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CITY OF KINGSTON
ZONING BOARD OF APPEALS

Public Hearing
Re:

32 Abeel Street
50 Rondout Landing
59 Broadway
3 Fairview Avenue Extension
385 Boulevard
35 Lucas Avenue

September 20, 2016
6:30 p.m.
Kingston City Hall

ZONING BOARD OF APPEALS MEMBERS:

JAMES RODDEN, Chairman

ANTHONY ARGULEWICZ
ANDREW CHAMP-DORAN
BRIAN CAFFERTY
JOSEPH FITZGERALD
REV. DONALD MAPES (Not Present)

JULIE SMITH, Clerk
LARRY WOLINSKY, Special Counsel
DANIEL GARTEINSTEIN, Assistant Corp. Counsel
JOSEPH SAFFORD, zoning enforcement officer

REPORTED BY: LORA J. CURATOLO, CSR

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CHAIRMAN RODDEN: May I have your attention, please. Everyone take their seat. Once again, thank you for your patience. This meeting will now come to order.

This meeting of the City of Kingston Zoning Board of Appeals will now come to order. It is 6:30 p.m. My name is Jim Rodden, I'll be chairing this proceeding. Let me take a moment to explain how this board functions.

The members of this board have been appointed to serve as citizens of the City of Kingston. We perform this service to the best of our abilities on a voluntary, unpaid basis.

We ask that as each admission is announced, the applicant and a representative will be seated at the desk, in this case the microphone right at the stand and directly in front of us. Those speaking on behalf of the request will be required to state their name, address and affiliation to the property under discussion. We will require that all applicants and representatives remain seated throughout their portion of the proceeding.

While applicants are welcome to have

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legal counsel, this is not a court of law or public hearing. We require that all representatives of the property abide by the guidelines I have now provided.

After the board has heard the applicant's statements, the public will have an opportunity to speak on behalf or in opposition to the proposal. Members of the public should line up at the podium right here in the front at the appropriate time and speak into the microphone, give their first name and address.

We ask that you keep your comments brief and to the point, respecting the time required to hear all applications. This is an opportunity to make a statement of opinion, not to engage in a debate. Any questions should be addressed and directed to the chair.

We require that there be no talking in the audience, please step out of the room. There are exits on both sides. If you have a cell phone, quiet it or put it on vibration so that if you have a call coming in you can receive it.

Also, once all of the applications

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have been heard, the board will gather, we will discuss the application. You are welcome to stay. Applicants will be notified by mail of the findings.

This meeting is being taped and is also being handled by a stenographer, Lora J. Curatolo, who will be creating the reports on the Irish Cultural Center hearing.

Tonight serving with me to my left, Andy Champ-Doran. To my immediate left, Anthony Argulewicz. To my right, Brian Cafferty. To the far right, Joe Fitzgerald. And also appearing and representing the Zoning Board of Kingston tonight will be our attorney, Larry Wolinsky. Also tonight Joe Safford, representing the Building and Safety Department, City of Kingston. Deputy Tom Tiano, in charge of Buildings and Safety. And Julie Smith is our administrative assistant.

At this time I would like to introduce Mr. Wolinsky, he will bring us up to speed as far as the Irish Cultural Center is concerned.

Mr. Wolinsky.

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2 MR. WOLINSKY: Good evening
3 everybody. Again, my name is Larry Wolinsky,
4 I've been appointed as a special counsel on this
5 application. And what I thought would be a good
6 idea to do initially this evening is to frame
7 the issue that's before the board very briefly
8 and then focus on how we'll proceed through the
9 hearing tonight.

10 On a procedural basis our objective
11 is to keep the hearing moving as quickly as we
12 can and as efficiently as we can. And so in a
13 second I will give you an order of speakers this
14 evening and we'll proceed along that basis.

15 There will be some additional ground
16 rules for the hearing as well, which relate to
17 keeping the hearing focused on the narrow issue
18 that is before this board.

19 So by way of background, the reason
20 we're here this evening is that on June 13th of
21 this year the Zoning Enforcement Officer,
22 Mr. Safford, issued a determination at the
23 request of several property owners, I believe
24 the Harveys and Ms. Baum, with respect to the
25 applicability of a certain zoning provision to

1 32 Abeel Street - Hearing

2 the Irish Cultural Center project, which I
3 presume everyone sitting here tonight is
4 generally familiar with. The specific section
5 of the Zoning Law at issue is Section 405-19
6 Subsection B1.

7 And the issue before the board
8 tonight is an appeal of a determination that was
9 made. That determination very simply found that
10 32 Abeel Street, which is the site of the Irish
11 Cultural Center, abuts West Strand.

12 Why that's a significant
13 determination is because by virtue of the
14 provision in the Zoning Law, whether it does or
15 it does not, and also what that provision means
16 is a function of the various uses that can be
17 located on that property. So it's an important
18 issue that needs to get resolved and that's why
19 we're here this evening.

20 Now, from a procedural standpoint
21 we're going to run it in this way. First we're
22 going to give the zoning enforcement officer the
23 ability to address the Zoning Board to
24 essentially explain to the board the basis for
25 his conclusion that 32 Abeel Street abuts West

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Strand.

Second, we will turn the matter over to the appellants, Harvey and Baum, and allow them to present their case and their side to the Zoning Board.

Thereafter we will allow the representatives of the Irish Cultural Center to say and put in whatever evidence it wants to put in.

And then finally we will open it to the public.

Now, when it comes to the point in time that we open it to the public, we're very appreciative that the public has taken an interest in this project, however, at the same time the public has to realize that we're here on a very narrow issue.

So we're not here tonight to take any testimony whatsoever about the merits of the project from an environmental standpoint, meaning its impacts, whether it's good or bad, all of those issues are confined to the planning board. We're here on, again, on a very narrow interpretation issue and we're only going to

1 32 Abeel Street - Hearing

2 take testimony with respect to that.

3 So forgive me in advance but if you
4 do come up, whoever comes up and addresses a
5 subject that is outside that specific parameter,
6 I will get up and ask you to please refrain from
7 doing that because, again, there may be a lot of
8 folks who want to speak tonight on this
9 particular issue and we want to get through it
10 as quickly as possible.

11 Finally, we have a stenographer
12 tonight, as the chairman pointed out. Please
13 speak clearly and deliberately, not too fast, so
14 that we can get every item that you are saying
15 verbatim.

16 And with that, I appreciate your
17 time and I'll turn it back to the chairman.

18 CHAIRMAN RODDEN: Thank you. Would
19 you please add to the minutes, also tonight
20 corporation counsel Dan Garteinstein is in
21 attendance. I think that would be good to have,
22 thank you. Assistant corporation counsel. I
23 know I tried to elevate him, he didn't want to
24 be puffed up.

25 Okay, we're ready. At this time I

1 32 Abeel Street - Hearing

2 would like to call Mr. Joe Safford up. If you
3 would be good enough to bring us up to speed as
4 to how you got to the determination and the
5 point at question tonight.

6 MR. SAFFORD: I'm Joe Safford, city
7 zoning officer. The way I determine any
8 property, where it's located, is first and
9 foremost I pull it up on Municipity, that's the
10 program that we use for the city. It takes all
11 of the information from the property cards and
12 puts it at our hands.

13 Once I establish what our computer
14 says, I go and will cross reference that with
15 Ulster County GIS and the City of Kingston GIS,
16 because they both have a map available online
17 that shows basically property lines.

18 MR. ARGULEWICZ: Can everyone hear?

19 THE AUDIENCE: (Multiple "no"s.)

20 MR. SAFFORD: So after I determined
21 what the zoning is as per our Municipity program,
22 I'll cross reference it with the Ulster County
23 GIS and the City of Kingston GIS, just to make
24 sure because sometimes there are discrepancies.

25 MR. CHAMP-DORAN: GIS?

1 32 Abeel Street - Hearing

2 MR. SAFFORD: Yes.

3 MR. CAFFERTY: Geographical
4 Information System.

5 MR. CHAMP-DORAN: Thank you.

6 MR. SAFFORD: So ultimately that
7 gives me a bird's eye view of the property in
8 its location and generally speaking where the
9 zoning is allowed. The City has overlaid on GIS
10 the zoning map, illustrated in color. If you
11 guys want to take a look at these, I'll pass
12 them around. This isn't going to work. How can
13 I hand these? Do you want to grab these?

14 This is the screen shot of the GIS
15 with the zoning overlay on it from Ulster County
16 as well as -- this actually specifically shows
17 the property.

18 And then so once I figure out what
19 it's zoned as I'll refer back to the zoning
20 chapter in the city code, 405 in this case. It
21 was confirmed to be in the RT District.

22 Once I figured that out, I look at
23 the actual allowable uses for that area, because
24 generally speaking the only reason people come
25 to me is they want to know what they can use

1 32 Abeel Street - Hearing

2 their property for.

3 In this case it is in the RT
4 District and one of the allowable uses in that
5 district is what they are trying to use it for,
6 an amphitheater, theater, hall. Irish Cultural
7 Center. That's it.

8 That's how I come about my decision.

9 CHAIRMAN RODDEN: Any questions from
10 the board? Mr. Argulewicz.

11 MR. ARGULEWICZ: Mr. Safford, on
12 November 19th, 2015 the Zoning Board of Appeals
13 held a public meeting to consider several
14 parking lot variances for the properties at 32
15 Abeel Street and 33 Abeel Street. Do you recall
16 those meetings?

17 MR. SAFFORD: Yes.

18 MR. ARGULEWICZ: My question to you
19 is had you made a determination about the
20 permitted use of the property at 32 Abeel
21 Street, just 32 Abeel Street, prior to your
22 submittal of the parking lot variances to the
23 Zoning Board of Appeals for a decision?

24 MR. SAFFORD: Yes.

25 MR. ARGULEWICZ: Would you have

1 32 Abeel Street - Hearing

2 submitted those parking lot variances to the
3 board if you had not reached a determination
4 regarding permitted use at 32 Abeel Street?

5 MR. SAFFORD: No, had I determined
6 it was not permitted, the variance would have
7 also included a use variance for the building
8 that they were putting up on the property as
9 well, not just for the parking lot. And I
10 believe at that point it was specifically the
11 parking lot, the landscaping requirements for
12 the parking lot.

13 MR. ARGULEWICZ: So you had made a
14 determination of permitted use back in November
15 2015?

16 MR. SAFFORD: Correct.

17 MR. ARGULEWICZ: You had just not
18 been asked to put your decision in writing --

19 MR. SAFFORD: Correct.

20 MR. ARGULEWICZ: -- to someone?

21 MR. SAFFORD: Yes.

22 MR. ARGULEWICZ: And by virtue of
23 that decision, the Zoning Board of Appeals made
24 decisions regarding those parking lot variances?

25 MR. SAFFORD: That is correct.

1 32 Abeel Street - Hearing

2 MR. ARGULEWICZ: Thank you.

3 CHAIRMAN RODDEN: Any other
4 questions from the Board?

5 MR. CAFFERTY: Yes. Hi, Joe. I see
6 that the UCIS parcel on your map is a little bit
7 different than the actual tax map and this is --

8 MR. SAFFORD: That's the city zoning
9 overlay.

10 MR. CAFFERTY: The city zoning
11 overlay. So two of these maps show a corner of
12 the property actually touching West Strand
13 Street directly.

14 MR. SAFFORD: That is correct.

15 MR. CAFFERTY: On the tax map they
16 refer to it as Dock Street. The parcel you were
17 -- on your version does not, there's a Company
18 Hill Path.

19 MR. SAFFORD: The Company Hill Path
20 is a diagonal line that intersects, on this one
21 I actually did mark out, there's almost 33 feet
22 of frontage. So it does show it as well on that
23 one, it's just not as obvious I guess.

24 MR. CAFFERTY: And the question I
25 have, because I wasn't at these earlier

1 32 Abeel Street - Hearing

2 meetings, is there an actual survey of this
3 property?

4 MR. SAFFORD: Generally speaking
5 when I am doing this I'm not working off a
6 survey, I'm working off the information
7 available to me at the time. I believe the
8 Irish Cultural Center has put together a survey
9 but that survey would simply be their property,
10 not all the adjoining properties and the
11 right-of-way of the Kingston roads.

12 MR. CAFFERTY: Okay. So I guess the
13 question is are we aware of whether or not the
14 Irish Cultural Center has actually surveyed
15 their property?

16 MR. SAFFORD: In the packet they
17 submitted there is a smaller version of the
18 survey. So yes, I'm sure they surveyed that
19 property. What I am saying is that would only
20 show their property, not the adjoining
21 properties.

22 MR. CAFFERTY: And does the survey
23 show that it's contiguous with West Strand?

24 MR. SAFFORD: I believe on the
25 survey map itself it doesn't show West Strand on

1 32 Abeel Street - Hearing

2 there at all, just shows the lines for their
3 property.

4 MR. CAFFERTY: Great, thanks.

5 CHAIRMAN RODDEN: So to the chair.
6 Your determination was made that the Center had
7 frontage on Dock/West Strand Street from the
8 corner of 33 plus or 35 feet of it edged up to
9 what is known as Company Hill Path, which is a
10 walkway on a street thoroughfare, is that
11 correct?

12 MR. SAFFORD: Company Hill Path is
13 in front of part of the property, the Dock or
14 West Strand side. It's not the entire frontage
15 of the property. And the way it's defined is it
16 just says direct frontage, it's not saying the
17 entire piece of property has to have frontage.

18 So yes, I was doing it based on the
19 fact that although Company Hill Path property
20 does come down in front of it, it doesn't
21 obscure the entire front of the property, it's
22 only two-thirds of it. So the last third is
23 what led me to make a decision that it does meet
24 the frontage requirement, which is direct
25 frontage on West Strand Street.

1 32 Abeel Street - Hearing

2 CHAIRMAN RODDEN: Thank you. Any
3 other questions from the Board?

4 MR. CHAMP-DORAN: Yes. Who owns
5 Company Hill Path?

6 MR. SAFFORD: It's a city owned
7 property.

8 MR. CHAMP-DORAN: City owned
9 property. And what documents -- did you use any
10 documents, any verbal documents, metes and
11 bounds as it were, a survey map to determine
12 where the West Strand was?

13 MR. SAFFORD: I'm not aware of any
14 maps that would be available to me immediately
15 that would show where West Strand's actual
16 property lines are.

17 The front of, or the back side of
18 the property, whichever side you want to talk
19 about, depending on which way you're looking at
20 it, the piece of property that has frontage on
21 West Strand, there's no other property on that
22 particular part. And I don't have a survey of
23 Company Hill Path.

24 MR. CHAMP-DORAN: And is there a
25 metes and bounds determination of the RF-R, the

1 32 Abeel Street - Hearing

2 Rondout Creek District and the Rondout District?

3 MR. SAFFORD: The map that I have in
4 my office is put together by an engineer, I work
5 off of that. I'm not sure if there's an actual
6 stake in the ground that says this is the corner
7 that has RT and RF-R, I'm not aware of that.
8 The map that I go off was provided to me by the
9 city.

10 MR. CHAMP-DORAN: And is the nap
11 that was provided to you by the city accurate?

12 MR. SAFFORD: I would say as far as
13 for the purposes of what we're doing,
14 absolutely. It shows the areas that they've
15 deemed to be these zones.

16 CHAIRMAN RODDEN: Yes,
17 Mr. Argulewicz.

18 MR. ARGULEWICZ: Mr. Safford, is
19 there a, in the current Kingston Zoning Law, is
20 there any minimum lot frontage that's
21 required --

22 MR. SAFFORD: No.

23 MR. ARGULEWICZ: -- in this
24 particular RT zone?

25 MR. SAFFORD: No, the section that

1 32 Abeel Street - Hearing

2 defines frontage doesn't define it as any
3 particular distance.

4 MR. ARGULEWICZ: It just says direct
5 frontage?

6 MR. SAFFORD: Yes -- well, zoning
7 requires direct frontage. And in the language
8 that's put together in zoning, it doesn't
9 actually use the word direct, it only has
10 frontage. It's the lineal distance of a lot
11 along the street line.

12 MR. ARGULEWICZ: In the book it
13 doesn't say direct frontage?

14 MR. SAFFORD: There is no definition
15 for direct frontage.

16 MR. ARGULEWICZ: But does it use the
17 words "direct frontage"?

18 MR. SAFFORD: The caption in the RT
19 -- in 405-19, which defines the RT District,
20 uses direct frontage; however, when you look
21 back and find the definition, there's a
22 definition that says -- section that only
23 defines frontage.

24 MR. ARGULEWICZ: Well, just as an
25 aside, I would have to say the majority of

1 32 Abeel Street - Hearing

2 properties in the City of Kingston don't have
3 direct frontage on a street, they have direct
4 frontage on a sidewalk.

5 MR. SAFFORD: That's correct.

6 MR. ARGULEWICZ: Thank you.

7 CHAIRMAN RODDEN: Mr. Safford, can
8 you help clarify for us why that street has two
9 names? It's very, very confusing.

10 MR. SAFFORD: Again, one of the
11 reasons I use so many different maps is to cross
12 reference because there are discrepancies.

13 Ultimately my understanding of why
14 that has two names is there used to be more than
15 one road down there. When they divided Broadway
16 and over time consolidated roads, West
17 Strand now is -- East Strand is on the right
18 side of Broadway, West Strand would be on the
19 left. West Strand can lead you back to the
20 bridge where it becomes Dock Street, which at
21 one point in time I think probably went all the
22 way up Broadway and West Strand is in front of
23 that. That's my understanding of that
24 situation.

