

In The Matter Of:
Town of Fenwick Island
Request for Variance - Buas Sands Hotel LLC,

Hearing
August 23, 2018

Wilcox & Fetzer, Ltd.
1330 King Street
Wilmington, DE 19801
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1 THE TOWN OF FENWICK ISLAND
2
3 IN RE: :
4 REQUEST FOR VARIANCE :
5 AND APPEAL TO DECISION :
6 OF BUILDING OFFICIAL :
7 :
8 BUAS SANDS HOTEL LLC, :
9 a Delaware Limited :
10 Liability Company :
11 Mr. Spiro Buas :
12 1501 Coastal Highway :
13 FENWICK ISLAND, DELAWARE:
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15
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Hearing taken pursuant to
notice at the Roxana Volunteer Fire Company,
35943 Zion Church Road, Frankford, Delaware,
beginning at 2:50 p.m., on Thursday, August
23, 2018, before Gloria M. D'Amore,
Registered Professional Reporter and Notary
Public.

- - -

WILCOX & FETZER
Registered Professional Reporters
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477
www.wilfet.com

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1 CHAIRMAN COLLINS: We're going
2 to get started on the second hearing that we
3 have for today.
4 I'll read the Legal Notice.
5 However, one thing I'll mention before we
6 start is that you'll now notice that there
7 are four of us that will be dealing with this
8 issue as opposed to five. Mr. Benn, Richard
9 Benn recused himself from this particular
10 hearing.
11 Okay. The Legal Notice that
12 was posted reads or read as follows.
13 There will be a public hearing
14 before the Town of Fenwick Island Board of
15 Adjustments in accordance with Chapter 160,
16 Zoning, of the Code of the Town of Fenwick
17 Island, Delaware on a request for an appeal
18 of the building official's decision of the
19 calculation of the building height or a
20 variance to the maximum roof height at 1501
21 Coastal Highway, also known as 1-34 23.12
22 179.00 located within the incorporated limits
23 of the Town for a six-foot encroachment for
24 the installation of an elevator.

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1 APPEARANCES:
2
3 TOWN OF FENWICK ISLAND
4 BOARD OF ADJUSTMENT
5 TIM COLLINS, CHAIRMAN
6 CRAIG LAMBERTSON, VICE CHAIRMAN
7 MARLENE QUINN
8 LINDA BUNTING
9
10 DAVID C. HUTT, ESQUIRE
11 Counsel for Town of Fenwick Island
12 Board of Adjustment
13
14 On behalf of Town of Fenwick Island
15 TERESA TIEMAN, TOWN MANAGER
16 PATRICIA SCHUCHMAN, BUILDING OFFICIAL
17 WILLIAM WEISTLING,
18 BUILDING COMMITTEE CHAIR
19
20 MARY SCHRIDER-FOX, ESQUIRE
21 Counsel for Town of Fenwick Island
22
23 On behalf of Buas Sands Hotel LLC:
24 TIMOTHY G. WILLARD, ESQUIRE
SPIRO BUAS
KEITH P. FISHER
MEAGHAN POULIN
MARIANNE SPIRO
PETER SPIRO

- - - - -

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1 This hearing will be held on
2 Thursday, August 23, 2018, two p.m. at Roxana
3 Volunteer Fire Company, 35943 Zion Church
4 Road, Frankford, Delaware
5 Interested persons may inspect
6 the plot plans at Town Hall during Town
7 business hours Monday through Friday
8 8:00 a.m. to 4:00 p.m.
9 Now, Pat, who is the building
10 inspector, will read the...
11 MS. SCHUCHMAN: Hello,
12 everyone.
13 Before I get started, can
14 everyone please either turn your phones off
15 or lower your ring tones because we can hear
16 it up front here.
17 Thank you.
18 On July 25, 2018, I sent a memo
19 to the Board of Adjustments regarding the
20 application for a building permit for the
21 Buas Sands Hotel LLC.
22 My memo stated, An application
23 for a building permit for the construction of
24 a 65-room hotel was submitted on May 4, 2018

<p style="text-align: right;">Page 5</p> <p>1 by Mr. Spiro Buas of Buas Sands Hotel LLC. 2 A review of the plans commenced 3 and the Town Building Official followed 4 proper Town procedures when denying the 5 building permit application. 6 Per Town Code Chapter 61-3, 7 Issuance of Permits, the application has been 8 received by the Building Official and two 9 Building Committee Members who subsequently 10 issued a denial of the building permit due to 11 non-conformity of the elevator shaft, which 12 will exceed the maximum roof height by a 13 distance of six feet. Chapter 61 3D states: 14 If disapproved, the owner may appear before 15 the Town Board of Adjustments for a variance 16 or appeal. 17 A Board of Adjustments Hearing 18 is scheduled for today, Thursday, August 23, 19 2018 on the matter of a request for variance 20 and appeal to the Building Official's 21 decision. 22 Board Members, please. I will 23 enter the Exhibits into the record. 24 Exhibit No. 1 is the amended</p>	<p style="text-align: right;">Page 7</p> <p>1 that appeared on the August 23rd Board of 2 Adjustments Notice and on July 27, 2018 in 3 the Coastal Point. 4 Exhibit 3B is a copy of the 5 Legal Notice as it appeared in the July 27, 6 2018, Coastal Point. 7 Exhibit No. 4 is my memo dated 8 July 25, 2018 that I just read into the 9 record. 10 Exhibit No. 5 is the list of 11 property owners surrounding the location of 12 the hotel that received notice of this 13 hearing. 14 Exhibit No. 6 is a letter I 15 received from Mr. Spiro Buas dated July 23, 16 2018 requesting this hearing. 17 Exhibit No. 7 is a copy of Mr. 18 Buas' check. 19 Exhibit No. 8 is a letter 20 received from Keith Fisher of Fisher 21 Architecture regarding the height variance, 22 HVAC and elevator overrun. 23 Exhibit 8A is Page 2 of that 24 letter.</p>
<p style="text-align: right;">Page 6</p> <p>1 agenda, change in location of the hearing to 2 where we are at right now, the Roxana 3 Volunteer Fire Company. 4 Exhibit No. 1A is the original 5 agenda, which was posted on August 6, 2018. 6 Exhibit No. 2 is the Legal 7 Notice that Mr. Collins just read. It was 8 amended on August 7, 2018. And the reason 9 for the amendment was to change the location 10 from the Fenwick Island Town Hall to the 11 Roxana Volunteer Fire Company. 12 Exhibit 2A is the Affidavit 13 showing the change in location of the 14 August 23rd meeting notice in the Coastal 15 Point. 16 Exhibit 2B is the actual Legal 17 Notice as it appeared in the Coastal Point on 18 August 8, 2018. 19 Exhibit No. 3 is the Legal 20 Notice dated July 25th, which was the 21 original notice saying that the hearing would 22 be held in Fenwick Island Town Hall. 23 Exhibit 3A is the Affidavit 24 showing the publication of the Legal Notice</p>	<p style="text-align: right;">Page 8</p> <p>1 Exhibit No. 9 is my disapproval 2 form saying that the elevator shaft will 3 exceed maximum roof height permitted in 4 Chapter 160-5B(2). It bears the signatures 5 of myself, William Weistling, as Building 6 Committee, and Jesse Sheppard as Building 7 Committee. 8 Exhibit No. 10 is the 9 application. The application to construct a 10 65-room hotel, swimming pool and elevator. 11 This is the application for a building 12 permit. 13 Exhibit No. 11 is a rendition 14 showing the Indian Street south side and rear 15 of the building on the east side. It also 16 shows Coastal Highway on the west side and 17 Indian Street coming from the south. 18 Exhibit No. 12 is another 19 rendering showing the rear of the building on 20 the east side and James Street on the north 21 side with another rendering showing the front 22 of the building. 23 Exhibit No. 13 is a front view 24 from Coastal Highway, the south view and</p>

