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TOWNSHIP OF TEANECK

BOARD OF ADJUSTMENT

THURSDAY, JANUARY 6, 2022

IN THE MATTER OF : TRANSCRIPT OF
APPLICATION AND PUBLIC HEARING : PROCEEDING
on Investigation and Adoption of :
54 WEST ENGLEWOOD AVENUE LLC : ZB2020-22

B E F O R E :
TOWNSHIP OF TEANECK BOARD OF ADJUSTMENT
THERE BEING PRESENT:

JERRY BARTA
JAN MEYER, The Chairman (Recused)
DANIEL WETRIN
HARVEY ROSEN, Vice Chairman
MARK MERMELSTEIN
ATIF REHMAN
ZEV MO GREEN
JAMES BROWN

MARK MADAIO, ESQ.
BOARD ATTORNEY

ROSILAND McLEAN
BOARD SECRETARY

DAN MELFI
ZONING OFFICER

MATT CAPIZZI, ESQ.
Attorney for the Applicant

Reported by: Angela (Angie) M. Shaw-Crockett
Certified Court Reporter
Registered Merit Reporter
Certified Realtime Reporter

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C O N T E N T S

MR. CAPIZZI 8

I N D E X

Examination of: Page

Joseph Burgis

E X H I B I T S

(Retained by the court reporter)

DEPOSITION	EXHIBIT	PAGE
Exhibit A-11	Site aerial	10
Exhibit A-13	Similar exhibit to the one before also dated October 5, 2021	12

1 CHAIRMAN MEYER: Thank you, everyone.
2 That brings us back to West 54 Englewood
3 Avenue.

4 Mr. Capizzi, are you still with us?

5 MR. CAPIZZI: Let me unmute myself. Yes,
6 Mr. Chairman.

7 CHAIRMAN MEYER: Okay. I hope you didn't
8 fall asleep so far. You're back up.

9 MR. CAPIZZI: Thank you, Mr. Chairman.

10 CHAIRMAN MEYER: And I'm going to recuse
11 myself on this matter as I've done before.

12 Mr. Rosen?

13 VICE CHAIR ROSEN: I'm here.

14 CHAIRMAN MEYER: You're back on.

15 VICE CHAIR ROSEN: Mr. Capizzi, if you
16 could just give us a 30-second summary of where
17 you left off, so we can reorient.

18 MR. CAPIZZI: Absolutely, Mr. Rosen.

19 CHAIRMAN MEYER: If you need my help, let
20 me give you -- who is going to testify?

21 Mr. Burgis, I'll make you host so you can
22 share your screen.

23 MR. CAPIZZI: So, Mr. Rosen, this was an
24 application that was last before the board on
25 November 4th of --

1 CHAIRMAN MEYER: I'm sorry. Mr. Capizzi,
2 before you go get into it, I think about 11:00,
3 11:15, 11:30 I think is closure. Depends on
4 what Mr. Rosen wants to do, but I think at
5 least give you an hour to --

6 VICE CHAIR ROSEN: Do we intend to hear
7 anything else?

8 MR. MADAIIO: No, no, no. This is it.

9 VICE CHAIR ROSEN: Okay. So, yes. We'll
10 do our best to finish tonight at 11:00 and
11 hopefully if we have to go to 11:15, so be it.

12 Go ahead, Mr. Capizzi.

13 MR. CAPIZZI: Thank you, Mr. Rosen.

14 As I was saying, we were last before the
15 board on November 4th of 2021. At that point
16 in time, we heard testimony from our traffic
17 engineer, Lou Luglio. Prior to that, we had
18 heard from our architect, Chris Blake. And
19 then prior to that, our civil engineer, Michael
20 Hubschman, relative to this project, which is a
21 2~1/2-story development over one floor of
22 parking. It consists of 20 units serviced by
23 34 parking spaces in a residential zone. It
24 meets several variances that Mr. Burgis will
25 speak to momentarily.

1 We had filed an amended plan set in August
2 of 2021. So the plans that Mr. Burgis will be
3 referring to are dated -- both architectural
4 and engineering plans, both dated August 19,
5 2021. We've had a total of four hearings prior
6 to tonight's matter. This, presumably, will be
7 the last hearing on the matter if we're able to
8 get through Mr. Burgis' testimony. And there
9 was a full composition of the board eligible to
10 testify.

11 Mr. Madaio, Mr. Rosen, I don't know if we
12 could run through who's eligible now or if you
13 want to reserve that for the conclusion of
14 Mr. Burgis' testimony?

15 VICE CHAIR ROSEN: That's exactly what I
16 was doing to my notes. And maybe you can help
17 me out.

18 How about, Rosiland, can you shed some
19 light on who's eligible and who needs --

20 THE BOARD SECRETARY: Was the last time
21 you were here, Matt, November 4?

22 MR. CAPIZZI: Correct.

23 THE BOARD SECRETARY: At that time --(Zoom
24 audio fades.)

25 VICE CHAIR ROSEN: Rosiland, you keep

1 fading out. We can't hear you.

2 THE BOARD SECRETARY: Can you hear me now?

3 VICE CHAIR ROSEN: Yes.

4 THE BOARD SECRETARY: Okay. (Zoom audio
5 fades.)

6 VICE CHAIR ROSEN: Doesn't last too long.
7 All we can hear is when you say, "Can you hear
8 me now?"

9 THE BOARD SECRETARY: Is that better?

10 VICE CHAIR ROSEN: Yes.

11 (A discussion was held off the record.)

12 THE BOARD SECRETARY: Mr. Green was
13 absent. And everyone else at that time who was
14 present now is here now except for Honis, who
15 is out; Mulligan is out; Mr. Brown came and he
16 heard it.

17 You heard enough of it, Mr. Brown? I see
18 that you were here at that meeting.

19 MR. BROWN: Yes.

20 THE BOARD SECRETARY: So basically.

21 VICE CHAIR ROSEN: So just Mr. Green was
22 absent and in order for him to qualify to vote
23 in the future, he would have to get the
24 transcripts?

