

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

MEETING IS CALLED TO ORDER:

MR. LEVITON: I'm going to call this meeting to order and ask you to join me in the flag salute.

SALUTE TO THE FLAG

MR. LEVITON: Pursuant to section five of the Open Public Meetings Act notice of this meeting of the Manalapan Township Zoning Board of Adjustment was sent and advertised in the Asbury Park Press. A copy of that notice was posted on the bulletin board where public notices are displayed in the municipal building. In addition a copy of this notice is and has been available to the public and is on file in the office of the municipal clerk. Accordingly this meeting is deemed in compliance with the Open Public Meetings Act. Roll call please.

ROLL CALL

MS. MOENCH: Mr. DiTota is on his way. Mr. Gregoiwcz?

MR. GREGOWICZ: Here.

MS. MOENCH: Mr. Rosenthal?

MR. ROSENTHAL: Here.

MS. MOENCH: Mr. Schertz?

MR. SCHERTZ: Here.

MS. MOENCH: Mr. Shalika?

MR. SHALIKAR: Here.

MS. MOENCH: Mr. Weiss is not with us this evening. Mr. Mantagas?

MR. MANTAGAS: Here.

MS. MOENCH: Mr. Pochopin?

MR. POCHOPIN: Here.

MS. MOENCH: And Mr. Wechsler is not with us. Chair Leviton?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

MR. LEVITON: I am here. Okay our first order of business tonight is to accept the minutes from May 4th. Can I get a motion and a second please?

MR. SCHERTZ: So moved.

MR. LEVITON: Thank you Dave.

MR. POCHOPIN: I'll second.

MR. LEVITON: And thank you Dan.

MS. MOENCH: I'm sorry who was the second?

MR. LEVITON: Dan.

ROLL CALL

MS. MOENCH: Mr. Gregowicz?

MR. GREGOWICZ: Yes.

MS. MOENCH: Mr. Rosenthal?

MR. ROSENTHAL: Yes.

MS. MOENCH: Mr. Schertz?

MR. SCHERTZ: Yes.

MS. MOENCH: Mr. Shalika?

MR. SHALIKAR: Yes.

MS. MOENCH: Mr. Mantagas?

MR. MANTAGAS: Yes.

MS. MOENCH: Mr. Pochopin?

MR. POCHOPIN: Yes.

MS. MOENCH: Chair Leviton?

1 MR. LEVITON: Yes. Next we're going to memorialize
2 resolution number ZBE2311, Mr. Marmero.

3
4 MR. MARMERO: Yes Mr. Chairman and Board as you'll
5 remember this was bulk variance relief that was granted for a
6 proposed deck and a proposed rear porch. These were rear yard
7 encroachments and the address was 10 Vancleve Road.

8
9 MR. LEVITON: Thank you sir.

10
11 MR. MARMERO: Sure.

12
13 MR. LEVITON: Will someone move to memorialize?

14
15 MR. GREGOWICZ: So moved.

16
17 MR. LEVITON: Thank you Mr. Gregowicz and will
18 someone second it?

19
20 MR. MANTAGAS: I second Mr. Chairman.

21
22 MR. LEVITON: Thank you Mr. Mantagas.

23
24 **ROLL CALL**

25
26 MS. MOENCH: Mr. Gregowicz?

27
28 MR. GREGOWICZ: Yes.

29
30 MS. MOENCH: Mr. Rosenthal?

31
32 MR. ROSENTHAL: Yes.

33
34 MS. MOENCH: Mr. Schertz?

35
36 MR. SCHERTZ: Yes.

37
38 MS. MOENCH: Mr. Mantagas?

39
40 MR. MANTAGAS: Yes.

41
42 MS. MOENCH: Mr. Mantagas, Mr. Shalika?

43
44 MR. SHALIKAR: Yes.

45
46 MS. MOENCH: Mr. Pochopin?

47
48 MR. POCHOPIN: Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

MS. MOENCH: Chair Leviton?

MR. LEVITON: Yes. Mr. Marmero will you swear in our professionals please?

MR. MARMERO: Absolutely Brian and Jen if you guys want to raise your right hands. Do you swear the testimony that you'll provide tonight will be the truth, the whole truth, and nothing but the truth?

MR. BOCCANFUSO: Yes I do.

MR. MARMERO: Okay.

MR. LEVITON: Thank you Mr. Marmero. Thank you Brian and thank you Jennifer. Okay tonight there are two applications on our agenda. One of them is a residential application and in an attempt to get you out of here in a timely fashion I'm going to move you to the front and the esteemed attorney for the other applicants Mr. Licata has graciously consented to allow us to do that. So I'm not sure which of you is Mr. Schoefeld, but if you would please come forward. I presume you Mr. Nemirosky? You are welcome as well sir.

MS. BEAHM: He should be comfortable.

MR. LEVITON: Alright.

MR. MARMERO: Just grab the mic and I'll get you sworn in sir. If you raise your right hand do you swear the testimony you'll provide tonight will be the truth, the whole truth, and nothing but the truth?

MR. SCHOEFELD: Yes I do.

MR. MARMERO: Okay and can you again state your name for the record please?

MR. SCHOEFELD: Scott Schoefeld.

MR. MARMERO: Okay.

MR. MARMERO: Do you plan on providing testimony sir?

MR. NEMIROSKY: ---

1 MR. MARMERO: We'll get you sworn in just in case you
2 do. Do you swear the testimony you provide tonight will be the
3 truth, the whole truth, and nothing but the truth?

4
5 MR. NEMIROSKY: Yes.

6
7 MR. MARMERO: Okay and again for the record what was
8 your name sir?

9
10 MR. NEMIROSKY: Michael Nemirosky.

11
12 MR. MARMERO: Okay.

13
14 MR. LEVITON: We've taken care of everything that we
15 can up to this point and we want to include Rob so. He is
16 running behind. We are going to take a five minute recess.
17 Well because Rob's not here. I just want to wait for Rob.

18
19 MS. BEAHM: This can be done in like five minutes.

20
21 MR. LEVITON: This could be done in five minutes, but
22 I want to wait for Robert so if you'll just pause the meeting.
23 That's good and we'll start up in five minutes, okay. Let the
24 record reflect that Mr. DiTota is present in these proceedings
25 and let us look to Mr. Schoefeld to tell the Board what brings
26 him here this evening.

27
28 MR. SCHOEFELD: Good evening everyone. Like I said my
29 name is Scott Schoefeld. I live at 8 Dogwood Court in
30 Manalapan. My wife and I have been there since 2005 when we
31 moved in. In 2007 we put a pool in which was very difficult to
32 do. Our property is quite large, but it's very limited due to
33 a number of easements and conservation area and wetlands. At
34 the time the township was very helpful in helping us almost
35 puzzle piece the pool into where it is. If you can see on the
36 map the fence line almost follows the conservation easement in
37 parallel identically so we kind of cherry-picked it nice and
38 carefully. Years later now we've just sold the home and during
39 the zoning survey we found that either through error of the
40 construction of the pool or whatever they're a little bit over
41 on the front line, but in fact you can't really see it from
42 the front line which is why it probably wasn't noticed. So
43 we're asking for a variance to complete the ZCCO so the buyer
44 can move in. I did take some pictures of it. There's no
45 gravening to the surroundings. It's aesthetically pleasing
46 this way, none of the neighbors mind. The buyer certainly
47 doesn't mind and prefers it this way and if you actually look
48 at it it actually is in the front behind the house. You can't

1 see the pool from the street at all. It's set back and down.
2 There's a nice tree line in front of it which blocks all of it
3 anyway as well as a retaining wall that keep the hill that was
4 there up. So we tried to leave everything the way it was other
5 than where the pool is. That's it, that's all I got.

6
7 MR. LEVITON: Thank you sir. Let's go out to the
8 Board and see what they think, Dan.

9
10 MR. POCHOPIN: So at the time you just didn't realize
11 you bought the house like that with the pool?

12
13 MR. SCHOEFELD: No, no we bought it in '05. We put
14 the pool in two years later.

15
16 MR. POCHOPIN: Okay so you just didn't think ---

17
18 MR. SCHOEFELD: Oh no we had all the permits. Yeah we
19 got all the permits at the time.

20
21 MR. POCHOPIN: Okay.

22
23 MR. SCHOEFELD: The township gave us. The township
24 was very helpful in helping us decide where to put the pool.
25 We couldn't put it in the backyard because the easements so we
26 chose the side spot that almost fits right in to where the
27 easement is except in the front of the house there's
28 apparently an easement which there really shouldn't be because
29 my understanding of an easement or conservation is protecting
30 wetlands in the back not the front, but that's probably why it
31 was missed by Sylvan whoever put the pool in.

32
33 MR. POCHOPIN: Oh okay.

34
35 MR. SCHOEFELD: So we did ---

36
37 MR. POCHOPIN: Misunderstanding okay.

38
39 MR. LEVITON: Mr. Schoefeld let's define specifically
40 what variance relief you need. You're here about the pool,
41 pavers, the fence, and the retaining wall.

42
43 MR. SCHOEFELD: The piece of it that sticks out in
44 front, yes.

45
46 MR. LEVITON: Okay Mr. Marmero is going to need the
47 encroachment quantified I believe.

