

1 BOROUGH OF SHREWSBURY
2 NEW JERSEY
3 April 27, 2010
4 7:30 p.m.
5 Special Meeting

6 IN THE MATTER OF:
7 K. Hovnanian Shore Acquisitions
8 Owner: D/Three
9 445 Shrewsbury Avenue
10 Bl: 2 Lots: 1 & 3

11 B E F O R E:

12 E.M. Siciliano
13 D. Teller
14 T. Moran
15 M.G. Bell, Chairman
16 B. Dodge
17 S. Gardella
18 J. Martinelly
19 G. Carroll
20 D. Derasadourian

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

22 Lorraine Kelleher, Board Secretary
23 Dave Cranmer, PE, PP, CME, Board Engineer
24 Michelle Donato, Esq., Board Attorney

25 A P P E A R A N C E S:

26 MICHAEL R. MACANINCH, ESQ.
27 Legal Counsel
28 Delaware Valley Division
29 K. Hovnanian Companies, LLC
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35 Attorney for the Applicant

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1 CHAIRMAN BELL: We have one thing on the
2 agenda tonight and that's a special meeting and that's
3 K. Hovnanian Shore Acquisitions, 445 Shrewsbury Avenue,
4 Block 2, Lots 1 and 3. Mr. Macaninch?

5 MR. MACANINCH: Thank you. Good evening,
6 once again. I have two witnesses tonight. I have the
7 architect and I have the planner. What I'd like to do
8 is start with the planner, have his testimony go on and
9 then I'll have the architect provide his testimony if
10 that's okay with the Board.

11 CHAIRMAN BELL: One question I have. Have
12 we gotten a letter because I haven't seen one, from the
13 fire department or from the first aid squad?

14 MS. KELLEHER: No. It's my understanding
15 that the first aid squad wants to have another meeting
16 with them.

17 CHAIRMAN BELL: Do you know anything about
18 that?

19 MR. MACANINCH: We thought that was done.

20 CHAIRMAN BELL: And I'm in the blind because
21 I don't know either and I'm on the first aid squad, but
22 I'm not on that committee, but I do know that I was
23 expecting a letter and it's particularly related to the
24 architect. So one of the things that I would say it up
25 front is that anything that comes forth I would expect

1 that we would want the architect to come back at the
2 next meeting.

3 MR. MACANINCH: And that's fine. I can
4 certainly do so. Okay, with that I would call Mr.
5 Raymond Liotta, the planner.

6 MS. KELLEHER: Has he been previously sworn?

7 MS. DONATO: I don't think so. Your full
8 name and spell your last name.

9 MR. LIOTTA: Raymond C. Liotta, L-i-o-t-t-a.

10 MS. DONATO: And your address, your business
11 address?

12 MR. LIOTTA: 331 Newman Springs Road, Red
13 Bank.

14 R A Y M O N D L I O T T A, was duly sworn by the
15 Notary, and testified as follows:

16 BY MR. MACANINCH:

17 Q. Mr. Liotta, just at the outset if I could go
18 through your qualifications to qualify you as an expert
19 in the field of architecture. Is this a true and
20 correct copy of your curriculum vitae?

21 A. Yes, but it's in planning.

22 Q. Did I say architecture?

23 A. Yes.

24 Q. I've got my witnesses mixed up. With that I'd
25 like to enter his curriculum vitae. If you could just

1 walk through your --

2 A. Sure. First and foremost I'm a licensed planner
3 by examination in the state of New Jersey. I have been
4 licensed as such since 1988. I have testified in over
5 50 different municipal jurisdictions throughout the
6 state. I was also the Borough planner for Milltown
7 Borough in Middlesex County for seven years earlier in
8 the beginning of 2000 to approximately 2007. I have
9 written master plan documents regarding plans, COAH
10 plans and testified extensively on variance issues for
11 private clients.

12 I have a landscape architecture degree from
13 Rutgers University. I'm a member the APA. I'm also a
14 member of the American Institute of Certified Planners
15 and I have actually testified here before only once, but
16 it was four or five years ago.

17 CHAIRMAN BELL: Do you remember what
18 application that was on?

19 MR. LIOTTA: Quite honestly it was actually
20 the very early concept plans for this site when it was
21 first envisioned to propose some multi-family affordable
22 housing on this project site.

23 CHAIRMAN BELL: Was that with Hovnanian?

24 MR. LIOTTA: Yes, sir.

25 CHAIRMAN BELL: And was it part of the Board

1 or was it one of the conceptual meetings that we had?

2 MR. LIOTTA: It was a conceptual meeting to
3 discuss master plan changes.

4 CHAIRMAN BELL: So just for the record that
5 would be that you didn't actually present in front of
6 the Board, you presented in front of the committee that
7 was looking at the rezoning of the property.

8 MR. LIOTTA: That's possible. I don't
9 remember exactly before, but it was --

10 MS. SICILIANO: It was before council.

11 MR. LIOTTA: It may have been before
12 council, thank you, Mayor.

13 CHAIRMAN BELL: So it wasn't before here.
14 Because if you had been, if my memory is correct,
15 Michelle, if he had testified before and he was accepted
16 as an expert witness we wouldn't ask him for it again.

17 MS. DONATO: Right.

18 CHAIRMAN BELL: Could you just explain, the
19 logo on and I apologize, I don't see it on here, the M,
20 what does the M stand for?

21 MR. LIOTTA: I'm a principle associate with
22 Maser Consulting here in our Red Bank office.

23 CHAIRMAN BELL: Maser, okay.

24 MS. KELLEHER: What number are we marking
25 this? Are we going to mark it?

1 MR. MACANINCH: A-13.

2 (Exhibit A-13 was received and marked into
3 evidence.)

4 MS. DONATO: I didn't get A-12.

5 MR. MACANINCH: It was the AOC.

6 MS. DONATO: I have the area of concern map
7 as A-11.

8 MR. MACANINCH: Two area of concern maps.
9 One was the existing conditions and one was on the site
10 plan.

11 MS. DONATO: Okay, thank you.

12 CHAIRMAN BELL: Does anybody have any
13 questions or concerns about Mr. Liotta? Michelle?

14 MS. DONATO: I just wanted to make sure that
15 I understand. You're a landscape architect but you're a
16 professional planner by examination not just by --

17 MR. LIOTTA: Yes, ma'am. I'm a licensed
18 landscape architect as well as a licensed professional
19 planner in New Jersey.

20 MS. DONATO: And your professional planning
21 is from --

22 MR. LIOTTA: From examination by the state
23 exam, yes.

24 MS. DONATO: I ask that because there was a
25 period of time when landscape architects could get a

1 planner's designation without anything other than paying
2 a fee.

3 MR. LIOTTA: It is not that, trust me.
4 Believe me.

5 MS. DONATO: It is not that way anymore.
6 You can't do it anymore, but there was a period of time.

7 CHAIRMAN BELL: And I'm looking at the
8 towns. Have you been employed or licensed or whatever
9 by -- because you have I think five towns or six towns
10 under the planning. Are you officially one of their or
11 have you been one of their planners for the year?

12 MR. LIOTTA: Maser Consulting provided
13 municipal services to all of those towns and as part of
14 a planner working for the municipal engineer I provided
15 some planning studies and planning opinions to those
16 towns on various issues.

17 CHAIRMAN BELL: But so my question is have
18 you been the actual town planner for any of these towns?

19 MR. LIOTTA: Yes, for Milltown Borough in
20 Middlesex County.

21 CHAIRMAN BELL: For Milltown Borough.

22 MR. CRANMER: Actually, our offices worked
23 with Mr. Liotta in the past and found him to be a
24 competent planner.

25 CHAIRMAN BELL: Okay. Does anybody have any

1 other questions? There being none we would accept you
2 as an expert witness.

3 MR. MACANINCH: Thank you.

4 BY MR. MACANINCH:

5 Q. Mr. Liotta, can you just go through at the outset
6 your extent of your investigation and your involvement
7 in the project?

8 A. Yes. My involvement in the project was to review
9 the application with the applicant, the client and
10 render a planning opinion and assist in the preparation
11 of the plans. And in doing that I reviewed the
12 municipal ordinances, particularly the affordable
13 housing overlay zone that affects this property and
14 provided an opinion to the client and I'm here tonight
15 to express those opinions on the variance issues that
16 are associated with the application as submitted.

17 Q. And on the easel, on the easel is previously
18 marked Exhibit A-3. Just by making reference to that
19 exhibit, can you go through the subject property itself?

20 A. Yes, the subject property as indicated in the
21 application is Block 2, Lots 1 and 13. It has frontage
22 on Shrewsbury Avenue which is on the left side or the
23 western side of Exhibit A-3. It also has a small
24 frontage along Patterson Avenue which is at the
25 southeast corner of the project exhibit. To the east of

1 the project site is the central railroad right-of-way.
2 To the north just off the exhibit or the top of the
3 exhibit is Newman Springs Road which is the boundary
4 between Shrewsbury Borough and Red Bank, and Shrewsbury
5 Avenue again is on the western side.

6 The property is 9.63 acres. Currently there are
7 three structures which are all proposed to be removed.
8 I'm sure there has been testimony in the past as to
9 Circle Truck Center and those structures are proposed to
10 be eliminated and removed from the site as part of this
11 application.

12 Now the subject property is located in two zone
13 districts. It is in the B1 -- excuse me, B3 underlying
14 commercial district as well as the AHMF-8 affordable
15 housing, multi-family overlay zone. And the area that
16 surrounds the project site you have essentially
17 commercial activity to the north. In the center of
18 exhibit A-3 you can just see approximately half of the
19 Foodtown building that was located at that site and the
20 parking lot to the west of that building. And then on
21 Shrewsbury Avenue there are other commercial properties
22 that front on Shrewsbury. And again, to the east is the
23 railroad right-of-way and then single-family homes on
24 the east side of the railroad.

25 On the south side of the project site is

1 Patterson Avenue. There are seven properties which are
2 primarily single-family residential, however two of the
3 properties do contain businesses within those
4 residential dwellings. There's a small barber shop and
5 I believe a pediatric office in one of the homes. But
6 it's essentially a residential street on Patterson.

7 And then fronting on Shrewsbury is commercial
8 from Patterson Avenue all the way to the intersection of
9 Newman Springs Road.

10 Q. And if you could just --

11 CHAIRMAN BELL: Just for the record, for the
12 public, the map that he's referring to is the one that
13 was handed out to everyone and I believe it was the
14 first or second night of the hearing. A-3.

15 MS. SICILIANO: December 16th.

16 CHAIRMAN BELL: December 16th.

17 MR. MACANINCH: Let me see if we have
18 another large --

19 CHAIRMAN BELL: All right, Mr. Liotta.

20 MR. LIOTTA: That's okay.

21 MR. MACANINCH: We'll just put another large
22 up so everyone can see it.

23 Q. Ray, while that's occurring, just very, very
24 briefly since the Board --

25 CHAIRMAN BELL: I'm sorry, Mr. Macaninch,

1 why don't you -- the one that's officially marked A-3
2 point towards the audience because we all have ours in
3 front of us what we have officially marked and you can
4 put the duplicate in front of us.

5 MR. MACANINCH: Sure.

6 CHAIRMAN BELL: This again, just for the
7 public, every exhibit that they have presented there's
8 two. One is an official exhibit and one is a duplicate
9 and I want to make sure that the public sees the
10 official one just so that there's no concern that the
11 official and duplicate aren't exactly the same. And we
12 all have which is what everyone was handed out, the
13 official map, pictures.

14 BY MR. MACANINCH:

15 Q. Okay, Mr. Liotta, just very briefly since the
16 Board has heard this before, but just the project
17 summary.

18 A. The brief project summary is that the applicant
19 is proposing to construct 77 multi-family style homes of
20 which 16 or 20.7 percent would be affordable. They're
21 also proposing along the Shrewsbury Avenue frontage a
22 two-story nonresidential or commercial structure which
23 is composed of 5,515 square feet of retail space on the
24 ground floor and 2,833 square feet of office space on
25 the second floor for a total of 8,348 square feet of

1 commercial space on the proposed lot that fronts on
2 Shrewsbury Avenue.

3 Now with respect to the variance issues that are
4 associated with the application as submitted, there are
5 five different bulk variances that I will be talking
6 about tonight and I'm going to number the variances and
7 talk about them in that numbered order.

8 Variance number one is a bulk variance for the
9 maximum impervious coverage in the B3 business zone
10 where 65 percent impervious coverage is permitted where
11 68.35 percent is proposed as part of that subdivided lot
12 that will be the commercial lot fronting on Shrewsbury
13 Avenue.

14 Variance number two is a variance to permit a
15 10-foot perimeter buffer around the commercial property
16 whereas 20 feet is required.

17 Variance number three is -- three, four and five
18 are associated with the residential portion of the
19 project site. The third variance then is a setback from
20 any tract boundary where 50 feet is required and that's
21 a building setback we're talking about and 40 feet is
22 proposed as part of the application.

23 Variance number 4 is another bulk variance in the
24 affordable housing zone, and it requires a minimum of 20
25 foot clear area between the multi-family structures.

1 The proposed application is showing a 15-foot distance
2 between the stair and porch areas on the sides of the
3 building and I will get into it in a little more detail
4 later, but the buildings themselves are separated and do
5 meet the separation standard of 20 feet or -- excuse me,
6 of 25 feet, but those porches and stair columns in fact
7 are approximately 15 feet apart.

8 And variance five and the last bulk variance is
9 requiring a landscape buffer strip of 50 feet along the
10 tract boundary lines and the application is proposing
11 less than 50 feet and generally 40 feet along the
12 southern and northern property boundaries.

13 Now in review of the zoning standards, all of the
14 bulk requirements that are listed in the zone chart on
15 the cover sheet of the site plans are satisfied except
16 for those bulks that I just discussed in terms of the
17 variances.

18 So again, we have impervious coverage exceedance
19 in the business zone. We have a buffer variance in the
20 commercial zone and then we have three variances, two of
21 which are essentially the same area. There's the
22 landscape buffer along the perimeter. The building
23 separation between the buildings and the perimeter and
24 then the setback of the building to each building.

25 The rest of the bulks in the charts are compliant

1 and I won't take your time going over each one of those.

2 Now with regard to variances one and two --
3 excuse me a second. Do you have another exhibit that
4 shows the subdivision a little more easily?

5 MR. HOLMES: No, I don't.

6 MR. LIOTTA: With respect to the variances
7 one and two, it relates to the front portion of the site
8 that fronts on Shrewsbury Avenue or the commercial
9 parcel.

10 CHAIRMAN BELL: Just for the record for the
11 public, that's the commercial property on Shrewsbury
12 Avenue which would be where the access, the current
13 access to the old Stop & Shop which is what he circled
14 which excludes the residential, it's just purely the
15 commercial.

16 MR. LIOTTA: It's a little difficult to see
17 on the exhibit. If the public reviews Exhibit A-3 I'm
18 going to be pointing to the replica, but there is a
19 subdivision line that separates the commercial parcel
20 which is in the northwest corner of the project site
21 from the commercial piece which is essentially the bulk
22 of the area to the east of the subdivision line and it
23 is a zigzag line that establishes a lot area for the
24 commercial parcel of just under 1.2 acres. So that is
25 the commercial segment of the proposal.

1 Now what's occurring here is that the
2 project site is doing several things with this one
3 access point. It's serving the commercial center and
4 allowing people to get into the commercial center from
5 Shrewsbury Avenue. It's also in place to serve the
6 access, ingress and egress movements of the residential
7 portion of the proposal as well as maintaining existing
8 access through an easement to the rear of the commercial
9 property to the north which is the previous Foodtown
10 site. So this access point is serving three different
11 functions. And in order to design it so that it
12 provides adequate, safe ingress and egress not only for
13 the people who use the site but also for emergency
14 service vehicles, this access road is a little bit wider
15 than it would normally be under standards where it was
16 serving only one of these functions.

17 So if it were just here to service the
18 commercial it could be as small as 24 or 25 feet.

19 Similarly, the same thing for the residential. If it
20 was only serving the residential it could be as small as
21 24 feet wide. But in this case because it needs to be a
22 little bit bigger to make it efficient and safe for all
23 three functions, it's been made 30 feet wide. So what
24 that's doing is creating a little bit more impervious
25 coverage to the lot that's been created around the

1 commercial proposed building and parking lot.

2 Now the exceedance in the commercial lot is
3 quite small actually. It's only 3.3 percent or 1,747
4 square feet. So by serving three different uses in
5 terms of access and providing a wider drive aisle, it's
6 causing us to shift things around a little bit, shift
7 things south and provide more impervious coverage on the
8 site than we would normally do if we were only serving
9 the commercial use. So because of the fact that there
10 is a need to provide that safe and efficient design, we
11 are exceeding the maximum impervious coverage slightly.

