

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

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I N D E X

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1 MR. PRINCIOTTO: I will summarize the
2 variance requested in this application:

3 This is an application for a use variance
4 as well as other variances, in particular, for a
5 restaurant with an outdoor patio that is 7 feet by 35
6 feet.

7 There is also a variance for impervious
8 coverage. Limitation for impervious coverage in this
9 zone is 50 percent. This is a B1 business zone. A
10 prior variance was granted by this Board and impervious
11 coverage was 62.89 percent. The applicant proposes to
12 increase impervious coverage to 63.33 percent. This is
13 a .44 percent increase in impervious coverage.

14 The applicant is also seeking a parking
15 variance. There are currently 65 parking spaces on
16 site. The strict application of our zoning ordinance
17 for a restaurant would require 38 parking spaces. That
18 is calculated based upon 48 seats in the interior of
19 the premises and 16 outdoor seats. That's a total of
20 64 seats. Our ordinance requires 1 space for every 2
21 seats so that requires 32 parking spaces initially and
22 the applicant proposes to have six employees. Our
23 ordinance requires one space for each employee so
24 that's how we come up with 38 parking spaces that are
25 required for the restaurant use only.

1 This is a mixed use building. There are
2 14 apartments and the parking requirement for the
3 apartments is 27. All of those spaces are at the rear
4 of the building.

5 In addition to the restaurant and
6 apartment use is other retail proposed. The
7 restaurant, the current proposal, is going to be 2,077
8 square feet. That leaves a remaining 5,065 square feet
9 for the balance of the retail. Pursuant to our
10 ordinance, 1 space is required for every 175 square
11 feet. The balance of the retail would require 29
12 parking spaces.

13 Under the strict application of the
14 ordinance, 94 parking spaces are required. There are
15 65 parking spaces that are proposed so the variance is
16 for 29 spaces.

17 Now, you have heard all the testimony of
18 the witnesses, including the experts, and what we are
19 intending to discuss tonight and will discuss are
20 conditions that the Board considered to be imposed. As
21 you know, I had issued a letter and Mr. Molinelli also
22 issued a letter. My letter is dated August 15, 2018
23 Mr. Molinelli's is August 16, 2018.

24 That takes us to the discussion about the
25 conditions. I prepared a list of conditions for

1 discussion by the Board, which I handed out to the
2 Board members, similar to the conditions that were in
3 my August 15, 2018 letter.

4 Without getting too far into it, Mr.
5 Molinelli can tell us what conditions you are in
6 agreement with.

7 So we want to make most of the discussion
8 with regard to those, of course, unless any Board
9 member has any particular questions about it.

10 MR. SPIRIG: Before you go forward with
11 that, is there or is there not an existing variance on
12 the site with regard to parking?

13 MR. PRINCIOTTO: Yes, there is.

14 MR. NEWMAN: I think 71 are required, if
15 I remember correctly.

16 MR. PRINCIOTTO: I do have a copy of the
17 prior...

18 MR. SPIRIG: I asked the question with
19 regard to what the current variance is.

20 MR. NEWMAN: When we originally granted
21 the application for what's existing, they needed a
22 parking variance. There's already one there.

23 MR. PRINCIOTTO: Six spaces.

24 MR. SPIRIG: So what do you want to do?
25 Go down each of these items and discuss them or do we

1 want to...

2 MR. PRINCIOTTO: I -- we can go over
3 them. Mr. Intindola is familiar with the conditions so
4 I can go over them.

5 MR. NEWMAN: I think you were going to
6 ask Mr. Molinelli which ones he consents to and which
7 ones he does not.

8 MR. PRINCIOTTO: You are correct. I did
9 ask him.

10 MR. MOLINELLI: For the record, John
11 Molinelli, Price, Meese, Shulman & D'Arminio.

12 I'm going to refer to -- instead of your
13 letter, I'll refer to that one-page sheet, since it's
14 easier.

15 1 is acceptable.

16 2 is acceptable.

17 3 is acceptable.

18 4 is acceptable.

19 5 is acceptable.

20 6 is acceptable. We just needed to
21 clarify, the spill that we were looking at was coming
22 from the southern lighting as depicted on Photo Number
23 1 of B-4, which were the series of photographs
24 presented by your planner, Mr. Preiss. I think that's
25 the spill we were talking about.

1 Number 8 is acceptable.

2 Number 9 is acceptable.

3 Number 10 -- well, let me get back to 10.

4 11 is acceptable.

5 Number 12 is acceptable.

6 Those are acceptable, the ones that I
7 just went through.

8 The ones that I would like to have
9 further discussion on is Number 7. Number 10, just to
10 clarify, the testimony during the hearing, there will
11 be deliveries to both the front and the rear depending
12 on what's delivered. That was the testimony.

13 And Number 13 needs more discussion.

14 And 14, I'm not quite sure what you are
15 asking me to say on 14.

16 MR. PRINCIOTTO: Okay. For the benefit
17 of those who were here and those who may be watching, I
18 will just read the conditions that are acceptable.

19 Number 1, the rear parking lot will not
20 be used for staff parking.

21 Number 2, there will be no other
22 restaurant at the premises while Ray's Pizza continues
23 to occupy the premises.

24 Number 3, hours of refuse pickup shall be
25 the same as for borough residents.

1 they could be made in front or in the back.

2 Number 11, the outdoor patio shall not be
3 used past 10:00 p.m.

4 Number 12, the basement shall be used
5 only for storage and food preparation.

6 Number 13 we need discussion on.

7 Number 14, I think, is a minor issue but
8 perhaps Board members might want to discuss it. That's
9 the use of the basement. The prior resolution said
10 that the basement would be only used for storage but I
11 think it's contemplated that it would be used for
12 storage and food preparation.

13 I think it's part and parcel of the
14 application and you mentioned it specifically, but
15 certainly, the resolution would exist that this seating
16 is going to be limited to 64 seats but we will clarify.

17 These are just a summary of the
18 conditions. Obviously, if the Board should look
19 favorably on the application, we are going to have a
20 resolution that's going to be prepared and adopted by
21 the Board and will have other particular language, but
22 just to identify the conditions for discussion, I
23 prepared this. We can mark it as a B exhibit.

24 (Exhibit B-5, list of resolutions, was marked
25 for Identification.)

1 MR. PRINCIOTTO: Here is Mr. Intindola.

2 CHAIRMAN BONGARD: He has arrived.

3 MR. PRINCIOTTO: Brian Intindola has
4 arrived and we can begin discussing the conditions.

5 Brian, I think you have a copy of the
6 conditions?

7 MR. INTINDOLA: I have it. Thanks.

8 MR. PRINCIOTTO: 7 is the first one we
9 have to talk about, correct?

10 MR. MOLINELLI: Yes.

11 MR. PRINCIOTTO: 7 has to do with a
12 change in the use or occupancy of what the proposed use
13 is, and that is for Ray's Pizza, including a different
14 type of restaurant and the condition, if the Board
15 accepts it, would require that a new application would
16 be filed with the Zoning Board to determine if the
17 parking is adequate and whether or not the use should
18 be approved.

19 I think there was some discussion, during
20 this application, that, once the use variance is
21 granted for a restaurant, it could indeed be a
22 different restaurant application and there was some
23 testimony or discussion about a pancake house that
24 could have a peak hour of operation significantly
25 different than a pizzeria that would have an impact on

1 the parking and the application.

2 The current application is based upon the
3 parking study of Ray's operation in Hillsdale. A
4 different restaurant could present a different parking
5 demand and different parking peak hours and that
6 parking might not work with a different type restaurant
7 so this condition is suggested as a means to look at
8 that change in use for occupancy, which is not
9 uncommon, for a municipality to look at a change in use
10 of occupancy, especially with something like this with
11 a proposed shared parking type concept, if the Board
12 wants to look favorably on the application.

13 Now --

14 CHAIRMAN BONGARD: That would be no
15 matter what type of business is coming? If it's a yoga
16 class, do they have to appear before the Board to
17 determine or any type of business?

18 MR. PRINCIOTTO: Well, it would be -- I
19 think our ordinance requires it regardless.

20 MR. NEWMAN: That would be the Planning
21 Board, right?

22 MR. MOLINELLI: I think Number 7 is
23 dealing with -- when we get to 13, we will be dealing
24 with other uses in the other units. Number 7, I think,
25 is dealing with what happens if Ray's closes and

1 another restaurant use comes in; correct me if I'm
2 wrong.

3 MR. PRINCIOTTO: Correct.

4 MR. MOLINELLI: 7 deals with what if
5 Ray's ends and another restaurant comes in. We will
6 get to your question but that's under 13.

7 CHAIRMAN BONGARD: Okay. Good.

8 MR. PRINCIOTTO: Okay.

9 Mr. Molinelli, would you like to be heard
10 on that condition?

11 MR. MOLINELLI: All right. You made
12 reference to a couple of concepts. First of all, the
13 one that I agree with, if a pancake house or something
14 with a morning or heavy lunch demand came in, I'm in
15 agreement; we have to work on some language but I think
16 Mr. Intindola and Mr. Preiss both testified that what
17 would throw the numbers off is if a new restaurant that
18 came in had a morning peak, like a pancake house. I'm
19 in agreement with that testimony. I think it's
20 correct. We have to, kind of, phrase it the right way.

21 Where I do begin to depart is, to
22 automatically say that, if one restaurant ends and
23 another restaurant comes in, that automatically should
24 require -- and I'll take it from B-5, the language --
25 an application to be filed to the Zoning Board to

1 determine, one, whether or not the parking is adequate
2 or, two, whether or not the use should be approved. I
3 suggest to you, whether or not the use should be
4 approved, respectfully, would not be a permissible
5 condition.

6 There is a well-known New Jersey Supreme
7 Court case out of Springfield involving Stop & Shop
8 which clearly stated, once a use variance is granted to
9 a particular use, the fact that another use comes in
10 that is the same use is not a basis to require that
11 applicant to go back before the Board nor does it vest
12 the Zoning Board with jurisdiction to deny it as a use.
13 You can't say, "Well, I'm going to allow pizza, but
14 now, if you put in a burger place, we will not allow
15 it" and I should note that, the Springfield case, even
16 in light of a different parking or intensity on the
17 particular tract so that really addresses the parking
18 issue as well.

19 Secondly, from a substantive standpoint
20 -- and I don't want to characterize their testimony but
21 if I could -- from a legal standpoint issue, both Mr.
22 Preiss and Mr. Intindola both believe that the Ray's
23 Pizza is not an outlier or a particular restaurant use
24 that is so unique, if we were to vacate the property,
25 that you would throw the numbers out. That's what I

1 recall both of your experts testifying. I would urge
2 the Board to not try and pigeonhole any approval --
3 should you decide to grant approval -- to the fact that
4 this is Ray's Pizza as opposed to another use.

5 That would be my formal position.

6 MR. PRINCIOTTO: Well, if the parking was
7 inadequate upon application, then the application
8 should not be approved. We do not know what the future
9 use may be. There is the Houdaille vs. Tewkesbury
10 Township Board of Adjustment case. In that case, they
11 limited the use to a period of five years. Let me put
12 my hand on it. We also have our borough ordinances.

13 MR. MOLINELLI: Can I get a
14 clarification? You stated that, if we do not know what
15 the future parking requirements would be for another
16 restaurant, the Board can deny the application? I want
17 to confirm that's what you just said.

18 MR. PRINCIOTTO: Well, no. Not exactly.
19 This is a -- you are seeking a variance based upon a
20 shared parking concept and based upon the peak hours.
21 The parking could be inadequate based upon the peak
22 hours of any subsequent user so...

23 MR. MOLINELLI: Of the restaurant
24 location?

25 MR. PRINCIOTTO: Yeah, sure. As you

1 said, as you said, if the pancake house comes in with a
2 different peak hour of operation.

3 MR. MOLINELLI: I don't disagree with
4 that. If we could just focus on something like a
5 Ray's, not a pancake house, a restaurant that pretty
6 much has the same type of peak hours. I just want to
7 clarify what you're suggesting, that's all. I wasn't
8 sure I heard it right. I don't believe a Board can
9 deny an application because Ray's Pizza may go out of
10 business and there may be a restaurant in the future
11 and the Board does not know what the parking would be
12 for the evening. I don't believe Ray's is a unique
13 restaurant in that regard. I think that both of the
14 Board experts have confirmed that.

15 MR. NEWMAN: I agree with Mr. Molinelli's
16 assessment. If we approve this application, we are
17 stuck with it.

18 MR. PRINCIOTTO: I don't know what that
19 means.

20 MR. NEWMAN: If we approve a restaurant,
21 there's going to be a restaurant there.

22 MR. PRINCIOTTO: That's why we are having
23 conditions and that would require this Board to take,
24 you know, another look at --

25 MR. NEWMAN: I'm not sure that condition,

1 as Mr. Molinelli points out, is enforceable under the
2 Stop & Shop case.

3 MR. PRINCIOTTO: I understand that.
4 There's a number of different cases.

5 MR. NEWMAN: I -- it is, at a minimum,
6 debatable.

7 MR. PRINCIOTTO: Anything is debatable.

8 MR. SPIRIG: Did the Stop & Shop case
9 have conditions on it to begin with?

10 MR. NEWMAN: The Stop & Shop case had to
11 do with -- Mr. Molinelli will correct me if I'm wrong
12 -- there was a variance approved for a use. It was a
13 use variance and another applicant, I believe it was
14 Stop & Shop, came in and they were actually under the
15 same category of use. So let's say you have a use that
16 permits electricians, plumbers, box cutters.
17 Obviously, the approval was for something that fell
18 into grocery store use and then Stop & Shop --

19 MR. MOLINELLI: It was a Saks Fifth
20 Avenue in Springfield that was sought to be taken over
21 by a Stop & Shop.

22 MR. NEWMAN: The Supreme Court said that
23 "You approved Saks, and under your code, Saks is
24 approved; Stop & Shop is approved; therefore, Stop &
25 Shop is allowed."

1 MR. SPIRIG: Did they put any specific
2 conditions on it to prevent that from happening?

3 MR. PRINCIOTTO: No. Under their zoning
4 ordinance, there wasn't any differentiation between a
5 supermarket and any other retail store. They were
6 stuck with the way their ordinance was.

7 MR. SPIRIG: We are trying to put
8 conditions on it to stop that from happening.

9 MR. PRINCIOTTO: You could argue that but
10 cases are fact sensitive, as we all know. Certainly,
11 if I argued this case on behalf of the Board, I would
12 say the facts of this case were much different than the
13 Stop & Shop case and that this was predicated on a
14 shared parking concept and upon presentation of facts
15 with regard to peak hours of operation and that's what
16 the Board would prove. Generally, I agree that,
17 typically, a use variance does run with the land. I'm
18 not going to say there's no exposure. I can't predict
19 what another court would do. It's not uncommon but the
20 premise for it, if Mr. Molinelli agrees, if we had a
21 pancake house, it wouldn't work, then what is the
22 applicant proposing as a condition, okay, so that, you
23 know, we are not faced -- the Board is not faced, the
24 town is not faced with this situation where, now, we
25 have a peak-hour operation that doesn't work?

1 MR. MOLINELLI: It's much different when
2 you want to put a condition that there won't be a
3 pancake house with a morning peak. I have no problem
4 if you impose a condition that Ray's cannot be replaced
5 with another restaurant that has a morning peak, I have
6 no difficulty with that. I think that makes sense
7 because, now, it is substantially different. All I'm
8 addressing is that you can't --

9 I'm going to, again, recommend -- I would
10 defer to Mr. Intindola and Mr. Preiss. I think both of
11 the experts have said -- Mr. Preiss said Ray's is not
12 an outlier and I think Mr. Intindola said you don't
13 throw the numbers out if Ray's leaves because there's
14 nothing unique about Ray's from any other type of
15 restaurant use. If there's one that is open for
16 breakfast at 7:00 a.m. and a pancake house, I don't
17 disagree with that and would be more than happy to work
18 on some language.

19 MR. NEWMAN: Ray's intends to be open
20 during the day during lunch when all the other
21 businesses are open.

22 MR. MOLINELLI: Right. Yeah. I think
23 Ray testified and Mr. Luglio testified that the lunch
24 hour demand is virtually nonexistent. It's not a
25 significant demand during lunch.

1 MR. SPIRIG: For Ray's?

2 MR. NEWMAN: As it exists today in
3 Hillsdale.

4 MR. MOLINELLI: Again, if we can separate
5 them out. The one that I have the most concern over is
6 requiring that any replacement use -- restaurant
7 replacement use of Ray's has to come before the Board
8 and the Board must permit the use. I'm very certain
9 that the Springfield case would prohibit that.