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1 north view of the proposed building.
2 Exhibit No. 14 is a rendering
3 showing elevations.
4 Exhibit No. 15 is an
5 enlargement of that rendering of the north
6 side of the building.
7 Exhibit 16 is an enlargement of
8 the rendering of the south side of the
9 building.
10 Exhibit No. 17 is a schematic
11 of the elevator shaft.
12 Exhibit No. 18 is Town Code
13 Chapter 161-3A, C and D regarding applying
14 for a building permit, the review of the
15 Building Committee, and if disapproved, the
16 ability to go to the Town of the Board of
17 Adjustments.
18 Exhibit No. 19 is Chapter
19 160-2, Definition of Building.
20 Exhibit No. 20 is Chapter
21 160-2, Definition of Mechanical Equipment,
22 Definition of Motel/Hotel.
23 Exhibit No. 21 is Chapter
24 160-2, Definition of Primary Building and

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1 Robert Wigglesworth, Hans Banziger, Josh
2 Kleinstuber, Elise Mumford, Steve Carey, J.
3 Scott Mumford, Barbara Peters, Clarence
4 Tingle, Richard Banziger, Carl McWilliams,
5 Ross McWilliams, James Simpson, III, Nancy Jo
6 Pepper, Alizon Banziger, J. Gary Burch, John
7 Lewis, Diane Tingle, Frank Serio, William
8 Biddle, Lucy Snow, Kimberly Flynn, Linda Faye
9 Horner, Winnie Lewis, Ben Horner, Kristin
10 Clark, Paula Mumford, Bonita Zonko, Charles
11 Zonko, Janet McCabe, Raymond McCabe, Marilyn
12 Simpler, Theodore Simpler, Robert Clark, Sue
13 Clark, Ashley Brosnahan, Bonnie Sheppard,
14 Virginia Schreppler, Ed Higgins, Jenna Hess,
15 Ginger Holnick, James Holnick, Janet Clark,
16 Thomas Clark, Nancy Kushela, Rod Kushela,
17 Barbara Houser, Mitchell Houser, Ann
18 Paskalides, Kathleen Kraft, Deborah Weiss,
19 James Hayman, Alexander Daly, Jerry
20 Greenspan, Mark Tingle, Charles Hastings,
21 Joseph Eshback, Frederick Eckhardt, Roger
22 Crump, Carolyn Smith, Christine Tingle, Jim
23 Yori, Norma Yori, Kathryn Kent, Terry Long,
24 Betty Schnitzer, Sharon Robinson, Richard

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1 Primary Structure.
2 Exhibit No. 22 is Chapter
3 160-5B, height regulations.
4 Chapter 160-5C4, restriction on
5 mechanical equipment.
6 Exhibit No. 23 is a
7 continuation of that Section 160-4.
8 There's one more thing that I
9 will read into the record. Hold on. I
10 forgot.
11 As you are aware, many letters
12 from the community were received.
13 The Board Members have gotten a
14 copy of every letter.
15 After this hearing, tomorrow
16 morning, a copy of all of the letters will be
17 posted on the Town's website.
18 There were 87 letters received
19 in favor of granting the variance. They were
20 received by Jeff Mumford, Andrew Maiorino,
21 Ben Waide, Hugh Curd, William Clark, Charlie
22 Mann, Russell Hall, Lisa Loeffler, Sharon
23 Swank, Randall Larrimore, Debra Coleman,
24 William Callis, R.E. Grace, Craig Pfeifer,

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1 Robinson, Reid Tingle, Nancy Merritt, Sharon
2 Ruble, Lori Anastasi, Warren Cherry.
3 There were nine letters
4 received opposed to granting the variance.
5 They were Jacque Napolitano, Jody and Warren
6 Hayden, Brian and Lisa Kelly, Kevin Carouge,
7 Liz Lear, Dave Reifschneider, Denny and Pam
8 Pridgeon, Joseph Raffetto, Marion and David
9 Webster.
10 That's all I have. Thank you.
11 **CHAIRMAN COLLINS:** Pat, before
12 you leave, do any of the Board Members have
13 any questions of Pat?
14 At this time, I think we can
15 ask the attorney that is representing the
16 hotel to step forward and identify himself.
17 And let's go.
18 **MR. WILLARD:** Let's go. Here
19 we go. I have to get used to this. I
20 apologize.
21 Can everyone hear me all right?
22 My name is Tim Willard. I'm an
23 attorney with the law firm of Fuqua, Willard
24 Stevens and Schab. Our main office is on The

