

In compliance with the Open Public Meetings Act of the State of New Jersey adequate notice of this meeting has been mailed to The Daily Record and posted at the municipal building.

ROLL CALL:

Members Present: Steve Bedell, Joe Fleischner, Nelson Russell, Brian Schaechter, Scott Van Ness, Michael Koroski

Members Excused: Judy Johnson, John Mania, Dan Nelsen, David Koptyra, Howie Weiss

Professionals Attending: Chuck McGroarty, Planning Consultant, Eugene Buczynski, P.E., Edward Buzak, Esq., Catherine Natafalusy, Planning Administrator

Professional Excused: Tiena Cofoni, Esq.

MR. FLEISCHNER: Please note for the record that Nelson Russell who was not here for the last meeting has reviewed the tape of the last meeting and is present today and will be eligible to vote on this item.

APPROVAL OF RESOLUTIONS

Resolution #PB 13-12- Jeffrey & Kelly Cramer – (Block 7610, Lot 17)

Motion: Brian Schaechter
Second: Steve Bedell

Roll Call:

Steve Bedell - yes
Joe Fleischner - yes
Brian Schaechter - yes
Scott Van Ness - yes
Michael Koroski - yes

Resolution #PB 13-13 – Joseph & Victoria Hruby – (Block 7610, Lot 5)

Motion: Brian Schaechter
Second: Steve Bedell

Roll Call:

Steve Bedell - yes
Joe Fleischner - yes
Brian Schaechter - yes
Scott Van Ness - yes
Michael Koroski - yes

APPLICATION #PB 13-15 – SIEMENS HEALTHCARE DIAGNOSTICS, INC. – (Block 5400, Lots 25 & 26)

MR. FLEISCHNER: With that being done let's move into the development matter a continuation of PB 13-15 Siemens Healthcare Diagnostics "d" variance (height) preliminary and final site plan with variances and waivers.

MR. MOORE: Thank you Mr. Chairman, members of the Board good evening for the record my name is Kevin Moore with the firm of Sills Cummis & Gross I represent the applicant before you this evening in this continued hearing Siemens Healthcare Diagnostics, Inc. Mr. Chairman just a little matter of housekeeping did Mr. Russell sign a certification to the effect that he listened to the tapes just for record purposes?

MS. NATAFALUSY: Yes he did.

MR. MOORE: Thank you very much. At last weeks hearing as you may recall we presented the testimony of Mr. Michael Canary the Director of Strategic Projects for Siemens Healthcare Diagnostics, Inc., that of our project site Civil Engineer Mr. Peter Korzen and the testimony of Ms. Deborah Cerbone our landscape architect and a Mr. Karl Pehnke our project Traffic Engineer. Tonight we have two remaining witnesses our project architect Mr. Benjamin Martin and our project planner Mr. Paul Phillips. Also the last exhibit we presented and entered in the record by my notes Mr. Buzak is exhibit A-15 and

at the last week's meeting Mr. Buzak had requested that we supply the presence/absence letters for Freshwater Wetlands and Transition Areas which we did submit to Ms. Natafalusy and also copies all of the professionals but I would like to enter that submission into the record and that would be exhibit A-16 which I will bring up. Let the record reflect that some of the property owners have Counsel and I hand him a copy as well.

MR. BUZAK: Mr. Moore these both the letters one on Lot 25 and one on Lot 26?

MR. MOORE: Yes Mr. Buzak.

MR. BUZAK: And we'll mark those all as one?

MR. MOORE: Yeah I figured since I transmitted it under one cover letter.

MR. BUZAK: All right I'm just adding the date, today's date to the designation.

MR. MOORE: With that Mr. Horton could you stand and put your hand o the Bible and be sworn?

(BEN HORTEN SWORN IN FOR THE RECORD)

MR. BUZAK: Please be seated sir, state your name and business address for the record spelling you last name.

MR. HORTEN: My name is Ben Horten (H-O-R-T-E-N) business address is 312 State Route 10, Randolph, New Jersey.

MR. BUZAK: Thank you sir.

MR. MOORE: Mr. Horten could you briefly give your educational licenses and professional experience for the Board?

MR. HORTEN: Sure. I received a Bachelor of Fine Arts at Carnegie Mellon University and I received a Master of Architecture at Yale University. I have over 20 years of experience working in this field. I've worked for some major and national companies such as Canon Design and (inaudible) & Associates and I've subsequently having worked with them opened my firm back in 2000 and have been practicing on my own since. I'm licensed in New Jersey, Pennsylvania and New York and I'm (inaudible) certified. I'm a Member of the American Institute of Architects; I am a member of the International Code Council and a Certified Leed Professional.

MR. MOORE: I would like to offer Mr. Horten as an expert in the field of architecture.

MR. FLEISCHNER: I would say he's an expert.

MR. MOORE: Mr. Horten could you describe the design for the Siemens campus?

MR. HORTEN: Sure. Are we going to submit the exhibits first?

MR. MOORE: Yeah we could start . . . why don't we for housekeeping and all of the exhibits Mr. Horten that you are going to testify to and we're going to submit as exhibits under your under testimony were they either prepared by you or under your supervision?

MR. HORTEN: That's correct.

MR. MOORE: Thank you very much.

MR. HORTEN: I've prepared some exhibits which include some renderings that wasn't included in the original submission package. And I also have, I would be going over drawings today that was submitted.

MR. MOORE: Let's mark . . .

MR. HORTEN: The drawings that I submitted which I will be presenting today are the drawings dated issued for the Planning Board review dated 5/03/13.

MR. MOORE: And that's A0.00 correct?

MR. HORTEN: Yeah A0.00.

MR. MOORE: And that would be exhibit

MR. BUZAK: 17.

MR. MOORE: Exhibit A-17.

MR. HORTEN: Could we mark that entire set as A-17 or do we have to include . . .

MR. MOORE: No we have to individually mark them.

MR. HORTEN: The A-17 includes A0-00, A1-00, A1-02, A2-01, A2-02, A2-03, A2-04, A4-01, A5-01, A6-00 and A7-00 these were the drawings that were submitted to the Board.

MR. BUZAK: Thank you sir.

MR. SCHAECHTER: Mr. Horten you said A1-00?

MR. HORTEN: A1-01.

MR. SCHAECHTER: Okay.

MR. MOORE: Mr. Horten why don't we just go through and mark the boards that weren't submitted as well.

MR. HORTEN: Okay so this is a set of handouts. This set of handouts that I'm going to handout includes initially the key plan that shows the renderings where we put the renderings.

MR. MOORE: We'll call the whole plan set exhibit A-18. And then do we want to mark the boards in the renderings as well? So this is going to be referring to the boards we should also do, so this is going to be exhibit A-19 I'll mark it on the back.

MR. HORTEN: A-19 is Artistic Rendering Number 1 - Aerial View.

MR. MOORE: Exhibit A-20.

MR. HORTEN: Is Artistic Rendering Number 2 – Street View.

MR. MOORE: And these correspond to the handout that you supplied to the Board as well right?

MR. HORTEN: Right but not in the order.

MR. MOORE: Okay any other boards?

MR. HORTEN: There is four boards.

MR. MOORE: So exhibit A-21.

MR. HORTEN: Is Artistic Rendering Number 3 and that is entitled The Sunroom Addition to the Cafeteria View.

MR. MOORE: This is exhibit A-22.

MR. HORTEN: That's Artistic Rendering Number 4 and that is View from the Neighbor's Side and then we have Artistic Rendering Number 5 which is the proposed site plan that shows the locations of where these perspective views were taken.

MR. MOORE: That's exhibit A-23.

MR. HORTEN: And then finally the last exhibit (inaudible) is, this will be A-24, and that is entitled A6.01 and this is an enlargement of previously submitted section drawings that goes through the site that shows the site line.

MR. MOORE: And then Mr. Horton you should also be referring to the sign.

MR. HORTEN: That was part of the pack which (inaudible).

MR. MOORE: All okay thank you very much.

MR. HORTEN: Okay thank you. Okay now I'm going to walk you through the project. Before I go through the renderings what I'd like to do is I'll walk you through the projects. Starting from where the site plan engineer had last discussed the variances regarding the signs, I'd like to go over that first. And so for that I'm going to refer you to A7.00 which was submitted to the Board. That is the, we call that sheet A7.00 which is part of exhibit A-17. This shows the photograph on the top left corner of the existing monument sign or the main served sign that's currently at the site. What we're proposing to do is relocate that to the main driveway that would be the visitors, the main visitors and the employee entry. As you recall we had two entries to the site. One is the main visitor's entry and another is the entry for the truck drivers where we rerouted the driveway behind the building. So the top left corner is showing the photograph of the existing sign and the bottom two drawings are showing the plan view and the dimensions of the sign. This shows that the main sign portion is 91 square foot, approximately 14 foot wide, 10 foot high, the bottom of the sign is located approximately 3 foot 6 inches from the bottom of the base. The base of the structure is the existing concrete structure that we're looking to relocate. The second sign is the detail two it's called the New Exterior Pylon Sign and that was the truckers sign that we discussed. But the second entryway which is closer to the intersection of Route 206 that would be the main driveway coming into the site for the truck drivers. And having this second sign was the variance requirement that we had because the town ordinance says you're only allowed one sign and we're proposing two signs. Mainly for (inaudible) finding directions so that the truckers don't accidentally drive past the driveway and enter the wrong driveway. The sign itself is 8 foot high and its 2 foot 8 inches wide and it actually, the entire height of the sign is covered with similar sort of metal panel like you see in the existing sign. It will be a white sign and at the top, the very top of the sign will be the Siemens logo, the panels are broken into three sections and to 2 foot 8 inch heights, the second panel has the truck entry and delivery sign located just below it. And the idea was obviously any deliveries or truck traffic will be routed this way and as the civil engineer had testified before the attempt is to grab their attention before they (inaudible). There was another issue with the sign in that the ordinance requires that the bottom of the sign, the bottom 3 feet of the sign not be covered and that it be open and again the engineer testified that the sign is going to be setback from the sight lines so that the auto traffic driving by or cart traffic coming out of the driveway will be able to see the traffic and not impede the visual. I think (inaudible) the intent of that ordinance is to, if there was any instances where the sign might obstruct views having some opening underneath might leave some room but again we moved the sign made it taller moved it out of the sight lines in the driveway configuration and that's the reason we're requesting that variance.

MR. MOORE: And Mr. Horten the sign there is no letter though below 3 feet correct?

MR. HORTEN: Right, right the top panel would have the Siemen's logo the middle panel would have the truck entry sign the bottom panel which is approximately to the top of the bottom panel is about 3 feet that would be totally blank. We don't intend to put any signage on that portion of the sign.

MR. MOORE: And Mr. Horten both signs conform to the ordinance with respect to height and area is that correct?

MR. HORTEN: That's correct.

MR. MOORE: And all dimensional aspects except for the variance we're requesting for the 3 foot space.

MR. HORTEN: That's correct.

MR. MOORE: Thank you.

MR. BUZAK: Do I understand that you are going to move . . . the existing sign is located, is it not where the truck entrance is?

MR. HORTEN: That's near the existing driveway that's correct.

MR. BUZAK: Right so that sign is going to be eliminated is that correct?

MR. HORTEN: That's correct.

MR. BUZAK: And two new signs are going to be constructed. When I say two new signs I mean . . .

MR. MOORE: Well actually the one sign Mr. Buzak if I have it correct and then Mr. Horten you can confirm it is right now I have the one entrance so the sign that's there now is going to be placed at what's going to be the new visitor/employee entrance.

MR. HORTEN: Right.

MR. BEDELL: With that same sign, that same physical sign?

MR. MOORE: It's the same sign it's the same physical sign it's just moving that, exactly the same sign.

MR. BEDELL: Okay.

MR. BUZAK: And then a new sign will be constructed for the use at the existing . . .

MR. MOORE: Well no the existing entrance is . . .

MR. BUZAK: No isn't the existing entrance going to be the truck entrance now?

MR. MOORE: Yes.

MR. HORTEN: Pretty much yes that's correct.

MR. MOORE: More or less.

MR. BUZAK: All right I understand it might not be precise but it's down that end so to speak.

MR. MOORE: Yes.

MR. BUZAK: Okay thank you I just wanted to know whether we were getting two physically two new signs or you were relocating one and you're getting one new one.

MR. MOORE: We're relocating one and one new one.

MR. BUZAK: All right thank you.

MR. FLEISCHNER: And will the lights from the new sign for the truck entrance, will that, those flood lamps they're (inaudible) from the ground will they be on 24 hours?

MR. MOORE: Yes Mr. Canary, this is Mr. Michael Canary for the record he has been previously sworn.

MR. CANARY: Yes Michael Canary and our expectation is that we would shut those lights off in the evening when we are not receiving deliveries.

MR. FLEISCHNER: Okay.

MR. BEDELL: On both signs or just the delivery?

MR. CANARY: Just the delivery our employee entrance sign would remain lit.

MR. BEDELL: Okay.

MR. MOORE: And that's lit today during all shifts correct Mr. Canary?

MR. CANARY: I believe so I am not positive of that.

MR. MOORE: Okay.

MR. MCGROATY: Mr. Chairman there was the third variance for the sign with respect to the location was that testified to last meeting?

MR. MOORE: Right that was testified to. You know Mr. Phillips will address that obviously in his planning testimony but the reason I didn't have Mr. Horten address that is that was really dealt with you know traffic safety and traffic visual points which were testified to last week by Mr. Korzen and Mr. Pehnke.

MR. FLEISCHNER: Thank you.

MR. HORTEN: With that I'd like to move on to the building. I'm going to start off with A1.01 and this is called the overall reference floor plan and I just wanted to sort of before we get into the building just give you a background on the existing . . .

MR. MOORE: And that's part of exhibit A-17 correct?

MR. HORTEN: Right. As you can see on the top left side of the plan the hatched out and diagonal striping that's the existing building. The right side of the building is the new building that we're proposing to add, the existing building is a two-story building. The left side of the plan is a two-story structure it primarily has an office function, R&D function on that floor. The right side of that building is primarily a light assembly building. The proposed building that we're looking to add on is comprised of three major components. It has a warehouse, it has light assembly similar to what we're doing currently and then it also has another office function that supports that part of the building. What we're also proposing to do is add on to the existing cafeteria which if you look at the center of the existing building there's an existing cafeteria located towards the westerly side of the building which is where the railroad tracks are and along that side of the awning span the cafeteria with the one story structure kind of matching the architecture of that building. And I have some views to explain what that will look like. So the project consists of the addition of the main sort of large addition here to the right of the building and then the small expansion of the existing cafeteria. Now going into the new addition A2.01 is the first floor plan which is level 1. I highlighted in purple the area that's considered the warehouse space and part of the discussion the site engineer Mr. Korzen had indicated before is that when we developed the plans for the building we tried to make the footprint of the building much smaller. We did two major sort of things; one is to sort of make the height of the building a little bit taller so that we could accommodate more storage in less of a footprint. And then the other item that we discussed was that there was a second floor office area that was put over the production area. Again instead of putting another building next to this building to accommodate the office space we stacked it on top and by taking the warehouse and making it taller we were able to reduce the footprint. And that's part of the reason why we're ending up with a taller building and we're requesting a variance for the height. And I'll explain a little bit more of the height of the building as we get into the elevations. As you can see on the first floor primarily warehouse located towards the westerly side of the building. If you recall the easterly side is where the neighbors are, the residential sort of neighborhood. The westerly side is the side where the railroad tracks are.

MR. VAN NESS: By increasing the height of the warehouse I imagine that means you're increasing the height of your storage, shelving units and all that stuff.

MR. HORTEN: That's correct.

MR. VAN NESS: Is this an automated system that reaches higher levels than normal? Or how can you explain that, how that will not have an issue with safety.

MR. CANARY: There's not an issue with safety these are standard practices in high bay warehouses. It would sort of be a medium to high bay warehouse typically it's a narrow aisle high reach lift truck where there's a man on board the person rises up to the appropriate level. The warehouse racking that would be here would not be an automated system we are considering installing automated carousel type of systems so the operators working at the floor level and the system is indexing vertically to present to the employee. We have not concluded that that is the direction that we're going I expect that when we open this building we would not have that automated system installed.

MR. VAN NESS: Thank you and what is the height of the shelving system do you know that?

MR. MOORE: The height of the shelving system?

MR. CANARY: The clear height for the building is I believe 35 feet, the clear height for the installation of the shelving is 35 feet so if I recall I believe it is six standard pallet height locations.

MR. VAN NESS: Thank you.

MR. HORTEN: The next plan that I want to go over is A2.02 it's called the mezzanine floor plan. The mezzanine floor plan is an intermediate level between the first floor and the second floor office area and the primary reason for this space is it houses all of our lockers and break areas for the employees that will be working in the assembly floor. Also because of the cleanliness of the facility we're required to have (inaudible) our employees to come in through the entry located on the north and the south side of the building and enter this area to gown up and then go into the production area.

MR. SCHAECHTER: Is this is a clean manufacturing facility?

MR. CANARY: Mike Canary again. This is not a clean room, manufacturing facility this has been designed to an Iso Level 9 standard from a cleanliness perspective which is just outside the clean room classification.

MR. SCHAECHTER: (Inaudible) lab coat?

MR. CANARY: Typically our employees are working wearing lab coats they may or may not wear gloves depending upon what their level of activity is in the area their working in. In a G&P facility what's most important is that we have access control only trained and qualified employees have control to enter that space. So we cannot allow general population to have access to that manufacturing space.

MR. HORTEN: And then finally this is the A2.03 and that's the second floor plan and as you can see in the blue color is the office area and back towards the westerly side of the plan is the purple area which is sort of the support utility storage space for the office areas. The office areas consist of open plan offices with some private offices and several meeting rooms. And also in the center of the space here we'll have some R&D sort of laboratories up there. So that's the basic organization of the floor plan it's a fairly simple straightforward building. It's a two-story building with a mezzanine, the warehouse located on the back side is slightly taller space but as Mr. Canary indicated it's not really a super tall space because by the time you get the roof structure built in we're ending up with approximately 35 foot of clear space. Which is not a drastically high space I've built spaces that were over 50 foot clear for warehouse so this is not what I would call a very high type of warehouse facility but we did sort of need to accommodate a certain amount of stock at this facility. I'm going to sort of go to the elevation but I think in order to describe the elevation we generate some perspective to be able to give you a better clear idea. This is sheet A4.01 and the top of the plan is the south elevation which is the main sort of view of the building that you would see as your standing at the Bartley-Flanders Road. The second elevation is the east elevation which is the side facing the neighbors side. And I think this gives a good indication in terms of height. It sort of the let of the elevation that I highlighted in grey is the existing building, and you can see the proposed building is a few feet taller.

MR. BEDELL: What was that again?

MR. HORTEN: The left side of the elevation that you're looking at that's the existing building and the, sort of the white portion of the building is the new addition that we're adding. You can see the relative height difference between the two structures.

MR. BEDELL: How much taller was the new versus the existing?

MR. HORTEN: It's approximately about 10 foot taller.

MR. BEDELL: Okay.

MR. HORTEN: And then the next elevation that I show is the north elevation and here you can see towards the westerly side of the north elevation that's where we located the loading docks. And here at the bottom detail, detail 4 is the west elevation which is the side that would face the railroad tracks. The basic architecture I think, for now I think this is a good time for me to transition into the exhibits, the handouts that I submitted to you. The views that I'm going to take I show you is keyed on

the first page that's on their handout which is exhibit A-23 and that's the artistic rendering number 5 proposed sign plan. And as you can see I . . .

MR. FLEISCHNER: Mr. Horten could you turn that vertical for me please to the left. Thank you.

MR. HORTEN: So rotating the plan 90 degrees the Bartley-Flanders Road is located on the bottom of the drawing now and then the residential neighborhoods are located on the easterly side on the side right side and then you have the railroad track on the left side. I created an aerial view which gives you a visibility that's going to be the first view I go over. The second view is a street view is a street view, the third view is going to be a view from the back of the building looking at the cafeteria addition which is part of the project and then the fourth view is going to be the view from the neighbor's properties specifically we took the view from Lot 14 and I'll explain that in a little as we go forward. The view one is the aerial view and I think this gives you a really good overview of the architecture of the building and the basic organization. As I discussed you can see the existing building here on the left side of the rendering, you can see the existing circular driveway here and it gives you a good overview of how we rerouted the driveway. Currently this driveway which is the truck entry is the primary entry today but we're going to use that primarily for the truck entry going around the back of the building on the westerly side. And then you can see the new driveway here on the easterly side for the main employee and visitor entry. And you can see the view of the new addition towards the northern side of the property here. And the basic intent of the architecture is keep in the spirit of the existing building. The existing building consists of precast architectural panels which is a very nice durable material and if you seen the building it's a nice finish, it also has some curtain wall or window aluminum window and glass insulated glass system here. And with the new addition we're trying to take that same sort of architectural language and incorporate it into the building. So I think part of the building as you can see all of the sides that are facing the south, east and portion of the north sides that are visible we dressed it up with the same sort of architectural panels. A little bit of the top of the building that I'm pointing to which is the warehouse, the higher portion of the warehouse and the north and the west side of the building that warehouse side that's less visible for people we're going to make that out of architectural metal panels. And the panels are going to be colored to match the precast concrete. We show some lines (inaudible) to represent that they are going through joints but when we looked at the actual panels they pretty much match the concrete when you look at it from a distance so we feel that it's going to marry with the existing architecture very well.

MR. BEDELL: So at this point you don't propose any changes to the façade of buildings 1 and 2 that's all going to stay just the way it is no changes period.

MR. HORTEN: That's correct.

MR. BEDELL: Okay, all right.

MR. RUSSELL: With the exception of the cafeteria.

MR. HORTEN: That's correct. The cafeteria and I'm going to explain what's going on there. The second view that I took was a street view from Bartley-Flanders Road and you see it here in the rendering this is exhibit A-20 and that's the street view. You can see to your left is the existing building and you can see the new proposed building that will be set back quite a distance from the road here. Again I think this shows the character of the building and the how it will look from the street. And finally the third view that we have is a view taken from the rear of the building or the westerly side of the building that's View 3 and that's looking at the existing cafeteria, and this is exhibit A-21. And you can see this is the view of the existing architecture that's back there; the cafeteria that I discussed in plan is the taller portion of the building here with the aluminum framing glass. And what we're proposing to do is add a one-story addition in front of that cafeteria. Again it's blending with the existing architecture we need a little extra room we're going to have more employees so we needed a slightly larger cafeteria.

MR. MOORE: Mr. Horten can you go ahead and discuss the next exhibit and the views from the neighbors?

MR. HORTEN: The next exhibit I think that we're going to go over is the View 4 and before I get into View 4 I'd like to go over this exhibit A-24. This is an enlarged section that was submitted to you that was in your original submission package A6.00 which was a sort of a section through the building and to the adjoining sort of lot. Specifically this section drawing on A6.00 we cut a section through the building through Lot 15 one of the closer served neighborhoods. Because I think one of the things that we know the Board and the neighbors are concerned with is what's going to give me my view from that

area and what are the effect of the building. In this sort of diagram that we showed was there's a detail two and three, if you don't mind I'm going to switch to the exhibit A6.01 which is just an enlarged view of that area. I think this way you can see what's going on a little bit better as I point to it. We show that footprint apparently if you look at it from the right side of the drawing to the left side and you have sort of a diagram of a house, a two-story house most of the houses in that neighborhood are two stories. And we show the location of the property lines and then we show some of the . . . the double row of trees that the landscape architect had explained in the last testimony. And what we showed in (inaudible) is the approximately located of the previously approved site plan. Previously we discussed the building was approved with a setback of approximately 100 to 105 foot from the property line. I wanted to sort of show you that because I think in relationship to where we put the new building which is now approximately 284 feet from the property line, what the visual affect is. And this diagram is intended to kind of explain that a little bit. As you can see there's a sight line, we took a sight line from, not from the ground because I think you know surely if you're standing on ground you're going to see less, but if you stand on the first floor and second floor of a house you know what would that be like and we want to kind of go over that. In the previous testimony the engineer indicated that we're going to have approximately a 12 foot high fence along the property line, and then we're going to have a double row of the conifers which are going to provide some screening. And the sight line is taken kind of looking from the first floor if you're standing on the first floor which is approximately 7 foot off the ground because your floor is usually a couple feet high and your eye level is around 5 feet. So we took the elevation at approximately 7 foot kind of looking out the first floor window looking over the top of the proposed fence and what you would see. What the green line is indicating is based on that sort of sight section, sight line you'll start to see just a little bit of the top of the building. One of the things that we also wanted to note is the issue with the mechanical units because I think part of the discussions when you look at the Planning Board application is we don't always talk about the mechanical system. But our client asked us to really take a look at that to make sure the mechanical equipment would be set back far enough so it really won't become a visual disturbance. And also as you can see by the green section line that you really wouldn't be able to see that beyond the building line you barely catch maybe the top corner of the building but you really won't be able to see beyond that. The blue sight line you can see is taken from the second floor and that sight line I ran it from the second floor eye level to the top of the building. And what this is telling you is when you're on the second floor you're going to see the building. At that time the trees that we're showing here are about 18 foot tall as the landscape architect previously testified what we're trying to do with our landscaping plan is take all the mature trees that we have on site instead of day one going in with just standard 6 foot trees we want to try to save as much of the large trees as we can and transplant them day one along those areas. Especially the areas that are for the neighbors that are close by. And what this is telling you is based on the sight line you'll see over the top of the trees and you will be able to see the building. And I think my perspective view will explain that a little bit more in what that's doing. But I think one of the big things I wanted to highlight is that if you look at this green sight line and the blue sight line that I just discussed what was previously approved when the building is much closer about 100 foot from the property line you see a lot more of the building. If the building was that close if you look at the sight line the previously approved building being 100 feet away would have been almost twice the size in appearance to a building that's about 300 feet away. This graphic representation of the sight line showing where the green line intersects the previously approved building, you can see that the height of the building there you would have saw much more of it even from the ground floor. Whereas right now from the ground floor you hardly ever see the building. Now the second floor again shows the same condition you would have saw a lot more of the building the building would have been closer to you so it would have appeared a lot bigger. Even though the previously approved building was slightly shorter and the building that we're requesting is slightly taller the fact that we pushed it so far back is going to make it appear a lot less obtrusive. In the end what I do want to say that is this is a good building, it's an industrial building you will see the building. I don't want to sort of dance around the fact that this is a building and you won't see it at all, the fact of the matter is you will see it at day one but the intent in the ordinance is to come up with a plan, a good buffering idea that would sort of mitigate that issue and how we're going to deal with that. And I think that's where I would like to take you to the perspective view. The series of perspective is in your handout so you can get a closer look. There's three panels along the top and three panels along the bottom. The three panels along the top are the same view that you would have from your first floor of that house. If you're standing on the first floor of the house looking towards the building that's facing you, if you look at the first panel you can start to see barely the tops of the proposed building there. If you look closely there's a pink line there and it pretty much tells you, its section diagrams it's kind of reinforcing the section diagram. So when we took that perspective view of the proposed building we set the camera height at that elevation approximate elevate where the eye level would be and took a view of that building. And it shows you that from the first floor with this 12 foot high fence you wouldn't see it and in this case the trees are located behind the fence and they're 18 foot tall. Now the trees are taller than the fence so you will see the tops of the trees and then what happens is we're estimating that most of the trees are going to be in that range.

Some of the trees might be 14 feet, 16 feet I think the landscape architect had said that she submitted a packet last hearing with some of the mature trees. I think some of the trees are actually taller than that. But the intent is we're going to take as many of the bigger trees and apply it to the areas that we think are most sensitive.

MR. MOORE: So Mr. Horten the first view on the top panel that's at the time of initial planting correct?

