

PRINCETON ZONING BOARD OF ADJUSTMENT
Minutes of Regular Meeting
Wednesday, October 23, 2013– 7:30pm
Main Meeting Room
400 Witherspoon Street, Princeton, NJ 08540

PRESENT: Penelope Baskerville, Louisa Clayton, Michael Floyd,
Richard Kahn, Sara Segal , Doreen Blanc-Rockstrom
Barrie Royce and Steven Cohn (left at 8:15 p.m.)

ALSO PRESENT: Karen Cayci, Attorney; Derek Bridger, Zoning Officer; Jack West
Jack West, Land Use Engineer; Lee Solow, Planning Director;
Brian Stankus, IH Traffic Engineer; and Debra Rogers, Secretary

ABSENT: None

There were forty-eight (48) members of the public present.

The meeting commenced at 7:33 p.m. with Chairman Kahn reading the Open Public Meetings Act statement.

1. APPLICATION:

- a) 39 RANDOM LLC**
276 Mt. Lucas Road
Block 5404, Lot 12, R-6
C1/C2- Lot Width for new house
File No. Z13 13-092V

Present for the hearing were Lawrence Barsky, applicant; Eric Goldberg, Attorney; and Robert Gazalli, Engineer.

Attorney Cayci said all of the noticing documents were in order and the Board was in a position to entertain jurisdiction of the application.

Attorney Cayci swore in Derek Bridger, Princeton Zoning Officer.

Mr. Bridger reviewed his memo saying the applicant has applied for a c1 hardship variance and in the alternative a c2 variance to develop a single-family residence on the lot. He said the single-family use is permitted in this zoning district. He said the required lot width is 85 feet and this lot has 80 ft therefore variance relief is required. He said the applicants would like to demolish the existing structure and rebuild a new home on the lot. He said if the Board should approve the request, he would suggest that the Board place a condition on the approval that the

applicant obtain all necessary approvals through the NJDEP because a portion of lot lies within the C-1 Riparian Buffer.

Mr. Goldberg, Attorney for the applicant said that the application is very simple in nature, the applicants are requesting a 5 foot variance for the lot width because the requirement is 85 feet and this lot is non-conforming whereby the existing lot width is only 80 feet. He said the applicants would like to demolish the existing structure and rebuild a newer single-family home. He said they are proposing a home that is approximately 2700 sf. He noted that the neighborhood has a mixed variety of homes and the applicant is sensitive to that. He said the new home will meet all other bulk requirements and no other relief is being sought. He said the applicant met with the adjacent property owners and none of them wanted to sell any of their land to make this lot more conforming, nor did any of them want to buy the subject lot. He said there will be no harm to the neighborhood should the variance be granted. He also noted that with regard to the C1 variance – the lot is undersized by no fault of the owner and the lot is quite narrow. He said with regards to the C2 criteria, if the relief is not granted the lot can never be developed.

Attorney Cayci swore in Lawrence Barsky, applicant and Robert Gazelli, Engineer.

Mr. Goldberg asked Mr. Barsky if he agreed with the testimony he gave regarding this application and if he had anything else to add.

Mr. Barsky said yes, he agreed with the testimony that was given by Mr. Goldberg. He also stated that he did not have anything else to add.

Mr. Gazelli said yes, he agreed with the testimony that was given by Mr. Goldberg. He also noted that he did not have anything else to add.

Chairman Royce asked the Board if they had any questions. Hearing none, he asked if there were any members of the public who wanted to comment on this application.

Attorney Cayci swore in Henry Singer.

Mr. Singer, Laurel Circle, asked if the old Nemeth house required a variance.

Ms. Rogers, Board Secretary said yes, that lot did receive variance relief.

Mr. Singer said he has not seen any plans of the new home the applicants are proposing to build, and it makes it hard for to render an opinion without actually knowing what is being built on the lot.

Chairman Royce responded by saying it is the nature of the applicants request, with variances such as these the applicant is not required to submit architectural plans. He said the applicants attorney has stated that whatever is built will comply with the zoning regulations; if not, they will have to come back to this Board.

Attorney Cayci added under the state statute there is no site plan approval for residential structures. She said the applicant is testifying that they will comply and if they do not comply they will have to return to this Board.

Mr. Singer noted that Laurel Circle is a wet area and after the storm-sewer was installed the water flow has changed and it is causing drainage issues.

Mr. Bridger responded by saying that part of the building permit process is that the Land Use Engineer reviews the application for compliance with the storm-water drainage regulations.

Attorney Cayci swore in Jack West, Land Use Engineer.

Mr. West said that he looks at the application and if there are any issues, the applicant will be required to remediate the problem.

Mr. Singer also noted that Mt. Lucas Road is one of the oldest streets in the town and the homes are quite small and he hopes that whatever the applicant builds, it is in keeping with the neighborhood.

Attorney Cayci swore in Andrea Malcolm.

Andrea Malcolm, Mt. Lucas Road, said she is the adjacent property owner to the northeast. She also stated that it was difficult to provide input without seeing plans. She said she is concerned about the style and orientation of the new house. She said she is also concerned about the driveway location and if it will affect her privacy. She noted that the survey plan that was provided by the applicant shows her setback as only 12 feet when in actuality it is 15 feet. She said if that is wrong on the survey she is wondering what else could be wrong.

Mr. Bridger addressed the survey issue saying that it could be a typo on the plan, but it has no basis in this application. He suggested checking with her survey to verify the numbers. He said a landscape plan will have to be approved by the town arborist prior to the issuance of a building permit.

Ms. Malcolm said she is concerned about the visual impacts this structure may have on her lot – especially the placement of the windows on the house and how it will affect her privacy.

Mr. Bridger noted that the town ordinance does not address design issues.

Ms. Malcolm said she is also worried about the impact on the trees. She said they purchased their lot because of all the trees on the lot. She said the applicant has offered to purchase trees but she would like to see that become a condition of approval. She also said that drainage is an issue.

Chairman Royce suggested that Ms. Malcolm engage in a conversation with the applicant regarding the landscaping and work towards an agreement.

Ms. Malcolm said she would like it to be a condition of approval. She said she would like to work with the developer and would be grateful if the board made the landscaping a condition of approval.

Member Blanc-Rockstrom said the lots on the street are very narrow. She inquired about the width of the pathway.

Mr. Bridger said the new house would have to be 5 feet more narrow than the existing structure.

Attorney Cayci swore in Miriam Wright.

Ms. Wright said that she lives next door to one of the houses that were recently renovated and there were trees cut down and the drainage seems worse. She said she is concerned the same thing will happen here.

Mr. West said they will look at it, and if there is a drainage issue it will be addressed.

Mr. John Fisher said this is a close neighborhood where people have been friends for years and he hoped that the Board would take that into consideration.

Chairman Royce asked if there were any other members of the public who wanted to comment on the application. Hearing none, he closed the public portion of the application.

Mr. Goldberg said that the storm-water issues will be addressed at a later time. He said the applicant is proposing a 2700 sf new home ; he has been a developer in the area for a long time and will be sympathetic to the look and style of the neighborhood.

Chairman Royce this application is for a pre-existing condition and as long as it is developed according to the zoning regulations there is nothing the Board can do but approve.

Member Clayton said most of the concerns that were expressed are issues that will be dealt with at a later date and she thinks the Board can grant a c1 variance. Member Floyd seconded the motion.

Attorney Cayci asked if Member Clayton wanted to amend her motion to include the condition that the approval is conditioned upon the applicant obtaining NJDEP approvals as necessary and also that the new structure must conform to all zoning regulations.

Upon motion made by Louisa Clayton and seconded by Michael Floyd, a motion was made to approve the application of 39 Random LLC as it has been presented to the Board with the conditions that the applicant obtains any NJDEP approvals as required for the repairian zone and that the new structure conforms to all of the other zoning regulations as outlined for the zoning district.

ROLL CALL: **Aye** **Penelope Baskerville**
 Aye **Louisa Clayton**
 Aye **Michael Floyd**
 Abstain **Richard Kahn**
 Aye **Sara Segal**
 Aye **Steven Cohen**
 Aye **Barrie Royce**

Chairman Royce and Member Cohen left the diaz at 8:15 p.m.

b) 255-257 NASSAU/ROI RENOVATIONS AND DEVELOPMENT

255 Nassau Street
Block 48.01, Lots 7 & 8, SB Zone
Preliminary/Final Major Site Plan with Use Variance and various bulk variances
File No. Z13 13-029PUV

**PLEASE SEE THE ATTACHED TRANSCRIPTS AS THEY WILL BE USED AS
THE OFFICIAL RECORD FOR THIS APPLICATION.**

Upon motion made by Penelope Baskerville and seconded by Sara Segal, a motion was made to deny to the use variance request of 255 Nassau LLC.

ROLL CALL: **Aye** **Penelope Baskerville**
 Nay **Louisa Clayton**
 Aye **Michael Floyd**
 Aye **Sara Segal**
 Aye **Dorcen Blanc-Rockstrom**
 Aye **Richard Kahn**

2. ADJOURNMENT:

Upon motion made by Michael Floyd and seconded by Penelope Baskerville, a motion was made to adjourn the meeting at 10:57 p.m.

ROLL CALL: **Aye** **Penelope Baskerville**
 Aye **Louisa Clayton**
 Aye **Michael Floyd**
 Aye **Steven Cohen**
 Aye **Sara Segal**
 Aye **Doreen Blanc-Rockstrom**
 Aye **Richard Kahn**

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Debra Rogers".

Debra Rogers, Secretary

Date Approved: December 11, 2013

PRINCETON ZONING BOARD OF ADJUSTMENT
REGULAR MEETING AGENDA
Wednesday, October 23, 2013 7:30 P.M.
Municipal Complex - Main Meeting Room
400 Witherspoon Street
Princeton, New Jersey

IN RE: :
: :
255-257 NASSAU/ROI :
RENOVATIONS AND :
DEVELOPMENT, :
: :
Applicant :
: :

B E F O R E:

RICHARD KAHN, Acting Chairman
LOUISA CLAYTON
PENELOPE BASKERVILLE
MICHAEL FLOYD
DOREEN BLANC-ROCKSTROM
SARA SEGAL
DEBORAH ROGERS, Board Secretary

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

LEE O. SOLOW, PP/AICP
DEREK BRIDGER
JACK WEST, Land use engineer
BRIAN STANKUS, Traffic engineer

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A P P E A R A N C E :

BUDD, LARNER, P.C.
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BY: LAUREN E. ALLU, ESQ.
Attorneys for the Applicant

HERBERT, VAN NESS, CAYCI & GOODSSELL, P.C.
22 Chambers Street
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BY: KAREN L. CAYCI, ESQ.
Attorneys for Princeton Board of Adjustment

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I N D E X

WITNESS

PAGE

Paul Grygiel

Direct examination by Ms. All

7

Christopher Peregoy

40

E X H I B I T S

NUMBER

DESCRIPTION

PAGE

No exhibits were marked.

1 MS. CAYCI: The board's continuing
2 this evening with the application for 255 Nassau
3 Street. I understand the applicant has, as
4 requested, did provide notice by first class mail
5 and provided an affidavit to the town confirming
6 that. It's come to my attention at the last hearing
7 we didn't mark certain staff memos as board
8 exhibits. I had advised the applicant's attorney
9 that I was going to do that this evening so I'd like
10 to indicate for the record we didn't mark at the
11 last meeting exhibit Z 1 which was sheet 3 of their
12 site plan staff. We'd like to mark as exhibit Z 2
13 Mr. Solow's memo of August 26, 2013, exhibit Z 3
14 Mr. West's memo dated July 25, 2013 revised to July
15 31st with attachments, exhibit Z 4 the SPRAB report
16 dated September 3, 2013, exhibit Z 5 traffic a
17 transportation memo, Z 6, shade tree commission memo
18 and Z 7, Princeton environmental commission memo and
19 that ends our housekeeping.

20 MR. KAHN: Okay. There was a
21 sign-in sheet from last meeting for anyone from the
22 public that wanted to speak. As we open up the
23 public portion, I think the list is over there.

24 A VOICE: Yes, it's here.

25 MR. KAHN: So if anyone is interested

1 in addressing the board when the public portion is
2 open, please sign up.

3 This case, we should redo a preview of
4 where we left off.

5 MS. CAYCI: I think that would be a
6 good idea. At the last hearing the applicant
7 presented testimony I believe from their engineer,
8 also testimony from Miss Fahmie who was a
9 representative of the developer, their architect and
10 their traffic engineer. My recollection is that the
11 applicant now wishes to begin with testimony of
12 their planner and if there's anything else in terms
13 of summary the applicant would like to add that's
14 fine.

15 MS. ALLU: Good evening. My name is
16 Lauren Allu, A-l-l-u, of the law firm Budd Larner
17 representing the applicant this evening. We are
18 here to continue our presentation of last month and
19 at this time we would like to call our professional
20 planner, Paul Grygiel.

21 MR. KAHN: Okay. Before we call the
22 witness up, we had talked about having Princeton
23 University present as a, to try and clear some of
24 the comments that we were talking about last month
25 and I think the issue was that Princeton's attorney

1 wasn't present, but I believe they are present this
2 time a.

3 A VOICE: Here.

4 MS. CAYCI: Mr. Kahn, the board may
5 want to consider allowing the applicant to complete
6 their presentation and then I thought perhaps what
7 we could do is have, I believe we do have attorneys
8 here representing neighbors and we also have
9 Princeton University's counsel. We could then open
10 it up to them for questions or comments and then to
11 the public.

12 MR. KAHN: Okay.

13 MS. ALLU: Yes, we would prefer that
14 route.

15 MR. KAHN: Okay. Fine. Shall we.

16 MS. CAYCI: Sir, would you state your
17 name for the record and your affiliation.

18 MR. GRYGIEL: Certainly. Good
19 evening. My name is Paul Grygiel, last name spelled
20 G-r-y-g-i-e-l. I'm a principal of Phillips, Preiss,
21 Grygiel Planning and Real Estate Consultants. We're
22 located in Hoboken, New Jersey.

23 MS. CAYCI: I need to swear you in.
24
25

1 PAUL GRYGIEL, being duly sworn, testified as
2 follows:

3 DIRECT EXAMINATION BY MS. ALLU:
4

5 Q. Mr. Grygiel, can you tell the board
6 about your qualifications?

7 A. Certainly. I'm a licensed
8 professional planner in the State of New Jersey.
9 Also a member of the American Institute of Certified
10 Planners. In terms of my educational background I
11 have a Master's degree in regional planning from the
12 University of North Carolina at Chapel Hill, a
13 Bachelor of arts in urban studies from Rutgers
14 University. As I mentioned, I'm a principal with
15 Phillips, Preiss, Grygiel. We're planning and real
16 estate consultants. In that capacity I represent
17 both municipalities as well as development
18 applicants. In terms of applications, I've been
19 accepted as an expert before over one hundred boards
20 throughout the state of New Jersey. As far as
21 municipalities go, I prepare zoning regulations,
22 redevelopment plans, master plans, particularly for
23 municipal, built up municipal areas, suburban areas,
24 urban areas, you name it, Maplewood, Hoboken,
25 Millburn, numerous other municipalities throughout

1 New Jersey as well as in New York State. And lastly
2 I have a working knowledge of the various issues
3 related to this application.

4 MS. ALLU: Mr. Chairman.

5 MR. KAHN: Yeah, you're accepted.

6 Q. Can you describe the scope of the work
7 you were retained to undertake?

8 A. Yes. I was retained by 255 Nassau
9 Corp., to check variances, namely the D 1 use
10 variance and C variance, multiple C variances.

11 Q. Have you reviewed the application and
12 the related documents?

13 A. Yes.

14 Q. Including the site plan?

15 A. Yes, I have. As typical for this type
16 of application, I've reviewed the materials
17 including the site plan, architectural plans,
18 various other documents submitted in support of the
19 application as well as review materials from the
20 board's professionals. I visited the site and
21 surrounding area on multiple occasions and also
22 reviewed the relevant sections of Princeton's zoning
23 ordinance and master plan.

24 Q. Can you describe the property and the
25 surrounding area?

1 A. Yes. Just briefly because there's
2 been some time since we've heard about this
3 application, just to recap some key issues.
4 Property is identified as block 4801 lots 7 and 8.
5 It's on the south side of Nassau Street, that's a
6 state highway, Route 27 at its intersection with
7 Pine Street. Just to point out it is a two lane
8 road. There's one lane in each direction. So when
9 you say state highway, it's not the typical state
10 highway that most people think of. There are some
11 on street parking spaces nearby as well.

12 The lot itself is 37,500 square feet
13 in area. It's currently developed with a two story
14 building facing Nassau Street with a one story
15 portion in the rear and one unique factor on this
16 building is it's well set back from Nassau Street,
17 56 feet from the right of way line.

18 Currently the building is occupied by
19 an exercise studio and two residential tenants. It
20 was formerly used as a grocery store. One other key
21 factor is there are nine parking spaces currently
22 located between the building and the street or in
23 the front yard area. So there's certainly some
24 paving and activity adjacent to Nassau Street
25 currently. Additional parking spaces are also

1 located on the side of the building.