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1 Circle in Georgetown. We have a couple of
2 offices in Eastern Sussex County as well.
3 I'm here representing Buas. I
4 always struggle with that. It's only four
5 letters. Buas Sands Hotel LLC.
6 Let me first introduce who is
7 here on our team.
8 Spiro Buas who is seated at the
9 table. Next to him is Keith Fisher. He's an
10 architect. Spiro's wife, Marianne, is here.
11 And Pete, his son, is here.
12 Over here is Meaghan Poulin.
13 She is on our team. She is going to help me,
14 hopefully, with some Powerpoints that you
15 will all see.
16 Before I begin, I have a couple
17 of handouts for the Board. Members of the
18 Board, how are you today?
19 The handouts I'm going to give
20 you are, quite frankly, redundant. Pat has
21 done a pretty excellent job organizing them.
22 So the first handout I have is
23 just the application letter, the E-mail
24 dealing with the appeal, the architect

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1 letter, the vertical plan and the elevator
2 plans all of which are, more or less, in your
3 package, but organized by tabs this way.
4 That may be too many. Thank you, Mr.
5 Chairman.
6 The second handout I have is
7 actually the printout pages of the
8 Powerpoint.
9 And for the Members of the
10 Audience, you will be seeing these on the
11 screen as we go through the presentation.
12 Just an overview of why we are
13 here. I assume most of you know why you're
14 here. That's why you're here.
15 My client is proposing to build
16 a hotel where the Sands is now. We're at the
17 building permit stage of that, and that's
18 going to the Town and getting a building
19 permit so they will review it. And it's not
20 uncommon for a project of this size to have a
21 few things that have to be dealt with. One
22 of them is, this hotel needs an elevator
23 shaft so it can have two elevators in it.
24 And we approached the Town, my

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1 client did, to get a building permit for that
2 purpose. And to the extent the elevator
3 shaft will exceed the 32-foot limit, we need
4 a variance to go above that.
5 We also looked at the statute.
6 Your Code really doesn't talk about elevator
7 shafts. Maybe it fits within different
8 sections and it's not necessary. That's the
9 appeal you're hearing tonight. Appeal or
10 challenge. I like to say it's more of a
11 dialogue. But the Town says, I don't think
12 it does. We say it does, perhaps.
13 And then in the alternative, if
14 this Board finds that, Well, it doesn't --
15 you'll need a variance, in fact, the statute
16 doesn't exclude it from the height limits,
17 then we do the variance after that.
18 But we appreciate the Town
19 hearing both of these at the same time. It
20 is much more efficient. If they decide it
21 doesn't need a variance and it can be done,
22 otherwise, we move onto the variance phase.
23 So first of all, I would like
24 to talk a little bit about the history of the

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1 property just briefly and also what the
2 vision is. And to do that, I think Spiro is
3 better equipped. We have a couple of slides
4 to show. Spiro is coming forward.
5 **MR. BUAS:** Everyone, thank you
6 for coming out. I know a lot of people are
7 interested.
8 I had the property now for
9 three years. Everybody knows my hopes and
10 dreams are to make it a much better property.
11 It's due.
12 The property was built -- I
13 don't even know how long ago it was built.
14 It was built in two or three phases by the
15 Tingles' great grandfather, I imagine.
16 And it's gone through some
17 construction. And I got some pictures that
18 actually got torn up a little bit during one
19 of the storms. It's not a candidate for
20 remodel. I have remodelled several hotels.
21 It's a difficult thing to do. But if you got
22 the walls in the right place, you can make
23 something work. This can't work. Being that
24 it is on a slab and most of the plumbing has

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1 met its life under that slab, it won't work.
2 The roots are too small. It won't make it
3 marketable. So I can't put a lot of money
4 into something that won't make a difference.
5 So we struggled to try to
6 figure out who we can get and what brand we
7 can get. And it has taken longer than I
8 expected it to. Because I wanted to make
9 sure we got a brand that the Town would be
10 happy and proud of.
11 During our talk very early on
12 about density, I got a lot of feedback from
13 people, from neighbors saying, Hey, you may
14 want to look at this brand, you might want to
15 look at that brand.
16 And it was a challenge because
17 most of the larger brands wanted a minimum of
18 80 rooms. And that is because they have to
19 protect territory.
20 At 65 rooms puts us at a little
21 bit of a limit. I did have three actual
22 brands that were very interested, none of
23 which I thought was a good fit for Fenwick.
24 I didn't think you wanted to see a Holiday

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1 Inn Express. I didn't think you wanted to
2 see a Microtel. I didn't think you wanted to
3 see a Best Western.
4 When I got the opportunity that
5 Hilton came out with some new soft brand, I
6 jumped right on it. This brand, Tapestry, is
7 a three to four star hotel. That is the
8 level of quality I have to keep. I cannot
9 have a product not built to their standards.
10 They won't allow it. They control almost
11 everything we're doing. And I can't have a
12 product that we don't keep up to their
13 standards.
14 So, for me, the amount of
15 investment is in the difference between
16 trying to do a cheaper hotel or a grand
17 hotel, to me, this is a no-brainer. This is
18 the right product.
19 We got approved for a Tapestry,
20 which gives us an independent feel. We get
21 to come up with the concept. They walk us
22 through it and approve it.
23 And the elevators even. I
24 didn't want to put in two elevators. It's

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1 two sets of flights to get upstairs. They
2 are making us put in two elevators. They
3 don't want to see the maid's cart in the same
4 elevator that the guest is going in. That's
5 the kind of standards they're looking for.
6 The Tingles built this and then
7 it went to Susan afterward, both of which the
8 previous owners are fully in support of this.
9 And that means a lot to me. Because they had
10 something they built and had their whole
11 life. They don't mind seeing it disappear.
12 They know time is up.
13 This is Tapestry, another
14 Tapestry. This isn't ours. We haven't
15 gotten this far yet. We hired an interior
16 designer. We're required to hire an interior
17 designer, Hilton approved. We're going
18 through that phase now. And this is what you
19 will see, this type of quality.
20 I think I about said it all.
21 Thank you.
22 **MR. WILLARD:** We're going to
23 shift now just to the technical issue of the
24 elevator shaft and try to give the Board the