48

1 MR. MARMERO: Yeah so at least from what I can see
2 from the plans and from the application it looks like like you
3 said it is the pool, it is the fence, it is the patio, and the
4 retaining wall. The required front yard setback is sixty feet.
5 It looks like the pool has a setback of fifty feet. The fence
6 has a setback of twenty-nine feet and the patio and the
7 retaining wall have a setback of thirty-eight feet and I think
8 those are the notes that Nancy had in the application.

9
10 MR. LEVITON: Yes I can see them here. You're good
11 with that?

12
13 MR. MARMERO: Yes.

14
15 MR. LEVITON: Okay. Basil?

16
17 MR. MARMERO: So those will be the four bulk
18 variances required.

19
20 MR. LEVITON: And we'll take them in one vote.

21
22 MR. MARMERO: Yes all the same standards so yes.

23
24 MR. LEVITON: Basil?

25
26 MR. MANTAGAS: Hi Mr. Schoefeld.

27
28 MR. SCHOEFELD: Hi.

29
30 MR. MANTAGAS: So where the problem begin and end if
31 the township gave you guidance they guided you the wrong way
32 you're saying?

33
34 MR. SCHOEFELD: I guess the township does, from my
35 understanding, is the COs have nothing to do with zoning.
36 Those are two completely separate things and in 2007 I guess
37 there was no process as an owner to do a zoning as part of
38 putting a pool in. It only came up now when we sold the house
39 because we have to get a ZCO.

40
41 MR. MANTAGAS: But you had to submit a plan where the
42 pool was going to go.

43
44 MR. SCHOEFELD: Yeah exactly. Yes we did submit a
45 plan and ---

46

1 MR. MANTAGAS: So did they follow that plan that was
2 submitted to the township or was it altered after it was
3 installed?

4
5 MR. SCHOEFELD: I don't put the pools in. I can only
6 assume that the pool provider that puts all the pools in this
7 area knows what to do and not do. I would never even have
8 thought they'd not do what they're supposed to. I don't see
9 why they would care if its X feet in one direction or X feet
10 in another.

11
12 MR. MANTAGAS: And the permit was closed? The
13 township ---

14
15 MR. SCHOEFELD: I believe so.

16
17 MR. MANTAGAS: Inspected it and closed the permit
18 with this?

19
20 MR. SCHOEFELD: Fifteen years later now and I've
21 never heard anything about it so I'm assuming yes.

22
23 MR. LEVITON: He has all of that. He's good on all
24 that.

25
26 MR. MANTAGAS: Okay thank you.

27
28 MR. LEVITON: Bob?

29
30 MR. GREGOWICZ: No questions.

31
32 MR. LEVITON: Josh?

33
34 MR. SHALIKAR: Yeah no questions.

35
36 MR. LEVITON: David?

37
38 MR. SCHERTZ: Did you put the shed in?

39
40 MR. SCHOEFELD: I put the shed. The shed's removed.

41
42 MR. SCHERTZ: You put the shed in?

43
44 MR. SCHOEFELD: Yeah.

45
46 MR. SCHERTZ: Okay.

47

1 MR. SCHOEFELD: The shed's now removed though. That's
2 not part of the variance though.

3
4 MR. SCHERTZ: I understand that, but the shed should
5 be fifteen feet from the rear.

6
7 MR. SCHOEFELD: From the what?

8
9 MS. MOENCH: The shed was moved and as a result after
10 today he has to submit a revised survey showing all the things
11 that are moved out of the conservation easement, but we didn't
12 have him do that until tonight because we weren't sure how the
13 Board was going to vote.

14
15 MR. SCHERTZ: Okay so the shed will be rectified
16 then.

17
18 MR. SCHOEFELD: The shed's already been rectified.

19
20 MR. SCHERTZ: Got you.

21
22 MR. SCHOEFELD: Yeah the shed's been removed.

23
24 MR. LEVITON: Bob?

25
26 MR. GREGOWICZ: Yeah just a quick question about the
27 in-ground pool. You did get permits. You said the inspectors
28 were down as the process was going and I do know when you put
29 the pool in they come at several steps as you're doing a pool.
30 So when the pool company does the mark outs or they do the
31 spray what the shape of the pool is that's usually when the
32 township comes and looks at it before you start digging, but
33 they didn't pick up on it? Because at that point all would
34 have had to was just adjust ten feet before you started
35 digging.

36
37 MR. SCHOEFELD: I agree yeah, but no no one said ---

38
39 MR. GREGOWICZ: And then when they came back and you
40 poured the concrete when you put the forms out, they come back
41 before everything that they didn't pick up on it then?

42
43 MR. SCHOEFELD: No sir.

44
45 MS. BEAHM: It wasn't built per plan. That's clear.
46 The plan the got approved by the town has the pool much, much
47 closer to the house.

48

1 MR. SCHOEFELD: Right.

2

3 MS. BEAHM: They've expanded the patio and pushed it
4 into the front yard. So they're here asking for forgiveness
5 basically.

6

7 MR. BOCCANFUSO: And to your point Mr. Gregowicz
8 there is no in Manalapan there is no as-built zoning
9 inspection or as-built review procedure. These things get
10 reviewed upfront by zoning and engineering. They're approved
11 and then there are inspections to insure compliance with the
12 building code, the construction code requirements, electrical
13 and what have you, but there is no requirement to submit an
14 as-built nor is there any inspection for setbacks or things
15 like that.

16

17 MS. MOENCH: Hence the ZCCO.

18

19 MR. BOCCANFUSO: It's expected that the contractor
20 and homeowner are responsible for that up until the point that
21 there is a ZCCO.

22

23 MR. GREGOWICZ: Okay no other questions.

24

25 MR. LEVITON: Thank you Bob. Terry?

26

27 MR. ROSENTHAL: I think because he did get the permit
28 which is due diligence in my book and I see that this is a
29 configuration, no hardship, so I have nothing further.

30

31 MR. LEVITON: Thank you Terry. I have to agree with
32 that. You can see that the pool abuts the conservation
33 easement line. He did have all of his permits and there is no
34 mechanism to insure that zoning regulations are compliant at
35 the time and so given that I am inclined to offer forgiveness
36 as well. Josh you have something further?

37

38 MR. SHALIKAR: Yeah was the fence vendor or person
39 who, installer, same as the pool or two companies?

40

41 MR. SCHOEFELD: No the fence was a different company.

42

43 MR. SHALIKAR: So that's another company that didn't
44 realize that they were reaching outside of the zoning
45 approval?

46

1 MR. SCHOEFELD: My guess would be the fence company
2 just followed what everyone else was doing, fruit from the
3 poisonous tree.

4
5 MR. SHALIKAR: Okay no further questions.

6
7 MR. LEVITON: Okay. Does anyone have anything
8 further? Then at this time I'll go out to the public and ask
9 if anyone in attendance wants to question Mr. Schoefeld or
10 address the board now would be the time. Seeing none I'll
11 close public and ask Mr. Marmero sir do you require anything
12 else?

13
14 MR. MARMERO: No I guess you already provided
15 testimony that the property is constrained with various
16 easements and wetlands. That's the difficulty you're facing?

17
18 MR. SCHOEFELD: Yeah I mean we take care of the whole
19 property of course, maintain it, taxes on that. I know there's
20 no monetary, but yeah we can't do anything else with it.

21
22 MR. MARMERO: Alright.

23
24 MR. SCHOEFELD: That's the only spot we can do
25 anything with is where it is.

26
27 MR. LEVITON: So how would you characterize the
28 position of your property relative to its constraints? Is it
29 skewed to one side or the other, the house?

30
31 MR. SCHOEFELD: Oh yeah greatly.

32
33 MR. LEVITON: So the house is skewed to which side?

34
35 MR. SCHOEFELD: It's skewed toward the ---

36
37 MR. LEVITON: You can just say left or right.

38
39 MR. SCHOEFELD: The left.

40
41 MR. LEVITON: Okay and then to the right how many
42 easements are to the right that necessitated the pool being
43 built exactly where it is?

44
45 MR. SCHOEFELD: To the right of the neighbor.

46
47 MR. LEVITON: Yes.

48

1 MR. SCHOEFELD: Yes the right is a neighbor.
2
3 MR. LEVITON: The right is the neighbor and ---
4
5 MR. SCHOEFELD: The left is the cul de sac all the
6 way ---
7
8 MR. LEVITON: Yes the easements are on your property
9 though?
10
11 MR. SCHOEFELD: Correct.
12
13 MR. LEVITON: How many?
14
15 MR. SCHOEFELD: Oh a lot.
16
17 MR. LEVITON: Okay we'll leave it at that.
18
19 MS. BEAHM: I just have a couple questions. The plans
20 you submitted to the town or the pool company submitted to the
21 town for permits took into consideration all these easements,
22 correct?
23
24 MR. SCHOEFELD: I believe so yeah because the ---
25
26 MR. LEVITON: They're on the survey.
27
28 MS. BEAHM: Correct and the pool, well the pool plan
29 that was submitted, that wasn't built took into consideration
30 all those easements?
31
32 MR. LEVITON: He said yes.
33
34 MS. BEAHM: Correct so what happened here is that
35 your contractor got happy with the concrete, put more concrete
36 than was initially proposed which pushed this into the setback
37 and now you're asking this board for forgiveness correct?
38
39 MR. SCHOEFELD: Yes.
40
41 MS. BEAHM: Okay so it's not a C1 hardship so I just
42 want to be very clear. This is a clear C2 variance. They have
43 a plan that can conform. The site is not that constrained that
44 you cannot comply. They could comply. It happens all the time.
45 They guy has extra concrete on the truck, whatever. I
46 understand it happens on a regular basis. This is an absolute
47 C2 variance so I just want to be very clear because they have
48 a plan that was submitted for approval that takes into

1 consideration all those easements and it's compliant. That's
2 not what they constructed.