2 One other last factor to point out
3 we've heard quite a bit about is the existing
4 parking lot does not have direct access to Nassau
5 Street currently, but instead it connects through an
6 access way located on adjacent lot 16.

7 Q. Can you describe the neighborhood land
8 uses, other land uses in the zone?

9 A. Yes. Property is in the SB, service
10 business zone. This is on the fringe of downtown
11 Princeton. There's a mix of land uses here. That's
12 a bit different than you find in the core of the
13 downtown area. There's commercial, residential and
14 institutional uses. Of course the university is to
15 the rear of the property, but along Nassau Street
16 you have primarily commercial uses. There's a new
17 mixed use building located directly to the west.
18 It's three stories in height, although it actually
19 has the first floor somewhat elevated to allow
20 parking underneath. So it's a rather sizable
21 building. There also is a vacant commercial
22 building to the east. The other uses nearby include
23 a couple of gasoline service stations, some
24 residential beyond that, those two stations. And as
25 I mentioned, the university is located to the south.

1 permitted if the circumstances were right in this
2 zone. But the crux of the case is that ground floor
3 offices are not permitted other than medical and
4 dental offices. That's why a D 1 use variance is
5 required.

6 Q. Can you describe what a D 1 use
7 variance is?

8 A. Yes, municipal land use law at section
9 70D 1 permits boards of adjustment to grant
10 variances pertaining to uses that are or principal
11 structures that are not permitted in the zone. D
12 variances can only be granted in particular cases
13 for special reasons. That's the language that comes
14 out of the municipal land use law. And what that
15 means is one of three things, either that the use is
16 inherently beneficial, that there would be an undue
17 hardship if the property owner is compelled to use
18 the property in conformity with the permitted uses
19 in the zone, or that the site's particularly suited
20 for the proposed use. Also, the negative criteria
21 must be met, that there be no substantial detriment
22 to the public good and no substantial impairment to
23 the zone plan or zoning ordinance of the
24 municipality, and lastly for use variance is also
25 something called the enhanced quality of proof in

1 accordance with the Medici case must be addressed.
2 Essentially that the grant of a use variance is not
3 inconsistent with the intent and purpose of the
4 master plan and zoning ordinance.

5 Q. The applicant is setting forth two
6 separate arguments to justify their use variance.
7 One of these is the particularly suitable standard.
8 Can you describe that?

9 A. Sure. The particular suitability
10 standard has been around for sometime. As I
11 mentioned, it's one of, the case law has established
12 it's one of three tests, so to speak, that could be
13 utilized to grant a use variance. There is though a
14 very recent New Jersey Supreme Court case that's
15 Price versus Hameggi out of Union City which
16 particularly addresses this standard. And the
17 inquiry in that case was whether a use variance
18 should be granted and whether, you know, how the
19 particular suitability is defined and that case
20 found that's an inherently fact specific and site
21 sensitive finding. That is previously there's some
22 cases that talked about looking whether they're
23 alternative locations where a use could go or
24 establishing a need in a particular location. The
25 court found in Price V Hameggi that that's not as

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21 sensitive finding. That is previously there's some
22 cases that talked about looking whether they're
23 alternative locations where a use could go or
24 establishing a need in a particular location. The
25 court found in price V Hameggi that that's not as

1 important as looking at the factors affecting a
2 particular site, the existing layout, the location
3 of the property, or other factors that impacted
4 suitability for various uses. So again it doesn't
5 demand that you have to say the, you know, this is
6 the only location where you can build a particular
7 use. It's whether it's suitable or particularly
8 suitable for a particular use.

9 Q. The second planning justification is
10 based on undue hardship or economic inutility. Can
11 you explain that?

12 A. Yes. This is, as I mentioned, the
13 hardship is somewhat different than you just heard
14 on the previous case with regards to C variances,
15 that's a hardship due to the width of a property,
16 depth or environmental factors, that type of thing.
17 In this case it's dealing with economic inutility.

18 So this particular property what we're
19 dealing with is the NJ DOT has certain restrictions
20 on access. When they're combined with the issue
21 about permanent access from Princeton University on
22 lot 16, the zoning regulations really limit what
23 could possibly be built on this property. We're
24 dealing with conflicting, you know, objectives of
25 trying to have unified access between two properties

1 yet allowing reasonable use of the property. And
2 when you look at the, those different
3 characteristics, there's very limited overlap
4 between the uses permitted by zoning and how big
5 they can be, what uses would be permitted by the NJ
6 DOT and how large they could be, and really what's
7 realistic from a market perspective and from the
8 arrangement of the building on the site currently
9 due to its lack of visibility and the fact that it's
10 of course the rear, at least it's a deep property,
11 it's a building that exists well back of the street.

12 So it can be argued that these
13 restrictions resulted in exceptional burden and
14 limitation on what could possibly be located on the
15 side and I think it's important to note, these are
16 unique factors affecting this property. It's not
17 something that applies broadly throughout the SB
18 zone.

19 Most properties either can access
20 Nassau Street themselves or have other permanent
21 access agreements. This property for a number of
22 reasons unfortunately does not have that luxury and
23 is dealing with having to either gain that access
24 one way or the other, but either way, there's issues
25 that certainly limit the permitted uses on the site.

1 Q. Can you explain the positive criteria
2 associated with this application?

3 A. Certainly. So I think there are two
4 aspects. First as I mentioned the hardship issue.
5 Not going to talk much more about that, but we've
6 heard some of the testimony from other witnesses
7 regarding the limitations on the size of retail that
8 can be located on the property. So I think that
9 certainly is a consideration, but I'd like to focus
10 more on the site's particular suitability.

11 In this case more specifically for
12 office use on a portion of the ground floor, what
13 we're looking at is a zoning ordinance that is
14 intended to provide for a lively and vital edge of
15 the downtown area. And in this case the applicant
16 is proposing a permitted use, a bank, in the most
17 visible portion of the site closest to Nassau
18 Street, but the remainder of the first floor is
19 really limited. It's set back from the street, not
20 visible. Again at its closest point the building is
21 nearly 60 feet back from Nassau Street. As you go
22 further back it's essentially invisible from passing
23 traffic, whether pedestrians or people in cars.
24 It's our opinion that small office spaces would be a
25 good fit for this location. You know, what are we

1 talking about here? Probably design professionals,
2 architects, engineers, that type of thing, research
3 or marketing firms, nonprofits, perhaps management
4 offices for the property owner. Small scale space
5 can fill an area that would not be as appropriate
6 for retail, again given the site's existing
7 conditions. I would note that in downtown Princeton
8 there really are few opportunities for new office
9 space to be built or that exist currently. Most of
10 the space that's around the area is older, you know,
11 converted homes in some cases or older buildings
12 that aren't ADA compliant or have other issues that
13 do not allow for modern new office space for various
14 types of small business users.

15 So I think there would be some
16 benefits to this portion of downtown Princeton from
17 having an office in this location.

18 Some other positive aspects, office
19 spaces are typically quiet and do not add to truck
20 traffic. They're Mondays through Friday daytime
21 uses, no evenings or weekends generally. In fact
22 compared to retail uses I think you have
23 significantly lesser impacts in terms of traffic,
24 trucks, and other concerns that neighbors typically
25 have.

1 Now, while it might be possible to at
2 least keep the first floor to medical or dental
3 users I don't think there are any potential benefits
4 from doing so in accordance with the zoning and this
5 is because a medical or dental office would have the
6 same type of activity, but probably more activity
7 with patients coming and going as a regular office
8 space would, nonmedical or dental office space.

9 There would be no different appearance from a street
10 to make it more compatible with the retail
11 streetscape. Really there's nothing that jumps out
12 to me to make the medical or dental use any
13 different from an urban design perspective or from
14 the perspective of adding vitality to this portion
15 of Princeton.

16 So just to summarize on the positive
17 criteria I think the site is particularly suitable
18 for the limited office use again due to the unique
19 arrangement of the building on the lot, it's set
20 back from the street, it's limited visibility. So
21 for those reasons I think certain purposes of the
22 municipal land use law would be met. Purpose A,
23 promoting, excuse me, encouraging municipal action
24 to guide the appropriate use or development of all
25 lands to promote the public health, safety and

1 general welfare. The reasons for that are that the
2 application will allow for the redevelopment of a
3 site that's currently in somewhat fair condition.
4 It's not the most attractive site currently. The
5 uses that are in there are not consistent with the,
6 you know, more vibrant types of uses found nearby in
7 that part of Princeton. It would also improve the
8 appearance of the property, both by restoring and
9 enhancing the appearance of the existing building,
10 but also adding a plaza in the front area, moving
11 parking spaces outside the front yard, again just
12 trying to clean up the site to make it more
13 consistent with what the zoning intended, also
14 enabling new housing which is a permitted use on the
15 upper floors including affordability. It's clearly
16 a public benefit to having both housing but
17 particularly affordable housing in this location.
18 So for that purpose I think purpose G of the land
19 use law would be met, that's providing sufficient
20 space in appropriate locations for commercial,
21 residential and other uses. This is a great
22 location for mixed use buildings. Your zoning
23 ordinance says so. Again we're looking for a
24 limited deviation from it, but I think the office
25 and residential uses would work well together and

1 would also benefit the surrounding area and having
2 people living there on evenings and weekends, also
3 having people working there during the day so you
4 would have customers from nearby restaurants and
5 stores, you would have the vitality the SB zone is
6 looking for. And lastly, promoting a desirable
7 visual environment, purpose I of the municipal land
8 use law. Again significant aesthetic improvements
9 compared to existing conditions, public plaza, you'd
10 have some shade trees, landscaping added to the
11 site, generally cleaning it up and making it look
12 more in keeping with the new building directly next
13 to it.

14 Q. Can you explain how there are no
15 negative criteria associated with this application?
16 Please start with the impact on public good.

17 A. Sure. So as I mentioned, negative
18 criteria involves two aspects. The first is the
19 impact on the public good and in this case I don't
20 believe there would be substantial detriment to the
21 public good from the use variance that's being
22 requested. I say that because any development of
23 the property will have impacts. A three story
24 building or in this case technically a four story
25 building certainly would be impactful, but it's what

1 the zoning ordinance calls for. It allows for
2 buildings up to 45 feet in height. So we need to
3 look at whether office compared to permitted uses
4 would have any substantial detrimental impacts.

5 In this case I think the site can
6 accommodate the office space, we're talking about
7 5,400 square feet of office. It's a limited amount.
8 Parking would be provided for it. Property nearby
9 are all nonresidential zones. It's surrounded by
10 the SB zone, NB zone and the E 3 zone. There are no
11 single family residential properties bordering the
12 subject property.

13 Despite the fourth floor, and we'll
14 hear about a variance shortly for an additional
15 floor, the building height is similar to what's
16 around it in the surrounding area and complies with
17 the overall height in terms of feet. I don't think
18 the use variance causes any traffic impacts compared
19 to permitted uses. I think we've heard testimony
20 that traffic and parking can be addressed. There's
21 no more impacts of light, noise or anything else
22 because again we're only dealing with office space
23 versus retail or medical, dental office, other
24 permitted uses. And again I believe office is
25 actually less intense in terms of traffic and other

1 factors than a permitted use would be.

2 Lastly in terms of negative impact
3 being reduced, we're getting rid some front yard
4 parking spaces and trying to improve the appearance
5 of the building. So I think it would not detract
6 from the character of the surrounding area compared
7 to a permitted use on the entire property.

8 Q. Could you please explain the impact on
9 the zone plan and zoning ordinance?

10 A. Sure. I think there's some issues
11 here with regard to zoning that may seem somewhat
12 counterintuitive. The SB zone again was recently
13 amended. I understand it was a process that took
14 sometime and there was lot of thought put into it.
15 However, zoning is a process that cannot always deal
16 with specifics of every individual site. It can
17 even with the best intentions not always work the
18 way it's intended to. There may be properties that
19 just don't fit into the scheme of things.

20 In this case I think we're dealing
21 with that. The applicant's proposing a use that's
22 nonpermitted on 5,400 square feet of the building's
23 floor area. That's 18 percent. So the remaining 80
24 plus percent of the building will be utilized by
25 permitted uses, residential, and a bank. So we're

1 talking about just a small portion of a building
2 that is nonpermitted.

3 As far as consistency with the master
4 plan and zoning ordinance, the Princeton community
5 master plan does raise a number of issues that I
6 think are addressed to some extent by this
7 application. First of all, it recognizes there's a
8 shortage of vacant developable land to meet
9 competing needs. Princeton is only so big. There's
10 only so many locations in the near downtown to
11 provide for various types of uses.

12 In this case the proposal would
13 provide an opportunity for housing, particularly
14 again a different type of housing, not single family
15 detached units, but multi-family within walking
16 distance of stores, shops, employment opportunities,
17 the university, really a terrific location for it.
18 It would also be housing that could be utilized by
19 either senior population or others that there's a
20 shortage of that type of housing for. We also
21 maintain, excuse me, provide for affordable housing
22 as is proposed. Lastly, in terms of ensuring the
23 economically healthy downtown. The choice is
24 determining what makes the most sense for this site
25 in terms of its existing conditions. So if you do

1 not allow for some flexibility with the uses you may
2 be faced with a property that sits there today
3 remaining as it is. It will not be redeveloped.
4 You have an applicant who's looking to redevelop the
5 property consistent in many regards, most regards
6 with the SB zoning. So I think that in that,
7 considering that, that there are a number of
8 positive aspects of the application that will not be
9 a substantial impairment to the municipal zone plan
10 or zoning ordinance.

11 Just a couple of other things I'd like
12 to add and I realize I have a lot to say, but if you
13 would just hear me out. We need to address the
14 issue of Medici reconciliation, why again if you
15 just update the zoning should you allow for this
16 deviation. In this case the applicant is proposing
17 a permitted use in the portion of the building
18 closest to Nassau Street. So a bank would be there,
19 all the requirements of a bank would be met. That's
20 very consistent with the zoning. The residential up
21 stairs is consistent with zoning. Again back to
22 what I said in the beginning. There are some
23 factors on this site, the property depth, the fact
24 that the parking only exists on one side of the
25 building that's being renovated limit the possible

1 arrangement for retail or other types of uses. I
2 think the rear portion of the building is not an
3 appropriate location for an additional retail use.
4 And again as I mentioned before, medical and dental
5 uses really don't get you anymore beneficial impacts
6 compared to what's proposed.

7 Q. The applicant is also requesting
8 certain C or bulk variances as part of its
9 application. Can you please explain what a C
10 variance is?

11 A. Sure. The board is I'm sure aware of
12 the C variances for deviations from the bulk
13 standards or other standards of the ordinance, and
14 either one of two things must be addressed to get a
15 C 1 or hardship variance as I just mentioned or C 2
16 for the purpose of the zoning ordinance and the
17 benefits must out weigh the detriments. And again
18 the negative criteria must be addressed for C
19 variances as well.

20 Q. Would you please address the variance
21 for maximum number of stories?

22 A. Certainly. And just so the board is
23 clear, there's a list of C variances on page 2 of
24 Mr. Solow's memorandum from August 26, 2013. I
25 agree with that those are all required and will

1 essentially list all the variances in the order that
2 they are in Mr. Solow's memo.

3 As far as the number of stories here,
4 the application is proposing technically four
5 stories where three is permitted. As I mentioned,
6 technically it's because what we're dealing with is
7 the area underneath the pitched roof. The applicant
8 is seeking to expand the building upward and have a
9 peak roof on top, which is generally more attractive
10 than a flat roof, but because of the existing width
11 of the building the roof needs to have a certain
12 pitch and there's room that's available underneath
13 there. So the applicant is proposing the third
14 floor residential units should have loft space. So
15 it's really not a separate floor. There aren't
16 additional units. It's just adding an amenity that
17 will make those units more attractive, more
18 marketable and again take advantage of space that
19 already exists.

20 So in other words if you remove the
21 so-called fourth story the building still complies
22 with the overall height requirements. It would not
23 look any different. It would be under 45 feet tall,
24 would have a peaked roof and look essentially
25 identical. In fact it would look identical from the

1 street or from neighboring properties.

2 So again this variance is only dealing
3 with the uniqueness of a building that's well set
4 back from Nassau Street and is being redeveloped in
5 its existing location. One last thing on that
6 variance. There will be no increases in the number
7 of parking spaces required due to the additional
8 story. Again these aren't additional units so
9 there's no change in the amount of cars that would
10 be on site, the amount of parking that's required
11 for the use.

