

PLANNING BOARD
BOROUGH OF ATLANTIC HIGHLANDS

140 First Avenue
Atlantic Highlands,
New Jersey
Monday, April 29, 2019

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IN RE:

- APPLICATION FOR
PRELIMINARY AND FINAL
SUBDIVISION WITH VARIANCES
AS MAY BE REQUIRED: DENHOLTZ
CUSTOM HOMES

TRANSCRIPT
OF
PROCEEDINGS

x ----- x

B E F O R E:

RICHARD COLANGELO	-	CHAIRMAN
JAMES NEFF	-	VICE CHAIRMAN
JOHN MCGOLDRICK	-	BOARD MEMBER
KATHRYN KLOBY	-	BOARD MEMBER
MARTIN HAWLEY	-	BOARD MEMBER
DEBORAH MURRAY	-	BOARD MEMBER
LOUIS FLIGOR	-	BOARD MEMBER
LOUIS ILLIANO	-	BOARD MEMBER
BRIAN DOUGHERTY	-	BOARD MEMBER
DOUGLAS PEPE	-	BOARD MEMBER
DR. EDWARD CETRON	-	BOARD MEMBER
JOSEPH CACCAMO	-	BOARD MEMBER
	-	

ALSO PRESENT:

MICHAEL B. STEIB, ESQ.		BOARD ATTORNEY
DOUGLAS ROHMEYER	-	BOARD ENGINEER
ERIN URIARTE	-	BOARD SECRETARY

A P P E A R A N C E S

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3 GIORDANO, HALLERAN & CIESLA, ESQ.
4 BY: JOHN A. GIUNCO, JR, ESQ.
5 125 Half Mile Road
6 Suite 300
7 Red Bank, New Jersey 07701
8 Attorneys for the Applicant
9
10 Mr. Jonfeld and James Kennedy for Applicant
11
12 COMMUNITY MEMBER:
13 Elise Conroe
14 Tony Hannan
15 Mike Shriveran
16 Brent Sonnek-Schmelz
17 Janice Hudverton
18 Gay Griggenton
19 Vedison Johns
20 Frank Annunciata
21 Robert O'Connor
22 Mr. Chowzy
23
24
25

EXHIBITS MARKED INTO EVIDENCE

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3 A-33 Open Space Adjustment Exhibit, document regarding 1,088 square feet adjustment in the open
4 space lot.
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1 [0:00:00]
2 **Male Speaker 1:** Uh, yes.
3 **Board Admin:** Call to order. Pursuant to Section 5 of the -- ladies and gentlemen?
4 Pursuant to Section 5 of the Open Public Meetings Act, this meeting has been duly advertised in
5 accordance with the law through publication in the official newspapers of the Borough and that posting
6 in the Borough Hall by the Borough Clerk as part of the annual notice. This meeting is a quasi-judicial
7 proceeding. Any comments or questions must be limited to issues that are relevant to what the Board
8 may legally consider in reaching a decision. Decorum appropriate to a judicial hearing must be
9 maintained at all times.
10 **Chairman Colangelo:** And uh, roll call please.
11 **Ms. Uriarte:** Ms. Kloby? Mr. Fligor?
12 **Mr. Fligor:** Here.
13 **Ms. Uriarte:** Mr. Hawley?
14 **Mr. Hawley:** Here.
15 **Ms. Uriarte:** Mr. Caccamo?
16 **Mr. Caccamo:** Here.
17 **Ms. Uriarte:** Dr. Cetron?
18 **Dr. Cetron:** Here.
19 **Ms. Uriarte:** Mr. Neff?
20 **Mr. Neff:** Here.
21 **Ms. Uriarte:** Mr. Pepe? Ms. Murray?
22 **Ms. Murray:** Here.
23 **Ms. Uriarte:** Mr. Colangelo?
24 **Chairman Colangelo:** Here.
25 **Ms. Uriarte:** Mr. Dougherty? Ms. Burris [phonetic]? Mr. McGoldrick?

1 **Mr. McGoldrick:** Here.
2 **Ms. Uriarte:** Mr. Illiano?
3 **Mr. Illiano:** Here.
4 **Chairman Colangelo:** Please rise for a silent prayer and a pledge of allegiance.
5 **Board Admin:** I pledge allegiance to the flag of the United States of America, and to the
6 Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.
7 **Chairman Colangelo:** First thing on the agenda is PB18-06.
8 **Male Speaker 2:** [Indiscernible] [0:01:33]
9 **Chairman Colangelo:** Excuse me?
10 **Ms. Uriarte:** He can't hear you.
11 **Board Admin:** The mics are on.
12 **Chairman Colangelo:** First item on the agenda is PB18-06, Block 142, Lot 5, 17
13 Avenue D, Denholtz Custom Homes. Application for preliminary and final subdivision with variances
14 as may be required. Mr. Guinco, if you wouldn't mind for one moment please. I'd like to address
15 something in a statement. When this application started many months ago, it became obvious that we
16 had to have special meetings to accommodate the public interest in the application. As the Board has
17 learned throughout the process, in addition to carrying the venue, it is also required to coordinate
18 additional recording devices, a police presence due to crowd size, a sound system, so the public can hear
19 the entire proceeding, and to be sure that a member of the AHES school staff is here to the black card
20 requirement due to the boiler landing what is in the building. Unfortunately, last week was Spring Break
21 for the school system in Monmouth County, meaning this school was unavailable. And the availability
22 of those involved with this application with children in these school systems was far less than it is today.
23 You will notice that there are Board members that have put in 25 hours of listening to
24 testimony and countless hours of review time of plans and studies. They are not here tonight because of
25 work obligations. In addition to an attorney for an objector and other residents who might also want to

1 attend this evening who cannot be present. Obviously, this is unfortunate. The Board has had several
 2 hearings on this application and has gone out of its way to accommodate all interested parties with great
 3 effort and systems from the Atlantic Highlands Elementary School and its staff, the police department,
 4 the town employees who coordinate the setup you're seeing at the school, and a Planning Board,
 5 Secretary, Ms. Urierte. We thank those people for their efforts. At the conclusion of the last meeting,
 6 the applicant's case had been presented, a public question and comment section had been completed with
 7 full opportunity for the public and any of their experts to cross-examine the applicant and his witnesses.
 8 At this point tonight, the applicant may respond to the testimony of the objector's witnesses to the public
 9 if they choose to. The Board has not received any changes to review prior to this meeting, so we do not
 10 know if there will be any changes.

11 Originally, there was an additional meeting scheduled for March 26, but the applicant's
 12 representation and the attorney for an objector, Mr. Asadi, both agreed it would be prudent to cancel that
 13 scheduled meeting. The applicant has given an extension through the end of May to render its decision.
 14 That extension was given by the applicant to the Board, not from the Board to the applicant.
 15 Considering the history of this application, it was imperative that the Board prepare itself in case tonight
 16 does not result in a conclusion, but rather might need an additional meeting in May.

17 The Board received correspondence from the objector's attorney, Mr. Asadi, that he
 18 would be unavailable due to a family vacation to attend this evening. Mr. Asadi communicated that
 19 there was no other attorney within his firm that was a land use attorney. Although this Board cannot
 20 verify the availability of Mr. Asadi's law partner, Mr. Albert Zager of Zager Fuchs, Mr. Asadi's firm, Mr.
 21 Zager does advertise on the firm's web page that he is a land use attorney. Considering all the factors
 22 outlined, it was decided that this date would remain on the calendar, and the Board would continue to
 23 hear this application. Whether it comes to a conclusion this evening or must have an additional meeting
 24 scheduled in May. Ultimately, that responsibility for that decision falls on my shoulders. With heavy
 25 consideration given to all factors, including the fact that Board members who have given their time and

1 effort into this application are unable to attend this evening. It is unfortunate, but impossible to
 2 coordinate an effort like this and have the three-dozen people involved in this application available on
 3 the same date. With that being said, we are at the point where the applicant may either address the
 4 testimony given by residents and their experts or conclude and send this application to the Board for
 5 discussion. If the applicant chooses to respond with a rebuttal or make de minimus changes to the
 6 application, the Board and its experts will have the opportunity to ask questions of the applicant or its
 7 experts, and then the public will have the opportunity to first ask questions about those changes and then
 8 make comments about those changes.

