

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 Applicant.  
-----X

8 March 30, 2011  
9 7:05 p.m.

10 B E F O R E:

11 THE NORTH BERGEN PLANNING BOARD

12 PRESENT:

13 HARRY D. MAYO, III, Chairman  
14 GEORGE AHTO, JR., Vice Chairman  
15 STEVEN SOMICK, Member  
16 PATRICIA BARTOLI, Member  
17 RICHARD LOCICCHIO, Member  
18 SEBASTIAN ARNONE, Member  
19 MANUEL FERNANDEZ, Alternate Member  
20 REHAB AWADALLAH, Alternate Member

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

24 Geraldine Baker, Board Clerk  
25 Jill Hartmann, Board Planner  
James Fordham, Board Engineer

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

Celeste A. Galbo, CSR, RMR

1 3-30-11 Appreview  
2 A P P E A R A N C E S:  
3 ALAMPI & DeMARRAIS  
4 Attorneys for the Applicant  
5 1 University Plaza  
6 Hackensack, New Jersey 07601  
7 BY: CARMINE R. ALAMPI, ESQ.  
8  
9 BEATTIE & PADAVANO, LLC  
10 Attorneys for Objectors Galaxy Towers  
11 Condominium Association, Inc.  
12 50 Chestnut Ridge Road  
13 Montvale, New Jersey  
14 BY: JOHN J. LAMB, ESQ.  
15 DANIEL STEINHAGEN, ESQ.  
16  
17 MARIA GESUALDI, ESQ.  
18 Attorney for Objector Township of  
19 Guttenberg  
20 6806 Bergenline Avenue  
21 Guttenberg, New Jersey 07093  
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1 THE CHAIRMAN: Meeting is called to  
2 order. Pursuant to the Open Public Meetings Act,  
3 please be advised that notice of this meeting was  
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4 faxed to the "Journal Dispatch" and "Bergen  
5 Record" on March 14, 2011 advising that the North  
6 Bergen Planning Board will hold a meeting on  
7 March 30, 2011 at 7 p.m. in the chambers of the  
8 municipal building located at 4233 Kennedy  
9 Boulevard, North Bergen, New Jersey 07047.

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

15 Gerry, please call the roll.

16 (Whereupon roll call is taken and  
17 Member Robert Basalice is absent.)

18 THE CHAIRMAN: All right.  
19 Continuation of Case No. 4-10, 7009 to 7101 River  
20 Road.

21 MR. MUHLSTOCK: Mr. Chairman, before  
22 the testimony continues, I just want to note for  
23 the record that I have received written  
24 certifications from certain board members with  
25 respect to reading of past transcripts. Mr.

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1 Locricchio certified that he has read what would  
2 be the transcript of March 10; Ms. Bartoli has  
3 read the transcript of March 3; and Vice Chairman  
4 Ahto has read the transcript of March 3. So with  
5 the exception of Mr. Basalice who is not here,

6 who is absent anyhow, all of the board members  
7 that are here have read or have been present for  
8 all of the hearings.

9 THE CHAIRMAN: All right. Thank  
10 you, Mr. Muhlstock. All right. Mr. Lamb.

11 MR. LAMB: Yes, sir. Good evening,  
12 Mr. Chairman and members of the board, John J.  
13 Lamb from the law firm of Beattie & Padavano.

14 Just for the record, the board has  
15 been forwarded a letter that I sent dated March  
16 29th. I provided 18 or so copies to the board  
17 secretary and that's been distributed. I think  
18 for purposes of keeping the exhibits that should  
19 be marked Exhibit 21 which is the next exhibit  
20 according to my notes.

21 MR. MUHLSTOCK: Which report are you  
22 referring to?

23 MR. LAMB: No, my letter to the  
24 board dated March 29th that responds on to some  
25 but not all of the recent correspondence that's

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1 been sent.

2 MR. MUHLSTOCK: I don't know that  
3 we've been marking your all of your letters,  
4 Mr. Lamb, honestly. They're argument. I don't  
5 think we've been marking them along the way.

6 MR. LAMB: I don't we've marked all  
7 of them but several of them we've marked. I  
8 think in this case we marked the Palisades Slope

9 stability study with my cover letter.

10 MR. MUHLSTOCK: That was marked,  
11 separately, yes, that was marked separately.

12 MR. LAMB: But I think that was also  
13 with my cover letter as well.

14 MR. MUHLSTOCK: Well, instead of --  
15 I don't think it's really appropriate to mark in  
16 as exhibits argument. I would suggest that if  
17 there are documents attached to your letters,  
18 that those should be brought out through your  
19 witness or separately if you want and make us  
20 aware of that.

21 MR. LAMB: Okay. I'm also  
22 responding to letters from various professionals  
23 that have not testified. So if it's understood  
24 that everybody is just making argument in that  
25 and it's not testimony, then that's fine. It's

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1 in the record anyway.

2 MR. ALAMPI: Well, there are -- let  
3 me chime in. Carmine Alampi for the applicant,  
4 Apple View LLC. There are reports and comment  
5 letters from professionals hired by the board  
6 specifically to weigh in on the questions. Those  
7 should be marked, but if they're just letters,  
8 generally I think I would agree with Mr.  
9 Muhlstock. For example, Mr. Lamb's letter has an  
10 attachment. The attachment I guess could be

11 marked, not his legal argument, that we can  
12 reserve.

13 MR. LAMB: Well, the attachment has  
14 already been attached to a Boswell letter dated  
15 October 12th of 2010, I believe, so it's not a  
16 new attachment.

17 MR. ALAMPI: So then we have no  
18 problem with it.

19 MR. MUHLSTOCK: Okay.

20 MR. LAMB: Well, I guess my question  
21 is if we're responding to all the Boswell letters  
22 and they're all written by Mr. McGrath, I know  
23 Mr. McGrath is convalescing because of some  
24 surgery, but obviously we disagree strongly with  
25 the contents of those letters.

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1 MR. MUHLSTOCK: Okay.

2 MR. LAMB: Where we left off,  
3 Mr. Chairman and members of the board, was the  
4 testimony of Peter Steck. If you recall it was  
5 rather late. I had a couple more questions for  
6 Mr. Steck and I believe Mr. Alampi had to  
7 cross-examine him, as well as members of the  
8 public. Mr. Steck had one or two revisions to  
9 the exhibit that was submitted. That exhibit was  
10 marked Exhibit 19, and so I would suggest that  
11 when we revise it, we stick it under the same  
12 number or you want to put Exhibit 19A --

13 THE CHAIRMAN: Revised --  
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14 MR. MUHLSTOCK: 19A would be fine.

15 MR. LAMB: That's fine. So with  
16 that I'd like to call Mr. Steck. He's been  
17 previously sworn.

18 THE CHAIRMAN: Okay.

19 PETER STECK, having been duly sworn by the Notary  
20 Public, was examined and testified as follows:

21 MR. LAMB: Mr. Chairman, while he's  
22 testifying, can I distribute his revised report?

23 MR. MUHLSTOCK: Certainly.

24 Mr. Alampi obviously has a copy?

25 MR. LAMB: Yes, I gave him a copy.

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Steck - Direct

1 The outline is the same. I'll leave a couple  
2 copies of this over here.

3 (Objector's Exhibit 19A, report of  
4 Peter G. Steck, revised March 30, 2011 was  
5 received in evidence.)

6 DIRECT EXAMINATION

7 BY MR. LAMB: (Continued)

8 Q. Mr. Steck, you had occasion to make  
9 some revisions on your report?

10 A. Yes.

11 Q. Okay. Can you describe to the board  
12 what revisions you made?

13 A. Yes. If the board can recall,  
14 marked as Exhibit 19 was a six-page handout, and  
15 I'll just highlight the changes that have been

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16 made. On the first page the only thing I did was  
17 change the date in the upper left-hand corner, it  
18 says revised March 30th, 2011; no other changes.  
19 If you go to the third page, in the upper  
20 right-hand side corner is P-3.

21 If you recall, I noted on Exhibit 19  
22 that the rear setback line, in my opinion, was  
23 different from what the applicant was intending,  
24 and I verbally described how to change that on  
25 your exhibits. Well, I've actually done that

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Steck - Direct

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1 here. So let me highlight, first of all, that  
2 the building footprint that's proposed is in a  
3 blue line on page P-3 of Exhibit now 19A. And  
4 above that I put corrected March 30th, 2011.  
5 What I have also added is there's  
6 kind of a rectangle with large green dots; that's  
7 the rear portion of the building that protrudes  
8 into the rear setback area. And as Mr. Lamb has  
9 characterized it, it is in a sense a negative  
10 setback since you start measuring, in my opinion,  
11 from the start of the 30 percent slope, this  
12 building, in a sense, has a negative setback  
13 because it's even closer, it's even further west  
14 than what a zero setback would allow. That  
15 rectangle which starts at the green line that  
16 says "required rear setback" and goes to the blue  
17 line that has three rows of green dots, that  
18 totals approximately 17,366 square feet. So



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19 that's the portion of the building which would  
20 not be permitted should the applicant adhere to  
21 the, in my opinion, mandatory rear yard setback.

22 As a result of pulling the building  
23 back, the average southerly side yard changes.  
24 The applicant extended the building further to  
25 the rear than would be permitted, and because of

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Steck - Direct

1 that, because the lot is not a rectangle, the  
2 space between the building and let's call it the  
3 Galaxy property line kept on increasing as you go  
4 to the back. And the applicant took advantage of  
5 that to say as long as I meet the average  
6 southerly setback, it's compliant. Well, in my  
7 opinion you should not, in calculating the  
8 average, use the portion of the building that  
9 violates the rear yard setback. So if the  
10 applicant padded here to the rear setback  
11 requirement as shown on this diagram, he's about  
12 two and a half feet too close to the southerly  
13 property line. So as you can see there, there's  
14 a dashed green line that is just inside the blue  
15 line, and that square footage that is excessive,  
16 at least on the first floor, the footprint of the  
17 building, is 278 square feet.

18 The other thing I added is along the  
19 frontage if you read the standard in the  
20 ordinance where the developer is providing a

21 sidewalk, which this developer is doing, it  
22 requires a setback of 15 feet. So I've  
23 approximated along the front where that setback  
24 should be. I have not attributed a square  
25 footage to that because as you know, the building

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Steck - Direct

1 is irregular in that front portion; the stair  
2 towers come out.

3 So as a kind of summary to this, the  
4 applicant is entitled to a footprint of 25  
5 percent of the building area which would be about  
6 25,110 square feet. If you stayed within the  
7 setbacks that I contend are the proper setbacks,  
8 the applicant could have a footprint of  
9 approximately a little over 50,000 square feet.

10 So essentially what I'm saying is  
11 that the most restrictive standard in your  
12 ordinance is the 25 percent of building coverage.  
13 And typically with many municipalities if you  
14 extract the proper setbacks, there are different  
15 places to put the building. But this ordinance,  
16 like many ordinances, does not permit the  
17 building to extend and to all of the setbacks;  
18 north, south and east and west in this case. So  
19 the regulations, in my opinion, fit together as a  
20 unit. It is typical that once you draw the  
21 proper building envelope, you can't fill it up  
22 100 percent. This is an applicant that's  
23 exceeding the maximum building coverage by 25

24 percent.

25 Q. Mr. Steck, just if there was

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Steck - Direct

1 compliance, if there was compliance with the  
2 setbacks in your opinion, and the building that  
3 was proposed was fully compliant with respect to  
4 that, what was the -- what is the amount -- the  
5 building area of that footprint on a compliant  
6 basis compared to the maximum allowed of a little  
7 over 25,000 square feet?

8 A. You'll have to ask that again. I'm  
9 not sure I followed that.

10 Q. You said that if the lot is  
11 approximately 100,000 square feet, the maximum  
12 building coverage permitted is 25 percent.

13 A. Yes.

14 Q. And so we know that the maximum  
15 permitted is a little more than I think you  
16 said --

17 A. 25,110 square feet.

18 Q. If we now look at taking away the  
19 offending setback intrusions so that this is a  
20 compliant setback, is there an approximate size  
21 of the building coverage that is warranted if  
22 they scale it back?

23 A. That's the approximately 50,000  
24 square feet. They could do much more than that.  
25 Again, there would be a -- they're allowed --

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Steck - Direct

1 Q. Well, they're allowed building  
2 coverage of 25 --

3 A. Right. In other words, that's the  
4 limiting factor.

5 Q. Right.

6 A. If -- the applicant is not entitled  
7 to make a building footprint that matches all of  
8 the setbacks. He's not entitled to meet those  
9 setbacks. The most limiting factor is the  
10 standard of 25 percent of the lot area. And  
11 again, what the applicant is doing here is the  
12 applicant has at least 17 -- I'm not even  
13 considering the side yard intrusion or the front  
14 yard intrusion. The applicant is proposing a  
15 building that has 17,366 square feet over the  
16 setback line. And, again, part of the  
17 applicant's request is to exceed not only the  
18 building coverage, which is neutral as to shape,  
19 that's just percentage of lot area, he's not only  
20 exceeding that, but he's doing it in a fashion  
21 that greatly protrudes into the rear yard. So  
22 kind of it's the double whammy. He not only  
23 wants to exceed the building footprint regardless  
24 of the shape of the property or regardless of the  
25 topography, he wants to not only do that but

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Steck - Direct

1 extend closer to the Palisades than normally  
2 would be permitted.

3 Q. Okay. Now, did you make any changes  
4 on P-4?

5 A. Yeah. P-4 is the next page. And,  
6 again, it says revised in the upper right-hand  
7 corner. And what I did on that exhibit is in the  
8 lower left-hand corner -- and, again, that  
9 exhibit is just the top half of page P-4 -- I  
10 indicated -- I put in a black line that says "15  
11 feet setback for sidewalk", which I just  
12 referenced. And so this building not only  
13 intrudes 72 feet approximately in the rear of the  
14 property, but it intrudes about 9.3 feet in the  
15 front of the property. So, again, the applicant  
16 is doing two things; it's violating the building  
17 coverage requirement, but in the course of doing  
18 that while he could stay within the proper  
19 setbacks, the applicant has elected to make the  
20 building in my opinion too close to River Road  
21 and too close to the Palisades.

