

**BOROUGH of GARWOOD**  
**PLANNING BOARD**

**MEETING of April 23, 2014**

*Chair Steve Greet called the meeting to order at 7:30 p.m. and stated the following:*

**Meeting Notice:**

Pursuant to the Open Public Meeting Law, this is to state for the record that adequate notice of this meeting has been provided to the public by publication in the Cranford Chronicle and by filing of said notice in the office of the Municipal Clerk. This is a regularly scheduled meeting of the Board.

**MOMENT OF SILENCE AND SALUTE TO THE FLAG**

**ROLL CALL**

**Present:** Mayor Patricia Quattrochi, Bruce Paterson, William Nierstedt, Michael Vena, Robert Scherer, Stephen Greet, Kathleen Villaggio, Gene Jannotti, Georgia Mac Indoe Timothy Hak (Alt I), Craig McCarrick (Alt II), Ileen Cuccaro (Alt III), Paul Tarantino (Alt IV)

**Absent:** None

**Excused:** None

Also present were Board Attorney Donald Fraser Board Planner/Engineer Victor Vinegra and Board Secretary Adele Lewis.

**MINUTES**

• **MINUTES OF THE MARCH 26, 2014 MEETING**

*On a motion by Kathleen Villaggio and seconded by Robert Scherer, the Board voted by general consent to adopt the minutes of the March 26, 2014 Planning Board meeting. It was noted that there were some typographical errors on the transcript, and Mr. Nierstedt and Mr. Hak were not identified as being present. It was noted that the attendance was correct on the minutes.*

**Invitation to Address the Board**

Sandra Seip inquired when she would get a response to her letter to Victor Vinegra regarding her property on Center Street. Mr. Vinegra stated he would respond within a week.

**RESOLUTION**

None

**APPLICATIONS**

**Case #PB13-05**      **105 Center Street- Block 404 Lot 34**    C/I Zone-

**Applicant:** Ermina Savino Livieri  
Seeking Final Site Plan Approval  
with parking variance for apartments

Augie Savine and Ermina Saino Livieri were present with their attorney, Mr. John Demassi, Esq., stated that he believed they had fulfilled the requirement to complete his application for final site plan approval.

Mr. John Demassi stated that the deed restriction has been finalized. It was reiterated that absent a parking rental agreement, the variance approval must be re-examined by the Board.

Carmen Iuso, architect, was sworn and stated that his qualifications had not changed since his last appearance before the Board.

**MARKED INTO EVIDENCE:**

- A-1 Colorized site plan- zoning district/Zoning Analysis
- A-2 Material List/Façade Elevations

Mr. Iuso testified that the massing is in character with the neighborhood. Additionally, the façade is consistent with the area, in an updated 21<sup>st</sup> Century style.

Mr. Iuso also stated that the signage will comply with the ordinance. He added that all compressors will be on the rooftop and a parapet wall will shield them from sight.

Bruce Paterson inquired if the deed should be revised to specifically identify the Block and Lot of the accepted sites for the parking lease rather than simply state "Garwood Mall, Wells Fargo, etc"

Mr. Fraser stated that would be beneficial and the deed can be amended to include the specific Block and Lots.

*On a motion by Gene Jannotti and seconded by Kathy Villaggio, the Board voted by Affirmative (9) Mayor Quattrochi, William Nierstedt, Michael Vena, Georgia Mac Indoe, Gene Jannotti, Kathleen Villaggio, Bruce Paterson, ~~Tim Hak~~, Stephen Greet, Robert Scherer Negative (0) to grant Final Site Plan Approval for 105 Center Street. The deed will be amended to include the specific Block and Lots.*

**Case #PB13-12** 325-331 South Ave Block 404 Lots 8 & 9 C/B Zone

**Applicant:** LAND of NJ, INC.

*Seeking Site Plan Approval (Preliminary & Final) with Variance relief for demolition of existing greenhouse and single family home to provide expansion of the existing mixed use building consisting of 1<sup>st</sup> floor retail and 2<sup>nd</sup> floor apartments (8 one bedroom units and 4 two bedroom units)*

*Bruce Paterson recused himself as he resides within 200 ft. of the subject property and stepped down from the dais.*

*Ileen Cuccarro who absent at the March meeting, gave Board Secretary Lewis certification to be placed in the case file stating that she had read the March 26, 2014 transcript and therefore qualified to participate in the application.*

**ATTACHMENT # 1**  
**TRANSCRIPT FROM CASE # PB 13-12**  
**325-331 SOUTH AVENUE**

John Schmidt, Esq. of Lindabury, McCormick, Estabrook & Cooper, Westfield, NJ continued to represent the applicant.

Board Attorney Fraser stated that the application had reached the point of public comments and deliberations of the Board.

**TESTIMONY FROM THE PUBLIC:** (each member of public was sworn in prior to speaking)

Bruce Paterson, 325 Willow Avenue  
Rick Dolan, 328 Willow Avenue  
Anthony Prieto, 336 Willow Avenue  
*John Schmidt cross examined Mr. Prieto*  
Sara Todisco, 91 3<sup>rd</sup> Avenue  
Frank Kelly, 337 Willow Avenue  
*John Schmidt cross examined Mr. Kelly*

#### **MARKED INTO EVIDENCE**

- K-1 photo of back of Chinese Restaurant
- K-2 photo February 26, 2014 rear of 321 South Ave- single family house
- K-3 photo is rear parking lot of subject property taken February 15<sup>th</sup>
- K-4 photos of west side of subject property depicting trash
- K-5 photo taken February 25<sup>th</sup> depicting snow west side of property

#### **MARKED INTO EVIDENCE**

- A-16 Letter from Mr. Kelly to Mr. Tsapatsaris re: Sale of property

Carl Reggi, director for the property owner of Garwood Mall Associates  
*The Board asked questions of Mr. Reggi*

REBUTTAL WITNESS called my Mr. Schmidt.  
Randy Phu, owner of Nail Salon, 331 South Ave.  
*Mr. Kelly cross examined Mr. Phu*

**Mr. Schmidt** summed up the application. He thanked the Board for their time over the four meetings. He stated that the applicant incorporated the Boards comments over the three revisions of the plans. He stated that the application is hard pressed to meet the lot coverage requirement and the parking requirement. He listed the variance and the non-conforming setbacks. The parking requirement (which was not in existence when the property was purchased)for this property is 34, they are providing 18 spaces. He stressed that this site will attract predominately commuters and Mr. Steigar testified to the shared parking scenario for the 8 one bedroom units and 4 two bedroom units and the retail use. The applicant will work to secure the additional parking spaces. The applicant will work with Victor Vinegra on the issue of lighting to shield off of neighbors property. The garbage area will be fenced in and monitored as necessary and the superintendent of the building will be monitoring the subject property daily. He summed up the planning testimony reiterating that this is consistent with the Master Plan.

The Board referenced the review letter dated March 26, 2014 prepared by Victor Vinegra. **Victor Vinegra** reviewed the revisions throughout the process. He stated that the applicant has agreed to most of his suggestions. Victor Vinegra inquired of the applicants COAH obligation and noted that round three of the COAH obligations were thrown out but round two could be used as a guide. He also spoke of the fencing and the buffer.

Mr. Tsapatsaris was asked if he was amenable to offering a COAH unit. He said he is not at this time but he will offer the rental apartments at a reasonable monthly rate.

#### DELIBERATIONS OF THE BOARD

William Nierstedt stated that he agrees with this application. He read his list of conditions and recommendations for the Board's consideration: Limited time Loading area to the east on the street, first floor setback of 5 ft. which was subsequently changed to an open air café style removable windows/front wall to provide 20 ft. of outdoor seating as recommended by Mr. Tsapatsaris.

Kathy Villaggio and Steve Greet also stated that they support the application. Gene Jannotti also stated that the applicant listened to the Board and revised the application to satisfy the issues of the Board and public

*On a motion by William Nierstedt and seconded by Kathleen Villaggio, the Board voted Affirmative (9) Mayor Quattrochi, William Nierstedt, Michael Vena, Georgia Mac Indoe, Gene Jannotti, Kathleen Villaggio, Bruce Paterson, Tim Hak, Stephen Greet, Negative (1) Robert Scherer*

Board Attorney Fraser stated that the application will be carried to the April 23, 2014 meeting without further notice given or required.

#### **OLD BUSINESS/NEW BUSINESS**

##### **PLANNING BOARD REVIEW OF: Ordinance No. 14-07**

Section 106-141- Signs in the Borough  
Pursuant to N.J.S.A.40:55D-26 of the Municipal Land Use Law

The Planning Board held a discussion on the above referenced ordinance. The Board recommends its adoption with the following recommendations:

- Define Sandwich and Sidewalk Boards (A frame)
- Consider post frame signs in the ordinance

The consensus of the Board was to forward the recommendations on to the Governing Body.

*On a motion by Kathleen Villaggio and seconded by Gene Jannotti, the Board voted Affirmative (9) Michael Vena, Georgia Mac Indoe, Gene Jannotti, Kathleen Villaggio, Bruce Paterson, Robert Scherer, Tim Hak, Craig McCarrick, Stephen Greet, Negative (0) to forward the recommendation for Ordinance No. 14-07, amending Chapter 106-141, Signs in the Borough to the Governing Body pursuant to 40:55D-26 of the Municipal Land Use Law.*

Adele Lewis, Board Secretary will send a Memo to the Governing Body with the Board's findings.

#### **Discussion of RFP's for Board Attorney**

Board attorney Donald Fraser left the dais and the meeting for the following discussion.

Chair Greet advised that Christina Ariemma, Borough Administrator had prepared, on behalf of the Planning Board, a Request for Proposals for the position of Board Attorney.

There was one response to the RFP: Donald Fraser  
The Planning Board discussed that the position of Legal Counsel to the Planning Board and noted that this was for the term of May 1, 2014 to the Board's re-org of January 14, 2015.

Services of this position include:

- o Attendance at scheduled and/or special meetings
- o Review of submitted applications as to their completeness relative to legal compliance
- o Preparation of board resolutions and/or ordinances
- o Answering legal questions of the Board & Staff of the Planning Board
- o Offering legal opinions when requested by the Board
- o Review and/or prepare studies, reports, or other related matters
- o Provide direction/information to any borough official & Board member under direction of the Board Chair

The retainer covers the attendance at 15 meetings and preparation of general correspondences and the resolutions.

*On a motion by Mike Vena and seconded by Robert Scherer, the Board voted by Affirmative (9) Mayor Quattrochi, William Nierstedt, Michael Vena, Georgia Mac Indoe, Gene Jannotti, Kathleen Villaggio, Bruce Paterson, Tim Hak, Stephen Greet, Robert Scherer Negative (0) to award the Request for Proposal for the position of Legal Counsel to the Planning Board to Donald B. Fraser, Jr. for the term of May 1, 2014 to the Board's re-org of January 14, 2015.*

Board Secretary Adele Lewis will inform Ms. Ariemma of the Board's decision.

#### **CLAIMS**

*On a motion by William Nierstedt and seconded by Robert Scherer the Board voted to approve payment to Victor Vinegra from Westfield Senior Housing escrow account in the amount of \$727.50 for invoice # 19994*

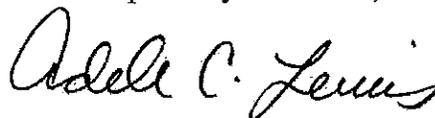
*On a motion by Gene Jannotti and seconded by Robert Scherer the Board voted to approve payment to Victor Vinegra from 302 New St/Myrtle Ave escrow account in the amount of \$180.00 for invoice # 20036*

*On a motion by Mike Vena and seconded by Robert Scherer the Board voted to approve payment to Victor Vinegra from the escrow account of LAND Inc, South Avenue for invoice # 20016 in the amount of \$1740.00*

#### **ADJOURNMENT**

There being no further business, the Board adjourned 10:40 p.m.

Respectfully Submitted,



Adele C. Lewis, Board Secretary



1                   BOROUGH OF GARWOOD  
2                   MUNICIPAL BUILDING  
3                   403 South Avenue  
                  Garwood, New Jersey

4                   IN THE MATTER OF:  
5                   CASE NO. PB13-03  
6                   LAND OF NEW JERSEY, INC.

7                   ON

                  TRANSCRIPT OF:  
                  PROCEEDINGS

8                   WEDNESDAY, APRIL 23, 2014

**Condensed  
Transcript**

9                   BEFORE:

10                  BOROUGH OF GARWOOD PLANNING BOARD

11                  PRESENT:

12                  Stephen Greet, Chairman

13                  Gene Jannotti

14                  Michael Vena

15                  Kathleen Villaggio

16                  Georgia MacIndoe

17                  Patricia Quattrochi

18                  Robert Scherer

19                  Paul Tarantino

20                  Craig McCarrick

21                  William Nierstedt

22                  Timothy Hak

23                  Ileen Cuccaro

24                  Donald B. Fraser, Jr., Esq., Board Attorney

25                  Victor Vinegra, Planner/Engineer

                  Adele C. Lewis, Board Secretary

                  Job No. NJ1852394

Содержание  
Содержание

1 APPEARANCES:  
2 LINDABURY, MCCORMICK, ESTABROOK & COOPER, P.C.  
BY: JOHN H. SCHMIDT, ESQ.  
3 53 Cardinal Drive  
Westfield, NJ 07090  
4 Counsel for the Applicant, Land of New Jersey,  
Inc.  
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6  
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1 MR. PATERSON: Yeah. It is more in  
2 comment. There will be comment.  
3 MR. FRASER: I am sure there is going  
4 to be some testimony in this one way or another. I  
5 am just sure, so why don't we just swear you in.  
6 Bruce Paterson. What is the address?  
7 MR. PATERSON: 325 Willow Avenue.  
8 MR. FRASER: Alright. Mr. Paterson,  
9 do you solemnly swear or affirm that the testimony  
10 you are about to give before this Board will be the  
11 truth, the whole truth and nothing but the truth?  
12 MR. PATERSON: I do.  
13 MR. FRASER: The floor is yours.  
14 MR. PATERSON: Thank you very much. I  
15 did ask some questions leading up to what my comments  
16 were going to be. I like the plan. It is a  
17 beautiful plan. The parking obviously on just the  
18 residents, you know, I will let the Board decide on  
19 where the parking is going to be, but towards the  
20 application there was a couple of items. One was the  
21 trash area which seemed to be a very hot item and I  
22 was making a suggestion. I understand there is three  
23 stores on both sides. If possibly the applicant, the  
24 one store on the right side -- on the left side of  
25 the pass-through which is the east side of the

1  
2 CHAIRMAN GREET: Okay. At this time,  
3 if I am not mistaken, we were about ready to open it  
4 up to the general public.  
5 MR. SCHMIDT: That's correct.  
6 CHAIRMAN GREET: For opposition or  
7 comments.  
8 MR. FRASER: Or support.  
9 CHAIRMAN GREET: Definitely support.  
10 MR. FRASER: Essentially where we are,  
11 I am going to go right back to my comment on page 137  
12 on the last transcript which is the last paragraph  
13 which said maybe sum up. With the exception of  
14 counsel for the applicant being heard on summation,  
15 the applicant has rested its case. Now it is up to  
16 anyone from the public who wants to be heard to  
17 either testify themselves or to call witnesses or  
18 present evidence to be heard either in support of or  
19 in opposition to this application if anybody from the  
20 public does in fact wish to be heard.  
21 CHAIRMAN GREET: Name?  
22 MR. PATERSON: Bruce Paterson, 325  
23 Willow Avenue.  
24 MR. FRASER: Mr. Paterson, are you  
25 going to be giving testimony I am assuming?