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1 facts about that because that's relevant to
2 your decision in reference to the Code
3 section. There it is. And I think my
4 question is going to be to Keith Fisher.
5 Keith, do you want to come on
6 up?
7 Why don't you identify yourself
8 and your business and what you do?
9 **MR. FISHER:** Thank you.
10 Keith Fisher. Fisher
11 Architecture. Principal of the firm.
12 **MR. WILLARD:** And you are
13 involved with the design of this building?
14 **MR. FISHER:** I am.
15 **MR. WILLARD:** I'm just going to
16 ask you a simple question.
17 What are we looking at here?
18 **MR. FISHER:** Great question. I
19 ask myself that a lot.
20 So, basically, when we start
21 with the design process of what is needed, we
22 capitalize on people that have done this
23 before.
24 So these drawings that you see

Page 21

1 are known as technical shop drawings of the
2 elevator, of an elevator that theoretically
3 could be used.
4 We use this to begin the base.
5 This is the plan view. Here are the
6 roundabout spacial requirements that you will
7 have to need to put in.
8 These drawings give us an
9 indication of requirements of the State of
10 Delaware adopting certain Code Sections of
11 the ASME Mechanical Code.
12 All of these pieces all play
13 into the mechanical nature of the elevator.
14 Everything that has to do with how we make
15 this work and meet the code compliant levels
16 of design.
17 These next two drawings are
18 specific to -- so everybody understands --
19 I'll take you back to high school shop class
20 -- where you have a structure. You cut that
21 structure in half. That's known as building
22 sections.
23 So what we're looking at here
24 on the far left, we took an elevator shaft

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1 part of the mechanics.
2 So after that, you have the top
3 of the piston. You have what looks like a
4 steel beam up at the top, that is the
5 elevator hoist beam. The purpose of that
6 beam is structural in nature. It's carrying
7 the load of the elevator. Whether one person
8 is in the elevator or 20 people are in the
9 elevator, that hoist beam is required for
10 that.
11 The other thing that happens up
12 there is when the elevator is in an event --
13 if a piston were to fail and we've all seen
14 those scary non-fictional movies, where
15 everybody is plummeting to the ground in the
16 elevator, well, that doesn't happen. There
17 are mechanical brakes that are involved in
18 these rails that are all attached above you
19 on the last stop. So that hoisting shelters
20 that load and holds it down.
21 I hope that helps.
22 **MR. WILLARD:** Can you tell us
23 where the roof line is on the upper part of
24 it relative to the mechanical equipment?

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1 out and cut it in half and we're ready to
2 look straight into and see all of the working
3 parts. So these areas here indicate floor
4 level, ground floor level, second level and
5 so on up.
6 So, basically, what you see is
7 the hydraulic piston, if you will. The
8 piston is, basically, what pushes the car up
9 in the air.
10 The top of that is the cab
11 section. So this little rectangle that you
12 see right there, that drawing is blown up for
13 you right here. This is your elevator cab.
14 So the next time you are in an
15 elevator, this is the floor, that's the
16 ceiling above you, all of those crazy movies
17 where people get trapped in an elevator and
18 they say, Well, how do I get out? The shaft
19 that is above you. There is a hole right
20 here. And every single elevator allows the
21 mechanics to get into that area and do
22 maintenance on all of the mechanical
23 machinery that's in that area, as well as to
24 identify all of the safety features that are

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1 **MR. FISHER:** So this is the
2 elevator door, the top of the door, so your
3 ceiling and roof structure would happen in
4 that area.
5 The roof of your building is
6 somewhat irrelevant to the design of an
7 elevator.
8 What is most important to the
9 design and the height of the elevator overrun
10 is this -- its last stop. It gives us
11 required dimensioning from the floor to the
12 height of the overrun.
13 So that required dimension is
14 what we base that on.
15 The ASME, which is a Mechanical
16 Code, specifically states that we can't have
17 anything within 43 inches of any piece of
18 equipment that's in that overrun.
19 So all of this stuff that's up
20 at the top, all of that mechanical equipment,
21 there has to be at least 43 inches to
22 accommodate both of those things.
23 So that's the stop. So if you
24 were the service guy up on top, somebody

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1 inadvertently hits the up button, there is
2 space in there so you don't get crushed.
3 **MR. WILLARD:** What is above
4 32 feet on this elevator shaft?
5 **MR. FISHER:** All of the
6 mechanical equipment that allows that
7 elevator to function.
8 **MR. WILLARD:** Currently, as
9 it's designed, how much distance is above the
10 32 feet and why?
11 **MR. FISHER:** Right. The six
12 foot that we're asking for?
13 **MR. WILLARD:** The design we're
14 looking at now.
15 **MR. FISHER:** So the design
16 we're looking at now -- the 43 inches clear
17 is what we have. At the 32, it's mechanical
18 equipment that's above that.
19 **MR. WILLARD:** My question is,
20 how high above the 32 feet is it?
21 **MR. FISHER:** It took me longer
22 to get that. Sorry.
23 We are three foot three above
24 the 32.

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1 **MR. WILLARD:** The applicant is
2 asking for six feet.
3 Can you explain why you came up
4 with three-and-a-half here, but it could be a
5 little higher?
6 **MR. FISHER:** So the idea is to
7 think about the future, think about not
8 wasting a whole lot of people's time for
9 this.
10 We know based on that drawing
11 that you just saw there today what a
12 theoretical elevator is when we design it.
13 When this project goes from
14 permitting to the point which they are ready
15 to build it, there is a lot that can change.
16 This is also based on one
17 elevator installer or manufacturer's design.
18 That doesn't mean that the next elevator will
19 have a different -- or somebody else will
20 have a different idea. That dimension
21 changes based on the exact firm or company
22 that you hire.
23 So we base this knowing that
24 there are going to be things in the field

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1 that slightly alter or change. So we plan
2 for those things. We all heard the joke that
3 the plans are done, then the building gets
4 built differently, or not according or
5 exactly to the plan. That is a real life
6 thing. Those kinds of fluid changes are to
7 be expected.
8 **MR. WILLARD:** Are you
9 comfortable that it is not going to exceed
10 six feet in any event? Is that fairly
11 conservative?
12 **MR. FISHER:** That is correct.
13 Yes. Absolutely.
14 **MR. WILLARD:** Thank you.
15 That's all I have for Mr.
16 Fisher right now.
17 Of course, if you have any
18 questions for either one of these gentlemen
19 or me, please interrupt me.
20 **CHAIRMAN COLLINS:** Before you
21 leave, just so we can kind of clarify these
22 things as we go along.
23 You have touched on something
24 that has been a point of confusion.