22 There are no other changes to this  
23 exhibit other than I want to repeat my last  
24 statement that while the applicant suggested that  
25 they go -- they could go two more stories, in my

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Steck - Direct

1 opinion there's not enough excess height. If the

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2 you recall, your standard is 75 feet from the  
3 center line of River Road. The way I calculate  
4 it I think the applicant is about 17 and a half  
5 feet they could go higher; that's not enough for  
6 two stories. So the applicant is dropping the  
7 height by essentially one story, which means that  
8 on the bottom of page P-4 where I have those two  
9 site line restrictions, they're actually closer  
10 because the applicant is never going to get up to  
11 17 feet; it's only going to have one story which  
12 might be 10 feet. So the difference between what  
13 the applicant is entitled to and what the  
14 applicant is proposing is even slimmer in terms  
15 of its impact on supposedly saving the view of  
16 the Palisades.

17 The other thing I did is -- I'm not  
18 a construction code official but I had mentioned  
19 last time that a lot of developers are reducing  
20 their heights of building to four stories of  
21 residential over a concrete parking deck. And I  
22 have actually three projects that have been  
23 revised over the course of the last year simply  
24 because of cost factors. And what I want to  
25 essentially clarify is that in reading the

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Steck - Direct

1 construction code --

2 MR. ALAMPI: I wanted to object but  
3 wait until you say something objectionable.

4 THE WITNESS: Okay, I'll slow down  
Page 14

5 so you can find a good spot.

6 MR. ALAMPI: It's coming. Get  
7 ready.

8 THE WITNESS: In reading the  
9 construction code which happened to be read in  
10 English, there's a --

11 MR. ALAMPI: Is that the 2009?

12 Q. Finish your testimony, please, and  
13 Mr. Alampi will object at the appropriate time  
14 which I know is coming.

15 A. The International Construction Code  
16 has a table of allowable building heights and  
17 areas, and it's Table 5003 on page 70. And  
18 that's an online version that the state has  
19 orchestrated. For an R-2 type of construction,  
20 which is multi-family residential, the table on  
21 types of construction two, three, four and five  
22 and that can be either sprinkled or non-sprinkled  
23 has heights of maximum of three and four stories.  
24 To go above that you are -- you jump into a type  
25 one construction.

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Steck - Direct

1 MR. ALAMPI: Chairman, at this point  
2 I will strenuously object. At the last meeting  
3 we discussed the issue of whether or not  
4 Mr. Steck is qualified. Obviously he's qualified  
5 to read English and he certainly can read the  
6 treatise, but I object to his qualifications. He

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7 was presented as a planner, not a construction  
8 expert and not a code expert. I don't know,  
9 perhaps he'll reveal to us that he does in fact  
10 holds a construction official's license. I don't  
11 know.

12 MR. LAMB: Mr. Chairman, with all  
13 due respect, this issue was raised at the last  
14 hearing and Mr. Steck was allowed to testify and  
15 he is only supplementing that testimony  
16 previously allowed by the board by giving the  
17 actual citation to the International Construction  
18 Code and the relevant regulations thereunder.

19 MR. FERNANDEZ: Not to interrupt  
20 you, but he's citing 5003? It's table 502 --  
21 503.

22 THE WITNESS: That's what I said,  
23 table 503 is titled Allowable Building Heights  
24 and Areas.

25 MR. FERNANDEZ: No, you said 5003.

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Steck - Direct

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1 MR. MUHLSTOCK: Let's get back to  
2 the objection. I think while Mr. Alampi's  
3 objection is probably on the mark, I think,  
4 Mr. Chairman, this is not a court, we do take  
5 some leeway here, and if you can do it rapidly,  
6 the board can give it the weight.

7 MR. ALAMPI: Just note my exception  
8 to your ruling.

9 THE CHAIRMAN: Yes. Thank you.



10           A.     In chapter six, Table 601 there's a  
11     table of fire assisted ratings and that dovetails  
12     with my last statement that when you go above  
13     four stories of residential, all of a sudden the  
14     walls, the floors, bearing walls have to be a  
15     two-hour fire rating. And what that from a  
16     practical point of view means that a lot of  
17     developers like four stories or under because you  
18     can do stick built construction with normal  
19     sheetrocking. Many developers recognize that  
20     when you go above that you have to have masonry  
21     walls to achieve the two-hour fire rating.

22                 So what I can tell you is in my  
23     experience, I have three projects now on the  
24     books where the developers have lowered them to  
25     four stories not because they want to preserve

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Steck - Direct

1     the height of the Palisades or views, they are  
2     doing it because it's a more economical form of  
3     construction. Once you go up that one extra  
4     story, all of a sudden the costs start zooming  
5     and they have made the decision, at least in  
6     those three projects, that it's a feasible  
7     project to lower it to four stories over a  
8     concrete deck.

9                 MR. ALAMPI: I'll object to costs  
10     zooming and stuff. We have no figures and  
11     calculations here.

12 THE CHAIRMAN: Duly noted on both  
13 counts. You did make that point at the last  
14 meeting. I don't think we need to belabor it.

15 MR. LAMB: I think he's done,  
16 Mr. Chairman.

17 THE CHAIRMAN: Okay. Mr. Lamb.

18 MR. LAMB: On that issue.

19 THE CHAIRMAN: Oh, I'm sorry.

20 MR. LAMB: I'm sorry. On that  
21 particular -- we're done with the construction  
22 code.

23 THE CHAIRMAN: Okay.

24 Q. Mr. Steck, do you have anything to  
25 add to your testimony?

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Steck - Cross

1 A. I do not.

2 MR. LAMB: Thank you, now we're  
3 officially done.

4 THE CHAIRMAN: Thank you, Mr. Lamb.  
5 Mr. Alampi.

6 MR. ALAMPI: You're done?

7 CROSS-EXAMINATION

8 BY MR. ALAMPI:

9 Q. Peter, isn't it true that you can go  
10 up seven stories with metal studding?

11 A. If -- you can actually go up higher  
12 but you have to have the two-hour rating, so  
13 that's what adds the expense.

14 Q. But you could do it with metal

3-30-11 Appleview

15 studding, right?

16 A. Yes.

17 Q. So let's not kid the board --

18 A. No, but it's more expensive because  
19 of the two-hour fire rating.

20 Q. But it's done with metal studding,  
21 isn't it?

22 A. There are many ways to do it. You  
23 can accomplish a two-hour rating --

24 Q. You brought the issue up. The  
25 answer is yes or no.

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Steck - Cross

1 A. I'm trying to answer the question.

2 Q. Yes or no?

3 A. The studding is not the issue, it's  
4 the two-hour fire rating which --

5 MR. MUHLSTOCK: Mr. Steck, he did  
6 ask you a question, yes or no, could it be done  
7 in the manner --

8 THE WITNESS: The answer --

9 MR. MUHLSTOCK: Do you know?

10 THE WITNESS: All I know is it  
11 changes the fire rating and it's more expensive.

12 MR. MUHLSTOCK: So you can't answer  
13 the question?

14 THE WITNESS: I can't answer his  
15 question.

16 MR. MUHLSTOCK: Okay, fine.

17 Q. But you can give that testimony  
18 about the cost and expense?

19 MR. LAMB: We're not going to have  
20 arguments here. There's an objection or a  
21 question, Mr. Chairman.

22 MR. MUHLSTOCK: He can't answer the  
23 question.

24 Q. So, Peter, what you're saying is  
25 you'd rather see a taller building and pulled up

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Steck - Cross

1 front in a box-like configuration because that  
2 would be a better design, even though it would  
3 not be sensitive to the view of the Palisades,  
4 that you'd rather see that, you're actually  
5 advocating for that in this project?

6 A. What I testified last time is that  
7 the applicant meets the standard of the height  
8 limit. So the public purpose of protecting the  
9 view from the Palisades and of Palisades is  
10 accomplished at least in that vertical issue.

11 What I'm saying is that in my  
12 opinion, while you're characterizing the one  
13 story lower height as being a great public  
14 benefit, my analysis of it is that to someone on  
15 River Road, it is of no benefit; it's not going  
16 to make the Palisades visible. What would be of  
17 benefit is to have wider side yards; that would  
18 allow a pedestrian, a motorist, to view the  
19 Palisades. So what I'm saying is that the

20 benefit that you're promoting by lowering it,  
21 first of all, I suspect that the motivation is  
22 really to have a less expensive form of  
23 construction, nevertheless, it is one story  
24 lower. My point is that is an insubstantial  
25 benefit.

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Steck - Cross

1 Q. It's not what I asked you. I asked  
2 you if you're advocating and promoting that this  
3 building be brought up closer to or further away  
4 from the Palisades, closer to River Road and made  
5 taller, whether it be one story or even two  
6 stories, that it be brought up closer?

7 A. I don't think you can fit on two  
8 more stories, and I'm an advocate of a building  
9 that conforms to the zoning ordinance, especially  
10 where the applicant has no statutory reasons to  
11 get an exception from the law.

12 Q. So you would rather see a full  
13 rectangular style building within ten or 12 feet  
14 from -- it's actually 15 feet from the curb line,  
15 isn't it? Isn't that the ordinance? The setback  
16 for the front yard --

17 A. Well, setback is measured from the  
18 property line.

19 Q. What does the North Bergen setback  
20 ordinance say?

21 A. Well, there are two setbacks.

3-30-11 Appleview  
22 There's a zero setback from the property line in  
23 the table but it says, my recollection is -- and  
24 I can pull out the ordinance if you want --  
25 Q. I'm asking you. Doesn't it say that

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24

Steck - Cross

1 it's 15 feet from the curb line?  
2 A. Let me pull out my copy of the  
3 records.  
4 Q. Of the right-of-way. You could ask  
5 Ms. Hartmann, she probably knows.  
6 MS. HARTMANN: The ordinance says  
7 that in order to provide for a sidewalk you need  
8 to have a 15-foot setback. But the sidewalk has  
9 already been provided within the right-of-way.  
10 So it was our determination early on that the  
11 15-foot setback was not required and I prepared a  
12 memo to that effect. At least that was my  
13 opinion.  
14 THE WITNESS: May I read what the  
15 section is?  
16 Q. Well, you disagree with the board's  
17 planner?  
18 A. Yes.  
19 Q. Okay.  
20 A. This is Article XI 11.3 entitled  
21 Supplementary Lot, Height Yard and Landscaping  
22 Regulations, small C, yard regulations and a two,  
23 so it would be c(2) and --excuse me, c(1) is  
24 front yard it reads as follow: "In Zone P2 no  
Page 22

25 front yard will be required other than that

Celeste A. Galbo, CCR, RMR

♀

25

Steck - Cross

1 necessary to comply with the standards cited in  
2 that section and to provide a 15-foot setback for  
3 a paved sidewalk to be installed by the  
4 developer." It doesn't say set back the curb  
5 line.

6 If you read the definition of  
7 setback in the ordinance, setback is measured to  
8 the property line.

9 Q. And so is there a sidewalk already  
10 installed in front of this property?

11 A. The applicant is proposing to  
12 install a sidewalk as part of the application and  
13 that's what triggers this section.

14 Q. I don't understand your analysis but  
15 we'll move on.

16 With regard to the issue at hand,  
17 however, are you not advocating that in your  
18 opinion to stay within the building coverage,  
19 that that's so important that you would rather  
20 see a building built as a solid rectangle, not a  
21 U-shaped courtyard as this project, but a solid  
22 rectangle, pull it away from the rear setback  
23 area and even increase it in height, albeit one  
24 or two stories? Are you not advocating that?

25 A. That's a false example because no

Steck - Cross

1 one could build a residential building that was a  
2 rectangle. You have to have light and air  
3 accessible to the units.

4 Q. What are you talking about, we see  
5 rectangular buildings all over the place?

6 A. But your building is U-shaped.

7 Q. No, no, we got rid of the U-shape.

8 A. Well, if you show me a design that's  
9 a box that has dimensions of, for example, 100  
10 feet by 200 feet, I can tell you that that's a  
11 very difficult shape to put residential use in  
12 because you don't have the light, air and open  
13 space that the code would require for bedrooms,  
14 for example, other living rooms.

15 Q. You're telling me and you're telling  
16 this board and the public that rectangular shaped  
17 residential mid-rises are unusual?

18 A. 60 foot, 62 foot wide rectangles are  
19 fine because you can have a double loaded  
20 corridor, but if you're talking about a box  
21 that's bigger than that, I would invite you to  
22 show me a plan that you think meets the image  
23 that you're portraying. I don't see it being  
24 used for residential use if it's larger than that  
25 type of dimension.



1           Q.     What I'm asking you is whether  
2     the -- if the applicant addresses the points you  
3     raise, that you say are so important, the issue  
4     of the building coverage, which is the primary  
5     concern, and the rear yard setback, and  
6     addressing those by reconfiguring the footprint  
7     of this building, albeit keep it a 25 percent  
8     structure, that if they added to the height, to  
9     the permissible height level, that that would be  
10    better, that would be what you're advocating,  
11    that is what you're promoting as opposed to a  
12    building that is configured or shaped so that the  
13    center is open to the unit owners and open to the  
14    public?

15           A.     I am promoting an application that  
16    conforms to the standards of the ordinance and  
17    that means there could be an additional story.  
18    And, in my opinion, whether I like building A or  
19    building C or building C is irrelevant. The  
20    applicant has the burden of proof in justifying  
21    exceptions from the law. In my opinion I have  
22    heard nothing that the applicant has presented  
23    that would warrant either a c(1) or a c(2)  
24    variance or any other type of relief that would  
25    accommodate the building that's proposed.

