

CONCORD TOWNSHIP BOARD OF ZONING APPEALS
LAKE COUNTY, OHIO
MEETING

Concord Town Hall
7229 Ravenna Road
Concord, Ohio 44077

January 9, 2019
7:00 p.m.

TRANSCRIPT OF PROCEEDINGS

Board of Zoning Appeals members present:

Ivan Valentic, Chairman
Francis Sweeney, Vice Chairman
Blair Hamilton, Member
Chris Jarrell, Member
Todd Golling, Alternate Member

Also Present:

Michael Lucas, Esq., Legal Counsel
Heather Freeman, Planning & Zoning Director/Zoning
Inspector
Marty Pitkin, Assistant Zoning Inspector

Melton Reporting
11668 Girdled Road
Concord, Ohio 44077
(440) 946-1350

1 7:04 p.m.

2 CHAIRMAN VALENTIC: Good evening. The Concord
3 Township Board of Zoning Appeals meeting for January 2019 is
4 now in session. I would like to introduce my Board. To my
5 far left is Skip Sweeney and Todd Golling, I am Ivan Valentic,
6 to my right is Chris Jarrell and Blair Hamilton, to our far,
7 far right is Heather Freeman, our Zoning Inspector.

8 Tonight, under the advice of our legal counsel, we
9 ask that anyone speaking must be sworn in. If you plan on
10 speaking, please stand and raise your right hand.

11 (Whereupon, the speakers were sworn en masse.)

12 CHAIRMAN VALENTIC: All right. Thank you. Please
13 be seated.

14 This evening, when presenting your case or
15 commenting, come to the microphone and state your name and
16 address for the record. Okay?

17 Heather, were the legal notices published in a
18 timely manner?

19 MS. FREEMAN: Yes, it was.

20 CHAIRMAN VALENTIC: Perfect.

21 We have one appeal tonight. A three-vote majority
22 is required to either approve or deny this appeal.

23 So first is Appeal Number 2018-41, Mr. Randy
24 Viviani, of 7757 Concord LLC, requests an administrative
25 appeal from the determination by the Zoning Inspector that a
26 zoning permit and a certification of zoning compliance are
27 required for a new business to occupy a vacant commercial
28 building, pursuant to Sections 11.01 and 12.01 of the Concord
29 Township Zoning Resolution, for the property located at
30 7757 Auburn Road, Unit 12, currently known as Permanent Parcel

1 Number 08-A-020-0-00-036-0.

2 Please come up and present your case.

3 MR. RESNICK: Thank you. My name is Melvyn Resnick.
4 I'm an attorney in Painesville, Ohio, one of the attorneys
5 representing the Viviani Family Limited Partnership, currently
6 known as the property number, which is 7757 Concord LLC.

7 CHAIRMAN VALENTIC: You've been sworn in, sir?

8 MR. RESNICK: Yes. And, if I may, I would like to
9 just kind of give a brief opening statement before I call
10 witnesses. This is kind of an involved matter and it's been
11 pending around Concord Township quite a while. So I want to
12 just kind of lay the groundwork as to what, basically, is
13 going on and why we have taken an appeal on this matter.

14 The Viviani Family Partnership originally acquired
15 the property back in 1999. It subsequently was transferred to
16 a wholly-owned limited liability company in 2018 called
17 7757 Concord LLC. That transfer occurred as a result of a
18 refinancing of the property.

19 In 2007, this property was rezoned from BX, which
20 was a combination of light industrial and commercial zoning,
21 to Gateway Business, and then it was subsequently rezoned
22 again to Capital District. At the time, this property was
23 being operated as a flex multi-tenant facility of four
24 separate buildings on the property on Normandy and, basically,
25 was grandfathered as a nonconforming use when the initial
26 zoning change occurred. And that zoning change occurred in,
27 as I said, in 2007, at which time light industrial warehousing
28 was permitted within these buildings.

29 Subsequent to that time, Mr. Viviani's family,
30 basically, were leasing these buildings to various industrial,

1 machine shop, warehousing facilities and was kind of going
2 along as it had gone since 1999.

3 In 2006 -- excuse me -- 2016, Concord Township,
4 through it's Zoning Inspector, started to issue violation
5 notices claiming that the businesses operated on the property
6 were not in conformity with the nonconforming use statute,
7 ordinances of this township. And from 2016 until just
8 recently, in 2018, the property continued to operate as it was
9 in the past until Heather then presented a notice to a
10 Mr. Hillier, who was in one of the units, that it was no
11 longer considered to be a nonconforming use and that he was in
12 violation of the zoning ordinances, failing to get a zoning
13 permit.

14 The issue at hand here is, what is considered to be
15 a nonconforming use for this property? And it deals with
16 whether or not the Concord Township is going to take a
17 position that the operation of a multi-tenant flex building,
18 as under the previous zoning of BX, can no longer operate on a
19 continual basis as long as those buildings are being leased
20 within a two-year period, which is the two-year nonconforming
21 requirements, okay, under the zoning code.

22 The issue that is being presented here is not
23 whether or not these buildings can operate as they did in the
24 past but the Zoning Department is taking the position that, if
25 a building unit was occupied for one particular use and that
26 use, whether it be a machine shop, went out, then that unit
27 had to be released to another machine shop. Otherwise, it
28 loses its classification as nonconforming.

29 And in that regard, there is a zoning violation
30 letter, dated November 2nd of 2016, in which, at that time,

1 Bruce Bullard, who was the Zoning Inspector, clearly stated
2 that a tenant known as Liquid Filtration Specialists had not
3 received a change in use permit, okay, when it located -- It
4 was initially located in Unit 3 and was a legal nonconforming
5 use when it was rezoned from Business Interchange to General
6 Business. However, when this tenant, the same tenant that was
7 in Unit 3, moved to Unit 17 in another building within this
8 property, it became noncompliant and, therefore, could no
9 longer operate and there was a zoning notification of a
10 violation.

11 And that's really one of the central points of what
12 our issue is here today, that it is inconceivable that you can
13 take a properly constructed building that had a legal, valid
14 zoning classification which permitted, under the zoning code,
15 light industrial use, mixed use, and say that those buildings
16 could no longer operate in that category as a light
17 industrial, could no longer get light industrial tenants in
18 there except if you put them in the same unit within a
19 multiplex building, they did the same thing. They couldn't
20 move from one unit to another.

21 So the question that we have been discussing with
22 the law department, with the Zoning Inspector, is, what is the
23 true definition of a nonconforming use for this property?
24 Does it cover all the buildings and the zoning classification
25 that was permitted back in 2007 when the zoning changed? The
26 zoning in 2007 clearly stated that you could have light
27 industrial uses within this complex on all of the buildings,
28 no matter what. Now, once it changed, it's been the position
29 of your department that that doesn't apply, that you're going
30 to lose the value of your building unless you can keep the

1 same type of tenant in each unit that allegedly was
2 grandfathered when this zoning changed.

