

TOWNSHIP OF NUTLEY  
ZONING BOARD OF ADJUSTMENT

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IN THE MATTER OF: :  
 :  
649 PASSAIC AVENUE : TRANSCRIPT  
BLOCK-LOT: 502-15; : OF  
 : PROCEEDINGS  
98 KINGSLAND STREET AND :  
108 KINGSLAND STREET :  
BLOCK-LOTS: 502-16&17 :  
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Monday, September 22, 2014  
Township Hall  
One Kennedy Drive  
Nutley, New Jersey 07110  
Commencing at 7:30 p.m.

BOARD MEMBERS PRESENT:

PAUL SCRUDATO, Chairman  
THOMAS DaCOSTA LOBO  
FRANK GRAZIANO  
LOU FUSARO  
RALPH PASTORE  
MARY RYDER  
SERGE DEMERJIAN  
SUZANNE BROWN  
GARY MARINO

ALSO PRESENT:

ANGELICA MITCHELL, Recording Secretary  
TODD HAY, PE, CPWM, CME, Board Engineer  
PAUL RICCI, P.P., Board Planner

MICHELE QUICK  
Certified Court Reporter

**QUICK COURT REPORTING, LLC**  
**47 BRIAN ROAD**  
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1 A P P E A R A N C E S:

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ZIMMERER, MURRAY, CONYNGHAM & KUNZIER  
Park 80 West, Plaza Two  
250 Pehle Avenue, Suite 108  
Saddle Brook, New Jersey 07663  
BY: DIANA POWELL McGOVERN, ESQ.  
Counsel for the Board

6

DiBIASI & RINALDI, LLC  
345 Centre Street  
Nutley, New Jersey 07110  
BY: THOMAS S. DiBIASI, ESQ.  
Counsel for the Applicant

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EXHIBITS MARKED INTO EVIDENCENUMBER DESCRIPTION PAGEA-1 Document submitted by Mr. Steck, five  
pages, P-1 through P-5, containing  
photographs, a rendition of the site  
plan, and excerpts from the Township  
of Nutley Master Plan 58

1                   CHAIRMAN SCRUDATO: Good evening.  
2 Welcome to the Nutley Board of Adjustment. Could we  
3 please stand and salute the flag.

4                   (The Pledge of Allegiance is recited.)

5                   CHAIRMAN SCRUDATO: Will the secretary  
6 please read the Sunshine notice and poll the Board,  
7 please.

8                   MS. MITCHELL: Pursuant to the  
9 requirements of section 13 of the Open Public  
10 Meetings Act, notice of this special meeting was  
11 advertised in the Nutley Sun with a copy posted on  
12 the Township of Nutley bulletin board, first floor,  
13 1 Kennedy Drive, Township of Nutley, New Jersey,  
14 with a copy sent to the Herald News and the Nutley  
15 Journal. A copy is filed in the office of the  
16 Township clerk and copies are made available to all  
17 persons requesting same.

18                   Susan Brown?

19                   MS. BROWN: Here.

20                   MS. MITCHELL: Thomas DaCosta Lobo?

21                   MR. DaCOSTA LOBO: Here.

22                   MS. MITCHELL: Frank Graziano?

23                   MR. GRAZIANO: Here.

24                   MS. MITCHELL: Gary Marino?

25                   MR. MARINO: Here.

1 MS. MITCHELL: Ralph Pastore?

2 MR. PASTORE: Here.

3 MS. MITCHELL: Serge Demerjian?

4 MR. DEMERJIAN: Here.

5 MS. MITCHELL: Mary Ryder?

6 MS. RYDER: Here.

7 MS. MITCHELL: Lou Fusaro?

8 MS. FUSARO: Here.

9 MS. MITCHELL: Paul Scrudato?

10 CHAIRMAN SCRUDATO: Here.

11 MS. MITCHELL: Diane McGovern?

12 MS. MCGOVERN: Here.

13 CHAIRMAN SCRUDATO: Okay. I'd like to  
14 set some guidelines for this evening's meeting. I  
15 want to remind everyone in the audience the  
16 procedure we use for our meeting. First the  
17 applicant's attorney will do an opening statement.  
18 After the applicant's attorney has finished  
19 questioning the witness, the Board members will ask  
20 the questions -- will ask their questions. When the  
21 Board members have finished their questions of the  
22 witness, if anyone in the audience has anything  
23 further, note questions only for that witness.  
24 Please note you are permitted to give your opinion  
25 about the applicant at the end of the testimony, not

1 during this phase where we are asking questions.  
2 Also, some of you may have questions that will not  
3 be relevant to a particular witness. For example,  
4 you may have a question for traffic with the  
5 architect witness being questioned. You will have  
6 to hold those questions about the traffic for that  
7 traffic expert. If you start to make a statement or  
8 ask questions that should be directed to another  
9 witness, you will be asked to wait until the  
10 appropriate time.

11 This procedure will -- we will enjoy --  
12 I'm sorry, we will employ four witnesses. At the  
13 conclusion of the testimony, we will ask the  
14 audience if there is anyone who would like to voice  
15 an opinion, concern or statement. We're going to  
16 ask you to please be quiet so that everyone can hear  
17 what is being said as the acoustics in this room are  
18 not the best.

19 Thank you.

20 Mr. DiBiasi, please.

21 MR. DiBIASI: Thank you, Mr. Chairman.  
22 May it please the Board, counsel's name for the  
23 record is Thomas DiBiasi, representing the  
24 applicant.

25 CHAIRMAN SCRUDATO: Before you

1 continue, can we read -- I don't think we've read  
2 the --

3 MS. McGOVERN: Yes, it was read at the  
4 July meeting and then we stopped because we  
5 discussed when the special meeting was. We didn't  
6 take any testimony, we didn't do anything subsequent  
7 other than read the letter of denial, which is part  
8 of the package. If you want -- it's a long letter  
9 if you want to read it again.

10 CHAIRMAN SCRUDATO: Not necessary if  
11 everyone's satisfied. Are you -- please.

12 MR. DiBIASI: Right. For the record,  
13 counsel has waived any applicable time periods under  
14 the land use statute.

15 Mr. Chairman, thank you for giving me  
16 the opportunity to make some opening comments and I  
17 would like to put this project in context, not only  
18 within this neighborhood but also within the  
19 community and also within the history that we have  
20 with this Board.

21 Fourteen years ago, this Board was  
22 faced with a development application on East Centre  
23 Street that had an environmental problem, and at  
24 that time, an application was made for a residential  
25 development. Mr. Meka was nowhere near Nutley at

1 that time. The owner of the property was Benjamin  
2 Moore, the potential developer was Frank Widener,  
3 and at that time, this Board heard testimony and  
4 granted the applicant some relief and some mechanism  
5 to help fund the environmental condition, and the  
6 mechanism at that time was to create additional  
7 units so long as parking was not an issue. It's as  
8 a result of the vision that this Board had at that  
9 time in 2003 for the variance and use and site  
10 plan -- and it started, actually, in 2002 with the  
11 use variance and then 2003 with the site plan. As a  
12 result of the vision that this Board had at that  
13 time and the mechanism that this Board granted, that  
14 environmental site was cleaned up. The testimony at  
15 that time, 2002/2003, was that the estimates were  
16 about a quarter of a million dollars to clean up  
17 that property. Every year, I would come back to  
18 this Board, Mr. Scrudato remembers that I would be  
19 asking for extensions and the Chair would ask me for  
20 an update of what was going on environmentally and  
21 every year, I would come back. By 2010 when the  
22 property was cleared up, the estimate of \$250,000  
23 turned out to be 1.2 million. The good news for the  
24 Township of Nutley is that Benjamin Moore was a deep  
25 pocket and was able to actually keep funding that

1 cleanup, and as a result of funding that cleanup on  
2 East Centre Street, not only was that project at 56  
3 East Centre Street developed but a positive  
4 multiplier effect took place and the Board was  
5 involved with some of the other development projects  
6 and we see what East Centre Street looks like now.

7           Now the context of this application.  
8 For seven months, you and I went through an  
9 application for 7-Eleven and some of the  
10 representations made at that time were based on the  
11 350-page environmental report that 7-Eleven  
12 corporate, the Southland Corporation, had paid for,  
13 had retained, and all of those reports were very  
14 optimistic, and we represented that to the Board and  
15 there was testimony. The tanks had to be removed  
16 but the integrity of the tanks seemed to be in place  
17 and that there was no leakage, and the one  
18 representation that 7-Eleven allowed me to put on  
19 the record is that 7-Eleven would be responsible for  
20 any environmental issues. Seven months later, after  
21 we had a very long dialogue, this Board approved the  
22 7-Eleven application. Then a higher level at  
23 7-Eleven made a decision that the ordinance hours of  
24 operation in Nutley were not going to be sufficient  
25 for that site and the upper level pulled the plug on

1 that application so that, legally, the approvals are  
2 still in effect as a result of the Extension Permit  
3 Act, but functionally, that application is dead,  
4 7-Eleven signed off on the rights to the property,  
5 and I suggested that Mr. Meka take a look at that  
6 since he had been involved in other areas in need of  
7 repair in our township.

8           Mr. Costenbader is local counsel and is  
9 not here this evening, he's at the Nutley  
10 invitational tournament. He will be here at future  
11 minutes. He's representing the owners of that  
12 property lawfully. The owners of that property --  
13 it's actually one owner, Mrs. Szmak, she is the  
14 surviving heir to Bill Szmak that most of us know.  
15 The estate is cash poor. There is no money in the  
16 estate. The estate has liabilities. It now has an  
17 environmental liability, which I will explain about,  
18 it has a mortgage on it, it doesn't have sufficient  
19 cash to even keep the taxes current, it doesn't have  
20 any money to maintain the property, and that's why  
21 you and I have seen, over the last year or so, that  
22 the deterioration has continued.

23           Mr. Meka has standing to make this  
24 application because we are under a contract that has  
25 a contingency for a land use approval. Mr. Meka has

1 assumed the responsibility of cleaning up this  
2 property. Now, we thought we'd have what is a  
3 relatively clean piece, because we have a 350-,  
4 375-page report, except when we sent our expert to  
5 look at the report, his initial findings were that  
6 there was no case opened at the DEP and that  
7 everything that 7-Eleven had reported was accurate.  
8 For some reason, we asked them to go back and take  
9 another look and go through that report page by  
10 page, page by page, and buried in that report was a  
11 paragraph that one of the tanks could be leaking.  
12 We took that up with counsel, Mr. Costenbader, and  
13 asked if, in fact, we would be able to do additional  
14 testing and go into Phase 2. And that's why you  
15 have seen trucks on the site and you've seen  
16 backhoes on the site and you've seen fencing on the  
17 site.

18           What the Phase 2 report showed is that  
19 the integrity of one of the tanks had failed and  
20 that a leak did occur. We immediately called DEP to  
21 report it and there now is a public case number on  
22 this environmental issue.

23           In 2002, I estimated that the cleanup  
24 would be a quarter of a million dollars. We all  
25 found out that that estimate was woefully

1 inaccurate. We are attempting to have the  
2 contractors put a cap on what the cleanup would be  
3 and say "You've got to gamble with us. Put a cap on  
4 it. If you're under that cap, you made a windfall;  
5 if you're over that cap, you're going to eat it."  
6 And we have not been able to get a cap of anything  
7 under a half a million dollars.

8 Now, there is good news. As of this  
9 evening, the contamination is still located on the  
10 three properties that the Szmak estate owns, the  
11 one-family house on Kingsland, the corner piece  
12 which is the gas station, and then the three-family  
13 that's on Passaic Avenue. So we have contained  
14 that. Mr. Meka has also funded, at his own risk, to  
15 remove the tanks and that's why you see a big hole  
16 there. He has also funded, at his own risk, to take  
17 the additional tests because the Szmak estate has no  
18 money. If, in fact, this program goes forward, this  
19 project goes forward, there will be value to the  
20 real estate value that the widow will receive after  
21 she pays off the mortgages on the property. And we  
22 have plans as we go through this process that we  
23 will continue funding the real estate taxes.

24 One of the special reasons that you  
25 will hear from our experts in granting this variance

1 is the fact that we are here to clean up an  
2 environmental situation. We also believe that when  
3 we were doing the 7-Eleven application, we heard  
4 many of the neighbors come up and talk about a real  
5 estate project, and this is the real estate project.  
6 None of us lives in a fishbowl. We all live in  
7 Nutley, we all walk the streets. People have  
8 stopped me and I've heard "Why four stories? Why so  
9 big? We like the look of it but it just seems to be  
10 big," and our experts will review those issues and  
11 we'll face them head on. We all know this is a  
12 large building, we all know it's four stories, we  
13 all know that it is the tallest building in the  
14 area. You will hear that we have taken heights and  
15 that one of the buildings is 38 feet in actual  
16 height and we're at 44 feet in actual height.  
17 You'll hear testimony that we believe this is a  
18 gateway building, you'll hear testimony that we did  
19 design this so that parking complies, 36 units, 54  
20 spaces. You'll hear testimony that this is a  
21 typical Ken Meka project, which means everything is  
22 upscale that Mr. Meka builds, inside and out.  
23 You'll hear all those things. You'll hear that the  
24 traffic situation will be better with this kind of  
25 use as opposed to 7-Eleven. You'll hear that.

1 You'll hear the engineers have agreed, engineering  
2 issues can always be solved, it's a matter of  
3 writing a check and doing what the township engineer  
4 wants.

5           We're here to be partners in planning.  
6 We are not here to do anything that this Board and  
7 this community does not want. This application has  
8 been discussed on the streets, informally, formally,  
9 there have been newspaper articles written about it,  
10 but everything outside the four corners are merely  
11 hearsay and now when we put our hands and we swear  
12 to tell the truth, these will be the facts. We will  
13 present this application as we always do, it is a  
14 no-spin application. We know that we have neighbors  
15 here that are concerned about this application, the  
16 way they were about 7-Eleven. It is always our goal  
17 to compromise with the neighbors, put them at a  
18 comfort level, to work with this Board as partners  
19 in planning. We give you the facts and then we  
20 listen to your comments, then we see if we could put  
21 a project that's even better than what we proposed,  
22 and that's what we plan to do this evening.

23           I appreciate you giving me this extra  
24 time. I thought it was important to put this in  
25 context and to get us on the right road, and Mr.

1 Chairman, with your permission, I am ready to call  
2 our first witness.

3 CHAIRMAN SCRUDATO: Before you do, the  
4 amount of the cost for the cleanup of the property,  
5 this Board cannot consider. We cannot consider,  
6 generally, cost of a project.

7 MR. DiBIASI: That is correct as a  
8 matter of law.

9 CHAIRMAN SCRUDATO: The size of this  
10 application en masse is larger than the 7-Eleven  
11 application.

12 MR. DiBIASI: That is correct too,  
13 sir.

14 CHAIRMAN SCRUDATO: Has the state  
15 issued a letter of no further action on the  
16 property?

17 MR. DiBIASI: There is no no-further-  
18 action letter because the cleanup has not begun,  
19 only the testing has begun and the tanks were  
20 removed as a result of, really, the graciousness of  
21 Mr. Meka.

22 CHAIRMAN SCRUDATO: Okay. Please call  
23 your first witness --

24 MR. DiBIASI: Thank you, Mr. Chairman.

25 CHAIRMAN SCRUDATO: -- unless somebody

1 has questions from the Board.

2 MR. DiBIASI: Thank you.

3 Steven Corso, please be sworn.

4 CHAIRMAN SCRUDATO: Sir, would you  
5 give us your full name, your address and spell your  
6 last name.

7 MR. CORSO: Steven Corso, C-O-R-S-O,  
8 676 Bloomfield Avenue in Bloomfield, is my office  
9 address.

10 CHAIRMAN SCRUDATO: Raise your right  
11 hand, sir.

12 S T E V E N C O R S O, 676 Bloomfield Avenue,  
13 Bloomfield, New Jersey 07003, first having been  
14 sworn by Board attorney, testified as follows:

15 MS. McGOVERN: I have one more  
16 housekeeping. We forgot, the record is going to be  
17 kept by the court reporter tonight. Mr. DiBiasi.

18 MR. DiBIASI: Thank you, counsel.  
19 Would you like to swear our court reporter?

20 MS. McGOVERN: No. You're a Certified  
21 Court Reporter, right?

22 COURT REPORTER: Yes.

23 MS. McGOVERN: We have the backup, the  
24 tape will be available, minutes will be done after a  
25 transcript is done and our Board Secretary's had the

1 opportunity to review it and go through it in the  
2 normal course, but just so that you're aware that we  
3 will be provided a copy of this transcript at the  
4 applicant's expense.

5 MR. DiBIASI: You will, at our cost  
6 and expense, it will be provided and Ms. Quick will  
7 probably have this transcript, based on past  
8 experience, by next Monday.

9 MS. McGOVERN: Thank you.

10 MR. DiBIASI: Thank you.

11 Mr. Corso, please give your occupation  
12 to the Board.

13 MR. CORSO: The building is --

14 MR. DiBIASI: No, Mr. Corso, please  
15 give your occupation to the Board.

16 MR. CORSO: Oh, I'm sorry. I thought  
17 you said "observation." I'm an architect licensed  
18 in the State of New Jersey.