9 Because of the procedural point we are at in the application, questions from the Board
 10 and questions and comments from the public will be limited to those changes, if any. If we get beyond
 11 that point this evening, the application will then go to the Board members for discussion. That
 12 discussion is between Board members and their professionals only. Mr. Guinco?

13 **Mr. Guinco:** Thank you, Mr. Chairman. The applicant does wish to make rebuttal to
 14 three points that were made. Uh, we're also proposing change to the plans to increase the area of open
 15 space. And uh, with your permission I would like to recall James Kennedy, our civil engineer who is
 16 formed and presented an expert in civil engineering.

17 **Mr. Steib:** Mr. Kennedy, you were previously sworn. You understand you are still under
 18 oath?

19 **James Kennedy:** Yes, I do. Thank you.

20 **Mr. Guinco:** Mr. Kennedy, after reviewing the testimony presented by one of our
 21 adversaries and reviewing the project, did you consider uh, making any modifications to the area of open
 22 space being proposed in this project?

23 **James Kennedy:** Yes, I did. Um, at this point, I testified that the pump station, in my
 24 opinion didn't fit the definition of a structure. But after considering their testimony, considering the
 25 questions of the public, we are moving the pump station area of not only the square around the pump

1 station, but the driveway access to it, was calculated to 1,088 square feet. Uh, that 1,088 square feet uh,
 2 is going to be offset now. We're going to increase the open space that same amount. So, I have an
 3 exhibit rather better than words, but basically, the area of open space utilized by the pump station and its
 4 access roadway is now taken out of the area of open space and added in. So, we're offsetting that area.
 5 So, the -- uh, one of the lots is getting sizably smaller um, and the open space is getting slightly larger by
 6 1,088 square feet. I have a large board that I'll, it's going to be hard to even show this lot line change
 7 because of the scale, but I do have 11X17's that I can pass out to the Board members.

8 **Mr. Guinco:** Are you saying what you're about to pass out to the Board is an accurate
 9 and true, verified drawing of the modification to the plan and the change to open space brought to the
 10 land of 1,088 square feet?

11 **James Kennedy:** That's correct. It's called Open Space Adjustment Exhibit. It was
 12 drawn under my direction and control, and I'll just briefly discuss it.

13 **Mr. Guinco:** We ask that that be our next exhibit. Uh, number?

14 **Mr. Steib:** A-33.

15 **Mr. Guinco:** A-33.

16 **James Kennedy:** Uh, Mr. Chairman, do you want one that's open for the record, or do
 17 you want the Board to [indiscernible] [0:09:44]?

18 **Chairman Colangelo:** I'll keep this in order.

19 **James Kennedy:** Okay. So, A-33 removes -- we calculated the area over the open space
 20 that the pump station and the access driveway encumber, and we simply added that 1,088 square feet
 21 additional to the open space lot. So, you'll see that Lot 5.09 became slightly smaller, and Lot 5.17,
 22 which is the open space lot became slightly larger. And again, that increase in area is simply to offset
 23 the area of open space that was dedicated to the access driveway and pump station.

24 **Board Member 1:** So, Mr. Kennedy, Lot 5.09 the grantor of the 1,088 square feet, is that
 25 mean a full conforming on the lot space.

1 **James Kennedy:** Yes, it does.

2 **Board Member 1:** Um, with the addition of 1,088 square feet, does the open space meet
 3 the requirements of the ordinance, in particular exceeding the 30% requirement for the site.

4 **James Kennedy:** It is my opinion that now it exceeds that 30%. In any case, even if you
 5 take the objector's view um, it meets the requirement of 30% open space.

6 **Mr. Guinco:** Mr. Kennedy, did you itemize also uh, Section 150-84A3 of the ordinance?

7 **James Kennedy:** Yes, I did.

8 **Mr. Guinco:** I'm going to request that you uh, address the Board about the requirements
 9 for a waiver. Mr. Chairman, I'm going to request that the Board consider that because this issue has
 10 been debated before the Board with discussion of whether or not the pump station crossed the
 11 [indiscernible] [0:11:36] structure and should or should not be included in the open space. I'm going to
 12 attack that issue on behalf of the application by drawing additional square footage to make sure that it's
 13 at 30%. But I'd also like the Board to consider a waiver of the condition of the ordinance to confirm that
 14 we meet the area of open space. So, I was going to ask Mr. Kennedy to present some testimony on that.
 15 Would you describe the area?

16 **James Kennedy:** Well, this is what I just described. The 1,088 square feet open space is
 17 meeting the 30%. That's the first waiver that if the Board feels um, that a waiver is necessary, but I
 18 believe that the count by adding that 1,088 square feet, that was previously encumbered by the pump
 19 station and access driveway, a waiver in any case would be required.

20 The second issue which resulted -- again, it was brought up in testimony um, under
 21 [indiscernible] [0:12:35], but also by the objectors and the neighbors has to do with Section 150-84A3.
 22 And this is the preservation uh, under general site design standards, open space, historic structures. And
 23 I'll just read it. In subdivision and site design, the following area shall be preserved as undeveloped
 24 open space or in the case of historic structures maintained within the development. And then part of that
 25 A3 states lands in the floodway are identified as V and the A zones are the advisory base flood elevation

1 level.
2 I testified a number of months ago that in my opinion I didn't think that this one was
3 applicable to what we were doing because this is not an undeveloped area. This is a commercial marine
4 storage and, you know, a [indiscernible] [0:13:31] operated uh, it operates for many years. Uh, and this,
5 the flood zone, the V zone, the A zone, there is nothing to preserve. Those areas are developed. So, it
6 was my opinion that this ordinance wasn't applicable to the development at hand because the areas are
7 developed. There's nothing to preserve as undeveloped land because it's developed. So, from my
8 perspective, I didn't think that it was applicable.

9 Considering the -- uh, the objectors' testimony, if one finds that wrong, then we
10 essentially request a waiver. And the justification for the waiver is first of all, no structure -- the open
11 space will encumber most of that land V zone. Now, a V zone is the wave velocity on a barrier um,
12 initially prone to the most damage during a flood. It's the waves. The A zone is a static elevation.
13 When you develop in either one of those areas, there's certain protections under the building code that
14 must be met for the construction period. You can't build a house in an A or a V zone without taking
15 certain protections. And the protections include elevation, which is what you're undamaged
16 [indiscernible] [0:15:05] ordinance suggested. Um, the building code says structure anomalies such as
17 the dimension, flood venting. I don't need to tell you. You live here. You know what needs to be done
18 in a flood zone. But there's certain protections for a new development that's in the flood zone. So, given
19 that these were new homes, the homes that will be built in the A zone would be moving to a higher sea,
20 current flood rules and regulations. So, if the Board does find that this ordinance is applicable, even
21 though it's my opinion it's not, we respectfully request a waiver given the consideration that this is new
22 construction that would be in the flood prevention ordinance as well as the building codes of the State of
23 New Jersey.

24 **Mr. Guinco:** Mr. Kennedy, as you prepared the plans and went through uh, preparation
25 for this presentation, did you uh, determine that there are ways, all encumbered open space, meeting the

1 standard of the ordinance?
2 **James Kennedy:** Correct, for open space purposes, that -- the open space meets the
3 requirements of the ordinance.

4 **Board Member 2:** Could you use the microphone?
5 **James Kennedy:** The new space on the open space development of this lot um, meets
6 the ordinance.

7 **Mr. Guinco:** Are you satisfied that the standards applicable, that you [indiscernible]
8 [0:16:36], it would be a reasonable determination that the Board grant the waiver requested?

9 **James Kennedy:** Yes.
10 **Mr. Guinco:** So, in summary of your testimony, number one, you had to go back 1,088
11 square feet to the open space?

12 **James Kennedy:** That's correct.
13 **Mr. Guinco:** Number two, you've taken that from Lot 5.09, which remains fully
14 confirmed.

15 **James Kennedy:** That's correct.
16 **Mr. Guinco:** With regard to the structure of the pump station and the access driveway,
17 do you recount that into the open space by adding the additional square footage?

18 **James Kennedy:** That's correct.
19 **Mr. Guinco:** And the alternative would be to support Grant A, with that structure
20 remaining in the location that it goes?

21 **James Kennedy:** Yes.
22 **Mr. Guinco:** Secondly, with regard to the A and V zone, you described the nature of the
23 zone and proposed uh, development or less in the zone, and your reasoning as to why it would not be
24 applicable?

25 **James Kennedy:** Correct.