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Steck - Cross

1           Q.     Let me ask you why do you say that  
2     this applicant could only add one story to this

3 proposed development as opposed to two stories?

4 A. Because I think the additional  
5 height that could be accommodating is about 17  
6 and a half feet.

7 Q. Well, are you familiar with the  
8 zoning notes on the site plan that was part of  
9 the evidence in this case?

10 A. Yes.

11 MR. ALAMPI: Chairman, I don't have  
12 the marked exhibit, but I'm sure Mr. Lamb will  
13 allow me if I represent that I believe this to be  
14 the --

15 MR. MUHLSTOCK: Just refer to the  
16 document designation.

17 MR. ALAMPI: For just purposes of  
18 review.

19 Q. If I show you from the Bertin  
20 Engineering plans the title sheet and just go to  
21 the zoning notes, Peter. And look at the  
22 building height section, could you just look at  
23 that a moment and just review it.

24 (Pause in the proceedings.)

25 A. Yes, I've looked at it.

Celeste A. Galbo, CCR, RMR

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Steck - Cross

1 Q. Okay. And --

2 A. I have my own copy is identical to  
3 that, so if you want to take that back.

4 Q. Thank you.

5 And with the building height it

3-30-11 Appleview

6 talks about the elevation of the center line of  
7 River Road at 9.33.

8 A. Yes.

9 Q. And then the ordinance is 75 feet  
10 above the building height -- the center line?

11 A. Yes.

12 Q. So the total would be 84.33?

13 A. Yes.

14 Q. And this proposed building is 64.33,  
15 isn't that 20 feet?

16 A. Well, I looked at the architectural  
17 plans and scaled it from the architectural plans.

18 First of all, let me say that if you  
19 comply with the 75 foot height limit in my  
20 opinion the public purpose of view from and to  
21 the Palisades, at least from someone, let's say,  
22 from New York or looking down from the Palisades  
23 is met. As I scaled it from the architectural  
24 plans, I saw a clearance of 17 and a half feet  
25 which would not accommodate two stories.

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Steck - Cross

1 My diagram in my exhibit --

2 Q. So you're going to disregard the  
3 engineering --

4 A. I'm saying that I looked at the  
5 architectural plans which had precise limits, and  
6 the point that I raised and in my exhibit which  
7 is 19A, page P-4, I picked what would be the

3-30-11 Appleview  
8 maximum height from your plan. So I'm -- by  
9 choosing a height that is slightly lower than the  
10 maximum permitted, in my opinion there is an  
11 insubstantial change in the view from or of the  
12 Palisades.

13 Q. So if it was two or three feet  
14 higher, it would be inconsequential as well?

15 A. That's correct.

16 Q. Okay. And so there is room or  
17 arguably possibly for two stories, not one?

18 A. As I scaled the architectural plans  
19 there was only room for one but --

20 Q. You made your point.

21 A. -- my conclusion doesn't change  
22 whether it's one or two stories.

23 Q. Okay.

24 A. One could shrink maybe the first  
25 floor where the parking is and bring the whole

Celeste A. Galbo, CCR, RMR

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Steck - Cross

1 bring down.

2 Q. So if it was one or two floors, your  
3 point is it remains the same?

4 A. Yes.

5 Q. And if it could be done, then you're  
6 advocating for a building which could be one,  
7 possibly two stories higher and pulled away from  
8 the rear property line and it could be box like  
9 in configuration and you would think that that's  
10 a superior plan from your world of planning for

11 purposes of the integrity of the zoning?

12 A. Well, you can make the building  
13 architecturally as ugly as you want, that's not  
14 my concern.

15 Q. Well, don't want -- we certainly  
16 don't want to do that.

17 A. That's why I'm thinking your  
18 presentation to me has some false presumptions in  
19 it. I presume that any building that someone  
20 would make, someone would want it to be  
21 marketable. My point is that you are entitled to  
22 comply with the ordinance. Your witnesses are  
23 suggesting that this more than meets the rear  
24 setback; I disagree. Your witnesses are  
25 suggesting that there is a significant public

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♀

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Steck - Cross

1 benefit to being below 75 feet, and in my opinion  
2 that doesn't constitute a public benefit; it.  
3 makes an insubstantial difference.

4 If you were to narrow the building  
5 to have wider side yards, in my opinion that  
6 would start now approaching a benefit that at  
7 least had some eligibility to view the Palisades  
8 from, for example, River Road.

9 Q. If you were to narrow the building,  
10 how would that improve the view from the top of  
11 the Palisades?

12 A. You would see down to River Road, so

3-30-11 Appleview  
13 it wouldn't be completely blocked by the building  
14 which essentially it is now.

15 Q. So by narrowing the building  
16 somewhat you improve the view from the top of the  
17 Palisades --

18 A. You could see --

19 Q. Let me, finish the question.

20 In this property which is surrounded  
21 on either side by buildings that are close to  
22 their property line with the Galaxy to the south  
23 and the MUA facility to the north, there would be  
24 an improvement?

25 A. The MUA doesn't abut the side

Celeste A. Galbo, CCR, RMR

8

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Steck - Cross

1 property line. That building and those  
2 facilities don't abut the property lines.

3 Q. No, all right.

4 A. And the Galaxy didn't abut the  
5 property line.

6 Q. They're set back from the property  
7 lines. You think that would be a sufficient  
8 expanse of a view corridor by narrowing the  
9 building?

10 A. In my opinion it is more productive  
11 in terms of the public purpose than lowering the  
12 height as you're proposing it below 75 feet. In  
13 my opinion there is no individual that's going to  
14 notice the difference between your height and 75  
15 feet. It's an inconsequential change.

3-30-11 Appleview

16 Q. You don't deny that the proposal is  
17 a permitted use in the zone do you?

18 A. Excuse me?

19 Q. You don't deny that the proposal is  
20 a permitted use in the zone?

21 A. Yes, that and offices are permitted  
22 uses.

23 Q. You don't deny it, I'm asking you.

24 A. I don't deny it well --

25 Q. I'll rephrase it. Is a residential

Celeste A. Galbo, CCR, RMR

♀

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Steck - Cross

1 building a permitted use in this zone?

2 A. Yes.

3 Q. And with regard to the density, you  
4 recall testifying a few weeks ago late one night,  
5 late one rainy night a few weeks ago?

6 A. Actually in this room I recall.

7 Q. Right. And you indicated that the  
8 developer, this developer or any developer is not  
9 entitled to build out of the maximum permitted in  
10 the zone?

11 A. Yes, the maximum density is one of  
12 many requirements that an applicant is required  
13 to adhere to.

14 Q. Well, we'll talk about the density.  
15 Do you know what the maximum density would be  
16 permitted in this zone if we're just  
17 concentrating on the density?

3-30-11 Appleview  
18 A. 75 dwelling units per acre.  
19 Q. And so do you know how many units  
20 would be permitted as a maximum? You can round  
21 it off. If I suggested 160 or 170 units, would  
22 that be --  
23 A. Well, I'll calculate it.  
24 Q. Okay.  
25 MR. MUHLSTOCK: Why don't you recite

Celeste A. Galbo, CCR, RMR

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Steck - Cross

1 on the record what exactly -- what calculation  
2 you're making so we --  
3 THE WITNESS: I'm multiplying 2.305  
4 acres times 75 dwelling units and it's 172  
5 dwelling units.  
6 Q. I was close, right?  
7 A. Oh, I like to be more precise.  
8 Q. And with regard to that, do you  
9 opine that this applicant is attempting to secure  
10 the maximum density in this developments?  
11 A. No.  
12 Q. As a matter of fact, it's less than  
13 40 percent of the permitted density, isn't it?  
14 A. Well, I'll do that calculation if  
15 you want.  
16 Q. All right. Why don't you.  
17 A. It is less than 40 percent.  
18 Q. Isn't that an important factor?  
19 A. It -- just because you're lower than  
20 a maximum, in my opinion, is not necessarily a



21 public benefit that automatically justifies  
22 violating other standards.

23 Q. Okay. So if you build less than 40  
24 percent of the density, then on top of that we  
25 address the issue of the side yards by narrowing

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Steck - Cross

1 them beyond what the ordinance requires, and then  
2 we move the building further away from the rear,  
3 the development will shrink to a very small  
4 footprint and a very small number of units,  
5 wouldn't it?

6 A. I didn't calculate how many units  
7 could fit in with that. You might have the same  
8 number of units. I think it's the configuration  
9 of the building which is offensive to the public  
10 purposes.

11 Q. So that's it, it's the footprint and  
12 the placement which is the issue in your mind,  
13 not the density and the height?

14 A. The answer is you have -- I haven't  
15 designed this building. You proposed a building  
16 and your responsibility is to demonstrate that  
17 the statutory proofs are met. My responsibility  
18 is to review it as best I can and to determine  
19 whether you've met the statutory criteria, and I  
20 don't think you have. There might be other  
21 designs that you could come up with, and I would  
22 be happy to look at them in the future, but

3-30-11 Appleview  
23 there's only one thing before this board.

24 Q. Well, the fact that the applicant  
25 has limited the scope or the scale of the

Celeste A. Galbo, CCR, RMR

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Steck - Cross

1 building in so far as the number of units and the  
2 number of stories and such, doesn't that relate  
3 to then the reconfiguration of the footprint of  
4 the building? Doesn't one relate to the other?

5 A. Well, if you lower the number of  
6 units, you technically probably don't need as  
7 large a footprint.

8 Q. And if you lowered the number of  
9 stories, you might need a larger footprint?

10 A. Yes, and that's -- my point is that  
11 lowering it below the 75 foot height limit is not  
12 a public benefit that is touted by the applicant.  
13 It doesn't -- there is probably no human that's  
14 going to perceive a difference in view from  
15 either the top of the Palisades or from River  
16 Road from that difference in height.

17 Q. Now, you testified at the last  
18 session that you had reviewed the master plan for  
19 1994 and the reexamination reports of 2003 and  
20 the last reexamination adopted in 2009, correct?

21 A. Yes.

22 Q. And you indicated in your testimony  
23 that there were provisions in these reports that  
24 dealt with the -- this district, what we call the  
25 Edge Cliff District?

Celeste A. Galbo, CCR, RMR

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Steck - Cross

1 A. Yes.

2 Q. And you had developed a portion of  
3 your testimony based upon your research that the  
4 goals and the concerns enumerated in some of the  
5 references in those reports dealt with the public  
6 access -- or dealt with the Palisades or the view  
7 of the Palisades. Is that a fair statement?

8 A. Yes.

9 Q. If you turn to page 5 of the 2003  
10 reexamination report.

11 MR. ALAMPI: Chairman, these haven't  
12 been marked, but these are not only public  
13 records, these are legally binding records and  
14 have been passed by the boards. I don't think  
15 they need to be marked --

16 MR. MUHLSTOCK: I don't think they  
17 need to be marked.

18 MR. ALAMPI: And of course the  
19 objector's attorney brought them in --

20 MR. MUHLSTOCK: If it's easier to  
21 follow --

22 MR. ALAMPI: I didn't make 20 copies  
23 of it.

24 MR. MUHLSTOCK: Okay.

25 MR. ALAMPI: I assumed you had it

Celeste A. Galbo, CCR, RMR

Steck - Cross

1 all pretty much memorized.

2 THE CHAIRMAN: Make your point.

3 MR. MUHLSTOCK: Why don't you ask  
4 the question.

5 THE CHAIRMAN: Yeah.

6 Q. With regard to the 2003 report, I'm  
7 looking at page 5, maybe it actually starts at  
8 the bottom of page 4. There's -- I guess it's  
9 number nine. Could you read that, Peter? Review  
10 it first --

11 A. "Public access to the waterfront. A  
12 major concern at the time of the last  
13 reexamination report was the lack of public  
14 access to the Palisades cliff and the  
15 waterfront."

16 Q. What do you think they mean by that?

17 A. Well, this is a reexamination  
18 report, not a master plan, and that is under the  
19 title of "Periodic Reexamination Report: The  
20 major problems and objectives relating to land  
21 development in the municipality in the time of  
22 the adoption of the last master plan  
23 reexamination report."

24 So that is simply a reference to  
25 what was the policy of the reexamination report

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Steck - Cross

1 in 1994. That was simply a reporting of what was  
Page 36

2 the policy six years before.

3 Q. But is the --

4 A. Or 10 -- how many years before?

5 MR. MUHLSTOCK: Mr. Alampi, why  
6 don't you more specific with your question.

7 Q. Is the concern raised by the  
8 adoption of this report the access to the  
9 waterfront?

10 A. What you're reading from is simply a  
11 statutory requirement. One of the requirements  
12 of a reexamination report is to look at the prior  
13 reexamination report and determine what were the  
14 policies and objectives referenced in 1994. And  
15 that's what that did. It doesn't say whether  
16 it's good, bad; it says that's one of the  
17 statutory requirements of a reexamination report.  
18 That does not express a policy as a master plan  
19 does. That's simply one of the stages of a  
20 reexamination report.

21 Q. I understand. So public access to  
22 the Palisade cliff, what does that mean? What  
23 are they talking about?

24 A. That would probably mean a park  
25 land.

Celeste A. Galbo, CCR, RMR

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Steck - Cross

1 Q. Access to the --

2 A. First of all, let me read it again.  
3 It says "public access to the waterfront: So a

3-30-11 Appleview  
4 major concern at the time of the last  
5 reexamination report," that was the 1994 one,  
6 "was the lack of public access to the Palisades  
7 cliff and the waterfront."

8 So, it says in 1994 the planning  
9 board in analyzing problems, concerns, it said we  
10 would like people to have access to the cliff and  
11 to the waterfront.

