

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

MEETING IS CALLED TO ORDER:

MR. LEVITON: I will call the meeting to order and ask everyone to stand for the flag salute.

SALUTE TO THE FLAG

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

ROLL CALL

MS. MOENCH: Mr. DiTota is not with us this evening. Mr. Gregowicz?

MR. GREGOWICZ: Here.

MS. MOENCH: Mr. Rosenthal?

MR. ROSENTHAL: Here.

MS. MOENCH: Mr. Schertz?

MR. SCHERTZ: Here.

MS. MOENCH: Mr. Shalika?

MR. SHALIKAR: Here.

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

MR. MANTAGAS: Here.

MS. MOENCH: Mr. Pochopin is not with us. Mr. Wechsler?

MR. WECHSLER: Here.

MS. MOENCH: Chair Leviton?

1
2 MR. LEVITON: Here. Okay just a note of business
3 before I get started. The sound system is new so board members
4 when you speak it has to be almost directly into the mic or
5 the recording won't be picked up and of course tonight there's
6 a court reporter, but typically Janice transcribes everything
7 that we say later by listening back and it's supposed to be a
8 good system because it doesn't pick up background noises.
9 Right Janice?

10
11 MS. MOENCH: Yeah, it doesn't pick up like the
12 ruffling of the papers, but unfortunately if you even turn
13 your head or sit back it won't pick you up at all.

14
15 MR. LEVITON: Okay now that that's out of the way,
16 our first order of business tonight is to accept the minutes
17 from January 19, 2023. Can I get a motion please?

18
19 MR. WECHSLER: So moved.

20
21 MR. LEVITON: Thank you Michael and David will you
22 second it?

23
24 MR. SCHERTZ: Second.

25
26 MR. LEVITON: Thank you David.

27
28 **ROLL CALL**

29
30 MS. MOENCH: Mr. Gregowicz?

31
32 MR. GREGOWICZ: Yes.

33
34 MS. MOENCH: Mr. Rosenthal?

35
36 MR. ROSENTHAL: Yes.

37
38 MS. MOENCH: Mr. Schertz?

39
40 MR. SCHERTZ: Yes.

41
42 MS. MOENCH: Mr. Shalika?

43
44 MR. SHALIKAR: Yes.

45
46 MS. MOENCH: I'm sorry Mr. Mantagas? No.

47
48 MR. MANTAGAS: I wasn't there.

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

MS. MOENCH: Mr. Wechsler?

MR. WECHSLER: Yes.

MS. MOENCH: Chair Leviton?

MR. LEVITON: Yes. Okay next we're going to memorialize three resolutions. The first one is ZBE2240.

MR. MARMERO: Yeah so this resolution as you will remember, this was a bulk variance or several bulk variances for the construction of a single-family home on an undersized lot. Just of note one of the conditions on the resolution --- is that the applicant and the arborist for the township were to meet at the property and that has occurred. The arborist has determined that there should be removed two dead ash trees alongside the yard with address number 38 and then also remove five trees to construct a driveway for the new single-family dwelling and that is to be done within one month.

MR. LEVITON: Thank you Mr. Marmero. Can I get a motion and a second please?

MR. GREGOWICZ: I'll make the motion.

MR. SHALIKAR: I'll second.

MR. LEVITON: Thank you Mr. Gregowicz and thank you Mr. Shalikar.

ROLL CALL

MS. MOENCH: Mr. Gregowicz?

MR. GREGOWICZ: Yes.

MS. MOENCH: Mr. Rosenthal?

MR. ROSENTHAL: Yes.

MS. MOENCH: Mr. Schertz?

MR. SCHERTZ: Yes.

MS. MOENCH: Mr. Shalikar?

MR. SHALIKAR: Yes.

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

MS. MOENCH: Mr. Wechsler?

MR. WECHSLER: Yes.

MS. MOENCH: Chair Leviton?

MR. LEVITON: Yes. Next is 2263, Mr. Marmero.

MR. MARMERO: Yes and this was bulk variances to permit the construction of an addition on the front of the home which required a front yard variance.

MR. LEVITON: Thank you sir, motion please.

MR. SCHERTZ: So moved.

MR. LEVITON: Thank you David. Second?

MR. GREGOWICZ: Second.

MR. LEVITON: Thank you Bob.

ROLL CALL

MS. MOENCH: Mr. Gregowicz?

MR. GREGOWICZ: Yes.

MS. MOENCH: Mr. Rosenthal?

MR. ROSENTHAL: Yes.

MS. MOENCH: Mr. Schertz?

MR. SCHERTZ: Yes.

MS. MOENCH: Mr. Shalika?

MR. SHALIKAR: Yes.

MS. MOENCH: Mr. Wechsler?

MR. WECHSLER: Yes.

MS. MOENCH: Chair Leviton?

1 MR. LEVITON: Yes and the last application to be
2 memorialized is 2258, counselor.

3
4 MR. MARMERO: Sure and this was several bulk
5 variances to legitimize a poolhouse that construction had
6 already started on and then it was also discovered that there
7 was a patio and a pergola that needed to be legitimized as
8 well and then you did attach several conditions mainly the
9 tree line screening of the poolhouse.

10
11 MR. LEVITON: Thank you sir, motion please.

12
13 MR. ROSENTHAL: I'll make the motion.

14
15 MR. LEVITON: Thank you Mr. Rosenthal, second?

16
17 MR. SCHERTZ: Second.

18
19 MR. LEVITON: Thank you David.

20
21 **ROLL CALL**

22
23 MS. MOENCH: Mr. Rosenthal?

24
25 MR. ROSENTHAL: Yes.

26
27 MS. MOENCH: Mr. Schertz?

28
29 MR. SCHERTZ: Yes.

30
31 MS. MOENCH: Mr. Shalika?

32
33 MR. SHALIKAR: Yes.

34
35 MS. MOENCH: Mr. Wechsler?

36
37 MR. WECHSLER: Yes.

38
39 MS. MOENCH: Chair Leviton?

40
41 MR. LEVITON: Yes and before we call our first public
42 hearing Mr. Marmero will you swear in our professionals
43 please?

44
45 MR. MARMERO: Absolutely, each of you raise your
46 right hand. Do you swear that the testimony you will provide
47 tonight will be the truth, the whole truth and nothing but the
48 truth?

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

MR. BOCCANFUSO: Yes I do.

MS. BEAHM: I do.

MR. MARMERO: Okay.

MR. LEVITON: Thank you sir and before I call you Mr. Shimanowitz I want to address the public. There are a lot of folks here. They can't all be part of your team. If you're here tonight you will not have an opportunity to address this board regarding the matter before it. I will open up to public at the end of the meeting if you want to address the board on matters non-agenda related. Okay having said that ---

MR. MARMERO: Would you like me to explain why?

MR. LEVITON: Sure that would be great.

MR. MARMERO: So the application tonight before the board is an interpretation. You're not hearing a development application tonight. Any decision you make tonight will not be to approve or to deny a development application. What you're acting on tonight is more in the areas of jurisdiction that the zoning board has which is to interpret a zoning ordinance. So the applicant tonight will present their position probably through expert testimony as to what their position or their interpretation of an ordinance is. Our experts will also provide their position or their interpretation of the ordinance and then it will be up to you as board members to make a determination on that interpretation. What that interpretation would do is likely decide which board has jurisdiction over this application in the future for a development application.

MR. LEVITON: Thank you Mr. Marmero. Okay the application is ZBE2209. The applicant is 51 Route 33, LLC and on behalf of them I'm going to call Mr. Shimanowitz to present his case.

MR. SHIMANOWITZ: Thank you Mr. Chairman, members of the board, Ron Shimanowitz from the firm of Hutt and Shimanowitz here on behalf of the applicant 51 Route 33, LLC which is the current owner of the subject property. Just to clarify the record so there's no confusion when we were at the planning board the applicant was Mercer Realty Partners, LLC which had been the contract purchaser of the property. Subsequently my client closed title. It's the same principle,

1 but just different entities. So if you're seeing documentation
2 that shows Mercer Realty Partners, LLC that's the former
3 contract purchaser. 51 Route 33, LLC is the applicant tonight
4 and is the current owner of the subject property, but again
5 it's effectively the same principle.

6
7 MR. LEVITON: Mr. Shimanowitz not to interrupt, but
8 that would be --- principles was to Kiner, Kainer how do I say
9 his name?

10
11 MR. SHIMANOWITZ: Mr. Kainer is a principle of the
12 applicant that's correct.

13
14 MR. LEVITON: And he is here this evening?

15
16 MR. SHIMANOWITZ: Yeah he's here.

17
18 MR. LEVITON: Okay.

19
20 MR. SHIMANOWITZ: That's correct, yes.

21
22 MR. LEVITON: Continue sir thank you.

23
24 MR. SHIMANOWITZ: Thank you. The property in question
25 at least at the planning board application was known as Lot
26 4.01, 4.02 and 7 and Block 79.02. It's approximately 26.7
27 acres in size and it's sandwiched between Route 33 Highway and
28 Route 33 business. It's in your SED5 zone where flex space is
29 a permitted use. As was referenced earlier the applicant had
30 applied to the planning board for site plan approval for a
31 flex space proposal which is permitted under the SED5 zone.
32 There were two planning board public hearings. One occurred on
33 February 24, 2022 and another on April 28, 2022. During those
34 hearings particularly the second of those hearings the
35 planning board questioned whether the planning board had
36 jurisdiction over the applicant's planning board application.
37 The applicant was effectively forced to come to this board to
38 file the application at the zoning board for an interpretation
39 and the reason I characterize it that way is because the
40 planning board record is clear that the applicant had two
41 choices either accept a denial from the planning board or come
42 to this board for an interpretation of a section of the
43 ordinance and under those circumstances we chose to come to
44 this board for the interpretation. The planning board
45 application is still pending so it's being carried pending the
46 zoning board's decision on the interpretation. So we kept the
47 planning board matter open until this board makes a decision.
48 The application as was stated by your counsel is being made to

