

1 CITY OF ELIZABETH STENOGRAPHIC
 2 ZONING BOARD OF ADJUSTMENT TRANSCRIPT OF
 3 REGULAR MEETING PROCEEDINGS
 4 HELD VIRTUALLY VIA ZOOM
 5 Thursday, August 12th, 2021
 6 Commencing at 9:00 p.m.
 7 -----
 8 IN THE MATTER OF
 9
 10 Z-09-21
 11 331-337 Morris Avenue
 12 Mr. Pollo Rotisserie & Bakery, LLC
 13
 14
 15 B E F O R E :
 16 THE CITY OF ELIZABETH ZONING BOARD OF ADJUSTMENT
 17
 18 THERE BEING PRESENT:
 19 GEORGE A. CASTRO II, CHAIRMAN
 20 JOSE NUNES, VICE CHAIRMAN
 21 ELIZABETH CANO, COMMISSIONER
 22 YOLANDA EADY-PERKINS, COMMISSIONER
 23 FERNANDO F. FERNANDEZ, COMMISSIONER
 24 ANTONIO GONCALVES, COMMISSIONER
 25 MICHELLE SILVA-ALFONSO, COMMISSIONER
 26 RICHARD SOSA, COMMISSIONER, ALTERNATE #1
 27 EDDIE FALCON, COMMISSIONER, ALTERNATE #4
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13 EXHIBITS

14

| 15 NO. | <u>DESCRIPTION</u> | <u>ID</u> | <u>EVID</u> |
|---------------|---|-----------|-------------|
| 16 | B-1 Parking Space Lease 430 Morris Ave, Eight Spaces | 10 | |
| 17 | B-2 Parking Space Lease 426 Morris Ave, 15 Spaces | 11 | |
| 18 | B-3 Outdoor Dining Site Plan Last Revision 7/15/2021 | 29 | |
| 19 | | | |
| 20 | | | |
| 21 | (Exhibits retained by the Board.) | | |
| 22 | | | |
| 23 | | | |
| 24 | | | |
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1 A P P E A R A N C E S :

2

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6 HEHL & HEHL, ESQS.
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 Counsel for the objectors

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

14 MONAE WHITEHEAD, Board Secretary

15 ANTHONY GALLERANO, PE, PP

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09:00PM **1** (Time noted 9:00 p.m.)

09:00PM **2** CHAIRMAN CASTRO: Okay. So next

09:00PM **3** application to be heard tonight is application

09:00PM **4** Z-09-21, 331-337 Morris Avenue, Mr. Pollo Rotisserie

09:00PM **5** & Bakery, LLC.

09:00PM **6** Mr. Bonner?

09:00PM **7** MR. BONNER: Thank you, Mr. Chairman,

09:00PM **8** as you're aware, this is a continuation of a hearing

09:00PM **9** that was held on July 29th. We have the applicant's

09:00PM **10** representative is here again to give a little bit of

09:00PM **11** new information about the parking.

09:00PM **12** We've entered -- he has entered into

09:00PM **13** two additional leases covering 23 more spaces that

09:00PM **14** will be utilized by the valet service that they're

09:00PM **15** going to be providing to their diners, those are for

09:01PM **16** 426 and 430 Morris Avenue, they comprise 23 spaces.

09:01PM **17** He will also explain that the make up

09:01PM **18** of the parking lot over at 416 Morris Avenue, which

09:01PM **19** was the subject of some discussion last week with

09:01PM **20** Mr. Lenahan who was indicating that there were

09:01PM **21** multiple businesses sharing a parking lot for 49

09:01PM **22** spaces, and that's just not the case.

09:01PM **23** Our client tried to explain it last

09:01PM **24** week and he will provide some clarity this week that

09:01PM **25** there are actually 49 spaces, nine of them are

09:01PM 1 available and reserved for the laundromat on-site, 40
 09:01PM 2 are reserved for the gym and leased alternatively to
 09:01PM 3 the applicant.
 09:01PM 4 So with the 23 additional spaces at 426
 09:01PM 5 and 430, the applicant has access to 63 spaces for
 09:02PM 6 the valet parking service and he will talk tonight
 09:02PM 7 about the hours that the gym is open, what their
 09:02PM 8 experience has been in terms of available spaces and
 09:02PM 9 things like that.
 09:02PM 10 We have -- the engineer is available
 09:02PM 11 tonight, although he didn't plan on providing any
 09:02PM 12 testimony, only a couple of issues came up on
 09:02PM 13 engineering, one of which was drainage, which was
 09:02PM 14 pretty much handled by the architect in terms of how
 09:02PM 15 the drainage will be set up on the structure that's
 09:02PM 16 to be put on the property, excuse me.
 09:02PM 17 And the other issue was the access to
 09:02PM 18 the refuse container to the dumpster in the back and
 09:02PM 19 as is clearly shown on the plans, there's a
 09:02PM 20 truck-turning template that shows how a garbage truck
 09:02PM 21 can get in and out of the property.
 09:02PM 22 And, additionally, we have our planner
 09:02PM 23 who will provide the basis for the variances that are
 09:02PM 24 being requested.
 09:02PM 25 For now I would like --

09:02PM 1 MR. McNAMARA: Counsel, before you go
 09:03PM 2 any further, I just want to note for the record, has
 09:03PM 3 Mr. Lenahan entered his appearance, is he here?
 09:03PM 4 MR. BONNER: I saw a Peter Lenahan
 09:03PM 5 earlier, but not the same Lenahan that was here last
 09:03PM 6 time.
 09:03PM 7 CHAIRMAN CASTRO: I see him here.
 09:03PM 8 MR. McNAMARA: Is counsel for the
 09:03PM 9 Knights of Columbus present? Is there a
 09:03PM 10 representative of the Knights who is present?
 09:03PM 11 Okay. They still have the opportunity
 09:03PM 12 to log in, but I just want to know what counselor
 09:03PM 13 here is -- there was another objector's counsel also
 09:03PM 14 who participated in the last meeting, Mr. DiStefano.
 09:03PM 15 MR. DiSTEFANO: Yes, I'm here.
 09:03PM 16 MR. McNAMARA: Okay.
 09:03PM 17 Are you intending to present any
 09:03PM 18 rebuttal witnesses this evening?
 09:03PM 19 MR. DiSTEFANO: Yes, I have Edward
 09:04PM 20 Collins, planner. There is my client Mr. Barros, and
 09:04PM 21 there's a tenant of Mr. Barros's who's a resident
 09:04PM 22 there, Georgiana Brady Lema (phonetic).
 09:04PM 23 MR. McNAMARA: Okay. Yeah, after
 09:04PM 24 Mr. Bonner had completed putting in his case in full,
 09:04PM 25 you will have the opportunity then to present your

09:04PM 1 rebuttal witnesses.
 09:04PM 2 I admonish both of you now to make sure
 09:04PM 3 you advise all your witnesses, as I am stating here
 09:04PM 4 now for the record, that they must maintain full
 09:04PM 5 video and audio at all times while making -- while
 09:04PM 6 representing their testimony and responding to any
 09:04PM 7 questions from the board, any opposing counselor or
 09:04PM 8 objectors or members of the public, at all times
 09:04PM 9 video and audio must stay on.
 09:04PM 10 With that, Mr. Bonner, unless you have
 09:04PM 11 anything further, we'll take your first witness.
 09:04PM 12 MR. BONNER: Thank you. I would like
 09:04PM 13 to --
 09:04PM 14 MR. McNAMARA: Mr. DiStefano, I'm
 09:04PM 15 sorry, Mr. DiStefano, you have no objection to that
 09:05PM 16 course of proceeding?
 09:05PM 17 MR. DiSTEFANO: No objection.
 09:05PM 18 MR. McNAMARA: And your client
 09:05PM 19 understands that since he's appearing through you as
 09:05PM 20 counsel, you will be asking any questions on his
 09:05PM 21 behalf?
 09:05PM 22 MR. DiSTEFANO: Yes.
 09:05PM 23 MR. McNAMARA: Thank you.
 09:05PM 24 Thank you, Mr. Bonner, the floor is
 09:05PM 25 yours.

09:05PM 1 MR. BONNER: Thank you. Edwin Gomez is
 09:05PM 2 here again, he was sworn last time, he's a
 09:05PM 3 representative of the applicant. I would like to
 09:05PM 4 start by asking him if he has entered into --
 09:05PM 5 MR. McNAMARA: Just before you start,
 09:05PM 6 Mr. Bonner.
 09:05PM 7 Mr. Gomez, please be advised that you
 09:05PM 8 remain under oath, that you were sworn at the prior
 09:05PM 9 hearing, and the testimony you remain is still
 09:05PM 10 obligated to satisfy the terms of that oath.
 09:05PM 11 Thank you.
 09:05PM 12 MR. GOMEZ: Understood.
 09:05PM 13 E D W I N G O M E Z,
 09:05PM 14 Having been previously sworn, continues to
 09:05PM 15 testify as follows:
 09:05PM 16 DIRECT EXAMINATION
 09:05PM 17 BY MR. BONNER:
 09:05PM 18 Q. You -- we sent over two copies to
 09:05PM 19 Ms. Whitehead, the board secretary, of the leases,
 09:05PM 20 the additional leases you entered into.
 09:05PM 21 Can you tell us the addresses for those
 09:05PM 22 two leases and how many spaces they represent for
 09:05PM 23 your valet service use?
 09:05PM 24 A. Yes.
 09:06PM 25 Good evening, everyone.

09:06PM 1 **The first lease is on 426 Morris Avenue**
 09:06PM 2 **in Elizabeth, New Jersey, right next to the 416**
 09:06PM 3 **Morris Avenue that we already have.**
 09:06PM 4 **And also in the purple right next to it**
 09:06PM 5 **to the right, the 430 Morris Avenue, Elizabeth, New**
 09:06PM 6 **Jersey, which we have eight spots. I didn't say that**
 09:06PM 7 **the previous lease for 426 has 15 spots available as**
 09:06PM 8 **well, for a total of 23 on top of the 40 on 416**
 09:06PM 9 **Morris Avenue**
 09:06PM 10 **Q.** Thank you.
 09:06PM 11 MR. BONNER: Mr. McNamara, the copies
 09:06PM 12 of those documents were sent to you, they can be --
 09:06PM 13 can they be admitted as evidence or would you like me
 09:06PM 14 to put them on -- as exhibits, or would you like me
 09:06PM 15 to put them up on my screen?
 09:06PM 16 MR. McNAMARA: Please put them on your
 09:06PM 17 screen and we'll mark them as exhibits. Let me check
 09:06PM 18 the transcript. I think all the exhibits from the
 09:06PM 19 prior hearing were part of the application package.
 09:06PM 20 MR. BONNER: Correct.
 09:07PM 21 MR. McNAMARA: So anything that's new,
 09:07PM 22 let's start with A-1 and go from there.
 09:07PM 23 MR. BONNER: And the lease for 416 was
 09:07PM 24 entered last time as well.
 09:07PM 25 MR. McNAMARA: All right. So the new

09:07PM 1 leases let's enter those as Exhibits A and B -- A-1
 09:07PM 2 and A-2.
 09:07PM 3 MR. BONNER: This is a parking space
 09:07PM 4 lease agreement for 430 Morris Avenue for eight
 09:07PM 5 parking spaces, I don't think we need to go into any
 09:07PM 6 more detail than that for the sake of this hearing.
 09:07PM 7 (Whereupon, Parking Space Lease
 09:07PM 8 Agreement for 430 Morris Avenue for Eight
 09:07PM 9 Parking Spaces is marked as Exhibit B-1 for
 09:07PM 10 identification.)
 09:07PM 11 MR. McNAMARA: What is the term of the
 09:07PM 12 lease? Let's just get that in the record, please.
 09:07PM 13 MR. BONNER: It's a one-year lease that
 09:07PM 14 renews automatically every year.
 09:07PM 15 MR. McNAMARA: Okay.
 09:07PM 16 CHAIRMAN CASTRO: And the hours of the
 09:07PM 17 lease?
 09:07PM 18 MR. GOMEZ: 5:00 p.m. to 6:00 a.m.
 09:07PM 19 every day.
 09:07PM 20 BY MR. BONNER:
 09:07PM 21 **Q.** The business operated at this site,
 09:07PM 22 Mr. Gomez, is closed at the times you were busiest,
 09:07PM 23 correct, during your dinner hour?
 09:08PM 24 **A. Yes, it's a law office and they work**
 09:08PM 25 **from 9:00 to 5:00 p.m.**

09:08PM 1 **Q.** Thank you.
 09:08PM 2 MR. BONNER: And this is, Mr. McNamara,
 09:08PM 3 I'm not sure what number we're up to here.
 09:08PM 4 MR. McNAMARA: A-2.
 09:08PM 5 MR. BONNER: A-2 for tonight. We had
 09:08PM 6 additional exhibits last time.
 09:08PM 7 MR. McNAMARA: Okay. Well, then we'll
 09:08PM 8 go with B-1 and B-2, we'll start that way to
 09:08PM 9 distinguish it.
 09:08PM 10 MR. BONNER: This is for 426 Morris
 09:08PM 11 Avenue, it represents a parking space lease for 15
 09:08PM 12 spaces, same essential terms as the lease identified
 09:08PM 13 previously, it is one-year lease renewable
 09:08PM 14 automatically.
 15 (Whereupon, 426 Morris Avenue Parking
 16 Space Lease for 15 Spaces is marked as
 17 Exhibit B-2 for identification.)
 18 BY MR. BONNER:
 19 **Q.** And the hours of operation of this
 20 business, the business operated at this center,
 21 Mr. Gomez, do they conflict with your busiest hours
 22 of operation?
 23 **A. No, it's not. It's a business that**
 24 **runs operations during the day, it's a physical**
 25 **therapy place.**

1 **Q.** Thank you.
 2 **A. No problem.**
 3 MR. BONNER: That's the end of the
 4 exhibits for now.
 5 BY MR. BONNER:
 6 **Q.** Okay.
 7 Mr. Gomez, having introduced those two
 8 leases, can you tell us the lease at 416 that was
 9 introduced last time, we noted that there are only
 10 two businesses that operated out of that parking lot,
 11 one is a laundromat.
 12 Can you tell me how many reserve
 13 parking spaces the laundromat has?
 14 **A. Nine.**
 09:09PM 15 **Q.** So that would leave 40 spaces for the
 09:09PM 16 gym and for your valet service to share, correct?
 09:09PM 17 **A. That is correct.**
 09:09PM 18 **Q.** And you've gone over and observed the
 09:09PM 19 parking, the parking needs in that parking lot at
 09:09PM 20 various hours of the day. And what did you find out
 09:09PM 21 when you went and looked -- when you checked out the
 09:09PM 22 usage of that parking lot?
 09:09PM 23 **A. Yeah, I took the time to walk the space**
 09:09PM 24 **on my peak hours of operation, which is mainly at**
 09:09PM 25 **night, at dinner time.**

09:09PM **1 I walked to that property and the gym**
 09:09PM **2 hours of operation from Monday through Friday are**
 09:10PM **3 from 6:00 a.m. to 11:00 p.m. I stopped by around**
 09:10PM **4 7:00, 8:00 p.m. in a few days and I noticed that the**
 09:10PM **5 gym don't use more than from 17 to 20 spots when the**
 09:10PM **6 gym is open, leaving over 20 parking spaces available**
 09:10PM **7 for the valley.**
 09:10PM **8 Q. So between the typical uses by the gym,**
 09:10PM **9 that would leave at least 20 or so spaces available**
 09:10PM **10 for you plus the 23 at the other two sites would be a**
 09:10PM **11 combined 43 spaces available, plus the six spaces**
 09:10PM **12 that are on-site when the pharmacy closes, correct?**
 09:10PM **13 A. That is correct.**
 09:10PM **14 Q. That puts you at about 49 spaces, which**
 09:10PM **15 exceeds the requirement for your restaurant based on**
 09:10PM **16 the testimony we heard at the last hearing?**
 09:10PM **17 A. Yes.**
 09:10PM **18 Additional to that, on Saturday and**
 09:10PM **19 Sunday, which is my busiest times of operation, the**
 09:10PM **20 gym closes pretty early. On Saturday they close at**
 09:11PM **21 6:00 p.m. and on Sunday they close at 4:00 p.m.,**
 09:11PM **22 creating no conflict with my business.**
 09:11PM **23 Q. So at your busiest times, there are**
 09:11PM **24 plenty of spaces available is what you're telling us,**
 09:11PM **25 correct?**

