

In The Matter Of:

In Re: V-Fee Mendham Apartments

Transcript of Proceedings

May 16, 2023



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Min-U-Script® with Word Index

1 BOROUGH OF MENDHAM
2 JOINT LAND USE BOARD
3 REGULAR MEETING
4 Tuesday, May 16th, 2023
5 Commencing at 7:33 p.m.

STENOGRAPHIC
TRANSCRIPT OF
PROCEEDINGS

6 - - - - -
7 IN THE MATTER OF

8 23-22 V-Fee Mendham Apartments, LLC
9 84-86-88 East Main Street
10 Block 801, Lot 20

11 B E F O R E:
12 BOROUGH OF MENDHAM JOINT LAND USE BOARD
13 THERE BEING PRESENT:

- 14 ROBERT RITGER, CHAIRMAN
- 15 CHRISTINE SERRANO GLASSNER, MAYOR (Stepped down)
- 16 JOYCE BUSHMAN, ADMINISTRATOR
- 17 STEVE ANDREW, COUNCILMAN (Stepped down)
- 18 RICHARD SMITH, MEMBER
- 19 DAVE SPRANDEL, MEMBER
- 20 JOE D'URSO, MEMBER
- 21 JOHN EGERTER, MEMBER
- 22 MARRIE ROSE GARBACZ, MEMBER
- 23 JAMES MOLNAR, ALTERNATE 1
- 24 KEITH KAY, ALTERNATE 2
- 25 JAMES BARKER, ALTERNATE 3
- 26 RICHARD PACE, ALTERNATE 4

27
28 RIZMAN RAPPAPORT
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13 JESSICA CALDWELL, PP, AICP, Board Planner

14 LISA SMITH, Planning and Land Use Coordinator

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(Exhibits retained by counsel.)

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(Time noted 7:33 p.m.)

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MR. GERMINARIO: All right. So we're going to next move into the V-Fee Mendham Apartments application, but this is not the application for the development itself, it's an application for interpretation of the ordinance as it applies to this development in terms of what variances are and are not needed.

So it's not going to be -- we're not going to be deciding anything or hearing any testimony about the development, itself, except as it relates to that issue, the issue of ordinance interpretation.

Because we're doing ordinance interpretation, this is part of the joint land use board jurisdiction that falls under what is traditionally called the zoning board of adjustment.

And so you'll see on this case that Mayor Glassner and Councilman Andrew will not participate in this application tonight.

I just want to remind you of the rules of public participation. You will have the opportunity after each witness to ask questions and again, bear in mind that your questions have to be

1 relevant to what we're doing tonight, which is the
2 ordinance interpretation.

3 So if you have questions involving the
4 development, itself, that don't pertain to this
5 particular very narrow set of questions, I'm going to
6 have to rule you out of order.

7 So just, you know, try and keep your
8 mind on what is relevant to the proceeding we have
9 tonight.

10 So after every witness, you'll be able
11 to question the witness on their particular
12 testimony. At the end of the entire case that the
13 applicant will present, you will have the opportunity
14 if you have testimony of your own and again, this is
15 factual. We're not asking for your opinion one way
16 or another, we're asking if you have facts that bear
17 upon the issues that you're going to hear about
18 tonight. And that will come only after all the
19 testimony and documents that have been submitted by
20 the applicant have run their course.

21 So that being said, I see the
22 applicant's attorney lurking behind the pillar. If
23 he wants to come over, go ahead.

24 MS. SMITH: I thought we were doing
25 completeness first.

1 CHAIRMAN RITGER: Just to be clear on
2 the agenda, we're moving a couple of items. Number 5
3 -- excuse me -- Number 6 and 7, those -- the
4 discussion item and the resolution, we're going to
5 move later in the agenda to just before the executive
6 session.

7 Right now we're going to do the
8 completeness review, the Kuchinski application at
9 24 Franklin Road.

10 (Whereupon, the Joint Land Use Board
11 conducts agenda items.)

12 CHAIRMAN RITGER: All right.

13 Next up is the V-Fee Mendham
14 Apartments, LLC, and I believe there's representation
15 here.

16 MR. ORTH: Thank you, Mr. Chairman.
17 Just give me a minute to get set up here.

18 Okay. Can everybody hear me?

19 CHAIRMAN RITGER: Yes.

20 MR. ORTH: All right, great.

21 Thank you.

22 MR. GERMINARIO: Before you get
23 started, Derek, I've just for the board's
24 information, I've reviewed your public notice and it
25 is adequate with jurisdiction on the board.

1 So you may proceed.

2 MR. ORTH: Thank you.

3 So good evening.

4 UNIDENTIFIED SPEAKER: Can you speak
5 up? We can barely hear. I don't know if it's, like,
6 you have to speak into the microphone.

7 MR. GERMINARIO: Oh, okay.

8 What I just said was I have reviewed
9 the public notice for this application and it is in
10 order and we can proceed with the hearing tonight.

11 MR. ORTH: Okay. Thank you,
12 Mr. Chairman, Members of the Board, my name is Derek
13 Orth.

14 And it's a pleasure to be here with you
15 in beautiful Mendham this evening.

16 I'm here on behalf of the applicant,
17 V-Fee Mendham Apartments, LLC. The property that is
18 the subject of this application is known as
19 84-90 East Main Street, Mendham, New Jersey and is
20 more particularly referred to as Block 801, Lot 20 on
21 Mendham's official tax map.

22 I'm sure that everyone on the board and
23 those in the audience better know this property as
24 the Kings shopping center.

25 There's a little bit of history to this

1 application, Mr. Chairman. So bear with me because
2 my opening remarks are going to be a little bit more
3 lengthy than they otherwise normally would be.

4 Tonight we are here before you on a
5 limited basis. As Mr. Germinario mentioned, we're
6 requesting an interpretation of your land use
7 ordinance as applied to the proposed development of
8 the subject property. This is a power that is vested
9 in the zoning board under N.J.S.A. 40:55D-70(b), it
10 provides the zoning board of adjustment with the
11 power to hear and decide requests for interpretation
12 of the zoning map or ordinance.

13 Sometimes this is referred to as a B
14 variance, but in reality, it's just a simple request
15 that the zoning board interpret the land use
16 ordinance of the municipality.

17 These types of applications are
18 somewhat rare in the land use context, but they're
19 not unheard of. They commonly arise during due
20 diligence investigations by a prospective contract
21 purchaser or as here, when there is some disagreement
22 as to whether a proposed use implicates a variance.
23 And the latter is exactly what we are requesting of
24 the board this evening.

25 I'd like to put this matter into

1 context, Mr. Chairman, so I'm going to provide a
2 little bit of history for the benefit of the board
3 and for the public.

4 Basically how we got to where we are
5 today, as that will inform the board's deliberations
6 this evening.

7 So as the board may be aware, back in
8 2015, Mendham filed an action in superior court
9 seeking a declaration that it was compliant with its
10 affordable housing obligation arising through the
11 years 1999 through 2025.

12 As part of that process, the superior
13 court required Mendham to evaluate several sites
14 including the subject property, which had been
15 proposed for inclusionary housing.

16 Now, when I say "the subject property,"
17 I want everyone to understand that we are referring
18 to the portion of the site which is behind the Kings
19 shopping center.

20 In other words, the portion of the site
21 which was developed with the now defunct racquet
22 club.

23 So just to be clear, we're not removing
24 the Kings shopping center. To the contrary, we are
25 actually proposing, not as part of this

1 interpretation application but as part of the site
2 plan application, some nice architectural updates to
3 the center, which you will see later on when we reach
4 our witnesses. So everyone can continue shopping at
5 the Kings, as you otherwise have been.

6 Going back to the court process,
7 Mendham and the applicant negotiated for years
8 regarding the proposed multifamily development of the
9 rear portion of the site. Mendham's elected
10 officials fought hard for their constituents and
11 ultimately entered into a settlement agreement with
12 V-Fee in which Mendham agreed to rezone the site to
13 permit a 75-unit inclusionary community.

14 This settlement agreement was executed
15 on or about December 23rd, 2019, by both parties and
16 subsequently approved by the superior court at a
17 fairness hearing.

18 Mr. Chairman, I had previously
19 submitted this settlement agreement as Exhibit A-1 to
20 Ms. Smith, I premarked it in that fashion, and I
21 respectfully request that it be entered into the
22 record accordingly.

23 CHAIRMAN RITGER: Fair enough.

24 MR. ORTH: Thank you.

25 (Whereupon, Settlement Agreement is

1 marked as Exhibit A-1 for identification.)

2 MR. ORTH: The settlement agreement
3 provides for a number of things. In relevant part,
4 Mendham agreed that the site was suitable, available,
5 developable, and approvable. Mendham also agreed to
6 adopt a zoning ordinance amendment which would permit
7 the construction of a 75-unit inclusionary
8 development consisting of 60 market-rate units and 15
9 affordable units.

10 The parties also agreed to work
11 cooperatively to draft use and bulk standards in
12 connection with this ordinance. The parties agreed
13 that this ordinance would not only permit the 75-unit
14 project, but also, and I quote, "permit the existing
15 uses on the property to remain as a permitted use,"
16 and that language is found on page 5 of the
17 settlement agreement.

18 Ultimately Mendham and V-Fee worked
19 together to craft this ordinance as stipulated in the
20 settlement agreement. The end result of that
21 cooperation was Ordinance No. 09-2020.

22 This ordinance was introduced by the
23 governing body on July 15th, 2020, and adopted on
24 August 11th, 2020, following a public hearing.

25 Mr. Chairman, I probably didn't have to

1 do this given that it's an ordinance, but for the
2 avoidance of that, I did submit a copy of
3 Ordinance 09-2020, I premarked that as Exhibit A-2,
4 and I also respectfully request that it be entered
5 into the record.

6 CHAIRMAN RITGER: Sounds fair.

7 MR. ORTH: Thank you.

8 (Whereupon, Ordinance 09-2020 is marked
9 as Exhibit A-2 for identification.)

10 MR. GERMINARIO: That's fine.

11 MR. ORTH: Thank you.

12 The whereas clauses in this ordinance
13 specifically reference the settlement agreement and
14 state that the ordinance was being adopted in
15 accordance with this court-approved settlement.

16 So right there we have a statement of
17 intent by the governing body to effectuate the terms
18 and conditions of the settlement agreement, one of
19 which was to permit the existing uses on the property
20 to remain as a permitted use.

21 Section 5 of that ordinance also states
22 that all ordinances of the Borough of Mendham that
23 are inconsistent with the provisions of this
24 ordinance are hereby repealed to the extent of such
25 inconsistency, and we'll talk a little bit more about

1 that as we get through the bulk of our presentation
2 here tonight.

3 Following the adoption of that
4 ordinance, V-Fee worked over the next several years
5 to develop a site plan for the project. The
6 applicant hired a team of professionals, some of whom
7 you're going to meet tonight, and ultimately we filed
8 an application for preliminary and final major site
9 plan approval with minor bulk variance relief on or
10 about November 2nd, 2022.

11 That application, which I am going to
12 refer to as the site plan application, was reviewed
13 by the board's professionals on a number of occasions
14 and ultimately scheduled for a completeness review on
15 March 21st, 2023.

16 As the board will recall, at that
17 hearing the board deemed the application incomplete
18 because the board's professionals suggested that the
19 site plan application might require D-1 variance
20 relief and/or D-3 variance relief.

21 The potential D-1 variance was
22 associated with the proposed use of what I have
23 referred to as the premium parking building, which is
24 part of the site plan application.

25 Essentially, the board and the

1 professionals noted that in our initial planning
2 report had made a reference to the potential use of
3 this building, including climate controlled
4 automobile storage, which in the abstract standing
5 alone is potentially not a permitted use.

6 Second, the board found that a D-3
7 conditional use variance may also be required because
8 the proposed residential building is located within
9 250 feet of an existing cell tower in the rear of the
10 site.

11 In this regard, Section 215 of Mendham
12 code sets forth standards for cell tower applications
13 which are treated as condition uses and one of the
14 conditions associated with a cell tower application
15 requires them to be set back 250 feet from
16 residential dwellings. As a result, the board deemed
17 the site plan application incomplete.

18 Now, reasonable minds can differ and we
19 respectfully differed with the board's incompleteness
20 determination. And to bring resolution to this issue
21 and to help clarify this issue, we filed the instant
22 interpretation application that is before you this
23 evening.

24 In connection with the interpretation
25 application, we submitted an updated planning report

1 from our planner, Topology, Philip Abramson, who is
2 also here tonight, and that report is dated
3 March 8th, 2023.

4 The updated report clarifies that the
5 use of the premium parking building is limited to
6 auto sales and services, which is a permitted
7 principal use in the zone and accessory uses for the
8 tenants of the residential building, including
9 accessory parking, tenant storage and bicycle
10 parking.

11 So in response to that submission, we
12 received a memorandum from the board attorney dated
13 May 2nd, 2023, and also the report from the board
14 planner dated May 5th, 2023, and we're hoping to
15 change your opinions tonight after we present our
16 testimony.

17 So what we submitted after we submitted
18 the updated Topology report, we also submitted that
19 report in connection with the site plan application.
20 We stipulated to the uses in that report, and we
21 amended our application, that being the site plan
22 application, accordingly.

23 So just to be clear, there will be no
24 third-party vehicle storage provided on-site in
25 connection with this project.

1 So with that stipulation in the record,
2 I believe and I respectfully submit that the
3 potential D-1 variance is eliminated.

4 And when I finish up with my opening
5 statement, I'm going to ask Mr. Germinario and you,
6 Mr. Board Chairman, to weigh in on that issue to see
7 if we can limit the scope of, you know, presentation
8 this evening.

9 So turning back for a moment to the
10 potential D-3 variance, as noted, this arose because
11 a cell tower had been previously approved and
12 installed in the rear of the site. There was -- as
13 this board is well aware, there was significant
14 litigation over that cell tower starting in superior
15 court going up to the appellate division, but
16 ultimately, the cell tower was approved via board
17 resolution memorialized on or about September 12th,
18 2017, and installed shortly thereafter, well prior to
19 the execution of the settlement agreement.

20 My last exhibit in connection with my
21 opening statement, Mr. Chairman, I have premarked as
22 A-3, and that is the resolution of approval of the
23 cell tower application from 2017 and I also
24 respectfully request that that resolution be entered
25 into the record as Exhibit A-3.

1 CHAIRMAN RITGER: No problem.

2 (Whereupon, Resolution of Approval of
3 the Cell Tower Application from 2017 is marked
4 as Exhibit A-3 for identification.)

5 MR. ORTH: Thank you.

6 It's our position, Mr. Chairman and
7 Members of the Board, and the board is going to hear
8 expert testimony on this topic, that no D-3 variance
9 is required in connection with the site plan
10 application. We're going to provide argument and
11 testimony that such an interpretation is contrary to
12 the expressed intent of both the settlement agreement
13 and the ordinance and also from our perspective, a
14 common sense interpretation of Mendham's land use
15 ordinance.

16 In terms of witnesses, Mr. Chairman, I
17 have two. That would be my architect Bruce Stieve
18 from the premiere firm of MHS Architecture.
19 Mr. Stieve is going to provide a short presentation
20 showing the proposed project, existing conditions,
21 buildings, and identify the proposed layout of the
22 site as well as the location of the cell tower.

23 After that I intend to call my planner,
24 Philip Abramson from Topology. Mr. Abramson is going
25 to present planning proofs in support of our

1 interpretation request.

2 So that's my opening spiel,
3 Mr. Chairman, a little longer than normal, but I hope
4 it was helpful in placing this interpretation
5 application in context with where we are tonight.
6 And if you don't have any questions, I'd like to
7 inquire of Mr. Germinario and for the board, if given
8 the stipulation as to the use of the premium parking
9 building, which is in conformance with the land use
10 ordinance, does the board agree that the potential
11 D-1 variance is no longer at issue and we can simply
12 focus on the D-3 tonight?