1 building, if possibly that one store could either be  
2 cut in half or even eliminated to create a nice trash  
3 disposal area right there where people don't have to  
4 walk to the back and create a lot of noise because  
5 there is a neighbor that was strongly against it. I  
6 would like to see something like that one store  
7 eliminated. You could put the trash receptacles  
8 there making it easy then to move back and forth to  
9 the garbage trucks that show up, possibly a bike rack  
10 could be right there also, even a soda machine maybe  
11 for the residents down there. So I know that would  
12 be cutting back on the applicant's use of a rental,  
13 retail rental and lose cash flow on that, but I would  
14 like the board to at least think about that. I  
15 didn't look at a plan, but unsure, but there may not  
16 be like actually a sidewalk on either side of that  
17 walk-through. I am not positive. No, there is no  
18 sidewalk. Possibly where that store would be removed  
19 I would like to see a sidewalk because obviously the  
20 residents would have to get from the parking lot out  
21 back to the front and the only other way they can do  
22 is walking where the road is, where the pass-through  
23 road is or through the lobby which is on the far east  
24 side of the building. And just one last comment, I  
25 did talk about it, about the parking lot drainage. I

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1 did talk to Vic Vinegra, the planning board engineer,  
2 and he said it is not a problem.  
3 MR. SCHMIDT: Objection. I am going  
4 to object to any comments, any discussions he had  
5 with Mr. Vinegra and what Mr. Vinegra may have told  
6 him.  
7 MR. PATERSON: Okay.  
8 MR. FRASER: Except Mr. Vinegra is  
9 present.  
10 MR. SCHMIDT: I understand that, but  
11 Mr. Vinegra is not under oath and is not testifying  
12 and I can't call him as a witness.  
13 MR. FRASER: Why? Why couldn't you  
14 call Mr. Vinegra as a witness on your rebuttal if you  
15 wanted to?  
16 MR. SCHMIDT: Well, I have never had  
17 that. I have never had that happen and I don't think  
18 it's appropriate to do so since he's an expert for  
19 the Board and is advising the Board and for him to --  
20 and I don't think it's appropriate for this witness  
21 to be commenting about what Mr. Vinegra told him or  
22 what anybody else told him. It is hearsay.  
23 MR. FRASER: I disagree with you, Mr.  
24 Schmidt. Mr. Paterson, you won one. I am agreeing  
25 with you.

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1 MR. PATERSON: That is only because  
2 your RFP is up there.  
3 MR. NIERSTEDT: You lost that. You  
4 lost that, Bruce. It is over.  
5 MR. PATERSON: Okay. Moving forward  
6 removing Mr. Vinegra from the conversation. Just  
7 with the back parking lot area, the drainage, there  
8 is two central catch basins right there. I would  
9 really like to see them further out because all the  
10 water that would be coming to just one central point  
11 and there is a trench drain right at the pass-through  
12 and there is going to be water going to the trench  
13 drain and that's where the cars are going to be  
14 driving and if there could be some overflow towards  
15 the end of the parking lot, the catch basin and the  
16 overflow basin. So that's my comment. Just for the  
17 Board to consider it as possible conditions. Thank  
18 you very much.  
19 MR. FRASER: Okay.  
20 CHAIRMAN GREET: Thank you.  
21 MR. FRASER: Mr. Schmidt, do you wish  
22 to cross-examine?  
23 MR. SCHMIDT: I do not.  
24 MR. FRASER: Very well. Is there  
25 anybody else from the public?

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1 CHAIRMAN GREET: Yes.  
2 MR. DOLAN: Good evening. Rick Dolan,  
3 328 Willow Avenue.  
4 MR. FRASER: Mr. Dolan, do you  
5 solemnly swear or affirm the testimony you are about  
6 to give will be the truth, the whole truth and  
7 nothing but the truth?  
8 MR. DOLAN: I do. I want to come out  
9 in support for the proposed current proposed deal for  
10 Land of New Jersey. I have come to all these board  
11 meetings since they have been here and I have a  
12 direct effect. My home is directly behind 325 South,  
13 so we have lived there for close to 13 years and so I  
14 have been there a long time and I knew all my  
15 neighbors and I might be in the minority in my  
16 support, but I want to state my support. I am one of  
17 the homeowners with no driveway, so I understand of  
18 anybody parking issues, but I am still in support.  
19 Some of the issues that I have heard board members or  
20 members of the public state over the last few months  
21 that we have been coming is the size and scope of the  
22 building. There have been concerns that have come  
23 out and then they have changed the building one, two,  
24 this is the third change I believe to the building,  
25 so all the concerns have been stated and then

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1 changed.  
2 The second issue was a lot of residents had  
3 concern with the fencing. Land of New Jersey has  
4 offered basically all the residents almost any style  
5 of fencing they wanted. I think the biggest issue is  
6 we can't agree with what kind of fencing, but they  
7 have offered to put fencing up for all of us.  
8 The biggest concern that I have heard is issues  
9 with garbage. They are going to encase the  
10 enclosure. They are going to have somebody  
11 constantly the garbage out and taking out as many  
12 times, if I remember correctly, as many times as  
13 deemed necessary to pull out the garbage. It is also  
14 going to be encased, and if I am correct, and maybe I  
15 am not, but I am pretty sure it is not encased now,  
16 so it is actually going to be more protected if this  
17 is approved than it was, than it is now.  
18 Lighting, I have heard issues with the lighting  
19 coming off and shining in people's windows. I have  
20 also heard Land of New Jersey say we will move the  
21 lighting towards not affecting the residents. I have  
22 also heard of issues with shrubberies and the trees.  
23 I have also heard Land of New Jersey say we will  
24 plant shrubbery any size you want on your side, our  
25 side, their side, anything to make your experience

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1 with me as your neighbor more pleasant. I have heard  
2 that. I have heard questions about retail stores.  
3 This is personally my favorite. 20 years in retail I  
4 have done every kind of job you can think of. I can  
5 tell you, since I swore in, as testimony you are not  
6 getting fast food joints, you are not getting big  
7 box, you are not going to have tractor trailers.  
8 There is no way that these small storefronts are  
9 going to produce the volume to bring in that kind of  
10 merchandise. I can be an expert in that, 20 years of  
11 running stores. You need a big big building to sell  
12 lots of merchandise. That is not what these are.  
13 The mom and pop is beautiful for us for that area.  
14 I have heard questions about the residents, what  
15 kind of residents and tenants are living here. It is  
16 in his, the owner's best interest to have quality  
17 tenants in that building. He will not be able to  
18 rent -- if he rents to party animals or kids that,  
19 you know, people like just disbehave and destroy  
20 property he is not going to get tenants in there. It  
21 is going to cost him money. He is going to want a  
22 certain client, a certain resident in his buildings  
23 so he can rent other units out. It is not in his  
24 best interest that people destroy the property, you  
25 know. And then I have heard questions about people,

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1 you know, throwing their trash all over the place on  
2 the property. That's not an image that anybody would  
3 maintain on their property. Some people who rent  
4 their upper levels, he is going to keep it clean  
5 because he can't show people an apartment and trash  
6 all over the place. It is not going to be someplace  
7 that people want to move.  
8 I happen to have been at a council meeting last  
9 night. I am going to give credit to Councilman  
10 Palmer here. She brought up the master plan from  
11 2008 or 2009 and talked about how Garwood needs to  
12 move into a commuter environment, that we need more  
13 commuters to get more access to the bus stops and the  
14 trains and she quoted a study, and I won't want to  
15 give the exact years, but over a ten-year period of  
16 time that when you are in a commuter town that people  
17 are getting on trains and going to New York, property  
18 values increased 110 percent, 110 percent, compared  
19 to other areas that are not commuter towns, so what I  
20 have seen distributed is notices that how our  
21 property values are going to go down. If we become a  
22 commuter town where people come to live in Garwood  
23 and they are going to hop on a train and go to New  
24 York, all of our property values are going to go up,  
25 all of them because this is where people are going to

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1 want to live.  
2 Now I heard a lot of worse case scenarios. You  
3 know, what if this happens, what if we get snow, what  
4 if this happens. The worse case scenario is in my  
5 opinion the Board denies him his claim and then with  
6 all due respect he doesn't do anything with the  
7 property and that property deteriorates. That's when  
8 our property values go down. They don't go down when  
9 somebody develops and somebody puts nice buildings  
10 and nice units and nice apartments. They go down  
11 when people don't maintain their properties, so he is  
12 offering to maintain the property and build it into  
13 something very nice and I fully support him in his.  
14 Thank you.  
15 CHAIRMAN GREET: Thank you.  
16 MR. FRASER: Mr. DeMassi, I assume you  
17 waive cross-examination of that witness.  
18 MR. DEMASSI: No cross.  
19 CHAIRMAN GREET: Anyone else from the  
20 public?  
21 MR. PRIETO: Yes. Good evening.  
22 Anthony Prieto, 336 Willow.  
23 MR. FRASER: Mr. Prieto, do you  
24 solemnly swear or affirm that the testimony you are  
25 about to give is the truth, the whole truth and

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1 nothing but the truth?  
2 MR. PRIETO: I do. So you have heard  
3 my comments over the past several meetings. I  
4 unfortunately don't echo a lot of what was just  
5 said. However, I do commend you on the fact that you  
6 have listened to a lot of the concerns. I think of  
7 the neighbors, myself being one, my parents who live  
8 there. I do appreciate the fact that you have scaled  
9 it down, so in answer to some of the questions I  
10 think it could probably be scaled down a little bit  
11 more and then you would assuage all of my concerns in  
12 that regard because I still think while it is a  
13 beautiful structure and you have done a magnificent  
14 job in terms of architecture on it and I would like  
15 to see something other than the eyesore that I look  
16 at every day when I go to visit my parents and I look  
17 outside their window and I see what has been there  
18 since I have owned the property which is in 2004, so  
19 for ten years there has been nothing. The property  
20 has deteriorated, okay. It hasn't improved. So now  
21 you come along and you have these great plans. Well,  
22 great, that's wonderful, but for the last ten years  
23 that I have been there it has been ridiculous,  
24 alright, in terms of the lighting. The lighting has  
25 been a problem, okay. My property is right behind

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1 your property and the lights come into my house,  
2 okay, and I got my mother-in-law on the second floor  
3 and I have my parents on the first floor and it is a  
4 problem, okay, and we have raised a concern about  
5 that. So to the extent, Board, if you are going to  
6 approve this I would like that addressed because it  
7 is a significant concern. Might not be a significant  
8 concern to some people, but when your property is  
9 directly behind it and we have discussed it and  
10 nothing has been done, it is a significant concern,  
11 okay. My parents are 84 and 74 and my mother-in-law  
12 is 74, okay, and they sleep at odd hours sometimes.  
13 So that's one problem. Another problem is the  
14 fencing. When I first bought the property we had a  
15 situation where one of your tenants drove through my  
16 fence and it took quite a bit of effort on my part to  
17 get that fence repaired and quite frankly it didn't  
18 get repaired until I sent you a letter on my attorney  
19 letterhead that you then came over and took some  
20 notice. So my experience has not been perhaps the  
21 same as some other people's. So to the extent that  
22 you are going to do a nice fence, I would love a nice  
23 fence. We put up a vinyl fence of our own because  
24 your fence was garbage and it was broken and we had  
25 rodents coming through and we had raccoons coming

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1 through, so that's why we put up a vinyl fence and  
2 now we have a vinyl fence with your dilapidated old  
3 fence and I have a tree growing between the two,  
4 okay, and now I got a problem because the only way to  
5 access this big tree that's growing between the two  
6 that you must have noticed if you took care of the  
7 property is I got to take down my vinyl fence to get  
8 to it. So to the extent that we are going to do  
9 something in terms of approving this application, I  
10 would like you to take cognizance of the fact that  
11 that's one experience I have had in terms of my  
12 neighbor and this property, so if you are going to do  
13 a fence let's do a nice uniform fence, let's do maybe  
14 one fence so that we don't have trees growing between  
15 the fences. And in terms of foliage and landscaping,  
16 my father when he first got in the place spent a lot  
17 of time putting foliage, trying to camouflage and  
18 address the fact that we tried to do a buffer. I  
19 raised the issue if you are going to approve this and  
20 we are going to ask that you put some landscaping in,  
21 I would like some mature trees, I would like some  
22 mature foliage, I would like something that's not  
23 going to go in, in terms of arborvitae, that's going  
24 to be dead in a year and now I got to look at some  
25 dead brown arborvitae. I would like that is going to

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1 being a little bit of a screen. I think parking is a  
2 problem, alright. I know parking is one of the main  
3 concerns that you are presented with. I go and visit  
4 my parents on Willow. If you go out there now you  
5 can see the extent of the parking. It is a problem.  
6 Alright, people park on that street constantly, so to  
7 say that well it is not a concern or we are going to  
8 get some spots from down here at the Garwood Rest, I  
9 think it is a temporary fix, number one, for that. I  
10 think the other proposal to get them down the road is  
11 a ridiculous proposal. It is not going to happen and  
12 then when they sell the property and they want to  
13 develop it and do something different you have  
14 another issue there, but I can speak personally  
15 living on Willow where my parents do and where I  
16 visit that parking on that street is horrendous. We  
17 are not talking about worse case scenarios in terms  
18 of situations, snow. This past winter was a  
19 horrendous winter. You saw what happened on Willow.  
20 You had to come in there and use, you know, backhoes  
21 to get rid some of the snow because there was no  
22 parking. Cars couldn't go down the street because of  
23 the amount of snow. If you listen to what's going on  
24 in the world with climate change, doesn't look like  
25 it is getting better, okay, so to say this was a

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1 worse says scenario kind of flies in the face of what  
2 my experience has been in the last several years. I  
3 think parking on Willow is going to be hampered and I  
4 would like you to take that into consideration.  
5 Again if you downsize it even further, maybe that  
6 would be an alleviated concern.  
7 I am all in favor of my property value going up.  
8 I bought the place in 2004, okay. I bought it for  
9 \$450,000. It ain't worth that now, okay, it ain't  
10 worth that now, so is this going to make my property  
11 value up, I personally don't think it will because I  
12 have an edifice now that kind of is there and is not  
13 there. It shouldn't be there in my opinion that  
14 size, but that's okay, but I am all in favor of my  
15 property values going up. I would love them to. I  
16 don't think that this is the answer. I think it is a  
17 step in the right direction. I am happy to see you  
18 do something with that property because, like I said,  
19 I have been in this town now for ten years and  
20 anything is better than what's there quite frankly.  
21 So I think those are most of my concerns. I  
22 think there is going to be some problems in terms of,  
23 you know, people moving in, moving out, businesses  
24 loading, unloading. I am not in retail, but I think  
25 it is going to be a little more difficult than the

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1 rosy picture we paint it to be. Those are my  
2 concerns. Thank you very much.  
3 CHAIRMAN GREET: Thank you.  
4 MR. SCHMIDT: Yes, I do have some  
5 questions, Mr. Fraser.  
6 Mr. Prieto, have you reviewed the lighting plan  
7 that has been proposed?  
8 MR. PRIETO: I have been here for the  
9 meeting. I haven't reviewed any lighting plans.  
10 MR. SCHMIDT: As you sit here tonight,  
11 do you have any comment favorable or unfavorable to  
12 the lighting plan that's been proposed?  
13 MR. PRIETO: If you are going to do  
14 that that's great. If you are going to do something  
15 that shields it so it is not coming into my  
16 mother-in-law's room. My mother-in-law is the one  
17 that complained. I would like to have a nice  
18 relationship with my mother-in-law.  
19 MR. SCHMIDT: At this point the  
20 lighting plan that's been proposed is satisfactory to  
21 you?  
22 MR. PRIETO: If what I saw you talk  
23 about the times I was here, sir, with the shielding  
24 light where it goes down instead of coming out and up  
25 at me, great.