19 MR. DiBIASI: You have to hold that  
20 closer.

21 MR. CORSO: I'm an architect licensed  
22 in New Jersey.

23 MR. DiBIASI: Okay. And have you  
24 testified in front of this Board before?

25 MR. CORSO: I have.

1 MR. DiBIASI: And you were accepted as  
2 an architect in the past?

3 MR. CORSO: Yes.

4 MR. DiBIASI: Mr. Chairman, would you  
5 accept Mr. Corso again as an architect?

6 CHAIRMAN SCRUDATO: Mr. Corso is  
7 accepted as an architect.

8 DIRECT EXAMINATION BY MR. DiBIASI:

9 Q. Mr. Corso, your testimony is going to  
10 be limited this evening so we could have a clear,  
11 crisp transcript. What I'd like you to do is take  
12 us through the project and talk about the dimensions  
13 of the project and the materials of the project, but  
14 in terms of the surrounding areas and those issues,  
15 that's going to be covered by Peter Steck. I'd  
16 appreciate it if you would be that disciplined.

17 A. Okay.

18 Q. Thank you.

19 A. We do have a four-story building; it  
20 occupies the corner of Passaic Avenue and Kingsland  
21 street. The Kingsland facade is approximately 140  
22 feet wide, the Passaic Avenue facade is about 85  
23 feet wide. On the west side, it's approximately a  
24 hundred feet and then on the back side opposite  
25 Kingsland, which would be the north side, it's

1 approximately 140 feet also. The building --  
2 there's a slight curve to Kingsland here  
3 (indicating) so the building gets smaller as you  
4 come to the right, across the face of it.

5 CHAIRMAN SCRUDATO: I'm sorry, sir,  
6 excuse me.

7 You're raising your hand for what  
8 purpose?

9 MEMBER OF THE PUBLIC: I'm having  
10 difficulty hearing.

11 MEMBER OF THE PUBLIC: We all are.

12 MR. CORSO: Okay.

13 CHAIRMAN SCRUDATO: You have the mic,  
14 you have to speak into it. Thank you.

15 MR. CORSO: What we've done to the  
16 street facades of the building to lessen the size of  
17 it and the effect of the size is to break it up into  
18 dormers, three dormers on Kingsland Avenue, two on  
19 Passaic, and then we have a tower at the corner, and  
20 then the building recedes back. As you go up, the  
21 fourth story is actually within a roof, it's within  
22 a mansard roof, the third floor is set back, and  
23 then the first and second floor are maybe six or  
24 eight feet back from the face of the dormers, which  
25 are ten feet back from the property line. So

1 there's quite a bit of plaza area in front of the  
2 building with planters and trees and there's quite a  
3 lot of room for that.

4           There's a pedestrian entrance at the  
5 corner to go to the residential and the second,  
6 third and fourth floors and there's a driveway  
7 entrance on the west side, the Kingsland Avenue  
8 facade, where the parking will enter and only on  
9 Kingsland Avenue; there will be no parking entrances  
10 on Passaic.

11           There's 1500 square feet,  
12 approximately, of service establishment space on the  
13 first floor, the rest of the first floor is a  
14 parking garage, and then there's a parking garage  
15 under the entire site below grade and there's a ramp  
16 inside to get down.

17           On the plaza level, this is Passaic  
18 here and this is Kingsland, this is the entrance  
19 into the residential lobby, we have the elevator and  
20 stairs (indicating). The commercial space or  
21 service establishment space is on Kingsland and then  
22 the entrance to the parking garage is to the west  
23 side of Kingsland. You come in, there's parking on  
24 the left, there's parking behind the service  
25 establishment space and then more parking further

1 down towards Passaic, and then at the back further  
2 from the entrance, there's the ramp that goes down  
3 to the garage level. On this plaza level, there's  
4 19 parking spaces and then when you get down below,  
5 there are 35 spaces. The stairway and the elevator  
6 go down, there's handicapped spaces and there's  
7 mechanical space in this lower level also.

8           When we get to the second floor, we  
9 have 14 residential units, there's a center corridor  
10 and the units face around all four sides of the  
11 building. The elevator is just past where the  
12 entrance was below.

13           On the third floor, there are 13 units,  
14 the same basic floor plan but now the floor plan is  
15 smaller because the building steps back as you go  
16 up. They're all one-bedroom units, they range from  
17 660 to 1130 square feet. 30 of them have one  
18 bathroom and six of them have either one-and-a-half  
19 or two baths.

20           On the fourth floor, this is the floor  
21 that is behind the mansard roof where most of the  
22 windows come either in the gable peaks of the lower  
23 levels or from the dormers. That's a smaller floor  
24 as well. There are seven units on that level. I  
25 mean, I'm sorry, nine units on that level.

1           There are variances for this project.  
2     We have a coverage variance, a building coverage  
3     variance, where 45 percent is allowed and it's 68.68  
4     percent coverage. There are two side yards, the  
5     combination of which is a variance. We have a five-  
6     foot and six-foot setback, totaling 11, where 14  
7     feet is required. We have a story variance. Two  
8     stories are allowed and four stories are proposed.  
9     We also have, on the west side of the property, we  
10    have parking that's a little too -- that's too  
11    close, it's not five feet back from the property  
12    line, and we're required to have a six-foot buffer  
13    next to a residential zone and we're right on the  
14    property line with the wall. The west side of the  
15    project has six-foot walls and the north side of the  
16    project has six-foot-high walls to shield the  
17    parking from the neighboring properties.

18           Q.       Mr. Corso, we have a residential  
19    neighbor directly to our west and I happen to know,  
20    you could take this as a representation, that the  
21    couple actually purchased that house while 7-Eleven  
22    was in the middle of its approval, and you could  
23    imagine that that couple is going to be concerned  
24    about the height of the building from their backyard  
25    and privacy issues.

1                   Have you done anything to address those  
2 issues with your design?

3                   A.           Yes. That would be the west side  
4 elevation here (indicating). You can see how the  
5 building -- there are different volumes on that side  
6 of the building. The two volumes that are closest  
7 to the neighboring property are designed to be about  
8 the same size as a single-family house. This  
9 section, this two-and-a-half story section here --

10                   MS. McGOVERN: Could you just indicate  
11 what page you're referring to on your plans as  
12 you're doing this?

13                   MR. CORSO: This is Sheet A-6.

14                   MS. McGOVERN: Thank you.

15                   A.           Then the building goes in and out,  
16 it's set back five -- it's actually six feet from  
17 the property line, the closest section, there's  
18 another five feet in the middle of the second floor  
19 and then it goes back, set back again twice as you  
20 go up.

21                   We've made the six-foot wall three feet  
22 high in the middle, put a decorative railing on the  
23 top so that it gives it a little more of a break-up  
24 too on that side, and you'll hear the engineer  
25 testify that there's going to be some planting on

1 the neighboring side of the building, you'll see on  
2 the landscape plan that there's some planted buffers  
3 on their side of the property.

4 Q. Please keep the microphone very close  
5 to your mouth.

6 You're in your backyard --

7 MS. McGOVERN: Also, one thing, it's  
8 the top right drawing that you're pointing to on  
9 A-6.

10 MR. CORSO: On A-6, correct?

11 Q. Mr. Corso, you're now in your backyard  
12 and you're concerned about privacy, now a developer  
13 comes next door to you and wants to put up a four-  
14 story building. Now, all of a sudden, you're  
15 concerned about light, you're concerned about air,  
16 and you're concerned about somebody looking down on  
17 you. How do you prevent somebody from taking away  
18 your privacy?

19 A. We propose to have textured glass on  
20 this side of the building (indicating), the lower  
21 stash of the double-hung windows, so that when  
22 someone's looking down, they can't see distinct  
23 images, they just see textured glass and those kind  
24 of things.

25 Q. And what about light and air that

1 you're accustomed to having in your backyard? This  
2 building is now going to be to the east of you, the  
3 sun rises in the east, we all know that, it sets in  
4 the west. Does the design of your building in any  
5 way lessen the impact of losing light and what I  
6 call "air space"?

7 A. Yes. The entire plaza level or ground  
8 level of the building, it's mostly open. 45 percent  
9 of the exterior wall of that level of the building  
10 is open for air to move through and it's on all four  
11 sides, some of the openings are on all four sides.

12 Q. You were also talking about the  
13 architectural impact on the west side of the  
14 building. If I, as the neighbor, am going to look  
15 at that building, why will I not see a monolithic  
16 wall?

17 A. As I had described, it's broken up  
18 into lots of parts, lots of different volumes.  
19 There are two volumes on the front and back of that  
20 side wall and then there's smaller volumes in the  
21 middle which gives the building more of a delicate  
22 feeling.

23 Q. Okay, can you be a little bit more  
24 specific because you're an architect and understand  
25 that but people in the audience probably went right

1 over --

2           A.       Okay. The two sections on either side  
3 are approximately the size of a single-family house.  
4 In the middle -- on the first floor, it's almost all  
5 open, there's a six-foot-high wall and then there's  
6 six feet above it that's all open. So on the second  
7 floor, in the middle, there's a small one-story  
8 section that's only the second floor and it has a  
9 roof on it which is about 35 feet wide and it's  
10 about 9 feet tall. And then set back from that  
11 third floor, there's one single dormer in the middle  
12 which is about 10 feet wide and it has a little roof  
13 on it, individual roof. And on either side of that,  
14 set back about 15 feet is the third floor and the  
15 two small pieces of the third floor about 12 feet  
16 wide each, and then once you get to the top of the  
17 third floor, the roof recedes back, the dormer roof,  
18 and there's four small dormers that come out of the  
19 roof, so there's a lot of different smaller pieces  
20 of the building.

21           Q.       When you're out in your backyard and  
22 you're looking at this building, what materials will  
23 you be looking at?

24           A.       Well, brick. The entire building is  
25 brick, it's going to have aluminum trim and aluminum

1 windows.

2 Q. And how about the roof?

3 A. The roof will have a dimensional  
4 shingled roof so it's not just -- it's not just a  
5 smooth, flat surface, it has texture to it, so it'll  
6 look a lot better.

7 Q. And would you go into a little more  
8 detail with the elevator detail for this building?

9 A. In what sense?

10 Q. Describe the elevator.

11 A. It's going to be a large elevator, now  
12 you have the size elevator for handicap for a  
13 stretcher. The inside of the elevator will be a  
14 nice material, probably natural wood, it will be  
15 tile on the floor, it will probably be a wood or  
16 cloverleaf ceiling with recessed lights inside.  
17 It'll be a luxury look.

18 Q. You heard my statements, which are not  
19 testimony, and some of the things that I said and I  
20 now need you to confirm under oath, is that these  
21 units will be upscale units, meaning upscale  
22 molding, yes?

23 A. Yes.

24 Q. Upscale refrigerators and appliances?

25 A. Stainless steel appliances, yes,

1 recessed countertops, recessed lighting fixtures,  
2 we'll have ceiling moldings in the dining room,  
3 we're putting in molding in the dining areas and  
4 sometimes in the living areas. The kitchens are L-  
5 shaped kitchens or U-shaped. Most of the time,  
6 you'll see on the plan, they have a peninsula that  
7 can be used to sit at and eat at, like for just  
8 breakfast or for quick meals, and then next to the  
9 kitchen, there's a dining area for a full-sized  
10 table, and then there's usually a very large living  
11 room that can accommodate more than one furniture  
12 group.

13 Q. And what material for the flooring in  
14 the bedroom, dining room, living room area?

15 A. It will be all hardwood floors and  
16 tile. The kitchens can either be hardwood or tile.  
17 The bathrooms will be tile and all the other rooms  
18 will be hardwood.

19 Q. And you can make that representation  
20 for all 36 units.

21 A. That's right.

22 Q. Is there anything else you'd like to  
23 bring out before the Board before you're submitted  
24 for cross-examination?

25 A. Yes. A lot of the bathrooms continue

1 on with that. A lot of the bathrooms are large,  
2 some of the bathrooms will have two sinks. They're  
3 very spacious, they'll have a lot of storage, a lot  
4 of cabinets.

5 Q. Thank you.

6 MR. DiBIASI: Mr. Chairman, your  
7 witness.

8 CHAIRMAN SCRUDATO: Thank you.  
9 Questions from Board members, please. Ms. Brown.

10 MS. BROWN: Mr. Corso, I prepared the  
11 questions to ask you. The first one is: Can a  
12 mixed use building be built on this site in  
13 compliance with the maximum height for a mixed-use  
14 building per Section 700-40E and within lot coverage  
15 per 700-40F?

16 MR. CORSO: We're requesting variances  
17 for those.

18 MS. BROWN: But can a mixed use  
19 building be built on this site --

20 MR. CORSO: I'm sorry. Yes, it can  
21 conform.

22 MS. BROWN: Can a project be built on  
23 the two lots that are zoned for this use, creating  
24 only a C variance?

25 MR. CORSO: I'm sorry, say that again?

1 MS. BROWN: Can this project be built  
2 on the two lots that are zoned for this, creating  
3 only a C variance need instead of a D?

4 MR. CORSO: I didn't really study  
5 that. I would have to look at it but I would think  
6 probably yes.

7 MR. DiBIASI: I understand the  
8 question. In other words, if you had two lots  
9 instead of three --

10 MR. CORSO: Yes.

11 MR. DiBIASI: -- could you put a  
12 building on two lots and, clearly, the answer is  
13 "yes."

14 MR. CORSO: Yes, you could have a  
15 conforming building.

16 MS. BROWN: Thank you. I noticed you  
17 didn't really address this so I don't know if I'll  
18 bring it to you, maybe I'll hold it for the planner.  
19 I'd like to talk about the parking lot a little.

20 Tell me how wide the aisles are. It's  
21 not really depicted on plans A-1 and A-2, and then  
22 can you compare the aisle width of other residential  
23 projects in town, for example, if they're the same  
24 or wider or narrower as the building on the corner  
25 of Harrison Street and Kingsland Avenue? And you

1 also show compact car spaces --

2 MS. McGOVERN: Ms. Brown, you should  
3 really go one at a time so the record's not  
4 confused.

5 MS. BROWN: Okay. You also show  
6 compact car spaces which are not an approved size in  
7 the code. Wouldn't it be better design practice to  
8 provide compliance so you don't limit the  
9 flexibility?

10 MR. CORSO: As to the aisles, all  
11 designs should be 24 feet wide. That is shown on  
12 the engineer's plan, he'll provide testimony for  
13 that. The compact cars, the traffic consultant is  
14 going to provide a lot of testimony pertaining to  
15 that.

16 MS. BROWN: Okay. If the apartment  
17 size is complied with, the minimum of 650 square  
18 feet for one-bedroom garden apartments, would you be  
19 able to reduce the size and height of the whole  
20 building and still keep the quantity?

21 MR. CORSO: If we just met the minimum  
22 size is what you're saying?

23 MS. BROWN: Yes.

24 MR. CORSO: That will reduce the size  
25 of the building, yes.

1 MS. BROWN: Do you think that this  
2 building as presently designed fits into the scale  
3 of the neighborhood and why?

4 MR. CORSO: We know that the building  
5 is four stories and there's nothing four stories in  
6 the neighborhood and that it's higher than  
7 everything in the neighborhood and what we've done  
8 is to make a design that has smaller volumes and has  
9 setbacks going up so that it would fit in.

10 MS. BROWN: Have you looked at the  
11 solar patterns and the shades on the adjacent  
12 properties that will be cast by this project?

13 MR. CORSO: Our planner is going to be  
14 testifying to that.

15 MS. BROWN: Do you know what the  
16 reasons are for the code's height provision?

17 MR. CORSO: I'm sorry, for what  
18 provision?

19 MS. BROWN: The code's height  
20 provision?

21 MR. CORSO: Do I know the reasons  
22 behind the two-story provision?

23 MS. BROWN: Yes.

24 MR. CORSO: Probably because most of  
25 the neighborhood businesses have two-story

1 buildings.

2 MS. BROWN: Does this design run  
3 counter to the reasons for the code's height  
4 provision?

5 MR. CORSO: Yes, we need a variance  
6 for that.

7 MS. BROWN: All right. It would be  
8 very helpful if you could provide a cross-section  
9 drawing, one north to south and one east to west,  
10 because in order to understand the topography,  
11 you're coming up the hill from Clifton, it would  
12 better explain the building and how it relates to  
13 its surroundings. Would you be able to provide  
14 that?

15 MR. CORSO: Yes, we could provide  
16 that.

17 MS. BROWN: Would you also show the  
18 existing structures to remain on your elevation so  
19 we could see them in context with the proposed  
20 building?

21 MR. CORSO: We -- if the applicant  
22 approves for me to do that, we could do that, yes.

23 MS. BROWN: The project recently  
24 completed on East Centre Street has a large amount  
25 of rooftop equipment and when you drive up Route 21

1 coming north, all you see are a sea of things coming  
2 out of the roof. How is this project going to  
3 address that?

4 MR. CORSO: Yeah, this is completely  
5 different and I'm glad you brought that up because I  
6 didn't show that yet.

7 The roof that goes all the way around  
8 the four-story where the dormers come out, there's  
9 an extra three-foot roof parapet that's above the  
10 actual roof level that will hide all of the air-  
11 conditioning units and they're all -- if you see on  
12 the roof plan, which is A-7, you can see where we've  
13 indicated all of the air-conditioning units and  
14 they're all less than three feet high.

15 MS. BROWN: Can this project be scaled  
16 back to conform to the lot coverage requirements?

17 MR. CORSO: It's possible to have a  
18 small project, yes.

19 MS. BROWN: Are you going to provide a  
20 loading space? The reason I ask is because you know  
21 there is no on-street parking anywhere in this  
22 vicinity and say the UPS man or FedEx man comes,  
23 where are they going to pull over to provide drop-  
24 off and pickup?

