

**MINUTES
CLIFTON PLANNING BOARD
MEETING NOVEMBER 25, 2025**

Minutes of the regular meeting of the Planning Board of the City of Clifton, New Jersey, held at the City Hall, Clifton, New Jersey on November 25, 2025. Pursuant to the “Open Public Meeting Act” all notice requirements were satisfied. The time, place, date, and form of notice was announced as well as advising all applicants that formal action may be taken on the matters on the agenda.

Those present: Comrs. Binaso, Korbanics, Lataro, Welsh, Rodgers, Fragapane, Councilman D’Amato, Mayor Grabowski, Vice Chair Withers, Chair Susan Kolodziej

Those absent: Comr. Gurkov,

Continued Hearings:

- . Islamic Center of Passaic County, Inc.
257-259 Pershing Road
Block 47.02, Lot 37.01
Amendment to site plan with bulk variances and design waivers

The Board adopts the transcript of the proceedings attached hereto and made a part hereof.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Robert A. Ferraro, Esq. Secretary/Counsel

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21	NO.	DESCRIPTION	IDENT/EVID
22	(NONE)		
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25			
	LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C. 201-641-1812		

CITY OF CLIFTON
 PLANNING BOARD
 THURSDAY, NOVEMBER 25, 2025
 COMMENCING AT 7:00 P.M.

.....
 IN THE MATTER OF: :
 ISLAMIC CENTER OF PASSAIC COUNTY, INC.: TRANSCRIPT
 257-259 Pershing Road : OF
 Block 47.02, Lot 37.01 :PROCEEDING

B E F O R E:

CITY OF CLIFTON PLANNING BOARD
 THERE BEING PRESENT:

SUSAN KOLODZIEJ, CHAIRWOMAN
 JOHN WITHERS, VICE-CHAIRMAN
 RAYMOND GRABOWSKI, MAYOR
 CHRIS D'AMATO, COUNCILMAN
 STEVEN LATARO, COMMISSIONER (8:20 p.m. Departure)
 PHILIP BINASO, COMMISSIONER
 JOSEPH KORIBANICS, COMMISSIONER
 EDWARD WELSH, COMMISSIONER
 ZALMAN GURKOV, COMMISSIONER (ABSENT)
 FRANK FRAGAPANE, COMMISSIONER
 BRIAN RODGERS, COMMISSIONER

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A L S O P R E S E N T:

JILL HARTMANN, PP, AICP, BOARD PLANNER
 ANTHONY KURUS, PE, BOARD ENGINEER
 LIANA BOLCATO, ZONING OFFICIAL

A P P E A R A N C E S:

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CHAIRWOMAN KOLODZIEJ: I would like to
 call the meeting to order.

Would you please stand for the flag
 salute?

(Whereupon, the Recitation of the
 Pledge of Allegiance is held.)

MR. FERRARO: The notice requirements
 of the Open Public Meetings Act has been satisfied.
 Notice of date, time and place of this special
 meeting including the matter to be acted upon was
 published in two newspapers, posted on the municipal
 bulletin board and filed in the office of the city
 clerk all within the time limits prescribed by the
 act.

CHAIRWOMAN KOLODZIEJ: Roll call,
 please.

MR. FERRARO: Commissioner Gurkov?
 (No Response.)

MR. FERRARO: Commissioner Fragapane?
 COMMISSIONER FRAGAPANE: Here.

MR. FERRARO: Commissioner Koribanics?
 COMMISSIONER KORIBANICS: Here.

MR. FERRARO: Commissioner Lataro?
 COMMISSIONER LATARO: Here.

MR. FERRARO: Commissioner Welsh?

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1 COMMISSIONER WELSH: Here.
2 MR. FERRARO: Commissioner Rodgers?
3 COMMISSIONER RODGERS: Here.
4 MR. FERRARO: Commissioner Binaso?
5 COMMISSIONER BINASO: Here.
6 MR. FERRARO: Councilman D'Amato?
7 COUNCILMAN D'AMATO: Here.
8 MR. FERRARO: Mayor Grabowski?
9 MAYOR GRABOWSKI: Here.
10 MR. FERRARO: Vice Chair Withers.
11 VICE CHAIRMAN WITHERS: Present.
12 MR. FERRARO: Chairwoman Kolodziej?
13 CHAIRWOMAN KOLODZIEJ: Here.
14 MR. FERRARO: A quorum is present for
15 the conduct of business of tonight's meeting, Madam
16 Chair.
17 CHAIRWOMAN KOLODZIEJ: Okay. So the
18 only business we have this evening is for a special
19 meeting for the Islamic Center at 257-259 Pershing
20 Road, Block 47.02, Lot 37.01, the only business that
21 we are discussing this evening.
22 MR. FERRARO: I believe we concluded
23 the testimony of the representative from the
24 applicant and I believe Mr. McGowan is going to
25 present his planner this evening.
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1 MR. MCGOWAN: Yes, that's correct.
2 At the last hearing we concluded the
3 testimony and the questions for the president of the
4 ICPC, Ibrahim Fahmy, and tonight we have our
5 professional planner who is going to provide
6 testimony on the application.
7 Before we do that, I believe there were
8 a couple of commissioners who were not at the last
9 meeting who I'd like to confirm that they read the
10 transcripts or watched the video.
11 CHAIRWOMAN KOLODZIEJ: Okay.
12 Can I have those members certify that
13 they have heard all of the testimony and are up to
14 date.
15 That would be Commissioner Fragapane,
16 are you up to date?
17 COMMISSIONER FRAGAPANE: Yes.
18 It was the 25th of September, I watched
19 it.
20 CHAIRWOMAN KOLODZIEJ: Okay.
21 COMMISSIONER FRAGAPANE: The one I
22 missed.
23 CHAIRWOMAN KOLODZIEJ: Councilman
24 D'Amato, are you up to date?
25 COUNCILMAN D'AMATO: I was here last
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1 meeting, yes.
2 CHAIRWOMAN KOLODZIEJ: You're up to
3 date with everything?
4 COUNCILMAN D'AMATO: Yes.
5 CHAIRWOMAN KOLODZIEJ: Okay.
6 COMMISSIONER KORIBANICS: Yes, the past
7 two meetings that I wasn't here, I'm up to date on
8 it, I watched it on the video.
9 CHAIRWOMAN KOLODZIEJ: Okay. And
10 Commissioner Lataro?
11 COMMISSIONER LATARO: Yes, I watched
12 the video for the October 23rd meeting.
13 CHAIRWOMAN KOLODZIEJ: Okay. So it
14 looks like we're all in compliance.
15 MR. MCGOWAN: Very good.
16 Thank you.
17 One other piece of housekeeping before
18 we begin the testimony of the planner. We did
19 receive further comments from the environmental
20 commission on the clarifications to the EIS that was
21 submitted.
22 We received those comments late last
23 week.
24 I'm happy to say that the comment was
25 only one question basically asking for further
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1 clarification on the species of trees that were going
2 to be used and the specific locations of a few
3 things.
4 We will be submitting a written
5 response. It's ready today, but I didn't want to
6 submit it today prior to the meeting.
7 So it will be going in probably early
8 next week. And basically the clarification that's
9 going to be provided is in accordance with the
10 testimony that was provided from the engineer that we
11 -- the site engineer will work with the board's
12 engineer and planner on the species of trees to be
13 used and then there will be a specific map showing
14 where trees are going to be removed and replaced.
15 So hopefully once we submit that, the
16 answer to that question for further clarification,
17 the EIS will be acceptable to the board.
18 And if there's no questions on that, I
19 will introduce the next witness who is Paul Grygiel
20 from the firm of Phillips Preiss and Grygiel who's
21 the planner.
22 MR. FERRARO: Mr. Grygiel, do you swear
23 that the testimony you're about to give before this
24 board in this matter will be the truth, the whole
25 truth and nothing but the truth?
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1 MR. GRYGIEL: I do.
 2 P A U L G R Y G I E L, PP, AICP
 3 70 Hudson Street, Suite 5B, Hoboken, New Jersey
 4 07030, having been duly sworn, testifies as
 5 follows:
 6 MR. FERRARO: Please state your name
 7 and spell your last name.
 8 MR. GRYGIEL: Yes.
 9 Good evening. My name is Paul Grygiel,
 10 last name is spelled G-R-Y-G-I-E-L.
 11 MR. FERRARO: Do you want to qualify
 12 Mr. Grygiel, please?
 13 MR. MCGOWAN: Yeah.
 14 VOIR DIRE EXAMINATION
 15 BY MR. MCGOWAN:
 16 Q. Mr. Grygiel, could you please give the
 17 board the benefit of your licenses and experience as
 18 a professional planner?
 19 A. Yes.
 20 I have a master's degree in regional
 21 planning --
 22 COMMISSIONER BINASO: Speak -- move the
 23 microphone.
 24 THE WITNESS: I have a master's degree
 25 in regional planning from the University of North
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1 Carolina Chapel Hill. I have a bachelor of arts in
 2 urban studies from Rutgers University.
 3 COMMISSIONER BINASO: Madam Chair, move
 4 to accept credentials.
 5 MR. FERRARO: Well, let's get his
 6 license on first.
 7 THE WITNESS: Yes, since 1999 I've been
 8 licensed in the State of New Jersey as a professional
 9 planner.
 10 I'm also a member of the American
 11 Institute of Certified Planners.
 12 Currently I'm a principal of the
 13 Phillips Preiss Grygiel Leheny Keller planning
 14 consulting firm representing applicants and boards
 15 throughout the State of New Jersey.
 16 I've appeared before the Clifton Zoning
 17 Board as an expert, as well as over 150 or so other
 18 boards throughout the state.
 19 CHAIRWOMAN KOLODZIEJ: Okay. So your
 20 credentials have been approved.
 21 I need a second. Is there any --
 22 VICE CHAIRMAN WITHERS: Second.
 23 CHAIRWOMAN KOLODZIEJ: I have a second.
 24 Anyone opposed?
 25 (No Response.)
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1 CHAIRWOMAN KOLODZIEJ: Okay. So we
 2 accept your credentials.
 3 Thank you.
 4 THE WITNESS: Thank you.
 5 DIRECT EXAMINATION
 6 BY MR. MCGOWAN:
 7 Q. So, Mr. Grygiel, you are familiar --
 8 you've become familiar with this application and the
 9 property on Pershing Ave that is the subject of this
 10 application?
 11 A. Yes.
 12 Q. Very good.
 13 So tonight -- very often planners
 14 appear before zoning boards when the use is not
 15 permitted to provide justification why that use
 16 should be allowed despite the fact that the zoning
 17 ordinance does not allow that use.
 18 Tonight's a little different, because
 19 we're before a planning board with minimal variances.
 20 So for the benefit of the public, could
 21 you maybe describe, you know, what a planner does and
 22 then your thoughts on this property and this
 23 application?
 24 A. Certainly.
 25 Thank you.
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1 Planners advise both applicants and
 2 boards and municipalities on issues regarding land
 3 use and development, primarily the master plan of a
 4 municipality.
 5 So licensed planners, such as myself,
 6 prepare those types of documents.
 7 So for Clifton you, likewise, had a
 8 planner prepare a master plan, the zoning ordinance,
 9 which regulates land use and development and in many
 10 instances, as was mentioned, on behalf of applicants
 11 seeking variances or deviations from the zoning
 12 ordinance, planners will provide testimony, expert
 13 testimony, supporting those applications.
 14 In this instance, that's why I'm here
 15 for two minor variances, but also I think in this
 16 case more importantly to point out to the board and
 17 the public how this application actually complies in
 18 nearly all regards with the City of Clifton zoning
 19 ordinance and other regulations pertaining to land
 20 use and development.
 21 So with that, the -- I won't belabor
 22 the history of the application and the site, but just
 23 to put it into context, we're dealing with a proposal
 24 to modify an existing house of worship to expand the
 25 building, provide a new building, as well as
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1 additional parking and other facilities. That does
2 not change the fact that the use is permitted as a
3 conditional use within the R-A2 zone in which the
4 property is located. So both the property as it's
5 developed today and is proposed to be developed in
6 the future would be considered a permitted
7 conditional use.

8 And, again, briefly the difference
9 there between what are so-called principal permitted
10 uses that have no conditions attached, those are in
11 this zone, for example, single-family homes and other
12 types of things, Clifton, like many municipalities,
13 has use categories that are for properties that need
14 additional conditions to be met. There are a number
15 of them listed in the zoning ordinance for the city
16 and, again, houses of worship have various standards
17 set forth that need to be addressed.

18 In this case, just to be clear for the
19 record, both houses of worship and the accessory uses
20 are listed as being permitted conditionally in this
21 zone.

22 In terms of the house of worship
23 standards for that particular use, they are very
24 straightforward dealing with things such as lot area
25 and dimensions, the setbacks of the building from the
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1 parking spaces.

2 Changing gears a bit to the general
3 provisions. Just to be clear, the ordinance, as I
4 mentioned, has various types of uses that are
5 conditionally permitted and there are seven different
6 standards that are put forth in the ordinance.
7 However, of these, five of them are highly
8 subjective.

9 In other words, they're not measuring
10 the minimum lot area or the setback from the street,
11 that type of thing.

12 In this case we're dealing with a more
13 subjective standard that I'll get to in a moment, but
14 there is case law, the PBR Enterprises, Inc. vs.
15 South Brunswick Planning Board case determined that
16 when a planning board considers this type of
17 conditional use, it must use standards that exhibit,
18 quote, sufficient certainty and definiteness.
19 Hopefully I pronounced that correctly.

20 The ordinance must use objective
21 standards to be able to for you as a board and for
22 the public to essentially weigh whether those
23 standards are met.

24 So going back to, as mentioned, there's
25 five general provisions that are not objective or
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1 street, height of the building, the amount of parking
2 spaces, all those types of things.

3 The proposal is fully compliant with
4 all of those standards and that's, you know, outlined
5 in your board professionals' review letters and,
6 again, there's been no variances cited or required
7 from any of those overall standards for the
8 conditional use of a house of worship.

9 And just to be clear, with regard to
10 the parking standard, as been discussed previously,
11 the parking requirement is one parking space for four
12 seats.

13 In this instance for this type of house
14 of worship, it's generally accepted, in my experience
15 as a planner and throughout the state, that a seat in
16 this case is a prayer mat.

17 So that's a very common way to have a
18 proxy for a seat given the nature of the house of
19 worship.

20 Therefore, we have a parking
21 requirement of 210 spaces based upon the number of
22 mats that are there. The applicant is now proposing
23 216 parking spaces in the revised layout.

24 So, therefore, we're fully compliant
25 with the ordinance requirements for the number of
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1 definitive enough. These are standards one through
2 four and number seven in Section 461-25C of the
3 Clifton zoning ordinance.

4 So the first one is that the planning
5 board shall first determine that the proposed use
6 shall not be detrimental to the health, safety and
7 general welfare of the community; two, is the
8 proposed use shall be reasonably necessary for the
9 convenience of the community; three, the proposed use
10 shall not create a fire, traffic or safety hazard;
11 four, the proposed use or structure shall not have an
12 adverse effect on the neighborhood in which it's
13 proposed; and seven, the use shall provide safe and
14 efficient vehicular and pedestrian circulation with
15 access and egress designed to eliminate any traffic
16 safety hazards entering and exiting the site and so
17 designed as to not -- as not to cause traffic
18 congestion on abutting streets.

19 So these are very broad standards that,
20 again, there's no possible way for you to come up
21 with an objective review that you can measure it
22 against. It doesn't say 100 trips, 200 trips or have
23 other types of numerical type of ways you can
24 evaluate them.

25 There are, though, two standards,
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1 number five and six, that are objective and the
 2 proposal complies with these. Number five,
 3 off-street parking and loading spaces shall be
 4 provided in accordance with the schedule of
 5 regulations in Article 4. As I just mentioned, 216
 6 spaces proposed, 210 spaces required, we comply.
 7 Number six, where parking, loading and
 8 recreation areas adjoin a residential use or
 9 residential zone, there shall be a 10-foot-wide
 10 landscape strip adjoining the residential lot line
 11 unless a wider buffer is specifically required.
 12 The application has been amended to
 13 provide that 10-foot strip in all applicable
 14 locations.
 15 So it now is fully compliant with that
 16 standard that's been reviewed, again, by the board's
 17 professionals and we have a compliant plan with
 18 regard to that Item No. 6.
 19 Just briefly with regard to the
 20 parking, in addition to having adequate spaces under
 21 the ordinance standard section, the state regulations
 22 actually allow for additional credits for electric
 23 vehicle parking, which the applicant's entitled to.
 24 We're not even counting those in that number.
 25 So we do comply, again, with all the

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1 overall numbers.
 2 The applicant's traffic engineer,
 3 Mr. Hughes, previously provided testimony and an
 4 exhibit regarding typical parking ratios and parking
 5 lot dimensions for houses of worship throughout
 6 Clifton and the parking lot characteristics.
 7 I won't re-hash all that testimony,
 8 but, again, six of the examples that were previously
 9 provided to the board and the public are also located
 10 in similar RA residential zones where houses of
 11 worship are conditional uses.
 12 So these are your typical one-family
 13 zones. There's three different ones with different
 14 minimum lot areas and other standards, but
 15 essentially, you know, there's at least six examples
 16 elsewhere in the city of houses of worship in
 17 residential settings such as this one.
 18 So I just wanted to make the point that
 19 the house of worship in all those cases and accessory
 20 uses are permitted in residential zones and are
 21 typically seen throughout the city.
 22 It's certainly not unusual, again, in
 23 an older built-up community such as Clifton to have
 24 this mix of religious use within a residential
 25 single-family neighborhood.

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1 So I think in my opinion, the planning
 2 board can make a finding that the proposed use, the
 3 conditional use of a house of worship does meet all
 4 of the conditions that are applicable for this type
 5 of development.
 6 And just briefly to tie up the -- some
 7 loose ends with regard to conditional uses, so for
 8 the board's information, for the public's information
 9 as well, again, the question was asked at the outset
 10 what do planners do.
 11 Well, in this case it's what do -- what
 12 role does a planning board have when reviewing a
 13 conditional use application.
 14 It's set forth by what's known as the
 15 Municipal Land Use Law, that's a state statute that
 16 regulates everything we're doing here tonight, the
 17 planning board is established through that statute,
 18 zoning boards, zoning ordinances, et cetera.
 19 That state law sets forth that this
 20 planning board adopts a master plan, which includes a
 21 land use element that guides the establishment of
 22 zone districts.
 23 So you have throughout Clifton, again,
 24 dozens of zones of different types of uses, lot
 25 areas, et cetera.

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1 The governing body then, that's the
 2 council, adopts the ordinances, in this case the
 3 zoning ordinance, and sets forth in each of these
 4 zones or areas what uses are permitted and
 5 essentially provides for all the regulations of where
 6 things belong within the city.
 7 In this case, the council has
 8 determined that houses of worship should be a
 9 permitted use in the R-A2 zone, provided they meet
 10 the conditional use standards.
 11 So if these conditions are met, the
 12 planning board is responsible for reviewing a site
 13 plan.
 14 If those conditions are not met, the
 15 standards pertaining to the conditional uses, the
 16 zoning board has jurisdiction.
 17 But, again, in this case, we're dealing
 18 with all the objective standards being addressed and
 19 the -- the planning board, its role is to, you know,
 20 determine that the project complies with those
 21 standards, but also that the site plan layout works,
 22 the site plan has been reviewed by the professionals
 23 for the board and deals with on-site circulation
 24 issues, that type of thing, but really, again, it's
 25 not the board's determination or the public's

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1 determination to say whether you think it's
2 appropriate to have a house of worship here, because
3 that was already decided by the governing body.

4 So I think it's an important
5 distinction to remember as far as, you know, if
6 there's any concerns about whether the use makes
7 sense here, that determination is out of this board's
8 hands.

9 Just lastly on one of those conditional
10 use standards pertaining to safe and efficient
11 vehicular and pedestrian circulation, the public has
12 rightly pointed out there's been some issues with the
13 operations as they exist today. The applicant -- you
14 know, one of the main benefits of this application is
15 to try to improve over existing conditions.