12 Q. Would you please address the variance
13 for the trash enclosure setback?

14 A. Yes. This is a 25 foot requirement
15 for a trash enclosure. Our engineer testified it's
16 a three foot setback provided. The issue is the
17 enclosure proposed in the rear corner of the
18 property, three feet often the property line. And
19 if I can refer to an exhibit here, just briefly
20 refer to exhibit. Just referring to exhibit A 3 if
21 you're looking at the site plan, the upper right
22 corner is where the traffic, will be the southeast
23 corner of the site is where the enclosure is
24 proposed, and this is just the most appropriate
25 location to allow for truck access and to separate

1 that trash enclosure from the building. My
2 discussions with our engineer indicate that you
3 could relocate the trash enclosure adjacent to the
4 building or to comply with the setbacks, but really
5 there's no benefit to have that in that location and
6 that this is simply just a most appropriate place on
7 the site to locate it, but also any permitted use
8 would have the same issues here if they were using
9 the property. Essentially the parking lot laid out
10 as it is, we believe it's appropriate but certainly
11 there could be a change in the location to have it
12 comply if need be, but we believe in this case given
13 that there's no direct adjacent residential uses or
14 other uses that's impacted by the trash enclosure,
15 it's not a significant negative impact.

16 Q. Isn't it accurate that putting the
17 trash enclosure against the building would cause a
18 safety issue?

19 A. My understanding is there would
20 certainly be some issues regarding safety, noise and
21 other things from having trucks right there, but
22 again this is really a limited use. It's not a high
23 intensity use. It's a typical residential trash
24 enclosure.

25 MR. KAHN: Can you elaborate why you

1 think it's a safety issue?

2 MS. ALLU: Having garbage up against,
3 garbage enclosure up against a building what if
4 cigarettes butts and whatever will go in there --

5 MR. KAHN: So it's a fire hazard?

6 MS. ALLU: I would think it would be a
7 fire hazard, yeah, having the trash container
8 against the building. We can ask our engineer or we
9 could ask your engineer.

10 Q. Would you please address the variance
11 for minimum side yard setback?

12 A. Yes. And this is again a limited
13 deviation related to the existing arrangement of the
14 building on the property. The requirements are
15 either zero feet provided or ten feet is provided if
16 there is a setback. Essentially you can't have two,
17 three feet. You have to either have zero foot
18 setback adjacent to a neighboring property or you
19 have to have a minimum of ten feet.

20 In this case the existing building is
21 for the most part, excuse me, located directly
22 adjacent to the property line, but there's a small
23 portion where there's a two foot setback proposed in
24 the west side of the building if the front.

25 As the applicant's engineer testified,

1 the location where the setback is proposed, see it
2 just barely here in brown, the idea was simply to
3 locate the electrical meters on the side of the
4 building so they're not facing Nassau Street. So
5 essentially from the entire length of the building
6 it complies with the zero foot setback requirement,
7 but at one location it proposed to have a deviation
8 really just for aesthetic purposes. The applicant
9 could certainly relocate the electrical meters to
10 the front of the building, but we believe it would
11 be less appropriate to have them there and for that
12 reason we're seeking a variance for a very small
13 portion of the building.

14 Q. Would you please address the variance
15 for illumination?

16 A. This is a very straightforward
17 request. Minimal accent lighting is proposed, I
18 believe it's appropriate as the building is set back
19 again nearly 60 feet from the street. There's also
20 some safety lighting proposed that's very minimal.
21 But the applicant again will defer to the board as
22 to whether your concerns about the limited lighting
23 that's proposed. I think the safety lighting
24 certain makes sense and I don't think there would be
25 any impacts from providing lighting for that

1 purpose.

2 Q. Would you please address the variance
3 for parking in the front yard?

4 A. Yes. Portions of two spaces are
5 proposed to slightly encroach on the yard and you
6 can see up in the northeast corner of the site, go
7 over again, where there are portions of two spaces
8 closest to Nassau Street on an angle that encroach
9 into the 15 foot front yard setback. The
10 requirement is either that we offer by parking in
11 the required setback or between the building and the
12 street. In this case we have a couple spaces there
13 as well as the handicapped spaces which are next to
14 the building. I think that's an appropriate
15 location for the handicapped spaces, but again we're
16 reducing the amount of spaces that are proposed in
17 front of the building or within the 15 foot front
18 setback.

19 So I think in this case it is a
20 significant improvement over existing conditions and
21 the applicant is proposing an efficient use of the
22 site to provide parking by locating it towards the
23 rear.

24 Q. Would you please address the variance
25 for the parking lot entrance?

1 A. Yes. This relates to any parking lot
2 with ten or more spaces may not have its entrance
3 within 50 feet of an intersection of two streets,
4 and the Pine Nassau intersection is within 50 feet
5 that's on the opposite side, the north side of
6 Nassau Street. Really there's no way to comply with
7 this requirement given the existing conditions. If
8 you move the driveway a different direction it would
9 be closer to the lot 16 right of way. If you move
10 it further west, it's actually closer to Pine
11 Street.

12 So the applicant is proposing
13 essentially a driveway that makes the most sense
14 from a traffic engineering point of view. I would
15 just note that the Pine Street is a one way away
16 from Nassau Street so it's not going to give cars
17 coming off of there towards the direction of the
18 site.

19 Q. Would you please address the variance
20 for stacked parking?

21 A. Yes. This is the request to permit 20
22 stacked or tandem park spaces. 16 of these would be
23 assigned to residential uses, four for
24 nonresidential tenants, and it's important to note
25 this is something that's very common to assign two

1 spaces or more to a single user such as a
2 residential user or tenant in a commercial property.
3 In fact in the surrounding area there are many
4 examples of tandem parking. Now maybe not in this
5 type of site, but on single family homes and
6 multi-family, two family homes nearby you have
7 driveways that are essentially single width wide
8 where you have two or more cars parked in there and
9 the same type of movement is required to maneuver
10 cars in that type of driveway. By our count
11 approximately three quarters of the driveways in the
12 surrounding area have this arrangement. I can give
13 you more specifics on that, but essentially it's a
14 prevalent condition in the streets nearby, Pine,
15 Maple, Chestnut, Linden, all the tree streets have
16 these type of arrangements for the most part if
17 parking is provided at all on the street. So I
18 think that's part of the proof for this request.

19 But also I think there's some benefits
20 to having the stacked parking. You can reduce the
21 amount of coverage by not providing as much space,
22 you know, for example, providing more parking in the
23 front yard or essentially covering more of the site
24 to provide for the required parking spaces on the
25 property. One issue is that the SB zone does allow

1 for residential units in a building of this size.
2 It allows for commercial spaces, but if you were to
3 apply the sparking requirements, you would have the
4 same issue, that there's a limitation based on the
5 number of spaces.

6 The applicant is proposing something
7 that is commonly accepted and makes sense to provide
8 parking to individual users.

9 Q. Could you please summarize the
10 positive criteria for the requested C variances?

11 A. Yes. So just to wrap up, I've
12 mentioned C 1 and C 2 criteria. I think these
13 requested variances can be granted in accordance
14 with the C 2 criteria, that is they'll give benefits
15 from redeveloping the site with a permitted use on
16 the upper floor and nearly half of the first floor
17 which would outweigh any detrimental impacts. I've
18 talked about how they're, the proposal is consistent
19 with a number of master plan objectives, but also
20 allowing for the additional story would only make
21 the residential units more marketable, make it more
22 likely that this project would succeed. Proposing
23 tandem parking spaces allows for the provision of
24 those residential units without any impacts to
25 neighboring properties. There's really no

1 substantial detriment or impact from having two cars
2 stacked up against each other if it's for the same
3 user.

4 In terms of all the other requests,
5 they were very straightforward. Again related to
6 specific conditions on the site, whether it's the
7 trash enclosure, the setback on the side of the
8 property line, the lighting, they all relate to the
9 existing arrangement of the property, so I don't
10 think there will be any impacts that will be
11 substantial from the proposed C variance conditions.
12 Also, there are some hardship aspects given that
13 it's an existing building on the site, but I think
14 generally speaking there's overall general benefits
15 from the redevelopment of this property that
16 outweigh any detrimental impacts.

17 Q. Could you please address why there are
18 no negative impacts associated with this
19 application?

20 A. Just to be fair, I think again there
21 might be some impacts, but I think the question is
22 whether they're more substantial than would be with
23 a permitted use and whether they would be due to the
24 requested C variances. I think again overall
25 there's, you know, I said a lot of this before so I

1 won't repeat this, but the building size, just to
2 recap, is the same height that's permitted, so if
3 it's all permitted uses you can have a building of
4 this height. The set backs are consistent other
5 than a very limited deviation. Everything about
6 this project conforms to the zoning ordinance except
7 for certainly the use and then some limited
8 deviations that relate to the arrangements on the
9 property.

10 So I don't think there's anything that
11 comes from the C variances that would have
12 substantial negative impacts compared to a permitted
13 use on the property or a full compliance with the
14 zoning ordinance standards.

15 As far as of the impacts on the zoning
16 ordinance and zone plan, again the SB zone has some
17 standards, they're actually all essentially met
18 other than the number of stories and the limited
19 deviation for side yard setback. Every other
20 standard for that zone in terms of bulk is
21 addressed. Notably the height requirement, the
22 building would be again similar in appearance to
23 what's permitted in the area. There are other
24 buildings such as the neighboring Prudential
25 building that are similar in height. There's

1 buildings on Princeton's property to the rear that
2 are similar in height. So it's not that we're
3 proposing anything drastically out of character in
4 terms of the height or the size of the building
5 that's proposed. So I don't think there would be
6 any substantial impairment to the SB zone from
7 noncompliance standards given they're very limited
8 in nature and I think overall there will be no
9 substantial impairment to the municipality zoning
10 efforts or master plan from the bulk variance that
11 is requested.

12 So bottom line I think this proposal
13 is actually very consistent with the vision that
14 Princeton has for this portion of downtown and the
15 requested variances would not cause substantial
16 detriment, again compared to a fully compliant
17 building on this property.

18 Q. Is there anything else you would like
19 to add?

20 A. Just to wrap up on, just to point out
21 some benefits we've heard about from other
22 witnesses, just to recap. I think there are a
23 number of benefits that would be put forward by this
24 proposal. First the new building is generally
25 consistent with the bulk in this zone. It provides

1 for a new housing option including affordable units.
2 It's going to provide for new plaza along Nassau
3 Street where currently there's parking. The
4 renovation and aesthetic improvements to the
5 existing older building would improve its
6 appearance, would actually be a very sustainable
7 solution for reusing the existing building. And in
8 fact, you know, instead of starting from scratch,
9 tearing it down and putting something entirely new
10 there.

11 So I think it will be environmentally
12 friendly in a number of ways providing for
13 residential proximity to services and transit, again
14 providing for reuse of the existing building.

15 As far as any possible impacts, again
16 I'll say one more time, I don't think there will be
17 anymore that would result than from a fully
18 compliant building. You could have a building
19 essentially of the same size with identical uses,
20 but would still need the similar relief that's
21 proposed. The use itself is not driving the relief
22 that we're requesting.

23 So in summary I think the beneficial
24 aspects are significantly greater than any
25 detriments from this proposal.

1 MS. ALLU: Does the board have any
2 questions?

3 MR. FLOYD: I think you stated that
4 basically you had stated or implied that the revised
5 SB was developed and then we have this unusual site,
6 but is it true or are you aware whether the SB was
7 actually developed with this site on the table and a
8 main consideration?

9 THE WITNESS: I understand that there
10 was, it's a small area.

11 MR. FLOYD: Okay.

12 THE WITNESS: So it's not like we're
13 looking at a town wide zone change but.

14 MR. FLOYD: Yeah.

15 THE WITNESS: Maybe I didn't.

16 MR. FLOYD: It's not a square peg,
17 round hole if they were both looked at together.

18 THE WITNESS: Fair point. Maybe why I
19 didn't point it out enough is the issue of the DOT
20 access really is different than other properties
21 have, that combined with the Princeton access issues
22 which we'll hear about I'm sure later on this
23 evening, that limits the ability of the site to be
24 redeveloped for community uses.

25 MR. FLOYD: I wholeheartedly agree

1 that the FT is the herring, but the other things SB
2 supposed to mesh a little bit better.

3 THE WITNESS: Understood.

4 MR. KAHN: Okay. No more questions?
5 Do you have anyone else that you would like to put
6 forward?

7 MS. ALLU: No.

8 MR. KAHN: So --

9 MS. CAYCI: Mr. Kahn, I don't know if
10 any of the board professionals or consultants at
11 this time want to offer any comments or if they want
12 to hold their comments, please. Mr. Stankus.

13 MR. STANKUS: Thank you. I did want
14 to share speaking at the last hearing, but there's
15 one issue that I've neglected to bring up and I'm
16 wondering if I might ask Mr. Peregoy to discuss one
17 additional issue. In the technical report that I
18 prepared we requested a crash analysis, analysis of
19 the crash history in the area of the site. I wonder
20 if you might discuss the results and conclusions
21 from that evaluation.

22 MS. CAYCI: Mr. Peregoy, we'll swear
23 you in again.

24

25 CRAIG PEREGOY, being duly sworn, testified as

1 follows:

2 THE WITNESS: Yeah. We requested the
3 accident reports from the police department for a
4 period from January 1st, 2011, around April was when
5 we made the request, April 27, 2013, so a 28 month
6 long period and there were a total of 19 crashes and
7 most of them were parked cars. 12 of the 19 were
8 parked cars pulling in or out of the spaces or side
9 swiping a parked car. Three of the crashes were
10 somebody crossing over center line and side swiping
11 the oncoming car, obviously awaiting parking
12 maneuvers of somebody else. There was bicyclist who
13 was hit, pedestrian illegally crossing the street
14 was hit, and then there was a crash due to a rear
15 end from the gas lines after Hurricane Sandy.
16 Obviously unexpected there was a large queue of
17 traffic in the roadway after that storm trying to
18 get gas, so nothing really coming into or out of any
19 driveways.

20 So nothing that would impact this
21 site. In fact we don't have parking adjacent to our
22 site.

23 MR. STANKUS: I wanted to confirm
24 that. I think there was testimony to that effect
25 that there would be no parking along the south side

1 of Nassau immediately adjacent to the proposed
2 driveway, correct?

3 THE WITNESS: Right.

4 MR. STANKUS: Would you say there's
5 anything in this development that could exacerbate
6 that crash pattern?

7 THE WITNESS: No, I don't think so.
8 And again because you notice that it's not
9 necessarily people coming into another driveway.
10 The only change that we're making is introducing a
11 driveway and again the location where there is no
12 parking in the street and that's primarily what was
13 creating any of those crashes. It's not very many
14 actually. 19 crashes over 28 months in the downtown
15 area like that is not too bad.

16 MR. STANKUS: Okay. Thank you.

17 MR. KAHN: Do you believe that moving
18 the curb cut would cause any additional concern as
19 to the existing location in terms of the accidents?

20 THE WITNESS: No. Curb cuts, the way
21 the curb cuts line up isn't going to exacerbate the
22 accident condition or create any safety problems.

23 MR. KAHN: Any other questions?

24 MS. SEGAL: Can we ask a question?

25 Maybe you can answer the question about the curb

1 cuts. Do you think this is a problem, because,
2 about five or six curb cuts right again one after,
3 after the other on the street.

4 MR. STANKUS: Yeah. I guess in
5 reviewing, in reviewing their location to the
6 proposed curb cut I think the most important thing
7 to keep in mind or the most important thing that we
8 considered is the fact that Pine Street is one way
9 away from Nassau Street and that really greatly
10 reduces. The reason to separate a driveway from
11 another driveway or another street is because of,
12 you know, potential conflicting overlapping
13 movements and one driver maybe not getting enough
14 notice of what the other driver is doing.

15 If you had left turns coming out of
16 the proposed site and left turns coming out of Pine
17 Street at the same time, those drivers might
18 surprise each other, but because nobody is coming
19 out of Pine Street, that really reduces the number
20 of potential conflicting movements. So I think
21 that, I think that needs to be weighed in the
22 consideration of how close the driveway is to Pine
23 Street.

24 MS. SEGAL: What about pedestrians
25 walking on that side of the street? I was asking

1 what about pedestrians on the traffic.

2 THE WITNESS: You mean pedestrians
3 walking on the sidewalk across the proposed
4 driveway?

5 MS. SEGAL: Yeah.

6 MR. STANKUS: I don't know that I see
7 that the driveway space as an issue in terms of
8 pedestrians as long as there are good sight lines
9 provided between the driveways and the pedestrians
10 and it appears that, you know, based on the layout
11 of that area, the site, the site plans would be
12 clear.

13 MS. SEGAL: All right.

14 MR. KAHN: Thank you. So if you're
15 finished with your application.

16 MS. ALLU: We would like to have some
17 concluding remarks after the public portion.

18 MR. KAHN: That's what I meant, so I
19 would like to have Princeton University's attorney
20 present, because I think that some things that came
21 up with quite a few people is the issue of the
22 existing driveway, because that is what presents a
23 lot of the reason for the D variance possibly,
24 because if we had the existing access we could avoid
25 the DOT requirements which would allow us to have a

1 different use. So I think it's important that we
2 hear from the university.

3 MS. ALLU: We just will renew our
4 objection to this line of testimony because we
5 believe that the site access is within the
6 jurisdiction of the NJ DOT.

