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THE ZONING BOARD
OF ADJUSTMENT FOR THE
BOROUGH OF BRADLEY BEACH

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IN THE MATTER OF THE	TRANSCRIPT OF
APPLICATION OF BETH AND	PROCEEDINGS
HAROLD COTLER,	
306 MONMOUTH AVENUE	
BLOCK 78, LOT 14	
----- x	

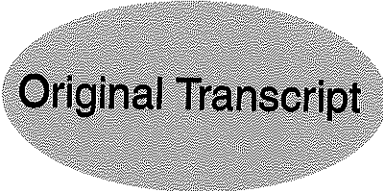
August 20, 2020
6:30 p.m.

ZONING BOARD

HARVEY ROSENBERG, Chairman
MICHAEL AFFUSO
RAYMOND WADE
DEIDRE PHILLIPS
TERESA ROSENBERG
DAVID CRITELLI
DEBORAH BRUYNELL

PERSONNEL

GERALD FREDA, Engineer
CHRISTINE BELL, Planner
KRISTIE DICKERT, Secretary



APPEARANCES

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CHAIRMAN ROSENBERG: Next case.

MS. DICKERT: The only application under consideration this evening, since we've carried the Irvington Manor case to October 15th would be ZB20/05 Beth and Harold Cotler, Block 78, Lot 14, 306 Monmouth Avenue. The applicants proposing to demolish an existing garage and construct a two-story accessory garage having a two-car garage on the first floor and a residential apartment above regarding variances for the height of the detached garage, minimum side yard setback for accessory structure, living accommodations on both floor and maximum impervious coverage. Applicants represented by Richard Stone.

MR. STONE: Mr. Kitrick is on. I take it that the board -- first let me enter my appearance again. Recall all of you that in the June meeting I indicated to the Board that I have the pleasure of representing the applicant Cotler in regard to this application. In the June meeting there was some dialogue from an objector, Mr. Coan. I must assume that Mr. Coan is on this meeting as well. One of the things that disturbed

1 me back then was that the objection that was
2 raised with respect to the notice was a late call
3 when it's hopeful that just as an applicant is
4 required to provide information timely, it would
5 have been best if the objector, any objector
6 provided the board, applicant's counsel,
7 applicant's experts with any issues that he might
8 have.

9 In the June meeting there was an issue
10 raised with regard to the notice. Frankly I
11 believe that the notice was adequate but in order
12 to make sure that that issue was not raised at
13 some later date, we agreed to adjourn the hearing
14 for two months giving an opportunity for my client
15 to order a full-blown architect's plan, which we
16 timely submitted. And that we crafted a far more
17 detailed notice in order to adequately respond to
18 the objector.

19 I want to re-enforce that at the time of
20 the June meeting it was then and it remains now
21 that that original notice was satisfactory.

22 But what I was hoping to avoid is that in
23 the event that the application proceeded to its
24 conclusion and without being presumptuous that it
25 was approved, I didn't want there to be a

1 procedural attack on the application. So I agreed
2 to carry the hearing until this date.

3 Either late last night or early this
4 morning Ms. Dickert was kind enough to forward
5 over to my office a rather detailed communication
6 from in this case Thomas TJ Coan. This time
7 Bradley Beach public citizen. I see there was a
8 modification to his last characterization. But it
9 was a rather detailed list of objections that Mr.
10 Coan had and of course as always an objector had
11 a right to make those objections. But again I
12 point to the board's attention that the items
13 contained in this myriad list were certainly well
14 known to Mr. Coan before this morning or late last
15 night. And I just want to make sure that the
16 record is clear that I object to the late notice
17 to the board, to the board professionals, to the
18 applicant, to the applicant's attorney, all of
19 which could have been done before. I should point
20 out to you that --

21 FEMALE VOICE: That's the lawyer,
22 Richard Stone.

23 MR. STONE: I'm sorry. I didn't
24 hear that.

25 MS. DICKERT: It's somebody who keeps

1 unmuting. Go ahead, Mr. Stone. I'm sorry.

2 MR. STONE: I also want to make sure
3 that the record clear that earlier this week and I
4 don't remember if it was Monday or Tuesday I
5 received an unsolicited call at my law office from
6 Mr. Coan. I indicated to him then and assume that
7 he would confirm now that I inquired as to whether
8 or not he was represented by an attorney. He told
9 me then that he was not but that he engaged a
10 planner. And again I'm assuming that the planner
11 is available tonight.

12 I've not received nor has any of us
13 received I don't think any record or a report
14 from his proposed planner. But he did go through
15 some detail, Mr. Coan did, about items that he
16 objected to and I would hope that the and I know
17 Ms. Dickert must have, and again I'm assuming I
18 hope without being presumptuous that the
19 information provided by Mr. Coan was
20 disseminated to all of the board members and that
21 we might have those in front of us now including
22 Mr. Kitrick. Because I do have some questions
23 about these things because certainly before we can
24 get this application under way, I believe that --

25 FEMALE VOICE: -- I get on that --

1 MS. DICKERT: Sorry, Mr. Stone.

2 MR. KITRICK: Excuse me one second.

3 Who is that individual?

4 MS. DICKERT: Whoever Karen is. I'm
5 not sure. It just says Karen.

6 MR. KITRICK: Okay. So they need to
7 stay muted until they're going to speak. And if
8 it keeps happening, we're going to have to take
9 other measures. Okay. Don't want to do that but
10 we have to proceed. So...

11 MR. STONE: You know as a result of
12 this new environment we're in I've only done a few
13 of these. Ordinarily I guess if we were in the
14 meeting in person just as we wouldn't permit --

15 MR. KITRICK: Correct.

16 MR. STONE: -- anybody from speaking
17 out of turn. I guess we're doing the same thing
18 here; am I correct, Mr. Kitrick?

19 MR. KITRICK: That's correct. So
20 let's keep rolling.

21 MR. STONE: Okay. So if all of us
22 have Mr. Coan's communication dated Thursday,
23 August 20, 2020 at 9:50 am. Well actually that's
24 not correct.

25 MS. DICKERT: That was -- Mr. Stone

1 that was the prior objection. And actually the
2 new objection since I got it late last night, it
3 was not distributed to the board members. It was
4 only distributed to Mr. Kitrick, yourself and it
5 was posted on the website.

6 MR. STONE: Do the board members have
7 this document now?

8 MS. DICKERT: They do not.

9 CHAIRMAN ROSENBERG: No.

10 MR. STONE: Do they have the ability
11 to access it so that when we review it, they will
12 be able to see what's on it?

13 MS. DICKERT: I can -- can you hold
14 on one second.

15 MR. STONE: Yes.

16 MS. DICKERT: I'll attempt to share
17 my screen.

18 MR. STONE: I'm sorry about that, Ms.
19 Dickert.

20 MS. DICKERT: No, that's okay.

21 MR. STONE: I just assumed that
22 because --

23 MS. DICKERT: I was just rambling
24 around. I don't work in Bradley Beach full time.
25 So...

1 MR. STONE: But I see here that Mr.
2 Coan sent it, it appears to you.

3 MS. DICKERT: At ten to eight last
4 night.

5 MR. STONE: Right. 7:49 last night.

6 MS. DICKERT: Yeah --

7 MR. STONE: So certainly you wouldn't
8 have disseminated that last night. I don't
9 suppose at eight o'clock at night the night before
10 a meeting you would be on your computer working --

11 MS. DICKERT: No, sorry. I was not.

12 MR. STONE: So that none of us, Mr.
13 Kitrick nor myself received this until this
14 morning; am I right?

15 MS. DICKERT: Correct.

16 MR. STONE: And even as late as
17 tonight at the outset of this meeting other than
18 us discussing it now, none of the board members
19 have seen it; am I right?

20 MS. DICKERT: The board members have
21 not seen it unless they have viewed it on the
22 website.

23 MR. STONE: Okay. So with that in
24 mind might I ask Mr. Coan since the board members
25 didn't have an opportunity to see this and I would

1 defer of course to Mr. Kitrick but it seems to me
2 that this would fall under a general heading
3 housekeeping. And because if there are any
4 procedural issues that have to be raised I suspect
5 I would respect --

6 FEMALE VOICE: This temporarily
7 unmuted but we --

8 MR. STONE: -- I would respectfully
9 suggest that these items and others should be
10 discussed before the meeting gets started, before
11 the application process gets started. And I would
12 defer to Mr. Kitrick.

13 MR. KITRICK: I don't have any
14 objection to that. And both sides will have the
15 opportunity to address this, so...

16 MR. STONE: So what I would ask is
17 Mr. Coan now the ability to address these various
18 issues and bring them up before the board?

19 Is he attending the meeting, Ms. Dickert?

20 MR. COAN: Yes, I'm here. I'm here.
21 I had my hand raised. Thomas Coan, 612 Third
22 Avenue. I'd be happy to address all these issues.
23 But first of all I really would like to address
24 this issue that Mr. Stone keeps bringing up about
25 the timeliness. So in the ZOOM document of the

1 agenda tonight I'm going to read you what it says.

2 It says --

3 MR. KITRICK: Before you start that,
4 I just want to make it a clear -- the reason we're
5 having this discussion now, at this point this
6 board has not accepted jurisdiction in this
7 matter. So we're having this discussion before
8 there's any ruling on that. Okay.

9 FEMALE VOICE: Yeah.

10 MALE VOICE: I mean we're not getting
11 anywhere.

12 MR. COAN: It plainly says in the
13 Town's document for this ZOOM meeting if you have
14 information or exhibits you wish to be considered
15 and entered into the record, you will have to
16 email them to the board's secretary, Kristie
17 Dickert in advance of the meeting so they may be
18 marked into evidence. There is no time frame, Mr.
19 Kitrick, none. It's your own document created by
20 the Borough of Bradley Beach. My documents should
21 stand as they were submitted in plenty of time.

22 MR. STONE: Number one -- May I
23 respond to that, Mr. Kitrick?

24 MR. KITRICK: Of course.

25 MR. STONE: Okay. So number one the

1 communication in and of itself I would suggest is
2 not evidential. There are items contained in the
3 document clearly hearsay.