25 CHAIRMAN RODDEN: Because that

1 32 Abeel Street - Hearing

2 parcel has -- I don't know if I want to call it
3 frontage, but abuts up to the Dock Street/West
4 Strand/Company Hill side. What -- is there a
5 change in address? Will that still be
6 considered 32 Abeel or will it now become West
7 Strand/Dock Street?

8 MR. SAFFORD: That's ultimately up
9 to them. Because you could get mail delivered
10 from the back side.

11 CHAIRMAN RODDEN: That would be my
12 question, where would the legal mailing address
13 be?

14 MR. SAFFORD: That's up to them,
15 they could use either one of them. Ultimately,
16 I've heard stories when it comes to mail, it
17 will probably be in the parking lot.

18 MR. CAFFERTY: In the plans for the
19 Irish Cultural Center, my understanding is that
20 the front of the building and the access to the
21 building, the main entrance is off of West
22 Strand, correct?

23 MR. SAFFORD: That is correct. In
24 the plans that were submitted to us it shows the
25 main entrance off of the front, which would be

1 32 Abeel Street - Hearing

2 the West Strand, walk up West Strand and goes
3 into the first floor, and it also has a
4 handicapped accessible entrance that comes in
5 from Abeel Street. But the main entrance is --
6 the front of the building appears to be on West
7 Strand.

8 CHAIRMAN RODDEN: And that's not
9 abnormal. There are many properties,
10 businesses, whatever, where they have frontage
11 on two streets and they can use the front access
12 or the back?

13 MR. SAFFORD: Absolutely.

14 CHAIRMAN RODDEN: Thank you.
15 Mr. Argulewicz.

16 MR. ARGULEWICZ: I could be mistaken
17 but I think inherent in the definition of
18 frontage is the front of a building. So the
19 front of the building is the West Strand Street
20 side?

21 MR. SAFFORD: In this instance, yes.

22 MR. ARGULEWICZ: In the proposal.

23 MR. SAFFORD: In the proposal, yes.

24 MR. ARGULEWICZ: So that is
25 frontage.

1 32 Abeel Street - Hearing

2 MR. SAFFORD: Of the building, yes.

3 MR. ARGULEWICZ: Usually, I may be
4 mistaken, but I don't -- the attorney can
5 correct me, but usually frontage means -- the
6 nature of the word it means the front of the
7 building, the land between the front of the
8 building to the street.

9 MR. WOLINSKY: I think it gets very
10 complicated. I will say that most ordinances,
11 when you see these terms you go directly to the
12 definition because the definitions vary among
13 municipalities. A lot -- sometimes what you are
14 describing would be defined as the front yard
15 and sometimes frontage is described as the front
16 line along the street, the street line.
17 Sometimes where it's the corner lot there's a
18 dual frontage.

19 So I think that, you know, if
20 there's a question about what frontage is, the
21 objective is to look at how it's defined in the
22 Zoning Law.

23 CHAIRMAN RODDEN: Anymore questions
24 for Mr. Safford?

25 MR. CHAMP-DORAN: Yes. Joe, is

1 32 Abeel Street - Hearing

2 there language in the code that says -- that
3 determines where the property is by the majority
4 of the property being in a particular zone?

5 MR. SAFFORD: In this case the
6 entire property is in the RT District.

7 What's unique about the RT District
8 is it determines if it has frontage on Broadway
9 or West Strand, its particular uses, that's the
10 only thing that's different. But ultimately if
11 the zoning applies to the property the way
12 zoning is laid out and if you look at the zoning
13 maps, it follows property lines. When there's a
14 delineation that follows the backside of the
15 property, it cuts between the lines.

16 So generally speaking if the
17 property is one continuous piece, it's all going
18 to end up in the same zone.

19 CHAIRMAN RODDEN: Anymore questions?

20 MR. CHAMP-DORAN: So would a
21 property say on the east side of Broadway be in
22 the same district as the opposite side of
23 Broadway should they want that zoning?

24 MR. SAFFORD: Yes and no. Not down
25 at the end of the strand, right down where we're

1 32 Abeel Street - Hearing

2 talking here; the left side is RT, the right
3 side is not RT.

4 CHAIRMAN RODDEN: To get this on
5 point, we're discussing 32 Abeel and not east
6 side and west side.

7 MR. CHAMP-DORAN: But I'm interested
8 in general. Would you say that the
9 determination is either side of the street could
10 use either --

11 MR. SAFFORD: I don't know who made
12 the maps but generally speaking they either use
13 a street or a property line to delineate two
14 different zones.

15 MR. CHAMP-DORAN: Thank you.

16 MR. FITZGERALD: And Joe, is it
17 completely at the discretion of the applicant to
18 decide which address they want to designate as
19 frontage?

20 MR. SAFFORD: In this case I'd say
21 yes because the property abuts two roads, so
22 they have the ability to situate a building the
23 way they want to. In other situations they may
24 not be permitted to. In this case they can
25 decide to have frontage on either side, the

1 32 Abeel Street - Hearing

2 frontage of the buildings can be on either side.

3 CHAIRMAN RODDEN: Any other
4 questions?

5 Thank you, Joe.

6 Larry.

7 MR. WOLINSKY: The next speaker we
8 ask up is the representative of the appellant.

9 MR. REPLANSKY: Good evening. My
10 name is Warren Replansky, I'm an attorney. My
11 office address is 60 East Market Street,
12 Rhinebeck, New York.

13 I'm here -- can you hear me?

14 CHAIRMAN RODDEN: You're good.

15 MR. REPLANSKY: 60 East Market
16 Street, Rhinebeck, New York. I'm here with my
17 clients, I represent Hillary and Owen Harvey and
18 Deanna Baum, who are the owners of property
19 either adjacent to or in close proximity to 32
20 Abeel Street in Kingston.

21 And as you know, as expressed by
22 Mr. Wolinsky, my clients have appealed to the
23 Zoning Board of Appeals from the determination
24 of the City of Kingston Fire Department,
25 Building Safety Division and Joe Safford, who I

1 32 Abeel Street - Hearing

2 would call the zoning enforcement officer for
3 the city. And his determination was made in a
4 letter dated June 13th, 2016, a copy of which I
5 have annexed to the submittals. I'm assuming
6 that you have it as part of your record.

7 And this appeal is being made
8 pursuant to the authority of Section 405-54 A of
9 the City of Kingston's Code and the General City
10 Law Section 81B.

11 And pursuant to these sections of
12 the law, the ZBA has the power to reverse,
13 affirm, modify any decision or interpretation or
14 determination of the zoning enforcement officer.
15 And in making that determination you, as the
16 ZBA, have all of the powers that Mr. Safford
17 could exercise as the zoning enforcement
18 officer. So basically, the decision ultimately,
19 unless it goes farther, is up to this board.

20 The Irish Cultural Center, on or
21 about March 23rd, 2016, filed an application to
22 the planning board for site plan approval for a
23 proposed 16,889 square foot what they call
24 community center at 32 Abeel Street in the City
25 of Kingston.

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2 According to the application, the
3 facility will include but not be limited to a
4 185-seat space for a theater, film and music
5 programs, an art studio and submission
6 galleries, a dance studio, a recording studio, a
7 multi-purpose social area, which will include an
8 80-seat restaurant, a pub and a tea room,
9 kitchen, 150-seat banquet facility and a green
10 room for gardening, learning opportunities and
11 social gathering.

12 The search that I made of the
13 records of the zoning office and the planning
14 office reveal no determination, in spite of what
15 Mr. Safford said he had in his own mind back
16 when the variance was applied for, had ever been
17 made by the zoning enforcement officer that any
18 of these uses were in fact permitted in the RT
19 Zone, in which the property is located.

20 And just point to Mr. Safford's
21 comments in response to one of the board members
22 tonight that he had in his mind that back in
23 November, I think, of 2015 that 32 Abeel Street
24 was in fact permitted -- was in fact in this
25 portion of the RT District. That determination

1 32 Abeel Street - Hearing

2 was not made in accordance with the application,
3 which I believe was for a variance application
4 for 33 Abeel Street for the parking, it was
5 never put in writing and it was never filed in
6 the office of the city clerk. So this appeal is
7 certainly timely if that's what one of the board
8 members was suggesting.

9 As demonstrated to the ZEO in my
10 clients' appeal, the 32 Abeel Street property on
11 which this facility is proposed to be located as
12 we know is in the city's RT Rondout District.
13 And the issue is quite complicated, as
14 Mr. Wolinsky indicated.

15 The uses permitted in that district
16 are strictly regulated and set forth in Section
17 405-19 of the city code. The purpose of the RT
18 District as set forth in Section 405-19 A is in
19 part to permit and encourage the use,
20 rehabilitation and adaption of existing
21 structures in this unique and historic area in
22 accord with their original character and can
23 assure that new construction will be compatible
24 with the established character of the existing
25 development district.

1 32 Abeel Street - Hearing

2 By letter dated May 6th, 2016 and a
3 follow-up letter dated June 13th, I made a
4 request to the ZEO for a formal determination as
5 to whether these uses were in fact permitted at
6 the property location. The response that we got
7 from the appeal had no explanation of how this
8 determination was made. This explanation was
9 made for the first time tonight. I certainly
10 would not personally find it very compelling.

11 Section 405-19 B1 provides that any
12 building may be erected and the premises may be
13 used for any of the thereafter designated
14 purposes in each of two areas designated in
15 Section 405-30 B1.

16 The two areas are, one, properties
17 which have direct frontage on Broadway between
18 Spring Street and Dock Street; and two, on the
19 West Strand.

20 It is clear from the language of
21 this statute that it was the intent of the
22 drafters of this legislation to allow for more
23 intensive uses within the RT District but only
24 for those properties that have direct frontage
25 on two streets, Broadway and West Strand.

1 32 Abeel Street - Hearing

2 The reason for this is obvious,
3 there are areas -- these are areas of the RT
4 District which are capable of handling more
5 intensive uses set forth in Section 405-19 B1A,
6 which include restaurants, theaters, dance and
7 art studios. The uses do not, by the way,
8 include a pub or banquet facility, which is not
9 under any circumstances permitted.

10 The initial issue, therefore, is the
11 ZEO to -- the Zoning Board of Appeals to resolve
12 is whether the 32 Abeel Street property does in
13 fact have direct frontage either on Broadway or
14 on West Strand Street as required by the
15 statute.

16 The ZEO's determination is set forth
17 in his June 13th, 2016 letter was that after
18 reviewing the survey map it was his opinion that
19 32 West Strand and the uses permitted pursuant
20 to that section of the statute are permitted.

21 As demonstrated by all of the
22 empirical evidence, including most importantly
23 the survey map for this ICC property, which was
24 prepared and submitted by ICC and the deed in
25 ICC, it is clear that 32 Abeel Street does not

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have direct frontage on West Strand. As concluded by the ZEO, is a direct contravention of the letter, spirit and intent of this portion of the city code.

The term "direct frontage" is not defined in the Zoning Law, however, the term "frontage" is defined in Section 405-3 as the linear distance along the street line. So in order for you to have frontage, you have to be satisfied, the linear distance along a street line. The term "direct" is not defined in the Zoning Law.

Section 405-2 J of the Zoning Law, however, provides that words not specifically defined shall have their ordinary meaning as in Webster's New International Dictionary. The term "direct," as evidenced in this dictionary, which I provided to you, is, in relevant part, because there's many definitions, as proceeding from one point to another in time or space without deviation or interruption; leading by the short or shortest way to a point, wherein as a direct group or a direct means.

By application of these definitions

32 Abeel Street - Hearing

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2 and common sense and logic, for a property to
3 avail itself of the expanded uses set forth in
4 405-19 B, the proof must be that the entire
5 frontage of the property is either directly
6 either on Broadway or West Strand Street. As
7 demonstrated by ICC's own survey map submitted
8 in conjunction with your initial application,
9 the southern boundary of 32 Abeel Street abuts
10 the property known as Company Path. Company
11 Path is not a street, it is a walking path.
12 None of the southern boundary of 32 Abeel Street
13 fronts directly on West Strand Street. The
14 facts are confirmed by the metes and bounds
15 description contained in ICC's deed. If I can
16 just pull that out for a moment.

17 In the deed, which I've supplied you
18 a copy of it in my initial submission, gives the
19 full metes and bounds description of 32 Abeel
20 Street. And in the critical area it states as
21 follows, along the southeasterly bounds of Flynn
22 and Stafford, 182.67 feet south 27 degrees 24
23 feet 41 minutes, east along -- I'm sorry,
24 southwesterly bounds of Flynn and Stafford,
25 182.67 feet to a steel rod on the face of the

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bluestone retaining wall on the northwestern boundary lands of the City of Kingston known as Company Hill Path. Then along those boundaries Company Hill Path, the blue stone wall, back to Abeel Street. That's the metes and bounds description of this property contained in their deed.

Then we go to the survey map, which was prepared and submitted by ICC and which I provided you with copies of. But I have larger copies. How would I get this over to you? (Handing). If you need two more, I have it.

This is the survey map that was prepared by the Irish Cultural Center by Mark Keanough, P.E. If you look at this survey map it is clear that the southern boundary of this property, according to their own survey, is on Company Hill Path. West Strand is shown as a distance away from that, separated, the property is separated from West Strand Street by not only Company Hill Path but that portion of I assume city owned property or maybe owned by somebody else lying between Company Hill Path and West Strand. Clearly by virtue of their own survey

1 32 Abeel Street - Hearing

2 they have no frontage on West Strand Street.

3 The attorney for ICC, and I'm sure
4 he will again argue tonight, has stated in
5 letters to the zoning enforcement officer that
6 405-19 B1 clearly refers to buildings that have
7 or will have direct frontage on what they call
8 the West Strand Subarea. They have argued that
9 since the Zoning Law does not in that section
10 refer to West Strand Street, that section of the
11 law should be interpreted as permitting the
12 additional uses for any properties which front
13 on what they call the West Strand Subarea or
14 even the West Strand Area.

15 The problem is that those terms are
16 not defined in the Zoning Law. There is no
17 section of the Zoning Law which defines or
18 describes or delineates a West Strand Area or
19 West Strand Subarea.

20 Mr. Pordy, the attorney for ICC, has
21 and I'm sure he will argue that the elements
22 that delineate and constitute the West Strand
23 include but are not limited to the city owned
24 Company Hill Path, there's no evidence of that
25 in the Zoning Law, that runs along the city's

1 32 Abeel Street - Hearing

2 West Strand Street right-of-way for vehicular
3 and pedestrian access within the West Strand.

4 The West Strand Street itself, the
5 West Strand Plaza, the Maurice D. Hinchey
6 Promenade, the T.R. Gallo Memorial Park, the
7 West Strand Municipal Parking Lot located in and
8 serving the West Strand, and the private
9 properties including the subject property that
10 fronts and therefore former part of West Strand.
11 I'm quoting from his letter that was submitted
12 to the Zoning Board of Appeals. Again, contrary
13 to ICC's attorney's intentions, there is nothing
14 in the City Zoning Law which creates or defines
15 a West Strand Area or West Strand Subarea.

16 These areas which are described by
17 Mr. Pordy are separately described in portions
18 of the Zoning Law but there's nothing in the
19 Zoning Law in which these separate elements are
20 collectively described as part of an area known
21 or district in the city known as the West Strand
22 Subarea or West Strand Area. The ICC's
23 contentions are simply not supported by the
24 plain language of the Zoning Law.

25 Although 405-19 B of the Zoning Law

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2 refers to the Broadway/West Strand Area in its
3 title, the remainder of the subparagraph states
4 that only projects having direct frontage on
5 Broadway between Spring Street and Dock Street
6 on the West Strand may be used for the listed
7 purposes. The section does not state that
8 buildings which have direct frontage on the West
9 Strand Area or the West Strand Subarea may be
10 used for this purpose.

11 The Court of Appeals has held in the
12 case People vs. O'Brien 66 Single 1 back in 1988
13 that the meaning of a statute is defined not by
14 its title but by the substance of that statute.
15 And you cannot resort to the title except to
16 explain ambiguity and the statute itself in
17 turn. There's no ambiguity in Section 405-19
18 B1.

19 Moreover, Section 405-76 B in the
20 City Zoning Law provides in the relevant part
21 that in the event of a conflict in the
22 terminology of any section or part thereof of
23 this chapter, the more restrictive provisions
24 shall control.

25 ICC's interpretation of the Zoning

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2 Law, apparently Mr. Safford's interpretation,
3 would create a very dangerous precedence for
4 this board. If the ZBA was to accept this
5 argument, all of the properties which border --
6 which are on -- residential properties which are
7 on Abeel Street which border on Company Hill
8 Path would be entitled to the more intensive
9 development, including restaurants and theaters
10 provided by this section of the law. One can
11 only imagine how many other property owners
12 would argue that they are permitted also to
13 develop their properties by theaters,
14 restaurants, pubs, dining facilities, simply
15 because they are -- they abut the amorphous
16 undefined area of the Zoning Board known as the
17 West Strand and the Broadway area.

18 The decisional law in the State of
19 New York is clear that in interpreting terms in
20 a zoning ordinance, the interpretive authority,
21 which is you, must give the terms their natural,
22 obvious and ordinary meanings. In addition, the
23 zoning law's terms should be given fair and
24 reasonable construction in light of the fact of
25 the massive intention of the legislative body,

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the objects thought to be obtained, the natural import of the words used in kind and accepted usage, the setting in which they are employed and the general structure of the law as called.

In making these determinations, ZBA must apply common sense and logic. It is well said in law that Zoning Law should not be interpreted in a matter which obtains a certain result. I'm sorry to say I see this argument violates all of these basic rules of statutory instruction.

Now, I'm sure it will be argued tonight, as it has been in the past, that the absence of the word "street" when referring to West Strand in this section of the Zoning Law is proof that the intent was to allow these uses of property along the West Strand Area other than just properties which abut West Strand Street is allowed.

