?

2 MR. NAVEH: I would like to know also
3 if other board members, how they feel about, you
4 know, the letter from the county, if they have an
5 opinion or -- I'm asking if the other board members
6 have an opinion about the letter from the county and
7 if they have similar opinions about this at all or am
8 I the only one bringing this up?

9 CHAIRMAN SEIBEL: Anybody?

10 MS. BARATTA: Well, the record is
11 closed now on this.

12 We've heard the testimony for many,
13 many days. And the testimony is closed. This, as
14 far as I'm concerned, is another variable to this
15 application, which gives it numerous scenarios that
16 would happen; the widening of the driveway, we can
17 change some of it.

18 And as our attorney said, if that's the
19 case, the applicant would come back to this board.
20 So that's my thought. I mean, I thought this
21 information was very important in regard to
22 discussing the lights, the sequence of the lights,
23 what kind of lights. I felt it was very important.
24 I'm glad that this board decided to have Mr.
25 Miskovich go to the meeting to give us his report on

1 this as well.

2 But in my mind this adds some more
3 variables to this application.

4 CHAIRMAN SEIBEL: I'll just add that
5 this is a very complex site. This is not a -- you
6 know, a 50 by 100 site on the interior lot on a
7 cul-de-sac. This is a -- this is a keystone site in
8 town, in that corridor, right there from Abbott Road
9 to Route 208.

10 Obviously, if we all live in town, we
11 know what's going on there. One of the first
12 questions I asked -- and Mr. Bertin, you may
13 remember, was I mentioned that the timing of the
14 light was off.

15 And the timing of the light is off
16 causing cars to back up on the railroad tracks. And
17 now we're getting this from the county telling us
18 they've taken care of that. That bothers me.

19 And I don't know how many times you
20 folks have been caught at that light. If you go over
21 the railroad tracks, and right away the light turns
22 red and your rear end is hanging out on the railroad
23 tracks there. The county -- I guess they're pretty
24 clear that they're not going to do anything about it.
25 That they already have.

1 So as far as I'm concerned, 16 months,
2 I haven't -- if anything, I've noticed it's gotten
3 worse.

4 Yes?

5 MR. RACENSTEIN: What I read from the
6 county, the county said no, but they will reword it,
7 or revote it, if the people change the -- if the
8 people change for all the laws and the agreement --
9 the agreements to the -- and to the site.

10 If they go ahead -- if the attorney, as
11 its people, we will say, we will abide by the county,
12 whatever they want we'll do it, then the county will
13 come back to us and they will change it and give a go
14 at it to the site.

15 CHAIRMAN SEIBEL: Now, you see that
16 opens another can of worms because now is the county
17 now telling us how it's going to be at Pollitt Drive
18 and Fair Lawn Avenue?

19 VICE CHAIRMAN PUZIO: From the letter
20 it appears that way.

21 MR. LOWENSTEIN: I have a procedural
22 question for Mr. Randall. Correct me if I misstate
23 this, but it's my understanding that this board will
24 make a recommendation to take a vote. And no matter
25 what we say -- well, let's assume it's voted for

1 approval, that even if we approve it, that the county
2 has -- is higher up in the pecking order and they
3 have the right to impose terms and conditions whether
4 we agree with them or not?

5 MR. RANDALL: Well, yes and no.
6 They're higher up in the pecking order in terms of
7 what they can decide on a county road.

8 As far as the approvals, you know,
9 we're all subject to each other, and ours are
10 co-equal in that sense, but if they do impose
11 something like that, that we don't agree with, that
12 affects our view of the -- the board's view of the
13 property. They might impose something that's made in
14 their decision, but that is one of the -- the whole
15 basis of approval by the board, had they known this
16 was going to be done by the county, they might not
17 approve the project. So that's why these approvals
18 are all dependant upon each other.

19 And that's why at the end of the day if
20 there's differences, they have to be reconciled. If
21 you have something that they don't.

22 MR. LOWENSTEIN: Is there a procedure
23 for the board and the county to interface and try to
24 resolve any of --

25 MR. RANDALL: Well, they could.

1 Basically the applicant, you know, goes to two
2 independent bodies independently. He comes to us, he
3 goes to them, shows them the same thing he showed us.