1 **Mr. Guinco:** And the alternative would be requesting the Board to grant a waiver that as
2 a developer, that the use of the A and V zone would be at, uh the two building lots and uh, in the proxy
3 would be reasonable?

4 **James Kennedy:** That is correct.
5 **Mr. Guinco:** No more direct questions, Mr. Chairman.

6 **Chairman Colangelo:** Thank you. Does any Board member have any questions for Mr.
7 Kennedy in reference to these changes? Mr. Rohmeyer, I must ask you in reference to the waiver for the
8 open space and for the development structures in a flood zone. Upon your initial review, you did not see
9 it necessary for a waiver, and I would like to hear your opinion again in reference to those two items.
10 Uh, I don't want to set the precedence of granting waivers that are unnecessary.

11 **Mr. Rohmeyer:** Okay, Mr. Chairman. With regard to 150-84, um, general site design
12 standards, specifically for preservation of open space. Uh, it's my interpretation of that code that um, the
13 intention is to preserve open space, undisturbed space. I could not identify with 150-84 as a um, item
14 that the applicant need relief in my technical review 'cause it's my opinion it's not.

15 With regards to open space, 30% requirement was calculated and verified that it was met as
16 originally proposed prior to tonight's modification. However, with the addition of space to offset the
17 utility component, the pump station and the driveway um, that would just further bolster the open
18 amount of open space, so again, I don't believe a waiver is required.

19 **Board Member 2:** And I had a reference to the third waiver with the structure, in your
20 opinion. I'm not sure if that was actually clear, but you asked for three separate waivers. Correct?

21 **Mr. Guinco:** One, a request to modify the site plan.
22 **Board Member 2:** Mm-hm.

23 **Mr. Guinco:** To 1,088 square feet from Lot 5.09 to open space.
24 **Board Member 2:** Okay.

25 **Mr. Guinco:** Second, to grant a waiver in the alternative or the pump station location,

1 even though we've added additional open space to compensate for that. And the second waiver was with
2 development in the A and V zone, in accordance with the standards that we've proposed, that we
3 [indiscernible] [0:19:56] development ordinance of the municipality.

4 **Board Member 2:** Obviously, any Board member is able to create their own opinion in
5 this matter, but Mr. Rohmeyer, you seem to think that the -- those waivers will not be necessary?

6 **Mr. Rohmeyer:** That is correct. And for the flood zone discussion, I just want to draw a
7 parallel to um, like any previously developed site, say a residential property was destroyed during
8 Sandy, um, they -- that wouldn't be subject to this ordinance to be redeveloped. A developed property to
9 be redeveloped is one thing where preserving open space, I believe, undisturbed open space was the
10 intention of 150-84.

11 **Mr. Steib:** Mr. Rohmeyer, you were previously sworn in connection with this
12 application, were you not?

13 **Mr. Rohmeyer:** Correct.
14 **Mr. Steib:** You understand that you're still under oath? What you've just said is under
15 oath?

16 **Mr. Rohmeyer:** Yes.
17 **Chairman Colangelo:** Does any Board member have questions for either the witness or
18 for Mr. Rohmeyer for that matter? Any member of the public have a question for Mr. Rohmeyer? I'm
19 sorry, I'm sorry, for Mr. Kennedy. I apologize.

20 **Elise Conroe:** Hi, Elise Conroe, 20 Burlington Avenue.
21 **Ms. Murray:** I'm sorry, your name, please.

22 **Elise Conroe:** Elise Conroe. Since you're reconfiguring that open space to
23 accommodate the conversation, is the reason that you chose this reconfiguration because the access
24 easement granted by the township is not able to be moved? And did you speak to the person responsible
25 for granting the access easement to the conversation? And who is that?

1 **James Kennedy:** No, this reconfiguration has nothing to do with um, the access
2 easement. It's really just offsetting uh, 1,088 square feet that was encumbered by the pump station and
3 access road. We increased the open space lot to offset that emcumbance. When I say off encumbance,
4 it's not a legal encumbrance, it's an occupation, I guess. So, to be perfectly clear, the -- uh, the objectors
5 uh, brought up the fact that part of our open space was occupied by the pump station, and we were just
6 offsetting the area of that part of the open space lot that was occupied. That's all we did.

7 **Elise Conroe:** So, you're enlarging that section?

8 **James Kennedy:** The open space, the continuous open space lot, is a little bit larger.

9 **Elise Conroe:** So, one of my questions, because the pump station's like in the middle of
10 the open space area that -- and it's just, you know, drawn there. It could have been moved, but I thought
11 maybe you didn't move the pump station because of the access easement that was granted by the
12 township. So, I just wondered if you spoke to the people, and who was the person who granted you that
13 easement to access?

14 **James Kennedy:** We still have the easement granted.

15 **Applicant:** The easement is proposed on our plan. If it's approved, we would merely
16 ask the party to grant the access easement.

17 **Elise Conroe:** So, if you didn't get that easement, then this open space configuration
18 would have gone differently.

19 **Applicant:** No. Well, Mr. Kennedy, is there another access to the pump station?

20 **James Kennedy:** Yes.

21 **Elise Conroe:** But we don't have an alternative to that.

22 **Applicant:** This is part of the testimony that was previously presented. I'll just
23 summarize that there is an easement because from the proposed street, along the rock line of 5-16, I
24 believe it is, we were to access the sewer pump station.

25 **Elise Conroe:** Through the park by the soccer field?

1 **Applicant:** No. Well, that's an alternate. There's two. This one goes from, I'll do it this
2 way. Mr. Kennedy, can you just describe exactly the easement proposed to the pump station?

3 **James Kennedy:** Well, there's an alternative between um, Lots 5.11 and 5.12, which is
4 this area here. There's an alternative access point from the cul de sac at that point by being that there's
5 an existing driveway access where we show the access. We figured that we made practical sense to
6 utilize the dirt driveway that's currently in existence. If the Borough Council chose not to provide an
7 access easement to the applicant for that configuration, we have other alternatives available, including
8 the easement between two homes. This is not something that is going to require maintenance uh, to the
9 pump station.

10 **Elise Conroe:** Thank you.

11 **James Kennedy:** You're welcome.

12 **Ms. Murray:** I have a question. So, the pump station on this shows that it's less than 10
13 feet from the property line. Is that the lowest, the case to the pump station?

14 **James Kennedy:** From the residential, from the proposed residential lot line. Correct?

15 **Ms. Murray:** Right.

16 **James Kennedy:** When we first configured the location, we wanted to be 50 feet from
17 any perimeter of the property, and that set the configuration placement of the pump station. The thought
18 was not to impose the pump station on the neighbors, but for the future homeowners, they'll know the
19 pump station is there when they go and buy the lot. It's not something that's being imposed on them.

20 **Ms. Murray:** So, Lot 12, that pump station is going to be behind that house?

21 **James Kennedy:** That's correct.

22 **Ms. Murray:** Okay. And you show um, what you just handed us is that it looks like the
23 pump station is going to be less than 10 feet away from the property line.

24 **James Kennedy:** That's correct, from the real property line.

25 **Ms. Murray:** That's -- you don't need any lines or anything. Correct?

1 **James Kennedy:** No, 'cause there is no structure. It's below grade. There's no uh,
2 building. There's no setback requirement. We were focused on the existing residential homes and moving
3 it as far away from the existing residential homes as possible. There is flexibility. If the Board says to
4 move it and center it in the lot and move it to the side, we can certainly do that. There's really no uh, it
5 was self-imposed, and I wonder if it's even [indiscernible] [0:26:24], frankly, uh, to the existing homes
6 along the perimeter. Uh, but that was self-imposed. I just thought it made sense.

7 **Ms. Murray:** Okay.

8 **Chairman Colangelo:** Other questions from the public. Sir, you had your hand up first.

9 **Tony Hannan:** Uh, Tony Hannan, H-a-n-n-a-n, I [indiscernible] [0:26:46]. Uh, I'm sorry,
10 I Grand Road. Has Denholtz -- has Denholtz considered donating the open space to the town under the
11 current plan?

12 **Chairman Colangelo:** Uh, Mr. Hannan, it's actually a question here at this point are solely
13 based on the changes made. That's the point we are in these proceedings.

14 **Tony Hannan:** Even with the change to open space?

15 **Chairman Colangelo:** And that is not part of the changes they've made as far as whether
16 they have considered donating it or not. You may ask questions in reference to the changes made, please.