3 Now, what I would like to do with this brief history
4 is call Mr. Randy Viviani and have him give some direct
5 testimony, exactly what's been going on in this facility,
6 because what -- if you take the interpretation of the Zoning
7 Department, you are basically taking the Viviani property. It
8 has no value, has little value on a going concern basis
9 because they have to find tenants within a two-year period
10 that were the same tenant, same type of business that was
11 operated when a tenant left. Otherwise, this property has to
12 be considered under the Capital District, which is basically
13 office space for which there is no demand at this time at this
14 location.

15 So with that, I'd like Mr. Viviani -- I'm not sure
16 where you would like me to put him but we would like to keep
17 this record. Where would you like him to --

18 CHAIRMAN VALENTIC: He'll have to come up there.

19 But first, before Mr. Viviani comes up, are there
20 any questions from the Board before we hear additional
21 testimony at this point? You guys, everyone is good?

22 MR. SWEENEY: I'll have some questions later.

23 MR. HAMILTON: I do have just one.

24 CHAIRMAN VALENTIC: Yeah, go ahead.

25 MR. HAMILTON: A point to make, really. So we can
26 consider this change of use of an existing building. We can
27 consider this change in occupancy. That is true. I mean, the
28 occupancy is changing and the use of the building is changing.

29 MR. RESNICK: The uses, it is our position that the
30 uses of buildings --

1 MR. HAMILTON: Maybe I shouldn't say building, I
2 should say units.

3 MR. RESNICK: Well, now, they're buildings. They
4 are multi units within buildings. The uses that were in
5 existence under the zoning code in 2007, before the first
6 zoning change, is grandfathered. Those uses enumerated -- and
7 I have an exhibit which lays it all out -- it's basically
8 light industrial, warehousing, general contracting,
9 warehousing, you know, whatever small machine shops are,
10 storage. They can exist in any unit within that complex, that
11 those -- that that classification for those buildings are
12 grandfathered.

13 CHAIRMAN VALENTIC: Okay. What -- Really quick, I
14 guess maybe I might have missed it in this. What's the use in
15 Unit 12 that changed, from what to what?

16 MR. RESNICK: Okay, let me -- I can do that.

17 (Whereupon, Appellant's Exhibit 1 was marked for
18 identification.)

19 MR. RESNICK: I have handed you what we have marked
20 as Appellant's Exhibit Number 1, which is a history of the
21 occupancy of Unit 12, which is the basis of basically what
22 this violation came under which we filed an appeal from. It
23 goes beyond just Unit 12 because it applies to all the units
24 and we'd like the thing clarified. It's not as to -- We don't
25 want to have in this multiplying appeals because they're all
26 going to have the same issue. So, hopefully, if we can get
27 past Unit 12, we can get past all of them.

28 But the history on Unit 12 is very -- is laid out in
29 this timeline. From November of '07 to October of '08, that
30 unit was occupied by Auburn Vocational School. It was a

1 hands-on tech room for HVAC training.

2 From '09 through -- it's actually one year of '09,
3 it was occupied by Rosedale Products for warehousing, light
4 manufacturing of filtration products.

5 From January '10 until December -- I am sorry. From
6 January of 2010 to December of 2010, it got occupied by LBL
7 Printing, which is warehousing of printed material and
8 packaging material.

9 In 2011 through June of 2018, it was occupied by a
10 Mr. Tom Hart as a motorcycle museum.

11 And from June of '18 to the present, it's being used
12 by Mark Hillier as a machine shop equipment storage for future
13 use.

14 So, basically, this unit has transferred, since the
15 zoning change, to a number of different uses. Some of those
16 uses weren't challenged. Mr. Hillier's use has been
17 challenged. But the premise upon which we bring this matter
18 on appeal is that every one of these uses, the history of this
19 unit, are all permitted under the prior BX zoning before it
20 was changed.

21 I hope that answers your question.

22 CHAIRMAN VALENTIC: Yeah. So currently it's serving
23 as equipment storage?

24 MR. RESNICK: At the present time. He has not
25 opened up his machine shop.

26 CHAIRMAN VALENTIC: So it will be a machine shop
27 eventually?

28 MR. RESNICK: Yes, that's his intent.

29 CHAIRMAN VALENTIC: Okay. So when I look at --
30 Again, I am just trying to understand.

1 MR. RESNICK: No, that's not -- I understand. Take
2 your time.

3 CHAIRMAN VALENTIC: In Section 11.01, it says
4 "change of use of an existing building, accessory building, or
5 lot," that requires a zoning permit when there is a change to
6 an existing building.

7 So when it changed from a motorcycle museum to a
8 machine shop, why not just file the zoning permit that's
9 required with Heather? And maybe I am oversimplifying it.

10 MR. RESNICK: No, no, no, it's very -- It's a very
11 good question. That was section what?

12 CHAIRMAN VALENTIC: 11.01, zoning permits are
13 required, it says, the zoning permit is required per "change
14 of use of an existing building, accessory building, or lot."
15 "Change in occupancy of a vacant commercial building" is also,
16 you know, requires a zoning permit.

17 MR. RESNICK: There is also a provision in your code
18 that, when you have a nonconforming use, zoning permits are
19 not required, okay, to operate in the nonconforming use, that
20 you don't have to get a permit. Okay? And I can -- that
21 is --

22 MR. SELBY: 7.02.

23 MR. RESNICK: 7.02, thanks. If I can read that in
24 your code, Section 7.02, and I am reading, it says, "A
25 nonconforming use or building existing at the time this
26 Resolution takes effect may be continued and no zoning permit
27 shall be required." No -- It can continue. And our
28 continuation is all within the prior zoning classification of
29 BX zoning, so those are automatically permitted.

30 The point that has happened here, as I read, the

1 Zoning Inspectors have taken a position that, each time a
2 tenant comes in, that it's not the same operation as was
3 before. They're saying, we're not going to permit that. They
4 are taking an absolute position that that's a change in use,
5 and it's not a change in use.

6 If I may call your attention to -- This is the
7 definition of "use" under your code. It's actually on
8 Section or -- On Section V, Item 208. It's under the
9 Definitional Section. It says the "use" is defined as, "The
10 purpose for which land or a building thereon is designed,
11 arranged, or intended, or for which it is occupied or
12 maintained. The use of land shall include but not be limited
13 to the occupancy of all buildings or structures situated on
14 any parcel of land." And under your zoning code, "use" is not
15 only deemed to be singular but it is to be deemed plural, so
16 it's "uses" and "building" are "buildings."

17 So we come to this issue of whether or not you're
18 taking a position that those uses that were permitted back in
19 2008 when the zoning was changed can be used in any of the
20 units in any of the buildings on a going-forward basis. To
21 say otherwise is to literally take this property, to lower its
22 value so that my client can no longer operate what he bought
23 for over two and a half million dollars or \$2.9 million in
24 1999. You're telling him, a citizen of this community, that
25 these buildings for which you made an investment of, you're
26 limited to finding the same tenant, same type of tenant within
27 a two-year period. Otherwise, you lose. You've got to go to
28 Capital, you've got to be part of the Capital District, which
29 is a myriad of problems, especially with the location and
30 what's here.