13 CHAIRMAN RITGER: I'd like to get a
14 couple things clear before we do that.

15 You mentioned that the cell tower is at
16 the rear of the site. I think you ought to be a
17 little more specific on that, because it is not.

18 MR. ORTH: That's one of the reasons
19 we're going to call up Mr. Stieve, who is going to
20 show where all the structures are located on the
21 site.

22 CHAIRMAN RITGER: All right.

23 MR. GERMINARIO: Yeah, I agree with
24 counsel for the applicant that the issue of the D-1
25 variance, in light of their stipulation, is no longer

1 on the table, that their appearance is no longer
2 required, and we can narrow this proceeding down to
3 the D-3 variance.

4 I assume the board's planner is okay
5 with that?

6 MS. CALDWELL: Yes, we reviewed it and
7 found that without the third-party vehicle storage
8 and the other uses, vehicle car sales and accessory
9 storage for the apartments were both permitted uses.

10 CHAIRMAN RITGER: Jessica, help me out
11 on this. There's list of uses. Which of these are
12 individual uses and which ones are collective?

13 Okay. So we have car sales, car
14 service. Car storage is no longer on the list, but
15 tenant storage is, pool storage is. We have EV
16 chargers, are all of those individuals or which ones
17 are not?

18 MS. CALDWELL: If you mean principal
19 uses, some of them are accessory --

20 CHAIRMAN RITGER: Yes, principal versus
21 accessory.

22 MS. CALDWELL: So the car sales and
23 service is one principal use.

24 The parking, the premium parking is an
25 accessory, they're proposing it as an accessory to

1 the apartments, so it wouldn't be able to be used by
2 the public, that's where we found that it was a
3 different type of use that wasn't contemplated by the
4 zone where it would just be premium parking that
5 anyone can come and rent a space there.

6 So it's just for -- the way the
7 application now states, it's just for tenants of the
8 building to use that space.

9 And then there's car sales and service
10 and electric vehicle charging stations are accessory
11 to any of the uses, I suppose, on the site.

12 CHAIRMAN RITGER: Pool storage?

13 MS. CALDWELL: Pool storage?

14 CHAIRMAN RITGER: Pool storage, that's
15 on the first floor.

16 MS. CALDWELL: You mean storage for the
17 pool would be accessory to -- the pool is accessory
18 to the apartments, which would be an accessory use to
19 the apartments.

20 And I think all of, you know, the board
21 may not agree with everything the applicant's asked
22 for with respect to the building and how they would
23 like to sort of be flexible on how much space is used
24 for what, but all of that can be determined through
25 the process of site plan application.

1 CHAIRMAN RITGER: And just to go on
2 record, bike storage is also accessory?

3 MS. CALDWELL: That would be an
4 accessory use to the apartments.

5 CHAIRMAN RITGER: Okay.

6 MS. CALDWELL: So all of those things I
7 think have to be flushed out a little bit further
8 during the site plan process, but this is just to get
9 them to that process.

10 CHAIRMAN RITGER: Right, okay.

11 All right. Proceed.

12 MR. ORTH: Thank you, Mr. Chairman.

13 Now that the D-1 is no longer an issue, I just would
14 like to call my first witness, Mr. Bruce Stieve, have
15 him sworn in and qualified.

16 Should -- let's see. We don't have
17 another microphone, do we? I can speak very closely
18 into this.

19 MS. SMITH: You can pick that one up.

20 MR. ORTH: Can I pick this one up?

21 MS. SMITH: Either way.

22 MR. GERMINARIO: Mr. Stieve, do you
23 swear that your testimony this evening will be the
24 truth, the whole truth, and nothing but the truth?

25 MR. STIEVE: I do.

1

2 B R U C E S T I E V E, RA

3 1225 Willow Avenue, Hoboken, New Jersey, having
4 been duly sworn, testifies as follows:5 MR. GERMINARIO: You want to qualify
6 him?

7 MR. ORTH: Oh, yes.

8 THE COURT REPORTER: Can you just have
9 him spell his last name?10 MR. ORTH: Oh, yes, and just before I
11 get going, I just want to introduce our stenographer
12 tonight, she's here next to me. She's here just to
13 keep a record of the proceedings.14 Mr. Stieve, why don't you spell -- I
15 think we all know how to spell Bruce. Why don't you
16 please spell your last name.

17 MR. STIEVE: Sure.

18 My last name is Stieve, S-T-I-E-V-E.

19 VOIR DIRE EXAMINATION

20 BY MR. ORTH:

21 Q. And why don't you provide the board
22 with a brief overview of your professional
23 qualifications, confirming your pertinent licenses
24 are still in effect and where you've been qualified
25 as an expert in the field of architecture in the

1 past?

2 A. Sure.

3 So again, my name is Bruce Stieve. I'm
4 a principal in the firm Marchetto, Higgins, Stieve,
5 MHS Architecture. We're located in Hoboken, New
6 Jersey.

7 I have a master's degree in
8 architecture, as well as a bachelor degree of
9 architecture, and I've been licensed in the state of
10 New Jersey since 1996.

11 And my license is current and in good
12 standing.

13 Q. Hold on one second, Bruce.

14 MR. ORTH: With that, Mr. Chairman, I
15 proffer Mr. Stieve as an expert in the field of
16 architecture and request that he be recognized as
17 such by the board.

18 CHAIRMAN RITGER: Anybody have any
19 objection?

20 (No response.)

21 CHAIRMAN RITGER: Fair enough.

22 MR. ORTH: Thank you, Mr. Chairman.
23 Now, Mr. Stieve does have a -- you have a map and
24 exhibit there, right, Bruce?

25 THE WITNESS: I do, yes.

1 MR. ORTH: Before he gets into that, I
2 just wanted to deal with the marking of that exhibit.
3 This is not something that was presubmitted to the
4 board nor was it premarked.

5 It's one packet. I have printed out,
6 you know, hand packets that I could distribute to the
7 board if you so like.

8 CHAIRMAN RITGER: That would be
9 helpful. There are some that can't see that board,
10 so that would be very helpful.

11 MR. ORTH: So if I may approach the
12 table.

13 CHAIRMAN RITGER: This is A-4?

14 MR. ORTH: I would like to mark the
15 whole packet as A-4 instead of going --

16 CHAIRMAN RITGER: No, that's fine.

17 MR. ORTH: Okay, great.

18 (Whereupon, Conceptual Overview of the
19 Project, 14 Sheets, is marked as Exhibit A-4
20 for identification.)

21 DIRECT EXAMINATION

22 BY MR. ORTH:

23 Q. Okay. Bruce, before you get going, did
24 you premark it as A-4?

25 A. I did.

1 Q. Okay.

2 Why don't you just describe what this
3 is now that it's been premarked so that our
4 stenographer could keep a note of it?

5 A. Sure.

6 So this is a package, I believe it's
7 about 14 sheets, it represents a conceptual overview
8 of the project. It includes some existing condition
9 photographs, aerial photographs. It includes some
10 concept site plan drawings, it includes some
11 conceptual rendering of the projects, just to give a
12 flavor and an idea of how the project is laid out and
13 configured on the site.

14 Q. Right.

15 And this is undated, but this was
16 prepared by today's date, correct, Bruce?

17 A. That's correct.

18 There's a series of drawings that have
19 been prepared over the last couple of months that
20 we've been working on the project, I should say a
21 couple of years that we've been working on the
22 project. So it's just a compilation that was
23 compiled today.

24 Q. Thank you, Bruce. Why don't you just
25 walk us through what you have prepared.

1 A. Sure.

2 So I just wanted to give a brief
3 overview. I didn't mention some of the boards that
4 I've testified in front of before, but we've done --
5 we're an architecture firm that specializes in
6 multifamily residential buildings, mixed-use
7 projects, and a lot of downtown projects.

8 We've worked in Morristown. We've got
9 quite a few projects that were completed in
10 Morristown. We've got a project in Florham Park that
11 was recently completed. Parsippany, Montclair, South
12 Orange. So we work in a lot of the larger downtown
13 neighborhoods in this area.

14 And so we were approached to take a
15 look at this project on Main Street and we realized
16 early on that there was some unique site conditions
17 that we were going to be working with.

18 So I'm going to turn to the second
19 sheet of the package that you have in front of you.
20 This is --

21 MR. FERRIERO: Mr. Orth, if I could
22 just make a suggestion, because nobody in the
23 audience can actually see this.

24 MR. ORTH: Sorry, folks.

25 MR. FERRIERO: Maybe before you start

1 to speak about it, you can show it to the audience so
2 they have some idea of what you're talking about and
3 as necessary, move back and forth.

4 MR. ORTH: Sure.

5 CHAIRMAN RITGER: Before we go there,
6 is there anybody that would be put off if we simply
7 had him turn that around permanently? I think we
8 have what we need.

9 Yeah, you can turn that around, that
10 would be fine.

11 MR. FERRIERO: You're going to have to
12 move it, I think all the way back behind the columns.
13 Further.

14 THE WITNESS: Can I move the --

15 CHAIRMAN RITGER: Yeah, move the mike,
16 that's fine, it's wireless.

17 THE WITNESS: So the first image that
18 I'm sharing is an aerial photograph, it was taken by
19 a drone, and we're actually hovering over the racket
20 club at the rear of the site.

21 And you can see at the very front of
22 the site is the cell tower, it's the white pole
23 that's sticking up in the middle of the parking lot
24 area there (inaudible).

25 And then immediately in front of that

1 is the shopping center that faces on Main Street
2 (inaudible).

3 And so a couple things that we started
4 looking at that were challenges for the site we
5 started to identify.

6 So we have the cell tower. We have the
7 service areas for the Kings supermarket. We have the
8 service areas for the shopping centers on the sides
9 of the site. And we had the parking field that
10 surrounded the retail center.

11 So those are things that we were
12 considering about when we started to think about the
13 layout of the site and the project.

14 The next image is actually a
15 GoogleEarth image, it's a GoogleEarth image at the
16 eastern entrance to the site. This is a road that
17 leads back to the racket club, it serviced the access
18 to the racket club, but it also services a few of the
19 industrial uses that are -- or the manufacturing uses
20 that are at the rear of the site, and it services the
21 loading and the trash collection areas for the retail
22 center on the site.

23 So we look at this, again, as not an
24 ideal way to access a residential project at the back
25 of the site, so we wanted to look at ways that we

1 could reconfigure the parking area in front of the
2 building to provide a better approach to the
3 residential project at the rear of the site.

4 I'll also note that you can see the
5 cell tower that's the point of discussion tonight
6 sticking up at the back. It's not at the back of the
7 site, but it's at the back of the retail portion of
8 the site.

9 The next sheet that I'm going to share
10 is, again, a GoogleEarth image. This was taken a
11 view looking towards the existing current entry point
12 to the site for the retail center. And you can see
13 this gets sort of the character of the retail center.

14 One of the things that we -- it's a --
15 it has a unique design to it. It's kind of -- we
16 call -- started to think about it, it has this rural
17 suburban sort of I'll call it equestrian or a farm
18 look to the shopping center, and that's something
19 that we were looking at as an idea generator for the
20 design of the multifamily building at the back of the
21 site.

22 And as I mentioned, one of the things
23 that we were thinking about is how if you were to
24 live at this project, how would you approach the
25 project and what would that process be. And you can

1 see that this access route, not quite on access, goes
2 directly back to the back of the site.

3 So that's something that started the
4 thoughts of how we would introduce a residential
5 building to the site.

6 This next image is I'll call this a
7 very conceptual site plan. This is a site plan
8 sketch that, again, started to help us inform how we
9 would configure the site to contain a residential
10 building in the back of the site, how we can provide
11 screening from that residential building to the
12 retail service areas at the back of Kings.

13 And so one of the things that you'll
14 see is that we were looking at and working with the
15 County on the access points to the property and one
16 idea or the idea that we started to receive was
17 creating a main street that went through the parking
18 area.

19 So reconfiguring the parking area in
20 front of Kings to provide a boulevard that ran in
21 front of the retail, kind of like a main street where
22 the street goes by the retail center and then leads
23 to the back of the site and then into a courtyard
24 area that would service the residential building.

25 And that -- and the idea would be that

1 we would use another structure to screen the back of
2 the Kings service area, and I'll explain that a
3 little bit more as I get to the next slide.

4 So the next image is a more developed,
5 I'll call it an architectural site plan, and this
6 shows the residential building that's being proposed
7 at the back of the site, it shows the premium parking
8 building that provides a separation or a buffer
9 between the residential building and the service
10 areas of the retail at the front of the site, and it
11 shows that relocated driveway access into the
12 shopping center that comes along the boulevard that
13 runs back to the residential building.

14 So the next image is, again, an overall
15 view of the site looking back towards the racket
16 club. You see the mountain range in the distance,
17 you'll see the cell tower that's in question
18 prominently located at what I would call the center
19 of the site behind the Kings shopping center
20 building, and you can see the parking field that's
21 contained by the two wings of the retail and the
22 Kings center itself.

23 The next image is a conceptual
24 rendering of the proposed project, it shows very
25 clearly the relocated entry point, the reconfigured

1 parking field in front of the Kings to now allow this
2 what we're calling a new main street to run in front
3 of the retail on the left-hand side of the image
4 straight through to the back of the site.

5 And you can see there's a, we'll call
6 it a portico share, but you'll see that there's a
7 barn styled structure that's about a
8 one-and-a-half-story structure that will contain the
9 premium parking, the auto sales and service areas,
10 the pool storage areas, and the residential storage
11 areas within that building. And that building
12 provides a distinctive feature that separates the
13 residential building at the back and the retail
14 service areas in the -- behind the Kings.

15 The residential building is a building
16 that's located behind that, it has two lower wings
17 and then the main portion of the building. The main
18 portion of the building is actually parallel with
19 Main Street, we did that very specifically so that
20 the shorter sides of the projects were facing the
21 neighbors and the broader expanse of the project
22 faced Main Street.

23 AUDIENCE MEMBER: Excuse me. When
24 you're mentioning places, could you point to them?
25 I'm having a hard time picking out where the

1 buildings are.

2 THE WITNESS: So this is the Kings
3 supermarket. These are the two retail wings that
4 blanket. This is what I was referring to as the
5 parking field. This is the new entrance,
6 reconfigured entrance and exit to the supermarket
7 shopping center, as well as what we're discussing as
8 the Main Street that leads back to the residential
9 portion of the building.

10 These are the ancillary businesses that
11 are happening in the back. This is the eastern
12 driveway that I showed you the first photograph, the
13 Google Earth image of that we really saw as a service
14 entrance to the residential -- I mean to the retail.

15 So service trucks come along here and
16 service the back of the Kings and service trucks come
17 along here and service these businesses back here, as
18 well as picking up refuse and deliveries for this
19 retail strip along here.

20 So this was -- we thought this was a
21 challenge access point to the site and that this
22 would be a much nicer entryway to the residential
23 portion at the back of the site.

24 One of the things that we're looking to
25 do, and again, this is all in development, but we

1 were looking to build on the idea of the sort of
2 agricultural style or that sort of equestrian horse
3 farm style of the retail center. So we introduced
4 the idea of the barn form to house the premium
5 parking for the residents and then we used that barn
6 form to inform the style at the architecture at the
7 back of the site as well.

8 There is a portico share, so once the
9 residence come through Main Street, they drive
10 through a portico share and into a courtyard space at
11 the back for the entrance into the residential
12 building. And I'll show you some more things of
13 that, images of that coming up.

14 The next plan that you see is actually
15 of the residential portion of the site. So along the
16 bottom of the page, horizontally along the bottom of
17 the page is that premier parking building, that barn
18 structure that we're using to buffer the retail and
19 the residential.

