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Attorney for the Plaintiff

BOROUGH OF PARAMUS

2025 MAR 26 P 12:32

BOROUGH CLERKS OFFICE

KENNETH LENOCI and SHARON
LENOCI

Plaintiff,

vs.

BOROUGH OF PARAMUS ZONING
BOARD OF ADJUSTMENT; KENNETH
HOOK in his capacity as Zoning Official
of Borough of Paramus, the BOROUGH
OF PARAMUS and MS HEIGHTS, LLC

Defendant,

:: SUPERIOR COURT OF NEW JERSEY
:: LAW DIVISION: BERGEN COUNTY

:: DOCKET NO. BER-L-001640-25
:: CIVIL ACTION

SUMMONS

From The State of New Jersey

To The Defendant(s) Named Above: Borough of Paramus

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appears above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Legal Referral Services. A list of these numbers is also provided.

MICHELLE M. SMITH,

Clerk of the Superior Court

Dated: March 12, 2025

Name of Defendant to be served: Borough of Paramus

Address of Defendant to be served: 1 West Jockish Square, Paramus, N.J. 07652

ELISE DINARDO, ESQ.

Attorney ID # 004461989

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Union City, New Jersey 07087

(201) 963-9500

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Attorney for Plaintiffs, Kenneth Lenoci and Sharon Lenoci

KENNETH LENOCI and SHARON LENOCI

Plaintiff,

v.

BOROUGH OF PARAMUS ZONING
BOARD OF ADJUSTMENT; KENNETH
HOOK, In his capacity as Zoning Official of
Borough of Paramus, the BOROUGH OF
PARAMUS and MS HEIGHTS, LLC

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

Docket No.

Civil Action

**COMPLAINT IN LIEU OF
PREROGATIVE WRITS**

Plaintiffs, Kenneth Lenoci and Sharon Lenoci (hereinafter "Lenoci" or "Plaintiffs"), by way of Complaint against Defendants Borough of Paramus Zoning Board of Adjustment, Kenneth Hook and Borough of Paramus says:

FIRST COUNT

1. Plaintiffs, Kenneth Lenoci and Sharon Lenoci are the owners of certain real property located at 153 Lucky Hollow Drive, Paramus, New Jersey and more particularly described as Block 2701, Lot 5 on the Official Tax Maps of the Borough of Paramus. Said property is located in the Residential One-Family R-100 Zoning District of the Borough of Paramus.
2. Defendant, Borough of Paramus Zoning Board of Adjustment (hereinafter referred to as the "Zoning Board", "Board" or "Defendant") was at all times relevant, a quasi-judicial Board created under and existing pursuant to the laws of the State of New Jersey and the Ordinances of the

Borough of Paramus and charged under these laws and ordinances with the duty to administer and interpret provisions of the Zoning Ordinances with powers pursuant to N.J.S.A. 40:55D-70.

3. The Zoning Board is a "public body" as that term is defined in N.J.S.A. 10:4-8 and is required to conduct its meetings in accordance with the Open Public Meeting Act, N.J.S.A. 10:4-6, et seq.

4. Defendant, Kenneth Hook (hereinafter referred to as "Hook"), at all relevant times, was employed by the Borough of Paramus and acted as its agent, representative serving as the Zoning Official of the Borough of Paramus.

5. Defendant, Borough of Paramus (hereinafter referred to as "Borough"), at all relevant times, is a municipal corporation of the State of New Jersey. The Borough of Paramus Zoning Board of Adjustment is an agency of the Borough. Both having offices located at 1 Jockish Square, Paramus, New Jersey 07652.

6. Defendant, MS Heights, LLC (hereinafter referred to as "MS Heights"), at all relevant times, is the owner of certain real property located at 148 Spring Valley Road, Paramus, New Jersey, and more particularly described as Block 2701, Lot 12 on the Official Tax Maps of the Borough of Paramus (hereinafter referred to as "Site"). The Site is located in the Residential One-Family R-100 Zoning District of the Borough of Paramus.

7. At all relevant times herein, Defendant MS Heights was aware that the Site was formerly a nursery and allocated under a Redevelopment Plan for affordable housing. However, MS Heights leased the Site to Billy V's Unique Landscaping, LLC (hereinafter referred to as "Billy V's") registered with the New Jersey Department of Consumer Affairs as a home improvement contractor. Knowing that the Redevelopment Plan controlled the uses for the site, Defendant MS Heights allowed and continues to allow Billy V's to operate a landscape design build and maintenance company with bulk storage on the Site for its (Billy V's) residential, commercial, municipal and industrial clients, in violation of Borough Ordinances and State-Laws.

8. The Site is the former home of Treeland Nursery, Inc. (hereinafter referred to as "Treeland Nursery"). Treeland Nursery was the owner/occupier of the Site since 1948 and was in the business of growing and selling plants, trees and shrubs.

9. In and around June of 2019 and December of 2019, Treeland Nursery was one of six nursery properties in the Borough of Paramus designated as areas in need of rehabilitation under Borough Ordinances 19-06-409 and 19-12-709. A Redevelopment Plan (hereinafter referred to as the "Nurseries Redevelopment Plan") was adopted for the Site by Ordinance 2020-08 (Exhibit "A"). The Site is included in the settlement of the Borough's affordable housing declaratory judgment litigation under Docket No.: BER-L-6227-15 with the Fair Share Housing Center.

10. On or about November 2023, Billy V's moved onto the Site. At the time Billy V's did not have a non-conforming use certification in accordance with N.J.S.A. 40:55D-68 from the Borough to occupy the Site. From November 2023 through November 14, 2024, Billy V's continued to occupy the Site and operate his landscaping business without a non-conforming use certification.

11. In and around August 29 2024, Billy V's filed a site plan application for a d(2) variance for expansion of a non-conforming use and bulk variances of Accessory Structure Side Yard Setback, Accessory Structure Rear Yard Setback, Permitted Accessory Uses and Maximum Accessory Structure Area. The hearing on said application was scheduled for November 14, 2024 before the Zoning Board.

12. Plaintiffs are within 200 ft of the Site and therefore received notice of the hearing on the site plan application. Plaintiffs appeared as objectors/interested parties to the application. Counsel to the Board was notified in writing of the Plaintiffs objections to the site plan application and moreover to the fact that Billy V's had been operating its landscaping business on the Site since November 2023 without a non-conforming use certification. (Exhibit "B").

13. On November 14, 2024, the Plaintiffs learned that a Continuing Certificate of Occupancy (hereinafter referred to as "CCO") was issued by Hook earlier that day. (Exhibit "C"). In issuing the CCO Hook determined that the landscaping company was a continuation of the prior

non-conforming use of the site. In his analysis Hook referenced the Moskowitz book of definitions, a reference book that defines terms used in land use planning and regulation. Hook chose the word "landscape" from the Moskowitz book in support of his determination. (Exhibit "D").

14. On December 4, 2024, counsel for Plaintiffs filed a timely appeal of Hook's decision challenging the issuance of the CCO on the basis that: (i) the current use as a landscaping company/storage yard is not a nursery and therefore is a non-conforming use not permitted in the Residential One-Family R-100 Zone; (ii) that the previous use by Tree Land Nursery was a seasonal business engaged in selling live plants, trees, and flowers; (iii) the previous use as a nursery was deemed a non-conforming use in the Residential One-Family R-100 Zone; (iv) a non-conforming use certification had not been issued by the zoning officer in accordance with N.J.S.A. 40:55D-68; (v) the use of the property is controlled under the Nurseries Redevelopment Plan and the Zoning Official does not have the legal authority to issue a CCO for a use not permitted under the Redevelopment Plan. (Exhibit "E")

15. On January 23, 2025, the Board held a public hearing on the Plaintiffs' appeal of the Zoning Official's decision. The Zoning Official acknowledged that he issued the CCO because it's the same type of landscaping business that's been on the existing property since 1948. He explained that he used the definition of landscaping from the Moskowitz book of definitions to reach his determination that a landscaping business was a preexisting nonconforming use on the Site. When asked why he didn't use the Moskowitz definition of "nursery", he stated that he just didn't do it. Knowing that the Site was formerly Treeland Nursery and that the Site was under the Nurseries Redevelopment Plan, he had no reason to not use the Moskowitz definition of "nursery". Instead, he chose landscape which Moskowitz defines as: "an expanse of natural scenery, elements of use for alteration and ornamental and open space, including lawns, trees, plants, and other natural material, such as rock and wood chips and decorative features including sculptures, patterned walkway, fountains, and pools.

16. At the hearing, Hook admitted to never reviewing Billy V's application for CCO. He further admitted to assisting Billy V's in selecting the Site for his landscaping business.

17. Plaintiffs offered the testimony of a Professional Planner Eileen Banyra (hereinafter referred to as "Banyra"), who tried to explain to the Board, despite numerous interruptions and extraneous testimony from the Board Chairman and Craig Bossong, Board Counsel, that "nursery" is the appropriate land use to reference in the Moskowitz book of definitions. Banyra testified that nursery is the principal non-conforming use on the property and although there may be other uses on the property, i.e. landscaping, the principal use remains nursery. Banyra testified that nurseries, by definition grow, cultivate, store and sell garden plants, flowers, trees, shrubs, fertilizers, as well as gardening tools, similar accessories and ancillary products to the general public. Banyra offered photographs of the site, along with Moskowitz' definitions of nursery (wholesale and retail). Banyra also offered Moskowitz' definitions of landscape and contractor's storage yard. (Exhibit "F"). Banyra opined that while a landscaping company is not a nursery, a nursery can offer landscaping services. Banyra suggested to the Board that what's on the site is not a nursery but instead a contractor's storage yard for a landscaping business. Banyra emphasized Billy V's site plan application for variance to allow storage containers to remain on the property as evidence of the fact that the site is being used as a contractor's storage yard.

18. Despite the testimony of the Plaintiffs' Professional Planner and the documents filed and offered as exhibits illustrating the site as a "nursery", the Board wrongfully upheld the Zoning Official's decision and denied Plaintiffs' appeal. The Board found that the landscaping company was a continuation of a preexisting nonconforming use. The Board refused to acknowledge that the prior use as a nursery was the principal use and landscaping services may have been offered by Treeland Nursery as an ancillary service. The Board members ignored the Borough's Zoning Ordinance and Redevelopment Plan calling the site "Nursery" claiming that Plaintiffs' professionals were calling the site a nursery simply because of the name Treeland Nursery. **A copy of the hearing transcript is attached as Exhibit "G".**

19. At the public hearing on January 23, 2024, sixty (60) or so members of the public were present and denied the opportunity to speak or ask questions of the witnesses. Although the Chairman advised the public that they would get a chance to ask questions or whatever, the public was not permitted to comment or ask questions. Board Counsel advised the public that they could not comment on the appeal as they did not file an appeal themselves, whether or not they were interested parties. Board Counsel announced that the hearing on the appeal was not a public hearing and that an appeal of an administrative officer's decision is not a hearing. Board Counsel expressly stated "[t]hey filed no appeal, they have no standing. The hearing on the appeal was on the public agenda posted on the Borough website and the meeting was opened and conducted in accordance with the Open Public Meetings Act. (Exhibit "H")

20. During the public hearing, the Chairman repeatedly threatened members of the public that he would call the police and have them escorted out. The Chairman told the audience that the hearing would be continued without any residents whatsoever. The members of the public asked the Chairman, "why don't you care", "you have to care", "we are the residents", "we live on that street". In response the Chairman told the audience "I don't care" whereupon he shouted "call the police". This colloquy followed numerous interruptions by Board Counsel and the Chairman, who was laughing, while Plaintiffs' Counsel pursued a record of the proceedings. The Chairman's actions against the public were carried out simply to intimidate and silence the public. Two police officers arrived at the chambers and four police officers were outside Borough Hall.

21. On February 21, 2024, Plaintiffs' counsel was advised that the Board would not issue a Resolution memorializing its decision upholding the Zoning Official's issuance of a CCO. Therefore, Plaintiffs must rely on the January 23, 2025 hearing transcript as the memorialization of the Board's decision.

22. In upholding the Zoning Official's decision, the Board ignored the facts before it and made assumptions based upon the Chairman's personal claims that he used to go to Treeland Nursery because they had a Coca-Cola machine that dispensed bottled, glass bottled sodas. The Chairman

essentially testified that the establishment had been a nursery/landscape facility doing different types of planting and so forth. The Chairman rambled on about the "Goldens" who used Treeland for their services all the time. The Chairman offered testimony not germane to the issues on appeal that Treeland did everything on the Goldens property from planting to walkways to whatever was and offering that Treeland was basically the "be-all end-all" for the Golden family here in Paramus. Clearly the Chairman and the Board ignored the facts before it and made assumptions as to the use of the site. The Board palpably abused their discretionary authority, in that the action taken was in all regards not based upon the facts in evidence, was contrary to applicable law and was arbitrary, unreasonable and capricious and otherwise wrongful.

23. The Board failed to properly analyze and consider all the elements required to establish that Billy V's activities on the site are those of a nursery. Moreover, the Board prohibited the public from asking questions of the Zoning Official and/or comment on their knowledge of the site. As a result of Hook's actions in issuing the CCO, the Plaintiffs have suffered a manifest injustice and unnecessary expense created by Defendant Hook's unreasonable and wrongful decision in granting Billy V's, a home improvement contractor, a CCO as a preexisting nonconforming use as a nursery.

24. The Board's denial of Plaintiffs' appeal was arbitrary, capricious, and unreasonable and not justified by the facts on the record, contravene the intent and purpose of the Borough's Ordinances and State Laws, and is a detriment causing hardship to the Plaintiffs in disregard of their property rights.

25. As a result of the actions of the Board, the Plaintiffs have been adversely affected, and the Plaintiffs have suffered a manifest injustice created by the Board's unreasonable application of their planning, zoning and land use powers.

WHEREFORE, Plaintiffs demand judgment against the Defendants as follows:

(a) Reversing the decision of the Board, as set forth in its decision on January 23, 2025, upholding the Zoning Official's decision and directing the Zoning Official to require Billy V's and

MS Heights, LLC to apply for a d(1) use variance in accordance with the Redevelopment Plan for the Nursery Properties and awarding;

- (b) Attorney's fees and costs of suit as permitted by law;
- (c) Such other relief as the Court deems just and equitable.

COUNT TWO

26. Plaintiffs repeat and reiterate each and every allegation set forth in the First Count of the Complaint as if set forth at length herein.

27. The Chairman's statements during the hearing that he used to go to Treeland Nursery because they had a Coca Cola machine that dispensed bottled, glass bottled sodas, along with his rambling about the "Goldens" who used Treeland for their services all the time reflected a bias against the Plaintiffs thereby tainting the Board's hearing on Plaintiffs' appeal. The Board's proceedings were tainted by an appearance of impropriety, bias, prejudice and prejudgment.

28. The Board members were biased and predisposed to deny Plaintiffs' appeal and failed to properly weigh and consider the Plaintiffs' factual and expert testimony.

29. The Board's action in failing to fairly and impartially consider the Plaintiffs' arguments; witnesses and expert testimony constitutes a denial of fundamental principles of due process and the spirit and intent of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. which mandates that a zoning board act fairly and impartially.

WHEREFORE, Plaintiffs demand judgment against the Defendant, Borough of Paramus Zoning Board of Adjustment, as follows:

- (a) Reversing and vacating the Board's denial of Plaintiffs' appeal;
- (b) Declaring that the Board's January 23, 2025 decision denying Plaintiffs' appeal null and void and of no force and effect;
- (c) Granting Plaintiffs' appeal of the Zoning Official's decision to issue Billy V's a CCO on November 14, 2024;

- (d) Awarding Attorney's fees and costs of suit as permitted by law;
- (e) Such other relief as the Court deems just and equitable.

COUNT THREE

30. Plaintiffs repeat and reiterate each and every allegation set forth in the First Count and Second Count of the Complaint as if set forth at length herein.

31. Pursuant to the Open Public Meeting Act, the public has the right "to be present at all meetings of public bodies, and witness in full detail all phases of the deliberation, policy formation, and decision making of public bodies as vital to the enhancement and proper functioning of the democratic process.

32. The Open Public Meeting Act encourages public bodies to provide the public the opportunity to comment on any matters on the Board meeting agenda.

34. The January 23, 2025, Board meeting was conducted in accordance with the Open Public Meeting Act. The agenda for the meeting noticed of a public hearing on "Appeal of Zoning Officer's Issuance of a Certificate of Occupancy Pursuant to N.J.S.A. 40:55D-72.

35. In violation of the Open Public Meetings Act, the public was denied the opportunity to ask questions of the witnesses or provide comments regarding the site and the Zoning Official's actions in issuing the CCO.

36. The Board's action in denying the public the opportunity to ask questions or provide comments during the public hearing on the appeal of the Zoning Official's actions constitutes a denial of the fundamental principles of due process and the spirit and intent of the Open Public Meetings Act N.J.S.A. 10:4-6, et seq.

37. The Board's actions in not allowing the public to speak during the public hearing on the appeal constitute a willful violation of the Open Public Meetings Act.

WHEREFORE, Plaintiffs demand judgment against the Defendant, Borough of Paramus Zoning Board of Adjustment, as follows:

- (a) Declaring the Board's January 23, 2025 decision denying Plaintiffs' appeal null and void and of no force and effect;
- (b) Reversing the decision of the Board;
- (c) Sanctioning the Board for willfully failing to comply with the Open Public Meeting Act;
- (d) Awarding Attorney's fees and costs of suit as permitted by law;
- (e) Such other relief as the Court deems just and equitable.

COUNT FOUR

38. Plaintiffs repeat and reiterate each and every allegation set forth in the First Count, Second Count and Third Count of the Complaint as if set forth at length herein.

39. The Board's action in denying the public the opportunity to ask questions or provide comments during the public hearing on the appeal of the Zoning Official's actions constitutes a denial of the fundamental principles of due process and the spirit and intent of the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq.

WHEREFORE, Plaintiffs demand judgment against the Defendant, Borough of Paramus Zoning Board of Adjustment, as follows:

- (a) Declaring the Board's January 23, 2025 decision denying Plaintiffs' appeal null and void and of no force and effect;
- (b) Reversing the decision of the Board;
- (c) Awarding Attorney's fees and costs of suit as permitted by law;
- (d) Such other relief as the Court deems just and equitable.

COUNT FIVE

40. Plaintiffs repeat and reiterate each and every allegation set forth in the First Count, Second Count, Third Count and Fourth Count of the Complaint as if set forth at length herein.

41. The Chairman threatened to call the police and have the public escorted out and close the public hearing to the public.

42. The Chairman told the public he didn't care about their concerns regarding the activities on the site whereupon he shouted, "call the police".

43. The Chairman and the Board's actions against the public were carried out simply to intimidate and silence the public and constitutes a denial of fundamental principles of due process and the spirit and intent of the Open Public Meetings Act N.J.S.A. 10:4-6, et seq.

WHEREFORE, Plaintiffs demand judgment against the Defendant, Borough of Paramus Zoning Board of Adjustment, as follows:

- (a) Declaring the Board's January 23, 2025 decision denying Plaintiffs' appeal null and void and of no force and effect;
- (b) Reversing the decision of the Board;
- (c) Sanctioning the Board for willfully failing to comply with the Open Public Meeting Act;
- (d) Awarding Attorney's fees and costs of suit as permitted by law;
- (e) Such other relief as the Court deems just and equitable.

COUNT SIX

44. Plaintiffs repeat and reiterate each and every allegation set forth in the First Count, Second Count, Third Count, Fourth Count and Fifth Count of the Complaint as if set forth at length herein.

45. The Board's action in upholding the Zoning Official's decision to issue a CCO to Billy V's and MS Heights constitutes a violation of the settlement of the Borough's affordable housing declaratory judgment litigation under Docket No.: BER-L-6227-15 with the Fair Share Housing Center.

WHEREFORE, Plaintiffs demands judgment against the Defendants, Borough of Paramus and Borough of Paramus Zoning Board of Adjustment, as follows:

- (a) Reversing and vacating the Zoning Official's issuance of the CCO;
- (b) Declaring that the Board's January 23, 2025 decision denying Plaintiffs' appeal null and void and of no force and effect;
- (c) Granting Plaintiffs' appeal of the Zoning Official's decision;
- (d) Awarding Attorney's fees and costs of suit as permitted by law;
- (e) Such other relief as the Court deems just and equitable.

COUNT SEVEN

46. Plaintiffs repeat and reiterate each and every allegation set forth in the First Count, Second Count, Third Count, Fourth Count, Fifth Count and Sixth Count of the Complaint as if set forth at length herein.

47. The vote taken on the motion to uphold the Zoning Official's issuance of the CCO and finding that the landscaping/home improvement contractor business is a continuation of the existing business previously on the site was improper, defective and tainted.

48. The Board's action in denying the Plaintiffs' appeal based on the vote was arbitrary, capricious and unreasonable and must be overturned.

WHEREFORE, Plaintiffs demand judgment against the Defendant, Borough of Paramus Zoning Board of Adjustment, as follows:

- (a) Reversing and vacating the Board's denial of Plaintiffs' appeal;
- (b) Declaring that the Board's January 23, 2025 decision denying Plaintiffs' appeal null and void and of no force and effect;
- (c) Granting Plaintiffs' appeal of the Zoning Official's decision to issue Billy V's a CCO on November 14, 2024;
- (d) Awarding Attorney's fees and costs of suit as permitted by law;

(e) Such other relief as the Court deems just and equitable.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, ELISE DiNARDO, ESQ., is designated as trial counsel herein.

CERTIFICATION PURSUANT TO RULE 4:5-1

Pursuant to R. 4:5-1, I hereby certify that to the best of my knowledge the matter in controversy is not the subject of any other action pending in any State Court or any pending Arbitration proceeding. I further certify that to the best of my knowledge, no other action or Arbitration is contemplated, and I know of no other persons who should be joined in this litigation.

Elise DiNardo

Elise DiNardo, Esq.

DATED: March 7, 2025

EXHIBIT A

**BOROUGH OF PARAMUS
COUNTY OF BERGEN
STATE OF NEW JERSEY**

ORDINANCE 2020-08

AN ORDINANCE ADOPTING A REDEVELOPMENT PLAN FOR NURSERY PROPERTIES IN THE BOROUGH OF PARAMUS (BLOCK 7002, LOT 1.QQ; BLOCK 7701, LOT 3.Q; BLOCK 7701, LOT 4; BLOCK 7701, LOT 2 (2.Q); BLOCK 7003, LOT 1.QQ; BLOCK 7101, LOT 4.QQ (4.Q); BLOCK 2701, LOT 12; BLOCK 2801, LOT 1; BLOCK 4701, LOT 9.01) IN ACCORDANCE WITH THE LOCAL REDEVELOPMENT AND HOUSING LAW

WHEREAS, pursuant to N.J.A.C 5:93-4.2(d), nurseries are amongst the properties to be included in sites most likely to be developed for low and moderate income housing; and

WHEREAS, in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law"), by Resolution 18-07-469 amended by Resolution 19-03-224 and by Resolution 19-08-511, the Mayor and Council of the Borough of Paramus directed the Paramus Planning Board (the "Planning Board") to undertake a preliminary investigation to determine whether certain nursery property designated as Block 7002, Lot 1.QQ; Block 7701, Lot 3.Q; Block 7701, Lot 4; Block 7701, Lot 2 (2.Q); Block 7003, Lot 1.QQ; Block 7101, Lot 4.QQ (4.Q); Block 2701, Lot 12; Block 2801, Lot 1; Block 4701, Lot 9.01 on the Tax Map of the Borough (hereinafter the "Nursery Properties") qualify as areas in need of rehabilitation as defined in N.J.S.A. 40A:12A-14; and

WHEREAS, at the conclusion of its preliminary investigations in accordance with the Redevelopment Law, by Resolution 2019-17 adopted June 6, 2019 and by Resolution 2019-36 adopted December 5, 2019, the Planning Board determined the Nursery Properties to be areas in need of redevelopment, and recommending that the Mayor and Council of the Borough of Paramus designate the areas as such; and

WHEREAS, the Mayor and Council adopted Resolution 19-06-409 on June 11, 2019 and Resolution 19-12-709 on December 3, 2019 concurring with the Planning Board's findings and designated the Nursery Properties as areas in need of rehabilitation as defined in N.J.S.A. 40A:12A-14; and

WHEREAS, pursuant to the resolutions designating the Nursery Properties as areas in need of rehabilitation, the Borough authorized the Borough's Planners, DMR Architects, to prepare a Redevelopment Plan for the Nursery Properties dated March 2020, a copy of which is attached hereto and made part of this Ordinance (the "Redevelopment Plan") and which shall be referred to the Planning Board for its review and consideration pursuant to N.J.S.A. 40A:12A-7 and 15; and

WHEREAS, prior to the adoption of the Redevelopment Plan, the Planning Board,

**BOROUGH OF PARAMUS
COUNTY OF BERGEN
STATE OF NEW JERSEY**

ORDINANCE 2020-08

shall within 45 days after referral by the Borough Council, transmit to the Borough Mayor and Council, a report containing its recommendation concerning the redevelopment plan pursuant to N.J.S.A. 40A:12A-7 & 15; and

WHEREAS, upon receipt of the Planning Board's recommendation or if the Planning Board fails to transmit a recommendation within 45 days after referral, the Borough Mayor and Council shall act upon this Ordinance adopting the Redevelopment Plan pursuant to N.J.S.A. 40A:12A-7; and

WHEREAS, the Planning Board recommended that the Mayor and Council adopt the Redevelopment Plan; and

WHEREAS, the Nursery Properties are included in the settlement of the Borough's affordable housing declaratory judgment litigation (docket No. BER-L-6227-15) with Fair Share Housing Center; and

WHEREAS, it is in the best interests of the Borough that the Nursery Properties be redeveloped in accordance with the Redevelopment Plan; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of Borough of Paramus, County of Bergen, State of New Jersey, as follows:

1. Adoption of Redevelopment Plan.

The Mayor and Council of the Borough of Paramus hereby adopt the Redevelopment Plan as the redevelopment plan for Nursery Properties.

2. Amendment of Zoning Map.

The Zoning Map of the Borough of Paramus, adopted as Ordinance 16-10 referred to in Section 429-17 of the Zoning Ordinance, is hereby amended to reflect the Redevelopment Plan and to provide for the Nursery Properties.

3. Redevelopment Entity.

The Mayor and Council hereby declares that it, without the designation of any other redevelopment entity as defined in the Redevelopment Law, shall exercise all of the powers and discharge all of the duties of the redevelopment entity for purposes of clearance, re-planning, development and redevelopment of the Nursery Properties and, without limiting the generality of the foregoing, shall be the sole body empowered by the Borough to enter into redevelopment agreements with redevelopers, subject to such limitations and requirements as are prescribed by the Redevelopment Law.