MR. HORTEN: That's correct. At the time of initial planting we're going to have these mature trees and this is the effect you're going to get from the first floor. Now the second panel that's shown is that the tree grows from 18 foot tall to 25 foot that's about 7 feet of growth. And we spoke to our landscape architect with these conifers that are the anticipated growth and she testified to that at the last hearing. She said that you're going to get growth of approximately 1-1/2 to 2 feet per year but mind you that the first year you're not going to get that full growth because you just transplanted it so the tree needs to recover a little bit. So you won't get that actual growth but within somewhere between 3 to 5 years we could expect a growth up to about 25 feet. And so by the time you get to that time period the trees are quite tall and would totally (inaudible) to block out the view of the building. That little bit of view that you had, when it gets to 35 foot tall you know it becomes denser and you won't be able to see it. Now the lower panels that would be from the second floor as I said based on the sight line you see the building. You look over the fence so you will be able to see the portions of the parking lot too so here you can fully see the building. The trees are a little bit taller than the fence and you will see the tops of the trees but basically we're up high so you're looking over the top of them. But then when we look further down the road a few years from now when the trees start to grow and it starts to screen in the trees, in about 5 years or so it's going to start to block out the trees a little bit more. Totally block it out? No. I think by the time it gets to 35 feet tall then it really becomes a dense mass there to start to really screen the buildings. And I think what this view is trying to reinforce is the whole spirit behind the ordinance, the ordinance says you know let's provide the nice buffer a visual buffer so that as these landscape buffers grow in its going to do its job. You know we understand at day one we can't take 35 foot trees and put them all on there it's just difficult to do but within time we're going to get that sort of growth there and we're going to have the (inaudible) company.

MR. SCHAECHTER: Do you ever look at moving the fence to the other side of the buffer and then having the trees in between the fence and the buffer and then the properties?

MR. HORTEN: Yeah we certainly had discussions about that before so we looked it. One of the issues that we had was one when we build the fence you know certainly we want to sort of like define that property line. There's many reasons for that. You know I think partly it's we have instance where you know people don't realize where the boundary is and they've come into our property. There's actually a shed on our lot that we have to relocate but you know it happens so we do want to protect our border. That's one issue, the other issue is if you recall the Civil Engineer discussed the buffer area especially as you get towards the Lot 14 and 15 there is a more pronounced swale, natural swale that we have to maintain. That swale at that property line is about 25 foot wide before we start to slope off the earth a little bit for that part of the land. (Inaudible) moved one more that difference doesn't happen and the ground gets more level. But because of that, there's no way for us to be able to plant the screening plants there and then put the fence somewhere between the trees because the trees are going grow out. We want the trees to grow out and leave room for it. So we sort of thought that but it really doesn't work in that part of the property.

MR. SCHAECHTER: What will happen if you left the trees that are already there, there?

MR. HORTEN: I think that's something that we discussed also at the last testimony. We said that the landscape architect actually physically walked the property line with all the trees there and her opinion was the trees are you know are in sad condition. They're unhealthy you know certainly as we develop this project what's going to happen is a lot of those trees just aren't to a point where you can even climb up and trim it. So those unhealthy trees we're going to take those down but then the trees that are healthy if you could mark those out you know try to save those trees, certainly you know they'll provide some sort of buffering in the summertime when the conifers aren't as tall in day one those existing trees will provide some buffer at the higher levels. But the chances of you know being able to save all the trees is almost impossible.

MR. MOORE: That concludes Mr. Horten's direct testimony he's available for any question obviously the Board has.

MR. BEDELL: Yeah the units on top of the new building, the AC units and whatever other units what are the heights of those units? What additional height?

MR. HORTEN: The tallest one if you look at your drawing A6.00 and we tried to sort of highlight that. The tallest one is in the middle of the building and that's of course the manufacturing floor. This is about where the manufacturing ends so we pushed that unit, originally when we started with the plan ideally we wanted to locate it in the center but the client asked us to look at that and try to push it back as far as we can to be sensitive. This is the tallest unit this one is about I believe 114 inches tall and you can see it in the section here we drew the section line here so the section line when we look at it from the green line you really don't see that at all. When you look at it from the second floor you do catch the top of it just a little graze of it. Actually if you look at this perspective view this lower panel here from the second floor you can see this little bump out there, that's actually the taller unit that's way in the back.

MR. BEDELL: So the building height itself is 42 and then there's the additions on the top,

MR. HORTEN: The actual building on the easterly side is 40 foot 10 inches to the highest point which is the parapet. The 42 feet came about because when we calculate according to the zoning ordinance we have to take the average grade around the building and then measure the height based on that average grade. And that's where we got the 42 foot 2 inches that's shown on the site engineer's plan.

MR. BEDELL: So height wise we just go by the roof of the building not the structures on the building. Because then it becomes like a 52 foot building as opposed to a 42 foot.

MR. FLEISCHNER: Ed?

MR. BUZAK: Chuck or Catherine.

MR. FLEISCHNER: Chuck could you answer Steve's

MR. MCGROARTY: I'm sorry I apologize I was asking Gene a question.

MR. BEDELL: That's all right. So the building itself is 42 feet the structures on top let's say another 9 feet, let's call it 10 feet but the 42 foot building now it is 42 feet but the structures on top for another 10 feet to make it 52. I mean as a Board do we look at it as a 42 foot building or do we look at it as a 52 foot building?

MR. MCGROARTY: The mechanicals are not counted as part of building height.

MR. BEDELL: Okay. I just want to confirm that.

MR. MCGROARTY: I'll find that for you.

MR. BEDELL: All right I just want to confirm it.

MR. FLEISCHNER: Nelson?

MR. RUSSELL: In View 2A lower left hand corner those windows are office windows?

MR. HORTEN: That's correct.

MR. RUSSELL: So they would not be normally lit at night.

MR. HORTEN: That's correct.

MR. FLEISCHNER: If you did, I believe his previous testimony that eventually this could be seven days a week, 24 hours a day. So . . .

MR. CANARY: Mike Canary again. The 24/7 is our manufacturing/warehouse operations. The office operation there is the potential we may have folks in and out but in general it is vacant in the evening.

MR. FLEISCHNER: Okay thank you.

MR. BUZAK: And on weekends.

MR. CANARY: Yes.

MR. HORTEN: Just part of (inaudible) discussion, part of what we discussed at the last hearing the LEED accreditation requirements we're trying to get this building recertified as the "Green Building". And part of the requirement is if you do have night time operation you have to provide some sort of blind system to cut off the light so we are going to put blinds in there.

MR. FLEISCHNER: Okay anymore questions from Board members of this witness?

MR. MCGROARTY: I had one.

MR. FLEISCHNER: Yes.

MR. MCGROARTY: No, no that's all right. To Mr. Bedell's question under Section 400-82 the mechanicals are not counted towards building height but, and we asked this I did in the report, about screening or visual and audio screening. And he did testify, the gentleman did testify that where the mechanicals are, I don't know one question I would have will they be visible from the public street?

MR. HORTEN: The street view kind of shows that I think very clearly. It's by the time you look at the street view the building is quite far back.

MR. MCGROARTY: Yeah we asked because the original building had mechanicals on the roof and it was a concern.

MR. HORTEN: I remember that actually I was a young architect I worked with Gessler and I was at the Board hearing and I actually designed the original building. And during that time this Board did request that we put a screen in this front corner because the Board thought that that was the most prominent corner and we did have a taller unit, mechanical unit there. So we did locate a screen there but then the rest of the units that are at the back of the building you can see the existing building here you can see those units and you can see those units in the new proposed building in the back. But by the time you look at that building the way it's so far back I think it really doesn't become a visual deterrent. When it was this close I think I read with the Board that you would see those units right there so we did at that time the Board requested that we put a screen there.

MR. MCGROARTY: The ordinance was amended actually in 2004 to give the Board some latitude in terms of we wanted to have a parapet on the roof for screening purposes if you thought it was necessary. So that's

MR. MOORE: And Mr. Horten could you just explain to the Board just how far back that mechanical equipment is both from the main street the Flanders-Bartley Road and also from the residential neighborhood?

MR. HORTEN: We didn't measure that because we didn't (inaudible).

MR. FLEISCHNER: Steve I think there's also the fact that there is no sidewalk in front of that Siemens so it's not like

MR. BEDELL: Yeah there's all those trees lining Bartley Road yeah.

MR. FLEISCHNER: If you're driving a car I would hope your looking ahead and not . . .

MR. BEDELL: Yeah.

MR. RUSSELL: Quick question though for Chuck, I may have missed is a variance required to the height of the fence?

MR. MCGROARTY: No 6 foot limit is in the residential zone, there's no limit in the nonresidential zones.

MR. MOORE: Mr. Chairman, members of the Board just for you know we took the queue with the making the fence 12 feet tall from the prior resolutions and the prior Board but we're receptive to

making that fence lower than the 12 feet. That would be your pleasure, we were doing it . . . the 12 feet was being done along you know if you noticed it goes, it's 12 feet until . . . along the residential neighborhood, it goes to 6 feet by the church and the 12 feet was to aid in the visual screening. But if the Board would have wanted that fence to be lower we would certainly cooperate and be receptive to that with the Board.

MR. FLEISCHNER: I don't think we're at that point.

MR. MOORE: No I just wanted to let you know.

MR. FLEISCHNER: I appreciate that.

MR. MOORE: Mr. Horten.

MR. HORTEN: The proposed building the nearest corner to the front street property line is about 830 feet and then we're looking at the closest unit which is this small unit here that's about 16 feet from the edge of the building so that's another 16 feet. And then the biggest unit which is setback from the edge a little bit more that's another about 90 feet. So the larger unit would be actually about 920 feet and change.

MR. FLEISCHNER: I'd like to open it to the public to ask questions not give testimony but ask questions of Mr. Horten. And first question if you could please step to the podium give your name.

MR. COHEN: I might want to go up there and use some of the exhibits in my questions.

MR. FLEISCHNER: You would start out at the podium for the record.

MR. COHEN: By the way my name is Lawrence Cohen of Courter, Kobert & Cohen and I'm here representing Mr. and Mrs. Peter Zambetti who are residents and by the way they may have been the property that they took the sight lines from but they are at this property.

MR. MOORE: So Mr. Cohen are you only representing the Zambetti's?

MR. COHEN: I am. Mr. Horten as you know the zoning ordinance for this light industrial zone has a 30 foot height, you're obviously aware of that.

MR. HORTEN: Yes.

MR. COHEN: And obviously you were aware of this before you began design of this project is that a fair statement?

MR. HORTEN: That's a fair statement.

MR. COHEN: Fine. And I presume there was some discussion was there not among you and the owners, the engineers, etc. about exceeding this height is that correct?

MR. HORTEN: That's correct.

MR. COHEN: What is, since you're the architect, what's the architectural reason for exceeding the 30 foot height?

MR. HORTEN: One of the reasons was to sort of minimize the foot print as I indicated before. Obviously if you go less in height you have to have more building.

MR. COHEN: Well my understanding is now, this is where I have to approach, looking at this board over here I don't know what the number of that is.

MR. HORTEN: That one is A-20.

MR. COHEN: Okay as you come over here I'm sorry Mr. Horten what is the height of this structure from the ground level to the roof line?

MR. HORTEN: Approximately 30 feet.

MR. COHEN: 30 feet. That's the existing building.

MR. HORTEN: That's correct.

MR. COHEN: Okay now show me on here what is going to be the 42 feet not counting the . . .

MR. HORTEN: That's this back part right there.

MR. COHEN: Okay. That's going to be the 42 feet and where is my client's property to the east over here?

MR. HORTEN: Another 300 feet or so to the right.

MR. COHEN: So and just show myself, the Board, the rest of the public

MR. VAN NESS: 300 feet from, could you show us on the drawing what you meant by that?

MR. HORTEN: You can see on the right most portion of the street view that's the edge of the building.

MR. VAN NESS: From that point not the higher point.

MR. HORTEN: That's right.

MR. VAN NESS: Thank you.

MR. COHEN: And show us would you please Mr. Horten that portion of the buildings that are going to be now from 32 feet to 42 feet. Not counting the mechanicals. Can you show us on that exhibit?

MR. HORTEN: Well the portion of the building that would be

MR. COHEN: 42 feet.

MR. HORTEN: 42 feet it starts right about here.

MR. COHEN: Yeah and how far does it go?

MR. HORTEN: That sets back about 50 foot from the easterly

MR. COHEN: No I didn't ask you that. I mean how far does it how much of this building is going to be 42 feet? That's my question maybe I'm not articulating properly.

MR. HORTEN: The entire length of the building going from east to west.

MR. COHEN: Where is the westerly end of that building?

MR. HORTEN: You can't see it in that perspective.

MR. COHEN: All right show me approximately where it will end.

MR. MOORE: Well if it's not shown on the perspective he can't show you.

MR. HORTEN: I can show you on the plan.

MR. MOORE: He'll have to show you on the plan.

MR. HORTEN: I can show you on the floor plan.

MR. COHEN: Will it be approximately here, will it be here?

MR. MOORE: Mr. Chairman the witness has said it can't be shown on that plan.

MR. FLEISCHNER: He can show you on the plan.

MR. HORTEN: The plan is very clear. The plans shows you, this is the plan, I think this is the most

MR. BUZAK: Mr. Horten when your referring to the plan can you just use the designation as A?

MR. HORTEN: This is part of the exhibit that was submitted as A-17 that was the drawing A6.00.

MR. BUZAK: Okay thank you sir.

MR. HORTEN: And this drawing is the section drawing that we showed through the building to the rear property line and its showing that the closest part of the building here is approximately 284 feet. The portion that's 40 feet and change starts here where the setback of the building is, see where the hatching changes? This hatching portion we discussed earlier is the future addition and at that point the building becomes 40 feet 10 inches above the first floor level all the way back to this loading dock area here.

MR. COHEN: And that average is about 42 feet and that's why the variance for the 42 feet is that correct?

MR. HORTEN: The average of the building height is 42 that's correct.

MR. COHEN: Now how many feet is it approximately from this hatched area to the end here?

MR. HORTEN: What's the distance?

MR. COHEN: Yeah how many feet?

MR. HORTEN: I can tell you exactly. If I can get to the floor plan, that is 335 feet.

MR. COHEN: 335 feet so it's going to exceed by more than one third the permitted height for 335 feet of building from one end to the other and approximately what is the width?

MR. HORTEN: The width is approximately 275 feet including the stairs.

MR. COHEN: All right so it's about 350 by 275 feet is going to be there is that correct?

MR. HORTEN: That's correct.

MR. COHEN: And obviously we could figure the square footage if we wanted to take it. My understanding is the reason for this is because you need the

MR. FLEISCHNER: Could you just ask him a question and not the reasoning that's

MR. COHEN: That is the question, it will be a question.

MR. FLEISCHNER: Okay.

MR. COHEN: My understanding Mr. Horten and correct me if I'm wrong, the reason for this Mr. Horten is that the owner the user of this property needs more square footage or cubic footage in the building. Is that correct?

MR. HORTEN: Actually we've reduced the proposed by a significant amount. We reduced the overall building size by what was previously approved.

MR. COHEN: Okay. Well let me see maybe you didn't understand my question so let me try to rephrase it Mr. Horten. Mr. Horten if we took away the 12 extra feet and made it conforming they would lose square footage and cubic footage in the building would they not?

MR. HORTEN: No we would have built it out.

MR. COHEN: Well very simple let's do it one question at a time.

MR. MOORE: He answered your question.

MR. FLEISCHNER: Mr. Horten just answered the question.

MR. HORTEN: We're well within the floor area allotment.

MR. COHEN: Well let me rephrase the question; again let me ask it again Mr. Horten. If you reduce this to 30 feet is it not true that they would lose square footage and cubic footage of usable space?

MR. HORTEN: Absolutely not.

MR. COHEN: They would not. Then why not reduce it and make it conforming?

MR. HORTEN: We could do that but we'll make the building bigger.

MR. COHEN: Well that's not my question Mr. Horten.

MR. MOORE: The question has been asked and answered.

MR. FLEISCHNER: He's answered your question.

MR. COHEN: So my understanding is that if we cut 12 feet off this building they would not lose cubic foot or square footage.

MR. HORTEN: No that's absolutely incorrect.

MR. COHEN: Well I thought that was your answer.

MR. HORTEN: No that was your answer.

MR. COHEN: Okay let me ask the question again. With your permission I'm sorry I don't want belabor this, I just want to get an answer to what I thought was a simple question that I understand but apparently Mr. Horten doesn't.

MR. MOORE: Ask the question don't make a speech.

MR. COHEN: Okay I'll try not to. If we reduce this portion of the building the 350 feet by 275 feet and make it 30 foot high isn't it obvious that you're going to lose square footage and cubic footage of usable space?

MR. HORTEN: Absolutely not because when you do a project

MR. COHEN: Fine that's your answer Mr. Horten that's not true.

MR. VAN NESS: Excuse me would you let him answer the question please.

MR. HORTEN: Sir when you do a development project as you know when you do a development project you have certain limitations floor area being one of them. The floor area in the zoning ordinance is the primary means to sort of reduce the density on a property do we agree?

MR. BUZAK: Mr. Horten you can't ask

MR. COHEN: I'd like to testify and you ask the questions but they're not going to allow that.

MR. HORTEN: And within the ordinance we're well under the floor area allotment and when you say that, when you ask a question well would this disappear it won't disappear because we have to have that square footage.

MR. COHEN: Okay well that was my point before. The reason for the height variance is that the owner wants more square footage. Is that a true statement?

MR. HORTEN: They don't want more square footage they need it that's part of the project.

MR. COHEN: Okay I'll rephrase it then okay it will take a little bit longer than I thought. The reason that you want a height variance is because the owner needs more square footage. Is that correct then?

MR. HORTEN: They need to build a square footage that's allotted within the zoning ordinance.

MR. COHEN: How many square footage will the entire project encompass if this is built?

MR. BUZAK: Mr. Cohen do you mean the existing or the new portion of the project?

MR. COHEN: As the existing and proposed.

MR. MOORE: I'd like to recall Mr. Korzen.

MR. COHEN: Well Mr. Horten if you don't know the answer just tell him you don't know the answer.

MR. HORTEN: I don't know the exact figures.

MR. COHEN: Okay can you give me an approximate you being the architect of the project?

MR. HORTEN: Approximately 160,000 square foot.

MR. COHEN: 160,000 okay. And the size of the building, I'm sorry the addition was driven by how much square footage the owner needs on the site that's what they asked you to design the project for approximately is that correct?

MR. HORTEN: I didn't understand your question.

MR. COHEN: Okay let me try to rephrase it. You have designed a structure with the existing buildings and a new proposed structure that will have approximately 160,000 square feet is that correct?

MR. HORTEN: Yes.

MR. COHEN: That's on all floors.

MR. HORTEN: That's correct.

MR. COHEN: Okay. When the owner asked you to design a project did they tell you how much total square footage they are going to need or they want for this . . .

MR. MOORE: I object to this line of questioning because it's not material to the application and it's not material to the variance request.

MR. COHEN: And a height variance.

MR. FLEISCHNER: Well I think the information that your requesting has already been answered in previous testimony. In that the applicant has come before this Board, submitted documents to our planner and our engineer and the township saying we want to have a facility with "X" number of square feet it's in the documents, this is what we want, this is how we propose to do it. And the reason why they have given in previous testimony last week, the reasons why they're going up instead of out. In other words the decrease to density on the proposed property, so they have already answered that question.

MR. COHEN: This witness hasn't answered it.

MR. MOORE: If I might summarize the testimony and if you were here last week you could have, but that testimony is closed, that the reason as Mr. Korzen had testified at last week's hearing . . .

MR. COHEN: Mr. Chairman (inaudible) and if you're going to hear testimony from the attorney and I would suggest you not become an attorney but become a witness.

MR. MOORE: I am not testifying.

MR. BUZAK: We leave this very simply. Mr. Horten do you know the answer to the question, your answer was no you don't know end of question. Mr. Moore please seat down, Mr. Cohen continue your questions. Mr. Horten does not know the answer to your question.

MR. COHEN: Okay. So as I understand what you attempted to say then, let me withdraw that. Let's presume and you understand that this is a "d" variance the applicant has applied for?

MR. MOORE: We have planning testimony our planner can address that.

MR. FLEISCHNER: That's the next witness that's not his responsibility. Mr. Horten is the architect.

MR. COHEN: I didn't ask him planning questions all I asked him if he understood it was a "d" variance.

MR. MOORE: No that's planning he's an architect.

MR. COHEN: Do you have an objection to the question?

MR. MOORE: I do object.

MR. COHEN: What's your objection?

MR. FLEISCHNER: Come on the planner can answer that.

MR. COHEN: I think that the Planning Board attorney can certainly handle the objection.

MR. FLEISCHNER: Mr. Horten will answer the questions of architecture.

MR. COHEN: Fine, fine. Mr. Horten when you designed this building 42 feet high, this portion did you know that a variance was going to be requested and needed for that?

MR. HORTEN: Yes.

MR. COHEN: Okay and did you understand what type of variance would be requested or needed?

MR. HORTEN: That's correct.

MR. COHEN: And what was that?

MR. HORTEN: That was a height variance.

MR. COHEN: And did you understand do you know and I know you're not a planner, do you know the difference of different types of height when you need certain proofs as opposed to others or are you not aware of it.

MR. HORTEN: I'm not that familiar with it.

MR. COHEN: Okay. Now my understanding, let's presume that this Board does not grant the applicant the height variance what would the redesign consist of.

MR. FLEISCHNER: I don't think the witness really needs to answer that because we do not know how this Board will vote and depending on how the Board votes then there would be an answer to a question. I'm sorry but that's the way I feel.

MR. COHEN: Mr. Chairman you have to, you and the Board have to take into consideration all of the testimony which the applicant has the burden of proving and establishing what if you know to be a "d" variance or a height variance for this particular application. I think that one of the very pertinent questions is, and that I would want to know if I were sitting as a member of this Planning Board, is what's the alternative if we don't grant the variance? Are there alternatives? Is there something that may be better that may be more appealing to the property owners that live along this?

MR. FLEISCHNER: This was stated in the previous testimony that was given last Thursday.

MR. COHEN: Well this man designed the building. He said that it would not change the application because they have to make the building bigger. That's exactly what I asked him.

MR. FLEISCHNER: The previous witnesses testified as to the reason why the design is so on this building.

MR. COHEN: Mr. Chairman you're telling me I can't ask him that question.

MR. FLEISCHNER: You can ask it but he doesn't have to answer it it's been previously discussed.

MR. COHEN: Oh and so your directly him not to answer the question. I don't want to waste the Board's time by asking the question. On what basis may I ask on a legal basis and maybe Mr. Buzak has a problem are you directing the witness not to answer that question.

MR. FLEISCHNER: I'm not directing, he has a choice of what he can do.

MR. COHEN: Well I think that he can make the decision himself Mr. Chairman. So the question is, unless you tell me I can't ask him.

MR. FLEISCHNER: He has a question Mr. Horten just answer the question.

MR. COHEN: If this Board does not grant the variance, what changes if any would your understanding be, would be made in this project.

MR. HORTEN: I don't know.

MR. COHEN: You don't know. You said before that you would have to make the building bigger is that correct? In other words the footprint of the building bigger?

MR. HORTEN: That's correct.

MR. COHEN: Okay so is it not true Mr. Horten that if this variance for height is not granted that the building footprint would be built bigger.

MR. HORTEN: Yes.

MR. COHEN: And do you have any idea as to where that will be added to the building or is that something that you have to design in the future.

MR. HORTEN: I don't understand; we're going to try to design something right now?

MR. COHEN: No we're not designing something I just asked you assuming that this Board, and let's presume they vote tonight and they vote to deny your height application do you know

MR. BUZAK: Mr. Cohen we can't have this speculative question as to what may happen if this doesn't happen. The witness has testified you can limit your cross examination to his testimony. We can be here all night to listen to what Mr. Horten might think but what Mr. Horten might think might not be what his client might think in terms of how he will address a denial of a variance. So that being said that kind of hypothetical question I think is inappropriate for this proceeding and I don't agree that it's appropriate for the Board to be considering that. So with that Mr. Cohen I think you should move on to a different line of questioning.

MR. COHEN: Okay well why not make the building footprint smaller and . . .

MR. MOORE: Again.

MR. FLEISCHNER: That's the same, you know . . .

MR. COHEN: Is that an improper question?

MR. MOORE: Yes it is.

MR. COHEN: Because as Mr. Buzak just said he'd like to know the basis for it.

MR. FLEISCHNER: The basis for it is you've asked the same question five different ways, ten times over you beat that horse until it's not going to stand up anymore. Just if you have a different question that is not the exact same question just word it differently move on to it.

MR. BUZAK: I think the reality Mr. Cohen is that there's no doubt that an applicant that comes before a Board can design a conforming application.

MR. COHEN: I don't know that.

MR. BUZAK: Well I think that when one is asking for a height variance I think its self evident that the applicant could have designed the building to (inaudible) the height variance which would make it conforming to the zoning ordinance. They have selected or chosen for reasons that they have given to increase the height and a portion of this building and their seeking a variance for that. That's a decision they have a right to make and they have a right under the law to make that application to the Board. To ask a question that well could you have effectively submitted a conforming application, of course they could.

MR. COHEN: Well I don't know that.

MR. BUZAK: Well I think you know that too so let's focus on the testimony that Mr. Horten has given and as Mr. Moore pointed out the issues with regard to supporting the use variance have yet to be testified to by the applicant and his expert and perhaps your questioning will be more directed in where your trying to go to the planner as opposed to the architect here. So with that I'd like to try to move on.

MR. COHEN: Well I'd like to try to move on too and I frankly didn't think the questioning was going to take that long and the discussion about each question is taking much longer than the questions. If the witness doesn't know the answer to the questions then all he has to say is I don't know.

MR. BUZAK: Okay that's fine Mr. Horten you heard Mr. Cohen's suggestion if you don't know the answer say that and we'll move on. Let's see if we can get this proceeding moving.

MR. COHEN: Although it may be apparent to everyone else Mr. Horten had he . . .

MR. BUZAK: And Mr. Cohen I'd appreciate your apercentagle comments be limited here.

MR. COHEN: Okay thank you.

MR. BUZAK: Thank you.

MR. COHEN: Mr. Horten have you ever looked at it from potential design that if you had this building conforming to height if you could fit the (inaudible) square footage on the site and meet all of the zoning requirements.

MR. FLEISCHNER: You know Mr. Cohen I'm going to ask you again; this is the exact same question. We are not fools here sir, we are not fools.

MR. COHEN: And I'm not a fool either sir. I think it's a proper question, why don't you ask Mr. Buzak to see if that's a proper question.

MR. FLEISCHNER: I am not saying that. What I'm saying is sir you have . . . we have just stated we do not know what is going to happen. We do not know how this Board will vote, the architect has submitted his plans obviously the people who hired him to do it it was done at his direction. He has submitted the plans, this is his plans it is not his job to think differently based on what might happen, what might not happen. You need to change your line of questions.

MR. COHEN: Are you telling me I cannot ask that question Mr. Chairman?

MR. BUZAK: I think what we're saying Mr. Cohen is that you can't ask the witness to speculate what he could have otherwise done because we will be . . .

MR. COHEN: I'm not asking . . .

MR. BUZAK: Yeah you were you were asking whether or not he could move the building and expand the footprint of the building back. And we can do this all night long Mr. Cohen you can ask him whether he can do this or that or the other thing we could be here for 15 hours listening to a variety of choices that Mr. Horten or his client may have had. That's obvious we all know that. As Mr. Fleischner has said we have a plan this is the plan they rise or fall on this plan and if they are unable to demonstrate the proofs that they need to obtain a variance then this Board will not grant that variance and they're going to have to go back to . . . the applicant is going to have to go back to the drawing board and decide what they want to do and maybe at that point you can give them a call and suggest to them some of the options that they may have. Other than that let's focus on the plans that are here.