1 the zoning board pursuant to New Jersey stature of municipal
2 land use law, 40:55D-70B which is the section which gives this
3 board jurisdiction and power to interpret the ordinance. The
4 applicant is preceding with this zoning board interpretation
5 tonight under protest and without prejudice for the reasons I
6 gave earlier. It's the applicant's position that the
7 definition of flex space in the township's land development
8 ordinance is clear and unambiguous and therefore there's
9 nothing for the board to interpret. The law requires that the
10 zoning board start its interpretation with the plain language
11 of the ordinance definition of flex space and where there's no
12 ambiguity in that ordinance definition there is no need for
13 the board to further analyze the intent or meaning of the
14 ordinance. If the board finds ambiguity in the ordinance
15 definition of flex space then you search for the intent and
16 meaning of the ordinance, but I don't even think you need to
17 get to that step. There's nothing unclear in the ordinance in
18 what is required by the definition of flex space. So with that
19 background statement and reservation of rights the applicant
20 has filed this application for the interpretation and we're
21 prepared to present to you tonight our position regarding the
22 flex space definition in the ordinance and how the applicant's
23 development proposal clearly meets that definition. We
24 requested during the planning board hearings that the issue
25 that the planning board wished this zoning board to interpret
26 be stated. So we didn't come to this board sort of willy nilly
27 or sort of cloudiness so when that question was asked of the
28 planning board it was put on the record what the actual
29 interpretation question was and I want to quote that. It's in
30 my application documents. It's replete in all of the documents
31 that's before you tonight, but just to state the question
32 clearly that you are considering tonight and this is being
33 quoted from the transcript of the April 28, 2022 planning
34 board hearing and I quote "whether the flex space ordinance
35 requires that the collection of flex uses being proposed by
36 the planning board application are viable or whether there's
37 any such thing in the municipal land use law an illusory use
38 or phantom use or whether applicant's interpretation is
39 correct that the flex space ordinance does not go into all
40 that". That's effectively not effectively, that is how the
41 planning board set up the question for you the members of the
42 zoning board. There is one housekeeping item I'd like to take
43 care of. We had submitted with our application many
44 application rider documents. I think there's some thirty-three
45 or thirty-five of them and probably other documents went in as
46 well. Whatever was submitted is part of the application
47 package we'd just like to stipulate that that's part of the

1 record tonight. I just want to get confirmation either through
2 your counsel or through the chair.

3
4 MR. MARMERO: And you and I spoke on this issue.

5
6 MR. SHIMANOWITZ: We did.

7
8 MR. MARMERO: And my position was as long as all of
9 those items have been submitted to the board it appears that
10 they have been then we would become a part of the record for
11 this evening's proceeding.

12
13 MR. LEVITON: Thank you Mr. Marmero. They were
14 enumerated alphabetically. Tonight they were referred to
15 numerically. It's the same rider documents that we're talking
16 about?

17
18 MR. MARMERO: Yes.

19
20 MR. LEVITON: Okay.

21
22 MR. MARMERO: Yes.

23
24 MR. SHIMANOWITZ: Yeah as we go forward and just so
25 you know we don't plan to introduce and talk about every one
26 of those documents or we'd be here a very long time. We'll
27 figure out if there are such documents that we are referring
28 to we'll figure out how to mark those so we don't get too
29 confused because I did label them as application rider
30 exhibits and here we're in a public hearing where we also mark
31 exhibits so we'll try to be careful on that Mr. Chairman. I do
32 also want to point out for the board's consideration that
33 during the pendency of the planning board hearings sort of
34 toward the end of that process the township governing body
35 amended the definition of flex space and that amendment stated
36 or I should eliminated the warehouse use as one of the
37 categories of flex space use. That amendment came after our
38 application was deemed complete and after our hearing so we're
39 vested under the old definition, the original definition, of
40 flex space, but the more important reason why I'm pointing
41 this out to the board is that although the governing body had
42 the opportunity to amend the ordinance to state minimum
43 percentages of uses or maximums or further define how those
44 uses must be put forth in a development proposal, the
45 governing body did not choose to do that. They left the
46 definition effectively, essentially as originally written
47 other than eliminating the warehouse use as one of the choices
48 that the developer has. So we think that's very telling if the

1 board does get to a point where they're trying to get to the
2 intent of the ordinance which we don't think you even have to
3 go that far, but if you do clearly the governing body was not
4 worried about percentages of uses. They left that part of the
5 ordinance as originally written. If the zoning board were to
6 find that the plain language of the flex space definition is
7 ambiguous in any way or requires interpretation and decides to
8 somehow assign minimums or maximum use categories or
9 percentages it's the applicant's position that that would be
10 beyond the power of this board. It would be tantamount to re-
11 writing the flex space definition which is the role of the
12 governing body not the role of the zoning board. The zoning
13 board has great power being permitted to interpret, but you
14 interpret what you're given. So you start with the plain
15 language of that document and the applicant is entitled to
16 rely on what's in that ordinance, the plain language of that
17 ordinance and again we feel it's unambiguous as adopted by the
18 governing body. For tonight's presentation we're going to
19 focus on the question as presented at the planning board, the
20 one that I quoted from the planning board transcript and
21 effectively the question is directed to whether the applicant
22 proposed phantom uses and whether the ordinance somehow
23 requires that the uses not be phantom. I don't want to
24 paraphrase the question. The question is stated and you can
25 read it and figure out what the planning board wants you to
26 answer, but you're going to hear a lot from our side, from our
27 experts that the uses proposed are viable and are not phantom
28 uses. In fact they're quite typical uses. So that's the
29 essence of our case tonight. The rest is reading the
30 definition in the ordinance and it's your job and power and
31 authority to interpret the ordinance. Just by way of preview
32 for the chair and managing the night we have four planned
33 witnesses. We have Renee Anstiss who's our site engineer to my
34 left from Colliers Engineering. We have our planner Dan Bloch
35 also from Colliers. We have Chris Otteau, I'm sorry Connor
36 Montferrat from Otteau Group who is our real estate market
37 expert and last but not least we have Jonathan Glick who is a
38 realtor, commercial-licensed realtor with Sheldon Gross
39 Realty. Those are the three witnesses, I'm sorry four
40 witnesses I misspoke, that we plan to present tonight and with
41 that introduction and with the chair's permission we prepared
42 to call our first witness.

43
44 MR. LEVITON: Please do.

45
46 MR. SHIMANOWITZ: Okay. First witness is Ms. Renee
47 Anstiss and we would need to have her sworn.

48

1 MR. MARMERO: Sure. Ms. Anstiss if you raise your
2 right hand I'll get you sworn in. Do you swear the testimony
3 you provide tonight will be the truth, the whole truth and
4 nothing but the truth?

5
6 MS. ANSTISS: Yes I do.

7
8 MR. MARMERO: Okay can you spell your last name for
9 the record?

10
11 MS. ANSTISS: Yes it's A-N-S as in Sam-T-I-S-S.

12
13 MR. MARMERO: Okay and you've provided testimony
14 before this board before or ---

15
16 MS. ANSTISS: Planning board yes.

17
18 MR. MARMERO: The planning board?

19
20 MS. ANSTISS: Yes.

21
22 MR. SHIMANOWITZ: Renee if you want to briefly give
23 your qualifications and just quickly confirm that you were
24 accepted as an expert in site engineering during the planning
25 board matter and then the board will ---

26
27 MR. LEVITON: It won't be necessary Ms. Anstiss. ---
28 I accept her credentials.

29
30 MS. ANSTISS: Thank you.

31
32 MR. LEVITON: You're welcome.

33
34 MR. SHIMANOWITZ: Renee I'm going to turn it over to
35 you. This is not a site plan hearing so we can kind of keep it
36 short and sweet. I just want you to introduce to the board the
37 property briefly and more particularly the development
38 proposal and the uses that the applicant ---

39
40 MS. BEAHM: I just have to jump in. This is an
41 interpretation of the ordinance.

42
43 MR. SHIMANOWITZ: Yes.

44
45 MS. BEAHM: We're not here to discuss the site plan
46 application. --- Respectfully I sat and listened very quietly
47 to your opening. I would appreciate the same courtesy.
48

1 MR. SHIMANOWITZ: Go ahead.

2
3 MS. BEAHM: We're here to interpret the ordinance.
4 We're not here to opine on your application. So I just want to
5 be very clear what the focus of this hearing is. It's not a
6 regurgitation of your site plan application. It's the
7 ordinance says X, you believe you comply with the ordinance.
8 We're interpreting the ordinance. So I mean I'm going to defer
9 to the attorney, but we're not here to regurgitate the site
10 plan application that went before the planning board.

11
12 MR. SHIMANOWITZ: I don't plan to do that and I
13 happen to agree with your statement fully, but if I don't put
14 on the record what the uses were that we proposed at the
15 planning board how will the board know what the issue is?

16
17 MS. BEAHM: Well I mean I would suggest you focus on
18 the ordinance language, what you're proposing. I understand
19 that, but I just want to make it very clear that to everyone
20 here the board as well as the people that are here for the
21 public we're not reinventing the site plan application that is
22 currently pending before the planning board. We're here
23 focusing on the plain language of the ordinance period.

24
25 MR. SHIMANOWITZ: But in doing that you have to be
26 cognizant of what was happening at the planning board and what
27 the uses as they were proposed.

28
29 MS. BEAHM: I mean I kind of half agree, uses yes.
30 What's happening before the planning board? No. You're here
31 because you want us to interpret the ordinance. What's
32 happening at the planning board is irrelevant. You're here to
33 discuss the ordinance language and what you're proposing with
34 respect to the ordinance language.

35
36 MR. SHIMANOWITZ: Okay the ordinance language we're
37 dealing with the definition of flex space. That definition
38 sets forth categories of uses and my intent through Renee, Ms.
39 Anstiss, was to have her testify as to what uses were proposed
40 during the planning board process. If it strays slightly into
41 the site plan, if you want to see the picture of that, that
42 might happen, but we have no intention of providing site plan
43 testimony tonight. I agree with Ms. Beahm one hundred percent.
44 That's not this board's role on their interpretation, but I
45 think you have to have some context to understand what the
46 issue was at the zoning board. Otherwise ---

47
48 MS. BEAHM: Planning board you mean.

1
2 MR. SHIMANOWITZ: I misspoke. It gets confusing I'll
3 admit. Some context to know what was going on at the planning
4 board. Otherwise you really don't need us. All of you folks up
5 here I'm sure can read the English language very, very well
6 and can understand what the definition says. We can just sit
7 back and say you tell us, but we had planned to present to you
8 what we thought was a cogent, logical presentation so you had
9 a good context for making your decision.

10
11 MR. LEVITON: Mr. Marmero?

12
13 MR. MARMERO: Yeah I mean I think as long as the
14 testimony is limited to what you said. You're going to discuss
15 what the proposed uses were, how your belief is that they fit
16 into the ordinance and kind of limit it to that I think we
17 keep it on the track as just an interpretation.

