

1 COUNTY OF HUDSON
2 STATE OF NEW JERSEY
-----x
3 In Re: APPLE VIEW
4 7009-7101 RIVER ROAD
5 NORTH BERGEN, NEW JERSEY 07047
6 CASE NO. 4-10
7
8 Applicant.
9 -----x
10
11 January 20, 2011
12 7:10 p.m.
13
14 B E F O R E:
15
16 THE NORTH BERGEN PLANNING BOARD
17
18 PRESENT:
19
20 HARRY D. MAYO, III, Chairman
21 GEORGE AHTO, JR., Vice Chairman
22 ROBERT P. BASELICE, Member
23 RICHARD LOCICCHIO, Member
24 SEBASTIAN ARNONE, Member
25 PATRICIA BARTOLI, Member
REHAB AWADALLAH, Alternate Member

GITTLEMAN, MUHLSTOCK & CHEWCASKIE, ESQS.
Attorneys for the Planning Board
BY: Steven Muhlstock, Esq.

Geraldine Baker, Board Clerk
Jill Hartmann, Board Planner
Derek McGrath, Board Engineer

Reported by:
CELESTE A. GALBO, CCR, RPR, RMR

Celeste A. Galbo, CSR, RMR

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

ALAMPI & DeMARRAIS
Attorneys for the Applicant
1 University Plaza
Hackensack, New Jersey 07601
BY: CARMINE R. ALAMPI, ESQ.

BEATTIE & PADAVANO, LLC
Attorneys for Objectors Galaxy Towers
Condominium Association, Inc.
50 Chestnut Ridge Road
Montvale, New Jersey
BY: JOHN J. LAMB, ESQ.

MARIA GESUALDI, ESQ.
Attorney for Objector Township of
Guttenberg
6806 Bergenline Avenue
Guttenberg, New Jersey 07093

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THE CHAIRMAN: Meeting is called to
order. Pursuant to the Open Public Meetings Act
please be advised that notice of this meeting was
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4 faxed to the "Journal Dispatch" and "Bergen
5 Record" on January 3rd, 2011 advising that the
6 North Bergen Planning Board would hold a special
7 meeting on January 20th, 2011 at 7 p.m. in the
8 chambers of the municipal building located at
9 4233 Kennedy Boulevard, North Bergen New Jersey
10 07047.

11 Board members, attorneys and
12 applicants were mailed notices on that date and a
13 copy of this notice was posted on the bulletin
14 board in the lobby of the municipal building for
15 public inspection.

16 Gerry, please call the roll.

17 (Whereupon roll call is taken and
18 Members Steven Somick and Manuel Fernandez are
19 absent.)

20 THE CHAIRMAN: All right. This is a
21 continuation of Case No. 4-10, 7009 to 7101 River
22 Road. Counsel.

23 MR. ALAMPI: Thank you, Chairman.
24 For the record, again, Carmine Alampi for Apple
25 View LLC. This is a continuation from the

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1 December 7, 2010 meeting. We're calling Roger
2 DeNiscia, our planning consultant, forward for
3 his direct testimony.

4 MR. MUHLSTOCK: Mr. Alampi, before
5 you called your witness, let me just do one

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6 housekeeping item on the record.
7 I reviewed all the transcripts,
8 Mr. Chairman, to make sure that everyone had
9 either been present or had read and certified to
10 reading the transcripts. So the certifications
11 executed tonight were by Ms. Bartoli who
12 certified reading the November 17, 2010
13 transcript, and by Mr. Locricchio who certified
14 to reading the September 29, 2010 transcript. As
15 of today, not counting of course this evening,
16 every one of the board members has either
17 attended or read and certified to reading the
18 transcripts.

19 THE CHAIRMAN: Okay.

20 MR. MUHLSTOCK: So everyone up
21 through tonight is absolutely qualified to
22 participate later on. We'll see going forward.
23 Thank you.

24 THE CHAIRMAN: All right. Thank
25 you.

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1 MR. LAMB: Mr. Chairman, just
2 another kind of housekeeping issue. The board
3 was distributed a letter that I sent to the board
4 with a copy to Mr. Alampi dated January 17th
5 which went through all the reasons why I thought
6 that my continued request to have the easement or
7 license for the gas pipeline and the maintenance
8 area around the gas pipeline be provided. Mr.

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9 Alampi responded by his letter yesterday dated
10 January 18th, and that letter enclosed the draft
11 of the easement that he was proposing. He noted
12 in his letter that one of the comments from I
13 think the board's professionals was that the
14 easement also had to be in favor of the Township
15 of Guttenberg, the North Bergen MUA, and there
16 might have been some other governmental agency
17 and they had agreed to that as well.

18 Mr. Alampi did indicate that he was
19 in the process of doing that. I just want to
20 note, and I'm telling everybody now so that there
21 is no surprise, that it is obvious when you look
22 at that form of easement agreement that it does
23 not contain the -- any of the contents that was
24 the subject of Mr. McGrath's review letter dated
25 October 18, 2010. Mr. McGrath's review letter

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1 assumed that there would be some type of
2 construction and maintenance requirements, and
3 his review letter of that date attached, he had
4 run into somebody from Transco at a seminar and
5 had gotten kind of a form of construction and
6 maintenance requirements that were necessary.
7 And he discussed that in his report. And
8 although we're not saying that all -- that those
9 guidelines contain all the required safety
10 features, the point is that this agreement didn't

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12 have any of that and didn't have any signs that
13 So I'm just pointing it out now that
14 we have a problem with that easement and we have
15 a problem, especially not containing any of the
16 protections in those guidelines and as Mr.
17 McGrath discussed.
18 MR. ALAMPI: Mr. Mayo, let me
19 correct Mr. Lamb.
20 MR. LAMB: We have been at this too
21 long.
22 MR. ALAMPI: I know you 30 years.
23 I didn't prepare that document. The
24 document is the sole proprietary ownership of
25 Transco and their attorneys. They will not allow

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1 me to draft and script it. The document comes
2 from them. I've contacted them several times
3 indicating first and foremost it had to be
4 non-exclusive to just them. And I've identified
5 for them several times it would be the Township
6 of North Bergen, Guttenberg and MUA and so forth.
7 There is no resistance to that. That draft that
8 you received says it's non-exclusive. I've asked
9 them again to incorporate the specific parties to
10 be identified. The attachments, though, of the
11 description, of course that comes from our side.
12 Bertin Engineering prepared the description and
13 the diagram. So let's get one thing straight,

14 Transco is not going to let re-script or write
15 their easement on a document, but we will
16 endeavor as Mr. Lamb indicated to at least
17 incorporate by reference the safety protocol that
18 he's referring to. It makes sense. We're not
19 against that. So we'll take care of that in
20 short order. But with that --

21 MR. LAMB: Let me just --

22 MR. ALAMPI: -- we're not going to
23 go into that this evening because that's a
24 Transco issue. I've produced it. It is what it
25 is. If it needs to be upgraded somewhat, we will

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1 attempt to do that. I'd like to continue on,
2 please.

3 MR. LAMB: I'm just going to respond
4 very briefly. First of all, one of the issues is
5 going to be the non-exclusivity portion of the
6 easement because essentially Mr. Alampi has
7 insisted on non-exclusivity which means that his
8 client and anybody else and all their contractors
9 can drive over that area. So that's an issue.
10 Number two, having just completed an eight month
11 negotiation with Transco, it is not correct to
12 say that they do not change their easements.
13 Transco needs an easement from Mr. Alampi's
14 client, that's what they need. And having again
15 negotiated at length for eight plus months an

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16 easement, Transco negotiates easements because I
17 just finished one in my office. So the form --
18 they could say that that's their form, but the
19 bottom line is they're asking Mr. Alampi's client
20 to give them an additional piece of property and
21 property rights and so therefore I do not accept
22 that they won't change it.

23 THE CHAIRMAN: All right.

24 MR. ALAMPI: Well, we do know
25 everybody wants the township and others to be

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1 able to access it. So that's why it's
2 non-exclusive. But, Mr. Chairman, I'm sorry I
3 don't think we need to go any further --

4 THE CHAIRMAN: Let me just interrupt
5 this dialogue back and forth. Once you do get
6 the easement in the form that you're looking for,
7 let's have Mr. McGrath review it, see if there is
8 still any open issues with regard to the things
9 that he raised.

10 MR. ALAMPI: Absolutely.

11 THE CHAIRMAN: Okay.

12 MR. ALAMPI: Thank you. Let's call
13 Mr. DeNiscia, please.

14 MR. SHAW: On a point of order,
15 Harry, I can't hear anything that goes on here.
16 You have a PA system, use it.

17 THE CHAIRMAN: We'll try and speak
18 up.

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19 MR. SHAW: Doesn't the PA system
20 work?

21 THE CHAIRMAN: It's not on.

22 THE CLERK: Herb, calm down. I'm
23 putting it on. Relax.

24 THE CHAIRMAN: Go ahead.

25 MR. ALAMPI: Thank you. I

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1 understand the PA may not be amplifying, so we'll
2 try to keep our voice up. Maybe you want to sit
3 over here, Mr. Shaw, so you could hear us. Do
4 you want to swear in Mr. DeNiscia.

5 DEREK MCGRATH, having been duly sworn by the
6 Notary Public, was examined and testified as
7 follows:

8 JILL HARTMANN, having been duly sworn by the
9 Notary Public, was examined and testified as
10 follows:

11 ROGER DENISCIA, having been duly sworn by the
12 Notary Public, was examined and testified as
13 follows:

14 VOIR DIRE EXAMINATION

15 BY MR. ALAMPI:

16 Q. Mr. DeNiscia, could you please very
17 briefly give us the benefit of your education and
18 professional background, and I do mean briefly?

19 A. Yes, I'm a licensed professional
20 planner, been licensed in New Jersey since 1972.

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21 I have an undergraduate degree from the
22 University of Notre Dame and a graduate degree in
23 urban planning from New York University. I've
24 been practicing local planning primarily in New
25 Jersey for the past 44 years. I've prepared

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1 master plans and planning studies for communities
2 and counties, and I have appeared as an expert
3 witness before the United States District Court,
4 New Jersey Superior Court and before numerous
5 planning boards and boards of adjustment, and I
6 have appeared previously before this board.

7 THE CHAIRMAN: We will accept him as
8 an expert.

9 MR. ALAMPI: Thank you.

10 DIRECT EXAMINATION

11 BY MR. ALAMPI:

12 Q. Mr. DeNiscia, have you had the
13 opportunity to review any documents or ordinances
14 or any treatises in preparation of your review
15 and testimony this evening?

16 A. Yes. I reviewed the plan and the
17 application that we're discussing tonight. I
18 also reviewed the zoning ordinance especially as
19 it pertains to the application, and I have
20 reviewed the report of the board's professionals
21 as they have been submitted. I have also made
22 inspections of the site in the area and I
23 prepared one exhibit. And should that be marked?

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24 MR. MUHLSTOCK: Yeah.

25 MR. ALAMPI: Okay.

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1 MR. MUHLSTOCK: Hold on.

2 MR. ALAMPI: I believe that our last
3 exhibit was A-12, and then there were a series of
4 objectors exhibits. I may be mistaken but let's
5 use A-13 with today's date. If I'm --

6 MR. MUHLSTOCK: Let me confirm that,
7 Mr. Alampi, if I could. I believe you're
8 correct.

9 MR. ALAMPI: Thank you. So we'll
10 mark as A-13 today's date and Roger, mark it
11 right on the hard copy up here.

12 (Applicant's Exhibit 13, four
13 composite photos of the site and adjacent
14 properties, was received in evidence.)

15 Q. Could you just tell us what this
16 exhibit is?

17 A. It just consists of four composite
18 photos of the site and the adjacent properties,
19 and it also has pasted in a photocopy of the site
20 plan section that was submitted as part of the
21 plan package.

22 Q. So that reduction is a portion of
23 the previously marked engineering site plan?

24 A. Yes, it is.

25 Q. When you said that you reviewed the

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1 zoning ordinance, you mean the zoning ordinance
2 of the Township of North Bergen?

3 A. That's correct.

4 Q. And did you have an opportunity to
5 listen to the testimony of the several witnesses
6 that were presented in this application?

7 A. Yes, I have. I believe I heard
8 testimony of every witness.

9 Q. You have been here for four or five
10 public hearings to make observations and listen
11 to the testimony and cross-examination?

12 A. Yes, I have.

13 Q. With regard to the preparation, were
14 there any other documents that you reviewed or
15 reports of any colleagues that you reviewed in
16 your analysis?

17 A. No.

18 Q. And with regard to this property,
19 you indicated that you visited the site?

20 A. Yes, I have.

21 Q. And you visited more than one time?

22 A. Yes, I have.

23 Q. And are you generally familiar with
24 the area in question from other work that you
25 performed whether before this board or other

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1 agencies up and down River Road in both Hudson
2 and Bergen County?

3 A. Yes, I am.

4 Q. Now, with regard to the review of
5 the site, could you give us very basic
6 information regarding the site without repeating
7 with great redundancy all the testimony that's
8 already been established?

9 A. Yes. Yes. Yes. First, in --

10 Q. Keep your voice up, Roger.

11 A. Yes, I will. In referring to
12 Exhibit A-13 the photographs, as I go to photo
13 two shows the entire frontage of the site along
14 River Road. And photo four shows the portion
15 which is Lot 3 which is to the right and it's a
16 second photo because the combined photo doesn't
17 show up that well.

18 So the site is located at 7009-7101
19 River Road. However, the site consists of four
20 separate lots of record, Lots 1, 2 and 3 and Lot
21 5.02 in Block 316. Three of the lots front on
22 River Road and that's why I pointed out photo
23 two, they just show the lots in front. If we
24 take all of the site together, again if we look
25 at this on Exhibit A-13, the site plan, generally

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1 what you see here is the entire site. If we take

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2 that together, the dimensions are 277 feet by 360
3 feet for an area of 2.3 acres.

4 Q. And are you familiar with the
5 requirement in this particular zone for lot size?

6 A. Yes, it's five acres.

7 Q. And what zone is this located in?

8 A. This is -- I have to look.

9 Q. I'm suggest is it the P-2?

10 A. P-2 edge cliff.

11 Q. Did you have an opportunity to
12 review the P-2 zoning ordinances with regard to
13 permitted uses and criteria with regard to
14 minimum standards?

15 A. Yes.

16 Q. And regarding this property, you
17 indicate the composite size of the site is 2.3
18 acres?

19 A. Yes.

20 Q. Are there any other features, the
21 shape and topography?

22 A. Yes, yes. As you could see, the
23 generally shape of the site is fairly regular,
24 it's not a perfect rectangle but it's a fairly
25 regularly shaped site. But we have heard in the

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1 previous hearings the site has an unusual
2 topographic features. And this little diagram is
3 good to show it. If the bottom of this diagram
4 is River Road, and as we go to the top it goes

5 further to the west, you could see the shaded
6 portion represents where the building or parking
7 area will be. That is the developed area. At
8 this point back to the rear of the site is an
9 area of steeper slope. So that the site is
10 really composed of two separate areas.
11 Essentially Lot 5.02 in the rear, which is not
12 connected to the front which is the other three
13 lots, when we look at the photos we can -- it's
14 very hard to see that rise because of the
15 vegetation and there wasn't any good photo from
16 the side. But essentially we have a site that is
17 composed of two parts that are not connected. So
18 it's really like two separate sets.

19 Q. When you say they're not connected,
20 they are physically contiguous with each other?

21 A. Yes, they're contiguous not
22 accessible to go from back and forth.

23 Q. Now, the configuration on the site
24 plan is rectangular but the topography is not
25 flat all the way --

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1 A. It's not flat, it's very irregular.
2 The other important aspect of the site is along
3 the front, although it's not visible in the
4 photos, the lot to the left is a former tennis
5 court or recreation facility which is in a very
6 poor condition, unkempt and not usable. Half of

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7 the site to the right which is Lot 3 shown in
8 photo four is vacant, overgrown and its natural
9 condition, but it is not in a condition that
10 represents a valuable community resource. The
11 site is really in a state of disuse. And,
12 however, when we look at Lot 5.02 or a portion of
13 it that is above the lower portion, that has a
14 little different character. Because of its
15 placement and of the topography of most of it, it
16 does act as a very valuable community resource.
17 It will be a visual resource. It's not
18 accessible physically to the public because it's
19 private property, but visually it forms a large
20 area along the cliff and the Palisades that is
21 open to public view. And I think in my opinion
22 that's a very beneficial element of the site.

23 A VOICE: Oh please.

24 THE WITNESS: I'm sorry?

25 A VOICE: Oh please, I said.

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1 THE CHAIRMAN: Please don't
2 interrupt.

3 A VOICE: This is ridiculous.

4 THE CHAIRMAN: I don't want to have
5 to throw anybody out of here tonight. Let the
6 witness speak.

7 THE WITNESS: And I think because
8 there is no practical access to that portion it
9 will continue no matter what as, again, as a

10 valuable community resource. So it will act as a
11 permanent buffer.

12 If we look at what is surrounding
13 the site, Exhibit A-13, photo one shows the
14 neighbor to the south, the Galaxy Tower, and a
15 portion of the building is also shown in Figure
16 2. So next to the site is a developed property.

17 Q. Now, Mr. DeNiscia, the Galaxy is
18 actually not in the Township of North Bergen
19 itself?

20 A. No, it's in Guttenberg.

21 Q. But it is the adjacent property to
22 the south?

23 A. Yes, it's abutting the subject
24 property.

25 Q. Would you classify that as what kind

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1 of development?

2 A. That's a hi-rise, high density
3 residential development.

4 Q. And what about to either the north
5 or the east of the property?

6 A. To the north is public property.
7 It's a sewerage treatment plant. And, again,
8 looking at photo three, the left hand corner of
9 the photo three is the edge of the site, the
10 northerly edge, and the rest of the photo shows
11 the frontage of the treatment plant and then up,

12 1-20-11 Apple View
13 as we proceed up to the rear, the tanks and all
14 of those various pieces of equipment that go with
15 the sewerage treatment plant.

16 To the rear of the site above in the
17 more level area, of course it's vacant on the
18 site and it reflects -- and we can see in photo
19 two some of the multi-family buildings behind it.
20 It abuts a residential area in a part of North
21 Bergen that relates to the west and not the east.
22 So the site is surrounded entirely by developed
23 properties and of course River Road to the front
24 or to the east.

