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CITY OF ELIZABETH
ZONING BOARD OF ADJUSTMENT
THURSDAY, JULY 29, 2021
7:30 P.M.

RE: Z-09-21, 331-337 MORRIS AVENUE, MR. POLLO ROTISSERIE
& BAKERY, LLC.

BOARD MEMBERS:

- GEORGE CASTRO, Chairman
- JOE NUNES, Vice Chairman
- FERNANDO FERNANDEZ
- ELIZABETH CANO
- DR. JOHN K. DONAHUE
- RICARDO SOSA
- MICHELLE SILVA-AFONSO

MONAE WHITEHEAD, BOA Secretary
ANTHONY GALLERANO, PE,PP

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12 ALESANDRO Di STEFANO, ESQ.
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15 Appearing on behalf of the Objector, 327-329
16 Morris Avenue

14

15

16 ROBERT J. LENAHAN, ESQ.
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19 Appearing on behalf of the Objector, Knights of
20 Columbus

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I N D E X O F E X H I B I T S

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A-1	SHEET C-5

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2 (There was no objection by all parties that the
3 witness be sworn via the ZOOM platform.)

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5 (The enclosed transcript was conducted based on the
6 accuracy of the ZOOM platform.)

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1 MR. CASTRO: Okay. Thank you.

2 And the application is, application Z-09-21, 331-337
3 Morris Avenue, Mr. Pollo Rotisserie & Bakery, LLC.
4 Mr. Hehl.

5 MR. BONNER: Mr. Bonner.

6 MR. CASTRO: Mr. Bonner.

7 MR. BONNER: Thank you.

8 As the board is aware this matter we started on -- at
9 a meeting on July 8 but decided that since there was an
10 issue with the notice that we would re-notice and
11 effectively we're starting the application again
12 tonight.

13 We had intended to present -- we have the owner here,
14 we have our architect here. Unfortunately our engineer
15 was in a car accident on the way home so that he could
16 join the meeting and he will not be able to join us
17 tonight, and our planner at the last minute became
18 unavailable as well. So we only have two witnesses for
19 tonight and we have spoken with the boards attorney and
20 we're asking that once we finish the two witnesses
21 tonight that this be carried, and if possible that a
22 special meeting be afforded the applicant so that we can
23 continue as soon as possible. Thank you.

24 MR. McNAMARA: Thank you, Counsel.

25 Mr. Chairman, if I may. There's an attorney

1 who represents a neighboring property owner, I want to
2 afford him the opportunity at least entering his
3 appearance.

4 Mr. Di Stefano, do you hear me?

5 MR. Di STEFANO: Yes. Good evening.

6 Alessandro Di Stefano on behalf of, I think I'm going to
7 mangle the LLC, because it's also an address like the
8 applicant here. I sent a letter, I'm going to try to
9 look for the specific address, the LLC I represent.

10 MR. McNAMARA: That's fine.

11 Just for the benefit of the record Mr. Chairman,
12 I did send an e-mail to counsel advising him of the
13 policies of the board and it's speakers. We have a
14 situation where there are objectors and counsel and
15 advised him that he would have a full opportunity at a
16 subsequent meeting to present any rebuttal witnesses he
17 wanted as well as the right to cross examine any
18 witnesses proffered by the applicant and that we were
19 prepared to proceed this evening but at the end of the
20 hearing, and now the lack of availability of witnesses,
21 it's clear we're not going to finish tonight. That at
22 any subsequent meeting he would have -- still have the
23 opportunity to appear and present any rebuttal witnesses
24 that he was interested in presenting. I also advised
25 him to please advise his client that since he's entering

1 his appearance the client is appearing through him and
2 is not to be asking questions or making statements
3 except in responses.

4 MR. CASTRO: Thank you, Mr. McNamara.

5 Yes, I read the e-mail that you sent to Mr.
6 Di Stefano.

7 MR. McNAMARA: Okay.

8 MR. CASTRO: I guess everybody's on the same
9 page.

10 MR. McNAMARA: Right.

11 I'm also looking for Mr. Lenahan, or is
12 there someone on who's a representative of Knights of
13 Columbus?

14 MR. Di STEFANO: Just for a second. For the
15 record it was -- it's 327-329 Morris Avenue, LLC, that I
16 represent. I got the right address for the LLC.

17 MR. McNAMARA: Thank you.

18 MR. LENAHAN: Mr. McNamara, this is Robert
19 Lenahan, appearing for the Knights of Columbus.

20 MR. McNAMARA: Okay. I got you under Sandy,
21 I didn't see you. Okay.

22 MR. LENAHAN: That's right.

23 MR. McNAMARA: Madam Secretary, just for the
24 benefit of the record, Mr. Lenahan is here on behalf of
25 the Knights of Columbus and Mr. Di Stefano has noted his

1 appearance for his client.

2 Mr. Lenahan, same thing I told Mr. Di
3 Stefano. You'll have full right to cross examine any
4 witnesses proffered by the applicant or by the other
5 objector. You will have the same opportunity, if your
6 client so desires, to present witnesses subject to cross
7 examination by the board and other counsel.

8 MR. BONNER: Is Mr. Lenahan appearing as the
9 attorney for the Knights of Columbus or as a member of
10 the Knights of Columbus as he did on July 8?

11 MR. LENAHAN: Well, I'm appearing as
12 attorney for the Knights of Columbus. At the last
13 hearing I stated that I was appearing as a member and as
14 a representative.

15 MR. BONNER: Okay. Just wanted to be sure.

16 MR. McNAMARA: Okay.

17 With all those preliminaries out of the way,
18 are there any other attorneys who have logged in who
19 wish to enter an appearance at this time? Hearing,
20 seeing none.

21 Mr. Chairman, I think we can turn the matter
22 over to Mr. Bonner and let him proceed with his first
23 witness.

24 MR. CASTRO: Mr. Bonner, please --

25 MR. DONAHUE: Mr. Chairman, this is John

1 Donahue, I'd like to make a comment. Can I make a
2 comment?

3 MR. McNAMARA: Sure.

4 MR. DONAHUE: How about we -- I'm not sure
5 why we're proceeding this evening. If we're going to
6 have to carry this to another meeting why don't we just
7 hold it until everybody's on board and we can do this
8 meeting one time and get it over with. I don't really
9 see the point of this evening.

10 MR. McNAMARA: Well Mr. Donahue, the
11 applicant unfortunately, you know, circumstances happen.
12 His engineer was in an automobile accident. Other
13 parties are here who are noticed and the special
14 meetings being charged to the applicant, so it's at no
15 additional cost to the board.

16 MR. DONAHUE: But we're not going to finish
17 tonight. Why can't we, if we're going to have another
18 meeting, just knock it all out in the next meeting and
19 be done with it rather than have two meetings?

20 MR. McNAMARA: I understand, sir.

21 MR. DONAHUE: This is going to be -- this is
22 going to turn out to be the same situation that we had
23 with Amazon. We had five meetings with Amazon and it
24 went on and on and on. Each time we repeated what we
25 did the time before. This meeting needs to start at

1 7:30 and end at 10:30 and make a vote. You know, I'm
2 not sure why -- where we're going with starting this
3 meeting if we can't vote at 10:30.

4 MR. McNAMARA: I understand.

5 MR. CASTRO: Commissioner Donahue, the
6 applicant actually -- we are going to begin, I
7 understand how you feel, but we're to start the meeting.
8 If the meeting is concluded today it will be concluded
9 today. If not it will be -- we will continue with the
10 meeting the next meeting.

11 MR. DONAHUE: But we know before we start
12 that it's not going to be concluded tonight because his
13 two people who are not here under unfortunate
14 circumstances can't be here and I don't hold that
15 against them and that's not an issue. It's that there's
16 no point in starting something you can't finish. If
17 it's going to take another meeting to get it done let's
18 do it all in that meeting, not spend the whole evening
19 tonight doing this and not being able to go anywhere
20 with it but carry it to a whole other night. This is
21 impractical. It's a very practical issue.

22 MR. CASTRO: Commissioner, the meeting will
23 proceed tonight and then if we do not finish the meeting
24 tonight we will continue at another date. I don't want
25 to postpone the meeting tonight to start another meeting

1 in the future that we may not even end in the next
2 meeting. So the meeting will proceed tonight.

3 MR. McNAMARA: One thing Mr. Chairman I'll
4 bring to the boards attention. I was discussing with
5 the board secretary the fact that your regular agendas
6 for August, September and October are already spoken
7 for. All right. You're going to have to consider
8 holding a couple of additional special meetings in order
9 to start clearing the backlog because we've been advised
10 by the zoning order officers that there's going to be a
11 number of applications coming through the pipeline in
12 the coming month or so where in many cases it's going to
13 be something similar to what you have in front of you
14 tonight, where people are looking to make permanent
15 certain improvements they did for outdoor seating at
16 local restaurants. And so one of the things we'll need
17 to discuss tonight is looking to calendar additional
18 meetings so we don't even get further behind, because
19 right now someone filed an application next, say next
20 week, they may not get heard until next year at this
21 rate. I mean, it's nice to be popular but it has its
22 drawbacks. So with that, Mr. Chairman.

23 MR. CASTRO: Thank you, Mr. McNamara.

24 Mr. Bonner.

25 MR. BONNER: Thank you, Mr. Chairman.

1 As I stated, we began this on July 8, there
2 was an issue with the notice and we elected to re-notice
3 and start the application over. Tonight, as I
4 explained, we have a representative of the applicant,
5 Mr. Edwin Gomez, who will discuss the operational, how
6 the restaurant operates, the efforts that have been made
7 to alleviate the parking situation and a few other
8 things. We also have the architect who will explain the
9 modifications to the plans that occurred between July 8
10 and this meeting that were, you know, filed with the
11 board at least ten days ago and where we ended up with
12 that. We attempted to address a number of the comments
13 that were made at the last meeting, but as I said, we're
14 treating this as a new application, we're going to start
15 from the beginning.

16 With that, I would like to introduce Eddie
17 Gomez and have him sworn and he will go through a
18 narrative explanation of the restaurant, the operational
19 details and discuss the parking.

20 Thank you.

21 MR. McNAMARA: Mr. Gomez, please raise your
22 right hand.

23 Do you swear or affirm the testimony you are
24 about to present before the board concerning this
25 application now pending before it to be the truth the

1 whole truth and nothing but the truth.

2 THE WITNESS: I do.

3 E D W I N G O M E Z, having been duly sworn
4 under oath testifies as follows:

5 MR. McNAMARA: For the record sir, please
6 state your name, spell your last name and provide your
7 business affiliation and address.

8 THE WITNESS: My name is Edwin Gomez. I'm
9 owner of Mr. Pollo Rotisserie & Bakery, LLC d/b/a The
10 Garden. My residence address is 34 Apartment 431 in
11 Bloomfield, New Jersey 07303.

12 MR. McNAMARA: Thank you, sir.

13 Counsel, your witness.

14 MR. BONNER: Thank you, Edwin.

15 Q. Why don't you explain how we got here as briefly
16 as you can in terms of why you expanded into the parking
17 lot, how you did that permitting and then talk about the
18 present operational details of the restaurant and the
19 expected operational details of the restaurant?

20 A. Okay.

21 For everyone to know I'm deeply involved in the
22 operations simply not just financial, fully aware of
23 what we're going to discuss and also aware of the
24 application submitted to this board in order to obtain
25 an approval for an outdoor dining year round structure

1 so I could protect patrons from weather and also to
2 protect neighbors from possible noisy conditions that
3 could effect the neighborhood.

4 To give a brief explanation of where we are.
5 Back in 2019 -- I mean back in 2020, actually February
6 13 we opened up for business only in the indoor part.
7 Nevertheless, we also apply at that time for ABC
8 application so we can conduct an extension of premises
9 in the designated area outdoor and we obtained it. So
10 we are approved by the ABC board to receive and serve
11 alcohol and food outside in the outdoor environment.
12 When we were operating the indoor the COVID hits all of
13 us and we get into the quarantine time. We only operate
14 for three weeks, roughly, before we were shutdown fully.
15 The world was -- went into quarantine and then Governor
16 Murphy sometime in June, or beginning of July, he signed
17 and executive order so businesses like mine can conduct
18 business outside. The indoor was prohibited, the
19 outdoor was approved, so we had to make drastic
20 decisions and take measurements in order to set up
21 patrons in the outdoor area without having to close the
22 business fully. In order to do that we obtained a
23 permit from the fire department to set up tents which is
24 partial, it is not a covered permit it runs from, I
25 believe from April to November, that because of the

1 COVID alone or the COVID executive order we were able to
2 obtain the tent permit and keep it longer months than
3 that. We enclosed the tent, at the same time we were
4 getting ready for this application to submit it, go
5 through the whole process, which we're here tonight but
6 in the doing of that construction city officials asked
7 us to dismantle the structure because we went a little
8 further and we closed it. So we ripped it apart, right
9 now we only working with the top tent which was approved
10 by the fire department and that's what we're trying to
11 do. Look to a approval so we can build a structure so
12 we can protect the patrons from weather conditions.