7 MR. KAHN: Okay. That's understood,
8 but still we think it's important.

9 In addition to that, there's currently
10 17 people that are signed up that would like to
11 present. It's a little bit after 9:00 and we want
12 to give people an opportunity, but we also need to
13 be fair to the time of day because we're not going
14 to run until midnight tonight and it would be good
15 if we can conclude with this case this evening, so
16 people don't have to come back again.

17 So why don't we start with the
18 university and then from there we'll see how much
19 time we have and how much time each person will be
20 able to talk and then we can go into our session.

21 MR. GOLDMAN: Thank you. My name is
22 Richard Goldman of Drinker, Biddle & Reath in
23 Princeton and I represent Princeton University.

24 At the outset I'd like to indicate
25 that the university really takes no position with

1 regard to this application.

2 MS. CAYCI: I'll swear you in.

3

4 RICHARD GOLDMAN, sworn:

5 MR. GOLDMAN: So just to recap,
6 Princeton University takes no position with regard
7 to the application before the zoning board.
8 However, we want to make sure Princeton University's
9 position has been clearly stated with regard to this
10 access easement or access right, with regard to lot
11 16. Lot 16 is essentially a driveway lot that runs
12 along the top of that diagram that's before you. I
13 don't know what exhibit number it is, but it's on --

14 A VOICE: A 3.

15 MR. GOLDMAN: A 3, and by way of
16 background, the building that you all know was one
17 time Davidson's Supermarket and at that time
18 Davidson's asked for and received a 20 year access
19 license agreement, sort of real estate law in law
20 school 101 is the difference between a license
21 agreement and an easement, and the primary
22 difference between a license agreement and an
23 easement is that a license agreement is for a term
24 of years, an easement is in perpetuity. As you may
25 know, perpetuity is a very long time. It's forever.

1 So historically the Davidson
2 Supermarket operated under a 20 year license
3 agreement.

4 MR. KAHN: Excuse me, what year was
5 that first begun?

6 MR. GOLDMAN: I don't remember the
7 exact period, but it was probably, I want to say
8 the, I'm going to say in the late '70's probably.
9 The license agreement had actually expired and
10 although the building continued to operate really it
11 was a continuation of that licensing provision. And
12 things were going along fine.

13 Apparently in and around the end of
14 2011, that's about two years ago, the university was
15 contacted that the owner wanted to put a temporary
16 tenant in the facility known as CrossFit and that in
17 order to get their occupancy rights it needed, they
18 needed to confirm their access rights to use the
19 driveway. I got involved around that time and in
20 December, actually December 30th of 2011 I wrote to
21 Linda Fahmie to indicate that the university would
22 provide a temporary access permit for the CrossFit
23 facility. I drafted the temporary access permit. I
24 sent it over. We also indicated that we were not in
25 a position at that time to begin to consider her

1 request for a permanent easement because we didn't
2 know what they were proposing yet. We needed to
3 know much more about the zoning, the plan and the
4 like, but at that point we would accommodate this
5 temporary easement for CrossFit.

6 MR. KAHN: Was there a duration on
7 that temporary license?

8 MR. GOLDMAN: There was, but let me
9 come back to that. And so we prepared a proposed
10 temporary easement. We sent it along. It was
11 rejected and returned to us edited, marked up to be
12 converted into a permanent easement, and with a note
13 indicating that the owner of the building could not
14 accept this temporary easement because it would
15 derogate from the permanent easement rights that
16 they held for the property.

17 We did title searches at the time. We
18 could not find any permanent easement. All of the
19 agreements, all of the records we had indicated a
20 license. So I wrote to Linda Fahmie and at times
21 her counsel saying if you have any documentation
22 that establishes that there's an easement there,
23 please share it with us and we will react
24 accordingly, but I can't find it.

25 We went back and forth for a bit. We

1 were never, in our mind there was never a
2 confirmation that an easement document had ever been
3 prepared, executed, filed, you know, you name it.
4 No easement document ever existed.

5 However, as early as January 17th,
6 2012 I wrote to counsel for the owner and I
7 indicated that the university continues to be
8 willing to provide access to their property, to this
9 property on this lot 16 as it had been granted for
10 Davidson's and so we proposed initially a 20 year
11 license and in that same writing we indicated that
12 we would not only consider the 20 year license, we
13 would also provide for one 10 year extension which
14 made it a 30 year license.

15 On, there was some exchanges of
16 e-mails that were happening sort of fast and
17 furiously in that month of January and again on
18 January 17th in a follow-up e-mail to counsel I
19 indicated that university would be willing to
20 provide for additional extensions of the license
21 agreement if that was what would be helpful to the
22 owner. In other words, the 30 year license
23 agreement plus additional extensions, whatever they
24 needed frankly, and I can say to you that I had
25 actual personal conversations with Miss Fahmie in

1 and around that time and I remember explaining to
2 her that my office which is in Forrestal Center that
3 is built on a series of class A office buildings,
4 expensive, big office buildings, and a lot of them,
5 and they're built all on ground leases similar to a
6 license agreement, it's a period of time that you
7 have the right to maintain your buildings and I know
8 I mentioned to her that the ground leases at
9 Forrestal Center were 60 years and I said if that's
10 what you need to get your financing, financing is 30
11 years, if you need 60 years, I can probably get you
12 60 years, but I can't get you a permanent easement.
13 The university does not want to do a permanent
14 easement. It's against their policy, again because
15 the university, unlike most owners, is an eternal
16 organization. It's been there for hundreds of
17 years. It expects to be there for hundreds of years
18 into the future and when you grant an easement
19 today, you can't predict what your needs will be 200
20 years in the future. But once you grant it, it's
21 gone, it's permanent, perpetuity.

22 Well, there's lots of back and forth
23 and conversation around that time. A 60 year
24 license agreement wouldn't be satisfactory to the
25 owner. They had to have an easement. And we did

1 indicate at that time that we would at least
2 undertake the investigation to see what that would
3 entail and we would present it to the real estate
4 committee at the university.

5 So as you could imagine there's a
6 process that you go through when you want to sell
7 land or grant permanent rights in land, but land
8 owned by the university and so we did that process.
9 We actually undertook a site development
10 investigation of the property that is before you to
11 see what would happen in terms of its development
12 potential if it did or did not have the easement or
13 license, the access, and then we engaged an
14 appraiser to look at the value of an easement in
15 light of those impacts in terms of development
16 potential.

17 We prepared the materials that, and
18 this is all internal. I will say to you this is not
19 something we had yet prepared to share with the
20 owner. Because first we have to go through our
21 process and we presented these materials, the
22 appraisal, the values, the impacts to our process at
23 the university and to our real estate committee and
24 the real estate committee said no, you know, we were
25 not, we're not going to change our policy. We're

1 not going to grant a permanent easement, but we are
2 happy to accommodate access to this property owner
3 and we are willing to grant a long-term license
4 agreement.

5 That was confirmed both in e-mail and
6 by letter from John Ziegler at the university to Lou
7 Carnevale, the last letter being January 31, 2013.
8 So basically a year of this had gone on. And on
9 that letter John Ziegler confirmed that the
10 university was not willing to provide a permanent
11 easement, but would provide a very long-term license
12 agreement.

13 After that letter was sent the next
14 thing we heard was in July that this application had
15 been filed. There was no further inquiry or
16 requests to us.

17 So whatever the decision of this board
18 is, we would like it to be based on at least the
19 facts as we understand them to be and as we
20 understand them to be. Had this applicant asked us
21 for a long-term license agreement and as I indicated
22 for them it could have been as long as 60 years,
23 might have even been longer, I mean nobody asked,
24 but had they asked, if they had come to us and said
25 we need 75 years of a license agreement or, you

1 know, three 20 years terms and extensions, however
2 you want to structure it, we had indicated to them
3 we are open to help them with a long-term access
4 agreement in the form of a license for a set period
5 of time but not forever. And I think that is really
6 in sum the position of the university.

7 MR. KAHN: Any questions?

8 MR. FLOYD: Just so I understand,
9 whether it be the 20 year or the ten year renewal or
10 a longer term which isn't referenced in the letter
11 from Mr. McCay, how hard, was this condition doing
12 anything that the university have any outs in year
13 40 if it was going to be 60.

14 MR. GOLDMAN: No.

15 MR. FLOYD: It would be a hard
16 renewal?

17 MR. GOLDMAN: Would have been a hard
18 license agreement for the period of years at issue.

19 MR. FLOYD: That's quite different
20 than what we have been told coming down. All right.

21 MR. KAHN: So there's no intent or
22 there was no intent up to this point that Princeton
23 would have or would require to have that license
24 back at the end of the period that --

25 MR. GOLDMAN: Correct. I mean

1 certainly if it was, let's say it was a 60 year term
2 had been agreed upon. As we got closer to the 60
3 years everyone would reevaluate where they were. If
4 this building by then had deteriorated and was a
5 mess and was problematic, we would have to talk
6 about that. If it was a going concern, things
7 remain the same, there's no reason to suspect, as we
8 were willing to do now, that as we did with the
9 Davidson license, that we would not extend the
10 license. There was never an indication that said
11 that's a hard end and once that comes to an end, you
12 know, we own the right of way, you're done. That
13 was never put out there and that was not our
14 intention. I said that a number of times in the
15 conversations I had, that a little faith, 60 years
16 gets you pretty far along, and assuming all sort of
17 similar things are going on, it's not going to be a
18 problem in the future.

19 However, I mean to be silly about it,
20 if you, in 60 years you converted that into a bunch
21 of X rated book stores and an offensive use, we
22 might have to consider not extending the license.

23 MS. ALLU: May I ask a question?

24 MR. KAHN: Sure.

25 MS. ALLU: Mr. Goldman, is lot 16

1 already encumbered by an easement?

2 MR. GOLDMAN: Lot 16 is encumbered by
3 an easement. It was encumbered by an easement when
4 it was acquired by the university. We didn't have a
5 choice when we acquired it for emergency access to
6 the campus. It's encumbered by an easement not for
7 this property, but from the adjoining property on
8 the other side and again we're not happy that we
9 have to have that easement there, but we have it.
10 It's how we bought the property.

11 So to give you a wild example, let's
12 say in a hundred years we bought that property, the
13 adjoining property that held that easement. Well,
14 then there would be no easement. If we granted
15 another easement, right, you would have another
16 easement that you would have to deal with. So we
17 don't want to expand the restrictions on our
18 property in perpetuity, but as a good neighbor, we
19 were willing to provide an unfettered access,
20 ingress, egress, license agreement and as I said,
21 although formally we had put out there for a period
22 of longer than, extensions beyond 30 years in,
23 conversations I said, listen, I'm sure we could get
24 up to 60 or more. Tell us what you need.

25 MR. KAHN: You don't see any reason

1 not to grant access to this accessway at this time?

2 MR. GOLDMAN: Not to do what?

3 MR. KAHN: You don't foresee any
4 reason that the university will not permit access
5 along this --

6 MR. GOLDMAN: We would absolutely
7 provide access along this way.

8 MR. KAHN: But there's nothing at this
9 point in time that you foresee that you would need
10 to take back that license when the license expired?

11 MR. GOLDMAN: Absolutely nothing. We
12 have no really planned use for that driveway. It's
13 an emergency access for us. It needs to be there.
14 But yes, there is nothing in the works. This is
15 not, I'm not trying to fool somebody into building a
16 building and then take away their access. If we
17 committed to them to a long term license as we
18 proposed, they would have those rights and there was
19 no issue of pulling back those rights. There was no
20 termination provision. If they default, that's a
21 different story in any agreement. That's true of an
22 easement by the way. If you default, you lose it.
23 But there is going to be, there is no provision put
24 on the table that would indicate that we would have
25 had the right to terminate a license agreement in a

1 short-term.

2 MS. ALLU: Mr. Goldman, did you put a
3 provision on the temporary license that you would
4 have to approve the tenants in the building?

5 MR. GOLDMAN: For the interim
6 temporary licenses, which were I think somewhat
7 unique, again we said we wanted to know what the
8 uses were going to be and these were for the site,
9 for CrossFit, there was another for a time when they
10 wanted some additional temporary licenses. We said
11 fine, just tell us who the users are going to be.
12 If we're going to do short-term, temporary users we
13 would just like to know who they were. That was
14 never a condition of the proposed long-term license
15 agreement.

16 MR. KAHN: Okay.

17 MS. ALLU: If Mr. Goldman is finished,
18 I'd like to call a rebuttal witness.

19 MR. KAHN: You know what, I'm going to
20 hold for a second because there's a lot of people
21 still here that have been here twice and I want to
22 make sure everybody gets a chance so we can come
23 back to that and if we have to carry over to the
24 next meeting, I want to at least give the people
25 that have come here twice a chance to speak, okay.

1 MR. CASEY: Can I interrupt?

2 MR. KAHN: Mr. Casey.

3 MR. CASEY: Yes, very briefly. Since
4 Mr. Goldman has the floor, I wanted to have him
5 explain to the board the permit aspect of this, that
6 the, the access to the driveway goes hand in glove
7 with the DOT permit because access is to Route 27.
8 Could you explain that?

9 MR. GOLDMAN: I can only tell you what
10 I think I know on this and perhaps your consultants
11 would know better, but DOT advised us that any
12 property on a state highway whose only access is to
13 the state highway has an automatic, so a guaranteed
14 right of access to the state highway. They can't
15 landlock you and say you can't have access. We were
16 also advised that the permit is defined by the
17 application. In other words, you define your use,
18 say what your need is and that defines the permit
19 that's granted. More than that I can't tell you.
20 That's only what's been reported to me by the DOT
21 and perhaps your consultants know a little bit more
22 than that, but it's not my impression that the DOT
23 puts sort of trip limits, arbitrary trip limits.

24 MR. KAHN: On the existing?

25 MR. GOLDMAN: Yes.

1 MR. KAHN: Okay.

2 MR. CASEY: And this access is covered
3 by a permit.

4 MR. GOLDMAN: The current permit that
5 exists really stems back from the Davidson's
6 Supermarket. When this driveway, if this driveway
7 that's being proposed, it's permitted and goes in,
8 the Davidson permit would expire and university get
9 its own permit for its driveway and the neighbor who
10 uses that driveway would apply for and get a permit
11 as well. But that's the reason we made an inquiry,
12 because we wanted to make sure that we and the
13 neighbor that uses our property under their easement
14 would have a right, also have an access permit and
15 we were told that it's an absolute right to have a
16 permit. Each property would have a permit.

17 MR. KAHN: All right. Thank you very
18 much, Mr. Goldman. Mr. Casey, did you, I know you
19 were here representing the neighbor. Did you want
20 to say anything?

21 MR. CASEY: By way of summation, if
22 you're going to hear comments or statements at the
23 end, I would like to say a few words.

24 MR. KAHN: A few.

25 MR. CASEY: Sure, and I will be brief.

1 Thanks for the opportunity.

2 MR. KAHN: I think we can define your
3 term of brief. Okay.

4 MR. CASEY: Yeah.

5 MR. GOLDMAN: While he's doing that,
6 1985 was the date of, the original date.

7 MR. KAHN: Thank you, sir.

8 MR. GOLDMAN: Wanted to give that you.

9 MR. KAHN: Mr. Casey, just with
10 respect to the other people in the, if you could
11 keep it very brief.

12 MR. CASEY: Yes, I will. Robert
13 Casey, C-a-s-e-y, spelled differently than the
14 board's counsel and we're not related.

15 MS. CAYCI: No, we're not. Are you
16 providing testimony on behalf of your client?

17 MR. CASEY: No. No. If I do.

18 MS. CAYCI: Just indicate on the
19 record who you represent.

20 MR. CASEY: I represent Jack Morrison
21 who is a neighborhood businessman. Mr. Morrison is
22 in favor of sound commercial development in the
23 neighborhood, but he wants the board to understand
24 that this is a fragile neighborhood and I think that
25 what we've, what we have explored at the end of this

1 application is really the crux of the application
2 when it comes to this driveway and the, the fear
3 that Mr. Morrison has is that by changing and adding
4 a driveway we may create an imbalance in an area
5 that's very fragile to begin with and we add
6 something to the mix that is not absolutely critical
7 for this business to operate on this newly developed
8 lot.

9 So that's really where he is coming
10 from. And then the other point I'd like to make
11 very briefly is, and I've been involved in other
12 cases like this where the board has to make, if the
13 board is going to approve this application, it would
14 be conditioned upon DOT approval and I wanted to
15 make sure that the board or a representative,
16 particularly maybe the traffic consultant would have
17 a seat at the table with DOT as this matter goes
18 forward to make sure that the board's interest is
19 protected, the public interest is protected if
20 indeed the board is inclined to approve the
21 application. That's just for future thought.
22 That's all I have.