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1 I'm drawing this from some of
2 the letters that I read in opposition.
3 There was a conception right
4 out of the gate, apparently, by some folks
5 that this elevator shaft was going to be six
6 feet above the level -- above the 32 feet.
7 And this is what I'm looking
8 for clarification on.
9 When I looked at the drawings,
10 this is what my interpretation was. In the
11 drawing, the elevator shaft is three feet and
12 some odd inches. Just re-explain that.
13 Where are we, in the simplest terms, where
14 are we in terms of what that elevator shaft
15 is above the 32 feet?
16 **MR. FISHER:** Right. Great
17 question.
18 The design that you are looking
19 at is showing an elevator overrun that
20 exceeds above the 32 by three foot three.
21 What we've asked for in this
22 process is anywhere between three foot three
23 and six feet. No more than. No less than.
24 And that's based on selecting the proper

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1 elevator, selecting all of that, to kind of
2 hone in on all that as we get to the final
3 analysis.
4 **CHAIRMAN COLLINS:** I want to
5 make sure we're clear.
6 So you're actually asking us
7 for something between three foot three inches
8 up to six feet?
9 **MR. WILLARD:** That is correct,
10 Mr. Chairman.
11 And the reason is, this design
12 here is based on the latest stats that he
13 has. And he has explained or tried to
14 explain when the bids come in for elevators,
15 that the specs may change somewhat. I'll
16 defer to him on this because I don't buy
17 elevators every day.
18 But we want to tell you exactly
19 what it could be. And not say, Oh, it's
20 going to be three-and-a-half if it turns out
21 to be 4.2 or something like that.
22 **CHAIRMAN COLLINS:** But the
23 three feet three inches has come from
24 someplace. I mean, you're under the

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1 impression that this can be done based on
2 whatever you're seeing and your expertise out
3 there that there is an elevator that should
4 be able to fit into this that would not
5 encroach three feet three inches.
6 You're just trying -- you're
7 creating a situation where you don't get
8 sandbagged where somebody comes back and
9 says, Well, you got approved for three feet
10 and three inches. But this turned out to be
11 four foot and a half.
12 But I mean, because of the
13 issue we end up dealing with here, I mean,
14 there is a perception, I think, between
15 somebody dealing with three feet and three
16 inches, opposed to trying to say, Well,
17 whatever. It could be up to six feet.
18 I mean, we'll talk and we'll
19 discuss. I'm just saying, I'm not too sure
20 we are going to make a decision based on that
21 kind of latitude.
22 **MR. FISHER:** Understood.
23 **CHAIRMAN COLLINS:** I rather
24 have to end up making a decision saying, You

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1 know what, I mean, this would be my opinion,
2 maybe that's reasonable three feet three
3 inches, but I don't know about six foot.
4 Your feeling is that there is
5 something out there that can work for
6 three feet three inches.
7 **MR. FISHER:** Yes. We base this
8 off of a Delaware Elevator specific hydraulic
9 elevator that would meet the code, meet
10 everything.
11 I think the only thing in our
12 mind that does change, for instance, next
13 year the code for the elevator may say,
14 Instead of 43, we need 54. And I didn't want
15 to be in a position to tell our developer,
16 Hey, we got to go back through this process
17 because of change.
18 But right now today, having
19 this conversation, this is a specific
20 elevator that will work within the three foot
21 three. Yes.
22 **CHAIRMAN COLLINS:** Okay. Now,
23 I don't want to jump too far ahead, Tim, Mr.
24 Willard. Just tell me if I get ahead of you,

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1 you just say and I'll come back.
2 Is part of your area, when that
3 comes up through the roof, is part of what
4 you deal with the enclosure of that piece of
5 equipment, if that's what we're going to call
6 it? Is that part of your area as to how
7 that's going to be -- are we going to be able
8 to see what that is or how it looks like?
9 **MR. FISHER:** If you'll put up
10 one of the renderings.
11 These are technical drawings.
12 These are perfectly flat. There's no
13 eye-level perspective. I think the idea or
14 the intent of certain zoning parameters is,
15 what is it that I'm looking at.
16 You have certainly seen
17 buildings that have been designed where you
18 can, without even knowing, you know that's an
19 elevator tower.
20 So in the overall design of
21 this, we knew this was going to be a very
22 sensitive topic. So we planned that elevator
23 to be placed in an area that we, as the
24 designer, thought was the least impactful to

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1 its presence and something that would make it
2 so that you had to be here today for me to
3 point out to you where the elevator shaft is.
4 So to answer that question,
5 without pointing to it, we show it, this is
6 the view looking west. So if I'm at the
7 beach looking west on this street, the
8 overrun, the highest overrun is right here.
9 If you want to show the other
10 one. It shows the street. This is on
11 Coastal Highway. Again, because of my arrow,
12 you can point it out. That little bit is the
13 first extent that you would be able to see
14 that shaft. And we attempted to decorate it
15 and to put façade treatments around it so it
16 would look cohesive with the entire building
17 design.
18 **CHAIRMAN COLLINS:** So just
19 using the three foot three inches as a base,
20 so now we've got something to look at as far
21 as the height. What's enclosing it? What is
22 the size of what you're putting around the
23 unit that comes up?
24 **MR. WILLARD:** It is nine by

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1 seven. It required two elevators.
2 Is that right?
3 **MR. FISHER:** This would be the
4 17. And then the nine is north to south.
5 **CHAIRMAN COLLINS:** So the nine
6 is north and south?
7 **MR. FISHER:** Yes.
8 **CHAIRMAN COLLINS:** And the 17
9 is, obviously, east to west?
10 **MR. FISHER:** Yes. East to
11 west.
12 **CHAIRMAN COLLINS:** And just so,
13 well, not only for myself, but the folks that
14 are sitting out here, do you know
15 approximately what the total square footage
16 is of that entire structure across the top?
17 Is it 8,000 square feet? Is it 10,000 square
18 feet?
19 **MR. WILLARD:** I asked that
20 moments ago at the table there. It should be
21 about one half of 39,000.
22 Does that sound --
23 **MR. FISHER:** Yes.
24 **MR. WILLARD:** One half of