1 It just, it makes no sense to tie and take a man's
2 property based upon a faulty interpretation of what your own
3 code sections provide for nonconforming use.

4 And as I said, all of the zoning letters -- and I
5 will admit them in, too -- that were sent out clearly show the
6 intent of the Zoning Department not to agree with our
7 interpretation but to agree with a provision that it has to be
8 the same tenant type in each unit. In fact, they can't even
9 move from Unit 3 to Unit 17 within this complex, and that's a
10 violation.

11 Now, as long as I'm referencing your code, if I
12 may --

13 CHAIRMAN VALENTIC: I guess, how do you get to that
14 interpretation that that's, that that's their stance? Because
15 maybe I am missing something but, when I read it, I just see
16 that they're asking you, they are telling you that the use
17 changed in the unit, to submit the zoning permit for that use
18 change.

19 MR. RESNICK: It's futile. They're not going to
20 grant it. It's futile. They are telling us that they're not
21 going to grant it if it's a change in the business that was
22 operated.

23 MS. JARRELL: Where does it say that?

24 CHAIRMAN VALENTIC: Yeah, where does it -- It's only
25 a two-page letter.

26 MR. RESNICK: It says that in the other
27 notifications that they've sent us. It says that in my
28 meeting with Heather back in August of 2018. It says that --
29 and I am under oath -- in my meeting with your law director,
30 at that meeting when they specifically told us that our

1 interpretation is not what they're going on. They're going on
2 the fact that it has to be the same type of business.

3 Now, you know, we can -- This is every unit there.
4 And I can't put in -- If I have an office space, they're not
5 going to let me put an industrial user in there. They're not
6 going to let me do it.

7 MS. JARRELL: I think, I think I am personally
8 having an issue with trying to determine what the exact issue
9 is. Is it that there was not a zoning permit issued? It
10 wasn't, it wasn't requested? There was no payment made to get
11 a permit? What happened?

12 MR. RESNICK: The issue is --

13 MS. JARRELL: You keep saying that Concord will not
14 allow it, no matter if they requested the permit.

15 MR. RESNICK: That's correct.

16 MS. JARRELL: How do -- Is that the case? I mean,
17 if they asked for a permit -- I mean, I know when commercial
18 users are going to commence a new lease, they have to get a
19 permit or a notice of occupancy. That's standard operating
20 procedure.

21 Is that the intent, Heather? Are we going to say
22 that --

23 CHAIRMAN VALENTIC: Maybe that's a Mike question.

24 MS. JARRELL: Well, whoever, I am just posing the
25 question. Was that the intent that the permit would not be
26 issued because it wouldn't comply with the Capital District
27 restrictions?

28 CHAIRMAN VALENTIC: And maybe I will answer that
29 question. I guess, wouldn't you need to apply? Because what
30 I am not following is the Zoning Department is telling you

1 you've got to obtain a zoning permit, you know, a zoning
2 permit because your change of use in the unit changed. But
3 you're appealing that on the basis of, you know, it's
4 nonconforming, it's always going to be nonconforming, they're
5 not going to issue it.

6 MR. RESNICK: It's on two bases. Number one, a
7 zoning permit is not required for a continued use of a
8 nonconforming use. Okay? It comes down to the question of,
9 what is your interpretation of a nonconforming use? Okay?

10 As I showed you -- And I should mark this. This is
11 Appellant's Exhibit Number 2.

12 (Whereupon, Appellant's Exhibit Number 2 was
13 marked for identification.)

14 MS. JARRELL: It says in our Zoning Resolution,
15 Section 11.01, Item D, that any change of a nonconforming use
16 to a different use, conforming or nonconforming, it requires a
17 zoning permit. I mean, did they not apply? Did Mr. Hillier
18 not apply for a zoning permit?

19 MR. RESNICK: He didn't apply for a zoning permit
20 because, number one -- two reasons -- it's not, it's our
21 interpretation that it's not required; and, number two, that
22 it was a futile act because of the prior, prior
23 interpretations that your Zoning Department is making in
24 connection with the fact that it has to be the same use, and
25 Mr. Hillier's use was not the same use as the use that was on
26 the property at the previous time or in 2007.

27 And if you can take a look at this zoning violation
28 for Unit 17 which was issued in 2016 -- And you have to
29 understand.

30 CHAIRMAN VALENTIC: Give it to Blair and we will

1 just pass it along.

2 MR. RESNICK: You understand, understand a little
3 bit of the circumstances of this. Mr. Viviani is refinancing
4 his buildings. The bank said, "I want a zoning compliance
5 letter to show that you're in compliance." I then went to the
6 law department and Heather and said, "Can I get a zoning
7 compliance letter?"

8 The answer that I received from both of them was,
9 there are too many violations outstanding, including one of
10 these. And until you correct those, we're not going to do it.

11 So I requested a meeting. I went to the meeting
12 with my client. And the issue was raised at that meeting by
13 both of them that, exactly what I am saying, we are not going
14 to give you a zoning compliance letter if you are putting in
15 tenants that are not the same tenants that were there at the
16 time they -- the zoning change went into effect.

17 In other words, if you take a look at this letter,
18 it says this guy moved from Unit 3 to Unit 17 and he's now not
19 in compliance because he's in a different unit. They're
20 looking at units for use versus building uses. The entire
21 buildings, four of them, are nonconforming grandfathered
22 buildings and they should be permitted to put in any use that
23 was under the prior zoning articles of BX.

24 Now, I filed our appeal and submitted a brief with
25 case law, which I ask be incorporated as part of this
26 record -- I assume it is because it's there -- and it outlines
27 the legal aspects of what a nonconforming use is.

28 So in answer to your question, your code, as I
29 indicated, it stated that no zoning permit is required for
30 nonconforming uses, no zoning permit. It's right there in the

1 code. So if no zoning permit is required because it's
2 nonconforming, then we don't have to apply.

3 And we would be more than happy to comply and apply
4 for any of these but we were told, "You're not going to get
5 them." So why should we do a futile act? Why should we go
6 through this time and expense? We can't get a zoning
7 certificate to complete our refinancing requirements, which
8 could cause this whole loan to be called into default as a
9 result of the fact that a bank is relying on that Mr. Viviani
10 is operating his buildings within the zoning requirements of
11 Concord Township.

12 And so I want to show you something else which I
13 think will help. I have a summary of the tenant history in
14 many of these buildings and I would like to mark this as
15 Appellant's Exhibit 3. I think you will get an understanding
16 of what's going on.

17 (Whereupon, Appellant's Exhibit Number 3 was
18 marked for identification.)

19 MR. RESNICK: This is an analysis of the various
20 units and who's been occupying those spaces since 2008. As
21 you can see, they consist of sales, service, installation
22 facilities, light manufacturing of filtration products,
23 general contractor, warehousing and light manufacturing,
24 warehousing and light manufacturing, HVAC contractor,
25 printing, warehousing, an HVAC school, warehousing and
26 packaging, a motorcycle museum, and a machine shop. These are
27 all in there.