25 THE BOARD SECRETARY: That's correct.

J. Burgis

1 Dr. Mulligan is off now because his
2 computer messed up. I sent that message to --

3 MR. GREEN: Presumably this is going to be
4 finished this evening, right? So I would have
5 enough time?

6 MR. MADAIIO: Right.

7 MR. GREEN: Okay.

8 VICE CHAIR ROSEN: So Mulligan left.

9 MR. MADAIIO: I agree that there may not be
10 a point to counting who can vote tonight
11 because I think it's kind of unlikely we're
12 going to vote tonight.

13 VICE CHAIR ROSEN: No, I agree. I just
14 wanted to make sure that transcripts were
15 provided where needed.

16 MR. MADAIIO: So Matt will do that.

17 I think the best use of the time is to
18 jump into Joseph's testimony and use that, say,
19 45 minutes we have.

20 And, again, I think it's doubtful there
21 will be a vote tonight because it seems like
22 there's a few members who probably aren't even
23 eligible.

24 VICE CHAIR ROSEN: I agree. Okay. Go
25 ahead.

J. Burgis

1 EXAMINATION

2 BY MR. CAPIZZI:

3 Q. Joe, why don't you introduce yourself to
4 the group, please.

5 A. Okay. Hello, everybody. Joe Burgis. I'm
6 a professional planner involved in this application.
7 I've been before the board once or twice before.

8 THE WITNESS: Mark, I don't know if you
9 want me to go through my credentials?

10 MR. MADAIIO: No, no. Board members,
11 Mr. Burgis has appeared before us many times
12 and he's certainly appeared before me and other
13 towns dozens and dozens of times.

14 He's an extraordinarily well-respected
15 planner. I assume he has not lost his license
16 since I last saw him.

17 THE WITNESS: I have not.

18 MR. MADAIIO: We've determined him to be an
19 expert in the past.

20 Mr. Chairman, I would certainly suggest he
21 be deemed an expert.

22 VICE CHAIR ROSEN: So ordered. Let's go.

23 MR. CAPIZZI: Thank you, Mr. Madaio.

24 Joseph Burgis, having been duly REMOTELY sworn, testified
25 as follows:

J. Burgis

1 MR. MADAIIO: Let's proceed.

2 BY MR. CAPIZZI:

3 Q. Mr. Burgis, can you tell the board your
4 involvement with the application and then just take
5 us right into your testimony, please?

6 A. Certainly. I was asked by the applicant
7 to look at this application relative to the
8 statutory criteria for the variance relief that is
9 necessary.

10 And with respect to that, I looked at the
11 surrounding development pattern and surrounding
12 densities. I looked at the municipality's master
13 plans and subsequent re-examination reports. I
14 evaluated all of that information and the site plan
15 itself and the architectural plans relative to how
16 the variance applications can be affirmed by the
17 statutory criteria that's involved, and came to
18 certain conclusions regarding each and every one of
19 those issues.

20 I know we have a limited amount of time,
21 so what I would like to do is jump in and talk about
22 how this project fits in with the surrounding
23 development pattern first; then I'll talk about the
24 master plan and zoning regulations, and then the
25 conclusions that I've come to with respect to how

J. Burgis

1 the statutory burden is being affirmed here.

2 So with that, we have two exhibits. One
3 is an aerial.

4 MR. MADAIIO: Matt, you can maybe help me
5 get through my paperwork and let me know what
6 exhibit number we're up to. I'm seeing A-7.

7 MR. CAPIZZI: This would be A-11.

8 MR. MADAIIO: A-11. So I have another
9 sheet somewhere. All right. So let's start it
10 off as A-11.

11 (Exhibit A-11 was received and marked for
12 identification, as of this date.)

13 BY MR. CAPIZZI:

14 Q. Go ahead, Joe.

15 A. A-11 is a site aerial. The subject site
16 is shown with a yellow border. It's on the lower
17 part of the page. It's on the south side of West
18 Englewood Avenue.

19 Immediately to the east is Teaneck Road.
20 It's about six or seven lots in from the corner.
21 The property actually abuts the West Englewood
22 Avenue/Mersereau Terrace intersection.

23 The aerial may be a little difficult to
24 read. It's to scale. But suffice it to say -- I'll
25 show you another exhibit. Thank you, Matt. There's

J. Burgis

1 a variety of single-family and multifamily uses in
2 the immediate and general area. Immediately to the
3 east is about a half dozen or so single-family
4 dwellings. And then a three-family dwelling one lot
5 in from Teaneck Road.

6 Directly across the street on the north
7 side of the street are a couple multifamily
8 buildings. And then the large one where the arrow
9 is pointing right now, which is a four-story larger
10 multifamily building immediate in the block across
11 the block from us.

12 And then to the west along West Englewood
13 Avenue, there's also number of single-family houses.
14 And then farther to the west at Laurel Terrace,
15 there's one multifamily development on the south
16 side of the street. And directly across the street
17 from that is another multifamily development.

18 And then as we all know, farther to the
19 north, I'm going up Hill Street and then beyond,
20 there's quite a number of multifamily developments,
21 as well.

22 The next exhibit, I broke out the
23 densities of these various multifamily projects.

24 BY MR. CAPIZZI:

25 Q. Is this the one you wanted to go with,

J. Burgis

1 Joe?

2 A. Yes, it is.

3 All of those properties shown in yellow
4 are existing developments. The ones in blue have
5 been approved but not yet constructed.

6 Immediately at the very lower edge of our
7 property of our map is of our site. If you scroll a
8 little bit -- there you go. You'd see our property.
9 And the densities in the area range significantly.

10 Our project, as you heard in a previous
11 meeting, is about 45 units to the acre. It's 20
12 units on a little less than 1 acre, one-half acre
13 lot. Immediately to the west, that yellow property
14 is an older garden apartment-style building built at
15 61 units to the acre.

16 Q. What I may do, Joe, I think actually the
17 other exhibit actually has that delineated on it.
18 Just give me one second to bring it up. Sorry to
19 interrupt.

20 A. I was wondering what happened to my
21 numbers.

22 (Exhibit A-13 was received and marked for
23 identification, as of this date.)

24 MR. CAPIZZI: This would be A-13. Give us
25 a quick identifier for it and then we can

J. Burgis

1 utilize this.