10 In the Springfield case, there were
11 conditions to Saks Fifth Avenue. There were variances
12 granted to Saks. It was a residential area of Millburn
13 by Morris Avenue and Route 24. Saks had been doing
14 poorly for many years prior to its decision to sell to
15 Stop & Shop. There is a very clear passage by
16 Associate Justice Gary Stein where he acknowledged that
17 the intensity of the use of the Stop & Shop, including
18 the fact that there were shopping carts and other
19 things, was greater than the Saks Fifth Avenue use. He
20 acknowledged that, but he said, notwithstanding that,
21 you cannot differentiate between a Saks Fifth Avenue
22 and a Stop & Shop or any other type of retail use of
23 this nature.

24 I still have no problem with partitioning
25 out things with the morning breakfast demand. I would

1 say that I don't think Ray's Pizza is a unique
2 restaurant that its model, its peak, its demand would
3 be any different from any other restaurant.

4 MR. PRINCIOTTO: Well, I think you are
5 anticipating that a similar use would come back and
6 come to the Board because there's a change in
7 occupancy and the Board would act in an arbitrary and
8 capricious manner.

9 MR. MOLINELLI: What concerns me is where
10 you suggested, a few moments ago, that, because the
11 Board doesn't know what the future replacement use
12 might be, you can deny this application. That is what
13 I'm concerned about. I think --

14 MR. PRINCIOTTO: A future application.

15 MR. MOLINELLI: No. That's why I asked
16 you to repeat. I thought you had said, since a future
17 restaurant may come in to replace Ray's and we do not
18 know what the future restaurant's parking demand would
19 be, you should consider that on whether to approve the
20 application. If I'm misstating -- I hope I'm
21 misstating.

22 CHAIRMAN BONGARD: I think he meant
23 another application.

24 MR. PRINCIOTTO: These are conditions to
25 be considered in the event that the Board would look

1 favorably upon the application.

2 MR. MOLINELLI: Right.

3 MR. PRINCIOTTO: That -- so, no. I
4 didn't mean that is a reason -- no. Somebody else may
5 disagree with me. Okay? But I know that our planner
6 also made a comment so we will get to that in a moment.

7 I just want to point out, our Woodcliff
8 Lake Code Section 292-13 contemplates, when there's a
9 change in use or occupancy, it states "Any change in
10 use, ownership or occupancy of an existing
11 nonresidential structure or use shall require approval
12 by the approving authority prior to the issuance of the
13 Certificate of Occupancy by the construction code
14 official." It's not a unique concept.

15 MR. MOLINELLI: I brought that condition
16 to your attention at the April meeting to alleviate
17 some of the concerns but that is a decision that would
18 be made by the construction code official as opposed to
19 an objective determination as a condition by this Board
20 that any change in use must come back. There's a
21 difference. That's a common clause that appears in
22 most town codes and allows a construction official to
23 refer a matter to a Board, typically, the Planning
24 Board. Usually, it's a site plan matter as opposed to
25 a variance matter. I have seen it. That's different

1 as opposed to saying, "If Ray's ever goes out of
2 business and another restaurant comes in, it must come
3 before the Board." That's much different than what you
4 read.

5 MR. PRINCIOTTO: This is different than a
6 usual situation because you are proposing the shared
7 parking concept with the particular peak hour of
8 operation in conjunction with some other conditions and
9 that's a particular application. This is a special
10 situation. This is a variance.

11 MR. MOLINELLI: The shared parking is not
12 relevant to Number 7. It's relevant to Number 13. The
13 shared parking arrangement we are talking about right
14 now is: Ray's does not exist anymore; a new restaurant
15 goes in, presumably -- and this I will say -- with the
16 same number of seats. If they increase the seats, they
17 have to come back before this Board. I agree with
18 that. If they have the same number of seats, it's the
19 same required number of parking spaces and it does not
20 make a difference. When you talk about peak hours and
21 shared parking, that is a discussion that we need to
22 have under Item Number 13. Number 7 is just a straight
23 somebody selling pizza in 48 seats, and now, somebody
24 is not selling pizza. They are selling hamburgers in
25 the same 48 seats. The shared parking does not come

1 into play. We are talking about the number of parking
2 spaces required for that restaurant.

3 Shared parking is relevant when you look
4 at the other -- as the Chairman was saying, at the
5 other retail uses and 13 is when we are going to talk
6 about that. We do have a disagreement on it but we
7 have a formula to talk about. I'm saying, if another
8 restaurant comes in that's using the same number of
9 seats, under the Woodcliff Lake ordinance, it still
10 requires the same number of parking spaces.

11 MR. NEWMAN: Let me make this easy, Mr.
12 Molinelli. You do not agree with the condition; is
13 that fair?

14 MR. MOLINELLI: I do not agree with the
15 Number 7 as it is written except I do not disagree
16 that, if it became a pancake house or something with a
17 heavy breakfast use, that is something that would be
18 inconsistent.

19 MR. NEWMAN: What about a heavy lunch
20 use?

21 MR. MOLINELLI: I couldn't define "heavy
22 lunch use."

23 MR. NEWMAN: Understood.

24 MR. PRINCIOTTO: I don't think it should
25 be decided by a construction code official when we have

1 multiple experts review this and look at peak hours of
2 operation and perform traffic studies, etc. It all
3 depends on the nature of the future application, so you
4 know, before, you said that you thought that I was
5 stating this as a reason not to grant the application.
6 Now that you know that I meant it as a condition, in
7 the event that there was an approval, you still have an
8 objection?

9 MR. MOLINELLI: I do.

10 MR. PRINCIOTTO: Let's hear from Mr.
11 Preiss.

12 MR. PREISS: I think we are really
13 dealing with the crux of the issue here. I think the
14 real issue is: When the restaurant has its peak hour
15 of operation, is there enough parking for this
16 particular use? And I think that the issue going -- if
17 Ray's goes in and the rest of the spaces are all used
18 for -- putting aside 13, Condition 13 -- all the other
19 uses are only open during the day, then there's not
20 going to be an issue because there will be 15 spaces
21 available beyond the peak hour.

22 MR. NEWMAN: How can you say that? You
23 have no idea what the pizza place is going to generate
24 on a Saturday.

25 MR. PREISS: I'm talking about the peak

1 hour, not during the day.

2 MR. NEWMAN: It's a pizza place. You
3 ever go to Brooklyn Pizza during lunch?

4 MR. PREISS: We're talking about a
5 particular study that was done at this particular
6 restaurant in Hillsdale.

7 MR. NEWMAN: Right. Which is a different
8 location and a different restaurant and you heard Mr.
9 Molinelli; if Ray's goes out and Brooklyn Pizza goes
10 in, we are stuck with it.

11 MR. PREISS: If I could just finish, then
12 --

13 MR. NEWMAN: Please do.

14 MR. PREISS: Basically, the applicant did
15 a comparable analysis and indicated, at the peak hour,
16 the demand was for 23 spaces leaving 15 spaces
17 available at the peak hour.

18 MR. PRINCIOTTO: Mr. Preiss, we don't
19 know if you are being picked up on the mic.

20 MR. PREISS: I'll come forward.

21 The testimony in the record is as
22 follows: At the peak hour -- this is putting aside
23 what the other uses are. Let's assume, for the time
24 being, that all the other uses are closed and the
25 restaurant has the full availability of the parking in

1 front. Okay? That will be dealt with in Number 13.
2 When this particular restaurant has its peak hour, it
3 needs 23 spaces so there's 15 spaces cushion available
4 for this restaurant.

5 So even in a situation where, let's say,
6 Ray's is replaced by Brooklyn Pizza and that has a peak
7 hour of operation which is 20 percent higher, there are
8 still those 15 spaces that are available for that
9 particular restaurant so I'm pretty satisfied that
10 there isn't a restaurant out there that, at its peak
11 hour, is going to require all 38 spaces. I think that,
12 at the peak hour -- and not putting aside what other
13 spaces are being used by the other users -- the 38
14 spaces that are provided can accommodate Ray's Pizza,
15 and any other restaurant that has an evening peak hour,
16 they will also be accommodated because, even if they
17 are 15 or 20 percent higher -- this is a pretty
18 intensive use, Ray's Pizza -- the parking will be
19 satisfied.

20 I think that the condition and the way
21 that Mr. Molinelli has stated it is fine. If Ray's
22 goes out and another restaurant comes in, they may have
23 23 or 24 or 25. There's going to be enough parking for
24 them.

25 MR. NEWMAN: And if the other use is a

1 gym --

2 MR. PREISS: Hold on. If I could just
3 finish.

4 That condition, I think, is fine. If
5 Ray's goes out and another restaurant comes in and has,
6 you know, similar demand at peak hour, it can be
7 accommodated. That deals with this particular
8 condition.

9 The Condition Number 13 indicates that,
10 if Ray's remains in and other uses come in at 6:30 that
11 have a peak that stays open beyond 6:30, are there
12 enough spaces to satisfy both? Whether it's Ray's or
13 another restaurant, that's a separate issue. I think
14 what the testimony that has been put on the record is
15 that the 38 spaces available to Ray's is sufficient to
16 accommodate that particular restaurant and any
17 restaurant replacing it, likewise, would have all those
18 38 spaces available, just on the basis of this
19 particular condition. Now, that may change depending
20 on whether other uses have a demand at 6:30, at 7:00
21 when Ray's has its peak. That's a separate issue that
22 has to be addressed. That's all I'm saying, that I
23 think that both Ray's and any other restaurant that
24 would replace it for that particular hour.

25 And I agree with Mr. Molinelli and with

1 Mr. Intindola. It's a different situation if you had a
2 restaurant that had its peak hour when other businesses
3 were open, such as in the morning. I can't think of
4 any lunchtime because, if a restaurant has a peak at
5 lunch, it usually has a peak at dinner. If it had a
6 peak at that time and the other retailers were
7 competing for spaces, you would run into a problem. I
8 think there's some wording to say that, if a restaurant
9 were permitted -- made an application other than Ray's
10 that had a similar peak hour as Ray's, then whatever
11 the restaurant it would be would be permitted because
12 you have the 38 spaces available. That's setting forth
13 what Mr. Molinelli is indicating and I'm fine with
14 that. You can ask Mr. Intindola if he is.

15 MR. PRINCIOTTO: If they came back to
16 this Board and they had this condition and they came
17 back and the testimony was such and the type of
18 restaurant was such that the peak hours of operation
19 would be identical to Ray's, then the Board could not
20 act in an arbitrary and capricious manner.

21 MR. PREISS: I understood that. In my
22 experience as a planner, the mere fact that you are
23 sending a particular applicant to go to the Zoning
24 Board and obtain, essentially, an approval is enough to
25 deter that tenant from replacing the existing tenant.

1 MR. PRINCIOTTO: But it happens all the
2 time in many municipalities where you have to go to the
3 Planning or Zoning Board, as the case may be, upon a
4 change in use.

5 MR. PREISS: For a Certificate of
6 Occupancy, it is fairly straightforward. When you
7 confront -- and I know it has happened in a number of
8 situations. You have a tenant that says "I have to go
9 to the Zoning Board in Woodcliff Lake and I'm going to
10 be tied up for three to six months trying to prove what
11 the parking is; I'm out of here." I think it's
12 reasonable. We are permitting a restaurant. Then,
13 that variance goes with the land and I think that,
14 essentially, what the Board is doing by approving, if
15 they are going to approve this in approving Ray's, is
16 approving a restaurant that has a peak hour at the
17 dinnertime with these restrictions. I think, if
18 another restaurant that had a similar peak hour
19 replaced it, putting aside whether other businesses are
20 open at 6:0, then 38 spaces are available and I don't
21 see a situation where that restaurant with 64 seats is
22 going to have a demand for 38 spaces or more so that
23 you would run into a parking problem.

24 MR. NEWMAN: What about a lunch demand?
25 What about an Italian restaurant that has a lunch

1 special, \$4.99 all you can eat? What if Ray's decided
2 \$4.99 all you can eat? We can't stop that once we
3 approve this application.

4 MR. PREISS: Correct. You are --

5 MR. NEWMAN: Every business is going to
6 be open and Ray's requires 38 spaces and they are doing
7 a tremendous business and there's no way to stop it.

8 MR. PREISS: Once a Board grants a
9 variance, a Board can't say they can't have a sales
10 special at lunchtime. When you approve a particular
11 use --

12 MR. NEWMAN: We are stuck with it, yes.

13 MR. PREISS: -- and they decide they want
14 to have a lunch special, the Board has approved it.
15 The horse has left the barn, so you know, I said I
16 can't think of a situation -- a set of situations where
17 the peak for a restaurant at lunchtime or breakfast
18 would be so substantial that you would run into a
19 problem but I have no problem and I think Mr. Molinelli
20 indicated and I'm sure we can come up with the language
21 to indicate, if there is a situation under which a
22 restaurant which comes to this Board has a peak hour
23 different than Ray's, then they have to come to the
24 Board but most restaurants operate like Ray's. They
25 have a peak on Saturday or Sunday.

1 MR. PRINCIOTTO: To answer your question,
2 there are restaurants that particularly have peak-hour
3 operations that are much different than Ray's. One is
4 Turning Point. They do a tremendous breakfast and
5 lunch business and they close, okay, completely
6 different than Ray's operation and there are
7 restaurants like that, they're not open for dinner,
8 breakfast and lunch only.

9 Perhaps we're talking about the language,
10 you know, of the condition rather than the condition.
11 We have been discussing what happens when you have a
12 different restaurant that comes in. You may be giving
13 reasons why the Board should not grant the application,
14 okay, because, if there's no protection on a future
15 different type of use of a restaurant, the Board
16 members might be reluctant to grant that.

17 MR. PREISS: Here's what I would say:
18 When a municipality adopts an ordinance and says "These
19 are the following uses that are permitted," it's --
20 essentially, there's a certain amount of risk they are
21 taking. They don't know exactly what the parking
22 demands are and how the business is operating. That's
23 their best guess as to what should be permitted and
24 they are assuming, with the standards in place, the
25 impacts will be limited so --

1 MR. NEWMAN: We have requirements.

2 MR. PREISS: I understand that, but
3 basically, what I'm saying is, you know, every time a
4 restaurant comes in the municipality, it doesn't say
5 "You have to come forward and indicate and we will see
6 whether it fits." If you were going to permit the
7 restaurant, there's a certain amount of latitude that
8 you have to provide that that restaurant or another
9 restaurant, you know, is going to be able to operate at
10 that particular location. If you don't do that, you
11 are not going to have any retail uses in Woodcliff
12 Lake, and with all due respect, I don't think that's a
13 positive message that you are sending to the business
14 community.

15 MR. PRINCIOTTO: We have discussed this
16 before and I don't have any proposed language for Mr.
17 Molinelli, you know, or anyone on how we deal with this
18 issue as you get breakfast/lunch type operation that
19 wants to come in and what's the protection? This whole
20 concept of shared parking is based upon a peak hour
21 such as Ray's. If that's not the type of use that
22 comes, that could be a problem. That's what we are
23 trying to address.

24 MR. PREISS: I do understand and I
25 sympathize with the Board. The only problem is,

1 essentially, what you are doing is saying -- and I'm
2 not a lawyer so I don't know if this is legal -- we are
3 granting a variance for only this particular use with
4 this set of circumstances and nothing else, and any
5 time there's a change, you have to come back to the
6 Board. I don't know whether that's legal to do it. I
7 don't know.

8 MR. MOLINELLI: The Lionel Center case,
9 the appellate case in my letter, I know what you are
10 talking about but you can't use the Municipal Land Use
11 Law to reach out in the future and regulate the way the
12 Mayor and Council can regulate through its ordinances.
13 There's a difference. That's my concern.

14 A few minutes ago, you mentioned a gym.
15 If a gym is a permitted use --

16 MR. NEWMAN: It's a permitted use.

17 MR. MOLINELLI: You are somehow concerned
18 what if Ray's goes out and a gym goes in.

19 MR. NEWMAN: I'm concerned if what if the
20 other spaces is rented to a gym.

21 MR. MOLINELLI: That's Number 13. I'm
22 trying my best to separate 13 from 7.

23 MR. NEWMAN: I think you have done a
24 terrific job and a wonderful presentation, and believe
25 me, it's not personal.

1 MR. PREISS: All I'm indicating, if you
2 look at Number 7 alone, all we are saying is that, if a
3 restaurant is permitted that has a peak-hour use
4 similar to Ray's, then the 38 spaces that are available
5 are sufficient to accommodate the parking. That's all
6 that Number 7 says, and if the Board thinks there's a
7 restaurant out there that would replace Ray's that has
8 more than 38 seats, I would like to hear about it.