As stated previously, the frontage requirements in the city's Zoning Law are measured along the line of the street, not along a line of an area or subarea.

Members of the ZBA making their

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2 determination are permitted to apply their
3 common knowledge and experience in interpreting
4 terms, provisions of the zoning code. It is
5 clear that West Strand, the term "West Strand"
6 has historically been used when referring to
7 West Strand Street. The code uses the terms
8 West Strand Street and West Strand
9 interchangeably. In a similar fashion, the
10 terms East Strand and East Strand Street are
11 used interchangeably.

12 And I've given -- and I'll repeat it
13 now but I've given you in my submissions, and
14 I'm going to give you a copy of my statement,
15 I've given you numerous examples in the code
16 where West Strand Street is simply referred to
17 as West Strand. That's what the drafter of this
18 legislation had intended.

19 Similarly in the city of --
20 Rondout's Historic District map, which I have
21 also brought with me tonight, which we took off
22 the website, you'll note that when they describe
23 the properties within the Rondout Historic
24 District, the city refers to the six properties
25 that are within the historic district on West

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2 Strand Street as simply West Strand; 17 West
3 Strand, 19 West Strand, 21 West Strand. Clearly
4 they're referring to West Strand Street, not
5 West Strand Subarea.

6 However, perhaps the most important
7 document that we've managed to come up with is a
8 map dated from 1918 that was prepared by the
9 City of Kingston engineer. I'll give you copies
10 of these, it's an excellent map. And you can
11 see from this map that West Strand Street is
12 referred to as West Strand. That's how the term
13 West Strand became incorporated in the Zoning
14 Law instead of West Strand Street.

15 And if you look at the map you can
16 see obviously the intent of this portion of the
17 statute was to allow more intensive uses along
18 West Strand Street and Broadway. That was the
19 idea behind this. It wasn't intended to expand
20 these types of very high intensive uses to
21 residential areas on Abeel Street or residential
22 areas in other portions of the town.

23 For all of these reasons we
24 respectfully request that the board, ZBA, take
25 some long and hard deliberation and look at

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2 these and examine these issues very carefully
3 because it will set a precedence not only for
4 this project, which if permitted is going to
5 have a profound impact on the residents of Abeel
6 Street, but it will set a very dangerous
7 precedent in the future for anyone who comes in
8 and wants to argue to the zoning enforcement
9 officer or the ZBA that they are permitted to
10 operate restaurants, theaters in residential
11 sections of the town, such as 32 and my clients'
12 properties on Abeel Street.

13 Thank you very much for hearing me
14 out. Do you have any questions?

15 MR. WOLINSKY: Will you be
16 submitting a copy of your statement?

17 MR. REPLANSKY: I have it for you.
18 These are my remarks. I saw a couple of you
19 nodding out so I didn't read the whole thing.

20 MR. WOLINSKY: Board members, do you
21 have any questions of Mr. Replansky at this
22 time?

23 MR. ARGULEWICZ: I have a question,
24 Mr. Replansky. In your research have you found
25 any evidence sort of Irish Cultural Center,

1 32 Abeel Street - Hearing

2 similar to the Irish Cultural Center, have you
3 ever seen some use similar to that over the
4 years on Abeel Street, that area?

5 MR. REPLANSKY: I don't know
6 that there -- I have not done research into the
7 whole history of the Abeel Street area. I can
8 tell you now that the uses along Abeel Street
9 are for the most part residential. I think
10 there's one restaurant on Abeel Street that's
11 been there for quite some time. All of the rest
12 of the uses are residential.

13 MR. ARGULEWICZ: You may want to
14 check 50 Abeel Street.

15 MR. REPLANSKY: Is that the one
16 where the parking lot is?

17 MR. ARGULEWICZ: No.

18 MR. REPLANSKY: Okay. A lot of it
19 depends on --

20 MR. ARGULEWICZ: Historically 50
21 Abeel Street.

22 MR. REPLANSKY: What you are saying,
23 a lot of it depends on how these uses came into
24 being. There may be one or two uses that
25 preceded the Zoning Law. We're talking now

1 32 Abeel Street - Hearing

2 about application of this Zoning Law, what this
3 Zoning Law permits.

4 MR. CAFFERTY: I think what my
5 colleague is referring to is at the top of
6 Company Hill Path there is a brick building
7 which has now been converted into apartments but
8 was a very active restaurant and club for a
9 number of years at the very top of Company Hill
10 Path.

11 MR. ARGULEWICZ: Up to four or five
12 years ago.

13 MR. REPLANSKY: That may be.

14 MR. CAFFERTY: And I'm just --
15 whether it has any bearing on this at all, the
16 mention is that, you know, that is consistent.
17 However, I don't know how that came into being
18 but it did, it did come into being, it was
19 converted and it was a very active restaurant
20 and club for a very long time.

21 MR. REPLANSKY: I don't know how
22 things get approved in the City of Kingston.
23 I'm beginning to learn a little bit more than I
24 knew before. But if Mr. Safford's
25 interpretation of the law is any indication, I

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mean there is a possibility that uses have come into play which are not strictly permitted. A lot of it depends on whether there's an objection to the use. You can propose any use and get a permit for it if it's not carefully scrutinized and if it's submitted.

If you give me one second though, there's another document that I want to share with you.

This is the appraisal of the Irish Cultural Center property that was performed prior to the purchase. And this is the neighborhood description that's contained in that appraisal.

"This block of Abeel Street is residential. Housing consists of a mix of single and two- to four-family dwellings. Neighborhood values are in the middle range for the city. Most of the properties are well maintained and display pride of ownership. This is a stable neighborhood that is within the distance of Rondout Creek's marina, shops and restaurants." This is the way ICC's own appraiser described that street.

1 32 Abeel Street - Hearing

2 And I think if you look at the
3 street now you'll find that that's pretty much
4 true. I don't think there's been any recent
5 development on that street that hasn't complied
6 with the Zoning Law.

7 CHAIRMAN RODDEN: I need
8 clarification on your determination that the
9 parcel that we're questioning, the ICC parcel,
10 that has frontage on Dock Street, West Strand
11 Street or whatever street you want to call it,
12 that's what it is. Yet the rest of the property
13 that runs in conjunction, concurrent with that
14 property heading towards the Kingston-Rhinecliff
15 Bridge, which is west of that building or that
16 parcel, they all as well border on the Company
17 Path road, or whatever you'd like to call it,
18 walkway, as Mr. Cafferty had mentioned. So that
19 property does have connection to both streets.

20 And you are saying that Company Hill
21 Path is owned by the city, sidewalks are owned
22 by the city, although it may not be a vehicle
23 and traffic thoroughfare, it's still a city
24 walkway/street. So if you could just kind of
25 clarify that.

1 32 Abeel Street - Hearing

2 MR. REPLANSKY: I never heard of a
3 city walkway/street.

4 CHAIRMAN RODDEN: It's a pathway.

5 MR. REPLANSKY: Let me answer your
6 question. You can have streets, you can have
7 roads, you can have walkways. Company Hill Path
8 is a walkway, it's used for pedestrian traffic
9 only; it's not a street, it's not defined as a
10 street, it's not shown as a street anyplace,
11 it's simply sort of a recreation area. I'm not
12 sure exactly how it's used on a day-to-day
13 basis. But it's not a street on which 32 Abeel
14 Street is permitted to utilize to satisfy the
15 direct frontage requirements of the Zoning Law.

16 And I have to tell you, I firmly
17 believe that this concept of the entrance of the
18 property on Company Hill Path is pretty bogus.
19 When this was originally proposed I believe that
20 everything was focused on Abeel Street, that was
21 supposed to be the entrance, that's where the
22 parking was supposed to be, that's where
23 whatever buses were supposed to drop people off.
24 And I think that ICC recognized that they had a
25 problem with this, so they changed their maps

1 32 Abeel Street - Hearing

2 and plans to show that this property in fact has
3 an entrance on Company Hill Path.

4 The problem with that is that
5 Company Hill Path is owned by the city. The
6 stone wall is owned by the city. Property
7 owners who may abut Company Hill Path have no
8 right to open up that wall without the approval
9 of the town, and also there's historical
10 implications, simply to satisfy an argument that
11 they have frontage on West Strand Subarea or
12 West Strand Area.

13 CHAIRMAN RODDEN: I questioned our
14 zoning officer, Mr. Safford, as to how he came
15 to his determination. That's what I was trying
16 to do with you as your determination as to how
17 you nullified that piece of frontage as not
18 being valid as a frontage. So you've made it
19 clear, thank you.

20 MR. REPLANSKY: That's my opinion.
21 I'm not saying that that's right.

22 CHAIRMAN RODDEN: That's what we're
23 here for, opinions.

24 MR. REPLANSKY: The other arguments
25 are legal arguments, that's my opinion.

1 32 Abeel Street - Hearing

2 CHAIRMAN RODDEN: Thank you. Any
3 questions from anyone on the board?

4 Thank you.

5 MR. REPLANSKY: Thank you very much.
6 Mr. Wolinsky.

7 MR. WOLINSKY: So we'll now hear
8 from the Irish Cultural Center.

9 MR. PORDY: Also before we start I
10 just wanted to clarify that the retaining wall
11 along Company Hill Path is on our property.

12 CHAIRMAN RODDEN: Sir, would you
13 introduce yourself. You can present your
14 argument or your statement.

15 MR. PORDY: I am Ron Pordy, I'm the
16 attorney for the Irish Cultural Center for the
17 Hudson Valley, and I'm going to start our
18 presentation in a moment. I just want to
19 clarify that the retaining wall along the
20 Company Hill Path is on our property and we own
21 that wall. It's not public property.

22 CHAIRMAN RODDEN: Could you
23 introduce your partner.

24 MR. PORDY: With me is Matthew
25 Rudikoff, he's a professional planner, he's on

1 32 Abeel Street - Hearing

2 our team. And Debbie Robinson, an attorney from
3 my office.

4 Mr. Chairman, members of the board.
5 We took a copy of the Zoning Law and blew it up
6 for you to see very clearly. And I think that
7 some of the points that Mr. Replansky was making
8 with respect to statutory interpretation and so
9 on really to the contrary I think are
10 interpreted in our favor.

11 And when you look at the Section
12 405-19 of the RT Rondout District for the City
13 of Kingston, it's very clear that there are two
14 subareas designated in the code. And I use the
15 term subarea because that was ordained in the
16 code. Right here.

17 And I'll read "uses permitted by
18 right." "A building may be erected,
19 reconstructed, altered, arranged, designed or
20 used in a lot and or premises may be used for
21 any of the following purposes by rights in each
22 of the two subareas designated, subject to the
23 conditions established."

24 So here we know, it's clear that
25 there are two subareas that have been reported

1 32 Abeel Street - Hearing

2 to attach to the code. The two subareas are the
3 Broadway Subarea and the West Strand Subarea.

4 Now, the Broadway Subarea is
5 discussed first in Subsection B1 of the code.
6 It refers to buildings existing as of the date
7 of the adoption of this chapter as well as
8 buildings subsequently erected which have direct
9 frontage on Broadway between Spring Street and
10 Dock Street. That's the first subarea. And you
11 notice with respect to the first subarea it's
12 clearly delineated by streets, and they use the
13 term "street" in the code. They're referring to
14 Spring Street and Dock Street.

15 Interestingly, and I think the
16 members of the board probably know this, Spring
17 Street starts a little above the water, it comes
18 down to Dock Street. Dock Street actually is
19 used interchangeably with West Strand Street
20 when you are talking about the roadway that runs
21 along the water and down that district abutting
22 our property.

23 It's interesting there that when you
24 look at the language that describes the next
25 subarea, the words are "and on the West Strand."

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2 Period. Now, I don't think the authors of this
3 portions of the zoning code forgot to use the
4 word "street" when referring to West Strand.
5 And that's because the language in the text
6 clearly is not limiting this subarea to just
7 West Strand Street.

8 I think Mr. Replansky is doing his
9 best to convince the board that this term is
10 used interchangeably, but we disagree and we
11 wanted to dispel that notion here tonight. Had
12 the word West Strand Street been intended, it
13 would have been reflected in the code.

14 And interestingly, in looking at the
15 language, where Dock Street -- where Broadway
16 would intersect with Dock Street would be the
17 old reference to Dock Street going the length of
18 the roadway. This may even be referring to the
19 concept prior to the existence of West Strand
20 Street. So clearly if they were trying to
21 allocate a subarea of West Strand Street it
22 would have been described that idea and it's
23 not. In fact, they're referring to Dock Street,
24 which is a term interchangeably used, therefore
25 they're purposely eliminating a reference to

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West Strand Street and they're really referring to the area that everyone in the city knows is the West Strand Subarea.

Now, the other thing that I just want to jump into is this whole notion of frontage. And the term "frontage" is defined in the Kingston Zoning Law but so is the term "sidewalk." And it is clear that what we commonly refer to as the Company Hill Path is nothing more than an extension of the existing sidewalk that runs along West Strand Street.

To take the appellants' argument at face value means we have to eliminate the sidewalk from the entire length of West Strand Street. Their argument is that if our property doesn't have direct frontage above the blacktop of West Strand Street, we're not on West Strand Street. We are on West Strand Street, and Dock Street for that matter. And that's because the Company Hill Path is simply a sidewalk, it's an extension of the existing sidewalk, it's a pedestrian right-of-way that forms part of the street.

If you look at the definition of

1
2 "sidewalk" under Section 355-53 of City of
3 Kingston Code, it reads "that portion of a
4 street between curb lines or the lateral lines
5 of a roadway and the adjacent property lines
6 intended for use of pedestrians." There's no
7 distinction between the Company Hill Path and
8 the sidewalk, it's a pedestrian right-of-way and
9 it's part of the right-of-way of the street
10 that's known as West Strand Street and Dock
11 Street so on and so forth.

12 MR. ARGULEWICZ: Could you get the
13 section?

14 MR. PORDY: We gave copies, we have
15 a couple more copies.

16 MR. ARGULEWICZ: Thank you. Can we
17 have one more?

18 CHAIRMAN RODDEN: Which exhibit are
19 you on?

20 MR. PORDY: We're still in the
21 affirmation. And what's been submitted to the
22 members of the board is an affirmation in
23 opposition to the appellants' appeal to the
24 Zoning Board for the relief that they have
25 requested. And the affirmation consists of a

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written document, our analysis of the legal issues in the case and also some exhibits.

And so let me just back up here. We'll go through some portion of the affirmation. And I've already referenced, Michelle gave you the blow up of the pertinent portion of the zoning code. That it really is important when you are analyzing this issue to know the specific references to the word "street" when we're really referring to the Broadway subarea, the references to Spring Street and Dock Street. And they do make reference to Dock Street too, which is really West Strand Street at that corner of Broadway and the fact that it was purposely left out for reference to West Strand Street, it was intentionally left out because clearly it's talking about Dock Street. And then the next subarea refers only to the West Strand. So clearly there's a distinction being made between these two subareas.

And so when we're talking about statutory interpretation we can't, because it's convenient, insert the word "street" when we're

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talking about West Strand as it's referred to and attached to the code because in actuality West Strand Street is not mentioned in that portion of the code, period.

So there's really two narrow issues here, as your attorney mentioned at the outset, and one of them is really you would -- I think as an attorney you think of it as a statutory interpretation of the language itself in the code. And this is what Mr. Replansky was referring to and what I am referring to now.

And I think that the appellants' reference to interpretation of language in a statutory provision such as this is important. Actually I think when you apply it correctly it's quite clear that the reference to the term "street" when it comes to West Strand is intentionally left out because they're referring to an entire subarea.

Now, the subarea we're referring to is all city owned land. From the Company Hill Path down to the water, that's all city owned land. And the Company Hill Path, again, is simply a sidewalk and the land between it is

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2 city owned land. And by the way, that's a
3 single city owned tax lot, the Company Hill
4 Path, and there's an exhibit in here that shows
5 the tax map. We got that off the city's
6 website. Which shows that there is a single
7 parcel of land from the Company Hill Path down
8 to the water. And we abut that property.

9 And it's very important to -- the
10 definition of "street," by the way, in the
11 zoning code is "any public street, court, place,
12 square, lane or way set aside for use as a
13 right-of-way which affords legal access to
14 abutting property."

15 Now, by the way, there is no
16 intervening private property between our lot,
17 the ICC lot, and the city land. That includes
18 the sidewalk, that includes the streets abutting
19 the sidewalk. There's no intervening private
20 property. We have direct frontage onto the city
21 owned land, which comprises part of West Strand
22 Street, Dock Street and the entire West Strand
23 Subarea. It's very clear. I think the
24 arguments of the appellants is to try to
25 convince this board to ignore that reality.

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2 There's also another provision in
3 the code, in 405-6 C of the zoning code, which
4 is referred to as district boundaries. And I'll
5 read from that. "Where such boundaries are
6 indicated as approximately following the
7 property lines of parks or other public or
8 institutionally owned lands, such lines shall be
9 construed to be such boundaries."

10 Well, I proffer to this board that
11 the West Strand Subarea, the boundary for West
12 Strand Subarea is the boundary that we abut.
13 It's all of those elements that we discussed,
14 including the Company Hill Path and the roadways
15 that are served by the Company Hill Path as a
16 public sidewalk and pedestrian way. So there is
17 direct linear public access, access to the
18 frontage from the subject property, both the
19 West Strand -- both West Strand Street and the
20 West Strand Subarea at large, there's no
21 intervening private property between the subject
22 property and the public property elements,
23 including the sidewalk and the public streets
24 that abut the property. Consequently, any
25 pedestrian can directly and easily without

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2 impairment whatsoever access the subject
3 property from West Strand Street without having
4 to pass over or be near or upon any other
5 property or any intervening private property
6 whatsoever. If that doesn't constitute direct
7 frontage, we really don't know what does.