20 This is the courtyard area that you
21 would pull into. So a car would come in, pull in for
22 drop-off or pull into the parking garage under the
23 building. Access into the premium parking is from an
24 entrance coming in at this edge of the site on the
25 right-hand side of the page.

1 The premium parking is located in this
2 location. The cell tower location is right in this
3 location, so it's located in the parking spaces in
4 the loading area of the Kings -- the back of the
5 house for Kings.

6 There's bicycle storage in this
7 building. There was discussion about pool storage.
8 So one of the amenities for the residential building
9 is a pool, an outdoor pool area that's located on the
10 lower left-hand corner of the plan that you have in
11 front of you. And associated with that are some
12 restrooms and a pool storage area that can be used
13 for the people, the residents at the pool area.

14 The main lobby for the building is
15 located on access with the new main street that we're
16 proposing. And again, I'm not going to go into the
17 very specifics of the project. This is really just
18 to give you an overview of how the building is
19 envisioned on the site.

20 The second floor plan, so again, you
21 drove over the barn building in the front, the second
22 -- the attic story or second floor of the barn is
23 where the resident storage will be. So they'll be
24 storage lockers, they'll be accessed from an elevator
25 located adjacent to that portico share that we

1 showed.

2 You can see that the residential units
3 form a C shape on the lower floors of the building
4 and as the building goes up, these floors drop off
5 and then just the barn building continues. And you
6 can see one of the things that we're really trying to
7 do, realizing we have neighbors on either side of the
8 property, is we put the shorter -- the smallest faces
9 of the building facing those neighbors and the
10 longest face of the building facing the shopping
11 center and Main Street.

12 So the next image is again a conceptual
13 rendered view. You can remember from the first
14 aerial images that I was showing you, you've got the
15 mountains in the background, so that's in this view.

16 But you also see that now you're
17 looking at the main entry, the main street that comes
18 into the site. You can see that there's a planted
19 median that separates ingress and egress. There's a
20 paved median that implies a boulevard, you can still
21 pull across it to park, but it just, it steps up the
22 idea of main street.

23 The frontage of the retail along the
24 left side of that main street really gets activated
25 and becomes important. And then you can see as

1 you're looking down, a planted median picks back up
2 when you get back to the residential portion of the
3 building and the portico share, the drive through
4 under the barn building, and then again, the
5 residential building behind.

6 The next image that we have is really
7 just a concept elevation, it basically begins to show
8 concept materials that we're thinking about, some
9 basic building dimensions on it.

10 And then the last two images, very
11 quickly, again, these are rendered images. This is a
12 rendered view from the main street. So I believe,
13 and forgive me, I don't know the name of it, but
14 there's a Japanese/Chinese restaurant in the corner.

15 There's currently a little trellis or
16 arbor that sticks out into this area right here. One
17 of the things that we're looking to do is remove that
18 as part of this -- to provide a more open field to
19 that main street and also provide some outdoor
20 recreation areas in front of that shopping center.
21 Again, you can see the portico share of the
22 drive-through at the back here and then the new
23 residential building behind that.

24 Another feature that we're trying to do
25 as part of this is a little bit of dress up on the

1 Kings building. You can see on the side of the Kings
2 building we're contemplating some form of mural or
3 identifying feature that maybe can recall a little
4 bit of the history of the town and then we use a
5 green wall to screen the loading docks for Kings from
6 the new main street.

7 And then the last image that I have to
8 share with you, again, this is a rendered image of
9 the courtyard space. So this would be -- you can see
10 a portion of the premium parking building on the
11 left-hand side. You can see how we use these barn
12 forms on the two Ls that come out from the main
13 structure to create, again, a character and capture
14 this courtyard space. And then in the background
15 here, you can see the entrance to the pool area at
16 the rear of the image.

17 So again, that's a brief overview, very
18 conceptual. We'll have more detailed presentations
19 of the site plan.

20 MR. ORTH: Thank you, Mr. Stieve, I
21 appreciate that presentation.

22 And that's all I had on direct for
23 Mr. Stieve was just to provide some context of what
24 it is that we're proposing and the location of the
25 cell tower and the adjacent buildings here.

1 MR. GERMINARIO: Okay. So as far as
2 questioning of this witness is concerned, this was
3 largely just background information.

4 So I don't want to get into the
5 questions of this development as he's described them
6 other than the interaction between the location of
7 the cell tower and the location of the residents.

8 So board members and members of the
9 public are instructed to tailor your questions to
10 that issue and that issue only. And if we go beyond
11 it, I'll remind you.

12 CHAIRMAN RITGER: Do you have any
13 questions for Mr. Stieve, anyone on the board?

14 MS. CALDWELL: I have a question.

15 The fact that you have the opportunity
16 to redesign the site, do you feel like the cell tower
17 is where you would put it if you were designing this
18 site? Is it in a good location?

19 THE WITNESS: I actually think that
20 it's in a pretty good location. I don't think that
21 it is intrusive into the design of the site. I do
22 believe that by using this premium parking building,
23 this barn structure to create a separation between
24 the retail component and the residential component
25 that, you know, that it provides screening to the

1 cell tower, and the cell tower I really don't think
2 is any kind of a problem for the residential
3 building.

4 MS. CALDWELL: What about from the
5 other side now you're proposing a plaza area on the
6 other side of the building, I guess adjacent to the
7 cell tower location?

8 THE WITNESS: No, there's no sort of
9 public interaction with that cell tower. That cell
10 tower is actually on the Kings supermarket side of
11 the site, it's not within the residential portion of
12 the site. It's actually in the service area for the
13 Kings where they do the deliveries for the Kings
14 supermarket.

15 MS. CALDWELL: Were you showing us a
16 plaza on the Kings side?

17 THE WITNESS: The plaza, the one
18 rendered image -- I'll go to the second to the last
19 image that -- so the Kings building is the building
20 that is on the right side of the page and the
21 Japanese restaurant is on the left side of the page.
22 The plaza area is just in front of the Japanese
23 restaurant. Right now there's a little trellis area,
24 and I apologize, I'll go to the aerial view. It's
25 this seventh sheet that 's the aerial view of the

1 site. I'll show you right here. That plaza space
2 that I'm speaking of is right in here, the cell tower
3 is back here.

4 MS. CALDWELL: And do you think there
5 would be a better location on the site for the cell
6 tower?

7 MR. ORTH: I mean, I just have to
8 question the relevance of the question because we're
9 not proposing to move the cell tower. We're not the
10 cell tower applicant or the owner.

11 CHAIRMAN RITGER: The question is why
12 not?

13 MR. ORTH: Because we don't own the
14 cell tower.

15 CHAIRMAN RITGER: I know, so why not
16 ask them to move it?

17 MR. ORTH: If they want to move it,
18 they'll have to come before the board on that type of
19 an application. We're not proposing a cell tower.

20 CHAIRMAN RITGER: Did you inquire with
21 Verizon, T-Mobile, and whoever else is on there to
22 move the tower?

23 MR. ORTH: I have not.

24 CHAIRMAN RITGER: As you know, we did
25 not want that location, we turned it down.

1 MR. ORTH: I surmised after the decade
2 of litigation that was --

3 CHAIRMAN RITGER: It took two years to
4 say no, and we did.

5 MR. GERMINARIO: Yeah, let's not argue
6 about this.

7 I think the question has at least a
8 tangential relevance, so let's let the witness
9 respond to it.

10 THE WITNESS: So the best thing that I
11 can say is that what we've done is our focus has been
12 primarily on this access through the site. We've
13 done what we can to help mitigate all of the service
14 and area along this property edge through the
15 improvements of the Kings, the side wall of Kings,
16 through the introduction of a green wall and through
17 the introduction of the parking facility in the
18 front.

19 MS. CALDWELL: Okay. So I mean, I
20 guess just from my perspective and thinking of the
21 reasoning behind the 250-foot buffer and the D-3
22 variance is just thinking about the opportunity to
23 look at the site as if that's the best location for
24 the cell tower. So that was the reasoning behind my
25 questioning.

1 MR. GERMINARIO: Well, here, let me
2 just, if you don't mind me asking the planner a
3 question of my own?

4 So the specific provision, Jessica, the
5 250-foot setback, what do you construe the purpose of
6 that to be?

7 MS. CALDWELL: Well, I think it said
8 that it's A, not intrusive on residential properties
9 and, you know, perhaps there's potential for RF
10 issues. I'm not an expert on RF, so I think that's
11 one of the things that we might want testimony on.

12 I think those are the types of things,
13 whether it's visually intrusive, whether there's
14 issues with conflicts with the way that the land is
15 used around it, being outside, adjacent to it, all
16 those types of things.

17 And I think potentially if you were
18 redesigning the site, I would think you would put it
19 in a different location and I thought that this opens
20 up the opportunity to think about that potentially
21 with this site.

22 I mean, you have multiple principal
23 uses permitted, that doesn't mean that every use can
24 be on the property all at once in any location. I
25 think there's the opportunity to think about how the

1 uses work together.

2 CHAIRMAN RITGER: A couple of other
3 things, 120 feet is what I recall for the tower
4 height.

5 MR. GERMINARIO: It's 130.

6 CHAIRMAN RITGER: A hundred and 30. So
7 if it falls over, it's not going to kill anybody if
8 it's 250 feet away.

9 MR. GERMINARIO: Well, you know, these
10 are issues that may come into play if the board
11 decides that the D-3 variance is something that has
12 to be in this application, but we don't need to get
13 into those issues yet unless my learning counterpart
14 believes that we do.

15 MR. ORTH: I concur with what you just
16 said.

17 CHAIRMAN RITGER: So I was mentioning
18 truck turning radiuses; is that something that I can
19 do?

20 MR. GERMINARIO: No, unless you can
21 connect that for the need for a D-3 variance.

22 CHAIRMAN RITGER: No, I'm going to
23 connect it to why not inquire at least about moving
24 that tower.

25 MR. GERMINARIO: But that's an issue

1 that we don't need to get to. I mean, we're deciding
2 tonight whether they need to apply for this variance.
3 If they do need to apply for it, then you can
4 question the very issues that the planner just went
5 through in terms of okay, what was the intent of this
6 250-foot setback, is there a way of avoiding this
7 variance by doing something like relocating the
8 tower; those are all issues that you can get to, but
9 we're not at that stage yet. We're just deciding
10 whether they need this variance or not.

11 CHAIRMAN RITGER: Well, in a way,
12 aren't we deciding that if it's moved, there might be
13 a spot where they don't need the variance? We would
14 ask that of anybody if they placed a generator in the
15 side yard, could you put it in the rear yard, we
16 would ask that question.

17 MR. GERMINARIO: That's part of the
18 analysis of whether the variance is warranted or not.
19 So if there's an easy way to avoid the variance, then
20 that becomes a possible basis for denying the
21 variance. So --

22 MR. SPRANDEL: What about the distance,
23 the closest distance of the cell tower to
24 approximately the closest resident?

25 MR. GERMINARIO: Well, you have to

1 remember that we went through that -- those
2 conditional use criteria when this application was
3 originally heard and it was determined that they met
4 that criteria as the site existed at that time.

5 The only thing that the board raised
6 and denied initially, eventually it was overturned,
7 but we initially denied on the basis of the fact that
8 the cell tower was not located in a rear yard and
9 that the -- ultimately the appellate court ruled that
10 that variance should have been granted. So if that
11 variance was, in fact, granted, the conditional use
12 variance, that was a D-3 variance also.

13 But the criteria that we're talking
14 about tonight, as the site existed at the time of
15 that application, it was conforming. It was not
16 within 250 feet of the nearest residence, I believe
17 it would be deemed --

18 MR. SPRANDEL: Right, but in this case
19 it's going to be within 250?

20 MR. GERMINARIO: Right, it's sort of
21 like the inverted picture of it. I mean, the
22 mountain is coming to Mohammed rather than Mohammed
23 going to the mountain, I guess you could put it that
24 way.

25 The tower is where it is, but now

1 residences are being put in place and the question
2 is, all right, they're not changing anything with the
3 cell tower, you know, you'll hear their argument as
4 they go through this case, but is it changing a
5 condition of the conditional use approval and does
6 that trigger a need to revisit that issue.

7 So there's the whole crux of the
8 question. You'll hear their case and I'll chime in
9 with my opinion when we get to the end.

10 Okay. So that being said, any more
11 questions from the board?

12 CHAIRMAN RITGER: Anybody else?

13 MR. EGERTER: I've got a question. On
14 the entranceway, it goes out to Route 24, which is a
15 county road. Does the County have any input on --
16 and maybe I missed this, on the -- on what it's going
17 to do to traffic?

18 MR. GERMINARIO: Could you hold that
19 question until we get to site plan? Again, that's
20 not relevant to what we're -- it's a good question,
21 but it's not relevant to what we're doing tonight.

22 CHAIRMAN RITGER: Any other questions
23 from members of the board?

24 MR. GERMINARIO: Okay. So now public.
25 Again, remember what we're doing tonight. We're

1 talking about the relationship of the existing cell
2 tower to the proposed new residential use and the
3 proximity of that use to the existing cell tower.

4 Everything else, although it was
5 helpful background, everything else that Mr. Stieve
6 went through is just context and we don't need a
7 question that is not directly relevant to what we're
8 doing tonight, so try and stay within those
9 boundaries.

10 That being said, any member of the
11 public who wants to come forward, please do so.

12 CHAIRMAN RITGER: Come to the
13 microphone and please identify yourself, unless of
14 course you are covered by Daniel's Law, which would
15 be moot.

16 MR. ORTMAN: My name is Frederick
17 Ortman, I've been a resident of the borough for about
18 19 years and a property owner, 3 Loryn Lane.

19 MS. SMITH: Can you please spell your
20 last name?

21 MR. ORTMAN: O-R-T-M-A-N.

22 CHAIRMAN RITGER: Sorry, your time's
23 up.

24 MR. ORTMAN: Okay. Yes, I know we are
25 here to discuss the relationship of the cell tower to

1 the building and the need for a D-3 variance due to
2 that.

3 However, the D-1 variance was weighed,
4 the requirement was weighed with very little
5 discussion and no comment from the public, so I'd
6 like to address that.

7 MR. GERMINARIO: Go ahead.

8 MR. ORTMAN: My question is how are
9 tenants defined as we interpret the application
10 regarding the D-1 zoning variance requirement? To me
11 that could mean anyone renting any space on the
12 property, not necessarily residents of the proposed
13 dwellings, and I think that wording is vague enough
14 that a D-1 variance may indeed be required.

15 MR. GERMINARIO: How -- a tenant is
16 defined as people who are not residents in the
17 residential --

18 MR. ORTMAN: Everyone who rents space
19 in Kings shopping center now is a tenant. For
20 example, Kings is a tenant, Aoyama is tenant.

21 MR. GERMINARIO: No, their revised
22 planning report indicates that the tenants -- that
23 this parking is going to pertain to where the tenants
24 of the residential buildings are.

25 MR. ORTH: That's correct.

1 MR. ORTMAN: The auto -- potential auto
2 sales operation would also be a tenant.

3 MR. GERMINARIO: Well, see, again, this
4 use in terms of auto storage was what brought up the
5 D-1, possible D-1 variance. They have to be either
6 accessory to the residential, which would mean
7 tenant's parking their cars in this building, or
8 storing them, or an accessory to the auto sales and
9 service.

10 The auto sales and service is a
11 permitted use here on this property and the zone. So
12 they can have the auto storage provided in connection
13 with the cars that they're servicing and/or the cars
14 that they're selling. That's a legitimate accessory
15 use.

16 MR. ORTMAN: While you have described
17 it in that way and defined tenants in that way, I did
18 not hear the representatives of the developer define
19 it that way, and I would suggest that it be very
20 tightly defined if you're going to grant this
21 exception from meeting the zoning variance based on
22 the testimony that we've heard tonight.