25 MR. CORSO: That's going to be best

1 answered by our traffic consultant.

2 MS. BROWN: Okay: That's all I have  
3 for now.

4 CHAIRMAN SCRUDATO: Thank you, Ms.  
5 Brown.

6 Any further questions from Board  
7 members? Serge?

8 MR. DEMERJIAN: Can you just describe  
9 the floor heights?

10 MR. CORSO: The finished floor of the  
11 second floor is 13 feet 6 inches. The reason for  
12 that is because we have a steel structure for the  
13 roof of the -- or the ceiling of the first floor and  
14 that requires quite a depth to span what we're  
15 spanning, and the commercial space would require a  
16 little more height. And then the second to third  
17 floor, the third to fourth floor, the fourth floor  
18 to roof are all nine feet that would be wood  
19 construction, standard frame construction.

20 MS. McGOVERN: And you're pointing to  
21 Page A-6 again?

22 MR. CORSO: Page A-6, the lower left  
23 drawing, which is the front elevation, shows that.

24 MS. McGOVERN: Thank you.

25 MR. DEMERJIAN: And how about the

1 basement?

2 MR. CORSO: The basement is going to  
3 have a floor-to-floor height of 9 feet 2 inches at  
4 the bottom of the ramp and then it's going to go  
5 down further and it's going to get down to as far as  
6 about 12 feet.

7 MR. DEMERJIAN: And what's the first  
8 floor structure?

9 MR. CORSO: 13 feet 6 inches.

10 MR. DEMERJIAN: No, I'm sorry, the  
11 ground floor structure, what are you making it out  
12 of?

13 MR. CORSO: Steel and masonry.

14 CHAIRMAN SCRUDATO: Anything else from  
15 the Board members?

16 (No response)

17 CHAIRMAN SCRUDATO: At this point, I'd  
18 like to open it to the audience for questions of the  
19 architect, please.

20 Come to the microphone, ma'am. Please  
21 identify yourself, give your name and your address,  
22 spell your last name.

23 MS. IMHOFF: My name is Jacqueline  
24 Imhoff, I-M-H-O-F-F, 193 Rutgers Place.

25 CHAIRMAN SCRUDATO: Would you raise

1 your right hand.

2 J A C Q U E L I N E I M H O F F, 193 Rutgers  
3 Place, Nutley, New Jersey 07110, is sworn by the  
4 Board Chairman.

5 CHAIRMAN SCRUDATO: Please tell us  
6 what you have to say.

7 MS. IMHOFF: Okay. I have questions.  
8 You mentioned that the dimensions of the apartments  
9 are to be 660 to 1130 square feet but you didn't  
10 indicate how many would be of each size or whether  
11 there were different sizes; in other words, are  
12 there only 660 square feet and 1130 square feet or  
13 are there other dimensions?

14 MR. CORSO: There are a lot of sizes  
15 in between.

16 MS. IMHOFF: There are a lot of sizes.  
17 What would the range be; say, how many would be at  
18 660?

19 MR. CORSO: I'd say there are two or  
20 three at 660 and there might be five or six between  
21 700 and 800. The majority of between 800 and 950  
22 and there are just a few that are over a thousand.

23 MS. IMHOFF: So between 800 and 950  
24 are the majority of them.

25 MR. CORSO: Right.

1 MS. IMHOFF: And I assume that the  
2 1130 square feet apartments are the ones with two  
3 baths.

4 MR. CORSO: That, no one doesn't have  
5 two baths, I don't think, but that's on the top  
6 floor.

7 MS. IMHOFF: Oh, so they're not  
8 necessarily that way. What size would have the two  
9 baths?

10 MR. CORSO: There's a range in sizes  
11 for those too. I would say between 7 and 900.

12 MS. IMHOFF: Okay.

13 MR. CORSO: There's only one that has  
14 two baths. There are five that have one-and-a-half  
15 baths.

16 MS. IMHOFF: I see. You mentioned,  
17 but I'm not certain I heard this correctly, that  
18 there are appliances in the kitchens?

19 MR. CORSO: Yes.

20 MS. IMHOFF: All right. I assume this  
21 is going to be a -- I didn't know that much about it  
22 but I assume it's going to be a rental project?

23 MR. CORSO: Yes.

24 MS. IMHOFF: About what do you  
25 estimate the range of the rents to be?

1 MR. CORSO: I really don't have that  
2 information.

3 MS. IMHOFF: Well, could you give me a  
4 comparable, say, for a nearby area?

5 MR. CORSO: I think some of the other  
6 apartments that this applicant has built range from  
7 2,000 to 2500 a month.

8 MS. IMHOFF: 2,000 to 2500 a month?

9 MR. CORSO: Yes.

10 MS. IMHOFF: In a comparable  
11 neighborhood?

12 MR. CORSO: I think those are on East  
13 Centre Street.

14 MS. IMHOFF: East Centre Street?

15 MR. CORSO: Yeah.

16 MS. IMHOFF: Okay. And you mentioned  
17 that some of the apartments, I'm assuming the larger  
18 ones, also have a dining area?

19 MR. CORSO: Most of them have a dining  
20 area and living room combination but they're big  
21 enough so that you have separate dining room space.

22 MS. IMHOFF: The separate dining room  
23 space, could that be made into another room?

24 MR. CORSO: Not the way it's laid out  
25 because it's between the kitchen and the living

1 room.

2 MS. IMHOFF: Okay. That's all I have.  
3 Thank you.

4 CHAIRMAN SCRUDATO: Thank you. Don't  
5 go away. Ma'am, don't go away.

6 Any questions of the witness?

7 (No response)

8 CHAIRMAN SCRUDATO: Thank you very  
9 much. Anyone else, please come to the mic.

10 MR. CIOBAN: Good evening.

11 CHAIRMAN SCRUDATO: Please give us  
12 your full name, your address and spell your last  
13 name, please.

14 MR. CIOBAN: Michael Cioban, last name  
15 is C-I-O-B-A-N, 1 Edgewood Avenue, Nutley.

16 CHAIRMAN SCRUDATO: Raise your right  
17 hand, sir.

18 M I C H A E L C I O B A N, 1 Edgewood Avenue  
19 Nutley, New Jersey 07110, is sworn by the Board  
20 Chairman.

21 CHAIRMAN SCRUDATO: Please tell us  
22 what you have to say.

23 MR. CIOBAN: Okay. Mr. Corso, you  
24 mentioned -- you testified to an establishment space  
25 on the ground floor?

1 MR. CORSO: Yes.

2 MR. CIOBAN: What is that space?

3 MR. CORSO: Service establishment  
4 would be --

5 MR. CIOBAN: Service establishment,  
6 yes.

7 MR. CORSO: Yeah.

8 CHAIRMAN SCRUDATO: Excuse me. Please  
9 speak into the mic.

10 MR. CIOBAN: Sorry.

11 CHAIRMAN SCRUDATO: Pull it to you.

12 MR. CORSO: The zoning ordinance has a  
13 category for that and it includes, like, hair  
14 salons, nail salons, cleaning services and other  
15 service-oriented businesses. The planner has  
16 more --

17 MR. CIOBAN: Okay.

18 MR. CORSO: -- to testify --

19 MR. CIOBAN: And is there any related  
20 parking for that space or is that just --

21 MR. CORSO: This zone, for this size  
22 lot, does not have a parking requirement for that  
23 space and the planner and the traffic consultant  
24 will be addressing those issues.

25 MR. CIOBAN: Okay, so the issues for

1 those people who use that establishment where they  
2 would park, there would be other testimony?

3 MR. CORSO: Well, they would park on  
4 site during time when the residences were not in  
5 full use, so --

6 MR. CIOBAN: They would park on the  
7 site?

8 MR. CORSO: Yeah, inside the property,  
9 yeah, but the planner and the traffic consultant can  
10 explain that fully for you.

11 MR. CIOBAN: Okay. The building, you  
12 testified, has 36 units?

13 MR. CORSO: That's correct.

14 MR. CIOBAN: And those are all one-  
15 bedroom units?

16 MR. CORSO: One-bedroom units.

17 MR. CIOBAN: Okay. You also testified  
18 to the west elevation that, I think there was some  
19 testimony in terms of the adjacent property and  
20 giving some privacy to that property, you mentioned  
21 some textured glass or whatever that you were  
22 putting in. What kind of windows do you have in  
23 this building?

24 MR. CORSO: They're double-hung  
25 windows.

1 MR. CIOBAN: Double-hung windows?

2 MR. CORSO: Yes.

3 MR. CIOBAN: So it's textured glass on  
4 the top and bottom.

5 MR. CORSO: On the lower is what we  
6 usually do because that's the one that you see down,  
7 you would look down.

8 MR. CIOBAN: So if you looked forward  
9 --

10 MR. CORSO: You could open the window.

11 MR. CIOBAN: Okay. And the ground  
12 level, can you take me through the ground level a  
13 little bit? Because you had just mentioned that it  
14 was open and it seems as though your plans show  
15 parking on the ground level in addition to your  
16 service establishment space.

17 MR. CORSO: Yes.

18 MR. CIOBAN: So would you be able to  
19 see cars if you're on Kingsland or if you're on  
20 Passaic, would you be able to look into the -- you  
21 know, essentially, it's a garage.

22 MR. CORSO: Yeah, but most of it's --  
23 all of it is blocked from view from the street,  
24 except for right where the opening is. There's a  
25 six-foot wall on the west side, there's a six-foot

1 wall on the north side, and then there are simulated  
2 storefronts on Passaic Avenue with plantars in  
3 between.

4 MR. CIOBAN: Okay, so basically, the  
5 wall goes up to six foot, there's an open space  
6 above that --

7 MR. CORSO: Yes.

8 MR. CIOBAN: -- that will give  
9 ventilation to the garage area.

10 MR. CORSO: Right. There are a few  
11 peek-a-boo places where you will be able to see  
12 through to the cars but it will be almost  
13 unnoticeable.

14 MR. CIOBAN: And can you talk a little  
15 bit more about how the units are heated and cooled?

16 MR. CORSO: They have a combined  
17 heating and air-conditioning unit that's on the roof  
18 and --

19 MR. CIOBAN: So it's like a heat-pump  
20 unit that's on the roof?

21 MR. CORSO: It's not technically  
22 considered a heat pump but it does both heating and  
23 air-conditioning and that's conducted into each  
24 unit.

25 MR. CIOBAN: Okay, so do the units

1 have any type of louvers or any other type of  
2 mechanical equipment sticking out of the facade?

3 MR. CORSO: No.

4 MR. CIOBAN: No?

5 MR. CORSO: Everything is on the roof.

6 MR. CIOBAN: Everything's on the roof.

7 MR. CORSO: And then there are  
8 mechanical rooms inside the building for other  
9 equipment like water heaters and sprinkler piping  
10 and things like that.

11 MR. CIOBAN: Okay. Okay, thank you.

12 CHAIRMAN SCRUDATO: Thank you. Don't  
13 go away. Any questions for the witness?

14 (No response)

15 CHAIRMAN SCRUDATO: Thank you very  
16 much.

17 MR. CIOBAN: Thank you.

18 CHAIRMAN SCRUDATO: Anyone else have  
19 any other questions for the architect?

20 Please give us your full --

21 MS. LANDRY: Pennie, P-E-N-N-I-E,  
22 Landry, L-A-N-D-R-Y, 135 Lakeside Drive.

23 CHAIRMAN SCRUDATO: Would you raise --

24 MS. LANDRY: First -- yes?

25 CHAIRMAN SCRUDATO: Would you raise

1 your right hand, please. It's the other one.  
2 P E N N I E L A N D R Y, 135 Lakeside Drive,  
3 Nutley, New Jersey 07110, is sworn by the Board  
4 Chairman.

5 CHAIRMAN SCRUDATO: Please tell us  
6 what you have to say.

7 MS. LANDRY: What is the total number  
8 of the variances that is being asked for with this  
9 current design?

10 MR. CORSO: I believe it's 5.

11 MS. LANDRY: 5? Thank you.

12 MR. CORSO: I'm not a hundred percent  
13 sure. The planner is going to testify to that.

14 MS. LANDRY: Okay, good, thank you.

15 You said that the parking was below-  
16 grade parking?

17 MR. CORSO: There's parking below  
18 grade and at grade level.

19 MS. LANDRY: How many are below grade?

20 MR. CORSO: 35.

21 MS. LANDRY: 35, so there's a total of  
22 fifty- --

23 MR. CORSO: 54.

24 MS. LANDRY: 54. And are there  
25 currently any buildings in Nutley with below-grade

1 parking?

2 MR. CORSO: Yes. There's one on East  
3 Centre Street that I know of and --

4 MS. LANDRY: That's Mr. Meka's other  
5 --

6 MR. CORSO: Yeah.

7 MS. LANDRY: And is a variance  
8 required for this below-grade parking?

9 MR. CORSO: No.

10 MS. LANDRY: No? Below-grade parking  
11 is allowed in this --

12 MR. CORSO: Um-hum.

13 MS. LANDRY: Okay, great. And I guess  
14 this is for Mr. Meka. Will there be any  
15 stipulations or clauses in the lease addressing the  
16 maximum number of residents per unit?

17 MR. CORSO: I believe that's governed  
18 by state law.

19 MS. LANDRY: You believe?

20 MR. CORSO: I believe but I don't know  
21 for sure.

22 MS. LANDRY: Is there somebody who can  
23 address that?

24 Can you address that, Mr. DiBiasi?

25 CHAIRMAN SCRUDATO: Ask the questions

1 up here, please.

2 MS. LANDRY: Oh, okay, so I can ask  
3 that later?

4 MR. DiBIASI: Yeah.

5 MS. LANDRY: Okay, thank you.

6 CHAIRMAN SCRUDATO: Don't go away,  
7 hold it, hold it.

8 Any questions for the witness?

9 (No response)

10 CHAIRMAN SCRUDATO: Okay, thank you.

11 All right, any further questions for  
12 the architect?

13 (Two members of the public approach the  
14 podium.)

15 CHAIRMAN SCRUDATO: Who's going to  
16 give testimony?

17 MS. McGOVERN: It's not testimony,  
18 it's questions at this point.

19 CHAIRMAN SCRUDATO: Questions.

20 MR. MERTZ: Good evening. My name is  
21 John Mertz, M-E-R-T-Z. This is my wife, Elizabeth.  
22 We are at 114 Kingsland Street.

23 CHAIRMAN SCRUDATO: Would you raise  
24 your right hand, both of you.

25 J O H N M E R T Z, 114 Kingsland Street, Nutley,

1 New Jersey 07110, is sworn by the Board Chairman.  
2 E L I Z A B E T H M E R T Z, 114 Kingsland Street,  
3 Nutley, New Jersey 07110, is sworn by the Board  
4 Chairman.

5 CHAIRMAN SCRUDATO: Please tell us  
6 what you have to say.

7 MR. MERTZ: Well, we just had a few  
8 questions to start with.

9 In your experience, when a building of  
10 this nature is put up in a neighborhood, how does  
11 that affect the surrounding property values?

12 MR. CORSO: It brings them up.

13 MR. MERTZ: It brings them up?

14 MR. CORSO: Absolutely.

15 MR. MERTZ: Okay. So you're saying if  
16 someone --

17 MS. McGOVERN: Excuse me. That's not  
18 your -- is that -- are you offering Mr. Corso as an  
19 expert in real estate values, Mr. DiBiasi?

20 MR. DiBIASI: No --

21 MR. CORSO: That's just my experience.

22 MR. DiBIASI: No, but I think the  
23 question was based upon his experience.

24 MS. McGOVERN: Okay, that's just his  
25 general life experience. We're asking you to

1 confine your questions to --

2 MR. MERTZ: Okay.

3 MS. McGOVERN: -- his testimony as an  
4 architect.

5 MR. MERTZ: Okay, thank you. The  
6 blueprints, are there more complete blueprints  
7 available for public display?

8 MR. CORSO: The town has these  
9 blueprints on record right now.

10 MR. MERTZ: Okay.

11 MR. CORSO: Once the -- assuming we  
12 get approval on the zoning issues, after that, we  
13 prepare construction blueprints that have a lot more  
14 detail.

15 MRS. MERTZ: I went down and looked at  
16 the blueprints at City Hall and I have to say, I  
17 didn't understand them very well and I'm the  
18 daughter of an architect, so I didn't feel that they  
19 gave as much information as I was hoping to get.

20 MR. CORSO: Well, they don't give a  
21 lot of information at this stage, they're a  
22 preliminary drawing and they show basically what we  
23 need to show for the appearance of the building and  
24 to show how it conforms to the zoning ordinance.

25 MRS. MERTZ: We happen to be the

1 property that's immediately up against this --

2 MR. MERTZ: West.

3 MRS. MERTZ: -- on the west side, and  
4 as has been mentioned, we are very concerned about  
5 privacy issues, particularly the fact that it's four  
6 stories. We've been -- we've seen the rendering  
7 picture. I'll be honest, I don't see how something  
8 that massive is going to fit in that space.

9 MR. CORSO: Well, physically, it fits,  
10 we've put it there, and what we've done with the  
11 design we're building is to break it up and set it  
12 back so that, you know, so that it fits in better.

13 MRS. MERTZ: Well, you know, looking  
14 at the rendering, the drawing I got, I'm sitting  
15 here saying "that looks like it extends down clear  
16 to the street."