2 A. It's a similar exhibit to the one before,
3 also dated October 5, 2021.

4 The properties in orange are all the
5 developed multifamily buildings. There's one arrow
6 on the exhibit. The one on the corner of Teaneck
7 and West Englewood, actually that very small three-
8 or four-unit building is one lot in from the corner.
9 That is developed at 40 units to the acre.
10 Immediately across the street from the subject site,
11 there are three multifamily developments. Two of
12 them are small eight-unit buildings. One is at 21.8
13 to the acre. The other is at 17~1/2 to the acre.

14 But then to the east of -- two lots to the
15 east of that, is a four-story 41-unit building which
16 is developed at a density of 119 to the acre. If
17 you look to the west of the subject site, there's a
18 yellow box at Laurel Terrace. That's developed at
19 51 units to the acre.

20 Across the street is a white building that
21 should have been colored in. That's an older garden
22 apartment building, 36 to the acre. And then you
23 can see the other densities in the area very
24 significantly. They range from 22.96 to the acre
25 immediately north of the 119-unit-to-the-acre

J. Burgis

1 project. There's a recent one on Hill Street at
2 31.8 to the acre. That was -- I believe that's
3 maybe under construction now. And then across the
4 street from that is 38~1/2 units to the acre. And
5 then to the north of that are much higher densities.

6 So you could see there's a multifamily
7 character to the area. The benefit of developing
8 this site that is being proposed: A, it fits in
9 with the surrounding development pattern. But also
10 more importantly, there's a number of public
11 benefits that will hold true from the grant of this
12 relief.

13 For example, one of the critical features
14 is the widening of Mersereau Terrace. Right now
15 it's a very narrow street for those that may have
16 driven down it. It's 20 or so feet in width. It is
17 being proposed to be widened to 28 feet in width.
18 And if you recall at one of the previous hearings,
19 the fire marshal testified to the problems
20 associated with going down this street in terms of
21 fighting fire. And the provision of a 28-foot-wide
22 street here would help then significantly in their
23 firefighting capability in this area. So that's a
24 very significant public safety issue.

25 But in addition to that, as you heard, I

J. Burgis

1 think, from Mr. Hubschman, he talked about the
2 deteriorated character of the two existing houses on
3 the site. They're going to be demolished and
4 replaced with an attractive new building on the
5 property, with improved landscaped amenity on the
6 property, which also serves an aesthetic enhancement
7 to the neighborhood.

8 And in addition, Mr. Hubschman testified
9 to all the drainage improvements that will result
10 from this project, which also represents a benefit
11 to the area.

12 And then finally is the fact that of the
13 20 dwelling units, four will be affordable-housing
14 units. Now, four may not sound like a lot, but it
15 is a 20 percent set-aside. And the municipality, if
16 you look at your housing element and fair share
17 plan, while you're meeting your realistic
18 development potential housing need number, you are
19 significantly below your ability to accommodate
20 what's called your unmet housing need, which is the
21 difference between your full obligation and your
22 realistic development potential, or RDP. So
23 we're -- this project will help address that portion
24 of your unmet need that is not being addressed
25 today.

J. Burgis

1 So with that in mind, I decided to look at
2 the master plan to see what it says about all of
3 these different issues. And it's interesting. You
4 go back to the 2007 Master Plan, and it has a whole
5 series of goals and objectives, a number of which
6 about five or so are pertinent to this matter.

7 First and foremost is the goal that talks
8 about encouraging the development of affordable
9 housing. And needless to say, we are providing a
10 full complement of a 20 percent set-aside.

11 Secondly, a separate goal talks about
12 encouraging multifamily housing expansions, where it
13 wouldn't have detrimental impacts on the
14 neighborhood or represents something as a new
15 intrusion into a neighborhood.

16 Here, as I pointed out, there are a number
17 of other multifamily housing developments. And so
18 consequently, we filled that goal of the master plan
19 that's also been affirmed.

20 The third -- the separate goal talks about
21 encouraging a balanced land-use pattern in the
22 community. And it talks about -- that does in terms
23 of overall land use, but also in terms of the
24 differential between single-family housing and
25 multifamily housing in the community. And what was

J. Burgis

1 interested to note is that -- and it actually came
2 as a surprise to me, that fully 76 percent of the
3 municipality's housing stock is single-family
4 residential. And when you compare that statistic to
5 the county as a whole, 60 percent of the county's
6 housing stock is single-family residential. I'm not
7 going to suggest that 20 units is going to make a
8 significant dent in that ratio -- in those ratios,
9 but it will increase, to a certain limited extent,
10 the number of multifamily housing in the
11 municipality, but it won't represent an adverse
12 effect in the overall character --

13 VICE CHAIR ROSEN: Mr. Burgis, if you'd
14 just back up a second. I want to make sure I
15 got that and everybody else got that.

16 What is the mix in Teaneck right now?

17 THE WITNESS: Right now it's 76 percent
18 single-family and 24 percent two-family.

19 VICE CHAIR ROSEN: What's the date of that
20 study?

21 THE WITNESS: It comes from the 2020
22 Census.

23 VICE CHAIR ROSEN: Thank you.

24 THE WITNESS: And then the county average
25 is basically a 60/40 split of single-family to

J. Burgis

1 multifamily and whatnot.

2 A. Another goal talks about strengthening the
3 vitality of the business district. And you've heard
4 me speak before about how, by adding residential
5 development near the Teaneck Road corridor, it will
6 help with the expenditure of money into the business
7 district.

8 Typically you see about 20-some thousand
9 dollars a year in retail trade dollars per
10 multifamily dwelling unit. I'm not going to tell
11 you that all of that could be spent here in the
12 Teaneck Road corridor, but given the character of
13 the kind of shops that are there, which are daily
14 needs -- a number of daily needs kinds of shops and
15 some restaurants -- it's safe to assume that a good
16 portion of that total retail trade dollar will, in
17 fact, end of being spent in that corridor and help
18 with its revitalization and upgrading.

19 And with all of that -- I guess all of
20 that ties in with the land use plan recommendation
21 of the master plan, which specifically talks about
22 encouraging the expansion of multifamily development
23 and encouraging the long-term vitality of key
24 commercial areas in Teaneck.

25 That master plan, obviously, is now 14

J. Burgis

1 years old. But in 2017, you did a re-examination of
2 the master plan and you -- the planning board
3 reiterated each and every one of those goals and
4 objectives. And specifically, it talks about
5 providing for affordable housing, maintaining a
6 reasonable balance of housing choice, and providing
7 for infill development where feasible.

