

1 CITY OF ELIZABETH STENOGRAPHIC
 ZONING BOARD OF ADJUSTMENT TRANSCRIPT OF
 2 REGULAR MEETING PROCEEDINGS
 HELD VIRTUALLY VIA ZOOM
 3 Thursday, August 12th, 2021
 Commencing at 9:00 p.m.

4 - - - - -
 IN THE MATTER OF

5 Z-09-21
 6 331-337 Morris Avenue
 Mr. Pollo Rotisserie & Bakery, LLC
 7

8
 B E F O R E:
 9 THE CITY OF ELIZABETH ZONING BOARD OF ADJUSTMENT

10 THERE BEING PRESENT:

- 11 GEORGE A. CASTRO II, CHAIRMAN
- 12 JOSE NUNES, VICE CHAIRMAN
- 13 ELIZABETH CANO, COMMISSIONER
- 14 YOLANDA EADY-PERKINS, COMMISSIONER
- 15 FERNANDO F. FERNANDEZ, COMMISSIONER
- 16 ANTONIO GONCALVES, COMMISSIONER
- 17 MICHELLE SILVA-ALFONSO, COMMISSIONER
- 18 RICHARD SOSA, COMMISSIONER, ALTERNATE #1
- 19 EDDIE FALCON, COMMISSIONER, ALTERNATE #4

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MONAE WHITEHEAD, Board Secretary

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ANTHONY GALLERANO, PE, PP

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E X H I B I T S

14

15	NO.	DESCRIPTION	ID	EVID
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	

20

21 (Exhibits retained by the Board.)

22

23

24

25

1 (Time noted 9:00 p.m.)

2 CHAIRMAN CASTRO: Okay. So next
3 application to be heard tonight is application
4 Z-09-21, 331-337 Morris Avenue, Mr. Pollo Rotisserie
5 & Bakery, LLC.

6 Mr. Bonner?

7 MR. BONNER: Thank you, Mr. Chairman,
8 as you're aware, this is a continuation of a hearing
9 that was held on July 29th. We have the applicant's
10 representative is here again to give a little bit of
11 new information about the parking.

12 We've entered -- he has entered into
13 two additional leases covering 23 more spaces that
14 will be utilized by the valet service that they're
15 going to be providing to their diners, those are for
16 426 and 430 Morris Avenue, they comprise 23 spaces.

17 He will also explain that the make up
18 of the parking lot over at 416 Morris Avenue, which
19 was the subject of some discussion last week with
20 Mr. Lenahan who was indicating that there were
21 multiple businesses sharing a parking lot for 49
22 spaces, and that's just not the case.

23 Our client tried to explain it last
24 week and he will provide some clarity this week that
25 there are actually 49 spaces, nine of them are

2 are reserved for the gym and leased alternatively to
3 the applicant.

4 So with the 23 additional spaces at 426
5 and 430, the applicant has access to 63 spaces for
6 the valet parking service and he will talk tonight
7 about the hours that the gym is open, what their
8 experience has been in terms of available spaces and
9 things like that.

10 We have -- the engineer is available
11 tonight, although he didn't plan on providing any
12 testimony, only a couple of issues came up on
13 engineering, one of which was drainage, which was
14 pretty much handled by the architect in terms of how
15 the drainage will be set up on the structure that's
16 to be put on the property, excuse me.

17 And the other issue was the access to
18 the refuse container to the dumpster in the back and
19 as is clearly shown on the plans, there's a
20 truck-turning template that shows how a garbage truck
21 can get in and out of the property.

22 And, additionally, we have our planner
23 who will provide the basis for the variances that are
24 being requested.

25 For now I would like --

1 MR. McNAMARA: Counsel, before you go
2 any further, I just want to note for the record, has

3 Mr. Lenahan entered his appearance, is he here?

4 MR. BONNER: I saw a Peter Lenahan
5 earlier, but not the same Lenahan that was here last
6 time.

7 CHAIRMAN CASTRO: I see him here.

8 MR. McNAMARA: Is counsel for the
9 Knights of Columbus present? Is there a
10 representative of the Knights who is present?

11 Okay. They still have the opportunity
12 to log in, but I just want to know what counselor
13 here is -- there was another objector's counsel also
14 who participated in the last meeting, Mr. DiStefano.

15 MR. DiSTEFANO: Yes, I'm here.

16 MR. McNAMARA: Okay.

17 Are you intending to present any
18 rebuttal witnesses this evening?

19 MR. DiSTEFANO: Yes, I have Edward
20 Collins, planner. There is my client Mr. Barros, and
21 there's a tenant of Mr. Barros's who's a resident
22 there, Georgiana Brady Lema (phonetic).

23 MR. McNAMARA: Okay. Yeah, after
24 Mr. Bonner had completed putting in his case in full,
25 you will have the opportunity then to present your

1 rebuttal witnesses.

2 I admonish both of you now to make sure
3 you advise all your witnesses, as I am stating here

4 now for the record, that they must maintain full
5 video and audio at all times while making -- while
6 representing their testimony and responding to any
7 questions from the board, any opposing counselor or
8 objectors or members of the public, at all times
9 video and audio must stay on.

10 With that, Mr. Bonner, unless you have
11 anything further, we'll take your first witness.

12 MR. BONNER: Thank you. I would like
13 to --

14 MR. McNAMARA: Mr. DiStefano, I'm
15 sorry, Mr. DiStefano, you have no objection to that
16 course of proceeding?

17 MR. DiSTEFANO: No objection.

18 MR. McNAMARA: And your client
19 understands that since he's appearing through you as
20 counsel, you will be asking any questions on his
21 behalf?

22 MR. DiSTEFANO: Yes.

23 MR. McNAMARA: Thank you.

24 Thank you, Mr. Bonner, the floor is
25 yours.

8

1 MR. BONNER: Thank you. Edwin Gomez is
2 here again, he was sworn last time, he's a
3 representative of the applicant. I would like to
4 start by asking him if he has entered into --

5 MR. McNAMARA: Just before you start,
6 Mr. Bonner.

7 Mr. Gomez, please be advised that you
8 remain under oath, that you were sworn at the prior
9 hearing, and the testimony you remain is still
10 obligated to satisfy the terms of that oath.

11 Thank you.

12 MR. GOMEZ: Understood.

13 E D W I N G O M E Z,

14 Having been previously sworn, continues to
15 testify as follows:

16 DIRECT EXAMINATION

17 BY MR. BONNER:

18 Q. You -- we sent over two copies to
19 Ms. Whitehead, the board secretary, of the leases,
20 the additional leases you entered into.

21 Can you tell us the addresses for those
22 two leases and how many spaces they represent for
23 your valet service use?

24 A. Yes.

25 Good evening, everyone.

9

1 The first lease is on 426 Morris Avenue
2 in Elizabeth, New Jersey, right next to the 416
3 Morris Avenue that we already have.

4 And also in the purple right next to it
5 to the right, the 430 Morris Avenue, Elizabeth, New

6 Jersey, which we have eight spots. I didn't say that
7 the previous lease for 426 has 15 spots available as
8 well, for a total of 23 on top of the 40 on 416
9 Morris Avenue

10 Q. Thank you.

11 MR. BONNER: Mr. McNamara, the copies
12 of those documents were sent to you, they can be --
13 can they be admitted as evidence or would you like me
14 to put them on -- as exhibits, or would you like me
15 to put them up on my screen?

16 MR. McNAMARA: Please put them on your
17 screen and we'll mark them as exhibits. Let me check
18 the transcript. I think all the exhibits from the
19 prior hearing were part of the application package.

20 MR. BONNER: Correct.

21 MR. McNAMARA: So anything that's new,
22 let's start with A-1 and go from there.

23 MR. BONNER: And the lease for 416 was
24 entered last time as well.

25 MR. McNAMARA: All right. So the new

10

1 leases let's enter those as Exhibits A and B -- A-1
2 and A-2.

3 MR. BONNER: This is a parking space
4 lease agreement for 430 Morris Avenue for eight
5 parking spaces, I don't think we need to go into any
6 more detail than that for the sake of this hearing.

7 (Whereupon, Parking Space Lease
8 Agreement for 430 Morris Avenue for Eight
9 Parking Spaces is marked as Exhibit B-1 for
10 identification.)

11 MR. McNAMARA: What is the term of the
12 lease? Let's just get that in the record, please.

13 MR. BONNER: It's a one-year lease that
14 renews automatically every year.

15 MR. McNAMARA: Okay.

16 CHAIRMAN CASTRO: And the hours of the
17 lease?

18 MR. GOMEZ: 5:00 p.m. to 6:00 a.m.
19 every day.

20 BY MR. BONNER:

21 Q. The business operated at this site,
22 Mr. Gomez, is closed at the times you were busiest,
23 correct, during your dinner hour?

24 A. Yes, it's a law office and they work
25 from 9:00 to 5:00 p.m.

11

1 Q. Thank you.

2 MR. BONNER: And this is, Mr. McNamara,
3 I'm not sure what number we're up to here.

4 MR. McNAMARA: A-2.

5 MR. BONNER: A-2 for tonight. We had
6 additional exhibits last time.

7 MR. McNAMARA: Okay. Well, then we'll

8 go with B-1 and B-2, we'll start that way to
9 distinguish it.

10 MR. BONNER: This is for 426 Morris
11 Avenue, it represents a parking space lease for 15
12 spaces, same essential terms as the lease identified
13 previously, it is one-year lease renewable
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.

12

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.

15 Q. So that would leave 40 spaces for the
16 gym and for your valet service to share, correct?

17 A. That is correct.

18 Q. And you've gone over and observed the
19 parking, the parking needs in that parking lot at
20 various hours of the day. And what did you find out
21 when you went and looked -- when you checked out the
22 usage of that parking lot?

23 A. Yeah, I took the time to walk the space
24 on my peak hours of operation, which is mainly at
25 night, at dinner time.

13

1 I walked to that property and the gym
2 hours of operation from Monday through Friday are
3 from 6:00 a.m. to 11:00 p.m. I stopped by around
4 7:00, 8:00 p.m. in a few days and I noticed that the
5 gym don't use more than from 17 to 20 spots when the
6 gym is open, leaving over 20 parking spaces available
7 for the valley.

8 Q. So between the typical uses by the gym,
9 that would leave at least 20 or so spaces available

10 for you plus the 23 at the other two sites would be a
11 combined 43 spaces available, plus the six spaces
12 that are on-site when the pharmacy closes, correct?

13 A. That is correct.

14 Q. That puts you at about 49 spaces, which
15 exceeds the requirement for your restaurant based on
16 the testimony we heard at the last hearing?

17 A. Yes.

18 Additional to that, on Saturday and
19 Sunday, which is my busiest times of operation, the
20 gym closes pretty early. On Saturday they close at
21 6:00 p.m. and on Sunday they close at 4:00 p.m.,
22 creating no conflict with my business.

23 Q. So at your busiest times, there are
24 plenty of spaces available is what you're telling us,
25 correct?

14

1 A. Yes, that's what I explained to you.

2 Q. And at the last hearing, there was an
3 objector that appeared on behalf of the Knights of
4 Columbus and we indicated that you had reached out
5 via telephone and you were attempting to go over
6 there, knock on the door and see if anybody would
7 talk to you.

8 Have you continued those efforts?

9 A. I continued those efforts. I haven't
10 still cross information with them, but more than

11 willing, as we say in the last meeting, that we're --
12 we want to cooperate with them, plus give information
13 to the managers on-sites in case of a problem or a
14 conflict, we can be contacted right away so we can
15 alleviate the issue.