09:11PM **1 A. Yes, that's what I explained to you.**
 09:11PM **2 Q. And at the last hearing, there was an**
 09:11PM **3 objector that appeared on behalf of the Knights of**
 09:11PM **4 Columbus and we indicated that you had reached out**
 09:11PM **5 via telephone and you were attempting to go over**
 09:11PM **6 there, knock on the door and see if anybody would**
 09:11PM **7 talk to you.**
 09:11PM **8 Have you continued those efforts?**
 09:11PM **9 A. I continued those efforts. I haven't**
 09:11PM **10 still cross information with them, but more than**
 09:11PM **11 willing, as we say in the last meeting, that we're --**
 09:11PM **12 we want to cooperate with them, plus give information**
 09:11PM **13 to the managers on-sites in case of a problem or a**
 09:11PM **14 conflict, we can be contacted right away so we can**
 09:11PM **15 alleviate the issue.**
 09:11PM **16 Q. So you've reached out to the Knights of**
 09:11PM **17 Columbus and attempted to make a reasonable**
 09:11PM **18 accommodation to provide the on-site manager of your**
 09:11PM **19 restaurant, his cellphone number to the Knights of**
 09:12PM **20 Columbus so that you could -- so that they could**
 09:12PM **21 contact them immediately if there was a parking or**
 09:12PM **22 any conflict with their parking lot and they have yet**
 09:12PM **23 to reach out to you, and we put this on the record**
 09:12PM **24 last time, and they are aware of this and they still**
 09:12PM **25 haven't reached out to you to try to work this out,**

09:12PM **1 have they?**
 09:12PM **2 A. Correct.**
 09:12PM **3 Q. Okay. Thank you.**
 09:12PM **4 You're also planning on posting signage**
 09:12PM **5 at the entrance to your restaurant that there's no**
 09:12PM **6 parking allowed at the Knights of Columbus' property?**
 09:12PM **7 A. Yes.**
 09:12PM **8 As I said in the last meeting, we will**
 09:12PM **9 post signage by in the main entrance in reference to**
 09:12PM **10 that that would state that please do not park on**
 09:12PM **11 Knights' of Columbus property.**
 09:12PM **12 Q. Thank you.**
 09:12PM **13 MR. BONNER: Mr. Chairman, I don't have**
 09:12PM **14 any further questions for Mr. Gomez.**
 09:12PM **15 CHAIRMAN CASTRO: Mr. Gomez, can you**
 09:12PM **16 upload the lease again, please?**
 09:12PM **17 MR. GOMEZ: Michael, could you help we**
 09:12PM **18 with that?**
 09:12PM **19 MR. BONNER: What are you, I'm sorry,**
 09:12PM **20 the lease, Mr. Chairman, which one?**
 09:13PM **21 CHAIRMAN CASTRO: The newest lease, the**
 09:13PM **22 latest lease.**
 09:13PM **23 MR. BONNER: Okay. This is 426.**
 09:13PM **24 CHAIRMAN CASTRO: Just scroll down the**
 09:13PM **25 lease to the signature section, please.**

09:13PM **1 MR. BONNER: To which section?**
 09:13PM **2 CHAIRMAN CASTRO: Signature.**
 09:13PM **3 Mr. Gomez, Dr. Monica Gonzalez, is she**
 09:13PM **4 the owner of the Pain Center of Morris, the one where**
 09:13PM **5 you will be leasing those parking spaces?**
 09:13PM **6 MR. GOMEZ: Yes, she is.**
 09:13PM **7 CHAIRMAN CASTRO: Okay. That is what I**
 09:13PM **8 wanted to see.**
 09:13PM **9 Thank you, Mr. Gomez.**
 09:13PM **10 Thank you, Mr. Bonner.**
 09:13PM **11 MR. BONNER: Would you like to see the**
 09:13PM **12 other one, Mr. Chairman?**
 09:13PM **13 CHAIRMAN CASTRO: I saw the other one,**
 09:13PM **14 but if you can upload it, I would appreciate it.**
 09:14PM **15 MR. BONNER: Yes.**
 09:14PM **16 CHAIRMAN CASTRO: Mr. Gomez, how far is**
 09:14PM **17 the pain center?**
 09:14PM **18 MR. GOMEZ: How far is -- okay, 416 is,**
 09:14PM **19 as we all know, is where the gym is located. The**
 09:14PM **20 property right next to it is the 426 and the property**
 09:14PM **21 right next to it is 430. It's three properties right**
 09:14PM **22 next to each other.**
 09:14PM **23 CHAIRMAN CASTRO: Who will be parking**
 09:14PM **24 there, valet parking?**
 09:14PM **25 MR. GOMEZ: Valet parking, yes, only**

09:14PM 1 valet parking.
 09:14PM 2 CHAIRMAN CASTRO: So people will come
 09:14PM 3 to your facility, park there, a valet parking
 09:14PM 4 attendant will take the car to the pain center
 09:14PM 5 parking lot; is that what you're saying?
 09:14PM 6 MR. GOMEZ: Yes.
 09:14PM 7 COMMISSIONER SOSA: Mr. Chairman?
 09:14PM 8 CHAIRMAN CASTRO: Commissioner Sosa.
 09:14PM 9 COMMISSIONER SOSA: How many valet will
 09:14PM 10 you have there?
 09:15PM 11 MR. BONNER: The testimony at the last
 09:15PM 12 meeting was it depends on what time of day it is, but
 09:15PM 13 there could be as many as three or four, but
 09:15PM 14 Mr. Gomez can confirm that.
 09:15PM 15 MR. GOMEZ: Yes, what Michael said is
 09:15PM 16 correct. On our busiest times we also -- we try to
 09:15PM 17 accommodate three valet parking, that's in the most
 09:15PM 18 peak hours. And when the business is not as busy, we
 09:15PM 19 will have two.
 09:15PM 20 COMMISSIONER SOSA: Thank you.
 09:15PM 21 CHAIRMAN CASTRO: You mean three valet
 09:15PM 22 parking attendants?
 09:15PM 23 COMMISSIONER SOSA: Yeah, I'm referring
 09:15PM 24 to that, yes, that's correct.
 09:15PM 25 MR. BONNER: As many as four if needed,

09:15PM 1 correct?
 09:15PM 2 MR. GOMEZ: Yes, correct.
 09:15PM 3 CHAIRMAN CASTRO: Go ahead, Mr. Bonner.
 09:15PM 4 MR. BONNER: Thank you, Mr. Chairman.
 09:15PM 5 That concludes my questioning for
 09:15PM 6 Mr. Gomez. If there are any board or objector --
 09:15PM 7 CHAIRMAN CASTRO: Do you have any
 09:15PM 8 questions for Mr. Gomez? No questions for Mr. Gomez.
 09:16PM 9 Mr. Bonner, do you have any witnesses?
 09:16PM 10 MR. DiSTEFANO: I'm sorry, I'm sorry,
 09:16PM 11 Chairman Castro, I thought you were talking to other
 09:16PM 12 board members. I would have questions for Mr. Gomez.
 09:16PM 13 CHAIRMAN CASTRO: Go ahead,
 09:16PM 14 Mr. DiStefano.
 09:16PM 15 CROSS-EXAMINATION
 09:16PM 16 BY MR. DiSTEFANO:
 09:16PM 17 Q. Mr. Gomez, in these two leases that you
 09:16PM 18 presented, are there -- well, I think I saw one
 09:16PM 19 scroll past, termination clauses?
 09:16PM 20 A. No, we don't have termination clauses
 09:16PM 21 on those leases.
 09:16PM 22 Q. Would it be possible to bring the first
 09:16PM 23 one back up on the screen?
 09:16PM 24 A. That's the one for 430 or 426?
 09:16PM 25 Q. Let's start with 426 and then go to

09:16PM 1 430.
 09:16PM 2 A. Okay.
 09:16PM 3 MR. BONNER: Well, here's 430.
 09:16PM 4 BY MR. DiSTEFANO:
 09:16PM 5 Q. So it is terminable on 90 day's written
 09:16PM 6 notice?
 09:17PM 7 A. That's what I'm reading, Point Number
 09:17PM 8 4.
 09:17PM 9 Q. Yeah, is -- and that was 426. Does 430
 09:17PM 10 have --
 09:17PM 11 MR. BONNER: This is 430.
 09:17PM 12 BY MR. DiSTEFANO:
 09:17PM 13 Q. Okay. Does 426 also have a similar or
 09:17PM 14 identical clause for --
 09:17PM 15 MR. BONNER: It does.
 09:17PM 16 A. It does.
 09:17PM 17 BY MR. DiSTEFANO:
 09:17PM 18 Q. Okay. Now, with regard to -- you just
 09:17PM 19 refreshed my recollection. You had previously
 09:17PM 20 testified as to the numbers of workers at any one
 09:17PM 21 particular time. What was that number?
 09:17PM 22 A. Peak 20, no more than 20.
 09:17PM 23 Q. Well, and just so I understand this
 09:17PM 24 correctly, when you say peak, is that 20 people on
 09:17PM 25 duty or 20 people on payroll?

09:18PM 1 A. Twenty people on duty, which is the
 09:18PM 2 same as people on payroll for that specific time.
 09:18PM 3 Q. And generally it would be fair to say
 09:18PM 4 you'd have roughly 20 people on payroll or you would
 09:18PM 5 be intending to do that at the moment?
 09:18PM 6 MR. BONNER: His testimony last time
 09:18PM 7 was clear that at the peak hours of operation of the
 09:18PM 8 restaurant, he has 20 employees on-site. He has more
 09:18PM 9 employees than that, but he has 20 employees on-site
 09:18PM 10 during his busiest times.
 09:18PM 11 BY MR. DiSTEFANO:
 09:18PM 12 Q. Okay. And you had testified that a
 09:18PM 13 number of those employees walk to work, correct?
 09:18PM 14 A. Most of them walk to work, yes.
 09:18PM 15 Q. Okay. What are the names of the
 09:18PM 16 employees who walk to work?
 09:18PM 17 MR. BONER: I think that's getting
 09:18PM 18 outside the bounds of questioning.
 09:18PM 19 A. Yeah, it would be hard for me to say
 09:18PM 20 names right now. I've got almost over 40 employees
 09:18PM 21 on whole payroll for different shifts.
 09:18PM 22 I pick, as I say, there are no more
 09:19PM 23 than 20, but to give you names right now, I would
 09:19PM 24 have to pull the payroll detail and I am not ready
 09:19PM 25 for that.

09:19PM 1 BY MR. DiSTEFANO:
 09:19PM 2 Q. And besides these employees who walk to
 09:19PM 3 work, are there any other employees who don't drive
 09:19PM 4 who arrive any other way?
 09:19PM 5 A. I got employees that use -- I've seen
 09:19PM 6 does these electrical scooters, which don't take any
 09:19PM 7 parking spaces, and some, like, a few wanted to
 09:19PM 8 sometimes drive bikes on it. They park in the back
 09:19PM 9 of the building, which doesn't take spaces as well.
 09:19PM 10 Q. What are the names of your employees
 09:19PM 11 who don't walk?
 09:19PM 12 MR. BONNER: I'm sorry, I would like to
 09:19PM 13 remind Mr. DiStefano that the testimony last time was
 09:19PM 14 that they're prohibited from parking on-site and they
 09:19PM 15 do not use the valet service.
 09:19PM 16 MR. GOMEZ: We say that, yes.
 09:19PM 17 MR. BONNER: That was made clear last
 09:19PM 18 time.
 09:19PM 19 BY MR. DiSTEFANO:
 09:19PM 20 Q. Okay. Can you name the employees who
 09:19PM 21 don't walk and don't drive?
 09:19PM 22 MR. McNAMARA: Counsel, I think
 09:19PM 23 identifying the number of employees is sufficient for
 09:19PM 24 the board's consideration.
 09:20PM 25 COMMISSIONER SOSA: Yeah, that's,

09:20PM 1 Mr. Chairman, that's ridiculous already. I'm not
 09:20PM 2 trying to...
 09:20PM 3 MR. BONNER: His employees are entitled
 09:20PM 4 to their privacy.
 09:20PM 5 COMMISSIONER SOSA: Absolutely. I
 09:20PM 6 don't want to know who works there, doesn't work
 09:20PM 7 there. That doesn't -- that's irrelevant to the
 09:20PM 8 application.
 09:20PM 9 MR. DiSTEFANO: Well, the witness gave
 09:20PM 10 a conclusory statement and on cross, I'm looking for
 09:20PM 11 the reason behind it. He stated simply that most of
 09:20PM 12 the employees walk or they don't park. And the real
 09:20PM 13 question is can he account for that?
 09:20PM 14 MR. BONNER: I'm sorry, Mr. McNamara,
 09:20PM 15 he's accounting for that by stating what his
 09:20PM 16 employees do. Identifying those employees doesn't
 09:20PM 17 change his answer.
 09:20PM 18 MR. McNAMARA: I believe the answers
 09:20PM 19 that have been provided were approximate numbers of
 09:20PM 20 employees who either walk, use the scooter, may or
 09:20PM 21 may not use mass transit, but do not drive or park
 09:20PM 22 and he gave a range of numbers both at the prior
 09:21PM 23 hearing and I believe here again tonight.
 09:21PM 24 Naming people individually, I don't
 09:21PM 25 believe serves any additional purpose in leading to

09:21PM 1 any additional relevant evidence or being relevant
 09:21PM 2 with regard to the nature of the proceedings. He's
 09:21PM 3 testified twice now as to the general number of
 09:21PM 4 employees and within parameters as to how they get to
 09:21PM 5 and from this place of employment.
 09:21PM 6 MR. DiSTEFANO: Well, it's a conclusory
 09:21PM 7 statement that he can't back up, so that will speak
 09:21PM 8 for itself.
 09:21PM 9 BY MR. DiSTEFANO:
 09:21PM 10 Q. But the other issue is I wanted to ask,
 09:21PM 11 are there any provisions for handicap spaces in front
 09:21PM 12 of the -- in the parking lot in front of the
 09:21PM 13 restaurant?
 09:21PM 14 A. We got handicap spaces allocated on the
 09:21PM 15 spots that are in the pharmacy, which is I believe
 09:21PM 16 right next to it, which is the two spots -- three
 09:22PM 17 spots, I believe, they are in the front.
 09:22PM 18 Q. Okay. And the staging area for the
 09:22PM 19 valet handoffs will be in the front parking lot?
 09:22PM 20 A. It will be at the driveway of the
 09:22PM 21 parking lot.
 09:22PM 22 Q. Can cars turn around in the parking lot
 09:22PM 23 after making that valet handoff?
 09:22PM 24 A. When they do the valet handoff, the
 09:22PM 25 cars are going to be situated in the parking of the

09:22PM 1 pharmacy. In order for them to leave parameters,
 09:22PM 2 they're going to have to back up. They cannot turn
 09:22PM 3 around, no.
 09:22PM 4 Q. So they have to back into the street?
 09:22PM 5 A. They've got to go in reverse, yes, but
 09:22PM 6 the valet is responsible for that, cars coming into
 09:22PM 7 --
 09:22PM 8 MR. McNAMARA: I think that question
 09:22PM 9 would be better suited for Mr. Kurus, the engineer.
 09:22PM 10 After we're done, you can recall him and ask that
 09:22PM 11 question.
 09:22PM 12 BY MR. DiSTEFANO:
 09:22PM 13 Q. Do you have any current arrangement
 09:23PM 14 with an entity providing valet services?
 09:23PM 15 A. We do.
 09:23PM 16 Q. What is that entity?
 09:23PM 17 A. I don't have the name of the company
 09:23PM 18 right off my head, but I can provide it if it's
 09:23PM 19 necessary.
 09:23PM 20 MR. McNAMARA: It is necessary and I'm
 09:23PM 21 going to request that it be provided.
 09:23PM 22 MR. GOMEZ: Okay. I'll provide it
 09:23PM 23 then, related to that.
 09:23PM 24 MR. McNAMARA: Counsel, do you have any
 09:23PM 25 further questions of the witness?