4 Mr. Coan has not been sworn in and I
5 would like him to be sworn in. And I don't have
6 any objection to him bringing up each one of the
7 four, I believe that there are four line items
8 contained in this document, which may very well
9 lead to a further discussion generally about the
10 jurisdiction of the board.

11 But I would like him to go through each one
12 so that I can respond to it.

13 MR. KITRICK: You'd like him to go
14 through each one in relation to whatever argument
15 he wants to put forth; is that correct?

16 MR. STONE: Yes, Mr. Kitrick.

17 MR. KITRICK: All right. So moving
18 forward there's not a discussion about, you know,
19 the timeliness. Is that it?

20 MR. STONE: No, I anticipate that at
21 some point the record of these proceedings are
22 going to be reviewed. And when they are reviewed,
23 if as in when they're reviewed, regardless of
24 whether the application is approved or denied,
25 when it's approved I want to make sure that the

1 reviewing court sees the progression of events in
2 which at each separate occasion the objector drop
3 shift his objection after anybody can prepare
4 answers. And I would respectfully suggest he does
5 so intentionally. He did it in June with regard
6 to the notice. And he did it today in regard to
7 addressing the issue of the various members of the
8 board he has asked for recusal.

9 Now I'll --

10 MR. KITRICK: All right. So let me
11 address the overall issue. So first of all we
12 have an applicant's attorney and we have Mr. Coan
13 who's a pro se objector. So the objector is
14 extended the same courtesies as the applicant
15 regarding scheduling matters. I think that's
16 consistent with the Municipal Land Use Law. Also
17 Mr. Coan had the opportunity to retain counsel and
18 he is decided as many people do not to retain
19 counsel. I think he's -- I understand he's got a
20 planner but as legal advice he's representing
21 himself and every right to do that. However he'll
22 have to follow the same rules as someone who is an
23 attorney.

24 So the reality is that whenever those
25 documents came if we were to determine that it

1 wasn't timely, what really would occur was the
2 matter would be carried. That's what would be
3 carried. That's what would likely happen.

4 I don't disagree what Mr. Coan had said as
5 to what is on the website and when it has to, you
6 know, addressing where the documents go. So while
7 I don't think what he's done is different than
8 perhaps, contradicts I should say what's on the
9 site. What I do not understand is, and I'd like
10 to hear, one, why he did it? He did that the
11 night before. And just as a professional courtesy
12 as the Board Attorney I didn't get a copy.

13 Mr. Coan, do you want to address that?

14 MR. COAN: Mr. Kitrick, I'm following
15 the instruction based on your own agenda document.
16 All files should go through Ms. Dickert and she
17 should disperse them. I should not be dispersing,
18 and quite frankly I did it improperly the first
19 time and I sent submissions to Mr. Cannon in
20 error. So I didn't want to make that mistake.
21 And I followed the rules as per your agenda.

22 MR. KITRICK: Well, Mr. Coan, I don't
23 know why you would give the documents to the
24 Borough Attorney. I mean you're before the Board
25 of Adjustment.

1 MR. COAN: That was my error. So
2 that was not this meet -- this was before the
3 previous meeting. And Ms. Dickert was nice enough
4 to give me the proper direction and said that he
5 was not involved in that case.

6 MR. KITRICK: Right. So you
7 understand that when these documents are presented
8 they have to be reviewed in a timely manner,
9 right. So I think out of, I'm going to call it a
10 courtesy that I think most attorneys would follow
11 that you would give people notice ahead of time.
12 You didn't do that. And we're not going to hold
13 up the proceeding on that but --

14 MR. COAN: I don't expect you to,
15 sir.

16 MR. KITRICK: But you need to give
17 people more notice.

18 MR. COAN: Well I would advise the
19 Borough to change the notice for the ZOOM then. If
20 people read this, I followed the rules.

21 MALE VOICE: I would like to --

22 MR. KITRICK: No, no. Please. Now I
23 don't know where we're going with this. But in
24 the future if you have some documentation I would
25 expect that you give it to your adversary and you

1 give it to the attorney of the board in a timely
2 fashion. And not the day of and the night before.
3 Okay.

4 MR. COAN: Yes, sir. I understand
5 that.

6 MR. KITRICK: All right.

7 MR. STONE: May I just comment
8 briefly on that, Mr. Kitrick?

9 MR. KITRICK: Sure.

10 MR. STONE: Those of us who practice
11 Municipal Land Use we're confronted on any given
12 application, we could be the applicant's attorney
13 or we could be the objector's attorney. And as
14 you pointed out and the record should be clear any
15 person has a right to be a pro se litigant. But
16 they're held to the same rules that you and I
17 would be. And you used the word "professional
18 courtesy" and I think that's a good term. But I
19 think the record should reflect that if the course
20 of conduct over the history that each time that
21 there's a meeting on the eve, not even, the day of
22 the meeting, the night before at eight o'clock he
23 communicates it to the board secretary well
24 knowing that she's not going to be able to
25 disseminate it amongst the board members, who

1 certainly have a right particularly under some of
2 the assertions made in this transmittal and that
3 should be done so that if it's appealed at some
4 later point the record should be clear that on
5 each occasion in which I appear it was a late
6 submission by Mr. Coan to somehow delay this
7 process from taking place.

8 Now with that said let's move ahead. I
9 would like him to raise each one of his items and
10 to each one we can have a colloquy. I will
11 respond to it. I can answer it. I will defer to
12 the board attorney and then as we go through the
13 process we can make decisions on each one, not me,
14 but the board and the board attorney can make a
15 decision on each issue that Mr. Coan raised.

16 But I'd like to hear from him not through
17 written transmittal, what are his problems? What
18 are his objections?

19 MR. KITRICK: All right. So I just
20 want to make sure everybody can see the
21 submission.

22 MR. CRITELLI: This is Dave Critelli.
23 I can't scroll down the submission at all.

24 MS. DICKERT: No because I'll do the
25 scrolling. It's my screen.

1 MR. CRITELLI: Oh, okay.

2 MR. KITRICK: Okay. All right.

3 MR. COAN: Mr. Kitrick, I just have
4 one aside there.

5 MR. KITRICK: Sure.

6 MR. COAN: I've attended a lot of
7 meetings and I've been handed engineer's letters
8 the day of the meeting in the forum. So I don't
9 understand why now I'm held to this standard when
10 other professionals have done that to me before.

11 MR. KITRICK: What do you mean done
12 that to you? I don't know what --

13 MR. COAN: I've been handed an
14 engineer's letter the day of the meeting, at the
15 meeting.

16 MR. KITRICK: In what capacity?

17 MR. COAN: As an applicant. So I
18 mean I don't know --

19 MR. KITRICK: I can't comment on your
20 prior history. You have -- we're talking about
21 this board.

22 MR. COAN: I totally understand, sir.

23 MR. KITRICK: And you have to have
24 standards. Listen I accept that you looked at the
25 website and you believed that you were following

1 the procedure.

2 MR. COAN: Yes, sir.

3 MR. KITRICK: I accept that. But
4 going forward there's got to be courtesy extended.
5 That's how we conduct it.

6 MR. COAN: Yes, sir. I understand.

7 MR. KITRICK: Because if you want to
8 be a cynic it looks like someone was trying to get
9 it late so people don't have the opportunity to
10 prepare.

11 I accepted that that was not your
12 intention. I accept that. But, you know, a cynic
13 would think that that is what's going on. So I
14 accept that that's not what you're doing. I
15 totally accept your representation. But moving
16 forward, if we are moving forward, we need to
17 extend each other professional courtesy. Okay.

18 MR. COAN: Yes.

19 MR. STONE: Let the record reflect
20 that I'm the cynic in the group.

21 MR. KITRICK: Okay. All right so I'm
22 looking at this, Mr. Coan.

23 MR. COAN: Yes.

24 MR. KITRICK: So let's just start
25 with number one.

1 MR. COAN: Sure well it became
2 readily apparent after reviewing the video
3 numerous time that this testimony and it is
4 literally testimony was entered onto the record by
5 a board member leaving many, many facts that would
6 not come in the meeting because there was no
7 testimony in the meeting. So how would she know
8 that it was a lighting and safety issue. She
9 states that she's familiar with the structure. You
10 know, how does she know it's a safety issue? I
11 mean --

12 MS. PHILLIPS: Can I object? Since
13 you're --

14 MR. KITRICK: No, just -- let him --

15 MS. PHILLIPS: Let him finish then
16 I'll tell you my opinion.

17 MR. KITRICK: Well let's --

18 MS. PHILLIPS: My neighbors.

19 MR. COAN: Mr. Kitrick --

20 MR. KITRICK: I appreciate that. Mr.
21 Coan, you proceed. Proceed, Mr. Coan.

22 MR. COAN: What I'm interested in is
23 Ms. Phillips' opinion after she hears the facts.
24 So clearly she came to the proceeding schooled
25 about this. Having intimate knowledge that she

1 received somewhere and --

2 MS. PHILLIPS: Not true.

3 MR. COAN: Please, Mr. Kitrick, can I
4 finish.

5 MS. PHILLIPS: Not true.

6 MR. KITRICK: Well let him -- Deidre,
7 just let Mr. Coan finish. Let Mr. Coan finish.

8 MS. PHILLIPS: Go ahead.

9 MR. COAN: Mr. Kitrick, Mr. Stone
10 offered no testimony and swore in nobody to give
11 testimony. But a board member decides to give
12 testimony and shouts it out to the other board
13 members. It's highly improper. And the only
14 answer is for her to recuse herself. That's a
15 perception of a conflict and I perceive a conflict
16 as many other people who viewed it. So a
17 perception of a conflict, sir, is a conflict.

18 MS. PHILLIPS: You opened it.

19 MR. KITRICK: Ms. Phillips, let me
20 respond first, okay.

21 MS. PHILLIPS: Okay.

22 MR. KITRICK: All right. So I'm not
23 sure that a perception of a conflict is a
24 conflict. I'm not sure that that's accurate but
25 let's talk about the specifics of this. In this

1 you're saying -- you're referring to this as
2 testimony.