16 Q. So you've reached out to the Knights of
17 Columbus and attempted to make a reasonable
18 accommodation to provide the on-site manager of your
19 restaurant, his cellphone number to the Knights of
20 Columbus so that you could -- so that they could
21 contact them immediately if there was a parking or
22 any conflict with their parking lot and they have yet
23 to reach out to you, and we put this on the record
24 last time, and they are aware of this and they still
25 haven't reached out to you to try to work this out,

15

1 have they?

2 A. Correct.

3 Q. Okay. Thank you.

4 You're also planning on posting signage
5 at the entrance to your restaurant that there's no
6 parking allowed at the Knights of Columbus' property?

7 A. Yes.

8 As I said in the last meeting, we will
9 post signage by in the main entrance in reference to
10 that that would state that please do not park on
11 Knights' of Columbus property.

12 Q. Thank you.

13 MR. BONNER: Mr. Chairman, I don't have
14 any further questions for Mr. Gomez.

15 CHAIRMAN CASTRO: Mr. Gomez, can you
16 upload the lease again, please?

17 MR. GOMEZ: Michael, could you help we
18 with that?

19 MR. BONNER: What are you, I'm sorry,
20 the lease, Mr. Chairman, which one?

21 CHAIRMAN CASTRO: The newest lease, the
22 latest lease.

23 MR. BONNER: Okay. This is 426.

24 CHAIRMAN CASTRO: Just scroll down the
25 lease to the signature section, please.

16

1 MR. BONNER: To which section?

2 CHAIRMAN CASTRO: Signature.

3 Mr. Gomez, Dr. Monica Gonzalez, is she
4 the owner of the Pain Center of Morris, the one where
5 you will be leasing those parking spaces?

6 MR. GOMEZ: Yes, she is.

7 CHAIRMAN CASTRO: Okay. That is what I
8 wanted to see.

9 Thank you, Mr. Gomez.

10 Thank you, Mr. Bonner.

11 MR. BONNER: Would you like to see the
12 other one, Mr. Chairman?

13 CHAIRMAN CASTRO: I saw the other one,
14 but if you can upload it, I would appreciate it.

15 MR. BONNER: Yes.

16 CHAIRMAN CASTRO: Mr. Gomez, how far is
17 the pain center?

18 MR. GOMEZ: How far is -- okay, 416 is,
19 as we all know, is where the gym is located. The
20 property right next to it is the 426 and the property
21 right next to it is 430. It's three properties right
22 next to each other.

23 CHAIRMAN CASTRO: Who will be parking
24 there, valet parking?

25 MR. GOMEZ: Valet parking, yes, only

17

1 valet parking.

2 CHAIRMAN CASTRO: So people will come
3 to your facility, park there, a valet parking
4 attendant will take the car to the pain center
5 parking lot; is that what you're saying?

6 MR. GOMEZ: Yes.

7 COMMISSIONER SOSA: Mr. Chairman?

8 CHAIRMAN CASTRO: Commissioner Sosa.

9 COMMISSIONER SOSA: How many valet will
10 you have there?

11 MR. BONNER: The testimony at the last
12 meeting was it depends on what time of day it is, but
13 there could be as many as three or four, but

14 Mr. Gomez can confirm that.

15 MR. GOMEZ: Yes, what Michael said is
16 correct. On our busiest times we also -- we try to
17 accommodate three valet parking, that's in the most
18 peak hours. And when the business is not as busy, we
19 will have two.

20 COMMISSIONER SOSA: Thank you.

21 CHAIRMAN CASTRO: You mean three valet
22 parking attendants?

23 COMMISSIONER SOSA: Yeah, I'm referring
24 to that, yes, that's correct.

25 MR. BONNER: As many as four if needed,

18

1 correct?

2 MR. GOMEZ: Yes, correct.

3 CHAIRMAN CASTRO: Go ahead, Mr. Bonner.

4 MR. BONNER: Thank you, Mr. Chairman.

5 That concludes my questioning for
6 Mr. Gomez. If there are any board or objector --

7 CHAIRMAN CASTRO: Do you have any
8 questions for Mr. Gomez? No questions for Mr. Gomez.

9 Mr. Bonner, do you have any witnesses?

10 MR. DiSTEFANO: I'm sorry, I'm sorry,
11 Chairman Castro, I thought you were talking to other
12 board members. I would have questions for Mr. Gomez.

13 CHAIRMAN CASTRO: Go ahead,
14 Mr. DiStefano.

15 CROSS-EXAMINATION

16 BY MR. DiSTEFANO:

17 Q. Mr. Gomez, in these two leases that you
18 presented, are there -- well, I think I saw one
19 scroll past, termination clauses?

20 A. No, we don't have termination clauses
21 on those leases.

22 Q. Would it be possible to bring the first
23 one back up on the screen?

24 A. That's the one for 430 or 426?

25 Q. Let's start with 426 and then go to

19

1 430.

2 A. Okay.

3 MR. BONNER: Well, here's 430.

4 BY MR. DiSTEFANO:

5 Q. So it is terminable on 90 day's written
6 notice?

7 A. That's what I'm reading, Point Number
8 4.

9 Q. Yeah, is -- and that was 426. Does 430
10 have --

11 MR. BONNER: This is 430.

12 BY MR. DiSTEFANO:

13 Q. Okay. Does 426 also have a similar or
14 identical clause for --

15 MR. BONNER: It does.

16 A. It does.

17 BY MR. DiSTEFANO:

18 Q. Okay. Now, with regard to -- you just
19 refreshed my recollection. You had previously
20 testified as to the numbers of workers at any one
21 particular time. What was that number?

22 A. Peak 20, no more than 20.

23 Q. Well, and just so I understand this
24 correctly, when you say peak, is that 20 people on
25 duty or 20 people on payroll?

20

1 A. Twenty people on duty, which is the
2 same as people on payroll for that specific time.

3 Q. And generally it would be fair to say
4 you'd have roughly 20 people on payroll or you would
5 be intending to do that at the moment?

6 MR. BONNER: His testimony last time
7 was clear that at the peak hours of operation of the
8 restaurant, he has 20 employees on-site. He has more
9 employees than that, but he has 20 employees on-site
10 during his busiest times.

11 BY MR. DiSTEFANO:

12 Q. Okay. And you had testified that a
13 number of those employees walk to work, correct?

14 A. Most of them walk to work, yes.

15 Q. Okay. What are the names of the
16 employees who walk to work?

17 MR. BONER: I think that's getting
18 outside the bounds of questioning.

19 A. Yeah, it would be hard for me to say
20 names right now. I've got almost over 40 employees
21 on whole payroll for different shifts.

22 I pick, as I say, there are no more
23 than 20, but to give you names right now, I would
24 have to pull the payroll detail and I am not ready
25 for that.

21

1 BY MR. DiSTEFANO:

2 Q. And besides these employees who walk to
3 work, are there any other employees who don't drive
4 who arrive any other way?

5 A. I got employees that use -- I've seen
6 does these electrical scooters, which don't take any
7 parking spaces, and some, like, a few wanted to
8 sometimes drive bikes on it. They park in the back
9 of the building, which doesn't take spaces as well.

10 Q. What are the names of your employees
11 who don't walk?

12 MR. BONNER: I'm sorry, I would like to
13 remind Mr. DiStefano that the testimony last time was
14 that they're prohibited from parking on-site and they
15 do not use the valet service.

16 MR. GOMEZ: We say that, yes.

17 MR. BONNER: That was made clear last

18 time.

19 BY MR. DiSTEFANO:

20 Q. Okay. Can you name the employees who
21 don't walk and don't drive?

22 MR. McNAMARA: Counsel, I think
23 identifying the number of employees is sufficient for
24 the board's consideration.

25 COMMISSIONER SOSA: Yeah, that's,

22

1 Mr. Chairman, that's ridiculous already. I'm not
2 trying to...

3 MR. BONNER: His employees are entitled
4 to their privacy.

5 COMMISSIONER SOSA: Absolutely. I
6 don't want to know who works there, doesn't work
7 there. That doesn't -- that's irrelevant to the
8 application.

9 MR. DiSTEFANO: Well, the witness gave
10 a conclusory statement and on cross, I'm looking for
11 the reason behind it. He stated simply that most of
12 the employees walk or they don't park. And the real
13 question is can he account for that?

14 MR. BONNER: I'm sorry, Mr. McNamara,
15 he's accounting for that by stating what his
16 employees do. Identifying those employees doesn't
17 change his answer.

18 MR. McNAMARA: I believe the answers

19 that have been provided were approximate numbers of
20 employees who either walk, use the scooter, may or
21 may not use mass transit, but do not drive or park
22 and he gave a range of numbers both at the prior
23 hearing and I believe here again tonight.

24 Naming people individually, I don't
25 believe serves any additional purpose in leading to

23

1 any additional relevant evidence or being relevant
2 with regard to the nature of the proceedings. He's
3 testified twice now as to the general number of
4 employees and within parameters as to how they get to
5 and from this place of employment.

6 MR. DiSTEFANO: Well, it's a conclusory
7 statement that he can't back up, so that will speak
8 for itself.

9 BY MR. DiSTEFANO:

10 Q. But the other issue is I wanted to ask,
11 are there any provisions for handicap spaces in front
12 of the -- in the parking lot in front of the
13 restaurant?

14 A. We got handicap spaces allocated on the
15 spots that are in the pharmacy, which is I believe
16 right next to it, which is the two spots -- three
17 spots, I believe, they are in the front.

18 Q. Okay. And the staging area for the
19 valet handoffs will be in the front parking lot?

20 A. It will be at the driveway of the
21 parking lot.

22 Q. Can cars turn around in the parking lot
23 after making that valet handoff?

24 A. When they do the valet handoff, the
25 cars are going to be situated in the parking of the

24

1 pharmacy. In order for them to leave parameters,
2 they're going to have to back up. They cannot turn
3 around, no.

4 Q. So they have to back into the street?

5 A. They've got to go in reverse, yes, but
6 the valet is responsible for that, cars coming into
7 --

8 MR. McNAMARA: I think that question
9 would be better suited for Mr. Kurus, the engineer.
10 After we're done, you can recall him and ask that
11 question.

12 BY MR. DiSTEFANO:

13 Q. Do you have any current arrangement
14 with an entity providing valet services?

15 A. We do.

16 Q. What is that entity?

17 A. I don't have the name of the company
18 right off my head, but I can provide it if it's
19 necessary.

20 MR. McNAMARA: It is necessary and I'm

21 going to request that it be provided.

22 MR. GOMEZ: Okay. I'll provide it
23 then, related to that.

24 MR. McNAMARA: Counsel, do you have any
25 further questions of the witness?

25

1 MR. DiSTEFANO: Yeah, I was -- no, I
2 don't think I have any further questions for this
3 witness.

4 MR. McNAMARA: Mr. Bonner, would you
5 please recall Mr. Kurus then?

6 CHAIRMAN CASTRO: Let me ask a question
7 to Mr. Gomez, and it relates to the comment that
8 Mr. DiStefano made regarding the cancellation clause
9 of the lease.

10 Mr. Gomez, I would feel more
11 comfortable if none of the parties can cancel that
12 lease within the period of the time of the lease.