25 Looking generally, especially in
context with two other aspects, one is that there

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1 is an easement along the Lot 3 to the north for
2 maintenance for the sewerage treatment plant, and
3 there is also the gas transmission line that we
4 heard spoken about before, and that is to the
5 north along the northerly boundary on the site.

6 So if we look at the site as it is
7 now in total, all four lots together, I would
8 classify them generally as in poor condition.
9 And especially those parts that can be easily
10 visible along River Road, they represent a
11 negative element in the area and require
12 redevelopment.

13 Q. Now, with regard to the application
14 itself, are you familiar with the nature of the

15 application and the plans associated with the
16 application?

17 A. Yes, I am.

18 Q. Would you describe that briefly for
19 us?

20 A. Yes. Well, essentially the
21 applicant proposes to redevelopment the site and
22 eliminate the negative elements that exist at
23 present. But at the same time the applicant has
24 chosen obviously to maintain that valuable open
25 space resource represented by most of Lot 5.02

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1 which is the slope area and the area above the
2 ridge line so that will be retained for public
3 use in terms of a visual open space. So that
4 what the architect and the engineer have done
5 then in designing the site plan is to use the
6 more level or regular topographic feature of the
7 site in the front and not to disturb much of the
8 slope area in the rear. So that the proposed
9 height of the building will not encroach or rise
10 above the ridge line in the rear, and we'll see
11 in a view seconds how that relates to the zoning
12 ordinance so that the height will remain below.

13 Essentially the applicant proposes a
14 six-story residential building with 59 one and
15 two bedroom units.

16 Q. Now, is a residential multiple

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17 dwelling permitted in this zone?
18 A. Yes, it is permitted.
19 Q. It's a principal permitted use?
20 A. A principal permitted use.
21 Q. With regard to the number of units,
22 did you have an opportunity to evaluate the
23 number of units to the size of the property and
24 to evaluate whether the density is within the
25 permitted density or not?

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1 A. Well, the site is in the P-2 Edge
2 Cliff Zone District for which the maximum density
3 is 75 units, dwelling units per acre. And of
4 course it's a minimum lot size of five acres.
5 The proposed density on the 2.3 acres is 26 units
6 per acre which is one-third of what is permitted
7 on this site. So from that you can conclude that
8 the site is definitely not being overdeveloped.
9 Q. When you make that statement it's
10 one-third of the density, you've taken into
11 consideration that the site is approximately just
12 under one-half of the minimum lot size?
13 A. Yes.
14 Q. And used that in your evaluation?
15 A. Yes. Yes.
16 Q. And then you took the number of
17 units per acre mathematical calculation?
18 A. Yes.
19 Q. With regard to the property itself,

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20 did you make any observations with regard to
21 properties bounding the subject property and the
22 availability of additional land mass for this
23 property?

24 A. Well, as I described before, aside
25 from River Road which is a public roadway, the

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1 site abuts properties along its entire perimeter
2 that are already developed. So that there is no
3 opportunity to expand the site. In addition to
4 that, expansion of the site in the westerly
5 portion on Lot 5.02 would not have any practical
6 impact because it cannot be developed in
7 conjunction with the lower part of the lot. So
8 in effect there is no available land surrounding
9 the site that could be added to the site to make
10 it larger. As a matter of fact, what the
11 applicant has done is combine four separate lots.
12 These are four separate lots now. So each of
13 those lots could actually be developed on their
14 own. So instead of doing that, the applicant has
15 attempted to create as large a parcel as possible
16 by combining the four lots to make the 2.3 acres
17 where of course one of the lots is fairly large,
18 5.02. The other once along River Road are fairly
19 small. But the applicant has actually met this
20 burden of increasing or enlarging the size of the
21 site.

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22 Q. Is that consistent with the intent
23 of the minimum lot size standard?
24 A. Yes.
25 Q. By enlarging or combining the sites?

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1 A. Yes, certainly it comes closer to
2 the requirement.
3 Q. With regard to the project itself,
4 it's 59 dwelling units. Are there any other
5 features of the building? Are there any other
6 uses? Are there any commercial uses or anything
7 being introduced here or is it purely
8 residential?
9 A. It's purely residential, but I think
10 what is being proposed has a very specific
11 planning advantage. There are 59 units, they're
12 all one and two bedroom units. Now, presently in
13 New Jersey and in most urban areas it's precisely
14 one and two bedroom units that are needed in
15 housing. We don't necessarily need any more
16 large homes on large lots of four and 5,000
17 square feet to accommodate large households.
18 What is needed are homes that accommodate smaller
19 households. Approximately 40 percent of the
20 population of the state would -- could be
21 accommodated in smaller households. That's
22 almost half. But we don't build nearly enough of
23 these smaller households.

24 The other aspect that's very

25 important is that the proposed development

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1 obviously with multi stories would have elevator
2 access. What that means that there will be
3 barrier free access to every unit, and potential
4 a barrier free design for every unit. Now that's
5 important because most people think about barrier
6 free design for people with disabilities. But
7 that's not necessarily the intent of the
8 Americans with Disabilities Act. It's also
9 provides for long-term occupancy. So if a
10 household that moves into a development such as
11 proposed even at an early age, as that household
12 advances in age, and being in good condition, the
13 fact that it's barrier free and has elevator
14 access might avoid the need to change a living
15 place in the future when a person may not be ill
16 but where single level living might be an
17 advantage. Lots of people leave their
18 traditional one family homes of multi stories
19 because they can't negotiate up and down from the
20 basement to the third floor. So they move into
21 single level buildings.

22 More ADA adaptable housing would
23 prevent this from happening as often and provide
24 a long-term housing benefit.

25 In addition to that, the proposal

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1 will substantially improve the site. There will
2 be a storm watering management system where there
3 is none now, and of course this is on the sloping
4 site where water would tend to gravitate to the
5 roadway and adjacent properties. The site will
6 be landscaped and totally improved. And also it
7 will be aesthetically improved. Presently,
8 especially when you're close to the site, it's
9 not very desirable, it's just empty lots with
10 overgrown weeds and some trees which are okay but
11 the rest of it is not. Certainly the proposal
12 will provide a new building with a very high
13 level of design and construction and will provide
14 a pleasing environment. So I think that the
15 application has very significant planning
16 benefits.

17 Q. Now, with regard to the site plan
18 review of the planning board, what items are
19 implicated in this application that the either
20 call for variation and/or waivers from the zone?

21 A. Okay. Again, the site is in the P2
22 Zone district and as Mr. Alampi asked before, the
23 proposed use is specifically permitted. And in
24 addition to that, the density that is being
25 proposed is substantially less than what would be

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1 permitted on this site. So obviously I conclude
2 from that that the site would not be
3 overdeveloped. The application meets most of the
4 dimensional or bulk requirements in the P2
5 District but there are three items for which a
6 variance is required.

7 The first I don't know necessarily
8 that a variance is required, but the minimum lot
9 size is five acres and the site is 2.3 acres.
10 This is an existing situation that cannot be
11 enlarged or changed in any way except it could be
12 made smaller. It could be made smaller by each
13 of these lots being developed separately which
14 would be of course even less conforming than it
15 is now.

16 The second standard that requires a
17 variance is building coverage. Where the
18 ordinance permits 25 percent building coverage,
19 and the proposal is for 31.6 percent building
20 coverage. Well, the purpose of that, the reason
21 that the coverage exceeds what is required in the
22 ordinance is due to the intent of the ordinance
23 to maintain the views and non-disturbance in a
24 sense of the ridge line and steep slope or cliff
25 face. And this is --

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DeNiscia - Direct

1 Q. So, Roger, the coverage of the
2 building is approximately six percent above the

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maximum coverage under the ordinance?

4 A. Yes, that's correct.

5 Q. With regard to the building height,
6 could you give us a brief analysis of the
7 permitted height and what the height is of this
8 structure?

9 A. Yes. I have to refer. The
10 permitted height is 70 feet but I have to look at
11 the -- I don't have the site plan to give you the
12 exact height.

13 MR. LAMB: Mr. Chairman, I don't
14 mind Mr. DeNiscia checking plans and things but I
15 do mind Mr. DeNiscia in the middle of the
16 examination talking to other witnesses to get the
17 answers. If he doesn't know it's okay, he just
18 has to say he doesn't know.

19 MR. MUHLSTOCK: He's checking plans.

20 MR. LAMB: He's checking plans and
21 talking to Mr. Bertin.

22 MR. MUHLSTOCK: Mr. Bertin is
23 handing him the plans.

24 Q. Mr. DeNiscia, you needed to check
25 the site plans exhibits that were already marked

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DeNiscia - Direct

1 into evidence?

2 A. Yes.

3 Q. In order to refresh your memory as
4 to the height of the structures proposed?

5 A. Yes.

6 Q. Just tell us what you understand to
7 be the height from these plans?

8 A. Since the proposed height is
9 substantially less than what is permitted, I
10 neglected to mention it, the maximum height
11 permitted is 84 feet and the proposed height is
12 67.5 feet to the top of the penthouse. Again,
13 that's substantially less than what is permitted,
14 and as we heard from the previous witnesses, it
15 is substantially lower than the existing ridge
16 line.

17 Q. Now, Mr. DeNiscia, I'm not concerned
18 with each foot, you know, exactly, but the
19 differential of the height from the ridge of the
20 Palisades, is that an important element to study
21 and analyze?

22 A. Well, yes, it is because if we look
23 at the intent of the P2 District, before the P2
24 District talks about anything else, it talks
25 about, number one, preserving the integrity of

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DeNiscia - Direct

1 the ridge line views to and from the ridge line
2 and the cliff or the Palisades. And also
3 discusses as an intent, acknowledges the fact
4 that there are unique topographic conditions in
5 the properties in the P2 District and the intent
6 of the P2 District is to encourage a flexible
7 design and layout in order to work with these

8 1-20-11 Apple View
unusual conditions. So --

9 Q. Just stop there. Your reviewing of
10 the P-2 ordinance sets as a predicate to
11 encourage flexible design?

12 A. Yes.

13 Q. And what do you mean by that?

14 A. Well, that would be to -- since the
15 topographic conditions are so extreme, meaning
16 that we have not just a slope but we have a level
17 area to the west and where a cliff, let's say
18 half the site that is almost 90 degrees, and then
19 a slope area beyond that and then a level area,
20 as I mentioned at the beginning, this is a very
21 difficult condition to cope with in terms of
22 building. And what has happened is it's so
23 difficult that the applicant cannot use half of
24 the site. It's not practical. So whatever is
25 developed is developed on the front half of the

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DeNiscia - Direct

1 site. What -- and the P2 District was designed
2 for these kinds of conditions. And the beginning
3 of the P2 District establishes the intent and
4 says we know that this is difficult to deal with,
5 so try to develop a flexible design or layout to
6 deal with it, and that's exactly what the
7 applicant has done. He has located the building
8 on the lower part. But in order to not encroach
9 the ridge line in terms of height, the base of
10 the building, meaning the footprint or the

11 coverage has to be a lot more.

12 In doing that, the applicant still
13 could not reach anywhere near the maximum height
14 of the building and couldn't anywhere reach near
15 the permitted density, just for the 2.3 acres,
16 not for five acres but 2.3. So that the
17 applicant has tried to meet that intent of the P2
18 District by this flexible design and the
19 flexibility is that the building is positioned on
20 the front half of the lot which has a little more
21 regular conditions.

22 Q. Now, the building coverage is a
23 function of the total volume of the building, the
24 height of the building and the configuration of
25 the building?

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DeNiscia - Direct

1 A. That's correct.

2 Q. And how do you relate the
3 maintaining a lower height to the configuration
4 and how do you relate that to the building
5 coverage? How does that connect?

6 A. Well, if we have a given number of
7 units, 59 in this application, if we had a
8 really, really high building of 25 or 30 stories
9 that would be a building that would not require
10 much space on the ground as a footprint but it
11 would go very, very high in the air. Well, in
12 order to do the opposite is to conserve that

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13 height or reduce that height, then that building
14 has to come down and it has to spread out. Now
15 obviously to take a building 20 or 25 stories and
16 you push it down, it's never going to work on
17 this site because the site is not large enough.
18 what the applicant did was determine the number
19 of units that the site could accommodate, given
20 the fact that the height is limited to what is
21 below, substantially below the ridge line, and
22 the result of that was the coverage that is being
23 proposed at 31.6.

24 Q. Now, do you have an opinion with
25 regard to exceeding the maximum building coverage

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DeNiscia - Direct

1 while keeping the building below the maximum
2 height? Do you have an opinion about that?
3 A. Yes.
4 Q. what is your opinion?
5 A. Let's talk about the impact of the
6 coverage of the building. what happens is if the
7 lot -- now the lot is aside from the tennis
8 courts it's vacant so it's undeveloped. So as
9 soon as some development is introduced as
10 Mr. Bertin explained, we get storm water runoff.
11 And the larger the building is the more runoff
12 there is. But the thing is that runoff is fairly
13 easy to abate. Mr. Bertin has designed a storm
14 water management system that he explained
15 complies with the current regulation and I

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16 believe, I may not be correct, but I believe that
17 it requires that no more water leave the site
18 than is leaving now or else, you know -- no
19 excess water.

20 Q. You mean the rate of discharge?

21 A. The rate of discharge. In other
22 words, the fact that we have 31.6 coverage is not
23 creating any condition that will have any impact
24 with respect to drainage both on the site and the
25 surrounding area.

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DeNiscia - Direct

1 Q. So the first thing about coverage is
2 whether or not it creates a water runoff
3 condition that violates any standards of codes?

4 A. Right. But let's then compare that
5 to the height. If there was no height
6 restriction and the building was, let's say, as
7 high as the Galaxy on this side, it would
8 certainly encroach the ridge line and it would
9 affect views up either to the ridge line and
10 above from the west to the river and beyond.
11 well, the thing with that is there is no way to
12 abate that. When that building goes up, the
13 views and the obstructions are there. It's not
14 like making a larger detention basin for
15 drainage. You can't change that. So considering
16 the fact that the master plan and the zoning
17 ordinance has strong standards in order to

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18 encourage the preservation of the ridge line, the
19 cliff, the Palisades and the views to and from,
20 that is in my opinion substantially or
21 significantly more important than a slight
22 increase in coverage that can be accommodated
23 because that is non-reversible.

24 THE CHAIRMAN: Question, surely
25 you're not arguing that because we have height

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DeNiscia - Direct

1 limitation you have to go over building coverage?

2 THE WITNESS: No.

3 THE CHAIRMAN: That's not your
4 argument?

5 THE WITNESS: No.

6 THE CHAIRMAN: It sounds like it.

7 THE WITNESS: No.

8 Q. But if you reduce the height from
9 the maximum, that might increase the building
10 coverage?

11 A. Yes, that's correct.

12 Q. And is it your opinion that reducing
13 the height from the maximum is better zoning,
14 better planning even if it implicates an
15 enlargement of the footprint or the coverage?

16 A. That's right.

17 Q. well, is that your opinion?

18 A. Yes, that is my opinion.

19 Q. With regard to impact regarding the
20 height of a building versus an increase to the

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21 footprint or coverage, impact upon not only the
22 property itself but the adjacent property owners,
23 could you characterize or quantify the impact to
24 the surrounding neighbors regarding height versus
25 increase in building coverage?

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DeNiscia - Direct

1 A. Well, the increase in building
2 coverage would have no impact on the site or
3 surrounding properties because we have
4 requirements and standards for storm water
5 control that will not permit them. But the
6 impact of the height if it does encroach would
7 affect the views to and from abutting a nearby
8 property.

9 Q. What about visual impact?

10 A. Well, the visual impact, a building
11 that covers the cliff and the ridge line would
12 essentially obscure or prevent views to that
13 feature. When I said previously at the beginning
14 that a valuable role of the rear part of the
15 property its importance is as a communities
16 visual resource. Everybody can see it whether
17 they're above it, below or driving or whatever.
18 That would be maintained with the proposal.

19 Q. Now, with regard to the
20 accommodation or the ability of this site to
21 accommodate the structure as designed, do you
22 have an opinion as to that?

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23 A. well, I think if we look at the
24 standards -- first of all, the site itself. The
25 architect explained the design and layout of the

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DeNiscia - Direct

1 building, the engineer explained all of the site
2 features including parking and we had a traffic
3 expert also discuss the parking. So that all of
4 the necessary features are being provided with.
5 For example, there is sufficient parking, there
6 is no parking variance. In addition to that, the
7 only dimensional variances are of course the
8 existing lot size which can't be changed, but the
9 building coverage and the rear yard setback which
10 I get we'll discuss in a minute. But there are
11 other standards such as impervious coverage,
12 height and so on and front yard setback and side
13 yard setback that are being met. There are no
14 variances required. So --

15 THE CHAIRMAN: That's not what your
16 plan says.

17 THE WITNESS: It's the only ones I
18 know.

19 MR. MUHLSTOCK: Just talk a little
20 bit about the minimum front yard.

21 MR. ALAMPI: We're going to talk
22 about that in a minute.

23 MR. MUHLSTOCK: All right.

24 A. okay. But the fact that no other
25 variances are required and the site proposal

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DeNiscia - Direct

1 meets all of its functions would indicate that
2 the site obviously could accommodate the use even
3 with the coverage.

4 Q. Now, with the front yard setback,
5 you heard the testimony of the engineers --

6 A. Yes.

7 Q. -- on that issue?

8 A. Yes.

9 Q. And the issue of the curb line
10 versus the property line. Could you explain that
11 issue of the setback, where the ordinance calls
12 for the measurements to be made?

13 A. As I understand it, the ordinance
14 requires that the measurement be made at the curb
15 line which is unusual because it is not on the
16 property. But as was explained by I believe it
17 was Mr. Bertin, the purpose of that standard is
18 to provide enough clearance from the curb line
19 which is the entranceway to the road and any
20 development so that someone that is driving from
21 the site to the street has enough space visual
22 space in front so that they could see in either
23 direction. In other words, so that the building
24 isn't located to obscure the view of drivers.

25 I didn't do an analysis on that, but

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1 I heard Mr. Bertin and Mr. Izadmehr discuss that,
2 and the fact that the site does have proper --

3 Q. Front setback?

4 A. -- front setback from the curb.

5 Q. With regard to now the rear setback,
6 much has been made of the rear yard setback in
7 this application; is that true?

8 A. That's true.

9 Q. You were aware from attending all
10 these public meetings and listening to the
11 testimony and review that the rear yard setback
12 has become a subject of discussion; is that true?