MR. COHEN: So my understanding is that I can't ask a witness that if this Board since the applicant has the burden of proof and the Board has indicated it doesn't know what they're going to do, denies the application how would . . . because he said the owner has a certain need, how would they deal with that issue?

MR. BUZAK: That's correct you cannot ask that.

MR. COHEN: I can't address that. It's not pertinent of the Board . . .

MR. BUZAK: Mr. Cohen, Mr. Cohen the ruling has been made let's move on.

MR. COHEN: When you tell me I can't ask a question just please tell me you cannot ask that question and I'll move onto the next one okay? Because that will be on the record then Mr. Chairman.

MR. FLEISCHNER: You have asked the same question a minimum of ten times the record is going to show.

MR. COHEN: Okay well I don't think so I think they were different but let's not belabor the point.

MR. FLEISCHNER: Right so let's move on to what he's presented.

MR. COHEN: Sure. Okay now let's move to this exhibit, and I forgot what number this is.

MR. MOORE: It's in the back.

MR. COHEN: Oh in the back I'm sorry A-22 okay and this is the site line that you prepared this or did someone else?

MR. HORTEN: My office did.

MR. COHEN: Your office did. Mr. Horten your office prepared this now specifically the bottom photos show the site line from, and let me get one of these other maps.

MR. BUZAK: I think its right behind the one that you had that on Mr. Cohen you may move that to the right.

MR. COHEN: Oh okay. From which piece of property Mr. Horten?

MR. HORTEN: Lot 15.

MR. COHEN: Lot 15 the one next to my client. You didn't do anything with reference from my clients property is that correct?

MR. HORTEN: No.

MR. COHEN: Okay. All right so we know the perspective so that . . . do you know if these perspectives would change at all for my client's property which is Lot 13 I guess.

MR. HORTEN: It would change it would be similar.

MR. COHEN: It would be similar, would it be more . . . would they see more or less or you don't know.

MR. HORTEN: It would be very similar.

MR. COHEN: All right so you would think it would be about the same.

MR. HORTEN: About the same.

MR. COHEN: Now . . .

MR. FLEISCHNER: Mr. Cohen your client is Lot 13 or Lot 14?

MR. COHEN: 14.

MR. FLEISCHNER: You said 13.

MR. COHEN: Oh sorry. Lot 14 I guess so it's this lot. Okay. Now you had indicated, by the way this is what a board on board fence? Or what type of fence is it?

MR. HORTEN: A stockade fence.

MR. COHEN: A stockade fence. And have you been on Lot 13 to look at what they now view or any of the other

MR. HORTEN: 14.

MR. BUZAK: 14 right you're talking about your client's property.

MR. COHEN: Well have you been on, this is 15 is it not? That's the one that he took the site lines from.

MR. HORTEN: Correct.

MR. COHEN: Okay have you been on that property Mr. Horten?

MR. HORTEN: Not on the property but on the property line.

MR. COHEN: Oh you mean right here along your clients property.

MR. HORTEN: That's right.

MR. COHEN: And have you been along your client's property line with my client's property?

MR. HORTEN: Yes.

MR. COHEN: Okay and how did you come up with these site lines, and I know you have the other drawing too. How did you come up with these site lines? This would be the elevation from the second floor of this first corner or the first corner?

MR. HORTEN: The bottom panels are from the second floor view.

MR. COHEN: The second floor, the top ones are from the first floor.

MR. HORTEN: That's correct.

MR. COHEN: Okay now not having been do you know what distance these homes are from your client's property line?

MR. HORTEN: The property line is about 284 and then the houses are a little bit further. Your client's house would be actually even further because it's on more of a diagonal.

MR. COHEN: Okay but when you did these site lines my understanding is that it was from the first and second floor of Lot 15 is that correct? And how many feet, in other words when you did the

site lines how many feet did you measure or how many feet did you use in order to get the site line from the first and second story of the actual house on Lot 15?

MR. HORTEN: We estimated the elevation because the grading and survey that we previously show do not . . . it shows fairly closely the actual grades on these property lines. So based on that grade we estimated where the floor of the first floor would be and then based on that floor elevation which we estimate about 2 feet above the . . . some houses are right on grade, some houses are built a little bit higher so I showed it 2 feet higher which is fairly typical for residential structures.

MR. COHEN: Well you can see the house from your client's property line could you not?

MR. HORTEN: Yes.

MR. COHEN: Did you look at it?

MR. HORTEN: Yes.

MR. COHEN: And did you see whether it was 2 feet above grade or on grade or what?

MR. HORTEN: It was about 2 feet.

MR. COHEN: About 2 feet?

MR. HORTEN: Yes.

MR. COHEN: So it was an estimate.

MR. HORTEN: Sure.

MR. COHEN: All right and how high are the ceilings in the house do you know?

MR. HORTEN: Probably somewhere between 8 or 9 feet. Most of those type of houses are built like to 8 feet, some of them they upgrade a little bit to a 9 foot ceiling.

MR. COHEN: Well is this the view of someone standing on the first floor and looking out on the floor itself?

MR. HORTEN: That's what I indicated yes.

MR. COHEN: And this would be on the second floor or the floor itself looking out, is that correct the bottom those photos?

MR. HORTEN: Yes.

MR. COHEN: And that's an estimate as to what the elevation of the first and second floor was but you never actually took the elevations or never had them shot from your client's property by a surveyor is that correct?

MR. HORTEN: As I indicated I approximated and it's fairly close.

MR. COHEN: Well how do you know it's fairly close? I mean is it within 1 percent, is it within 10 percent?

MR. HORTEN: If you ask me if it was within 1 foot I can't tell you that is exactly within 1 foot but it's . . . but if you say is it within 2 to 3 feet I'd probably say yeah that's a pretty fair estimate.

MR. COHEN: Well okay let's use that, if its 3 feet then this becomes 3 feet higher does it not? The one on the bottom?

MR. HORTEN: What becomes 3 feet higher?

MR. COHEN: The view of the building.

MR. HORTEN: No.

MR. COHEN: If you made a 3 foot error it doesn't become, and that they're actually 3 feet lower than you estimated they don't see 3 feet more of the building.

MR. HORTEN: The higher you go the less height of the building feels because . . .

MR. COHEN: Well how about the lower you go?

MR. HORTEN: The lower you go, the lower you go it's like if you're standing at the bottom of a mountain and look at the mountain close it looks very big. If you stand far away it doesn't look so big.

MR. COHEN: Well you approximated the distance from the house to the property line on Lot 15 did you not?

MR. HORTEN: That's correct.

MR. COHEN: And what was the approximate distance?

MR. HORTEN: I used . . . it was . . . I could measure it and tell you.

MR. COHEN: Well no just tell me what you used because when you shot these . . .

MR. HORTEN: Do you want approximate?

MR. COHEN: Well I want as best you can. If you can tell me exact if not tell me what was the approximate amount you used. And if you don't know without measuring tell me you don't know.

MR. HORTEN: It's about 330.

MR. COHEN: Okay so it's about 330 feet from this property line to the house.\

MR. MOORE: No not the house.

MR. COHEN: Maybe he misunderstood my question.

MR. HORTEN: Yeah I misunderstood your question.

MR. COHEN: Okay this board, this fence you're proposing to put on the property line am I correct?

MR. HORTEN: That's correct.

MR. COHEN: Okay and that's the viewpoint that your showing right?

MR. HORTEN: That's correct.

MR. COHEN: All right so now what distance did you estimate is the house on Lot 15, the structure the closest part of the structure to the fence, what distance do you estimate that to be? I didn't ask you to measure the question is did you estimate?

MR. HORTEN: We actually took the site plan which shows the location of the house.

MR. COHEN: Where did you get the site plan for the house?

MR. HORTEN: From my site engineer.

MR. COHEN: Oh so your site engineer did it? Do you have that plan? I didn't ask you to measure it obviously we can all measure it. Do you have that plan that your site engineer gave her?

MR. HORTEN: Sure.

MR. COHEN: All right may I see it please? All right is this the plan Mr. Horten? I don't know if this is a marked plan. Mr. Horten is this the plan?

MR. HORTEN: This drawing is site plan Phase I B sheet number 4A of 23.

MR. COHEN: Okay and this the plan you were just referring to? The site plan.

MR. HORTEN: Yes.

MR. COHEN: Okay.

MR. BUZAK: Excuse me Mr. Horten do you know if this is a marked plan in this proceeding?

MR. COHEN: Well why don't we mark it.

MR. MOORE: I'll recall Mr. Korzen to introduce the plans since he prepared them.

MR. COHEN: Well I'm asking this witness, he used the plan.

MR. BUZAK: All right why don't we proceed with this one and we'll do that.

MR. MOORE: Well he didn't prepare the plan and we can't introduce . . .

MR. COHEN: Well Mr. Horten do you have a copy of the site plan that you used to make this estimate?

MR. HORTEN: You're looking at it.

MR. COHEN: Right here, okay. And what was the estimate, what was the estimate that you used for the distance from the house to the property line?

MR. HORTEN: Can I measure it now?

MR. COHEN: No I just want . . . if you told me you don't know then as the Chairman said or as Mr. Buzak said . . .

MR. MOORE: He doesn't remember, he didn't memorize it.

MR. BUZAK: Let me ask a question. Mr. Horten how did you estimate, you used the word estimate, how did you determine the distance of the house on Lot 15 to first the common property line and then from the common property line to the proposed building? How did you do that?

MR. HORTEN: We took the site survey drawing that was provided to us from our site engineer and then actually measured the location of the house to the property line and that's how I estimated the located of the house.

MR. BUZAK: Okay and is that then reflected on sheets A6.00 the Proposed Eye Level Sections at the bottom?

MR. HORTEN: That's correct.

MR. BUZAK: All right so that reflects the calculation that you performed as you've just testified is that correct?

MR. HORTEN: That's correct.

MR. BUZAK: Okay Mr. Cohen go ahead we know how he did it.

MR. COHEN: I didn't ask him how he did it I just want to know what the estimate was.

MR. HORTEN: Off the top of my head I don't know.

MR. COHEN: You don't know.

MR. HORTEN: Yes.

MR. MOORE: Do you not know or do you not remember?

MR. COHEN: I didn't finish my question to you. Obviously he can ask him whatever he wants to when I'm done.

MR. FLEISCHNER: No he can't, no he can't you know that. Let's not be obnoxious. Let's just try and keep this on an even plain and act like adults and not children. So please, this is why I never went into law because I don't want to deal with this kind of stuff. So go ahead and ask your question.

MR. COHEN: I forgot the question. I think the question is that when you did this you don't know standing here today what distance you used. Is that a fair statement Mr. Horten? I'm not trying to trick you I'm just

MR. HORTEN: Yeah I do.

MR. COHEN: You do? What's the distance?

MR. HORTEN: I'll guess that I'm probably looking at it about 45 feet to the closest point but that's give or take because I'm looking at it and you're not letting me measure it.

MR. COHEN: Okay.

MR. BUZAK: Well Mr. Horten why don't you measure it. I don't know Mr. Cohen may not want you to measure it but I think the Board if you need to answer it and you can measure it on the plan, why don't we measure it and let's see what it is and we can move on.

MR. HORTEN: About 40 feet.

MR. COHEN: About 40 feet but you can't recall what you used when you did these documents right? When you did these shots correct?

MR. HORTEN: No we took that view from the nearest corner of the house right there.

MR. COHEN: Okay so you're telling me today you now remember that you used 40 feet or not.

MR. BUZAK: No I think his testimony was he measured 40 feet he said that that's what he used.

MR. COHEN: Oh maybe I misunderstood. Did you measure it?

MR. FLEISCHNER: He just did.

MR. COHEN: No not now before he

MR. BUZAK: Mr. Cohen look we can go on with this but let's move on Mr. Cohen we could be here all night about what the distance is. If you have testimony to show that Mr. Horten is inaccurate that's fine but let's move on.

MR. COHEN: Well as long as the Board thinks it's inaccurate I'll move on fine.

MR. BUZAK: Mr. Cohen let's move on.

MR. COHEN: Okay. By the way when you went out there I presume when you walked the property line you went through a fairly dense growth of trees did you not?

MR. HORTEN: Well I walked it when there was no leaves so it wasn't very dense.

MR. COHEN: It wasn't very dense. Okay were there trees there?

MR. HORTEN: Yes.

MR. COHEN: Okay but show me the area using this diagram if you would as to approximately how wide that stand of trees are

MR. MOORE: That was already testified to by the civil engineer and the landscape architect.

MR. FLEISCHNER: Yes Mr. Moore I was just going to say, you don't have to jump up that was already testified to . . .

MR. COHEN: Well that's fine the witness just put something in. In fact your own member asked him about the trees there and he just put this in. I'm asking what's there now, he said he prepared this.

MR. BUZAK: Mr. Horten can answer the question as to what he saw when he was out there.

MR. COHEN: I didn't ask him about the planting or the architect.

MR. BUZAK: Mr. Horten what did you see when you went out there? When you were walking that site what did you see?

MR. HORTEN: Well there's some trees where the existing detention basin is. There's a thin row of trees along the detention basin but as you go more north there's more trees.

MR. BUZAK: Can you point that out Mr. Horten on what's been marked A6.00. Or do you have another plan that you can show it on? And if there's a better plan Mr. Horten that you can show it on that's fine use that one I just happen to pick . . .

MR. HORTEN: Sure I'm just going to bring up exhibit A-3 which is the site plan. I think this shows some of the tree lines here. I think it's somewhat thinner towards the, where the existing detention basin is and then it gets wider as it goes north here.

MR. COHEN: Your not pointing out the two tree stands goes up this way right?

HORTEN: That's right.

MR. COHEN: Where is the tree stand?

MR. BUZAK: No he is pointing that out Mr. Cohen because that building that you see in tan is not there.

MR. COHEN: Oh I understand that. I'm talking about, by the way Mr. Horten are you aware that there was an existing, in the existing site plan there was a 105 foot buffer?

MR. HORTEN: I'm aware of the 105 foot setback yeah sure.

MR. COHEN: Okay within that 105 foot buffer, and you walked you said approximately along the property line of the residents off of Hogan Court and your client's property is that correct?

MR. HORTEN: Sure.

MR. COHEN: Okay that stand of trees, and by the way this dark neon here was does that show if you know.

MR. HORTEN: I don't know.

MR. COHEN: Okay when you walked that area did you see trees?

MR. HORTEN: Yes.

MR. COHEN: Okay and approximately how tall were these trees on the average?

MR. HORTEN: If I were to venture a guess I'd say probably about 50, 60 feet.

MR. COHEN: 50 or 60 feet okay and they're deciduous trees like leaves?

MR. HORTEN: Yeah they appear to be mostly deciduous trees.

MR. COHEN: Okay and how wide is the tree growth? There's an area where there are no trees where it's cleared out to your client's property is that . . . let me withdraw that. Right up to this property line trees grow is that correct?

MR. HORTEN: That's correct.

MR. COHEN: Okay and how far back towards your client's property is the width of the tree growth? Approximately.

MR. HORTEN: Can I measure this time?

MR. COHEN: Sure go ahead.

MR. HORTEN: Actually you know what I can't quite tell where your property line is . . .

MR. COHEN: Well this is the property line right here. That's the property line. See this line right here that's your boundary line between the residences on Hogan Court and your client's property. At least that's what the engineer says.

MR. HORTEN: I think that maybe this is something for the site engineer because I can't really tell with this drawing where the tree line is.

MR. COHEN: All right but you said the tree line isn't shown here or if it's that dark green portion you don't know that to be that is that correct?

MR. HORTEN: That's correct.

MR. COHEN: All right. Forget about measuring and so forth, how many times were you out walking this area? Was it once or more?

MR. HORTEN: I can't tell you how many times I've walked the line.

MR. COHEN: It was more than once?

MR. HORTEN: It was more than once.

MR. COHEN: Okay in your own estimate how wide was that tree stand approximately?

MR. MOORE: This is not Mr. Horten's area.

MR. COHEN: (Inaudible) it's what he did to prepare these things. He walked it, he walked it several times. This man is an architect he can't estimate as to a width?

MR. BUZAK: Mr. Cohen the testimony had not to do with the trees we had testimony for at least an hour and a half last hearing from the landscape architect who gave a comprehensive detail elaborate presentation on the landscaping that is there and the landscaping that is proposed. So I'm going to ask you to withdraw that question, if you don't withdraw I'm going to direct the witness to not answer it he has not testified about the trees that are there. He testified based upon the exhibit that is marked to show what in his estimate given the limitations that he provided one would see from Lot 15 with the fence and tree plantings. You can ask him questions about that as you did.

MR. COHEN: And I'll beg to differ with you. Because I think if

MR. BUZAK: And that's fine Mr. Cohen.

MR. COHEN: Mr. Schaechter asked him a question

MR. SCHAECHTER: No let me repeat what my question was. I asked him if they considered moving the fence to the other side of the buffer.

MR. COHEN: And I think you asked him also did they consider leaving the trees where they are.

MR. SCHAECHTER: And his question . . .

MR. COHEN: And his response was . . .

MR. FLEISCHNER: Could you let Mr. Schaechter please answer.

MR. SCHAECHTER: And his answer was because of the swale and because of the property they considered it and they came up with this option.

MR. FLEISCHNER: That's it.

MR. COHEN: I'll ask you Mr. Horten do you remember in response to that you said that the condition of the trees is not . . .

MR. MOORE: It's on the tape.

MR. COHEN: I think he said that it was his testimony I'm just asking questions about his own testimony in response to Mr. Schaechter's question. I recall, and I marked it down unless I'm . . .

MR. BUZAK: Mr. Cohen where are we going with this? Tell me where are you going?

MR. COHEN: I don't have to say where I'm going my client doesn't have the burden of proof.

MR. BUZAK: Well I'm asking you if you don't want to answer you don't answer. Is that your response?

MR. COHEN: Thank you. It's a proper question.

MR. BUZAK: Proceed Mr. Cohen.

MR. COHEN: Thank you.

MR. BUZAK: Now can you answer that question please approximately how wide when you walk that was that tree growth?

MR. HORTEN: I really can't say. If I were to guess . . .

MR. BUZAK: No Mr. Horten don't guess. Do you know the answer? Can you estimate it?

MR. HORTEN: No.

MR. BUZAK: That's fine.

MR. COHEN: (inaudible) may not like it . . .

MR. BUZAK: Mr. Cohen, Mr. Cohen you asked a question he answered it, move on Mr. Cohen.

MR. COHEN: Wider than 10 feet do you know?

MR. BUZAK: Mr. Cohen move on.

MR. FLEISCHNER: He answered the question.

MR. COHEN: Is that an improper question?

MR. FLEISCHNER: Yes it is. Mr. Cohen now you can step over to the podium you don't need to . . .

MR. BUZAK: Now you can proceed.

MR. COHEN: Are you telling me that's improper for me to stand here?

MR. BUZAK: Mr. Canary can you please take your seat in the audience. Mr. Horten can you please sit next to Mr. Moore and Mr. Cohen you can point out anything you want on your exhibits.

MR. COHEN: I'll be happy to, I appreciate that. Now by the way did you do . . . was there any consideration, and maybe you didn't do it but maybe you were involved with the team that designed this in considering sound effects on these properties along this development with reference to the addition that's going to be proposed here?

MR. HORTEN: That's correct.

MR. COHEN: What's correct?

MR. HORTEN: When you asked whether we could . . .

MR. COHEN: Oh you did do that, who did that do you know?

MR. HORTEN: Our sound engineers.

MR. COHEN: I'm sorry?

MR. HORTEN: Our sound engineering expert.

MR. COHEN: And who is the sound engineer?

MR. HORTEN: I don't remember.

MR. COHEN: You don't remember. Did you meet with that person and any team or anything?

MR. HORTEN: Yes we did.

MR. COHEN: Okay and did you see any reports prepared by the sound engineer?

MR. HORTEN: We had discussions I didn't see any reports.

MR. COHEN: Okay and was there any consideration given to the sound or for instance the HVAC equipment is on the roof is that correct?

MR. BUZAK: I'm going to rephrase that question. Mr. Horten did you take into account in what you have prepared and presented to this Board any sound effects of the structure or the operation of the structure on your design?

MR. HORTEN: Yes.

MR. BUZAK: Can you tell us what you did?

MR. HORTEN: Well normally you now for a site plan application we don't usually get into that level of detail of figuring out all the engineering for the rooftop equipment. Generally we sort of look at the project and say you know that there's going to be rooftop equipment and that's usually dealt in the construction phase. But the client asked us to do a little further study regarding the appointment because we want to be considerate about the sound issue. So we looked at it . . .

MR. BUZAK: We being your office.

MR. HORTEN: Yes my office, we looked at the location as I indicated in my testimony. We pushed the equipment back as far as we can you know physically on the building. And then we actually had some discussion with the sound engineer to make sure that it won't become a sound issue because you guys have that noise ordinance and we looked at it and we know that it's going to be well under the noise ordinance so we really been (inaudible). Because the fact that we moved the building from about 105 feet to almost 300 feet that building diminished the sound.

MR. BUZAK: All right Mr. Cohen go ahead.

MR. COHEN: Okay so you were involved in this particular issue and with reference to the sound. And I presume, did the sound engineer do decibel readings along the property line?

MR. HORTEN: I believe so yeah.

MR. COHEN: Okay did you look at those?

MR. HORTEN: Yes I did.

MR. COHEN: Okay and when you design things are you familiar with that function and design of buildings and looking at sound levels and looking at municipal ordinances that have different sound level requirements?

MR. HORTEN: Basic concepts.

MR. COHEN: Basic concepts.

MR. HORTEN: Yes.

MR. COHEN: Okay well and you designed this as best you could obviously, I'm presuming and maybe I'm presuming wrongly, to reduce the sound impact to these residents. Is that a fair statement?

MR. HORTEN: Well the actual physical planning, the site planning of the footprint I wasn't involved in that.

MR. COHEN: You weren't.

MR. HORTEN: No.

MR. COHEN: Okay so you don't know if this was designed to have the least impact at least the HVAC equipment on the roofs, have the least impact of noise on these residents is that a fair statement then?

MR. HORTEN: All I can say is that as I stated before having a building under 5 feet to almost 300 feet away and then having the (inaudible) further back additional 100 feet or so is going to have a better served condition. You know you're going to have less noise.

MR. COHEN: Well let me ask you this, if you lowered this equipment presuming lowered the building and you lowered the equipment would it have a different effect if you don't. What sound is emanated at the property line?

MR. HORTEN: Again conceptually I think if you lower it it would probably have a little more impact.

MR. COHEN: It would be the same.

MR. HORTEN: No you would have probably a little bit more impact because you're closer. Generally if you can see it

MR. COHEN: The lower you make it the less impact you're going to have?

MR. HORTEN: No the more impact.

MR. COHEN: More impact. So if we make this 50 feet high you're saying the sound level on the placement along here would be less than at 42 feet.

MR. HORTEN: That's right.

MR. COHEN: Okay now you had indicated that these trees and your testimony about these trees was that they were going to be planted . . . the fence is 12 feet high right?

MR. HORTEN: That's correct.

MR. COHEN: And they were going to be planted at approximately 18 feet is that right?

MR. HORTEN: That's correct.

MR. COHEN: And after the first year they're going to grow to a foot and a half to 2 feet a year.

- MR. HORTEN: That's the estimate our landscape architect gave us.
- MR. COHEN: Landscape architect gave you that. And you based this on her testimony is that correct?
- MR. HORTEN: Right.
- MR. COHEN: And this is when they get the 35 feet, these two photos on the top is that correct?
- MR. HORTEN: It's marked on the bottom of those pictures.
- MR. COHEN: Well this is 25 feet and this is 35 feet. Well by my calculation it will take about 10 years to get to this 35 feet, would that be at 1-1/2 to 2 feet a year after the first year?
- MR. HORTEN: I think that's probably fair to say.
- MR. COHEN: Okay so they're going to have to wait 10 years to get to this height right?
- MR. HORTEN: That's right.
- MR. COHEN: Now by the way, and you said that the reason you can't, it's not . . . I shouldn't say practical I presume it's possible but for some reason you really can't put higher trees in. That was your testimony right?
- MR. HORTEN: Yes.
- MR. COHEN: And why can't you put higher trees in I'm trying to understand that.
- MR. MOORE: That was addressed by our landscape architect.
- MR. BUZAK: I think that's not a . . .
- MR. COHEN: Well that was his testimony I marked it down he says he can't put higher trees and he understood. And I also want to know what's his understanding as to why you can't put higher trees in.
- MR. BUZAK: If you know Mr. Horten answer the question, if you don't know that's fine.
- MR. HORTEN: Why we can't put higher trees?
- MR. COHEN: Yeah higher than 18 feet.
- MR. HORTEN: Well anything is possible.
- MR. COHEN: So is it your understanding you could put higher trees.
- MR. HORTEN: I think it would be difficult in terms of trying to get big trees put in. It's obviously more expensive and more difficult.
- MR. COHEN: So it's a matter of expense is that what you're understanding is Mr. Horten?
- MR. BUZAK: He said it was more expensive and more difficult Mr. Cohen, go ahead move on.
- MR. COHEN: Is it a matter of expense Mr. Horten?
- MR. BUZAK: He answered the question Mr. . . . He said it was, did you hear him say that Mr. Cohen?
- MR. COHEN: I just wanted to make sure.
- MR. BUZAK: Well we all heard that and I think you heard it too because you asked the question a second time so let's move on Mr. Cohen.

MR. COHEN: Now if you put trees in that are 50 or 60 feet higher obviously it would block the view greater would it not? You wouldn't see anything maybe from 50 or 60 feet if these trees were 50 or 60 feet high is that correct?

MR. HORTEN: Well I think, I'm showing that 35 foot trees are going to start to screen the views; I think 50 foot trees would probably be an overkill at that point.

MR. COHEN: But they would certainly screen it.

MR. HORTEN: Sure.

MR. COHEN: Okay well they're existing by your own testimony, now have 50 or 60 foot trees out there do they not? That's what you testified a few minutes ago my understanding is that you estimated them to be 50 to 60 foot high.

MR. FLEISCHNER: Mr. Cohen he's the architect he is not an expert on what it takes to plant a tree.

MR. COHEN: I didn't ask him . . .

MR. FLEISCHNER: You say a 60 foot tree, do you know how . . .

MR. COHEN: I don't know he estimated 50 or 60 feet.

MR. FLEISCHNER: You can plant anything if you have a root ball that's 500 miles wide.

MR. COHEN: Mr. Chairman . . .

MR. FLEISCHNER: Let's just move on you know enough games move on.

MR. COHEN: Okay I'm sorry I didn't mean to come here and play games it's very serious to my client, it's not games to my client.

MR. FLEISCHNER: This is very serious to this Board but you need to just ask the question and move on.

MR. COHEN: I keep being interrupted.

MR. FLEISCHNER: No, no you're not, no you're not.

MR. BUZAK: Mr. Cohen look we're trying to get to an objective here. You can ask a question as to whether or not Mr. Horten, whether he planted a 60 foot tree that would give a greater screening than an 8 foot tree. That's obvious and there's not going to be planting of a 60 foot tree.

MR. COHEN: I'm not asking to.

MR. BUZAK: Well I understand but you're asking a question in a hypothetical fashion that's just completely beyond what we're talking about. So let's be practical I understand you have a client to represent, it's very important for your client to have adequate screening you can ask practical questions but let's not go beyond that. All right Mr. Cohen?

MR. COHEN: Well I'm trying to ask real practical questions.

MR. BUZAK: We'll be here as long as we have to be here but I think we need to accomplish something and not just ask questions for the sake of asking a question.

MR. COHEN: Well I'm not asking questions for the sake . . .

MR. BUZAK: Well you are when you ask a question after Mr. Horten answers.