3 MR. COAN: Yes, sir.

4 MR. KITRICK: So --

5 MS. PHILLIPS: You said that nobody
6 had seen it. None of us -- that we are --

7 MR. KITRICK: Deidre, Deidre, let me
8 just get through this, okay.

9 MS. PHILLIPS: He opened it up.

10 MR. KITRICK: Yeah, okay. So I think
11 what you're saying is a statement. I mean
12 testimony is stated under oath. So this isn't --

13 MR. COAN: It's absolutely testimony,
14 sir. I'd be happy to read it right now for
15 everybody.

16 MR. STONE: I have to interrupt. May
17 I interrupt, Mr. Kitrick?

18 MR. KITRICK: No. No. I'd like
19 people to stop interrupting actually. So I'm not
20 saying you can't read it. What I'm saying is, and
21 I saw what you had, that's not testimony. That
22 may be a statement. I don't think you're
23 characterizing it correctly.

24 MR. COAN: Well how would she know
25 about what their daughter needs, sir?

1 MR. KITRICK: That's -- do you know
2 what testimony is?

3 MR. COAN: Yeah, I know what
4 testimony is. That was testimony in favor of the
5 application before the board.

6 MR. KITRICK: Tell me what it is.
7 Tell me what testimony is.

8 MR. COAN: Testimony is statements
9 entered into the record in a legal proceeding.

10 MR. KITRICK: Under oath.

11 MR. COAN: Okay, so she wasn't under
12 oath. It's still improper for a board member to
13 enter this onto the record whether she's under
14 oath or not. She has a preconceived notion of
15 the way the application should go and she
16 broadcast that notion to the other board members.

17 MR. KITRICK: So I'm not disputing
18 what you're saying other than I was clarifying --
19 I want the record to be clear. That's not
20 testimony. Okay, so that's not what that is.
21 That's not what that is. But I understand your
22 point and we'll address your point.

23 So you say -- so you have attached a
24 transcript that you prepared, right. So is that
25 transcript -- so my question is: Who prepared it

1 and was that from the meeting?

2 MR. COAN: I'm very clear to state,
3 sir, that I typed it based upon the video
4 recording, which is available to any board member
5 or any other jurisdiction beyond this one.

6 MR. KITRICK: Okay. So after the
7 meeting you viewed it and typed it up.

8 MR. COAN: Numerous times, sir.

9 MR. KITRICK: I couldn't hear you.
10 I couldn't hear you.

11 MR. COAN: Oh, numerous times.

12 MR. KITRICK: Okay.

13 MR. COAN: I viewed it numerous
14 times, sir.

15 MR. KITRICK: So it remains -- I'm
16 just curious it remains on the website after the
17 meeting is that --

18 MR. COAN: Well I actually inquired
19 to Ms. Dickert and she sent me the video recording
20 link.

21 MR. KITRICK: Got it. Okay.

22 MR. COAN: So I could watch it.

23 MR. KITRICK: Just trying to
24 understand how you got it. Okay.

25 MR. COAN: I -- inaudible --

1 something from that.

2 MR. KITRICK: All right.

3 MS. DICKERT: Mark, want to see the
4 transcript that he prepared or --

5 MR. KITRICK: Yes.

6 MS. DICKERT: Yes?

7 MR. KITRICK: Please.

8 MR. STONE: I object to that.

9 MR. KITRICK: Okay. What's your
10 objection?

11 MR. STONE: Okay, a couple of things.
12 Number one, may I respectfully ask that since Mr.
13 Coan has given this information to the board, that
14 he be sworn in so that he makes these statements
15 under oath.

16 MR. KITRICK: Yes. Mr. Coan, since
17 you're not a lawyer. You would need to be sworn
18 in.

19

20 THOMAS TJ COAN, Sworn.

21

22 MR. KITRICK: Thank you.

23 MR. STONE: Mr. Kitrick, I'd like to
24 direct a question to you to ask Mr. Coan. I don't
25 want it to appear on the record that I'm

1 cross-examining Mr. Coan at this time. That may
2 happen later on but I think in the spirit of this
3 dialogue it would be better if the questions came
4 from the board attorney.

5 I'd like to know whether or not the
6 transcript that he provided, to which I object, is
7 a verbatim record and is he certified as a court
8 reporter or otherwise to provide such information
9 to the board?

10 MR. KITRICK: Okay. Mr. Coan, you
11 heard that.

12 MR. COAN: It is prepared to the best
13 of my ability and the backup documentation is the
14 video itself.

15 MR. STONE: Okay, so I object to
16 that. That has no place in this record. And it's
17 not testimony. It's not certified and he's not
18 qualified to take a verbatim record.

19 I'd like to ask a second question. I'd
20 like to know whether or not during the course of
21 the last meeting in June did he tape the meeting
22 himself?

23 MR. COAN: No, I rely on the
24 Borough's copy of the meeting and I made multiple
25 requests as to why it wasn't posted on the Borough

1 website for the rest of the public to watch. I
2 had to take an extra step, do an OPRA request to
3 Ms. Dickert to get a copy of the link to watch it.
4 I would much prefer to be able to watch it at my
5 leisure attached to the website but apparently
6 that's not the way it works.

7 MS. DICKERT: I don't believe by law
8 we're required to post videos. You're entitled to
9 an audio recording.

10 MR. COAN: Well I mean the planning
11 board has no problem with it. The Council has no
12 problem with it. So I don't know why it's a
13 problem for the zoning board but, you know, I'm
14 all about public information. Let's just put it
15 out there.

16 MR. STONE: Let me make another
17 comment, Mr. Kitrick. It's not unusual after an
18 applicant provides a application to the board that
19 the board in preparation, board members in
20 preparation for the meeting review the
21 application, attachments, reports, plans. In fact
22 that's the very essence of the Municipal Land Use
23 statute. That the board members have an
24 opportunity. So on the outset of a meeting it is
25 not unusual for board members to have a dialogue

1 about it. But make no decision until all of the
2 evidence in both for and against.

3 So the fact that, I don't know, this
4 particular board member but the fact that she made
5 a comment from what her review was, I don't find
6 that objectionable. And it's certainly no reason
7 for her to be -- to recuse herself.

8 In addition to that I would respectfully
9 suggest that if there's such an issue, the next
10 question that should be raised is whether she can
11 be fair, unbiased and form no preconceptions. And
12 if the board attorney is satisfied with that, then
13 that should end the issue there.

14 And if Mr. Coan has a problem after the
15 application is completed, he can take that appeal
16 up to the Superior Court Trial Division.

17 MR. KITRICK: So I think it's helpful
18 at this time to hear from Ms. Phillips.

19 MS. PHILLIPS: Okay. And I think to
20 reiterate that I'm absolutely fair, unbiased. I
21 don't pretend to be an attorney or a planner or
22 an architect. I'll listen to the testimony and
23 then I make my decisions in conjunction with the
24 rest of the board.

25 Furthermore I was saying a question.

1 They're my neighbors. I've seen the structure and
2 I know that the daughter's a doctor. Like I know
3 other cases that have come before. They're
4 neighbors of mine. It doesn't mean that they're
5 going to like what I think, whether I vote for
6 them or against them. But I think I can
7 absolutely remain unbiased, fair and come in with no
8 preconception about what my final vote will be.

9 MR. KITRICK: So I think -- so I
10 appreciate that. And I saw what Mr. Coan had
11 presented. And you made reference to, and I'm
12 paraphrasing so please excuse me, but something
13 about them needed two doors, something along those
14 lines.

15 MS. PHILLIPS: Well in my mind again,
16 do you need to have two doors for a two-car
17 garage. You think you would. And I raised the
18 question, I didn't know if you do because I only
19 saw one door. But I've seen pictures with the two
20 cars like we have all -- we all got pictures on
21 the board. So...

22 MR. KITRICK: So have you prejudged
23 the application.

24 MS. PHILLIPS: No, I have not.

25 MR. KITRICK: All right. And do you

1 have a relationship with the applicant which would
2 --

3 MS. PHILLIPS: No, I really don't
4 think so.

5 MR. KITRICK: -- impact your
6 impartiality.

7 MS. PHILLIPS: I would definitely say
8 I'm impartial. I say hello. I'm not in the house
9 socializing. I see them when they're walking the
10 dogs and their kids and I say hello. That's the
11 extent of my relationship with the Cotlers.
12 They're very nice people. I supported him when he
13 ran for Mayor. That was many years ago. Other
14 than that no, you know, I really don't have, again
15 I'm impartial. So whatever you think that's how I
16 feel about it.

17 MR. KITRICK: Mr. Coan, do you have
18 any comment?

19 MR. COAN: Well sure, I'd like to
20 know if she's ever been in the structure. So she
21 says so I guess knowing this structure for myself
22 they have to have two doors.

23 MS. PHILLIPS: I've never been in the
24 structure.

25 MR. COAN: Has she ever been in the

1 building?

2 MS. PHILLIPS: No.

3 MR. COAN: And how would you know
4 about the applicant wanting lighting and safety
5 for their daughter if there was never any
6 testimony to that affect?

7 MR. STONE: Mr. Kitrick, I don't
8 think it's appropriate.

9 MR. COAN: I asked a question --
10 Inaudible.

11 MR. KITRICK: So this isn't -- you
12 don't get to cross -- it applies to Mr. Stone,
13 this is not a cross-examination of Ms. Phillips.
14 So the question, and I'll ask the question. So
15 you've already stated you're not in the building,
16 inside the building.

17 MS. PHILLIPS: Yes.

18 MR. KITRICK: But would it be fair to
19 say with applications that we've had previously,
20 have nothing to do with this application, that you
21 and other board members will sometimes go to a
22 property, look at it prior to the meeting to get
23 an idea of what --

24 MS. PHILLIPS: I do that all the
25 time.

1 MR. KITRICK: Right.

2 MS. PHILLIPS: You know I do that
3 with particularly one of my pet peeves as you know
4 is the air conditioning unit placement.

5 MR. KITRICK: Right. Okay.

6 MS. PHILLIPS: Solely of that. I've
7 been voted -- you know, I vote against it and been
8 outnumbered but, hey, I feel strongly about
9 certain things. De minimis factors of the solar
10 panels on the top. We already know from
11 literature that we got regarding this. But no, in
12 terms of them wanting a safe structure that just
13 goes without saying. I mean I had no
14 conversations about it with anybody.

