

BOROUGH OF WOODCLIFF LAKE
ZONING BOARD

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE MATTER OF: :
 :
 :
WCL BROADWAY REALTY :
ASSOCIATES, LLC; 62 :
BROADWAY, BLOCK 2708, :
LOT 1 :

TRANSCRIPT
OF
PROCEEDINGS

Tuesday, June 26, 2018
Municipal Building
188 Pascack Road
Woodcliff Lake, New Jersey
Commencing at 7:41 p.m.

BOARD MEMBERS PRESENT:

VICTOR BONGARD, Chairman
JOHN SPIRIG
JAMES VERCELLI
EMILIA OROZOVA-FENDIAN
SANJEEV DHAWAN
ROBERT HAYES
ROBIN EFFRON-MALLEY
GARY NEWMAN

ALSO PRESENT:

SYLVIA KOKOWSKI, Secretary
RICHARD PREISS, P.P.
MIKE NEGLIA, P.E.
BRIAN A. INTINDOLA, P.E.

ALISON GULINO, CCR, RPR
CERTIFIED COURT REPORTER

QUICK COURT REPORTING, LLC
47 BRIAN ROAD
WEST CALDWELL, NEW JERSEY 07006
(973) 618-0872
office@quickreporters.com

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

SAL PRINCIOTTO, ESQ.
Counsel for the Board

PRICE, MEESE, SHULMAN & D'ARMINIO, P.C.
Mack-Cali Corporate Center
50 Tice Boulevard
Woodcliff Lake, New Jersey 07677
By: JOHN L. MOLINELLI, ESQ.
Counsel for the Applicant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

<u>APPLICANT'S WITNESSES:</u>	<u>PAGE</u>
LOUIS LUGLIO	7
GIL RIVERA	43
MICHAEL EICHENLAUB	49
JOSEPH BURGIS	68

EXHIBITS MARKED INTO EVIDENCE

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
A-6	Revised parking study	7
A-7	Letter dated 6/8/18	49

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 CHAIRWOMAN HEMBREE: WCL Broadway Realty
2 Associates, LLC, 62 Broadway, Block 2708, Lot 1.

3 I'll recuse myself.

4 MR. MOLINELLI: Thank you. Good evening.
5 John Molinelli; Price, Meese, Shulman & D'Arminio, on
6 behalf of the applicant.

7 We are prepared to go this evening. Just
8 by a short summary, I will call Mr. Luglio back and do
9 a redo of his count. You will recall, back in May, it
10 rained on that Saturday night so I had him go back on
11 June 16th. The weather was lovely. He will testify as
12 to trip counts.

13 I'll call Mr. Rivera, briefly, to tell
14 you about tenants that have leased the premises and Joe
15 Burgis is here as our planner and I'll call Mr.
16 Eichenlaub, just briefly, to address the letter that I
17 received from Evan Jacobs from Neglia Engineering.

18 I want to confirm -- I don't think you
19 were at the last meeting, Mr. Chairman. I want to make
20 sure you listened to the tape or read the transcript.

21 CHAIRMAN BONGARD: I read the transcript
22 and I am up to speed.

23 MR. MOLINELLI: Before I begin, I want to
24 make a formal withdrawal of what we were requesting.
25 We are no longer asking this Board to waive something

1 from a previous approval. We are not going to use any
2 parking in the rear of the building for the parking of
3 employees nor the utilization by the delivery person.
4 We would like to use the rear entrance for, I'll say,
5 deliveries, purveyor delivers. You know, Ray testified
6 that he's got a Sprinter van, and the number of times
7 he comes, it's not a significant number of times. We
8 would like to use the rear, just like -- all of the
9 retail have the doors but we will no longer utilize any
10 parking spaces in the rear for employees nor for the
11 pizza delivery vehicles so we are going to go on that
12 basis. All right?

13 MR. PRINCIOTTO: Before you begin, I know
14 you made a request because one of your experts has
15 another matter to attend to. Normally, we would have
16 taken the 18 Martha Street first. Which witness is
17 that in particular?

18 MR. MOLINELLI: Mr. Luglio, if he was
19 here. He is running a few minutes late. However, I
20 can recall Mr. Rivera. He's only a few minutes.

21 MR. PRINCIOTTO: Well, what I was
22 thinking, if Mr. Luglio is not here, maybe we should
23 take the Martha Street application first because that
24 is not going to take very long and the rest of the
25 evening would be yours.

1 MR. MOLINELLI: I'm told he was a few
2 minutes out.

3 MR. NEWMAN: Is the gentleman here for
4 Martha Street? I would make a motion to switch the
5 order and take Martha Street first.

6 MR. DHAWAN: He's here now.

7 MR. NEWMAN: I can't see it taking more
8 than ten minutes.

9 CHAIRMAN BONGARD: I think we are going
10 to have the Martha Street application first, and then,
11 it will not be long. Then, we will go back to where we
12 are at now with this. Now, we can proceed where we
13 were.

14 MR. MOLINELLI: I would like to call Mr.
15 Luglio.

16 CHAIRMAN BONGARD: He completed his
17 testimony. He is just -- he completed last month, the
18 testimony?

19 MR. MOLINELLI: I was not here last
20 month. I did review the transcript. I thought there
21 was a couple of questions that needed to be answered.
22 He's just addressing something.

23 Mr. Princiotto, Mr. Luglio had prepared a
24 sheet last week with the parking study marked as A-4.
25 We modified that and I'm going to mark that as A-6.

1 That was the last one.

2 (Exhibit A-6, revised parking study, was
3 marked for Identification.)

4 DIRECT EXAMINATION BY MR. MOLINELLI:

5 Q. Mr. Luglio, on that evening, you
6 testified as to a particular trip count study you had
7 done at Ray's Pizza in Hillsdale. Do you recall that
8 testimony?

9 A. Yes, I do.

10 Q. If you recall, you did it on two
11 evenings. You did it on May 18, 2018 and May 19, 2018.
12 Do you recall that?

13 A. Yes.

14 Q. The weather, on the evening of May 19th,
15 if you recall, was rather nasty and rainy and you
16 indicated that your numbers, back then, may have been
17 off by as much as 20 percent; is that right?

18 A. Yes.

19 Q. Did you go out and conduct a new trip
20 count at Ray's Pizza on the evening of June 18, 2018?

21 A. I think it was -- it was the 16th.

22 Q. The weather was fine on that night?

23 A. Yes, it was.

24 Q. The methodologies that you used were the
25 same: You arrived at 6:00 p.m. and stayed until

1 approximately 9:50 p.m. and counted the cars coming in
2 and leaving over ten-minute increments?

3 A. That is right. Up to about 9:00.

4 Q. There's been a report or amended sheet
5 marked as A-6 prepared by you in anticipation of your
6 testimony here tonight?

7 A. Yes. It was.

8 Q. Based upon this revised chart, can you
9 give the Board the benefit of the findings when you
10 conducted that trip test on June 16th?

11 A. Sure.

12 If you look at the right side of this
13 exhibit, under "June 16th," you can see, again -- how
14 this was conducted is, before 6:00 p.m., we do a count
15 of the number of cars that are parked in both the lot
16 that is out front that is 22 spaces and, underneath the
17 building, there's also parking. That is the starting
18 point, and again, normally, we would do a count every
19 15 minutes and have an idea of how many people are
20 parked and coming in and out but we thought it was more
21 important to have it in a shorter period of time, every
22 ten minutes. That's what we did here.

23 So you can see, if we start with 12, 6
24 come in, 5 go out. That gives you the number of parked
25 cars at 13, 6 come in but 4 go out. That is 2 more

1 cars that are parked, 15, and we continue that. The
2 maximum number of parking spaces were 23 parked
3 vehicles. That occurred at 7:10.

4 Generally, from about 6:50 to about 7:20,
5 we had 20 or over 20 parked vehicles, and then, after
6 that, similar to the other counts that we had conducted
7 on Friday and Saturday in May, it starts to go down in
8 terms of the number of vehicles that are parked on site
9 until just before 9:00 p.m., where we have 6 parked
10 vehicles, and probably, shortly thereafter, there's
11 probably no one left in the lot or 1 vehicle left in
12 the lot.

13 Q. Because there were 12 vehicles that were
14 there when you started, you really don't know who those
15 vehicles belong to. They may have been people inside
16 Ray's Pizza. Was there another restaurant open at that
17 time?

18 A. Yes. The Chinese restaurant.

19 Q. So you don't know the origin of the 12
20 but you started with 12?

21 A. Yes.

22 Q. The 23 that existed at 7:10 p.m., that
23 included that 12?

24 A. That's right.

25 Q. Is it fair to say the rise of vehicles

1 occurred between 6:40 p.m. and 7:10 p.m., and then,
2 after 7:10 p.m., there was a consistent reduction of
3 the number of vehicles? More vehicle were leaving as
4 opposed to coming?

5 A. Yes.

6 Q. Translating that, of course, the Ray's
7 Pizza operation in Hillsdale will be the same as in
8 Woodcliff Lake. Can you translate that information
9 based upon the 38 parking spaces that exist in the
10 front of 62 Broadway? Can you reconfirm or do you have
11 any new opinion concerning the ability of this parking
12 lot to handle the vehicles that are coming to Ray's
13 Pizza?

14 A. Based upon on this data, due to the
15 weather, there's an increase in the number of vehicles
16 coming in and out and the number of parked cars, but
17 still, the ability of the proposed site and the
18 operation would still be able to be accommodate the
19 number of vehicles that are parked. There's no change
20 in that.

21 Q. Of course, you are relying on testimony
22 that has come out that the other retail users will not
23 be restaurants. They are traditional retail users
24 where the demand begins to drop after 6:00 p.m.?

25 A. Correct. There's a shared level of

1 parking with the 38 parking spaces out front.

2 Q. If I took the 38 parking spaces that are
3 available and I take the maximum amount of 23 vehicles,
4 I'm assuming that 12 vehicles are somehow related to
5 Ray's. Doing the worst-case scenario, 23 vehicles on
6 this lot, which includes employees, you still have
7 approximately 15 vehicles left in this parking lot?

8 A. Yes.

9 Q. By the way, the numbers, you testified,
10 on May 22nd, that, acknowledging the rain, you thought
11 there could be an error factor of 15 to 20 percent with
12 these numbers. In fact, is that ratio, in fact,
13 accurate of 15 to 20 percent?

14 A. It's about 20 percent. It is different
15 for every ten minutes that you look at it, so again, if
16 you compared the beginning 10 to 13, it's not as high
17 in terms of percentage but some of them are higher than
18 20 percent, might be 30 percent, but on average, it's
19 about 20 percent, 18 percent, something like that.

20 Q. Again, beginning at 8:20, there's drops
21 of 2 vehicles and another 2 and another 2 and another 3
22 at 8:50 leaving 6 vehicles in the lot as of 8:50 p.m.;
23 is that correct?

24 A. Yes.

25 Q. Is it fair to say that perhaps some or

1 all of those original 12 left?

2 A. Certainly, unless they are employees that
3 parked there of either one of the restaurants. Then,
4 they might still be there.

5 MR. MOLINELLI: That is all I have.

6 CHAIRMAN BONGARD: Anyone from the Board
7 have questions?

8 MR. SPIRIG: The number of vehicles
9 coming in and out of the parking lot, they may be for
10 Ray's or the Chinese as well. You have no way of
11 knowing how many was for one or the other, do you?

12 MR. LUGLIO: I did not quantify, but
13 predominantly, it was Ray's. It was a small percentage
14 of the Chinese.

15 MR. SPIRIG: For people coming in for
16 picking up a take-out order, are they considered
17 parking?

18 MR. LUGLIO: They were counted as
19 vehicles coming in and how much they took as parked or
20 as leaving so every vehicle that came in was counted
21 either as an inbound and an outbound or as a parked
22 vehicle. It depends on how long. Some people, for
23 pick up would come in and spend more than ten minutes
24 in the pick-up or they were in the middle of that ten-
25 minute period so it ran over. Some people were there

1 for longer than the ten-minute period. We captured
2 everyone that came in and out.

3 MR. MOLINELLI: You didn't do it by cars.
4 You didn't indicate a pink Cadillac or a particular
5 vehicle. You counted the number of vehicles in and
6 number of vehicles leaving?

7 MR. LUGLIO: That's right.

8 MR. NEWMAN: Can you remind me? When the
9 applicant testified, is there outdoor seating in the
10 existing Ray's?

11 MR. MOLINELLI: The transcript is
12 available. He testified it is available to him but it
13 was rather problematic to do it at that location. It
14 had something to do with his reluctance to put anything
15 in the front parking lot at that location.

16 MR. NEWMAN: Right. So he didn't. Okay.

17 MR. SPIRIG: At the time you were doing
18 the study, was there a party going on or an event or
19 anything in the side room in the dining room?

20 MR. LUGLIO: No, it was relatively empty,
21 the dining room. There was activity in the dining room
22 but not a party with a lot of people that was
23 organized. It was an average day.

24 MR. SPIRIG: I'm trying to extrapolate.
25 There was testimony that there would be, potentially,

1 parties in that alternate room. Any idea what type of
2 impact the parking numbers would be if there was a
3 party going on?

4 MR. LUGLIO: If there was a party that
5 was going on, certainly, we would have more vehicles
6 that would be parked. They would be parked for a
7 longer period of time. At that point, I would say that
8 there would be more people per vehicle. Right now, the
9 code is based upon one parking space for every two
10 seats. If there's an organized party, that's one to
11 every three, just because there's a party. I mean,
12 people are going in cars at a higher number per car so
13 I think the number would go up but I don't think it
14 would go up significantly and I still think we would be
15 able to accommodate that with the 15 parking spaces
16 that would still be available after 6:00 or 7:00 p.m.