8 MR. RUDIHOFF: Matthew Rudikoff,
9 planner for the project.

10 I think just on that one point, I
11 think noting in addition to the technical
12 definitions that Ron is reading from for the
13 Zoning Board, that the purpose of the West
14 Strand, which is a public recreational purpose,
15 is the same really as the Company Hill Path,
16 which is a public way, it's part of the
17 amenities of the West Strand. In fact, it's
18 been improved and repaired by the ICC and would
19 be further enhanced by the ICC project. But up
20 towards the top, it's actually a very usable
21 area where cars can park. So it's not only the
22 proximity in the definition, but it also shares
23 the purpose of the public space, and that's
24 consistent also with the ICC use itself.

25 It's meant to be an enhancement to

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2 the public resource, attracting people to the
3 public resource, making people have access to --
4 interpretational access of the creek and the
5 waterfront, educational purposes, arts and
6 cultures. So it really fits in with the overall
7 concept of the West Strand from the purpose of a
8 land use perspective.

9 MR. ARGULEWICZ: What's your name,
10 sir? I didn't catch it.

11 CHAIRMAN RODDEN: Matthew Rudikoff.

12 MR. RUDIHOFF: Matthew Rudikoff, I'm
13 from Mount Tremper, I'm a professional planner
14 and environmental consultant.

15 MR. ARGULEWICZ: Thank you.

16 MR. PORBY: And just another matter,
17 we'd like to dispel any notion to the contrary,
18 the entrance to this building is not an
19 afterthought, it's the only thought.

20 This building was designed from day
21 one for the main entrance to be on West Strand,
22 celebrate the West Strand. This is a current
23 depiction of the building. You can see that
24 from day one this thing was designed to be built
25 into the hill so that what you see at the first

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2 level is actually built into the hill and cannot
3 be seen by Abeel Street.

4 Abeel Street was never considered to
5 be the main entrance of this building, we merely
6 have enough room on the Abeel side of the
7 property to build an 18 parking space on-site
8 parking lot, and there will be a service
9 entrance and another entrance. The main
10 entrance, the entire design concept is for this
11 building to be built into the hill and you can
12 see there utilize the Company Hill Path off of
13 West Strand Street, the main entrance of the
14 building.

15 The first floor goes right into the
16 theater and the rest into the rest of the
17 building. There's also the second and third
18 floors of the building has a balcony. And by
19 the way, this is all for public use, this is
20 open to the public, this facility, it will be
21 for people to come and stand on the balcony and
22 look over the Rondout Creek and overlooking the
23 West Strand.

24 We have other drawings but we won't
25 waste your time, just showing where we got the

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2 concept from, other buildings that have
3 historically existed over the West Strand,
4 facing Rondout Creek, just like our building is
5 designed to do.

6 I also think the other notion that
7 we'd like to dispel is that although there are
8 residential properties on Abeel Street, Abeel
9 Street is not a residential neighborhood, it is
10 a mixed use neighborhood. There are commercial
11 buildings that run the distance of Abeel Street
12 from Broadway beyond the Wurts Avenue Bridge.
13 And anyone who lives in Kingston knows that.

14 The other thing that's important to
15 mention is that this board back in 2013, that
16 the ICC back in 2013 was before the zoning,
17 maybe different members, but this board of the
18 City of Kingston, and they sought and received
19 an area variance. And the area variance had to
20 do with some parking elements and so on and so
21 forth. A use variance has never been sought, by
22 the way, for the 32 Abeel Street property, it
23 was an area variance that was sought.

24 And I bring that up because this
25 board has already passed on this issue. This

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2 issue of challenging whether or not this
3 property is in the West Strand Subarea really
4 just arose several months ago when the
5 appellants sought an interpretation from
6 Mr. Safford. Prior to that point in time there
7 was never any doubt that this property was in
8 the West Strand Subarea and as of right was
9 permitted for the commercial development that we
10 propose to build.

11 This was also -- also, this property
12 was also included in the Brownfield Opportunity
13 Implementation Plan, the report implementation
14 plan, that the city has been studying for years
15 and years and years. This property is actually
16 considered in the first phase of the
17 redevelopment of the Kingston Waterfront on the
18 Rondout and is mentioned several times
19 throughout the study, especially in the final
20 implementation plan that was just approved in
21 December of 2015.

22 This property has always been
23 assumed for commercial development and in fact
24 for the development by the Irish Cultural Center
25 specifically referred to, and we attached that

1 32 Abeel Street - Hearing

2 to exhibits to my affirmation as well, just so
3 you have that handy.

4 There has been -- you have Mr.
5 Safford's interpretation, you have an opinion
6 from corporation counsel from several years ago
7 that they made an interpretation with respect to
8 this property being in the subarea. And
9 although that opinion of the former corporation
10 counsel, Andy Zweiben, who was not the zoning
11 enforcement officer at the time, Mr. Replansky
12 has raised that issue and correctly so, it
13 should have come from the zoning enforcement
14 officer. But our understanding is that the
15 opinion from Mr. Zweiben was drafted at the
16 behest of the Zoning Department and although the
17 zoning officer didn't sign that, it's not on his
18 letterhead, we included that as well as an
19 exhibit, take it for what it's worth, but it
20 indicates that it is an additional perspective
21 from the city that there's never been a doubt of
22 where this property is located, in the West
23 Strand Subarea.

24 Unless my colleagues have anything
25 further to add, I think that we would just wrap

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2 this up by asking you to make the common sense
3 determination and the appropriate legal
4 determination and deny the variance sought by
5 the applicant. We think there's no question
6 where this property is located. We think it is
7 an issue that has no merit that's been raised.

8 And again, we thank the board
9 members for their time. We hope you make the
10 correct decision and deny what they sought. And
11 once and for all, if there's any doubt, you
12 should confirm that this property is located in
13 the West Strand Subarea under the applicable
14 reading of the code.

15 CHAIRMAN RODDEN: Thank you.

16 Mr. Argulewicz.

17 MR. ARGULEWICZ: Yes. Mr. Pordy,
18 you did refer, and I was on the board, you did
19 refer to this 2013 decision on some variances
20 that were granted. However, as I mentioned
21 previously, that a determination of the board in
22 November 2015, those same variances were denied
23 in 2015 because there were some changes in the
24 design and the buffer and the landscape,
25 etcetera. So you mentioned 2013, I'm mentioning

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2015.

Also, previous attorney mentioned the application, I believe I heard him correctly it was March 2016, were there several different applications made?

MR. PORDY: Which applications are you referring to?

MR. ARGULEWICZ: To the Planning Board.

MR. PORDY: No, there's one application made.

MR. ARGULEWICZ: But how were we determining variances if there weren't applications back in 2013 and 2015?

MR. PORDY: No, I think the only point I'm making is that the -- this property has been subject to ZBA scrutiny prior to now. And in a 2013 application this board did not raise, did not question the as of right use that was proposed and, therefore, that the property was indeed in the West Strand Subarea, otherwise you couldn't have gone forward and made a decision with respect to the area variances.

Now, with respect to the 2015

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2 determinations, I was not involved with that at
3 the time but those were not denied on the basis
4 that this property was not in the West Strand
5 Subarea, they were denied on a completely
6 unrelated basis. And I think there were other
7 issues that came up with respect to the record
8 in those cases and also maybe some deficiencies
9 in the submissions by the applicant.

10 What we did in March of 2016, we
11 submitted a new application for site plan review
12 and that is still ongoing, we're still before
13 the planning board. We're going through that
14 process, we're going through SEQRA scrutiny
15 right now. We have plans to possibly be back
16 before the Zoning Board once these issues are
17 settled for a possible area variance for
18 setback, a possible setback.

19 MR. ARGULEWICZ: See, I'm confused.
20 I need to have distinction made here. There's
21 been several different applications.

22 MR. PORDY: Yes.

23 MR. ARGULEWICZ: Has the uses of the
24 property changed, is that the reason why --

25 MR. PORDY: No.

1 32 Abeel Street - Hearing

2 MR. ARGULEWICZ: -- there have been?
3 Because Mr. Safford in answering my question
4 said he had made a determination prior to
5 submitting those variances for parking and in
6 his mind he must have made that decision, I'm
7 sure he made that decision based on an
8 application of some sort of what the use of the
9 building was going to be.

10 So I'm a little confused, I get
11 confused easily of course, but why there have
12 been different applications here up to March of
13 2016, which is actually after this submission of
14 those parking variances in November of 2015?

15 MR. PORDY: I'm sorry if I
16 misunderstood the question when you first raised
17 it but I think hopefully this -- I'm answering
18 the question that you are asking now.

19 Those applications and those
20 approvals simply lapsed. What happened was
21 approvals were received by the ICC for these
22 area variances, site plan approval. I was not
23 involved in that at the time, but the one I
24 looked at. And what happened was you are
25 required under the zoning code to start your

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2 construction once you get the approvals within
3 12 months. And at the time the ICC was unable
4 to commence construction, attempted to obtain
5 extensions on these final approvals but at some
6 point they lapsed.

7 MR. ARGULEWICZ: Has the scope
8 stayed the same?

9 MR. PORDY: It's stayed the same.

10 MR. ARGULEWICZ: And defined uses of
11 the property stayed the same?

12 MR. PORDY: As far as I understand,
13 the uses are the same. The building I believe
14 originally was 15,000 square foot and it's been
15 enlarged by 1,889 square feet.

16 MR. ARGULEWICZ: That hasn't stayed
17 the same.

18 MR. PORDY: Well, the size has been
19 increased by 1,889 square feet but the uses are
20 the same.

21 MR. ARGULEWICZ: The uses are the
22 same.

23 MR. PORDY: Yes. I think one of the
24 reasons for the increase in the size of the
25 building was because when the project was first

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2 submitted for site plan approval, area variance,
3 so on and so forth, the plans had been drawn up
4 by some architectural students and at some point
5 in that process it was decided that professional
6 architects should be brought in, and they
7 realized that in order to accommodate the uses
8 proposed that the building needed to be slightly
9 larger.

10 MR. ARGULEWICZ: The reason I am
11 asking is because there's very set defined uses
12 in the chart up there and I want to make sure
13 none of those uses have been added to over the
14 years, deleted. I see restaurant, theater.

15 MR. PORDY: Well, the uses that
16 we're proposing are all permitted, you have
17 theaters, art studios and other places of public
18 assembly, which broadly encompasses various
19 uses. A venue like this community center is a
20 place of public assembly and it falls within
21 that subsection of the code, 405-19 B1 and any
22 subsections thereunder.

23 MR. ARGULEWICZ: So that has never
24 deviated through all of the applications, those
25 uses?

1 32 Abeel Street - Hearing

2 MR. PORDY: As far as I know it has
3 not. Though I was not the attorney on that.

4 MR. ARGULEWICZ: As far as you know.
5 I don't like when a lawyer says "as far as I
6 know."

7 MR. PORDY: It is the same. My
8 client has informed me it is the same, there has
9 been no variation. I only say that being a
10 cautious attorney but the uses have not been
11 changed.

12 CHAIRMAN RODDEN: The uses have not
13 change from 2013?

14 MR. PORDY: Yes, the uses have not
15 changed since the original application from
16 2013.

17 CHAIRMAN RODDEN: From 2013 to the
18 present the uses have not changed?

19 MR. PORDY: Has not changed.

20 CHAIRMAN RODDEN: And the only thing
21 that changed was the size.

22 MR. PORDY: Yes, and that's due to
23 site plan issues.

24 CHAIRMAN RODDEN: Do you have the
25 original size?

1 32 Abeel Street - Hearing

2 MR. PORDY: About 15,000 square
3 feet.

4 CHAIRMAN RODDEN: That sounds a
5 little larger than the original plan.

6 MR. PORDY: What happened with the
7 original plan was when they submitted, and this
8 was corrected quickly in the planning board
9 process, when they had originally submitted
10 their application, as I understand it they did
11 not include the ground -- the basement level
12 that's built into the hill as square footage
13 that was included in the application, thinking
14 that it was a basement level it wasn't required
15 to be included. In certain instances basements,
16 cellars, depending on the municipality, don't
17 get figured into the square footage.

18 CHAIRMAN RODDEN: But it was going
19 to be used for --

20 MR. PORDY: Yes.

21 CHAIRMAN RODDEN: -- for the purpose
22 as you in fact described?

23 MR. PORDY: Exactly. So that was
24 updated as soon as that realization was made,
25 pretty early in the process. That application

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2 was updated to clarify that this was really a
3 15,000 square foot project from the get go. As
4 a matter of fact, even in the River Port
5 Implementation Plan, the building actually was
6 referred to -- they picked this up quite awhile
7 ago, when we first had a draft of the plan, as
8 in one spot it was 15,000 square feet, in two
9 spots in the River Port Implementation Plan it
10 was referred to as 20,000 square feet. So it
11 was kind of drifting.

12 But once we had the professional
13 architects and planners involved, the exact
14 square footage was determined to be 15,000.

15 CHAIRMAN RODDEN: That's why I asked
16 that question because we've seen it drift and I
17 wanted to get it clarified. Thank you.

18 Any questions from the board?

19 MR. CAFFERTY: Yes.

20 CHAIRMAN RODDEN: Mr. Cafferty.

21 MR. CAFFERTY: I'm trying to wrap my
22 mind around this. This is no doubt complicated.

23 So just it's your contention that
24 and your interpretation of the code that the
25 property fronts the West Strand Subarea?

1 32 Abeel Street - Hearing

2 MR. PORDY: Some of it.

3 MR. CAFFERTY: Not West Strand
4 Street?

5 MR. PORDY: My contention is it
6 fronts both.

7 MR. CAFFERTY: Okay. And you make
8 that determination by saying that the Company
9 Path is a sidewalk --

10 MR. PORDY: It is.

11 MR. CAFFERTY: -- of West Strand
12 Street?

13 MR. PORDY: Yes. The Company --
14 it's historically been referred to as the
15 Company Hill Path, but if you --

16 MR. CAFFERTY: I know the history of
17 the path.

18 MR. PORDY: Yes.

19 MR. CAFFERTY: I know where the path
20 went.

21 MR. PORDY: But there's a lot of
22 great history. But today it's nothing more than
23 a pedestrian right-of-way, it's a sidewalk. And
24 it continues directly from the sidewalk on West
25 Strand Street and actually makes a 90-degree

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turn at the top of the hill and turns onto Abeel Street. And a sidewalk is part of the right-of-way of the street.

When you are looking at a street, it's not just a blacktop, it's an entire right-of-way. They can vary in width, and some people don't realize that you are riding down a road and driving on blacktop that's 20 feet wide, there's a right-of-way that extends beyond the blacktop, and that's the case here. This is all city owned property.

And when we're talking about frontage -- so there's really two positions we have here, two contentions to be made. One is very clear by just looking at the statutory language. We don't have to have direct frontage West Strand Street. There is simply no requirements to the code. If you are just looking at the code, we're not required. We're required to have frontage on West Strand Subarea, nothing more.

However, we also contend that we do have direct frontage by virtue of the fact that the property abuts directly onto a public

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2 sidewalk and public lands that are part of the
3 right-of-way of the public streets and we can
4 see how the building is designed. If you look
5 at the -- let me just -- here's a photograph
6 but you can see where the West Strand Street is
7 and the sidewalk and it's just a continuation of
8 the sidewalk, directly up the hill. And from
9 our property boundary over the Company Hill
10 Path, over these few inches of land separating
11 us from the top of the curb of the street,
12 that's all city owned public land and part of
13 the public right-of-way. If you look at the
14 definition of sidewalk and streets, so on and so
15 forth, it's pretty clear what's going on here.

16 CHAIRMAN RODDEN: So your green
17 space comes down to -- it abuts up to Company
18 Hill Path?

19 MR. PORDY: Yes. That retaining
20 wall is part of our private property. And by
21 the way, we would intend to take it down and
22 rebuild it. That's a big part of what we are
23 trying to do here is make the entrance and
24 preserve the historical integrity.

25 MR. CAFFERTY: The only point I

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2 would take issue with, not that it makes any
3 difference, but I don't believe the Company Hill
4 Path to be a sidewalk for West Strand Street but
5 I do believe it's in the West Strand Area. So
6 the path clearly diverts and goes and traverses
7 the hillside to get up to Abeel Street. So I
8 don't consider it technically a sidewalk for
9 West Strand Street but there's no doubt that the
10 Company Hill Path, that whole nexus, that whole
11 public that you call part of the West Strand
12 Subarea, that I get.

13 And so that's what I'm -- I think
14 this is probably not going to be decided here,
15 ultimately, but that's your contention that
16 these rights are extended to this property
17 because it abuts the area, the West Strand Area.

18 MR. RUDIKOFF: And that's the point
19 I was making. Is the discussion of whether or
20 not we were on West Strand Street is one topic
21 but the other topic is are we part of this
22 described area, which is a recreational area and
23 public use area, and that's the West Strand
24 Subarea, and that we are, as you are saying,
25 adjacent to because the Company Hill Path is

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2 functionally part of that same area as long as
3 -- as much as Gallo Park is and the waterfront
4 the way it is and the parking areas are, so that
5 point is well taken.

6 MR. PORDY: And I understand the
7 confusion about whether or not the Company Hill
8 Path constitutes a sidewalk but I believe, and I
9 have not cited in my papers, but I'm pretty
10 confident that there can be a median that can be
11 public land in between the blacktop and the
12 sidewalk. And just because the Company Hill
13 Path is at the foot of our property, starts
14 diverting up the hill, it creates that
15 triangular track of land, it is also city land.