MR. COHEN: Well I'm sorry the Chairman thinks that I'm wasting the Board's time asking inappropriate questions.

MR. BUZAK: No I didn't say you're wasting the Board's time I said ask questions that are practical. Go ahead Mr. Cohen.

MR. COHEN: Now there are trees there that are 50, 60 feet high that's your testimony before is that correct?

MR. HORTEN: That's correct.

MR. COHEN: Oh, so why not leave those trees there? Why spend the client's money in putting in all of these trees if they're already there.

MR. MOORE: That was all testified to by the landscape architect Mr. Buzak, Mr. Chairman that was all testified to. It's not this witnesses I'm sorry.

MR. FLEISCHNER: Mr. Moore please, Mr. Cohen the trees that were there were discussed in detail last Thursday evening.

MR. COHEN: Fine.

MR. FLEISCHNER: All of that information has been presented we do not need to go over it again from a witness that did not present that information and is not an expert in that area.

MR. COHEN: He had produced testimony on direct or in response to questions about there are 50 to 60 foot high trees that they're not in good shape and as far as the landscape architect is concerned they should all come down. That's what he said.

MR. BUZAK: I don't think that was his testimony but go ahead Mr. Horten.

MR. COHEN: Was that your testimony Mr. Horten?

MR. HORTEN: No sir.

MR. COHEN: No. Did you discuss in your planning in this design with the landscaping architect, did you ever consult with the landscape architect?

MR. BUZAK: Mr. Cohen I ask you to focus your attention on the testimony that Mr. Horten provided. Now the fact that he said when he walked out there and you asked him how high were the trees and he hesitated and hesitated and hesitated and finally said if I had to guess they were 50 or 60 feet, that's it. Whether they should be planted, whether they should be cut down, whether they should be used as a buffer he didn't testify as to that and I'm going to ask you to not ask him questions about whether they should stay and your question was why don't we just leave those trees. His testimony didn't relate to that at all Mr. Cohen so that's it.

MR. COHEN: I'll withdraw the question.

MR. BUZAK: Fine, proceed.

MR. COHEN: Did you do any studies Mr. Horten using the existing trees from let's say Lot 15 is where you took it from as to how the building would appear if the trees were not disturbed and leaving the existing trees?

MR. HORTEN: No I haven't.

MR. COHEN: And is that because the landscape architect and the applicant

MR. BUZAK: Mr. Cohen he said he didn't it doesn't matter why he didn't it and move on.

MR. COHEN: Fine. I may be done let me just confer one moment with my client please. Now Mr. Horten you also indicated that one of the reasons that somebody asked if you could move this fence on the other side of the trees that you're going to plant. Do you recall that question?

MR. HORTEN: (Inaudible).

MR. COHEN: I forgot which member of the Planning Board asked you did you consider moving the fence on the other side of the trees keeping the trees where they were and moving the fence on the other side of the trees.

MR. HORTEN: Yes, yes.

MR. COHEN: Okay and you gave I think two reasons. Number one you said as security so that people know where your client's property line is that was one of them am I correct?

MR. HORTEN: Yes.

MR. COHEN: Okay and the other thing had to do with a swale. Quite frankly I didn't understand it, can you show us where that swale is on any one of these maps?

MR. BUZAK: If you can point it out Mr. Horten please do, if you can't you can't.

MR. HORTEN: Yeah I know where it is.

MR. COHEN: I mean you said the swale is a problem for that do you know where the swale is?

MR. HORTEN: Yes I know where the swale is.

MR. COHEN: Oh okay so would you show it.

MR. HORTEN: Sure it's right along the property line. It pretty much runs along the property line.

MR. COHEN: Is that the dark green area?

MR. HORTEN: It's within that dark green area.

MR. COHEN: And where is the swale, where does it begin and where does it end?

MR. HORTEN: My understanding is it pretty much runs along that property line.

MR. COHEN: All along the whole property line?

MR. HORTEN: I think so yes.

MR. COHEN: Is it existing or is it to be installed as a result of this site plan?

MR. MOORE: Mr. Korzen had testified to that last week.

MR. BUZAK: Mr. Horten if you know you know, if you don't know you don't know. Up to you.

MR. HORTEN: That's a civil engineering matter I really

MR. COHEN: So you don't know about the swale and you don't know its purpose.

MR. HORTEN: I understand that the swale was there.

MR. COHEN: The swale is existing.

MR. HORTEN: Yes.

MR. COHEN: Okay so because the swale is existing now and you have some trees there why can't you, and forgetting about, I understand the security issue, why can't you put the fence behind the trees? Because it would be in the swale?

MR. BUZAK: Let me ask a different question Mr., Cohen if I might. Mr. Horten did you make the determination as to where the fence should be on the property?

MR. HORTEN: I did not.

MR. BUZAK: You did not. You were given that information is that correct?

MR. HORTEN: That's correct.

MR. BUZAK: And based upon the information that you were given as to the location of the fence you prepared the exhibit that shows the various views that you estimated would be seen from Lot 15 as it relates to the fence, the plantings and the building is that correct?

MR. HORTEN: That's correct.

MR. BUZAK: Okay Mr. Cohen Mr. Horten did not decide where the fence is and therefore questions as to why the fence could or could not be moved are not to be asked of Mr. Horten.

MR. COHEN: Mr. Buzak I presume you recall that he gave testimony as to why the fence should not be moved.

MR. BUZAK: I understand that he gave testimony, yes. But . . .

MR. COHEN: Okay and I'm only doing this asking him a question on his own testimony.

MR. BUZAK: I understand Mr. Cohen but we're going to move on.

MR. COHEN: And if he wasn't a qualified witness he should have said I'm not qualified to answer that.

MR. BUZAK: And he didn't but we're going to move on from that. We're going to move on from that Mr. Cohen.

MR. COHEN: Fine. Mr. Buzak just tell me Mr. Cohen you cannot ask that question.

MR. BUZAK: No what I'm going to say Mr. Cohen is that Mr. Horten just clarified his testimony that he did not make the selection as to where the fence would be, that his exhibit was based upon where someone else decided the fence would be and we're going to move on from that. The fence is where the fence is, if you would have been here last week you would have heard the testimony and would have been able to ask those questions of the witness who determined where the fence should be. It's not Mr. Horten so we're not going to waste the Board's time, the witness's time or candidly your time going into whether Mr. Horten thinks he should or shouldn't do it.

MR. COHEN: Well we're not wasting my time I get paid by the hour.

MR. BUZAK: Your client's money I don't want to waste.

MR. COHEN: Okay, okay I'm glad that you're looking out for them. But anyway Mr. Horten am I given to understand that when you testified before that the fence can't be moved because it would interfere with the swale, you have no knowledge of that, you don't know that to be a fact is that correct?

MR. HORTEN: That's correct.

MR. COHEN: That's correct. Is there any other testimony that you gave before this Board today as sworn testimony that you don't know. That you said was a fact and now realize is not a fact.

MR. HORTEN: I think I misunderstood your question. When you say it's a fact in terms of it's . . . like there are questions about can you design the building differently, of course.

MR. COHEN: Okay.

MR. HORTEN: But you know you're asking questions of all of these speculative things that . . .

MR. BUZAK: Mr. Horten let me just ask you. Mr. Cohen asked you whether or not there's any testimony that you have given that you now have determined is incorrect. That doesn't mean to say you didn't give incorrect testimony inadvertently, if you cannot answer that question or you believe that

the testimony that you provided is in fact accurate that's all you have to answer and we move on from here.

MR. COHEN: I didn't want to imply that you did anything intentionally I'm just asking you as Mr. Buzak asked you, upon reflection is there anything that you testified to that you now see that may not be accurate?

MR. HORTEN: I think what I testified was accurate.

MR. COHEN: That was the only inaccurate thing then about the swale.

MR. HORTEN: No there is a swale there.

MR. COHEN: Well but that the fence would interfere with the swale or don't you know. Because you said before it would, now you said you can't answer that.

MR. HORTEN: That it interferes with the swale? I don't think I said that it interferes with the swale. I said that there's a swale there.

MR. COHEN: Fine. So we said your testimony tonight if they do move the fence on the other side of where you're proposing the trees that it will not interfere with the swale.

MR. BUZAK: No his testimony . . . Mr. Cohen let's move on, we're going to move on Mr. Cohen. We got past it Mr. Cohen move on.

MR. COHEN: Are you telling me I can't ask that question?

MR. BUZAK: I'm telling you you can't ask that question.

MR. COHEN: I can't, and what's the basis for that?

MR. BUZAK: Because Mr. Horten has testified we got on the record clearly that Mr. Horten did not locate the fence that the exhibit that he's prepared was based upon where the fence was located by others and he's already testified that his testimony with regard to whether it can be moved on the other side was, he did not understand your question correctly. So let's move on in that.

MR. COHEN: Oh okay you didn't understand my question then. My question was do you know whether or not moving the fence would interfere with the swale? Just tell me whether you know or you don't know.

MR. HORTEN: I don't know.

MR. COHEN: You don't know okay. I have no further questions.

MR. FLEISCHNER: Okay what I'm going to do is, is there anyone else who wishes to ask a question and it cannot be a repeat of any questions that were already asked. If the questions have been asked you ask the same question again.

MR. CARTIER: Maybe to add a little clarity but they will be direct (inaudible).

MR. FLEISCHNER: As long as it's not the same question, if it is then you can't ask it. But please you know if it's a different question . . .

MR. CARTIER: Understood. John Cartier 3 Hogan Court.

MR. BUZAK: Spell your last name sir.

MR. CARTIER: (C-A-R-T-I-E-R)

MR. BUZAK: Thank you sir.

MR. CARTIER: Mr. Horten how accurate do you feel the diagram that A-22 diagram is with relation to where you took your picture from and the extrapolation of the trees as they grow older from the top and the bottom.

MR. HORTEN: I feel pretty confident that's fairly accurate. Again I say approximate because you know I indicated how I took it, when I took it.

MR. CARTIER: Okay. How high did you say the camera was on A-22 when you took those pictures from the lower level and then the upper level?

MR. HORTEN: The lower level the view from the first floor was approximately 7 foot from the . . . above what I felt was the approximate grade.

MR. CARTIER: From like the street level.

MR. HORTEN: Again the exact grade where the house is I don't know.

MR. CARTIER: Okay. Were you aware of how the properties were set on the plat map for each one of the properties knowing that they weren't exact? Did you know the houses were not exactly square to each one of the property lots?

MR. HORTEN: Yes.

MR. CARTIER: Did you know how far of some of the rear setbacks? Were you aware of the setbacks of some of those properties that were along there?

MR. HORTEN: You can see it on the drawings the actual footprints of the house so yes.

MR. CARTIER: Okay because I think normally the setbacks are what, 30 feet front and rear? 35 feet front and rear estimate it doesn't matter, 30 feet, 35 feet front and rear, 15 feet on the sides in Flanders Crossing okay? On some of these properties where the houses were layed down inside the map some of their fronts and backs got twisted around where the property setbacks were.

MR. BUZAK: We need to just ask questions. You'll have an opportunity sir to . . .

MR. FLEISCHNER: You will have a chance to say that at the end but just leave it to a question now.

MR. CARTIER: Okay. How come no pictures, renderings were created from those properties that are going to be 15 feet from that fence? Or ideas of what it will look like with a fence right up against the property? From a different angle maybe across the street.

MR. HORTEN: I really didn't know there was a house 15 feet from the property line but in general our thought process was these houses along that property line directly across from the building they're the closest ones so we took the view from there.

MR. CARTIER: Okay and then how about a view from a little bit farther out like the intersection of Hogan Court and Crenshaw as you start to get a little bit farther out you know minus the 60 foot trees. There's no rendering for that either.

MR. HORTEN: No it wasn't really required we wanted to . . . we developed this as an extra sort of exhibit to show what's going to be the view, the approximate view.

MR. CARTIER: And then one other thing, the renderings for the pictures of what it would look like from those lots let's say Lot 22, 23, 24 & 25 I believe there's a grade of elevation of I don't know how many feet but evidently quite a bit. So there's no renderings to show you what that looks like from those homeowners looking down at what is at a lower elevation right? So you're looking straight across correct? You never considered a rendering of what it looks like for the property owners at the top of the hill looking down.

MR. HORTEN: We haven't done a rendering.

MR. CARTIER: Okay that's fine. You mentioned something about noise. Were there any noise readings, current noise readings made with what exists currently?

MR. HORTEN: No.

MR. CARTIER: So there was nothing done. And then how would you extrapolate anything different minus all of the barrier that's there right now including now a 52 foot building with more mechanicals on top? Even though they're set back you're now going to remove somewhat of something natural in between the two buildings and you're going to add I would have to assume maybe twice the mechanicals on the roof. So there is no impact noise studies done with the increase that we'll see generated from those extra mechanicals that will now be added.

MR. BUZAK: Is that a question sir?

MR. CARTIER: Yes.

MR. BUZAK: Mr. Horten.

MR. HORTEN: I don't know.

MR. CARTIER: So he does not know there will be an increase in noise somehow, someplace by putting mechanicals on a 52 foot building.

MR. MOORE: No he didn't know if noise studies were done.

MR. BUZAK: That's not what he answered. Perhaps you could ask the question sir again and Mr. Horten you can answer the question that's being asked. So let's . . . sir can you ask your question again.

MR. CARTIER: Let me rephrase that. Would you expect an increase in noise from the new building with the mechanicals being at 52 feet as opposed to they're 36 feet now?

MR. BUZAK: Well they're no mechanicals on the building that's being proposed.

MR. CARTIER: There are he mentioned that they were on the top

MR. BUZAK: Well there's no building there so you're talking about . . . Is your question whether or not the construction of a new building with new mechanicals will increase the sound from those mechanicals when added to the mechanicals that are on the existing building?

MR. CARTIER: Correct I would assume that if noise readings or decibel readings were made or measured during you know certain times that doubling that capacity that there would be some extrapolation that would say they we're doubling the capacity of our mechanicals, they're still on the roof, however there are another 12 feet higher so they will project sound louder and more. So I guess the question is there was no extrapolation, there was no measurements of any increase in noise.

MR. BUZAK: Well the question is was there any extrapolation of that. And Mr. Horten did you make that calculation?

MR. CARTIER: Was there any extrapolation for any type of noise?

MR. BUZAK: Did you make that calculation?

MR. HORTEN: I didn't make that calculation.

MR. BUZAK: That's fine Mr. Horten thank you.

MR. CARTIER: Good enough. Can the mechanicals on the roof possibly be mounted any other way? On the ground, is it possible?

MR. HORTEN: It would be very difficult.

MR. CARTIER: But the question is could it? Yes or no.

MR. HORTEN: Yes it could, it would be very difficult.

MR. CARTIER: I think that's it, thanks.

MR. BUZAK: Mr. Horten if the mechanicals were mounted on the ground would that increase, if you know, would that increase or decrease the level of noise that would be heard by neighbors?

MR. HORTEN: I really don't know.

MR. BUZAK: Okay that's fine thank you.

MR. FLEISCHNER: Thank you.

MR. COHEN: May I just ask if there's going to be a sound expert that's going to testify?

MR. BUZAK: I don't believe Mr. Moore indicated that there was going to be a sound expert testifying is that right Mr. Moore?

MR. MOORE: That's correct.

MR. FLEISCHNER: Is there anyone else who wants to ask a question that has not been asked, that has not been asked.

MR. BUZAK: And if you're not sure sir you can ask the question and we'll tell you that it's been asked.

MR. FLEISCHNER: And then we'll tell you that you have to wait until the end.

MR. CONOVER: Okay Robert Conover 4 Hogan Court.

MR. BUZAK: That's (C-O-N-O-V-E-R) sir?

MR. CONOVER: Correct (C-O-N-O-V-E-R) 4 Hogan Court.

MR. BEDELL: Which lot number? Are you 15?

MR. CONOVER: I am 15.

MR. BEDELL: Just right above.

MR. CONOVER: Correct.

MR. BEDELL: Yeah okay.

MR. CONOVER: Correct above my neighbor. I believe let me ask you this question, your drawings are they from my lot, Lot 15?

MR. HORTEN: Yes.

MR. CONOVER: Okay. Short question is in your expert opinion are there ways to potentially further dampen the noise from the HVAC units where they are in your plan today?

MR. HORTEN: Well it's my understanding that we meet the noise level requirements.

MR. CONOVER: You meet the requirement.

MR. BUZAK: Let me follow up on a question sir stay there let me just follow up on the question. Mr. Horten in your design of the building did you provide any kind of sound control, sound muffling, sound deadening aspects or components when you designed the building that's been presented to the Board thus far?

MR. HORTEN: The primary issue as I indicated in my testimony is moving the units as far away as possible and that's one of the best ways to do it. And again the other one is a site line you know you try to block the site lines. As I indicated in my testimony we moved it further back away from the edge of the building so it reduces the site line which is going also reduce noise.

MR. BUZAK: Okay so that was the limit of what you did to address any potential noise issue.

MR. HORTEN: Right.

MR. BUZAK: And in addition it's your testimony that from your understanding that the mechanicals as being proposed on this building met the noise ordinance requirements in the municipality.

MR. HORTEN: That's correct.

MR. CONOVER: Thank you.

MR. BEDELL: I just have a follow up with that if I may.

MR. FLEISCHNER: Yes.

MR. BEDELL: The building is basically about 284 from the property line and another 45 feet from the house. From the corner of the building how far back is the HVAC unit? Is it 50 feet back, another 80 feet back?

MR. FLEISCHNER: I thought he said 90, he testified 90 feet.

MR. BEDELL: That was from the front but I mean from the side of the building. So it could be 500 feet from the property line or 480 or . . . you know?

MR. HORTEN: It's an additional 130 feet plus 284 feet plus whatever the distance to the house is.

MR. BEDELL: So it's close to 500.

MR. FLEISCHNER: Close to 500 feet.

MR. BEDELL: Okay thank you.

MR. MOORE: Mr. Chairman, members of the Board we've heard your concerns, and the neighbor's concerns and we will also put up a barrier around the mechanical equipment on the roof to help attenuate the sound. We have a design and that way we'd make the actual design subject if the Board were to grant an approval to Mr. McGroarty's review. If that were acceptable to the Board.

MR. BEDELL: It doesn't hurt. If you're going to offer it yeah it can't hurt.

MR. FLEISCHNER: Yeah thank you. That young lady sitting over there who has been raising her hand please state your name and your address.

MS. CHU: Robin Chu 37 Crenshaw Drive, Lot 17. We didn't talk about lights on the building at all. I assume there will be some lights visible from the building. I don't know if they will be security lights, office lights on. We can see lights today from the existing building on the second floor of our home and I have 105 feet of woods. Can you talk about what the lighting plan is for the building? I think you only addressed the parking lot last week.

MR. HORTEN: The building itself, we're not putting any lights on the building on the southeast or north side except when you get back towards a loading dock. Typically the loading docks would have a couple of lights to light the loading area. And then, I'm sorry by Code you're required to have an emergency light over all of the exit doors, one of the small ones.

MS. CHU: So you've got a 24/7 operation for the warehouse there's not lighting over the entrances there?

MR. HORTEN: The parameter lighting in the parking lot that the site engineer discussed, those light the internal area, the site area.

MS. CHU: And the entrance to the buildings they light those also?

MR. HORTEN: Yes.

MS. CHU: Okay the other question I had was, and I can't quite tell from the elevations, if you could talk about where the height of the planned new entrance road is compared to the height of the fence if the fence is on the property line?

MR. HORTEN: That was on the site drawings so I wouldn't know exactly off the top of my head but on that section when I took that section along Lot 15 the . . . sort of where the property line to the, where the road was it was about 6 to 7 feet approximately.

MS. CHU: The rise was 6 to 7 feet at that point?

MR. HORTEN: Yeah.

MS. CHU: Okay and that road is that road level or does that rise as the property goes back?

MR. HORTEN: My understanding is the lot continues to slope up naturally as further north you go.

MS. CHU: Okay so is it fair to say that at some point the road might be close to the top of the height of the fence or no?

(EVERYONE TALKING AT ONCE)

MS. CHU: I understand that but I don't understand how the swale is and where the swale . . . they're saying there's a rise on the other side.

MR. HORTEN: That was all testified to last meeting.

MR. BUZAK: I don't think Mr. Horten is . . .

MS. CHU: It's because they show it at 12 feet higher I think at . . . I thought it was 12 feet maybe I read it wrong for house 15, for the other drawing that they did for the site line.

MR. FLEISCHNER: Yes sir.

MR. KUZNETSOV: Vadim Kuznetsov 45 Crenshaw Drive. In your renderings did you take into consideration the elevation difference between 21, 22, 23 and the rest of them? Like I saw the cut that you made on Lot 14 and Lot 15 but there's a drastic elevation difference. Did you take it into consideration?

MR. HORTEN: No we didn't do renderings from each one of those property lines. We did it from Lot 15 because again as I said to the gentleman before who asked that, those houses that are across from the building are the closest so we thought that those would be the most impactful. So we took the view from there where we thought would be the worst case scenario.

MR. KUZNETSOV: (Inaudible) because (inaudible) through the line.

MR. HORTEN: Yeah but the idea was that as we show you that view you know it would be similar for all the other neighbors.

MR. KUZNETSOV: Okay with the fence, if the fence should go up and I don't think a 12 foot fence is the solution but if it should go up who is going to be responsible for the maintenance of the fence on the side of the property owner? Is it going to be Siemens or is it going to be us if anything happens with the fence over the years?

MR. BUZAK: It's Siemens fence they're responsible.

MR. FLEISCHNER: It's Siemens fence they're responsible.

MR. BUZAK: Both sides of the fence.

MR. FLEISCHNER: Both sides.

MR. BUZAK: And I believe, and I'll ask Mr. McGroarty and Ms. Natafalusy if the fence ordinance requires that the decorative side of the fence be facing away from the person who is putting up the fence.

MS. NATAFALUSY: Yes.

MR. BUZAK: Yes so the nicer side of the fence so to speak, if there is one, will be facing the property owners not the applicant.

MR. KUZNETSOV: Okay. And the last question the health of the trees was this estimated or you actually went lot, to lot, to lot.

MR. MOORE: I don't think the landscape architect . . .

MR. BUZAK: Yeah I think Mr. Horten is not capable of answering that question.

MR. FLEISCHNER: And I know you were here last Thursday and I believe she did . . .

MR. KUZNETSOV: Yeah but I didn't get a chance to ask that.

MR. FLEISCHNER: I understand you're asking the question . . .

MR. KUZNETSOV: Yeah I think she said that somebody is going to come around and he's going to look at the properties and . . .

MR. BUZAK: That was her testimony, that's correct sir.

MR. FLEISCHNER: I believe that's correct.

MR. MOORE: As a condition what I can . . . as we talked about last time as a condition of the approval the arborist is going to go through, look at all the trees, we had hoped to be able to actually have him do that by the meeting but it's a time consuming process to do properly. And those trees that can be saved will be saved.

MR. FLEISCHNER: I do believe that was testified to at last Thursday's meeting.

MR. MOORE: And we said that last week too.

MR. KUZNETSOV: Yes it was I thought it was going to be done (inaudible). Okay thank you.

MR. FLEISCHNER: Thank you.

MS, GIORDANO: Hi Cheryl Giordano (G-I-O-R-D-A-N-O) 39 Crenshaw Drive.

MR. FLEISCHNER: Before you ask the question how was the concert?

MS. GIORDANO: Oh my goodness it was fifth and fourth kids playing Cello's and Violins it was horrific but . . .

MR. FLEISCHNER: I didn't forget.

MS. GIORDANO: Did you get that in the minutes? That's fine actually he didn't sound that bad because we didn't hear it. But my question actually kind of goes back to what we had talked about last week but then kind of on the side and I just wanted to get it on the record. The lots at the end of the fence line which I believe the entire fence line is 12 feet, the height is going to be 12 feet all the way across correct?

MR. HORTEN: I think the engineer testified that from my recollection when it gets to that property line where that church property is then it's going to step down to 6 feet.

MR. MOORE: But its 12 feet the rest of the way.

MS. GIORDANO: Okay so towards the end which is Lots 22, 23, 24 is where it stops those will be 12 foot fences and we had mentioned because the three property owners were here last week that we

would consider, if you would consider not putting up the fence at those particular spots. And you were agreeable to that last week. But the question back last week was could we, and this was on the side it was not on the record, could we see how it's going throughout the process to find out I think where we can make a judgment call as it's going up to determine whether or not we would rather not see the fence up towards the very end of the planned fence line right now.

MR. BUZAK: So is your question mam, is the applicant willing to reduce the height of the fence . . .

MS. GIORDANO: Actually not put it up.

MR. FLEISCHNER: Eliminate.

MS. GIORDANO: Towards the end of Lots 24 which that would be my neighbor who is not here, 23 which is us and 22 which is another neighbor. But we don't want to say like throw it out right now because we may see that when the trees are cleared and the dead trees are gone that wow we see a lot and we don't want to see that. But kind of keeping it open ended and if so how would we go about contacted Siemens to let them know save your money and stop putting the fence up.

MR. BUZAK: Well let's see if we can handle it this way. Mr. Moore and Mr. Canary . . .

MR. MOORE: I actually have Mr. Canary can answer that.

MR. BUZAK: All right why don't, Mr. Canary you can perhaps have an idea so why don't you go forward.

MR. CANARY: Okay and I'm going to answer the question that I think was asked. Okay so if I don't answer it please, please . . .

MS. GIORDANO: I won't berate you.

MR. CANARY: Okay. What we indicated earlier is we took our queue for a 12 foot fence from the prior decisions from the Planning Board. So that coupled with the desire to obstruct the view that's why we arrived at the 12 foot fence. Though why a fence at all and what purpose does the fence serve? The purpose of the fence, any fence is to protect the neighborhood and to protect Siemens. We don't want to see your kids coming across onto our property and you don't want to either so I mean it acts as a deterrent.

MS. GIORDANO: My kids are cute you would want to see them.

MR. CANARY: So that's the purpose of a fence. The 12 foot fence if it's considered to be imposing we certainly are willing to reduce that fence it's a lower cost for us, we certainly are willing to consider it. With respect to the extent of the fence, we certainly are willing to consider to reducing the length of the northern direction. Now mechanically how do we establish that in a Planning Board hearing as far as where that fence ends and everything else, I don't know the mechanism about how we do that.

MR. BUZAK: We can handle that Mr. Canary but my question to you is this, are you willing if the Board is so inclined to grant an approval, are you willing to accept a condition that would eliminate the fence if the adjoining property owners so request? And I ask you that sir because you mentioned there's a concern not only for screening but for security and demarcations so I think that ought to be answered so the witness or the resident knows what the parameters are here.

MR. CANARY: Sure, sure. So with respect to security this is not a high security fence. We recognize that people can walk north around the end of the fence around the end of the fence, it acts as a deterrent so the balls don't come flying across, kids . . . well all of that type of stuff. So it is only serving as a deterrent and our intent is to keep that along the property line near where our property is fully developed. Along the more heavily treed areas the need is less of a deterrent; it's less of a concern from our perspective.

MR. MOORE: Mr. Canary we know we're flexible on the height of the fence is there a point can be coordinated by lot where we'd be flexible as to whether or not we (inaudible).

MR. CANARY: I think that we are flexible as far as how far north, I mean we would like to work with the residents to determine how far north.

MR. MOORE: Can we draw like an actual like (inaudible) lot?

MR. CANARY: Let me just talk about the constraints. One of the things that I don't want to have is a checkerboard type of fence. Cross one lot no fence, next lot etc., so a continuous fence to act as that deterrent. So that's our desire but as far as the extent northward we certainly are willing to reduce that extent northward, we're willing to reduce the height of the fence, it really is what is desired by the community.

MR. FLEISCHNER: I think what Ms. Giordano is trying to say is as this fence is being built as it gets closer and closer to her property and her neighbors property and at that point they say well we really don't need the fence there would you be willing to stop the fence at "X" lot.