**BOROUGH OF PARAMUS
COUNTY OF BERGEN
STATE OF NEW JERSEY**

ORDINANCE 2020-08

4. Procedures for Amendment of Redevelopment Plan.

This Redevelopment Plan may be amended from time to time, by the Mayor and Council, upon the compliance with all requirements of all applicable law.

5. Severability.

If any section, sentence or any other part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance but shall be confined in its effect to the section, sentence or other part of this Ordinance directly involved in the controversy in which such judgment is rendered.

6. Inconsistent Ordinances Repealed.

All other ordinances or parts of Ordinances which are inconsistent with the provisions of this Ordinance are hereby repealed, but only to the extent of such inconsistencies.

7. Effective Date.

This Ordinance shall take effect immediately upon final passage and publication as provided by law.

Attest:


ANNEMARIE KRUSZNIS, RMC
Borough Clerk

Approved:


RICHARD A. LABARBIERA
Mayor

Introduced: March 17, 2020
Adopted: May 19, 2020

EXHIBIT B

The Law Offices of
ELISE DiNARDO, ESQ.
1814 Kennedy Boulevard
Union City, New Jersey 07087
(201) 963-9500
Fax (201) 963-5080
Email: eobjection@gmail.com

November 14, 2024

Craig Bossong, Esq.
Florio, Perrucci, Steinhardt, Cappelli & Tipton, LLC
91 Leroy Holmes Drive
Suite 200
Easton, PA 18042

Re: Application of Billy V's Unique Landscaping, Inc.
148 Spring Valley Road
Block 2701, Lot 12
Docket No. 7233

Dear Mr. Bossong:

Please be advised that the undersigned represents Kenneth and Sharon Lenoci the owners of property located at 153 Lucky Hollow Drive, Paramus, New Jersey who are interested parties/objectors to the application of Billy V's Unique Landscaping, Inc., which application is scheduled for hearing before the Zoning Board of Adjustment today at 7:30 p.m.

The purpose of this letter is to fully set forth Kenneth and Sharon Lenoci's jurisdictional objection to the application of Billy V's Unique Landscaping, Inc. for site plan review with a d(2) variance for expansion of a non-conforming use and bulk variances of Accessory Structure Side Yard Setback, Accessory Structure Rear Yard Setback, Permitted Accessory Uses and Maximum Accessory Structure Area as stated in the applicant's required public notice. The history behind the subject site as a "Nursery" is important to note as to whether Billy V's Unique Landscaping, Inc. is truly a "Nursery" company. The applicant's website advertises the following services: (1) installation of paths and entrances; (2) construction of hardscapes; (3) installation of stone walls; (4) installation of patios; (5) snow removal including de-icing, shoveling, plowing and salting for roads, parking lots, driveways, sidewalks, stairs and entrances. Although the applicant's website advertises full-service landscaping, landscape design and lawn care, the company is engaged in the installation of hardscapes, patios which requires stonework, the use of gravel, cement and other non-living materials to create structure and functionality in outdoor spaces. The website identifies Billy V's by two (2) distinct laurels; Billy V's Unique Landscaping and Billy V's Extreme Hardscapes.

Moreover, as part of the application process, the Board's consultants reviewed the applicant's State of New Jersey Division of Consumer Affairs Business Registration for Billy V's Unique Landscaping, Inc, classified as a Certified Home Improvement Contractor.

The subject site was previously the "Tree Land Nursery" and is in the Residential One-Family R-100 District. The Tree Land Nursery was engaged in growing, selling and planting trees and flowers. Tree Land Nursery operated as a small seasonal nursery/garden center with two (2) trucks. Tree Land was in the business of growing and planting living things. As Tree Land Nursery was seasonal, the business did not engage in snow plowing activities nor was it engaged in the construction of hardscapes. Moreover, Tree Land Nursery operated on a portion of the property due to the 300 ft setback of the Herring Brook.

The applicant, Billy V's has been operating on the subject site for nearly a year. Today, we learned that Billy V's has been operating without a CCO. According to Town Officials, Billy V not issued a CCO to operate a landscaping business/snow plowing business on the subject site. Moreover, Billy V's has been storing hardscape materials, heavy equipment, buses and snow plows on the property which has become essentially a staging area/truck depot for his landscaping/hardscaping/snow plowing/general construction services. Billy V's is storing equipment and materials in the 300 ft setback of the Herring Brook. These activities are not synonymous with the operations of a seasonal nursery.

The required statutory notice states that the applicant seeks a D(2) use variance for expansion of a non-conforming use and bulk variances of Accessory Structure Side Yard Setback, Accessory Structure Rear Yard Setback, Permitted Accessory Uses and Maximum Accessory Structure Area. The applicant's notice fails to further describe the proposed nature of the application. In particular, the required notice fails to specify that the applicant seeks to relocate two (2) on-site containers to the back of the main building and erect a canopy to cover the containers, as stated in the application filed with the Board. Moreover, the required notice fails to specify the relevant Chapters of Borough Ordinance that the applicant seeks variance relief while the Board application reflects relief from Chapter 429-106(D) Accessory Structures & Trailers; Chapter 429-22 Permitted Accessory Uses and Chapter 429-29(B) Minimum Yard Depth/Rear Yard Setbacks. As such, the notice fails to adequately inform the public of the proposed nature of the application in a common sense manner such that the ordinary lay person could intelligently determine whether to object or to seek further information. *See Pearlman v. Lacey Tp. Planning Bd.*, 295 N.J. Super 234 (App. Div. 1996). The lack of reference in the required noticed to the Borough Ordinances to which the applicant seeks relief prejudices interested parties from referencing the relevant Ordinances and educating themselves to the pertinent variances sought. Moreover, the purpose for notifying the public of the "nature of the matters to be considered" is to ensure that members of the general public who may be affected by the nature and character of the proposed development are fairly apprised thereof so that they may make an informed determination as to whether they should participate in the hearing or, at the least, look more closely at the plans and other documents on file. *See Scerbo v. Orange Bd. Of Adj.*, 121 N.J. Super 378, 389, 297 A.2d 207 (Law Div. 1972). When a statute requires a notice to be given to

the public, such a notice should fairly be given the meaning it would reflect upon the mind of the ordinary layman, and not as it would be construed by one familiar with the technicalities solely applicable to the laws and rules of the zoning commission. *Perlmart*, at 238, citing *Holly Development, Inc. v. Board of County Comm'rs*, 140 Colo. 95, 101, 342 P.2d 1032, 1036 (1959).

The required public notice of applicant Billy V's Unique Landscaping, Inc. fails to adequately describe the nature of the application. Furthermore, it fails to cite the Borough Ordinances from which the applicant seeks relief, such that a layperson could review the relevant Borough Ordinances and adequately inform themselves of the variances sought. Lastly, the notice fails to adequately describe the nature of the commercial business (i.e. General Contracting/Landscape/Hardscape and Snow Plowing) to be conducted on the property which is not permitted under the current zoning R-100 Residential One-Family District. Therefore the Board lacks jurisdiction to hear this application.

In the alternative, we argue that the required notice is defective because the applicant is occupying the property without a CCO therefore seeking a d(2) variance for a continuing use is inappropriate. We argue that this is d(1) variance application for the property to be used for landscaping, hardscaping, snow removal and general construction activities, which is not a continuing use. In fact, the uses proposed are prohibited by ordinance. As such, the applicants required statutory notice is defective, therefore the Board lacks jurisdiction to hear this application.

Furthermore, the required notice states that "[t]his application is on file in the office of the Secretary of the Zoning Board of Adjustment and is available for inspection Monday through Friday, 8:30 a.m. – 4:30 p.m. On November 7, 2024, I appeared at the office of the Board of Adjustment and requested the opportunity to view the application. The Clerk provided me with a one-page site plan. When I requested to view the Board application and supporting documents, I was told that I could only view the site plan, nothing else. Later that day, my client Sharon Lenoci went to the office of the Board of Adjustment and requested to view the application on file. The Clerk provided Mrs. Lenoci with the Board application and the one-page site plan, nothing more. Mrs. Lenoci was told that in order to receive a copy of the Board application, redactions would have to be made before it could be released to her. By email dated November 12, 2024, and in response to my OPRA request, Ms. Colasurdo provided me with a copy of the application. There were no redactions in the application. To date Mrs. Lenoci has received nothing from the Board office.

Also, in response to my OPRA request, Ms. Colasurdo provided me with copies of the Board's Consultants review reports. Both consultants note in their reports that they reviewed the State of New Jersey Division of Consumer Affairs Business Registration for Billy V's Unique Landscaping, Inc., valid from March 6, 2024 to March 31, 2025, as part of the application. I and my client were not permitted to view this document which is alleged to part of the application. The Board's consultant Gregory Associates notes in their report that the applicant is registered with the State of New Jersey as a certified home improvement contractor which supports our prior argument that Billy V's is certainly not a nursery or engaged in a business synonymous with the prior occupant of the property, Tree Land Nursery, of operating a nursery/garden center.

Lastly, the subject site is under a Redevelopment Plan dated April 30, 2020. The Redevelopment Plan was adopted by the Mayor and Council by Ordinance 2020-08. As such, the Board of Adjustment does not have the jurisdiction to hear this application. The Redevelopment Plan outlines the specific uses for the subject site. The Redevelopment Plan for Block 2701, Lot 12 (148 Spring Valley Road) provides as permitted uses: (a) single family homes; (b) Townhouses; (c) Stacked Flats; and (d) age restricted senior housing. The Redevelopment Plan further provides for accessory permitted uses: (i) active and passive recreation areas and facilities including resident clubhouses, provided that such facilities are not commercial in operation and are restricted to the use of the occupants of the project and guests; (ii) sidewalks and plazas; (iii) refuse areas; (iv) storm water management facilities; and (v) those accessory uses and accessory buildings customarily incidental to the above uses and located on the same lot. The relief sought in the pending application does not fall within the specific uses permitted under the Redevelopment Plan. Therefore, any variance application from the zoning regulations adopted under the Redevelopment Plan must be heard by the Planning Board. N.J.S.A. 40A:12A-13. Moreover, where an application for a variance constitutes a "de facto wholesale revision of the entire Redevelopment Plan", the proposal should be heard by the Planning Board in accordance with the Redevelopment Plan. We contend that the proposed use by Billy V's in the R-100 Residential One-Family District constitutes a "de facto wholesale revision of the entire Redevelopment Plan" therefore, the Zoning Board of Adjustment lacks jurisdiction to hear this application.

Thank you for your attention to this matter.

Very truly yours,



ELISE DINARDO, ESQ.

Via email @ cbosson@floriolaw.com

Cc: Tracy Colasurdo, Board Secretary via hand delivery
Joseph Marinello, Esq. via hand delivery

EXHIBIT C



Paramus Borough
 Paramus Building Department
 1 Jochish Square
 Paramus, NJ 07652
 (201) 265-2100 Ext.2230
 Building@paramusborough.org

Application Date 12/4/2023

Tracking Number CCO-23-00391

Date Issued 11/14/2024

Expiration Date

Business Certificate of Occupancy

Location

MS HEIGHTS LLC
 148 SPRING VALLEY RD
 Paramus Borough NJ

Applicant

BILLY V'S UNIQUE LANDSCAPING LLC
 148 SPRING VALLEY RD
 PARAMUS, NJ 07652

Owner

MS HEIGHTS LLC
 148 SPRING VALLEY RD
 PARAMUS NJ, 07652

Tenant/Buyer

BILLY V'S UNIQUE LANDSCAPING LLC
 148 SPRING VALLEY AVE
 PARAMUS NJ, 07652
 (T)(201) 491-6786

Telephone (201) 491-6786

Block 2701

Lot 12

Building

Unit #

Business Certificate of Occupancy

Summary This certificate is valid only when signed by Construction Code Official as listed below. This Continued Certificate of Occupancy is subject to all Borough Ordinances.

BUS LIC #

Inspection Info: Joe Biggy 11/14/2024 8:00:00 AM

Michael O'Connell
 Director of Building Department/Construction Official

Fee Paid \$300.00

Date Printed: 11/14/2024

EXHIBIT D

1/21/25, 2:41 PM

Borough of Paramus, NJ Activities requiring site plan approval.

Borough of Paramus, NJ
Tuesday, January 21, 2025

Chapter 371. Site Plan Review

Article I. General Provisions

§ 371-5. Activities requiring site plan approval.

- A. Site plan approval is necessary to obtain a building permit for all buildings other than one-family and two-family purposes. No building permit shall be issued to any person to construct any building, to reconstruct any building such as to change its outside dimensions or entrances, to construct any addition or alter the size of any building or to move any building other than for a permitted one- or two-family residential dwelling, unless and until site plan approval has been obtained by resolution of the Planning Board.
- B. Site plan approval is required to make any alterations on a site. No person shall alter any parking area, parking aisles, grades, fire lanes, slopes, manholes, traffic signs on the lot, ingress and egress roads, required planted area or required buffer area, sidewalks, drainage facilities, fencing, lighting, utility facilities, curbing or acceleration or deceleration lanes on any lot or lots other than lots zoned or used for one- or two-family residential dwelling purposes without first obtaining site plan approval by resolution of the Planning Board. However, minor alterations for maintenance, repairs or correction of drainage problems, as determined by the Borough Engineer, are exempted from this requirement.
- C. Site plan approval is required to change use to a different use than previously approved. No person shall change the use of any lot or building in the Borough of Paramus so as to use any building or lot for a use different from the use proposed and approved previously or approved on any previous site plan application to the Planning Board without obtaining a new site plan approval by resolution of the Planning Board. This section, however, shall not apply to the use of property for a permitted one-family residential use or permitted two-family residential use or to a change from one kind of retail or office use to another kind of similar use not requiring more off-street parking or loading, as determined by the Zoning Officer.
- D. Site plan approval may be required for special problem residential lots. Prior to the issuance of any building permit for any one-family or two-family residential dwelling, the Zoning Officer of the Borough of Paramus may require the applicant to obtain site plan approval if, in the opinion of the Zoning Officer, the particular lot or the building proposed for said lot or the lot layout is such that there may be problems of either flooding, erosion, drainage or traffic safety with respect to ingress and egress to the lot or from the lot.

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**HARVEY S. MOSKOWITZ
CARL G. LINDBLOOM
DAVID LISTOKIN
RICHARD PREISS &
DWIGHT H. MERRIAM**

LANDSCAPE PLAN

LANDFILL

A disposal site in which refuse and earth, or other suitable cover material, are deposited and compacted in alternating layers of specified depth in accordance with an approved plan. See *Sanitary Landfill*.

Comment: Landfills are usually regulated and licensed by the state or another public agency to accept certain types of waste. Landfills differ from dumps in that refuse is compacted and covered in the landfill.

Legal Annotation: "The Indiana Code defines 'landfill' . . . as 'a solid waste disposal facility at which solid waste is deposited on or beneath the surface of the ground as an intended place of final location.'" *Killbuck Concerned Citizens v. JM Corp.* fn. 9 (Ind., 2011).

LANDMARK

(1) Any site, building, structure, or natural feature that has visual, historic, or cultural significance; (2) a permanent marker, usually called a "monument," designating property boundaries. See *Historic Property*.

Legal Annotation: "A landmark is defined as: '[a]ny improvement, any part of which is thirty years old or older, which has a special character or special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation, and which has been designated a landmark pursuant to the provisions of this chapter.'" 9th & 10th Street LLC v. New York City Landmarks Preservation Commission (N.Y. Sup. Ct., 2008).

LANDSCAPE

(1) An expanse of natural scenery; (2) elements used in the alteration and/or ornamentation of open space, including lawns, trees, plants, and other natural materials, such as rock and wood chips, and decorative features, including sculpture, patterned walks, fountains, and pools. See *Landscape Plan*.

Comment: As noted in the definition, landscaping treatments can include some non-natural

elements, such as a fountain. However, they do not include artificial trees or other artificial plants. Natural materials used in landscaping often are referred to as "softscape," while non-natural elements incorporated into a landscape, such as gazebos, benches, and fountains, are referred to as "hardscape."

Legal Annotation: "According to *The Architecture Book*, 'landscape' means '[a] pictorial (and hence perspective) concept of one's on-land surroundings, as opposed to an abstract design idea . . . hence the idea of the pictorial or picturesque,' . . . One dictionary defines 'landscape' as: 'a section or portion of rural scenery, usually extensive, that may be seen from a single viewpoint . . . to improve the landscape of . . . to improve the appearance of (an area of land, a highway, etc.), as by planting trees, shrubs, or grass, or altering the contours of the ground.'" *Keith v. Volpe* (C.D. Calif., 1996).

LANDSCAPE PLAN

A component of a development plan on which are shown:

- proposed landscape species (such as number, spacing, size at time of planting, and planting details)
- proposals for protection of existing vegetation during and after construction
- proposed treatment of hard and soft surfaces
- proposed decorative features
- grade changes
- buffers and screening devices
- any other information that can reasonably be required for an informed decision to be made by the approving authority

(Rouse and Bunsten-Ossa 2013.)

See Figures 65 and 66.

Legal Annotation: "A conceptual landscape plan needs to indicate the areas of existing landscaping and areas of proposed landscaping. The plan shall also identify the major types of plant material to be used (e.g., [t]he species of trees and parking lot trees to be used, species of shrubbery to be used to screen parking lots, etc.)." *San Jose Christian College v. Morgan Hill* (9th Cir., 2004).

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EXHIBIT E

ELISE DINARDO, ESQ.

Attorney ID #004461989

1814 Kennedy Boulevard

Union City, New Jersey 07087

Tele: (201) 963-9500

Email: eobjection@gmail.com

Attorney for Appellants, Kenneth & Sharon Lenoci

In Re the Matter of Billy V's
Unique Landscaping, LLC,

Borough of Paramus

Zoning Board of Adjustment

NOTICE OF APPEAL

TAKE NOTICE that the undersigned attorney, on behalf of Kenneth and Sharon Lenoci, owners of premises in the Borough of Paramus designated on the Borough Tax Map as Block 2701, Lot 5, and also known as and designated as 153 Lucky Hollow Drive in said Borough located in the Residential One-Family R-100 Zoning District hereby appeals to the Zoning Board of Adjustment from the order, determination, or decision of the construction code official made on the 14th day of November of 2024 granting a certificate of occupancy to Billy V's Unique Landscaping, LLC of 148 Spring Valley Road to permit the operations of a landscape design build and maintenance company servicing residential, commercial, municipal & industrial clients, on premises designated as Block 2701, Lot 12 on the Borough Tax Map owned by MS Heights, LLC for the reasons that appellants allege error in the order, requirement, decision or refusal of said administrative officer in that:

1. The current/proposed use is not permitted under Borough Ordinance in the Residential One-Family R-100 Zone;
2. The current/proposed use is a non-conforming use not permitted in the Residential One-Family R-100 Zone;
3. The subject site was previously the "Tree Land Nursery" which was a seasonal business engaged in the growing, selling and planting of trees and flowers. The previous use was deemed a non-conforming use in the Residential One-Family R-100 Zone. The construction code official does not have the legal authority to issue a certificate of occupancy authorizing extension of a nonconforming use;

4. A non-conforming use certification has not been issued by the zoning officer to allow Billy V's Unique Landscaping to operate on the subject site;
5. The use of the subject site is controlled under a Redevelopment Plan dated April 30, 2020, and adopted by Ordinance 2020-08. A landscape design build and maintenance company servicing residential, commercial, municipal & industrial clients is not a permitted use under the Redevelopment Plan. The construction code official does not have the legal authority to issue a certificate of occupancy for a use not permitted under the Redevelopment Plan;
6. Billy V's Unique Landscaping, LLC is registered with the New Jersey Division of Consumer Affairs as a home improvement contractor, which use is not permitted under Borough Ordinance in the Residential One-Family R-100 Zone nor in the redevelopment area;
7. Billy V's Unique Landscaping, LLC is using the subject site as a construction yard/storage site for its operations. Storage containers are present on the property without the requisite permits and in violation of Borough Ordinance. Heavy equipment, construction materials and vehicles are being stored on site within the required setback of Herring Brook in violation of Borough Ordinance;
8. Billy V's Unique Landscaping, LLC begins operations at 6:00 a.m. in violation of Borough Ordinance.

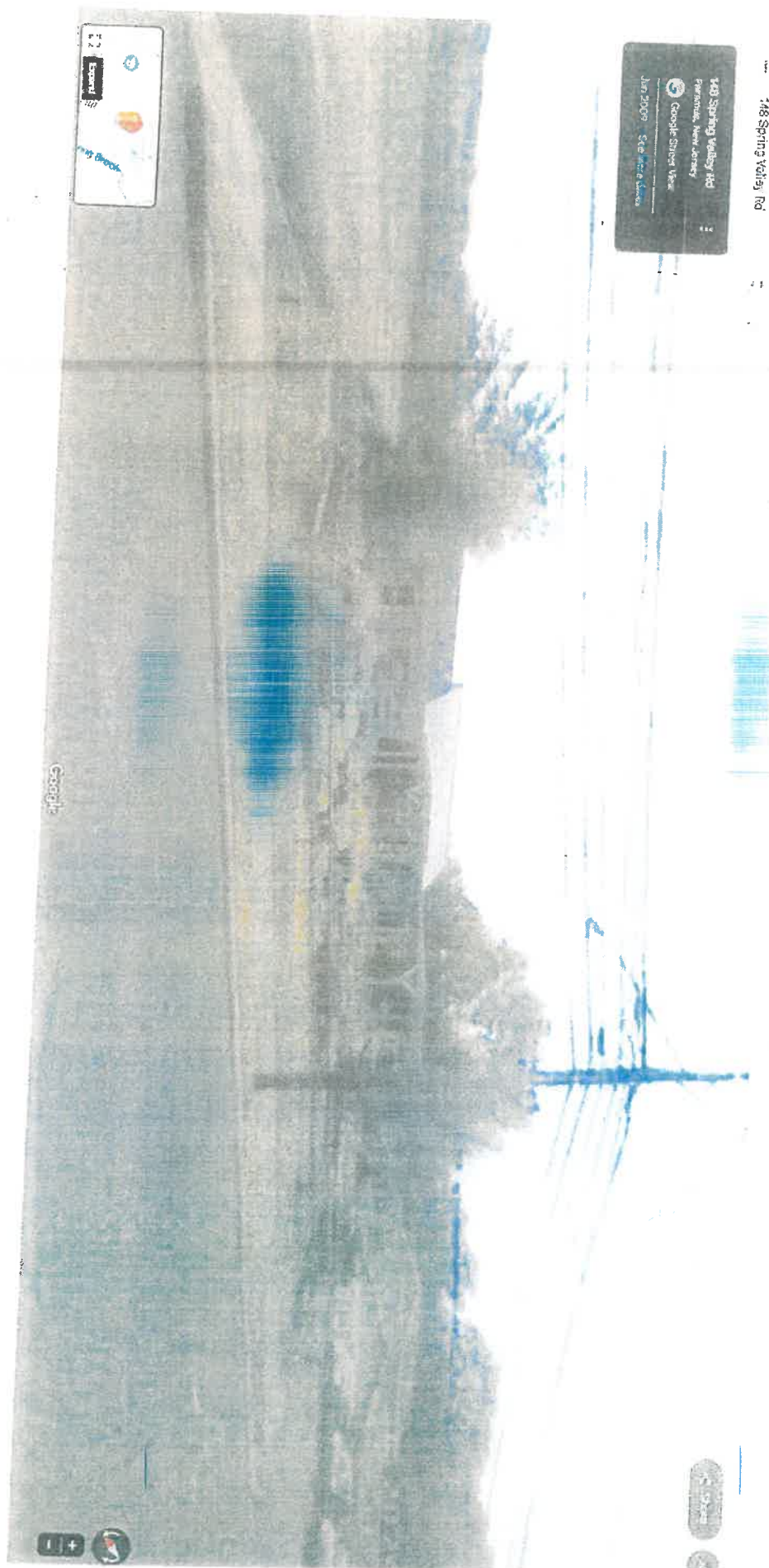
TAKE FURTHER NOTICE that the arguments presented herein may be amended as records are received by Appellants through the Open Public Records Act. Appellants reserve their right to present additional arguments and documents supporting their allegations of error in the decision of said administrative officer.

TAKE FURTHER NOTICE that you are hereby required to immediately transmit to the Secretary of the Zoning Board of Adjustment all papers constituting the record upon which the action appealed from was taken, in accordance with the Rules of the Zoning Board of Adjustment and the statute in such case made and provided.

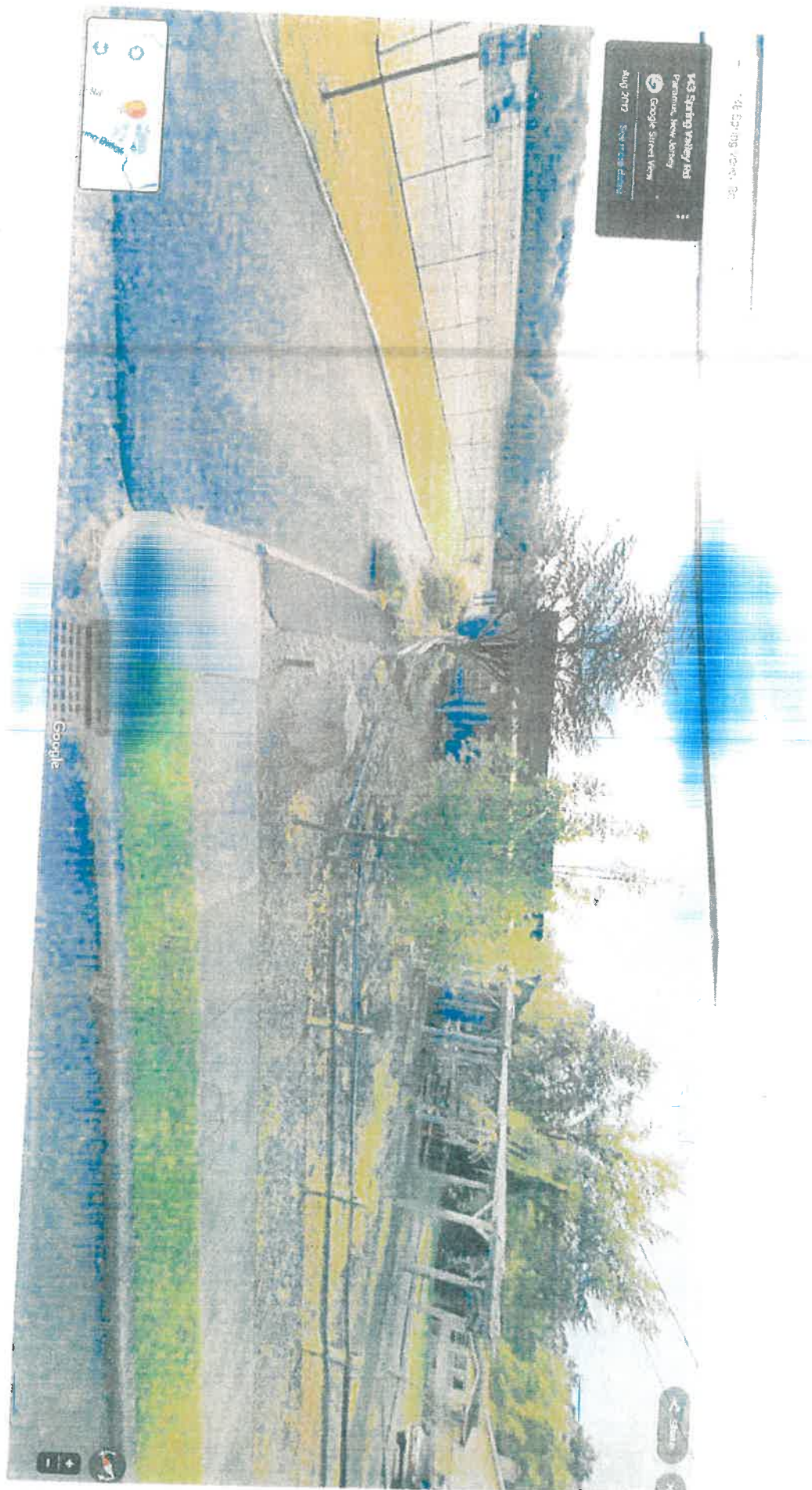

ELISE DINARDO, ESQ.
Attorney for Appellants

Dated: December 4, 2024

EXHIBIT F



04
1/23/25



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- any other information that can reasonably be required for an informed decision to be made by the approving authority

(Rouse and Hunsten-Ossa 2013.)