8 Now, the zoning ordinance here is the RS
9 single-family residential zone, which only permits
10 single-family housing. Now, as Matt had pointed
11 out, there's a number of above bulk variances that
12 are not being met by this application, but it's
13 really a function of the fact that we're proposing a
14 multifamily building and applying single-family
15 residential design standards to it.

16 And that's why there's case law that says
17 when you're proposing a multifamily development in a
18 single-family residential zone, for example, you
19 typically have all of those bulk variance subsumed
20 under the use variance itself. And here we've
21 identified a number of special reasons that support
22 the use variance request.

23 I think we've identified five in number.

24 One is how the site is particularly suited
25 for this use, given the established development

J. Burgis

1 pattern in the neighborhood. Our density is 45 to
2 the acre. Across the street -- on average, the
3 block across the street from us comes in about 40
4 units to the acre. The average total density, the
5 entire West Englewood corridor is about 25 to the
6 acre, even recognizing the single-family houses --

7 (Reporter interruption.)

8 A. I was talking about the site's particular
9 suitability for the use. In terms of the
10 surrounding development pattern and densities. And
11 I talked about how the average density in a
12 multifamily housing unit of 40 to the acre, how our
13 proposal is somewhat higher than that, at 45.

14 And the average total density along the
15 entire corridor, even including all of the
16 single-family dwellings in the corridor, it's still
17 at about 25 to the acre. So consequently, I feel
18 that the proposed project, recognizing its modest
19 20-unit size, fits in with that established
20 development pattern.

21 Second, there's a furtherance of a number
22 of the purposes of the state's Municipal Land Use
23 Law. One of the purposes of the act talks about
24 guiding the appropriate use or development of land
25 consistent with established development patterns.

J. Burgis

1 That's what I just had discussed. It talks about
2 promoting appropriate population densities, which is
3 also what I just touched upon. It talks about
4 providing a desirable visual environment.

5 Now, you had the architect testify at a
6 previous meeting where he talked about how we were
7 replacing two deteriorated single-family dwellings.
8 It's an attractive multifamily residential building
9 which has an architectural design to it. And then
10 we also talked about the more efficient -- the
11 statute talks about the more efficient use of land.
12 And we feel that this does represent an appropriate
13 use of this particular property.

14 A third special reason is something that I
15 had already touched upon. And I talked about
16 furthering the goals of the master plan. The goals
17 of the master plan, again, talk about encouraging
18 development of affordable housing. It talks about
19 encouraging multifamily housing expansion in the
20 appropriate locations. It talks about strengthening
21 the vitality of nearby business districts and
22 providing a balance of housing choice. That's what
23 this application really does on all four points.

24 Fourth, and very critically, is the
25 improved circulation design and fire access that

J. Burgis

1 occurs through the widening of Mersereau Terrace.
2 You're not just hearing that opinion of the planner.
3 Your own fire marshal had testified to the very fact
4 at the previous meeting.

5 And then tied in with all of that is the
6 improved drainage conditions that result from this
7 plan that our engineer, Mr. Hubschman, had testified
8 to.

9 Now, in addition to that positive criteria
10 of the statute, there's the negative criteria of the
11 statute. An applicant has to show that there's no
12 substantial detriment to the public good and has to
13 show there's no substantial impairment to the intent
14 and purpose of the master plan.

15 In terms of this no substantial detriment
16 to the public good, typically the issues are framed
17 around three or four particular matters.

18 One regards traffic impact. And you heard
19 from Mr. Luglio, I think, at the very last meeting
20 how there's a limited and negligible impact in terms
21 of total traffic-generating potential and impact on
22 West Englewood Avenue by virtue of this application.
23 He specifically identified the fact that fully a
24 quarter of the residents of Teaneck actually used
25 mass transit to get to and from work. So that also

J. Burgis

1 played into his determination that there is no
2 significant traffic impact that results from this
3 project.

4 The second area of concern typically
5 revolves around school impacts. And here because of
6 the bedroom distribution count, if we have two or
7 three public school attendees coming out of this
8 project, I'd be surprised. And that's a function of
9 the fact that 20 units that are proposed, 16 of them
10 are going to be one-bedroom units. And that doesn't
11 typically generate much in the way of public school
12 attendees. But even if I was wrong and it was
13 double that number, the school system has indicated
14 that there's substantial capacity to accommodate an
15 additional number of kids coming out of this kind of
16 a project.

17 Some other issues relate to the issue of
18 land use compatibility. I think I touched upon
19 that. The fact that we're adding to the diversity
20 of housing stock, I think it also reflects well on
21 the issue of public good.

22 Finally, in terms of the second prong of
23 the negative criteria, there's no substantial
24 impairment to the intent of the master plan. I
25 think I touched upon that when I talked about the

J. Burgis

1 five goals that are being affirmed by this
2 particular plan. And within all of that context and
3 recognizing how the bulk variances are subsumed
4 under the use issue, I think it's safe to conclude
5 that I feel comfortable in suggesting that the board
6 approve this application.

7 VICE CHAIR ROSEN: Mr. Burgis, I just
8 wanted to clear something up.

9 You cited Mr. Luglio's testimony about
10 traffic and you said he said "a limited
11 negative impact" or "no impact at all"?

12 THE WITNESS: Actually, I believe he said
13 "no negative impact" were his exact words.

14 VICE CHAIR ROSEN: Okay. I wasn't sure.
15 I couldn't find my notes. So he said no and
16 you're, obviously, agreeing with that.

17 So how is that a negative criteria if
18 there's no impact?

19 THE WITNESS: Well, you have to show
20 that -- all applicants have to show there's no
21 substantial detriment to the public good. And
22 as I had indicated, it's typical that one of
23 the elements of public good relate to traffic
24 and traffic-generating potential.

25 And here, the traffic expert has opined

J. Burgis

1 that there will be no negative impact on
2 traffic, so consequently there's no substantial
3 detriment to the public good with respect to
4 that matter.

5 VICE CHAIR ROSEN: We call that a double
6 negative, but I'm not quite sure.

7 THE WITNESS: I think you're right. But I
8 just want to point out that I used the word
9 "substantial" there. That doesn't come just
10 out of -- I'm not saying that off the top of my
11 head. That comes directly from the statute.
12 The statute says you have to show there's no
13 substantial detriment.