12 Now I do want to just discuss the impervious
13 coverage briefly on the residential. Now the
14 residential part where the maximum permitted is 50
15 percent, it's only at a 31.5 percent as proposed. So
16 it's significantly under the maximum impervious coverage
17 permitted in the residential portion. So when I took
18 those two numbers and put them together, the 68 percent
19 coverage in the commercial zone and looked at the size
20 of that property and then added that to the impervious
21 coverage on the commercial side, overall the entire site
22 only has 36 percent total of impervious coverage. So
23 with the slight deviation of the subdivision line, even
24 that could change the coverages. So from a planning
25 perspective, the coverage on this in total is quite

1 small. We're only talking about 36 percent. So on
2 average I think we've done quite well to get all the
3 uses designed into a difficult site. Somewhat tight
4 site in order to produce the unicap that we're looking
5 at and still serve those three different access and
6 egress needs on the project site.

7 Now with regard to the bulk standards in
8 general for the affordable housing component, we looked
9 to some of the COAH regulations to get some guidance on
10 how COAH looks at sites and the guides that they give
11 planning boards like yourselves when looking at these
12 sites and whether variances should be considered and
13 what the conditions should be when they're considered.
14 And essentially there are a couple of standards in the
15 COAH regs that should be considered. There's a section
16 5:97-6.4(B)4 and that talks about the bulk standards
17 within.

18 CHAIRMAN BELL: Could you repeat that
19 number, please.

20 MR. LIOTTA: Yes, it's 5:75-6.4(B)4. Now
21 that talks about how municipalities should evaluate
22 their bulk standards in the context of the desire to
23 provide affordable housing and that there should be some
24 flexibility in your review of what the standards are and
25 that reasonable deviations that don't have impacts on

1 neighbors and your zone plan in general should be
2 considered and can be approved by boards. So it says
3 that municipalities should evaluate the zoning to
4 determine whether reduced setbacks, heights, things like
5 that should be increased to allow for the affordable
6 housing.

7 There's also another section in the same
8 area of their regulations, it's 5:97-10.3(B) and that
9 talks about municipalities should cooperate with the
10 applicants who are bringing affordable housing
11 developments to towns and should be granting reasonable
12 variances and waivers. So there should be some
13 reasonableness in the evaluation. Are the deviations
14 that are proposed significant or not? Are they
15 substantial? And if they're not and if they promote
16 affordable housing, if they're promoting good design, if
17 they're doing something that achieves and supports and
18 advances the purposes of zoning, then it's a reasonable
19 request.

20 So that's something for the Board to
21 consider that when COAH looks at these kinds of projects
22 they ask you to just look at any variance conditions in
23 a reasonable, concise manner.

24 Now I'm sure you've heard this discussion
25 about what the standards are in terms of variance

1 approval so I'm just going to repeat it quickly. In
2 terms of the Municipal Land Use Law an applicant is
3 required to demonstrate both the positive and negative
4 criteria for C variances. Now positive criteria could
5 be two different things with respect to bulk variances.
6 It could be a hardship to the land. It's an unusual
7 shape, topographic conditions, some kind of unusual
8 particularly difficult or peculiar situation that causes
9 you to do something different than what the ordinance
10 prescribes. And you do it for a reason, to either
11 promote a better design or to achieve a goal like
12 fitting affordable housing on a project site.

13 The other purpose in terms of positive
14 criteria is that if you advance the purpose of zoning
15 you're showing positive criteria.

16 Now on the negative criteria side there are
17 two aspects of that and you probably heard it before,
18 there are two prongs. There is is there any substantial
19 detriment to the public good. That essentially refers
20 to the neighborhood that the project site or the
21 surrounding neighborhood of the project site. So is
22 there any substantial detriment. The second aspect or
23 prong of that criteria is is there any impairment to the
24 zone plan or the intent of the zone plan and master
25 plan, your zoning ordinance and master plan. So it's

1 those negative aspects that the Board should look at
2 with respect to the C variance conditions that we're
3 proposing.

4 Now let me go back to the variances and give
5 you my opinion on how we believe we've satisfied or can
6 satisfy the criteria for this Board to approve the five
7 different variances that are listed on the plans and in
8 the application. Now variances one and two are the
9 impervious coverage and the buffer width on the
10 perimeter for the commercial aspect of this project
11 site. Now we believe that there is somewhat of a
12 hardship in that this particular project site is needed
13 to serve for purposes of access, ingress and egress and
14 emergency service use, essentially three different uses.
15 We've got the commercial use, we've got the residential
16 use and we've got the easement access that we need to
17 continue to provide to the commercial property to the
18 north. So there is some practical difficulty in doing
19 that which means that the aisle driveway needs to be in
20 a particular location and it needs to be in a particular
21 orientation in order to have all three of those
22 components effectively work. So it needs to be a
23 certain width. It needs to have a certain radius on the
24 curbs. It needs to be a certain elevation and
25 particularly it needs to be in a location where it shall

1 for those three aspects to function. So the road
2 geometry is peculiar. There are some peculiar aspects
3 to this site that drive the hardship aspects of our
4 request.

5 Now the beneficial aspect or the C2
6 beneficial deviation component is that we've only got
7 one driveway serving three different functions which
8 means we're limiting the access point on Shrewsbury
9 Avenue to only one. So it's cutting down on exits and
10 entrances to the site on Shrewsbury Avenue which helps
11 support some safer traffic movements. So there is some
12 positive aspects to combining the uses in one driveway,
13 albeit slightly wider driveway which increases the
14 impervious coverage, it does make the site more
15 efficient in terms of access and particularly for
16 emergency service.

17 Now with respect to the 10-foot proposed
18 landscape buffer around the perimeter of the commercial
19 site where 20 is proposed, it's also a function of the
20 need to provide a certain presumptive density of the
21 residential and that area needs a certain space in order
22 for it to be appropriately designed. So we've shown a
23 subdivision line that separates the commercial from the
24 affordable housing component. It's a zigzag. It could
25 be changed and if it's changed slightly it would affect

1 an increase in the buffer, but it's really just a line
2 on paper. There is sufficient buffer and green space in
3 between the two components to allow them to adequately
4 exist next to each other. It's sufficiently planted and
5 the buffer that we're proposing on this site is actually
6 more extensive than what you see in the neighboring
7 sites in the existing commercial development that exists
8 on Shrewsbury Avenue and also on Newman Springs Road.
9 So we are making a fairly significant improvement to
10 what's proposed there or what is common in the
11 neighborhood in terms of buffer from commercial to
12 commercial and along the property lines.

13 With respect to variance three --

14 CHAIRMAN BELL: Can I just interrupt you for
15 a second?

16 MR. LIOTTA: Yes, sir.

17 CHAIRMAN BELL: I think this is a logical
18 point if the Board agrees that we ask questions on the
19 commercial side of the variances that are being
20 requested and then listen -- if anybody has any
21 questions and then listen to the residential and ask any
22 questions. And then we could open this to the public
23 for general questions. Does anybody or would everybody
24 rather hear the whole thing? Because I think as you go
25 along you lose, you lose what the concerns or questions

1 that you may have on the commercial.

2 MR. MORAN: You might as well separate it.

3 MR. LIOTTA: Mr. Chairman, if I could maybe
4 help you with your thinking about this. My testimony on
5 the residential is probably another 15 minutes.

6 CHAIRMAN BELL: Would you like to ask the
7 question on the commercial?

8 MR. GARDELLA: I have a question. Is there
9 a buffer that's going to be between the residential and
10 the commercial piece of property?

11 CHAIRMAN BELL: So to answer the question to
12 the public, we're going to ask the questions specific on
13 this and actually I think to be fair to the public we
14 will then open it to the public for the questions on the
15 commercial and then we'll close it and then we'll go to
16 the residential because it's going to be very different.

17 MR. LIOTTA: The answer to that question is
18 yes. There is a landscape strip that separates the
19 commercial parking lot from parking stalls at the
20 northwest side of the residential component. The area
21 varies in shape. It ranges from anywhere in the
22 neighborhood to 15 feet to 30 feet in some areas, but it
23 does vary and it is landscaped and there is a landscape
24 buffer separating the two.

25 MR. GARDELLA: Will there be any kind of

1 growth that will have some height to it to separate the
2 two or is it all going to be low-lying?

3 MR. LIOTTA: I don't have the landscape plan
4 to put up for you. I believe that was testified to at a
5 prior hearing, but there are combination of evergreen,
6 deciduous trees and shrubs and plantings that go in that
7 strip and throughout the site.

8 MS. MARTINELLY: Is that strip the
9 residential responsibility, the landscaping part or is
10 it going to wait until the commercial is developed when
11 and if?

12 MR. LIOTTA: I'm not sure I understand the
13 question.

14 MS. MARTINELLY: The property that you have
15 separating them, is it part of the residential
16 application, the landscape buffer?

17 MR. LIOTTA: Yes, the landscaping is
18 proposed as part of the entire project site.

19 MR. MACANINCH: It will be installed.

20 MR. LIOTTA: It's my understanding it will
21 be installed as part of the residential development.
22 And I'm referring to sheet 1 of 6, an overall landscape
23 plan that was submitted by Maser Consulting dated March
24 31, 2009, latest revision October 28, 2009. There is a
25 significant evergreen shrub and shade tree planting in

1 that landscape strip that separates the two parking
2 lots.

3 CHAIRMAN BELL: Mr. Macaninch, would that be
4 reflected do you know in A-4 that was presented that
5 shows the proposed landscaping?

6 MR. MACANINCH: It would have been part of
7 the landscaping plan. Is that your question?

8 CHAIRMAN BELL: No. I'm looking at the
9 drawing, the rendering that was presented to us and it's
10 A-4 which shows some trees.

11 MR. MACANINCH: Yes.

12 CHAIRMAN BELL: So the public has that,
13 okay.

14 MR. LIOTTA: Yes, Mr. Chairman, the exhibit
15 you're referring to is the rendered version of the
16 landscape plan.

17 CHAIRMAN BELL: Just to follow-up on Mr.
18 Gardella and Mrs. Martinelly's question, what's the
19 distance and I'm trying to looking at A-3 and I've been
20 looking at A-4 and I'm looking at the line, the yellow
21 line between the properties. What's the distance of the
22 buffer between the proposed business and the residential
23 at the closest point?

24 MR. LIOTTA: I believe the closest point
25 would be the southeasterly parking stall in the

1 commercial.

2 CHAIRMAN BELL: Correct.

3 MR. LIOTTA: And it visually looks to be
4 approximately 5 feet to the subdivision line, but I
5 don't have a scale.

6 CHAIRMAN BELL: So how much landscaping
7 could be put into that?

8 MR. LIOTTA: Let me just measure that
9 distance for you, Mr. Chairman. I think the 5 feet is
10 pretty close in terms of an approximation. And the plan
11 shows a series of evergreen shrubs that are planted
12 along the back edge of the residential stalls that are
13 in that area and then there are a series of shrubs on
14 both sides of the corner of that commercial piece. So
15 there are two rows of shrubs and then there are a few
16 evergreen trees and a couple of shade trees.

17 CHAIRMAN BELL: So the buffer in that area
18 would be up to 5 feet?

19 MR. LIOTTA: The distance from the corner of
20 that parking stall to the property line would be about 5
21 feet, but then there's roughly an additional 10 feet to
22 the curb line of the residential parking space.

23 CHAIRMAN BELL: But the buffer that's
24 required on the commercial is required to be on the
25 commercial side and I'm taking into account the

1 residential side.

2 MR. LIOTTA: That's correct.

3 CHAIRMAN BELL: I didn't mean to jump on
4 your questions.

5 MS. MARTINELLY: That's okay. That's why
6 you're the chair.

7 CHAIRMAN BELL: Questions? I have a couple
8 of questions. Currently how wide is the access road
9 that accesses the property and services -- which would
10 service, it's closed now, but the old Foodtown?

11 MR. HOLMES: I can answer that.

12 CHAIRMAN BELL: You need to introduce
13 yourself. You've been sworn in.

14 MR. HOLMES: Timothy Holmes with Najarian
15 Associates, design engineer. The portion of the road in
16 front of the Colex or adjacent to Colex, it's slightly
17 under 30 feet, ranges 26 to 28 feet and as it goes down
18 over the hill and into Shop Rite or Foodtown it goes
19 down to about 24 feet. We currently are going to make
20 it 30.

21 CHAIRMAN BELL: So it's currently at the
22 widest by Shrewsbury Avenue it's roughly 30 feet?

23 MR. HOLMES: Yes, yes.

24 MR. GARDELLA: So where that retaining wall
25 is on the back side of the property you're going to

1 remove that and widen it?

2 MR. HOLMES: Actually we're holding just
3 about the curb line, as you drive in now, as you're
4 driving in and Colex is on the left, that left-hand curb
5 line is staying about where it is and we're bringing the
6 road over into our site.

7 MR. GARDELLA: Right.

8 CHAIRMAN BELL: So the current road out at
9 Shrewsbury Avenue is roughly 30 feet currently?

10 MS. DONATO: 28.

11 CHAIRMAN BELL: No, I don't think that's
12 what was testified to.

13 MR. MACANINCH: He said it varies.

14 CHAIRMAN BELL: At Shrewsbury Avenue it's
15 roughly 30 and then it narrows down to about 26 feet.

16 MR. HOLMES: Yes.

17 CHAIRMAN BELL: Okay. So that in your
18 testimony you're making it 30, in essence it's already
19 30. You're widening it as it goes down, but currently
20 the access road is actually 30 feet.

21 MR. LIOTTA: We're making it consistent 30
22 feet for the whole stretch.

23 CHAIRMAN BELL: Okay.

24 MR. MORAN: Excuse me, to what point because
25 now you have an easement?

1 MR. LIOTTA: No, it's to the point at which
2 it gets to the intersection of where the road goes into
3 the commercial development and then to the south and
4 then it also veers off in a Y shape and goes into the
5 commercial property through an easement to the north.
6 So it's essentially at that intersection where it
7 transitions down to the smaller widths. So it's for the
8 entire length from Shrewsbury Avenue past the
9 subdivision line.

10 MR. MORAN: To the Y.

11 MR. LIOTTA: That's correct, sir.

12 CHAIRMAN BELL: Mr. Liotta, the property,
13 the entire property right now you testified is 9.63
14 acres, I believe?

15 MR. LIOTTA: Yes, sir.

16 CHAIRMAN BELL: Under the current zoning for
17 affordable housing, how many units are allowed per acre?

18 MR. LIOTTA: 8 units per acre.

19 CHAIRMAN BELL: Okay, and how many units are
20 proposed?

21 MR. LIOTTA: Gross acreage on the entire 9
22 acres it's 7.99. It's just under the 8 units per acre
23 maximum.

24 CHAIRMAN BELL: What I'm asking is how many
25 units are they proposing to build on the overall tract?

1 MR. LIOTTA: 77 total.

2 CHAIRMAN BELL: So if you take 8 times the
3 9.63, how many units would they be allowed to build?

4 MR. LIOTTA: Well, what I'm saying is the
5 density that's being proposed is just under the maximum
6 permitted 7.99.

7 CHAIRMAN BELL: No, my question is it's 9.63
8 acres. You're allowed 8. The density that's allowed is
9 8 per acre. How many units maximum on the total acreage
10 would any applicant be allowed to build?

11 MR. LIOTTA: 77.

12 CHAIRMAN BELL: I think it's 77.04.

13 MR. LIOTTA: Right, but we can't build a
14 tenth of a unit.

15 CHAIRMAN BELL: How much property is the
16 applicant proposing to subdivide off?

17 MR. LIOTTA: If you're asking what the
18 acreage of the residential tract is is 8.437.

19 CHAIRMAN BELL: How many units at 8 times
20 8.43 would they be allowed to build?

21 MR. LIOTTA: I didn't do the math, but the
22 density on the residential portion is -- let me find it
23 in the chart -- 9.1.

24 CHAIRMAN BELL: Okay, I'll bring my
25 calculator out. I just heard from someone in the

1 audience it's 67 acres.

2 MR. LIOTTA: 67 units.

3 CHAIRMAN BELL: 67 units. Okay, on the
4 variances that you're requesting, you're requesting
5 because it's good planning and it's a hardship. Who is
6 creating the hardship?

7 MR. LIOTTA: Well, the one thing that I
8 didn't get to in terms of describing the unit count is
9 that the ordinance allows for the applicant to count the
10 entire acreage and propose a gross overall density and
11 that's in the overlay zone ordinance.

12 CHAIRMAN BELL: That's correct. But my
13 question is, okay, you have 9.63 acres and you're asking
14 for two variances up front. You're asking for
15 impervious on a property that you're going to subdivide.
16 Not you, but the applicant is going to subdivide.

17 MR. LIOTTA: Correct.

18 CHAIRMAN BELL: And you're asking for a
19 variance on buffer.

20 MR. LIOTTA: Correct.

21 CHAIRMAN BELL: The variance is required or
22 requested because the applicant wants to maximize the 77
23 units and wants to put a commercial property in there,
24 aren't they creating their own hardship?