9 Thank you.

10 MR. SPIRIG: I have a couple questions,
11 if I may.

12 CHAIRMAN BONGARD: Go ahead.

13 MR. SPIRIG: With regard to this
14 restriction of not being able to control what type of
15 restaurant goes in there, why do we bother listening to
16 testimony about parking at Ray's in Hillsdale? What
17 bearing does that have?

18 MR. PREISS: It's absolutely important
19 because you want to be assured that there's sufficient
20 parking, right? So we know, if Ray's is the only use
21 that's open and we have heard, from the testimony,
22 between 6:30 and 7:00, at its peak use, it will use 23
23 spaces, okay --

24 MR. SPIRIG: But the bottom line is --

25 MR. PREISS: We know, if that's its peak,

1 there will be 15 spaces additional available. If
2 another restaurant comes in, the question is: If the
3 Board says that no other restaurant comes in, you are
4 saying that we suspect that another restaurant that
5 would replace Ray's would have more than 38 spaces. I
6 don't think, quite frankly, that is the case.

7 MR. SPIRIG: What if Ray's never moves
8 in? Because we are not giving this variance to Ray.
9 It's to the owner of the building and Ray may never
10 move in there.

11 MR. PREISS: Essentially, what you are
12 being asked to do is grant a variance for a restaurant
13 that has its peak hour in the evening. That's,
14 essentially, what you are doing.

15 MR. NEWMAN: No, no, no. We are asked to
16 give a restaurant that can have its peak hour whenever
17 it wants. We cannot patrol peak hours of the
18 restaurant that goes in there.

19 MR. PREISS: Essentially, what Mr.
20 Molinelli indicated is that if -- that's he's willing
21 to live with the condition that, if the peak hour is
22 not in the evening, if it's at breakfast or lunch, that
23 would have to come back to the Board because --

24 MR. NEWMAN: What if Ray's is changing
25 its menu?

1 MR. PREISS: What if?

2 MR. NEWMAN: It's perfectly legitimate.

3 MR. PREISS: Do you think, when it
4 changes its menu, it will have 38 --

5 MR. NEWMAN: It's going to take up 38
6 spaces under the code or 25 spaces or 24 spaces and you
7 are going to have a bunch of other businesses operating
8 at the same time.

9 MR. PREISS: I think, quite frankly, a
10 change, we can look at the statistics for how many
11 seats are occupied -- Mr. Molinelli may have it at
12 lunchtime -- and if you can tell me that changing the
13 use is going to treble the number of seats at all
14 times, then I don't know why I'm here.

15 MR. PRINCIOTTO: Let me try this. Maybe
16 it's the wording. This isn't the resolution. This is
17 for discussion. I said a different type of restaurant.
18 If we said including a different peak hour of operation
19 instead of a different type of restaurant, does that
20 get us anywhere?

21 MR. MOLINELLI: I think both of the
22 experts have said they would be concerned about a
23 breakfast restaurant, a pancake house. Define that and
24 I don't have a problem, in concept; I don't.

25 MS. MALLEY: What's to stop Ray's from

1 doing breakfast? I have seen places open for dinner
2 and then they open for breakfast in the morning.

3 MR. MOLINELLI: But a Board has to make
4 its decision based upon the testimony that you heard.
5 Ray never testified that he's serving breakfast. I
6 know he testified that he has minimal lunch issues. He
7 said it's mostly delivery. The record will speak. I'm
8 not trying to testify here. I think the concern I
9 have, as an applicant's attorney, is: I don't want the
10 Board to be concerned about what could happen in the
11 future when there's no evidence that came out in the
12 hearing to suggest that to deny an application. That
13 is what concerns me right now. I get your concern.

14 On the other hand, you have to understand
15 my position, as a lawyer, trying to make sure that we
16 keep the record the way it is. There are a lot of
17 residents that came in and said "What happens, what
18 happens; what happens?" I brought my witnesses and
19 they all testified. Nobody brought in any witness to
20 say, "Oh, he's going to sell breakfast and always going
21 to have a ton of cars there in the morning." If
22 somebody had come in and testified under oath to that,
23 I would have cross-examined. I would have had a chance
24 to address that, so when you think about what can
25 happen and there's never been any evidence to suggest

1 it, I urge you, you have to disregard that. So "What
2 if Ray's sells breakfast," that wasn't Ray's testimony.
3 His testimony is: He sells pizza.

4 By the way, we are talking about the
5 peak. Remember Mr. Luglio's testimony. For 10
6 minutes, there were 23 cars in the parking lot for 10
7 minutes. After 10 minutes, it dropped, and by 30
8 minutes later, it was down well below even the number
9 of 23. We picked that number, 23, in a ten-minute
10 snapshot on a Saturday night and I am willing to use
11 that 23 worst-case scenario. Let's use the 23.

12 MR. NEWMAN: John, this Board does not
13 approve users. We approve uses so...

14 MR. MOLINELLI: This is a restaurant use.

15 MR. NEWMAN: What Ray's does is not what
16 any other user would do. We can't rely on Ray as a
17 user versus approving a use.

18 MR. MOLINELLI: I want to read from Page
19 6 of my letter. I hope all of you read it. We
20 postponed the last meeting because I thought this
21 letter was important enough that you wanted to read it.
22 I quoted a very well-known court case from 1978. "The
23 court was called upon to address a condition that the
24 Board had imposed on a three-building development and
25 wherein the Board attempted to restrict the issuance of

1 a permit on the third building until it could review
2 how traffic issues were being addressed in the 18-month
3 period subsequent to the approval but prior to when the
4 developer would want to receive a permit for the third
5 building. The court struck that type of approach. It
6 stated a special use permit cannot be employed to vest
7 the municipal officials the authority to determine the
8 whole future development of a community on an ad hoc
9 case-by-case basis."

10 Is there authority for a municipality to
11 do that? Yes. By ordinance or Mayor and Council but
12 not by a Zoning Board on a case-by-case basis. These
13 are well-known cases.

14 MR. NEWMAN: I'm not disagreeing with you
15 on that point. It's about the parking requirements at
16 this location and you want a 30 percent variance.
17 That's what this is about. It's not about whether a
18 pizza place would be a good use in the neighborhood.
19 It's about the fact that your applicant came before the
20 Board already, got a parking variance. He didn't want
21 7 apartments; he wanted 14. He didn't want 5,000
22 square feet of retail space; he wanted 8,000 square
23 feet of retail space and you come to the Board again
24 and this -- this structure with this use requires 94
25 spaces and you have 65. You have Broadway where you

1 can't have parking. You have Lincoln Avenue. One of
2 the streets, I think it's Lincoln -- Columbus. One of
3 them, the other side of the street does not even belong
4 to Woodcliff Lake. Hillsdale could come tomorrow and
5 say no parking on that street and it's about the
6 parking.

7 MR. MOLINELLI: I don't know what you
8 meant when you said my client wanted 7 apartments and
9 then 14. I have no idea what you are talking about.

10 MR. NEWMAN: You weren't there.

11 MR. MOLINELLI: It's not in this record.

12 MR. NEWMAN: It's in the record from when
13 he wanted the approval for the building.

14 MR. MOLINELLI: I want to give you the
15 way I look at it. This is a fully-conforming
16 restaurant use in terms of parking because, when this
17 restaurant is open for business and operating, it needs
18 38 parking spaces. There's 38 parking spaces in that
19 parking lot.

20 MR. NEWMAN: Are you going to guarantee
21 that all the other businesses are going to be closed?

22 MR. MOLINELLI: That's Number 13. I have
23 no problem discussing that when we get to Number 13.

24 To suggest that something in the future
25 may change the way Ray's sells pizza requires us to

1 deny this application, I'm suggesting that that's not a
2 good thing in terms of what the law says but it's not a
3 good thing in terms of encouraging development on
4 Broadway. You start attaching conditions. Okay? Now,
5 you didn't do it for Blue Moon. You didn't do it for
6 Panera Bread. There's no other restaurant use in town
7 that has anything remotely that you are suggesting so
8 this would be the first.

9 MR. NEWMAN: I'm not suggesting attaching
10 that condition. I'm saying it's insufficient parking.

11 MR. MOLINELLI: If you start to impose
12 these types of conditions, you might as well write off
13 any potential future retail use on Broadway because
14 nobody is going to want to come into this town because
15 the Board imposed conditions that said "We can only
16 sell pizza between 6:30 and 7:00 p.m. and we can't sell
17 breakfast and we can't sell lunch and we can't be a gym
18 and we can't be an Orange" -- whatever that word was.
19 You have to be realistic. There's a reason why
20 Hillsdale developed the way it did.

21 Do you know how many parking spaces exist
22 for the bagel place, Ronnie's Bagels?

23 MR. NEWMAN: For the existing Ray's?

24 MR. MOLINELLI: Do you know how many
25 parking spaces exist for those restaurants on Broadway

1 in Hillsdale? Zero. And they know it and they don't
2 care because they know what it takes to develop a
3 downtown. "They" being the very smart Mayor and
4 Council in Hillsdale years ago.

5 I'm suggesting: Be careful about your
6 conditions. I'm in agreement that the morning pancake
7 house throws things off. I agree with that. When we
8 talk about "What if Ray's changes the use," I'm
9 suggesting, respectfully, it builds a very difficult
10 concept to deal with, not only from a legal standpoint
11 but from a development standpoint.

12 MR. SPIRIG: My problem is: We are not
13 granting the variance to Ray. It's to the building
14 owner and they can put in anything they want once we
15 grant the variance.

16 MR. MOLINELLI: Years ago, this town
17 granted a variance. They allowed the bar known as "The
18 Library in Kinderkamack Road.

19 MR. SPIRIG: You are talking 1940s.

20 MR. MOLINELLI: I understand.

21 MR. NEWMAN: Was there even a Zoning
22 Board back then?

23 MR. MOLINELLI: Then, it changed to
24 another restaurant. To my knowledge, there are no
25 conditions that they could not serve breakfast or

1 lunch. I don't think there's any conditions at all and
2 it's a successful restaurant.

3 MR. PRINCIOTTO: What's their parking?

4 MR. MOLINELLI: A lot less than this.

5 MR. NEWMAN: But they are the only
6 business there. There's no apartments on top. There's
7 no other businesses.

8 CHAIRMAN BONGARD: We wanted to hear from
9 our traffic engineer.

10 MR. PRINCIOTTO: Are you going to
11 stipulate that this use, no matter what it is, is not
12 going to serve breakfast?

13 MR. MOLINELLI: Sure, sure. That's an
14 easy one because I know he won't do it, Ray's Pizza.

15 MR. PRINCIOTTO: No. We are not
16 approving Ray's Pizza. We are approving the use.

17 MR. MOLINELLI: I do not have a problem
18 if we come up with some language that restricts that
19 any restaurant that goes in can't be a pancake house;
20 Ihop cannot go in there. That's the type of breakfast
21 use, a morning diner.

22 MR. SPIRIG: Can McDonalds go in there?

23 MR. MOLINELLI: Anything that serves a
24 pancake style.

25 MR. SPIRIG: Well, they have pancakes.

1 MR. MOLINELLI: I try to prefer --
2 designating a certain brand. I would just say a
3 morning breakfast location.

4 MR. SPIRIG: Maybe McDonalds will tell
5 you that their peak is dinnertime but they also have a
6 lunch and a breakfast which may be not as peak as
7 dinner but...

8 MR. NEWMAN: If you approve the use, you
9 approve any restaurant. Mr. Molinelli is absolutely
10 right about that. You are approving a restaurant use,
11 period.

12 MR. MOLINELLI: With a certain number of
13 seats.

14 MR. NEWMAN: Right. With a certain
15 number of seats that requires a certain number of
16 parking, that's what you are approving.

17 MR. MOLINELLI: I am in agreement with
18 you, Mr. Newman.

19 MR. NEWMAN: Yes.

20 MR. PRINCIOTTO: I don't know that we
21 made much progress on Number 7.

22 MR. SPIRIG: The variance is not for
23 Ray's Pizza. It's for the building owner for the use
24 of a restaurant.

25 MR. MOLINELLI: That's not it, Mr. Sprig.

1 The applicant is Ray's Pizza. I have brought testimony

2 --

3 MR. SPIRIG: They are the applicant?

4 Ray's Pizza?

5 MR. MOLINELLI: Camson, the business
6 owner, presented to you certain facts relative to a
7 restaurant, required seating, number of employees, and
8 that's the only evidence that is in front of you. That
9 is all.

10 MR. SPIRIG: Well, we have precedence
11 that another restaurant that gave us testimony of a
12 sushi restaurant and that's what they are going to be
13 and they were excited to move in and we did their
14 necessary traffic requirements and so forth and they
15 never moved in. Somebody else is moving in. We have
16 to assume the same thing could potentially happen here.

17 MR. NEWMAN: I'm not sure how the
18 particular operation of one restaurant applies to every
19 restaurant because it doesn't and we are not approving
20 a user. We are approving a use.

21 MR. MOLINELLI: I said enough on the
22 topic.

23 CHAIRMAN BONGARD: I think we should move
24 on to our traffic person.

25 MR. PRINCIOTTO: All right. You want to

1 hear from our traffic/parking expert?

2 CHAIRMAN BONGARD: Yeah. Since he was so
3 gracious to get here.

4 MEMBER OF THE PUBLIC: The audio on TV at
5 home is not coming through from this meeting. The
6 visual is fine but the audio is not understandable. I
7 called a neighbor. It's throughout the broadcast. It
8 wasn't an issue with my TV.

9 MR. PRINCIOTTO: I wanted to know if it
10 was the mics of the Board members or --

11 MR. SPIRIG: The mics are working. If
12 the TV is not picking it up, that's something else.

13 CHAIRMAN BONGARD: Thank you. Thanks for
14 letting us know but we are going to have to go on with
15 the meeting.

16 MR. INTINDOLA: Specific to 7?

17 MR. PRINCIOTTO: We are talking about 7
18 but it's related to 13 but we are talking about 7.

19 MR. INTINDOLA: 7 and its first cousin
20 13, right?

21 MR. PRINCIOTTO: If there's a different
22 type of restaurant with a different peak hour of
23 operation.

24 MR. INTINDOLA: We would say, would it be
25 reasonable to say, from a traffic engineer perspective,

1 Ray's Pizza to John's Pizza, apples to apples. That's
2 the data you are relying on for that. If you were to
3 go to a Sunny Hunny or any other breakfast use, they
4 would have to come before the Board because they would
5 have a different peak hour.

6 So from a traffic perspective, you could
7 say, you know, you could make a condition that, should
8 the peak hour be different from what is there now for a
9 new operator, then they would have to come before the
10 Board. Now, I tend to be conservative with that, so
11 unless it's pizzeria to pizzeria, which we have highly
12 specific parking data on, the empirical data would
13 suggest, should it not be pizzeria to pizzeria, they
14 would have to come back to the Board and give the same
15 type of information with the specifics that was
16 presented that was a justification should the Board
17 look favorably upon the application for the pizzeria.
18 I think that's a fair way of going about it so I think
19 that the Board and the Board attorney was trying to
20 relate that.

21 If you have a change in occupancy,
22 tenancy, you could go back to the Board. That is
23 pretty common if it was one use and then it changes
24 again. Then, the train of thought was, if it's pizza
25 to pizza, it makes sense. If it's a re-branding, even

1 from like a pizza to, like, a boutique burger place, I
2 think they should come back, relate their parking
3 experience because we are relying on highly-specific
4 information that has been provided to the Board so far
5 that, of the 38 -- if there's a demand of 23, 15 left
6 over, that demand for 23 is specific to the pizzeria.
7 I think any other brand of restaurant should come back
8 to the Board. I don't know the exact legal mechanism
9 for that or if there is a legal mechanism for that but
10 that's what we heard. I think that would be a
11 reasonable approach.

12 I think the second part of 7, if there
13 was one, is that how do you quantify or make that the
14 wall between a restaurant use that is morning
15 intensive? I think you would have to rely on the
16 experience of the code official, and if he feels that
17 this is more morning intensive, then it should be
18 referred to the Zoning Board so I think that the
19 narrowness of 7 would rely on pizzeria to pizzeria.
20 It's not uncommon for one to take it over after another
21 is gone, to convert a restaurant from a pizzeria to
22 another pizzeria is not a big deal. To go from a
23 pizzeria to another type of restaurant when you have
24 the pizza oven, that is a heavy lift in a physical
25 space. I think, if you brought it back if it was not a

1 pizzeria, that would be reasonable from a traffic
2 perspective. That is what we relied upon, this
3 specific data.