17 MR. CORSO: It's 140 feet across the  
18 face.

19 MR. MERTZ: Do you have any knowledge  
20 of how the garbage will be handled at this site?

21 MR. CORSO: Yes, there's a garbage  
22 area in the back at the plaza level surrounded by  
23 walls. I'm going to have a landscape buffer back  
24 there and the engineer, the site engineer, will  
25 explain that more fully.

1 MR. MERTZ: Okay. And again, I wasn't  
2 quite clear on how this was explained, but how far  
3 from the western residential property does the  
4 building, how far from the building is -- or how far  
5 -- I apologize, I'm wording this badly.

6 MR. CORSO: How far is the building  
7 from the property line?

8 MR. MERTZ: Yes, exactly.

9 MR. CORSO: If you want to look at  
10 this upper right-hand drawing here, these two  
11 sections, okay?

12 MR. MERTZ: Um-hum.

13 MR. CORSO: The sections on each end,  
14 that part is six feet back from the property line,  
15 and then this goes back another five feet and then  
16 this goes back another five feet, so this is about  
17 15 or 16 and this is about 10 or 11 (indicating).

18 MRS. MERTZ: That's the west facing?

19 MR. CORSO: That's the west facing  
20 right there.

21 MRS. MERTZ: That's a lot of windows.

22 We are, frankly, very concerned about  
23 the fact that we have a very nice backyard and we  
24 feel that we're going to be someone else's scenery.

25 MR. CORSO: I think there's a plan --

1 the site engineer who's going to talk about the  
2 landscaping, he can talk about what we're going to  
3 do on this side of the building also.

4 MRS. MERTZ: So you're saying that  
5 this is going to be between like 36 and 44 feet  
6 tall? Is that what I got from you in the beginning  
7 statements?

8 MR. CORSO: Yeah, the second story  
9 here, the top of it is about 22 feet and then it's  
10 about 31 feet to the top of the third floor and  
11 that's further back, and then when you get back a  
12 lot further, this very top is about 44 feet  
13 (indicating).

14 MR. MERTZ: And there's parking on the  
15 west side?

16 MR. CORSO: There's parking on the  
17 west side that is behind the wall.

18 MR. MERTZ: Okay.

19 MRS. MERTZ: Does that mean we're  
20 likely to get fumes over the wall, I mean, because  
21 it's a contained space?

22 MR. CORSO: The ventilation is very  
23 good through that level because 45 percent is open.

24 MRS. MERTZ: And you said there was  
25 going to be a lower section on the west side?

1 MR. CORSO: Yes. In order to break up  
2 the wall, we have a three-foot section here which  
3 would stop, you know, which would block the  
4 headlights and then there's a deck with an aluminum  
5 section here (indicating), and there's going to be  
6 planting on this side too (indicating), which the  
7 site engineer will describe. There's a landscape  
8 plan that shows a lot of that.

9 MR. MERTZ: Does your plan take into  
10 account the trees that are currently in between the  
11 two properties?

12 MR. CORSO: Those trees will have to  
13 be removed, the ones that are very close to the  
14 property line.

15 MRS. MERTZ: So, basically, the trees  
16 on our side of the property are going to be removed.

17 MR. CORSO: I'm not sure about the  
18 ones that are totally on your property, that's a  
19 question probably for the engineer.

20 MRS. MERTZ: But they're going to  
21 shear them.

22 MR. CORSO: I'm not -- the landscape  
23 design --

24 MR. MERTZ: The landscape, okay.

25 MR. CORSO: Yeah.

1 MR. MERTZ: Thank you.

2 CHAIRMAN SCRUDATO: Don't go away.

3 Any questions from Board members,  
4 please?

5 (No response)

6 CHAIRMAN SCRUDATO: Hearing none,  
7 thank you very much.

8 MS. McGOVERN: Did you have a  
9 question, Serge?

10 MR. DEMERJIAN: When did you purchase  
11 the house?

12 MRS. MERTZ: The actual purchase was  
13 January 22 of 2013, so this is all pretty new. It's  
14 not what we were expecting. We understood that  
15 there was a possibility of a 7-Eleven going in on  
16 the corner, we were not told that the additional  
17 property on either side of that were purchased and  
18 part of that and that we'd be right up against  
19 anything that was being done.

20 MR. DEMERJIAN: Okay. Thank you.

21 CHAIRMAN SCRUDATO: Thank you very  
22 much.

23 Any further questions for the  
24 architect?

25 MR. GRAZIANO: Have we addressed --

1 will this building be fully sprinklered?

2 MR. CORSO: Yes.

3 MR. GRAZIANO: Has the fire department  
4 seen those plans? Can a truck get down there if  
5 there's a fire or -- a car fire, say, or --

6 MR. CORSO: Our traffic consultant  
7 will be talking about all of that.

8 MR. GRAZIANO: Okay.

9 CHAIRMAN SCRUDATO: Mr. Corso, thank  
10 you very much.

11 MS. RYDER: I have a question, Mr.  
12 Corso. I just want to know, have you made any  
13 provisions for safety for the lower-grade parking?  
14 I know on the east side, there's some natural light,  
15 but coming down, there are tenants late at night,  
16 anybody could be going down there as well. I've  
17 seen in the past where you put in a gate --

18 MR. CORSO: Yes, we do have plans to  
19 have an overhead gate -- grate that comes down just  
20 like in a former application.

21 MS. RYDER: Just access for the  
22 tenants only.

23 MR. CORSO: For the tenants only,  
24 yeah, after a certain hour.

25 MS. RYDER: Thank you.

1 CHAIRMAN SCRUDATO: Thank you, sir.

2 MR. CORSO: Thank you.

3 MR. DiBIASI: Thank you, Mr. Chairman.

4 With your permission, may we call Peter Steck, our  
5 planner?

6 CHAIRMAN SCRUDATO: Please.

7 MR. DiBIASI: Thank you, sir.

8 CHAIRMAN SCRUDATO: Sir, would you  
9 give us your full name, your address and spell your  
10 last name.

11 MR. STECK: Yes. Peter G. Steck,  
12 S-T-E-C-K, 80 Maplewood Avenue, Maplewood, New  
13 Jersey.

14 CHAIRMAN SCRUDATO: Would you raise  
15 your right hand, sir.

16 P E T E R G. S T E C K, 80 Maplewood Avenue,  
17 Maplewood, New Jersey, first having been duly sworn,  
18 testified as follows:

19 CHAIRMAN SCRUDATO: Please tell us  
20 what you have to say.

21 MR. DiBIASI: Mr. Chairman, will you  
22 accept Mr. Steck as an expert in planning? He has  
23 appeared in Nutley on several occasions.

24 CHAIRMAN SCRUDATO: Very much so.

25 MR. DiBIASI: Thank you, sir.

1                   MR. STECK: I have a handout that  
2 might be helpful to the Board.

3                   CHAIRMAN SCRUDATO: Please. Talk  
4 closely into that microphone, though, when you do  
5 speak.

6                   MS. McGOVERN: How many copies do you  
7 have of that?

8                   MR. DiBIASI: 20.

9                   MS. McGOVERN: Okay, could you give  
10 one to get marked as identification?

11                  MR. DiBIASI: Sure.

12                  MS. McGOVERN: And that'll be marked  
13 as A-1.

14                  (Document submitted by Mr. Steck, five pages,  
15 P-1 through P-5, is marked as Exhibit A-1.)

16                  (Mr. DiBiasi hands document out to the Board  
17 members.)

18                  MR. DiBIASI: Mr. Chairman, with your  
19 permission, to move this hearing along, may Mr.  
20 Steck testify in narrative form?

21                  CHAIRMAN SCRUDATO: Can he what,  
22 please?

23                  MR. DiBIASI: May Mr. Steck testify in  
24 narrative form in order to expedite the hearing?

25                  CHAIRMAN SCRUDATO: Please.

1 MR. DiBIASI: Thank you.

2 MR. STECK: I'll first just describe  
3 what A-1 is and I'll refer to it as I go through my  
4 testimony.

5 A-1 was prepared by me today and  
6 consists of five pages, in the upper right-hand  
7 corner, P-1 through P-5. The first page has an  
8 aerial photograph from Bing Maps and I superimposed  
9 the three lots in yellow and the existing zoning in  
10 red. Below that is a photo from Google Street Maps.  
11 It's not the property as it exists today, it's  
12 probably about two years ago before Mr. Meka  
13 orchestrated the removal of the tanks. As you know,  
14 today, it's fenced in front and there's an  
15 excavation there, but this shows you what it was  
16 prior to Mr. Meka's involvement.

17 The second page has a series of  
18 photographs numbered 3 through 8. They were taken  
19 by me on September 8 of this year and I remember  
20 they accurately depict the existing conditions. The  
21 top two show the one-family bungalow on Kingsland  
22 Street; the second row, 5 to 6, show the three-  
23 family dwelling; 7 shows the vacant gas and auto  
24 repair station; and 8 shows that little peninsula,  
25 the subject property, there's a little bump-out in

1 the rear.

2           The next page or third page of A-1 has  
3 six more photographs, taken by me also on September  
4 8. 9 shows the garden apartment development to the  
5 north. 10 shows the driving and parking area  
6 between the existing three-family house on the  
7 subject property and the garden apartment. 11 shows  
8 the single-family house to the west, and those were  
9 the two recent purchasers, so that house is a two-  
10 story house, then there's a driveway and some trees,  
11 as you can see. Photograph 12 is a view from a  
12 property at 13 Glendale street, so behind the two-  
13 and-a-half story building on the right side of the  
14 photograph, and you see there's a retaining wall  
15 there, behind that is where the peninsula is, that  
16 little jut-out on the subject property. 13 shows  
17 the gas station across Passaic Avenue and 14 shows  
18 the Beauty Ridge commercial building and the  
19 adjacent house.

20           The next page, P-4, is a rendition of  
21 the site plan and it is difficult to read because  
22 you have to look at the dotted lines, for example,  
23 on the left-hand side or the west side because some  
24 of the parking, you know, extends further to the  
25 property line than the actual building does, but

1 what I did was I outlined the property in red, I  
2 superimposed the zoning line so you can see a  
3 portion of the commercial space is in the single-  
4 family zone. Below that, I reproduced, on a small  
5 scale, the front facade already testified to by Mr.  
6 Corso as well as the facade rendering.

7           The final page has some excerpts from  
8 the Master Plan. The upper two squares have  
9 graphics that show the designation and the street  
10 classifications and then I have some quotations that  
11 I'll refer to below that. In the upper right-hand  
12 corner is not part of the Master Plan. The Master  
13 Plan didn't have this information in it but somewhat  
14 reflective of, I guess, modern society is of the  
15 2010 census that shows there were 11,314 households  
16 in Nutley at that time, so anybody that lives in a  
17 separate unit is a household, and right at that  
18 time, they were 27.5 percent single-person  
19 households, which is somewhat of a high number but  
20 it's significant partly because of the bookends  
21 generation; we have older people, let's say that  
22 there's a widow or a widower; there are also young  
23 people, millennials that are just starting, but as  
24 of that time, and again, that's a historical, that's  
25 four years ago, over one-fourth of the population

1 already in Nutley consisted of one-person  
2 households.

3           So let me go back to the beginning to  
4 lay some foundation for my testimony. I did look at  
5 the property on several occasions, walked the  
6 neighborhood, I looked at the zoning ordinance and  
7 the Master Plan, I reviewed the plans and discussed  
8 the application with the applicant and his other  
9 experts. These are three lots that are in separate  
10 technical ownership but, as indicated, it's in one  
11 entity at the moment, and together it forms a corner  
12 lot, so frontage on two streets of 18,629 square  
13 feet. The most prominent feature of the property is  
14 the abandoned gas station in front, it's been vacant  
15 for a good period of time. If you face the gas  
16 station to the left on Kingsland, you have a small  
17 bungalow that is not in good shape, I believe it's  
18 only the one-bedroom dwelling. The red building is  
19 a three-family dwelling. The site is known to be  
20 contaminated and it will require, most likely,  
21 extensive excavation. It's unknown and that's  
22 simply as described by the applicant's attorney,  
23 that's the nature of the game. The answer is  
24 there's testing done; when the testing was done, it  
25 was one of the tanks was not as secure as thought,

1 so there's an unknown feature to this property.  
2 This is in a prominent location, and I'll talk about  
3 that in a minute, it's at a crossroads intersection  
4 that's fairly visible and it's one of the entry  
5 points from the north from Clifton along Passaic  
6 Avenue and coming into Nutley. This property was  
7 approved for a 7-Eleven and, in my mind, it makes  
8 sense in the sense that that's a pretty potent use,  
9 it's a very active commercial use, and the reason is  
10 you need an active commercial use to clean up this  
11 property. This property is not going to be  
12 redeveloped with one or two single-family homes, the  
13 answer is it's going to sit the way it is, in my  
14 judgment. Now, this property today probably could  
15 be considered a blighted property because of the  
16 contamination, because of the substandard nature of  
17 the buildings that are on it, because of the four  
18 separate curb cuts right at the corner. One could  
19 look at this property and say "This should be a  
20 redevelopment area." In my judgment, it would  
21 qualify as a blighted property and, hence,  
22 potentially a redevelopment plan, but the fact that  
23 it was approved for a 7-Eleven suggests to you the  
24 kind of engine that's needed to have this property  
25 turn around, that is, to assemble the lots, to make

1 sure that it's clean, meets the Department of  
2 Environmental Protection standards, and can support  
3 good architecture at a very high level in a highly  
4 visible location.

5           The application is to demolish all of  
6 the buildings on the property, excavate all of the  
7 contaminated soil, and construct a mixed-use  
8 building. There's a service area commercial space  
9 on the first floor that is 1,540 square feet. Most  
10 of that commercial space is in the commercial zone  
11 or B-2 zone. A small portion of it, maybe a fifth  
12 or a sixth of it, happens to encroach into the  
13 residential zone. There are, as discussed, two  
14 levels of parking, all enclosed. Now, this is  
15 perfectly -- physically could be developed, in fact,  
16 was proposed as a 7-Eleven, so you could have  
17 surface parking right up to within five feet of a  
18 side property line, for example, but this applicant  
19 has proposed to have all of the parking enclosed so  
20 that means you don't have to worry about snow  
21 removal, et cetera. So just so you can picture  
22 this, instead of four driveways now, there's going  
23 to be one driveway, an entrance and exit combined,  
24 on Kingsland. You enter the site and there is  
25 parking immediately visible there because you're

1 going to have a 24-foot-wide driveway. If you go to  
2 the rear of that first level, there is a ramp that  
3 goes down to the lower level, and again, there's a  
4 combination of standard size spaces, many of them  
5 are 9 by 18, which is one foot short in your  
6 ordinance, the 9 by 19, and there are some compact  
7 spaces there.

8           The front facade will have a commercial  
9 use there, proposed to be a service use. At the  
10 corner, it is the lobby for the residential, at  
11 least the exterior lobby for the residential portion  
12 of the property, and again, there are three levels  
13 of residential use that are diminished in scale and  
14 in terms of the architecture, it steps back and it's  
15 protected by dormers and roofs. What is significant  
16 is that this is an apartment building that is new  
17 and that has elevator access, different from simply  
18 the apartments over a store, which is the older type  
19 of development. This is a development that, because  
20 it's one-bedroom, it attracts what's called  
21 "bookends" of the population. People like me,  
22 children have left home, would like to stay in town,  
23 for example; that's one end of the population. The  
24 other end is single individuals or young couples yet  
25 to start a family and that typically represents the

1 majority use that these units go for. These would  
2 be rental units.

3           As part of my analysis, I looked at the  
4 surrounding area and it's fairly well depicted on  
5 the aerial photograph on the first page of A-1, and  
6 I know the Board's familiar with it but to the  
7 north, and I'm going to call northeast "north," but  
8 to the north is the B-1 zone, there's a garden  
9 apartment there, which is -- I don't believe it's a  
10 permitted use in that zone so it must have had the  
11 benefit of a variance at one time. To the west  
12 along Kingsland, there are single-family houses and  
13 the closest single-family house is on -- does have a  
14 green space and then the driveway and then there is  
15 the house there. So the house is not right up  
16 toward our property line, there is some existing  
17 setback there.

18           Across the street to the south across  
19 Kingsland is the commercial building, Beauty Ridge,  
20 and then there are single-family homes that continue  
21 along Kingsland. To the east, you have a gas  
22 station that does auto repair so that's, you know,  
23 I'll call it an unaesthetic use. You have an older  
24 mixed-use building traveling to the north on Passaic  
25 Avenue, so you have a number of neighborhood

1 commercial uses on the first floor and apartments on  
2 the second and then you have the pool business, and  
3 then if you move to the southeast, there are wood-  
4 framed buildings, some of them have commercial uses  
5 in them. They're typically two-and-a-half stories.  
6 There is no parking permitted right at the  
7 intersection for obvious reasons because of traffic  
8 concerns, but as you go away from the intersection  
9 on each of the streets, there is on-street parking  
10 permitted for one or two hours and typically you'll  
11 find them only on one side of the street and in  
12 front, in some cases, of the commercial uses; in  
13 other cases, they're in front of homes. I can say  
14 that this use is the use that is most -- detracts  
15 from the area. It's clearly a use that's  
16 distressed, it's been that way for a long time,  
17 there clearly is a public need to do something on  
18 this property.