25 MR. LIOTTA: No. Well, no, not really

1 because the presumptive density in the planning area one
2 which is where we are is 8 units per acre and that's
3 what COAH is looking to do in terms of affordable
4 housing developments to get that particular density in
5 so they can achieve a certain number of units and that's
6 what the applicant has proposed.

7 CHAIRMAN BELL: No, I understand that and I
8 don't have a problem with that. But the applicant has
9 come forth with 77 units which is allowed under the
10 ordinance.

11 MR. LIOTTA: Correct.

12 CHAIRMAN BELL: But asking for a hardship on
13 the commercial property that they have designed that
14 then requires a hardship. If the property -- I'll ask
15 the question. If the building was smaller which would
16 then require fewer parking spaces, would they need a
17 variance?

18 MR. LIOTTA: I'd have to presume some
19 things. I can't speculate, but in general I guess if
20 the building were a third smaller it would require less
21 parking and possibly not require a variance, but I can't
22 say that that's the case.

23 CHAIRMAN BELL: Okay. I think I had one
24 last question and that's the entrance road and I'm not
25 sure if you can answer the question or not. And one of

1 the things that I think you made a mistake on, not that
2 it's a big mistake, but that you said that it serviced
3 -- the entrance road services three uses, the Stop and
4 Shop, the residential and the new commercial. It also
5 has an access road to the auto body shop. So it's
6 actually four uses is what's proposed on the map that I
7 have.

8 MR. LIOTTA: Well, it's accessing two uses
9 on the project site and the property to the north.

10 MS. SICILIANO: No, and the --

11 CHAIRMAN BELL: There's actually two
12 properties to the north if you look at the map.

13 MR. LIOTTA: I'm sorry, you're right, Mr.
14 Chairman, there's a body shop on Lot 14 just to the
15 north at the intersection of Shrewsbury, that is
16 correct. There is an access.

17 MS. DONATO: Do they have an easement as
18 well, the body shop?

19 CHAIRMAN BELL: It's a double-ended question
20 and you might not have the answer, but the first
21 question is will the auto body shop have the access?
22 Will there be four basic or three easements I guess
23 because whoever owns the property won't have an easement
24 on their own, but three property owners would have an
25 easement.

1 MR. LIOTTA: I do not know the answer to
2 that, Mr. Chairman.

3 CHAIRMAN BELL: And then the second question
4 is I'm assuming by reading this that the entrance road
5 which goes back to the back of the commercial property
6 is going to be owned by the commercial property, not
7 owned by the residential property?

8 MR. LIOTTA: The portion on the commercial
9 parcel will be owned by the commercial property owner.

10 CHAIRMAN BELL: So the access from -- and I
11 just want to be clear on it -- from Shrewsbury Avenue
12 back to the residential property will be owned by the
13 commercial property which will then grant easements to
14 Stop & Shop or whatever it's going to be, the auto body
15 and the residential?

16 MR. LIOTTA: I would think that's the case,
17 but I'm not the right witness to answer the question.
18 You'd have to ask the applicant.

19 CHAIRMAN BELL: And one other thing that I
20 have a little bit of an issue with, in your testimony
21 you said that was a positive about the way this was
22 designed, you testified that as it's proposed, the
23 access that is proposed which is currently there, the
24 single access is a positive for the town. I'm looking
25 at the beneficial, a beneficial limiting the point to

1 one access. You might not be aware, but the testimony
2 from the applicant is that the county has limited them
3 to one access. So there is no benefit to the town by
4 this because the applicant has no choice but to present
5 it either here or anywhere in there, but one access.
6 And again, you probably don't have the benefit of the
7 testimony that we already had. Anybody else have any
8 questions?

9 MR. LIOTTA: Mr. Chairman, my only comment
10 is that the design of it whether it was mandated by the
11 county or not is still a benefit in that it's not
12 producing another access point to the commercial
13 property. So if this lot existed and there were a
14 sliver of land to get this driveway in there would be a
15 separate access for the commercial parcel on Shrewsbury
16 Avenue which, in my opinion, would not be a good thing
17 that the one access point serving the commercial where
18 the access, the parking lot behind the building and
19 actually shield Shrewsbury Avenue from the parking makes
20 it a safer condition.

21 CHAIRMAN BELL: So if I understand it right,
22 if I'm looking at the rendering A-3, if the applicant
23 were to have gone to the county and said we don't want
24 the business to have access to this road and we would
25 rather have its own access because we're going to

1 subdivide it, now it's going to be a separate piece of
2 property, the only public road it has is Shrewsbury
3 Avenue. We would rather have it come out on the south
4 side of the building, that would be a poorer planning
5 design in your opinion?

6 MR. LIOTTA: If there were a second access
7 for the commercial parcel, yes, sir.

8 CHAIRMAN BELL: Just for the commercial
9 access, okay.

10 MS. MARTINELLY: Question. On the yellow
11 line that shows the boundaries on A-3, now the piece of
12 the road that's going into Stop & Shop where the
13 easement is is part of the residential, correct? That
14 will be part of the maintenance required by the
15 association?

16 MR. LIOTTA: It is on the residential lot,
17 yes, that's correct.

18 MS. MARTINELLY: Okay.

19 CHAIRMAN BELL: We haven't had any testimony
20 as far as the maintenance agreement on the road, who's
21 going to maintain it, how it's going to be maintained;
22 is that correct?

23 MR. MACANINCH: With regard to the future
24 occupant of the Stop & Shop?

25 CHAIRMAN BELL: One of the things that we'll

1 hear is how this access road -- well, we might not hear
2 it but you're going to have to have an agreement on how
3 this access road, who is going to pay for it, whether
4 it's going to be paid for by the residential component
5 or it's going to be paid for by the commercial component
6 or by the Stop & Shop component.

7 MR. MACANINCH: It would be obviously a
8 shared maintenance agreement. Probably the easiest
9 would be the association itself, the Homeowner's
10 Association would retain a contractor who would do the
11 actual improvements because they're probably the
12 dominant user depending on the future user and then the
13 other two users would pay their share.

14 CHAIRMAN BELL: Out of curiosity, if
15 following Mrs. Martinelly's comment, why wouldn't you
16 subdivide the property and have the road be -- if the
17 Homeowner's Association is going to be the predominant
18 party responsible for maintaining the road which
19 certainly makes sense since they have 77 units, why
20 wouldn't they own the road and then the minority would
21 be against the business section and Stop & Shop?

22 MR. MACANINCH: And, again --

23 CHAIRMAN BELL: I'm not looking to -- I'm
24 just asking the question.

25 MR. MACANINCH: I understand. I think the

1 idea was probably to give more of an, I don't know, an
2 easier shaped lot with the access that's up to the
3 commercial. You know, I can talk to Tim about the
4 specific reason, but again, in terms of the impervious
5 coverage, we could monkey around with these lines when
6 you have this irregularly shaped lot to get the
7 impervious coverage down, but that doesn't help anybody.
8 You have a lot where it could kick up, you know, further
9 to the east on the property line between the residential
10 and the commercial, but that doesn't help. That's not
11 good planning.

12 CHAIRMAN BELL: Well, I think our ordinance
13 and I'm not sure, Michelle, if you can clarify this, our
14 ordinance requires that there be an access on Shrewsbury
15 Avenue and a secondary access. If they don't own it is
16 that still considered an access? They own it now and
17 then you give up ownership.

18 MS. DONATO: I think it's still considered
19 access.

20 MR. MACANINCH: It would be, yeah.

21 CHAIRMAN BELL: So it would conform with our
22 ordinance?

23 MS. DONATO: I'll double check it, but I'm
24 pretty sure it will meet that criteria, yes. It
25 provides access. I don't think it's --

1 MR. LIOTTA: Whether it's through easement
2 or through owning property it's still access. That's my
3 opinion.

4 CHAIRMAN BELL: I'm sorry. Mrs. Martinelly?

5 MS. MARTINELLY: No, I'm done.

6 MS. DONATO: I have a couple of questions
7 whenever the Board is done.

8 CHAIRMAN BELL: Michelle?

9 MS. DONATO: Mr. Liotta, I just want to
10 clarify a couple of questions about the variances here.
11 Now what did you say the impervious coverage was for the
12 residential portion?

13 MR. LIOTTA: For the residential portion it
14 is -- let me find it again in the chart. It is 31.5
15 percent.

16 MS. DONATO: Now maybe Dave Cranmer can
17 address this. I'm looking at your review letter. Were
18 there changes that were significant? What do you
19 calculate the impervious on the residential? Do you
20 agree with that figure?

21 MR. CRANMER: Yeah, the residential
22 impervious obviously is much lower.

23 MS. DONATO: But you agree with the figure
24 that Mr. Liotta has?

25 MR. CRANMER: Yes.

1 MR. LIOTTA: And I'm reading the figure off
2 of the zone chart on the site plans, the cover sheet.

3 MR. CRANMER: Of course these numbers are
4 subject to change. There are going to be further
5 revisions to the plan and I guess I'll jump in now with
6 my 2 cents. Granting the variance for the 68.3 percent
7 they're asking for tonight is probably premature. There
8 were discussions several hearings ago about adding turn
9 lanes into the drive aisle, possibly widening it. We
10 discussed putting an island down the center of it. So I
11 think that the number is going to change. So I know
12 we're not going to be in a position to take a vote
13 tonight, but perhaps the smart way to go about it is to
14 see what the final impervious coverage is on the
15 commercial portion and have that addressed in testimony
16 and those proofs entered at a subsequent hearing. I
17 think it is going to change, not only for the commercial
18 and as Mike was saying the property line could be
19 adjusted. Most of the impervious coverage on the
20 commercial lot that I'm speaking of, the lot that's in
21 the B3 zone is a result of that driveway. If that
22 driveway were -- if basically a flag lot were created
23 and the driveway were on the residential property, then
24 the B3 property would likely not have an impervious
25 coverage variance or an impervious coverage exceedance

1 and the residential lot also would not have an
2 exceedance because I believe there is sufficient lot
3 area to accommodate that little bit of impervious
4 coverage or that additional impervious coverage. So I
5 think there are ways to make adjustments to the lot
6 configuration and have the same end physical result, but
7 just have everything comply with the ordinances.

8 CHAIRMAN BELL: That's what I was getting
9 at. Do you think that that makes sense?

10 MR. CRANMER: Although I'm going to caution
11 you it will very likely result in a fronting variance.

12 MR. LIOTTA: Mr. Chairman?

13 CHAIRMAN BELL: What would the frontage
14 variance be?

15 MR. CRANMER: If they created a flag portion
16 for the residential lot that came out to Shrewsbury
17 Avenue it would be under the required frontage on
18 Shrewsbury Avenue. So it basically would be creating a
19 flag lot.

20 CHAIRMAN BELL: No, because right now as it
21 is there is no variance.

22 MR. CRANMER: You're correct.

23 CHAIRMAN BELL: For the frontage. If you
24 take the whole front off, your frontage is on Patterson
25 Avenue so you don't require a variance because you have

1 the frontage on Patterson Avenue. If you subdivide and
2 you leave a little tail onto Shrewsbury Avenue you still
3 have the frontage on Patterson Avenue so you wouldn't
4 create a variance unless the frontage for the B3 is too
5 small. I don't know what it is. I haven't looked at
6 it, but if it's too narrow that that would require -- am
7 I right?

8 MR. CRANMER: That's correct. It would very
9 likely result in a frontage variance on Shrewsbury
10 Avenue.

11 CHAIRMAN BELL: For the B3, for the business
12 property not for the residential property?

13 MR. CRANMER: Probably, both.

14 MR. LIOTTA: Mr. Chairman, the lot width
15 requirement is 200 feet and there's 229 shown currently
16 on the plan for the business line.

17 CHAIRMAN BELL: Currently for the business
18 including the driveway?

19 MR. LIOTTA: Yes, that's correct.

20 CHAIRMAN BELL: So that it would require a
21 variance for the frontage of the B3 property?

22 MR. LIOTTA: If it were not reduced more
23 than 29 feet.

24 MR. MACANINCH: Mr. Bell, my point was if,
25 for example, you look on the entrance road where the

1 residential -- where you see the yellow line on Exhibit
2 A-3. You could turn that line so it is a diagonal to
3 take that 3 percent out. You'd have this irregularly
4 shaped lot. Again, from a planning perspective it
5 doesn't make any sense to do that. You're just
6 monkeying with the numbers as Mr. Cranmer said, but the
7 physical layout is exactly the same. It doesn't get you
8 anywhere.

9 MR. LIOTTA: That's why when I covered what
10 the overall coverage was on the entire project site to
11 give you a flavor of the overall coverage is really
12 pretty small.

13 CHAIRMAN BELL: I'm just speaking for one
14 person. The 68 percent, because you look at the overall
15 lot, the overall lot meets the requirement. When you
16 subdivide it off you have one that doesn't and one that
17 does.

18 MR. LIOTTA: That's correct.

19 CHAIRMAN BELL: So from my perspective
20 that's not as big an issue as the buffer. The buffer to
21 me is a far bigger issue because whether you -- unless
22 you leave it one lot you need a buffer variance. And
23 you have a virgin piece of property right now and from a
24 planning standpoint -- well, it's not a virgin piece of
25 property, it's got a Borough bus property or Circle

1 Chevrolet, sorry. It seems to me that it would be
2 relatively easy to downsize the building so you don't
3 need a buffer variance. There has to be a reason to
4 grant a buffer variance because in this case the lot
5 coverage, if one company owned everything you wouldn't
6 need it, the impervious. If you didn't subdivide you
7 wouldn't need it. So whether you subdivide or don't
8 subdivide you wouldn't need it. You are going to need
9 the buffer variance. Anyhow, I don't want to beat a
10 dead horse.

11 MR. MACANINCH: Mr. Liotta, just for a point
12 of clarification, in the commercial zone what is the
13 required maximum, the maximum building coverage?

14 MR. LIOTTA: 65 percent.

15 MR. MACANINCH: The building coverage, not
16 the impervious.

17 MR. LIOTTA: Oh, I'm sorry. Building
18 coverage? 40 percent and the building is at 9.94.

19 MR. MACANINCH: So a quarter of the
20 permitted?

21 MR. LIOTTA: Correct.

22 CHAIRMAN BELL: Other questions for the
23 Board?

24 MR. GARDELLA: How many square feet is that
25 building again?

1 MR. LIOTTA: The building is a total of
2 8,348 total square feet and two floors. The first floor
3 footprint is 5,515 square feet.

4 MR. CRANMER: What does the floor area ratio
5 work out to be?

6 MR. LIOTTA: The floor area ratio is .16
7 where .4 is permitted.

8 MS. DONATO: May I? May I?

9 CHAIRMAN BELL: Sure.

10 MS. DONATO: Mr. Liotta, you are aware of
11 the fact that the applicant worked closely with the
12 Borough over the course of years, in fact attempted to
13 join in a litigation that the Borough was pursuing to
14 obtain this judgment of compliance in repose? Are you
15 aware of that?

16 MR. LIOTTA: I'm aware of those actions,
17 yes.

18 MS. DONATO: And you're aware that the
19 applicant worked, commented often on the proposed
20 ordinances that the special committee was preparing and
21 working with the master to develop? You're aware of
22 that?

23 MR. LIOTTA: I'm assuming they did. I
24 wasn't present for those meetings.

25 MS. DONATO: So you're not aware of the fact

1 that the applicant actually created concept plans to see
2 how they would fit within the zoning that was being
3 developed, that in order to create a feasible,
4 developable, affordable housing project with the
5 commercial component?

6 MR. LIOTTA: I'm sure they worked on many
7 different concept plans before they arrived on the plan
8 that's before you.

9 MS. DONATO: And you referred to the COAH
10 regulations and the recommendation for the density in
11 this particular area. So this site has that density,
12 does it not?

13 MR. LIOTTA: Yes.

14 MS. DONATO: And the various bulk revisions
15 that are set forth essentially are designed and very
16 carefully reviewed in order to create a project that
17 could be achieved. Are you aware of that, that there
18 were many times that K. Hovnanian commented on the
19 ordinance changes?

20 MR. LIOTTA: I'm not aware of how many
21 comments they had or what they were.

22 MS. DONATO: So in terms of your reference
23 to the flexibility that COAH recognizes or recommends,
24 you're not aware of the fact that the Borough diligently
25 worked for a number of years to incorporate that

1 flexibility into this ordinance?

2 MR. LIOTTA: I'm sure they did work to
3 create some flexibility, but as you know as time moves
4 on things change and they've arrived at a design that
5 they believe addresses the need in terms of the size of
6 the units and the size of the affordable units. So
7 they've arrived at a plan that does achieve the
8 presumptive density and in my opinion asks for a series
9 of variances that are really pretty minor.