13 Q. Thank you.

14 A. I took pictures of what we have done in the
15 restaurant. Right.

16 We have also acquired leases that permit us to
17 park vehicles, no use in the street parking. Like I
18 said at the beginning of last year when I got into the
19 indoor, we also got a lease, I forgot to mention that
20 part. We obtained a second lease that permit us to use
21 the outdoor area and also permit us to use the parking
22 which is right next to us where pharmacy operates.
23 There are seven parking spots right there that we are
24 fully capable of using when the pharmacy closes and that
25 has a lease in force since then. We also have a verbal

1 agreement to use parking a block down -- down the block,
2 but per the board requirement we engaged into a signed
3 lease with them, so we have our signed lease right now
4 on that property, which is the address -- the address is
5 416 Morris Ave. And we are capable to park there 41
6 vehicles on top of the 7 that we already have from the
7 pharmacy. How we do it, we implementing valet parking.
8 So there's valet parking in the front of our restaurant
9 taking the cars and designated them to available spaces
10 as they come. That's one of the things that we're
11 trying to do to alleviate the parking issue. We are --

12 Q. Are you -- are the customers going to be paying
13 for the valet parking or are you going to absorb that
14 cost?

15 A. No, we absorb the cost. We absorb the parking,
16 we pay the parking but the clients are using the valet
17 for free.

18 Q. And will you be using -- utilizing the parking
19 spaces on site as a valet staging area so that to avoid
20 double parking?

21 A. We could do that. To avoid double parking we
22 could do that also. If more parking will be needed
23 because we are doing this we also have spoken to Parking
24 Authority, if you guys know the area across the street
25 there's a municipal lot that sometimes we are using by

1 renting it through the parking authority. We pay a
2 monthly fee and they rent us 10 spaces. That could be
3 allocated for that as well.

4 Q. Thank you.

5 Can you tell us roughly what the hours of
6 operation will be once you open?

7 THE WITNESS: Yes. Our hours of operation on
8 Monday to Wednesday from 4:00 PM to 2:00 AM. Thursday
9 and Friday we operate from 4:00 PM to 3:00 AM.
10 Saturdays from 12:00 PM to 3:00 AM. Sunday from 12:00
11 PM to 2:00 AM.

12 Q. Thank you.

13 And how many employees do you have?

14 A. Well, at peak we never have more than 20
15 employees one shift.

16 Q. And do they drive to work and do you allow them
17 to park on site?

18 A. Well, most of our employees live in the
19 neighborhood. They're city of Elizabeth residents.
20 They -- most of them, like I said, they live within the
21 blocks walking distance. The ones that have vehicles
22 are very few, they look for a spot off premises.

23 Q. So you don't let them park in the pharmacy
24 spaces?

25 A. No. No, they're are not allowed.

1 Q. Okay.

2 Can you tell us what efforts you've made, what
3 other efforts you made in terms of addressing the issues
4 that were raised by the Knights of Columbus at the last
5 meeting?

6 A. Yes, I have it here in my notes. We are aware of
7 the situation with Knights of Columbus, we have possible
8 customers parking there when they don't find parking in
9 the surrounding. We are implementing banners and signs
10 that we are going to be using in front of the structure
11 once it's built, that advise the patrons not to park in
12 Knights of Columbus. We are telling them that that's a
13 private lot that shouldn't be used in any -- in any
14 occasion. We are implementing that. We weren't aware
15 of that before, now we are. We are also trying, we're
16 making an effort to, if possible, get into a
17 relationship with Knights of Columbus cross our numbers
18 with the person in charge of the lot possibly see people
19 parking on the property have the ability to call us
20 directly and for us to tell our clients to, if they
21 already parked, to remove their car right away or if
22 they haven't parked by reading of signs not to do it.

23 Q. So what you're saying is you reached out to the
24 Knights of Columbus but you haven't been able to connect
25 with anybody?

1 A. Correct.

2 Q. But you're willing to provide contact information
3 for the on-site manager in the event the Knights of
4 Columbus have an issue with their parking?

5 A. Yes.

6 Q. Where you will either send a vehicle owner over
7 or a valet over to move the car. Correct?

8 A. That is correct. That's our intention.

9 Q. Thank you.

10 Is there anything else you think you would like
11 to explain to the board at this time?

12 A. Pretty much that's the general idea what I'm
13 trying to do there. To describe what kind of structure
14 we're going to use and what are the limits we are
15 intending to use, I believe Greg would be more versed on
16 explaining, and he will give a better detail of what
17 we're trying to do.

18 Q. Thank you, Mr. Gomez.

19 MR. BONNER: That's all I have for this
20 witness, Mr. Chairman.

21 MR. McNAMARA: Mr. Bonner, did you submit a
22 copy of the lease regarding the off-street parking of
23 the 41 spaces?

24 MR. BONNER: Yes, I believe the applicant
25 misspoke. It's for 40 spaces and I did submit that.

1 MR. McNAMARA: Okay. Thank you.

2 MS. WHITEHEAD: I'm sorry, your video is not
3 on.

4 MR. McNAMARA: Sorry, I'm having problems
5 with it again. For crying out loud. Well, if you can
6 hear me that's sufficient.

7 MR. BONNER: I'm okay with not looking at
8 you, Pat.

9 MR. McNAMARA: I can't blame you.

10 MR. CASTRO: Okay.

11 I have some questions for Mr. McNamara.
12 Yes, we have in our package, we received a copy of the
13 lease that was submitted by the applicant and it was
14 stamped as received by the planning and zoning board of
15 adjustments office on July 20, 2021, at least the copy
16 that I have has that stamp.

17 MR. McNAMARA: Okay. Good. Just as long as
18 we have it in the record. I know I had it here
19 somewhere. I just want to make sure we put on the
20 record that it had been received and there was testimony
21 as to by the witness. So.

22 MR. CASTRO: Yes. The lease is actually
23 executed by Mr. Pollo Rotisserie & Bakery and also by
24 416 Morris Avenue, LLC, Pollo Acquisitions, who owns
25 this parking lot.

1 May I ask you a question, Mr. Gomez.

2 So you indicated the lease that I have here
3 in front of me begins on what date?

4 THE WITNESS: Well, like I said before, we
5 had a verbal agreement with them, so it's been
6 implemented, I believe, from several months but since in
7 the last meeting I was advised to have it written, so I
8 believe that the lease begins a couple of days after the
9 last hearing.

10 MR. CASTRO: Do you have the lease in front
11 of you?

12 THE WITNESS: No, I don't.

13 MR. BONNER: I do, Mr. Chairman.

14 Edwin, it's dated to be begin on July 1,
15 2021.

16 THE WITNESS: All right.

17 MR. CASTRO: So this lease begins on July 1,
18 2021, am I correct?

19 THE WITNESS: That is correct.

20 MR. CASTRO: And it provides 40 parking
21 spaces?

22 THE WITNESS: Correct.

23 MR. CASTRO: You also indicated before
24 during your testimony that the pharmacy immediately
25 adjacent to The Garden also allows you to park up to 7

1 cars there, am I correct?

2 THE WITNESS: That is correct.

3 MR. CASTRO: So now you have 47 parking
4 spaces?

5 THE WITNESS: That is correct.

6 MR. CASTRO: Okay.

7 How many tables do you have at The Garden?

8 MR. BONNER: The architect is probably
9 better suited to discuss the floor plan that was
10 submitted, Mr. Chairman.

11 MR. CASTRO: No, but I'm trying to get at
12 the number of parking spaces.

13 Can you tell me, Mr. Gomez, how many tables
14 you have at The Garden?

15 THE WITNESS: Yes, I can tell you. I'm
16 trying to go over the drawings to see how many.

17 MR. CASTRO: Okay. I can ask the architect
18 later.

19 THE WITNESS: Probably better, yes. I don't
20 want to give you the wrong answer.

21 MR. CASTRO: I just wanted to establish that
22 you have 47 parking spaces available right now.

23 You mentioned something about the Parking
24 Authority with the parking that is diagonally across the
25 street from the restaurant known as The Garden. Do you

1 have any agreement right now in place with the Parking
2 Authority for additional parking spaces?

3 THE WITNESS: I don't have an agreement with
4 them right now, but because of what we have done before,
5 we have rented spaces when they are needed. They are in
6 their ability to rent me extra spaces if the 47 that I'm
7 providing aren't enough.

8 MR. CASTRO: Okay. But right now you have
9 47 spaces?

10 THE WITNESS: Correct.

11 MR. CASTRO: Okay.

12 Commissioners, do you have any questions for
13 Mr. Gomez?

14 MR. GONCALVES: Mr. Chairman, what is
15 required? How many parking spaces are required.

16 MR. CASTRO: Commission Goncalves.

17 Commissioner, that's what I was trying to
18 establish, how many tables. You usually have four
19 people per table, so you need one parking lot per table
20 per se, because of course a family of four comes in the
21 same time.

22 MR. GONCALVES: Looking at the plans it
23 shows a lot of tables of two people not necessarily
24 four. You said four, I don't see that in the plans. I
25 mean, am I off the wall here because that's what I saw

1 in the plans.

2 MR. CASTRO: So tables of four people.

3 MR. GONCALVES: I don't see four people one
4 table, I see tables of two people.

5 MR. GALLERANO: Mr. Chairman, may I.

6 MR. CASTRO: Mr. Gallerano.

7 MR. GALLERANO: Yeah. So per the plan they
8 submitted they're required to have 47 parking spaces.
9 The way it's calculated it's one per four seats. So if
10 you have --

11 MS. WHITEHEAD: I'm sorry, Tony. Did you
12 get sworn in.

13 MR. GALLERANO: No.

14 MR. McNAMARA: Mr. Gallerano, please raise
15 your right hand.

16 Do you swear or affirm the testimony you're
17 about to present concerning the application now pending
18 before this board shall be the truth the whole truth
19 nothing but the truth.

20 MR. GALLERANO: I do.

21 A N O T H O N Y G A L L E R A N O, having
22 been duly sworn under oath testifies as follows:

23 MS. WHITEHEAD: Thank you. Sorry about
24 that.

25 MR. McNAMARA: Mr. Gallerano, I will advise

1 you that throughout the proceeding any time you speak or
2 being asked questions you must be having both your audio
3 and video on at all times.

4 MR. GALLERANO: Understood.

5 MR. McNAMARA: Thank you.

6 MR. GALLERANO: All right.

7 So the applicants required to have 47 spaces
8 and what it's based on is one per four seats. So if you
9 have a table of two, you know, it doesn't matter how
10 many people are at a table, it's just based on total
11 number of seats. So you could have table of two, four,
12 six but the total number of seats that they're showing
13 is 110 based on my count. So the requirement is that
14 you need 47 and that also includes the retail space for
15 the pharmacy. So it's 47 total for the whole facility
16 and that includes the spaces also required for the
17 pharmacy as well.

18 MR. CASTRO: So that's why I was asking
19 Commissioner Goncalves, how many tables and then what we
20 can do later is find out what will be the occupancy of
21 the place and then determine the amount of the parking
22 spaces that the applicant is providing.

23 MR. GONCALVES: Totally agree what Mr.
24 Gallerano just mentioned. That's what he said, that
25 basically summed it all up. To me at least it's been

1 summed up. It's 47 total and Mr. Gomez, how many are
2 you supplying?

3 THE WITNESS: 47.

4 MR. GONCALVES: You are 47. Okay.

5 THE WITNESS: Correct.

6 MR. GONCALVES: Thank you.

7 MR. McNAMARA: Thank you, Tony.

8 MR. CASTRO: Commissioners, any other
9 questions for this witness, Mr. Edwin Gomez?

10 MR. McNAMARA: Mr. Chairman, if there are no
11 members of the public, if Mr. Di Stefano wishes to
12 conduct cross examination of the witness now would be
13 the time to do so.

