

**HARDING TOWNSHIP BOARD OF ADJUSTMENT  
MINUTES  
DECEMBER 20, 2018**

**CALL TO ORDER AND STATEMENT OF COMPLIANCE**

The Board of Adjustment Chair, Mike Flanagan, called the meeting of the Board of Adjustment to order at 7:30 and announced that adequate notice of the meeting had been made in accordance with the New Jersey State Open Public Meetings Act.

**REGULAR MEETING**

The Roll call was taken and went as follows:

Mr. Rosenbach	Present	Mr. Newlin	Present
Mr. Flanagan	Present	Mr. Maselli	Present
Mr. Kearns	Present	Mr. Symonds	Present
Ms. Chipperson	Present		

Also present was Board Attorney, Gary Hall, Board Engineer, Paul Fox, and Board Secretary, Lori Taglairino.

**MINUTES**

Mr. Flanagan made a motion to approve the September 20, 2018 Special Meeting minutes as written. The motion was seconded by Mr. Rosenbach. On a voice vote all eligible members were in favor of approving the minutes.

Mr. Flanagan made a motion to approve the October 18, 2018 minutes as written. The motion was seconded by Mr. Newlin. On a voice vote all eligible members were in favor of approving the minutes.

**ADMINISTRATIVE**

Mr. Newlin noted that he would like the Planner to present an Ongoing Training session for Affordable Housing in the new year.

The Board reviewed a draft of the meeting schedule that will be drafted into a Resolution for the Reorganization Meeting.

**RESOLUTIONS**

Resolution BOA# 06-2018      Do Not Exceed Limit for Gary Hall

Mr. Flanagan made a motion to adopt Resolution BOA# 06-2018. It was seconded by Mr. Rosenbach. On a voice vote, all eligible members were in favor of adopting the resolution.

Resolution BOA# 07-2018      Special Counsel, Ed Purcell for the Verizon Application

Mr. Flanagan made a motion to adopt Resolution BOA# 06-2018. It was seconded by Mr. Newlin. On a voice vote, all eligible members were in favor of adopting the resolution.

Resolution BOA# 07-2018  
Resolution BOA# 08-2018

Teri Eichler Appreciation  
Joe Schleifer Appreciation

Mr. Flanagan read the Resolutions commending Ms. Eichler and Mr. Schleifer for their longstanding contributions to the town and to the Board of Adjustment. Mr. Flanagan made a motion to adopt Resolution BOA# 07-2018 and BOA# 08-2-18. They were seconded by Mr. Newlin and Mr. Rosenbach respectively. On a voice vote, all eligible members were in favor of adopting the resolutions.

### **OLD BUSINESS**

Application BOA# 16-16

S.Y.A.S., LLC  
1 Post House Road, B33.03/L1, R-1/B-2 Zones  
Applicant requesting variance relief for use and height, per NJSA 40:55D-70(d) for 4 proposed townhouse units subject to a subsequent request for site plan approval.

Presenting:  
Bart Sheehan, Attorney

There was a vote taken on this application. The vote was to deny the application. There was one vote against denying the application and six for denying the application.

A transcript of the continuation of this application including public comment, summation, deliberation and the vote is appended to the minutes.

### **NEW BUSINESS**

Application BOA# 16-18

Phil Poto  
52 Blue Mill Road, B16/L20, R-  
Applicant requesting variance relief for setbacks, lot coverage and non-conforming structure.

Presenting:  
Cristine Miseo, Architect  
Phil Poto, Owner

Ms. Miseo and Mr. Poto were sworn in for testimony.  
Mr. Newlin recused himself from this application.

- Ms. Miseo presented proposed plans for an addition for a family room, study and master suite.
- Ms. Miseo presented Exhibit A-1 a revised rendering that included some of the suggestions from the Historic Preservation Commission.
- There was a note that there are wetlands on the property.
- The Board requested a Site Inspection of the property.

A Site Inspection was scheduled for January 12, 2019 at 9:00am at the property with a snow date of January 13, 2019 at 10:52.

### Completeness Review

Application BOA# 17-18

New York SMSA Limited Partnership d/b/a Verizon Wireless  
8 Millbrook Road, B17/L1, B-1 Zone  
Applicant requesting variance relief for use and height, per NJSA  
40:55D-70(d) for a cell tower.

Presenting:

Richard Schneider, Attorney

Chris Lanna, Environmental Scientist, E2Pm Management

Mr. Lanna was sworn in for testimony as related to completeness for the application.

Board of Adjustment Attorney, Gary Hall recused himself from this application.  
Special Counsel Ed Purcell is advising on this application.

- Mr. Schneider noted that the applicant is seeking waivers for this application.
- Mr. Fox reviewed the items for completeness.
- Mr. Fox noted that the applicant was seeking a waiver for an NJDEP Letter of Interpretation.
- Mr. Lanna stated that there was no indication of wetlands near the proposed site.
- Mr. Fox noted that the applicant must submit revised plans for T-1 with accurate zoning data on the plans.
- Mr. Fox noted that the applicant must provide plans for the HPC to review.

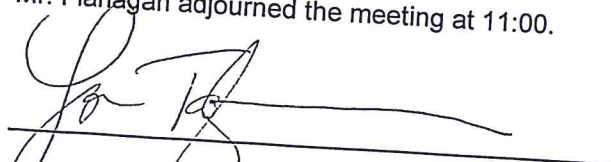
Mr. Newlin made a motion to grant waivers for the condition of completeness only. It was seconded by Mr. Flanagan. A roll call vote went as follows:  
For: Mr. Newlin, Mr. Maselli, Mr. Rosenbach, Mr. Kearns, Ms. Chipperson, Mr. Symonds  
and Mr. Flanagan.  
Against: None

### OTHER BUSINESS

None

### ADJOURNMENT

Mr. Flanagan adjourned the meeting at 11:00.

  
Respectfully submitted by

Lori Taglairino, Board of Adjustment Secretary





HARDING TOWNSHIP  
BOARD OF ADJUSTMENT

IN THE MATTER OF: : TRANSCRIPT  
: :  
CASE: BOA# S.Y.A.S, LLC : OF  
1 Post House Road :  
Block 33.03; Lot 1 :  
R-1/B-2 Zones : PROCEEDING  
X

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Thursday, December 20, 2018  
Municipal Building  
21 Blue Mill Road  
New Vernon, New Jersey  
Commencing at 7:40 p.m.

BOARD MEMBERS PRESENT:

MIKE FLANAGAN, Chairman  
PHILIP ROSENBACH  
RITA CHIPPERSON  
ALF NEWLIN  
BILL KEARNS  
DAN MASELLI  
HUGH SYMONDS

ALSO PRESENT:

LORI TAGLAIRINO, Board Secretary  
PAUL D. FOX, P.E., CME

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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 GARY HALL, ESQ. Attorney for the Board</p> <p>4</p> <p>5 DEMPSEY, DEMPSEY &amp; SHEEHAN, ESQS BY: BARTHOLOMEW SHEEHAN, ESQ. Attorneys for the Applicant</p> <p>6</p> <p>7</p> <p>8 KAUFMAN, SEMERARO &amp; LEIBMAN, LLP BY: JOHN VISCONI, ESQ. Attorneys for the Objectors - Post House Road, LLC (Member: Thomas Williams)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 CHAIRMAN FLANAGAN: We'll start with SYAS,</p> <p>2 Mr. Sheehan. So, Mr. Sheehan, unfortunately, we have</p> <p>3 to start this discussion with a continuation of the</p> <p>4 conversation we had at our last meeting, I think it</p> <p>5 was. Prior to that your clients I know had some</p> <p>6 contact with Gary and with Lori, et cetera, and others</p> <p>7 possibly. And at that time we told your client that he</p> <p>8 is not to contact any of these Board members, any of</p> <p>9 this Board directly.</p> <p>10 Unfortunately, since then I have received a</p> <p>11 letter in the mail from your client. I believe other</p> <p>12 Board members have as well.</p> <p>13 MR. HALL: At your home?</p> <p>14 CHAIRMAN FLANAGAN: At my home.</p> <p>15 So let me once again for the record convey</p> <p>16 I do not want to see any letters from your client. I</p> <p>17 do not want to be contacted by your client. If your</p> <p>18 client wants to speak to me he can speak to the Board</p> <p>19 attorney.</p> <p>20 Okay. Are there any other members of the</p> <p>21 Board that would like to say anything?</p> <p>22 BOARD MEMBER CHIPPERSON: Well, I also</p> <p>23 received a letter at my office. So I would second</p> <p>24 everything that Mike is saying. It's highly</p> <p>25 inappropriate.</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2</p> <p>3</p> <p>4 Summation by Mr. Visconi.....page 16</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 EXHIBITS</p> <p>10 IN EVD. DESCRIPTION PAGE</p> <p>11</p> <p>12 No Exhibits were marked</p> <p>13</p> <p>14</p> <p>15</p> <p>16 AUDIENCE MEMBERS:</p> <p>17</p> <p>18 Catherine Anastasiou.....page 7</p> <p>19 Tom Addonizio.....page 10</p> <p>20 Joseph Longo.....page 10</p> <p>21 Alexander Anastasiou.....page 13</p> <p>22 Robert Jutkowitz.....page 15</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 BOARD MEMBER NEWLIN: I'd like to ask Mr.</p> <p>2 Sheehan. Do you think that's appropriate contact?</p> <p>3 MR. SHEEHAN: No.</p> <p>4 BOARD MEMBER NEWLIN: Thank you.</p> <p>5 MR. HALL: I would just like to add one</p> <p>6 thing and I'm not going to get into personal to me, but</p> <p>7 the township years ago, when they set up the web page,</p> <p>8 somebody wanted to put members' addresses on there.</p> <p>9 That was when Karen Zaborski was the secretary for this</p> <p>10 Board. And we specifically decided and I recommended,</p> <p>11 do not put people's addresses on there. Everything to</p> <p>12 them should go to the Board and not to their homes. So</p> <p>13 if you go to the town webpage you won't find anybody's</p> <p>14 address. Obviously, there's tax records, but the web</p> <p>15 page has your names and that's all, no address. And</p> <p>16 that was an intentional decision for the reasons you</p> <p>17 just stated.</p> <p>18 CHAIRMAN FLANAGAN: So for the record, Mr.</p> <p>19 Sheehan, I do want to be contacted by your client. If</p> <p>20 any contact is necessary he can contact Gary.</p> <p>21 MR. SHEEHAN: We'll make sure he's aware of</p> <p>22 that.</p> <p>23 CHAIRMAN FLANAGAN: So just to refresh my</p> <p>24 memory where we left off, I believe we were having --</p> <p>25 the public was -- I don't know what you call it,</p>