10 MS. DONATO: Do you know whether or not the
11 unit size may have increased?

12 MR. LIOTTA: I am not aware of how the unit
13 size changed or increased from early concepts. I'm sure
14 it changed.

15 MR. MACANINCH: Are you referencing the
16 residential units or the --

17 MS. DONATO: I'm just trying to understand
18 it. I do recall over the course of years there were
19 several times that K. Hovnanian appeared before this
20 board and had concept plans and those concept plans were
21 designed to take this site, put the number of units on
22 it and create a project that met certain criteria that
23 the municipality insisted on having; the perimeter
24 buffer, the distances, et cetera. So I'm just trying to
25 figure out why it is that it doesn't fit now when it did

1 in the past, that's all.

2 MR. MACANINCH: I mean, it does. It does
3 fit.

4 MS. DONATO: Well, there were no variances
5 then so-to-speak designed to avoid that.

6 MR. MACANINCH: I think the plans we
7 submitted were consistent with the discussions of the
8 municipality throughout, density being the biggest one
9 and it changed meeting the affordable housing criteria.
10 That was done. Part of the reason of the plan revisions
11 were based on comments by the professionals.

12 MS. DONATO: No, I do understand. The only
13 thing I guess I'm in a quandary about was it wasn't just
14 the density and everyone paid very, very close attention
15 to all of the bulk standards. It was something that was
16 extremely important because it was really a new venture
17 for this municipality and they were looking to try to
18 create a development that would fit and work closely
19 with the master for -- because I specifically recall, I
20 don't know if anybody else does, that K. Hovnanian
21 didn't want a development with variances so it was a lot
22 of work to develop bulk standards that allowed the
23 number of units, the density to be achieved with the set
24 aside and the commercial portion. So I'm just trying to
25 figure out what happened. The only thing I can think of

1 was that the buildings got bigger.

2 MS. SICILIANO: Michelle, please. I had
3 mentioned this once before at a prior meeting. On
4 October 5, 2006 following all the meetings that began in
5 2005, a letter was written by legal counsel who
6 represented K. Hovnanian at that time to Frank Banish,
7 the court master appointed by Judge Coogan and she
8 writes, "Dear Mr. Banish, K. Hovnanian is agreeable to
9 the borough's counteroffer on the following conditions."
10 And I had mentioned this before. And there are four
11 pages of conditions that were agreed to at the time
12 following those meetings. And this was addressed to the
13 court master. It was not addressed to council. We
14 received a copy, but this was something that was between
15 K. Hovnanian and the court master who was appointed by
16 a judge. And as far as the density is concerned, that's
17 number one. The density of the site will be 8 dwelling
18 units/gross acre. The gross acreage will include an
19 addition to the portion of the tract to be developed
20 with a for-sale housing. The portion of the tract to be
21 developed with a commercial use, rental, affordable
22 units and to acquire the providing access to Patterson
23 Avenue. I mean, that was all in one paragraph and I'm
24 waiting for the final plans to see if they comply with
25 this agreement that went to the court. I mean, I

1 brought it up about two, three meetings ago.

2 MR. MACANINCH: I don't think anything in
3 there we're not doing and obviously our obligation and
4 the planning board's charge is to just apply the zoning
5 ordinance, I think.

6 MS. SICILIANO: Well, no. Hovnanian sued
7 the Borough. As a result of the lawsuit we had those
8 meetings with the court master. This was the agreement
9 that was reached at that time and I'm wondering why it
10 was not reviewed and the agreements that were rendered
11 at that time apply to all this discussion we've had at
12 the Planning Board. All we've had to date, Mr.
13 Macaninch, is one expert after another. We've had no
14 review of the plans. So I have not been able to compare
15 this letter to the plans because we're constantly
16 changing the plans.

17 MR. MACANINCH: With all due respect, Mr.
18 Holmes testified. He put the site plan up. He went
19 through the layout. He went through the stormwater. He
20 went through all of the issues. We had Mr. Cranmer's
21 review.

22 MS. SICILIANO: I understand that, but
23 following that meeting I brought up this letter, this
24 agreement. Now you want me to go back to Mr. Banish who
25 will then go back to the judge? I mean, that's up to

1 you.

2 MR. MACANINCH: I'm not understanding what
3 you're seeing in there that we're not complying with.

4 MS. SICILIANO: There was an agreement here.

5 MR. MACANINCH: Well, what are we not doing
6 in accordance with that agreement? That's my question.

7 MS. SICILIANO: I haven't seen the final
8 plan yet.

9 MR. MACANINCH: We've submitted plans. I'm
10 saying, that's what we're doing. That's why we're here.

11 MS. SICILIANO: We have had all these
12 meetings with all these discussions and all these items
13 that have come up. Lighting, landscaping. The
14 landscaping was approved by the Shade Tree Commission so
15 we don't really have -- we can discuss location and
16 depth, but the plans themselves have to be approved by
17 the Shade Tree Commission by ordinance.

18 CHAIRMAN BELL: We have not received --
19 we're going through the application. We have not
20 received the final plans yet. We won't receive the
21 final plans -- you're not going to receive -- we talked
22 at the last meeting. You may have them for the May
23 meeting; is that correct?

24 MS. SICILIANO: But in answer to -- I'm
25 responding to what Mrs. Donato was asking.

1 CHAIRMAN BELL: Right. I think the
2 question -- I think the question that we all have --
3 well, I won't say that. The question that I have is I
4 do go back to day one and I do remember K. Hovnanian
5 wanting a variance-free application. And as we've
6 progressed through there was a waiver here and there was
7 a waiver there and now all of a sudden we have -- not
8 all of a sudden, but we have five variances and here
9 we're just talking about these two, and I'll go back to
10 my original question. Here is the applicant has a
11 virgin piece of 9.63 acres. Why do we need -- because
12 even if you take, give the benefit of the doubt because
13 you can't take -- I don't believe you can take -- I
14 don't believe you can take the driveway and count that
15 and take this over here. You can't take it both ways.
16 You have to take the overall. And if you take the
17 overall we meet the impervious surface. So from my
18 perspective at the end result when you subdivide it, the
19 impervious surface in the driveway, if you take the
20 driveway and just do what I talked about which may not
21 make planning sense, you'd be way under the 65 percent
22 because there's 30 feet by however many feet. So you're
23 way below the 65 percent. So take that one away.
24 You're asking for a variance -- not you, but the
25 applicant is asking for a variance, a 10-foot on the

1 buffer. My question is there's nothing there now. Why
2 when we've heard from day one they weren't going to go
3 for variances?

4 MR. MACANINCH: Obviously Mr. Liotta has not
5 been a part of the whole process, but again when you
6 look at the density, look at the site constraints,
7 what's around there, for example, the perimeter buffer
8 we always would have needed one for Colex. We always
9 would have needed that variance. That would not have
10 changed. That was there. So it's things like that and
11 then when we submitted our plans we received review
12 letters and I think very good comments from Mr. Cranmer,
13 for example, about sight distance issues and those
14 things. Those prompt changes to the plans. It's a
15 static process.

16 CHAIRMAN BELL: That's why I go back to what
17 I said. The question I asked before and I don't expect
18 an answer tonight, if this building was smaller you
19 wouldn't need that variance?

20 MR. MACANINCH: I don't know if that's true
21 or not. We'd need it for Colex.

22 CHAIRMAN BELL: You wouldn't need it for the
23 residential.

24 MR. MACANINCH: Again, I don't know if I can
25 say that.

1 CHAIRMAN BELL: Residential you're only at 5
2 feet.

3 MR. MACANINCH: At the lowest point.

4 CHAIRMAN BELL: That's maybe 6 feet.

5 MR. MACANINCH: The think the minimum is 10
6 feet.

7 CHAIRMAN BELL: But there's no 10 feet
8 there. Everybody looks at it -- but anyhow, that's the
9 question and again, as we go through and I don't expect
10 an answer. I don't expect an answer tonight, but that's
11 a concern. I'm one person. That's a concern that I
12 have.

13 MR. LIOTTA: Mr. Chairman, if I could just
14 comment on the parking lot design of the commercial area
15 and if you look at where there's landscaped areas in the
16 parking lot, it's done that way in order to introduce
17 some impervious or some pervious cover to the landscape
18 plantings into the parking field both at the building
19 frontage and also separating the two parking rows. So
20 you have roughly a 5 or 6-foot wide landscape island
21 separating the two parking areas in the commercial piece
22 that if that's eliminated, all of that shifts west, that
23 same dimension. So you increase the buffer at the
24 property line. And if the landscape strip along the
25 sidewalk across the front of the building is removed

1 that's approximately 5 feet, everything shifts west
2 approximately 10 to 15 feet. So then what you've done
3 now is you've achieved the landscape buffer between the
4 residential and the commercial, but you've compromised
5 the design of a nice landscape treatment to a parking
6 field and a commercial center.

7 CHAIRMAN BELL: But you can't eliminate that
8 because we require it. And one of the things that this
9 Board has been very consistent in the -- I don't
10 remember how long I've been on the Board, 17 years, 16
11 years, whatever. We have tons of properties that have
12 come to us that are commercial. And most of them unlike
13 this are small pieces of property, you know, where you
14 have to look at what's reasonable when you look at a
15 variance. And when you're commercial to commercial
16 we've looked at it and that is a logical sense of a
17 variance. We have been very consistent I think on every
18 single variance we've ever -- every application we've
19 ever had in front of us, I think. Dave, you may be able
20 to correct me, but we've held firm when it's up against
21 residential. And I can think of one, the Gloria Nielsen
22 building is a prime example of a building where we --
23 and it made sense and the whole purpose is you want to
24 have the buffer between commercial and residential. And
25 in this particular -- the closest if I'm not mistaken

1 and I could be, is to the residential. And I think it's
2 not because you're going to move it one way or the
3 other, it's because the building is a large building for
4 the lot that you're looking to subdivide. Not you, I'm
5 not saying you. I apologize.

6 MR. LIOTTA: I understand.

7 CHAIRMAN BELL: The applicant is looking to
8 subdivide and I have an issue with that and I think 5
9 feet where 20 feet is required, right? Am I right?

10 MR. LIOTTA: That is correct, 20 feet.

11 CHAIRMAN BELL: 20 feet is required and we
12 only have 5. That's the shortest, the shortest distance
13 and I care about the shortest distance.

14 MR. LIOTTA: And it's at a point where you
15 have two parking lots abutting against each other.

16 CHAIRMAN BELL: But you still, it's still
17 commercial.

18 MR. MACANINCH: 100 feet.

19 CHAIRMAN BELL: It's not -- how do you
20 figure -- anyhow, I'm not going to argue.

21 MS. SICILIANO: Mike, the boundary of the
22 residential area not only is a boundary with the B3
23 zone, I mean with the --

24 CHAIRMAN BELL: We haven't gotten to the
25 next one yet.

1 MS. SICILIANO: But no, it's also these
2 other, there's businesses. They go right up to it. I
3 mean, they have no control.

4 CHAIRMAN BELL: No, they don't, but we're
5 going to hear --

6 MS. SICILIANO: Yes, they do.

7 CHAIRMAN BELL: Where are you talking about?

8 MS. SICILIANO: Here, right here. This lot
9 here.

10 CHAIRMAN BELL: On the commercial property?

11 MS. SICILIANO: The commercial property.

12 CHAIRMAN BELL: What is that, 5 feet?

13 MR. LIOTTA: Against which lot, Mr.
14 Chairman?

15 CHAIRMAN BELL: Against Lot 12, Block 2.

16 MR. LIOTTA: The distance from the parking
17 stalls to the property line is approximately 8 to 10
18 feet I'm scaling.

19 CHAIRMAN BELL: 8 to 10 feet which is not
20 the 20?

21 MR. LIOTTA: That's correct.

22 CHAIRMAN BELL: And again, I'm only one
23 person. That's not outside what we've done in the past.
24 Is that right, Dave, when we've looked at commercial to
25 commercial?

1 MR. CRANMER: We're very consistent on the
2 buffer between a residential and a commercial use. Now
3 I seem to recall cases where perhaps a 50-foot buffer
4 would be required, but only a 20 or 25-foot buffer were
5 provided, but the intensity of the buffer were increased
6 to provide the same effectiveness as a 50-foot buffer
7 would provide.

8 CHAIRMAN BELL: I believe we can go down to
9 5 feet and it's not unusual and I'm thinking of the
10 property on Newman Springs Road, the old Red Cross
11 building which is the big brick building. I seem to
12 think it was commercial to commercial we were like 5 or
13 10 feet which we allowed because it made good planning
14 sense, but it wasn't residential to residential and in
15 the back we did hold -- in the back which backed up to
16 the farm, the Bonano farm or whatever. Anyhow, that's
17 my concern.

18 MR. LIOTTA: I do understand and if we look
19 at that one closest point and if we're saying that we
20 need 5 feet on the residential side and 20 feet on the
21 commercial side, we're talking about 25 feet total.
22 Does that make sense? And if I measure that closest
23 point from curb line to curb line it's approximately 20.
24 So we're missing by 5 feet total. So there's a 20-foot
25 area in there that has the ability to put beefed up

1 landscaping that would mitigate a 5-foot deviation.

2 CHAIRMAN BELL: But the subdivision, what
3 you're asking for a variance for, the subdivision is
4 asking that the commercial property has a 5-foot buffer.
5 And I don't care how much is on the residential side. I
6 care about how much is on the commercial side. I mean,
7 I do care about how much is on the residential. I don't
8 mean it that way, but we're not going to -- we're going
9 to agree to disagree. Anymore questions? Mr. Teller?

10 MR. TELLER: Yes, Mr. Chairman, in light of
11 the letter that the Mayor brought up and the legal
12 action five years ago, I would like to ask that Mr.
13 Cranmer take that letter and review it.

14 MS. SICILIANO: He was given a copy.

15 MR. TELLER: To see where the current plans
16 fall within that parameter.

17 MS. SICILIANO: On January 14th, on January
18 14th of this year Mrs. Donato and Mr. Cranmer were both
19 copied as was the Planning Board.

20 MR. CRANMER: Retracing the Borough's steps
21 and the affordable housing process, there was a motion
22 filed by the Borough to basically have a temporary order
23 of immunity from builders remedy lawsuits while the
24 Borough formulated its affordable housing plan and had
25 that plan approved by the court in place of COAH. Once

1 our temporary order of immunity was granted K. Hovnanian
2 filed a builder's remedy lawsuit and challenged the
3 immunity. And that lawsuit was dismissed and the
4 immunity that the Borough had been granted was upheld by
5 the court. As a result of that action the Borough was
6 then obligated as part of its temporary order of
7 immunity from the court, one of the conditions was that
8 the Borough formulate an affordable housing plan that
9 considered this particular property because we had a
10 development -- and Mr. Macaninch, please, if I'm saying
11 something that's not correct, step in.

12 MR. MACANINCH: No, go ahead.

13 MR. CRANMER: We had a developer, a willing
14 developer for an inclusionary project and one of the
15 conditions that we had to abide by was that we prepare a
16 fair share element part of the housing plan which we did
17 that included certain ordinances and provided realistic
18 opportunities for the creation of affordable housing in
19 the Borough. And we had to -- I'm not going to use the
20 term "negotiate," but we had to at least consider what
21 Hovnanian which was the willing developer for this site
22 had in mind. Now part of those discussions were issues
23 such as density, the number of homes, the height, the
24 size. Certain accommodations were made and one of those
25 we talked about earlier was that they considered the

1 entire tract boundary for the overall gross density of
2 the project notwithstanding the fact that an acre or so
3 was to be subdivided off and developed with a
4 nonresidential use. The letter that you, Mayor, are
5 referring, Mrs. Siciliano are referring to is a letter
6 that was a result of a series of discussions with
7 Hovnanian and the Borough oversaw or with the oversight
8 of Mr. Banish who was the special master appointed by
9 the court and at the end of those discussions there was
10 an agreement reached between the Borough and Hovnanian
11 memorialized in that letter. Now as a result we then
12 proceeded to formulate our ordinances and the affordable
13 housing plan. So that letter really has no bearing on
14 the plans that are before us. What that letter did was
15 establish the ordinances that were to be created and the
16 ordinances reflect those conditions. So if we took that
17 letter and compared it to these plans there really is no
18 statutory requirement for these plans to --

19 MS. SICILIANO: Why did the Borough spend
20 over \$10,000 of taxpayers' money for Mr. Banish?

21 MR. CRANMER: Because what we had to do as
22 part of our -- in order to keep our immunity and not be
23 subject to a builder's remedy lawsuit we had to proceed
24 with our affordable housing plan and prepare the
25 ordinances which we did, which we did. Now if Hovnanian

1 continued to disagree, Mr. Banish would likely not be in
2 a position to recommend to the court that our plan be
3 approved and if our plan were not approved we then would
4 be subject to the builder's remedy litigation once
5 again.

6 MS. SICILIANO: I'll have to call.

7 MR. CRANMER: So that letter that you have
8 is the agreement that says we agree to this density. We
9 agree to two entrances. We agree to the overall tract
10 area being utilized and the calculation of the density.
11 We then proceeded to prepare the ordinances which we did
12 not elicit, quite frankly. We didn't get Hovnanian's
13 consent on the ordinances. We prepared the ordinances
14 based on our discussions. They made comments under the
15 public hearing part which any member of the public can
16 do. We now have a plan, an ordinance. The ordinances
17 themselves were reviewed by Mr. Banish and the court and
18 Mr. Banish recommended that they be approved. So what
19 you have, Mayor, Emi, is the letter that's from Mrs.
20 Richmond I believe it was, right? That said we agree to
21 all of this. We then proceeded to prepare the documents
22 that embodied that agreement and that's what we have to
23 compare the plans to.