16 If you look at the definition of a
17 sidewalk and the concept of a right-of-way, and
18 of course you don't have to agree, but it's
19 definitely our position we think it's valid that
20 Company Hill Path is definitely part of the
21 sidewalk and continuation of the right-of-way.

22 I think to take that out of the -- I
23 just lost the word I was trying to think of. To
24 remove that conceptually, if you look at it
25 here, it is really for the most part the

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2 equivalent of removing the sidewalk at the front
3 of the buildings there from -- so in front of
4 one of these buildings, they're in the West
5 Strand Subarea. Well, they are, the sidewalk
6 separates them from the blacktop and the road
7 but they are still in the West Strand Subarea.

8 MR. RUDIHOFF: It's all part of the
9 street scape.

10 MR. PORBY: Part of the street
11 scape. There's another angle if you are not
12 familiar.

13 CHAIRMAN RODDEN: Any other
14 questions?

15 MR. ARGULEWICZ: Yes, I have a
16 question. When you are saying it's just as this
17 red building has frontage on West Strand because
18 the sidewalk is in the middle of the red
19 building and the street, you are saying the
20 property line ends here, the sidewalk or end of
21 the sidewalk, beginning of the path is in
22 between your property line and West Strand.

23 MR. PORBY: That's what I am saying.

24 MR. ARGULEWICZ: So you have the red
25 building, they have West Strand frontage.

1 32 Abeel Street - Hearing

2 CHAIRMAN RODDEN: The service box is
3 on the side of the building, that area. A
4 little further up.

5 MR. PORDY: Our property doesn't
6 directly abut that.

7 CHAIRMAN RODDEN: That's the corner
8 we're talking about.

9 MR. PORDY: Yes.

10 MR. ARGULEWICZ: Can you put an X
11 with your felt tip pen where you believe your
12 property ends on that wall.

13 MR. PORDY: Bob. I just want my
14 representative of the property to help me.

15 MR. ARGULEWICZ: Just so we have a
16 frame of reference.

17 MR. PORDY: Show me on the wall.

18 CHAIRMAN RODDEN: I'm only --

19 MR. PORDY: We can leave it right
20 there (marking).

21 (Board examining photograph.)

22 MR. PORDY: Of course we welcome
23 members to do a site visit on their own or as a
24 group or whatever. The property is now staked
25 out, so that would be a much more accurate

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picture than what I did there.

So you know, simply our position is with respect to the sidewalk, it seems a little specious to make this claim that we're not abutting the West Strand Subarea, we're not abutting West Strand Street, and that's the requirement being opposed, which we don't think is a requirement, I just want to make that clear.

My interpretation of the code, which I think is the accurate interpretation, is that there is no specific requirement that we have direct frontage on the street. But if you impose that standard on us, we have direct frontage because there is nothing separating our property from the public lands of the City of Kingston and the Company Hill Path is a sidewalk. If you don't continue walking on the sidewalk, on the Company Hill Path, you are in the street. So I think, you know, that keeps you on the public right-of-way, out of harms way of walking onto the blacktop.

And in our papers we did provide some definitions that we think are appropriate

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and applicable that are in the city's ordinances with respect to what a sidewalk is, what a street is, so on and so forth.

CHAIRMAN RODDEN: Anymore questions?

MR. CHAMP-DORAN: Mr. Chairman.

Mr. Pordy, I just want to go back to one thing you said first.

The ZBA, you said the ZBA has already approved applications and the uses that you point out notwithstanding, correct?

MR. PORDY: Well, all I'm saying is that there have been matters before this board, this ZBA, where the question of the zoning of this property was never put into question. So that really supports our contention that from the city's perspective, this has always been in the West Strand Subarea. Had it not been, if there was an issue with respect to the as-of-right uses available for the property, what zoning district it was in, that would have been raised before.

So our position simply is you have a previous made specific determination on this narrow issue, which we hope you will do now and

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settle this once and for all, but you have definitely heard cases before.

If I come before this board for an area variance and I'm not in the right zoning district, you stop me right then and there. I'm not supposed to necessarily apply for an area variance if I'm not allowed to do what I want to do in that zoning district. That was not the case because there was never any question where this property was located.

MR. CHAMP-DORAN: You understand, though, that we cannot -- we cannot rule on issues that are not brought before us. For instance, the November, where we did deny the appeal or the -- yeah, the appeal.

MR. ARGULEWICZ: No.

MR. PORDY: It was an application.

MR. CHAMP-DORAN: We did deny the variance, we only ruled on -- we only ruled on a setback issue and I believe a landscaping issue.

MR. ARGULEWICZ: And the number of parking spaces.

MR. CHAMP-DORAN: And the number of parking spaces. So this application in front of

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2 us is not about the uses of the building, it's a
3 matter of what it's in. So we can't really rule
4 on your uses of the building. At the beginning
5 we said that's going to the planning board.

6 I have one other question. In the
7 code it says the zoning map has to be kept
8 accurate. And do you agree that the city zoning
9 map is accurate?

10 MR. PORDY: I can't answer that.
11 You'd have to show me what you are referring to.
12 It's not my role to determine whether the city's
13 zoning map is accurate or not. It's the zoning
14 enforcement officer, the city engineer would do
15 that, and not on the part of an applicant.

16 CHAIRMAN RODDEN: Anymore questions
17 from the board?

18 Thank you.

19 MR. PORDY: Thank you.

20 CHAIRMAN RODDEN: Mr. Wolinsky.

21 MR. PORDY: I want to say please
22 take your time.

23 CHAIRMAN RODDEN: Oh, we will.

24 MR. PORDY: And think this through.
25 We want this done correctly. We appreciate your

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2 time. Thank you very much.

3 CHAIRMAN RODDEN: Thank you.

4 MR. WOLINSKY: So at this point in
5 time we'll open it up to the public.

6 As a reminder, any comments made to
7 the board should be directed at the decision or
8 the issue that's before the board this evening,
9 the discrete issue, and not on the merits of the
10 project itself.

11 And both of these attorneys have
12 done an excellent job on behalf of their
13 advocates of laying out the positions. The
14 board has a very thorough presentation and
15 understanding of the positions, so in the
16 interest of time and this lengthy agenda, which
17 contains other matters other than this, if you
18 have something to add that's of a factual nature
19 or a legal nature that could help, please come
20 forward. Thank you.

21 CHAIRMAN RODDEN: We've been here
22 for quite some time. If you folks would like a
23 five-minute recess so you could take care of
24 personal business, get a drink, whatever, I
25 would be more than glad to warrant that. If

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2 not, we can continue forward. Moving on.

3 Again, the issue here is the
4 property language, all the other parts we are
5 not interested in at this particular time. So
6 as you can see from the audience, it's rather
7 large, I ask that you keep your statements
8 brief.

9 And if you could give my partners
10 here a moment.

11 MR. CAFFERTY: They're going to take
12 a break no matter what.

13 CHAIRMAN RODDEN: You can get your
14 thoughts together.

15 MR. WOLINSKY: When you come up give
16 the stenographer your name and address.

17 (Off the record.)

18 CHAIRMAN RODDEN: Okay, we are back
19 and we're back on the record. You may state
20 your name and address.

21 MS. BORENSTEIN: Merle Borenstein,
22 97 Abeel Street, Kingston, New York.

23 Just a few questions you guys might
24 be interested in. It's zoning and I couldn't
25 quite hear. To the best of my knowledge, 32

1 32 Abeel Street - Hearing

2 Abeel Street is a legal address for mailing and
3 all legal documents, to the best of my
4 knowledge. Just didn't know -- I didn't hear it
5 clearly and I didn't know if that was clarified.

6 As far as the previous bars. There
7 have been three in the location where the
8 Rondout News is now, three failed bars. And the
9 person, and I ask you to look into this, the
10 person who purchased the property and put
11 residential buildings -- and put residential
12 buildings into it was told that he could not put
13 a bar in. So he had some restrictions, his name
14 was Mike Piazza. I'm sure the city has records.
15 But he was not permitted to use it for a bar.

16 As far as Company Hill Path and
17 sidewalks go, I'm under the impression, because
18 I know I'm responsible for paving, for
19 bluestoning my sidewalk, if Company Hill Path is
20 indeed a sidewalk, how come none of the
21 landlords do anything? I mean they don't pave
22 it, they don't stone it, nothing. It's a path,
23 just to be clear.

24 I also believe that the ICC is not,
25 and I think you people should research it, not

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2 in the Brownfield Opportunity Area. When the
3 ICC went before Ulster County Planning, it was
4 9,000 square feet. Again, something you can all
5 look into.

6 My other concern with when you zone
7 something like this, if per chance the dream or
8 their wish doesn't happen to come to fruition,
9 what happens with the property. The Hotel Noble
10 has been a big hole in the ground on Abeel
11 Street for close to 20 years, it is still owned
12 by the person that owned it but just a big hole
13 in the ground. When somebody falls down maybe
14 the city will get sued.

15 So what happens if this doesn't come
16 to fruition and it is zoned commercial? Does it
17 just sit there like a hole in the ground? Does
18 another commercial property go in? What would
19 it be? Would it be a factory? Would it be some
20 kind of a plant? Just questions I'd like you to
21 look into before you make your determination on
22 this cultural center. Thank you.

23 CHAIRMAN RODDEN: Thank you.

24 MR. HARVEY: First I would like to
25 thank the ZBA for their time in hearing the

1 32 Abeel Street - Hearing

2 appeal that was brought before the board today.

3 CHAIRMAN RODDEN: Would you please
4 state your name and address.

5 MR. HARVEY: I typed something up,
6 it's in the second paragraph. I can skip to the
7 second paragraph first.

8 CHAIRMAN RODDEN: I thought we would
9 like to know who you are and where you live.

10 MR. HARVEY: First I just wanted to
11 thank the board for your time for hearing the
12 appeal that was brought before you today. I
13 also want to thank the board for the opportunity
14 to present my concerns regarding the uses put
15 forth in the recent ICCHV proposal and why the
16 ICCHV should be required to seek use variances
17 before this board.

18 CHAIRMAN RODDEN: And now it's time
19 to introduce yourself.

20 MR. HARVEY: Now I'm going to
21 introduce myself.

22 My name is Owen Harvey and I am a
23 resident of the RT District. As I have stated
24 before the Planning Board --

25 CHAIRMAN RODDEN: Do you have a

1 32 Abeel Street - Hearing

2 street address?

3 MR. HARVEY: 26 Abeel Street.

4 CHAIRMAN RODDEN: Thank you.

5 MR. HARVEY: As I have stated before
6 the Planning Board, zoning codes are not written
7 on water but rather they exist to protect the
8 quality of life of the homeowners, residents and
9 businesses of our city, as well as to encourage
10 holistic and responsible development.

11 As outlined in the Heritage Area
12 Commission Regulations, we can clearly see that
13 the uses put forth for the ICCHV Abeel Street
14 parcel are simply not permitted.

15 Code 405-19 Rondout District states
16 that the only uses, no other, that are permitted
17 for this section of Abeel Street, that is
18 between Broadway and Wurts, are as follows.

19 Two, remainder of district, which
20 includes between Broadway and Wurts, Abeel
21 Street. Remainder of district, new and existing
22 buildings may be used for the following purposes
23 and no other.

24 A, one-, two- or three-family
25 dwellings.

1 32 Abeel Street - Hearing

2 B, the professional office, studio
3 or home occupation of a resident of the
4 buildings if limited to no more than 30 percent
5 of the floor area of the building and employing
6 no more than one non-resident.

7 C, places of worship including
8 parish houses and religious school buildings and
9 public and private schools, including uses
10 customarily accessory thereto subject to the
11 requirements of 405-9 A3.

12 Also, as a reminder, the ICCHV
13 parcel is situated between residences on either
14 side. If you reviewed the historical deeds to
15 the ICCHV property, you will find no reference
16 to nor mention of this property fronting West
17 Strand, rather the property is referred to as
18 being on Abeel Street, where it has frontage, as
19 defined as the linear distance along a street
20 line.

21 It is with this understanding that I
22 agree with the points outlined by Warren
23 Replansky this evening. Thank you again for
24 your time and consideration.

25 CHAIRMAN RODDEN: Could you just

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2 give us the zoning reference that says that --
3 the last one you read.

4 MR. HARVEY: The 405-19, it was two,
5 remainder of district. Or do you want to hear
6 the 405-9 A?

7 CHAIRMAN RODDEN: The last one.

8 MR. HARVEY: 405-9 A, that is what I
9 typed out.

10 MR. ARGULEWICZ: That's not in the
11 RT District.

12 MR. HARVEY: It's at the tail end of
13 where this particular code is in the zoning
14 code.

15 MR. ARGULEWICZ: 405-9 A is in the
16 RR-R.

17 MR. CAFFERTY: You are making the
18 contention that this property doesn't front West
19 Strand Street or West Strand Subarea?

20 MR. HARVEY: My contention is just
21 basically -- I'm not saying that the ICC
22 shouldn't be built, all I'm saying is that I
23 believe they should seek a use variance.

24 CHAIRMAN RODDEN: Thank you.

25 MR. HARVEY: Thank you.

1 32 Abeel Street - Hearing

2 CHAIRMAN RODDEN: Anyone else?

3 MS. BENDELIUS: Good evening. I'm
4 Ruth Bendelius. I sold the property to --

5 CHAIRMAN RODDEN: Can we have your
6 name and address?

7 MS. BENDELIUS: My name is Ruth
8 Bendelius. I maintain an apartment at 11 West
9 Strand and I also have a home outside of
10 Kingston.

11 I sold four parcels of land plus the
12 land on the other side of Abeel Street in
13 January 2013 to the cultural people. This land
14 consisted of four parcels. There were two very,
15 very small parcels that opened only to Abeel
16 Street. There's one long skinny parcel that
17 went from Abeel Street to Company Hill Path.
18 The largest parcel came right down to Company
19 Hill Path and West Strand and it was the only
20 access to this property. There was no access
21 from Abeel Street. This is a copy that came
22 from the tax map at that time. You are welcome
23 to have it.

24 CHAIRMAN RODDEN: Would you like to
25 submit that into evidence?

1 32 Abeel Street - Hearing

2 MS. BENDELIUS: There is access --
3 there obviously is access to West Strand. Thank
4 you.

5 CHAIRMAN RODDEN: Thank you. Anyone
6 else?

7 MS. HARVEY: Hi, I'm Hillary Harvey,
8 26 Abeel Street. I'm one of the applicants on
9 this appeal.

10 And I'm confused about what Ruth
11 Bendelius said because there's actually no
12 stairway or any sort of access point up that --
13 there's a retaining wall there off of Company
14 Hill Path. The Company Hill Path starts to
15 ascend and then there's a wall that follows it.
16 So some of the properties that are on Abeel
17 Street, they do have stairways and walkways that
18 go up mid-hill from Company Hill Path onto their
19 property but this property does not have any
20 such stairway or interruption in that stone wall
21 that I can see. So I'm just confused about what
22 she presented.

23 But I also just wanted to say that I
24 think I speak for a lot of the people who are
25 sitting over here tonight, our neighbors who

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2 have been supporting us, albeit quietly, in this
3 study sort of of the Irish Cultural Center.

4 I think I speak for them and a lot
5 of the people that couldn't be here tonight when
6 I say that we're really comfortable with the
7 historical uses and zoning of 32 Abeel Street.
8 A lot us live on Abeel Street. We have
9 businesses on Abeel Street. It's always been a
10 residential property.

11 The four parcels that Mrs. Bendelius
12 sold to them were all residences. So I think if
13 you look at the property and know its geography
14 and history and how people think of it and see
15 it, it's very clear that the intended uses for
16 32 Abeel Street align with its address at 32
17 Abeel Street.

18 So I just wanted to read you, I know
19 we don't have a lot of time, but I wanted to
20 read you a couple of the comments and letters
21 that I have been seeing all throughout this
22 discussion since last November. And it's just
23 the parts that pertain to this zoning question.

24 So Rachel Lozak, who was a resident,
25 wrote into the paper "I'm concerned that the

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proposed center has been able to change its address to West Strand with different zoning laws when the site is actually on Abeel Street."

Tracy Lerman, who is sitting over there, already a resident, says "additionally, despite property being on Abeel Street where it is zoned residential, the zoning officer made the unprecedented determination that the property's address is West Strand Street, although no part of the property is on West Strand. This would allow developers to comply with commercial zoning such as building up to the property lines on the residential properties on either side."

Steven Lance, a visitor to the Rondout, wrote "buildings, permits and zoning codes are crucial in protecting this community. If zoning can be changed at the whim by the zoning enforcement officer, then why do we have zoning districts in the first place or why do we have a zoning enforcement officer. Zoning laws protect all uses if strictly applied. Planning is what is needed. Residential districts should remain residential in character. Bringing in

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2 large commercial ventures like ICC will destroy
3 the residential character of the district."

4 Merle Borenstein, who you just heard
5 from, wrote "if zoning is changed to accommodate
6 one district, Kingston legally will be unable to
7 deny doing the same for others. That would make
8 that precedence."

9 And Mike Amuzak (phonetic), who is
10 an Abeel Street resident, wrote "they plan to
11 face the building in the opposite direction from
12 all the other structures on Abeel Street, remove
13 landscaping, so the lot will be entirely covered
14 by concrete and have no windows except for the
15 Company Hill Path side. Given the beauty and
16 sidewalk character of the other buildings on
17 that lot, this seems like a decision Kingston
18 will come to regret."