3

4 MR. LEVITON: Mr. Schoefeld would you testify that
5 what you created on your property enhances the visual
6 aesthetics in the neighborhood?

7

8 MR. SCHOEFELD: Absolutely.

9

10 MR. LEVITON: That advances a purpose of the MLUL.
11 She begrudgingly shrugged her shoulders.

12

13 MS. BEAHM: That's not how I would characterize it.

14

15 MR. LEVITON: Well he did, I didn't.

16

17 MS. BEAHM: I understand that, but if he does it
18 conforming it would've been ---

19

20 MR. LEVITON: Yes be that as it may.

21

22 MR. SCHOEFELD: The new buyer surely loves it.

23

24 MS. BEAHM: What I'm saying is that how it was
25 constructed creates no negative impact. It's not advancing it
26 because building it the way it was initially permitted would
27 have had the same aesthetic with the same landscaping, etc.

28

29 MR. LEVITON: Its okay we'll ---

30

31 MS. BEAHM: And so what I'm saying.

32

33 MR. LEVITON: Yeah.

34

35 MS. BEAHM: You're requesting a C2 variance and
36 you're submitting that what you're proposing or is out there
37 is not creating any negative impact to the surrounding land
38 uses right?

39

40 MR. LEVITON: Well Jennifer let me just interrupt.
41 It's academic at this point and I would never ---

42

43 MS. BEAHM: It's not academic. They have to ---

44

45 MR. LEVITON: Go against.

46

47 MS. BEAHM: Anything negative on the record.

48

1 MR. LEVITON: Your thinking.

2

3 MS. BEAHM: So I'm trying to get ---

4

5 MR. LEVITON: You are, okay do that then.

6

7 MS. BEAHM: Right? So correct?

8

9 MR. SCHOEFELD: I'm not familiar with C2s and C1s.

10

11 MS. BEAHM: Well that's why I'm stepping you through
12 the process. So given the fact that there were improvements
13 built in the setback which requires relief would you say that
14 there's no negative impact on the surrounding land uses as a
15 result of the construction as done?

16

17 MR. SCHOEFELD: Yes there's no negative impact.

18

19 MS. BEAHM: Okay thank you that's all I needed to
20 get.

21

22 MR. LEVITON: You're welcome. Okay so he's going to
23 be looking for a C2 variance. Mr. Marmero do you have anything
24 further?

25

26 MR. MARMERO: No you guys heard the testimony. These
27 are the four bulk variances which we discussed earlier.
28 There's four encroachments into the front yard, sixty feet is
29 required. We have a pool that has fifty foot setback. We have
30 a fence that has a twenty-nine foot setback and a patio and a
31 retaining wall that needs to be thirty-eight foot setback and
32 you guys heard the testimony so at this point if so inclined
33 you would make a motion to approve those variances.

34

35 MS. MOENCH: Mr. Schoefeld I just want to confirm
36 that the fence, the retaining wall, and the shed that were
37 located within the easement have been removed, correct?

38

39 MR. SCHOEFELD: That is correct.

40

41 MS. MOENCH: Okay and then you'll provide a ---

42

43 MR. SCHOEFELD: I've already sent pictures to Nancy.
44 Well those were done weeks ago.

45

46 MS. MOENCH: Okay I just wanted to confirm it.

47

1 MR. SCHOEFELD: The shed's been destroyed and
2 removed. The fence has been destroyed and removed and the
3 retaining wall should be clear is really just a few retaining
4 bricks that were over the line that we moved off.

5
6 MS. MOENCH: Okay.

7
8 MR. SCHOEFELD: But yes those were all done when they
9 first asked.

10
11 MR. LEVITON: Thank you sir. Will someone.

12
13 MR. ROSENTHAL: Yeah I have a question.

14
15 MR. LEVITON: Sure.

16
17 MR. ROSENTHAL: You said earlier about the extra
18 concrete. Is the pool company or do they have any liability?

19
20 MS. BEAHM: No.

21
22 MR. ROSENTHAL: For violating the plan?

23
24 MS. BEAHM: Nope.

25
26 MR. ROSENTHAL: Or do they have to discuss it with
27 the owner what they're doing or they just do it?

28
29 MS. BEAHM: I mean a lot of times when they say hey I
30 have a couple extra drums on the truck let me just figure out
31 a better design and most people are like oh that sounds great
32 and its very common. I'm not saying you did anything
33 duplicitous.

34
35 MR. SCHOEFELD: I understand.

36
37 MS. BEAHM: Of that nature. It happens all the time,
38 but I just wanted to be very clear that this does not qualify
39 as a hardship. It's a C2 variance, but I do think that the
40 benefits of the added aesthetic and the lack of negative
41 impact outweigh any detriments so I think that they more than
42 qualify under a C2.

43
44 MR. ROSENTHAL: Okay thank you.

45
46 MR. LEVITON: Okay will someone make a motion?

47
48 MR. DITOTA: I'll make the motion.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

MR. LEVITON: Thank you Rob. Will someone second it?

MR. POCHOPIN: I'll second it.

MR. LEVITON: Thank you Dan.

MS. MOENCH: Dan's not eligible to vote.

MR. LEVITON: Okay will someone else?

MR. MANTAGAS: I'll second.

MR. LEVITON: Thank you Basil.

ROLL CALL

MS. MOENCH: Mr. DiTota?

MR. DITOTA: Yes.

MS. MOENCH: Mr. Gregowicz?

MR. GREGOWICZ: No.

MS. MOENCH: Mr. Rosenthal?

MR. ROSENTHAL: Yes.

MS. MOENCH: Mr. Schertz?

MR. SCHERTZ: Yes.

MS. MOENCH: Mr. Shalika?

MR. SHALIKAR: Yes.

MS. MOENCH: Mr. Mantagas?

MR. MANTAGAS: No.

MR. LEVITON: I guess it falls to me.

MS. MOENCH: I'm sorry. You seconded the motion to approve

MR. LEVITON: Okay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

MR. MANTAGAS: Oh I second the motion to approve?

MS. MOENCH: Correct.

MR. LEVITON: Yeah.

MR. MANTAGAS: Oh that was ---

MR. MARMERO: He's moving it along, but he can vote
no.

MS. MOENCH: Okay understood thank you.

MR. LEVITON: Okay now it falls to me.

MS. MOENCH: And okay we're done now.

MR. LEVITON: Until I vote. I haven't cast a vote.

MS. MOENCH: Okay Chair Leviton?

MR. LEVITON: Is it now three-three?

MR. MARMERO: I have four-two.

MS. MOENCH: Four two.

MR. LEVITON: Oh beautiful. Congratulations then.

MR. SCHOEFELD: Thank you.

MR. LEVITON: Good luck wherever you're going and
welcome to the neighborhood sir. Okay be well.

MR. SCHOEFELD: Thank you. Good night everybody.

MR. LEVITON: And now the board calls, you're
welcome, now the board calls All Smiles Dental and on behalf
of them Mr. Peter Licata. Welcome back Mr. Licata.

MR. LICATA: Thank you Mr. Chairman.

MR. LEVITON: This is the principal?

1 MR. LICATA: This is the principal. Good evening
2 everyone, Peter Licata on behalf of the applicant. I have with
3 me Dr. Vishali Aygari.

4
5 MS. AYGARI: Hi.

6
7 MR. LICATA: She is a principal of both the owner of
8 the property and she operates her dental practice out of this
9 property that she has done for a couple of decades. I also
10 have in the audience to the extent we do have specific
11 questions for him, the architect, who prepared the second
12 floor conversion plan and the proposed porch as well as the
13 parking lot layout and we have our professional planner John
14 Taikina.

15
16 MR. LEVITON: Welcome doctor.

17
18 MS. AYGARI: Thank you.

19
20 MR. LEVITON: You're welcome.

21
22 MR. MARMERO: Do you guys want to get everyone sworn
23 in at once Peter?

24
25 MR. LICATA: Sure that's a great idea.

26
27 MR. MARMERO: Okay we'll go ahead and get these two
28 sworn in now and then --- at a later time. Do you both want to
29 raise your right hand? Do you swear the testimony you'll
30 provide tonight will be the truth, the whole truth and nothing
31 but the truth?

32
33 MS. AYGARI: Yes.

34
35 MR. MARMERO: Okay and ma'am can you state your name
36 for the record please?

37
38 MS. AYGARI: Vishali Aygari.

39
40 MR. MARMERO: Okay. And sir?

41
42 MR. TAIKINA: John Taikina T-A-I-K-I-N-A.

43
44 MR. MARMERO: And John have you testified before this
45 board before?

46
47 MR. TAIKINA: I actually have not.