4 MR. LOWENSTEIN: Right.

5 MR. RANDALL: And obviously if
6 someone's there, it could be -- there's often times
7 towns and counties do have meetings down there where
8 they work out things in advance or they know --
9 they're on the same page. That works -- avoids a
10 little bit of the ping pong effect if it does occur.
11 But at the end of the day we have to be looking at
12 the same plan for approval.

13 MR. LOWENSTEIN: Thank you.

14 CHAIRMAN SEIBEL: Anybody? Yes?

15 MR. LOWENSTEIN: Are we ready to
16 discuss it amongst ourselves?

17 MS. BARATTA: I think we have been.

18 MR. LOWENSTEIN: Well, okay. I'm going
19 to look beyond this county thing, and I -- I've
20 either attended or listened to the recordings or read
21 the transcripts.

22 And as you said at the outset, Mr.
23 Chairman, it's a very difficult site for the
24 application. And I am not intending to substitute my
25 --

1 THE COURT REPORTER: Mr. Lowenstein,
2 please speak up.

3 MS. PECK: Mr. Lowenstein, you got to
4 use the mic.

5 MR. LOWENSTEIN: I'm not suggesting for
6 a moment to substitute my judgement for that of the
7 professionals that we heard from, from the applicant
8 or our own professionals.

9 But I do think we are expected to bring
10 to this board, to our conversation here, the benefit
11 of our layperson's experiences. And as you
12 indicated, Mr. Chairman, we all live in town, and
13 that is one of the most highly traffic -- traveled
14 streets and intersections and parts of this
15 community. I myself must traverse that thing five,
16 six times -- different times in the day, different
17 places. And I have some natural capability of
18 summoning the trains. No matter what time I come,
19 there's a train. And that's what concerns me more
20 than anything else, is the traffic flow, the lack of
21 regulation, and the grave, grave danger at that spot.
22 And it seems to me, listening to the testimony, that
23 there's going to be an intensification of traffic in
24 and out of that site because it's a quick stop place.
25 It's a 7-Eleven, people go in there, they get their

1 coffee, their newspaper, what have you. There's
2 going to be a lot of traffic, additional traffic.
3 And I have looked at the county's report and they are
4 unwilling to change the timing of the traffic lights,
5 and it just seems to me that this is a recipe for
6 disaster. And as such, unless I'm persuaded
7 otherwise, I'm disinclined to submit the application
8 as submitted.

9 CHAIRMAN SEIBEL: Duly noted. I will
10 make note that -- I don't know what I did with the
11 paperwork, but I went through all the paperwork from
12 the beginning of the testimony to the end, and in a
13 couple of places I noted that the traffic volume is
14 going to increase because it's a retail outlet. So
15 -- and I believe even on the original application it
16 was noted by the applicant himself -- oh, here it is.

17 "Will the operation of the site effect
18 local vehicular or pedestrian traffic?" "Yes,
19 the project will affect both."

20 It doesn't say how it's going to affect
21 both, but I don't imagine it's going to be better,
22 but -- and our expert, Frank, had stated that there
23 will be increased traffic at that site.

24 So anybody else? Anything? Yes?

25 MR. NAVEH: Mr. Chairman and fellow

1 board members, this application has evolved over the
2 last -- I don't know how many months we've been
3 discussing it. This site is obviously modified
4 greatly. They've moved around the building, they've
5 adjusted the parking, and now, of course, the traffic
6 conditions on the property are going to be subject to
7 Bergen County's approval, of course.

8 But I am looking at this application
9 and I understand the concerns about traffic
10 congestion, but keep in mind that Fair Lawn Avenue,
11 it's a right turn in, and a right turn exit as it is
12 now. And Pollitt Drive is the -- the only entrance
13 where you can go in both left and right and exit left
14 and right. I know the railroad tracks are in close
15 proximity, and there is issues when it becomes rush
16 hour, how will traffic move on that roadway.

17 But I don't think like the
18 intensification -- well, personally I don't know. We
19 don't know until we see it happening, but I don't the
20 intensification would be so great that it would cause
21 a disaster, I don't see that coming.

22 But I do understand the concerns, and I
23 just feel that they have met with us on many of our
24 recommendations. And I do like the way it looks. I
25 think it could work for the site. If not this, you

1 know, I mean, I'm not sure what other purpose this
2 site is best suited for.