28 Now, I would be happy for somebody to tell me that I
29 could put in any light industrial permitted use back there in
30 BX zoning in any one of these units in that facility, as long

1 as they got an occupancy permit, and they wouldn't be denied
2 because it's a different use than was in that unit previously.
3 That's the crux of this whole question. It goes to Hillier
4 because he's in this situation.

5 The letter I showed you back in 2016 clearly shows
6 the mind-set of the Concord Township. And I have other
7 letters here that I will put into evidence that show the same
8 thing, that they're refusing to permit changes in use of the
9 business, not of the building. They won't accept that it was
10 zoned light industrial. And as long as we continue to fill
11 those buildings with tenants that meet the BX zoning when it
12 was changed and there is not an interruption in two years, we
13 should have the absolute legal right to use our buildings to
14 make a livelihood.

15 We are not hurting anybody. I mean, right outside
16 our facility is the CEI, is the CEI trucks. Right next to
17 that is some marble works place. Okay? They're not --
18 They're grandfathered but they're still operating but they're
19 operating one individual type of business. We're operating a
20 flex building, multi-tenant. It's unreasonable, it's
21 arbitrary, it's capricious to consider that we have to keep
22 those units occupied by the same businesses, and there is
23 nothing in your code that says that, nothing.

24 Not only that, I want to call your attention,
25 because we're dealing with your actual codes, this is
26 Appellant's Exhibit Number 4, which is a copy of your Concord
27 Township Comprehensive Plan.

28 MS. FREEMAN: Can you be more clear on what version
29 that one is because we've had a few in the past.

30 MR. RESNICK: That one was 2015, I think, 2015.

1 (Whereupon, Appellant's Exhibit Number 4 was
2 marked for identification.)

3 MR. RESNICK: I want to read one specific paragraph
4 from that Comprehensive Plan which was enacted and adopted by
5 this township back in 2015, and it appears on page 33 of that
6 plan, bullet point Number 3:

7 "Several important, long-standing industrial
8 businesses" -- industrial -- "exist in the BX District. While
9 there is no guarantee of their continued tenure, it is
10 important that the Township encourage their continuation and
11 not create conditions which negatively impact their operation.
12 They are, of course, 'grandfathered' while they remain in
13 compliance with current zoning regulations and may remain in
14 place despite any zoning changes."

15 This is your own Comprehensive Plan that was
16 adopted. And I am going to have -- I am sorry -- another page
17 marked, which is the page I just read from, so that could be
18 the next exhibit.

19 (Whereupon, Appellant's Exhibit Number 5 was marked
20 for identification.)

21 CHAIRMAN VALENTIC: So, Mr. Resnick, I guess what I
22 am still struggling with --

23 MR. RESNICK: Okay.

24 CHAIRMAN VALENTIC: And, Mike, tell me if I should
25 be thinking about this or the Board should be thinking about
26 this differently. I am still not -- I understand the
27 conforming use. But when I read this 11.1, it's telling me
28 that any change of nonconforming use to a different use,
29 conforming or nonconforming, or the expansion or extension of
30 a nonconforming use requires a zoning permit.

1 I mean, wouldn't it -- I guess I am asking, would it
2 make more sense to apply for the zoning permit, be denied, and
3 then file appeal for the, for that zoning permit?

4 MR. RESNICK: Well, that's a very, very good
5 question. Okay?

6 CHAIRMAN VALENTIC: I am trying to understand.

7 MR. RESNICK: I understand. I want you to
8 understand how we got do this point.

9 CHAIRMAN VALENTIC: Okay.

10 MR. RESNICK: Okay? Because this wasn't the route
11 that I wanted to take. The route I wanted to take resulted
12 from a meeting on August 1, 2018, with your law director and
13 Heather, at which time they asked me to provide them with a
14 memorandum explaining why our position was correct and their
15 position was wrong. I supplied that memorandum to Mr. Lucas,
16 who I never, ever heard back from. Made repeated calls to
17 him. He never got back to me. Okay? I never heard from
18 anybody.

19 What happened was, we then get two violation
20 notices, one, the first one which Heather sent out, which was
21 never served on my client. But we got a second one. We
22 didn't even know about the first one. We got a second one
23 saying they were sending it over for legal action.

24 You have to understand that, under administrative
25 law, and the law director will indicate, if we don't appeal
26 from that particular ruling, it's going to be res judicata
27 against us and we're going to have waived it.

28 This is the first notice that we received that the
29 Township intended to take legal action against my client,
30 first time. The other ones were just warning notices. They

1 never did a thing from 2016 until 2018. They sent out
2 letters. They never enforced them. You know, they talked to
3 our tenants. They gave them a hard time. Mr. Viviani can
4 testify that they lost tenants because they came out there and
5 said, "Oh, you can't operate in here. You're a nonconforming
6 use." I will get into that testimony.

7 So we had no choice, Ivan, but to file the appeal on
8 that particular issue in order to preserve our legal rights
9 for court should we not get the property remedy and redress
10 before this body, so we did it.

11 I am asking you that, rather than jump through the
12 hoops, your Zoning Inspector is here, your law director is
13 here. They will tell you that they don't agree with my
14 interpretation that we should be permitted to use any
15 industrial use that was on this property permitted back in
16 2007. That totally hamstring's my client's ability to utilize
17 his property to the fullest extent.

18 In my mind, if you don't want him operating there,
19 then take his property legally, not illegally -- which is what
20 you are doing here -- and pay him for the buildings because
21 you're telling him he can't continue to operate.

22 His property depreciated in value by \$690,000 when
23 he refinanced it because the appraiser said, "Your income
24 stream is less than what it was when you were originally
25 owning this property." And why is the income stream so low?
26 Because they won't permit anybody to go in there that wants to
27 operate.

28 MS. JARRELL: I've got to stop you right there.
29 That is not the only reason why the income stream has
30 depreciated. That is absolutely not.

1 MR. RESNICK: Okay.

2 MS. JARRELL: I am in the real estate industry, so I
3 know that is not the case. It probably contributed to the
4 entire recipe of factors. I am familiar with the history of
5 the property.

6 But what I do want to ask our law director and
7 Heather is, what exactly is the position that Concord Township
8 is taking?

9 MR. RESNICK: That's a very good question.

10 MR. LUCAS: Let me first indicate that, although
11 Attorney Resnick, in his typically eloquent way, is trying to
12 broad-brush this into a far greater parameter in terms of what
13 is before this Board, there is only two issues before this
14 Board on the appeal and both of them revolve solely and
15 exclusively around Unit 12 and is based on the letter that was
16 sent on November 26. They've appealed that.

17 And the only identification within that letter as to
18 violations is under -- which has already been discussed
19 partially -- Section 11.01, captioned Certificate of Zoning
20 Compliance, and Section 12.02, by occupying a vacant
21 commercial property without first acquiring a zoning permit.
22 Those are the only two issues. They haven't done that.