23 MR. KAHN: Thank you, sir. Okay.
24 Open to the public? So there's quite a few names
25 here. It's almost 9:30. We know everybody would

1 like to talk and present their case, but if
2 everybody can be respectful of your fellow
3 neighbors, be as brief as possible, we'll go in
4 order of the sign-up list. Excuse me if I
5 mispronounce any names. Van Williams, you need
6 to --

7 MS. CAYCI: I need to swear you in
8 Mr. Williams.

9
10 VAN SANDT WILLIAMS, being duly sworn, testified as
11 follows:

12 MR. WILLIAMS: My name is Van Sandt,
13 S-a-n-d-t Williams and I live at 101 Broadmead, so I
14 am technically a neighbor in this area. You'll hear
15 from others about the process that the neighborhood
16 went through to come to a conclusion to this zone
17 and I would say that in today's environment any time
18 one can achieve a tri partisan agreement, one ought
19 to consider that very carefully before you break it.
20 A decision to grant a variance for this application
21 would be dreadfully insulting to two of the parties
22 to that agreement that was worked out between the
23 developer, the town and the neighbors to what we
24 thought was a very good conclusion. It would help
25 preserve the essence of the neighborhood and the

1 nature of the streetscape. I'm not going to speak
2 either to the uses. I think that's a decision that
3 you could properly make and should make. That's a
4 question that I think will need to be addressed by
5 people with more expertise than I. But on the face
6 of it I have to say that this isn't ten pounds in a
7 five pound bag, it's at least seven. This is just
8 grossly over developing the site. The parking is
9 too intense. Whether you have access to the side
10 driveway or to the main street, I think the
11 circulation is badly compromised. I don't believe
12 it's actually a marketable project and in addition
13 to the fact that I don't think it's a very good idea
14 anyway to pack things this densely, I worry that you
15 may some day find the applicant back saying, we
16 built it, we can't market it, now we have to change
17 the use. We can't make it work the way we designed
18 it.

19 I really doubt that there's a viable
20 market for this kind of development in this area.
21 The stacked parking, the parking in the front yards
22 all to me seem to be just too much development in
23 one place and I really think the applicant ought to
24 be pushed to go back and conform to the ordinance
25 and prove that that doesn't work.

1 So consider it all carefully.
2 Consider the downstream implications. Thank you
3 very much.

4 MR. KAHN: Thank you, Mr. Williams.
5 Andrea Stine.

6 MS. CAYCI: Ma'am, raise your right
7 hand.

8
9 ANDREA STINE, being duly sworn, testified as
10 follows:

11 MS. STINE: Andrea S-t-i-n-e. I live
12 at 23 Murry Place and I'm one of about several
13 neighbors who would be directly affected by the
14 development and it's not so much by the development
15 on the street side of Nassau Street, but from the
16 back of the building and we have big concerns. I
17 mean we were very involved in the whole development
18 of the SB ordinance and had tried to get safeguards
19 in there to prevent there being a lot of, you know,
20 effect on our houses, but right now as it stands
21 with the development we're very much against having
22 any sort of balconies there because we're going to
23 see the building to begin with, it's a very tall
24 building, it is within code, but it's one thing to
25 see windows, but it's another thing to see people

1 looking down into your backyard, almost like as if
2 it's an amphitheater. We find that's going to be
3 very, very intrusive, both from the privacy
4 standpoint, possible noise standpoint when people
5 potentially partying on the balconies, putting boom
6 boxes there or whatever. And then also the question
7 of balconies requiring additional lighting. I don't
8 know if the building codes require because they're
9 technically an entrance to an apartment that there's
10 going to be more lighting on the building that we're
11 going to see.

12 So that is my major concern and the
13 other concerns that I have too are that there isn't
14 a lot of screening around the building and the
15 applicant is asking for lower screening as far as
16 lower landscaping and I would urge the board to not
17 grant that and there had been concerns raised by the
18 town engineer about the type of the lighting and
19 that that is going to be intrusive on neighbors and
20 we really have to agree as well. But I would hope
21 that there's something that you could do about the
22 balconies because that really, I mean we can't even
23 sit in our own backyard without having to look up at
24 people potentially looking down at us. But the
25 elevation there is higher than what we are and a lot

1 of trees are no longer there to, you know, which had
2 been very tall, but you know, are no longer there so
3 it's a wide open area for some of the neighbors.

4 Thank you.

5 MR. KAHN: Thank you, Miss Stine.

6 Mr. Reid.

7 MR. REID: I'm Marvin Reid. I'm chair
8 of the master plan committee of the planning board,
9 but I'm speaking here as an individual.

10 MS. CAYCI: Mr. Reid, if you would
11 just be sworn.

12

13 MARVIN REID, being duly sworn, testified as follows:

14 MR. REID: You've been hearing that
15 during the past two or three years there has been a
16 continual study and dialogue about the development
17 of this property on East Nassau Street. The
18 planning board, the municipal council, the owners of
19 the various properties nearby, the nearby residents
20 have come to countless meetings in order to produce
21 a modified and clarified ordinance that respects the
22 zoning in this service district.

23 The borough council studied requests
24 but limited the development in the borough service
25 district on East Nassau Street. The planning board

1 reviewed the proposal and added its endorsement to
2 limit uses to service oriented and neighborhood
3 convenience retail. It specifically limited the
4 size of development in order to avoid over
5 congestion in this already very busy neighborhood.
6 The zoning board of adjustment should carefully
7 review what the borough council and the planning
8 board thought would be the appropriate scale for
9 this neighborhood. This board should not be
10 adopting a wholesale modification of the limits that
11 the nearby residents expected to prevail.
12 Especially take a look at the proposal in this
13 regard, the height in relation to surrounding
14 properties as limited by the new ordinance. Access
15 from Nassau Street, a state highway subject to the
16 access code of the state Department of
17 Transportation, which in the past has tried to
18 relieve congestion by trying to reduce on street
19 parking upon which so many of the other neighborhood
20 businesses depend, the needs of Princeton University
21 to maintain its fire lane which the planning board
22 requires for the size of the engineering quadrangle
23 elsewhere in the block, and stacked park, nowhere
24 else do any of the other ordinances allow it for
25 multi-family residential use. There were reasons

1 for the recent changes in the ordinance. Don't just
2 cast these restrictions aside. Thank you.

3 MS. ALLU: Excuse me, may I ask one
4 question?

5 MR. KAHN: No. These are people that
6 are stating their opinion. He's not testifying as
7 an expert, so I want to have everybody have an
8 opportunity to speak. Miss Cayci, do you have an
9 issue with that?

10 MS. CAYCI: Counsel.

11 MS. ALLU: I just had a simple
12 question.

13 MS. CAYCI: Go ahead, if it's all
14 right with the chair.

15 MR. KAHN: I just want to keep things
16 moving.

17 MS. CAYCI: I understand. I
18 understand.

19 MS. ALLU: Sir, I just want to know,
20 you said you're here on behalf of yourself as an
21 individual this evening.

22 MR. REID: I didn't hear your
23 question.

24 MS. ALLU: You're here on behalf of
25 yourself as an individual?

1 MR. REID: Individual, yes.

2 MS. ALLU: Do you live in the
3 neighborhood.

4 MR. REID: Not at the current time.
5 I'm familiar with the neighborhood but I don't live
6 there now.

7 MR. KAHN: Thank you, Mr. Reid.
8 Samuel Bunting, excuse me if I mispronounce the
9 names.

10 MS. CAYCI: Sir, if you would raise
11 your right hand.

12
13 SAMUEL BUNTING, being duly sworn, testified as
14 follows:

15 MR. BUNTING: Samuel Bunting,
16 B-u-n-t-i-n-g. I would like to speak in support of
17 the application. I know there's a lot of history
18 which has gone into putting together zoning for this
19 particular site. However, I do not see that
20 variances which are being requested as causing a
21 substantial deviation from what was intended for the
22 site. Furthermore, looking towards the future I
23 think that the type of development that this
24 proposal offers is something which carries a great
25 deal of benefits to the town of Princeton. We have

1 a problem in this town which is that there's a
2 distinct shortage of multi-family apartments for
3 people at the low end of the income spectrum, for
4 young people such as junior research faculty in the
5 university and for seniors who are looking to age in
6 place. As a result of that loss of low income
7 housing many of our working class and middle class
8 workers are being forced to seek other housing in
9 neighboring jurisdictions and that carries with it
10 significant problems in that these people are all
11 driving into the town, clogging our streets with
12 traffic and contributing to global warming through
13 CO2 emissions. Adding residential housing in a
14 highly walkable site like this is inherently
15 beneficial because it enables people to live close
16 to where they work and to prevent the excessive
17 traffic which is caused by people commuting from
18 neighboring jurisdictions.

19 This proposal also offers two units of
20 affordable housing and increases the supply of
21 apartments in town which helps to maintain social
22 and economic diversity in the town of Princeton.

23 With regards to the driveway, I think
24 it is a pity that we are looking at a new curb cut
25 here. However, there are a large number of curb

1 cuts along Nassau Street and it's not obvious to me
2 why adding one further curb cut will suddenly be the
3 straw that tips the camel's back.

4 If you reject the variances as
5 required, as many I'm sure will encourage you to do
6 so, we might expect that the developer will come
7 back with some kind of superior application,
8 presumably using the university driveway. I think
9 that that expectation is perhaps optimistic. The
10 access onto Nassau Street is governed by NJ DOT.
11 Therefore, if you reject this application in
12 expectation that the developer will use the
13 university driveway if in the future you may be
14 disappointed when instead it pursued an inferior
15 development proposal and still go to the curb cut
16 that none of us want to see. Thank for your
17 consideration.

18 MR. KAHN: Thank you. Rosalind
19 Westlake.

20 MS. ALLU: That is our corporate
21 counsel. She'll be here later.

22 MR. KAHN: Okay. Jay Verona.

23 MS. CAYCI: Just want a clarification.
24 The corporate counsel is testifying as a member of
25 the public or is she testifying as part of your

1 application?

2 MS. ALLU: She originally had signed
3 up to be part of the public and now she's saying
4 that she wishes to be part of our application.

5 MS. CAYCI: So she's going to testify
6 as part of your application?

7 MS. ALLU: Yes. That was my rebuttal
8 witness from before.

9 MS. CAYCI: Understood.

10 MR. KAHN: Okay. Jay. Okay. Rob
11 Dodge.

12 MS. CAYCI: Mr. Dodge, raise your
13 right hand.

14
15 ROBERT DODGE, being duly sworn, testified as
16 follows:

17 MR. DODGE: Robert D-o-d-g-e. My name
18 is Robert Dodge. I'm a resident of 32 Maple Street
19 where I can see the property in question and effect
20 by traffic and parking noise generated by the
21 businesses at the top of Maple Street. There is no
22 hardship for the landowner that would justify
23 granting a variance, said variances. The land owner
24 purchased the property with the easement existing in
25 full knowledge of what the, what that would mean to

1 the value and future uses of the property. The
2 university's continuing to offer this easement so
3 nothing has fundamentally changed. Granting this
4 variance would be like me requesting to put a
5 McDonald's on my front lawn. What would be my
6 hardship? Well, the university won't sell me Nassau
7 Street to open McDonald's so it's a hardship because
8 I really want to open a McDonald's. Of course the
9 university owned Nassau Street when I bought my
10 house and my house is zoned residential, but I need
11 variances that would inconvenience my neighbors with
12 additional traffic and noise so I can get what I
13 want. Of course this is absurd and if you took
14 logic in college you would see the applicant is
15 making the logical error of relevance in their
16 arguments.

17 I urge the board to act in the
18 interest of the neighborhood and citizens of
19 Princeton and not to bow to the legalese and
20 irrational logic presented by the applicant by
21 denying the variances. Thank you.

22 MR. KAHN: Thank you, Mr. Dodge.

23 MS. ALLU: Mr. Dodge, I have to just
24 clarify one point. The applicant did not have this
25 problem when it purchased the property. It had

1 purchased --

2 MR. KAHN: Say that again.

3 MS. ALLU: They had curb cuts when we
4 purchased the property --

5 MS. CAYCI: If that's your
6 representation, then you can, it's up to Mr. Kahn if
7 you want to provide additional testimony to that
8 effect, but you haven't provided any testimony so
9 far establishing that.

10 MR. KAHN: You're saying that this
11 curb cut you're proposing was existing when you
12 bought the property.

13 MS. CAYCI: We're in the middle of
14 public comments.

15 MS. ALLU: So my point is simply
16 that --

17 MS. Cayci: We're in the middle of
18 public comment.

19 MR. KAHN: We'll give you a chance.
20 Don't worry. Mr. Martindell.

21

22 ROGER MARTINDELL, being duly sworn, testified as
23 follows:

24 MR. MARTINDELL: Roger Martindell,
25 M-a-r-t-i-n-d-e-l-l, good evening and thank you for

1 your service on the board.

2 I live at 144 Patton Avenue. I have
3 an office at 245 Nassau Street and have had for 25
4 years. It's two doors down from the applicant's
5 structure. I served on the borough council during
6 the deliberations that led to the adoption of the
7 current SB ordinance and to Mr. Floyd's question
8 were we thinking about this particular property, the
9 answer is yes. Most of our discussions, and there
10 were maybe a half a dozen meetings, every single one
11 of them principally involved this property. We were
12 concerned about a number of issues that are before
13 you. I'm only going to mention only two. One is
14 the prevalence of financial institutions on Nassau
15 Street and did we need yet one other, because the
16 applicant came to us with a proposal to allow a
17 bank. We initially, many of us and I can't give you
18 a vote total, we never took that vote, but many of
19 us were opposed to any kind of bank at that
20 location, but it was represented to us that in order
21 to make this project go, they needed a premier
22 tenant. That would be a bank. And so we urged a
23 compromise and the compromise would be okay, a bank,
24 but it had to be limited in size. And it was in the
25 ordinance. But many of us were deeply concerned

1 that if you just have a bank of any size and you
2 roll over too easy with a bank you're going to end
3 up with one more bank on Nassau Street. We don't
4 need it in the community. The neighborhood doesn't
5 need it. It's not friendly to the neighborhood, to
6 that part of the community. It doesn't promote
7 retail. It's not a good idea.

8 So if in this application you are
9 inclined to grant it, I would suggest that because
10 it involves a bank, be fairly strict with granting
11 variances because that's what we tried to do, to set
12 limits, and if you allow the bank in there and then
13 throw off those limits, you destroy the intention of
14 what we tried to reach by way of compromise.

15 The second part I'd like to address is
16 the issue of front yard and I have a letter here
17 signed by myself, Barbara Trelstad and Kevin Wilks
18 which I'll hand to somebody shortly, but it has two
19 paragraphs and I'd briefly like to read it.

20 We have, the undersigned, being all of
21 the recently retired majority members of the common
22 council of the borough of Princeton who voted for
23 the current SB service business zone ordinance
24 adopted by mayor and council in December of 2012
25 hereby state that it was our understanding and

1 intent that the current zoning ordinance prohibit
2 any parking between Nassau Street and any existing
3 buildings in SB service business zone as a condition
4 of developers developing lands more intensely than
5 had been previously allowed by ordinance.

6 In our opinion the variance
7 application pending before the board to allow front
8 yard parking would substantially impair this intent
9 of the zone plan and zone ordinance.

10 MS. ALLU: I want to not for the
11 record my objection of his reading the letter into
12 evidence.

13 MS. CAYCI: Since Martindell is here
14 to speak to us in a letter, he's also signed the
15 letter, I don't have a problem with it.

16 MS. ALLU: My objection is noted.

17 MS. CAYCI: Yes.

18 MR. KAHN: All right.

19 MR. MARTINDELL: Finally, if I might
20 proceed. May I?

21 MR. KAHN: Quickly if there's still
22 some more to go.

23 MR. MARTINDELL: Thank you. The
24 second part of the front yard is this idea of kiosk.
25 Somebody said it was a placeholder. Boy, is it a

1 placeholder and that's all it's worth. Don't buy
2 this idea that this kiosk is ever going to be
3 developed. It's a sucker's game. You want a kiosk?
4 That's what we wanted when we did the ordinance.
5 That's why kiosk is in the ordinance. Okay. We'll
6 draw a kiosk. Is there any plan to ever develop it?
7 No, there's nothing there. We'll do it some day.

8 MR. KAHN: Okay.

9 MR. MARTINDELL: Take it for what it's
10 worth.

11 MR. KAHN: We can't tell what the
12 applicant's going to develop. I mean they may or
13 may not, but it's not for us to --

14 MR. MARTINDELL: I understand but the
15 point of a kiosk was to promote public use of that
16 front yard area and instead of a real kiosk with a
17 current plan to install anything, you have a
18 driveway and a bunch of parking in front. That is
19 not friendly to the neighborhood.

20 MR. KAHN: Okay.

21 MR. MARTINDELL: Thank you. The last
22 thing I would like to say is the gentleman that
23 spoke, Mr. Dodge said about hardship, this is a self
24 inflicted hardship. This is not a real hardship
25 under the law for all the reasons that Mr. Goldman

1 and Mr. Dodge indicated. They could get the
2 financing if they want to. They may not be able to
3 sell it as much as they want in the future, but they
4 bought the property in the current situation and you
5 don't need to give them anything special in order to
6 enhance their value in my opinion.