MR. CANARY: Yes within limitations.

MS. GIORDANO: As long as everyone agreed from that point.

MR. FLEISCHNER: Yes from that point on.

MR. MOORE: I'd like to call Mr. Howard Lange also a Siemens Real Estate.

(HOWARD LANGE SWORN IN FOR THE RECORD)

MR. BUZAK: Please be seated sir state your name and business address for the record spelling your first and last name. Thank you for your card you still have to . . .

MR. LANGE: My name is Howard Lange (L-A-N-G-E) I'm with Siemens Real Estate one of the corporate groups business address is 170 Wood Avenue South in Iselin, New Jersey.

MR. BUZAK: Thank you sir.

MR. LANGE: Okay with respect to the fence we would need to make a determination as to where we stop it now. We have to purchase the material and you can't go out and have this material standing there waiting to make a decision as to whether or not you would continue it based on someone's opinion. So it's either in or it's out.

MS. GIORGANO: How would we communication that we do not want it with agreement of our neighbors? How do we communicate . . .

MR. LANGE: If you reach consensus with your neighbors . . .

MS. GIORDANO: Well one of them is not here and they are Lot 24.

MR. BEDELL: Is there a deadline date I guess . . .

MS. GIORDANO: Do we need a notarized letter? What do we do?

MR. FLEISCHNER: Should the application be approved within the time frame of resolution time . . .

MR. LANGE: Yeah, yeah I mean if we knew within the next 30 to 60 days that's fine.

MS. GIORDANO: How do we communicate that information to you?

MR. BUZAK: I think what you do is you can communicate that to the Planning Board secretary but what we would need mam would be written documentation; a written letter from the various property owners and the arrangement would be to the extent that they are contiguous to each other so we don't have a checkerboard kind of fence as was pointed out. The applicant is willing to not put a fence where the property owners do not want a fence. Is that correct?

MR. LANGE: That's correct.

MR. CANARY: Absolutely.

- MS. GIORDANO: Can I just clarify what lot number you're willing to start that from?
- MR. BUZAK: I think their testimony was they're willing to stop that from any point.
- MR. MOORE: No is that true? I thought operationally we wanted to keep it in certain areas.
- MR. LANGE: Yes ideally you would want to keep the fence at least into this area of the parking lot and also around the block access into the detention basin.
- MS. GIORDANO: What lot?
- MR. LANGE: I'm going to say probably up to about Lot 18, 17 or 18 but you have to understand from Lots 19 up your going to have a view into the parking lot. If you eliminate that fence you're looking into the parking lot.
- MR. CANARY: Well through the screening of the
- MR. LANGE: You'll have some screening from the plantings but in the earlier days until the plantings fill in you're going to have a view into the parking lot.
- MR. FLEISCHNER: It's something to think about.
- MS. GIORDANO: Right. We're 22, 23, 24 so it's right at the edge of the medium green.
- MR. LANGE: Yeah this is the future parking lot so right now our asphalt will stop about midway up Lot 20.
- MS. GIORDANO: Right and last week it was on the record that you agreed to continue the evergreens around . . .
- MR. LANGE: Yeah we're going to continue the planting around here.
- MS. GIORDANO: And that will be done at the time of the construction?
- MR. LANGE: That's correct.
- MR. MOORE: Yes at the time all of the other plantings go in.
- MS. GIORDANO: Okay. And just exactly in terms of the time line or the process do you clear the parking lot areas first? Like what do you clear first?
- MR. LANGE: I can't speak to that it's up to our contractor we haven't worked out the programming yet.
- MS. GIORDANO: Okay and we don't know exactly when they're going to go and tag the trees that are good.
- MR. LANGE: That will be done in the early stages because yes we have to get in there and do that excavation in that part of the property.
- MS. GIORDANO: Okay and last question if we choose not to forgo the fence in those latter lots towards the north would we be willing to maybe just throw some trees or would that be out of the question? If we're losing some of those dead trees . . .
- MR. LANGE: We'll continue the plantings at the existing pattern. Because you have to understand those trees are going to fill in. If you plant too many too close they're going to die. So you need to plant them based on the landscape architecture requirements because they will grow in.
- MS. GIORDANO: No I understand that but we're the area where we're wooded so behind, directly behind our lot you're not taking down trees unless, and it's my understanding from last week that unless they were unhealthy they will be removed.
- MR. LANGE: That's correct.

MS. GIORDANO: If there happen to be . . . since I'm not an arborist and I don't know what a healthy tree is and what isn't healthy, would Siemens be open to if there were a lot of dead trees back there to . . . since you have to plant "X" amount of trees by Code kind of like fill them in if we don't put up the fence instead? I mean I know it's a guessing game because we don't know but . . .

MR. CANARY: I just wanted to clarify a couple of things. One is that northern part is going to be undisturbed so our intent is not to go in there and cut any trees. The extent of the disturbance is really the light green as shown here so beyond that the forest of trees will not be touched.

MR. LANGE: Roughly from Lot 22 north as you see there today is what you have.

MS. GIORDANO: Okay. I do have one more question. For those people who are getting the fence how far back from the property line do you need to remove the trees in order to get your equipment in there to actually install the fence? Approximately.

MR. LANGE: They usually do those in very narrow spaces, they're like jeeps, four wheel drives, narrow jeeps and they have augers set on the back and they can get in and really get around there without disturbing trees.

MS. GIORDANO: Okay so 8 feet?

MR. LANGE: They're not going to clear they will probably drive around to get it in.

MS. GIORDANO: Oh okay, all right that's it thank you.

MR. FLEISCHNER: Okay what we're going to do is we are going to take a break. Four minutes and 30 seconds and I'm setting my timer now so if you got to go you better run.

(BREAK TAKEN AT 9:35 P.M.)

MR. FLEISCHNER: Let's take our seats and Mr. Cohen, Mr. Moore please sit down so we can get started. Mr. Moore you next witness?

MR. MOORE: Mr. Chairman thank you.

MR. BUZAK: No we still have, we had Mr. Lange testify and Mr. Canary testify so does anybody have any questions of either of them on what they've testified to?

MR. COHEN: Are we asking for questions of them right now?

MR. BUZAK: That's what I said.

MR. COHEN: Oh I have questions for them.

MR. BUZAK: Of who Mr. Cohen?

MR. COHEN: Of both.

MR. BUZAK: Okay.

MR. COHEN: And by the way when I ask the question they can elect who should answer because it just deals with the fence which was basically their testimony.

MR. BUZAK: Okay. Go ahead Mr. Cohen.

MR. COHEN: Okay thank you. So either one of you my understanding is that the fence is going to go down to 6 feet somewhere in this area am I correct?

MR. CANARY: That's correct.

MR. COHEN: And why is that?

MR. CANARY: Currently the fence that is proposed is 12 feet from that point at which the neighbor's begins and extends back northern. And then from that point southward it drops to a 6 foot fence.

MR. COHEN: And could somebody just tell me the approximate location of where it drops to 6 feet?

MR. CANARY: I can point to the location, it's my understanding and that is the corner of the property lines between Lots 14 and Lots 27 and the Siemens property.

MR. COHEN: Okay so Lot 14 that's my client's property. Was there any thought given to the fact that a fence drops 6 feet, has anybody thought, and Mr. Horten who did the visuals along this area that that would allow my client now to oversee the parking lot if you cut it down to 6 feet? Or certainly you can see more of the parking lot (inaudible).

MR. CANARY: I am not aware of any study that's done.

MR. LANGE: No studies were done.

MR. COHEN: Okay and again any of the three of you do you believe that at this point it goes down to 6 feet that that will expose my client to more view of the parking lot than if it was 12 feet?

MR. CANARY: I do not know the answer to that.

MR. COHEN: Mr. Horten?

MR. HORTEN: I'd have to think about that I'm not sure.

MR. COHEN: And assuming that if someone went out and looked at that you'd be willing to make the fence higher than that up to 12 feet consistent.

MR. CANARY: As we stated before we have some flexibility on that fence.

MR. COHEN: That's what you said that's right. I don't know maybe you can't answer the question.

MR. MOORE: He just said we have some flexibility.

MR. COHEN: Does that mean you would?

MR. CANARY: We are willing to discuss and determine whether or not that makes sense yes.

MR. MOORE: It's not only your property, your client it is also the church.

MR. COHEN: Well yeah.

MR. MOORE: Maybe you want to discuss the need with the church.

MR. COHEN: Did the church specifically request a lower fence line along there?

MR. MOORE: Not yet.

MR. BUCZYNSKI: Just one point. But I guess as far as the decision for a limit of the 6 to 12 you'd have to make that decision now right?

MR. MOORE: Correct.

MR. BUCZYNSKI: Based on what you just said earlier.

MR. MOORE: Exactly.

MR. COHEN: So can we make that decision?

MR. BUZAK: Mr. Cohen are you asking Siemens as to whether or not they would install a 12 foot high fence from point A to point B and if that is your question to them you need to be specific and they can answer your question.

MR. COHEN: Well quite frankly this is point A where they said it goes down to 6 feet and the question becomes I don't know I don't represent the church and maybe they'd like to see the parking lot, but as far as my client is concerned there is a portion of that where it's going to allow him to see the parking lot a much more clearer view than if you had a 12 foot fence along this area. So whatever that takes in order to cut, and I don't know the number of feet quite frankly as to how many feet that would be in order to cut that view off from my client's home.

MR. CANARY: As was indicated earlier we are certainly willing to take this Board's guidance as far as the height of the fence and I assume this Board would also take into consideration not just your client but all of the other properties as well.

MR. COHEN: Well you don't know whether the church wants a lower fence . . .

MR. CANARY: Absolutely I do not.

MR. COHEN: Pardon?

MR. CANARY: I do not.

MR. COHEN: Okay but the idea I presume was your putting in 6 feet here because you thought that it wouldn't serve any greater purpose to put a 12 foot here and it saves you money by putting the 6 foot fence and I presume that's the thinking is that correct?

MR. CANARY: It is beyond just cost it is also looking at the overall presentation of the site to the public.

MR. COHEN: So you think it would be better in this area to have a 6 foot fence instead of a 12 foot fence which is about 30 feet (inaudible). My client is going to be looking at the side of a 12 foot board wall 40 foot from his house. It would be better for the church to have a 6 foot fence is that your thinking?

MR. CANARY: We don't know that.

MR. COHEN: You don't know that. Then why was it decided to put a 6 foot fence?

MR. BUZAK: Mr. Cohen the question was answered. The question was there's a variety of factors, let's move on. Okay I don't know where you're going if you want to ask the applicant whether or not they will put a 12 foot fence in a distance from where they were going to begin the 6 foot fence "X" number of feet you have to ask him a specific question . . .

MR. COHEN: Okay 300 feet.

MR. BUZAK: 300 feet.

MR. CANARY: I think the traffic may have an objection to us putting a . . . ;

MR. COHEN: Who?

MR. CANARY: The traffic on the road may have difficulty driving through that fence if we made it 300 feet, but that's okay.

MR. COHEN: Well this is 479 feet this lot line and the road is here.

MR. CANARY: I'm sorry I'm just responding in kind.

MR. COHEN: Okay I try to make light of things and they holler me down but you can probably do it and get away with it.

MR. CANARY: I doubt that. As indicated we certainly would be willing to take the guidance from this Board and if it makes sense from your opinion to extend that 12 foot further down, absolutely.

MR. MOORE: We'll defer to the Planning Board.

MR. BUZAK: So you're willing to abide by the Board's determination as to the height of the fence from the point where you were proposing it to be 6 feet, you're willing to abide by the determination of the Board as to whether that height should increase is that correct?

MR. CANARY: Yes that's correct.

MR. BUZAK: All right that's it Mr. Cohen go on any other questions?

MR. COHEN: Oh by the way somebody said that you're not going to take down I think in response to that woman's question over there, you're going to take the trees down to the end of this area? That's the reserved parking area?

MR. CANARY: I did not tell you exactly, I can tell you though it's approximately Lot 22 is where we would stop with the clearing of the trees.

MR. COHEN: Okay so you would clear trees up to approximately Lot 22 right?

MR. CANARY: Correct.

MR. COHEN: Okay and these trees you're not going to do anything with.

MR. CANARY: Our expectation is we will not be touching that.

MR. COHEN: Okay by the way are these trees approximately the same type of trees and the same condition as these trees?

MR. BUZAK: Mr. Canary testified Mr. Cohen about the fence let's focus on the fence let's not get back on the trees.

MR. COHEN: He testified about . . .

MR. BUZAK: Mr. Lange testified regarding where the fence is so let's go on. Move on Mr. Cohen.

MR. COHEN: Okay the question very simply is that he testified they're not going to take the trees down beyond this and I want to know if these trees . . . what's the reason for not taking the trees down? Are these trees in better shape than these trees along the 105 foot buffer or are they the same and there's just no reason to take them down?

MR. CANARY: I'll answer the two questions that you put out there.

MR. COHEN: Sure, okay.

MR. CANARY: First with respect to not disturbing there's no reason to disturb it. So why disturb it, why take down the trees.

MR. COHEN: Okay fine.

MR. CANARY: With respect to the areas along that buffer zone, I am not qualified to make the decision as to whether or not a tree can remain healthy after clearing all away the adjacent trees. I have to defer to the expertise of arborists and landscape architects. So for you to ask me that question, I'm not qualified to answer it.

MR. COHEN: All right. There's no need to take the trees down here what's the need to take the trees along this area?

MR. CANARY: Sir I believe I just answered that question I am not qualified to answer that question.

MR. BUZAK: He said he wasn't qualified go on Mr. Cohen.

MR. COHEN: All right you're not qualified you don't know the reason that . . .

MR. BUZAK: Sir he answered the question Larry now come on don't ask it fifty times.

MR. COHEN: How are you qualified to know that these trees, there's no reason to take those down?

MR. BUZAK: Because there's no activity going on out there Larry come on move on, move on.

MR. COHEN: What's the activity that's being built in here?

MR. BUZAK: Mr. Cohen do you have another question with regard to the fence? Do you have a question with regard to the fence?

MR. COHEN: I asked my question regarding the fence . . .

MR. BUZAK: Fine.

MR. FLEISCHNER: Fence.

MR. COHEN: I have no other questions in regard to the fence. Oh I do have another question regarding the fence. The question was asked of Mr. Horten why not put the fence on the other side of the trees your proposing to plant since you've just indicated before that you know that this is not a security fence.

MR. BUZAK: Mr. Canary did not testify to that, Mr. Lange did not testify to that Mr. Cohen I think the question is improper sir do you have another question?

MR. COHEN: One of them testified that they realize that this is not a security fence, I think it was Mr. Canary, and he said we know that this isn't a security fence we just want a demarcation. Because we know that people can walk around it.

MR. BUZAK: That's correct that is what he said. So what's your question about that?

MR. COHEN: So the question becomes since it's not a security fence on the property why not put it behind the trees you're proposing to plant?

MR. CANARY: Sir I believe that I in my testimony earlier I answered that question accurately. What I indicated is that the fence is not a security fence we recognize that, it is acting as a deterrent, it is not a security boarder without a doubt. It acts as a deterrent for encroachment it acts as a deterrent for any children to follow balls over; they decide they want to skateboard on our property any of those areas where we can be an attractive nuisance. So it is acting as a deterrent and that's what I testified to.

MR. COHEN: Okay if you put the fence on the other side of the trees would it also not act as a deterrent so people would not have access to your grounds, to your detention basin, to your parking lot? I don't know how wide this stand of trees is but it can't be that wide.

MR. CANARY: Well I think you know that the buffer is 50 feet wide so that would be 50 feet of exposure of our neighbor's children to those trees that you are indicating you want us to keep that we've already indicated are unhealthy that may fall down on top of them. That's something that's inappropriate for us to even offer.

MR. COHEN: Did you ever consider if you kept the trees you wouldn't need the fence?

MR. CANARY: No I did not because I disagree with that position.

MR. COHEN: Oh you answered the question you said you never considered that. Thank you.

MR. BUZAK: Anyone else have any questions of Mr. Lange or Mr. Canary with regard to the fence? Seeing none Mr. Chairman, Mr. Moore?

MR. FLEISCHNER: Mr. Moore would you please ask your last witness to come forward?

MR. MOORE: Yes.

(PAUL PHILLIPS SWORN IN FOR THE RECORD)

MR. BUZAK: Please be seated state your name and business address for the record spelling your last name.

MR. PHILLIPS: My name is Paul Phillips (P-H-I-L-L-I-P-S) with the firm of Phillips Preiss Grygiel 33-41 Newark Street, Hoboken, New Jersey.

MR. BUZAK: Thank you sir.

MR. PHILLIPS: Thank you.

MR. MOORE: Mr. Phillips could you give your education licenses and professional experience for the Board?

MR. PHILLIPS: Yes I hold a Masters Degree in Urban Planning from Hunter College, I am a principal in the firm of Phillips Preiss Grygiel, I've been practicing planning in New Jersey for over 30 years, I'm a licensed professional planner in the State of New Jersey, member of the American Institute of Certified Planners. I've appeared and been accepted as an expert in my field in probably over 200 municipalities in the State of New Jersey. It's been quite a number of years but I have appeared here but it's been some time. I've also appeared and been accepted as an expert in the Superior Court in New Jersey probably in at least 25 or 30 occasions.

MR. MOORE: I would welcome Mr. Phillips as an expert in the field of planning.

MR. FLEISCHNER: The Board is affirming to the positive.

MR. MOORE: Mr. Phillips just a little housekeeping the planning report that was submitted with the application was that prepared by you and/or under your supervision?

MR. PHILLIPS: It was prepared by me.

MR. MOORE: Mr. Phillips can you address the basis for both the "d" height variance that the applicant is seeking as well as the three "c" variances with respect to the signs?

MR. PHILLIPS: Surely. Let me just go back to the underlying zoning to provide a little bit of context. This property is located in your L-I Light Industrial District all of the existing and proposed uses on the site are permitted within the zone. The proposed development also complies with the majority of the bulk standards for the district. The one regulation that is not met relates to a maximum building height, the maximum building height in this district as you have heard from other witnesses is 30 feet, the applicant's new building is proposed to be just over 42 feet in height. As this basically is more than 10 feet or 10 percent above what the height standard is it basically kicks to a what's known as a "d" variance, in his instance a D6 variance for height and that is basically why we are requesting the "d" relief instead of the "c" relief which would be covered by any other height variance that didn't meet that threshold that I've just articulated. As Mr. Moore indicated there are several additional variances as well and they all relate to signage. A second ground sign is being sought where only one such sign is permitted. An additional variance is being sought for the fact that less than 3 feet of clearance is being proposed or provided with the new sign for the truck entrance. And lastly the new truck entrance sign is proposed at I think somewhere less than a foot from the front property line where your existing ordinance has a setback requirement of I believe 20 feet. So that is the relief that this applicant is seeking before you this evening. In terms of the planning proofs in support of the variance request let me start with the d(6) variance and first let me say that I believe there are a number of special reasons in support of the height variance sought. And first just to put what's proposed here in some context I think it's important to point out that while the existing building as you can see from I think that's exhibit A-3 is located in the westerly portion of the property. The only really logical place to expand on the site is to the east. If you look at the property on figure A-3 you'll see that the . . . you've got the railroad basically providing a barrier to the west, you've got the two out parcels the banks providing basically a blockage to the south, and if you look at what I'll characterize as the sort of irregular or angled westerly lot line you really don't have room to move exactly entirely to the north. So the place to basically expand on the site is basically in an easterly direction. The other thing that's important to consider is this applicant is seeking, you've heard from other witnesses most recently the architect, to basically construct a building expansion which seeks to put on the site the same basic uses that exist there today.

Namely a combination of warehousing, assembly/production and additional office space. The main difference here is that currently all of those uses are now housed within a building that is just under I think 33 feet in height whereas this proposed new building will have a second floor directly above as Mr. Horten testified to the assembly production area which will effectively result in a building height of roughly an additional story is really essentially what this applicant is asking. I think the design scheme accomplishes several objectives. First, and you've heard this from other witnesses as well, it allows for the new building to be more efficiently designed operationally again by locating the offices above the production space tighter to the other functions as opposed to spread out in another single story building and/or another building again further to the east of the property. Second the arrangement I think is preferable to having a lower building or building spread out over the site because it allows for basically keeping the impervious coverage to a minimum and below what the ordinance requires and also allows again hand in hand with that is additional green space to be provided on the site over and above what can be done consistent with the underlying zoning. But I think most importantly in terms of the design scheme it will allow the building to be located further from the residential properties to the east which I think is critical here. I should also point out that one of height regulations is to allow for as you well know adequate light air and open space, another purpose is to promote a desirable visual environment, another purpose is to best or properly relate to the surrounding area. I think all of these objectives can be accomplished with this proposal and with this variance granted. And I think they can be done so consistent with the principals that are articulated in the Grasso Case which is the key case which basically established the principals that an applicant must satisfy this Board in terms of seeking a d(6) variance for height. And again more particularly the L-I zone regulations permit a 30 foot tall building, again which is the height limit in the district to be located as close as 50 feet to the side property line. That's what your ordinance designed to protect the public interest and the public welfare allows this applicant or any applicant in this district in this location to do. As you've heard from others this applicant is proposing a building setback of 286 feet to that common residential property line. That's over five times, almost six times what the ordinance allows. You also heard from other witnesses about the prior approval on this particular property, at least Lot 26 which I think dates back to 2004. There was a proposal for two I think it was roughly 94,000 square foot office buildings, they were approved at a location again much closer to the residential property line than this application. I think it was somewhere between 100 and 105 feet. So I think not only can the additional height over the maximum permitted in the L-I zone be accommodated on the site but I think it can be done so in a manner that in my professional opinion better respects and affords better protection to the adjacent residences to the east along Crenshaw Drive and Hogan Court. Again I think the bottom line here with the enhanced setback provided non compliance with the height standard does not affect the suitability of the property for what is presently proposed in terms of a three story building, 42 feet height in the location where it is proposed within the context of this particular site. I would also note, and this is also cited in the Grasso case the leading case on d(6) variances that one of the reasons to have height limitations is to basically control the intensity of development on a site. Much like a density standard, much like a floor area ratio standard and much like a coverage standard. We don't have density here because it's not a residential zone but we do have a coverage requirement in the zone and we do have a FAR requirement and again you heard from other witnesses. We are within, with this proposal within the coverage requirement and we are well within the Floor Area Ratio requirement. I think we are only at about three quarters of what is allowed, .3 is what is allowed we're roughly about three quarters of that with this proposal taken into account. So again this height request is not being done to basically intensify the site above and beyond which the underlying zoning allows. I believe the negative criteria can be satisfied in relation to the height variance request, I think that again the property can accommodate the proposed height without impacting adjoining properties or the surrounding area in general. As I mentioned there will be a substantial 286 foot separation of the building from the adjoining residential property lines. We heard from the prior witness, specifically the engineer and the landscape architect, a complying buffer consistent with your ordinance with new fencing and plantings. The building will be well removed from the public view I think you heard a number about 800, 900 feet if I heard it correctly by another witness earlier this evening, and certainly I don't think it's going to unduly impact the railroad property to the west and the applicant basically controls the triangularly shaped lands to the north. In addition, and I don't know whether other witnesses pointed this out or not but it's pretty evident if you look at Figure A3 and I think this is again important. The applicant has basically placed the warehousing component at the far or westerly end of the site as you can see from the site plan. And no truck loading areas will be placed along the easterly façade of the new building, which again to me affords the maximum protection to the residential properties to the east. And you may recall because it was testified to with regard to the prior approval there was a provision for loading in between those two buildings that were approved. Not quite as close as 100 feet but somewhere beyond 100 feet to the residential property line. I believe the granting of the height variance will not substantially impair the intent and purpose of the Mount Olive's Master Plan and Zoning Ordinance. Again the applicant is proposing uses that are permitted within the zone and I think the new building is being placed within a location that appropriately responds both to the existing site context as I described in the existing

development on the site as well as in terms of its relationship to the adjacent residential district. As I noted an expansion could comply with the height limit for the L-I zone we have an existing approval which basically did that. But again doing so would increase the coverage, reduce the green space and again most importantly I think it would have greater impact on the adjacent residential district. Regarding the variances for the signage I don't think any of the sign variances that are being sought are significant in nature, I think they all can be granted under C-2 or so called flexible "c" criteria. Again the rationale for the second ground sign is to properly identify for the traveling public the separate entrances for the employee's visitors from the truck delivery traffic. The existing ground sign I think you heard from Mr. Horten is 91 square feet in area the one that's basically being shifted, and the second ground sign is just 21 square feet in area. The zone permits a single sign of no more than 100 square feet so you can basically look at the magnitude the applicant is actually staying fairly close to the square footage that would be allowed for the one sign. I believe this variance would advance at least two purposes of the Municipal Land Use Statute. Purpose A which is encourage municipal action and guide development in a manner that promotes the public health safety and welfare and again to alert the traveling public of the separate entrances and similarly to encourage the location of circulation improvements that will provide for the free flow of traffic. Given the relatively small size of this particular second sign modest lettering neutral coloring I don't see any substantial detriment to the public good if this variance is granted. And visa vi the zone plan I think given the unique circumstances of separating the truck and the employee visitor traffic I think this variance can be granted without compromising your underlying zone plan. In terms of the variance relief for the 3 foot sign clearance, Mr. Horten discussed the second sign it is basically characterized as a vertical sign it's about just over 8 feet high but it's less than 3 feet wide so it's kind of tall and narrow. The sign lettering is confined to the top half of the structure which is key and relates back to having the clearance requirement in the first place. Given its size dimensions the metal material I think trying to have the clearance is sort of questionable from a visual perspective. I think given all of those factors I think it will actually look a lot better without the clearance, again given the shape and materials of the sign and the key is that the lettering is high that you can see it. So I think this variance would indeed promote a desirable visual environment consistent with one of the purposes of the statute and I see no substantial detriment to the public good or the zone plan if this variance is granted. And lastly you heard from our site engineer during the last meeting the need for the setback relief for that second sign really is to properly provide the visual identification of the truck entrance. Again this is a modest size, the lettering is modest and I think it's probably clear to everyone that you don't want the trucks to miss that entrance. And again I think there's additional area if I heard the testimony at the last meeting, there was additional area between the sign and the curb line as well so I think this variance too can be granted in furtherance of the same two purposes of the statute that I had mentioned. And I think if the variance is granted the negative criteria can be similarly satisfied as well. I think I've covered all of the relief that the applicant is seeking Mr. Moore.

MR. MOORE: That is correct Mr. Phillips and in respect to the flexible "c" variances is it also your opinion the benefits, I mean it's implicit in your testimony, but the benefits of granting those variances outweigh any detriment?

MR. PHILLIPS: There's absolutely no question in terms of with regard to the signage the improved visual identification and the need to basically highlight the different entrances for the different purposes and again critically not to have the trucks miss that entrance.

MR. MOORE: Thank you. That concludes Mr. Phillips direct testimony he's available for questions from the Board and the public.

MR. FLEISCHNER: Okay what I'm going to do now is open it up to the public unless the Board has any questions of this witness. Open it up to the public ask questions of this witness first and if they have anything additional they want to add to expedite time wise, and you have a question of an additional witness you will be allowed to do so but your first question or second or third pertaining to this witness go first and then if you have a statement you'd like to make . . .

MR. BUZAK: Yeah I'm sorry I had a sidebar with the Chairman and I misunderstood what he said so let me clarify what I thought you asked and you didn't because obviously I misunderstood what you said. I thought what the Chairman asked is whether we could have the residents ask the questions initially, not make any statements, then Mr. Cohen who is representing one of the residents ask the questions and then we'd have the residents make any comments and if Mr. Cohen wants to make a comment on behalf of his client they can do that. We weren't going to open it up to any other witnesses who had not . . . they will . . .