13 A. Yes, that is true.

14 Q. Are you prepared to discuss the rear
15 yard setback ordinance?

16 A. Yes.

17 Q. And the plans and the testimony and
18 express your own opinion and observations
19 concerning the same?

20 A. Yes, I am.

21 Q. Would you please do that, Roger?

22 A. Yes. The P2 District has a rear
23 yard setback requirement of 40 feet. And when we
24 look at the site plan that's on Exhibit A-13, the
25 rear yard setback from the property line to the

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1 west is approximately 140 feet which appears to
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2 satisfy the requirement of the ordinance.
3 However, there is under Article 11 in the
4 ordinance a secondary requirement, a general
5 requirement for rear yards and I would like to
6 reads it. It said "In lots having a slope of 30
7 percent or more, the rear yard shall be measured
8 horizontally from the first habitable floor to
9 the cliff face." And it refers to see Figure 14
10 which is --

11 Q. Now, Roger, Roger, you are referring
12 to a specific paragraph in Article 9 and you're
13 going to refer to this Figure 14; is that
14 correct?

15 A. Yes.

16 Q. These are the documents and pages
17 and excerpts from the North Bergen Zoning
18 Ordinance?

19 A. Yes, but I believe it's Article 11.

20 Q. I'm sorry.

21 A. Yes.

22 Q. Article 11, I said nine.

23 A. Yes.

24 Q. But these are the provisions of the
25 ordinance whether read together with the

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1 reference to illustrations and figures that are
2 provided for in the ordinance, correct?

3 A. Correct.

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4 Q. This is the very subject of the
5 extensive cross-examination by Mr. Lamb of the
6 witnesses and the review of the geotechnical
7 testimony, the engineering testimony and the
8 like?

9 A. Yes.

10 Q. And so you are familiar with the
11 testimony and cross-examination and these
12 provisions of the ordinance?

13 A. Yes, I am.

14 Q. And could you just review with us
15 your analysis of this ordinance or group of
16 ordinances when read together?

17 A. Okay. There are a couple of
18 important aspects of this. Figure 14 that's
19 mentioned is a very similar to Lisa Greco's
20 exhibits, which she referred to, A-7.

21 Q. Slowly, Roger. You're looking at an
22 exhibit you referred to as A-7?

23 A. A-7.

24 Q. You mentioned Lisa Greco. Is that
25 the geotechnical expert who testified earlier?

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DeNiscia - Direct

1 A. Yes.

2 Q. Did you have an opportunity to
3 review this exhibit prior to tonight?

4 A. Yes.

5 Q. And could you just explain what you
6 will draw from this exhibit in your testimony?

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7 A. Look at this exhibit. We see the
8 horizontal line is generally the cross-section
9 through the site on River Road on the left to the
10 ridge line or west rear of the site to the right.
11 And there is a large area colored in tan that
12 slopes up and then goes to the rear and then
13 there is a vertical portion. Miss Greco used
14 this to illustrate some of the aspects of her
15 testimony, but what this does, it's very similar
16 to the sketch of Figure 14 which shows in a
17 different way a building, a sloping area and then
18 a steep cliff area. And so that goes hand in
19 hand with the text in the other part of the
20 ordinance in Article 11.

21 Q. Now, Roger, are you also aware of
22 the discussion regarding definitions of cliff
23 face and what constitutes a cliff and slope?
24 Have you been listening to that testimony?

25 A. Yes, I have.

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DeNiscia - Direct

1 Q. Have you heard the experts talk
2 about the different definitions in different
3 ordinances or in Webster's and such, are you
4 familiar with that?

5 A. Yes, I am.

6 Q. Are you familiar with whether or not
7 the North Bergen code of ordinances has any
8 specific definition on these points of cliff face

9 and steep slope and such? 1-20-11 Apple View

10 A. The ordinance in this section that I
11 just read from Section 11 refers to the cliff
12 face. And essentially it says that the rear yard
13 setback should be measured from wherever the
14 cliff face is to the level of the first habitable
15 floor. So there was a lot of discussions about
16 cliff face and subsequent to that I did my own
17 research because it's an important aspect, it's
18 actually a standard in the ordinance. The
19 ordinance has no definition of cliff face. So
20 what I did was look at the Webster dictionary
21 definition. And I found that the definition of
22 cliff is a high steep face of rock. So we have
23 the two words, cliff face, so a cliff is a high
24 steep face of rock or an equal definition is a
25 precipice. The definition of a precipice is a

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1 vertical or almost vertical or overhanging rock
2 face or a steep cliff.

3 Now, also in the discussion there
4 was the term Palisades was discussed and because
5 of this area is generally known as the Palisades
6 and I think that was important because the master
7 plan not only in North Bergen but in other
8 communities talk about the Palisades and the
9 preservation of the views and the integrity of
10 the Palisades. And it's very unusual. The
11 definition of a Palisade is a line of very steep

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12 cliffs usually along a river. But the real
13 definition of a Palisade has nothing to do with
14 geographics, it's a fence, a stockade fence that
15 goes up. And what it comes from old fort, like
16 Fort Ticonderoga, they build stockade fences and
17 as we know, that is the way the Palisades got the
18 name because they looked like fence posts. But
19 not only that, the Webster dictionary also has a
20 definition of the Palisades, "the line of steep
21 cliffs in northeastern New Jersey along the west
22 shore of the Hudson."

23 So in looking at all of that, it
24 became obvious to me that the cliff face is the
25 same as the Palisades which is a vertical area

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DeNiscia - Direct

1 and not a sloping area or a gentle or
2 non-vertical sloping area.
3 If we then look at the diagram on
4 Appendix 14, it clearly shows that the rear yard
5 setback is measured from that vertical area. If
6 you look on the Figure 14, you'll see that it's
7 measured from up here where it's vertical, not
8 down here where it has a less than vertical
9 slope. So if we were to apply it from this to
10 this diagram, we would be up here at the top
11 measuring the rear yard setback. That's combined
12 with the idea that if a site has a slope of 30
13 percent, it qualifies to have this aspect of the

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14 ordinance apply. The way this aspect of the
15 ordinance is applied is we look at the cliff face
16 or the vertical part or the Palisades itself and
17 measure from there. And when I looked at this I
18 concluded that no rear yard setback is required
19 or variance is required because this is
20 substantially more than the 40 foot requirement.
21 On this exhibit I believe it shows 15 or 20 feet
22 from the building which is very close to the
23 building. And if measured to the cliff face, it
24 would be substantially more than that.

25 Q. Now --

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DeNiscia - Direct

1 THE CHAIRMAN: How high up is the
2 cliff face that you're talk about?

3 THE WITNESS: I'm sorry.

4 THE CHAIRMAN: How high up?

5 THE WITNESS: Well, I don't know
6 because I don't think --

7 MR. BASELICE: Right there at the
8 bottom.

9 THE CHAIRMAN: No. No. I want to
10 know how far up he's saying the cliff face is.

11 THE WITNESS: That looks like 110
12 feet on the scale of this.

13 THE CHAIRMAN: And how high is the
14 building?

15 THE WITNESS: The building is 68
16 feet.

1-20-11 Apple View

17 MR. BASELICE: How high is the
18 bottom part?

19 THE WITNESS: I'm sorry.

20 THE CHAIRMAN: So you can't measure
21 a horizontal line from the building to the cliff
22 face?

23 THE WITNESS: Yes, you can you just
24 extend, you project the building.

25 THE CHAIRMAN: Project vertically

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DeNiscia - Direct

1 and then go horizontally?

2 THE WITNESS: Yes.

3 MR. ALAMPI: But, Mr. Chairman,
4 we're going to go into this discussion if you
5 allow me about that issue.

6 THE CHAIRMAN: What you're doing is
7 telling me to ignore my eyes and listen to him.

8 MR. ALAMPI: We're going to into
9 this discussion, Mr. Chairman, because you see,
10 he hasn't concluded his presentation by any
11 means, but I think the commissioner has a
12 question.

13 MR. BASELICE: How high is the tan
14 section at the bottom?

15 THE WITNESS: Now, tell me where you
16 mean here or here?

17 MR. BASELICE: There, that abuts the
18 building.

1-20-11 Apple View
19 THE WITNESS: Twenty-two feet.

20 MR. BASELICE: What is the
21 definition of steep?

22 THE WITNESS: There is no definition
23 of steep. I looked in the dictionary and steep
24 means having a sharp rise.

25 Q. Now, Roger, with regard to the

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DeNiscia - Direct

1 review of the ordinance, you are aware that
2 taking the narrative portion and that Figure 14
3 and other elements, there have been implicated
4 that the rear yard measurement would be closer to
5 the rear wall of the building because of the
6 sloping effect of the rear portion of the
7 property, correct?

8 A. Yes.

9 Q. You are aware of that?

10 A. Yes.

11 Q. Could you discuss that issue if a
12 variance was triggered, even though it's your
13 opinion there is no variance, could you discuss
14 it and discuss whether or not this application
15 has merit and can support the grant of a
16 variance?

17 A. Okay. I believe, if I recollect
18 properly, if the ordinance were applied in that
19 way in a part of the building towards the
20 southern portion, the setback to an area that was
21 determined to be the start of the slope would be

1-20-11 Apple View

22 15 feet where 40 feet is required.

23 Q. So, Roger --

24 A. And of course a variance --

25 Q. I just want to slow you up. would

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DeNiscia - Direct

1 you take the site plan exhibit and show us the
2 section of the property you're referring to?

3 A. This is Exhibit A-3.

4 Q. The exhibit that was marked A-3 at
5 an earlier date, can you tell us, just show us
6 with your hand the --

7 A. Well, it's just, probably --

8 Q. Let me ask the question.

9 A. I'm sorry.

10 Q. Show us with your hand the rear of
11 the building and the section in the back that is
12 implicated by this 15 foot setback measurement.

13 A. As I understand it, it's the
14 left-hand section of the building, midway back
15 and it's in this general area (indicating).

16 Q. So going from the mid-section or so
17 north, this is not implicated?

18 A. No.

19 Q. This issue?

20 A. No.

21 Q. But going from a point in the rear
22 southerly towards the Galaxy, it is implicated?

23 A. Yes.

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Q. By different interpretations?
25 A. Yes.

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DeNiscia - Direct

1 Q. Accepting that interpretation, as an
2 expert witness in planning, if it is correct that
3 it should be measured from that point, could you
4 discuss the application, the merits of the
5 application and whether or not such a variance is
6 appropriate and can be granted by the board?

7 A. And I guess should I mention the
8 other variances along with it so we don't repeat?

9 Q. You can mention the other variances,
10 but I'd like to stay attentive to the rear yard
11 for a while and then we'll go through it.

12 A. Okay. All right. Then we'll have
13 to repeat. But essentially the board is able to
14 grant a dimensional variance. The rear yard
15 setback variance pursuant to the criteria of
16 Section 40:55D-70, paragraph C-1 of the Land Use
17 Law. And under that paragraph the board can
18 grant the setback variance if there are certain
19 physical reasons that justify it. And one of the
20 reasons specifically listed in the Land Use Law
21 is unique topography on a particular site or
22 irregular topography.

23 Q. Now, Roger, you referenced a
24 section, you're talking about the Municipal Land
25 Use statute?

DeNiscia - Direct

1 A. Yes.

2 Q. And specifically the language in the
3 statute you referred to C(1), that's the bulk or
4 dimensional variance discourse in the statute?

5 A. Yes, that is correct.

6 Q. And topography is a consideration in
7 whether or not the variance can be granted?

8 A. Yes. If a property is affected by
9 topographic conditions that result in the
10 inability to comply with the ordinance, then the
11 board could grant a variance but it's very
12 interesting, the Land Use Law was written some
13 time ago, and recently local ordinances have
14 related to slope and topographic conditions. But
15 what the Land Use Law says is if a site is
16 affected by unusual topography or irregular
17 topography, that in itself is a reason to grant a
18 variance.

19 Let's look at it another way to show
20 that. I said previously that this site has an
21 irregular site. Let's assume it was a flat,
22 level site. If it were a flat, level site, this
23 variance would not be required because there
24 would be no slope.

25 So clearly the fact that there is a

1 slope or irregular topography is the only reason
2 that the variance is being required. That seems
3 a little odd. That's because the Land Use Law
4 was written in a way where the fathers of the
5 state thought building into the Land Use Law this
6 provision where topography is considered a severe
7 limitation and that all property should not be
8 encumbered by the fact that they're on -- have
9 irregular slope. Subsequently local ordinances
10 have actually circumscribed that provision and
11 said oh, where there's a slope, you have to have
12 setback and so on. But clearly in my opinion the
13 Land Use Law provision has precedent over a local
14 ordinance, meaning that the board could grant a
15 variance --

16 THE CHAIRMAN: Just so we're clear
17 on what you just said, the Land Use Act does not
18 require the variance to be granted, it enables a
19 board to consider topography as a factor in
20 granting a variance.

21 THE WITNESS: I would like to
22 respond in a different way. The Land Use Law
23 does not require any dimensional variance to be
24 granted except for inherently beneficial uses and
25 it's not even required in the Land Use Law, no,

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DeNiscia - Direct

1 it does not, no variances are required or
2 mandated to be granted, but the criteria are
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3 mandated by the Land Use Law.

4 Q. So the issue is whether the board
5 has the authority properly in exercising its
6 jurisdiction to grant or deny such a variance?

7 A. Yes.

8 Q. And that there is authority but
9 they're not compelled?

10 A. No, they're never compelled to grant
11 a variance.

12 Q. So let's discuss then the scenario
13 that an interpretation is that a rear yard
14 setback is fixed at a portion of the building 15
15 feet behind the building. Can you discuss the
16 conditions of the property that warrant
17 relaxation and relief from this --

18 A. Well, conditions would be the fact
19 that there is extreme topography that creates the
20 need for a variance. And I think in talking
21 about it, it's not just that, it's just that you
22 have to look at the same time the impact of that
23 variance. And to do that we have to look at,
24 again, go back to the intent of the ordinance.
25 The intent of the ordinance way at the beginning

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1 of P2 District is to preserve the views and
2 integrity of the Palisades or cliff face so that
3 to avoid disturbance and avoid obstruction of
4 views. So if we look at the application of the

1-20-11 Apple View
5 ordinance in this particular case, there is
6 absolutely no disturbance of the cliff face or
7 Palisades, no affect on views or any aspect of
8 the cliff face except as provided for in the
9 ordinance in terms of the permitted height of the
10 building.

11 Q. Now, you discussed the permitted
12 height and the actual height of this development
13 and the importance of maintaining a height below
14 the maximum for purposes of the Palisades, what I
15 would call the rim of the Palisades, correct?

16 A. Yes. Yes.

17 Q. Does that consideration affect or
18 work its way into your analysis with regard to
19 this rear yard setback that's implicated by the
20 particular ordinance in North Bergen?

21 A. Well, it is because if we take a
22 hypothetical situation where there's 15 foot
23 setback, might have an effect of disturbing the
24 cliff face or blocking its view, if the building
25 were a little bit higher. It's obvious that if

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DeNiscia - Direct

1 that building were -- would be slid back to
2 against the cliff face, that would definitely
3 have a serious impact and not meet the intent of
4 the ordinance.

5 Q. And if the building were to be
6 reconfigured to address this 40 foot dimension
7 but it was to be increased by two stories, would

1-20-11 Apple View

8 that be a factor for you to consider as to which
9 is the better alternative?

10 A. Well, in my opinion the better
11 alternative is to maintain as low a height as
12 possible so that more of the cliff or Palisades
13 area is -- can be observed.

14 Q. Now, this brings us back to the
15 number of units being proposed in the ratio
16 density which you described as 26 units to the
17 acre where a much higher density is permitted.
18 Is that true?

19 A. Yes. Yes.

20 Q. So do you feel that this
21 configuration, this location and the granting of
22 a variance for the rear yard setback is warranted
23 because of the limitation of the height and the
24 fact that the application, the building is even
25 lower than the maximum height?

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1 A. Well, certainly by reducing the
2 density it certainly makes the building smaller
3 and reduces or lessens any impact no matter what
4 impact that is on that 15 foot setback.

5 Q. Now, let's talk about visual impact
6 whether to the occupants of this property in the
7 future or the adjacent property owners or those
8 property owners above the Palisades. The height
9 of the building as proposed versus the permitted

1-20-11 Apple View
10 maximum height, the physical location and the
11 setback, could you discuss the visual impact of
12 those three elements as to whether or not this
13 application warrants relief from the setback?
14 A. Well, a higher building would have
15 more impact on visibility of the site in the rear
16 of the site from either on the site or off the
17 site from any location. So that would be less
18 desirable, but by lowering the building, that
19 lessens the impact substantially so about the
20 minimum impact.
21 Q. I'm asking you as a planning
22 consultant what would constitute a better plan --
23 better planning or more conformance to the scheme
24 of the zoning or intent of the zoning, raising
25 the height or intruding in the setback? What

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1 would be more important in your opinion?
2 A. Lowering the height and intruding it
3 to the setback.
4 Q. You think that would constitute good
5 planning?
6 A. Yes, it would.
7 Q. And for what reason?
8 A. Well, primarily because when we talk
9 about impact, the location, the placement of the
10 building does not have any substantial impact on
11 the site or the surrounding area. There
12 certainly is adequate side yard, and that is the

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13 way the relationship with the adjacent building
14 is measured. The height of course is
15 substantially less than what is permitted. I
16 don't think by placing the building where it is
17 proposed it would have a substantial impact on
18 the way adjacent properties are used or
19 developed.

20 Q. Now, Roger, we discussed the rear
21 yard setback subject to interpretation just now.
22 We discussed the building coverage, the six
23 percent overage and the size of the property, two
24 and a half acres versus five. Are there any
25 other bulk or dimensional variances that you

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1 needs to address?
2 A. No.
3 Q. And taking into consideration the
4 configuration of the property as it exists
5 consolidated, the availability or unavailability
6 of the property surrounding the perimeter of
7 this, the setback, the height and the coverage,
8 can you bring forth a conclusion in your opinion
9 as to whether the statute authorizes relief, what
10 we call the C Section of the zoning -- and I
11 don't mean a C section, I mean that section of
12 paragraph 70D?

13 MS. HARTMANN: 70C.

14 A. Yes, it meets those criteria two

1-20-11 Apple View
15 ways, under the two provisions, paragraph C(1)
16 and C(2). I elaborated on paragraph C(2) -- C(1)
17 which relates to physical conditions, namely the
18 topography as it relates to the rear yard
19 setback.

