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CITY OF ELIZABETH
ZONING BOARD OF ADJUSTMENT
THURSDAY, JULY 8, 2021
7:30 P.M.

RE: Z-09-21, 331-337 MORRIS AVENUE, MR. POLLO ROTISSERIE
& BAKERY, LLC.

BOARD MEMBERS:

- GEORGE CASTRO, Chairman
- JOE NUNES, Vice Chairman
- FERNANDO FERNANDEZ
- ELIZABETH CANO
- DR. JOHN K. DONAHUE
- RICARDO SOSA
- FERNANDO HORTA

- MONAE WHITEHEAD, BOA Secretary
- TALIA SMITH
- ANTHONY GALLERANO, PE,PP
- MARIA CARVALHO

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Appearing on behalf of the Applicant

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I N D E X O F E X H I B I T S

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EXHIBITDESCRIPTION

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A-1

EXHIBIT AB-3

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2 (There was no objection by all parties that the
3 witness be sworn via the ZOOM platform.)

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5 (The enclosed transcript was conducted based on the
6 accuracy of the ZOOM platform.)

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1 CHAIRMAN CASTRO: So the application that
2 we're going to attend to today is application with, let
3 me see. Okay. Z-09-21, 331-333 Morris Avenue, Mr.
4 Pollo Rotisserie and Bakery, LLC.

5 This is an application proposal to add an enclosed
6 outdoor dining area to the kitchen structure, in a C-5
7 zone.

8 Let me explain so everybody understands what is this
9 application about and let me actually look at what Mr.
10 Gallerano wrote in his comments, so that the
11 commissioners understand the nature of this application.

12 Under the COVID executive order the restaurant has
13 been utilizing a temporary outdoor dining area that
14 occupies a portion of the front yard, the right side
15 yard and a portion of the rear yard. The emergency
16 order is due to expire on October 21, 2021. This
17 applicant is proposing to construct a permanent outdoor
18 eating area in the same location where this applicant
19 operated or has been operating his location up to now.
20 The applicant is proposing to construct a permanent
21 outdoor eating area in the exact location. The
22 enclosure will have an area of 3,321 square feet and the
23 plans submitted by the applicant indicates that the
24 structure will be constructed of a metal frame and
25 fabric cover.

1 So now I give the floor to Mr. Hehl so he can make
2 his presentation.

3 MR. BONNER: Steve Hehl isn't here today.
4 I'm here from his office. My name is Michael Bonner.

5 CHAIRMAN CASTRO: Go ahead, Mr. Bonner.

6 MR. BONNER: Thank you.

7 Thank you for that introduction. You explained most
8 of the things that I wanted to explain.

9 We have three witnesses here tonight. We have our
10 architect, Greg Waga. We have Anthony Kurus, who will
11 be providing engineering and planning testimony. And a
12 representative of the applicant, Mr. Gomez. Mr. Waga
13 and Mr. Gomez, to the extent necessary, will go through
14 the history of how we got here. Mr. Waga will explain
15 the design of the proposed permanent structure. Our
16 proposal is to continue and expand an existing -- the
17 existing restaurant use which is not permitted in the
18 C-5 zone, therefore we are here for potentially a D-1
19 and D-2 variance since the -- since the new structure is
20 a non-permitted use, but it also can be considered an
21 expansion of the existing restaurant use. So we're
22 going to cover both of those bases in our planning
23 testimony.

24 The other variances needed are for rear yard setback,
25 number of parking spaces, and front yard setback. All

1 those will be handled in testimony and now I'd like to
2 introduce Greg Waga, our project architect, and have him
3 sworn and I believe he has some, at least one knew
4 exhibit to enter tonight, Mr. McNamara.

5 MR. McNAMARA: Before you proceed, Counsel.
6 I note attending the meeting virtually is Ms. Maria
7 Carvalho, who is one of the zoning officers of the city.
8 Ms. Carvalho, are you here regarding this application?

9 MS. CARVALHO: I am, Mr. McNamara.

10 MR. McNAMARA: Okay. Since you may be
11 giving testimony or responding to questions, I'm going
12 to ask that you also be sworn in with Mr. Gallerano at
13 the outset of the hearing.

14 I also note the presence of, from the city's
15 attorney's office, Mr. Lenahan. I assume you're here
16 for this application as well? Mr. Lenahan? Hopefully
17 he'll reconnect at some point.

18 Ms. Carvalho and Mr. Gallerano, would you also be
19 sworn in by the court reporter at this time.

20 M A R I A C A R V A L H O, having been duly
21 sworn under oath testifies as follows:

22 A N T H O N Y G A L L E R A N O, having
23 been duly sworn under oath testifies as follows:

24 MR. McNAMARA: I also have to ask both of
25 you, since you may be testifying and/or responding to

1 questions, that in accordance with the DCA guidelines
2 running electronic meetings, you leave your video and
3 audio on, and Mr. Bonner, I would ask you, please
4 counsel your witnesses to do the same.

5 MR. BONNER: Certainly.

6 MR. McNAMARA: Thank you.

7 Mr. Bonner, with that, please proceed.

8 MR. BONNER: Greg, un-mute your mic. Greg.
9 There you go.

10 Can you provide us with your credentials.

11 G R E G O R Y J. W A G A, 2109 SAINT
12 GEORGE AVENUE, RAHWAY, NEW JERSEY 07065, having been
13 duly sworn under oath testifies as follows:

14 Q. Can you briefly describe your qualifications for
15 this board, where I believe you have already testified
16 in the past.

17 A. Yes. So I am a graduate of NJIT 1987. I hold a
18 masters in finance and investments from Fairliegh
19 Dickinson. I've been in practice now for close to 27
20 years. Have a staff of eight and have testified in
21 front of this board and many others throughout the state
22 numerous occasions.

23 CHAIRMAN CASTRO: Mr. Bonner, the board
24 accepts Mr. Waga's credentials. He has testified before
25 this board before.

1 MR. BONNER: Thank you.

2 THE WITNESS: Thank you, Mr. Chairman.

3 MR. BONNER: In the electronic format, I
4 think it's easier if Mr. Waga testifies as a narrative
5 rather than back and forth questioning.

6 So Greg, why don't you present your drawings
7 and whatever necessary part of the design process, the
8 history that you feel you need to describe.

9 A. Sure. If I can share a screen, please.

10 Can everybody see this? Great.

11 So there were four sheets that were presented as
12 part of the original submittal that you have in your
13 possession this evening and they were AB-1, AB-2, AB-3
14 and AB-4. The only differential, and I've included it
15 as part of an exhibit, is a modification to sheet AB-3,
16 which I'll present to you shortly, and it'll truly give
17 a clear graphic representation of what it is we're
18 proposing. So I think -- I think the board is due
19 somewhat of a history here.

20 I was first retained back in 2018 to prepare a
21 renovation to this portion of a structure which
22 currently exists as one structure but is subdivided into
23 the two spaces. There's a pharmacy, as outlined in Mr.
24 Gallerano's letter dated June 29 this year. There's a
25 pharmacy that exists to the left of this, which, if I'll

1 zoom in here I'll queue this in. First of all, Morris
2 Avenue is to the lower portion of this plan. Sorry,
3 wrong. So this is the area of the pharmacy, the
4 building is really squared off. The pharmacy has an
5 area of approximately 2,780 square feet. The remainder
6 of the structure that is leased by my clients has a
7 total area of approximately 1,750 square feet. Our
8 anticipated -- the space was vacant when I first
9 arrived. Bathrooms did exist here, this entire area
10 here in the center is vacant. There was some sort of an
11 annex off to the side which is connected to the
12 structure. There is a driveway or apron access that
13 takes you off of Morris in a northerly direction around
14 the structure and out back to Morris in a one way, and
15 parking was situated along the perimeter of this
16 structure and primarily located off to the left side of
17 the structure. You know what I'll do, to make it
18 easier, to give you a site, I'll go to Sheet AB-4, and
19 here's the site. So we have our apron here, Morris
20 Avenue apron. The building carried around. Parking,
21 there was some perpendicular angled parking towards the
22 rear of the site and then we've got four or five spaces
23 which existed tucked into this area here. A common
24 sidewalk and the entire footprint of the building was
25 this irregular five sided configuration. The hatched

1 area, the crosshatched area indicates the area that our
2 client, the applicant, is looking to occupy or has
3 occupied actually since 2000 -- latter portion of 2018.
4 So I've given you an update on the site. So let me go
5 back to the history of our relationship and our
6 commission, being commissioned to do the work at this
7 site.

8 I was approached by our clients to prepare
9 construction documents for what was to be a restaurant
10 use. We prepared the necessary construction documents,
11 and I'll fast forward to their original submission some
12 time in October, I believe it was October 27 of 2018.
13 Upon subsequent review and approval by the building
14 department of Elizabeth my client received permit some
15 time mid December of 2018 and construction began.
16 Construction, and I'll go back to sheet AB-1.
17 Construction again was allocated only towards this area
18 here, within the confines of the building. So again,
19 Morris Avenue is to our lower portion. This was the
20 common drive here which took you around. So that
21 bathroom existed, the configuration of the space was
22 very awkward in nature. It was almost a J shaped
23 building in reverse. Bathrooms existed at the front.
24 We were going to have an open area, lobby area with some
25 minor seating along this portion of the structure. A

1 bar was designed and implemented at this area here,
2 center portion, and then we had some additional seating
3 prior to entering into what was going to be, what is, or
4 was a kitchen and a prep area and storage area for the
5 necessary product for food preparation.

6 Second means of egress existed at this location,
7 though it was not required it existed at this location.
8 We did have an existing storage or a storage metal box
9 container that was in this location here. When I
10 arrived to the site there was a freezer and a freezer,
11 so those elements did exist. Okay. I'm sorry, those
12 were implemented.

13 This, I'm going to fast forward now through last
14 years debacle of the virus and what occurred and we'll
15 back into that. But this drawing is dated April 27.
16 It's been updated to today's date of July 8 because I
17 incorporated the exhibit, which I will get into on Sheet
18 AB-3. These drawings were prepared in anticipation of
19 this board meeting so that we could create a graphic
20 display of what existed and what had been implemented
21 during COVID last year, 2020. 2019 we were able to
22 achieve our occupancy. 2020 this area here, which was
23 considered to be outdoor area was then covered by a
24 pre-engineered structurally designed signed and sealed
25 documents, which were submitted to the building

1 department, structure. Single story in nature. Fabric
2 at some points and a vinyl fabric at other points. The
3 structure worked. From, based upon what I was able to
4 review, I did not have anything to do with the design of
5 the structure, but I did review it most recently, as
6 recently as this past June. So seating was implemented
7 at this location here. Mechanical drawings were
8 prepared. This entire roof area encompassed from my
9 cursor around the rear portion, along the right side
10 portion of the property and then this area here along
11 the front which encompassed probably about a 38 by 35
12 foot footprint. Okay. There was a open fencing, very
13 sculptural fencing that was installed along the front
14 facade and the portion of the left side to screen the
15 parking area and the noise off of Morris. A set of
16 front doors were put in, again maintaining the egress
17 portion of the required facility. The original
18 footprint, what was originally approved in 2018, this
19 was the original door. So I'll just walk you through
20 briefly, I'm going to -- if you can follow my cursor,
21 I'm going to just follow, I'll go in a clockwise
22 direction. This was the building here. Down here along
23 this angle here, down across back to the left towards
24 the pharmacy, up in the northerly direction, in an
25 easterly direction and then back up in a northerly

1 direction around the kitchen. That was the original
2 scope in 2018. The remaining items of the freezers
3 here, the outdoor box that was then added at a later
4 date, along with the covered roof canopy.

5 That being said, we are here now in -- well, let
6 me back up one more time.

7 Since -- because I think this is an important
8 matter to discuss. About a month ago there was an
9 on-site meeting based upon what had been constructed and
10 what was originally permitted. My client -- these
11 drawings, again, the original exhibit was prepared.
12 Original drawings were submitted back in April, over two
13 months ago, almost two-and-a-half months ago and they
14 were indicative of what existed prior to what currently
15 exists. My client was -- was required by the
16 municipality, both zoning and -- and building to remove
17 the entire canopy structure along with anything that had
18 to do with food prep along the outside. We were then
19 required to resubmit drawings most recently as yesterday
20 back to the building department reflecting what was
21 originally approved for seating occupancy of 20 people
22 in anticipation of maintaining good faith by our clients
23 but also in anticipation of the board hearing this
24 evening. So what we're looking to do based upon this
25 evenings presentation is obtain a positive vote to

1 reconstruct, and here's the key, reconstruct satisfying
2 all New Jersey adopted 2018 building code requirements
3 from both the IDC mechanical code, the plumbing code,
4 the electrical code, and more importantly, life safety
5 and fire code. All of this will be submitted in a
6 proper fashion to the building department for proper
7 approval prior to any additional construction being
8 implemented.

9 So that being said, I'll walk you through this,
10 the anticipated scope now bringing you up to date on
11 what we're proposing. We're proposing a covered seating
12 -- a covered seating area within this area here
13 alongside this area, as well up to a point where there
14 will be no pedestrian or public access. Private access
15 will be held for staff only from this portion back in
16 here. In order to maintain the integrity of the kitchen
17 prep, the food storage area, any necessary ventilation,
18 a staging area for servers and again additional storage
19 for various dry goods such as all the needs for
20 flatware, stemware and various other take out products
21 in this area.

22 MR. McNAMARA: Mr. Waga, the original
23 restaurant configuration, how many tables and seats was
24 that kitchen anticipated to serve?

25 THE WITNESS: That kitchen was oversized in

1 anticipation of a presentation similar to this at a much
2 later date. So the kitchen -- the kitchen, not only the
3 kitchen design, and I can't see whoever asked that
4 question, please forgive me -- oh, Mr. McNamara. So the
5 kitchen and the food prep area here along with this
6 staging area were over designed. We were initially
7 granted approval for 20 occupants in this facility.
8 This kitchen is designed to support almost 200 occupants
9 in this facility. It's ten times the support, along
10 with the necessary ventilation. That's all been taken
11 into consideration as far as the master plan for my
12 clients -- my clients broad aspect of development for
13 this site.

14 MR. McNAMARA: Thank you. Please continue.

15 THE WITNESS: Sure.

16 A. So this is indicative of what Sheet AB-1
17 reflects. I think I've been pretty very thorough in my
18 description.

19 Sheet AB-2 is just the electrical aspect, nothing
20 to do with anything. It was just part of our as-built
21 documentation for the building department and for this
22 meeting. So the footprint remains the same. Nothing
23 has changed from the area or configuration based upon
24 what was presented on sheet AB-2 -- AB-1.