12 Q. You think they meant access to the  
13 cliff from River Road or access to the cliff from  
14 Boulevard East?

15 A. Logically it may be Boulevard East.  
16 It doesn't say. It says what it says.

17 Q. Well, if you read the '94 master  
18 plan -- I know you did because you're always  
19 prepared, and I know you read these reexamination  
20 reports, when you read them all in its totality,  
21 weren't these reports when it dealt with this  
22 district concerned with the differences in the  
23 neighborhoods on the top of the Palisades and the  
24 differences within the type of development at the  
25 base of the Palisades?

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7

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Steck - Cross

1 A. Yes, there are different zones that  
2 apply to the base of the Palisades than to the  
3 top. So there's a recognition that they're  
4 different characteristics.

5 Q. Well, at one time years ago wasn't  
6 the zoning on both the top of the Palisades and  
Page 38

3-30-11 Appreview

7 below the same zoning? That is to say, to the  
8 east of the Palisades and to the west of the  
9 Palisades, weren't they in the same zone?

10 MR. LAMB: For purposes of  
11 clarifying the question, years ago, does that  
12 mean the 1994 master plan?

13 MR. ALAMPI: And before.

14 A. In 1994 there was a P2 designation  
15 below the Palisades and an R1 designation above  
16 it. So there was a distinction even back then.  
17 I don't have records prior to that.

18 Q. Are you familiar with the adoption  
19 of the P3 Zone in the Township of North Bergen?

20 A. That's a more recent zone, yes.

21 Q. Do you know where that is?

22 A. That's to the north.

23 Q. And is it below the Palisades, that  
24 is to say, east of the Palisades, or is it to the  
25 west of the Palisades?

Celeste A. Galbo, CCR, RMR

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Steck - Cross

1 A. To the east.

2 Q. And was the P3 Zone or zoning change  
3 a product of the review in both the 2003 and the  
4 2009 Master Plan Reexamination Reports?

5 A. Yes.

6 Q. And throughout these reports was  
7 there a discussion about the differences in  
8 development patterns on the top of the Palisades

3-30-11 Appleview  
9 versus below the Palisades?

10 A. With respect to the P3 Zone, yes.

11 Q. And was there a discussion with  
12 regard to recognizing the need to review the  
13 zoning ordinance or to adopt what ultimately  
14 became the P3 Zone just to the north?

15 A. There was a recommendation to  
16 develop a P3 Zone which doesn't include this  
17 property.

18 Q. It's to the north of this property?

19 A. Yes.

20 Q. And the purposes of the zoning in  
21 the P3 Zone, is there similarly language that  
22 talks about sensitivity to the view of the  
23 Palisades in the P3 Zone?

24 A. I don't recall because it's a  
25 different zone, it's not applicable to this

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Steck - Cross

1 application.

2 Q. In any regard, when the master plan  
3 reexamination reports talk about access to the  
4 Palisades cliffs, are they not talking about  
5 public access from Boulevard East?

6 A. They're talking about visual access  
7 to a large degree, both from the top of the  
8 Palisades and the view of the Palisades. So it's  
9 looking both east and west.

10 Q. Give me a minute, Peter. I lost my  
11 face sheet on this.



12 Now, in both examination reports  
13 there's reference to the edge cliff area; is that  
14 correct? In the 2003 report I believe -- I'm  
15 sorry, the 2009 report, isn't there a reference  
16 to the edge cliff area on page 31?

17 Peter, I might have misspoken. I  
18 think it's the 2003 report, page 31 I was looking  
19 at. What happened is my engineer moved my 2009  
20 report and I thought it was in my hands, so I got  
21 a little confused for the moment.

22 I'm referring to the 2003. This is  
23 what's happening with me, I don't even know what  
24 town I'm in half the time, but the 2003 master  
25 plan report.

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Steck - Cross

1 A. I have the 2003 report in front of  
2 me and I'm on page 31.

3 Q. And there's a reference to study  
4 area number three, edge cliff area?

5 A. Yes.

6 Q. Is that this area that we're  
7 involved with this evening or is that another  
8 area?

9 A. That's this area.

10 Q. And it talks about this area is of  
11 interest because it includes parcels to the east  
12 and west of the Palisade cliff face? You see  
13 that on the third line on page 31?

14 A. Yes.

15 Q. If you reviewed this section, we're  
16 going to refer --

17 MR. ALAMPI: Chairman, we're at the  
18 2003 Reexamination Report. On page 31 there were  
19 some areas that were studied. This was called  
20 the study area number three.

21 Q. So you agree that study area number  
22 three is the subject area where this property is  
23 located?

24 A. Yes.

25 Q. Doesn't it talk about the fact that

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Steck - Cross

1 this district is essentially divided between  
2 properties to the west of the cliff and those to  
3 the east of the cliff, that is between Boulevard  
4 East and River Road?

5 A. If you'll give me a chance to just  
6 reread it, I'll answer that.

7 Q. Yeah, take your time.

8 (Pause in the proceedings.)

9 A. Yeah, it talks about the properties,  
10 you know, below the cliff are visible from River  
11 Road and the properties on top obviously have a  
12 view to the east.

13 Q. And they say that the properties  
14 below can only be accessed by River Road and the  
15 properties on the top can only be accessed by  
16 Boulevard East?

17           A.     That would seem to be a common sense  
18 conclusion because of the nature of the  
19 Palisades.

20           Q.     And it talks about the fact that  
21 there's a difference in the pattern of  
22 development between the two?

23           A.     Yes.

24           Q.     And so in this report they go on to  
25 talk about the current heights and the height

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Steck - Cross

1     limitations. What do you make of this discussion  
2 about the heights and controlling the heights?  
3 why were they discussing that?

4           A.     Well, the outcome of this, as you  
5 know that, they did lower the height limit from,  
6 I believe, 85 to 75 feet.

7           Q.     Why would they do that?

8           A.     Because they felt that a height of  
9 75 feet would accomplish the public purpose of  
10 the view from the Palisades and to the east and  
11 of the Palisades looking west.

12          Q.     So a building 75 feet would  
13 accomplish the public purpose but a building 85  
14 feet would not accomplish that public purpose?

15          A.     As eventually legislated, that is  
16 correct.

17          Q.     Isn't it the truth that they're  
18 talking about the view from the top of the



3-30-11 Appleview

22 consistent talk about the view from and of the  
23 Palisades; so that's looking both east and a west  
24 direction. The one change that they recommended  
25 was lowering the height limit from 85 to 75 feet.

Celeste A. Galbo, CCR, RMR

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Steck - Cross

1 Q. They also recommended adopting a P3  
2 Zone, didn't they?

3 A. Yes, but that doesn't include this  
4 property. So that's a different issue.

5 Q. The recommendation for the P3 did  
6 not include this --

7 A. We're not in the P3 Zone.

8 Q. No, no, no. The recommendation was  
9 to adopt a P3 Zone?

10 A. But as implemented, it did not  
11 include this property.

12 Q. My request is, the P3 Zone was not  
13 implemented for this property, was it?

14 MR. LAMB: Mr. Chairman, the  
15 property is in the P2 Zone.

16 THE CHAIRMAN: But that's not the  
17 question he asked.

18 MR. ALAMPI: I'll rephrase it.

19 Q. The question is, doesn't the report  
20 recommend adopting the P3 even for this zone, for  
21 this parcel, this area? It's at the bottom of  
22 that page 31.

23 A. It doesn't say what lot and blocks

24 are included.

25 Q. Okay, it just says the edge cliff

Celeste A. Galbo, CCR, RMR

♀

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Steck - Cross

1 area which you just acknowledged was this area  
2 and it does recommend a P3 Zone adoption. I'm  
3 not saying they adopted it, just they recommended  
4 it, the master plan --

5 A. But it doesn't say exactly where  
6 it's to be recommended, and it clearly was not in  
7 terms of being recommended by this document. It  
8 promoted the P3 Zone as it exists today which  
9 doesn't include the subject property. So I don't  
10 know how you can conclude that it was intended to  
11 include the subject property because it was  
12 clarified by the governing body when they adopted  
13 the ordinance amendment.

14 Q. I didn't make any conclusions. I  
15 asked you a question.

16 With regard to the 2009  
17 reexamination, you want to take a moment to get  
18 that in front of you?

19 A. I have it in front of me.

20 Q. I'm going to page 21 and 22 of that  
21 report. This, again, is only a reexamination  
22 report, correct?

23 A. That's what it says on the cover.

24 Q. And now it talks about at the bottom  
25 of page 21, goal number 7?

Steck - Cross

1 A. Yes.

2 Q. And it says that any prospective  
3 development should be responsive to North  
4 Bergen's environmental features, particularly the  
5 cliffs of the Palisades, correct?

6 A. That's what it says.

7 Q. All right. And what is the policy  
8 statement?

9 A. On the next page the policy  
10 statement reads as follows: "The Township seeks  
11 to encourage development which is sensitive to  
12 the community's particular physical  
13 characteristics and environmental elements  
14 including steep slopes, wetlands, floods plains  
15 and other areas prone to flooding, and retains  
16 vegetation. The Township also seeks to protect  
17 the natural cliff face of the Palisades."

18 Q. Now, we've had a lot of discussion  
19 about cliff face, cliff, talus, all of that.  
20 were you here for all of those many hours of  
21 testimony both by the applicant's witnesses and  
22 others?

23 A. I did not attend that hearing but I  
24 am aware of the reports that defined the aspects  
25 of the cliff.

1 Q. You would agree, Peter, that the  
2 documents, that is the master plan reexamination  
3 reports prepared by Burgis Associates, the  
4 township's ordinance from 1999, the code of  
5 ordinances, the definitions and such, that cliff  
6 face appears throughout the language of the  
7 ordinance when they refer to the Palisades?

8 A. In some instances they refer to  
9 cliff face, in some instances they don't. It is  
10 not a consistent view.

11 Q. Well, is the issue of the Palisades  
12 the which really is the crux of the issue of the  
13 rear yard setback, do you feel that the  
14 ordinances are unequivocal and clear?

15 A. I feel that the ordinances are clear  
16 if you look at the diagram and the text and the  
17 purpose. In my opinion the start of the 30  
18 percent slope is the proper way to measure the  
19 start of the rear setback.

20 Q. Well, what do you think about the  
21 ordinance? It refers to the edge cliff district,  
22 the waterfront/cliff district, and then it talks  
23 about steep slope and there are various  
24 provisions in the ordinance. But there's really  
25 no detailed definition, no clear-cut definition

Celeste A. Galbo, CCR, RMR

♀

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Steck - Cross

1 anywhere no matter how hard you search, no matter  
2 what document you look at, is there?



3           A.     Well, there is no definition in the  
4 definitions section, but as you saw in P-2 of my  
5 exhibit now 19A, if you match the language with  
6 the diagrams, in my opinion you inevitably would  
7 come to my conclusion as illustrated on page P-3  
8 of my exhibit.

9           Q.     Now, out of an abundance of  
10 ignorance on my part, I looked at Figure 14 many  
11 times. You know what I was impressed with?

12          A.     I don't know.

13          Q.     Perhaps you felt the same thing, the  
14 diagram showing the slope itself seems rather  
15 sharp, rather severe, rather vertical, doesn't  
16 it?

17          A.     Yes, because that's how you -- in a  
18 diagram you want to emphasis what is important.  
19 And, for example, with a road profile engineers  
20 often have a different vertical than horizontal  
21 scale because it emphasizes the information that  
22 you want to relay. So this is in a sense out of  
23 scale because they're emphasizing certain  
24 concepts.

25          Q.     So that's really the explanation, it

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♀

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Steck - Cross

1 was to exaggerate the situation, to draw your  
2 attention to it?

3           A.     Well, not to draw your attention to  
4 it but I think to better explain what the

5 regulation meant.

6 Q. Well, what do you think the purpose  
7 of the Figure 14 is?

8 A. It is to illustrate how one would  
9 measure a slope of 30 percent.

10 Q. Well, you see there's like a  
11 vertical rectangle or some box-like figure in  
12 front of the slope illustration on Figure 14?

13 A. That appears to be a building.

14 Q. Would you say that it is understood  
15 by this ordinance, especially if you rely upon  
16 Figure 14, that a multilevel or mid-rise type  
17 building would be contemplated to be built in the  
18 P2 Zone?

19 A. Well, it shows a rectangle with  
20 commercial on the first floor and residential  
21 above, but there are no dimensions to it and  
22 so -- and it's schematic, so that could be a  
23 two-story building, it could be a six-story  
24 building; you don't know by looking at it.

25 Q. Well, don't you think Figure 14 is

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Steck - Cross

1 illustrative?

2 A. It is accentuated to convey where  
3 the rear yard is and how you calculate a 30  
4 percent slope.

5 Q. It's also meant to show that a  
6 building would be built in front of the  
7 Palisades, isn't it?

- 8 A. Pardon?
- 9 Q. It's also meant to show that a  
10 building is contemplated to be built in front of  
11 the Palisades?
- 12 A. Yes, on the flat section as you are  
13 a certain distance away from the start of the 30  
14 percent slope, that's correct.
- 15 Q. And so if we follow your analogy or  
16 your thesis which is to condense the footprint  
17 somewhat and move it away from the base of the  
18 Palisades, even if we added one, possibly two  
19 stories, that would be a better design as a  
20 planner, not as an architect, but as a planner,  
21 because it would protect and preserve the  
22 integrity of the zone?
- 23 A. I didn't say it was a better design.  
24 I said that your allegation that there is some  
25 significant public benefit to lowering the

Celeste A. Galbo, CCR, RMR

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Steck - Cross

- 1 building from the maximum building height in my  
2 opinion is an insubstantial benefit. There may  
3 be 18 other designs that I haven't reviewed,  
4 unfortunately or maybe fortunately we have one  
5 proposal to review here and one record to  
6 determine whether the statutory proofs are  
7 present. In my opinion the statutory proofs have  
8 not been demonstrated.
- 9 Q. Now, Peter, with regard to the

3-30-11 Appleview

10 footprint of the building as proposed, I'm also  
11 looking at what was marked A-4 back in July of  
12 last year. Are you familiar with this exhibit  
13 generally?