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1 39,000, the building footprint which is --
2 **CHAIRMAN COLLINS:** There is
3 about 18,000 -- would you say 18,000 or
4 19,000?
5 **MR. WILLARD:** The footprint is
6 a little north of 17,000.
7 If your next question is what
8 percentage is the footprint of the elevator,
9 I got to get my --
10 **CHAIRMAN COLLINS:** Get somebody
11 to do the math.
12 **MR. FISHER:** It is not a lot.
13 **CHAIRMAN COLLINS:** It is really
14 --
15 **MR. FISHER:** 0.1 percent. Less
16 than one percent.
17 **CHAIRMAN COLLINS:** Less than
18 one percent.
19 **MR. FISHER:** You have a nine by
20 17 elevator. Call it roughly 170 square feet
21 of a 17,000 square foot footprint.
22 **CHAIRMAN COLLINS:** Okay. All
23 right. Keep going.
24 **MR. WILLARD:** Any other

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1 questions for Mr. Fisher?
2 **CHAIRMAN COLLINS:** Well, while
3 we've got him up there, let me see.
4 Well, the enclosure that you
5 have around it, is that included in the
6 drawing? I mean, the way that's positioned,
7 can you actually see that in the drawing the
8 way that's enclosed? Just explain what kind
9 of enclosure you put around it.
10 **MR. FISHER:** Go back to that
11 last view.
12 So we used a lot of the
13 materials and some vinyl siding and different
14 treatments like that, some faux wood type of
15 features, decorative brackets of a low
16 maintenance material. That is what we were
17 going to utilize.
18 So without being here today and
19 having this explanation, if you looked at
20 that, it would be very similar treatment to
21 this entry tower meeting room that would be
22 over there.
23 **CHAIRMAN COLLINS:** So the idea
24 is, it's going to blend right in with what

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1 the whole unit looks like?
2 **MR. FISHER:** Exactly. Exactly.
3 **MR. WILLARD:** Thank you, Keith.
4 **CHAIRMAN COLLINS:** Just a
5 second.
6 **MR. FISHER:** Spiro won't make
7 me leave. You've got me all day.
8 **CHAIRMAN COLLINS:** Okay. Well,
9 I guess, an appropriate question to ask now,
10 which, again, I have seen, and I believe I
11 saw this in a couple of the letters that were
12 in opposition. And, of course, it came up in
13 the previous hearing. In fact, I know I saw
14 this question, and I'm sure it will come up
15 from the audience.
16 Is there any other alternative
17 to putting this elevator to accomplish what
18 they need to do to get people to the second
19 and third floor of this building without
20 going through the roof and encroaching in
21 that area?
22 **MR. FISHER:** We created an
23 option a while back. And we thought we had
24 solved the problem. And what, basically, we

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1 found out was, the brand, as explained to
2 you, felt that our solution didn't meet their
3 standard.
4 And, essentially, what it was,
5 we created, when you got off the elevator,
6 you were at a slightly lower elevation than
7 the floor you were on. So, in fact, you got
8 off the elevator and had to take a ramp to
9 your floor. And so, it meets the intent of
10 the Code. All of those wonderful things.
11 But I'll go with a greater understanding that
12 sometimes the intent of the Code doesn't mean
13 that it is a commonsense approach.
14 So the idea then, are we
15 creating, or are we over thinking, or going
16 beyond something that would cause a problem?
17 The corridor that that elevator
18 shaft is on is on a main egress corridor. So
19 if you can imagine, you just come to this
20 hotel. You've never been in this building
21 before. You're with your family. You're
22 with your mom, your dad, whoever you are
23 with, there is an event. The lights go out.
24 The building has a fire. You need to get

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1 out. You're running down the hallway. You
2 have a level of expectation that there's not
3 going to be a dramatic change in the floor
4 that you're getting to and racing on.
5 The Code speaks to creating
6 environments in which you do not have to have
7 special knowledge or information to be able
8 to get out of a house.
9 When you exit a door, you
10 should be able to walk up and push the door
11 and not hit some special code or jiggle the
12 lock or twist your arm.
13 So we did do it. And we
14 respect everybody's time and looked at it
15 very, very, very hard and tried to find other
16 ways.
17 We could have very easily
18 positioned this elevator in another portion
19 of the -- if you're talking about positions
20 -- the elevator height is now -- we could
21 have placed that elevator in other parts of
22 this design that would have benefitted the
23 developer in terms of larger rooms, extra
24 space, different things from the amenities,

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1 different perspective.
2 But it was very apparent
3 because of this issue, we wanted to place it
4 in an area that was going to be beneficial to
5 everybody that surrounded it. That meant a
6 lot to Spiro.
7 **CHAIRMAN COLLINS:** Essentially,
8 this is the explanation that was included in
9 the packet?
10 **MR. FISHER:** Yes, sir.
11 **CHAIRMAN COLLINS:** Lastly, I
12 don't know if it is lastly. Does this
13 elevator come all the way down to the parking
14 lot so you can access this --
15 **MR. FISHER:** Yes.
16 **CHAIRMAN COLLINS:** So somebody
17 gets out of their car and puts their luggage
18 in, whatever, and starts from the bottom?
19 **MR. FISHER:** That's correct.
20 They'll park their car over here. They'll
21 come into the main entrance of the lobby.
22 They'll check in. You'll walk to the
23 elevator and get to your hotel room. The
24 Code requires that.