48

1 MR. MARMERO: It's up to you Mr. Chairman if you want
2 to illicit any background info from them.

3
4 MR. LEVITON: Well ---

5
6 MR. TAIKINA: Sure.

7
8 MR. LEVITON: The expert, Albert will.

9
10 MR. MARMERO: Sure could you provide to the board
11 your background, your reputation credentials please?

12
13 MR. TAIKINA: Certainly I completed my studies at
14 Rutgers University in the Edward Bloustein School of Planning
15 in October of 1992. At that time I was licensed as a
16 professional planner, license number 5298. My license remains
17 in good standing for the last thirty years. Over that time
18 I've been a private consultant as well as a director of
19 development for large real estate developers in the state of
20 New Jersey and around the country. Most of the time I do this.
21 You'll be my 107th board that I've appeared before in the state
22 of New Jersey providing testimony on behalf of applicants just
23 like Dr. Aygari just like All Smiles Dental.

24
25 MR. MARMERO: Okay.

26
27 MR. LEVITON: Thank you.

28
29 MR. MARMERO: --- going to be if he testified before
30 other boards. I think he's made that clear so it's up to you
31 Chair Leviton.

32
33 MR. LEVITON: Thank you Mr. Taikina. Yes the board
34 accepts his credentials.

35
36 MR. TAIKINA: Thank you.

37
38 MR. LICATA: John before you step down can we just
39 get the exhibits marked that you've helped us with?

40
41 MR. TAIKINA: Sure.

42
43 MR. LICATA: Just help the testimony roll.

44
45 MR. TAIKINA: A1 is the aerial photograph.

46
47 MR. LEVITON: I think we already have that in our
48 packet.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

MR. LICATA: Yeah.

MR. LEVITON: Okay, okay, okay.

MS. MOENCH: I marked it as A1.

MR. LEVITON: Okay I don't know the numbers.

MR. LICATA: --- and they have that too.

MR TAIKINA: I think everything is part of the packet
so.

MR. LICATA: Yeah.

MR. MARMERO: Yeah if it's part of the packet.

MR. LICATA: Yeah.

MR. MARMERO: No need to mark it then.

MR. LICATA: Great and I see Vinu has arrived. Again
we want to swear him in.

MR. MARMERO: Okay and we'll get your architect sworn
in now too. Sir if you want to raise your right hand. Do you
swear the testimony you'll provide tonight will be the truth,
the whole truth, and nothing but the truth? Okay can you state
your name for the record please sir?

MR. PATEL: Vinu V-I-N-U Patel P-A-T-E-L. I'm VP of
Architectural Design. The address is 200 Perrine Road Old
Bridge, New Jersey.

MR. MARMERO: Would you like some background Mr.
Chair?

MR. LEVITON: Please.

MR. MARMERO: Can you provide your education and
credentials to the board please? Give us some background on
your education and credentials please.

MR. PATEL: I have a Bachelor's degree in
architecture practicing architecture --- since 2001. We ---
lot of residents and --- graphics.

1 MR. MARMERO: And have you testified before planning
2 and zoning boards in the past before?

3
4 MR. PATEL: Oh yeah I have a problem with hearing.

5
6 MR. MARMERO: Sure have you testified before planning
7 and zoning boards in the past before?

8
9 MR. PATEL: Not board, but I have done in Edison.

10
11 MR. MARMERO: Okay so other boards, okay.

12
13 MR. LEVITON: We'll accept his credentials.

14
15 MR. MARMERO: Okay.

16
17 MR. LEVITON: Thank you Mr. Patel, Mr. Licata.

18
19 MR. LICATA: Thank you. Dr. when did you come to own
20 this property in what year?

21
22 MS. AYGARI: Own the property 2015.

23
24 MR. LICATA: In 2015 and how long have you been there
25 as a practice?

26
27 MS. AYGARI: Since 1999.

28
29 MR. LICATA: 1999 and you've operated your practice
30 every year?

31
32 MS. AYGARI: Yes.

33
34 MR. LICATA: Since that point in time?

35
36 MS. AYGARI: Yes.

37
38 MR. LICATA: Okay and just quickly in terms of your
39 neighbors, this is your property here in yellow?

40
41 MS. AYGARI: Yes.

42
43 MR. LICATA: And if you move in this direction is
44 this a doctor's office as well?

45
46 MS. AYGARI: Right that's the dermatologist office.
47 It's 26 right?

48

1 MR. LICATA: Yeah.
2
3 MS. AYGARI: Yeah dermatologist.
4
5 MR. LICATA: And then is that another medical office?
6
7 MS. BEAHM: Peter.
8
9 MS. AYGARI: Internal medicine.
10
11 MS. BEAHM: --- at all.
12
13 MR. LICATA: So Doctor I'm going to ask you to speak
14 into the microphone. So this is your property in yellow?
15
16 MS. AYGARI: Yes.
17
18 MR. LICATA: And are these two properties doctor's
19 offices?
20
21 MS. AYGARI: Right.
22
23 MR. LICATA: Okay and as we move these are these?
24
25 MS. AYGARI: Residential.
26
27 MR. LICATA: Those are residential?
28
29 MS. AYGARI: Yes.
30
31 MR. LICATA: Okay and also there's another office
32 complex over here?
33
34 MS. AYGARI: Right I think accountant and some
35 commercial offices and then further this side is again
36 residents.
37
38 MR. LICATA: It's residential?
39
40 MS. AYGARI: Yes.
41
42 MR. LICATA: Okay great thank you. When you first
43 came to start your practice at this location did you occupy
44 the entirety of the property or just part of it?
45
46 MS. AYGARI: No I was upstairs in the second floor
47 half of it.
48

1 MR. LICATA: Okay and what was the other half of the
2 second floor?

3
4 MS. AYGARI: It's the gastroenterologist, their
5 billing office.

6
7 MR. LICATA: Okay and what was the bottom floor used
8 as?

9
10 MS. AYGARI: Pediatrics office.

11
12 MR. LICATA: Okay.

13
14 MS. AYGARI: The whole floor.

15
16 MR. LICATA: And they had the whole floor?

17
18 MS. AYGARI: Yes.

19
20 MR. LICATA: And how long did they run that
21 pediatrics office? Until what year?

22
23 MS. AYGARI: Oh until 2015.

24
25 MR. LICATA: Okay and so your office, the gastro
26 billing office, and the pediatrics you all shared this
27 property and its parking area?

28
29 MS. AYGARI: That's right.

30
31 MR. LICATA: Is parking kind of difficult at that
32 time?

33
34 MS. AYGARI: Always.

35
36 MR. LICATA: Okay. You said they were there until
37 215, the pediatricians left 2015 or so?

38
39 MS. AYGARI: Yes.

40
41 MR. LICATA: Okay and what happened after they left?

42
43 MS. AYGARI: They left and then the following year or
44 so even the gastroenterologist left the office I just did the
45 construction in all of 2016 and I moved 2017 January to the
46 first floor and since then upstairs is open.

47

1 MR. LICATA: Okay so you renovated the first floor
2 and moved your office downstairs?

3
4 MS. AYGARI: Right yes.

5
6 MR. LICATA: Okay in your downstairs office in
7 addition to yourself, how many staff members do you have?

8
9 MS. AYGARI: Three, three people.

10
11 MR. LICATA: Three staff.

12
13 MS. AYGARI: I have two front and then one assistant.

14
15 MR. LICATA: Okay and the assistant is that a
16 hygienist or do they do other things? What do they do?

17
18 MS. AYGARI: No she just assists like with me with
19 procedures and cleaning the rooms and sterilization and then
20 hygienist is I have a part-time on a need basis. She comes
21 maybe once a week or twice a week sometimes.

22
23 MR. LICATA: Okay.

24
25 MS. AYGARI: Now I also do my own cleanings so I
26 don't have a full-time hygienist just only on a need basis.

27
28 MR. LICATA: So you do your own cleanings when the
29 patients come in?

30
31 MS. AYGARI: That's right.

32
33 MR. LICATA: Unless you schedule something with the
34 hygienist?

35
36 MS. AYGARI: That's right.

37
38 MR. LICATA: Okay and your patients are they seen by
39 appointment only?

40
41 MS. AYGARI: Yes.

42
43 MR. LICATA: Okay and what are the days and hours of
44 your operation?

45
46 MS. AYGARI: Mondays and Thursdays nine to six,
47 Tuesdays and Fridays nine to three and maybe once a month one

1 Saturday like eight to one or eight to two something like
2 that.

3

4 MR. LICATA: So you said eight in the morning until
5 like one or two o'clock in the afternoon?

6

7 MS. AYGARI: Yes.

8

9 MR. LICATA: And are you closed on Sundays?

10

11 MS. AYGARI: Yes.

12

13 MR. LICATA: Okay and given for instance on your
14 weekday for instance I'll take a Monday or a Thursday from
15 nine to six that's like a nine-hour workday right?

16

17 MS. AYGARI: Right.

18

19 MR. LICATA: Okay. How many patients do you see over
20 the course of that day and how do you schedule them?

21

22 MS. AYGARI: On a nine-hour probably around seven to
23 nine or ten at the most.

24

25 MR. LICATA: At the most?

26

27 MS. AYGARI: At the most. Usually like one hour a
28 patient or even sometimes even longer like usually I do longer
29 procedures sometimes two hours and even three hours straight,
30 but some half hour so on an average I would say seven to ten
31 patients on a nine-hour day.