23 CHAIRMAN RITGER: You're under oath,
24 feel free to ask.

25 MR. ORTMAN: Can you define tenants in

1 this context, please?

2 MR. ORTH: Sure.

3 We stipulated this in writing in a
4 letter I wrote to the board, I don't know, two weeks
5 or so ago where we stipulated that the accessory
6 parking would be for the tenants of the residential
7 building, the 75-unit building, plus the automotive
8 sales and service uses, so --

9 CHAIRMAN RITGER: Just to clarify,
10 there is a space on the second floor that's labeled
11 "Tenant storage."

12 MR. ORTH: Sure.

13 One of the permitted accessory uses in
14 this zone is also tenant storage. Tenant storage in
15 that context refers to storage lockers for tenants of
16 the 75-unit building.

17 MR. GERMINARIO: And also in response
18 to your suggestion, if, in fact, the board does
19 decide that the D-1 variance is not an issue as the
20 planner and I have indicated that it's appropriate,
21 our resolution will restate the conditions that
22 Mr. Orth has just put on the record.

23 MR. ORTMAN: Thank you.

24 My additional question is regarding
25 your comment about the Mountain moving to Mohammed.

1 And I guess I would suggest that if indeed there a
2 residence built within the restricted area in terms
3 of proximity to the cell tower, that would require
4 the cell towers be removed, would it not.

5 THE WITNESS: No, it would not. We
6 would have to then consider whether to grant that
7 variance or not. I mean, there would be proofs put
8 forward to say, all right, well, if it's within that
9 250 feet, the harm that the ordinance was meant to
10 avoid is not -- would not take place.

11 For example, hypothetically we could
12 have RF data showing that the signal very close to
13 the tower is negligible, and people might have
14 noticed this, if you go under that tower, you
15 probably don't get cell service, it's just the nature
16 of the way those towers operate.

17 Our planner brings up the question of,
18 you know, of also the appearance or the, you know,
19 having this tower very close to a residence, is
20 that something that brings into play other planning
21 consideration. So those proofs would have to be
22 weighed and the board would have to decide to grant
23 or not to grant that variances.

24 MR. ORTMAN: Thanks. Those are my
25 questions.

1 MS. RAWLEY-PAYNE: Hi, Melissa
2 Rawley-Payne, I live at 23 Drake Road in Mendham
3 Borough.

4 MS. SMITH: Can you please spell your
5 last name?

6 MS. RAWLEY-PAYNE: Yes. Sorry, it's
7 long. R-A-W-L-E-Y, hyphen, P-A-Y-N-E.

8 So my question was actually also
9 related to the D-1 variance elimination, but you
10 answered part of my question, which was how could --
11 if they couldn't do third-party vehicle storage, how
12 could they have vehicles stored for service? But you
13 answered that it will be allowed.

14 But my question is actually is there
15 designated parking for those service storage vehicles
16 and if so, how much is dedicated to that?

17 MR. ORTH: So that's an issue we'll
18 address at site plan application, but I can tell you
19 we intend to have some sort of designation, some
20 delineation between those parking spaces, but we'll
21 address that more fully when we get to the site plan
22 application.

23 MS. RAWLEY-PAYNE: Okay. Thank you.

24 CHAIRMAN RITGER: Anyone else?

25 MR. LUPO: Frank Lupo, 17 Dean Road.

1 THE COURT REPORTER: L-U-P-O?

2 MR. LUPO: That's it.

3 I just want to understand if you were
4 aware during the original cell tower meetings, a lot
5 of discussion was coming from, I don't know if it was
6 the planner at that time, but we discussed the tower
7 being in the rear of the developed lot because of
8 falling ice and safety concerns during the winter
9 when the ice built up in the tower.

10 The appeals court also in their brief
11 or in their summary, highlighted that verbiage and
12 stated that it's in the rear of the developed lot,
13 therefore there was not going to be a lot of activity
14 in the back, so it was okay and that's how it was
15 kind of pushed through.

16 I just want to understand your thought
17 on that.

18 MR. ORTH: To answer briefly, I was not
19 aware of that testimony. That application goes back
20 several years before my involvement in the property,
21 but certainly if the board determines that a D-3
22 variance is necessary, that's, you know, I'm sure one
23 of the things that will be under consideration.

24 MR. LUPO: Right. At the same time,
25 why was the left side chosen on the cell tower verse

1 the right side of the cell tower, because the service
2 lines that are critical service lines the power that
3 cell tower and contain the fiber optics to that cell
4 tower go through from the left side of that tower.
5 Why not go to the right of the left side of the cell
6 tower or move the cell tower?

7 MR. GERMINARIO: Frank, again, that is
8 an issue that will come up if we decide that a
9 variance is required and you'll have an opportunity
10 to address those issues in terms of whether the
11 variance should be granted or not, but I think, like
12 the chairman, you want to get one step ahead and
13 we're not at that point.

14 MR. LUPO: I always just make sure that
15 we're just aware that the ice and the safety
16 conditions --

17 MR. GERMINARIO: Right. Well, you
18 know, I was involved with that and I argued that case
19 before the law division and before the appellate
20 division, and that was one of the arguments we had
21 for denying the conditional use variance for not
22 being in the -- for being in the front yard rather
23 than the backyard.

24 And we have a different set of facts
25 here and I don't know whether those facts in terms of

1 possible perils to the people at that time of the
2 racket club, I don't know that that relates really to
3 what we're going to be talking about in terms of this
4 particular variance.

5 And also I might add that the --
6 ultimately the appellate division found that argument
7 unconvincing.

8 MR. LUPO: Well, that's just the point,
9 they said that there was no activity to back and
10 that's why it could go there. That was the point.

11 MR. GERMINARIO: No, that's not true.
12 I mean, we -- again, I think we're getting off the
13 track here quiet a bit. There was in the original
14 application for the T-Mobile tower, it went
15 through 28 board hearings and it was ultimately
16 denied on the basis of the fact that they didn't meet
17 one of the conditional use requirements which were it
18 has to be in the rear yard and then it went up
19 through the court and the courts --

20 MR. LUPO: I'm very aware of these --

21 MR. GERMINARIO: And one of the
22 arguments that was presented was I think based in
23 part on your testimony in the hearings was, okay,
24 there are these risks involved, there may be ice
25 falling, there may be a wind storm, one of the

1 antennas blows loose and it comes down and hits
2 somebody on the head who's walking out of the racket
3 club. The appellate panel found that reasoning to be
4 too far fetched.

5 MR. LUPO: Absolutely, because at that
6 time, there was less residents. What we're proposing
7 here are 75 units plus an automobile service center
8 plus parking. So we're increasing the use in this
9 particular area, which only brings this conversation
10 further up.

11 MR. GERMINARIO: Well, but it's a
12 different conditional use criteria we're addressing.
13 They've already been granted that conditional use
14 variance as a part of the resolution of that earlier
15 application pursuant to the way the appellate court
16 moved.

17 We're not talking about putting it in
18 the front yard or the backyard, it already has the
19 authorization to be in the front yard. What it
20 doesn't have is -- well, we'll have to hear arguments
21 both ways, but what it doesn't have is the
22 authorization within 250 feet for residents.

23 And there are other considerations that
24 may go into that, I don't want to get into them
25 tonight because it's not what we're here to do.

1 We're here to decide do they need the variance or
2 not. If they need the variance, come back and --

3 MR. LUPO: I think they need the
4 variance.

5 Thank you.

6 MR. GERMINARIO: Okay.

7 MS. ORTMAN: Just a little lower.

8 We all know development is going to
9 happen, but we want to make sure it's right for
10 Mendham. And that's true, we want to make sure it's
11 right and --

12 THE COURT REPORTER: Ma'am, before you
13 continue, could you just state and spell your name,
14 please?

15 MS. ORTMAN: Sure, it's Carol, last
16 name is Ortman, O-R-T-M-A-N, 3 Loryn Lane.

17 So I'm sorry, I'm going to ask for
18 forgiveness, but I had no idea that I was not allowed
19 to say -- make any comments about the cell tower, so
20 I just have a couple comments.

21 Any redevelopment, the master plan
22 requires a traffic study; has that been done?

23 MR. ORTH: (No verbal response.)

24 MR. ORTMAN: Okay.

25 So I can't see that on the -- auto

1 sales, hydraulic lifts. Every space is going to have
2 a hydraulic lift. You realize on the research for
3 hydraulic lifts, the oil goes into the ground a lot
4 of the time. So we have to be very careful of any
5 oil going into the bottom, we already have problems
6 with the area not being --

7 MR. GERMINARIO: Yeah, so far you
8 haven't really touched on --

9 MS. ORTMAN: I know I haven't. I'm
10 asking for forgiveness because I didn't realize it
11 was only going to be on the cell tower.

12 And the height limitation. Where can I
13 find in the master plan where it says how high the
14 structure can be? Because I think it says five or
15 six stories.

16 CHAIRMAN RITGER: There's an overlay
17 zone that dictates the height in the ordinance, the
18 allowable height.

19 MS. ORTMAN: There's an overlay zone?
20 And where can I read more about that?

21 CHAIRMAN RITGER: eCode on the borough
22 site, you can just search that.

23 MS. ORTMAN: Okay. I kind of was just
24 going on the Dunkin' Donuts thinking that looks
25 pretty high and, you know, I was thinking that looks

1 pretty high right there.

2 CHAIRMAN RITGER: Off the top of my
3 head, and you can correct me, it's either 60 or 65.

4 MS. ORTMAN: Yeah, I thought they were
5 going above that, though.

6 MR. ORTH: I believe it's 60, but --

7 CHAIRMAN RITGER: Appurtenances can go
8 higher than that, not the main level of building.

9 MR. GERMINARIO: In the ordinance that
10 was Exhibit 2, A-2, it is specified as "Building
11 height limit, four stories over parking."

12 MS. ORTMAN: Oh, four stories over
13 parking?

14 MR. GERMINARIO: Yeah, and ultimately
15 60 feet, I guess it's whichever is greater.

16 MS. ORTMAN: Okay. So it's the parking
17 and then four stores on top of that. Okay, great.
18 But I think that's something to look into is the
19 hydraulic lifts, that's a huge issue, you know, with
20 the groundwater. Thank you.

21 MR. MARINO: Bob Marino, 27 Florie Farm
22 Road.

23 THE COURT REPORTER: How do I spell
24 your last name?

25 MR. MARINO: M-A-R-I-N-O.

1 THE COURT REPORTER: Thank you.

2 MR. MARINO: I have a question
3 regarding the D-1 variance and then the proposed D-3
4 variance.

5 Regarding the D-1 variance, the parking
6 is going to be premium parking for residents. How do
7 we distinguish from regular parking and premium
8 parking, what's the qualifications that make it
9 premium?

10 MR. ORTH: Sure.

11 Just briefly, and this is something
12 we'll talk a little bit more at the site plan
13 application, premium parking it's a word we came up
14 with because it's climate controlled in that
15 building. The regular parking for the other tenants
16 is not going to be climate controlled.

17 Mr. MARINO: Thank you.

18 For Mr. Stieve, what is the distance
19 from the cell tower to the borders of the property?

20 MR. ORTH: Mr. Stieve probably doesn't
21 know the answer to that question, but we do have
22 another witness who's our planner who is going to
23 testify, so if he knows the answer to that, you can
24 ask him that.

25 MR. MARINO: At that time?

1 MR. ORTH: Yes, at that time.

2 CHAIRMAN RITGER: He'll be here
3 tonight, correct?

4 MR. ORTH: Yes, the planner will be
5 testifying tonight. And also when we get to the site
6 plan application, we're going to present civil
7 engineering testimony, which is, you know, can be a
8 little bit dry, but it's going to include a lot of
9 measurements, site constraints, et cetera, and that
10 would be something that would be addressed.

11 MR. MARINO: Right, but that would seem
12 to be relevant to the D-3 application because we're
13 looking at a situation where there's going to be
14 residential buildings within 250 feet of the cell
15 tower.

16 My question would be is it possible to
17 put forth a design that would be compliant with
18 that's Borough Code 151, maybe, that 250-foot
19 setback.

20 Second or thirdly, I guess, when did
21 the applicant acquire the property?

22 MR. ORTH: I don't know the answer to
23 that question.

24 MR. MARINO: Well, when did the
25 applicant put the cell tower on the property?

1 MR. ORTH: So to the extent it's
2 relevant, the cell tower company was the applicant
3 for the cell tower. The applicant just owns the
4 underlying ground.

5 MR. MARINO: Okay. So it would be fair
6 to say that it would be after V-Fee acquired the
7 property that the cell tower went up?

8 MR. ORTH: No, I believe V-Fee owned
9 the property before that.

10 MR. MARINO: Before the cell tower went
11 up?

12 MR. ORTH: Yes, yes, I believe it.

13 MR. MARINO: So then would this -- and
14 did V-Fee contract with Verizon or rent to Verizon to
15 put the cellphone tower up?

16 MR. ORTH: I think we're getting a
17 little far afield of the scope of the application
18 tonight.

19 MR. MARINO: Well, respectfully, if
20 you're going to ask for a D-3 variance --

21 MR. ORTH: We're not there yet. We're
22 asking the board to determine whether or not a D-3 is
23 applicable. If the board does determine that a D-3
24 is applicable, come back to the next hearing, we're
25 gonna be -- we look forward to presenting this

1 application in public and we're going to have a lot
2 more testimony on-site plan considerations.

3 MR. MARINO: Okay. So regarding a D-3
4 variance, I'm sure the board knows, but for the
5 benefit of the audience, if you create a hardship,
6 you can't then ask for relief from the hardship.

7 So to the extent V-Fee owned the
8 property and facilitated putting up the cell tower,
9 it would be inconsistent to come and say, well, now
10 we've got this cell tower on our property, we need
11 the borough to give us relief.

12 Thank you.

13 CHAIRMAN RITGER: Anyone else in the
14 public?

15 MR. LUPO: I just had one follow-up
16 question.

17 Just one quick question, what if --
18 could you just not put the barn and this other car
19 parking lot in there? Would you need the D-3 if you
20 didn't have this premium parking? Why do you need
21 this premium parking and this little car service
22 thing?

23 MR. ORTH: That's part of the
24 application that's presented before the board tonight
25 and that's what's being presented.

1 MR. LUPO: Well, I guess my question is
2 if you don't have those structures then do you need
3 the D-3? Just eliminate the car parking, premium
4 parking. It's going to be -- I mean, isn't that the
5 easiest thing to do?

6 MR. FERRIERO: If I could just weigh in
7 here, the D-3 is for the relationship of the tower to
8 the residential building.

9 MR. LUPO: Oh, so the barn is okay
10 then, the parking is okay?

11 MR. FERRIERO: Correct.

12 MR. LUPO: Okay. Thank you.

13 CHAIRMAN RITGER: Anyone else?

14 Okay. We're done with this witness?

15 MR. ORTH: Yes.

16 Okay. Let me give Mr. Stieve just a
17 minute to create some space, but my last witness will
18 be Phil Abramson from Topology, he's our professional
19 planner. I'm trying to help out my stenographer
20 here.

21 MR. GERMINARIO: Do you swear that your
22 testimony this evening will be the truth, the whole
23 truth, and nothing but the truth?