09:23PM 1 MR. DiSTEFANO: Yeah, I was -- no, I
 09:23PM 2 don't think I have any further questions for this
 09:23PM 3 witness.
 09:23PM 4 MR. McNAMARA: Mr. Bonner, would you
 09:23PM 5 please recall Mr. Kurus then?
 09:24PM 6 CHAIRMAN CASTRO: Let me ask a question
 09:24PM 7 to Mr. Gomez, and it relates to the comment that
 09:24PM 8 Mr. DiStefano made regarding the cancellation clause
 09:24PM 9 of the lease.
 09:24PM 10 Mr. Gomez, I would feel more
 09:24PM 11 comfortable if none of the parties can cancel that
 09:24PM 12 lease within the period of the time of the lease.
 09:24PM 13 MR. GOMEZ: This is more of a legality
 09:24PM 14 answer, but I don't know if I should say this or not,
 09:24PM 15 but most of the leases got terms that you have a
 09:24PM 16 bridge on it, any party can terminate, but I can go
 09:24PM 17 back to the landlord and renegotiate this lease if
 09:24PM 18 necessary to take those clauses out so they can't
 09:24PM 19 terminate me during the time of the lease, they would
 09:24PM 20 have to wait until the lease expires, if that's what
 09:24PM 21 happens.
 09:24PM 22 CHAIRMAN CASTRO: That's usually the
 09:25PM 23 way it is, Mr. Gomez.
 09:25PM 24 MR. McNAMARA: Mr. Chairman, if I
 09:25PM 25 might, Mr. Chairman, I would like to make a

09:25PM 1 recommendation to the board that if the board is to
 09:25PM 2 act favorably on this application, one of the
 09:25PM 3 conditions would be that the applicant submit to
 09:25PM 4 review by our consultants a management plan
 09:25PM 5 identifying the company, times the employees, without
 09:25PM 6 their names, are going to be on-site managing it,
 09:25PM 7 what properties are going to be utilized during
 09:25PM 8 weekdays and weekends, and a provision also that
 09:25PM 9 should any lease be terminated, it is the obligation
 09:25PM 10 of the applicant to make every best effort within the
 09:25PM 11 next -- as soon as they are given 90 day's notice of
 09:25PM 12 that termination, they have to notify the city, they
 09:25PM 13 have to notify our consultants and take all immediate
 09:25PM 14 measures necessary to replace that loss of parking.
 09:25PM 15 MR. BONNER: Mr. McNamara, if I might,
 09:25PM 16 I was going to suggest something similar that perhaps
 09:26PM 17 Mr. Gomez can negotiate a slightly longer termination
 09:26PM 18 notice period and they'd be willing to accept a
 09:26PM 19 condition of the resolution that in the event of a
 09:26PM 20 termination, that they would have to replace the
 09:26PM 21 spaces being lost within the period of notice.
 09:26PM 22 MR. McNAMARA: That would be, yeah, I
 09:26PM 23 would be willing to amend my suggestion to the board
 09:26PM 24 along those lines.
 09:26PM 25 MR. BONNER: Second comment about what

09:26PM 1 you said. I think you seemed to indicate that the
 09:26PM 2 valet parking -- people handling the valet parking
 09:26PM 3 were employees; they are not.
 09:26PM 4 MR. McNAMARA: Well, they're employees
 09:26PM 5 of the company that are supplying the service,
 09:26PM 6 they're not --
 09:26PM 7 MR. BONNER: That's correct.
 09:26PM 8 MR. McNAMARA: That's fine, but I want
 09:26PM 9 them identified -- I want the company identified as
 09:26PM 10 part of the plan so that if the city receives any
 09:26PM 11 complaints about lack of parking or how it's being
 09:26PM 12 managed, the city then knows who to contact besides
 09:26PM 13 your client to get the situation addressed and
 09:27PM 14 rectified immediately.
 09:27PM 15 MR. BONNER: Understood.
 09:27PM 16 Is that it for Mr. Gomez, Mr. Chairman,
 09:27PM 17 or no?
 09:27PM 18 CHAIRMAN CASTRO: Do you have any other
 09:27PM 19 questions for Mr. Gomez?
 09:27PM 20 MR. McNAMARA: I don't have anything
 09:27PM 21 further, Mr. Chairman.
 09:27PM 22 CHAIRMAN CASTRO: Go ahead,
 09:27PM 23 Mr. McNamara.
 09:27PM 24 MR. McNAMARA: I have no further
 09:27PM 25 questions of the witness, Mr. Chairman.

09:27PM 1 CHAIRMAN CASTRO: Thank you,
 09:27PM 2 Mr. McNamara.
 09:27PM 3 And, Mr. Bonner, do you have any other
 09:27PM 4 witnesses?
 09:27PM 5 MR. BONNER: I do, I have Anthony
 09:27PM 6 Kurus, the engineer who can briefly walk you through
 09:27PM 7 the site plan, a lot of it you're familiar with due
 09:27PM 8 to the architect's testimony, but he can walk you
 09:27PM 9 through that and he can discuss how parking is
 09:27PM 10 handled on-site and things of that nature,
 09:27PM 11 engineering stuff.
 09:27PM 12 Anthony?
 09:27PM 13 MR. McNAMARA: Mr. Kurus, please, sir,
 09:27PM 14 I'm going to remind you you were placed under oath at
 09:28PM 15 the prior hearing on this application, you remain
 09:28PM 16 under oath and remain obligated to provide truthful
 09:28PM 17 answers and truthful testimony to this board. Thank
 09:28PM 18 you.
 09:28PM 19 Please proceed.
 09:28PM 20 DIRECT EXAMINATION
 09:28PM 21 BY MR. BONNER:
 09:28PM 22 Q. Anthony, do you need to screen share?
 09:28PM 23 Could you screen share or would you like me to do
 09:28PM 24 that?
 09:28PM 25 A. Let me try. Can you see the site plan?

09:28PM 1 Q. Yes, thank you.

09:28PM 2 A. **So this is the outdoor dining site plan**

09:28PM 3 **that we prepared, latest revision 7/15/2021 revised**

09:29PM 4 **per the board hearing comments.**

09:29PM 5 MR. MCNAMARA: So let's mark this as

09:29PM 6 B-3.

09:29PM 7 (Whereupon, Outdoor Dining Site Plan,

09:29PM 8 last revision 7/15/2021, is marked as Exhibit

09:29PM 9 B-3 for identification.)

09:29PM 10 MR. BONNER: And Mr. McNamara, you may

09:29PM 11 want to swear Mr. Kurus, he was sworn at the hearing

09:29PM 12 that was postponed, he was not sworn after the

09:29PM 13 renotice.

09:29PM 14 MR. MCNAMARA: Thank you.

09:29PM 15 Mr. Kurus, please raise your right

09:29PM 16 hand.

09:29PM 17 MR. KURUS: Let me see, hold on.

09:29PM 18 MR. MCNAMARA: Anthony, could you

09:29PM 19 please raise your right hand so I could re-administer

09:29PM 20 your oath?

09:29PM 21 Do you swear the testimony you're about

09:29PM 22 to present before the Elizabeth Zoning Board of

09:29PM 23 Adjustment concerning the application now pending

09:29PM 24 before it shall be the truth, the whole truth and

09:29PM 25 nothing but the truth?

09:29PM 1 MR. KURUS: I do.

09:29PM 2 ANTHONY KURUS, PE,

09:29PM 3 34 Park Avenue, Lyndhurst, New Jersey, having

09:29PM 4 been duly sworn, testifies as follows:

09:29PM 5 MR. MCNAMARA: For the record, sir,

09:29PM 6 state your name, spell your last name and provide

09:29PM 7 your business affiliation.

09:29PM 8 MR. KURUS: Anthony Kurus, spelled

09:30PM 9 K-U-R-U-S, business address Neglia Engineering

09:30PM 10 Associates, 34 Park Avenue, Lyndhurst, New Jersey.

09:30PM 11 I'm a licensed, professional engineer

09:30PM 12 in the state of New Jersey. I've appeared before

09:30PM 13 this board, as well as various boards throughout New

09:30PM 14 Jersey.

09:30PM 15 MR. BONNER: Your license is current?

09:30PM 16 MR. KURUS: It is.

09:30PM 17 MR. BONNER: Thank you.

09:30PM 18 MS. WHITEHEAD: I'm sorry, what is this

09:30PM 19 that's being Exhibit B-3, what is this called?

09:30PM 20 MR. BONNER: These are the engineering

09:30PM 21 plans that are part of the file already, Monae.

09:30PM 22 MS. WHITEHEAD: Oh, they're already

09:30PM 23 part of the file?

09:30PM 24 MR. BONNER: Correct.

09:30PM 25 Mr. McNamara, do you want to mark these

09:30PM 1 exhibits?

09:30PM 2 MR. MCNAMARA: If they're part of the

09:30PM 3 file then I just ask you to identify what page and

09:30PM 4 date is on the sheet being shown. If you bring up

09:30PM 5 anything that is new that is not in the application

09:30PM 6 package, we will need to mark it.

09:30PM 7 MS. WHITEHEAD: Thank you.

09:30PM 8 BY MR. BONNER:

09:31PM 9 Q. Take it away, Anthony.

09:31PM 10 A. **Okay. So hold on.**

09:31PM 11 **The project site again is located at**

09:31PM 12 **331 to 337 Morris Avenue, Block 11, Lot 677 in the**

09:31PM 13 **City of Elizabeth.**

09:31PM 14 **Everyone's familiar with the site, it**

09:31PM 15 **contains the existing pharmacy building and the**

09:31PM 16 **existing garden restaurant. The outdoor dining site**

09:31PM 17 **plan we prepared shows the proposed outdoor dining**

09:31PM 18 **enclosure that's proposed around the existing garden**

09:31PM 19 **restaurant.**

09:31PM 20 **As the architect has previously**

09:31PM 21 **testified, the outdoor enclosure will meet all codes**

09:31PM 22 **as applicable. This revised plan that was submitted**

09:31PM 23 **shows 3-foot minimum side yard setback on the south**

09:32PM 24 **side of the proposed enclosure.**

09:32PM 25 **Again, the proposed enclosure will meet**

09:32PM 1 **all applicable codes.**

09:32PM 2 **For parking, they'll be a total of six**

09:32PM 3 **parking spaces on-site, three existing -- three**

09:32PM 4 **parking spaces in front of the existing pharmacy as**

09:32PM 5 **well as three spaces along the driveway that runs to**

09:32PM 6 **the rear of the property.**

09:32PM 7 **As was testified by the applicant,**

09:32PM 8 **they'll be -- he has agreements in place to park at**

09:32PM 9 **off-site locations in order to satisfy the balance of**

09:32PM 10 **the parking needs. They'll be no changes to existing**

09:32PM 11 **utilities.**

09:32PM 12 **For stormwater management they'll be no**

09:32PM 13 **increase in impervious coverage. The roof runoff**

09:32PM 14 **from the proposed enclosure will be handled by way of**

09:32PM 15 **roof drains tied into the existing storm drain**

09:33PM 16 **system.**

09:33PM 17 **Sanitary sewage, we could provide the**

09:33PM 18 **sewer generation calculations that were requested.**

09:33PM 19 **The flow generation is 35 gallons per**

09:33PM 20 **day per seat per code, we calculated it out based on**

09:33PM 21 **the proposed seat count, it results in a sewer flow**

09:33PM 22 **of approximately 3,850 gallons per day, so a**

09:33PM 23 **Treatment-Works' approval would not be required for**

09:33PM 24 **the application.**

09:33PM 25 **No changes to the proposed sanitary --**

09:33PM **1 to the existing sanitary sewer are proposed, so we**
 09:33PM **2 don't need a Treatment-Works' approval permit, and we**
 09:33PM **3 will be utilizing the existing sanitary sewer for the**
 09:33PM **4 project.**
 09:33PM **5 For trash and recycling --**
 09:34PM **6 MR. McNAMARA: Anthony, do you have to**
 09:34PM **7 upscale the grease trap for the restaurant?**
 09:34PM **8 MR. KURUS: I don't believe there's any**
 09:34PM **9 changes to the kitchen. I think the kitchen -- it**
 09:34PM **10 was testified that the kitchen is -- has -- the**
 09:34PM **11 kitchen was designed to accommodate more seats than**
 09:34PM **12 were existing prior to the encloser, so it's my**
 09:34PM **13 understanding they'll be no changes to the existing**
 09:34PM **14 grease trap or the existing sewer drains and waste**
 09:34PM **15 lines.**
 09:34PM **16 MR. McNAMARA: Thank you.**
 09:34PM **17 MR. KURUS: Trash and recycling, our**
 09:34PM **18 plan we show the driveway access to the trash and**
 09:34PM **19 recycling area to the rear of the site over on the**
 09:34PM **20 bottom left. The dumpster area is in the back corner**
 09:35PM **21 of the property. Vehicles would access that**
 09:35PM **22 driveway, pull in, pick up the trash and then use**
 09:35PM **23 that driveway to back out in order to exit the**
 09:35PM **24 property.**
 09:35PM **25 Any other questions?**

09:35PM **1 BY MR. BONNER:**
 09:35PM **2 Q. In your opinion, is there sufficient**
 09:35PM **3 room for the valet parking to operate when there are**
 09:35PM **4 cars parked in front of the pharmacy?**
 09:35PM **5 A. There is.**
 09:35PM **6 If the parking spaces in front of the**
 09:35PM **7 pharmacy are utilized, the cars would pull in and use**
 09:35PM **8 that parallel driveway similar to this truck-turning**
 09:35PM **9 template plan.**
 09:35PM **10 The car would be received by the valet**
 09:35PM **11 company and as was testified by Mr. Gomez, they would**
 09:35PM **12 have to back out and then leave.**
 09:35PM **13 If there was an open spot, you know,**
 09:35PM **14 then they would be able to pull into that open spot**
 09:36PM **15 and then back out and pull out head first.**
 09:36PM **16 But in the event -- in the event that**
 09:36PM **17 every space was taken, there'd be sufficient room for**
 09:36PM **18 a car to pull in, be received by the valet, and then**
 09:36PM **19 back out.**
 09:36PM **20 Q. So for the busiest times of the**
 09:36PM **21 restaurant, which is after the -- is the dinner hour**
 09:36PM **22 and later, the pharmacy is closed and those six**
 09:36PM **23 spaces would be open, would be ample space for a**
 09:36PM **24 valet staging area, correct, for cars to make turns**
 09:36PM **25 on-site and pull out front first?**

09:36PM **1 A. Absolutely.**
 09:36PM **2 Q. Thank you.**
 09:36PM **3 Do you have anything further, Anthony?**
 09:36PM **4 I believe you covered the issues that had been**
 09:36PM **5 questioned at the last hearing. There really is very**
 09:36PM **6 little engineering testimony necessary for this**
 09:36PM **7 application?**
 09:36PM **8 A. No.**
 09:36PM **9 MR. BONNER: Mr. Chairman.**
 09:37PM **10 CHAIRMAN CASTRO: Yes.**
 09:37PM **11 MR. BONNER: That concludes Mr. Kurus'**
 09:37PM **12 direct testimony.**
 09:37PM **13 CHAIRMAN CASTRO: Commissioners, do you**
 09:37PM **14 have any questions for Mr. Kurus?**
 09:37PM **15 COMMISSIONER FALCON: I just have one**
 09:37PM **16 question, Mr. Chairman.**
 09:37PM **17 CHAIRMAN CASTRO: Commissioner Falcon.**
 09:37PM **18 COMMISSIONER FALCON: So along the wall**
 09:37PM **19 of the property line there, we're giving up 3 feet.**
 09:37PM **20 Is that for code or is that for future**
 09:37PM **21 walkways or something?**
 09:37PM **22 MR. BONNER: If I might address that**
 09:37PM **23 first, Commissioner Falcon.**
 09:37PM **24 The architect testified last time that**
 09:37PM **25 that was being done in order to create space between**

09:37PM **1 the fire-rated wall to the restaurant and the**
 09:37PM **2 adjacent property owner in order to allow some type**
 09:37PM **3 of air and light into the building next door.**
 09:37PM **4 There is zero lot line on zoning here**
 09:37PM **5 and they could have built immediately adjacent to the**
 09:37PM **6 building and probably blocked off the windows that**
 09:37PM **7 existed on that side of the building, but they chose**
 09:38PM **8 not to do that in an attempt to be courteous to the**
 09:38PM **9 adjacent property owner.**
 09:38PM **10 COMMISSIONER FALCON: And that's**
 09:38PM **11 exactly -- I'm sorry, go ahead, I apologize.**
 09:38PM **12 MR. BONNER: No. And the one last**
 09:38PM **13 thing that I would say, there was also testimony by**
 09:38PM **14 the architect last time, and this is in the**
 09:38PM **15 transcript, that there will be a doorway into that**
 09:38PM **16 alley and it is the applicant's intention to keep**
 09:38PM **17 that alleyway clean, it is not going to become a**
 09:38PM **18 place where trash is piled up, it will be kept clean.**
 09:38PM **19 COMMISSIONER FALCON: And that was my**
 09:38PM **20 curiosity was, you know, I'm kind of in a fine line**
 09:38PM **21 here in believing that that's not going to be used in**
 09:38PM **22 the future.**
 09:38PM **23 But, Mr. McNamara, can we add that as a**
 09:38PM **24 stipulation of approval?**
 09:38PM **25 MR. McNAMARA: Mr. Bonner, would your**

09:38PM 1 client agree to such a stipulation that the area
09:38PM 2 cannot be used, it's his responsibility to
09:39PM 3 maintain and clean it?
09:39PM 4 MR. BONNER: I believe that Mr. Waga
09:39PM 5 testified to that effect, but, yes, that's fine,
09:39PM 6 because there -- if you recall the testimony,
09:39PM 7 Mr. McNamara, there is a gate at the front of the
09:39PM 8 property. The wall that's depicted, the 1-foot wall
09:39PM 9 runs from one property line to the other, so the
09:39PM 10 3-foot alley spans the entire property along that
09:39PM 11 property line, but there is a gate at the front that
09:39PM 12 allows access, so cleaning that will make --
09:39PM 13 COMMISSIONER FALCON: And that gate can
09:39PM 14 be open and that gate can be open in the future, and
09:39PM 15 that's what I'm trying to get at, to stop that from
09:39PM 16 becoming an egress or access to something --
09:39PM 17 MR. BONNER: Right, that's why the gate
09:39PM 18 is being provided, so that the applicant has access
09:39PM 19 to that property.
09:39PM 20 COMMISSIONER FALCON: Again, the gate
09:39PM 21 can be opened. And, please, we'll agree to disagree
09:39PM 22 here, but I would love for that to be as part of the
09:39PM 23 stipulation of this application, should it be
09:39PM 24 approved.
09:39PM 25 MR. McNAMARA: Understood, sir.