4 CHAIRMAN BONGARD: Thank you.

5 MR. PRINCIOTTO: You understand you are
6 still under oath?

7 MR. INTINDOLA: Yes. Thank you.

8 MR. PRINCIOTTO: Okay. Do the Board
9 members have any comments or questions about Number 7?

10 MR. SPIRIG: I think we beat this to
11 death.

12 MR. PRINCIOTTO: What about the
13 deliveries, Number 10? I put that down.

14 MR. NEWMAN: Mr. Molinelli had some
15 issues with it so let's hear from him.

16 MR. PRINCIOTTO: I put that on the list
17 because that question was raised at a prior meeting in
18 terms of how deliveries were going to be made. I
19 think, during the original application, it was felt
20 that the business operators would determine the best
21 ways to make their deliveries.

22 MR. MOLINELLI: In the initial
23 application, every retail use has a rear door for
24 deliveries. I noted, in my letter, that Ray testified
25 that the deliveries are not significant. They are not

1 big trucks. He will come in and bring the vegetables
2 in the front and sometimes in the rear. It's not a
3 significant impact. They are not big vehicles, vans
4 and a box truck perhaps for soda. Soda is something
5 that you would probably bring in the back but I don't
6 want to recount Ray's testimony. It was not a
7 significant issue. They use either front or rear
8 depending on the circumstances.

9 MR. SPIRIG: When we talk about
10 deliveries in this particular use, there's two types of
11 deliveries. There's deliveries of items coming into
12 the store, and then, there's the concept of delivering
13 pizza.

14 MR. MOLINELLI: Good point. I think,
15 when Sal wrote that, we were talking about food
16 deliveries to the store that they will utilize in the
17 preparation of food.

18 The vehicles that are going to deliver
19 food that's made to homeowners, they use the front.
20 They park in the front. That all comes back and forth
21 through the front.

22 MR. NEWMAN: I believe the issue there
23 was, you know, in the original application, it had to
24 do with blocking in residents.

25 MR. MOLINELLI: We abandoned that. I

1 made it clear, in the May meeting, we would not be
2 using the rear for the pizza delivery cars, and correct
3 me if I'm wrong, I think what Mr. Princiotto was
4 getting to was deliveries to the restaurant, food.

5 MR. PRINCIOTTO: You are correct because
6 you are not going to deliver pizza to yourself. Okay.
7 So that answers that question.

8 Let's move down to 13. This has to do
9 with the shared parking concept and it has to do with
10 the other tenants. The peak use, based upon the Luglio
11 study, seems like it started around 6:00 p.m. and
12 peaked at around 7:00 or 7:10 p.m. so it's in this
13 range where the peak traffic demand occurred. Assuming
14 his study that 22 spaces are required during the peak
15 and that includes employees, that would leave only 15
16 parking spaces for four other potential tenants and
17 there was a suggestion made that, "Well, there's one
18 way to take care of that, if those businesses close at,
19 for example, 6:00 p.m. or 6:30 p.m., then you are not
20 going to have parking there and that gives you some
21 relief." That's a simplistic form. I'm sure Mr.
22 Molinelli is not happy with it.

23 An alternative to that is, look at how
24 much parking is left, 15 spaces, four tenancies, and to
25 limit the hours of operation to a particular number of

1 square feet because the 15 parking spaces don't look
2 like they would be sufficient for four retail users if
3 they were open after these hours so this condition is,
4 once again, based upon this shared parking concept and
5 that, if this condition is imposed, it would alleviate
6 a parking problem, you know, at the site.

7 So, Mr. Molinelli, you want to be heard
8 on that?

9 MR. MOLINELLI: All right. As I comment
10 on your number, I would like to hand something out to
11 all of the Board members. I'm not giving anything new.
12 This is the exact language that I suggested in my
13 letter that I had sent dated August 16th that I had
14 hoped everyone had read.

15 First, I guess my greatest concern is:
16 We have shifted from a concept in Number 7, where we
17 were talking about a future use having to appear before
18 a Board, to Number 13, which is an out-and-out
19 prohibition for any future user to continue to exist
20 after 6:00 p.m. I suggest to you that that is rather
21 draconian. It would severely limit the appropriate use
22 of not only this property but if it became a habit all
23 the way up Broadway, the entire length of Broadway.

24 I just envision a scenario where the
25 dentist that's there who closes customarily, whatever

1 it is, 5:30, 6:00, but, on one night, has an emergency
2 root canal and is working on that at 6:30, and under
3 that condition, people would be banging on the
4 dentist's door saying "You have to close at 6:30."
5 Trying to limit hours of operation is always a
6 disaster. I think we should focus on a future use that
7 might require appearance before the Board, a concept
8 that I agree with.

9 So the second part is something that I
10 think we should do. What I did, in my letter of August
11 16th -- I can't take credit for this language. It's
12 from some other application my office has worked with.
13 "It is typical for a shared services application that
14 is approved to contemplate the fact that there is a
15 shared service arrangement" so that, if there is a
16 factual change in the future, the Board has some
17 ability to hear about this future prospective use that
18 might be going into the evening hours. I used the ITE
19 standards of 250 square feet. It's objective. An
20 applicant comes in --

21 By the way, there's presently no use
22 there that does occupy the evening hours but let's say,
23 in the future -- you know what I think is a good use?
24 That shave bar on the corner of Hillsdale Avenue and
25 Broadway. They got a couple of chairs. It's a

1 millennial use. It's terrific. I don't get my haircut
2 there because I don't require that type of a barber but
3 it is a great type of use that obviously is a night
4 type of use. They are open until 8:00 p.m.

5 If that type of use were to go in there,
6 the building official would look at the square footage
7 being utilized and they would utilize a square footage.
8 Let say it's 1,000 square feet. They would take 250
9 square feet. They would say "That is 4 nighttime
10 parking spaces and this property owner only has 15."
11 How do we come up with the 15? We took the 38 spaces
12 outside and subtracted the maximum peak, even though
13 for 10 minutes. We are using worst-case scenario, 23.
14 We are summing, from 6:00 until 10:00, all 23 spaces
15 are being utilized by Ray's so that would be 4.

16 And then, a month later, another user
17 comes in looking for 2,000 square feet, also somehow
18 using the evening hours. We would divide the square
19 footage by 250. If it got to a point where the
20 nighttime parking use came to 15, then the building
21 official would be entitled not to issue an occupancy
22 permit for that use until that user came before this
23 Board, which would allow the Board to assess the shared
24 parking arrangement that it originally agreed to as
25 part of the Ray's application and to determine whether

1 that was being frustrated by this nighttime user. It
2 works; it's objective and I think this is something
3 that would further the commitment that Ray's Pizza will
4 not interfere with the use of this site because of its
5 peak. Of course, if other future retail users begin to
6 impinge on that peak, then I would agree that we would
7 have to come back before the Board. Not Ray's, the
8 retail user would have to come before the Board.

9 I like using the barbershop. It's one
10 chair, one barber, all right? But let's say that that
11 particular square footage puts us over the 15. We
12 would have to come before the Board, and at that point
13 in time, I would argue that, yes, he's taken 1,000
14 square feet but there's only one chair and one barber,
15 and even though, technically, based upon the square
16 footage under the local ordinance he needs 5 spaces, he
17 really doesn't need 5 spaces. That would be the
18 interaction that would work in the future between the
19 Board and any future retail applicant and that would be
20 a much more favorable alternative to simply saying "No
21 future retail user can be open after 6:00 p.m." I urge
22 you not to pursue that line. It is --

23 I have actually never seen it at this
24 point. It's something that most towns recognize is too
25 restrictive and not workable.

1 MR. PRINCIOTTO: There's no way for us to
2 determine that so we are not looking at other towns
3 but, you know, but -- let's look at this in a
4 simplistic --

5 MR. NEWMAN: Can I ask a question?

6 MR. PRINCIOTTO: Sure.

7 MR. NEWMAN: As 13 is written, you
8 disagree with 13? You do not consent to that?

9 MR. MOLINELLI: Well, there's a few
10 things I don't agree with, the first line that ends
11 with "7:00 p.m." "As an alternative, a condition that
12 no more than a specified number of square feet per
13 recommendation of professionals of the remaining retail
14 space shall be open beyond 6:00 p.m.," I agree with
15 that line and I have given you suggested language.

16 MR. PRINCIOTTO: Okay. That's what I was
17 going to lead into because I read your language but I
18 think it can be much simpler. Basically, you have
19 8,288 gross square feet there. The restaurant is going
20 to be 2,077 square feet so that leaves you 6,211 square
21 feet. By our ordinance, you would need 35 parking
22 spaces for that remaining retail space. You propose
23 15. Even using ITE standards and they have different
24 -- I'll let our parking expert weigh in on this. Even
25 ITE has different conditions that could vary.

1 I understand that, Mr. Molinelli, you
2 have taken the 1 space for 250 square feet as the
3 standard that you would like the Board to use, but even
4 using that, that probably translates into using
5 something probably less than half of the remaining
6 6,000 square feet.

7 MR. MOLINELLI: You are in the ballpark;
8 that's correct. If you want to define it by square
9 footage, I don't have a problem doing it that way
10 either.

11 MR. PRINCIOTTO: To make it easy, X-
12 amount of square feet can be open after 6:00 p.m. and
13 the balance can't. It's impossible to say what's
14 absolutely going to work and what's not going to work
15 but at least there would be some consideration given to
16 avoiding what could be a parking problem because
17 there's only 15 spaces for the four tenants.

18 Now, I know there's a new tenant that I
19 think put up a sign, Wonder Place, that's occupying, I
20 think, 1300 square feet?

21 MR. MOLINELLI: I don't do the leasing
22 work. I can't help you on that.

23 MR. PRINCIOTTO: Do we know what the
24 hours of operation are at Wonder Place?

25 MR. MOLINELLI: I do not.

1 MR. PRINCIOTTO: The sign says Wonder
2 Place. I understood it's for nails, facials and eye
3 treatments.

4 MEMBER OF THE PUBLIC: They are not going
5 to be open past 6:00 p.m.?

6 MR. MOLINELLI: We are getting off track
7 here.

8 MR. PRINCIOTTO: We need to have quiet,
9 please.

10 It doesn't matter because the use could
11 change tomorrow.

12 MR. MOLINELLI: Right. Exactly.

13 MR. PRINCIOTTO: We need to be concerned
14 about whether or not a condition can be imposed so the
15 15 spaces are available and limited to a certain amount
16 of square footage or, simplistically, to say that those
17 retail spaces can't operate past a certain hour.

18 MR. NEWMAN: I believe the testimony was
19 there are no hours of restriction in the existing
20 leases that the landlord has made with the tenants that
21 are proposed to move in. I asked him if there are any
22 restrictive hours with the leases and he said no. He's
23 here. He can correct me if I'm wrong.

24 MR. RIVERA: That is correct.

25 MR. MOLINELLI: I will confirm that was

1 in the record.

2 MS. MALLEY: By using this restriction
3 for the 250 square feet, what happens when, you said a
4 gym, a pilates studio, they get 12 people and 12 more
5 start coming in at the end of the hour or a yoga
6 studio? We are ruling out anything that would have
7 sort of classes or scheduled times because that would
8 put you right over the top.

9 MR. MOLINELLI: I hear you; I hear you.

10 MS. MALLEY: Although your 250 square
11 feet wouldn't rule it out.

12 MR. MOLINELLI: I hear you. I don't
13 disagree with you. I don't know how to define it.

14 First of all, Mr. Princiotto -- I don't
15 have a problem of limiting the square footage. I think
16 it comes out to 3750 square feet but the question
17 is: What if -- let's take the little one. Unit 4 is
18 815 square feet. What if everyone was getting packed
19 in there? I'm assuming they comply with the fire code.
20 I don't know. I don't disagree with you in concept; I
21 don't. I am reluctant to define it by brand. How do
22 you do it?

23 MS. MALLEY: I agree. I'm looking at
24 when you get groups of people.

25 MR. MOLINELLI: Maybe the experts have

1 some magic language but I don't disagree.

2 MR. INTINDOLA: So basically, the way I
3 read Mr. Molinelli's proposal is that 3700 square foot
4 could go into the pool of the after-6:30 hour so that's
5 the way I look at it. If you assume that the 3700
6 square foot at a rate of 250 square foot needs a
7 parking space, all right? That consumes the 15 spaces,
8 so then, there's leftover spaces, so you know, it's
9 last in comes to the Board. That's what it comes to.
10 That's the way I look at it from a practical matter.
11 If the Board is okay with that, it's workable but
12 there's the --

13 You can't figure this for every use. The
14 1-per-250 rate is for retail. It's not really a rate
15 for classes and personal services and goods, like
16 barbering and stuff. It's a generic retail rate that
17 is workable for, basically, a shopping center
18 application and you give this -- if you give this plaza
19 the benefit of the doubt and call it a shopping center,
20 that would be the 1-per-250 rate, which is not an
21 unreasonable approach but what would be the likely uses
22 that could come in here? That's what we are talking
23 about, that we are trying to apply a generic stand to
24 what -- I think, all our experiences, you are going to
25 get boutique uses in this area that is not accounted

1 for --

2 MR. NEWMAN: Like a cycle?

3 MR. INTINDOLA: Like a soccer coach with
4 a specialty soccer store or lacrosse store, which is
5 covered under your retail use, but it's going to be
6 that kind of use and I can't predict the future of what
7 would go in there. If you cut right to the chase and
8 say 3700 square foot for retail use gets a pass for the
9 6:30 hour, I think that's what the construct is right
10 now, then anything outside of the norm of a retail use,
11 such as a class-based or personal-service-based, maybe
12 that type of use would have to come to the Planning
13 Board even before it gets to the 3700 square feet upset
14 limit of the 15 spaces consumed.

15 So what that brings to me to, as a
16 traffic engineer, as a practical matter, is that you
17 say that any future use after the pizzeria comes before
18 the Board. Discussion, "This is what we are going to
19 do, this is what your parking demand is, okay. That
20 slot is filled. You are taking four spaces. That slot
21 is filled. You are taking eight spaces," you know?
22 That's a hypothetical. The next slot takes the next
23 three spaces so that might be -- because I don't think
24 there is magical language to do that so --

25 MR. NEWMAN: So your suggestion would be

1 that any future user has to come before the Board.

2 MR. INTINDOLA: Because we are already at
3 a parking deficit that we are trying to work under but
4 we are not trying to do an adverse taking and say "Of
5 the 3700 square foot that can be used, what is left
6 over can never be used." That's what that is setting
7 up as well. I want to try to avoid that too. I think
8 that the Zoning Board has the latitude, because we are
9 under a use variance for the parking, to review future
10 applications that come in that would have hours past
11 6:30, and you know, I try and think of how do you
12 enforce that, you know? The code official or the
13 Building Department official sees the lights on at
14 6:00, "Oh, did you get the zoning certificate to have
15 your operation here like that?"

16 MR. SPIRIG: You are setting up a
17 scenario where it is impossible to enforce.

18 MR. INTINDOLA: I'm trying to avoid that,
19 but in my mind, it's kind of enforceable because you
20 see that the lights are on at 6:30. If you got a use
21 and they say "We are doing well. We want to go to
22 6:30, 7:00," they would have to come to the Board for a
23 use that would be -- because a scenario could be that
24 "We are going to come in and close at 6:00. We are
25 avoiding the pizza shared parking concept but we are

1 doing well and we want to stay open to 8:00." I think
2 that should also bring them to the Board. I think --
3 because the Board has given such careful consideration,
4 I think that has to continue because you are protecting
5 your parking reserve, basically, of 15 through the
6 6,000 square foot that's left.

7 MR. NEWMAN: If I understand you
8 correctly, what you are suggesting is that, if we were
9 to grant this application, that any future user would
10 have to come before this Board to say what their hours
11 of operation are, when are they going to be open, what
12 is their occupancy and we could say "We approve you
13 with X, Y, Z, restriction"?

14 MR. INTINDOLA: Only if they were coming
15 in after the 6:30 hour because that's when the pizzeria
16 specifically starts to peak. Because I don't have
17 magical language to account for every scenario.

18 MR. SPIRIG: In summary, you don't agree
19 with this proposal?

20 MR. INTINDOLA: I agree with the essence
21 of it but I have to -- I tend to be pragmatic, maybe to
22 a fault. How is it enforced, right? And you are
23 struggling with the pizzeria and it's part of what a
24 Zoning Board does. I think that careful consideration
25 should go forward. If an application or a user or a

1 use specifically is going to operate past 6:30, then I
2 think the Board should visit that again and we could be
3 mildly surprised. In their application, it could be
4 that Ray's Pizza, if it's granted, has less parking
5 demand and they represent that. Of the 23 that we
6 said, it's really only using consistently 15. That
7 gives 7 back for your reserve which a future tenant
8 could report. It's a good way of seeing where the
9 decision is being flushed out as you go to occupancy.