18
19 MR. SHIMANOWITZ: Yeah and that's what we plan to do.
20 Ms. Anstiss' testimony will be very brief. The planner is
21 going to go into exactly that issue, the uses and then we have
22 the two other experts that have opinions as to whether those
23 uses are to quote the stated the question presented whether
24 those uses are phantom or viable uses.

25
26 MR. MARMERO: Okay.

27
28 MR. SHIMANOWITZ: So if no further objection I have
29 Renee and you heard the colloquy here if you keep it short
30 and sweet if you can just orient the board to the property and
31 what uses were proposed at the planning board.

32
33 MS. ANSTISS: Sure. The property is 51 Route 33. I do
34 have an exhibit, first good evening. The property is 51 Route
35 33. I have an exhibit called 51 Route 33 Manalapan, New Jersey
36 rendering exhibit. It was exhibit A6 at the April 28, 2022
37 planning board hearing. This shows the proposed development. I
38 will be brief and for the benefit of the board, north is up on
39 the exhibit.

40
41 MR. SHIMANOWITZ: Just going to interrupt you for one
42 second Renee and through the chair, Mr. Marmero do you wish to
43 mark that as A1?

44
45 MR. MARMERO: Yeah I was going to say we can use A1
46 and we'll call that rendering.

47

1 MR. SHIMANOWITZ: Fine so if you could just identify
2 that by title and date?

3
4 MS. ANSTISS: Oh.

5
6 MR. SHIMANOWITZ: If you didn't already.

7
8 MS. ANSTISS: 51 Route 33 Manalapan, New Jersey
9 rendering exhibit. Its exhibit A1 and it does have a date of
10 April 28, 2022 on it.

11
12 MR. SHIMANOWITZ: Perfect so exhibit A1 please
13 continue.

14
15 MS. ANSTISS: Okay so the site is contained within
16 the SED5 special economic development zone district and also
17 portions of the site are within the Route 33 overlay zone. The
18 application proposes a flex space building which is a
19 permitted use deflects space building total area is 232,900
20 square feet. The following uses will occupy the flex space
21 building: contractor's offices and shops consisting of 2,675
22 square feet, the establishment for production, processing,
23 assembly, manufacturing, compounding, preparation ---
24 servicing, testing or repair of materials, goods, or products.
25 That space consists of 2,675 square feet. The next use is
26 wholesale trade establishment consisting of 2,675 square feet.
27 The next use is office use which consists of 4,400 square feet
28 and the remaining portion of the building will be warehousing
29 establishment and will consist of 220,495 square feet.

30
31 MS. BEAHM: So if we're going to go through the uses
32 that were presented to the planning board, can we talk about
33 the percentages? Because we talked about them at the planning
34 board that ninety-five percent of the space in the building
35 was being used as a warehouse and five percent was divided
36 between two additional spaces. So are we going to talk about
37 that too?

38
39 MR. SHIMANOWITZ: That's up to the board if they wish
40 to talk about it.

41
42 MS. BEAHM: I'm just seeing you presenting this, I'm
43 asking you. As you're presenting these "square footages" my
44 question is at the planning board which you're presenting the
45 same information ninety-five percent of the space is being
46 used as a warehouse and the other five percent is divided
47 between two "tenant spaces" which you categorized
48 understandably why as phantom space. Are we going to talk

1 about that? Is that going to come up? Or are we just going to
2 move over it?

3
4 MR. LEVITON: --- so let's ask Ms. Anstiss is that
5 correct characterization?

6
7 MS. ANSTISS: The uses meet the definition.

8
9 MS. BEAHM: That's all that we ask you.

10
11 MR. LEVITON: I'm asking is Ms. Beahm's
12 characterization of the ---

13
14 MS. BEAHM: Percentages.

15
16 MR. LEVITON: Percentages assigned to warehouse
17 and/or what you call phantom spaces correct?

18
19 MR. SHIMANOWITZ: Let's clear the record because Ms.
20 Beahm mentioned it and the chair mentioned it. We don't call
21 them phantom spaces.

22
23 MS. BEAHM: You said it multiple times. I didn't
24 bring it up so you kept categorizing it as you're trying to
25 justify phantom space. You said it multiple times in your
26 opening.

27
28 MR. SHIMANOWITZ: I did not call our space phantom
29 spaces.

30
31 MR. LEVITON: Okay let's shut this down right now and
32 I'm just going to say forget phantom let's call it flex. Why
33 don't you call it flex?

34
35 MR. SHIMANOWITZ: It's flex space.

36
37 MR. LEVITON: Okay we can agree on that.

38
39 MR. SHIMANOWITZ: When I used the word phantom just
40 to be clear on the record, I'm quoting from the transcript
41 that the planning board, the question that the planning board
42 presented or requested the applicant to present to this board.
43 The word phantom is not the applicant's word. It is the
44 planning board's word.

45
46 MR. LEVITON: Okay.

47
48 MR. SHIMANOWITZ: That's why I quoted.

1
2 MS. BEAHM: I agree. I'm not disagreeing. I'm not
3 disagreeing.

4
5 MR. SHIMANOWITZ: Okay.

6
7 MS. BEAHM: But what I'm asking you is can you
8 quantify the percentages based upon what I just said?
9

10 MR. SHIMANOWITZ: If the board wishes us to do that,
11 we can do the calculation very quickly and I think Ms. Beahm
12 probably characterized it very close, but what can you quickly
13 pull out your calculator and do the ---
14

15 MS. ANSTISS: Yes. Contractor's office and space is
16 1.14 percent, establishment for production processing,
17 assembly, manufacturing, compounding, preparation, cleaning,
18 servicing, testing or repair of materials, goods, or products
19 is 1.14 percent. The wholesale trade establishment is 1.14
20 percent. The warehouse is 94.7 percent and the office is 1.89
21 percent.
22

23 MS. BEAHM: And the office at the planning board was
24 attributed to the warehouse correct?
25

26 MR. SHIMANOWITZ: That's correct, yes.
27

28 MS. BEAHM: So you should probably add the 4,400
29 square foot into the percentage for the warehouse.
30

31 MS. ANSTISS: 96.59 percent.
32

33 MS. BEAHM: Thank you.
34

35 MS. ANSTISS: You're welcome.
36

37 MR. LEVITON: Is there anything else Ms. Anstiss?
38

39 MS. ANSTISS: I do not have anything further.
40

41 MR. SHIMANOWITZ: I don't know that it's clear on the
42 record, just one question Renee, the uses that you described
43 that are proposed by the applicant those uses are shown on
44 exhibit A1 correct?
45

46 MS. ANSTISS: Yes that is correct.
47

1 MR. SHIMANOWITZ: And they're labeled on exhibit A1
2 in terms of each use category and how many square feet is
3 allocated to each use category correct?

4
5 MS. ANSTISS: That is correct.

6
7 MR. SHIMANOWITZ: Thank you. I have nothing further
8 of Ms. Anstiss.

9
10 MR. LEVITON: Ms. Beahm are you comfortable with the
11 testimony as it is now?

12
13 MS. BEAHM: For now yeah.

14
15 MR. LEVITON: You can go on then sir and thank you
16 Ms. Anstiss.

17
18 MR. MARMERO: Counsel just for the record I'm not
19 sure if our secretary has a copy of A1. You've probably
20 submitted it to the planning board is that part of your?

21
22 MR. LEVITON: We have it Janice. We have it. It's A6.
23 A1 needs to be marked tonight because that's a new marking, a
24 new designation. She wants it Ms. Anstiss is what she's
25 saying. She wants a tangible copy to mark as A1.

26
27 MS. ANSTISS: We can overnight it.

28
29 MR. LEVITON: Is there a need to mark it as A1? Mr.
30 Marmero says we already have it.

31
32 MR. MARMERO: Yeah, but we want to have it for the
33 record of this hearing, but as long as she can get it to
34 Janice we can get it marked as A1.

35
36 MR. LEVITON: --- We'll accept that.

37
38 MR. SHIMANOWITZ: Sorry ---

39
40 MS. ANSTISS: I think it's already here it's just
41 categorized A6. No I agree, but I don't think its A1. I think
42 its A6.

43
44 MR. SHIMANOWITZ: Right it was in the presentation.

45
46 MR. LEVITON: I've looked at it digitally, but I'm
47 not --- of a hard copy packet I can probably pull A1 out of

1 here. I mean A6 out of here. I'm going to let her overnight
2 it. I'm not really good with paper. I hate paper.
3

4 MS. MOENCH: I'd prefer if you could just overnight
5 it to me and then A6 and A1 ---
6

7 MR. SHIMANOWITZ: We'll get you a paper copy.
8

9 MS. MOENCH: Thank you so much.
10

11 MR. SHIMANOWITZ: Yeah.
12

13 MR. LEVITON: Thank you Ms. Anstiss.
14

15 MR. SHIMANOWITZ: It does get confusing because it
16 was submitted as part of the application documents to this
17 board. It was marked at the planning board, but for tonight's
18 hearing it is exhibit A1.
19

20 MR. LEVITON: Yes.
21

22 MR. SHIMANOWITZ: I will admit it's confusing.
23

24 MR. LEVITON: Okay. Are you going to call the next
25 witness? Mr. Bloch testified before the planning board. He's
26 going to be sworn in this evening and the board accepts his
27 credentials.
28

29 MR. MARMERO: Okay Mr. Bloch if you can raise your
30 right hand. Do you swear the testimony you provide tonight
31 will be the truth, the whole truth and nothing but the truth?
32

33 MR. BLOCH: Yes I do.
34

35 MR. MARMERO: Okay and as the chair said you have
36 testified before the planning board, but just for my records
37 could you please spell your last name?
38

39 MR. BLOCH: Yeah it's B-L-O-C-H.
40

41 MR. MARMERO: Okay and I was going to guess K so
42 that's why I asked.
43

44 MR. LEVITON: Welcome sir.
45

46 MR. MARMERO: And you're a professional planner sir?
47

1 MR. BLOCH: Correct, professional planner and
2 certified by the American Institute of Certified Planners.

3
4 MR. MARMERO: Okay.

5
6 MS. BEAHM: I would probably recommend that you
7 qualify him because while he is qualified at the planning
8 board he was not qualified here.

9
10 MR. MARMERO: That's fine you can give the ---
11 benefit of your qualifications.

12
13 MR. LEVITON: If you would sir. Whatever pleases
14 Jennifer pleases me.