14 There's a lot of case law that identifies
15 the fact there's a recognition that there can
16 be some detrimental impact on a variety of
17 issues. The question is whether it's
18 substantial or not.

19 So when we're talking about traffic and
20 there's testimony -- unrefuted testimony that
21 says that there's no negative impact on
22 traffic, I think that goes a long way towards
23 addressing the detriment to the public good
24 issue with respect to that matter.

25 VICE CHAIR ROSEN: And are you speculating

J. Burgis

1 that there could be two to three students in a
2 public school system on the basis of this
3 development or would that --or was that
4 somebody else's testimony?

5 THE WITNESS: That was mine. That was
6 mine. I looked at the Rutgers University study
7 on school -- public school projections based on
8 total number of units. I'm refining it by the
9 fact that 16 of our 20 units are one-bedroom
10 units. So consequently, I think suggesting two
11 public school children coming out of this size
12 project is a reasonable number.

13 VICE CHAIR ROSEN: Okay. Good. All
14 right. Any questions from other members of the
15 board?

16 MR. CAPIZZI: I do have a few follow-up
17 questions, Mr. Rosen, but I can certainly
18 reserve.

19 VICE CHAIR ROSEN: Sure. You want to do
20 now or you want to wait?

21 MR. CAPIZZI: I'll wait. Perhaps some of
22 the members of the board will capture what I
23 was going to ask Mr. Burgis.

24 VICE CHAIR ROSEN: Okay.

25 THE BOARD SECRETARY: Mr. Rosen, sorry to

J. Burgis

1 interrupt. We also have our professional of
2 traffic, the planner and the engineer.

3 VICE CHAIR ROSEN: Okay. We'll get to
4 that in a second. I just want to make sure
5 that we have no other questions, based upon
6 what Mr. Burgis has said tonight.

7 Any questions from anybody on the board?

8 MR. REHMAN: Yeah, thank you.

9 VICE CHAIR ROSEN: Mr. Rehman?

10 MR. REHMAN: Thank you.

11 Mr. Burgis, my question, it stems from
12 your testimony, but I'm not sure if you can
13 answer it and maybe Mr. Capizzi can.

14 But one of the things -- one of the
15 benefits that you mentioned was the affordable
16 housing. I think in a prior testimony with the
17 architect, we talked about the three-bedrooms
18 being affordable units. And there was some
19 confusion or it wasn't clear whether that
20 included one bathroom or two bathrooms.

21 I want to make sure if we have affordable
22 housing that it's at market. We wouldn't
23 typically see a three-bedroom with just one
24 bathroom.

25 So could Mr. Capizzi, perhaps, you know,

J. Burgis

1 stipulate that if this is approved, that -- if
2 there is an affordable housing unit that's
3 three bedrooms, it would have two bathrooms,
4 which seems like it's in line with what the
5 market would expect?

6 MR. CAPIZZI: We could certainly provide
7 one full bath and one half bath. I don't know
8 if that would meet your concern? Only because
9 of space limitations. I'm not necessarily sure
10 we could accommodate two full bathrooms. We
11 certainly could do a full bath and a half bath.

12 MR. REHMAN: Yeah, I think that's fine. I
13 just want to make sure that we're somehow not
14 providing affordable units that we otherwise
15 wouldn't.

16 MR. CAPIZZI: Understood. We don't want
17 to provide something substandard, certainly.

18 THE WITNESS: What you're suggesting makes
19 sense. And I remember the conversations in
20 terms of the design. It was difficult to get
21 a -- certainly a second full bath. I think
22 what Matt is suggesting is reasonable.

23 VICE CHAIR ROSEN: Ms. Trahan, do you have
24 a question?

25 MS. TRAHAN: If you went back to that map

J. Burgis

1 that you were showing with all the multifamily
2 projects, I was wondering if you could just
3 describe which of those are in the RS zone?

4 THE WITNESS: My recollection, all of West
5 Englewood Avenue is in the RS zone. The ones
6 to the rear are in multifamily zones.

7 MS. TRAHAN: Do you know if any of these
8 received use variances?

9 THE WITNESS: I know some of them did.
10 Well, the ones when -- the 119 units to the
11 acre, that's rather old. So that might have
12 predated the ordinance. I just don't know for
13 a certainty.

14 I know that a number of them received
15 D-density variances because many of them exceed
16 the density limitation. Density limitation is
17 only 12 units to the acre in the RM zone. So
18 many of these projects, obviously, well exceed
19 that.

20 MR. MADAIIO: Couldn't that just mean that
21 they predate the ordinance?

22 THE WITNESS: Well, that's why I said, I
23 know in some instances, they may have. But in
24 other instances, I know they didn't because
25 they got the density variances and height

J. Burgis

1 variances at the same time.

2 MR. MADAIIO: I'm sorry to interrupt,
3 Ms. Trachan.

4 MS. TRAHAN: That's fine. Thank you for
5 that. And then I just had a question on the
6 record study.

7 Were you using the more recent 2018 record
8 study or the older one?

9 THE WITNESS: No, the '18 or '17? The
10 recent one.

11 MS. TRAHAN: The more recent one. I think
12 otherwise you've covered --

13 MR. MADAIIO: Mr. Chairman, could I ask a
14 question or two?

15 VICE CHAIR ROSEN: Please go ahead.

16 MR. MADAIIO: My connection. If I could,
17 Joe, could you put that exhibit back up and
18 perhaps Matt could make it just a little bit
19 smaller so we could see more of it?

20 Okay. So the projects -- what is not in
21 this zone? Where is the zone line that would
22 tell us what's not apples to apples, is not in
23 the zone?

24 THE WITNESS: I think the properties
25 fronting West Englewood Avenue are all in the

J. Burgis

1 RS zone, I think. Most of the rest is in the
2 RM zone, but it has a limitation of 12 units to
3 the acre.

4 So, for example, I was involved in, I
5 think, three projects on State Street that
6 received density variances exceeding 12 to the
7 acre. And the one fronts on Queen Anne and
8 fronts also on Palisade Avenue had a height
9 variance as well.