14 A. Yes.

15 Q. And the concept is that the building  
16 is U-shaped or horseshoe shaped, correct?

17 A. On the residential floors, yes, but  
18 it's actually --

19 Q. Well, the surface parking is the  
20 whole platform, surface parking?

21 A. It's underneath the building, but  
22 the answer is the residential units are in a U  
23 shape. As I mentioned, no one builds a big block  
24 because you need access to the windows, light and  
25 air and open space.

Celeste A. Galbo, CCR, RMR

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Steck - Cross

1 Q. Well, you seem to hesitate with the  
2 parking. Parking is on grade, surface parking,  
3 right?

4 A. Yes, you drive right into the  
5 parking area.

6 Q. And the building is above the  
7 parking pad?

8 A. Yes, I mentioned, it's four stories  
9 of residential over a concrete parking level.

10 Q. Now, the configuration, does that  
11 not in some way lead us to the rear yard setback  
12 and the rear yard violation?

3-30-11 Appleview

13 A. No.

14 Q. Okay. With regard to the front,  
15 you're familiar with the term streetscape?

16 A. Yes.

17 Q. And could you tell us what's  
18 generally meant by streetscape?

19 A. It's how buildings present  
20 themselves to either a pedestrian or a motorist  
21 on the street.

22 Q. So if a rectangular building were  
23 built in the front portion, pull it 30 feet away  
24 to the east and build it in a rectangular  
25 configuration or somewhat rectangular

Celeste A. Galbo, CCR, RMR

♀

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Steck - Cross

1 configuration, wouldn't you have 220, 230,  
2 240-foot wide wall five stories high?

3 A. Well, as I mentioned earlier, you  
4 know, one can hypothesize buildings of different  
5 levels of ugliness.

6 Q. No, no, we're not going to use the  
7 word ugly because we haven't talked about the  
8 finished material, the quality of the work.  
9 We're talking about --

10 A. I'm not interested in the material.  
11 When you talked about the streetscape. And I'm  
12 not interested in the color or the finishes.  
13 What I'm interested in is basically in the  
14 massing of the building. And let me just pull

3-30-11 Appleview  
15 out an exhibit that might be helpful.  
16 I draw your attention to the  
17 architectural plans A-3 of 4 which is the third  
18 one down from the top, and that's what the  
19 building at least is alleged to look like. Now  
20 it would look exactly the same in terms of  
21 blocking the Palisades if it was pulled up.  
22 Q. Exactly. Thank you. I have no  
23 further questions.  
24 THE CHAIRMAN: Thank you.  
25 Okay, Ms. Gesualdi.

Celeste A. Galbo, CCR, RMR

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Steck - Cross

1 CROSS-EXAMINATION  
2 BY MS. GESUALDI:  
3 Q. Mr. Steck, you would agree from a  
4 planning perspective it's appropriate for this  
5 board to consider safety issues of the project  
6 vis-a-vis the pipeline? Though you're not here  
7 as an expert to opine on safety, it's your -- you  
8 would say that from a planning perspective it's  
9 appropriate for the board to consider issues of  
10 that nature?  
11 MR. ALAMPI: You asked that in a  
12 unobjectionable way.  
13 A. Certainly from a site plan point of  
14 view, just as an applicant might comply with all  
15 of the setbacks, but there might be traffic  
16 safety considerations that would require a  
17 further manipulation of the building. So, yes,

3-30-11 Appreview

18 it's certainly a valid planning concern in  
19 looking particularly at the site plan.

20 MR. MUHLSTOCK: Which of the  
21 proposed variances implicates the safety issue?

22 THE WITNESS: I think there's an  
23 issue of proximity to the pipeline because --

24 MR. MUHLSTOCK: Which of the  
25 variances implicates?

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Steck - Cross

1 THE WITNESS: One could -- well, as  
2 I just said, there are site plan considerations  
3 that may coach the board into manipulating the  
4 design, nothing to do with whether they're  
5 variances or not. If I have a building that's  
6 right up at the front property line and I don't  
7 have an easy way to get in and out of the  
8 driveway, then I'm going to stack out in the  
9 road, that would tell me --

10 MR. MUHLSTOCK: Can you answer my  
11 question? Do you know which variances are being  
12 requested by the applicant?

13 THE WITNESS: The applicant -- you  
14 could argue that the applicant meets the 20-foot  
15 setback on the northern side.

16 MR. MUHLSTOCK: Okay.

17 THE WITNESS: It happens to be right  
18 up against the easement but there are -- what I'm  
19 suggesting is there are site plan considerations.

20 That means that for construction purposes you may  
21 have to intrude on that --

22 MR. MUHLSTOCK: Does this board have  
23 jurisdiction over construction issues?

24 THE WITNESS: It has jurisdiction in  
25 terms of the safety of a site plan. In my

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Steck - Cross

1 opinion you can take public safety concerns into  
2 your deliberation about the site plan and that's  
3 independent of the variances that are sought.

4 MR. MUHLSTOCK: From the general  
5 wording of the statute and the prefatory language  
6 of the statute that says generally safety and  
7 welfare, that's where you're getting your support  
8 --

9 THE WITNESS: There are two portions  
10 of the Municipal Land Use Law. There's a zoning  
11 section that says comply with these standards,  
12 use and bulk standards, and then there is a site  
13 plan section of the statute which is different,  
14 and it allows you to take other things into  
15 consideration other than just full compliance  
16 with the zoning.

17 MR. MUHLSTOCK: Okay.

18 Q. I'm going to be a little bit more  
19 detailed now. With regard to the site, you would  
20 agree with me that within 1,000 feet of the  
21 pipeline we have four hi-rise complexes, there's  
22 a senior citizen complex, together with a



23 mid-rise complex and a hospital that services  
24 North Hudson. Adjacent to the pipeline is a  
25 sewerage treatment plant. Arguably in the event

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Steck - Cross

1 of some type of -- I don't want to call it  
2 disaster to the pipeline, it could have a serious  
3 impact both to the residents of Guttenberg and to  
4 the interference of gas being piped over to New  
5 York, wouldn't you agree?

6 A. Well, I would agree, as I heard the  
7 testimony at the last public hearing that --

8 MR. ALAMPI: Let me just -- excuse  
9 me, Peter.

10 I'll just object on the record. I  
11 can't possibly imagine that this witness --

12 MR. MUHLSTOCK: I agree with you 100  
13 percent on that one. This witness is not an  
14 expert. We've already heard all of the expert  
15 testimony from Mr. Kuprewicz, I believe.

16 MS. GESUALDI: Well, in terms of  
17 what's there presently and the pipeline, would it  
18 be appropriate for this board to insure that this  
19 project does not increase the risk of any  
20 residents to the Town of Guttenberg as a result  
21 of this project near the pipeline?

22 MR. MUHLSTOCK: That's the same  
23 question.

24 MS. GESUALDI: Not really.

25 3-30-11 Appleview  
MR. MUHLSTOCK: That really is not a

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Steck - Cross

1 planning issue for this witness.

2 MS. GESUALDI: It's a safety issue.

3 MR. MUHLSTOCK: But the safety

4 issues have already been discussed by Mr.

5 Kuprewicz who was the expert.

6 MS. GESUALDI: He was the expert

7 vis-a-vis the pipeline and more specifically it

8 was with regard to the construction. I'm

9 bringing up another issue, Mr. Muhlstock.

10 MR. MUHLSTOCK: I don't see it.

11 MS. GESUALDI: If you'll allow me to

12 proceed with one more question then.

13 MR. MUHLSTOCK: Go ahead.

14 Q. Specifically if there's a

15 governmental or regulatory agency such as the

16 office of Homeland Security and Preparedness

17 which should be contacted to conduct a security

18 vulnerability assessment of this project

19 vis-a-vis the project with an eye towards the

20 safety and security of the residents of

21 Guttenberg, is this not something that this board

22 should insure?

23 MR. ALAMPI: Well, let me object to

24 the premise --

25 MR. MUHLSTOCK: Again -- go ahead.

Steck - Cross

1 MR. ALAMPI: Please. Let me object  
2 to the premise that there's a requirement to  
3 notify Homeland Security. I'm not aware but of  
4 course I don't know all the federal regulations.

5 MR. MUHLSTOCK: Again.

6 MR. LAMB: I disagree.

7 MR. MUHLSTOCK: I think that the  
8 question was posed or should have been posed to  
9 Mr. Kuprewicz, not the planner. I don't see this  
10 as being within Mr. Steck's expertise, but I  
11 suppose the answer is obvious, the answer is yes.  
12 So I don't think -- I think the board is aware of  
13 that.

14 Q. Okay. Is that your answer,  
15 Mr. Steck?

16 A. My answer is that there are --

17 MR. MUHLSTOCK: I can't even help it  
18 along.

19 THE CHAIRMAN: You can't get a yes  
20 out of him.

21 MR. MUHLSTOCK: You can't get a yes.  
22 I gave it to you, Peter.

23 A. I can't help myself. The answer is  
24 that there are aspects of site plan review that  
25 allow you to take things into consideration other

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3-30-11 Appreview  
1 than pure zoning dimensional things. An  
2 illustration is if you have a residential  
3 building, let's say, backing up to a truck  
4 terminal, the planning board could suggest, let's  
5 say, having the corridor without windows on the  
6 back side of the building to keep the noise down.  
7 Now, that's not in the zoning ordinance --

8 Q. Agreed.

9 A. -- but in my opinion those types of  
10 considerations are eligible for consideration of  
11 the board in terms of its site plan review.

12 Q. It would make good planning?

13 A. Yes.

14 Q. Thank you.

15 THE CHAIRMAN: Okay, any member of  
16 the public?

17 MR. LAMB: Mr. Chairman, I have just  
18 a few redirect questions.

19 REDIRECT EXAMINATION:

20 BY MR. LAMB:

21 Q. Mr. Steck, Mr. Alampi asked you and  
22 I think you referred to the 2009 Master Plan  
23 Reexamination. And he quoted it and he said -- I  
24 think the question was, is a development  
25 sensitive -- the development should be sensitive

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♀

Steck - Redirect

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1 to the environment and the cliffs. I might  
2 have -- I'm just paraphrasing it.

3 Is it your opinion -- what is your  
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4 opinion as to whether this development is  
5 sensitive to the environment of the cliffs?

6 A. It is not because, first of all, it  
7 intrudes into the 30 percent slope physically and  
8 it violates the standard of a setback from the  
9 cliff. So by that very request for a variance,  
10 it is not sensitive to the cliffs.

11 MR. MUHLSTOCK: Well, let me follow  
12 up on that so the board can understand. Are you  
13 saying that there is no conceivable situation  
14 where the board could give or justify a setback  
15 into the slope of the Palisades?

16 THE WITNESS: I didn't say that. I  
17 said that it's the burden of proof of the  
18 applicant. The applicant is, number one,  
19 misreading the ordinance in my opinion; number  
20 two, has not shown, in my opinion, a  
21 justification.

22 MR. MUHLSTOCK: Right. Okay. So  
23 you don't believe they've proven their case, but  
24 you wouldn't deny that the board could give a  
25 variance if it felt that -- if it felt that it

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♀

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Rabin

1 was justified? Legally it could.

2 THE WITNESS: As I understand the  
3 law, the board can grant variances where there's  
4 a statutory justification for granting them.

5 MR. MUHLSTOCK: Okay. Okay. But

3-30-11 Appleview  
6 you don't think it's been proven here?

7 THE WITNESS: Not only do I not  
8 think it's been proven, I think if you do approve  
9 it it will be substantially detrimental to the  
10 zone plan and to the zoning ordinance.

11 MR. LAMB: Nothing further.

12 THE CHAIRMAN: All right. Thank  
13 you. I'm opening the public portion. Please,  
14 folks, don't repeat things that have been brought  
15 up before. We've heard previous testimony, let's  
16 not repeat it.

17 Let me also remind the public that  
18 we're questioning this witness on his testimony.  
19 JEREMY RABIN, residing at 7004 Boulevard East,  
20 Guttenberg, New Jersey 07047, having been duly  
21 sworn by the Notary Public, was examined and  
22 testified as follows:

23 THE WITNESS: If a building were to  
24 meet all the zoning requirements but it presented  
25 some kind of danger to the public as in Article 1

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Rabin

1 title and purpose D, the board has an obligation  
2 to promote public safety providing protection  
3 against fire, explosion, et cetera; if a building  
4 that met all the zoning ordinances was considered  
5 to be detrimental, would the board have the  
6 authority to refuse that building on the grounds  
7 of safety issues or to suggest redesigns to  
8 protect the public from dangers.

9 MR. STECK: Two answers --

10 MR. ALAMPI: Peter, just let me just  
11 note an objection. I recognize that these are  
12 non-lawyers. Just for the record, to say the  
13 building is a danger, I object. Maybe the issue  
14 is construction but go ahead.

15 MR. MUHLSTOCK: Okay.

16 MR. STECK: My understanding is that  
17 you cannot use a general purpose statement of an  
18 ordinance to prohibit something. You have to  
19 have a more detailed regulation. But it is  
20 eligible in terms of site plan review that there  
21 may be ways that a building can be reoriented.  
22 There could be safety precautions in construction  
23 that would better protect the public welfare.  
24 But the first answer is just because there's a  
25 general purpose statement, does not allow the

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1 municipality to prohibit the use.

2 THE WITNESS: So, for instance, if  
3 the a building was within zone but would involve  
4 pile driving close to a gas pipeline and the  
5 board were to determine that that was creating,  
6 after consulting with experts on this matter, was  
7 able to determine that there was a possibility of  
8 a catastrophic explosion, would they be able to  
9 say even though this is within zone, we don't  
10 think that this plan is safe, our experts don't

11 think it's safe, we think you need to alter the  
12 plan?