3 But I do feel that they've come a long
4 way with the application.

5 CHAIRMAN SEIBEL: I agree. It's duly
6 noted, also. It's important to note that they -- the
7 applicant was very cooperative, because when we
8 voiced our concerns, they were quick to make note and
9 to make adjustments to the plan. And we've come to
10 this point now.

11 Does anybody else have anything?

12 MR. RANDALL: Just -- and this is not
13 intended to cut the discussion off, but perhaps could
14 put some guise on it.

15 As the board knows in dealing with a
16 (d) variance, it is a (d)(1) variance in particular
17 that was decided and agreed to by the -- by the
18 applicant in agreement with our planner, it was a
19 (d)(1) variance.

20 And as such, as you know, it requires a
21 super majority of five affirmative votes to pass.

22 And just to remind the board of the
23 criteria, it is that the positive criteria needs to
24 be satisfied by the applicant. It is his burden to
25 satisfy the board in their discretion. They decided

1 in this case also being a conditional use that is
2 particularly suited and compatible to the surrounding
3 development.

4 And also that it in seeking the
5 extraordinary relief of a (d)(1) variance that they
6 will be able to show special reasons to support that.

7 Now that you've heard their planner and
8 our planner in regard to what might possibly be the
9 special reasons, the testimony that you heard, and is
10 for you to decide.

11 But as important to that is also the
12 board -- the board must consider whether the
13 applicant has considered the negative -- has
14 satisfied the negative criteria of the variance that
15 there will be no substantial detriment to the public
16 good and the project will not have an adverse effect
17 on the master plan or zoning plan intent.

18 So in your analysis in what your
19 thoughts are, those are the things that you need to
20 go through in determining whether the applicant has
21 carried its burden prior to formulating a motion to
22 either accept or deny the application.

23 CHAIRMAN SEIBEL: Those immortal words,
24 "substantial detriment to the public good". So it's
25 important that we keep that in our heads while we're

1 making these decisions.

2 Jeanne, you had --

3 MS. BARATTA: Sure. Just quickly, I
4 think when this board does its deliberations, you
5 have to look at the positives and the negatives of
6 this site, and there were some positives.

7 Positives is we had an outdated
8 building that's gone through it's usefulness.
9 Another positive of this site is the board -- I know
10 I appreciate the meeting with our historical
11 committee in changing the design of the building to
12 meet with the historical nature of the Radburn area.

13 The negatives on there a lot of what we
14 spoke about. The negatives are the congestion of
15 that area as it is now. And as we all know it's very
16 congested now and we're talking about putting an
17 establishment that will generate more traffic at the
18 times that that area is congested already. You know,
19 of course, if you're going to put a convenience
20 store, you're going to put it in a place where you're
21 going to have a lot of high traffic when the train
22 comes, that's what -- you're looking for the commuter
23 traffic, and that's when that area gets congested.
24 And what I'm weighing is the safety of the community
25 when we talk about the railroad tracks, when we talk

1 about the lights, when we talk about the queueing on
2 Pollitt Drive and the other areas around, large
3 trucks coming in the area. That area in Fair Lawn
4 unfortunately has seen some pedestrian fatalities,
5 unfortunately. And a number of that is regarding
6 pedestrians in that Radburn section along River Road,
7 but I think those are -- you have to weigh those
8 negatives against the positives and come up with our
9 decision.

10 CHAIRMAN SEIBEL: Well said.

11 Anybody? New guy?

12 (No response.)

13 CHAIRMAN SEIBEL: I guess what I'll do
14 now is I'll just -- I'll put my two cents in this as
15 the papa bear here. And, you know, life is all about
16 making decisions, but we make decisions based on too
17 little information. Whether you're buying a chicken
18 sandwich or you're deciding on the fate of some
19 criminal going to the electric chair, was he guilty
20 or not, is that chick -- is the mayonnaise any good
21 or not? You're making a decision but you don't have
22 enough information. And all you have to do is get
23 married and you'll understand what I'm talking about.
24 But that's where -- did you put that down? My wife
25 can't get this, can she?