15 MR. KITRICK: All right. Okay. I
16 have enough information.

17 Let's go to number two.

18 MR. COAN: Sure that would be a
19 business relationship and I understand there are
20 HIPAA laws so it's not anything that I can ask
21 about but the board members should volunteer by
22 recusing themselves. There's nothing more
23 intimate than that relationship between a doctor
24 and a patient. And you know, if you're going to
25 be making a decision about your doctor, you're in

1 a very awkward position. And I believe the best
2 thing for the public is any members as I request
3 who are -- have that relationship should simply
4 just recuse themselves. I'm not here to beat
5 anybody up, Mr. Kitrick. I'm just asking simple
6 questions to get the smoothest application here
7 for Mr. Stone.

8 MR. STONE: Okay, can I --

9 MS. PHILLIPS: He's not my doctor by
10 the way.

11 MR. STONE: Wait a minute. Can I
12 enter? I have a question about that.

13 MR. KITRICK: Sure.

14 MR. STONE: I wonder whether or not
15 Mr. Coan has any information to suggest that any
16 of the board members are in fact patients of Dr.
17 Cotler.

18 MR. COAN: No, sir. I have nothing
19 that leads me to believe that. I'm just asking
20 the question and leaving it up to the conscience
21 of the board members because there are HIPAA
22 because there are HIPAA restrictions. So they can
23 -- that's why I ask in my letter for Mr. Kitrick
24 to poll them privately. It's their information.
25 But, you know, the public should get a fair and

1 honest hearing. That's all I want as a public
2 citizen, sir.

3 MR. KITRICK: So, Mr. Stone, and
4 without prejudging this, I mean I have no idea
5 who's, like yourself I don't know, who's seeing
6 which doctor. But let's assume for the purpose of
7 this conversation, Mr. Stone, that there are --
8 there's a member or there are members of the board
9 who are patients of the applicant. What's your
10 position on that?

11 MR. STONE: You know, all day today
12 after receiving this transmittal and that
13 paragraph dealing with patient information, it's
14 very troublesome.

15 I'll give you an example. Supposed you
16 take your board one by one just as if you were the
17 judge in a trial out in Freehold and you wanted to
18 voir dire each one of the various jurors and you
19 wanted to do it in a private setting. Now we've
20 tried cases in Freehold before juries. I know I
21 have. And once in a while either you go to side
22 bar everybody whispers, once in a while you go
23 into chambers and the judge brings the lawyers in
24 and in front of the attorneys the judge asks very
25 very delicate questions. In this case I think you

1 fill that role. So but let's assume that you took
2 your board out one by one to one of the meeting
3 rooms and then they proceeded to come out to the
4 -- back to the dais. And one of them leaves.
5 That would allow the public, Mr. Coan, and all of
6 the other people that are now visualizing this
7 proceeding to know something very private that Mr.
8 Coan would be getting indirectly that he's not
9 allowed to get directly.

10 Now if he were to say are you a partner
11 with Dr. Cotler, and it determined that one of the
12 board members was a business partner, that's
13 different then the very sensitive relationship
14 that will be exposed to the world if Mr. Coan gets
15 his way. And that issue is very sensitive. So he
16 can't get a HIPAA form executed. He already
17 indicated to his credit that there's HIPAA
18 sensitivity. But he wants to know who Dr. Cotler
19 treats. He's not entitled to know that. Nobody
20 is entitled to know that.

21 So when we place members of a community
22 onto a board we trust that if they feel as though
23 they can't be honest and fair, then that is within
24 their conscience. But if they're asked that
25 question, can you be unbiased? Will you be

1 prejudice in one favor or other? And their answer
2 is being negative, then we have to accept that.

3 Mr. Coan is not entitled to the answer as
4 to whether or not any of these board members are
5 patients of Dr. Cotler. And that's my position.
6 So I don't think he's entitled to that
7 information.

8 MR. COAN: Mr. Kitrick, if I may this
9 could be done very simply. The board members can
10 just recuse themselves. There's no -- there's
11 nothing here but to have a business relationship
12 with someone that you're going to vote on their
13 application, I find that very troubling, sir. I
14 want --

15 MR. KITRICK: I think you're both
16 saying the same thing. By that I mean you and Mr.
17 Stone are just saying it a little differently that
18 a board member without having to announce what the
19 issue is could recuse themselves knowing about
20 this standard, if you will. So I think that would
21 be the way to handle it.

22 MR. COAN: I don't disagree, sir.
23 That's all I ask for.

24 MR. KITRICK: Right. Okay. Well
25 let's --

1 MR. STONE: Let's not decided -- May
2 I suggest that we not decide --

3 MR. KITRICK: No, I'm not going to --
4 we're not making any final decisions on anything
5 right now.

6 So number three.

7 MR. COAN: Sure, Mr. Kitrick. Number
8 three I find is very important because Mr.
9 Waterman writes the denial for the application.
10 And in other forum I've been in they supply the
11 Zoning Officer to answer questions as to why the
12 denial is the way it is.

13 In this case there is a history of denials
14 on this same structure before they were granted
15 the approval to build it. I would like to know
16 more about the history of that. I would like to
17 know what those plans looked like. And I'd like to
18 know why they were denied.

19 Mr. Waterman is the who wrote the denial
20 and I feel that I should be able to cross-examine
21 him as Mr. Stone. Mr. Stone may have questions
22 about the ordinances intimately and he may want to
23 ask Mr. Waterman.

24 So I mean I believe Mr. Waterman should be
25 supplied for this hearing. I would hope he's on

1 the call.

2 MR. STONE: I don't know if he is or
3 not. May I provide --

4 MR. KITRICK: Go ahead.

5 MR. STONE: So what I think that Mr.
6 Coan is alluding to is that he wants to bring in
7 Mr. Waterman for all of the history leading to the
8 approval.

9 I would respectfully submit that all that
10 lead up to that approval would merge into the
11 approval. And once it was approved if Mr.
12 Waterman is to testify as to what happened
13 post-approval, I certainly have no objection to
14 that. He certainly -- but if Mr. Coan is going to
15 go back into the history of this property for the
16 last ten years, what lead to the approval, at the
17 time that Mr. Waterman would be provided for his
18 testimony I would raise that objection.

19 So whether or not Mr. Waterman comes or
20 doesn't come to the meeting, that would be
21 determined as the meeting was progressing.

22 MR. COAN: That being said I'd like
23 to state that, you know, there was an approval
24 granted to build a garage apartment and that
25 didn't happen. And I'd like to ask -- talk to Mr.

1 Waterman about that application and as you say,
2 Mr. Stone, the subsequent application which was
3 denied. I have multiple questions on the denial.

4 MR. STONE: And you know what, I --
5 Mr. Waterman, he's not my witness. I don't
6 suspect he's your witness. If the board found
7 that it would be appropriate for him to provide
8 information to the board, for him to assist them
9 in their decision, provided that we don't go back
10 into the history pre-approval.

11 Once it's approved, then if you want to
12 talk about what happened after that, of course
13 that is part of full consideration. In fact you
14 know, Mr. Coan, that that's the reason we're here.
15 Because if the structure was completed in the
16 identical fashion to which it was approved, there
17 would be no objections to this application.

18 MR. COAN: Oh, I don't disagree, sir.
19 That's all I'm asking for.

20 MR. STONE: So I have no problem with
21 Mr. Waterman but I would respectfully submit to
22 Mr. Kitrick that the issue about the extent of his
23 testimony and what it covers that would be dealt
24 with just as it would with any witness in any
25 trial setting or any board meeting. When he

1 testifies, there will be issues whether there will
2 be evidential objections or otherwise. That's not
3 -- that's not something that should be dealt with
4 here.

5 MR. KITRICK: All right. Any other
6 issues.

7 MR. STONE: Yes, I have an issue. So
8 along with Mr. Coan package I was pleased to see
9 that he found and submitted to the board -- I
10 should tell -- for those board members that may
11 not know. I was the zoning board attorney in
12 Bradley Beach for what I believe was over two
13 decades. And during that time I acted in the same
14 capacity as Mr. Kitrick. And a few years ago I
15 decided that the winter night meetings were too
16 much for me. But here I am.

17 And he provided a copy of a resolution the
18 application was for a Joseph and Jackalyne
19 Jankowitz (phonetic) along with one of my bills to
20 the Borough of Bradley Beach.

21 I'd like to know what his point is. What
22 was his issue to provide that to the board?

23 MR. COAN: Oh, sure. That goes to
24 the arbitrary and capricious nature of this
25 application, sir. And you will hear testimony

1 about that.

2 MR. STONE: I want an explanation of
3 that. This would suggest that he culled out of
4 all the records that I had over a two or decade
5 period or more he decided to bring this bill
6 before the board, which I think is irrelevant,
7 immaterial and presumptuous. I'd like to know why
8 he gave this bill to the board.

9 MR. COAN: As it relates to the legal
10 review for that and in that case, 507 Fourth
11 Avenue they requested a basement -- I'm sorry, a
12 garage bathroom and I submitted the original plans
13 when the garage bathroom was proposed. Through
14 the hearing and in the resolution it indicates
15 that the board did not approve that and there's a
16 letter from Mr. Freda also which states that Mr.
17 Jankowitz removed the bathroom from the plan as
18 part of -- as condition number one of the
19 resolution. And entered that into evidence
20 because this applicant is asking for a garage
21 bathroom. And it's -- I consider it to be an
22 arbitrary and capricious standard if the board
23 approves that.

24 So that's why I entered that into the
25 record, sir. And it just so happened that you did

1 the legal review, which I just found interesting.
2 If you'd like to strike that from the record, I
3 would have no objection, sir.

4 MR. STONE: No, actually I'm very
5 proud to have been the board attorney for the
6 zoning board of Bradley Beach. So I have no
7 interest in striking my --

8 MR. COAN: Okay. Great.

9 MR. STONE: Let me suggest this and
10 I'll defer again to Mr. Kitrick. Regardless of
11 whatever happened on any other application, under
12 any other review standard, none of that is
13 precedent in the application before the board.

14 Every case stands on its own four points.
15 And in this application it will stand on what
16 we're going to provide to the board, which
17 includes the bathroom, the washer/dryer, the --
18 all of the comments the second engineer made, we
19 are prepared to address.

20 But the issue as to whether or not the
21 board should retain jurisdiction of this is an
22 issue that I will raise after Mr. Coan completes
23 his -- his discussion.