25 AB-3 now is a little different than what was

1 originally presented. What you have are general notes
2 along with these three elevations. An existing partial
3 front elevation, an existing rear elevation and an
4 existing right side elevation, which is indicative of
5 what exists. The bubbled areas here are graphic
6 representations of partial front elevations offering two
7 options, and this is -- this is taking everything into
8 consideration based upon the meeting that we had with
9 the -- with various members of the municipal -- the
10 municipality along with the ABC and Mr. Bonner and
11 clients and myself back in June. Specific date I don't
12 recall, but it was around the middle of June. So what
13 we're offering here is -- oh, and the fire official as
14 well. But that's included as part of the municipality
15 population.

16 What we're offering here, and based upon our
17 preliminary conversations with the fire sub code, we are
18 proposing here two options, both of which will satisfy
19 necessary fire rated wall assemblies and separations in
20 between two individual isolated structures.

21 The current structure directly to the right of
22 our clients building at 331 is approximately 35 feet
23 tall. It's a three story structure, a commercial
24 application at ground level and then two residential
25 floors. Along the right side -- the left side of this

1 facade are fenestrations or windows that exist and
2 cannot be blocked. So what we're proposing, and both
3 elements would satisfy our obligation for fire
4 separation, would be to construct a fire rated wall
5 assembly which would have a two hour fire rating without
6 any fenestrations and any penetrations would be required
7 to be fire stopped and all construction methods will
8 satisfy the 2018 New Jersey IBC. And that would be
9 satisfied for both obligations here in either aspect,
10 whether it's a three foot separation in between the
11 structure, and our clients -- our clients proposed right
12 side wall or we come in with a five foot separation
13 here, and our clients right side wall.

14 Now, with the five -- the reason I showed the
15 five foot separation is because once you hit five feet
16 we are able to implement -- 15 percent of that facade
17 can have openings. So that's why we're showing both
18 methods here. We don't -- we want to show both because
19 we don't want to have to entertain having to come back
20 and -- and should our client have elected to go to three
21 or five we want to have these two choices adopted as
22 part of a -- an approval this evening. And again, all
23 these methods and materials will be properly designed
24 and submitted prior to any adoption as part of this
25 process for formal resolution at next months meeting.

1 And again they'll also be reviewed with the building
2 subcode official, Mr. Sarran and his department. Mr.
3 Gamba as well, along with the fire marshal for their
4 review and subsequent approval. And this way we can --
5 we can deem this -- this matter closed.

6 Our neighbor to our right would be satisfied with
7 this type of construction aspect. It'll be masonry
8 and/or metal stud in nature and/or a combination of
9 both, yet to be determined. I've been asked to put this
10 exhibit together in the last 24 hours so I thought about
11 the composition of the structure, but whatever we do it
12 will satisfy our obligation of a two hour separation
13 between the two structures.

14 MR. McNAMARA: Mr. Waga, the structure to
15 the right, is that the actual height of that building
16 relative to the one that's the subject of the
17 application?

18 THE WITNESS: I called it, Mr. McNamara if
19 that was you again, I can hardly see you.

20 MR. McNAMARA: Yes, it is.

21 THE WITNESS: Yeah. So we scaled it at about
22 35 plus or minus feet high off the structure. Our
23 anticipated structure right now, the wall that was
24 constructed of on that right side elevation is at the 21
25 foot six. Okay. So we're anticipating a 21 foot high,

1 potentially high wall at this location. Again, methods
2 and materials, this was -- this was part of that
3 as-built presentation that we prepared, or as-built
4 verification that we prepared back in April of this
5 year. So this is what existed. What is going to be
6 proposed has yet to be determined, but again I will
7 stipulate that it will satisfy the required separation
8 between these two structures.

9 Q. And just to be clear Mr. Waga, when you talk
10 about the three foot and five foot, you're talking about
11 alternatives and we're willing to work with the fire
12 marshal and the building code officials to satisfy them
13 with either option. Correct?

14 THE WITNESS: Either option, yes.
15 Technically we're allowed, there are no restrictions
16 here on setbacks. We're allowed to build zero lot line.
17 But with a curtesy and a respect for our neighbor to our
18 right we understand completely that there are, I
19 believe, at least four -- four fenestrations that exist
20 along with open porches off the rear. So we want to be
21 courteous to our neighbor and we're proposing that we
22 probably won't be any closer than three feet but we
23 wanted to show the five foot because once you're at five
24 feet as a separation between these two uses -- these two
25 structures, we can implement 15 percent of that entire

1 facade can -- 15 of that can have openings. So we want
2 to offer it in these two manners so that again the board
3 has a clear understanding, our neighbor has a clear
4 understanding and more importantly, the building
5 officials will have a clear understanding once a
6 decision is made in the next week or so on what route we
7 want to take with this application.

8 MS. WHITEHEAD: Pat, sorry. This will be
9 A-1, correct? Because there was a revised sheet.

10 MR. McNAMARA: Yes.

11 THE WITNESS: Oh, I'm sorry. Yes.

12 THE PUBLIC: If they do go in they should
13 make it the five foot.

14 MR. BONNER: Do you -- Mr. McNamara, do you
15 want to mark the entire five sheets as an exhibit or
16 each one individually?

17 MR. McNAMARA: Each one individually. If
18 they only have, if they're the same sheet that was in
19 the packet, they don't need to be marked separately.
20 Any board or exhibit you're putting on now that was not
21 in the application package needs to be identified
22 separately as an exhibit.

23 MR. BONNER: Okay.

24 Q. So Greg, identify the --

25 A. AB-3 should be identified, Ms. Whitehead, as A-1.

1 Exhibit A-1.

2 MS. WHITEHEAD: Thank you.

3 Q. And the other sheets are the same. Correct?

4 A. Same exact sheets. Correct, sir.

5 MR. McNAMARA: Mr. Waga, I don't know if
6 this is for you to respond to or for Mr. Kurus, but we
7 have a report from the construction department not
8 recommending this application with a series of reasons.
9 Do you have a copy of that report?

10 THE WITNESS: I do. I have to -- I'd to just
11 access it. If you can give me a minute I can do so.

12 MR. McNAMARA: That's fine, because I'd like
13 you to -- okay. Good. If you can respond.

14 THE WITNESS: This is the report here.

15 MR. McNAMARA: Yes.

16 THE WITNESS: It's dated -- it's dated the
17 15th of June 2021. And the comments are as follows, and
18 there are four.

19 Front gate/door swing over public
20 right-of-way.

21 Yeah, that will be addressed. That's the --
22 they're the double doors that were inserted and I can go
23 back to -- bear with me on this. I think it's this
24 sheet here. Yeah. So that's this set of doors here.
25 And I'll go back to Sheet AB-1. And these are the doors

1 here in the lower portion. The sidewalk at this
2 location is well over ten feet wide. These doors
3 encroached into that walkway by about two foot six
4 inches. So they will, upon resubmission, they will be
5 recessed to comply so that nothing overhangs a property
6 line.

7 CHAIRMAN CASTRO: Mr. Waga, so what you're
8 saying is that the front gate/door swing over public
9 right-of-way will be addressed?

10 THE WITNESS: Yes, Mr. Chairman. Yes. Let
11 me show you Sheet AB-4.

12 So right now those doors are at this
13 location. Let me zoom in to make it a real easy. Easy
14 review for everyone. That is that angled portion where
15 those doors are located. They encroached at the left
16 door. The left passage door encroached by six inches
17 into -- I'm sorry, the right passage door encroached by
18 six inches onto the right-of-way and as you can see from
19 the property line we have 12-foot 1 -- 12-foot 2 inches
20 from the property line to the edge of the apron. The
21 structure itself was over, it was about the fenced area
22 was over the property line by about six inches and so
23 all this will be taken into consideration and set behind
24 the property line so that there is no encroachment by
25 any pedestrian access into the facility.

1 CHAIRMAN CASTRO: Okay. Are you going to
2 show us again the egress plan, please.

3 THE WITNESS: Sure.

4 CHAIRMAN CASTRO: Just another issue brought
5 to the boards attention by the construction department.

6 THE WITNESS: Sure.

7 So the anticipated egress, I think that
8 might be on -- let me see if it's on that C-4 sheet.
9 Because we've since -- we've since submitted an updated
10 egress plan just yesterday to the board reflecting
11 current conditions as they are, as of the 8th of June --
12 of July 2021.

13 The egress plan at this location, and I'll
14 have to pan out because it's a much broader -- much
15 broader scale. Our egress was through this back area
16 here, which was open along this area here. I'm sorry
17 but my bottom screen keeps on showing up. Let me
18 diminish this one more time. Through this front door
19 here. The egress from inside was through this area out
20 through this door, along with this -- this double door
21 here. We did satisfy egress based upon occupancy. I
22 checked it after these drawings were prepared. They did
23 -- we did have more than sufficient space or the
24 required egress for the occupancy load which was
25 determined after these as-builts were prepared. The

1 original plan, again, encompassed just this area here,
2 only was to support 20 -- 20 public individuals and six
3 staff members. And the way we had it set up
4 technically, because we didn't need more than -- we
5 didn't require more than 75 feet of travel and our
6 occupancy load was under 49, we only required one door
7 of egress. One means of egress, but we provided two.
8 So we do satisfy, Mr. Chairman, in this, the way this
9 was presented back in April, we did satisfy the egress
10 by more than sufficient quantities.

11 CHAIRMAN CASTRO: Point number 1 and point
12 number 2 have been already proposed. Is that what
13 you're saying?

14 THE WITNESS: They have been, yes. And they
15 will be moving forward because again, we'll have to
16 redesign. What was presented as part of this
17 application has now been totally removed. It's all been
18 removed. All -- the structure has been taken down, the
19 mechanical has been taken down. The walk-in boxes have
20 been removed. Everything has been taken down as per
21 what I've been informed by my client. So what ever we
22 do moving forward will satisfy, and that's why I'm
23 saying, we're going to have to submit a supplemental --
24 a revised plan to this board prior to next month's
25 decision or formal reading of the resolution. We will

1 submit through Mr. Gallerano's office a complete revised
2 footprint making sure that we satisfy item number 1, or
3 all four items. Item number 2, and these are the two
4 items that we most recently discussed, show the amount
5 of outdoor seating. Item number 3 will be discussed and
6 resolved, as well as the structure, which is the outdoor
7 structure, demolished. That has been taken down. We
8 show it as existing, yes, because again that was in
9 anticipation of a board without -- without, or prior to
10 this -- to this meeting that we had just about three,
11 four weeks ago. So all these four items will become
12 void and all will satisfy code obligations and negate
13 these four items.

14 CHAIRMAN CASTRO: The outdoor structure has
15 already been demolished?

16 THE WITNESS: Yes, sir.

17 CHAIRMAN CASTRO: I know because I drove by
18 the location.

19 You did show us a egress plan?

20 THE WITNESS: Yes, sir.

21 CHAIRMAN CASTRO: You're going to be
22 addressing the front gate/door swing over the public
23 right-of-way.

24 THE WITNESS: Correct.

25 Q. Do you have anything further to present?

1 THE WITNESS: Unless I have any other
2 questions or comments from the board at this time I
3 concluded my presentation.

4 MR. McNAMARA: Mr. Waga, could you take the
5 screen down so I can see who's in attendance, please.

6 THE WITNESS: Yes, I'm sorry.

7 MR. McNAMARA: That's okay. Not a problem.
8 There's only so much you can do on a screen.

9 THE WITNESS: I'll stop sharing. There we
10 go.

11 MR. McNAMARA: Mr. Lenahan, are you still
12 with us?

13 MR. LENAHAN: Yes, I am, Mr. McNamara. I
14 may be coming in on a different line since our -- in any
15 event, if you can hear me.

16 MR. McNAMARA: Yes.

17 MR. LENAHAN: I'm not here in my capacity as
18 special counsel for City of Elizabeth. I'm here as a
19 member of the Knights of Columbus which is on 328 Union
20 Avenue.

21 MR. McNAMARA: Okay.

22 MR. LENAHAN: So I'm observing the meeting.

23 MR. McNAMARA: Okay. Because if you were
24 here on behalf of the city, I certainly wanted to afford
25 you the opportunity, which you still have as an

1 interested participant, to cross examine any of the
2 witnesses and testimony that's being offered.

3 Ms. Carvalho, do you have anything you wish
4 to respond to that you heard from the witness or related
5 concerns that you wish to bring to the boards attention
6 at this time concerning the testimony you've heard?

7 MS. CARVALHO: Good evening everyone.

8 I'm satisfied with the testimony of the
9 attorney, also that we have compliance from the business
10 owner on taking down the structure and complying with
11 all the requests that have been made from -- from and by
12 the city in the last few weeks. Also that the plans for
13 the fire safety has been approved and will be picked up
14 from, it's my understanding, first thing in the morning.

15 MR. McNAMARA: Okay.

16 CHAIRMAN CASTRO: Excuse me, Ms. Carvalho,
17 you referred to the city or the department, you're
18 satisfied with testimony of the witness. It's complying
19 with your request?

20 MS. CARVALHO: Yes. They are in compliance
21 with the requests that were made by the city to remove
22 the structure and are now in compliance with what was
23 approved by the ABC Board.

24 CHAIRMAN CASTRO: Thank you.

25 COMMISSIONER NUNES: Mr. Chairman --

1 CHAIRMAN CASTRO: Do you have any questions
2 for Mr. Waga?

3 COMMISSIONER NUNES: Mr. Chairman.

4 CHAIRMAN CASTRO: Mr. Nunes. Commissioner
5 Nunes.

6 COMMISSIONER NUNES: I have a question
7 actually for Mr. Bonner, if I may.

8 MR. BONNER: Sure.

9 COMMISSIONER NUNES: Mr. Bonner, so far all
10 the testimony that we've heard here tonight from Mr.
11 Waga and from Ms. Carvalho is in regards to how your
12 client has already, you know, complied with everything
13 the city has asked for and is in the process of getting
14 everything together in order to submit to the city with
15 new seating arrangements and new egress arrangements as
16 well for the site as well, is that correct?

17 MR. BONNER: Yes.

18 COMMISSIONER NUNES: So my question is, why
19 are you here tonight then? Realistically like why don't
20 we have a set of plans in here with the new seating
21 area, with the egress already so that the board can, you
22 know, do what we do?