1 VICE CHAIRMAN PUZIO: Yes.

2 MS. PECK: Yeah. I'm e-mailing it
3 tomorrow.

4 CHAIRMAN SEIBEL: This is where
5 knowledge and experience comes into play. So we've
6 all lived in town. We're taking that experience of
7 living in town and now we have to figure out is this
8 good? Is this maybe good? Is this not so good? But
9 not only are we doing it for today and for tomorrow,
10 but we're making decisions for the next generation.
11 We're making decisions for 20, 30, 40 years down the
12 road. So we have to be very careful in what we're
13 doing because how many times have we sat here and
14 we'll get an application and there's something
15 written in here from 1948 and we have to look back on
16 the records, and maybe they didn't do such a good job
17 back in 1948.

18 And that's the reason that this
19 application is in front of us again. So that's just
20 myself. I know everybody will do the right thing.

21 And with that, I think it's time we
22 call for a vote. And if somebody would like to make
23 a motion, we could bring this to a head and get a
24 decision.

25 MR. LOWENSTEIN: Mr. Chairman?

1 CHAIRMAN SEIBEL: Yes?

2 MR. LOWENSTEIN: I'll make a motion
3 concerning -- as to Application 2015-27, VR II, 20-19
4 Fair Lawn Avenue, LLC. Commonly known as 20-19 Fair
5 Lawn Avenue, Block 4701.01, Lot 1, Zone B-1, a
6 proposal to remove an existing building and replace
7 with a new 24 hour 7-Eleven convenience store.
8 Retail establishments, which are located in the B-1
9 restricted business zone and which seek to operate 24
10 hours per day shall be permitted as a conditional use
11 as per Section 125-43.3. Applicant cannot fill all
12 the requirements of the conditional use and requires
13 a (d)(1) use variance as per Section
14 125-57D(1)(d)[1]. Would require bulk variances as
15 per Section 125-12, schedule of area yard and
16 building requirements, lot width of 91.2 feet front
17 yard setback of 9 feet on Pollitt Drive, side yard
18 setback of 5.6 feet and 9 feet. Parking variance, 14
19 spaces required, and 12 provided. Sign variances as
20 per Section 125 --

21 MS. PECK: Excuse me, Mr. Chairman.

22 MR. RANDALL: I think the setback was 4
23 feet for the front yard.

24 MS. PECK: I think what -- this is
25 probably a clerical error on our side, because this

1 was the original denial. We should've altered it
2 when they changed the plans and relocated the
3 building. So we should really go over the variances
4 and then redo -- I'm sorry, Mr. Lowenstein.

5 MR. LOWENSTEIN: It's okay.

6 MS. PECK: I just realized that this
7 was when the building was located in a different
8 location.

9 MR. RANDALL: I believe in just going
10 over what I can recall, variances that remain were
11 the 9 foot deficiency in the width of the lot. There
12 was a front yard setback on Pollitt, which was 4
13 feet, I believe, the final -- the final building
14 location.

15 MR. LOWENSTEIN: Rather than 9.

16 MR. RANDALL: Rather than 9. And I
17 think as to the bulk requirements, the parking
18 variance was eliminated.

19 MS. PECK: Yes, it was.

20 MR. RANDALL: The other variances were
21 not -- I don't think there was -- well, was there a
22 --

23 MS. PECK: There was an existing
24 building there.

25 MR. RANDALL: An existing building,

1 yes, but there was -- also, was there a loading spot
2 variance?

3 CHAIRMAN SEIBEL: No, they couldn't get
4 a loading.

5 MR. RANDALL: And I think the other
6 variances were as to the signage.

7 MR. LOWENSTEIN: Yes. Thank you.

8 CHAIRMAN SEIBEL: Oh, and one other
9 thing, it says Section 125-43.3.

10 MS. PECK: It should be 45.

11 CHAIRMAN SEIBEL: It should be
12 125-45.3.

13 MR. LOWENSTEIN: Thank you,
14 Mr. Randall. Thank you, Mr. Chairman. I accept
15 those corrections.

16 CHAIRMAN SEIBEL: Do you want to take
17 it from the top?

18 MS. PECK: Yeah, I think we could maybe
19 start over at some point and just read it so it's
20 corrected in the minutes. Yes?