23 So you've got to determine whether their appeal is
24 correct that they don't need to do that, and that's it. All
25 the other issues regarding the whole building, the units, the
26 other uses that are available and that, it doesn't have
27 anything to do before this Board in reference to what was
28 appealed under the November 26, 2018, letter, and specifically
29 with reference to Unit 12. That's it.

30 MR. RESNICK: Why don't you respond to whether or

1 not your position or Heather's position is that Mr. Hillier's
2 use, because it was different than what was in there before,
3 is not permitted in that?

4 MR. LUCAS: I am not giving an advisory opinion
5 tonight on that. I think -- Well, there's a lot of things I
6 could say but I am not going to.

7 MR. RESNICK: There's a lot I could say, too.

8 MR. LUCAS: I am sure there is but we will keep that
9 between you and I, I guess.

10 MS. JARRELL: Well, I mean --

11 CHAIRMAN VALENTIC: Hold on.

12 MS. JARRELL: It seems like there is conflicting
13 text in our Resolution because I read where it says that a
14 zoning permit is not required but, in 11.01, it's definitely
15 required. So the fact that the permit --

16 MR. RESNICK: Can I just interrupt you for one
17 minute on 11.01? It says it's required under B, okay, if
18 there is a change of use of an existing building.

19 MS. JARRELL: I am looking at D.

20 MR. RESNICK: Well, let's look at -- Can I look at B
21 first?

22 MS. JARRELL: Sure.

23 MR. RESNICK: Okay. Because the first question
24 you've got to reach is, was there a change in use? These are
25 permitted under the industrial use that was in effect under
26 BX, so there is no change in use.

27 MR. LUCAS: With all due respect, and briefly to
28 interrupt, if you look at 11.01(C), that zoning permit is
29 required if a nonconforming use -- and, granted, a
30 nonconforming use -- is changed to a different nonconforming

1 use. And that specifically addresses the situation we're
2 talking about here.

3 MR. RESNICK: But it goes, again, it goes to whether
4 or not you are using the term "use" as a specific operating
5 use versus what your definition under your code section
6 specifically says in definition section of 208, the use is
7 "the purpose for which land or a building thereon is
8 designed" -- these buildings were designed as flexible
9 multi-tenant buildings -- "arranged, or intended for which it
10 is occupied or maintained." Okay? "The use of land shall
11 include but not be limited to the occupancy of all buildings
12 and structures."

13 So we come right back, Michael, to the same question
14 of, what do you consider a nonconforming use?

15 MR. LUCAS: Nobody has said in the appeal document
16 that you're appealing from -- And I understand these are
17 arguments you want to make. All right? I respect that
18 because I have a lot of respect for you and Rick. They're not
19 saying that this can't be permitted as a use. They're saying,
20 by the November 26 letter, which is the only document that's
21 the subject of this appeal, even though you're bringing in a
22 lot of -- and that's your right -- you're bringing in a lot of
23 other information regarding other uses, other alleged
24 violations and that, the only violations in this November 26
25 letter include violations of 11.1 and 12.01, both of which
26 require the act of requesting a permit.

27 And, again, 11.01(C) specifically talks about and
28 actually abides by your argument, to some extent, that when
29 you change a nonconforming use to another different
30 nonconforming use -- except in your argument that everything

1 that was set forth within the code at the time that the zoning
2 specification changed, all right, you still can avail yourself
3 of other nonconforming uses, which, in part, I would argue, at
4 least in terms of 11.1(C) is true because they're saying
5 within that document you can have a nonconforming use under
6 the existing zoning at that time, change it to a new
7 nonconforming use, and you apply then for a permit.

8 MR. RESNICK: Okay.

9 MR. LUCAS: That's what 11.01(C) says.

10 MR. RESNICK: Mike, I understand that. And if it
11 weren't for the prior violation letters back in 2016, which
12 took the position that it had to be the same type of business,
13 we wouldn't even have this argument. Why do you want to not
14 deal with the crux of the question here?

15 MR. LUCAS: Because that's not how administrative
16 law works.

17 MR. RESNICK: Well, it is.

18 MR. LUCAS: No, it's not.

19 MS. JARRELL: I have a question.

20 MR. LUCAS: You and I respectfully disagree.

21 MS. JARRELL: I'm going to stop you two right now.
22 I have a question because I understand what you're both
23 saying. Here is a question: If Mr. Hillier had applied for
24 the permit, and knowing that it's a light manufacturing use
25 that would be ordinarily used in a flex space, would the
26 permit have been issued? That's the first question. Can
27 you -- Can Concord answer that?

28 MR. LUCAS: It's up to Heather to answer that first.

29 MS. FREEMAN: I think that Mr. Hillier would have to
30 provide some evidence that he is a legitimate light

1 manufacturing business. I have never spoken to the owner or
2 the occupant of Unit 12.

3 MS. JARRELL: Let's assume that he provides that.

4 MS. FREEMAN: Right off the top of my head, I am not
5 sure if light industrial use in that building at the time that
6 the building became nonconforming --

7 MS. JARRELL: But the property itself was --

8 MS. FREEMAN: So I would have to look at that. I
9 can't give you an answer right now.

10 MS. JARRELL: The property itself was BX or general
11 business and these uses in a flex space were permitted. If he
12 was to supply substantiation to you that it, it followed suit
13 and correlated with the light manufacturing, light industrial
14 use, would the permit have been granted?

15 CHAIRMAN VALENTIC: Well --

16 MS. JARRELL: I've got to know the answer to that
17 question because the letter that Mr. Resnick provided, which
18 is insisting that it complied with the Capital zoning
19 district, doesn't make any sense.

20 MS. FREEMAN: What letter are you referring to?

21 MS. JARRELL: But I just -- Could you answer the
22 question?

23 MS. FREEMAN: Well, honestly, I would have to go
24 back and take a look, at the time of rezoning, whether or not
25 a machine -- What did you say his use was?

26 CHAIRMAN VALENTIC: Machine shop.

27 MS. FREEMAN: Machine shop, Mr. Hillier?

28 MR. RESNICK: Yeah.

29 MS. FREEMAN: -- if a machine shop was, in fact, a
30 permitted use under the BX, you know, prior to it becoming

1 rezoned and whether or not that use continued with that
2 building up until this date.

3 MS. JARRELL: So even if it was a different type of
4 light industrial tenant and it complied with the original
5 zoning of BX, would the permit have been issued?

6 MS. FREEMAN: As long as it didn't expire over
7 the two years, right. As long as the use, the nonconforming
8 use --

9 MS. JARRELL: So as long as the unit wasn't vacant
10 for two years?

11 MS. FREEMAN: As long as that building had always
12 continued to have that machine shop use.

13 MR. RESNICK: The building.

14 MS. JARRELL: The building or the unit?

15 MS. FREEMAN: The building.

16 MS. JARRELL: Okay. So --

17 MS. FREEMAN: I mean, there's four buildings on the
18 site. So the letter you're referencing, the Liquid Filtration
19 Specialists, Unit 3 is in Building 1, Unit 17 is in Building
20 4, I believe, or 3.