15
16 MR. BLOCH: I have a Bachelor's degree in
17 environmental design and urban planning from the University of
18 Buffalo, licensed professional planner in the state of New
19 Jersey, certified by the American Institute of Certified
20 Planners, been practicing for thirteen years as a licensed
21 planner, testified before over a hundred planning and zoning
22 boards across New Jersey including the Manalapan planning
23 board.

24
25 MR. LEVITON: Thank you sir.

26
27 MR. SHIMANOWITZ: It's accepted as an expert in
28 planning?

29
30 MR. LEVITON: He is yes.

31
32 MR. SHIMANOWITZ: Thank you Mr. Chairman. Did you
33 prepare a report dated December 21, 2021 which is addressed to
34 the planning board secretary and that which had been submitted
35 during the planning board application is that correct?

36
37 MR. BLOCH: That's correct.

38
39 MR. SHIMANOWITZ: Okay and just for housekeeping for
40 everyone that report that Dan's going to refer to is rider P
41 to the application package. So if you're on your laptops or
42 using paper copies if you find rider P to the application for
43 interpretation that is Dan's report, but it probably makes
44 some sense since you're referring to it to mark it and I will
45 request that that be marked as exhibit A2 for tonight. And
46 that's the Dan Bloch Colliers Report dated 12/21/2021.

47

1 MR. LEVITON: Mr. Bloch do you have a hard copy to be
2 given to the board's secretary for marking?
3

4 MR. BLOCH: Sure. Can I give it to you after I'm done
5 reading from it?
6

7 MR. LEVITON: Sure that's fine.
8

9 MR. SHIMANOWITZ: Dan if you could give the board the
10 benefit of a summary of that report, but paying particular
11 attention to the issue before the board tonight which is the
12 interpretation of the ordinance definition of flex space?
13

14 MR. BLOCH: Absolutely. The intention behind the
15 report to the planning board was to opine that the proposed
16 use that was before the planning board at that time was
17 permitted under the definition and in the permitted uses in
18 the SED5 zone and I will read the definition of flex space as
19 it was adopted at that time and that was adopted in 2012 and
20 it says flex space, a building occupied by two or more uses
21 permitted in the zone and/or two or more of the following uses
22 contractor's offices and shops, establishments for production,
23 processing, assembly, manufacturing, compounding, preparation,
24 cleaning, servicing, testing, or repair of materials, goods,
25 or products. Provided that such activities or materials create
26 no hazard from fire or explosion or produce toxic or corrosive
27 fumes, gas, smoke, obnoxious dust, or vapor. Offensive noise
28 or vibration, glare, flashes, or objectionable ---;
29 warehousing establishments, wholesale trade establishments,
30 and offices so when I look at the schedule of permitted uses
31 in the SED5 zone any of those uses that I just mentioned would
32 be permitted in a flex space use. In addition to any of the
33 permitted uses in the zone which include restaurants, planned
34 office park, motels, convention centers, indoor recreation
35 centers which is a conditional use, research establishments
36 and laboratories, childcare centers, headquarters, mixed use
37 which is a conditional use, golf training centers which is a
38 conditional use, adult day care facilities, data centers,
39 fitness/health clubs, flex space, hotels including extended
40 stay hotels, media production, supermarkets, artisan/craft
41 product manufacturing, commercial schools, training centers,
42 institutional and vocational schools, and instructional
43 tutoring and vocational schools. So any of those uses that are
44 defined in the definition of flex space and/or any of those
45 specific uses permitted in the zone which I just read would be
46 permitted and constitute a flex space use if you have two or
47 more of those uses in the building, as per the definition.
48 That definition also appears in the 2012 master plan amendment

1 that was adopted by the planning board who recommended to the
2 governing body that the ordinance be amended to allow flex
3 space as a permitted use in the SED zones as well as the OP
4 zone and that definition is word for word the same as in the
5 planning board's master plan amendment for 2012. Nowhere in
6 that definition or in the development regulations is there a
7 stipulation that there's a certain percentage, a proportion of
8 the building that must be used for any of those uses. There's
9 no minimum or maximum floor area. The only specification is
10 that there has to be at least two of those uses in that list
11 that I read, but there's no requirements as to what
12 percentage, what floor area, or what proportion of the
13 building can be used for any of those uses. So in my opinion
14 as I presented to the planning board and as I had in my
15 December 21, 2021 letter to the board I believe that that
16 application was and by right a permitted use and should be
17 heard by the planning board.

18
19 MR. LEVITON: Ms. Beahm?

20
21 MS. BEAHM: I'm going to wait until the applicant
22 finishes his testimony and then I'll give you my opinion.

23
24 MR. LEVITON: Okay.

25
26 MR. SHIMANOWITZ: Your questions of the witness.

27
28 MS. BEAHM: I do want to say one thing. In your
29 letter of December 21, 2021 there's a statement that says at
30 the TRC the applicant's professionals applying that the
31 application meets the township definition of flex and
32 therefore is permitted a hundred percent not true and we're
33 the applicants for the planning board so that is not true.
34 Both of our letters question the jurisdiction and the
35 definition. I just want to make that abundantly known. I want
36 to make it abundantly clear I told you from the jump that I
37 question the definition as did Brian and it's in both of our
38 letters. So you can say whatever you'd like which is fine, but
39 I want to make that abundantly clear to the board that that
40 statement is absolutely not true.

41
42 MR. SHIMANOWITZ: Chairman if I may?

43
44 MR. LEVITON: Well hold off on that because I want to
45 bring the board up to speed. The TRC actually stands for what
46 Jennifer the three letters they stand for?

47
48 MS. BEAHM: Technical ---

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

MR. LEVITON: Technical review.

MS. BEAHM: It says --- that if --- meet the definition. I just want to be very clear that the board professionals never agreed that that was permitted. So I just want make it abundantly clear the board professionals for the planning board has always questioned the jurisdiction which is kind of why they're here, but I'll give my overall opinion once all the witnesses are completed.

MR. LEVITON: And TRC meetings usually occur regularly between the applicant for a project and our professionals. It's an opportunity for the applicant to sit down with our professionals to discuss their concerns as delineated in the reports that they've written. Also our professionals guide an applicant's professionals to the best of their ability so that when they appear before us everything is in harmony and copacetic and things should go smoothly. So in Mr. Bloch's report from December 21, 2021 he says that the board's professionals at the TRC meeting, that's the planning board's professionals, and the planning board's professionals are Ms. Beahm and Mr. Boccanfuso. He says that this was not brought up and Mr. Bloch asserts that it wasn't presented to us as a problem and Ms. Beahm has taken exception to that. She is saying that is not true. We talked about it and it's in both of our letters. How did I do Jennifer?

MS. BEAHM: ---

MR. LEVITON: Okay now Mr. Bloch please.

MR. BLOCH: Well I don't think that that's a correct characterization of what my letter says because it says the applicant's professionals opine that it's a permitted use.

MS. BEAHM: ---

MR. BLOCH: Right so nowhere in my letter does it say that it wasn't brought up. Our position from the beginning was that it's a permitted use. They disagree. That's why we're here.

MR. LEVITON: At TRC meetings they disagreed with you.

1 MR. BLOCH: They raised the question. They didn't say
2 that it was not a permitted use. They said it has to be
3 figured out.

4
5 MR. LEVITON: They expressed concern.

6
7 MR. BLOCH: Concern, I would agree with that.

8
9 MR. LEVITON: Alright.

10
11 MR. SHIMANOWITZ: Yeah and just to follow through on
12 that I'm glad Ms. Beahm brought it up. To Ms. Beahm's point
13 her review letters and perhaps Mr. Boccanfuso's review letter,
14 I can't remember, but at least one of them consistently
15 brought up that issue. So Ms. Beahm is right about that. I
16 will tell you though that we were at the planning board, we
17 were deemed complete, presented our case, got into our
18 witnesses, and then got off on this side track of the issue.

19
20 MR. LEVITON: Well not really a side issue if it was
21 expressed as a concern early on.

22
23 MR. SHIMANOWITZ: It was, but it was raised in
24 earnest after we started presenting our case, but I think the
25 most important thing is we don't disagree with Ms. Beahm. The
26 issue was raised in her review letter.

27
28 MR. LEVITON: Let's ask Ms. Beahm before we go on
29 with your affirmative case to just define the issue for the
30 board. What was the issue?

31
32 MS. BEAHM: We always questioned --- the definition
33 of flex. We questioned it. Brian you also questioned it in
34 your letter as well. I don't know that we just brought it up
35 as a maybe an issue. We brought it up. You, this letter, this
36 correspondence that was submitted to the planning board was in
37 response to us bringing this up as a question. So do I,
38 completeness is completeness right, and we're not here and
39 I'll defer to Al on this. We're not here to opine on the
40 planning board accepting jurisdiction and going through what's
41 happening. We're here now to interpret the ordinance.

42
43 MR. SHIMANOWITZ: Correct.

44
45 MS. BEAHM: So how far you got at the planning board
46 that's a totally different matter having nothing to do with
47 what we're doing tonight, correct?

48

1 MR. SHIMANOWITZ: Correct.

2
3 MS. BEAHM: So I get it. I understand what you're
4 saying, but let's be clear this got brought up from the
5 beginning before you even came to the planning board from me,
6 from Brian, from the planning board professionals. We had a
7 TRC before you came to the board. This got brought up as a
8 question, as a concern, as you're going to need to address it.
9 You did. The planning board obviously didn't agree with your
10 assertion which is why they pushed you to come here and so
11 therefore we're here now to decide whether they comply with
12 the definition of flex and I will wait until all their
13 witnesses have completed before I opine on that issue.

14
15 MR. MARMERO: And Ms. Beahm it looks like there's at
16 least four letters you authored that are in our materials that
17 do seem to raise that issue so we do have them in our packets
18 here.

19
20 MR. SHIMANOWITZ: And I stated on record we don't
21 have a disagreement on that. I would disagree perhaps with Ms.
22 Beahm slightly because at the planning board the planning
23 board didn't make a decision as to whether or not the use was
24 permitted or not permitted. In fact the planning board
25 attorney said I'm not even sure we have jurisdiction to
26 determine whether we have jurisdiction and that's a quote from
27 the transcript of the planning board proceeding. The planning
28 board basically said we don't know and we're not comfortable
29 going forward until you get this interpretation. So as I
30 stated in my opening they forcefully recommend that we go to
31 the planning board.