19 And then Drew in the Daily
20 Freeman --

21 CHAIRMAN RODDEN: Ms. Harvey, again,
22 these are all editorials that were in the
23 Freeman and it's coming to us as hearsay
24 secondhand. I'd really appreciate that you stay
25 on point. Give us your feelings, opinions and

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2 that will suffice. Thank you.

3 MS. HARVEY: Well, I was just --
4 what I was hoping to do was just to -- because I
5 know this is a legal conversation.

6 CHAIRMAN RODDEN: We're aware that
7 there is opposition, so I'm asking you --

8 MS. HARVEY: I was just trying to
9 add a personal element so you could understand
10 that the decision made here tonight will -- how
11 it would be seen by all of the people that would
12 be affected by this.

13 CHAIRMAN RODDEN: Maybe you know
14 something we don't know, because we haven't
15 determined what a decision would be. So if you
16 could please address the concerns that we have
17 as far as the frontage to West Strand, Dock
18 Street or whatever it's called, that's what I
19 need to hear from you.

20 MS. HARVEY: Okay. Thank you.

21 CHAIRMAN RODDEN: Is there anyone
22 else who has any additional comments?

23 MS. LERMAN: Good evening. My name
24 is Tracy Lerman, I live at 43 Crane Street in
25 Kingston. I just wanted to point out a couple

1 32 Abeel Street - Hearing

2 of things for the board's attention that you
3 might want to look into.

4 Obviously we have people here trying
5 to innervate their case on different sides of
6 the issues, it's hard for me as a resident to
7 know what the actual truth is. On the one hand
8 we're told that in the Zoning Law there's no
9 mention of a West Strand Subarea, by another
10 person we are told there are. So I'm hoping
11 that you'll take a serious look at whether or
12 not there's a legal designation of a West Strand
13 Subarea and, if there isn't, I think you should
14 take that into consideration in your
15 determination.

16 On the question of whether Company
17 Hill Path is a sidewalk or an extension of West
18 Strand or just a lovely gravel road that I
19 sometimes run down, I don't know, I'm not a
20 planner. But there is city communication about
21 whether or not Company Hill Path is in fact an
22 extension of the West Strand Street or if it's
23 its own thing. The gentleman that redid 50
24 Abeel Street had communication with the city
25 about that very pathway or byway or whatever you

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2 want to call it, so that should be information
3 that you should easily be able to find in your
4 role as Zoning Board of Appeals members.

5 In addition we've been coming to the
6 Planning Board meetings. And the ICC in their
7 original submission of the building said that
8 the entrance was going to be on Abeel Street.
9 So I'm not the one taking minutes at these
10 meetings, but these minutes should be documented
11 if the city is being run like a democracy, which
12 I assume it is. You should be able to look at
13 old planning board meetings and determine if in
14 fact the original entrance to the building was
15 determined to be 50 Abeel Street.

16 The other thing I just want to
17 mention is as a resident who will be impacted by
18 this, because I spend a lot of time in the
19 Rondout area, I think there's a real question
20 here of what is the intent of the Zoning Law.
21 Yes, you might be able to claim through some
22 weird manipulations of laws or whatever or like
23 sidestepping common understanding that there is
24 some way to prove frontage on West Strand
25 Street.

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2 But if you go to the actual
3 property, it is on Abeel Street. There is a big
4 retaining wall that like -- the people who will
5 eventually use this place will have to climb up
6 to get to that property. Maybe they're going to
7 blow a hole in the side of that wall and have to
8 deal with all of the bedrock, I don't know, I'm
9 not going to be building the building. But if
10 you look at the property, it is on Abeel Street
11 and in my opinion Zoning Law should be -- are in
12 place to protect the residents who live in that
13 area. And if the residents are, you know,
14 subject to the whims of a project developer who
15 wants to switch the zoning designation so that
16 their property can move forward, that doesn't
17 really speak well to a law protecting the
18 interests of its citizens. Thank you.

19 CHAIRMAN RODDEN: Just one thing
20 before you close. I don't think that there's
21 any underhanded things going on as far as how
22 we're going to come to our decision. I
23 personally took offense to that comment.

24 MS. LERMAN: Which comment? I don't
25 know.

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2 CHAIRMAN RODDEN: You referred to
3 the board, that the things that we're going to
4 do, the hocus pocus kind of stuff.

5 MS. LERMAN: No, I wasn't -- and I
6 apologize if that was my -- if that's how you
7 took my comment. I was saying --

8 CHAIRMAN RODDEN: I took it very
9 personally.

10 MS. LERMAN: I deeply apologize for
11 that. All I am saying is that there are
12 documents that you could look into that will
13 prove whether or not the claims made by either
14 side are in fact true. There are documents
15 about the designation of Company Hill Path
16 because of the property at 50 Abeel Street, and
17 there are minutes from board meetings.

18 I'm not putting any malintent, and I
19 apologize if you took it that way, I'm just
20 saying that there's ways that you can look into
21 this that are a lot more objective than what
22 different sides of the story are being presented
23 here.

24 CHAIRMAN RODDEN: Thank you.

25 MS. LERMAN: I hope you accept my

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apology.

CHAIRMAN RODDEN: Thank you.

MS. LERMAN: I really like your shirt, by the way.

CHAIRMAN RODDEN: You can't have it.

MR. WOLINSKY: I want to clarify for everybody's benefit, because I've heard it a couple of times now, this board is not -- the application before this board does not involve any kind of a change in zoning. The uses that are eligible in the zoning district are already there. Under certain conditions they can be employed.

What we're grappling with here this evening is whether, on one side or the other, is whether that condition is met or not. So it's not really an issue of manipulation or a change of zoning, we're really grappling with a narrow issue of whether a condition that's already set forth in the law applies in this particular instance. Just by way of clarification.

MS. LERMAN: Can I respond to that?

MR. WOLINSKY: Sure.

MS. LERMAN: I think that's great

1
2 that you made that clarification because you are
3 the zoning experts here and we are just
4 residents of the city who want to make sure that
5 like the Zoning Law is being applied fairly to
6 all people. And so it's good that you are able
7 to, you know, make the specifications for us so
8 that we understand that but, you know, from our
9 perspective it doesn't really feel that way when
10 a building is coming in with a particular
11 address. It feels that like, you know, there's
12 a change or an application of the Zoning Law
13 that doesn't feel right. So we're just hoping
14 that the Zoning Board recognizes that concern
15 that we have in their determination.

16 MR. WOLINSKY: We get that
17 perspective. That's not really our particular
18 job. Our particular job is to interpret the law
19 as best we can and based on the facts and the
20 law. But the perspective is definitely
21 appreciated and I'm sure it's appreciated at the
22 Planning Board and it's appreciated at the City
23 Council as well.

24 MS. LERMAN: All right.

25 MR. WOLINSKY: Thank you.

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2 MS. LERMAN: I know you'll do the
3 right thing. Thank you.

4 CHAIRMAN RODDEN: Thank you. Is
5 there anyone else?

6 MR. HOFFAY: Tom Hoffay, 160 Tremper
7 Avenue in Kingston. I'm the former majority
8 leader of the Common Council.

9 And there were just a couple of
10 statements that I thought needed clarification
11 that were made by the appellants in this case.

12 One was the definition of what was
13 allowable on Abeel Street, which seemed to limit
14 it to one, two or three residence facilities,
15 which would then preclude the conversion of the
16 former synagog and nightclub on Abeel Street
17 into its present use, because there are in fact
18 more than three residents in that building.

19 The other point I think that's
20 important is in our discussion of Company Hill
21 Path, which goes, as you know, up and then makes
22 that sharp 90-degree angle onto Abeel Street,
23 that in fact there were businesses -- that was
24 the entrance to businesses; certainly the
25 nightclub that was there, the West Strand Grill,

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2 which was there for many years and it was a
3 previous bar before that. And whether or not it
4 would have been allowed again under the new
5 owner, the fact of the matter is the entrance to
6 that was largely through Company Hill Path.

7 And as well, and was there for a
8 shorter period of time, there was an art gallery
9 and cafe also that stretched between Abeel
10 Street and Company Hill Path and the main
11 entrance to that facility was through Company
12 Hill Path.

13 And there are a number of the
14 buildings as you go up the path that in fact do
15 have entrances through the wall and any kind of
16 visual examination, I was down there today, any
17 visual examination of the property of ICC,
18 there's clearly a difference in the wall where
19 you can see that there was a previous entrance
20 or there was some interruption in the wall on
21 the property.

22 So I mean I was down there today, I
23 was looking at it. This is going to be a part
24 of the West Strand, certainly, area. Thank you.

25 CHAIRMAN RODDEN: Is there anyone

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2 else? Is there anyone who wants to speak in
3 opposition?

4 MR. WOLINSKY: So I'm not hearing
5 any further folks from the public who wish to
6 speak.

7 What's before you right now is --
8 the first thing that's before you right now is
9 whether to close the public hearing this
10 evening. You should make that determination
11 based upon whether you believe by the written
12 submissions and the testimony that has been made
13 before you that you have enough here that you
14 feel that the record should be closed and then
15 will be in a position to evaluate everything and
16 then reach -- ultimately reach a decision on the
17 application.

18 MR. ARGULEWICZ: I move to close the
19 public hearing in regard to the decision made by
20 the zoning enforcement officer regarding 32
21 Abeel Street.

22 MR. FITZGERALD: Second.

23 CHAIRMAN RODDEN: That motion was by
24 Mr. Argulewicz and seconded by Mr. Fitzgerald.

25 MR. CAFFERTY: And to speak to that,

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2 I just think that -- I believe if there's any
3 other additional information that's going to
4 shed anymore light on this issue, I think we --
5 I think it's safe to say we can close this.

6 CHAIRMAN RODDEN: At that movement
7 we will be making a determination of something
8 and you folks will be informed.

9 MR. WOLINSKY: You need to take a
10 vote.

11 CHAIRMAN RODDEN: I poll the board
12 that we close this session at this point.

13 MR. CHAMP-DORAN: Aye.

14 CHAIRMAN RODDEN: It's an aye from
15 Mr. Champ-Doran.

16 MR. ARGULEWICZ: Aye.

17 CHAIRMAN RODDEN: From
18 Mr. Argulewicz.

19 MR. CAFFERTY: Aye.

20 CHAIRMAN RODDEN: From Mr. Cafferty.
21 And Mr. Fitzgerald?

22 MR. FITZGERALD: Aye.

23 CHAIRMAN RODDEN: And myself too.

24 So you folks will be hearing from us
25 shortly. Thank you for your --

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2 MR. WOLINSKY: Just a point of
3 clarification --

4 MR. REPLANSKY: Just as a
5 procedural, I just wanted to know, first, are
6 you going to be making a decision tonight?

7 MR. WOLINSKY: There will be no
8 decision tonight.

9 MR. REPLANSKY: Because I didn't
10 want to have to wait.

11 CHAIRMAN RODDEN: Although we've
12 heard from both sets of evidence that it's a
13 straight forward issue and it's complicated, I
14 think that we're leaning on the side that this
15 is complicated and there are issues that need to
16 be researched and need to pull the record
17 together here and have a hard look at it.

18 MR. REPLANSKY: Thank you.

19 CHAIRMAN RODDEN: Based on the
20 comments from the public, we're going to have to
21 look closer.

22 MR. REPLANSKY: Thank you.

23 CHAIRMAN RODDEN: Thank you.

24 (Off the record.)

25

1 50 Rondout Landing - Hearing

2 CHAIRMAN RODDEN: We're going to
3 reconvene. I need a motion to reopen the
4 meeting.

5 MR. ARGULEWICZ: I move that this
6 meeting of the Zoning Board of Appeals is
7 reopened.

8 CHAIRMAN RODDEN: Hear a second?

9 MR. FITZGERALD: Second.

10 CHAIRMAN RODDEN: That's motion by
11 Mr. Argulewicz, seconded by Mr. Fitzgerald.
12 This meeting is now open and back in order.

13 I need a vote to open the meeting.
14 Mr. Champ-Duran.

15 MR. CHAMP-DORAN: Aye.

16 MR. ARGULEWICZ: Aye.

17 CHAIRMAN RODDEN: Mr. Cafferty.

18 MR. CAFFERTY: Aye.

19 CHAIRMAN RODDEN: And Mr.
20 Fitzgerald.

21 MR. FITZGERALD: Aye.

22 CHAIRMAN RODDEN: We're all in
23 favor, this meeting is officially reopened.

24 The next one is 50 Rondout Landing.
25 This is in Zone RF-R. Daniel Proctor/Hudson

1 50 Rondout Landing - Hearing

2 River Maritime, applicant/owner. Rebuild in
3 place the deteriorated non-ADA compliant
4 entrance ramp.

5 Applicant requests an area variance
6 from Section 405-8 of the zoning ordinance of
7 the City of Kingston, New York. Applicant
8 requests an area variance from the permitted
9 front yard setback of 25 feet to zero setback.

10 Would you state your name and
11 address.

12 MR. PROCTOR: My name is Dan
13 Proctor, I'm on the board of trustees for the
14 Hudson River Maritime Museum. You need my home
15 address or the museum's? The museum is 50
16 Rondout Landing, is that sufficient?

17 CHAIRMAN RODDEN: That's fine, sir.

18 MR. PROCTOR: And I was in front of
19 you just a few months ago, as you mentioned. We
20 have done a substantial amount of work at the
21 museum. We now have five lines of business; we
22 have boat school, we have boot restoration
23 service, we have event space, we have training
24 space. We would like to continue to improve the
25 building.

1 50 Rondout Landing - Hearing

2 We've come before you requesting an
3 area variance for a ramp, for the facade. We
4 would like to push that forward if at all
5 possible.

6 The last time we were here it was my
7 understanding that we were missing a significant
8 letter from the mayor which gave us the ability
9 to encroach further. Right now we're
10 encroaching -- we are encroaching one and a half
11 feet onto city property, we're requesting an
12 additional encroachment of 16 feet, giving us a
13 total of 17 feet six inches, in order to build
14 this ramp and this facade and associated
15 structures.

16 CHAIRMAN RODDEN: We have the letter
17 from the mayor and he consents that the
18 encroachment of the additional 16 feet plus the
19 additional 1.5 feet that was there, giving you
20 the total encroachment on your part of 17.5
21 feet, he gives his consent pursuant to Section
22 355-13 of the Code of the City of Kingston.

23 MR. ARGULEWICZ: So what's the total
24 of encroachment?

25 CHAIRMAN RODDEN: The total

1 50 Rondout Landing - Hearing

2 encroachment is 17.6, 17 and a half feet. And I
3 think that was the main concern the last time
4 you appeared before us.

5 MR. PROCTOR: Yes, sir.

6 CHAIRMAN RODDEN: Is there anything
7 for Mr. Proctor?

8 MR. CAFFERTY: My only question was
9 that -- I just have a question as to whether or
10 not the mayor alone can make that decision or
11 whether there's a need to have an authorizing
12 ability before the Common Council.

13 If everyone is comfortable
14 proceeding with a letter, that's fine with me,
15 but that was the only question I had. As far as
16 I'm concerned I'm ready to move forward and make
17 a determination on it.

18 MR. PROCTOR: I'll point out that
19 the Common Council generated the letter for the
20 mayor's signature.

21 CHAIRMAN RODDEN: Did you hear that?

22 MR. CAFFERTY: What's that?

23 MR. PROCTOR: The Common Council
24 generated the letter for the mayor's signature.

25 MR. CAFFERTY: Okay, great.

1 50 Rondout Landing - Hearing

2 CHAIRMAN RODDEN: Any other
3 questions?

4 MR. FITZGERALD: No.

5 CHAIRMAN RODDEN: Anybody here to
6 speak in favor of the request?

7 Anyone in opposition?

8 Thank you. We'll make a decision
9 and you are welcome to stay or you will be
10 notified by mail.

11 MR. GARTENSTEIN: Mr. Proctor, the
12 original letter is in my office if you want to
13 walk down and get a copy of it.

14 MR. PROCTOR: Thank you, sir, I
15 appreciate that. I would be glad to stay to
16 hear. I'm on the zoning board of appeals for
17 Marbletown, so I appreciate it.

18 MR. CAFFERTY: Are we doing this
19 right now?

20 MR. ARGULEWICZ: No, after the
21 agenda is done.

22 CHAIRMAN RODDEN: We're going to
23 hear all of the applications and then --

24 MR. CAFFERTY: Okay.

25 MR. PROCTOR: Very good.

1 50 Rondout Landing - Hearing

2 CHAIRMAN RODDEN: I guess you don't
3 like that.

4 MR. CAFFERTY: I'd like to dispense
5 with them and be done with them one at a time.

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1 59 Broadway - Hearing

2 CHAIRMAN RODDEN: The second piece
3 of business is for 59 Broadway; it's in Ward 8,
4 Zone RT. Alicia Beisel and Nicola Coppola,
5 applicant/owner. Convert first floor space to
6 residential living space.

7 The applicant requests a use
8 variance from Section 405-19 B1 of the zoning
9 ordinance of the City of Kingston, New York.
10 The applicant is looking to convert part of a
11 hair salon to residential space on the first
12 floor.

13 You've been before us before. Can
14 you give us your name and address.

15 MR. COPPOLA: Nicola Coppola, I live
16 in Highland, and I'm the landlord for the
17 project.

18 MS. BEISEL: Alicia Beisel, Route 9,
19 Broadway, I'm the applicant.

20 CHAIRMAN RODDEN: And I believe the
21 concern had something to do with financial, is
22 that it?

23 MR. COPPOLA: Yes.

24 MR. ARGULEWICZ: We received a
25 letter from an Attorney Moriello that I had

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posed the question on reasonable return and I appreciate you adding that into the record. Here it states what you're currently leasing for the various areas are and associated expenses and it appears that you basically are breaking even on the cost --

MR. COPPOLA: Yes.