17 **Tony Hannan:** That's my question.

18 **Chairman Colangelo:** Then they don't have to answer it.

19 **Mike Shriveran:** Mike Shriveran, 55 Avenue D, Atlantic Highlands. The access, the dirt
20 access road, who is that owned by?

21 **James Kennedy:** It comes across the Borough mountain.

22 **Mike Shriveran:** It's a Borough property? Is the Borough going to maintain that road?

23 **James Kennedy:** That would have to be part of the easement discussion with counsel after
24 any action by this Board.

25 **Mike Shriveran:** Okay. If the council grants you permission to use that dirt road, who

1 ultimately will maintain and for how long?

2 **James Kennedy:** That would be subject to the easement agreement. I've seen easement
3 agreements where the grantor of the easement offers to maintain it or the grantee um, maintains it
4 ultimately. That is something I can't answer because it's really a choice for the applicant or council to
5 work out.

6 **Mike Shriveran:** Okay.

7 **Chairman Colangelo:** Are you sure? Other questions from the public? Yes, sir.

8 **Brent Sonnek-Schmelz:** 78 --

9 **Chairman Colangelo:** Yes, please state your address.

10 **Brent Sonnek-Schmelz:** Brent Sonnek-Schmelz, North [indiscernible] [0:28:48]
11 Boulevard.

12 **Ms. Murray:** Spell your last name.

13 **Brent Sonnek-Schmelz:** S-o-n-n-e-k-s-c-h-m-e-l-z. Uh, concerning the comments of this
14 turn, a few questions. Um, given that the way I understood it is that the waivers here are not required? Is
15 that what it was?

16 **Chairman Colangelo:** You are not talking into the microphone, so it's hard to hear.

17 **Brent Sonnek-Schmelz:** Relief is not required for 150-84 or 150-87, right? And 150-84
18 is the flood zone design waiver.

19 **Mr. Rohmeyer:** 150-84 is entitled the town's design standards um, in reference to the
20 floodway.

21 **Brent Sonnek-Schmelz:** Okay. And what was the other one that relief was required?

22 **Mr. Rohmeyer:** Required open space, 30%.

23 **Brent Sonnek-Schmelz:** The 30%. Okay. So, the -- my understanding, the reasoning that
24 there is no waiver required is that you're determining that this is not currently undeveloped for the -- for
25 the flood zone barrier, for the flood zone waiver? The reasoning behind why it is not required by the flood

1 plan.

2 **Mr. Rohmeyer:** 150-84, in my opinion applied to undeveloped, undisturbed areas where
3 this site is a previously disturbed site.

4 **Brent Sonnek-Schmelz:** So, are you differentiating between undeveloped, undisturbed,
5 and at what point is land that was previously developed revert back to undeveloped?

6 **Mr. Rohmeyer:** That's not pertinent to this.

7 **Brent Sonnek-Schmelz:** I'm asking for clarification on this issue. As I said, what he's
8 looking at, looking at it, does he see that the bulkhead there has been subsequently abandoned.

9 **Mr. Rohmeyer:** It is -- if you're saying it's abandoned, it was used at one point. It was
10 clear. It was grade A. It was utilized as a marine.

11 **Brent Sonnek-Schmelz:** That's why I'm asking you guys at what point and time does land
12 that has been abandoned revert back to being undeveloped?

13 **Mr. Rohmeyer:** That's a good question.

14 **Brent Sonnek-Schmelz:** So, do you not have an answer to that question?

15 **Mr. Rohmeyer:** I don't believe that -- it's an active site, correct?

16 **James Kennedy:** Can I answer the question addressed to me?

17 **Chairman Colangelo:** You may.

18 **Brent Sonnek-Schmelz:** Okay. I look at that, that site, and is there bulk storage on the
19 site?

20 **James Kennedy:** Yes. Is the entire land utilized? No. If you look at that bulkhead that
21 runs along the water, the area behind that has absolutely been abandoned to a status of about 50 to 75 feet
22 which is not in any use whatsoever, and has been overgrown with weeds, shrubs, and trees. To me, that
23 sounds like undeveloped space.

24 **Chairman Colangelo:** Mr. Rohmeyer, is there anything within our ordinances in this
25 municipality that addresses Mr. Sonnek-Schmelz question in reference to time of abandonment.

1 **Mr. Rohmeyer:** Not that I'm aware of.

2 **Board Member 3:** Thank you. Can I say something? I don't think the property's been
3 abandoned. We're talking about a subdivision here. A subdivision is to take that whole piece of property
4 that's utilized as one, and break that down into 16 homes. So, we're taking one piece of property, whether
5 there's one borough down there or 300, what's the difference?

6 **Brent Sonnek-Schmelz:** The difference is --

7 **Board Member 3:** Now, I'm asking you a question.

8 **Brent Sonnek-Schmelz:** I understand, and I'm giving you an answer. If you look at that
9 property, then the ordinance does not specify whether a portion of land can be considered undeveloped or
10 not, whether or not it's one particular --

11 **Board Member 3:** Well, does it say that they have to have a road on each piece of that
12 property?

13 **Chairman Colangelo:** Ladies and gentlemen, once again, we are -- this is at a point the
14 Board described in discussion. Questions please direct towards the applicant in reference to the changes.
15 And I'm taking control.

16 **Brent Sonnek-Schmelz:** That's fine. I was just answering.

17 **Chairman Colangelo:** I understand. I don't want it to get down that road. Please direct
18 it towards the applicant.

19 **Brent Sonnek-Schmelz:** Alright. As far as the pump station, am I incorrect in reading
20 that you do not believe that there is any structure or building and that the conditional use bearing is not
21 required?

22 **James Kennedy:** Correct. In reading, as you know, we've gone through that ordinance
23 one by one. Uh, with regard to the utilities and there's no building proposed as part of the pump station.

24 **Brent Sonnek-Schmelz:** Did prior testimony from one of the other representatives of the
25 developer claim that there was a roof on the site?

1 **Chairman Colangelo:** I'm sorry, sir. That's prior testimony.

2 **Brent Sonnek-Schmelz:** It --

3 **Chairman Colangelo:** I'm sorry. It's just from a procedural standpoint. We must direct
4 the questions strictly on the change. I'm sorry.

5 **Brent Sonnek-Schmelz:** Chairman, I understand that. What I'm doing is I address the
6 comment made tonight which is different from the comment that was made in the meeting prior.

7 **Chairman Colangelo:** Absolute. With a review of that, is a review by the Board engineer
8 that according to the ordinances, in his opinion, that is not considered a structure based on our ordinances.

9 **Brent Sonnek-Schmelz:** I don't understand that. Was that something in the last meeting?
10 I just --

11 **Chairman Colangelo:** I must ask from a procedural standpoint -- I understand.

12 **Brent Sonnek-Schmelz:** And one thing, he said it would be reasonable to grant the waiver
13 in his [indiscernible] [0:34:05] if it was deemed profitable. Would it also be reasonable for them not to
14 grant the waiver?

15 **Mr. Guinco:** I don't think it would be reasonable.

16 **Brent Sonnek-Schmelz:** Why not?

17 **Mr. Guinco:** Well, because the negative would be we have codes and requirements for
18 building that permit the construction of homes which are in A zones and V zones as well, and to impose
19 an additional standard that uh, pre-empt a state building code on undeveloped site uh, just seems that it
20 would be, in my opinion, unreasonable.

21 **Brent Sonnek-Schmelz:** So, it's not the prerogative of the municipality to -- to address
22 waivers and ordinances that affect this particular situation, that could be given to other places in the state?

23 **Mr. Guinco:** Yes. There's a balance that this Board has to come to, and this is a balance
24 that it's your job to -- to balance uh, when you either figure out when a waiver is required or not, and when
25 granting a waiver is reasonable. That's the balance that this Board is up against. In my professional

1 opinion, when I balance it, it's unreasonable. To impose, to not grant this waiver um, where the land is
2 [indiscernible] [0:35:24].

3 **Brent Sonnek-Schmelz:** So, has that changed since Sandy and the community of Atlantic
4 Highlands, which is the reason that that waiver was even passed? Given the whereas?

5 **Mr. Guinco:** Well, I assume that's your testimony or understanding, and I do notice that
6 this was passed in 2013, after Sandy. Um, I don't know why it was current with the land laws. The intent
7 was to not rebuild on properties that were damaged by Sandy, because that's not how the ordinance can be
8 reasonably interpreted, that any home that was damaged could not be built there, if it was in an A or V
9 zone. Uh, being unreasonably disturbed, in my opinion, if you know the house is damaged, you rebuild
10 it.