17 MR. SPIRIG: What would you consider
18 significant?

19 MR. LUGLIO: Maybe another 10 percent
20 above what we have now, 10 to 15 percent.

21 MR. SPIRIG: Two to three cars?

22 MR. LUGLIO: Yeah. Another three to four
23 cars.

24 MR. NEWMAN: I believe it's 48 and 48; is
25 that correct?

1 MR. MOLINELLI: You are mixing apples and
2 oranges. If we say seats, we are still -- we are
3 trying to compare the existing Ray's operation and put
4 it here. If you are counting seats, then we just go
5 back to the number of seats and number of cars you need
6 for each seat independent of the time they get there.
7 We are showing a realtime of when these 96 seats are
8 going to be filled based upon our experience over in
9 Hillsdale.

10 MR. SPIRIG: What we don't know is --

11 MR. NEWMAN: I'm trying to -- the
12 existing restaurant -- you will refresh my recollection
13 -- is 48 and 48, correct?

14 MR. MOLINELLI: I don't know whether
15 there was 48 seats in the party room. I don't think
16 there's 48 seats in that room.

17 MR. NEWMAN: The proposed restaurant is
18 48 seats --

19 MR. MOLINELLI: Not really 48. It's 48,
20 48, but in the nice weather, 16 can go outside which
21 would reduce the number of seats inside. It's 96
22 total, maximum, so for example, if there's no party,
23 you might have 16 outside. He could take it from
24 wherever he needs to take it from.

25 MR. NEWMAN: Let say there's a party and

1 your witness testified it drops from two per, Ray's
2 is -- however you want to put it -- from two people
3 because they come to parties together -- approximately.

4 MR. MOLINELLI: That ratio would favor us
5 in the terms of the number of cars.

6 MR. NEWMAN: If you had a party for 45
7 people, that would generate 15 cars. Am I
8 understanding that correctly?

9 MR. MOLINELLI: 45 divided by 4.

10 MEMBER OF THE PUBLIC: 3.

11 MR. LUGLIO: Anywhere from 3 to 4. It
12 depends -- unfortunately, it depends on what kind of
13 party is it and what time that party is going to be.
14 It's anywhere from 3 to 4. If you use the 3, yes,
15 there's 15 additional but --

16 MR. NEWMAN: If I use 2, it would be
17 more.

18 MR. LUGLIO: Yes.

19 MR. NEWMAN: If I used your number of 3,
20 it would be 53.

21 MR. LUGLIO: But also, those seats would
22 not be available, then, to the public from an average
23 day so there is -- there's not just a plus 15 that
24 would happen here. If it was, we would still have
25 enough parking spaces on the site.

1 MR. NEWMAN: Oh.

2 MR. SPIRIG: If it is 3.

3 MR. LUGLIO: If it was 3.

4 MR. SPIRIG: The maximum would be 32
5 parked cars if you are calculating three people or
6 three seats per car?

7 MR. LUGLIO: Right.

8 MR. NEWMAN: Well, there's the other 48
9 seats, right?

10 MR. SPIRIG: Two seats per car.

11 MR. NEWMAN: Code is two seats per car.

12 MR. SPIRIG: So the maximum would be 40.

13 MR. NEWMAN: The maximum is 96 seats so
14 that would require, like, 48 spots plus the employees,
15 plus, plus, plus, but if even you use his number of
16 three seats for the party, you don't eliminate the
17 other room so -- but...

18 CHAIRMAN BONGARD: This is another thing
19 too; how frequent would the parties be?

20 MR. LUGLIO: I don't know.

21 MR. MOLINELLI: Ray testified on his
22 track record.

23 MS. MALLEY: Weren't they planning on
24 using that dining room side?

25 MR. MOLINELLI: Any person would be

1 optimistic that the dining room would be used. We
2 assume that, when we give you numbers, that all 96
3 seats would be occupied. It does not make a difference
4 but we are trying to emphasize, based upon his current
5 use, it's not going to be that number of vehicles
6 because, even putting aside the dining room, you talk
7 about 23 vehicles at maximum peak for ten minutes on a
8 Saturday night in nice weather.

9 I'm trying to emphasize that, while you
10 hope that a restaurant is always filled up -- for some
11 reason, planners use ratios based on the number of
12 seats for a restaurant. That's the way it works so you
13 have a certain number of seats that you can fill. I
14 think we have a golden opportunity to use the business
15 as it currently exists in Hillsdale.

16 MS. MALLEY: The current business, when I
17 have seen the dining room, does not fill up. Okay? We
18 are looking at, hopefully, an expanding business in the
19 new location with a full dining room?

20 MR. MOLINELLI: Right.

21 MR. NEWMAN: That would be more like
22 Bensi.

23 MR. MOLINELLI: If it does fill, that
24 would be the 96 seats and the 48 parking spaces as Mr.
25 Newman just went through, that's correct.

1 MS. MALLEY: So we should be looking at
2 those seats.

3 MR. SPIRIG: What we don't want to see
4 happen is that the parking lot gets filled up and
5 there's a party going on, and then, cars start parking
6 up and down residential streets because the people in
7 the area do not want that to happen, especially on a
8 Friday or Saturday or Sunday when, potentially, the
9 parking lot in the back is filled with residents.
10 That's why we are asking these questions. We do not
11 want overflow coming out onto the streets.

12 MS. MALLEY: For clarification, we're
13 talking 48 spots needed for patrons and how many for
14 employees?

15 MR. MOLINELLI: Six.

16 MS. MALLEY: Only six?

17 CHAIRMAN BONGARD: That's what they said.

18 MR. NEWMAN: That's 54. That doesn't
19 include any of that, the residents.

20 MR. MOLINELLI: They are in the back, 27.

21 CHAIRMAN BONGARD: Any other questions
22 from the Board members for Mr. Luglio?

23 (No response)

24 CHAIRMAN BONGARD: I would like to open
25 it up to the public to ask questions of this witness.

1 to be about the current restaurant?

2 MR. NEWMAN: They have to be related to
3 testimony you heard tonight or the prior meeting if you
4 have a question to ask him about his parking study that
5 he testified about.

6 MR. SCHWARTZMAN: Howard Schwartzman, 2
7 Barker Court.

8 The analysis you gave is based upon
9 comparable usage of Hillsdale and the proposed
10 Woodcliff Lake; is that correct?

11 MR. LUGLIO: Usage of the restaurant,
12 correct.

13 MR. SCHWARTZMAN: If, in fact, the usage
14 of the Woodcliff restaurant is passed, is greater,
15 would you, then, still indicate that the usage of
16 parking spaces would be the same?

17 MR. LUGLIO: If it's greater, then,
18 obviously, there would be more parked cars or parking
19 space that would be required, yes.

20 MR. SCHWARTZMAN: Thank you.

21 CHAIRMAN BONGARD: Any other questions?

22 MS. REZEN: Ann Marie Rezen, 21 Columbus
23 Avenue.

24 I don't think you testified to this. I'm
25 wondering why not or possibly, in other cases, you

1 might do this. Aside from the Hillsdale Ray's traffic
2 location, is there any other areas that are comparable?
3 Like, the Board was making a comment that Bensi or
4 Domani's would be an ideal type goal that the new Ray's
5 location would achieve? Do we have any sense of, like,
6 the number of cars coming in and out and delivery for
7 another successful or more successful location that's
8 also in our area?

9 MR. LUGLIO: What we normally do is, we
10 look at a typical type of restaurant use. This, in
11 this case, is very specific to be a pizzeria/restaurant
12 and we have the opportunity and it was suggested that
13 we go out and collect actual data because it was very
14 specific, and most of the time, we don't have the
15 ability to go and collect data for a use that is going
16 to move from one location to another. So yes, we can
17 utilize other data, but usually, that data is either
18 traditional land use data for a restaurant that is
19 similar, which is not always 100 percent accurate but
20 you get an average for the actual facility that you are
21 trying to relocate. We won't normally go out and
22 survey a different pizzeria in a different location
23 because it's not exactly the same, and then, I would
24 rely just on traditional national rates instead of
25 trying to go out and do surveys of, like, a --

1 MS. REZEN: Like a comparable restaurant
2 a mile away, an Italian restaurant in Hillsdale that's
3 very successful a mile away?

4 MR. LUGLIO: In our case, it was
5 suggested that we do parking utilization counts of the
6 existing operation. We did that for a Friday and a
7 Saturday and, then, an additional Saturday because of
8 the weather. We didn't have any indication that we
9 needed to go out and look at other sites.

10 MS. REZEN: I don't know if you know or
11 -- but it is related to traffic and parking. I was
12 under the impression that there was, like, an auxiliary
13 or overflow parking lot designated on the north side of
14 the building that was --

15 MR. LUGLIO: Of the proposed building.

16 MS. REZEN: It's across the street on the
17 corner of Lincoln; is that true?

18 MR. LUGLIO: No.

19 MR. PRINCIIOTTO: An auxiliary parking
20 lot?

21 MS. REZEN: On Broadway and Lincoln, the
22 strip mall, that's the neighbor's property across the
23 street.

24 MR. LUGLIO: That's not a part of this
25 application.

1 MS. REZEN: I was under the impression
2 that that was a consideration, to allow for auxiliary
3 parking.

4 MR. NEWMAN: We don't know of any parking
5 agreement or arrangement that's been submitted.

6 MS. REZEN: It's a misunderstanding?

7 MR. PRINCIOTTO: There is an aerial
8 photograph that's marked if you want to know what the
9 parking looks like.

10 MS. REZEN: I live there so I know what
11 the parking looks like. I'm looking at a permit from
12 four years ago.

13 CHAIRMAN BONGARD: That was never a
14 consideration.

15 MS. REZEN: Okay. Thank you.

16 MS. CULLINAN: Laura Cullinan, 27
17 Columbus.

18 On all the three nights that you were
19 doing the study, were you inside? How many seats were
20 occupied inside the restaurant?

21 MR. LUGLIO: We didn't look at how many
22 seats were occupied. This was a parking study, number
23 of vehicles going in and parked.

24 MS. CULLINAN: That would be all take-out
25 and not one person sitting inside the restaurant?

1 MR. LUGLIO: There were people inside the
2 restaurant. The number of people, we do not have.

3 MS. CULLINAN: Okay. That, maybe should
4 be looked into. If 96 seats are being occupied inside,
5 it would be a definitely different traffic pattern,
6 don't you think?

7 MR. LUGLIO: The number of people inside
8 is not relevant. We are looking at the number of
9 parked vehicles coming in and out.

10 MS. CULLINAN: If 96 people are sitting
11 inside, don't you think that would increase the amount
12 of vehicles that would be in the lot?

13 MR. LUGLIO: If it was fully occupied,
14 there would be more vehicles in the parking lot, yes.

15 MR. McMANUS: Kevin McManus, 27 Columbus.

16 Does the employee headcount include
17 drivers and delivery guys?

18 MR. LUGLIO: Yes, it does.

19 MR. McMANUS: 96 diners are going to be
20 served by 6 people, 2 or three delivery guys and
21 someone working the register, a waiter and a cook and
22 that's it, I guess, for 96 diners?

23 MR. LUGLIO: I didn't testify to the
24 functions of the six employees. That, I think was back
25 in the testimony of the operator or the owner.

1 MR. McMANUS: As a numbers guy, does that
2 seem correct to you?

3 MR. LUGLIO: Yes, it does.

4 MEMBER OF THE PUBLIC: 6 people serving
5 96 people?

6 MR. McMANUS: One waiter, one guy working
7 the register, one cook.

8 MR. MOLINELLI: Mr. Chairman, Ray has
9 testified and been cross-examined. The witness said
10 he's relying on 6 employees.

11 CHAIRMAN BONGARD: Right. I don't recall
12 the drivers being part of those employees.

13 MR. LUGLIO: During the counts, we had
14 two and possibly three vehicles that went back and
15 forth so those people occupied spaces. It was never
16 more than one space at one time.

17 CHAIRMAN BONGARD: I understand that. In
18 your study, I don't recall that Ray, when he gave his
19 testimony, in the number of employees included the
20 drivers because they could vary?

21 MR. MOLINELLI: He didn't because they
22 are only there on Friday, Saturday and Sunday. They do
23 not enter the restaurant. They are outside. We are
24 counting them as taking parking but not employees
25 inside. Also not counted were the two kids that would

1 come at the height of Saturday night when they are
2 calling. They just answer the phone. They are dropped
3 off and not counted in the 6.

4 CHAIRMAN BONGARD: That was my
5 indication, that the 6 employees were people actually
6 working in the restaurant.

7 MR. LUGLIO: Yes.

8 MR. MOLINELLI: That is at max people,
9 not all the time.

10 CHAIRMAN BONGARD: Yes.

11 MR. McMANUS: These two extra employees,
12 they have contracts for life? We are not going to
13 change those two?

14 CHAIRMAN BONGARD: No. I don't know
15 anything about that. Drivers are not included in the
16 6.

17 MR. MOLINELLI: He's talking about the
18 high school kids that come in on Saturday nights, kids
19 in the area that their parents drive them.

20 MR. NEWMAN: They don't have their own
21 car.

22 MR. McMANUS: The next person that
23 replaces them could have a car and could add to the
24 traffic?

25 MR. NEWMAN: Maybe, maybe not.

1 Understood.

2 MR. REZEN: Jim Rezen, 21 Columbus.

3 The three nights that you were doing the
4 study, aside from not looking at the number of people
5 in the restaurant, do you know what type of revenue was
6 made in those three nights?

7 MR. LUGLIO: That was not a part of the
8 study or the focus of the study.

9 MR. REZEN: Is it your intent that those
10 three nights are going to be how it's going to be
11 within Woodcliff Lake? That's going to be the average
12 of how many people based upon those three nights that
13 you studied?

14 MR. LUGLIO: The three nights were
15 average conditions. Friday and Saturday were more of a
16 peak condition, that condition that you would have.
17 That's a typical peak Saturday. We went back out to do
18 another Saturday because of the weather.

19 MR. REZEN: Is it possible, if we don't
20 look at the revenue for those three nights and based
21 upon only 23 cars during that time, is the business
22 able to make enough review in another location or are
23 they expecting, during that time, they are going to
24 increase the number of parked cars because of this 48-
25 seat restaurant next door?