13 MR. GOMEZ: This is more of a legality
14 answer, but I don't know if I should say this or not,
15 but most of the leases got terms that you have a
16 bridge on it, any party can terminate, but I can go
17 back to the landlord and renegotiate this lease if
18 necessary to take those clauses out so they can't
19 terminate me during the time of the lease, they would
20 have to wait until the lease expires, if that's what
21 happens.

22 CHAIRMAN CASTRO: That's usually the
23 way it is, Mr. Gomez.

24 MR. McNAMARA: Mr. Chairman, if I
25 might, Mr. Chairman, I would like to make a

26

1 recommendation to the board that if the board is to
2 act favorably on this application, one of the
3 conditions would be that the applicant submit to
4 review by our consultants a management plan
5 identifying the company, times the employees, without
6 their names, are going to be on-site managing it,
7 what properties are going to be utilized during
8 weekdays and weekends, and a provision also that
9 should any lease be terminated, it is the obligation
10 of the applicant to make every best effort within the
11 next -- as soon as they are given 90 day's notice of
12 that termination, they have to notify the city, they
13 have to notify our consultants and take all immediate
14 measures necessary to replace that loss of parking.

15 MR. BONNER: Mr. McNamara, if I might,
16 I was going to suggest something similar that perhaps
17 Mr. Gomez can negotiate a slightly longer termination
18 notice period and they'd be willing to accept a
19 condition of the resolution that in the event of a
20 termination, that they would have to replace the
21 spaces being lost within the period of notice.

22 MR. McNAMARA: That would be, yeah, I

23 would be willing to amend my suggestion to the board
24 along those lines.

25 MR. BONNER: Second comment about what

27

1 you said. I think you seemed to indicate that the
2 valet parking -- people handling the valet parking
3 were employees; they are not.

4 MR. McNAMARA: Well, they're employees
5 of the company that are supplying the service,
6 they're not --

7 MR. BONNER: That's correct.

8 MR. McNAMARA: That's fine, but I want
9 them identified -- I want the company identified as
10 part of the plan so that if the city receives any
11 complaints about lack of parking or how it's being
12 managed, the city then knows who to contact besides
13 your client to get the situation addressed and
14 rectified immediately.

15 MR. BONNER: Understood.

16 Is that it for Mr. Gomez, Mr. Chairman,
17 or no?

18 CHAIRMAN CASTRO: Do you have any other
19 questions for Mr. Gomez?

20 Mr. McNAMARA: I don't have anything
21 further, Mr. Chairman.

22 CHAIRMAN CASTRO: Go ahead,
23 Mr. McNamara.

24 MR. McNAMARA: I have no further
25 questions of the witness, Mr. Chairman.

28

1 CHAIRMAN CASTRO: Thank you,
2 Mr. McNamara.

3 And, Mr. Bonner, do you have any other
4 witnesses?

5 MR. BONNER: I do, I have Anthony
6 Kurus, the engineer who can briefly walk you through
7 the site plan, a lot of it you're familiar with due
8 to the architect's testimony, but he can walk you
9 through that and he can discuss how parking is
10 handled on-site and things of that nature,
11 engineering stuff.

12 Anthony?

13 MR. McNAMARA: Mr. Kurus, please, sir,
14 I'm going to remind you you were placed under oath at
15 the prior hearing on this application, you remain
16 under oath and remain obligated to provide truthful
17 answers and truthful testimony to this board. Thank
18 you.

19 Please proceed.

20 DIRECT EXAMINATION

21 BY MR. BONNER:

22 Q. Anthony, do you need to screen share?
23 Could you screen share or would you like me to do
24 that?

25 A. Let me try. Can you see the site plan?

29

1 Q. Yes, thank you.

2 A. So this is the outdoor dining site plan
3 that we prepared, latest revision 7/15/2021 revised
4 per the board hearing comments.

5 MR. McNAMARA: So let's mark this as
6 B-3.

7 (Whereupon, Outdoor Dining Site Plan,
8 last revision 7/15/2021, is marked as Exhibit
9 B-3 for identification.)

10 MR. BONNER: And Mr. McNamara, you may
11 want to swear Mr. Kurus, he was sworn at the hearing
12 that was postponed, he was not sworn after the
13 renotice.

14 MR. McNAMARA: Thank you.

15 Mr. Kurus, please raise your right
16 hand.

17 MR. KURUS: Let me see, hold on.

18 MR. McNAMARA: Anthony, could you
19 please raise your right hand so I could re-administer
20 your oath?

21 Do you swear the testimony you're about
22 to present before the Elizabeth Zoning Board of
23 Adjustment concerning the application now pending
24 before it shall be the truth, the whole truth and
25 nothing but the truth?

1 MR. KURUS: I do.

2 A N T H O N Y K U R U S, PE,

3 34 Park Avenue, Lyndhurst, New Jersey, having
4 been duly sworn, testifies as follows:

5 MR. McNAMARA: For the record, sir,
6 state your name, spell your last name and provide
7 your business affiliation.

8 MR. KURUS: Anthony Kurus, spelled
9 K-U-R-U-S, business address Neglia Engineering
10 Associates, 34 Park Avenue, Lyndhurst, New Jersey.

11 I'm a licensed, professional engineer
12 in the state of New Jersey. I've appeared before
13 this board, as well as various boards throughout New
14 Jersey.

15 MR. BONNER: Your license is current?

16 MR. KURUS: It is.

17 MR. BONNER: Thank you.

18 MS. WHITEHEAD: I'm sorry, what is this
19 that's being Exhibit B-3, what is this called?

20 MR. BONNER: These are the engineering
21 plans that are part of the file already, Monae.

22 MS. WHITEHEAD: Oh, they're already
23 part of the file?

24 MR. BONNER: Correct.

25 Mr. McNamara, do you want to mark these

1 exhibits?

2 MR. MCNAMARA: If they're part of the
3 file then I just ask you to identify what page and
4 date is on the sheet being shown. If you bring up
5 anything that is new that is not in the application
6 package, we will need to mark it.

7 MS. WHITEHEAD: Thank you.

8 BY MR. BONNER:

9 Q. Take it away, Anthony.

10 A. Okay. So hold on.

11 The project site again is located at
12 331 to 337 Morris Avenue, Block 11, Lot 677 in the
13 City of Elizabeth.

14 Everyone's familiar with the site, it
15 contains the existing pharmacy building and the
16 existing garden restaurant. The outdoor dining site
17 plan we prepared shows the proposed outdoor dining
18 enclosure that's proposed around the existing garden
19 restaurant.

20 As the architect has previously
21 testified, the outdoor enclosure will meet all codes
22 as applicable. This revised plan that was submitted
23 shows 3-foot minimum side yard setback on the south
24 side of the proposed enclosure.

25 Again, the proposed enclosure will meet

1 all applicable codes.

2 For parking, they'll be a total of six
3 parking spaces on-site, three existing -- three
4 parking spaces in front of the existing pharmacy as
5 well as three spaces along the driveway that runs to
6 the rear of the property.

7 As was testified by the applicant,
8 they'll be -- he has agreements in place to park at
9 off-site locations in order to satisfy the balance of
10 the parking needs. They'll be no changes to existing
11 utilities.

12 For stormwater management they'll be no
13 increase in impervious coverage. The roof runoff
14 from the proposed enclosure will be handled by way of
15 roof drains tied into the existing storm drain
16 system.

17 Sanitary sewage, we could provide the
18 sewer generation calculations that were requested.

19 The flow generation is 35 gallons per
20 day per seat per code, we calculated it out based on
21 the proposed seat count, it results in a sewer flow
22 of approximately 3,850 gallons per day, so a
23 Treatment-Works' approval would not be required for
24 the application.

25 No changes to the proposed sanitary --

1 to the existing sanitary sewer are proposed, so we
2 don't need a Treatment-Works' approval permit, and we
3 will be utilizing the existing sanitary sewer for the
4 project.

5 For trash and recycling --

6 MR. McNAMARA: Anthony, do you have to
7 upscale the grease trap for the restaurant?

8 MR. KURUS: I don't believe there's any
9 changes to the kitchen. I think the kitchen -- it
10 was testified that the kitchen is -- has -- the
11 kitchen was designed to accommodate more seats than
12 were existing prior to the encloser, so it's my
13 understanding they'll be no changes to the existing
14 grease trap or the existing sewer drains and waste
15 lines.

16 MR. McNAMARA: Thank you.

17 MR. KURUS: Trash and recycling, our
18 plan we show the driveway access to the trash and
19 recycling area to the rear of the site over on the
20 bottom left. The dumpster area is in the back corner
21 of the property. Vehicles would access that
22 driveway, pull in, pick up the trash and then use
23 that driveway to back out in order to exit the
24 property.

25 Any other questions?

2 Q. In your opinion, is there sufficient
3 room for the valet parking to operate when there are
4 cars parked in front of the pharmacy?

5 A. There is.

6 If the parking spaces in front of the
7 pharmacy are utilized, the cars would pull in and use
8 that parallel driveway similar to this truck-turning
9 template plan.

10 The car would be received by the valet
11 company and as was testified by Mr. Gomez, they would
12 have to back out and then leave.

13 If there was an open spot, you know,
14 then they would be able to pull into that open spot
15 and then back out and pull out head first.

16 But in the event -- in the event that
17 every space was taken, there'd be sufficient room for
18 a car to pull in, be received by the valet, and then
19 back out.

20 Q. So for the busiest times of the
21 restaurant, which is after the -- is the dinner hour
22 and later, the pharmacy is closed and those six
23 spaces would be open, would be ample space for a
24 valet staging area, correct, for cars to make turns
25 on-site and pull out front first?

1 A. Absolutely.

2 Q. Thank you.

3 Do you have anything further, Anthony?
4 I believe you covered the issues that had been
5 questioned at the last hearing. There really is very
6 little engineering testimony necessary for this
7 application?

8 A. No.

9 MR. BONNER: Mr. Chairman.

10 CHAIRMAN CASTRO: Yes.

11 MR. BONNER: That concludes Mr. Kurus'
12 direct testimony.

13 CHAIRMAN CASTRO: Commissioners, do you
14 have any questions for Mr. Kurus?

15 COMMISSIONER FALCON: I just have one
16 question, Mr. Chairman.

17 CHAIRMAN CASTRO: Commissioner Falcon.

18 COMMISSIONER FALCON: So along the wall
19 of the property line there, we're giving up 3 feet.

20 Is that for code or is that for future
21 walkways or something?

22 MR. BONNER: If I might address that
23 first, Commissioner Falcon.

24 The architect testified last time that
25 that was being done in order to create space between

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1 the fire-rated wall to the restaurant and the
2 adjacent property owner in order to allow some type
3 of air and light into the building next door.

4 There is zero lot line on zoning here
5 and they could have built immediately adjacent to the
6 building and probably blocked off the windows that
7 existed on that side of the building, but they chose
8 not to do that in an attempt to be courteous to the
9 adjacent property owner.

10 COMMISSIONER FALCON: And that's
11 exactly -- I'm sorry, go ahead, I apologize.

12 MR. BONNER: No. And the one last
13 thing that I would say, there was also testimony by
14 the architect last time, and this is in the
15 transcript, that there will be a doorway into that
16 alley and it is the applicant's intention to keep
17 that alleyway clean, it is not going to become a
18 place where trash is piled up, it will be kept clean.

19 COMMISSIONER FALCON: And that was my
20 curiosity was, you know, I'm kind of in a fine line
21 here in believing that that's not going to be used in
22 the future.