16 Traffic is assumed to be addressed by
17 the use being permitted.

18 Again, it's the governing body made a
19 decision that you can have a house of worship here if
20 you provide the adequate parking for the use pursuant
21 to code. There's no jurisdiction to say that too
22 much traffic is a reason to deny the application.
23 That's the Dunkin' Donuts vs. Township of North
24 Brunswick case.

25 Basically it just means that the
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1 planning board can't hold this use to a higher
2 standard than those spelled out in the ordinance.
3 The use is permitted and, therefore, again, the focus
4 is more on site specific issues, how cars circulate
5 around the property, that it's safe and efficient and
6 that you get on and off the property in a safe
7 manner.

8 That said, the applicant has made
9 changes and addressed the -- some of the concerns by
10 providing substantially more parking on site, by
11 improving circulation on the property and I think
12 that given the testimony you've heard already, that
13 there's a substantial improvement to existing
14 conditions by taking cars off the streets by adding
15 to the on-site parking facilities and providing for
16 -- not having as many congregants needing to park on
17 adjacent streets, because there will be the ability
18 to park on-site.

19 So turning now to the variance proofs.
20 As I mentioned, there are two minor standards that
21 are not being met by this application. The first is
22 from Section 461-60.A, parking stall length, 19 feet
23 is required where 18 feet is proposed. And the other
24 is 461-15B1B for drive aisle width where 24 feet is
25 required and 20 feet is proposed.

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1 I would point out with regard to that
2 second standard for the drive aisle, that section of
3 the ordinance actually deals with driveways. It's a
4 maximum standard of up to 24 feet and a curb cut of
5 -- excuse me -- of 30 feet being allowed.

6 So we're actually compliant with that
7 standard with regard to being less than the 24 feet.
8 So I think it's a little confusing reading through
9 the ordinance section, but that's, you know, I think
10 one way you can interpret it is that we don't need a
11 variance.

12 With that said, it's been called out.
13 We're happy to provide testimony. We've already
14 heard from the applicant and its professionals as
15 well as the board's professionals that the 20 foot
16 require -- the 20 foot provided is more than adequate
17 and appropriate.

18 **Q.** Yeah.

19 And also, with the revised plans that
20 the applicant showed at the last meeting, they made
21 changes to reduce the number of locations on-site
22 where there was less than a 24-foot drive aisle,
23 correct?

24 **A.** That's correct.

25 So, again, so these standards are not
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1 meant -- are not for all of the spaces, they're not
2 for all of the drive aisles.

3 There's, I think, three locations left
4 at this point, if my memory serves correct, but it's
5 not the -- for the majority of the parking aisle
6 areas you have 24 foot provided for two-way traffic.

7 In some cases there's one-way traffic
8 and it's less, in a couple of isolated locations it's
9 20 feet versus 24 feet.

10 With that said, I do believe that those
11 two deviations or variances can be granted under
12 what's called the (c)(2) proofs.

13 Again, we're going back to the
14 Municipal Land Use Law. There's a section, 40:55D-70
15 of the land use law part -- Sub Part C outlines bulk
16 variances or variances that are not use or other
17 major standards.

18 One of the ways that an applicant can
19 address them, the board's probably heard this, but if
20 you haven't or if the public is not familiar, it's
21 called a (c)(2) where you basically prove that the
22 benefits substantially outweigh any detriments from
23 non-compliance.

24 In this case, I do believe that the
25 variances can be granted under the (c)(2) criteria.

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1 Courts, first of all, determined that
2 houses of worship are inherently beneficial uses.
3 That is, they serve the general welfare by their very
4 existence. So they are provided at sort of an
5 elevated status above all other uses within a
6 municipality.

7 So the overall project and its
8 variances will support the growth and enhancement of
9 an inherently beneficial use.

10 There also are protections under
11 federal law, but any conditions on a religious land
12 use must be essentially the least restrictive means
13 of furthering compelling government interest.

14 So in this case, we're dealing, again,
15 with two minor deviations that according to testimony
16 provided by the applicant's professionals and as I --
17 best I can tell, agreed to by the board's
18 professionals are not substantial deviations from
19 what's required.

20 So there are several design aspects of
21 the parking lot here.

22 Again, we've tried to improve
23 conditions over what was previously proposed to
24 provide larger spaces where possible, but the
25 tradeoff is this: That if you require 19-foot-deep

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1 spaces in all locations of the parking lot, that's
2 additional paving that would have no benefit.

3 Really the consistent standard
4 throughout the state pursuant to the Residential Site
5 Improvement Standards, that's a statewide law, is
6 9-foot-wide spaces by 18-feet deep.

7 So, again, the 18 foot is standard.
8 It's -- essentially there's no reason to provide
9 additional depth, cars can fit within that size
10 space.

11 Mr. Hughes also in his prior testimony
12 pointed out that this is a very common depth of
13 space, as well as the 20-foot aisle width throughout
14 parking lots for other houses of worship throughout
15 Clifton.

16 For that matter, the police
17 department's traffic division issued a letter back in
18 April regarding parking stall length.

19 It said, after doing research, the
20 North American standard appears to be
21 9-feet-wide-by-18-feet-deep.

22 So that's consistent with what I just
23 said and my experiences in New Jersey.

24 With regard to the 20-foot parking
25 aisle width, the police report also said the 20-foot

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1 drive aisle will not be universal on the grounds. It
2 appears to be split between 20 and 24 feet and these
3 20-foot drive aisles help accommodate the 230 parking
4 spaces. That was the number that was provided at
5 that time.

6 While this could be on the tighter side
7 of drive aisles, we have found that 20-foot drive
8 aisles are in use throughout the United States, and
9 ultimately the police department report recommended
10 approval of both variances and found that the
11 provision of parking spaces in a substantial number
12 would have a significant benefit in removing cars
13 from neighboring streets on typical Fridays, it would
14 be a major benefit for an area -- for the area.

15 And also the additional reduction in
16 parking stall size -- excuse me, parking aisle widths
17 to 20 feet in some locations would help accommodate
18 the spaces on-site.

19 Furthermore, the board's traffic
20 engineer, Mr. Intindola, testified at the July 8th
21 hearing on the parking aisle width and also said
22 they're a bit undersized but are functional and that
23 the reduced parking aisle widths are just, again,
24 limited to certain locations where it's least
25 impactful.

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1 Most importantly, though, I think that
2 providing less pavement allows for more green. The
3 parking lot redesign allows for additional
4 landscaping and lawn areas and trees that will be
5 either retained or added to the site, which will be
6 well in excess of the trees that have to be removed.
7 I think that's a major benefit to the community at
8 large and the neighborhood surrounding the property.

9 So these dimensional parking variances
10 allow for compliant parking, maximize green space and
11 essentially take cars from on the street today and
12 move them onto the site.

13 So I think with regard to this
14 variance, the (c)(2) variance in summary, the
15 benefits that I mentioned would substantially
16 outweigh any detriments.

17 Theoretically, you could have a
18 compliant application. The applicant could reduce
19 the number of parking spaces somewhat, provide deeper
20 parking stalls and fully-compliant parking widths,
21 parking aisle widths, but that would result in less
22 landscaping, fewer landscaped areas and essentially
23 not provide all the benefits that we've talked about.

24 The other options, keep the parking lot
25 the same as it is today with the ADA parking spaces.

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1 I don't think that's an alternative you want to
2 consider either.

3 So in my opinion as a planner,
4 certainly the benefits of providing the smaller --
5 slightly smaller aisle widths and parking depths and
6 spaces outweigh any detriments from those two
7 variances.

8 Lastly, with regard to (c)(2)
9 variances, we need to address that purposes of zoning
10 are advanced as set forth in the land use law. And,
11 again, I won't belabor this. There's a number of
12 them in my opinion that do, but they include
13 promoting the general health, safety and public --
14 public health, safety and general welfare by
15 supporting an inherently beneficial use, which is a
16 place of worship, providing overall parking
17 improvements to the site, improving other aspects of
18 the development on the property, including, again,
19 providing landscaping, improve the aesthetics and
20 other types of improvements with regard to stormwater
21 management and other types of facilities.

22 Likewise, I think a desirable visual
23 environment would be promoted, that's Purpose I of
24 the land use law, by the aesthetic improvements to
25 the building, as well as the landscape buffers and

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1 essentially there's other ones as well, but the point
2 is that clearly there are a number of beneficial
3 aspects to this application, I think, outweigh any
4 detriments.

5 Lastly, for variances, we need to
6 demonstrate that there would be no substantial
7 detriment to the public good.

8 In this case, we're only focusing on
9 the variances that are being sought. That's not,
10 again, the board's or the public's consideration of
11 the overall, whether they like the use, they like the
12 size of the project, because that's fully compliant.
13 It's with regard to the deviations that I mentioned,
14 these two little things with regard to parking areas.
15 These minimal deviations would provide for all the
16 benefits I mentioned previously. The police and fire
17 department issued favorable reviews. We've revised
18 landscaping to be better and the use is permitted.

19 So, again, we can't focus on traffic
20 being a concern here, because it's within the purview
21 of the governing body to set forth what a permitted
22 use is.

23 Lastly, with regard to the master plan
24 and zoning ordinance, again, these are very technical
25 deviations from two standards. Overall, the project

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1 is overwhelmingly compliant and consistent with the
2 master plan and zoning ordinance of the city. I
3 don't think that these technical design deviations
4 would have any substantial negative impacts on the
5 city's planning or zoning.

6 So in conclusion, again, we're a
7 permitted conditional use. The board has to review
8 it in that regard. We're seeking very limited
9 deviations from the ordinance. I think that the
10 overall benefits of the application and the variances
11 being sought would outweigh any detriments and the
12 board can grant the application.

13 **Q.** Thank you, Mr. Grygiel.

14 We appreciate your detailed testimony
15 on individual points of the variances and the master
16 plan and so on and so forth.

17 But just to summarize with the
18 question, taking a look at the application as a
19 whole, not from the technical standpoint, but you
20 review a lot of development applications?

21 **A.** I do.

22 **Q.** In your opinion, does this -- is this
23 application appropriate in size and scale and a best
24 available solution for removing as many cars that are
25 currently parking on the street onto the site as

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1 possible?

2 **A.** Yes.

3 I think it's very common in a situation
4 such as this.

5 As I mentioned, Clifton's been built up
6 for sometime. There's a neighborhood around the
7 property, has been there and the uses have
8 co-existed, but times change and over time as either
9 congregations change from one to another and grow
10 and, again, more commonly, you know, these additional
11 uses are added to houses of worship, there are
12 increased demands for parking, there's increased --
13 you know, better facilities as a desire as well of
14 congregations.

15 In this case the applicant has designed
16 a building that fully complies with all standards for
17 setbacks and height and coverage and everything else
18 for a house of worship and is improving an existing
19 situation where you have very limited on-site parking
20 by providing now fully-compliant parking for the size
21 of the use.

22 **Q.** And just, I mean, to further that
23 point, the building coverage is even much less than
24 what they would be permitted?

25 **A.** Correct.

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1 Q. In order to maximize the parking
 2 on-site?
 3 A. Right.
 4 35 percent is permitted.
 5 So building coverage is, again, taking
 6 the size, the outlines of the building, if you will,
 7 the footprint and dividing that area from the overall
 8 site area of just about three acres.
 9 Here we are going from, again, a
 10 requirement of 35 percent, we're only at
 11 16.33 percent, so less than half of the maximum
 12 permitted for the size of that building.
 13 Q. Very good.
 14 Thank for your testimony, Mr. Grygiel?
 15 A. You're welcome.
 16 CHAIRWOMAN KOLODZIEJ: Thank you.
 17 Commissioners, do we have questions?
 18 Commissioner Lataro?
 19 COMMISSIONER LATARO: Madam Chair.
 20 Mr. Grygiel, can you go back to the
 21 conditional use standards and if you wouldn't mind
 22 just going through each one and why you think the
 23 applicant -- application meets all those standards?
 24 THE WITNESS: There are five of them
 25 and, again -- seven of them and five of those seven
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1 are not ones that can be measured.
 2 So it's more of, I think, a legal
 3 question that there's been case law that says boards
 4 can't -- boards aren't -- aren't supposed to come up
 5 with, you know, sort of subjective, you know,
 6 feelings about applications, you have to be able to
 7 measure them.
 8 So the two that can't be measured are
 9 the 10-foot buffer, as well as providing for the
 10 number of parking spaces, we clearly meet those.
 11 COMMISSIONER LATARO: But I think there
 12 are. You can make a planning opinion about certain
 13 things, so maybe just read off one that you think is
 14 a legal question and see if you can make an
 15 assessment of it.
 16 THE WITNESS: I just want to be clear,
 17 so we're talking about the general -- the seven
 18 general conditional use standards --
 19 COMMISSIONER LATARO: Yes.
 20 THE WITNESS: -- versus the ones for
 21 specifically for houses of worship.
 22 COMMISSIONER LATARO: Well, the ones
 23 that apply to this application.
 24 So I guess it would be the house of --
 25 house of worship.
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1 THE WITNESS: Okay. Well, for houses
 2 of worship, everything -- every single standard
 3 that's required with regard to the use, well, of
 4 course the lot area for the use, lot width, lot
 5 depth, side yard setback, front yard setback, rear
 6 yard setback all are met.
 7 The building height is compliant, the
 8 building coverage and the number of parking spaces.
 9 So all of the ones that can't be
 10 measured from the house of worship requirements are
 11 addressed.
 12 From the other ones, we have planning
 13 board determining whether this use would be -- will
 14 not be detrimental to the health, safety and general
 15 welfare of the community.
 16 Respectfully, again, if the governing
 17 body has determined a house of worship to be
 18 permitted, you can't just differentiate and come up
 19 with reasons to say that it's not -- that's not
 20 addressed. It's a very broad standard.
 21 With regard to the proposed use being
 22 reasonably necessary for the convenience of the
 23 community, there's really no way to measure that.
 24 Does the community mean people that can
 25 walk there? Does it mean people within, you know,
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1 short driving distance or biking distance?
 2 Does it mean the broader community
 3 outside the borders of Clifton?
 4 I think certainly this is serving the
 5 community, the community broadly and under the state
 6 statute of inherently beneficial uses, this is
 7 something houses of worship are deemed to be
 8 furthering the public good by their very nature, so I
 9 think that's addressed.
 10 The proposed use shall not create a
 11 fire, traffic or safety hazard. That's not my area
 12 of expertise, but, again, there are city
 13 requirements, there are building code requirements to
 14 deal with the building itself, but for the overall
 15 site and the circulation, et cetera, the board has
 16 its own experts who, you know, weighed in after our
 17 experts weighed in that this site will operate
 18 safely.
 19 But I can go onto additional ones. I
 20 don't know if you have specific questions. I
 21 apologize if I'm just rambling on about various
 22 standards.
 23 COMMISSIONER LATARO: Just in general,
 24 the ones for -- specifically for the house of worship
 25 that you mentioned, like the size of the lot and
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1 things like that, and if the applicant didn't meet
 2 any of those, they would have to go before the zoning
 3 board, correct?
 4 THE WITNESS: That's correct.
 5 So sorry if I misinterpreted the
 6 question and went in more detail than I needed to be.
 7 COMMISSIONER LATARO: No, I appreciate
 8 it.
 9 THE WITNESS: Yes, the standards that
 10 are set forth, again, any one of these, so if the lot
 11 area was under 20,000 square feet, the zoning board
 12 would have jurisdiction.
 13 If the site yard setback was, you know,
 14 non-compliant, that becomes what's called a (d)(3)
 15 variance.
 16 COMMISSIONER LATARO: Right, thanks.
 17 VICE CHAIRMAN WITHERS: Madam Chair?
 18 CHAIRWOMAN KOLODZIEJ: Vice Chair.
 19 VICE CHAIRMAN WITHERS: Mr. Grygiel,
 20 pivoting off Commissioner Lataro's concerns, you said
 21 that Condition 3, 4 and 7 were not met, correct?
 22 Those are the ones that could not be measured.
 23 THE WITNESS: One -- one, two, three --
 24 VICE CHAIRMAN WITHERS: One, two --
 25 one, two is good. Three was questionable.

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1 Four and seven, five and six were met
 2 because of the improvements.
 3 THE WITNESS: Just to be clear,
 4 hopefully I said it correctly, five and six are
 5 objective standards.
 6 Off-street parking is number five and
 7 six is providing for the 10-foot landscape strip.
 8 Those are ones you can measure and the applicant --
 9 VICE CHAIRMAN WITHERS: But the other
 10 ones, three, four and seven --
 11 THE WITNESS: Yes, and one and two as
 12 well.
 13 VICE CHAIRMAN WITHERS: One and two I
 14 think you, beneficial use, check that off. I mean,
 15 it's always been a house of worship since as long as
 16 I can remember before Clifton Avenue was even built.
 17 The Richfield Reformed Church was there, had a larger
 18 parcel.
 19 So it's always been a site used for
 20 religious worship, whatever denomination was there,
 21 it was always a religious worship.
 22 Two, I believe was also along those
 23 lines, but it conformed, right?
 24 THE WITNESS: I believe it serves the
 25 community certainly. There's a large population

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1 being addressed by this, yes.
 2 VICE CHAIRMAN WITHERS: Yeah,
 3 beneficial use.
 4 Three was --
 5 THE WITNESS: The fire -- the proposed
 6 use shall not create a fire, traffic or safety
 7 hazard.
 8 Again, the building will be up to
 9 current codes.
 10 VICE CHAIRMAN WITHERS: Now, are they
 11 -- they're only responsible for the circulation
 12 on-site, not leading to it, not -- not getting on the
 13 residential streets, right? There's some -- the
 14 issues here in my mindset go way back. The original
 15 Richfield Reformed Church had frontage on Clifton
 16 Avenue. They had frontage on a major thoroughfare
 17 capable of taking significant traffic without
 18 impacting the neighborhood. They ran into some
 19 financial issues and they sold off a significant
 20 portion and sold it to TD Bank and that stay -- that
 21 was a stay of execution, they stayed a couple more
 22 years, because they could afford it.
 23 Until that money ran out and then they
 24 had to get out to dodge. So they go to dodge and the
 25 access was back to a local residential street.

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1 Most of the religious houses of worship
 2 sites that were looked at from a parking perspective,
 3 I believe all of them are accessed and egressed off
 4 of either a county road or a roadway that is at --
 5 operates at a higher level of capacity and has curbs
 6 and sidewalks for people to walk for those people who
 7 are not in that area.
 8 In this location, Pershing Road does
 9 not provide a cartway wide enough for two-way
 10 traffic. You know, I've looked for, you know,
 11 roadway capacities for residential streets and I
 12 can't find it anywhere. I know a highway lane has a
 13 capacity of 2,000 vehicles an hour at 60 miles an
 14 hour, 12-foot lane and that's a rule of thumb you use
 15 in roadway and highways. That works for county
 16 roads, that works for, you know, collector
 17 distributor roads.
 18 When it comes to a residential area,
 19 that really doesn't come into play for whatever
 20 reason. They get a 50-foot right-of-way, 30-foot
 21 cartway. They can have two-way traffic, but you
 22 don't have significant two-way traffic. So you stop,
 23 you pass each other.
 24 The vehicles coming in and out of this
 25 facility right now technically take an hour to

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1 dissipate on the local roadways and the traffic
 2 study, when I went back and looked at it, it dealt
 3 with the volumes coming in and out of the facility.
 4 I don't think it took into consideration the 6 to 800
 5 homes that use these roadways as well.
 6 So the facility can use this road
 7 unencumbered for an hour, but if you live there, you
 8 can't get in and out. So there's a -- there's a
 9 disconnect with that and part of that is because
 10 you're using a residential street for your main
 11 access and egress into this facility rather than a
 12 collector distributor road, which can dissipate the
 13 traffic quicker and I think that is part of the issue
 14 and I think in my mind that the safety of the people
 15 who can't park in the parking lot and have to park on
 16 the street, if they don't have a sidewalk, they got
 17 to walk in the street, that's not safe. And it's
 18 those kind of things that are -- been problematic
 19 with this location. It -- I don't think -- I
 20 understand the building itself is too small, it needs
 21 to get bigger so you cannot have a, you know, dance
 22 studio in the prayer area, that's not right. The
 23 prayer area should be the prayer area. There should
 24 be other areas to do the secular stuff that goes with
 25 it. You know, so a larger facility is warranted,

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1 but, again, does it warrant something this size? Do
 2 you have to go from a building and make it
 3 400 percent larger, four times the size where, sure,
 4 you're giving maybe two, 2-and-a-half more, you know,
 5 of the parking, but there's still 100 to 150 cars
 6 parking on the streets.