32

33 MR. LICATA: So they're spread out over the course of
34 the day?

35

36 MS. AYGARI: Yes.

37

38 MR. LICATA: Do you kind of, are there times where
39 you say I'm going to have three people in the office at a
40 given time?

41

42 MS. AYGARI: It's really rare.

43

44 MR. LICATA: Very rare?

45

46 MS. AYGARI: Very rare.

47

48 MR. LICATA: Okay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

MS. AYGARI: If I have a hygienist then I may have three people, but that's really rare.

MR. LICATA: It's not your typical way?

MS. AYGARI: No.

MR. LICATA: Okay you mentioned back in about 2017 your second floor space became vacant.

MS. AYGARI: Right.

MR. LICATA: Okay. Did you try to market that space?

MS. AYGARI: Yes.

MR. LICATA: For office use?

MS. AYGARI: Yes.

MR. LICATA: Okay and did you try that since 2017?

MS. AYGARI: I did and it's been almost seven years, six, seven years and I still couldn't find anyone as of now.

MR. LICATA: And how did you try to market it? What did you do?

MS. AYGARI: In the beginning I used to do word of mouth and then dental equipment and supply reps and then friends, physicians, other dentists, family and friends just word of mouth and then later I hired real estate agent after a year or so. I tried through him too and it didn't work out. I didn't get anyone as of now.

MR. LICATA: And did you have that property listed on the multiple listing service with your broker?

MS. AYGARI: Yes.

MR. LICATA: Okay and still you weren't able to attract people?

MS. AYGARI: No.

1 MR. LICATA: Okay and so your second floor space at
2 that time it was still well it was an office. There were two
3 empty offices.

4
5 MS. AYGARI: Right yes.

6
7 MR. LICATA: Okay and each office was about nine
8 hundred square feet?

9
10 MS. AYGARI: Yes.

11
12 MR. LICATA: Okay and what was the rent that you were
13 asking per office?

14
15 MS. AYGARI: Per office probably around thousand to
16 fifteen hundred around fifteen hundred. I tried actually
17 initially maybe fifteen hundred per office then I even reduced
18 it to the whole thing as two thousand, the whole floor like
19 maybe a thousand dollars or something, but I still didn't ---

20
21 MR. LICATA: No takers?

22
23 MS. AYGARI: No.

24
25 MR. LICATA: Okay. You have a plan now to convert the
26 second floor to two residential units?

27
28 MS. AYGARI: Yes.

29
30 MR. LICATA: Okay and each unit would have two
31 bedrooms is that correct?

32
33 MS. AYGARI: Right.

34
35 MR. LICATA: Okay and you've looked at the parking in
36 the back and you've submitted a plan to the board that would
37 have thirteen spaces?

38
39 MS. AYGARI: Right.

40
41 MR. LICATA: And that would include an ADA-accessible
42 space so that would twelve unrestricted spaces.

43
44 MS. AYGARI: That's right yes.

45
46 MR. LICATA: Okay. Would you designate spaces for
47 your tenants and limit in their leases the number of spaces
48 that would be available to them?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

MS. AYGARI: Yes.

MR. LICATA: Okay and how many spaces would you give each unit?

MS. AYGARI: Two for each residential.

MR. LICATA: Per unit?

MS. AYGARI: Right.

MR. LICATA: Okay. Given the way you have practiced since 1999 and how you schedule your patients do you believe that the total of thirteen spaces again one being an ADA will be enough for you and your staff, your patients, and the residents?

MS. AYGARI: Definitely.

MR. LICATA: Okay and again when do you have your office hours?

MS. AYGARI: Mondays and Thursdays nine to six, Tuesdays and Fridays nine to three.

MR. LICATA: Nine to three, okay.

MS. AYGARI: Wednesdays I'm off.

MR. LICATA: Wednesdays you're off, Sundays you're off? And then Saturday mornings?

MS. AYGARI: Saturdays not even every Saturday usually once a month.

MR. LICATA: Okay once a month okay. Also as part of your application you're proposing a trash enclosure at the rear of the property?

MS. AYGARI: Yes yeah.

MR. LICATA: Okay and would you be designating the location of your tenants spots so that there was no difficulty in the trash being picked up from that enclosure?

MS. AYGARI: Yes, yeah.

1 MR. LICATA: Okay and are your trash pickups
2 occurring at a time before your office staff is even on the
3 premises?
4

5 MS. AYGARI: Yeah usually I never see the trash
6 people coming in so before even anyone --- is there they
7 already took care of it.
8

9 MR. LICATA: Okay and I imagine you currently have a
10 private service to remove your medical waste in a secure
11 manner?
12

13 MS. AYGARI: Yes yeah.
14

15 MR. LICATA: And you would continue that?
16

17 MS. AYGARI: Yeah.
18

19 MR. LICATA: Okay. I see that you've proposed a
20 covered porch for the existing rear entrance way.
21

22 MS. AYGARI: That's right.
23

24 MR. LICATA: Okay. Is there a need that's driving
25 your request for the porch?
26

27 MS. AYGARI: Yes every time rain, snow, anything all
28 the water seeps into the office and actually its damaging my
29 door and the floor and everything so I wanted a dry space. The
30 porch would help to create the dry space over there.
31

32 MR. LICATA: Okay.
33

34 MS. AYGARI: It's damaging the building the door in
35 front of the whole thing so.
36

37 MR. LICATA: So you'd be covering and enclosing an
38 existing walkway and entrance way? You're not creating like
39 new concrete at the back of your property?
40

41 MS. AYGARI: No.
42

43 MR. LICATA: Okay. When you would enter the rear to
44 the building would there be a separate entrance for your
45 office?
46

47 MS. AYGARI: Yes, yes.
48

1 MR. LICATA: Okay and that obviously has locks and
2 security?

3
4 MS. AYGARI: Yes.

5
6 MR. LICATA: Okay and then in the vestibule to the
7 right there's a stairwell that would go up.

8
9 MS. AYGARI: It's a separate entrance.

10
11 MR. LICATA: Separate.

12
13 MS. AYGARI: Upstairs.

14
15 MR. LICATA: For upstairs, okay. So the residents
16 once your office is locked they don't have entrance into your
17 office?

18
19 MS. AYGARI: No they don't.

20
21 MR. LICATA: Okay and if the board were to grant your
22 application would you be in addition to re-striping the
23 parking lot would you be repairing cracked pavement on the
24 sidewalk and filling in potholes?

25
26 MS. AYGARI: Absolutely actually we have been waiting
27 because it's a common driveway for the dermatologist office
28 and mine so we have been planning since last year or we kind
29 of even have the codes and everything also, but I just told
30 them I wanted to wait until I present to the board and if I do
31 get accordingly I just needed to do it after. I wanted to take
32 care of it after so we have the codes and everything ready
33 also. I'm just waiting.

34
35 MR. LICATA: You're waiting?

36
37 MS. AYGARI: Right.

38
39 MR. LICATA: Okay. Thank you Doctor at this point I
40 would make this witness available to the board's professionals
41 and the board.

42
43 MR. LEVITON: Thank you Dr. Nandiwanda. Did I say
44 that correctly?

45
46 MS. AYGARI: Aygari it used to be Nandiwanda.

47
48 MR. LEVITON: Help me pronounce your name.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

MS. AYGARI: A-Y-G-A-R-I Aygari.

MR. LEVITON: Aygari.

MS. AYGARI: Yes.

MR. LEVITON: Thank you Dr. Aygari. Professionals do you have any questions?

MS. BEAHM: Nothing from me.

MR. BOCCANFUSO: Just one question Mr. Chair. Thank you Doctor. On the revised architectural plans that were submitted on the lower right corner of sheet two it's a key plan. I believe what I assume is the existing floor plan of the dental practice is that correct?

MR. LICATA: We're going to bring it over to the doctor so she can see it. This here.

MR. BOCCANFUSO: Yeah.

MS. AYGARI: Right yes.

MR. BOCCANFUSO: Okay so that shows what appears to be six dental chairs maybe one other service area perhaps two. Is there a reason that you have that many treatment areas when it's just you and a part-time hygienist?

MS. AYGARI: Yes in the beginning I basically thought about different things and I didn't want to do it so I just --

MR. BOCCANFUSO: On a typical day, let's call it a busy day even, how many patients would you typically have at your practice at one time?

MS. AYGARI: Three maybe.

MR. BOCCANFUSO: So maybe one or two in the chair ---

MS. AYGARI: One or two and then at the most year.

MR. BOCCANFUSO: Okay got you similar to my dentist. Okay great and then as far as the improvements to the parking area I know you agreed to do those as a condition of approval

1 if granted. Can I presume that you would be willing or have
2 your architect be willing to add a note to the plan indicating
3 that that work would be done as a condition of approval if it
4 is approved?

5
6 MS. AYGARI: Sure yes.

7
8 MR. BOCCANFUSO: Okay great that's all I have Mr.
9 Chairman thank you.

10
11 MR. LEVITON: Thank you Brian.

12
13 MR. LICATA: Thank you.

14
15 MR. LEVITON: Okay Doctor thank you so much.