1 MR. LUGLIO: The basis of the revenue or
2 any financial success is not part of this application.

3 MR. REZEN: Okay. Thank you.

4 CHAIRMAN BONGARD: Anybody else?

5 MR. MORRISON: Craig Morrison, 7 Cricket
6 Lane.

7 Is 65 the base parking for the whole
8 area?

9 MR. LUGLIO: Yes.

10 MR. MORRISON: How much do we give the
11 residents?

12 MR. LUGLIO: There's 27 parking spaces
13 for all of the residents. It's a combination of
14 different size units on the site.

15 MR. MORRISON: If we start with 65 and
16 back out 27, that leaves 38. Now, the question is: We
17 are already in a max-overflow situation, not
18 necessarily guaranteed but if 27 are presumed for the
19 residents and you are looking at a maximum of 48, 96
20 divided by 2, you already have a problem within the
21 local streets potentially; is that correct?

22 MR. LUGLIO: Based on the 38 available
23 and the nonresidential and the 48, yes.

24 MS. CULLINAN: What about when these
25 other -- he's not the only business there. Where are

1 the three other businesses supposed to park?

2 MR. LUGLIO: The three other businesses
3 also are using those 38 parking spaces that are in the
4 front now. Those businesses would likely -- and it
5 could be part of the resolution -- would be closed by
6 6:00 or even by 7:00 p.m. based upon their function,
7 whatever they are.

8 MS. CULLINAN: I know there's a spa.
9 They definitely close probably past 6:00 on a weekend
10 because most people use the spa when --

11 MR. NEWMAN: I hate to interrupt. I
12 think Mr. Molinelli indicated that the owner will
13 testify as to the tenants. That would probably be a
14 better question for him.

15 MS. CULLINAN: Okay. But it sounds like
16 these 38 spots are only for Ray's Pizza.

17 MR. NEWMAN: All I'm saying, he's a
18 parking guy. You are asking questions about other
19 tenants. I'm not saying you shouldn't. There's
20 probably a better person to ask those questions of.

21 MS. CULLINAN: All we are talking about
22 is one tenant in a five-bay place.

23 MR. NEWMAN: We understand.

24 MR. SCHWARTZMAN: You indicated that
25 finances are not part of this traffic study. What

1 happens -- let me take the opposite approach -- if he
2 does much worse and a new restaurant comes in? Then,
3 the traffic study that you have done has no meaning as
4 to the new person; is that correct?

5 MR. LUGLIO: It is definitely not
6 comparable; that's correct.

7 CHAIRMAN BONGARD: Any other questions?

8 (No response)

9 CHAIRMAN BONGARD: Motion to close?

10 MR. NEWMAN: Motion.

11 MR. SPIRIG: Second.

12 CHAIRMAN BONGARD: All in favor?

13 MEMBERS OF THE BOARD: Aye.

14 MR. MOLINELLI: May I ask a couple of
15 follow-up questions?

16 REDIRECT EXAMINATION BY MR. MOLINELLI:

17 Q. You were present and you listened to Ray
18 testify that a substantial part of his business is
19 take-out; is that correct?

20 A. That's right.

21 Q. The moment or, generally, over the course
22 of a certain number of minutes, that vehicle would come
23 and leave during your observations during that Saturday
24 night, correct?

25 A. Yes.

1 Q. You were present when ray testified that
2 a substantial percentage of his business is delivery,
3 correct?

4 A. Yes.

5 Q. Delivery is revenue for the company but
6 has no impact or is not affected by the number of
7 vehicles there, correct?

8 A. Or the number of seats, correct.

9 Q. In fact, obviously, you don't know, on
10 that night, how much was being delivered and who were
11 calling? You didn't measure that, only vehicles coming
12 in and out?

13 A. That is right.

14 Q. Getting to this restaurant, I think it
15 was your testimony or you heard testimony that, if it
16 did develop into a sit-down restaurant like a Domani's
17 what -- a restaurant like Domani's or any other
18 traditional sit-down restaurant, is the peak hour at
19 6:00 or 6:40 p.m. or is it a little bit later?

20 A. It's a little later. 7:45 to 8:15 would
21 be the start of the peak hour.

22 Q. At 8:20 p.m., on the night you observed
23 it, there were only 14 vehicles in the lot, correct?

24 A. Yes, that's correct.

25 Q. And at 8:50 p.m. -- would it be fair to

1 say that was the middle of the peak hour for a sit-down
2 restaurant -- there were only six vehicles in the
3 parking lot?

4 A. As far as a Saturday night, usually,
5 until about 9:00 or 9:30, that's when you start to see
6 the end of that peak or people leaving to get into
7 their cars to leave again.

8 MR. MOLINELLI: Thank you.

9 MR. PRINCIOTTO: When you did the study
10 in Hillsdale, were there any retail stores that were
11 open?

12 MR. LUGLIO: Just the other restaurant,
13 that's it. There's nothing else open there; that is
14 why, not occupied, vacant stores.

15 MR. MOLINELLI: There's a retail store at
16 the corner, a children's gym, right?

17 MR. LUGLIO: I don't believe it's open or
18 it certainly wasn't open.

19 MR. MOLINELLI: It's a retail children's
20 gym that, at that hour, was closed.

21 MR. PRINCIOTTO: Closed or vacated.

22 MR. SPIRIG: We asked for a track
23 engineer from our borough last month.

24 MR. MOLINELLI: I have not received any
25 information that he was retained. Is it Mr. Intindola?

1 MR. PRINCIOTTO: I was told he was not
2 available tonight but he is available.

3 Mr. Intindola, do you have any questions?

4 MR. INTINDOLA: I serve as the principal
5 traffic engineer for the firm.

6 I had read the transcript of the prior
7 meeting. It went over a lot of the methodology that
8 Mr. Luglio did, and then, I went through the -- our
9 letter as well as the site plan package.

10 There's one question I have for the site
11 plan package. It was puzzling to me. In the site plan
12 package, there is a calculation of 1 space per 175. In
13 that table, it makes mention -- it did not include the
14 hallways and common areas. I went to your ordinance to
15 see where you can do that. I don't see where you can
16 do that so it's not that it -- if the applicant were to
17 revise it to include the common areas because I don't
18 think it's allowed to take that out. Sometimes
19 engineers will take an interpretation as "How does a
20 hallway generate parking?" It's based on the gross
21 floor area so that might revise the ordinance -- the
22 request of the variance needed and that is something
23 that should be looked at. As I was going through
24 preparing for tonight, I don't think we can take out
25 the common areas. There may be a reason why their

1 experts did do this but I went through the ordinance.
2 If you chain-gang through in the ordinance where this
3 references the tables, I didn't see that specific
4 allowance or net floor area or whatever but it wasn't
5 specifically in that. Maybe the applicant can provide
6 that approach.

7 MR. MOLINELLI: You are referring to the
8 retail area that is not the subject of this
9 application?

10 MR. INTINDOLA: It was in the applicant's
11 site plan, the second sheet. It said it was the basis
12 of the -- parking is needed for the site and it was --
13 that specific bracketed item indicated that the 1 per
14 175, the remaining retail, was deducted out and I
15 didn't see any ordinance why that was. I just want the
16 representation for the applicant to be accurate.

17 MR. MOLINELLI: Let me just -- I'm going
18 to go over the number. I'm not quite sure. The square
19 footage is 7,143 square feet. We took out 2,893 square
20 feet for the restaurant, which doesn't have anything to
21 do with square footage, and we were left with 4,250
22 square feet remaining retail area and that had -- the
23 175-square-foot-per-space ratio is the 4250, the number
24 that you are questioning. You think it should be
25 higher because we need to include common areas?

1 MR. INTINDOLA: I'm not saying higher or
2 lower. I am saying you have to clarify how it can be
3 you can subtract out square footage when it's not in
4 the ordinance.

5 MR. MOLINELLI: We can do that. The
6 witness is here.

7 MR. INTINDOLA: If you look at Mr.
8 Luglio's testimony from last week or month and some of
9 this evening's, he redid the parking demand. It's
10 fairly isolated. It's a fairly good representation of
11 what the Board wants to achieve to see what the parking
12 demand would be if this one entity moved from one end
13 of town to another, but one thing that was striking to
14 me in the application was that, this application has a
15 beautiful basement kitchen, which I'm not sure if the
16 one that it's moving from has that, so, like, your
17 square footage, in this instance, that is walk-in
18 square footage or at ground level, is pure restaurant
19 except for the pizzeria prep area. The reason I say
20 this is, if you look at how parking relates to trip
21 generation, it's an indirect relationship. So many
22 cars come in --

23 MR. PRINCIOTTO: I thought you were going
24 to ask Mr. Luglio questions. We can swear you in.

25 MR. INTINDOLA: I'm getting to a

1 question.

2 MR. PRINCIOTTO: That is fine. I don't
3 want to cut you off. I would like you to testify, if
4 you have an opinion.

5 MR. INTINDOLA: It's a specific question
6 for Mr. Luglio.

7 There's an indirect relationship between
8 parking demand and trip generation. If we were to take
9 this and do the trip generation calculation, we would
10 include the basement area because it has a
11 functionality of the gross floor area, so as we were
12 talking about just before, Mr. Luglio said there's six
13 employees. It seems to me that, if you have a full,
14 professional kitchen downstairs and a pizza kitchen
15 upstairs, they would be hard-pressed to man that. It
16 would also have to be calculated that -- what the trip
17 generation would be in its entirety of the square
18 footage, both upstairs and downstairs, and maybe Mr.
19 Luglio would have that.

20 MR. NEWMAN: Are you saying the kitchen
21 is in the basement?

22 MR. INTINDOLA: There's a new set of
23 stairs being cut in.

24 MR. NEWMAN: Let's finish with this
25 witness. He has somewhere else to go.

1 MR. LUGLIO: I'm good for now.

2 MR. NEWMAN: Your testimony may take a
3 while.

4 MR. PRINCIOTTO: Do you need to ask a
5 question of Mr. Luglio?

6 MR. INTINDOLA: No. Ultimately, he's
7 converging on 2.5 seats per every parking space. That
8 is a typical number. Your ordinance has it in another
9 section of the ordinance that, for every 2.5 seats, you
10 need a parking space. This particular application, I
11 believe, it comes under 1 per 2 seats, 1 parking space,
12 so that is for the event-driven or catering banquet
13 area. That's --

14 MR. PRINCIOTTO: It sounds like your
15 question is: Is this study he did valid because --

16 MR. INTINDOLA: It does converge on that
17 number but there's --

18 MR. NEWMAN: My understanding is, his
19 testimony had to do with trip generation of the
20 existing Ray's Pizza. How relevant that is, that's
21 what we are all trying to figure out. It may be the
22 same restaurant but it's moving to a different location
23 and a different facility. I don't know if it comes
24 down to apples and apples.

25 MR. PRINCIOTTO: Because it's a different

1 operation in the sense of a different kitchen size, two
2 kitchens instead of one, is the parking study valid
3 that you did in Hillsdale to Woodcliff Lake that is
4 going to have a different size kitchen or
5 configuration?

6 MR. MOLINELLI: I understand that
7 question; however, I don't know where Mr. Intindola is
8 getting the idea that there's a commercial kitchen in
9 the basement. There is no commercial kitchen in the
10 basement. There is a locked storage, a dry goods
11 storage and walk-in freezer and refrigerator, a janitor
12 closet and toilet and triple sink and a hand sink.
13 That's not a commercial kitchen.

14 MR. INTINDOLA: It's labeled "Food
15 Preparation."

16 MR. MOLINELLI: Is there a difference, in
17 your judgment, between an area where they prepare the
18 dough and the food as opposed to a commercial kitchen?

19 MR. INTINDOLA: For food prep, you can
20 have your early guy come in and do salads in the
21 basement so it's a kitchen. It's functioning as a
22 kitchen.

23 MR. PRINCIOTTO: Did you hear my
24 question?

25 MR. LUGLIO: Yes. It's a very long

1 question. There's no doubt. I think, to Mr.
2 Intindola's point, if the upstairs, if there is a
3 kitchen downstairs and the upstairs is just solely used
4 for seats, in my opinion, in calculating the number of
5 parking spaces or the number of trips, it is based on
6 the seats only so I could have a 50,000-square-foot
7 kitchen but I have to base it just on the number of
8 seats. You laugh but that is true. It's a number of
9 seats.

10 MR. INTINDOLA: I will take exception to
11 that. If you look at the NJDOT methodology that would
12 be the ultimate arbiter of trip generation, you have to
13 see if the independent variable is seats alone or
14 square footage.

15 MR. LUGLIO: It is both but I think more
16 -- there's definitely more data that's provided on
17 seats, and certainly, I would also agree that, as Ray's
18 moves over, they would like to be more successful and
19 that number of 23 parked vehicles would likely be more
20 but not more than the available parking that we would
21 have on site at that time where Ray's peaks where the
22 other uses on site would not be in operation or not
23 require the maximum number of parking spaces for those
24 uses.

25 MR. MOLINELLI: I would like to see

1 further -- I think the ordinance is what controls here.
2 The ordinance doesn't say that you need a certain
3 number of parking spaces for seats and a certain
4 additional number of spaces for the square footage of
5 your kitchen. It's irrelevant; I think you will agree.

6 I know what Mr. Intindola is talking
7 about but the study that Mr. Luglio was asked to do was
8 to figure out the number of vehicles coming into the
9 existing Ray's at the peak and the number of vehicles
10 that were leaving. A trip generation study is a little
11 bit different.

12 What I'm saying, though, first of all,
13 there is not a commercial kitchen. I don't know what
14 the definition of a commercial kitchen is but it's not
15 a commercial kitchen. I would also say that, to
16 somehow require a greater level of parking because of
17 the square footage of the kitchen, that's arbitrary;
18 that is capricious. I would ask this Board to not
19 consider that.

20 MR. NEWMAN: I have to agree with you;
21 it's the ordinance that controls.

22 MR. MOLINELLI: I would thank Mr.
23 Intindola for the comment that a 1.25 ratio is more
24 appropriate for a restaurant like this, where the 1.2
25 ratio is more for events and parties and I also

1 appreciate his comment that what Mr. Luglio testified
2 to is a fair representation of what you are going to
3 see here at Ray's.