7 When it comes to the High Holy Days and
 8 you're doing for the population of more than a normal
 9 Friday service, you know, they had to put people
 10 outside. I couldn't get a number to that, but I
 11 mean, now they're going to keep them within the
 12 building. Well, that's good. You know what I mean,
 13 the building, itself, has a multipurpose room in the
 14 basement that can handle if you take the square
 15 footage of the rooms and the person load, if you want
 16 to call it, right, you can take another 4, 500 people
 17 within the multipurpose building, not even counting
 18 the basketball court and, you know, institutions have
 19 basketball courts usually when they have a school, a
 20 K through 9 or K through 8, K through 6 for physical
 21 education for the children that are going to school.
 22 I don't think this facility is looking to have a
 23 school.

24 You know, but, again, the building
 25 itself is one thing. The parking is one thing.
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1 They're compliant with the numbers, but the function
 2 of the building within the neighborhood and the
 3 interrelationship, I don't think is really addressing
 4 the health, safety, welfare of the people who attend
 5 the mosque, as well as the people in the
 6 neighborhood.

(Applause.)

7 VICE CHAIRMAN WITHERS: And I think you
 8 need to see both positive and negative criteria, how
 9 that comes into play, because you don't want to --
 10 you want to have a nice facility. And I don't want
 11 to go by just the numbers, because the numbers are
 12 checking off, they're all there, but there was
 13 interpretation of the history of the existing
 14 facility and some of that is due to 300 cars having
 15 to park on the street, but that's only Ramadan,
 16 that's only one month of the year, but, again, that's
 17 one-twelfth of a year. I mean, it still -- you know,
 18 and it impacts something that's slightly different
 19 with, I guess, the way the country was built. The
 20 country was built basically where Saturday and
 21 Sundays is when you worship, you didn't -- you know,
 22 you worked on Friday.

23 So there's -- there's incidental peaks
 24 that come into play right, wrong or indifferent, but

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1 they all come into play and the town has aged.
 2 It's -- you know, you want to go and
 3 basically raise this site, it's basically getting
 4 knocked down and I think this is an opportunity to
 5 look at better distributing the traffic into areas
 6 that are not just safe for the people who are on the
 7 site, but also the people who have to park off-site
 8 and that as, I think, proper planning would address
 9 the shortcomings of the existing facility to make
 10 sure that some of those shortcomings are properly
 11 addressed more so than just providing more parking.
 12 Parking is there, they're definitely providing much
 13 more parking than what they did in the past, which is
 14 -- which is good, admirable, but the other foot has
 15 to drop and the other foot has to drop is that when
 16 God forbid at a time between services with the
 17 traffic you can't get a police vehicle in, you can't
 18 get emergency vehicles in and I think there is case
 19 history of that because there has been discussions
 20 over at least the past three years dealing with that
 21 issue.

22 Granted, the facility is overcrowded,
 23 people are outside during High Holy Days, that's
 24 being taken care of.

25 So there's a lot of accommodations
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1 going into play to fix the facility, but I think it's
2 got to go beyond the facility.

3 The facility needs to address some of
4 these other shortcomings and I would think some of
5 those criteria, I mean, you can't measure them, but
6 they're there. And some of those things need to be
7 addressed.

8 And going back to the traffic study,
9 again, I don't really think that local traffic -- and
10 I mean, you can stand there with a traffic counter on
11 a local street at 5:00 in the morning and everybody
12 is sleeping in their house, traffic is going to be
13 zero. You go there noontime, a lot of people are
14 having lunch, but there are people going back and
15 forth.

16 There are arguably 800 homes within the
17 area that were looked at for the parking, just the
18 areas that were parking and there's even more that if
19 you want to go to it from -- you know, I'm not even
20 counting Richfield Village, Brookside Drive, I'm
21 looking at the homes that are there along Lawrence,
22 along Pershing, along Starmond, along all the cross
23 streets, Urma, because the parking goes down to all
24 of those locations.

25 Some of that falls on the city, I'm
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1 sure, you know, but there's things that we have to
2 look at if we pass this, we have to pass it and we
3 have to look at it as the whole thing. We have to
4 make sure it's addressing the needs of all the
5 residents to the greatest extent possible and I don't
6 think that the planning testimony was -- checklist, a
7 lot of stuff there, it definitely meets the
8 checklist, but does it meet the spirit of what the
9 intention is to provide health, safety, welfare for
10 not only the people at the facility, but the people
11 in the local area? That's a major concern that I
12 have.

13 Now, maybe it's not the purview of the
14 planning board, but it definitely affects what we're
15 hearing and what we can project as to what this
16 application will do to the area.

17 I mean, I know there's not impact, laws
18 into place. They keep talking about them, they're
19 probably never going to do it, but there's things
20 that we see by normal land use law, black and white,
21 you meet the criteria, but once your criteria is in
22 and you're built, things get used a little bit
23 differently than they were testified to be, because
24 they can because now we got extra room.

25 Well, you know what, we can do this.
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1 We didn't intend to when we got the facility, but now
2 this is 10 years later and it would be a good idea if
3 we did X, Y, Z and you know what, we can do it. That
4 impact then comes on the area, which wasn't intended.

5 So it's these kinds of things that, you
6 know, the one foot drops, I worry about the other
7 foot dropping, which usually does and it comes across
8 our neck.

9 That's sort of where I am.

10 So is -- I don't know if I'm just -- I
11 know I'm rambling, but do you understand where I'm
12 coming from, that the black and white is one thing,
13 but the established work that's going out there needs
14 to be addressed somehow.

15 Thank you.
16 (Applause.)

17 MR. McGOWAN: So I can understand what
18 you're saying, but the governing body has said that a
19 house of worship is a permitted conditional use at
20 the site, that is already functioning at the site and
21 as you pointed out, Commissioner, has been
22 functioning as a house of worship for as long as
23 anyone can remember in this room.

24 VICE CHAIRMAN WITHERS: Well, it wasn't
25 quite as busy as it is now.
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1 MS. HADJIYANNIS: Yeah, I --

2 VICE CHAIRMAN WITHERS: They are very
3 good, they all go and worship, which I can say that
4 the -- you know, the churches and whatever, the other
5 areas they're on, they're all on the television thing
6 watching Billy Graham or whatever, they're not going
7 to worship.

8 MS. HADJIYANNIS: I'm sorry, I have to
9 jump in to object to something Mr. McGowan just said.
10 He said that the governing body has said that this
11 has been determined to be a permitted conditional
12 use.

13 The governing body has made no such
14 determination. This board determines whether --

15 MR. McGOWAN: That's entirely
16 incorrect.

17 VICE CHAIRMAN WITHERS: Well, the thing
18 is that the mosque is there. The --
19 (Applause.)

20 BY MR. McGOWAN:

21 Q. Mr. Grygiel, can you please repeat your
22 testimony as to how permitted uses are delegated by
23 the governing body and conditional permitted uses are
24 put into law by the governing body?

25 A. Certainly.
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1 I didn't want to go into a detailed
2 dissertation earlier, the risk of, you know,
3 prolonging this hearing, which has gone on for a
4 number of nights already, but, again, I have over 25
5 years of professional experience as a professional
6 planner advising boards and municipalities following
7 the Municipal Land Use Law and essentially the
8 criteria is set forth pretty cleanly in the Municipal
9 Land Use Law division of powers that the governing
10 body says this is permitted or not permitted.

11 There's also in addition to that law
12 case law that courts then weigh in and say if the use
13 is permitted, then the board does not have the
14 ability to look at all the off-site impacts.

15 MR. FERRARO: I don't think that -- I
16 don't think the Vice Chair is talking about the use.
17 I think he's talking about the site plan.

18 VICE CHAIRMAN WITHERS: Yes.

19 MR. FERRARO: And whether a
20 modification can be made to the site plan to make it
21 better.

22 THE WITNESS: Okay. Fair enough.

23 The site plan, yes, the applicant has
24 gone a long way to improve the site plan. The issue
25 I hear is off-site and the streets around and the

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1 All right? The mosque is there, it's functioning.

2 It's overcrowded, the parking is terrible, the
3 circulation is terrible, right?

4 So either it stays that way or we look
5 to make improvements and there are improvements with
6 the building being expanded, it will make it function
7 better for the congregation.

8 To have additional parking is going to
9 relieve some of the off-site parking, but not all,
10 not all.

11 There's arguably 500 vehicles in total
12 when the High Holy Days come, roughly, attributed to
13 the facility.

14 So that's 210 being parked in the
15 parking lot and another 290 out in the street.

16 Now, granted the people won't be out on
17 the grass, because the mosque will be big enough to
18 hold them in the building, which is good.

19 So those inconveniences, those things
20 that were problematic to the residential area should
21 be addressed, but there's still the issue with the
22 parking, health, safety welfare and it's
23 realistically when we come to a decision.

24 It has nothing to do -- it's a mosque
25 today, it's going to be a mosque tomorrow.

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1 property and the parking and that is, unfortunately,
2 whether you like it or not, that's not the way it
3 works with a permitted use and for -- for example,
4 there's a reference made to busier streets.

5 (Audience Outburst.)

6 THE WITNESS: Excuse me.

7 MR. FERRARO: Listen, this is not going
8 to be a competition about who cheers for what side.
9 Okay.

10 CHAIRMAN KOLODZIEJ: We're not going to
11 have -- right.

12 This is a business meeting that we want
13 to keep under control. Okay?

14 We understand both sides, but we have
15 to conduct it like a business meeting.

16 We understand, but we have to get all
17 the facts and while we have our professional here,
18 let's listen, please.

19 Thank you.

20 VICE CHAIRMAN WITHERS: Maybe I can
21 simplify where we are as a board.

22 Essentially we have to either approve
23 it, because it makes things better or deny it and
24 leave things the way they are and it doesn't change
25 the religious use of the property, it's still there.

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1 So that's -- that's not -- that's not
2 the case.

3 Beneficial use, yes, we're not arguing
4 that. It's the expansion and the magnitude of the
5 expansion and if you do -- is there balance? Are we
6 doing 500 percent there and 2 percent there? Right?
7 There's got to be -- there's got to be balance and is
8 there proper balance and I haven't seen that
9 demonstrated in the testimony.

10 THE WITNESS: Respect -- I was just
11 going to say with regard to -- there's two things.
12 One is you mentioned before about frontage on a major
13 street. If the governing body thought that was an
14 issue, it could have put a standard such as that.
15 That is a typical standard.

16 The --

17 VICE CHAIRMAN WITHERS: That was
18 probably 25 years ago and no one thought about it,
19 because the Richfield Reformed Church had 60 people
20 that walked to the -- so it was not an issue.

21 THE WITNESS: The other issue is this:
22 I did mention in my testimony, I can elaborate
23 briefly, is that there is an option that the
24 applicant can have a fully conforming plan by making
25 all the parking spaces 19-foot deep and making the

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1 aisles 24-feet wide.
 2 Then the board would have absolutely,
 3 in my opinion as a planner, no jurisdiction to say no
 4 to the application based on -- there would be no
 5 variances, but there would be less grass, less new
 6 plantings, fewer parking spaces and everything you've
 7 talked about that's a concern that the applicant's
 8 been trying to work with the board and the public to
 9 address would not be addressed.

10 So I do believe firmly that this is a
 11 better planning alternative to have two minor
 12 variances to allow for additional parking and more
 13 green space on site while improving the facility. I
 14 think that's the board's -- it's not keep what's
 15 there versus, you know, what's being proposed. We
 16 have another option, which we think this is actually
 17 currently a better proposal.

18 VICE CHAIRMAN WITHERS: But the
 19 question that I think we -- is it -- is too much
 20 being put into that and not enough into the other?
 21 Should all the parking -- again, you don't have to
 22 because you're meeting the ordinance, because the
 23 ordinance -- it's an impossible ordinance to write.
 24 They've been trying to write it, I think -- well, I'm
 25 on the board 20 years.

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1 too subjective, they are not enforceable and while I
 2 can understand everything that you're saying, you
 3 referenced before black and white, unfortunately this
 4 board's job pursuant to case law is to judge this
 5 application through whether it's black or white
 6 without a lot of gray and from the applicant's
 7 perspective, while we certainly hear you and
 8 understand what you're saying, the governing body had
 9 an opportunity to provide more definite standards in
 10 their zoning ordinance making houses of worship
 11 conditionally permitted uses in residential zones.
 12 They didn't do that and I understand that, you know,
 13 maybe it was past 25 years, but they had 25 years to
 14 update it.

15 VICE CHAIRMAN WITHERS: I believe that
 16 has been in the -- since day one that it's always
 17 been -- what's a more beneficial use than a school or
 18 a church, right, or a house of worship? That's what
 19 the country was built on.

20 So you're not going to snub that and
 21 say it doesn't apply, it does apply, but the question
 22 is, does it apply -- you're bringing in a beneficial
 23 use, but then you jam it into an area that's already
 24 developed and it doesn't quite fit, it's a square peg
 25 in a round hole, still it's a beneficial use, but at

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1 MR. FERRARO: It doesn't matter.
 2 VICE CHAIRMAN WITHERS: It doesn't
 3 matter.

4 Trying to write that and it's a no-win
 5 situation. You can't regulate that and what you do
 6 is you try to make it fair and equitable across all
 7 denominations, which I think it does, but it still --
 8 you know, you have it for a restaurant. You can't
 9 park, guess what, you don't go to the restaurant, you
 10 go to a different one.

11 But if that's where you go to worship,
 12 you know what, you're going there to worship, because
 13 that's your -- you know, that's your congregation.

14 MR. MCGOWAN: The case law dealing with
 15 the issues that you're questioning and addressing,
 16 Commissioner, are -- is, you know, pretty clear in
 17 that from the applicant's perspective and this
 18 applies to all planning boards throughout the state,
 19 in that, you know, the applicant needs to have
 20 objective standards that they need to work towards
 21 and if the -- it is the governing body's job to
 22 enumerate those objective standards into the zoning
 23 ordinance, whether it be for a fully-permitted use or
 24 a conditionally permitted use.

25 If they're not objective and they are
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1 what cost?
 2 You blow up everything else, but you
 3 can't go back and change that, because it's still a
 4 beneficial use, but that doesn't mean we're going to
 5 blow up the whole, you know, residential area and
 6 make it fit for this beneficial use.

7 A lot of these beneficial uses were
 8 part of planned developments as the houses and the
 9 parks and everything else were put in when they took
 10 down the 12 farms. All right?

11 So it's old school thinking, but a lot
 12 of other things. Old school thinking doesn't cut the
 13 mustard today.

14 MR. MCGOWAN: Right.
 15 But the applicant --

16 VICE CHAIRMAN WITHERS: I know the
 17 applicant still has to work off the rules that are in
 18 place, that's true, but the problem that we see with
 19 it and this is when we talk about, you know, having
 20 impact fees and impact, you know, things that don't
 21 work. It's that when you see something and you
 22 change something, you try to make it fit as best as
 23 possible and I think --

24 MR. MCGOWAN: And that's what the
 25 applicant is trying to do.

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1 VICE CHAIRMAN WITHERS: And I think
2 what the application is doing is very admirable,
3 making it better for their congregation, providing
4 more parking.

5 But if you're wiping out the entire
6 site and you have an opportunity to rethink how to
7 bring in the traffic from a major roadway rather than
8 -- and, again, if this -- if this local street didn't
9 have 15 other local streets all going into it, I
10 mean, it's like a medusa what's going on and they all
11 -- and everybody goes to the one thing and they all
12 come out to somewhere a half mile away, which is a
13 big problem too, because it's going to another road
14 that doesn't handle traffic and, you know, got to
15 love the County of Passaic and county roads in
16 Clifton are a single lane in each direction, not two
17 lanes in each direction, you know, so there's issues.
18 Are we behind the times? It's just that you look at
19 land use law and it's, you know, again, black and
20 white, it's what we're working off of and it's what
21 we're ultimately going to have to make a decision
22 upon, but the only thing that comes into play there
23 is, again, health, safety, welfare. If no sidewalks
24 on the local streets, the local streets shouldn't
25 have parking. Maybe that -- does the town change

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1 that?
2 Do they put in permit parking so no one
3 else but the residents can park there? Nobody wants
4 that, because that's another problem.

5 So I mean, I'm going off on a tangent.

6 MR. FERRARO: Madam Chair.

7 CHAIRWOMAN KOLODZIEJ: Counsel.

8 MR. FERRARO: We have to bear in mind
9 on the board what our function and our duty is here
10 is that the applicant's determined to be a
11 conditional -- an approved conditional use, meaning
12 that they meet the conditional use standards, then
13 the off-site conditions are not relevant to the issue
14 of whether or not to approve the application.

15 The issues here are there's two minor
16 variances and whether or not those variances affect
17 the health, safety and welfare of the community or if
18 they're just matters of internal discussion.

19 So I understand that there's a big
20 concern, but what we're left to review is what's in
21 front of us and that's the ordinance that was given
22 to us by the Mayor and Council and we have to examine
23 our role on that basis.

24 VICE CHAIRMAN WITHERS: Madam Chair,
25 just does that --

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1 CHAIRWOMAN KOLODZIEJ: Vice Chair.
2 VICE CHAIRMAN WITHERS: Does that
3 comply 100 percent with the master plan? Does that
4 comply 100 percent with the master plan in the City
5 of Clifton.

6 MR. FERRARO: Well, the planner
7 testified about the master plan, so...

8 THE WITNESS: If you'd like, I can
9 weigh in that the master plan was most recently
10 adopted by this board in, I believe, 2023 and did not
11 recommend any changes that I was able to find with
12 regard to the house of worship standards.

13 So, you know, the regulations that have
14 been in place for some number of years, as you
15 mentioned, are still there and I could -- actually my
16 testimony outline, I've got citations to various
17 goals and objectives of that document that I think
18 are furthered.

19 I mean, I can belabor the point by
20 pointing out how there are some with regard to
21 providing adequate community facilities throughout --
22 you know, in terms of schools, public works and other
23 things that includes houses of worship. I mean, we,
24 I think, are certainly compliant with that and
25 providing for a modern facility that meets the needs

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1 of the -- it's a large segment of the community,
2 likewise improving the community appearance and
3 visual environment.

4 So there -- but the issue is this, as
5 someone who writes master plans for a living, they
6 are generally broader like that.

7 So it's not, again, an objection --
8 objective standard that you can measure, but I think
9 there's nothing of this application that is
10 inconsistent with the overall objectives of the
11 master plan and it's fully -- this application,
12 again, is fully complaint with the -- I guess about a
13 dozen or so standards that are set forth for houses
14 of worship.

15 So I think that's the clearest
16 indication of it being almost essentially -- it's a
17 permitted use certainly and one that's almost
18 essentially fully compliant.

19 VICE CHAIRMAN WITHERS: Right.

20 You're taking care of your parcel
21 100 percent, it's fine. It's the fragmentation of
22 how it fits in the -- you know, this works fine, but
23 how does it work with everything else?

24 And that's not your problem. Right?
25 That's not your problem.

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1 You work fine within the confines of
2 your parcel. You're going above and beyond by trying
3 to take care of some of the other things as you can
4 within your own parcel. You're not going to build a
5 10-story parking garage, that's not your issue,
6 shouldn't be your issue, but the overflow and the
7 impact on the roadway, that becomes the town's issue
8 which this board has no purview over and really that
9 has no basis on the decision that we have to make,
10 which is sort of disingenuous.

11 MR. McGOWAN: I can understand that
12 that's frustrating --

13 VICE CHAIRMAN WITHERS: Very
14 frustrating.

15 MR. McGOWAN: -- from where you sit.

16 VICE CHAIRMAN WITHERS: Right.

17 MR. McGOWAN: But we all,
18 unfortunately, need to play with the rules that we
19 have been provided. Saying that from the applicant's
20 perspective, you know.