MR. ARGULEWICZ: -- on the lease.

And if you lose the salon then you are going to lose a substantial part of your income.

MR. COPPOLA: Yes.

MR. ARGULEWICZ: I just have one question. What's the percentage of that first floor -- what's the percentage of the salon and the apartment; 50/50?

MR. COPPOLA: About 50/50.

MR. ARGULEWICZ: 50/50?

MR. COPPOLA: 50 is the salon on the first floor.

MR. ARGULEWICZ: And 50 is --

MR. COPPOLA: And 50 is the apartment.

MR. ARGULEWICZ: And the apartment piece I think had a kitchen in it?

1 59 Broadway - Hearing

2 MR. COPPOLA: Yes.

3 MR. ARGULEWICZ: And what else?

4 MR. COPPOLA: Kitchen and living
5 room.

6 MR. ARGULEWICZ: Kitchen and living
7 room. And also I was happy to see you put an
8 estimate in there of what it would cost to move
9 the plumbing, kitchen upstairs to make the first
10 floor completely business and then make the
11 second floor an apartment; and about \$40,000, if
12 my memory serves. So thank you for providing
13 that information on the finances.

14 MR. COPPOLA: You're welcome.

15 CHAIRMAN RODDEN: Is there any other
16 questions from the board?

17 Okay, since we've just received the
18 financials tonight, we will table this until we
19 have an opportunity to review all of the
20 paperwork that we received from your lawyer and
21 we'll put you on the calendar for next month's
22 meeting. I need a motion to table.

23 MR. FITZGERALD: So moved.

24 MR. CHAMP-DORAN: Second.

25 CHAIRMAN RODDEN: Joe Fitzgerald,

59 Broadway - Hearing

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seconded by Andrew Champ-Doran. All in favor,
aye? Aye.

MR. CAFFERTY: Aye.

MR. FITZGERALD: Aye.

MR. ARGULEWICZ: Aye.

MR. CHAMP-DORAN: Aye.

CHAIRMAN RODDEN: Thank you and
we'll see you here in October.

1 3 Fairview Avenue Extension - Hearing

2 The next order of business is 3
3 Fairview Avenue Extension, Ward 1, Zone R-1.
4 Kathleen Warncke, applicant/owner. Park two
5 vehicles in the front yard setback.

6 Applicant requests an area variance
7 from Section 405-34 E(4) of the zoning ordinance
8 of the City of Kingston, New York. Applicant
9 would like to park two vehicles in the front of
10 the house to make entry and exit safer.

11 Would you please tell us who you are
12 and your address.

13 MS. WARNCKE: My name is Kathleen
14 Warncke, I believe at 3 Fairview Avenue in
15 Kingston and I'm here to receive a variance, a
16 decision hopefully on my property.

17 CHAIRMAN RODDEN: Yes?

18 MR. BERARDI: Frank Berardi, 158
19 First Avenue, Apartment 1, Kingston.

20 CHAIRMAN RODDEN: When we met last
21 time, there were members of the board who hadn't
22 had an opportunity to visit the site so we made
23 recommendations that that could happen. I
24 believe that everyone had the opportunity to
25 visit the site.

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So if you can tell us, has there been any changes that we should be aware of or anything of that nature?

MS. WARNCKE: Just the basics that we have four vehicles. It's very hard to get up and down that little knoll in the wintertime, it's very hard to go up and down the stairs from the basement. I do understand Mr. Teetsel's concerns that Mr. Little had three vehicles there at one time. One of those vehicles was parked in the basement, what I call the basement now. As far as I know it's not legal to do that anymore because of the way the furnace is. He may have been in and out during the day and stuff like that but not as often as us.

Like I said, we have four vehicles that go in and out. One of us goes to work at 3:30 in the morning, one of us goes to work at six, one of us goes to school at nine and the other one goes to work at seven and sometimes does not return home until 11 p.m.

So with that said, when we park the vehicles it's a constant juggle. By having this little area in the front it makes it safer for

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2 us to go in and out of the side entrance so no
3 one falls coming up the hill in the wintertime,
4 it makes it easier on our neighbors, which I'm
5 sure that -- Mr. Argulewicz, you went by the
6 other day, I don't know if you got to speak to
7 Mr. Sweeney or not.

8 MR. ARGULEWICZ: I spoke to someone
9 who was watching their grandson.

10 MS. WARNCKE: That was John, that is
11 my significant other. Anyway, Mr. Sweeney is
12 not happy about it. Whenever we park on the
13 streets he gets very upset, however, he's been
14 parking there for years until he added on to his
15 driveway without a variance and nothing was
16 said. I don't care one way or the other because
17 it's not my business. I live over there, I
18 don't want to give him any grief.

19 The lady next door consistently if
20 you park on the street -- which is totally
21 legal, there are no no parking signs, no law
22 says that we have to park in our driveway, it
23 makes it easier for us.

24 As Mr. Argulewicz said, we have a
25 very small child in the house, he's only going

1 3 Fairview Avenue Extension - Hearing

2 to be two years old, he has a little bit of a
3 learning disability and instability on his feet.
4 We try to keep him down in the backyard as much
5 as we can so that any traffic coming in and out
6 is not a hindrance to him.

7 So therefore, we would really like
8 to have this parking area. Mr. Sweeney has had
9 folks come by, haven't had a place to turn
10 around, they use that particular area to turn
11 their car. I never go out and tell them you
12 can't come on my property, you can't turn here.
13 I don't really care. I mean he's his own person
14 as far as that goes.

15 However, Suzanne, I don't know her
16 last name, always has a problem when we park on
17 the street. She has a tendency to come out and
18 scream at my granddaughter all the time when we
19 park there. She has a tendency to be very
20 disrespectful about the fact that my great
21 grandson is interracial and partially Puerto
22 Rican, and to me that's just disgusting.

23 We do have neighbors up the street
24 that are white and their boyfriends are black.
25 I don't have a problem with that. Nobody else

1 3 Fairview Avenue Extension - Hearing

2 seems to have a problem with that.

3 I don't know what more they want. I
4 just want a little area where I feel that it's
5 easy for me to go in and out with the little
6 guy, with groceries, people coming, people
7 going, Early Intervention; just want an easy
8 life for the rest of my life. I'm not getting
9 any younger, we all know that. So that's my,
10 you know, my thing.

11 I would appreciate it if when you
12 rule you take all of that into consideration.
13 The problem is the driveway's starting to
14 collapse and sink and all that stuff, you know,
15 that's going to be a big deal for the city
16 because that's the city water main. And as much
17 as we drive across it, it's going to make that
18 happen sooner. If we don't drive across it, you
19 folks may not have to do anything until I'm six
20 foot under the ground. So you know.

21 So that's my thing. I'd appreciate
22 it if you would take it into consideration those
23 things and if you have any questions -- any
24 questions as far as what the property --

25 CHAIRMAN RODDEN: Mr. Argulewicz has

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a question.

MR. ARGULEWICZ: Since the last time you came to see us, I revisited. Now I notice the area, the parking area, has wood and some kind of post, nails but paving going into the stone. What, is that area designated what you want that approval for?

MS. WARNCKE: We did that as a temporary thing so you could see what our intention was. We do want to put landscaping ties there and make it similar to what Mr. Teetsel has.

MR. ARGULEWICZ: That would be the size of what you are speaking approval of, it's about a foot in from what it was originally?

MS. WARNCKE: Yes. And that's why we did that, so you would have an idea.

MR. ARGULEWICZ: Thank you.

CHAIRMAN RODDEN: Any other questions from the board?

MR. BERARDI: One little statement, whatever. Before the last meeting we discussed the fact that we had a problem with the neighborhood and the police officer came and

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2 said to park there. And since that's been the
3 practice, we have had no confrontation with
4 neighbors, there's been no problem with traffic
5 in or out. So I mean if you talk to the police
6 department they'll tell you there haven't been
7 any calls or problems since then. So in a way
8 it kind of proved that just doing that
9 alleviated a lot of conflict in the
10 neighborhood. Because that's what it really
11 amounts to too, personal conflict not just
12 zoning. It's whether you're going by the law
13 but it's still a personal problem when people
14 start blocking driveways and parking in front of
15 houses and all of that. So it has kind of
16 proven the fact that it did work.

17 CHAIRMAN RODDEN: So the police told
18 you to park on the front lawn?

19 MR. BERARDI: After the
20 confrontation with Susan, he said I don't want
21 to come here again, park in the driveway.

22 CHAIRMAN RODDEN: Any questions?
23 Anybody else?

24 MR. ARGULEWICZ: No. I made my
25 observations. And it's very tight. My own

1 3 Fairview Avenue Extension - Hearing

2 observation, the whole area is really tight. I
3 can't imagine when I was backing up if a big
4 truck was parked there across there. And I
5 parked in your parking spot that you requested,
6 and when I backed up I had to be very careful.

7 MR. BERARDI: And from that spot if
8 you are in the driveway and trying to back up,
9 you have a pole, you have a fire hydrant,
10 there's cars parked. You can't put three cars
11 in the driveway and everybody backs out, there's
12 nowhere to put them.

13 MR. CAFFERTY: I went up there
14 yesterday. It's terrible. It's a terrible
15 setup. I mean that driveway that goes right off
16 the end of the cul-de-sac. And I made the
17 mistake of pulling into the driveway, which
18 meant that I had to back out, which was not fun.

19 MS. WARNCKE: Just so you know, that
20 is a complex that's owned by a gentleman in New
21 York City, I don't know what his name is, but
22 Mr. O'Brien lives in that apartment house. And
23 from what I understand that address was actually
24 Apple Street and they used to park where there
25 was a concrete wall. Whether they had a

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variance, we've done our homework, we've never seen any variance for them to put that driveway there, whether it's him personally or the people from New York that actually owned the property.

However, we don't care. I don't care if he has his driveway on top of his roof, that's not my problem. I want it safe for my family, I want to be able to maneuver. There's a lot of people coming and going all the time.

You know Mr. Sweeney has sometimes -- not so much anymore, he used to have his work truck, which I understand he's on call a lot. I don't have a problem with that. He has a vehicle, he has his truck, he has two or three motorcycles; nobody says anything, nobody cares. We don't care, we don't want trouble with them.

Like I said, I just want a quiet place for me and my children to live comfortable and no problems, you know. I don't care if my neighbors live --

MR. CAFFERTY: Yeah.

CHAIRMAN RODDEN: Joe, go ahead.

MR. FITZGERALD: One question. When

1 3 Fairview Avenue Extension - Hearing

2 you said that the policeman asked you to park in
3 your driveway, is that the new spot?

4 MS. WARNCKE: The new spot, yes. As
5 a matter of fact, he didn't ask us, he said no,
6 Kathy, I am telling you as an officer, park your
7 car there because I don't want to have to come
8 back here again and hear that lady cursing and
9 swearing, and he cursed.

10 CHAIRMAN RODDEN: Andy.

11 MR. CHAMP-DORAN: Just a couple of
12 things. The last time I was down there was
13 since our last meeting, I've been a couple of
14 times before that, I noticed something I hadn't
15 seen, nothing on the street. There was one car
16 in your drive that seemed to be parked parallel
17 to the street, nose in, and I thought that was a
18 nice solution.

19 MS. WARNCKE: It depends.

20 MR. CHAMP-DORAN: Because there's
21 still no -- we still aren't -- there's still no
22 regulation against parking on the street in
23 front of your driveway, which was one of the
24 concerns I raised the first time.

25 MR. CAFFERTY: Well, it's all well

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and fine in the summertime but what happens in the wintertime when the street has to be plowed into a dead end cul-de-sac and parking on the street becomes problematic.

MR. CHAMP-DORAN: I was there in the wintertime when there was snow and that's why, the street got even narrower. It was backed all the way up to Fairview.

MS. WARNCKE: And that's what we've been saying all along. We're not here to start any trouble. When I first bought the house, Mr. Sweeney came over and he talked to us like we've been best friends forever, we showed him what we were doing with the house, we painted it all up nice. Suzanne loved it, she came over and complimented on how it looked. And then all of a sudden there's this whole big thing because we put in a fence in there.

And when we were told we needed a building permit, we went down, talked to the girl at the office, she said we didn't need it. And then at that point you would have thought, and it could be an honest mistake, that they would have said no, you need a variance. But no

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2 one said that to us. And then Mr. Teetsel got
3 up all up in arms and it just became this whole
4 thing.

5 Now he came down awhile ago and
6 spoke to me before the last meeting we had, very
7 nice, came inside and told me that he was
8 against it. I understand that. And I asked him
9 why do you park your car on your neighbor's yard
10 along the road and that's okay but if I park my
11 car within 15 feet of the road, I can get fined
12 for it.

13 CHAIRMAN RODDEN: Ms. Warncke, we've
14 heard this testimony or opinion a couple of
15 times, so we're pretty knowledgeable of the
16 problem that's going on on the end of Fairview
17 Extension.

18 MS. WARNCKE: I hope it clears up.

19 CHAIRMAN RODDEN: We're not going to
20 go offer a solution from the floor, that's not
21 how we do it.

22 MR. BERARDI: And the best thing was
23 what you did, you went and looked at it. On
24 paper it looks one way and when you go there and
25 you try and drive, you have to make your own

1 3 Fairview Avenue Extension - Hearing
2 determination to see if that's the best
3 solution.

4 CHAIRMAN RODDEN: I'm going to ask
5 are there any other questions from the board?

6 MR. FITZGERALD: No.

7 CHAIRMAN RODDEN: Is there anyone
8 that would want to speak in favor of Ms.
9 Warncke's request?

10 Is there anyone in opposition?

11 We'll go to -- at the end of the
12 meeting we'll discuss it, we'll make a decision
13 hopefully. If you want to stay, you are welcome
14 to. If not, you will be notified by mail of
15 what transpires at the end of the meeting.

16 MS. WARNCKE: Thank you very much.

17 CHAIRMAN RODDEN: Thank you.

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1 385 Boulevard - Hearing

2 CHAIRMAN RODDEN: Heimo Menges.

3 This application is for 385 Boulevard. It's a
4 Ward 3, Zone RRR. Heimo Menges is
5 applicant/owner. Rent both units in a single
6 family structure without owner occupancy.

7 Applicant requests a use variance
8 from Section 405-9(9)b of the zoning ordinance
9 of the City of Kingston, New York. Applicant
10 looking to remove the requirement of owner
11 occupancy on a property he owns and no longer
12 lives in but retains its configuration as a
13 single family with an accessory apartment.

14 If you will tell us your name and
15 address.

16 MR. MENGES: Excuse me?

17 CHAIRMAN RODDEN: We need your name
18 and address.

19 MR. MENGES: My name is Heimo
20 Menges, I live in Red Hook. Orlich Road in Red
21 Hook.

22 THE REPORTER: I'm sorry, what was
23 the address?

24 CHAIRMAN RODDEN: Can you repeat
25 that?

1 385 Boulevard - Hearing

2 MR. MENGES: I live on Orlich Road
3 in Red Hook, New York.

4 CHAIRMAN RODDEN: Warwick?

5 MR. MENGES: Orlich, O-r-l-i-c-h.

6 CHAIRMAN RODDEN: Oh, Orlich. Okay.

7 MR. MENGES: I recently moved about
8 two years ago.

9 CHAIRMAN RODDEN: And you are the
10 owner of this property, correct?

11 MR. MENGES: What's that?

12 CHAIRMAN RODDEN: You are the owner
13 of this property?

14 MR. MENGES: Yes, I am. I have
15 found it difficult to sell. I've had it on the
16 market for a couple of years, kept reducing the
17 price. The problems being the location of the
18 home is across from the county jail, in back of
19 the old county jail. I have the city dump
20 across the street. My driveway forms a four-way
21 intersection with 32 and the jail inlet and
22 outlet. And then they put a three-way light
23 there, so it's always a fun time leaving my
24 driveway. Don't know -- if I do have an
25 accident, I'm not sure what would happen.

1 385 Boulevard - Hearing

2 Also there's a retaining wall that
3 was built close to a hundred years ago in front
4 of the property, about 30 feet of it, that
5 becomes an issue to the buyer because we're not
6 sure whose the responsibility is to rebuild it.
7 It was built by the City of Kingston in 1932 or
8 '33, it's held up so far, but it's ready to come
9 down. So those are the issues that I deal with
10 as far as the difficulty in selling the
11 property.

12 I also share a right-of-way with my
13 neighbor, who's very aggressive. That's another
14 problem but that's not the city's problem,
15 that's my problem.

16 So what I would like from this is to
17 be able to rent it as another apartment
18 downstairs so I can at least make a little bit
19 of money to do whatever repairs are necessary to
20 maintain the home and pay the taxes. I have the
21 expenses there. If everything goes right during
22 that year I may make 6,000, which has to go back
23 into the wall or whatever the repairs are. I
24 don't know whether the City of Kingston will
25 take responsibility for the wall but up until

1 385 Boulevard - Hearing

2 now I don't think they would.

3 I asked about the traffic light and
4 no one really wanted to deal with that either.

5 MR. ARGULEWICZ: How many people are
6 living in the house now?

7 MR. MENGES: There's three upstairs;
8 three, a mother and two daughters. And a single
9 woman downstairs, which is moving out because
10 she's been threatened so many times by my
11 neighbor, very aggressive neighbor.

12 MR. ARGULEWICZ: So it's two
13 families that are living there now?

14 MR. MENGES: Yes.

15 MR. ARGULEWICZ: Okay. Now, we have
16 in our possession a letter that was written to
17 whoever it may concern. Have you seen this
18 letter from Michael LaFever, building safety
19 division, indicating that your mother can
20 continue to live downstairs but the property is
21 a one-family residence and that if you ever sell
22 the property you would need to dismantle the
23 kitchen in the basement so a future owner cannot
24 rent the basement area as an apartment? So this
25 letter indicates February 28th, 2003.