<p style="text-align: right;">Page 6</p> <p>1 sharing your thoughts with us.</p> <p>2 MR. HALL: This is public comment. They</p> <p>3 can give testimony if they want.</p> <p>4 CHAIRMAN FLANAGAN: We need to finish</p> <p>5 allowing the public to make their comments. I believe</p> <p>6 you have provided all the testimony you intended to</p> <p>7 provide.</p> <p>8 MR. SHEEHAN: Yes, sir.</p> <p>9 CHAIRMAN FLANAGAN: And I see that we have</p> <p>10 a summation here. What's your intention with that</p> <p>11 summation?</p> <p>12 MR. SHEEHAN: It is to give it this</p> <p>13 evening, Mr. Chairman.</p> <p>14 CHAIRMAN FLANAGAN: So you intend to read</p> <p>15 that?</p> <p>16 MR. SHEEHAN: I do.</p> <p>17 CHAIRMAN FLANAGAN: All right. Then with</p> <p>18 that said, are there any members of the public who</p> <p>19 would like to provide any comments?</p> <p>20 ADMINISTRATOR TAGLAIRINO: They can use the</p> <p>21 microphone at the table. I believe that might be the</p> <p>22 best choice. You can have a seat. Is the red light</p> <p>23 off of that or no?</p> <p>24 MR. FOX: Just press that button.</p> <p>25 MS. ANASTASIOU: My name is Catherine</p>	<p style="text-align: right;">Page 8</p> <p>1 However, I am yet to make a statement. I am here</p> <p>2 tonight to communicate my strong and evidently</p> <p>3 unwavering opposition to this application.</p> <p>4 Since the start this application has never</p> <p>5 sat well with me. Why? Primarily because of its stark</p> <p>6 contrast to my neighborhood, and what it is about and</p> <p>7 what a resident wants for the street. I compliment the</p> <p>8 architect for their efforts to make this development</p> <p>9 somewhat pleasing to the eye, but in my opinion the</p> <p>10 shear expense and density of the project within the</p> <p>11 small area is again not in keeping with our street.</p> <p>12 For me personally the application</p> <p>13 essentially goes against the very fiber of what keeps</p> <p>14 this and protects this town. The fiber to which the</p> <p>15 township is held is the master plan. Adherence to the</p> <p>16 master plan I think is paramount if we as residents</p> <p>17 want this township's unique qualities to continue. The</p> <p>18 Board should not lose that control. Making exceptions,</p> <p>19 which in my opinion again is a big one, is a threat to</p> <p>20 our township as a whole and will be a catalyst of</p> <p>21 change that I believe is irreversible and ultimately</p> <p>22 regrettable.</p> <p>23 If we look at the big picture allowing this</p> <p>24 application allows for a slippery slope. Contrary to</p> <p>25 the many points failed the loose insinuation that we</p>
<p style="text-align: right;">Page 7</p> <p>1 Anastasiou. I am the owner of 35 Post House Road.</p> <p>2 MR. HALL: Before you begin, just to be</p> <p>3 safe I'm going to swear you in. If there are any</p> <p>4 factual assertions made it will be under oath.</p> <p>5 Would you raise your right hand? Do you</p> <p>6 solemnly swear any testimony you may give will be the</p> <p>7 truth?</p> <p>8 MS. ANASTASIOU: THE WITNESS: Yes.</p> <p>9 CATHERINE ANASTASIOU, 35 Post House</p> <p>10 Road, having been duly sworn, testifies as follows:</p> <p>11 MS. ANASTASIOU: As I said, my name is</p> <p>12 Catherine Anastasiou and I'm a resident at number 35</p> <p>13 Post House Road. My husband and I previously lived at</p> <p>14 59 Post House Road, and as a result by living on both</p> <p>15 sides of the street I've had the pleasure of getting to</p> <p>16 know the vast majority of the residents and getting a</p> <p>17 complete feel for this remarkable neighborhood and the</p> <p>18 surroundings.</p> <p>19 Post House Road basically emphasizes the</p> <p>20 unique environment of the entire Harding Township.</p> <p>21 Except for two I've attended every meeting connected to</p> <p>22 this case. In fact, I think my kids think I'm on the</p> <p>23 Board of Adjustment. But like you I have sat and been</p> <p>24 attentive to hours of testimony and debate carefully</p> <p>25 considering both sides in my effort to be fair-minded.</p>	<p style="text-align: right;">Page 9</p> <p>1 the residents are unreasonable and unrealistic I do</p> <p>2 recognize the rights of the property owner to develop,</p> <p>3 but again it has to be within the limitations of the</p> <p>4 master plan.</p> <p>5 That comes also with the limitation that we</p> <p>6 all as residents of Harding are held to as well. The</p> <p>7 zone announcement must be consistent with the master</p> <p>8 plan and zoning regulations. These implemented</p> <p>9 restrictions act as safeguards and stand for good</p> <p>10 reason. It's clear and simple. My opposition to</p> <p>11 anything garish and unkeeping in my street and in my</p> <p>12 neighborhood is not solutional, rather central to my</p> <p>13 position and concern as a resident of all of Harding</p> <p>14 Township.</p> <p>15 Please don't put private property above the</p> <p>16 protection of Harding's Master Plan. This application</p> <p>17 is not a good fit for my street; nor, for the majority</p> <p>18 of residents including myself. I'd like to thank the</p> <p>19 Board and wish you a well and Happy New Year. Any</p> <p>20 questions?</p> <p>21 BOARD MEMBER NEWLIN: I have a question.</p> <p>22 MR. HALL: You're allowed to do that.</p> <p>23 BOARD MEMBER NEWLIN: Would you have the</p> <p>24 same view if a commercial building was built on that</p> <p>25 site?</p>



<p style="text-align: right;">Page 10</p> <p>1 MS. ANASTASIOU: Again, if it was within 2 the confines of the zoning regulations and the master 3 plan I would have to accept that. I'm not opposed to 4 that as long as it's within the guidelines of the 5 master plan. 6 BOARD MEMBER NEWLIN: Thank you. 7 CHAIRMAN FLANAGAN: Okay. Does anyone else 8 from the public want to give any comments? 9 MR. ADDONIZIO: Tom Addonizio. 10 MR. HALL: I'll swear you in. Do you 11 solemnly swear any testimony you may give will be the 12 truth? 13 MR. ADDONIZIO: Yes. 14 T H O M A S A D D O N I Z I O, 59 Post House Road, 15 having been duly sworn, testified as follows: 16 THE WITNESS: I'll be short and sweet, but 17 I just wanted to reiterate what Catherine just 18 explained in her speech, that myself as well as other 19 members of the neighborhood support the master plan. 20 And in the confines of what the master plan allows for 21 a residential development in our neighborhood. And 22 this does not meet those requirements, so I oppose this 23 as well. 24 CHAIRMAN FLANAGAN: Thank you. Any 25 questions from the Board? Alf?</p>	<p style="text-align: right;">Page 12</p> <p>1 comments tonight are just totally different than they 2 were the last time. 3 MR. HALL: But you could have said them the 4 last time. 5 CHAIRMAN FLANAGAN: They should have come 6 out the last time. It's important that we follow the 7 rules here. So, thank you. 8 MR. LONGO: Okay. I'm sorry you don't 9 allow me to speak again, because I have something 10 constructive as it relates to the master plan and this 11 applicant's not conforming well with it. 12 CHAIRMAN FLANAGAN: I understand, but if we 13 let you speak twice -- 14 THE WITNESS: I understand. I sat where 15 you're seating many years on different Boards so I 16 understand. Thank you. 17 CHAIRMAN FLANAGAN: Thank you. Anyone else 18 have anything to say? Any comments. 19 MR. HALL: Who hasn't spoken before. 20 CHAIRMAN FLANAGAN: Yea, who hasn't 21 previously spoken before. 22 MR. ALEXANDER ANASTASIOU: I do. 23 CHAIRMAN FLANAGAN: Okay. Come on up. 24 MR. HALL: Okay. Do you solemnly swear the 25 testimony you will give will be the truth?</p>
<p style="text-align: right;">Page 11</p> <p>1 BOARD MEMBER NEWLIN: No. (Laughter.) 2 MR. HALL: I'll swear you in real quickly, 3 if I could. You can sit. Do you solemnly swear any 4 testimony you may give will be the truth? 5 MR. LONGO: I do. 6 MR. HALL: Give the reporter your name. 7 J O S E P H L O N G O, having been duly sworn, 8 testifies as follows: 9 MR. VISCONI: Mr. Chairman, Mr. Longo 10 already had an opportunity. I want to be fair to the 11 applicant. 12 CHAIRMAN FLANAGAN: Frankly, I don't 13 recall. Did you speak at the last meeting? 14 MR. HALL: He did. 15 MR. LONGO: I did, yes. 16 MR. HALL: I'm looking at the transcript. 17 CHAIRMAN FLANAGAN: All right. Does that 18 preclude him from speaking tonight? 19 MR. HALL: It should, unless there's. I 20 mean, you can let him if you want, but he really 21 shouldn't. 22 CHAIRMAN FLANAGAN: Well, if you shouldn't 23 I'm going to say you've already spoken, so in fairness 24 to the applicant -- 25 MR. LONGO: I understand that. However, my</p>	<p style="text-align: right;">Page 13</p> <p>1 MR. ALEXANDER ANASTASIOU: I do. 2 MR. HALL: Please give the reporter your 3 name, and spell your last. 4 THE WITNESS: My name is Alexander 5 Anastasiou, A-n-a-s-t-a-s-i-o-u. I'm a resident at 35 6 Post House Road. 7 A L E X A N D E R A N A S T A S I O U, having been 8 duly sworn, testifies as follows: 9 BOARD MEMBER CHIPPERSON: Do you think the 10 microphone is working? Maybe pull it over a little bit 11 more. 12 THE WITNESS: Is that better? 13 BOARD MEMBER CHIPPERSON: Yes. 14 THE WITNESS: I echo, obviously, my wife's 15 sentiments, but I would just like to add that I really 16 think that for me a multi-family development along The 17 Country Mile sets a bad precedent. It would really 18 make available any of those properties along that 19 stretch to become multifamily if the Board approves it. 20 It would also allow other applicants in 21 other areas of town where there is no public water, 22 where there is no public sewer to build multifamily 23 dwellings. And, again, it goes against the master 24 plan. It goes against what makes Harding great. 25 Again, I echo the sentiments of my wife</p>

<p style="text-align: right;">Page 14</p> <p>1 where I know that the property has a right to be 2 developed. I know that the current ownership has a 3 right to sell it. They'd like it to be developed, but 4 there are other alternatives for that property. 5 We can see along The Country Mile small 6 businesses that have made a great success out of -- you 7 know, the Minuteman has completely turned around. That 8 was a restaurant that was not doing great business. 9 New ownership came in, turned it around. 10 The Depot does wonderful business. 11 Wightman's Farms, obviously is an institution in town. 12 Our little section of town, which some of 13 us refer to as Country Mile, has a very unique charm, 14 and it's one of the reasons why I bought not one but 15 two houses on Post House Road, and I just want the 16 Board to keep that in mind that we really as residents 17 would love to see Country Mile stay as the beautiful, 18 quaint little area of town that it is. Thank you. 19 CHAIRMAN FLANAGAN: Thank you. Does the 20 Board have any questions? Okay. Thank you. 21 All right. Is there anyone else who hasn't 22 previously spoken who would like to? Please come on 23 up. 24 MR. HALL: Do you solemnly swear any 25 testimony you give will be the truth?</p>	<p style="text-align: right;">Page 16</p> <p>1 support of what the previous speakers have commented. 2 That's my comment. 3 MR. HALL: Okay. 4 CHAIRMAN FLANAGAN: Thank you. Anyone else 5 who hasn't previously spoken? 6 All right. Last opportunity. Okay. Fine. 7 Mr. Visconi, do you have any comments you 8 would like to offer? 9 MR. VISCONI: If Mr. Sheehan is going to do 10 a summation I would like two minutes to do a very brief 11 one, but other than that -- 12 CHAIRMAN FLANAGAN: Mr. Sheehan, are you 13 planning on doing a summation? 14 MR. SHEEHAN: I do. 15 CHAIRMAN FLANAGAN: Would you like to go 16 first? 17 MR. VISCONI: Whatever the preference the 18 Board has. I can go first. 19 MR. HALL: It might be better in deference 20 to the applicant. 21 MR. VISCONI: Thank you very much. As you 22 all know my name is John Visconi. I'm now with the 23 firm Kaufman, Semeraro and Leibman. On behalf of Post 24 House Road, LLC, the objector, which is a single-person 25 entity. I've spoken quite a bit. I've asked quite a</p>
<p style="text-align: right;">Page 15</p> <p>1 DR. JUTKOWITZ: I do. 2 MR. HALL: Will you give the reporter your 3 name and spell your last? 4 DR. ROBERT JUTKOWITZ, having been duly 5 sworn, testifies as follows: 6 MR. SHEEHAN: Mr. Chairman -- 7 MR. HALL: You're in the transcript also. 8 Did you speak the last time? 9 DR. JUTKOWITZ: No I didn't speak, as far 10 as public comment. 11 MR. VISCONI: He might have asked the 12 witness a question maybe. 13 MR. HALL: Oh, maybe it was a question, 14 because it's a low number. 15 DR. JUTKOWITZ: That's okay. 16 CHAIRMAN FLANAGAN: Hold on a second. Mr. 17 Sheehan, you were going to say something? 18 MR. SHEEHAN: I thought that the Doctor had 19 spoken before, but I believe it was a question. 20 MR. HALL: It's a low page number versus -- 21 CHAIRMAN FLANAGAN: All right. So you 22 don't take issue with the Doctor, speaking? 23 MR. SHEEHAN: No? 24 DR. JUTKOWITZ: Again, I'm going to make 25 this brief. I just want to say that I am fully in</p>	<p style="text-align: right;">Page 17</p> <p>1 few questions, but I will be brief tonight. 2 I won't rehash the full legal standard. I 3 won't bore everyone with belabored details. I will 4 just say that this applicant has not met the enhanced 5 quality of proof required for a use variance and for 6 the other variances that come with this. 7 There's been some mixed reaction tonight 8 regarding whether a multifamily house in this area is a 9 good idea or not. I don't have a strong position 10 either way. I don't know that multifamily houses in 11 their own are a terrible idea for this property, I just 12 know that anything in this size and scale is a bad idea 13 for this property. 14 The applicant was required to meet many 15 criteria. The positive criteria was they were supposed 16 to point out that this property is particularly suited 17 for this type of use, and simply they failed. They've 18 argued that the wetlands on the property pushing 19 development closer to the residential homes on Post 20 House Road, and that's true for multifamily housing, 21 but it's also true of modest scale commercial which is 22 consistent with the neighborhood. 23 It's also true with single-family houses, 24 which is consistent with the neighborhood. Modest 25 scale commercial and single-family homes are permitted</p>