09:39PM 1 CHAIRMAN CASTRO: Commissioner Falcon,
09:39PM 2 if the board decides to move to approve this
09:39PM 3 application, you can, at the time of moving for a
09:40PM 4 motion, add that.
09:40PM 5 Mr. McNamara has documented your
09:40PM 6 concerns, but, yes, you can always add a stipulation
09:40PM 7 as a condition of an approval.
09:40PM 8 COMMISSIONER FALCON: Thank you.
09:40PM 9 CHAIRMAN CASTRO: Thank you,
09:40PM 10 Commissioner Falcon.
09:40PM 11 Commissioners, any other comments?
09:40PM 12 COMMISSIONER SOSA: Mr. Chairman?
09:40PM 13 CHAIRMAN CASTRO: Commissioner Sosa.
09:40PM 14 COMMISSIONER SOSA: I just need a
09:40PM 15 little bit more clarification on the parking in the
09:40PM 16 front of the building on the front of the pharmacy
09:40PM 17 area. How many spots is there, for the record?
09:40PM 18 MR. BONNER: There's six.
09:40PM 19 COMMISSIONER SOSA: Six.
09:40PM 20 MR. KURUS: There's three head-on
09:40PM 21 spaces in front of the building and then there's an
09:40PM 22 additional three parallel spaces on the driveway for
09:40PM 23 a total of six.
09:40PM 24 COMMISSIONER SOSA: And safe to say
09:40PM 25 that those spots would be the last spots to get

09:40PM 1 filled, correct, for you guys to be able to turn
09:41PM 2 around in the property; is that safe to say?
09:41PM 3 MR. BONNER: There's -- I think that
09:41PM 4 the testimony was that they're reserved for the
09:41PM 5 pharmacy until the pharmacy closes, which operates
09:41PM 6 until, I believe, the testimony was 6 o'clock.
09:41PM 7 Mr. Gomez can correct me, but I think
09:41PM 8 it's 6 o'clock and then those spaces are no longer
09:41PM 9 used by the pharmacy. And then he, under the terms
09:41PM 10 of his lease, has the right to utilize those spaces.
09:41PM 11 They would not be used for parking, they'd be used as
09:41PM 12 the valet staging area, as I understand it.
09:41PM 13 COMMISSIONER SOSA: That's what I
09:41PM 14 needed clarification on, thank you.
09:41PM 15 MR. BONNER: Yup.
09:41PM 16 CHAIRMAN CASTRO: Thank you,
09:41PM 17 Commissioner Sosa.
09:41PM 18 Commissioners, any other comments or
09:41PM 19 any other question for this witness?
09:41PM 20 Mr. Bonner, do you have your next
09:41PM 21 witness?
09:41PM 22 MR. BONNER: I --
09:41PM 23 MR. McNAMARA: Mr. Chairman, before you
09:41PM 24 proceed to the next witness, Mr. DiStefano should be
09:41PM 25 offered the opportunity to cross Mr. Kurus strictly

09:41PM 1 as to the testimony he has proffered this evening.
09:42PM 2 CHAIRMAN CASTRO: Mr. DiStefano.
09:42PM 3 MR. DiSTEFANO: Yes, thank you.
09:42PM 4 CROSS-EXAMINATION.
09:42PM 5 BY MR. DiSTEFANO:
09:42PM 6 Q. Mr. Kurus, is there any rule or
09:42PM 7 regulation that pertains to -- well, let me ask a
09:42PM 8 different question.
09:42PM 9 What number of handicap spaces, if any,
09:42PM 10 are required to pertain to, you know, this -- the
09:42PM 11 premises here?
09:42PM 12 A. One.
09:42PM 13 Q. One handicap spot?
09:42PM 14 A. Based on the six on-site, it would
09:42PM 15 require one.
09:42PM 16 Q. So the handicap requirement is based on
09:42PM 17 a proportion of the available on-site parking?
09:42PM 18 A. Correct.
09:42PM 19 Q. And so, it's not based on the intended
09:42PM 20 occupancy of the structure?
09:43PM 21 A. It's based on the spaces in the lot
09:43PM 22 on -- it's based on the spaces on the facility,
09:43PM 23 correct.
09:43PM 24 Q. Is there any requirement with regard to
09:43PM 25 distance of the off-site lots, how far they can be

09:43PM 1 away from the premises here?
 09:43PM 2 MR. BONNER: Based on what, the ADA?
 09:43PM 3 BY MR. DiSTEFANO:
 09:43PM 4 Q. I'm just asking is there a requirement
 09:43PM 5 that you're aware of as to the closeness as to the
 09:43PM 6 distance that an off-site lot is permitted?
 09:43PM 7 MR. BONNER: Probably just as far as
 09:43PM 8 the valets can run.
 09:43PM 9 MR. DiSTEFANO: Well, that's a question
 09:43PM 10 to Mr. Kurus.
 09:43PM 11 MR. McNAMARA: Mr. Kurus, if you could
 09:43PM 12 answer.
 09:43PM 13 MR. KURUS: I don't know of any
 09:43PM 14 limitation on off-site parking facility distance.
 09:43PM 15 BY MR. DiSTEFANO:
 09:43PM 16 Q. Do you know how far the parking
 09:44PM 17 facility is from -- or how far the three different
 09:44PM 18 parking facilities are from the premises?
 09:44PM 19 MR. BONNER: I think the applicant can
 09:44PM 20 testify to that, Edwin, how far away.
 09:44PM 21 MR. DiSTEFANO: No, it's a question to
 09:44PM 22 Mr. Kurus and he can answer.
 09:44PM 23 MR. BONNER: Well, you asked factually
 09:44PM 24 how far away they are and Mr. Kurus is indicating
 09:44PM 25 he's not positive. Mr. Gomez can tell you for sure.

09:44PM 1 MR. DiSTEFANO: Well, he answered for
 09:44PM 2 him and said he doesn't -- he's not positive. I was
 09:44PM 3 waiting for him to answer.
 09:44PM 4 MR. McNAMARA: Mr. DiStefano, if
 09:44PM 5 there's a better witness qualified to answer the
 09:44PM 6 question, then I would suggest he be provided the
 09:44PM 7 opportunity to respond.
 09:44PM 8 MR. DiSTEFANO: Certainly.
 09:44PM 9 MR. McNAMARA: Mr. Gomez, can you
 09:44PM 10 answer the question that's been proffered by
 09:44PM 11 Mr. DiStefano?
 09:44PM 12 MR. BONNER: You're on mute.
 09:44PM 13 MR. McNAMARA: Mr. Gomez.
 09:44PM 14 MR. GOMEZ: I'm back, I'm back, yeah, I
 09:44PM 15 was muted.
 09:44PM 16 MR. McNAMARA: Okay. The three
 09:44PM 17 properties that have been leased, how far away are
 09:44PM 18 they from your establishment?
 09:44PM 19 MR. GOMEZ: If I can answer correctly,
 09:45PM 20 there is one traffic light at the corner, which the
 09:45PM 21 next half of the block. And then the other half of
 09:45PM 22 the block is where the property is within one block.
 09:45PM 23 MR. BONNER: Would you say they're less
 09:45PM 24 than two tenths of a mile?
 09:45PM 25 MR. GOMEZ: Oh, yes, definitely.

09:45PM 1 MR. BONNER: Does that satisfy you,
 09:45PM 2 Mr. DiStefano?
 09:45PM 3 MR. DiSTEFANO: Well, the testimony
 09:45PM 4 speaks for itself.
 09:45PM 5 MR. BONNER: Yeah, it does. He
 09:45PM 6 answered your question.
 09:45PM 7 BY MR. DiSTEFANO:
 09:45PM 8 Q. So the -- now, Mr. Kurus, is there any
 09:45PM 9 standard within your profession with regard to
 09:45PM 10 calculating, like, the area required to establish,
 09:45PM 11 like, to allow the, you know, a vehicle to turn?
 09:45PM 12 Like, you need, you know, X square feet to allow, you
 09:45PM 13 know, a passenger car to make a turn in the parking
 09:45PM 14 area?
 09:45PM 15 A. There's a minimum requirements for
 09:46PM 16 one-way driveway, two-way driveway and a drive aisle
 09:46PM 17 widths within parking area, but there are instances
 09:46PM 18 where there's existing conditions and existing
 09:46PM 19 parking lots that have varying dimensions for drive
 09:46PM 20 aisle widths.
 09:46PM 21 In those situations, we'll use turning
 09:46PM 22 template software, which, you know, uses a computer
 09:46PM 23 program to generate a car turning template so that we
 09:46PM 24 could physically check it to see, make sure that
 09:46PM 25 there's enough room for a vehicle to enter and exist

09:46PM 1 a particular area. And that's what we did on this
 09:46PM 2 site for the single unit truck slash garbage truck to
 09:46PM 3 be able to pull into the site, access the trash area
 09:46PM 4 and then leave.
 09:46PM 5 So a typical passenger vehicle is going
 09:46PM 6 to be smaller than a box truck or a garbage truck, so
 09:47PM 7 that turning template that, you know, we looked at
 09:47PM 8 that works for the garbage truck would essentially
 09:47PM 9 also work for any, you know, on-road passenger
 09:47PM 10 vehicle would be coming to the site.
 09:47PM 11 Q. Okay. So the turning template, is that
 09:47PM 12 what we see illustrated I guess in the lower left
 09:47PM 13 corner of the exhibit you were previously showing?
 09:47PM 14 A. Yes.
 09:47PM 15 Q. Okay. And if I'm looking at it
 09:47PM 16 correctly, that shows that a truck would either have
 09:47PM 17 to back in or back out; is there something I'm
 09:47PM 18 missing?
 09:47PM 19 A. It could pull in and back out.
 09:47PM 20 Q. So it can't -- the turning template
 09:47PM 21 would indicated that it can't turn around.
 09:47PM 22 A. A single unit box truck can't turn
 09:47PM 23 around on-site.
 09:47PM 24 Q. Okay. And did you make any application
 09:47PM 25 using the turning template software with regard to a

09:48PM 1 passenger vehicle?

09:48PM 2 **A. Well, there's a clear drive aisle**

09:48PM 3 **that's sizable enough for a passenger vehicle to turn**

09:48PM 4 **around on-site and leave the site head on if, you**

09:48PM 5 **know, if you're utilizing those spaces.**

09:48PM 6 **I use -- I was able to use the parking**

09:48PM 7 **spaces within the pharmacy myself. I pull in, I sat**

09:48PM 8 **there for a couple minutes, I used the space behind**

09:48PM 9 **me to back out within the site and then exit the site**

09:48PM 10 **head on.**

09:48PM 11 **So I physically tested the existing**

09:48PM 12 **parking stalls for the pharmacy, they work, but the**

09:48PM 13 **testimony is if they all were in use and someone**

09:48PM 14 **pulled in the site head on, they'd have to back out**

09:48PM 15 **to leave, that's the testimony.**

09:48PM 16 **Q.** And where is it envisioned if you've

09:49PM 17 considered this where the valet staging area would

09:49PM 18 be?

09:49PM 19 **A. I think that's all going to be detailed**

09:49PM 20 **in the valet management plan. I don't have that, I**

09:49PM 21 **don't have that with me.**

09:49PM 22 **Q.** I mean is there ability to use all six

09:49PM 23 spaces and then also do valet staging area in the

09:49PM 24 outside of the street?

09:49PM 25 **MR. BONNER:** The applicant already

09:49PM 1 testified that after 6 o'clock when the pharmacy is

09:49PM 2 closed, the entire area will be available to be used

09:49PM 3 at a valet staging area.

09:49PM 4 **MR. DiSTEFANO:** Okay.

09:49PM 5 **BY MR. DiSTEFANO:**

09:49PM 6 **Q.** Well, Mr. Kurus, did you come to any

09:49PM 7 conclusions as to that?

09:49PM 8 **A. I testified that once those spaces are**

09:49PM 9 **open, those spaces could be utilized to pull in, have**

09:49PM 10 **the car received and then the valet would take the**

09:50PM 11 **car to the off-site parking lot.**

09:50PM 12 **Q.** So your thought process is that some of

09:50PM 13 those six spaces would have to be used for valet?

09:50PM 14 **A. I think it would help if they are all**

09:50PM 15 **utilized then the cars would have to pull in, they**

09:50PM 16 **would get received and then the valet would back them**

09:50PM 17 **out, that's how it would operate if those spaces were**

09:50PM 18 **-- if they were taken or used.**

09:50PM 19 **Q.** Now, with regard to the circulation,

09:50PM 20 did you make any calculations with how long it would

09:50PM 21 take a valet to drive to any of the off-site parking

09:50PM 22 spots and then return?

09:50PM 23 **A. I did not.**

09:50PM 24 **Q.** Did you make any calculations with

09:50PM 25 regard to the frequency of, you know, arrivals and

09:51PM 1 departures?

09:51PM 2 **A. I did not.**

09:51PM 3 **Q.** Just bear with me a moment.

09:51PM 4 Have you seen any written lease that

09:51PM 5 pertains to when the -- when the, whatchamacallit,

09:51PM 6 when the restaurant is permitted to use the entirety

09:51PM 7 of the pharmacy spaces?

09:51PM 8 **A. I didn't review any leases.**

09:51PM 9 **MR. BONNER:** It was the testimony of

09:51PM 10 the applicant their lease is in existence, it's not

09:51PM 11 part of our case. The pharmacy closes at 6 o'clock

09:51PM 12 as a factual statement of testimony. The spaces are

09:51PM 13 available after 6 o'clock.

09:51PM 14 **MR. DiSTEFANO:** But that specific lease

09:51PM 15 hasn't been provided.

09:52PM 16 **MR. BONNER:** No.

09:52PM 17 **MR. DiSTEFANO:** All right. I have no

09:52PM 18 further questions of Mr. Kurus at this time.

09:52PM 19 **MR. BONNER:** Thanks.

09:52PM 20 **REDIRECT EXAMINATION**

09:52PM 21 **BY MR. BONNER:**

09:52PM 22 **Q.** Anthony, just quickly, the space from

09:52PM 23 the newly constructed, enclosed, covered outdoor

09:52PM 24 dining area where the security planters that are up

09:52PM 25 against the wall, from the edge of the security

09:52PM 1 planters to the property line, in other words, the

09:52PM 2 entire paved parking area, can you give me that

09:52PM 3 dimension?

09:52PM 4 **A. Yes.**

09:52PM 5 **Q.** You show the drive as 22.7, but you

09:52PM 6 don't give a dimension from across the front of the

09:52PM 7 pharmacy building. About how big is that space?

09:52PM 8 **A. It's approximately, I would say, hold**

09:52PM 9 **on, approximately 55 feet.**

09:52PM 10 **Q.** Total, from -- including the driveway

09:52PM 11 and the parking area?