See Figures 65 and 66.

Legal Annotation: "A conceptual **landscape plan** needs to indicate the areas of existing landscaping and areas of proposed landscaping. The plan shall also identify the major types of plant material to be used (e.g., [t]he species of trees and parking lot trees to be used, species of shrubbery to be used to screen parking lots, etc.)." *San Jose Christian College v. Morgan Hill* (9th Cir., 2004).

NURSERY, WHOLESALE

See

The growing, cultivation, storage, and sale of garden plants, flowers, trees, and shrubs to landscapers, developers, builders, and retail nurseries.

NU

See
Facili

flat feet above mean sea level as established by the
two United States Geological Survey Bench Marks."
ning *Wall v. Lower Colorado River Authority* (Texas Ct.
fees Civ. App., 1976).

may

CONTRACTOR'S STORAGE YARD

feet A lot or portion of a lot or parcel used to store
skc and maintain construction equipment and
15 other materials and facilities customarily

125



since element, it is not

Potomac Elec. Power Co. (Md. 1950)

NURSERY, RETAIL

The growing, cultivation, storage, and sale of garden plants, flowers, trees, shrubs, and fertilizers, as well as the sale of garden tools and similar accessory and ancillary products, to the general public. See *Greenhouse*.

EXHIBIT G

1	BOROUGH OF PARAMUS	1	INDEX	3
2	ZONING BOARD OF ADJUSTMENT			
3	COUNTY OF BERGEN			
4	APPLICATION: DOCKET # 7219	2	KENNETH HOOK	
5	BILLY V'S UNIQUE LANDSCAPING	3	BY MR. BOSSONG	PAGE 6
6	148 SPRING VALLEY ROAD	4	BY MS. DINARDO	PAGE 7, 31
7	APPEAL OF ZONING OFFICER'S DECISION	5	BY MR. MARINIELLO	PAGE 28
8		6	BY THE BOARD	PAGE 35
9	THURSDAY, JANUARY 23, 2025	7		
10	Paramus Borough Hall	8	EILEEN BANYRA	
11	1 Lockish Square	9	BY MS. DINARDO	PAGE 39
12	Paramus, New Jersey	10	BY THE BOARD	PAGE 50
13	MEMBERS PRESENT FOR THE APPLICATION:	11		
14	STEPHEN SULLIVAN, Chairman	12		
15	THOMAS LOCICERO	13	EXHIBITS	
16	AL SCRIVANICH	14	O-1 DCA registration	PAGE 10
17	JON BURGER	15	O-2 application for business permit	PAGE 16
18	MOHAMMED REDA	16	O-3 redevelopment plan	PAGE 20
19	ABDO AL-YOUSEFY	17	O-4 planning exhibit	PAGE 50
20	JASON CASSESA	18		
21	LENA KAMAL	19		
22	APPEARANCES: CRAIG BOSSONG, ESQ.	20		
23	ATTORNEY TO THE BOARD	21		
24	JOSEPH MARINIELLO, ESQ.	22		
25	ATTORNEY TO THE APPLICANT	23		
	ELISE DINARDO, ESQ.	24		
	ATTORNEY TO THE OBJECTOR	25		
	ALSO PRESENT:			
	TRACY COLASURDO			
	JOHN DUNLEA			
	MIKE FOWLER			
	SUSAN BISCHOFF CCR CO.			
	201-390-0583 - SBIschoffccr@yahoo.com			
1	2.	1	CHAIRMAN SULLIVAN: On docket number	
2		2	7233, Block 2701, Lot 12, Billy V's Unique	
3		3	Landscaping, 148 Spring Valley Road. Appeal of	
4		4	zoning officer's issuance of a certificate of	
5		5	occupancy pursuant to N.J.S.A. 40:55D-72,	
6		6	proposal: Use and bulk variance, use of storage	
7		7	containers. Section 429-8 site plan review	
8		8	required. Section 429-22 permitted accessory uses	
9		9	do not exceed 60 percent of the land coverage of	
10		10	main building - proposed 77 percent, required	
11		11	60 percent. Section 429-29(B) minimum rear yard	
12		12	setback - proposed 5 feet, required 10 feet.	
13		13	Section 429-47(G)(2) minimum side yard R-100 zone,	
14		14	proposed 5 feet, required 12 feet. Section	
15		15	429-108(D) accessory structures and trailers -	
16		16	proposed trailers required, not permitted. This	
17		17	is continued from November 14, 2024.	
18		18	With that, I'm going ask counsel to come	
19		19	on up.	
20		20	MR. LOCICERO: Mr. Chairman, I have to	
21		21	recuse myself from this application.	
22		22	CHAIRMAN SULLIVAN: Let the record show	
23		23	Mr. Locicero has recused himself from this	
24		24	application.	
25		25	MS. DINARDO: So, Mr. Chairman, are we	

5 1 doing the appeal first of the zoning officer's 2 decision? 3 CHAIRMAN SULLIVAN: Yes, we are. 4 MR. BOSSONG: So what we'll do is get 5 both counsels' appearances on the record. 6 MR. MARINIELLO: I shall begin then. 7 Joseph Marinjello from the firm of Hartman, 8 Dougherty on behalf of the applicant, Billy V's 9 Landscaping. 10 MS. DINARDO: Elise DiNardo on behalf of 11 the objectors, Kenneth and Sharon Lenoci, they're 12 within 200 feet of this application and we filed 13 the appeal of the zoning officer's decision. 14 MR. BOSSONG: So the Board is aware, so 15 the way this works is the objectors have filed an 16 appeal. Your zoning officer issued a CCO, 17 continued certificate of occupancy for the 18 applicant to continue operating the business on 19 the site. The objectors believe that that CCO was 20 issued improperly. So we first have to deal with 21 whether or not the CCO issuance was proper. 22 We have your zoning officer here, I 23 believe, to testify. So he's going to come and 24 explain what transpired and why he issued the CCO. 25 And then the objector's attorney can ask him	7 1 MR. BOSSONG: Thank you very much. 2 CHAIRMAN SULLIVAN: Okay. I guess I'm 3 going to ask you to give us maybe -- you want to 4 do a little history of the property or just tell 5 us why you felt that -- 6 THE WITNESS: Well, as far as back as I 7 can remember, growing up in this town, that 8 property has always been a landscaping nursery 9 business. And over the years, they declined a 10 little bit. And now a new business took over, 11 which is a landscaping hardscape business, which 12 is a continuation of an existing use. So in the 13 Borough, when it's a continuation of an existing 14 use, we grant them a CCO, so that's -- 15 MR. BOSSONG: When you say -- let me ask 16 some questions. 17 CHAIRMAN SULLIVAN: Go ahead. 18 BY MR. BOSSONG: 19 Q When you say as far as back as you can 20 remember, can you give an approximate date as far 21 as not to date you, but -- 22 A I went to Paramus High School, I graduated 23 in 1972. And I went to East Brook and all the 24 times that I've been in that area, it's always 25 been a nursery and a landscape company with the
6 1 questions, counsel for the applicant can ask 2 questions, if he wishes. And then the objector's 3 attorney, I believe, has a witness that they want 4 to present as well. 5 Once we hear all that, before we -- the 6 Board's got to make a determination as to whether 7 or not the CCO was issued properly. And then 8 pending that result, we either go into the 9 application or it might have to be adjourned so 10 new notice can be provided. So if we want to call 11 Ken. 12 CHAIRMAN SULLIVAN: Mr. Hook, come 13 forward, please. Good evening, Mr. Hook. How are 14 you? 15 MR. HOOK: I'm very good, Mr. Sullivan. 16 MR. BOSSONG: Raise your right hand. 17 18 KENNETH HOOK, after having been duly 19 sworn or affirmed, did testify as follows: 20 21 MR. BOSSONG: If you can state your name 22 and give your position with the Borough for the 23 record? 24 MR. HOOK: I'm Kenneth Hook, I'm the 25 commercial zoning officer.	8 1 machines and the trailers, and that's what I can 2 remember about that property. 3 Q So back to the '70s, you're saying? 4 A Back in the '70s, yeah. I know they started 5 in 1948. 6 CHAIRMAN SULLIVAN: Having grown up in 7 that neighborhood, I will say that Mr. Hook is 8 correct. That was one of the places that used to 9 have a Coca Cola machine that used to dispense 10 bottled, glass bottled sodas. So as a child that 11 used to attend, years ago, they had recreation 12 summer playground at that school, when I was 13 10 years old, so you're talking that's over 14 50 years, okay. We'll leave it at that. 15 So that establishment has been there, 16 like Mr. Hook said. It has been a 17 nursery/landscape facility doing different types 18 of planting and so forth. And Eddie who was one 19 of the owners there at the time, that was his 20 business. 21 MR. BOSSONG: Let's ask counsel if she 22 has any questions. 23 MS. DINARDO: I do. 24 BY MS. DINARDO: 25 Q So, Mr. Hook, before issuing the CCO,

9

1 did you have an opportunity to review the
2 application for the CCO?

3 A You mean the CCO application itself?

4 Q Yes.

5 A No. I just tell them that they have to get
6 a CCO when they get -- they get the application
7 from the building department.

8 Q But you don't review the application
9 before you issue a CCO?

10 A I look at the property, but I don't review
11 the application.

12 Q Okay. So if I told you the application
13 said nothing of being a nursery and the business
14 was strictly described as landscaping,
15 maintenance, installation, for both industrial,
16 residential and commercial, nothing about nursery,
17 would you agree or disagree with me?

18 MR. MARINIELLO: I'm going to object.

19 A I don't know.

20 MR. MARINIELLO: How can he agree or
21 disagree if he hasn't reviewed it?

22 Q Okay. What I don't understand, sir, is
23 why wouldn't you review the application to see
24 what the applicant wants to put on the property?
25 How would you know what he wanted to put on the

10

1 property?

2 A It's just a landscaping business, so it's a
3 continuation.

4 Q So you took him for his word that it was
5 a landscaping business?

6 A Yes.

7 Q Did he tell you himself?

8 A Yes.

9 Q The owner of the business?

10 A Yes.

11 Q Told you he was going to put a
12 landscaping business there?

13 A Yes.

14 Q Did he tell you that he was going to put
15 hardscape and mulch and stones and run heavy
16 equipment?

17 A Yes.

18 Q Snow plowing business, did he tell you
19 all that, too?

20 A Yes.

21 Q Did he produce a copy of his State of
22 New Jersey Division of Consumer Affairs license?

23 A Not to me. He submitted that with his CCO.

24 Q Okay. So were you aware that he's
25 registered as a home improvement contractor with

11

1 the Department of Community Affairs?

2 A No.

3 MS. DINARDO: I'd like to mark this as
4 O-1?

5 MR. BOSSONG: O-1.

6

7 (Division of Consumer Affairs
8 registration marked O-1.)

9

10 Q Sir, I'm going to show you what's been
11 marked O-1?

12 MR. BOSSONG: What is that again?

13 MS. DINARDO: It's the State of New
14 Jersey Division of Consumer Affairs registration
15 for this applicant. I have copies for the Board
16 Members, if I may? I believe it might have been
17 in your package.

18 Q Okay, sir. So this is -- O-1 is a copy
19 Billy V's Unique Landscaping, LLC, license with
20 the Division of Consumer Affairs for the State of
21 New Jersey. And what is the description of the
22 business?

23 A It says Billy V's Unique Landscaping, LLC.

24 Q Okay. And Billy V's Unique Landscaping
25 later down in the page is certified as a home

12

1 improvement contractor; is that correct?

2 A That's what it says.

3 Q So can we both agree that that's not a
4 landscaping business?

5 MR. MARINIELLO: Can you point out where
6 it says that?

7 MS. DINARDO: Right here. That's the
8 registration. And look at your engineer's report
9 from the town, the planner considered it to be the
10 registration.

11 MR. MARINIELLO: I don't know what that
12 is. I'm not sure what that address is. But it
13 certainly doesn't say he's a certified home
14 improvement person. There's an address, it says
15 home improvement contractors and a PO box.

16 MS. DINARDO: I would disagree. It says
17 your license registration certificate is -- the
18 number is there. Please use it in all
19 correspondence to the Division of Community
20 Affairs, use this section to report changes. You
21 are required to report any address changes
22 immediately to the address noted below. Home
23 Improvement contractor.

24 MR. MARINIELLO: Hold on a second.

25 CHAIRMAN SULLIVAN: Here's my question.

13

1 I guess now --

2 MR. MARINIELLO: First of all --

3 CHAIRMAN SULLIVAN: Wait one second.

4 MR. MARINIELLO: I'm sorry.

5 CHAIRMAN SULLIVAN: Under the home

6 improvement contractor that you're saying that he

7 applied for, is landscaping design that he applied

8 for, is that covered under that license?

9 MS. DINARDO: It's a home improvement

10 contractor, which is someone that could come in --

11 CHAIRMAN SULLIVAN: I'm asking being

12 that he's a landscape designer --

13 MS. DINARDO: No, it doesn't qualify.

14 CHAIRMAN SULLIVAN: It doesn't --

15 MS. DINARDO: As a landscape designer,

16 you don't have to register with DCA.

17 MR. REDA: Department of Consumer

18 Affairs, like if somebody is doing landscaping, is

19 there a specific license for a contractor

20 performing landscaping work or he's using home

21 improvement license to provide landscaping work?

22 I think this is what Mr. Chairman is trying to

23 ask.

24 MS. DINARDO: What I'm saying to you is

25 that he's registered as a home improvement

14

1 contractor, okay. And that I'm going to get to

2 the fact that this business is beyond landscaping.

3 CHAIRMAN SULLIVAN: If he --

4 MS. DINARDO: And more so, more

5 importantly, before we even get there, okay, maybe

6 we should go in the direction of whether or not

7 this is a permitted use under your own ordinance

8 and under a redevelopment plan that exists for

9 that property.

10 MR. REDA: Our second question is

11 landscaping like nursery? With the existing

12 nonconforming use of a nursery, can they provide

13 landscaping work or do we need -- because they

14 came to us, here this Board, some other

15 applications, they have two different uses, but

16 close to each other. And then the Board doesn't

17 have to state every type of use.

18 MS. DINARDO: Okay. So maybe we can ask

19 Mr. Hook this question.

20 Q Mr. Hook, when you issued the CCO, okay,

21 you used a book of definitions that you looked up

22 to see how the use would fit for this property,

23 correct?

24 A Correct.

25 Q Okay. And the book that you used, what

15

1 is that called, sir?

2 A It's the Paramus Zoning Book.

3 Q Well, did you use --

4 A I used the Moskowitz book.

5 Q That's a book that's used in the

6 industry, is that correct?

7 A Correct.

8 Q Okay. And in the Moskowitz book, is

9 there a definition of landscaping as a landscaping

10 business?

11 A Yes, there is.

12 Q So can you read for the Board the

13 definition of landscape, please? And I believe

14 you all have it in front of you.

15 A An expanse of natural scenery, elements of

16 use for alteration and ornamental and open space,

17 including lawns, trees, plants, and other natural

18 material, such as rock and wood chips and

19 decorative features including sculptures,

20 patterned walkways, fountains, and pools.

21 Q So, sir, how does that fit the

22 description of a landscaping business?

23 A Because it's the same type of landscaping

24 business that's been on the existing property

25 since 1948. They did hardscapes, they did

16

1 landscaping, they did planting of trees. And so

2 it's the continuation of an existing use, he's not

3 expanding it.

4 Q The previous business that was there,

5 what was it called?

6 A It was called Treeland Nursery.

7 Q Was there a retail business on the

8 property?

9 A There was -- yes, there was.

10 Q Is there a retail business on the

11 property now?

12 A That, I don't know.

13 Q You don't know? Have you been to the

14 site to see what's going on at the site?

15 A I've been.

16 Q Did you go before you issued the CCO?

17 A I did.

18 Q Okay. And did you see a retail business

19 on the site?

20 A I seen -- no. The Treeland Nursery did

21 custom landscaping, design and installations,

22 complete ground maintenance.

23 Q And the Treeland Nursery was, your

24 argument, was a preexisting nonconforming use; is

25 that correct?

17

1 A Correct.

2 Q Are you aware that there's a

3 redevelopment plan that was approved by the

4 Borough for that property?

5 A Yes.

6 Q Okay. And you're aware that there's a

7 redevelopment plan for all the nurseries in the

8 Borough? Is that correct?

9 A Correct.

10 Q Okay. And are you aware that with the

11 redevelopment plan, that's an overlay on the

12 property that only permits certain uses for the

13 property?

14 A Correct.

15 MS. DINARDO: I'd like to mark this as

16 O-2, Counsel.

17 MR. BOSSONG: This is O-2?

18 MS. DINARDO: O-2.

19

20 (Application for business

21 permit marked O-2.)

22

23 Q Sir, if you would?

24 A Thank you.

25 Q I'm going to show you what's been marked

18

1 O-2. And this is the application for the business

2 permit with the Borough and ask you to direct your

3 attention to page 2 with regard to the description

4 of the business. And what does it say is the

5 description of the business?

6 A It says we're a landscape design/build and

7 maintenance company for residential, commercial,

8 municipal, and industrial.

9 Q So, sir, when you decided to use the

10 Moskowitz book to issue this CCO and find the

11 description of the permitted use, why didn't you

12 use the word nursery? Because nursery is a

13 permitted use there, if we go with your argument,

14 is that correct?

15 A Correct.

16 Q So you know Moskowitz has a definition

17 of nursery, why not use that definition?

18 A Just didn't do it. I didn't know -- it was

19 a landscape business, I just continued the use,

20 that's all.

21 Q But you knew that the property was

22 Treeland Nursery, you knew the property was part

23 of the nursery site redevelopment plan, so why not

24 use the definition nursery as what --

25 A I have no reason.

19

1 Q -- Is the actual work that's happening

2 there, the actual --

3 A I have no reason for that.

4 Q Okay.

5 MR. BOSSONG: I just want to go on the

6 record with some clarification on this home

7 improvement contractor's registration. I pulled

8 up the definition of home improvement under the

9 home improvement contractor's registration statute

10 and the regulations. And under the definition of

11 home improvement, it says means the remodeling,

12 altering, painting, repairing, renovating,

13 restoring, moving, demolishing, or modernizing of

14 residential or non-commercial property or the

15 making of additions thereto; and includes, but is

16 not limited to the construction, installation,

17 replacement, improvement, or repair of driveways,

18 sidewalks, swimming pools, terraces, patios,

19 landscaping, fences, porches, windows, doors,

20 cabinets, et cetera.

21 MS. DINARDO: And does it say nursery?

22 MR. BOSSONG: This is under N.J.A.C.

23 13:45A-17.2 for the record. So a landscaper,

24 contrary to what was represented, a landscaper,

25 under this definition, would have to register

20

1 under the home improvement contractor's license.

2 MS. DINARDO: But so would all those

3 other tasks?

4 MR. BOSSONG: Absolutely.

5 MS. DINARDO: Driveways.

6 MR. BOSSONG: Correct. So a landscaper

7 would have to register.

8 MS. DINARDO: But would a nursery have

9 to register?

10 MR. REDA: If --

11 MS. DINARDO: As a home improvement

12 contractor, it is not included in the description

13 you just gave us, correct?

14 MR. BOSSONG: Correct. I don't believe

15 a nursery would have to register, but that's not

16 what's before the Board.

17 Q Okay. So again I ask you, sir, you just

18 didn't think to use the definition of nursery from

19 the Moskowitz book --

20 A Correct.

21 Q -- when you were issuing the CCO?

22 A Correct.

23 Q Instead you used the description, not of

24 a landscaping business, you used the description

25 that is characterized as more like topography in

21

1 the sense of talking about a expanse of natural
 2 scenery, correct, that's the definition?
 3 A Yeah, hardscapes.
 4 Q You consider the expanse of natural
 5 scenery as a hardscape?
 6 A I do.
 7 Q You believe those are synonymous with
 8 one-another?
 9 A That's my opinion.
 10 Q Okay, okay. So, sir, you were aware of
 11 the redevelopment plan that was on that property;
 12 is that correct?
 13 A I am.
 14 Q Okay. And with that, were you aware
 15 that there were certain limitations of what you
 16 could permit on that property?
 17 A Under redevelopment plan, yes.
 18 Q Okay. And is it fair to say that a
 19 landscaping business is not one of the permitted
 20 uses under the redevelopment plan?
 21 A I'd have to read it.
 22 Q I'm going to show what's been marked
 23 O-3.
 24
 25 (Redevelopment plan marked

22

1 Q-3.)
 2
 3 CHAIRMAN SULLIVAN: Mr. Hook read
 4 into -- you had him read into the record the
 5 definition of landscaping from Moskowitz?
 6 MS. DINARDO: Yes, sir.
 7 CHAIRMAN SULLIVAN: There was also a
 8 comment section. And it reads: As noted in the
 9 definition, landscaping treatments can include
 10 some nonnatural elements, such as a fountain.
 11 However, they do not include artificial trees or
 12 other artificial plants. Natural materials used
 13 in landscaping often are referred to as softscape,
 14 while nonnatural elements incorporated into the
 15 landscape, such as gazebos, benches, and fountains
 16 are referred to as hardscape.
 17 And according to the architect book,
 18 landscape means a pictorial and end concept of
 19 one's own land surrounds as opposed to an object
 20 design idea, hence the idea of pictorial
 21 picturesque. One dictionary referred to landscape
 22 as a section or portion of rural scenery, usually
 23 extensive, that may be seen from a single
 24 viewpoint to improve the landscape of, to improve
 25 the appearance of an area of land, a highway, et

23

1 cetera, by planting trees, shrubs, or grasses off
 2 in the contours of the ground. That was the
 3 complete section under the landscape under the
 4 Moskowitz book;
 5 MS. DINARDO: Concept of one's -- on
 6 land --
 7 CHAIRMAN SULLIVAN: Counsel, we will
 8 agree that according to the contractor's
 9 registration, that he did register correctly with
 10 the State of New Jersey, correct?
 11 MS. DINARDO: We can agree that he's
 12 registered as --
 13 CHAIRMAN SULLIVAN: As a contractor?
 14 MS. DINARDO: As a contractor.
 15 CHAIRMAN SULLIVAN: A building
 16 contractor.
 17 MS. DINARDO: And part of that is for
 18 landscaping, I will agree with that, yes.
 19 CHAIRMAN SULLIVAN: Okay.
 20 MS. DINARDO: I don't agree with the
 21 definition of landscape as being a landscaping
 22 business, but I will provide testimony to show why
 23 we don't agree.
 24 CHAIRMAN SULLIVAN: But he's registered
 25 as a building contractor, which includes

24

1 landscaping.
 2 MS. DINARDO: But building contractor,
 3 yes, key. Yes, I agree, including landscaping.
 4 CHAIRMAN SULLIVAN: That falls --
 5 MR. BOSSONG: Her argument is that he's
 6 not a landscaping -- the prior use was not a
 7 landscaper, they were a nursery.
 8 MS. DINARDO: They were a nursery,
 9 correct.
 10 MR. BOSSONG: That's the argument.
 11 MS. DINARDO: Correct. Now, whether or
 12 not they did that other business on the side is
 13 another story, but they were registered as a
 14 nursery. And your own Borough says the site was
 15 the site of a nursery. So I'm going to give you a
 16 copy of the redevelopment plan --
 17 MR. BOSSONG: You're saying the prior
 18 owner was registered as a nursery?
 19 MS. DINARDO: No, I didn't say that.
 20 MR. MARINIELLO: Well, that's --
 21 MS. DINARDO: I said he was --
 22 MR. BOSSONG: That's what --
 23 MS. DINARDO: I said he was a nursery --
 24 MR. BOSSONG: Who's he?
 25 MS. DINARDO: Treeland Nurseries.

25

1 MR. BOSSONG: Was he a landscaper? Your
2 argument is he's --
3 MS. DINARDO: Mr. Sullivan said last
4 time we were here, my argument he was not
5 registered as a landscaper; he was a nursery,
6 Treeland Nurseries.
7 MR. BOSSONG: Registered with whom?
8 MS. DINARDO: With the town, with the
9 state. He was incorporated in 1948.
10 MR. BOSSONG: So you're going to present
11 documentation to show that he's not registered --
12 he was registered as a nursery with the town and
13 with the state?
14 MS. DINARDO: No. I can produce proof
15 that he was registered with the state and
16 incorporated with the state as a nursery and
17 that's from 1948.
18 MR. REDA: Can the nursery provide
19 landscaping work?
20 MS. DINARDO: We're talking about --
21 MR. REDA: Can a nursery place provide
22 landscape --
23 MS. DINARDO: No, this isn't a matter of
24 whether it can or cannot, it's a matter of what
25 your ordinance allows.