4 So thank you, Brian.

5 MR. NEWMAN: So he likes some of what you
6 said but not all of what you said.

7 MR. INTINDOLA: That has to be -- to say
8 that my testimony is arbitrary and capricious is not a
9 fair representation of my testimony.

10 MR. NEWMAN: I would like to get this
11 witness out of here. I would like you to testify
12 later.

13 MR. MOLINELLI: I said, if the Board
14 relied on that, its decision would be arbitrary because
15 you are employing a parking requirement that is not set
16 forth in the ordinance. I have a lot of respect for
17 Mr. Intindola. This is not the only town where I work
18 with him. He's a terrific engineer. I wasn't
19 commenting on what he said; it's: Can you use it and
20 ignore your own ordinance?

21 MR. NEWMAN: I would like to release this
22 gentleman.

23 MR. PRINCIOTTO: You are here because you
24 don't meet the ordinance and the question is the
25 relevance of this study and it may be that the use is

1 different and that's why the questions are valid.

2 Are you staying here, Mr. Intindola?

3 MR. INTINDOLA: I'm enjoying myself so
4 far.

5 CHAIRMAN BONGARD: We will release Mr.
6 Luglio.

7 MR. MOLINELLI: The architectural
8 drawings are A-1 and I have to look at the definition
9 of commercial kitchen.

10 DIRECT EXAMINATION BY MR. MOLINELLI:

11 Q. Mr. Rivera, you are still under oath?

12 A. Yes.

13 Q. Have you been successful in finding a
14 couple of tenants?

15 A. Yes.

16 Q. Can you tell me what those tenants are?

17 A. The first one is the wellness center.

18 They are actually, right now, doing some of the
19 improvements and should be opening up shortly. We also
20 just put a lease out for a dentist. That would leave
21 us with one remaining unit.

22 Q. Just so we can clarify, when you say "put
23 a lease out," what does that mean?

24 A. We sent a lease to the dentist and to his
25 attorney for their review and have it executed shortly,

1 hopefully.

2 Q. I'm not looking to bind any of these
3 tenants but are you aware, generally, of the nature of
4 the dentist's operations.

5 A. Yes, I'm aware that they will be open
6 Monday through Friday and the dentist would be
7 observing the Sabbath on Saturday but will be open on
8 Sunday.

9 Q. It's one dentist, you said?

10 A. One.

11 Q. The wellness center, they are occupying
12 -- there are three vacant spaces left. The dentist
13 will have one of the divided five and the wellness
14 center is one space of the divided five?

15 A. Yes.

16 Q. Are you aware of the nature of the
17 wellness care operation?

18 A. They are open from Monday to Saturday
19 from 9:00 to 6:30.

20 Q. Thank you, Mr. Rivera.

21 MR. NEWMAN: I have a question --

22 CHAIRMAN BONGARD: At the wellness
23 center, what basic operations will they be doing? How
24 many employees?

25 MR. RIVERA: I don't have the number of

1 employees. They will be doing nails, pedicures,
2 facials and waxing.

3 MR. MOLINELLI: For the record, for a
4 retail use such as that, it's based on the number of
5 square feet. Mr. Intindola may disagree with me. It's
6 1 space for every 250 square feet. That equals 6
7 spaces, and for a dentist, it's 5 spaces for each
8 dentist and 1 for employees. We don't know how many
9 employees but it will probably be 6 spaces.

10 MR. NEWMAN: We don't even know if the
11 dentist will sign the lease.

12 MR. MOLINELLI: Correct.

13 MR. NEWMAN: And one mystery space.

14 MR. MOLINELLI: That is right.

15 MR. NEWMAN: The lease, are you going to
16 put hours restricting hours of operation for any of
17 those tenants?

18 MR. RIVERA: No. We are not.

19 MR. SPIRIG: There's no hours for the
20 wellness center at this point?

21 MR. NEWMAN: There's no restriction in
22 the lease.

23 MR. RIVERA: But they have given us the
24 indication that it will be Monday through Saturday,
25 5:00 to 6:30.

1 MR. SPIRIG: 1 space for 250 square feet?

2 MR. MOLINELLI: For this type -- what I
3 have said from the beginning is that the other uses of
4 the spots are traditional retail or professional uses.
5 I offer Mr. Rivera's testimony just as an example of
6 the type of uses you can expect. The restriction that
7 we have agreed to -- and I certainly understand there
8 can't be another restaurant, I don't want to pigeonhole
9 any tenant in terms of hours but you get an idea. It's
10 based upon the square foot. Each of these units is
11 1,416 square feet. That equates to 6 spaces each
12 during the daytime.

13 MR. SPIRIG: For their own employees.

14 MR. MOLINELLI: If it's a dentist, the
15 ordinance does require a space for an employee and a
16 dentist, otherwise 5 spaces for each dentist, but when
17 you get to the retail use, it's 1 space for 250 square
18 feet. It doesn't matter, in a sense, how many. The
19 ordinance --

20 MR. NEWMAN: I got another question. Is
21 there going to be a restrictive covenant in the lease
22 that there will only be one dentist?

23 MR. MOLINELLI: There will not be. We
24 are just giving you a basic idea of what the uses will
25 be that are there. I'm sure the borough wants to

1 encourage retail use in the area. The last thing the
2 Board wants to do is put restrictions out there.

3 MR. NEWMAN: I understand.

4 CHAIRMAN BONGARD: Any other questions
5 from the public -- open to the public for questions.

6 Could I have a motion?

7 MR. SPIRIG: I'll move to open it to the
8 public for questions of this person's testimony only.

9 MR. NEWMAN: I second the motion.

10 CHAIRMAN BONGARD: Anybody that would
11 like to ask Mr. Rivera any questions about what he
12 talked about tonight?

13 MR. SCHWARTZMAN: You indicated that two
14 of the business facilities either have been rented or
15 you are in negotiations, the dentist and spa?

16 MR. RIVERA: That is correct.

17 MR. SCHWARTZMAN: All of the apartments
18 are rented also?

19 MR. RIVERA: Yes.

20 MR. SCHWARTZMAN: Could one assume that
21 you are doing pretty well so far?

22 MR. RIVERA: I would say so, yes.

23 MR. SCHWARTZMAN: If, in fact, the Board
24 turns down the variance for the restaurant, would you
25 assume that you could get a replacement for those two

1 plus the third one?

2 MR. RIVERA: There's always a
3 possibility, yes.

4 MR. SCHWARTZMAN: Just a possibility?

5 MR. RIVERA: Yes.

6 CHAIRMAN BONGARD: Anybody else?

7 (No response)

8 CHAIRMAN BONGARD: Motion to close?

9 MR. SPIRIG: Motion.

10 MR. NEWMAN: Second.

11 DIRECT EXAMINATION BY MR. MOLINELLI:

12 Q. Mr. Eichenlaub, you had previously
13 testified in this matter; is that correct?

14 A. That's correct.

15 Q. Are you familiar with a letter that we
16 received from the -- or the Board received from Neglia
17 Engineering Associates dated June 8, 2018?

18 A. I am.

19 (Exhibit A-7, letter dated 6/8/18, was marked
20 for Identification.)

21 Q. This letter was submitted to the Board in
22 response to a request by this Board to have the Zoning
23 Board engineer review the application, correct?

24 A. Correct.

25 Q. In fact, Mr. Intindola, who just gave a

1 statement before this Board, is also with Neglia?

2 A. My understanding, yes.

3 Q. But this is Kevin Jacobs who submitted
4 this letter?

5 A. Correct.

6 Q. You reviewed the letter?

7 A. I did.

8 Q. I would like to just, briefly, go over
9 the letter with you. Directing your attention to
10 Paragraph 2.1 of this letter where Mr. Jacobs refers to
11 the request for the impervious coverage variance as
12 being de minimis, do you agree with that?

13 A. I am. I testified to that, yes.

14 Q. Directing your attention to Paragraph 2.4
15 of the letter where Mr. Jacobs indicated there was no
16 exception taken as to the proposed barrel that will
17 collect the used cooking oil, are you familiar with
18 that paragraph?

19 A. I am.

20 Q. You are in agreement with that
21 assessment?

22 A. Yes. That had been testified to.

23 Q. Now, Paragraph 2.3 requests certain work,
24 on your part, to revise the plan to provide existing
25 and proposed spot elevations in the area of the

1 proposed patio improvements. You are okay with that
2 request that came from Mr. Jacobs?

3 A. I am.

4 Q. In accordance with that, have you made
5 changes to certain portions of the plan?

6 A. Per that request, I went out and I took
7 additional grade shots along the south side of the
8 building in the vicinity of the proposed outdoor dining
9 patio. Those grade shots were taken in a north-south
10 direction every 5 feet, and in an east-to-west
11 direction along the patio, they were taken every 10
12 feet. What those grade shots show is the grade in the
13 vicinity of the patio itself, existing grade in the
14 vicinity of the patio itself. There's a grade
15 differential from the walkway to the outer southerly
16 edge of the proposed patio of several inches. From
17 that point, it grades off, and approximately 10 feet
18 off of the sidewalk, the grade starts dropping at a
19 much greater rate. From the edge of the sidewalk to
20 the outside edge of our planted screening strip here,
21 the grade drops approximately 15 inches. What we have
22 proposed, and I testified to, to make up that and
23 flatten the area to provide for the patio, we would
24 require a small, curved type retaining structure to
25 build up the planted area. That built-up planted area

1 and the, what I would refer to as, segmental block
2 would stand about 15 inches in height maximum, not the
3 entire length but the maximum height would be about 15
4 inches. Those grades do justify and they are in
5 agreement with what I had testified to at the previous
6 two meetings.

7 Q. This plan shows the extensions of the
8 relocated bollard lights and the landscaping?

9 A. Correct. This has not changed. The
10 landscaping, originally, we called for holly. We are
11 looking to provide for a greater screening and use
12 arborvitae. They are taller and denser and they are
13 the plants that we have along there now, there will
14 just be more of them.

15 CHAIRMAN BONGARD: Everything was done
16 that was requested.

17 MR. EICHENLAUB: Yes, that was forwarded
18 to your engineer last week.

19 CHAIRMAN BONGARD: Okay.

20 MR. PRINCIOTTO: You said there was a
21 retaining area. Is that a wall?

22 MR. EICHENLAUB: I refer to it as a
23 retaining curb. It's about 15 inches tall at the
24 highest point. It varies from that 15-inch height to
25 0. The majority of it is somewhere between 8 and 12

1 inches in height. There's one point that would be
2 about 15 inches in height.

3 MR. PRINCIOTTO: The arborvitae, I know
4 there's a lot of different varieties. Do you know how
5 tall it is?

6 MR. EICHENLAUB: Certainly, tall enough
7 to screen a person on that patio. The ones that are
8 planted now are about 3 to 4 feet in height. That
9 would be the planted height. The mature height is
10 much, much higher than that. I mean, these things can
11 grow 15 to 20 feet in height. We wouldn't want that.
12 They would be properly pruned and maintained. We would
13 want something in the neighborhood of 5 to 6 feet to
14 screen the patio completely from our neighbors to the
15 south.

16 MEMBER OF THE PUBLIC: Thank you.

17 Q. I would direct your attention, for a few
18 moments, approximately a half hour ago, Mr. Intindola
19 testified that your calculations for parking, which
20 appear on the site plan, specifically, that part that
21 references 250 -- 1 space for every 250 square feet of
22 floor area, you were here; you were present when he
23 testified to that?

24 A. I heard it, yes.

25 Q. The substance of his statement was that

1 you should not have excluded common areas and corridors
2 in the calculation of the square footage?

3 A. I heard that. Yes.

4 Q. You are familiar with the Woodcliff Lake
5 Zoning Code --

6 A. Yes.

7 Q. -- and site plan review?

8 A. Yes.

9 Q. Do you have a response to that position
10 that you are not supposed to use the common areas when
11 computing the floor area?

12 A. It wasn't that we weren't supposed to,
13 but under our original application that received
14 approval from this Board back in 2016, we had indicated
15 on our plans and it was agreed to and approved and I
16 state, in our calculation that for retail space, we
17 need 1 space for every 175 square feet of floor area.
18 It does not include entry and lobby, stairwells and
19 elevator. That was agreed upon at the time that this
20 application was approved back in 2016 so we simply,
21 when we redid it -- and for the outdoor dining and the
22 restaurant, we simply maintained that net area.

23 Q. Right. You are familiar with Section
24 380-6, the definition of floor area and I'll put it in
25 front of you. The floor area is defined into gross or

1 net floor area. You are familiar with that section of
2 the ordinance?

3 A. Yes.

4 Q. Gross floor area, you would use the
5 entire gross area and you would include the common
6 areas and corridors as was being suggested by --

7 A. Stair towers, elevators, everything.

8 Q. You used the floor area but excluding the
9 corridors?

10 A. Corridors, elevator and stair shafts.

11 Q. But the definition of this requirement
12 for 175 square feet, it just says "based upon floor
13 area"; is that correct?

14 A. Yes.

15 Q. It does not say "gross floor area"?

16 A. Again, I'm -- correct.

17 Q. Based upon the prior experience with this
18 Board and whether or not corridors and other common
19 areas should be excluded for purposes of this
20 calculation and based upon your reading of the
21 ordinance, you are satisfied, from an engineering
22 standpoint, the applicant is entitled to exclude those
23 common areas in calculating the number of required
24 parking spaces?

25 A. Correct. Because it was excluded on the

1 original approved plan and we maintained those same
2 calculations.

3 MR. MOLINELLI: Thank you. That is all I
4 have.

5 MR. SPIRIG: As a matter of
6 clarification, when you said the "original approval,"
7 was that the original approval from the Planning Board?