11 **Brent Sonnek-Schmelz:** Are we dealing with a situation here were we are rebuilding
12 houses?

13 **Mr. Guinco:** We are redeveloping the site.

14 **Brent Sonnek-Schmelz:** That wasn't my question.

15 **Chairman Colangelo:** However, that was his answer.

16 **Brent Sonnek-Schmelz:** Okay. I'll ask it again. Are we rebuilding houses then? Was this
17 the location that was a residential --

18 **Mr. Guinco:** I'm going to object to the question. It's out of the scope for what we do. We
19 talked about the waivers and the issues that were presented by the objectors. They were party to that
20 testimony. The value of the substance of the waiver and the ordinance, the development, and this
21 municipality is outside the scope of this question.

22 **Chairman Colangelo:** Mr. Sonnek-Schmelz, I'd ask that you save that point for your
23 comments in the comment section.

24 **Brent Sonnek-Schmelz:** Thank you very much.

25 **Chairman Colangelo:** You're welcome. Yes? [Indiscernible] [0:36:56].

1 **Janice Hudverton:** Janice Hudverton [phonetic], 72 Burlington Avenue, Atlantic
2 Highlands. I'm not sure this is in the scopes of tonight's meeting. Perhaps not. Um, recently we had
3 sewer pipe breakage on Bay Avenue, where our neighbors right now had to leave their home for three or
4 four days, live in a motel. Would the scope of this development affect the uh, capacity?

5 **Chairman Colangelo:** I'm sorry Ms. Hudverton, that is above and beyond the changes
6 that they made and presented, so that would have had to have been asked at the previous hearings during
7 the comment and question section for that.

8 **Janice Hudverton:** Thank you

9 **Gay Griggenton:** Good evening. I'm Gay Griggenton [phonetic], 52 Avenue D, Atlantic
10 Highlands. Mr. Kennedy, do you have any reason to presume that council will grant access to that sewer
11 pump?

12 **Mr. Guinco:** To the access, Mr. Griggenton?

13 **Gay Griggenton:** Yes, that's correct.

14 **James Kennedy:** Okay. I can't speak to what the Borough council may or may not do,
15 and I don't give this Board who may want to do that either, but we do have alternatives should the Borough
16 council decide not to uh, grant the access.

17 **Gay Griggenton:** So, if you're not granted the access, you have to go back to Plan B?
18 And does that mean it's going to be put back to the Board, or it's just an alternate plan?

19 **James Kennedy:** Well, I think it's really a procedural change um, to switch the access
20 from the back to the easement that we're proposing between two properties.

21 **Chairman Colangelo:** To Ms. Griggenton's point, would the access from the cul de sac,
22 does that affect either of the two lots in reference to requiring any relief?

23 **James Kennedy:** It does not.

24 **Gay Griggenton:** We don't understand or expect that we'll get access to that, right? I
25 mean if council [indiscernible] [0:39:25]?

1 **James Kennedy:** I really think we wouldn't go to council without some sort of positive
2 evidence from this Board. I don't [indiscernible] [0:39:36].

3 **Dr. Cetron:** But Mr. Kennedy, it's my understanding, 'cause I want to clarify this,
4 regardless of whether or not the Borough council gives you access, the easements are going to go forward
5 between those two lots you spoke of so that if the road gets flooded out or anything else, it's already there,
6 regardless of whether or not the council gives you access. Correct?

7 **James Kennedy:** That is correct. We also have a sewer meet going through that same
8 easement, so providing access above the sewer main is, just makes sense.

9 **Dr. Cetron:** Yeah.

10 **Gay Griggenton:** Dr. Cetron, thank you for your clarification, but Mr. Kennedy is the
11 person to testify.

12 **Dr. Cetron:** Understood, which is why I asked him to testify to answer your question in a
13 clear and/or --

14 **Gay Griggenton:** I get it. Thank you.

15 **Chairman Colangelo:** Question for the witnesses, continued questions at this point. Mr.
16 Johns?

17 **Vedison Johns:** Vedison [phonetic] Johns at 59 3rd Avenue, Atlantic Highlands. Um, a
18 couple of quick questions. Uh, Mr. Kennedy, um, when you uh, requested the waiver based on 150-84
19 um, did -- can you clarify for the Board and for the public how many houses are in the A, V flood zone
20 that would be affected by this?

21 **James Kennedy:** Depending on -- and we testified to this as well -- that the show a
22 conceptual layout of homes, and there would be probably three homes that would be in the A zone if
23 they're placed in accordance with our subdivision now.

24 **Vedison Johns:** Thank you. And how many lots would be in the flood zone?

25 **James Kennedy:** The open space lot um, has V and A zone. Uh, Lots 5.08, 5.07, 5.06,

1 5.05, so it's six or seven would have some of their lot in A zone. It is at least, lots do run in that open space
2 lot that was [indiscernible] [0:41:54], so this lot could have an A or V zone somewhere on the lot.

3 **Vedison Johns:** Thank you. And is there -- how -- is there any additional infrastructure
4 that would be in the A, V flood zone, such as the road?

5 **James Kennedy:** No.

6 **Vedison Johns:** Those are not in the flood zone?

7 **James Kennedy:** Correct.

8 **Vedison Johns:** Thank you. And when you were reading out the ordinance, you testified
9 that the um, the reason that this ordinance does not apply, 150-84, is due to the character of the flood zone,
10 that it's not undisturbed open space, it's already developed. Um, is there a place that you could point to in
11 the ordinance that clarifies the intent of the ordinance is to preserve undisturbed open space?

12 **James Kennedy:** All I can say is that it says exactly that. It says preserved as undeveloped
13 open space. Those exact words are in 150-84A.

14 **Vedison Johns:** Thank you.

15 **James Kennedy:** You're welcome.

16 **Vedison Johns:** Uh, I have a question for Mr. Rohmeyer. Um, when you did your initial
17 review letter, as you um, looked at it, which ordinance did you use? Which date of the ordinance did you
18 use when you considered this waiver?

19 **Mr. Rohmeyer:** Mr. Johns, could you define which waiver you're speaking of? Uh, of
20 150-84. Technical review number 4, due to the amount of changes uh, is it about the initial review, the
21 timeline?

22 **Vedison Johns:** The longer letter that you wrote which I believe is the current one. I know
23 there's been another review letter since this particular design was proposed, 16 units, um, and no public
24 open space.

25 **Mr. Rohmeyer:** Well, when my office prepares the report, they utilize the most recent

1 version available online.

2 **Vedison Johns:** So, you were using the 2013, updated ordinance with regard to this
3 waiver?

4 **Mr. Rohmeyer:** Correct. While my paper copy has both, the um, 2013 and the prior
5 versions given, the reports are prepared based off the online version.

6 **Vedison Johns:** Thank you.

7 **Chairman Colangelo:** Further questions for this witness? Yes, sir. Bless you.

8 **Mr. Steib:** Sir, please state your name and address.

9 **Frank Annunciata:** Frank Annunciata, 124 Center Avenue.

10 **Chairman Colangelo:** Would you please spell that for the Court Reporter.

11 **Frank Annunciata:** Sure, A-n-n-u-n-c-i-a-t-a.

12 **Chairman Colangelo:** Thank you, sir.

13 **Frank Annunciata:** Just my question is, is uh, the changes that were made with the pump
14 station and when I look out my door, am I going to be looking at this pump station?

15 **Chairman Colangelo:** I'm going to let Mr. Kennedy answer that question just as a simple
16 yes or no, although that was discussed in previous testimony. Are you going to be looking at the pump
17 station out your door?

18 **Frank Annunciata:** Right. That's right behind my house.

19 **Chairman Colangelo:** Mr. Kennedy probably does not know where you live, so you might
20 want -- you might have to point it out, sir.

21 [Inaudible] [0:45:45]

22 **Chairman Colangelo:** Yes, please.

23 **James Kennedy:** Got it.

24 **Frank Annunciata:** That's the appurtenance there, yeah?