10 MR. MADAIIO: But we agree that none of
11 those are in the zone, right?

12 THE WITNESS: They're in the RM zone.

13 MR. MADAIIO: So they're not in this zone,
14 right?

15 THE WITNESS: Yes, correct.

16 MR. MADAIIO: Okay. So of the ones in this
17 zone, which I assume is only the ones that
18 front on West Englewood Avenue, right, not the
19 ones that front on The Plaza, only the ones
20 that front on West Englewood?

21 THE WITNESS: Correct.

22 MR. MADAIIO: Of the -- now, Matt, can you
23 zoom in a little bit. Thank you.

24 Of the ones that front on West Englewood,
25 there's only four or five. And one of them,

J. Burgis

1 quite frankly, is a postage stamp.

2 THE WITNESS: There is a fifth mark. One
3 directly opposite Laurel Terrace. That
4 lightening up box, that was inadvertently not
5 colored in. That's at 36 to the acre.

6 MR. MADAIIO: So of those, how many predate
7 the ordinance?

8 THE WITNESS: That I don't know. The
9 ordinance -- my recollection of Teaneck's
10 ordinance goes back to the '20s, if not
11 mistaken. I don't know that any of those
12 buildings other than the -- even the 119 to the
13 acre, I don't believe they're that old. So it
14 may have gotten variances. I just don't know.

15 MR. MADAIIO: So let's -- so not knowing
16 whether any of those that front on West
17 Englewood, which are the only ones in the zone,
18 we don't know if any of those received
19 variances or if they predate the ordinance or
20 if something else occurred, correct?

21 THE WITNESS: That's correct.

22 Can I point out one fact for you, Mark?

23 MR. MADAIIO: Always, Joe.

24 THE WITNESS: The real concern from a land
25 use perspective is the established development

J. Burgis

1 pattern. So here we have five projects, 119 to
2 the acre, 17~1/2 to the acre, almost 22 to the
3 acre, 51 to the acre, and the white boxes I had
4 inadvertently not colored is at 36 to the acre.

5 So when you're looking from a land use
6 perspective, that's part of the pattern of
7 development that a board should be taking into
8 consideration when they're evaluating the
9 merits of any application. Because whether or
10 not they received the variance or not, the fact
11 is they have an influence on the current
12 property.

13 MR. MADAIIO: Well, let me ask this way,
14 then. If you only included those properties in
15 the zone, does that -- even if we don't know
16 how they got there, does that change your
17 numbers and calculation and averages?

18 THE WITNESS: No. And I thought I gave
19 the numbers appropriately because I included
20 all the single-family lots when I did that
21 calculation. So you've got a good sense of the
22 entirety of the corridor from Queen Anne to
23 Teaneck Road and what the overall density is.

24 MS. TRAHAN: Did you testify that it was
25 40 units to the acre of the multifamily units

J. Burgis

1 on West Englewood Avenue?

2 THE WITNESS: It's in excess of 40 to the
3 acre. The overall character when you factor in
4 with a single family, you're still at
5 24-point-something to the acre.

6 MS. TRAHAN: But just of the multifamily
7 on West Englewood, that was about 40. And then
8 the proposed development is 45, correct?

9 THE WITNESS: Correct.

10 MS. TRAHAN: That's your testimony?

11 THE WITNESS: Yes.

12 MR. MADAIIO: Last question or so.

13 If this is -- if this is so clear, why
14 hasn't the Township rezoned West Englewood
15 Avenue to permit exactly this? If it's the
16 predominant existing development pattern, what
17 does it mean -- why hasn't the Town chosen to
18 rezone it and what does it mean that they have
19 not chosen to resolve it?

20 THE WITNESS: That's why I focus on the
21 continuing ongoing goals that the planning
22 board is pursuing, instead of designating
23 sites. They identify as a broad goal to
24 encourage the expansion of multifamily housing
25 at appropriate locations. And what I would

J. Burgis

1 suggest is where you have the site directly
2 opposite multifamily housing, it seems to make
3 sense. But coupled with the fact that we're
4 making certain physical improvements to the
5 street in terms of widening, that serve to
6 enhance the fire safety issues identified by
7 the fire marshal, I think that goes a long way
8 to say there are some significant special
9 reasons here to support the application.

10 MR. MADAIIO: Doesn't the governing body
11 know about those goals as well and yet they've
12 still chosen not to rezone this in exactly the
13 manner that you're talking about?

14 THE WITNESS: Right. And that's why the
15 statute provides for this alternative approach;
16 i.e., the use variance. Where a zoning board
17 can look at the particulars of the site and
18 particulars of a corridor and make a
19 determination as to whether or not there are
20 special reasons to support the case.

21 And also in terms of the negative criteria
22 and the master plan, whether or not the master
23 plan goes with being affirmed or not. And what
24 I'm suggesting is there's a number of master
25 plan goals that are affirmed. There's public

J. Burgis

1 safety issues that are being affirmed here.
2 And in terms of surrounding development
3 patterns, this also fits in. So that's why
4 I've concluded that there's merit to this
5 application.

6 MR. MADAIIO: Thank you. I'm sorry -- and
7 thank you for the time for that, Mr. Chairman.

8 VICE CHAIR ROSEN: No problem.

9 MR. BARTA: Could I ask a question?

10 VICE CHAIR ROSEN: Sure.

11 MR. BARTA: I'm going back to the public
12 safety improvement. I understand the street's
13 being widened by 8 feet, which helped
14 accommodate the fire engine. But is that so
15 much a concern if we -- if it remains a
16 single-family development or whatever the
17 zoning would allow, two or three units?

18 Or is that -- what was -- as I recall the
19 testimony, that was a much bigger issue because
20 of the multifamily swing. In the multifamily
21 context, the fire department had an issue. I'm
22 not sure -- I don't recall that the fire
23 department had an issue with the street as it
24 is if we didn't change -- grant the
25 application.

J. Burgis

1 THE WITNESS: I would suspect they would,
2 only because of my own experience going down
3 that street. There are a number of times where
4 I've seen a number of cars parked on Mersereau.

5 Now, if you've got an 18- or 20-foot-wide
6 street and there's cars parked on that side
7 street, and it just complicates the ability to
8 get firefighting equipment down that street.
9 And you would not get a widened street if
10 someone were just to come along and
11 rehabilitate those two single-family houses.