<p style="text-align: right;">Page 18</p> <p>1 in this home. They wouldn't catch your eye when you're  2 driving down The Country Mile. The behemoth proposed  3 here would. It's out of character. You would see it  4 coming either direction immediately and you would know  5 it's there and you would just know it doesn't make  6 sense.</p> <p>7 And that's the point of the master plan.  8 The property is particularly well suited for a use or  9 for a project when the attributes of the lot itself  10 help to mask the other-ness of the development. In  11 this case the size, the use.</p> <p>12 This property does the opposite. They're  13 asking for a height variance. They want to build  14 something that's taller than is permitted in the zone.  15 Taller than is permitted in either direction up 202.  16 And they're doing it on a property that's up a hill.  17 So you've got the height from the ground floor to the  18 roof, but then you've also got the height from Route  19 202 to the ground floor. You're basically asking to  20 put a building that's too tall on stilts to make it  21 even taller. It just doesn't make sense.</p> <p>22 They also thought that the wetlands allowed  23 for minimization of density, but their application is  24 four times the density that would be allowed on the  25 abutting residential lot. If the wetlands restricted</p>	<p style="text-align: right;">Page 20</p> <p>1 property. It's bad for the neighborhood. When  2 everyone moved here there was a master plan that they  3 could look at, they could read and say, okay, if I  4 moved to Post House Road, or if I moved to Route 202 I  5 know that this is the size that can be built. I know  6 what I'm getting myself into.</p> <p>7 What they're asking to put there is not  8 only a different use that's not even contemplated by  9 the Master Plan, but it's a size that none of them  10 could have anticipated when they purchased their home.  11 When they got the deed to their property and they knew  12 what neighborhood they were moving into, this isn't  13 that.</p> <p>14 It's just -- it's detrimental to the  15 neighbors. It's also detrimental to the zoning plan  16 and the zoning ordinance. I mean, a lot of the  17 positive and negative criteria goes back and forth.  18 The same argument that I would make of this property is  19 not particularly suited for the positive criteria  20 because of the wetlands, because of the water, because  21 of the height.</p> <p>22 It's also what I would say about the zoning  23 ordinance. This area is one of the few areas in town,  24 there's only two, the master plan is very clear on  25 that, we don't want a lot of commercial, but where we</p>
<p style="text-align: right;">Page 19</p> <p>1 density enough they wouldn't need a variance, it would  2 fit. What they're doing is cramming even more  3 development onto an even smaller building envelope.</p> <p>4 The wetlands are important because the  5 master plan for this town speaks at length about  6 protection of natural resources, including water. This  7 property has wetlands because it abuts Primrose Brook,  8 which is cited repeatedly in the Master Plan as being  9 one of the most important natural resources in town.</p> <p>10 Septic systems no matter how big, no matter  11 how small in some way degrade the environment. It's  12 just the nature that they are. This property doesn't  13 have any option but septic. They're asking to put a  14 residential use there that is larger than a single  15 family use, and would use more water, have more sewer  16 than a compliant commercial. There are some properties  17 where that might make sense. If you've gotten ten  18 acres, putting four units -- putting one septic with  19 four units you can spread that out over a ten acre  20 land. They're asking to do it on a minimum developable  21 land. And they're asking to do it next to the most  22 important brook in town.</p> <p>23 This property is the opposite of  24 particularly suited. As to the negative criteria the  25 folks here will attest that this is just bad for their</p>	<p style="text-align: right;">Page 21</p> <p>1 do want them we want them in this zone. And we want to  2 limit them. A lot of them look like maybe a converted  3 home that now is a business. A lot of them look like a  4 small salon. A lot of them look like a flower shop  5 that we know our residents can go to.</p> <p>6 This looks more like mixed use that you put  7 in Morristown by the Square. That's not Harding. That  8 doesn't make sense in your zoning plan. That doesn't  9 make sense in your ordinance. There are times to  10 deviate from that.</p> <p>11 The townhouse zone that was just approved,  12 the Planning Board expressly said this does not conform  13 to our Master Plan. It's too dense. This is not what  14 our Master Plan contemplates, but there there's a good  15 reason for that. That's an affordable housing  16 settlement. That's an inherently beneficial use.</p> <p>17 This is a developer who wants to make money  18 by sticking as much as he possibly can on a small piece  19 of land as he can, and that's not consistent with the  20 Master Plan. It's not consistent with the residences,  21 and it shouldn't be permitted today. That's all I  22 have. Thank you.</p> <p>23 CHAIRMAN FLANAGAN: Thank you. Does  24 anybody have any questions for Mr. Visconi? (No  25 response.) Okay. Thank you. Mr. Sheehan?</p>

<p style="text-align: right;">Page 22</p> <p>1 MR. SHEEHAN: Mr. Chairman and members of  2 the Board, it's important to recall the chronology of  3 this application in an effort to provide structure to  4 those deliberations that will follow. There were 12  5 hearings spread over one year and eight months  6 beginning in May of 2017. The original application  7 proposed five luxury townhome units. After the  8 April 19, 2018, hearing the applicants, at the Boards  9 encouragement, filed an amended application. The  10 amended application reduced the number of the proposed  11 units by 20 percent to four luxury townhouse units and  12 was filed on July 30th, 2018.</p> <p>13 The amended application retained the same  14 variance relief for parking in the front yard, number  15 of stories, FAR and height as stated in the initial  16 application. The application was submitted as a  17 bifurcated application as permitted under the Municipal  18 Land Use Law deferring considerations of specific site  19 plan details to abide the decision of this Board with  20 regard to the bifurcated application for the use.</p> <p>21 Emotions run high in any contested  22 application. In this application the emotions reached  23 an exceptional level reflecting the frustrations felt  24 over the time committed to this application, and for  25 the commitment of resources by the principal of the</p>	<p style="text-align: right;">Page 24</p> <p>1 Yes. We prefer to leave the lot empty. We do. Why  2 would we not? He can take a tax write-off and all that  3 sort of thing. And also build in provisions such that  4 they couldn't -- a charity couldn't build there either  5 or give it to open space. So with that I close my  6 comments.</p> <p>7 "BOARD MEMBER NEWLIN: I'd like to ask you  8 a question.</p> <p>9 "MR. LONGO: Yes, sir.</p> <p>10 "BOARD MEMBER NEWLIN: So what about that  11 simple question that if you had a commercial property  12 that got -- I mean, commercial building that got built  13 conforming, what would that do to the neighborhood?  14 And what about that comparison with regard to your  15 comment about the proposed townhouses are too big?  16 What do you think about that?</p> <p>17 "MR. LONGO: Well, it's quite an  18 interesting question. I would say this. It's been on  19 the market for how many years? Nobody found a use for  20 the property. So it's impractical to use that  21 facility. It's just not buildable. That's what we're  22 dealing with here. And the answer is we would not  23 appreciate that either, Mr. Newlin. No, we would not  24 like that either. We understand that.</p> <p>25 "BOARD MEMBER NEWLIN: And I'm not going to</p>
<p style="text-align: right;">Page 23</p> <p>1 applicant in what he considered the pursuit of  2 unnecessary details in the presentation.</p> <p>3 Perhaps I bear some responsibility for that  4 circumstance in view of my belief that no question or  5 concern expressed in such a case should go unanswered  6 or unexplored. In such an instance the Board and the  7 applicant become collectively sensitized to the nuance  8 of the context in which the matter is presented. I ask  9 for your patience tonight while I put these proceedings  10 in proper perspective and analyze the applicable law  11 which must be applied.</p> <p>12 As I stated at this last meeting when  13 emotions run high the two polestars that fairly guide  14 the proceedings are the facts and the law. I intend to  15 focus on these two polestars in this summation.</p> <p>16 Senator Moynihan of fading memory stated  17 "Everyone is entitled to his own opinion. No one is  18 entitled to his own facts."</p> <p>19 I would like to begin the factual summary  20 with a quote from the transcript of the last meeting  21 beginning with the honest and unvarnished exchange  22 between Mr. Longo of 8 Post House Road and Board Member  23 Newlin.</p> <p>24 "MR. LONGO: My suggestion before, and  25 still is, that they should donate it to a charity.</p>	<p style="text-align: right;">Page 25</p> <p>1 argue, of course, but they fairly proved to us that  2 such a building could be built there legally as almost  3 a matter of right. So I think it's a fair.</p> <p>4 "MR. LONGO: That's a fair question. I  5 understand that. Yes, I do."</p> <p>6 MR. SHEEHAN: This exchange captures the  7 essence of this application. The neighbors want  8 nothing developed. The applicant proposes a plan  9 customized to the site and to the expressed concerns of  10 the Objectors. The Board is charged to strike a result  11 that serves the best interest of the township.</p> <p>12 The facts of the case, the lot consists of  13 three acres, 80 percent of which is located in the B-2  14 Zone, and 20 percent of which is located in the R-1  15 Zone. Neither the B-2 Zone, or the R-1 Zone of this  16 split zone lot permits the proposed four-unit townhouse  17 development.</p> <p>18 In addition to the split lot zoning the lot  19 is subject to further development constraints  20 consisting of wetlands with a transition area occupying  21 approximately one-third of the lot area. There is a  22 topographical grade change of 20 feet running from Mt.  23 Kemble Road in the northwesterly direction to the rear  24 property line of the subject lot.</p> <p>25 The lot is located on the northwesterly</p>



<p style="text-align: right;">Page 26</p> <p>1 corner at the intersection of Post House Road and Route 2 202. Post House Road constitutes a long loop road 3 which has developed a substantial number of significant 4 single-family residences.</p> <p>5 Since the subject lot fronts on Route 202 6 and Post House Road it is of critical importance to 7 note that the department of transportation regulations 8 require that access to the site be from Post House Road 9 regardless of the type of development made. There are 10 no other properties in the immediate or adjacent area 11 with the same characteristics as the lot in question.</p> <p>12 The subject lot on Post House Road has been 13 offered for sale for nine years without receiving a 14 bona fide offer for any one of the 31 uses permitted in 15 the B-2 Zone, and has been in the family of the current 16 ownership for 50-plus years.</p> <p>17 Harding Township consists of approximately 18 3,500 residents, with 21 percent of said residents 19 being 65 years and older. As was stated at the 20 January 18, 2018, Harding Township Board of Adjustment 21 meeting there were 59- to 65-single family homes for 22 sale. The applicant through Charles Geyer mailed out 23 800 inquiry cards inquiring as to whether the 24 recipients, residents of Harding Township, favored the 25 development of luxury townhouses in Harding Township.</p>	<p style="text-align: right;">Page 28</p> <p>1 encouragement for development and uses that are 2 compatible with the overall character of the township. 3 See the 2008 Harding Township Master Plan.</p> <p>4 Further in that regard Goal 6 of the 2008 5 Harding Township Master Plan states, goal 6: 6 Minimalization of commercial development, policy, the 7 continued importance of Route 202 as the dominant local 8 traffic artery within the township will be greatly 9 impaired unless greater development control is 10 exercised and business activities are limited to 11 specific areas. Needless traffic congestion, plus the 12 recognition that the majority of all residents shopping 13 has taken place and will continue to take place outside 14 of the township indicates a lack of need for additional 15 commercial space to serve township residents.</p> <p>16 As a result of this traffic congestion a 17 1980 Abbingtion traffic engineering investigation 18 concluded that based upon actual traffic counts there 19 is no excess vehicle capacity along Route 202 in 20 Harding Township. This conclusion is consistent with 21 the N.J.D.O.T's 1977's annual report of traffic data. 22 It has only gotten worse in the ensuing years as the 23 concerns of the neighborhood expressed by the various 24 residents on Post House Road have demonstrated. 25 Additionally, since this report was given</p>
<p style="text-align: right;">Page 27</p> <p>1 The applicant received 423-plus responses, of which 340 2 responses stated yes, 36 responses stated no, and 47 3 responses stated maybe.</p> <p>4 To confirm the objective to serve the 5 transitional buyer the applicant committed to a 6 55-year-old deed restriction as a condition of 7 approval. In Harding Township at the present time 8 there are no alternative living -- residential living 9 options comparable to the four-unit luxury townhouses 10 proposed by this application. This was acknowledged by 11 the four planners who have spoken in these hearings.</p> <p>12 Based on the 2008 Harding Township Master 13 Plan as reviewed and reflected upon in the Harding 14 Township Master Plan re-examination report of 2013 15 there are references to whether there is sufficient 16 housing in Harding Township to accommodate the needs of 17 older residents and lower-income households.</p> <p>18 Issues involving the B-2 district along 19 Route 202 have also been the subject of reflection by 20 the Harding Township planners. Statements include the 21 need to consider updating permitted uses and other 22 provisions applicable in the B-2 Zone. See the 23 examination report of 2013, Land Use and Development 24 Regulation Amendments. A discouragement of strip 25 development and sprawl in the B-2 Zone, and</p>	<p style="text-align: right;">Page 29</p> <p>1 the Internet shopping preemption has dramatically 2 diminished the need for retail development, and the 3 commercial office demand in Morris County has had the 4 highest vacancy rates in the state. These two factors 5 combined suggest that a likely conforming development 6 for this site would be substantially more of a service 7 oriented use.</p> <p>8 Twenty-six pieces of evidence were 9 introduced, including a conforming commercial office 10 plan. The time and effort devoted to this comparative 11 and conforming commercial analysis has been the subject 12 of great consternation as expressed for the applicant's 13 principal -- and stated by the applicant's principal, 14 Charles Geyer. He considers the time spent and the 15 exhibits developed to have been an unnecessary and 16 unreasonably time-consuming detour in the presentation 17 of the application.</p> <p>18 Not going to repeat and call out the 26 19 pieces of evidence other than to reflect that the 20 evidence presented by the applicant fully addressed 21 each and every concern, each and every question that 22 was asked by this Board in respect of the application.</p> <p>23 The applicant produced five witnesses 24 addressing the following issues as referenced above. 25 Charles Geyer was the principal for the applicant.</p>