23 MR. BONNER: As Mr. Waga I believe attempted
24 to explain, we submitted based on what was existing at
25 the time. After the site inspection about a month ago

1 certain issues were raised and the applicant has done
2 his best, their best to address those concerns. That
3 requires modifications of the plans and as you can tell
4 from what Mr. Waga was saying there are at least two
5 possibilities in terms of the size of the structure, so
6 they couldn't be finalized. What we're here for tonight
7 is essentially -- the essential nature of what we're
8 here for tonight is the use variance, and the other
9 variances that are required by the application, and the
10 applicant would like to move this along because their
11 business is -- is not completely shutdown but
12 effectively reduced by not having the outdoor structure.
13 So they're trying to expedite the process and they're
14 willing to accept, again, as conditions of approval, you
15 know, whatever the final number of outdoor seating is.
16 It's going to depend on whether the three foot or five
17 foot option is accepted, or they go back to the zero lot
18 line, which I don't think is being proposed at all. But
19 the difference -- a difference of two feet will make a
20 difference in how many tables and chairs and other items
21 can be put in the space. So I guess the answer to your
22 question is, we are here to get the concept approved and
23 the variances approved. The final plans will be subject
24 to, you know, if the overall applications approved, the
25 variances approved, then the final plans will be subject

1 of resolution of compliance. Mr. McNamara can explain
2 further that, you know, we can agree to approve the
3 applicant going forward with this application and leave
4 certain -- and this happens on a regular basis as you
5 know as a member of the board, that certain open issues
6 are left as conditions of approval. You know, meaning
7 the applicant can't go forward unless they're satisfied.

8 MR. McNAMARA: Michael, let me stop you
9 there for a moment. I think Mr. Nunes raises a valid
10 point. If we're reviewing this as a restaurant then we
11 ought to be able to see some type of seating plan or
12 some type of plan that indicates how many tables and
13 chairs the applicant actually expects to put in this
14 space, if it's to be developed, and we don't have that.

15 COMMISSIONER NUNES: Mr. McNamara, again
16 just to go back to a point that Mr. Bonner brought. He
17 said that we're here regarding the use variance. Is
18 that --

19 MR. McNAMARA: Yeah, there are a number of
20 variances and Mr. Gallerano can summarize anything I
21 miss. A restaurant is not permitted in this zone, so
22 they need a use variance, a D-1.

23 COMMISSIONER NUNES: But isn't it a current
24 ongoing concern?

25 MR. BONNER: It's a pre-existing

1 nonconforming use, correct.

2 COMMISSIONER NUNES: Right.

3 MR. McNAMARA: Well, there's two things.
4 You have an expansion of pre-existing nonconforming use.
5 That's the D-2 variance. The restaurant in and of
6 itself is already not a permitted use in the zone. So
7 you're now asking to ratify a use that is not permitted
8 and the expansion of a preexisting nonconforming use.
9 So you have both a D-1 use variance and a D-2 expansion
10 of a pre-existing nonconforming use variance. So you
11 got two D variances, that's why this board has
12 jurisdiction. They're here instead of in front of the
13 Planning Board.

14 COMMISSIONER NUNES: No, that part of it is
15 fine. That part of it is fine. My question is, when we
16 come to vote what are we voting on. Are we going to sit
17 here and say, hey, listen we're either going to vote on
18 a three foot side yard or a five foot side yard. Is
19 that what we're voting on? I'm just -- want to be
20 clear.

21 MR. McNAMARA: What you have the option to
22 do is you can vote for the variance relief only tonight
23 and then say, look, when you got revised plans with this
24 information come back to us at our meeting next month
25 and we'll be in a position to vote on the site plan.

1 The second thing you can do is approve the variances and
2 grant preliminary site plan, but not grant final saying,
3 fix these things, come back next month, get final and
4 that would give you the assurance that things are being
5 done the way you think they should be, and then they
6 would be able to come in and apply for and seek final at
7 the August meeting.

8 COMMISSIONER NUNES: But Mr. McNamara, it
9 seems to me, just given the testimony that we've gotten
10 so far, the client is definitely doing the right thing.
11 I mean, they demolished, you know, all the stuff that
12 they've done already. They've come up with some plans.
13 I just want to be clear on what the board is voting on.
14 It's -- I don't want to -- I don't want to give away the
15 way that I'm leaning, what I'm trying to say is, give us
16 the substance unto which we're voting on. Tell us, hey,
17 listen guys we're going to vote on either a three foot
18 side yard or five foot side yard. We're going to vote
19 on, you know, the ongoing concern of a nonconforming
20 use. We're going to vote on this. And like give it to
21 us like that, because right now we're looking at plans,
22 which is fine, and Mr. Bonner and Mr. Waga have told us
23 that we're going -- they're going to prepare a final set
24 prior to the reading next month depending on which way
25 we vote tonight. But again, I just want every -- all

1 the members here to be clear as to what we're actually
2 voting on.

3 MR. McNAMARA: Okay. As I said, you have
4 several options in front of you. You can consider just
5 the two D variances and carry the rest to the next
6 meeting. You can vote the D variances and the C
7 variances tonight, because part of those involve bulk
8 standards that will shape the overall design of the
9 building. You can vote the variance package and
10 preliminary tonight or you could conceivably vote the
11 whole package.

12 Now, if you were going to do that then it
13 would certainly be a series of conditions stating that
14 before that vote would be taken on that resolution next
15 month that they got to submit updated drawings, they got
16 to be reviewed by Tony Gallerano's office, reviewed by
17 the board and deemed acceptable before that resolution
18 would be put before you at the August meeting. So
19 you've got, to use a restaurant adjective, one from
20 Column A, one from Column B, and one from Column C. You
21 have three choices.

22 MR. GALLERANO: Mr. Chairman, may I chime
23 in.

24 MR. BONNER: May I interject for a moment.
25 I agree with everything Mr. McNamara had said and I

1 would also reiterate that I like the way he presented
2 the options and I just want to remind you of something
3 that Mr. Waga said, which is that the seating, the
4 capacity and all of that would be in compliance with
5 fire and safety codes. So we're not looking to get a
6 big empty shell approved and jam as many seats and
7 tables as we can in there. It will be in compliance
8 with your local ordinances. You're, you know, zoning,
9 building and fire code.

10 COMMISSIONER NUNES: That's one of the
11 questions I had was regarding the seating and exactly
12 how it is going to be overloaded or how we are going to,
13 you know, oversee what was happening. But if you're
14 telling me it's going to be looked at by fire and
15 everybody else.

16 Mr. Gallerano, you were going to say
17 something.

18 MR. GALLERANO: Yeah, I was going to maybe
19 make a suggestion. I know Mr. Waga presented two
20 options, I guess. I think it was a three foot and five
21 foot setback. If the board wasn't inclined to want to
22 have that left as an open item, I guess a question to
23 the applicant or to Mr. Waga would be, would they be
24 willing to commit to one or the other tonight this way
25 this board would have -- would be voting on something

1 more definitive if they weren't comfortable with having
2 that as kind of an open item as to whether it would be
3 three foot or five foot. I agree the seating is going
4 to be based on occupancy code based on what they could
5 physically fit, and I don't think the three of five foot
6 setback, I don't think, changes the overall look of the
7 structure. So I think you could probably be comfortable
8 on voting on at least what the buildings going to look
9 like. Mr. Waga already explained how he would address
10 the front door. So it's more of a questions for the
11 applicant, if they're willing to proceed with one or the
12 other.

13 THE WITNESS: So I think I can speak on
14 behalf of the applicant and we would elect to go with a
15 three foot separation off of the property line with our
16 new two hour fire rated assembly.

17 MR. GALLERANO: Yeah, and keep in mind when
18 the board approves a setback, say a minimum of three
19 foot, the applicant always has the option of building it
20 with a bigger setback. I mean, we never -- never allow
21 them to go to a smaller setback but if an applicant for
22 some reason wanted to increase that setback it's usually
23 not objectionable from the construction department to
24 allow something even of a little bit larger setback. So
25 if it was approved at three and then ended up building

1 it at five it wouldn't really effect the variance that
2 was granted.

3 MR. BONNER: And I think it's worth pointing
4 out too, in this zone there's a zero setback and the
5 three foot or five foot is done as, really as an
6 accommodation to the adjacent building and the people
7 who live there to give them some light and space between
8 what we're constructing and their windows and their
9 building.

10 MR. GALLERANO: Sure. And I think the fire,
11 you know, the fire officials going to have some input
12 also. If he prefers to have a, you know, a five foot as
13 opposed to a three foot, I think the applicant may be
14 obligated to have to do that anyway. I don't think they
15 objected to the three foot, as far as I can see.

16 MR. BONNER: I would say lets proceed on the
17 assumption, not the assumption, on the statement that
18 it'll be the three foot setback.

19 COMMISSIONER NUNES: Perfect.

20 MR. BONNER: And that will govern the
21 interior space and therefore, as Tony stated, that will
22 govern the number of seats and tables and other things
23 based upon your, you know, the cities codes.

24 CHAIRMAN CASTRO: I think Mr. Nunes, what
25 the applicant is looking for is probably to suggestion

1 three of Mr. McNamara, to ask to approve the --

2 COMMISSIONER NUNES: The whole package.

3 CHAIRMAN CASTRO: -- the whole package,
4 because he's in the business of restaurants and this is
5 his season. Don't want to delay this application.

6 COMMISSIONER NUNES: I agree with you, Mr.
7 Chairman. It's a fairly straight forward application.
8 Now that we have the ground rules laid out for us I
9 think it would be easy for the, for our colleagues to be
10 able to vote.

11 COMMISSIONER CONGALVES: Mr. Chairman. Mr.
12 Chairman, can I say something.

13 CHAIRMAN CASTRO: Yes, give me one second,
14 please.

15 And then he can submit the seating plan
16 which has to be in agreement with the city for this size
17 of facility. Mr. Gallerano will review it and by the
18 time we come with the final resolution 30 days from now,
19 the applicant would be ready to review what they have to
20 review. Communicate with Ms. Carvalho and Mr. Gallerano
21 and the fire department, and make sure that everything's
22 ready for the resolution.

23 MR. McNAMARA: Mr. Bonner, has anyone
24 submitted an application to the Union County Planning
25 Board, because this is a county road this section of

1 Morris Avenue?

2 MR. BONNER: We have not prepared -- Anthony
3 maybe, you can -- you guys worked on that yet?

4 MR. KURUS: No, sir.

5 MR. BONNER: Okay. It will be done, Mr.
6 McNamara.

7 MR. McNAMARA: It'll be a condition of any
8 approval that you got to come back with a site plan
9 approval from them. Just so you're aware.

10 MR. BONNER: Yup.

11 MR. McNAMARA: Okay.

12 MR. BONNER: If the application is approved
13 tonight I'm sure we can get that done between now and
14 the resolution. But we accept that as a condition of
15 approval.

16 MR. McNAMARA: Okay.

17 MS. CARVALHO: Mr. McNamara.

18 MR. McNAMARA: Yes.

19 MS. CARVALHO: I'm sorry, before you go any
20 further. Regardless of what happens tonight, I just
21 want the board to know that this property, like many
22 others in the city of Elizabeth, are under what's also
23 called an Outdoor Dining COVID Permit which has been
24 extended by the governor until 2022. Where the tents,
25 membranes are inspected b7 the fire department and the

1 Health Department and the zoning department. So
2 regardless of what happens this establishment, like many
3 others in the city, are also covered by this COVID
4 permit.

5 MR. McNAMARA: Okay. That's great. And I
6 would ask, because I don't have a copy handy, if you can
7 transmit one to my office and to Mr. Bonner.

8 MS. CARVALHO: I'll send you a copy.

9 MR. McNAMARA: And we will incorporate that
10 requirement for compliance as a condition of any
11 approval, if the board acts favorably on this matter.

12 MS. CARVALHO: Thank you.

13 CHAIRMAN CASTRO: Thank you.

14 MR. McNAMARA: Thank you for bringing that
15 to our attention.

16 MS. CARVALHO: You'll be seeing a lot more
17 applications.

18 MR. McNAMARA: I have that feeling.

19 CHAIRMAN CASTRO: Commission Congalves.

20 COMMISSIONER CONGALVES: Yes. Let me just
21 add to Commissioner Nunes comments. I totally agree and
22 I understand but I think us as commissioners should
23 concentrate strictly on the use and lead the
24 construction details to Gallerano, zoning in the city,
25 construction officials, fire department and so on.

1 Let's look at the use, if it's what we want and leave
2 those details -- let that responsibility be for those
3 people that are doing their jobs.

4 MR. McNAMARA: Well, one point Commissioner.
5 The two bulk variances they need are for a front yard
6 and rear setbacks. So that's why the discussions
7 ensuing.

8 COMMISSIONER CONGALVES: Right, but we've
9 discussing -- yeah, I've been looking at plans and
10 Commissioner Nunes has a raised a perfect question to
11 the board. I'm looking at existing plans, what do I
12 want to look at existing plans. I want look at what is
13 being proposed.

14 MR. McNAMARA: Understood.

15 COMMISSIONER CONGALVES: So at this point
16 for us to go forward in the positive note, of which
17 we're not against to a certain degree until we see the
18 final outcome, at least that's the way I like to look at
19 it. I'd like to see what they're proposing. Now, if
20 they're saying they're going to meet every requirement
21 that's been thrown at them by the fire department, by
22 the city, by Gallerano and so on. You know, I'm sort of
23 leaning in favor of pursuing it without seeing this.
24 That's what I'm trying to say. So I don't want to say
25 three feet, five foot. All I'm trying say is let the

1 people doing their job tell us what it really should be.

2 MR. McNAMARA: Understood, sir.

3 COMMISSIONER CONGALVES: Okay. Thank you.

4 CHAIRMAN CASTRO: Thank Commissioner
5 Congalves.

6 Mr. Bonner, do you have any other witnesses?

7 MR. BONNER: We do. Thank you, Mr.
8 Chairman.

9 Anthony Kurus is here as our engineer and
10 planner. There isn't a whole lot of engineering
11 testimony, but he can walk you through basics. I think
12 Mr. Waga covered that, covered most of it but he is here
13 also as a professional planner.

14 So Mr. McNamara, can we get him sworn and
15 then we'll go through his credentials.

16 A N T H O N Y K U R U S, NEGLIA ENGINEERING
17 & ASSOCIATES, 34 PARK AVENUE, LYNDHURST, having been
18 duly sworn under oath testifies as follows:

19 CHAIRMAN CASTRO: Curious, have you
20 testified before this board before?

21 THE WITNESS: I have.

22 MR. BONNER: As both an engineer and a
23 planner?

24 THE WITNESS: Yes, I have.

25 CHAIRMAN CASTRO: You're licenses are

1 active?

2 THE WITNESS: They are.

3 CHAIRMAN CASTRO: Mr. McNamara will swear
4 you in, but this board accepts your credentials.

5 MR. McNAMARA: Okay. We're good.

6 Q. Go get them Anthony.

7 A. Okay. So I'm not going to rehash what Greg has
8 already testified to. Hold on a second. If I could
9 just share my screen. I'd like to go through the site
10 location and the zoning and the variances that we are
11 requesting. As well as ingress, egress.