24 MS. SICILIANO: So what we have in front of
25 us now is a request for variances to this agreement?

1 MR. MACANINCH: No.

2 MR. CRANMER: In an indirect way.

3 MS. DONATO: Variances from the ordinances
4 adopted.

5 MS. SICILIANO: That's what I mean. The
6 ordinance reflects that agreement.

7 MS. DONATO: I believe that it does and I
8 seem to recall, Mr. Cranmer, that the comments that were
9 registered by K. Hovnanian during the process addressed
10 not just density and set aside, but also addressed the
11 bulk criteria because they kept trying to figure out how
12 to fit it in. It wasn't -- you know, it wasn't as if
13 the Borough fought on its own and the only reason I
14 raised the questions to Mr. Liotta was because he cited
15 the COAH regulation and the obligation for flexibility.
16 And, you know, I think that, you know, the history of
17 the zoning from at least some people's memory was that
18 the combination of use and bulk standards that
19 eventually became incorporated in the ordinance was
20 considered to be a workable set of standards that fit
21 the 8 units in in a manner that made it as palatable as
22 possible to the Borough, but still recognizing the
23 standards. So that's why I don't -- I mean, I just was
24 really questioning the basis of the argument that the
25 COAH standard for flexibility therefore becomes a

1 guiding principle for this Board when I really think
2 that the guiding principle was already incorporated in
3 the ordinance. It was a very, very long, long
4 considered ordinance amendment and it wasn't done
5 lightly and it certainly wasn't done unilaterally as I
6 understand it, but --

7 MR. CRANMER: And that's why I didn't use
8 the term "negotiation."

9 MS. DONATO: It wasn't negotiation, but it
10 was -- it was an effort, a collaborative effort that
11 took place which is common in affordable housing
12 situations. So the judge had appointed a master.

13 MR. CRANMER: Right. We had certain
14 standards and I believe the 50-foot buffer was one of
15 the standards that the Borough dug in on and Hovnanian,
16 you know, while they requested a smaller buffer standard
17 because they felt that they needed a smaller standard to
18 make it work, we held tight to what we believed was the
19 right thing from a planning standpoint to have the
20 50-foot buffer and they acknowledged that they had the
21 right as any other applicant would to seek a variance.
22 It doesn't mean they'll get it, but they have a right to
23 seek it.

24 MR. MORAN: So simplistically the letter
25 helped create the ordinance and the variance is to the

1 ordinance?

2 MR. CRANMER: I think a better way to put it
3 is the letter that Mrs. Siciliano referred to enabled us
4 to go from a point where an impasse or a point where we
5 could put the litigation behind us and move forward to
6 prepare the documents that we needed to prepare to
7 control our own destiny as it were with respect to
8 affordable housing and how this site would be
9 redeveloped as an inclusionary development. We retained
10 control of it rather than have control go to -- I don't
11 want to point the finger at Hovnanian as a bad guy, but
12 under a builder's remedy lawsuit.

13 MR. LIOTTA: Mr. Chairman, if I could add
14 just one brief statement about it. I've been involved
15 in these type of plans for a long time and it's always
16 everyone's best intention to craft an ordinance and to
17 come up with conceptual plans that everybody believes
18 they're going to be satisfied with. But when you
19 actually sit down and design the plan and design the
20 actual units that you're going to build and time passes,
21 things change. I mean, you were talking about it before
22 we got into the application about the changing COAH
23 rules. Since the time that the original issues came up,
24 five, six, seven, eight years ago COAH's rules have
25 changed several times. So things change and as things

1 change you have to start looking at what can you do to
2 make the inclusionary or the affordable housing project
3 work on this project site. And they've done that and
4 they've looked at it very concisely to try to limit the
5 variance request. And they think that the variance
6 requests are minimal, that they can be mitigated, but
7 obviously that's for you to evaluate.

8 CHAIRMAN BELL: The issue and just for me,
9 because we've had several proposed conceptual plans come
10 in front of us and a number of them had apartments over
11 the commercial property. And with the apartments over
12 the commercial property the driveway was in a different
13 location and there wasn't a variance for buffer
14 variance. And I understand, you know, as things change
15 and this very well may be a far better planning proposal
16 keeping the driveway where it is, keeping it straight
17 in. Straight is always better, most times better. But
18 when the changes happen the affordable -- the apartments
19 are no longer over it which now everything gets moved
20 over to the other project which then limits the amount
21 of space and we're trying to put far more in and every
22 time it comes in we're looking for more variances. And
23 I'm not saying they're bad variances, but from my
24 perspective what I looked at, what my original question
25 was the 77 units. It's over the whole project. And

1 what the reason for the whole project is you base
2 everything over the whole project so you can get 77
3 units. But then when we go to separate off the small
4 project, what is the hardship for the buffer? And I
5 respect your answer and I don't expect you to answer it
6 again. That was my question because I believe you have
7 to look at the whole thing and then take it down to the
8 small because you couldn't get -- if you didn't have the
9 whole project you wouldn't have 77 units. You have to
10 have the 9.63. And I respect your opinion or not your
11 opinion, your testimony. Your expert witness' opinion.
12 Anybody else have any other questions?

13 MS. DERASADOURIAN: I have a quick question
14 for Dave. I don't want to put you on the spot, but I
15 think at one of the meetings we talked about there was
16 some kind of formula to determine how many parking
17 spaces you need in conjunction with square footage of
18 retail space.

19 MR. CRANMER: Yes, it's an ordinance
20 standard that we have.

21 MS. DERASADOURIAN: Do you happen to know
22 that offhand? I don't want to put you on the spot.

23 MR. CRANMER: It depends on the type of use
24 you have. Office has one, retail has another.

25 MS. SICILIANO: Professional has another.

1 MR. MACANINCH: Retail is 1 space per 150
2 square feet. Professional office is 1 space per every
3 200 square feet.

4 MS. DERASADOURIAN: So that answers the
5 question that if the size of the building were scaled
6 down, there would be less parking spaces required
7 therefore the flexibility that is being asked for really
8 has nothing to do with the housing units, it really has
9 to do with the commercial space. So it can be scaled
10 down I think is what --

11 MR. CRANMER: Theoretically, absolutely.

12 CHAIRMAN BELL: Can I get a motion to open
13 the meeting to the public for questions of Mr. Liotta on
14 his testimony regarding the two variances and any of the
15 testimony you've heard? Comments.

16 MR. MORAN: So moved.

17 CHAIRMAN BELL: Mr. Moran.

18 MR. CARROLL: Second.

19 CHAIRMAN BELL: Second, Mr. Carroll. All
20 those in favor?

21 (Multiple Board members respond in the
22 affirmative.)

23 CHAIRMAN BELL: Meeting is open to the
24 public for any questions regarding the two variances
25 that were requested that Mr. Liotta has testified to.

1 Yes, come on up and talk into the microphone and state
2 your name and your address and your question.

3 MS. LEE: Yes, Nancy Lee. For the
4 commercial part of the property, how many acres is it?

5 MR. LIOTTA: It's approximately 1.2 acres.

6 MS. LEE: 1.2 acres. Now on that piece of
7 property like you said and it's 8,000 square feet for
8 the building which you proposed for commercial?

9 MR. LIOTTA: Total in two floors.

10 MS. LEE: Now there would be no EMO's or
11 what do you expect for an 8,000 square foot building?
12 Would it be divided and how many stores or how many
13 buildings?

14 MR. LIOTTA: We don't really know, but it
15 would be whatever uses are permitted in the B3.

16 MS. LEE: Okay, so deliveries so it could be
17 something which would require deliveries and there's
18 enough for a truck to get in for deliveries and turn
19 around to get out?

20 MR. LIOTTA: That may have been testified to
21 before by the engineer, but there is a loading zone
22 identified on the plan which is for delivery trucks to
23 park and access the site, yes.

24 CHAIRMAN BELL: Mr. Macaninch, would that be
25 something when we hear the architecture, would it be the

1 architecture of the commercial building and the
2 residential?

3 MR. MACANINCH: Obviously since the
4 commercial building is only in the preliminary we don't
5 know what the final use is. That's going to be for Mr.
6 DeFelise when he chooses to develop it down the road,
7 they'll have to provide testimony on use, what they're
8 actually going to do. It is just being I don't want to
9 say place holder, but --

10 MS. LEE: I guess what I'm getting at is if
11 we have another Stop & Shop or Foodtown or shopping
12 market we'll have the trucks pulling in behind of course
13 the condos. We could have the trucks pulling in for the
14 proposed whatever the commercial area is right there,
15 the 8,000 square feet. So we could have a fairly good
16 concentration of trucks in that back area.

17 CHAIRMAN BELL: But what's your -- I
18 understand, but what's your question for Mr. Liotta?

19 MS. LEE: Okay, my question was I wanted to
20 know the acreage. He told me the acreage, 1.5 acres,
21 8,000 square feet. I'm just trying to get it in my
22 head. I know when I was on the Planning Board of course
23 I think when Mr. Rea did his presentation and he said
24 that many at the particular corner it was a D minus for
25 traffic, for traffic study.

1 CHAIRMAN BELL: But you need to ask a
2 question specific of Mr. Liotta.

3 MS. LEE: So anyway, I'm concerned obviously
4 about the traffic, how will the traffic --

5 CHAIRMAN BELL: But he didn't testify
6 anything about traffic. I'm sorry.

7 MS. LEE: Okay, I know we're on the
8 architecture.

9 CHAIRMAN BELL: No, we're on the planner.

10 MR. LIOTTA: Let me just clarify a question
11 she did ask me about the square footage. The building
12 is proposed to be the first floor retail space of 5,515
13 square feet and the second floor is office at 2,833 so
14 it's not all retail.

15 MS. LEE: And how many parking places
16 totally for the 8,000?

17 MR. MACANINCH: It's 52.

18 MS. LEE: 52.

19 MR. MACANINCH: 52.

20 MR. LIOTTA: 52.

21 MS. LEE: Thank you.

22 CHAIRMAN BELL: Any other questions from the
23 public?

24 MR. WHELAN: Jim Whelan, 201 Patterson
25 Avenue. Was the commercial building always -- was it in

1 the conceptual plans?

2 MR. LIOTTA: I am not aware if it was in the
3 conceptual plans. I believe it always was the
4 commercial.

5 CHAIRMAN BELL: It wasn't his testimony, but
6 from day one there's always been a commercial property
7 in front.

8 MR. WHELAN: Was it his testimony that he
9 did testify years ago for this property?

10 MR. LIOTTA: It was extremely early on when
11 the Borough was considering what this site might be used
12 for. So there was a discussion about a lot of different
13 options.

14 MR. WHELAN: And then another planner did
15 the conceptual drawings and you came back in to do this
16 one.

17 MR. LIOTTA: That's correct.

18 MR. WHELAN: So you had no dealings with the
19 conceptual drawings that were previously?

20 MR. LIOTTA: When they presented the
21 conceptual plans for this site and this plan?

22 MR. WHELAN: Not this plan, before this.
23 The 99 units.

24 MR. LIOTTA: I was not involved in the 99
25 unit plan, no.

1 CHAIRMAN BELL: Thank you. Can I get a
2 motion to close the meeting to the public?

3 MR. MORAN: So moved.

4 CHAIRMAN BELL: Mr. Moran.

5 MS. MARTINELLY: Second.

6 CHAIRMAN BELL: Mrs. Martinelly. All those
7 in favor? Opposed? Does anybody want to take a
8 five-minute break before we get into --

9 MR. MACANINCH: I was going to make that
10 request.

11 CHAIRMAN BELL: Motion to take a five-minute
12 break.

13 (Brief recess was taken.)

14 CHAIRMAN BELL: Let the Planning Board
15 meeting come back to order. April 27th special meeting
16 for K. Hovnanian. Roll call, please.

17 MS. KELLEHER: Mr. Bell?

18 CHAIRMAN BELL: Here.

19 MS. KELLEHER: Mr. Moran?

20 MR. MORAN: Here.

21 MS. KELLEHER: Mr. Dodge?

22 MR. DODGE: Here.

23 MS. KELLEHER: Ms. Derasadourian?

24 MS. DERASADOURIAN: Here.

25 MS. KELLEHER: Mr. Teller?

1 MR. TELLER: Here.

2 MS. KELLEHER: Mr. Gardella?

3 MR. GARDELLA: Here.

4 MS. KELLEHER: Mrs. Martinelly?

5 MS. MARTINELLY: Here.

6 MS. KELLEHER: Mr. Carroll?

7 MR. CARROLL: Here.

8 MS. KELLEHER: Mrs. Siciliano?

9 MS. SICILIANO: Here.

10 MS. KELLEHER: Mr. Cranmer?

11 MR. CRANMER: Here.

12 MS. KELLEHER: And Mrs. Donato?

13 MS. DONATO: Here.

14 CHAIRMAN BELL: Mr. Macaninch?

15 MR. MACANINCH: Thank you, Mr. Bell. Just

16 at the outset and just discussions during the break I

17 just want to make it clear what we will do is we will

18 take a look again at the commercial property. We've

19 heard you loud and clear about the need for the

20 perimeter buffer between the residential. I don't

21 really think there's much we can do with the commercial

22 on either side, but in terms of perimeter buffer to the

23 residential we'll look and see where we can bring that

24 into conformance or at least as close as we can. So

25 with that I'm going to ask Mr. Liotta to go through the

1 three residential variances and the proofs.

2 MR. LIOTTA: Okay. As I indicated earlier
3 in testimony there are three variances associated with
4 the residential component. Variance number three which
5 I highlighted early on was the setback to the tract
6 boundary where 50 feet is required with the allowance of
7 6-foot encroachment into that setback with architectural
8 features such as decks and patios and things like that.
9 The plan proposes 40 feet to the edges of the decks that
10 are extended over the rears of the units that back up to
11 the northern property line and the southern property
12 line. So the buildings themselves are actually meeting
13 the 50-foot setback requirement. It's the deck
14 extensions that extend to a point approximately 40-feet
15 from the perimeter property line.

16 Now the variances 3, 4 and 5 which are
17 associated with the residential component are really all
18 associated with the desire and need to meet the
19 presumptive densities on the site and I know we've heard
20 some contrary opinion from several folks tonight, but it
21 is our opinion that achieving that presumptive density
22 is a positive criteria aspect of the application and
23 meeting the low and modern income housing need
24 requirement helps us to establish the positive criteria
25 for the variances.

1 Now with respect to the 50-foot setback,
2 there is a need to provide an adequate space for those
3 residents and those units and they've provided a deck
4 area that's approximately 10 by 10 which is generally
5 sized to fit a small table and a few chairs. If it's
6 reduced to meet that 6-foot encroachment permission you
7 really only have a very small, minimal area and it
8 becomes ineffective for use by the residents. So the
9 applicant has proposed a 10-foot deep extension off the
10 building. But again, I remind you that the building
11 itself does meet the 50-foot setback limitation.

12 Now with respect to the negative criteria,
13 on the north border there's an existing -- there's the
14 existing commercial facilities or properties and there
15 are existing trees that are along the property line that
16 will remain and then there's additional landscape
17 buffering that's introduced as part of the landscape
18 plan which will mitigate and provide buffering directly
19 behind the homes as proposed. So I believe that what
20 we've done is supplement that area on the north side
21 sufficiently to provide a buffer that meets the intent
22 of the ordinance particularly when the encroachment is a
23 deck area that sticks into that buffer area 4 feet
24 further than the ordinance permits.

25 On the south side we have some very mature

1 trees along the property line that are being retained.
2 There's also a fairly dense landscape screening proposed
3 along that property line as well as a fence being
4 installed along the property line. So we have existing
5 tree growth that's both on our property as well as the
6 residential properties to the south that is being
7 maintained. We have mid-height buffering that's being
8 proposed as part of the landscape plan and then we have
9 the lower fence screening so we have a layering system
10 developed along the southern property line that in my
11 opinion develops an adequate screen and buffering to
12 mitigate again the same encroachment of those deck areas
13 into the setback area behind those buildings along the
14 southerly property line.

15 So the deviations in my opinion are really
16 minimal particularly since they're decks and not
17 enclosed structures. The buildings themselves to the
18 walls of the buildings meet the 50-foot requirement.