21 MR. LOWENSTEIN: Before I make the
22 motion, I just want to make certain I have these
23 modifications accurately.

24 MS. PECK: Right.

25 MR. LOWENSTEIN: So it's Section

1 125-45.3, rather than 43.3?

2 MS. PECK: Correct.

3 MR. LOWENSTEIN: The front yard setback
4 should be 4 feet rather than 9. The parking variance
5 request is entirely stricken.

6 MS. PECK: Right.

7 MR. LOWENSTEIN: And with all the
8 particulars it's been changed; is that correct?

9 MR. RANDALL: It's still the 9 foot
10 deficiency in lot width.

11 MR. LOWENSTEIN: Yes.

12 MR. RANDALL: I think you said 8.

13 MR. LOWENSTEIN: Well, I'm just reading
14 language here. There is a reference to the 9 foot
15 side yard setback. It says --

16 MS. PECK: There should probably be two
17 front yard setbacks because the building's still on
18 the corner.

19 CHAIRMAN SEIBEL: It says lot width of
20 91.2 front yard setback of 9.

21 MS. PECK: Hold on, I'm going to --

22 CHAIRMAN SEIBEL: Two front yards.

23 MR. RANDALL: Right. The 4 foot I'm
24 referring to is the 4 foot setback on Pollitt.

25 MS. PECK: Yeah.

1 MR. LOWENSTEIN: That's the front yard.

2 MR. RANDALL: There are two front
3 yards. It was corrected at the last meeting it was
4 two front yards.

5 MS. PECK: I'm looking to see if Paul
6 has a --

7 CHAIRMAN SEIBEL: So we're talking
8 about that side yard setback of 5.6 and 4; is that
9 right?

10 MS. PECK: Maybe the applicant can help
11 us out and give us a list what the changes were.

12 MR. ALAMPI: I can.

13 MR. RACENSTEIN: Mr. Chairman?

14 CHAIRMAN SEIBEL: Yes?

15 MR. RACENSTEIN: I need a recess,
16 please.

17 CHAIRMAN SEIBEL: This is a tough time.
18 Can you hold on? No?

19 MS. PECK: Well, we have other board
20 members sitting. It's up to you.

21 CHAIRMAN SEIBEL: All right. You won't
22 be able to vote.

23 MR. RACENSTEIN: Okay.

24 MS. PECK: Mark, you're up.

25 CHAIRMAN SEIBEL: Okay. Go ahead.

1 MR. LOWENSTEIN: Mr. Chairman, in
2 fairness to the applicant, he needs five affirmative
3 votes.

4 CHAIRMAN SEIBEL: Oh, yeah, yeah, but
5 all right.

6 MR. LOWENSTEIN: I suggest we adjourn.

7 CHAIRMAN SEIBEL: We're going to --

8 VICE CHAIRMAN PUZIO: Take a short
9 recess.

10 CHAIRMAN SEIBEL: We're going to take a
11 A short recess.

12 (Whereupon, a brief recess is taken.)