21 VICE CHAIRMAN WITHERS: Uh-huh, uh-huh.
22 No, we do -- from the first early testimony, very
23 appreciative of going above and beyond the requisite
24 number of parking and doing more and we modified a
25 little bit, lost a little bit to get the interior

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1 parking lot landscaping and the buffer zone, which,
2 again, is beneficial for the surrounding homes and
3 area. You know, it's just a question of, you know,
4 how do we reconcile this with the testimony, with the
5 size and magnitude of the improvement versus, you
6 know, what's going on outside the fenced-in area.

7 MR. McGOWAN: Right, yeah.

8 I mean, and that's why Mr. Grygiel, I
9 think, highlighted the fact that, you know, you say
10 the size and the scope of the improvement, but the
11 zoning ordinance actually permits more. I mean, it
12 probably couldn't park it if it was bigger. I mean,
13 I guess theoretically they could if the prayer mats
14 were kept even lower, but, you know, the applicant
15 has tried to be considerate in striking a balance as
16 to what they need to properly provide an adequate
17 house of worship, which I think everyone agrees
18 they're entitled to, versus, you know, the effects on
19 the town and that's why they're only building to, you
20 know, roughly half of the permitted building
21 coverage.

22 CHAIRWOMAN KOLODZIEJ: Any other
23 commissioners have a question?

24 COMMISSIONER RODGERS: Madam Chair?

25 CHAIRWOMAN KOLODZIEJ: Yes,

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1 Commissioner Rodgers.

2 COMMISSIONER RODGERS: Can the
3 applicant's planner provide some testimony regarding
4 fire and safety and the proposed overall occupancy of
5 the building during peak times of prayer.

6 THE WITNESS: I cannot just because I'm
7 an expert in -- I'm an expert in professional
8 planning.

9 And, again, I review applications on
10 behalf of boards, but I defer to the municipal
11 experts who are dealing with code issues, that type
12 of thing.

13 So it's not something that's my
14 purview.

15 I am aware, though, that there are
16 standards that apply that the applicant has already
17 said they will comply with and will have to comply
18 with with regard to fire safety, building codes,
19 everything else in that regard.

20 So that's, again, why I think it's not
21 a standard that is really up for discussion by the
22 board, because it's this whole separate process that
23 needs to be addressed if and when the applicant, you
24 know, gets building permits and constructs the
25 facility.

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1 COMMISSIONER RODGERS: I think the
2 overall occupancy of the building during the peak
3 times of prayer is a potential fire hazard.

4 So I was just wondering if you can
5 weigh in on that.

6 THE WITNESS: That's -- again, that's
7 not something I'm able to testify to with regard to
8 the operation of the facility. There are applicable
9 standards that will regulate that.

10 MR. McGOWAN: When the building is
11 built, there will be a requirement from the fire
12 department that they provide a maximum occupancy for
13 the building.

14 The applicant has provided testimony on
15 numerous occasions that the maximum number of people
16 praying in the building will be the 837 prayer mats
17 that they are providing. That is different from the
18 overall occupancy of the building and, like I said,
19 there was the -- they will be required and just like
20 any other building to provide those occupancy -- the
21 maximum occupancy to the fire code official simply
22 because it would be a violation to go over that
23 number.

24 COMMISSIONER RODGERS: Right.

25 I think my concern, though, is, you

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1 know, the 837 number, you know, during one prayer
 2 service and then you have a second or a third prayer
 3 service, you know, coming and going at the same time,
 4 that was my concern.
 5 MR. MCGOWAN: Yeah, and I think that
 6 would go to that overall maximum fire code capacity
 7 that will need to be provided to the fire department
 8 as, you know, part of their final approval.
 9 COMMISSIONER RODGERS: Okay. Thank
 10 you.
 11 CHAIRWOMAN KOLODZIEJ: Anyone else?
 12 (No Response.)
 13 CHAIRWOMAN KOLODZIEJ: Okay. Would you
 14 like to -- okay, and then after we'll open to the
 15 public.
 16 MS. HADJIYANNIS: Yes, I would. Thank
 17 you, Madam Chair.
 18 CHAIRWOMAN KOLODZIEJ: Okay. Well, you
 19 know what, let's make it official.
 20 Can I have a motion to open to the
 21 public.
 22 COMMISSIONER BINASO: So moved.
 23 CHAIRWOMAN KOLODZIEJ: Second.
 24 MAYOR GRABOWSKI: Second.
 25 CHAIRWOMAN KOLODZIEJ: Anyone opposed?

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1 Clifton's zoning ordinance and I'd like you tell me
 2 whether you agree or disagree with the way it's
 3 defined there.
 4 So it says, a use --
 5 MR. FERRARO: What section are you
 6 referring to?
 7 MS. HADJIYANNIS: It's the definition
 8 section. I don't have the section number in front of
 9 me.
 10 BY MS. HADJIYANNIS:
 11 Q. It says:
 12 "A use permitted in a particular zoning
 13 district only upon a showing that such use in
 14 a specified location will comply with the
 15 conditions and standards for the location or
 16 operation of such use as contained in the
 17 zoning ordinance and upon the issuance of an
 18 authorization, therefore, by the planning
 19 board."
 20 A. That's the way Clifton defines it, yes.
 21 That's -- I agree with the -- that's the definition
 22 as it's written in Clifton, yes.
 23 Q. Okay. You don't have a problem with
 24 that?
 25 A. Again, the state Municipal Land Use Law

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1 (No Response.)
 2 CHAIRWOMAN KOLODZIEJ: Okay.
 3 CROSS EXAMINATION
 4 BY MS. HADJIYANNIS:
 5 Q. Good evening, Mr. Grygiel.
 6 A. Good evening.
 7 Q. My name is Cynthia Hadjiyannis. I'm
 8 here representing a group of neighbors who live in
 9 close proximity to the Islamic Center.
 10 So I'm just wondering, are you familiar
 11 with the definition of a conditional use in the
 12 definition section of Clifton's Zoning Ordinance?
 13 A. I have not -- not familiar with how
 14 it's defined in Clifton. It's defined at the state
 15 level.
 16 Q. Okay. I'm going to read the definition
 17 to you and I'd like you to tell me whether you agree
 18 or disagree with the way it's defined in Clifton's
 19 ordinance.
 20 COMMISSIONER BINASO: Speak into the
 21 mic. When you go sideways --
 22 MS. HADJIYANNIS: Sorry, sorry.
 23 BY MS. HADJIYANNIS:
 24 Q. So I'll just repeat myself. I'm going
 25 to read the definition of a conditional use that's in

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1 provides what a conditional use is.
 2 So if Clifton does elaborate, I don't
 3 recall if it exactly matches that language. The
 4 point is a conditional use statewide is one that has
 5 standards set forth and if those standards are met,
 6 the use is permitted and the planning board has
 7 jurisdiction to grant that conditional use.
 8 If the standards are not met, the
 9 zoning board has the ability to grant a (d) (3)
 10 variance from those conditional use standards.
 11 Q. Okay. And I did want to respond to the
 12 board attorney's question, it's Section 461-64 in the
 13 definition section.
 14 So do you know whether the Islamic
 15 Center is asking the planning board for an
 16 authorization stating that this house of worship
 17 application complies with the conditions in the
 18 zoning ordinance?
 19 A. The applicant has been the -- the
 20 planning board has taken jurisdiction of the
 21 application, so I would imagine that includes
 22 requesting conditional use approval.
 23 That's the whole point of being here,
 24 plus the ancillary variances that are being sought.
 25 Q. Okay. And the planning board is

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1 supposed to determine whether the application
2 satisfies the conditional use requirements, correct?
3 **A.** It's not the planning board's
4 jurisdiction to do that.

5 The zoning official sends the
6 application to a board based on how it's judged,
7 whether it's a permitted use or not.

8 The fact that the application is here
9 at the planning board is because it's determined that
10 all the conditional use standards are met and in
11 addition, again, this is already an operating use, so
12 that's almost a different category in some ways, but,
13 again, the planning board wouldn't be able to hear
14 the application if it was not compliant with those
15 conditional use standards.

16 **Q.** Okay. But then what is the
17 authorizer (phonetic) supposed to issue, it's
18 not meaningful?

19 **A.** The way the -- the planning board has
20 jurisdiction, that's the way it goes.

21 I mean, strictly speaking, you can call
22 it the conditional use permit if you want. I don't
23 recall how the notice was sent, but this is the
24 proper -- again, in my quarter century plus of
25 experience, planning boards by state law hear

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1 standards are not measurable in that way.

2 **Q.** Okay. I understand what you're saying.

3 Okay. So the -- so your opinion is

4 that all of the conditions for the conditional use

5 for this particular conditional use have been

6 satisfied?

7 **A.** Yes.

8 **Q.** Okay. And on the last condition in the

9 objective conditions, it -- number nine, it says

10 off-street parking, one space for every four seats;

11 is that correct?

12 **A.** That's -- I don't have the ordinance
13 section in front of me, but that's the -- that's the
14 standard is one for every four seats, yes.

15 **Q.** Okay. So how did you determine that
16 that was satisfied?

17 **A.** The testimony has been provided already
18 that based on the prayer mats, that ratio is
19 addressed.

20 **Q.** Okay. Did you measure the prayer mats
21 or do the math on this?

22 **A.** No, I don't typically -- there are
23 other professionals who are under oath providing
24 testimony or providing signed plans who have
25 testified to that and it's been reviewed by the

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1 conditional use applications and grant them when the
2 conditions are met and zoning boards have the
3 jurisdiction when those conditions are not met and
4 can still grant variances to allow them.

5 **Q.** Okay. So if the conditions aren't
6 satisfied, would the planning board still have
7 jurisdiction over the application?

8 **A.** As I testified, there are about a dozen
9 or so quantifiable standards, each one of which is
10 met. The only other standards that don't have any
11 definitive way to measure them, they are more
12 aspirational, if you will, in terms of how they're
13 written and I don't -- in my opinion there's no way
14 for a planning board to make a determination that's
15 not subjective with regard to those, because the way
16 there's no measurable number or amount of any type of
17 way to objectively -- you know, again, the example I
18 used before, front yard setback is 20 feet.

19 Either it's 20 feet or more or it's
20 not. So if it's 19 feet, it's not met, that's a --
21 that's a zoning board application.

22 Same goes for all the -- the parking
23 standard. If 210 spaces are required and 216 are
24 provided, it's met, so that's measurable.

25 The other standard -- the other five

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1 board's professionals as well that that is the number
2 that we're dealing with.

3 **Q.** Okay. So when you opined that all nine
4 conditions have been satisfied, for the ninth
5 condition you're relying on another professional's
6 testimony; is that correct?

7 **A.** Yes, that's very common.

8 **Q.** Okay. And you, yourself, admitted
9 earlier that planners don't have any special
10 expertise when it comes to calculating occupancy
11 load?

12 **A.** Well, with regard -- I think the
13 question was more specific, right, to fire codes,
14 occupancy, that is outside the jurisdiction,
15 respectfully, of this board or me as a planner that
16 there are applicable state laws and regulations that
17 are addressed, you know, when the architect submits
18 plans and the city has its own very qualified
19 professionals who then review them according to state
20 codes.

21 **Q.** Okay. And when you -- when you're
22 talking about Condition No. 9 for off-street parking,
23 one space for every four seats, wouldn't you agree
24 that a seat means occupant?

25 **A.** The seat, in this case, for a house of
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1 worship, in my opinion here it's been considered the
2 prayer mat.

3 In my experience with other similar
4 mosque facilities where you have that, it's the
5 prayer mat.

6 In other instances we have pews. It's,
7 you know, measured as a percentage or a certain --
8 you know, if it's not a chair, it's a -- there's a
9 proxy for it.

10 In this case for this faith, the proxy
11 is the prayer mat, because that's the same
12 essentially as me walking into a church or a
13 synagogue or any other place that has it by a chair
14 versus a prayer mat.

15 Q. Okay. So is -- are you saying that
16 Clifton's fire code official will ultimately be the
17 one to make the determination of the number of seats
18 or in this case prayer rugs?

19 A. No.

20 Q. Okay. So there's one determination
21 that's made now by the applicant's professionals and
22 then a separate determination made later by --

23 MR. MCGOWAN: There was testimony
24 provided that there will be 837 prayer mats, no more,
25 no less. I'm sure no one would care if there were

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1 applicant that other parts of the facility are not
2 going to be used when the --

3 MR. MCGOWAN: Yeah, the testimony was
4 that there will be no formal programming in any of the
5 other parts of the mosque during prayer time. That's
6 not to say that there might not be children running
7 around in the multipurpose rooms or something to that
8 ilk, but there will be no formal programming, meaning
9 there will be no reason for anyone to come to the
10 mosque for a reason other than to pray during those
11 prayer times.

12 BY MS. HADJIYANNIS:

13 Q. Okay. So the accessory spaces have
14 been excluded from any calculation of the number of
15 seats?

16 A. Right.

17 It's four -- it's four seats -- it's
18 one space for every four seats. That's the way the
19 ordinance is written just as for theaters,
20 auditoriums, et cetera, it's one space for every four
21 seats.

22 Q. Okay. But that's limited to the prayer
23 hall only and it excludes the accessory spaces,
24 correct?

25 A. That's the calculation that's been

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1 less than 837 prayer mats.

2 MS. HADJIYANNIS: Okay.

3 MR. MCGOWAN: But there will not be
4 more than -- more than 837 prayer mats.

5 MS. HADJIYANNIS: Okay.

6 MR. FERRARO: And that's a stipulation
7 of the applicant.

8 MR. MCGOWAN: Yes, I mean, that was --
9 testimony was provided on that, you know, probably 20
10 times throughout the course of this application.

11 BY MS. HADJIYANNIS:

12 Q. Okay. So do you have any idea what
13 percentage of the building is comprised of accessory
14 spaces?

15 A. I don't have that measurement.

16 Q. Okay. Do you know whether Clifton's
17 zoning ordinance specifies that you're supposed to
18 count the number of seats inside the prayer hall
19 only?

20 A. My understanding -- I'd have to look at
21 the exact wording of the section. It's the number of
22 seats for the -- for the house of worship.

23 Q. I'm sorry, could --

24 MR. FERRARO: Isn't this -- isn't -- I
25 just want to be clear. Was the stipulation of the

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1 provided, yes.

2 Q. Okay. Can you cite any authority that
3 supports that approach to calculating occupancy?

4 A. It's been reviewed by the applicant's
5 professionals, the board's professionals and it's my
6 experience, again, in representing about a few dozen
7 municipalities and representing applicants throughout
8 the state that that's the standard approach is that
9 in the sanctuary or prayer hall or whatever, that's
10 what the seats are based upon. It's not counting --
11 you know, we don't count a seat at a desk in an
12 office within the accessory use. You don't count
13 seats throughout the entire building. That would be
14 a -- you know, it's beyond what typically is measured
15 for this type of use.

16 Q. Okay. And are you familiar with
17 Article X of Clifton's zoning ordinance, it's
18 entitled "Off-street Parking and Loading"?

19 A. Within the zoning, the section within
20 the zoning, yes.

21 Q. Okay. And do you know what the purpose
22 of Article X is?

23 A. I don't have it in front of me. If you
24 would like to tell me, I can --

25 Q. Okay. So Article X just says to ensure

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1 sufficient off-street parking and loading spaces to
 2 avoid congestion of public streets to promote safety
 3 and convenience of pedestrians and motorists.
 4 So I know you're saying you don't have
 5 anything in front of you, but I don't know if you
 6 want me to --
 7 **A.** That's --
 8 **Q.** -- go into or you're okay with --
 9 **A.** That's a very standard preamble
 10 language.
 11 Again, someone who writes ordinances,
 12 reads, you know, probably a hundred of them a year,
 13 that type of language is very common, yes.
 14 **Q.** Okay. Doesn't Article X require one
 15 parking space for every 100 square feet in other
 16 parts of the building?
 17 **A.** No, for the house of worship there's a
 18 standard of one for every four seats.
 19 **Q.** Okay. Okay. Just turning to the
 20 general standards that you were saying most of them
 21 are the general standards for review of conditional
 22 uses. Is it your testimony that most of these
 23 general standards are not legal?
 24 **A.** It's my testimony based upon how case
 25 law is interpreted, ordinances, you can't -- if you

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1 have a standard that can't be measured, it's really
 2 of no use to a board to have a sort of aspirational
 3 standard such as this.
 4 **Q.** So your position is that the board
 5 should not apply its own ordinance when it's
 6 reviewing the application?
 7 **A.** That's not the board's job to do that
 8 to apply an ordinance to a generic section such as
 9 this. It's -- again, if the board wants to weigh in
 10 on it, it has the ability to do so, but, again --
 11 **MR. FERRARO:** Excuse me, just for the
 12 record, Commissioner Lataro had to leave. He has a
 13 family emergency.
 14 So he's leaving at 8:20 and he'll
 15 review the tape and whatever. I hope everything's
 16 okay, Commissioner.
 17 (Whereupon, Commissioner Lataro departs
 18 the meeting.)
 19 **THE WITNESS:** And just to finish up on
 20 that point, with regard to the standards, these are
 21 applicable to all -- a few dozen conditional uses.
 22 So they're not directly applicable to
 23 any one. You know, whether it was a gas station or a
 24 -- I forget the -- senior housing or other types of
 25 uses or in this case, house of worship, each of those

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1 also has very specific measurable standards and in my
 2 opinion those are the ones that are really most
 3 applicable, because non-compliance with them would
 4 send the application to the zoning board.
 5 **BY MS. HADJIYANNIS:**
 6 **Q.** Okay. And so for general standards,
 7 (c)(1), (c)(2), (c)(3), (c)(4) and (c)(7), you did
 8 not provide any testimony about those -- whether
 9 those standards are satisfied?
 10 **A.** My testimony was they're not
 11 applicable.
 12 **Q.** Okay. Now, turning to the accessory
 13 uses, is it -- is it possible that any of the
 14 accessory uses could be -- become commercial?
 15 **A.** I want to make sure I understand your
 16 question.
 17 If any of the uses within the house of
 18 worship could become commercial.
 19 **Q.** Yes.
 20 **A.** I suppose I may need some clarification
 21 -- I'm not sure how to answer this.
 22 **MR. MCGOWAN:** There was testimony from
 23 the applicant's representative that there would be no
 24 -- you know, they will not be renting the spaces or
 25 anything of that nature, if that's what you mean by

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1 commercial. It's only for use by the congregants at
 2 the -- of the mosque.
 3 **BY MS. HADJIYANNIS:**
 4 **Q.** Okay. So just for example, so the
 5 multipurpose halls won't be rented out? I mean, I
 6 guess this is a better question for the operations
 7 person.
 8 Let's see, and just to kind of close
 9 the loop on this, you're saying the occupancy load of
 10 the accessory spaces is not relevant to zoning
 11 compliance?
 12 **A.** The zoning compliance is set based upon
 13 the parking standards. The occupancy load is a
 14 totally separate set of regulations and enforcement
 15 by others.
 16 The planning board/zoning board do not
 17 set occupancy loads. They don't have the ability to
 18 do so under law, nor the expertise to do so
 19 generally.
 20 **Q.** Okay. How -- and I guess you testified
 21 before you don't know how big the gym is?
 22 **A.** I'm sorry?
 23 **Q.** There's a gymnasium as part of the
 24 proposal. Do you know how big it is?
 25 **A.** No, I saw it, it looks like it's a

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1 standard size to include a basketball court. I don't
2 have the square footage off the top of my head.
3 Q. Okay. And when you talk about
4 accessory spaces, they're supposed to be subordinate
5 to the principal use.

6 In your experience is there any time an
7 accessory use is so big in proportion to the
8 principal use that it can no longer be considered an
9 accessory use?

10 A. You're asking if that's possible just
11 generally?

12 Q. Yes, a hypothetical question.

13 A. Well, we're not -- if you -- generally
14 there's a lot of things that are possible. I'm
15 focused on this application that this board is
16 hearing.

17 But based upon my experience with
18 houses of worship, this is very common to have --
19 like the church I went to growing up or other ones
20 I've represented or visited having facilities,
21 whether it's meeting rooms, gymnasiums, classrooms,
22 religious education, courts have been pretty clear
23 that a house of worship is not just a prayer hall,
24 but it's also all of these other aspects that are
25 part of their mission.