8 MR. EICHENLAUB: No, no, no. From this
9 Board in 2016.

10 MR. SPIRIG: The retail space was
11 approved by the Planning Board as the original
12 application that was submitted. It was for retail
13 below and office space, and then, subsequent to that,
14 the application -- applicant came in to get a zoning
15 variance for apartments on the second floor and the
16 removal of office space. When you said the original
17 proposal, was that by the Planning Board or in front of
18 this Board?

19 MR. EICHENLAUB: In front of this Board.
20 The plans that were approved --

21 MR. NEWMAN: Did you change it from the
22 Planning Board to the Zoning Board?

23 MR. EICHENLAUB: These were the plans
24 that were approved by this Board and there's a note --

25 MR. NEWMAN: If I understand correctly --

1 MR. MOLINELLI: Can I correct the record
2 before you talk? The original approval -- I have them
3 and I can mark all of the resolutions to have them in
4 the record -- was a Planning Board approval for an
5 office building only with a height variance that was
6 approved December 12, 2011. Mr. Princiotto has that
7 approval. The approval that Mr. Eichenlaub is talking
8 about is October 27, 2015, which granted approval for
9 the retail on the ground floor, the 14 apartments
10 above. There was a modification after it. There were
11 changes to increase the corridors and aisles and it
12 provided for that chase because it was anticipated
13 there would be a future restaurant in the use. That
14 was a Zoning Board application that Mr. Eichenlaub is
15 referring to. That's 10/17/15.

16 MR. NEWMAN: So I understand correctly,
17 the reason why you don't include the gross area of the
18 corridors is because of the variance, but if there were
19 no variance, it would be included in your calculation?

20 MR. EICHENLAUB: No. It was excluded
21 because -- again, I'm referring to the original
22 application approved by this body that those areas were
23 going to be subtracted out.

24 MR. NEWMAN: We didn't require parking
25 for those areas back in 2015.

1 MR. EICHENLAUB: Correct.

2 MR. PRINCIOTTO: Was there any exception
3 taken in the review of this back then?

4 MR. EICHENLAUB: I know there were
5 discussions and it was agreed upon to take the net area
6 or the net area or the gross area minus those areas
7 that were stair towers, elevators and common hallway
8 space on the first floor.

9 MR. NEWMAN: Let me ask you a follow-up
10 question. But for that, would you have to include
11 those areas in your calculations for parking?

12 MR. EICHENLAUB: We probably would have.

13 MR. NEWMAN: Oh. How many parking spaces
14 are required for this application?

15 MR. EICHENLAUB: For the restaurant, 48
16 plus 6, 54.

17 MR. NEWMAN: But for the building,
18 assuming the other space stays as retail, how many
19 total parking spaces do you need?

20 MR. PRINCIOTTO: 114.

21 MR. MOLINELLI: 105. It was 114. We
22 reduced the number of seats to 96. 96 seats plus the 6
23 employees brings you to 54. The number of parking
24 spaces in the rear under the Residential Site
25 Improvement Standards is 27. We took the balance of

1 the square footage left on the first floor. Other than
2 the restaurant, it was 4,250 square feet and we took
3 the parking requirement by square footage of that.

4 That comes to 27 spaces. The total number is 105.

5 MR. NEWMAN: You -- according to you, Mr.
6 Molinelli, the total number you need is 105 and how
7 many are there?

8 MR. EICHENLAUB: 65.

9 MR. NEWMAN: Thank you.

10 MEMBER OF THE PUBLIC: No. There's 38.

11 MR. MOLINELLI: Thank you.

12 CHAIRMAN BONGARD: Any other questions?

13 MS. MALLEY: I have a question on the
14 outdoor dining and why that space was chosen. Any way
15 to move it to the front corner there?

16 MR. EICHENLAUB: That's where our water
17 treatment package is. They are large water treatment
18 chambers and the manhole covers and so forth. That was
19 looked at. There was not enough area and it would have
20 required us to alter those chambers and remove all of
21 that landscaped area.

22 MS. MALLEY: Then, it wouldn't be in the
23 neighbor's space.

24 MR. EICHENLAUB: It would still be on
25 that side of the building.

1 MS. MALLEY: It's more commercial towards
2 the front and that side.

3 MR. DHAWAN: Can you explain the water
4 treatment chambers?

5 MR. EICHENLAUB: They are part of the
6 state regulation. Because we are disturbing over an
7 acre of property, we are required to add adhere and
8 comply with the water quality measures, the state.
9 It's a filtering system. Before it goes into --

10 MR. DHAWAN: Below grade?

11 MR. EICHENLAUB: Correct. They are large
12 manhole covers covering these so they can have access
13 to get in there and clean them.

14 MR. DHAWAN: The intent is not to have
15 seating over it is what you are saying?

16 MR. EICHENLAUB: That was the intention
17 and not have to alter those because it would be quite
18 expensive and that area is all landscaped and we would
19 be eliminating that landscaping.

20 MS. MALLEY: A clarification on that, you
21 are saying where it's shrubs would be manhole covers if
22 you move it on the sidewalk in the front? Is there any
23 way to do that?

24 MR. EICHENLAUB: To the sidewalk? It's a
25 narrow sidewalk.

1 MS. MALLEY: Can that be widened a little
2 bit?

3 MEMBER OF THE PUBLIC: Yes.

4 MR. EICHENLAUB: Right in front of the
5 restaurant are handicapped spaces. We have a
6 handicapped ramp. The sidewalk is not level. It
7 slopes down to accommodate that ramp. It's not level.
8 I mean, I guess you could set up small tables along the
9 front but they would not be directly in front of the
10 pizzeria. That is basically taken up by the ramp.
11 They would be smaller tables. You still want to be
12 able to walk around.

13 MR. MOLINELLI: Look at Page 2 of the
14 plans and you can -- if you had to put tables in front
15 of the building, you, obviously, would have to avoid
16 the entrances. What's the distance between the edge of
17 the building and that first spot where there's an
18 entrance?

19 MR. EICHENLAUB: The fine dining area.

20 MR. MOLINELLI: By the way, the width of
21 this sidewalk is how much.

22 MR. EICHENLAUB: About 7 feet.

23 MR. MOLINELLI: And you could not make it
24 any wider because you would be taking away from parking
25 spaces that exist?

1 MR. EICHENLAUB: No, we cannot make it
2 any wider.

3 CHAIRMAN BONGARD: What's the width of
4 the proposed?

5 MR. EICHENLAUB: 7 feet -- the patio is
6 7 feet wide by 35 feet.

7 MR. MOLINELLI: The problem is: You
8 can't put chairs in front of an entrance so you would
9 have to put them one here, one there, two here, two
10 there. You have to look at where your entrance nodules
11 are. You can only put tables away from them.

12 MR. EICHENLAUB: There wouldn't be able
13 to be tables for four. It would be, mainly, a seating
14 of two because the seating, if we were to take the 7
15 feet that we have proposed for the patio and use that
16 across the front and our walkway is 7 feet, there would
17 be no room to get around the tables.

18 CHAIRMAN BONGARD: I would like to open
19 it up to the public.

20 Can I have a motion?

21 MR. SPIRIG: Motion to open to the
22 public.

23 MR. HAYES: Second.

24 CHAIRMAN BONGARD: All in favor?

25 MEMBERS OF THE BOARD: Aye.

1 CHAIRMAN BONGARD: Anybody in the public
2 that would like to direct questions of what
3 Mr. Eichenlaub has talked about this evening?

4 MR. COUTO: Alex Couto, 18 Crestfield
5 Court, Woodcliff Lake.

6 The proposed patio, if you have people
7 sitting on the patio and all the tables are filled, do
8 people have a view of the south more or the west more?

9 MR. EICHENLAUB: Again, at this point,
10 they would have a view of the southwest and to the
11 east.

12 MR. COUTO: But it's 7 feet facing west,
13 correct?

14 MR. EICHENLAUB: No. 7 feet in the
15 north-south direction. The 35 feet is in the east-west
16 direction.

17 MR. COUTO: If you had the tables filled,
18 the people would be looking south to the houses --

19 MR. EICHENLAUB: They turn to look to the
20 south. They would be sitting facing one another in an
21 east-west direction.

22 MR. COUTO: My question is: From that
23 point, let's say looking away from the restaurant, they
24 see houses, the front of --

25 MR. EICHENLAUB: Looking to the south,

1 they see the front yard of a residential lot and the
2 rear yard of the restaurant next door.

3 MR. COUTO: If you are facing with your
4 back to the west, they would have a nice view.

5 MR. EICHENLAUB: No, no. The back facing
6 west, they are facing west.

7 MR. COUTO: The parking lot on Broadway,
8 they can see a portion of it, especially in the winter.

9 MR. EICHENLAUB: They are not going to be
10 sitting out there in the winter.

11 MR. COUTO: But you are going to see.

12 MR. EICHENLAUB: You are not going to
13 see.

14 MR. COUTO: Once the people are sitting
15 on the proposed patio, they -- how many feet are they
16 from the sidewalk from where the road starts?

17 MR. EICHENLAUB: About 14 feet, the
18 sidewalk, public sidewalk.

19 MR. COUTO: It seems very close and could
20 be imposing on the peace and quiet of the houses.

21 MR. EICHENLAUB: That's why we changed
22 the landscaping. We are trying to give it a greater
23 buffer and a sound barrier between the seats and our
24 neighbors.

25 MR. COUTO: I'm not telling you what to

1 do but I won't support it facing west.

2 MR. PRINCIOTTO: Do you have a question?

3 You can make a comment later.

4 MR. COUTO: Okay. I'll make a comment
5 later.

6 MR. EICHENLAUB: I want to make that
7 clear. The tables, the way we are proposing setting
8 them up, you are going to be sitting at the table, one
9 person or two people would be looking to the west and
10 the other two will be looking to the east. Now, you
11 would have to turn your head 90 degrees to look to the
12 south.

13 CHAIRMAN BONGARD: There's no seats
14 looking directly across.

15 MR. EICHENLAUB: We are not setting the
16 tables up so you are looking out to Columbus.

17 MR. REZEN: So you are saying there's two
18 people to a table?

19 MR. EICHENLAUB: Maximum of four.

20 MR. REZEN: How far from the side of the
21 building to the curb?

22 MR. EICHENLAUB: You are talking from the
23 side of the building to the property line, we have 22
24 feet. You have another 10 feet or so, maybe another 8
25 feet, about 30 feet.

1 MR. REZEN: 30 feet from the side of the
2 building to the curb?

3 MR. EICHENLAUB: To the curb to the
4 sidewalk, it's 20 feet from the building. I laid a
5 tape out on it.

6 MR. REZEN: You are going to go from the
7 edge of the building, 7 feet from the edge of the
8 building out?

9 MR. EICHENLAUB: No, no, no. There's a
10 sidewalk from the existing sidewalk out to the south.
11 We are going an additional 7 feet.

12 MR. REZEN: How wide is the sidewalk
13 right next to the building?

14 MR. EICHENLAUB: About 6 feet, 13 feet.

15 MR. REZEN: 13 feet and you are saying
16 there's another 17 feet to the curb?

17 MR. EICHENLAUB: To the curb.

18 MR. REZEN: And the curb is pretty close
19 so you are looking at 6 or 7 feet between the edge of
20 the tables and the sidewalk, correct?

21 MR. EICHENLAUB: We are about --

22 MR. MOLINELLI: Look at the plans.

23 MR. EICHENLAUB: 22 feet is from the
24 corner of the building to the property line. Okay? We
25 have got --

1 MR. REZEN: This is the sidewalk?

2 MR. EICHENLAUB: That is the public
3 sidewalk, correct.

4 MR. REZEN: The length of the building
5 total is how long? 64 feet? You are going to do the
6 front --

7 MR. EICHENLAUB: 35 for the first front
8 half, correct.

9 MR. REZEN: These manhole covers are how
10 far from here to there?

11 MR. EICHENLAUB: Approximately, 15 feet.

12 MR. REZEN: What's between the manhole
13 covers and the corner of the building?

14 MR. EICHENLAUB: Landscaping.

15 MR. REZEN: Is there a possibility this
16 could be shifted further since you have 15 feet from
17 the manhole cover?

18 MR. EICHENLAUB: You are talking about
19 shifting it further to the west?

20 MR. REZEN: What we are trying to do is
21 keep it more commercial.

22 MR. EICHENLAUB: We can line it up with
23 the edge of the building?

24 MEMBER OF THE PUBLIC: Don't do that.
25 Why would you want to do that?

1 MR. PRINCIOTTO: Any other questions for
2 this witness?

3 (No response)

4 CHAIRMAN BONGARD: Motion to close to the
5 public?

6 MR. NEWMAN: Motion.

7 MS. MALLEY: Second.

8 CHAIRMAN BONGARD: Okay.

9 J O S E P H B U R G I S, first having been duly
10 sworn, testified as follows:

11 VOIR DIRE EXAMINATION BY MR. MOLINELLI:

12 Q. You are testifying as a professional
13 planner?

14 A. Yes. I am.

15 Q. Could you give the Board your
16 qualifications?

17 A. I have a Master's degree in city and
18 regional planning obtained from Rutgers University. I
19 have been a planning consultant for close to 40 years
20 and the firm presently represents 45 municipalities
21 throughout New Jersey, and at one time, Woodcliff Lake.
22 I'm licensed as a professional planner by the state and
23 certified by the America Institute of Certified
24 Planners and a member of the American Planning
25 Association.

1 Q. You have been qualified many times as a
2 professional planner?

3 A. Yes, many times including this Board.

4 MR. MOLINELLI: I would offer him as an
5 expert.

6 CHAIRMAN BONGARD: He is accepted.

7 DIRECT EXAMINATION BY MR. MOLINELLI:

8 Q. You have been asked to make an assessment
9 for the application for variances, particularly a D
10 variance to permit a restaurant, a D application for a
11 parking variance as well as a small impervious coverage
12 variance. Are you familiar with the application?