26

1 MR. REDA: Because they have a business
2 to design something, then I decide to do -- do I
3 have to go and amend -- this is the question. Do
4 I have to go and amend the certificate of
5 corporation and come before the board and say they
6 want to change the use --
7 MS. DINARDO: No, I think the question
8 is whether or not you, as the zoning board, okay,
9 as part of the land use component, the people who
10 decide the land use in this Borough, are going to
11 allow a landscaping company when there was a
12 nursery there that one would assume was a
13 preexisting nonconforming use, now on top of that,
14 you have a redevelopment plan that's changed it
15 all.
16 MR. REDA: The whole point of --
17 CHAIRMAN SULLIVAN: Real quick, back
18 when they registered in 1948, you said?
19 MS. DINARDO: That's when they were
20 incorporated?
21 CHAIRMAN SULLIVAN: The New Jersey
22 department of --
23 MS. DINARDO: I didn't say they were
24 registered with DCA, I said --
25 CHAIRMAN SULLIVAN: Because there was no

27

1 registration back then when they first
2 incorporated.
3 MS. DINARDO: When they incorporated
4 with the State of New Jersey was 1948.
5 CHAIRMAN SULLIVAN: It wasn't until
6 later on that they started that contractors be
7 registered.
8 MS. DINARDO: Right, 1948.
9 MR. BOSSONG: So the argument -- to boil
10 this down, you believe and what your argument is,
11 the prior operator on the site was a nursery and
12 not a landscaper?
13 MS. DINARDO: Right. And nursery --
14 MR. BOSSONG: Stop right there. That's
15 it?
16 MS. DINARDO: That's the argument.
17 MR. BOSSONG: So the question is, what
18 the Board has to consider is, was the prior
19 owner --
20 MS. DINARDO: Use.
21 MR. BOSSONG: -- just a nursery? Did
22 they use it just as a nursery --
23 MS. DINARDO: The use.
24 MR. BOSSONG: Or did they use it as a
25 nursery and a landscaper.

28

1 MS. DINARDO: It's more than just the
2 prior owner, it's whether or not your ordinance
3 allows what's going on there now.
4 MR. REDA: But it's --
5 MS. DINARDO: But it goes to the use.
6 MR. REDA: If it's preexisting
7 condition, we're still doing continuation of the
8 pre-existing condition.
9 MS. DINARDO: Not when you have a
10 redevelopment plan.
11 MR. REDA: I mean it's continuation.
12 MR. BOSSONG: Go ahead, let her continue
13 with her argument.
14 MS. DINARDO: That's not how I
15 understand the redevelopment plan.
16 MR. BOSSONG: We could have a --
17 MS. DINARDO: Here you go.
18 MR. BOSSONG: They're allowed to
19 continue the existing use.
20 MR. REDA: That's the whole point. If
21 I'm not change the use, then I don't have to
22 comply with the --
23 MS. DINARDO: Then you would have to
24 believe that --
25 MR. REDA: That's why I asked.

29

1 MS. DINARDO: -- the use is acceptable.
 2 CHAIRMAN SULLIVAN: That's why we're
 3 here, we're here to make --
 4 MS. DINARDO: I understand that.
 5 CHAIRMAN SULLIVAN: -- right now?
 6 MR. BOSSONG: Correct. That's the
 7 appeal. That's what this Board has to decide.
 8 MS. DINARDO: So right now, I don't have
 9 anymore questions for Mr. Hook. I'd like to call
 10 my planner, if I may?
 11 MR. MARINIELLO: First, I have a couple
 12 questions.
 13 CHAIRMAN SULLIVAN: Don't go anywhere,
 14 Mr. Hook.
 15 BY MR. MARINIELLO:
 16 Q. Mr. Hook, you've been in this town since
 17 the 1970s at least, correct?
 18 A. Yes. I was brought up in this town.
 19 Q. And you've been well aware of what's on
 20 this site for all those years?
 21 A. Correct.
 22 Q. And you are aware of what's on that site
 23 today?
 24 A. Correct.
 25 Q. And it is your opinion, as a zoning

30

1 officer, commercial zoning officer, that the use
 2 of that property today is sufficiently similar to
 3 the use that was there from the prior owners, that
 4 that is why you issued a CCO, correct?
 5 A. Correct.
 6 Q. And you --
 7 AUDIENCE MEMBER: No way.
 8 AUDIENCE MEMBER: Come on.
 9 MR. MARINIELLO: Mr. Chairman,
 10 CHAIRMAN SULLIVAN: Please.
 11 MR. MARINIELLO: I mean I know people
 12 are upset and I'm respecting --
 13 AUDIENCE MEMBER: Are we going --
 14 CHAIRMAN SULLIVAN: Just a reminder, you
 15 will get a chance to ask questions or whatever --
 16 AUDIENCE MEMBER: Come to our house.
 17 CHAIRMAN SULLIVAN: At the end of the --
 18 MR. MARINIELLO: Is that your client
 19 sitting behind me?
 20 AUDIENCE MEMBER: No.
 21 MS. DINARDO: No.
 22 CHAIRMAN SULLIVAN: At the end, you'll
 23 get a chance to give your opinion of the
 24 application before the Board.
 25 MR. MARINIELLO: I've lost where I was.

31

1 If the court reporter could read back what I last
 2 asked, I would appreciate that.
 3 (Whereupon the reporter read back the
 4 last question and answer.)
 5 Q. Prior to the Billy V's Landscaping
 6 coming to that site, you had had communications
 7 with Mr. Vamvakidis, Billy V?
 8 A. Correct.
 9 Q. And you had conversations with him
 10 because he told you that he was looking for sites
 11 in the area, correct?
 12 A. Correct.
 13 Q. And on a number of occasions prior to
 14 this particular site becoming available, he asked
 15 you about other sites in the town, correct?
 16 A. Correct.
 17 Q. And he asked you whether or not a
 18 landscaping use would be allowed in that
 19 particular section?
 20 A. Correct.
 21 Q. So, specifically, he came to you with
 22 this site because you had told him that, in your
 23 opinion, this was a site that that type of
 24 business would be allowed to continue on, correct?
 25 A. Correct.

32

1 MR. MARINIELLO: I have nothing further.
 2 BY MS. DINARDO:
 3 Q. Sir, when did he first come to you about
 4 operating a landscaping business in Paramus?
 5 A. I don't know the exact date.
 6 Q. When did he first come in and file
 7 for -- his application for the CCO?
 8 A. He came in July of '24.
 9 Q. When did he actually move on to the
 10 property?
 11 A. That, I don't know.
 12 Q. If I told you he moved on to the
 13 property in November '23, would that help your
 14 recollection of when he moved on to the property?
 15 A. Possibly, I don't know.
 16 Q. Okay. So you had no notice or
 17 inclination that he moved on to the property?
 18 A. No.
 19 Q. Prior to him coming in and filing for a
 20 CCO?
 21 A. Right.
 22 Q. Did you receive any phone calls from the
 23 neighbors reporting what was going on on the
 24 property and did you go out and inspect the
 25 conditions?

33

1 A I received phone calls from the neighbors
2 before he moved in, when it was -- when Treeland
3 was closed up, that they were not happy with the
4 overgrown grass, and there's animals, and kids
5 playing. So I got phone calls from there. And
6 then I got a phone call from Billy and I met him
7 out there. And we discussed what he was going to
8 do on the property. And I said well it's a
9 continuation of the existing use, so you have to
10 get a CCO to move into the property.

11 Q And did you get phone calls from the
12 neighbors after he moved into the property about
13 the conditions on the property?

14 A Yes, eventually, I did.

15 Q And did you go out to see what was going
16 on on the property?

17 A Yes, I did.

18 Q To try to resolve the issues with the
19 neighbors?

20 A I did.

21 Q Okay. And what did you do as a result
22 of visiting?

23 A I told Billy he would have to put some
24 buffers up to block the view from the neighbors to
25 his property. And I believe he did plant some

34

1 trees. I know he changed all the fencing and put
2 fabric on the fence, so you couldn't see through
3 it. He was cleaning up the lot, he changed the
4 fencing along the Board of Ed side, he was doing
5 his best to make it -- to blend in with the
6 neighborhood.

7 Q And when you were there, were there any
8 plants or trees or shrubs for sale with the retail
9 store?

10 A No.

11 Q When did you issue the CCO, sir?

12 A This was July '24.

13 Q July 24th?

14 A July 2024.

15 Q I have in my --

16 A That's the date on the CCO.

17 Q May I see that, sir?

18 A His business license is July 3rd.

19 Q When is the CCO issued by you, sir?

20 A The CCO is issued by the building
21 department.

22 Q Well, when did you tell the building
23 department to issue the CCO?

24 A December of '23.

25 Q May I see that, sir?

35

1 Sir, this is an application for the
2 continued certificate of --

3 A You gave that to me.

4 Q No, this is what I gave you, sir. Bear
5 with me a moment, please.

6 A This is what you're looking for.

7 Q And what's the date on that?

8 A The date on it is 11/14/24.

9 Q Okay. So the CCO was issued on 11/14?

10 A The application date was 12/4/23, so he
11 applied for it in December 2023.

12 Q So he was allowed to operate on the
13 property from that time December or November of
14 '23, and then the CCO was issued in November of
15 '24; is that correct?

16 A Correct.

17 Q You call him Billy, do you know him
18 personally? Did you know him before he moved to
19 town?

20 A I did not.

21 Q Did you ever use his services at your
22 property?

23 A No.

24 MS. DINARDO: Okay. All right I have
25 nothing further. Do you have anything?

36

1 MR. MARINIELLO: No, I have nothing
2 further.

3 THE WITNESS: Okay.

4 MR. MARINIELLO: Thank you, Mr. Hook. I
5 don't know if the Board has any questions.

6 CHAIRMAN SULLIVAN: Okay. Questions?
7 Any Board Members have questions of Mr. Hook? No.
8 MR. AL YOUSEFY: So, basically, you
9 issued the certificate based on the fact that it
10 existed for as long as you've known that business,
11 right?

12 THE WITNESS: Excuse me, you have to
13 speak up, I'm a little hard of hearing.

14 MR. AL YOUSEFY: The business was
15 existing for as long as you know?

16 THE WITNESS: Right.

17 MR. AL YOUSEFY: But you don't know
18 whether he was practicing some other businesses,
19 such as, you know, landscaping or --

20 THE WITNESS: Right.

21 MR. AL YOUSEFY: Is there a nursery?

22 THE WITNESS: When I met with Billy, he
23 told me he was a landscaping company, he did
24 hardscapes, cut lawns, maintenance, for people,
25 residential, commercial. And that's what he told

37

1 me what he did, so that's what was there on the
 2 property. So we issued him a continued
 3 certificate of occupancy.
 4 MR. AL YOUSEFY: But you weren't aware
 5 it was a nursery or anything?
 6 THE WITNESS: No.
 7 MR. AL YOUSEFY: Okay. No further
 8 questions.
 9 CHAIRMAN SULLIVAN: Just so we know,
 10 everybody knows that I am very familiar with the
 11 property. Treeland Nursery was more than just a
 12 nursery. I remember one of our neighbors, the
 13 Golden family, I don't know if Mr. Hook is
 14 familiar with the Golden family?
 15 THE WITNESS: Yes, I am.
 16 CHAIRMAN SULLIVAN: They used to use
 17 Treeland for their services all the time. They
 18 did everything on their property from planting to
 19 walkways to whatever was -- the Golden's had done
 20 on the property as far as the exterior of the
 21 property, Treeland was basically the be-all
 22 end-all for the Golden family here in Paramus.
 23 With that, I thank you, Mr. Hook, for your time
 24 and I appreciate it. And I guess you're free to
 25 go.

38

1 THE WITNESS: Thank you, Mr. Chairman,
 2 thank you, Board.
 3 MR. BOSSONG: She has a witness.
 4 MS. DINARDO: I have a witness.
 5 CHAIRMAN SULLIVAN: She has a planner,
 6 correct?
 7 MS. DINARDO: Eileen Banyra.
 8 MR. BOSSONG: Please raise your right
 9 hand.
 10
 11 EILEEN BANYRA, after having been duly
 12 sworn or affirmed, did testify as follows:
 13
 14 MR. BOSSONG: Please state your name,
 15 spell it, and give your business address for the
 16 record.
 17 THE WITNESS: My name is Eileen Banyra,
 18 B-A-N-Y-R-A. I'm a licensed professional planner
 19 in the State of New Jersey. My business address
 20 is Post Office Box 1054, New Paltz, New York. My
 21 company name is EFB Associates. I've been
 22 practicing in the State of New Jersey since 1987.
 23 Would you like me to keep going as my background,
 24 so you have some idea -- I don't believe I've
 25 appeared before your Board before.

39

1 CHAIRMAN SULLIVAN: You have a license
 2 in New Jersey?
 3 THE WITNESS: I do.
 4 CHAIRMAN SULLIVAN: Okay. And New York?
 5 THE WITNESS: No, there's no licenses in
 6 New York.
 7 MS. DINARDO: And your license in New
 8 Jersey is in good standing?
 9 THE WITNESS: Yes, it is.
 10 CHAIRMAN SULLIVAN: Do you have your
 11 license number?
 12 THE WITNESS: Yes, 003667.
 13 CHAIRMAN SULLIVAN: I'm sorry, 00?
 14 THE WITNESS: 3667.
 15 MS. DINARDO: And have you appeared
 16 before other zoning boards and planning boards in
 17 the County of Bergen?
 18 THE WITNESS: Yes.
 19 MS. DINARDO: And have you also been --
 20 CHAIRMAN SULLIVAN: Okay.
 21 MS. DINARDO: You're satisfied?
 22 CHAIRMAN SULLIVAN: Counsel, do you have
 23 any questions, sir?
 24 MR. MARINIELLO: No, Mr. Chairman.
 25 CHAIRMAN SULLIVAN: Accepted as a

40

1 witness.
 2 MS. DINARDO: Thank you. Accepted as an
 3 expert in the field --
 4 MR. BOSSONG: Professional planner, yes.
 5 BY MS. DINARDO:
 6 Q Okay. So I want to direct your
 7 attention to the CCO that was issued for Billy
 8 V's.
 9 A Can I just -- prior to that, I would like to
 10 just give you a little bit of my background
 11 because I don't think you really -- I've been
 12 operating in the State of New Jersey. And I've
 13 been a planner, licensed planner in New Jersey
 14 since 1987. I'm a former planning director for
 15 West Milford Township, Princeton. I represented
 16 the City of Hoboken, Pequannock, Madison, Summit,
 17 Englewood Cliffs, as well as appeared in probably
 18 40 or 50 other communities. I represented zoning
 19 boards, Hoboken zoning board, most recently,
 20 Pequannock zoning board --
 21 MR. BOSSONG: I don't want to cut you
 22 off, but there's no questions regarding your
 23 qualifications, as long as you're a professional
 24 planner.
 25 THE WITNESS: I understand that. I just

41

1 wanted to say I have appeared and represented
2 zoning boards principally in my career.

3 MR. BOSSONG: Whether you've practiced
4 for two years or you've practiced for 50 years,
5 you're a professional planner.

6 THE WITNESS: Thank you.

7 BY MS. DINARDO:

8 Q Okay. So then let's get to the
9 substance of what we're here for and that the
10 issuance of the CCO. You've had an opportunity to
11 look at Mr. Hook's documentation; is that correct?

12 A I have.

13 Q Okay. And as a result of that, do you
14 disagree with his assessment of landscaping
15 business being permitted on this particular site?

16 A I do.

17 Q Can you explain to the Board why you
18 disagree?

19 A Sure. So I think, you know, what I'm a
20 little bit -- I'm going to disagree with counsel a
21 little bit or change a little bit of what she
22 indicated.

23 Q That's okay.

24 A So the principal use on this property, I'm
25 going to say, it appears to me -- and I'm not even

42

1 clear that it is still a preexisting nonconforming
2 use because it appears it's been vacant for so
3 long, I don't know if anything has changed or if
4 he's abandoned his use. But I'm assuming that
5 this a preexisting nonconforming property for a
6 nursery. And I have definitions of nurseries,
7 too, so maybe we can talk about that. I think
8 counsel -- first of all, the counsel did ask Mr.
9 Hook about what definitions he looked at, I looked
10 at the same book that he looked at, the Moskowitz
11 book, edition four, dated 2015.

12 CHAIRMAN SULLIVAN: Mr. Mariniello, do
13 you have something to say?

14 MS. DINARDO: No, he has it to say to
15 me, Mr. Chairman.

16 MR. MARINIELLO: I'm happy to say it to
17 you. The whole issue I'm having with this is the
18 term nursery. Treeland Nursery used that word in
19 its title. But it is clear from Mr. Hook's
20 testimony and from the Board's own knowledge of
21 the site, which the Chairman has spoke to many
22 times that this is not a nursery only. It had
23 nursery in the name and it sold retail plants,
24 along with ten other things that Mr. Hook talked
25 about.

43

1 So I'm contesting the idea that the fact
2 that the definition of nursery, which could be
3 taken from a thousand different horn books, it
4 might be slightly different in different places,
5 this was not a nursery. It may have been a
6 nursery and other things, in fact, it's clear that
7 it was. I would concede that they sold retail
8 plants at the site. But that's not all they did,
9 which is patently obvious from the testimony of
10 people who were here in the town. So wasting a
11 whole night on whether or not it's a nursery or
12 not is a waste of time. It just is.

13 MS. DINARDO: So since I'm making a
14 record here and we disagree with Mr. Mariniello
15 that landscaping is not a permitted land use,
16 okay. Nursery is a permitted land use, correct?
17 That we --

18 MR. MARINIELLO: We agree it's not
19 permitted.

20 MS. DINARDO: Right, but that what I'm
21 saying --

22 MR. MARINIELLO: That's why it's a
23 (d)(2), not a (d)(1).

24 MS. DINARDO: No, it's a (d)(1). And
25 then on top of that, you have a redevelopment plan

44

1 there. So that's another complication here. So I
2 think -- we filed an appeal, whether -- I'm sorry
3 you feel that we're wasting your time or the
4 Board's time. We filed an appeal, we have about
5 60 residents in this room right now who want this
6 appeal heard because they live there, they're
7 putting up with what's going on there, none of you
8 are, respectfully, Board Members. And they want
9 this appeal heard. I'm making a record. If you
10 agree with us at the end, fine, if you disagree
11 with us, fine. And we'll take it to the next
12 step. But to claim that we're wasting your time
13 when all of these people are in this room and this
14 is affecting their lives -- and I'm sorry if you
15 think that's funny, Mr. Chairman, but that's
16 what's going on right now.

17 So I will make a record. This is well
18 within our rights and we'll continue on.

19 AUDIENCE MEMBER: We're here.

20 AUDIENCE MEMBER: We're the residents.

21 AUDIENCE MEMBER: We live on that
22 street.

23 CHAIRMAN SULLIVAN: Listen, there's one
24 way we can solve this problem; I'll call the
25 police and I'll have you all escorted out. And

45

1 this hearing will be continued without any
2 residents whatsoever. We can do it that way if we
3 want. All right.

4 MR. BOSSONG: The threats of standing up
5 and motioning to the dais --

6 CHAIRMAN SULLIVAN: You're trying to
7 intimidate the Board Members and I will not have
8 it.

9 AUDIENCE MEMBER: We want you to
10 understand what we're --

11 CHAIRMAN SULLIVAN: I don't care. I
12 will not have --

13 AUDIENCE MEMBER: You don't --

14 CHAIRMAN SULLIVAN: You know what, why
15 don't we call the police.

16 AUDIENCE MEMBER: Really, sir.

17 CHAIRMAN SULLIVAN: Sit down. Anybody
18 stands up again, the police get called, you'll all
19 be escorted out of here.

20 AUDIENCE MEMBER: You have to care.

21 CHAIRMAN SULLIVAN: We will have decorum
22 in this chamber.

23 AUDIENCE MEMBER: You have to care.

24 CHAIRMAN SULLIVAN: Sir, I'm going to
25 ask you to leave.

46

1 AUDIENCE MEMBER: Yes.

2 MR. BOSSONG: So let's cut to the chase.
3 We understand the argument is it's a nursery. Do
4 you have any --

5 THE WITNESS: I'd like to just complete
6 my testimony because I think I can --

7 MR. BOSSONG: We're going to short
8 circuit this whole thing.

9 THE WITNESS: I think I can frame this.

10 MR. BOSSONG: Your argument is -- you're
11 going to say the nursery does not include
12 landscaping.

13 THE WITNESS: No, I'm not going to say
14 that actually. I'm not going to say that. So I
15 would like to just complete my testimony. I'm not
16 really sure why I was stopped because I might be
17 able to answer some things. And I can talk about,
18 yes, it was a nursery, it still is a nursery. It
19 still is possibly allowed as a permitted use as a
20 nursery; however --

21 MR. BOSSONG: Do you have any knowledge
22 as to whether or not the prior owner also
23 conducted landscaping?

24 THE WITNESS: I don't have any prior
25 knowledge of that.

47

1 MR. BOSSONG: Okay. Then it's on the
2 record. You can continue your testimony.

3 THE WITNESS: Thank you. So what I'm
4 going to suggest is Mr. Hook looked up a
5 definition in the definition book, which he was
6 directed to by his -- by the zoning ordinance. It
7 says if you don't have a definition in your zoning
8 ordinance, you go to Moskowitz's book. You don't
9 go to any book, you go to this particular book.
10 It gives you the year and date and everything of
11 that. He looked up under landscape and then --
12 but he didn't look under nursery. And I think the
13 nursery part -- and that I'd -- that's what I'd
14 like to share with you. I'm going to just read
15 you what nursery is and I'm going to hand out
16 these exhibits. Nurseries come in both wholesale
17 and retail. I'm going to suggest to you that what
18 was on this site was retail.

19 MR. BOSSONG: Nobody has disputed that.

20 THE WITNESS: Okay, so let me just
21 finish my testimony then.

22 MS. DINARDO: But then again, you're not
23 giving testimony, Counsel, so can we not interrupt
24 her and let her make the record, please.

25 THE WITNESS: Retail nursery is the

48

1 growing, cultivation, storage and sale of garden
2 plants, flowers, trees, shrubs, fertilizers, as
3 well as the sale of garden tools, similar
4 accessory and ancillary products to the general
5 public. And then there's one for retail and
6 there's one for wholesale. Wholesale means you
7 basically sell to larger entities, commercial
8 entities, maybe business contractors.

9 The point that I'm making is nursery is
10 the principal use, other uses on the property;
11 i.e., landscaping, that's not a principal use.
12 That's something you might do as part of your
13 nursery business; but the principal use of the
14 property is a nursery. And that means you have
15 a -- nursery retail and nursery wholesale means
16 you're growing plants, you're taking care, you're
17 cultivating, and you may sell other things. P.S.
18 you may have a landscaping -- you may do
19 installations, sure, but that's the tail wagging
20 the dog. The dog is nursery and that's what I'm
21 saying is the principal use.

22 So I, unfortunately, disagree a little
23 bit with the way counsel presented it because she
24 said, no, landscaping isn't. I would say that's
25 an accessory use to that. It's many landscape

49

1 companies also provide other services. But I
2 think you're all familiar, you have a lot of
3 landscape -- excuse me, a lot of nurseries in
4 town. And when you look at those nurseries,
5 they're all growing plants, they're selling
6 plants, they're selling products. This is not
7 what's happening at this site. This is not what's
8 happening at this site. There is no retail
9 activity. And if it's just a landscaping
10 business, that's made that the principal use.
11 This is not -- that is not what is supposed to be
12 a principal use on this property. And that's
13 where I'm suggesting to you that's not a permitted
14 use. Nursery is. Can you conduct landscaping?
15 Yes, you can. Ancillary to your products, you're
16 selling your products, you're moving your
17 products, but that's not the principal use.
18 And I'm going to hand out to you now
19 just a few -- the definitions that I just quoted.
20 you know, the pictures are really awful
21 me. I was surprised how few pictures I could
22 get because most of the time, when I do aerial
23 photographs and covers and stuff, you could find a
24 lot of pictures.
25 The only pictures -- and you'll see the

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1 cover picture I'm going to present to you shows
2 landscaping in the front. It's dated 2009, June
3 of 2009. It shows planting material by June -- by
4 August of 2012, it looks like there's no material
5 in the front, which is when I'm going to say it
6 appears that, at least, from these photographs,
7 that maybe they're not selling products anymore.
8 They look like the site's vacant.

9 I've also included the landscape
10 definition that Mr. Hook used and I've included
11 the two definitions of retail. So if you don't
12 mind, I don't know if you want to mark this,
13 Counsel.

14 BY MS. DINARDO:

15 Q I have it marked. I marked it O-4.

16 A Are they all marked?

17 Q No, no, I didn't mark them all.

18 MR. BOSSONG: So O-4.

19 MS. DINARDO: Which is six page
20 document, photographs of the site, along with the
21 Moskowitz --

22 MR. BOSSONG: Seven pages.

23 MS. DINARDO: -- definition?

24 MR. BOSSONG: Seven pages.

25 MS. DINARDO: Seven?

51

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(Planning exhibit marked O-4.)

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MR. REDA: One question. I think the
5 applicant came before this Board to ask for
6 certain variance. And now since we start talking
7 about the validity of -- how valid is the CCO, if
8 this applicant, right now, for the second point of
9 argument starts selling the nursery product, will
10 he be conforming to the preexisting condition to
11 the existing use?

12

THE WITNESS: If he was a nursery?

13

MR. REDA: If he restore it to nursery
14 with landscaping accessory use.

15

THE WITNESS: He would have to have a
16 retail store, that's what the previous use was.
17 So any expansion of that would require a D
18 variance. Any expansion of that would require a D
19 variance.

20

MR. REDA: Okay.

21

THE WITNESS: Which means then the
22 zoning board, when you have a redevelopment plan,
23 can't approve a D variance. It has to go to the
24 city council or board council under a
25 redevelopment law.

52

1

MR. REDA: So restoring the
2 preexisting -- I'm going to -- just restoring the
3 preexisting use, would still mandate him to go --

4

THE WITNESS: For what he wants to do,
5 yes. Because he's expanding -- he's expanding it.

6

MR. REDA: No, no, I'm not talking about
7 the variances, I'm talking about restoring --

8

THE WITNESS: Well, that's not what's
9 before us, so I guess it's -- you're asking a
10 hypothetical. So I think we should deal in

11

reality. So what's before you is a landscaping
12 company. The question is is a landscaping company
13 the same as a nursery. And I'm proffering it's
14 not. It's not. Can a nursery have landscaping?

15

Yes, it can, but it's not a nursery, what's
16 proposed here. And what I'm suggesting to you
17 what's happening here, it's a landscaping
18 business. And this is a contractor storage yard
19 for a landscaping business. That's what I think
20 is happening.

21

MR. REDA: So they use -- they're
22 proposing the accessory use and they didn't
23 propose --

24

THE WITNESS: The principal use --

25

MR. REDA: -- the main principal use?