20 Q. Now, Roger when you say C(1), we in
21 the business refer to hardship variances and the
22 like as a C(1) variance?

23 A. That's correct.

24 Q. And what we mean is what?

25 A. Is that the physical conditions that

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1 are present on the property, namely the severe
2 topographic conditions, is the element that
3 causes the physical hardship in the sense that
4 the entire site can't be developed.

5 Q. Now, hardship does not mean
6 impossibility. What does it mean?

7 A. It means that some modification in
8 the standards might have to be made in order to
9 accommodate the use which is permitted.

10 Q. Is there a phrase you're familiar
11 with called practical difficulty?

12 A. Well, that's the other aspect, is
13 that that section of the statute states that if
14 any provision of the ordinance results in a
15 practical difficulty in developing the site, then
16 the board could grant a variance. That goes
17 along with the physical conditions or topographic

18 situations.

19 Q. Now, when a development is going to
20 be substantially less in density than permitted
21 and it's going to be substantially lower in
22 height than the maximum permitted, would the
23 other elements such as the rear setback cause a
24 practical difficulty to be visited upon this
25 application?

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1 A. Yes, and the way that is measured is
2 the fact that the site or the site cannot be
3 developed to its maximum as permitted in the
4 ordinance. So that usually in applications that
5 relate to these kind of variances, you find
6 excess density or a substantial amount of setback
7 variances or parking variances. In this case the
8 application has already modified its plan to
9 adapt to the hardship to the greatest extent
10 possible. And the only standard is the coverage
11 which is due to keeping the building low and the
12 rear yard setback, but everything else is not
13 only met, it's exceeded. And the most important
14 of these is the density. Instead of 75 units per
15 acre, the proposal is 26 units per acre which is
16 -- you could call that a hardship in the sense or
17 the result of a physical hardship.

18 Q. Now, you indicated that if a -- it
19 prevented maximum development permitted under the

1-20-11 Apple View
20 ordinance, but this application is nowhere near
21 the maximum development permitted under the
22 ordinance, is it?

23 A. No, it's not.

24 Q. And it's been reduced because of the
25 consideration of the size of the property and the

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1 topography and the Palisades to the rear and all
2 the things you've been talking about, correct?

3 A. Yes, that's correct.

4 Q. So the strict enforcement of each of
5 the elements of the setback requirements,
6 coverage requirements, height requirements and
7 such, the strict and absolute enforcement of each
8 and every one, would that have a -- present an
9 underutilization of the site or an interference
10 with a fair and reasonable utilization of the
11 site?

12 A. Yes, it would.

13 Q. With regard to the Municipal Land
14 Use Statute for bulk variances, are you familiar
15 with the term flexible C or the C(2) type of
16 variance?

17 A. Yes.

18 Q. Now, could you explain why they call
19 it the C(2) versus a C(1), is it because of where
20 it's located in the code and how it's codified?

21 A. Yeah, that's why --

22 Q. I know I just gave you the answer

23 but it's because of the way it's codified?

24 MR. LAMB: I'm not objecting.

25 A. No, it has nothing to do with the

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1 C(2).

2 Q. So we call it that because of the
3 way it's coded, right?

4 A. Yes.

5 Q. So the reference to C(2) is how it's
6 written up in the code section?

7 A. Yes. I never had such a simple
8 question.

9 Q. Do you have an opinion as to whether
10 or not these variances we discussed about the
11 bulk or dimension or the setbacks also meet the
12 criteria developed in the C(2) section of the
13 statute?

14 A. Yes, I do.

15 Q. And can you explain how it does and
16 how you draw your conclusion?

17 A. The board can grant a variance
18 alternatively under that -- the C(2) provision
19 without even considering the C(1) if the board
20 finds that the application or granting of the
21 variances result in planning benefits, and those
22 benefits outweigh any substantial detriments.

23 we talk about benefits. The way
24 we'll measure them is whether or not they advance

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25 the purposes of the plan. The first we could

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1 talk about what are the planning benefits of this
2 application and I discussed them previously. In
3 summary the applicant is proposing 59 one and two
4 bedroom housing units that meet a very critical
5 housing need. The barrier free design will meet
6 a critical housing need. The preservation of the
7 cliff and the ridge line and the general
8 Palisades structure which would certainly
9 represent a planning benefit and leaving much of
10 the site undeveloped and to be a visual resource
11 would result in a planning benefit. Fitting the
12 proposal to the site at substantially less
13 density than what is permitted would be a
14 planning benefit. And of course providing the
15 required number of parking spaces would also be a
16 planning development. And in addition to that,
17 the installation of a storm water or management
18 plan would generally help the site and the
19 surrounding area.

20 Now, in my opinion -- and all of
21 these are planning benefits because they advance
22 specific purposes of the Land Use Law that are
23 listed under Section 40:55D(2) of the Land Use
24 Law --

25 Q. Now, Roger, your reference to this

DeNiscia - Direct

1 section is in the actual statute the goals and
2 purposes of zoning under Section 2?

3 A. Yes.

4 Q. And they go A, B, C, D, and E and
5 all that?

6 A. That's right.

7 Q. And can you tell us which section of
8 the statute or criteria are met and supported by
9 this application?

10 A. Yes. Of that section this
11 application would advance the purposes under
12 paragraphs A, C, E, G, H, and I.

13 Q. Now, that sounds like a lot of
14 sections. How many sections are there
15 specifically enumerated in that Chapter 2, about
16 13 or 14?

17 A. Yeah, 13 or 14.

18 Q. And we sometimes have applications
19 that only fulfill one of the 13 criteria or two.
20 In this instance there may be six or seven in
21 your opinion?

22 A. Six, yes.

23 Q. That are fulfilled in this
24 application?

25 A. Yes. Yes, there are.

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1 Q. How many times do you have an
2 application meets, let's say, five of the 13
3 criteria?

4 A. Not very often.

5 Q. How long have you been practicing?

6 A. A few years.

7 Q. Forty years?

8 A. Forty-four years.

9 Q. So would you say that this is a
10 strong application reading the statute in your
11 opinion?

12 A. Yes.

13 Q. Now, you mentioned A, B, C, and D.
14 You don't have to read each and every clause,
15 but, please, just highlight for us those areas.
16 And I'm sure the legal counsel for the board will
17 explain that at the appropriate time.

18 A. Yes, paragraph A relates to the
19 general health and welfare and by provided needed
20 housing especially for barrier free housing, that
21 would certainly affect the general health and
22 welfare. Paragraph C and E relate to density and
23 the availability of light, air and visual open
24 space. In this application would advance those
25 purposes even granting the variance for the 15

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DeNiscia - Direct

1 foot setback in the rear, because that setback
2 has absolutely no impact on any properties to the
3 rear and very minimal impact for a property to

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4 the side. Again, the rear property line is 140
5 feet beyond that.

6 Q. You said that a little too fast.

7 A. Oh.

8 Q. The impact of the rear setback is
9 generally for what purpose?

10 A. It's to provide separation between
11 the rear of a building and its neighbor to the
12 rear on the rear property.

13 Q. Now, obviously if the land is flat
14 and the back half was owned by a different
15 property owner and a six-story building was going
16 to be built 15 feet from the property line, that
17 would have an impact, wouldn't it?

18 A. Yes, it would.

19 Q. But if the rear of the property is
20 140 feet, rising grades notwithstanding, what
21 impact would that have for this size building?

22 A. That would have a negligible impact.

23 Q. And what impact would it have on the
24 people who live above the roadway there? I guess
25 it's Boulevard East.

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DeNiscia - Direct

1 A. Have absolutely no impact. They
2 wouldn't even see the building.

3 Q. Now, with regard to the other
4 criteria, could you identify those?

5 A. Yes. Paragraph E relates to

1-20-11 Apple View
6 appropriate population density, and of course
7 this application is proposing a density
8 substantially less than what is permitted.

9 Q. So that would be appropriate?

10 A. Yes, it would.

11 Q. It would be even more appropriate?

12 A. More appropriate. Paragraph G has
13 to do with locating uses in appropriate
14 locations, and of course this use is located in
15 the P2 District in which the use is specifically
16 permitted, so it is appropriate. Paragraph H
17 relates to traffic and transportation and
18 parking, and this application certainly would
19 advance that purpose by providing sufficient
20 amount of parking on the site and having minimal
21 impact on the traffic pattern in the area as
22 testified to previously. And Paragraph I relates
23 to creating an improved aesthetics and a visual
24 environment, and certainly the elimination of the
25 substandard or conditions on the site and

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DeNiscia - Direct

1 replacing it with what is proposed would advance
2 that purpose of planning.

3 Q. Now, Roger, you indicated the impact
4 that this would have on the adjacent properties
5 as well as on the subject site itself. When you
6 refer to impact, doesn't the statute actually
7 talk in terms of substantial negative impact as
8 what should be avoided?

9 A. Yes, and I believe I might have said
10 substantial but I didn't say negative.

11 substantial impact not impact, yes.

12 Q. And would this have any substantial
13 or substantial negative impact, this application,
14 notwithstanding the setback, the 15-foot setback
15 in the rear as the ordinance may -- for
16 argument's sake that the ordinance calls for?

17 A. There would be no substantial
18 impact. The site will be redeveloped as I just
19 mentioned. It will be visually and aesthetically
20 improved, there will be storm water management so
21 there will be no drainage impact. We heard that
22 the traffic impact would be minimal. The lot
23 size deficiency existing but the applicant scaled
24 the plan to fit the lot size and all of the other
25 standards. The rear yard setback as I explained

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DeNiscia - Direct

1 will have absolutely no impact. The building
2 coverage will have absolutely no impact. The
3 side yards are met and drainage is accommodated.

4 Q. Now, developing the property by
5 combining the four lots, by enlarging this parcel
6 into 2.3 acres as opposed to separate parcels, is
7 that a good thing?

8 A. Yes, I think that improved --
9 resulted in an improved plan rather than
10 developing each site piecemeal.

11 Q. Is it more desirable than developing
12 each site -- each lot piecemeal?

13 A. Yes, it's more desirable.

14 Q. With regard to the intent and the
15 purpose, can you briefly discuss whether this
16 application would impair the intent and the
17 purpose of the P2 Zone?

18 A. Okay. Essentially this application
19 is consistent with the purpose of the P2
20 District. Number one, obviously the use is
21 permitted, multi-family use. Second, most of the
22 relevant standards are met; height and density
23 and a number of parking spaces. Next, I think
24 it's very important, the P2 District has that
25 unusual provision at the beginning which

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DeNiscia - Direct

1 acknowledges the fact that there are an unusual
2 conditions in this area and that a flexible
3 layout is encouraged.

4 Q. Can you find that in the code,
5 please, if you have a minute or two to look in
6 the code book?

7 MR. LAMB: It's Roman numeral
8 IIII-24.

9 MR. ALAMPI: What page is that, Jay?
10 Help us out.

11 MS. HARTMANN: It is it's page
12 IIII-24. Here.

13 THE WITNESS: Thank you.
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14 Under Article III, subsection B-1
15 the purpose of the P2 District is "To allow
16 maximum potential development against the
17 Palisades while preserving the view of and from
18 the cliff from within as well as outside the
19 waterfront area through height and lot coverage
20 restrictions. To allow flexibility and site
21 design by acknowledging the topographical
22 limitations inherent in potential sites."

23 Q. So you didn't make it up, it's right
24 there?

25 A. No. I'm not that good.

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DeNiscia - Direct

1 Q. Now, with the --

2 MR. LAMB: I was going to ask him to
3 repeat that but --

4 Q. With that said, then, too many
5 planning consultants just get up and say well, it
6 doesn't impair the intent of the zoning and they
7 sit down. Do you think that you've sufficiently
8 discussed and explained and built up the
9 background to draw that conclusion?

10 A. Yes, I have.

11 Q. I'm sure the board and public feels
12 that you've done more than enough.

13 A. Yes, I have.

14 MR. ALAMPI: With that, I conclude
15 the direct testimony.

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16 THE CHAIRMAN: Mr. Lamb?
17 MR. ALAMPI: Can we take a break at
18 all?
19 THE CHAIRMAN: Couple minutes break
20 for the court reporter.
21 (Recess taken.)
22 THE CHAIRMAN: Folks, if you're
23 going to continue to chat, take it outside.
24 Mr. Lamb.
25 MR. LAMB: Thank you, Mr. Chairman.

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DeNiscia - Cross

1 CROSS EXAMINATION
2 BY MR. LAMB:
3 Q. Good evening, Mr. DeNiscia. You had
4 testified about the various documents and plans
5 that you reviewed. You reviewed the set of
6 plans, the application, zoning ordinance. You
7 made inspections. You looked at the exhibits and
8 you heard the testimony of four or five
9 witnesses. I think that's what my notes
10 indicate. And the zoning ordinance. Anything
11 else that you reviewed in connection with your
12 preparation?
13 A. Not that I can recall.
14 Q. Okay. Did you review the master
15 plan of the Township of North Bergen?
16 A. No, not in connection with this
17 application.
18 Q. Okay. Did you review the Master
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19 Plan Reexamination Report in 2003?

20 A. No, I did not, not in connection
21 with this application.

22 Q. Did you review the Master Plan
23 Reexamination Report of 2009, the most recent?

24 A. No, I have not.

25 Q. So your testimony essentially could

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DeNiscia - Cross

1 not address what the master plan or the
2 reexamination reports provided because you didn't
3 review them?

4 A. That's right.

5 Q. This is the P2 Zone. How many
6 properties in total are in the P2 Zone?

7 A. I don't know.

8 Q. Do you think it's relevant to find
9 out in connection with the zone whether there are
10 other properties that are affected, where they're
11 located?

12 A. I think it's important to determine
13 whether other properties in the immediate area
14 are affected. And I thought I did, but I may not
15 have done it completely.

16 Q. Are you aware that these four lots
17 are the only properties in this P2 Zone?

18 A. No, it's my understanding that the
19 P2 Waterfront Edge Cliff District extends to the
20 east of River Road according to the zoning map

1-20-11 Apple View

21 that I saw.

22 Q. To the east of River Road?

23 A. Yes.

24 Q. Okay. Towards the river?

25 A. Yes.

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DeNiscia - Cross

1 Q. And you indicated that the site has

2 unusual -- you went into the unusual

3 topographical characteristics, but it's fair to

4 say that you really focused those unusual

5 topographical conditions to the rear of the

6 property, looked as a whole, that rear lot?

7 A. Well, no, no, I don't think that's

8 fair to say. The rear lot is higher and the

9 front of the lot is lower, but it's all irregular

10 because if you didn't have the front, the rear

11 wouldn't be higher. So it's all together.

12 Q. There is -- on the front of the

13 three lots facing River Road, there is some

14 levelness to that area, is there not?

15 A. Oh, yes, I think I explained that,

16 that the front part is more regular than the rear

17 part, yes, you're correct.

18 Q. Now, when you say that this is a

19 resource, you said it's important to have a

20 resource for viewing this area, let's take from

21 either River Road or across the water from New

22 York City, that's one view that you look at?

23 A. Yes.

24 Q. Is that correct?

25 A. Um-hum.

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DeNiscia - Cross

1 Q. So if I take a building and the
2 building -- this 25 percent coverage, building
3 coverage is the maximum and this is at 31.6, so
4 you said you're 6.6 percent over; is that
5 correct?

6 A. Yes.

7 Q. Okay. Is it fair to say that 6.6
8 over the 25 percent maximum, you have excess
9 building coverage on the property of about 25
10 percent of the property?

11 A. You'd have to do that math, that's
12 too -- it's six percent over the entire area. I
13 don't know the percentage of that excess area as
14 compared to the site. I didn't do that
15 calculation.

16 Q. The building coverage, if building
17 coverage -- if the zoning ordinance says I can
18 have 25 percent of this property with buildings
19 on it and you propose 31.6 percent, aren't you
20 increasing that building coverage by about a
21 quarter, by about 25 percent? You're putting on
22 25 percent more building than you could?

23 A. Well, you're putting on six percent
24 of 2.3 acres more.

25 Q. Right --

DeNiscia - Cross

1 A. I can't answer your question. I
2 haven't done -- if you do the arithmetic, I'll
3 look at it, but I didn't do that. I'm not trying
4 to not answer your question, I just haven't done
5 it.

6 Q. Now, by the way, you are employed by
7 Bertin Engineering, is that correct?

8 A. No, I am not.

9 Q. You're not employed by Bertin
10 Engineering?

11 A. No.

12 Q. Were you previously employed by
13 Bertin Engineering?

14 A. Yes.

15 Q. How long were you employed by them?

16 A. A number of years, 20 years.

17 Q. And when did you cease becoming an
18 employee of Bertin Engineering?

19 A. Early this year -- last year.

20 Q. Okay. Approximately what time?

21 A. April.

22 Q. Now, do you share offices with
23 Bertin Engineering?

24 A. No, I do not.

25 Q. So you are -- you have no

DeNiscia - Cross

1 affiliation with Bertin Engineering?

2 A. No, I do not.

3 Q. Thank you. Now, one of the reasons
4 -- you talked about various benefits. One of the
5 benefits you said is that the property and I
6 don't want to put words in your mouth, it's
7 dilapidated, unkept or not maintained?

8 A. I didn't say dilapidated. It's
9 unkept, not maintained and not in good condition.

10 Q. Are there any buildings that are
11 falling apart?

12 A. No.

13 Q. What's wrong with the property from
14 being unkept and not maintained, just grass
15 growing?

16 A. I think it's a general character.
17 So if you look at developed properties in the
18 area along River Road and some of the other
19 areas, residential and commercial properties,
20 there's a degree of maintenance that you would
21 expect in a property. So that the landscaping is
22 maintained, the grass is cut, the trees are
23 pruned and there's an orderly arrangement of
24 whatever is on the site.

25 If you look at this site, the

Celeste A. Galbo, CCR, RMR

7

DeNiscia - Cross

1 opposite is entirely true. The tennis courts

1-20-11 Apple View
2 which are there are dilapidated even though
3 they're surface facilities. They're not in
4 playing condition. There are weeds in the court
5 area. As a matter of fact, until you go on the
6 site you don't even know there are tennis courts.
7 On the other side there are trees which are
8 substantial, but the rest of the growth is
9 uncontrolled. It's not maintained to the level
10 to which all of the properties in the area,
11 developed properties, are maintained.