13 A. Yes.

14 Q. You reviewed the transcript from
15 testimony that was offered in May and April of this
16 year?

17 A. I was here for the April meeting but not
18 the May but I did read the transcript.

19 Q. Can you describe your nature of the
20 application and the property description?

21 A. Certainly.

22 I'll be brief. I think everyone in the
23 room knows what this application is about.

24 The site is on the east side of Broadway
25 between Lincoln and Columbus Streets. It occupies a

1 little over one and a quarter acres in size, and in
2 terms of the frontage, it has a total of 117 feet
3 frontage directly on Broadway and that's an average of
4 290 feet.

5 There's an increased already existing
6 building. It has a footprint of 8288 square feet.
7 It's at-grade retail and two floors of apartments above
8 and those two floors are a total of 14 units, including
9 four one-bedroom units and ten two-bedroom units, and
10 as everybody in the room has been discussing, there are
11 65 parking spaces on site, 38 on one side and 27 on the
12 other.

13 Everybody is familiar with the
14 surrounding land uses. I don't want to go into too
15 much depth on that. To the east is residential
16 development. Along roadway is commercial development
17 including another pizzeria right nearby at the corner.

18 In terms of the proposed development, we
19 are focusing, this evening, on the restaurant use. The
20 restaurant occupies, if you approve it, 2893 square
21 feet of floor space. It has a total of 96 seats as we
22 discussed, and to make it clear, while we do have
23 proposed use of outdoor patio area for 16 seats, if
24 those seats are used outdoors, there would be 16 seats
25 removed from the inside of the building. We would also

1 have no more than 96 seats. The patio area is just 245
2 square feet in area.

3 What I did, in terms of examining the
4 application for my purpose, is to examine the Master
5 Plan; now, there's a re-examination report following
6 that that our firm had done, looked at the zoning
7 regulations to see where we comply and where we don't
8 and focused all that information relative to the
9 statutory burden for variance relief.

10 Let me identify that. I know the Board
11 is familiar with it and the public is. Let me talk
12 about that for a moment. The Municipal Land Use Law is
13 a document that identifies the statutory criteria that
14 any use variance has to address. That's for the
15 restaurant use because the zoning ordinance does not
16 permit restaurants in the B1 zone where we are located.
17 The Municipal Land Use Law has two different sets of
18 criteria and applicable case law that we have to
19 address.

20 In terms of the statutory burden, an
21 applicant has to prove special reasons to address the
22 positive criteria in the statute, and typically, those
23 special reasons can be a variety of things because the
24 statute is not definitive in what special reasons
25 means, but clearly, in terms of case law, where one

1 affirms some of the purposes of the Municipal Land Use
2 Law, that would represent a special reason to support
3 the application.

4 There's also the negative criteria, a
5 two-pronged test that the applicant has to address.
6 The first prong is that you have to show there's no
7 substantial detriment to the Master Plan intent.
8 That's actually in the Municipal Land Use Law. The
9 second prong is that you have to show there's no
10 substantial detriment to the public good. The focus is
11 "substantial," which is a statutory term of art.

12 For a use variance like this, there's
13 also a case, the Medici case, that you have to address
14 which basically talks about particular suitability and
15 how you are furthering the overall intent of the
16 community's Master Plan. That's all for the restaurant
17 use.

18 In addition to that, we have two bulk
19 variances, one for parking and one for impervious
20 coverage. For that, there's a separate set of
21 standards from the Municipal Land Use Law. One test is
22 that you are to either show that there's physical
23 features that affect your ability to comply, or
24 alternatively, that, by virtue of the grant of the
25 variance, the public benefits that will accrue from the

1 relief being sought, and then, the negative criteria
2 would also apply to those variances as well.

3 So a lot of this has to do with the
4 Master Plan. Let's talk about that for a moment.
5 Going back to the early 2000s, this municipality's
6 Planning Board prepared and adopted a comprehensive
7 Master Plan. The one before that was 30 years old.
8 The Master Plan identified Broadway for commercial
9 development and it specifically designates it
10 consistent with the zoning designation of B1 zone.

11 What's interesting about that document is
12 that it looked at the variety of land uses that are
13 permitted along the corridor and it recognized and says
14 this in the text that the zoning ordinance doesn't
15 permit certain uses it deemed to be inappropriate for
16 the corridor and one of them is restaurants. It said
17 that the municipality should re-examine its zoning
18 ordinance. When it does, it should reconsider the
19 prohibition on restaurants.

20 Now, fast forward six years later; the
21 Planning Board adopted a re-examination report of its
22 Master Plan and that was an obligatory item at that
23 time. The Municipal Land Use Law required a
24 municipality to re-examine its Master Plan every six
25 years. Now, that's been changed to every ten years.

1 Back then, it was six.

2 It was re-examined back in 2008 and the
3 document, again, reiterated its concern about the
4 prohibition on restaurants and it went further than
5 that because it then went on to say, along the Broadway
6 corridor, the kind of uses that are found in a
7 traditional downtown should be considered as permitted
8 uses here. When you look at traditional downtowns, one
9 thing we clearly see is what? Restaurants. So again,
10 it was reiterating the concern that was voiced back in
11 2002.

12 At the same time, there is a Broadway
13 corridor study that was prepared, and at that time with
14 that report, it talked about recognizing changing
15 market conditions and how -- we are seeing this in
16 every municipality. There is a need to re-examine
17 permitted uses and commercial corridors in an effort to
18 address the problem of dying commercial areas because
19 e-commerce trade was starting to have a significant
20 adverse effect on all business districts.

21 What is interesting is, we did an
22 examination for two or three of our central business
23 district plans for different municipalities throughout
24 the state and found the change that e-commerce has
25 brought in commercial areas. One of the things is

1 that, whereas 10 or 15 years ago, we saw record stores
2 in downtowns or commercial areas, we don't see those or
3 video stores. They are a thing of the past. Clothing
4 stores are slowly going in that direction. We are
5 seeing a significant reduction in the number of
6 clothing stores in business districts.

7 Why am I bringing up all this? This is
8 reflective of any commercial corridor. If you want
9 retail trade, you need to adjust your ordinance to go
10 in the direction where the market is going today and
11 the market is going towards entertainment uses in
12 commercial areas, restaurant uses in commercial areas,
13 the kind of uses that Gil had mentioned earlier that
14 they are seeking leases for on this kind of property.
15 Fifteen years ago, we never saw, in this kind of a
16 retail corridor, a dentist move into this kind of
17 facility. You are seeing it today more and more. You
18 are seeing medical facilities moving into these kind of
19 facilities because the availability of retailers just
20 isn't what it once was.

21 The data on e-commerce really points in
22 that direction. For example, in the year 2000, e-
23 commerce only accounted for one half of 1 percent of
24 all retail trade in this country. By 2017, the last
25 year for which we have data, I usually ask the

1 question, what do people think is the amount of e-
2 commerce trade, and quite often, I hear 15, 20 percent.
3 I was in one municipality where somebody said "It's got
4 to be close to 40 percent." It's only 8.9 percent of
5 all retail trade and we, already, every one of us, we
6 see the changing nature of retail, how retail dollars
7 are spent, based on 8.9 percent of our retail trade
8 dollars being spent in retail trade. By 2022, that
9 figure is projected to go to 13 percent and by 2030
10 it's projected to be about 30 percent.

11 Now, think of what our retail areas are
12 going to look like when we have that kind of
13 expenditure on e-commerce rather than brick-and-mortar
14 retail sales. When you look at what's happening with
15 Amazon, in the year 2005, there is 8.5 billion spent on
16 Amazon and we all get those lovely boxes all the time
17 and everybody is laughing about that. By 2017, the
18 figure went from 8.5 billion to 178 billion dollars.
19 That's had an obvious adverse effect on brick-and-
20 mortar retailers. In another five years, that figure
21 is projected to go to 356 billion dollars. It's going
22 to double what it is today.

23 So what do we do with all this retail
24 space that we have approved but don't see yet occupied?
25 As I said earlier, entertainment activities and other

1 uses that we mentioned earlier and restaurant uses is
2 the direction a lot of municipalities are going in, as
3 is your municipality based upon its earlier Master Plan
4 documents. Now, within the context of the statutory
5 criteria, I think that represents a special reason in
6 support of this kind of application. In addition to
7 that, the fact that the Master Plan makes that
8 recommendation represents a second special reason in
9 support of the application. When you look at Municipal
10 Land Use Law purposes, when it talks about the
11 appropriate use of land and its compatibility with
12 adjoining municipalities development pattern, I think
13 that can represent a special reason in support of the
14 application.

15 Now, in terms of the negative criteria of
16 the statute, I think it's safe to say that, given the
17 Master Plan made the recommendation that it did, it's
18 safe to say this application doesn't represent a
19 substantial impairment to the intent of the plan
20 because that was the intent of the plan, to give
21 consideration to this kind of a use.

22 In terms of the other prong of the
23 negative criteria, there's no substantial impairment to
24 the surrounding development pattern and whatnot. The
25 fact that we have this buffer area that we are

1 providing to physically separate this activity from the
2 adjoining or surrounding residential development
3 pattern, the fact that the parking lot can be
4 accommodated, based on all the testimony that Lou
5 Luglio had given earlier where it seems that there will
6 be sufficient parking on site to accommodate this
7 activity and the other activities that occupy the site,
8 I think it's safe to conclude that we affirm that prong
9 of the statutory burden.

10 In terms of the final issue, which is the
11 increase in impervious coverage, the increase in
12 impervious coverage is about a quarter of a percent.
13 That 245 square feet area, however, results in an
14 attractive feature that a lot of people are seeking
15 today in restaurant use, an outdoor space. There are
16 only 16 seats outside. I can tell you that it's not
17 atypical that anyone with a back yard, especially in
18 the summertime, will have 16 people in their back yard.
19 I know, in our house throughout the summer, we always
20 have that many people every Friday or Saturday night.
21 I know there's a concern about the impact of that for
22 the nearby residents, but in terms of the asset to the
23 community, I think it is a benefit and I think, in the
24 context of Medici, the Medici test is also affirmed.

25 Q. What you are saying is it will further

1 what the Planning Board and this borough has envisioned
2 with regard to the Broadway corridor, particularly it's
3 linkage to the train station, correct?

4 A. Yes.

5 Q. That is a significant factor in it?

6 A. Yes. The Master Plan does reference the
7 proximity of this area to the train station.

8 Recognizing that, when people get off the train, they
9 could stop at a place like this and it's proximate and
10 convivial and it works. You are seeing that throughout
11 the State of New Jersey where this kind of mixed-use
12 development, at-grade retail and apartments above, are
13 being located all around train stations throughout the
14 state.

15 Q. That is certainly something that the
16 Master Plan here in Woodcliff Lake envisions and
17 encourages?

18 A. Yes.

19 Q. When you are doing something that is
20 encouraged by the Master Plan, that itself, under the
21 purpose and intent of the Land Use Law, actually is in
22 furtherance of the zoning and everything else?

23 A. I would agree with that statement.

24 MR. MOLINELLI: That's all I have.

25 MS. MALLEY: You talk about the Master

1 Plan. I still have not seen the Master Plan change.
2 Did I miss something? Did the Planning Board approve
3 the change for restaurants?

4 MR. BURGIS: No. That's why we are here
5 this evening.

6 MR. MOLINELLI: You are talking about the
7 ordinance that had been considered two years ago? That
8 has not been approved but the 2008 corridor -- Broadway
9 corridor study is still a valid study.

10 MS. MALLEY: But the Planning Board and
11 the Mayor and Council never approved that?

12 MR. MOLINELLI: The Mayor and Council has
13 not adopted an ordinance that provides that a
14 restaurant is a permitted use, but normally, you would
15 have to say "Why haven't they done it?" They have not
16 adopted an ordinance in a way that's inconsistent with
17 it and they have attempted, but for whatever reasons,
18 they have not adopted it but they have attempted it on
19 a couple of occasions to make a restaurant a permitted
20 use.

21 MR. PRINCIOTTO: No. It has not changed
22 and there's no ordinance that permits a restaurant use.

23 MR. MOLINELLI: Correct. In fact, the
24 latest rounds of discussions, I don't think there was
25 any consideration to ever remove that from something

1 that's being encouraged in the Master Plan.

2 MR. PRINCIOTTO: It's been tabled.

3 MR. NEWMAN: This particular property
4 asked for a use variance so that it could have
5 residential apartments on the property. Are you aware
6 of that?

7 MR. MOLINELLI: No. That's not correct.
8 The application is to put a restaurant in a zone that
9 is not permitted.

10 MR. NEWMAN: I mean previously.

11 MR. MOLINELLI: That is correct.

12 MR. NEWMAN: We granted that to put
13 apartments on the very same property, so where I'm
14 having an issue is that, there are people, there are
15 neighbors as well but there are people that live --
16 like, you were talking about your backyard and you have
17 people in your back yard outdoors on the weekends but
18 there are people that work all week that live directly
19 above where you are proposing to put a restaurant.

20 MR. MOLINELLI: You are talking about the
21 people living in the apartments?

22 MR. NEWMAN: The apartments directly
23 above the site for which the applicant asked for and
24 obtained a variance. So this is no longer just a
25 property being used for a commercial use. This has

1 residents within the property and the applicant is
2 proposing to have outdoor seating. When these people
3 rented the apartments, there was no restaurant.

4 MR. BURGIS: Correct.

5 MR. NEWMAN: Don't you think some of the
6 residents that are living there and are home on Friday
7 and Saturday nights, don't you think that would be
8 unfair to have outdoor seating that is generating noise
9 when that's not what they bargained for when they
10 rented their apartment?

11 MR. BURGIS: We don't know what they
12 bargained for but it's not atypical to have a use like
13 that. Some people would view that as a significant
14 asset. They could just go downstairs and get pizza or
15 whatever. That would be viewed favorably.

16 MR. NEWMAN: Maybe in a town like
17 Ridgewood. When you go to Ridgewood, you know, when
18 you rent that apartment, that there are restaurants
19 throughout Ridgewood throughout the downtown concept
20 and my concern is that, when these people rented their
21 apartments, they did not know, nor is that use
22 permitted in the zone so nor could they have known that
23 there was a substantial likelihood that an applicant
24 would want to put not just a restaurant but have
25 outdoor seating with noise on the weekends. I mean,

1 this is not -- Woodcliff Lake is not Ridgewood. People
2 who want to live in Ridgewood live in Ridgewood.