24 MR. ABRAMSON: I do.

25

1

2 P H I L I P A B R A M S O N, PP, AICP,

3 60 Union Street, 1st Floor, Newark, New Jersey,

4 having been duly sworn, testifies as follows:

5 MR. GERMINARIO: Okay. Qualify him.

6 VOIR DIRE EXAMINATION

7 BY MR. ORTH:

8 Q. Okay. Mr. Abramson, why don't you just
9 spell your last name for the record, please.

10 A. A-B-R-A-M-S-O-N.

11 Q. Okay. And why don't you please provide
12 the board with a brief overview of your professional
13 qualifications, where you've been accepted as an
14 expert in the field of professional planning, and
15 just confirm that all your relevant professional
16 licenses are in effect.17 A. I'll start with the last one. All of
18 my relevant professional licenses are in effect.19 Educationally, I'm a three-time
20 graduate of Rutgers University.21 I have a bachelor's of science from
22 Rutgers Newark. I have an MCRP, master of city and
23 regional planning degree from the Bloustein School in
24 New Brunswick, and a juris doctorate degree from the
25 Rutgers Law School in Newark where Derek and I were

1 classmates.

2 MR. ORTH: Yes.

3 THE WITNESS: I founded Topology, this
4 planning firm ten years ago.

5 I currently serve as the CEO.

6 My professional license is in good
7 standing. I'm nationally accredited under the
8 American Institute of Certified Planners.

9 My municipal planning experience
10 includes serving The Town of Morristown as the town
11 planner and planning board planner, zoning board
12 planner for about 13 years.

13 I've represented communities like
14 Summit, Cranford, South Orange, Chatham, Boonton,
15 Perth Amboy, several communities up and down this
16 state.

17 My expert testimony before numerous
18 land use boards and governing bodies throughout New
19 Jersey including this board a few years ago for Jay
20 Grant over on Main Street, the Town of Boonton -- oh,
21 I'm sorry, no.

22 Mendham Borough, West Orange, Morris
23 Township, Hoboken, Roselle, Burlington City, Fair
24 Field.

25 And the last thing I'll say, which is a

1 qualification or not, I grew up in Mount Freedom, you
2 know, like, 10 minutes from this site.

3 My first summer job was working produce
4 when I was 15 years old in this Kings supermarket,
5 and it's really, like, a pleasure and an honor to be
6 back here as an adult now being about to impact the
7 future of the communities I grew up in.

8 BY MR. ORTH:

9 Q. Thank you, Phil.

10 MR. ORTH: And with that, Mr. Chairman,
11 I proffer Mr. Abramson as an expert in the field of
12 planning and request that he be considered as such by
13 this board.

14 CHAIRMAN RITGER: Anybody have any
15 questions or objections? No?

16 Seeing and hearing none, I vote we're
17 willing to accept his credentials.

18 MR. ORTH: Thank you, Mr. Chairman.

19 DIRECT EXAMINATION

20 BY MR. ORTH:

21 Q. Phil, why don't you take us through
22 your presentation and let me know if you have any
23 exhibits you'd like me to mark.

24 A. Okay. You let me know if I forget to
25 say anything.

1 Q. Okay.

2 A. So I have the lovely job of having to
3 come and disagree with your attorney on his findings
4 and recommendations to you with regard to the D-3
5 variance.

6 So I'm going to state -- put a few
7 things on the record with regard to the property and
8 the zoning. The property is just over 13 acres,
9 13.27 acres in area. The current uses on the
10 property is what the ordinance calls a planned
11 commercial development and a wireless
12 telecommunications facility and I guess you could say
13 a fitness center, the shell of Mendham racquet club.

14 Am I doing that? Maybe I won't touch
15 it. We'll give that a shot.

16 So the proposal that's been stated by
17 Mr. Stieve, this application involves the
18 construction of a new multifamily structure, as well
19 as the now what was called the barn building, it does
20 not involve any modification, intensification,
21 enlargement of the existing mobile tower.

22 As has been discussed, I just again
23 will put these things on the record. It was
24 initially the wireless facility, the monopole was
25 initially denied by this board July 7th, 2007, it was

1 permitted by order of the appellate division on
2 February 16th, 2016, and then it was approved
3 ultimately by the planning board in 2017, it was
4 constructed some time thereafter, maybe 2018.

5 And the purpose of what we're doing
6 here tonight is under N.J.S.A 40:55D-70(b), which I'm
7 going to quote directly from the Municipal Land Use
8 Law, it enables the zoning board or in this case, a
9 joint land use board sitting as a zoning board, to
10 hear and decide requests for interpretation of the
11 zoning map or ordinance or for decisions upon other
12 special questions upon which such board is authorized
13 to pass by any zoning or official map ordinance in
14 accordance with this act.

15 Mr. Orth submitted the request for this
16 interpretation on April 13th, 2023, and I took the
17 liberty of forming a question. Like what are we
18 really answering here? And it's under the New Jersey
19 Municipal Land Use Law and the Mendham Borough Zoning
20 Ordinance whether D-3 variance relief is required to
21 construct a multifamily residence within 250 feet of
22 an existing wireless facility when doing so would
23 violate a conditional use standard applicable to that
24 wireless facility at its time of initial approval.

25 Are you okay, Mr. Germinario? Are you

1 good with that?

2 MR. GERMINARIO: Yes.

3 THE WITNESS: Okay. So again going
4 into some of the zoning of the property, and if you
5 need to, you know, create a record and give us some
6 background, so, like, I wish you guys can fast
7 forward me with stuff you already know, but --

8 So again, we're in the EB-AH zone, it
9 begins at Ordinance Section 250-71. There's a broad
10 set of uses permitted there, maybe the broadest in
11 the borough. It includes multifamily housing, it
12 includes a shopping center, it includes all the uses
13 that we've talked about being proposed.

14 And we talk about conditional uses.
15 What are they? They're not really permitted, they're
16 not really prohibited, they're somewhere in that Venn
17 diagram, they're sometimes permitted uses.

18 So to use the definition contained in
19 state law, it's a use permitted in a particular
20 zoning district only upon a showing that such use is
21 in a specified location will comply with the
22 conditions and standards for the location or
23 operation of such use as contained in the zoning
24 ordinance and upon the issuance of authorization
25 therefore by the planning board.

1 So the conditional use are typically
2 granted by the planning board unless there's a
3 variance, and they always will be reviewed by at
4 least one of the land use boards. So the conditional
5 use ordinance that we're dealing with is Ordinance
6 Section 215-12.6, it regulates wireless facilities in
7 the borough.

8 So we talked about purpose a minute
9 ago, like, why does this ordinance exist. We don't
10 have to guess, there's a list, there's a list in the
11 ordinance. I just pulled out one that I thought was
12 most relevant, because there's a lot of conditions in
13 there, the 250-foot distance is one of them. I
14 pulled out what I thought was the one closest to the
15 basis for that separation.

16 Quote: "To preserve and protect the
17 general visual, historic and natural
18 environment within the Borough of Mendham and
19 prevent adverse visual impacts from wireless
20 communication towers, antennas and other
21 facilities within areas zoned or used for
22 residential purposes along public streets
23 within historic sites and district within
24 parks and along ridge lines, skylines, natural
25 open spaces and other ecological and natural

1 features."

2 I will just -- I'll leave that. And
3 then the conditions. I'm just going to read -- so my
4 view -- I've sat for many hours today reading this
5 ordinance. My view after all that is that this
6 250-foot separation appears in two different
7 subsections, I think it was a cut-and-paste error,
8 because it's in one section it doesn't belong in.

9 We've cited both. I could read both if
10 you'd like, but I'm going to read the one that I
11 think actually we're dealing with here.

12 It says: "Setback facilities for
13 wireless telecommunication facilities in any
14 zone where conditionally permitted, wireless
15 telecommunication facilities shall be located
16 in compliance with the applicable minimum
17 setback requirements, plus one foot of
18 additional setback for each foot of tower
19 height.

20 "In no event shall wireless
21 telecommunication facilities be set back less
22 than 150 feet from a street right of way and
23 not less than 250 feet from any residential
24 dwelling in any direction."

25 And the variance that you're seeking as

1 the zoning board, the one that allows you to grant a
2 variance, N.J.S.A 40:55(d)3 -- or 40:55D-70 --
3 40:55D-70(d)3 is a deviation from a specification or
4 standard pursuant to a reference pertaining solely to
5 a conditional use, and I emphasize pertaining solely
6 to a conditional use.

7 Last kind of tee up testimony here. So
8 one of the things we're going to be doing tonight is
9 trying to figure out what did the governing body
10 mean, right? What did the governing body -- what
11 does the ordinance mean, what did they intend when
12 they adopted this ordinance?

13 So there's really four ways, and I've
14 been in the position to advise boards like you
15 sitting in Ms. Caldwell's seat a number of times. So
16 I have four ways that come from case law and that
17 come from the Bible of land use, we used to call it
18 the Cox book, he's no longer alive.

19 So Number 1 is legislative intent.

20 "Priority should be given to the intent
21 and purpose of an ordinance at the time of its
22 drafting, the intent of which is supported by
23 the ordinance itself, its subject, and in the
24 context in which the ordinance was drafted."

25 So that's really the main one. That's

1 our job, to enforce the governing body's intent.

2 And then moving beyond that specific
3 verse general provisions, always go with the more
4 specific provision as opposed to the more general
5 provision.

6 Plain and literal meaning. Unless
7 we're clearly using a different sense, words and
8 phrases in the ordinance must be construed in the
9 ordinary plain meaning of such words; however, where
10 a literal reading of the ordinance would create a
11 result contrary to the intent of the ordinance,
12 including when applied in an unforeseen
13 circumstances, the intent of the ordinance should
14 govern.

15 And then prior rulings. I don't think
16 that applies here. You would know better than me. I
17 have not been able to find anything where you've had
18 to deal with the situation that Mr. Germinario has
19 pointed out with regard to cellphone tower distances
20 and kind of reaching back to existing conditional
21 uses. So if you don't have any prior rulings on
22 that, we don't have to be consistent with any prior
23 rulings on that. If you do, I'd love to hear about
24 them.

25 Okay. So I respectfully disagree with

1 the findings or the recommendations of Mr.
2 Germinario.

3 So point number one, to require D-3
4 variance relief under the circumstances is
5 inconsistent with the mechanics of the New Jersey
6 Municipal Land Use Law and the language of the
7 borough's ordinance.

8 So Mr. Germinario drafted a letter, I'm
9 sure you all have it, and in that letter he cites one
10 case from my hometown Randolph, New Jersey about the
11 Macedonian church. And Mr. Germinario basically put
12 forward the argument that, you know, this case, they
13 had an approval, a conditional use approval, and then
14 they came back and they needed a conditional use
15 approval again. So therefore, with the cell tower,
16 we're coming back again, we need conditional use
17 approval again, not to oversimplify what you've said.

18 So let's -- I want to take a look at
19 the facts of that case. So this was, I don't know
20 what street it was on in Randolph, but it was in
21 Randolph, it was a church, and in 1978 they were
22 initially approved and there was going to be, like, a
23 community hall or an all-purpose room for, like,
24 weddings and they don't do bar mitzvahs, but things
25 like that, weddings and christenings, and they had a

1 5,000-foot recreation hall that required 50 parking
2 spaces when they were building their church.

3 Then they didn't have enough money at
4 the time, as the story goes, to build that
5 all-purpose hall. So when they got enough money in
6 1991, they came back with a much bigger all purpose
7 hall, 11,200 square feet, more than twice what the
8 old one was, and it required 142 parking spaces,
9 almost three times the amount of parking.

10 And the church argued we already got
11 our conditional use, we shouldn't have to modify, we
12 shouldn't have to disrupt this conditional use, we
13 already have it. We're conditionally permitted. And
14 the Court said no, because the conditions were way
15 more vague than they are here, like, you cannot
16 impede the quality of life and the neighborhood and
17 things like that, very difficult to measure.

18 But the Court disagreed with the
19 church, it agreed with the board and it found that it
20 differed substantially from that approval in 1978,
21 namely an increase in size. The conditional use
22 increased in size.

23 Based on the changes in the proposal,
24 the planning board acted within the bounds of its
25 discretion in deciding to review the application anew

1 under the ordinance.

2 I would say of course this required
3 conditional use approval, but this is not the
4 situation we have here. We are not touching the
5 conditional use in question. D-3 variances are only
6 pertaining to a conditional use. A conditional use
7 is not at application here, it's not at subject here,
8 and that case was a lot about the First Amendment and
9 religious freedom, but.

10 So again, looking at the ordinance,
11 moving to the ordinance part, not just the Municipal
12 Land Use Law, so what -- Ordinance
13 Section 215-12.6B1A it says, quote, "Before proposing
14 a site within the Borough of Mendham for wireless
15 facilities," before, that's when this ordinance -- or
16 this ordinance was drafted to regulate before a
17 wireless telecommunication facility is constructed.

18 It doesn't say anything about existing
19 facilities, like as Mr. Germinario said, like, the
20 mountain came to them or something like that, it
21 doesn't address that situation, right, that's why
22 we're here. If it did, we wouldn't be here.

23 And in my view, it does not prohibit
24 subsequent dwellings from coming to an existing
25 facility before proposing -- yeah, I read that. I

1 read that.

2 So and I guess I'll also just say that
3 the east business affordable -- this is a new zoning
4 district, this is an affordable overlay, it dealt
5 with neighborhood impacts in its own way. It did not
6 speak to this issue.

7 This cell tower was there when the
8 ordinance was adopted, it was there when the
9 settlement was being negotiated, it's in the concept
10 plan, and the ordinance was adopted on the basis of
11 that settlement agreement.

12 The east business overlay imposed its
13 own buffering requirements to protect adjacent
14 residential districts. It demonstrates the same
15 intent as the wireless ordinance to protect existing
16 residents from the impacts of new development, not to
17 protect new residents from existing structures. And
18 that is the requirements of Section 215-27, impact on
19 adjoining residents shall apply.

20 A 30-foot buffer is required where the
21 east business affordable housing zone abuts any
22 overlay residential district, but existing
23 improvements, roadways, or structure shall be exempt
24 from this requirement.

25 Bottom line, there's no clear legal --

1 there's no clear legal mechanism. You are not
2 obligated. You would not be flaunting the law or
3 ignoring part of your code to decide that this is an
4 as-of-right use. I think, quite frankly, it's the
5 opposite here.

6 Point number two, in 2017 the approval
7 of the wireless facility did not impose any ongoing
8 conditions of approval to be associated with the
9 variance relief. So if we have no clear statutory or
10 ordinance provision requiring this, then the next
11 place I would look, as I guess an attorney and also a
12 planner --

13 BY MR. ORTH:

14 Q. As a planner tonight.

15 A. As a planner.

16 Q. I'll be the lawyer. Okay?

17 A. He'll be the lawyer.

18 But as a planner with a legal eye, I
19 guess you could say, I'd be looking at the conditions
20 of approval, right? That's the thing that lives on,
21 that's the resolution, that's where we all go to look
22 about what happened and what did we agree to as part
23 of this approval collectively? Nothing in there
24 about this.

25 Does it mention the ordinance at all?

1 Actually yes, but just not this section. It
2 references Section 215-12.6L regarding the removal of
3 the telecommunication facility. That one they knew.
4 That one the planning board knew that they needed to
5 keep enforcement of well after this ordinance either
6 comes or goes or whatever happens that you knew that
7 you wanted that to be durable.

8 Why mention the condition if it was
9 presumed as an automatic operation of law that
10 conditional use standards are imposed upon a use for
11 its lifetime. Why do that?

12 There's nothing prohibiting housing or
13 requiring ongoing enforcement of conditional use
14 standards in the resolution itself. So these are
15 going to go faster, I promise.

16 Point number three, to require a D-3
17 variance under the circumstances would be
18 inconsistent with the intent of the governing body.

19 So again, we talked about legislative
20 intent being really the most important thing, the
21 governing body's intent, what did they intend -- and
22 not when they adopted that cellphone or the mobile
23 tower ordinance, what did they intend when they
24 entered into a settlement agreement? What did they
25 intend when they adopted the zoning allowing

1 multifamily to happen here? Did they intend for us
2 to turn around three years later and say actually,
3 Governing Body, you were wrong. You cannot build the
4 housing here that you already permitted. They
5 decide. They make those decisions. The governing
6 body makes those decisions.