MR. FLEISCHNER: And just these witnesses that are here.

MR. MOORE: Just Mr. Phillips.

MR. BUZAK: Mr. Phillips because we took care of everybody else, everybody had a chance to ask all of those questions.

MR. FLEISCHNER: Right.

MR. BUZAK: Questions of Mr. Phillips and comments on the general

MR. FLEISCHNER: Yes.

MR. BUZAK: Okay so that's what we're going to do. So if any resident has a question of Mr. Phillips please proceed.

MR. COHEN: Do you want the residents to ask before I do?

MR. BUZAK: Yes and then we'll have Mr. Cohen ask his questions.

MR. FLEISCHNER: And if you have any comments on the entire site.

MR. COHEN: Well is that going to come before my question?

MR. BUZAK: If no one else has any questions let's have Mr. Cohen

MR. FLEISCHNER: Are there any residents have any questions other than Mr. Cohen of this witness? Please step forward.

MS. CHU: Robin Chu 37 Crenshaw Drive. My question was, and I asked this question last week but it's a different witness I'd like to ask it again, in the 2004 plans we had an agreed buffer of trees of 105 feet with the neighbors that got approved by the Board. Can you explain why that wasn't taken into consideration, the buffer of 105 feet of trees and if we can still make that a part of this plan?

MR. PHILLIPS: Well it's a couple of things, one is I wasn't here for the 2004 . . . I read the resolution and I looked at the plans but I wasn't here and I don't know what any potential give and take may have been between the applicant, the Board and the public as to why it is 100 feet. What I will say however is that the buildings under that particular approval were within 100 feet of that common residential property line. That may have been a factor that was taken into account in basically coming up with a 100 foot area of separation between the buildings and the property line. Here what is being proposed is a much more significant setback, nearly three times as much of a building setback and the other key thing here is the applicant is basically providing a buffer albeit it's a 50 foot buffer that is compliant with what's stipulated in the Mount Olive Zoning Ordinance with regard to buffer. Again I don't know the basis of why that was agreed to but clearly you had buildings that were closer to the residential properties. And whether or not that was a factor I don't know you know with 100 percent certainty but it may well have been.

MS. CHU: Also I believe in that previous plan some of the reason that that was happening was actually to keep the entrance road away from the neighborhood so that the traffic is far from the neighborhood as possible. So it was a rather odd plan.

MR. PHILLIPS: By the way after looking at it I would agree with that. In terms of the layout, the buildings and the parking areas it was a little bit on the unusual side.

MS. CHU: Yeah. So was there any consideration given to potentially having that entrance road farther from the community. Because frankly I think that's for me my largest concern is that that road is 50 feet now from the property line and there's going to be traffic there on and off most of the day.

MR. PHILLIPS: You know I reviewed the plans as my due diligence as a planner but I didn't . . . the site engineer is probably the best person that could answer that question. I think he may have answered it at the last hearing.

MS. CHU: I think questions were cut off so I didn't get to ask it.

MR. PHILLIPS: But obviously a site designer has to look at a property, look at where the buildings are, where the parking is, in this case the separation of the truck traffic from the vehicular traffic and for you know whatever reasons this is where the road was laid out. To me as a planner in looking at the juxtaposition of what's proposed here and what the underlying zoning is in relation to the residential properties is does it conform or comply with the ordinance requirements. And I didn't see anything in the ordinance requirements that basically would prevent the applicant from basically putting a road fairly close to the compliant buffer. From a purely planning/zoning compliance standpoint. But I did not do the lay out so it's a little bit difficult for me to kind of answer, to be totally responsive to that question.

MS. CHU: I had one additional question I'm not sure if it's appropriate to ask but it's come up a couple of times about the trees in the buffer zone, it's been stated already that the healthy trees should try to be saved. I was confused by some of the conversation that happened late at the end of last week's meeting right before we ended. And I don't think it's actually a variance but because you can't plant the number of trees and you can give the money to the town instead, is it possible to actually replace the trees in the zone where they're being removed instead or replace some of the trees at least in that zone? Because I got the impression that those pine trees are just along the road.

MR. PHILLIPS: Yeah I saw it because I was at the last hearing that that issue came up and was addressed either by the engineer or the landscape architect. But I think they are better witness to answer the question as to what's the appropriate amount of trees that can be placed on the site. We have the issues with crowding of trees and that's the site design and landscape architect questions I'm not the witness to answer that.

MR. FLEISCHNER: Thank you. Any other members of the public have questions before Mr. Cohen goes?

MR. COHEN: I'm sorry are you ready for me?

MR. FLEISCHNER: Waiting for you, as ready as we're going to be.

MR. COHEN: Mr. Phillips as I understand your testimony you believe one of the special reasons for granting this variance is the fact that it will save the expansion of the footprint of the building and keep it at approximately 286 feet from the easterly property line. Did I understand your testimony correctly?

MR. PHILLIPS: I think that's a fair characterization. There's a tradeoff between height and setback and in my professional opinion I think the 42 foot height at three times the setback in my opinion affords greater protection to the residential properties.

MR. COHEN: Well why not make the building higher and the building footprint smaller then?

MR. PHILLIPS: Well that kind of relates back to the function of the building, the architecture of the building all of these factors come into play. All I can tell you is that I can speak to the particular proposal that's before this Board and I can assess it from an overall planning and zoning standpoint. You're asking me to sort of comment on something in a vacuum without showing me a plan and asking me what I think, whether it's similar to this it would convey the same benefits.

MR. COHEN: All right I presume then you were not involved in deciding to design this building at 42 feet in height that was a factor given to you when they asked you to look at it I presume.

MR. PHILLIPS: Well I was asked to look at it after the building was basically designed but before the plans were submitted to this Board. I guess that the applicant wanted to make sure that the planner was okay with the plans before they were submitted. But I wasn't involved in basically the design of the building or ultimately the reason for the . . . I mean I understand the reason for the 42 feet but the exact 42 feet that's an architectural issue.

MR. COHEN: If they decided to make the building 50 feet instead of 42 feet I presume your reasoning would be the same that the benefit of having the building 50 feet high would be to lessen the impact of the footprint of the building and the encroachment on the neighboring property would it not be?

MR. PHILLIPS: Well you know you can use that example with varying intervals of height but at some point you can't, I don't think you can make that same argument at some point I think you're going

to get a height that basically is out of character. Perhaps even with the existing building on the site and it may be out of character with the adjacent neighborhood. What I'm proffering before this Board and you and the public is that the one additional story, effectively one additional story at the setback required basically to me it makes sense from a planning standpoint in fact it's a better zoning alternative given what is allowed in the L-I district.

MR. BUZAK: And just for the record Mr. Fleischner mentioned this before, Mr. Cohen is asking the questions for the record because we spoke about Mr. Cohen and then we just said you get up and so

MR. COHEN: Oh I'm sorry I should have given my name again thank you.

MR. BUZAK: That's fine.

MR. COHEN: Again I represent Mr. Zambetti. Mr. Phillips obviously you've been to the site haven't you?

MR. PHILLIPS: I have.

MR. COHEN: Okay and on how many occasions?

MR. PHILLIPS: Two.

MR. COHEN: Okay and did you walk along and see the neighboring properties along Hogan Court that (inaudible) from your clients property?

MR. PHILLIPS: I did.

MR. COHEN: All right. And given the facts of this particular design and this particular property and the juxtaposition of the residents around there what height would you opine would begin to begin a problem where you could no longer comfortably testify that this would be a reason to put it this high so it doesn't further intrude on these properties?

MR. PHILLIPS: Well it's not just the issue of the height. For example let me try and answer it this way, if someone were perhaps attempting to have a taller building then there may be, and I don't know the reasons there's got to be some special reasons for that to begin with, to me it would satisfy the criteria. But the issue whether I think it's appropriate also relates to well perhaps they can do a larger buffer, perhaps they can plant more trees, perhaps they can totally visually screen a 50 foot tall building. In that sense it may make a certain amount of sense from a planning perspective. All I can relate to this Board or the public is how I reacted from a planning perspective with regard to the proposed building, the proposed width of the buffer here, the plantings and so forth.

MR. COHEN: All right so this building is effectively going to be 42 feet and we've had some sight line testimony by Mr. Horten and things of that nature as to how it's going to appear. It's interesting and obviously if they put up a buffer that was 50 feet high it would completely block their view of the proposed building is that correct?

MR. PHILLIPS: No I didn't say anything about a 50 foot tall buffer all I said was that along with the issue of height in evaluating whether it's appropriate I would evaluate two other issues the setback and the width and/or height of the plantings in the buffer. They all come into play and it's hard for me to sort of answer a hypothetical but those are the factors that I consider as a planner in weighing additional height and whether it would be appropriate.

MR. COHEN: Fair enough. Now you said you examined the previous resolution given in 2004 I think it was for the previous development is that correct?

MR. PHILLIPS: Yes the resolution and the physical plan which I think has been marked as one of the exhibits if I'm not mistaken.

MR. COHEN: Okay and in that resolution you noted that there was a height variance also is that correct?

MR. PHILLIPS: I didn't note that.

MR. COHEN: Okay well I have a copy here let me read that to you. And by the way it was a "c" variance because it was less than 10 percent.

MR. PHILLIPS: I'm aware of that I just said I didn't note it in my testimony.

MR. COHEN: A variance is, and I'm reading from page three of the resolution I presume . . .

MR. BUZAK: Mr. Cohen perhaps you misunderstood Mr. Phillips testimony he said he didn't testify to that he was aware of the fact that there was a height variance.

MR. COHEN: Oh I'm sorry. My question Mr. Phillips and perhaps you didn't understand my question, my question was were you aware that in a previous resolution of 2004 there was a variance for height?

MR. PHILLIPS: Yes that's my understanding.

MR. COHEN: Okay then it went from 30 feet to 32 feet I believe.

MR. PHILLIPS: I think it's a little over . . . less than 33 I think.

MR. COHEN: Less than 33 fair enough.

MR. PHILLIPS: Yeah it's close to 33.

MR. COHEN: It was less than the 10 percent because it was a "d" variance.

MR. PHILLIPS: It was a "c" variance correct.

MR. COHEN: All right now, and you very correctly said that in considering the granting of these variances one of the things the Board could consider is the buffering to these neighbors if they're going to allow a higher structure. Is that . . .

MR. PHILLIPS: It's a factor.

MR. COHEN: Okay and in this resolution they required the 105 foot buffer, you saw that.

MR. PHILLIPS: There's 100 to 105 feet yes.

MR. COHEN: And you do not know do you? Although it appears obviously very probable that one of the reasons perhaps for the granting of the buffer was because they were granting a height variance.

MR. PHILLIPS: I don't know whether that was the reason for the 100 foot buffer or not. It was a fairly, it was a less than 3 foot deviation from the allowable height and again I don't know if the buffer related specifically to the height. It could be the mass of the building there were two large buildings, it could be any number of reasons I can't remember whether it was stipulated in the resolution as to whether or not the buffer was related to the height variance I just don't recall as I sit here.

MR. COHEN: As I read it and I read it very briefly there's no clear explanation as I see it.

MR. PHILLIPS: Yeah that was my recollection Mr. Cohen.

MR. COHEN: There's no clear explanation except it says the 105 foot buffer. But according to your testimony a few minutes ago when considering and granting of a height variance it's very logical to consider buffering correct?

MR. PHILLIPS: I think it's one of the factors that comes into play.

MR. COHEN: It could be very probable that the 105 foot buffer was put in there as a stipulation in the consideration of granting the height variance.

MR. PHILLIPS: We don't know that you and I just came to that conclusion that we don't know that.

- MR. COHEN: Okay we don't know that but that certainly could be a very probable reason.
- MR. PHILLIPS: It's a possibility but we don't know.
- MR. COHEN: Okay not probable just possible right?
- MR. BUZAK: The record should reflect that the resolution to which Mr. Cohen is referring is not the 2004 resolution it's the 2000 resolution. It's resolution 99-24.
- MR. COHEN: I'm sorry I think somebody mentioned 4 and I . . .
- MR. BUZAK: That's fine and the record should also reflect that Mr. Phillips
- MR. COHEN: Mr. Buzak the resolution was adopted March 16, 2000.
- MR. BUZAK: Correct and Mr. Phillips you did not testify in connection with that application is that correct?
- MR. PHILLIPS: That is correct.
- MR. BUZAK: And did you have anything to do with that application whatsoever?
- MR. PHILLIPS: None whatsoever Mr. Buzak.
- MR. BUZAK: All right so any testimony you are providing is based upon your review of the resolution and the plans that were accompanying those to the extent that you so testified is that correct?
- MR. PHILLIPS: That is correct.
- MR. BUZAK: All right Mr. Cohen go ahead.
- MR. COHEN: Now Mr. Phillips I take it then that if the Board saw fit to grant this variance for height and they wanted to require an additional buffer you would consider that as a reasonable condition assuming obviously pending what the buffer was.
- MR. PHILLIPS: I don't feel based on my professional opinion that any buffer over and above what this applicant is providing as part of this application is necessary in connection with the variance relief.
- MR. COHEN: Now you very clearly testified that there's a 50 foot buffer under the zoning ordinance correct?
- MR. PHILLIPS: Well there's a number of different options as I understand your buffer regulations. What we're proposing is a . . . I think under certain circumstances you could actually go to 25 foot buffer if I'm not mistaken but I'll defer to Chuck and Gene but we're proposing a 50 foot buffer.
- MR. COHEN: Well the general buffer okay is 50 feet. If you take the table
- MR. PHILLIPS: No that's not my reading of the ordinance.
- MR. COHEN: Okay.
- MR. BUZAK: Well we can move on the applicant is proposing 50 feet that's what's before us and Mr. Cohen why don't we just assume that it doesn't really matter whether he's doing it out of the goodness of his heart or whether he's required to do it.
- MR. COHEN: Is it true then Mr. Phillips that that's the maximum buffer under the ordinance that's permitted? Obviously you can put in a larger buffer but you have to have Under certain conditions you can have less than a 50 foot buffer.
- MR. PHILLIPS: That's correct.

MR. COHEN: All right and if you don't meet those conditions you have to have a 50 foot buffer which you're proposing.

MR. PHILLIPS: I don't know if that's accurate.

MR. COHEN: Okay which part isn't accurate?

MR. BUZAK: Go ahead Mr. McGroarty.

MR. MCGROARTY: Under 400-37 a minimum one half the length of a required buffer shall be at least 25 feet wide. But the 50 foot is the setback in the L-I zone.

MR. COHEN: I'm sorry and Mr. Phillips I apologize.

MR. PHILLIPS: No need to.

MR. COHEN: That was my own mental error, maybe it's the hour. I meant to say the setback was 50 feet not the buffer.

MR. PHILLIPS: Correct.

MR. COHEN: I realize that and I thank Mr. McGroarty for pointing that out I confused them. The setback is 50 feet is that correct?

MR. PHILLIPS: That's correct.

MR. COHEN: Okay which your client is obviously meeting.

MR. PHILLIPS: And then some.

MR. COHEN: And then some all right. When they required the additional, and by the way and one half must be at least 25 feet as Mr. McGroarty indicated. Do you agree with me Mr. Phillips that if this Board grants the variance that the buffer that's imposed okay pursuant to the ordinance is presuming that you're going to meet all of the requirements of the ordinance. Since you're seeking a variance would you agree with me that the Planning Board would have a right to impose a larger buffer as a condition presuming it was reasonable and there was a nexus for it?

MR. PHILLIPS: The Planning Board has the right and the ability to review all the merits of this application and decide what it wants to decide in good conscious. What I will point out is that while the, again which is critical to me here is that there is a compliant buffer and although the applicant is seeking effectively an additional story, that compliant buffer, or that buffer requirement could be met with a building that's 30 feet high within 50 feet of the setback. This is all rolled into my analysis of pluses and minuses and benefits of what is being proposed in terms of what this applicant is seeking in terms of the additional height. The key mitigating factor here is the significantly larger setback that he is providing.

MR. COHEN: Okay so have you looked at or have you discussed with the applicant or the engineer or the architect at all if this Board does not see fit to grant this variance and as testified by Mr. Horten the building would have to be made bigger as to how and where that building would be made larger, the footprint.

MR. PHILLIPS: Have I discussed that with the applicant?

MR. COHEN: Yes or the applicant's representatives.

MR. PHILLIPS: I've not discussed that and . . .

MR. BUZAK: The answer is he hasn't discussed it Mr. Cohen, go ahead.

MR. COHEN: Now by the way on you're, twice the two times that you physically appeared on the property did you view the boundary area between your client's property and the residents off of Hogan Court there in that development?

MR. PHILLIPS: Yes.

MR. COHEN: Okay and did you see the band of trees that is now on that property line?

MR. PHILLIPS: Yes.

MR. COHEN: And I believe we have an estimate of about 50 to 60 feet on the height of those trees, could you agree with that or disagree with that.

MR. PHILLIPS: I didn't measure the height of the trees but I you know . . . again I didn't measure the height if someone told me it was 50 to 60 based on my visual observation I wouldn't dispute that but I didn't measure it.

MR. COHEN: And do you know the applicant has sought to apparently initially remove those trees and now says he wants to thin them out. Are you aware of that?

MR. PHILLIPS: I'm aware that there was testimony at the prior hearing, significant testimony by the landscape architect as to the reasons why some of those trees would be removed and also the extent to which some of the trees could be transplanted and the extent that there would be additional plantings to provide a suitable buffer. But I'm not the landscape architect I listened to me what was critical from a planning standpoint was do we have a compliant buffer. In terms of the specifications I'll defer to the other experts in that area.

MR. COHEN: Was it not the intent to remove all of those trees along that particular area of Hogan Court, did you understand that.

MR. PHILLIPS: No that's not what my understanding was but the record will speak for itself.

MR. COHEN: Okay. If in fact there are 50 or 60 foot high trees there they would in fact create a good natural buffer to what you're proposing as an additional height would they not?

MR. PHILLIPS: Assuming they lived and weren't you know some . . . my understanding of the testimony, and I went out there and some of the . . . and I'm not an expert, I'm not an arborist, I'm not a landscape architect but to me there was some trees there that were not in great shape. I know that some of them are dying or diseased or don't have a very long useful life. And again I will defer to the expert in terms of what makes the best mix of trying to preserve trees, planting new trees in order for that buffer to be of the best quality and afford the best protection to the residential neighbors.

MR. COHEN: When was the last time you were out at the site?

MR. PHILLIPS: Two, three weeks ago.

MR. COHEN: Did you see leaves on those trees?

MR. PHILLIPS: They were starting to come in. I think the first time I went out, and that's when I focused on that area, the second time I went out I didn't focus on that area.

MR. COHEN: And in your opinion did they provide a visual buffer?

MR. PHILLIPS: They provide screening.

MR. COHEN: Okay and by the way when you have leaves on trees and you have trees such as that in your experience, if you can tell me, do they also attenuate noise?

MR. PHILLIPS: I am not a noise . . . my understanding is yes but I'm not really qualified to answer that.

MR. COHEN: Okay fine. Now you also testified that in your opinion all right the proposed height variance would not substantially impair the intent and purpose of the zone plan meaning the Master Plan of the town is that correct?

MR. PHILLIPS: Correct.

MR. COHEN: Okay and obviously you reviewed the Master Plan of the town.

MR. PHILLIPS: I did and the Reexamination Report.

MR. COHEN: Okay and what provisions in the Master Plan and the Reexamination Reports do you say that are consistent with this Board granting a variance on this particular property for 12 feet additional height.

MR. PHILLIPS: Well again the Master Plan as I recall designates various zone classifications which effectively near the zoning my recollection is there weren't . . . The Master Plan documentation didn't specifically go to the issue of height in the L-I district. In terms of the zone plan impacts again I looked at all the zone plan impacts and again I tied in the requested height to the fact that we are proposing a setback that is nearly six times greater than what the ordinance allows.

MR. COHEN: Now Mr. Phillips are you presently a planner for any municipalities in the State?

MR. PHILLIPS: I am.

MR. COHEN: For how many?

MR. PHILLIPS: Probably at least a dozen maybe 15 and that's varying capacities. I maybe do specialized work; I do reviews for other communities

MR. COHEN: So obviously you've prepared zoning variances for a number of municipalities.

MR. PHILLIPS: I have.

MR. COHEN: And the reason for the height limitations is what generally?

MR. PHILLIPS: As I testified to it's to provide adequate light, air and open space, to provide for the best visual environment and to properly relate to the surrounding context.

MR. COHEN: Okay light, air and open space so the higher we go the less light, air and open space is that correct?

MR. PHILLIPS: The higher we go the more we'll have to provide in my opinion a setback which we do here.

MR. COHEN: Okay less light, air and open space right?

MR. PHILLIPS: No not in this context because we're providing a setback which is five to six times greater than what's allowed. You can't just cherry pick which portions of the zoning code you want to look at they all relate to . . . All the development controls and bulk standards relate to one another and that's why again to me the main justification for the height variance is with a significant setback and with a compliant buffer I think it is actually a better plan in terms of protection to the neighbors than what can be done under the current zoning.

MR. COHEN: Well you can't testify, because I asked this question before and you said you had no knowledge, if they don't grant the height variance whether or not they'd even build a bigger building. You don't know that.

MR. PHILLIPS: But I don't need to know that what I need to know is this zoning envelope, there's a vallable envelope in the zoning in terms of additional FAR, in terms of additional coverage that an alternative which might be something similar to the prior approval could be developed here with large building within 50 feet of the residential property line. There's room within the envelope to do that.

MR. COHEN: You don't know if the applicant has any intention of building anything within 50 feet.

MR. PHILLIPS: Yeah but they clearly doesn't have an intention to do that the applicant has an intention to come before this Board . . . The applicant wants to build a plan that's before this Board.

MR. COHEN: My understanding is that one of your special reasons, your main special reason for the granting of this height variance it will lessen the impact on the properties to the east because I'm presuming in that opinion that if they don't get the height variance they're going to have to build a bigger building. Now maybe I'm wrong, maybe that's not the case.

MR. BUZAK: Let me just stop the questioning here. Certainly there's no impact and there's no need for a variance, there's no need for an application if there's going to be no building. So when you compare the proposal of a building being constructed and a project being constructed with nothing being constructed obviously it is no impact.

MR. COHEN: I didn't say nothing Mr. Buzak.

MR. BUZAK: Well you're getting to that point.

MR. COHEN: I'm not getting to that point at all I'm talking about if you take the same footprint and you lower it to 30 feet. That's not going to have any greater impact.

MR. PHILLIPS: From a planning standpoint that's not the point of departure, that's not the benchmark, that's not the reference point. The reference point is what the zoning allows.

MR. COHEN: I understand that. The zoning allows 30 feet right?

MR. PHILLIPS: Within 50 feet of the residential property line.

MR. COHEN: If this Board does not grant that variance to your knowledge is the applicant going to build within 50 feet of the property line?

MR. PHILLIPS: I have no idea it's not relevant.

MR. COHEN: Fine.

MR. PHILLIPS: An applicant can do that.

MR. BUZAK: Mr. Phillips could the applicant build a building 30 feet in height, 50 feet from the property line without seeking any variance as a matter of right under the zoning ordinance as you understand it?

MR. PHILLIPS: Mr. Buzak I've probably said that at least half a dozen times through my direct testimony the answer is yes.

MR. BUZAK: Thank you. Mr. Cohen go ahead.

MR. COHEN: Let me give you a hypothetical Mr. Phillips, Mr. Phillips presume that this Board does not grant the height variance and the applicant says you know what we're going to build the exact same building except making it

MR. PHILLIPS: You know he's done this

MR. COHEN: May I finish my question first?

MR. BUZAK: Finish your question Mr. Cohen.

MR. COHEN: I'm going to have to start over again because Mr. Moore I don't if Mr. Phillips could properly hear the question. Mr. Phillips assume would you for the purposes of my question that this Board does not grant the height variance and the applicant says we're going to build the exact same building we're just going to lower it from 42 feet to 30 feet. Would you still have the same opinion that this would allow for special reason that it would not further impact the properties to the east if they weren't going to build a building any bigger?

MR. PHILLIPS: It wouldn't change my opinion because as I've now mentioned three times to me the critical thing is what you're allowed to do under the current zoning that's the point of comparison from a planning and zoning standpoint. Not whether the applicant is willing to cut off a story that's not the benchmark it's not the point of comparison.

MR. COHEN: Well if the applicant was willing to cut off a story they wouldn't need you to testify except for the signs maybe.

MR. PHILLIPS: That may well be.

MR. COHEN: Okay.

MR. PHILLIPS: But that's not the proposal before the Board.

MR. COHEN: No I understand that and if the proposal was 50 feet and you come out with the same testimony

MR. BUZAK: Mr. Cohen next question Mr. Cohen your being argumentative with the witness, ask a question.

MR. COHEN: I'm argumentative with an expert witness?

MR. BUZAK: Yes you are sir, absolutely.

MR. COHEN: You can't be argumentative with an expert witness?

MR. BUZAK: No you can't.

MR. COHEN: I'm asking a question I'm not arguing.

MR. BUZAK: No you can't be argumentative with a witness Mr. Cohen you know that.

MR. COHEN: Pardon?

MR. BUZAK: You know that, you cannot be argumentative with a witness whether it's an expert or a lay witness. So ask . . .

MR. COHEN: I don't think I'm being argumentative. This man is an expert he testifies at hundreds of hearings.

MR. BUZAK: You may not think so sir, most times sir when attorneys ask argumentative questions they don't think they are either. And that's why the Board makes the determination

MR. COHEN: So you're telling me I can't ask this question.

MR. FLEISCHNER: (Gavel banging) Mr. Cohen one at a time. Mr. Cohen move on to the next question. Mr. Buzak please.

MR. COHEN: Well I didn't finish that question.

MR. FLEISCHNER: Yes you did.

MR. COHEN: No I didn't. How do you know I finished it if you didn't hear it?

MR. FLEISCHNER: Because the witness has given you an answer three times to the same question.

MR. COHEN: How do you know it's the same if I didn't finish the question?

MR. FLEISCHNER: Because I am not stupid sir and I can hear. I am not deaf so I suggest you ask your next question.

MR. COHEN: I'm not allowed to ask that question that I didn't finish am I right?

MR. FLEISCHNER: I said ask your next question.

MR. COHEN: All I'm asking is a simple yes or no. I'm not allowed to ask that question that I didn't even complete.

MR. BUZAK: Mr. Cohen you questioned the witness that's your question.

MR. COHEN: Well

MR. BUZAK: Mr. Cohen you questioned the witness.

MR. COHEN: Well I

MR. BUZAK: Mr. Cohen you questioned the witness. What's your question?

MR. COHEN: My question is that if the applicant all right decided that it was going to building the same building Mr. Phillips without the 42 foot, the extra 12 feet, then Mr. Phillips would you still have the same special reason that they're going to build a bigger building and therefore this is less of an impact.

MR. PHILLIPS: Well if they were complying then, I don't understand your question because I thought you just asked me if they complied would there be special reasons. If they complied they wouldn't have to proffer special reasons. Unless I misunderstood your question.

MR. BUZAK: Next question Mr. Cohen.

MR. COHEN: But your special reason is . . .

MR. FLEISCHNER: He just gave you an answer.

MR. BUZAK: Mr. Cohen next question.

MR. COHEN: I'm asking a new question.

MR. BUZAK: Okay fine.

MR. COHEN: Your proposed special reason is, as I understood as we went over many times and I don't want to beat a dead horse, is that the height here is in your opinion a better alternative than to making the building larger. Am I correct?

MR. PHILLIPS: No my opinion is the proposed height in the context on the site with the setback being five to six times greater than what the zoning allows is a special reason and affords a better zoning alternative in my opinion.

MR. COHEN: And the same building the 30 foot height does not afford a better zoning alternative.