14 MR. CASTRO: Mr. Di Stefano.

15 MR. Di STEFANO: Thank you. Thank you.
16 Just for the witness, the 47 spots we're talking about,
17 so there's 40 at the parking lot that -- that's, that's
18 northwest on Morris Avenue. Correct?

19 THE WITNESS: That is correct.

20 MR. Di STEFANO: And those are going to be
21 used for valet parking?

22 THE WITNESS: Valet will take the car from
23 the premises or adjacent parking that we have to use as
24 a standpoint and then it would be -- the cars would be
25 driven to that location. Correct.

1 MR. Di STEFANO: Okay. So the valet parking
2 locations going to be that, is going to take up some of
3 those 40 spots devoted to the valet parking?

4 THE WITNESS: All 40 spots are going to be
5 devoted to them, yeah. They're going to have ability to
6 park 40 cars there.

7 MR. Di STEFANO: Okay.

8 So when you say, devoted to them, is that
9 going to be exclusively for the valet or patrons who
10 want to park there and walk back and forth, are those
11 spots going to be available to them?

12 THE WITNESS: Well, those spots most --
13 yeah, no. Yes, because that property got more than 40
14 spots and the ones that we can't use they're tagged and
15 marked not to be used by us. The property got the first
16 10, 11 spots says exclusively who can use them, the
17 other ones right now the 10 spots and beyond are going
18 to be used by us.

19 MR. Di STEFANO: Okay. So there's some
20 proportion of that, of the lot that's northwest of
21 Morris Avenue that's going to be devoted exclusively to
22 valet and some portion devoted to, like I guess we'll
23 call them pedestrians, is that fair?

24 THE WITNESS: That's fair.

25 MR. Di STEFANO: Okay.

1 And then the seven spots, could you just
2 remind me where those are going to be located, the other
3 seven?

4 THE WITNESS: Right attached to my property.
5 You look at my property to the front there on the left
6 of it there is a pharmacy, those spots are on that
7 pharmacy.

8 MR. Di STEFANO: Okay.

9 And what is the pharmacy's hours of
10 operation?

11 THE WITNESS: I do have them with me. The
12 pharmacy got Monday through Friday from 10:00 AM to 6:00
13 PM. Saturday 10:00 to 3:00. 10:00 AM to 3:00 PM and
14 Sunday from 10:00 AM to 1:00 PM only.

15 MR. Di STEFANO: Okay. So is there any
16 overlap between the pharmacy hours and the restaurant
17 hours?

18 THE WITNESS: Monday through Friday the
19 pharmacy got 10:00 to 6:00, we got 10:00 to 2:00. There
20 would be a little overlap from 4:00 PM to 6:00 PM. Only
21 weekdays, which are the slow days.

22 MR. Di STEFANO: So prior to the Corona
23 virus pandemic and the construction of temporary
24 structures, how many spots did you have available at the
25 premises?

1 THE WITNESS: Just 7.

2 MR. Di STEFANO: Okay. It was only 7? At
3 all --

4 THE WITNESS: Only 7. With a signed lease
5 with the pharmacy right next door, 416, I have always
6 had, I was in a verbal agreement but I have always been
7 on our -- in our use.

8 MR. Di STEFANO: All right.

9 So when -- before the Corona virus pandemic
10 what was -- what was the indoor capacity or the
11 occupancy let's say of your restaurant?

12 THE WITNESS: My -- 48 people.

13 MR. Di STEFANO: And what's the proposed
14 total occupancy now?

15 THE WITNESS: The proposed. I got 110 seats
16 outside -- no, in total?

17 MR. Di STEFANO: 47 to 110?

18 And with regard to that increase to 110
19 occupancy, what, if any, is the increase in terms of
20 your staffing intended to be?

21 THE WITNESS: I have been, since after the
22 pandemic, we are allowed to work after the pandemic,
23 like I said, we have been peak 20 employees max with the
24 restaurant full.

25 MR. Di STEFANO: Okay. But -- so let me

1 understand this a little better. So if, when you were
2 operating before the pandemic, it's -- how many
3 employees did you have?

4 THE WITNESS: Oh, before the pandemic. I was
5 only able to operate for only, I don't even think three
6 weeks. We open February 12 and some time in March the
7 whole country got shutdown. So at that point we were
8 like operating with probably half of the staff, ten
9 members.

10 MR. Di STEFANO: Okay. So would it be fair
11 to say that basically the intended staffing initially
12 was about 20?

13 THE WITNESS: Probably less than that.
14 Because we were only working indoor. Once we moved to
15 the outdoor we had to keep --

16 MR. BONNER: I'd like to interrupt for a
17 second and ask Mr. Di Stefano, why does it matter if
18 between the on-site parking spots and the off-site
19 parking spots meets that parking requirements for the
20 use. Are you getting to the point where you're going to
21 argue that the cities parking requirements for this
22 particular use are incorrect?

23 MR. Di STEFANO: I'm just --

24 MR. BONNER: I'm not sure where you're
25 going.

1 MR. Di STEFANO: Well, we'll get there
2 pretty soon.

3 MR. McNAMARA: I don't have any objections
4 at this point to the line of questioning, Mr. Chairman.
5 But we'll keep close eyes on it.

6 MR. CASTRO: Yes.

7 MR. Di STEFANO: Okay. So, all right.

8 So anyway, the intended staff is 20 and then
9 is there going to be any increase in your intended staff
10 or are you sticking at 20 with the -- with the intended
11 level -- increase in the level of capacity?

12 MR. BONNER: I think what Mr. Gomez was
13 saying is that at peak hours he would have a staff of
14 about 20. The total number of employees is irrelevant.
15 He could have 50 employees but what he's saying is at
16 any given time there aren't more than 20 on-site.

17 MR. Di STEFANO: Okay. So it would be fair
18 to say that your testimony is that notwithstanding the
19 increase in capacity your, you know, the staffing level
20 is going to stay the same?

21 MR. BONNER: No, he said there were 10
22 before at a maximum.

23 MR. Di STEFANO: Well, right. Then his
24 testimony was, if I remember correctly, he intended it,
25 it would have been 20 at that point.

1 MR. BONNER: No. He said a total of 20
2 employees, 10 on-site at maximum at peak. Correct?

3 THE WITNESS: You got to -- you need to know
4 that we right now operating outdoor with the 20 that I
5 mentioned. I'm operating outdoor. Whether enclose it
6 or not I'm already doing business outside with the 20.
7 So if I enclose it, it'll stay at the same.

8 MR. Di STEFANO: Right. I'm just trying to
9 understand whether or not there was an increase in, you
10 know, the staffing level at any -- any particular time
11 between what was intended before the pandemic and what
12 would be intended with this plan or presently?

13 THE WITNESS: No. No.

14 MR. Di STEFANO: And you stated that the
15 construction of the structure part of it would be
16 intended to decrease the emanation of noise at the site?

17 THE WITNESS: Yes. We have to understand
18 something, when the governor allows us to do business in
19 streets, of course just by talking and have a
20 conversation between two people or ambiance music you're
21 going to creat noise. Once you enclose something that
22 is in the outdoor you definitely eliminate noise.
23 That's what I'm saying. It could improve it.

24 MR. Di STEFANO: When you had the temporary
25 structure did you have any outdoor speakers or let's say

1 speakers within the temporary structure?

2 THE WITNESS: Ambient music only.

3 MR. Di STEFANO: Well, what do you mean by
4 ambient music in that respect?

5 THE WITNESS: Well, this is a restaurant
6 lounge, when I seat people outside I got to give them
7 some sort of ambience to entertain but to a decent noise
8 level. You talk about speakers you might be getting
9 into something different with a much louder ambience.
10 This is a restaurant, so you go into the restaurant you
11 always going to have in the background some sort of
12 music.

13 MR. Di STEFANO: Okay.

14 But it would be fair to say one way or the
15 other you're planning to have recorded music played
16 within the structure that you're seeking approval for?

17 THE WITNESS: Yes. I'm going to be playing
18 music.

19 MR. Di STEFANO: Okay.

20 And just, I mean, it would be fair to say
21 that regardless, you know, the noise level in the
22 neighborhood would certainly be lower for an indoor
23 restaurant rather than outdoor dining or with this
24 proposed structure?

25 MR. BONNER: Depends on the level of the

1 noise. I mean, I don't think that's a, you're going to
2 have to ask a different question. I mean, you could put
3 music outside very low and have very loud music inside
4 and you can hear the music inside out in the street.
5 You have to let us know what kind of level music is
6 playing in both situations. I don't think my client can
7 answer that question. He's not a noise expert.

8 MR. Di STEFANO: Well, the statement that he
9 made was that the proposed structure would create a more
10 quiet site.

11 MR. BONNER: No. No.

12 MR. Di STEFANO: And my question is that --

13 MR. BONNER: He stated it would reduce the
14 noise by enclosing. We were playing noise outside in an
15 open parking lot and you put a tent over it the noise
16 level would be lower, all things being equal.

17 MR. Di STEFANO: Right.

18 MR. BONNER: That was his testimony.

19 MR. Di STEFANO: All things being equal,
20 eating inside and having inclusive indoor dining would
21 be thus more quiet than that.

22 MR. BONNER: Unless you're playing the music
23 louder. Right?

24 MR. Di STEFANO: Well, right.

25 MR. BONNER: I mean, you don't have to

1 answer my question.

2 MR. Di STEFANO: Depends what time --

3 MR. McNAMARA: Gentlemen, you're having an
4 interesting conversation, the problem is you're talking
5 to each other and what you say is advocacy and not
6 evidence. So I think you kind of need to slow down a
7 little bit and if necessary, Mr. Bonner, on occasion if
8 you would defer to your applicants witness.

9 Mr. Di Stefano, of course with the proviso
10 he is not a municipal engineer, if there's an issue
11 about whether or not the ambient air standards need to
12 be met under the states noise pollution and control
13 laws, is a given because any applicant before this board
14 who gets approval has to do so and conduct their
15 business in a manner consistent with the laws of the
16 state of New Jersey. So if we can try to, Mr. Di
17 Stefano, I think the floor is still yours for your cross
18 examination.

19 MR. Di STEFANO: And you currently have a
20 valet -- you're currently doing valet parking?

21 THE WITNESS: I'm currently doing valet
22 parking, yes.

23 MR. Di STEFANO: And I would assume there's
24 some sort of valet staging area where people drop-off
25 their cars?

1 THE WITNESS: Yes.

2 MR. Di STEFANO: And are you intending that
3 to, if this were approved, that that valet staging area
4 stay in the same place as it is currently?

5 THE WITNESS: We don't have any stand
6 actually. We have valet parking, when the cars approach
7 they park at, let's say the driveway of the pharmacy,
8 the entrance of the pharmacy, they take the cars from
9 there and they take them way when a space there at the
10 pharmacy is not available.

11 MR. Di STEFANO: Okay. So is the valet
12 where -- it would be fair to say like when someone is
13 dropping off cars for valet parking there's like an
14 initial accumulation of cars to be exchanged for valet?

15 THE WITNESS: No, because they drive inside
16 the ramp of the pharmacy. The lines are not here or
17 anywhere.

18 MR. Di STEFANO: No, understood. My point
19 isn't like where it is.

20 THE WITNESS: We are not doing double
21 parking.

22 MR. McNAMARA: Gentlemen, whoa, whoa, one at
23 a time. We have a court stenographer and it's very
24 difficult when multiple people are talking at once.

25 So Mr. Di Stefano, let him answer his

1 question in full and then you'll have the opportunity
2 for follow up.

3 MR. Di STEFANO: Just to get to the crux of
4 the matter. Where do you intend to do like the valet
5 interchange off of the street?

6 THE WITNESS: At the pharmacy area.

7 MR. Di STEFANO: Okay.

8 THE WITNESS: Which are not a spot taken by
9 doing that, by the way.

10 MR. Di STEFANO: I'm sorry.

11 THE WITNESS: We're doing it at the pharmacy
12 area but we're not utilizing parking spots to do that.
13 Look at the drawings, the width of the parking on the
14 pharmacy, we're utilizing the spots all the way to the
15 left but on the side that corridor right there is free,
16 so we can line up cars there to be taken immediately.