23 But, Mr. McNamara, can we add that as a
24 stipulation of approval?

25 MR. McNAMARA: Mr. Bonner, would your

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1 client agree to such a stipulation that the area
2 cannot be used, it's his responsibility to
3 maintain and clean it?

4 MR. BONNER: I believe that Mr. Waga

5 testified to that effect, but, yes, that's fine,
6 because there -- if you recall the testimony,
7 Mr. McNamara, there is a gate at the front of the
8 property. The wall that's depicted, the 1-foot wall
9 runs from one property line to the other, so the
10 3-foot alley spans the entire property along that
11 property line, but there is a gate at the front that
12 allows access, so cleaning that will make --

13 COMMISSIONER FALCON: And that gate can
14 be open and that gate can be open in the future, and
15 that's what I'm trying to get at, to stop that from
16 becoming an egress or access to something --

17 MR. BONNER: Right, that's why the gate
18 is being provided, so that the applicant has access
19 to that property.

20 COMMISSIONER FALCON: Again, the gate
21 can be opened. And, please, we'll agree to disagree
22 here, but I would love for that to be as part of the
23 stipulation of this application, should it be
24 approved.

25 MR. McNAMARA: Understood, sir.

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1 CHAIRMAN CASTRO: Commissioner Falcon,
2 if the board decides to move to approve this
3 application, you can, at the time of moving for a
4 motion, add that.

5 Mr. McNamara has documented your

6 concerns, but, yes, you can always add a stipulation
7 as a condition of an approval.

8 COMMISSIONER FALCON: Thank you.

9 CHAIRMAN CASTRO: Thank you,
10 Commissioner Falcon.

11 Commissioners, any other comments?

12 COMMISSIONER SOSA: Mr. Chairman?

13 CHAIRMAN CASTRO: Commissioner Sosa.

14 COMMISSIONER SOSA: I just need a
15 little bit more clarification on the parking in the
16 front of the building on the front of the pharmacy
17 area. How many spots is there, for the record?

18 MR. BONNER: There's six.

19 COMMISSIONER SOSA: Six.

20 MR. KURUS: There's three head-on
21 spaces in front of the building and then there's an
22 additional three parallel spaces on the driveway for
23 a total of six.

24 COMMISSIONER SOSA: And safe to say
25 that those spots would be the last spots to get

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1 filled, correct, for you guys to be able to turn
2 around in the property; is that safe to say?

3 MR. BONNER: There's -- I think that
4 the testimony was that they're reserved for the
5 pharmacy until the pharmacy closes, which operates
6 until, I believe, the testimony was 6 o'clock.

7 Mr. Gomez can correct me, but I think
8 it's 6 o'clock and then those spaces are no longer
9 used by the pharmacy. And then he, under the terms
10 of his lease, has the right to utilize those spaces.
11 They would not be used for parking, they'd be used as
12 the valet staging area, as I understand it.

13 COMMISSIONER SOSA: That's what I
14 needed clarification on, thank you.

15 MR. BONNER: Yup.

16 CHAIRMAN CASTRO: Thank you,
17 Commissioner Sosa.

18 Commissioners, any other comments or
19 any other question for this witness?

20 Mr. Bonner, do you have your next
21 witness?

22 MR. BONNER: I --

23 MR. McNAMARA: Mr. Chairman, before you
24 proceed to the next witness, Mr. DiStefano should be
25 offered the opportunity to cross Mr. Kurus strictly

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1 as to the testimony he has proffered this evening.

2 CHAIRMAN CASTRO: Mr. DiStefano.

3 MR. DiSTEFANO: Yes, thank you.

4 CROSS-EXAMINATION.

5 BY MR. DiSTEFANO:

6 Q. Mr. Kurus, is there any rule or
7 regulation that pertains to -- well, let me ask a

8 different question.

9 What number of handicap spaces, if any,
10 are required to pertain to, you know, this -- the
11 premises here?

12 A. One.

13 Q. One handicap spot?

14 A. Based on the six on-site, it would
15 require one.

16 Q. So the handicap requirement is based on
17 a proportion of the available on-site parking?

18 A. Correct.

19 Q. And so, it's not based on the intended
20 occupancy of the structure?

21 A. It's based on the spaces in the lot
22 on -- it's based on the spaces on the facility,
23 correct.

24 Q. Is there any requirement with regard to
25 distance of the off-site lots, how far they can be

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1 away from the premises here?

2 MR. BONNER: Based on what, the ADA?

3 BY MR. DiSTEFANO:

4 Q. I'm just asking is there a requirement
5 that you're aware of as to the closeness as to the
6 distance that an off-site lot is permitted?

7 MR. BONNER: Probably just as far as
8 the valets can run.

9 MR. DiSTEFANO: Well, that's a question
10 to Mr. Kurus.

11 MR. McNAMARA: Mr. Kurus, if you could
12 answer.

13 MR. KURUS: I don't know of any
14 limitation on off-site parking facility distance.

15 BY MR. DiSTEFANO:

16 Q. Do you know how far the parking
17 facility is from -- or how far the three different
18 parking facilities are from the premises?

19 MR. BONNER: I think the applicant can
20 testify to that, Edwin, how far away.

21 MR. DiSTEFANO: No, it's a question to
22 Mr. Kurus and he can answer.

23 MR. BONNER: Well, you asked factually
24 how far away they are and Mr. Kurus is indicating
25 he's not positive. Mr. Gomez can tell you for sure.

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1 MR. DiSTEFANO: Well, he answered for
2 him and said he doesn't -- he's not positive. I was
3 waiting for him to answer.

4 MR. McNAMARA: Mr. DiStefano, if
5 there's a better witness qualified to answer the
6 question, then I would suggest he be provided the
7 opportunity to respond.

8 MR. DiSTEFANO: Certainly.

9 MR. McNAMARA: Mr. Gomez, can you

10 answer the question that's been proffered by
11 Mr. DiStefano?

12 MR. BONNER: You're on mute.

13 MR. McNAMARA: Mr. Gomez.

14 MR. GOMEZ: I'm back, I'm back, yeah, I
15 was muted.

16 MR. McNAMARA: Okay. The three
17 properties that have been leased, how far away are
18 they from your establishment?

19 MR. GOMEZ: If I can answer correctly,
20 there is one traffic light at the corner, which the
21 next half of the block. And then the other half of
22 the block is where the property is within one block.

23 MR. BONNER: Would you say they're less
24 than two tenths of a mile?

25 MR. GOMEZ: Oh, yes, definitely.

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1 MR. BONNER: Does that satisfy you,
2 Mr. DiStefano?

3 MR. DiSTEFANO: Well, the testimony
4 speaks for itself.

5 MR. BONNER: Yeah, it does. He
6 answered your question.

7 BY MR. DiSTEFANO:

8 Q. So the -- now, Mr. Kurus, is there any
9 standard within your profession with regard to
10 calculating, like, the area required to establish,

11 like, to allow the, you know, a vehicle to turn?
12 Like, you need, you know, X square feet to allow, you
13 know, a passenger car to make a turn in the parking
14 area?

15 A. There's a minimum requirements for
16 one-way driveway, two-way driveway and a drive aisle
17 widths within parking area, but there are instances
18 where there's existing conditions and existing
19 parking lots that have varying dimensions for drive
20 aisle widths.

21 In those situations, we'll use turning
22 template software, which, you know, uses a computer
23 program to generate a car turning template so that we
24 could physically check it to see, make sure that
25 there's enough room for a vehicle to enter and exist

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1 a particular area. And that's what we did on this
2 site for the single unit truck slash garbage truck to
3 be able to pull into the site, access the trash area
4 and then leave.

5 So a typical passenger vehicle is going
6 to be smaller than a box truck or a garbage truck, so
7 that turning template that, you know, we looked at
8 that works for the garbage truck would essentially
9 also work for any, you know, on-road passenger
10 vehicle would be coming to the site.

11 Q. Okay. So the turning template, is that

12 what we see illustrated I guess in the lower left
13 corner of the exhibit you were previously showing?

14 A. Yes.

15 Q. Okay. And if I'm looking at it
16 correctly, that shows that a truck would either have
17 to back in or back out; is there something I'm
18 missing?

19 A. It could pull in and back out.

20 Q. So it can't -- the turning template
21 would indicated that it can't turn around.

22 A. A single unit box truck can't turn
23 around on-site.

24 Q. Okay. And did you make any application
25 using the turning template software with regard to a

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1 passenger vehicle?

2 A. Well, there's a clear drive aisle
3 that's sizable enough for a passenger vehicle to turn
4 around on-site and leave the site head on if, you
5 know, if you're utilizing those spaces.

6 I use -- I was able to use the parking
7 spaces within the pharmacy myself. I pull in, I sat
8 there for a couple minutes, I used the space behind
9 me to back out within the site and then exit the site
10 head on.

11 So I physically tested the existing
12 parking stalls for the pharmacy, they work, but the

13 testimony is if they all were in use and someone
14 pulled in the site head on, they'd have to back out
15 to leave, that's the testimony.

16 Q. And where is it envisioned if you've
17 considered this where the valet staging area would
18 be?

19 A. I think that's all going to be detailed
20 in the valet management plan. I don't have that, I
21 don't have that with me.

22 Q. I mean is there ability to use all six
23 spaces and then also do valet staging area in the
24 outside of the street?

25 MR. BONNER: The applicant already

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1 testified that after 6 o'clock when the pharmacy is
2 closed, the entire area will be available to be used
3 at a valet staging area.

4 MR. DiSTEFANO: Okay.

5 BY MR. DiSTEFANO:

6 Q. Well, Mr. Kurus, did you come to any
7 conclusions as to that?

8 A. I testified that once those spaces are
9 open, those spaces could be utilized to pull in, have
10 the car received and then the valet would take the
11 car to the off-site parking lot.

12 Q. So your thought process is that some of
13 those six spaces would have to be used for valet?

14 A. I think it would help if they are all
15 utilized then the cars would have to pull in, they
16 would get received and then the valet would back them
17 out, that's how it would operate if those spaces were
18 -- if they were taken or used.

19 Q. Now, with regard to the circulation,
20 did you make any calculations with how long it would
21 take a valet to drive to any of the off-site parking
22 spots and then return?

23 A. I did not.

24 Q. Did you make any calculations with
25 regard to the frequency of, you know, arrivals and

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1 departures?

2 A. I did not.

3 Q. Just bear with me a moment.

4 Have you seen any written lease that
5 pertains to when the -- when the, whatchamacallit,
6 when the restaurant is permitted to use the entirety
7 of the pharmacy spaces?

8 A. I didn't review any leases.

9 MR. BONNER: It was the testimony of
10 the applicant their lease is in existence, it's not
11 part of our case. The pharmacy closes at 6 o'clock
12 as a factual statement of testimony. The spaces are
13 available after 6 o'clock.

14 MR. DiSTEFANO: But that specific lease

15 hasn't been provided.

16 MR. BONNER: No.

17 MR. DiSTEFANO: All right. I have no
18 further questions of Mr. Kurus at this time.

19 MR. BONNER: Thanks.

20 REDIRECT EXAMINATION

21 BY MR. BONNER:

22 Q. Anthony, just quickly, the space from
23 the newly constructed, enclosed, covered outdoor
24 dining area where the security planters that are up
25 against the wall, from the edge of the security

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1 planters to the property line, in other words, the
2 entire paved parking area, can you give me that
3 dimension?

4 A. Yes.

5 Q. You show the drive as 22.7, but you
6 don't give a dimension from across the front of the
7 pharmacy building. About how big is that space?