12 So it's not just the fact that it's
13 assisting in firefighting for the purposes of
14 fighting a fire in this building, it also
15 serves the rest of the street, as well.

16 MR. CAPIZZI: Mr. Barta, that request for
17 the road widening did not come from the fire
18 department. It came from your board engineer
19 as a means to try and improve circulation in
20 and out of Mersereau. And as a side benefit,
21 the fire department has commented that this
22 off-track improvement, not being made at the
23 board's request, was also having an offshoot
24 positive effect to the fire department for
25 firefighting capabilities.

J. Burgis

1 MR. MADAIIO: So, Joe, is that the
2 trade-off? In other words, for widening a
3 borough street, of course, I assume widening
4 any borough street makes fire safety better or
5 easier. The trade-off seems to be that if you
6 widen a borough street, property which is
7 lawfully zoned for two units should become
8 viable for 30 units.

9 MR. CAPIZZI: Joe -- don't justify that,
10 Joe. That certainly has not been -- we haven't
11 spent five hearings going through plans and
12 traffic testimony to be so glib with the
13 off-site improvement and how that alone carries
14 the day. Nobody on my team has ever said that.

15 THE WITNESS: If I could just add to that.
16 I never said there's that trade-off. What I
17 have said that it's one benefit. I identified
18 a half dozen benefits.

19 Also in terms of land use compatibility
20 along the corridor and what's happening
21 directly across the street, I think that also
22 comes into play to suggest that anytime you
23 have any road widening, let's say it's on a
24 solely detached single-family housing, you
25 couldn't make this argument. It wouldn't hold

J. Burgis

1 water.

2 But the fact that you have these other
3 issues and other land uses and other densities,
4 that's why I can sit before you and make these
5 comments.

6 MR. MADAIIO: Okay. Very good, Joe. Thank
7 you.

8 VICE CHAIR ROSEN: I'm going to just let
9 you know, because we're getting close to that
10 time period. What I want to do is call upon
11 either Mr. Corak, Mr. Vince, Mr. Melfi, anybody
12 who are associated with the Town, have any
13 further questions.

14 I see you, Mermelstein. And we're going
15 to have to cut it there. Dr. Powers, I see
16 your hand, but we're going to have to hold
17 until next session.

18 Mr. Corak, did you have a question or a
19 point to make?

20 MR. CORAK: It wasn't so much a question.
21 It was a point of clarification related to the
22 widening of the roadway and whether or not
23 that's brought about by this particular
24 development or if it should be that wide
25 regardless of the residents that are served

J. Burgis

1 there.

2 And under the present conditions, the
3 roadway width does not meet the requirements
4 set forth in the RSIS. The requirements say it
5 should be 28 feet. It's currently 20 feet
6 because with the parking on one side, it
7 doesn't allow two-way flow.

8 So regardless of whether or not there's an
9 apartment building here or it stays as
10 single-family houses, at 20 feet wide, it's too
11 narrow per RSIS. At 28 feet wide, it does meet
12 those requirements.

13 VICE CHAIR ROSEN: Mr. Barta, does that
14 help you?

15 MR. BARTA: It does. I'm not sure it
16 answers the question I have in my head. I
17 understand the standard.

18 I'm wondering from a safety issue whether
19 there is a safety benefit to having a --
20 whether there's a real safety enhancement or
21 not by having two houses -- by having two
22 houses on the lot with a 20-foot street. Or
23 having 30 units on the lot with a 28-foot
24 street.

25 I'm just wondering whether there's a real

J. Burgis

1 enhancement there because of the increased
2 risk. Is that -- is the widening making that
3 much of a difference?

4 I get it. We're widening the street. I
5 understand the RSIS standard and I appreciate
6 that clarification, Mr. Corak. I'm just not
7 sure that from a safety perspective, it's
8 really changing the game, especially on a
9 dead-end street. It's not as though I can
10 drive through. I've got to drive in and back
11 out anyway.

12 THE WITNESS: With cars parked on the one
13 side, it just complicates the ability to get
14 the firefighting vehicles down that street and
15 firefighting equipment.

16 But I also want to point out -- I was
17 going make a joke and say what if we reduced to
18 20 units? Because everyone keeps talking about
19 30. That was the previous application. We're
20 20 units.

21 VICE CHAIR ROSEN: Okay. Mr. Melfi?

22 MR. CAPIZZI: I think, Mr. Barta, we're
23 certainly not saying any one particular element
24 carries the day. We're just asking the Board
25 to look at the application in total and make an

J. Burgis

1 assessment. That's all.

2 MR. BARTA: I understand. I get it. I
3 had the same sort of question on the affordable
4 housing comment. Is this really -- this is not
5 addressing the affordable housing in town.
6 This is just satisfying the statutory
7 requirement that if you're going to build a
8 multifamily development, you need to set aside
9 affordable housing. It's not an affordable
10 housing project. It's a statutory requirement
11 of doing a market family -- a market rate
12 project.

13 MR. CAPIZZI: Nonetheless, there are
14 objectives, though. The only way to achieve
15 the objective is --

16 MR. BARTA: Okay.

17 VICE CHAIR ROSEN: Gentlemen, I think that
18 you all have made your point. I think we can
19 debate this.

20 Mr. Mermelstein, I just want -- Mr. Melfi,
21 you're unmuted. Do you have a question?

22 MR. MELFI: No. I have no questions for
23 the application. The only thing I'm going to
24 ask you and the board is if we can continue --
25 if it can end tonight shortly, only because our

J. Burgis

1 agenda is extremely busy for the next month or
2 so.

3 VICE CHAIR ROSEN: I will. I want to
4 bring to a good ending here.

5 Mr. Mermelstein, you have a question?

6 MR. MERMELSTEIN: Yes, thank you. And
7 it's for Mr. Burgis, actually.

8 So I've heard all of the benefits that you
9 listed. I might even agree with some of them,
10 but do any of these benefits lose any of
11 benefit by -- if this were a eight-unit
12 building or six-unit building?

13 Or are these only -- are we only able to
14 achieve all of these benefits that you
15 mentioned by having a now 20-unit building?

16 THE WITNESS: You would lose some of your
17 affordable units obviously with an eight-unit
18 building. You wouldn't get as many as four.