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1 THE WITNESS: They are proposing a
2 principal use, but it's contrary to your zoning
3 ordinance because it's just a landscaping
4 business.
5 MR. BOSSONG: Nobody is arguing it's
6 contrary to the ordinance. Your argument is it's
7 contrary to the prior use on the property.
8 THE WITNESS: Correct.
9 MR. BOSSONG: Okay.
10 MS. DINARDO: Yes.
11 THE WITNESS: Yes. I don't think it's
12 synonymous -- I'm sorry, Mr. Chairman. I don't
13 think it's synonymous with the nursery.
14 MR. BOSSONG: You have no prior
15 knowledge as to what the prior use on the property
16 was?
17 THE WITNESS: It's irrelevant --
18 MR. BOSSONG: It's completely relevant.
19 THE WITNESS: No, it's not.
20 MR. BOSSONG: It's completely relevant
21 because if the prior use on the property was
22 landscaping, was a nursery and landscaping, the
23 continuation of the nursery and landscaping by the
24 current owner is a continuation of a nonconforming
25 use.

54

1 THE WITNESS: But that's not what's
2 happening there. There is no nursery on the
3 property, there's only landscaping, storage, and
4 equipment. If you look at even the site plan
5 application that's before you, it's expanding
6 storage containers on the property for what? For
7 contractor material and storage. That's not a
8 nursery. Now, could a nursery do that? Could a
9 nursery have sheds and things? Sure, but this is
10 not -- that's what I'm saying. Let's take reality
11 that's not take hypotheticals. What's happening
12 is it's a landscaping business with a lot of
13 contractor storage on it.
14 It's not a nursery. It's not growing,
15 selling, taking care of, nurturing plants,
16 products, it's not that. And you have many other
17 nurseries in town you can look at and say is it
18 like that. It's not. It's not.
19 CHAIRMAN SULLIVAN: So my question is
20 this: Treeland Nursery established in 1948, sold
21 me a tree?
22 THE WITNESS: Yes.
23 CHAIRMAN SULLIVAN: They came and
24 planted that tree.
25 THE WITNESS: Yes.

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1 CHAIRMAN SULLIVAN: They're a landscaper
2 now because they planted that tree, yes?
3 THE WITNESS: Did they grow it on their
4 property?
5 CHAIRMAN SULLIVAN: What's that?
6 THE WITNESS: Did they grow it on their
7 property?
8 CHAIRMAN SULLIVAN: I have no idea. I'm
9 just saying they sold me a tree from their
10 property, okay. They now came to my house and
11 planted that, they're no longer a nursery --
12 THE WITNESS: No, no, they are a
13 nursery.
14 CHAIRMAN SULLIVAN: -- they are now
15 planting the tree which is a landscaper?
16 THE WITNESS: They provide --
17 CHAIRMAN SULLIVAN: Yes or no?
18 THE WITNESS: No.
19 CHAIRMAN SULLIVAN: No?
20 THE WITNESS: Not as a principal use.
21 They provide landscaping services. Part of --
22 you're a farmer, okay, and you grow plants. So if
23 you go and plant at somebody else, you're still a
24 farmer, you're still growing plants. They're
25 growing plants at the site and part of their

56

1 business is to sell material. So, yes, they're
2 going to go plant it somewhere. But that doesn't
3 mean that's the principal use. That means it's in
4 addition to -- they're selling product, to move
5 their product, they go and plant it, so --
6 MR. REDA: Any percentage?
7 THE WITNESS: It's ancillary.
8 CHAIRMAN SULLIVAN: I guess, do you know
9 the intention of Billy V's Landscape, what he
10 wants to do with that property?
11 THE WITNESS: I read the application.
12 It doesn't say anything about nursery.
13 CHAIRMAN SULLIVAN: Do you know what his
14 future plans for the property is?
15 THE WITNESS: No, but it doesn't matter
16 because what is before us is before us. The
17 future plans of opening a nursery is not what he's
18 showing up before this Board to do right now. Had
19 he come in and said nursery, then that would be a
20 different situation. That's not what's happening
21 here.
22 MR. BOSSONG: Let me ask you this: Is
23 there a quantity of, say, trees that he has to
24 sell to qualify as a nursery?
25 THE WITNESS: I don't know the answer to

57

1 that, I don't think so. But this was a
2 retail business.

3 MR. BOSSONG: So if he would sell one
4 tree or advertise one tree for sale --

5 THE WITNESS: No. I mean that's -- I
6 think that's -- it's a nursery, come on. You know
7 what a nursery is and so do I. You're growing
8 plants.

9 MR. BOSSONG: I also know what a
10 landscaper is.

11 THE WITNESS: Right. They install
12 plants and material that they get from some place
13 and where do they get them from? A nursery. So
14 they go hand in hand, but it doesn't make it its
15 principal use. Nursery is used in your community,
16 even in your redevelopment plan. They don't call
17 them -- they don't have a listing as a permitted
18 in use any land ordinance I've ever seen as
19 landscaping companies because it's kind of
20 nebulous. And it could be a lot of different
21 things. Nurseries, people understand what a
22 nursery is, it's defined. As you can see, Mr.
23 Hook's definition of landscape is a street -- I
24 mean basically the lawn and beautiful bucolic
25 property. That's because there is no landscape

58

1 business that has such a tight definition. This
2 is the tail wagging the dog.

3 CHAIRMAN SULLIVAN: Didn't Mr. Hook read
4 in the definition of a landscape?

5 THE WITNESS: He did.

6 CHAIRMAN SULLIVAN: That was his
7 definition, right?

8 THE WITNESS: Yes.

9 CHAIRMAN SULLIVAN: You asked what --

10 MS. DINARDO: I did ask.

11 CHAIRMAN SULLIVAN: And he read in
12 the Moskowitz book.

13 THE WITNESS: Yeah.

14 CHAIRMAN SULLIVAN: Okay.

15 THE WITNESS: And it included hardscapes
16 and --

17 CHAIRMAN SULLIVAN: So it wasn't Mr.
18 Hook's opinion, it was Moskowitz?

19 THE WITNESS: No, understood, right.
20 I'm saying he used that as the basis of his --
21 yes.

22 CHAIRMAN SULLIVAN: He based his
23 decision on the Moskowitz.

24 THE WITNESS: On the Moskowitz landscape
25 definition and did not look at the nursery

59

1 definition. Which is clearly even illustrated in
2 the signed -- illustrated in the municipal
3 documents.

4 CHAIRMAN SULLIVAN: And he registered
5 himself Billy V's, as a home improvement
6 contractor, which landscaper falls under that
7 provision, yes?

8 THE WITNESS: That wasn't my exhibit,
9 but, yes, I heard the testimony regarding that,
10 right. You can also build a house and plant a
11 plant, yes.

12 CHAIRMAN SULLIVAN: Okay.

13 MS. KAMAL: So you're determining that
14 it was the primary use that it was a nursery based
15 on the name and not by necessarily your
16 understanding of what happened at that property?

17 THE WITNESS: No, I saw pictures of them
18 selling plants. It's not a good picture, what I
19 said to you. But there was a retail store, the
20 was a retail store and they were selling plants.

21 MS. KAMAL: Does that mean that --

22 THE WITNESS: It means it's a nursery.

23 MS. KAMAL: -- majority of the business
24 was a nursery?

25 THE WITNESS: It's not about majority,

60

1 it's about retail sales and service. So the
2 ancillary, you're selling -- a nursery sells
3 product. If you look at the definition and it's
4 not my definition, it's not some random
5 definition, it's what your zoning ordinance says
6 to look at. Look at the Moskowitz book. If you
7 look at the nursery, this is not a nursery. And
8 that's all I'm suggesting is Mr. Hook -- I'm not
9 saying he was wrong, he just didn't look at the
10 right definition. He didn't look at the right
11 definition. It's a nursery --

12 MS. KAMAL: -- from 1948.

13 MR. BOSSONG: Do you know whether the
14 prior owners -- do you have any personal knowledge
15 as to whether the principal use was a landscape
16 business or a nursery? Or are you going based
17 solely because of the name of the company?

18 THE WITNESS: I'm going by your zoning
19 ordinance --

20 MR. BOSSONG: No, no, that's not the
21 question.

22 THE WITNESS: -- what it permits.

23 MS. DINARDO: Yes, that is -- that's the
24 response.

25 MR. BOSSONG: The question --

61

1 THE WITNESS: I have no personal
2 knowledge, no. I grew up in Bergen County, but
3 no.
4 MR. MARINIELLO: I have to just object
5 to Ms. DiNardo jumping up and helping explain for
6 the witness.
7 MS. DINARDO: No, I'm not helping
8 explain for the witness --
9 MR. MARINIELLO: It sounds like it.
10 MR. BOSSONG: She's doing a great job on
11 her own.
12 MS. DINARDO: She's trying to answer
13 your question and you're interrupting her.
14 MR. MARINIELLO: I didn't say anything.
15 MS. DINARDO: Not you, not you. Craig.
16 CHAIRMAN SULLIVAN: Any other Members of
17 the Board have questions of the witness on the
18 testimony given?
19 MR. REDA: Just have yes or no. A
20 question, like preexisting condition, which is the
21 statement date, like the definition of the
22 preexisting condition, does it go by year, like
23 before, let's say, 1960?
24 THE WITNESS: It's usually prior --
25 typically, when you're establishing a preexisting

62

1 nonconforming use, you usually establish it when
2 the business moved, you establish it with a
3 certificate. Or if it's historical, in this case,
4 I'm going to say it's a historical use. And
5 everybody knows it was a nursery, the sign is
6 still there, the --
7 MR. REDA: Just in general.
8 THE WITNESS: Yes.
9 MR. REDA: Like when we classify a
10 property as an existing nonconforming use, does it
11 go before the town established the zoning
12 ordinance?
13 THE WITNESS: Most of the time.
14 Sometimes, yes and sometimes, no. Before the
15 zoning ordinance or before the zoning ordinance
16 changes in a zone.
17 MR. REDA: Within the town or within the
18 county?
19 THE WITNESS: Within the town.
20 MR. REDA: Within the town.
21 THE WITNESS: It's always within the
22 town.
23 MR. REDA: Do you know when our zoning
24 ordinance --
25 CHAIRMAN SULLIVAN: That was going to be

63

1 my next question. Back in 1948, you don't know
2 how --
3 MR. REDA: I'm sure there wasn't zoning.
4 CHAIRMAN SULLIVAN: -- how that area was
5 zoned, do you?
6 THE WITNESS: I do not.
7 MR. REDA: New York City was zoned in
8 1961, if I'm not mistaken. Any use prior to 1961,
9 which is one of the largest city within the U.S.,
10 was established 1961.
11 THE WITNESS: I wouldn't be surprised if
12 the zoning wasn't established until after this,
13 number one. And number two, what I'm going to
14 suggest to you is that the zoning for this -- you
15 know, this property, many nurseries, and even in
16 the state and in Paramus came from farms, they
17 were farms.
18 MR. REDA: I understand --
19 THE WITNESS: And then they ultimately
20 turned --
21 MR. REDA: -- the history of the town.
22 THE WITNESS: -- that they themselves --
23 MR. REDA: My question: Since the
24 company, the original owner, was established in
25 1948?

64

1 THE WITNESS: Yes.
2 MR. REDA: As far as I know from the
3 testimony, if establishing like the preexisting
4 condition or nonconforming use of the property,
5 let's say, it's 1970s --
6 THE WITNESS: Usually predates,
7 MR. REDA: -- it might be that they
8 change. And again, it's counsel now job to prove
9 to us if it was any change from nursery within the
10 years till the zoning ordinance of Paramus was
11 established. It might be for you to find out,
12 might start as nursery as the main use, maybe it
13 was, as the witness said here, was an accessory
14 use of the landscaping --
15 THE WITNESS: Landscaping would be --
16 MR. MARINIELLO: Hold on. I don't want
17 to --
18 THE WITNESS: -- would be accessory --
19 MR. REDA: -- and then it might be down
20 the road, they change it. But also it's before
21 the zoning was established.
22 MR. MARINIELLO: So far nobody has told
23 you from this microphone that this nursery use was
24 the only use at that location.
25 MR. REDA: We didn't say that.

65

1 MR. MARINIELLO: No, I know. But I'm
2 getting at what you've been told is the exact
3 opposite. So as far as I'm concerned, I can rely
4 on Mr. Hook's testimony as to what he's seen at
5 that location for the last several years.

6 MR. REDA: -- Mr. Hook's testimony.
7 Again, this an expert witness. That's why I'm
8 asking you this question. It's good route for you
9 to start because she said the main principal use
10 and using the landscaping as an accessory use, if
11 you can prove before the zoning was established in
12 this town, if the main use was changed to become
13 like landscaping use, it might be --

14 MR. MARINIELLO: I understand your
15 point. But truthfully, the way I think my legal
16 obligation is to show that the use that was being
17 used before this use is this is a continuation of
18 a sufficiently similar use of the property. They
19 may have done something different in the '60s or
20 the '40s, I'm sure there was something different,
21 right? I mean it's a long time ago.

22 MR. REDA: We need some --

23 THE WITNESS: Well, there were plants in
24 2009.

25 MR. REDA: -- any kind of proof. I

66

1 think would be the point for us not to keep going
2 in loops --

3 CHAIRMAN SULLIVAN: What kind of proofs?

4 MS. KAMAL: We have testimony from a
5 witness that lived around the block.

6 MS. DINARDO: Right, that there --

7 MR. REDA: I said my is --

8 MS. DINARDO: We have people who live in
9 the area who are going to tell you there were live
10 things at the property, they were selling things
11 that were alive. They're not selling anything
12 that's alive right now. So it was a nursery with
13 live things, plants, shrubs, flowers, trees.

14 THE WITNESS: As per the definition, I
15 would say that that fits what was happening on
16 that property. And it also was a retail use in
17 there selling material. What's proposed here is
18 not a retail use. It's somebody using the
19 property for their business and it's just
20 landscaping. This provided more -- and I'm going
21 to say if you look at any of your -- you know, any
22 of your nurseries around town, you're going to say
23 it's a similar thing. Do they do landscaping,
24 yes, yes. But that's also to move their product.
25 It's not the principal business. The principal

67

1 business and its -- principal is not defined by
2 how much money you make --

3 MR. BOSSONG: But you have no idea what
4 the principal business was of the prior owner?

5 THE WITNESS: Are you defining that by
6 volume? By what are you saying? I'm saying --

7 MR. BOSSONG: You're the professional.

8 THE WITNESS: I'm saying the principal
9 use of that property was a nursery.

10 MR. BOSSONG: How do you know that?

11 THE WITNESS: Because it says nursery,
12 number one.

13 MR. BOSSONG: So you're basing it purely
14 on the name?

15 THE WITNESS: I'm basing it on the fact
16 that they -- based on the definition of what a
17 nursery is, that's the principal use of that
18 property was a nursery. Everything else --

19 MS. KAMAL: How do you know that?

20 Because they may --

21 THE WITNESS: Because they sold plants.

22 It was a retail store that sold plants and other

23 products and they did installations. This has

24 nothing to do with that --

25 MR. BOSSONG: But you don't --

68

1 MS. KAMAL: You don't know that.

2 THE WITNESS: This is basically --

3 MR. BOSSONG: You don't know if the
4 majority of their business was landscaping and the
5 nursery was the accessory?

6 THE WITNESS: The use --

7 MR. BOSSONG: You have no idea?

8 THE WITNESS: Landscaping is an
9 activity.

10 MR. BOSSONG: Nobody has any idea.

11 THE WITNESS: Landscaping is an activity
12 that results in here's your use. I have trees
13 that I grow, now what am I going to do? I'm going
14 to go and plant them. So that's like a verb as
15 opposed to the noun --

16 MS. KAMAL: It's a hypothetical.

17 THE WITNESS: No, it's not a
18 hypothetical, that's what a landscaping business
19 does.

20 MR. BOSSONG: Hold on. I have a
21 landscaping business in my town, they're a
22 landscaping business and they sell some trees on
23 the side and they sell some plants on the side.

24 THE WITNESS: That would be the
25 principal use of that.

69

1 MR. BOSSONG: Right. There's no --
2 THE WITNESS: Is there a retail store on
3 that property?

4 MR. BOSSONG: No, there's not. There's
5 no testimony and I don't think anybody in this
6 room can provide testimony as to what the
7 principal use -- If they know what the exact
8 principal use of the prior owner.

9 THE WITNESS: I think what's important
10 is --

11 MR. BOSSONG: You're surmising.

12 THE WITNESS: No, your zoning ordinance.
13 Your zoning ordinance and we're going as a
14 preexisting nonconforming use.

15 MR. BOSSONG: Correct.

16 THE WITNESS: The word nursery comes up
17 in municipal documents, many municipal documents.
18 Landscaping business on this property does not
19 come up. So in terms of a use, a use recognized
20 in your community is a nursery, recognized as a
21 use, a landscaping business, you're not going to
22 find that in any zone, maybe in an industrial
23 zone.

24 MR. BOSSONG: So you have documentation
25 to show in -- I'll pick a random year -- 1970,

70

1 that the zoning allowed a nursery, but did not
2 allow --

3 THE WITNESS: No, I do not.

4 MR. BOSSONG: So you have no idea --

5 THE WITNESS: I'm using your municipal
6 documents that I read. I read the master plans, I
7 read the redevelopments, they all use the word
8 nursery.

9 MR. BOSSONG: Right, but that's
10 currently. The issue is the use on the property
11 by the prior owner and whether this is a
12 continuation of the same use.

13 THE WITNESS: It's not.

14 MR. BOSSONG: In your opinion?

15 THE WITNESS: It's my opinion --

16 MR. BOSSONG: It's your opinion.

17 THE WITNESS: -- It's not. It's
18 truncated it. It's truncated it.

19 MR. BOSSONG: We understand your
20 opinion. We're going in circles. We understand
21 your opinion.

22 THE WITNESS: It's truncated it.

23 MR. BOSSONG: You're saying the use is
24 different from this current owner to the prior
25 owner, we're good.

71

1 THE WITNESS: Significantly different,
2 yes.

3 MR. BOSSONG: Significantly, like we
4 strenuously object.

5 THE WITNESS: Yes.

6 CHAIRMAN SULLIVAN: With that, I'm going
7 to ask our professionals, any questions on the
8 testimony?

9 MR. DUNLEA: I don't have any questions
10 at this point in time. Thank you.

11 MR. FOWLER: Nothing, Chairman.

12 MR. MARINIELLO: Can I just take a
13 couple minutes to talk to my planner and see
14 whether or not I need to call him as a witness?

15 CHAIRMAN SULLIVAN: Okay.

16 MR. MARINIELLO: I just need two
17 minutes.

18 CHAIRMAN SULLIVAN: We're going to take
19 a five-minute recess, let our court reporter get
20 her fingers back.

21
22 (Whereupon a short recess was taken.)
23

24 CHAIRMAN SULLIVAN: We're back. Okay.
25 We're finished with your planner?

72

1 MS. DINARDO: I am.

2 CHAIRMAN SULLIVAN: Do you have any
3 other witnesses?

4 MS. DINARDO: I have no other witnesses.

5 CHAIRMAN SULLIVAN: Okay.

6 MR. BOSSONG: Do you want to do a
7 summation?

8 MR. MARINIELLO: I suppose we should.

9 MR. BOSSONG: A quick summation and a
10 Board discussion.

11 MR. MARINIELLO: Who should go first?

12 I'm not even sure, I'm so backwards right now.

13 MR. BOSSONG: It's her appeal, so she
14 would go first.

15 MS. DINARDO: Okay. Simply put,
16 nursery, primary use; landscaping, ancillary use.
17 You all asked questions about 1968, 1948, all
18 these different questions because you're curious
19 as to whether or not the use there ever changed.
20 Nursery, primary use. Your own municipal
21 documents call that site a nursery. I gave you a
22 copy of the redevelopment plan. What was it
23 called? Nursery, it wasn't called landscaping
24 business when it was deemed an area in need of
25 redevelopment. It was called a nursery along with

73

1 all the other nurseries in your town that are
2 under that redevelopment plan. So I agree with my
3 planner, my planner is telling you that that's the
4 primary, the principal use. The secondary use is
5 landscaping.

6 On this property right now, you cannot
7 buy a flower, you cannot buy a bush, you cannot
8 buy a tree. Some of the people in the audience
9 told me that this nursery used to sell --

10 MR. MARINIELLO: Objection.

11 MS. DINARDO: -- Christmas trees.

12 Pardon me. This nursery used to sell Christmas
13 trees. This nursery -- and you could see it from
14 the pictures that we gave you, which was O-4,
15 exhibit O-4. If you look at the two pictures, you
16 see the trellises on where the plants used to
17 hang. Evidence of a nursery. Yes, the sign said
18 nursery. And apparently that doesn't seem to be
19 sufficient. But let's move beyond that, let's
20 look at the trellises that are hanging on the
21 property. What would hang from that? Plants,
22 flowers.

23 You all talk about your experience in
24 the town, how long you've been here and I respect
25 that. But the reality is the primary use of this

74

1 property is a nursery, it is not being used in
2 that manner right now. It is a storage facility
3 for a landscaping company. There is nothing for
4 sale on that property that you could buy that you
5 could bury in your yard or put in your garden. It
6 doesn't exist. So it is a completely different
7 use and not the use that existed there, the
8 primary use. That's all I have.

9 MR. MARINIELLO: So let's just start
10 with the basics. To me, the motion is really
11 based on the fact that the word nursery was used
12 in the name of this company. We don't dispute
13 that they sold plants, I don't know that these
14 pictures prove it, but we don't dispute it.

15 But they also, obviously, from the
16 testimony of Mr. Hook, have done a lot of other
17 things related to landscaping, hardscaping,
18 streetscaping. In fact I would say this: It's
19 not true that they don't sell mulch and stone and
20 things like that that could go into somebody's
21 garden because they absolutely do. They don't
22 sell it retail right now, but when a person comes
23 to them to do hardscape for their backyard or
24 their pool or softscape around the pool, they
25 absolutely get those products. And those products

75

1 are stored on the site right now -- I mean maybe
2 not in the wintertime, but that's where they are.

3 It can't possibly be that a person who
4 has a nonconforming use and then a redevelopment
5 plan comes along that doesn't include that use
6 can't ever have a different company buy that spot.
7 Think about it like this: If you had a strip mall
8 that was part of a redevelopment plan and there
9 was a unit within that strip mall for a retail
10 shop, you can't tell that strip mall owner that he
11 could put a new retail shop in there. That would
12 be an absolute taking of their property. You
13 would absolutely will be faced with a
14 constitutional eminent domain taking because he
15 has an absolute right under New Jersey law to
16 continue the use that's there, that is there,
17 whether it's there because it got a variance or it
18 preexisted the zoning code. You cannot stop that
19 person from continuing a use on a property for
20 which the prior use was allowed.

21 Mr. Hook's testimony is uncontroverted.
22 This place has been being used for these uses
23 since he came around in the 1970's and he sees
24 this use as the same use. Is it exactly the same?
25 Maybe there's some tweaks here or there, but it's

76

1 clearly sufficiently similar to the use that was
2 there before.

3 Now, certainly, the appellant of the
4 zoning officer's decision could have come here
5 with a number of people who would dispute that
6 those uses were there for all these years, that
7 Mr. Hook contended that they were there for. But
8 nobody has come here to tell you that. The
9 planner told you on a number of occasions that she
10 doesn't know what was there, which is
11 understandable because she's not a Paramus
12 resident, she hasn't been here. The best she
13 could do was give us a couple of photographs from
14 Google Images or something along those lines, but
15 that's literally the best that she should do.

16 I would remind you that your own
17 planner, Ms. Gregory, issued a report related to
18 our application. And that planner found that this
19 was a (d)(2) variance, not a (d)(1) use variance
20 and did not contest the fact that this use was a
21 continuation of the prior use.

22 So we have Ms. Gregory's position, we
23 have Mr. Hook's position. We have no one to tell
24 you otherwise about what the use of this property
25 was beforehand. There's no evidence that nursery

77

1 was the primary use beforehand, other than the use
2 of the word nursery in the name.

3 I would ask you to uphold the decision
4 of the zoning officer that this is a continuation
5 of a prior use and allow us to move forward with
6 our application that's before the Board.

7 CHAIRMAN SULLIVAN: I'm going to open up
8 to Members of the Board, their thoughts. Anyone?
9 Mr. Cassesa, any thoughts or comments?

10 MR. CASSESA: I'm kind of torn from the
11 testimony that I've heard tonight. I do not know
12 what was there 15 years ago. I do not know what
13 they sold. I'm relying on the testimony tonight
14 to inform me on what was there previously and what
15 is there now. So at this point, I honestly need
16 to hear of the rest of the questions and make a
17 determination.

18 CHAIRMAN SULLIVAN: Mr. Burger, any
19 questions?

20 MR. BURGER: I don't have any questions,
21 Mr. Chairman.

22 CHAIRMAN SULLIVAN: Going down the line.

23 MR. SCRIVANICH: I got to agree with the
24 fact that it seems like the only testimony of what
25 was really there came from Mr. Hook's testimony,

78

1 his professional testimony. And that's where I am
2 right now. I mean this -- we're just deciding on
3 this?

4 CHAIRMAN SULLIVAN: Whether --

5 MR. SCRIVANICH: It can continue?

6 CHAIRMAN SULLIVAN: Right.

7 MR. SCRIVANICH: Nothing to do with the
8 variances?

9 CHAIRMAN SULLIVAN: Right.

10 MR. SCRIVANICH: Okay. I just want to
11 get that cleared up.

12 MS. DINARDO: May I interrupt?

13 CHAIRMAN SULLIVAN: No, not right now.

14 MS. DINARDO: Okay.

15 CHAIRMAN SULLIVAN: Mr. Reda.

16 MR. REDA: It's from the professionals,
17 and Ms. Gregory and Mr. Hook seem -- I mean going
18 through hoops with it.

19 CHAIRMAN SULLIVAN: Okay. Mr. Al
20 Yousefy? You could have moved down, you know.

21 MR. AL YOUSEFY: I know. I've heard a
22 lot, my head is kind of filled with a lot of
23 stuff. We know it's an existing use,
24 nonconforming. It's been established already. So
25 also he has a contractor there, that use is also

79

1 listed in there. However, the argument from the
2 appellant that is objecting to this is that if
3 it's a nursery, should be a nursery, therefore
4 they could do anything they want, at least to my
5 understanding that is the case.

6 But it's there, he's using it. He's
7 been there, maybe he's not selling as much trees
8 or plants or shrubs or whatever, but he's doing
9 other stuff. And it's existing as long as we
10 know. I can understand your point. At the same
11 time, I understand what's going on with the
12 property that's at this time. So why is it such a
13 big deal here, whether it's a nursery, since it is
14 going to be used here the same thing? I don't
15 know how this kind of playing into you or the
16 residents for that matter objecting to the
17 process. Yeah, I went to the place. I saw it's
18 kind of abandoned place, it's the winter. Anyway,
19 I didn't see any activities at this time, it's
20 winter. I didn't know I haven't seen in the
21 summer, so I cannot claim he's doing this and
22 that, I'm sure you guys live in the neighbor, you
23 know that better than me. But at the same time is
24 it the business, is it existing, yes, it's there.
25 I don't think any of us would say doesn't exist.