8 A. It's approximately, I would say, hold
9 on, approximately 55 feet.

10 Q. Total, from -- including the driveway
11 and the parking area?

12 A. Yes. So there's 22.7 from the property
13 line to the building corner. I would say there's at
14 least another 30 feet from the building to the
15 planters, so --

16 Q. From the planters, so --

17 A. So same -- yeah.

18 Q. And we all drive cars. So the typical
19 depth of a car is maybe 20 feet?

20 A. I would say 16 feet is your typical
21 sedan, 20 feet would be, like, the biggest possible,
22 oversized SUV-like truck.

23 Q. So if cars were parked front in to the
24 planters or front in to the pharmacy building and
25 there were three or four cars there, there would

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1 still be enough room for a car to make a K turn and
2 pull out of a parking lot front ways, correct?

3 A. Correct.

4 Q. Okay. Thank you.

5 MR. BONNER: I don't have anything
6 further for Mr. Kurus, Mr. Chairman.

7 CHAIRMAN CASTRO: Mr. Kurus, I have
8 some questions for you. The parking spaces that the
9 applicant is using and the parking spaces for which
10 Mr. DiStefano was cross-examining you, are they
11 currently in use? Are they being used as parking
12 spaces for the owners who you are renting the parking
13 spaces from?

14 MR. BONNER: Perhaps Mr. Gomez would be
15 better to answer that question, Mr. Chairman.

16 CHAIRMAN CASTRO: Mr. Gomez.

17 MR. GOMEZ: Yeah, I'm back, yeah, I'm
18 here.

19 CHAIRMAN CASTRO: Mr. Gomez,
20 Mr. DiStefano was asking a specific question as to
21 the turning, the guidelines for turning, existing,
22 entering. Are these parking spaces that you're
23 renting from the owner of the buildings, are they
24 currently being used as parking spaces for them
25 during the work hours?

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1 MR. GOMEZ: Yes, they are. The
2 pharmacy uses -- they allow their clientele to park
3 there every day.

4 CHAIRMAN CASTRO: They are being used
5 as a parking space?

6 MR. GOMEZ: They are being used as
7 parking spaces for the pharmacy.

8 CHAIRMAN CASTRO: I'm talking about all
9 the parking spaces including the pharmacy parking
10 spaces that the applicant is going to be using.

11 MR. GOMEZ: Yes, they're being used as
12 well, yes.

13 CHAIRMAN CASTRO: They are parking
14 spaces, the only thing you're going to be doing is
15 you're going to continue using those spaces as
16 they've been used throughout the years?

17 MR. GOMEZ: That is correct.

18 CHAIRMAN CASTRO: As parking spaces?
19 MR. Gomez: As parking spaces, correct.
20 CHAIRMAN CASTRO: Thank you.
21 Commissioners, do you have any other
22 questions for Mr. Gomez or Mr. Kurus?
23 Mr. Bonner, are you done with
24 Mr. Kurus?
25 MR. BONNER: I am finished with

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1 Mr. Kurus.
2 CHAIRMAN CASTRO: Do you have any other
3 witnesses?
4 MR. BONNER: I do, Mr. Chairman, we
5 have our planner, Nicholas Graviano.
6 Mr. McNamara, would you like to do the
7 honors?
8 MR. McNAMARA: Yes, Mr. Graviano, if I
9 didn't before, raise your hand also, please.
10 Gentlemen, do you swear the testimony
11 you're about to present to the zoning board of
12 adjustment concerning the application now pending
13 before it shall be the truth, the whole truth, and
14 nothing but the truth?
15 MR. GRAVIANO: I do.
16 N I C H O L A S G R A V I A N O, P.P.
17 101 Crawfords Corner Road, Holmdel, New Jersey,
18 having been duly sworn, testifies as follows:

19 MR. McNAMARA: Nick, for the record,
20 state your name, spell your last name and provide
21 your business affiliation, please.

22 MR. GRAVIANO: Yes, my first name is
23 Nicholas with an H.

24 Last name Graviano, G-R-A-V, as in
25 victor, I-A-N-O.

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1 I'm a planner and partner with Graviano
2 & Gillis Architects & Planners with a business
3 address of 101 Crawfords Corner Road in Holmdel, New
4 Jersey.

5 MR. McNAMARA: Thank you, Mr. Graviano,
6 you've testified on numerous occasions before land
7 use boards as well as the boards here in Elizabeth
8 and have been accepted as an expert in your field?

9 MR. GRAVIANO: Yes, I have.

10 I've been qualified by this board on
11 numerous occasions. My professional planning license
12 is still valid. If Mr. Bonner would like me to give
13 my credentials, I can.

14 CHAIRMAN CASTRO: No thank you,
15 Mr. Graviano.

16 MR. McNAMARA: Does the board have any
17 objections?

18 CHAIRMAN CASTRO: The board accepts
19 Mr. Graviano's qualifications.

20 Mr. McNAMARA: Thank you. Please
21 proceed.

22 DIRECT EXAMINATION

23 BY MR. BONNER:

24 Q. Mr. Graviano, why don't you walk us
25 through your testimony by narrative rather than my

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1 asking you questions, I think it will move a little
2 faster that way.

3 A. Certainly, Mr. Bonner.

4 The applicant is here this evening
5 requesting a (d) (1) and (d) (2) variance as well as
6 (c) variances for preliminary and final site plan
7 approval for Block 677 -- I'm sorry, Lot 677,
8 Block 11.

9 Currently the property contains a
10 one-story commercial building in a pharmacy and the
11 existing restaurant operating as a garden. The
12 applicant seeks to construct a permanent outdoor
13 seating and storage facility at the location.

14 The property is located in the C-5
15 District, which does not permit restaurants with
16 outdoor dining, that's the (d) (1) portion of the
17 application.

18 The (d) (2) portion of the application
19 is that there's an existing restaurant on the site
20 that is expanding as a result of the applicant's

21 proposal.

22 The (c) variances that the applicant is
23 requesting tonight relate to the front yard setback
24 where 6 feet is prevailing and a setback of 0 feet is
25 proposed. The proposed 0 feet is certainly

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1 consistent with the established land use patterns on
2 Morris Avenue in this general vicinity.

3 The second (c) variance relates to the
4 rear yard setback. Part of the temporary enclosure
5 will be on the rear property line with a 0-foot
6 setback whereas a 30-foot setback is prevailing in
7 this instance.

8 Then lastly the applicant is requiring
9 the parking variance, this has been discussed at
10 lengths via Mr. Bonner and Mr. Gomez, as well as the
11 project engineer Mr. Kurus. The applicant is
12 providing six spaces on-site whereas 47 off-street
13 parking spaces are required.

14 You did hear testimony the applicant
15 does provide at least 43 and possibly 20 more up to
16 63 off-street parking spaces via a valet arrangement
17 with the leases in parking lots in the general
18 vicinity.

19 As the board knows, this section of
20 Morris Avenue is located between the Elizabeth River
21 and Westfield Avenue. It's the Elizabeth River where

22 the C-5 Zoning District begins, as well as when
23 you're going down Morris Avenue to the downtown port,
24 this is where you see the established development
25 patterns take on more of an urbanized and downtown

55

1 type feeling.

2 This is a site that is located between
3 two mixed-use buildings consisting of three and four
4 stories respectively, and to the rear of the property
5 is the Knights of Columbus site.

6 I had an opportunity to study this area
7 on two occasions and I did note there are numerous
8 restaurants on both sides of Morris Avenue between
9 the river and Westfield Avenue, specifically
10 restaurants located at 301 Morris, 300 Morris, 302
11 Morris, 304 Morris, 306 Morris, 308 Morris, 330
12 Morris, 332 Morris, 336 Morris and 344 Morris. All
13 of those properties are located in the C-5 Zoning
14 District as well.

15 When you look at the permitted uses at
16 the C-5 Zoning District, it's a district that permits
17 a wide array of commercial and residential uses
18 specifically including professional offices, studios
19 and clinics, business offices, neighborhood
20 convenience type uses, local convenience type uses,
21 community retail, general and speciality retail,
22 indoor amusement, hotels, major entertainment, major

23 retail commercial, arterial commercial.

24 So it's a long list of permitted
25 commercial uses in the C-5 District. I would like to

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1 note that that district also permits accessory uses,
2 which are customary to our permitted use.

3 So, for example, if you have a major
4 entertainment facility, a hotel, an indoor amusement
5 facility, those are all uses that could actually have
6 a restaurant by right as a permitted accessory use.

7 So when you analyze these (d) variances
8 that are being requested, it's a very unique scenario
9 in that the existing restaurant is seeking to
10 permanently establish the (Audio Distortion) not
11 specifically listed as permitted uses in the C-5
12 District, so the (d)(1) use variance is required.

13 The existing restaurant expansion
14 requires the (c)(2) variance because it's located on
15 the site.

16 After close examination of the built
17 environment to the city's Master Plan, the zoning
18 ordinance, it was certainly determined that the
19 proposal can both satisfy the negative and positive
20 criteria needed to support both the (d)(1) and
21 (c)(2) variances, and I'll give you those reasons
22 now.

23 In relation to the (d)(1) variance, the

24 board has the power to grant (d) (1) variances in
25 particular cases and for special reasons.

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1 The positive criteria to the (d) (1)
2 variance. It's the promotion of the general welfare
3 as the zoning purpose that most clearly amplifies the
4 meeting of that term "special reasons."

5 So the benefit to the Elizabeth
6 community from a not inherently beneficial use arises
7 not from the use itself, but the development of a use
8 on a site that's particularly suited for the
9 enterprise that's proposed.

10 This applicant does not need to
11 demonstrate that there are other viable locations for
12 the project in order to provide proof that the site
13 is particularly suited for the proposed use.

14 The applicant must also demonstrate
15 that the variance can be granted without substantial
16 detriment to the zone plan or zoning ordinance, nor
17 will it create substantial detriment to the public
18 good.

19 Looking at the positive criteria, we'll
20 take first the particular suitability. The property
21 is particularly suited for the neighborhood and for
22 the site for a numerous of factors, first being the
23 site.

24 The presence of a front yard parking

1 outdoor dining area. This is the only site between
2 the Elizabeth River and Westfield Avenue that
3 contains a front yard parking lot.

4 Moving on, there's neighborhood factors
5 as I discussed before. This portion of Morris Avenue
6 houses numerous restaurants. The site is
7 particularly suited for such use as it is consist
8 with the established land use pattern of the area.

9 This neighborhood is part of the
10 downtown core, its proximity to Broad Street, the
11 train station and other downtown uses make it suited
12 for outdoor dining as the built environment in this
13 area makes it difficult for many of the restaurants
14 to provide outdoor dining arrangements.

15 When I discussed the C-5 District's
16 permitted principal and accessory land uses, this is
17 certainly a zoning district that permits uses that
18 are similar in nature and could potentially be more
19 intense than the proposed use than what this
20 applicant is proposing with you this evening. It's
21 certainly a proposal which is in keeping with the
22 neighborhood and regional commercial uses which are
23 prescribed for the district. And as I stated before,
24 many of the permitted land uses could have restaurant
25 facilities as part of their operations.

1 With respect to the advancement of the
2 purpose of zoning of the Municipal Land Use Law this
3 proposal advances Purpose A to encourage municipal
4 action, to guide the appropriate use of land in a
5 manner which will promote the public health, safety,
6 morals and general welfare.