25 **Chairman Colangelo:** Come on over, Mr. Annunciata, just have the [indiscernible]

1 [0:46:59].
2 **James Kennedy:** So, um, his home would be immediately behind the pump station, and
3 that is why, one of the reasons, we intend to screen the pump station, even the [indiscernible] [0:47:18] to
4 the right. There is a fence. The screening of the preliminary landscape in order to minimize any view of
5 -- of the facility at the fence.

6 **Chairman Colangelo:** Thank you for answering that question.

7 **Frank Annunciata:** So, you say most of the pump station --

8 **Chairman Colangelo:** I'm sorry, Mr. Annunciata, being that this was covered in previous
9 testimony and where we are with the procedure, we allowed Mr. Kennedy to answer, but this was covered
10 previously. It has to be on the changes made with the application.

11 **Frank Annunciata:** That was [indiscernible] [0:47:47]?

12 **Chairman Colangelo:** Nope, that was all discussed previously, sir. I apologize, but where
13 we are in this hearing, the only questions that may be asked at this point are based on the changes.

14 **Frank Annunciata:** I see.

15 **Chairman Colangelo:** Any other questions for this witness? Public comment section,
16 seeing that I see no further questions. Comments are limited to the changes made. Does anyone have
17 comments?

18 **Mr. Steib:** Sir, please raise your right hand to be sworn. Do you either swear or affirm
19 that any testimony you give in connection with this proceeding will be the truth, the whole truth, and
20 nothing but the truth?

21 **Robert O'Connor:** I do.

22 **Mr. Steib:** Please state your name and address.

23 **Robert O'Connor:** Robert O'Connor [phonetic], 21 20th Avenue [phonetic], Atlantic
24 Highlands. So, Neighbors For Waterfront Preservation, and our counsel, Kevin Asadi, have been involved
25 in these meetings and this application from the very beginning. Mr. Asadi was unable to attend tonight's

1 meeting due to long-standing vacation plans. Mr. Asadi made a request, as you know, on March 26th. He
2 spoke with Mr. Guinco prior to the [indiscernible] [0:49:09]. Mr. Guinco did not extend professional
3 courtesy of requesting a different date, which is standard practice among opposing professionals. Mr.
4 Asadi made a formal request on April 12th to reschedule, and I remember David Schuzenhaller [phonetic],
5 reiterated that request at the last Planning Board meeting. Mr. Steib sent the letter denying that request on
6 April 15th. Mr. Asadi has been at all previous meetings that have included many changes and articles.
7 We understand the difficulty of working around everyone's schedules, but legal counsel is key to these
8 proceedings which review the applicant and can hurt the opposition. So, we find that your decision not to
9 reschedule highly unfair.

10 **Chairman Colangelo:** Okay. Thank you, Mr. O'Connor. Just for clarification --
11 [Applause]

12 **Chairman Colangelo:** This [indiscernible] [0:50:13] the meeting. Thank you very much.
13 For the record, the meeting that Mr. O'Connor was referencing was the 11th, not the 13th. Uh, being that
14 Mr. O'Connor made that statement, this Board allowed him to make his statement, and that will be it as
15 far as statements in regard to that situation. Alright. We did not stop him. He has the right to voice his
16 opinion. It was covered in the opening statement. If anyone has further statements or comments they
17 would like to based on the changes presented this evening, please raise your hand. Yes?

18 **Mr. Steib:** Sir, raise your right hand, please and be sworn. Do you either swear or affirm
19 that any testimony given in connection with this proceeding will be the truth, the whole truth, and nothing
20 but the truth?

21 **Brent Sonnek-Schmelz:** I do.

22 **Mr. Steib:** And we need you to state your name and address.

23 **Brent Sonnek-Schmelz:** Brent Sonnek-Schmelz [phonetic], 51 Ocean Boulevard. Uh, in
24 regard to my last questions that I asked just a few minutes ago. Uh, Mr. Rohmeyer seems to be uncertain
25 about the uh, the reality of what is an undeveloped, versus abandoned, versus uh, redevelopable states

1 concerning this labor. That waiver was passed, led by Constant Fleeder [phonetic] to try to protect our
2 town in the cases of large storms such as Sandy. We have a situation here where we have that opportunity
3 to actually protect our town, protect the land, protect the people. We do not want to have a situation where
4 new houses are built in a place where a house has never ever before existed. This isn't a situation of
5 rebuilding existing structures. It is a situation of building homes on a land that has never before been used
6 for residential use. We do not want to put homes in a situation where they are in that risk in a storm surge
7 situation like Sandy. Not just for the residents that are there, but also for our first responders when people
8 don't evacuate when they're required to. Those are situations where fire or police can be put in a situation
9 that is potentially life-threatening. Those are the kind of situations that we want to avoid. That is why we
10 want to have this waiver be as strongly considered as possible by this Board. Not simply dismissed
11 because there have been prior use of this land for marina, for boats, that now we have an abandoned
12 structure along the waterfront.

13 We also have a situation where it is reasonable to not grant this waiver as commented by
14 the applicants engineer, Mr. Kennedy. This is a place where, no, of course, we want to let people rebuild
15 the homes that they have, but that's not the case here. This is maybe zoned residential, but it's been
16 commercial for what was it 1923 that Exxon used this as a commercial entity. It's not residential land.
17 There's not reason why we have to have it as residential land. I ask that the Board consider there is
18 sufficient reason here to deny this application. It is neither required or necessary that you grant this
19 application as put forth. Use this opportunity to stand up for this town for what we want as a community
20 and allow us to preserve this land as a potential open space, not add these homes that put too many people,
21 both residents and first responders at risk in the case before you. Thank you.

22 [Applause]

23 **Chairman Colangelo:** Thank you, Mr. Seinfelds. I will say once again um, we wanted to
24 let that comment come out. That was also voiced previously at the previous meeting. Once again,
25 comments based on the changes and testimony given this evening, please. Does anyone have comments?

1 Mr. Chowzy?

2 **Mr. Chowzy:** Well, I think this appropriate given the testimony that was given about why,
3 you know --

4 **Mr. Steib:** Did you speak previously about this matter?

5 **Mr. Chowzy:** I believe I was, not that I'm sworn in.

6 **Mr. Steib:** Alright. Do you either swear or affirm that any testimony you give in
7 connection with this proceeding will be the truth, the whole truth, and nothing but the truth?

8 **Mr. Chowzy:** I do. Um, with regard to this application and this particular waiver, 150-84,
9 it was the applicant's testimony in the beginning that there would be no variances or waivers required as
10 part of this application. Um, and the letter from the town's engineer verified that uh, finding. After a week
11 into your testimony regarding the uh, flood zone area, Mr. Rohmeyer came up to Mr. Asadi, and myself,
12 and I believe there was another person there and asked where we got that waiver from. And our planner,
13 who was in that discussion also, pulled that uh, ordinance out from 2013 that was updated when uh, after
14 Sandy to account for flood concerns. And Mr. Rohmeyer seemed surprised, and that was the end of the
15 conversation. But it seemed pretty clear to me from that conversation that he had not looked at that
16 particular portion of the ordinance, and I want to put that on the record because I was surprised by the
17 testimony that he offered tonight. Um, in my reading of the Board notes and the resolution passed by the
18 town council, the purpose of the ordinance was not to protect undisturbed or undeveloped open space, it
19 was to protect people from the flood zones. And it's pretty clear when you look at the resolution that the
20 council passed in 2013 that that was the case. Now, we're talking about putting new residential structures
21 in the flood zone. This ordinance in particular does not deal with individual homeowners who are trying
22 to rebuild after a flood event. Okay? This ordinance deals with subdivision plans, new development on
23 property in the flood zone, and I think that's an important distinction that has been made yet tonight. So,
24 thank you for your time. I appreciate it.

25 [Applause]

1 **Chairman Colangelo:** I have a question when [indiscernible] [0:57:16]. 150-84A,
2 Section 3, does that deal necessarily, is that an open space ordinance, meaning not in the storage structures?
3 An open space in that the storage structure -- is that the ordinance, or is that --

4 **Mr. Rohmeyer:** The ordinance uh, is general site design standards. Section A deals with
5 storage within the storage structures.

6 **Chairman Colangelo:** Okay.

7 **Mr. Rohmeyer:** That's the one.

8 **Chairman Colangelo:** Thank you. Comments? Mr. Junfelt [phonetic], summation.