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1 then we can have Ms. Hartmann return.

2 Okay. We are back on the record.

3 This is the public portion to ask the
4 planner questions, that's what this is about. So if
5 you would like to state your name and address and
6 this is for questions only to the planner.

7 MR. PERINO: Yes, thank you.

8 Good evening. My name is Gary Perino,
9 491 Mt. Prospect Avenue, Clifton, New Jersey.

10 Mr. Planner, you said something very
11 profound just a few minutes ago and I'd like you to
12 possibly elaborate.

13 You said times -- things don't change
14 or time doesn't change things, something to that
15 effect.

16 Did you purposely leave off -- and I
17 guess that was in relation to your site plan.

18 Did you purposely leave off just a
19 little sniglet at the end? The roadways leading to
20 and from your site have never changed.

21 THE WITNESS: Respectfully, I'm not
22 sure I remember the context of which I mentioned
23 that.

24 So you're saying it was in regard to
25 direct testimony that times don't change.

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1 So in this case, I don't see anything
2 out of the ordinary with regard to having accessory
3 uses that you would have potentially in a synagogue,
4 a church, a mosque, any other type of -- temple, any
5 other type of facility that has, you know,
6 accessory-type uses.

7 Q. Okay. Did you visit the site to
8 prepare to testify today?

9 A. Yes.

10 MS. HADJIYANNIS: Okay. That's all I
11 have.

12 Thank you.

13 CHAIRWOMAN KOLODZIEJ: I am going to
14 continue with the public, but I'm going to take a
15 break for our stenographer.

16 So we will break for about 10 minutes,
17 15 minutes and then we will come back and the public
18 portion is open.

19 (Whereupon, a short recess is held.)

20 CHAIRWOMAN KOLODZIEJ: Let's go back on
21 the record. Okay.

22 So I just need a few more people back
23 up on the dais. The mayor and the councilman are
24 going to return.

25 And my attorney is going to return and

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1 MR. PERINO: Yeah, you had just said
2 something -- something to the effect that times do
3 change.

4 THE WITNESS: Times do change.

5 MR. PERINO: Times do change with
6 respect to your --

7 THE WITNESS: Oh, yes --

8 MR. PERINO: In other words, building a
9 bigger building.

10 THE WITNESS: Yes, now I understand
11 what you're -- yes, thank you for refreshing that the
12 -- again, that we're all aware over time the needs of
13 whether it's offices, stores, houses of worship,
14 people's homes even, you know, grow and evolve and
15 change.

16 There's different types of facilities.
17 So basically that as times evolve, that there's needs
18 to, you know, update facilities, expand facilities,
19 replace them. It was more -- that was the type of
20 context in which I was -- was mentioning that.

21 MR. PERINO: But you didn't mention
22 that the roadways leading to and from your site did
23 not change.

24 THE WITNESS: Well, I can't speak to
25 whether they have and I'm sure there's been some

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1 changes over the years, but the overall pattern has
 2 been essentially --
 3 MR. PERINO: I would respectfully
 4 disagree with you, but that's --
 5 THE WITNESS: Okay. Fair enough.
 6 MR. PERINO: -- for another day.
 7 THE WITNESS: Yes.
 8 The uses along the roadways may have
 9 changed over time too, but, yes, what you're saying
 10 is the road was there --
 11 MR. PERINO: The road was there and --
 12 THE WITNESS: The road's been there,
 13 yes.
 14 MR. PERINO: It's still parking on both
 15 sides and basically one lane.
 16 THE WITNESS: Yes, understood.
 17 I understand what you're saying, yes.
 18 Thank you.
 19 MR. PERINO: We can agree to disagree.
 20 There's certain definitions like I
 21 don't think anyone here is going to dispute the fact
 22 that it's beneficial, that it's a permitted use and
 23 that you're trying to do everything for your client
 24 within that site to do.
 25 But there's kind of a fourth step or
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1 stage and that's -- that's the neighborhood, how it
 2 effects the neighborhood.
 3 Did you address that at all? I mean,
 4 obviously you're paid by the clients to do your due
 5 diligence, but did you also do due diligence within
 6 the neighborhood in terms of quality of life, health,
 7 safety, welfare, that sort of thing.
 8 THE WITNESS: Yes, yes. Certainly --
 9 that's certainly a consideration.
 10 The applicant has designed -- before I
 11 was involved even -- designed a project that complies
 12 with how far the building is set back from the
 13 property lines, how large it is, how tall it is, but
 14 also has evolved as the application has gone on to
 15 say we can move the parking around a bit, we can add
 16 some additional landscaping and buffering and to try
 17 to address concerns. You know, again, the overall
 18 purpose of this too is to try to take an existing
 19 congregation that's there not to grow the size of it,
 20 but to make it work more efficiently on the site and
 21 that's a benefit, I think, to the neighborhood that
 22 you don't need to have outdoor services during
 23 Ramadan, for example, that you'll have adequate
 24 facilities within the buildings and more -- I think
 25 very importantly having parking on-site so there's
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1 not this concern about people parking all over the
 2 streets, whereas now those vehicles can be
 3 accommodated on the property.
 4 So I think there's actually a lot
 5 that's beneficial to the neighborhood from the
 6 proposal.
 7 MR. PERINO: You have a very unique
 8 congregation as I mentioned in the last meeting. You
 9 have X amount of people that belong to your, I'm
 10 going to call it, a church or your mosque and then
 11 there's a secondary group of people that basically
 12 don't belong to your mosque, but attend there.
 13 Can you with any certainty -- I mean,
 14 you used the word "objective," which we'll talk about
 15 in a minute, but can you tell me how many people are
 16 going -- do you average things? How many people are
 17 going to be on the site for your prayer services? I
 18 don't think you can.
 19 THE WITNESS: There's a maximum number
 20 of prayer mats, which was already specified, that the
 21 applicants agreed to would be a condition of any
 22 approval.
 23 So they have to live within the
 24 confines of that and there's just the reality to,
 25 again, we're talking about a specific congregation
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1 that has multiple locations, so it's not that, you
 2 know, everyone's coming to one facility and there's
 3 other options within -- within that.
 4 Now, that said, religion is granted
 5 under federal law for various protections, as well as
 6 under state law as an inherently beneficial use that
 7 you don't get -- just like you don't get into the
 8 details of certain other types of uses within
 9 offices, you know, how your office operates. There
 10 is going to be, you know, aspects of the operation
 11 that change over time.
 12 But my understanding, and it's been put
 13 in testimony, is you have a facility that's here
 14 already with a certain amount of people coming to the
 15 site. It's not intended to drastically change, if at
 16 all, just to make it work better within that context.
 17 MR. PERINO: Have you visited the site?
 18 THE WITNESS: Yes, as I mentioned
 19 before.
 20 MR. PERINO: How many occasions?
 21 THE WITNESS: To the site specifically,
 22 one recently. I've been by this site many times over
 23 -- I've done a lot of work in the vicinity, so I've
 24 driven by the area multiple times, but not --
 25 MR. PERINO: That's fine.
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1 THE WITNESS: -- to visit specifically.
2 MR. PERINO: Just one time you visited
3 it. You weren't there during Ramadan.

4 THE WITNESS: No.

5 MR. PERINO: You weren't there after
6 prayer service by, let's say, Van Houten Avenue or
7 Clifton Avenue to view the traffic.

8 THE WITNESS: No, I'm not dealing with
9 the off-site traffic, no.

10 MR. PERINO: Have you ever tried to
11 cross Clifton Avenue from either Lawrence Court or
12 Brookside Drive, four lanes of traffic during
13 noontime.

14 THE WITNESS: Noontime, that's a very
15 specific question. No, not during noontime.

16 MR. PERINO: What about Van Houten Ave,
17 Pershing and Urma and Van Houten.

18 THE WITNESS: I've been in the
19 vicinity. I couldn't say specifically to all the
20 intersections. I've been through the area, but --

21 MR. PERINO: I think I could tell you
22 that it's very difficult to do that and it backs
23 traffic up, but that's besides the point.

24 Commissioner Welsh in, I believe, it
25 was the last meeting or the meeting before that said

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1 you just plan for, okay, this is what the applicant
2 wants and this is the best that we can do.

3 THE WITNESS: That varies depending on
4 the project. I can't say every project is the same.

5 MR. PERINO: This project.

6 THE WITNESS: This project was laid out
7 to accommodate the existing facility -- the existing
8 congregation in a better manner on this site and to
9 comply to the extent possible of all of the zoning
10 standards that out -- that are in place.

11 MR. PERINO: But with all due respect,
12 sir, you don't know how many cars are going to be
13 coming at any particular time there, so how can you
14 plan for something for -- you can do the minimum.
15 You did the minimum, 418 parking spaces or whatever
16 -- whatever that number is. Did you plan for worst
17 case scenarios?

18 THE WITNESS: Again, I know that now
19 there's under 100 spaces on site now and there's an
20 issue with regard to parking. There's also an issue
21 with regard to traffic in the vicinity that
22 respectfully goes well beyond this particular use.
23 Clifton's built up, Clifton Ave is busy. You have a
24 lot of traffic that comes from other sources.

25 So to pinpoint it only on the
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1 something very, very profound also and I'd like your
2 comments. He said something to the effect -- and I
3 hope he doesn't get mad at me, but he said, you folks
4 are starting with a blank canvas. You could have
5 designed or planned this facility any which way to
6 take the traffic out of the city for better ingress
7 and egress, but you choose not to.

8 I mean, yeah, you made some
9 concessions, that's fine, but it's still not a good
10 project. Why?

11 THE WITNESS: So you're paraphrasing
12 and then asking me why he said that.

13 MR. PERINO: No, I'm not -- no, I'm
14 saying --

15 THE WITNESS: I'm not following your
16 question respectfully.

17 MR. PERINO: I'm saying why didn't you
18 with -- as a planner, as a professional planner,
19 design that facility that would work in the
20 neighborhood, a parking garage, didn't have to be 14
21 stories, but it could be a parking garage that you
22 could put 1,000 cars, 500 cars, 800 cars? Why -- why
23 didn't you -- in other words, my -- I guess my
24 question to you directly is: When you plan a
25 project, do you plan for the worst case scenario or

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1 congregation is, you know, leaving out there's a lot
2 of other factors.

3 With that said, as I told -- I
4 suggested to the board or elaborated to the board,
5 the planning board has a role here to deal with what
6 the governing body set forth.

7 Houses of worship are permitted.
8 There's one that exists there today. Standards have
9 been provided and they're all met.

10 To say you should provide additional
11 parking just for the sake of it, that would then lead
12 to more traffic if you had a garage for 1,000 cars as
13 you suggested.

14 I think it's a reasonable proposal to
15 increase on-site parking that would better
16 accommodate the cars that are there today in the
17 future.

18 MR. PERINO: Did you make any
19 provisions for -- the ON3 project, for example,
20 there's going to be 1,000 apartments soon built
21 there. There's going to be a beautiful hotel
22 facility there.

23 On Paulison Avenue we have the
24 distillery, which is going to add 300 people there.

25 Have you made any -- any kind of
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1 planning -- what shall I say -- plans for future
 2 growth as well?
 3 Because you can't tell me right now or
 4 the board how many people are going to come to next
 5 Friday's services or Ramadan, you can't tell me that.
 6 You said it's subjective, okay. The traffic on Urma
 7 and Pershing and Clifton and Brookside Drive, that's
 8 subjective, but you don't have to be a rocket
 9 scientist to just stand there and see the traffic
 10 there. I mean, I think it changes from being
 11 subjective to being realtime, but anyway that's just
 12 my -- my -- sir, as a planner, do they have -- and
 13 I'll wrap this up quickly. Are there certain
 14 definitions? Like there's a definition for a church
 15 or a mosque or a place of worship, for a hospital,
 16 for a box store like Costco, there's certain
 17 definitions and it has to meet a criteria. When does
 18 -- let's take Costco, for example, Costco over here
 19 in Clifton has a gas station. Costco has -- is a box
 20 store. When does Costco stop being a box store and
 21 become a gas station or a minimart and what -- versus
 22 when does a house of worship, which -- and, again,
 23 I'm just using somebody's statistics, they said it's
 24 under 25 percent of the total facility and 75 percent
 25 are these ancillary facilities. When does it become

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1 there's a little kitchen, there's a stage. It's a
 2 50/50 proposition. Maybe it's 48/52, 52/48,
 3 whatever, but it's very close. This particular
 4 facility is 75/25 or in other words, 25/75,
 5 25 percent worship, 75 percent extra.
 6 Does that not cross the threshold of
 7 becoming something other than what is being
 8 presented.
 9 THE WITNESS: I don't believe it does
 10 and, again, the broad freedoms granted by the state
 11 and the federal, you know, government in terms of
 12 religious practice don't try to get into
 13 micromanaging the specifics. There are some
 14 congregations that have a mission that includes --
 15 I'm not saying it's this one, but other ones that
 16 feeding the poor, you know, helping out with other
 17 types of activities, educating people. There are
 18 many aspects that aren't directly related just to
 19 praying is my point, whether it's in the Catholic
 20 church or a Jewish synagogue or a mosque, Muslim
 21 mosque, there are often aspect -- again, this is not
 22 a new thing that there are other parts of the
 23 mission, whether it's a ministry for certain parts of
 24 the -- you know, the congregation or youth education,
 25 that type of thing. That's not typically the -- it's

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1 a community center with 75 percent of the activity
 2 versus a house of worship?
 3 I hope I -- with 25 percent. I hope I
 4 haven't confused you. When -- you can ask my wife, I
 5 can confuse anyone. But when does a house of worship
 6 not become a house of worship, but rather a community
 7 center.
 8 THE WITNESS: There's a definition
 9 there, I don't have it in front of me, but the house
 10 of worship traditionally has been -- has had
 11 ancillary uses, whether it's this one or other
 12 existing facilities or -- throughout the city.
 13 There's no threshold set in the
 14 ordinance and if it's -- you know, the primary
 15 objective is to provide a place for freedom of
 16 religion for a religious institution to operate.
 17 That also includes all those other aspects as well.
 18 I don't know of a threshold of what you're saying
 19 where it becomes a community center versus a house of
 20 worship.

MR. PERINO: I can just speak from 73
 21 years experience at St. Andrew Church, which is one
 22 of the four or six that you mentioned and there's a
 23 church on the top and on the bottom there's a
 24 community room, there's -- there's classrooms,
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1 not a planning board's role to do that and, B, again,
 2 under the state law and federal law within -- you
 3 know, there's a lot of leeway given to how -- you
 4 know, how it's defined. We don't get into measuring
 5 these things.
 6 MR. PERINO: Just two other quick
 7 questions.
 8 THE WITNESS: Sure.
 9 MR. PERINO: No, I think I'll leave it
 10 at that.
 11 THE WITNESS: Okay.
 12 Thank you.
 13 CHAIRWOMAN KOLODZIEJ: Okay. Would you
 14 state your name, please, and address?
 15 MS. CASTRONOVO: Nancy Castronovo,
 16 52 Greendale Road.
 17 I'd like to answer Gary's question that
 18 the --
 19 MALE BOARD MEMBER: Pull down your mic.
 20 MS. CASTRONOVO: Internal Revenue --
 21 MR. FERRARO: Excuse me, ma'am. This
 22 is --
 23 MS. CASTRONOVO: -- defines -- the
 24 Internal Revenue defines -- defines it --
 25 MALE BOARD MEMBER: State your name and
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1 address.

2 MS. CASTRONOVO: Oh, Nancy Castronovo,

3 52 Greendale Road.

4 MR. FERRARO: Yeah, but this is the

5 time where you ask questions --

6 MS. CASTRONOVO: Yes.

7 MR. FERRARO: -- of the planner.

8 MS. CASTRONOVO: Well, I'm just --

9 since Gary asked, I -- it is --

10 MR. FERRARO: You'll have an

11 opportunity --

12 MS. CASTRONOVO: Well, I'm just

13 answering this because we're here now. We've been

14 here many nights.

15 MR. FERRARO: We're going to be here

16 again and you'll have that opportunity, but please

17 limit this to questions to the planner.

18 MS. CASTRONOVO: It's primarily and

19 exclusively a house of worship, that's what it's

20 supposed to be.

21 In this case, the accessory space is

22 31,559 square feet.

23 MR. FERRARO: Ma'am.

24 MS. CASTRONOVO: I understand.

25 Which is 73 percent. So to clarify

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1 that.

2 MR. FERRARO: Ma'am, please direct your

3 -- a question to the planner, that's the phase we're

4 at now. When the -- when the --

5 MS. CASTRONOVO: So I would like to

6 ask, why -- all right, to check the box on all --

7 these are all measurements for conditional uses. You

8 check off 35 feet height, this and that.

9 However, this is a question I want to

10 know. You say that City of Clifton Code 461-25,

11 which we read one, three -- one, two, three, four and

12 seven do not count. Then why do we have them?

13 As I read the website and I read the

14 City of Clifton criteria for how these planning board

15 members are supposed to judge, they are supposed to

16 -- they are supposed to judge, and this is why we are

17 all here, that it not -- shall not be detrimental to

18 the health, safety and general welfare of the

19 community.

20 Currently we're saying that it is

21 already on a Friday. Now we're talking seven days a

22 week where accessory uses are a recreation center.

23 So why does that not count that the

24 structure shall not have an adverse effect on the

25 neighborhood in which it is proposed and we are all

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1 here saying, yes, it does.

2 And that the use shall provide safe and

3 efficient vehicular and pedestrian circulation with

4 access and egress designed to eliminate any traffic

5 safety hazards entering and exiting the site and so

6 designed as not to cause traffic congestion on

7 abutting streets where currently this is a problem.

8 So seven days a week you don't think

9 this is going to be a problem when we have

10 basketball, table tennis room, full track, offices,

11 kitchen, you don't think so?

12 Possibly in the future, daycare center,

13 rental facility, catering facility, what's to prevent

14 that? You don't think that's important, that we're

15 wasting our time?

16 And we all, by the way, pay taxes, they

17 do not.

18 MALE AUDIENCE MEMBER: Yes, we do.

19 (Audience Outburst.)

20 CHAIRWOMAN KOLODZIEJ: Please.

21 MS. CASTRONOVO: Some of them in the

22 neighborhood may, but the majority of -- the majority

23 of them don't.

24 CHAIRWOMAN KOLODZIEJ: Just ask your

25 question and he'll answer your question.

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1 MS. CASTRONOVO: And that's my

2 question.

3 Why doesn't that count when that's the

4 criteria that they are obligated to use.

5 CHAIRWOMAN KOLODZIEJ: All right. Let

6 him answer.

7 THE WITNESS: Why does -- please, there

8 was a lot there. Why doesn't what count?

9 MS. CASTRONOVO: The 461-25.

10 All those provisions, general

11 provisions of an ordinance, it exists for them to

12 judge the proposal.

13 THE WITNESS: I'll tell you why it

14 doesn't count.

15 The master plan set forth many years

16 ago where uses, houses of worship are permitted.

17 This planning board had the ability in 2021, '22, '23

18 when it updated its master plan if there was concerns

19 about that to say we recommend that houses of worship

20 should no longer be permitted in residential

21 neighborhoods. The planning board did not recommend

22 that.