24 MR. COAN: Sure, my last one was --
25 yeah I made the recommendation on the first

1 meeting that we do a site inspection. And my
2 recommendation was just kind of dismissed. It's a
3 very unusual application here. Where the building
4 has already been built.

5 So we're not just working off of -- of
6 some plans. I mean we can actually go inside.
7 See the operation. I think it's a very unique
8 opportunity but I made that recommendation in the
9 video and it was just pushed aside based upon
10 the, I guess, the missed notice arguments. But
11 I'd like to know why no one called me to schedule
12 one.

13 MR. STONE: Well I have -- I will
14 raise a point. A site inspection is unnecessary.
15 There are as-built plans showing what the
16 buildings exist today. The plan as proposed is
17 pretty clear. And I think that frankly a site
18 inspection in which we parade people onto the
19 Cotler's property is inappropriate. It approaches
20 harassment. It's unnecessary. The board will
21 have plenty of information in order to make an
22 informed decision as to what the conclusion of the
23 application should be.

24 MR. COAN: Well --

25 MR. STONE: And this application is no

1 more unique than all of the many, many
2 applications that have occurred over the many
3 decades before the zoning board and the planning
4 board of Bradley Beach.

5 They're very -- the board members are
6 very capable in my opinion to review, analyze,
7 listen to, evaluate and concluded an opinion
8 based upon what has been presented both for and
9 against the applicant.

10 MR. COAN: Mr. Kitrick, as Mr. Stone
11 stated, you know, every application stands on its
12 own. And this one is unique on its own because
13 the building is already built and there should be
14 no reason that the board members and the public
15 can't have an organized site inspection. So again
16 I'm going to stand on that. I think it's very
17 unusual and there's a wonderful opportunity to
18 really get -- get just site information for the
19 board members so they know exactly what they're
20 voting on.

21 MR. KITRICK: So without making any
22 sort of decision on that, it would be highly
23 unusual if we did that, highly unusual. And, you
24 know, one of the considerations would have to be
25 we're in a pandemic right now and the health and

1 the safety of all the individuals involved in the
2 application is paramount. So...

3 MR. CRITELLI: This is Dave Critelli.

4 MR. KITRICK: Excuse me. Wait a
5 minute, Dave. You know especially the board
6 member.

7 MR. CRITELLI: This is Dave Critelli.
8 I'm sitting here listening to all these
9 conversations and I'm just a little bit confused
10 as to why this is going on for the period of time
11 that it's going where we have somebody who's
12 trying to improve a community, improve the town,
13 who has been a longstanding member of this town,
14 and we're lambasting them for, I'm not sure for
15 what reason.

16 MR. KITRICK: Dave, Dave, so right
17 now we're going through some issues before where
18 the board has taken jurisdiction. We have not
19 taken jurisdiction. So to answer your question,
20 we're working our way through issues before we get
21 to the point where we accept jurisdiction. So
22 that's --

23 MR. CRITELLI: Can I ask a question.
24 How long has Mr. Coan been in town?

25 MR. KITRICK: I would -- I don't

1 think that's relevant right now, Dave. So if we
2 could just conclude this and then --

3 MR. COAN: For the record I'd like to
4 say that I have owned property here for 20 years
5 -- 25 years.

6 MR. KITRICK: Okay. All right. So I
7 think we need to conclude resolving issues in the
8 case before -- okay.

9 MS. HOSSIDY: Catherine Hossidy
10 (phonetic). I just have one question. At the end
11 of the meeting --

12 MR. KITRICK: We're not taking
13 questions right now. We're working through these
14 issues right now.

15 MS. HOSSIDY: Gotcha. Okay. Thank
16 you.

17 MR. KITRICK: Mr. Stone, did you --

18 MR. STONE: I don't -- I think that
19 -- I think we have to make some decisions but --
20 Mr. Kitrick, what's your pleasure? What are your
21 thoughts?

22 MR. KITRICK: Well do you have any --
23 I thought you indicated you had an issue that you
24 wanted to raise.

25 MR. STONE: I may not need to. May

1 not need to. It depends upon what happens now
2 considering Mr. Coan's positions.

3 You know, when I gave thought to these
4 things early in the day, it was before I really
5 heard from him to see what his problems were. I
6 want to know can the board hear this and do it --
7 can the board in its present configuration hear
8 this application without being bias and allow the
9 process to move forward?

10 I tell you, I will concede Mr. Kitrick
11 these issues that are being raised are
12 troublesome. And I know that you said early on
13 that -- and Mr. Coan pointed out that apparently
14 according to the website he was within his right
15 to bring this issue up at the last minute.

16 You know I wanted to comment, you know, we
17 lawyers who practice in this field, we very often
18 even when we're against each other we extend
19 courtesies to each other. And if Mr. Coan had
20 these issues which were clearly available to him a
21 month or more ago. If he were a lawyer, he would
22 have either called me up and said, Richard, I got
23 some problems. I'm going to give them to you.

24 And I would have -- I would have been
25 prepared instead of having to run all day trying

1 to prepare for these questions. And that's why
2 we're taking up the time of the board members.

3 We should be already moving through the
4 application. I should also point out to you on
5 now, on this video or this ZOOM meeting all my
6 experts are available. My engineer, my
7 architect, my planner, my clients, we're ready to
8 go. But to put a taint of some impropriety on an
9 application that should have moved forward in
10 June, is unfair.

11 So I don't know. I really have to defer to
12 you as I would to a judge as to know what you
13 think we should do. And of course I will discuss
14 it with my clients and I will do what you think is
15 the right thing.

16 MR. KITRICK: Well I don't understand
17 what you mean by what you think we should do.

18 MR. STONE: Well if the board members
19 are not going to recuse themselves, let's get
20 going. If some of the board members, I'm very
21 uncomfortable about that. Because everybody know
22 that's on this ZOOM, or will read the transcript,
23 or watch the video as Mr. Coan did, they're going
24 to know that anybody steps down is a patient of
25 Dr. Cotler.

1 Now Mr. Kitrick, are you entitled to know
2 that? I don't think so. I don't think any of us
3 are. But we have to leave in the best judgment of
4 the board member, that they will be fair and
5 unbiased for whatever their reason. Maybe they
6 don't like the way Dr. Cotler practices medicine
7 or the way he keeps his garden. If they feel as
8 though they can't be fair, then that's within the
9 conscience of each of the board members.

10 MR. KITRICK: So this is an extremely
11 sensitive and important issue. And here's -- and
12 here is one of the problems with dealing with it
13 the day of. What is the legal guidance on this,
14 Mr. Coan or Mr. Stone? What's the legal guidance
15 here?

16 MR. STONE: Okay. So I want -- I
17 want to put something --

18 MR. KITRICK: Tell -- tell -- Can
19 either one of you, either one of you provide a
20 case to me in either direction as to how we would
21 make this determination?

22 MR. STONE: I would defer to Mr. Coan
23 first since he raised the objection.

24 MR. COAN: I'm making a simple
25 observation and I made my case clear. There may

1 be case law. I don't have access to LexisNexis so
2 I don't have it.

3 MR. KITRICK: Yeah, so it's not as
4 simple observation. It's not a simply -- it's
5 actually a pretty complex one, you know. And so
6 -- which presents a problem when it's presented at
7 the eleventh hour because everybody wants to be
8 treated fairly. Both, you know, the applicant,
9 the board members, the public, the objector and
10 you've raised an extraordinarily sensitive issue.
11 And I think it's relevant. But it's
12 extraordinarily sensitive.

13 And, you know, to make a decision like this
14 in the middle of a meeting with -- and I want
15 everybody to appreciate you have our board
16 secretary, who, this is not -- this case is not
17 her only activity tonight. You know I'm your
18 board attorney. I spend a lot of time doing the
19 work on this board but I have other
20 responsibilities during the day. And it's --
21 that's why people -- and you want to be able to
22 do a good job and you want to be able to give a
23 sound legal opinion and the fact that Mr. Coan
24 you don't have access LexisNexis is, that doesn't
25 cut it.

1 MR. COAN: Okay.

2 MR. KITRICK: You're representing
3 yourself and that's fine. But, you know, if
4 you're raising these issues and this one is
5 relevant what's -- so what's the legal support?

6 MR. COAN: These common sense issues
7 which should have been brought up to the board
8 members when the application came in. That could
9 have been done internally. I mean obviously
10 there's a potential for conflict. I mean there's
11 been previous cases of conflict in Bradley Beach.

12 MR. STONE: We're talking -- we're
13 here about this case.

14 MR. COAN: I realize that, sir. But
15 conflict in a small community is an issue and
16 especially in this case.

17 MR. KITRICK: No kidding. No
18 kidding. But that's not what we're talking about
19 here. This is a HIPAA issue.

20 MR. COAN: Yes, it is, sir.

21 MR. KITRICK: That's very unique.

22 MR. COAN: Uh-huh.

23 MR. KITRICK: Very unique. This is
24 not just a simple conflict issue. Now the issue
25 you raised at the beginning, you know, the

1 transcript issue. Okay, that's not an unusual
2 type of conflict issue. But what you're
3 presenting here in this part of it, it is. Very
4 unique. And very -- very sensitive.

5 MR. COAN: Okay. Uh-huh, I agree,
6 sir.

7 MR. KITRICK: All right. So what --
8 so what's your legal argument? What -- are there
9 cases supporting your position?

10 MR. COAN: My case is they have a
11 business relationship -- if they have a business
12 relationship --

13 MR. STONE: Who does?

14 MR. COAN: -- they recuse themselves
15 that's all.

16 MR. STONE: Do you know who has a
17 business relationship?

18 MR. COAN: No, I've stated that
19 already. Under oath I've stated that already. I
20 do not know. I just raised the question, sir.

21 MR. KITRICK: Right. And I'm telling
22 you it's a relevant. I agree it's a relevant but
23 getting the answer to that presents complications
24 that you don't see in other conflict issues.
25 That's the inherent problem. And you've already

1 addressed the HIPAA aspects. So I'm certainly not
2 going to do something tonight, which is going to
3 violate anybody's privacy. And I don't think
4 anybody here wants that to happen.