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1 MR. SCHMIDT: You heard Mr.  
2 Tsapatsaris talk about fencing, that he is going to  
3 try and match the fencing of at least the neighbor to  
4 put across, the one fence across the back. That is  
5 satisfactory to you?  
6 MR. PRIETO: Well, no it is not  
7 because I don't know what you mean by try and match  
8 the fence. I have a beautiful vinyl fence. If you  
9 want to put a nice uniform wood fence, that's  
10 beautiful too. I don't want a chain link fence.  
11 MR. SCHMIDT: No. The idea was to  
12 match. I believe you had a vinyl fence and I believe  
13 he also has a vinyl fence and the idea was to try and  
14 match that and make one fence across the back. That  
15 is satisfactory to you?  
16 MR. PRIETO: Absolutely.  
17 MR. SCHMIDT: And I think you said you  
18 wanted some type of screening, some foliage and  
19 landscaping. Do you have any objection to Mr.  
20 Tsapatsaris and/or Land of New Jersey putting shrubs  
21 or bushes or trees on your property to help shield  
22 and form a screen to the property?  
23 MR. PRIETO: Yeah, I would because I  
24 have some foliage there now that my father planted  
25 and I think they are pretty satisfied with what they

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1 have there.  
2 MR. SCHMIDT: Okay. So what's there  
3 now acts as a screen?  
4 MR. PRIETO: Partial.  
5 MR. SCHMIDT: In some effects?  
6 MR. PRIETO: Yeah, partial.  
7 MR. SCHMIDT: If there was more trees  
8 on the land side of the property that would be  
9 further satisfactory to you?  
10 MR. PRIETO: If you want to do that,  
11 if you want to put something else in addition. I  
12 don't want you coming in and saying what I can and  
13 can't do with my property in terms of foliage. If  
14 you want to add to make it nicer, that's beautiful,  
15 sure.  
16 MR. SCHMIDT: Now you talk about  
17 parking being a problem on Willow at the current  
18 time?  
19 MR. PRIETO: Yes.  
20 MR. SCHMIDT: Do you have any idea  
21 where the cars are from that are parking on Willow?  
22 MR. PRIETO: No. Do I have an idea,  
23 no.  
24 MR. SCHMIDT: Have you done any type  
25 of survey or just watching them go in and out to see

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1 whether they are residents who are parking there?  
2 MR. PRIETO: Yeah, I see a lot of them  
3 aren't residents.  
4 MR. SCHMIDT: Are not residents?  
5 MR. PRIETO: Right. A lot of them use  
6 the restaurant on the corner, you got the plumbing  
7 company there that parks cars all over the place, you  
8 have people that park and then walk around the block  
9 to the gym because there is no parking now with the  
10 lot by the gym.  
11 MR. SCHMIDT: Have you surveyed the  
12 parking lot at the shopping center to determine  
13 whether there is inadequate parking for the gym?  
14 MR. PRIETO: Yes.  
15 MR. SCHMIDT: And those spots in the  
16 shopping center are so full that people using the gym  
17 can't park there now?  
18 MR. PRIETO: I know. I have been a  
19 patron of the Investor Savings Bank since it opened  
20 practically and I know that now I have difficulty  
21 parking there. I have to park further closer to the  
22 train tracks, so to the extent that my experience is  
23 that. I have also seen people that park their car  
24 and walk around the block to use the gym facility,  
25 yes.

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1 MR. SCHMIDT: Are there any  
 2 restrictions to parking on Willow currently?  
 3 MR. PRIETO: Yes.  
 4 MR. SCHMIDT: And do the people who  
 5 park there comply with the restrictions to your  
 6 knowledge?  
 7 MR. PRIETO: I have no idea.  
 8 MR. SCHMIDT: Have you made any effort  
 9 to contact the police to enforce the restrictions  
 10 that are there?  
 11 MR. PRIETO: I don't reside there. I  
 12 come to visit --  
 13 MR. SCHMIDT: I see.  
 14 MR. PRIETO: -- my parents. Okay, we  
 15 have a driveway access with a two-car garage, so  
 16 luckily we have parking there.  
 17 MR. SCHMIDT: Nothing further.  
 18 CHAIRMAN GREET: Okay. Thank you.  
 19 Anyone else?  
 20 MS. TODISCO: Yes. Thank you. Sara  
 21 Todisco, 91 Third Avenue.  
 22 MR. FRASER: Do you solemnly swear or  
 23 affirm the testimony you are about to give is the  
 24 truth, the whole truth and nothing but the truth?  
 25 MS. TODISCO: I do. Thank you.

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1 First of all, I just want to express my support  
 2 for this project. I feel that this is moving Garwood  
 3 in the right direction with redevelopment. It is a  
 4 buzz word these days, but I think this is one of  
 5 those components to moving us forward with that and I  
 6 understand that the parking is a large issue. I  
 7 attended the last meeting here and I would  
 8 approximate that about 75 percent of the conversation  
 9 had at the last meeting revolved in one way or  
 10 another about parking in the borough. I recognize it  
 11 as a significant problem. I don't feel it is the  
 12 issue of any one developer or anything like that, but  
 13 I do think it is a larger issue that needs to be  
 14 addressed. It is something I brought up specifically  
 15 in January of this year at a council meeting, I am on  
 16 the borough council in town, and it is something that  
 17 is on our radar. Also it is definitely something  
 18 that will take a larger vision. Again one property  
 19 should not have to hold all the burden of our parking  
 20 issue, but it is something that certainly should not  
 21 be ignored either, so I would hate to see a great  
 22 project like this one turned down based on parking.  
 23 I understand that some of the solutions presented  
 24 with this project specifically may seem temporary and  
 25 in fact they do seem that way to me. However, I hope

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1 we do have some long-term solutions for the borough  
 2 moving forward for the benefit of residents, for the  
 3 benefit of residents that commute, residents that  
 4 don't communicate, also businesses coming to the town  
 5 and also bringing commuters because as Mr. Dolan  
 6 stated, and I second your comments, they are very  
 7 nicely stated, in order for us to be a transit  
 8 village we do need to have more parking so that we  
 9 can have more commuters and more stops and the cycle  
 10 goes through. I work in Chatham, for the school  
 11 district of the Chathams and I am in that area quite  
 12 a bit and you can see how being next to a train with  
 13 a one-stop ride to New York City has directly  
 14 affected those municipalities and I would love to see  
 15 Garwood move in that direction as well one step at a  
 16 time. So I just want to commend you for your  
 17 project, appreciate it and I hope it gets support  
 18 tonight. Thank you.  
 19 CHAIRMAN GREET: Thank you. Thank  
 20 you, Sara.  
 21 MR. FRASER: Mr. Schmidt?  
 22 MR. SCHMIDT: No questions.  
 23 MR. PRIETO: I feel special.  
 24 MR. FRASER: Do you solemnly swear or  
 25 affirm the testimony you are about to give is the

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1 truth, the whole truth and nothing but the truth.  
 2 MR. KELLY: I do.  
 3 MR. FRASER: State your name and  
 4 address.  
 5 MR. KELLY: Frank Kelly, 337 South  
 6 Avenue, 339 South Avenue, 306 Willow Avenue, 439  
 7 Willow Avenue, 252 Beach Avenue, 94 Second Avenue and  
 8 a couple probably I can't remember.  
 9 MR. FRASER: Presumably they are not  
 10 all your residence?  
 11 THE WITNESS: No, but it shows my  
 12 affinity for Garwood. I have owned properties in  
 13 Garwood for over 17 years and I am currently in  
 14 negotiation to buy two more properties. I have a  
 15 vested interest to see this town do well, not not to  
 16 the extent of Mr. Tsapatsaris, but two and three and  
 17 four times now. This project as it looks in the  
 18 photo is beautiful. However, we all know and have to  
 19 be honest with each other Garwood is not ready for  
 20 that building. It is not ready because of one  
 21 primary issue which is parking and the parking, we  
 22 talk about it having 18 spaces in the proposed space.  
 23 There is argument to be made that it could be north  
 24 of 48 plus if you put an eatery on the other side, a  
 25 sit-down eatery on the other side. That would make

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1 it short 30 spaces. There is no room. If you have  
2 18 and you have 12 units the law says you need 18  
3 spaces for the residences. What about the employees  
4 two a store, two per a store, ten stores, what about  
5 the customers for those stores, what about visitors  
6 for the residents that live there, 12 visitors, where  
7 do all of these people park? Not on the street.  
8 There is one-hour parking and in front of this  
9 particular building there is virtually no parking  
10 because there is fire hydrants, there is now openings  
11 and it opens up to two lanes right on the corner of  
12 this property, so there is not even street parking.  
13 The agreements that are referenced here, and I think  
14 somebody else already mentioned it, and we know that  
15 they are just charades, one is not even signed. With  
16 what's going on over there it probably will never be  
17 signed and the other one is only up until 6:00 p.m.  
18 and at 6:00 p.m. everybody has to clear the lot.  
19 When they don't clear the lot the owner is going to  
20 pull it back because he needs his business, it is his  
21 business, so he is going to pull that, so now we are  
22 back to no parking. If you go to the parking lot,  
23 and I am sure you have over the last three, four  
24 months visited the site, it is now virtually full  
25 during the day with 21 spots, there is 21 spots and

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1 if you triple the size of the building which we are  
2 talking about what's existing there you are tripling  
3 it. Logic, logic drives you to say well, you are  
4 going to need somewhere about three times the number  
5 of parking that exists now because it is full. So if  
6 you take the 21, you multiply it by three, you are at  
7 63 spots. Now we can go and get an expert and pay  
8 him a lot of money to twist things around and move  
9 things and say we have got, well if you do this and  
10 this study over here and that study over there, if I  
11 had Mr. Tsapatsaris' money I would throw in an expert  
12 here that blew his guy out of the water. We all know  
13 that, so let's not go there. Let's just do logic and  
14 say hey and I applaud a board member who when I  
15 served on my board in my hometown went out and looked  
16 at it and went over across the street from Shop-Rite  
17 and saw that they are at a maximum spot and they are  
18 in need of more space and they met the requirements  
19 over there.  
20 The 300 block of Willow is on permit now. There  
21 is no doubt if this is approved, even if they just  
22 took a whole another floor and put only six units  
23 there, you are going to have to have, you are going  
24 to have because your residents are going to demand  
25 it, more permit parking on the east and center and

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1 400 block of Willow and the 200 block of Willow  
2 because this is a tube of toothpaste. You are going  
3 to squeeze it and you are going to find parking, they  
4 are going to need parking, they are going to find  
5 street parking and permits are going to go up and  
6 what's going to happen is, to our attorney here, he  
7 said well didn't you call the police. Well, I am  
8 paying the salary of fine police officers to stop  
9 crime, not go around and mark tires for two-hour  
10 parking and give parking tickets so that I can park  
11 or my tenants can park or whatever in front of my own  
12 house. That is not the use, the proper use for a  
13 police force especially in today's world where things  
14 are happening that are not good.  
15 We heard a lot of cars about mass transit, oh we  
16 are going to have less cars and this and that and you  
17 divide this by that and you multiply it by this ratio  
18 and divide by this. Well, the bottom line is I saw a  
19 commercial on TV the other day, brand new car,  
20 Hyundai or whatever, \$199 a month brand new car, \$199  
21 a month and there is a lot of them out there. Well,  
22 if you are working in New York and you live out here,  
23 the reason you live out here is you want to drive  
24 around, you want to go see on the weekends and on  
25 your vacations and your holidays because you are not

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1 going to do it, there is no greenery at 321 South  
2 Avenue. You are going to drive and see the garden  
3 state. You are going to have a car, you are going to  
4 have a car. At \$199 a month can't afford not to.  
5 That is parking. The sheer number of spaces needed  
6 alone is astronomical. We talked about the drawings,  
7 attorney talked about the drawings. They are  
8 incomplete. We talked about, last week, we talked  
9 about the fencing doesn't go all the way, isn't shown  
10 going all the way around. We heard testimony that it  
11 would, but the drawings don't show that. The  
12 lighting, there is lighting on the west side of the  
13 building that said oh, it would be addressed. It is  
14 not on the drawings, so, you know, when we look at  
15 these drawings and, you know, at some point maybe  
16 when Garwood has a municipal lot and I understand  
17 they are moving in that direction and that's great  
18 because it is a noted point to this resident here  
19 that maybe then this should be considered, but at  
20 this point we are in a big problem.  
21 The other issue is garbage and I have noted that  
22 this Board here has approved big projects like this  
23 with the caveat that the garbage is enclosed in the  
24 building. We have a board member and resident that  
25 pointed that out a number of local residents. If you

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1 go there today you see open containers just strewn  
2 about and that has been that way for 15 years. There  
3 has never been containers. Garbage is flying all  
4 over the place and I will introduce some pictures  
5 that were recently taken by myself to show you that  
6 there is no garbage collection there and to say that  
7 oh, there will be is doubtful at best because of some  
8 personal experiences I have had with the owner and  
9 would be the continued owner of the building.  
10 There was when I bought the building 15 years  
11 ago to the west side a railroad retaining wall  
12 clearly on Mr. Tsapatsaris' property. It was  
13 dilapidated and it was falling down. My property was  
14 actually slipping into his parking lot and taking  
15 what few spaces he did have and he said okay, listen,  
16 call me up, he said I am going to put a retaining  
17 wall in there, it is going to be oh, two or three  
18 feet, I said great, fine. Well, I happened to go  
19 over there passing by to see the retaining wall going  
20 in. Mr. Tsapatsaris had very conveniently carved out  
21 the old wall and dirt from my property and put it on  
22 -- and was ready to put it on my property, so now it  
23 became my wall to maintain and I said stop and the  
24 landscaper, I said if you come on my property,  
25 property pins are marked, I had to actually threaten

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1 the landscaper he was using with suit and arrest for  
2 trespassing if he continued. Well, Mr. Tsapatsaris  
3 backed off again only because of pressure and my  
4 threat to have his landscaper arrested did he move  
5 the wall back, so that's what kind of neighbor we  
6 have here. He's owned the property as long as I have  
7 owned the property and it is just a mess. This is a  
8 beautiful picture, this is a beautiful picture, but,  
9 you know, what you have to do is go with what you  
10 have now, no improvements 15 years, that greenhouse  
11 just take it down, right, but no there is no care for  
12 Garwood and that is a problem because Mr. Tsapatsaris  
13 doesn't live in Garwood, he doesn't live in a  
14 neighboring town, he doesn't live in Union County.  
15 CHAIRMAN GREET: OKAY, let's go.  
16 THE WITNESS: He is not here at the  
17 property. Should the Board approve this application  
18 and all its variances, there is a number of  
19 variances, I think there is six or seven variances,  
20 it would most likely find itself in a severe  
21 predicament when it comes to parking and when we talk  
22 about negative criteria as it relates to the law the  
23 huge safety hazard that is created from crossing the  
24 street from the Kings' parking lot to the other side  
25 of the street that exists today. People have, and