80

1 Therefore, we can't tell you otherwise. So that
2 is my feeling and thought that the process,
3 listening to all the testimonies and both
4 attorneys present here. That's what I have to say
5 at this time.

6 CHAIRMAN SULLIVAN: Mrs. Kamal?

7 MS. KAMAL: I don't have anything to
8 say.

9 CHAIRMAN SULLIVAN: I gave testimony
10 myself of having lived in the neighborhood back in
11 1962 we moved into the neighborhood. So I was in
12 that neighborhood for 29 years. So knowing what
13 it is, what it was, somewhat, okay. Whether it
14 was registered as a nursery, a landscape business,
15 or whatever, to me, it seems that it is a
16 continuation of what's there now. That's my
17 opinion.

18 MR. REDA: For the hours that they --
19 for the neighbors, did they operate like very
20 early?

21 CHAIRMAN SULLIVAN: That's not what
22 we're deciding right now, the hours of operation,
23 okay. We're talking about whether or not it's a
24 continuation of what was operating there prior.
25 Okay. I firmly believe that it is the same type

81

1 of business, the continuation of the existing
 2 business that was there. We heard testimony that
 3 there was no real facts, it was just opinion, it
 4 was just a nursery. But we do not know for sure
 5 if there was other type of businesses, any other
 6 type of landscaping or whatever run out of that
 7 business when it was first done. And it's always
 8 been Treeland Nursery, the property. It's always
 9 been designated as Treeland property, even in the
 10 rezoning, Treeland Nursery.
 11 MS. DINARDO: So, Mr. Chairman, are you
 12 going to hear from the public because they weren't
 13 witnesses for me but, they're here.
 14 MR. BOSSONG: This is isn't a hearing,
 15 it's not a public hearing. Appeal of an
 16 administrative officer's decision is not a
 17 hearing.
 18 MS. DINARDO: So then you won't hear
 19 from someone who wants to come up and be a witness
 20 on this appeal as an interested party?
 21 MR. BOSSONG: No.
 22 MS. DINARDO: Okay.
 23 MR. BOSSONG: They filed no appeal, they
 24 have no standing on --
 25 MS. DINARDO: Okay.

82

1 MR. BOSSONG: -- this aspect,
 2 MS. DINARDO: That's on the record,
 3 okay.
 4 CHAIRMAN SULLIVAN: Okay. With that --
 5 MR. AL YOUSEFY: I mean if he operates
 6 as a nursery, you can't stop him from doing
 7 everything else he's doing, he's licensed --
 8 MS. DINARDO: But, respectfully, he's
 9 not operating that way, sir.
 10 CHAIRMAN SULLIVAN: That's your opinion.
 11 MS. DINARDO: No, that's what's
 12 happening there.
 13 CHAIRMAN SULLIVAN: Okay. Well, we're
 14 not going to get into it. He's registered under
 15 the State of New Jersey as a licensed home
 16 improvement contractor. In the statute, under the
 17 licensed home improvement contractor, he does meet
 18 the qualifications for that, okay.
 19 And with that, I'm going to make a
 20 motion that we -- it is a continuation of the
 21 existing business that was there.
 22 MR. BOSSONG: And uphold the CCO.
 23 CHAIRMAN SULLIVAN: And uphold the CCO.
 24 MR. CASSESA: That would determine
 25 moving forward with the variances?

83

1 CHAIRMAN SULLIVAN: Right.
 2 MR. CASSESA: Which is not --
 3 MR. BOSSONG: That will be heard
 4 separately.
 5 MR. CASSESA: Okay.
 6 MR. BURGER: I'll second, Mr. Chairman.
 7 MS. COLASURDO: Mr. Al Yousefy.
 8 MR. AL YOUSEFY: Yes.
 9 MS. COLASURDO: Mr. Burger.
 10 MR. BURGER: Yes.
 11 MS. COLASURDO: Mrs. Kamal.
 12 MS. KAMAL: Yes.
 13 MS. COLASURDO: Mr. Reda.
 14 MR. REDA: Yes.
 15 RIGHT1: Mr. Scrivanich.
 16 MR. SCRIVANICH: Yes.
 17 MS. COLASURDO: Mr. Sullivan.
 18 CHAIRMAN SULLIVAN: Yes.
 19 RIGHT1: Mr. Cassesa.
 20 MR. CASSESA: Yes.
 21 MR. BOSSONG: Now, we can hear the
 22 application.
 23 CHAIRMAN SULLIVAN: With that, this
 24 continuation of the CCO has been approved.
 25 (Whereupon the appeal was completed.)

84

CERTIFICATE

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 6 I HEREBY CERTIFY that the foregoing is a
 7 true and accurate transcript of the testimony and
 8 proceedings as taken stenographically by me at the
 9 time, place, and on the date hereinbefore set
 10 forth.
 11
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15 SUSAN BISCHOFF, CCR, RPR
 16 LICENSE NO. 30XI00233700
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	4	76:12 agree [1] - 8:17, 8:20, 11:3, 22:8, 22:11, 22:18, 22:20, 22:23, 23:3, 42:18, 43:10, 72:2, 76:23 ahead [2] - 6:17, 27:12 AL [2] - 35:8, 35:14, 35:17, 35:21, 36:4, 36:7, 77:21, 81:5, 82:8 Al [2] - 77:19, 82:7 alive [2] - 65:11, 65:12 allow [3] - 25:11, 69:2, 76:5 allowed [1] - 27:18, 30:18, 30:24, 34:12, 45:19, 69:1, 74:20 allows [2] - 24:25, 27:3 alteration [1] - 14:16 altering [1] - 18:12 amend [2] - 25:3, 25:4 ancillary [5] - 47:4, 48:15, 55:7, 59:2, 71:16 animals [1] - 32:4 answer [4] - 30:4, 45:17, 55:25, 80:12 anyway [1] - 78:18 appeal [1] - 3:3, 4:1, 4:13, 4:16, 28:7, 43:2, 43:4, 43:6, 43:9, 71:13, 80:15, 80:20, 80:23, 82:25 appearance [1] - 21:25 appearances [1] - 4:5 appeared [4] - 37:25, 38:15, 39:17, 40:1 appellant [2] - 75:3, 78:2 applicant [1] - 4:8, 4:18, 5:1, 8:24, 10:15, 50:5, 50:8 Application [1] - 16:20 application [2] - 3:21, 3:24, 4:12, 5:9, 8:2, 8:3, 8:6, 8:8, 8:11, 8:12, 8:23, 17:1, 29:24, 31:7, 34:1, 34:10, 53:5, 55:11, 75:18, 76:6, 82:22 applications [1] - 13:15 applied [3] - 12:7, 34:11 appreciate [2] - 30:2, 36:24 approve [1] - 50:23 approved [2] - 16:3,	82:24 approximate [1] - 6:20 architect [1] - 21:17 area [6] - 6:24, 21:25, 30:11, 62:4, 65:9, 71:24 arguing [1] - 52:5 argument [1] - 15:24, 17:13, 23:5, 23:10, 24:2, 24:4, 26:9, 26:10, 26:16, 27:13, 45:3, 45:10, 50:9, 52:6, 78:1 artificial [2] - 21:11, 21:12 aspect [1] - 81:1 assessment [1] - 40:14 Associates [1] - 37:21 assume [1] - 25:12 assuming [1] - 41:4 attend [1] - 7:11 attention [2] - 17:3, 39:7 attorney [2] - 4:25, 5:3 attorneys [1] - 79:4 audience [1] - 72:8 AUDIENCE [1] - 29:7, 29:8, 29:13, 29:16, 29:20, 43:19, 43:20, 43:21, 44:9, 44:13, 44:16, 44:20, 44:23, 45:1 August [1] - 49:4 available [1] - 30:14 aware [1] - 4:14, 9:24, 16:2, 16:6, 16:10, 20:10, 20:14, 28:19, 28:22, 36:4 awful [1] - 48:20	become [1] - 64:12 becoming [1] - 30:14 beforehand [2] - 75:25, 76:1 begin [1] - 4:6 behalf [2] - 4:8, 4:10 behind [1] - 29:19 below [1] - 11:22 benches [1] - 21:15 Bergen [2] - 38:17, 60:2 best [3] - 33:5, 75:12, 75:15 better [1] - 78:23 beyond [2] - 13:2, 72:19 big [1] - 78:13 Billy [1] - 3:2, 4:8, 10:19, 10:23, 10:24, 30:5, 30:7, 32:6, 32:23, 34:17, 35:22, 39:7, 55:9, 58:5 bit [5] - 6:10, 39:10, 40:20, 40:21, 47:23 blend [1] - 33:5 Block [1] - 3:2 block [2] - 32:24, 65:5 Board [2] - 4:14, 10:15, 13:14, 13:16, 14:12, 19:16, 28:18, 28:7, 29:24, 33:4, 35:5, 35:7, 37:2, 37:25, 40:17, 43:8, 44:7, 50:5, 55:18, 60:17, 71:10, 76:6, 76:8 board [2] - 25:5, 25:8, 39:19, 39:20, 50:22, 50:24 Board's [2] - 5:6, 41:20, 43:4 boards [1] - 38:16, 39:19, 40:2 boil [1] - 26:9 book [1] - 13:21, 13:25, 14:4, 14:5, 14:8, 17:10, 19:19, 21:17, 22:4, 41:10, 41:11, 46:5, 46:8, 46:9, 57:12, 59:6 Book [1] - 14:2 books [1] - 42:3 Borough [1] - 5:22, 6:13, 16:4, 16:8, 17:2, 23:14, 25:10 BOSSONG [2] - 4:4, 4:14, 5:16, 5:21, 6:1, 6:15, 6:18, 7:21, 10:5, 10:12, 16:17, 18:5, 18:22, 19:4, 19:6, 19:14, 23:5, 23:10, 23:17, 23:22, 23:24, 24:1, 24:7, 24:10, 26:9, 26:14, 26:17,
0	5			
00 [1] - 38:13 003667 [1] - 38:12	5 [2] - 3:12, 3:14 50 [2] - 7:14, 39:18, 40:4			
1	6			
10 [2] - 3:12, 7:13 1054 [1] - 37:20 11/14 [1] - 34:9 11/14/24 [1] - 34:8 12 [2] - 3:2, 3:14 12/14/23 [1] - 34:10 13:45A-17.2 [1] - 18:23 14 [1] - 3:17 148 [1] - 3:3 15 [1] - 76:12 1948 [1] - 7:5, 14:25, 24:9, 24:17, 25:18, 26:4, 26:8, 53:20, 59:12, 62:1, 62:25, 71:17 1960 [1] - 60:23 1961 [3] - 62:8, 62:10 1962 [1] - 79:11 1968 [1] - 71:17 1970 [1] - 68:25 1970's [1] - 74:23 1970's [2] - 28:17, 63:5 1972 [1] - 6:23 1987 [2] - 37:22, 39:14	60 [2] - 3:9, 3:11, 43:5			
	7			
	A			
	abandoned [2] - 41:4, 78:18 able [1] - 45:17 absolute [2] - 74:12, 74:15 absolutely [4] - 19:4, 73:21, 73:25, 74:13 acceptable [1] - 28:1 accepted [2] - 38:25, 39:2 accessory [1] - 3:8, 3:15, 47:4, 47:25, 50:14, 51:22, 63:13, 63:18, 64:10, 67:5 according [2] - 21:17, 22:8 activities [1] - 78:19 activity [2] - 48:9, 67:9, 67:11 actual [2] - 18:1, 18:2 addition [1] - 55:4 additions [1] - 18:15 address [2] - 11:12, 11:14, 11:21, 11:22, 37:15, 37:19 adjourned [1] - 5:9 administrative [1] - 80:16 advertise [1] - 56:4 aerial [1] - 48:22 Affairs [1] - 9:22, 10:1, 10:7, 10:14, 10:20, 11:20, 12:18 affecting [1] - 43:14 affirmed [2] - 5:19, 37:12 ago [3] - 7:11, 64:21,	7233 [1] - 3:2 77 [1] - 3:10		
2				
2 [1] - 17:3 200 [1] - 4:12 2009 [3] - 49:2, 49:3, 64:24 2012 [1] - 49:4 2015 [1] - 41:11 2023 [1] - 34:11 2024 [2] - 3:17, 33:14 24th [1] - 33:13 2701 [1] - 3:2 29 [1] - 79:12				
3				
3667 [1] - 38:14 3rd [1] - 33:18		B		
		B-A-N-Y-R-A [1] - 37:18 background [2] - 37:23, 39:10 backwards [1] - 71:12 backyard [1] - 73:23 Banyra [2] - 37:7, 37:17 based [2] - 35:9, 57:22, 58:14, 59:16, 66:16, 73:11 basics [1] - 73:10 basing [2] - 66:13, 66:15 basis [1] - 57:20 be-all [1] - 36:21 bear [1] - 34:4 beautiful [1] - 56:24		

26:21, 26:24, 27:12, 27:16, 27:18, 28:6, 37:3, 37:8, 37:14, 39:4, 39:21, 40:3, 44:4, 45:2, 45:7, 45:10, 45:21, 48:1, 46:19, 49:18, 49:22, 49:24, 52:5, 52:9, 52:14, 52:18, 52:20, 55:22, 56:3, 56:9, 59:13, 59:20, 59:25, 60:10, 66:3, 66:7, 66:10, 66:13, 66:25, 67:3, 67:7, 67:10, 67:20, 68:1, 68:4, 68:11, 68:15, 68:24, 69:4, 69:9, 69:14, 69:16, 69:19, 69:23, 70:3, 71:6, 71:9, 71:13, 80:14, 80:21, 80:23, 81:1, 81:22, 82:3, 82:21 bottled [2] - 7:10 box [1] - 11:15 Box [1] - 37:20 Brook [1] - 6:23 brought [1] - 28:18 bucolic [1] - 56:24 buffers [1] - 32:24 build [1] - 58:10 building [1] - 3:10, 8:7, 22:15, 22:25, 23:2, 33:20, 33:22 bulk [1] - 3:6 Burger [1] - 82:9 burger [1] - 76:18 BURGER [3] - 76:20, 82:6, 82:10 bury [1] - 73:5 bush [1] - 72:7 business [9] - 4:18, 6:9, 6:10, 6:11, 7:20, 8:13, 9:2, 9:5, 9:9, 9:12, 9:18, 10:22, 11:4, 13:2, 14:10, 14:22, 14:24, 15:4, 15:7, 15:10, 15:18, 16:20, 17:1, 17:4, 17:5, 17:19, 19:24, 20:19, 22:22, 23:12, 25:1, 30:24, 31:4, 33:18, 35:10, 35:14, 37:15, 37:19, 40:15, 47:8, 47:13, 48:10, 51:18, 51:19, 52:4, 53:12, 55:1, 56:2, 57:1, 58:23, 59:16, 61:2, 65:19, 65:25, 66:1, 66:4, 67:4, 67:18, 67:21, 67:22, 68:18, 68:21, 71:24, 78:24, 79:14, 80:1, 80:2, 80:7, 81:21 businesses [2] - 35:18, 80:5	buy [5] - 72:7, 72:8, 73:4, 74:6 BY [1] - 6:18, 7:24, 28:15, 31:2, 39:5, 40:7, 49:14 C cabinets [1] - 18:20 cannot [6] - 24:24, 72:6, 72:7, 74:18, 78:21 care [5] - 44:11, 44:20, 44:23, 47:16, 53:15 career [1] - 40:2 case [2] - 81:3, 78:5 cassesa [1] - 78:9 Cassesa [1] - 82:19 CASSESA [3] - 76:10, 81:24, 82:2, 82:5, 82:20 CCO [3] - 4:16, 4:19, 4:21, 4:24, 5:7, 6:14, 7:25, 8:2, 8:3, 8:6, 8:9, 9:23, 13:20, 15:16, 17:10, 19:21, 29:4, 31:7, 31:20, 32:10, 33:11, 33:16, 33:19, 33:20, 33:23, 34:9, 34:14, 39:7, 40:10, 50:7, 81:22, 81:23, 82:24 certain [3] - 16:12, 20:15, 50:6 certainly [2] - 11:13, 75:3 certificate [1] - 3:4, 4:17, 11:17, 25:4, 34:2, 35:9, 36:3, 61:3 certified [2] - 10:25, 11:13 cetera [2] - 18:20, 22:1 CHAIRMAN [9] - 3:1, 3:22, 4:3, 6:12, 6:2, 6:17, 7:6, 11:25, 12:3, 12:5, 12:11, 12:14, 13:3, 21:3, 21:7, 22:7, 22:13, 22:15, 22:19, 22:24, 23:4, 25:17, 25:21, 25:25, 26:5, 28:2, 28:5, 28:13, 29:10, 29:14, 29:17, 29:22, 35:8, 36:9, 36:16, 37:5, 38:1, 38:4, 38:10, 38:13, 38:20, 38:22, 38:25, 41:12, 43:23, 44:6, 44:11, 44:14, 44:17, 44:21, 44:24, 53:19, 53:23, 54:1, 54:5, 54:8, 54:14, 54:17, 54:19, 55:8, 55:13, 57:3, 57:6, 57:9,	57:11, 57:14, 57:17, 57:22, 58:4, 58:12, 60:16, 61:25, 62:4, 65:3, 70:8, 70:15, 70:18, 70:24, 71:2, 71:5, 76:7, 76:18, 76:22, 77:4, 77:6, 77:9, 77:13, 77:15, 77:19, 79:6, 79:9, 79:21, 81:4, 81:10, 81:13, 81:23, 82:1, 82:18, 82:23 Chairman [4] - 29:9, 37:1, 41:21, 70:11 chairman [10] - 3:20, 3:25, 12:22, 38:24, 41:15, 43:15, 52:12, 76:21, 80:11, 82:6 chamber [1] - 44:22 chance [2] - 29:15, 29:23 change [6] - 25:8, 27:21, 40:21, 63:8, 83:9, 83:20 changed [5] - 25:14, 33:1, 33:3, 41:3, 64:12, 71:19 changes [3] - 11:20, 11:21, 61:16 characterized [1] - 19:25 chase [1] - 45:2 child [1] - 7:10 chips [1] - 14:18 Christmas [2] - 72:11, 72:12 circles [1] - 69:20 circuit [1] - 45:8 City [2] - 39:16, 62:7 city [2] - 50:24, 62:9 claim [2] - 43:12, 78:21 clarification [1] - 18:6 classify [1] - 61:9 cleaning [1] - 33:3 clear [3] - 41:1, 41:19, 42:6 cleared [1] - 77:11 clearly [2] - 58:1, 75:1 client [1] - 29:18 Cliffs [1] - 39:17 close [1] - 13:16 closed [1] - 32:3 Coca [1] - 7:9 code [1] - 74:18 Cola [1] - 7:9 COLASURDO [5] - 82:7, 82:9, 82:11, 82:13, 82:17 coming [2] - 30:6, 31:19 comment [1] - 21:8 comments [1] - 76:9	commercial [7] - 5:25, 8:16, 17:7, 18:14, 29:1, 35:25, 47:7 communications [1] - 30:6 communities [1] - 39:18 community [2] - 56:15, 68:20 Community [2] - 10:1, 11:19 companies [2] - 48:1, 56:19 company [12] - 6:25, 17:7, 25:11, 35:23, 37:21, 51:12, 59:17, 62:24, 73:3, 73:12, 74:6 complete [4] - 15:22, 22:3, 45:5, 46:15 completed [1] - 82:25 completely [3] - 52:18, 52:20, 73:6 complication [1] - 43:1 comply [1] - 27:22 component [1] - 25:9 concede [1] - 42:7 concept [2] - 21:18, 22:5 concerned [1] - 64:3 condition [8] - 27:7, 27:8, 50:10, 60:20, 60:22, 63:4 conditions [2] - 31:25, 32:13 conduct [1] - 48:14 conducted [1] - 45:23 conforming [1] - 50:10 consider [2] - 20:4, 26:18 considered [1] - 11:9 constitutional [1] - 74:14 construction [1] - 18:16 Consumer [5] - 9:22, 10:7, 10:14, 10:20, 12:17 containers [2] - 3:7, 53:6 contended [1] - 75:7 contest [1] - 75:20 contesting [1] - 42:1 continuation [1] - 6:12, 6:13, 9:3, 15:2, 27:7, 27:11, 32:9, 52:23, 52:24, 64:17, 69:12, 75:21, 76:4, 79:16, 79:24, 80:1, 81:20, 82:24	2 continue [8] - 4:18, 27:12, 27:19, 30:24, 43:18, 46:2, 74:16, 77:5 continued [6] - 3:17, 4:17, 17:19, 34:2, 36:2, 44:1 continuing [1] - 74:19 contours [1] - 22:2 contractor [20] - 9:25, 11:1, 11:23, 12:6, 12:10, 12:19, 13:1, 19:12, 22:13, 22:14, 22:16, 22:25, 23:2, 51:18, 53:7, 53:13, 58:6, 77:25, 81:16, 81:17 contractor's [4] - 18:7, 18:9, 19:1, 22:8 contractors [3] - 11:15, 26:6, 47:8 contrary [4] - 18:24, 52:2, 52:6, 52:7 conversations [1] - 30:9 copies [1] - 10:15 copy [4] - 9:21, 10:18, 23:16, 71:22 corporation [1] - 25:5 correct [44] - 7:8, 11:1, 13:23, 13:24, 14:6, 14:7, 15:25, 16:1, 16:8, 16:9, 16:14, 17:14, 17:15, 19:6, 19:13, 19:14, 19:20, 19:22, 20:2, 20:12, 22:10, 23:9, 23:11, 28:6, 28:17, 28:21, 28:24, 29:4, 29:5, 30:8, 30:11, 30:12, 30:15, 30:16, 30:20, 30:24, 30:25, 34:15, 34:16, 37:6, 40:11, 42:16, 52:8, 68:15 correctly [1] - 22:9 correspondence [1] - 11:19 council [2] - 50:24 Counsel [3] - 16:16, 46:23, 49:13 counsel [10] - 3:18, 5:1, 7:21, 22:7, 38:22, 40:20, 41:8, 47:23, 63:8 counsels' [1] - 4:5 County [2] - 38:17, 80:2 county [1] - 61:18 couple [3] - 28:11, 70:13, 75:13 court [2] - 30:1, 70:19
---	---	--	---	---

cover [1] - 49:1 coverage [1] - 3:9 covered [1] - 12:8 covers [1] - 48:23 Craig [1] - 60:15 cultivating [1] - 47:17 cultivation [1] - 47:1 curious [1] - 71:18 current [2] - 52:24, 69:24 custom [1] - 15:21 cut [2] - 35:24, 39:21, 45:2 D d(1) [1] - 75:19 d(1) [2] - 42:23, 42:24 d(2) [2] - 42:23, 75:19 dais [1] - 44:5 date [2] - 6:20, 6:21, 31:5, 33:16, 34:7, 34:8, 34:10, 46:10, 60:21 dated [2] - 41:11, 49:2 DCA [2] - 12:16, 25:24 deal [2] - 4:20, 51:10, 78:13 December [2] - 33:24, 34:11, 34:13 decide [2] - 25:2, 25:10, 28:7 decided [1] - 17:9 deciding [2] - 77:2, 79:22 decision [2] - 4:2, 4:13, 57:23, 75:4, 76:3, 80:16 declined [1] - 6:9 decorative [1] - 14:19 decorum [1] - 44:21 deemed [1] - 71:24 defined [2] - 56:22, 66:1 defining [1] - 66:5 definition [2] - 14:9, 14:13, 17:16, 17:17, 17:24, 18:8, 18:10, 18:25, 19:18, 20:2, 21:5, 21:9, 22:21, 42:2, 46:5, 46:7, 49:10, 49:23, 56:23, 57:3, 57:4, 57:7, 57:25, 58:1, 59:3, 59:4, 59:5, 59:10, 59:11, 60:21, 65:14, 66:16 definitions [2] - 13:21, 41:6, 41:9, 48:19, 49:11 demolishing [1] -	18:13 department [4] - 8:7, 25:22, 33:21, 33:23 Department [2] - 10:7, 12:17 described [1] - 8:14 description [2] - 10:21, 14:22, 17:3, 17:5, 17:11, 19:12, 19:23, 19:24 design [2] - 12:7, 15:21, 21:20, 25:2 design/build [1] - 17:8 designated [1] - 80:9 designer [2] - 12:12, 12:15 determination [2] - 5:8, 78:17 determine [1] - 81:24 determining [1] - 58:13 dictionary [1] - 21:21 different [1] - 7:17, 13:15, 42:3, 42:4, 55:20, 56:20, 64:19, 64:20, 69:24, 70:1, 71:18, 73:6, 74:6 DiNardo [100] - 3:25, 4:10, 7:23, 7:24, 10:3, 10:13, 11:7, 11:18, 12:9, 12:13, 12:15, 12:24, 13:4, 13:18, 16:15, 16:18, 18:21, 19:2, 19:5, 19:8, 19:11, 21:6, 22:5, 22:11, 22:14, 22:17, 22:20, 23:2, 23:8, 23:11, 23:19, 23:21, 23:23, 23:25, 24:3, 24:8, 24:14, 24:20, 24:23, 25:7, 25:19, 25:23, 26:3, 26:8, 26:13, 26:16, 26:20, 26:23, 27:1, 27:5, 27:9, 27:14, 27:17, 27:23, 28:1, 28:4, 28:8, 29:21, 31:2, 34:24, 37:4, 37:7, 38:7, 38:15, 38:19, 38:21, 39:2, 40:7, 41:14, 42:13, 42:20, 42:24, 46:22, 49:14, 49:19, 49:23, 49:25, 52:10, 57:10, 59:23, 60:5, 60:7, 60:12, 60:15, 65:6, 65:8, 71:1, 71:4, 71:15, 72:11, 77:12, 77:14, 80:11, 80:18, 80:22, 80:25, 81:2, 81:8, 81:11 diNARDO [1] - 39:5 direct [2] - 17:2, 39:6 directed [1] - 46:6	direction [1] - 13:6 director [1] - 39:14 disagree [2] - 8:17, 8:21, 11:16, 40:14, 40:18, 40:20, 42:14, 43:10, 47:22 discussed [1] - 32:7 discussion [1] - 71:10 dispense [1] - 7:9 dispute [2] - 73:12, 73:14, 75:5 disputed [1] - 46:19 Division [2] - 9:22, 10:7, 10:14, 10:20, 11:19 docket [1] - 3:1 document [1] - 49:20 documentation [2] - 24:11, 40:11, 68:24 documents [2] - 58:3, 68:17, 69:6, 71:21 dog [2] - 47:20, 57:2 domain [1] - 74:14 done [2] - 36:19, 64:19, 73:16, 80:7 doors [1] - 18:19 Dougherty [1] - 4:8 down [2] - 10:25, 26:10, 44:17, 63:19, 76:22, 77:20 driveways [2] - 18:17, 19:5 duly [2] - 5:15, 37:11 DUNLEA [1] - 70:9 E early [1] - 79:20 East [1] - 6:23 Ed [1] - 33:4 Eddie [1] - 7:18 edition [1] - 41:11 EFB [1] - 37:21 Eileen [2] - 37:7, 37:17 either [1] - 5:8 elements [2] - 14:15, 21:10, 21:14 Elise [1] - 4:10 eminent [1] - 74:14 end [2] - 21:18, 29:17, 29:22, 36:22, 43:10 end-all [1] - 36:22 engineer's [1] - 11:8 Englewood [1] - 39:17 entities [2] - 47:7, 47:8 equipment [2] - 9:16, 53:4 escorted [2] - 43:25, 44:19	establish [2] - 61:1, 61:2 established [2] - 53:20, 61:11, 62:10, 62:12, 62:24, 63:11, 63:21, 64:11, 77:24 establishing [2] - 60:25, 63:3 establishment [1] - 7:15 et [2] - 18:20, 21:25 evening [1] - 5:13 eventually [1] - 32:14 evidence [2] - 72:17, 75:25 exact [2] - 31:5, 64:2, 68:7 exactly [1] - 74:24 exceed [1] - 3:9 excuse [2] - 35:12, 48:3 exhibit [2] - 50:2, 58:8, 72:15 exhibits [1] - 46:16 exist [2] - 73:6, 78:25 existed [2] - 35:10, 73:7 existing [2] - 6:12, 6:13, 13:11, 14:24, 15:2, 27:8, 27:19, 32:9, 35:15, 50:11, 61:10, 77:23, 78:9, 78:24, 80:1, 81:21 exists [1] - 13:8 expanding [1] - 15:3, 51:5, 53:5 expanse [2] - 14:15, 20:1, 20:4 expansion [2] - 50:17, 50:18 experience [1] - 72:23 expert [2] - 39:3, 64:7 explain [2] - 4:24, 40:17, 60:5, 60:8 extensive [1] - 21:23 exterior [1] - 36:20 F fabric [1] - 33:2 faced [1] - 74:13 facility [2] - 7:17, 73:2 fact [2] - 13:2, 35:9, 42:1, 42:6, 66:15, 73:11, 73:18, 75:20, 76:24 facts [1] - 80:3 fair [1] - 20:18 falls [2] - 23:4, 58:6 familiar [2] - 36:10, 36:14, 48:2 family [2] - 36:13, 36:14, 36:22	far [2] - 6:5, 6:19, 6:20, 36:20, 63:2, 63:22, 64:3 farmer [2] - 54:22, 54:24 farms [2] - 62:16, 62:17 features [1] - 14:19 feet [2] - 3:12, 3:14, 4:12 felt [1] - 6:5 fence [1] - 33:2 fences [1] - 18:19 fencing [2] - 33:1, 33:4 fertilizers [1] - 47:2 few [2] - 48:19, 48:21 field [1] - 39:3 file [1] - 31:6 filed [2] - 4:12, 4:15, 43:2, 43:4, 80:23 filling [1] - 31:19 filled [1] - 77:22 fine [2] - 43:10, 43:11 fingers [1] - 70:20 finish [1] - 46:21 finished [1] - 70:25 firm [1] - 4:7 firmly [1] - 79:26 first [1] - 4:3, 4:20, 12:2, 26:1, 28:11, 31:3, 31:6, 41:8, 71:11, 71:14, 80:7 fit [2] - 13:22, 14:21 fits [1] - 65:15 five [1] - 70:19 five-minute [1] - 70:19 flower [1] - 72:7 flowers [2] - 47:2, 65:13, 72:22 follows [2] - 5:19, 37:12 former [1] - 39:14 forth [1] - 7:18 forward [2] - 5:13, 76:5, 81:25 fountain [1] - 21:10 fountains [2] - 14:20, 21:15 four [1] - 41:11 FOWLER [1] - 70:11 frame [1] - 45:9 free [1] - 36:24 front [2] - 14:14, 49:2, 49:5 funny [1] - 43:15 future [2] - 55:14, 55:17 G garden [2] - 47:1, 47:3, 73:5, 73:21 gazabos [1] - 21:15
---	---	--	---	---