32
33 MS. BEAHM: I think it's more ---

34
35 MR. SHIMANOWITZ: And like you said earlier Ms. Beahm
36 I shouldn't interrupt you and you let me speak. Yeah and I'm
37 happy to listen to what you have to say. So I just didn't want
38 that to be mischaracterized on the record. The planning board
39 said look go to the zoning board and let them figure it out. I
40 would like to emphasize though that the applicant at the
41 planning board requested that the planning board state the
42 issue for the zoning board because they said the applicant's
43 got to make this application. We said what are we applying
44 for? The planning board stated what the question presented is.
45 We've quoted that in our application. I quoted it on the
46 record tonight. So the zoning board tonight needs to stick
47 with that question. When you're deliberating look back at that
48 question and that's the question you need to answer.

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

MR. LEVITON: Thank you sir. Is there anything further for Mr. Bloch?

MR. SHIMANOWITZ: I have nothing further of Mr. Bloch.

MR. LEVITON: Then you can bring your next witness.

MR. SHIMANOWITZ: Thank you.

MR. BLOCH: Thank you.

MR. LEVITON: Thank you Mr. Bloch.

MR. SHIMANOWITZ: Our next witness is Connor Montferrat.

MR. LEVITON: Okay Mr. Montferrat you're going to be sworn in and just to be clear you did not testify before the planning board. Is that correct?

MR. MONTFERRAT: I did not.

MR. LEVITON: Okay.

MR. MARMERO: Okay well let's get you sworn in. Do you swear the testimony you provide tonight will be the whole truth and nothing but the truth?

MR. MONTFERRAT: I do.

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

MR. MONTFERRAT: My name's Connor Montferrat.

MR. MARMERO: How do you spell the last name?

MR. MONTFERRAT: M-O-N-T-F as in Frank-E-R-R-A-T.

MR. MARMERO: Okay and what is your occupation Connor?

MR. MONTFERRAT: Could you say that again?

MR. MARMERO: What is your occupation?

1 MR. MONTFERRAT: My occupation is a real estate
2 appraiser for the Otteau Group O-T-T-E-A-U. E-A-U.
3

4 MR. MARMERO: Connor if you could give the board the
5 benefit of your qualification?
6

7 MR. MONTFERRAT: Sure. I hold a Master's degree in
8 public policy, a Master's degree in city and regional
9 planning. I hold the highest licensing for state certified
10 general real estate appraiser in the state of New Jersey and
11 I've testified in front of numerous boards and cities within
12 the state of New Jersey and I hope to do the same for you
13 tonight.
14

15 MR. LEVITON: Thank you Mr. Montferrat. The board
16 accepts your credentials.
17

18 MR. SHIMANOWITZ: We're presenting Mr. Montferrat as
19 an expert in appraisal and also as a real estate market expert
20 as well. He studies the real estate market. Connor if you
21 could give the board your findings in terms of studying the
22 use that's before the board and helping the board come to a
23 conclusion on the interpretation of the definition of flex
24 space.
25

26 MR. MONTFERRAT: Absolutely. It is my opinion that
27 the development of flex space is promising in this market with
28 exceptional market demand from participation of users and I'd
29 like to just explain that a little bit. So one of the core
30 tenants of economic viability is successful projects that
31 breed competition. That's why Wawa wants to locate across the
32 road from QuikChek and why the fudgy-wudgy man on Risdon's
33 Beach in Point Pleasant wants to go right next to the Italian
34 ice guy and why Gaitway Farms wants to put a million square
35 foot warehouse just down the road from Amazon and from this
36 perspective this space is more beneficial to a lot more users
37 because a million square foot warehouse doesn't accommodate
38 for contractors or office users or equipment rental, wholesale
39 trade companies even small business owners would use this
40 space and similarly self-storage lockers don't do the trick
41 either. They can't operate a business out of a five-by-five
42 locker or ten-by-ten locker and these spaces and this size
43 provide that accommodation for those users. In this market we
44 found about .5 percent to 3.2 percent vacancy which means as
45 soon as the product comes online while its being constructed,
46 its being leased, fully occupied. Rents are at a decade-high
47 and proposed developments are popping up in Millstone,
48 Jackson, Howell, and Wall. So that is clear to me in my

1 professional opinion that market participation is breeding
2 competition which will help this project and be a successful -
3 -- of the Township of Manalapan.

4
5 MR. SHIMANOWITZ: Connor when you speak about the
6 market in the analysis you did, does that include the type of
7 uses that the applicant is proposing, these 2,600 roughly
8 smaller spaces?

9
10 MR. MONTFERRAT: Yes and in the report which I would
11 want to put into the record. Eight of the ten comparable rents
12 from the market are in Manalapan.

13
14 MR. LEVITON: What rent is this?

15
16 MR. SHIMANOWITZ: This is not a rider. It needs to be
17 marked.

18
19 MR. MARMERO: I'm going to mark this as A3 then.

20
21 MR. SHIMANOWITZ: Yeah so Connor do you wish to mark
22 a report or what is it that you're referring to that we're
23 marking? Do you want to mark the ---

24
25 MR. MONTFERRAT: I'll mark this exhibit, the
26 comparable rents.

27
28 MR. SHIMANOWITZ: Okay so explain what that is and
29 we're going to mark that exhibit A3 for tonight.

30
31 MR. MONTFERRAT: This exhibit shows ten comparable
32 rents, eight of which are in Manalapan over the last year and
33 a half to two years.

34
35 MS. BEAHM: Is this somewhere submitted ahead of time
36 or this is not?

37
38 MR. SHIMANOWITZ: This was not.

39
40 MR. LEVITON: I'm not familiar with it.

41
42 MR. SHIMANOWITZ: This is not.

43
44 MR. MONTFERRAT: And I can put it on the computer if
45 you'd like.

46
47 MS. BEAHM: No.

48

1 MR. MONTFERRAT: You got it? It's a grid.
2
3 MS. BEAHM: Let me just ask you a question.
4
5 MR. MONTFERRAT: Sure.
6
7 MS. BEAHM: So it was --- if you had things to submit
8 ahead of time and you said no and this is now something you're
9 looking to put in.
10
11 MR. SHIMANOWITZ: That's correct and ---
12
13 MS. BEAHM: I'm just asking for the clarity of the
14 record just to understand. We had no opportunity to look at
15 this ahead of time or provide any information regarding it,
16 but great.
17
18 MR. SHIMANOWITZ: You have not seen it, you're
19 hearing.
20
21 MS. BEAHM: I understand ---
22
23 MR. SHIMANOWITZ: You're hearing testimony on it
24 tonight.
25
26 MS. BEAHM: Understand.
27
28 MR. SHIMANOWITZ: We're happy to provide it to the
29 board for consideration.
30
31 MS. BEAHM: Thanks.
32
33 MR. LEVITON: Before he continues Mr. Marmero
34 typically for an application the MLUL precludes a zoning board
35 from hearing anything about economic viability. What makes
36 tonight different?
37
38 MR. MARMERO: The only difference tonight and again I
39 don't want to present the applicant's case for them, but the
40 planning board is asking about phantom or illusory uses so I
41 take it they're arguing that those uses would not be phantom
42 or illusory because they're tenable is what your testimony is.
43
44 MS. BEAHM: Is there a reason why you didn't submit
45 it ahead of time?
46
47 MR. LEVITON: Thank you very much.
48

1 MR. SHIMANOWITZ: No there is no reason and in fact
2 Ms. Moench, the board's secretary, did request that we get her
3 everything in advance. Sometimes the world just doesn't work
4 that perfectly and apologies to the board that you didn't have
5 it in advance.

6
7 MS. BEAHM: Do you have copies for the board to look
8 at while you're presenting it or you just have your own copy?

9
10 MR. MONTFERRAT: I --- have a high tech printer so I
11 printed one copy out.

12
13 MS. BEAHM: Its one piece of paper that's this big,
14 yes? A high tech printer you can't print fifteen copies of one
15 piece of paper?

16
17 MR. LEVITON: It's okay Mr. Montferrat. We're going
18 to allow the testimony and we're just going to ask you to put
19 it on the record and then move on.

20
21 MR. MONTFERRAT: Absolutely chairman.

22
23 MR. SHIMANOWITZ: And we'll provide the document to
24 the board.

25
26 MR. MARMERO: Yeah Janice is going to need a copy of
27 that.

28
29 MR. SHIMANOWITZ: Absolutely.

30
31 MR. LEVITON: But before you do that I want to
32 publicly acknowledge our recording secretary is the best in
33 the business.

34
35 MR. MONTFERRAT: Yeah if I could add --- if I could
36 add I always liked my municipal staff in Hightstown too when I
37 was on council there. They're the best. To get to this exhibit
38 which should I mark it A2?

39
40 MR. SHIMANOWITZ: It's A3.

41
42 MR. MONTFERRAT: A3. The sizes of the spaces range at
43 100 through 110 Park Avenue between 1,250 square feet and
44 1,760 square feet. At building two at 200-205 Park Avenue also
45 1,250 square feet. At just down the road, at 223 County Route
46 522 at Tennent Commons the spaces range from 500 to 5,000
47 square feet in which the rentals that we provide in our

1 exhibit are 899 square feet and 1,372 square feet, and then
2 Pension Park just north of us 1,150 square feet.

3
4 MS. BEAHM: Are these all things that are in tandem -
5 --

6
7 MR. MONTFERRAT: These are flex uses.

8
9 MS. BEAHM: Are they in the same zone as this?
10

11 MR. SHIMANOWITZ: That's not the issue so I'm not
12 going to have him answer that question. It's irrelevant. It
13 doesn't matter.

14
15 MS. BEAHM: It does matter, but okay.

16
17 MR. SHIMANOWITZ: It does not matter. This is all
18 about interpreting what flex space is under you ordinance and
19 whether --- I'm sorry and whether to the question that was
20 presented whether the applicant's proposed uses are phantom or
21 whether they're viable Mr. Montferrat's testimony goes to the
22 fact that this same type uses are throughout the town and are
23 very much viable. You can continue.

24
25 MR. BOCCANFUSO: Mr. Montferrat did any of these uses
26 that are detailed in your report do any of them share a
27 building or a site with a warehouse that is 220,000 square
28 feet?

29
30 MR. MONTFERRAT: I'm not sure.

31
32 MR. BOCCANFUSO: Thank you.

33
34 MR. LEVITON: Continue Mr. Montferrat.

35
36 MR. MONTFERRAT: I've concluded my testimony.

37
38 MR. LEVITON: Professionals anything further?

39
40 MR. BOCCANFUSO: One other question for Mr.
41 Montferrat. Mr. Montferrat you indicated in your direct that I
42 believe the numbers were 0.5 to 3.2 percent vacancy in this
43 market is that correct?