7 As you know, we are in a midst of one
8 of the largest health crisis of our time that has
9 highlighted the need for outdoor dining, retail and
10 recreation space.

11 According to the Centers for Disease
12 Control, otherwise known as the CDC, considerations
13 for bars and outdoor dining indicate that outdoor
14 dining carries less of a transmission risk than
15 indoor dining in terms of COVID, it certainly
16 provides a better risk than indoor dining, there's no
17 doubt about it, according to the CDC data.

18 And I quote from the website:

19 "In general, being outdoors and in
20 spaces with good ventilation reduces the risk
21 of exposure to the virus that causes COVID
22 19."

23 Moving on, it advances Purpose Z of the
24 -- C of the MLUL to provide adequate light, air and
25 open space. This is a proposal this helps provide

1 adequate air and ventilation in a restaurant context,
2 piggybacking on the analysis given in relation to the
3 advancement and Purpose A of the MLUL.

4 It additionally advances Purpose G to
5 provide sufficient space in appropriate location for
6 a variety of uses to meet the needs of New Jersey
7 citizens that ties into the analysis of particular
8 suitability. This is sufficient space and
9 appropriate location for an outdoor dining use.

10 Lastly, this helps promote a desirable
11 visual environment to creative development techniques
12 and good civic design and arraignment. It helps
13 provide that continuous facade plan along Morris
14 Avenue.

15 It's a creative solution for the
16 vitality of a restaurant use which is in response to
17 the ongoing health crisis and in this context, it's
18 certainly appropriate to remove the parking and add
19 the outdoor dining space in light of the fact that
20 the applicant has gone to great lengths to replace
21 those spaces through alternative methods.

22 Now looking at the negative criteria,
23 there's no substantial detriment to the public good
24 by granting the (d)(1) use variance. This is a
25 corridor that contains eating and drinking

1 establishments, these are the types of use which are
2 the norm in the neighborhood.

3 The applicant's acquisition of off-site
4 parking mitigates any ills associated with the
5 increased use of the space and the removal of the
6 on-site parking spaces. There's no substantial
7 detriment to the zone plan or zoning ordinance, as
8 this is a use which is consistent with the commercial
9 uses for the district.

10 Looking at the city's Master Plan, the
11 2020 Master Plan does not address the C-5 Zone, nor
12 does it make mention of the ongoing COVID 19
13 pandemic.

14 The 2016 Land Use Element of the Master
15 Plan encourages economic development along main
16 transportation corridors and along the train station.
17 Morris Avenue is certainly a main transportation
18 corridor in the City of Elizabeth.

19 Furthermore, the 2016 Land Use Element
20 seeks to improve pedestrian facilities and
21 streetscape amenities. The applicant's proposal is a
22 positive streetscape improvement.

23 Lastly, the 2016 Land Use Element also
24 seeks to encourage the rehab of existing building
25 facades, site improvements and structures when

1 appropriate.

2 And then given in light of the COVID-19
3 pandemic, as well as site factors which make the
4 applicant's proposal fit in the surroundings a little
5 bit better, this is certainly an appropriate rehab of
6 an existing site and building facade.

7 Now I'm going get into the (d) (2)
8 variance, that's the expansion of the nonconforming
9 use.

10 With this variance, the board has the
11 power to grant variances to permit the expansion of
12 lawfully created preexisting, nonconforming uses and
13 particular cases and special reasons, that's the
14 positive criteria of the (d) (2) variance.

15 The benefit to the general welfare in a
16 (d) (2) concept is not from the use itself, but in a
17 development of a site in the community which is
18 particularity suited for the enterprise proposed.

19 I would also like to note that special
20 reasons warranting a (d) (2) variance may be found
21 that this variance, if granted, would tend to make
22 this use more acceptable in its particular setting.

23 When looking at the positive criteria,
24 it certainly advances Purposes A, C, G and I as
25 discussed in the (d) (1) use variance analysis, and

1 this is a use which tends to make the use more
2 acceptable in a particular setting.

3 And when you look at this case, this
4 application has two settings, one being the building
5 and the site setting on Morris Avenue, the second
6 being the place and time and circumstance of this use
7 existing in the current COVID-19 pandemic.

8 (D) (2) variances must show that the
9 proposal is intertwined with notions of the general
10 welfare and the applicant's attempt to provide
11 permanent outdoor seating is certainly intertwined with
12 the notion of the general welfare.

13 The CDC has established that outdoor
14 dining is a safer health environment, so therefore
15 the applicant is certainly intertwined in promoting the
16 general welfare.

17 This is a proposal that provides
18 flexibility in a challenging health and restaurant
19 environment and the removal of the parking spaces and
20 the provision of an impeccably designed -- if you go
21 to the site today, you'll see it's beautiful with
22 beautiful furniture, plantings, decor and the like.
23 It's certainly helps close the gap between the
24 neighboring buildings providing the enhanced
25 aesthetics and safer pedestrian environment.

1 As with the (d) (1) variance, there's no
2 substantial detriment to the public good. This is a
3 corridor that contains numerous eating and drinking

4 establishments. These types of uses are the norm in
5 the neighborhood.

6 Lastly moving on to the (c) variances,
7 they certainly can be granted without substantial
8 detriment to the zone plan or zoning ordinance, they
9 can be granted under the (c)(2) criteria which must
10 relate to a specific piece of property. It must also
11 advance purposes of zoning in the Municipal Land Use
12 Law.

13 The (c) variance also advances Purposes
14 A, C, G and I of the MLUL. When you look at the site
15 itself, the front yard setback variance is certainly
16 in keeping with the established front yard setbacks
17 of the Morris Avenue corridor between the river
18 extending to Westfield Avenue.

19 And then with relation to the rear yard
20 setback variance, the rear yard setback abuts other
21 off-street parking areas in the Knights of Columbus
22 parking lot, which have a storage container directly
23 on the parking lot line, so there's certainly no
24 impairment to that portion of that property.

25 So in summation, this proposal

1 certainly advances purposes of the zoning and the
2 Municipal Land Use Law. The (d)(1) variance for the
3 outdoor dining and restaurant use can certainly be
4 granted by this board, as well as the (d)(2) variance

5 for the expansion of the nonconforming use.

6 Q. Thank you, Mr. Graviano.

7 MR. BONNER: I have no questions for
8 him, Mr. Chairman.

9 CHAIRMAN CASTRO: Commissioners, do you
10 have any questions for Mr. Graviano?

11 MR. McNAMARA: I have no questions,
12 Mr. Chairman.

13 CHAIRMAN CASTRO: Okay.

14 I understand that the objector, the
15 person that is the owner of the building immediately
16 adjacent, is going to have some witnesses.

17 We don't have time, 15 minutes is all
18 we have left, and I am in favor of probably hearing
19 the rest of this application during the live meeting
20 in September.

21 COMMISSIONER SOSA: Mr. Chairman?

22 CHAIRMAN CASTRO: Yes, Commissioner.

23 COMMISSIONER SOSA: Is it possible that
24 we can -- we carried it over once. Is it possible we
25 could just end it today? We need to --

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1 CHAIRMAN CASTRO: Let's see how many
2 other witnesses we have, but I don't think we're
3 going to be done, Commissioner Sosa, in an hour.

4 MR. McNAMARA: It's my understanding
5 from counsel, Mr. Chairman, that he has both his

6 client as a witness and he's hired a professional
7 planner, Edward Kolling to offer a rebuttal testimony
8 to the testimony proffered by Mr. Graviano and the
9 other expert of the applicant.

10 So to allow time for Mr. Graviano to be
11 cross-examined by counsel for the objector and then
12 present two more witnesses, you're looking at at
13 least another 90 minutes to get through all of that.

14 MR. DiSTEFANO: I'm sorry, actually I
15 have -- there's also a tenant.

16 MR. McNAMARA: Three witness.

17 MR. DiSTEFANO: So it would be three
18 witnesses.

19 MR. McNAMARA: Mr. Chairman, you would
20 have a choice of we have a scheduled special meeting
21 for August 26th.

22 MS. WHITEHEAD: Yes, and I asked all
23 commissioners and we do have a quorum for that
24 meeting if we would like to reschedule it for the
25 special meeting on the 26th.

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1 MR. McNAMARA: It would be the only
2 application on that night, so it would make it a lot
3 easier to complete the entire application and put it
4 to the board for a vote since there wouldn't be any
5 other applications on that night.

6 COMMISSIONER SOSA: Absolutely, I

7 definitely want to hear the witnesses, that's good.

8 CHAIRMAN CASTRO: Commissioner Sosa,
9 the meeting of August 26th is actually a meeting
10 where we're going to be tending to this application
11 only, no other application is going to be heard.

12 COMMISSIONER SOSA: Absolutely, I
13 definitely am interested. I want to hear the
14 tenants' concerns and community concern as well.

15 CHAIRMAN CASTRO: Thank you.

16 Mr. Bonner?

17 MR. BONNER: Yeah, Mr. Chairman, I'm
18 disappointed that we're not finishing tonight. I was
19 under the impression that we were going to be earlier
20 in the agenda, especially in light of the notice
21 issues that we had at a prior hearing.

22 I would like to continue as long as we
23 can tonight, if that's okay with the board, and then
24 of course we would accept the 26th as the next
25 meeting without notice.

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

3 MR. BONNER: I do not.

4 MR. McNAMARA: The attorney for the
5 objector has the right to cross-examine Mr. Graviano.

6 So your decision is do you want to
7 proceed and do that tonight or do that at the next

8 meeting.

9 CHAIRMAN CASTRO: Let's proceed,
10 Mr. McNamara, with the cross-examination of this
11 witness.

12 MR. McNAMARA: Who's ever in the
13 background, please mute your phone so that we can
14 hear, please.

15 Thank you.

16 Mr. Chairman, I think you said you
17 wanted to proceed with Mr. Graviano's
18 cross-examination; am I correct?

19 CHAIRMAN CASTRO: That is correct,
20 Mr. McNamara.

21 MR. McNAMARA: Okay. And then we'll
22 carry the meeting to the 26th.

23 MR. DiStefano, do you wish to
24 cross-examine Mr. Graviano?

25 MR. DiSTEFANO: Yes, just tonight how

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1 long will I have to cross this witness?

2 MR. McNAMARA: Well, we're not going to
3 start another witness given the lateness of the hour,
4 so let's see how you do. We normally wrap things up
5 around 10:30. If you don't think that's going to
6 give you enough time, then we'll just move everything
7 to the meeting of the 26th.

8 MR. BONNER: No, Mr. McNamara, I would

9 like him to get started tonight. As long as
10 Mr. Graviano is here and the testimony is fresh, I
11 think Mr. DiStefano should start his
12 cross-examination tonight.

13 MR. McNAMARA: Well, okay, start and
14 we'll see how we do. Okay.

15 MR. DiSTEFANO: Just interrupt me if it
16 gets too late.

17 CROSS-EXAMINATION

18 BY MR. DiSTEFANO:

19 Q. So for the witness, did you reach any
20 conclusions or any opinions as to the intent and
21 purpose of the existence of this C-5 Zone, what is it
22 supposed to serve within the Master Plan? What
23 purpose is it supposed to serve?

24 A. This is intended to provide commercial
25 uses and increased commercial uses in the City of

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1 Elizabeth.