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1 you can call, you know, the captain is in, the chief  
2 is in and see how many people have been hit and/or I  
3 understand, I understand somebody has been killed  
4 crossing there four lanes of traffic. We have under  
5 code you have to look to adjoining properties to kind  
6 of appease your variances. I offered Mr. Tsapatsaris  
7 at market rates to buy --  
8 CHAIRMAN GREET: You know, this is not  
9 exactly testimony specific. Your offering him to buy  
10 your property has nothing to do with this applicant  
11 at the time.  
12 MR. KELLY: The opportunity to cure  
13 your variances is, it is and it is very relevant.  
14 MR. FRASER: The objector is correct.  
15 It is admissible testimony.  
16 CHAIRMAN GREET: Okay.  
17 MR. FRASER: The Board can weigh it as  
18 appropriate and certainly be cross-examined on bona  
19 fides of such issue.  
20 MR. KELLY: Great.  
21 Then I did one better for the benefit of  
22 Garwood. I offered to buy the property from Mr.  
23 Tsapatsaris and he told me --  
24 MR. FRASER: Well, how is this  
25 relevant and admissible? The other part you are

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1 absolutely correct.  
2 MR. KELLY: It solves the variance  
3 issues. There would be no variances.  
4 MS. MacINDOE: That is not  
5 appropriate.  
6 MR. FRASER: Alright, this part I --  
7 MR. SCHMIDT: Well, now he's had it  
8 in I have the right to cross him on that. I think I  
9 have to.  
10 MR. FRASER: Both the applicant and --  
11 MR. KELLY: We are talking about  
12 criteria, positive criteria. One of the big issues  
13 is open space and greenery. There is none. The  
14 buffer zones have been reduced down to a foot, a foot  
15 and 18 inches, trying to make it bigger. The bottom  
16 line is we are trying to put ten pounds of potatoes  
17 in a five-pound sack. If it was five pounds of  
18 potatoes that would be great and I understand people  
19 on Third Avenue saying this is a good project, okay,  
20 but living next to something where you can't park  
21 your car becomes a problem, becomes a huge problem  
22 and you have your police force giving tickets as  
23 opposed to saving, so I suggest the Board deny the  
24 application before this continuing as it currently  
25 stands and not hold the town hostage because I show

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1 you something pretty and if you want something pretty  
2 you approve me or if you don't I am going to let it  
3 sit like a dump. Thank you.  
4 CHAIRMAN GREET: Thank you.  
5 Cross-examine.  
6 MR. FRASER: Mr. Schmidt can certainly  
7 cross-examine and if any Board members have questions  
8 as well, we will follow Mr. Schmidt. Let Mr. Schmidt  
9 go first.  
10 MR. SCHMIDT: Before I cross, Mr.  
11 Kelly had said something about pictures.  
12 MR. FRASER: Put them into evidence.  
13 MR. SCHMIDT: As long as he's not  
14 going to have that opportunity before I finish my  
15 cross that's fine. That's what I am asking.  
16 MR. FRASER: No, let's not stand on  
17 ceremony.  
18 MR. SCHMIDT: Right.  
19 MR. FRASER: Mr. Kelly, do you have  
20 pictures that you wish to submit into evidence?  
21 MR. KELLY: I do as a matter of fact.  
22 MR. FRASER: How many such pictures  
23 do you have?  
24 MR. KELLY: I have five such pictures  
25 of which I supplied the applicant a copy of on a

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1 prior occasion.  
2 MR. FRASER: How many copies of the  
3 five pictures do you have?  
4 MR. KELLY: I have one copy here that  
5 I made all labeled and noted and the applicant also  
6 has.  
7 MR. FRASER: Did you personally take  
8 the pictures?  
9 MR. KELLY: I did.  
10 MR. FRASER: When did you take the  
11 pictures?  
12 MR. KELLY: The dates are on the  
13 pictures. They run from December of 2013 through  
14 February 26th.  
15 MR. FRASER: What I am going to  
16 suggest we do is let's mark the pictures K-1 through  
17 K-5 and then I am going to ask Mr. Kelly to describe  
18 what is in each one of the pictures and then that  
19 will conclude his direct testimony and then Mr.  
20 Schmidt may proceed.  
21 MS. CUCCARO: Mr. Kelly, you had these  
22 pictures at one of the last, at a previous meeting,  
23 right?  
24 MR. KELLY: Correct. I was asked to  
25 hold them until this evening.

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1 MR. FRASER: While she's writing, Mr.  
2 Kelly, you in fact you testified the pictures you  
3 took were taken by you on the dates that are  
4 indicated by the pictures and they accurately reflect  
5 the condition of the property that you observed on  
6 each such date, is that correct?  
7 MR. KELLY: That's correct.  
8 MR. FRASER: With that testimony, five  
9 pictures will be made into evidence and then when  
10 Adele catches up, I can see the court reporter is  
11 caught up, then we will let Mr. Schmidt go.  
12 MR. KELLY: The pictures are  
13 eight-and-a-half by 11 and I will pass them, but I  
14 think they are of sizable --  
15 MR. FRASER: We are going to get them.  
16 There is only one of each. Just tell us what's on  
17 K-1.  
18 MR. KELLY: On number one here is the  
19 rear of the current Chinese eatery. There certainly  
20 is, as you can see --  
21 MR. FRASER: The pictures are going to  
22 speak for itself.  
23 MR. KELLY: Okay.  
24 MR. FRASER: K-1 is the back of the  
25 Chinese restaurant?

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1 MR. KELLY: Right.  
2 MR. FRASER: What is K-2?  
3 MS. VILLAGGIO: What date?  
4 MR. NIERSTEDT: Pass it around.  
5 MR. KELLY: What date, the date is  
6 12/28.  
7 MR. FRASER: Of '13.  
8 MR. KELLY: Of '13.  
9 MR. FRASER: What's in K-2? Pass them  
10 over to Mr. Nierstedt and he will pass them on. No,  
11 Mr. Kelly, do each one. After you describe it pass  
12 it to Mr. Nierstedt.  
13 MR. KELLY: Emphasizes the need for  
14 --  
15 MR. FRASER: We are not looking for  
16 comment. Just right describe what it is. The back  
17 of the Chinese restaurant in December. What is K-2?  
18 MR. KELLY: K-2 is a picture that was  
19 taken in February, the end of February, February  
20 26th, that was a situation that existed since  
21 December when a tenant moves out --  
22 MR. FRASER: Where is the picture?  
23 MR. KELLY: Right here.  
24 MR. FRASER: What is it a picture of?  
25 MR. KELLY: The rear of 321 South

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1 Avenue.

2 MR. FRASER: Which is what?

3 MR. KELLY: Which is a single family

4 house, two bedroom house that sits at that property.

5 MR. FRASER: Okay. What is K-3?

6 MR. KELLY: K-3 is the rear of the

7 property that demonstrates the existing buffer zone

8 and snow along the rear parking lot.

9 MR. FRASER: Of the subject property?

10 MR. KELLY: Of the subject property.

11 MR. FRASER: When was it taken, Mr.

12 Kelly?

13 MR. KELLY: This was taken -- it was

14 taken February 15th.

15 MR. FRASER: K-4?

16 MR. KELLY: K-4 is a picture taken on

17 the west side of the building in December of 2013

18 prior to any of the heavy snows and it shows the

19 current situation of the garbage and how it is just

20 unaccessible.

21 MR. FRASER: Okay. K-5?

22 MR. KELLY: K-5 is February 25th,

23 taken on February 25th where the snow has been plowed

24 up losing all of the spaces across.

25 MR. FRASER: Why don't you just tell

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1 us where the picture was taken.

2 MR. KELLY: And the garbage is also

3 taken --

4 MR. FRASER: Just tell us where the

5 picture was taken.

6 MR. KELLY: On the west side of the

7 property.

8 MR. FRASER: Mr. Kelly, by the way, I

9 would just note for you the courtesy Mr. Schmidt

10 showed to you because you forgot to pull put all your

11 evidence in and I just want you to understand Mr.

12 Schmidt went out of his way to be courteous to you to

13 give you an opportunity to put your pictures in.

14 MR. KELLY: And I appreciate that.

15 Thank you, Mr. Schmidt.

16 MR. FRASER: Five pictures are now

17 into evidence. Mr. Schmidt, you have copies of these

18 or you don't?

19 MR. SCHMIDT: I have not, but I will

20 look at them when they come around.

21 MR. FRASER: Once the picture pass

22 through the Board we will let Mr. Schmidt temporarily

23 have possession of the five pictures so he can use

24 them in his cross if he deems necessary.

25 MR. SCHMIDT: Do you want me to wait

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1 until the Board has seen pictures before I start?

2 MR. FRASER: Not necessary.

3 CHAIRMAN GREET: In the interim take a

4 five-minute break while you can take a look at the

5 pictures as well.

6 MR. SCHMIDT: That's fine.

7 (Whereupon there was a recess.)

8 CHAIRMAN GREET: Mr. Schmidt, are you

9 prepared to cross-examine?

10 MR. SCHMIDT: I am. Thank you, Mr.

11 Chairman.

12 Mr. Kelly, where are you?

13 MR. KELLY: Mr. Schmidt, right here.

14 MR. SCHMIDT: You had indicated you

15 own currently four to six properties here in

16 Garwood?

17 MR. KELLY: Correct.

18 MR. SCHMIDT: And you were critical of

19 Mr. Tsapatsaris because he doesn't live in Garwood,

20 is that correct?

21 MR. KELLY: I was not critical of

22 him.

23 MR. SCHMIDT: Yes or no, you were

24 critical of Mr. Tsapatsaris because doesn't live

25 here?

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1 MR. KELLY: I have seen Mr.

2 Tsapatsaris in 15 years on his property perhaps twice

3 in 15 years.

4 MR. SCHMIDT: Mr. Kelly.

5 MR. KELLY: I am in this town, and if

6 we want to go that route we can talk to the police

7 officers, I am in this town every day of the week.

8 MR. SCHMIDT: Mr. Kelly, you don't

9 live in this town either, do you?

10 MR. KELLY: I do not.

11 MR. SCHMIDT: With regard to your

12 offer to purchase this property from Mr. Tsapatsaris,

13 did you provide him with anything in writing

14 concerning your offer to purchase this property?

15 MR. KELLY: I prefaced my offer

16 orally.

17 MR. SCHMIDT: Sir, sir, I think you

18 can answer it very simply yes or no. Did you provide

19 him with anything in writing concerning your offer to

20 purchase this property?

21 MR. KELLY: It was an oral.

22 MR. SCHMIDT: And yet when you, as you

23 indicated, wanted to sell your property to Mr.

24 Tsapatsaris you actually sent him a registered letter

25 with an offer for him to purchase your property,

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1 correct?  
2 MR. KELLY: That's correct. That was  
3 on advice of counsel.  
4 MR. SCHMIDT: I see.  
5 MR. KELLY: The letter, do you want  
6 the letter?  
7 MR. SCHMIDT: The letter wasn't from  
8 your counsel. It was from you personally, correct?  
9 MR. KELLY: That's correct.  
10 MR. SCHMIDT: Can we have this marked  
11 please?  
12 MR. FRASER: What number are you up  
13 to, Mr. Schmidt?  
14 MR. SCHMIDT: Seven?  
15 MS. LEWIS: We are up to --  
16 MR. SCHMIDT: I think it is 16, A-16.  
17 Mr. Kelly, I am going to show you what's marked  
18 A-16. Is that the letter that you sent to Mr.  
19 Tsapatsaris asking him if he would be interested in  
20 purchasing your property?  
21 MR. KELLY: Yep.  
22 MR. SCHMIDT: Offer A-16.  
23 MR. FRASER: Okay. That is in  
24 evidence.  
25 MR. SCHMIDT: Thank you.

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1 Mr. Kelly, if you could look at the document  
2 that was marked K-1 and if you don't mind I am going  
3 to stand next to you and I will speak loudly. This  
4 is the year of the Chinese restaurant?  
5 MR. KELLY: That is correct.  
6 MR. SCHMIDT: You took this picture  
7 yourself?  
8 MR. KELLY: I did.  
9 MR. SCHMIDT: And this supposedly  
10 demonstrates as you consider to be an area of  
11 garbage?  
12 MR. KELLY: It is a very typical  
13 garbage site, correct, every day.  
14 MR. SCHMIDT: Correct me if I am  
15 wrong. All of the cardboard seems to be boxed up and  
16 stacked up in one area, correct?  
17 MR. KELLY: The cardboard is stacked  
18 out in the middle of the parking lot.  
19 MR. SCHMIDT: This is under -- looks  
20 like it is under the deck here, correct, and it is  
21 all stacked up together?  
22 MR. KELLY: There is a parking line  
23 here.  
24 MR. SCHMIDT: Sir.  
25 MR. KELLY: And then there is a

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1 parking line here and that box is in that parking  
2 spot.  
3 MR. SCHMIDT: That one spot?  
4 MR. KELLY: You are right, it is in a  
5 parking spot.  
6 MR. SCHMIDT: Then there is looks like  
7 a plastic container here that has plastic and some  
8 cans in it?  
9 MR. KELLY: There are two or three  
10 plastic containers with refuse hanging out over the  
11 top not covered, yes.  
12 MR. SCHMIDT: Where is refuse hanging  
13 over the back?  
14 MR. KELLY: Right there. See that  
15 says Brute, truly the plastic 50-gallon garbage can  
16 which by the is not standard. It is 42 gallons, but  
17 in any case do you see the garbage cans hanging over  
18 the top that is not covered which Garwood code has to  
19 have covers on them?  
20 MR. SCHMIDT: Mr. Kelly.  
21 MR. KELLY: They are not covered.  
22 MR. SCHMIDT: I didn't ask you that.  
23 MR. FRASER: Mr. Kelly, this is  
24 cross-examination. You answer the questions that the  
25 attorney asks you. I think you know that.

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1 MR. SCHMIDT: This looks like plastic  
2 and cans, correct?  
3 MR. KELLY: It looks like a spaghetti  
4 sauce can.  
5 MR. SCHMIDT: I didn't ask you if it  
6 was a spaghetti sauce can. Did you go so close to  
7 look at it to see if it was spaghetti sauce?  
8 MR. KELLY: With a zoom lens, yeah.  
9 MR. SCHMIDT: You think that a Chinese  
10 restaurant would have spaghetti sauce? Doesn't it  
11 appear that these items were stacked up for  
12 recycling? I will let the Board consider this  
13 picture, but I could suggest that the boxes and the  
14 cans are stacked up for recycling as they should be.  
15 Have you ever dumped garbage, construction waste  
16 or anything else on Mr. Tsapatsaris' property?  
17 MR. KELLY: No, the converse has  
18 happened.  
19 MR. SCHMIDT: Sir, yes or no?  
20 MR. KELLY: Not to my knowledge.  
21 MR. SCHMIDT: Not to your knowledge?  
22 MR. KELLY: No.  
23 MR. SCHMIDT: So if somebody else  
24 dumped your garbage on their property you wouldn't  
25 know about it?