<p style="text-align: right;">Page 30</p> <p>1 Patrick Burke as an engaged architect on 2 the proposed plan and alternative development options, 3 as well as the revised four-unit plan. 4 William Hollows, a professional engineer, a 5 civil engineer on the layout, site layout details trip 6 generation, general engineering considerations relevant 7 to a bifurcated application. 8 Willard Alexander, Jr., a real estate 9 developer, an expert. 10 Paul A. Phillips, an expert in the field of 11 municipal planning of great distinction. An Objector 12 presented the testimony of a planner named Jessica 13 Caldwell during the July 2017 meeting. The February 14 and October meetings of 2018, and this evening 15 residents from the Post House Road Move appeared and 16 gave statements opposing the application emphasizing 17 the problems with traffic on Post House Road and Route 18 202 intersection and voicing concerns with regard to a 19 potential impact on well water recharge, as well as a 20 desire to see the lot remain developed, as well as 21 concerns for consistency with the Master Plan. 22 In this regard the applicant has presented 23 a bifurcated application after performing percolation 24 tests at the site, with a representation and conviction 25 that testing and evaluation of well water impact and</p>	<p style="text-align: right;">Page 32</p> <p>1 locations for a variety of residential uses. 2 A general overview of the legal standards 3 applicable to the case is helpful before the applied 4 specific legal analysis is presented. Zoning Boards of 5 Adjustment are statutorily established quasi-judicial 6 Boards created to grant a variance in particular cases 7 and for special reasons provided that the variance can 8 be granted without substantial detriment to the public 9 good and without substantial impairment to the intended 10 purpose of the zone plan and zoning ordinance. Quoting 11 from the case of Price versus Himeji. 12 The general law and particular suitability 13 of the location is as follows: When the proposed use 14 would be located at a site that is particularly 15 suitable for the proposed use the required special 16 reasons of promotion of the general welfare required to 17 positively advance the requested variance are 18 satisfied." 19 See Medici versus BPR Co.; Smart JMR versus 20 Borough of Fair Lawn Borough of Adjustment; and the 21 commentator Cox at Section 32-3.2 and 32-4.1. Such a 22 circumstances -- in such a circumstance as stated by 23 the Court in Kohl versus Mayor and Council of Fair 24 Lawn, the general welfare is served because the use is 25 peculiarly fit to the particular location for which the</p>
<p style="text-align: right;">Page 31</p> <p>1 septic capacity will satisfy all applicable laws and 2 regulations. This belief was assessed by the municipal 3 engineer who supported the waiver to proceed on the 4 bifurcated application deferring these issues to site 5 plan review if the application was approved. 6 Over the course of most of the ten hearings 7 the municipal engineer, Paul Fox and then municipal 8 planner Christine Cafone, responded to questions from 9 the Board and participated in the presentation of 10 witnesses giving testimony at the hearings. In fact, a 11 fair reading of Christine Cafone's questions and 12 comments strongly supports the belief that she was in 13 favor of this application based on the proofs 14 submitted. No question or issue addressed to the 15 applicant was unanswered or unaddressed. 16 It is against this factual background that 17 the well established principals of law relevant to this 18 application must be applied. The applicant has 19 presented a bifurcated use variance under the statute. 20 The application, as amended, asserts entitlement to a 21 use variance to construct four luxury townhouses in two 22 buildings on a lot particularly suited to accept the 23 proposed townhouse development. This will satisfy an 24 unmet need in Harding Township and promote the general 25 welfare by providing sufficient space in appropriate</p>	<p style="text-align: right;">Page 33</p> <p>1 variance is sought. 2 The Supreme Court observed that in the 3 context of a specific parcel it means that strict 4 adherence to the established zoning requirements would 5 be less beneficial to the general welfare. The site 6 need not be the only site available from the project 7 proposed, Price versus Himeji. This case also confirms 8 that the required analysis is inherently site specific. 9 Particular suitability does not equate with uniquely 10 suited. 11 It is the unique characteristics of the 12 subject site itself that make it particularly 13 appropriate for the proposed use, rather than a 14 permitted use and these facts must be expressly 15 identified according to the Court. The negative 16 criteria have been redefined by Medici versus BPR case, 17 which established the Medici standard which qualifies 18 the quality of proof required to satisfy the so-called 19 negative criteria. 20 The Medici standard as stated is in 21 addition to proof of special reasons an enhanced 22 quality of proof and clear and specific findings by the 23 Board of Adjustment that the variance sought is not 24 inconsistent with the intent and purpose of the Master 25 Plan and zoning ordinance. The Supreme Court</p>



<p style="text-align: right;">Page 34</p> <p>1 explicated the Medici concepts in Price versus Himeji  2 stating proof of the negative criteria requires the  3 applicant to demonstrate in accordance with the  4 enhanced quality of proof both that the variance can be  5 granted without substantial detriment to the public  6 good, and that it will not substantially impair the  7 intent and purpose of the zone plan and zoning  8 ordinance. It shall be required to satisfy the first  9 of the negative criteria focuses on the effect that  10 granting the variance would have on the surrounding  11 properties.</p> <p>12 The proof required for the second of the  13 negative criteria must reconcile the grant of the  14 variance for the specific project at the designated  15 site with the municipality's contrary determination  16 about the permitted uses as expressed through its  17 zoning ordinance.</p> <p>18 With the foregoing legal principals -- I'm  19 sorry, when the foregoing legal principals of a general  20 nature are applied to the evidence in the form of  21 testimony and documentary evidence presented by the  22 applicant in this case the following conclusions are  23 clearly established. Number one, there is an unmet  24 need in Harding Township for the housing alternatives  25 represented by this four-unit luxury townhouse as</p>	<p style="text-align: right;">Page 36</p> <p>1 residents.</p> <p>2 There is no dispute that there is no  3 existing luxury residential townhouses among the  4 current variety of housing in Harding Township. The  5 applicant through the testimony and presentation of its  6 real estate expert Willard Alexander, its Planner, Paul  7 Phillips, and the current survey of Mr. Geyer on behalf  8 of the applicant has convincingly demonstrated the need  9 for the proposed housing in Harding Township. There is  10 further independent proof of this special -- this is  11 further independent proof of the special reasons in  12 support of the positive criteria justifying the use  13 variance requested. In fact, this established fact was  14 repeatedly endorsed by each of the planners who spoke  15 in these hearings.</p> <p>16 In order to reaffirm and solidify the  17 Applicant's intension to provide luxury, collective  18 housing, or transitional buyers, the applicant  19 committed to place a 55-year-old deed restriction as a  20 condition of approval.</p> <p>21 With regard to the specific proofs of  22 particular suitability of location for the proposed use  23 as stated in Price versus Himeji, detailed factual  24 findings that distinguished the property from  25 surrounding sites that demonstrate a need for the</p>
<p style="text-align: right;">Page 35</p> <p>1 proposed.</p> <p>2 Number two the location at 1 Post House  3 Road is particularly suited for the proposed use.</p> <p>4 And three that the Medici standard  5 regarding the negative criteria has been satisfied by  6 the requisite enhanced quality of proof reconciling the  7 proposed variance use with the admission of that use  8 from the uses permitted in the applicable zone. Now,  9 that's a general statement of the legal principals  10 involved but it doesn't relate the specific evidence of  11 the case to the required proofs.</p> <p>12 With respect to the positive criteria, the  13 unmet need in the community is an additional special  14 reason. It relates to the Harding Township Master Plan  15 in which it has been stated and clearly determined that  16 Route 202 is saturated with traffic and that there is  17 no desire to have any additional strip development of a  18 commercial nature in that road.</p> <p>19 In fact, an initiative to consider a  20 permitted use and other permitted uses in the B-2 Zone  21 has been specifically called out in the 2013 Harding  22 Township re-examination report. Further, in 2008  23 Harding Township Master Plan the planner specifically  24 questioned whether there is sufficient variety in  25 housing types to accommodate the needs of older</p>	<p style="text-align: right;">Page 37</p> <p>1 proposed use may help establish that the property is  2 particularly suitable for the proposed use and a lack  3 of such findings may be fatal when tested on review.</p> <p>4 In the pending application the detailed  5 findings in support of particular suitability abound.  6 The undeveloped split lot zone has been on the market  7 for nine years without a single other offer. Wetlands  8 and the required transition area equal one-third of the  9 three-acre lot. This condition militates against but  10 does not preclude development of required off-street  11 parking for a commercial or retail use such as an  12 office building or a restaurant or a drugstore.</p> <p>13 This condition also drives development on  14 the site to the north and east impinging on the R-1  15 sector of the lot in close proximity to the residents  16 adjoining along Post House Road. Alternatively, the  17 wetlands and transition area serve as an untouchable  18 and viable amenity for the proposed townhouse use.</p> <p>19 Split lot zoning of the lot in question  20 creates a hardship in that it limits it -- in that it  21 limits the area permitted for commercial development,  22 as well as the area permitted for single-family  23 residential development, it however accommodates the  24 proposed four-unit townhouse development which would  25 preserve greater natural cover enhanced with additional</p>



<p style="text-align: right;">Page 38</p> <p>1 screening, thereby minimizing or eliminating negative 2 impact upon the residential uses to the north.</p> <p>3 The 20-foot topographic grade change from 4 south to north at the subject location affords a unique 5 opportunity to the site for the proposed improvements 6 on the lot in a way that in combination with a berm and 7 planting effectively screens the access to the site, as 8 well as the lower story and garages at the site and 9 off-street parking from neighboring residential uses to 10 the north and Route 202 to the south. This virtually 11 eliminates any off-site perception of the height, FAR, 12 and front-yard parking variances proposed.</p> <p>13 The topography of the site also affords a 14 substantial mitigation for the FAR and the height 15 variances requested by masking the lower story of the 16 two proposed buildings behind the berm with enhanced 17 evergreen plantings on the top of the berm to the south 18 of the proposed improvements.</p> <p>19 A sixth specific justification for 20 particular suitability is found in the citing of the 21 driveway, garages and lower level of the structures in 22 the way proposed by the architecture which permits the 23 minimization of the view of the project from the 24 northerly residential uses which will face the 25 one-and-a-half-story fronts of the proposed buildings</p>	<p style="text-align: right;">Page 40</p> <p>1 that in the context of the specific location in 2 question the strict adherence to the established zoning 3 requirements would be less beneficial to the general 4 welfare than the proposed use. This is particularly 5 true when traffic concerns repeatedly expressed by the 6 neighbors from Post House Road are considered in the 7 trip generation context of a commercial use when 8 compared with the trip generation of a four-unit luxury 9 townhouse development.</p> <p>10 The negative criteria required to be proven 11 under the statute. The first is the absence of 12 substantial detriment to the master plan and zoning 13 ordinance. In accordance with the Medici standard an 14 applicant for a use variance must specify with enhanced 15 proof that the variance can be granted without 16 substantial impairment to the intent and purpose of the 17 Master Plan and zoning ordinance.</p> <p>18 This according to the Medici case and its 19 prodigy is necessary to reconcile the omission of the 20 proposed variant use from among those permitted in the 21 zones. The cases speak in terms of the quality of the 22 enhanced proofs offered rather than the quantity of 23 proofs.</p> <p>24 The applicant offers the following reasons 25 supporting the requests, requisite, enhanced proof</p>
<p style="text-align: right;">Page 39</p> <p>1 with no driveways, parking, or garages in the northerly 2 facing viewscapes. And because the property has 3 access on Route 202 and Post House Road the New Jersey 4 DOD regulations will require access to and from the lot 5 from Post House Road whether the lot is developed with 6 commercial or residential uses.</p> <p>7 For the foregoing specific reasons the Lot 8 one at Post House Road is under the Price versus Himeji 9 case analysis, particularly suited to accept the 10 proposed use. Under Kohl versus Mayor of Fair Lawn the 11 Supreme Court stated it may be stated that the general 12 welfare is served because the use is peculiarly fitted 13 to the particular location for which the variance is 14 sought.</p> <p>15 Correspondingly, the comparative and 16 conforming commercial plan as evidence in Exhibits A-6, 17 7, 8, 9, and 11, demonstrated clearly that a conforming 18 commercial or retail use could be developed at the 19 site. It would have parking in the rear yard hard up 20 against the single-family residential property to the 21 north. It would have an intrusive effect to a degree 22 far greater than the proposed use by reason of 23 lighting, noise, and most importantly traffic.</p> <p>24 As similarly observed in Kramer versus 25 Board of Adjustment, again a Supreme Court case, stated</p>	<p style="text-align: right;">Page 41</p> <p>1 required under the Medici standard. This is a single 2 lot particularly suited by defined facts to accept a 3 proposed use, and therefore no usurpation of the 4 governing body's legislative role exists since the 5 proposed use relates to only one specified lot with 6 particularly suited characteristics.</p> <p>7 The 2013 Harding Township reexamination 8 report calls for an updating of permitted uses and 9 other provisions applicable in the B-2 Zone. This 10 describes the zone in transition with continued study. 11 This fact coupled with a single lot particularly suited 12 to the proposed use equals a status right for variance 13 relief.</p> <p>14 The Harding Township Master Plan questions 15 whether there's sufficient housing variety to 16 accommodate the needs of older residents. This concept 17 invites evaluation as to how the needs can be 18 addressed, either by variance or legislation, and the 19 current proposal addresses a stated need promoting a 20 sufficient variety of housing in the township.</p> <p>21 Goal 6, regarding traffic on Route 202 22 invites solution on a case-by-case basis. The proposed 23 use has low trip generation characteristics that do not 24 surcharge traffic on Route 202, particularly since the 25 proposed improvement will be age restricted.</p>