2 Q. So increased over which particular
3 zone, otherwise, the C-4 or was it the R-C, increase
4 in what?

5 A. The language spoke to providing
6 increased commercial opportunities other than
7 warehousing.

8 Q. And with regard to the area that was, I
9 guess, carved down, became the C-5 Zone, what zone

10 was it beforehand, if you know?

11 A. I believe it was the C-4 District, but
12 I could be incorrect.

13 Q. Could you compare the C-4 and the
14 purposes behind that with the C-5?

15 A. Yes.

16 I did look at that when I looked at the
17 language.

18 As I stated previously, the desire was
19 to create a commercial zoning district to provide
20 commercial opportunities other than warehousing.

21 Q. Okay.

22 So is the C-5 then supposed to be just
23 to eliminate warehouses from C-4?

24 A. No.

25 Obviously through the permitted land

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1 uses of the district as well as the language behind
2 it, it seeks to be region and local commercial hub of
3 activity.

4 Q. I mean, but just, you know, you
5 mentioned the warehouses, but with regard to I guess
6 the changes going from C-4 to C-5 in this area,
7 besides the warehouses, what was it to accomplish?

8 A. It wasn't specifically noted in the
9 document.

10 Q. Okay.

11 So you -- did you come to any opinion
12 then on that issue?

13 A. Yes, you heard my testimony. My
14 opinion was that this is a use consistent with the
15 established commercial nature of this district, the
16 applicant's proposed use is certainly a use which
17 could be accommodated through a permitted use in an
18 accessory context, so it's not a substantial
19 departure from the zone plan or the zoning ordinance.

20 Q. Well, not a substantial -- okay.

21 So, now, with regard to the prohibition
22 on outdoor dining in C-5, is that something that
23 existed in C-4 previously in the area?

24 A. There was no mention of the outdoor
25 dining in any of the zoning districts in the City of

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1 Elizabeth. The City of Elizabeth had regulated
2 sidewalk dining. Outdoor dining was not specifically
3 addressed in this zoning district or any other zoning
4 districts.

5 Q. Well, what's the purpose of the
6 restriction on outdoor dining, in your opinion?

7 A. I'm not the person to ask that question
8 to, I'm not the governing body or the planning board.

9 Q. Well, I mean, you did come to a
10 conclusion with regard to the intent and purpose of
11 that zoning ordinance, correct?

12 A. That was the intent and purpose spelled
13 out in the Master Plan for proposed amendment. That
14 was not my conclusion, that was the city's
15 conclusion.

16 MR. BONNER: Mr. Graviano doesn't
17 determine the policies in the zoning for the City of
18 Elizabeth, he interprets and applies it to the
19 individual case before him.

20 BY MR. DiSTEFANO:

21 Q. So, essentially, you didn't come to any
22 conclusion at all with regard to the purpose of that
23 specific restriction, the outdoor dining restriction?

24 A. No, that's not my role in this. My
25 role is to analyze one, if there's conditions that

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1 make this use particularly suited for the site in
2 which its proposed; two, to establish if there's a
3 substantial detriment to the zone plan or zoning
4 ordinance, which I established there were not.

5 And certainly with the (d) (2) analysis
6 to see if there's advancements in terms of the --
7 being intertwined with the general welfare. And in
8 light of the current COVID-19 pandemic, there's
9 certainly something that is intertwined with promoting
10 the general welfare of the applicant's proposal.

11 Q. So if you can't come to a conclusion or
12 an opinion with regard to the intent and purpose of

13 the zone plan and ordinance, how can you testify that
14 this doesn't impair that purpose if you haven't
15 established the purpose?

16 A. Mr. DiStefano, how many times are you
17 going to ask me the same question? I indicated that
18 the Master Plan did provide an intent and purpose for
19 the C-5 District, which was to provide a variant
20 array of commercial uses other than warehousing.

21 Q. So as to the other restaurants that you
22 mentioned, are there any other restaurants that you
23 found that do have outdoor dining on a permanent
24 basis in the C-5 District or specifically in the
25 vicinity of the premises we're talking about tonight?

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1 A. As I indicated in my testimony, this
2 was one of the rare parcels that had the opportunity
3 to provide an outdoor seating area within the site
4 itself.

5 Q. Did you review the parcel across the
6 street from the one at issue?

7 A. Which parcel are you referring to?

8 Q. The one that has Pisko's restaurant.

9 A. Yes, I did.

10 Q. And does Pisko's restaurant have the
11 same capacity for outdoor dining as the parcel we're
12 talking about tonight?

13 A. Pisko's is a little bit of a different

14 situation that there is a roof over their dining
15 situation. That structure exists.

16 Q. Okay. What's the roof at Pisko's
17 constructed of?

18 A. Wood. There's metal support systems
19 there.

20 Q. And is it an outdoor dining area or a
21 roofed dining area in your thought process?

22 A. It's somewhat a combination, similar to
23 what the applicant is proposing.

24 Q. So is there any difference with regard
25 to the suitability of the Pisko's site for, you know,

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1 a permanent outdoor dining solution via the current
2 site, is there any difference? Is there any reason
3 that the site we're talking about would be any more
4 suitable than the Pisko's site?

5 A. Yes. As I stated in my testimony, it
6 is more suitable because one, it promotes a
7 continuation of the street elevation and facades of
8 the established land use pattern of the area.

9 Q. Isn't it the case that the Pisko's
10 establishment actually continues a facade across the
11 entrance to the outdoor dining area?

12 A. Yeah, we're not talking about the
13 Pisko's site now, we're talking about this site.

14 Q. Right, but if you said that the

15 difference between this site and Pisko's is that this
16 site promotes, you know, you put a facade in and it
17 promotes, you know, the even, you know, the
18 architectural evenness of the area, how is that any
19 different from what's currently at Pisko's?

20 A. Because Pisko's doesn't have a front
21 yard parking lot which is -- deviates from the
22 established land use pattern of the area.

23 Q. And next to Pisko's is there another
24 restaurant Monchy's that has outdoor dining on a
25 temporary basis?

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1 A. Let me look. Well, you know, temporary
2 and permanent are two different things.

3 Q. Right, but they do have outdoor dining
4 on a temporary basis at Monchy's, correct?

5 A. Give me one second, let me check my
6 notes. I believe their outdoor dining was on the
7 sidewalk.

8 Q. There's not a gap between Monchy's and
9 the Gyro's or the -- I guess there's a -- regardless,
10 so there's no dining, in your recollection, between
11 Monchy's and the next building over heading south?

12 A. I do not recall that being there.

13 Q. Okay. But so it would be fair to say
14 that the particular suitability that you see here is
15 based on the fact that there is a front parking area

16 where outdoor dining could be established?

17 A. Well, there's an area in general and in
18 the front, it promotes a better design aesthetic.

19 Q. All right. But I mean, but Pisko's has
20 an area in general, so the difference here would just
21 be that it's in front?

22 A. Yes, the applicant's proposal on this
23 site, and we're talking about this site, that front
24 yard parking area makes it suitable for the outdoor
25 dining arrangement.

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1 Q. Okay. So any front door -- any parking
2 any in front would be suitable for outdoor dining
3 based on that premise in any site?

4 A. In the downtown context, yes.

5 Q. Okay. So and that would continue down
6 Morris Avenue to the area near, you know, El Nuevo
7 Latino?

8 A. Yes.

9 Q. So that would also be equally suitable
10 for outdoor dining based on that premise?

11 A. Nuevo Latino has a different land use
12 context than what the neighborhood we're talking
13 about in the applicant's proposal.

14 Q. What's the difference?

15 A. The built environment is not as compact
16 at that location.

17 Q. Because of the large parking area?

18 A. Due to numerous factors, you know, I
19 studied the area between the Elizabeth River and the
20 intersection of Westfield Avenue because that's the
21 connection in which the applicant's proposal is
22 taking place.

23 Q. And equally the same, the public
24 parking area a little bit south would also be
25 suitable for outdoor dining?

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1 A. No, this is a site in which the
2 applicant controls, it's not a public parking area.

3 Q. Isn't the public parking area a large
4 open spot that abuts onto the sidewalk?

5 A. It's a public parking area.

6 Q. Well, right, but that doesn't change
7 the physical structure of the area, the fact that
8 it's currently a public parking area.

9 A. Yes, it does.

10 Q. Well, what is physically different
11 about the parking lot, the public parking lot versus
12 the parking lot that is pertinent to the pharmacy, is
13 there some sort of different asphalt that's used?

14 A. This is a privately controlled parking
15 lot, that is a public parking lot.

16 Q. Right, but that's who owns title to it.
17 I'm talking about, like, the physical realty on the

18 street. It's an open parking lot, an open space that
19 abuts right onto the sidewalk. There's no physical
20 difference, is there?

21 A. This line of questioning is ridiculous.
22 It's a public parking lot. There's no established
23 restaurant use on that parking lot.

24 Q. So basically there are -- besides the
25 parking lot here at the pharmacy, there are three

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1 other parking lots on the street that could
2 accommodate open-air dining?

3 A. You need an established land use.
4 Those are public parking lots.

5 Q. So you talked about how building a
6 somewhat enclosed permanent outdoor dining structure
7 will promote public health because of the current
8 COVID pandemic, correct?

9 A. That is correct.

10 Q. And it would be fair to say that that
11 criteria would become hopefully less salient in the
12 future?

13 A. We don't know the direction by which
14 the COVID-19 pandemic is going to take, but we have
15 been taught and told by our health officials that
16 outdoor seating in any context is safer than indoor
17 seating and the promotion of outdoor seating in
18 restaurants promotes good public health and public

19 policy.

20 Q. And the plan you'll substantially
21 increase is the occupancy of the site, correct?

22 A. I have not categorized that, you know,
23 you can't define substantially. Does it increase the
24 occupancy on the site, it does; however, the
25 applicant has gone through painstaking measures to

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1 mitigate that expansion through the acquisition of
2 leases to provide off-street parking for the
3 customers of the establishment.

4 Q. Well, do you know by how many diners
5 the occupancy is being increased or the capacity?

6 MR. BONNER: That was covered by the
7 architect, that's not for this witness, and you've
8 had your opportunity to question him. You'd know how
9 many seats there are if you attended the meeting or
10 read the transcript.

11 MR. DiSTEFANO: Well, I'm just asking
12 of this witness.

13 MR. BONNER: Well, sooner or later you
14 have to get to a point, don't you?

15 BY MR. DiSTEFANO:

16 Q. Mr. Graviano, do you have -- do you
17 know by how many people it's being increased?

18 A. That was not relevant to my testimony.
19 The applicant is providing a parking count that meets

20 what is required by the city's zoning code.

21 Q. So basically if this plan were
22 approved, you'd have a substantially higher
23 concentration of people in one spot versus --

24 MR. BONNER: That's your words.

25 Q. -- the current occupancy; isn't that

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1 correct?

2 A. As I stated before, I don't agree with
3 your use of the term "substantial." Will you have an
4 increase in occupancy, yes, you will.

5 Q. Okay. So could you come to any
6 conclusions whether or not this increase in occupancy
7 will be a greater threat to public health than, you
8 know, the current occupancy, you know, if you have 20
9 people together in an enclosed space, that's one
10 thing, but if you have, you know, X number people,
11 whatever it was, a hundred people in an outdoor
12 space, that's another thing.

13 And the question is did you come to any
14 consideration, did you contemplate that when you said
15 this promotes the public health? While you're
16 bringing, you know, a bunch of people together in an
17 outdoor setting, you're still increasing the crowd
18 size; isn't that the case?