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1 MR. KELLY: As a matter of fact, just  
2 last week I had an issue --  
3 MR. SCHMIDT: Sir.  
4 MR. KELLY: -- to call the police  
5 department to remove Mr. Tsapatsaris' garbage from  
6 being in front of my garbage in my house.  
7 MR. SCHMIDT: I think what happened  
8 was that recycling was placed in front of your house,  
9 correct?  
10 MR. KELLY: This was three or four  
11 times I have called, regular garbage.  
12 MR. SCHMIDT: Uh-huh.  
13 MR. KELLY: Disposable, bags of  
14 garbage buried in snow.  
15 MR. SCHMIDT: Do you have pictures of  
16 any of this? If it was so bad do you have pictures  
17 of any of that?  
18 MR. KELLY: As a matter of fact, let  
19 me check my phone if you so like because it is all  
20 here.  
21 MR. FRASER: We are not going to put  
22 any pictures off of a phone that have not been  
23 printed.  
24 MR. SCHMIDT: Mr. Kelly, you seem to  
25 complain a lot about Mr. Tsapatsaris apparently not

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1 abiding by municipal codes. Do you have a tenant  
2 living in the basement of your building?  
3 MR. KELLY: I am sorry?  
4 MR. SCHMIDT: Do you have a tenant  
5 living in the basement of your building?  
6 MR. KELLY: What building?  
7 MR. SCHMIDT: The building that's  
8 adjacent to Mr. Tsapatsaris' property on South  
9 Avenue?  
10 MR. KELLY: No, absolutely not.  
11 MR. SCHMIDT: Okay.  
12 MR. KELLY: And if, Mr. Schmidt, you  
13 would like to take a walk after this meeting.  
14 MR. SCHMIDT: Sir, there is no  
15 question pending.  
16 MR. KELLY: I have the keys on me. We  
17 will go into that basement.  
18 MR. SCHMIDT: There is no question  
19 pending.  
20 MR. FRASER: The question has been  
21 answered.  
22 MR. KELLY: I will not be brought into  
23 a code violation by some rumor that he has concocted  
24 to deface me and defame me in front of this Board.  
25 MR. FRASER: Excuse me, Mr. Kelly, you

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1 were asked a direct question, you gave a direct  
2 answer. You denied it. He didn't say you had a  
3 tenant. He asked you a question. You said no.  
4 MR. KELLY: The implication is not  
5 going to go well with me with all due respect.  
6 MR. SCHMIDT: Mr. Kelly, it is your  
7 opinion that this property should have parking for 63  
8 parking spots?  
9 MR. KELLY: I explained my logic.  
10 MR. SCHMIDT: Is that what you  
11 indicated, Mr. Kelly, in your testimony that there  
12 should be 63 spots there?  
13 MR. KELLY: Logical interpretation,  
14 yes.  
15 MR. SCHMIDT: Now, Mr. Kelly, you seem  
16 to be quite a land baron in this town, you own six  
17 pieces of rental property, but I don't see you having  
18 any type of traffic expert here to support your  
19 testimony. Is there?  
20 MR. KELLY: Real life experience.  
21 MR. SCHMIDT: Sir, you don't have an  
22 expert to support your testimony?  
23 MR. KELLY: I don't need an expert.  
24 MR. SCHMIDT: Thank you.  
25 The property across from Shop-Rite on North

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1 Avenue consists of three sit-down restaurants, a  
2 coffee shop, a bank and at least three or four retail  
3 establishments in addition to the tenants that are  
4 located above those stores, correct?  
5 MR. KELLY: I have no way of knowing  
6 that.  
7 MR. SCHMIDT: The current property  
8 does not include any type of garbage container or  
9 fenced off area in the rear for garbage to be  
10 maintained in, is that correct?  
11 MR. KELLY: There was testimony that  
12 there was in December. There is currently not, no.  
13 MR. SCHMIDT: The picture that was  
14 marked number two, K-2, which is, as you described  
15 it, the rear of 321 South Avenue, does that clutter  
16 still exist there today?  
17 MR. KELLY: After four or five months.  
18 MR. SCHMIDT: Sir, does the property  
19 clutter still exist there today, yes or no?  
20 MR. KELLY: No, no.  
21 MR. SCHMIDT: Thank you.  
22 You indicated that the buffers that are being  
23 proposed on the property are one foot or less. From  
24 where did you get that information?  
25 MR. KELLY: I don't think you are

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1 accurate. I said anywhere from a foot to 18 inches  
2 in some areas.  
3 MR. SCHMIDT: Okay. A foot to eight  
4 inches.  
5 MR. KELLY: No, I didn't say that.  
6 MR. FRASER: A foot to 18, Mr.  
7 Schmidt, he said.  
8 MR. SCHMIDT: Okay. Where on the  
9 plans does it say the buffer is only going to be one  
10 foot to 18 inches?  
11 MR. KELLY: I am sorry.  
12 MR. SCHMIDT: Can you show us?  
13 MR. KELLY: Can you show me where it  
14 is not?  
15 MR. SCHMIDT: I don't have to show  
16 you. I am just asking you a question. Did you get  
17 that off of the plans?  
18 MR. KELLY: I heard testimony today.  
19 MR. SCHMIDT: You indicated that  
20 apparently there is a safety issue with people  
21 crossing South Avenue and that people have been hit  
22 by cars crossing South Avenue?  
23 MR. KELLY: My understanding.  
24 MR. SCHMIDT: From where were these  
25 people coming, from the shopping center or from your

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1 side of South Avenue, do you know?  
2 MR. KELLY: From the available, the  
3 only available parking in the area across the street  
4 in Kings parking lot.  
5 MR. SCHMIDT: How do you know that,  
6 did you talk to these people to find out where they  
7 were coming from?  
8 MR. KELLY: I saw them.  
9 MR. SCHMIDT: You saw people getting  
10 hit by cars?  
11 MR. KELLY: No, I saw people crossing  
12 the street, four lanes of oncoming speeding traffic.  
13 MR. SCHMIDT: Where were they going,  
14 do you know?  
15 MR. KELLY: They were going into to  
16 the stores across the street, Mr. Tsapatsaris'  
17 stores, nail salon, beauty salon. I saw people going  
18 into the -- picking up stuff from the, because they  
19 can't park in front of the Chinese store, they were  
20 parking across the street and then quickly shooting  
21 back again on their lunch hour.  
22 Q. How did you see these people, were you  
23 parked in front of your house at the time?  
24 A. I was standing on my property.  
25 Q. Standing on your property. This was during

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1 the day?  
2 A. Standing on my property.  
3 Q. During the day?  
4 A. All hours.  
5 Q. All hours. How often do you stand in front  
6 of your house?  
7 A. I am in Garwood every day of the week all  
8 hours. I am the property manager.  
9 MR. SCHMIDT: No more questions.  
10 Thank you.  
11 MR. KELLY: You are welcome.  
12 CHAIRMAN GREET: Okay. With that do  
13 we have any other questions from anyone or comments  
14 from the general public? Yes.  
15 MR. REGGIE: Carl Reggie, South  
16 Avenue, representative for Garwood Mall.  
17 MR. FRASER: Mr. Reggie, do you  
18 solemnly swear or affirm the testimony you are about  
19 to give will be the truth, the whole truth and  
20 nothing but the truth?  
21 MR. REGGIE: I do. It is important to  
22 us as a partner in the community to continue to be  
23 seen as somebody or an entity that people can visit,  
24 have access to shopping needs and fulfill whatever  
25 the daily routine requires. Having said that we

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1 don't oppose this development, but it is important to  
2 us to be on record that parking is critical. I think  
3 it is coming out loud and clear here not only this  
4 evening, but in the previous meetings that I have  
5 attended, we had to take serious actions a couple  
6 months back and work with the police department of  
7 Garwood to address issues that we were dealing with  
8 within the shopping malls' parking lot. If this  
9 development goes forward that's, you know, the  
10 decision of the Board and we recognize that, but  
11 again it is our hope that there is that serious  
12 consideration given to the parking situation because  
13 we don't want to be the ones that end up dealing with  
14 the spill-over and then having to be the ones that  
15 take matters into our own hands and have to work with  
16 the police again to have cars removed for residents  
17 that we know live in the area, but have limited  
18 parking, so again our position is we don't oppose it,  
19 but we do ask that there be serious consideration  
20 given to the parking variance and some type of  
21 understanding or determination made looking at that  
22 situation.  
23 CHAIRMAN GREET: Thank you. I do have  
24 one question for you. Since that had transpired  
25 during I believe it was the winter period, has there

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1 been a recurrence of cars parking overnight that you  
2 had to address?  
3 MR. REGGIE: Not had to address it,  
4 but we do know that while it has been reduced it is  
5 still occurring greet.  
6 CHAIRMAN GREET: Thank you.  
7 MR. FRASER: Mr. Schmidt, do you have  
8 any questions of Mr. Reggie?  
9 MR. SCHMIDT: No questions.  
10 CHAIRMAN GREET: Anyone he also from  
11 the public? Seeing none we will close this portion  
12 and we will have discussion of the --  
13 MR. FRASER: Mr. Schmidt.  
14 MR. SCHMIDT: I would just like, if I  
15 may, I would like to have rebuttal witness. I call  
16 Randy Phu please.  
17 MR. FRASER: Why don't you bring up  
18 your witness please. I am sorry, is that Mr.  
19 Pruitt?  
20 MR. PHU: Randy Phu.  
21 MR. FRASER: F-o-o?  
22 MR. PHU: No. P-h-u.  
23 MR. FRASER: P-h-u, okay. Mr. Phu,  
24 do you solemnly swear or affirm the testimony you are  
25 about to give be the truth, the whole truth and

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1 nothing but the truth?  
2 MR. PHU: Yes, I do.  
3 MR. SCHMIDT: Mr. Phu, do you live or  
4 work in Garwood?  
5 MR. PHU: Yes, I own nail salon 331  
6 South Avenue.  
7 MR. SCHMIDT: For how long have you  
8 owned the nail salon there?  
9 MR. PHU: I owned more than two and  
10 half year.  
11 MR. SCHMIDT: Do you know the  
12 gentleman Frank Kelly?  
13 MR. PHU: I see him quite often, once  
14 in a while.  
15 MR. SCHMIDT: Have you ever seen him  
16 dumping anything on Mr. Tsapatsaris' property?  
17 MR. PHU: I saw him come often with a  
18 lot of garbage cans with a truck, go in the back  
19 parking lot and unload garbage, trucks in garbage,  
20 sand, cement, a lot of stuff, stinky, smelly and  
21 loading and put in the hallway for the next day or  
22 two day later for the public sanitation pickup.  
23 MR. SCHMIDT: No further questions.  
24 Thank you.  
25 MR. FRASER: Mr. Phu, not yet. Where

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1 is Mr. Kelly?  
2 PUBLIC MEMBER: He left the room.  
3 MR. PRIETO: I just alerted him.  
4 That's okay. He is prepared to pass on questioning.  
5 MR. FRASER: I want the record for Mr.  
6 Kelly to waive that.  
7 MR. KELLY: I am sorry.  
8 MR. FRASER: Mr. Kelly, do you wish  
9 the opportunity to cross-examine Mr. Phu?  
10 MR. KELLY: I didn't hear his  
11 testimony.  
12 MR. FRASER: The essence of his  
13 testimony was that you dumped garbage onto Mr.  
14 Tsapatsaris' property. That was the essence of it.  
15 MR. KELLY: I deny that vehemently.  
16 MR. FRASER: No, that's not the  
17 question I asked you, sir. Do you wish to  
18 cross-examine the witness?  
19 MR. KELLY: Yeah, sure. Do you have  
20 pictures.  
21 MR. PHU: Yes, I do, sir.  
22 MR. KELLY: Where are they?  
23 MR. PHU: On my --  
24 MR. KELLY: We can't admit that.  
25 MR. PHU: I have on my phone, I have

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1 on my phone.  
2 MR. FRASER: Wait. The question was  
3 dose he have pictures, the answer was yes, the  
4 question was where are they, the answer is they are  
5 on his phone. Do you have another question?  
6 MR. KELLY: Can you produce them?  
7 MR. PHU: Sure.  
8 MR. KELLY: To the Board? I would  
9 like to see them too.  
10 MR. FRASER: Okay. Mr. Phu, since the  
11 witness since he's asked.  
12 MR. PHU: Okay. I show him first.  
13 MR. FRASER: Show him first and then  
14 show Mr. Schmidt and we will deal later with how we  
15 are going to put them into evidence.  
16 MR. SCHMIDT: I have a suggestion.  
17 Visually now I can download it and we can submit a  
18 hard copy of it.  
19 MR. FRASER: That's fine.  
20 MR. KELLY: We also have to reopen  
21 testimony.  
22 MR. FRASER: Mr. Kelly, Mr. Kelly, we  
23 are on rebuttal, okay. You had your testimony. Mr.  
24 Schmidt has properly called a rebuttal witness. You  
25 chose to absent yourself during the direct testimony

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1 of that rebuttal witness for whatever reason, which  
2 that's fine, and you are now cross-examining. If you  
3 wish to continue your cross-examination of this  
4 witness you may do so.  
5 MR. PHU: That is your truck, sir?  
6 MR. FRASER: Don't ask Mr. Kelly  
7 questions, Mr. Phu.  
8 MR. PHU: You load all the garbage  
9 cans?  
10 MR. FRASER: Mr. Phu, I am going to  
11 make a suggestion. Hold on, both gentlemen. Right  
12 now just show Mr. Kelly the pictures. There is no  
13 way -- I think the court reporter can hear some of  
14 that that is going on, the Board can't hear all of  
15 it, it is not properly part of the record. You  
16 showed Mr. Kelly some pictures you say are his  
17 garbage. You are now showing to Mr. Schmidt and then  
18 after Mr. Schmidt looks at those Mr. Kelly can  
19 continue his cross-examination if he wishes. Mr.  
20 Kelly, the floor is still yours.  
21 MR. KELLY: My truck on that  
22 particular instance --  
23 MR. FRASER: No, no. Are you asking a  
24 question?  
25 MR. KELLY: No. I don't have any

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1 questions.  
2 MR. FRASER: Okay. So you have  
3 completed your cross-examination?  
4 MR. KELLY: Yeah, but we do need to  
5 reopen on a rebuttal if we are going to admit  
6 pictures on telephones.  
7 MR. FRASER: Excuse me, Mr. Kelly,  
8 nothing has been admitted. You, for whatever reason,  
9 asked Mr. Phu a question if he had pictures because  
10 you doubted his word.  
11 MR. KELLY: Right, and I continue to  
12 doubt his word.  
13 MR. FRASER: Excuse me, Mr. Kelly. He  
14 said yes, you asked to see them, he showed them to  
15 you. Nobody has moved them into evidence. There  
16 have been no pictures moved into evidence of the  
17 testimony that Mr. Phu provided about garbage.  
18 MR. KELLY: Mr. Phu, do you have a  
19 picture of me putting these garbage on Mr.  
20 Tsapatsaris' property?  
21 MR. PHU: I don't.  
22 MR. KELLY: That's all. You answered  
23 the question.  
24 MR. FRASER: That's fine. The  
25 question was answered.