17 MR. Di STEFANO: Do you have any knowledge
18 currently like how many valets are on duty when the
19 valet parking is provided?

20 THE WITNESS: It all depends on the day. On
21 the peak days, Friday nights, Saturday night even
22 sometimes Thursday night, we can have up to three, four
23 valets.

24 MR. Di STEFANO: Are you -- in the, kind of
25 in that vicinity of Morris Avenue, you know, south of

1 the Elizabeth river going towards that intersection with
2 Union Avenue or even going to the intersection of
3 Westfield Avenue, are there any other restaurants with
4 liquor licenses?

5 THE WITNESS: Yes.

6 MR. Di STEFANO: And which one is that, if
7 you can remember, or you can offer off the top of your
8 head?

9 THE WITNESS: If you drive down Westfield
10 Avenue across the street in the very corner there is
11 like a bar, I don't recall the name of it. Across the
12 street there is another establishment that's called
13 Chupitos. You continue walking further down on the left
14 you got another one called the Station House. And then
15 a restaurant which is called Brisas, they also have a
16 liquor license.

17 MR. BONNER: And the Knights of Columbus
18 too?

19 THE WITNESS: I don't know about them.

20 MR. Di STEFANO: And it would be fair to say
21 there are a number of other take out establishments in
22 the vicinity of your restaurant?

23 THE WITNESS: Yeah.

24 MR. Di STEFANO: All right.

25 I have no further questions of this witness.

1 MR. McNAMARA: Mr. Lenahan.

2 MR. LENAHAN: I have --

3 MR. CASTRO: I have a question for Mr.
4 Gallerano.

5 Mr. Gallerano, the applicant is proposing 47
6 parking spaces, according to the application and
7 according to the testimony of the applicant. You
8 indicated, if I heard you well, that the amount of
9 parking spaces that he is providing are enough for the
10 seating capacity of this facility. Is that what I
11 heard, Mr. Gallerano?

12 MR. GALLERANO: That's correct. I mean, he
13 requires 47 so if he's providing the 47 then he would be
14 obviously providing the correct number of parking
15 spaces.

16 MR. CASTRO: So what relates to parking
17 spaces he's in compliance with the city parking spaces
18 requirement, am I correct?

19 MR. GALLERANO: That's correct.

20 MR. CASTRO: Okay.

21 Now, I have another question for you, Mr.
22 Gomez.

23 The structure that you're proposing will
24 enclose the ambience music or any noise within your
25 restaurant, is that what you said?

1 THE WITNESS: Yeah, that's what I said.

2 MR. CASTRO: So in essence if this board
3 chooses to approve your application, there will be more
4 or less noise?

5 THE WITNESS: Less.

6 MR. CASTRO: Okay. By virtue of Morris
7 Avenue being Morris Avenue, it's very noisy from 6:00 PM
8 to midnight, right?

9 THE WITNESS: Yes.

10 MR. CASTRO: There are many restaurants
11 located there.

12 Commissioners, do you have any questions for
13 this witness?

14 MR. NUNES: Mr. Chairman.

15 MR. CASTRO: Okay.

16 MR. NUNES: I have a question.

17 MR. CASTRO: Mr. Di Stefano, do you have any
18 further questions for this witness?

19 MR. Di STEFANO: No, I do not.

20 MR. CASTRO: Thank you.

21 MR. NUNES: Mr. Chairman, I have a question
22 for Mr. Gallerano.

23 MR. CASTRO: Commissioner Nunes.

24 MR. NUNES: Mr. Gallerano, just following up
25 on the same question that the Chairman asked you just

1 now regarding parking. That currently with the current
2 situation the applicant currently meets the parking
3 requirement with the amount of parking. Is there
4 anything that requires the applicant to have valet
5 parking?

6 MR. GALLERANO: No, it doesn't. I mean, he
7 doesn't have to have valet parking. That would be
8 strictly his option.

9 MR. NUNES: This is something that he's
10 willing to go above and beyond the parking requirement
11 in order to be able to help, you know, the parking
12 situation on Morris Avenue?

13 MR. GALLERANO: Yeah, I think it's a fair
14 statement. Again, he's not required to have valet.
15 He's doing that, you know, again beyond what the
16 ordinance require and, you know, I think it's a good
17 effort to help streamline the process to get people to
18 the parking lot and to the restaurant, so. But, yeah,
19 the answer is that it's not a requirement of the
20 ordinance.

21 MR. NUNES: Okay.

22 In your opinion do you think that helps, you
23 know, the bad parking situation on Morris Avenue and the
24 traffic and everything else?

25 MR. GALLERANO: Yeah, certainly it would

1 help. I believe it would help having those, the correct
2 parking spaces being able to valet, get people in and
3 out as quick as possible. So I think it's a good system
4 that he's proposing.

5 MR. NUNES: At the previous meeting some
6 members of the Knights of Columbus testified that they
7 had a problem with people parking in their lot and they
8 may or may not have been from the applicants restaurant.
9 Do you feel that this valet parking will also alleviate
10 problems like that to happen not only with the Knights
11 of Columbus but with other establishments in the area?

12 MR. GALLERANO: Yeah, I think it will help
13 if the place, you know, people pull up and have their
14 car valeted. I think people would be in favor of that.

15 Other thing Mr. Gomez is proposing as far as signage
16 and making his customers aware that they shouldn't be
17 parking there, I think also that should help alleviate a
18 good part of that problem.

19 MR. NUNES: Thank you very much.

20 MR. GALLERANO: Okay. You're welcome.

21 MR. CASTRO: Thank you.

22 MR. McNAMARA: Mr. Lenahan, did you have any
23 questions you wanted to ask of the witness?

24 MR. LENAHAN: Yes, I do.

25 CROSS-EXAMINATION BY MR. LENAHAN:

1 Q. All right. Yes.

2 The lease for parking at 416 Morris Avenue, does
3 the owner of that property have a license to lease those
4 parking spots?

5 THE WITNESS: Well, that question goes to me,
6 quite frankly don't know. Has to be asked of him.

7 MR. LENAHAN: All right.

8 Under our city code he has to have a license
9 before he can lease those spots.

10 MR. CASTRO: Mr. Lenahan, I have a question
11 for you. He has to have a license for what?

12 MR. LENAHAN: To maintain, conduct an open
13 air parking station within the limits of the city.

14 MR. CASTRO: Does the Knights of Columbus
15 have a license from the city?

16 MR. LENAHAN: We do not rent to people as
17 this one is being done.

18 MR. CASTRO: I'm asking you because the
19 last, during testimony you indicated that the Knights of
20 Columbus is renting individual spaces for people.

21 MR. LENAHAN: Yes, we said that, and I don't
22 know the answer to that question.

23 MR. CASTRO: So you don't have a license?

24 MR. LENAHAN: I don't know, I don't handle
25 the parking.

1 MR. CASTRO: Can you ask someone, you are
2 representing the Knights of Columbus as their attorney,
3 and you're a member of the Knights of Columbus too, Mr.
4 Lenahan.

5 MR. LENAHAN: I'm a member and I'll have to
6 get that answer for you at another time.

7 MR. CASTRO: Thank you Mr. Lenahan.
8 Commissioners, do you have any other questions?

9 MR. LENAHAN: I have further questions.

10 MR. CASTRO: Okay. Go ahead, Mr. Lenahan.

11 MR. LENAHAN: Does -- how many spaces are in
12 this parking lot?

13 THE WITNESS: 416 Ave?

14 MR. LENAHAN: Yes.

15 THE WITNESS: I know there over more than 40
16 spots. The total number, like I said I'm not the
17 landlord, I am not sure how many he has but he has over
18 40 and I know he got marked over 12 spaces that were
19 some specific people can park but us. So, but the total
20 number I don't know.

21 MR. LENAHAN: This lot services several
22 business, doesn't it?

23 THE WITNESS: The lot serves the laundromat
24 that is there and I guess the gym.

25 MR. LENAHAN: Club Metro?

1 THE WITNESS: Correct.

2 MR. LENAHAN: The gym.

3 THE WITNESS: Correct.

4 MR. LENAHAN: Isn't there a Caribbean
5 supermarket at that location?

6 THE WITNESS: Through the parking lot I can
7 only recall the laundromat and the gym. You go to
8 Morris Avenue to the left there's a supermarket but they
9 also have parking on the left of it, on that corner.
10 There's another big lot right there which I believe the
11 supermarket belong to. I think they're still there.
12 Like a strip right there in the street, in the corner of
13 that street and that's a big lot also.

14 MR. LENAHAN: Does the owner -- there's a
15 discount wine and liquor store there too?

16 THE WITNESS: Yeah, but they have their own
17 parking lot. It's two parking lots on that property.

18 MR. LENAHAN: Where are the two parking
19 lots? You mean on the side and in the back.

20 THE WITNESS: Yeah, on the side of it which
21 is the one that I'm renting where the Metro gym is,
22 that's one lot. And the other lot is all the way to the
23 left of the supermarket where the liquor store is.
24 There is a big lot right there. Part of the same
25 property.

1 MR. LENAHAN: How many businesses use this
2 parking lot as, for parking that they are required to
3 have?

4 THE WITNESS: I don't know the answer to that
5 question.

6 MR. LENAHAN: If other businesses, which are
7 required to provide parking, use this lot then how can
8 the owner lease those spots to you?

9 THE WITNESS: I would have to bring him and
10 ask him. I can't answer that.

11 MR. BONNER: Do you know the hours of
12 operation of all the businesses in that center at 416?

13 MR. LENAHAN: The gym operates until 11:00
14 PM on Monday to Friday. Until 6:00 o'clock on Saturday
15 and until 4:00 o'clock on Sunday.

16 MR. BONNER: And the other businesses?

17 MR. LENAHAN: One other -- the laundromat I
18 believe work, is operating until midnight.

19 MR. BONNER: Mr. Gomez, when you spoke with
20 the owner of that property and entered into the
21 arrangements to utilize the spaces, did he give you any
22 indication that he thought it was overcrowding the site
23 or that the spaces wouldn't be available when you needed
24 them?

25 THE WITNESS: No. No.

1 MR. BONNER: The spaces will be available
2 when you need them?

3 THE WITNESS: And to add something to this
4 argument with the parking. The property right next to
5 it, which is 421 Morris Ave, that also several other
6 spots available that I can use if I'm required to. If
7 it becomes a condition of it on this hearing I can
8 provide a written lease as well.

9 MR. BONNER: And you had that conversation
10 with the owner?

11 THE WITNESS: Yes. I had the conversation
12 with the owner, yes. The address is 421 Morris Ave.
13 The property right next door to 416.

14 MR. LENAHAN: Do you have a lease for that?

15 THE WITNESS: No, I said I got a verbal
16 agreement I can use it when it is needed. Most of the
17 time I don't, but it is available for me, but like I
18 said, it becomes a condition I'm more than capable to
19 provide a written lease from that property.

20 MR. LENAHAN: Well, the point I'm making is
21 that, that particular parking lot services several
22 businesses and those businesses are required to provide
23 a certain number of parking spots and it seems as though
24 we are piggybacking on those spots when you state that
25 you have 40 spots leased for you. I believe, and I can

1 have pictures taken of the -- of those lots and those,
2 to determine the exact number of available spaces. In
3 fact I can provide pictures that will show that, that
4 entire line of spots across from the two -- across from
5 the gym and the laundromat are practically fully taken
6 up.

7 MR. BONNER: At what time of day?

8 MR. LENAHAN: About 6:00 o'clock.

9 MR. BONNER: All day, everyday?

10 MR. LENAHAN: I wasn't there all day,
11 everyday.

12 MR. BONNER: Okay. So you're going to get
13 pictures at various hours of the day showing the usage
14 of the parking lot or just pick and choose when its
15 full? How we going to document this. I think what we
16 put into -- what we put into the record here is a lease
17 for parking spaces that the applicant has represented
18 based on the fact that it was able to enter into a
19 written agreement with a property owner that those
20 spaces are available. Maybe if we talk to that -- maybe
21 if you talk to that property owner and ask him if those
22 spaces are available he can clarify it for you in your
23 mind that they're available when they're needed.

24 MR. LENAHAN: I think that it's pretty
25 obvious that any business is required to have a certain

1 number of parking spots for its customers and that these
2 businesses, there are six businesses there, five
3 businesses there, and they all need to have a certain
4 number of spots.