09:52PM 12 **A. Yes. So there's 22.7 from the property**

09:52PM 13 **line to the building corner. I would say there's at**

09:52PM 14 **least another 30 feet from the building to the**

09:53PM 15 **planters, so --**

09:53PM 16 **Q.** From the planters, so --

09:53PM 17 **A. So same -- yeah.**

09:53PM 18 **Q.** And we all drive cars. So the typical

09:53PM 19 depth of a car is maybe 20 feet?

09:53PM 20 **A. I would say 16 feet is your typical**

09:53PM 21 **sedan, 20 feet would be, like, the biggest possible,**

09:53PM 22 **oversized SUV-like truck.**

09:53PM 23 **Q.** So if cars were parked front in to the

09:53PM 24 planters or front in to the pharmacy building and

09:53PM 25 there were three or four cars there, there would

09:53PM **1** still be enough room for a car to make a K turn and
 09:53PM **2** pull out of a parking lot front ways, correct?
 09:53PM **3** **A. Correct.**
 09:53PM **4** **Q.** Okay. Thank you.
 09:53PM **5** MR. BONNER: I don't have anything
 09:53PM **6** further for Mr. Kurus, Mr. Chairman.
 09:53PM **7** CHAIRMAN CASTRO: Mr. Kurus, I have
 09:53PM **8** some questions for you. The parking spaces that the
 09:53PM **9** applicant is using and the parking spaces for which
 09:54PM **10** Mr. DiStefano was cross-examining you, are they
 09:54PM **11** currently in use? Are they being used as parking
 09:54PM **12** spaces for the owners who you are renting the parking
 09:54PM **13** spaces from?
 09:54PM **14** MR. BONNER: Perhaps Mr. Gomez would be
 09:54PM **15** better to answer that question, Mr. Chairman.
 09:54PM **16** CHAIRMAN CASTRO: Mr. Gomez.
 09:54PM **17** MR. GOMEZ: Yeah, I'm back, yeah, I'm
 09:54PM **18** here.
 09:54PM **19** CHAIRMAN CASTRO: Mr. Gomez,
 09:54PM **20** Mr. DiStefano was asking a specific question as to
 09:54PM **21** the turning, the guidelines for turning, existing,
 09:54PM **22** entering. Are these parking spaces that you're
 09:55PM **23** renting from the owner of the buildings, are they
 09:55PM **24** currently being used as parking spaces for them
 09:55PM **25** during the work hours?

09:55PM **1** MR. GOMEZ: Yes, they are. The
 09:55PM **2** pharmacy uses -- they allow their clientele to park
 09:55PM **3** there every day.
 09:55PM **4** CHAIRMAN CASTRO: They are being used
 09:55PM **5** as a parking space?
 09:55PM **6** MR. GOMEZ: They are being used as
 09:55PM **7** parking spaces for the pharmacy.
 09:55PM **8** CHAIRMAN CASTRO: I'm talking about all
 09:55PM **9** the parking spaces including the pharmacy parking
 09:55PM **10** spaces that the applicant is going to be using.
 09:55PM **11** MR. GOMEZ: Yes, they're being used as
 09:55PM **12** well, yes.
 09:55PM **13** CHAIRMAN CASTRO: They are parking
 09:55PM **14** spaces, the only thing you're going to be doing is
 09:55PM **15** you're going to continue using those spaces as
 09:55PM **16** they've been used throughout the years?
 09:55PM **17** MR. GOMEZ: That is correct.
 09:55PM **18** CHAIRMAN CASTRO: As parking spaces?
 09:55PM **19** MR. Gomez: As parking spaces, correct.
 09:55PM **20** CHAIRMAN CASTRO: Thank you.
 09:56PM **21** Commissioners, do you have any other
 09:56PM **22** questions for Mr. Gomez or Mr. Kurus?
 09:56PM **23** Mr. Bonner, are you done with
 09:56PM **24** Mr. Kurus?
 09:56PM **25** MR. BONNER: I am finished with

09:56PM **1** Mr. Kurus.
 09:56PM **2** CHAIRMAN CASTRO: Do you have any other
 09:56PM **3** witnesses?
 09:56PM **4** MR. BONNER: I do, Mr. Chairman, we
 09:56PM **5** have our planner, Nicholas Graviano.
 09:56PM **6** Mr. McNamara, would you like to do the
 09:56PM **7** honors?
 09:56PM **8** MR. McNAMARA: Yes, Mr. Graviano, if I
 09:56PM **9** didn't before, raise your hand also, please.
 09:56PM **10** Gentlemen, do you swear the testimony
 09:56PM **11** you're about to present to the zoning board of
 09:56PM **12** adjustment concerning the application now pending
 09:56PM **13** before it shall be the truth, the whole truth, and
 09:56PM **14** nothing but the truth?
 09:56PM **15** MR. GRAVIANO: I do.
 09:56PM **16** N I C H O L A S G R A V I A N O, P.P.
 09:57PM **17** 101 Crawford's Corner Road, Holmdel, New Jersey,
 09:57PM **18** having been duly sworn, testifies as follows:
 09:56PM **19** MR. McNAMARA: Nick, for the record,
 09:56PM **20** state your name, spell your last name and provide
 09:56PM **21** your business affiliation, please.
 09:56PM **22** MR. GRAVIANO: Yes, my first name is
 09:56PM **23** Nicholas with an H.
 09:56PM **24** Last name Graviano, G-R-A-V, as in
 09:56PM **25** victor, I-A-N-O.

09:56PM **1** I'm a planner and partner with Graviano
 09:57PM **2** & Gillis Architects & Planners with a business
 09:57PM **3** address of 101 Crawford's Corner Road in Holmdel, New
 09:57PM **4** Jersey.
 09:57PM **5** MR. McNAMARA: Thank you, Mr. Graviano,
 09:57PM **6** you've testified on numerous occasions before land
 09:57PM **7** use boards as well as the boards here in Elizabeth
 09:57PM **8** and have been accepted as an expert in your field?
 09:57PM **9** MR. GRAVIANO: Yes, I have.
 09:57PM **10** I've been qualified by this board on
 09:57PM **11** numerous occasions. My professional planning license
 09:57PM **12** is still valid. If Mr. Bonner would like me to give
 09:57PM **13** my credentials, I can.
 09:57PM **14** CHAIRMAN CASTRO: No thank you,
 09:57PM **15** Mr. Graviano.
 09:57PM **16** MR. McNAMARA: Does the board have any
 09:57PM **17** objections?
 09:57PM **18** CHAIRMAN CASTRO: The board accepts
 09:57PM **19** Mr. Graviano's qualifications.
 09:57PM **20** MR. McNAMARA: Thank you. Please
 09:57PM **21** proceed.
 09:57PM **22** DIRECT EXAMINATION
 09:57PM **23** BY MR. BONNER:
 09:57PM **24** **Q.** Mr. Graviano, why don't you walk us
 09:57PM **25** through your testimony by narrative rather than my

09:57PM 1 asking you questions, I think it will move a little
 09:57PM 2 faster that way.
 09:57PM 3 **A. Certainly, Mr. Bonner.**
 09:58PM 4 **The applicant is here this evening**
 09:58PM 5 **requesting a (d)(1) and (d)(2) variance as well as**
 09:58PM 6 **(c) variances for preliminary and final site plan**
 09:58PM 7 **approval for Block 677 -- I'm sorry, Lot 677,**
 09:58PM 8 **Block 11.**
 09:58PM 9 **Currently the property contains a**
 09:58PM 10 **one-story commercial building in a pharmacy and the**
 09:58PM 11 **existing restaurant operating as a garden. The**
 09:58PM 12 **applicant seeks to construct a permanent outdoor**
 09:58PM 13 **seating and storage facility at the location.**
 09:58PM 14 **The property is located in the C-5**
 09:58PM 15 **District, which does not permit restaurants with**
 09:58PM 16 **outdoor dining, that's the (d)(1) portion of the**
 09:58PM 17 **application.**
 09:58PM 18 **The (d)(2) portion of the application**
 09:58PM 19 **is that there's an existing restaurant on the site**
 09:58PM 20 **that is expanding as a result of the applicant's**
 09:58PM 21 **proposal.**
 09:58PM 22 **The (c) variances that the applicant is**
 09:58PM 23 **requesting tonight relate to the front yard setback**
 09:58PM 24 **where 6 feet is prevailing and a setback of 0 feet is**
 09:59PM 25 **proposed. The proposed 0 feet is certainly**

09:59PM 1 **consistent with the established land use patterns on**
 09:59PM 2 **Morris Avenue in this general vicinity.**
 09:59PM 3 **The second (c) variance relates to the**
 09:59PM 4 **rear yard setback. Part of the temporary enclosure**
 09:59PM 5 **will be on the rear property line with a 0-foot**
 09:59PM 6 **setback whereas a 30-foot setback is prevailing in**
 09:59PM 7 **this instance.**
 09:59PM 8 **Then lastly the applicant is requiring**
 09:59PM 9 **the parking variance, this has been discussed at**
 09:59PM 10 **lengths via Mr. Bonner and Mr. Gomez, as well as the**
 09:59PM 11 **project engineer Mr. Kurus. The applicant is**
 09:59PM 12 **providing six spaces on-site whereas 47 off-street**
 09:59PM 13 **parking spaces are required.**
 09:59PM 14 **You did hear testimony the applicant**
 09:59PM 15 **does provide at least 43 and possibly 20 more up to**
 09:59PM 16 **63 off-street parking spaces via a valet arrangement**
 10:00PM 17 **with the leases in parking lots in the general**
 10:00PM 18 **vicinity.**
 10:00PM 19 **As the board knows, this section of**
 10:00PM 20 **Morris Avenue is located between the Elizabeth River**
 10:00PM 21 **and Westfield Avenue. It's the Elizabeth River where**
 10:00PM 22 **the C-5 Zoning District begins, as well as when**
 10:00PM 23 **you're going down Morris Avenue to the downtown port,**
 10:00PM 24 **this is where you see the established development**
 10:00PM 25 **patterns take on more of an urbanized and downtown**

10:00PM 1 **type feeling.**
 10:00PM 2 **This is a site that is located between**
 10:00PM 3 **two mixed-use buildings consisting of three and four**
 10:00PM 4 **stories respectively, and to the rear of the property**
 10:00PM 5 **is the Knights of Columbus site.**
 10:00PM 6 **I had an opportunity to study this area**
 10:00PM 7 **on two occasions and I did note there are numerous**
 10:00PM 8 **restaurants on both sides of Morris Avenue between**
 10:00PM 9 **the river and Westfield Avenue, specifically**
 10:00PM 10 **restaurants located at 301 Morris, 300 Morris, 302**
 10:01PM 11 **Morris, 304 Morris, 306 Morris, 308 Morris, 330**
 10:01PM 12 **Morris, 332 Morris, 336 Morris and 344 Morris. All**
 10:01PM 13 **of those properties are located in the C-5 Zoning**
 10:01PM 14 **District as well.**
 10:01PM 15 **When you look at the permitted uses at**
 10:01PM 16 **the C-5 Zoning District, it's a district that permits**
 10:01PM 17 **a wide array of commercial and residential uses**
 10:01PM 18 **specifically including professional offices, studios**
 10:01PM 19 **and clinics, business offices, neighborhood**
 10:01PM 20 **convenience type uses, local convenience type uses,**
 10:01PM 21 **community retail, general and speciality retail,**
 10:01PM 22 **indoor amusement, hotels, major entertainment, major**
 10:01PM 23 **retail commercial, arterial commercial.**
 10:01PM 24 **So it's a long list of permitted**
 10:01PM 25 **commercial uses in the C-5 District. I would like to**

10:02PM 1 **note that that district also permits accessory uses,**
 10:02PM 2 **which are customary to our permitted use.**
 10:02PM 3 **So, for example, if you have a major**
 10:02PM 4 **entertainment facility, a hotel, an indoor amusement**
 10:02PM 5 **facility, those are all uses that could actually have**
 10:02PM 6 **a restaurant by right as a permitted accessory use.**
 10:02PM 7 **So when you analyze these (d) variances**
 10:02PM 8 **that are being requested, it's a very unique scenario**
 10:02PM 9 **in that the existing restaurant is seeking to**
 10:02PM 10 **permanently establish the (Audio Distortion) not**
 10:02PM 11 **specifically listed as permitted uses in the C-5**
 10:02PM 12 **District, so the (d)(1) use variance is required.**
 10:02PM 13 **The existing restaurant expansion**
 10:02PM 14 **requires the (c)(2) variance because it's located on**
 10:02PM 15 **the site.**
 10:02PM 16 **After close examination of the built**
 10:02PM 17 **environment to the city's Master Plan, the zoning**
 10:03PM 18 **ordinance, it was certainly determined that the**
 10:03PM 19 **proposal can both satisfy the negative and positive**
 10:03PM 20 **criteria needed to support both the (d)(1) and**
 10:03PM 21 **(c)(2) variances, and I'll give you those reasons**
 10:03PM 22 **now.**
 10:03PM 23 **In relation to the (d)(1) variance, the**
 10:03PM 24 **board has the power to grant (d)(1) variances in**
 10:03PM 25 **particular cases and for special reasons.**

10:03PM 1 The positive criteria to the (d)(1)
 10:03PM 2 variance. It's the promotion of the general welfare
 10:03PM 3 as the zoning purpose that most clearly amplifies the
 10:03PM 4 meeting of that term "special reasons."
 10:03PM 5 So the benefit to the Elizabeth
 10:03PM 6 community from a not inherently beneficial use arises
 10:03PM 7 not from the use itself, but the development of a use
 10:03PM 8 on a site that's particularly suited for the
 10:03PM 9 enterprise that's proposed.
 10:03PM 10 This applicant does not need to
 10:03PM 11 demonstrate that there are other viable locations for
 10:03PM 12 the project in order to provide proof that the site
 10:04PM 13 is particularly suited for the proposed use.
 10:04PM 14 The applicant must also demonstrate
 10:04PM 15 that the variance can be granted without substantial
 10:04PM 16 detriment to the zone plan or zoning ordinance, nor
 10:04PM 17 will it create substantial detriment to the public
 10:04PM 18 good.
 10:04PM 19 Looking at the positive criteria, we'll
 10:04PM 20 take first the particular suitability. The property
 10:04PM 21 is particularly suited for the neighborhood and for
 10:04PM 22 the site for a numerous of factors, first being the
 10:04PM 23 site.
 10:04PM 24 The presence of a front yard parking
 10:04PM 25 area in the downtown environment is conducive to an

10:04PM 1 outdoor dining area. This is the only site between
 10:04PM 2 the Elizabeth River and Westfield Avenue that
 10:04PM 3 contains a front yard parking lot.
 10:04PM 4 Moving on, there's neighborhood factors
 10:04PM 5 as I discussed before. This portion of Morris Avenue
 10:04PM 6 houses numerous restaurants. The site is
 10:04PM 7 particularly suited for such use as it is consist
 10:05PM 8 with the established land use pattern of the area.
 10:05PM 9 This neighborhood is part of the
 10:05PM 10 downtown core, its proximity to Broad Street, the
 10:05PM 11 train station and other downtown uses make it suited
 10:05PM 12 for outdoor dining as the built environment in this
 10:05PM 13 area makes it difficult for many of the restaurants
 10:05PM 14 to provide outdoor dining arrangements.
 10:05PM 15 When I discussed the C-5 District's
 10:05PM 16 permitted principal and accessory land uses, this is
 10:05PM 17 certainly a zoning district that permits uses that
 10:05PM 18 are similar in nature and could potentially be more
 10:05PM 19 intense than the proposed use than what this
 10:05PM 20 applicant is proposing with you this evening. It's
 10:05PM 21 certainly a proposal which is in keeping with the
 10:05PM 22 neighborhood and regional commercial uses which are
 10:05PM 23 prescribed for the district. And as I stated before,
 10:05PM 24 many of the permitted land uses could have restaurant
 10:05PM 25 facilities as part of their operations.