12 Q. Okay. So it's not landscaped
13 properly, is that fair to say?

14 A. No, it's not maintained properly.
15 Landscaping is fine but it's just --

16 Q. And who is the owner of the
17 property?

18 A. I have no idea.

19 Q. Do you know whether Apple View is
20 the owner of the property? Do you know who the
21 applicant is in this application?

22 A. I believe it's Apple View is the
23 name of the applicant.

24 Q. Do you know whether they own the
25 property?

Celeste A. Galbo, CCR, RMR

♀

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DeNiscia - Cross

1 A. No, I have no idea.

2 Q. Who is your client?

3 A. Apple View.

4 Q. So if Apple View owns the property,
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1-20-11 Apple View

5 and I'm going to make that assumption, if Apple
6 View owns the property, are you saying that
7 because the owner doesn't maintain or landscape
8 or cut the grass or whatever, that that failure
9 by the owner is a reason why this board should
10 grant variances?

11 A. No, I think it goes beyond that.
12 It's clear that the condition of the property is
13 not due to recent --

14 MR. ALAMPI: I guess it's humorous
15 to drag these things out about the conditions and
16 such, but I don't think it's very funny. We're
17 trying to do some serious business here.

18 MR. LAMB: I'm just -- let the
19 record -- I would ask every, --

20 MR. ALAMPI: It's not humorous.

21 MR. LAMB: I don't know who is a
22 resident of the Galaxy or not, I can't control
23 it. I'm not sitting here laughing, I'm asking
24 serious questions.

25 THE CHAIRMAN: Right, thank you

Celeste A. Galbo, CCR, RMR

♀

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DeNiscia - Cross

1 both.

2 A. I think it goes beyond the
3 ownership. Looking at the site and the condition
4 of the tennis courts especially, it's not a
5 recent condition. It's also relates to the fact
6 that the site is disused. It's not utilized

1-20-11 Apple View
7 properly. And I think that has an effect on its
8 condition. In other words, it's not -- there is
9 not a manicured lawn and beautiful shrubs, trees
10 and flowers. And it's precisely because it's not
11 utilized properly.

12 Q. Okay.

13 A. I think that was the point, not the
14 reluctance of an owner to cut the grass.

15 Q. Okay. And you indicated and I think
16 the plans depict that the existing conditions,
17 there's tennis courts and there was a playground
18 there?

19 A. Yeah, I believe so. I haven't seen
20 the playground or I don't recall it.

21 Q. And isn't it fair to say that one of
22 the permitted uses in the P2 Zone is exactly
23 that, a playground?

24 A. Recreation, but it's not in that use
25 there.

Celeste A. Galbo, CCR, RMR

♀

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DeNiscia - Cross

1 Q. And I believe that's -- public
2 parks and playgrounds, that's one of the uses?

3 A. Yes, public.

4 Q. So really if the tennis court was
5 paved, if there was a little landscaping there,
6 this would fit in with a permitted use in the
7 zone, one of the four permitted uses, this would
8 be permitted without one variance, one deviation
9 from the zoning ordinance; is that correct?

1-20-11 Apple View

10 A. I'm thinking of the other side which
11 is wooded, I'm not sure what's there, but let's
12 just look at the tennis court. If the tennis
13 court were maintained and in conditions where it
14 could be used, then it would be a contributing
15 use.

16 Q. Okay.

17 A. Definitely.

18 Q. Do you know what the minimum lot
19 size is for the playground area?

20 A. No.

21 Q. That's 40,000 square feet under
22 table 3.10(B), I'd like you to assume that that's
23 the case.

24 A. Okay.

25 Q. If it's 40,000 square feet. This

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DeNiscia - Cross

1 has a complying lot area?

2 A. I take your word for it, I didn't
3 measure each lot.

4 Q. Now, another use is it fair to say
5 is the office building, that's a permitted use?

6 A. Yes.

7 Q. Do you know what the minimum lot
8 size for an office building is?

9 A. No.

10 Q. I'm going to have you assume that
11 it's four acres which is also in table 3.10(B).

1-20-11 Apple View
12 You currently have a property that has about 2.3
13 acres; is that correct?
14 A. Yes.
15 Q. And so the deviation from a five
16 acre minimum use is about 2.6 acres, is it not?
17 A. Yes.
18 Q. The five acres --
19 A. 2.7.
20 Q. -- minimum less, you have about 2.3
21 it's 2.6 and change?
22 A. Yes.
23 Q. That's about a 54 percent deviation.
24 You're 54 percent under the minimum requirement?
25 A. Yes.

Celeste A. Galbo, CCR, RMR

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DeNiscia - Cross

1 Q. If I now go to another use, I go to
2 office building or research, let's put them in
3 the same to move along, those are four acres.
4 A. Okay.
5 Q. If I have -- if I propose those
6 uses, my deviation would be four minus 2.3 or 1.6
7 acres?
8 A. Right.
9 Q. So is it fair to say that at least
10 with respect to lot area, those other two uses,
11 office building and research, have a less
12 variance, a less deviation only when it comes to
13 lot area size?
14 A. No.

1-20-11 Apple View

15 Q. okay. Can you explain why?
16 A. Because no variance is required for
17 an existing property. That's an existing
18 condition. If a variance is denied for the lot
19 size, then the lot has to be removed. If an
20 applicant makes -- requests an application, let's
21 say, for a front yard setback of 30 feet and that
22 application is denied, there is no setback, it's
23 not built. Exactly the same way. If a variance
24 is requested for a lot size and it's denied, you
25 can't have a lot. You can't ask for a variance

Celeste A. Galbo, CCR, RMR

♀

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DeNiscia - Cross

1 and have it denied and still have the lot. It's
2 not required for a lot size because it's an
3 existing condition.
4 Q. Let's go to the playground. The
5 playground, if that site plan showed a playground
6 with tennis courts on 2.3 acres, that's it, would
7 I need one variance from this board or under the
8 zoning ordinance?
9 A. No, if you're right and it's 40,000
10 square foot requirement, no.
11 Q. So now I'm going up to the four
12 acres.
13 A. Right.
14 Q. Don't I need a less acre deviation
15 when I'm comparing the 2.3 to four acres than I
16 am to five acres?

17 A. No. Let me answer your question
18 another way. The lot size is 2.3 acres.
19 whatever is on that lot, if there's a separate
20 standard, you relate to that standard, it doesn't
21 change the size of the lot. There is no such
22 thing as a lot size deviation. You're not
23 creating the lots when they're already there.
24 It's not necessary.
25 Your question is very good it's if

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♀

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DeNiscia - Cross

1 it's a subdivision. If this applicant was taking
2 from a large area and saying we don't want to do
3 five acres, we want 2.3 and we can justify, then
4 I think you have a very good question but we're
5 the opposite.

6 Q. Are you saying the lot area is
7 nonconforming for every use in the zone, is that
8 what you're saying?

9 A. No, there are different lot sizes
10 for each uses but they're not conditional,
11 they're not related in a conditional way. And I
12 don't know why there are different lot sizes.

13 Q. How many uses in this zone require a
14 minimum of five acres?

15 A. At least this one, that's the only
16 one I know.

17 Q. All the other uses don't need five
18 acres, this is the only one?

19 A. Yes, sir.

1-20-11 Apple View

20 Q. Now, I asked Mr. -- you were here
21 when I cross-examined Mr. Bertin or Mr. Bertin
22 testified?

23 A. I guess so. I don't remember which
24 time --

25 Q. Were you here for every meeting?

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DeNiscia - Cross

1 There is no requirement --

2 A. I don't know if I was here for every
3 one. I can't say that.

4 Q. Okay. If I reduce the building in
5 size to a conforming building coverage, okay, I
6 take from the building footprint, let's use
7 yours, I take 6.6 percent of the total lot area
8 of the 2.3 acres, okay, that I take away from the
9 building, I can't -- I now have a complying
10 building coverage.

11 A. Okay.

12 Q. I take if it's a round -- if two
13 acres is a little more than 80,000 square feet, I
14 take 6.6 percent times 80,000 square feet, I take
15 about 5,000 square feet of building away.

16 A. Um-hum.

17 Q. When I do that I reduce the number
18 of units, do I not?

19 A. Not necessarily.

20 Q. Okay.

21 A. Finish your question.

1-20-11 Apple View
22 Q. Okay. Do I reduce the visual impact
23 of the cliffs by taking away part of the building
24 when I'm looking at it from River Road?
25 A. Not necessarily because there are

Celeste A. Galbo, CCR, RMR

87

DeNiscia - Cross

1 two things that can happen. That reduction could
2 be along the rear or parallel to River Road
3 making the building less deep in which case the
4 frontage that obscures the view to the rear would
5 be exactly the same because it meets the
6 setbacks.

7 Q. Well, let me qualify that. If I
8 take away that extra building coverage and you
9 assume that you already violating the rear yard
10 setback, you can't make it up by going backwards,
11 don't I then decrease the size of the building?

12 A. Yes, the size of the footprint, yes.

13 Q. And unless the owner changes the
14 makeup of the units --

15 A. Go ahead, I'm sorry. Don't stop.

16 Q. -- unless the owner decreases the
17 size of the units, then I have a smaller building
18 with less people and less traffic?

19 A. Yes, but that's not the question you
20 asked before. That's a different question. If
21 you take this building and take -- reduce it by
22 5,000 square feet, it will be less space.

23 Q. Right.

24 A. But the number of units could stay

25 the same, they will be smaller units. Second of

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♀

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DeNiscia - Cross

1 all the height could increase to accommodate.

2 Let's say you're taking 5,000 off, well, the

3 height could be increased to add the 5,000.

4 Q. And we're going to go into that.

5 A. Well, I'm going into it now because

6 that's part of the answer. See, you can't just

7 do it in pieces.

8 Q. And that's fine. And I'm going to

9 let you talk to Mr. Bertin, but what is the

10 height of this building on this property? We had

11 a --

12 A. I believe up to the penthouse it's

13 68 feet. It's six stories but 68 feet, but it's

14 funny because the height is measured in the

15 ordinance not from the height of the building but

16 the height from River Road.

17 Q. Right.

18 A. So it's a height in feet from River

19 Road, and I think that's 75 feet is that height.

20 So depending upon the topography, it depends upon

21 what you get in that in terms of building.

22 Q. How many more stories could you put

23 on this property?

24 A. Quickly looking at the plans I'd say

25 two at most, but I'm not an expert in that.

DeNiscia - Cross

- 1 Q. And I know that I believe Mr. --
2 A. At least one.
3 Q. -- Mr. Baselice asked the question
4 what's the total height on the top of the cliff
5 versus what's the height of the top of the
6 building. I think it was 110 versus --
7 A. Sixty-eight or 70 just to be --
8 Q. So the difference between 110 and 68
9 is 42 feet?
10 A. Okay.
11 Q. Approximately.
12 A. Whatever it is, yes.
13 Q. So there's roughly four stories
14 there?
15 A. Right.
16 Q. What do you call or what are you
17 defining as the "ridge"? I know you used it a
18 lot.
19 A. It would be, I guess, I think Miss
20 Greco defined it but I can't recall the exact
21 definition of the height. But when I looked at
22 it where I thought the ridge was on the diagram
23 is 110 feet. I don't know if that's the
24 delineation of the ridge.
25 Q. Well, I guess my point is are you

1 saying the ridge is the very top of that, and
2 I'll call it cliff area? You testified about the
3 ridge and I'm just trying to figure out what you
4 meant.

5 A. Well, first of all, in all of the --
6 in the ordinance, the ridge is not defined in
7 terms of its height, it's just name. It's in
8 terms of -- it's qualified as the ridge. So
9 there is no definition. And I remember Miss
10 Greco's testimony, and I think you asked her some
11 questions about that, and I don't recall the
12 answer if there was an actual elevation of 110
13 feet or 106 feet that was defined as the ridge --

14 Q. Let's go back to the brown, there
15 was a brown diagram that is A-7?

16 A. Yes.

17 Q. Can you point to what you believe on
18 A-7 is the ridge?

19 A. That would be on the top of the
20 brown area.

21 Q. Can you put an R on where you say
22 the ridge is?

23 (Witness complies.)

24 Q. Or just put a capital R, that's
25 fine. And just date it today.

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♀

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DeNiscia - Cross

1 (Witness complies.)

2 Q. Thank you. So one of the goals is

1-20-11 Apple View
3 to make sure that you don't impact the view of
4 the ridge?
5 A. No.
6 Q. Be it to the ridge or from the
7 ridge?
8 A. No, it also includes the Palisades,
9 impact the view to the Palisades as well as the
10 ridge. The P2 District says Palisades, I don't
11 think it says ridge.
12 Q. I believe you're correct.
13 A. Yes.
14 Q. So is it fair to say that the bigger
15 the building I have, whether it's height or
16 width, however it is, the bigger that building
17 is, the more of the Palisades I block?
18 A. No, that's not correct. It's not
19 the bigger the building, it's the height.
20 Because the lower the building is, the more of
21 this cliff, cliff face or Palisades will be seen
22 through here. So if this building were extended
23 out, all the way to the river, it's not going to
24 block any of the view. But if it's built higher,
25 it's going to block at some point the view to

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†

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DeNiscia - Cross

1 the --
2 Q. Let me --
3 A. -- to the Palisades.
4 Q. On A-7 I'm going to pick -- let me
5 pick the point that's out 325, I'm going to put P

1-20-11 Apple View

6 for point on it and today's date, I'm going to
7 put P right there. That point, is that if I go
8 higher or wider can I block that point?

9 A. If you go higher you'll block it
10 more effectively than if you can wider or longer.

11 Q. But if I go wider, don't I block all
12 the portion of the cliff area that's in that
13 extra -- the extra building going either to the
14 north or to the south?

15 A. Well, that's not an easy question to
16 answer because then I think you'd have to project
17 lines of site through the building that you're
18 describing and show from a certain point show how
19 much building is exposed. I understand your idea
20 but I don't think it's that easy to answer
21 explicitly.

22 Q. But I'm talking about the cliff
23 area.

24 A. Yes.

25 Q. Which is this whole -- it says

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♀

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DeNiscia - Cross

1 ground level. There's a ground level and then it
2 goes up where the brown ends on this A-7. I'm
3 looking at all of that.

4 A. Well --

5 Q. Is all of this the cliff area?

6 A. I would say no, but the definition
7 of a cliff, the cliff has to be a lot steeper

1-20-11 Apple View

8 than that, more vertical. But still I think this
9 area is valuable as a visual resource.

10 Q. Well, then you tell me --

11 A. Without a doubt.

12 Q. You tell me from your planning
13 standpoint which part of that brown you think is
14 the cliff?

15 A. I think it's the vertical part
16 that's here.

17 Q. So in your opinion only the cliff
18 face, this is I guess underlined in orange, the
19 cliff face which has black crosshatching, that's
20 the only part of that brown that you say is the
21 Palisades cliff?

22 A. Yes, the cliff is actually a rise
23 from the ground up. Miss Greco explained that.
24 So the cliff is that distance, let's say it's a
25 mountain for easy purposes. So it's 100 feet

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♀

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DeNiscia - Cross

1 high, so that's the cliff. And the cliff face is
2 something entirely different. All --

3 Q. I'm not talking about the cliff
4 face, just the cliff.

5 A. All of this would be called a
6 mountain or a hill, without a doubt, it's all
7 integrated and she explained that. But the cliff
8 is a different part. I wasn't exactly sure of
9 what a cliff is until I looked. Since the
10 ordinance didn't have any definition, I tried to

1-20-11 Apple View

11 find something. And from everything I could find
12 a cliff is vertical or nearly vertical and the
13 diagram in the ordinance doesn't show it
14 vertically, it's a little -- it has an angle but
15 I still think it represents a cliff.

16 Q. So, again, in the zoning ordinances
17 of the Township of North Bergen are trying to
18 protect the visual view of the cliff, you're
19 saying that --

20 A. No, no, I'm sorry to interrupt, it
21 says to protect the cliff face and the Palisades.
22 It doesn't say cliff, cliff face and Palisades.

23 Q. Let's say the Palisades.

24 A. Yes.

25 Q. Is it your testimony that when it's

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♀

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DeNiscia - Cross

1 trying to make sure that there are views of the
2 Palisades, that it's only this little -- that
3 probably it's 20 feet on the very top of that
4 brown area?

5 A. In this particular location, yes,
6 those are the Palisades. In other areas if you
7 go up to the Palisades Interstate Park and other
8 places, the actual Palisades is a vertical
9 portion is very, very high so it's much higher
10 than this, so it varies. And I think Miss Greco
11 explained that. She described her experiences up
12 and down River Road, and I think she explained

1-20-11 Apple View
13 \ that it varies. There is no standard or uniform
14 height of the cliff or Palisades.
15 Q. But you're a planner.
16 A. Yes.
17 Q. And from the planning standpoint of
18 North Bergen, you're driving along River Road,
19 you're looking at North Bergen from New York
20 City, wherever you are.
21 A. Right, right.
22 Q. Aren't you trying to protect the
23 whole brown area, not just this little vertical
24 strip up here that's roughly 20 feet on A-7?
25 Aren't you trying to protect from a planning

Celeste A. Galbo, CCR, RMR

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DeNiscia - Cross

1 standpoint all of that?
2 A. Well, I think you're right to some
3 extent, even though there is no explicit
4 standard, I think it -- the least amount of
5 disturbance to this -- you pointed this out where
6 the slope starts up to the top, the least amount
7 of disturbance is I think desirable to some
8 extent. In this sketch very little of that area
9 is disturbed, and it's the lower part which is
10 less visible when you looked at the photos, you
11 see in photo two on A-13, you can't see any of
12 that at this point but you could see the top.
13 Q. Let's go back to A-7.
14 A. Sure.
15 Q. Is there any site plan -- first of

1-20-11 Apple View

16 all, let me ask a question I think you answered
17 it. Part of the -- this lot has an area that is
18 30 percent or greater in slope; is that correct?

19 A. Yes.

20 Q. Okay. And so under the zoning
21 ordinance when a lot has 30 percent or more of
22 slope, it, for using slang, it kicks in the
23 provision of 40 feet from the first floor? In
24 other words, do you not count --

25 A. Yes, yes.

Celeste A. Galbo, CCR, RMR

♀

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DeNiscia - Cross

1 Q. You do you not calculate the 40 foot
2 setback from where the first floor intersection
3 of that area?

4 A. Which is the area? Now I'm asking
5 you a question .

6 Q. The cliff -- the open part of the
7 cliff.

8 A. No, it's a cliff face explicitly in
9 the ordinance.

10 Q. So you're advocating what the
11 geotechnical person advocated and the chairman of
12 the board had a question, to calculate the rear
13 yard setback for any project along the Palisades,
14 you have defined the vertical exposed cliff area
15 and do a calculation by extrapolating the
16 distance on a vertical point to that area?