10 MR. PRINCIOTTO: You are talking about
11 Mr. Molinelli's proposal?

12 MR. SPIRIG: Yes. Because it's complex
13 just talking about it, let alone trying to enforce it.

14 MR. NEWMAN: The only thing I could see
15 is if any future user at this particular property would
16 have to come before this Board for approval. I don't
17 know if Mr. Molinelli would agree with that.

18 MR. PRINCIOTTO: Not any user. I think
19 we are talking about any user after 6:00 p.m. or 6:30
20 p.m. If their hours of operation are going to stop at
21 5:00 p.m. --

22 MR. NEWMAN: One issue, Sal, that I have
23 is that we didn't get any traffic study at all for
24 lunchtime hours, nothing. We have no idea how many
25 customers are there for lunch.

1 MR. PRINCIOTTO: I mean, you have the
2 applicant's burden of proof and they presented the
3 testimony that they think is relevant. If the record
4 reflects --

5 MR. NEWMAN: I have genuine concerns that
6 this restaurant, especially on Saturday, does business
7 during the day. They are open during the day. I can't
8 imagine any business would be open and not have people
9 come.

10 MR. PRINCIOTTO: I think the testimony
11 was that the peak hours of operation are as was
12 indicated and it's the evening that is the peak hour.

13 MR. NEWMAN: It's the peak but that
14 doesn't mean that they are not doing business during
15 the day.

16 CHAIRMAN BONGARD: When the other
17 businesses are open.

18 MR. NEWMAN: Right. And that you don't
19 do lunch. How many cars are there during lunch? How
20 many spots are they going to take?

21 CHAIRMAN BONGARD: Sal, I think that we
22 should, you know, go a little bit faster here and get
23 out of the weeds here.

24 MR. MOLINELLI: I want to take a few
25 minutes to comment on what Mr. Intindola suggested. I

1 have a lot of respect for him. My concern is: If you
2 have a straight retail use -- I'm in agreement. If you
3 have an outlier use, like a yoga place, I agree with
4 you on that. If you have a straight retail use that's
5 1,000 square feet, under your local ordinance, that
6 retail use requires 6 parking spaces. There are plenty
7 of parking spaces even from 6:30 until 6:40 p.m., even
8 if there's 23 cars in the parking lot, that user that
9 is there until 7:00 p.m. using 1,000 square feet of
10 retail space only requires 6 spaces. To require that
11 retail user before being given permission to occupy to
12 come to this Board, that tenant is going to walk. That
13 tenant is not going to be bothered. They will go to
14 Hillsdale or anywhere else where they do not have to go
15 through that process. I'm just suggesting that; that's
16 all.

17 MR. PRINCIOTTO: Well, if the use closes
18 at 6:00, then they wouldn't.

19 MR. MOLINELLI: But your ordinance does
20 not make any distinction. It says, if you have 1,000
21 square feet, you need 6 spaces. At 6:30 p.m., that
22 retail use is using 6 spaces. There's still plenty of
23 spaces in the parking lot.

24 MR. PRINCIOTTO: We are not going by the
25 ordinance. If you went by the ordinance, you wouldn't

1 be here.

2 MR. MOLINELLI: Well, I understand that.

3 Thank you for that.

4 MR. SPIRIG: What about Number 14?

5 MR. PRINCIOTTO: Does anyone have an
6 issue with the use of the basement for something other
7 than storage?

8 MR. SPIRIG: I have a question about it.
9 The original application, which was approved by this
10 Board, indicated that the use for the basement was
11 strictly for storage so the proposal now may be that it
12 may not be used for storage. It may be used for
13 something else, food preparation, whatever it may be.
14 Does that require a variance from what was originally
15 approved?

16 MR. PRINCIOTTO: It was just part of the
17 testimony. I don't think that there's anything
18 specifically in your code that deals with the basement
19 but I think it was something that was raised by Mr.
20 Newman, I think.

21 MR. PREISS: Can I be heard on this?

22 MR. NEWMAN: It was going to be for
23 storage.

24 MR. PRINCIOTTO: Mr. Intindola brought it
25 up that it was in one of the plans that the kitchen was

1 going to be used. I'm just bringing it up to the
2 Board.

3 You remain under oath.

4 MR. PREISS: Yes.

5 So essentially, what the Board is
6 concerned about here is the parking. The intensity of
7 parking is dictated by the number of chairs and the
8 number of employees. That's been stated. Whether the
9 basement is used for food preparation or not, it is not
10 going to increase the number of employees or number of
11 tables so what difference would it make to this
12 application if they chose to do some food prep in the
13 basement? It would be the same intensity, the same
14 parking requirement so --

15 MR. NEWMAN: I agree with that. The
16 parking requirement is dictated by the number of chairs
17 and the number of employees and I agree with your
18 statement that food preparation would not increase or
19 decrease that parking requirement.

20 MR. SPIRIG: Except for maybe the number
21 of employees.

22 MR. PREISS: If the number of employees
23 goes up, then the parking requirement goes up and they
24 indicated the number of employees and you can put that
25 as a condition. I think that deals with that issue.

1 Thank you.

2 CHAIRMAN BONGARD: I think we are at a
3 point now where we have to, as a Board, discuss. I
4 feel we have had enough from the planners and the
5 traffic people and we all have our thoughts about it
6 also and then we can get along and vote on it rather
7 than just continue to hash out things.

8 MR. NEWMAN: I agree, unless Mr.
9 Molinelli has anything else to say before we break.

10 MR. MOLINELLI: No. The last round
11 between me and Mr. Princiotto, I'm done. I'm good.

12 CHAIRMAN BONGARD: I personally feel we
13 have to have some conditions in the proposal. I don't
14 think we have to have them, you know --

15 MR. NEWMAN: How do we feel about the
16 application? Maybe we should go around.

17 CHAIRMAN BONGARD: There's one thing
18 that's always a concern to me. That is something that
19 hasn't been thought of too often. That is the outside
20 sitting in a residential area. This is an important
21 duty.

22 MR. NEWMAN: I agree with that.

23 CHAIRMAN BONGARD: This is on the south
24 side of the building halfway up the street --

25 MR. NEWMAN: And there are people that

1 live directly above.

2 CHAIRMAN BONGARD: -- close to the homes
3 and it's not a quiet street. You can always put in the
4 vegetation to hide it but you can't hide it completely.

5 MR. NEWMAN: And the people that moved in
6 there moved in there without outdoor seating.

7 MR. SPIRIG: Well, I see a couple issues.

8 Issue number one is: This original
9 application was approved with a variance, a parking
10 variance with a shortage of 6 parking spaces. Some may
11 argue that may have been a mistake. Maybe it wasn't a
12 mistake, but nevertheless, it happened and we have a
13 variance there. Now, we are being asked to increase
14 that to 29.

15 Here's my concern: Worst-case scenario,
16 they are all needed and they get used up and what
17 happens with the overflow parking? And asking the
18 building owner what would happen in that instance, he
19 indicated he expected there would be parking on the
20 street. When you have a facility that's adjacent to a
21 residential neighborhood, if we have a shortage of 29
22 parking spaces, that's a lot of cars that potentially
23 could be parked up and down Columbus and Lincoln,
24 right? We don't want to go out there and put "No
25 Parking" signs because all that is going to do is hurt

1 the residents. If they have company or whatever and
2 they want to have people parking on the street, they
3 get punished to prevent overflow parking from going
4 onto the streets. That's an issue.

5 How do you fix that? The only way to fix
6 that problem is to reduce the number of parking spaces
7 that are required and there's only two things you can
8 really do. You can eliminate the outdoor seating
9 altogether. That eliminates 16 seats. Okay? Not only
10 that, it eliminates the burden put on the residents
11 that live on that street that don't necessarily need or
12 want to hear people eating or making noise or whatever
13 they are doing, BYOB, whatever possibly would happen up
14 until 11:00 at night or 10:00 at night, whatever we
15 decide. The other burden is on the people who live in
16 the building. They come home at night and they can't
17 get a parking space. What are they going to do? They
18 are going to park on the street too. So I think the
19 application, from that standpoint, puts an undue burden
20 on the residents of Columbus and Lincoln. Some people
21 may argue that they have a burden already with the
22 building with excessive lighting and so forth.

23 And I hate to sound like a broken record.
24 I don't believe we are issuing this variance to Ray's
25 Pizza. We are issuing it to the building owner. As we

1 had just seen in a recent precedent that one person
2 that we thought we were giving a variance to turned out
3 to not be the one that moved in at all and somebody
4 else moved in, not that I have anything against the
5 type of food that's going in there. That's not the
6 point. The point is: Any testimony related to a
7 specific is really irrelevant because any restaurant
8 could go in there regardless of what the parking
9 requirements are.

10 Those are my problems. I would say
11 outdoor seating has to be eliminated, number of seats
12 have to be reduced so there's not such harsh parking
13 requirements, and clearly, it sounds to me like we have
14 no recourse if some other type of restaurant moves in
15 there. That is what this sounds like to me.

16 Those are my thoughts.

17 CHAIRMAN BONGARD: Thanks, John.

18 MR. NEWMAN: I agree with everything that
19 John says. I would like to point out a couple of
20 additional things.

21 This is not a small parking variance.
22 This is 31 percent, 65 versus 94. I mean, that is huge
23 and I also want to add -- I agree with you about the
24 residents that did not bargain for outdoor seating, and
25 again, I just want to point out that, one of those

1 streets, half the street doesn't even belong to
2 Woodcliff Lake. What happens if they say the parking
3 is by permit only? You see what goes on at Demarest
4 Farm. They closed all that parking now -- it's just
5 too much of a variance that can be reasonably dealt
6 with.

7 If the applicant were to come and say "We
8 are going to put in a fine dining restaurant. We are
9 going to only open -- we talked about restricting the
10 hours of the other businesses but how about restricting
11 the hours of the restaurant that "We are going to open
12 at 6:00 p.m." or "We are not going to be open for
13 lunch" or "not going to be open for breakfast." That
14 is something I think this Board could perhaps consider
15 but we had no traffic study as to how much business
16 Ray's does during the day and no way to gauge how many
17 of the parking spaces, as with all the other
18 businesses, will be taken by Ray's during the day.
19 There's not an opportunity for -- you know, on
20 Broadway, there is no parking on Broadway.

21 It's not about the restaurant. It's not
22 about whether the restaurant would fit there. I think
23 a restaurant would fit there. It's about the parking.
24 There's simply not enough parking.

25 MS. MALLEY: So I guess I look at it a

1 little bit differently. I agree with what you guys are
2 saying. We gave variances to -- the Planning Board
3 gave variances to allow that building to be built. I
4 live around the corner up the street. I would hate
5 coming by there and seeing it vacant. I know how hard
6 it is to find retail tenants. You know, you find a
7 good tenant. You think you have a good tenant. I hate
8 to see we get one tenant in there and all the rest
9 stays vacant. That lowers the tax on the building but
10 just seeing "For Rent" signs all over. Right now,
11 there's a "For Rent" sign on the one storefront.
12 There's an "Apartment for Rent" sign. It doesn't look
13 good for the neighborhood.

14 I had questioned, way back, moving that
15 outdoor dining in the front. I was told, because of
16 the drainage, that wouldn't work. I still think the
17 front was the right place, no different than what
18 Nino's has, dining in the front. It does not affect
19 the whole community. I don't know that I agree with 16
20 seats of outdoor. I definitely think that interior
21 dining has to be cut down because there is not enough
22 parking. I hate to see, you know, the dentist in there
23 limiting his time, can't take people at night. Wonder
24 Place, I like to get my nails done at night. They
25 couldn't have, you know, stations that they want to do,

1 nails and manicures on Friday and Saturday afternoons
2 because of one restaurant taking it all so I think,
3 limiting what was out there, I would go for it, but I
4 mean, cutting down the seating inside, potentially
5 cutting that seating outside but definitely not on the
6 side by the residents.

7 Like I said, it's tough to fill those
8 stores and I understand that. We permitted it somehow.
9 I think we have to help them, at least be lenient but
10 not overly lenient.

11 CHAIRMAN BONGARD: I started by
12 explaining how I felt.

13 MR. HAYES: I appreciate the prior
14 comments. I was wondering, we have this concern about
15 the parking and I'm wondering if we gave too much
16 weight to this issue. If we are completely and utterly
17 disregarding the amount of time we spent with our own
18 experts on the parking studies that pretty much
19 illustrated for us that this use would work in this
20 situation and I understood that they are worst-case
21 scenarios that, you know, if everything potentially
22 goes wrong, they could potentially have a parking issue
23 in some instances which are de minimis. I do
24 appreciate --

25 I'll temper that by saying I do

1 appreciate that this variance is not particular to
2 Ray's Pizza. It's particular to the -- yeah. It would
3 run with the space, which is, I think, the real issue,
4 but I think, with the conditions that we discussed
5 earlier, Conditions Number 7 and 13, if they are
6 constructed appropriately, and I would suggest, for 7,
7 not to limit it to a morning use but rather a non-
8 evening peak hour rather than just the morning peak
9 hour, and Condition 13, if we could find the right
10 measurement for a non-retail use for a new tenant
11 rather than just a retail, then this application seems
12 completely workable to me.

13 Those are my thoughts on this.

14 MR. DHAWAN: So going through these
15 conditions, we got stuck on 7 and 13. I think, along
16 the conversation, it came up that, when you go for a
17 future -- we are hung up on future uses. That seems to
18 be a lot of it here. Right now, we have an application
19 before us. There's a building that I would hate to
20 see, like Robin said, stay vacant so we are putting a
21 lot of "what ifs" out there. There's a lot of
22 conditions. I think I would like to see something done
23 with 7 and 13. Some compromise, I think, perhaps can
24 be made.

25 But the outdoor patio, I gave a lot of

1 thought to that because of what I hear the residents
2 saying, and you know, I don't live there so I'm just
3 going to say, from what I see, I don't think it's going
4 to be as bad as it's made out to be as an outdoor
5 space. You see a lot of these places in front of
6 Hillsdale. It's not a loud raucous event.

7 If you have a restriction for noise or
8 lighting, I'm okay with that but I think 7 and 13, in
9 terms of how to get a use condition for future, really
10 is the crux of what's happening here. I think a lot of
11 this stuff is being worked out; however, no one knows
12 what is in the future. If it is possible to write
13 something that does require every other use to be
14 before the Board, I heard mixed statements about that.
15 I know, other towns, you have to. I went for an office
16 in Montvale twice using an office as a professional
17 space and I went before the Board twice just to use the
18 office like a previous tenant. They want to know what
19 my hours are, what I'm doing there. I don't know if
20 that's something that's possible here but if that --
21 something could be worked out in that respect because
22 it gets complicated about what's peak, breakfast.

23 MR. NEWMAN: I don't think Mr. Molinelli
24 agreed with that, which is an issue.

25 MR. VERCELLI: I agree with the report

1 they did, the studies. You did your homework as far as
2 parking. I mean, it works.

3 As far as the outdoor seating, I think
4 it's nice for the town. I think it's nice to have
5 restaurants and what Mr. Molinelli was saying, if you
6 make it hard, it's going to close the floodgate to
7 develop that area so I think it's nice for the town to
8 have outdoor seating and have a restaurant and I don't
9 see a problem with it and there's other restaurants on
10 Broadway too that has outdoor seating.

11 MR. SPIRIG: In Woodcliff Lake?

12 MR. VERCELLI: In Hillsdale.

13 MR. SPIRIG: I have no problem with
14 outdoor seating either. I like it but there's a place
15 for something like that. The question is: Is the
16 place adjacent to a residential area? Maybe not.

17 MR. VERCELLI: Any town that has a main
18 street and outdoor seating there is residential area
19 that is combined with that, right? Look at Ridgewood.

20 MR. SPIRIG: Not necessarily, though.

21 MR. DHAWAN: Doesn't Blue Moon have
22 outdoor seating in the residential?

23 MR. HAYES: Directly adjacent.

24 MR. VERCELLI: And there's alcohol and
25 there's never a problem there.

1 MR. NEWMAN: That's preexisting and that
2 has been there forever and ever. The issue I have when
3 a resident buys a house next to Blue Moon, they know
4 what they are buying.