5 We all in agreement about that?

6 MR. COAN: Yes.

7 MR. KITRICK: Okay, so I get back to,
8 I can tell you there are responses but the
9 response "common sense" that's an evasive
10 response. Do you have -- it appears that you, Mr.
11 Coan, you don't have any law supporting direction
12 one way or the other on this.

13 MR. COAN: No, that's true, sir. I
14 don't.

15 MR. KITRICK: Okay.

16 MR. COAN: I leave that up to your
17 legal mind.

18 MR. KITRICK: Yeah, I know. I
19 appreciate that but my expectation, you know, I
20 have to call balls and strikes, right. Somebody's
21 got to call balls and strikes. And it's not good
22 enough for you to raise the issue and say, okay
23 let somebody make the decision. You have to have
24 a legal argument. You're not making -- and once
25 again I'm saying you don't have any cases

1 supporting or giving guidance one way or the
2 other.

3 Now imagine a scenario where this issue was
4 raised ten days ago. And the parties would have
5 the opportunity maybe to do some research on it,
6 review it. But that didn't happen here. And
7 that's the problem with providing something like
8 this the night before. That's the inherent
9 problem.

10 But, you know, we're dealing with it. So
11 we will deal with it.

12 Mr. Stone, do you have any --

13 MR. STONE: So I'm going to throw
14 another fly in the ointment and I see I don't know
15 exactly how this works but I see that people are
16 typing in.

17 MR. KITRICK: Yeah, I know.

18 MR. STONE: Does that usually happen?
19 I don't know how that happened. I saw somebody
20 typed in if you're not a lawyer so you don't have
21 to hire a lawyer. And --

22 MR. KITRICK: So I don't know what we
23 can do about the chat but it's also distracting.

24 MR. STONE: Okay. I just want the
25 public to understand that it is true that we are

1 trained as lawyers and of course the skill of a
2 lawyer is being with the research. But anybody
3 has a right to represent themselves.

4 And Mr. Coan certainly -- and I've never
5 had any dealings with him before, I don't think,
6 but he seems to me to be a formidable adversary.
7 He's prepared, articulate. I'm not just
8 complimenting him. But that doesn't make him
9 correct. And if I were on his side and I made the
10 issue -- I raised the issues that he raised, I
11 would have to support it. That's what a lawyer's
12 job is and if you choose to represent yourself,
13 then you still have to do that.

14 However if this issue doesn't complicate
15 the case enough, the issue of the undercurrent of
16 politics is even worse. You know when this
17 application was first filed, and again I'm making
18 it for the record, because I anticipate this
19 record is going to be reviewed. When the
20 application was first filed Dr. Cotler was a
21 sitting councilman in Bradley Beach. Clearly as a
22 sitting council member the board of adjustment or
23 the planning board or the Mayor and Council
24 couldn't hear those cases because there was a
25 very clear conflict. And that could work both

1 ways.

2 If it were heard by the zoning board, and
3 the members of the zoning board favored the other
4 side of the political line, that would be one
5 conflict. And similarly if there were those who
6 favored his side of the politics, that would be
7 inappropriate as well.

8 So that existed. That conflict existed.
9 As a result of which the case was transferred to
10 the contiguous municipality Avon. And at that
11 time I believe I forget if I communicated with the
12 board secretary there or I was anticipating that
13 as the application was progressing that it would
14 be heard there.

15 So I see there's other chats here. People
16 are --

17 MR. KITRICK: Yeah.

18 MR. STONE: -- already chatting. But
19 that conflict while he was a sitting council
20 person has not disappeared. If this application
21 were to continue before this body, I think that
22 the conflict that existing before he lost the
23 election could very well exist after he lost the
24 election.

25 So I'm as interested as Mr. Coan is that

1 Mr. -- that Dr. Cotler receive a fair hearing.
2 And the board member also have to reflect upon
3 their own conscience to make sure that whatever
4 line of politics their own either now or in the
5 future that they'll give him a fair shake.

6 So as we approach these very sensitive
7 issues I don't -- I'd like to get over the first
8 issue first. That's the one of the disclosure of
9 what would otherwise be confidential under HIPAA.

10 And then revisit the issue later as to the
11 second part of it. Because it appears to me that
12 this is going to take some time. Am I wrong
13 about that, Mr. Kitrick?

14 MR. KITRICK: Well I didn't
15 understand. What do you mean revisit what?

16 MR. STONE: Well at the time that the
17 board members make their decision as to whether or
18 not they're going to be intact as a board then
19 we'll take a look at the issue as to whether or
20 not the board as a body can be unbiased. And if
21 they can, then there's no reason to remove this
22 case from Bradley Beach. But if some of them feel
23 as though because of political motivations they
24 can't be, then for those reasons they may be --
25 need to be removed.

1 MR. COAN: If I may, Mr. Kitrick.

2 MR. KITRICK: Go ahead.

3 MR. COAN: It has nothing to do with
4 politics, sir. He's putting his own testimony on
5 there. This is a Municipal Land Use Law issue.
6 This is not political issue at all.

7 MR. STONE: And you know what I would
8 say to that. What I would say to that is that
9 when the board is intact and ready to proceed I
10 too may want to question them through the board
11 attorney as to their prejudice or lack thereof.

12 MR. CRITELLI: If this is a Municipal
13 Land Use Law, why are we ever having a
14 conversation about HIPAA?

15 MR. STONE: Well that's because Mr.
16 Coan brought up something that would violate -- he
17 brought up the HIPAA.

18 MR. CRITELLI: Isn't HIPAA a Federal
19 Law? Not a Borough law? And why are we having
20 this conversation?

21 MR. KITRICK: Well, okay, so Dave,
22 the reason this is coming up is because there's a
23 question of whether a board member has a
24 doctor/patient relationship with the applicant.
25 And whether in fact that relationship results in a

1 conflict. And the sensitivity of determining
2 whether such a relationship exists is governed by
3 HIPAA and I -- so that's the conundrum.

4 MR. AFFUSO: Mr. Kitrick, can I
5 make a suggestion?

6 MR. KITRICK: Just one thing, Federal
7 Law would preempt. Go ahead. Yes.

8 MR. AFFUSO: You have two
9 situations where there can be bias. Bias under
10 the doctor/patient question or bias based upon the
11 political question.

12 MR. KITRICK: Right.

13 MR. AFFUSO: If we present to the
14 board a chance to recuse based upon either one,
15 you should possibly be able to give the fig leaf
16 to cover the HIPAA. I would suggest that you
17 don't bifurcate it and you do it all at once. And
18 that's just merely a suggestion from myself.

19 MR. KITRICK: Okay. That's a good
20 suggestion.

21 So if I could just elaborate on an argument
22 that Mr. Stone made. So here's my understanding
23 before this application got here.

24 While the applicant was an elected
25 official, there was a need for some level of

1 inspection regarding the project. I don't know
2 all the details but when that was occurring the
3 inspections were handled by the Borough of Avon by
4 the Sea. That's my understanding. And that's not
5 unusual. Because there's a -- whoever would serve
6 the role of inspector would be an employee of the
7 Borough. So it went to Avon.

8 But it's not clear to me that that meant
9 that once that was done and once whatever
10 decisions were made regarding those inspections
11 that the application would have been heard by
12 Avon. That's not clear to me.

13 So there are cases that say and one is a
14 Superior Court case, Wyzykowski versus Rizas, and
15 I'm going to just summarize that. That's a
16 situation in which the elected official wanted
17 their matter to be heard, wanted their matter to
18 be heard before a Municipal Land Use board. And
19 there was push back regarding that. And the
20 ruling is that procedures have to be put in place
21 but the mere fact that you're an elected official
22 does not prohibit you from having an application
23 be heard by that Municipal Land Use board.

24 Now I'm giving a very general observation
25 here and are always restrictions and guidelines

1 in doing that. So that's a different situation.
2 And I'm not trying to put words in Mr. Stone's
3 mouth at all. But, you know, this potentially
4 would be an issue -- would be a situation where
5 perhaps, perhaps the applicant would be saying I
6 don't want to be -- I don't wish to be heard by
7 the Land Use board in this municipality or this X
8 municipal official.

9 That's a little bit different spin on that.
10 Okay. So I'm not -- and I'm not -- a cursory
11 review is I haven't seen any cases where it's
12 taken out of the municipality. It doesn't mean
13 they don't exist. If there are conflicts within
14 one particular land use board that people can't
15 hear, often times members from another board in
16 town, in this instance the planning board could
17 enter into a situation so that there be enough for
18 a quorum.

19 Of course in this situation you may dealing
20 with the same conflict issues. So any way.

21 So, Mr. Stone, I agree with Mr. Affuso
22 that we should deal with all of that at one time.
23 I think that makes perfect sense.

24 MR. STONE: I don't object -- you
25 know what I don't object to that. I mean look we

1 have to cover the record. We have to make sure
2 that we get support to make -- for you to make
3 decision. I have no objection to that.

4 MR. KITRICK: So I don't want to --
5 since we're having discussions about conflicts, I
6 want to -- I'm trying to as we're discussing these
7 I want to get everything on the table. All right.
8 So here's something that is occurring to me as
9 we're discussing this and I'd like Mr. Coan and
10 Mr. Stone to address this because I don't want
11 to address it later.

12 You're before the Borough of Bradley Beach
13 Board of Adjustment. The members of the Bradley
14 Beach Board of Adjustment are appointed. It's a
15 Mayor's appointment. Typically the Mayor's
16 appointment is done, not always, but done at a
17 reorganization meeting whereby it's part of a
18 consent agenda that the Council would vote on. So
19 arguably the members of this board were appointed
20 in that manner while the applicant was an elected
21 official.

22 Anybody have any position on that?

23 BOARD MEMBER: I was not.

24 MR. KITRICK: Okay.

25 MR. STONE: Well I ask --

1 MR. KITRICK: Well there are members
2 that fall in that position perhaps not all but I
3 know there are so.

4 Mr. Coan, do you have any position that?

5 MR. COAN: I mean I like what Mr.
6 Affuso said. I mean it made sense to give people
7 the opportunity and --

8 MR. KITRICK: No, that's a different
9 issue. I agreed what he said made sense. But
10 this is a different issue.

11 MR. COAN: I mean that's up to the
12 board members. I mean I don't --

13 MR. KITRICK: No, no, no, no, no, no.
14 No.

15 MR. COAN: I'm not objecting to
16 anything that has to do with politics at all, sir.
17 That's not at all what --

18 MR. KITRICK: And I'm not talking
19 about politics. I'm not talking about politics.
20 What I'm saying is that there are members of this
21 board, and I'm telling you, I think you're
22 somewhat familiar with the format, that members of
23 the board are appointed the political entity in
24 town; correct?