7 MR. KAHN: Thank you, sir. Okay.
8 Robert Bratman.

9 MR. BRATMAN: Hi. Good evening, board
10 members. My name is Robert Bratman, B-r-a-t-m-a-n.
11 Myself and my two sisters, we own 259 Nassau Street
12 which is the adjoining property of.

13 MS. CAYCI: Before you continue, if we
14 could swear you in.

15

16 ROBERT BRATMAN, being duly sworn, testified as
17 follows:

18 MR. BRATMAN: I first note my concern
19 about opening the curb cuts is this, the agreement
20 that was reached 20, in 1985 when Davidson's had the
21 property indicates that when 255 Nassau Street opens
22 its curb cuts, the curb cut that currently exists
23 for the easement, for lot 16, which is the
24 university's property, which is the easement that is
25 run with our property since the turn of the last

1 century, that curb cut will be closed automatically.
2 So I'm concerned about that.

3 However, I'm not concerned about the
4 applicant's desire to develop their property.
5 They've done a lot of work and a lot of study into
6 what would work at that property. They've looked
7 into food stores. They've looked into specialty
8 shops and unfortunately Princeton doesn't have the
9 vertical density that would allow these uses that
10 perhaps the neighbors and people in the area would
11 like to see in this property. When it was a
12 Davidson's and there was a Rite Aid or a West Coast
13 Video in our property, the traffic use was a lot
14 more intense than what I think the applicant
15 proposes. They propose a bank, a handful of offices
16 and residential property and I don't see how for the
17 life of me that's going to create more traffic in
18 this area than a supermarket that had its parking
19 lot full constantly and a West Coast Video that had
20 people coming and going on a rather regular basis
21 and at the time there was also a laundromat in the
22 back of the property.

23 So I think that if the concern is that
24 we're going to have an increased use here or it's
25 going to be detrimental to the property because of

1 the traffic, I would disagree.

2 I would also point out that this part
3 of town is really restaurant row. There are a
4 number of restaurants that are in the area and up
5 until recently they all parked in our parking, in my
6 parking lot. I often joked that I was the parking
7 lot for Jack's fish restaurants because that's where
8 people parked until we recently closed that for
9 liability reasons.

10 I think that having a bank and offices
11 in the first floor of this development is actually a
12 very nice idea because when those people that would
13 go to the bank and go to the offices leave, the
14 restaurant crowd comes in and you have built in
15 parking for the people that would frequent the
16 restaurant.

17 So I am in support of the development,
18 but my concern is the curb cuts. Thank you.

19 MS. SEGAL: Is your building empty at
20 the moment?

21 MR. BRATMAN: The building is
22 currently empty. There is a lease with Rite Aid
23 corporation that expires in 2015. We are currently
24 looking into new tenants. We don't plan on
25 developing the property greater than the footprint

1 that's there. . It's 8,200 square feet. We have no
2 desire to build up or no desire to expand the
3 footprint. We're leaving it the same.

4 MS. SEGAL: So you're not selling the
5 property or the developing it?

6 MR. BRATMAN: I'm sorry.

7 MS. SEGAL: You're not selling or
8 developing the property?

9 MR. BRATMAN: No. You are correct.

10 MR. KAHN: Thank you, Mr. Bratman.

11 MR. BRATMAN: Thank you.

12 MR. KAHN: Jan Weinberg.

13 MS. CAYCI: Mr. Weinberg, raise your
14 right hand please.

15

16 JAN WEINBERG, being duly sworn, testified as
17 follows:

18 MR. WEINBERG: Jan Weinberg,
19 W-e-i-n-b-e-r-g. I'm the owner of the Weinberg
20 Management Corporation. I'm a licensed real estate
21 broker.

22 (At this time a discussion was held
23 off the record.)

24 MR. WEINBERG: I'm owner of Weinberg
25 Management Corporation. I'm the property manager

1 for 253 Nassau Street, the property immediately to
2 the right or on the west. I have a very serious
3 concern about the placement of the air-conditioning
4 units. I trust that you will reread the engineering
5 report that cites the Engineering Department's
6 concern about the placement of the air-conditioning
7 units. I'm not an acoustical engineer. I have not
8 heard any testimony from any acoustical engineers.
9 I am positive there will be a cacophony of sound
10 between the two buildings. I am expert on going on
11 to rooftops while our air-conditioning companies
12 maintain our air-conditioning units. This is
13 between two walls. Our tenants in both buildings
14 would not be able to open their windows. They would
15 have to have an extra set of curtains. I'm positive
16 about that. I implore you to get expert testimony
17 before you decide on the placement of the
18 air-conditioning units. I do not know why they're
19 not placed on the other side of the building. I'm
20 wondering if Mr. Solow or Mr. West tonight will
21 speak about that because that information was not
22 presented at the last meeting. Thank you.

23 MR. KAHN: Thank you, Mr. Weinberg.

24 MR. SCHNEIDERMAN: Martin

25 Schneiderman, S-c-h-n-e-i-d-e-r-m-a-n. I live at 47

1 Murry Place in Princeton.

2 MARTIN SCHNEIDERMAN, being duly sworn, testified as
3 follows:

4 MR. SCHNEIDERMAN: By way of
5 background, it has been discussed this evening about
6 the tripartite, different ways that this has
7 evolved. The SB ordinance revision was prompted by
8 the community that came and said as we looked at the
9 neighborhood, how things have evolved over many,
10 many years and many of us in the community have
11 lived here during the time Davidson's was there and
12 prior to that when that was a Volvo car dealership
13 and so on and so forth. We've seen the evolution of
14 this over the years. It was very clear to people
15 that we wanted to see the neighborhood grow and to
16 become more neighborhood friendly in many different
17 ways. As a consequence because we've done this and
18 we've worked in the community before to try to look
19 at ordinances and look at what works for both the
20 owners of the property and the neighbors and the
21 residents and so on, we came up with some ideas and
22 some suggestions and some plans and in the process
23 of doing so we met with government officials, we met
24 with the property owners and we attended all of the
25 many, many meetings that were held by borough

1 council up until this particular point in time.

2 There were a number of things that we
3 suggested would be advantageous for the property
4 owner and one of them was more intense development
5 of that property and as you well know and as you may
6 have read in the ordinance, what existed previously
7 is not what the current ordinance said. We wanted
8 to make it advantageous for the property owners to
9 be able to have higher density there, to be
10 profitable for them to make that happen. However,
11 there were things that were very important to us and
12 we sat down and we described what all of those
13 things were and in our various meetings a number of
14 things were very clear. One was the vitality of the
15 street of the neighborhood across the street is
16 extremely different than it is on this side. This
17 is in the SB as opposed to the other district that's
18 on the other side of the street.

19 So one of the things that was
20 extremely important was to have a community there
21 and the parking in front of the buildings was
22 something that the neighbors objected to and when I
23 say neighbors objected to, I'm not talking just by
24 myself, my own personal opinion. There was a bunch
25 of neighbors that got together that had surveys of

1 the community, e-mails back and forth, meetings and
2 block parties and so on and so forth and we asked
3 people lots of questions about what was important
4 and all of the things that we were not a personal
5 opinion and none of the people providing that input
6 had any financial interests in those properties. It
7 was what would be best for the community in terms of
8 revising the SB ordinance.

9 So these were the things that
10 influenced them. Number one, eliminate the parking
11 in the front and in fact what was discussed and
12 presented to us at a number of meetings including
13 those with borough officials along the way was that
14 the building would be moved forward, that the
15 parking in front of the building would no longer be
16 the case, which is in fact what the ordinance, the
17 revised SB ordinance said. The SB ordinance that
18 was passed when? 11 months, ten months ago. It was
19 the last action the borough council took at the very
20 end of December of 2012.

21 So the discussion in all of these
22 things preceded this for about a year, year and a
23 half, and the meetings, in fact in all of the years
24 that I've lived in this town, since 1971 to my
25 knowledge there has not been any other ordinance

1 that has had as much discussion, as much opportunity
2 for understanding on both sides as has been the case
3 here.

4 The draft ordinance, the SB ordinance
5 was presented to the property owners in the SB. The
6 borough officials asked do you have any concerns,
7 questions or objections to what are being presented
8 there and the primary thing, I think practically the
9 only thing was, as was pointed out, we'd like to
10 bank there. Because, thank you for the question,
11 because in the SB, historically no bank had ever
12 been permitted before. This was a new proposed use
13 different than anything before. I should also point
14 out as part of that that when we asked the community
15 what are the things you want there?

16 MR. KAHN: Excuse me Mr. Schneiderman.

17 MR. SCHNEIDERMAN: Yes.

18 MR. KAHN: I don't mean to cut you
19 off. It's a long evening.

20 MR. SCHNEIDERMAN: May I come to --

21 MR. KAHN: I would like to have people
22 talk about things that we haven't heard before.
23 We're reiterating things that others have said.

24 MR. SCHNEIDERMAN: Fair point. Let me
25 come to closure if I may then. Thank you so much.

1 So these are things that have been discussed,
2 considered and so forth. We believe, just as was
3 described earlier by Mr. Martindell, these were key
4 points that were made, things that were discussed.
5 These were things that everybody kind of you
6 understood and those were the kind of terms and
7 conditions of what that SB ordinance was all about
8 and we'd like to see very much that the spirit and
9 intent of that is honored and respected and
10 maintained by this body. Thank you very much for
11 your time.

12 MR. KAHN: So we still have a few more
13 to go. I would request that people don't present
14 the same issues again and we understand the interest
15 in the SB zone and what, you know, we've had several
16 people talk about that. So if there's somebody that
17 has some new things that they would like to talk
18 about, that's fine. David Kinsey.

19 MR. KINSEY: Good evening. My name is
20 David Kinsey. I live at 14 Aiken Avenue.

21

22 DAVID AIKEN, being duly sworn, testified as follows:

23 MR. KINSEY: This board as you know is
24 entrusted with a super duper, major responsibility
25 in interpreting the zoning ordinance of how much of

1 a deviation is okay. What's substantial?

2 Mr. Chairman, you indicated you understand the
3 intent and that's very important to the neighbors
4 who worked for a long time in developing with the
5 help of borough council and talking to developers
6 this ordinance. I favor mixed use, redevelopment of
7 this site, but in conformance with the ordinance.

8 Let me point out three of the variance
9 and the starting point is the access issue. We all
10 heard Princeton University say they are willing to
11 provide an up-to-60-year license. That to me should
12 be dispositive. That's terrific. And what a
13 generous neighbor, but instead the applicant has
14 told you, well, DOT won't say yes to this unless we
15 limit the kind of office spaces we have, so
16 therefore we have to have office space. And that
17 triggers the use variance.

18 MR. KAHN: I think they were referring
19 to the new curb cuts.

20 MR. KINSEY: Yes. Yes.

21 MR. KAHN: The number of trips.

22 MR. KINSEY: Yes the number of trips.

23 THE WITNESS: Not the existing curb
24 cut.

25 MR. KINSEY: That's correct. But the

1 applicant has told you that they have to have office
2 space because they have to have a new curb cut. So
3 remove the needs for the new curb cut by working out
4 an agreement with the university and there goes the
5 need for a new DOT permit and any DOT oversight over
6 the uses on the ground floor. The ground floor uses
7 are vital to the streetscape and that's why the
8 ordinance was carefully crafted to allow a bank, but
9 insists on other, more people oriented uses on the
10 ground floor. So that's the access issue and that's
11 the use variance issue.

12 Also instead of, I know you have the
13 authority to condition an approval on all other
14 governmental approvals, but I suggest in this case
15 you reverse it. Have the applicant go to DOT, if
16 they must, and get denied if that's really what's
17 going to happen and then come back to you if that is
18 how this case progresses.

19 The front yard variance that's
20 requested is something that goes contrary to intent,
21 the clear intent of the ordinance. That's part of
22 the street orientation, friendly pedestrian major
23 theme. And again resolve the access issue by
24 agreeing to work with the university and that issue
25 should disappear because the front yard would then

1 be available, it wouldn't be bisected by a driveway.
2 It wouldn't make sense to have parking there.
3 Parking should be off of the new driveway or the old
4 driveway, the university property.

5 And finally the stacked parking
6 variance. Yes, the neighborhood does have driveways
7 with tandem parking. My house, built in 1911, the
8 driveway, that's our situation currently. But a row
9 of tandem parking is something very different.
10 That's not the situation in any of the homes in the
11 neighborhood that I'm aware of and a row of I
12 believe it's ten spaces. This is not allowed in any
13 of our residential zones and that's for a reason,
14 for ease of maneuverability, aesthetics, what it
15 looks like. I think there are a number of reasons
16 why you should not grant the variance for that
17 parking and thank you very much.

18 MR. KAHN: Thank you. Ryan
19 Lilienthal. If we could keep things brief because
20 we still have others tonight.

21 MR. LILIENTHAL: My ten minute speech
22 has been cut down to hopefully just a few minutes.

23 MS. CAYCI: Mr. Lilienthal, if you
24 would raise your right hand.

25

1 RYAN LILIENTHAL, being duly sworn, testified as
2 follows:

3 MR. LILIENTHAL: Ryan Lilienthal, 34
4 Maple Street. L-i-l-i-e-n-t-h-a-l. Let me just
5 start off by saying that I live right next to Robert
6 Dodge at 32 Maple Street. I urge you to deny any
7 application he makes for a Burger King or McDonald's
8 for the sake of my three kids. So both Rob and I
9 live a half block from this site. I'm here both on
10 behalf of myself, on behalf of Princeton future of
11 which I'm a board member. I'm, in fact about half
12 of the board of Princeton future lives in this
13 particular neighborhood. I have a longer statement
14 to make on behalf of Princeton future, but in the
15 spirit of being additive I just want to introduce
16 Jonathan Best.

17 Princeton future was involved at the
18 outset of this development effort in bringing the
19 neighbors, the residential neighbors and the
20 commercial neighbors together to think
21 constructively about what could be in this
22 neighborhood and it culminated in addition to many
23 neighborhood meetings that Princeton future
24 organized but as well as the survey and you heard a
25 little bit about it. I want to introduce Jonathan

1 Best who I think is on the list of speakers who have
2 from Princeton Survey Research Associates who can
3 talk about the particular survey that we conducted
4 where there were 225 responses and he'll talk about
5 very briefly about the statistical validity and
6 tease out the aspects of the survey that relate
7 specifically to the variance application.

8 MS. ALLU: Excuse me, I will object to
9 any mention of a survey as hearsay.

10 MR. KAHN: I don't think we want to
11 bring an expert witness. This is open public
12 opinion so I think we should leave it at that.

13 MR. LILIENTHAL: So as a board member
14 of Princeton future I'd like to pass this onto the
15 clerk or to Karen Cayci.

16 MS. CAYCI: What is this?

17 MR. LILIENTHAL: Let me just, as a
18 member of Princeton future I'm not offering expert
19 testimony so you don't have to worry about that and
20 you objected to that.

21 MS. ALLU: Yes, I objected to that.
22 That is not admissible.

23 MR. KAHN: Okay.

24 MS. CAYCI: Mr. Kahn, this appears to
25 be the survey that Mr. Lilienthal was referring to.

1 MS. ALLU: Complete hearsay and not
2 admissible.

3 MS. CAYCI: If you would let me finish
4 my statement.

5 MS. ALLU: I apologize.

6 MS. CAYCI: If the chair's position is
7 that you don't want to permit the testimony, I think
8 that the document is going to be equally part. The
9 document in the absence of testimony is not going to
10 provide any clarification for the board.

11 MR. KAHN: I think we need to be fair
12 to the applicant. This is a public forum at this
13 point. The public can speak of their concerns or
14 favor of the application, neighbors, right, that are
15 somehow impacted by this application. So I think we
16 should leave it at that. I don't think that we want
17 to introduce the survey at this point.

18 MR. LILIENTHAL: Okay. So in the work
19 of Princeton future what we found was that there was
20 overwhelming objection to parking in front of the
21 buildings that would be in the, in this particular
22 zoning location.

23 MS. ALLU: Excuse me, is he testifying
24 to the results of a survey?

25 MS. CAYCI: I believe he's testifying

1 based on his knowledge as a board member of
2 Princeton future which I think he's entitled to.

3 MS. ALLU: Sounds like he's testifying
4 to the results of the survey.

5 MS. CAYCI: Counsel, you want to put
6 your objection on the record?

7 MS. ALLU: Yes, I note my objection.

8 MS. CAYCI: That's fine.

9 MR. KAHN: Ms. Cayci, what is your
10 opinion on this because I'm kind of leaning towards
11 the applicant that he's presenting something from
12 the, unless Princeton future were part of the
13 presentation from Mr. Solow or Mr. West, I think it
14 has to be presented as such, right? Wouldn't you
15 agree? As opposed to public opinion. If we're
16 going that route.

17 MS. CAYCI: Well, Mr. Kahn, I
18 understand your point. I think that if the board's
19 inclined, you can give some leeway to Mr. Lilienthal
20 as a representative of Princeton future. I think
21 what I'm trying to say is I can support that. If
22 the board feels that you want to limit testimony to
23 personal opinions or observations, that's your right
24 to do so.