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1 **CHAIRMAN COLLINS:** Did any of
2 you guys have any questions for him? We can
3 call him back.
4 **MR. WILLARD:** Mr. Chairman.
5 Explain to me, as a lay person,
6 if you tried to do the alternative he's
7 describing, the elevator on the first floor
8 might be level. But as you keep going to
9 proceeding floors, the pitch of the ramp has
10 to be steeper to keep it lower.
11 So on the first -- if you go to
12 the second floor, if I'm on the elevator,
13 once you leave the elevator, there would be a
14 pitch like this to get up like that. And
15 then on the second floor, it would be steeper
16 just to accommodate for that loss.
17 And what would be the pitch on
18 the top floor?
19 **MR. FISHER:** So every time you
20 build a ramp, the Americans with Disabilities
21 Act comes into play. For one inch, basically
22 -- 18-inch ramp -- an 18-inch difference in
23 height would be an 18-foot ramp.
24 On the first level above the

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1 grade, we were at an eight-inch differential.
2 That was an eight-foot long ramp.
3 The next level, we were at an
4 18-inch differential. So that became an
5 18-foot ramp. So that takes up a lot of
6 space.
7 **CHAIRMAN COLLINS:** Okay.
8 **MR. WILLARD:** Can we excuse him
9 for now?
10 And some of what you got into
11 was a little ahead of the game and more about
12 the elements of our variance, which is
13 exceptional practical difficulty. And I
14 called him up initially to describe what was
15 above the 32 feet housed in the elevator
16 shaft, if you would, to address the issue of
17 the statute. And if I can comment on that
18 now.
19 This is the quote/unquote
20 appeal issue. We indicated -- because the
21 HVACs weren't required for the height --
22 32 feet. And they're actually built,
23 according to spec now, they would have to be
24 higher than the elevator shaft itself, which

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1 is telling as far as the impact this would
2 have.
3 But your height variance says
4 that a building can't be more than 32 feet.
5 So the question in our minds is, is this a
6 building?
7 If you read the definition of
8 building, it says, A structure having a roof
9 supported by columns, posts or walls, which
10 is utilized for shelter, support or enclosure
11 of persons, animals or chattels.
12 Your attorney, Mr. Hutt, can
13 probably talk to you about statutory
14 interpretation. If things aren't defined,
15 you give them their plain meaning.
16 And it's our interpretation, I
17 don't think it is that outrageous, that an
18 elevator is not a shelter for purposes of
19 housing.
20 Like HVAC, the definition of
21 mechanical equipment seems more appropriate
22 for the structure that houses the equipment
23 to run the elevator.
24 You don't have a definition of

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1 elevator shaft. So then you go to the
2 definition of mechanical equipment. And it
3 is any equipment including, but not limited,
4 and they don't list elevator equipment or
5 elevator shaft equipment.
6 But in legislative drafting or
7 statutory interpretation, including, but not
8 limited gives you all the -- not only gives
9 you all -- but it sort of invites you to say,
10 Well, that machinery that Keith described in
11 that housing, is that a mechanical equipment?
12 We think it is.
13 So that's why we approached the
14 Town, I think it was Mary originally, and
15 offered that as maybe we don't need this for
16 this particular purpose.
17 And when they said, No, we
18 think you do. We said, We'll apply for a
19 variance and let's ask the Board to consider
20 that.
21 And I think Mr. Hutt and I
22 talked about this being kind of a threshold
23 issue. So we have to deal with that first.
24 **MR. HUTT:** That is correct.

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1 Interpretation of the Code would inform
2 whether or not a variance is required.
3 **CHAIRMAN COLLINS:** Just so we
4 are all on the same page, what we want to
5 deal with right now is the issue of the
6 appeal.
7 We want to make a decision on
8 the appeal that the Building Inspector and
9 Building Committee made and have a
10 discussion, if necessary, among us and vote
11 on that issue.
12 Does everybody understand that?
13 I mean, basically, this is a two-fold thing
14 where we are dealing with the appeal now. We
15 need an answer, a vote. And so we'll deal
16 with that.
17 **MR. HUTT:** I think it may be
18 helpful for the Board to hear from the
19 Building Official as to what the
20 interpretation of building mechanical
21 equipment was to compare to what you just
22 heard Mr. Willard and his witness say.
23 **MS. SCHUCHMAN:** Based on our
24 definition of a primary structure, it says,

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1 That which is built or constructed, an
2 edifice or building of any kind or any piece
3 of work artificially built up or composed of
4 parts joined together in some manner. The
5 term structure shall be construed as if
6 followed by words or part thereof. We
7 thought that the shaft was a part thereof of
8 the building.
9 **CHAIRMAN COLLINS:** Okay. Does
10 anybody have any questions for Pat?
11 Well, just one simple question.
12 Obviously, that interpretation and that
13 definition is one that the Town has relied on
14 for multiple issues over the years. I mean,
15 that really is what you rely on to determine
16 the height of a building?
17 **MS. SCHUCHMAN:** We do.
18 However, these were amendments made in
19 February of 2018. The definition of a
20 primary building, the definition of a primary
21 structure were amended in February of 2018.
22 Hold on. Yes. Those two were amended in
23 January of 2018, excuse me, February of 2018.
24 They appear on Exhibit No. 21 in your books.

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1 And mechanical equipment was
2 added -- no. Excuse me. Pardon me. Primary
3 building, primary structure were added in
4 February of 2018. Mechanical equipment was
5 added in June of 2017. That is Exhibit No.
6 20.
7 **CHAIRMAN COLLINS:** Okay. Does
8 anyone have any questions for Pat?
9 **MR. HUTT:** I have a question.
10 From the Town -- from the
11 Building Official and the Committee's
12 perspective, what differentiated the
13 mechanical equipment from the primary
14 structure? I understand you're saying it was
15 a part thereof, part of the building. What
16 was the difference between that?
17 **MS. SCHUCHMAN:** Mechanical
18 equipment can be added at a later date. It
19 can be removed. A structure or part thereof
20 is never going to be removed.
21 **CHAIRMAN COLLINS:** Well, let me
22 ask a question. And I think Mr. Willard
23 mentioned this. He mentioned the Town
24 Attorney, Mary.