16
17 MR. LICATA: Do we need to make her open to the
18 public? There's nobody here okay very good. I do have our
19 architect here to the extent the board may want to hear from
20 him. His testimony really would be just limited to the number
21 of units, the number of bedrooms, and their square footage
22 which the doctor has already spoken to so.

23
24 MR. LEVITON: Well I'll ask the board. Does anybody
25 feel a need to? They don't. I see a lot of.

26
27 MR. BOCCANFUSO: Mr. Chairman.

28
29 MR. LEVITON: Yes.

30
31 MR. BOCCANFUSO: The only thing I would ask there
32 were some specific requests in our report as far as additional
33 information, calculations to clarify, etc. Some of those have
34 been addressed with the re-submission others remain
35 outstanding. Pete if you can agree on behalf of the architect
36 that those will be corrected during resolution applicance
37 that'll be fine.

38
39 MR. LICATA: We so confirm.

40
41 MR. BOCCANFUSO: Great.

42
43 MR. LEVITON: Well that was easy. There's no need for
44 you to talk to Mr. Patel.

45
46 MR. LICATA: Thank you.

47

1 MR. BOCCANFUSO: Nothing personal I'm sure he's a
2 fine man.

3
4 MR. LEVITON: And --- imply okay.

5
6 MR. LICATA: Thank you Doctor you can sit there thank
7 you very much.

8
9 MS. AYGARI: I can?

10
11 MR. LICATA: You can sit down yes. We're going to
12 make room for John Taikina our professional planner.

13
14 MR. LEVITON: Okay.

15
16 MR. LICATA: Exceedingly brief.

17
18 MR. LEVITON: Mr. Taikina you've already been sworn
19 in?

20
21 MR. TAIKINA: Yes I have thank you.

22
23 MR. LEVITON: Good.

24
25 MR. TAIKINA: So I'm here just briefly to talk about
26 the proofs required for the use variance. The subject property
27 is located at the intersection referring to A1 of the OP zone
28 is to the right that incurs kind of east end of Briar Hill
29 Road and then at our property line and continuing down to the
30 south everything to the west of that is in the R20 zone and
31 then the larger office building behind us is actually in the
32 OP3 district. They're actually on Route 9 and that would be
33 consistent with the larger properties on Route 9 and for
34 example 200-198 Route 9 at the corner of Taylors Mills Road
35 those types of properties. So we're right on the boundary of
36 those respective zones and Doctor Aygari already described
37 with Peter our surrounding uses. They are consistent with the
38 current zoning. So we are seeking a D1 variance as you know
39 under the Medici case in South Plainfield and more recently
40 Price v. Himeji up in Union City we need to show a few things.
41 One is the site's particularly suited for the use. Two is
42 proposed use furthers some purposes of zoning and the
43 municipal land use law. Three if we reconcile that the
44 governing body didn't zone use this way and then finally the
45 negative criteria. Does the proposal substantially impair the
46 intended purpose of the zone plan and the master plan and can
47 the use be granted without substantial detriment to the public
48 good? So they're the specific findings. In terms of particular

1 suitability this site is located at the edge of the OP zone.
2 It is not smack in the middle and that's exactly consistent
3 with the Price v. Himeji case where the court's found that
4 something that's on the end especially when it's going in
5 between two zones can serve as a type of transitional use
6 between the two. We believe this will provide a lower impact
7 second floor use which benefits each zone so we'll have less
8 impact and parking impacts to the adjacent office users that
9 kind of share that parking lot to the north of all the uses on
10 the northside of the street and it also is kind of a lower
11 impact use for the residents to the west. The OP in this area
12 is very, very unique and importantly without additional
13 improvements that are going to impact and change the character
14 of this street, the OP in this area is a very unique area. It
15 looks like a very nice residential street even though it has
16 residentially-scaled office buildings on it and then it
17 transitions right away into the residential zone and it all
18 looks very nice and everything is very well kept and then
19 finally the site itself benefits from walk to transit New York
20 bus on Route 9, opening the housing units to a wider range of
21 residents including those who may be transit dependent and
22 that's an attractive point for any future resident. In terms
23 of their positive criteria the special reasons, these come
24 directly from the purpose of the municipal land use law. I
25 think there are three. Purpose G to provide sufficient space
26 and appropriate location for a variety of residential uses
27 according to their respective environmental requirements to
28 meet the needs of New Jersey citizens. H to encourage the
29 location and design of transportation routes which will
30 promote the freeflow of traffic while discouraging location of
31 such facilities and routes would result in congestion or
32 blight and M to encourage coordination of the various public
33 and private procedures and activities shaping land development
34 with the view of lessening the cost of such development and a
35 more efficient use of the land. We heard that there is
36 sufficient space here to provide for these two units. They're
37 also very modest units. They're two bedroom, but the second
38 bedroom is very, very small and again these are going to be
39 very modest units. I would expect that they will have a very,
40 very low occupancy. Typically one or maybe two people even in
41 a two-bedroom unit especially with more work from home these
42 days. Given this space's vacant nature and location we think
43 this is an efficient use to reuse this space that has not been
44 able to be used for its office intention. The traffic and
45 parking for the proposed uses will be much less than what is
46 required by the offices and you heard specific testimony from
47 Dr. Aygari that her practice is not a factory dental practice.
48 It's a very small, family-oriented, individual care setting

1 with a very low volume and then finally the reuse of this
2 space for residential is an efficient use of land and very
3 cost-effective way to create housing in a community with very,
4 very few impacts. No additional improvements needed really
5 utilized the existing infrastructure. In terms of the Medici
6 criteria this is why did we zone it this way? This type of
7 residential reuse of office space is becoming very, very
8 common throughout New Jersey and really throughout the country
9 with what has happened over the last three years. It's just
10 accelerating. The focus has been on larger office spaces
11 really because of the fiscal impact on municipalities where
12 these empty offices are saying listen I can't pay these high
13 taxes. You have to zone me for something else, but also with
14 the MD class A space that you see the first thing that class B
15 or C tenants do is flee to that space so they can get a better
16 deal and get a better office space and the ones that are
17 really impacted and they're going to have to happen are these
18 more modest office facilities. So we think that this is
19 something that is coming. Some towns are starting to address
20 it in different ways. We think that again it's something
21 that's going to be coming here to Manalapan really all of New
22 Jersey in the future. It's expected in the industry that all
23 type of office users and owners are going to be looking for a
24 broadening of these replacement uses and then finally in terms
25 of the negative criteria the first it shall not be granted if
26 it's a substantial detriment to public good. These are two
27 modest residential units. They're not obnoxious use. There's
28 no emissions, no odors. They're going to have lesser impacts
29 in terms of traffic and parking and activity. There's
30 certainly going to be really no perceptible change to the
31 area. It's going to be a very quiet use. Certainly no
32 detriment and then it should not be granted if --- the intent
33 and purpose of the zone plan and the master plan. The OP
34 district doesn't have a stated purpose. The use is provide for
35 a variety of business uses, offices of all types, day centers
36 and banks. They're predominantly low impact uses and this kind
37 of just floats into that. It is certainly not impairing the
38 intent of the OP district. Likewise the R20 doesn't have a
39 purpose, but provides for moderate density, single-family
40 homes on half acre lots. The addition of these two residences
41 on the adjacent office again is not going to have any negative
42 impact. It's not going to impair the residential plan that
43 there's two additional residences next door and that's a
44 standard. Is there a substantial impairment to the zone plan?
45 --- for examination continue the goals to manage Route 9
46 traffic, preserve open space, coordinate transportation
47 improvements, this limited residential use in the Route 9
48 corridor doesn't change those goals. In terms of the variances

1 that are requested they can be subsued into the use under
2 Price v. Himeji there are really two. One is the parking and I
3 think it does go directly to the use. It's a very modest
4 office, very modest office use. The parking for the residences
5 is substantially lower than the existing office so you've
6 heard substantial testimony from Dr. Aygari that the parking
7 would be adequate. So we think that the benefits of that
8 certainly outweigh any detriments of needing additional
9 parking. The site has coverage and space and all those things
10 to add parking, but it'll be in the front yard and it would
11 dramatically change the character of that area and I think
12 that granting the variances is far more preferable than having
13 a compliant condition with additional parking on the site. It
14 is a much better land use alternative and then finally there's
15 a fifty foot buffer required between an office use and a
16 residential use. This has existed in this way for more than
17 forty years and with about ten feet provided we're just
18 continuing that. We think that we're decreasing the activity
19 on the site and that's a better planning alternative just
20 continue it as it is without any substantial changes and then
21 finally some minor design exceptions for spaces and how far
22 exactly are the dimensions between the parking aisles. We
23 think for this low impact, low activity parking lot in the
24 back that keeping the existing condition is the best condition
25 and really will have the most minimal impact on everyone
26 involved, neighbors included so I believe the board has the
27 ability to grant the relief requested and I'm available for
28 your questions.

29

30 MR. LICATA: Thank you John.

31

32 MR. LEVITON: Just a second. Albert do you concur
33 that subsuming the bulk relief that they need would be the way
34 to go?