7 And so we have in the settlement
8 agreement, Mr. Orth, and I think the relevant points
9 in that settlement agreement, not to quote -- I'm not
10 quoting tonight, that it permits the housing as of
11 right and it permits the existing uses to remain as
12 of right.

13 That is not the -- that is not what --
14 deciding anything else, deciding that a D-3 variance
15 would be required here would presume that you could
16 deny that D-3 variance, which makes it not as of
17 right. It was supposed to be an as-of-right thing,
18 that was the bargain of the governing body.

19 So I have a map, an exhibit, and I
20 think somebody asked this question, it's not the best
21 map, it's not as pretty as Bruce's pictures.

22 BY MR. ORTH:

23 Q. Before you hand that out, Phil, why
24 don't we just identify what the map is, provide a
25 date of it, and tell the board what it is you're

1 going hand to them.

2 A. Okay. It's A something.

3 MS. SMITH: Five.

4 BY MR. ORTH:

5 Q. We're up to A-5.

6 A. A-5. So this is an aerial photograph,
7 it is not, you know, done to precise engineering
8 standards, but I'm comfortable as a licensed
9 professional testifying to this.

10 What I did was I tried to look at some
11 of the different setbacks that are required under the
12 ordinance because that affordable housing ordinance
13 pushes the housing to the way back, right, and then
14 the cell tower ordinance puts that little ring, that
15 250-foot ring around it. So what's left?

16 You know, we've heard some talk about
17 relocation. Is there a place to relocate it where
18 we're not going to trigger new D-3 variances? And
19 then you really do need a new D-3 variance because
20 then you're relocating or disrupting the actual
21 conditional use or the conditional structure, however
22 you want to say that. Anyway --

23 Q. Which again is not what we're
24 proposing, right?

25 A. Which is not what we're proposing.

1 So that's what this is, it's an aerial
2 photograph with some annotations that my list has
3 created on there. May I approach?

4 CHAIRMAN RITGER: Yeah, go ahead.

5 THE WITNESS: I'm going keep one for
6 myself and then I will give some more, or should I
7 pass these out?

8 MR. ORTH: Mr. Chairman, I'm going to
9 mark Mr. Abramson's copy as A-5, if I may.

10 MR. GERMINARIO: Hold on. Let me just
11 take a look at this thing.

12 CHAIRMAN RITGER: If you have any
13 extras, send them back.

14 MR. GERMINARIO: So Mr. Abramson, You
15 have on this marked out the 250-foot radius --

16 THE WITNESS: Right.

17 MR. GERMINARIO: -- from the cell tower
18 within which there would be an issue with the
19 proximity to residential uses, right?

20 THE WITNESS: Correct, so yes and I'll
21 just --

22 MR. GERMINARIO: And before you go on,
23 so what is this red line 700 foot setback line, what
24 is that?

25 THE WITNESS: Thanks for asking. So

1 that is the closest a multifamily residence can be to
2 the street. The affordable housing ordinance
3 requires a 700-foot setback. So that housing is
4 pushed within 250 feet of that tower, that was the
5 intent of that ordinance.

6 So if this, in fact, requires D-3
7 relief under some mechanism that I have not been able
8 to locate after weeks of research, then the governing
9 body -- it was on oversight of the governing body to
10 do that because they pushed that. And there's
11 nowhere within that front yard set back that you can
12 put that tower and it would be not within 250 feet on
13 this property.

14 (Whereupon, Aerial Photograph is marked
15 as Exhibit A-5 for identification.)

16 MR. GERMINARIO: So you've just made
17 a -- this can go in, but you've just made a very good
18 argument for the variance relief.

19 MS. BUSHMAN: Thank you.

20 THE WITNESS: I made the argument as to
21 why the legislative intent couldn't be to --

22 MR. GERMINARIO: Well, that's --

23 MS. BUSHMAN: Who are you to determine
24 what the legislative intent is of our city council?
25 You are talking about intent, intent, intent, but you

1 have not -- I mean that's hearsay when you're talking
2 this intent and they made a mistake.

3 We passed -- what was passed was
4 passed. This is an issue for the court because
5 obviously you have a very different opinion of what
6 our council did and I'm not going to sit here and
7 guess what city council did 10, 15, 20 years ago or
8 what those good people's legislative intent was.
9 They passed ordinances, they have it in the code.

10 So you can debate all you want, but I
11 am very offended.

12 THE WITNESS: Can I explain?

13 MS. BUSHMAN: On behalf of city council
14 and of the very good volunteers on this committee.
15 And I am one to say very few words. And for your
16 gratification, I've been an AIC certified planner
17 since 1986, so I have earned my stripes.

18 And I'm sorry, Mr. Chair, but that's
19 about the first time I've ever been very disturbed.

20 CHAIRMAN RITGER: I applaud your
21 enthusiasm on this --

22 MS. BUSHMAN: And to dictate to this
23 board that your intent, this is your intent and to
24 say that we made a mistake and that you can interpret
25 the code freely because you accused counsel of making

1 a mistake based on your interpretation, it sounds to
2 me like this has to be decided in a court.

3 MR. GERMINARIO: Well, no, no. The --

4 MS. BUSHMAN: I'm sorry, Mr. Chair, but
5 I'm just very offended. I apologize.

6 MR. GERMINARIO: Well, your comments
7 are well taken, but this isn't the venue for deciding
8 it. What we decided -- the applicant -- it's the
9 applicant's move about whether they want to challenge
10 it in court or not, but the question is before us.

11 And I think Mr. Abramson is trying to
12 make a circumstantial case to infer based on this
13 logic that he's presented in this exhibit to infer
14 what the intent might be.

15 Can he tell was what the actual intent
16 was without reading your mind, Joyce, no.

17 MS. BUSHMAN: Well, that's my point.

18 MR. GERMINARIO: And I think you're
19 right to point that out, but it is in the law when
20 you're looking for legislative intent, you can use
21 inferential arguments. And so what he's trying to
22 do, it may not absolutely prove what the intent is,
23 but it's presenting some evidence and that's
24 allowable.

25 So did I explain your case well enough

1 or do you want to add something to that?

2 MS. BUSHMAN: I understand the points,
3 Tom, but to infer that this was a mistake by council
4 and therefore, the intent is this; it's one thing to
5 discuss the intent, it's another thing to say there
6 was mistakes and say, so we'll interpret it this way.

7 MR. GERMINARIO: Well, yeah, but you
8 know, that cuts both ways. If was a mistake and it
9 wasn't their intent, the mistake means okay, they
10 didn't realize it, there's a conflict and
11 Mr. Abramson is trying to make his case for it
12 existed when they put the combination of 70-foot
13 setback and 200-foot radius, maybe they didn't, that
14 just didn't pop up on their radar that's conceivable
15 too but --

16 THE WITNESS: That's what I meant.

17 MR. GERMINARIO: So go ahead with your
18 testimony, you know.

19 THE WITNESS: Okay. So the last point
20 I have, point number five, is talking about logic,
21 right.

22 We talked -- Mr. Germinario's letter
23 talked a lot about logic. And it -- I'd like to
24 discuss why I think it was more logical to interpret
25 that a D-3 variance is not required here.

1 We take this D-3 to its inevitable
2 conclusion. The D-3 proofs would not really make
3 sense here when we have -- when the use is existing.
4 It would require me to put proofs on basically that
5 the site remains appropriate for a conditional use
6 despite the failure to conform to all the ordinance's
7 conditions, which is Coventry Square, the permitted
8 case on conditional uses.

9 We would do that by looking at purposes
10 and conditions. What is this ordinance trying to
11 accomplish? What is that conditional use ordinance
12 trying to accomplish?

13 The only stated intent in this case are
14 visual and aesthetic in nature. And to cite the
15 United States Telecommunication Act, 40 U.S.C.(a)332
16 quote:

17 "No state or local government or
18 instrumentality thereof may regulate the
19 placement, construction and modification of
20 personal wireless service facilities on the
21 basis of environmental effects of
22 radiofrequency emissions to the extent that
23 such facilities comply with the commission's
24 regulation concerning such emissions," which
25 was cited by New Jersey Supreme Court in

1 Smart SMR verse Borough of Fair Lawn in 1998.

2 So what are the other conditional uses?

3 What are the things that we're trying to avoid, that
4 people in this new apartment building are going to
5 have to look at the cellphone tower here verse to the
6 right verse somewhere else?

7 How -- for how -- as the next point,
8 these conditions associated with conditional uses in
9 the ordinance, how long -- how long do they persist,
10 a hundred years? Fifty years? Eight years? Is it
11 forever?

12 There's been -- there's no law on this.
13 There's no case law on this point. So now we're
14 going to determine that there's an indefinite expert,
15 you know, or what -- yeah, I said that -- or that
16 they're going to stay on for that long.

17 And I'll conclude it's my opinion it is
18 within the zoning board's jurisdiction and discretion
19 to determine that conditional use standards for an
20 existing wireless facility should retroactively apply
21 to the proposed inclusionary developments for the
22 reasons I've stated.

23 The intent of the zoning ordinance was
24 to restrict wireless facilities within 200 feet from
25 existing residences. To find otherwise under the

1 circumstances would be inconsistent with the intent
2 of the governing body's execution of the settlement
3 agreement under the EB-AH Ordinance.

4 MR. ORTH: I have nothing further on
5 direct for Mr. Abramson and I tender him over to the
6 board and your professionals.

7 MR. GERMINARIO: Okay. Could I go
8 first?

9 CHAIRMAN RITGER: Yes, Tom.

10 MR. GERMINARIO: So Mr. Abramson, what
11 was the status of this tower prior to the settlement
12 agreement?

13 THE WITNESS: It was there, as far as I
14 know.

15 MR. GERMINARIO: It was what kind of a
16 use at that point in time?

17 THE WITNESS: An existing use?

18 MR. GERMINARIO: Well, in terms of we
19 talked about permitted uses and conditionally permit
20 uses.

21 THE WITNESS: I really think that
22 applies to things that are --

23 MS. SMITH: Mr. Abramson, can you
24 please speak up a little?

25 THE WITNESS: I'm sorry.

1 So it wasn't the subject of any active
2 application. So was the use considered conditional,
3 yes.

4 MR. GERMINARIO: It was a conditional
5 use.

6 So did the settlement agreement change
7 that, did it change it from a conditional use to a
8 categorically permitted use, did that happen? Is
9 that what the settlement agreement did?

10 THE WITNESS: The settlement agreement
11 had no effect on the use.

12 MR. GERMINARIO: So it remained a
13 permitted use -- I'm sorry -- a conditionally
14 permitted use.

15 So the argument that I've heard both
16 from counsel and yourself was that somehow when this
17 settlement agreement referred to the fact that
18 existing uses would -- permitted existing uses would
19 remain as permitted uses, then it didn't change the
20 status of the tower, the tower remained as a
21 conditional use permitted as a condition use,
22 correct?

23 MR. ORTH: Objection.

24 I'm going to -- if I may,
25 Mr. Germinario, I have a very brief closing argument

1 whenever Mr. Abramson is done and I'm going to
2 address that briefly.

3 MR. GERMINARIO: Well, I'd like him to
4 answer the question. He testified to it, so I'd like
5 him to answer the question.

6 MR. ORTH: You can answer the question.

7 THE WITNESS: So under the zoning
8 ordinance is a conditional use, it was not subject to
9 any preceding or active application at the time.

10 MR. GERMINARIO: Okay. So there was no
11 operation either through the settlement agreement or
12 through the ordinance that was passed pursuant to the
13 settlement agreement that wiped out the conditions
14 subject to which that power existed as a permitted
15 use?

16 THE WITNESS: No, but the tower exists
17 as a permitted use.

18 MR. GERMINARIO: Granted.

19 So now we come to a point where one of
20 the conditions that made it a permitted use, one of
21 the compliance conditions that made it a permitted
22 use was the fact that it was more than 250 feet from
23 residences.

24 And now, as happened in the Macedonian
25 church, the site development is changing so that now

1 what was -- so that condition that was originally
2 approved is no longer complied with, now we have
3 residences within 250 feet.

4 So why -- under the Macedonian case, I
5 see the clear parallel. Why are we, in our
6 discretion -- I mean, they talk about board
7 discretion and the board is entitled to exercise that
8 discretion in a reasonable way to say okay, let's
9 look at this now, let's look at what has happened and
10 how it's changed in the conditions pursuant to which
11 this was originally approved.

12 I'm not saying that this triggers
13 something where we say, okay, we have the right to
14 tell you to pull up the tower and move it to the
15 other side of the lot or anything like that, but the
16 fact that we have at least an obligation as a
17 planning group to look at the planning consequences
18 of the change, you're saying we don't have that
19 discretion?

20 THE WITNESS: I don't think you do.

21 MR. GERMINARIO: Why?

22 THE WITNESS: Because I think that it's
23 an existing use and we do not have a conditional use
24 variance in front of us. The Macedonian church case
25 specifically involved the modification and

1 intensification of a conditional use, this case does
2 not.

3 MR. GERMINARIO: It becomes intensified
4 -- well, I won't use the word intensified.

5 The planning aspects of it change when
6 you put housing right next to it; don't you agree
7 with that? There are planning --

8 THE WITNESS: Housing is a permitted
9 use here.

10 MR. GERMINARIO: Well, yeah, but as a
11 planner you want to put on blinders and say okay, I
12 don't want to see what happens when I put housing
13 next to this tower, I'm just going to say it's an
14 existing thing, so we can just wipe this slate clean.

15 Let's say hypothetically, and I'm not
16 saying this is true, but hypothetically let's say
17 that in the interim, the T-Mobile people have put a
18 5G antenna that's pointed straight down, why would
19 they do that in the real world, of course it would be
20 ridiculous, but let's say they did and it was
21 pointing straight down with an intense RF signal
22 right at where you -- the bedrooms of the residential
23 building that you want to put there, we would -- we
24 should say, okay, we want to put our head in the sand
25 and we don't want to look at that because it's

1 existing; is that what you're arguing?

2 THE WITNESS: I think under federal law
3 and under the Fair Lawn case, you're prohibited from
4 looking at radiofrequency and the environmental
5 effects of radiofrequency.

6 MR. GERMINARIO: We -- well, I don't
7 agree with that. I mean, we -- we went through many
8 hearings on the original site of this in which we
9 heard RF testimony and RF testimony showing that they
10 meet federal standards, and I think the
11 telecommunications act says that, it says okay, if
12 they're meeting federal standards, you don't develop
13 your own standards or say that's not good enough?

14 THE WITNESS: Correct.

15 MR. GERMINARIO: So there's a
16 difference there, though. The question is, okay, are
17 they meeting -- do they continue to meet federal
18 standards with this housing right underneath the
19 tower?

20 I think there's a very clear answer to
21 that. We got many volumes of testimony on what
22 the -- where the RF signal was -- where it was and
23 what they -- the magnitude of that radiation was and
24 at the foot of the tower was not a place where it
25 was.

1 So, you know, these things are things
2 that we have to look at, not to say, okay, well,
3 okay, now you're putting this close, so you can't do
4 it. We're just saying as planners and as regulators
5 we can exercise our discretion, let's take a look at
6 it.

7 You've already made a number of
8 arguments that would actually be very convincing in
9 the context of is it proper to grant this variance.

10 THE WITNESS: I'm glad you think so.

11 MR. GERMINARIO: But what I'm
12 suggesting, though, is that those arguments would
13 apply, but they don't foreclose us nor should they
14 foreclose us from reviewing and making sure. I mean,
15 we're dealing with questions that may be of
16 significance to public health and safety, of, you
17 know, obtrusive appearances and so on and so forth.