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1 I assume you don't have redirect, Mr. Schmidt?  
2 MR. SCHMIDT: Nothing.  
3 MR. FRASER: Alright. Do you have any  
4 further rebuttal testimony?  
5 MR. SCHMIDT: No.  
6 MR. FRASER: Okay. So the rebuttal  
7 case is closed. Before the Board takes it under  
8 advisement, Mr. Schmidt, you have the right to sum up  
9 now having had the supporters and objectors having  
10 all had their say. You get the last say before the  
11 Board takes it under advisement.  
12 MR. SCHMIDT: If I may. I will try to  
13 make it quick.  
14 Mr. Chairman, members of the Board, first of all  
15 I would like to thank you for your patience. This  
16 has been a lot longer hearing than we anticipated.  
17 This is now the fourth night and I realize that you  
18 probably had better things to do than listen to us,  
19 but what we have tried to do, and I hope the Board  
20 appreciates this with three different iterations of  
21 plans, we have tried to take your suggestions, your  
22 comments, your questions and incorporate them into  
23 plans that we hope are now satisfactory. We have  
24 down-sized the building. It may still be larger than  
25 some of you may have thought is necessary, but when

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1 you look at what the ordinance requires, and that is  
2 a 60 percent coming, we are significantly less than  
3 that. I think we are at 38 or 40 percent and yet we  
4 still don't have appropriate parking and I think I  
5 mentioned early on in my opening that this is  
6 somewhat of a Hobson's choice based upon your  
7 ordinance because it is very hard to get the lot  
8 coverage and the parking, to get them to match in a  
9 lot in your downtown area. As Mr. Tsapatsaris had  
10 said, when the property was originally purchased your  
11 ordinance didn't have a parking requirement. It does  
12 now and we are trying to do everything we can to  
13 somehow compromise the size of the building and to  
14 meet as best as we can both requirements. The  
15 building we are proposing has really only one major  
16 variance that is necessary. It is true we don't meet  
17 the lot coverage, we are short, but I don't think  
18 that's a significant issue. It is nonconforming in  
19 the number of parking spots and that seems to be the  
20 major issue. It is nonconforming in setbacks, but I  
21 think we are going to address that and we have tried  
22 to address it as best we could with the buffering we  
23 have so that we get the parking spots and with the  
24 repeated pledge and if the Board would approve this  
25 we would have no objection to it being incorporated

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1 into the resolution that we will work with the  
2 neighbors and put plantings not only on our side, but  
3 on their side, somewhat mature plantings to act as a  
4 shield. I don't think that the Board can monitor  
5 that and I hope that that's not an issue. We are  
6 working with the town on the lighting. We think the  
7 lighting plan matched. Mr. Vinegra had some  
8 questions concerning it. We are willing to work with  
9 the lighting so we can shield it as best as we can  
10 off of the residents' property. The issue is really  
11 parking.  
12 The ordinance requires 34 spots for the size of  
13 this building. We are providing 18. The testimony  
14 of our traffic expert, Mr. Steiger, I think was very  
15 clear. He said that he doesn't believe that during  
16 the day there is going to be any significant issue  
17 with parking. He anticipates that the location of  
18 this is going to attract and now especially with  
19 predominately one-bedroom units, there are 11 of them  
20 and only four two-bedroom unites, he anticipates this  
21 will predominately attract commuters who will be  
22 using both the train and the bus which is very  
23 conveniently located out the front door and within  
24 300 or a quarter mile of this property. Eight units,  
25 eight one bedroom and four two bedroom. Not 11. I

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1 apologize. Big difference.  
2 MR. FRASER: My notes --  
3 MR. SCHMIDT: Big difference.  
4 But Mr. Steiger doesn't anticipate that there  
5 are any problems.  
6 Mr. Vinegra in his comments to the Board has  
7 also indicated that based upon the location of this  
8 property to the train station, he said that there is  
9 a reduction that should be taken into consideration  
10 and he initially said it was somewhere -- the number  
11 of spots should be somewhere between eight and 11.  
12 In addition to the eight he settled on 11, so even  
13 assuming they're 11 spots that are needed because of  
14 this location, the 16 would be down-sized. We  
15 presently have at least for five additional spots  
16 down the street at the rest. We have been  
17 negotiating with Casale to use that spot. I will be  
18 very candid with this Board, the attorneys and I are  
19 very close to making a deal, but now they are before  
20 the bankruptcy court to approve the sale of the  
21 property, so my next step is to talk to whoever ends  
22 up buying that property if the deal is in fact  
23 approved, so we are still trying to get those spots.  
24 I am not sure, as I said to this Board, that we are  
25 ever going to be able to do it completely or for

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1 long-term, but we do have a lease for the rest for  
2 five spots which during the day then would take the  
3 overage from 11 to six, so in reality we are seeking  
4 a variance for six parking spots in addition to the  
5 18.  
6 We have again, in an attempt to accommodate some  
7 of the issues that the neighbors have raised, we have  
8 placed an interior garbage shoot within the building.  
9 We did not think it was appropriate in this  
10 building to have interior garbage. What my client  
11 has testified to is that there is going to be a  
12 superintendent living on the building. It will be  
13 his job on a daily basis to move the garbage into the  
14 garbage container which is going to be in the corner  
15 of the property a newly fenced constructed area that  
16 is going to be cleaned on a regular basis. We have  
17 already talked to the sanitation company. They are  
18 going to take those garbage cans out on a daily or  
19 biweekly or whatever is necessary so that those cans  
20 do not overload and you can incorporate that into  
21 your resolution. We have no issue with that. The  
22 superintendent will be living there and will be  
23 required to maintain that. We know that there could  
24 be an issue with snow. This was an unusual winter.  
25 The past several winters we haven't had much snow,

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1 but Mr. Tsapatsaris has also testified that if  
2 necessary we will remove the snow from the property  
3 so that we can continue to maintain the same number  
4 of parking spots. The building is fully handicapped.  
5 Although there is no walkway through the drive  
6 area, as Mr. Paterson was suggesting, there is a  
7 sidewalk area along this side of the property and  
8 that's going to be continued to be maintained, so  
9 there is a pedestrian walkway which would protect the  
10 pedestrians from necessarily walking where there is  
11 traffic.  
12 You heard the testimony also of our planner who  
13 summed up I think very succinctly. She indicated  
14 that this plan is absolutely on all fours with your  
15 master plan and the redevelopment of your downtown  
16 area to attempt to make this more of a commuter-type,  
17 transit-type village in that area. Yes, Mr.  
18 Tsapatsaris has not kept the property in pristine  
19 condition. We acknowledged that from the very  
20 beginning. He had intentions of doing this from the  
21 time he started. He hasn't done it. That doesn't  
22 mean that we are not going to do it now and we want  
23 to do it and when he does it he wants to maintain it  
24 as the benchmark kickoff part for Garwood and we  
25 think this is an excellent project for this area and

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1 we had hope that the Board would grant the variances  
2 that are necessary so this project can be completed.  
3 Thank you.  
4 CHAIRMAN GREET: Thank you.  
5 Okay, open it for discussion of the Board.  
6 MS. VILLAGGIO: Can I ask Victor,  
7 Victor, with regard to your letter that we received,  
8 has the applicant satisfied in your opinion?  
9 MR. VINEGRA: For the most part the  
10 applicant, you know, there were three letters because  
11 there were two submittals. As we all know started as  
12 a T-type instruction where the building went further  
13 back. They modified that with the four-story  
14 structure, now the three, so from the beginning there  
15 have been a number of changes. They have agreed and  
16 for the most part and everything that we requested in  
17 this letter move the handicap spaces a little  
18 business closer, change some of the doorways and  
19 configuration so, yes, the answer is yes on that.  
20 And just to go briefly to, in my own words, yes with  
21 Mr. Schmidt because technically by ordinance the  
22 variance for parking, I have it written on here, I  
23 think is 18 spaces, but that's not using really a  
24 reduction factor. If you use a reduction factor it  
25 gets somewhere around the 11 space or less. That's

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1 the reduction factor for shared when you have  
2 commercial. I didn't apply a reduction factor for  
3 transit, which you can do, because I was hoping that  
4 the cafe, the one cafe does move in. That kind of  
5 offsets because that parking demand is greater.  
6 There was some input from people here tonight that  
7 what happened if they all become restaurants. Well,  
8 if the zoning officer sees all restaurants and we  
9 count them by seat that is a different section of the  
10 ordinance. So say if a cafe comes in, the numbers I  
11 have here now at 11 pictures a cafe, something a  
12 little bit, so I didn't apply the reduction because  
13 the real world testimony was a possible cafe could  
14 come in there, so the 11 spaces considers a cafe in  
15 one of those locations, so there's 11 spaces really  
16 deficient, but it is based on using a shared factor,  
17 there is five being leased, so we are really talking  
18 about six spaces.  
19 CHAIRMAN GREET: I have a question  
20 about the five lease. In your opinion, how would you  
21 direct or what kind of signage would you use to  
22 indicate that these five spaces at the rest are  
23 available for this period of time for those?  
24 MR. VINEGRA: The owner said it best.  
25 It will be employees of the retail.

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1 CHAIRMAN GREET: Okay.  
2 MR. VINEGRA: And some residents.  
3 They will not be customers. The owner said it best.  
4 You keep the parking for your customers in the rear  
5 so you can get good tenants. He gets a good tenant  
6 he gets a good lease. So if he keeps the parking  
7 open in the rear, like you most likely will, he gets  
8 better leases.  
9 CHAIRMAN GREET: Okay.  
10 MR. VINEGRA: But to quell any  
11 concerns, I really couldn't see as zoning officer if  
12 someone came in here with a restaurant for all the  
13 bottom first floor, I would do a parking count and  
14 say no you are way more deficient --  
15 CHAIRMAN GREET: Right.  
16 MR. VINEGRA: -- than the variance of  
17 the Board, so right now we are looking at a possible  
18 one cafe and the rest retail stores.  
19 MS. VILLAGGIO: Don't we have an  
20 ordinance?  
21 MR. VINEGRA: And the existing  
22 restaurant that's there now, takeout.  
23 MS. VILLAGGIO: Yeah. And don't we  
24 have an ordinance which limits the amount of  
25 restaurants.

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1 MR. VINEGRA: That's correct too,  
2 that's correct too.  
3 MS. VILLAGGIO: Without coming before  
4 this Board and asking for an additional variance.  
5 MR. VINEGRA: That is a good point.  
6 The ordinance by Mr. Nierstedt did a nice little  
7 provision. Instead of stating you can't have  
8 different types of restaurants, it limits the amount  
9 in any one zone.  
10 MR. FRASER: You can also put that in  
11 as a condition on this approval that it be limited to  
12 the one existing, you know, to the one takeout and  
13 the one cafe.  
14 MR. VINEGRA: Cafe.  
15 MR. FRASER: And the approval is  
16 conditioned upon no additional restaurant usage if  
17 you were so inclined.  
18 MR. VINEGRA: Right. But I am saying  
19 so in the real world the spaces aren't -- they are  
20 not going to be 30 spaces because we are not looking  
21 at all the restaurants right here. We are looking at  
22 retail.  
23 MR. FRASER: I am just saying if you  
24 wanted to you could put that in this is not going to  
25 be all restaurants.

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1 MR. VINEGRA: Everything else the  
2 applicant -- the other concern was, to answer your  
3 original question was, you know, now the new modern  
4 lighting, the LED lighting has come down in costs.  
5 It is much more efficient and if you do place the  
6 lighting not on the building, but closer to the  
7 homes, but face them entirely towards the building  
8 there is almost no glare. The cutoff on these new  
9 LED lights is phenomenal. I purchased them and  
10 testing them on my own house. They are phenomenal  
11 with direction, so I think if we just moved the  
12 lights that the applicant has agreed to move the  
13 poles to the rear of the lot, face the lighting away  
14 from the resident, you won't get the splash or glare  
15 or the residents who live behind there will not see  
16 the lightbulbs, so you won't get that.  
17 The one item that didn't come up was the COA  
18 growth share. I mean that's something that, you  
19 know, we don't know what it is going to be. Right  
20 now sometimes we are reverting to around two. I  
21 don't know how this town. We really haven't  
22 addressed that yet, Bill, and if they are obligated  
23 to a growth share every ninth, eighth unit, after  
24 units one growth share unit would be required. I  
25 wouldn't use around three guidelines because they

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1 were thrown out. Most towns have reverted back to  
2 around two of COA which around two the retail doesn't  
3 really come into play, but the 12 units do, so one  
4 may have to be COA under the round two, but we won't  
5 know until June until they publish the current  
6 findings.  
7 And one other item was they agreed to increase  
8 the height of some of the landscaping and sometimes  
9 what we do is just for the good of the Board, when  
10 you go to pick a fence normally I walk out there with  
11 the builder before they install the fence and  
12 sometimes you don't want a fence in front of a fence  
13 because you get saplings and seeds fall down and then  
14 you get trees growing between the two fences.  
15 Sometimes what you want to do is use good existing  
16 fence from your neighbor and jog in and out and it  
17 doesn't look bad either that way. Little breaks in  
18 the fence with some plantings look good instead of  
19 one big wall of white or one big wall of wood. It is  
20 nice to have a fence that matches the other fences,  
21 but they come in and out, so we would most likely do  
22 that, walk it first, look at neighboring fences that  
23 look in good condition and utilize them so we don't  
24 have fence in front of fence and then the areas where  
25 you save money on not putting fence you add more

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1 trees and I think the applicant said he would be  
2 amenable to doing that.  
3 CHAIRMAN GREET: Mr. Tsapatsaris, I  
4 would have a question possibly.  
5 MR. TSAPATSARIS: Yes.  
6 CHAIRMAN GREET: Would you be amicable  
7 to allowing for one COA unit within your 12.  
8 MR. TSAPATSARIS: Not at this point.  
9 I am going to a seminar as part of my continuing  
10 education on the 30th to learn more about how that  
11 will affect us as professionals and as developers, so  
12 I put it top on my list to learn more. I am confused  
13 about it as this point and I have difficulty  
14 especially in a project that is so tight on the line  
15 to commit to something I am not an expert in, so I  
16 would have trouble with that. However, I can assure  
17 you that our project will compete successfully with  
18 the adjacent communities. We are going to try and  
19 find great tenants for a nice building and not  
20 necessarily try and hit those 2,200 numbers. I don't  
21 think that is realistic, so we'd like to have a nice  
22 building for nice people and have a rent that is  
23 sustainable for the long term, so that is our  
24 management philosophy and I would submit to that.  
25 MR. FRASER: Okay.

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1 MS. VILLAGGIO: Okay. I have another  
2 question.  
3 CHAIRMAN GREET: Mr. Tsapatsaris.  
4 MS. VILLAGGIO: I have a question for  
5 you. There was a lot of discussion on the fences in  
6 the backyard, the back of your property. Who owns,  
7 and I know, you know, nobody has said anything  
8 throughout, you know, the couple meetings we had, who  
9 owns the fences on the side of your yard, of your  
10 property?  
11 MR. TSAPATSARIS: We put a brand new  
12 fence, board fence in in the late nineties. When we  
13 purchased the building it was dilapidated. That was  
14 a brand new wood fence that we put in, so we owned  
15 the fence that is on --  
16 MS. VILLAGGIO: The western?  
17 MR. TSAPATSARIS: On the South Avenue  
18 side, on the South Avenue side, so there is a fence  
19 that we installed --  
20 MS. VILLAGGIO: No.  
21 MR. TSAPATSARIS: -- years ago.  
22 MS. VILLAGGIO: Not in the back. On  
23 the side?  
24 MR. TSAPATSARIS: There is no fence on  
25 the side.