44
45 MR. MONTFERRAT: That's correct.

46
47 MR. BOCCANFUSO: What is this market? Could you
48 quantify that what specifically you were referring to?

1
2 MR. MONTFERRAT: That's between the five and ten-mile
3 radius within the subject's site.
4
5 MR. BOCCANFUSO: Okay so 0.5 to 3.2 percent of what?
6
7 MR. MONTFERRAT: Vacancy of flex space square
8 footage.
9
10 MR. LEVITON: He wants you to define how much square
11 footage in total so that he can verify the veracity of your
12 calculations.
13
14 MR. BOCCANFUSO: And just for the record Mr. Chair
15 I'm not trying to verify anything I'm trying to understand
16 what it is that Mr. Montferrat is saying there is this high
17 demand for so that the board can understand.
18
19 MR. MONTFERRAT: Yes I understand your question and
20 it's regarding the amount of square feet available in the
21 market and the fact that 99.5 to 97.8 is occupied.
22
23 MR. BOCCANFUSO: Again of what? Of what is occupied?
24
25 MR. MONTFERAT: Of flex space.
26
27 MR. BOCCANFUSO: Flex space, okay.
28
29 MS. BEAHM: Do you have the towns that make up that
30 five to ten-mile radius?
31
32 MR. MONTFERRAT: Not readily in front of me, no.
33
34 MR. LEVITON: Anything further professionals?
35
36 MR. BOCCANFUSO: Not from me Mr. Chair.
37
38 MS. BEAHM: Nope.
39
40 MR. LEVITON: Thank you Mr. Montferrat.
41
42 MR. MONTFERRAT: Thank you.
43
44 MR. LEVITON: And now Mr. Richt.
45
46 MR. SHIMANOWITZ: Jonathan Glick.
47
48 MR. LEVITON: Glick. This is your realtor?

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

MR. SHIMANOWITZ: That is correct.

MR. LEVITON: Mr. Glick welcome.

MR. GLICK: Thank you.

MR. LEVITON: Make yourself comfortable and Mr. Marmero will swear you in sir.

MR. MARMERO: Sure if you raise your right hand. Do you swear the testimony you provide tonight will be the truth, the whole truth and nothing but the truth?

MR. GLICK: I do.

MR. MARMERO: Okay and as with the others, could you state your name for the record please?

MR. GLICK: Jonathan Glick.

MR. MARMERO: Okay and I think I've heard you're a real estate broker is that correct?

MR. GLICK: Correct.

MR. LEVITON: The G is silent? The G is silent?

MR. GLICK: No, Glick.

MR. LEVITON: Glick.

MR. GLICK: G-L-S-K, sorry.

MR. LEVITON: Don't be. I don't want to butcher it.

MR. SHIMANOWITZ: Jonathan if you could give the board the benefit of your qualifications and background.

MR. GLICK: Yeah I'm a principal at Sheldon Gross realty. I've been a licensed real estate broker since 1996. I specialize in industrial real estate. I do some office and industrial land sales as well. I've completed a couple of sales transactions and marketed properties in your town in Manalapan within the last five years.

MR. LEVITON: Just for my own edification tell me where is Sheldon Gross?

1
2 MR. GLICK: Our office, our bricks and mortar office
3 is 80 Main Street in West Orange.

4
5 MR. LEVITON: Okay thank you Mr. Glick. The board
6 accepts your credentials.

7
8 MR. SHIMANOWITZ: Jonathan if you could give the
9 board what your experience has been with regard to the type of
10 flex space proposal that is being put forth by the applicant.
11 What kind of users do you get? What type of demand? Wht has
12 been your experience in the marketplace?

13
14 MR. GLICK: Currently there has been an
15 unprecendented demand for flex space. I wouldn't say that a
16 lot of people are --- in two new types of industry there ---
17 e-commerce and they're moving out of their houses and they're
18 looking into getting professional spaces that don't exist on a
19 smaller scale and that said there's demands for all sizes of
20 space and flex space isn't always small. Sometimes in my mind
21 flex space can be a large space with its proportions changing
22 so it's not always a microspace.

23
24 MR. SHIMANOWITZ: But what demand do you see for the
25 proposal that the applicant is putting forth which is spaces
26 of approximately 2,600 or 2,675 square feet. What's your
27 experience been on what we might call the smaller spaces?

28
29 MR. GLICK: Alright so currently not far from here in
30 Howell --- Route 33 which is over by the Wawa and Five Corners
31 that's probably about 50,000 square feet and we have at least
32 sixty people who came to the space for.

33
34 MR. SHIMANOWITZ: So if the applicant were successful
35 in the overall application, both at the zoning board tonight
36 and ultimately at the planning board and built this
37 development what is your opinion as to the viability and the
38 leasability of the smaller spaces in the proposal?

39
40 MR. GLICK: Very high.

41
42 MR. SHIMANOWITZ: Thank you. I have nothing further
43 of Mr. Glick.

44
45 MR. LEVITON: Ms. Beahm?

46
47 MS. BEAHM: Nothing.
48

1 MR. LEVITON: I believe that concludes Mr.
2 Shimanowitz's affirmative case. Mr. Shimanowitz is that
3 correct?

4
5 MR. SHIMANOWITZ: That is correct Mr. Chairman.
6

7 MR. LEVITON: And you've held your comments and
8 abeyance until this time. So I'll give you time to collect
9 your thoughts. I'll go to Mr. Boccanfuso and ask him if he has
10 anything.

11
12 MR. BOCCANFUSO: Thank you Mr. Chairman. You may be
13 disappointed to know that there really isn't much in the way
14 of the engineering in an interpretation. So I don't have much
15 to offer. I am available for questions from the board if you
16 have any relative to the numbers and items that may dwell into
17 the engineering realm. The one thing that I do think is
18 important to note as the board heard, I did have a couple of
19 questions for Mr. Montferrat. It's a little concerning that we
20 haven't had the opportunity to review the data that he
21 presented specifically how the square footages, locations,
22 zoning, etc. compare to the subject's site and also that we
23 can't know whether or not, Mr. Montferrat doesn't know,
24 whether or not any of the uses in the spaces that he analyzed
25 shares a site or building with a 220,000 or more or less
26 square foot warehouse space because I think that certainly
27 could have an impact on the demand of the smaller spaces.
28 Aside from that really nothing else to offer as I mentioned
29 not much in the world of engineering in an interpretation
30 hearing.

31
32 MR. LEVITON: Thank you Brian.

33
34 MR. BOCCANFUSO: Of course.

35
36 MR. LEVITON: Jennifer?

37
38 MS. BEAHM: Ron are you complete? Is your case
39 complete?

40
41 MR. SHIMANOWITZ: Yes.

42
43 MS. BEAHM: So I'm just going to say professionally I
44 don't agree. I think that the intention of flex space was for
45 contractors and I think that historically the use of the word
46 warehouse has been equivocal to the use of the word storage
47 where a plumber would come in and they would have a desk, a
48 phone and they would have the ability to store their materials

1 in the back and so I don't agree with the testimony that's
2 been provided and I don't understand what contractor they
3 think is going to come in and use 96.6 percent of a 250-plus
4 thousand square foot facility. I think it's a warehouse and I
5 think that the intention of flex was to use this storage quote
6 warehouse space historically as storage as accessory to the
7 contractor's usage which I think is what the concern was from
8 the planning board. I am not going to deny that the language
9 in the ordinance is not super clear which is kind of why we're
10 here. I think the intention was for a contractor's usage and I
11 think a lot of those representations that came to us as
12 equivilant or comparable uses were in a light industrial zone
13 intended for contractor's usage. I get that the language is
14 unfortunate, however, I would stipulate that the intention was
15 not for a 250 some odd thousand square foot warehouse to have
16 these two itty, bitty one-percent users that could potentially
17 be something maybe, maybe not because I agree with Brian. In
18 spite of being asked for the information ahead of time, we
19 weren't provided it so we had absolutely no opportunity to
20 review, opine, refute what have you and so I would stipulate
21 that what the applicant has put forth before the planning
22 board ultimately wound up here is a warehouse and therefore is
23 not permitted in the zone, stand alone and they're using flex
24 as kind of a mask to get this warehouse approved. So I don't
25 agree. I think it's not permitted. I don't agree with the
26 assertion that we didn't bring this up in a very direct and
27 strong position becaue I myself because I'm known to be soft
28 spoken, but what I will say is I brought it up from the jump.
29 At the TRC we brought it up. I put it in my letter and I think
30 Mr. Marmero had identified there were what four letters that
31 came from my office?

32
33 MR. MARMERO: Yeah we have four.

34
35 MS. BEAHM: And it was in there every single time. I
36 am not the person that determines how the planning board
37 operates, but I was very clear in my issue from the beginning
38 and so I don't agree. I think this is a warehouse in sheep's
39 clothing. I think they're using flex. The intention of flex is
40 to have a space that's utilized by multiple users, but 96.6
41 percent warehouse and then the other miniscule percentage
42 could potentially be these users that we don't really know and
43 let me be very clear I asked the question at the planning
44 board what could go there. There wasn't a very good response
45 so now all of a sudden months and months and months later we
46 have these people that have come forth saying oh yeah
47 absolutely this could be utilized for something else, but we
48 weren't provided with the information ahead of time. It's a

1 warehouse in my humble opinion. I don't think it meets the
2 definition of flex or the intention of the definition of flex.
3 I think the intention was for a smaller building to be used by
4 individual contractors not 260,000 square foot with multiple
5 loading docks, etc. That's a warehouse and I think that
6 they're using the word flex because that's what's permitted to
7 mask a warehouse user. That's my professional opinion.
8

9 MR. LEVITON: So Jennifer it's your contention ---
10 the applicant didn't violate the letter of the ordinance. It
11 violates the spirit of the ordinance.
12

13 MS. BEAHM: I don't agree that that is the case. I
14 think the reason that they're here is because there was
15 questions about the compliance with the ordinance and the
16 jurisdiction with which the planning board has to act on the
17 application which is why it's here. Because I don't think this
18 is flex space. I think this is a warehouse and that a
19 warehouse is not permitted and I also don't agree with the
20 assertion that well they changed the ordinance so therefore
21 they intended for this too. That is absolutely not the case.
22 They have made amendments and I know there's another amendment
23 currently in progress because this has become a habitual
24 problem and therefore I think that it's very important that
25 the board think about how to interpret this. In my opinion
26 flex space is for a plumber or an electrician or some other
27 kind of contractor who has a desk and a phone and a bathroom
28 that runs their business and stores like a hot water heater or
29 something like that in the back. I think the word warehouse
30 and storage were synonymous at the time. I think warehouse now
31 has taken on a different characteristic and I don't think that
32 this 260,000 square feet or 96.6 percent of a massive building
33 for one big warehouse user was ever intended when flex was
34 defined. I mean you've been here a long time. Do you disagree?
35