18 I've heard all that you've said and
19 when you come back, if the board decides that way,
20 those arguments are going to be good arguments,
21 persuasive arguments in terms of what the need for
22 variance relief or the justification for variance
23 relief could be, but I'll leave it at that.

24 Your opinion is the board is without
25 power to exercise its discretion to take another look

1 at this to make sure it's still okay.

2 THE WITNESS: So the board has the --
3 this is the zoning board essentially.

4 MR. GERMINARIO: Correct.

5 THE WITNESS: You have the right to
6 interpret your ordinance.

7 MR. GERMINARIO: All right. Okay.

8 MS. BUSHMAN: Thank you.

9 MR. GERMINARIO: All right. Paul,
10 would you like to --

11 MR. FERRIERO: I did have one question
12 because I wrote some notes here and I'm coming at
13 this as the engineer trying to think logically. I am
14 a planner, I'm going to let Jessica do that and I'll
15 let you do that, but I'm trying to understand what
16 you said.

17 It almost sounds like you said once you
18 get a conditional use approved then those conditions
19 disappear and they don't apply here anymore.

20 THE WITNESS: So what I will -- what my
21 testimony is is that I have spent weeks researching
22 case law on this matter, and I'm sure Mr. Germinario
23 has too and, there's nothing -- this is not addressed
24 by the courts.

25 MR. FERRIERO: I'm not asking you that

1 question.

2 THE WITNESS: Well, that's where I
3 would get my guidance from.

4 MR. FERRIERO: Okay. But is it -- how
5 long does a site plan approval last?

6 THE WITNESS: It lasts, what is it, two
7 or three years until -- unless it's vested and they
8 pull building permits and there's two extensions that
9 can happen under the statute to your --

10 MR. FERRIERO: I'm going to have to
11 disagree with you on that. It's my opinion that a
12 site plan approval lasts indefinitely. The
13 protections of the ordinance may expire, as you said,
14 but the site plan lasts indefinitely.

15 THE WITNESS: Okay.

16 MR. FERRIERO: How long does a variance
17 last?

18 THE WITNESS: It runs with the land.

19 MR. FERRIERO: Okay. So why wouldn't
20 the conditions of a conditional use run with the land
21 like a site plan runs with the land and just go on
22 indefinitely? I can't understand -- I'm trying to
23 wrap my head around that logic that all of a sudden
24 this one thing just goes away and --

25 THE WITNESS: I understand, but we're,

1 you know, we're bodies of law and there is no law on
2 that point.

3 MR. FERRIERO: No, but there is logic.

4 THE WITNESS: In your opinion.

5 MR. FERRIERO: In my opinion.

6 MR. ORTH: Paul, can you -- were you
7 talking about the conditions of approval attached to
8 the approval, or just the conditional use?

9 MR. FERRIERO: No. What Phil said was
10 that the conditions of a conditional use go away once
11 it's approved.

12 MR. ORTH: Any further questions from
13 the board?

14 CHAIRMAN RITGER: Anybody?

15 MR. SMITH: Well, yeah, I have just a
16 response. I mean, you're proposing this residential
17 unit, which is four stories above the parking garage
18 which elevates potential living spaces and it could
19 potentially put them in line with RF frequencies
20 because when this tower was put up, all the buildings
21 in the surrounding area in there were only one story
22 and they had lined all the antennas -- I was at every
23 meeting, you know, right from Day 1 with this cell
24 tower proposal and, you know, so everything was in
25 line.

1 I would at least like the opportunity
2 to have an RF expert justify your point or our point
3 and make it clear to everybody that there's no health
4 or safety issues that could potentially happen to
5 residents of those units.

6 MS. SMITH: Rich, can you speak up a
7 little more into the microphone?

8 MR. SMITH: I would just appreciate an
9 RF expert in investigating this, because the
10 elevation of these apartments brings it in line with
11 the height of the tower to a certain point and it
12 could potentially, you know, have RF radiation or
13 frequency entering into living areas of these
14 apartments and, you know, from a health and safety
15 aspect, I'd like that investigated. So I would tend
16 to want to have, you know, that investigated and
17 checked out.

18 MR. ORTH: So thank you, Mr. Smith,
19 your concern is noted and, you know, public health
20 and safety is always a part of any land use
21 application, whether it's a D-3 or an as-of-right
22 application.

23 So that's not a concern that
24 necessarily goes away even if the board determines
25 that there is no D-3 variance associated with this

1 application, which is what we're requesting that you
2 interpret.

3 MR. SMITH: Well, there was a D-3
4 interpret -- you know, we did require a D-3, then we
5 can request that and hold you to it; whereas, you
6 know, if we just say oh, no, you don't need a
7 variance, you know, it could be status quo, the
8 towers could stay the same, the frequencies could
9 stay the same, and there could be no investigation of
10 potential harm.

11 MR. ORTH: Understood.

12 I just wanted to make that clear that
13 that type of request can be made even if you
14 determine that there is no D-3.

15 CHAIRMAN RITGER: I had previously --
16 Tom, don't hit me -- previously I asked about the
17 location of the tower, but did you do due diligence
18 and ask the owners of the tower, Verizon, T-Mobile
19 and the like if they could, in fact, replace the
20 tower with DAS units?

21 MR. ORTH: I have not, Mr. Chairman.

22 CHAIRMAN RITGER: Why not? You
23 wouldn't need a variance if you did.

24 MR. ORTH: I'm not sure what a DAS unit
25 is, to be honest, at this moment.

1 MR. GERMINARIO: Mr. Chairman, you're
2 getting ahead of us. Those are questions that would
3 come into play if the board decides --

4 CHAIRMAN RITGER: It would obviate the
5 need for a variance, that would be one of the things
6 I would think of.

7 THE WITNESS: What is a DAS unit?

8 CHAIRMAN RITGER: A distributed antenna
9 system.

10 MR. GERMINARIO: We're not deciding
11 tonight whether they can avoid the variance, we are
12 deciding tonight whether the variance exists.

13 CHAIRMAN RITGER: All right. Let me
14 ask a totally different question.

15 In your opinion, Mr. Abramson, could
16 you build the entire residence around that tower,
17 surround it immediately so the tower is right in the
18 middle of it?

19 THE WITNESS: There are wireless
20 antennas on top of residential buildings, you know,
21 regularly in this country in New Jersey. So yeah, I
22 don't think --

23 CHAIRMAN RITGER: Would you do it?

24 THE WITNESS: Would I?

25 CHAIRMAN RITGER: Yeah.

1 MR. ORTH: Phil, frankly, we have an
2 application pending before the board.

3 The application is what it is and we're
4 not changing it tonight, Mr. Chairman.

5 CHAIRMAN RITGER: Well, all right. Let
6 me go a different route.

7 Obviously you've dealt with
8 transformers and transformer locations?

9 THE WITNESS: Yes, sir.

10 CHAIRMAN RITGER: So what is the
11 requirement for a transformer and its proximity to a
12 building?

13 THE WITNESS: 8-by-8 it has to be --

14 CHAIRMAN RITGER: No, it's 10-by-10,
15 but go on.

16 THE WITNESS: 10-by-10, but it's an
17 8-by-8 transformer.

18 CHAIRMAN RITGER: And how much
19 clearance do you need around that transformer?

20 THE WITNESS: I think it's 3 feet for a
21 --

22 CHAIRMAN RITGER: No, it's 10 to a
23 combustible service.

24 Now, in this scenario if you had a
25 transformer that exists, you're suggesting you could

1 build a building, a new building closer than 10 feet
2 whereas -- yeah, that's what you're saying, we're
3 going to build a -- we're going to take down the old
4 building and build a new one real close to that
5 transformer pad, you're asking us to say that's okay.

6 THE WITNESS: So --

7 CHAIRMAN RITGER: We have a cell tower
8 that requires 250 foot of clearance, you're saying,
9 no, we could build right around it. And we think we
10 should look at that.

11 THE WITNESS: I understand. I don't --
12 think that this is different than the transformer
13 phase. I understand your point. And our point is
14 that zoning was adopted after that 250-foot of
15 clearance to say this is a place where you should put
16 housing. And there's no place that could be done in
17 accordance with that ordinance that wouldn't be --

18 CHAIRMAN RITGER: Yes, there is, but
19 you didn't even go there. You could tear down all
20 the rest of the buildings on the site and build your
21 residential 250 feet away. It would fit. It would
22 work.

23 THE WITNESS: I know, but that's also
24 -- there's legal issues there, but I understand your
25 point, Mr. Chairman.

1 Thank you.

2 CHAIRMAN RITGER: Okay. Any other
3 questions from the board?

4 (No response.)

5 CHAIRMAN RITGER: Any questions from the
6 public?

7 MR. LUPO: Frank Lupo.

8 MS. SMITH: Is that on? Push the
9 button, maybe the thing -- press it and hold it.

10 MR. LUPO: Hello?

11 MS. SMITH: Hello.

12 MR. LUPO: Frank Lupo, 17 Dean Road.

13 I just have a simple question because
14 you read most of the Wireless Telecommunication Act,
15 but you missed a paragraph. I just wanted to
16 understand why, because you talked all about the
17 siding, you missed the one that said the reason for
18 this piece is to eliminate the safety hazards
19 associated with wireless telecommunication towers and
20 other facilities, including but not limited to
21 attractive nuisances, risk of falling ice and other
22 objects. It seems like you read everything else but
23 that paragraph.

24 THE WITNESS: So can I answer or do you
25 want me to not answer?

1 MR. ORTH: Is there a question?

2 MR. LUPO: I'm just wondering why you
3 missed that paragraph, that's the question.

4 THE WITNESS: I'll use this one.

5 So, Mr. Lupo, is it?

6 MR. LUPO: Yes.

7 THE WITNESS: So I pulled out the ones
8 that I thought demonstrated intent and purpose. What
9 we will demonstrate, and maybe to Mr. Germinario's
10 point, these are the types of things that would go
11 into a variance proof.

12 But as I was in the back listening to
13 your questioning earlier, my thought was that this
14 location is more cordoned off from public access than
15 the location that -- that's there today.

16 Right now a member of the public could
17 walk right up to that fence, that will not be as easy
18 the case under the proposed condition, but I guess
19 maybe I'm getting ahead of myself because that is
20 a --

21 MR. LUPO: I just want to make sure you
22 read the whole --

23 THE WITNESS: Thank you, sir.

24 MR. LUPO: -- purpose of the ordinance,
25 because I know that you may have offended somebody on

1 the board.

2 THE WITNESS: Clearly.

3 CHAIRMAN RITGER: Anyone else from the
4 public?

5 MR. MARINO: So I think Mr. Ritger --

6 THE COURT REPORTER: Just remind me
7 what your name is, sir.

8 MR. MARINO: Marino, M-A-R-I-N-O,
9 Robert 27 Florie Farm.

10 I think Mr. Ritger asked this question,
11 but I just want clarification. Is it possible -- how
12 far is the cell phone tower located from the borders
13 of the building, the property? That would be
14 question one.

15 And then two, is it possible to
16 construct the residences in a way that's in --
17 compliant with the borough's ordinance?

18 THE WITNESS: I'll answer the second
19 one first.

20 I have not been able -- I have not seen
21 a way where you can -- where all the ordinances
22 harmonize with each other.

23 MR. MARINO: That's not really the
24 question. The question was is it possible to build
25 residences in a way that it would be compliant to

1 build residences on the subject property in a way
2 that they would meet the 250-foot setback, minimum
3 setback requirement?

4 THE WITNESS: So as part of the
5 hypothetical, do we assume that the cell tower
6 remains on the site?

7 MR. MARINO: In its current location.

8 THE WITNESS: Not one -- yes, it's
9 possible, but you would require different variances,
10 it would trigger different -- new variances.

11 MR. MARINO: Okay.

12 So it is possible then to build without
13 asking the borough to turn away from this statute, it
14 would require other variances, but it is possible, so
15 that this isn't the only solution to the problem?

16 THE WITNESS: It would -- it would be
17 dramatic.

18 MR. MARINO: All right. And then do
19 you know the distance to the property line?

20 THE WITNESS: I can -- do we have that
21 map? I kind of estimated it for you. I don't have
22 it.

23 Can I borrow that?

24 MR. GERMINARIO: I think your circle
25 sort of just goes outs to that --

1 THE WITNESS: Yeah, it doesn't go -- I
2 mean, I'm going to let you see this, that might help
3 you. So I'm looking at A-5 and pointing to
4 Mr. Marino, this orange circle is 250 feet, so you
5 kind of --

6 MR. MARINO: 250 from the tower?

7 THE WITNESS: Correct, and that red
8 line is the front yard setback.

9 MR. MARINO: So 250 feet from the tower
10 extends to this building --

11 THE WITNESS: Yes.

12 MR. MARINO: -- which appears to be
13 Mendham Hardware?

14 THE WITNESS: Yes, sir.

15 MR. MARINO: All right.

16 Thank you.

17 So again, it is possible, it's just not
18 what the applicant is offering today?

19 MR. ORTH: It's not what we're
20 proposing today and it would create additional
21 variance conditions and also totally disrupt the
22 concept plan to the site.

23 MR. MARINO: So it would require more
24 work for the applicant to be compliant.

25 Thank you.

1 CHAIRMAN RITGER: Anyone else?

2 (No response.)

3 CHAIRMAN RITGER: No, not hearing anyone
4 else in the public.

5 So Tom.

6 MR. ORTH: Mr. Chairman?

7 MR. GERMINARIO: He's got to give a
8 summation.

9 MR. ORTH: Literally two minutes,
10 Mr. Chairman, if I may?

11 CHAIRMAN RITGER: Go for it.

12 MR. ORTH: So first of all, thank you,
13 Mr. Chairman and Members of the Board, Members of the
14 Public, Board Professionals, we really appreciate
15 your time this evening and your consideration of our
16 proposal.

17 To briefly summarize, we respectfully
18 submit that there's no doubt that the settlement
19 agreement expressly states the governing body's
20 intention to rezone the subject property and
21 accomplish two relevant items.

22 First, that the 75-unit inclusionary
23 project be permitted as an as-of-right use and
24 second, that all existing uses on-site be treated as
25 permitted uses.

1 The settlement agreement is a critical
2 document because it provided for the rezoning of the
3 subject property and was also the principal document,
4 which allowed Mendham to satisfy its affordable
5 housing obligation by meeting nearly the entirety of
6 its obligation on one site.

7 We respectfully submit that this
8 intention was carried over into the ordinance which
9 expressly references the settlement agreement and
10 states that it is designed to implement the
11 objectives of the settlement agreement, which as
12 noted, provided that all existing uses are to be
13 treated as permitted uses.

14 Since the cell tower existed prior to
15 the execution of the settlement agreement, it is an
16 existing use, which we respectfully must be
17 considered as a permitted use and not a conditionally
18 permitted use.

19 That said, even if the board finds that
20 a portion of Ordinance 09-2020 conflicts with the
21 code provision concerning cell towers, the ordinance
22 provides a way to resolve this inconsistency, that
23 conflict resolution paragraph is set forth in
24 Section 5 of Ordinance 09-2020 which states that:

25 "All ordinances of the Borough of

1 Mendham that are inconsistent with the
2 provisions of this ordinance are hereby
3 repealed to the extent of such inconsistency."

4 So Ordinance 09-2020 contemplated that
5 there might be some inconsistencies and addressed
6 them by resolving them in favor of the ordinance. By
7 the ordinance, I'm referring to Ordinance 09-2020.

8 Third, it is also clear that Mendham's
9 cell tower ordinance, which is found at
10 Section 215-12.6 of the code is only applicable when
11 an application for a cell tower is filed with the
12 board. We are not proposing a cell tower, we are
13 proposing a residential development in furtherance of
14 Mendham's Mount Laurel obligation.