19 Variance number 4 is a minimum 20-foot
20 cleared area required around all structures. Now that
21 variance -- and if I can just point to the replica of
22 exhibit A-3, A-3 is facing the public. It's the spaces
23 between each of the multi-family units side to side. So
24 currently the buildings are separated by 25 feet.
25 That's the space in between, but what they do have on

1 the end units is a small porch and a staircase that goes
2 up into that unit that encroaches into those side yard
3 areas. So what you end up with after you subtract those
4 widths of the staircases, you're roughly 15 feet between
5 the two staircase columns, essentially what we're
6 looking at. But the remainder of that yard area does
7 satisfy the requirement for the open space between the
8 buildings. And again, the buildings do meet the setback
9 limitations and they are set back 25 feet from each
10 other.

11 The stair columns and those porches are open
12 so it really does not degrade the open air and feel of
13 those spaces in between the buildings and in my opinion
14 it really is a de minimis deviation from the standard.
15 I believe it also still provides adequate emergency
16 service access around the buildings.

17 And the last variance is variance number 5
18 which has to do with the 50-foot landscape buffer around
19 the perimeter of the tract. Again, we are here with a
20 project that includes affordable housing and we are
21 attempting to meet the presumptive density as created by
22 the ordinance and desired by the applicant to meet that
23 maximum standard. Now what that's doing is it's
24 requiring us to do some creative design on the site to
25 get the units to fit and in doing so we've squeezed the

1 areas a little bit along these southern and northern
2 property lines so the buildings themselves again meet
3 the 50-foot standard. And the decks again encroach into
4 that landscape buffer. It's essentially an overlap of
5 the prior variance I discussed with respect to the
6 50-foot setback to the buildings. So it's the deck
7 areas again that are encroaching into this landscape
8 area.

9 And particularly on the southern side,
10 again, there is a beefed up landscape design, fencing
11 and existing mature trees that in my opinion establish a
12 visual break, a good buffer and provides adequate
13 buffering to those residential properties to the south.
14 And I believe that the applicant's proposal does achieve
15 the intent of the ordinance which is to provide open
16 space in areas for the residents of the property to
17 enjoy the property on their side of the property line.

18 So from my perspective the residential
19 variance requests are minimal deviations to the
20 ordinance standards. I think they can be granted
21 without any substantial detriment to the neighborhood,
22 the public good and certainly I don't believe it's any
23 substantial impairment to the zone plan or the zoning
24 ordinances. Mr. Chairman, that's essentially my
25 testimony.

1 CHAIRMAN BELL: Questions of the Board?

2 Emi?

3 MS. SICILIANO: Well, I was wondering -- I
4 really was expecting you to tell us how many dwelling
5 units there were per acre.

6 MR. LIOTTA: Well, we have 77 proposed units
7 and the overall gross density is 7.99 units per acre.

8 MS. SICILIANO: So it's exactly .01 less
9 than the requirement by RSIS for sidewalks.

10 MR. LIOTTA: It's .01 units in -- the
11 density calculation is less than what's --

12 MS. SICILIANO: You don't have sidewalks in
13 this except for that one area. You really don't have
14 sidewalks in this plan.

15 MR. MACANINCH: I think we've providing
16 sidewalks.

17 CHAIRMAN BELL: That's not the testimony.
18 We'll have that.

19 MS. SICILIANO: I thought that was part of
20 planning, okay.

21 MR. LIOTTA: Well, one thing I can indicate
22 that based on my review and I believe you probably heard
23 it from the engineer although I wasn't here to hear his
24 testimony, the plan does comply with the Residential
25 Site Improvement Standards which the plan does show

1 sidewalks on one side and driveways and curbed streets
2 and the radiuses all meet the Residential Site
3 Improvement Standards as documented.

4 MS. SICILIANO: Okay, I'll wait for the
5 engineer to discuss it with him. I have all my figures
6 so I don't care. I don't agree with the engineer. So
7 I'll wait for the engineer to testify again.

8 MR. LIOTTA: Okay.

9 MR. DODGE: Could you speak to bulk variance
10 number 4, 15 feet separation between the buildings
11 comprised I believe of 2-and-a-half feet on each side of
12 the stairwell and in particular the use I don't know if
13 it's appropriate for your testimony or not, but the use,
14 is it for secondary access or primary access? Are there
15 safety issues in terms of the design that are associated
16 with the use?

17 MR. LIOTTA: We do have the architect here.
18 I'm sure he's going to testify about the unit design,
19 but those are stair and porch accesses to the end units
20 on the side of the building and it's my understanding
21 they are not the primary access point. There is a
22 driveway and garage system as well as a front door on
23 each unit.

24 MR. DODGE: Thank you.

25 MR. GARDELLA: How many units per acre? I'm

1 sorry.

2 MR. LIOTTA: Total? The density is -- I'm
3 sorry, I keep forgetting.

4 MR. MACANINCH: 7.99.

5 MR. LIOTTA: 7.99. It's just under the
6 maximum permitted by ordinance.

7 MR. GARDELLA: But are you taking into
8 consideration the whole property? The whole 9.63 acres
9 or just the 8.43 acres that the actual residential
10 dwellings sit on? I'm calculating about 9.1 units.

11 MR. LIOTTA: Well, I did testify to that
12 earlier. Let me just review that with you now. The
13 ordinance allows for the overall gross density to be
14 calculated on the entire tract including the
15 nonresidential portion.

16 MR. GARDELLA: Even if you're subdividing?

17 MR. LIOTTA: Even if you're subdividing,
18 yes, that's correct. And that number is 7.99 dwelling
19 units per acre. The residential density for just the
20 residential tract is 9.1. And that is contained on the
21 8.437 acres of residential property.

22 MR. GARDELLA: All right, so it's fuzzy
23 math. I mean, it's just --

24 MR. LIOTTA: I'm just reading from the
25 general.

1 MR. GARDELLA: No, I understand, I
2 understand.

3 CHAIRMAN BELL: For all the Board members
4 and for the applicant if you'll bear with me for a
5 second. For all the Board members because we have quite
6 a few new Board members since this ordinance was put
7 into place. The intent of the ordinance was to take
8 into account the entire tract property and it was 8
9 acres and it was intended so that there could be an
10 overlay. You could have residential on part of it, you
11 could have commercial with an overlay, a parking overlay
12 on the other side, but you would take the entire
13 property and utilize that as far as coming up with the
14 total number of units that were available.

15 MR. GARDELLA: Even if you're subdividing
16 them?

17 CHAIRMAN BELL: Even if you're subdividing.

18 MR. LIOTTA: Mr. Chairman, if I could refer
19 to the ordinance --

20 CHAIRMAN BELL: I'm sorry, does that pretty
21 much explain it, Michelle?

22 MS. DONATO: Yes, it does.

23 MR. LIOTTA: I could cite the section. It's
24 ordinance 924, Section 94-10.16(I)2. That's the section
25 that talks about the maximum per the residential

1 density.

2 CHAIRMAN BELL: Right.

3 MR. CARROLL: Real quick. Is there a
4 percentage that was allowed to be commercial and a
5 percentage that's allowed to be for residential because
6 obviously if you made it 4 acres of private or
7 commercial and 5 acres of residential all of a sudden
8 you're then having 77 units it would --

9 MR. CRANMER: That ratio is controlled by
10 all of the other bulk standards, that being the
11 requirement for minimum open space, distance between the
12 units, heights of the units.

13 CHAIRMAN BELL: I think that explains it.

14 MR. CRANMER: Yeah.

15 CHAIRMAN BELL: Mr. Liotta, I know you said
16 this, but I just wanted -- when did you get involved --
17 the plan that we have in front of us right now, at what
18 stage of this plan did you get involved with the
19 application?

20 MR. LIOTTA: I don't remember exactly, Mr.
21 Chairman. Our office has been involved with the plan as
22 it developed.

23 CHAIRMAN BELL: Okay, because one of the
24 things and this is the plan in front of us was dated
25 August 14, 2009, the A-3 that I have. One of the things

1 again and it just throws a curve to me. And not
2 necessarily one of these three variances or all of them,
3 part of this whole process how we got to where we were
4 was part of the lawsuit and part of the finalized plans,
5 you know, where we came to 50 feet and with a 6-foot
6 encroachment, we didn't pull that number out of the air.
7 The 6-foot encroachment came from K. Hovnanian, said
8 that from the ballpark what we need, you know, 50 feet
9 we might need to go in. We might need 6 extra feet for
10 decks. We might not, but we might need 6 feet. The
11 Planning Board did not just throw that number out. So
12 we said, you know that makes sense. It's now elevated,
13 yeah, 50 feet, 60 so we put it. And now the plan that
14 comes to us again on the virgin piece of property is now
15 10 feet. The 25 feet, you know, all these things, K.
16 Hovnanian was involved not in us passing the ordinance
17 or whatever, but in developing something that was part
18 of the litigation, how do we make something that works
19 which is part of one of the things that some of the
20 members here don't understand, but going back to how do
21 you make it work which you're talking about COAH, part
22 of any COAH plan is you give a little bit to get a
23 little bit and it's part of higher density. I just
24 really have a problem grasping where we had plans where
25 the preliminary, the earlier renderings that we had and

1 they were a little bit different, the 6 feet was fine.
2 Now it's 10 feet. I just find it hard to find where the
3 hardship is where we would grant that variance. And
4 it's the same thing whether it's the 25 and the 15, 15
5 instead of 20, the 50 and 40 perimeter. I just don't
6 understand it.

7 MR. LIOTTA: Well, I guess first of all I'm
8 probably not the right person to answer that question as
9 to how the unit sizes got developed. That's probably a
10 question for either the architect or the applicant. But
11 I can say as things evolve and it goes from concept to
12 real design, things change and I indicated that earlier.
13 And sometimes it's unforeseen. Sometimes you haven't
14 anticipated something that you need to have in a unit as
15 you're moving forward and now you've realized that the
16 area that you think you had available for a deck really
17 doesn't work. And what you're trying to do is provide
18 the affordable housing and make those units appropriate
19 sizes for not only those units, but also the market
20 units that drive the ability to build affordable
21 housing, the units got to be a certain size.

22 CHAIRMAN BELL: From a planning standpoint,
23 from a planner's standpoint, most of the original
24 conceptual plans that we looked at had at least some of
25 the affordable housing units/apartments, whatever over

1 the business section which if they were over the
2 business section on the commercial side that reduced the
3 number of residences that were in the residential side
4 which subsequently if you had fewer units you have less
5 buildings. Less buildings mean you can move them around
6 a little bit so that you maybe now don't have this.
7 From your standpoint as a planner does having
8 affordable, having X number of these affordable units
9 over the commercial property as apartments or whatever
10 make good planning sense?

11 MR. LIOTTA: Well, number one it's a
12 different kind of unit. It's a different kind of
13 affordable unit. There's mixed opinion as to whether
14 you should have along a road like Shrewsbury Avenue
15 affordable units or apartment units at all above
16 commercial with the activity on the road and some of
17 those traffic issues, but that's a speculation. It's a
18 different design. It's a different delivery of
19 affordable units by proposing apartments above
20 commercial. This is a different product. It's a
21 townhouse style product that's a little more upscale
22 than an apartment.

23 CHAIRMAN BELL: You testified and we
24 accepted you as an expert planner. As an expert planner
25 does having apartments over commercial property make

1 good planning sense?

2 MR. LIOTTA: It depends. It depends on
3 where it is. If it's on a real downtown street where
4 it's 25 miles-an-hour and it's close to a lot of other
5 town center type thing it probably does. Because you
6 want to look at generating a certain kind of population
7 density to drive the use of the other commercial
8 activity in your core downtown. And in other places
9 where it's not really like that, that the commercial
10 section is not like that that you have other light
11 industrial type uses maybe it's not appropriate to have
12 apartments above the commercial activity. But it
13 depends.

14 CHAIRMAN BELL: Variance number 3 which is
15 the 50-foot setback with the 6-foot encroachment which
16 is allowed and where it is it's 50 foot with a 10-foot
17 encroachment and that's what you testified to, correct?

18 MR. LIOTTA: Variance 3 is the setback to
19 the perimeter boundary with the allowance of a 6-foot
20 encroachment, that's correct.

21 CHAIRMAN BELL: So that what is allowed is a
22 50-foot setback from the building and a 6-foot deck
23 encroachment.

24 MR. LIOTTA: Some kind of architectural
25 feature. It could be a deck, yes.

1 CHAIRMAN BELL: And what is proposed it's
2 still a 50-foot setback in the middle of 10 foot.

3 MR. LIOTTA: So it's an exceedance of
4 approximately 4 feet.

5 CHAIRMAN BELL: That's on the north and the
6 south.

7 MR. LIOTTA: Yes, sir.

8 CHAIRMAN BELL: From a planning standpoint
9 do you see a difference between potentially granting a
10 variance on the northern part of this property and the
11 southern part of this property?

12 MR. LIOTTA: Well, as I indicated along the
13 northern property you have commercial properties
14 adjacent to the residential border and on the southern
15 property you have residential properties.

16 CHAIRMAN BELL: The Board, if a Board was to
17 consider granting a hardship, if it would be agreed that
18 this was a hardship would it be easier or would it make
19 better planning sense to grant it up against a
20 commercial property like the back of a Stop & Shop than
21 against the back of a residential property?

22 MR. LIOTTA: Well, I'm not sure I can answer
23 that with a definitive yes or no or identify the
24 location. It really depends on how is it mitigated?
25 How is the deviation? Number one, is the deviation

1 really significant? Is it substantial? What's the
2 effect on neighboring properties? Is that substantial?
3 And any effect that is created can it be mitigated by
4 additional landscaping and fencing or additional
5 vegetation that you're leaving? So it's not a black and
6 white answer, it probably can be mitigated and you have
7 to weigh the effect to the adjacent properties.

8 CHAIRMAN BELL: Again, from a planning
9 standpoint the Borough standards would normally be 50
10 feet. The ordinance for the affordable housing was to
11 take it down to 50 I think at the property, at the
12 building and 44 at the deck -- on the commercial side
13 and you don't want to make a stand so I'll say, from my
14 perspective I don't see as big a difference, I don't see
15 as big an issue, it's really going to be an issue of the
16 developer having a 40-foot setback looking over the back
17 of Stop & Shop is a marketing problem. It doesn't
18 really affect any of the neighbors because Stop & Shop
19 doesn't care if somebody is looking over at them. 40
20 feet overlooking a residential and really from my
21 perspective what I look at is the standard is 50.
22 You're allowed to go -- under the COAH you're allowed to
23 go to 44. Now it's 40. So it's not just going from 40,
24 it's not just going from really 44, it's really going
25 from 50 to 40.

1 MR. MACANINCH: Well, the ordinance is 44.

2 CHAIRMAN BELL: Well, I'm looking at a
3 planning standpoint. If you look at the topography of
4 the property and we looked at this at great lengths when
5 we looked at the zoning and the planning. The property
6 as you move down to the east, your property gets higher
7 over -- or not your property, the subject property gets
8 higher as you move closer to the railroad tracks. So
9 that deck that may be over here was pretty -- by "over
10 here," sorry for the notes, to the west and I don't know
11 how far it is, but maybe it's one-story up so it's
12 one-and-a-half stories because of the elevation. It's
13 not as noticeable as it is when you get to the far east
14 where maybe it's two-and-a-half stories high because of
15 the slope and then taking it from 50 feet which is what
16 the non-COAH standard would be. The COAH standard would
17 allow you and I'm using probably the wrong terms, but
18 the COAH what's allowed under this ordinance with
19 affordable housing, you can take it to 44 and now it's
20 to 40. That impact on the neighbors, that impact on the
21 town potentially is much, much greater. So from my
22 perspective -- from a planning, how do you justify that
23 as that being a hardship and how do you say as a
24 hardship, the hardship is you can't do it. Well, you
25 can do it if you make the building smaller. To the

1 betterment of the town to the surroundings, what's the
2 justification for the betterment of the surroundings?

3 MR. LIOTTA: Well, you have to also consider
4 the distance from a common property line to the rear of
5 the residential structures. And they're all in
6 approximately 100 feet off the property line with fairly
7 mature existing trees that line their property in the
8 rear yards. And of the seven properties, two also have
9 commercial activity on them. So you have to take those
10 things into consideration along with the design on-site.
11 So you have some existing vegetation that's already
12 established a visual screen on the residential
13 properties. You have approximately 100 foot of distance
14 between the property line and the rear of the
15 residential structures. And then you have a fence that
16 we're proposing. You have additional landscape
17 buffering that we're proposing behind the fence as well
18 as essentially just a deck, an open deck that's
19 encroaching into that 50-foot area.

20 CHAIRMAN BELL: How high is the deck and the
21 proposed landscaping along the property line?

22 MR. LIOTTA: I'd have to take a look at the
23 grading plan. I don't remember exactly.

24 MR. MACANINCH: Southern property line?

25 CHAIRMAN BELL: Yes.

1 MR. LIOTTA: I'm sure the architect has some
2 sketches that show the deck extensions on the back. I
3 believe they're extended off of the first floor.

4 CHAIRMAN BELL: So --

5 MR. LIOTTA: It would be a story up.

6 CHAIRMAN BELL: So you're figuring at least
7 10 or 12 feet up. What's the hardship from a planning
8 standpoint? What's the hardship that would be your
9 rationale to grant this variance?