36 MS. DEFALCO: I don't. I agree a hundred percent.
37

38 MS. BEAHM: And so therefore I think that I think
39 they're manipulating the language to get themselves a
40 warehouse with a couple little one percent here, one percent
41 there to say they're a flex. It's not flex. It's a warehouse.
42 That's my opinion on everything.
43

44 MR. LEVITON: --- you think then their application
45 before the planning board would then have to come before this
46 board?
47
48

1 MS. BEAHM: Either they would have to modify their
2 plans or they would have to come before us for a use variance
3 or they could take whatever they want in court right?
4

5 MR. MARMERO: They could seek an interpretation
6 elsewhere, Superior Court level.
7

8 MR. LEVITON: I understand.
9

10 MS. DEFALCO: So the board knows also the uses that
11 are permitted in the flex space it's on --- are typically
12 permitted in the LI zone and I think what the intent of the
13 township committee was to allow these contractor's offices to
14 also be on Route 33. That's why it is written this way. If you
15 read --- how it's permitted it's only permitted if it faces
16 33. Again they weren't going to change the zone to make an LI
17 zone so this was to have that flexibility for these other uses
18 to go on 33. I explained that correctly.
19

20 MR. LEVITON: Ms. Beahm and Ms. DeFalco talk about
21 intention, but in his opening remarks Mr. Shimanowitz said
22 that he referenced that the governing body changed the
23 ordinance and he said the zoning board has to consider the
24 language alone and not the intent.
25

26 MR. MARMERO: Well the first thing you consider and
27 Mr. Shimanowitz is correct so the first thing you consider is
28 the language of the ordinance that you're interpreting. If you
29 find that the language of the ordinance that you're
30 interpreting is ambiguous you then can move onto external
31 factors such as the intent of the ordinance, the intent of
32 those who drafted the ordinance.
33

34 MR. LEVITON: So then let me ask you Ms. Beahm. How
35 is the ordinance as it's currently written different from what
36 --- what the applicant was bound to?
37

38 MS. BEAHM: Well the governing body now has said very
39 clearly that flex space shall not include warehouse or
40 distribution. So and I'm not opining that that's what's at
41 stake here, but that was the initial step to say nope
42 warehousing is not permitted. They're looking at additional
43 steps moving forward to deal with height and things like that,
44 but it was never intended to allow a huge warehouse. That was
45 never the intention.
46

47 MR. MARMERO: Ms. Beahm as a planner do you know how
48 the intention has defined the warehouse use?

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

MS. BEAHM: As storage, correct Nancy?

MS. DEFALCO: Correct.

MS. BEAHM: Prior to all this stuff it was storage.

MS. DEFALCO: --- distribution.

MR. ROSENTHAL: Distribution if it's like a food warehouse.

MS. BEAHM: Distribution is a separate use as is fulfillment, but it always was intended historically to be storage which is why I think the initial definition of flex space included the word storage because it was more the contractor could work out of there and store their goods there. It was never intended to be a warehouse as a standalone. Correct Nancy?

MS. DEFALCO: Correct.

MR. LEVITON: Mr. Shimanowitz do you want to come up with a summation?

MR. SHIMANOWITZ: I do not.

MR. LEVITON: Board, do you have any questions for our professionals?

MR. SCHERTZ: No questions.

MR. SHALIKAR: No questions.

MR. MARMERO: Do you want me to sum up the question that's before the board Mr. Chairman?

MR. LEVITON: Sure. Thank you Mr. Marmero.

MR. MARMERO: Yeah so as Mr. Shimanowitz pointed out obviously this application was at the planning board level. At some point I guess in the second hearing there came to be some question as to whether or not this was in fact a permitted use. It seems like that question arose because there was a thought of some that this was in fact a warehouse due to the large percentage that's devoted to the warehouse as opposed to flex space. Any question that was posed by the planning board attorney which appears in the application here is whether the

1 flex space ordinance requires that the collection of flex uses
2 being proposed by the application are viable or whether there
3 was any such thing in the municipal land use law an illusory
4 use or phantom use or whether an applicant's interpretation is
5 correct that the flex space ordinance doesn't go into that at
6 all. So it's kind of a confusing wording of the question the
7 way it comes through, but I think what the question is asking
8 is there any requirement that the smaller proposed uses
9 actually be viable in order to be considered flex space.

10

11 MR. LEVITON: And what is procedurally the next step
12 that this board takes?

13

14 MR. MARMERO: So the board would have to make an
15 interpretation. So really someone would have to make a motion
16 either way. So there would be a motion that the ordinance does
17 in fact require that the smaller flex uses that are
18 accompanying the warehouse have to be viable or a motion that
19 they don't have to be viable. If the board determines that
20 they do have to be viable then at that point this application
21 would no longer be a permitted use because it would be deemed
22 a warehouse. If there is no viability requirement then the
23 application would continue at the planning board level. I know
24 that's a mouthful.

25

26 MR. LEVITON: I hope someone understood that that
27 they can make a motion.

28

29 MR. SCHERTZ: --- for me.

30

31 MR. LEVITON: David?

32

33 MR. SCHERTZ: To phrase the resolution properly we
34 have to say that the permitted use of the flex space ---

35

36 MR. LEVITON: Is viable.

37

38 MR. SCHERTZ: Is viable. Is that what you're saying?

39

40 MR. MARMERO: You would have to cause a motion so you
41 would make a motion that the proposed flex uses are required
42 to be viable and if you make that motion then this application
43 deems to not be a permitted use. If your motion is that there
44 is no requirement that these uses be viable they would be a
45 permitted use and it would continue at the planning board
46 level.

47

48

1 MR. LEVITON: Mr. Shimanowitz do you have anything to
2 say?

3
4 MR. SHIMANOWITZ: I do. With all due respect to Mr.
5 Marmero I think we differ a little bit. The way Mr. Marmero
6 has stated the question is having this board answer the wrong
7 question. The way I heard it is whether or not uses have to be
8 viable in order to be flex space. Of course they have to be
9 viable. The ordinance would not allow uses that are not
10 viable, that are phantom uses. The question that was raised at
11 the planning board and I hate paraphrasing it because I've
12 read it verbatim, Mr. Marmero has read it verbatim is whether
13 or not the uses proposed by the applicant are phantom uses or
14 whether they are viable and to me that's the question. That's
15 why we presented the case the way we did because that was what
16 was raised at the planning board and all we did is go by your
17 ordinance definition. When I say your, the township's or
18 governing body's ordinance definition and we specifically
19 followed that definition. We intentionally did what we did by
20 way of our development proposal to hit all of those uses. So
21 to state the question the way it was stated earlier I think is
22 going to lead you in the wrong direction and of course uses
23 have to be viable.

24
25 MS. BEAHM: Al maybe I can say ---

26
27 MR. MARMERO: So you're saying your specific uses are
28 viable is what the question is.

29
30 MS. BEAHM: Well I think more to the point do we feel
31 that this meets the definition of flex, yes or no? If we don't
32 feel it meets the definition of flex and is in fact a
33 warehouse it is not permitted.

34
35 MR. SHIMANOWITZ: And that's not ---

36
37 MS. BEAHM: ---

38
39 MR. SHIMANOWITZ: I would object to that because
40 that's not the issue.

41
42 MS. BEAHM: You're asking us to look over the
43 ordinance --- You're here as flex. Do we feel that what has
44 been presented meets the definition of flex? Yes or no?

45
46 MR. SHIMANOWITZ: Again that is not the issue that
47 was presented by the planning board. That the applicant was

1 requested by the planning board to present to this board and I
2 presented, we, stated verbatim from the record.

3

4

MR. LEVITON: Mr. Marmero?

5

6

7

8

9

MR. MARMERO: And I think Jen is correct. I think in
general that's the question you're here to answer tonight just
like Jen phrased it. It just comes through very weird as posed
by the planning board in this dissertation here.

10

11

12

MS. BEAHM: Wait you were not sworn in so you're
going ---

13

14

15

MR. LEVITON: I don't know who this is either, but he
needs to move. He can't be sitting there.

16

17

18

19

MR. SHIMANOWITZ: Mr. Chairman the reason I called
him up is I would like permission to present some additional
testimony since the board is struggling with the issue.

20

21

22

MR. LEVITON: You don't know that the board is
struggling.

23

24

25

26

27

MR. SHIMANOWITZ: Well I shouldn't struggle, the
board is debating how the issue should be phrased. I think Mr.
Kainer who is the principal of the applicant should have the
opportunity to state his thoughts on the record.

28

29

30

MR. LEVITON: Mr. Marmero?

31

32

33

MR. MARMERO: It's up to you Mr. Chairman. The
application is closed so it's up to you if you want to re-open
the testimony.

34

35

36

MR. LEVITON: Sure I'll allow it.

37

38

MR. SHIMANOWITZ: Appreciate that. You have Mr.
Kainer's form.

39

40

41

42

MR. MARMERO: Sir, can you raise your right hand? Do
you swear that the testimony you will provide tonight will be
the truth, the whole truth and nothing but the truth?

43

44

45

MR. KAINER: Yes.

46

47

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

48

1 MR. KAINER: John Kainer.

2

3 MR. MARMERO: Okay and how do you spell the last
4 name.

5

6 MR. KAINER: K-A-I-N-E-R.

7

8 MR. MARMERO: Okay.

9

10 MR. SHIMANOWITZ: And John just so everyone knows who
11 you are, you're a principal and owner in the applicant 51
12 Route 33, LLC which is the current owner and applicant is that
13 correct?

14

15 MR. KAINER: Correct.

16

17 MR. SHIMANOWITZ: And you're also principal and owner
18 of Mercer Realty Partners LLC which had been the contract
19 purchased the property and was also the applicant in the
20 planning board proceeding is that correct?