MR. PHILLIPS: It's not part of this proposal.

MR. COHEN: Okay we'll end it there. Now you had indicated that the Master Plan does not refer to height, is that correct?

MR. PHILLIPS: I don't recall, it may relate the underlying height in the zones I don't recall but I don't remember any substantive issues relating to changes or seeking variances from the underlying height regulations in the classification of zoning.

MR. COHEN: Well obviously in all of these applications when you have a professional planner to testify as you did that in their opinion it would not substantially impair the intent and purpose of the zone plan we all hear that testimony meaning the Master Plan. I'd like to know specifically in these reasons what you base that opinion on. What in the Master Plan do you believe that the granting of this variance would not impair the intent and purpose of the Master Plan?

MR. PHILLIPS: Again if the Master Plan is silent on the issue of seeking a deviation at height in the district I will then go to the zone plan, which is what I did.

MR. COHEN: Okay.

MR. PHILLIPS: And as I've mentioned now on at least three or four different occasions when I look at the zone plan I don't just look at the issue of height I look at all of the development standards that go hand and hand with that zone, including the issue of setbacks. And there's a tradeoff between height and setback and what I'm again for probably the sixth time, if you look and analyze that trade off I think clearly this is a better zoning alternative given the significantly greater setback, on the one hand in relation to one additional story on the other.

MR. COHEN: Now you understand obviously when I talk about the enhanced proofs is that correct?

MR. PHILLIPS: What enhanced proofs?

MR. COHEN: Under Medici.

MR. PHILLIPS: This is not a Medici case.

MR. COHEN: Okay. Well do you not have to at least say at this particular point whether or not that there . . . if the zoning ordinance, which you can't tell is mentioned height or not, whether or not the zoning . . .

MR. PHILLIPS: No the zoning ordinance clearly mentions that. You asked about the Master Plan.

MR. COHEN: I'm sorry the Master Plan, I'm sorry you're correct. The Master Plan does not mention height, the zoning ordinance adopted a 30 foot height for this particular zone and you said you then go to the zone plan, why was that not considered at the time of the adoption of those plans the higher limitation?

MR. PHILLIPS: You mean the adoption of the Master Plan?

MR. COHEN: The adoption of the Master Plan or the zoning ordinance.

MR. PHILLIPS: I have no idea I didn't do the Master Plan. I can't answer that.

MR. COHEN: You don't feel this is a Medici situation.

MR. PHILLIPS: No the use is permitted.

MR. FLEISCHNER: Mr. Phillips you answered his question.

MR. PHILLIPS: Okay.

MR. COHEN: I don't think I have any further questions. Thank you Mr. Phillips.

MR. PHILLIPS: Thank you.

MR. FLEISCHNER: Thank you Mr. Phillips. Okay what I'd like to do now before we go to comments from the Board, any comments from the public?

MR. COHEN: Mr. Chairman do we understand that the applicant's case is complete now? I mean I didn't hear that.

MR. MOORE: Yes.

MR. FLEISCHNER: Yes the applicant's testimony is complete. Any member from the public wish to make a comment?

MR. COHEN: I'll leave mine until the end.

MR. MOORE: And I'll just as is my right after everything is closed . . .

MR. BUZAK: Yes you will be able to make a closing statement Mr. Moore.

MR. CONOVER: Robert Conover again 4 Hogan Court. I'm going to make a brief comment if I may. But first off thank you to the Board for hearing all of our concerns this evening and last week. I'm a new resident on the street I've been in the house probably just a couple of weeks, owned it maybe a bit over a month almost two months now so obviously quite a change from when I looked at the house and acquired it. I fully support obviously the idea of growth in the community, increasing the tax base, creating good jobs and business being a business person myself we want good manufacturing jobs here in the United States and in the community regarding tax base. So my concerns as a resident living next door to a facility such as this obviously we've talked a bit about light. In the drawing in the bottom left

down I believe it's A-18, that would be my view from the master bedroom. Obviously there's quite a bit of parking lot in that view at least for several years until the trees reached the second panel or the center panel on the bottom so obviously that's always a concern for me as a resident. Also I know we've talked a lot about noise and buffering it and enhancing the protection against the mechanicals and the HVAC but again it's a quiet oasis at the moment it will probably change to some degree as a result of this. We talked a lot about drainage, the bottom corner of my property where it abuts my neighbors property on Lot 14, I keep getting those confused lately, is quite wet and again that's a concern about how do we get the water, even though in earlier testimony it's reduced in that corner, get that up and out because that's obviously a concern with all the major changes there. So trees, gradings, lower the parking lot anything like that would be greatly appreciated should this be approved. And so again concern about my quality of life my property my new home which I'm in the process of renovating, those that of my neighbors and continuing to be a good neighbor and a member of the community so that we can all work together here and most importantly quietly enjoy my little oasis after a stressful day in work sit in my backyard and do whatever it is I'm going to do back there. So thank you all for taking the time and listening to our concerns and making a decision later this evening.

MR. FLEISCHNER: Thank you.

MR. COHEN: Mr. Chairman I just want to indicate, and I didn't want to mislead anybody, I would make comments on it however I do have . . .

MR. BUZAK: Mr. Cohen you're not being picked up on the microphone.

MR. COHEN: I do have testimony in evidence that I wish to produce and I should have said that before other than comments. I'm going to call my client as a witness, we have photos we'd like to put into evidence, etc.

MR. BUZAK: We understand.

MR. COHEN: Perhaps you would want all the comments after all the testimony. I'm only suggesting that . . .

MR. FLEISCHNER: Mr. Bedell.

MR. BEDELL: Yeah just a question I guess for the applicant. For the homeowners that are Lots 14, 15, 16, 18 whatever number with the plantings of the Conifers I believe it was, could you put larger Conifers behind those homes and maybe somewhat you know 14, 18 footers the other homes? You know maybe like more grown, more developed just maybe help the general screening and just a question I have whether it's doable or not I don't know. I know it could take maybe five to ten years for the trees so you know just a question.

MR. PHILLIPS: And I guess I will answer it the best that I can. I think that we certainly would consider it; we would have to look at the viability. I don't have the expertise; we would have to turn to our folks that do have that expertise as far as what type of screening, planting we realistically could get there. We certainly have mature specimens on our site that we intend to transplant. Those are the areas that we are targeting to transplant but I certainly don't have the expertise to be able to tell you the specifics of what we can do.

MR. BEDELL: Sure. I think you've done a good job trying to screen but like for pictures of some of the homes on the second floor if some of the trees are a mixture of three or four feet maybe shift those to those lots and maybe the smaller ones further out if you have them anyways. Just my two cents that's all I appreciate it.

MR. FLEISCHNER: Excuse me Mr. Schaechter?

MR. SCHAECHTER: I have a question for the last person. Currently the view from your bedroom is if I'm not mistaken looks at your neighbor's deck.

MR. CONOVER: The bedroom is located in the back corner.

MR. SCHAECHTER: Back right corner of the house.

MR. CONOVER: If you're at the front of the house the back left corner is the master bedroom.

MR. SCHAECHTER: Closest to the . . .

MR. CONOVER: Closest to the Siemens property. So there are two windows, one on each corner of the building and

MR. SCHAECHTER: So your view would be of the . . .

MR. CONOVER: If you'd like I can go over and point essentially where the view would be.

MR. SCHAECHTER: Sure.

MR. BUZAK: Sir what lot are you on?

MR. CONOVER: I am Lot 15. Actually if we can do with the orientation of the house so there are windows on the back of the house here, right here, two facing back towards this corner and there's windows on the side facing this way.

MR. SCHAECHTER: The side is that your family room correct?

MR. CONOVER: Yeah downstairs family room and then upstairs, see now I've been traveling for the last week I'm trying to think about how everything is facing, I got two windows facing back this way, family room facing out this way.

MR. SCHAECHTER: And your master bedroom is on the left side of that?

MR. CONOVER: Top corner on the left.

MR. SCHAECHTER: Same side as the garage right?

MR. CONOVER: Same side as the garage, behind the garage there.

MR. SCHAECHTER: And your other bedrooms face the street correct?

MR. CONOVER: The other bedrooms the two face the back and one faces the street in the front.

MR. CARTIER: John Cartier 3 Hogan Court. You have to bear with me I'm a little tired and this has been quite a stressful ordeal. What I've heard here today and last week when I came here, at a 30,000 foot level the argument has been pretty much the buffer. Although there is a setback increase the building farther from the setback and the reduced building footprint eliminating 105 foot buffer with 60 foot tall trees I feel that that makes some additional functional obsolescence occur more along the lines of visual and noise. When you take down those 60 foot trees, from my house being another few feet down your going to see a little more than being right up against the fence, from those properties that are up on top of the hill they're going to see a little bit more than what was originally testified here or shown on some of these graphics. So some other things such as like the light, yes the lighting I the parking lots are facing downward but like any ball field or anything else that you see from a further distance it's going to create a glow. That too will also be seen so that was not taken into consideration so I feel that those are functional obsolescence that add to basically property value issues and you know I guess you know that's basically it with that. From what I heard here I didn't see that there was any consideration for a noise increase, there were no noise studies with regard to you know actual noise or extrapolation to what would could or possibly be an increase in noise as a result of a taller building with mechanicals on top. Although it is further in the setback you know I don't feel there was a consideration for that. I don't feel there was a consideration for the functional obsolescence's based on the 52 foot structure in total other than from Lot 15. I don't feel that there was considerations for the fence for those homes with 15 foot setbacks in the rear yard. Where some of the houses will have structures 15 feet from that 12 foot fence so some of that will . . . there are two properties that I know that have that and I think Lot 14 and 15 from the corner of one of those lots it's I think 40 feet from the house but probably 25 feet or 20 feet from the deck. And I think, you know like I said I think that should the Board grant the variance for this you know like I said at 30,000 feet the arguments here have been about that buffer. Should the variance be granted here for a taller building I think there should be some consideration, something done with regards to either that buffer zone or something just to shelter that just a little more than what's being required. I feel they're doing the minimum or the minimum is being provided here and not something a little more elaborate. We had some testimony earlier or some questions I think that I heard last week with regards to could they move the fence in 15 feet or in 50 feet and then do some landscaping on the outside towards the homeowners side. There's no consideration

for the homeowner's side that lives on the other side it's just going to be a big tall wall. Moving that fence 50 feet and adding some landscape to the other side is basically the same thing. The argument to that was maintenance of that, well if that's on the other side of the fence how difficult is it for us to get there and maintain that. I am sure there are plantings and something that don't require a whole lot of maintenance. It doesn't have to be grass, it can be trees and shrubs and other small things that don't require a whole lot of maintenance. I mean a lot of this stuff I mean I work for a large corporation I see corporate plantings all over the place. We heard a lot of testimony about how beautiful the campus will look, what the inside of that structure will look, how the grass will look but no consideration for what it's like to be on the other side of a stockade fence and in some cases being just a few feet away from that fence. So there is a quality of living that kind of goes with this as well as the obsolescence as well as potential losing some value in the community. I mean those houses they will lose value you know so that's all I have to say thank you very much for hearing me, thank you very much for . . .

MR. FLEISCHNER: Nelson?

MR. RUSSELL: What are the noise issues with the current facility?

MR. CARTIER: I hear HVAC noises in the evening you know you're sitting out on your deck and it's kind of quiet you hear the HVAC. Is it a rock band? No. Is it a considerable hum? Yeah it's you know it's out there you know it's like anything else if you're in the noise for a long time you kind of don't hear it. When you go away from it and you come back out you go oh there it is you know it's that kind of thing. It's not super, crazy loud but it is a hum and I figure if they're going to double the capacity then they're going to double the mechanicals and therefore that noise will increase some.

MR. BEDELL: It may not double if it's the same decibel it may not double the noise it may just be the exact same noise so . . .

MR. CARTIER: I'm not an expert.

MR. BEDELL: No I know I'm just saying.

MR. CARTIER: I'm not an expert but I'm just . . . my contribution was there really was no consideration for that and that's it.

MR. MCGROARTY: Excuse me Mr. Chairman I just want to point out, unless I misunderstood earlier, but I thought Mr. Moore said they were going to put screening . . .

MR. MOORE: That's correct.

MR. FLEISCHNER: Surrounding around the new HVAC.

MR. MCGROARTY: So we talked to them about that and I think it sound that attenuation will be part of this building.

MR. CARTIER: But sound from what you hear right now with 60 foot trees and sound what you hear with a barrier let's just say on top of the mechanicals on top of it minus whatever 60 foot that there is is going to increase that. So maybe one offsets the other and we end up with the same amount of noise and/or maybe a little bit more. Again I'm not an expert for noise, I assume there will be something more and that's it.

MR. VAN NESS: Is there an active Homeowners Association in Flanders Crossing?

MR. CARTIER: Yes there is.

MR. VAN NESS: Thank you.

MR. ??: How long have you lived there sir?

MR. CARTIER: 18 years. I was one of the second ones to close. That's it thank you.

MR. MCGROARTY: Mr. Chairman just one other thing I know it's late but I just want to . . . there's no home in Flanders Crossing within 15 feet of a rear yard. Not that I'm aware of, not the dwelling itself.

MR. COHEN: I'm sorry what was that question, what was that statement?

MR. MCGROARTY: A house the footprint of the house there is none to my knowledge that's within 15 feet of a rear yard. I mean the zoning setback is . . .

MR. CARTIER: I know there are some houses with 15 foot setbacks and then within a . . .

MR. BUCZYNSKI: Not the rear yard.

MR. BEDELL: Your saying from the edge of the house to the back property?

MR. CARTIER: The rear setback is 15 feet.

MR. FLEISCHNER: No.

MR. BUCZYNSKI: No.

MR. MCGROARTY: I mean we were here when that came through.

MR. CARTIER: What is the smallest setback on there I know it was 30 and 15 or 30 and . . .

MRS. NATAFALUSY: 35 feet rear.

MR. CARTIER: Excuse me?

MRS. NATAFALUSY: 35 feet.

MR. CARTIER: 35 feet front and rear and what were the sides?

MRS. NATAFALUSY: 12.

MR. CARTIER: What I'm trying to say is to put some of those houses on those properties they call the side the back and the back the front. They twisted that around. In some of the cases because the lots have multiple points to make that work there were some variances or flexibility given to be able to put those on there and that's just how it actually occurs.

MR. VAN NESS: Maybe so but there are no houses that are within 12 feet or 15 feet from the rear property line.

MR. CARTIER: Some of them come kind of close I was standing on Pete's deck today and . . .

MR. VAN NESS: Understand we're talking about house.

MR. CARTIER: Understood but decks are also a quality of life.

MR. VAN NESS: No doubt.

MR. CARTIER: You sit out there with your guests, your relatives, your friends on good days like communions, weddings and things like that it's there. So thank you.

MR. FLEISCHNER: Thank you. Ms. Chu?

MS. CHU: Robin Chu 37 Crenshaw. I'll be fairly brief because my neighbor's have already stated pretty eloquently my concerns. And I do want to state for the record I'm very happy that Siemens is growing I'm very happy that we have more jobs coming in to the community; maybe someday I'll apply there. But I am very concerned about the buffer obviously I'm concerned about both the light and the noise. We see the lights now and we see the lights through the trees four or five months a year let's say, but they're not too bad with shades and everything else. Now we're going to have the parking lot there's going to be a lot more lights and that building is far. We've talked about the setback for that building multiple times and we see the lights now. So can I live with it now? I can, you know we put shades up and stuff so they're there and we hear noise from Route 206 at night at our homes now I'm concerned that the loss of that buffer of trees that we'll have more noise. Not just from the facility itself but the buffer we get from Route 206 as well. I'm also concerned with the road; the access road going in 50 feet from the back of the property line there's going to be more noise not just from the HVAC on top of the building but from the car traffic. You know I hear the cars in front of the

house so I'm going to hear them in back of the house now too when they're on both sides of my house. So the loss of the buffer of the trees you know the noises are more muted at this point as John talked about I'm worried that those noises are going to be a lot . . . we're going to hear them a lot more. A lot more noise on the property. So if any consideration can be given to putting trees back, I can understand removing the dead trees, removing the things that are not healthy I'm fine with that as long as we can replace them and we put some decent sized trees as was requested. Because I think our quality of life is important and I can already see the building you know six or seven months of the year from the second story of my house. The fence isn't going to stop that and I have the 50 and 60 foot trees. But you're seeing through the trees what didn't bother you that much. So that's it thank you.

MR. FLEISCHNER: Thank you very much. Anyone else?

MR. BUZAK: So Mr. Cohen?

MR. COHEN: Okay yes if I could get some room here please I want to call my client as a witness.

MR. BUZAK: Mr. Moore would you be so kind as just move that Bible over to the witness.

MR. MOORE: Certainly.

MR. COHEN: Let me for the record Lawrence Cohen of Courter, Kobert & Cohen on behalf of Mr. Peter Zambetti, Mr. & Mrs. Zambetti and I represent them and I am going to produce some testimony and some evidence that we would like the Board to consider. And I would call Mr. Zambetti as a witness.

MR. BUZAK: So will you raise your right hand place your left hand on the Bible. \

(MR. PETER ZAMBETTI SWORN IN FOR THE RECORD)

MR. BUZAK: Please be seated state your name and address for the record spelling your last name.

MR. ZAMBETTI: Peter Zambetti 5 Hogan Court Zambetti is (Z-A-M-B-E-T-T-I).

MR. BUZAK: Thank you sir.

MR. COHEN: Mr. Zambetti we've already heard that you occupy Lot 14 is that correct?

MR. ZAMBETTI: Yes.

MR. COHEN: And that is this lot right here and your house.

MR. ZAMBETTI: That's correct.

MR. COHEN: And how long have you lived there Mr. Zambetti?

MR. ZAMBETTI: 15 years.

MR. COHEN: Were you the first owner of the home?

MR. ZAMBETTI: No second owner.

MR. COHEN: Do you know how old our home is approximately?

MR. ZAMBETTI: It was built in 1991.

MR. COHEN: Now Mr. Zambetti you also in addition to that and I show the house there you have a deck on your home?

MR. ZAMBETTI: I do.

MR. COHEN: And how far from the house does the deck extend?

MR. ZAMBETTI: Approximately 20 feet on the back of the house.

MR. COHEN: And explain would you the view that you now have from the back of your home and your deck looking out over to the Siemens property.

MR. ZAMBETTI: Oh we see a wonderful stand of trees on my property line are two Cherry trees, the forest in that area is about 100 years old it was originally farmland where my house is today so it was a cornfield. The stone wall has been there again for 100 years and beyond that tree stand is again original. And so I look at trees, trees and Honeysuckles and you know a dense forest basically. In the summer I can't see through it.

MR. COHEN: Do you know any other species of trees that exist at least in your area of the backyard and generally in that area?

MR. ZAMBETTI: I've actually reviewed the area there's Maples, Oaks, Choke Cherries a lot of smaller you know grub type shrubs that again provide a deterrent to trespassing and also animals.

MR. COHEN: That stone fence is that on your property line to the best of your knowledge?

MR. ZAMBETTI: The stone wall is actually . . . I have about 5 feet beyond the stone row as part of my property.

MR. COHEN: Now the property that you back up to has that always been the Siemens property? Is there part of the property that they're now acquiring to add to this?

MR. ZAMBETTI: Well my property is, I have three neighbors actually I have Siemens on one side, I have the church and the Country Barn that's where I intersect.

MR. COHEN: And the Country Barn property has the tree growth as well as the existing Siemens property is that right?

MR. ZAMBETTI: That's correct.

MR. COHEN: And does that tree growth go all the way up from the, I'm sorry that roadway is what Flanders what road?

MR. ZAMBETTI: Flanders-Bartley.

MR. COHEN: Flanders-Bartley Road all the way up to as shown on A-23 goes all the way up from Flanders-Bartley Road way back to the tip of the Siemens property?

MR. ZAMBETTI: Yes it does.

MR. COHEN: And by the way have you ever been back in this area the Siemens property, the trees back there have you observed those?

MR. ZAMBETTI: Yes I haven't physically been up there but yes I can see them.

MR. COHEN: Do they appear anything different to you than the growth that's behind your property and your neighbor's property?

MR. ZAMBETTI: No I believe it's the same age of the forest you know again not been disturbed.

MR. COHEN: These are deciduous trees for the most part they have leaves on them is that correct?

MR. ZAMBETTI: I'd say almost all of them are. There are no conifers or evergreens in that space.

MR. COHEN: And the leaves are fully out now?

MR. ZAMBETTI: Yes they are.

MR. COHEN: All right and have you taken photos to show this and to demonstrate that to the Board?

MR. ZAMBETTI: I have.

MR. COHEN: All right are those photos contained on a disk which we'd like to put into evidence, we'd like to show the photos and put the disk into evidence of how it appears out of his backyard.

MR. BUZAK: Well let's look at the photos and we'll start from there.

MR. COHEN: Okay.

MR. ZAMBETTI: How best would you like me to I have a projector I can set up or do you want me to pass the computer around?

MR. COHEN: There's a screen there.

MR. ZAMBETTI: How best do you want to see them?

MR. BUZAK: Well I don't think you should pass the computer around that's not going to work so I suppose we should show them on the screen that's there.

MR. COHEN: By the way Mr. Chairman I note that it's about quarter after eleven I don't know what time the Board is going.

MR. FLEISCHNER: As soon as you're finished.

MR. COHEN: That's a current view. When was this photo taken?

MR. ZAMBETTI: Today.

MR. COHEN: Okay and what other photo do you have on there that shows that area?

MR. ZAMBETTI: Again shows a dense forest and you can see on the left side there is the fence as well.

MR. COHEN: All right that's from your deck?

MR. ZAMBETTI: That's from actually the bathroom window on the second floor.

MR. COHEN: On the second floor and where does that look out just using this A-23. In the existing Siemens building if you stood in that bathroom window what are you overlooking?

MR. ZAMBETTI: Of the Siemens property?

MR. COHEN: Yes of the Siemens property.

MR. ZAMBETTI: Actually the Siemens buildings are to the right of this photo. So you could see through it, in the winter you can see very clearly the first building Siemens built or DPC built and the new extension. So it would be crystal clear if the trees weren't there.

MR. COHEN: All right but with the leaves on you have that blockage is that correct?

MR. ZAMBETTI: That's correct.

MR. COHEN: And now if you look out at that window I guess if you look hard enough you can see some building through it but for generally it is protected from (inaudible).

MR. ZAMBETTI: The way you see on the lower part that is the building.

MR. COHEN: Okay all right what other photos do you have?

MR. SCHAECHTER: Before you move to the next photo can I ask a question?

MR. ZAMBETTI: Sure.

MR. SCHAECHTER: You're on the second floor looking out?

MR. ZAMBETTI: Right.

MR. SCHAECHTER: So those are the tree tops that you're seeing?

MR. ZAMBETTI: Ah well

MR. COHEN: Do the trees go beyond that photo?

MR. ZAMBETTI: Yes they do.

MR. BEDELL: Not much further but yeah.

MR. ZAMBETTI: Yeah I mean the trees are as we've heard before 50, 60 feet.

MR. COHEN: Did you agree with that height Mr. Zambetti?

MR. ZAMBETTI: I would say yeah for sure I mean these are mature trees and I'd say I don't know for sure but they're at least 50 years old.

MR. COHEN: What is this picture from?

MR. ZAMBETTI: This is also from the upstairs bathroom as well but looking out the other window and as you can see on the right side about half way up you can see the fence. You can see here this is where the fence is and this is the building behind it.

MR. COHEN: Okay and how far is that fence from you now, do you know?

MR. ZAMBETTI: The fence is 105 feet.

MR. COHEN: Okay and do you have any other pictures that you desire to show to the Board?

MR. ZAMBETTI: Actually again from the second floor but that gives us a view pointing south . . .

MR. COHEN: Is that all your property or does that include your neighbor's property?

MR. ZAMBETTI: That's all my property. So the evergreen trees is the buffer between the church and my property, if you go to the corner behind the play set here is where the Country Barn property line is here. So again these trees offer as you can see an incredible buffer. And that's from the first floor and that's a close up of you know you can see the top of the fence and the building beyond it. And that's it (inaudible) all we have. Again that's back to the first floor on the deck looking out from my kitchen.

MR. COHEN: Can you just point out where that stone wall is please.

MR. ZAMBETTI: Sure. The stone row is basically right here it runs the entire property line and all the way through to the next lot as well. So my property line is 261 feet and the stone row is continuous.

MR. COHEN: Now you were here last month for the, or whenever it was, (inaudible) testimony of the landscape architect?

MR. ZAMBETTI: Correct.

MR. COHEN: I believe it was a woman.

MR. ZAMBETTI: Correct.

MR. COHEN: You heard her testimony concerning the condition of these trees?

MR. ZAMBETTI: I did.

MR. COHEN: And do you agree with that?

MR. ZAMBETTI: I do not.

MR. COHEN: And why is that?

MR. ZAMBETTI: Well the sampling, I heard her testify the sampling of what she looked at was not in this area it was the northern part of the lot and not the trees here. Again these trees are you have Choke Cherries on my . . . what the original farmer planted however long ago that are 50, 60 foot and you have a variety of trees beyond those. I've lived there for 15 years and we've only had only one tree through all those storms, hurricanes we've had one tree has fallen down in 15 years.

MR. COHEN: And when was that?

MR. ZAMBETTI: That was Irene not even during Sandy did I lose a tree.

MR. COHEN: Now your 261 feet at least, are there any trees that are obviously dead and do not have leaves on them do you know.

MR. ZAMBETTI: There's one that I can see.

MR. COHEN: One. And how many trees could you estimate, by the way what is this tree stand, what is the width of this tree stand behind your property approximately?

MR. ZAMBETTI: I would say 105 feet. I haven't measured it but I believe because of the buffer that was agreed to in the resolution in 1999 105 feet was granted so it's 105 feet.

MR. BEDELL: You're saying the depth of the trees.

MR. ZAMBETTI: The depth of the trees because it goes as you can see right from my property line right to where the fence is.

MR. COHEN: And before you were there when Siemens built originally or whoever the developer was.

MR. ZAMBETTI: DPC yes.

MR. COHEN: All right and before that did that tree stand go beyond it and they cleared it to 105 feet?

MR. ZAMBETTI: Exactly it went continuous all the way to the train tracks.

MR. COHEN: Okay so this is part of the forest that was there before they did development.

MR. ZAMBETTI: Exactly.

MR. COHEN: And what about in the winter . . . let me withdraw that, what about in the winter when you don't have the leaves on the trees does it still give you any protection the fact that the trees are there.

MR. ZAMBETTI: It does but very little I mean you can see very clearly through and the fence having being on the bottom of a 12 foot rise in the property we get no protection at all. The fence is there but it doesn't really do much.

MR. COHEN: Okay now they are proposing to put a 12 foot fence I presume where that rock wall is.

MR. ZAMBETTI: Well they'd have to move back about 5 feet because my line is actually 5 feet behind it.

MR. COHEN: All right well 5 feet beyond the rock wall. If they actually put a fence there that means you would be looking at instead of these trees you'd be looking at a 12 foot wall is that correct?

MR. ZAMBETTI: That is correct.

MR. COHEN: Is that desirable to you?

MR. ZAMBETTI: Absolutely not.

MR. COHEN: Would you much rather have the trees?

MR. ZAMBETTI: Absolutely I mean the reason we bought this property 15 years ago because it had this wonderful cul-de-sac with again 27 acres of woods and we understood at the time it couldn't be built on and a variance was granted and there wasn't enough frontage on the road and that was granted and they built . . . and we worked with DPC they were very good neighbors, they sat with us the owners came to my house and we discussed the buffer and then they gave us the buffer they granted us the buffer.

MR. FLEISCHNER: I have a question for you. Now when you bought your house you were aware that the area behind your property line is commercial am I correct?