23 Therefore, the council, it's zoning

24 regulations stayed in place to say in the R-2A --

25 R-A2 zone you can have a house of worship as long as

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1 it meets all these conditions.
 2 MS. CASTRONOVO: Well, the conditions
 3 are all measurements.
 4 THE WITNESS: Can I answer the
 5 question, please.
 6 MS. CASTRONOVO: That's all that is.
 7 THE WITNESS: May I answer the
 8 question, please.
 9 MS. CASTRONOVO: Well, you keep saying
 10 the same thing about a master plan that we don't
 11 have.
 12 THE WITNESS: The master plan is
 13 available on the township's website where I've
 14 obtained and read it.
 15 MS. CASTRONOVO: But you're not saying
 16 why this ordinance -- why we -- why they don't use
 17 this ordinance when they're obligated to use it.
 18 THE WITNESS: I did say that, but if --
 19 I can rehash my testimony if the board would like,
 20 but I answered that question previously.
 21 MS. CASTRONOVO: No, you didn't.
 22 THE WITNESS: Okay.
 23 MR. MCGOWAN: There was definitely
 24 testimony provided earlier that the governing body is
 25 the one in every town but also here in Clifton --

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1 MR. FERRARO: Excuse me, do you have
 2 any more questions.
 3 MS. CASTRONOVO: Yes.
 4 Are you aware the City of Clifton
 5 Ordinance 461-27B refers to harmonization with the
 6 neighborhood to include size, height and overall
 7 coverage of the proposed structure compared to
 8 neighboring homes, which number around 800, which the
 9 planning board must evaluate for the overall visual
 10 effect.
 11 And in addition traffic and safety
 12 considering access and egress and, again, which must
 13 be planned to avoid congestion or hazards on
 14 residential streets and must contribute to the
 15 overall neighborhood compatibility, which we will say
 16 it does not.
 17 We're not talking the worship area,
 18 which is minimal. You keep saying worship area.
 19 We're talking the accessory uses, that's why we're
 20 here. That's part of the planning board, is it not?
 21 THE WITNESS: Is that --
 22 MS. CASTRONOVO: That's the question.
 23 THE WITNESS: The question, if that's
 24 part of the planning board --
 25 MS. CASTRONOVO: The harmonization, the

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1 compatibility doesn't count.
 2 THE WITNESS: These standards are all
 3 there and there also are the other standards, which
 4 are measurable, which have all been met.
 5 MS. CASTRONOVO: So you just pick and
 6 choose which ones you want to meet, is basically what
 7 you're saying and the board doesn't have an
 8 obligation to abide by its own ordinances.
 9 THE WITNESS: This --
 10 MS. CASTRONOVO: I mean, why have the
 11 ordinance then.
 12 CHAIRWOMAN KOLODZIEJ: Let him answer,
 13 let him --
 14 THE WITNESS: Would you like me to
 15 answer the question or would you like to keep
 16 talking.
 17 MS. CASTRONOVO: I'd like to keep
 18 talking.
 19 (Audience Outburst.)
 20 CHAIRWOMAN KOLODZIEJ: Okay, okay.
 21 MS. CASTRONOVO: You're pretty
 22 arrogant.
 23 MR. FERRARO: No, go ahead, ma'am, you
 24 ask your question.
 25 THE WITNESS: I'm trying to answer your

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1 questions, but it's -- you know, I'm trying to do my
 2 best.
 3 CHAIRWOMAN KOLODZIEJ: Give him a
 4 chance to answer the questions.
 5 THE WITNESS: My apologies.
 6 CHAIRWOMAN KOLODZIEJ: Okay.
 7 Answer the question.
 8 MS. CASTRONOVO: On the harmonization
 9 and compatibility with the 4 -- 800 residential
 10 homes, why isn't -- why aren't you considering that.
 11 THE WITNESS: Because what you might
 12 think is compatible or not compatible is not
 13 something that's measurable.
 14 It's the -- there are standards that
 15 are set in terms of height, in terms of setbacks, in
 16 terms of buffering to neighboring properties that are
 17 addressed.
 18 There are -- there's no way to say that
 19 what you think is objectionable or not objectionable
 20 is the same as a board member or anyone else in the
 21 public can say.
 22 That's the reason that type of standard
 23 has been through case law. The courts have said that
 24 that's not a valid standard to have those types of
 25 aspirational language for --

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1 MS. CASTRONOVO: So then why do we have
2 them.
3 THE WITNESS: That's a question --
4 MS. CASTRONOVO: And you don't think
5 that --
6 THE WITNESS: That's a question you
7 have to ask your --
8 MS. CASTRONOVO: You don't think
9 harmonization and compatibility is --
10 THE COURT REPORTER: One at a time.
11 CHAIRWOMAN KOLODZIEJ: Wait, one at a
12 time.
13 MS. CASTRONOVO: I'm sorry, you're
14 right.
15 CHAIRWOMAN KOLODZIEJ: We have a
16 stenographer. We have --
17 MS. CASTRONOVO: I know, I realize, I
18 apologize to her.
19 CHAIRWOMAN KOLODZIEJ: It's one at a
20 time, you ask a question, he answers the question,
21 and --
22 MS. CASTRONOVO: Right. I'm asking
23 about ordinances.
24 CHAIRWOMAN KOLODZIEJ: Okay, okay. So
25 you ask, he needs to answer, she needs to type.
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1 One at a time.
2 THE WITNESS: I think the harmonization
3 and compatibility is you have a use there today where
4 the applicant has parking that does not accommodate
5 all of its cars.
6 They're trying to bring them onto the
7 site.
8 So that's a benefit to take cars off
9 the adjacent streets and to add green space.
10 So in my view, that is harmonizing with
11 the neighborhood. It provides --
12 MS. CASTRONOVO: Well, you're talking
13 parking. We're talking accessory uses seven days a
14 week, basketball teams, ping pong table, tournaments,
15 track, that's what we're looking -- that's why we're
16 here.
17 MR. MCGOWAN: There was testimony
18 provided that there wouldn't be tournaments.
19 CHAIRWOMAN KOLODZIEJ: Can you say that
20 again?
21 MR. MCGOWAN: There was testimony
22 provided that there would not be tournaments where
23 there would be lots of people coming in.
24 MS. CASTRONOVO: Well, you don't know
25 that, because there's been a lot of assume and
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1 expects.
2 CHAIRWOMAN KOLODZIEJ: Do you have
3 another question.
4 MS. CASTRONOVO: Yes. You say that the
5 (c) variance is minor.
6 The New Jersey Statute 40-55D-70C, that
7 we are to be provided testimony that the applicant
8 has a hardship reason or the variances request
9 benefit the community and represent a better zoning
10 alternative for the property.
11 We disagree. Why do you think that's a
12 better alternative to have a recreation center there?
13 And let's forget about house of worship, because
14 that's minimal. They're not expanding for a house of
15 worship.
16 MR. MCGOWAN: I'd like to remind the
17 public, as I said in my opening or I think to the
18 first question that was answered of this application,
19 that the New Jersey Courts have routinely determined
20 that a variety of uses to be accessory uses to
21 churches and other houses of worship.
22 This is in case law, in multiple cases
23 throughout New Jersey.
24 Quote: "The accessory uses to a church
25 have been considered in a number of cases and
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1 may be summarized as follows: The accessory
2 uses which are non-excludable in such
3 jurisdictions where churches themselves are
4 non-excludable are: Mortuaries with the
5 church, parochial schools, parking lots and
6 playgrounds, covenants, rectories, and
7 monasteries, gymnasiums and swimming pools,
8 meeting rooms, auditoriums, Boy Scout rooms
9 and other places of quasi-public assembly,
10 daycare centers, drug rehabilitation centers
11 and softball fields," end quote.
12 MS. CASTRONOVO: So why is this --
13 MR. MCGOWAN: So you can continue to
14 classify this as a community center, but the primary
15 use is a house of worship and the accessory uses are
16 deemed permitted under the New Jersey Courts.
17 MS. CASTRONOVO: Well, we're not in
18 court. Is that what you need is to go to court to
19 prove this?
20 What we're asking is why is this a
21 better alternative in a residential area to have a
22 community recreation center where accessory use
23 dwarfs the worship area?
24 THE WITNESS: I'd be happy to answer
25 that, but I'd like to correct you that the variances
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1 that you're referring to are for the two variances,
2 one of which is for a parking space being 18-feet
3 deep instead of 19 feet, the other one for the aisle
4 widths in certain locations to be 20-feet wide versus
5 24 feet. Those are two (c) variances that are being
6 requested under Section 70C, which has a (c)(1)
7 hardship aspect, which I'm not arguing. The (c)(2)
8 aspect of the benefits of those variances outweigh
9 any detriments. I provided detailed testimony, which
10 I can recap by saying there's no basis to provide
11 additional pavement when the -- you have the ability
12 to provide more parking on-site and more green space.
13 We don't need to demonstrate the (c)(2) variance
14 criteria for the overall use, because it's permitted
15 in the zone in which it's located.

16 MS. CASTRONOVO: Why is it a better
17 alternative than what -- why is it a better
18 alternative in a residential area?

19 That was in Jill Hartmann's report that
20 she said they'd have to provide testimony --

21 MR. FERRARO: Excuse me.

22 THE WITNESS: For the two variances.

23 MS. CASTRONOVO: -- that --

24 MR. FERRARO: The issue is whether it's
25 a better alternative than meeting the standard of 8

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1 -- of a 9-foot deep parking space or a 24-foot aisle,
2 that's the standard that you're measuring against.
3 They're seeking a variance --

4 MS. CASTRONOVO: I mean, I'll go back
5 and revisit her report, but it wasn't talking about
6 parking.

7 MR. FERRARO: They're seeking a
8 variance for a 9-by-8 [sic] parking space as opposed
9 to the standard -- what's the standard, 9-by-9 [sic]?

10 MS. HARTMANN: 9-by-19.

11 MR. FERRARO: 9-by-19, I'm sorry. And
12 they're looking for 9-by-18.

13 So the question is: Is it a better
14 alternative to do the 9-by-18 than the 9-by-19 in
15 this case and go through the other criteria that are
16 required?

17 MS. CASTRONOVO: I'm not talking about
18 the parking.

19 MR. FERRARO: Well, that's what the
20 variances are.

21 THE WITNESS: Thank you.

22 CHAIRWOMAN KOLODZIEJ: Anyone else?

23 MS. MCGIMPSEY: This is just quickly.

24 CHAIRWOMAN KOLODZIEJ: Okay. Name --
25 wait --

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1 MS. MCGIMPSEY: Andrea McGimpsey,
2 Springdale Court.

3 CHAIRWOMAN KOLODZIEJ: Okay.
4 Questions.

5 MS. MCGIMPSEY: Pardon.

6 CHAIRWOMAN KOLODZIEJ: Questions.

7 MS. MCGIMPSEY: McGimpsey, M-c
8 G-I-M-P-S-E-Y.

9 Are you planning on putting on tents on
10 this property during Ramadan?

11 MR. MCGOWAN: There was already
12 testimony provided on that that there would not be
13 tents outside.

14 MR. FERRARO: You'll stipulate to that?

15 MR. MCGOWAN: Yes.

16 MS. MCGIMPSEY: Okay. Also --

17 MR. MCGOWAN: I'm sorry, I'm sorry, I
18 just want to elaborate one -- on one other thing
19 that's important.

20 The whole purpose of this application
21 is to better adequate the existing congregation by
22 bringing things that are currently occurring outside
23 at the existing site inside and because of that,
24 there will be no tents.

25 MS. MCGIMPSEY: All right. I just want
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1 to clarify something too.

2 You said that there were no tournaments
3 and there were definitely soccer tournaments during
4 the summer.

5 And, also, I want to -- I want to say
6 that I am really concerned. I know you say it
7 doesn't matter of the neighborhood, but when you say
8 this benefits the neighborhood, it doesn't, that's a
9 lie.

10 It does not benefit the neighborhood as
11 you say, it's a lie.

12 CHAIRWOMAN KOLODZIEJ: Okay.

13 Do you have a question for the planner?

14 MS. MCGIMPSEY: Yes, I do.

15 Twice I was almost run off the road.
16 This is going to be a question.

17 Twice I almost hit someone crossing
18 right to get to the mosque right in front of me,
19 almost hit a car pulling -- the cars pull out without
20 even looking. Our neighbors have almost been hit by
21 cars.

22 MR. MCGOWAN: So I believe --

23 MS. MCGIMPSEY: My question is: Does
24 someone have to get hurt or die before you take us
25 seriously? I am really concerned.

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1 Does someone have to get hurt or die?
 2 I am concerned.
 3 CHAIRWOMAN KOLODZIEJ: Is that a
 4 question for the planner? I'm not --
 5 MR. MCGOWAN: I object to that
 6 question.
 7 CHAIRWOMAN KOLODZIEJ: Yeah, your
 8 objection is noted. Okay.
 9 Next. Okay, would you please state
 10 your name and address for the record.
 11 MR. LARAIA: Larry Laraia, 91 Viola
 12 Ave.
 13 CHAIRWOMAN KOLODZIEJ: Okay. Question
 14 for the planner.
 15 THE COURT REPORTER: Please spell your
 16 last name.
 17 MR. LARAIA: L-A-R-A-I-A.
 18 You mentioned before that there are
 19 seven provisions, five -- two of them which are
 20 objective and five are subjective; is that my
 21 understanding?
 22 THE WITNESS: Yes, of the general --
 23 there's general conditional use standards, that's
 24 correct.
 25 MR. LARAIA: Okay. If the board
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1 decides to use one of the more subjective provisions
 2 in order to turn down what they're looking for, can
 3 that be considered to be like an arbitrary and
 4 capricious decision.
 5 THE WITNESS: As much as I'd love to
 6 offer an opinion on that, as a planner I don't think
 7 it's -- I'd be the best person to answer that
 8 question. My testimony is just interpreting how
 9 typically you have to have measurable standards for a
 10 board to consider, but I can't give you a legal
 11 opinion as to whether --
 12 MR. LARAIA: In your 25 years of
 13 experience, more than that, have you ever seen or
 14 witnessed a decision like that open up a township to
 15 a lawsuit because of their decision for not having a
 16 -- having an arbitrary and capricious reason.
 17 MR. FERRARO: I don't think that's an
 18 appropriate question for the planner.
 19 MR. MCGOWAN: I can say that as the
 20 lawyer, there is case law out there where land use
 21 decisions have been appealed where the case law says
 22 that the planning board needs to make decisions based
 23 on objective criteria.
 24 MR. LARAIA: Thank you.
 25 MR. MCGOWAN: Whether -- arbitrary and
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1 capricious is kind of going to another standard, but,
 2 yeah, that's the answer to your question.
 3 MR. LARAIA: All right.
 4 Thank you.
 5 CHAIRWOMAN KOLODZIEJ: Thank you for
 6 your question.
 7 Anyone else?
 8 Okay, please come up.
 9 Would you state your name and address,
 10 please.
 11 MR. SAI: Name is Partha Sai, 9 Landis
 12 Place. I live right around the corner from the
 13 mosque.
 14 THE COURT REPORTER: Please spell your
 15 name for the record.
 16 MR. SAI: Partha, P-A-R-T-H-A, Partha,
 17 Sai, S-A-I.
 18 THE COURT REPORTER: Thank you.
 19 MR. SAI: So let me just give you a
 20 little background, give me 20 seconds and then I'll
 21 ask my question.
 22 I think chairman said that before, I've
 23 been in this house for 28 years, it's about to be 28
 24 years.
 25 Have seen many come and go, including
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1 I've seen the church that was there before. It's
 2 lively right now, I give it that. People come and
 3 go. It's lively to see.
 4 My only issue is traffic. Every single
 5 day when that is congregation, when it's a Friday or
 6 a Saturday or a holiday, the traffic is enormous.
 7 You have not seen it obviously. It would be good as
 8 a planner for you to come and see during those -- in
 9 high traffic areas or high traffic times.
 10 Getting in and out of my driveway, I
 11 can't do it. It's difficult for me to even pull out
 12 and pull back in.
 13 Even last week I had the cop call in
 14 the people who are actually watching the traffic to
 15 get a car out of my -- he was blocking my driveway.
 16 This is very common. You don't live there. You
 17 don't see it.
 18 My life, our life is completely
 19 disrupted during high traffic, not other times.
 20 CHAIRWOMAN KOLODZIEJ: Okay. So --
 21 MR. SAI: It's a very, very quiet
 22 neighborhood.
 23 My question to you is: Is there any
 24 other way that you can plan to divert the traffic out
 25 of Pershing Road?
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1 It's a house of worship, good cause.
2 I'm not questioning that. All of us go, I go. The
3 question is traffic.
4 Is there another alternative to
5 redirect the traffic?
6 THE WITNESS: I can only answer with
7 regard to the planning that the sheer numbers of
8 parking spaces on the streets will be moved off the
9 streets.
10 MR. SAI: That's not going to solve the
11 problem at all, I can tell you that. I can tell you
12 that.
13 The question is: Traffic in and out
14 the street, is there another alternative you guys can
15 come up with.
16 THE WITNESS: Beyond that, the
17 applicant -- you can't control traffic on the streets
18 around it, frankly.
19 That's something that the Mayor and
20 Council, governing body has the ability to make
21 changes, but that's beyond the scope of this
22 application and my testimony.
23 I understand your concern, believe me,
24 I understand.
25 MR. SAI: Aren't you a planner? Is it
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1 something that you guys can do.
2 THE WITNESS: But, again, I can only
3 answer within the context of this board and its
4 jurisdiction. It doesn't have the ability to go --
5 go out and deal with all traffic issues that exist
6 already.
7 The applicant's trying to fix
8 something, that's my understanding, is a problem.
9 I've heard plenty, I've read the transcripts. It's a
10 problem for people like yourself who live nearby, we
11 get that and we're doing what we can on-site to
12 address it.
13 Beyond that, though, we have a traffic
14 expert who's already spoken and the board has heard
15 the concerns.
16 REDIRECT EXAMINATION
17 BY MR. McGOWAN:
18 Q. Mr. Grygiel, I'm just going to ask you
19 a question that I think will help answer the
20 question.
21 So you're a professional planner, you
22 look at the uses of properties?
23 A. Yes.
24 Q. You're not a design planner, you don't
25 design things, correct?
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1 A. That's correct.
2 That's also fair to point that out. I
3 mean, I'm not the one who would be making the changes
4 anyway. I just -- yes, I'm focused on a certain part
5 of this application.
6 MR. SAI: Then the question would be to
7 the board, who can make that --
8 CHAIRWOMAN KOLODZIEJ: Now is not the
9 time, only to the planner.
10 Thank you.
11 Thank you for your question.
12 THE WITNESS: Thank you.
13 MR. SAI: Okay.
14 Thank you.
15 CHAIRWOMAN KOLODZIEJ: Everyone will
16 have an opportunity before this case wraps up to make
17 a statement, to say what you want to say, but now the
18 questions are only for the planner.
19 Would anyone else like to come up?
20 (No Response.)
21 CHAIRWOMAN KOLODZIEJ: Okay. So I
22 don't see anyone coming up, so I'm going to entertain
23 a motion to close the public portion.
24 COMMISSIONER BINASO: So moved.
25 CHAIRWOMAN KOLODZIEJ: And a second,
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1 please.
2 VICE CHAIRMAN WITHERS: Second.
3 CHAIRWOMAN KOLODZIEJ: Second.
4 Anyone opposed?
5 (No Response.)
6 CHAIRWOMAN KOLODZIEJ: Okay. The
7 public portion is now closed.
8 Commissioner Welsh, do you have a
9 comment?
10 COMMISSIONER WELSH: I just wanted to
11 comment on the gentleman that just spoke. The
12 question he was asking had nothing to do with street
13 traffic, it had to do with the site traffic.
14 He was asking is there any way that you
15 can redirect the site traffic to an ingress or a
16 different egress and I think the answer to that would
17 be -- the answer is simple, it's yes, we can and, B,
18 close down Pershing Road, correct.
19 THE WITNESS: I would have to --
20 COMMISSIONER WELSH: That's what he was
21 asking you.
22 THE WITNESS: I get that, that you've
23 clarified it, but we have a traffic expert who can
24 speak to that. I'm not --
25 COMMISSIONER WELSH: All right.
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1 THE WITNESS: It's possible that's
 2 something they have to look into, not me, but thank
 3 you.
 4 MR. McGOWAN: Okay. So speaking with
 5 the applicant, the applicant is going to take another
 6 look at the plans and make sure that the plans as
 7 presented are the best way to disburse traffic to
 8 alleviate any traffic concerns throughout the
 9 neighborhood.
 10 We will return and either provide a
 11 revised plan or if -- the applicant has worked very
 12 hard to make this the best application possible, so I
 13 am not entirely sure that any alternatives will be
 14 shown, but as a sign of good faith to the board and
 15 the general public, I've asked my client to go take
 16 another look to see if there's anything additional
 17 that can be done and we'll come back with an answer.
 18 CHAIRWOMAN KOLODZIEJ: Very nice.
 19 MR. FERRARO: So at that point you'll
 20 either proceed with the change or you'll rest?
 21 MR. McGOWAN: Yeah. You know, the
 22 applicant is under no illusions that, you know, they
 23 bring cars to the site and currently there are cars,
 24 a lot of cars parking on the street.