21 MS. JARRELL: I don't get why --

22 MS. FREEMAN: It's not, this is not what we're here
23 for.

24 MS. JARRELL: I don't get why we're looking at an
25 industrial property that has several buildings on it with
26 multiple units and we're treating those independently. I
27 don't understand that. Why are the units being treated
28 independently? It's like looking at a shopping plaza where
29 it's zoned retail and somebody else -- one of the units
30 changes hands and the new tenant is going to have to get a

1 permit to say that it complies with the retail, period.

2 It's the same in industrial. Why are we treating
3 them independently? It's one property. It was an industrial
4 BX District property. Why are we looking at these units
5 independently and making sure? I mean, I can see if it was
6 completely, you know, heavy manufacturing, but that's why you
7 apply for the permit.

8 I think Mr. Hillier should have been gotten the
9 permit so that Concord Township could make sure that it
10 complies with the nonconforming usage.

11 CHAIRMAN VALENTIC: But he never applied. That's
12 the thing.

13 MS. JARRELL: I know, that is the problem.

14 CHAIRMAN VALENTIC: That's the problem.

15 MS. JARRELL: That it --

16 CHAIRMAN VALENTIC: So they were never able to
17 determine whether if he should receive the permit or not.

18 MR. RESNICK: I think Heather just kind of gave the
19 answer that he wouldn't have gotten the permit. He wouldn't
20 have gotten the permit because, just like building -- the one
21 I gave you where that filtration moved from Building 3 to
22 Unit 17, that's Unit 17 in another building, they denied him.
23 They said you're violating it because you moved to another
24 building. They're treating every unit separately.

25 MS. JARRELL: Why are we doing that?

26 MR. LUCAS: I don't think that letter indicates
27 that.

28 MS. JARRELL: That's what this letter right here
29 absolutely indicates.

30 MR. LUCAS: No, it does not. It says you need to

1 apply for a permit and you need to apply for a zoning
2 certificate.

3 CHAIRMAN VALENTIC: That is the one.

4 MR. LUCAS: It doesn't say --

5 CHAIRMAN VALENTIC: This is from November 2nd that
6 Bruce sent.

7 MR. LUCAS: We're not dealing with that. We're
8 dealing with the letter that's the subject of this appeal,
9 which was, again, on November 26, 2018. That's what we're
10 dealing with here.

11 MS. JARRELL: Okay.

12 CHAIRMAN VALENTIC: The use -- That's where I was
13 trying to get to and I wasn't trying to cut you off but we
14 have to look at this. I am looking at this as they need -- do
15 they need to go in for a permit? And the change, the change
16 in that use of that building, does that require them to come
17 in and get a new zoning permit? And then whatever happens
18 with that zoning permit, that's not what we're concerned with
19 right now.

20 MR. RESNICK: But what I am saying is there is a
21 whole basis of law that says if there -- if you do a futile
22 act, you don't have to do it. We've been told that we're not
23 going to get it. So why go through this process if they're
24 taking a position that you're not going to get it, just like
25 that happened where he moved from one unit to another.
26 They're saying, "No, you've got to stay in the same unit.
27 It's got to be in the same business." It's futile. So why
28 should we have expensive legal time going through all this?

29 We've asked for a determination of, give us, give us
30 what you're willing to do. Okay? We're not -- All we want to

1 do is rent our buildings. Okay? We have a ton -- and I will
2 give this testimony -- a ton of people who want to put in
3 light industrial warehousing in there. They don't come. They
4 go in there and then they're told they can't do it.

5 Mr. Bullard goes out there and tells them they can't.

6 Randy, I mean, you are the one who is in charge.
7 Can you enlighten them on what's happened over this --

8 CHAIRMAN VALENTIC: Well, let's -- Go ahead and then
9 I want to continue the --

10 MS. JARRELL: I don't know that Heather ever gave
11 the answer. Did you give the answer?

12 CHAIRMAN VALENTIC: No.

13 MS. JARRELL: You didn't give the answer.

14 MS. FREEMAN: I gave the answer that I would need to
15 do more research. I don't have an answer --

16 MR. GOLLING: To be fair, you would have to apply
17 before she can say yes or no.

18 MR. SWEENEY: Yes.

19 MS. JARRELL: Okay. Let's just, let's just
20 speculate for a moment, can we? Let's say Mr. Hillier -- And
21 it could be anybody. It could be Joe Schmoe going in there
22 with the light industrial usage asking for a zoning permit.

23 CHAIRMAN VALENTIC: Can I just --

24 MS. FREEMAN: Respectfully, that's not what we're
25 here to debate this evening.

26 MS. JARRELL: No, but is it nonconforming or not?

27 CHAIRMAN VALENTIC: That doesn't matter, right,
28 Mr. Lucas?

29 MS. JARRELL: It's still nonconforming.

30 MR. SWEENEY: That's the not the issue. He's making

1 it the issue. I don't think this is the proper forum for this
2 proceeding. I think this is totally inappropriate.

3 MR. LUCAS: Well, it's not --

4 MR. SWEENEY: I really do.

5 MR. LUCAS: Let me just say it's not inappropriate,
6 number one, because putting aside the arguments that we're
7 having a friendly colloquy on regarding nonconforming, his one
8 point is that, as he's arguing it's a nonconforming use, he
9 didn't need, under the "use" definition, all right, to apply
10 for the zoning certificate as required under 11.01.

11 MR. SWEENEY: But, apparently, there is disagreement
12 in that. He's appealing -- He's not even appealing a
13 decision. He's creating a redress and calling it an appeal.

14 MR. LUCAS: Well, he's appealing the interpretation
15 of the November 26 -- He's allowed to do that. He's appealing
16 independent of the nonconforming.

17 MR. SWEENEY: What about declaratory judgement?

18 MR. RESNICK: Rick, do you want to say something?

19 MR. SELBY: May I, Mike?

20 MR. LUCAS: Yes.

21 CHAIRMAN VALENTIC: Come up to the microphone,
22 please.

23 MR. SELBY: I will.

24 CHAIRMAN VALENTIC: And you've been sworn in, sir?

25 MR. SELBY: Yes.

26 MS. JARRELL: And you are?

27 MR. SELBY: Rick Selby, I'm Mel's partner.

28 MS. JARRELL: Oh, okay.

29 MR. SELBY: At Dworken and Bernstein. And I think
30 this will help focus on the issue you're talking about and the

1 interpretation of the statute. When you talk about whether or
2 not a permit, the 11.01 permit, is needed, when it talks about
3 7.02, it talks about how a nonconforming use, you don't need
4 to get that permit.

5 When you look at the definition of "use," it talks
6 about the use for the entire parcel of property, which is all
7 four of these buildings. That's the definition of "use" in
8 Section 208.

9 So when you look at the 11.01 definitions of all of
10 these things, it talks about, in C, a change in occupancy of a
11 vacant commercial building. Okay? This building was never
12 vacant. We're talking about units. When you look at D, "Any
13 change of a nonconforming use to a different use, conforming
14 or nonconforming," because these uses were in all four of
15 these buildings, there isn't a change in use. That use has
16 always been done.