25 MR. KAHN: Mr. Floyd, your opinion.

1 MR. FLOYD: I agree with the
2 applicant. I agree with you, and I think,
3 Mr. Lilienthal, as a lawyer you know you're kind of
4 playing with us a little bit. She's already ruled
5 out presenting the survey so that is definitely how
6 I feel.

7 MR. KAHN: I think --

8 MR. LILIENTHAL: Let me just say this,
9 I'm not offering expert testimony.

10 MR. KAHN: I understand, but you're
11 providing findings of the survey and I think we want
12 to be careful here. We want to be fair to the
13 applicant. Princeton Future is not presenting and
14 your opinion is actually presenting what those facts
15 are. I think in that light we need to move on.

16 MR. LILIENTHAL: Okay. So let me just
17 express my opinion as someone who lives a half block
18 from this site and someone who is familiar with what
19 I've heard from other people that live around me.
20 Is that, and you heard it already, that there's
21 overwhelming objection to parking in front of this
22 building. There is objection to a building that is
23 four stories tall, although surprising to me,
24 there's acceptance of a building that's three
25 stories tall which is taller than what's there.

1 There's significant concern about this curb cut and
2 the safety particularly for thousands of us with
3 families with small children in adding a curb cut
4 and another driveway to this particular location.
5 We should be moving in the opposite direction.

6 So to the opinion that what's one more
7 curb cut, we should actually be going in the other
8 direction and eliminating curb cuts, and so let me
9 just offer that as a neighbor to this site and as a
10 board member of Princeton Future.

11 MR. KAHN: Thank you, sir. Mr. Best,
12 I know you were introduced. Did you have anything
13 additional to add or do you want to-

14 MR. BEST: I was going to talk about
15 the survey, but my understanding is --

16 MR. KAHN: We're not going to talk
17 about that survey.

18 MR. BEST: Okay.

19 MR. KAHN: Thank you, sir. Gina Lee.
20 I live 39 --

21 MS. CAYCI: Please raise your right
22 hand.

23

24 GINA LEE, being duly sworn, testified as follows:

25 MS. LEE: I don't see anything wrong

1 to have additional offices in the first floor.
2 Besides that it can have a hard gathering.
3 Princeton land is very limited so why we can occupy
4 and utilize this space, make it expand it even to
5 the maximum. I don't see anything wrong with the
6 building height because if you stand on the parking
7 garage of the Princeton Library and you can see the
8 area, every inch of the residency, the backyard. So
9 I don't see anything wrong with that. Okay. Thank
10 you.

11 MR. KAHN: Thank you very much.
12 Mr. Wolfe. Are you presenting as a concerned
13 neighbor?

14 MR. WOLFE: I want to be very brief
15 and follow up on the initial statement that I made
16 and the question from Mr. Floyd.

17 MS. CAYCI: We'll swear you back in,
18 Mr. Wolfe.

19
20 WILLIAM WOLFE, being duly sworn, testified as
21 follows:

22 MR. WOLFE: The second recommendation
23 of SPRAB --

24 MS. ALLU: Can I just ask the question
25 what capacity is he testifying in?

1 MR. WOLFE: Page 2.

2 MS. CAYCI: Mr. Wolfe --

3 MR. KAHN: This is as a resident, not
4 as --

5 MS. CAYCI: No.

6 MR. WOLFE: I'm testifying as a
7 chairman of SPRAB.

8 MS. CAYCI: On behalf of SPRAB, which,
9 yes, this is the public comment portion of the
10 evening and if the board is inclined to allow
11 Mr. Wolfe to supplement that, you can pull it out
12 and have him come back, sit down for a few minutes
13 and --

14 MR. KAHN: I would like to limit it to
15 the public comment. If you would like to talk in
16 terms of public capacity, that's fine, but I think
17 let's try and leave this open just to public comment
18 at this point.

19 MR. WOLFE: Will there be a later
20 time?

21 MR. KAHN: Yes, we'll have summation
22 again.

23 MR. WOLFE: Okay.

24 MR. KAHN: That's the end of everyone
25 that signed up for this, in terms of public.

1 However, Miss Westlake had signed up in the public
2 portion.

3 MS. ALLU: Yes.

4 MS. CAYCI: If the speaker is the
5 applicant's corporate counsel, so I don't see how
6 she qualifies as a member of the public.

7 MS. ALLU: I thought we were finished
8 with the public portion.

9 MR. KAHN: That's what I was about to
10 say. So at this point the public portion is closed.
11 Now, is this your last testimony at this point?

12 MS. ALLU: Last witness.

13 MS. CAYCI: Mr. Kahn, do you still
14 intend to have Mr. Wolfe speak?

15 MR. KAHN: We can do that.

16 MS. CAYCI: Do you want to do it
17 before the applicant presents rebuttal testimony?

18 MS. ALLU: My rebuttal testimony is
19 limited to the Princeton University issue, not
20 the --

21 MS. CAYCI: Okay,

22 MR. KAHN: So why don't we have Miss
23 Westlake.

24 MS. CAYCI: Ma'am, would you state
25 your name and affiliation other record please.

1 MS. WESTLAKE: My name Rosalind
2 Westlake, that's W-e-s-t-l-a-k-e and I'm corporate
3 counsel for 255 Nassau/ROI which is the owner of the
4 property.

5
6 ROSALIND WESTLAKE, being duly sworn, testified as
7 follows:

8 MS. WESTLAKE: The main reason I'm up
9 here is just for purposes of the record to clarify
10 some of the factual confusion that we have with
11 respect to the ownership of the property, when it
12 was owned, when there were curb cuts and also to
13 just add a little bit to Mr. Goldman's description
14 of the evolution of the discussions that we had on
15 access.

16 First of all, this property was
17 purchased by the applicant in 1980. At that time
18 none of these access issues were in existence. In
19 fact there were curb cuts on the property itself.
20 Part of the issue is that the laws that govern Route
21 27 came into being subsequent to the purchase of the
22 property and therefore it's an evolving situation.
23 So just to clarify that particular issue in terms of
24 whether it's self created or whether or not the
25 applicant should have known or what have you.

1 MR. KAHN: So the curb cut roughly
2 where you're proposing, there was one existing
3 already.

4 MS. WESTLAKE: There were actually two
5 curb cuts in the property at the time. We're
6 proposing just the one curb cut.

7 MR. KAHN: Okay.

8 MS. WESTLAKE: Just again like I said,
9 to clarify historically.

10 The main comment that I would like to
11 provide in response to Mr. Goldman's history of
12 events is that the offer from the university was in
13 fact a license as opposed to an easement and I would
14 like to differ very slightly with Mr. Goldman's
15 opinion as to what the difference is between a
16 license and an easement. A license is a contractual
17 right. An easement is a property right. An
18 easement may be limited in terms of time. It does
19 not need to be permanent. Of course what we are
20 seeking is permanent, but I just wanted to clarify
21 my understanding of the difference between a license
22 and an easement. A license is a contractual
23 obligation, nothing more, nothing less. For
24 purposes of the discussion access, what we're really
25 looking at here is that we do need permanent access

1 to our property, whether or not the university is
2 going to offer us a license that may be 20 years,
3 may be extendable to 30 years, that's what happened
4 28 years ago and here we are again with the same,
5 exact issue. What we would like to do at this point
6 is provide access to our property such that there is
7 no future issue arising regarding access to our
8 property. Very simple solution, single curb cut in
9 our property. Consequently the reason that we need
10 to have our own access and if it's not by way of
11 using a permanent easement through the university's
12 property, it's by way of access directly onto Route
13 27 in accordance with the NJ DOT permission.

14 The other issue is that with respect
15 again with the license versus the permanent access,
16 a contract is not sufficient for purposes of
17 obtaining financing. A lease or a ground lease such
18 as was described by Mr. Goldman is in fact property
19 interest. Once again it's not specifically a
20 contractual right only. A lease is actually a
21 definable property interest. Banks will in fact
22 finance based upon long-term leases. They will not
23 finance based upon a license.

24 Secondarily we are not going to be in
25 a position to sell any aspect of the condominiums or

1 apartments that are being built. So this devalues
2 our property significantly. So we have to get into,
3 any kind of discussions we're starting to get into,
4 you're going to deny us the right to access our
5 property directly we're getting into constitutional
6 takings issues. So that's all I have to say with
7 respect to the access issue and the university.

8 MR. KAHN: Now, have they offered you
9 a long-term lease though, Miss Westlake?

10 MS. WESTLAKE: I'm sorry.

11 MR. KAHN: Have they offered you a
12 long-term lease that would be acceptable?

13 MS. WESTLAKE: No. It's the same
14 issue because the lease is terminable.

15 MR. KAHN: But you said you could get
16 financing on a long-term lease.

17 MS. WESTLAKE: But our issue is the
18 permanency as I indicated.

19 MR. KAHN: But it would negate the
20 issue of financing.

21 MS. WESTLAKE: Potentially it would
22 negate financing, but it would still devalue our
23 property and it borders on the constitutional issue
24 of taking.

25 MR. KAHN: Thank you. Mr. Wolfe, can

1 you please be brief?

2 MR. WOLFE: Yes. I want to address
3 our second recommendation that if the added curb cut
4 is proven to be necessary, SCRAB recommends that the
5 zoning board approve all of the variances. However,
6 Princeton University should be invited to
7 participate in the use variance discussion. I thank
8 the board for inviting Princeton University to
9 participate. Mr. Floyd pointed out there was an
10 inconsistency between the vote to approve all
11 variances and the comment. Sorry, the comment that
12 three of us offered that failure to reach such an
13 agreement, referring to the access agreement, should
14 not be justification for changing the master plan
15 and you could substitute zoning as representing
16 master plan, in order to intensify use of the
17 property. I, I would submit that it is my opinion
18 that if our board had received the testimony from
19 Princeton University that you have now received, the
20 vote would have been very different.

21 MR. KAHN: Thank you. I'm sure you
22 want to object to that testimony.

23 MS. ALLU: I'm just in shock and
24 delayed response but yes, I'm going to object to
25 that.

1 MR. KAHN: Thank you. Okay. Are you
2 finished with your presentation?

3 MS. ALLU: Final comments, but we
4 would like at this time to have some discussion with
5 the board, any questions.

6 MR. KAHN: We're going to open it up
7 to the board in a second, but I want to make sure
8 that you've completed your presentation.

9 MS. ALLU: Yes, sir.

10 MR. KAHN: Okay. So, Mr. Bridger,
11 anything you would like to add?

12 MR. BRIDGER: I don't really have any
13 comments. I mean I think you have to balance the
14 positive and negative criteria to see if there's
15 harm to the zone. I think maybe Lee Solow, I don't
16 know if he wants to add any comments about the
17 planning testimony, but I think you've heard both
18 sides to the issue or about as much as you can about
19 the case and you have a choice.

20 MR. KAHN: Mr. West, anything.

21 MR. WEST: Nothing else unless you
22 have any questions about, specific questions about
23 any variance that came up.

24 MR. KAHN: Anything from anybody?

25 MR. SOLOW: As the others were here to

1 answer your questions from a planning perspective we
2 do have concerns regarding a new ordinance variance
3 that's being used for the offices on the ground
4 floor and would urge the board to consider that very
5 carefully and as Derek had said, the way that the
6 negative criteria is particularly held this would
7 impact the zone plan and we heard a lot of comment
8 from the public.

9 My other secondary concern is with
10 what any precedents you may be setting if you allow
11 the stacked parking. That is not permitted. It is
12 a variance. It's ten spaces. You can play a lot of
13 what if games in terms of what the development would
14 look like if they had ten less spaces, you know,
15 would it be less units or less square footage? But
16 we do urge you to proceed cautiously with the idea
17 of permitting stacked parking.

18 MR. KAHN: Okay.

19 MR. WEST: There was one comment I
20 just wanted to bring up. One of the neighbors had a
21 concern with the air-conditioning units and that was
22 a concern in the task memo. I did speak with the
23 architect. I don't know if he had in his testimony,
24 but they have agreed that they're going to raise the
25 parapet wall and they will meet all of the municipal

1 noise ordinances, whether, so that may require some
2 type of sound deadening on the units, but they have
3 agreed to do that.

4 MR. KAHN: And I think there's
5 probably the least of your concerns is the location
6 of the air conditioning.

7 MS. ALLU: Yes, sir.

8 MR. KAHN: Okay. Board members, who
9 would like to begin?

10 MS. CAYCI: Mr. Kahn, before the board
11 goes into deliberation, there's just a couple points
12 I wanted to make to the board. You've heard
13 testimony this evening regarding the use variance
14 the applicant needs as well as the bulk variances.
15 They're also seeking preliminary and major final
16 site plan approval. Under the municipal land use
17 law this board has jurisdiction to hear that site
18 plan application because they're seeking these here.
19 If you determine that the applicant has not
20 sufficiently satisfied the criteria for the use
21 variance and you deny it, you don't have further
22 jurisdiction to continue with site plan
23 consideration. And the applicant would have the
24 choice then to appeal or to make a new application
25 to the planning board that did not require the use

1 variance.

2 MR. KAHN: So we need to discuss the
3 bulk variance.

4 MS. CAYCI: No. I said that you need
5 to address the use variance first because from that
6 will flow whether --

7 MR. KAHN: The second.

8 MS. CAYCI: Yeah, the site plan.

9 MR. KAHN: Well, if the use variance
10 is not approved, we need five.

11 MS. CAYCI: That's correct, only five
12 affirmative votes with respect to the use variance.

13 MR. KAHN: At that point would we then
14 discuss the bulk variance or would the applicant,
15 the application would just --

16 MS. CAYCI: The application will end
17 for this board and then the applicant, as I said,
18 will have the choice whether they want to appeal
19 this to a court or whether they want to come to the
20 planning board with a site plan application that
21 doesn't require a use variance because that's what,
22 that's what brings it to you.

23 MR. KAHN: But what about the bulk
24 variance?

25 MS. CAYCI: The planning board would

1 have co-jurisdiction with you to consider bulk
2 variances, correct.

3 MS. ALLU: May I, Mr. Chairman. Are
4 you going to discuss or are you going to deliberate
5 because I still have my closing remarks.

6 MS. CAYCI: Counsel, that's a good
7 point. Why don't you make your closing remarks and
8 then I can continue with the board once they go into
9 executive session.

10 MS. ALLU: This is an application that
11 involves substantial improvement of our building
12 that provides the increased vitality and, sought by
13 the master plan, the pedestrian friendly plaza with
14 kiosk, benches and bike racks requested by the
15 neighbors. We are understand an accept that
16 approval of this application is contingent on the
17 receipt of a NJ DOT permit. Please keep in mind
18 that the use variance requested is for less than 20
19 percent of the building, and the other bulk
20 variances are de minimis. You've heard from the
21 planner that the proposed office use is particularly
22 suited to the property and that in fact the proposal
23 will provide much needed modern ADA accessible
24 office space where none is located. You heard that
25 the original impact of the office space is identical

1 to the permitted uses and that the operational
2 impact is actually less, less traffic, but more
3 employees to visit neighborhood restaurants and
4 shops. With respect to the bulk variances, we have
5 demonstrated to you that we can provide the required
6 parking spaces without the proposal, but that to do
7 so would result in no plaza and parking in the front
8 yard. Our plan is consistent with the neighborhood
9 and allows us to provide the plaza with less
10 impervious surface and better water quality.

11 Regarding our request for a fourth
12 floor, it is really a loft within a third floor
13 apartment. The loft doesn't affect the exterior
14 appearance nor the parking requirement. The fourth
15 floor loft does not cause a detriment to the public
16 or the zone plan.

17 This property is owned by a local
18 family that has been part of the Princeton community
19 for three generations. They purchased this property
20 in 1980, but it has been substantially under
21 utilized for the past several years because shared
22 access is no longer available. Because access from
23 Nassau Street is within the exclusive jurisdiction
24 of the NJ DOT the Carnevals reevaluated the
25 property, redesigned the site and now come before

1 this board seeking permission to move forward. We
2 cannot remain stagnant. The proposed plan is not
3 over development. It's within the setbacks, under
4 height, under RAR and reduces the impervious
5 coverage. The proposed plan promotes the intent and
6 purpose of the master plan. SPRAB unanimously
7 approved the plan. No other individual private
8 property owner has agreed to donate so much for the
9 public benefit. We respectfully request the board
10 to look favorably upon this application.

11 MR. KAHN: Thank you.

12 MS. CAYCI: Mr. Kahn, just a couple of
13 other comments I wanted to make. You heard
14 testimony from the applicant's planner with respect
15 to the categories special reasons and as their
16 planner indicated, the applicant who demonstrated
17 use variance has to establish both special reasons
18 as well as establishing that there's no substantial
19 detriment to the public good, the surrounding
20 property or the intent and purpose of the zone plan.