15 So for all these reasons and for the
16 reasons testified by our experts, we respectfully
17 request that the board interpret Ordinance 09-2020 so
18 as to not require a D-3 conditional use variance in
19 connection with the residential development of this
20 site. Thank you.

21 MR. GERMINARIO: So let me just state a
22 little legal guidance of my own in this response to
23 some of the issues that they have raised.

24 When we look at the settlement
25 agreement, it does not say that it's going to convert

1 any conditionally permitted use to a categorically
2 permitted use; it doesn't say that. It says that
3 there will be an ordinance passed and it refers to
4 that ordinance and it says that existing uses, the
5 actual words "permit the existing uses on the
6 property to remain as a permitted use."

7 So the permitted -- conditionally
8 permitted uses would remain as conditionally
9 permitted uses; that's -- that fits perfectly within
10 the actual wording of the settlement agreement.

11 And when you look at the ordinance
12 itself, it does not refer to the telecommunications
13 tower as uses permitted under Section 215-73, it
14 doesn't specifically refer to it, but it does refer
15 to any use permitted in the historic business zone.

16 So this cell tower would fall under
17 that category as a use permitted, but a use permitted
18 conditionally. And I think the terminology is broad
19 enough to take that in. So there isn't -- I don't
20 see any inference here that somehow through the back
21 door, this ordinance intended to repeal the
22 conditional use conditions and the telecommunications
23 tower ordinance.

24 I mean, that's such an extreme step to
25 go ahead and say, okay, this ordinance is -- now you

1 can put up cell towers with any conditions
2 whatsoever, we can just throw this ordinance out. I
3 would expect that to be emphatically stated, not just
4 through some verbiage, that standard verbiage at the
5 end of every ordinance that the township -- I mean
6 the borough passes.

7 So I don't find that argument
8 convincing. I think that, as I said to Mr. Abramson,
9 the board has issues that are raised by the fact that
10 this will no longer comply with the conditions under
11 which the tower was approved and the board has the
12 discretion to take a look at that and see and satisfy
13 itself that we're not creating conditions that are
14 either incompatible with the character of the area or
15 incompatible with the health and safety of the people
16 who are going to be residing in this proposed
17 housing.

18 So my legal position remains as stated
19 in my letter of May 2nd, it's up to the board to make
20 the final decision.

21 CHAIRMAN RITGER: All right.

22 MS. BUSHMAN: Are you asking for a
23 motion too?

24 CHAIRMAN RITGER: Well, we've got to
25 formulate that motion. So to get to that, I would

1 think the motion is simply to state that a variance
2 would be required, therefore -- well --

3 MR. GERMINARIO: Well, let me try and
4 state it.

5 So on the question of the D-1 variance
6 as it pertains to the issue of potential services
7 that would store vehicles for third parties that
8 would not be an accessory to this -- either the car
9 dealership or the residential dwelling, that we find
10 that based on the representations made and the
11 document, the revised planning report, that that
12 variance is not required, that would be point number
13 one.

14 Point number two, that the board has
15 heard the arguments of the applicant, but the board
16 reaffirms the position of its planner and its
17 attorney that a D-3 variance is required with respect
18 to the setback of the tower from the residences that
19 are proposed.

20 CHAIRMAN RITGER: So to boil that down
21 to two different questions, we would need a motion to
22 state that a D-1 variance is not required and then a
23 separate motion stating that a D-3 variance is
24 required. So if there's an agreement on that, we can
25 start with the first.

1 MR. GERMINARIO: Yes, you can do it
2 that way.

3 MS. BUSHMAN: So you're stating the
4 first motion in the negative so --

5 CHAIRMAN RITGER: Yes.

6 MS. BUSHMAN: Say that again.

7 CHAIRMAN RITGER: Yes, it will state
8 that the D-1 variance is not required and if you
9 agree, you're stating that it is not required.

10 MS. BUSHMAN: So that would be a yes.
11 And then the other one you're stating in the
12 affirmative --

13 MS. SMITH: Tom, Mr. Lupo pointed out
14 that you didn't open the public comment at the end of
15 the testimony.

16 CHAIRMAN RITGER: It wasn't a new -- we
17 open testimony when there's a new person that is
18 providing testimony.

19 MR. GERMINARIO: Yeah, but -- no, that
20 is a valid point. Under the procedure if they have
21 their -- as opposed to questions, if they have
22 factual testimony that they want to give that would
23 be relevant to this, we should reopen and allow that.

24 CHAIRMAN RITGER: So be it.

25 MS. SMITH: They have to be sworn in,

1 correct?

2 MR. GERMINARIO: They have to be sworn
3 in, yeah.

4 Mr. Lupo, is it?

5 MR. LUPO: Yes.

6 MR. GERMINARIO: Frank Lupo. Frank
7 Lupo, do you swear your testimony will be the truth,
8 the whole truth, and nothing but the truth?

9 MR. LUPO: I do.

10 F R A N K L U P O,

11 17 Dean Road, Mendham, New Jersey, having been
12 duly sworn, testifies as follows:

13 MR. GERMINARIO: Go ahead.

14 MS. SMITH: Frank, can you use that
15 microphone, that one?

16 MR. ORTH: Testing. It's out.

17 MS. SMITH: Here.

18 MR. LUPO: Thank you.

19 I just wanted to make a comment.

20 I appreciate all your input and
21 interaction and understanding that the -- these
22 ordinances are there for a purpose and there is a
23 conditional use and we did go through 22 meetings, at
24 least I went through 22 meetings, and there's
25 purposes for those 22 meetings.

1 And technology changed, things have
2 changed, not only do you want to expand the uses on
3 that property, but as the Chair said, there's other
4 technology. So that tower does not have to remain.
5 That tower could go away. That tower could be
6 transformed. I think there's other opportunities
7 here as opposed to just saying we're going to put
8 this up here and just look the other way.

9 So I do believe a D-3 variance is
10 something, a process that we need to go through. And
11 I do believe those directional antennas compounded by
12 multiple towers and the 5G are going to present some
13 sort of RF frequencies or dangers to the tenants that
14 are to be facing those towers or facing that --
15 facing that tower and those antennas.

16 That's all I want to say and I just
17 want to thank you for your efforts and your passion.
18 Thank you.

19 CHAIRMAN RITGER: Public comment is
20 open if anyone else would like to come forward.

21 MR. GERMINARIO: And again, this is --
22 we're saying comment, but we want to hear factual
23 testimony.

24 Do you swear -- repeat your name again.

25 MS. RAWLEY-PAYNE: Melissa

1 Rawley-Payne.

2 MR. GERMINARIO: Do you swear your
3 testimony is going to be the truth, the whole truth,
4 and nothing but the truth?

5 MS. RAWLEY-PAYNE: Yes, I do.

6 M E L I S S A R A W L E Y - P A Y N E,
7 23 Drake Road, Mendham, New Jersey, having been
8 duly sworn, testifies as follows:

9 MR. GERMINARIO: Okay.

10 MS. RAWLEY-PAYNE: So there was a
11 statement by the V-Fee attorney, and apologies, I
12 forgot to write your name down, so --

13 MR. ORTH: Derek.

14 MS. RAWLEY-PAYNE: Derek, yes, that
15 this will meet almost all of our affordable housing
16 requirement, but there is a document on the website,
17 third affordable housing presentation that says we
18 have 152 units that we have to meet.

19 So I just wanted to make that
20 clarification to the public because I didn't want
21 anyone walking away thinking this was it, because we
22 still have quite a number of affordable housing units
23 ahead of us. So thank you.

24 CHAIRMAN RITGER: Very good job. I was
25 going to point that out myself.

1 All right. We do have a bit of a time
2 constraint, but nonetheless, any other comments from
3 the public or testimony, I should say?

4 All right. And let's see if we can get
5 ourselves to a motion for the first item, which was
6 the D-1 variance.

7 So again, I'll state it this way: A
8 D-1 variance is not required and if you want to make
9 a motion, that's the statement.

10 MR. PACE: I guess that's with the
11 stipulation that was made that the parking would be
12 different?

13 CHAIRMAN RITGER: That parking would be
14 for tenants only.

15 MR. PACE: I'll make that clear.

16 MR. SMITH: I'll make a motion.

17 CHAIRMAN RITGER: Do I have a second?

18 MR. EGERTER: I'll second.

19 MS. SMITH: Who was the second?

20 CHAIRMAN RITGER: Mr. Egarter.

21 MS. SMITH: Okay.

22 Ms. Bushman.

23 MS. BUSHMAN: Could you please repeat
24 the motion?

25 CHAIRMAN RITGER: That a D-1 variance

1 is not required.

2 MS. SMITH: Do you agree?

3 MS. BUSHMAN: I'm going to vote no, I
4 don't agree.

5 MS. SMITH: You think a D variance is
6 required, a D-1?

7 MS. BUSHMAN: Yeah.

8 MS. SMITH: Okay.

9 Mr. Ritger?

10 CHAIRMAN RITGER: Yes.

11 MS. SMITH: Mr. Smith?

12 MR. SMITH: Yes.

13 MS. SMITH: Mr. Sprandel?

14 MR. SPRANDEL: Yes.

15 MS. SMITH: Mr. D'Urso?

16 (No response.)

17 MS. SMITH: Oh, sorry, he isn't --

18 Mr. Egerter?

19 MR. EGERTER: Yes.

20 MS. SMITH: Ms. Garbacz?

21 MS. GARBACZ: Yes.

22 MS. SMITH: And, Mr. Molnar?

23 MR. MOLNAR: No.

24 CHAIRMAN RITGER: All right.

25 Next up for the D-3 variance the

1 statement will be this: The D-3 variance is
2 required, and this is regarding the setback for the
3 cell tower.

4 Anyone like to make a motion stating
5 that the D-3 variance is required?

6 MR. KAY: I'll make a motion that the
7 D-3 variance is required.

8 MS. SMITH: Mr. Kay, you can't. I'm
9 sorry.

10 There's not enough board members
11 missing.

12 CHAIRMAN RITGER: I see.

13 MR. EGERTER: I'd like to make a
14 motion.

15 MS. SMITH: Mr. Egarter.

16 CHAIRMAN RITGER: Do we have a second?

17 MR. SMITH: I'll second it.

18 MS. SMITH: Ms. Bushman. A D-3 is
19 required.

20 CHAIRMAN RITGER: Is required.

21 MS. BUSHMAN: Yes.

22 MS. SMITH: Mr. Ritger?

23 CHAIRMAN RITGER: Yes.

24 MS. SMITH: Mr. Smith?

25 MR. SMITH: Yes.

1 MS. SMITH: Mr. Sprandel?

2 MR. SPRANDEL: Yes.

3 MS. SMITH: Mr. Egerter?

4 MR. EGERTER: Yes.

5 MS. SMITH: Ms. Garbacz?

6 MS. GARBACZ: Yes.

7 MS. SMITH: And, Mr. Molnar?

8 MR. MOLNAR: Yes.

9 CHAIRMAN RITGER: Okay. Well, this
10 concludes the interpretation segment.

11 Thank you.

12 MR. ORTH: Mr. Chairman, may I briefly
13 discuss scheduling and next steps for the site plan
14 application?

15 CHAIRMAN RITGER: Yes, I think Lisa,
16 you're going to know more than I regarding who we
17 have in June, so --

18 MS. SMITH: I haven't had any
19 communication with Accordia, so --

20 CHAIRMAN RITGER: Okay. Do we have
21 Kuchinski then as a hearing?

22 MS. SMITH: Yes, it will be Kuchinski
23 and then if they wanted to come on for --

24 CHAIRMAN RITGER: Okay. So we have an
25 application that will precede you for an addition of

1 lot coverage on a house on Franklin, but that will be
2 for June.

3 So we would expect, if you would like,
4 to see you in June.

5 MR. ORTH: Yes, that would be great,
6 Mr. Chairman, and the board has determined that a D-3
7 variance is required.

8 I believe there's an application fee
9 associated with that which we will submit to
10 Ms. Smith and we'd like to be scheduled for the June
11 meeting.

12 CHAIRMAN RITGER: Very good.

13 MR. GERMINARIO: Yeah, so that will be
14 initially completeness based on your submission that
15 would require fees and documentation in connection
16 with the D-3 variance, and then we will go right from
17 the completeness into the hearing on the merits.

18 MS. SMITH: And then just note that the
19 next meeting is at the high school, West Morris High
20 School.

21 CHAIRMAN RITGER: Mendham High School.

22 MR. ORTH: We're going to the high
23 school?

24 CHAIRMAN RITGER: Yeah.

25 MR. ORTH: Okay. I'll just get the

1 address for that and I will notice for the June
2 meeting on the assumption it will be -- the
3 application will be deemed complete.

4 CHAIRMAN RITGER: Okay.

5 MS. SMITH: Now, will you need all new
6 applications to the board, all new plans and -- just
7 so he knows what he needs.

8 MR. GERMINARIO: No, I think, though,
9 that the board already has copies of the planner's
10 revised planning report, they'll need that.

11 MR. FERRIERO: They may want to amend
12 that to include the D-3 arguments.

13 MR. GERMINARIO: The what?

14 MR. FERRIERO: A D-3 variance. Aren't
15 they going to put that in their planner's report,
16 that they need a D-3 variance?

17 MR. GERMINARIO: Well, you know,
18 that -- the D-3 variances, they're going to have to
19 address that in the planner's report as far as the
20 basis for the relief, it's up to the applicant.

21 If the applicant can do that, they can
22 revise the planner's report so that some of
23 Mr. Abramson's issues that he made that really would
24 pertain to the merits of that variance, you could do
25 that. That's your option.

1 I don't think we have to compel you,
2 because you can do that through testimony as well.
3 I'm sure that Mr. Abrams is going to be back and
4 testifying on the merits of that, granting that
5 variance.

6 MR. ORTH: Right. Thank you.

7 And I wouldn't bring Phil back as the
8 initial witness on the site plan application, you
9 know, we'll probably start with the engineer, just so
10 everyone knows.

11 MR. ABRAMSON: Give me a breather.

12 MR. GERMINARIO: But I think just a
13 word to the wise, Mr. Orth, you might want to get an
14 RF expert. I think that he would have all the data
15 he needs if we could pull out some of the records of
16 that original application as we went through that
17 whole thing in terms of RF.

18 Matter of fact, I seem to recall there
19 was an exhibit in that case that went from zero
20 distance out to the property line and said here are
21 the RF numbers. And, you know, again, you don't have
22 to prove to the satisfaction of this board that it's
23 quote, unquote safe, you have to prove that it is in
24 compliance with federal standards of safety, as you
25 referred to The Telecommunications Act and you

1 witnessed it too.

2 So we're not here as experts, but we
3 need an expert of some form to tell us yeah, this is
4 with the housing where it's proposed, no problem,
5 federal standards are going to be complied with.

6 MR. SMITH: And that report also was
7 that ground up, Tom, we're talking four or
8 five stories high, so you'll have the different
9 elevations.

10 MR. GERMINARIO: Yeah, yeah, you're
11 right. So the expert, you know, these things it's a
12 matter of mathematics, the radiation is so much here,
13 so all equations that they can come up with and
14 extrapolate from the existing data, but, you know, so
15 let's have that and perhaps your other witness
16 talking about the sort of use of the buildings to
17 mask or block the site of the tower in terms of the
18 other part of this ordinance talking about the sort
19 of aesthetic context of the 250-foot boundary.

20 MR. ORTH: Okay. Thank you, everyone,
21 for your time and we'll look forward to seeing
22 everyone again in June.

23 Thank you.

24 (Whereupon, this meeting in concluded.

25 Time noted: 10:00 p.m.)

C E R T I F I C A T E

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

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

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



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

Dated:

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