3 People who live here, generally, they want to live
4 here. I'm not speaking about everyone. Some of the
5 people that live here, they -- their paying for their
6 peace and quiet. They are paying for an area that has
7 less noise, so to speak. I mean, that's where I'm
8 having an issue.

9 MR. MOLINELLI: I think it's important
10 that you should say what type of people are renting
11 apartments in mixed retail residential uses on a road
12 like Broadway within proximity of a train station
13 today. This is today's rental.

14 MR. BURGIS: This is the great change
15 that we are seeing everywhere, that the people that are
16 renting these kind of apartments are the so-called
17 "millennials" who want to have everything quick, easy
18 access, whether it be the train station or retail or
19 restaurant uses downstairs, I think, you just have easy
20 access to.

21 The irony that you raised Ridgewood as an
22 example, over the past three to four years, I have been
23 involved in a number of apartment applications above
24 at-grade retail in downtown Ridgewood and there was a
25 significant concern about the implications of having

1 apartments in the downtown. In the end, four different
2 projects were approved, and in terms of what I'm
3 hearing, because they are not yet built, the interest
4 that has evolved has been significant. I'm hearing
5 that from my clients but these were uses that were not
6 permitted in the downtown. Certainly, it's intensity
7 that was being contemplated.

8 MR. NEWMAN: You don't know the
9 particular makeup of the residents in this particular
10 apartment?

11 MR. BURGIS: I don't know.

12 MR. NEWMAN: Let me, again, explain the
13 difference. The difference is that, in Ridgewood, you
14 had the commercial, and then, anybody -- and then you
15 build the apartments and someone who wants to live in
16 the apartments knows what's going on below them. They
17 know what they are getting themselves into when they
18 rent. My concern here is that it didn't exist when
19 they rented these apartments and I have a concern as
20 well as the neighbors. I mean, this is still --

21 MR. MOLINELLI: First of all, the witness
22 has been very honest in saying he does not know what
23 the mindset of these apartment dwellers is and neither
24 do you. What the witness is saying and this is not
25 just in Woodcliff Lake but in a lot of locations, the

1 type of tenants that are currently going into a
2 building like this are exactly the type of tenants that
3 are looking for a train station, a mixed opportunity to
4 have easily-accessible retail uses. They could be a
5 dentist, a wellness center. It, most certainly, is a
6 restaurant, which, in many areas, is revitalizing
7 downtown districts, even with apartments above retail
8 in buildings that have existed for many years in areas
9 like Rutherford or Park Ridge. What I'm trying to say,
10 this is the planner; this is the person that has an
11 expert opinion on the type of tenant that is now
12 occupying mixed retail residential uses today.

13 MR. PRINCIOTTO: It sounds like you are
14 getting into summation. I think we should --

15 MR. MOLINELLI: My point is that you
16 can't speculate on what anyone thinks that is living in
17 those apartments.

18 MR. PRINCIOTTO: I think we should see if
19 there's other questions so we can move this along.

20 MR. SPIRIG: My problem is from a
21 planning perspective. We are not the Planning Board.
22 We are a Zoning Board. We are being asked to provide
23 or grant a variance for a use and for parking.

24 You made mention of the Broadway Corridor
25 Committee, if you will, which has been ongoing for many

1 years, and even though it's been said that it may be
2 tabled right now, my understanding, there's an active
3 committee between the Mayor and Council and the
4 residents of the east side of Woodcliff Lake
5 participating in this planning event.

6 My problem is: I don't want to preempt
7 this Committee as to what they eventually come out with
8 with regard to what is going to be the Master Plan for
9 Broadway corridor. What we are doing is, we provide a
10 use variance, which also has a parking variance and
11 potentially creates a parking problem and make a
12 parking problem in a residential area. Going up and
13 down residential streets may not be in good faith with
14 regard to what the overall plan is on the Broadway
15 corridor.

16 Of course, I want to hear from our
17 planner and from our engineer, who are going to comment
18 on this as well.

19 MR. BURGIS: I know your planner well.
20 He is very opinionated. Let me give you mine.

21 Planning is a balance of a lot of
22 competing interests and is a fluid process.
23 Unfortunately, for the Zoning Board members of this
24 state, you are obligated to make a determination, not
25 on what a Council may or may not do in the future but

1 on the application before you and the statutory
2 criteria is very clear for you. You might not agree
3 with me, but if you look at the special reasons that I
4 offered and you feel that, "Okay. That made sense,"
5 and then, you look at the negative criteria and the
6 comments I offered about that, if you say "That made
7 sense," then I think you are obligated to vote in the
8 affirmative. If you feel I'm full of nonsense, you
9 would just vote no. I think I have given some cogent
10 arguments on behalf of the application but you're
11 obligated to make a decision.

12 There is a case down in South Jersey
13 where the municipality had adopted a housing plan and
14 shortly after that -- and I think it got certified.
15 Shortly after that, there was an application for
16 apartments in that town and that Zoning Board said "We
17 have our affordable housing all locked up. We don't
18 need any other apartments or affordable housing." They
19 refused to hear the application and the property owner
20 appealed that decision and the courts very quickly said
21 "You might not like the application but you have to
22 make a decision on it." You just can't say "We don't
23 want to make a decision." I don't know if that is what
24 you are saying.

25 MR. SPIRIG: I'm saying, here's an active

1 planning program going on right now. All right? And
2 if I was a betting man, I would bet that restaurants
3 would be included at some point in time but where they
4 are going to be and what type, whether or not they are
5 going to have, potentially, insufficient parking or
6 whether or not it's something that's going to encroach
7 upon a residential area, I don't know.

8 MR. BURGIS: I would defer to your
9 attorney in terms of if that's a proper basis to deny
10 something. I can tell you that, over in Mahwah
11 Township, there is a lot of angst about how
12 International Crossroads was going to develop. We had
13 written an ordinance for Mahwah at that time to change
14 the zoning because they were very concerned about a
15 particular application for a large mall coming in, and
16 the day before that ordinance was to go into effect,
17 the property owner filed an application and,
18 consequently, because it's the time-of-application rule
19 that applies, they were then forced to deal with that
20 application as a permitted use, and if it was submitted
21 just a few days later, it would have been a use
22 variance to the Zoning Board and they had to deal with
23 the consequences of it.

24 MR. PRINCIOTTO: To answer the question,
25 the application has been filed. You have to look at

1 the statutory criteria, and if the applicant has met
2 its burden -- and the applicant does have the burden --
3 then you can grant it. If you do not feel that the
4 applicant has met the burden, then you can deny the
5 application but you do have to hear it and apply the
6 statutory criteria.

7 I have some questions. Let's assume -- I
8 don't vote -- that some of the Board members agree with
9 your special reasons, and then, we look at the negative
10 criteria and you were involved in the Master Plan and
11 you know that one of the goals of the Master Plan is to
12 preserve the residential areas. Do you agree?

13 MR. BURGIS: Yes.

14 MR. PRINCIOTTO: Woodcliff Lake and the
15 surrounding areas are residential type communities?

16 MR. BURGIS: Correct.

17 MR. PRINCIOTTO: Did you, when you
18 formulated your opinions, consider the size of this
19 restaurant and the parking demand?

20 MR. BURGIS: Yes.

21 MR. PRINCIOTTO: Did you consider that
22 some of the parking may flow into the residential
23 areas?

24 MR. BURGIS: Based on Lou Luglio's
25 testimony, he seemed to be of a different opinion. His

1 position was that we have 65 parking spaces, 27 are for
2 the dwellings and they would be in the rear, and of the
3 38 up front, he said, at peak hour, 23 spaces would be
4 used by the restaurant at peak hour. That's a limited
5 amount of time. Then, you would end up with 15 for the
6 other retail spaces. Now, when you look at that 15 and
7 you take out 4248 square feet of floor space, if you
8 use that conventional parking standard in the ordinance
9 of 1 per 250, that would require 17 parking spaces. We
10 have 15, in the theoretical sense, set aside for them
11 so it's only a two-space shortfall. I would suggest
12 that, given how the ebb and flow of parking for the
13 restaurant would occur, and certainly, during the
14 daytime, it's a lot less than 23, there's a significant
15 enough number of parking spaces on that site to
16 accommodate both the restaurant and the retail spaces.

17 CHAIRMAN BONGARD: He did indicate, if
18 the restaurant was fully occupied, there wouldn't be
19 enough.

20 MR. MOLINELLI: If 96 people are sitting
21 in the seats, that's correct.

22 MR. PRINCIOTTO: In this type of parking
23 study, I know it was suggested and it may be helpful to
24 some extent, we don't know if Ray's Pizza is going to
25 be there for one year, five years or ten years and some

1 other restaurant could occupy that space and have a
2 completely different type of operation, parking demand
3 than Ray's Pizza in Hillsdale. Would you agree, once
4 this Board grants that variance, that variance runs
5 with the land?

6 MR. BURGIS: That's why I said "Planning
7 is a very fluid process." Even a permitted use with a
8 reasonable number of parking demand is approved in one
9 day, and ten years from now, that can be replaced by a
10 very, very active retailer that has tremendous parking
11 generation over and above what's typically anticipated.
12 That's the sort of things that occurs and we see it all
13 the time, but on other hand, you also see the flip side
14 of that where a -- one retailer has a decent amount of
15 parking demand and a new retailer moves in, and by
16 virtue of how their business is, they have virtually no
17 parking demand. These things happen.

18 MR. MOLINELLI: I would add, there's a
19 section of the code, 292-6, which provides under
20 Paragraph C, that allows the construction code official
21 to refer to a Board where there's a change in use
22 whether it's permitted or not which will affect motor
23 vehicles, pedestrians, traffic circulation, water
24 drainage, water supply, sewage and parking so the
25 construction code official does have the authority to

1 refer any matter that might be a permitted use and one
2 that would be entitled to a use or a certificate of
3 occupancy where the construction code official deems
4 that one or more of those factors should be looked upon
5 by a Planning Board. That gives the Board protection.

6 MR. NEWMAN: Changing use, restaurant to
7 restaurant is not a change.

8 MR. MOLINELLI: This has nothing to do
9 with a change in use. It can be another restaurant
10 use. It can be the same use or another retail or
11 professional use. There is authority for a
12 construction code official to refer that matter to the
13 Planning Board. It has to be something different than
14 what's there. There would have to be a basis for it.

15 MR. NEWMAN: I'm not banking on that.

16 MR. MOLINELLI: I can only quote what's
17 in the code.

18 MR. PRINCIOTTO: What would be done with
19 it? You know, it's not like a situation where you
20 banked parking and you would be able to create any more
21 parking in that area. I'm not sure what a Board could
22 do if it got to that.

23 But, Mr. Burgis, do you believe it's a
24 consideration for the Board to determine the size of
25 this restaurant, meaning the number of seats?

1 MR. BURGIS: I'm sorry. I did not hear
2 the first part of your question.

3 MR. PRINCIOTTO: Do you think the Board
4 should consider the size of the restaurant, the number
5 of seats?

6 MR. BURGIS: We are asking for a parking
7 variance very certainly but I think the testimony, and
8 I guess we will have to hear from your traffic
9 consultant to see it's refuted, but the testimony from
10 our traffic consultant seemed to suggest that there is
11 sufficient parking to accommodate the parking demand.

12 MR. PRINCIOTTO: Any other questions?

13 MR. NEWMAN: Do we have a closed session
14 tonight?

15 MR. MOLINELLI: I would like to finish
16 with Mr. Burgis.

17 MR. PRINCIOTTO: We can if we have time.
18 It doesn't look like we are going to finish tonight.

19 MR. MOLINELLI: I have a lot of experts
20 here. I would like to finish with all the experts.
21 It's been difficult for three months to have four or
22 five experts here.

23 MR. PRINCIOTTO: Let's finish Mr. Burgis.

24 MR. NEWMAN: Motion to open to the
25 public.

1 MR. HAYES: Second.

2 CHAIRMAN BONGARD: All in favor?

3 MEMBERS OF THE BOARD: Aye.

4 MR. SCHWARTZMAN: Do you know what block
5 number the applicant is in?

6 MR. BURGIS: No, I don't have it written
7 in my notes right now -- oh. Here. 2708.

8 MR. SCHWARTZMAN: You have been speaking
9 about the Master Plan and indicated that that's a good
10 reason that -- concerning the Broadway corridor that
11 this variance, on the negative criteria, should be
12 allowed; is that correct?

13 MR. BURGIS: Yes.

14 MR. SCHWARTZMAN: Resolution 2012-02 of
15 the Planning Board of Borough of Woodcliff Lakes
16 states, the second paragraph, "Whereas the borough's
17 planning consultant, Burgis Associates, Inc., the
18 planning consult, has prepared a document entitled
19 'Broadway Corridor Phase II Study' dated August 6,
20 2012, which is intended to examine and amend the Master
21 Plan so as to guide the future development of certain
22 parcels." Are you familiar with that?

23 MR. BURGIS: Okay.

24 MR. SCHWARTZMAN: "Certain parcels in
25 Blocks 2701, 2704, 2601 and 2602 and known as the

1 'Broadway Corridor Area.'" I don't think they
2 indicated 2708.

3 MR. BURGIS: I didn't say it did. Let me
4 tell you what I said. There's a 2002 comprehensive
5 Master Plan which included recommendations for the
6 entirety of the Broadway corridor. That is what I was
7 referring to. Subsequent to that, I was referring to
8 the 2008 adopted re-examination report of that Master
9 Plan, which reiterated that recommendation and, then,
10 took it one step further. This is a different
11 document.

12 MR. SCHWARTZMAN: 2012 is later than
13 2008. This is the last word we are getting from the
14 Planning Board as to the Master Plan.