19 MR. BONNER: He made it very clear that
20 the CDC has determined that outdoor dining is safer

21 than indoor dining. This characterizes outdoor
22 dining with ventilation.

23 I think you've asked this question
24 enough times and he's answered it enough times.

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

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1 if he considered that if -- if -- because it's not
2 keeping all the --

3 MR. BONNER: He's already answered the
4 question.

5 MR. DiSTEFANO: -- same. If you have
6 20 people indoor and you have 20 people outdoor, then
7 you can compare that. And based on premise that he's
8 established, certainly the outdoor or the ventilated
9 area is safer, but is it safer to public health to
10 have a hundred people together in an outdoor
11 ventilated area versus 20 people together in an
12 indoor area?

13 MR. McNAMARA: Mr. DiStefano, the
14 witness is not a public health expert, he's a
15 planner. I think the question has already been
16 adequately hashed through, so I'm going to suggest
17 you please move on.

18 MR. BONNER: And Mr. McNamara, we've
19 also testified that this will be subject to the board
20 of health's review.

21 MR. McNAMARA: Any restaurant

22 establishment anywhere is regulated --

23 MR. BONNER: Exactly.

24 MR. MCNAMARA: -- by the municipal

25 board of health, that's a given and that's a

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1 condition on any resolution that's adopted by this

2 board for virtually any type of use.

3 BY MR. DiSTEFANO:

4 Q. So and then you said this is going to

5 provide adequate light, air and open space, right,

6 that's a -- it's to vindicate that purpose of the

7 act, correct?

8 A. This is certainly a proposal which

9 provides air and ventilation for the diners of the

10 establishment.

11 Q. Well, but --

12 MR. BONNER: I object to your use of

13 the word "vindicate." He stated, as is required of a

14 planner giving testimony, that an application meets

15 the purposes of the Municipal Land Use Law, one of

16 which is adequate air, light and open space. That

17 was his testimony, nothing about vindication of

18 anything.

19 BY MR. DiSTEFANO:

20 Q. Okay.

21 So and it's your testimony that

22 actually putting in this, you know, semipermanent

23 structure is going to increase light, air and open
24 space versus the preexisting open space?

25 A. It's a situation that provides air and

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1 ventilation for the diners of the establishment.

2 Q. But it actually decreases the light,
3 air and open space that is existing?

4 A. No.

5 MR. BONNER: When you consider that a
6 zero lot line is permitted and this is much more
7 open, lighted and airy than an enclosed restaurant by
8 comparison.

9 MR. DiSTEFANO: And it's much less
10 light open and airy than nothing.

11 MR. BONNER: And your point is?

12 BY MR. DiSTEFANO:

13 Q. And you also testified --

14 MR. McNAMARA: Gentlemen, gentlemen, if
15 you're going to argue with each other, you can save
16 it for the next meeting.

17 By my clock you've got six minutes left
18 this evening, Counsel, to conduct your
19 cross-examination or that's going to be carried as
20 well to the next meeting because there's going to be
21 a hard stop here at 10:45.

22 CHAIRMAN CASTRO: Mr. DiStefano?

23 MR. DiSTEFANO: Yes.

24

CHAIRMAN CASTRO: Go ahead.

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1 BY MR. DiSTEFANO:

2 Q. So you also testified that this will
3 provide sufficient space and appropriate locations
4 for a variety of agricultural, residential,
5 recreational, commercial and industrial uses and open
6 space, both public and private, according to our
7 respective environmental requirements in order to
8 meet the needs of all New Jersey citizens.

9 And again, is this providing open
10 space?

11 A. It's providing a commercial use to meet
12 the needs of New Jersey citizens.

13 Q. And what are those needs?

14 A. The need to accommodate outdoor dining
15 in light of the COVID-19 pandemic.

16 Q. And so, but then you're proposing a
17 permanent solution to the COVID-19 pandemic, which
18 has been -- there's been a response with regard to
19 outdoor dining pursuant to executive action; isn't
20 that correct?

21 A. In any health context, outdoor dining
22 is a promotion of the general health, safety and
23 general welfare.

24 Q. But we're talking about Subsection G

25 here.

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1 A. Yeah, you combined it in your question.
2 With respect to G, it's sufficient
3 space in that the site can accommodate the
4 applicant's proposal, it's an appropriate location in
5 that it's located on Morris Avenue between the River
6 and Westfield Avenue, an area which contains numerous
7 restaurant uses, and the applicant has been able to
8 acquire off-street parking solutions to help
9 accommodate the proposal.

10 Q. Did you make any review with regard to
11 the requirements for the lessees of the three
12 off-site parking spaces?

13 A. I'm sorry, I don't understand the
14 question.

15 Q. Well, the lessees of those spaces, do
16 they -- what do they need with regard to -- with
17 regard to requirements at -- for their business
18 purposes vis-a-vis those parking lots?

19 MR. BONNER: The applicant is the
20 lessee.

21 MR. DiSTEFANO: I'm pretty sure the
22 applicant is the lessor, but --

23 MR. BONNER: No, the lessor is the
24 landlord.

25 MR. DiSTEFANO: I'm pretty sure he

1 signed as lessor on the leases, but regardless, let's
2 talk about landlord and tenant.

3 BY MR. DiSTEFANO:

4 Q. With regard to the landlords at
5 those -- well, with regard to the users, okay, the,
6 like, adjacent users, what are the actual
7 requirements with regard to the parking spaces they
8 need to provide?

9 A. That testimony was provided by the
10 applicant who analyzed the spaces that were going to
11 be shared and the shared users' hours of operation
12 and needs, that was done by another witness.

13 Q. So did you rely on that testimony?

14 A. Yes, I'm relying on the applicant's
15 testimony in relation to that issue, yes.

16 Q. Okay. So you don't -- you didn't make
17 any independent review of the number of spaces
18 required with regard to the other uses of those
19 spaces?

20 A. No, I did not.

21 Q. Okay.

22 A. My analysis relied on the applicant's
23 negotiations with those land owners based on the
24 information given by the applicant and the hours of
25 operation of the other business uses that the

1 applicant's proposal for the provision of off-street
2 parking was certainly reasonable in this context.

3 MR. DiSTEFANO: Okay. I have no
4 further questions at this time for the witness.

5 MR. McNAMARA: Thank you.

6 Mr. Chairman, at this point I would
7 recommend that you entertain a motion to carry this
8 hearing to a special meeting date of August 26th.
9 The board secretary will advertise it under the
10 Sunshine Law to provide updated meeting ID and
11 password information so people can log in via Zoom to
12 participate.

13 For members of the public who have been
14 observing these proceedings this evening, this
15 application is going to be carried to a special
16 meeting of the board on August 26th, 2021, it will be
17 a virtual meeting as has this one been tonight.

18 This will be the only application to be
19 placed on that agenda. The set meeting will start at
20 7:30. The office of the board secretary will publish
21 new notice with the information and it will also be
22 posted on the city website.

23 MR. BONNER: Mr. McNamara, before the
24 chairman closes the meeting, this concludes the
25 applicant's case, but I would like to reserve time to

1 make a statement after Mr. DiStefano presents his
2 case.

3 MR. McNAMARA: I have no objection to
4 that, Counsel, you will have the right to
5 cross-examine any and all witnesses proffered by the
6 objector, as does the board and its professionals.
7 It's your decision as to whether or not you wish to
8 have your professionals available at the meeting on
9 the 26th.

10 MR. BONNER: We'll make that
11 determination. Thank you, Mr. McNamara, we have no
12 plans to present further testimony.

13 CHAIRMAN CASTRO: Mr. Bonner, I'd like
14 you to have Mr. Graviano back for the August 26th
15 meeting, please, I'd like to ask him some questions.

16 MR. BONNER: Certainly, Mr. Chairman.

17 CHAIRMAN CASTRO: And, Madame
18 Secretary, if you can please send out the transcript
19 of today's hearing, I would appreciate it.

20 MR. BONNER: Patricia, you're there
21 somewhere.

22 MS. WHITEHEAD: I'm sorry.

23 THE COURT REPORTER: Oh, I'm sorry, I
24 thought he was talking to you.

25 I'm sorry, continue, Ms. Secretary.

1 MS. WHITEHEAD: I'm sorry, can you
2 repeat that again, Chairman? I couldn't hear you.

3 MR. McNAMARA: Patricia, we need a copy
4 of the transcript done expedited so we can distribute
5 it to members of the board prior to the hearing on
6 the 26th.

7 THE COURT REPORTER: Okay. So today is
8 what, the 12th?

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
18 transcript -- we'll post it on the city website so
19 it's available to the public.

20 CHAIRMAN CASTRO: Thank you,
21 Mr. McNamara.

22 So we're going to have Mr. Graviano
23 back, we're going to have copies of today's
24 transcript, today's -- transcript of today's hearing,
25 so on the next meeting is going to continue or this

1 hearing is going to continue on the meeting of

2 August 26th.

3 Any comments, Commissioners? May I
4 have a motion to adjourn this meeting to August 26th?

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.

13 Madame Secretary, roll call, please.

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?

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1 VICE CHAIRMAN NUNES: Aye.

2 MS. WHITEHEAD: Chairman Castro?

3 CHAIRMAN CASTRO: Aye.

4 MS. WHITEHEAD: Chairman, I'm sorry,
5 before we go, can I just have a motion for the
6 minutes of last meeting, please?

7 VICE CHAIRMAN NUNES: Motion to approve
8 the minutes of the last meeting dated what?

9 MS. WHITEHEAD: I think it was July
10 29th.

11 VICE CHAIRMAN NUNES: The minutes of
12 the meeting for July 29th.

13 MS. SILVA-ALFONSO: Second.

14 CHAIRMAN CASTRO: Motion moved by
15 Commissioner Nunes, second by Commission Alfonso.

16 Madam Secretary, roll call, please.

17 MS. WHITEHEAD: Commissioner
18 Silva-Alfonso?

19 COMMISSIONER SILVA-ALFONSO: Aye.

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.

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1 MS. WHITEHEAD: Commissioner Sosa?

2 COMMISSIONER SOSA: Aye.

3 MS. WHITEHEAD: Vice Chairman Nunes?

4 VICE CHAIRMAN NUNES: Aye.

5 MS. WHITEHEAD: Chairman Castro?

6 CHAIRMAN CASTRO: Aye.

7 May I have a motion to adjourn this
8 meeting?

9 COMMISSIONER FALCON: Motion to adjourn
10 the meeting.

11 COMMISSIONER GONCALVES: Second.

12 CHAIRMAN CASTRO: Motion to adjourn by
13 Commissioner Falcon, seconded by Commissioner --

14 COMMISSIONER GONCALVES: Goncalves.

15 All these in favor signify by saying
16 Aye.

17 (Whereupon, all present members respond
18 in the affirmative.)

19 CHAIRMAN CASTRO: This meeting is
20 adjourned.

21 (Whereupon, this matter adjourned.

22 Time noted: 10:48 p.m.)

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

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4 I, LAURA A. CARUCCI, C.C.R., R.P.R., a Notary
Public of the State of New Jersey, Notary
ID.#50094914, Certified Court Reporter of the State

5 of New Jersey, and a Registered Professional
6 Reporter, hereby certify that the foregoing is a
7 verbatim record of the testimony provided under oath
8 before any court, referee, board, commission or other
9 body created by statute of the State of New Jersey.

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

15 This transcript complies with
16 regulation 13:43-5.9 of the New Jersey Administrative
17 Code.

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

21 Dated:

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