10:05PM 1 With respect to the advancement of the
 10:05PM 2 purpose of zoning of the Municipal Land Use Law this
 10:06PM 3 proposal advances Purpose A to encourage municipal
 10:06PM 4 action, to guide the appropriate use of land in a
 10:06PM 5 manner which will promote the public health, safety,
 10:06PM 6 morals and general welfare.
 10:06PM 7 As you know, we are in a midst of one
 10:06PM 8 of the largest health crisis of our time that has
 10:06PM 9 highlighted the need for outdoor dining, retail and
 10:06PM 10 recreation space.
 10:06PM 11 According to the Centers for Disease
 10:06PM 12 Control, otherwise known as the CDC, considerations
 10:06PM 13 for bars and outdoor dining indicate that outdoor
 10:06PM 14 dining carries less of a transmission risk than
 10:06PM 15 indoor dining in terms of COVID, it certainly
 10:06PM 16 provides a better risk than indoor dining, there's no
 10:06PM 17 doubt about it, according to the CDC data.
 10:06PM 18 And I quote from the website:
 10:06PM 19 "In general, being outdoors and in
 10:06PM 20 spaces with good ventilation reduces the risk
 10:06PM 21 of exposure to the virus that causes COVID
 10:06PM 22 19."
 10:07PM 23 Moving on, it advances Purpose Z of the
 10:07PM 24 -- C of the MLUL to provide adequate light, air and
 10:07PM 25 open space. This is a proposal this helps provide

10:07PM 1 adequate air and ventilation in a restaurant context,
 10:07PM 2 piggybacking on the analysis given in relation to the
 10:07PM 3 advancement and Purpose A of the MLUL.
 10:07PM 4 It additionally advances Purpose G to
 10:07PM 5 provide sufficient space in appropriate location for
 10:07PM 6 a variety of uses to meet the needs of New Jersey
 10:07PM 7 citizens that ties into the analysis of particular
 10:07PM 8 suitability. This is sufficient space and
 10:07PM 9 appropriate location for an outdoor dining use.
 10:07PM 10 Lastly, this helps promote a desirable
 10:07PM 11 visual environment to creative development techniques
 10:07PM 12 and good civic design and arraignment. It helps
 10:07PM 13 provide that continuous facade plan along Morris
 10:07PM 14 Avenue.
 10:07PM 15 It's a creative solution for the
 10:07PM 16 vitality of a restaurant use which is in response to
 10:07PM 17 the ongoing health crisis and in this context, it's
 10:07PM 18 certainly appropriate to remove the parking and add
 10:08PM 19 the outdoor dining space in light of the fact that
 10:08PM 20 the applicant has gone to great lengths to replace
 10:08PM 21 those spaces through alternative methods.
 10:08PM 22 Now looking at the negative criteria,
 10:08PM 23 there's no substantial detriment to the public good
 10:08PM 24 by granting the (d)(1) use variance. This is a
 10:08PM 25 corridor that contains eating and drinking

10:08PM 1 establishments, these are the types of use which are
 10:08PM 2 the norm in the neighborhood.
 10:08PM 3 The applicant's acquisition of off-site
 10:08PM 4 parking mitigates any ills associated with the
 10:08PM 5 increased use of the space and the removal of the
 10:08PM 6 on-site parking spaces. There's no substantial
 10:08PM 7 detriment to the zone plan or zoning ordinance, as
 10:08PM 8 this is a use which is consistent with the commercial
 10:08PM 9 uses for the district.
 10:08PM 10 Looking at the city's Master Plan, the
 10:08PM 11 2020 Master Plan does not address the C-5 Zone, nor
 10:08PM 12 does it make mention of the ongoing COVID 19
 10:08PM 13 pandemic.
 10:09PM 14 The 2016 Land Use Element of the Master
 10:09PM 15 Plan encourages economic development along main
 10:09PM 16 transportation corridors and along the train station.
 10:09PM 17 Morris Avenue is certainly a main transportation
 10:09PM 18 corridor in the City of Elizabeth.
 10:09PM 19 Furthermore, the 2016 Land Use Element
 10:09PM 20 seeks to improve pedestrian facilities and
 10:09PM 21 streetscape amenities. The applicant's proposal is a
 10:09PM 22 positive streetscape improvement.
 10:09PM 23 Lastly, the 2016 Land Use Element also
 10:09PM 24 seeks to encourage the rehab of existing building
 10:09PM 25 facades, site improvements and structures when

10:09PM 1 appropriate.
 10:09PM 2 And then given in light of the COVID-19
 10:09PM 3 pandemic, as well as site factors which make the
 10:09PM 4 applicant's proposal fit in the surroundings a little
 10:09PM 5 bit better, this is certainly an appropriate rehab of
 10:09PM 6 an existing site and building facade.
 10:09PM 7 Now I'm going get into the (d)(2)
 10:10PM 8 variance, that's the expansion of the nonconforming
 10:10PM 9 use.
 10:10PM 10 With this variance, the board has the
 10:10PM 11 power to grant variances to permit the expansion of
 10:10PM 12 lawfully created preexisting, nonconforming uses and
 10:10PM 13 particular cases and special reasons, that's the
 10:10PM 14 positive criteria of the (d)(2) variance.
 10:10PM 15 The benefit to the general welfare in a
 10:10PM 16 (d)(2) concept is not from the use itself, but in a
 10:10PM 17 development of a site in the community which is
 10:10PM 18 particularity suited for the enterprise proposed.
 10:10PM 19 I would also like to note that special
 10:10PM 20 reasons warranting a (d)(2) variance may be found
 10:10PM 21 that this variance, if granted, would tend to make
 10:10PM 22 this use more acceptable in its particular setting.
 10:10PM 23 When looking at the positive criteria,
 10:10PM 24 it certainly advances Purposes A, C, G and I as
 10:10PM 25 discussed in the (d)(1) use variance analysis, and

10:10PM 1 this is a use which tends to make the use more
 10:11PM 2 acceptable in a particular setting.
 10:11PM 3 And when you look at this case, this
 10:11PM 4 application has two settings, one being the building
 10:11PM 5 and the site setting on Morris Avenue, the second
 10:11PM 6 being the place and time and circumstance of this use
 10:11PM 7 existing in the current COVID-19 pandemic.
 10:11PM 8 (D)(2) variances must show that the
 10:11PM 9 proposal is intertwined with notions of the general
 10:11PM 10 welfare and the applicant's attempt to provide
 10:11PM 11 permanent outdoor seating is certainly intertwined with
 10:11PM 12 the notion of the general welfare.
 10:11PM 13 The CDC has established that outdoor
 10:11PM 14 dining is a safer health environment, so therefore
 10:11PM 15 the applicant is certainly intertwined in promoting the
 10:11PM 16 general welfare.
 10:11PM 17 This is a proposal that provides
 10:11PM 18 flexibility in a challenging health and restaurant
 10:11PM 19 environment and the removal of the parking spaces and
 10:11PM 20 the provision of an impeccably designed -- if you go
 10:11PM 21 to the site today, you'll see it's beautiful with
 10:12PM 22 beautiful furniture, plantings, decor and the like.
 10:12PM 23 It's certainly helps close the gap between the
 10:12PM 24 neighboring buildings providing the enhanced
 10:12PM 25 aesthetics and safer pedestrian environment.

10:12PM 1 As with the (d)(1) variance, there's no
 10:12PM 2 substantial detriment to the public good. This is a
 10:12PM 3 corridor that contains numerous eating and drinking
 10:12PM 4 establishments. These types of uses are the norm in
 10:12PM 5 the neighborhood.
 10:12PM 6 Lastly moving on to the (c) variances,
 10:12PM 7 they certainly can be granted without substantial
 10:12PM 8 detriment to the zone plan or zoning ordinance, they
 10:12PM 9 can be granted under the (c)(2) criteria which must
 10:12PM 10 relate to a specific piece of property. It must also
 10:12PM 11 advance purposes of zoning in the Municipal Land Use
 10:12PM 12 Law.
 10:12PM 13 The (c) variance also advances Purposes
 10:12PM 14 A, C, G and I of the MLUL. When you look at the site
 10:12PM 15 itself, the front yard setback variance is certainly
 10:13PM 16 in keeping with the established front yard setbacks
 10:13PM 17 of the Morris Avenue corridor between the river
 10:13PM 18 extending to Westfield Avenue.
 10:13PM 19 And then with relation to the rear yard
 10:13PM 20 setback variance, the rear yard setback abuts other
 10:13PM 21 off-street parking areas in the Knights of Columbus
 10:13PM 22 parking lot, which have a storage container directly
 10:13PM 23 on the parking lot line, so there's certainly no
 10:13PM 24 impairment to that portion of that property.
 10:13PM 25 So in summation, this proposal

10:13PM **1** certainly advances purposes of the zoning and the

10:13PM **2** Municipal Land Use Law. The (d)(1) variance for the

10:13PM **3** outdoor dining and restaurant use can certainly be

10:13PM **4** granted by this board, as well as the (d)(2) variance

10:13PM **5** for the expansion of the nonconforming use.

10:13PM **6** Q. Thank you, Mr. Graviano.

10:13PM **7** MR. BONNER: I have no questions for

10:13PM **8** him, Mr. Chairman.

10:13PM **9** CHAIRMAN CASTRO: Commissioners, do you

10:13PM **10** have any questions for Mr. Graviano?

10:14PM **11** MR. McNAMARA: I have no questions,

10:14PM **12** Mr. Chairman.

10:14PM **13** CHAIRMAN CASTRO: Okay.

10:14PM **14** I understand that the objector, the

10:14PM **15** person that is the owner of the building immediately

10:14PM **16** adjacent, is going to have some witnesses.

10:14PM **17** We don't have time, 15 minutes is all

10:14PM **18** we have left, and I am in favor of probably hearing

10:14PM **19** the rest of this application during the live meeting

10:14PM **20** in September.

10:14PM **21** COMMISSIONER SOSA: Mr. Chairman?

10:14PM **22** CHAIRMAN CASTRO: Yes, Commissioner.

10:14PM **23** COMMISSIONER SOSA: Is it possible that

10:14PM **24** we can -- we carried it over once. Is it possible we

10:14PM **25** could just end it today? We need to --

10:15PM **1** CHAIRMAN CASTRO: Let's see how many

10:15PM **2** other witnesses we have, but I don't think we're

10:15PM **3** going to be done, Commissioner Sosa, in an hour.

10:15PM **4** MR. McNAMARA: It's my understanding

10:15PM **5** from counsel, Mr. Chairman, that he has both his

10:15PM **6** client as a witness and he's hired a professional

10:15PM **7** planner, Edward Kolling to offer a rebuttal testimony

10:15PM **8** to the testimony proffered by Mr. Graviano and the

10:15PM **9** other expert of the applicant.

10:15PM **10** So to allow time for Mr. Graviano to be

10:15PM **11** cross-examined by counsel for the objector and then

10:15PM **12** present two more witnesses, you're looking at at

10:15PM **13** least another 90 minutes to get through all of that.

10:15PM **14** MR. DiSTEFANO: I'm sorry, actually I

10:15PM **15** have -- there's also a tenant.

10:15PM **16** MR. McNAMARA: Three witness.

10:15PM **17** MR. DiSTEFANO: So it would be three

10:15PM **18** witnesses.

10:15PM **19** MR. McNAMARA: Mr. Chairman, you would

10:15PM **20** have a choice of we have a scheduled special meeting

10:15PM **21** for August 26th.

10:15PM **22** MS. WHITEHEAD: Yes, and I asked all

10:16PM **23** commissioners and we do have a quorum for that

10:16PM **24** meeting if we would like to reschedule it for the

10:16PM **25** special meeting on the 26th.

10:16PM **1** MR. McNAMARA: It would be the only

10:16PM **2** application on that night, so it would make it a lot

10:16PM **3** easier to complete the entire application and put it

10:16PM **4** to the board for a vote since there wouldn't be any

10:16PM **5** other applications on that night.

10:16PM **6** COMMISSIONER SOSA: Absolutely, I

10:16PM **7** definitely want to hear the witnesses, that's good.

10:16PM **8** CHAIRMAN CASTRO: Commissioner Sosa,

10:16PM **9** the meeting of August 26th is actually a meeting

10:16PM **10** where we're going to be tending to this application

10:16PM **11** only, no other application is going to be heard.

10:16PM **12** COMMISSIONER SOSA: Absolutely, I

10:16PM **13** definitely am interested. I want to hear the

10:16PM **14** tenants' concerns and community concern as well.

10:16PM **15** CHAIRMAN CASTRO: Thank you.

10:16PM **16** Mr. Bonner?

10:16PM **17** MR. BONNER: Yeah, Mr. Chairman, I'm

10:16PM **18** disappointed that we're not finishing tonight. I was

10:16PM **19** under the impression that we were going to be earlier

10:17PM **20** in the agenda, especially in light of the notice

10:17PM **21** issues that we had at a prior hearing.

10:17PM **22** I would like to continue as long as we

10:17PM **23** can tonight, if that's okay with the board, and then

10:17PM **24** of course we would accept the 26th as the next

10:17PM **25** meeting without notice.

10:17PM **1** CHAIRMAN CASTRO: Do you have,

10:17PM **2** Mr. Bonner, any other witness?

10:17PM **3** MR. BONNER: I do not.

10:17PM **4** MR. McNAMARA: The attorney for the

10:17PM **5** objector has the right to cross-examine Mr. Graviano.

10:17PM **6** So your decision is do you want to

10:17PM **7** proceed and do that tonight or do that at the next

10:17PM **8** meeting.

10:17PM **9** CHAIRMAN CASTRO: Let's proceed,

10:17PM **10** Mr. McNamara, with the cross-examination of this

10:17PM **11** witness.

10:17PM **12** MR. McNAMARA: Who's ever in the

10:17PM **13** background, please mute your phone so that we can

10:17PM **14** hear, please.

10:17PM **15** Thank you.

10:17PM **16** Mr. Chairman, I think you said you

10:17PM **17** wanted to proceed with Mr. Graviano's

10:17PM **18** cross-examination; am I correct?

10:18PM **19** CHAIRMAN CASTRO: That is correct,

10:18PM **20** Mr. McNamara.

10:18PM **21** MR. McNAMARA: Okay. And then we'll

10:18PM **22** carry the meeting to the 26th.

10:18PM **23** MR. DiStefano, do you wish to

10:18PM **24** cross-examine Mr. Graviano?

10:18PM **25** MR. DiSTEFANO: Yes, just tonight how

10:18PM 1 long will I have to cross this witness?

10:18PM 2 MR. McNAMARA: Well, we're not going to

10:18PM 3 start another witness given the lateness of the hour,

10:18PM 4 so let's see how you do. We normally wrap things up

10:18PM 5 around 10:30. If you don't think that's going to

10:18PM 6 give you enough time, then we'll just move everything

10:18PM 7 to the meeting of the 26th.

10:18PM 8 MR. BONNER: No, Mr. McNamara, I would

10:18PM 9 like him to get started tonight. As long as

10:18PM 10 Mr. Graviano is here and the testimony is fresh, I

10:18PM 11 think Mr. DiStefano should start his

10:18PM 12 cross-examination tonight.

10:18PM 13 MR. McNAMARA: Well, okay, start and

10:18PM 14 we'll see how we do. Okay.

10:18PM 15 MR. DiSTEFANO: Just interrupt me if it

10:18PM 16 gets too late.

10:18PM 17 CROSS-EXAMINATION

10:18PM 18 BY MR. DiSTEFANO:

10:18PM 19 Q. So for the witness, did you reach any

10:18PM 20 conclusions or any opinions as to the intent and

10:19PM 21 purpose of the existence of this C-5 Zone, what is it

10:19PM 22 supposed to serve within the Master Plan? What

10:19PM 23 purpose is it supposed to serve?

10:19PM 24 A. This is intended to provide commercial

10:19PM 25 uses and increased commercial uses in the City of

10:19PM 1 Elizabeth.

10:19PM 2 Q. So increased over which particular

10:19PM 3 zone, otherwise, the C-4 or was it the R-C, increase

10:19PM 4 in what?

10:19PM 5 A. The language spoke to providing

10:19PM 6 increased commercial opportunities other than

10:19PM 7 warehousing.

10:19PM 8 Q. And with regard to the area that was, I

10:19PM 9 guess, carved down, became the C-5 Zone, what zone

10:19PM 10 was it beforehand, if you know?

10:19PM 11 A. I believe it was the C-4 District, but

10:19PM 12 I could be incorrect.

10:19PM 13 Q. Could you compare the C-4 and the

10:20PM 14 purposes behind that with the C-5?

10:20PM 15 A. Yes.

10:20PM 16 I did look at that when I looked at the

10:20PM 17 language.

10:20PM 18 As I stated previously, the desire was

10:20PM 19 to create a commercial zoning district to provide

10:20PM 20 commercial opportunities other than warehousing.

10:20PM 21 Q. Okay.

10:20PM 22 So is the C-5 then supposed to be just

10:20PM 23 to eliminate warehouses from C-4?

10:20PM 24 A. No.

10:20PM 25 Obviously through the permitted land

10:20PM 1 uses of the district as well as the language behind

10:20PM 2 it, it seeks to be region and local commercial hub of

10:20PM 3 activity.