9 **Mr. Jonfeld:** Mr. Chairman, our client presented the plan to the uh, ordinance property as
10 suitable redevelopment of this property. There's no evidence to counter it whatsoever, and this property
11 we're dealing with is occupied by [indiscernible] [0:58:13] today, some by Mr. Connell, some by the
12 Borough, which may be by the Catamaran Club. What this occupation ended up doing is we're moving
13 along variances. We also specifically log that our proposed street which is Bayside there so that that
14 design standard would also be met.

15 **James Kennedy:** For the record, correct.

16 **Applicant:** Correct, it's Bayside Drive.

17 **Mr. Jonfeld:** Further, our clients' relocated the public station from its original location.

18 **Applicant:** I'm sorry, I'm sorry. Bay Avenue, sorry Bayside Drive is another street. Bay
19 Avenue. I [indiscernible] [0:58:55].

20 **Mr. Jonfeld:** The first street --

21 **Applicant:** Harborstreet Drive.

22 **Mr. Jonfeld:** -- Harborstreet Drive. In any event, we wind up with that, so there would
23 be no question about that issue. We knew that there's traffic coming from the north, which is, of course,
24 [indiscernible] [0:59:12]. Second, during the development of the site, we learned that the original location
25 of our pumping station was inconvenient to a resident and relocated so it would be equal distance for all.

1 We tried to separate that and create a barrier where there would be no issue. The basis of the original
2 application sought the open space to be dedicated. There was considerable debate at the first meeting
3 discussion and comment that talked about that would be burying the Borough and the taxpayers, and as a
4 result of that our client directed that we find a way to relieve the Borough of that issue, and we did that by
5 creating a common open space issue where the residents would bear the maintenance obligations.

6 Further, we went at the variances to continue the safety and address the minor issues that
7 were in the design of the site. In fact, this application has no basis that I can see for any reasonable person
8 to issue denial. In fact, this is an application that meets the standards of the ordinance in every aspect.
9 And in meeting the ordinance, it requires that the Board consider that if the application meets the standards
10 of the ordinance, it's entitled to approval.

11 There could be an issue of health and safety that could uh, deter that. However, in our case,
12 we're well aware of the issues. The design has been designed in accordance with all applicable standards.
13 We just went through some of those that apply to the A and V zone. We also unnecessary -- addressed
14 unnecessary to obtain an approval from the NJPEP, Department of Environmental Protection under a
15 [indiscernible] [1:01:01] Provision for this site which will be come as we issue, I guess, this approval.
16 The plan divides and addresses almost every issue that's been raised by either the ordinance, the consultant,
17 or even this Board's discussion. We've tried to incorporate every single one of those ideas into this plan.
18 And it's a very good plan. It will provide for 16 new residences in Atlantic Highlands, and it will provide
19 that they're safe and that they, hopefully, are able to continue the new development of the city, the
20 township, the Borough, rather, as its own. This site has an industrial use. There's no working around that.
21 The industrial use went through proper procedures for uh, determination of its use, for renewal and
22 environmental compliance for all, all at the private expense of the property owner. The application's what's
23 being proposed is what's permitted under your ordinance. We're not looking for anything any other
24 property owner or any property under land currents is not entitled to. And my client has proposed the
25 design that will hopefully set a nice standard for this area of the Borough, and permit this development to

1 be successful, and for the Borough to continue to operate effectively.

2 We are taking into account all of the municipal standards that need to be applied. The
3 streets, the orientation of the structures, their location, setbacks. All standards have been complied with.
4 I'm going to suggest that this is a good application for Atlantic Highlands, and that there is -- my client,
5 throughout this time has listened to everyone's comments and tried to address them. Some comments
6 were just not necessarily compatible with any development, and that is not something that we would be
7 able to comply with and still need to be [indiscernible] [1:03:19]. We here to propose a development that
8 will meet standards, present new development, a new neighborhood if you will in Atlantic Highlands that
9 will carry on the standards that have been established in this neighborhood along the bayfront and permit
10 more families to join the Borough.

11 That's the only positive use for this from my client's perspective, of course, but also, having
12 done this for many years, this is one of the few applications that has had as many interesting persons
13 speaking to it that have no variances that I've ever been associated with. In any event, we will ask the
14 Board to consider that when we started, there were certain issues about the design that were raised,
15 comments that were given, and our client responded to them. We have been approached and spoken with
16 the objector groups, and there is now three of them which each have individual and independent issues.
17 We tried to address all of them in one way or another, and we will continue to do that. I ask the Board to
18 grant this approval. It is a worthy project, and it will be a benefit to the Boroug. And my client in this
19 case, as it has every other application presented with has considered not only his own interest, but the
20 interests of the Borough, the representatives of the Borough, and even all of the persons who have come
21 here to oppose it. I'm going to ask the Board to grant that approval. Thank you.

22 **Chairman Colangelo:** Thank you, sir. And to clarify, are you still requesting waivers that
23 might not exist before we talk about whether those waivers are necessary?

24 **Mr. Jonfeld:** The reason that we ask that, in rebuttal, Mr. Chairman, is those issues were
25 raised in the context of the confession frame of the testimony. The issues were addressed in direction

1 testimony. They were determined and ruled on, I shouldn't say ruled on, but recommended to the Board
2 by your consultant. We found nothing at fault with that consultant. I can recall the moment we were
3 discussing the issue of the open space. There was a vigorous debate, and it was kind of interesting from
4 my perspective because not only did you hear from our consultant and -- I'm sorry, excuse me -- our
5 client's engineer and his sewer engineer about how this system would operate, where it would operate,
6 and it's function and structure. It was then brought to the attention of the Board engineer. It was reviewed,
7 basically, the ordinance. It was determined, again, vigorously debated amongst the Board members, that
8 it was not a structure. It's an underground pumping station that is available and accessible for maintenance
9 and repair. When we heard the issue of square footage and the potential for this issue in rebuttal, and
10 perhaps in an [indiscernible] [1:06:25] in an attempt to avoid any litigation. We wanted to bring before
11 the Board all the aspects of that issue that may have, and in my opinion, could have been further explained.
12 We did that tonight. We particularly took advantage of that opportunity to add 1,088 square feet, so that
13 the calculation of the 30 square -- 30% of the total lot was open space remains uncontested. So, even if
14 there was an issue about whether or not that was a structure that went to another tribunal or to accord with
15 an appeal, we think we've addressed it thoroughly, and we'd ask the Board to take the step of considering
16 would you be able or willing to grant that waiver in the alternative. And by in the alternative, I mean in
17 the event it became a Court's opinion that is was a structure, even though it doesn't meet the ordinance
18 definition. Perhaps I was doing everything I can on behalf of my client to try to avoid litigation.

19 **Chairman Colangelo:** Um, I'm somewhat uncomfortable with having this Board grant
20 waivers to prevent other people's litigation.

21 **Mr. Jonfeld:** Mr. Chairman, I fully understand that. I respect you and thank you for the
22 opportunity to present. I'd ask that you consider favourably. However, the Board has all the facts and
23 evidence in front of it, and I am way satisfied that any determination that the waiver is not required is
24 correct. But having been in front of judges and the courts in the past, I can't do enough to help my client.

25 **Chairman Colangelo:** I do understand that, but that is not the Board's duty to grant.

1 **Mr. Jonfeld:** I understand that.

2 **Chairman Colangelo:** Either side in reference to that.

3 **Mr. Jonfeld:** I do understand that. But you gave us an opportunity to present. Thank you,
4 sir.

5 **Chairman Colangelo:** Thank you, sir. Ladies and gentlemen, this is the point of Board
6 discussion over this matter. At this point and time, the public is here as to listen, view, watch. There will
7 be no banter back and forth between the public. There will be no banter from the Board to the public
8 either. Um, we are at a point now where the Board after listening to at this point 27 hours of testimony,
9 comments, and questions, now it gets to talk about and decide. Mr. Steib, did I miss anything.

10 **Mr. Steib:** No.

11 **Chairman Colangelo:** Good. Ladies and gentlemen, would anyone like to start?

12 **Dr. Cetron:** I'll just start with the two simple ones, whether or not we need to two waivers.

13 **Male Speaker 3:** We can't hear you.