13 MR. STECK: I think the proper  
14 position of the board to be is that we are  
15 concerned about this obvious problem and we would  
16 request that you provide proofs that it could be  
17 constructed in a safe way. I think that's a  
18 reasonable approach to put the burden on the  
19 applicant to demonstrate that, for example,  
20 construction techniques are available which could  
21 keep the integrity of the pipeline.

22 THE WITNESS: In matters where there  
23 are substantial variances, such as lot coverage  
24 which are affecting that safety, would it be  
25 easier for the board to rule on those variances

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Rabin

1 on matters of public safety, wouldn't it?

2 MR. ALAMPI: Chairman, I have to  
3 object. There's been never a correlation that  
4 the lot coverage affects the safety of the gas  
5 pipe, so that's my objection.

6 MR. MUHLSTOCK: Well, I had asked  
7 Mr. Steck, the question I asked was which of the  
8 variances implicate this safety issue and maybe  
9 Mr. Rabin can get an answer from Mr. Steck  
10 because I couldn't.

11 THE WITNESS: I'm trying.

12 MR. LAMB: And just for the record,  
13 what our expert testified to is that you have to



3-30-11 Appleview

14 assess the risks to see what recommendations are  
15 to mitigate those risks which do have varying  
16 consequences where in connection with the site  
17 plan layout.

18 MR. MUHLSTOCK: Is that testimony?

19 THE CHAIRMAN: Yeah, sounded like  
20 it.

21 MR. MUHLSTOCK: It sounded like it.

22 MR. LAMB: That was his testimony,  
23 Mr. Muhlstock.

24 MR. MUHLSTOCK: Mr. Steck, can you  
25 answer Mr. Raben's question?

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Rabin

1 MR. STECK: Yes, I can.

2 MR. MUHLSTOCK: Go ahead.

3 MR. STECK: Just as an example, if  
4 the applicant conformed to the building coverage,  
5 it would allow more flexibility for placing a  
6 building and that more flexibility could be --  
7 could offer better protections for the pipeline.

8 THE WITNESS: Okay. In other areas  
9 where variances could create these dangers, in  
10 terms of the rear yard setback there is  
11 environmental reasons for protecting steep  
12 slopes, water runoff and soil erosion and other  
13 issues like that. There's aesthetic reasons for  
14 the rear setback, but I imagine there is also  
15 safety reasons, particularly if you consider a

16 building --

17 MR. MUHLSTOCK: Are you testifying  
18 or are you going to ask him a question?

19 THE WITNESS: I know I'm getting  
20 close to testifying. I'll turn it into a  
21 question. Given that the building inhabited  
22 floors are made of wood, do you think that there  
23 is an inherent risk of putting the first  
24 habitable floor up against a steep slope which is  
25 50, 60 percent slope when rocks could come

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Rabin

1 tumbling down, trees could come tumbling down and  
2 strike the wooden structure?

3 MR. ALAMPI: I couldn't imagine --  
4 even Mr. Steck would agree, he couldn't answer  
5 that the question, qualified to answer that  
6 question.

7 MR. STECK: I'd like to answer that,  
8 if I may.

9 MR. ALAMPI: I know you want to but  
10 I don't think he's qualified.

11 MR. STECK: I'm aware there are a  
12 number of developments that are built in quarries  
13 and because of the fact freezing and that thawing  
14 cycle there's always rock coming down from a rock  
15 face. So there is a safety issue that relates to  
16 that setback.

17 THE WITNESS: We had a --

18 MR. ALAMPI: You know, see, now we  
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19 talk about a quarry which is --  
20 MR. MUHLSTOCK: Mr. Alampi, look --  
21 MR. ALAMPI: -- chipping away with  
22 machines all day along.  
23 MR. MUHLSTOCK: He already  
24 testified. Ask another question.  
25 THE WITNESS: The geologist

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Rabin

1 testified that this is an area very prone to --  
2 THE CHAIRMAN: There were several --  
3 THE WITNESS: -- land slides, rock  
4 falls, et cetera.  
5 MR. STECK: Well, my experience is  
6 that that's what the talus slope is, it's rubble  
7 that over time has been deposited from part of  
8 the cliff. So it's clearly a natural phenomenon  
9 that rocks fall off the side of the cliff.  
10 Q. Would a 40-foot setback provide more  
11 protection to the wooden inhabited floors than a  
12 negative setback right up against the slope?  
13 MR. STECK: Yes.  
14 THE WITNESS: Thank you.  
15 Another issue, because the footprint  
16 of this building is larger, that obviously pushes  
17 the sides out closer to the pipeline than might  
18 otherwise have been possible, there's really  
19 nowhere that this building could be shifted to  
20 get -- if it's this big. It fills the entire

3-30-11 Appleview  
21 buildable area, the rest of it is cliff.  
22 MR. STECK: Actually it flows out of  
23 it. It can't fit in the area.  
24 THE WITNESS: Yes. Given that  
25 situation, do you think according to Article 1,

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Rabin

1 the protection, there is a protection in there  
2 from noxious fumes and other hazards, are you  
3 aware that the north side of this building is  
4 extremely close to open water sewerage treatment?  
5 MR. STECK: I'm aware that there is  
6 a treatment plant on the abutting property to the  
7 north.  
8 THE WITNESS: Well, there's two  
9 tanks that are open water sewerage treatment and  
10 particularly in the spring and summer --  
11 THE CHAIRMAN: Now you're  
12 testifying.  
13 MR. MUHLSTOCK: Now you're  
14 testifying. That's not appropriate.  
15 THE WITNESS: Well, we have in this  
16 building apartments --  
17 THE CHAIRMAN: Ask him if he's aware  
18 of it, so yes or no.  
19 THE WITNESS: -- that are extremely  
20 close to this open water sewerage and --  
21 MR. ALAMPI: Mr. Chairman --  
22 THE WITNESS: --penthouses that are  
23 exposed --

24 MR. ALAMPI: There's been no  
25 evidence of open water sewerage and such. We

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Rabin

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1 know it's a treatment plant.

2 THE CHAIRMAN: Yeah.

3 THE WITNESS: You have with your --

4 MR. MUHLSTOCK: Mr. Rabin, don't  
5 respond to Mr. Alampi. Ask a question.

6 THE WITNESS: Could I show where the  
7 open water sewerage is?

8 MR. MUHLSTOCK: Ask the witness a  
9 question.

10 THE CHAIRMAN: You're asking the  
11 witness.

12 MR. MUHLSTOCK: And don't testify,  
13 please.

14 THE WITNESS: I'll try not to.

15 MR. LAMB: Mr. Chairman, to assist  
16 this, this is just questions and at the end of  
17 this if you want to make a statement that says  
18 there are open sewers, then you can make that in  
19 the statement.

20 MR. MUHLSTOCK: Exactly, he can do  
21 that when it comes his turn.

22 THE WITNESS: If there were open  
23 water sewerage a few feet from apartment windows,  
24 air conditioners, balconies and people were  
25 sickened by that, would they be able to --

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Rabin

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1 THE CHAIRMAN: Wait a minute.

2 You're going way out.

3 MR. MUHLSTOCK: There's nothing in  
4 the record, Mr. Rabin. That's really not a fair  
5 question.

6 THE WITNESS: As I said, I could  
7 show on the map where the open water sewerage is.

8 THE CHAIRMAN: Now people are  
9 getting sick?

10 THE WITNESS: At this range, at this  
11 close proximity?

12 MR. MUHLSTOCK: This is a planner,  
13 by the way.

14 THE WITNESS: I'm asking about the  
15 zoning ordinance that requires that the public be  
16 protected from noxious fumes. It's one of the  
17 things you're supposed to consider.

18 MR. MUHLSTOCK: So ask him a  
19 question on that. And don't put evidence or  
20 proposed evidence into the record in your  
21 questions. Just ask him what he knows.

22 THE WITNESS: I didn't know the open  
23 water sewerage would be hypothetical. It exists.

24 THE CHAIRMAN: Ask him if he knows  
25 about it and is it dangerous.

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Rabin

1 THE WITNESS: Right here, those two  
2 are open water.

3 THE CHAIRMAN: No, no, no. Ask him  
4 if he knows about it.

5 THE WITNESS: Okay. Well, I'm sorry  
6 that didn't work.

7 I guess this will be my last  
8 question. There's a requirement in P2 that  
9 flexibility be used to achieve the P2. That  
10 would seem to imply that the developer aside from  
11 just meeting all the criteria, that the developer  
12 may need to actually make some sort of sacrifice  
13 to achieve the goal of the P2 which is to allow  
14 views of and from the Palisades. It seems to be  
15 the interpretation of Apple View's planner that  
16 flexibility means the right to request a lot of  
17 variances.

18 Isn't it really the developer who  
19 should be conceding when it says flexibility  
20 should be used to adhere to P2?

21 MR. STECK: I look at flexibility as  
22 built into the ordinance, and as I mentioned, if  
23 you just develop a building envelope, extract the  
24 front, side and rear yard setbacks, we have a  
25 certain area. The ordinance says, however, you

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Rabin

1 can only build on 25 percent of the property

3-30-11 Appleview  
2 which is a much smaller area. So the answer is,  
3 the ordinance allows multiple locations for a  
4 building based on the circumstances of the lot.  
5 So that's the type of flexibility I think that  
6 the -- that is illustrated by the requirements of  
7 the ordinance.

8 THE WITNESS: Given that some of the  
9 P2 lots are highly constrained -- this is one is  
10 50 percent steep slope -- it puts some additional  
11 burdens on the developer which he knew going into  
12 this, what he would be facing if he tried to  
13 build on this lot.

14 MR. STECK: Well, first of all, any  
15 developer, I'm sure, looked at the property  
16 before they purchased it and probably noticed  
17 something like the Palisades; it's hard to miss.  
18 And this whole zone is designed to address the  
19 fact that there are the Palisades there. And  
20 that's why I emphasis, for example, the rear yard  
21 setback. There were multiple concerns about the  
22 Palisades; it is safety, it is aesthetics, it is  
23 the view from and view of. And that's why, for  
24 example, in my opinion, the ordinance only  
25 allowed 25 percent coverage, because that means

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Marjan

1 now that there are areas left that are relatively  
2 flat where you can place a building and you have  
3 a choice. And that's an illustration of  
4 flexibility that's built into the ordinance.



5 THE WITNESS: would building a  
6 building within code or even smaller than  
7 required be one way to be flexible to achieve the  
8 P2?

9 MR. STECK: I'm not sure if the two  
10 are directly related.

11 THE WITNESS: All right. well,  
12 thank you.

13 THE CHAIRMAN: Okay, anyone else  
14 from the public? Yes, sir. The gentleman back  
15 there is the one I pointed to. We'll get you  
16 next.

17 BIJAN MARJAN, residing at 8100 River Road, North  
18 Bergen, New Jersey, having been duly sworn by the  
19 Notary Public, was examined and testified as  
20 follows:

21 THE WITNESS: Just very basic  
22 question. From a planning perspective, from a, I  
23 guess just from a building perspective, is  
24 privacy of the residents something that is  
25 important, something that should be taken into

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Varma

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1 consideration? Specifically we're talking about  
2 a distance of 20 feet from the Galaxy. So  
3 residents of this building and residents of the  
4 Galaxy can practically have lunch together or  
5 dinner together. Is that something that should  
6 be taken into consideration?

7 MR. STECK: I am -- in reviewing an  
8 application you're first confined by the  
9 standards. So what you're talking about is a  
10 little bit of site plan review which is over and  
11 above the standards of the zoning chapter. So  
12 the answer is, it is something many times -- the  
13 site plan process is typically kind of a  
14 negotiation where the board can express some  
15 concerns, such as the privacy of residents, and  
16 invite the applicant to provide a solution to  
17 that. So there should be some give and take in  
18 the planning process.

19 THE WITNESS: Thank you.

20 THE CHAIRMAN: Now, sir.

21 RAVINESH VARMA, residing at 3808 Liberty Avenue,  
22 North Bergen, New Jersey, having been duly sworn  
23 by the Notary Public, was examined and testified  
24 as follows:

25 THE WITNESS: Mr. Chairman, Harry,

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Varma

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1 Harry Mayo?

2 THE CHAIRMAN: Yes.

3 THE WITNESS: And the board members  
4 and the citizens of North Bergen --

5 MR. SOMICK: Do you have a question?

6 MR. MUHLSTOCK: You're here only to  
7 ask Mr. Steck questions at this time.

8 THE WITNESS: Okay, then I'll ask  
9 you a question, sir. You have a house and you

3-30-11 Appleview

10 don't want an article in the house, an object in  
11 your house, what would you do?

12 MR. STECK: I would take it out of  
13 the house.

14 THE WITNESS: Thank you very much.  
15 That's what we are here for, sir. We want, our  
16 common people of North Bergen --

17 MR. MUHLSTOCK: No, no, no speeches  
18 at this point.

19 THE WITNESS: I'm not giving speech.  
20 This is something that the everybody needs to  
21 understand.

22 THE CHAIRMAN: What's your question?

23 MR. MUHLSTOCK: Later on. Do you  
24 have a question? The witness is here.

25 THE WITNESS: Okay, I'll be back.

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Wong

1 THE CHAIRMAN: All right.

2 Mrs. Wong.

3 PEGGY WONG, residing at 8550 Boulevard East,  
4 North Bergen, New Jersey, having been duly sworn  
5 by the Notary Public, was examined and testified  
6 as follows:

7 THE WITNESS: Mr. Steck, could you  
8 just humor me and give me a definition of the  
9 purpose of a variance? I mean, where does that  
10 spring from?