10:20PM 4 Q. I mean, but just, you know, you

10:20PM 5 mentioned the warehouses, but with regard to I guess

10:20PM 6 the changes going from C-4 to C-5 in this area,

10:20PM 7 besides the warehouses, what was it to accomplish?

10:21PM 8 A. It wasn't specifically noted in the

10:21PM 9 document.

10:21PM 10 Q. Okay.

10:21PM 11 So you -- did you come to any opinion

10:21PM 12 then on that issue?

10:21PM 13 A. Yes, you heard my testimony. My

10:21PM 14 opinion was that this is a use consistent with the

10:21PM 15 established commercial nature of this district, the

10:21PM 16 applicant's proposed use is certainly a use which

10:21PM 17 could be accommodated through a permitted use in an

10:21PM 18 accessory context, so it's not a substantial

10:21PM 19 departure from the zone plan or the zoning ordinance.

10:21PM 20 Q. Well, not a substantial -- okay.

10:21PM 21 So, now, with regard to the prohibition

10:21PM 22 on outdoor dining in C-5, is that something that

10:21PM 23 existed in C-4 previously in the area?

10:22PM 24 A. There was no mention of the outdoor

10:22PM 25 dining in any of the zoning districts in the City of

10:22PM 1 Elizabeth. The City of Elizabeth had regulated

10:22PM 2 sidewalk dining. Outdoor dining was not specifically

10:22PM 3 addressed in this zoning district or any other zoning

10:22PM 4 districts.

10:22PM 5 Q. Well, what's the purpose of the

10:22PM 6 restriction on outdoor dining, in your opinion?

10:22PM 7 A. I'm not the person to ask that question

10:22PM 8 to, I'm not the governing body or the planning board.

10:22PM 9 Q. Well, I mean, you did come to a

10:22PM 10 conclusion with regard to the intent and purpose of

10:22PM 11 that zoning ordinance, correct?

10:22PM 12 A. That was the intent and purpose spelled

10:22PM 13 out in the Master Plan for proposed amendment. That

10:22PM 14 was not my conclusion, that was the city's

10:22PM 15 conclusion.

10:22PM 16 MR. BONNER: Mr. Graviano doesn't

10:22PM 17 determine the policies in the zoning for the City of

10:23PM 18 Elizabeth, he interprets and applies it to the

10:23PM 19 individual case before him.

10:23PM 20 BY MR. DiSTEFANO:

10:23PM 21 Q. So, essentially, you didn't come to any

10:23PM 22 conclusion at all with regard to the purpose of that

10:23PM 23 specific restriction, the outdoor dining restriction?

10:23PM 24 A. No, that's not my role in this. My

10:23PM 25 role is to analyze one, if there's conditions that

10:23PM **1 make this use particularly suited for the site in**
 10:23PM **2 which its proposed; two, to establish if there's a**
 10:23PM **3 substantial detriment to the zone plan or zoning**
 10:23PM **4 ordinance, which I established there were not.**
 10:23PM **5 And certainly with the (d)(2) analysis**
 10:23PM **6 to see if there's advancements in terms of the --**
 10:23PM **7 being intertwined with the general welfare. And in**
 10:23PM **8 light of the current COVID-19 pandemic, there's**
 10:23PM **9 certainly something that is intertwined with promoting**
 10:23PM **10 the general welfare of the applicant's proposal.**
 10:24PM **11 Q.** So if you can't come to a conclusion or
 10:24PM **12 an opinion with regard to the intent and purpose of**
 10:24PM **13 the zone plan and ordinance, how can you testify that**
 10:24PM **14 this doesn't impair that purpose if you haven't**
 10:24PM **15 established the purpose?**
 10:24PM **16 A. Mr. DiStefano, how many times are you**
 10:24PM **17 going to ask me the same question? I indicated that**
 10:24PM **18 the Master Plan did provide an intent and purpose for**
 10:24PM **19 the C-5 District, which was to provide a variant**
 10:24PM **20 array of commercial uses other than warehousing.**
 10:24PM **21 Q.** So as to the other restaurants that you
 10:24PM **22 mentioned, are there any other restaurants that you**
 10:24PM **23 found that do have outdoor dining on a permanent**
 10:24PM **24 basis in the C-5 District or specifically in the**
 10:24PM **25 vicinity of the premises we're talking about tonight?**

10:24PM **1 A. As I indicated in my testimony, this**
 10:24PM **2 was one of the rare parcels that had the opportunity**
 10:24PM **3 to provide an outdoor seating area within the site**
 10:25PM **4 itself.**
 10:25PM **5 Q.** Did you review the parcel across the
 10:25PM **6 street from the one at issue?**
 10:25PM **7 A. Which parcel are you referring to?**
 10:25PM **8 Q.** The one that has Pisko's restaurant.
 10:25PM **9 A. Yes, I did.**
 10:25PM **10 Q.** And does Pisko's restaurant have the
 10:25PM **11 same capacity for outdoor dining as the parcel we're**
 10:25PM **12 talking about tonight?**
 10:25PM **13 A. Pisko's is a little bit of a different**
 10:25PM **14 situation that there is a roof over their dining**
 10:25PM **15 situation. That structure exists.**
 10:25PM **16 Q.** Okay. What's the roof at Pisko's
 10:25PM **17 constructed of?**
 10:25PM **18 A. Wood. There's metal support systems**
 10:25PM **19 there.**
 10:25PM **20 Q.** And is it an outdoor dining area or a
 10:26PM **21 roofed dining area in your thought process?**
 10:26PM **22 A. It's somewhat a combination, similar to**
 10:26PM **23 what the applicant is proposing.**
 10:26PM **24 Q.** So is there any difference with regard
 10:26PM **25 to the suitability of the Pisko's site for, you know,**

10:26PM **1 a permanent outdoor dining solution via the current**
 10:26PM **2 site, is there any difference? Is there any reason**
 10:26PM **3 that the site we're talking about would be any more**
 10:26PM **4 suitable than the Pisko's site?**
 10:26PM **5 A. Yes. As I stated in my testimony, it**
 10:26PM **6 is more suitable because one, it promotes a**
 10:26PM **7 continuation of the street elevation and facades of**
 10:26PM **8 the established land use pattern of the area.**
 10:26PM **9 Q.** Isn't it the case that the Pisko's
 10:26PM **10 establishment actually continues a facade across the**
 10:26PM **11 entrance to the outdoor dining area?**
 10:26PM **12 A. Yeah, we're not talking about the**
 10:26PM **13 Pisko's site now, we're talking about this site.**
 10:27PM **14 Q.** Right, but if you said that the
 10:27PM **15 difference between this site and Pisko's is that this**
 10:27PM **16 site promotes, you know, you put a facade in and it**
 10:27PM **17 promotes, you know, the even, you know, the**
 10:27PM **18 architectural evenness of the area, how is that any**
 10:27PM **19 different from what's currently at Pisko's?**
 10:27PM **20 A. Because Pisko's doesn't have a front**
 10:27PM **21 yard parking lot which is -- deviates from the**
 10:27PM **22 established land use pattern of the area.**
 10:27PM **23 Q.** And next to Pisko's is there another
 10:27PM **24 restaurant Monchy's that has outdoor dining on a**
 10:27PM **25 temporary basis?**

10:27PM **1 A. Let me look. Well, you know, temporary**
 10:27PM **2 and permanent are two different things.**
 10:27PM **3 Q.** Right, but they do have outdoor dining
 10:27PM **4 on a temporary basis at Monchy's, correct?**
 10:27PM **5 A. Give me one second, let me check my**
 10:28PM **6 notes. I believe their outdoor dining was on the**
 10:28PM **7 sidewalk.**
 10:28PM **8 Q.** There's not a gap between Monchy's and
 10:28PM **9 the Gyro's or the -- I guess there's a -- regardless,**
 10:28PM **10 so there's no dining, in your recollection, between**
 10:28PM **11 Monchy's and the next building over heading south?**
 10:28PM **12 A. I do not recall that being there.**
 10:28PM **13 Q.** Okay. But so it would be fair to say
 10:28PM **14 that the particular suitability that you see here is**
 10:28PM **15 based on the fact that there is a front parking area**
 10:28PM **16 where outdoor dining could be established?**
 10:28PM **17 A. Well, there's an area in general and in**
 10:29PM **18 the front, it promotes a better design aesthetic.**
 10:29PM **19 Q.** All right. But I mean, but Pisko's has
 10:29PM **20 an area in general, so the difference here would just**
 10:29PM **21 be that it's in front?**
 10:29PM **22 A. Yes, the applicant's proposal on this**
 10:29PM **23 site, and we're talking about this site, that front**
 10:29PM **24 yard parking area makes it suitable for the outdoor**
 10:29PM **25 dining arrangement.**

10:29PM 1 Q. Okay. So any front door -- any parking
 10:29PM 2 any in front would be suitable for outdoor dining
 10:29PM 3 based on that premise in any site?
 10:29PM 4 A. **In the downtown context, yes.**
 10:29PM 5 Q. Okay. So and that would continue down
 10:29PM 6 Morris Avenue to the area near, you know, El Nuevo
 10:29PM 7 Latino?
 10:29PM 8 A. **Yes.**
 10:29PM 9 Q. So that would also be equally suitable
 10:29PM 10 for outdoor dining based on that premise?
 10:30PM 11 A. **Nuevo Latino has a different land use**
 10:30PM 12 **context than what the neighborhood we're talking**
 10:30PM 13 **about in the applicant's proposal.**
 10:30PM 14 Q. What's the difference?
 10:30PM 15 A. **The built environment is not as compact**
 10:30PM 16 **at that location.**
 10:30PM 17 Q. Because of the large parking area?
 10:30PM 18 A. **Due to numerous factors, you know, I**
 10:30PM 19 **studied the area between the Elizabeth River and the**
 10:30PM 20 **intersection of Westfield Avenue because that's the**
 10:30PM 21 **connection in which the applicant's proposal is**
 10:30PM 22 **taking place.**
 10:30PM 23 Q. And equally the same, the public
 10:30PM 24 parking area a little bit south would also be
 10:30PM 25 suitable for outdoor dining?

10:30PM 1 A. **No, this is a site in which the**
 10:30PM 2 **applicant controls, it's not a public parking area.**
 10:30PM 3 Q. Isn't the public parking area a large
 10:31PM 4 open spot that abuts onto the sidewalk?
 10:31PM 5 A. **It's a public parking area.**
 10:31PM 6 Q. Well, right, but that doesn't change
 10:31PM 7 the physical structure of the area, the fact that
 10:31PM 8 it's currently a public parking area.
 10:31PM 9 A. **Yes, it does.**
 10:31PM 10 Q. Well, what is physically different
 10:31PM 11 about the parking lot, the public parking lot versus
 10:31PM 12 the parking lot that is pertinent to the pharmacy, is
 10:31PM 13 there some sort of different asphalt that's used?
 10:31PM 14 A. **This is a privately controlled parking**
 10:31PM 15 **lot, that is a public parking lot.**
 10:31PM 16 Q. Right, but that's who owns title to it.
 10:31PM 17 I'm talking about, like, the physical realty on the
 10:31PM 18 street. It's an open parking lot, an open space that
 10:31PM 19 abuts right onto the sidewalk. There's no physical
 10:31PM 20 difference, is there?
 10:31PM 21 A. **This line of questioning is ridiculous.**
 10:31PM 22 **It's a public parking lot. There's no established**
 10:32PM 23 **restaurant use on that parking lot.**
 10:32PM 24 Q. So basically there are -- besides the
 10:32PM 25 parking lot here at the pharmacy, there are three

10:32PM 1 other parking lots on the street that could
 10:32PM 2 accommodate open-air dining?
 10:32PM 3 A. **You need an established land use.**
 10:32PM 4 **Those are public parking lots.**
 10:32PM 5 Q. So you talked about how building a
 10:32PM 6 somewhat enclosed permanent outdoor dining structure
 10:32PM 7 will promote public health because of the current
 10:32PM 8 COVID pandemic, correct?
 10:32PM 9 A. **That is correct.**
 10:32PM 10 Q. And it would be fair to say that that
 10:32PM 11 criteria would become hopefully less salient in the
 10:32PM 12 future?
 10:32PM 13 A. **We don't know the direction by which**
 10:33PM 14 **the COVID-19 pandemic is going to take, but we have**
 10:33PM 15 **been taught and told by our health officials that**
 10:33PM 16 **outdoor seating in any context is safer than indoor**
 10:33PM 17 **seating and the promotion of outdoor seating in**
 10:33PM 18 **restaurants promotes good public health and public**
 10:33PM 19 **policy.**
 10:33PM 20 Q. And the plan you'll substantially
 10:33PM 21 increase is the occupancy of the site, correct?
 10:33PM 22 A. **I have not categorized that, you know,**
 10:33PM 23 **you can't define substantially. Does it increase the**
 10:33PM 24 **occupancy on the site, it does; however, the**
 10:33PM 25 **applicant has gone through painstaking measures to**

10:33PM 1 **mitigate that expansion through the acquisition of**
 10:33PM 2 **leases to provide off-street parking for the**
 10:33PM 3 **customers of the establishment.**
 10:33PM 4 Q. Well, do you know by how many diners
 10:33PM 5 the occupancy is being increased or the capacity?
 10:33PM 6 MR. BONNER: That was covered by the
 10:33PM 7 architect, that's not for this witness, and you've
 10:33PM 8 had your opportunity to question him. You'd know how
 10:33PM 9 many seats there are if you attended the meeting or
 10:34PM 10 read the transcript.
 10:34PM 11 MR. DiSTEFANO: Well, I'm just asking
 10:34PM 12 of this witness.
 10:34PM 13 MR. BONNER: Well, sooner or later you
 10:34PM 14 have to get to a point, don't you?
 10:34PM 15 BY MR. DiSTEFANO:
 10:34PM 16 Q. Mr. Graviano, do you have -- do you
 10:34PM 17 know by how many people it's being increased?
 10:34PM 18 A. **That was not relevant to my testimony.**
 10:34PM 19 **The applicant is providing a parking count that meets**
 10:34PM 20 **what is required by the city's zoning code.**
 10:34PM 21 Q. So basically if this plan were
 10:34PM 22 approved, you'd have a substantially higher
 10:34PM 23 concentration of people in one spot versus --
 10:34PM 24 MR. BONNER: That's your words.
 10:34PM 25 Q. -- the current occupancy; isn't that

10:34PM 1 correct?

10:34PM 2 **A. As I stated before, I don't agree with**

10:34PM 3 **your use of the term "substantial." Will you have an**

10:35PM 4 **increase in occupancy, yes, you will.**

10:35PM 5 **Q.** Okay. So could you come to any

10:35PM 6 conclusions whether or not this increase in occupancy

10:35PM 7 will be a greater threat to public health than, you

10:35PM 8 know, the current occupancy, you know, if you have 20

10:35PM 9 people together in an enclosed space, that's one

10:35PM 10 thing, but if you have, you know, X number people,

10:35PM 11 whatever it was, a hundred people in an outdoor

10:35PM 12 space, that's another thing.

10:35PM 13 And the question is did you come to any

10:35PM 14 consideration, did you contemplate that when you said

10:35PM 15 this promotes the public health? While you're

10:35PM 16 bringing, you know, a bunch of people together in an

10:35PM 17 outdoor setting, you're still increasing the crowd

10:35PM 18 size; isn't that the case?

10:35PM 19 MR. BONNER: He made it very clear that

10:35PM 20 the CDC has determined that outdoor dining is safer

10:35PM 21 than indoor dining. This characterizes outdoor

10:35PM 22 dining with ventilation.

10:36PM 23 I think you've asked this question

10:36PM 24 enough times and he's answered it enough times.

10:36PM 25 MR. DiSTEFANO: Well, I'm just asking

10:36PM 1 if he considered that if -- if -- because it's not

10:36PM 2 keeping all the --

10:36PM 3 MR. BONNER: He's already answered the

10:36PM 4 question.

10:36PM 5 MR. DiSTEFANO: -- same. If you have

10:36PM 6 20 people indoor and you have 20 people outdoor, then

10:36PM 7 you can compare that. And based on premise that he's

10:36PM 8 established, certainly the outdoor or the ventilated

10:36PM 9 area is safer, but is it safer to public health to

10:36PM 10 have a hundred people together in an outdoor

10:36PM 11 ventilated area versus 20 people together in an

10:36PM 12 indoor area?

10:36PM 13 MR. McNAMARA: Mr. DiStefano, the

10:36PM 14 witness is not a public health expert, he's a

10:36PM 15 planner. I think the question has already been

10:36PM 16 adequately hashed through, so I'm going to suggest

10:36PM 17 you please move on.