19 Your Master Plan was adopted in  
20 December of 2012 and I have excerpts from it that  
21 are on the fifth page of my Exhibit A-1 and it did  
22 recommend a neighborhood commercial designation, it  
23 noted that both Kingsland and Passaic Avenue were --  
24 Kingsland was an urban minor arterial and Passaic  
25 Avenue was an urban collector, so clearly an active

1 area. One of the goals of -- well, first of all,  
2 what is a neighborhood commercial area, and these  
3 were intended to provide convenience goods and  
4 services that provide for everyday goods and needs  
5 of the surrounding residential neighborhoods. It  
6 requires a relatively small lot size, according to  
7 the Master Plan, 800 square feet. The single-family  
8 area is obviously single-family homes, detached  
9 homes, on lots of 5,000 square feet. There is some  
10 difference in terms of building heights that are  
11 permitted in the schedule of the zoning ordinance  
12 that says that the B-2 zone allows two-and-a-half  
13 stories at 30 feet and the review memo has two  
14 stories. I'll talk about that in a minute.

15 This property has -- this area, this  
16 little stretch of Passaic between this intersection  
17 and going northeast into Clifton, is called a  
18 "gateway" and your Master Plan identifies it as a  
19 gateway, and I'll just quote from Page 341 of the  
20 Master Plan and it's titled "Passaic Avenue at the  
21 Clifton Border."

22 "Gateways play an important role in  
23 making a first impression and helping to define the  
24 image of the township. They should present a  
25 positive and inviting impression. This can be

1 accomplished through landscaping, quality of design,  
2 signage and higher quality site development. The  
3 township should identify specific initiatives for  
4 each gateway which improve the visual image for  
5 those entries into the township." So that's what  
6 the Master Plan says a gateway is and it says that  
7 this is in a gateway strip of Passaic.

8           Those purposes are also reflected in  
9 the goals of the Master Plan that talked about  
10 Nutley wanting to enhance its community identity and  
11 it talked about gateways communicating a strong and  
12 appealing identity for the township, it talked about  
13 aesthetics are important, and it talked about  
14 adopting standards that apply to new development as  
15 well as redeveloped properties.

16           Although this isn't an industrial site,  
17 it's a brownfield site. This site is depressed  
18 because of the contamination and that's a drag on  
19 the marketplace. Obviously, as I said before, there  
20 has to be a use of some substance in order to clean  
21 up the property and certainly accept the risk,  
22 there's a risk involved because no one knows exactly  
23 the extent of the contamination, although it is  
24 known that there is contamination.

25           This is in a split ozone piece of

1 property. The B-2 zone covers two of the lots.  
2 That allows mixed uses, so the part of this building  
3 that's in the B-2 zone, which is most of the  
4 commercial space and the apartments, it's a  
5 permitted use. It happens to be taller than what  
6 the ordinance will permit and there are other  
7 conventional standards, but in terms of the D-1 use  
8 variance, what we are doing in the B-2 zone is a  
9 permitted use. The portion of the building that  
10 extends into the R-1 zone where that little bungalow  
11 is, that's a D-1 variance because it doesn't permit  
12 multifamily and it doesn't permit, obviously, the  
13 corner of that commercial development. The single-  
14 family zone, again, permits just detached single-  
15 family homes.

16 Here are the variances that we need.  
17 The, I'll call it the "parent variance" is the D-1  
18 variance and it's the portion of the building that  
19 is in the R-1 zone. That's what triggers this  
20 Board's jurisdiction and I'll talk about the  
21 standards of proof in a minute.

22 There is also a height variance. Our  
23 technical height is 41.75 feet. That would be a D-6  
24 variance. That would also trigger this Board's --  
25 Board of Adjustment approval. So both of those

1 things require five affirmative votes of the Board  
2 members in order to pass.

3           The other variances are called "C  
4 variances" and they're, according to, I guess, the  
5 case law, they're kind of subsumed into the larger  
6 parent variances. Obviously, the standards in the  
7 R-1 zone weren't intended for multifamily or  
8 commercial development so it doesn't make sense to  
9 apply them automatically, but we have identified  
10 them and so there are variances -- this property,  
11 because now it'll be a corner lot, has two front  
12 yards and two side yards, so we're supposed to have  
13 side yards of four and ten feet for a total of 14.  
14 We have side yards of 5.2 and 6 feet, so  
15 unfortunately, one of them is not 10 feet, that's  
16 one of the side yard setback variances, and the two  
17 together don't total 14 feet.

18           There are parking stalls that are 18  
19 feet deep instead of 19 feet deep of standard  
20 stalls. Were this a completely residential project,  
21 that is a standard parking dimension, in fact,  
22 that's the statewide standard, 9 by 18. We are  
23 going to allow both commercial users and residential  
24 users in the parking area and so your local  
25 standards apply. We need a variance for having a

1 space only 18 feet deep. We do have a number of  
2 compact spaces. One of them is 8 feet wide but has  
3 an open area next to it. Most of them are 9 feet  
4 wide and a depth down to 15 feet. It is a  
5 relatively small percentage, the traffic engineer  
6 will talk about them, but it is -- in my experience,  
7 it's acceptable up to 30, 40 percent could easily be  
8 accommodated as compact cars, and again, it is  
9 likely that one space -- when you rent an apartment,  
10 you will get one space assigned with it, but that  
11 means there are 18 some-odd spaces that could be  
12 used for either guest parking or for commercial  
13 parking on the property.

14           The lot coverage, which means the part  
15 of the lot that the building coverage is 68.68  
16 percent, which exceeds the maximum of 45. Keep in  
17 mind that this building, to a certain degree, is on  
18 stilts, so unlike a classic building, the air will  
19 pass through this building because there is natural  
20 ventilation on the first floor to accommodate for  
21 parking.

22           We have a curb cut of 24 feet wide that  
23 exceeds the 20-foot minimum. That's simply an  
24 extension of the parking aisle, and in my opinion,  
25 it makes sense, you know, because it allows more

1 convenient turning movements.

2 And finally, the parking that extends  
3 outside of the building is within five feet of the  
4 property line and you're supposed to be five feet  
5 away and have a six-foot buffer. We have proposed a  
6 wall on the west side of the building -- actually,  
7 on both sides of the building but the most sensitive  
8 side is obviously the single-family dwelling in the  
9 R-1 zone to the west. We're proposing a wall that's  
10 in two sections. They're full sections of six feet  
11 and then, as the architect said, there's a dropped  
12 section with some fencing in the middle. Frankly,  
13 and I'm jumping the gun on this, if you consider  
14 that, with a 7-Eleven, you could have parking with  
15 just a six-foot landscaping strip, one might suggest  
16 that a wall is a much better buffer in terms of  
17 light and activity from those parking spaces.

18 The standard of proof that the  
19 applicant has to provide is the so-called Medici  
20 standard because in the R-1 portion of the zone, we  
21 have a use that's not permitted and that's the  
22 multifamily use and that small portion of the  
23 commercial use, so that 's the D-1 Medici standard.  
24 The height is not as severe a standard. While it is  
25 a D variance, the height variance, because it's more

1 than 10 feet or 10 percent, the applicant has to  
2 address the impact of the height and how it can be  
3 mitigated by design or orientation. Because it's a  
4 Medici case, and that kind of takes, you know,  
5 that's kind of the umbrella over the whole case, we  
6 have to show that some purpose of the Municipal Land  
7 Use Law is advanced, we have to show that the use is  
8 particularly suited to the property, and we have to  
9 meet the negative criteria under the enhanced  
10 burden, that is, the applicant has to show that this  
11 could be approved without substantial detriment to  
12 the public good, that's traffic, stormwater runoff  
13 and the like, and can be approved without  
14 substantial impairment of the zone plan and zoning  
15 ordinance.

16 I'm going to recite several purposes of  
17 the Municipal Land Use Law and I want to link them,  
18 when I talk about them, to aspects of the property,  
19 and I'm going to refer to them by letter. That's  
20 the section of the state law N.J.S.A. 40:55D-2.

21 The first purpose, A, is "to encourage  
22 municipal action to guide a corporate use for  
23 development of all lands in the state in a manner  
24 that will promote the public health, safety, morals  
25 and general welfare." Clearly, by cleaning up the

1 property, we're going to promote public health. In  
2 terms of safety, and I'll talk about this later, we  
3 are reducing the number of driveways to the, I  
4 believe, less traffic to part of the site because  
5 now the driveways are going to be away from the  
6 corner. This is a corner lot now, it won't have any  
7 access points on Passaic, and a combination driveway  
8 on Kingsland.

9           Purpose D talks about "to ensure the  
10 development of individual municipalities not  
11 conflict with the development and general welfare of  
12 neighboring municipalities, the county and the state  
13 as a whole." As you know, most of Nutley is in a  
14 PA-1 designation on the state development and  
15 redevelopment plan. The theme of that is to use the  
16 infrastructure that you have now, the sewer, the  
17 water, the street system, and to accommodate  
18 development because it's more efficient to do it in  
19 an area that's already built up than building new  
20 roads up in the hinterland.

21           Purpose E talks about promoting the  
22 establishment of appropriate population densities  
23 and concentrations that will contribute to the well-  
24 being of persons, neighborhoods, communities and  
25 regions and preservation of the environment. This

1 is higher density, has more dwelling units than you  
2 would normally permit in the zone. They happen to  
3 be all one-bedroom units. And again, what I refer  
4 to is the fact that, according to the 2010 census,  
5 27.5 percent of the households, back in 2010, were  
6 one-person households. That suggests to me that a  
7 lot of people, in one sense, are overhoused. They  
8 may have a large single-family house, they may want  
9 to downsize, there may be sons and daughters that  
10 want to stay in Nutley but move out of their  
11 parents' houses.

12           Purpose G talks about "provide  
13 sufficient space in an appropriate location," and  
14 again, your Master Plan identifies this as a gateway  
15 site. You can't always legislate for gateway sites.  
16 Here's a situation where we have an opportunity,  
17 because there has to be a lot of expenditure to  
18 clean up the site, it happens to be a very visible  
19 site instead of an out-of-the-way industrial site,  
20 and your Master Plan clearly identifies the  
21 importance of having an image from an entry point,  
22 from Clifton. This building, in my opinion, will  
23 serve that purpose.

24           Purpose H talks about the free flow of  
25 traffic. We have a traffic expert, but the point

1 that I would like to emphasize is, from having three  
2 separate lots, four different driveways, we are now  
3 going to combine all that access -- those access  
4 points and put them away from the intersection with  
5 only one entrance and exit.

6           Purpose I talks about a desirable  
7 visual environment. As I said, this site, in my  
8 opinion, qualifies to have a blighting influence in  
9 the area. I can't testify about property values,  
10 but in my judgment, someone looking at the  
11 neighborhood is going to wonder at this site  
12 because, clearly, something's going to happen to it.  
13 The worst thing for the neighborhood, in my opinion,  
14 is nothing happens to the site because someone  
15 looking to buy in the area, to shop in the area, it  
16 is obviously a distressed piece of property that  
17 doesn't contribute to the neighborhood nor to the  
18 image of someone driving into Nutley from the north.

19           Purpose J talks about promoting  
20 conservation, open space, and it talks about  
21 preventing urban sprawl and degradation of the  
22 environment. In my opinion, the environmental  
23 cleanup of this responds to that site.

24           And finally, purpose M talks about more  
25 efficient use of land. This is a location that is

1 not a great location for big families or pools in  
2 the backyard; this is a location that has a fair  
3 amount of traffic and activity, and in my opinion,  
4 by enclosing the parking in the building, having  
5 elevator access, high-end apartments, this is an  
6 open use and an efficient use of this site that  
7 something has to happen on and I would, you know,  
8 the simplest way to put it, from the neighborhood  
9 point of view and from the image point of view, this  
10 is greatly superior to a 7-Eleven application.

11 In terms of peculiar suitability, we  
12 are assembling three lots that could be developed  
13 separately because they're under separate ownership,  
14 we have a gateway location that your Master Plan  
15 says needs to represent a positive image of Nutley,  
16 and we have an environmental cleanup, and we have  
17 the majority of the site, it's in a zone that  
18 permits the mixed use. Again, the B-2 zone does  
19 permit both multifamily above the first level as  
20 well as apartments, so they're not -- the uses  
21 themselves are not foreign to the area.

22 Finally, we get to the negative  
23 criteria and I'm going to kind of jump the gun but I  
24 expect the question, you know "Why can't you just  
25 build a building that's a hundred percent conforming

1 to the site that maybe has four apartments and  
2 stores and let's all go home?" And the answer is --  
3 first of all, that's not the statutory proof, how  
4 small can you go, that's not one of the statutory  
5 proofs with getting the variance. The proofs, as I  
6 mentioned, are purposes of the Municipal Land Use  
7 Law, peculiar suitability and meeting the negative  
8 criteria. The negative criteria are really what you  
9 use to decide whether the property fits on the site.  
10 Let me give you my reasons why I think the negative  
11 criteria are satisfied.

12           This is a unique site. It is the worst  
13 site in this commercial area and it is the worst  
14 site in a highly visible location that is one of the  
15 identified entry points to Nutley. It was approved  
16 for a 7-Eleven, and although 7-Eleven chose not to  
17 go ahead with it, the answer is you found, at some  
18 time in the past, that the 7-Eleven met the  
19 statutory criteria. In my opinion, this is a  
20 superior project, it looks better, the parking is  
21 confined within the building, the driveway accesses  
22 are more organized, it's only on one street, and  
23 you'll hear testimony from the traffic expert also  
24 about the level of intensity.

25           We have conforming on-site parking. We

1 meet the code. In fact, in my opinion, because the  
2 gate to the entry to the garage is going to be  
3 opened in the daytime, there will be people,  
4 certainly employees of a service business can park  
5 there and customers will be able to park there also.

6 In terms of the negative criteria, in  
7 my opinion, there's a lot of attention that should  
8 be paid to the architecture. These are first-class  
9 materials but the building is designed to diminish  
10 its impact because the level of interest as you go  
11 up the scale of the building is diminished, it's  
12 broken up by the dormers and the smaller footprint  
13 of each tier.

14 There is a wider driveway than the 20  
15 feet, but in my opinion, that is certainly  
16 acceptable; when you have busy streets, it provides  
17 for more convenient turning movements. The parking  
18 dimensions are physically adequate. The -- once you  
19 get maybe 40 percent compact cars, then you might  
20 run into issues, but here we have most of the  
21 parking being assigned, so clearly, people that have  
22 small cars will be assigned small spaces. The 18  
23 whatever additional spaces over and above what each  
24 apartment with one car needs, again, to accommodate  
25 cars of all different sizes. We don't have a

1 surface parking area and a six-foot-wide buffer, we  
2 have a wall, which, in my opinion, an environment  
3 like this is a better separation from this traffic  
4 activity in the building to the single-family use.

5           The shadow of this building will be  
6 largely in the wintertime cast to the north. The  
7 fronts of the houses on Kingsland will receive the  
8 same kind of sunlight that we'd normally have. Keep  
9 in mind that a single-family house could still be  
10 built there, it will have some shadow pattern, but  
11 the shadow pattern here is predominantly to the  
12 north, to the very rear of the abutting single-  
13 family house and to the garden apartment, which  
14 basically has parking in a driveway between it and  
15 our property line.

16           Finally, I return to the Master Plan.  
17 The Master Plan talks -- identifies the site as a  
18 gateway. It says it's important to the image of  
19 Nutley. It says there ought to be standards  
20 developed. Well, legislative standards haven't been  
21 done but what I would suggest to you is it's very  
22 difficult to do that, but in my opinion, at a  
23 crossroads intersection where you're taking the  
24 worst property and making it one of the best-looking  
25 properties in the area -- yes, it is prominent, yes,

1 it is tall, but the answer is that it draws your  
2 attention and that's what the gateway is, to show  
3 new investment, to show a use that's confined to the  
4 property that has, by and large, a mixed use where  
5 it should be, in the B-2 zone. In my opinion,  
6 because of the importance of the Master Plan to  
7 having a gateway here, this could be approved  
8 without substantial detriment to the public good and  
9 without substantial impairment to the zone plan and  
10 zoning ordinance.

11 MR. DiBIASI: Mr. Steck, just a couple  
12 of follow-up questions.

13 BY MR. DIBIASI:

14 Q. You were here and you heard some  
15 questions from the Board about downsizing this  
16 application and then you talked about needing a  
17 substantial engine because of the uniqueness of this  
18 property. If there were not an environmental issue  
19 on this property, is it a fair statement to say that  
20 a development could be downsized?

21 A. Yes. I think an inherent part of this  
22 project is the fact that it's contaminated. It's  
23 going to cost something more than -- three things I  
24 point out. We know that it's contaminated. We know  
25 that the current owner cannot clean it up. This is

1 not Southland Corporation. The current owner can't  
2 pay the real estate taxes. So there's going to be  
3 no action unless someone steps in. But in my  
4 opinion, the third element of this is there's an  
5 element of risk. Everybody thinks that, you know,  
6 developers build, retire early and everyone's happy.  
7 Well, I'll tell you that some developers, sometimes  
8 they're my clients, go bankrupt. Their projects  
9 don't go ahead because of unforeseen circumstances.  
10 This is a situation where we know it's going to cost  
11 some amount of money and there's some risk involved,  
12 and frankly, the units on this is to cover what the  
13 applicant sees as both the real cost, which we don't  
14 know, of cleaning up the property as well as the  
15 risk involved, it's a gamble here, and the applicant  
16 needs some confidence that even if the cost is twice  
17 what he initially thinks, this project will go  
18 forward.