21 The applicant's statement that
22 accompanied their application argued primarily that
23 economic inutility was the special reason, that that
24 was their hardship. In doing that they relied
25 heavily on a case called Eagle Brew. In that case

1 the owner argued that he couldn't use his property
2 that was zoned out of utility because although it
3 was zoned residential, three other sections facing
4 his property were all zoned and developed
5 commercially. He argued that common sense would
6 indicate no one will build houses there and that
7 less intense uses which apparently have been
8 proposed by that board were not feasible because of
9 high vacancy rates and there would be excessive
10 traffic.

11 The point I want to make to you is
12 that although the court in that case urged the
13 board, they remanded it back to the board and gave
14 them, told them we think you should reconsider this,
15 the court didn't actually rule that those factors
16 demonstrate economic inutility. They sent it back
17 to the board and said you take another look at it,
18 keep these things in mind.

19 I'm not aware of any cases in which a
20 court has ruled that a land use board has to take
21 into account the impacts of state regulations with
22 respect to the probable use of property, but I do
23 think that a factor that would be considered would
24 be whether the applicant has made efforts to develop
25 the property in line with regulations.

1 So I would suggest that you take a
2 look at that consideration as well.

3 Here the applicant has provided
4 testimony to you regarding their understanding of NJ
5 DOT regulations which they indicate tied development
6 of the site to the number of trips generated by
7 particular use or use group. I believe Mr. West
8 testified of his understanding that the applicant
9 will be able to balance the mix of uses in order not
10 to exceed the number of trips generated on the site.

11 In addition I think you can take into
12 account the fact that the inability to make the most
13 profitable use of the property doesn't constitute a
14 basis for granting a use variance.

15 With respect to the negative criteria,
16 the, his planner has gone through that as has Mr.
17 Solow in his memos to you. It's not entirely clear
18 to me whether the applicant is arguing that they
19 satisfied the Medici requirements and that is the
20 enhanced demonstration namely that, particularly
21 here where you have an ordinance I guess about nine
22 months ago was adopted by the governing body
23 prohibiting the use that's sought to be made now.
24 The issue is the extent of deference that you give
25 to that ordinance. Again if the applicants relied

1 on the argument of economic inutility, if you do not
2 accept that argument or don't feel they've made the
3 case, then I think they must full comply with the
4 requirements of the Medici case and those are the
5 proofs that their planner went through with you
6 claiming that he felt that they did satisfy the full
7 extent of requirements and that although this is not
8 in compliance with the ordinance that was recently
9 adopted, they feel they've made a satisfactory case
10 to you on that.

11 I'm not going to comment further on
12 the bulk variances. I think the board is familiar
13 with the positive and negative criteria that have to
14 be addressed there and again you won't reach those
15 until you first address the issue of the use
16 variance.

17 MR. KAHN: Is that it, Ms. Cayci?

18 MS. CAYCI: That's it.

19 MR. KAHN: I think you actually, you
20 make a good point, the difference between economic
21 hardship versus the, getting the most profit for
22 their use, for the site. But we can discuss that.
23 So why don't we hear opinion from the board. Mr.
24 Floyd.

25 MR. FLOYD: I actually have more of a

1 question than comment towards Miss Casey because I
2 was going to ask about the economic inutility
3 because that's a major part of their use variance
4 support and in the previous part of this hearing a
5 month ago I asked about whether DOT's opinion was in
6 writing and I asked, if I remember correctly, if
7 there was an appeal process, can you go talk to
8 them? And it was, to the second question it was
9 like. So I don't know if they have, in speaking to
10 Ms. Cayci's comments, exhausted all of their avenues
11 because I don't remember ever getting a complete
12 answer on that when I raised that question.

13 MS. CAYCI: Well, I, I would answer
14 the question this way. I think the earlier focus of
15 the board is the extent to which you can take into
16 account the impact of NJ DOT regulations on the
17 site. The applicants argued to you that that is the
18 jurisdiction of DOT, and that is for the DOT to make
19 a determination about. As I indicated to the extent
20 that the applicant is arguing that there is no
21 profitable use of the property, as I understand
22 their argument in part due to the zoning and in part
23 due to the NJ DOT regulations. I'm not aware of any
24 court cases that would obligate the board to base a
25 finding of hardship on NJ DOT regulations and again

1 I don't know if you want to hear a recap from
2 Mr. West about his understanding of what those
3 regulations mean and that the applicant could have
4 the ability to balance uses on the property. It
5 didn't dictate one particular use on the site. But
6 I think for this board that might be a more
7 appropriate focus than the extent to which the
8 applicant can appeal a determination by NJ DOT which
9 hasn't yet been made. They haven't yet applied. As
10 I understand they could appeal and they understand
11 that your ruling could be conditioned on that but.

12 MS. ALLU: I'm sorry, did you say that
13 we hadn't applied for DOT?

14 MS. CAYCI: That's my understanding.
15 Have you had applied for it?

16 MS. ALLU: Yes.

17 MS. CAYCI: Have you had a response?

18 MS. ALLU: No. It's still pending.

19 MS. CAYCI: I stand corrected. That
20 was my understanding from the earlier testimony,
21 that you hadn't yet applied.

22 MS. ALLU: No. That must have been a
23 misunderstanding.

24 MS. CAYCI: Okay. So I don't know if
25 I've adequately addressed your question.

1 MR. FLOYD: You have and her response
2 helped me too, because it's still pending, it hasn't
3 even been judged yet.

4 MS. ALLU: But this board can make a
5 condition of approval the receipt of that NJ DOT
6 permit.

7 MR. KAHN: So Miss Clayton, would you
8 like to start us off?

9 MS. CLAYTON: No.

10 MR. KAHN: Anyone? Quiet board
11 tonight. Well, I mean I'm not sure that what we've
12 heard has actually shown an economic hardship, I
13 mean from my opinion. And the site is developable.
14 It's a matter of how much you want to develop. I
15 think there's a lot of issues that have been
16 presented, not just the areas that you are seeking
17 variances, some less of an issue than others, four
18 story versus three story. I mean the height is the
19 height and what you're proposing up there. I see
20 the stacked parking I can see, even just the
21 maintenance and access for your garbage pickup. And
22 I think that the SB zone was set up less than a year
23 ago with knowledge of this site. And the university
24 has presented something that would provide access to
25 you and it's something that could be provided as a

1 lease which would provide you financing.

2 So the question of whether or not it
3 can be developed is not necessarily an issue. It's
4 a matter of the amount of financial return that
5 you're talking about and I don't know that the
6 financial return on one property is in the best
7 interest of the entire neighborhood.

8 So that's my opinion right now. I
9 don't know if anybody has any other opinions to add
10 to that.

11 MS. BASKERVILLE: I'm just concerned
12 about the ordinance that was passed last year and
13 that we're being asked to approve so many things
14 that are in direct contradiction to that ordinance.
15 The ordinance is, was developed with many
16 discussions about this property and I really haven't
17 heard anything that convinces me that we should go
18 against that.

19 MR. FLOYD: Okay. My comment, maybe
20 it's surprising, when I came in here I was going to
21 vote for the use on the economic utility question.
22 With the further comments from our attorney, also
23 the comments from the university that there could be
24 up to a 60 year license, then we have the comments
25 regarding, well, the license isn't a real estate

1 related contract, and a lender wouldn't lend, I do
2 understand that. I work for a lender and we do a
3 lot of lending and we tend to stick with the leases.
4 But I think the end discussions with our attorney,
5 that I cannot vote for the use variance.

6 MR. KAHN: All right. Miss Segal,
7 would you like to say anything?

8 MS. SEGAL: I'm afraid I won't be
9 voting for the use variance. I feel that there are
10 many other ways that you can develop this building
11 and this site to be more friendly to the neighbors
12 and to people who walk down the street and this is
13 not what this plan is proposing in my opinion.

14 MR. KAHN: Okay.

15 MS. CLAYTON: I have to agree. I
16 think that to grant variances against an ordinance
17 that has been so recently passed is a problem and I
18 also agree that I think that there are probably some
19 other ways that this property can be developed to
20 benefit sort of the pedestrian nature of this
21 neighborhood.

22 MS. ALLU: If the applicant were to
23 propose to limit the uses to a particular subset of
24 this uses, would this board find the proposal more
25 acceptable to them? If we were to say the use would

1 be limited to nonprofits, legal offices, consultants
2 professionals?

3 MR. KAHN: Are you making another
4 application or are you still --

5 MS. ALLU: Just trying to compromise.

6 MR. KAHN: Right, but --

7 MS. CAYCI: Counsel, just for
8 clarification, you're saying still have office use
9 but limited the office use to users or --

10 MS. ALLU: More technical offices that
11 the board might consider.

12 MR. KAHN: I think you're still
13 asking, regardless of the, at least my opinion,
14 regardless of the profit, nonprofit, it's still a
15 use variance for the office use so.

16 MS. ALLU: Would the board consider
17 one office space for the management company of the
18 owner?

19 MR. KAHN: Are we starting to get a
20 whole new application?

21 MS. CAYCI: Yeah. I mean I think the
22 concern, Counsel, is that I understand you want to
23 get help from the board about what they might
24 support, but the concern is that we seem to be
25 drifting away now from what you have presented. So

1 --

2 MS. ALLU: There's no harm in amending
3 the application.

4 MS. SEGAL: It's not only, we're not
5 the, it's not only about the use.

6 MR. KAHN: We haven't, there's no
7 motion. We haven't done anything. There's no vote.
8 We haven't done anything.

9 MS. ALLU: I was just proposing one
10 thousand square foot office for the management
11 company, the owner to manage his own property.

12 MS. CAYCI: And then what would be the
13 ground floor?

14 MS. ALLU: Bank and then other
15 permitted uses, medical.

16 MR. KAHN: See, I would have a problem
17 at that point because I am, I have to look at
18 drawings and things like that and we're kind of
19 describing things, basically get misinterpreted by
20 descriptions. So I don't know how we could do
21 something of --

22 A VOICE: Just for the owners to have,
23 that's all they're asking.

24 MR. KAHN: I understand that. That's
25 understandable. But are you requesting to go,

1 refine your application and come back because we
2 can't --

3 MS. ALLU: No.

4 MR. KAHN: We can't approve something
5 that we don't see on the documents at this point. I
6 mean what's in front of us is a --

7 MS. ALLU: You don't have a detail of
8 the tenant space either.

9 MR. KAHN: But we have a plan which
10 talks about how much square footage is for office
11 space and how much is for a bank. That's what we
12 have in front of us.

13 MS. ALLU: But you could carve out
14 office space for the owners.

15 MR. KAHN: That's fine, but what I'm
16 saying is do you want to refine your application and
17 come back with a new submission?

18 MS. ALLU: No. I don't think that's
19 necessary. I think we could amend it here.

20 MR. KAHN: I disagree. I disagree. I
21 don't know if anyone else on the board thinks
22 otherwise.

23 MS. ALLU: Miss Cayci, is it possible
24 to amend the application in the midst of it?

25 MS. CAYCI: Counsel, I know it depends

1 on what you're amending. Here the board doesn't
2 have information about where the office would be.
3 You do have the detailed site plan that's
4 accompanying this application and you chose to file
5 it together. You didn't bifurcate. You chose to
6 present the use variance with the site plan. So
7 that's what the board has tonight. That's what you
8 presented all your testimony about.

9 I think the chair's suggestion, if you
10 want to refine this application further and carry it
11 to the next meeting, and in that way you can amend
12 your site plan, come back to the next meeting and
13 limit that proposal to make, I think the chair is
14 indicating the board is willing to extend that
15 ability.

16 MS. ALLU: Okay. Can I have two
17 minutes to talk to my clients?

18 MR. KAHN: Sure.

19 MS. CLAYTON: But what she's
20 suggesting is changing one office to another office?
21 I don't think that, I'm not sure that that actually
22 changes, that that changes the concept of office
23 here.

24 MS. CAYCI: Well, it still requires a
25 use variance, an easement, so in that sense it

1 hasn't changed.

2 MR. KAHN: I'm sorry, I didn't hear
3 you.

4 MS. CAYCI: I'm saying that whether
5 it's a thousand square feet or 5,000 square feet or
6 8,000 square feet --

7 MR. KAHN: It still requires.

8 MS. CAYCI: -- it still requires a use
9 variance.

10 MR. KAHN: Okay.

11 MS. ALLU: Our position is that we can
12 amend our application here tonight and ask for the
13 one thousand square foot office.

14 MR. KAHN: Okay. So now we will take
15 that into consideration and we'll take a motion to
16 either approve or not approve this application.

17 MS. ALLU: Just to clarify, the rest
18 of the space would be permitted uses.

19 MR. KAHN: So we're still looking for
20 a D variance for office use and limiting it to
21 management's office of a thousand square feet.

22 MS. ALLU: The owner's office to
23 manage the property.

24 MS. BASKERVILLE: Can you clarify what
25 you mean by permitted uses for the rest of the

1 space?

2 MS. ALLU: I think medical, dental are
3 the other permitted uses on the ground floor,
4 according to the ordinance. We would have permitted
5 uses, whether it be medical, dental or some other
6 permitted use, we would have permitted uses.

7 MS. CLAYTON: So the only use variance
8 now would be for the management --

9 MS. ALLU: So that the owners have a
10 management office to manage the property, one
11 thousand square feet.

12 MS. CLAYTON: So everything else is
13 permitted?

14 MS. ALLU: Everything else is, the
15 bank is already permitted and the other office space
16 would be medical, dental or every other permitted
17 use.

18 MS. SEGAL: So I have a question. If
19 we allow that office, the one thousand square foot,
20 it means that they're going to get the DOT approval
21 for the curb cut and is this like one following the
22 other? Is this how it works?

23 MR. KAHN: Well, this is the first
24 part of the vote.

25 MS. SEGAL: Okay.

1 MR. KAHN: Because then we would have
2 to vote for site plan approval and the bulk
3 variance.

4 MS. CAYCI: That's correct.

5 MR. KAHN: So if we first get to that
6 we move onto the second. If we get to yay or nay,
7 the --

8 MS. CLAYTON: So we're going to vote
9 on three things?

10 MR. KAHN: We're going to vote on one
11 thing right now.

12 MS. CLAYTON: But ultimately three.

13 MR. KAHN: No. We're going to vote on
14 one thing, D variances. If the D variance is
15 approved, we'll then move onto site plan approval
16 and then vote on the bulk variance, okay. So if
17 there is an approval of the D variance we would then
18 move on. If there's not.

19 MS. ALLU: The D variance being the
20 management office for the owner.

21 MS. CLAYTON: Okay.

22 MR. KAHN: All right. Do we have a
23 motion to approve the D variance for the one
24 thousand square foot management office bank use and
25 other permitted uses for the remaining roughly 9,000

1 square feet or so? Okay. Last call. Okay. Let's
2 try this the other way. Do we have any motion to
3 deny the D variance for the one thousand square foot
4 office space bank use and other permitted uses on
5 the first floor?

6 MS. BASKERVILLE: I so move.

7 MR. KAHN: You move to deny --

8 MS. BASKERVILLE: Yes.

9 MR. KAHN: -- the application, okay.
10 So we have one motion to deny. Do we have a second?

11 MS. SEGAL: I second.

12 MR. KAHN: Okay. We will now vote on
13 whether or not to deny. So a yes would mean that
14 you are in agreement with denying the application
15 for the use variance. Miss Rogers.

16 THE SECRETARY: Ms. Baskerville.

17 MS. BASKERVILLE: Yes.

18 THE SECRETARY: Ms. Clayton.

19 MS. CLAYTON: No.

20 THE SECRETARY: Mr. Floyd.

21 MR. FLOYD: Yes.

22 THE SECRETARY: Ms. Segal.

23 MS. SEGAL: Yes.

24 THE SECRETARY: Miss Rockstrom.

25 MS. ROCKSTROM: Yes.

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THE SECRETARY: Mr. Kahn.

MR. KAHN: Yes.

THE SECRETARY: Motion to deny passed.

MR. KAHN: Thank you.

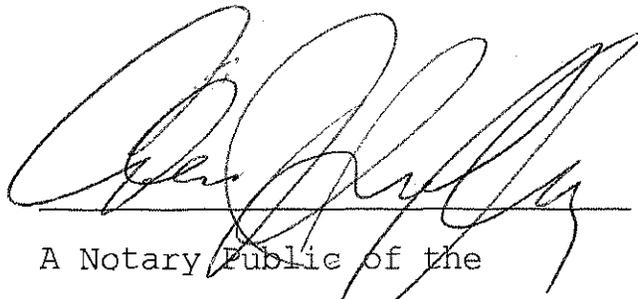
MS. ALLU: Thank you.

C E R T I F I C A T E

1
2 I, COLIN J. DUFFY, a Certified Court Reporter
3 and Notary Public of the State of New Jersey,
4 certify that the foregoing is a true and accurate
5 transcript of the hearing held before me, at the
6 place and on the date hereinbefore set forth.

7 I further certify that I am neither attorney
8 nor counsel for, nor related to or employed by, any
9 of the parties in the action in which this
10 deposition was taken and further that I am not a
11 relative or employee of any attorney or counsel in
12 this case, nor am I financially interested in the
13 action.

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