17 A. Yes.

1-20-11 Apple View
18 Q. And you've been involved in
19 applications in North Bergen?
20 A. Yes.
21 Q. Before, along the cliffs or the
22 bottom of cliffs?
23 A. Yes. Yes.
24 Q. Have you ever calculated the rear
25 yard setback of an application once using that

Celeste A. Galbo, CCR, RMR

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DeNiscia - Cross

1 methodology?
2 A. No, always from a property line,
3 rear property line in my experience but I haven't
4 done that many.
5 Q. Okay. Other municipalities, I know
6 you --
7 A. No, only from the rear property
8 line.
9 Q. You testified in Edgewater on the
10 SGS application?
11 A. Yes.
12 Q. That was involving a cliff?
13 A. Yes.
14 Q. Have you ever calculated -- in your
15 career, your 44 years as a planner, have you ever
16 made one calculation that just didn't take the
17 building to a particular point as defined in the
18 ordinance?
19 A. No, the only calculations I have
20 ever made in my recollection is taking a portion

1-20-11 Apple View

21 of the building to the appropriate property line.

22 Q. Okay. Now, once you -- since we got
23 into that Section 11 ordinance where we have --
24 we know it's triggered because we have more than
25 30 percent slope, so we know it's triggered, you

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9

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DeNiscia - Cross

1 take the first floor and is it not fair to say
2 that the first floor intersects this ground level
3 at a point which is actually inside the building?

4 A. Yes.

5 Q. Can you mark an X where actually the
6 first floor is, the first floor floor, the first
7 floor floor level?

8 A. Right on here.

9 Q. Where it hits. Right. Okay. And
10 is it not fair to say that this area, there is an
11 area that is in light gray, that this building
12 displaces this area?

13 A. Yes.

14 Q. So if this area is part of the
15 Palisades, then this building is jutting inside
16 it, is it not?

17 A. No, because it's not part of the
18 Palisades.

19 Q. But assume that I'm correct.

20 A. If it were part of the Palisades,
21 then it would be disturbing the Palisades or
22 extending --

1-20-11 Apple View
23 Q. And if that area is part of the
24 Palisades, the setback looks like it would either
25 be -- you'd have zero feet or almost a negative

Celeste A. Galbo, CCR, RMR

7

100

DeNiscia - Cross

1 setback; is that correct?

2 A. Yes. Yes.

3 Q. And there would be no difficulty,
4 assuming I was correct, in pulling the building
5 out to have a 40 foot rear yard setback? would
6 there be a difficulty doing that?

7 A. well, I think you could put any
8 building on this site and have it set back 40
9 feet. You know --

10 Q. There is no problem with complying
11 with 40 feet from the ground level if you assume
12 that ground level is the cliff, you could still
13 pull this building back? You might have to
14 shorten the building but you could still develop
15 the property, could you not?

16 A. Okay, in quarreling with your words,
17 you couldn't bring this building back, it would
18 be a different building.

19 Q. Right.

20 A. Because it would have to be
21 substantially smaller and, you know, and
22 everything else would --

23 Q. You'd have to shave something off
24 the building but you could still have a building
25 there?

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♀

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DeNiscia - Cross

1 A. It's possible. I haven't done it,
2 looked at it but it's possible.

3 Q. Have you done any reviews of what
4 you could build on this property in way of
5 multi-family residential that complied with the
6 rear yard setback, what that would do to the size
7 of the building?

8 A. No.

9 Q. Now, just a couple miscellaneous
10 things. Is it fair to say you're not a pipeline
11 safety expert?

12 A. Yes.

13 Q. Okay. And you haven't -- did you
14 review the easement that Mr. Alampi sent to this
15 board?

16 A. Absolutely not.

17 Q. Is it fair to say that public safety
18 is an issue for this board when reviewing a site
19 plan? Is that relevant from a planning
20 standpoint?

21 A. Yes, but only in terms of what's
22 provided in the ordinance as a way of standards.
23 I don't think any board can apply an arbitrary
24 standard either from another agency or
25 jurisdiction and apply it to the application,

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♀

DeNiscia - Cross

1 although I think the board condition compliance
2 with other restrictions, like typically we do
3 with DEP. The board doesn't grant any DEP
4 waivers, but the board allows the applicants to
5 obtain DEP letters of intent time, letters of no
6 interest and that kind of thing. So I think it's
7 in the same ballpark.

8 Q. Okay. But it's fair to say that
9 public safety and health is an important
10 objective when this board is looking at plans and
11 looking at whether to grant variances, that's
12 relevant to them?

13 A. Yes, but it's got to be in the
14 context of the ordinance. The board does not
15 usually get into the realm of arbitrary
16 conditions or standards, setting standards for
17 public safety, but I agree that, you know, such
18 standards are very relevant and that this
19 application, this development has to comply with
20 DEP standards as it relates to both, you know,
21 the gas transmission line, without a doubt.

22 Q. Have you reviewed the purposes of
23 the Township of North Bergen Zoning Ordinance
24 what it says at the beginning of the ordinance,
25 what it says about purposes?

Celeste A. Galbo, CCR, RMR

7

DeNiscia - Cross

1 A. No.

2 Q. Now, you indicated that the site is
3 not being overdeveloped.

4 A. Yes.

5 Q. That was your testimony quote
6 unquote, I believe, if I took my notes correctly?

7 A. Yes.

8 Q. This does not have sufficient lot
9 area; is that correct?

10 A. Yes.

11 Q. So if it complied -- if you could
12 acquire another 2.6 acres, you would have a
13 complying project, you could have a complying
14 project which would not overdevelop; is that
15 correct?

16 A. I guess, yes, if you had twice the
17 amount of area, yes.

18 Q. And we talked about the building
19 coverage, you're 25 percent over the requirement
20 or 6.6 percent over the total lot area. Is it
21 fair to say that this applicant could shrink the
22 building size, forget about what we do in the
23 rear yard setback, shrink the building size and
24 have a complying lot coverage building coverage
25 project?

Celeste A. Galbo, CCR, RMR

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DeNiscia - Cross

1 A. If you're saying that the applicant
2 could acquire property to make five acres and
3 then just build on two acres of it or something,

1-20-11 Apple View
4 yes, the applicant could do that.
5 Q. The applicant could redesign the
6 project if it had the five acres to have a
7 complying project?
8 A. It's quite possible you could do it
9 but it seems to me if the site were five acres,
10 the applicant could certainly comply with the
11 intent of the ordinance of having a density of 75
12 units per acre to a greater extent than the
13 applicant is doing now.
14 Q. You made a lot about the 75 percent
15 units per acre --
16 A. Five units per acre.
17 Q. Seventy-five units per acre but
18 isn't it fair to say that the scope of a project,
19 the size of a project, it's not just density,
20 it's all the other bulk requirements, it's
21 setback, it's building coverage, it's rear yard
22 setback?
23 A. Yes.
24 Q. It's everything combined and you
25 control that; is that fair to say?

Celeste A. Galbo, CCR, RMR

8

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DeNiscia - Cross

1 A. Yes. Yes.
2 Q. Now, going back to the size of the
3 property, this is a residential project, is it
4 not?
5 A. Yes, it is.
6 Q. And you testified that there were no

1-20-11 Apple View

7 properties available for purchase?

8 A. Abutting properties, yes.

9 Q. And you're aware that the
10 application also says there is no adjacent
11 properties to purchase? You read the
12 application?

13 A. I don't know if I read that portion
14 of it.

15 Q. It says it in the main application
16 in the addendum, there is no adjacent properties
17 to purchase.

18 A. Okay.

19 Q. So from a planning standpoint when
20 you have an undersized lot, one of the factors is
21 is there the ability to make it complying.

22 A. Yes.

23 Q. That's a factor. Okay. Is that
24 correct?

25 A. To meet the minimum lot size

Celeste A. Galbo, CCR, RMR

♀

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DeNiscia - Cross

1 requirement.

2 Q. Is it not also using that zoning and
3 planning standard relevant of whether you have
4 offered to sell the property to the adjacent
5 property owners?

6 A. I'm familiar with that but I'm not
7 an attorney.

8 MR. ALAMPI: I will object. The

1-20-11 Apple View
9 history, case history is that this property was
10 offered to the adjacent property owners, the
11 Galaxy, and they did not affect they're right to
12 buy it.

13 THE CROWD: No. No. No.

14 MR. ALAMPI: Now, I closed the
15 transaction, Chairman, and I'll represent that's
16 a fact.

17 MR. LAMB: First of all, Mr.
18 Chairman, that's not in the record. And,
19 secondly, the relevant time period is the time
20 there's a variance application which is now.

21 MR. ALAMPI: We'll get into it.

22 MR. MUHLSTOCK: The witness can
23 answer the question if he knows the answer.

24 Q. Do you know whether the owner has
25 offered either to the Galaxy or the North Bergen

Celeste A. Galbo, CCR, RMR

♀

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DeNiscia - Cross

1 Municipality Utilities Authority all or a portion
2 of this property?

3 A. No.

4 Q. And from a planning --

5 THE CHAIRMAN: Excuse me, just so
6 we're clear on the answer, that's no, you don't
7 know?

8 THE WITNESS: I don't know of any
9 offer.

10 Q. And from a planning standpoint as we
11 obtained before, it's relevant when you're

12 looking at an undersized lot to not only try to
13 acquire property but also to see if adjacent
14 property owners are interested in the property,
15 that's a relevant --

16 A. well, that's a legal question but
17 I'm familiar with that. I don't certainly
18 implement any of those requirements.

19 Q. But from a planning --

20 A. It happens, yes.

21 Q. And, for example, if the North
22 Bergen Municipal Utilities Authority for their
23 sewerage treatment plant needed an extra couple
24 acres, then this requirement of an offer would
25 give that opportunity to the property owners to

Celeste A. Galbo, CCR, RMR

♀

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DeNiscia - Cross

1 the north if they had an interest in that?

2 A. well, actually they probably
3 wouldn't need it, they could institute eminent
4 domain proceedings if they needed, so they
5 wouldn't have to have an offer. So if they
6 really needed it, they could acquire it.

7 Q. But you do agree that if there's a
8 building on this the eminent domain proceedings
9 are going to be a little more difficult and a
10 little more costly than where it is now.

11 MR. MUHLSTOCK: You're getting a
12 little bit far away from the issue.

13 MR. ALAMPI: Let me just put on the

1-20-11 Apple View
14 record what Mr. Lamb is alluding to, it's call
15 project enhancement in light of a known
16 condemnation. That's not the case here.
17 Q. And same thing with the Galaxy. If
18 the Galaxy had an interest, right now at the time
19 of this application to acquire back what they
20 used to use historically as the playground and
21 tennis courts, that would also do something
22 productive with the property that is undersized
23 with respect to this particular use, would it
24 not?
25 A. That's a very good question but I

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♀

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DeNiscia - Cross

1 don't know the legal answer to that, but from the
2 planning point of view that would really have a
3 negative impact because then that would reduce
4 the site to the two smaller lots and in that
5 particular area where the intent is to have high
6 density, hi-rise buildings, it would make those
7 other lots a less desirable by splitting it. If
8 it were the entire lot, the entire parcel, I
9 would agree with you but not part of it.

10 Q. You said the intent is to have
11 hi-rise and intensity development?

12 A. Yes.

13 Q. Isn't one of the permitted uses
14 here, we went through this before, a playground
15 and open space?

16 MR. MUHLSTOCK: No, it says public,
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1-20-11 Apple View

17 Mr. Lamb. Let's get it clear so the record is
18 clear, it says public.

19 MR. LAMB: Park --

20 THE CHAIRMAN: And playground.

21 MR. MUHLSTOCK: It doesn't say
22 private, it says public.

23 MR. ALAMPI: I appreciated
24 Mr. Lamb's courtesy during my direct, and I know
25 he exercised restraint in not objecting and I'm

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♀

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DeNiscia - Cross

1 trying to do the same thing, but this issue with
2 the playgrounds, we're dealing with public
3 facilities not privately owned facilities.

4 MR. MUHLSTOCK: I just said that.

5 MR. ALAMPI: I know that but I'm --
6 it's gone over three or four times and it's taken
7 out of context.

8 MR. MUHLSTOCK: It's clarified now,
9 let's move on.

10 Q. So if you offered it to the Galaxy
11 for its use, then could it not use -- it could
12 acquire it and make it available to the public?

13 A. I have no idea. I don't know.

14 Q. Now, we talked about office
15 buildings as a permitted use. Is it also another
16 scenario to have one or more office buildings on
17 this property? Isn't that something that the
18 applicant could seek to develop and present an

1-20-11 Apple View
19 application to the board?
20 A. Well, the applicant could present an
21 application for any permanent use for this site.
22 I don't see the relevance. If the applicant
23 wanted to develop an office building, he would do
24 that, or any other permitted use.
25 Q. But this particular application

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♀

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DeNiscia - Cross

1 you're short 54 percent of the minimum acreage,
2 are you not?
3 A. Yes.
4 Q. Okay. Now, is it fair to say that
5 that 54 percent deviation, is it fair to say that
6 the amount of the deviation is substantial?
7 A. No, substantial is a subjective
8 word. It's what it is. It's 2.3 acres versus
9 five.
10 Q. Is it being short 2.6 acres
11 approximately out of five acres, a substantial
12 deviation?
13 A. No, because in this particular
14 instance the applicant has reduced the extent of
15 the development not to fit the five acres but
16 reduced it to fit the 2.3 and even less based on
17 the density it would even be conforming with
18 respect to all other requirements on a much
19 smaller lot.
20 Q. Well, conforming with all other
21 requirements except for, number one, building

22 coverage, correct?

23 A. No, no, it could possibly do that,
24 maybe.

25 Q. Number two, rear setback, depending

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♀

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DeNiscia - Cross

1 upon whether Mr. Alampi's interpretation is
2 correct or the boards.

3 A. Okay.

4 Q. So either one of those scenarios
5 it's not going to be conforming?

6 A. Except for the fact if we just
7 change this building tonight and say it's an
8 office building, it would most likely have the
9 same impact in the rear yard because in order to
10 get -- utilize the property well below its
11 intended extent in the zoning ordinance, it's
12 very likely that there will be a building of this
13 size that would also encroach on this slope area.

14 Q. Okay. With respect to this
15 particular building, is it fair to say that I
16 couldn't expand it any further to the south to
17 the Galaxy or else I'd need a side yard setback
18 to the south?

19 A. I believe so, yes.

20 Q. Is it fair to say that the same
21 applies to the northerly side, I couldn't expand
22 that anymore because I'm already 20 feet up
23 against the property line and that's a right --

1-20-11 Apple View
24 there's going to be a right-of-way or an access;
25 is that correct?

Celeste A. Galbo, CCR, RMR

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DeNiscia - Cross

1 A. Yes.

2 Q. Is there anything in the zoning
3 ordinance that requires a building setback to be
4 calculated from the right-of-way as opposed to
5 the property line?

6 A. That's a front setback.

7 Q. Now, the northerly side yard
8 setback, is there anything in the zoning
9 ordinance that requires the setback calculation
10 to be calculated from the right-of-way or access
11 point as opposed to the property line?

12 A. You mean on Ferry Road?

13 Q. No.

14 A. I don't understand your question.

15 Q. You've heard a lot about the 20 foot
16 to the northerly which is the access -- this
17 access for Transco.

18 A. It's on this side, yeah.

19 Q. This -- we're looking at A-5,
20 7/29/10 this shows a 20-foot area here, this
21 green area to the north. Is there any
22 requirement in the Township of North Bergen that
23 requires the building setback to be calculated
24 from that right-of-way or that access point?

25 A. That's not a right-of-way, you mean

DeNiscia - Cross

1 the easement line?

2 Q. The easement line.

3 A. Okay, I'm not familiar with any such
4 requirement if it exists.

5 Q. And it's fair to say that that
6 easement line, that's access there, trucks are
7 allowed, the contemplation is that trucks,
8 vehicles, maintenance vehicles, whatever, will go
9 in and out of that 20 foot area?

10 A. I guess I'm not familiar with
11 what -- how the easement is described and what is
12 permitted, but I'll take your word for it that
13 trucks can go on it.

14 Q. So we know we can't expand this
15 building to the south?

16 A. Right.

17 Q. We know we can't expand this
18 building to the north?

19 A. Right.

20 Q. We know we're either -- let's assume
21 that you need the rear yard setback, we're even
22 passed the rear yard setback, if that's correct,
23 isn't it a fact that there's only sufficient
24 parking proposed on this building to use the
25 number of stories that's proposed?

1-20-11 Apple View
DeNiscia - Cross

- 1 A. In this building?
- 2 Q. Yes.
- 3 A. I don't quite understand that's --
- 4 you mean is the parking deficient?
- 5 Q. No, the number of parking spaces
- 6 complies.
- 7 A. Yeah. Yeah.
- 8 Q. So you couldn't add two stories on
- 9 top of this?
- 10 A. Yeah, sure you could. We can go up,
- 11 let's say we can go two stories but three stories
- 12 can be parking levels.
- 13 Q. Is your testimony --
- 14 A. I didn't look at the ordinance,
- 15 we're not -- the applicant isn't proposing an
- 16 office building but hypothetically if you had a
- 17 10-story building, four stories could be parking.
- 18 Q. Are you aware of any requirement in
- 19 the township that limits the number of parking
- 20 levels?
- 21 A. No, I have no idea. I didn't look
- 22 for requirements for any other use.
- 23 Q. Your testimony has been oh, yeah, we
- 24 can just go up and you can go up providing that
- 25 you provide compliant parking to meet the other

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DeNiscia - Cross

- 1 requirements of the zoning ordinance; is that
- 2 fair to say?

3 A. It's quite possible maybe with these
4 site conditions that an office building would not
5 be feasible, could not comply with more of the
6 requirements in the ordinance. That is possible.

7 Q. Now, it's fair to say that because
8 there's a residential use proposed, that
9 landscaping is something that would be relevant
10 to somebody who is going to occupy this as a
11 residence?

12 A. I would say that, yes.

13 Q. And you understand that because of
14 the special circumstances of the gas pipeline, we
15 can't have any landscaping to the north?

16 A. In other words, this is incorrect
17 showing grass in here?

18 Q. Well, I mean, any -- other than
19 grass.

20 A. well, this shows grass. I'm not
21 aware if there's a restriction, but assuming
22 there is, this would be lawn area, yes.