<p style="text-align: right;">Page 42</p> <p>1 The B-2 Zone comment in the 2013 Harding 2 Township re-examination report discourages strip 3 development and encourages development uses compatible 4 with the overall character of the township. The 5 character of the proposed use addresses an unmet need 6 in a way that acknowledges traffic issues on Route 202 7 without unduly surcharging trip generation in the area. 8 The property was on the market for nine 9 years without commercial office or retail interest. 10 This confirms site development constraints leading to 11 particular suitability for the proposed use. There has 12 been a significant change in retail practices caused by 13 external factors in the form of Internet shopping 14 preemption since the controlling ordinances were 15 adopted, which inhibits low intensity retail uses, and 16 promotes more intensive uses for this site such as 17 restaurant and large scale retail uses. 18 NJDOT regulation drives all access to and 19 from the lot onto the secondary roadway Post House 20 Road, thereby exaggerating any impact from trip 21 generation at the site on the Post House Road 22 residents. 23 The proposed use improves the aesthetics of 24 the existing site. The proposed use creates a 25 non-commercial buffer between Route 202 and the</p>	<p style="text-align: right;">Page 44</p> <p>1 consistent with the intent and purpose of the Harding 2 Township Master Plan to the extent that it pursues the 3 objective of low density development along Route 202, 4 while promoting Harding Township's rural character. 5 The proposed use would create significantly less trip 6 generation at the intersection of Post House Road and 7 Route 202 than any likely permitted use to be developed 8 at the site, thereby addressing an expressed concern of 9 the objectors. Property values will not be adversely 10 affected if the proposed use of the site is improved -- 11 is approved as compared with the development of a 12 higher intensity permitted use. 13 In addition to the "D" Variances requested 14 there were a number of variances which are dimensional 15 regulation variances. The applicant has also sought 16 variances from heighth, FAR, numerous stories, parking 17 in the front yard. While these variances might be 18 considered subsumed pursuant to the proof in support of 19 the use variance as reflected upon in Price versus 20 Himeji, and Puleio versus North Brunswick Township 21 Board of Adjustment. 22 They have been independently and 23 exhaustively justified through the testimony of Patrick 24 Burke, and the exhibits submitted by him, as well as 25 the planning testimony of Paul Phillips, the</p>
<p style="text-align: right;">Page 43</p> <p>1 residential area to the north along Post House Road. 2 The proposed use is more consistent in character of the 3 neighborhood than a high intensity commercial or retail 4 use such as a restaurant or a drugstore. 5 The last element of proof required to 6 justify the proposed variance necessitates a showing 7 that the relief can be granted without substantial 8 detriment to the public good. Medici states that the 9 absence of substantive detriment to the public good 10 focuses on the fact that granting the variance would 11 have on the surrounding properties. In the instant 12 case the proof demonstrates that the split lot zone 13 includes single-family residential use as permitted in 14 both zones. Given the residential nature of the use 15 proposed it is not inconsistent with the residential 16 loop to the north or with the mixed-use character of 17 the adjoining properties to the south, east and west. 18 The proposed use will protect and maintain 19 the quality of surface and surface waters including 20 stormwater management and wetlands preservation. The 21 proposed use addresses an unmet need for a housing 22 variety in Harding Township directed at those residents 23 seeking to downsize without downgrading their lifestyle 24 experience. 25 The proposed four-unit townhouse is</p>	<p style="text-align: right;">Page 45</p> <p>1 independent justification for these variances is found 2 in the particular suitability of the site, coupled with 3 the creative architectural design and site layout that 4 employs the use of topography and landscape screening 5 to minimize any negative impact from the dimensional 6 regulation variances requested. 7 As such, the site is capable of accepting 8 the proposed FAR, heighth and story variances, and 9 parking in the front yard without substantial negative 10 impact on the surrounding area and without substantial 11 impairment to the intent and purpose of the Master 12 Plan. 13 Based on the foregoing although the Post 14 House were all neighbors the only persons appearing in 15 opposition would prefer to have the subject lot remain 16 undeveloped and preserved in its natural state. That 17 is not legally justifiable or probable, in fact. 18 The testimony of the four planners confirms 19 that the most likely permitted use development at the 20 site would be one which would create a significantly 21 higher trip generation than the four unit townhouse 22 project proposed. Although the opponents to the 23 application raised a number of issues, one theme that 24 was recurrently founded was the concern for the 25 development that would recreate additional traffic on</p>



<p style="text-align: right;">Page 46</p> <p>1 the lot in question.</p> <p>2 Although a single-family home is in fact a</p> <p>3 permitted use in the B-2 Zone, and in the R-one Zone,</p> <p>4 it was not deemed to be a probable development by the</p> <p>5 planner's real estate expert and a neighbor who is a</p> <p>6 real estate agent, given the return or investment in</p> <p>7 the comparison between a single-family residential use</p> <p>8 and a commercial development.</p> <p>9 In addition, because of the shallowness of</p> <p>10 the lot and its proximity to Route 202 the lot is not</p> <p>11 deemed suitable to single-family residential</p> <p>12 development. The proposed use of a four-unit luxury</p> <p>13 townhouse over three acres of land equals a density of</p> <p>14 1.33 units per acre. The lot in question because of</p> <p>15 its developing constraints, split lot zoning, location</p> <p>16 and access mandate makes the lot peculiarly suited to</p> <p>17 receive the proposed use, and the development of a</p> <p>18 conforming commercial use would be an undue hardship</p> <p>19 and practical difficulty for the surrounding neighbors.</p> <p>20 The required positive criteria is satisfied</p> <p>21 by the particular suitability of the lot for the</p> <p>22 proposed use, as well as the promotion of the general</p> <p>23 welfare by providing a variety of housing in need that</p> <p>24 currently does not exist in Harding Township. The</p> <p>25 proposed use can be developed without substantial</p>	<p style="text-align: right;">Page 48</p> <p>1 to the neighborhood concerns clearly expressed and</p> <p>2 stated emphasizing the fact that the neighbors want</p> <p>3 nothing to be developed on the site. While this is in</p> <p>4 and of itself an outrageous statement, it clearly</p> <p>5 forecasts what will happen if the neighbors are</p> <p>6 confronted with a conforming commercial plan.</p> <p>7 The proposed plan is one that is responsive</p> <p>8 to the neighbor's complaints, and can be clearly</p> <p>9 sustained on any appeal. The facts here proven and</p> <p>10 indisputable are elemental. The lot is challenged by</p> <p>11 wetlands, split lot zoning, topography a DOT determined</p> <p>12 access. The opposition on reasonably but truthfully</p> <p>13 wants nothing to be built on the lot. The proposed use</p> <p>14 is demonstrably less intrusive than a conforming one.</p> <p>15 The lot is particularly suited for the</p> <p>16 proposed use because the proposed use which addresses</p> <p>17 an unmet need in Harding Township promotes the public</p> <p>18 good better than a predictable conforming use. The</p> <p>19 proposed use on a specific piece of property</p> <p>20 particularly suited to receive it either creates a</p> <p>21 substantial impairment to the intend proposed, in the</p> <p>22 intend and purpose of the Master Plan and zoning</p> <p>23 ordinance, or a substantial detriment to the public</p> <p>24 good.</p> <p>25 I ask you to do what the facts and law</p>
<p style="text-align: right;">Page 47</p> <p>1 detriment to the public good and without substantial</p> <p>2 detriment to the intent and purpose of the Harding</p> <p>3 Township Master Plan and zoning ordinance. And I</p> <p>4 emphasize that the key statutory word in that statement</p> <p>5 is the word "substantial." These two prongs of the</p> <p>6 statutorily required negative criteria have been</p> <p>7 demonstrated by the enhanced proof required by the</p> <p>8 Medici standard.</p> <p>9 Once again, back to the beginning.</p> <p>10 Everyone is entitled to his own opinion, and no one is</p> <p>11 entitled to his own facts. The facts are as they</p> <p>12 exist; your opinion, however, is constrained by</p> <p>13 applicable law. You are a quasi-judicial body charged</p> <p>14 with specific responsibilities regarding a specific</p> <p>15 parcel of property. Now is the time for judgment, not</p> <p>16 opinion guided by law.</p> <p>17 If you do not grant this application I</p> <p>18 believe that you are consigning this lot to a</p> <p>19 development plan that will result in years of</p> <p>20 controversy and litigation. I am specifically not</p> <p>21 referring here to an appeal of this case, but rather</p> <p>22 the controversy and litigation that will be the</p> <p>23 children of any conforming plan presented in the</p> <p>24 future.</p> <p>25 This statement is made in direct response</p>	<p style="text-align: right;">Page 49</p> <p>1 compel: Grant this bifurcated application and allow</p> <p>2 the development of a lot to proceed to a full site plan</p> <p>3 presentation. I thank you for your patience and</p> <p>4 forbearance in listening to this extend presentation</p> <p>5 which is offered as an aid in structuring the</p> <p>6 deliberations that is will ensue. I thank you.</p> <p>7 CHAIRMAN FLANAGAN: Thank you, Mr. Sheehan</p> <p>8 are you -- have you, are you through with your</p> <p>9 testimony?</p> <p>10 MR. HALL: It wasn't testimony.</p> <p>11 CHAIRMAN FLANAGAN: Are you through with</p> <p>12 your summation?</p> <p>13 MR. SHEEHAN: Yes.</p> <p>14 CHAIRMAN FLANAGAN: Do you want to present</p> <p>15 anything else in support of the application.</p> <p>16 MR. SHEEHAN: The applicant has rested.</p> <p>17 CHAIRMAN FLANAGAN: Thank you. So just for</p> <p>18 starters, for everyone from the public, we are now</p> <p>19 going to deliberate this. We are then going to take a</p> <p>20 vote on this. And I suspect some in the room are going</p> <p>21 to be happy with the vote, and I suspect some will be</p> <p>22 unhappy with it. Regardless of how you feel about the</p> <p>23 decision please realize we have other business we need</p> <p>24 to take care of tonight. There are other residents</p> <p>25 that have applications before us that we will need to</p>

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1 hear.

2 So I will ask once we take a vote that if

3 you do not intend to stay for the other applications,

4 if the only reason you are here is for this application

5 we will take a five minute recess. I would ask those

6 who intend to leave please leave quickly and quietly.

7 If you'd like to stand outside on the sidewalk and

8 speak among yourselves that's fine. Please do not

9 congregate in the hallway so we can continue on with

10 the other applications.

11 All right. So with that said -- what's

12 that?

13 MR. HALL: I think it would be appropriate.

14 I won't be long-winded.

15 CHAIRMAN FLANAGAN: Yea, Gary, why don't

16 you --

17 MR. HALL: I won't say the same thing four

18 times, okay. Much of the law as stated is fairly true

19 and accurate. The Price versus Himeji case is a New

20 Jersey Supreme Court, 20 -- 2013, 5 years ago. It

21 addresses in the town of Union City in Hudson County.

22 And basically -- I'll go through it real quickly

23 because that controls your decision. And at the end of

24 the day one thing is -- I'll give you my views on the

25 law, but how you apply it is your decision not mine. I

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1 don't vote here. I'm not going to tell you how to find

2 facts, but there is fact-finding you'll have to make.

3 And it's true that the Court focused on a

4 site-specific analysis. Procedurally this is a use

5 variance, a D-1. Now, they also have a height variance

6 based on the D-2 criteria, which is a D-something,

7 other number, an FAR. They're all "Ds." I agree

8 they're all sort of merged together. It's really a

9 package, but all the "Ds" you need five votes. There

10 are seven people here. As far as I know they're all

11 eligible, I'm pretty sure they all are. So five out of

12 seven have to vote yes to approve this application,

13 procedurally.