19 Q. Okay. Is it fair to say that the  
20 Master Plan takes into consideration these kinds of  
21 situations where we have a unique property that's  
22 contaminated?

23 A. It talks about remediating sites,  
24 redevelopment of sites. In my opinion, I'll repeat,  
25 I think this meets the statutory criteria for a

1 blighted site, and if it was declared to be  
2 blighted, that means that the municipality could do  
3 legal spot zoning, you could do a zone just for this  
4 site. Well, we're not going this route, this is not  
5 a blighted -- it hasn't been declared blighted, but  
6 the answer is, the theme is that you can do special  
7 -- you can have special considerations for a site  
8 like this.

9 Q. And although it's a true statement that  
10 the Board cannot take into consideration the cost of  
11 the cleanup, the Board can certainly take into  
12 consideration the contamination, per se, that is  
13 there in making a decision?

14 A. In my opinion, that's a legitimate  
15 concern because it's a known fact and the answer is  
16 it has already had a blighting influence, in my  
17 opinion, on this property and, consequently, the  
18 neighborhood.

19 Q. Now, all of us want to be good  
20 neighbors and we're concerned about the neighbor to  
21 the west that just bought the home, and both the  
22 husband and wife were up here and I will tell the  
23 chairman, as a matter of fact, that Mr. Meka and I  
24 did visit that household in the past.

25 Can you give a comfort level as a

1 planner as to the impact that the neighbors are  
2 concerned about with the height and with the privacy  
3 issue?

4 A. Sure. The biggest threat, I think, to  
5 the abutting property is that nothing happens with  
6 this property and that little bungalow stays there.  
7 That bungalow is not something that I think attracts  
8 a sound living environment. I think it has a one-  
9 bedroom facility, it is clearly substandard, I think  
10 it was built about 1900 or 1910. It's a very old  
11 building. That property, because it's involved with  
12 the contamination, is not going to change. There's  
13 a threat -- if I were buying a house next door, the  
14 answer is I would be concerned that nothing would  
15 happen and that property would just be rented.

16 This is going to be -- again, if you  
17 look at the difference between a 7-Eleven, I could  
18 have a parking lot right next to my house and I  
19 would have a six-foot strip of greenery and that's  
20 all the buffering I would get. This building has a  
21 suction-foot wall, the parking is enclosed within  
22 that wall. Yes, there is a greater impact because  
23 of the height, and the applicant has tried to  
24 address it by the architecture and by the shielded  
25 lower sashes, and I think that's a reasonable

1 approach in this instance.

2 Q. And in your report on Page 3, you took  
3 a photograph of our neighbor's home to the west and  
4 that's also Photo 13?

5 A. Photo 11.

6 Q. 11 up top?

7 A. Um-hum.

8 Q. And are we fortunate that the house  
9 seems to be on the western portion of the property  
10 so that between their piece and our potential piece,  
11 there's a driveway?

12 A. Yes.

13 Q. And then there's a side yard.

14 A. Yes.

15 Q. And then there will be our buffer on  
16 our side.

17 A. That's correct.

18 Q. And I'm not going to ask you to  
19 estimate that but if you would ask the Board to take  
20 a look at that Picture 11, and fortunately, there is  
21 a pretty good piece of property between their house  
22 and where our house will be.

23 A. Yes, and that's apparent as you look  
24 at the aerial photograph on the first page of A-1;  
25 you'll see that the house is over there. The other

1 -- the point that I want to mention about the trees,  
2 there are trees along the line and we don't have the  
3 right to destroy the neighbors' trees. The answer  
4 is there will have to be some cutting of some roots  
5 and the applicant is responsible for that, but the  
6 answer is it is not the intent to damage any trees  
7 on anyone else's property.

8 Q. And because you talked about the engine  
9 that's necessary in order to take care of the  
10 environmental issue, is it your opinion that if only  
11 two of the lots were used in the B-2 zone, that that  
12 engine would not be large enough to attract a  
13 developer in order to go forward and assume the  
14 risk?

15 A. That -- leaving the bungalow would  
16 remain as a negative influence to someone developing  
17 the rest of the property. It is better all as one  
18 because now we have one corner lot, we can push the  
19 driveway the furthest away from the intersection it  
20 can be, but to leave that small bungalow there,  
21 frankly, leaves a blighted influence and it injures,  
22 in my opinion, the success of a new project.

23 Q. And one other question. The neighbor  
24 to our north, which is, I call it the "World War II  
25 apartments" with parking outside, what about the

1 relationship of the height of those units to the  
2 rear of ours?

3 A. That's a two-story building. The  
4 answer is that it is separated by a driveway and  
5 parking, it's not like a green area displayed there.  
6 That is a unit that's in -- I think it's a non-  
7 permitted use in that zone. The answer is it will  
8 have some impact but the answer is there is already  
9 impact. That house -- the three-family house that's  
10 there already has a substandard side yard, so there  
11 already is a crowding of that line. We're going to  
12 have a building that when we do construction, it  
13 will have a wall there and a considerable aesthetic  
14 improvement, in my opinion.

15 Q. Isn't it also true -- and you and I  
16 walked the property -- that the focal point of that  
17 garden apartment is away from ours and that the  
18 courtyard was actually north of our property?

19 A. Yes, that's a classic garden apartment  
20 design that has a U shape and the green space is  
21 protected by the U of that garden apartment. So the  
22 green space is separated by its own building from  
23 us.

24 MR. DiBIASI: Mr. Chairman, your  
25 witness for cross.

1 CHAIRMAN SCRUDATO: Thank you.

2 Mr. Steck, could this project go ahead  
3 on a smaller scale with all you have told this Board  
4 and this audience?

5 MR. STECK: I can't answer that  
6 because my money's not at stake at this. The  
7 applicant has made --

8 CHAIRMAN SCRUDATO: I understand that,  
9 but you made a statement that this scale is suitable  
10 for this property.

11 MR. STECK: Yes, and the reason is  
12 you're going to get something active here. You're  
13 not going to get a small store, you're going to get,  
14 if it's not 7-Eleven, it's going to be a Quick Chek,  
15 it's going to be a strong engine. In my opinion, an  
16 engine that's largely one-bedroom apartments is  
17 better for the neighborhood than a pure commercial  
18 use that inevitably is going to be very active.

19 CHAIRMAN SCRUDATO: I don't know why  
20 -- or can you tell me why 7-Eleven did not go  
21 forward with this project?

22 MR. STECK: I think it was --

23 (Mr. DiBiasi raises his hand.)

24 MR. STECK: Yeah.

25 MR. DiBIASI: I have actual knowledge

1 of that, Mr. Chairman. When we were in front of  
2 this Board, and I know this Board spent seven months  
3 on this project, we all invested a lot of time, and  
4 there were two executives that monitored all the  
5 meetings. Actually, the executives were to my left  
6 here; remember, one had the silver hair. And a  
7 decision was made that the hours of operation in the  
8 Nutley zoning ordinance were fine for this location,  
9 and after all the approvals were done, an executive  
10 a step higher made a decision that the two  
11 executives that were in charge of this application  
12 made an error. Those executives lost their job. I  
13 made an application pro forma in front of the  
14 Commissioners asking the Commissioners if they would  
15 make an exception to 24 hours, telling 7-Eleven  
16 that, in my heart of hearts, I did not believe that  
17 it was ever going to happen, and the Commissioners  
18 were very gracious and said "We want you to come to  
19 our town but we don't believe that in the middle of  
20 the night, that's going to make that big of a  
21 difference to your bottom-line numbers" and they  
22 said "We want you in town but we're not going to  
23 make an exception." Even after that meeting, it  
24 seemed as if the application was going forward and  
25 then the higher level made a decision to pull the

1 application, cancel the contract, those two  
2 gentlemen that were with me in court lost their  
3 jobs.

4 CHAIRMAN SCRUDATO: Okay. Any  
5 questions from Board members?

6 MR. DaCOSTA LOBO: Mr. Steck, I'd like  
7 to address the density issue, which, to me, arises  
8 mostly out of the height. In your report on Page 5,  
9 you were gracious enough to include the recommended  
10 development density, which in the B-2 neighborhood  
11 business zone would be 17.4 apartments per acre. I  
12 would also refer to the current standards in B-1,  
13 which is 25 square feet per unit, and in the garden  
14 apartment, which is, again, the closest that I can  
15 come up with, 20 units per acre. This site with 36  
16 units on about 4/10 of an acre works out to 84 units  
17 per acre, which is about five times the quoted  
18 recommended density in B-2 and actually is in  
19 keeping with what 2500 feet per unit in B-1 would be  
20 without 7 units. 20 units per acres -- so those  
21 things all seem relatively consistent with each  
22 other and here we have something that's five times  
23 that. What is it about this site that makes this  
24 location favor such a development?

25 MR. STECK: First of all, the density

1 isn't hinged on the number of bedrooms, so when you  
2 have, you know, eight units an acre for single-  
3 family, that could be a four-bedroom house, so  
4 there's a little bit of a translation in terms of  
5 people per acre because --

6 MR. DaCOSTA LOBO: Let's go with the  
7 garden apartment and the 17.4-unit apartments in the  
8 B-2.

9 MR. STECK: Right. And again, no  
10 regulation on the number of bedrooms --

11 MR. DaCOSTA LOBO: Um-hum.

12 MR. STECK: -- but the answer is, in  
13 my opinion, that these standards are perfectly  
14 reasonable for sites that don't have extenuating  
15 circumstances. I'm not saying that your ordinance  
16 is unreasonable, I'm saying that this is a unique  
17 site in a unique location and that the applicant has  
18 made a judgment, and again, the catchall, to a  
19 certain degree, for you is the negative criteria,  
20 and you haven't heard all the witnesses yet.  
21 There'll be an engineering witness on stormwater,  
22 there'll be a traffic expert. What is the impact of  
23 this? There will be a visual impact. One of my  
24 responses is, on a gateway location, it's not so bad  
25 to have a taller building. In a redevelopment

1 project in Montclair, they have a hotel going in.  
2 That hotel will be the tallest building in the  
3 downtown area as you're coming in from Verona. They  
4 made the judgment legislatively that that's a good  
5 thing there because it's redevelopment of a site and  
6 they wanted it a gateway. So just because this is  
7 taller is not hostile to the idea of a gateway. It  
8 is, and we all know this, this accommodates the risk  
9 of the applicant. The applicant doesn't know what  
10 it's going to cost. The applicant has made a  
11 judgment, which he believes to be a fair judgment,  
12 of what is needed. I think the architecture masks,  
13 in a very pleasant way, the scale of the building,  
14 but it is taller than other buildings in the area  
15 without a doubt. The advantage is all the parking  
16 is indoors, this is an elevator apartment building,  
17 which means it serves both ends of the population,  
18 seniors like me or young couples.

19           When an applicant makes an economic  
20 decision, that's not how you should base your  
21 decision, but the question is: Can this be approved  
22 without substantial detriment? I invite you to  
23 listen to the other witnesses, but in my opinion,  
24 because of the uniqueness of the property and the  
25 recognized gateway location, this fits.

1 MR. DaCOSTA LOBO: Thank you.

2 CHAIRMAN SCRUDATO: Thank you.

3 MR. MARINO: Mr. Steck, thank you for  
4 your statement. You stated that according to the  
5 2010 census, 27.5 of the households in Nutley are  
6 one-person households. Since 2010, we've added a  
7 lot of apartments, so we're probably over 30 percent  
8 at this point.

9 MR. STECK: The housing census doesn't  
10 come out --

11 MR. MARINO: It comes out every ten  
12 years.

13 MR. STECK: Yes, so I don't know, but  
14 I can tell you that it is clearly a trend. As you  
15 know, because of the poor economy since 2008, there  
16 is a pent-up demand that you read about all the  
17 time, they're young individuals that stay with their  
18 parents because they can't afford, and most of the  
19 housing that's built now are near transit locations  
20 and they're all rental. This happens to be a rental  
21 location and there happen to be bus stops in the  
22 area. This, you know, not only does it fit this  
23 property but it does fit the market demand. This  
24 applicant would be surprised if there was more than,  
25 you know, one school-age kid and he would expect no

1 school-age children to come on this property.

2 MR. MARINO: I could appreciate that.  
3 I guess my question is: As we're nearing one-third  
4 of our households as single-person households, does  
5 that help strengthen our township identity, you  
6 think a township like Nutley? Is there a number, as  
7 a planner, that you think there's too many  
8 one-person households?

9 MR. STECK: You have -- what is meant  
10 -- what is oftentimes the case -- first of all, the  
11 developers are not going to build things that don't  
12 respond to the marketplace. You're not going to see  
13 the huge single-family houses out in Hunterdon  
14 County as you did in the past because there's a new  
15 set -- there's a millennium generation that's not  
16 interested in that, and frankly, there isn't the  
17 money around that there was in 2008 to afford that  
18 kind of construction. There are people that are in  
19 larger houses than they need because they don't have  
20 the opportunity to live in a place that, let's say,  
21 has an elevator and is a one-bedroom apartment.  
22 There are people who want to downsize but still stay  
23 in town. So there's a better fit. But frankly,  
24 this is a location that you don't want families.  
25 You don't want three-bedroom apartments here because

1 this is a busy location.

2 MR. MARINO: I understand that --

3 MR. STECK: The image of -- the image  
4 is visual because no one's -- no one looking at this  
5 building is going to know whether they're one-, two-  
6 or three-bedroom apartments. The image is a vacant  
7 gas station that's been that way for a number of  
8 years, a bungalow that reflects a time when Nutley  
9 was rural, and a three-family house that probably  
10 should be torn down.

11 MR. MARINO: Thank you.

12 MR. DiBIASI: Mr. -- I want to jump in  
13 because I think Mr. Marino is asking a question that  
14 goes to the very fabric of why we are here and I  
15 think he's asking, is there a number that changes  
16 the fabric of Nutley and if you can give an opinion  
17 on that. Is there a number?

18 MR. STECK: There is not a number that  
19 changes the fabric. This is a unique site. I would  
20 invite you to try to find another site in town that  
21 is this distressed and that is identified as a  
22 gateway location.

23 MR. MARINO: We're not asking about  
24 the site, I'm asking about the amount of single-  
25 person homes.

1 MR. STECK: There's no -- Montclair --

2 MR. MARINO: If we were at 50 percent  
3 -- we're not Montclair. I'm saying a township like  
4 Nutley.

5 MR. STECK: Montclair has 50 percent  
6 of its housing stock in multifamily units. You  
7 wouldn't know that because most of the town has  
8 large single-family homes that take up a lot of  
9 land, so in terms of land area -- most people look  
10 at Montclair as having a cluster of apartments by  
11 the business district and the rest solid single-  
12 family, but surprisingly, I think over half of the  
13 units are apartment units.

14 MR. MARINO: Thank you. That's great.  
15 Just clarify a couple of things. The green space,  
16 the driveway, the other green space that separates  
17 the Mertz household to the west, it's their  
18 property, right?

19 MR. STECK: It's --

20 MR. MARINO: The buffer that we were  
21 talking about.

22 MR. STECK: Yes.

23 MR. MARINO: It belongs to the  
24 homeowner, not to the applicant.

25 MR. STECK: Yeah, the reason -- yeah.

1 The garden apartment is not required to have a  
2 buffer.

3 MR. MARINO: I'm talking about the  
4 house to the west.

5 MR. STECK: Yes, that's in a single-  
6 family zone, that's where that six-foot buffer is  
7 required.

8 MR. MARINO: Right, and you spoke that  
9 there is a buffer, but you spoke about their  
10 property being a buffer.

11 MR. STECK: No. What we're proposing  
12 is a solid wall six foot high. What I said was that  
13 -- first of all --

14 MR. MARINO: On the property line.

15 MR. STECK: It is -- that would be a  
16 -- while you can have a, you know, a six-foot fence  
17 there, the answer is that if that house were, you  
18 know, four feet away from our property line, that  
19 would be a much greater concern. They have a  
20 driveway which I'm guessing is eight feet wide --

21 MR. MARINO: Their driveway.

22 MR. STECK: Their driveway and then  
23 they have a green space --

24 MR. MARINO: Their green space.

25 MR. STECK: -- and then they have our

1 property and they're going to see that six-foot wall  
2 plus the building is going to be set back from that  
3 wall. It is a tall building, there's no doubt about  
4 it --

5 MR. MARINO: Just to be clear, we're  
6 talking about their property is the buffer, not your  
7 property.

8 MR. STECK: We need a -- the  
9 requirement is not that you provide a buffer,  
10 obviously, on the neighbor's property. I'm saying  
11 that that's part of the negative criteria that their  
12 house is four feet away from the property line,  
13 which the law would allow.

14 MR. MARINO: Okay. Thank you.

15 CHAIRMAN SCRUDATO: Anything further?

16 MS. BROWN: Yeah.

17 CHAIRMAN SCRUDATO: Ms. Brown.

18 MS. BROWN: Mr. Steck, I also prepared  
19 some questions for you.

20 MR. STECK: I was afraid of that.

21 MS. BROWN: Is the total site, all of  
22 the lots, reasonably adaptable to a conforming use?

23 MR. STECK: Once again, please?

24 MS. BROWN: Is the total site, all  
25 three lots, reasonably adaptable to a conforming

1 use?