14 **Dr. Cetron:** Usually I talk to loud and people tell me to be quiet, so. I'll bring the
15 microphone over. Um, I think the first question to address is uh, whether or not any waivers are required.
16 Um, I have read 150-84 numerous times. I was on the Board for many years, and regardless of the intent,
17 we are legally bound by the wordage. And I think it's absolutely clear that it only applies to undeveloped
18 open space by the way the ordinance was written. And given that this is clearly developed space, I don't
19 believe there's any waiver required there um, as far as that's concerned. I think the other potential waiver
20 was on the amount of open space of 30%. And regardless of whether it's a structure or not, regardless of
21 whether it's included or not, they still meet the 30% with the lot line adjustment. So, just on those two
22 points, I do not believe that any waivers are required for those two issues. Because I still want to try, in
23 my opinion, to put that issue to bed before we then address it as a whole.

24 **Board Member 2:** But this is basically an operating commercial lot as we speak. There's
25 commercial businesses on this lot. This is not an undeveloped lot. I mean this lot's been here well before

1 I was born, and was used as an oil field, oil tank storage facility. So, um, it's not undeveloped open space,
2 and it's currently not undeveloped open space. It's being used. So, I'd have to agree with the Borough
3 engineer that this is a developed piece of property, and that is does not need a waiver.

4 **Chairman Colangelo:** Any other Board members would like to comment on that portion?

5 **Board Member 4:** Well, just on that portion?

6 **Chairman Colangelo:** Whatever you want.

7 **Board Member 3:** It's his standpoint.

8 **Ms. Murray:** My question is, if this is going to be an association, what requires them to
9 keep that open space? Are they required to keep it open space?

10 **Board Member 2:** It'll be in the deed.

11 **Ms. Murray:** Thank you.

12 **Board Member 2:** It'll be restricted when the deed is recorded.

13 **Mr. Steib:** If we approve the deeds, I'll make that very clear.

14 **Dr. Cetron:** And right now, we're looking at a subdivision. That's what this Board's
15 looking at at this period of time. And I believe we were provided, Ms. Murray, with the proposed HOA
16 agreements, which also made it clear that it was open space in perpetuity, supported at this time by the
17 homeowners and the property owners.

18 **Board Member 2:** They have to maintain it. They have to upkeep it.

19 **Mr. Jonfeld:** Those documents are a matter too for the Board that were handed the
20 homeowner's association bylaws.

21 **Ms. Murray:** I do think they give an example of it. I don't know if it was their --

22 **Dr. Cetron:** I would agree with that.

23 **Board Member 5:** Yeah.

24 **Mr. Jonfeld:** Yeah.

25 **Ms. Murray:** Well, is it something that was --

1 **Mr. Jonfeld:** But the intent, my -- my client knows the intent is there, and that can be
2 codified in our resolution, the intent.

3 **Board Member 6:** You're right. The wording can change a little bit, but the intent to keep
4 that open space, period, can be easily put into our resolution.

5 **Board Member 1:** Mr. Asadi, his client wouldn't be in upset.

6 **Chairman Colangelo:** Mr. Junfeld.

7 **Mr. Jonfeld:** Your client, Mr. --

8 **Chairman Colangelo:** Mr. Junfeld, I'm sorry.

9 **Board Member 6:** Your client, would he be okay with that? Writing in the open space?

10 **Mr. Jonfeld:** It is part of our application. We fully intend the open space is to be dedicated
11 as the ordinance requires, will be dedicated in perpetuity through the homeowner's association with any
12 point of deed which after is typical, and I'm expecting your procedures will be the same, we will prepare
13 those documents and submit them for the review and approval of the designated attorney for the Board or
14 the township. As with this Board, I mean the attorneys may be sought.

15 **Board Member 6:** And I apologize, Mr. Junfeld.

16 **Chairman Colangelo:** Anybody else have any comments right now?

17 **Board Member 4:** I've sat through, this is my second time with this property. I remember
18 the first time. I'm not sure how many other people remember the first time. Um, thank God we don't have
19 that one before us anymore because that was a disaster. Uh, and this one is obviously, in retrospect, much
20 better than that one.

21 **Board Member 7:** I think as far as use of the land, it's not nearly as dense as that last one.
22 Sixteen homes is, you know, could at least get away with on something like this piece of property and give
23 a lot more. And I think it's -- um, at first, I was surprised that it took as much of the property away from
24 the Catamaran Club as it did when I first saw it. I was going down to the Catamaran Club and looking at
25 it some more and uh, make sure that it could have done something to give more land to the Cat Club, so

1 they could keep some of that property there.

2 **Mr. Jonfeld:** Well, I'm hoping the homeowner's association talks to the Catamaran Club
3 and works it out.

4 **Chairman Colangelo:** I'd like to be clear that this is open space. They can't store anything
5 on here.

6 **Mr. Jonfeld:** I didn't say that.

7 **Chairman Colangelo:** You hear what I'm saying? If this is open space, there cannot be
8 any storage on there by the rules of open space. It needs to be clear.

9 **Mr. Jonfeld:** And I will say one other thing 'cause I want to view my address, and Murray,
10 you can jump in on this. Um, as a first responder, one who lived through Sandy and did a lot of work
11 during Sandy, I know what the building standards are now. I've seen them. I've seen what the building
12 codes are, and um, I have no intention of risking my life ever. However, I do not see any opportunity here
13 where I would be um, at risk of doing that. Um, if these houses are built to standards, and I know they
14 will be, there will be no problem. It's a whole lot more risky taking care of houses that are built on ocean
15 steep slopes than down here. Um, this is nice flat land, and even with the water, it's not nearly as dangerous
16 as our houses falling off the hill which have happened a number of times, so I just want to answer that as
17 a first responder. Um, we would have to go out should we have another Sandy.

18 **Board Member 3:** I'm a proponent for open space. I'd love to have this as open space and
19 [indiscernible] [1:17:28] the town also, but yet I haven't seen anything about the county being used as
20 interested in purposing this plan.

21 **Mr. Jonfeld:** Unfortunately, obviously, but --

22 **Board Member 3:** It's not an issue.

23 **Mr. Jonfeld:** This is what we got.

24 **Board Member 3:** And I think this is much better than what's there now.

25 **Mr. Jonfeld:** Which is a boat yard and uh, I didn't mean to stop you. Mr. Sinsmall

1 [phonetic] was talking about Exxon, but I was doing these with stickers because that was that way to
 2 Standard Oil. And I've been a Rockefeller, and it's not exactly a nice piece of property right now.

3 **Dr. Cetron:** And I think you'll find that the state um, and its land use perspective, as well
 4 as the master plan, has always talked about taking um, industrial properties, especially ones that are almost
 5 ground field, and redeveloping them into productive --

6 **Mr. Jonfeld:** Fitting the zones.

7 **Dr. Cetron:** Fitting the zones and the ordinances and so on. Uh, this has been an eye soar
 8 to be perfectly honest since well before I moved into town. And um, I think this is better than the eye soar
 9 we have now, so.

10 **Chairman Colangelo:** If there is no further -- is there any further Board discussion? If
 11 there is -- if there is not, would anyone like to pose a motion?

12 **Board Member 2:** I offer a motion to uh, approve the subdivision.

13 **Chairman Colangelo:** Do I have a second?

14 **Board Member 1:** I will second it.

15 **Chairman Colangelo:** Ms. Uriarte?

16 **Ms. Uriarte:** Mr. Fligor?

17 **Mr. Fligor:** Yes.

18 **Ms. Uriarte:** Mr. Hawley?

19 **Mr. Hawley:** Yes.

20 **Ms. Uriarte:** Mr. Caccamo?

21 **Mr. Caccamo:** Yes.

22 **Ms. Uriarte:** Dr. Cetron?

23 **Dr. Cetron:** Yes.

24 **Ms. Uriarte:** Mr. Neff?

25 **Mr. Neff:** Yes.

1 **Ms. Uriarte:** Mr. Pepe? Ms. Murray?

2 **Ms. Murray:** No.

3 **Ms. Uriarte:** Mr. Colangelo?

4 **Chairman Colangelo:** Yes.

5 **Ms. Uriarte:** Mr. McGoldrick?

6 **Mr. McGoldrick:** No.

7 **Female Speaker 1:** Thank you.

8 [Applause]

9 **Ms. Uriarte:** Mr. Illiano? I didn't hear your answer

10 **Mr. Illiano:** I abstain.

11 **Mr. Jonfeld:** Thank you.

12 **Chairman Colangelo:** Anyone make a motion to adjourn?

13 **Board Member 3:** I make a motion to adjourn.

14 **Board Member 5:** I second that.

15 **Chairman Colangelo:** All in favour?

16 **Board:** Aye.

17 [1:20:23]



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