14 The Court did say a site specific analysis,

15 something on this property that's different from other

16 properties that make what they want to do appropriate.

17 And first of all, anyone has a right to ask for a use

18 variance to do something the ordinance doesn't allow.

19 So the mere fact that that applies to any variance and

20 the court can say, well, by definition of variance

21 you're not adhering to the ordinance. Your job as

22 Zoning Board members is to see whether this falls

23 within one of the areas where it's appropriate to grant

24 relief for a specific property.

25 Having said that, the Price case said you

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1 don't have to -- the applicant doesn't have to prove

2 that what they want to do this is the only place they

3 can do it. That was specifically rejected in this

4 decision because some people thought, well, you have to

5 show that. It can't be something you can do anywhere,

6 you have to narrow it down to that property. And if it

7 works there and it doesn't have to work someplace else.

8 If it would work everywhere then that wouldn't fly.

9 It's not particularly suitable, it's it could do the

10 same thing here.

11 The other piece of it is, and this was

12 mentioned, that because it's not, number one,

13 inherently beneficial like a church, school, whatever,

14 and by the way an inclusionary affordable housing

15 development of 20 percent is not inherently beneficial.

16 It's got to be all affordable housing, a hundred

17 percent. This is none of those. So it has to be

18 either a hardship that you can't do what's allowed.

19 That you're, in fact, the zoning, what it allows you to

20 do can't be done.

21 Now, I think I asked this early on in this

22 case a few times whether that was -- they were basing

23 their relief request on that. I think their answer is

24 no. I think it's still a factor. I mean, there's

25 testimony concerning the fact that nothing has

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1 happened. But that's a factor.

2 And what the Supreme Court said in Himeji

3 case was that if what you want to do -- what the

4 applicant wants to do is better that weighs in their

5 favor, because the statement is it's particularly

6 suited to advance the public interest. And the Courts

7 have acknowledged almost anything you want to do can

8 advance the public interest. It's not something

9 obnoxious or whatever, it's a nuisance-type use. So I

10 don't know if you have to say there's some unmet need,

11 per se. You can find what you want on that point, but

12 it may have some relevance, but it's not in my mind the

13 overall driver of this. That what you want to do is

14 legitimately beneficial. That it could serve some

15 need. That's a factor. And on the negative side you

16 can say well, actually it's better than what they want

17 to do, that would weigh in their favor.

18 I think those are the main things. That's

19 a positive that it's particularly suited. They make

20 findings. There were representations, a statement

21 about certain claimed findings on that point. One I

22 will comment on. I don't see how wetlands cut either

23 way. I don't know how you see that for this, but that

24 argument is made.

25 But it's why is it unique? Why is it



<p style="text-align: right;">Page 54</p> <p>1 different? The planner addressed that in his  2 testimony, and that's -- what you just heard is  3 argument, not testimony. The planner did, Mr. Phillips  4 did testify more than once on what he thought were the  5 distinguishing factors. So you have to find that  6 there's something particularly suitable here, something  7 that separates it from most of the properties in town.  8 I would put it that way. And also that what you want  9 to do won't be substantially detrimental to the  10 neighborhood, its going to impact people with more  11 traffic, more this, more that. I think the showing  12 with the conforming plan, which by the way Mr. Phillips  13 thought it was a good idea, the statement I think said  14 the applicant thought it was unnecessary. So I'll  15 leave that alone.</p> <p>16 So the substantial detriment I'm not sure  17 there's much of an issue there that's going to hurt the  18 neighbors. Of course, it's what's permitted. The more  19 challenging issue is that substantially impairing the  20 zoning plan which doesn't provide for multifamily use.  21 Allows a single family. Allows off-the-street type  22 use. The question is by allowing this are you allowing  23 a substantial impairment of the zoning? It does apply  24 to one. You're not only one property that's in the  25 applicant's favor. It's not a large area of town that</p>	<p style="text-align: right;">Page 56</p> <p>1 question for Gary. My understanding is that I know we  2 have talked about what could happen if the application  3 is allowed or denied. That doesn't really factor into  4 our decision though, right?</p> <p>5 MR. HALL: I don't think so.</p> <p>6 BOARD MEMBER CHIPPERSON: I mean, it's  7 basically how we feel when the law is applied to this  8 case. It's not about whether it becomes a home or an  9 office in the future.</p> <p>10 MR. HALL: I think that is what I will call  11 speculation as to what might happen. What we heard,  12 you're right, anything they might want to do that the  13 neighbors won't like, but that's not for you to decide.  14 The reality has been did they meet the requirement  15 under the land use statute? Was the variance advanced  16 for?</p> <p>17 One last thing, and they did -- bifurcating  18 the application you're entitled to do that under the  19 statute. Okay. This came up at the outset and I said,  20 but the Board can't consider use variances in the  21 abstract. That's why you had to see what the package  22 was. You can't say, well, townhouses are crazy. You  23 have to see. And now you see the package, and if it's  24 approved and it goes to site plan you'll get into a lot  25 more minutia and details. This might be something like</p>
<p style="text-align: right;">Page 55</p> <p>1 you're saying, well, I'll go ahead and build a lot of  2 townhouses.</p> <p>3 So I think those are the main find. You  4 have to weight the findings and conclude whether this  5 is something that is reasonable and appropriate and  6 will not substantially impair the zoning plan. You  7 have to make those findings based on the testimony.  8 Okay.</p> <p>9 CHAIRMAN FLANAGAN: Okay.</p> <p>10 MR. HALL: I know it's a very amorphous  11 thing but that's the nature of the beast that you have  12 to weigh whether -- and one last comment. I will say  13 that -- the applicant has the burden of proof. And the  14 issue is for you to decide whether the applicant met  15 that burden. You heard from the neighbors, the public  16 is absolutely entitled, it has the right to be heard,  17 but this is not a competition between the applicants  18 and the neighbors. This Board is hearing the case and  19 it's for you to decide whether the statute is met and  20 whether it should be getting a use variance. All  21 right?</p> <p>22 CHAIRMAN FLANAGAN: Thank you.</p> <p>23 MR. HALL: If there are more questions  24 along the way please feel free to ask.</p> <p>25 BOARD MEMBER CHIPPERSON: I have one</p>	<p style="text-align: right;">Page 57</p> <p>1 this in order to show detriment or not you need to see  2 what it is and the principal elements on what this is  3 proposing to do. Does that answer your question?</p> <p>4 BOARD MEMBER CHIPPERSON: Yes, thank you.</p> <p>5 CHAIRMAN FLANAGAN: Anyone else want to  6 kick off the discussion? Phil?</p> <p>7 BOARD MEMBER ROSENBACH: Okay. Turn your  8 mics on.</p> <p>9 CHAIRMAN FLANAGAN: Mr. Sheehan, I ask, or  10 someone, would you mind turning that one off?</p> <p>11 MR. HALL: There's a limit on the mics.</p> <p>12 CHAIRMAN FLANAGAN: Thank you, Phil.</p> <p>13 BOARD MEMBER ROSENBACH: Thank you for  14 letting me go first. I appreciate that. I do have a  15 lot of things to say about this and they're probably  16 not as well organized as I'd like them to be and I  17 might be jumping around a little bit. So first of all,  18 I do appreciate the circumstances of the applicant in  19 that the initial application came to an end. We took  20 an informal poll of the Board. It became clear in its  21 informal poll that the application like then structured  22 was not going to get a single vote, much less five.  23 And we gave the applicant the opportunity to  24 reconfigure the development, but we couldn't really say  25 what would be accepted or what would not be accepted</p>



<p style="text-align: right;">Page 58</p> <p>1 because we would have no way of doing that.</p> <p>2 So the applicant came back to us with a</p> <p>3 reconfigured development, and essentially changed the</p> <p>4 development from five units to four and scaled down the</p> <p>5 size. It is possible that no one on the Board will</p> <p>6 agree with me, but I think to me that makes all the</p> <p>7 difference in the world. I just have to say that.</p> <p>8 That it's not just a matter of a scaled down</p> <p>9 development, but I have spent a lot of time reading the</p> <p>10 master plan since October. I have considered this</p> <p>11 application quite a bit.</p> <p>12 Obviously from the tenor of my remarks I'm</p> <p>13 going to say that I support it. On the other hand I</p> <p>14 would have to say that if other Board members were not</p> <p>15 to support it or were to oppose it I can probably say</p> <p>16 that they were acting improperly or arbitrarily or</p> <p>17 capricious. I think that it's a close call, but as for</p> <p>18 myself I have to say that I think that the applicant</p> <p>19 has proved its case.</p> <p>20 What I am, I suppose, most taken by is --</p> <p>21 the purpose of the application I will say again I think</p> <p>22 I've said it a half a dozen times already, I completely</p> <p>23 reject this thesis that the application is to allow</p> <p>24 Harding residents to downsize. I think that that's</p> <p>25 just wrong.</p>	<p style="text-align: right;">Page 60</p> <p>1 population, and I have no evidence that it has</p> <p>2 significantly changed since then, the population has</p> <p>3 gotten dramatically older, and I think it's going to</p> <p>4 continue getting older. I know in the Star Ledger to</p> <p>5 my surprise there was an article about towns with the</p> <p>6 oldest median populations in the state there was</p> <p>7 Lakewood and various other places in Monmouth County,</p> <p>8 and I swear to God there was also Harding Township.</p> <p>9 So this type of housing as modest an effort</p> <p>10 as it is in the sense of addressing this issue I think</p> <p>11 is a plus. I think that Route 202 is the correct</p> <p>12 location for it. I mean, for instance, if this housing</p> <p>13 were to be proposed in the RR Zone I think it would be</p> <p>14 very bad and not acceptable. I think the same thing</p> <p>15 would be true for the R-1 Zone, R-2 Zone, R-3 Zone, R-4</p> <p>16 Zone. I don't think it would fit at all, but 202 which</p> <p>17 happens to go through our town and has a certain type</p> <p>18 of development is for me the appropriate place to put</p> <p>19 this type of potential development.</p> <p>20 I also note in the Master Plan, and I will</p> <p>21 refer now to page, let's see, 11-19, there's what I</p> <p>22 consider to be actually a fairly odd reference where it</p> <p>23 says that the B-2 Zone should permit the development of</p> <p>24 an assisted living facility because of its easy access</p> <p>25 and proximity to Morristown where a full range of</p>
<p style="text-align: right;">Page 59</p> <p>1 On the other hand I accept the thesis that</p> <p>2 the purpose of the application at least as amended is</p> <p>3 to allow people over a certain age to own property of a</p> <p>4 certain type in Harding that does not yet exist. We're</p> <p>5 talking four units in terms of the population density</p> <p>6 and the housing structure in Harding of monumental</p> <p>7 change, but it is a change. It's an addition in that</p> <p>8 it is a type of housing that right now does not exist.</p> <p>9 There are plenty of townhouses in Harding, they are not</p> <p>10 built the way that these townhouses are proposed to be</p> <p>11 built. Whether we call them luxury or upscale or</p> <p>12 slightly better than what there is now, they're</p> <p>13 different.</p> <p>14 I think that the Master Plan acknowledges</p> <p>15 without specifically blessing this type of development.</p> <p>16 I mean, one thing that struck me in the Master Plan,</p> <p>17 and I will refer to page 10-9, is a chart changes in</p> <p>18 population age groups 1980 to 2000. I know that that's</p> <p>19 already nearly 20-years old, but it's what I got. And</p> <p>20 from 1980 to 2000 people in the age group of zero to 20</p> <p>21 went down by roughly 10 percent. People in the age</p> <p>22 group of 20 to 30 went down by roughly 44 percent.</p> <p>23 Thirty to 65 went up by three percent. And people 65</p> <p>24 and older went up by 146 percent.</p> <p>25 So if we look at that 20-year change in</p>	<p style="text-align: right;">Page 61</p> <p>1 health and hospital services are located.</p> <p>2 The Master Plan notes that assisted living</p> <p>3 is an inherently beneficial use so I find it particular</p> <p>4 because an inherently beneficial use can go in any</p> <p>5 zone. But the fact is that our Master Plan specifies</p> <p>6 that the B-2 Zone is an appropriate use for an assisted</p> <p>7 living facility. This is not an assisted living</p> <p>8 facility, but it shares one essential aspect of it,</p> <p>9 which is that it was designed for at least owned by</p> <p>10 people above a certain age, although it obviously does</p> <p>11 not limit people above a certain age living there.</p> <p>12 So I also note Route 202 is acknowledged in</p> <p>13 the Master Plan as not being as rural as other parts of</p> <p>14 Harding. There's a high density. And I think that</p> <p>15 this development, as it has been restructured, is</p> <p>16 attractive. I do not agree with the descriptions that</p> <p>17 it is overwhelming in size or over to that effect.</p> <p>18 I think that it serves the Master Plan</p> <p>19 goals of trying to use the landscape and use buffering</p> <p>20 to create an attractive environment along 202. And to</p> <p>21 get to the heart of it, as I certainly do not question</p> <p>22 the sincerity and the depth of the remarks stated by so</p> <p>23 many residents of Post House Road, and I admit I don't</p> <p>24 live there, so I can say it doesn't affect me</p> <p>25 personally, but I do not see this development as</p>