general [ɹ] - 47:4, 61:7 given [i] - 60:18 glass [i] - 7:10 Golden [ɹ] - 36:13, 36:14, 36:22 Goldens [i] - 36:19 Google [i] - 75:14 graduated [i] - 6:22 grant [i] - 6:14 grass [i] - 32:4 grasses [i] - 22:1 great [i] - 60:10 Gregory [ɹ] - 75:17, 77:17 Gregory's [i] - 75:22 grew [i] - 60:2 ground [ɹ] - 15:22, 22:2 grow [ɹ] - 54:3, 54:6, 54:22, 67:13 growing [i] - 6:7, 47:1, 47:16, 48:6, 53:14, 54:24, 54:25, 56:7 grown [i] - 7:6 guess [ɹ] - 6:2, 12:1, 36:24, 51:9, 55:8 guys [i] - 78:22	himself [ɹ] - 3:23, 9:7, 58:5 historical [ɹ] - 61:3, 61:4 history [ɹ] - 6:4, 62:21 Hoboken [ɹ] - 39:16, 39:19 hold [ɹ] - 11:24, 63:16, 67:20 home [i] - 9:26, 10:25, 11:13, 11:15, 11:22, 12:5, 12:9, 12:20, 12:25, 18:6, 18:8, 18:9, 18:11, 19:1, 19:11, 58:5, 81:15, 81:17 honestly [i] - 76:15 hook [ɹ] - 5:12, 5:13, 7:7, 7:16, 7:25, 13:19, 13:20, 21:3, 28:9, 28:14, 28:16, 35:4, 35:7, 36:13, 36:23, 41:9, 41:24, 49:10, 57:3, 59:8, 73:18, 75:7, 77:17 HOOK [ɹ] - 5:15, 5:24 Hook [ɹ] - 5:24, 46:4 hook's [ɹ] - 40:11, 41:19, 56:23, 57:18, 64:4, 64:6, 74:21, 75:23, 78:25 hoops [i] - 77:18 horn [i] - 42:3 hours [ɹ] - 79:18, 79:22 house [ɹ] - 29:16, 64:10, 58:10 hypothetical [ɹ] - 51:10, 67:16, 67:18 hypotheticals [i] - 53:11	81:17 inclination [i] - 31:17 include [ɹ] - 21:9, 21:11, 45:11, 74:5 included [ɹ] - 19:12, 49:9, 49:10, 57:15 includes [ɹ] - 18:15, 22:25 including [ɹ] - 14:17, 14:19, 23:3 incorporated [ɹ] - 21:14, 24:9, 24:16, 25:20, 26:2, 26:3 indicated [i] - 40:22 industrial [ɹ] - 8:15, 17:8, 68:22 industry [i] - 14:6 inform [i] - 76:14 inspect [i] - 31:24 install [i] - 56:11 installation [ɹ] - 8:15, 18:16 installations [ɹ] - 15:21, 47:19, 66:23 instead [i] - 19:23 intention [i] - 55:9 interested [i] - 80:20 interrupt [ɹ] - 46:23, 77:12 interrupting [i] - 60:13 intimidate [i] - 44:7 irrelevant [i] - 52:17 issuance [ɹ] - 3:4, 4:21, 40:10 issue [ɹ] - 8:9, 17:10, 33:11, 33:23, 41:17, 69:10 issued [i] - 4:16, 4:20, 4:24, 5:7, 13:20, 15:16, 29:4, 33:19, 33:20, 34:9, 34:14, 35:9, 36:2, 39:7, 75:17 issues [i] - 32:18 issuing [ɹ] - 7:25, 19:21 itself [i] - 8:3	K KAMAL [i] - 58:13, 58:21, 58:23, 59:12, 65:4, 66:19, 67:1, 67:16, 79:7, 82:12 Kamal [ɹ] - 79:6, 82:11 keep [ɹ] - 37:23, 65:1 Ken [i] - 5:11 Kenneth [ɹ] - 4:11, 5:24 key [i] - 23:3 kids [i] - 32:4 kind [i] - 56:19, 64:25, 65:3, 76:10, 77:22, 78:15, 78:18 knowing [i] - 79:12 knowledge [ɹ] - 41:20, 45:21, 45:25, 52:15, 59:14, 60:2 known [i] - 35:10 knows [ɹ] - 36:10, 61:6	L land [ɹ] - 3:9, 21:19, 21:25, 22:6, 26:9, 26:10, 42:15, 42:16, 56:18 landscape [ɹ] - 6:25, 12:12, 12:15, 14:13, 17:6, 17:19, 21:15, 21:18, 21:21, 21:24, 22:3, 22:21, 24:22, 46:11, 47:25, 48:3, 49:9, 56:23, 56:25, 57:4, 57:24, 59:15, 79:14 Landscape [i] - 55:9 landscaper [i] - 18:23, 18:24, 19:6, 23:7, 24:1, 24:5, 26:12, 26:25, 54:1, 54:15, 56:10, 58:6 Landscaping [i] - 3:3, 4:9, 10:19, 10:23, 10:24, 30:5 landscaping [i] - 6:8, 6:11, 8:14, 9:2, 9:5, 9:12, 11:4, 12:7, 12:18, 12:20, 12:21, 13:2, 13:11, 13:13, 14:9, 14:22, 14:23, 15:1, 15:21, 18:19, 19:24, 20:19, 21:5, 21:9, 21:13, 22:18, 22:21, 23:1, 23:3, 23:6, 24:19, 25:11, 30:18, 31:4, 35:19, 35:23, 40:14, 42:15, 45:12, 45:23, 47:11, 47:18, 47:24, 48:9, 48:14, 49:2, 50:14,	51:11, 51:12, 51:14, 51:17, 51:19, 52:3, 52:22, 52:23, 53:3, 53:12, 54:21, 56:19, 63:14, 63:15, 64:10, 64:13, 65:20, 65:23, 67:4, 67:8, 67:11, 67:18, 67:21, 67:22, 68:18, 68:21, 71:16, 71:23, 72:5, 73:3, 73:17, 80:6 larger [i] - 47:7 largest [i] - 62:9 last [ɹ] - 24:3, 30:1, 30:4, 64:5 law [ɹ] - 50:25, 74:15 lawn [i] - 56:24 lawns [ɹ] - 14:17, 35:24 least [ɹ] - 28:17, 49:6, 78:4 leave [ɹ] - 7:14, 44:25 legal [i] - 64:15 Lenoci [i] - 4:11 license [i] - 9:22, 10:19, 11:17, 12:8, 12:19, 12:21, 19:1, 33:18, 38:1, 38:7, 38:11 licensed [ɹ] - 37:18, 39:13, 81:7, 81:15, 81:17 licenses [i] - 38:5 limitations [i] - 20:15 limited [i] - 18:16 line [i] - 76:22 lines [i] - 75:14 listed [i] - 78:1 listen [i] - 43:23 listening [i] - 79:3 listing [i] - 56:17 literally [i] - 75:15 live [i] - 43:6, 43:21, 65:8, 65:9, 65:13, 78:22 lived [ɹ] - 65:5, 79:10 lives [i] - 43:14 LLC [i] - 10:19, 10:23 location [ɹ] - 63:24, 64:5 LOCICERO [i] - 3:20 Locicero [i] - 3:23 look [i] - 8:10, 11:8, 40:11, 46:12, 48:4, 49:8, 53:4, 53:17, 57:25, 59:3, 59:6, 59:7, 59:9, 59:10, 65:21, 72:15, 72:20 looked [i] - 13:21, 41:9, 41:10, 46:4, 46:11 looking [ɹ] - 30:10, 34:6
---	--	---	---	--	--

looks [i] - 49:4 loops [i] - 65:2 lost [i] - 29:25	Members [g] - 10:16, 35:7, 43:8, 44:7, 60:16, 76:8 met [g] - 32:8, 35:22 microphone [i] - 63:23 might [i] - 5:9, 10:16, 42:4, 45:16, 47:12, 63:7, 63:11, 63:12, 63:19, 64:13 Milford [i] - 39:15 mind [i] - 49:12 minimum [g] - 3:11, 3:13 minute [i] - 70:19 minutes [g] - 70:13, 70:17 mistaken [i] - 62:8 modernizing [i] - 18:13 moment [i] - 34:5 money [i] - 66:2 Moskowitz [i] - 14:4, 14:8, 17:10, 17:16, 19:19, 21:5, 22:4, 41:10, 49:21, 57:12, 57:18, 57:23, 57:24, 59:6 Moskowitz's [i] - 46:8 most [g] - 39:19, 48:22, 61:13 motion [g] - 73:10, 81:20 motioning [i] - 44:5 move [g] - 31:9, 32:10, 55:4, 65:24, 72:19, 76:5 moved [g] - 31:12, 31:14, 31:17, 32:2, 32:12, 34:18, 61:2, 77:20, 79:11 moving [g] - 18:13, 48:16, 81:25 mujch [g] - 9:15, 73:19 municipal [g] - 17:8, 58:2, 68:17, 69:5, 71:20	64:22, 70:14, 70:16, 71:24, 76:15 neighbor [i] - 78:22 neighborhood [g] - 7:7, 33:6, 79:10, 79:11, 79:12 neighbors [i] - 31:23, 32:1, 32:12, 32:19, 32:24, 36:12, 79:19 New [i] - 9:22, 10:13, 10:21, 22:10, 25:21, 26:4, 37:19, 37:20, 37:22, 38:2, 38:4, 38:6, 38:7, 39:12, 39:13, 62:7, 74:15, 81:15 new [g] - 5:10, 6:10, 74:11 next [g] - 43:11, 62:1 night [i] - 42:11 nobody [g] - 48:19, 62:5, 63:22, 67:10, 75:8 non [i] - 18:14 non-commercial [i] - 18:14 nonconforming [i] - 13:12, 15:24, 25:13, 41:1, 41:5, 52:24, 61:1, 61:10, 63:4, 68:14, 74:4, 77:24 none [i] - 43:7 nonnatural [g] - 21:10, 21:14 noted [g] - 11:22, 21:8 nothing [g] - 8:13, 8:16, 31:1, 34:25, 35:1, 66:24, 70:11, 73:3, 77:7 notice [g] - 5:10, 31:16 noun [i] - 67:15 November [g] - 3:17, 31:13, 34:13, 34:14 number [g] - 3:1, 11:18, 30:13, 38:11, 62:13, 66:12, 75:5, 75:9 Nurseries [g] - 23:25, 24:6 nurseries [i] - 16:7, 41:6, 46:16, 48:3, 48:4, 53:17, 56:21, 62:15, 65:22, 72:1 nursery [i] - 6:8, 6:25, 8:13, 8:16, 13:11, 13:12, 17:12, 17:17, 17:23, 17:24, 18:21, 19:8, 19:15, 19:18, 23:7, 23:8, 23:14, 23:15, 23:18, 23:23, 24:5, 24:12, 24:16, 24:18, 24:21,	25:12, 26:11, 26:13, 26:21, 26:22, 26:25, 35:21, 36:5, 36:12, 41:6, 41:16, 41:22, 41:23, 42:2, 42:5, 42:6, 42:11, 42:16, 45:3, 45:11, 45:18, 45:20, 46:12, 46:13, 46:15, 46:25, 47:9, 47:13, 47:14, 47:15, 47:20, 48:14, 50:9, 50:12, 50:13, 51:13, 51:14, 51:15, 52:13, 52:22, 52:23, 53:2, 53:8, 53:9, 53:14, 54:11, 54:13, 55:12, 55:17, 55:19, 55:24, 56:6, 56:7, 56:13, 56:15, 56:22, 57:25, 58:14, 58:22, 58:24, 59:2, 59:7, 59:11, 59:16, 61:5, 63:9, 63:12, 63:23, 65:12, 66:9, 66:11, 66:17, 68:18, 67:5, 68:16, 68:20, 69:1, 69:8, 71:16, 71:20, 71:21, 71:23, 71:25, 72:9, 72:12, 72:13, 72:17, 72:18, 73:1, 73:11, 75:25, 76:2, 78:3, 78:13, 78:14, 80:4, 81:6 Nursery [g] - 15:6, 15:20, 15:23, 17:22, 36:11, 41:18, 53:20, 80:8, 80:10 nursery/landscape [i] - 7:17 nurturing [i] - 53:15	30:13, 75:9 occupancy [i] - 3:5, 4:17, 36:3 Office [i] - 37:20 officer [g] - 4:16, 4:22, 5:25, 29:1, 76:4 officer's [g] - 3:4, 4:1, 4:13, 75:4, 80:16 often [i] - 21:13 old [i] - 7:13 once [i] - 5:5 one [i] - 7:8, 7:18, 12:3, 20:8, 20:19, 21:21, 25:12, 36:12, 43:23, 47:5, 47:6, 50:4, 56:3, 56:4, 62:9, 62:13, 66:12, 75:23 one's [g] - 21:19, 22:5 online [i] - 48:21 open [g] - 14:16, 76:7 opening [i] - 55:17 operate [g] - 34:12, 79:19 operates [i] - 81:5 operating [g] - 4:18, 31:4, 39:12, 79:24, 81:9 operation [i] - 79:22 operator [i] - 26:11 opinion [i] - 20:9, 28:25, 29:23, 30:23, 57:18, 69:14, 69:15, 69:16, 69:20, 69:21, 79:17, 80:3, 81:10 opportunity [g] - 8:1, 40:10 opposed [g] - 21:19, 67:15 opposite [i] - 64:3 ordinance [i] - 13:7, 24:25, 27:2, 46:6, 46:8, 52:3, 52:6, 56:18, 59:5, 59:19, 61:12, 61:15, 61:24, 63:10, 68:12, 68:13 original [i] - 62:24 ornamental [i] - 14:16 otherwise [g] - 75:24, 79:1 overgrown [i] - 32:4 overlay [i] - 16:11 own [g] - 13:7, 21:19, 23:14, 41:20, 60:11, 71:20, 75:16 owner [i] - 9:9, 23:18, 26:19, 27:2, 45:22, 52:24, 62:24, 66:4, 68:8, 69:11, 69:24, 69:25, 74:10 owners [g] - 7:19, 29:3, 59:14
machine [i] - 7:9 machines [i] - 7:1 Madison [i] - 39:16 main [g] - 3:10, 51:25, 63:12, 64:9, 64:12 maintenance [g] - 8:15, 15:22, 17:7, 35:24 majority [g] - 58:23, 58:25, 67:4 mall [g] - 74:7, 74:9, 74:10 mandate [i] - 51:3 manner [i] - 73:2 MARINIELLO [g] - 4:6, 8:18, 8:20, 11:5, 11:11, 11:24, 12:2, 12:4, 23:20, 28:11, 28:15, 29:9, 29:11, 29:18, 29:25, 31:1, 35:1, 35:4, 38:24, 41:16, 42:18, 42:22, 60:4, 60:9, 60:14, 63:16, 63:22, 64:1, 64:14, 70:12, 70:16, 71:8, 71:11, 72:10, 73:9 Mariniello [g] - 4:7, 41:12, 42:14 mark [g] - 10:3, 16:15, 49:12, 49:17 marked [i] - 10:8, 10:11, 16:21, 16:25, 20:22, 20:25, 49:15, 49:16, 50:2 master [i] - 69:6 material [i] - 14:18, 49:3, 49:4, 53:7, 55:1, 56:12, 65:17 materials [i] - 21:12 matter [g] - 24:23, 24:24, 55:15, 78:16 mean [i] - 8:3, 27:11, 29:11, 55:3, 56:5, 56:24, 58:21, 64:21, 74:1, 77:2, 77:17, 81:5 means [g] - 18:11, 21:18, 47:6, 47:14, 47:15, 50:21, 55:3, 58:22 meet [i] - 81:17 MEMBER [i] - 28:7, 29:8, 29:13, 29:16, 29:20, 43:19, 43:20, 43:21, 44:9, 44:13, 44:16, 44:20, 44:23, 45:1	N N.J.A.C. [i] - 18:22 N.J.S.A. [i] - 3:5 name [i] - 5:21, 37:14, 37:17, 37:21, 41:23, 58:15, 59:17, 66:14, 73:12, 76:2 natural [g] - 14:15, 14:17, 20:1, 20:4, 21:12 nebulous [i] - 56:20 necessarily [i] - 58:15 need [g] - 13:13,	64:22, 70:14, 70:16, 71:24, 76:15 neighbor [i] - 78:22 neighborhood [g] - 7:7, 33:6, 79:10, 79:11, 79:12 neighbors [i] - 31:23, 32:1, 32:12, 32:19, 32:24, 36:12, 79:19 New [i] - 9:22, 10:13, 10:21, 22:10, 25:21, 26:4, 37:19, 37:20, 37:22, 38:2, 38:4, 38:6, 38:7, 39:12, 39:13, 62:7, 74:15, 81:15 new [g] - 5:10, 6:10, 74:11 next [g] - 43:11, 62:1 night [i] - 42:11 nobody [g] - 48:19, 62:5, 63:22, 67:10, 75:8 non [i] - 18:14 non-commercial [i] - 18:14 nonconforming [i] - 13:12, 15:24, 25:13, 41:1, 41:5, 52:24, 61:1, 61:10, 63:4, 68:14, 74:4, 77:24 none [i] - 43:7 nonnatural [g] - 21:10, 21:14 noted [g] - 11:22, 21:8 nothing [g] - 8:13, 8:16, 31:1, 34:25, 35:1, 66:24, 70:11, 73:3, 77:7 notice [g] - 5:10, 31:16 noun [i] - 67:15 November [g] - 3:17, 31:13, 34:13, 34:14 number [g] - 3:1, 11:18, 30:13, 38:11, 62:13, 66:12, 75:5, 75:9 Nurseries [g] - 23:25, 24:6 nurseries [i] - 16:7, 41:6, 46:16, 48:3, 48:4, 53:17, 56:21, 62:15, 65:22, 72:1 nursery [i] - 6:8, 6:25, 8:13, 8:16, 13:11, 13:12, 17:12, 17:17, 17:23, 17:24, 18:21, 19:8, 19:15, 19:18, 23:7, 23:8, 23:14, 23:15, 23:18, 23:23, 24:5, 24:12, 24:16, 24:18, 24:21,	25:12, 26:11, 26:13, 26:21, 26:22, 26:25, 35:21, 36:5, 36:12, 41:6, 41:16, 41:22, 41:23, 42:2, 42:5, 42:6, 42:11, 42:16, 45:3, 45:11, 45:18, 45:20, 46:12, 46:13, 46:15, 46:25, 47:9, 47:13, 47:14, 47:15, 47:20, 48:14, 50:9, 50:12, 50:13, 51:13, 51:14, 51:15, 52:13, 52:22, 52:23, 53:2, 53:8, 53:9, 53:14, 54:11, 54:13, 55:12, 55:17, 55:19, 55:24, 56:6, 56:7, 56:13, 56:15, 56:22, 57:25, 58:14, 58:22, 58:24, 59:2, 59:7, 59:11, 59:16, 61:5, 63:9, 63:12, 63:23, 65:12, 66:9, 66:11, 66:17, 68:18, 67:5, 68:16, 68:20, 69:1, 69:8, 71:16, 71:20, 71:21, 71:23, 71:25, 72:9, 72:12, 72:13, 72:17, 72:18, 73:1, 73:11, 75:25, 76:2, 78:3, 78:13, 78:14, 80:4, 81:6 Nursery [g] - 15:6, 15:20, 15:23, 17:22, 36:11, 41:18, 53:20, 80:8, 80:10 nursery/landscape [i] - 7:17 nurturing [i] - 53:15	30:13, 75:9 occupancy [i] - 3:5, 4:17, 36:3 Office [i] - 37:20 officer [g] - 4:16, 4:22, 5:25, 29:1, 76:4 officer's [g] - 3:4, 4:1, 4:13, 75:4, 80:16 often [i] - 21:13 old [i] - 7:13 once [i] - 5:5 one [i] - 7:8, 7:18, 12:3, 20:8, 20:19, 21:21, 25:12, 36:12, 43:23, 47:5, 47:6, 50:4, 56:3, 56:4, 62:9, 62:13, 66:12, 75:23 one's [g] - 21:19, 22:5 online [i] - 48:21 open [g] - 14:16, 76:7 opening [i] - 55:17 operate [g] - 34:12, 79:19 operates [i] - 81:5 operating [g] - 4:18, 31:4, 39:12, 79:24, 81:9 operation [i] - 79:22 operator [i] - 26:11 opinion [i] - 20:9, 28:25, 29:23, 30:23, 57:18, 69:14, 69:15, 69:16, 69:20, 69:21, 79:17, 80:3, 81:10 opportunity [g] - 8:1, 40:10 opposed [g] - 21:19, 67:15 opposite [i] - 64:3 ordinance [i] - 13:7, 24:25, 27:2, 46:6, 46:8, 52:3, 52:6, 56:18, 59:5, 59:19, 61:12, 61:15, 61:24, 63:10, 68:12, 68:13 original [i] - 62:24 ornamental [i] - 14:16 otherwise [g] - 75:24, 79:1 overgrown [i] - 32:4 overlay [i] - 16:11 own [g] - 13:7, 21:19, 23:14, 41:20, 60:11, 71:20, 75:16 owner [i] - 9:9, 23:18, 26:19, 27:2, 45:22, 52:24, 62:24, 66:4, 68:8, 69:11, 69:24, 69:25, 74:10 owners [g] - 7:19, 29:3, 59:14