5 MR. BONNER: Okay.

6 MR. LENAHAN: And I, if you'd like, I will
7 take pictures of the entire lot and we'll find out just
8 how many spots are there and determine whether there's
9 enough availability for 40 spots to be leased.

10 THE WITNESS: We can't forget that the bulk
11 of my business is in the late hours not around the day.
12 So that should be taken into consideration the times the
13 are coming.

14 MR. LENAHAN: The gym is open until 11:00
15 o'clock, the laundry mat is opened until 12:00, and I
16 don't know the hours of the supermarket, but I will find
17 that out and provide that to the board since we will all
18 be coming back.

19 MR. CASTRO: Mr. Lenahan, the applicant
20 provided a lease agreement and secured it by the owner
21 of 416 Morris Avenue indicating that the applicant can
22 use 40 parking spaces.

23 MR. LENAHAN: And my point is that, that is
24 40 spaces in a lot that has to accommodate five other
25 businesses. So pure logic tells us that he cannot use

1 40 spaces, because whatever you give to the restaurant
2 you take away from the other businesses.

3 MR. BONNER: The testimony is that the
4 spaces are there and available and the lease is in the
5 record. That's the applicants position.

6 MR. LENAHAN: Well, that's his position and
7 my position is that you can not lease spaces that have
8 to be devoted to other uses that are on that property.
9 So we'll just leave that for you to consider.

10 But another point on that lease. That lease
11 is terminable on 90 days notice for no reason whatsoever
12 and it's a one year lease and it renews every year
13 automatically but it can be terminated for no reason
14 whatsoever on 90 days notice. Yet the variance will run
15 with the land, this lease for 40 spaces can last for 90
16 days.

17 MR. BONNER: And we had a discussion with
18 the board attorney that the applicant is willing to have
19 the resolution recorded, which means everyone will be on
20 the record that this is a condition of approval that
21 that lease be maintained. That those spaces be
22 maintained or substituted for.

23 MR. LENAHAN: So --

24 MR. BONNER: So we disappear he's going to
25 have to arrange for other spaces because that's part of

1 his approval.

2 MR. LENAHAN: And if -- so the resolution
3 will specifically state that a condition of approval is
4 that he maintain a lease for 40 spaces at this location?

5 MR. BONNER: I don't know what Mr. McNamara
6 will put in there, but --

7 MR. McNAMARA: I'll state for the record
8 that if the board deems to approve the application one
9 of the conditions is going to be that the applicant is
10 going to have to maintain, either with this arrangement
11 or with other arrangements, enough parking to meet code
12 requirements. And it says it's 47, it's 47. Whatever
13 the number is it is. And the reason I'm asking it be
14 recorded, so if anyone looks to acquire the business in
15 the future they understand the parking obligation that
16 continues to come with it.

17 MR. LENAHAN: Well, I understand. I
18 understand that, and I still do want to make the point
19 that this is not actually leased for 40 spaces. This is
20 a lease for whatever is left over after those businesses
21 that are there make use of their's. But as I said, I'm
22 not going to argue that point, I'll leave that for the
23 commissioners.

24 And is there, what progress is there to
25 arrange for a lease with the Parking Authority?

1 THE WITNESS: If the question goes to me,
2 we've been in talks with the Parking Authority. I can
3 tell you more specifically with who we were talking to
4 and they're willing to rent us up to 10 spaces across
5 the street in the municipal lot. We've done it
6 previously, we have used it, we have paid and they're
7 willing to continue to do so. They also told us today
8 that anyone can contact them to ask what I just said.
9 They're willing to say the same as I say.

10 MR. LENAHAN: And who stated that from the
11 Parking Authority?

12 THE WITNESS: Her name is Ms. Carla Massa.

13 MR. LENAHAN: Do you have a letter or
14 anything in writing from her?

15 THE WITNESS: No. She is -- well, that was
16 today. She said whoever needs to contact me to say what
17 I just told you, feel free to.

18 MR. BONNER: It's being presented as a
19 contingency in the event the 40 spaces aren't available.
20 It hasn't been arranged but they had discussions about
21 it and if they need to put it into place they will.
22 Same as the lease at 421.

23 THE WITNESS: And please don't forget we
24 also got 421 Morris Ave property which got a giant lot
25 that could be utilized as well and is capable and

1 willing to provide a written lease.

2 MR. LENAHAN: Well, until we have written
3 leases we really don't have those -- that in place.

4 MR. BONNER: But he's willing to accept them
5 as conditions of approval as we've already stated.

6 THE WITNESS: Yes.

7 MR. LENAHAN: So we're talking about you
8 obtaining a lease, written permission from the Parking
9 Authority for 10 spaces?

10 THE WITNESS: I'm talking about obtaining a
11 lease for 421 Morris Ave, and from Parking Authority I'm
12 only renting those 10 spots. Those 10 spaces.

13 MR. BONNER: What he's saying, what he's
14 trying to clarify is, that we have enough spaces
15 available for the use of the restaurant based on the
16 seating chart of the restaurant. In the event spaces
17 aren't available as you alluded to because perhaps the
18 businesses at 416 are using more spaces than the owner
19 of the property expected when he leased the 40 spaces to
20 the applicant, then he has made other contingency
21 arrangements to replace those spaces so that he
22 maintains 40 off premises spaces. I think that's pretty
23 clear at this point. He has enough spaces but he's made
24 contingency arrangements for additional spaces in the
25 event they're not available.

1 MR. CASTRO: Mr. Lenahan, are you done with
2 this witness?

3 MR. LENAHAN: Yes.

4 MR. CASTRO: Thank you.

5 Mr. Bonner, do you have any --
6 Commissioners, do you have any questions for Mr. Gomez?

7 Mr. Bonner, do you have any other witnesses?

8 MR. BONNER: Yes, Mr. Chairman. Thank you
9 Mr. Gomez.

10 We have the architect --

11 MR. McNAMARA: Mr. Chairman, if I could
12 suggest that we just take a brief recess at this time
13 for a couple minutes to let the other witness get set
14 up.

15 MR. BONNER: Sure, I don't have any
16 objection to that.

17 (Whereupon, a short recess is taken.)

18 MR. CASTRO: Mr. Bonner, your next witness.

19 MS. WHITEHEAD: I'm sorry. One second.

20 MR. CASTRO: Mr. Bonner, your witness.

21 MR. BONNER: Thank you, Mr. Chairman.

22 Next witness is Gregory Waga, our architect.
23 Mr. McNamara, would you like to swear him in.

24 MR. McNAMARA: I will do so.

25 Sir, please raise your right-hand.

1 Do you swear or affirm the testimony you are
2 about to present to the zoning board concerning this
3 application now pending before it will be the truth the
4 whole truth nothing but the truth.

5 THE WITNESS: I do.

6 MR. McNAMARA: Thank you.

7 G R E G O R Y J. W A G A, having been duly
8 sworn under oath testifies as follows:

9 MR. McNAMARA: For the record, state your
10 name, spell your last name and provide you business
11 affiliation.

12 THE WITNESS: Gregory J. Waga, W-A-G-A. 2019
13 Saint George Avenue, Rahway, New Jersey 07065. I'm a
14 New Jersey registered architect practicing in good faith
15 in the state for many years along with licensure in
16 eight other states.

17 MR. CASTRO: Mr. Waga, this board accepts
18 your credentials.

19 THE WITNESS: Thank you, Mr. Chairman.

20 Q. Would you -- what are you going to refer to and
21 Mr. McNamara, we'd like to have them introduced as
22 exhibits.

23 I believe you have four pages of drawings?

24 A. Yes, so actually I can begin to share screen --
25 first of all, can everybody hear me okay?

1 MR. CASTRO: Yes.

2 THE WITNESS: Great. Thank you.

3 If I can share a screen, please.

4 So I'm presenting to you five sheets this
5 evening. Four of which are titled C-1, C-2, C-3 and
6 C-4, which were part of the most recent submission to
7 this board a couple of weeks ago. There's a special
8 exhibit of C-5 which is acknowledging the, two of the
9 three questions posed by the construction department of
10 the City of Elizabeth, so I felt it necessary to present
11 that to put this boards minds at ease that we are in
12 conformity with their requests and satisfying the
13 building departments requirements.

14 So we can mark, if you'd like Mr. McNamara,
15 we can mark C-5 as Exhibit A-1.

16 MR. McNAMARA: That's fine.

17 THE WITNESS: Thank you.

18 Shall I begin?

19 MR. CASTRO: Yes.

20 MR. McNAMARA: Your witness, Mr. Bonner.

21 A. Thank you.

22 So what we're looking to achieve here is an
23 approval for this application which is going to provide
24 for both indoor seating and outdoor seating or covered
25 seating and closed seating. And in doing so maintaining

1 the integrity of the existing single story structure
2 which is shared by both our client, The Garden, Mr.
3 Pollo, along with the pharmacy to the left.

4 The plan, and I'll speak to the architectural
5 portion of this application this evening. This plan
6 depicts the section or area that is devoted strictly
7 towards the client, The Garden. I'll walk you through
8 the site.

9 North Avenue is along the lower portion of Sheet
10 C-1. The right-hand portion or the left-hand portion,
11 which is blank in essence, is the structure that is not
12 in our scope but is of the existing structure here that
13 is the pharmacy, and the existing remainder of the space
14 which is The Garden, which is comprised of approximately
15 1,751 square feet of indoor building space.

16 MR. GONCALVES: Morris Avenue not North
17 Avenue.

18 THE WITNESS: I'm sorry. I apologize.
19 Morris Avenue not North Avenue. Thank you, Mr. Chair --
20 Commissioner.

21 A. Therefore this is the covered seating or enclosed
22 seating area now, which is going to support
23 approximately 2,950 square feet for a total of
24 approximately 4,700 square feet of usable area.

25 There was a question earlier as to the, by one of

1 the commissioners, I believe it was you Commission
2 Goncalves, regarding the seating capacity and the mix of
3 tables. Yes, there are a few fours, and they are
4 located -- I'm going to zoom in on this sheet. They are
5 located within the facility here. There are 4 six tops
6 here and then there are 42 two tops. So the total
7 occupancy from a seating standpoint of view, the blend
8 is 42 and 4, for a total of 110 -- 110 occupants.

9 What we're proposing to do is to construct a
10 continuous 12 inch thick 23 foot high masonry wall,
11 which will act in a couple of manners and
12 characteristics. It will provide for the fire rating
13 requirement of two hours that will separate our clients
14 property from the adjacent property immediately to the
15 left, I believe that's either 327 or 329, I think it's
16 329 Morris Avenue. It will also provide for a means of
17 structural integrity to support the roof structure that
18 will provide for sufficient cover for the outdoor
19 seating area. I'm going to back away from that and then
20 move forward again slightly. It will provide for the
21 covering for this area here within the cursor at this
22 location.

23 Let me walk you through the facility. As we're
24 entering along the pedestrian way coming from the center
25 of town here, from the train station, which is to our

1 drawing left -- our drawing right. We proceed into what
2 would become a double door entry, and I'll zoom in a
3 little bit for you. Here. We'll have a double door
4 entry here into an open seating area and then continues
5 flow directly through that seating area back into which
6 will be separated by counters here for servers and prep
7 counters for servers along this area here and this area
8 here and then that will provide for access directly from
9 the prep area, which is located back in this location
10 here and the staging area here for drinks and the such.
11 There will be seating area here, there is a bar located
12 within the facility here and then we're back out to the
13 open dining area, restrooms to our immediate left and
14 then back out into the open seating area here, which is
15 approximately 36 by 35. This will then take us back out
16 through to Morris Avenue and the sidewalk and out to
17 enjoy the remainder of the evening.

18 As we proceed through to Sheet A-2. Sheet A-2 is
19 basically set up for the fire aspect at this point to
20 help the building department during the review along
21 with the fire department showing our indication and our
22 curtesy for, at this point and for this board, to better
23 understand our implementation of all our emergency
24 fixtures and smoke and carbon detectors. That's
25 basically it. The plan itself is the same building

1 configuration along with outdoor seating configuration
2 as was reflected on Sheet C-1.