15 MR. BURGIS: I disagree with that
16 entirely.

17 MR. SCHWARTZMAN: Do you think 2002 and
18 2008 take precedence over what they said in 2012?

19 MR. BURGIS: If you were in a court of
20 law and you were asking -- if a judge said "What is the
21 Master Plan of the community," they would not look to
22 that. The comprehensive Master Plan of the community
23 is 2002 with a re-examination of it in 2008. This was
24 a very specific study of those three or four blocks.
25 It doesn't obviate all the other recommendations. It

1 may offer recommendations for those three blocks but it
2 doesn't mean that everything else in the Master Plan is
3 negated.

4 MR. SCHWARTZMAN: I don't think you have
5 met the negative criteria, sir.

6 MR. BURGIS: That's your opinion.

7 MS. CULLINAN: Do you know there's a
8 pizzeria right next door?

9 MR. BURGIS: I do.

10 MS. CULLINAN: You are making the
11 community better? You said that people get off the
12 train and go have dinner. Why can't they go to Nino's
13 instead of going to...

14 MR. BURGIS: They could; they could. I
15 know one of the underlying principles that we all live
16 upon is that competition is a good thing. Here, you
17 could not negate that.

18 MS. CULLINAN: Right now, to make this --
19 Woodcliff Lake such a great community, we have six
20 pizzeria/Italian restaurants within a mile from
21 Hillsdale to Woodcliff Lake.

22 MR. MOLINELLI: In Woodcliff Lake?

23 MS. CULLINAN: No. From Hillsdale --
24 from a 1 --

25 MR. MOLINELLI: Hillsdale has them but

1 not Woodcliff Lake.

2 MS. CULLINAN: So the question is: Do
3 we -- in a B1 zone where there should be no
4 restaurants, why do we need another restaurant with
5 outdoor seating when, right now, we don't want to
6 negatively affect the neighbors which are the neighbors
7 upstairs and the people on Columbus and Lincoln, that
8 Nino's also has been granted outdoor seating so we have
9 to listen to the noise of them --

10 CHAIRMAN BONGARD: Just questions now.

11 MS. CULLINAN: You don't think that's a
12 negative effect on the neighbors?

13 MR. BURGIS: I think the Municipal Land
14 Use Law and the case law is very clear. When you look
15 at each site and each site stands on its own merits --

16 MS. CULLINAN: I'm telling you, as a
17 neighbor, it is a negative effect.

18 MR. BURGIS: There could be 20 Italian
19 restaurants along the corridor, but the reality is,
20 whether it is one two or six is immaterial to the
21 discussion that the Municipal Land Use Law requires
22 this Board to have.

23 MS. CULLINAN: You said it shouldn't
24 negatively impact the neighbors. So the
25 air-conditioning units that we cannot open up our

1 windows because of the noise, is that a negative
2 effect?

3 MR. MOLINELLI: Is that from Nino's?

4 MS. CULLINAN: No. Them.

5 MR. MOLINELLI: Ray's Pizza is not there
6 yet.

7 MS. CULLINAN: If it was approved, it
8 would negatively affect our neighborhood, yes or no?

9 MR. BURGIS: If the air conditioners are
10 functioning above noise standard, you would be within
11 your rights to have the building inspector go to them
12 and make sure they fix that air-conditioning system so
13 the noise gets below --

14 MS. CULLINAN: And the 16 people that are
15 talking and drinking until 10:00 or 11:00 at night or
16 loitering around after the restaurant has closed, that
17 does not negatively effect?

18 MR. PRINCIOTTO: She wants to know: Does
19 that negatively impact?

20 MR. BURGIS: I don't believe it does.

21 (Laughter)

22 MR. REZEN: If we are looking at positive
23 and negative, a positive effect would be that, by doing
24 this it's going to enhance the neighborhood, which, in
25 essence, would increase the land values of the

1 neighbors in the area. Are you saying that --

2 MR. BURGIS: We cannot -- by law, this
3 Board and the applicant cannot get into land value
4 because, otherwise, an applicant could come in and say
5 "I'm going to propose a ten-story building because you
6 can get a lot more tax revenue out of it."

7 MR. REZEN: What is the positive effect
8 of this for the neighbors in the area?

9 MR. BURGIS: It's not the positive
10 effect. If you recall what I said, the statute and
11 case law asks: Is there a substantial detriment to the
12 public good?

13 MR. REZEN: Okay. You are saying that
14 there's no substantial detriment to this. Does that
15 include parking? I understand you said the parking is
16 a certain amount but the expectation is, if this is a
17 positive, this restaurant will thrive and if this
18 restaurant thrives, it means that there will be a lot
19 of people and the volume of this restaurant is going to
20 increase and get to a point where it's past the volume
21 of parking that's allotted. Would you agree with that?

22 MR. BURGIS: I don't necessarily agree
23 with that.

24 MR. REZEN: How would the restaurant --
25 the only way the restaurant is going to thrive is if

1 there's more customers. If it's more customers,
2 there's more seats, and then, that's more parking.

3 MR. BURGIS: There's not more seats. If
4 the Board approves this, they will approve it with a
5 specified number of seats.

6 MR. REZEN: If the Board approves it with
7 the specified number of seats, which, in this case, you
8 are past the number of the capacity of parking in that
9 spot. Then, it's logical to say that, at any point
10 when there's 96 people in that restaurant, the parking
11 is going to overflow in the different areas on Lincoln
12 and Hillsdale, which will have a negative impact on the
13 neighborhood; is that right?

14 MR. BURGIS: I'm not the traffic
15 consultant but he was very clear that, overwhelmingly,
16 peak hours --

17 MEMBER OF THE PUBLIC: That's with no
18 people.

19 MR. MOLINELLI: I would like the witness
20 to finish.

21 MR. BURGIS: That was his testimony. As
22 an expert, I have to rely on that expertise to fashion
23 my arguments and my opinions and you will have the
24 municipality's traffic consultant, who may or may not
25 agree or disagree, but we will have to wait to hear

1 that but I may come back and rebut some of that.

2 MR. REZEN: Your expert opinion is based
3 on the traffic consultant that we have seen that said
4 that the volume of traffic will never be over X number
5 of cars; is that correct? In other words, if he's
6 wrong, then you would disagree with what your opinion
7 is?

8 MR. BURGIS: I would need to hear what he
9 said to be wrong.

10 CHAIRMAN BONGARD: We are at 20 after
11 10:00. Are there any other questions? If not we will
12 close it to the public.

13 Motion to close to the public?

14 MR. SPIRIG: Motion.

15 MR. NEWMAN: Second.

16 Were we ever able to find out how big the
17 old Matsu was?

18 MR. MOLINELLI: No. It had been knocked
19 down so all we have is a survey that shows the land and
20 not the building.

21 MR. NEWMAN: Would there be a way to get
22 an old Certificate of Occupancy?

23 MR. MOLINELLI: We are familiar with
24 what's in the file including the construction file. A
25 demo permit wouldn't necessarily come in and give you a

1 site plan or the size of the building before
2 demolition. I even tried -- there are websites that
3 have historical aerial photos. I tried to find some
4 and sometimes you can scale it by comparing it with the
5 width of the street. I couldn't find anything.

6 MR. NEWMAN: What about the old --

7 MR. MOLINELLI: Nothing that I can find
8 to indicate how big that building is.

9 MR. NEWMAN: Matsu is moving to Woodcliff
10 Lake.

11 MS. REZEN: It's in Hillsdale right now.
12 I'm sure they would be able to tell you how big their
13 restaurant was.

14 MR. NEWMAN: Did we approve that
15 application for them to move?

16 MR. MOLINELLI: We did.

17 MR. PRINCIOTTO: That's another subject.

18 CHAIRMAN BONGARD: You are complete with
19 witnesses?

20 MR. MOLINELLI: Correct.

21 MR. PRINCIOTTO: I don't think we will
22 finish this.

23 MR. MOLINELLI: I'm not used to appearing
24 at meetings where I -- I knew Mr. Jacobs would be here.
25 I didn't know that Mr. Intindola was coming or the

1 subject of his testimony. If he is going to come back
2 and offer testimony, we posted appropriate escrow. If
3 somebody else is going to review this, I would like a
4 heads up. I never had this happen where I had someone
5 show up and I didn't know what they were going to say.

6 MR. PRINCIOTTO: You weren't here at the
7 last meeting but the Board did indicate that they
8 wanted it and mentioned it to Lou.

9 MR. MOLINELLI: It was my understanding
10 that, sometime after this meeting, this Board would
11 reach out to the traffic consultant and seek input, and
12 normally, I would have gotten a report that would have
13 been filed. I would have had a heads up in terms of
14 what their inquiry would be. I have the utmost respect
15 for Mr. Intindola. I would hope maybe I would have an
16 idea of what he would testify on.

17 MR. PRINCIOTTO: You would like a letter?

18 MR. MOLINELLI: This went to Neglia
19 Engineering and they submitted a report and I
20 understand that Neglia Engineering showed up tonight
21 and had comments and questions that completely
22 surprised me and I wasn't prepared for it. That's all.

23 MR. PRINCIOTTO: I didn't know about that
24 particular testimony either.

25 MR. MOLINELLI: We just spoke a couple

1 days ago. I didn't think you knew about it either.

2 MR. PRINCIOTTO: We did mention Intindola
3 in our conversation. Pavlovich was the original. We
4 were trying to get somebody who could make it to the
5 meeting and we didn't have a complete review by Neglia
6 on this application because you already received site
7 plan approval.

8 MR. MOLINELLI: It was only when a
9 question came up over the patio.

10 MR. PRINCIOTTO: The bollards, a few
11 things that the Board wanted Neglia to look at so we
12 will continue it to the July meeting.

13 MR. MOLINELLI: What's going to happen?
14 Because, normally, when you submit the application, the
15 borough's professionals remove it and submit a report;
16 the applicant is given an opportunity to respond to it.
17 I would have all my witnesses testify, just like Mr.
18 Eichenlaub testified on an appropriate letter that Mr.
19 Jacobs sent. What am I supposed to do now? I closed
20 my case, and now, you are going to have the borough
21 submit a case. I need to know; what am I to do about
22 that?

23 MR. PRINCIOTTO: I think you, your firm,
24 knew of that because it was requested at the last
25 meeting so I don't think it's a surprise if you say you

1 want a letter from --

2 MR. MOLINELLI: What's surprising is: It
3 was not submitted before tonight. Mr. Jacobs submitted
4 a June 8th letter. He had time to do that. We had no
5 problem with that procedure. When this meeting closed
6 in May, I fully expected, as did Mr. D'Arminio, we
7 would get some report from some borough-retained expert
8 on the application, just like we got from Mr. Jacobs.
9 When the applicant closes, I'm concerned that, is it
10 really closed if you are going to have more experts
11 testify on behalf of the borough?

12 MR. PRINCIOTTO: We tried to accommodate
13 the request of the Board to get Pavlovich. I think you
14 had recommended Intindola. We certainly discussed it.
15 Neglia is the Board's engineering firm. We just
16 couldn't get that report that quickly, okay, with the
17 time that is required and we did not want to hold you
18 up, but look, you --

19 MR. MOLINELLI: Well, I was able to
20 address Mr. Intindola's opinion that you have to use
21 gross floor area for purposes of the parking
22 calculation. I think, if that is all there is, I'm
23 satisfied that Mr. Eichenlaub addressed those concerns.
24 I guess my question is: Am I going to get another
25 letter next week raising additional issues that didn't

1 have a chance to be addressed tonight?

2 MR. PRINCIOTTO: Sounds like you want to
3 know what he's going to say. It may be different
4 because he's probably going to comment on your parking
5 study that Luglio did. That's what he was asked to
6 review.

7 MR. MOLINELLI: I thought that was going
8 to be done after the May meeting. It's now June the
9 26th.

10 MR. PRINCIOTTO: It is done after the
11 meeting.

12 MR. MOLINELLI: Okay. Thank you, Mr.
13 Princiotto.

14 MR. PRINCIOTTO: Mr. Intindola, can you
15 make it for the July meeting?

16 MR. INTINDOLA: I can be here for that.

17 MR. PRINCIOTTO: Can you issue a report
18 with your review of this parking study?

19 MR. INTINDOLA: In fairness to the Board,
20 you just got a revised traffic report this evening that
21 we didn't see.

22 MR. PRINCIOTTO: True.

23 MR. INTINDOLA: I can comment on that.
24 The time change for the application, I saw this this
25 evening and...

1 MR. MOLINELLI: I don't have a problem if
2 it's limited to the night of June 18th and the
3 additional information but this report been available
4 for a month and a half.

5 MR. PRINCIOTTO: Not --

6 MR. MOLINELLI: What you see here has
7 been the subject that has been before the Board. What
8 was added was the night of June 16th. I don't have a
9 problem with that.

10 MR. INTINDOLA: I can provide a report in
11 a timely fashion.

12 MR. PRINCIOTTO: Okay. July 24th.

13 MR. SPIRIG: We were hashing out, last
14 month, whether or not we wanted an engineer to comment
15 on this but Price Meese made the suggestion that we
16 have a traffic engineer listen and come and listen to
17 what's being said this month because we didn't have a
18 chance to ask questions or the public.

19 MR. MOLINELLI: That part of it, I did
20 not get. I expected that there would be a traffic
21 engineer that reviewed everything, including what we
22 submitted, and be prepared to offer testimony or an
23 opinion. That's all, you know? All right.

24 MR. PRINCIOTTO: Could you consent to the
25 Board's extension of time, if it's needed? Otherwise,

1 we will take a vote tonight and that will be an
2 incomplete application.

3 MR. MOLINELLI: I don't have a problem.
4 Mr. D'Arminio might have to come back in July but the
5 time is no problem.

6 (The hearing concluded at 10:35 p.m.)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, ALISON GULINO, a Certified Court Reporter,
Registered Professional Reporter and Notary Public of
the State of New Jersey, do hereby state that the
foregoing is a true and accurate verbatim transcript of
my stenographic notes of the within proceedings, to the
best of my ability.

ALISON GULINO, CCR, RPR
NOTARY PUBLIC No. 2415679
LICENSE No. 30X100235500