17 So when you're reconciling 7.02 with 11.01, as long
18 as this is a nonconforming use that has always been in there,
19 11.01 isn't necessary.

20 So the point, one of the points of the appeals, in
21 addition to the other things that Mel has argued, is that he's
22 being cited for not getting that permit. But there's the
23 argument, when you look at the definitions under 7.02 that
24 says a permit is not needed for nonconforming use and the
25 definition of "use" and you look at these things talking about
26 vacancy of the entire building, there has not been a change in
27 use. There hasn't been a nonconforming use.

28 So part of the argument, and that's how it relates
29 to this appeal, is the 11.01 isn't applicable because there
30 hasn't been a change in use. There hasn't been anything that

1 would trigger the need to get that permit based on 7.02 and
2 the definition of "use."

3 Does that help, at least, where we're coming from
4 and why we think this is relevant? Because if you
5 determine --

6 MR. LUCAS: That argument, again, is why the appeal
7 in terms of whether that permit is permitted --

8 MR. SELBY: Right.

9 MR. LUCAS: -- is a viable appeal before this Board.

10 MR. SELBY: If you determine this is a nonconforming
11 use and that you should be looking at this for the entire
12 property as opposed to each unit individually, then this
13 appeal is appropriate because, you know, we shouldn't be cited
14 for not getting the permit because we never needed to get the
15 permit in the first place.

16 MR. LUCAS: Right.

17 MR. SELBY: Mel, I will let you go back.

18 MR. RESNICK: Thank you. I think this was, Chris,
19 was very important. I am going to have this marked, which is
20 the appellant's next exhibit, just so you have it in front of
21 you.

22 (Whereupon, Appellant's Exhibit Number 6 was
23 marked for identification.)

24 MR. RESNICK: These are the permitted uses of BX
25 zoning -- well, okay, I have the application -- and it lists
26 all of the things that we are actually operating within these
27 four buildings and they were all permitted under the BX
28 zoning. And it's fairly -- It's really very general. It's
29 all under there, automotive repair, light manufacturing and
30 construction.

1 And when you look at your definition in the code
2 under, you know, "contractors" and "construction," it's not
3 limited to one specific trade. It lists a number of trades.
4 So if you were a painter, painting contract, you could be then
5 a plasterer and use that light facility.

6 But that's not how this has been interpreted. That
7 is not what these zoning violation letters have indicated in
8 the past. Okay? And in all deference to Heather, you know,
9 she's not going to make a commitment to that.

10 And I have no problem in adjourning this, okay,
11 hearing and coming back at another time when Heather can take
12 a look at this and answer the question that Ms. Jarrell
13 indicated, is, can we put in any one of these operations in
14 any one of these units within the four buildings which we
15 claim are all nonconforming use facilities? That's really the
16 issue. If that issue goes away, we don't have appeals. We
17 don't go to Common -- We don't do anything.

18 So I am more than happy. I am not looking to make
19 this into a major litigation matter that's going to cost
20 everyone a lot of time and money. It's an issue that's
21 absolutely indicated to this particular property. We're just
22 stuck in there. I don't know if anybody else has this issue.

23 And, you know, I am not trying to say you didn't
24 have the right to rezone property. You did. That's within
25 your purview. But when you rezone this property, you rezone
26 our property, we should be able to continue to operate it as
27 we did before. We are not making any hazardous waste. We're
28 not bringing anything obnoxious in there. We do have some
29 office tenants. We have light industrial. We want to
30 continue with whatever we can legally lease in there but we

1 want -- We don't want to be hamstrung to say, as happened in
2 Unit 3 to 17, that we can't, we can't move one tenant to
3 another building. It's ludicrous.

4 So I am not opposed to having an adjournment, I am
5 not opposed to having any further review of the matter, and I
6 am not opposed to coming back. Okay?

7 MR. LUCAS: Why don't -- Maybe an adjournment is a
8 good idea.

9 MR. SWEENEY: Yeah.

10 MR. LUCAS: But the other thing is, why don't you
11 just apply?

12 MR. RESNICK: Why would I apply, Michael, if it's
13 going to be denied on the basis that we've already been told
14 that that's --

15 MR. LUCAS: I don't think -- I am here to tell you,
16 I don't think with one hundred percent I can tell you it is
17 going to be denied.

18 MR. RESNICK: Well, that's not how it was presented
19 to us.

20 MR. LUCAS: Well, at the initial discussion before
21 we looked at the law, that's true. I got some law contrary to
22 your memorandum but -- and that's fine. But why didn't you
23 apply and we will consider this then continuing forward as
24 part of the record.

25 MR. RESNICK: Fine.

26 MR. VIVIANI: We can try.

27 MR. LUCAS: That way, we'd have a, in part, we would
28 have an idea then detailed on the application what the precise
29 use is factually.

30 MR. RESNICK: Okay.

1 MR. LUCAS: And we'll consider, as legal counsel for
2 the Board, we will consider that denial then as included as
3 part of the overall appeal.

4 MR. RESNICK: And what if we have another tenant
5 currently that's interested in occupying a space for light
6 industrial? Can we make that application at the same time?

7 MR. LUCAS: Yeah. You know, I am not going to --
8 You're too smart for me to say yes or no to you, sir. All
9 right?

10 MR. SELBY: We can always make application.

11 MR. LUCAS: You can always make the application.

12 MR. RESNICK: All right. I would then, without
13 change -- keeping the record open?

14 MR. LUCAS: Absolutely. And we will include in the
15 record and we will stipulate to that on behalf of the Board
16 that whatever the, you know, depending on what the decision is
17 regarding the two applications that are subject to the letter,
18 all right, that will be part of it and it will be considered
19 properly filed without any defects in terms of you were
20 premature, whatever. Would that suffice, Mel?

21 MR. RESNICK: That's okay, yeah. I am more than
22 happy to do that.

23 MR. LUCAS: Rick?

24 MR. SELBY: Yeah, I am fine with that.

25 MR. LUCAS: Subject to the Board approving that
26 suggestion, by the way.

27 MS. FREEMAN: Mr. Lucas, can you clarify? You said
28 subject, subject to the two applications in the letter. What
29 do you mean? So they need to apply for the zoning and for the
30 zoning certificate of compliance?

1 MR. LUCAS: Yeah.

2 MR. SELBY: Yeah.

3 MS. FREEMAN: So --

4 MR. LUCAS: They need to -- The letter says that
5 there was a failure to comply with 12.01 and 11.01.

6 MS. FREEMAN: Right. So the zoning certificate of
7 compliance is issued after the zoning permit has been approved
8 and, you know, once the Zoning Inspector has been able to --

9 MR. LUCAS: Well, they're making application --

10 MS. FREEMAN: Okay.

11 MR. LUCAS: -- for the zoning permit.

12 MR. RESNICK: I just want to have one more
13 stimulation on record.

14 MR. LUCAS: Sure.

15 MR. RESNICK: We'll make the applications that are
16 necessary but we are not waiving our rights to indicate that
17 these applications were not necessary.