3 Sheet C-3 are the elevations. So as we look at
4 our first elevation, new partial front elevation with
5 additional alteration. We're looking at our proposed
6 structure here. We will be reinstating what previously
7 existed which were 72 inch high ventilated ornamental
8 screens to screen not only the patrons from the inside
9 but also from the outside. Here is the recessed double
10 door entry which will now clear it's opening directly
11 before the property line, thereby not encroaching into
12 the pedestrian right-of-way. We will provide for our 23
13 foot high 12 inch thick masonry wall, reenforced to
14 provide structural integrity. That wall will be located
15 three feet off of the property line to the west of 329
16 Morris Avenue, which I believe is located here. We
17 gauged the approximate height of the 329 structure at
18 approximately 35 feet -- I'm sorry.

19 MR. CASTRO: Sorry.

20 THE WITNESS: Oh. Okay.

21 We estimated the height of the adjacent
22 structure to be about 35 feet. The height of our
23 structure at its parapet height will be 23 feet high.
24 The building height currently that exists beyond that is
25 approximately 15-foot 3 inches high. We will create

1 signage yet to be determined but will satisfy all the
2 criteria set forth by the zoning ordinances of the city
3 of Elizabeth and as was alluded to by the municipality's
4 engineer we've already complied with the size itself.

5 We will submit samples of the signage to the city
6 representatives for their approval prior to purchasing,
7 fabrication and ultimately installation.

8 The other two elevations are just indicative
9 of a rear elevation where we're going to be removing the
10 existing masonry wall which is approximately 8 feet high
11 which encroaches slightly onto the 329 property and then
12 a majority of it is on the 331 property side. And then
13 this is looking at that wall from that alleyway which is
14 created between the 329 property and our 331 property
15 line.

16 Moving to item Sheet C-4, is basically
17 indicative of a property survey which was prepared only
18 in order to, again, provide the outline of the entire
19 building. The anticipated parking in this area here,
20 and again just an overlay of the seating. It was set up
21 more as a key plan than anything else.

22 Finally Sheet C-5 now requires or indicates
23 the intended egress for this particular occupancy. Our
24 occupancy, as earlier stated was -- is going to be 110
25 people. Based upon that we require a total -- a total

1 width of exit door opening of 33 inches for 110
2 occupants. We will be providing 108 inches in total
3 width for the 110 occupants which exceeds the minimum
4 required by over three times.

5 That is my testimony.

6 Q. I just want to be clear. You -- the new wall to
7 be constructed is going to maintain the 3 foot
8 separation distance from the front of the property to
9 the rear property line, correct? Between our wall and
10 the adjacent structure, that 3 feet is maintained
11 continuously.

12 A. Yes, sir. So we have our wall here as indicated
13 by the crosshatched area, which runs from the front
14 property line directly to the existing angled wall which
15 currently exists at the rear. The property line itself
16 is designated, and I'll back out from this so you can
17 see it in full. Is designated by this broadly hatched
18 line and our building distance, our neighbor at 329
19 exists somewhere to the right of this property, we're
20 not quite sure.

21 Q. Thank you.

22 MR. BONNER: I have no further questions for
23 Mr. Waga.

24 Mr. Chairman, you're muted.

25 MR. NUNES: Mr. Chairman, you're muted.

1 MR. CASTRO: Commissioners, do you have any
2 questions for this witness?

3 MR. GONCALVES: Yeah, Mr. Chairman, I have a
4 question.

5 MR. CASTRO: Commissioner Goncalves.

6 MR. GONCALVES: Mr. Waga --

7 THE WITNESS: Yes, sir.

8 MR. GONCALVES: Question for you is that 23
9 foot wall is there a reason why you put it up there? Is
10 there a height ordinance, a setback requirement, what's
11 the purpose of that wall? Other than structurally and
12 firewall.

13 THE WITNESS: The purpose -- the purpose is
14 to separate -- create a separation between two separate
15 uses. The -- our clients use is known as a A-2 use
16 which is predominately inclusive of restaurants,
17 nightclubs and the such. And our neighbors, our
18 neighbors is a mixed use occupancy, which has a retail
19 aspect, I believe, at the ground floor, the extent of
20 which and the depth of which I'm not sure Commissioner,
21 but then he also has a residential aspect. So that's an
22 R-2, or I'm sorry, R-5 use at the residential side,
23 possibly an R-5, maybe an R-3 I'm not sure. And a B or
24 N use below and the separation between these two require
25 a minimum of one hour but we are providing two hour not

1 out of -- out of curtesy but we're providing it based
2 upon the need for the structure integrity for the
3 construction of this wall. We cannot just construct an
4 8 inch thick 23 foot high wall, it must have a greater
5 density and width.

6 MR. GONCALVES: Okay.

7 My second question is, you basically created
8 an alleyway, an abandoned alleyway.

9 THE WITNESS: Yes.

10 MR. GONCALVES: Is that good practice? Is
11 that good design?

12 THE WITNESS: Well, what the intent is here,
13 we were going to continue this screen across,
14 Commissioner, so this will -- this will now become a
15 situation where this will be screened off and for
16 maintenance purposes only the owner or applicant will be
17 coming in here and cleaning that area out.

18 MR. GONCALVES: Okay.

19 I'd like to put on the record that that's
20 going to happen.

21 Another thought here, another thought, could
22 you open it up, let me see that back corner.

23 THE WITNESS: Sure.

24 MR. GONCALVES: Just another thought, is
25 there a reason why you don't put like a fire exit in the

1 back? Right -- I don't know if you can see my cursor,
2 right there?

3 THE WITNESS: Over here?

4 MR. GONCALVES: Yeah.

5 THE WITNESS: There's no reason, we can
6 accommodate that.

7 MR. GONCALVES: God forbid there's a fire,
8 that last person really is an issue and then if you
9 create that --

10 THE WITNESS: Well, no. They're actually,
11 Commissioner, they're exiting through this door here and
12 out.

13 MR. GONCALVES: I didn't realize that.
14 Okay.

15 THE WITNESS: So we got thru circulation in
16 and out. And once you're beyond, remember this is, if I
17 can go back to C-4 just for edification, this is
18 actually the end of the building here, so once you're
19 out here this is open space.

20 MR. GONCALVES: I didn't realize you had a
21 back exit.

22 THE WITNESS: That's okay. Thank you.

23 MR. GONCALVES: It's just that abandoned
24 alleyway, to me, I'm not too crazy for abandoned
25 alleyways. You know what's going to happen, garbage and

1 critters and rats are going to start growing in that
2 area.

3 THE WITNESS: Well, the alternative, again,
4 because we're a zero lot line, we were being courteous
5 to our neighbor because of the windows that they have on
6 the residential aspects on the second floor. We did not
7 want to block their daylight nor block their ability to
8 gain fresh air.

9 MR. GONCALVES: 100 percent. I mean, the
10 last thing you want to do is obviously put somebody in
11 danger.

12 THE WITNESS: Correct.

13 MR. GONCALVES: But --

14 THE WITNESS: I understand your thoughts
15 though, but that will be maintained. I know my clients
16 very well and that will be maintained.

17 MR. GONCALVES: Okay. Fair enough.

18 THE WITNESS: Thank you.

19 MR. GONCALVES: Thank you.

20 MR. CASTRO: Thank you Commissioner.

21 Commissioners, any other questions for the
22 witness?

23 MR. NUNES: Mr. Chairman, I have a question.

24 MR. CASTRO: Commissioner Nunes.

25 MR. NUNES: I have a question for Mr. Waga.

1 Mr. Waga, beyond the structural integrity that you
2 need for the roof and the fire, so on and so forth, what
3 will this wall do for sound -- for stopping sound from
4 moving from the applicants place of business to, you
5 know, the place next door? The mixed use property at
6 331.

7 THE WITNESS: Yes, Commission Nunes. Thanks
8 for the question.

9 So though in essence it will diminish the
10 sound. However, we know that our client will be abiding
11 by the ordinances for the noise control set forth by the
12 City of Elizabeth and this will a roofed area as well,
13 so it will be fully enclosed and weather tight.

14 MR. NUNES: Thank you very much.

15 THE WITNESS: You're very welcome.

16 MR. CASTRO: Thank you, Commissioner Nunes.
17 Commissioners, any other questions for this witness?

18 MR. SOSA: Mr. Chairman.

19 MR. CASTRO: Commissioner Sosa.

20 MR. SOSA: I have a question for Mr. Waga.
21 The occupancy, how many does it hold again?

22 THE WITNESS: 110 occupants, Commissioner.

23 MR. SOSA: And I have a question for Mr.
24 Gallerano.

25 He stated that for parking, what was it one

1 car for every four people, is that correct?

2 MR. GALLERANO: Yeah, so it's, for the
3 restaurant it's one car for four seats and then plus one
4 for every two employees. And then for the retail, for
5 the pharmacy, it's 1 for 300 square feet. So we total
6 all that up it comes to 47 parking spaces for the total
7 facility. I believe it's 9 are -- I forget what the
8 breakdown is, but you have to go, it includes the entire
9 facility. So all 47 aren't just for the restaurant,
10 there are also those spaces that are allocated or
11 required for the pharmacy. So when I say 47, it's for
12 the entire property not just for the restaurant.

13 MR. SOSA: Thank you for clarifying.

14 MR. GALLERANO: Welcome.

15 MR. CASTRO: Thank you, Commissioner Sosa.

16 Commissioners, any other questions?

17 Mr. Bonner, do you have any other witnesses?

18 MR. BONNER: We do but they're not available
19 tonight, Mr. Chairman, as I mentioned at the beginning.
20 That's all we have for presentation today.

21 MR. McNAMARA: Mr. Castro -- Chairman. We
22 need to make available the witness to the other two
23 gentlemen who were here this evening. The -- subject to
24 their questions, Mr. Di Stefano and Mr. Lenahan.

25 MR. CASTRO: Mr. Di Stefano, do you have any

1 questions for this witness, for Mr. Waga?

2 MR. Di STEFANO: Yes. Yes, I do. Yes, I
3 do.

4 MR. CASTRO: Thank you, Mr. McNamara.

5 MR. Di STEFANO: I'm un-muted, right?

6 MR. McNAMARA: Yes.

7 MR. CASTRO: Yes.

8 MR. Di STEFANO: Okay.

9 When, I guess when you testified at the
10 previous meeting there was some testimony with regard to
11 not yet having come to a conclusion with regard to the
12 slope angle of the, I guess I would call it the roof or
13 the top of the structure. Have you finalized your --
14 the decision with regard to the slope angle?

15 THE WITNESS: Yes, sir.

16 MR. Di STEFANO: Okay. And that would be
17 sloping towards the drawings left, is that fair to say?

18 THE WITNESS: Yes. So let me go back to
19 Sheet C-3 to assist you with that, and I'll zoom in on
20 this drawing here. It will be sloping from right to
21 left as you're facing the facade.

22 MR. Di STEFANO: Okay. So there would be,
23 fair to say that there, you have decided not to put
24 gutters or leaders on the right-hand side, the drawing
25 right?

1 THE WITNESS: Correct. Correct.

2 MR. Di STEFANO: Okay.

3 Now, has there been -- with regard to then
4 what was sort of termed an alleyway, has there been any
5 -- have you looked into what the creation of this
6 alleyway would do with regard to drainage and
7 accumulation of water in that alleyway, if any?

8 THE WITNESS: Yeah, I cannot attest to that.

9 MR. Di STEFANO: So it would be fair so stay
10 like you don't know if it would worsen, alleviate, stay
11 the same, anything?

12 THE WITNESS: Well, what we would imagine, if
13 and when -- when we specify the construction of this
14 wall and submit our drawings to the building department
15 because there will be excavation, and I'll zoom in on
16 this to assist you in interpreting this. There will be
17 excavation at this location here to place a footing
18 below grade within our property limits. At that point
19 this will all be disrupted. Our automatic notation will
20 revise -- be revised such that not only do we coordinate
21 our efforts with Mr. Gallerno's office, who's the
22 municipal engineer, but also we'll be providing for
23 positive water flow from the rear towards front of the
24 property line and away from immediate structures.

25 MR. Di STEFANO: Is there any surface that

1 you have envisioned for the alleyway?

2 THE WITNESS: It would be a paved surface.
3 Whether it's paved blacktop or concrete.

4 MR. Di STEFANO: Now, with regard to, are
5 you aware of what the seating arrangements were that,
6 you know, existed at the time of, I guess, the original
7 outdoor tent, I guess I would call it, were?