2 MR. STECK: We are not arguing undue  
3 or extreme hardship.

4 MS. BROWN: I think just yes or no is  
5 fine.

6 MR. STECK: Well, I can't -- I can't  
7 answer that because that's not a statutory criteria  
8 for a variance. You're asking me is it adaptable  
9 and that's immaterial to whether the variance should  
10 be granted or not because we're not arguing extreme  
11 hardship.

12 MS. BROWN: Okay. My next question:  
13 What is the reason for the height limitation in the  
14 land use code?

15 MR. STECK: It is typically to protect  
16 light, air and open space.

17 MS. BROWN: Will the height in this  
18 mixed-use building provide adequate light, air and  
19 open space?

20 MR. STECK: In my opinion, it will not  
21 be substantially detrimental to the surrounding  
22 properties.

23 MS. BROWN: Would you agree --

24 MR. STECK: And that's the test of the  
25 law, substantial detriment.

1 MS. BROWN: Would you agree that a  
2 two- or three-story building will provide better  
3 light and open airspace especially for the one-  
4 family house located immediately to the west?

5 MR. STECK: Yes, it would, but in my  
6 opinion, this developer would not be interested in  
7 the site at that point and these uses that exist now  
8 would probably continue for a while. Or the non-use  
9 of the property will continue.

10 MS. BROWN: Does the height of this  
11 building fit into the neighborhood?

12 MR. STECK: It is -- it doesn't match  
13 anything in the neighborhood but, in my opinion, in  
14 a gateway location, there is latitude that can be  
15 accepted.

16 MS. BROWN: You have a capable  
17 architect, I'm sure they could propose other options  
18 as to making a gateway. You're using the height as  
19 the gateway.

20 MR. STECK: But, see, when an  
21 applicant comes in, the statutory proof is "Give me  
22 six different designs." The question is do we meet  
23 the statutory criteria under this design, and this  
24 applicant has made a judgment about the risk  
25 involved.

1 MS. BROWN: Would you agree that a  
2 two-story building would fit better into this  
3 neighborhood?

4 MR. STECK: It would look more like  
5 the other buildings but the worst thing that can  
6 happen is for this site not to be redeveloped or to  
7 be redeveloped with something like a Quick Chek. In  
8 my opinion, that would be probably economically  
9 reasonable but I think less of a benefit to the  
10 neighborhood.

11 MS. BROWN: Is the project as  
12 currently designed consistent with the surrounding  
13 neighborhood?

14 MR. STECK: This is not consistent  
15 with the neighborhood, it's going to stand out as a  
16 unique building, but in my opinion, it can meet the  
17 statutory criteria despite it's differences. You  
18 know, if I put in a new gas station here, it would  
19 look like the U.S. Gas Station across the street.  
20 You'd say "Oh, that's great, I have two gas stations  
21 on two corners, that's consistent with the area."  
22 No one wants that.

23 MS. BROWN: What special reasons are  
24 there to change the zone border?

25 MR. STECK: Excuse me?

1 MS. BROWN: What special reasons are  
2 there to change the zone border?

3 MR. STECK: We are not changing the  
4 Zoning Boarder, we're asking for a variance which  
5 allows the Board to impose conditions. The zone  
6 line is not being changed.

7 MS. BROWN: Okay. As for negative  
8 impact, what would be the effect on the surrounding  
9 properties?

10 MR. STECK: In my opinion, there would  
11 be no substantial detriment on the surrounding  
12 properties. The worst thing that could happen,  
13 again, is for this blighting influence to continue  
14 on this property. That would be the worst for the  
15 neighborhood.

16 MS. BROWN: But you're just assuming  
17 that nothing would ever happen other than what is  
18 being proposed here.

19 MR. STECK: The -- in my judgment, if  
20 this property -- first of all, if this applicant  
21 disappears and decides it's not worth the risk, this  
22 property is going to sit the way it is until a  
23 potent use comes in and that potent use is going to  
24 be an active use. It might be a Quick Chek, it  
25 might be something else, but it's not going to be a

1 little mom and pop store because that's not going to  
2 finance the cleanup. So I guess what I'm concerned  
3 about, if I were, you know, buying a house next  
4 door, I think most people in the room are going to  
5 say "This property is not going to stay this way  
6 forever." It's terrible the way it is now, it's not  
7 going to stay this way forever, but there's a  
8 mystery of what will be there, and in my judgment,  
9 it's going to be a pretty potent use because that's  
10 the only use that's going to be able to be the  
11 proper engine to get this site cleaned up.

12 MS. BROWN: Some of the objectives of  
13 the Master Plan require all in-fill development to  
14 be undertaken in a manner that is consistent and  
15 compatible with the surrounding neighborhood and  
16 environment.

17 MR. STECK: This isn't technically --  
18 in-fill is you have a vacant lot or oversized lot  
19 that you're subdividing. This is a redevelopment of  
20 a brownfield site, a separate category, in my  
21 opinion.

22 MS. BROWN: I'll save my next question  
23 for the traffic.

24 MR. DEMERJIAN: Good evening, Mr.  
25 Steck. If I understand you correctly, your

1 testimony is based on the fact that your client came  
2 to you and said "The only way I'm going to consider  
3 this property is to have four stories and 36 units;  
4 otherwise, this property isn't worth it to me." So  
5 you've stated the entire time you're here that the  
6 reason that this is acceptable is so that it's no  
7 longer blighted is to give or allow those many units  
8 for your client. Do I understand that correctly?

9 MR. STECK: No. It happens to be the  
10 set of facts that brings me here, but my judgment is  
11 based on are there Municipal Land Use Law purposes  
12 that are advanced, is the use particularly suited,  
13 and can the negative criteria be met. That's my  
14 task.

15 MR. DEMERJIAN: So if he said "I need  
16 six floors or five floors or seven floors," would  
17 you say the same thing?

18 MR. STECK: No, I wouldn't because,  
19 obviously, that would be too tall.

20 MR. DEMERJIAN: Okay, so when is it  
21 too tall?

22 MR. STECK: It's a case-by-case basis.  
23 With a different -- I can tell you that with a  
24 different type of architecture, if this were a four-  
25 story box, I would not be here testifying. I think

1 the architecture is a crucial part of this project.

2 MR. DEMERJIAN: And when is it too  
3 big? When is it too big in girth and in coverage  
4 and in size?

5 MR. STECK: Well, generically, when  
6 you can't meet the negative criteria. If I have  
7 traffic problems, if I have zero setbacks --

8 MR. DEMERJIAN: But you do, you have  
9 zero setbacks --

10 MR. STECK: For a six-foot wall, yes.

11 MR. DEMERJIAN: You have zero setbacks  
12 that are affecting your neighbor, who's in the  
13 audience right now, who's expressing concerns on  
14 that, correct?

15 MR. STECK: That is correct.

16 MR. DEMERJIAN: And you have  
17 diminished parking sizes, correct?

18 MR. STECK: Yes. This will function  
19 perfectly adequately given the mix of automobiles  
20 out there today.

21 MR. DEMERJIAN: But you're also, if I  
22 understand correctly, 36 percent over in coverage,  
23 correct?

24 MR. STECK: That's correct, although,  
25 again, as I mentioned, the underneath of this

1 building is open, so...

2 MR. DEMERJIAN: What's the basis for  
3 overage on the coverage?

4 MR. STECK: It's related to the need  
5 of the applicant to produce a mixed use that has  
6 enough of a residential component that can  
7 accommodate the risk that the applicant sees in  
8 redeveloping the property.

9 MR. DEMERJIAN: So what comes with  
10 risk?

11 MR. STECK: What comes with risk?

12 MR. DEMERJIAN: Right.

13 MR. STECK: The applicant loses money  
14 or walks away from the deal.

15 MR. DEMERJIAN: Doesn't reward come  
16 with risk?

17 MR. STECK: Yes.

18 MR. DEMERJIAN: Okay, so he has  
19 potential, just the same as the risk, he has reward  
20 as well.

21 MR. STECK: Some builders make money  
22 and some builders go bankrupt, but what many people  
23 don't understand is that this is the problem with  
24 environmental cleanups. When I had my tank out, my  
25 insurance company said, you know, "It'll cost you

1 \$5,000, but we can't tell you if it'll be \$50,000."

2 MR. DEMERJIAN: I understand. I  
3 understand.

4 MR. STECK: That's just the nature of  
5 the business and that's why the property has been  
6 sitting there for a long time.

7 MR. DEMERJIAN: Thank you.

8 CHAIRMAN SCRUDATO: Thank you.

9 MR. MARINO: Mr. Steck, I just have --  
10 you mentioned the parking, you said there's going to  
11 be 36 assigned parking and 18 visitors or --

12 MR. STECK: There are 54 total.

13 MR. MARINO: 54, correct. 36  
14 apartments, 36 assigned spots, 18 would be for -- if  
15 we have millennials in there, just say half of them  
16 have two cars.

17 MR. STECK: No, well, the -- the  
18 traffic engineer will talk about the adequacy of  
19 parking. In my judgment, where you have some kind  
20 of bus connection, and there are bus stops in both  
21 directions here, where you have one-bedroom  
22 apartments, in my opinion, this is going to be  
23 adequate, and keep in mind that during the daytime,  
24 most people will be out at work so there'll be more  
25 than enough parking for, certainly, employees of a

1 service business and customers during the daytime.

2 MR. MARINO: There are already people  
3 parking in the gas station on the other side from  
4 the apartments. My fear is, on December 18 when  
5 four of these people have holiday parties in their  
6 large dining rooms that are, you know, where are  
7 these people going to park?

8 MR. STECK: They're having large  
9 parties in their one-bedroom apartments?

10 MR. MARINO: Yeah. They're full  
11 dining rooms.

12 MR. STECK: If -- when you have a  
13 party, I will ask you, do all of your guests park in  
14 your driveway or do you use the street?

15 MR. MARINO: There's parking on the  
16 street.

17 MR. STECK: But the streets are public  
18 and everybody gets to use them. In my opinion --  
19 well, first of all, this is code-compliant parking,  
20 period. But what is nice about this, it's protected  
21 parking. It doesn't have to be plowed. The answer  
22 -- and that's one of the reasons why the smaller  
23 spaces work. It is typical in many municipalities  
24 where there is conveniences in the area, where there  
25 is mass transit, the car ownership goes down, and in

1 my judgment, there will -- because it's a relatively  
2 small commercial space, I think that in most  
3 instances, those customers can be accommodated.

4 If you told me that every building in  
5 this area had to have the required amount of parking  
6 on site, half of those buildings would have to be  
7 torn down or more than half of those buildings would  
8 have to be torn down. This building has open --

9 CHAIRMAN SCRUDATO: Mr. Steck, please,  
10 let's stay on the subject.

11 MR. STECK: I'll do my best.

12 CHAIRMAN SCRUDATO: Thank you.

13 MR. MARINO: And just finally, you  
14 keep going back to if the use is a Quick Chek or  
15 something like that. This Board can make sure a  
16 Quick Chek is not on our neighbor's property line.  
17 We can make sure those trees and the foliage stays  
18 where it is. And we can make sure it's a one-story  
19 building.

20 MR. STECK: My judgment is Quick Chek,  
21 even though it's not going to be open 24 hours a  
22 day, will be active into the evening, because all  
23 these stores are, and I just think that that level  
24 of activity and that level of lighting is not going  
25 to be blocked by landscaping. When you have a

1 surface parking lot that is well used and well lit  
2 until 10 or 11:00 in the evening, whatever it is,  
3 that, in my opinion, is a worse consequence to the  
4 surrounding area, the residential area.

5 MR. MARINO: But we had testimony last  
6 year that it would not affect.

7 MR. STECK: I wasn't part of that  
8 application, I don't know what was said. In my  
9 judgment, given this project or a convenience food  
10 -- convenience mart, I think this project is more  
11 respectful of a residential neighborhood.

12 MR. MARINO: Thank you.

13 CHAIRMAN SCRUDATO: Thank you.

14 MR. PASTORE: To start with, I agree  
15 with my colleagues here that this particular -- this  
16 particular structure is a little too large for the  
17 space that we're trying to put it in. That's number  
18 one.

19 Number two, you're mentioning about,  
20 you're constantly mentioning about one-family or  
21 single individuals and single homes have increased.  
22 Have you taken into consideration how many people,  
23 and they come right before us to alter their homes  
24 and what have you, that are boyfriend and  
25 girlfriend, that are listed as single -- as a single

1 person who owns that particular property? Then we  
2 have an awful lot of single-parent that we never had  
3 before, and now, our Board of Education is in a  
4 critical state, right now our Board of Education is  
5 discussing whether they -- where and when they are  
6 going to expand our schools, which is going to put a  
7 tremendous burden on this town.

8 MR. STECK: This --

9 MR. PASTORE: Now, nobody -- a  
10 gentleman came here from the Board of Education when  
11 we were doing East Centre Street, told us there  
12 would be no impact. Washington School is probably  
13 the top school right now as far as students are  
14 concerned. Where are we going? We're going to put  
15 one-family -- we're going to put one-bedroom  
16 apartments up again and it's not going to be one  
17 person in an apartment. Yanticaw school is going to  
18 get the brunt of this particular project.

19 MR. STECK: If you put two -- in my  
20 judgment, if you put two single-family houses on  
21 this entire property, you would get more school-age  
22 children than you would from this development.

23 MR. PASTORE: I disagree with you.

24 MR. STECK: Well, you should ask your  
25 planner what the numbers are.

1 MR. PASTORE: The only thing I have is  
2 proof of what happened at Washington School. That's  
3 all I have.

4 CHAIRMAN SCRUDATO: Thank you.

5 MR. MARINO: Mr. Steck, if you look at  
6 the picture of the small, tiny bungalow, one  
7 bedroom, and just to piggyback on what Mr. Pastore  
8 said, it's got two mailboxes on the front of it.

9 MR. STECK: I don't know that there  
10 are two mailboxes --

11 MR. MARINO: It looks like two.

12 MR. STECK: -- and I didn't go inside  
13 the development but I understood --

14 MR. MARINO: Well, it's on the front  
15 of the building.

16 MR. STECK: I don't recall if that --

17 MR. MARINO: So --

18 MR. STECK: Maybe it was used as a  
19 two-family illegally, I don't know. I was not  
20 inside. I can tell you that it looks substandard.

21 MR. MARINO: Thank you.

22 CHAIRMAN SCRUDATO: Anything further?

23 MR. PASTORE: The gentleman out there  
24 wants to talk.

25 CHAIRMAN SCRUDATO: Anything further

1 from Board members, please?

2 (No response)

3 CHAIRMAN SCRUDATO: Hearing none, is  
4 there -- don't go away, Mr. Steck, you're not  
5 finished.

6 MR. STECK: I'm not.

7 CHAIRMAN SCRUDATO: Is there anyone in  
8 the audience who wants to be heard and ask a  
9 question of this planner, please?

10 Step aside, Mr. Steck, please.

11 MS. MCGOVERN: Do you need the  
12 handheld microphone? I don't know where it is.  
13 Someone had it over there.

14 (Mr. Steck is handed a microphone.)

15 MR. KLINE: Okay? Good evening, Ryan  
16 Kline, K-L-I-N-E, I reside at 87 Raymond Ave.,  
17 speaking on behalf of the Board of Education.

18 CHAIRMAN SCRUDATO: Would you please  
19 raise your right hand?

20 R Y A N K L I N E, 87 Raymond Avenue, Nutley, New  
21 Jersey 07110, is sworn by the Board Chairman.

22 CHAIRMAN SCRUDATO: Speak into the  
23 mic. Yeah, use that.

24 MR. KLINE: Okay. Speaking on behalf  
25 of the Board of Education, I have a couple

1 questions. One, the Board of Ed. recently received  
2 our own demographer report to look at our long-term  
3 planning. Do you have a copy of that report?

4 MR. STECK: I do not.

5 MR. KLINE: You do not, okay.

6 MR. PASTORE: Who is he?

7 MS. McGOVERN: He's from the Board of  
8 Ed.?

9 MR. KLINE: I'm from the Board of Ed.

10 MS. McGOVERN: He's a representative  
11 of the Board of Ed.

12 CHAIRMAN SCRUDATO: Please state your  
13 name again.

14 MR. KLINE: Ronald Kline. You didn't  
15 vote for me, I take it.

16 (Laughter)

17 MR. KLINE: Ronald Kline, K-L-I-N-E,  
18 at 87 Raymond Avenue.

19 CHAIRMAN SCRUDATO: Okay.

20 MR. PASTORE: Who do you represent?

21 MR. KLINE: The Board of Education.

22 The Board of Ed. has recently put  
23 together our own demographer report. You haven't  
24 seen a copy of it?

25 MR. STECK: I haven't seen a copy of

1 it yet.

2 MR. KLINE: Okay. The overwhelming  
3 feeling in that report is that all of our schools  
4 are beyond capacity. Now, in the beginning of your  
5 testimony, you were stating that the majority of the  
6 residents would be bookends, which is a nice way of  
7 saying younger and older --

8 MR. STECK: That's the experience in  
9 the marketplace.

10 MR. KLINE: Okay. So could you  
11 guarantee no students would be coming from this  
12 property?

13 MR. STECK: That would be illegal. It  
14 would be discriminatory.

15 MR. KLINE: Could you give an  
16 estimate?

17 MR. STECK: I think there would be two  
18 or less.

19 MR. KLINE: Two or less, okay. And  
20 you're basing that on?

21 MR. STECK: The Rutgers statistical  
22 study.

23 MR. KLINE: Was that used for the  
24 Centre Street property?

25 MR. STECK: Yes.

1                   CHAIRMAN SCRUDATO: Excuse me. Direct  
2 your questions here, we'll get you the answer.

3                   MR. KLINE: Okay, sorry. Because our  
4 findings found that the East Centre numbers are pure  
5 projections and our actual numbers, there's a  
6 discrepancy between the students that come out and  
7 the students that were estimated in that report.