11 MR. STECK: Well, when they

3-30-11 Appreview  
12 instituted zoning a great number of years ago it  
13 was recognized that there needed to be some  
14 relief mechanisms in certain circumstances  
15 because without a relief mechanism, the whole  
16 zoning control scheme would probably be  
17 unconstitutional. So there were criteria  
18 established both in the state law that authorizes  
19 zoning, and Municipal Land Use Law and case law  
20 which suggests that there may be unusual  
21 circumstances with a piece of property that don't  
22 exist generically in the zone that might link --  
23 that might result in practical difficulties or a  
24 hardship to a developer, or there might be a  
25 different development scenario where the

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Wong

1 benefits, for example, substantially outweigh the  
2 detriments.

3 So, if there was a rock outcropping  
4 on this part of the zone but none of the other  
5 zone had a rock outcropping, someone could say,  
6 oh, well there should be relief here.

7 So you have to look at something  
8 that's peculiar to this property, not generic.  
9 You have to show that it creates some kind of a  
10 hardship, for example. And even if you can  
11 demonstrate that, you have to show that it is not  
12 detrimental to the zone plan.

13 So, for example, if your zone plan  
14 is to protect the view of the Palisades or from

15 it, you have to show that it doesn't violate that  
16 principle and you have to show that it's not  
17 going to be detrimental to the public good; it's  
18 not going to cause a traffic problem; it's not  
19 going to cause storm water to run on someone  
20 else's property and the like.

21 THE WITNESS: Okay. I have seen not  
22 just in this application but other applications  
23 it seems that architects and developers come in  
24 front of the planning board with a just a ton of  
25 variances. And in my mind I'm saying to myself

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Wong

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1 well, why can't they design within the code. And  
2 is it my imagination but over the years has there  
3 been just a flood of variances on a given project  
4 or --

5 MR. STECK: I have not done a study  
6 on that, so I can't comment on other applications  
7 in this municipality.

8 THE WITNESS: well, in this one  
9 instance I believe you said that the footprint of  
10 this development is 25 percent in excess of  
11 what's allowed.

12 MR. STECK: That's correct.

13 THE WITNESS: Is that excessive,  
14 that 25 percent?

15 MR. STECK: In my opinion, it is.

16 THE WITNESS: All right. At what

17 point is a variance so excessive that it totally  
18 destroys the concept of a variance?

19 MR. STECK: Well, there are  
20 instances where a variance is so large that one  
21 could argue that it's almost changing the zone.  
22 It's more legislative than it is -- it's beyond  
23 the power of this board to grant. So if, for  
24 example, someone came in with a 30-story building  
25 here and it only allowed, you know, eight

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1 stories, one could argue that that might be even  
2 too big a variance that the board could grant.  
3 So it's a judgment call. But in this case  
4 there's an instance where I think it offends the  
5 purposes of the zone, and I don't think the  
6 applicant has presented what I would consider  
7 valid justifications, and I think the applicant  
8 has misread the ordinance in a severe way.

9 THE WITNESS: All right. And also  
10 there was -- I was reading your testimony and I  
11 wasn't quite comprehending. At one point you  
12 mentioned that this development had 17,500 square  
13 feet that was due to the rear yard setback.  
14 Could you explain that a little bit? Because I  
15 think even Mr. Muhlstock was questioning it  
16 because he didn't understand it either.

17 MR. STECK: Yes. Let me -- that  
18 figure got amended slightly. The new figure I  
19 quoted, I calculated a little more carefully, was

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20 -- I approximated it 17,366 square feet.  
21 That's -- the footprint of the building, if the  
22 sun is on top, that's the shadow. That's the  
23 portion of this building that is too close to the  
24 Palisades than permitted by law. So that's a  
25 substantial portion of the --

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1 THE WITNESS: To the tune of over  
2 17,000 square feet.  
3 MR. STECK: That is correct?  
4 THE WITNESS: That is abusive, isn't  
5 it, of a variance?  
6 MR. STECK: Well, I would call it  
7 significant.  
8 THE WITNESS: All right. Now, I  
9 have heard that the New Jersey Courts are  
10 starting to rule against cases where there are  
11 excessive variances granted. Is that true?  
12 MR. STECK: I'm not an expert --  
13 MR. MUHLSTOCK: Hold on, that's not  
14 an appropriate question for this witness.  
15 THE CHAIRMAN: Nice try, though.  
16 THE WITNESS: Nice try. But you can  
17 ask that of yourselves, if it's true.  
18 Now, are you familiar with this  
19 Exhibit 16 which is the Palisades Slope Stability  
20 Study? Have you read --  
21 MR. STECK: I did read the study,

22 yes.

23 THE WITNESS: And have you read that  
24 portion that addresses the Apple View site? Even  
25 though it's referred to in this study as the

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1 North Bergen MUA, south, point six, and it's on  
2 page 20 of the study.

3 MR. STECK: Yes, it does incorporate  
4 this site in the description.

5 THE WITNESS: And are you familiar  
6 with the part where it recommends -- and this  
7 was -- this study was done before the Apple View  
8 application was filed, this study recommends a  
9 gabion type retaining wall built?

10 MR. STECK: Yes.

11 THE WITNESS: Now, given this  
12 development, would you say that this kind of a  
13 recommendation would still apply?

14 MR. STECK: I can't answer that.  
15 what it does do is highlight the fact that there  
16 is a certain element of instability to the  
17 Palisades, and it certainly highlights, in my  
18 opinion, for example, the importance of a rear  
19 setback.

20 THE WITNESS: Okay. And also  
21 lastly, this report mentions investigating Ferry  
22 Road to assess the supporting requirements. Does  
23 that surprise you?

24 MR. STECK: Well, as the report in  
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25 general says, is that this is -- there are some

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1 instability to the Palisades, just through  
2 natural processes, and so I think it is wise for  
3 developers and board to take that into account in  
4 making their decisions.

5 THE WITNESS: All right. Now, as I  
6 understand it, the engineer for this project has  
7 said that protective netting is not required  
8 here. Do you have an opinion on that?

9 MR. STECK: I don't.

10 THE WITNESS: Okay. I think that's  
11 all I have. Thank you very much.

12 THE CHAIRMAN: All right. Thank  
13 you. Yes, ma'am.

14 RUTH OLSEN, residing at 7004 Boulevard East,  
15 Guttenberg, New Jersey, having been duly sworn by  
16 the Notary Public, was examined and testified as  
17 follows:

18 THE WITNESS: I just have a couple  
19 of questions considering what I've heard just in  
20 the past few minutes about variances. Now,  
21 you've been a planner for many, many years?

22 MR. STECK: Yes.

23 THE WITNESS: And have gone through  
24 many of these applications. Isn't it generally  
25 the case that a developer would look at the site

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1 before they attempt to buy anything or make site  
2 plans to develop it?

3 MR. STECK: Yes, if a developer is  
4 entering into a contract to purchase, there's  
5 often what they call a due diligence period where  
6 the developer does some investigations to gain a  
7 comfort level that they can do what they want to  
8 do.

9 THE WITNESS: Okay. Now, the  
10 question I have with variances and this whole  
11 issue is that it would seem to me that any  
12 developer looking at this site would know right  
13 away that they would have to ask for all these  
14 variances; isn't that the case?

15 MR. STECK: Well, I can't answer  
16 that. Some developers look at a site and they  
17 say well, I'm guaranteed development that's  
18 variance free, so that's kind of a base level.  
19 Sometimes developers knowing that it is to their  
20 financial benefit to seek variances, that might  
21 be their motivation. Sometimes there is a  
22 variance that's actually justified. So it  
23 depends upon the facts of the case.

24 THE WITNESS: But a developer  
25 looking at this site, this particular site would

1 know that he would have to ask or she would have  
2 to ask for a lot of variances?

3 MR. STECK: I don't know that to be  
4 the case. The ordinance -- it's certainly  
5 possible to build residential units on this site  
6 that are variance free. So there is -- there's a  
7 possibility, someone could look at that, talk to  
8 an architect or a planner or an engineer and say  
9 what can I build on this site that's guaranteed  
10 variance free, and there is a type of development  
11 that would be variance free.

12 THE WITNESS: So if that's the case,  
13 then if there was a way of developing this  
14 property that's variance free, that would meet  
15 all the zoning requirements and all -- for the P2  
16 zone, why would a developer want to just ignore  
17 all of that and seek variances that would be  
18 detrimental to the zoning laws?

19 MR. STECK: Well, there is a  
20 financial incentive to building more than the  
21 zoning allows.

22 THE WITNESS: And are these zoning  
23 regulations, are they regulations or laws?

24 MR. STECK: They're both. They are  
25 laws adopted by the North Bergen governing body

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1 and they're the regulations that developers are  
2 required to adhere to unless there are

3       statutorily based reasons why an exception should  
4       be granted.

5               THE WITNESS: But the board could  
6       look and say you have to build something that's  
7       variance free, couldn't it?

8               MR. STECK: Well, the board has to  
9       listen to the testimony. And every applicant has  
10      the right to apply, but it's the burden of the  
11      applicant to show that they merit some relief  
12      from the law. And if the they can't demonstrate  
13      a statutorily-based variance, then the board is,  
14      in my opinion, obligated to turn down the  
15      application.

16              THE WITNESS: Okay. So all right.  
17      Then my next question and my last will be what is  
18      the relief? I mean, are they going to be under  
19      tremendous hardship because -- is that one  
20      relief, that knowing that they would have to be  
21      asking these variances and going ahead anyway and  
22      risking it and then they say, well, I'm going to  
23      lose money if you don't give me the variances? I  
24      mean, that's what it seems to --

25              MR. STECK: See, the applicant's

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olsen

1      planner said there's a hardship because there's a  
2      cliff in the back part of this property.

3              THE WITNESS: But they knew that  
4      going in.

5              MR. STECK: Well, not only that, but  
                                Page 84

6 the whole zone is designed to accommodate the  
7 cliffs. So that is an example, in my opinion, of  
8 a testimony by the applicant that doesn't merit  
9 variance relief.

10 THE WITNESS: Yeah. See, that's  
11 what I don't get, the fact that the developer is  
12 saying please give me relief from something that  
13 I knew that was there and should stay there. I  
14 mean, he's not saying we should blow up the  
15 Palisades. So he's saying it should stay there.  
16 That's the part I don't get.

17 MR. STECK: I don't know if I can  
18 change the fact that you don't get it.

19 THE WITNESS: Okay, thank you very  
20 much.

21 THE CHAIRMAN: Okay. Anyone else?

22 MR. FERNANDEZ: How many variances  
23 -- and I'm looking at them -- does this applicant  
24 really have?

25 MR. STECK: I think there's a

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1 variance for lot size because it's undersized  
2 and, indeed, if he chose to put an office there,  
3 the variance would be less severe. I think that  
4 there is a variance for lot building coverage  
5 which exceeds 25 percent.

6 MR. FERNANDEZ: Right.

7 MR. STECK: I think there is a

8                               3-30-11 Appleview  
variance for a rear yard setback.

9                               MR. FERNANDEZ: There is now  
10 according to the zoning notes, the zoning  
11 requirements is 40 feet; he's proposing 130 feet.

12                              MR. STECK: Well, that's because  
13 he's misinterpreting what the rear yard is, in my  
14 opinion.

15                              MR. MUHLSTOCK: But they have  
16 requested a variance subsequent to the filing of  
17 the plan that you're looking at.

18                              THE CHAIRMAN: That's true.

19                              MR. STECK: There is a variance  
20 required, in my opinion, for the front setback  
21 which is measured from the property line.

22                              MR. FERNANDEZ: That's it.

23                              MR. STECK: It could be argued that  
24 there is a variance from the northerly side yard  
25 because the intent of the side yard is to be a

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1 setback that has landscaping on it and that  
2 side -- that northerly yard, that 20-foot  
3 easement the applicant doesn't control and can't  
4 plant over it because there's a pipeline there.  
5 So an interpretation, in my opinion, is possible  
6 that you really ought to measure the setback from  
7 the edge of the easement from a practical point  
8 of view rather than right at the easement.

9                              THE CHAIRMAN: But that's not what  
10 the ordinance requires, correct?

11 MR. STECK: well, this is an unusual  
12 circumstance. Because the whole picture is, you  
13 know, what do you do with the side yard; you  
14 plant things in it. Here's a side yard that by  
15 its very nature because of the easement can't be  
16 planted. So I think it is a reasonable  
17 interpretation to say perhaps the setback should  
18 be measured from the edge of the easement.

19 THE CHAIRMAN: As you pointed out in  
20 your testimony, that's why variances exist; yes?

21 MR. STECK: I don't think I pointed  
22 that out in my testimony.

23 MR. FERNANDEZ: So basically this  
24 application only has four --

25 MR. STECK: So those are the -- and

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1 it's not an issue of, you know, the applicant  
2 could conform with everything but be three times  
3 the height. It's the magnitude of the variance  
4 that plays into adjustment, not just the number.

5 MR. FERNANDEZ: Okay, thank you.

6 MR. AHTO: Do you also represent  
7 applicants and developers?

8 MR. STECK: I do.

9 MR. AHTO: Okay. With your  
10 representation in planning, do you have  
11 applications go in that have variances?

12 MR. STECK: Yes.

13 MR. AHTO: You do. I got a yes.  
14 That was the first yes of the evening. Okay.  
15 MR. STECK: Yes, you got a yes.  
16 MR. AHTO: There was a lot of talk  
17 about a lot of witnesses and experts about the  
18 pipeline and the safety. Now, the northern  
19 setback for the side yard is 20 feet, is that  
20 what the ordinance calls for?  
21 MR. STECK: The ordinance calls for  
22 a 20-foot average setback on the north side and  
23 the south side.  
24 MR. AHTO: Okay. You also said that  
25 if they build the building variance free it would

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1 be safer for the pipeline, but if they build a  
2 building variance free and still keep that 20  
3 foot side yard, wouldn't it be the same?  
4 MR. STECK: Well, again, I was  
5 trying to make the distinction between zoning  
6 controls and site plan controls. If you  
7 interpret the ordinance to be 20 feet and ignore  
8 the fact that there is an easement there with a  
9 pipeline and you say that's fine, if the  
10 applicant had conformed to the code, there would  
11 be flexibility of locating the building in  
12 different positions and one position might be  
13 away from the pipeline.  
14 So what I'm suggesting is that those  
15 considerations such as public safety issues



16 related to the pipeline can alter an application  
17 using site plan principals.