25 MR. COAN: They're -- those are

1 Mayoral appointments.

2 MR. KITRICK: That's what I said.

3 That's what I said before.

4 MR. COAN: With Council approval.

5 I'm not objecting to any of that.

6 MR. KITRICK: So my question is do
7 you have an opinion as to whether that presents a
8 conflict?

9 MR. COAN: Oh, I don't view that as a
10 conflict at all. That takes place in every single
11 town. But if they don't feel comfortable voting
12 on it, that's up to them. People have donated \$50
13 to a Mayoral campaign in the past and recused
14 themselves because they didn't feel comfortable.
15 That's up to them. I don't have any bearing on
16 that. I'll leave that up to their conscience,
17 sir.

18 MR. KITRICK: Okay. So --

19 MR. STONE: I think --

20 MR. KITRICK: Listen, Mr. Coan, you
21 representing a position. So, you know, the
22 response can't always be you'll leave it up to
23 them. We'll certainly inquire more. I'm asking
24 you, you're representing yourself do you have a
25 position as to whether you're arguing that that's

1 a conflict?

2 MR. COAN: I'm not arguing that
3 politics is a conflict, sir. I made my point
4 about the medical issues.

5 MR. KITRICK: All right. I'm going
6 to -- see you're not answering my question.

7 MR. COAN: Okay.

8 MR. KITRICK: And I'm going to --

9 MR. COAN: Okay. Try it again.
10 Let's do it again.

11 MR. KITRICK: Because this has
12 nothing to do with -- this is -- the question is
13 do you take a position that there would be a
14 conflict if a board member was appointed to the
15 board as a Mayor's appointment during the tenure
16 of the applicant serving as a member of Council
17 and that appointment by the Mayor was ratified at
18 a meeting under a Consent Agenda by the Council?

19 MR. COAN: My position is is that
20 this happens in 565 municipalities. The Mayor
21 makes the appointments. I have no issue with it
22 at all, sir. So...

23 MR. KITRICK: So your position is
24 it's not a conflict.

25 MR. COAN: I do not believe it's a

1 conflict.

2 MR. KITRICK: Okay.

3 MR. COAN: If they feel it's a
4 conflict because they made a political donation,
5 that's up to them. But I didn't raise this issue
6 and I have no problem with this issue.

7 MR. KITRICK: All right. So you -- on
8 its face you don't view that as a conflict.

9 MR. COAN: No, sir. There would be
10 conflicts everyday all of the state if that was
11 the standard.

12 MR. KITRICK: I don't agree with that
13 but you don't feel it's a conflict. So, Mr.
14 Stone.

15 MR. STONE: Well let's repeat the
16 history. This matter had been sent to Avon. It
17 was sent to Avon because Dr. Cotler was a sitting
18 member of the Council. After he loses the
19 election I don't believe that the conflict
20 disappears.

21 I think for the very same reason that it
22 was sent to Avon and that Avon's inspector did the
23 inspection it continues. It doesn't evaporate
24 because he lost the election. So in the
25 hypothetical had he won the election it would

1 have stayed in Avon. And that's where the
2 proceeding would have been held. I might point
3 out to you that the likelihood that if it was
4 before Avon today the very issues we're talking
5 about now would not exist.

6 And had Mr. Coan not introduced this this
7 morning I think that over the last, you know,
8 even if he gave it to me ten days ago or a week
9 ago, we would have been able to do a fair and
10 complete review as to a response.

11 And I also took a look at that case. It
12 seems like it's the same case in reverse. I lost
13 you. Are you still there?

14 MR. KITRICK: Yeah.

15 MR. STONE: I'm sorry. But I think
16 it's the same case in reverse. But you know as
17 lawyers we would have to research further. We'd
18 have to draw some analogies from it. And all I
19 want is for my client to get a fair shake. If
20 Bradley Beach feels as though this board can give
21 him a fair and unbiased decision, I'm ready to go.

22 MR. KITRICK: Yeah but I'm asking you
23 the same question because we're going to get all
24 this out now because we don't want to be
25 addressing this later on. So, one, Mr. Stone, I

1 don't necessarily agree that it would have gone to
2 Avon in the scenario that you're stating. I don't
3 necessarily --

4 MR. COAN: If I may, sir. The reason
5 that it went to the building department in Avon is
6 because the Council has direct control over the
7 budget.

8 MR. KITRICK: I already went over
9 that. I already established that. Okay. So once
10 the inspection issue was resolved, you know, I'm
11 -- it's not clear to me it would have stayed in
12 Avon. That's not clear to me. And I'm not aware
13 of any cases where it gets in a situation like
14 that, it gets transferred to another municipality.

15 MR. STONE: So let me ask you, if he
16 had won the election, you think that Bradley Beach
17 would have still heard the case.

18 MR. KITRICK: I think based on the
19 cases that I've reviewed if that was he desire,
20 yes. Now there would have been restrictions in
21 that and, you know, I'm not saying it would have
22 been an easy road and there may have been
23 conflicts that would have had to be addressed.
24 You may have had to get perhaps take members from
25 the planning board to ultimately flush out the

1 board. But once again, and that's a distinction I
2 made before, the case that I cited before it's a
3 situation where the elected official wanted to be
4 heard. We're talking about a situation where the
5 what is now the former elected official perhaps
6 would be asking not to be heard. That's a
7 different -- those are different facts.

8 MR. STONE: Then I have a solution.
9 Let me put on my case. I'm ready to go. If the
10 board is ready to hear the case, they feel as
11 though they can give me an unbiased decision, my
12 client and my experts are ready to go.

13 MR. KITRICK: So you don't view --
14 you don't believe this is a conflict based on the
15 scenario that I -- you're not arguing -- you're
16 not arguing a conflict based on the fact that
17 the -- regarding the appointment issue.

18 MR. STONE: I didn't raise that
19 issue.

20 MR. COAN: I didn't raise it either.

21 MR. STONE: Mr. Coan believes that
22 there are members that should not sit in this
23 hearing.

24 MR. KITRICK: Yes, okay. I'm not
25 asking anybody if they raised it. We're getting

1 all this out of the way. So you concur with Mr.
2 Coan that's not an issue; correct?

3 MR. STONE: That is not an issue
4 provided that we proceed now. If we proceed now,
5 I want to reserve my right to bring that up. If
6 the board decides now that we're not going to
7 proceed tonight for whatever reason, then I
8 reserve my right to raise any other issues that
9 might have to come up.

10 But right now I am here tonight to present
11 my case. And if it wasn't for Mr. Coan providing
12 this to us this morning, or -- in fact the board
13 members didn't even get this until tonight. We
14 wouldn't even be wasting two hours. I would have
15 put in two hours of testimony already.

16 MR. KITRICK: Right.

17 MR. STONE: Now I'm being put into a
18 position being asked a question that I would have
19 had been asked. Mr. Kitrick, if you and I didn't
20 get this today, would we be even talking about
21 this today?

22 MR. KITRICK: But we are. This is
23 where we are. So, you know, a lot of things that
24 happened today I wish could change but having
25 nothing to do with this. So this is where we are.

1 So this is a very difficult format to be
2 discussing these issues.

3 MR. STONE: And I agree with that. I
4 would rather be in that room having this
5 discussion where from time to time we could speak
6 together. But it's very difficult in a case
7 particular in a difficult case. In a
8 straightforward case it's not that bad. But in a
9 difficult case it becomes more difficult.

10 MR. KITRICK: Yeah.

11 MR. STONE: But given that I really
12 have nothing else to add. If the board wants me
13 to present my case tonight, I'm prepared to do it.
14 If the board wants to reserve and make a decision,
15 I'll accept that. And my client will have to
16 understand that he's waited this long, going to
17 have to wait a little longer.

18 MR. KITRICK: So I'm going to ask
19 that Mr. Coan and Mr. Stone provide legal research
20 on these issues.

21 MR. STONE: Let's make sure that
22 we're narrowing the issue. One board member
23 recusal.

24 MR. KITRICK: Kristie, could you show
25 that list again.

1 FEMALE VOICE: Kristie actually got
2 kicked off the meeting and is trying to get back
3 in. It's still --

4 MR. KITRICK: It's a rough crowd.
5 All right. So I don't know if you could do that
6 Kristie just so we don't miss anything. That's
7 why it's --

8 MR. STONE: You know what I'm going
9 to do, Mr. Kitrick. Tomorrow or Monday I'm going
10 to order a transcript of this proceeding.

11 MR. KITRICK: Okay.

12 MR. STONE: And unlike Mr. Coan I
13 will be happy to share it with him.

14 MR. COAN: Thank you, sir.

15 MR. STONE: Yeah, ordinarily I
16 suggest that we share the cost of that. Are you
17 okay with sharing the cost of a transcript?

18 MR. COAN: Could you give me an over,
19 under on this?

20 MR. STONE: It's only about two and
21 a half hours so it'll be -- but in fairness I
22 think that we should get a transcript. And what
23 I'll do Mr. Kitrick I'll be happy to supply it to
24 you at no charge.

25 MR. COAN: Wait I'll go a third, if

1 he goes a third.

2 MR. STONE: We can't negotiate that.
3 We have to provide it to Mr. Kitrick.

4 MR. KITRICK: Yeah. Right.

5 MR. STONE: I want to make sure that
6 we narrowed the issues. As I see it there's two
7 issues. The HIPAA sensitivity, that should be an
8 interesting one for us to research. And whether
9 or not once the matter is transferred to another
10 municipality is it supposed to stay there given
11 the very unusual facts of the case.