MR. ZAMBETTI: No Mr. Fleischner I wasn't the realtor told me it was a wooded preserve and shame on me I didn't come to you guys and take a look first. Yeah and I attempted disgrace the realtor but again without anything in writing it's pretty difficult.

MR. FLEISCHNER: Scott you had a question?

MR. ZAMBETTI: And I believe my neighbor also had the same, he bought the house a month ago so six weeks ago he got the same story from his realtor.

MR. BEDELL: A comment the attorney made was you know would you rather look at a 12 foot fence or the trees, well I guess the assumption to be made is are they going to level all of the trees and I haven't heard testimony to if they are or are not. You know the question alluded to that they are going to basically eliminate all of the trees.

MR. ZAMBETTI: My understanding is that it's going to be a complete deforestation the beginning of the project and they're going to try to transplant trees. But we already have beautiful trees there already.

MR. BEDELL: Maybe someone on the applicant's side can . . .

MR. BUZAK: Why don't we finish up here?

MR. BEDELL: All right.

MR. VAN NESS: So you're saying that you would rather . . .

MR. MOORE: I think there was a question of us?

MR. FLEISCHNER: Not yet.

MR. VAN NESS: So regardless of what Siemens does developmentally do you want or not want the fence?

MR. ZAMBETTI: It's a hard question to answer Mr. Van Ness because if they completely deforest the area the fence will be the only thing I have.

MR. VAN NESS: Well clearly they presented testimony last week that they were going to replant and improve the buffer if it's cleaned out right? I mean it doesn't matter last week they testified that they are going to be doing something with the buffer so the question is knowing that would the removal of the fence be a pro or con to you number one. Or a different kind of fence.

MR. ZAMBETTI: Oh I mean a 12 foot fence I don't think any of us would want to look at a 12 foot fence when you walk out of your backyard, when you have what you just saw. So to have no 12 foot fence and not know what kind of trees will be planted it's kind of like I heard many times this evening that's a speculative question because they say they're going to save trees but they could be (inaudible) trees that they save and it doesn't do me any good. The trees that are there now offer an incredible buffer and I would absolutely not want the fence if we could maintain the buffer. I understand the

security concerns so I expect you would need to have a fence you know at some point to walk the property.

MR. COHEN: Mr. Zambetti do you hear noise from your home and your deck? By the way could we get that picture up again? Okay now do you hear noise now from the Siemens facility?

MR. ZAMBETTI: Yeah certainly the HVAC system is running I believe 24 hours a day, I believe it does shut off maybe around Sunday because it is quieter on Sunday so yes you hear it 24/5 at least.

MR. COHEN: All right and when the leaves are out on the trees is that less than when the leaves are not there, the sound?

MR. ZAMBETTI: Yes.

MR. COHEN: So this gives you some protection also?

MR. ZAMBETTI: Absolutely and it also helps a lot with the light. Again the light poles they do cast a downward shadow but with the grade 12 foot above my grade you know we get the light.

MR. COHEN: Mr. Zambetti do the trees also give you any other protection, other than from the Siemens facility?

MR. ZAMBETTI: It gives us tremendous shade in the summer time. As that being a westerly facing deck we get shade about 3:30, 4:00 and the rest of the evening which is a tremendous difference than not having those trees there.

MR. COHEN: Now Mr. Zambetti you've heard that, and I guess they're going to have various shifts there I wasn't here for the last meeting.

MR. ZAMBETTI: My understanding is it will be operating 24 hours a day, five days a week which I believe it does today already. But because everything is so far away from my property now I really don't hear too much noise I hear cars occasionally but with the road proposed to be 50 feet off and active 24 hours a day clearly it will be a lot more disruptive.

MR. COHEN: Now I'm sorry I don't know if this is the right diagram I guess it is. The roadway, and this is A-6, the roadway is going to go

MR. FLEISCHNER: Could you have that face the Board so we could see what you're talking about.

MR. COHEN: Oh I'm sorry. That driveway is to go where?

MR. ZAMBETTI: The driveway is (inaudible) and my understanding right here.

MR. COHEN: And that's going to go right up here.

MR. ZAMBETTI: Along the length right along the fence.

MR. COHEN: Okay and your property is right there is that right?

MR. ZAMBETTI: That's correct.

MR. COHEN: Do you know approximately how many feet from the property line the roadway is going to be?

MR. ZAMBETTI: I believe it's proposed to be

MR. FLEISCHNER: 50 feet.

MR. SCHAECHTER: 50 feet.

MR. COHEN: And did the applicant propose any ultimate plans to have this driveway go anyplace else other than 50 feet off the line?

MR. ZAMBETTI: No I've asked about that in last week's meeting and was told it was not part of the design.

MR. COHEN: And do you know when the shifts will change, the timing at night?

MR. ZAMBETTI: 11:00 p.m.

MR. COHEN: 11:00 p.m. and by the way I believe they have approximately 1,000 parking spaces on site is that correct that they're proposing?

MR. ZAMBETTI: Yes right now I think the employees is really what matters and I believe it's 443 now going up to about 900.

MR. COHEN: And do you believe that that is going to create a disturbance to you with the proposed fence that they're putting up as opposed to the trees that you now have?

MR. ZAMBETTI: Well I mean a 12 foot fence on the bottom of a 12 foot berm is not going to offer anything. Not noise, not light I mean I expect headlights to be pointing towards my bedroom window as well as my children's and it's really something I think that you know the Planning Board could request to perhaps at least put the fence on top of the buffer to offer me some protection if they're going to completely deforest the area.

MR. COHEN: Well let me ask you this, presume that they were going to keep these trees up or as much as they could keep them up, would you rather just see the trees as they are now and as bad as the landscape architect testified they are stay the way they are.

MR. ZAMBETTI: Absolutely. Because like I said Mother Nature is a very powerful force and if those trees could stand hurricane Irene and hurricane Sandy I can't imagine that they're in such bad shape that they couldn't survive.

MR. COHEN: And again they're no different than the trees that they're planning not to anything in the north end of the lot is that correct?

MR. ZAMBETTI: That's my understanding yes that's correct.

MR. COHEN: I have no other questions of my client.

MR. BUZAK: Mr. Moore do you have any questions of the witness?

MR. MOORE: No.

MR. FLEISCHNER: Does any member of the public have a question of Mr. Zambetti? Seeing none anything from the Board?

MR. COHEN: I'd like to place in evidence the disk that contains these photos.

MR. FLEISCHNER: We need the disk please.

MR. COHEN: Okay.

MR. FLEISCHNER: Mr. Moore.

MR. MOORE: Yes.

MR. COHEN: I have some statements I'd like to make.

MR. MOORE: He can make those statements first.

MR. FLEISCHNER: You can make your statements first.

MR. COHEN: Okay.

MR. BUZAK: Oh yes I'm sorry Ms. Natafalusy properly reminded me we need to mark that disk and we'll mark it as O-1 and that will be a disk consisting of Mr. Zambetti do you recall how many photographs are on that disk?

MR. ZAMBETTI: I believe it's 16.

MR. FLEISCHNER: Mr. Cohen do you want to make your statement please?

MR. COHEN: Yes. Members of the Board as I indicated I am here on behalf of Mr. & Mrs. Zambetti who are going to be significantly impacted by this development. They along with their neighbors are very close to this development it's a significant impact. And I believe that Mr. & Mrs. Zambetti are not against the addition that's going to go on here. Things have to progress I think as one of the neighbors had spoken this project is probably a plus to Mount Olive Township, it brings more employment in, it brings more tax dollars and it's a good neighbor. Though you have heard no complaints that Siemens is not a good neighbor our main problem is this expansion and the impact it has upon these neighbors. One of the things that this Planning Board does is to make sure that there is orderly development of this township and that the development as far as it has the right to does not impact existing homeowners or existing property owners in any negative fashion. Now we realize that every time there's a development there's potentially negative impact, we know that. We know that this if you approve this development is going to cause additional traffic, there's no doubt about that. And I understand there may have been some traffic testimony but no one has been here saying, you know what you shouldn't allow this it's going to cause too much traffic. You know that's the price we have to pay and there is going to be more traffic. There's going to be more noise we know that you're going to have a lot more employees you're going to have a 24 hour operation with more employees and there's going to be more noise. Have they done a job to reduce that impact? I don't know I'm very surprised. I'm very surprised at the Planning Board did not request that a sound engineer since they already had studies done be produced as a witness. I think that's very important, I think it's very important when they're asking you to grant a "d" variance also and what effect the higher building is going to have on sound and what effect the entire project even if they were not going to be asking for a variance would have an effect on these properties. Sound is very important, sound effects the quality of life and by the way if any of you lived in my client's property you wouldn't like this either. And that's what you're here to protect. Now that doesn't mean you can't say to Siemens you know what you can't build your building because there's some (inaudible) are bothered by the sound of your building. No. But what we can do is that you can require them to do whatever is reasonable to reduce that impact. And that's the reason we're here now, we're not asking not to approve this site plan, perhaps we're not even asking that you deny the height of the building. And the height of the building is going to have definitely more of a detrimental impact on my clients and of their neighbors then if they built the building 30 feet high. Now the testimony I thought of Mr. Phillips was and of Mr. Horten that we could build a building that's larger and therefore we're building that higher it's less of an impact. But when I cross examined them on that everybody said no, no that's not what they're proposing. So I wonder, and I think you should wonder and should ask, well if we don't grant you the height variance are you going to build a bigger building or are you just going to build the same building but it's only going to be 30 feet high. I think that's a very important question. I wasn't allowed to explore it more and I didn't get a proper answer, I don't know if you understood a proper answer. Now the impact, we are lucky in this particular situation because we already have a visual and they sound protection. We have that in a stand of trees and of forest and those trees are 50 or 60 feet high. Now the testimony, and I wasn't here admittedly, of the landscape architect that these trees are in terrible shape they have to be taken down. You heard my client he lives there they've lost one tree in 15 years. If you saw the photos did you see dead trees? There was healthy big stand of trees offering natural protection here. How is the applicant going to be affected if you said you know what just leave the trees, you want to put a fence on the other side of the trees, put a fence on the other side of the trees take down what trees you may need to build your improvements but leave the stand of trees there. It's not going to cost them any money it's going to save them money. The reason is that we have a landscape architect that wants to make it look pretty. Well if they want to make it look pretty on their side let them make it look pretty. Pretty doesn't give the protection, you saw those pictures of their exhibits that they have prepared there's going to be a visual impact, there's going to be a sound impact, there's going to be a quality of life impact and it's going to be no matter what we do but it's going to be less if we allow the trees to stand. I haven't heard a good reason other than the trees are "deceased" and Mr. Zambetti said the area that she examined was not the back of his property or his next door neighbor's property. I haven't heard a good reason why those trees cannot stand. You know you have shade tree ordinances, you have an ordinance that says they're going to take down, I don't know 800 or 900 trees as I recall in the report, and they have to replant them. Why? Because the town wants trees they like trees, trees add to the quality of life. This is not New York City and some people move from New York City to be out here because you have trees you're in the country. They give you protection against a lot of things and what they want to do here is

take down 800 trees. Why? I don't know if they were building a building there and that's the only way it could be built I guess it could be a reason. But the only reason we've heard so far is it will look prettier if they're down. We don't agree with that, we definitely don't agree with that and you shouldn't agree with it. And I don't know why the applicant is steadfast and (inaudible) that we want to take this forest down. And by the way my client was under the impression that they were going to produce an arborist tonight or the next meeting who is going to testify about the quality of these trees and what could be done. We haven't heard from that, we haven't heard from a sound engineer, we haven't heard from an arborist and we haven't heard a good reason as to why these trees should in fact be removed. Who wants to come home and look at a 12 foot wall and I presume this, probably this room is 10 feet high so it's a couple of feet higher than that wall that's behind you. Who wants it 40 foot from their house and closer maybe 20 feet from their deck and stare out at a board fence, at a wall 12 feet high when you could look at trees and you could get the protection. Yes they're asking for a variance and as Mr. Phillips said you have the right to impose conditions on that and what we are asking you that this is more than reasonable that you impose a condition that they not disturb that forest, that growth of trees any more than they have to. Not go in and pick out trees which they want to, what's the criteria. What's the criteria going to be for thinning out the forest? Let it stand it has been there for 100 years it probably will be there for at least another 100 years. Other than that I'd like to make a comment on Mr. Phillips testimony. I don't think they have met their burden, I don't think that they really talked about the negative criteria and the impact; he said it would have an impact. You know we hear planners come and we hear planners testify and you hear more planners than I do probably because you sit every month on this hearing professional planners. And they make these statements, it will have no negative effect it will not impair the intent and the purpose of the zone plan or the zoning ordinance. You hear that all the time and I wonder well what do you mean by that where's the detail of that other than that's your offhand opinion. There's no back up with reference to that the zone plan is put there for a reason, we all know why we have height limitations, so they don't impact upon neighboring properties and infringe. And they're asking you know we want to make this higher. Well how many more square feet would you have to build the footprint if you didn't take it higher? Nobody could answer that, nobody knew the answer. I could have figured that out once I had the dimensions but I didn't want to take the time as to how big of a building but then when I asked well you're going to build a building that's any bigger and everybody jumped oh no you're speculating we can't do that. That's very important I think it's a very important consideration for you in deciding this. But if you're going to grant this variance even though I don't believe that they've met their burden of proof and established the reasons for this variance then certainly require that tree stand to remain and to get that driveway as far away from these neighbors as possible and the impact as far away from these neighbors as possible. There was an old resolution of 105 feet, that had a height variance and I maintain to you there's a very reasonable, and obviously I wasn't here also, that that buffer area was imposed because of this height variance and for the impact that it was going to be on its neighbors. This is now going to be potentially a bigger impact with all of the people that are going to be working here, approximately 1,000 people at any one time maybe. And I think it's your obligation and I think it's your duty to make sure that these people who have a lot of money invested in their homes and their lives invested in their homes that you give protection for that. And I thank you for your time I apologize for any outburst that I may have done but you know we all get pretty excited about this thing. My clients are very excited about that and feel very real about that as I'm sure the applicant does. It's a very serious thing and I thank you for your time.

MR. FLEISCHNER: Okay at this point I'm closing it to the public so that Mr. Moore can make his statement.

MR. MOORE: Mr. Chairman, members of the Board thank you so much for your consideration of this application and for staying here so late. I would just like to reiterate a few points and then I will try to be brief because I know it's late and we're all tired. As the Board knows there were prior approvals on this site that would still be valid if this approval were not granted. They did provide the 100 to 105 foot buffer. But they provided approximately 30,000 more square feet of development on five acres less of property with the buildings, two 94,000 square foot buildings only 100 to 105 feet away with the mechanical equipment much closer, loading much closer. This is a much more efficient plan it keeps the mechanical equipment further from the residential neighborhood, keeps the loading further from the residential neighborhood which are the noise producers and also we've agreed to the screen around the mechanical equipment in addition to that. Moreover the reason as you recall from the landscape architect is you know there is trees that go back further it's more than those 50 feet of trees. There will be trees cut behind that so then that's that small little buffer of trees even if it was the 100 foot buffer of trees the trees will, because they're surrounding on both sides are used to having forest back up as she had testified. That creates much more jeopardy to them than now. Additionally those are deciduous trees frankly they're going to be replaced by Conifers with Evergreen trees at a very close planting, a very dense planting as you saw. Moreover we're putting in at 18 feet and also we're transplanting the largest trees that we can from the rest of the properties. You also heard in that in

fitting what we can in there so with that I would like to thank you again for your consideration and good luck in your deliberations.

MR. FLEISCHNER: Thank you Mr. Moore. I think now the Board needs to discuss this application and if it sees fit to move to a motion of some sort yay or nay and I guess as Chairman I get to exercise my right to go first in discussion. And I certainly appreciate what the neighbors must feel at this point because I can say many years ago, and I live on the Budd Lake side of town, many residents in the Budd Lake side of town were very, very much against Flanders Crossing because of our concern about the water. Most of us are on wells and the water you may not be aware flows from the Budd Lake side of the aquifer down to the Flanders side. And more water that's taken out of the ground effects our wells and that was a concern we had. I think everywhere you live in this Township there will always be a concern as a neighbor for what comes into your neighborhood and I fully, fully understand that. We've had applications where I was not a member of this Board and I was on the other side of the table and voiced my opinion as to why something should not get approved, because it affected my neighborhood. It's a difficult decision because most of us, and I think its human nature are of the nimby mentality which is Not In My Back Yard. And there are times when we have to step back and say we have to look what's best for the entire township but at the same time we have to be cognizant of the folks that live in the adjacent property, adjacent neighbors. Now we've heard a lot of testimony from the applicants and I for one sincerely believe that they wish to be a good a neighbor and I believe they have been a good neighbor to Mount Olive and to the people actually in Flanders Crossing as well as the entire area that's adjacent to its property. There are always tradeoffs and I think that's something which we as a Board have to deal with and it's always nice when we can say yes this is the best and Ms. Giordano certainly knows I mean here's something that I was definitely against that came before this Board as you all know. But the Board chose to move forward and I respect and accept the decision that the Board made. Even though I didn't feel it was right for me and voiced my concern but the Board made a decision and you stand by it based on the testimony that's given. So I would ask each Board member if you wish to make a comment and then you see where it goes from there but base it on the testimony that was given this evening. And that's what you have to base your decision on and when I say this evening the entire application and last Thursday as well. We did hear a lot of information. Any Board members wishing to make a comment? Mr. Bedell.

MR. BEDELL: Yeah I'll just throw out; looking at whatever sheet you want to call this, this rendering sheet there is the I guess the 6 foot tall fence area I guess adjacent to the church. Between that fence and your property there is a row of I guess forestry you know then as the fence I guess turns into a 12 foot fence it's the Conifers and if you can comment on if the trees that are behind Mr. Zambetti's backyard will all b e leveled or some will remain or you'll cherry pick ones here or there. But my comment is is you know if you put the fence up I mean it's your property I guess it's your prerogative I can't stop you there but would you keep or could you keep some of those trees and then plant the Conifers in addition to.

MR. MOORE: And perhaps we weren't, it's been long hearings and we weren't clear but our intention and our commitment and I believe we can you know I'm going to have Ms. Cerbone kick me if I get this wrong but those trees that are there now that we can save we're going to. And that was our testimony Ms. Cerbone's testimony last week.

MR. BEDELL: Sure it's just there's been talk of deforestation so I just want to make it clear.

MR. MOORE: Well that's not us yeah, yeah we never said deforestation.

MR. BEDELL: I just let it be cleared up that's all. But now we can clear it up for the record.

MR. COHEN: Mr. Chairman I just want to

MR. MOORE: The hearing is closed you had your summation.

MR. FLEISCHNER: No, no the hearing is closed your done.

MR. COHEN: You had your summation also.

MR. FLEISCHNER: The Board has the right come on you know that.

MR. COHEN: And now he's asking another witness questions.

MR. MOORE: He didn't ask me any questions.

MR. FLEISCHNER: He's clarifying Mr. Bedell

MR. MOORE: Mr. Bedell asked me a valid question so now we had a little abesgation and confusion and further late evening did we answer your question?

MR. BEDELL: Yeah so basically deforestation is that term has not been used or that's not on the table it's just cherry picking what needs to go, adding your fence and adding the Conifers. So the eventually there could be Conifers, trees that are there and the fence.

MR. MOORE: Yes. And obviously where the building is going it's going to all be cut down in the parking lot.

MR. BEDELL: I mean like from the street will be the new road, will be the Conifers and whatever trees remain and the fence.

MR. MOORE: Right.

MR. BEDELL: Okay so let's let that be known now it's on the record.

MR. MOORE: Yes. It was on the record actually.

MR. BUCZYNSKI: Well there's going to be a limited amount of trees

MR. BEDELL: Oh I'm not asking for how many trees, I'm not asking for one or two but the term deforestation has been used several times so I just want a clarification from my end as well.

MR. FLEISCHNER: Mr. Russell.

MR. RUSSELL: I'd have the occasion to drive Route 80 and along the sides are large walls which are my understanding is for sound attenuation. I think Siemens has done everything they can to buffer against sound with the fence; the Conifers would provide 12 month blocking. I think they provide more sound protection than deciduous trees do and I think Siemens has gone to great extent to minimize the impact on the neighborhood.

MR. FLEISCHNER: Mr. Van Ness.

MR. VAN NESS: Well I think it's important that we continue to look at this application from a broad point of view as opposed to just focusing on one particular subject matter. Whether it be a fence, whether it be trees, whether it be drainage, traffic, noise. And the totality of the project when I think back on what was already approved for this property I think that the residents of Flanders Crossing are actually going to benefit from this development application as compared to the prior application. And the reasons I say this is that first of all I look at it more of a matter of what do our rules say, what does the ordinance say, what does the zoning say? And then I take into consideration what is the benefit and the detriment to what is going to happen here. Yes there's going to be more traffic, yes there's likely to be more noise or more light however, traffic is also mitigated in a way that isn't today. You have truck traffic that's now going to be separated from the front of the building to rear and side loading docks as opposed to what the approved plan is and is and as opposed to what currently exists. You have an improvement in drainage and stormwater management which can only help that whole area of Flanders right now. There's already a problem as I understand it throughout the area outside of Flanders Crossing as well with drainage in that area. And how I understand stormwater management, this should be an improvement to that situation in your area. There's a significant increase in the setback of the buildings, to me that helps mitigate the height request. And by quadrupling the distance from the property lines that was already approved I can only see that as a benefit to the neighborhood. The agreement to buffer the HVAC systems on the roof, I think that's very important and I think that cannot be overlooked in any way by the applicant and should be a condition of any approvals should it be granted. The operations are generally indoors so it's an not an outdoor company. The interest in obtaining green status for the building, reducing the light output, reducing reflected light, reducing building lights visible through windows at night that's all very important to the neighborhood. And I would expect that you continue to work in that fashion to reduce the amount of light visible to the surrounding neighborhoods. The testimony of the applicant's planner I found very credible. He was knowledgeable, he understood the big picture outlook on this property, on this application, he wasn't solely focused on a fence or the trees or the buffer or the traffic or any one thing. He had a very broad picture and I thought that was well presented. The testimony regarding stormwater management last

week I also felt again as I had mentioned earlier was a positive. The negative issue that I feel needs to be continue to be addressed is the fencing and the buffering in between the driveway and the fencing. Understand and I understand that this applicant has the right to put that driveway at this point without any zoning permits required, without having to have any applications to the Planning Board since they've developed that right now well simply put. And I feel that the . . . I don't think that the discussion regarding the fence should be over tonight and I believe that the Homeowner's Association of Flanders Crossing if not just the residents directly affected but as they've already discussed the residents broadly feel that this may affect them and I don't see why either a small committee or some further discussion with the Homeowner's Association and the affected residents with a liaison from Siemens couldn't be organized to work out what the differences are on this fence. I don't know if it's possible but that's something that I would propose should happen. And I would also like to rely on the testimony that will be the least amount of disturbance to any existing trees and I did find a positive step towards that with the agreement that an arborist will be brought in to work on preserving as many trees as possible, and I found that was a positive response to the concerns of the neighbors. With that I end my comments.

MR. FLEISCHNER: Thank you. Brian?

MR. SCHAECHTER: Yeah I'll be real brief because my colleagues summed it up very well and as a neighbor who lives in Flanders Crossing you know we talk about property values you know I'm affected just like everybody else. I also have sat on that Board in Flanders Crossing for many years, probably six years I served as the President of the Association, and the only issue I have is the current Board that sits there now if the properties were affected got the same notice as everybody else. And they obviously didn't see an issue with moving forward if they were affected. If they're not affected, and I haven't pulled the you know how much of Flanders Crossing land is really affected by this, you know they would look at it and go this is a homeowner issue not a Flanders Crossing issue and they probably wouldn't have anything to say about it anyway. That's just the way it works if there's not any common ground that's involved in this the Board wouldn't even bother hearing it. So that being said I think Siemens has put together a good plan for the community. They've tried to mitigate everything that they could possibly have, they've been amenable to noise, they're going to work on keeping as many of Mr. Zambetti's trees and the homeowner's trees as possible that they can. And that's all we can ask for at this point so you know that's my comments.

MR. FLEISCHNER: Thank you. And just for the record Mike has no comment but I didn't want to leave him out. I didn't want to make him feel that hey we passed you by because you're down there. Gene or Chuck do you have anything that you'd like to add? Or your expertise on anything, you submitted your reports and the applicants commented on your items listed, was there anything else?

MR. BUCZYNSKI: Well I think from a design standpoint they met the ordinance requirement relative to stormwater management and the other ordinances so I really have nothing else to say. I think it was a well designed plan.

MR. FLEISCHNER: All right thank you. Chuck?

MR. MCGROARTY: The only thing I would say is I agree with Scott. If it's possible in the field I know there's a retaining wall off the corner of the property at some point to the extent possible they could save some of those trees. I think that should be encouraged.

MR. FLEISCHNER: You know with what Scott and Chuck said I think you know those are very valid points. I don't think you can really put that into a resolution but I would strongly emphasize that the applicant, and I get the sense they're certainly willing to work with homeowner's as best that they can. Again as was said this is your property and if the application is approved I mean you have the right to do but we would encourage you to work with the homeowners as best as you can. I mean that would be my and the Board's request. I understand that that really is not something in a resolution.

MR. VAN NESS: Well their approach to this is going to set the tone as to how much of a good neighbor they're going to be.

MR. FLEISCHNER: Okay with that being said anymore comments from the Board? If not is there a motion? Would someone wish to make a motion?

MR. RUSSELL: I'll move that PB 13-15 be approved.

MR. FLEISCHNER: With the appropriate . . .

MR. RUSSELL: With the appropriate variance . .

MR. BUZAK: Variances and waivers.

MR. FLEISCHNER: Variances and waivers.

MR. BEDELL: There was also the late addition of the sound proofing of the HVAC on the roof? You may have it in there but

MR. BUZAK: Yeah there's a number of conditions I'll just go through a few of them because obviously we have to draft a resolution. But they include the following compliance with the requirements of the engineer's letter of May 13 truck traffic is limited to daylight hours, parking areas will be adequately screened as we talked about the conflict running up the property line and screening that upper parking lot.

MR. MOORE: Mr. Buzak I think just the 7:00 a.m. to 10:00 p.m. for the truck traffic as I recollect that was the condition. I mean you can impose but that was the

MR. BUZAK: The sound defining devices around the mechanicals on the roof, the requirement that an arborist go through the trees and save any trees that can be saved based upon their expert opinion. The 6 foot and 12 foot high fence with the comments that were made by the Board members and the professionals. That's what I have so far but I obviously have to go through my notes to see anything else. And the variances would be obviously the height variance as requested which is a "d" variance, the three signage variances which are the "c" variances for the two ground signs, the less than 3 foot clearance and the location of the truck entrance sign of approximately a foot from the right-of-way as opposed to 20 feet as proposed.

MR. BUCZYNSKI: And they're in the design waivers too.

MR. BUZAK: Yeah I said waivers I didn't go through the actual design waivers but I can whatever . . .

MR. BEDELL: Well with that I'll second that motion.

MR. FLEISCHNER: Mr. Bedell seconds, any further discussion? If not Catherine roll call please.

MS. NATAFALUSY: Steve Bedell - yes
Joe Fleischner - yes
Nelson Russell - yes
Brian Schaechter - yes
Scott Van Ness - yes
Michael Koroski - yes

MR. FLEISCHNER: With that the application is approved the resolution is basically 30 days and there's a lot to write here so please

MS. NATAFALUSY: June 20th.

MR. FLEISCHNER: The resolution (inaudible) until June 20th. With that I'd like a motion to adjourn.

MR. SCHAECHTER Motion to adjourn.

MR. FLEISCHNER: All in favor?

EVERYONE: Aye.

(MEETING ADJOURNED AT 12:12 P.M.)

Transcribed by:
Lauren Perkins, Secretary
Planning Department