<p style="text-align: right;">Page 62</p> <p>1 destroying Post House Road. And, in fact, I think that  2 a possible commercial development would have a much  3 worse effect on the Post House Road environment. It  4 doesn't have to be the building that was designed by  5 the applicant that we could look at as a conforming  6 building, but it is somewhat telling to me that this  7 property has been available for purchase for nearly a  8 decade, and it has been, as far as we have been told,  9 no other seriously interested buyer for any use, much  10 less a commercial use or a single-family use.</p> <p>11 So I think that the fact that this property  12 is at a corner, that the traffic will have to flow from  13 the intersecting street, that it is on 202, does make  14 it fairly suitable. I know that I asked many, many,  15 many months ago and it is still a question that  16 concerns me, well gee, if this is the case then why  17 can't the property right across Post House Road  18 demolish itself and create an additional development?</p> <p>19 I don't necessarily have a good answer for  20 that other than to say it is a fact that there is a  21 property there already. Means that if at some point  22 that property was able to be developed and sold. And I  23 know that Mr. Phillips said that that was a huge  24 difference, still not convinced by it, but I don't see  25 that as a reason to say that this is not particularly</p>	<p style="text-align: right;">Page 64</p> <p>1 but that does not include the bulk aspect. So the  2 height is actually not just the height, it's the bulk  3 times the height. But I think the applicant did  4 address the height variance with that one exception.</p> <p>5 With regard to the D-4 FAR Variance I think  6 that's related to the density. It's a very high  7 relative density. I'm not sure the applicant could  8 meet that, but it's really tied in with the special  9 reasons use variance. So I want to get to that.</p> <p>10 So on that, I think that's the essential  11 problem. I think that's always been the challenge for  12 this application. With regard to the positive  13 criteria, is the site particularly well suited for the  14 proposed use? I wasn't persuaded the applicant met  15 that criteria of particular suitability. In many ways  16 it's suitable, in some ways it's not.</p> <p>17 Particular suitability is not uniqueness  18 for sure, it's more like a specially well-suited -- I  19 just don't think that criteria was met. Close perhaps,  20 but not met.</p> <p>21 Would the owner suffer an undue hardship if  22 compelled to use the property in conformance with the  23 zoning? It is a challenging site to develop. We have  24 seen lots of sites that are challenging in Harding and  25 have been developed. I also was not persuaded that</p>
<p style="text-align: right;">Page 63</p> <p>1 suitable.</p> <p>2 So I think I have more to say but given  3 that -- I think that this is enough to indicate why I  4 stand where I stand, and I how I view this.</p> <p>5 CHAIRMAN FLANAGAN: All right. Alf, do you  6 want to chime in?</p> <p>7 BOARD MEMBER NEWLIN: All right. And I  8 won't ask any questions, I promise. I would want to  9 mention, Mr. Sheehan, and you said it several times  10 that emotions run high and phrases to that effect. I  11 don't really think that's the case from the Board's  12 perspective. I really haven't seen that, and I  13 personally don't feel that to this application. So I  14 wanted to respectfully disagree with you on that.</p> <p>15 I certainly respect the applicant's vision  16 of what they're trying to do here. There's no  17 question. And I respect the sincerity of the vision.  18 However, I'm not going to be supportive of this  19 application, and I'd like to give the reasons behind  20 that.</p> <p>21 Starting with the "C" Variances I think the  22 applicant did indeed meet the criteria to get the "C"  23 Variances approved. With respect to the D-6 height  24 variance I think the applicant also, if they didn't  25 quite meet the criteria they could meet the criteria</p>	<p style="text-align: right;">Page 65</p> <p>1 that criteria was met, that this would be an undue  2 hardship. I don't know about the finances. We don't  3 make judgments about finances. We are here on the  4 Board for good reason. There's a lot of testimony  5 about that. I'm neutral on it. If you give the  6 property waivers for free it would have gone. If you  7 try to charge something exorbitant you're not going to  8 sell it. Was the price too high? I don't know. I'm  9 just neutral on that.</p> <p>10 Onto the negative criteria. Did the  11 applicant substantiate the proposed use will not be a  12 substantial detriment to the public good? Yes, I think  13 the applicant met that.</p> <p>14 Would the proposed use potentially impair  15 the intent and purpose of the zoning plan? Yes, I  16 think it would. And this is my rational. I think it  17 does conflict with the zone plan that's in effect for  18 that property, and I think it would, in fact, impair  19 the zone plan.</p> <p>20 Goal three of the master plan is the  21 protection of rural development pattern and density.  22 Low density is fundamental for Harding. There's no  23 question about it. It's what makes us unique. It's  24 fundamental for our Master Plan. It's fundamental to  25 our zoning ordinances.</p>



<p style="text-align: right;">Page 66</p> <p>1 This application has relatively high  2 density. When you see density times four for  3 conforming residential sites and would substantially  4 exceed the water and septic usage for a conforming  5 commercial site, those are both very important facts.  6 And Harding cares a lot about density, particularly  7 now.</p> <p>8 We have recently had the town go through a  9 state Supreme Court supporting affordable housing  10 litigation. That's the best way I can say it. We were  11 forced to substantially increase permitted density in  12 the lower part of Route 202 corridor and also on two  13 properties at the corner of Tempe Wick and roughly  14 Route 202. And all those -- I mean, those are in  15 direct contradiction of Harding's Master Plan, but  16 nonetheless the town had to go with that settlement. I  17 was not part of it, but I certainly know that it  18 occurred. And it is relevant because considerable  19 density is permitted in certain sections of Route 202.  20 Not in this section, but that is, in fact, what we're  21 talking about.</p> <p>22 As part of the resettlement, the town, as  23 the planner -- our second planner did testify, the town  24 did re-examine the 202 corridor. And Mr. Sheehan, you  25 brought that up several times correctly, that had not</p>	<p style="text-align: right;">Page 68</p> <p>1 her report. Her report was neutral, as far as I can  2 tell. It was not supportive or negative. I never got  3 a chance to actually talk to Christine and ask her what  4 about this, what about that. So I don't know what to  5 say about that. And our second planner's report we  6 didn't get a chance to talk to her. So that's my  7 rational.</p> <p>8 CHAIRMAN FLANAGAN: Well, clearly you were  9 raising your hand?</p> <p>10 BOARD MEMBER KEARNS: No, but, first of all  11 I think all the professionals have done a very good job  12 in presenting their side of the application. So like  13 Alf I'm not going to be in support of this and for the  14 same reasons that Alf outlined. And I think  15 additionally it's really not in character with that  16 part of our town. It's totally out of character.</p> <p>17 I'm not opposed to the idea of having  18 townhomes. Three perhaps even on that property, but  19 the bulk and the height just is not a good fit for  20 that. And for all the reasons I can layout in the  21 summary I thought that was to the point. So I'm a no.</p> <p>22 CHAIRMAN FLANAGAN: And obviously we're  23 going to do a roll call vote, but I appreciate everyone  24 putting their views forward. Rita? Dan? Would you  25 guys like to read it?</p>
<p style="text-align: right;">Page 67</p> <p>1 been looked at for some time. The town did do it and  2 they did rezone, and that is a fact. That's relevant.  3 At least it's relevant that the town did go through a  4 whole planning review of Route 202.</p> <p>5 On unmet need, you know, the survey I  6 believe the faith, and I don't count on the survey  7 much, it wasn't scientific. I don't really disagree.  8 I think probably people would think on paper it's a  9 popular application, but I don't really think that's  10 relevant to us, because that's not really translated  11 into a true unmet need.</p> <p>12 This is four units. This has nothing to do  13 with assisted living facility. Nothing. I don't agree  14 with my colleague on that. It's four units. To me to  15 really have a material impact on that need you're going  16 to have to allow many more applications like this, and  17 potentially could. What's to say if the Board approved  18 this application in this zone why could other owners  19 apply for the same D-1 variance? Why couldn't 2 Post  20 House Road apply for that variance? They could. It's  21 a little easier to develop. It may be less similar.  22 It definitely is a different property but it's not  23 completely dissimilar. So I think indeed it will  24 impair the zoning plan.</p> <p>25 Our planner, Christine Cafone, I looked at</p>	<p style="text-align: right;">Page 69</p> <p>1 BOARD MEMBER CHIPPERSON: Okay. Well, I  2 appreciate the application and what the applicant is  3 looking to do, but unfortunately, you know, I can't  4 support the application for a lot of the same reasons  5 articulated by Alf, but I don't feel that the arguments  6 made met the legal burden, and I also think that the  7 evidence was insufficient to support the arguments.</p> <p>8 As we heard testimony there's at least  9 three occasions that the Board pointed out that we  10 thought the evidence was insufficient. The survey  11 cards I don't even believe that the card asked if the  12 person wanted to see the property specifically in  13 Harding. It just asked if they were interested.</p> <p>14 The sales efforts, I've said twice  15 throughout this proceeding that I know we had testimony  16 but we didn't have data. We don't know was it listed  17 on Garden State MLS? How many months was it listed?  18 What were the price points? I personally looked for  19 property in Harding, vacant land for two years with my  20 husband and was never aware of this property being for  21 sale.</p> <p>22 We have evidence about the availability of  23 office space that was very vague and we requested  24 additional evidence to show with a greater level of  25 break down as to what type of office was vacant. Are</p>

<p style="text-align: right;">Page 70</p> <p>1 these old Class "C" type spaces that are not rented  2 spaces above a deli, or are they Class "A" spaces that  3 are not rented?</p> <p>4 So I felt that the evidence was not there  5 to support a lot of what was said, but I don't think I  6 would have been persuaded by the arguments either way.  7 I do think that it's not particularly suited to this  8 piece of property. I know there is evidence that these  9 types of townhomes are very popular in many areas,  10 Morristown being one of them, but Morristown in my  11 opinion there's a huge difference between 30 units on  12 the Green where you can walk your dog and you have a  13 choice of 20 restaurants and you see someone in a  14 high-end home likes to get out and be mobile I can see  15 how those are very popular. I don't think a four-unit  16 development on a piece of property in Harding with no  17 sidewalks, two restaurants, probably not good location  18 to walk a dog, and other things, I just didn't see  19 evidence. And I did specifically ask for evidence of  20 other four- to five-unit properties that were  21 successfully sold in other towns and we didn't have any  22 evidence of that.</p> <p>23 So for me I do believe Morristown is  24 successful with these types of things, but I think it's  25 a different situation and I don't think it applies to</p>	<p style="text-align: right;">Page 72</p> <p>1 citizen level. I know people who are 55 who are  2 starting their families. Their wife might be 45, and I  3 raise that issue. So 65 or plus to me would seem more  4 consistent with senior citizens. I don't know a lot of  5 55-year-olds that need assisted living, so I agree with  6 prior comments that I don't see this pertaining to any  7 reference in the master plan about assisted living. I  8 see this completely different to me. And as presented  9 in testimony only one person would have to be over 55.  10 It could be a grandmother or grandfather with a family  11 there. I did not by the Internet use of retail.</p> <p>12 I do understand that a lot of retail  13 business is going away, but I brought up before that we  14 have seen the opening of a new art studio that sells  15 art and high-end wallpaper and things like that and I  16 believe that's the type of thing that in a town like  17 Harding along with The Country Mile that's a perfect  18 place for something like that and you're not going to  19 buy that type of thing on the Internet.</p> <p>20 We approved the Wash and Wiggle. That's a  21 new business. It's doing very well on 202. Dr.  22 Anastasiou mentioned the Minuteman, Wightman's. So I  23 would agree with the applicant that certain things like  24 Walmart, you know, Game Stop, sure, you buy that stuff  25 on the Internet, but I think the type of retail that we</p>
<p style="text-align: right;">Page 71</p> <p>1 this piece of property. So I didn't feel that the land  2 was particularly suited to this development. And I did  3 think that the intent of this substantially impairs the  4 Master Plan. The height is not consistent with the  5 other buildings along The Country Mile.</p> <p>6 I do not believe that it was the opinion of  7 the neighbors that they want the land to stay vacant.  8 The land is zoned for a residential home. And I  9 understand that there's testimony that it's more likely  10 it will be commercial than residential, but that's an  11 opinion. Nobody knows what the future will bring. And  12 I don't believe that that was really the -- there may  13 have been one statement or two statements to that  14 effect, but I didn't take the testimony of the  15 neighborhood as a whole to mean that that's what they  16 wanted, that there be no development.</p> <p>17 And as far as traffic on the lot, again, a  18 residential home would be less traffic than what's  19 being proposed. That is an option. So it's hard to  20 say whether this is better or worse from a traffic  21 perspective when you look at the full scope of what  22 could be built there without a variance.</p> <p>23 I wasn't persuaded by the assisted living  24 housing reference in the master plan. I found 55 to be  25 a very low age cutoff. In my mind, 55 is not a senior</p>	<p style="text-align: right;">Page 73</p> <p>1 have here it is a good location for a lot of retail and  2 a lot of retail is doing well there. I think that's  3 it. Sorry for jumping around a little there, but  4 that's my --</p> <p>5 CHAIRMAN FLANAGAN: Okay. Dan?</p> <p>6 BOARD MEMBER SYMONDS: I'm not going to be  7 nearly as well organized as my -- I was going to say my  8 peers, my superiors here on the Board, but I will do my  9 best to summarize the thoughts that came to me. And  10 the first one is a lot of this application that I've  11 heard has been presented on that there is an unmet need  12 for a different type of housing in the township. And  13 that this is a luxury -- this housing is luxury and  14 suited for older residents.</p> <p>15 As of -- and my, you know, as I go through  16 this and as somebody that is actually in the process of  17 trying to identify what to do with myself after I'm  18 already too old and unhappy with plowing snow, dealing  19 with a septic system, dealing with a well, that I would  20 not be -- so I don't feel that this property actually,  21 you know -- whether there's a need for different type  22 of housing, there may be, but I don't feel this one  23 meets the need for an older resident that is trying to  24 downsize to a simpler life. So that means less  25 driving, less maintenance, sort of less square footage.</p>