35

36 MR. MARMERO: Yeah I mean if that's the argument
37 they're making I mean that is a legally cognizable argument.
38 In this situation they are changing the use so generally the
39 argument there is that by changing the use any bulk variances
40 that come along are tied to that. Here the parking certainly
41 would be. The fifty foot buffer I think your testimony really
42 was its existed that way for forty-plus years really so it's
43 not necessarily a result of the use variance. It's really more
44 of an existing, non-conforming type situation.

45

46 MR. TAIKINA: Agreed.

47

1 MR. LEVITON: Very good then before we go out to the
2 board let's go to Ms. Beahm.

3
4 MS. BEAHM: So I take an exception to the request for
5 the variance. I don't disagree that two residential units is a
6 far less intense use than an additional medical office. I do
7 take exception to a couple of the goals of zoning that you're
8 advancing. I agree sufficient space and appropriate location
9 and efficient use of land a hundred percent. I don't agree
10 freeflow this does nothing with respect to the freeflow of
11 traffic. You're not making any site improvements. You're not
12 doing anything to the road networks so there's no improvement
13 or change to the traffic flow so.

14
15 MR. TAIKINA: Agreed I was just that it was a low.

16
17 MS. BEAHM: A less intense.

18
19 MR. TAIKINA: A lesser that's all.

20
21 MS. BEAHM: I totally agree with that and then I also
22 have an issue with the public/private partnership. There's no
23 public/private partnership involved here. There's no public
24 partnership at all, but luckily you only need one.

25
26 MR. LEVITON: He has.

27
28 MS. BEAHM: For zoning and he has two so I think
29 they've fully met that burden. I wholeheartedly agree that the
30 negative criteria is more than met. I think this is a far less
31 intense use parking wise, traffic, trip distribution, and I do
32 think that they kind of marry each other where the residential
33 use parking demand is kind of opposite what you would expect
34 from the medical use and I think that the medical testimony
35 that was provided this is not like a pediatrician's office
36 where you're expecting one kid every eight minutes. This is a
37 very specialized dental practice that has limited clientele,
38 one dentist and a hygienist, limited patients so I think that
39 the positive of providing for a viable business it is a
40 transition and I think Mr. Taikina accurately depicted that
41 this located is on the edge of the zoning district so while it
42 doesn't a hundred percent meet what the zone requires we're
43 transitioning into a residential district so I think this is a
44 perfectly legitimate transition and I take no exception to the
45 request. I also agree with the testimony and while yes the
46 bulk variances are subsumed within the use, but I do think yes
47 they could comply with the parking however I agree with Mr.
48 Taikina's testimony that putting parking spaces in the front

1 yard here would be a negative impact and I think the testimony
2 that there's a maximum three, maybe four patients on site plus
3 their employees, plus the residential I think there's adequate
4 parking in the back so I would recommend that the board acts
5 in the affirmative on that relief. So I take no exception to
6 the presentation as proposed.

7

8 MR. LEVITON: Jennifer what would happen if Dr.
9 Aygari sold her practice in thirty years? She had wonderful
10 tenants that paid their rent on time for the entirement of
11 time and she just wanted to live the good life and a new
12 practice came in and they actually turned it into a factory.
13 Do you have concerns about the parking?

14

15 MS. BEAHM: I do.

16

17 MR. LEVITON: On the other side is there sufficient
18 or ample space to provide for what's there currently?

19

20 MS. BEAHM: I mean it's not a gigantic space let's be
21 honest. So the likelihood that it's going to turn into a mega
22 factory is unlikely. Mr. Licata would you be amendable to a
23 condition put in the resolution that should this existing
24 dental practice and another medical office come in that they
25 would come to the township to evaluate the adequacy of the
26 parking and if at that point in time the intensity of that
27 medical use is in excess of what is there existing that would
28 be perhaps a D2 variance and that would have to come back to
29 the board for justification?

30

31 MR. LICATA: I would concur and concede that it is in
32 effect a limitation on the approval itself.

33

34 MS. BEAHM: It's based upon the testimony with
35 respect to the actual utilization of the space correct Al?

36

37 MR. MARMERO: Yeah.

38

39 MR. LICATA: And I agree completely and expect that
40 the land use officer would make that evaluation.

41

42 MR. MARMERO: Yeah I think you would be deficient in
43 the parking if you switched and you'd have to come here for
44 variance relief, yes.

45

46 MR. LEVITON: Then I have no concerns and we'll go
47 out and see what the board thinks. Danny?

48

1 MR. POCHOPIN: Yes thank you Mr. Chairman. So thanks
2 for clarifying everything and very thorough. I have some
3 concerns with the --- maybe it's just a minor thing with the
4 means of egress. It looks like the door and the stairwell are
5 A1 print. It looks like it's coming in the door it should be
6 swinging out right? Means of egress when you go out if you
7 look on the print out. See where the door swings? One's
8 swinging the correct way and the other one is not.

9
10 MR. LICATA: I guess that would be a question for our
11 architect. Vinu could you come on up? I'm sorry sir could you
12 ---

13
14 MR. POCHOPIN: So the means of egress sir. So you see
15 this door here that swings out. When someone is trying to exit
16 for --- for means of egress.

17
18 MR. LEVITON: Hold on a second.

19
20 MR. PATEL: ---

21
22 MR. LEVITON: Mr. Patel take the microphone.

23
24 MR. PATEL: Definitely we're going to swing that door
25 into the apartment.

26
27 MR. POCHOPIN: Right so actually that would have to
28 swing out if it's there because people leaving have to go out.

29
30 MR. PATEL: That is true.

31
32 MR. POCHOPIN: The means of egress usually one push
33 and you go out nothing coming in because if there's a fire.
34 That one is swinging correct, that's swinging out. This one's
35 swinging in.

36
37 MR. PATEL: Yeah I mean I can say back and inside and
38 the door outside, yeah it's possible yes.

39
40 MR. POCHOPIN: Yeah it was just a minor thing.

41
42 MR. PATEL: There's a small hallway become a little
43 bit smaller than that.

44
45 MR. POCHOPIN: And that was my other concern. The
46 small hallway on your last print you have a lot more storage
47 than your downstairs if you look at the last print. Hopefully
48 you won't be adding any storage since you've cut down and have

1 less exam rooms, etc. that you'll maintain the storage area
2 and stuff like that because you're changing your room use so
3 to speak right?

4

5 MS. AYGARI: ---

6

7 MR. POCHOPIN: This existing plan here we see all
8 these storage rooms you have here.

9

10 MR. PATEL: Now this actually this was the floor
11 we're converting into the apartment.

12

13 MR. POCHOPIN: For this one yeah, but I'm just saying
14 so now that you don't have that anymore.

15

16 MR. PATEL: We don't have that anymore.

17

18 MR. POCHOPIN: When you have the new one.

19

20 MR. LEVITON: Just a minute, just a minute, just a
21 muinute, just a minute, just a minute. If it's a conversation
22 that you're having amongst yourselves it doesn't serve the
23 purpose of the hearing.

24

25 MR. PATEL: I'm sorry.

26

27 MR. LEVITON: It's okay. He needs to make his
28 questions clear. He needs to let posterity know what it is
29 that he's referring to so that when the proceedings here this
30 evening are transcribed they'll be clear for anyone in the
31 public who requests the record and then Mr. Patel you'll need
32 to speak clearly and slowly so that your answers on record and
33 Dr. Aygari if you're going to speak you'll need to take the
34 mic from him.

35

36 MR. PATEL: Okay.

37

38 MR. LEVITON: So Mr. Pochopin I'll go to you.

39

40 MR. POCHOPIN: I'm sorry.

41

42 MR. LEVITON: It's okay.

43

44 MR. POCHOPIN: So with the less stringent use group
45 that you're going for now from a healthcare facility NAC517
46 you don't want the residential use you're not?

47

48 MR. PATEL: Yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

MR. POCHOPIN: The tenants is what I'm worried about now for safety. Is there anesthetizing gases downstairs that will be below them just local you'll use?

MR. LICATA: --- the doctor needs to have a microphone for the answer.

MS. AYGARI: No I do not have any gases anymore.

MR. POCHOPIN: Very good because then that's a whole nother you need some gas alarms and so forth.

MS. AYGARI: Right no I don't.

MR. POCHOPIN: --- all that stuff that's all electrical code so I'm sure you guys know that.

MR. LICATA: And we would stipulate to beating the requirements to the construction code for the actual construction permits.

MR. POCHOPIN: Very good, very good. So those are the concerns I had even though you're going less stringent I just wanted to make sure that the new residents above are safe after hours with any equipment that you might have that could be accidentally left on.

MR. LICATA: Understood okay.

MR. LEVITON: Thank you Mr. Pochopin.

MR. POCHOPIN: Yeah we're good.

MR. LEVITON: Basil?

MR. MANTAGAS: Now these two apartments going to go on the open market for rent? They're not going to be for family members, rentals?

MS. AYGARI: Yes.

MR. MANTAGAS: Not that it really generally matters, but just rental apartments.

MS. AYGARI: Yeah.

MR. MANTAGAS: Okay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

MS. AYGARI: Yeah.

MR. MANTAGAS: Great thank you.

MR. LEVITON: And Rob?

MR. DITOTA: If Jen is happy I'm happy.

MR. LEVITON: Smart man. Joshua?

MR. SHALIKAR: No questions great testimony thank
you.

MR. LEVITON: David?