21

22 MR. KAINER: Correct.

23

24 MR. SHIMANOWITZ: So you're fully familiar with these
25 proceedings is that correct?

26

27 MR. KAINER: Yes.

28

29 MR. SHIMANOWITZ: What do you wish to add for the
30 record?

31

32 MR. KAINER: The question to the zoning board was are
33 these viable units. A viability is determined by if they are
34 built will they be rented. I've had people testify here these
35 units are all over town. To quote the mayor from the planning
36 board hearing and he said that they are the contractors that
37 they use all over town that they hire, but these units are all
38 over town. They're in neighboring towns. They're almost all
39 rented. John has a list of people waiting to rent these types
40 of units and it's very obvious that they are economically
41 viable. There is no way to refute that in my opinion because
42 they exist and they exist in abundance. The market is
43 underserved and that is why we're building a few.

44

45 MR. LEVITON: Is there anything else sir?

46

47 MR. KAINER: That is all. Thank you very much for
48 listening

1
2 MR. LEVITON: --- Mr. Kainer. Mr. Shimanowitz?

3
4 MR. SHIMANOWITZ: Nothing further today.

5
6 MR. LEVITON: So there's I guess a dispute about how
7 we're looking at this interpretation.

8
9 MS. BEAHM: And I think they would like it to be a
10 dispute and I'm not interested in opening this back up to
11 them. So they said they're done. Are you done?

12
13 MR. SHIMANOWITZ: Jen ---

14
15 MS. BEAHM: I'm just asking a question like are you
16 done with your case or not because I don't agree with your
17 assertion that we're only supposed to be determining whether
18 the phantom uses are uses. The jurisdictional question is does
19 this meet the definition of flex or not period end of
20 discussion. If it does it's permitted. If it doesn't it's not
21 permitted and the question at the planning board was is this
22 really flex because can you really occupy these spaces, but
23 the underlying question was is this flex.

24
25 MR. LEVITON: Is that why the planning board attorney
26 Mr. Cucchiaro shut down the proceedings? He said it is not
27 flex and therefore we don't have jurisdiction.

28
29 MS. BEAHM: He --- respectfully, respectfully.

30
31 MR. LEVITON: I'm asking my professional.

32
33 MS. BEAHM: The question has always been from the
34 beginning does this meet the definition of flex which is why
35 it's in my letter, it's in Brian's letter. It came up at the
36 meeting, the first meeting, you were allowed to proceed. There
37 were questions about the viability of these uses. You came to
38 the second meeting and it was we're questioning whether or not
39 this two percent or three and a half percent of a massive
40 building qualifies itself as flex, come here and get an
41 interpretation. There's no interpretation of the ordinance of
42 phantom use. There's nothing in the ordinance that says
43 phantom use. The question is the definition of flex. Do you
44 meet it or do you not? Right? So at the end of the day as I've
45 stated I don't believe this is flex space. I believe this is a
46 warehouse. It's up to you. If you determine that it's a
47 warehouse and it doesn't meet the definition of flex based
48 upon the testimony that these uses are viable and I used the

1 quotations because there's no tenants or actual uses. I mean
2 they could've gotten a tenant by now, but they don't. So do
3 you believe it's an actual flex space or not. If it's not flex
4 space the planning board no longer has the jurisdiction to
5 hear the application. That's why we're here to determine
6 whether or not it meets the definition of flex or not.
7

8 MR. LEVITON: --- it sounds very straightforward.
9 Did that suffice?
10

11 MR. MARMERO: I'm fine with that straightforward
12 approach. It seems like the question that arose at the
13 planning board again had to do with the viability of the small
14 uses, but they were in fact questioning whether or not it met
15 the interpretation of flex use. Was this in fact flex use? So
16 I'm fine with phrasing it that way. So if your motion is to
17 determine whether or not this proposal meets the requirements
18 of flex space that could be a motion or you could make a
19 motion that it does in fact meet the requirements.
20

21 MR. SHIMANOWITZ: Mr. Chairman I want to note my
22 objection for the record and sorry to interrupt the board's
23 deliberations, but the applicant strenuously objects to this
24 procedure. You can't change the question during the course of
25 the hearing. The applicant specifically asked what issue or
26 what question do you want the applicant to present for the
27 zoning board. It was stated on the record. We lifted it from
28 the planning board record and presented it to you. Now that
29 issue is morphing. We presented our case based on the issue as
30 set forth by the planning board. You can't now morph the issue
31 that's unfair to the applicant. So I want to note that
32 objection for the record. The zoning board will do what it
33 will do, but that to me is highly inappropriate. There's an
34 issue for interpretation before you clearly stated that's the
35 question you're supposed to answer.
36

37 MR. LEVITON: ---
38

39 MR. BOCCANFUSO: No nothing Mr. Chair.
40

41 MR. LEVITON: Mrs. DeFalco? Mr. Marmero?
42

43 MR. MARMERO: No nothing sir. Again I mean you are
44 charged tonight with this interpretation and in the most
45 straightforward way we can put it you need to make a
46 determination as to whether or not this use fits the
47 definition in the flex space or whether or not it does not fit
48 that definition.

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

MR. LEVITON: ---

MR. SCHERTZ: I have a question first. The procedure if we determine that this is not flex space what happens? This can go back to the planning board.

MR. LEVITON: One of three things.

MR. SCHERTZ: And wait, wait, wait. It's going to go back to the planning board. They're going to say that they don't have jurisdiction and it's going to come back to us?

MR. LEVITON: No if that is our ruling then the applicant can seek interpretation from the Superior Court.

MR. SCHERTZ: I understand that.

MR. LEVITON: The applicant can come before this board or the applicant can revise its plans.

MR. SCHERTZ: Fine.

MR. LEVITON: The planning board would no longer have jurisdiction.

MR. SCHERTZ: Got it. So I'll make the motion.

MR. LEVITON: Okay.

MR. SCHERTZ: To say that this is no flex space.

MR. LEVITON: Will someone second that motion?

MR. GREGOWICZ: Second.

MR. LEVITON: Mr. Gregowicz thank you. Mr. Schertz thank you. Bob.

MS. MOENCH: Bob?

MR. LEVITON: Bob second.

ROLL CALL

MS. MOENCH: Mr. Gregowicz?

MR. GREGOWICZ: Yes.

1
2 MS. MOENCH: Mr. Rosenthal?
3
4 MR. ROSENTHAL: Yes.
5
6 MS. MOENCH: Mr. Schertz?
7
8 MR. SCHERTZ: Yes.
9
10 MS. MOENCH: Mr. Shalika?
11
12 MR. SHALIKAR: Yes.
13
14 MS. MOENCH: Mr. Mantagas?
15
16 MR. MANTAGAS: Yes.
17
18 MS. MOENCH: Mr. Wechsler?
19
20 MR. WECHSLER: Yes.
21
22 MS. MOENCH: Chair Leviton?
23
24 MR. LEVITON: Yes --- wish you luck going forward.
25
26 MR. SHIMANOWITZ: Thank you for your time tonight.
27 Thank you, take care.
28
29 MR. LEVITON: At this time I'm going to open up to
30 public for any matters that the general public wishes to bring
31 before the board not related to agenda items. Hello ma'am.
32 Again this is not related to anything pertinent to the
33 interpretation correct? Okay it's something else a different
34 matter? Okay then we're going to --- We're going to ask you to
35 be sworn in. Mr. Marmero will swear you in and then we'll hear
36 what you have to say.
37
38 MR. MARMERO: Do you swear the testimony that you
39 provide tonight will be the truth, the whole truth and nothing
40 but the truth?
41
42 MS. LEBRUN: I do.
43
44 MR. LEVITON: --- just a second, yeah. --- Thank you
45 to the court reporter. Don't be it's fine, you take your
46 time. Okay Mr. Marmero if you want to swear her in.
47
48 MR. MARMERO: She's been sworn in already.

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

MR. LEVITON: Oh I didn't get your name ma'am.

MS. LEBRUN: Oh Christine Lebrun.

MR. LEVITON: Christine Lebrun.

MS. LEBRUN: Yes L-E ---

MR. LEVITON: Lebrun. Ms. Lebrun ---

MS. LEBRUN: Thank you.

MR. LEVITON: And what is it that you want to tell us?

MS. LEBRUN: I just have a quick question regarding the resolution tonight of 2240.

MR. LEVITON: Give me a second, okay.

MS. LEBRUN: Okay I went to the zoning office --- to Ms. DeFalco was there and I spoke to the other women so for the permit of a variance they had to cut down several trees on my property so they came to look at it and Shari Spiro I think her name from Shade Tree so they agreed which trees have to come down, but I just was asking if they know when they're going to cut them. The reason I'm asking is I need some chimney work done and it's right where the trees are and I didn't want to schedule the chimney work on the same day when they're cutting trees down which is maybe eighteen feet away.

MR. MARMERO: She's going to require that the trees be removed within thirty days.

MS. LEBRUN: I'm sorry can you say that again?

MR. MARMERO: Within thirty days.

MS. LEBRUN: Within thirty days? Okay so I should wait thirty days after today before I schedule chimney work?

MR. MARMERO: Yeah and ---

MS. LEBRUN: So it should be finished within thirty days?

MR. MARMERO: Yes.

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

MS. LEBRUN: Okay alright thank you very much that's
all ---

MR. LEVITON: --- Ms. Lebrun.

MS. LEBRUN: Thanks.

MR. LEVITON: Is there anyone else from the public
who wishes to address the board on items other than agenda
matters this evening? Seeing none I'll close public. Is there
anything --- by the good of the order? Thank you to the board
for all of its hardwork and its dedication.

MR. MARMERO: Thank you Mr. Chairman.

MR. LEVITON: Your positions are unpaid and the
township appreciates your volunteerism. Thank you sir. How
long are you on this board Terry?

MR. ROSENTHAL: Eighteen years.

MR. LEVITON: Eighteen years right there, eighteen.

MR. ROSENTHAL: I --- twenty-one.

MR. LEVITON: Thank you to all of our professionals
especially Brian who killed it.

MS. BEAHM: ---

MR. LEVITON: Oustanding you're on the job, yeah.

MR. BOCCANFUSO: Second best news I heard tonight.

MR. LEVITON: I'm glad.

MR. ROSENTHAL: Of course none of them beat Purdue.

MR. LEVITON: Sweet. Alright will someone move to
adjourn?

MR. WECHSLER: I'll make a motion.

MR. LEVITON: Thank you Michael.

MR. SCHERTZ: Second.

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

MR. LEVITON: Thank you so much. Goodnight everyone.

TOWNSHIP OF MANALAPAN
MINUTES

ZONING BOARD MEETING
DATE FEBRUARY 16, 2023
PAGE 50

- 1
- 2
- 3
- 4
- 5
- 6
- 7