12 MR. COAN: I agree, sir.

13 MR. KITRICK: And I also want you to
14 address the -- Ms. Phillips conflict issue.

15 MR. STONE: Oh.

16 MR. COAN: Sure. Was that me or Mr.
17 Stone?

18 MR. KITRICK: Both of you.

19 MR. COAN: Sounds great.

20 MR. STONE: Could I give you my
21 schedule, Mr. Kitrick?

22 MR. KITRICK: Well it would be better
23 if you gave it to Kristie.

24 MR. STONE: Let me just explain to
25 you my issues. As a result of the COVID-19 all of

1 my pre-planned vacations for the first seven
2 months of the year were cancelled. Much to my
3 wife's chagrin. I anticipate being away for about
4 two weeks from Labor Day through the following
5 week. I know that my client is not going to be
6 happy about it but I'd like to put it on the
7 October meeting. Can you tell me --

8 MR. KITRICK: That's why I need
9 Kristie. I --

10 MR. STONE: May I make a suggestion.

11 CHAIRMAN ROSENBERG: I think it can
12 be -- I'm going to butt in. From what I see our
13 October 15th meeting is okay.

14 MR. KITRICK: So, Mr. Chairman, just
15 so they're aware that Irvington Manor is going to
16 be on the 15th.

17 CHAIRMAN ROSENBERG: They were
18 supposed to be on tonight as well.

19 FEMALE VOICE: Mark, I have Kristie.
20 I have Kristie on the phone and she said there's
21 no one on the October meeting right now.

22 FEMALE VOICE #2: Except for
23 Irvington Manor that we just carried tonight.

24 FEMALE VOICE: Except for Irvington
25 Manor which we just carried. She can't get back.

1 CHAIRMAN ROSENBERG: If they
2 renotice. They have to renotice, so...

3 MR. KITRICK: It's your call, Mr.
4 Chairman.

5 CHAIRMAN ROSENBERG: I would say we
6 put him up first on October 15th at this point.
7 Carried without notification.

8 MR. KITRICK: This matter.

9 CHAIRMAN ROSENBERG: This matter
10 only.

11 MR. KITRICK: Okay.

12 CHAIRMAN ROSENBERG: The Cotler
13 matter continued.

14 MR. KITRICK: All right. So --

15 MR. STONE: Can I supply you with a
16 brief by the 30th of September? That will give
17 you a full two weeks to digest my brilliant and
18 articulate argument?

19 CHAIRMAN ROSENBERG: Mr. Kitrick, is
20 that okay with you.

21 MR. KITRICK: Yeah, I'm --

22 CHAIRMAN ROSENBERG: It gives you 15
23 days.

24 MR. KITRICK: I'm thinking about my
25 schedule too. Okay. Both parties by September

1 30th.

2 MR. COAN: Yes, sir.

3 MR. KITRICK: All right.

4 CHAIRMAN ROSENBERG: You understand
5 that, Mr. Coan. You have to give a brief.

6 MR. COAN: Yes, sir.

7 MR. KITRICK: So the transcript will
8 come obviously sooner than that and then here's
9 what I would ask just provide when you do that
10 contact numbers in case prior to the 15th that
11 there's a discussion among -- there needs to be a
12 discussion among Mr. Stone, Mr. Coan and myself on
13 the legal issues. Not the facts of the case.

14 MR. COAN: Yes, sir. Just the legal
15 issues on those items.

16 MR. KITRICK: Yeah, if necessary
17 so... Okay?

18 MR. COAN: Okay.

19 MR. STONE: You know ordinarily -- I
20 guess that's not so. I was going to say ordinarily
21 we would have a discussion of the attorneys
22 leading to the 15th. But under these
23 circumstances given that Mr. Coan is a pro se
24 litigant that's inappropriate. I think. But I
25 think everything has got to be on the record. I

1 don't think anything should be off the record.

2 CHAIRMAN ROSENBERG: I actually agree
3 with Mr. Stone. We should have every conversation
4 on the record here.

5 MR. STONE: I don't want there to be
6 any confusion or misunderstanding. I think it's
7 --

8 MR. KITRICK: Well, listen I'm going
9 to -- I'm not saying we're going to have that
10 conference. I want your contact information and
11 it's possible that we'll need something.

12 MR. STONE: Okay. That's okay.

13 MR. KITRICK: But I'm hopeful that
14 both briefs are going to be so lucid and so
15 informative that I'll have no questions. And I'll
16 just be seeing you on the 15th.

17 MR. COAN: Mr. Kitrick, I'll forward
18 my information to Ms. Dickert and she can be the
19 conduit for everyone's information.

20 CHAIRMAN ROSENBERG: No you forward
21 it to Mr. Stone and Mr. Kitrick direct.

22 MR. COAN: Oh, okay.

23 MR. KITRICK: Directly to me.

24 CHAIRMAN ROSENBERG: With a copy to
25 Ms. Dickert.

1 MR. COAN: Yes.

2 MR. KITRICK: Yeah.

3 MR. COAN: Yes, sir.

4 MR. KITRICK: Okay. Same for you, Mr.
5 Stone.

6 MR. STONE: Of course. Of course.
7 So that's all I have.

8 MR. KITRICK: So, Mr. Chairman, I
9 think there's without further notice this matter
10 will be carried to the October 15th meeting with
11 the briefing schedule as outlined and --

12 CHAIRMAN ROSENBERG: And the
13 communication system as discussed.

14 MR. KITRICK: Yeah, and at this point
15 we still have not accepted jurisdiction in the
16 matter.

17 CHAIRMAN ROSENBERG: Correct. That
18 okay, Mr. Stone.

19 MR. STONE: I'm ready to go. I going
20 to go hit the books tonight.

21 CHAIRMAN ROSENBERG: Mr. Kitrick and
22 Mr. Coan.

23 MR. COAN: Yes, sir.

24 MR. KITRICK: And no issues with the
25 time line, Mr. Stone, as far as the application

1 being accepted and --

2 MR. STONE: Consider this the
3 acknowledgement that we can delay it until the
4 October meeting.

5 MR. KITRICK: Okay. Thank you.

6 CHAIRMAN ROSENBERG: Do we have to
7 make a motion or that was done. Mr. Kitrick, do
8 we have to make a motion?

9 MR. KITRICK: You can make the motion
10 based on what I just stated.

11 CHAIRMAN ROSENBERG: I make a motion
12 that we the discussion and continuation and the
13 correspondence to be forwarded accordingly. Is
14 there a second?

15 MR. KITRICK: And the hearing to be
16 October 15th.

17 CHAIRMAN ROSENBERG: And the hearing
18 to be October 15th.

19 MR. CRITELLI: Second.

20 MR. KITRICK: I have one question.
21 May I ask a question?

22 CHAIRMAN ROSENBERG: Hold the second.
23 Go ahead.

24 MR. CRITELLI: I'll second.

25 CHAIRMAN ROSENBERG: No, no, hold the

1 second. Mr. Stone, wants one more thing.

2 MR. STONE: I have a question. One
3 of the concerns of my client is that we want to
4 sure up the building for safety and to make sure
5 that there's no damage to the building. I'm not
6 sue that the zoning board can give that approval
7 but my intention is to communicate with the
8 building inspector to see if he'll allow us to
9 cover up the building.

10 CHAIRMAN ROSENBERG: That's fine with
11 us.

12 MR. KITRICK: That's not --

13 CHAIRMAN ROSENBERG: That's not a
14 zoning issue.

15 MR. KITRICK: That's not the board of
16 adjustment. I can't give you any guidance on
17 that.

18 CHAIRMAN ROSENBERG: An inspector's
19 issue.

20 MR. STONE: We'll take care of that
21 with the inspector.

22 CHAIRMAN ROSENBERG: Okay. Now you
23 can second whoever second it.

24 MR. CRITELLI: I'll second it, Dave
25 Critelli.

1 CHAIRMAN ROSENBERG: Is Kristie back
2 on or no? Mr. Affuso?

3 MR. AFFUSO: Yes.

4 CHAIRMAN ROSENBERG: Mr. Wade? Mr.
5 Wade, yes or no?

6 FEMALE VOICE: Kristie's listening.
7 She's on the phone.

8 CHAIRMAN ROSENBERG: You're on mute,
9 Mr. Wade. Mr. Wade yes or no?

10 FEMALE VOICE: Here.

11 Mayor Rosenberg? I'm sorry. Chair
12 Rosenberg?

13 CHAIRMAN ROSENBERG: Yes.

14 FEMALE VOICE: Kristie is on the
15 phone she's going to call the names and have me
16 just write them.

17 CHAIRMAN ROSENBERG: That's what I
18 was doing. Okay.

19 MS. DICKERT: I can hear their
20 responses. I'm just going to call the roll.

21 CHAIRMAN ROSENBERG: Go ahead.

22 MS. DICKERT: Okay. Call Teresa
23 Rosenberg.

24 BOARD MEMBER: Teresa Rosenberg?

25 CHAIRMAN ROSENBERG: Yes or no.

1 You're on mute.

2 MS. ROSENBERG: I'm sorry. Yes.

3 FEMALE VOICE: Okay.

4 MS. DICKERT: Ms. Bruynell.

5 FEMALE VOICE: Ms. Bruynell?

6 MS. BRUYNELL: Yes.

7 CHAIRMAN ROSENBERG: Yes.

8 BOARD MEMBER: Okay, who's next,

9 Kristie?

10 MS. DICKERT: Mr. Affuso.

11 FEMALE VOICE: Mr. Affuso?

12 MR. AFFUSO: Yes.

13 FEMALE VOICE: Okay.

14 MS. DICKERT: Ms. Phillips?

15 MS. PHILLIPS: Yes.

16 MS. DICKERT: Mr. Wade?

17 MR. WADE: Yes.

18 MS. DICKERT: And Mr. Mayor had

19 recused himself in the beginning. So Chair

20 Rosenberg?

21 CHAIRMAN ROSENBERG: Yes.

22 MS. DICKERT: Okay. All right.

23 October 15th with no further notice.

24 CHAIRMAN ROSENBERG: I make a motion

25 to adjourn. And the next meeting is September

1 17th.

2 BOARD MEMBER: I'll second that.

3 CHAIRMAN ROSENBERG: All in favor?

4 BOARD MEMBERS: Aye.

5 CHAIRMAN ROSENBERG: Thank you much.

6 Thank you everybody.

7 MR. KITRICK: Good night everybody.

8 (Meeting adjourned.)

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