25 As we said at the outset, this
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1 application is -- they want to provide the best
 2 possible solution.
 3 Don't let the good be -- don't let the
 4 perfect be the enemy of the good and some of the
 5 comments made tonight, they want to go back and make
 6 sure that they are doing the best that they can with
 7 the site that they have been provided and that they
 8 are operating on and is their home.

9 MR. FERRARO: Okay. That's good.
 10 So you don't have any other witnesses
 11 tonight?

12 MR. McGOWAN: No.

13 MR. FERRARO: So the question is, is
 14 whether we want to proceed now with any interested
 15 party's case in chief or if we want to wait until we
 16 see what happens next week.

17 CHAIRWOMAN KOLODZIEJ: You are on the
 18 agenda for December 4th. I believe you're on the
 19 agenda for December --

20 MR. McGOWAN: Yeah.

21 MR. FERRARO: And there's another major
 22 application on that night for ON3, I understand,
 23 Liana, ON3 is on.

24 MS. BOLCATO: Correct, we do have ON3
 25 on that night. Mr. McGowan did ask for the first

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1 hour.
 2 CHAIRWOMAN KOLODZIEJ: Who asked for
 3 the first hour?

4 MR. McGOWAN: We would.

5 CHAIRWOMAN KOLODZIEJ: Okay. So you
 6 are on December 4th for an hour.

7 MR. McGOWAN: Yeah. And we might defer
 8 or carry. If we determine that changes can be made,
 9 they probably won't be ready in a week.

10 CHAIRWOMAN KOLODZIEJ: Okay.

11 MR. McGOWAN: But I'd like to keep our
 12 application on for that night for an hour.

13 MR. FERRARO: What's the date of that
 14 meeting?

15 CHAIRWOMAN KOLODZIEJ: December 4th
 16 because of the holiday, it was December 4th, Thursday
 17 night, actually in a week.

18 MR. McGOWAN: Because tonight's a
 19 special meeting.

20 CHAIRWOMAN KOLODZIEJ: Tonight is a
 21 special meeting, correct, but our regularly scheduled
 22 meeting is December 4th because of the holidays.

23 Okay. So you want to advise the
 24 public?

25 MR. FERRARO: Well, I'd ask counsel if
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1 she wants to proceed with any testimony this evening
 2 or --

3 MS. HADJIYANNIS: We would like -- we
 4 brought -- we've had our expert here last time and we
 5 brought him here a second time, so I think we have
 6 plenty of time to have him testify.

7 MR. McGOWAN: And I'm fine with that as
 8 long as it's clear that we're not resting our case.

9 CHAIRWOMAN KOLODZIEJ: Okay.

10 MR. FERRARO: All right. So --

11 CHAIRWOMAN KOLODZIEJ: And we probably
 12 won't go until 10 this evening. This isn't a
 13 regularly-scheduled meeting, this is a special
 14 meeting.

15 So, yeah, I would think within a half
 16 an hour we will be wrapping it up.

17 MS. HADJIYANNIS: Okay. I think we can
 18 do it.

19 CHAIRWOMAN KOLODZIEJ: Could you have
 20 his name on the record, please.

21 MS. HADJIYANNIS: Yeah.

22 So our expert's name is David Phelan,
 23 P-H-E-L-A-N. I've brought him here. He's a former
 24 code official and I wanted a code expert to bring
 25 some clarity to the occupancy issue.

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1 I think so much of this application
 2 hinges on occupancy. It goes to the calculation of
 3 the number of required parking spaces.
 4 It goes to whether Conditional Use
 5 Requirement No. 9 has been satisfied. It goes to the
 6 Article X parking requirement, which is different
 7 than the conditional use --
 8 MR. FERRARO: All right. Why don't we
 9 swear him in and why don't we see where it goes.
 10 MS. HADJIYANNIS: Okay.
 11 MR. FERRARO: So, sir, may I swear you
 12 in?
 13 Do you swear the testimony you're about
 14 to give before this board in this matter will be the
 15 truth, the whole truth and nothing but the truth?
 16 MR. PHELAN: Yes, I do.
 17 D A V I D P H E L A N,
 18 8 Ruth Ann Drive, Manahawkin, New Jersey, having
 19 been duly sworn, testifies as follows:
 20 MR. FERRARO: Okay. If you want to --
 21 and state your name and spell your last name.
 22 MR. PHELAN: First name is David,
 23 D-A-V-I-D, last name P-H-E-L-A-N.
 24 MR. FERRARO: And you want to qualify
 25 your witness.

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1 VOIR DIRE EXAMINATION
 2 BY MS. HADJIYANNIS:
 3 Q. David, could you give the board the
 4 benefit of your work experience and your background?
 5 A. I'm recently retired.
 6 I spent a 25-year career in public
 7 sector code enforcement, essentially working in all
 8 levels progressing throughout my career, starting in
 9 property maintenance, housing compliance, moving into
 10 fire codes, fire code enforcement, building and
 11 mechanical codes.
 12 I hold licenses in the State of New
 13 Jersey as a building official, fire official, fire
 14 subcode official, a mechanical and housing official.
 15 And I've been previously qualified as
 16 an expert in both criminal and civil cases in the
 17 State of New Jersey Superior Court.
 18 And I've previously testified before
 19 the land use board in Beach Haven, Ocean County, New
 20 Jersey.
 21 MR. FERRARO: As what?
 22 THE WITNESS: I provided testimony on
 23 an application as to fire and life safety
 24 requirements and provisions on a hotel and marina
 25 project.

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1 MR. FERRARO: So what qualification
 2 does he have to talk about zoning -- zoning issues?
 3 Is he a zoning officer?
 4 THE WITNESS: So at issue here, yes,
 5 this is a zoning matter.
 6 It's hinging right now, it seems, on
 7 occupant load and my testimony is going to address
 8 essentially three ways that occupant loads are
 9 addressed by building codes, fire codes and then
 10 specifically in your zoning ordinance.
 11 As a procedural matter, calculation of
 12 occupant load is essentially a mathematical problem.
 13 It's a use, a space and a formula for persons either
 14 based on -- or based on the condition of the use of
 15 the space.
 16 MR. FERRARO: So just by way of
 17 proffer, how does that -- what -- how does that have
 18 any effect on the application?
 19 THE WITNESS: So the application here
 20 relies heavily on an occupant load value or a number
 21 of occupants to determine compliance with the parking
 22 requirements and there are questions that were raised
 23 and have been researched to try to bring clarity or
 24 --
 25 MR. FERRARO: Excuse me, it doesn't --

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1 it doesn't rely upon occupancy load to determine
 2 parking, it relies on the ordinance requirement of
 3 one parking space for four seats to meet the code, to
 4 meet the ordinance on parking.
 5 THE WITNESS: Correct.
 6 However, my testimony will go a little
 7 bit deeper into what your ordinance says.
 8 MS. HADJIYANNIS: I mean, the
 9 applicant's been here over a six-month-long period.
 10 They've repeatedly talked about number of occupants
 11 throughout testimony, various experts have brought it
 12 up.
 13 I think for my expert who is an expert
 14 on occupancy to be questioned so much, I mean, I'm a
 15 little confused.
 16 Is the board accepting his credentials?
 17 MR. FERRARO: We're very liberal in
 18 allowing testimony and, you know, I'm not going to
 19 advise the board not to allow the witness, but in
 20 terms of an area of expertise that talks about what
 21 our zoning ordinance says, I don't know that the
 22 witness has the qualifications, but it may develop
 23 that he has something relevant to say and --
 24 MS. HADJIYANNIS: I mean, I think the
 25 board can weigh --

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1 MR. FERRARO: -- maybe more than we lay
 2 people know.
 3 So we'll take a shot and see where it
 4 goes.
 5 MS. HADJIYANNIS: Okay. I mean, the
 6 board can weigh the testimony as it sees appropriate.
 7 MR. FERRARO: Right.
 8 Thank you.
 9 MS. HADJIYANNIS: Okay. So is our --
 10 so we're not --
 11 CHAIRWOMAN KOLODZIEJ: I'll entertain a
 12 motion to ask for the approval of the credentials of
 13 Mr. Phelan.
 14 COMMISSIONER BINASO: So moved.
 15 COUNCILMAN D'AMATO: Second.
 16 CHAIRWOMAN KOLODZIEJ: I have a motion
 17 and a second to approve his credentials.
 18 Is anyone opposed?
 19 (No Response.)
 20 CHAIRWOMAN KOLODZIEJ: Okay. Please
 21 begin.
 22 THE WITNESS: Good evening.
 23 Thank you, Board Members.
 24 So I was originally retained on the
 25 matter to look at the calculation of occupant load as
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1 provided in the application.
 2 I reviewed the case materials that are
 3 posted on the website, reviewed the prior transcripts
 4 and watched the videos that have accumulated leading
 5 up essentially to last meeting when I was first in
 6 attendance.
 7 Research confirmed that, indeed, the
 8 zoning ordinance has a house of worship, four
 9 occupants to one parking space formula, but it does
 10 not provide a methodology or any sort of external
 11 reference to guide an applicant on how to estimate or
 12 provide a number of occupants. That's one of two
 13 places in your ordinance where a four-to-one ratio
 14 where occupant number drives the parking formula and
 15 it has no guidance to a dimensional or external
 16 reference on how to do that. The other is a
 17 fixed-seating movie theater. So some method or some
 18 form of calculation is required.
 19 In the submittal details required for a
 20 site plan, Section 461-40, there is no provision that
 21 requires an occupant load value and only speaks to
 22 the total or to an estimated number of employees in
 23 Items P and T, Peter and Thomas, of that section.
 24 Throughout the zoning ordinance,
 25 there's 205 pages, the phrases "occupant load,"
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1 "occupant limit" and "number of occupants" never
 2 appears.
 3 In doing comparative research, the City
 4 of Passaic has a similar four-to-one house of worship
 5 ratio for parking, but they also provide dimensional
 6 formulas to serve as the basis to estimate that
 7 occupant load.
 8 The City of Paterson and the Township
 9 of Montclair also both use an occupant load to
 10 parking formula for houses of worship and provide
 11 specified dimensions by which an applicant can offer
 12 an occupancy.
 13 Since the zoning ordinance and the
 14 board's approval or the board's resolution will be
 15 considered a prior approval before this project can
 16 transition to the Uniform Construction Code, which
 17 would be the permitting and physical construction
 18 part, there are no regulations yet in play by which a
 19 formal recognized occupant load could be developed.
 20 That is, in theory, a future component that will take
 21 place after the application transitions out of the
 22 board.
 23 In looking at this application, the
 24 testimony in the application is that the prayer rug,
 25 the size of the prayer rug, which is 11.3 square
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1 feet, according to the applicant's architect, was
 2 used to develop the occupant load for the men's and
 3 women's prayer halls resulting in the 837 number,
 4 which has become fairly ubiquitous throughout the
 5 proceedings. That density of 11.3 square feet per
 6 person is not entirely inconsistent with the Uniform
 7 Construction Code and would require some review and
 8 analysis at that phase of the project.
 9 Still problematic, however, is that the
 10 board did not provide a direction of methodology yet
 11 for purposes of an application both a house of
 12 worship and a fixed-seating movie theater need to
 13 have an accurate to within a reasonable degree
 14 occupant load at this stage of a project in order to
 15 demonstrate compliance with the Article 10 off-street
 16 parking requirements of the zoning ordinance.
 17 The absence of this guidance and any
 18 formula leaves a house of worship project on an
 19 unequal footing since the manner of faith and worship
 20 dictates the occupant number and the occupant density
 21 of the space.
 22 Depending upon the manner in which
 23 worship is practiced, could be fixed pews, could be
 24 chair only, could be a standing room only service.
 25 Certainly the prayer rug or some hybrid of multiple
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1 methods of the parishioners gathering to worship and
2 practice their faith.

3 Under that concept, the house of
4 worship occupant load is essentially an arbitrary
5 number at this stage and there is no instrument in
6 the ordinance to provide an equal and realistic
7 actual relation to the final future occupant load of
8 the space and certainly of the building.

9 There's also been questions raised
10 about why the other large assembly spaces in the
11 building consisting of two multipurpose rooms, table
12 tennis room and what I'll refer to as the sport area
13 encompassing the basketball court and the walking
14 track have been included -- I'm sorry -- have been
15 excluded from occupant load consideration.

16 Through the prior testimony and case
17 materials, the applicant seems to be proffering a
18 nonsimultaneous use theory in support of not
19 including any occupant load from these other assembly
20 areas in the parking formula.

21 In a comprehensive review of the zoning
22 ordinance, there was no language found that
23 acknowledges or guides any form of nonsimultaneous
24 use as a design option.

25 The basketball and track end of the
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1 to exist across those 205 pages.

2 Section 461-60.1C Charlie speaks to the
3 gross building area which is defined in Section
4 461-64 as being used in parking formulas which are
5 based on square footage versus the only two which are
6 based on occupant load, the house of worship and the
7 fixed-seating theater. There are no other specific
8 exemptions for an occupant load formula.

9 For reference in Section 461-60, that
10 is the section where the applicant found it's waivers
11 and variance requirements relating to parking stalls
12 and aisle dimensions.

13 Further, the parking schedule in
14 461-60.1 includes, quote, meeting rooms and other
15 places of public assembly without fixed seating.
16 Public assembly is defined in the ordinance in
17 Section 461-64. The formula which fits the two multi
18 -- a formula which fits the two multipurpose halls,
19 the meeting room and potentially the table tennis
20 hall. The dedicated prayer halls represent
21 approximately 48 percent of the building's total
22 assembly area, while the -- these other multipurpose
23 spaces, meeting rooms, tennis and the basketball
24 assembly areas represent approximately 52 of the
25 building's total assembly area and I just want to
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1 building has been presented as an accessory use to
2 the house of worship and by definition in 461-64 an
3 accessory use is customarily incidental and
4 subordinate to the principal use of the building. It
5 is unclear, however, how the basketball court,
6 walking track end of the building is subordinate and
7 how it could not be utilized independently of the
8 house of worship.

9 When researching other neighboring
10 municipality zoning ordinances, it was noted that the
11 Paterson off-street parking ordinance 500-7D
12 specifically provides an allowable reduction shared
13 parking mixed-use provision, but specific to the
14 Clifton ordinance, zoning ordinance, there is no
15 language which permits consideration for
16 nonsimultaneous use.

17 In fact, there are three places within
18 the zoning ordinance which speak to the exact
19 opposite, that, in fact, the entire building and all
20 encompassed uses are to be included when making an
21 off-street parking computation.

22 Section 461.7 of the zoning ordinance
23 states that all required parking spaces shall not be
24 reduced in any manner except as otherwise provided
25 and so far no such reduction provision has been found
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1 clarify on that, because some numbers and percents
2 have been thrown around tonight in this regard.

3 I was very specific here that I only
4 looked at the assembly area spaces in creating this
5 48 to 52 ratio. I did not include corridors,
6 restrooms and storage facilities, strictly looking at
7 the assembly spaces.

8 The zoning ordinance schedule in
9 Article 10 contains two other entries which directly
10 relate to the inclusion of meeting halls and the
11 court space, specifically the very last two entries
12 in the schedule, which are uses not listed above and
13 more than one use on premises. The entry describes
14 uses not specifically enumerated in the schedule
15 being the basketball court, walking mezzanine and
16 that would require some sort of additional review and
17 rational analysis in order to determine how to best
18 comply with the parking requirements in Article 10.

19 The other entry at the very bottom of
20 the schedule plainly answers the discussion on how to
21 treat multiple uses. When, quote, more than one use
22 on premise, the parking space requirement is, quote,
23 the sum of the component requirements. There is no
24 other language in the zoning ordinance which provides
25 for exception, exemption or special consideration
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1 when an applicant proffers any nonsimultaneous use
2 testimony.

3 In applying the multiple use parking
4 schedule as written, the house of worship portion of
5 the building with its proposed 837 occupants requires
6 the 210 parking spaces that have been discussed. The
7 four non-fixed seating areas -- and the non-fixed
8 seating areas with a gross enclosed floor area of
9 approximately 6,714 square feet would require,
10 therefore, an additional 67 parking spaces. This
11 brings the subtotal of the required parking spaces
12 for all building areas with the exception of the
13 basketball court and walking track to approximately
14 277 spaces.

15 As stated previously, the lack of clear
16 guidance in the zoning ordinance for an indoor
17 basketball court and walking track will require
18 further review and rational analysis to develop an
19 off-street parking requirement to be added to the
20 subtotal 277 spaces.

21 A prior public comment raised the issue
22 of such a high number of adults in simultaneous
23 attendance inherently bringing about the presence of
24 children. There is no mention of any of the
25 materials as to children present during parental

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1 prayer services.

2 Ambulating children are, indeed,
3 occupants in the context of the Uniform Construction
4 Code and the Uniform Fire Code for purposes of means
5 of egress, design performance and overcrowding
6 enforcement.

7 Non-ambulating children are not counted
8 as occupants for burden on the means of egress,
9 though, non-ambulatory and incapable of
10 self-evacuation occupants would raise additional life
11 safety concerns.

12 Specific to the Clifton zoning
13 ordinance, an occupant-based parking count -- using
14 an occupant-based parking count, there is no real
15 discussion that children are counted occupants, that
16 they would not -- that they would add to the burden
17 -- the parking burden is an intangible means of
18 egress burden. Though, as an intangible means of
19 egress burden, it cannot be ignored.

20 The disparity between the occupant load
21 for parking counts at this juncture and the final
22 certificate of occupancy for the building will
23 certainly manifest itself at that time.

24 Another public comment/question, the
25 evolution and revision of the existing facility's

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1 occupant postings and how occupant load
2 determinations under the Uniform Fire Code, Uniform
3 Construction Code and as already stated, the absence
4 of guidance in the zoning ordinance. This
5 explanation should allay fears of future revision by
6 city officials and also make clear that the present
7 count against the future reality.

8 As shown in the architectural plans
9 from the applicant, there will be a significant
10 disparity between the occupant counts for off-street
11 parking and the final certificate of occupancy which
12 will be issued by the construction official upon
13 completion of the project.

14 Under that Uniform Construction Code,
15 the final CO which will be issued must detail the
16 occupant load grand total of the building and all
17 assembly uses thereof and any special stipulations
18 and conditions of the construction permit. That is
19 detailed in 5:232.23J2.

20 Similarly, there's a requirement in the
21 building code that each assembly space be posted with
22 the maximum permitted occupant load for all intended
23 configurations.

24 In the role of the Clifton Fire
25 Official or fire marshal under the Uniform Fire Code,

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1 their obligation to occupant load is twofold; first,
2 the fire official is charged by law with enforcing
3 the Uniform Construction Code certificate of
4 occupancy specified occupant load to prevent or
5 correct overcrowding; second, the fire official
6 through the Uniform Fire Code is empowered to
7 calculate and post an occupant load for any building
8 or space which did not receive a certificate of
9 occupancy under the construction code.

10 Generally speaking, this is any
11 building constructed prior to 1977.

12 As an example, we have a copy of the
13 current Uniform Fire Code occupant load posting for
14 the existing house of worship facility and it shows
15 the maximum permitted occupant load under three
16 permitted configurations of the space; standing room
17 only, chair only, and a table and chair
18 configuration. Those three configurations yield
19 different numbers based on the area designated for
20 each individual.

21 The reason the occupant load -- this
22 occupant load was calculated and posted by the fire
23 official is because the existing house of worship is,
24 indeed, a pre-1977 building which thereafter never
25 received a new certificate of occupancy from the

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1 construction official. Essentially there were no
2 triggering events that would have brought that about.

3 In similar, the construction official
4 is empowered via 5:232.8H to perform post-CO
5 inspections of buildings other than dwellings for the
6 purposes of enforcing use occupancy and occupancy
7 limit. Together the fire official and construction
8 official are the two public officials with regulatory
9 authority to gain entry to an otherwise private and
10 constitutionally protected building for purposes of
11 investigating occupancy conditions and violations,
12 including, if necessary, obtaining an administrative
13 warrant and police assistance to ensure
14 administrative process.