5 MR. VERCELLI: Well, Matsu was there
6 forever.

7 MR. NEWMAN: No, Matsu was on the other
8 side. My issue is not so much with the concept of a
9 restaurant there. I really -- you know, I buy the
10 testimony for the concept of a restaurant. My issue is
11 really more about the number of seats that they propose
12 and the burden on the parking. I mean, look at the
13 numbers.

14 MR. VERCELLI: But the studies were done.
15 The engineer -- money was spent on the engineers.

16 MR. NEWMAN: There was no study on the
17 lunchtime at all.

18 MR. HAYES: Wasn't there testimony that
19 they specifically picked these hours because they were
20 the busiest hours for the restaurant?

21 MR. NEWMAN: For Ray's but you understand
22 Ray's tomorrow is Bare Burger. Mr. Molinelli is
23 absolutely 100 percent right. Once you approve the
24 use, you are done and you can't control the hours and
25 can't control the hours, really, of the other tenants

1 and it's, really, you are talking about 94 spaces are
2 required and they -- 65. That's huge. If it were a
3 24-seat restaurant or something, it's workable. If
4 there was a lot that was municipal, like, next door,
5 you could take that into consideration. Don't forget,
6 what we do here today affects future applications.

7 MR. HAYES: I completely appreciate that.
8 I understood that but I tend to lean towards the
9 testimony that we received from our own experts,
10 experts of the applicant and the traffic study that we
11 were presented with for the particular use we are
12 looking at.

13 MR. NEWMAN: But we are not restricted to
14 this applicant so whatever this applicant does doesn't
15 mean that a future applicant is different.

16 MR. HAYES: Which, I think, brings us
17 back to Condition Number 7, which is the biggest issue.
18 How do we place a condition on it that allows us to be
19 okay with this application?

20 MR. NEWMAN: The truth is, you kind of,
21 under the law, can't. That is the problem.

22 MR. HAYES: I think that's disputed here
23 among the Board.

24 MR. SPIRIG: Is it a defensible
25 condition? That's the question. I can't answer that.

1 MR. PRINCIOTTO: Cases are fact specific.
2 It's tied into shared parking.

3 MR. NEWMAN: Do we want to be litigating
4 in court over a future user? Is that what we want to
5 do, subject the town to future litigation?

6 MR. PRINCIOTTO: Let me try it. The
7 Conditions 7 and 13, as a practical matter, you have to
8 take a vote, and if it's with conditions, we need to
9 know what conditions you are voting on, and then, you
10 can vote yes or no with the conditions. We have to
11 know what you are voting on.

12 So, Mr. Molinelli, on 7, if there's a
13 change in use or occupancy of Ray's Pizza with a
14 different peak hour of operation -- I'll define this
15 more in the resolution. I think we have to know what
16 the peak hours of operation are. Let's say, for
17 purposes of discussion -- tell me if you disagree --
18 that it would be from 6:00 p.m. or 6:30 p.m. on that a
19 new application would have to be filed with the Board
20 to determine what the peak hours of operation are and
21 whether or not there was adequate parking based upon
22 those peak hours, of course, any traffic testimony,
23 etc. In line with what our experts said, if it was
24 pizza to pizza, you probably wouldn't be making an
25 application. It would depend on what the applicant

1 said in their application but you are not going to come
2 in with a pancake house and tell us the peak hours of
3 operation will be the same when it closes at 5:00 p.m.
4 Okay? So that is my thought on 7. Any comments on
5 that? Is that something you think you could go along
6 with?

7 MR. MOLINELLI: In concept, if it's based
8 upon a change in peak hours, that's fair. I don't want
9 to get into the pizza for pizza. When you brand it on
10 food, that gets difficult.

11 MR. PRINCIOTTO: That's fair.

12 With regard to Number 13, my opinion is
13 that some simple formula, in terms of square footage,
14 would be a good way to resolve that. You get up to --
15 your client would get up to a certain amount of square
16 feet where they could operate past 6:00 p.m., but after
17 they passed that square footage of use, then they would
18 have to come back before the Board because, even by the
19 most generous standards, you probably are not going to
20 have enough parking, and my opinion, if your client
21 wanted to operate a successful business, it would be
22 with adequate parking and he would try to select
23 tenants that would have a proper mix, some that would
24 close at 5:00 or before 6:00 p.m. and some that would
25 be open later because, obviously, to avoid, as our

1 experts have said and you said, an application to the
2 Zoning Board, get tenants that don't operate past 6:00
3 p.m. and you do not have to come here.

4 MR. MOLINELLI: I think that proposal is
5 fair with the added proviso -- this is where we started
6 to get difficult is Ms. Malley's suggestion that we
7 somehow do something to avoid where you have a yoga
8 studio or a fitness studio which may be only in 1,000
9 square feet but there may be 20 people in there.

10 MR. MOLINELLI: I agree with that as
11 well. You have to work that language out. I agree
12 with you.

13 MR. PRINCIOTTO: This would be a group
14 type use.

15 MR. MOLINELLI: I don't think McCormick's
16 has a definition but we could come up with a definition
17 somehow.

18 MR. PRINCIOTTO: In light of the other
19 comments -- and it's your application, your client's
20 application. You can present it how you feel
21 appropriate. There were comments made about the
22 outdoor seating and the number of seats, etc. Before a
23 vote is taken, would you --

24 MR. MOLINELLI: I would remind you --

25 MR. PRINCIOTTO: -- make any revisions?

1 MR. MOLINELLI: I'll bring this out to
2 you. I put it in my letter. We definitely committed
3 to it.

4 MR. PRINCIOTTO: I would say "any other
5 stipulations."

6 MR. MOLINELLI: There's one that relates
7 to what you are talking about right now.

8 MR. NEWMAN: Are you thinking about, when
9 you use the outdoor dining, you will reduce the tables
10 inside? Is that what you are thinking of.

11 MR. MOLINELLI: No. The landscape buffer
12 that we agreed to put, the suggestion from Mr. Neglia
13 was they wanted 6 foot height as planted and the plan
14 was revised to show that. That should be a condition
15 we agreed to that and we also agreed to the lighting
16 issues as part of that as well. Somewhere I put it in
17 my letter that you wanted it. The language that --

18 MR. NEWMAN: Would your client consider
19 --

20 MR. MOLINELLI: -- arborvitae with
21 planting height 3 to 4 feet and to replace the holly as
22 shown on the site plan.

23 MR. NEWMAN: Would your client consider
24 eliminating the outdoor seating?

25 MR. MOLINELLI: No, he would not. Is it

1 the number of seats, because it's 16, or the fact that
2 it's outdoor?

3 MR. NEWMAN: It's based on my comments
4 and Mr. Bongard's comments.

5 MR. MOLINELLI: It's such an integral
6 part of any restaurant use now. To not allow it -- you
7 have lighting codes and noise codes. It's closed at
8 10:00 p.m. It's buffered. The bollard lights are
9 going to be reduced. I think the applicant has done
10 everything they can to minimize it. You go up and down
11 Broadway; you see a lot of places where there's al
12 fresco dining.

13 MR. NEWMAN: You could come back on that
14 after it all kind of works out.

15 MR. MOLINELLI: No. I really think you
16 want this. That's why I asked you: Is it the outdoor
17 part of it?

18 CHAIRMAN BONGARD: It's not just the
19 outdoor part but it's a residential.

20 MR. MOLINELLI: You know what it is? I
21 hear when you say that. You know, I addressed that in
22 my closing argument. Behind this building, there are
23 residences. You really can't classify Broadway as a
24 residential area; it's not.

25 CHAIRMAN BONGARD: I know what you are

1 saying.

2 MR. MOLINELLI: Broadway, in that
3 district, it's a commercial area. We would like to go
4 back 50 years and build step-down zoning to put
5 something between the commercial use and the one-family
6 homes but we can't do that anymore. We buffer; we do
7 the best we can to buffer the commercial uses, you
8 know, and it's outdoor dining but some people might say
9 they don't like to see all of that crappy rental
10 equipment outside of Taylor and that's equally visible
11 by people who live on Lincoln or Columbus. When do you
12 define what is not acceptable and what is? It's a
13 commercial area. Taylor operates a business. You have
14 their old equipment out front. You look at it.
15 There's a lot of businesses that have things outside
16 that some people may not like to see. There are ways
17 to control that. There's property maintenance codes,
18 lighting codes, sounds codes. There's authority of
19 government to regulate things that might be not
20 acceptable to residents but to simply say "I know
21 outdoor dining is a big part of restaurants but we
22 don't want to do it here because even though you are in
23 a business zone, some people up the street might see
24 it." You are effectively saying it will never happen
25 on Broadway.

1 CHAIRMAN BONGARD: It's not only visible
2 but it could be --

3 MR. NEWMAN: It's your application.

4 MR. MOLINELLI: I understand. We don't
5 believe that it will cause noise. We don't believe --
6 I don't believe any of the things will actually occur.
7 You are talking about 4 tables, right? This is not 100
8 tables. This is 4 tables for four people.

9 MR. NEWMAN: Eight parking spaces.

10 MR. MOLINELLI: I'm focusing, right now,
11 on your concern about outdoor dining. If you want to
12 talk about parking, we will talk about parking. I'm
13 focusing on all the buffering and the lighting and when
14 it's closing, will it constitute -- there's been no
15 testimony here because it does not exist. I understand
16 that so you rely on your own level of expertise. Four
17 tables immediately adjacent to the building 45 feet
18 away across the street. I think our planner equated it
19 with, if you are in your own back yard, you will hear
20 more noise from your next door neighbor with an outdoor
21 barbecue. That was the testimony.

22 MR. VERCELLI: How many complaints are
23 there in Blue Moon?

24 MR. NEWMAN: There are people living
25 right above it.

1 MR. VERCELLI: I'm talking about people
2 living next to it and people that are 45 feet away from
3 it.

4 MR. NEWMAN: Well, listen, it's his
5 application. He can either proceed with the outdoor
6 dining or without it.

7 MR. VERCELLI: I think it's a great
8 stepping-stone to develop that Broadway corridor. It's
9 a beautiful building they are putting in.

10 MR. PRINCIOTTO: Please, we can't have
11 people making noise or comments.

12 MR. VERCELLI: I think, to deter that,
13 it's going to force everybody not to do business on
14 that and you are not going to be able to develop.

15 MR. NEWMAN: I disagree with that
16 completely. It's an issue of many things, one of which
17 is parking.

18 MR. PRINCIOTTO: Okay. Not everyone has
19 to agree but everyone does have to vote when we get to
20 that point. We still need, before we can take a vote,
21 a limitation on the square footage that can be used
22 beyond 6:00 p.m. Looks like the remaining space is
23 around 6,211 square feet.

24 MR. MOLINELLI: It does not have to be.
25 If you want to make it 3200, that's fine.

1 MR. PRINCIOTTO: How about 3,000?

2 MR. MOLINELLI: That's fine.

3 MR. PRINCIOTTO: I think I have enough
4 information to put together the conditions so that you
5 can take a vote on it. Actually, all I have to go over
6 is 7 and 13. I'll try to keep it simple. As I said,
7 this is the resolution. This is identifying the
8 conditions. Obviously, we intend to be as close to
9 these conditions as we can. It would be all of the
10 items in my conditions for discussion that we marked
11 B-5 with the following additions and substitutions. Of
12 course, there's going to be a change to 7 and 13, which
13 I will go over.

14 I'll start with 7. Upon a change in use
15 or occupancy of the Ray's Pizza space with different
16 peak hours of operation, a new application will be
17 filed with the Zoning Board to determine if the parking
18 is adequate and whether or not the use should be
19 approved.

20 With regard to 14 -- excuse me, 13, no
21 more than 3,000 square feet of the remaining retail
22 shall be opened beyond 6:00 p.m., and then, we added
23 the stipulation about our agreement with regard to the
24 planting the arborvitaes, whatever the record reflected
25 on that, replacing the holly with arborvitaes.

1 MR. MOLINELLI: Yes. It's on the plan.

2 MR. PRINCIOTTO: Also, any other
3 stipulations that were agreed to own the record will be
4 included in the resolution.

5 What about not serving breakfast? Is
6 that a stipulation?

7 MR. MOLINELLI: Sure.

8 MR. PRINCIOTTO: Okay.

9 MR. MOLINELLI: Can you consider changing
10 the 6:00 p.m.? The peak hour is 6:40 to 7:00. I'm
11 worried about a dentist locking his door at 6:05.
12 That's all.

13 MR. PRINCIOTTO: 6:30.

14 MEMBER OF THE PUBLIC: He keeps coming
15 back.

16 MR. PRINCIOTTO: 13, no more than 3,000
17 square feet shall open beyond 6:30 p.m. of the
18 remaining space.

19 MR. MOLINELLI: They would have to make
20 an application. It's not a limitation on their hours
21 of operation. If they are open, they have to make an
22 application to the Board.

23 MR. PRINCIOTTO: They can make an
24 application any time they want.

25 MR. MOLINELLI: I'm trying to understand

1 your condition.

2 MR. PRINCIOTTO: You can always make an
3 application.

4 MR. MOLINELLI: No retail use shall be
5 open after 6:30 p.m.

6 MR. PRINCIOTTO: You can go above 3,000
7 square feet of space until 6:30. After that, you
8 can't.

9 MS. MALLEY: Any limitation on gyms or
10 classes?

11 MR. PRINCIOTTO: Additionally, there will
12 be a limitation on any type of group use. What this is
13 anticipating to do is address the parking issue by not
14 having group meetings where you have a pilates class,
15 group activities, whatever they may be and however we
16 can define them, where you are going to have 20, 25
17 people coming and participating in a class or
18 instruction or activity. So I think the concept is
19 that we are looking for more traditional type retail
20 and that will have to be more clearly defined but
21 that's the intent. I think there's agreement on all the
22 other conditions unless you have any other...

23 MR. MOLINELLI: Can I ask one more
24 question? What happens if the Mayor and Council
25 changes the ordinance to permit restaurants on

1 Broadway? What happens to these conditions?

2 MR. PRINCIOTTO: These are related to
3 parking.

4 MR. MOLINELLI: A lot of these are
5 related to the use, pizza to pizza.

6 MR. SPIRIG: But the restaurant use is
7 creating the parking situation.

8 MR. MOLINELLI: I just want
9 clarification.

10 MR. PRINCIOTTO: I see it as a parking
11 issue.

12 MR. MOLINELLI: Okay.

13 MR. SPIRIG: If restaurants were allowed
14 today, you would be here for a parking variance.

15 MR. MOLINELLI: These are not relative to
16 the use. It's relative to parking, the condition.

17 MR. PRINCIOTTO: Well, the use determines
18 the parking. You know, a restaurant use requires more
19 parking.

20 MR. MOLINELLI: If the Mayor and Council
21 decide that the restaurant use is a permitted use, how
22 does that --

23 MR. NEWMAN: It does not grow parking.

24 MR. MOLINELLI: I'm not trying to be
25 cute. I'm trying to drill down on the conditions. If

1 they exist regardless of the fact, whether or not the
2 restaurant is a permitted or not permitted use? I'm
3 just getting clarification on that.

4 MR. PRINCIOTTO: I think that, even if
5 our ordinance required or permitted restaurants, you
6 would still be here.

7 MR. MOLINELLI: Very well. Good.

8 MR. DHAWAN: Did we clear up the
9 deliveries on Number 10?

10 MR. PRINCIOTTO: Yes. They could be at
11 the front or the back.

12 MR. SPIRIG: Just for the record, I
13 wouldn't agree with any of those conditions. I think
14 that those conditions don't fix the fact that we are
15 allowing a variance of 29 parking spaces on that
16 property and I think, unless the applicant willing to
17 eliminate the outdoor parking and reduce the number of
18 -- the outdoor seating and reduce the number of seating
19 in the building, I don't think they have a viable
20 application. Well, they have a viable application.
21 It's just a parking situation disaster waiting to
22 happen. As much as I agree with you --

23 MR. PRINCIOTTO: Could you hold on? Mr.
24 Molinelli walked out.

25 MR. SPIRIG: So? This is our discussion.

1 MR. PRINCIOTTO: It's a courtesy. We
2 wait until he gets back.

3 (Recess taken)

4 MR. PRINCIOTTO: Okay. Mr. Molinelli has
5 returned.

6 Mr. Spirig, you were talking?

7 MR. SPIRIG: I want to say, I understand
8 your concern, Robin, for having a "For Rent" sign. I
9 agree; that is not a pleasant situation. If I weigh
10 that against the potential parking problem that we
11 create for the residents in that area, to me, that is
12 the lesser of two evils.

13 MS. MALLEY: That is what I would like to
14 see, the indoor dining cut back. I think that would
15 help alleviate a little piece, not all of it.