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1 MR. JANNOTTI: There is a house.  
2 MS. VILLAGGIO: The western side.  
3 MR. TSAPATSARIS: Yes, there is a  
4 house.  
5 MS. VILLAGGIO: Yeah, there is a  
6 house. So that is not your fence?  
7 MR. TSAPATSARIS: No, no.  
8 MR. VILLAGGIO: The rear of their  
9 property?  
10 MR. TSAPATSARIS: No, no. We just put  
11 the new fence which is now in need of replacement and  
12 that's why we had discussed a vinyl fence.  
13 MS. VILLAGGIO: But that's in the  
14 rear?  
15 MR. TSAPATSARIS: Yes.  
16 MS. VILLAGGIO: The wall that is  
17 there on the western side of your property, there is  
18 a --  
19 MR. SCHMIDT: Retaining wall.  
20 MS. VILLAGGIO: A retaining wall?  
21 MR. TSAPATSARIS: Yes.  
22 MS. VILLAGGIO: Okay. There is a  
23 fence that is falling down. That is not your fence?  
24 MR. TSAPATSARIS: That is Mr. Kelly's  
25 fence and the wall is quire frankly, I am sorry to

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1 interrupt you, just to be clear, that wall is well on  
2 our property. Mr. Kelly's property line between us  
3 is quite close to his house, sore that wall is very  
4 much on our property. However, to answer your  
5 question clearly, the fence that is collapsing is Mr.  
6 Kelly's fence.  
7 MS. VILLAGGIO: Okay. Would you be  
8 because I, you know, you are going to build this, if  
9 we approve this application, a real nice building in  
10 my opinion, and you are going to have this fence that  
11 may be on your property and it may not be on your  
12 property depending what the survey says. That's, you  
13 know, that would take away from --  
14 MR. TSAPATSARIS: I hear you loud and  
15 clear and I --  
16 MS. VILLAGGIO: Would you be willing  
17 to put on your property?  
18 MR. TSAPATSARIS: Yes.  
19 MS. VILLAGGIO: A side fence?  
20 MR. TSAPATSARIS: Yes.  
21 MS. VILLAGGIO: I think that would --  
22 MR. TSAPATSARIS: I mean I would  
23 prefer to keep --  
24 MS. VILLAGGIO: On your property.  
25 MR. TSAPATSARIS: I would keep on the

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1 property line.  
2 MS. VILLAGGIO: Correct.  
3 MR. TSAPATSARIS: Yes.  
4 MS. VILLAGGIO: If that is allowed.  
5 MR. TSAPATSARIS: Yes, yes. I would  
6 put a fence on the property line, absolutely. In  
7 fact, on sheet SP-1, I can just reenter it for the  
8 record, it says new six-foot-high fence, see detail  
9 SP-2, so I would have no problem re-clarifying that  
10 and put that in.  
11 MR. JANNOTTI: Which drawing was that,  
12 sir?  
13 MR. TSAPATSARIS: SP-1, SP-2. It is a  
14 vinyl slat fence, privacy fence.  
15 MS. VILLAGGIO: Yeah.  
16 MR. TSAPATSARIS: Along the whole  
17 length.  
18 MS. VILLAGGIO: To be, you know, on  
19 the western side. I don't have any further  
20 questions.  
21 CHAIRMAN GREET: Mr. Hak, did you  
22 have a question?  
23 MR. HAK: No, I did not.  
24 MR. FRASER: We are really on Board  
25 discussion.

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1 CHAIRMAN GREET: Bill.  
2 MR. NIERSTEDT: Mr. Chairman, I would  
3 like to start off first by saying I support this  
4 application. I recommend to my fellow board members  
5 that you also support, but I do have 15 conditions  
6 written down that would temper my support. I think  
7 the Board, actually those who would agree with this  
8 application, would actually, believe it or not, agree  
9 with 13, but I think two of them are real discussion  
10 points I would like the Board to weigh in on. One of  
11 them is loading. There is no loading area. Loading  
12 has been discussed in terms of the type of trucks,  
13 the type of vehicles and number of deliveries really  
14 doesn't warrant a loading area. I would disagree  
15 with that and I do think it is important particularly  
16 on South Avenue that the applicant be required to  
17 petition to counsel to actually provide not 24-hour a  
18 day, but a limited time frame loading area on the  
19 western side of this property. That's where the curb  
20 turns in and I think that's the place for it. I  
21 think further to the east is going to impede traffic  
22 and I would ask the Board your feelings on that  
23 requirement of providing one loading area in the  
24 street so that we don't have double parking on South  
25 Avenue and it be limited to hours that are necessary

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1 and the rest of those hours can be used for parking.  
2 CHAIRMAN GREET: That makes a lot of  
3 sense, yeah.  
4 MR. NIERSTEDT: The second one I am  
5 sure is going to raise more issue. We have compared  
6 this project to ones in Cranford and we have talked  
7 specifically about and also Victor has brought up a  
8 point in how important it is that that first floor  
9 actually be set back. You know, I think I can say  
10 candidly that The Point is a far better project than  
11 the Cranford Crossing and I think part of it is the  
12 fact that, as Victor has mentioned a number of times,  
13 you have that area. I would, you know, and I go into  
14 detail, but I think I would like to ask the Board  
15 consideration of actually requiring that at least the  
16 first floor, perhaps not the second floor, but that  
17 first floor because the sidewalk is smaller in front  
18 of this structure we actually require the first floor  
19 be set back a minimum of five feet if not for every  
20 retail unit, at least for the takeout restaurant and  
21 at least for the potential cafe so that we have  
22 outdoor dining in that area and we provide for that  
23 amenity which I think is a highly desirable amenity  
24 in developments in transit village areas.  
25 MS. VILLAGGIO: Would you then take

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1 away from the building itself?  
2 MR. NIERSTEDT: The first floor, the  
3 retail space would then be reduced by five feet with  
4 depth however look at it.  
5 MR. VENA: Depth.  
6 MS. VILLAGGIO: But then would you  
7 limit the type of tenants?  
8 MR. NIERSTEDT: Type of tenant, five  
9 feet X 20 feet, I don't really think so. We  
10 indicated what type of tenants we expect here. I  
11 don't really think the five feet is going to do that  
12 much. What does everybody think?  
13 MS. VILLAGGIO: I think my personal  
14 opinion is that I like the idea. However, five feet  
15 in my opinion would be too much, too much with the  
16 second floor out like this and then going up like  
17 that to me would take away.  
18 MR. VENA: You can't cantilever. You  
19 can cantilever three.  
20 MR. HAK: Then you are going to be  
21 right back to where you were.  
22 MR. NIERSTEDT: If you can cantilever  
23 three I think it is very important. I think it means  
24 in all seriousness for the applicant I think you are  
25 able to demand, talking about losing space, I think

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1 you are able to demand a higher rent.  
2 CHAIRMAN GREET: I think that is a  
3 good idea personally. It gives a nice offset to that  
4 whole front appearance.  
5 MR. VENA: Right now showing a little  
6 less than 47 and a half feet depth on each of the  
7 stores, so if you lose three feet.  
8 MS. VILLAGGIO: Two and a half make it  
9 cut it in half.  
10 MR. NIERSTEDT: Even within two and a  
11 half you picture your decks would have you allow for  
12 a table setback. That's one of the reasons why  
13 Cranford Crossing doesn't work.  
14 MS. VILLAGGIO: I know and even the  
15 one that they are building right now, it is right on  
16 the property line.  
17 MR. NIERSTEDT: What is nice about the  
18 one they are building now in Cranford is towards the  
19 east they do have that setback.  
20 MS. VILLAGGIO: Yeah.  
21 MR. NIERSTEDT: I think they learned  
22 midway through.  
23 MR. VENA: Let me ask you a question.  
24 On your existing structure, were you going to raz  
25 that or just going to refurbish shall it? You are

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1 not knocking it down, correct?  
2 MR. TSAPATSARIS: No.  
3 MR. VENA: Just going to remain there  
4 and putting a new face up?  
5 MR. TSAPATSARIS: Taking away -- one  
6 thing that has always disturbed me as an architect is  
7 that shed that exists there today.  
8 MR. VENA: Right.  
9 MR. TSAPATSARIS: So we are taking  
10 those stores and propagating that zero lot line up.  
11 To address Mr. Nierstedt's concerns, I remember  
12 having testified if we want to remind the Board of a  
13 solution that I voted for affirmatively when I was on  
14 a planning board in the village of Ridgewood where we  
15 really care about maintaining a streetscape. In the  
16 village we always had zero lot line and what we did,  
17 for example, at It's Greek To Me is that there is a  
18 zero lot line and then we go 20 feet back, but in the  
19 wintertime it is removable windows and then in the  
20 summer they remove the facade windows, which I am  
21 prepared to do, and then you have another 20 feet of  
22 outdoor seating, so when I was on the planning board  
23 and board of adjustment in the village I felt it was  
24 very difficult to maintain a very important  
25 streetscape, but at the same time I wanted the

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1 buildings back too, so the solution we came up with,  
2 and I am prepared to do her as I testified to  
3 previously, is the facade can be removable so that  
4 you go deeper, you have enough roof to put two rows  
5 of tables so in the summertime they open up because  
6 you can't have it completely open because the  
7 restaurant, put two walls in. We have done that on  
8 many other projects that I have been involved with so  
9 that in the summer you can open them up and there is  
10 outdoor seating and we want to do that in the cafe.  
11 MR. NIERSTEDT: Mr. Chairman, I am not  
12 exactly sure how to word that, but I would support  
13 that.  
14 MR. VENA: Removable front walls.  
15 MR. NIERSTEDT: That's the key. Okay.  
16 MS. VILLAGGIO: I think that would be  
17 a good compromise.  
18 MR. NIERSTEDT: I think that would be  
19 a good look too.  
20 MS. VILLAGGIO: And that would satisfy  
21 the setback.  
22 MR. NIERSTEDT: Okay.  
23 MS. VILLAGGIO: Right?  
24 MR. NIERSTEDT: That is fine with me.  
25 MR. FRASER: Those are the two hard

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1 ones, Bill?  
2 MR. NIERSTEDT: Those are the two hard  
3 ones, yeah. Should I read the other ones? Do you  
4 want me to do a motion?  
5 MR. FRASER: Save it for if you make a  
6 motion.  
7 MR. NIERSTEDT: Sure.  
8 MR. FRASER: I am sure they will be  
9 comprehensive.  
10 MR. NIERSTEDT: I hope so.  
11 MR. CHAIRMAN: We have had Bill,  
12 myself and Kathy. Anybody else from the Board with  
13 questions, comments?  
14 MR. JANNOTTI: The only comments I  
15 guess, there has been so many questions, the only  
16 comments I have again is reiterating what someone  
17 else has said, that this is the third iteration and I  
18 believe the applicant has really listened to each  
19 time and made significant changes to the property  
20 from going small, large and then three floors, four  
21 floors, three floors, coming up with this design. I  
22 think the applicant has been very amenable to changes  
23 and to satisfy to the extent that the applicant could  
24 satisfy all of the different issues that have been  
25 raised and I believe that the applicant has done a

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1 good job in coming forth with this design, so I am  
2 definite in support of it.  
3 CHAIRMAN GREET: Again, you know, just  
4 to piggyback on that, I wasn't a big proponent  
5 initially of this project basically because of the  
6 parking, but I think for the same reason that yeah,  
7 you took the time and you did make some major  
8 changes. I was a little taken back on the second  
9 one. The third one it settled in a little bit. You  
10 were receptive and understood where we were coming  
11 from. I still have got a concern about the parking.  
12 There is no question about that, but I think in the  
13 future that Garwood may be able to resolve some of  
14 its own issues down the line which may help us and I  
15 think it is a great improvement over that area I  
16 think.  
17 MS. VILLAGGIO: Oh, my.  
18 CHAIRMAN GREET: I hope it is really  
19 going to be a benefit to the town, I think it is  
20 going to be a benefit of that area and I have heard a  
21 lot, obviously we have gone through the testimony  
22 with the folks here and I really strongly feel that I  
23 really have a good feel from the Garwood people that  
24 they are receptive to a unit like this and it can  
25 only improve the area.

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1 MS. VILLAGGIO: I think it is going to  
2 be a 100 percent improvement to the area and  
3 hopefully it will be just a start of other types of  
4 development like this along South Avenue and thank  
5 you for listening to the people and to us up here.  
6 That's it.  
7 MS. MacINDOE: I agree with what you  
8 have all said. I think that it is moving forward and  
9 it is something that is going to improve the look of  
10 the town, so I really support the project.  
11 MS. QUATTROCHI: I am looking to move  
12 Garwood forward. I am very sensitive to the parking  
13 issue because for 32 years I have resided in a place  
14 that has very limited parking as you all know. It is  
15 a three-unit building with a business on the first  
16 floor right across from the Hess Station. There is  
17 only two apartments there. We have had up to eight  
18 cars belonging to the residents and have managed just  
19 fine in that small lot. Everybody just kind of moves  
20 around and after a while you respect each other's  
21 situation. Sometimes the customers are more of a  
22 problem than the people who actually live there, but  
23 we can sit here and we can talk all about parking and  
24 all this stuff, but there is one thing that we can't  
25 regulate and that is personalities of people who live

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1 there, people who shop there, people who shop across  
2 the street and those who respect other people's  
3 property and also, you know, no one person owns the  
4 street. Every week I have somebody in my office or  
5 on the phone or sending me an e-mail about a parking  
6 situation someplace. We are well aware as a  
7 governing body that we have a serious parking  
8 problem. We also acknowledge that we have some very  
9 interesting things that are going to be going on  
10 coming down the pike. Hopefully everything will at  
11 some point, a lot of these things will kind of  
12 shuffle themselves out and solve themselves as times  
13 goes on. I like the project. The property owner has  
14 been very flexible. Everything you guys asked he's  
15 come back and said okay, we can do this, we can do  
16 that. For me to vote no would be standing in the way  
17 of progress of my community that's blooming and on  
18 the cusp of some wonderful things, so I have to be  
19 supportive and hopefully everyone will get along and  
20 find a place to put their vehicles. I am done.

21 MR. SCHERER: I am sorry, but no  
22 parking no yes for me. It is the way I have to be.  
23 I value the parking in this town and I also value  
24 that you should also be able to run your business per  
25 se on your property and not depend on anybody

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1 else's. I don't depend on nobody, so I think your  
2 property should depend on itself, not on other people  
3 around.

4 CHAIRMAN GREET: Just as a comment on  
5 that, that gets back to what the community is about  
6 and community meaning that you kind of work together  
7 as a functioning town and that includes the business,  
8 the business aspect of it.

9 MR. SCHERER: But there are more  
10 depending on somebody else's business or their  
11 property than to run it on their own. I can see  
12 going from one store to another store, but the  
13 parking, you got to supply your own parking on your  
14 own piece of property and then let everybody go here  
15 and there and walk around. I just don't believe in  
16 this transit village thing. This is something I  
17 believe just made up so people don't have to have  
18 parking, but no matter how you look at it people are  
19 going to have cars even if they take the train or the  
20 bus. They are still going to own a car. Everybody  
21 here that may take a train or bus you all own a car.

22 MS. VILLAGGIO: And a bicycle.

23 MR. SCHERER: Something tells me  
24 somebody that works in New York is going to have a  
25 car because they make a lot of money, but that's how

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1 I settle it. It is a nice project and also I also  
2 did read you had a project in Elmwood Park three or  
3 150 apartments, something like that?

4 MR. TSAPATSARIS: Not Elmwood Park.  
5 MR. SCHERER: Not Elmwood Park.  
6 MR. SCHMIDT: Ridgewood?  
7 MR. SCHERER: No.  
8 CHAIRMAN GREET: While you are  
9 thinking about that, I think Mr. Hak has a comment.