12 MR. BONNER: Would you like me to put up
13 your plans?

14 THE WITNESS: Sure. Sure.

15 MR. BONNER: Is that coming up?

16 THE WITNESS: Got it.

17 A. So as was stated by Mr. Waga, site location we
18 have as 331-337 Morris Avenue. We're located in the C-5
19 commercial zone. We've got the frontage on Morris
20 Avenue to the south, bordered on the east by the mixed
21 building that was described by Mr. Waga. Bordered on
22 the west by a multi family residential building. To the
23 rear of us we got the parking area. Parking area for
24 the multi family residential, as well as on the --
25 further to the east you got the Knights of Columbus

1 building.

2 Again, this plan is representative of what
3 previously had existed on the property with the outdoor
4 enclosure that has been since demolished. As described
5 by Mr. Waga, these plans are going to be finalized to
6 show a minimum of a three foot side yard setback on the
7 south side adjacent to the existing building. The
8 enclosures going to meet all code requirements as was
9 described.

10 For parking, there will be a total of six parking
11 spaces on the site. There's three existing parking
12 spaces in front of the pharmacy, as well as an
13 additional three parking spaces in the driveway running
14 on the north side of the building that runs from the
15 front of the site to the rear of the site.

16 The trash dumpster area will be in that back
17 corner of the property.

18 We show a -- we show a truck turning exhibit that
19 shows the ability of a garbage vehicle to pull up that
20 driveway to access that dumpster area to the rear, to be
21 able to pick up trash and then exit -- and then exit the
22 site.

23 Q. Anthony, before we leave the parking. There was,
24 one of the reports raised the question of the ability, I
25 think it was engineering, of the ability for the parking

1 spaces in the rear here to make the appropriate
2 maneuvers to get in and out. Can you explain to us
3 whether they have enough room or not?

4 A. So I think there is a discrepancy between what
5 Mr. Waga shows at that back corner with the angled
6 spaces, I think that was pre-existing before the
7 enclosure was built. That area, there won't be angled
8 spaces in that back corner. That area is going to be
9 for the dumpsters. So it's really, the circulation is
10 pulling in, picking up and backing out. Parking spaces
11 that use that driveway that parallel they would be able
12 to pull into that back and perform a K-turn. Either
13 perform a K-turn and leave or -- or also back out into
14 the front parking area in front of the existing
15 pharmacy.

16 Q. And you'll be able to show those maneuvers on the
17 final plan?

18 A. Sure. Absolutely.

19 Q. Thank you. Go ahead.

20 A. As far as site utilities, there's no changes to
21 existing utilities. Stormwater management, we're not
22 proposing any increase in impervious coverage. The
23 outdoor enclosures proposed over an existing paved area,
24 so there will be no impact with stormwater management.

25 With respect to sanitary sewage. Per the Harbor

1 report we can supply those sewer calculations once that
2 final seat count is determined based on the applicable
3 building code at a rate of 35 gallons per day per seat.
4 Based on our review of the building we don't anticipate
5 a need for a treatment works approval and any
6 significant impact with respect to sanitary sewage.

7 Trash and recycling, again, that back corner is
8 -- would be the dumpster area.

9 Variances. Variances we have noted on our first
10 sheet, we're requesting variances for the restaurant
11 use, for the expansion of the existing restaurant use to
12 include the outdoor seating area. Variance for front
13 yard setback, rear yard setback and parking. I'll go
14 through them in a little more detail.

15 With respect to the city and professionals
16 reports. We can comply with all the requirements and
17 the request of the professional reports.

18 So going into the variances a little bit further.
19 First of all, the site is located in the C-5 zone,
20 restaurants are not permitted, so we are requesting a
21 D-1 use variance for the restaurant use in addition to a
22 D-2 use variance, as was described, for the expansion of
23 the existing restaurant.

24 Rear yard setback. We're proposing a rear yard
25 setback of zero for the proposed reconstruction. For

1 the proposed construction of the outdoor enclosure. The
2 existing rear yard setbacks approximately 15 feet, so we
3 are requesting a variance for rear yard and then number
4 of parking spaces. We're proposing a total of six
5 parking spaces where the requirement for the -- the
6 requirement for the retail use is one space per 300
7 square feet. So the retail -- the existing pharmacy
8 retail would require nine spaces. The restaurant is one
9 space for every two employees plus one space for four
10 seats. Once that final seat number is calculated we can
11 supply that actual number, but we know that we're -- we
12 know we're deficient and we know we have a -- we know we
13 need a variance for the required parking.

14 MR. McNAMARA: Do you have a ballpark
15 guesstimate as to, based on at least the number of
16 employees and the seating, that was there previously?

17 MR. BONNER: Mr. McNamara, we'll have some
18 testimony from a representative of the applicant who
19 will speak to the number of employees, hours of
20 operation, and the ability to provide additional spaces
21 via a lease with a nearby piece of property.

22 MR. McNAMARA: Okay. Do you want to hear
23 from that witness now, because I think Anthony may need
24 some of that information for his planning testimony.

25 MR. BONNER: Anthony.

1 THE WITNESS: I mean, I guess to answer your
2 first question, as far as the previous seating, I
3 believe it was 20 occupants and six staff. That's prior
4 to the outdoor -- that's prior to the outdoor enclosure.
5 So we can come up with what that existing parking demand
6 -- what that existing parking demand is. So 20 over
7 four, five -- so that would be 8 spaces required for the
8 existing restaurant prior to the proposed outdoor
9 enclosure. Plus 9 for the -- 9 for the pharmacy. So
10 that's -- the prior demand was 17. Where there was an
11 existing, we counted 14 to 15 spaces on-site. So there
12 was an existing parking deficiency. We're obviously,
13 you know, we're obviously asking for more relief for the
14 parking to be able to construct the outdoor enclosure
15 and reduce that on-site parking to only six parking
16 spaces on site. So that's what I have at this point
17 for, as far as the numbers go with parking.

18 MR. McNAMARA: Is there an arrangement with
19 the pharmacist about sharing the parking that will
20 remain? How is that going to be handled. Or is that
21 for your next witness.

22 MR. BONNER: That will be for the next
23 witness, Mr. McNamara.

24 MR. McNAMARA: Okay.

25 A. So then I guess the last variance is that front

1 yard setback. Zero feet is being proposed, 34.17 is
2 existing, where the prevailing required front yard
3 setback is 6.1 feet. First I'll get into, I'll describe
4 the use variance. The proposed use variance for the
5 outdoor seating area, as I stated, its an expansion of
6 the existing non-conforming restaurant use as a D-2. It
7 could also be considered a D-1 for the proposed outdoor
8 seating area. This variance relates to a specific piece
9 of property. It relates to a site that we're
10 discussing. The restaurant use, it's not a new use,
11 it's already an established restaurant. There are other
12 restaurants in the C-5 zone within this corridor of
13 Morris Avenue. I believe we can satisfy both the D-1
14 use variance and the D-2 expansion of a non-conforming
15 use requirement because the proposed site which contains
16 the existing restaurant is particularly suited for the
17 proposed outdoor seating. The site being located within
18 a mixed use corridor of Morris Avenue in my opinion is
19 particularly suited for outdoor seating and restaurant
20 use which will -- which compliments and fits in with the
21 existing restaurants in the vicinity. Will provide more
22 dining options and more outdoor dining which currently
23 there's a large demand for. The site is in close
24 proximity to the Elizabeth midtown redevelopment area.
25 There's new apartments that have been constructed in

1 that area and currently under construction, further
2 making the site particularly well suited for a
3 restaurant with outdoor seating use in order to provide
4 additional outdoor signing options in this location.

5 It's my opinion that purpose C of the Municipal
6 Land Use Law would be advanced by providing outdoor
7 dining which will serve as open space as part of the
8 restaurant and through the modifications that we're
9 presented by Mr. Waga for providing that side yard
10 setback, as well as an appropriate height of the outdoor
11 seating area, it's my opinion that, you know, we'll
12 provide adequate light, air and open space and through
13 the design there would be no adverse impact onto
14 adjacent properties.

15 Also Purpose I will be advanced by providing
16 improvements to the restaurant that will be attractive
17 to promote a desirable visual environment to attract
18 customers to the location and to improve upon the visual
19 environment along Morris Avenue.

20 Again, I think the sites particularly suited for
21 outdoor dining area. I think there's room on the
22 property. On both sides of us the buildings have zero
23 lot line setbacks. This is one of the few -- one of the
24 few sites in the area that has the 30-foot setback, so
25 by creating this enclosure we're almost making our

1 building and our line along Morris Avenue more uniform.

2 I think the variances can be granted without any
3 substantial detriment to the public good. I think the
4 benefits of granting the variances outweigh any
5 detriments. I know we have a parking -- I know we do
6 have a parking shortage, but that is an existing
7 condition. We have six spaces on the site along with
8 the availability of some on street parking and being the
9 location of the site being in a pedestrian friendly
10 environment and close proximity to midtown, we do
11 anticipate walk up patrons and really the parking is
12 something that's not, it's not unique to this area and I
13 think with the few parking spaces we have on-site we can
14 provide some off-street parking and then the remainder
15 would be the on-street and off-site.

16 It's my opinion that the variances will not
17 impair the intent and purpose of the zone plan and
18 zoning ordinance. The restaurant use is a pre-existing
19 non-conforming use. It's my opinion that, you know, the
20 applicant, you know, they're willing to, you know, put
21 in the changes that have been requested and make this
22 out to be a good project for everyone involved.

23 Q. Thank you, Mr. Kurus.

24 CHAIRMAN CASTRO: Thank you, Mr. Kurus.

25 Commissioners, do you have any questions for Mr.

1 Kurus?

2 Mr. Bonner, do you have any other witness?

3 MR. BONNER: I do. I have Mr. Gomez appearing on
4 behalf of the applicant. Who --

5 THE PUBLIC: Excuse me. Mr. McNamara.

6 MR. McNAMARA: Yeah.

7 THE PUBLIC: Bob Lenahan here. I have some
8 questions for Mr. Kurus.

9 MR. McNAMARA: Mr. Chairman, it would be in
10 order to open the floor to the public if they have any
11 questions regarding the testimony they've heard from the
12 two witnesses so far.

13 Mr. Lenahan: I can wait if you prefer until
14 the end.

15 CHAIRMAN CASTRO: Please wait until the end
16 of the testimony.

17 Mr. Bonner.

18 MR. BONNER: Okay.

19 I have Edwin Gomez here on behalf of the
20 applicant if you would like to swear him in.

21 E D W I N G O M E Z, having been duly sworn
22 under oath testifies as follows:

23 Q. And Mr. Gomez, your position with the applicant,
24 your -- tell us who you are in relation to the
25 applicant?

1 A. Good evening everyone. My name is Edwin Gomez.
2 I'm a co-owner of the restaurant, Mr. Pollo Rotisserie &
3 Bakery. I also own a few other restaurants in other
4 areas in New Jersey and I'm a licensed mechanical
5 contractor as well.

6 Q. Thank you.

7 And you're familiar with the general operation of
8 the restaurant, The Garden Restaurant?

9 A. I am very familiar with the general operation of
10 the restaurant. I do run operations along with my
11 partners. So I'm well versed of what's going on.

12 Q. Thank you.

13 Can you briefly outline for us the hours of
14 operation, typical number of employees on premise, and
15 the interaction, the parking between your restaurant and
16 the pharmacy and to the extent that you can explain the
17 hours of operation to the pharmacy versus the hours of
18 operation for the restaurant?

19 A. Okay. Let's begin with the hours of operation of
20 the restaurant. We operate on a daily basis on Monday
21 to Wednesday from 4 PM to 2 AM in the morning. On
22 Thursday and Friday we operate between 4 PM and up to 3
23 AM in the morning. On Saturday we noon, 12, up to 3 AM
24 in the morning and Sunday we work on noon, again, up to
25 2 AM in the morning. That's for the restaurant hours

1 operation. In regards to the pharmacy, the pharmacy
2 operates Monday through Friday from 10 AM up to 6 PM.
3 Saturday they work only from 10 AM to 3 PM and Sunday
4 from 10 AM to 1 PM.

5 Q. Do you ever find conflicting use of the parking
6 between your patrons and the pharmacy?

7 A. No, not at all. Actually we have a signed lease
8 with the landlord that states that we can have full
9 usage of the lot once the pharmacy is closed. So once
10 the pharmacy closes we have full rights on the parking
11 lot and that's where our clients park without any
12 problems in regards to the pharmacy.

13 Q. Okay. Thank you.

14 Mr. McNamara, I can provide you a copy of that
15 lease after the hearing.

16 MR. McNAMARA: That would be fine. You can
17 redact the financial information, we don't need that,
18 that would be of no substance. Thank you.

19 Q. Mr. Gomez, and typical day, take us from let's
20 say typically you open around noon, four o'clock, how
21 many employees are there when you open versus how many
22 employees are there throughout the rest of the day?

23 A. Basically on a weekly basis we operate with some
24 sort of, from 17 -- less than 20 employees. And on
25 Saturday and Sunday, even Friday, we open in noon, it

1 could go up to 19, 20 employees one shift.

2 Q. Thank you.

3 And you have made arrangements for parking
4 off-site to make up for the deficiency on site?

5 A. We have. Along with the pharmacy we have two
6 options that we most of the time utilize for parking.
7 Number one, across the street there is a parking --
8 public lot. Most of the times we rent spaces from them,
9 they rent out ten spaces every time we need them. In
10 addition to that I rent from another business that I
11 have premises on a location nearby where I am allowed to
12 use the parking. So I have a verbal agreement with the
13 landlord to lend us those spots for my other -- for the
14 restaurant as well.

15 Q. But you've spoken to him and you plan to commit
16 that to writing for those other spaces?

17 A. If that becomes a condition of the approval, yes.

18 MR. McNAMARA: It is going to be a condition
19 of any approval. So please plan accordingly.

20 THE WITNESS: No problem.

21 MR. McNAMARA: Thank you.

22 MR. BONNER: I don't have any further
23 questions for Mr. Gomez, Mr. McNamara.

24 MR. McNAMARA: I'm good, Mr. Chairman.

25 CHAIRMAN CASTRO: Commissioners, do you have

1 any questions for Mr. Gomez?

2 I actually have a question. From my
3 experience with some businesses along Morris Avenue,
4 corridor, the pandemic changed how people, how people go
5 to places and my understanding, and I want you to
6 correct me if I am wrong, more people are relying today
7 more on Lyft and Uber. Understanding how difficult
8 sometimes it is to park along the Morris Avenue corridor
9 they rely on Uber, am I right?