16 MR. PRINCIOTTO: Mr. Molinelli, do you
17 have anything to say after consulting with your client?

18 MR. MOLINELLI: Yeah. Without prejudice,
19 we would be willing to withdraw the outdoor seating,
20 which essentially reduces the parking down to 30, and
21 frankly, that is a rather insignificant number, now,
22 even more so, but based upon that, we would then
23 strongly object to all the other conditions concerning
24 other uses existing in the building and we would like
25 to reserve our right to make an application if there's

1 an ordinance change to allow the outdoor dining. What
2 our concern is, if other restaurants are approved on
3 Broadway and they have al fresco dining, what happens
4 to the restaurant that doesn't have it? You give them
5 a significantly competitive disadvantage so we want the
6 right, in the future, to bring an application if there
7 are ordinance changes, but if we reduce the parking
8 demand because there's no outdoor dining, we then would
9 really object to the conditions that are being attached
10 to Number 10 and Number 13, except for the peak hour
11 with the pancake. I still agree with that, 7 and 13,
12 because then we are reducing it to a point where, with
13 the six employees, it's 24 spaces for the number of
14 seats, which is a rather the low number. I would
15 continue my argument on Number 7 and 13 with the
16 reduction.

17 MR. PRINCIOTTO: Well, I don't know if
18 that gets us anywhere. You know, I hear the comments
19 with regard to the outdoor seating. I don't know how
20 much of an impact it's going to be on parking. Quite
21 frankly, nobody knows. I don't think that -- it's only
22 a certain period of time when that outdoor seating is
23 going to be used and really factored into the equation.

24 MR. MOLINELLI: But the condition that
25 you are recommending to this Board effectively is

1 telling a landlord that he has to close and cannot have
2 tenants over 3,000 square feet that are open after 6:00
3 p.m. I just believe that that is rather egregious,
4 especially in light of a reduction in outdoor seating.
5 If the Board still wants that, then we will keep the
6 outdoor seating and you can vote.

7 MR. PRINCIOTTO: I'm trying to make
8 progress here in some form that the Board can vote on,
9 you know? This, you know, it's a parking issue. The
10 applicant that is here seeking a variance. It's a
11 Board trying to analyze the situation under the case
12 law including addressing the impact on the residential
13 character of the community. It's not a situation where
14 the applicant meets the parking requirements. It's
15 your application.

16 MR. MOLINELLI: Yes, it is.

17 MR. PRINCIOTTO: I'm trying to work with
18 the comments and bring it to a vote in an acceptable
19 fashion. I think your proposal makes it more difficult
20 because we threw out a lot of what we had agreed upon.

21 MR. MOLINELLI: I agreed to certain
22 things. It's when you said that what I was looking to
23 do was have somebody make an application before the
24 Board for occupancy. You are creating a time
25 condition. I don't think that that is really called

1 for.

2 MR. PRINCIOTTO: I'm not creating
3 anything. Your client made this application based upon
4 inadequate parking. Under the terms of the conditions
5 that we discussed, he has 14 apartment units. He will
6 have a pizzeria and 3,000 square feet of use without
7 coming back to this Board again and he could fill his
8 other space.

9 MR. MOLINELLI: We agree with that. I
10 have no problem that. What I have a problem with is
11 when an official has a right to deny an application
12 because they are going to occupy after 6:30 p.m.
13 That's the way you phrased the condition. That's my
14 problem with your condition. You phrased it that there
15 is to be no retail tenants in excess of 3,000 square
16 feet that will occupy after 6:30 p.m. at night. That's
17 the part I have opposition to. I never had a problem
18 with making them coming back before the Board.

19 MR. PRINCIOTTO: And why?

20 MR. MOLINELLI: Because then, we have to
21 satisfy the Board that, even though they are occupying
22 at that hour, they are a barber with one chair in 2,000
23 square feet. They do not need the parking that would
24 be in the spirit of the shared parking arrangement.
25 You are not even giving a landlord an opportunity to

1 say, "Look, I'm occupying 3,000 square feet but here is
2 why we don't need the parking." You just have an out-
3 and-out prohibition against any tenants being able to
4 occupy after 6:30. No one can agree to that.

5 MR. PRINCIOTTO: It's not an out-and-out
6 prohibition. You have a pizzeria that can operate and
7 3,000 square feet that can operate. You have 14
8 apartment units. It's a limitation because of
9 inadequate parking and because of the peak hours of
10 operation.

11 MR. MOLINELLI: I don't know whether you
12 were. You seem to be suggesting findings for the
13 Board. That's up to you. I disagree with you, what
14 you are saying right now. I think you are wrong based
15 upon the testimony, Mr. Princiotto. I don't think you
16 are a Board member.

17 MR. PRINCIOTTO: Wrong about what?

18 MR. MOLINELLI: I think you are wrong. I
19 think the testimony, in this case, frankly, is not
20 something that you are finding as the Board attorney at
21 this point.

22 MR. PRINCIOTTO: What testimony am I
23 finding? I'm talking about the conditions.

24 MR. MOLINELLI: You seem to be testifying
25 at this point. That's all; that's all.

1 MR. PRINCIOTTO: I didn't testify about
2 the peak hours of operation.

3 MR. MOLINELLI: No. You were just making
4 findings as the Board attorney on the record. I'm just
5 objecting to that. I can have her repeat it if you
6 like. I'll have the court reporter report it back to
7 you.

8 MR. PRINCIOTTO: I'm not making any
9 findings and I really don't like that suggestion.

10 MR. MOLINELLI: I have a concern that,
11 when the Board attorney starts relating findings that I
12 don't think some of the Board members even agree with
13 you on. If you want, I'll have the court reporter read
14 back what you just said.

15 CHAIRMAN BONGARD: Let's -- I think that
16 we should consider what Mr. Molinelli came up with with
17 his client concerning closing the outdoor seating,
18 eliminating the 4 tables, 16, and --

19 MR. NEWMAN: What about the condition
20 that no more than 3,000 square feet operate after 6:30
21 p.m.?

22 MR. SPIRIG: He's saying he doesn't agree
23 to that.

24 MR. MOLINELLI: No. I will agree with it
25 if we have the right to come back before the Board to

1 have the Board hear testimony on that particular use
2 and be satisfied that the shared parking arrangement is
3 not being violated. I never had a problem with that.

4 MR. NEWMAN: Don't you always have a
5 right to come before the Board and ask for a further
6 variance?

7 MR. MOLINELLI: Well, I don't know. If I
8 have a condition to an approval for a restaurant that
9 says I can't have tenants occupy after 6:30 p.m. at
10 night, I suppose I could come back for relief on it.

11 MR. HAYES: We can make a condition that
12 they can come to the Board with a new application.

13 MR. MOLINELLI: I don't care how the
14 language is. I just want the right to be able to say
15 -- the tenant should be able to come in and say, "Look,
16 I know we are at 3,000 square feet but I don't think I
17 violate what the original spirit was" --

18 MR. NEWMAN: "But I would like a
19 relaxation of the conditions for this application."
20 You always have the right to do that.

21 MR. MOLINELLI: I need to give the
22 property owner the ability to make an application of
23 whatever the application would be called. That's all.
24 Not just, "You shall not occupy 3,000 square feet or
25 more after the hours of 6:30." That's a very difficult

1 thing for any property owner to accept.

2 MR. SPIRIG: I agree but I think it's
3 going to be difficult to enforce it. Who is going to
4 enforce this, you know? We are creating a situation
5 that is going to be difficult for our town to enforce.

6 MR. HAYES: The applicant should have the
7 right to come back before the Board. Does that cure
8 it? If you already have the right --

9 MR. VERCELLI: The barber comes in with
10 3,000 feet; he should be able to.

11 MR. MOLINELLI: I gave language. What
12 you are saying is exactly the language. The only
13 change I made is that Mr. Princiotto suggested that I
14 lower the number. The number is 3,000. I never had a
15 problem with that. What I do have to object to -- I
16 would not be doing my job if I didn't object to it --
17 is an out-and-out statement that says "No tenant shall
18 occupy after the hour of 6:30." That's a tough
19 condition.

20 MR. NEWMAN: No. It's no tenant above
21 3,000 square feet.

22 MR. MOLINELLI: 3,000, yes.

23 MS. MALLEY: What's to stop the dentist
24 from having an emergency? He has to go to the Board?

25 MR. PRINCIOTTO: I think we covered that.

1 I have other language for that. I could add language
2 so if there's an emergency.

3 MR. NEWMAN: I don't think, on a
4 Saturday, 11:00 p.m., that the dentist has to do a root
5 canal. The first thing that's going to happen is
6 someone is going to call the police.

7 MR. MOLINELLI: Unless it's your root
8 canal.

9 MR. NEWMAN: Then, the owner is going to
10 call.

11 MR. PRINCIOTTO: I can add to that,
12 Condition 13.

13 MR. SPIRIG: I think it's unfair to put
14 these restrictions on the landlord. How do you ever
15 rent anything out when you have all these restrictions
16 on it? The restrictions are being created because of
17 this use variance which is creating the parking
18 problem.

19 The bottom line is: Why are we going to
20 make a bad situation worse? I agree; we did not hear
21 testimony from the residents but we did hear commentary
22 from the residents because they have some experience.
23 They had an existing pizzeria on the corner and they
24 talked about some of the difficulties and challenges
25 that they have, and now, you know, why would we want to

1 make the situation worse? I don't understand that.

2 I think that restaurants are great. I
3 love restaurants I love to eat, just look at me, but
4 put it in a place where you have enough parking. When
5 this application was approved originally, it was with
6 the understanding that there were going to be retail
7 stores and that restaurants were not allowed.

8 MEMBER OF THE PUBLIC: Yes.

9 MEMBER OF THE PUBLIC: Thank you.

10 MR. SPIRIG: Putting a restaurant in is
11 creating a parking problem. That's all.

12 MR. PRINCIOTTO: Look, the conditions are
13 addressed and provided for and this is not an
14 adversarial process. This is a process to look at the
15 application and determine if the application can be
16 granted with conditions that would be beneficial to
17 preserving the character of the residential zone. You
18 can vote on it with no conditions or you can vote on it
19 with conditions but we have certainly seen that the
20 conditions would be beneficial to the community and to
21 the applicant because it's more likely that an
22 applicant would get approval with conditions than
23 without conditions, so you know, nobody may walk out of
24 here happy, okay, but an application with conditions
25 may be better than no application. Applications are

1 commonly considered and are appropriate and this is not
2 a simple application. I think conditions should be
3 considered and are appropriate and what they are, and
4 to the extent they exist, that is up to the Board.
5 Although, I thought that we had come to an agreement
6 with all them.

7 Mr. Molinelli, is it the fact that you
8 think you can't make a future application to the Board
9 that's bothering you about 13?

10 MR. MOLINELLI: In the phraseology that
11 you used, yes.

12 MR. PRINCIOTTO: What do you want to add
13 to that?

14 MR. MOLINELLI: If I exceed 3,000 square
15 feet with retail uses that are open after 6:30 p.m., no
16 permit should be issued before they come before the
17 Board and satisfy this Board that the shared parking
18 arrangement is not being violated, actually give the
19 standard because, you know, a future Board might say
20 "What are you doing here? What are we supposed to
21 approve?" I suggested language so this Board would
22 know the reason why we are here is technically going to
23 be like an amended site plan. "We are here because
24 here was the shared parking arrangement in the approval
25 and we are at 3,000 square feet and we would like to

1 occupy but we are not allowed to until this Board signs
2 off on it," and then, you give us a chance before we
3 even move in to actually show you why the shared
4 parking arrangement would be satisfied. That's why I
5 used the language in my suggestion so that I even gave
6 the Board a standard that you would have to measure the
7 future. It's not really an amended application on
8 Ray's. It's dealing now that new prospective retail
9 tenant. If that new retail tenant in their use, even
10 though they are occupying a certain square footage,
11 doesn't violate the shared parking arrangement, I would
12 argue that the Board would want to approve that tenant.

13 MR. NEWMAN: What about the other 3,000
14 square feet that you get automatically? Should they
15 have to come to the Board? What if it's a cycle store.

16 MR. PRINCIOTTO: We went over that. If
17 there's some type of group use, that would not be
18 permitted, but no, the way it's proposed, the other
19 remaining 3,000-and-change square feet would not have
20 to come to the Board for approval.

21 MR. MOLINELLI: Actually, it's -- the
22 bulk of that remaining is Ray's Pizza, which is
23 excluded from the formula.

24 MR. PRINCIOTTO: I'm talking about the
25 6,000-plus that is remaining.

1 MR. HAYES: I think this is what Mr.
2 Molinelli is getting at in that notwithstanding clause
3 that's attached to his language. The standard of 250
4 square feet, 15 parking spaces needs to be replaced
5 with the 3,000 square feet condition that you had
6 mentioned. I think that cures the problem.

7 MR. PRINCIOTTO: I mean, I haven't
8 developed the final language. This is like an outline.

9 MR. HAYES: I understand. From a
10 substantive perspective, that bridges the gap here.

11 MR. PRINCIOTTO: I would prefer to keep
12 it simple and just say that no more than 3,000
13 remaining space shall be open beyond 6:30 p.m.
14 provided, however, that the applicant can make
15 application to the Board for approval.

16 MR. MOLINELLI: What would the standard
17 be for that approval?

18 MR. PRINCIOTTO: You tell me. What's the
19 standard?

20 MR. MOLINELLI: I'm trying to compromise
21 here. You are getting in the direction I'm looking
22 for. I need to know what would that tenant have to
23 show this Board.

24 MR. PRINCIOTTO: It's difficult to answer
25 because there's such limited parking.

1 MR. MOLINELLI: How about this language

2 --

3 MR. PRINCIOTTO: There's only 15 parking
4 spaces.

5 MR. MOLINELLI: -- "Whether the occupancy
6 of the tenant materially alters the shared parking
7 calculations and assumptions made by the Zoning Board
8 as part of the approval granted to Camsons Realty as
9 set forth in this resolution"? If you were to add that
10 language so I have some objective definition of what
11 that tenant has to prove, then I don't have a problem
12 with that.

13 MR. NEWMAN: I don't want to tie the
14 hands of a future Board.

15 MR. SPIRIG: How is that?

16 MR. NEWMAN: If he wants to make an
17 application, he can make an application.

18 MR. PRINCIOTTO: He's trying to create a
19 standard or criteria for that future Board to consider.

20 MR. MOLINELLI: Right. It might be a
21 permitted use and maybe the parking is only 4 or 5
22 spaces based upon the retail use. I'm looking for:
23 What does the Board expect a tenant to show? What does
24 the tenant have to prove?

25 MR. NEWMAN: That all businesses open

1 after 6:30 p.m. will not have more than 15 parking
2 spaces under the requirement of the code.

3 MR. MOLINELLI: If you want to say it
4 that way with a little more technical language, I said
5 the same thing you just said. The way I phrase it --

6 MR. NEWMAN: 250 -- what's the ordinance
7 say? One space required for how much? 175 square
8 feet. There's 15. That's 2625 square feet.

9 MR. PRINCIOTTO: That's one standard.
10 They are using an ITE standard which is 250 square
11 feet.

12 MR. MOLINELLI: Well, less than that now.
13 At 3,000, it's less than 250.

14 MR. PRINCIOTTO: You are right. It's
15 less than that.

16 MR. SPIRIG: It's complex. It's going to
17 be difficult to enforce and the concern would be, if
18 people decide to do whatever they want to do, no one is
19 going to enforce it. That's my concern.

20 MR. PRINCIOTTO: I think it creates an
21 objective standard of 3,000 square feet --

22 MR. NEWMAN: How many square feet --
23 Ray's is how many square feet?

24 MR. PRINCIOTTO: 2077.

25 MR. NEWMAN: How many square feet is the

1 building?

2 MR. PRINCIOTTO: 8,288 minus 2077 equals
3 6211 minus 3,000. It's also 3211. Am I doing that
4 wrong?

5 MR. MOLINELLI: You are correct.

6 MR. SPIRIG: For the life of me, I don't
7 know why a landlord would want to put that type of a
8 restriction on a building.