15 This is different than the function of
16 a land use or zoning officer who is charged primarily
17 with the enforcement of the resolution and the site
18 conditions. Simply stated, they do not have the same
19 legal authority to enter a building post
20 construction, post certificate of occupancy and
21 enforce an occupant load.

22 In concept, that may sound good at this
23 stage of the process, that the zoning official would
24 enter or verify that the stipulated to 837 occupants
25 is being upheld.

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1 The problem arises that when the
2 building is completed and occupied, the legal
3 standard is the certificate of occupancy and that
4 certificate of occupancy will bear a different number
5 than 837. In fact, it will be a larger number.

6 The enforcement of a four-to-one
7 parking ratio based on 837 becomes impractical when,
8 in fact, the certificate of occupancy as posted will
9 contain a much higher permitted occupant limit.

10 In response to another public comment,
11 it is contrary to the construction code and fire code
12 regulations for the fire official to recalculate a
13 posting once it has been derived by the construction
14 code process, such as in the pre-19 -- as a post-1977
15 building.

16 The Uniform Construction Code's
17 occupant load calculation, methodology and provisions
18 will ultimately reflect on the final CO and those
19 values will persist for the life of the building
20 unless it undergoes rehabilitation and a revised
21 occupant load is posted by the construction official.

22 This hopefully addresses the question
23 that was raised in the October meeting as to what if
24 a different occupant load potentially increased
25 appears in the future.

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1 To be clear, however, there is going to
2 be a sizeable difference between the arbitrarily
3 opposed -- supposed 837-person occupant load and the
4 final total building occupant load with the
5 individual assembly space loads listed on the final
6 certificate of occupancy. Under the Uniform
7 Construction Code the final building CO will include
8 a total building occupant load, which will add
9 between 390 and 670 persons to the 837-person prayer
10 halls. This is not including the ball court and
11 walking track spaces.

12 While the applicant can stipulate to an
13 837-person occupant limit, the Uniform Construction
14 Code is, in fact, the sole code of jurisdiction for
15 occupant loads and spaces in buildings. A local
16 board is preempted by New Jersey Administrative Code
17 Title 5, Chapter 23, Subchapter 2.2(e) from any such
18 stipulation as it is in conflict with the Uniform
19 Construction Code's methodology. This disparity
20 exists because the construction code requires a
21 calculation of occupants in all anticipated
22 configurations for all spaces of the building. The
23 Uniform Construction Code only works with maximum
24 possible occupant loads to achieve occupant fire and
25 life safety through effective means of egress design

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1 and fire protection systems.

2 There is no provision in the Uniform
3 Construction Code which would allow a
4 newly-constructed house of worship to exercise a
5 nonsimultaneous use prophecy to achieve a lower total
6 building occupant load.

7 With regard to the requirement to
8 include special stipulations and conditions on the
9 certificate of occupancy, that would also be an
10 appropriate place to note the, quote, green roof,
11 which will actually be known in the construction code
12 as a vegetative roof of the building is not intended
13 for human use or occupancy and is strictly limited to
14 green or living vegetation and will be kept locked
15 and secured at all times only to be accessed for
16 landscaping and support activities by authorized
17 persons engaged in maintaining vegetation. This
18 carries forth the applicant's testimony into an
19 enforceable instruction for all future building
20 occupants and owners and will prevent the roof from
21 becoming what is known in the construction code as an
22 occupied roof at some point in the future without
23 first triggering a return to this board in compliance
24 with the construction code to ensure ongoing occupant
25 fire and life safety.

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1 Thank you.
2 CHAIRWOMAN KOLODZIEJ: Do we have any
3 questions for Mr. Phelan.
4 (No Response.)
5 CHAIRWOMAN KOLODZIEJ: Thank you.
6 MS. HADJIYANNIS: I actually have one
7 follow-up question for our expert.
8 BY MS. HADJIYANNIS:
9 Q. So in a nutshell is the 837 occupant
10 number that's been repeated by the applicant many
11 times, is that a defensible occupant number?
12 MR. MCGOWAN: I would like to object to
13 the characterization of what the applicant testified
14 to. There was no testimony that the occupant load
15 would be 837 people. The testimony is that there are
16 837 prayer mats and there will not be any more
17 congregants praying in the building other than 837
18 people.
19 CHAIRWOMAN KOLODZIEJ: Okay. Your
20 objection is noted.
21 MS. HADJIYANNIS: Okay. So I can
22 rephrase my question based on the objection.
23 CHAIRWOMAN KOLODZIEJ: Okay.
24 BY MS. HADJIYANNIS:
25 Q. So is the applicant's testimony that
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1 there would only be 837 congregants in the building
2 at one time, is that defensible?
3 MR. FERRARO: Can you repeat that
4 question again? I'm sorry.
5 BY MS. HADJIYANNIS:
6 Q. Is the applicant's testimony that there
7 will only be 837 congregants in the building at one
8 time, is that a defensible -- is that -- is the 837
9 number defensible?
10 MR. FERRARO: What do you mean by
11 "defensible".
12 BY MS. HADJIYANNIS:
13 Q. Is it, I guess, a legitimate way to
14 calculate the number of people who will be in the
15 building?
16 A. So the schedule in question in
17 Article 10 is four seats to one parking space. The
18 ordinance does not provide any guidance for how to
19 determine what a seat is.
20 The applicant has put forth that a
21 prayer mat, which is approximately 11.3 square feet
22 is the equivalent of a seat per person within the
23 house of worship. I'm not particularly arguing that
24 calculation. The fact of the matter is that the
25 ordinance for good or bad as it stands as it's
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1 written provides no guidance to any applicant coming
2 before the board on a house of worship product --
3 project on how to determine what a seat is.
4 For just illustrative purposes, fixed
5 pews, what is a seat? In the context of the zoning
6 ordinance that we're here for, if the house of
7 worship was to employ a fixed pew configuration such
8 as like in -- you know, we have in this room, what is
9 a seat?
10 A seat term or the use of the word
11 "seat" in the ordinance is not defined, nor does the
12 ordinance provide any metric guidance or external
13 reference to another document to say here's how you
14 would determine seats or seating in a house of
15 worship environment and as we know, depending upon
16 the manner in which worship is practiced, it could be
17 a traditional fixed-in-place rows and rows of pews
18 configuration. It could certainly be the prayer mat
19 scenario. It could be a standing room only sort of
20 like a gospel configuration. There's all sorts of
21 possibilities, how you would configure your house of
22 worship and the ordinance simply does not state how
23 you determine what a seat is.
24 Q. Okay. And then how -- and you
25 testified that there is likely going to be a
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1 disconnect between the 837 number of total
2 congregants cited by the applicant and what
3 eventually ends up being the calculation done by the
4 fire code official at the time the certificate of
5 occupancy is issued. How should the board reconcile
6 that disconnect?
7 A. So two points or two parts to that
8 answer.
9 Again, absent guidance in the ordinance
10 on what defines a seat, the board will have to come
11 to some decision in the future. Once the project
12 leaves the board's purview and moves to the
13 construction code review process, those code
14 officials will have to look at the calculation of the
15 occupancy -- of the occupant load in both of the two
16 prayer halls.
17 As it stands in the New Jersey building
18 code, there is no equivalency for a prayer mat in a
19 house of worship. The construction code official --
20 the construction officials will have to make a
21 judgement decision as to whether or not they believe
22 11.3 square feet per occupant is suitable for
23 purposes of their code and, again, this begins to
24 open up the widening disconnect.
25 The other part of it is, as it stands
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1 right now in the ordinance, those three sections,
2 three parts that I referenced, address mixed use or
3 multiple uses in a building, particularly beyond the
4 house of worship.

5 In fact, if you're looking at the
6 schedule in the ordinance, the meeting room and other
7 places of public assembly without fixed seating is
8 two lines above house of worship.

9 It's literally staring you in the face.
10 And with the definition of public assembly spaces in
11 your ordinance, the two -- the two large meeting
12 rooms, the table tennis room and ultimately something
13 to do with the basketball and walking track are
14 specifically assigned a square footage to parking
15 space formula. In the case of the meeting rooms it's
16 100 square feet of space -- excuse me -- per parking
17 space.

18 And then if you go all the way to the
19 very bottom of that schedule, literally the last line
20 entry, it specifically says, when there is more than
21 one use on the premises, the sum of the component
22 requirements is the parking requirement.

23 So you would add up, you would tally
24 from all of those uses above the house of worship,
25 the house of worship, the non-fixed seating assembly

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1 spaces and then whatever happens with the basketball
2 court and walking track to determine the sum of the
3 component requirements.

4 The -- this -- this schedule in the
5 ordinance specifically says -- and if I can just read
6 you the sentence out of 461-60.1A, off-street
7 parking. No building or premise shall be used nor
8 any building be built or erected nor shall any
9 building be altered so as to expand its gross floor
10 area unless there is provided parking space upon the
11 same premises upon which the use or structure is
12 located in accordance with the following schedule --
13 it does -- that section does not provide relief for
14 nonsimultaneous use, nor does it quantify or distinct
15 between principal, accessory, conditional or any
16 other of the terms that are being used in describing
17 the house of worship component from the assembly
18 spaces of the building.

19 COMMISSIONER BINASO: Sir, can you
20 repeat that ordinance? Was it 461-68?

21 THE WITNESS: What I just read, I'm
22 sorry? The section I just read --

23 COMMISSIONER BINASO: Yeah.

24 THE WITNESS: -- is 461-60.1 --

25 COMMISSIONER BINASO: 60.1.

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1 THE WITNESS: -- capital A. This
2 section is called "Requirements for off-street
3 parking and loading spaces."

4 COMMISSIONER BINASO: Thank you.

5 THE WITNESS: Yes, sir.

6 MS. HARTMANN: Madam Chairwoman, can I
7 just clarify something, please? There is --

8 CHAIRWOMAN KOLODZIEJ: Ms. Hartmann,
9 would you -- yeah, go right ahead.

10 MS. HARTMANN: There's a disconnect
11 here and that is that while you have a construction
12 official and the Uniform Construction Code, you also
13 then wind up having a resolution and an approval and
14 that resolution will have conditions in it and those
15 conditions will be required to be met regardless of
16 what the Uniform Construction Code says.

17 If we limit the number of people that
18 can go as -- or the number of congregants that can be
19 there to 837, as I recall the applicant has said that
20 they will put in some form of mechanism to determine
21 that they don't exceed that number.

22 It has nothing to do with capacity and
23 everything to do with what the applicant is saying
24 they're going to do.

25 Now, another group may come in in the
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1 future, doesn't remember the resolution. I'm not
2 only a planner, I'm a zoning officer, I enforce
3 resolutions, I enforce site plans in the town that I
4 work in and if people don't do what they're supposed
5 to do, I'm in court, because a resolution with
6 conditions is different from what the construction
7 official does, what all of the reviews do, what the
8 CO says.

9 The CO has to do with the capacity of a
10 building, which I think, as we all tend to know, is
11 usually greater than what anybody ever says is going
12 to be in a building, because it's done on a
13 square-footage basis, it's usually very small.

14 This applicant, whether the application
15 gets approved or not, is not why I'm saying this.
16 I'm just letting you know that there is two different
17 standards and your standard is to create -- if you
18 approve it, to create an approval and a resolution
19 with the facts, with the conditions and those
20 conditions have to be reviewed prior to those plans
21 being signed and then prior to getting any kind of
22 permits, but those conditions that are not specific
23 to development, like when you can use a building,
24 when the lights can be on, how many people can be in
25 there at a time is very different from what the

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1 construction code or the fire codes would be, that is
 2 -- would be a condition of approval and it's a very
 3 different number and if those numbers are not
 4 maintained and kept, then the enforcement official
 5 gets to go to court.
 6 CHAIRWOMAN KOLODZIEJ: Thank you.
 7 Thank you, Ms. Hartmann.
 8 THE WITNESS: Can I add to that?
 9 CHAIRWOMAN KOLODZIEJ: We have -- if
 10 you can answer it in a minute, because we're going to
 11 wrap this up, yes.
 12 THE WITNESS: Okay.
 13 So as I mentioned in my testimony and
 14 I'll enter certainly for the record, the matters
 15 covered preemption section of the construction code
 16 clearly states where provisions herein, referring to
 17 the construction code, specify requirements for
 18 structural fire and sanitary safety no provision of
 19 any municipal zoning or other municipal codes shall
 20 conflict, govern or have effect. Where the
 21 provisions herein specify requirements with respect
 22 to location, use, permissible area and height and the
 23 municipal code, zoning code establishes requirements
 24 as well, then the more restrictive requirements of
 25 this code or the zoning code shall govern.

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1 MS. HARTMANN: And Madam Chairwoman, I
 2 would say that my testimony right now does not
 3 contradict what he said, because what he's saying is
 4 that there are certain physical requirements.
 5 I'm telling you that you can dictate
 6 less people in a building than the construction code
 7 would permit.
 8 He's talking about height. He's
 9 talking about safety, a variety of other things that
 10 have nothing to do with the condition that would be
 11 in a resolution.
 12 THE WITNESS: I'm sorry, I'd have to --
 13 I have to respond to that.
 14 Again, the -- the preemption language
 15 is very clear and certainly the number of occupants
 16 in a building is, indeed, a matter of fire safety.
 17 Additionally, in the State of New
 18 Jersey, the New Jersey adopted building code
 19 specifically deleted the provision which would have
 20 allowed a lower occupant load to be stipulated to by
 21 parties compared to what would be prescribed by the
 22 construction code itself. There is a -- there is in
 23 concept language that would allow exactly what's
 24 being described. However, when the legislature
 25 adopted the New Jersey building code, they

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1 specifically struck that exception out of the code so
 2 that there could be no -- no allowance or a
 3 stipulation to a lower occupant load and the reason
 4 for that is because once we start playing with that
 5 occupant load number, the fire and life safety
 6 requirements of the code begin to change.
 7 For an example, if the occupant load of
 8 this building is stipulated 837 and that becomes the
 9 binding number as offered by the zoning officer, the
 10 -- the deleted exception would prevent that, but even
 11 if you were to try to do that, that is -- that is in
 12 contradiction because 837 is well below what the
 13 maximum of the building would be if calculated by the
 14 construction code and as a result the fire alarm in
 15 the building would be substandard because there is a
 16 breakpoint at 1,000 occupants.
 17 MR. FERRARO: But the occupancy load
 18 doesn't determine the amount of parking. The amount
 19 of parking is determined by the amount of seats.
 20 THE WITNESS: Correct.
 21 And so to that point, what is a seat in
 22 your ordinance? It is not defined either numerically
 23 with any kind of mathematical formula, square foot
 24 or, you know, as an example, in the other surrounding
 25 ordinances they have dimensions of space --

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1 MR. FERRARO: Well, seat -- you know,
 2 seat's not particularly --
 3 CHAIRWOMAN KOLODZIEJ: I think
 4 Ms. Hartmann --
 5 MS. HARTMANN: So while I appreciate
 6 you having looked at other ordinances, we have to
 7 work with our ordinance and the fact is that it's
 8 reasonable and this is how I did my report.
 9 So if in the end it's determined not
 10 reasonable, that was my reasoning and that is one
 11 seat per four people because if it's one -- if it's
 12 -- one space, rather, for four people, if it's one
 13 space per four seats, well, that's four people.
 14 However, if the occupancy of this building goes as --
 15 and I apologize, I can't remember your name, I do
 16 apologize -- this gentleman states, then a number of
 17 variances are necessary.
 18 So the building is restricted in the
 19 number of -- of the number of people that can be in
 20 it based upon the parking.
 21 So it's kind of a -- you know, it -- it
 22 winds up being a variance if you're allowed to
 23 increase the amount of people that are in that
 24 building, which the applicant has said they don't
 25 want to, then the parking is inefficient, is

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1 insufficient and I think that's why the conditions
 2 are always put in the resolutions because they
 3 complement or they go back to the physical
 4 development of the site.
 5 So I disagree with the analysis.
 6 CHAIRWOMAN KOLODZIEJ: Okay. In the
 7 spirit of we heard your report --
 8 THE WITNESS: One sentence, please.
 9 CHAIRWOMAN KOLODZIEJ: You're already
 10 past the three minutes.
 11 Go ahead, finish it up, finish it up.
 12 At 10:00 I'm calling the meeting.
 13 Finish it up, please.
 14 MALE AUDIENCE MEMBER: One more
 15 sentence.
 16 CHAIRWOMAN KOLODZIEJ: Yup, one more
 17 sentence, go right ahead, Mr. Phelan.
 18 THE WITNESS: So the argument being put
 19 forth then is that we -- we on this application will
 20 disregard the provisions of the schedule, which
 21 specifically require multiple uses to be calculated
 22 independently and the sum of those uses determines
 23 the number of parking spaces required, is that -- I
 24 believe that's the testimony that we just heard; is
 25 that correct?

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1 back December 4th if you have more questions.
 2 MR. FERRARO: Also at that time members
 3 of the public will be able to present their own
 4 testimony as well, the ones who are not being
 5 represented by you.
 6 MS. HADJIYANNIS: Okay. They may want
 7 to question our expert also.
 8 Okay, okay, thank you.
 9 CHAIRWOMAN KOLODZIEJ: All right. You
 10 want to advise the members of the public?
 11 MR. FERRARO: Members of public,
 12 members of the public, you are advised that this
 13 application -- can I see your thing?
 14 This application for the Islamic Center
 15 is being carried to December 4, 2025 at 7:00 p.m. in
 16 this room and you will not receive any further notice
 17 other than the notice you were given at this time.
 18 Mr. McGowan, you understand you'll
 19 waive any requirement for the board to act at least
 20 through that date?
 21 Mr. McGowan?
 22 CHAIRWOMAN KOLODZIEJ: Extend the time.
 23 MR. FERRARO: The time limit waiver.
 24 CHAIRWOMAN KOLODZIEJ: Waive the time.
 25 MR. MCGOWAN: Yes, we will.

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1 MS. HARTMANN: No, that is not correct.
 2 I was talking about parking spaces related to number
 3 of people in the building.
 4 Historically, our ordinance requires
 5 one space per four seats for a conditional use house
 6 of worship.
 7 It is silent as to the accessory uses.
 8 And we have in the past had issues with that and it
 9 has been determined that those are not part of
 10 parking calculation.
 11 That's a court decision.
 12 CHAIRWOMAN KOLODZIEJ: Okay. Thank you
 13 for your report.
 14 Thank you.
 15 (Applause.)
 16 MR. FERRARO: Do you have any --
 17 CHAIRWOMAN KOLODZIEJ: Please don't.
 18 MR. FERRARO: Are you going to have any
 19 other questions for your witness or are you done?
 20 MS. HADJIYANNIS: I may, but I'm not
 21 going to ask him now.
 22 CHAIRWOMAN KOLODZIEJ: Can you bring
 23 him back for December 4th?
 24 MS. HADJIYANNIS: I may want to, yes.
 25 CHAIRWOMAN KOLODZIEJ: Okay. Bring him

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1 MR. FERRARO: Thank you.
 2 CHAIRWOMAN KOLODZIEJ: Can I have a
 3 motion to adjourn?
 4 COUNCILMAN D'AMATO: So moved.
 5 COMMISSIONER FRAGAPANE: Second.
 6 CHAIRWOMAN KOLODZIEJ: Okay. Second by
 7 Mr. Fragapane.
 8 Happy holidays.
 9 (Whereupon, this matter is continuing
 10 at a future date. Time noted: 10:01 p.m.)
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C E R T I F I C A T E

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I, LAURA A. CARUCCI, C.C.R., R.P.R., a Remote Online Notary Public of the State of Florida, Notary ID. #1810618, Certified Court Reporter of the State of New Jersey, and a Registered Professional Reporter, hereby certify that the foregoing is a verbatim record of the testimony provided under oath before any court, referee, board, commission or other body created by statute of the State of New Jersey.

I am not related to the parties involved in this action; I have no financial interest, nor am I related to an agent of or employed by anyone with a financial interest in the outcome of this action.

This transcript complies with regulation 13:43-5.9 of the New Jersey Administrative Code.

LAURA A. CARUCCI, C.C.R., R.P.R.
License #XI02050, and Florida Notary
Public #1810618, Notary
Expiration Date May 27, 2028

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