10 MR. LIOTTA: Well, the hardship is that
11 we're trying to achieve a certain presumptive density
12 for the affordable housing, for the units themselves to
13 achieve the affordable housing through this particular
14 product. And I'll let the architect or the applicant
15 describe how the units evolve to the size and shape that
16 they are. I don't have that answer for you. But they
17 are designed to do certain things for both the market
18 units as well as the affordables. And within those
19 design parameters and what they're trying to achieve in
20 terms of the total unit numbers, there's only so much
21 space. And I think they efficiently and carefully
22 locate the buildings so that they met a whole bunch of
23 other standards like Residential Site Improvement
24 Standards for the width of the roads, the sidewalks, the
25 separations of the buildings to the streets so that they

1 could provide parking in the driveways. So there are a
2 lot of other things that we're meeting in terms of the
3 design in order to achieve an affordable housing complex
4 to be built on the site and we're having a problem with
5 satisfying the 50-foot dimension to the decks.

6 CHAIRMAN BELL: What's the betterment to the
7 town?

8 MR. LIOTTA: We're providing affordable
9 housing.

10 CHAIRMAN BELL: Okay. What would you be as
11 a planner and I'm really concerned with the southern
12 properties. These are now 50 feet off the property line
13 and 40 feet with the deck. What would be the limit that
14 you would say would be poor planning if the buildings
15 had to be moved closer to the property line or is this
16 the extent of the limit where you think it would be good
17 planning? What would be an unreasonable request?

18 MR. LIOTTA: I can't make a judgment on that
19 question. It's within the context of trying to satisfy
20 what the ordinance was developed to do which was to
21 achieve affordable housing on this site and then answer
22 with a design. And the design that's been brought forth
23 does have this deviation in it because of the design of
24 the units. It's a minimal reasonable size for a deck.
25 If you proposed a 20-foot deep deck on these units and

1 extended an additional 10 feet into the rear yard I
2 think that would be unreasonable.

3 CHAIRMAN BELL: What if the buildings needed
4 to be pushed back 4 feet so now you were requesting a
5 variance from 50 to 46 and from 40 to 36, would that be
6 unreasonable? Would that be something that you wouldn't
7 suggest?

8 MR. LIOTTA: Again, it would depend on the
9 mitigation that's possible and whether the deviation was
10 a substantial detriment to the public good weighed
11 against the benefit of providing the affordable housing.

12 CHAIRMAN BELL: Okay.

13 MR. DODGE: May I ask?

14 CHAIRMAN BELL: Sure, absolutely.

15 MR. DODGE: I'd like to actually get some
16 comment from Mr. Cranmer and Michelle Donato, but I want
17 to get clear on a point you just made and you made
18 earlier when you testified following your reference to
19 COAH Section 5 whatever it was, but that was the first
20 time tonight that you brought up this issue of
21 substantial detriment to the neighborhood and that was
22 your testimony, correct?

23 MR. LIOTTA: Well, that's part of the proofs
24 that are required as part of substantiating variances
25 per the Municipal Land Use Law.

1 MR. DODGE: A test, is that a fair way to
2 put it?

3 MR. LIOTTA: A test to determine whether the
4 Board has reason to grant or deny a variance you have to
5 weigh what the testimony is with respect to the positive
6 and negative criteria.

7 MR. DODGE: So are you asserting that in
8 order to deny the request for bulk variance that it
9 needs to pass the test of substantial detriment?

10 MR. LIOTTA: That's correct. In your
11 opinion it has to have a substantial detriment.

12 MR. DODGE: The other point, you made two
13 points at that time. The second one was and I don't
14 know that I have the language right here, that it should
15 be denied if it conflicts and I believe you might have
16 said seriously with the ordinance itself. In other
17 words, it's outside the boundaries.

18 MR. LIOTTA: No, that's not what my
19 testimony was. My testimony was I was trying to
20 paraphrase what the Municipal Land Use Law says and it
21 says that there should not be a substantial detriment to
22 the public good. That's the first prong of the negative
23 criteria. The second prong is that there should not be
24 a substantial impairment to the purpose and intent of
25 the zone plan and the zoning ordinance. That's the

1 master plan and the zoning ordinance. So what is the
2 intent of this ordinance? The intent of the ordinance
3 is to establish affordable housing on this site and in
4 doing that if there's a variance requested, is the
5 variance reasonable and would denial of the variance
6 really stop a major benefit of providing affordable
7 housing based on the intent of the ordinance of the
8 overlay zone?

9 MR. DODGE: Okay. Mr. Cranmer, do you agree
10 that these are two important issues that need to be
11 considered in any denial let's say?

12 MR. CRANMER: Well, the Municipal Land Use
13 Law in 40:55(D)-70(C) outline certain proofs that have
14 to be met. In order for any Board or planning or zoning
15 Board to grant a variance there has to be a finding of
16 fact by the Board that both the positive and negative
17 criteria have been satisfied. The test that I believe
18 you're referring to, Mr. Dodge, would be that there
19 would be no substantial detriment to the public good and
20 that there would be no impairment of the zoning plan or
21 the zoning ordinance of the municipality.

22 MR. DODGE: So if there were we couldn't
23 grant it.

24 MR. CRANMER: You would have to make a
25 finding of fact that there was not or there were not a

1 substantial detriment to the public good and that there
2 was not an impairment of the Borough's master plan and
3 zoning ordinance.

4 MR. DODGE: And just for the record,
5 counsel, do you agree with this interpretation?

6 MS. DONATO: The Board when it grants
7 variances has an obligation based on the testimony
8 before it to conclude either that the applicant has met
9 its burden of proof on both what we call the positive
10 criteria and the negative criteria. When you're talking
11 about this class of variances, the C1, the positive
12 criteria can either be what we usually refer to as
13 hardship, there's something about the shape of the
14 property that causes the hardship. I don't believe that
15 Mr. Liotta is really presenting a C1 hardship variance.
16 He's presenting what is called a Flexible C variance and
17 I think really that's what he's saying is that the
18 benefits of achieving the affordable housing
19 substantially outweigh any detriment and then of course
20 you need then to go to the negative criteria which is
21 that there's no substantial detriment to the public good
22 and no substantial impairment of the intent and purpose
23 of the zone plan. But I think, Mr. Macaninch, you could
24 really I think assist the Board in I think the dilemma
25 that they're facing with these variances and that is

1 there's an unanswered question here as to how these
2 variances, why they are here. And they might be here
3 not because they're accommodating affordable housing,
4 but because the unit size may have gone up. Somehow or
5 another if you could perhaps address that point I think
6 it would really answer some questions because it goes to
7 the very heart of some of the proofs. Let's assume for
8 the moment that the financial package and the proformer
9 that was established was that you would create these
10 market units which are what pays for the affordable
11 unit, then the market units were assessed at 2,500
12 square feet. I'm just throwing this out. I don't know
13 what the numbers are. And that in this market that
14 would have been fine and the market units ended up
15 increasing in size. And that increase in size is
16 generating the variances. Well, somebody is going to
17 have to do some financial testimony to say that now in
18 order to do this perhaps the market has changed or
19 something that 3,000 square feet is necessary to
20 generate the affordable housing units. I don't know the
21 answer to any of those questions, but Mr. Liotta doesn't
22 either. So it's their burden of proof, though. It's
23 their burden of proof to show everything they need to
24 show, substantial credible evidence.

25 MR. DODGE: Are we bound equally to the

1 positives and the negatives in how we view our decision?

2 MS. DONATO: The Board can conclude that any
3 one of the elements is missing. All of the elements
4 have equal --

5 MR. DODGE: It doesn't have to be
6 symmetrical around positives or negatives?

7 MR. LIOTTA: There is a balancing test.

8 MS. DONATO: There's a balancing test on the
9 C variance, but not nearly like it is on a D, an
10 inherently beneficial use D. The balancing on a C is
11 really on the balancing the benefits on a Flexible C.
12 That's where I see the balancing coming in. There's no
13 case law that says there's a balancing on a hardship,
14 but it's only on the positive criteria unlike some other
15 classes where you have to balance all of the things like
16 inherently beneficial use. So I don't think you have
17 the obligation to say that the benefits of affordable
18 housing are outweighed by the detriment. Quite honestly
19 I think that saying that the ordinance is there to
20 provide affordable housing is kind of giving short
21 shrift to the real effort of the municipality itself to
22 provide affordable housing in a manner that is
23 compatible with the Borough zoning.

24 MR. DODGE: But we've agreed that the test
25 is an impairment.

1 MS. DONATO: Substantial impairment of the
2 intent and purpose of the zone plan, but when you
3 identify what is the zone plan --

4 MR. DODGE: I understand.

5 MS. DONATO: Is the zone plan to just
6 provide affordable housing or to provide affordable
7 housing within --

8 MR. DODGE: I understand and the term
9 "substantial" opens up all kinds of stuff. Just as a
10 courtesy I think, you know, I started with you, I don't
11 know.

12 MS. DONATO: Did I answer your question?

13 MR. DODGE: Yes, you did and David thank
14 you. I mean, I think it is difficult at times to
15 understand where the boundaries of the rules are for the
16 Board and so I wanted to get this clarified and get
17 clarification on Mr. Liotta's testimony, but if you have
18 anything you'd like to add in closing, I'm done.

19 MR. MACANINCH: I actually would like to
20 jump in just in response to your question of how the
21 units got to here. I mean, I have not been involved in
22 obviously the history of this. I mean, Mr. Hoffman has
23 been, Rob Hoffman who is here, maybe he could give a one
24 or two minute -- the units didn't grow in size, but just
25 let him explain how we got to where we are and he's

1 already been sworn.

2 MS. DONATO: You remain under oath, Mr.
3 Hoffman.

4 MR. HOFFMAN: The product that we are
5 showing here it actually -- it really hasn't changed.
6 We went and the former Mayor, we did meet with numerous
7 meetings. We went through probably there had to be
8 about 25 different concept plans that we worked through
9 and revised product and changed designs and it was
10 always an evolving process. Once we landed on the
11 product that we have here which is the rendering that
12 our architect will show you, that has stayed fairly
13 consistent and the sizes of those homes has stayed
14 consistent. What has changed has been the revisions to
15 the plans. There have been revisions that were done
16 with good intention, staggering the units within the
17 building. Initially we had the 50 units all flat right
18 across the front of the building. So the shorter homes
19 were up further. As we decided to make a better
20 streetscape and feedback from the professionals that
21 caused some of the units to step back further and hence
22 encroach into setbacks that we did have initially all
23 intention of trying to meet. The deck sizes, the deck
24 sizes we think initially we had them on too short and
25 when we went back and we were looking at our product and

1 making it again the whole marketable, and so that we can
2 sell at the price that we anticipated, we did increase
3 the size of the decks to where the 10 foot is at this
4 point. And through the entire process and I hear the
5 chairman about the comments about the units on top of
6 the commercial building and we went through multiple
7 scenarios and we had them on top of the building. We
8 took them off of on top of the building because of
9 feedback along this process that's gone on for about
10 three years until we finally got to the point of our
11 application. I can't recall exactly why we moved them
12 or why we had them there to begin with, but there were
13 changes back and forth. And usually they were always
14 done with feedback from the professionals and trying to
15 come up with a plan that would work best for all. But
16 that's what I can remember. I've probably been the one
17 person that has been -- we have gone through three
18 different legal counsel unfortunately due to the market
19 conditions, but the changes that we went through from
20 what I can remember, you know, we're going on four years
21 of meetings. So I hope that helped a little bit and if
22 you have any questions for me, I'm right here.

23 MS. DONATO: Mr. Hoffman then, in terms of
24 the unit size, the unit size is the same, essentially
25 the same unit size?

1 MR. HOFFMAN: Yes, 1,800, approximately
2 1,800 to approximately 2,200 square feet is what we've
3 always targeted. This is a product that we've built for
4 years.

5 MS. DONATO: And there are currently 18 to
6 22 in the plan that's before the Board?

7 MR. HOFFMAN: Approximately, yes, that's
8 correct.

9 CHAIRMAN BELL: And the way this development
10 is set now preliminary or final for the residential,
11 preliminary for the commercial, it will be subdivided
12 off and you're going to develop the residential and the
13 commercial is going to be developed by somebody else?

14 MR. HOFFMAN: Ultimately the commercial will
15 be developed by the owners of the current property,
16 DeFelises. We have an obligation to as part of our
17 development to actually build the pad of the building
18 and complete the infrastructure of the parking lot. We
19 want that to get done and then hopefully in a time line
20 perspective works with the DeFelises' plan with
21 constructing the building.

22 CHAIRMAN BELL: That ties into your
23 drainage, that's all part of your drainage.

24 MR. HOFFMAN: That's all connected. So the
25 development of that commercial parcel will be done along

1 with our property as far as the infrastructure goes and
2 the padded development. The DeFelise family will then
3 be coming back for final site plan approval for the
4 building that's going to go there and the design.
5 They're working on that design.

6 CHAIRMAN BELL: Okay.

7 MS. MARTINELLY: They will be locked into
8 that pad, the parking, the buffers, everything. That
9 will be what they'll be dealing with?

10 MR. MACANINCH: I mean, what they would have
11 to do obviously is they'd have preliminary site plan
12 approval and if they wanted to change something based on
13 that site plan approval they'd have to come back in and
14 get an amendment to that site plan approval. This Board
15 would have to hear it.

16 CHAIRMAN BELL: They're not locked into it.
17 If they don't want to come back to us to get a change --

18 MS. MARTINELLY: If the pad is already in --

19 MR. CRANMER: They're not going to be able
20 to build a pad, parking lot or curb until the final site
21 plan approval is granted.

22 CHAIRMAN BELL: Right.

23 MS. MARTINELLY: So there will be final on
24 both then?

25 MR. CRANMER: There will be a final approval

1 on the commercial site before any curb or pavement or
2 building pads are installed.

3 CHAIRMAN BELL: On the commercial site.

4 MR. CRANMER: Yes.

5 MR. DODGE: But does that conflict with what
6 he said?

7 MS. DONATO: Excuse me, what was that? I
8 didn't hear.

9 MR. MACANINCH: Can you do any improvements
10 based on the roadway?

11 MR. CRANMER: You can do roadway and public
12 improvements based on preliminary approval according to
13 the land use law. Site plan, you can't construct the
14 site plan improvements on a preliminary approval.

15 MS. DONATO: Thank you, Mr. Cranmer.

16 MR. MACANINCH: Again, that's not --

17 MS. DONATO: But it's the actual, when they
18 say the footprint, the design and approved footprint of
19 the building and the approval, that's what is basically
20 protected in the preliminary.

21 MR. MORAN: So the final site plan would
22 have to include the commercial site.

23 MS. DONATO: No.

24 MR. CRANMER: It will probably have its own
25 separate final site plan application.

1 MS. DONATO: They have an application now
2 for a minor subdivision.

3 MR. MORAN: No, excuse me. What I meant was
4 what Mr. Hoffman referred to as the pad, when would that
5 have to be done?

6 MR. CRANMER: After they get a final site
7 plan approval for that property.

8 MS. SICILIANO: It's a major subdivision.

9 MS. DONATO: I'm sorry, you're correct,
10 Mayor. At your astute observation, we corrected that
11 and my poor memory has failed me, but there is a
12 subdivision that would be completed as part of this.
13 And once that subdivision is created both of these
14 parcels can proceed at entirely different paces.

15 CHAIRMAN BELL: Other than the drainage for
16 the business, the drainage is the same system.

17 MR. CRANMER: Yes, all the downstream
18 elements of that system would have to be constructed as
19 part of the residential.

20 CHAIRMAN BELL: So they could not, they
21 could despite and I'm not saying what you said Mr.
22 Hoffman was incorrect, but despite the fact that the
23 testimony is they are responsible to build the pad, they
24 get a preliminary and final on both potentially, the
25 residential could be completely built out. Nothing get

1 done on the business at all, but the hookups are there
2 for the drainage so that when the -- I mean up to the
3 commercial, so that when the commercial gets built it
4 gets hooked up into it.

5 MR. CRANMER: That's correct. The
6 commercial can't get constructed first because there
7 would be no detention basin and that will all be part of
8 a phasing plan and developer's agreement down the road.

9 CHAIRMAN BELL: Okay.

10 MS. DERASADOURIAN: I have a couple of quick
11 questions. Is there a proposed deck on every unit?

12 MR. LIOTTA: Yes.

13 MS. DERASADOURIAN: And this question is
14 kind of for Dave. I don't want to put you on the spot
15 again, but I know the deck is part of the dwelling or
16 the housing unit, it's connected. Would the same
17 variance be required if the applicant changed the deck
18 to like an unattached patio off the back?

19 MR. CRANMER: Yes.

20 MS. DERASADOURIAN: It would still require a
21 variance?

22 MR. CRANMER: Yes.

23 MR. MORAN: I just had one comment. In your
24 original testimony, Mr. Liotta, I think you mentioned
25 generally 40 feet. Is there any situation where it

1 would be less than 40?