9 MR. NEWMAN: In exchange for the
10 restaurant.

11 MR. SPIRIG: It's our issue because we
12 are creating a variance here.

13 MR. PRINCIOTTO: I think I am really not
14 sure what your intentions are and what you're voting
15 on.

16 MR. NEWMAN: We are very concerned about
17 parking.

18 MR. PRINCIOTTO: At some point, we have
19 to take a vote. I think -- I'm not sure if this patio
20 is in the vote or --

21 MR. NEWMAN: No, it's out of the vote.

22 MR. PRINCIOTTO: Then, I'm not sure as to
23 if 7 is in or is not in. It's up to the Board.

24 Let me say something. The Board can
25 determine the conditions. 7, that we had originally

1 agreed upon, is a condition that, I think, is
2 beneficial to the borough as is 13. The Board can
3 provide those conditions, and if the applicant doesn't
4 like those conditions, the applicant can take an
5 appeal. It's the Board to decide what the conditions
6 are. Yes, you like to have some discussion and reduce
7 the likelihood of appeal but it's the Board that has
8 the right to establish the conditions and the applicant
9 has the right to appeal it if they don't like the
10 conditions.

11 At this point, I'm not sure if 7 or 13
12 are in. If the Board wants them in on the vote, then
13 they are in as part of the vote. That is the way it
14 works. The Board gets to determine the conditions.
15 They are more beneficial to the borough than not, at
16 least, some would argue, some would argue otherwise but
17 it's the Board to determine conditions.

18 MS. MALLEY: I think the conditions
19 should stay.

20 MR. DHAWAN: I would rather leave the two
21 conditions and the patio.

22 MR. NEWMAN: The patio is going to have
23 an issue -- well, listen. We don't know but...

24 MR. PRINCIOTTO: Somebody is going to
25 make a motion. I think the only change is in deference

1 to Mr. Molinelli and Mr. Hayes' suggestion is that, 13,
2 we are going to add, you know, whether such occupancy
3 alters the shared parking calculations made by the
4 Zoning Board -- well, actually, that doesn't work. It
5 has to be an application. It will add something
6 providing, however, that the owner/applicant may file
7 an application to the Board to determine whether such
8 occupancy alters the shared parking calculations and
9 assumptions made by the Zoning Board as part of the
10 approval.

11 MR. MOLINELLI: That's fair.

12 MR. VERCELLI: I like that.

13 MR. PRINCIOOTTO: That's the change to 13.
14 Okay.

15 MR. NEWMAN: What's the change?

16 MR. SPIRIG: Can you restate that again?
17 Do you remember what you said?

18 MR. PRINCIOOTTO: I think so. It's
19 getting late. No more than 3,000 square feet of the
20 remaining retail space shall be open beyond 6:30 p.m.
21 provided, however, that the applicant/owner may make
22 application to the Board --

23 MR. NEWMAN: How about --

24 MR. PRINCIOOTTO: -- to determine whether
25 such occupancy alters the shared parking calculations

1 and assumptions made by the Zoning Board as part of the
2 approval granted to Camson Realty as set forth in the
3 resolution.

4 MR. NEWMAN: How about no more than 3,000
5 square feet of additional retail space may be occupied
6 after 6:30 p.m. without the express approval of the
7 Zoning Board?

8 MR. SPIRIG: I kind of say the same
9 thing.

10 MR. PRINCIOTTO: It's a little different.

11 MR. MOLINELLI: So long as you back in
12 that standard, it makes no difference to me.

13 MR. NEWMAN: Well, I mean, a future
14 Zoning Board should have discretion. Actually, you
15 could back that in, now that I'm thinking about it.

16 MR. PRINCIOTTO: All right. We will go
17 back to the language that I read.

18 MR. NEWMAN: The language that you read
19 with the addition without expressed approval of the
20 Zoning Board which shall utilize the standard of -- and
21 proof by the applicant.

22 MR. SPIRIG: I think remove the
23 restrictions, remove the outdoor seating, reduce the
24 number of internal seats with a maximum of 24, and
25 then, you have alleviated your -- some of your parking

1 situation. That's my suggestion.

2 MR. NEWMAN: Eliminate the two --

3 MR. PRINCIOTTO: Mr. Molinelli, is your
4 client agreeable to that?

5 MR. NEWMAN: There's still -- yeah.

6 MR. SPIRIG: I'm talking about the ones
7 that put the restriction on the owner of the building
8 from being able to rent it because of these hour
9 restrictions you are putting on this.

10 MR. NEWMAN: You so you say eliminate 7
11 and 13 with all the other restrictions and...

12 MR. SPIRIG: Eliminate the outdoor
13 seating and cap the indoor seating to 24 seats.

14 MR. NEWMAN: There's not as much of a
15 parking problem.

16 MR. PRINCIOTTO: I don't think that's the
17 application. It's a suggestion.

18 MR. SPIRIG: It's my suggestion.

19 MR. NEWMAN: He's at 48; John wants 24.

20 MR. PRINCIOTTO: I think we are ready for
21 a motion with all the conditions including 7, 13 and
22 you can include that with the patio or without a patio.

23 MR. NEWMAN: Definitely without a patio.

24 MR. VERCELLI: I think with a patio.

25 MR. PRINCIOTTO: Somebody has to make a

1 motion with or without the patio and with conditions or
2 not. Does anyone want to make a motion?

3 MR. SPIRIG: No.

4 MR. NEWMAN: Not particularly.

5 MR. PRINCIOTTO: We could make a motion
6 for approval or denial. Somebody has to make a motion.

7 MR. VERCELLI: With the patio?

8 MR. PRINCIOTTO: It's up to the Board to
9 determine the conditions. We had a lot of discussion
10 about that tonight. You can make a motion with the
11 patio and you could make motion --

12 MR. VERCELLI: With the language that you
13 used that you agreed on it. It has to abide by the
14 shared parking usage. You know, change the language in
15 7 and 13 and keep the patio. I mean, we had buffers
16 and trees that we put in, the lights. The guy is
17 jumping through hoops. He really is.

18 MR. NEWMAN: Well, I mean...

19 MR. PRINCIOTTO: Are you making a motion
20 to approve the application with all the conditions,
21 those agreed to as well as 7 and 13, with a patio?

22 MR. VERCELLI: Yes. I'm making that
23 motion.

24 MR. HAYES: Second.

25 MR. PRINCIOTTO: Any discussion on the

1 motion as to what you are voting on?

2 MR. SPIRIG: It sounds like we are voting
3 on --

4 MR. NEWMAN: The patio being there.

5 MR. SPIRIG: -- agreeing to the original
6 application?

7 MR. PRINCIOTTO: I wouldn't call it the
8 original application. We have a number of conditions.

9 CHAIRMAN BONGARD: The original
10 application with the conditions.

11 MR. NEWMAN: The patio is -- I'm one vote
12 but that's a deal-killer for me.

13 MR. PRINCIOTTO: This is for the
14 variances that I explained before including the use
15 variance, impervious coverage, etc., the parking
16 variance.

17 CHAIRMAN BONGARD: Before we go on, Mr.
18 Molinelli and his client got together and offered not
19 to have the patio.

20 MR. NEWMAN: Correct.

21 CHAIRMAN BONGARD: They also, at the same
22 time, asked that some of the conditions be amended.

23 MR. VERCELLI: He did that with the
24 language so he is satisfied.

25 CHAIRMAN BONGARD: Are we sure we want to

1 vote on the original even though he's come back?

2 MR. NEWMAN: We can vote. I don't think
3 it has a good chance of passing but I'm only one guy.

4 MR. SPIRIG: Just to be clear, we are
5 voting on the variance with the 29 parking spaces,
6 right, use variance with deficiency of 29 parking
7 spaces?

8 MR. NEWMAN: Basically, his motion is to
9 approve with conditions. That motion has been
10 seconded. I guess it deserves a vote, and then, we
11 will have some further discussion.

12 MR. PRINCIOTTO: You want me to go over
13 the variances again?

14 MR. SPIRIG: No. They don't change.

15 MR. PRINCIOTTO: I'm happy to go over
16 them if you want to hear them one more time.

17 CHAIRMAN BONGARD: I don't think so. It
18 sounds to me like we are going back to the original
19 application with the conditions.

20 MR. NEWMAN: That's the motion that's
21 been made on that side of the table and seconded.

22 CHAIRMAN BONGARD: And not accepting of
23 the --

24 MR. NEWMAN: We will take a vote and see
25 where we are.

1 MEMBER OF THE PUBLIC: Why can't they
2 vote without the patio first?

3 MS. KOKOWSKI: Mr. Dhawan?

4 MR. DHAWAN: Yes.

5 MS. KOKOWSKI: Ms. Malley?

6 MS. MALLEY: No.

7 MS. KOKOWSKI: Mr. Vercelli?

8 MR. VERCELLI: Yes.

9 MS. KOKOWSKI: Mr. Hayes?

10 MR. HAYES: Yes.

11 MS. KOKOWSKI: Mr. Newman?

12 MR. NEWMAN: No.

13 MS. KOKOWSKI: Mr. Spirig?

14 MR. SPIRIG: No.

15 MS. KOKOWSKI: Mr. Bongard?

16 CHAIRMAN BONGARD: No.

17 MR. VERCELLI: Can we make a motion
18 without the patio?

19 MR. NEWMAN: Hold on.

20 MR. PRINCIOTTO: Is there some
21 discussion?

22 MR. NEWMAN: I'm considering making a
23 motion but...

24 MR. PRINCIOTTO: The issue has been
25 raised about taking a vote without the patio.

1 Mr. Molinelli, you have any comments?

2 MR. MOLINELLI: No. We are dealing with
3 conditions. We can always make another motion without
4 it. I'll just sit here and listen.

5 MS. MALLEY: Would your applicant
6 consider less seats inside?

7 MR. MOLINELLI: The suggestion from
8 Mr. Spirig puts us below what the overall ordinance is
9 requiring.

10 MS. MALLEY: I'm not saying 24. I'll
11 even --

12 MR. NEWMAN: I'll make a motion.

13 MR. MOLINELLI: Whatever condition you
14 want, you know --

15 MR. NEWMAN: I'll make a motion.

16 CHAIRMAN BONGARD: We are down to 48.

17 MR. MOLINELLI: We start talking about
18 numbers; it gets very hard.

19 MR. NEWMAN: I'll make a motion to
20 approve the application with no patio with all the
21 conditions made by Mr. Princiotto limiting seating to
22 36. If I can get a second, we will have a vote. If
23 not, we will go back to the drawing board.

24 MS. MALLEY: I'll second it.

25 MR. SPIRIG: Did you say "all the

1 conditions"?

2 MR. NEWMAN: Yes, all the conditions.

3 CHAIRMAN BONGARD: These are all
4 conditions that were agreed upon.

5 MR. MOLINELLI: Set forth in B-5 as
6 modified through Mr. Princiotto and I.

7 MR. PRINCIOTTO: The motion is for
8 approval with no patio and all of the other conditions
9 discussed.

10 MR. NEWMAN: With limiting seating to 36.

11 MR. DHAWAN: Is this feasible? It's
12 something you just threw out there. Is this
13 acceptable?

14 MR. MOLINELLI: I don't know. I think
15 I'm in agreement with Mr. Princiotto. Just vote, and
16 if the client doesn't want it, we will have to do what
17 we have to do.

18 MR. VERCELLI: Why 36? You are taking
19 off 28 from the total.

20 MR. HAYES: What's your rationale behind
21 it.

22 MR. NEWMAN: Because they need a
23 tremendous parking variance and I don't want to give
24 them one where they need 94.

25 MR. HAYES: I'm not being combative. I

1 want to know the rationale.

2 MR. NEWMAN: The real issue here is
3 parking. Once you approve a restaurant, it's a
4 restaurant and I don't want to burden the residents in
5 the neighborhood and there's no off-street parking
6 there. I want to give Mr. Molinelli something whether
7 he chooses to accept it or not.

8 MR. HAYES: The rationale behind the
9 number of what percentage of a variance, that's what
10 I'm getting at.

11 MR. NEWMAN: Right. So with 36...

12 MR. SPIRIG: It's 18 parking spaces.

13 MR. VERCELLI: The patio was 16.

14 MR. PRINCIOTTO: The interior seats by 12
15 is what you did.

16 MR. MOLINELLI: It's a reduction of 36
17 seats. The actual parking requirement now is 13 seats
18 plus 6 employees, 19 seats. If you add the required
19 balance remaining, I'm not sure it's even a parking
20 variance anymore. It's close.

21 MR. NEWMAN: Let's figure it out.
22 Twenty-seven for the residents, 3,000 for the -- and 15
23 for the others, was it?

24 MR. PRINCIOTTO: No, no. What standard
25 are you using?

1 MR. NEWMAN: The borough standard, 1
2 space for 175 square feet. How many square feet are
3 left?

4 MR. PRINCIOTTO: 6,211.

5 MR. NEWMAN: So you need 35, right?

6 MR. PRINCIOTTO: 175, right.

7 MR. NEWMAN: I divided by 175 so you need
8 35, right, plus? You need 27 plus...

9 MR. VERCELLI: You took away the guy's
10 patio. You are going to take seats out of his
11 restaurant also?

12 MR. NEWMAN: 18 plus 6 is 24 for the
13 restaurant plus 27 for the residents plus 35. 24 plus
14 27 plus 35 equals 86, so even at 36 seats, normally,
15 you would need 86 parking. They have 65.

16 MR. SPIRIG: There's still a deficit.

17 MR. NEWMAN: I'm giving them a variance
18 of 21 parking spaces.

19 MEMBER OF THE PUBLIC: It's crazy.

20 MR. HAYES: You divided by 250 square
21 foot per spot?

22 MR. NEWMAN: I'm using the borough
23 standard so if I -- we are still giving a variance.

24 MR. HAYES: Use the 250. That was a
25 denominator that was thrown out there.

1 MR. NEWMAN: 6211 divided by 250 would be
2 24 spots instead of 35 so 24 plus 27 plus another 24
3 plus equals 75 so we are still giving 10 spots.

4 MEMBER OF THE PUBLIC: Is handicapped in
5 there?

6 MR. NEWMAN: Because they used a
7 different standard that's not a borough standard.

8 MR. SPIRIG: The borough standard is
9 still a 21 parking deficit.

10 MR. NEWMAN: Right. With the lesser,
11 it's 24.

12 MR. HAYES: What was the variance before,
13 what number of spots?

14 MR. NEWMAN: He wanted 49 --

15 MR. MOLINELLI: 8 spots.

16 MR. HAYES: So you said 29 was the
17 variance before?

18 MR. NEWMAN: Now, we are giving him 21.

19 MR. MOLINELLI: I'm not going to comment
20 on the request. I want to bring something to your
21 attention. With the lowered number, effectively, that
22 leaves 3,325 square feet of retail. That would be a
23 conforming number based upon the reduction and the
24 number of required spaces meaning, the pizza place only
25 need 19 spaces now so I factored in what's left and it

1 equates to 3,325 square feet.

2 MR. NEWMAN: It's 19 plus employees.

3 MR. MOLINELLI: No. It's 13 plus 6
4 employees, 19.

5 MR. NEWMAN: 18.

6 MR. MOLINELLI: All right. I'm sorry.
7 Yeah. I'm just throwing it out there. You still have
8 that Number 13 formula based upon 3,000 square feet,
9 just suggesting it.

10 CHAIRMAN BONGARD: Okay. We are ready to
11 get started again. We will go ahead with the Board.

12 MR. PRINCIOTTO: We need a roll call on
13 the vote. It's a motion for approval. Are you
14 reducing the number of seats to 36, which reduces the
15 parking variance from 29 to 21 spaces, with all the
16 conditions including 7 and 13 and all the others that
17 were discussed.

18 CHAIRMAN BONGARD: Right.

19 MR. PRINCIOTTO: Without the patio.

20 MS. KOKOWSKI:

21 MR. DHAWAN: Yes.

22 MS. KOKOWSKI:

23 MS. MALLEY: Yes.

24 MS. KOKOWSKI:

25 MR. VERCELLI: No.

1 MS. KOKOWSKI:

2 MR. HAYES: Yes.

3 MS. KOKOWSKI:

4 MR. NEWMAN: Yes.

5 MS. KOKOWSKI:

6 MR. SPIRIG: No.

7 MS. KOKOWSKI:

8 CHAIRMAN BONGARD: Yes.

9 MR. PRINCIOTTO: Okay. I will prepare a
10 resolution for the next meeting. We will probably have
11 a special meeting on the 18th. There was another
12 application listed for tonight and we did not reach it
13 by happenstance. The applicant is not here but the
14 architect is here.

15 Mr. Molinelli, I'll let you know about
16 this special meeting. It probably would be on October
17 18th. Then, we will have the resolution at that time.
18 I counted five affirmative votes so that means that the
19 motion passed. You needed five affirmative votes for
20 the use variance.

21 That concludes this particular matter
22 tonight.

23 (The hearing concluded at 10:01 p.m.)

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25

C E R T I F I C A T E

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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.

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