8                   MR. STECK: I'm not aware of the  
9 report so I can't respond.

10                  MR. KLINE: Okay. You guys have a  
11 copy of our report, correct?

12                  CHAIRMAN SCRUDATO: Yes, in a letter  
13 form from --

14                  MR. KLINE: Okay.

15                  MS. McGOVERN: No, we do not have the  
16 demographer's report, we have a letter, a general  
17 letter.

18                  MR. KLINE: You have a standard letter  
19 that I was --

20                  MS. McGOVERN: Right.

21                  MR. KLINE: -- asked to read, which  
22 I'll spare you. We can get a copy of the report to  
23 you, absolutely. We can forward it to you.

24                  MR. DEMERJIAN: Can you tell us who  
25 prepared the report?

1 MR. KLINE: I left for work at 7 a.m.  
2 this morning. Off the top of my head, I cannot  
3 remember the exact demographer that we used, but  
4 we'll forward you all that information.

5 MR. DiBIASI: Excuse me, Mr. Kline.  
6 I'm just wondering the process. I thought we were  
7 going to have people come and ask questions on  
8 planning right now. Are we changing the format?

9 CHAIRMAN SCRUDATO: We're not changing  
10 the format. I asked that the questions be directed  
11 to him.

12 MR. DiBIASI: I agree with you on  
13 that, but our planner did not go into school-aged  
14 children. Our planner talked about positive/  
15 negative criteria and the Medici case, we did not go  
16 into children with his presentation --

17 MR. PASTORE: Your planner --

18 MR. DiBIASI: -- and he --

19 MR. PASTORE: Your planner told us --  
20 your planner told us that there was a great  
21 percentage of one-family or one-individual home --

22 MR. DiBIASI: Right.

23 MR. PASTORE: -- and he made no  
24 comment about single-family parents.

25 MR. DiBIASI: Mr. Pastore, at the next

1 meeting, we're going to have an expert that will  
2 address all of the Board of Ed. figures. This  
3 witness is not going to do that nor is he prepared  
4 to do that. That's all I'm trying to say as a  
5 matter of process.

6 MR. PASTORE: Well, that's where he  
7 led us.

8 MR. DiBIASI: Sorry?

9 MR. PASTORE: That's where he led us.

10 MR. DiBIASI: Shame on him for doing  
11 that.

12 CHAIRMAN SCRUDATO: Mr. Kline, will  
13 you be here next meeting?

14 MR. KLINE: I can be, myself or Mr.  
15 Kucinski. One of us will be here. I came tonight,  
16 we had our own Board meeting so I left to speak on  
17 behalf of the Board.

18 MS. McGOVERN: Well, in fairness, Mr.  
19 DiBiasi didn't mention you were going to have a  
20 demographer or an expert to testify about the school  
21 impact.

22 MR. DiBIASI: I'm sorry?

23 MS. McGOVERN: You didn't mention that  
24 in your opening statement.

25 MR. DiBIASI: No, because this

1 evening, we only have four witnesses here and I  
2 talked about the four witnesses we have tonight.

3 MS. McGOVERN: Oh, I see.

4 MR. DiBIASI: But certainly, Mr. Kline  
5 can ask any question related to the planning.

6 MR. KLINE: Sorry, I was asking  
7 questions just piggybacking one off of Mr. Pastore,  
8 also the statement he made about the bookends.

9 CHAIRMAN SCRUDATO: Okay, your  
10 question, has it been answered?

11 MR. KLINE: Has my question been  
12 answered?

13 CHAIRMAN SCRUDATO: Yes.

14 MR. KLINE: Yes, it's been answered.

15 CHAIRMAN SCRUDATO: All right. Do you  
16 have anything further to tell us, Mr. Steck?

17 MR. STECK: No.

18 CHAIRMAN SCRUDATO: That was easy.

19 MS. McGOVERN: Do you have any more  
20 questions of this witness?

21 MR. KLINE: No.

22 CHAIRMAN SCRUDATO: Okay. Board  
23 members have questions of Mr. Steck?

24 (No response)

25 CHAIRMAN SCRUDATO: Thank you, sir.

1                   Come to the mic.

2                   MS. IMHOFF: I gave my name before,  
3 Jacqueline Imhoff.

4                   CHAIRMAN SCRUDATO: Raise your right  
5 hand.

6                   MS. IMHOFF: I'm still under oath.

7                   I have one question. What is the  
8 anticipated revenue for the town from this project?

9                   MR. STECK: I did not do a physical  
10 impact analysis, but in my experience, the revenue  
11 for municipal services and Board of Education  
12 exceeds the costs, very typically, of these types of  
13 projects, so in a sense, the town -- I have never  
14 seen a project like this where the town would lose  
15 money on it.

16                   MS. IMHOFF: No, that's not what I  
17 mean. I mean you know that you have 36 apartments  
18 plus the businesses and you know that you're going  
19 to charge between 2,000 and 2500 a year, so you must  
20 have an anticipated tax rate or tax figure for that.

21                   MR. STECK: The owner may have that,  
22 but that's not one of the statutory criteria for  
23 granting a variance.

24                   MS. IMHOFF: Okay.

25                   CHAIRMAN SCRUDATO: Thank you.

1                   Please identify yourself.

2                   MS. QUIRK: Yes, Terry Quick, 45  
3 Hampton Place in Nutley.

4                   CHAIRMAN SCRUDATO: Would you raise  
5 your right hand, please.

6 T E R R Y    Q U I R K, Nutley, New Jersey 07110, is  
7 sworn by the Board Chairman.

8                   MS. QUIRK: I have a question, is that  
9 all right?

10                  CHAIRMAN SCRUDATO: Direct it up here  
11 and we'll get you an answer.

12                  MS. QUIRK: What is the total amount  
13 that has been paid by Mr. Meka for the impact fees  
14 for the schools and/or it's coming from his company,  
15 the North American Eagle Construction? I just want  
16 to know, in effect, how they're going to be  
17 compensated for that.

18                  MS. McGOVERN: Okay, that wouldn't be  
19 of this witness, that would be of Mr. Meka, and he's  
20 not testifying yet.

21                  MS. QUIRK: Oh, okay. Thank you.

22                  MR. DiBIASI: And as a matter of law,  
23 impact fees are determined by the Board of  
24 Commissioners, so if this application were approved,  
25 the Board of Commissioners would make a

1 determination as to impact.

2 CHAIRMAN SCRUDATO: Anything else?

3 MS. QUIRK: Yeah. When do you get a  
4 chance to talk about your concerns in regards to  
5 this, is it now or is it at another time?

6 CHAIRMAN SCRUDATO: Talk about what,  
7 please?

8 MS. QUIRK: Concerns that you have in  
9 regard to this particular --

10 CHAIRMAN SCRUDATO: At the end of this  
11 meeting, we'll open it to subjects that may not  
12 be covered.

13 MS. McGOVERN: At the end of this  
14 evening?

15 CHAIRMAN SCRUDATO: No, not tonight.

16 MS. McGOVERN: That's what you said.

17 CHAIRMAN SCRUDATO: No, I didn't mean  
18 that.

19 MS. QUIRK: Oh, that'll be at another  
20 meeting?

21 MS. McGOVERN: At the conclusion of  
22 testimony, then audience members of the public are  
23 asked to come up and give their pros and their cons  
24 and their feelings and their suggestions. Right  
25 now, audience members are asked to ask questions

1 about the witnesses.

2 MS. QUIRK: Okay. Got it.

3 MS. McGOVERN: And I don't know how  
4 many more meetings it's going to be, but at the  
5 conclusion of meeting, we will discuss, on the  
6 record, when this matter will be continued to.

7 MS. QUIRK: Okay.

8 CHAIRMAN SCRUDATO: At that time, you  
9 can then come to the...

10 MS. QUIRK: Okay. Thank you.

11 CHAIRMAN SCRUDATO: Thank you. Anyone  
12 else?

13 MR. CIOBAN: Hello again.

14 CHAIRMAN SCRUDATO: Yes, just identify  
15 yourself, please.

16 MR. CIOBAN: Michael Cioban. I  
17 testified previously.

18 CHAIRMAN SCRUDATO: Okay.

19 MR. CIOBAN: Mr. Steck, how many units  
20 --

21 CHAIRMAN SCRUDATO: Talk into the  
22 microphone, please.

23 MR. CIOBAN: Oh, I'm sorry. Mr.  
24 Steck, how many units are in the garden apartment  
25 complex?

1 MR. STECK: I don't know.

2 MR. CIOBAN: So you couldn't tell us  
3 the number of units in the garden apartment complex  
4 plus the new building as proposed.

5 MR. STECK: I can tell you that the  
6 new building will have 36 units; I can't tell you  
7 how many are in the garden apartment.

8 MR. CIOBAN: There's 23 units, so if  
9 we do the math, there's 59 units in, what, less than  
10 an area?

11 MR. STECK: I don't know the exact  
12 acreage, but you might be approximately right.

13 MR. CIOBAN: Approximately less than  
14 an acre?

15 MR. STECK: I'd have to look at the  
16 square footage of the garden apartments.

17 MR. CIOBAN: Okay. I guess the other  
18 concern, too, is that my recollection of going up  
19 Passaic Avenue is that you kind of go uphill as you  
20 approach the intersection of Kingsland and --

21 CHAIRMAN SCRUDATO: Excuse me. Is  
22 that subject to Mr. Steck?

23 MR. CIOBAN: Well, it has to do with  
24 building height.

25 CHAIRMAN SCRUDATO: I thought you were

1 talking about the road itself.

2 MR. CIOBAN: No, it has to do with  
3 building height.

4 CHAIRMAN SCRUDATO: I'm sorry. Go  
5 ahead.

6 MR. CIOBAN: And I believe that the  
7 garden apartment complex building will be lower?

8 MR. STECK: Yes.

9 MR. CIOBAN: How much higher is the  
10 new proposal going to be over that garden apartment  
11 building? Do you have a feeling?

12 MR. STECK: I don't have a measurement  
13 but you will --

14 MR. CIOBAN: Is it in excess of two  
15 stories?

16 MR. STECK: You might be able to see  
17 the two stories.

18 MR. CIOBAN: In excess, though.

19 MR. STECK: I don't know, because it  
20 depends, obviously, where you are on the incline of  
21 the hill because as you get closer to the apartment  
22 building, it's going to loom a little larger in your  
23 field of vision.

24 MR. CIOBAN: And you testified that is  
25 a gateway into Nutley and it's very...

1                   MR. STECK: It is a -- it will be a  
2 noticeable gateway.

3                   MR. CIOBAN: Okay. The parking, are  
4 you providing handicapped spaces?

5                   MR. STECK: Yes.

6                   MR. CIOBAN: How many spaces are you  
7 required, handicapped spaces?

8                   MR. STECK: I think it's 2 percent of  
9 the -- I guess 3 spaces.

10                  MR. CIOBAN: So three spaces total.

11                  MR. STECK: We meet the requirement.

12                  MR. CIOBAN: Okay. And one other  
13 concern I have, too, is for the adjoining neighbor.  
14 You have that wall -- this is along Kingsland on the  
15 north side -- no, on the west side of the property,  
16 and you're building a wall on the property line?

17                  MR. STECK: Instead of -- the fence  
18 could be built there but the applicant is going to  
19 do a wall, yes.

20                  MR. CIOBAN: Okay, and that wall,  
21 there's testimony that it was six feet high?

22                  MR. STECK: The outer sections will be  
23 six feet high, the middle section by the house will  
24 drop down to three feet high, but there'll be an  
25 architectural fence on top of the three feet.

1 MR. CIOBAN: Okay, but is that an open  
2 fence or opaque?

3 MR. STECK: You'll have to talk to the  
4 architect to have the exact specifications.

5 MR. CIOBAN: Okay. Is that parking  
6 garage going to be lit 24/7?

7 MR. STECK: I believe that, by code,  
8 it probably needs to be lit.

9 MR. CIOBAN: Okay, so what sort of  
10 shielding would be afforded to the adjacent property  
11 owner at 2 in the morning when this parking garage  
12 is lit?

13 MR. STECK: You'll have to ask the  
14 architect or the engineer on lighting.

15 MR. CIOBAN: Okay.

16 MR. STECK: The engineer has a  
17 lighting plan, I think, for this set.

18 MR. CIOBAN: Okay, thank you.

19 CHAIRMAN SCRUDATO: Thank you.

20 Mr. Steck, thank you. I think you're  
21 -- oh, we have another one.

22 MS. LANDRY: Pennie Landry, 135  
23 Lakeside Drive.

24 Just for clarification, sir, how many  
25 total owners does the property contain and how many

1 total owners are there for the property? Because  
2 you stated three and Mr. DiBiasi stated one, and on  
3 the application here, it states three owners. So  
4 how many people are we talking about?

5 MR. DiBIASI: I'll jump in on that  
6 because I have personal knowledge of that.

7 There are three legal entities but  
8 there's one beneficiary, Mrs. Szmak. She's the one  
9 who inherited the three properties.

10 MS. LANDRY: Three legal entities?

11 MR. DiBIASI: Yes.

12 MS. LANDRY: And one owner?

13 MR. DiBIASI: Just one owner of each  
14 of those entities. So there's corporation ABC,  
15 corporation DEF, but she is the heir to those three  
16 properties.

17 MS. LANDRY: So Stacy, S-Z-M-A-K, and  
18 Bill Sta, Inc. are the three property owners but  
19 it's all --

20 MR. DiBIASI: It's all -- yes. Stacy  
21 Szmak is the wife of Bill. They took Bill's name,  
22 made a corporation up, took Stacy and did that, and  
23 she inherited all those three properties.

24 CHAIRMAN SCRUDATO: Let's end it  
25 there, we can ask Mr. Steck planning questions.

1 MS. LANDRY: Oh, okay, I thought that  
2 was. Okay, so that's the owner thing.

3 According to the site plan checklist  
4 application, of the total number of entrances and  
5 exits within the 400 -- within 400 feet without  
6 going onto Passaic and Kingsland were provided, do  
7 you know how many entrances and exits currently  
8 exist within 400 feet of the property?

9 MR. STECK: No.

10 MS. LANDRY: Oh, because it was on the  
11 checklist.

12 MR. STECK: Mr. Staigar may be able to  
13 -- the traffic expert may be able to reference that.

14 MS. LANDRY: Okay. "The applicant  
15 will provide estimated occupancy of employees," so  
16 what is the estimated number of employees that will  
17 be on site, or developer, and then you also provided  
18 in the application the estimated number of employees  
19 in the retail section in the development, so that  
20 would be --

21 MR. STECK: Mr. Meka would have an  
22 estimate of the number of personnel in the service  
23 use.

24 CHAIRMAN SCRUDATO: Could we limit the  
25 questions to the planner, please?

1 MS. LANDRY: Oh, I thought he was part  
2 of the deal.

3 CHAIRMAN SCRUDATO: No, please.

4 MS. LANDRY: Shoot. Okay, I'll come  
5 back.

6 CHAIRMAN SCRUDATO: Thank you.

7 Okay, I think we can dismiss you now,  
8 Mr. Steck.

9 MR. STECK: I appreciate that.

10 MR. DiBIASI: Mr. Chairman, our court  
11 reporter would appreciate a brief recess, please.

12 CHAIRMAN SCRUDATO: Yeah, let's take a  
13 five-minute break.

14 (Recess taken)

15 CHAIRMAN SCRUDATO: All right. Ladies  
16 and gentlemen, considering the lateness of the hour  
17 and at the suggestion of certain people in the  
18 audience, we're going to adjourn the meeting until  
19 October the 6th at 7:30 at our regular scheduled  
20 meeting.

21 MS. McGOVERN: No, it's not a regular  
22 scheduled meeting, it will be a special meeting. It  
23 will be here at 7:30 p.m. on Monday, October 6,  
24 2014. A notice will be printed in the newspaper  
25 regarding the special meeting and it will be posted

1 in accordance with the statute regarding special  
2 meetings. The Board's experts are available, as I  
3 understand it, for October 6, and the Board members  
4 that are sitting here have indicated their  
5 availability for October 6, and Counsel, do you have  
6 any opposition to the meeting being held on October  
7 6?

8 MR. DiBIASI: I think that's a very  
9 good day, Counsel.

10 MS. McGOVERN: Are you waiving the  
11 time constraints with respect to --

12 MR. DiBIASI: Once again, the  
13 applicant will waive the time periods.

14 CHAIRMAN SCRUDATO: Do I have a  
15 motion?

16 BOARD MEMBER: So moved.

17 BOARD MEMBER: Second.

18 CHAIRMAN SCRUDATO: All in favor?

19 BOARD MEMBERS: Aye.

20 CHAIRMAN SCRUDATO: Okay, October 6,  
21 I'll see you all then.

22 (Hearing concluded at 10:11 p.m.)  
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C E R T I F I C A T E

I, MICHELE QUICK, a Certified Court Reporter, Registered Merit Reporter, Certified Realtime Reporter of the State of New Jersey, authorized to administer oaths pursuant to R.S. 41:2-1, 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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