10 THE WITNESS: Yes.

11 CHAIRMAN CASTRO: Commissioners, do you have
12 any questions for Mr. Gomez?

13 MR. BONNER: Mr. Chairman, I did want to
14 clarify one more thing that I thought of.

15 Q. When we spoke earlier you indicated to me that
16 you don't permit your employees to park in the pharmacy
17 parking lot, correct? You reserve that for employees?

18 A. Yes.

19 Q. You reserve that for customers. Your employees
20 are instructed to park on the street, find a space where
21 they can, correct?

22 A. That is correct. Actually most of my employees
23 live in the area, so it is walking distance. Not too
24 many have their own cars.

25 Q. Okay. Thank you.

1 CHAIRMAN CASTRO: Do you have any other
2 witnesses, Mr. Bonner?

3 MR. BONNER: I do not, Mr. Chairman.

4 CHAIRMAN CASTRO: Mr. Gallerano, any
5 comments from your part?

6 MR. GALLERANO: I want to say one thing.
7 This application was a little confusing in the beginning
8 because the plans, when I looked at them, they showed it
9 was an existing condition and then when I looked at the
10 site it didn't look the same, so I think if you read my
11 letter it might be a little confusing because it went
12 out before I actually had a chance to go and straighten
13 it out. And thanks to Ms. Carvalho, who was gracious
14 enough to meet me there and walk the site, then I had a
15 better understanding what happened. The structure that
16 was put up was taken down, then a temporary structure
17 was put up.

18 But just one thing I want to say, this whole
19 outdoor dining thing has been kind of confusing, I think
20 in a lot of municipalities. You know, the state put out
21 this emergency order and allowed the outdoor dining but
22 in my opinion they never really gave really clear
23 guidelines as to what to do, not to do, what was
24 actually permitted, not permitted. So it was
25 challenging for owners to know exactly what to do and,

1 you know, some of them may have maybe went a little
2 further than they should, but in their defense they
3 didn't really have good guidelines to follow. This may
4 have been one of those cases where, you know, the
5 structure may have been where they should have had it
6 but again there really wasn't, in my opinion, clear
7 guidelines to follow and I think it's commendable that
8 they're here tonight trying to, you know, do it right.
9 Get the proper approvals. So as long as they're willing
10 to comply with all conditions of the board, meet all the
11 subcode requirements, you know, fire, electrical,
12 whatever they need, then I don't see any issues with it.

13 CHAIRMAN CASTRO: Thank Mr. Gallerano.
14 Thank you very much.

15 Commissioners, you okay?

16 MR. McNAMARA: Mr. Chairman, at this point a
17 motion to open the floor to the public for questions,
18 comments and concerns would be in order.

19 CHAIRMAN CASTRO: Thank you Mr. McNamara.
20 Are there any members of the audience who
21 wish to testify regarding this application? If so,
22 please do it now.

23 MR. McNAMARA: Mr. Lenahan wanted to be
24 heard. I think we may have lost his connection again.

25 Mr. Lenahan: Okay, I'm sorry.

1 THE PUBLIC: Good evening. This is Paul
2 Barros.

3 MR. McNAMARA: One at a time, please. Let
4 Mr. Lenahan talk first, if you don't mind.

5 Mr. Lenahan: Thank you very much.

6 MR. McNAMARA: I'm sorry, can you state your
7 name and address, please.

8 THE PUBLIC: Sure. Robert Lenahan. Home
9 address, 36 Summit Road, Elizabeth, New Jersey.

10 CHAIRMAN CASTRO: Mr. McNamara, does Mr.
11 Lenahan have to be sworn in.

12 MR. McNAMARA: Just to be safe we might as
13 well.

14 R O B E R T L E N A H A N, 36 SUMMIT ROAD,
15 ELIZABETH, NEW JERSEY, having been duly sworn under oath
16 testifies as follows:

17 CHAIRMAN CASTRO: Is it Summit or Somer?

18 MR. LENAHAN: Summit, S-U-M-M-I-T.

19 CHAIRMAN CASTRO: Thank you Mr. Lenahan.
20 Go ahead Mr. Lenahan.

21 MR. LENAHAN: I have comments because as a
22 member of the Union Knights of Columbus -- Elizabeth
23 Knights of Columbus, at 328 Union Avenue, we have
24 parking lot problems and many have occurred because of
25 customers from nearby restaurants. So I would like to

1 ensure that there are some plans in writing to provide
2 additional parking spots. I especially want to be sure
3 that there is some written agreement with the municipal
4 lot across from Sorrento's Restaurant, if that is -- oh,
5 I'm sorry, across on Morris Avenue for this restaurant
6 to use those spots.

7 MR. BONNER: I don't believe that is the lot
8 that's being proposed.

9 Correct, Mr. Gomez.

10 THE WITNESS: Yeah, the lot that is being
11 proposed is located in 416 Morris Ave.

12 THE PUBLIC: All right.

13 And who is -- and as I understood, Mr.
14 McNamara, you will be required to provide a written
15 lease to substantiate your statement that you have the
16 right to use spaces in that lot?

17 THE WITNESS: I think the question is
18 directed to me. The answers, yes.

19 MR. BONNER: Yeah, we have agreed to
20 formalize the currently verbal arrangement with 416
21 Morris. The owners of 416 Morris.

22 THE PUBLIC: All right.

23 Will the owner take affirmative steps to
24 advise customers not to park in the Knights of Columbus
25 parking lot?

1 MR. BONNER: Edwin.

2 THE WITNESS: Yes. We never encourage
3 customers to park even in any private lot near the
4 areas. They're always encouraged to park on the lots
5 that I authorized by our leases or the verbal that I say
6 and also any spot that they could find on the street,
7 but never in private.

8 CHAIRMAN CASTRO: I think Mr. Gomez the
9 concern of Mr. Lenahan is he does not want the customers
10 of nearby restaurants parking in his parking lot. In
11 the parking lot of the Knights of Columbus building. So
12 I would suggest that to alleviate, to prevent it from
13 happening, is that you have signs, some sort of a sign
14 or advise your customers not to park in the Knights of
15 Columbus parking area.

16 THE WITNESS: Correct, yeah.

17 THE PUBLIC: All right.

18 Another question I have of Mr. Gomez, have
19 you observed any double parking problems in front of
20 your restaurant on Morris Avenue Thursday, Friday,
21 Saturday's and Sunday's at -- during your opening hours?

22 THE WITNESS: In front of my restaurant I
23 have not. There are several restaurants in the area, so
24 I cannot speak for them. But in regards to my
25 restaurant when -- in the busiest time we have valet

1 parking which when a customer don't find a spot the car
2 is taken and driven away from the premises.

3 THE PUBLIC: Well, my question is not
4 whether your customers have created double parking
5 problems, my question was, have you observed any double
6 parking problems?

7 THE WITNESS: Not in front of my property.

8 THE PUBLIC: Not in front your property?

9 THE WITNESS: Correct.

10 THE PUBLIC: All right.

11 I don't know if we will be back for another
12 meeting, but we have members who would testify
13 otherwise. In fact, I can say personally, and since I
14 am under oath, that I frequently see double parking
15 problems in front of the restaurant at the intersection
16 of Morris avenue and Union. So I believe that there is
17 a problem. There will be problems with parking. There
18 will be problems with traffic, especially if there's
19 going to be an expansion of this use with the additional
20 traffic, cars and people coming in.

21 MR. BONNER: I would point out that the
22 restaurant located at the junction of Morris and Union
23 is not the restaurant that we're talking about.

24 THE PUBLIC: You're up the street a little
25 bit.

1 MR. BONNER: Yeah.

2 THE PUBLIC: All right. So --

3 MR. BONNER: Three or four doors up the
4 street.

5 THE PUBLIC: That's correct. The double
6 parking problems that we see extend up to your -- to the
7 restaurant that's in question and past the intersection.
8 So it's an area problem. It's not a problem in front of
9 The Garden, of this particular restaurant. It's a
10 parking problem that occurs up and down that area.

11 COMMISSIONER NUNES: Around Elizabeth.

12 MR. FERNANDEZ: I agree.

13 THE PUBLIC: Now, if I could ask a question
14 or two of Mr., I believe it was Kurus, from Neglia.

15 MR. BONNER: Sure, he's available.

16 MR. McNAMARA: Mr. Kurus, remember you're
17 still under oath.

18 THE PUBLIC: You stated that it was your
19 opinion that the use variances could be granted without
20 detriment to the local zoning, what are the facts that
21 you based that opinion on?

22 THE WITNESS: The fact that the site is
23 particularly well suited for a restaurant use. That the
24 site can accommodate the proposed outdoor enclosure
25 based on all the testimony that we heard.

1 THE PUBLIC: Well, what testimony are you
2 referring to?

3 What I'm trying to say is that I don't
4 believe that you've given basically a recitation of the
5 statutory guidelines and requirements but without
6 stating the facts supporting those. And I would like to
7 have a complete statement of facts that would justify
8 these D variances.

9 Q. Anthony, you pointed to purposes of the MLUL that
10 are served by the application, correct?

11 A. I did.

12 Q. And wouldn't that be a factual statement backing
13 up the application?

14 A. Absolutely. Yes.

15 THE PUBLIC: Could you restated them?

16 THE WITNESS: Purpose C of the Municipal
17 Land Use Law would be advanced by providing the outdoor
18 dining area which will serve as open space as part of
19 the restaurant. The architect provided testimony that,
20 all though a zero foot side yard setback is permitted in
21 the zone, we're proposing a minimum of three foot side
22 yard setback in order to provide adequate light, air and
23 open space in order to have no adverse impact onto the
24 adjacent properties.

25 I also stated Purpose I would be advanced.

1 Purpose I of the Municipal Land Use Law which states to
2 -- that the project would provide a -- promote a
3 desirable visual environment by improving the restaurant
4 and providing a more prominent street frontage to
5 extract customers, to create curb appeal and to draw
6 diners into the restaurant. And really, I mean the site
7 is -- the site currently has a restaurant on it today.
8 There's other restaurants within the -- this corridor of
9 Morris Avenue. It's my opinion this sites particularly
10 well suited for the existing restaurant, the expansion
11 of the existing restaurant and the outdoor dining area.

12 Q. Because of it's location within commercial
13 corridor and proximity to residents in the area and --

14 A. Correct.

15 Q. And a necessary compliment of available people to
16 the employees?

17 A. Yes.

18 Q. Okay.

19 MR. BONNER: Mr. Lenahan, you talked about
20 -- you asked questions about basis. Can you point to a
21 substantial detriment to the zone plan and zoning
22 ordinance that you think would refute anything that Mr.
23 Kurus said?

24 THE PUBLIC: There is -- there is no, there
25 is, in my opinion -- well, let me change that.

1 This is an area which has, which does not
2 permit restaurants all along this -- all along that
3 street on that particular side. Once you start to break
4 into that entire street you will have variances or you
5 will have other businesses seeking variances for
6 restaurants as well. If the initial use, the basic use
7 is not permitted then the expansion should not be
8 permitted either. So --

9 MR. BONNER: Go ahead, I didn't mean to
10 interrupt. Go ahead.

11 THE PUBLIC: One has to draw a line
12 somewhere and the line has been drawn on the other side
13 of Morris Avenue as far as allowing restaurants, and
14 allowing a restaurant on this particular side will
15 contribute to even more traffic congestion, more double
16 parking problem, more parking problems and that will
17 interfere with the local zoning and --

18 MR. BONNER: Well, I think the purpose of
19 variances and zoning boards in particular is to provide
20 flexibility to the zone plan that exists in the area.
21 You have an area here, a commercial corridor, that has
22 developed organically and there are restaurants on both
23 sides of the street and they serve the population of the
24 area. I don't see how that's a detriment. I don't see
25 how anything you described is a detriment, other than

1 you don't want this particular restaurant to be
2 expanded.

3 THE PUBLIC: I don't think the legal -- I
4 don't believe the legal issues is for me to prove that
5 it will be detrimental, it's for the applicant to prove
6 that it will not be detrimental.

7 MR. BONNER: And you're correct in that
8 respect and the applicant, through it's professional
9 team, has presented their case and it's for the board to
10 decide whether those proofs are adequate or not and I'm
11 only questioning you and asking you if you have anything
12 you think you can present in terms of factual, you know,
13 pictures of double parking perhaps or somehow show a
14 detriment to an existing use that's being expanded that
15 was actually expanded pursuant to the COVID guidelines
16 and has functioned quite well and the applicants are
17 here before the board trying to formalize that
18 particular use of the property that has thrived within
19 this neighborhood. So.

20 THE PUBLIC: Well, I can say that my
21 personal observation and driving from my home to this
22 club I have had to negotiate through double parking
23 problems and backed up traffic because of double parking
24 many times. And I can tell you we have had to tow
25 people out of our parking lot who have told us that they

1 were customers at the restaurant. Or at a local
2 restaurant.

3 MR. BONNER: Okay. Local restaurant or this
4 particular restaurant?

5 THE PUBLIC: Actually I cannot say that
6 anyone told me directly, but I can have someone tell --
7 testify tonight that it was somebody from -- using that
8 particular restaurant. And if you would like me to get
9 this person sworn in, I'd be happy to do so.

10 MR. BONNER: That's up to you. I'm not
11 presenting your objection.

12 THE PUBLIC: Then I would ask that I be
13 allowed to present a witness who is an officer of the
14 Knights of Columbus and who manages the parking lot and
15 who can testify as to his experience in having people
16 towed and warning people not to park in our parking lot.

17 CHAIRMAN CASTRO: Mr. Lenahan, has the
18 witness that you're referring to attended this meeting?

19 MR. LENAHAN: Yes. He sat by my -- yes, he
20 has. Through the entire meeting.

21 CHAIRMAN CASTRO: Mr. Lenahan, please let me
22 speak.

23 You have not been able to indicate
24 specifically that someone from this specific restaurant
25 has been parking in this parking lot.

1 THE PUBLIC: This is what I have been told,
2 as I said.

3 CHAIRMAN CASTRO: That's hearsay, Mr.
4 Lenahan.

5 THE PUBLIC: Exactly, and I have the person
6 who has told me this sitting here, he's willing to
7 testify so that it will be direct testimony.

8 CHAIRMAN CASTRO: And he has attended this
9 meeting from the beginning?

10 THE PUBLIC: Yes.

11 CHAIRMAN CASTRO: Okay.

12 MR. McNAMARA: Mr. Bonner, you have any
13 objections?

14 MR. BONNER: Are we going to see this
15 witness or are we just going to be listening. I
16 understand you recognize Mr. Lenahan's voice, but I
17 don't --

18 THE PUBLIC: Unfortunately -- well, let me
19 see. There we go. All right. Now -- you have to
20 excuse me because I'm using -- all right.