8 THE WITNESS: Yeah, they were very --
9 actually they were very similar to what we implemented
10 hear. The configuration and the open area was very,
11 very similar. In some instances a couple of the tables
12 would be grouped together to create a four top, but the
13 majority of the two tables that we've implemented here
14 were preexisting.

15 MR. Di STEFANO: Okay. And what about --
16 okay.

17 And then with regard to the interior
18 seating.

19 THE WITNESS: Yes.

20 MR. Di STEFANO: How does your design
21 compare to what was, or what is exterior?

22 THE WITNESS: How does my design compare,
23 I'm sorry, I didn't understand your --

24 MR. Di STEFANO: Have you altered the
25 interior?

1 THE WITNESS: No, sir. No, sir.

2 MR. Di STEFANO: Okay.

3 Now, with regard to, again, the exterior
4 portion. Is there any plan to have heating in the, you
5 know, to the outdoor area in the winter or, you know,
6 when --

7 THE WITNESS: Yes.

8 MR. Di STEFANO: -- required?

9 THE WITNESS: Yes.

10 MR. Di STEFANO: And what would be the
11 heating system?

12 THE WITNESS: The heating system would be an
13 RTU, which would be placed on the main structure and
14 then ducted into the facility along the rear wall here
15 blowing out this way with our necessary, and along the
16 center, with our necessary returns and supplies as
17 required to satisfy environmental conditions.

18 MR. Di STEFANO: And what about the portion
19 -- yeah, where you're moving the little hand right now?

20 THE WITNESS: Sure. That would be satisfied
21 with mini splits which will be mounted on either the
22 masonry wall here or the masonry wall here, creating a
23 -- the sufficient environmental aspects to qualify for
24 that particular occupancy.

25 MR. Di STEFANO: Now I'm just trying to read

1 my own handing writing with my own notes.

2 THE WITNESS: Okay.

3 MR. Di STEFANO: With regard to, I guess
4 waste receptacles, is there any provision for, I guess,
5 I don't know what we call that, the intermediate stages
6 from, you know, tables until it goes into the dumpster,
7 you know, we'll call that the intermediate stage, is
8 there any provision for any of that to occur in the
9 outdoor section or is that going to happen inside or
10 something else?

11 THE WITNESS: The dumpster location is going
12 to be directly back here, so I would defer that question
13 respectfully to Mr. Gomez. But I know for a fact that
14 this area here is staged for refuse and has satisfied
15 the obligations of, the aspects of the municipal
16 engineer. As staging as far as refuse, I'm not sure
17 where it's staged, how it's staged within the four walls
18 so to speak. But I know that the refuse area is going
19 to be placed here in order for any vehicular activity
20 for dumpster off-loading to occur in line with the apron
21 which exists off of Morris Avenue in this location here.

22 MR. BONNER: Mr. Waga, that information is
23 on the engineering plans and that testimony will be
24 handled by the project engineer.

25 THE WITNESS: Thank you.

1 MR. Di STEFANO: So just let me know if this
2 is something that will be within the purview of the
3 engineers testimony or yours. Is there any
4 consideration made in your planning with regard to, I
5 guess, you know, discouraging vermin entering into the
6 outdoor area or is that an engineers area of
7 responsibility?

8 THE WITNESS: I would -- I will answer that
9 as a professional and as a landlord and property owner.
10 An exterminator will be hired, I'm sure that the
11 standards that -- the very, very high standards that the
12 City of Elizabeth holds with their Department of Health
13 from an inspection point of view will have to be
14 satisfied by the applicant, and in doing so he'll have
15 to make sure, they'll have to make sure that they oblige
16 with the necessary vermin control.

17 MR. BONNER: The -- when we provided the
18 parking lot lease there was also attached to that
19 contract for vermin and pest control, which the board
20 secretary has. And a standard condition of approval is
21 comply with Board of Health requirements.

22 MR. Di STEFANO: With regard to, I guess,
23 windows and what have you. Besides, you know, the front
24 that adjoins Morris Avenue, is there -- are there any
25 windows or other openings for the rest of the outdoor

1 seating area?

2 THE WITNESS: It's along this area here,
3 along the west elevation and along the south elevation.
4 That is all. We have no penetrations, in order to
5 maintain the integrity of the weight rating of the wall
6 system here, there are no penetrations permitted because
7 of our proximity to the property line.

8 MR. Di STEFANO: And structurally the roof
9 component, is that -- is that attached on, I guess, on
10 the drawing left, is that attached to the existing
11 building or some sort of support structure? And I mean
12 the part that runs along the building.

13 THE WITNESS: There are internal, as was
14 indicated on the drawings, there are internal structural
15 columns or supports that will exist along the perimeter
16 and within the interior along here and that's again all
17 part of the presentation. And the structure itself is a
18 metal frame structure and the only -- the only
19 connection that will be concerned with will be the
20 connection directly to the wall where a, from a
21 architectural term, a reglet will be cut into the wall
22 in order to provide for the necessary waterproofing of
23 the system of the component of the roof and into the
24 masonry wall.

25 MR. Di STEFANO: So we're looking at right

1 now where we're looking at the front elevation on Morris
2 Avenue.

3 THE WITNESS: Yes.

4 MR. Di STEFANO: In that area, the upper
5 area where we got the signage notation. What is -- what
6 is that area going to be constructed of?

7 THE WITNESS: That's just going to be a
8 panelized construction. Can be a fabric, can be a roll
9 up fabric that is either clear that's put down for
10 weather purposes or rolled up for the environment of a
11 nice summer, spring or fall night.

12 MR. Di STEFANO: And then below that behind
13 the ventilated ornamental screening, is there going to
14 be any sort of similar --

15 THE WITNESS: Yes.

16 MR. Di STEFANO: Okay.

17 THE WITNESS: That will be all continuous.
18 We just wanted to designate graphically the proportion
19 and height of the entryway and by carrying this line
20 across, again, we will be satisfying every criteria
21 required by -- of us and set forth by the International
22 Building Code.

23 MR. Di STEFANO: Is -- so is the front
24 elevation that we talked about, like going to retract, I
25 guess the retractable covering, is that going to be one

1 continuous sheet coming down from the, you know, let's
2 just say from the top to the floor or is it going to be
3 multiple ones? How is going to work.

4 THE WITNESS: No, it would be multiple ones.
5 It would be rolled up just like a roll up lines whether
6 it's automated or manual. But it'll be manually
7 operated. It's used -- we used it for all types of
8 canopies and approaches for many types of restaurants
9 that we have completed over the past year.

10 MR. Di STEFANO: And what about the opposite
11 side of the structure at the other end?

12 THE WITNESS: Here?

13 MR. Di STEFANO: No. Well, yeah. Let me
14 ask of that side too.

15 THE WITNESS: So it's going to be the same
16 thing. It's going to be the same thing here.

17 MR. Di STEFANO: And on the rear?

18 THE WITNESS: Well, the rear is going to be
19 closed because that's going to incorporate a different
20 element. We have no seating out there. It's not open
21 to the public. It's the private section of the
22 facility. It's the private section of the facility.

23 MR. Di STEFANO: It's not, you know,
24 retractable or open to --

25 THE WITNESS: No, this would be a solid

1 element. It'll just be anywhere where there's seating.

2 MR. Di STEFANO: Can you just scroll down
3 again to the rear elevation that we were looking at.

4 THE WITNESS: Yup.

5 MR. Di STEFANO: And so most of that
6 existing wall will remain at the rear elevation?

7 THE WITNESS: The entire existing will remain
8 at the rear elevation.

9 MR. Di STEFANO: Well, I mean part of it you
10 noted that it would be --

11 THE WITNESS: Well, here -- right. A
12 section that we're offsetting for the property line,
13 correct. I should say, I'll retract. The majority of
14 that wall will remain.

15 MR. Di STEFANO: And then so with regard to
16 any sort of gutters or headers on -- are there -- are
17 any going to exist along the rear elevation for, you
18 know, potential water runoff towards the rear of the
19 structure?

20 THE WITNESS: Just going to scroll up to the
21 plan. To this section here.

22 Yeah, there will be potentially some leaders
23 and gutters along here but the wall -- the wall is
24 currently off the property line by almost a foot at this
25 location and almost two feet at this location here.

1 MR. Di STEFANO: When you say, potentially,
2 what is that contingent on?

3 THE WITNESS: Well, there will be, we don't
4 know. We're not -- we don't know how many yet, but
5 there probably will be a gutter with one or two leaders
6 getting the water out to the parking lot here.

7 MR. Di STEFANO: And at this point is there
8 any conclusion with regard to what the color of the roof
9 is going to be?

10 THE WITNESS: Most likely white.

11 MR. Di STEFANO: And the ornamental screens
12 on the front?

13 THE WITNESS: Again, that will be either
14 clear, most likely be clear in order to allow for a
15 visual aspect in order to create a more open environment
16 and be able to collaborate more with the outside and
17 inside.

18 MR. Di STEFANO: Well, so when you say,
19 clear, do you mean like made of a transparent material
20 or do you mean like --

21 THE WITNESS: Like a transparent fabric.

22 MR. Di STEFANO: Oh, we're talking -- no,
23 I'm sorry, I think I misstated. I meant the, if you can
24 go back to the front elevation again.

25 THE WITNESS: Okay.

1 MR. Di STEFANO: The -- yeah, the proposed
2 ventilated ornamental screening.

3 THE WITNESS: Yes.

4 MR. Di STEFANO: That's going to be a
5 fabric?

6 THE WITNESS: No, that's a metal screening.

7 MR. Di STEFANO: Oh, a metal. Okay. So
8 that's metal.

9 THE WITNESS: Metal screening. That's an
10 anodized aluminum metal screening which will be secured
11 properly at its base and it will be no greater than six
12 feet in height and again, that's more just to create a
13 private environment so nobody's leering in at somebody
14 while they're dining.

15 MR. Di STEFANO: Have you reached a
16 conclusion how that would be finished in terms of color
17 or otherwise?

18 THE WITNESS: Most likely be a silver
19 anodized or satin nickel anodized aluminum panel.

20 MR. Di STEFANO: I don't have any further
21 questions for the witness.

22 THE WITNESS: Thank you.

23 MR. McNAMARA: Mr. Lenahan.

24 MR. CASTRO: Thank you, Mr. Di Stefano.

25 Mr. Lenahan.

1 MR. McNAMARA: I can't tell if he's muted or
2 not from my screen.

3 MR. CASTRO: I think he logged off after the
4 short recess.

5 MS. WHITEHEAD: I'm not seeing him on here
6 anymore.

7 MR. DONAHUE: Who you looking for?

8 MS. WHITEHEAD: An attorney.

9 MR. McNAMARA: Mr. Lenahan.

10 MR. NUNES: Lenahan.

11 MR. DONAHUE: All right.

12 MR. McNAMARA: If he's not present, Mr.
13 Chairman, than you can open the floor to other members
14 of the public who may have any questions of either of
15 the witnesses who may have testified this evening.

16 MR. CASTRO: Commissioners, do you have any
17 further questions for Mr. Waga?

18 Mr. Bonner, I'll ask you the question again,
19 do you have any other witnesses?

20 MR. BONNER: Not for tonight, Mr. Chairman.

21 MR. CASTRO: Okay.

22 So should we, Mr. McNamara, open this
23 session to the public even though this meeting is not --

24 MR. McNAMARA: Yes. We should open it to
25 the public, they have the right to ask any questions of

1 either of the witnesses Mr. Bonner's put forward this
2 evening.

3 MS. WHITEHEAD: Mr. Bonner, can you just
4 stop sharing, please.

5 MR. WAGA: Oh, I'm sorry. Stop share. Here
6 we go. There we go.

7 MS. WHITEHEAD: Thank you.

8 THE WITNESS: You're welcome.

9 MR. CASTRO: Is there any members of the
10 public who wish to speak regarding this application?
11 Anyone from the public who wishes to speak regarding
12 this application or ask any questions to the applicants
13 witnesses?

14 MR. McNAMARA: If not, Mr. Chairman, what
15 I'd like to suggest, if the board can provide a quorum,
16 we have a special meeting date reserved on our annual
17 schedule for August 26. I've been advised by the board
18 secretary that there are a number of large applications
19 in the queue, some of which may have significant public
20 interest to the point where we may not have an open slot
21 on our regular agenda until the October meeting. If
22 that date doesn't work, if there's a similar date since
23 we wouldn't be in City Hall yet, so that this
24 application can be carried and if there's any others
25 that can be fit we can attempt to at least get one on

1 the agenda.