23 Q. But there is no other landscaping?

24 A. No, not shown on that side.

25 Q. There is no buffer to hide or

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DeNiscia - Cross

1 partially obscure the adjacent municipality
2 utilities, the sewerage treatment plant; is that
3 correct?

4 A. well, there are existing trees which

1-20-11 Apple View
5 might be on the sewerage treatment plant side,
6 but other than that, no, there are no -- there
7 are no trees on the site.
8 Q. And is it fair to say that if you're
9 a resident on the north side of the building,
10 that really isn't the best view so to speak
11 because there is no -- there's really no
12 landscaping on that side other than grass and the
13 sewerage treatment plant is on that side?
14 A. It's a view of the sewerage
15 treatment plant, yes, you're correct.
16 Q. Are you aware -- you've been on the
17 site a couple times, are you aware of any smell
18 or odor coming from the sewerage treatment plant?
19 A. No. That doesn't mean there isn't
20 one. I haven't noticed it.
21 Q. You haven't noticed it. Do you know
22 or you're not sure?
23 A. No, I have no idea.
24 Q. Would the existence of odors or a
25 smell be relevant to where the building is placed

Celeste A. Galbo, CCR, RMR

♀

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DeNiscia - Cross

1 or a residential development on the adjacent
2 property?
3 A. Well, I would say if that were a
4 condition that exists, then the site should
5 probably not be in a residential zone district.
6 So apparently the planning board and governing
7 bodies were certainly aware of the conditions and
Page 108

1-20-11 Apple View

- 8 have designated this site in residential use, so
9 that must have been considered.
- 10 Q. But it's not in a residential zone;
11 is that correct? This is not in a residential
12 zone?
- 13 A. P2 Zone permits residential uses.
- 14 Q. One out of four uses, yes?
- 15 A. Permits residential uses.
- 16 Q. There are three another uses that
17 are not residential; is that correct?
- 18 A. Yes.
- 19 Q. So 75 percent of the uses have
20 nothing to do with residential on this property?
- 21 A. Yes. One you mentioned is a public
22 park.
- 23 Q. Now, you might have heard, and I
24 don't know whether you were here, the issue of
25 whether the land was contaminated?

Celeste A. Galbo, CCR, RMR

♀

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DeNiscia - Cross

- 1 A. No, I'm not familiar with that.
- 2 Q. Is that relevant for the board to
3 make sure that if there's a residential building
4 on the property, that there is no environmental
5 contamination? Is that something the board
6 should consider?
- 7 A. Absolutely, but the board has no
8 jurisdiction over that but they certainly can
9 require that the applicant demonstrate that there

1-20-11 Apple View
10 is no environmental -- negative environmental
11 impact.
12 Q. And that's also a matter of public
13 health and safety, where the general purpose of
14 this --
15 A. Not for the board, that's for the
16 DEP. The board has no jurisdiction over that, no
17 standards to apply. You can't say these are our
18 set of standards that we apply. It's the DEP
19 that has those set of standards.
20 Q. But the board is being asked to
21 grant a number of variances, right?
22 A. Yes.
23 Q. And so in connection with granting
24 the variances, it has the power to make sure in
25 weighing, as you said, under the C(2) criteria,

Celeste A. Galbo, CCR, RMR

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DeNiscia - Cross

1 weighing the benefits versus the detriments?
2 A. Right.
3 Q. And one of the things that is in
4 that equation is the public health, safety and
5 welfare, is it not?
6 A. Yes. And I believe the board can
7 include a condition if it approves the project
8 that the applicant demonstrate that the site is
9 in compliance with all DEP regulations.
10 Q. Did you analyze the zoning ordinance
11 to see what other zones permits a mid-rise
12 residential or multi-family residential dwelling?

13 A. No.

14 Q. So it's not relevant to your
15 testimony that other zones permit -- would permit
16 the same type of use with different coverages and
17 different minimum acreage requirements?

18 A. No.

19 Q. And that's not -- that does not
20 evidence the intent of the governing body to vary
21 depending upon the zone different building
22 coverages, lot coverages or lot areas?

23 A. The governing body does not have
24 anything to do with varying the zone, absolutely
25 nothing. It's outside the jurisdiction the

Celeste A. Galbo, CCR, RMR

9

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DeNiscia - Cross

1 governing body.

2 Q. Isn't it fair to say that the
3 governing body is the entity that places by way
4 of the zoning ordinance the minimum requirements
5 for each zone?

6 A. Yes.

7 Q. So if the governing body decides
8 that it has a dozen zones -- and I don't know
9 whether it's a dozen but say a dozen zones -- and
10 five or six of the zones they're permitting this
11 use, the governing body can say, in this zone I
12 want 35 percent building coverage, in the P2 Zone
13 they say they want 25 percent, in another zone
14 they might want higher? The governing body gets

15 to do that?

16 A. Yes, um-hum.

17 Q. So is it not relevant to see if when
18 you're looking at variances whether they're
19 consistent with the master plan and the zoning
20 ordinances, to see what the governing body has
21 done in other zones for the same type of use?

22 A. No, it's not relevant at all.

23 Q. Now, you're aware that the site plan
24 shows -- we talked about the 20 foot access
25 easement for Transco, there's also a maintenance

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¶

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DeNiscia - Cross

1 area, I believe, on the property?

2 A. I'm not familiar with the
3 delineation of that.

4 Q. Are you aware of anything with
5 respect to the access, the maintenance area, the
6 staging area?

7 A. No.

8 Q. Anything dealing with the Transco
9 operations on the property?

10 A. No.

11 Q. Is it relevant that there's another
12 use on the property which should be viewed also
13 in the context of this proposal?

14 A. What other use is that? I just
15 asked you a question.

16 Q. There's the Transco access, there's
17 a maintenance area and staging area. If you

18 assume that, isn't it relevant to review this
19 planning of this project not only the proposed
20 residential project but where that is?

21 A. Oh yes, definitely.

22 Q. Okay. Now, is there any plan that
23 you're aware of -- and I know I had objected at
24 the last hearing and Mr. Alampi said you were
25 going to get into it -- that you would prepare an

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¶

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DeNiscia - Cross

1 actual plan that measures -- I know you and Mr.
2 Alampi don't agree -- but that measures if the
3 board -- and the board's planner is correct or
4 we're correct -- measures the actual square
5 footage of the rear -- the actual distance of the
6 rear yard setback?

7 A. I tried to do it and I have no idea
8 how to do it. The ordinance doesn't give me any
9 indication where to measure. It just refers to
10 the qualifier of the slope and the cliff face,
11 those are the only two. The cliff face is easy.
12 But the slope, as you pointed out, is from let's
13 say zero up until this point. Well, where do you
14 measure it on a slope? It doesn't say. So
15 somebody came up with this 15 feet here. I have
16 no idea, if you asked me to do it, I would have
17 no idea how to do it. Strictly I would say where
18 there is no slope you have to measure but the
19 ordinance doesn't tell you that.

1-20-11 Apple View
20 Q. When you look at C4.1 of the site
21 plan and that's A-7 which is the brown map, is it
22 fair to say that this grading that's shown on
23 this property is -- only shows the existing
24 grading at the center line of the building?
25 A. I have no idea. I know it's a

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♀

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DeNiscia - Cross

1 section but I don't know where the section is.
2 Q. Okay. Can you read this A-7?
3 A. Well, let's say you read it and I'll
4 take your word for it.
5 Q. And so this C4.1 site plan doesn't
6 show the ground level or slope or cliff face or
7 whatever with respect to either the north side of
8 the property or the south side of the property?
9 A. Yes.
10 Q. Is that correct?
11 A. Yes, this is one section.
12 Q. It only shows the center section?
13 A. Yes.
14 Q. So if, again, assuming that the rear
15 setback is calculated differently than what you
16 and Mr. Alampi say, should there not be that
17 calculation on the northerly side, the center of
18 the property, and the southerly side to show the
19 varying setbacks?
20 A. That's a very good question, but the
21 ordinance doesn't tell us where to do that.
22 You're saying get three or four sections and show

23 what the slope is. Okay, so we have a building
24 and four diagrams like this. Where do we measure
25 from and to? It's not clear.

Celeste A. Galbo, CCR, RMR

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DeNiscia - Cross

1 Q. Isn't it -- don't many instances
2 zoning ordinances don't give it precisely and so
3 from a planning standpoint you say let me show
4 that setback at various locations?

5 A. Let me explain it this way. Let's
6 assume we didn't have that slope and we were
7 discussing the rear setback of the building. And
8 this were the property line but it's an odd
9 shaped property like we have. We have a varying
10 rear yard, rear property line. We would, as you
11 said, take measurements from various points or
12 multiple points along that rear property line,
13 measure it to the building and then have a range
14 of setbacks, 15 feet to 75 feet, and then
15 calculate how much of the building is in
16 violation of the 40 foot setback requirement.
17 That's easy.

18 Let's do that here, where do we
19 start? The ordinance doesn't tell us where to
20 start. That's the problem. It just tells us if
21 there's a 30 percent slope, then you go to the
22 cliff face and measure back.

23 Q. According to your interpretation.

24 A. No, according to the ordinance,

1-20-11 Apple View
25 cliff face, it's clear. This isn't a cliff face.

Celeste A. Galbo, CCR, RMR

7

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DeNiscia - Cross

1 And if it is, where does it start? Does the
2 cliff face start on the ground here? Or way out
3 near River Road? Or is it halfway? This is
4 hypothetical, I don't know.

5 Q. So you're saying over a definition
6 that calculates the first floor to that -- the
7 outer surface of the Palisades --

8 A. Yes.

9 Q. -- absent that, you're saying you
10 identified the exposed rock and even if you go
11 subterranean, you do this calculation, even when
12 the cliff face is 40 feet above where you're
13 calculating from?

14 A. Yes. I don't know where the exposed
15 rock came in because there is no discussion of
16 exposed rock in the ordinance, that's the
17 problem. I know you had that discussion with
18 Miss Greco about is the exposed rock part of the
19 Palisades and part of the cliff. Whether it is
20 or it isn't isn't the point. The ordinance
21 doesn't provide enough information for somebody
22 to come in and make the measurement that you're
23 discussing. Which I think is a good idea if you
24 could figure out a place to start.

25 MR. LAMB: I'm going to pass out

DeNiscia - Cross

1 again Figure 14. And I know we're up to 0-8,
2 Mr. Chairman, but I don't know whether we
3 previously marked this. My recollection is that
4 we didn't.

5 MR. MUHLSTOCK: I don't think you
6 did. It's part of the ordinance, correct?

7 MR. LAMB: Right.

8 MR. MUHLSTOCK: I don't think you
9 did.

10 MR. LAMB: Does the board want a
11 copy of this?

12 (Handed.)

13 (Objector's Exhibit 8, copy of Figure
14 14, was received in evidence.)

15 Q. With respect to Figure 14, Mr.
16 DeNiscia, isn't it fairly simple how they
17 calculate it, they take a perpendicular line to
18 the exterior portion of whatever that is, that
19 mountain cliff whatever, that's how they do it?

20 A. No, well, it's simpler than that.
21 They take it from the more vertical portion of it
22 as it rises up. If you connect where that rear
23 yard arrow, dimension arrow is, the end of that
24 the arrow is on the portion of the cliff face
25 that is more vertical.

Celeste A. Galbo, CCR, RMR

DeNiscia - Cross

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1 Q. Okay.

2 A. So for me I look at the intent and
3 compare that to the ordinance wording, it says
4 cliff face. On this diagram if I had a pencil or
5 a red pencil I would draw, color in what I think
6 is the cliff face, the more vertical, not this
7 horizontal portion.

8 Q. Is there any portion of the site
9 plan that shows this other than the A-7 which
10 we've been talking about which comes closest?

11 A. I don't think so, not that I'm
12 familiar with. There may be but I'm not familiar
13 with it.

14 Q. So you can't tell me right now if
15 you're not -- if -- you're saying I think that
16 the rear yard setback is 140 -- about 140 feet I
17 think it is measured up to that cliff face marked
18 on A-7?

19 A. No, I think it's 140 feet from the
20 rear property line. Is it from the cliff face?

21 Q. I'm not sure.

22 A. I'm not sure. But it's more than 40
23 feet.

24 Q. But it's more than 40 feet?

25 A. Yes.

Celeste A. Galbo, CCR, RMR

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DeNiscia - Cross

1 Q. But if the calculation is not
2 correct, somebody has to do the calculation and
3 revise it and put it on the bulk schedule with a

4 calculation, do they not?

5 A. That's the question I have been
6 asking and the ordinance, how do you do that?
7 where do you start? It doesn't tell you. It
8 qualifies and says if a site has 30 percent
9 slope. Well, obviously this has a 30 percent
10 slope. Then it says follow the Figure 14.
11 Figure 14 you have to go up the cliff. The
12 problem is that this little profile doesn't match
13 the schematic.

14 MR. LAMB: I'm going to mark as O-19
15 is.

16 MR. ALAMPI: O-19.

17 MR. LAMB: I'm sorry, O-9.

18 MR. ALAMPI: Did you mark this as
19 O-8, Jay?

20 MR. LAMB: Yes.

21 I'm going to mark as O-9, Figure 13.

22 (Objector's Exhibit 9, copy of Figure
23 13, was received in evidence.)

24 Q. Mr. DeNiscia, so we just marked as
25 O-9, Figure 13. Is it fair to say that that

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DeNiscia - Cross

1 exterior mountain cliff whatever is labeled
2 generically the Palisades?

3 A. Yes.

4 Q. And so isn't there evidence in the
5 zoning ordinance that that area is called the

1-20-11 Apple View
6 Palisades by virtue of the specific diagram that
7 labels it?

8 A. I don't think that's enough. I
9 would use the -- since there is no definition in
10 the ordinance, I would use the dictionary
11 definition of Palisades.

12 MR. LAMB: Just bear with me for one
13 seconds. I'm going to mark as O-10, a resolution
14 of the Township of North Bergen dated May 28,
15 2008. And I'd ask you to review that quickly.
16 It's only one page.

17 (Objector's Exhibit 10, last page of
18 a resolution of the Township of North
19 Bergen dated May 28, 2008, was received in
20 evidence.)

21 MR. ALAMPI: Well, is there a
22 signature line?

23 MR. LAMB: That's all I have with
24 the date. I have one page and it's dated May
25 28th.

Celeste A. Galbo, CCR, RMR

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DeNiscia - Cross

1 MR. MUHLSTOCK: It's part of the
2 ordinance.

3 MR. LAMB: I believe it's part of
4 the new ordinance attached --

5 MR. MUHLSTOCK: It's the last page
6 of the new zoning ordinance.

7 MR. ALAMPI: What do you mean new
8 zoning ordinance?

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9 MR. MUHLSTOCK: The most recent
10 currently in effect zoning ordinance, the last
11 page.

12 MR. ALAMPI: Let me see this book.

13 MR. MUHLSTOCK: That's the last
14 page.

15 MR. ALAMPI: The code book is dated
16 June of 1999. I thought maybe you meant 2010 or
17 something. Okay.

18 Q. Does this not say in paragraph 2
19 that it's the intent of the township to assure
20 that the Palisades is adequately protected and
21 not visually impaired?

22 A. Yes.

23 Q. And they refer in the recitals to
24 the Palisades cliff area?

25 A. Yes.

Celeste A. Galbo, CCR, RMR

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DeNiscia - Cross

1 Q. That's how they refer to it?

2 A. Yes.

3 Q. Is there any doubt that this one,
4 all the brown and all the exterior is the
5 Palisades cliff area?

6 A. Yes, you could say that.

7 Q. And if it's the Palisades cliff
8 area, then any building that's going wider than
9 it should be or intruding into that area is not
10 maximizing the Palisades cliff area; is that

11 correct?

12 A. Not necessarily. I think what's
13 missing in this is the standards by which the
14 board judges that. How would you possibly
15 translate this into an evaluation of a site plan?
16 Does the board just vote on this impairs or does
17 not impair or are there some sort of standards
18 that goes along with that?

19 Q. I think what it shows is --

20 A. I don't know.

21 Q. I think what it shows is the intent
22 and isn't it fair to say that the intent of the
23 township in reviewing its zoning ordinances is
24 relevant if there's any ambiguity or you're
25 claiming you're not sure how it's calculated,

Celeste A. Galbo, CCR, RMR

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DeNiscia - Cross

1 isn't that something that's relevant to make a
2 final decision?

3 A. Yes, but the ordinance has done that
4 under section P2 when it shows you how to measure
5 that setback so you avoid impairment and that's
6 from the cliff face. It's very explicit. I
7 would agree with you if there is no standard in
8 the P2 District then the board would say well,
9 you know, we will impose the standard on the
10 setback but it's -- that's not the case.

11 Q. Now, Mr. DeNiscia, you -- wait a
12 second, I'm trying to cut this short. I know
13 it's difficult.

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14 A. Did you say something to me? I'm
15 sorry, I wasn't listening.

16 Q. I'm bypassing exhibits. And I'm
17 going to mark O-11 we already discussed it, that
18 was Article III b-1 the purpose and in the
19 District P-2 Zone?

20 A. Oh, okay.

21 Q. You already read from that?

22 A. Yes, I did.

23 MR. MUHLSTOCK: Let me ask you a
24 question, Mr. Lamb, that's from the ordinance,
25 right?

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DeNiscia - Cross

1 MR. LAMB: Yes.

2 MR. MUHLSTOCK: Why are you marking
3 it?

4 MR. LAMB: Because I'm going to go
5 through it with him line by line.

6 Q. Now, Mr. DeNiscia, you quoted in the
7 purposes of the P-2 Zone the reference to maximum
8 potential development against the Palisades?

9 A. Yes.

10 Q. And you quoted about the flexibility
11 of having the development?

12 A. Yes.

13 Q. Is it not fair to say that the
14 qualification there to that is the quote "while
15 preserving the view of and from the cliff from

1-20-11 Apple View
16 within as well as outside the waterfront area
17 through height and lot coverage restrictions"?
18 A. Yes.
19 Q. Is it not fair to say that the
20 coverage restrictions on this proposal are
21 violated?
22 A. Yes.
23 Q. Therefore that qualification to that
24 allowing maximum potential development is not
25 satisfied?