10:36PM 18 MR. BONNER: And Mr. McNamara, we've

10:36PM 19 also testified that this will be subject to the board

10:36PM 20 of health's review.

10:36PM 21 MR. McNAMARA: Any restaurant

10:36PM 22 establishment anywhere is regulated --

10:36PM 23 MR. BONNER: Exactly.

10:36PM 24 MR. McNAMARA: -- by the municipal

10:36PM 25 board of health, that's a given and that's a

10:36PM 1 condition on any resolution that's adopted by this

10:36PM 2 board for virtually any type of use.

10:36PM 3 BY MR. DiSTEFANO:

10:36PM 4 **Q.** So and then you said this is going to

10:37PM 5 provide adequate light, air and open space, right,

10:37PM 6 that's a -- it's to vindicate that purpose of the

10:37PM 7 act, correct?

10:37PM 8 **A. This is certainly a proposal which**

10:37PM 9 **provides air and ventilation for the diners of the**

10:37PM 10 **establishment.**

10:37PM 11 **Q.** Well, but --

10:37PM 12 MR. BONNER: I object to your use of

10:37PM 13 the word "vindicate." He stated, as is required of a

10:37PM 14 planner giving testimony, that an application meets

10:37PM 15 the purposes of the Municipal Land Use Law, one of

10:37PM 16 which is adequate air, light and open space. That

10:37PM 17 was his testimony, nothing about vindication of

10:37PM 18 anything.

10:37PM 19 BY MR. DiSTEFANO:

10:37PM 20 **Q.** Okay.

10:37PM 21 So and it's your testimony that

10:37PM 22 actually putting in this, you know, semipermanent

10:37PM 23 structure is going to increase light, air and open

10:37PM 24 space versus the preexisting open space?

10:37PM 25 **A. It's a situation that provides air and**

10:37PM 1 **ventilation for the diners of the establishment.**

10:37PM 2 **Q.** But it actually decreases the light,

10:37PM 3 air and open space that is existing?

10:38PM 4 **A. No.**

10:38PM 5 MR. BONNER: When you consider that a

10:38PM 6 zero lot line is permitted and this is much more

10:38PM 7 open, lighted and airy than an enclosed restaurant by

10:38PM 8 comparison.

10:38PM 9 MR. DiSTEFANO: And it's much less

10:38PM 10 light open and airy than nothing.

10:38PM 11 MR. BONNER: And your point is?

10:38PM 12 BY MR. DiSTEFANO:

10:38PM 13 **Q.** And you also testified --

10:38PM 14 MR. McNAMARA: Gentlemen, gentlemen, if

10:38PM 15 you're going to argue with each other, you can save

10:38PM 16 it for the next meeting.

10:38PM 17 By my clock you've got six minutes left

10:38PM 18 this evening, Counsel, to conduct your

10:38PM 19 cross-examination or that's going to be carried as

10:38PM 20 well to the next meeting because there's going to be

10:38PM 21 a hard stop here at 10:45.

10:38PM 22 CHAIRMAN CASTRO: Mr. DiStefano?

10:38PM 23 MR. DiSTEFANO: Yes.

10:38PM 24 CHAIRMAN CASTRO: Go ahead.

10:38PM 25

10:38PM 1 BY MR. DiSTEFANO:
 10:38PM 2 Q. So you also testified that this will
 10:38PM 3 provide sufficient space and appropriate locations
 10:39PM 4 for a variety of agricultural, residential,
 10:39PM 5 recreational, commercial and industrial uses and open
 10:39PM 6 space, both public and private, according to our
 10:39PM 7 respective environmental requirements in order to
 10:39PM 8 meet the needs of all New Jersey citizens.
 10:39PM 9 And again, is this providing open
 10:39PM 10 space?
 10:39PM 11 A. It's providing a commercial use to meet
 10:39PM 12 the needs of New Jersey citizens.
 10:39PM 13 Q. And what are those needs?
 10:39PM 14 A. The need to accommodate outdoor dining
 10:39PM 15 in light of the COVID-19 pandemic.
 10:39PM 16 Q. And so, but then you're proposing a
 10:39PM 17 permanent solution to the COVID-19 pandemic, which
 10:39PM 18 has been -- there's been a response with regard to
 10:39PM 19 outdoor dining pursuant to executive action; isn't
 10:39PM 20 that correct?
 10:39PM 21 A. In any health context, outdoor dining
 10:40PM 22 is a promotion of the general health, safety and
 10:40PM 23 general welfare.
 10:40PM 24 Q. But we're talking about Subsection G
 10:40PM 25 here.

10:40PM 1 A. Yeah, you combined it in your question.
 10:40PM 2 With respect to G, it's sufficient
 10:40PM 3 space in that the site can accommodate the
 10:40PM 4 applicant's proposal, it's an appropriate location in
 10:40PM 5 that it's located on Morris Avenue between the River
 10:40PM 6 and Westfield Avenue, an area which contains numerous
 10:40PM 7 restaurant uses, and the applicant has been able to
 10:40PM 8 acquire off-street parking solutions to help
 10:40PM 9 accommodate the proposal.
 10:40PM 10 Q. Did you make any review with regard to
 10:40PM 11 the requirements for the lessees of the three
 10:40PM 12 off-site parking spaces?
 10:40PM 13 A. I'm sorry, I don't understand the
 10:41PM 14 question.
 10:41PM 15 Q. Well, the lessees of those spaces, do
 10:41PM 16 they -- what do they need with regard to -- with
 10:41PM 17 regard to requirements at -- for their business
 10:41PM 18 purposes vis-a-vis those parking lots?
 10:41PM 19 MR. BONNER: The applicant is the
 10:41PM 20 lessee.
 10:41PM 21 MR. DiSTEFANO: I'm pretty sure the
 10:41PM 22 applicant is the lessor, but --
 10:41PM 23 MR. BONNER: No, the lessor is the
 10:41PM 24 landlord.
 10:41PM 25 MR. DiSTEFANO: I'm pretty sure he

10:41PM 1 signed as lessor on the leases, but regardless, let's
 10:41PM 2 talk about landlord and tenant.
 10:41PM 3 BY MR. DiSTEFANO:
 10:41PM 4 Q. With regard to the landlords at
 10:41PM 5 those -- well, with regard to the users, okay, the,
 10:41PM 6 like, adjacent users, what are the actual
 10:41PM 7 requirements with regard to the parking spaces they
 10:41PM 8 need to provide?
 10:41PM 9 A. That testimony was provided by the
 10:41PM 10 applicant who analyzed the spaces that were going to
 10:42PM 11 be shared and the shared users' hours of operation
 10:42PM 12 and needs, that was done by another witness.
 10:42PM 13 Q. So did you rely on that testimony?
 10:42PM 14 A. Yes, I'm relying on the applicant's
 10:42PM 15 testimony in relation to that issue, yes.
 10:42PM 16 Q. Okay. So you don't -- you didn't make
 10:42PM 17 any independent review of the number of spaces
 10:42PM 18 required with regard to the OTHER uses of those
 10:42PM 19 spaces?
 10:42PM 20 A. No, I did not.
 10:42PM 21 Q. Okay.
 10:42PM 22 A. My analysis relied on the applicant's
 10:42PM 23 negotiations with those land owners based on the
 10:42PM 24 information given by the applicant and the hours of
 10:43PM 25 operation of the other business uses that the

10:43PM 1 applicant's proposal for the provision of off-street
 10:43PM 2 parking was certainly reasonable in this context.
 10:43PM 3 MR. DiSTEFANO: Okay. I have no
 10:43PM 4 further questions at this time for the witness.
 10:43PM 5 MR. McNAMARA: Thank you.
 10:43PM 6 Mr. Chairman, at this point I would
 10:43PM 7 recommend that you entertain a motion to carry this
 10:43PM 8 hearing to a special meeting date of August 26th.
 10:43PM 9 The board secretary will advertise it under the
 10:43PM 10 Sunshine Law to provide updated meeting ID and
 10:43PM 11 password information so people can log in via Zoom to
 10:43PM 12 participate.
 10:43PM 13 For members of the public who have been
 10:43PM 14 observing these proceedings this evening, this
 10:43PM 15 application is going to be carried to a special
 10:43PM 16 meeting of the board on August 26th, 2021, it will be
 10:43PM 17 a virtual meeting as has this one been tonight.
 10:44PM 18 This will be the only application to be
 10:44PM 19 placed on that agenda. The set meeting will start at
 10:44PM 20 7:30. The office of the board secretary will publish
 10:44PM 21 new notice with the information and it will also be
 10:44PM 22 posted on the city website.
 10:44PM 23 MR. BONNER: Mr. McNamara, before the
 10:44PM 24 chairman closes the meeting, this concludes the
 10:44PM 25 applicant's case, but I would like to reserve time to

10:44PM **1** make a statement after Mr. DiStefano presents his
 10:44PM **2** case.
 10:44PM **3** MR. McNAMARA: I have no objection to
 10:44PM **4** that, Counsel, you will have the right to
 10:44PM **5** cross-examine any and all witnesses proffered by the
 10:44PM **6** objector, as does the board and its professionals.
 10:44PM **7** It's your decision as to whether or not you wish to
 10:44PM **8** have your professionals available at the meeting on
 10:44PM **9** the 26th.
 10:44PM **10** MR. BONNER: We'll make that
 10:44PM **11** determination. Thank you, Mr. McNamara, we have no
 10:44PM **12** plans to present further testimony.
 10:44PM **13** CHAIRMAN CASTRO: Mr. Bonner, I'd like
 10:45PM **14** you to have Mr. Graviano back for the August 26th
 10:45PM **15** meeting, please, I'd like to ask him some questions.
 10:45PM **16** MR. BONNER: Certainly, Mr. Chairman.
 10:45PM **17** CHAIRMAN CASTRO: And, Madame
 10:45PM **18** Secretary, if you can please send out the transcript
 10:45PM **19** of today's hearing, I would appreciate it.
 10:45PM **20** MR. BONNER: Patricia, you're there
 10:45PM **21** somewhere.
 10:45PM **22** MS. WHITEHEAD: I'm sorry.
 10:45PM **23** THE COURT REPORTER: Oh, I'm sorry, I
 10:45PM **24** thought he was talking to you.
 10:45PM **25** I'm sorry, continue, Ms. Secretary.

10:45PM **1** MS. WHITEHEAD: I'm sorry, can you
 10:45PM **2** repeat that again, Chairman? I couldn't hear you.
 10:45PM **3** MR. McNAMARA: Patricia, we need a copy
 10:45PM **4** of the transcript done expedited so we can distribute
 10:45PM **5** it to members of the board prior to the hearing on
 10:45PM **6** the 26th.
 10:45PM **7** THE COURT REPORTER: Okay. So today is
 10:46PM **8** what, the 12th?
 10:46PM **9** MR. McNAMARA: Yes.
10 THE COURT REPORTER: So when would you
11 need it by?
12 MR. McNAMARA: In a week.
13 THE COURT REPORTER: In a week, okay,
14 so the 19th?
15 MR. McNAMARA: Yes.
16 THE COURT REPORTER: Okay.
17 MR. McNAMARA: And we'll make the
 10:46PM **18** transcript -- we'll post it on the city website so
 10:46PM **19** it's available to the public.
 10:46PM **20** CHAIRMAN CASTRO: Thank you,
 10:46PM **21** Mr. McNamara.
 10:46PM **22** So we're going to have Mr. Graviano
 10:46PM **23** back, we're going to have copies of today's
 10:46PM **24** transcript, today's -- transcript of today's hearing,
 10:46PM **25** so on the next meeting is going to continue or this

10:46PM **1** hearing is going to continue on the meeting of
 10:46PM **2** August 26th.
 10:46PM **3** Any comments, Commissioners? May I
 10:46PM **4** have a motion to adjourn this meeting to August 26th?
 10:46PM **5** COMMISSIONER SOSA: Motion to adjourn.
6 CHAIRMAN CASTRO: Motion to adjourn by
7 Commissioner Sosa.
8 Second?
9 COMMISSIONER FERNANDEZ: I'll second
10 it.
11 CHAIRMAN CASTRO: Second by
12 Commissioner Fernandez.
 10:47PM **13** Madame Secretary, roll call, please.
 10:47PM **14** MS. WHITEHEAD: Commissioner
15 Silva-Alfonso?
16 COMMISSIONER SILVA-ALFONSO: Aye.
17 MS. WHITEHEAD: Commissioner Cano?
18 COMMISSIONER CANO: Aye.
19 MS. WHITEHEAD: Commissioner Goncalves?
20 COMMISSIONER GONCALVES: Aye.
21 MS. WHITEHEAD: Commissioner Fernandez?
22 COMMISSIONER FERNANDEZ: Aye.
23 MS. WHITEHEAD: Commissioner Sosa?
24 COMMISSIONER SOSA: Aye.
25 MS. WHITEHEAD: Vice Chairman Nunes?

1 VICE CHAIRMAN NUNES: Aye.
 10:47PM **2** MS. WHITEHEAD: Chairman Castro?
 10:47PM **3** CHAIRMAN CASTRO: Aye.
 10:47PM **4** MS. WHITEHEAD: Chairman, I'm sorry,
 10:47PM **5** before we go, can I just have a motion for the
 10:47PM **6** minutes of last meeting, please?
 10:47PM **7** VICE CHAIRMAN NUNES: Motion to approve
 10:47PM **8** the minutes of the last meeting dated what?
 10:47PM **9** MS. WHITEHEAD: I think it was July
 10:47PM **10** 29th.
 10:47PM **11** VICE CHAIRMAN NUNES: The minutes of
 10:47PM **12** the meeting for July 29th.
 10:47PM **13** MS. SILVA-ALFONSO: Second.
 10:47PM **14** CHAIRMAN CASTRO: Motion moved by
 10:47PM **15** Commissioner Nunes, second by Commission Alfonso.
 10:47PM **16** Madam Secretary, roll call, please.
 10:47PM **17** MS. WHITEHEAD: Commissioner
 10:47PM **18** Silva-Alfonso?
 10:47PM **19** COMMISSIONER SILVA-ALFONSO: Aye.
 10:48PM **20** MS. WHITEHEAD: Commissioner Cano?
21 COMMISSIONER CANO: Aye.
22 MS. WHITEHEAD: Commissioner Goncalves?
23 COMMISSIONER GONCALVES: Aye.
24 MS. WHITEHEAD: Commissioner Fernandez?
25 COMMISSIONER FERNANDEZ: Aye.

1 MS. WHITEHEAD: Commissioner Sosa?
2 COMMISSIONER SOSA: Aye.
3 MS. WHITEHEAD: Vice Chairman Nunes?
4 VICE CHAIRMAN NUNES: Aye.
10:48PM 5 MS. WHITEHEAD: Chairman Castro?
10:48PM 6 CHAIRMAN CASTRO: Aye.
10:48PM 7 May I have a motion to adjourn this
10:48PM 8 meeting?
10:48PM 9 COMMISSIONER FALCON: Motion to adjourn
10:48PM 10 the meeting.
10:48PM 11 COMMISSIONER GONCALVES: Second.
10:48PM 12 CHAIRMAN CASTRO: Motion to adjourn by
10:48PM 13 Commissioner Falcon, seconded by Commissioner --
10:48PM 14 COMMISSIONER GONCALVES: Goncalves.
10:48PM 15 All these in favor signify by saying
10:48PM 16 Aye.
10:48PM 17 (Whereupon, all present members respond
10:48PM 18 in the affirmative.)
10:48PM 19 CHAIRMAN CASTRO: This meeting is
10:48PM 20 adjourned.
10:48PM 21 (Whereupon, this matter adjourned.
10:48PM 22 Time noted: 10:48 p.m.)
10:48PM 23
24
25

1 C E R T I F I C A T E
2
3

4 I, LAURA A. CARUCCI, C.C.R., R.P.R., a Notary
5 Public of the State of New Jersey, Notary
6 ID.#50094914, Certified Court Reporter of the State
7 of New Jersey, and a Registered Professional
8 Reporter, hereby certify that the foregoing is a
9 verbatim record of the testimony provided under oath
10 before any court, referee, board, commission or other
11 body created by statute of the State of New Jersey.

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

17 This transcript complies with
18 regulation 13:43-5.9 of the New Jersey Administrative
19 Code.
20
21
22
23
24
25

LAURA A. CARUCCI, C.C.R., R.P.R.
License #XI02050, and Notary Public
of New Jersey #50094914, Notary
Expiration Date December 3, 2023

Dated:

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