2 MR. CASTRO: Okay. No problem.

3 You know, the concern that I have with this
4 particular applicant was they're in the business of --
5 in the restaurant business and that's one of the reasons
6 why I was pushing for a special meeting that is being
7 conducted today. And summer is their season and this
8 board actually wanted to see how the application could
9 be heard and then decided, but I understand that their
10 witness could not appear. So we have -- so Madam
11 Secretary, so we have a special meeting for August, what
12 date do you have?

13 MR. McNAMARA: 26th, sir.

14 MR. CASTRO: August 26. So --

15 MR. NUNES: Mr. Chairman, if I may.

16 MR. CASTRO: Yes, Commissioner Nunes.

17 MR. NUNES: Mr. McNamara, I've got a quick
18 question on procedure, if I could.

19 MR. McNAMARA: Yeah, I'm here. Go ahead.

20 MR. NUNES: Okay. So we have had a part of
21 this meeting during our last meeting. We have had
22 another part of this meeting just now, but it looks like
23 we started completely over again today. Explain to us,
24 please, so the board understands, this next meeting that
25 we're going to have, what will it encompass? Will it be

1 a --

2 MR. McNAMARA: It'll be a continuing of this
3 -- it would be a continuation. The problem we had with
4 the prior meeting is that toward the end of the meeting
5 it became evident that there was an error in the notices
6 that were issued and that people might not have been
7 able to access the meeting from the public, it would be
8 a Sunshine Law violation if proven out to be the case.
9 An objector raised the issue so the traditional remedy
10 is start over on proper notice, which is what we did
11 tonight. We would not need to repeat these witnesses,
12 they've been made available to the public and to
13 objectors counsel. It's up to counsel for the applicant
14 to decide who he wants to bring back the next meeting.
15 The two remaining witness would be the two we would hear
16 from, which is the engineer, Mr. Kurus, and their
17 planner, who I believe is Nick Rubiano. And at that
18 time point hopefully the hearing can be concluded and a
19 vote taken. And the next meeting date that's on the
20 calender is August 26. If the board so deems we could
21 adjourn the hearing to that date so the applicant would
22 not have to re-notice. The only obligation we would
23 have is to post the appropriate agenda and notice at
24 City Hall and on the city website so we make sure that
25 the dial in information for the Zoom meeting was current

1 and accurate.

2 MR. NUNES: Is the August 26 the earliest
3 available date that we can give this applicant?

4 MR. McNAMARA: Unless you want to pick
5 another night because we're not meeting physically in
6 City Hall, we're going to start doing that in September.
7 So if there's a different night, the only thing then is
8 the applicants going to have to re-notice.

9 MR. CASTRO: I think that what Commissioner
10 --

11 MR. McNAMARA: And you're already meeting
12 earlier in the month two weeks prior to that, I believe
13 that's the 12th.

14 MS. WHITEHEAD: Yes.

15 MR. McNAMARA: And you've already got a full
16 agenda that night from my understanding from the board
17 secretary.

18 MR. CASTRO: But I think that probably what
19 we have left of this application is not that much.

20 MR. BONNER: Mr. Chairman, if I could.
21 Anthony Kurus's testimony is fairly simple and straight
22 forward. There aren't a lot of engineering issues with
23 the application. He will not take very long. The
24 planner has a straight forward case to make for the
25 variances that are being requested but with the

1 appearance of the objectors that could take a little bit
2 of time. Mr. Waga has informed me that he has a
3 conflict on the 26th, but, you know, we have concluded
4 our presentation. As long as the board doesn't think
5 that they will have any questions for him I wouldn't
6 plan on having him available that night.

7 MR. McNAMARA: How many other applications
8 do we have on right now for the regular meeting in
9 August?

10 MS. WHITEHEAD: In August we have two
11 applications, but one is very, very large and it all
12 depends on public and the questions that will be asked.
13 We never know how long a meeting can be, so I wouldn't
14 say it's going to be short, you know, I wouldn't say
15 it's going to be long, it all depends. But I know that
16 the next meeting we have a big application, there's a
17 lot of public who will be attending, so I know that
18 there's public here as well and it might just be too
19 much to be honest. And I know they noticed for this
20 meeting.

21 MR. McNAMARA: Yeah, they're already slotted
22 in for those positions on the agenda.

23 MR. CASTRO: My question is this. I
24 remember back several years ago, probably 20 years ago,
25 we used to hear large applications from the beginning to

1 the end three or four at the same night. I understand
2 that there's one application that is quite complicated.
3 What I'm saying is Mr. Bonner indicated that he only has
4 two witnesses, that they are not going to take much of
5 our time. The only -- it's going to be short. So my
6 question is, can we squeeze in this application during
7 the first meeting of August?

8 MS. WHITEHEAD: I get what you're saying,
9 Chairman, that the witnesses won't have a lot to say but
10 like I said, it all depends because I've known this
11 application basically you've heard something just like
12 this the other month and it took the whole night and
13 that's why I'm telling you that I don't, I wouldn't
14 personally want to put this on the agenda if I know that
15 this might take the whole night to go through. I
16 understand that we used to do, four applications and
17 everything like that, but this specific project I
18 believe would take a long time and this going into that
19 will just adjourn the next project and then it has to go
20 on to the next meeting, which is, to me, is unfair
21 because they already had the notice done.

22 MR. BONNER: We noticed for the prior
23 meeting and the mistake, and I'm not pointing fingers,
24 but the mistake in the notice wasn't caused by the
25 applicant. The applicant was put off because the

1 information on the Zoom was incorrect, but it wasn't
2 provided by the applicant. So we've already lost time
3 and it wasn't the fault of the applicant, and I would
4 appreciate if we could be put on the 12th. We'll make
5 our case as quickly and succinctly as we can. I can't
6 control what Mr. Di Stefano or Mr. Lenahan might do, but
7 I can assure you that we can make our presentation in
8 under an hour.

9 MR. McNAMARA: I understand from Mr. Di
10 Stefano that he intends to bring a planner in as a
11 rebuttal witness, so you need to -- I don't know if he's
12 going to entertain any other witnesses as rebuttals, but
13 he did indicate that to me. Looking, I don't know if
14 he's still -- oh, there he is. Okay. So you can tag
15 another 15 to 30 minutes on to the length of time
16 needed. The only other thing we can do is make sure
17 everyone is aware if they show up on, the ones on the
18 12th, that if we don't finish that night then whatever
19 is left of applications or applications to be started be
20 carried to August 26.

21 MR. BONNER: I second that, not that I have
22 a vote, but, you know, seems to me this is old business
23 that was carried once due to no fault of the applicant
24 and, you know, it's a restaurant that needs to get open.
25 If it gets to the winter he's going to have a very

1 difficult time and may end up losing his business.

2 MR. SOSA: Mr. Chairman.

3 MR. CASTRO: Commissioner Sosa.

4 MR. SOSA: Yeah, I don't think it's fair.

5 If it was the applicants fault on the notice I would
6 agree they have to wait their turn. But it was no fault
7 for them, I don't think it's fair for them to wait any
8 further as well. I think we need to end this as soon as
9 possible.

10 MR. CASTRO: So let's do this. Let's do
11 this. Why don't we bring this application to the first
12 meeting -- do they have to notice, Mr. McNamara?

13 MR. McNAMARA: No, because it's the next
14 regularly scheduled meeting of the board. The only
15 reason they would have to re-notice is if they amend
16 their plans and they trigger new relief.

17 MR. CASTRO: I don't think the large
18 application that is scheduled for the, you said August
19 12, Monae?

20 MS. WHITEHEAD: Yes.

21 MR. CASTRO: I don't think that large
22 application we're going to end it on that day anyway.
23 So I think it would be probably appropriate for us to
24 bring this application to the first meeting of August
25 12. Try to end it as fast as we can and then continue

1 with the second application.

2 MS. WHITEHEAD: It's up to guys.

3 MR. SOSA: I agree with you, Mr. Chairman.

4 MR. GALLERANO: Mr. Chairman, may I make a
5 suggestion.

6 MR. CASTRO: Yes, Mr. Gallerano. Go ahead.

7 MR. GALLERANO: Sure. I mean, if the board
8 is willing to hold a special meeting on the 26th this
9 application could be continued to the meeting on the
10 12th. Anything that doesn't get heard on the 12th can
11 then be carried to the 26th. So this would allow this
12 application to continue on the 12th and the other two
13 applications on the schedule could be moved to the 26th,
14 if needed.

15 MR. NUNES: I agree with that.

16 MR. CASTRO: I agree with that, Mr.
17 Gallerano.

18 So Madam Secretary, let's schedule this
19 application for the -- to continue with this application
20 with the meeting on August 12.

21 MR. McNAMARA: Please advise the attorneys
22 for those two applications that there is at least the
23 possibility we may not be able to get all three finished
24 and they should be prepared to be returning on the 26th
25 for a special virtual meeting by Zoom, if necessary.

1 MS. WHITEHEAD: I will do so. Thank you.

2 MR. McNAMARA: You're going to run into
3 vacations, people not being available, witnesses not
4 being available when you get into late August.

5 MR. CASTRO: Mr. Bonner, you have to make
6 sure that your witnesses are ready for the meeting of --
7 of August 12.

8 MR. BONNER: I will, Mr. Chairman. And I
9 will tell them to keep their presentation as short as
10 possible.

11 MR. McNAMARA: Mr. Di Stefano, anything
12 further you wish to add?

13 MR. Di STEFANO: No, I -- no.

14 MR. McNAMARA: All right. Would you please
15 let us know if you intend to bring your planner as your
16 rebuttal witness to the meeting on the 12th or if you're
17 going to bring any other professionals.

18 MR. Di STEFANO: Certainly. Of course.

19 MR. McNAMARA: Okay.

20 MR. CASTRO: Thank you. I think we're set
21 for tonight. Am I right, Mr. McNamara?

22 MS. WHITEHEAD: I'm sorry, can we just --
23 I'm sorry, keep going. We're not even done with this
24 one. I'm so sorry.

25 MR. McNAMARA: Okay. I believe we've opened

1 the floor to the public. Is there anyone else who
2 wishes to ask any other questions of either of the
3 witnesses, please indicate now.

4 Seeing and hearing none, Mr. Chairman, at
5 this point a motion to carry the application to August
6 12 would be in order.

7 MR. CASTRO: May I have a motion to carry
8 this application for the meeting of August 12.

9 MS. ALFONSO: Motion to carry.

10 MR. CASTRO: Motion by Commissioner Alfonso.
11 Second.

12 MR. NUNES: I'll second.

13 MR. CASTRO: Second by Commissioner Nunes.
14 Madam Secretary, role call please.

15 MS. WHITEHEAD: Commissioner Silva-Alfonso.

16 MS. ALFONSO: Aye.

17 MS. WHITEHEAD: Commissioner Cano.

18 MS. CANO: Aye.

19 MS. WHITEHEAD: Commissioner Goncalves.

20 MR. GONCALVES: Aye.

21 MS. WHITEHEAD: Commissioner Fernandez.

22 Sorry, you're muted.

23 MR. FERNANDEZ: Aye.

24 MS. WHITEHEAD: Thank you.

25 Commissioner Sosa.

1 MR. SOSA: Aye.

2 MS. WHITEHEAD: Vice Chairman Nunes.

3 MR. NUNES: Aye.

4 MS. WHITEHEAD: Chairman Castro.

5 MR. CASTRO: Aye.

6 MR. DONAHUE: You skipped me. You skipped
7 Donahue.

8 MR. CASTRO: Commissioner Donahue.

9 MS. WHITEHEAD: Commissioner Donahue --

10 MR. DONAHUE: Aye.

11 MS. WHITEHEAD: -- I did not need your vote,
12 but thank you.

13 MR. CASTRO: Did you mention Commissioner
14 Cano, Madam Secretary?

15 MS. WHITEHEAD: Yes, I did.

16 MR. CASTRO: Okay. Thank you.

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C E R T I F I C A T E

I, ERIC S. FISHMAN, a Shorthand Reporter and Notary Public of the State of New Jersey do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically (VIA ZOOM) by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

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



ERIC S. FISHMAN, S.R.

Dated: 8/9/2021

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