Celeste A. Galbo, CCR, RMR

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DeNiscia - Cross

1 A. Well, that's not quite the case.
2 This preamble sets the stage for the standards
3 below. And what the ordinance is doing is saying
4 okay, if we want to control the height we're
5 going to have a maximum height of 75 feet above
6 River Road. And if we want to control the
7 coverage, we're going to have a maximum coverage
8 of 25 percent. So that was -- that's been
9 reflected in the ordinance, this intent.
10 Now, the applicant is asking for a
11 variance which is perfectly acceptable to ask for
12 a variance. This provision is also subject to
13 variance through its standards. So the ordinance
14 has taken that into account and enacted
15 standards. The applicant is proposing a building
16 that does not even go to the height limit that is
17 permitted but substantially below in order to
18 counter the increase in coverage.

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19 Q. But this ordinance, this III b-1
20 talks about the preserving the view of and from
21 the cliff.

22 A. Right.

23 Q. And so is it your testimony that
24 this ordinance only means the view of and from
25 this little cliff face area up here on A-7?

Celeste A. Galbo, CCR, RMR

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DeNiscia - Cross

1 A. Well, if we take the English
2 dictionary definition of cliff, yes. I don't
3 know if that's the intent of the ordinance. We
4 don't know. But the cliff is a vertical or
5 nearly vertical area.

6 Q. Let's take a step back. You're a
7 planner, you've been a planner for decades. From
8 a planning standpoint whether you're trying to
9 preserve a view of the cliff and it just says
10 cliff, the name of this cliff is it not the
11 Palisades, that was shown on Figure 13, that's
12 the name of this?

13 A. Yes.

14 Q. It doesn't say cliff face, it just
15 says cliff?

16 A. That's correct.

17 Q. You saw the township resolution that
18 says the Palisades cliff area?

19 A. Yes.

20 Q. Isn't it important under the zoning

1-20-11 Apple View
21 ordinances to look at the view of and from this
22 whole area?

23 A. Yes, and I'll answer it the same
24 way, this is the preamble to what comes below.
25 The preamble has been expressed, the intent has

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DeNiscia - Cross

1 been expressed in the standards below it, that's
2 how -- that's setting up the reasons for the
3 standard.

4 There are standards. If there were
5 no standards, this would be open to
6 interpretation on every single site; what is a
7 cliff? How do we preserve it? What's
8 impairment? But the ordinance tells us how and
9 it's true the applicant is requesting a variance
10 of one of those requirements.

11 Q. But the first clause is separated
12 from the second clause by a semicolon; is that
13 correct?

14 A. So what? I'm being facetious. The
15 grammar doesn't matter, you know that.

16 Q. I don't know that. I think
17 grammar --

18 A. No, it doesn't matter.

19 Q. When you're trying to figure out
20 what a zone ordinance means grammar doesn't
21 matter?

22 A. No, it's very clear what it means.
23 It's very clear, but it continues, that's not the

24 only standard. And the way this standard is
25 handled in the dimensional section of the

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DeNiscia - Cross

1 ordinance is -- there's an explicit height
2 requirement and an explicit coverage requirement.
3 So if in the hypothetical case that you mentioned
4 if this were an office building and we can get
5 into 22 percent coverage but have it the full 75
6 feet in height, that would meet that intent.

7 Q. Except for the fact that if you went
8 up higher in height, would you not expand the
9 view of the cliff area to the north and to the
10 south at the expense of possibly losing the view
11 of the cliff where the extra height went?

12 A. Yeah, but then you get into a very
13 practical problem. When you have an applicant
14 that meets the height and coverage requirement
15 how can you tell them oh, no, you can't build it
16 because you have to meet this requirement. And
17 then you ask well, how do you meet it; we don't
18 know there is no standard, this is subjective.
19 This is open-ended. The board can using this
20 apply any standard it wishes. And this board I
21 don't think has ever done that.

22 Q. When you talked about topography,
23 isn't it fair to say that topography -- your
24 argument is that topography is part of the C(1)
25 hardship variance that this is top graphically

DeNiscia - Cross

1 challenged?

2 A. Yes. Good word.

3 Q. Does not the ordinance specifically
4 allow for topography? Specifically you have
5 Figure 13 that shows, they have measurements and
6 to show what's the distance when you have the
7 topography. The ordinance already incorporates
8 the fact that this has topographical issues?

9 A. No, I don't think it does. I don't
10 think it -- the standards, the only standard is
11 that that peculiar measurement from whatever the
12 cliff area, cliff face or slope, that's the only
13 standard that relates. The rest of the standards
14 are explicit in the table, all the setbacks,
15 coverage, height and so on. There's nothing
16 that's expressed in terms of topography except
17 for that standard.

18 Q. Now, you're aware that the
19 application does say that the southerly portion
20 of the building is extremely close to the lot
21 line of the Galaxy property?

22 A. Well, I don't know if it says that,
23 but it meets the side yard requirement.

24 Q. But at its closest point it's only
25 10 feet; is that correct?

DeNiscia - Cross

- 1 A. I have to look at the plans.
- 2 Q. You can take out the site plan.
- 3 A. I won't disagree with you.
- 4 Q. That's fairly -- even though you
- 5 calculate side yard by the average, 10 feet is
- 6 fairly close to the property line for a building?
- 7 A. Yes. Yes.
- 8 Q. Compared to the Galaxy building; is
- 9 that correct?
- 10 A. Yes.
- 11 Q. Now, you talked about the benefits.
- 12 You did a C(2) analysis and you balanced the
- 13 benefits. One of the benefits you said is
- 14 because the project proposes one and two
- 15 bedrooms?
- 16 A. Um-hum.
- 17 Q. Is that a zoning and planning
- 18 benefit because you're proposing one and two
- 19 bedrooms?
- 20 A. Absolutely.
- 21 Q. That's a benefit, zoning and
- 22 planning, if I propose a one and two bedroom
- 23 project, that helps me get a variance granted
- 24 because I have one and two bedrooms in it; is
- 25 that what your testimony is as a planner?

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DeNiscia - Cross

- 1 A. No, that statement is generalized.

2 In specific applications that could be a benefit.
3 Certainly not in every zoning variance
4 application.

5 Q. You said that one of the other
6 benefits is preservation of the cliffs and the
7 ridge line?

8 A. Yes.

9 Q. This has -- where you described the
10 ridge line, this project is not even close to the
11 ridge line.

12 A. Exactly.

13 Q. So how is that a benefit?

14 A. For that reason, John.

15 Q. It's neutral.

16 A. For that reason, it's not even
17 close.

18 Q. The project, where the project is
19 neutral, you're going to weigh that as far as a
20 benefit?

21 A. The intent of the ordinance is not
22 to negatively impact the views to and from the
23 cliff face, the cliff, cliff area and the ridge
24 line. This application does not.

25 Q. Another benefit you said, you're

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DeNiscia - Cross

1 taking away the site, the overgrown site and the
2 maintenance area.

3 A. Yes.

4 Q. Even though if you assume that

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5 that's controlled by the developer and the
6 developer doesn't maintain it, cut the grass,
7 et cetera, that's a benefit for a C(2) analysis,
8 is that what your testimony is?

9 A. Yes, yes.

10 Q. You said that the project complies
11 with the ADA?

12 A. No, I didn't say that. I said that
13 all of the units are barrier free and potentially
14 ADA compliant.

15 Q. So this is -- you believe this is
16 ADA compliant?

17 A. No. Let me say it again. The
18 building has elevators.

19 Q. Right.

20 A. So that every floor is a ground
21 floor or single floor. All of the units are
22 potentially adaptable to barrier free living.
23 They all do not -- are not designed but they can
24 be adapted.

25 Q. Your testimony is where a project

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DeNiscia - Cross

1 complies with the barrier free requirements,
2 that's a C(2) benefit under the Municipal Land
3 Use Law in New Jersey, is that your testimony?

4 A. Oh, sure, yes. Without a doubt.

5 Q. It is a legal requirement, is it
6 not, that you have to comply with the barrier

1-20-11 Apple View
7 free access of the ADA, this building has to,
8 that's a legal requirement, is it not, in New
9 Jersey and federal as well?
10 A. Yes, according to the ADA,
11 absolutely.
12 Q. You're saying when a project
13 complies with something that's required by law,
14 that's a benefit when you're weighing and
15 balancing benefits and detriments?
16 A. Oh, absolutely.
17 Q. Now, you also said a benefit was
18 providing the required number parking spaces.
19 A. Yes.
20 Q. And we agree I think that we the
21 requisite number.
22 A. Yes.
23 Q. I think some them are off in size
24 but you got the requisite number?
25 A. Right.

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DeNiscia - Cross

1 Q. You're saying when somebody complies
2 with the number of parking spaces in the zoning
3 ordinance, when you're doing a C(2) analysis
4 that's a benefit?
5 A. Yes.
6 Q. Isn't it true that then any project
7 that complies with the ADA and the barrier free
8 and any project that has complying parking then
9 is going to take that balancing test and put some

1-20-11 Apple View

10 very positives in the balancing test to get a
11 C(2) variance, doesn't every project have this?

12 A. I can't speak for every project, I
13 can only speak for this one and you have to know
14 all the conditions.

15 Q. Okay.

16 MR. LAMB: I'm really trying to
17 zoom.

18 THE CHAIRMAN: Okay.

19 Q. One of the benefits is the Storm
20 Water Management Plan. You said that because it
21 complies with the storm water management
22 requirements and handles storm water and
23 drainage, that's a benefit?

24 A. Yes.

25 Q. And it doesn't matter that every

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DeNiscia - Cross

1 project has to comply with the storm water
2 management rules and regulations or ordinances?

3 A. No.

4 Q. So even though that's a legal
5 requirement applicable to every project, you're
6 going to put that as one of your benefits?

7 A. Sure.

8 Q. Now, you said throughout this that
9 the use is permitted?

10 A. Yes.

11 Q. This use is one of those four

1-20-11 Apple View
12 permitted uses. Is it fair to say that this use
13 is only permitted if the minimum lot size is five
14 acres?

15 A. No.

16 Q. Does not the zoning ordinance say
17 that?

18 A. No, that would make it a conditional
19 use and this is specifically not a conditional
20 use.

21 Q. Is that condition applicable to any
22 other use in the zone other than this zone?

23 A. It doesn't appear to be, no.

24 Q. The five acre requirement is only
25 applicable to this use?

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1 A. Yes.

2 Q. So it's fair to say that the five
3 acre minimum is not a requirement of general
4 applicability to the whole zone and all the uses
5 because it only applies to the multi-family use?

6 A. Yes.

7 MR. LAMB: Mr. Chairman, just give
8 me two more seconds. I'm skipping some
9 non-essential parts.

10 Okay, Mr. Chairman, I have no further
11 questions.

12 THE CHAIRMAN: I do want to clarify
13 one thing from the testimony, one of the things
14 that you testified was that the P-2 Zone went

1-20-11 Apple View

15 east of River Road, it doesn't.

16 THE WITNESS: It doesn't, okay, I
17 read the zoning ordinance incorrectly. It's the
18 waterfront section of that that goes -- it's all
19 under P-2 but it's a different zone district.

20 THE CHAIRMAN: It's P-1 actually.

21 THE WITNESS: P-1.

22 THE CHAIRMAN: Okay, given the hour,
23 folks, we need to talk to actually both of them,
24 we need to schedule another meeting.

25 Mr. Lamb, how many witnesses are you

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1 going to have?

2 MR. LAMB: I will have at least two
3 professional witnesses.

4 MR. MUHLSTOCK: Who are they going
5 to be?

6 MR. LAMB: I'm going to have my
7 planner Pete Steck and I'm having a pipeline gas
8 safety expert. And I was waiting to see what the
9 applicant provided by way of proof so we have
10 someone lined up. Just for the record my
11 objective is to have a report prepared and
12 present it at least, you know, a reasonable time
13 before the hearing so that he just doesn't come
14 here and starts testifying and people don't
15 follow it. So we will have a written report
16 presented in advance of the hearing.

1-20-11 Apple View
17 THE CHAIRMAN: All right, that's
18 good but don't give it to us at the last minute.
19 MR. LAMB: No, no, no. You will
20 have it -- my expert said he probably could be
21 finishing the report within two or three weeks.
22 So my goal was to have -- depending upon who is
23 ready, my goal is to have Peter Steck testify --
24 I'd rather have Peter Steck testify at the end
25 but I'll juggle him so that Peter Steck can

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1 testify.
2 Now, Mr. Chairman, also just with
3 respect to the gas expert, he's flying in from
4 the State of Washington and so we will -- it will
5 be important to make sure that we have an entire
6 meeting devoted to him because he's only going to
7 be in the area for that one day.
8 THE CHAIRMAN: So you anticipate two
9 different meetings?
10 MR. LAMB: Yes.
11 MR. MUHLSTOCK: Why would you need
12 an entire meeting for the pipeline gas safety
13 expert?
14 MR. LAMB: I think you're going --
15 he's flying from the State of Washington, he's
16 going -- it's going to be at least two hours, I
17 mean.
18 MR. MUHLSTOCK: Two hours of direct?
19 MR. LAMB: No, I think by the direct

1-20-11 Apple View

20 and cross examination it will be two hours. I
21 mean the problem with him is you can't make him
22 come back.

23 THE CHAIRMAN: Who is doing the
24 report, he is?

25 MR. LAMB: Yes.

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1 THE CHAIRMAN: I mean, is it him or
2 the planner?

3 MR. LAMB: No, the planner is not
4 doing the report. I have his schedule and we can
5 fit in the planner when you have --

6 MR. ALAMPI: John, can you identify
7 this gentleman? Because there may other experts
8 on the East Coast.

9 MR. LAMB: We've already retained
10 him and he's already started.

11 MR. MUHLSTOCK: Do you know his
12 name?

13 MR. LAMB: Yes, Richard Kurprewecz,
14 K-U-R-P-R-E-W-E-C-Z and I'll confirm his name.
15 I'm not 100 percent sure of the spelling.

16 THE CHAIRMAN: Okay.

17 MR. LAMB: So, Mr. Chairman, right
18 now we have Calisto Bertin was never finished
19 with the public, we have Mr. DeNiscia to be
20 finished with the public, I have Peter Steck, I
21 may have some fact witnesses, I'm not sure.

1-20-11 Apple View
22 MR. MUHLSTOCK: Okay, what fact
23 witnesses do you think you're going to have?
24 MR. LAMB: I may have a couple
25 residents about conditions that are relevant and

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1 I have the gas pipeline expert.
2 THE CHAIRMAN: Right. Try to
3 understand we're not -- we're trying not to drag
4 this out forever. It has been going on long
5 enough, that's why we're asking you specifically
6 who you're going to have.
7 MR. LAMB: And I have no problem
8 advising it. Mr. Alampi and I -- we share -- I
9 promised Mr. Alampi before each meeting I'm going
10 to give him the names of who I have so he can
11 prepare.
12 MR. MUHLSTOCK: I may have a
13 conflict with Mr. Steck, you know. He's been
14 utilized by clients of our firm.
15 MR. ALAMPI: Actually I use him
16 quite often. But that's okay. I guess.
17 MR. LAMB: If you're currently using
18 him on an application --
19 MR. MUHLSTOCK: I'm not currently
20 using him but our firm has absolutely been
21 involved in clients that have used him,
22 absolutely. I know it for a fact.
23 MR. LAMB: But if you had a current
24 application with him, it might be different.

25

MR. MUHLSTOCK: Are you going to

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1 hire another expert?

2 MR. LAMB: We're not hiring another
3 expert. We can hire another attorney.

4 MR. MUHLSTOCK: I don't think so.

5 MR. LAMB: Okay.

6 MR. ALAMPI: Chairman, your meetings
7 are usually on Thursday night?

8 THE CHAIRMAN: For these special,
9 how is February 17th?

10 MR. ALAMPI: No, I've already got
11 three meetings that night.

12 (Discussion off the record.)

13 THE CHAIRMAN: Ladies and gentlemen,
14 the next two meetings on this application, folks,
15 in the back there, the next two meetings on this
16 application will be Thursday, March 3rd at 7 p.m.
17 in these chambers and then a week later on March
18 10th at 7 p.m. in these chambers. You will not
19 receive new notice, this is your notice that I'm
20 giving now. And I see a number of people have
21 left so if you would, if you know some of them,
22 please let them know. Mrs. Wong.

23 MS. WONG: Since we don't seem to
24 have time tonight to cross examine the planner,
25 will he be back at the next meeting so the public

1 will have a chance to ask him questions?

2 THE CHAIRMAN: Yes. On the 3rd.

3 MS. WONG: I realize that you were
4 trying to schedule the two meetings with Mr. Lamb
5 and Mr. Alampi but if the public has an expert
6 witness that they want to present, will you allow
7 us to do so?

8 MR. MUHLSTOCK: Well, you got to
9 tell us.

10 MR. ALAMPI: How are they going to
11 question him? I don't know if that can be done.

12 MR. LAMB: The public can always
13 bring a witness.

14 MR. MUHLSTOCK: Someone can bring
15 their own witness. You got to tell us who it's
16 going to be.

17 MS. WONG: Well, when we find one,
18 we will.

19 (Discussion off the record.)

20 THE CHAIRMAN: All right. The Chair
21 will entertain a motion to adjourn.

22 MR. BASELICE: Motion.

23 MS. BARTOLI: Second.

24 THE CHAIRMAN: Moved and seconded.
25 All in favor?

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(Chorus of ayes.)
THE CHAIRMAN: Opposed?
Meeting stands adjourned.
(Time noted: 10:27 p.m.)

Celeste A. Galbo, CCR, RMR

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9	EXHIBITS		
10	Applicant's	ID	Evid.
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12	Exhibit 13 four composite photos		
13	of the site and adjacent		
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16	Exhibit 8 copy of Figure 14		128
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Celeste A. Galbo, CCR, RMR

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1 CERTIFICATE

2 STATE OF NEW JERSEY)

3) ss

4 COUNTY OF BERGEN)

5 I, CELESTE A. GALBO, a Certified

6 Court Reporter and Notary Public within and for

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6 the State of New Jersey do hereby certify:

7 That all the witnesses whose

8 testimony is hereinbefore set forth, was duly

9 sworn by me and that such is a true record of the

10 testimony given by such witnesses.

11 I further certify that I am not

12 related to any of the parties to this action by

13 blood or marriage and that I am in no way

14 interested in the outcome of this matter.

15 In witness whereof, I have hereunto

16 set my hand this 8th day of February 2011.

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CELESTE A. GALBO
License No. 30X100098800

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Celeste A. Galbo, CCR, RMR