18 MR. LUCAS: Good point. Yeah, absolutely.

19 MR. SELBY: We just beat you to that, yes.

20 MR. LUCAS: Agree, agreed. I didn't mean to
21 intend --

22 MR. RESNICK: No, no, I know. I am just, you
23 know --

24 MR. LUCAS: Yeah, yeah, that's fine.

25 MR. SELBY: Everybody preserving all of their
26 arguments.

27 MR. LUCAS: Yeah, every right is preserved.

28 MR. RESNICK: Every right.

29 CHAIRMAN VALENTIC: Okay.

30 MR. RESNICK: Now it's up to the Board to decide

1 whether it --

2 MR. LUCAS: That was an RBG decision.

3 MR. RESNICK: Yeah.

4 CHAIRMAN VALENTIC: So you're requesting the Board
5 to provide a motion to suspend this appeal?

6 MR. LUCAS: Not suspend, adjourn it.

7 CHAIRMAN VALENTIC: Adjourn it.

8 MR. LUCAS: Is that better?

9 MR. RESNICK: Yes.

10 MR. SELBY: Yeah.

11 MR. LUCAS: To the next meeting.

12 MR. RESNICK: When is the next meeting?

13 MS. FREEMAN: February 13, 7:00 p.m.

14 MR. LUCAS: You are not going to be wintering in
15 Florida, are you?

16 MR. RESNICK: I flew up for this hearing.

17 MR. LUCAS: I know. You are all tanned up.

18 MR. RESNICK: It turns out I have to be here on the
19 12th of February anyway, so the 13th works.

20 MR. SELBY: Mike, can we get some -- I don't
21 necessarily mean guarantee but some -- like, how quickly will
22 those applications -- We don't want to apply and then have the
23 application sit there for, like, ten months.

24 MR. LUCAS: No.

25 MR. SELBY: Like, what's the normal course for how
26 long?

27 MR. LUCAS: I don't know. What would be the normal
28 term on something like that, Heather?

29 MS. FREEMAN: The normal is usually a couple days.

30 MR. SELBY: Okay.

1 MR. RESNICK: That's fine.

2 MR. SELBY: I mean, if we can get those in, we can
3 try and get those in and get that done and turn that around so
4 we can just adjourn this to whenever you guys next hearing is.

5 MR. LUCAS: Right, which is February 12.

6 MR. RESNICK: Yeah. February 13th?

7 MR. LUCAS: Yeah, 12th or 13th.

8 CHAIRMAN VALENTIC: Hold on. The next meeting is
9 the 13th, yes.

10 MR. RESNICK: Okay.

11 MR. SELBY: I mean, we will turn around and get
12 those application, the latest, first of next week.

13 MR. LUCAS: Okay.

14 CHAIRMAN VALENTIC: Okay. So --

15 MR. LUCAS: Mel, are you going back to Florida then?

16 MR. RESNICK: Saturday.

17 MR. LUCAS: Okay. So do you want me to talk to Rick
18 then?

19 MR. RESNICK: Yeah.

20 MR. SELBY: You can deal with me. I'll be around
21 and I can get a hold of Mel.

22 MR. LUCAS: Yeah, yeah, okay.

23 MR. RESNICK: But we need to know whether or not
24 it's been approved to adjourn or to --

25 MR. SELBY: Yeah.

26 CHAIRMAN VALENTIC: So, Heather, tell me if I am
27 doing this wrong. So I am going to put forth a motion to
28 adjourn the appeal to the next meeting, right? And then
29 somebody has to -- or somebody has to make that motion and
30 then it has to be seconded and then we vote on that, right?

1 MS. FREEMAN: Correct.

2 MR. LUCAS: Yes. But you want to put down a motion
3 to adjourn to the next meeting subject to the stipulations as
4 represented between counsel and as part of the record.

5 CHAIRMAN VALENTIC: Yeah, what Mike said. Does
6 somebody want to make that motion?

7 MS. JARRELL: So moved. Do I have to repeat it? Do
8 we have to repeat it?

9 MR. LUCAS: No. Just say "so moved."

10 MS. JARRELL: So moved.

11 CHAIRMAN VALENTIC: Second?

12 MR. HAMILTON: Second.

13 CHAIRMAN VALENTIC: Okay. Do we need any discussion
14 with the Board? We can move on to the vote?

15 Okay. Heather, the question then is for -- the
16 motion is to adjourn to the next meeting. A yes vote is for,
17 you know, the approval to adjourn to the next meeting the
18 variance appeal. A no vote denies adjourning to the next
19 meeting. Heather, please call the vote.

20 MS. FREEMAN: Mr. Hamilton?

21 MR. HAMILTON: Yes.

22 MS. FREEMAN: Mr. Sweeney?

23 MR. SWEENEY: Yes.

24 MS. FREEMAN: Ms. Jarrell?

25 MS. JARRELL: Yes.

26 MS. FREEMAN: Mr. Golling?

27 MR. GOLLING: Yes.

28 MS. FREEMAN: Mr. Valentic?

29 CHAIRMAN VALENTIC: Yes.

30 Okay.

1 MR. RESNICK: Thank you.

2 CHAIRMAN VALENTIC: Thank you. So we will be
3 adjourned to the next meeting.

4 Okay. Thank you, everybody.

5 MR. RESNICK: Thank you.

6 MR. SELBY: Thank you.

7 CHAIRMAN VALENTIC: All right. The next item,
8 quickly, is the approval of the minutes. I want a motion to
9 approve the minutes from October 2018.

10 MR. SWEENEY: So moved.

11 MR. GOLLING: Second.

12 CHAIRMAN VALENTIC: Is there any changes or
13 discussion?

14 MS. JARRELL: I will not be voting as I was not
15 present.

16 CHAIRMAN VALENTIC: Chris is going to abstain.
17 Anybody else, any comments?

18 Okay. So then the approval of the minutes for 2018,
19 a yes approves the minutes, a no vote does not. All in favor
20 of approving the minutes say yes.

21 (Four aye votes, no nay votes, one abstention.)

22 CHAIRMAN VALENTIC: The minutes from October of 2018
23 have been approved.

24 The Concord Township Board of Zoning Appeals for
25 January 2019 is now closed.

26 (Whereupon, the meeting was adjourned at 8:11 p.m.)

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STATE OF OHIO)
COUNTY OF CUYAHOGA)

CERTIFICATE

I, Melinda A. Melton, Registered Professional Reporter, a notary public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that, to the best of my ability, the foregoing proceedings were reduced by me to stenotype shorthand, subsequently transcribed into typewritten manuscript; and that the foregoing is a true and accurate transcript of said proceedings so taken as aforesaid.

I do further certify that this proceeding took place at the time and place as specified in the foregoing caption and was completed without adjournment.

I do further certify that I am not a friend, relative, or counsel for any party or otherwise interested in the outcome of these proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 14th day of January 2019.

Melinda A. Melton
Registered Professional Reporter

Notary Public within and for the
State of Ohio

My Commission Expires:
February 4, 2023