P				6 R
P.S [1] - 47:17 package [1] - 10:17 page [3] - 10:25, 17:3, 49:19 pages [2] - 49:22, 49:24 painting [1] - 18:12 Paltz [1] - 37:20 Paramus [7] - 6:22, 14:2, 31:4, 36:22, 62:16, 63:10, 75:11 pardon [1] - 72:12 part [3] - 17:22, 22:17, 25:9, 46:13, 47:12, 54:21, 54:25, 74:8 particular [4] - 30:14, 30:19, 40:15, 46:9 party [1] - 80:20 patently [1] - 42:9 patios [1] - 18:18 patterned [1] - 14:20 pending [1] - 5:8 people [9] - 25:9, 29:11, 35:24, 42:10, 43:13, 56:21, 65:8, 72:8, 75:5 Pequannock [2] - 39:16, 39:20 per [1] - 65:14 percent [3] - 3:9, 3:10, 3:11 percentage [1] - 55:6 performing [1] - 12:20 permit [3] - 16:21, 17:2, 20:16 permits [2] - 16:12, 59:22 permitted [13] - 3:8, 3:16, 13:7, 17:11, 17:13, 20:19, 40:15, 42:15, 42:16, 42:19, 45:19, 48:13, 56:17 person [4] - 11:14, 73:22, 74:3, 74:19 personal [2] - 59:14, 60:1 personally [1] - 34:18 phone [5] - 31:22, 32:1, 32:5, 32:6, 32:11 photographs [4] - 48:23, 49:6, 49:20, 75:13 pick [1] - 68:25 pictorial [2] - 21:18, 21:20 picture [2] - 49:1, 58:18 pictures [6] - 48:20, 48:21, 48:24, 48:25, 58:17, 72:14, 72:15, 73:14	picturesque [1] - 21:21 place [5] - 24:21, 56:12, 74:22, 78:17, 78:18 places [2] - 7:8, 42:4 plan [22] - 3:7, 13:8, 16:3, 16:7, 16:11, 17:23, 20:11, 20:17, 20:20, 20:25, 23:16, 25:14, 27:10, 27:15, 42:25, 50:22, 53:4, 58:16, 71:22, 72:2, 74:5, 74:8 planner [6] - 11:9, 28:10, 37:5, 37:18, 39:4, 39:13, 39:24, 40:5, 70:13, 70:25, 72:3, 75:9, 75:17, 75:18 planning [2] - 38:16, 39:14 Planning [1] - 50:2 plans [3] - 55:14, 55:17, 69:6 plant [7] - 32:25, 54:23, 55:2, 55:5, 58:10, 58:11, 67:14 planted [3] - 53:24, 54:2, 54:11 planting [6] - 7:18, 15:1, 22:1, 36:18, 49:3, 54:15 plants [26] - 14:17, 21:12, 33:8, 41:23, 42:8, 47:2, 47:16, 48:5, 48:6, 53:15, 54:22, 54:24, 54:25, 56:8, 56:12, 58:18, 58:20, 64:23, 65:13, 66:21, 66:22, 67:23, 72:16, 72:21, 73:13, 78:8 playground [1] - 7:12 playing [2] - 32:5, 78:15 plowing [1] - 9:18 PO [1] - 11:15 point [10] - 11:5, 25:16, 27:20, 47:9, 50:8, 64:15, 65:1, 70:10, 76:15, 78:10 police [3] - 43:25, 44:15, 44:18 pool [2] - 73:24 pools [2] - 14:20, 18:18 porches [1] - 18:19 portion [1] - 21:22 position [3] - 5:22, 75:22, 75:23 possibly [3] - 31:15, 45:19, 74:3 Post [1] - 37:20 practiced [2] - 40:3,	40:4 practicing [2] - 35:18, 37:22 pre [1] - 27:8 pre-existing [1] - 27:8 predates [1] - 63:6 preexisted [1] - 74:18 preexisting [13] - 15:24, 25:13, 27:6, 41:1, 41:5, 50:10, 51:2, 51:3, 60:20, 60:22, 60:25, 63:3, 68:14 present [4] - 5:4, 24:10, 49:1, 79:4 presented [1] - 47:23 previous [2] - 15:4, 50:18 previously [1] - 76:14 primary [7] - 58:14, 71:16, 71:20, 72:4, 72:25, 73:8, 76:1 Princeton [1] - 39:15 principal [26] - 40:24, 47:10, 47:11, 47:13, 47:21, 48:10, 48:12, 48:17, 51:24, 51:25, 52:2, 54:20, 55:3, 58:15, 59:15, 64:9, 65:25, 66:1, 66:4, 66:8, 66:17, 67:25, 68:7, 68:8, 72:4 principally [1] - 40:2 problem [1] - 43:24 process [2] - 78:17, 79:2 produce [2] - 9:21, 24:14 product [5] - 50:9, 55:4, 55:5, 59:3, 65:24 products [10] - 47:4, 48:8, 48:15, 48:16, 48:17, 49:7, 53:16, 66:23, 73:25 professional [3] - 37:18, 39:4, 39:23, 40:5, 66:7, 77:1 professionals [2] - 70:7, 77:16 proffering [1] - 51:13 proof [2] - 24:14, 64:25 proofs [1] - 65:3 proper [1] - 4:21 properly [1] - 5:7 property [7] - 6:4, 6:8, 7:2, 8:10, 8:24, 9:1, 13:9, 13:22, 14:24, 15:8, 15:11, 16:4, 16:12, 16:13, 17:21, 17:22, 18:14, 20:11, 20:16, 29:2, 31:10, 31:13, 31:14,	31:17, 31:24, 32:8, 32:10, 32:12, 32:13, 32:16, 32:25, 34:13, 34:22, 36:2, 36:11, 36:18, 36:20, 36:21, 40:24, 41:5, 47:10, 47:14, 48:12, 52:7, 52:15, 52:21, 53:3, 53:6, 54:4, 54:7, 54:10, 55:10, 55:14, 56:25, 58:16, 61:10, 62:15, 63:4, 64:18, 65:10, 65:16, 65:19, 66:9, 66:18, 68:3, 68:18, 69:10, 72:6, 72:21, 73:1, 73:4, 74:12, 74:19, 75:24, 78:12, 80:8, 80:9 proposal [1] - 3:6 propose [1] - 51:23 proposed [3] - 3:10, 3:12, 3:14, 3:16, 51:16, 65:17 proposing [2] - 51:22, 52:1 prove [3] - 63:8, 64:11, 73:14 provide [9] - 12:21, 13:12, 22:22, 24:18, 24:21, 48:1, 54:18, 54:21, 68:6 provided [2] - 5:10, 65:20 provision [1] - 58:7 public [3] - 47:5, 80:12, 80:15 pulled [1] - 18:7 purely [1] - 66:13 pursuant [1] - 3:5 put [9] - 8:24, 8:25, 9:11, 9:14, 32:23, 33:1, 71:15, 73:5, 74:11 putting [1] - 43:7	R-100 [1] - 3:13 raise [2] - 5:16, 37:8 random [2] - 59:4, 68:25 read [13] - 14:12, 20:21, 21:3, 21:4, 30:1, 30:3, 46:14, 55:11, 57:3, 57:11, 69:6, 69:7 reads [1] - 21:8 real [2] - 25:17, 80:3 reality [2] - 51:11, 53:10, 72:25 really [6] - 39:11, 44:16, 45:16, 48:20, 73:10, 78:25 rear [1] - 3:11 reason [2] - 17:25, 18:3 receive [1] - 31:22 received [1] - 32:1 recently [1] - 39:19 recess [2] - 70:19, 70:22 recognized [2] - 68:19, 68:20 recollection [1] - 31:14 record [13] - 3:22, 4:5, 5:23, 18:6, 18:23, 21:4, 37:16, 42:14, 43:9, 43:17, 46:2, 46:24, 81:2 recreation [1] - 7:11 recuse [1] - 3:21 recused [1] - 3:23 Reda [2] - 77:15, 82:13 REDA [2] - 12:17, 13:10, 19:10, 24:18, 24:21, 25:1, 25:16, 27:4, 27:6, 27:11, 27:20, 27:25, 50:4, 50:13, 50:20, 51:1, 51:6, 51:21, 51:25, 55:6, 60:18, 61:7, 61:9, 61:17, 61:20, 61:23, 62:3, 62:7, 62:18, 62:21, 62:23, 63:2, 63:7, 63:19, 63:25, 64:6, 64:22, 64:25, 65:7, 77:16, 79:18, 82:14 redevelopment [21] - 13:8, 16:3, 16:7, 16:11, 17:23, 20:11, 20:17, 20:20, 23:16, 25:14, 27:10, 27:15, 42:25, 50:22, 50:25, 56:16, 71:22, 71:25, 72:2, 74:4, 74:8 Redevelopment [1] - 20:25

redevelopments [1] - 69:7 referred [3] - 21:13, 21:16, 21:21 regard [1] - 17:3 regarding [2] - 39:22, 58:9 register [3] - 12:16, 18:25, 19:7, 19:9, 19:15, 22:9 registered [17] - 9:25, 12:25, 22:12, 22:24, 23:13, 23:18, 24:5, 24:7, 24:11, 24:12, 24:15, 25:18, 25:24, 26:7, 58:4, 79:14, 81:14 registration [5] - 10:8, 10:14, 11:8, 11:10, 11:17, 18:7, 18:9, 22:9, 26:1 regulations [1] - 18:10 related [2] - 73:17, 75:17 relevant [2] - 52:18, 52:20 rely [1] - 64:3 relying [1] - 76:13 remember [4] - 6:7, 6:20, 7:2, 36:12 remind [1] - 75:16 reminder [1] - 29:14 remodeling [1] - 18:11 renovating [1] - 18:12 repair [1] - 18:17 repairing [1] - 18:12 replacement [1] - 18:17 report [4] - 11:8, 11:20, 11:21, 75:17 reporter [3] - 30:1, 30:3, 70:19 reporting [1] - 31:23 represented [4] - 18:24, 39:15, 39:18, 40:1 require [2] - 50:17, 50:18 required [5] - 3:8, 3:10, 3:12, 3:14, 3:16, 11:21 resident [1] - 75:12 residential [4] - 8:16, 17:7, 18:14, 35:25 residents [4] - 43:5, 43:20, 44:2, 78:16 resolve [1] - 32:18 respect [1] - 72:24 respectfully [2] - 43:8, 81:8 respecting [1] - 29:12	response [1] - 59:24 rest [1] - 76:15 restore [1] - 50:13 restoring [4] - 18:13, 51:1, 51:2, 51:7 result [3] - 5:8, 32:21, 40:13 results [1] - 67:12 retail [25] - 15:7, 15:10, 15:18, 33:8, 41:23, 42:7, 46:17, 46:18, 46:25, 47:5, 47:15, 48:8, 49:11, 50:16, 56:2, 58:19, 58:20, 59:1, 65:16, 65:18, 66:22, 68:2, 73:22, 74:9, 74:11 review [5] - 3:7, 8:1, 8:8, 8:10, 8:23 reviewed [1] - 8:21 rezone [1] - 80:10 RIGHT1 [2] - 82:15, 82:19 rights [1] - 43:18 road [1] - 63:20 Road [1] - 3:3 rock [1] - 14:18 room [3] - 43:5, 43:13, 68:6 route [1] - 64:8 run [2] - 9:15, 80:6 rural [1] - 21:22	77:17 sees [1] - 74:23 sell [11] - 47:7, 47:17, 55:1, 55:24, 56:3, 67:22, 67:23, 72:9, 72:12, 73:19, 73:22 selling [14] - 48:5, 48:6, 48:16, 49:7, 50:9, 53:15, 55:4, 58:18, 58:20, 59:2, 65:10, 65:11, 65:17, 78:7 sells [1] - 59:2 sense [1] - 20:1 separately [1] - 82:4 service [1] - 59:1 services [4] - 34:21, 36:17, 48:1, 54:21 setback [1] - 3:12 seven [3] - 49:22, 49:24, 49:25 several [1] - 64:5 shall [1] - 4:6 share [1] - 46:14 Sharon [1] - 4:11 sheds [1] - 53:9 shop [2] - 74:10, 74:11 short [2] - 45:7, 70:22 show [3] - 3:22, 10:10, 16:25, 20:22, 22:22, 24:11, 64:16, 68:25 showing [1] - 55:18 shows [2] - 49:1, 49:3 shrubs [5] - 22:1, 33:8, 47:2, 65:13, 78:8 side [5] - 3:13, 23:12, 33:4, 67:23 sidewalks [1] - 18:18 sign [2] - 61:5, 72:17 signed [1] - 58:2 significantly [2] - 70:1, 70:3 similar [5] - 29:2, 47:3, 64:18, 65:23, 75:1 simply [1] - 71:15 single [1] - 21:23 sit [1] - 44:17 site [25] - 3:7, 4:19, 15:14, 15:19, 17:23, 23:14, 23:15, 26:11, 28:20, 28:22, 30:6, 30:14, 30:22, 30:23, 40:15, 41:21, 42:8, 46:18, 48:7, 48:8, 49:20, 53:4, 64:25, 71:21, 74:1 site's [1] - 49:8 sites [2] - 30:10, 30:15 sitting [1] - 29:19	situation [1] - 55:20 six [1] - 49:19 slightly [1] - 42:4 snow [1] - 9:18 sodas [1] - 7:10 softscape [2] - 21:13, 73:24 sold [3] - 41:23, 42:7, 53:20, 54:9, 66:21, 66:22, 73:13, 76:13 solely [1] - 59:17 solve [1] - 43:24 someone [2] - 12:10, 80:19 sometimes [2] - 61:14 somewhat [1] - 79:13 somewhere [1] - 55:2 sorry [5] - 12:4, 38:13, 43:2, 43:14, 52:12 sounds [1] - 60:9 space [1] - 14:16 specific [1] - 12:19 specifically [1] - 30:21 spell [1] - 37:15 spot [1] - 74:6 Spring [1] - 3:3 standing [3] - 38:8, 44:4, 80:24 stands [1] - 44:18 start [4] - 50:6, 63:12, 64:9, 73:9 started [2] - 7:4, 26:6 starts [1] - 50:9 State [3] - 9:21, 10:13, 10:20, 22:10, 26:4, 37:19, 37:22, 39:12, 81:15 state [3] - 5:21, 13:17, 24:9, 24:13, 24:15, 24:16, 37:14, 62:16 statement [1] - 60:21 statute [2] - 18:9, 81:16 step [1] - 43:12 still [3] - 27:7, 41:1, 45:18, 45:19, 51:3, 54:23, 54:24, 61:6 stone [1] - 73:19 stones [1] - 9:15 stop [3] - 26:14, 74:18, 81:6 stopped [1] - 45:16 storage [3] - 3:6, 47:1, 51:18, 53:3, 53:6, 53:7, 53:13, 73:2 store [3] - 33:9, 50:16, 58:19, 58:20, 66:22, 68:2 stored [1] - 74:1 story [1] - 23:13 street [2] - 43:22,	56:23 streetscaping [1] - 73:18 strenuously [1] - 70:4 strictly [1] - 8:14 strip [3] - 74:7, 74:9, 74:10 structures [1] - 3:15 stuff [3] - 48:23, 77:23, 78:9 submitted [1] - 9:23 substance [1] - 40:9 sufficient [1] - 72:19 sufficiently [3] - 29:2, 64:18, 75:1 suggest [3] - 46:4, 46:17, 62:14 suggesting [3] - 48:13, 51:16, 59:8 SULLIVAN [3] - 3:1, 3:22, 4:3, 5:12, 6:2, 6:17, 7:6, 11:25, 12:3, 12:5, 12:11, 12:14, 13:3, 21:3, 21:7, 22:7, 22:13, 22:15, 22:19, 22:24, 23:4, 25:17, 25:21, 25:25, 26:5, 28:2, 28:5, 28:13, 29:10, 29:14, 29:17, 29:22, 35:6, 36:9, 36:16, 37:5, 38:1, 38:4, 38:10, 38:13, 38:20, 38:22, 38:25, 41:12, 43:23, 44:6, 44:11, 44:14, 44:17, 44:21, 44:24, 53:19, 53:23, 54:1, 54:5, 54:8, 54:14, 54:17, 54:19, 55:8, 55:13, 57:3, 57:6, 57:9, 57:11, 57:14, 57:17, 57:22, 58:4, 58:12, 60:16, 61:25, 62:4, 65:3, 70:6, 70:15, 70:18, 70:24, 71:2, 71:5, 76:7, 76:18, 76:22, 77:4, 77:6, 77:9, 77:13, 77:15, 77:19, 79:6, 79:9, 79:21, 81:4, 81:10, 81:13, 81:23, 82:1, 82:18, 82:23 Sullivan [3] - 5:15, 24:3, 82:17 summation [2] - 71:7, 71:9 summer [2] - 7:12, 78:21 Summit [1] - 39:18 suppose [1] - 71:8 supposed [1] - 48:11 surmising [1] - 68:11 surprised [2] - 48:21, 62:11
--	---	---	---	--

surrounds [1] - 21:19 swimming [1] - 18:18 sworn [2] - 5:19, 37:12 synonymous [3] - 20:7, 52:12, 52:13 T tail [2] - 47:19, 57:2 tasks [1] - 19:3 ten [1] - 41:24 term [1] - 41:18 terms [1] - 68:19 terraces [1] - 18:18 testify [3] - 4:23, 5:19, 37:12 testimonies [1] - 79:3 testimony [25] - 22:22, 41:20, 42:9, 45:8, 45:15, 46:2, 48:21, 48:23, 58:9, 60:18, 63:3, 64:4, 64:6, 65:4, 68:5, 68:6, 70:8, 73:16, 74:21, 76:11, 76:13, 76:24, 76:25, 77:1, 79:9, 80:2 THE [102] - 6:6, 35:3, 35:12, 35:16, 35:20, 35:22, 38:6, 38:15, 37:1, 37:17, 38:3, 38:5, 38:9, 38:12, 38:14, 38:18, 39:25, 40:8, 45:5, 45:9, 45:13, 45:24, 46:3, 46:20, 46:25, 50:12, 50:15, 50:21, 51:4, 51:8, 51:24, 52:1, 52:8, 52:11, 52:17, 52:19, 53:1, 53:22, 53:25, 54:3, 54:6, 54:12, 54:16, 54:18, 54:20, 55:7, 55:11, 55:15, 55:25, 56:5, 56:11, 57:5, 57:8, 57:13, 57:15, 57:19, 57:24, 58:8, 58:17, 58:22, 58:25, 59:18, 59:22, 60:1, 60:24, 61:8, 61:13, 61:19, 61:21, 62:6, 62:11, 62:19, 62:22, 63:1, 63:6, 63:15, 63:18, 64:23, 65:14, 66:5, 66:8, 66:11, 66:15, 66:21, 67:2, 67:6, 67:8, 67:11, 67:17, 67:24, 68:2, 68:9, 68:12, 68:16, 69:3, 69:5, 69:13, 69:15, 69:17, 69:22, 70:1, 70:5 themselves [1] - 62:22	therefore [2] - 78:3, 79:1 thereto [1] - 18:15 thoughts [2] - 76:8, 76:9 thousand [1] - 42:3 threats [1] - 44:4 tight [1] - 57:1 title [1] - 41:19 today [2] - 28:23, 29:2 tonight [2] - 76:11, 76:13 took [2] - 6:10, 9:4 tools [1] - 47:3 top [2] - 25:13, 42:25 topography [1] - 19:25 torn [1] - 76:10 town [22] - 6:7, 11:9, 24:8, 24:12, 28:16, 28:18, 30:15, 34:19, 42:10, 48:4, 53:17, 61:11, 61:17, 61:19, 61:20, 61:22, 62:21, 64:12, 65:22, 67:21, 72:1, 72:24 Township [1] - 39:15 trailers [3] - 3:15, 3:16, 7:1 transpired [1] - 4:24 treatments [1] - 21:9 tree [3] - 53:21, 53:24, 54:2, 54:9, 54:15, 56:4, 72:8 Treeland [18] - 15:6, 15:20, 15:23, 17:22, 23:25, 24:6, 32:2, 36:11, 36:17, 36:21, 41:18, 53:20, 80:8, 80:9, 80:10 trees [34] - 14:17, 15:1, 21:11, 22:1, 33:1, 33:8, 47:2, 55:23, 65:13, 67:12, 67:22, 72:11, 72:13, 78:7 trellises [2] - 72:16, 72:20 true [1] - 73:19 truncated [3] - 69:18, 69:22 truthfully [1] - 64:15 try [1] - 32:18 trying [3] - 12:22, 44:6, 60:12 turned [1] - 62:20 tweaks [1] - 74:25 two [8] - 13:15, 40:4, 49:11, 62:13, 70:16, 72:15 type [8] - 13:17, 14:23, 30:23, 79:25, 80:5, 80:6 types [1] - 7:17	typically [1] - 60:25 U U.S. [1] - 62:9 ultimately [1] - 62:19 uncontroverted [1] - 74:21 under [21] - 12:5, 12:8, 13:7, 13:8, 18:8, 18:10, 18:22, 18:25, 19:1, 20:17, 20:20, 22:3, 46:11, 46:12, 50:24, 58:6, 72:2, 74:15, 81:14, 81:16 understandable [1] - 75:11 understood [1] - 57:19 unfortunately [1] - 47:22 Unique [4] - 3:2, 10:19, 10:23, 10:24 unit [1] - 74:9 up [23] - 3:19, 6:7, 7:5, 13:21, 18:8, 28:18, 32:3, 32:24, 33:3, 35:13, 43:7, 44:4, 44:18, 46:4, 48:11, 55:18, 60:2, 60:5, 68:16, 68:19, 76:7, 77:11, 80:19 uphold [3] - 76:3, 81:22, 81:23 upset [1] - 29:12 uses [7] - 3:8, 13:15, 16:12, 20:20, 47:10, 74:22, 75:6 V V's [3] - 3:2, 4:8, 10:19, 10:23, 10:24, 30:5, 39:8, 55:9, 58:5 vacant [2] - 41:2, 49:8 valid [1] - 50:7 validity [1] - 50:7 Valley [1] - 3:3 vavvakidis [1] - 30:7 variance [7] - 50:6, 50:18, 50:19, 50:23, 74:17, 75:19 variances [4] - 3:6, 51:7, 77:8, 81:25 verb [1] - 67:14 view [1] - 32:24 viewpoint [1] - 21:24 visiting [1] - 32:22 volume [1] - 66:6 W wagging [2] - 47:19, 57:2	wait [1] - 12:3 walkways [2] - 14:20, 36:19 wants [4] - 8:24, 51:4, 55:10, 80:19 waste [1] - 42:12 wasting [3] - 42:10, 43:3, 43:12 West [1] - 39:15 whatever [1] - 44:2 whole [5] - 25:16, 27:20, 41:17, 42:11, 45:8 wholesale [4] - 46:16, 47:5, 47:15 windows [1] - 18:19 winter [2] - 78:18, 78:20 wintertime [1] - 74:2 wishes [1] - 5:2 WITNESS [102] - 6:6, 35:3, 35:12, 35:16, 35:20, 35:22, 36:6, 38:15, 37:1, 37:17, 38:3, 38:5, 38:9, 38:12, 38:14, 38:18, 39:25, 40:6, 45:5, 45:9, 45:13, 45:24, 46:3, 48:20, 46:25, 50:12, 50:15, 50:21, 51:4, 51:8, 51:24, 52:1, 52:8, 52:11, 52:17, 52:19, 53:1, 53:22, 53:25, 54:3, 54:6, 54:12, 54:16, 54:18, 54:20, 55:7, 55:11, 55:15, 55:25, 56:5, 56:11, 57:5, 57:8, 57:13, 57:15, 57:19, 57:24, 58:8, 58:17, 58:22, 58:25, 59:18, 59:22, 60:1, 60:24, 61:8, 61:13, 61:19, 61:21, 62:6, 62:11, 62:19, 62:22, 63:1, 63:6, 63:15, 63:18, 64:23, 65:14, 66:5, 66:8, 66:11, 66:15, 66:21, 67:2, 67:6, 67:8, 67:11, 67:17, 67:24, 68:2, 68:9, 68:12, 68:16, 69:3, 69:5, 69:13, 69:15, 69:17, 69:22, 70:1, 70:5 witness [12] - 5:3, 37:3, 37:4, 39:1, 60:6, 60:8, 60:17, 63:13, 64:7, 65:5, 70:14, 80:19 witnesses [3] - 71:3, 71:4, 80:13 wood [1] - 14:18 word [1] - 9:4, 17:12, 41:18, 68:16, 69:7,	8: 73:11, 76:2 works [1] - 4:15 Y yard [4] - 3:11, 3:13, 51:16, 73:5 year [3] - 46:10, 60:22, 68:25 years [12] - 6:9, 7:11, 7:13, 7:14, 28:20, 40:4, 63:10, 64:5, 75:6, 76:12, 79:12 York [4] - 37:20, 38:4, 38:6, 62:7 YOUSIFY [3] - 35:8, 35:14, 35:17, 35:21, 36:4, 36:7, 77:21, 81:5, 82:8 Yousefy [2] - 77:20, 82:7 Z zone [4] - 3:13, 61:16, 68:22, 68:23 zoned [2] - 62:5, 62:7 Zoning [1] - 14:2 zoning [35] - 3:4, 4:1, 4:13, 4:16, 4:22, 5:25, 25:8, 28:25, 29:1, 38:16, 39:18, 39:19, 39:20, 40:2, 40:6, 46:7, 50:22, 52:2, 59:5, 59:18, 61:11, 61:15, 61:23, 62:3, 62:12, 62:14, 63:10, 63:21, 64:11, 68:12, 68:13, 69:1, 74:18, 75:4, 76:4
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EXHIBIT H

**BOARD OF ADJUSTMENT – BOROUGH OF PARAMUS
PUBLIC HEARINGS
JANUARY 23RD, 2025
7:30 p.m. – Council Chambers**

APPLICATIONS WILL BE CALLED AS DETERMINED BY THE CHAIRMAN

PUBLIC HEARINGS: RESIDENTIAL

Docket No. 7239
Block 5407 Lot 5

Suh
424 Yuhas Drive

Proposal: Front foyer

Sec. 429-47.F.(1) Front yard setback shall be 35 ft., Proposed enclosed entry foyer to be at 32 ft.

ZONING MAP INTERPRETATION FOR BLOCK 3401, LOT 1

PUBLIC HEARINGS: Commercial

Docket No. 7233
Block: 2701 Lot: 12

Billy V's Unique Landscaping
148 Spring Valley Road

*** APPEAL OF ZONING OFFICER'S ISSUANCE OF A CERTIFICATE OF OCCUPANCY PURSUANT TO N.J.S.A. 40:55D-72**
Proposal: Use & Bulk Variances, Use of Storage Containers

Sec. 429-8	Site Plan Review Required
Sec. 429-22	Permitted Accessory Uses – Not to exceed 60% of the land coverage of main building – Proposed 77%, Required 60%.
Sec. 429-29 (B)	Minimum Rear Yard Setback – Proposed 5ft, Required 10ft.
Sec. 429-47 G. (2)	Minimum Side Yard r-100 Zone – Proposed 5ft, Required 12 ft
Sec. 429-106 (D)	Accessory Structures and Trailers – Proposed: Trailers, required: Not Permitted

CONTINUED FROM NOVEMBER 14TH 2024

NEW BUSINESS:

MINUTES:

DECEMBER 12TH 2024

ADJOURNMENT

Civil Case Information Statement

Case Details: BERGEN | Civil Part Docket# L-001640-25

Case Caption: LENOCI KENNETH VS PARAMUS ZONING

BD OF: ADJUST

Case Initiation Date: 03/07/2025

Attorney Name: ELISE DI NARDO

Firm Name: ELISE DINARDO ATTORNEY AT LAW

Address: 1814 KENNEDY BLVD

UNION CITY NJ 07087

Phone: 2019639500

Name of Party: PLAINTIFF : Lenoci, Kenneth

Name of Defendant's Primary Insurance Company

(if known): Unknown

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS

Document Type: Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: Kenneth Lenoci? NO

Are sexual abuse claims alleged by: Sharon Lenoci? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO Title 59? NO Consumer Fraud? NO Medical Debt Claim? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

03/07/2025

Dated

/s/ ELISE DI NARDO

Signed