10 MR. HAK: Yeah, I just wanted to  
11 comment sphere --

12 MR. SCHERER: Teaneck.

13 MR. HAK: The town is always tight, we  
14 always know it has been tight, but one of the nice  
15 things it is a walking community. One of my friends  
16 had rented an apartment and he said his house was  
17 being redone over and he said I hated leaving because  
18 I don't need a car. He goes I got the restaurant  
19 down the street, I got, you know, I got the gym over  
20 here. He goes you don't need a car. I mean we all  
21 do have cars, you are right, but he said it is a  
22 walking community. Our children walk to school all  
23 the way from the other side of town and, you know, so  
24 many times we all walk to our local places that we  
25 like to go to and, you know, you walk your dog to the

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1 place and one of the nice things about the town is it  
2 is a walking community. Nothing is further than a  
3 quarter mile away. Something that looks nice as this  
4 I can't go against it.

5 CHAIRMAN GREET: Okay. Anybody else  
6 from the Board?

7 MS. CUCCARO: I also believe he has  
8 been very accommodatable as far as the building goes,  
9 but it also really reverts back for me and the town  
10 is the parking issue has become so bad because of the  
11 density factor in this town. I mean it is  
12 eight-tenths of a mile square and you are squeezing  
13 so much stuff into such a small town. That's why  
14 there is such a big parking issue and to rely on  
15 other property owners for parking that is never going  
16 to come to pass, I don't care how many signed  
17 documents there are, I don't care what anybody has  
18 got, you cannot count on the Garwood Rest or Casale  
19 or anybody else for parking for your property. It is  
20 simple. And there is going to be no way to enforce  
21 it down the line, so what happens is from Willow  
22 Avenue not being able to park, people are going  
23 further and further and further this way into the  
24 town and before you know it the whole entire town  
25 will be packed with the sprawl of everybody where

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1 there is no place to park on South Avenue and stuff  
2 like that. It is happening now on my street and I am  
3 on Third, so I mean they are going to the bus, they  
4 are going to the train and sure enough it is  
5 sprawling out to the whole entire town. We will be  
6 like a little urban community which it is not. It is  
7 a little suburban community and like I said I really  
8 feel like you have to count on what you've got in  
9 order to proceed forward with what you want to have  
10 and that's what I have to say about that.  
11 CHAIRMAN GREET: Mike.  
12 MR. VENA: I like the project. I  
13 think it is really going to clean up South Ave, but I  
14 must ask you one question if you would hold to the  
15 promise of good housekeeping.  
16 MR. TSAPATSARIS: Yes.  
17 MR. VENA: That is my main concern  
18 here. I have lived in town it will be 25 years and I  
19 have been passing by there, you know, every day and  
20 it is just the housekeeping issue with me, but if you  
21 hold to your promise, you have a superintendent in  
22 there that takes care of your building, I am all for  
23 it.  
24 MR. TSAPATSARIS: Thank you.  
25 CHAIRMAN GREET: Anybody else? Okay,

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1 Bill.  
2 MR. NIERSTEDT: I think it is  
3 appropriate for you to make a motion and have a  
4 soliloquy before that.  
5 CHAIRMAN GREET: Can I say no?  
6 MS. VILLAGGIO: But it depends what  
7 his other 13 items were.  
8 MR. NIERSTEDT: I think we will be  
9 alright. I think we will be fine. You can time me  
10 here, alright.  
11 Before I make the motion, Mr. Chairman, and  
12 thank you for asking, I do want to indicate my  
13 support and the reason for it that we need for the  
14 record. I long for the problems of a busy active  
15 downtown development such as this project and others  
16 will bring Garwood in such that Westfield and  
17 Cranford already have. I don't want to have my  
18 living working environment designed for the motor  
19 vehicle. I want my living environment designed for  
20 non-vehicular living spaces. That's one reason why I  
21 own three bikes, Bob, okay. I ride a bike everywhere  
22 and go on vacation to places where I can park my car.  
23 CHAIRMAN GREET: You are limited to  
24 five minutes on this.  
25 MR. NIERSTEDT: I know. We are fine.

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1 Believe me.  
2 Many studies have shown the millennia generation  
3 seems to live in a commuting arrangement that we have  
4 created today of people living in Hunterdon,  
5 Middlesex, Ocean County driving to work two plus  
6 hours a day each way is not their desired living  
7 environment. The witness last month stated that they  
8 want vibrant downtown near mass transit where they  
9 can live, work and play within walking distance of  
10 each other such as we could have right here in  
11 Garwood with this project and so do I. This project  
12 will advance the intent of the master plan for the  
13 transit village to move an old dilapidated structure  
14 that's seen better days and eliminate the  
15 nonconforming -- I support this project. That being  
16 said, Mr. Chairman, I make a motion to approve this  
17 project subject to the following conditions.  
18 MR. FRASER: One.  
19 MR. NIERSTEDT: Number one, snow will  
20 be removed from the site in cases of three inches or  
21 more, there will be a bathroom provided for units D  
22 and E, sidewalk be --  
23 MR. JANNOTTI: What?  
24 MR. NIERSTEDT: Those were the retail  
25 units that didn't have them on the plan.

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1 MR. FRASER: So one is snow and two  
2 is?  
3 MR. JANNOTTI: Three inches of snow.  
4 MR. NIERSTEDT: Right. Two is  
5 bathrooms be provided for retail units D and E which  
6 the applicant agreed to. Repair the curbs and  
7 sidewalks as needed by the board engineer, comply  
8 with the lighting standards by working with again the  
9 board planner to reduce bulb height, improve  
10 direction of the building.  
11 MR. FRASER: Subject to approval.  
12 MR. NIERSTEDT: Correct, subject to  
13 approval. The fourth one I have here asks your  
14 assistance with the Board of removable walls.  
15 MR. JANNOTTI: Removable front walls  
16 on.  
17 MR. TSAPATSARIS: Removable front  
18 walls on retail. Removable front.  
19 MR. NIERSTEDT: On all retail units.  
20 MR. TSAPATSARIS: On the proposed  
21 ones.  
22 MR. NIERSTEDT: On the?  
23 MR. TSAPATSARIS: Proposed ones.  
24 MR. NIERSTEDT: On the proposed ones.  
25 MR. FRASER: In other words, the left

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1 side of the building?  
2 MR. NIERSTEDT: The left side of the  
3 building. That's fine. To go along with that, just  
4 to make certain that future zoning officers will  
5 recognize that while retail is what is being proposed  
6 here, one cafe will not increase or create a reason  
7 for a variance. Change the walk-through along the  
8 rear of the property to a mix of taller, mature  
9 evergreen plantings, as well as at least three shade  
10 trees, building will have a designated on-site person  
11 to manage the site and be responsible for property  
12 maintenance, that the properties be merged.  
13 MR. FRASER: Bill, that is a resident  
14 on site?  
15 MR. NIERSTEDT: That is correct.  
16 MR. JANNOTTI: That is the  
17 superintendent?  
18 MR. NIERSTEDT: That is the  
19 superintendent. The properties be merged.  
20 MR. FRASER: Deeds, correct?  
21 MR. NIERSTEDT: Correct. Provide a  
22 public bike rack on site, that there be no left turn  
23 coming out of the driveway.  
24 MS. VILLAGGIO: That is good.  
25 MR. NIERSTEDT: Provide separate

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1 interior storage area for each apartment, designation  
2 of loading area and actually I shouldn't say that.  
3 That the applicant petition counsel for a designation  
4 of an on-street loading area on the western side of  
5 the property.  
6 MS. VILLAGGIO: But even though we  
7 don't own that. That is a Union County road.  
8 MR. NIERSTEDT: He will have to go to  
9 the county too.  
10 MR. VINEGRA: We control the parking  
11 though.  
12 MR. NIERSTEDT: We control the  
13 parking, okay, then leave it the way it was.  
14 MR. SCHERER: 15-minute parking.  
15 MR. VINEGRA: That is up to counsel.  
16 MR. NIERSTEDT: There were a lot of  
17 questions raised about the drainage, so I would just  
18 like to make sure the drainage plan be acceptable to  
19 the board engineer and that install six-foot wood,  
20 please not vinyl, board-on-board or stockade fence as  
21 deemed necessary subject to review.  
22 MS. VILLAGGIO: I like vinyl.  
23 MS. MacINDOE: Something the  
24 neighbors.  
25 MR. NIERSTEDT: I mean that is my

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1 recommendation.  
2 MR. SCHERER: Per what the residents  
3 agreed upon.  
4 MR. NIERSTEDT: Subject to, as Victor  
5 indicated, he would go out and do the inspections.  
6 MR. VINEGRA: We will go look at it at  
7 time of construction.  
8 MR. NIERSTEDT: Right, understood.  
9 MR. VINEGRA: Make it match.  
10 MR. NIERSTEDT: Right.  
11 CHAIRMAN GREET: With the refuse  
12 containers they will have lids on them, correct, and  
13 they must be emptied if a lid cannot be completely  
14 closed.  
15 MR. TSAPATSARIS: I am sorry?  
16 CHAIRMAN GREET: The refuse containers  
17 are going to have lids on them, correct, the refuse,  
18 the garbage?  
19 MR. TSAPATSARIS: The cans, but there  
20 will be four sides to the --  
21 CHAIRMAN GREET: They will have lids.  
22 The lids must be able to close unless otherwise they  
23 must be emptied. In other words, you can't have  
24 stuff just falling off the top.  
25 MR. FRASER: Once the can is full you

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1 got to dump it out.  
2 CHAIRMAN GREET: That is a  
3 requirement.  
4 MR. NIERSTEDT: I rest. Mr. Chairman.  
5 CHAIRMAN GREET: Wow.  
6 MR. FRASER: What about the condition  
7 in the commercial leases that the tenants are to park  
8 up at the rest, Bill?  
9 MR. NIERSTEDT: Who is going to  
10 enforce that, Mr. Fraser?  
11 MR. FRASER: What else is new, Bill,  
12 if that is the question?  
13 MR. NIERSTEDT: You want to include  
14 it, sure. I am open to that amendment, yes.  
15 MS. MacINDOE: I have a question.  
16 MS. CUCCARO: Why bother if it is not  
17 going to be enforceable? Why?  
18 MR. NIERSTEDT: No, because if there  
19 is an issue we do have a specific standard and go to  
20 court with and say judge, here it is. That's the  
21 only reason you have it.  
22 MS. MacINDOE: I did have a question.  
23 What was the final say about the fence, how is worded  
24 because --  
25 MR. FRASER: His motion was for a wood

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1 fence.  
2 MS. MacINDOE: And?  
3 MR. JANNOTTI: What Victor said.  
4 MR. NIERSTEDT: Subject to Victor  
5 indicated he would be doing an inspection and, you  
6 know, if indeed it makes more sense in a particular  
7 location to have a vinyl, fine.  
8 MS. MacINDOE: I would say that I am  
9 not necessarily on board with the way the fence is.  
10 If the neighbors prefer to have a vinyl fence, I  
11 think they should be entitled to that.  
12 MR. NIERSTEDT: That is what my  
13 condition states.  
14 CHAIRMAN GREET: That is basically the  
15 agreement.  
16 MS. MacINDOE: That is what my  
17 condition is.  
18 MR. NIERSTEDT: I don't accept your  
19 condition. I accept the way I phrased it.  
20 MR. SCHMIDT: Mr. Chairman, if I could  
21 just comment on --  
22 MR. FRASER: Bill, final call on the  
23 fence is after Victor talks to the neighbors, is the  
24 final call on the fence is Victor's?  
25 MR. NIERSTEDT: That is correct.

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1 MS. MacINDOE: That is fine.  
2 MR. SCHMIDT: If I just may be heard on  
3 one of those issues, the issue that was suggested  
4 there be no left turn coming out of this.  
5 CHAIRMAN GREET: Yes.  
6 MR. SCHMIDT: Our traffic expert did  
7 not suggest that or propose it and one of the reasons  
8 he didn't propose it is he didn't think there would  
9 be enough traffic coming out of there that would  
10 warrant it, but more importantly if you have right  
11 turn only it is going to in our opinion increase the  
12 traffic on Willow.  
13 MS. CURRARO: Yeah, but you can't make  
14 a left turn there. It is impossible.  
15 MS. VILLAGGIO: It is one way.  
16 MR. NIERSTEDT: One way the other way.  
17 MS. VILLAGGIO: That way.  
18 CHAIRMAN GREET: If you look at some  
19 of the other retail units both on North Avenue and  
20 South Avenue notice there are a lot of no left turns.  
21 It is a right turn only.  
22 MR. VENA: It is a double yellow line.  
23 MS. VILLAGGIO: Increase the traffic  
24 on east, but, you know, technically make a right-hand  
25 turn on Myrtle or Spruce.

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1 MR. SCHMIDT: Okay.  
2 MS. VILLAGGIO: You can't make a  
3 right.  
4 MR. VINEGRA: How about I would meet  
5 with the county traffic engineer and evaluate the  
6 left-hand turn movement. I think we will do it that  
7 way. This way we will look at if there is  
8 availability to make lefts in the middle of the day.  
9 we should permit, so I will look at it with the  
10 county. It is a county road.  
11 MR. NIERSTEDT: That is fine.  
12 MS. CUCCARO: You can't even come out  
13 of the parking lot here and make a left turn.  
14 MR. VINEGRA: At certain hours.  
15 MR. FRASER: No, no, no. I leave this  
16 meeting in this lot I am not allowed to make a left  
17 turn.  
18 MS. CUCCARO: You are making a right.  
19 MR. FRASER: I do it.  
20 MR. JANNOTTI: Get the cameras out.  
21 MR. VINEGRA: I would gladly meet with  
22 right now more or less Mr. Lasso at the county  
23 engineer's office to look at the site and analyze it  
24 with the traffic expert from the county.  
25 MR. VENA: Have buses coming down this

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1 road.  
2 MR. NIERSTEDT: Mr. Chairman, I will  
3 accept that amendment to the motion.  
4 MR. FRASER: So there is a motion.  
5 CHAIRMAN GREET: We have a motion.  
6 MR. VINEGRA: The only thing with COA  
7 only one unit would be because they are only  
8 increasing it by nine.  
9 MR. NIERSTEDT: I apologize. Without  
10 having the actual adopted plan right now, I don't  
11 want to say where we are.  
12 MR. VINEGRA: Okay.  
13 MS. VILLAGGIO: Are we taking the word  
14 wood out of the fencing?  
15 MR. FRASER: Yes.  
16 MS. VILLAGGIO: Okay.  
17 CHAIRMAN GREET: Okay. We have a  
18 motion. Bill has made a motion. We need a second.  
19 MS. VILLAGGIO: I will second it.  
20 CHAIRMAN GREET: Roll call please.  
21 MS. LEWIS: Mayor Quattrochi.  
22 MS. QUATTROCHI: Yes.  
23 MS. LEWIS: William Nierstedt.  
24 MR. NIERSTEDT: Yes.  
25 MS. LEWIS: Gene Jannotti.

1 MR. JANNOTTI: Yes.  
 2 MS. LEWIS: Georgia MacIndoe.  
 3 MS. MacINDOE: Yes.  
 4 MS. LEWIS: Kathy Villaggio.  
 5 MS. VILLAGGIO: Yes.  
 6 MS. LEWIS: Robert Scherer.  
 7 MR. SCHERER: No.  
 8 MS. LEWIS: Michael Vena.  
 9 MR. VENA: Yes.  
 10 MS. LEWIS: Timothy Hak.  
 11 MR. HAK: Yes.  
 12 MS. LEWIS: And Chair Greet.  
 13 CHAIRMAN GREET: Yes.  
 14 MS. LEWIS: Motion carries.  
 15 MS. VILLAGGIO: Congratulations.  
 16 MR. TSAPATSARIS: Thank you.  
 17 (Whereupon the proceedings concluded  
 18 at 10:15 p.m.)  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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 2  
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