1 385 Boulevard - Hearing

2 MR. MENGES: Yes.

3 MR. ARGULEWICZ: That it was okay
4 for you to have your mother downstairs but you
5 are not to rent it out to anybody. And you're
6 no longer even living in the house?

7 MR. MENGES: Right. The letter was
8 brought up to me and I realized what was going
9 on and that's why I'd like to have the hardship
10 variance. I met all the safety requirements. I
11 met everything that's there.

12 MR. ARGULEWICZ: But you said the
13 letter was brought up to you. So you had no
14 knowledge of this letter?

15 MR. MENGES: Jill, the safety person
16 that inspected my home, brought that up.

17 MR. ARGULEWICZ: But I repeat my
18 question, you had no knowledge of this letter?

19 MR. MENGES: I didn't know it was
20 there, no.

21 MR. ARGULEWICZ: Who did the letter
22 go to? Ulster Savings Bank. But you didn't get
23 a copy of it?

24 MR. MENGES: No.

25 MR. ARGULEWICZ: Well, the letter is

1 385 Boulevard - Hearing

2 here, so you know that.

3 CHAIRMAN RODDEN: I mean this is --
4 you must have been here looking for a variance
5 to make it two family and it's pretty clear that
6 the variance was granted on the premise that as
7 long as it was owner occupied that the variance
8 would stay in force but once that owner either
9 moved or sold said property, the downstairs
10 apartment had to be dismantled.

11 MR. MENGES: Right.

12 CHAIRMAN RODDEN: That's the way the
13 original variance was written.

14 MR. MENGES: Okay. And I can apply
15 now for a hardship variance, correct?

16 MR. CAFFERTY: Is this property in a
17 zone that allows two family?

18 CHAIRMAN RODDEN: It's RRR. Allowed
19 to have owner occupied with accessory apartment.

20 MS. SMITH: That's how I interpreted
21 it, that's why there was a provision in there
22 that it had to be owner occupied and when it was
23 sold it would be dismantled.

24 CHAIRMAN RODDEN: Did you understand
25 what was just said?

1 385 Boulevard - Hearing

2 MR. MENGES: Yes.

3 CHAIRMAN RODDEN: Any questions for
4 Mr. Menges?

5 MR. FITZGERALD: No.

6 CHAIRMAN RODDEN: Anything?

7 MR. ARGULEWICZ: I'm just reading
8 the RRR.

9 CHAIRMAN RODDEN: Is there anybody
10 who would like to speak?

11 MR. CHAMP-DORAN: Have you seen the
12 letter from Bill Constant?

13 CHAIRMAN RODDEN: I'm going to read
14 it into the minutes.

15 MR. MENGES: Bill was my former
16 brother-in-law. When my mother passed away
17 there was a disagreement, family disagreement.
18 He's been very aggressive and making the
19 right-of-way, part of my home, he uses it as a
20 high speed exit on 32. I had to put a speed
21 bump in it in order that no one would get hurt
22 and he would slow down a little bit.

23 So I can imagine he has a complaint
24 because it's been with the family -- when my
25 mother passed away he felt there was some money

385 Boulevard - Hearing

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2 issues that weren't right or whatever it is.
3 Everything was explained to him but he's still
4 very aggressive towards -- he threatens me when
5 I use my right-of-way, as his home. He
6 threatens to -- you know, he threatens with
7 violence.

8 CHAIRMAN RODDEN: Sir, unfortunately
9 we're not -- we don't have any right to --

10 MR. MENGES: I understand that.

11 CHAIRMAN RODDEN: -- deal with the
12 problems between neighbors and family.

13 MR. MENGES: I understand that.

14 CHAIRMAN RODDEN: But I'm going to
15 read Mr. Constant's letter and I also have one
16 from Patricia Hall I'll read.

17 But in the interim is there anyone
18 who would like to speak in favor of the
19 application?

20 Anyone have a negative response?

21 MR. JABLONSKI: My name is Steve
22 Jablonski, 375 Boulevard. And I guess I'm the
23 nasty neighbor that used to be very good friends
24 with Mr. Menges here until he rented the other
25 apartment to a person who doesn't care.

1 385 Boulevard - Hearing

2 Anyway, I did some research and I
3 found the laws that says a variance request is
4 justified only if special conditions exist on
5 the lot that create a hardship making it too
6 difficult to comply with the code's normal
7 requirements. Likewise, if his request for a
8 variance on a normal lot with no special
9 condition could judicially be denied. The
10 special conditions or hardships typically must
11 arise from physical configurations on the lot or
12 structures. Financial or personal situation of
13 the applicant normally cannot be taken into
14 consideration.

15 Second, accessory apartment is
16 defined as a self-contained living area within a
17 single-family home as for an aging parent.

18 This does not meet that. He's
19 trying to rent it out to make money.

20 Third, parking. Three cars could
21 fit on the parking areas. The other cars always
22 park on the lawn. The problem with that is the
23 lawn between his house and my house is the
24 septic field. Cars park on that plenty of
25 times. One of these times they're going to cave

1 385 Boulevard - Hearing

2 it in and my house is a lower grade than his
3 house and who's going to wind up with the mess.

4 So all I'm asking is follow the law
5 and deny his request. The hardship is self made
6 and not anything to do with the property.

7 Thank you.

8 CHAIRMAN RODDEN: Thank you. Anyone
9 speaking in favor or against?

10 This letter is addressed to the
11 Kingston Zoning Board of Appeals, it's from Bill
12 Constant at 393 Boulevard.

13 "Since I've been unable to appear, I
14 cannot alter my work schedule, I am unable to be
15 present. However, I would like to express my
16 opinion on the matter at hand. I much prefer
17 the occupancy of the new tenants, a nice group
18 of ladies, to that of the landlord, a very
19 hostile and troubled individual at the 385
20 Boulevard address.

21 "I do actually have a suggestion
22 that might help to partly remedy the situation.
23 The landlord should be required to remove a
24 speed bump and four concrete pillars installed
25 on and either side of the driveway to which I

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have a right-of-way. This action would enhance the value of his property and mine and would facilitate the parking of three to five cars belonging to the tenants, who occasionally are forced to park on the lawn and/or over the septic field.

"I am not if this is the type of feedback" -- I think he meant he's not sure if this is the type of feedback we're looking for -- "but I do think it would resolve the issue at hand to some degree."

That was Mr. Constant.

MR. MENGES: And I agree with the speed bump and the traffic areas. But on the lawns, when he got angry at me he was using that right-of-way in front of my home as a high speed --

CHAIRMAN RODDEN: Again, sir, we're not here for conflict.

MR. MENGES: Well, those are the things that -- there's a reason it's there, safety.

CHAIRMAN RODDEN: But again, like I said, we are governed by certain rules of use

1 385 Boulevard - Hearing

2 and area and conflict is not one of them.

3 This is from Patricia Hall written
4 on 9/20. "Zoning Board of Appeals, Common
5 Council. I am writing concerning the rental
6 units belonging to Heimo Menges. The tenants in
7 both units are the nicest people and we have
8 hardly ever known that they are around. I live
9 at 388 Boulevard, directly across the street.
10 The tenants traffic is very minimal and I never
11 have a problem.

12 "I would also like to add that Heimo
13 Menges has been my neighbor on and off for over
14 40 years and he has never been anything but kind
15 and helpful to me. Thank you, Patricia Hall."

16 So those are entered into the
17 minutes.

18 Any questions from the board for
19 Mr. Menges?

20 Again, thank you for your time.
21 We're going to go into session and you're
22 welcome to stay for our decision or you'll be
23 notified by mail.

24 MR. MENGES: There's a decision?

25 CHAIRMAN RODDEN: Well, we may come

385 Boulevard - Hearing

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to a decision, okay, but it's not here. We're going to sit in a caucus so that we can talk about this before we make our final decision.

MR. MENGES: Thank you.

1 35 Lucas Avenue - Hearing

2 CHAIRMAN RODDEN: And the last on
3 the agenda, 35 Lucas Avenue, Ward 1, Zone C2,
4 Nancy Tierny, applicant/owner. To construct an
5 eight-foot privacy fence.

6 The applicant requests an area
7 variance from Section 405-9 C(8) of the zoning
8 ordinance of the City of Kingston, New York.
9 Applicant would like to erect a privacy fence
10 taller than allowable to screen property from
11 neighboring business.

12 Mr. Safford, do you have some
13 additional comment that you would like to add?

14 MR. SAFFORD: The only thing that I
15 mentioned before about the fence was that -- no,
16 it's okay.

17 MR. ARGULEWICZ: Isn't there a fence
18 currently there? I mean I drove by and I
19 looked. Is there a fence between your property
20 and the laundromat?

21 MS. TIERNY: Yes, it's probably a
22 little under six feet. It's going to be
23 removed.

24 MR. ARGULEWICZ: It's going to be
25 removed and put a new one.

1 35 Lucas Avenue - Hearing

2 MS. TIERNY: There's going to be a
3 new fence all around the property. And that
4 side where there's trees, those trees will be
5 taken down, so there's just more exposure
6 between the laundromat parking lot and our
7 property, which is why if we could just have
8 eight feet on just the laundromat side, it would
9 allow a little more privacy for our deck and
10 yard in the back.

11 MR. ARGULEWICZ: So the zoning
12 allows six feet, Joe?

13 MR. SAFFORD: It does. When it's
14 between residential and commercial areas,
15 normally what would happen the commercial area
16 would be asked during site plan review to go
17 above that, and it either got missed or wasn't
18 necessary at that point.

19 MR. ARGULEWICZ: It's only eight
20 feet on the laundromat side and the rest would
21 be six?

22 MS. TIERNY: Yes.

23 MR. ARGULEWICZ: Thank you.

24 CHAIRMAN RODDEN: Did you state your
25 name and address?

1 35 Lucas Avenue - Hearing

2 MS. TIERNY: My name is Nancy Tierny
3 and the address is 35 Lucas Avenue in Kingston.

4 CHAIRMAN RODDEN: Any questions from
5 the board, other than what we've discussed?

6 Anyone here opposed to the request?

7 Anyone to speak in favor?

8 Thank you.

9 MS. TIERNY: Thank you.

10 MR. ARGULEWICZ: It will be the same
11 style fencing?

12 MS. TIERNY: Exactly.

13 MR. ARGULEWICZ: White?

14 MS. TIERNY: It will be vinyl, white
15 vinyl.

16 MR. ARGULEWICZ: It's wood now.

17 MS. TIERNY: It's wood and chain
18 link. It's like used fencing right now.

19 CHAIRMAN RODDEN: Thanks, Nancy.

20 We're going to go into session so
21 this meeting is -- we will reconvene after our
22 discussion, thank you.

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32 Abeel Street - Determination

CHAIRMAN RODDEN: It's 9:45, we're going to call this meeting back to order.

The first variance that was heard tonight was from William Replansky representing the Irish Cultural Center.

And as you know, we tabled that and we'll make a decision later on.

1 50 Rondout Landing - Determination

2 CHAIRMAN RODDEN: The second order
3 of business, 50 Rondout Landing, Daniel Proctor,
4 Hudson River Maritime, rebuild in place
5 deteriorated non-ADA compliant entrance ramp.

6 Requested a zoning variance from the
7 City of Kingston, 405-8, requested an area
8 variance from the permitted front yard setback
9 from 25 feet to zero. Brian.

10 MR. CAFFERTY: Yes, I make a motion
11 that we approve that area variance for Hudson
12 River Maritime.

13 CHAIRMAN RODDEN: I have a second?

14 MR. FITZGERALD second.

15 CHAIRMAN RODDEN: Poll the board.
16 Andrew Champ-Doran?

17 MR. CHAMP-DORAN: Aye.

18 CHAIRMAN RODDEN: Anthony?

19 MR. ARGULEWICZ: Grant.

20 CHAIRMAN RODDEN: Brian?

21 MR. CAFFERTY: Aye.

22 CHAIRMAN RODDEN: Joe?

23 MR. FITZGERALD: Aye.

24 CHAIRMAN RODDEN: And Jim in favor.
25 That request has been granted.

1 59 Broadway - Determination

2 CHAIRMAN RODDEN: 59 Broadway,
3 Alicia Beisel and Nicola Coppola,
4 owner/applicant, want to convert a first floor
5 space to residential space.

6 Applicant requested a use variance,
7 405-19 B1 of the zoning ordinance of the City of
8 Kingston. The applicant is looking to convert
9 part of a hair salon to residential space on the
10 first floor.

11 We requested more information from
12 the owner as far as financials and other
13 information about square footage, etcetera. We
14 received that information tonight so we're going
15 to table that and review that and that will be
16 on the hearing notice for October.

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1 3 Fairview Avenue Extension - Determination

2 CHAIRMAN RODDEN: 3 Fairview Avenue,
3 Ward 1, Zone R-1, Kathleen Warncke,
4 applicant/owner. Request to park two vehicles
5 in front yard setback.

6 Applicant requested an area variance
7 from Section 405-34 E(4) of the zoning ordinance
8 of the City of Kingston. Applicant would like
9 to park two vehicles in the front of the house
10 to make entry and exit safer.

11 Anthony, would you like to make a
12 motion.

13 MR. ARGULEWICZ: I move to deny the
14 request for an area variance based on the fact
15 that there was not significant changes from the
16 original application and there are alternate
17 solutions for the parking.

18 CHAIRMAN RODDEN: Do I have a
19 second?

20 MR. CAFFERTY: Second.

21 CHAIRMAN RODDEN: Second Mr.
22 Cafferty.

23 I'll poll the board.

24 Andy Champ-Doran?

25 MR. CHAMP-DORAN: Based on the

1 3 Fairview Avenue Extension - Determination
2 motion, I deny.

3 CHAIRMAN RODDEN: Mr. Argulewicz?

4 MR. ARGULEWICZ: Deny.

5 CHAIRMAN RODDEN: Mr. Cafferty?

6 MR. CAFFERTY: Deny.

7 CHAIRMAN RODDEN: Mr. Fitzgerald?

8 MR. FITZGERALD: Deny.

9 CHAIRMAN RODDEN: The chairman
10 denied.

11 That request has been denied.

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1 385 Boulevard - Determination

2 CHAIRMAN RODDEN: 385 Boulevard,
3 Ward 3, Zone RRR, Heimo Menges, applicant/owner.
4 Rent both units in a single family structure
5 without owner occupancy.

6 He requests a use variance from
7 Section 405-9(9)b of the zoning ordinance of the
8 City of Kingston. The applicant is looking to
9 remove the requirement of owner occupancy on a
10 property he owns but no longer lives but retains
11 his configuration of a single family with
12 accessory apartment.

13 Mr. Fitzgerald, make a motion on
14 that.

15 MR. FITZGERALD: Yes, I present it
16 as denied.

17 CHAIRMAN RODDEN: Do I have a
18 second?

19 MR. CHAMP-DORAN: Second.

20 CHAIRMAN RODDEN: I'll poll the
21 board.

22 Andy?

23 MR. CHAMP-DORAN: Deny.

24 CHAIRMAN RODDEN: Mr. Argulewicz?

25 MR. ARGULEWICZ: Deny.

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385 Boulevard - Determination

CHAIRMAN RODDEN: Brian?

MR. CAFFERTY: Deny.

CHAIRMAN RODDEN: Mr. Fitzgerald?

MR. FITZGERALD: Deny.

CHAIRMAN RODDEN: Chairman, deny.

That's denied.

1 35 Lucas Avenue - Determination

2 CHAIRMAN RODDEN: 35 Lucas Avenue,
3 Ward 1, Zone C2, Nancy Tierny, applicant/owner.
4 Would like to construct an eight-foot privacy
5 fence.

6 The applicant requests an area
7 variance from Section 405-9 C(8) of the zoning
8 ordinance of the City of Kingston. The
9 applicant would like to erect a privacy fence
10 taller than the allowable to screen property
11 from neighboring business.

12 I'm looking for a motion. Andy
13 Champ-Doran?

14 MR. CHAMP-DORAN: Mr. Chairman, I
15 move that we approve that variance.

16 CHAIRMAN RODDEN: Do we have a
17 second?

18 MR. CAFFERTY: I'll second that.

19 CHAIRMAN RODDEN: That motion move
20 was by Mr. Brian Cafferty.

21 I'll poll the board.

22 Andy Champ-Doran?

23 MR. CHAMP-DORAN: Grant.

24 CHAIRMAN RODDEN: Mr. Arguleiwcz?

25 MR. ARGULEWICZ: Grant.

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35 Lucas Avenue - Determination

CHAIRMAN RODDEN: Mr. Cafferty?

MR. CAFFERTY: Grant.

CHAIRMAN RODDEN: Mr. Fitzgerald?

MR. FITZGERALD: Grant.

CHAIRMAN RODDEN: James, grant.

That motion has been granted.

Thank you all. Thank you all for
coming tonight.

(Whereupon, the Zoning Board of
Appeals Meeting was adjourned at 9:50 p.m.)

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C E R T I F I C A T I O N

I, Lora J. Curatolo, Certified
Shorthand Reporter, Certificate No. 1031-1, and
Notary Public, do hereby certify that I recorded
stenographically the proceedings herein at the
time and place noted in the heading hereof, and
that the foregoing transcript is true and
accurate to the best of my knowledge, skill and
ability.

IN WITNESS WHEREOF, I have hereunto
set my hand this 3rd day of October 2016.



LORA J. CURATOLO, CSR

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