MR. SCHERTZ: No questions at this time.

MR. LEVITON: Mr. Gregowicz?

MR. GREGOWICZ: No questions.

MR. LEVITON: And Mr. Rosenthal?

MR. ROSENTHAL: Yeah I just have one question for
clarification. The structures to the south of Briar Hill did
you say they were residential?

MR. LEVITON: He probably means the west.

MR. TAIKINA: Yes it is to the west, but yes directly
across the street.

MR. ROSENTHAL: Okay so I'm looking at the north
pointing up.

MS. BEAHM: Yeah.

MR. ROSENTHAL: Okay.

MR. TAIKINA: Directly across the street.

MR. ROSENTHAL: Yes across the street.

MR. TAIKINA: Is commercial, it's an accountant's
office.

MR. ROSENTHAL: Okay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

MR. LEVITON: Brian?

MR. BOCCANFUSO: Thank you Mr. Chairman just a couple of things I want to go over briefly. There was a comment in our report relative to the EV parking requirements. I know there was an e-mail I'm not sure if it was submitted just to me or to the board as well. I think Mr. Taikina indicated that in pursuant to the model ordinance in parking areas less than twenty-five spaces it's not applicable, however that exception is only applicable to retail specifically sites retailers not doctors. Now the ordinance, statewide ordinance, also speaks to preliminary site plan approval where we only have minor site plan approval here. I haven't seen this issue before. This is somewhat new requirement so unless Mr. Licata or Mr. Taikina unless you have anything further to add to it I would be content to table it for now as long as the applicant is willing to agree to comply with the EV space requirements if they are applicable.

MR. LEVITON: So you're not going to ask them to come back? You're going to grant them final site approval and use variance?

MR. BOCCANFUSO: They're seeking minor site plan approval and use variance. The statewide model ordinance which is kind of a misnomer I don't know how you could have statewide ordinance, but that's what the state has decided to call it. It specifically references preliminary site plan approval where this is a minor not a preliminary. Preliminary in my view tends to imply major.

MR. LEVITON: So you have a problem with the nomenclature and if they agree to it we're going to give them everything that they want tonight and then they're going to go away and be happy?

MR. BOCCANFUSO: What I'm saying is if it is determined that this EV, it's the electric vehicle I'm sorry for using the term EV, just to be clear the electric vehicle charging station requirements. The state sometime ago adopted a what I think is more of a mandate that every municipality has to employ these measures and these requirements there are certain requirements on site plans, but I think it's only applicable to major site plans.

MR. LEVITON: I see so it doesn't even apply to them.

1 MR. BOCCANFUSO: I don't think so.

2

3 MS. BEAHM: My experience has been I agree with
4 Brian. My experience has been that it's only applicable to
5 major site plan applications, but Mr. Licata if it's
6 determined at some point that it's required would the
7 applicant be willing to make the spaces made ready?

8

9 MR. LICATA: They would have to.

10

11 MS. BEAHM: Okay.

12

13 MR. LICATA: It would be the law.

14

15 MR. BOCCANFUSO: And that's fine. I would be content
16 with that. We don't need to and I think we're all seeing it
17 the same way. We don't think it's an issue, but in an
18 abundance of caution if the applicant's willing to agree that
19 they will comply because they have to I think they'll address
20 it.

21

22 MR. LEVITON: Mr. Marmero what are your thoughts?

23

24 MR. MARMERO: Yeah that's sufficient and I think like
25 Mr. Licata said if it's something legally they have to comply
26 with they have to comply with no matter what you put as a
27 condition, but we'll put it as a condition anyway just add it.

28

29 MR. LEVITON: Do you want to compel them to stipulate
30 such?

31

32 MR. MARMERO: No I think our professionals make it
33 clear that they don't think it's required for a site plan of
34 this magnitude, but if the state at some later time says it is
35 then they'll have to comply.

36

37 MR. LEVITON: Good stuff anything else Brian?

38

39 MR. BOCCANFUSO: The only other thing I have we had
40 recommended and I think Jen's office did as well a masonry
41 enclosure be provided for the refuse. I think the plan calls
42 it fencing. Can you agree on behalf of your client to do
43 masonry if approved?

44

45 MR. LICATA: So we'll do a masonry enclosure. They
46 want it to be a masonry enclosure because it's more permanent
47 and secure than fences which tend to degrade over time. I
48 heard a yes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

MR. BOCCANFUSO: Thank you. Aside from that nothing else to add just with regard to the refuse is that a private hauler that's going to take that away?

MR. LICATA: Do you have a private hauler?

MR. BOCCANFUSO: Private trash collection?

MS. AYGARI: Yes.

MR. LICATA: Yes.

MR. BOCCANFUSO: Okay great thank you that's it.

MS. BEAHM: I'm good.

MR. MARMERO: Okay so from a legal standpoint obviously you'll open up to the public here anyway, but from a legal standpoint so you're dealing with two separate use variances which are kind of one in the same really. You have the use variance relief to permit the residential use and then that also necessitates the use variance to permit the mix of the residential and medical use and then you have a couple of bulk variances here as well that the applicant has addressed. You have the bulk variance for parking. Obviously this site will be underparked, but you heard testimony as to why that might fit this site and then you have the fifty foot buffer requirement as well which is a bulk variance and then we heard some discussion about some design waivers mainly the size of the parking spaces and I think that was really it and then we heard some conditions that were discussed as well. The applicant has agreed if approved to restripe and repair the parking lot and then per Brian's request we'll add a note to the plan indicating as such. We heard some discussion that if there are new medical offices that come in and replace the residential at some point it necessitate the need for more parking that zoning review will be required. We can put that in the resolution, but I think that would be required by law anyway.

MR. LICATA: Yes.

MR. MARMERO: And then we heard some discussion of the EV parking requirement where again if it's required by law that would be something we'd have to comply with, but it's not something we're holding you to because this is just a minor

1 site plan and then finally we heard testimony that you would
2 agree to the masonry enclosure for the refuse area.

3

4 MR. LICATA: Yes correct.

5

6 MR. LEVITON: Thank you Mr. Marmero. Let me go out to
7 the public and see if there's anyone who wants to address us
8 some of the testimony that was entered onto the record this
9 evening. Seeing none I'll close public. Let me check with the
10 board see if they have any remaining issues. They do not. Mr.
11 Licata do you require anything further?

12

13 MR. LICATA: No I thank the board for its time and
14 consideration and submit to your deliberation.

15

16 MR. LEVITON: Alright then. Will someone make a
17 motion?

18

19 MR. GREGOWICZ: I'll make the motion to approve the
20 application along with the conditions raised by the board
21 planner and board engineer.

22

23 MR. LEVITON: Thank you Bob.

24

25 MR. SHALIKAR: I'll second that.

26

27 MR. LEVITON: Thank you Joshua.

28

29 **ROLL CALL**

30

31 MS. MOENCH: Mr. DiTota?

32

33 MR. DITOTA: Yes.

34

35 MS. MOENCH: Mr. Gregowicz?

36

37 MR. GREGOWICZ: Yes.

38

39 MS. MOENCH: Mr. Rosenthal?

40

41 MR. ROSENTHAL: Yes.

42

43 MS. MOENCH: Mr. Schertz?

44

45 MR. SCHERTZ: Yes.

46

47 MS. MOENCH: Mr. Shalikar?

48

1 MR. SHALIKAR: Yes.

2

3 MS. MOENCH: Mr. Mantagas?

4

5 MR. MANTAGAS: Yes.

6

7 MS. MOENCH: Chair Leviton?

8

9 MR. LEVITON: Congratulations Dr. Aygari. Good luck
10 to you and many years of success.

11

12 MR. LICATA: Thank you everybody. Have a good
13 evening.

14

15 MR. LEVITON: Thank you Mr. Licata. Thank you Mr.
16 Taikina. Thank you board professionals and thank you board. At
17 this time I'm going to open up to the public to see if there's
18 anyone who wants to address the board regarding non-agenda
19 items. Seeing none I will close public and I'll ask Mr.
20 Marmero is there anything to update the board on regarding
21 litigation?

22

23 MR. MARMERO: Yeah the only update is this week I
24 filed a motion to dismiss which I will distribute to all of
25 you. Again as we discussed early on I'm asking to be dismissed
26 because really you guys provided a zoning interpretation. It's
27 something that the judge can look at de novo meaning the judge
28 can look at on his own and just make a decision. So
29 essentially there really is no need to overturn what you've
30 done. I've discussed that with plaintiff's counsel and they're
31 close to agreeing and may actually issue an order to release
32 us from the case. The only reason they're hesitant to do so is
33 because they filed suit based on your resolution. The planning
34 board never issued a resolution so the suit is based on your
35 action although their beef is really with the planning board.
36 If we can figure out some way to rectify that they have agreed
37 to just consent to us being dismissed from the suit so I'll
38 continue to work on that and hopefully that's the case.

39

40 MR. LEVITON: Outstanding.

41

42 MR. MARMERO: And the HN yes, that's accurate, but
43 they hate you more on your planning board skills.

44

45 MS. BEAHM: I guess.

46

47 MR. LEVITON: And with that will someone move to
48 adjourn?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

MR. MANTAGAS: So moved.

MR. LEVITON: Thank you Basil and good night
everyone.