21 I can move. Now, if you would like to swear
22 in the witness his name is Owen Iungerman.

23 O W E N I U N G E R M A N, having been duly
24 sworn under oath according to law testifies as follows:

25 MR. McNAMARA: Mr. Iungerman, you've heard

1 the questions that have been raised and in particular
2 the comments that have been offered by Mr. Lenahan and
3 the questions and testimony that have been proffered by
4 the applicant and it's experts. What can you add to the
5 discussion in terms of the issue, the inappropriate use
6 of the K of C parking area?

7 THE WITNESS: On several different
8 occasions, mostly on Friday and Saturday nights, I've
9 had to tow cars out of our lot, after the people came
10 and said, where's my car, and were they told that it was
11 towed and they said, well, I was at The Garden Club, as
12 they stated, and was told to park around here. I don't
13 know if that's true, but I know that's where they said
14 they were. Other times I've had to go out in the
15 parking lot as we were closing and I see vehicles parked
16 with people in our lot in the rear and we approached
17 them, asked what they were doing there. They're getting
18 ready to go to The Garden Club they told us and that
19 that's the only place they could find to park and they
20 were advised they could not park here and we have signs
21 posted for that.

22 MR. BONNER: And how often has that
23 occurred?

24 THE WITNESS: Quite often.

25 MR. BONNER: Can you be more specific than

1 that. Let's say in the last six months, how many cars
2 have been towed that you identified as using The Garden
3 restaurant?

4 THE WITNESS: Towed about a half a dozen
5 cars out of here but I've also instructed more than two
6 dozen to leave our property. I cannot give you exact
7 times and dates. I never thought I would have to need
8 that.

9 MR. BONNER: And every single one of those
10 -- I'm sorry, I didn't mean to interrupt.

11 THE WITNESS: That's all right.

12 MR. BONNER: Every single one of those 18
13 episodes identified as going to The Garden restaurant?

14 THE WITNESS: Yes, sir.

15 MR. BONNER: Are there any another
16 restaurants that have been identified or just The
17 Garden?

18 THE WITNESS: No, not just The Garden.

19 MR. BONNER: Okay.

20 THE WITNESS: I've had other problems also.

21 MR. BONNER: So you've had more than 18 cars
22 and 18 of them you're identifying over say the last six
23 months as being affiliated with The Garden restaurant?

24 THE WITNESS: Yes, sir.

25 MR. BONNER: Okay.

1 MR. SOSA: Mr. Chairman.

2 MR. McNAMARA: I was going to say, Mr.
3 Chairman you can offer, since this gentleman's being
4 proffered as a witness the members of the board do have
5 a right to cross examines.

6 CHAIRMAN CASTRO: Yes, let me just --
7 Commissioner Sosa.

8 COMMISSIONER SOSA: I have a question for
9 him. If he's having a issue with Garden and other
10 restaurants in the area, did you ever try to fence in
11 the property or secure the lot so you won't have these
12 issues?

13 THE WITNESS: Our lot is fenced. It has
14 openings because we do allow people in the neighborhood
15 that have agreements with us to park here, so we don't
16 close the gate. But we have two entrances, signs are
17 posted and we also have signs posted in the lot saying
18 that, unauthorized parking is not allowed.

19 COMMISSIONER SOSA: Okay. And you got a
20 third-party towing company towing the cars, right?

21 THE WITNESS: Yes sir, we do. They only tow
22 when we call them.

23 COMMISSIONER SOSA: Okay.

24 CHAIRMAN CASTRO: I have a question for you,
25 I'm sorry, your name is?

1 THE WITNESS: Owen.

2 CHAIRMAN CASTRO: Mr. Bonner asked you in
3 the last six months how many cars have you identified as
4 patrons coming or going from The Garden.

5 THE WITNESS: Yes, he did and I estimated the
6 amount of cars that I -- he asked in regards to what I
7 stated. Okay. I stated at least 18 cars that I have
8 told people they could not park here in person.

9 CHAIRMAN CASTRO: At least 18 cars?

10 THE WITNESS: Mostly -- pardon me, sir.

11 CHAIRMAN CASTRO: Go ahead.

12 THE WITNESS: I've lost you, I think.

13 CHAIRMAN CASTRO: You're saying that in the
14 last six months 18 people have illegally parked in your
15 parking lot, am I right?

16 THE WITNESS: I am saying they've pulled in,
17 I didn't tow 18. I said I've approached up to 18 cars
18 and I asked them what they were doing in our lot and
19 they told me they were parking to go to The Garden Club.
20 And I told them they could not park there and they left.

21 CHAIRMAN CASTRO: In the last six months 18
22 cars -- you have approached 18 cars or you have told a
23 combination of totaling 18 cars between the ones you
24 approached and the ones you have towed and every single
25 one of them said, I'm going or coming from The Garden.

1 Is that what you are saying?

2 THE WITNESS: Yes, at least. I am not
3 saying there's been no others. I'm saying I know of at
4 least, and I am not here every single night.

5 MR. BONNER: Mr. Chairman, can I ask another
6 question.

7 CHAIRMAN CASTRO: Mr. Bonner, go ahead.

8 MR. BONNER: Have you ever gone over to The
9 Garden restaurant and spoken to management about the
10 problem and asked them to do something about it?

11 THE WITNESS: No sir, I did not.

12 MR. BONNER: Okay. That would have made
13 some sense.

14 And you indicated that you have agreements
15 with other people in the area and you allow them to use
16 the restaurant. Would you consider leasing spaces to
17 the restaurant?

18 THE WITNESS: No sir, we wouldn't do that.
19 The people that we allow to park here are people that
20 live in the area and people that work here during the
21 daytime. In the area. Otherwise we have no agreements
22 with any restaurants or clubs or anyone else to park in
23 our lot.

24 CHAIRMAN CASTRO: Commissioner Sosa, you
25 were going to say something.

1 COMMISSIONER SOSA: Yes, Mr. Chairman.

2 Just for the record I own -- I own some real
3 estate, I own some lots, and this issue always happens
4 just with tenants not only with businesses, so I'm not
5 saying that it's okay with it but it's not helping if
6 you're not securing the property. It's like anything
7 else. I have people parking on my driveway in my
8 personal home. I put a fence, that resolved the issue.
9 Same thing here, same concept with my lots I have. I
10 fence it and that eliminate the issue as well. You have
11 to secure your property like anything else.

12 MR. LENAHAN: I'm going to ask a question
13 here.

14 Is it practical to secure the property by
15 closing it off after hours?

16 THE WITNESS: Not for us because we have
17 people that work late in the evening. They live in this
18 neighborhood, they came to us, we have a agreement to
19 allow them to park. We put up signs telling people
20 authorized parking only.

21 COMMISSIONER SOSA: If you secure the -- if
22 you secure the property you don't have to worry about
23 anything happening to the car and it's actually a better
24 sell for your clients actually.

25 THE WITNESS: Well sir, we don't have

1 someone to stand here and guard a gate.

2 COMMISSIONER SOSA: You don't have to guard
3 it. You can lock it and secure it. That's all I'm
4 saying.

5 THE WITNESS: I can't give locks out to --
6 keys out to a number of people if I lock the gate.

7 COMMISSIONER SOSA: You don't have to
8 give them --

9 THE WITNESS: And these people are allowed
10 to park here overnight and they move their vehicles
11 different times and they have a written agreement with
12 us.

13 CHAIRMAN CASTRO: Mr. Bonner, do you have
14 anything else to say?

15 THE WITNESS: I have nothing more on it, sir.

16 CHAIRMAN CASTRO: Thank you.

17 Anyone else from the public -- thank you.
18 Anyone else from the public who wishes to speak
19 regarding this application?

20 THE PUBLIC: Yes.

21 COMMISSIONER CASTRO: Mr. Barros.

22 THE PUBLIC: Yes.

23 CHAIRMAN CASTRO: Can I have your name,
24 please.

25 THE PUBLIC: Paul Barros, sir.

1 CHAIRMAN CASTRO: I don't see you in the
2 camera.

3 THE PUBLIC: 323, 325, 327, 329 Morris
4 Avenue.

5 P A U L B A R R O S, having been duly sworn
6 under oath testifies as follows:

7 MR. McNAMARA: Mr. Barros, you have a
8 statement you wish to make or do you want to ask
9 questions of the witness that have been put forward this
10 evening?

11 THE PUBLIC: First thing is, do you need my
12 video on or --

13 MR. McNAMARA: Yes, you have to have your
14 video and audio on.

15 THE PUBLIC: Okay.

16 First thing is, the notice sent out or the
17 meeting ID is incorrect. So I don't know if a lot of
18 people missed or did not attend. But the meeting ID
19 isn't correct on the notice.

20 MR. McNAMARA: What is the nature of the
21 defect you're alleging in the notice, sir?

22 THE PUBLIC: The meeting ID I have says 983
23 7960 9814 and it's supposed to be 933.

24 MR. McNAMARA: Mr. Bonner, do you have the
25 affidavit of service?

1 MR. BONNER: I believe so. Yes.

2 MR. McNAMARA: I'll try and get my copy also
3 here. Meeting ID number I see here is 983 7960 9814.

4 THE PUBLIC: That's correct. That's the
5 wrong number.

6 MR. McNAMARA: Sir, how do you know that's
7 the wrong number?

8 THE PUBLIC: Because I got an e-mail today
9 with the right number.

10 MR. McNAMARA: And who sent you the e-mail?

11 THE PUBLIC: I would have to check. I don't
12 have that open right now.

13 MR. McNAMARA: Did you receive the notice in
14 the mail or did you look at the notice in the newspaper?

15 THE PUBLIC: This is the notice in the mail.
16 Certified mail.

17 MR. McNAMARA: Well, I need to know who you
18 got -- who sent you the e-mail with the revised number.

19 THE PUBLIC: One second. Let me check with
20 my wife.

21 MR. McNAMARA: Mr. Bonner, is that number
22 the correct number that's in the legal notice?

23 MR. BONNER: The notice contains the numbers
24 that we received from Monae, as I understand it. I
25 would have to go back and look at the information that

1 we received.

2 MS. WHITEHEAD: Just a mix-up of one number.
3 The 983 to the 933. I looked for my e-mail as well.

4 THE PUBLIC: It was the addendum and the
5 e-mail.

6 MR. McNAMARA: Mr. Chairman, I'm going to
7 request at this time, can the board take a brief recess
8 please while I look into this with the counsel for the
9 applicant.

10 Mr. Bonner, give me a couple minutes and
11 then please call me on my cell phone.

12 MR. BONNER: Pat, I will. I jotted it down
13 somewhere. I got it.

14 MS. WHITEHEAD: Patrick, should I pause this
15 recording?

16 MR. McNAMARA: Yeah, we'll just take a --
17 we'll take a ten minute recess.

18 MS. WHITEHEAD: Okay.

19 (Whereupon, a short recess is taken.)

20 MR. McNAMARA: Mr. Barros, do you have any
21 other comments you wish to make other than the issue
22 with regard to the adequacy of the notice?

23 THE PUBLIC: That's about it as far as the
24 notice. I like to make sure that everybody's
25 represented on this notice.

1 MR. McNAMARA: Okay. Fair enough.

2 For the members of the board, I have
3 conferred with the counsel for the applicant and the
4 chairman, there is a legitimate question as to whether
5 the information that was made available was accurate
6 with regard to being able to access the meeting through
7 electronic means, via Zoom. What we are going to do is,
8 I'm going to recommend to members of the board to vote
9 to carry this application to the next meeting in August.
10 The applicant will issue new notice, we will provide --
11 Mr. Fishman, you there still. We will need an expedited
12 hearing transcript that we will then make available to
13 the board and the public and post it on the boards
14 website so it's available to the public. Mr. Lenahan,
15 we'll provide you with a copy and then the hearing will
16 resume at the August meeting of the board.

17 Mr. Bonner, these terms acceptable to you
18 and your client?

19 MR. BONNER: It is Mr. McNamara. I would
20 ask Ms. Whitehead to get us the Zoom information as soon
21 as possible so we can get the notices prepared.

22 MR. McNAMARA: Fair enough.

23 And with that Mr. Chairman, unless there are
24 other members of the public who wish to speak and be
25 heard tonight before we close the hearing, I would ask

1 that they please indicate -- indicate their desire to
2 speak or ask any questions of any of the witnesses
3 before we move to close the public hearing.

4 THE PUBLIC: Can I proceed with any
5 questions?

6 MR. McNAMARA: Mr. Barros, if you want to
7 ask something now you can do so or wait until August.
8 It's your choice.

9 THE PUBLIC: Oh, the more information we
10 have the better. So I'd like to proceed.

11 CHAIRMAN CASTRO: Let me ask you a question.
12 Where do you live?

13 THE PUBLIC: Say that again, I'm sorry.

14 MR. McNAMARA: Where's your residence, sir?

15 CHAIRMAN CASTRO: Where do you live.

16 THE PUBLIC: I'm sorry. You're talking over
17 each other. Repeat.

18 MR. McNAMARA: Where is your residence, sir?

19 THE PUBLIC: My residence is in Woodland
20 Park. My properties are at Morris Avenue. 323, 325,
21 327, 329 Morris Ave.

22 MR. McNAMARA: Okay. And what are the
23 nature of those businesses, sir?

24 THE PUBLIC: They're mixed use. Commercial
25 and residential.

1 MR. McNAMARA: Thank you.

2 All right. Do you have any questions you
3 wish to pose to any of the witnesses or do you wish to
4 make a statement?

5 THE PUBLIC: Well, let's start by saying
6 that the representation of the existing, of the 331
7 Morris Avenue is incorrect. There's -- does not reflect
8 what was existing on the drawings. So I suggest you go
9 back and take a look at the drawings. There were four
10 parking spaces in front of the area that's designated
11 for dining. That does not show in your existing
12 drawings. So hopefully that gets corrected and shown.

13 The other thing is, you talked about setback
14 between my -- the property adjacent to the proposing of
15 the structure. Three foot setback. I'd like to know
16 the distance between the front to the back of the
17 setback and want to make sure there is a, what do you
18 call it, a easement for the back of the building. For
19 the tenants adjacent to the proposed structure. You
20 spoke about three to five feet but no setback distance
21 to the back of the -- to the rear of the building.

22 MR. McNAMARA: Okay. Hold on right there,
23 sir.

24 Mr. Waga, could you -- Counsel, unless you
25 have an objection, can I have your witness respond?

1 MR. BONNER: Yeah. I have no idea what he's
2 asking. If you're demanding an easement from my clients
3 I don't think that's acceptable.