18 MR. AHTO: But if they build a  
19 building without variances and still keep that 20  
20 foot side yard, would that be variance free also?

21 MR. STECK: Well, what I'm  
22 suggesting is -- and there is a couple more  
23 variance issues that came to my mind, I apologize  
24 for having to roll back my testimony, but I think  
25 you have to look at the -- one way to look at it

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1 is simply, look, they're 20 feet back from the  
2 northern property line that's it, that's the end  
3 of it. But because there's an unusual  
4 circumstance I can look at it two ways; the board  
5 could say there is a setback variance, you really  
6 ought to measure from the easement because that  
7 was really the purpose of it, or you could say  
8 from a site plan point of view it is wise to push  
9 it back from the easement.

10 what I forgot to say before, and  
11 sorry for rolling this back, is that the easement  
12 is part of this application because, as you  
13 recall, behind the building there's going to be a  
14 staging area for the pipeline which is another  
15 use on the property, a dual use, which could also  
16 be looked at as triggering a variance.

17 MR. FERNANDEZ: I was going to get

18 to that. what other use?

19 MR. STECK: It's the storage of  
20 construction, the maintenance equipment.

21 MR. FERNANDEZ: I don't remember any  
22 testimony of anybody putting --

23 MR. STECK: There's an easement area  
24 for the rear of the property that is part of this  
25 application that doesn't exist today that will

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1 accommodate maintenance equipment. We don't  
2 know, since the pipeline people haven't appeared,  
3 we don't know exactly what's going to go there.  
4 But the purpose of it, as I understand, is to  
5 potentially have equipment to, I don't know, to  
6 store there, to service the pipeline. We just  
7 don't know what it is. But there's another use  
8 that's proposed on the property that we just --  
9 it's kind of a mystery use because there is no  
10 one that's speaking on behalf of the easement  
11 holder.

12 MR. AHTO: Are we talking about in  
13 the rear of the building?

14 MR. STECK: Yes.

15 MR. AHTO: So you're saying there's  
16 another easement in the rear of the building with  
17 Transco pipeline? They have another easement?

18 MR. STECK: As I understand it,  
19 there is what you might call a staging area being  
20 framed in the rear of the building that is to  
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21 accommodate the pipeline company.

22 MR. AHTO: Is it on the plans?

23 MR. STECK: I believe it is.

24 MR. AHTO: Jill, do you know if it's  
25 on the plans?

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1 MR. LAMB: It's shown on the plans  
2 and it's also -- Mr. Alampi submitted to the  
3 board the right-of-way agreement. If you look at  
4 the right-of-way agreement that's proposed with  
5 Transco there's three areas; one is the access  
6 which is 20 feet, one is the maintenance area,  
7 and one is the staging area.

8 MS. HARTMANN: But as I understand  
9 it, there's nothing proposed for storage, just  
10 maintenance --

11 MR. ALAMPI: There's no storage  
12 here, come on. Nobody used those words.

13 MS. HARTMANN: They're just easement  
14 areas. And I will tell you, if I may, with  
15 regards to the side yard setback, we permit  
16 parking in the side yard setback. So the side  
17 yard setbacks that are required are to provide  
18 physical separation of buildings from they're  
19 sidelines. Would you prefer landscaping?  
20 Sometimes you get it, sometimes you don't. But  
21 our ordinance is very specific, the only other  
22 thing that you normally would have in any

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23 ordinance is no parking, you know, within a side  
24 yard or rear setback. And our ordinance does not  
25 allow parking in the front yard setback or within

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1 10 feet of the rear yard. It's silent to the  
2 side yards. So without an easement, this could  
3 also be paved.

4 MR. MUHLSTOCK: And there is no  
5 requirement in our ordinance that the side yard  
6 be landscaped?

7 MS. HARTMANN: That's what I'm  
8 saying, there is no requirement in our ordinance.

9 MR. MUHLSTOCK: There's a 10  
10 percent.

11 MS. HARTMANN: There's a 10 percent  
12 and we have, basically we have approximately 50  
13 percent of the site left open because it's most  
14 of the Palisades that isn't touched.

15 THE CHAIRMAN: All right. Thank  
16 you.

17 MR. STECK: If I could just complete  
18 my answer on the Bertin Engineering plans, sheet  
19 C-2.2 in the right hand half of it there's an  
20 inset that shows the existing easement that goes  
21 up the property line or the requested easement  
22 because apparently it was never recorded, and  
23 then it shows a larger area with a title  
24 "Proposed Pipeline Maintenance Easement to  
25 Transco and Township of North Bergen, total area

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1 4,842.7 feet." So these are things that don't  
2 exist today that are being proposed as part of  
3 this application.

4 THE CHAIRMAN: It doesn't include  
5 the word storage either.

6 MR. STECK: It says maintenance, and  
7 it would seem to me maintenance from my point of  
8 view probably includes some equipment.

9 THE CHAIRMAN: Okay. I'm sorry, Mr.  
10 Alampi, do you have a question?

11 MR. ALAMPI: I think I need a short  
12 break, Chairman.

13 THE CHAIRMAN: All right. We'll  
14 take a five-minute recess.

15 (Recess taken.)

16 THE CHAIRMAN: Ladies and gentlemen,  
17 please take your seats. Ladies and gentlemen  
18 please take your seats. Ladies and gentlemen.

19 Okay, I'm going to take the final two  
20 members of the public, then we'll do summaries.

21 MR. LAMB: Mr. Chairman, just to  
22 clarify, I referred to staging. The easement  
23 does not say staging, it has three sections of  
24 the easement in the proposed right-of-way and it  
25 references maintenance and it has a schedule of a

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1 description which has 4,400 some odd square feet.

2 THE CHAIRMAN: All right. Thank  
3 you. All right. This lady back here in the gray  
4 jacket, I think you wanted to --

5 A VOICE: I think he asked the  
6 question.

7 THE CHAIRMAN: It's been answered  
8 then thank you. This is the last one.

9 ELAINE BROOKS, residing at 7004 Boulevard East,  
10 Guttenberg, New Jersey, having been duly sworn by  
11 the Notary Public, was examined and testified as  
12 follows:

13 THE WITNESS: My question is to you,  
14 I speak with many of my concerned neighbors. We  
15 don't know about site lines and site plans and  
16 all the other things that we listen to. What we  
17 hear is that a gas pipeline is going up that  
18 could be dangerous, that could affect our lives,  
19 that could kill millions of people like it's been  
20 doing that California and it happened in Edison,  
21 New Jersey. My question is very simple, if this  
22 board in its judgment decides to pass the  
23 existing gas line the way it stands and there is  
24 God forbid an explosion, who is responsible, the  
25 board, the gas company or the developer?

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2 MR. MUHLSTOCK: Sustained. He can't  
3 answer that.

4 THE WITNESS: Well, I just want to  
5 put that thought --

6 MR. MUHLSTOCK: We understand your  
7 concerns. Thank you.

8 THE WITNESS: Okay, so you can't  
9 answer that?

10 MR. STECK: Correct.

11 THE WITNESS: I hope that nothing  
12 happens. Thank you very much.

13 THE CHAIRMAN: Thank you. Okay.  
14 Summations. Let's kind of keep them brief.

15 MR. LAMB: Mr. Chairman, I  
16 understand that the public has a right to make  
17 statements or comments because they've only asked  
18 questions so far.

19 MR. MUHLSTOCK: We're going to do  
20 that after.

21 MR. LAMB: And the outstanding issue  
22 that Mr. Muhlstock was going to address is my  
23 request that the board subpoena a representative  
24 of Transco.

25 THE CHAIRMAN: All right. Let me

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1 mention for the record we've got three items  
2 here. We have a letter dated March 28th from the  
3 attorney for Transcontinental Gas Pipeline

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4 Company. We have a letter from the mayor of  
5 Guttenberg, also dated March 28th raising an  
6 issue with regard to Homeland Security which has  
7 been briefly mentioned tonight, and we have a  
8 follow-up letter from Boswell dated March 29th  
9 talking about the information received from  
10 Transcontinental.

11 MR. MUHLSTOCK: Now, Mr. Lamb in  
12 response to your request I'm going to suggest to  
13 the board that no subpoena be issued. We have  
14 information from Transco, we have information  
15 from Boswell, we have specifications,  
16 specifically, Mr. McGrath's last letter "This  
17 letter should satisfy the board's concerns  
18 regarding the safety of the gas pipeline" and  
19 states "Williams Transco's intention to protect  
20 same as is their responsibility."

21 Unless any of the members of the  
22 board feel that we should subpoena for more  
23 information, I don't believe --

24 MR. LAMB: Mr. Muhlstock, just for  
25 the record I understand your position, I'm just

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1 putting my position on the record.

2 MR. MUHLSTOCK: Thank you.

3 MR. LAMB: I strenuously object to  
4 the board considering information on this issue  
5 from the engineers in Transco when nobody is here  
6 to be subject to direct examination or



7 cross-examination.

8 MR. MUHLSTOCK: Is strenuously more  
9 than a regular objection?

10 MR. LAMB: Much more than a regular  
11 objection. I was going to use the word  
12 vehemently but I used strenuously.

13 MR. MUHLSTOCK: Strenuously object,  
14 I heard that once before.

15 MR. LAMB: It's one of my three or  
16 four in this application.

17 THE CHAIRMAN: Summations,  
18 gentleman.

19 MR. LAMB: Do you want the public --

20 MR. MUHLSTOCK: No, we're going to  
21 hear attorneys first.

22 MR. LAMB: Do you want the public to  
23 make comment because I understand there's going  
24 to be another witness from Guttenberg? I believe  
25 the mayor from Guttenberg is going to testify.

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1 MR. MUHLSTOCK: As a witness?

2 MS. GESUALDI: Yes.

3 THE CHAIRMAN: As a witness.

4 MS. GESUALDI: The mayor would like  
5 to be called as a witness.

6 THE CHAIRMAN: Okay.

7 MR. ALAMPI: I respect the office of  
8 the mayor in Guttenberg. I thought -- and Ms.

9 Gesualdi has every right to call witnesses, so  
10 I'm a bit surprised but I certainly respect  
11 Guttenberg's right to weigh in on it.  
12 MAYOR GERALD DRASHEFF, stating a business address  
13 of 6808 Park Avenue, Guttenberg, New Jersey,  
14 having been duly sworn by the Notary Public, was  
15 examined and testified as follows:  
16 DIRECT EXAMINATION  
17 BY MS. GESUALDI:  
18 Q. Mayor Drasheff, as mayor of the Town  
19 of Guttenberg what is the town's position  
20 regarding the various variances requested by the  
21 applicant?  
22 MR. MUHLSTOCK: Wait a second.  
23 Before you answer that -- and I'm sure Mr. Alampi  
24 would ask the same question. Has the matter been  
25 discussed at a council meeting? Are there

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Drasheff - Direct

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1 minutes?  
2 THE WITNESS: No, there is not.  
3 MR. MUHLSTOCK: Is this going to be  
4 your, your -- you asked what is the Town of  
5 Guttenberg's position. The mayor is speaking on  
6 behalf of the entire town or he's speaking as  
7 just the mayor? I think that's important.  
8 THE WITNESS: Speaking as the mayor.  
9 MR. MUHLSTOCK: Okay, go ahead, just  
10 as the mayor.  
11 THE WITNESS: As mayor I want to be

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12 on record that as mayor of Guttenberg, we are not  
13 opposed to development. We encourage development  
14 in our own town. I've been here many, many  
15 months now following this particular application,  
16 and as I've watched it develop, some of the  
17 concerns we had as a town and as mayor of the  
18 town have been addressed.

19 The density of the project has  
20 relieved some of my concerns at least about  
21 traffic on River Road. A concern of the town and  
22 something that was discussed was the sewer  
23 easement which by moving the project forward up  
24 from the cliffs, that easement is protected now,  
25 so that is not a concern of ours.

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Drasheff - Direct

1 It really brings me to the main  
2 concern, and it's been touched on briefly here,  
3 and you mentioned a letter which I wrote on  
4 behalf of the town to the Department of Homeland  
5 Security; there is an 800 pound gorilla in the  
6 room and it's that gas pipeline. And in light of  
7 the fact that it's appropriate, and I've heard  
8 testimony from enough witnesses here that it is  
9 appropriate for this board to consider the impact  
10 of safety of this project as it's proposed. I  
11 think that something that this board needs to  
12 consider.

13 I would ask the board to join with me

14 in requesting from the Department of Homeland  
15 Security an evaluation of how this particular  
16 project as proposed will impact on the safety of  
17 that pipeline. The pipeline exists. It's there  
18 today; it's a risk. I think the question that I  
19 have and I've heard from many, many of my  
20 residents, and a question I think you need to  
21 consider is, is the placement of this project --  
22 does the placement of this project expose us all  
23 to a greater risk than is a concern today. There  
24 is a state agency that addresses that, Critical  
25 Infrastructure within Homeland Security. It's a

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Drasheff - Direct

1 very simple question to be asked of them, okay;  
2 would this as proposed with an enclosed garage  
3 within 20 feet of this pipeline increase our  
4 risk? You're going to get, as I could see it,  
5 one of three answers; it's not a problem, in  
6 which case you can certainly vote with a very  
7 clear conscience; it's a problem but it can be  
8 addressed in the following ways; they will  
9 address that for you. You can then consider that  
10 as part of your final decision. Or they'll tell  
11 you, you got to be crazy to even think about  
12 this. I think it would be -- it would help the  
13 peace of mind of all of our residents if that  
14 question was addressed beforehand.

15 You indicated a letter from Transco  
16 that seems to say they'll take care of all the