<p style="text-align: right;">Page 74</p> <p>1 So that was the first thing that struck me</p> <p>2 that the application is based on an unmet need, but the</p> <p>3 thing is I don't feel that the application meets the</p> <p>4 need. The housing is not that different than, you</p> <p>5 know, finding -- you know, there has been no apparently</p> <p>6 unable to find -- unable to find one resident willing</p> <p>7 to live on that property with a septic system and a</p> <p>8 well and everything else. So I find it harder to</p> <p>9 believe so now the answer to that is finding four</p> <p>10 residents that want to live on the piece of property</p> <p>11 with all of its residential requirements, you know.</p> <p>12 The other item that struck me and/or and</p> <p>13 this goes to I guess the section of to the surroundings</p> <p>14 and the environment is that granted the different uses</p> <p>15 generated different levels of traffic. And it wasn't</p> <p>16 real clear which ones generated the most, but it's very</p> <p>17 clear that this plan generated the most impact on, you</p> <p>18 know, we'll say the water table, and the, you know, the</p> <p>19 hydraulic environment which is, you know, includes</p> <p>20 wetlands and a high quality stream. So to allow a</p> <p>21 piece of property to -- that is going to have the most</p> <p>22 impact on these, those aspects of the environment I</p> <p>23 think is a detriment and so it would go against the</p> <p>24 criteria.</p> <p>25 But those are the two things that really</p>	<p style="text-align: right;">Page 76</p> <p>1 the property to handle. And I think a great job is</p> <p>2 being done trying to reduce the five to four, but I</p> <p>3 think it misses -- I think it went from that luxury in</p> <p>4 the beginning but too many luxuries the quantity of</p> <p>5 them to trying to reduce the mass and trying to keep</p> <p>6 too many of these things and now we're trying to fit</p> <p>7 within the confines and height restriction and density</p> <p>8 and now we have two buildings that to me have dwindled</p> <p>9 from that luxury status. You know, when you presented</p> <p>10 these new buildings, and I know it was a large effort</p> <p>11 to try to reduce the scale by making a mansard roof,</p> <p>12 but I also noticed that the ceiling heights got</p> <p>13 smaller, the first floor to the second floor. There's</p> <p>14 no attic space. Where are all the mechanicals going?</p> <p>15 Those ceiling heights get smaller and smaller. I think</p> <p>16 the height wouldn't have bothered me as much if there</p> <p>17 were just less of these buildings. Maybe it's just one</p> <p>18 building that actually looks like a larger residence</p> <p>19 than, you know, just inserts these different townhouses</p> <p>20 within one building. Because this is just creating</p> <p>21 presumably more masses because there's just two</p> <p>22 buildings, right.</p> <p>23 I just think it took a step backwards when</p> <p>24 it started becoming less, but I'm repeating myself but</p> <p>25 if it was like three of them within one building that</p>
<p style="text-align: right;">Page 75</p> <p>1 struck me. And as far as the Master Plan, again, the</p> <p>2 Master Plan, you know, it set up the multifamily</p> <p>3 housing, the units where there was city water and city</p> <p>4 sewer available, and this piece of property almost is</p> <p>5 very far from where you're going to be able to get</p> <p>6 those utilities. So I think to try and say okay -- so</p> <p>7 approving it is going to, again, impact the master plan</p> <p>8 because the property's not sufficiently different,</p> <p>9 let's say. Well, okay, if you can put a multifamily</p> <p>10 unit here where there's wetlands, where there's no city</p> <p>11 water, where there's no city sewer and side road</p> <p>12 access, it doesn't narrow it down much. There's a lot</p> <p>13 of properties where you can do that. And so again,</p> <p>14 these are my concerns, or these are the things that</p> <p>15 struck me listening to the testimony.</p> <p>16 BOARD MEMBER MASELLI: In addition to what</p> <p>17 everybody else has said, which I agree with everything</p> <p>18 that Alf has outlined and -- one thing that I keep</p> <p>19 thinking about is the way that it was originally</p> <p>20 presented. And I remember seeing photos of these</p> <p>21 beautiful unique townhouses that were made out of brick</p> <p>22 with I think they were like palladium window dormers on</p> <p>23 them, and I thought that was attractive, that concept.</p> <p>24 It's just that there was that concept times five.</p> <p>25 And I always thought it was too much for</p>	<p style="text-align: right;">Page 77</p> <p>1 looked like a beautiful residence that looked like a</p> <p>2 residence, and that it was disguised and all of a</p> <p>3 sudden there's like three units in there, which would</p> <p>4 in effect reduce the density.</p> <p>5 The height doesn't necessarily mean that it</p> <p>6 looks too big. A roof line can come down to a first</p> <p>7 floor and then all of a sudden it reduces the mass of</p> <p>8 the house or the building. And to me that's the point</p> <p>9 that bothers me the most on the way this developed. I</p> <p>10 wish we could have done it and just one building is</p> <p>11 less and the height wouldn't bother me as much if it</p> <p>12 was done, with the original concept. So that's all.</p> <p>13 BOARD MEMBER NEWLIN: Mike, can I just say,</p> <p>14 I strongly agree with Dan's articulation of the four</p> <p>15 versus the three, and also all the architect stuff that</p> <p>16 he just went through.</p> <p>17 CHAIRMAN FLANAGAN: Thank you for the</p> <p>18 architect stuff.</p> <p>19 BOARD MEMBER MASELLI: But also I do</p> <p>20 appreciate that the applicant was willing to use a</p> <p>21 wooden roof or a slate roof and draping in copper. I</p> <p>22 think that's the home run part of the whole thing.</p> <p>23 It's just everything else I said it's just I think it</p> <p>24 kind of tailed off.</p> <p>25 CHAIRMAN FLANAGAN: All right. From my</p>



<p style="text-align: right;">Page 78</p> <p>1 perspective the question from the beginning, and I'll  2 say, I'll agree to some of the arguments the applicant  3 made. I'll disagree with others. I think, however,  4 the most important thing for me was the question does  5 this impair, you know, the purpose and the intent of  6 the zoning plan. And when you look at the zoning plan,  7 as I read the master plan, and as I've seen through the  8 last several years one of the biggest considerations is  9 always intensity, and for a few reasons. One, because  10 most of us are on wells; two, most of us are on septic.  11 And there's great efforts made to limit higher density.  12 With that said, there are areas in the  13 township where when the plan was written higher density  14 was permitted. And these are the -- initially it was  15 the PRN Zones which was Shadow Brook and Harding Green.  16 And one of the reasons, as I understand it, why the  17 higher density was permitted in those areas was because  18 they have city water, and they have city sewer.  19 I don't know whether it makes a difference,  20 so there's been a lot of reference to the  21 re-examination of the Master Plan of 2013. And I guess  22 anybody could read whatever they want to in what is  23 written. The applicant would argue that that  24 re-examination points to -- that it would support the  25 applicant's application. I don't know if it does.</p>	<p style="text-align: right;">Page 80</p> <p>1 where you could possibly have sewer or water.  2 So I do think that granting this variance I  3 think it would do harm unto the Master Plan. So with  4 that said does anybody else want to talk about this? I  5 think everybody's said their peace here.  6 All right. I'll just remind everyone in  7 the public. We are now going to take a vote. If you  8 intend to stay for the other applications we have  9 coming up after this. You're welcome to stay. If you  10 intend to leave we're going to take a five-minute  11 break. Please leave quickly. You can congregate  12 outside, but we need to get onto other business.  13 So with that said we need to make a motion.  14 I think the motion is I would like to move that we vote  15 this up or down, whereas a yes vote would grant the  16 variance, and a no vote would deny the variance.  17 MR. HALL: No. I only heard one favorable  18 vote.  19 BOARD MEMBER ROSENBACH: Can we vote to  20 deny?  21 MR. HALL: You can vote to deny, so people  22 don't get confused.  23 CHAIRMAN FLANAGAN: Okay. So I move we  24 deny this application; whereas, a yes vote in this case  25 will deny the application; a no vote will grant this.</p>
<p style="text-align: right;">Page 79</p> <p>1 I would say, and I don't think -- I don't  2 think the fact changes based on what happened with what  3 Alf mentioned about the Affordable Housing Settlement,  4 but the fact is -- so I'll agree with Phil, the 202 is  5 the correct area for hire density. I think that's  6 absolutely correct. The question then becomes where on  7 202? Because 202 there's a lot of different sections of  8 it.  9 As part of the Affordable Housing  10 Settlement I don't think we can ignore that that  11 entire -- the fact is that that entire stretch of road  12 was reconsidered. The township and the planners. And  13 Fair Share Housing, which has a lot of the power to  14 enforce their will, they all looked at 202. And  15 ultimately they decided that if they're going to put  16 higher density someplace they're going to put it at the  17 southern end of 202.  18 So they looked at the entire stretch as I  19 understand it, but they decided to do a different  20 section of 202. And I understand part of that reason  21 is there is proximity to sewer there, which gets back  22 to the whole basic concept of why we want to maintain  23 lower density. It's because of sewer and water. This  24 property is on Primrose Brook. I think a few of you  25 started to say it's pretty far from either end of 202</p>	<p style="text-align: right;">Page 81</p> <p>1 Is everyone clear on that?  2 MR. HALL: I'm not sure we got a second on  3 the other vote. We'll get a second on the other vote.  4 CHAIRMAN FLANAGAN: So the motion is we  5 deny the application; whereas, a yes vote would be  6 denial of this; a no vote would be an approval of this  7 variance. Okay. And I need a second, if anyone wants  8 to second that.  9 BOARD MEMBER NEWLIN: I'll second that.  10 CHAIRMAN FLANAGAN: Okay. Lori, will you  11 call the roll?  12 ADMINISTRATOR TAGLAIRINO: Mr. Flanagan?  13 MR. HALL: To deny.  14 CHAIRMAN FLANAGAN: To deny, yes.  15 ADMINISTRATOR TAGLAIRINO: Mr. Newlin?  16 BOARD MEMBER NEWLIN: Yes.  17 ADMINISTRATOR TAGLAIRINO: Mr. Maselli?  18 BOARD MEMBER MASELLI: Yes.  19 ADMINISTRATOR TAGLAIRINO: Mr. Rosenbach?  20 BOARD MEMBER ROSENBACH: No.  21 ADMINISTRATOR TAGLAIRINO: Mr. Kearns?  22 BOARD MEMBER KEARNS: Yes.  23 ADMINISTRATOR TAGLAIRINO: Ms. Chipperson?  24 BOARD MEMBER CHIPPERSON: Yes.  25 ADMINISTRATOR TAGLAIRINO: Mr. Symonds?</p>

1 BOARD MEMBER SYMONDS: Yes.  
 2 CHAIRMAN FLANAGAN: All right. Thank you  
 3 everyone. We're going to take a five-minute break.  
 4 We're going to come back, we're going to start.  
 5 (Whereupon, the hearing on this application  
 6 concludes at 9:45 p.m.)  
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1 CERTIFICATE  
 2  
 3 I, IRIS LA ROSA, a Notary Public and Certified  
 4 Shorthand Reporter of the State of New Jersey, do  
 5 hereby certify that the foregoing is a true and  
 6 accurate transcript of the testimony as taken  
 7 stenographically by and before me at the time, place,  
 8 and on the date hereinbefore set forth.  
 9 I DO FURTHER CERTIFY that I am neither a  
 10 relative nor employee nor attorney nor counsel of any  
 11 of the parties to this action, and that I am neither a  
 12 relative nor employee of such attorney or counsel, and  
 13 that I am not financially interested in the action.  
 14  
 15 IRIS LA ROSA, CSR, RPR  
 16 Certificate No. 30XI 00162800  
 17 Dated:  
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