4 MR. McNAMARA: I don't -- I'm not sure --
5 Mr. Waga -- Mr. Barros if you could just please just try
6 to clarify your concern with regard to the setback.

7 THE PUBLIC: I'd like to know the setback,
8 the three foot or five feet setback, what is the
9 distance from the front of the Morris Ave to the rear of
10 the property?

11 MR. McNAMARA: The lot depth from curb to
12 back?

13 THE PUBLIC: Yes.

14 MR. McNAMARA: Mr. Waga, do you have that
15 information?

16 MR. WAGA: Sure.

17 So actually my colleague, Mr. Kurus, would
18 be better suited to answer that because he has a more
19 specific survey.

20 MR. McNAMARA: Mr. Kurus, we turn to you
21 then.

22 MR. WAGA: No, I can answer it.

23 MR. KURUS: 111.

24 MR. WAGA: I see it now.

25 The lot is irregular in shape. The lot on

1 the left side of the property --

2 THE PUBLIC: I'm not talking about, please.

3 The right side, let's stick to the right side where

4 these structures being built.

5 MR. WAGA: It's 111.03 feet.

6 THE PUBLIC: So the setback, the three foot,

7 five foot setback goes 111.03 feet?

8 MR. WAGA: It'll go as far as it needs to go

9 separating the structures.

10 THE PUBLIC: All right.

11 So that's not an answer really.

12 MR. WAGA: Well, it is an answer. I have no

13 idea how deep your structure is. It's not indicative on

14 any of our property surveys nor does it need to be. But

15 as far back as your property, your structure on your

16 property exists, that's as far back as we're required to

17 provide a separation.

18 THE PUBLIC: So the -- what I'm trying to

19 get at is that the back -- there's a backyard and that

20 was used in an easement for the tenants. Now you're

21 building a wall there. A 21 foot wall, that no longer

22 will become an easement. That's what I'm trying to get

23 at.

24 MR. WAGA: I don't know -- I think you're

25 misrepresenting the word easement.

1 THE PUBLIC: Do you want me to say fire
2 easement.

3 MR. WAGA: No, that's still a
4 misrepresentation of terms.

5 MR. BONNER: Can you explain to us what you
6 mean by an easement? Nobody knows what you're trying to
7 get across.

8 THE PUBLIC: Easement, if there is a fire
9 and there's an emergency, there's a rear exit for the
10 tenants, they go out to the yard. They need to get out.
11 How do they get out?

12 MR. BONNER: Okay.

13 On your property?

14 THE PUBLIC: Yes.

15 MR. BONNER: They have room on your property
16 to get out of the building.

17 THE PUBLIC: Yes. They have a backyard. A
18 stair exit in the back.

19 MR. BONNER: Okay. And with a zero lot line
20 available in the city of Elizabeth a building, a brick
21 building could have been built right next to your
22 building, what would you propose that your tenants do?
23 Have you provided them with safe egress from the
24 building if there was a building built within a zero lot
25 line to the back of the property? How would your

1 tenants get out?

2 THE PUBLIC: We're not talking about if.

3 MR. BONNER: No. Well, we are because
4 you're the one who raised it.

5 THE PUBLIC: You're asking if, I'm saying
6 it's not an if. It is what it is. Exists now, okay.
7 Please, don't change the words.

8 MR. BONNER: Okay. What exists? What is
9 your expectation --

10 THE PUBLIC: It's just a wall. It's a
11 four-foot wall in the backyard that people go over to
12 exit in the event of an emergency that you're proposing
13 to build adjacent to it. A 21 foot high wall of
14 structure.

15 MR. BONNER: And you're presupposing that
16 your tenants have the right to climb over the wall --

17 THE PUBLIC: Yes.

18 MR. BONNER: -- onto our property, is that
19 what you're saying?

20 THE PUBLIC: Yes, for exiting.

21 MR. BONNER: I don't think that they have
22 that legal right.

23 THE PUBLIC: Okay.

24 MR. BONNER: I think you have an obligation
25 to --

1 THE PUBLIC: Can you do some research on
2 that, please.

3 MR. McNAMARA: You both have to stop talking
4 over each other.

5 MR. BONNER: We'll, I'm trying to say
6 something, he continually talks over me. I don't get
7 to make my point, but keep going, Mr. Barros.

8 THE PUBLIC: Let's go on to the next one,
9 please.

10 MR. BONNER: We haven't finished that one
11 yet.

12 CHAIRMAN CASTRO: Mr. Barros, you have to
13 allow Mr. Bonner to answer your question. You can't
14 speak over him. He's answering your question and you're
15 interrupted him.

16 THE PUBLIC: That's not so. He just asked
17 me to talk. You want to talk or you want me to talk?

18 CHAIRMAN CASTRO: Please say what you have
19 to say and let Mr. Bonner answer any questions that you
20 may have.

21 THE PUBLIC: I said what I have to say.
22 Please respond.

23 MR. BONNER: Okay.

24 What expectation do you have to utilize the
25 property that is not yours and why aren't you providing

1 safe egress from your building on your property to your
2 tenants?

3 THE PUBLIC: Have you done your research to
4 see when this was designed back in 1980 -- 1920's.

5 MR. BONNER: I'm asking you about property
6 rights. You don't have the right to utilize any
7 property but your own.

8 THE PUBLIC: Fine. Can -- we'll have the
9 fire department -- we'll have the fire department make
10 that decision. Let's be honest. Okay.

11 MR. BONNER: Okay. If you're interested in
12 trying to work something out with my client with regard
13 to their property you would have to approach them and
14 talk to them about perhaps paying for an easement or
15 some type of access on their property. Otherwise it's
16 your responsibility for your property.

17 THE PUBLIC: Okay.

18 MR. BONNER: And your tenants.

19 THE PUBLIC: So basically the subject that's
20 being built, you haven't answered my question. Is three
21 feet -- three foot only up to my brick building,
22 correct?

23 MR. WAGA: Again, we haven't established, if
24 you were listening on -- during my presentation, we
25 haven't established the exact footprint as of this

1 meeting. What we were looking for was direction from
2 the board and we've since received that direction, three
3 foot setback off of your left side property line.
4 Again, whether it's continuous from front to back has
5 yet to be determined. That's what's going to be part --
6 that's what's part of this next phase of complying with
7 the boards requirements for approval.

8 THE PUBLIC: Very good.

9 Now, one more thing. We also -- you guys
10 also mentioned this business is a restaurant. There's a
11 restaurant open until three in the morning, is that
12 allowed?

13 MR. McNAMARA: Maria, are businesses allowed
14 to be opened until 3 AM under the city code?

15 THE PUBLIC: You mentioned restaurants, are
16 restaurants open to 3 AM?

17 MR. McNAMARA: I don't know what the city
18 ordinance provides off the top of my head, sir.

19 THE PUBLIC: Okay. Let's call it a lounge
20 then.

21 MR. McNAMARA: I'm not going to redefine it
22 on the fly here before the board this evening.

23 THE PUBLIC: Okay.

24 MR. McNAMARA: The kinds of operation are,
25 to some degree, regulated by city ordinance. The

1 ordinance speaks for itself, it's online, you can go
2 look at it.

3 THE PUBLIC: Okay.

4 Now, if there were four additional -- four
5 parking spaces in front of existing -- in front of the
6 property, what is the plan to provide these four spaces
7 and where?

8 MR. McNAMARA: I believe there was prior
9 testimony by the co-owner, Mr. Gomez.

10 MR. BONNER: The plan clearly shows four
11 spaces in the front of the pharmacy building adjacent to
12 the restaurant and there was testimony regarding what
13 other parking considerations we're going to make.

14 THE PUBLIC: I'm not talking about pharmacy,
15 I'm talking about the property -- the structure being
16 built. There were four existing spots there --

17 MR. BONNER: Right.

18 THE PUBLIC: -- you have the original
19 drawings?

20 MR. BONNER: No. What, I guess don't
21 understand your point. Those spaces are no longer in
22 existence.

23 THE PUBLIC: There's a drawing that shows --
24 existing drawings, if you bring them up they show there.
25 To be there.

1 MR. BONNER: Yeah, those are the four that
2 are in front of the pharmacy building.

3 THE PUBLIC: No. There's four to the right
4 also. They're no longer there.

5 MR. BONNER: Okay. You just said that
6 they're there, now you're saying that they're no longer
7 there. There are four spaces on the drawing, that's it.
8 In front the of building. There are not eight spaces,
9 there are four. So what spaces are you talking about?

10 THE PUBLIC: Used to be eight spaces to the
11 right.

12 MR. BONNER: Right. And those are gone.
13 And they're gone.

14 THE PUBLIC: Can I speak. Can I speak.

15 MR. BONNER: Yeah, sure.

16 THE PUBLIC: To the right in front of The
17 Garden there were four spaces until they made a dining
18 space. There were four parking spaces there, designated
19 for parking. Right?

20 MR. BONNER: Okay. Do you have a question.

21 THE PUBLIC: Yes. Where are we going --
22 where you doing with those four spots?

23 THE PUBLIC: They're gone.

24 THE PUBLIC: They're gone. Okay. Very
25 good. Move onto the next one then.

1 What is the plan of the, I had a business
2 sign adjacent to my property that's on the wall that
3 somebody took upon themselves to move that sign up.
4 Now, that signs supposed to be down, it was permitted to
5 be down eight feet, seven feet. That signs moved up to
6 15 feet with my knowledge -- without my knowledge, I'm
7 sorry. Now you're building a wall there, how is that
8 sign going to be -- my business -- my adjacent tenant
9 going to advertise his business on the sidewall that was
10 permitted?

11 MR. BONNER: I don't know.

12 THE PUBLIC: Please do your research on
13 that.

14 MR. BONNER: No. It's your building, your
15 sign. If you got a sign permitted and it's at eight
16 feet and we build a building on a zero lot line nobody's
17 going to see that sign. We don't have to make an
18 accomodation for that.

19 THE PUBLIC: I have to make accomodation?

20 MR. BONNER: I said we don't have to make an
21 accomodation for that.

22 THE PUBLIC: Okay. I'll have the attorney
23 look into that.

24 Other thing is, besides the sign there are
25 windows, second floor windows are, the view is being

1 blocked with this structure. What's the accommodations
2 for that?

3 MR. BONNER: The architect testified that
4 they will not be blocked.

5 THE PUBLIC: So 21 feet -- 21.6 feet from
6 ground level is above my window, how they not blocked?

7 MR. BONNER: Greg.

8 MR. WAGA: We're not covering the windows.
9 Again, as has been testified to over the course of the
10 last three hours, almost three hours now. We are -- we
11 are capable of building right up against your structure,
12 as a curtesy my client has elected to offset the wall
13 three feet and the windows, you'll still be provided
14 with natural light, natural ventilation.

15 THE PUBLIC: They won't be able to see out
16 to the street. They will see a roof.

17 MR. WAGA: Correct.

18 THE PUBLIC: So it's not what they have now.

19 MR. WAGA: No, it's not what you have now.

20 THE PUBLIC: Okay. All right. Very good.

21 So everybody understood that, right?

22 So now for the most part that would be a
23 negative in my property -- to my property. It would be
24 a problem. All right. So that's something you can look
25 into.

1 For the past year and a half since the
2 business operated I have -- I have water, water going
3 inside of my building. Some rainwater from the
4 structure that was built there into my electric meters.
5 Now, that's been kind of resolved. I want to know
6 what's being done to get the water rerouted? Rainwater.

7 MR. McNAMARA: Mr. Kurus, would be able to
8 respond.

9 MR. KURUS: I guess the question was related
10 to what, runoff from the roof?

11 THE PUBLIC: Yes. Into the window and also
12 into the building, inside the building.

13 MR. WAGA: I can help you on that Anthony.

14 MR. KURUS: Okay.

15 MR. WAGA: So again, once the configuration
16 of the new structure is designed we will have to comply
17 with the stormwater runoff requirements that are
18 established and maintained within the city of Elizabeth.
19 And we'll have direct connection into, most likely, into
20 the stormwater. So there will be gutters and leaders
21 and that aspect along that -- along that right side
22 wall. If that's the way -- if that's the way we decide
23 to slope our roof. Again, we have not yet -- we have
24 not yet come to that conclusion.

25 THE PUBLIC: So this is preliminary drawings

1 that you guys put together, it's not -- it was supposed
2 to be a vote today. Right?

3 MR. McNAMARA: Not necessarily, sir.

4 THE PUBLIC: Not necessarily. Okay.

5 So for the past year and a half, I guess,
6 like I said, I've had numerous phone calls, numerous
7 texts from my tenants, I don't live there. As far as
8 two, three in the morning of loud music, patrons, and
9 patron, until two, three in the morning. Patrons
10 socializing, smoking, vomiting, urinating and littering
11 in front of my door steps. What's being done to remedy
12 this issue?

13 MR. McNAMARA: If there's public code
14 violation that's not within the purview of this board.
15 That is within the purview of code enforcement or the
16 police department.

17 THE PUBLIC: This is what's happening. I'm
18 just letting you know now. Okay.

19 MR. McNAMARA: Understood, sir.

20 THE PUBLIC: Very good.

21 So those are the phone calls and texts that
22 I get. I mean, listen guys, I'm reasonable but when I
23 have little kids and I get texts and calls in the
24 morning from my tenants, I hear from a few tenants, rats
25 in my backyard. Mice in the house. Never had tenants

1 call me before, they have mice, they have rats. It's a
2 problem. Big problem.

3 MR. GOMEZ: Can I address that.

4 THE PUBLIC: It becomes a public safety
5 issue here that you guys got to take into consideration.

6 MR. GOMEZ: Can I address that.

7 THE PUBLIC: Let's talk about the -- go
8 ahead, I'm sorry.

9 MR. GOMEZ: Can I address that. Answer to
10 your comment. Because I do have a comment also that I
11 do need to have it for the record.

12 When you talk about your tenants calling you
13 overnight to text you about the noise. I have proof,
14 and I also got phone numbers of the tennants that come
15 to my place to entertain their selves and they don't say
16 that to us. So I don't know that's a true statement or
17 not. Your tennants come to my place to eat. They come
18 to entertain themselves even with their kids. We have
19 managed the noise, this structure will also help to
20 minimize noise.

21 THE PUBLIC: All due respect, my tenants
22 have told me numerous times they are intimidated by the
23 business owners. Plural.