19 But I guess all of the other benefits may
20 still accrue, not to the same extent. And now
21 it's a little out of my pay grade. I just
22 don't know if by only doing an eight-unit
23 building, is it cost effective to do that road
24 widening? I just have no idea about that.

25 VICE CHAIR ROSEN: Okay. I'm going to

1 have to stop this here.

2 Dr. Powers, I see you and I know that
3 you're usually a very thorough questioner. So
4 I want to reserve enough time for you at our
5 next session.

6 MR. CAPIZZI: What I would like to do,
7 Mr. Chairman, before we break, if I can just
8 run down the hearing dates.

9 VICE CHAIR ROSEN: Yes, that's where we're
10 going next. So, Ms. McClean, we have a pretty
11 busy agenda in February, right?

12 Are you there?

13 THE BOARD SECRETARY: We carried six
14 already from tonight and we have two on for the
15 next meeting that are not on here.

16 So unless there's a pressing -- can you
17 hear me?

18 Because of the agenda, it might be better
19 for this one to be carried to March 3rd.

20 Matt, I've got a question. You see how
21 many applications we have on.

22 Do you want to be carried to the next
23 meeting and take a chance or March 3rd?

24 MR. CAPIZZI: I'm not available March 3rd,
25 Roz. We started this application in June.

1 We've been very patient with allowing other
2 matters to proceed before us. I would ask for
3 a one-time courtesy to finish this up in
4 February so we can be done. We did start in
5 June and we've been very gracious with carrying
6 the matter to accommodate other matters. I
7 really would like to finish it on February 3rd.

8 THE BOARD SECRETARY: Are you going to
9 furnish transcripts?

10 MR. CAPIZZI: That's what I was going to
11 ask Mr. Chairman.

12 If the board members can give you a
13 rundown of what dates were missed, I can have
14 transcripts produced for those dates, circulate
15 them so that we can have a full composition.

16 VICE CHAIR ROSEN: I think we've
17 established that Dr. Mulligan, who had to
18 leave, will need at least tonight's transcript
19 and Mr. Green, who is absent. So that November
20 meeting, we'll need that.

21 THE BOARD SECRETARY: We can work with
22 Miss Shaw and she'll let us know.

23 VICE CHAIR ROSEN: I'm sorry?

24 THE BOARD SECRETARY: Angie will let us
25 know.

1 VICE CHAIR ROSEN: Mr. Chair, are you okay
2 with the calendar that we're establishing here?

3 CHAIRMAN MEYER: I have no problem.
4 Everything has been -- Mr. Capizzi has a lot of
5 matters and he juggles and he spends different
6 times. So that's the problem when you
7 represent 16 applicants at one time. You've
8 got to share your own time.

9 So I have no problem if we have time. I
10 can offer you tremendous time next time, but
11 because we have other things that we're trying,
12 other applications, but...

13 If there's time, of course I'll give
14 you -- we can give you some time like we did
15 tonight.

16 VICE CHAIR ROSEN: Mr. Capizzi, is that
17 acceptable to you or would you rather go to
18 April?

19 MR. CAPIZZI: We'll appear before you in
20 February and see what we can get done then.
21 We'll certainly will have Mr. Burgis back to
22 finish questioning from Mr. Powers and any
23 other members of the public, members of the
24 board. But he's our final witness.

25 VICE CHAIR ROSEN: Mr. Madaio, do you have

1 something to say?

2 MR. MADAIIO: No, I think it's imperative
3 that we continue to list this. It should be a
4 significant effort made to reach it. It has
5 been pending for a while. I know it's been
6 pending, but Matt's gotten at this point four
7 meetings out of it. So it hasn't been set on
8 certainly. But let's list it.

9 We saw of all of the hearings we had
10 tonight, I have one resolution to do. So
11 that's how many things either dropped off or
12 incomplete, couldn't be heard, notices were
13 bad. So I think we should list this for the
14 3rd and do our very, very best to get to it.

15 VICE CHAIR ROSEN: So we're going to carry
16 this to February.

17 Do we hear a motion for that?

18 MR. BARTA: Motion.

19 CHAIRMAN MEYER: No further notice to the
20 public.

21 MR. BARTA: Yes.

22 VICE CHAIR ROSEN: I believe we're all in
23 agreement. Again, just to pick up where we're
24 going to continue at the next meeting, that
25 this application is heard.

1 Dr. Powers, any other members of the
2 public will get a chance to ask questions of
3 Mr. Burgis. Mr. Capizzi will also reserve time
4 to ask further questions as well and we'll take
5 it from there.

6 Second to carry this?

7 MR. WETRIN: Second.

8 VICE CHAIR ROSEN: All in favor?

9 (Unanimous aye)

10 MR. BARTA: If we're planning to vote at
11 the next meeting, I think we just -- whether we
12 do it tonight or in the next day or two,
13 doesn't matter, but I think we need to be clear
14 on which transcripts are necessary for whom.

15 VICE CHAIR ROSEN: I thought we did that.

16 MR. BARTA: I didn't hear October.

17 MR. CAPIZZI: My notes show that Mr. Barta
18 missed October 7; Ms. Prince June 21 and
19 October 7; and Mr. Green missed November 11.

20 THE BOARD SECRETARY: October 7, Mr. Green
21 missed.

22 MR. CAPIZZI: November 4th, I'm sorry.
23 And Mr. Mulligan missed this evening, as well
24 as November 4th.

25 VICE CHAIR ROSEN: Mr. Capizzi, you, Angie

1 and I can work this out and find out which is
2 which.

3 MR. MADAIIO: It sounds like you need all
4 of the transcripts. Every night there's
5 someone who missed and --

6 MR. CAPIZZI: I may get lucky and not have
7 to get September. We'll see.

8 MR. MADAIIO: Whatever is good.

9 VICE CHAIR ROSEN: Thank you all for
10 working this out as best as we can and under
11 the time constraints. And Mr. Chair Meyer,
12 it's all yours.

13 CHAIRMAN MEYER: Thank you. I appreciate
14 that.

15 (Time noted: 11:22 p.m.)

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C E R T I F I C A T E

I hereby certify that the proceedings herein are from the notes taken by me in this matter of the aforementioned case; and that this is a correct transcription of the same.



Angela (Angie) M. Shaw-Crockett
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