2 MR. LIOTTA: Well, the reason I said that is
3 along the southern property line the backs of the
4 buildings aren't exactly parallel with the property line
5 so the distance varies a little bit. So it varies from
6 50.6 feet to 50.5 feet from one end to the other so it
7 changes a little bit. So it's approximately 40 to
8 40-and-a-half feet to the deck.

9 CHAIRMAN BELL: Okay.

10 MR. CRANMER: In fact, I think our original
11 discussions to go back to your question, Mrs.
12 Derasadourian, was the features that are shown on the
13 plan are either decks or patios. They weren't sure
14 whether they were going to be either or.

15 MS. DONATO: I think it says buildings and
16 structures to have a perimeter so the structure is a
17 patio, it's a deck, it's anything without a roof.
18 Stairs, et cetera.

19 CHAIRMAN BELL: Any other questions before
20 we open it to the public? There being none, can I get a
21 motion to open the meeting to the public for questions
22 of Mr. Liotta? And it could be what he's testified
23 either commercial or residential.

24 MR. DODGE: So moved.

25 CHAIRMAN BELL: Mr. Dodge.

1 MS. MARTINELLY: Second.

2 CHAIRMAN BELL: Mrs. Martinelly. All those
3 in favor?

4 (Multiple Board members respond in the
5 affirmative.)

6 CHAIRMAN BELL: Opposed? Meeting is open to
7 the public for any questions regarding the five
8 variances discussed this evening.

9 MR. WHELAN: Jim Whelan again, 201 Patterson
10 Avenue. There was no statement of the height of the
11 decks. We don't know? Is that coming out of the first
12 floor, I assume the first floor will be the garage,
13 ground level and then --

14 CHAIRMAN BELL: I think Mr. Hoffman.

15 MR. HOFFMAN: I can answer that. Yeah, the
16 first level is the garage level. The decks do come off
17 of what you would consider the second level. So the
18 deck is probably the height or with a 9-foot ceiling
19 about 10 feet, 10, 11 feet.

20 MR. WHELAN: 10 feet off the ground. And
21 you're proposing a 6-foot fence?

22 MR. LIOTTA: Along the southern property
23 line, yes.

24 MR. WHELAN: So I mean for a 6-foot person
25 standing on a 10-foot deck you're talking about 16 feet

1 line of sight from the ground level to look into the
2 neighbor's backyard.

3 MR. LIOTTA: Yes.

4 MR. WHELAN: And from what was said I've
5 heard very mature and dense foliage or trees coming from
6 that. I live on Patterson Avenue. I have pictures
7 showing in the fall and the winter and it's not dense at
8 all.

9 MR. LIOTTA: No, my testimony was that
10 there's a combination of existing vegetation that's
11 along the property line and on the residential property,
12 but we're also adding screen plantings on our property
13 line which is a combination of evergreen and deciduous
14 plantings to supplement the visual screen that the fence
15 will produce essentially for the 6-foot high area and
16 then these plants will grow taller. So there's a
17 combination of existing mature trees on the residential
18 side and then proposed plantings on the applicant's
19 side.

20 MR. WHELAN: As to the pages that I've read
21 concerning the meetings on the trees, it says that they
22 are the vegetation, the plant materials are in really
23 bad condition and it's really the summation of parts
24 that make that somewhat ineffective. There's no
25 evergreen plantings so that in the wintertime you can

1 see right through as you can now. A lot of the plant
2 material is old and in decline. This is true and from
3 what I've read, you're going to plant anywhere from 6 to
4 10-foot trees, evergreen trees?

5 MS. DONATO: I'm sorry, where are you
6 reading from so we have clear in the record where that's
7 coming from?

8 MR. WHELAN: That is February 17, 2010.

9 CHAIRMAN BELL: Mr. Whelan, you need to
10 phrase whatever you're saying into a question to Mr.
11 Liotta so he can answer it.

12 MR. WHELAN: Okay, sure.

13 MR. LIOTTA: I would indicate that I did not
14 do the landscape planning testimony.

15 MR. WHELAN: Well, that was my question is
16 that you're referring to the landscape without being the
17 -- testimony I think already from --

18 MR. LIOTTA: I'm just referring to what is
19 shown on the plan and it's a combination of evergreen
20 and deciduous plantings in that screen planting.

21 MR. CHAIRMAN: Mr. Liotta, is it reasonable
22 to assume from the testimony from Mr. Hoffman that this
23 deck is going to be at 11 feet, 12 feet, whatever off
24 the ground and the fence is at 6 feet. Until sometime
25 when the trees grow, the evergreens grow that the deck

1 is going to be visible from the properties to the south?

2 MR. LIOTTA: That's reasonable to assume,
3 yes.

4 MR. WHELAN: And coming from a planning
5 standpoint do you think in taking into consideration for
6 the privacy of the neighbors that having a concrete
7 patio at ground level and stairs going from the first
8 floor down to the patio, even though you'd still need a
9 variance, it might be more accommodating towards the
10 south side of the property?

11 MR. LIOTTA: It would be different, yes.

12 MR. WHELAN: Different in a better way or?

13 MR. LIOTTA: Not necessarily. It depends on
14 your perspective.

15 MR. WHELAN: Perspective of the neighbors
16 versus the--

17 MR. LIOTTA: Yeah, it's just a function of
18 if you have a patio at the ground level of some of the
19 units where it's the utility level, is it really a
20 usable area for that as opposed to a deck off the main
21 living space which would be I guess the second floor of
22 the unit. So you're talking about the opinion of the
23 residents and what they're saying and I think you have
24 to look at both sides.

25 MR. WHELAN: Okay. From my understanding

1 the ordinance was given because of the COAH; is that
2 correct? For the 50?

3 CHAIRMAN BELL: The ordinance was created as
4 a whole combined between COAH demands, what requirements
5 the town had, the units that the town was required under
6 COAH, the obligation we had for affordable housing. We
7 had litigation from K. Hovnanian for affordable housing.
8 So as an overall combination to meet our needs the
9 ordinance came about.

10 MR. WHELAN: And that was the 50-foot?

11 CHAIRMAN BELL: And then also, yeah. Well,
12 the ordinance, all the things that came into the
13 ordinance being developed.

14 MR. WHELAN: And do the COAH units have the
15 decks or balconies or patios?

16 CHAIRMAN BELL: I think that's actually
17 going to be a question for the architect.

18 MR. MACANINCH: Yeah, architect.

19 MS. DERASADOURIAN: I just asked that
20 question if all the units had decks and I think the
21 answer was yes.

22 MR. MACANINCH: I don't think the
23 affordables have them. All the market rates.

24 MS. DERASADOURIAN: My question was do all
25 the units have decks.

1 MR. MACANINCH: He misunderstood your
2 question.

3 CHAIRMAN BELL: Mr. Hoffman, the affordable
4 housing units don't have them?

5 MS. DONATO: I'm sorry, what's the answer to
6 the question? I'm getting confused.

7 MR. HOFFMAN: The affordable homes, all the
8 units do have decks.

9 MS. DONATO: All the units have decks?

10 MR. WHELAN: But on the affordable they
11 don't encroach upon the -- that's what I just heard.

12 MR. MACANINCH: I think I have the
13 architect.

14 CHAIRMAN BELL: You know what? Let's wait
15 on the architect, the testimony of the architect on
16 that.

17 MR. WHELAN: Okay.

18 CHAIRMAN BELL: Other questions of the
19 public?

20 MR. SELERY: Richard Selery, 48 Francis
21 Street. I've been coming to just about every meeting.
22 I believe I may have missed the first one and as you
23 mentioned before there have been several changes. When
24 will the public get to see all of these proposed changes
25 or things that were talked about that may be changed?

1 CHAIRMAN BELL: We will have -- when will we
2 have a final plan that will be to the public that
3 will --

4 MR. MACANINCH: We're planning on submitting
5 revised plans for the May meeting.

6 CHAIRMAN BELL: So 10 days before the May
7 meeting. They'll be out in 10 days.

8 MR. CRANMER: A minimum of 10 days they'll
9 be on file upstairs.

10 MR. SELERY: Okay, thank you.

11 CHAIRMAN BELL: Other questions of the
12 public?

13 MR. HOFFMAN: Just to clarify that question,
14 the affordables do have decks. Where they look a little
15 bit different is they don't protrude off the back of the
16 building. They're actually cut into the building. So
17 all the units have decks, that was a correct answer but
18 they don't protrude off the back.

19 MS. DERASADOURIAN: Thank you.

20 MS. MINERVINI: Mrs. Minervini, Patterson
21 Avenue. The gentleman said that all the property owners
22 on Patterson Avenue, their houses are at least 100 feet
23 back from the line. I believe that was correct.

24 MR. LIOTTA: I said approximately.

25 MRS. MINERVINI: And that there's full grown

1 foliage at the back.

2 MR. LIOTTA: I said there were mature shade
3 trees.

4 MRS. MINERVINI: Mature, yes, mature. Well,
5 this is not accidental. These mature, these trees that
6 are now mature were put there years ago because there
7 was a commercial property in the back and these were put
8 up by my parents and a lot of other people in the
9 neighborhood to protect and give us the privacy from the
10 commercial enterprise that was on the other side of the
11 fence. Now you will be taking that privacy away from us
12 by putting these houses closer into the buffer zone and
13 putting decks on as the gentleman said that are going to
14 be eye level. Now I really don't want to come out of my
15 house and see people looking down at me.

16 CHAIRMAN BELL: Ms. Minervini, could you ask
17 a specific question because you'll have plenty of time
18 to give any of your comments at the end.

19 MRS. MINERVINI: Yes, I will. Do the
20 buildings that face the south have to have decks on
21 them? Can those units be without decks where all the
22 other units are with decks?

23 CHAIRMAN BELL: I think that's probably
24 going to be -- well, would you like to answer that, Mr.
25 Hoffman or would you prefer to leave that?

1 MR. HOFFMAN: They're all designed with
2 decks.

3 MRS. MINERVINI: Can that be changed?

4 MR. HOFFMAN: Not for the marketing
5 capabilities of the community the decks are a necessary
6 feature to sell a market rate townhome.

7 MRS. MINERVINI: Do patios?

8 MR. HOFFMAN: Because these are garage under
9 townhomes the patios are actually located at the utility
10 level. The main living of these homes is on the second
11 floor. These decks are accessed off of the kitchen
12 area.

13 MS. MINERVINI: You say there will be
14 another meeting?

15 CHAIRMAN BELL: There's going to be at least
16 one more, probably -- sorry, Mr. Macaninch, two, three?
17 Any other questions? There being none can I get a
18 motion to close the meeting to the public? Mrs.
19 Martinelly?

20 MS. MARTINELLY: So moved.

21 CHAIRMAN BELL: Second?

22 MR. DODGE: Second.

23 CHAIRMAN BELL: Mr. Dodge. All those in
24 favor?

25 (Multiple Board members respond in the

1 affirmative.)

2 CHAIRMAN BELL: Does anybody else have any
3 other questions? I have one just as a question,
4 comment, whatever, but just feedback from listening to
5 the public and we're not going to get to your architect
6 tonight.

7 MR. MACANINCH: Yeah, got that.

8 CHAIRMAN BELL: Maybe it's to look at
9 because there's certainly a concern and I'm speaking for
10 myself and I think for some of the people who are in the
11 audience or not speaking for them, but paraphrasing
12 them, you know, maybe there's the concern on the decks
13 on the south side. There's nobody here from Foodtown
14 complaining about the north side. Maybe there's some
15 way from an architectural standpoint and the architect
16 is going to come next at the next meeting where you go
17 somewhere in between. Instead of being 11 feet up where
18 you walk right out onto the deck maybe you go down two
19 or three steps or four steps or something like that not
20 down on the ground, but if you dropped it down just
21 enough where you can still have all the utilities and
22 everything underneath it, but that 3 or 4 feet. And I
23 don't know, maybe there's a way to have steps where it
24 makes sense, maybe there's not. But a way to, you know,
25 to use your term, mitigate the encroachment. It's the

1 same distance, but there's a big difference between
2 being 11 or 12 feet in the air than being 6 or 7 feet in
3 the air. And maybe it doesn't work. I don't know. But
4 something to look different. Any other comments?

5 MR. CRANMER: Mr. Bell, just to add on to
6 what you just said, when Mr. Cosentino was here and he's
7 the landscape architect who designed the landscape plan,
8 one of the ideas that was discussed when he testified
9 was creating a berm along the property line to raise the
10 plantings by 3 or 4 feet. And I think he said the
11 plantings along that property line were going to be in
12 the 10 to 12 foot range. Is that right?

13 MS. DONATO: You mean the planting height?

14 MR. LIOTTA: That's pretty consistent with
15 the plan.

16 CHAIRMAN BELL: I think he said the trees
17 that were going to be planted were going to be 6 to 8
18 feet high and if there was a berm put and they were
19 going to look at the berm and they were going to talk to
20 the neighbors. If the berm was up 3 feet that would
21 raise the top of when they're planted to about 10 or 11
22 feet.

23 MR. CRANMER: And the 6-foot fence would be
24 on top of that berm if I remember correctly.

25 CHAIRMAN BELL: Which then if the deck was

1 dropped down a little bit, if people were sitting up on
2 the deck they're really down even below. If they're
3 standing up then they're not, but it's just something to
4 think about, you know.

5 MR. CRANMER: So has that been looked into
6 further, Mike?

7 MR. MACANINCH: It has, yes.

8 MR. CRANMER: And is that something that's
9 even feasible or not?

10 MR. MACANINCH: To be honest I don't recall
11 offhand. It was definitely something that Jay looked at
12 and he was, again, part of the recommendation of the
13 Board was to beef up the landscaping on that section and
14 he's doing that. That's part of what is being done in
15 terms of some of the species questions and a number of
16 that.

17 MR. CRANMER: So that may be another
18 mitigation for a variance if one were to be considered.

19 CHAIRMAN BELL: We have -- the meeting is
20 not open to the public, but is there something that --

21 MR. WHELAN: The thing to consider about the
22 berm is that whatever large trees that are there, you're
23 going to take them down to create a berm and you're
24 going to give up the height to any foliage that you have
25 during the spring and summer you're going to take them

1 down, you're defeating the purpose.

2 CHAIRMAN BELL: I think that's what Jay was
3 looking into to see --

4 MR. MACANINCH: I think that was the
5 discussion that night.

6 CHAIRMAN BELL: Any comments?

7 MR. MACANINCH: Not at this point.

8 CHAIRMAN BELL: Okay.

9 MR. HOFFMAN: I think just one about the
10 buffer. There's certainly interest in the people that
11 are going to buy our homes as far as looking into
12 someone's backyard and it's something that we take into
13 consideration a lot when we're designing our
14 communities. I mean, that's something that we'll look
15 at. I understand the concern of the visual from
16 someone's backyard, being able to look into the deck and
17 see the deck. You know, the berm was an idea, but as
18 far as the buffering behind those homes there's probably
19 a solution that I think would help us market those homes
20 and also make the residents feel maybe more comfortable
21 about the height of those decks. So I think as a
22 comment I think that's something we'll definitely look
23 at. We have no problem with that.

24 MR. MACANINCH: Right.

25 CHAIRMAN BELL: I think on the same thing

1 out of all due respect, I for one really don't care what
2 your people, how they feel about looking down on people.
3 I care about the people down below who are already there
4 and having people looking down on them. So I think it's
5 the same basis, it's what side of the table we're
6 sitting on.

7 MR. HOFFMAN: That's true. Ultimately
8 they'll all be residents of Shrewsbury.

9 CHAIRMAN BELL: Okay. This application is
10 carried until May 19th. Do we need an extension?

11 MS. KELLEHER: Well, May 31st.

12 CHAIRMAN BELL: So there will be no
13 additional notice on this. It's carried to May 19th.
14 It will be posted on the website, Lorraine?

15 MS. KELLEHER: Oh, yeah.

16 CHAIRMAN BELL: Everything will be posted on
17 the website and if we have final plans that will be
18 discussed at the May 19th meeting, they will be on
19 record upstairs by May 9th at the latest.

20 MR. CRANMER: They have to be.

21 CHAIRMAN BELL: If they're not here by May
22 9th we will not be discussing them at the May 19th
23 meeting for the public, okay? Can I get a motion to
24 close the meeting?

25 MR. DODGE: So moved.

1 CHAIRMAN BELL: Mr. Dodge.

2 MS. DERASADOURIAN: Second.

3 CHAIRMAN BELL: Mrs. Derasadourian. All
4 those in favor?

5 (Multiple Board members respond in the
6 affirmative.)

7 CHAIRMAN BELL: Opposed? Okay.

8 (Whereupon the proceeding was concluded at
9 10:39 p.m.)

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CERTIFICATE

I, NADINE M. GAZIC, a Notary Public and Certified Court Reporter of the State of New Jersey, License No. XI01883, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Notary Public of the State of New Jersey
Dated: May 5, 2010