24 MR. GOMEZ: How that could be possible if
25 they come to our restaurant.

1 THE PUBLIC: This is what they're telling
2 me.

3 MR. GOMEZ: And that statement, unless it is
4 noted by notary republic and recorded --

5 THE PUBLIC: Should be no challenge --

6 MR. McNAMARA: Gentleman, you're getting far
7 afield here.

8 CHAIRMAN CASTRO: Please allow Mr. Gomez to
9 speak.

10 THE PUBLIC: I didn't finish speaking. I
11 was making my statement. Can I finish my statement.

12 CHAIRMAN CASTRO: Go ahead. Go ahead, Mr.
13 Gomez.

14 MR. GOMEZ: Okay. I want to say again, your
15 tenants come to my establishment to eat, to entertain.
16 Their kids come to my place. When we ask them about
17 your complaints, because we both have spoken about those
18 complaints, they're telling me that they don't know what
19 are you talking about.

20 THE PUBLIC: Let me read you --

21 MR. GOMEZ: No complaints.

22 THE PUBLIC: Let me read you one of the
23 complaints that I have on my phone right here.

24 "Hello Don Pablo. I'm writing to you
25 because I'm very tired that the people who come to The

1 Garden are always smoking at the door when the window is
2 open. They come up here and the also smoke marijuana at
3 the door. I have told them but just not -- they do not
4 -- nothing, only if I go tell them to get those people
5 out of there and since they are open they are -- since
6 they are open there are mice in the house and in the
7 yard." It's a text.

8 MR. GOMEZ: Yes, okay. There are numerous
9 restaurants in the area and places where people go to
10 eat and entertain also. You putting all the blame on
11 The Garden.

12 THE PUBLIC: All due respect, never had
13 these problems.

14 MR. GOMEZ: How do he know that they're
15 coming from The Garden?

16 THE PUBLIC: All due respect. I never had
17 these problems.

18 MR. McNAMARA: Mr. Barros, do you have any
19 other questions or anything else you want to place on
20 the record at this time?

21 THE PUBLIC: I have one more thing.

22 What is the -- is there a designated smoking
23 zone for the patrons?

24 MR. GOMEZ: As I said, we are right now
25 conducting business in an outdoor environment. Once

1 this environment is enclosed it's going to help the
2 whole community because there will be designated places
3 to smoke if we're permitted to do. If not there will
4 not be because most of the time indoor areas are not
5 permitted to smoke. But if we are allowed there will
6 be. That will minimize the noise. That will give us
7 decent seating capacity, that will eliminate your
8 problems in the most part. This, instead of going
9 against, you guys should be supporting it, because it's
10 helping to eliminate all the problems we have. We have
11 to understand something here. We suffer because of the
12 COVID. We were allowed by the government through an
13 executive order that is actually unclear to conduct
14 business outside. We still got that permit until
15 November of 2022 to sit people outside. When you sit
16 people outside in the street you make noise, of course.
17 People talk loud. People say loud things and do
18 different things. We play -- we play music in some
19 level. That obviously is going to affect the community.
20 We're trying to address that by enclosing this. When we
21 enclose this we will eliminate the noise permeantly and
22 we will also eliminate the noise going to the street.

23 THE PUBLIC: Mr. Gomez, again, all due
24 respect, you have the enclosure and these noises can
25 cause the windows vibrating from the music and the loud

1 patrons.

2 MR. GOMEZ: That is correct. It was a
3 temporary enclosure that we were permitted to do by the
4 fire department. That's not what we're building here.
5 The architect already placed the testimony what he's
6 going to build. What kind of wall he's going to build
7 near your property. We have the curtesy to give you
8 setbacks. We got to make sure that this doesn't bother
9 you in any way and not only to you, the whole community.

10 THE PUBLIC: It's not bothering me. It's
11 bothering me in the sense that I have these texts and
12 phone calls every night.

13 MR. McNAMARA: Gentleman, I don't think
14 we're going to get this resolved in the next few minutes
15 and we stop taking testimony in the next 15 minutes. So
16 I would at least like to advise the Chair at this point
17 -- Mr. Barros, unless you have anything else further.

18 THE PUBLIC: Something clearly referenced to
19 the parking. Parking is a nightmare. I had myself
20 personally encountered twice, I had to go to an
21 emergency call on a Sunday at two PM, I had no parking
22 to be found. I had to double park in front of my
23 property to get in due to a fire situation. Okay. So
24 parking is nowhere to be found during those business
25 hours that was mentioned.

1 COMMISSIONER SOSA: Do you have parking in
2 your property?

3 THE PUBLIC: Absolutely not, no.

4 COMMISSIONER SOSA: Okay.

5 THE PUBLIC: Now this goes for the parking
6 lot across the street, that was street parking. I would
7 say probably two, three blocks I could not find parking.
8 I had no choice to double park and go into my property.

9 CHAIRMAN CASTRO: Well, you don't have
10 parking in your property, right Mr. Barros?

11 THE PUBLIC: That's correct. Two
12 properties.

13 CHAIRMAN CASTRO: So you expect someone to
14 just save a parking space in front of you property for
15 you to be able to park when you don't have parking?

16 THE PUBLIC: No, I never said that. Meter
17 parking. This is all metered parking.

18 CHAIRMAN CASTRO: Your tenants do not have a
19 place to park either?

20 THE PUBLIC: That's correct. That's
21 correct. They don't have a place to park.

22 CHAIRMAN CASTRO: Mr. Barros, you have to
23 let me ask a question. Okay. You have a tendency to
24 speak over people and don't allow them to speak or
25 answer your question.

1 So you don't have parking in your building,
2 am I right?

3 THE PUBLIC: Yes.

4 CHAIRMAN CASTRO: So your tenants do not
5 have a place, assigned parking in your building, am I
6 right?

7 THE PUBLIC: Correct.

8 CHAIRMAN CASTRO: Okay. Thank you.

9 THE PUBLIC: Now, was that meant for
10 something else or what is this -- I'm being cross
11 examined for something. I'm just curious why you asked
12 those questions.

13 MR. McNAMARA: Sir, if you come forward and
14 offer testimony the board and the members of the public
15 do have a right to ask questions of you regarding your
16 testimony, including the conditions that you raised.

17 THE PUBLIC: Right. And I have the right to
18 ask the question, why were those questions asked.

19 MR. McNAMARA: It's part of the process of
20 building a record to get a full understanding of what's
21 going on. That's why questions are asked of witnesses,
22 sir.

23 THE PUBLIC: So there's no response for my
24 question. Okay.

25 MR. McNAMARA: Anything else, sir?

1 THE PUBLIC: It's just been a frustrating
2 time. Unfortunately, again, I'm an easy going person.
3 I have little kids, my tenants have little kids and it's
4 been a nightmare. That's about it.

5 MR. McNAMARA: Mr. Bonner, you have anything
6 else?

7 MR. BONNER: I do not, Mr. McNamara.

8 MR. McNAMARA: Okay.

9 Mr. Chairman, if you could ask if there are
10 any other members of the public who wish to speak nows
11 the time to do it.

12 CHAIRMAN CASTRO: Are there any other
13 members of the public who wish to speak regarding this
14 application?

15 So this is -- hearing is -- I close the
16 session to the public and this is what I have to say.

17 Mr. McNamara, our attorney, and the
18 applicants attorney had a conversation regarding a date
19 in service. Mr. McNamara suggested that's we adjourn
20 the meeting to the August meeting. Understanding the
21 urgency of this applicant to open his business I will
22 ask Mr. Gallerano.

23 Mr. Gallerano, can we call for a special
24 meeting in July understanding that the applicant has two
25 weeks to provide a new service so we can hear this

1 application some time within the two week period
2 allowing the applicant to provide service or to correct
3 the service, can we do that?

4 Probably have the special meeting for July
5 23.

6 MR. GALLERANO: I don't see any reason why
7 we couldn't do a special meeting if the applicant could
8 renotice, unless Mr. McNamara do you have any objection?

9 MR. McNAMARA: Well, my concern is that your
10 -- you have got an applicant with an engineer and
11 architect who acknowledge there's additional work that
12 needs to be done on the plans that have been previously
13 submitted. That's giving them next to no time to get it
14 in and meet the ten day rule that has to be on file at
15 City Hall and available to public no later than ten days
16 prior to the date of the hearing. If you're looking at
17 -- what was the date you proposed, Mr. Chairman, the
18 23rd?

19 MR. GALLERANO: 22nd would be the two
20 Thursdays.

21 MR. McNAMARA: 22nd literally does not --
22 today's the 8th. That's only 14 days. You need a
23 three-day lead time minimum to get an add published and
24 submitted in time into the Star Ledger. I mean, they'd
25 literally be sending out notice tomorrow morning.

1 MR. GALLERANO: What about the 29th, I mean,
2 that'll give them three weeks.

3 MR. McNAMARA: Wait a minute. Monae, when
4 is the, if we had a special meeting in August what is
5 the date that we already have on the annual meeting
6 schedule?

7 MS. WHITEHEAD: So we have the regular
8 meeting is August 12, which we do have a large
9 application going on for that meeting.

10 MR. McNAMARA: So if we --

11 MS. WHITEHEAD: And the special meeting date
12 would be August 26.

13 MR. McNAMARA: That's kind of late. I would
14 suggest -- let me get my calendar. Hold on one second.

15 MR. BONNER: If I might, Mr. McNamara. On
16 August 12 if we were to --

17 CHAIRMAN CASTRO: Mr. Bonner, give me one
18 second, please.

19 Today's the 8th of July. I understand Mr.
20 McNamara that the 22nd of July may be -- may be to
21 close. What about the 29th of July for a special
22 meeting?

23 MR. BONNER: I would be comfortable with
24 that in terms of notice.

25 MR. McNAMARA: I'm available on the 29th.

1 COMMISSIONER NUNES: Monae, can you make
2 something like that happen?

3 MS. WHITEHEAD: I can make it happen. I
4 just need to make sure we have a quorum for that
5 meeting.

6 MR. McNAMARA: Well, while we still have
7 members of the board still here, is there any member of
8 the board who cannot attend on the 29th?

9 CHAIRMAN CASTRO: Let's do something Monae,
10 can you call in your role call to see who's -- I am
11 going to be available for the 29th for this special
12 meeting. So why don't you role call them and the
13 commissioners would be able to --

14 MS. WHITEHEAD: Okay. Say aye if you can
15 make it, say nay if you can not. Thank you.

16 MS. WHITEHEAD: Commissioner Cano.

17 COMMISSIONER CANO: Aye.

18 MS. WHITEHEAD: Commissioner Congalves.

19 COMMISSIONER CONGALVES: Aye.

20 MS. WHITEHEAD: Commissioner Fernandez.

21 COMMISSIONER FERNANDEZ: Aye.

22 MS. WHITEHEAD: Commissioner Sosa.

23 COMMISSIONER SOSA: Aye.

24 MS. WHITEHEAD: Commissioner Donahue.

25 COMMISSIONER DONAHUE: Aye.

1 MS. WHITEHEAD: Commission Horta.

2 COMMISSIONER HORTA: Aye.

3 MS. WHITEHEAD: Vice chairman Nunes.

4 COMMISSIONER NUNES: Aye.

5 MS. WHITEHEAD: Chairman Castro.

6 CHAIRMAN CASTRO: Aye.

7 MS. WHITEHEAD: So I will put -- I will make
8 a Zoom meeting for July 29 for a special meeting for the
9 zoning board. I will send you the information, Mr.
10 Bonner and --

11 MR. McNAMARA: We'll make it available to
12 the public. It will get published and that will be a
13 7:30 PM start as is our custom.

14 MR. BONNER: And we will get the notices out
15 early next week provided we have the Zoom information.

16 MR. McNAMARA: And we'll make sure we get
17 that to you.

18 MR. BONNER: And we'll -- Mr. Waga and Mr.
19 Kurus will do their best to revise drawings in time to
20 get them posted ten days in advance as well.

21 MR. McNAMARA: Okay. They have to be in
22 City Hall ten days prior. So let's make sure we got a
23 date right now. Hold on.

24 MS. WHITEHEAD: They have to be in my office
25 and noticed by July 19, please, and thank you.

1 MR. BONNER: All right.

2 MR. McNAMARA: I ask just for safety, if you
3 can manage to get them delivered by close of business on
4 the 16th that would be preferable so we have no issues
5 at that point.

6 MS. WHITEHEAD: Yes.

7 MR. BONNER: I can't speak for Greg or
8 Anthony, but we'll do our best.

9 MR. McNAMARA: Okay.

10 MR. WAGA: We'll get it done. Greg Waga.

11 CHAIRMAN CASTRO: Thank you for that.

12 MR. McNAMARA: Okay.

13 With that Mr. Chairman, at this point the
14 public hearing on this having been closed it would be
15 appropriate to entertain a motion at this time to vote
16 to carry this application to a special meeting to be
17 held on July 29 at 7:30 PM. The meeting to be conducted
18 virtually by way of Zoom. Zoom information will be
19 available. New notice will be made by the applicant.

20 Mr. Bonner, you waive statutory time with regard
21 to the 125 day window for variance and site plan
22 approval as required under the Land Use Law?

23 MR. BONNER: We'll agree to any necessary
24 extension, Mr. McNamara.

25 MR. McNAMARA: Just for safety sake let's

1 just say August 31 and we'll worry about it then.

2 MR. BONNER: Okay.

3 Thank you everyone.

4 CHAIRMAN CASTRO: May I have a motion.

5 MR. McNAMARA: Due to the lateness of the
6 hour we can suspense with the closed session.

7 COMMISSIONER NUNES: Mr. Chairman, motion to
8 push this application to the July 29 meeting to be held
9 as a special meeting at 7:30 PM.

10 CHAIRMAN CASTRO: Motion moved by
11 Commissioner Nunes.

12 Second.

13 COMMISSIONER CANO: Second.

14 CHAIRMAN CASTRO: Second by Commissioner
15 Cano.

16 Madam Secretary, role call, please.

17 MS. WHITEHEAD: Commissioner Cano.

18 COMMISSIONER CANO: Aye.

19 MS. WHITEHEAD: Commissioner Congalves.

20 COMMISSIONER CONGALVES: Aye.

21 MS. WHITEHEAD: Commissioner Fernandez.

22 COMMISSIONER FERNANDEZ: Aye

23 MS. WHITEHEAD: Commissioner Sosa.

24 COMMISSIONER SOSA: Aye.

25 MS. WHITEHEAD: Commissioner Donahue.

1 COMMISSIONER DONAHUE: Aye.

2 MS. WHITEHEAD: Vice chairman Nunes.

3 COMMISSIONER NUNES: Aye.

4 MS. WHITEHEAD: Chairman Castro.

5 CHAIRMAN CASTRO: Aye.

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C E R T I F I C A T E

I, ERIC S. FISHMAN, a Shorthand Reporter and Notary Public of the State of New Jersey do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to the action; and that I am neither a relative nor employee of such attorney or counsel; and that I am not financially interested in the action.



ERIC S. FISHMAN, S.R.

Dated: 7/14/2021

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