13 CHAIRMAN SEIBEL: All right. Can we
14 take a roll call?

15 MR. LOWENSTEIN: It's 8:41 p.m. Mr.
16 Racenstein?

17 MR. RACENSTEIN: Here.

18 MR. LOWENSTEIN: Ms. Baratta?

19 MS. BARATTA: Here.

20 MR. LOWENSTEIN: Ms. Perchuk?

21 MS. PERCHUK: Here.

22 MR. LOWENSTEIN: Mr. Lowenstein is
23 here. Mr. Puzio?

24 VICE CHAIRMAN PUZIO: Here.

25 MR. LOWENSTEIN: Mr. Naveh?

1 MR. NAVEH: Here.

2 MR. LOWENSTEIN: Mr. Zharnest?

3 MR. ZHARNEST: Here.

4 MR. LOWENSTEIN: Mr. Reinitz?

5 MR. REINITZ: Here.

6 MR. LOWENSTEIN: And Mr. Seibel,
7 Chairman?

8 CHAIRMAN SEIBEL: Here.

9 MR. LOWENSTEIN: Okay. The board has
10 resembled, the quorum is present.

11 CHAIRMAN SEIBEL: Okay. Everybody's
12 back. Now, where were we?

13 MR. LOWENSTEIN: Okay. Well, I'm going
14 to take it from the top with the Chair's permission.
15 I'll make a motion.

16 CHAIRMAN SEIBEL: Okay. Let's make a
17 motion.

18 MR. LOWENSTEIN: Mr. Chairman,
19 regarding Application #2015-27, VR II, Roman II,
20 20-19 Fair Lawn Avenue, LLC, the property commonly
21 known as 20-19 Fair Lawn Avenue, Lot 4701.01, Lot 1,
22 Zone B-1. Proposal to remove an existing building
23 and replace it with a new 24 hour 7-Eleven
24 convenience store. Retail establishments, which are
25 located in the B-1 restricted business zone and which

1 seek to operate 24 hours per day shall be permitted
2 as a conditional use as per Section 125-45.3. The
3 applicant cannot meet all the requirements of the
4 conditional use and requires a (d)(1) use variance as
5 per Section 125-57D(1)(d)[1]. Would require bulk
6 variances as per Section 125-12, schedule of area
7 yard and building requirements, a lot width of 91.2
8 feet with a front yard setback of 4 feet on Pollitt
9 Drive, sign variances as per Section 125-41.
10 Preliminary and major site plan approval required as
11 per Section 125-65A, and any other variances and/or
12 waivers that may be required on this application,
13 including but not limited to a waiver for the loading
14 area where 12 by 56 feet is required and the
15 applicant is asking for 12 by 50 feet be denied.

16 CHAIRMAN SEIBEL: That's a denial.

17 MR. RACENSTEIN: The motion is --

18 CHAIRMAN SEIBEL: He's making a motion
19 to deny the application, so therefore a yes --

20 MR. RANDALL: Let's get a second first.

21 CHAIRMAN SEIBEL: Oh, let's get a
22 second. Do I have a second?

23 MS. BARATTA: Second.

24 CHAIRMAN SEIBEL: Now, an affirmative
25 vote is a vote to deny, correct?

1 MR. RANDALL: Correct.

2 CHAIRMAN SEIBEL: A negative vote is a
3 vote to approve?

4 MR. RANDALL: Yeah. Depending on how
5 the vote goes. It is, It would be a vote to approve,
6 yes.

7 CHAIRMAN SEIBEL: Okay. So everybody
8 got that? It's flip-flopped.

9 MR. RACENSTEIN: Right. The motion was
10 to deny.

11 CHAIRMAN SEIBEL: Correct.

12 MR. RACENSTEIN: Okay.

13 MR. NAVEH: Okay. So we need to have a
14 second motion later.

15 MR. RANDALL: Let's see how the first
16 one -- see how the first one goes.

17 CHAIRMAN SEIBEL: Then we'll know.

18 MR. LOWENSTEIN: Mr. Racenstein?

19 MR. RACENSTEIN: Yes.

20 MR. LOWENSTEIN: Ms. Baratta?

21 MS. BARATTA: Yes.

22 MR. LOWENSTEIN: Ms. Perchuk?

23 MS. PERCHUK: Yes.

24 MR. LOWENSTEIN: Mr. Lowenstein, yes.

25 Mr. Puzio?

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VICE CHAIRMAN PUZIO: Yes.

MR. LOWENSTEIN: Mr. Naveh?

MR. NAVEH: No.

MR. LOWENSTEIN: Mr. Chairman, I just have a procedural question. I have, so far, one, two, three, four, five, six votes exclusive of yours. Do I ask the others --

MS. PECK: No, Mr. Seibel is your last vote.

MR. LOWENSTEIN: I beg your pardon?

MS. PECK: Mr. Seibel is your last vote.

CHAIRMAN SEIBEL: I'm the last vote.

MR. RANDALL: Yes.

CHAIRMAN SEIBEL: I vote yes also.

MR. LOWENSTEIN: Okay. Mr. Chairman, that's six votes, yes votes, to deny. And one vote no, which does not. So therefore the motion to deny is carried.

MR. ALAMPI: Thank you.

CHAIRMAN SEIBEL: That's the way it happens. Okay. All right. Thank you.

(Whereupon, the application is adjourned. Time noted: 8:45 p.m.)

C E R T I F I C A T E

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

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

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

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: _____