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1 There was an issue -- part of
2 what they're asking as far as not accepting
3 your decision is -- there was an issue
4 between the mechanical equipment that was put
5 on the building, that was submitted, and the
6 shaft for the elevator.
7 The Town Attorney -- what
8 advice did you get to make the decision to
9 okay the mechanical equipment apart from the
10 --
11 **MS. SCHRIDER-FOX:** I'll have to
12 object to that. That's asking for
13 attorney/client privilege information.
14 But if you're asking for a
15 greater explanation about the legal analysis,
16 I'm happy to offer that.
17 **CHAIRMAN COLLINS:** Mary, can
18 you repeat what you said?
19 **MS. SCHRIDER-FOX:** I'm
20 objecting to any question that delves into
21 any attorney/client privilege between The
22 Town Solicitor and Town Officials when we
23 conferred about this matter.
24 So to the extent that you're

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1 seeking details about the advice and exchange
2 of information we had, I object to that.
3 However, if I can fill in some
4 of the blanks about some of the legal
5 analysis, I'm happy to offer that in support
6 of the Town's position in this matter.
7 **CHAIRMAN COLLINS:** Okay. Well,
8 I think you might have answered at least what
9 my question was. Because had she answered
10 that, which you are indicating that she
11 should not, or that it is attorney/client, my
12 next question would have been, Well, did they
13 get legal advice, meaning the Town Attorney
14 and the Building Committee, did they get
15 legal advice on the elevator shaft?
16 **MS. SCHRIDER-FOX:** Yes. And
17 Pat and I did confer about it. And the
18 Town's conclusion -- and I'm happy to explain
19 her analysis a little bit here. And that is,
20 the difference between the mechanical
21 equipment associated with the elevator and
22 other types of mechanical equipment is that
23 as such are deferred by your Town Code that
24 Mr. Willard read out a few minutes ago. It

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1 is part of the exterior of the building. And
2 certainly the elevator shaft, like a
3 stairwell, is part of the interior of the
4 building of the structure.
5 So although we agree that the
6 elevator shaft standing alone doesn't qualify
7 as a building as that is defined, it is
8 certainly a component part of the building.
9 So that was part of the
10 analysis that -- part of the discussion we
11 engaged in. That was the conclusion that we
12 came to about the elevator and why it is
13 different from mechanical equipment as such
14 as defined in your Code.
15 **CHAIRMAN COLLINS:** So again
16 that we're all on the same page, and not only
17 myself, but the audience understands, the
18 decisions that were made in the denial of the
19 shaft and the decision that was made in the
20 acceptance of the mechanical equipment up
21 there was with input and communications with
22 you, the Town's lawyer.
23 **MS. SCHRIDER-FOX:** Certainly.
24 **CHAIRMAN COLLINS:** Okay.

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1 is our understanding the mechanical equipment
2 that is necessary for the elevator is part of
3 and included within the shaft of the
4 elevator. It's not something that can be
5 removed and taken away from the shaft of this
6 elevator. And it's a component part of that
7 elevator structure that is part of the
8 building.
9 So the Town's analysis was, in
10 conclusion based on the definition, was that
11 the elevator is a part of the building as is
12 the mechanical equipment is a part of that
13 elevator shaft. You can't just lift up those
14 mechanical equipment at the top of the
15 elevator based on the testimony we heard and
16 move it to a different portion of the
17 building or relocate it someplace else.
18 And that certainly the elevator
19 is within the building envelope. The
20 envelope of the building, meaning it is part
21 of what separates the interior and exterior
22 of the building. So the outside of the
23 elevator shaft that goes up and down the
24 entire structure, the entire building, that

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1 That's all I have.
2 Anybody else?
3 **MR. LAMBERTSON:** No.
4 **CHAIRMAN COLLINS:** Can I
5 comment and suggest that we have a motion?
6 **MR. HUTT:** I think the Town's
7 position was put on the floor. I don't know
8 if Mr. Willard wants to address the argument
9 that we just heard from the Town's Solicitor.
10 **AUDIENCE MEMBER:** Can you speak
11 up, please?
12 **CHAIRMAN COLLINS:** Do you want
13 to comment on anything that was just said
14 there?
15 **MR. WILLARD:** Very briefly.
16 I think the Town and the
17 Solicitor articulated their positions pretty
18 well.
19 Our position is different. We
20 think it is mechanical equipment.
21 And I think, and a lot of times
22 in the evolution of Towns and Codes,
23 sometimes you have to address this stuff by
24 ordinances. I think it calls for maybe an

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1 ordinance to address it more specifically.
2 But when it is not addressed specifically,
3 you have to look for the language you have
4 there. And the language is pretty broad.
5 And that is our position. And
6 we could have just appealed it right away.
7 Again, I'm just saying that. We understand
8 the difference of opinion. But we think the
9 statutory language is pretty clear.
10 **CHAIRMAN COLLINS:** All right.
11 As Chairman, what I would like
12 to say, before we get a motion and a vote, as
13 Chairman what I would like to say, or express
14 my thoughts are, is that the greater issue is
15 the request for the variance, which is going
16 to be another whole set of elements here.
17 My suggestion, or my thoughts
18 are, that we approve the position that the
19 Town took. I think we should approve what
20 the Building Inspector did with the help --
21 well, not with the help -- but with the
22 guidance of the Town attorney and the
23 guidance of the Building Committee. They
24 made a decision. That decision is based on

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1 to vote first this time, Linda? We'll go
2 from one end to the other.
3 **MS. BUNTING:** I vote in favor
4 of the motion just made.
5 **CHAIRMAN COLLINS:** Marlene.
6 **MS. QUINN:** I vote yes.
7 **CHAIRMAN COLLINS:** I vote yes.
8 **MR. LAMBERTSON:** I vote yes.
9 **CHAIRMAN COLLINS:** Now, being
10 there was an appeal, David, do we have to
11 explain our reasons for this? It's an appeal
12 as opposed to --
13 **MR. HUTT:** It is always good to
14 articulate what the Board found. You
15 expressed your opinion as to what you thought
16 the proper interpretation of the Code was.
17 It would be good to have other Board Members
18 say how they reached the conclusion that they
19 reached about that.
20 **CHAIRMAN COLLINS:** The same
21 thing is to express why --
22 **MS. BUNTING:** To support the
23 Building Inspector.
24 **CHAIRMAN COLLINS:** In case

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1 their interpretation of the ordinance, which,
2 as Mr. Willard just indicated, is subject to
3 interpretation. But it can be viewed from a
4 couple of different perspectives.
5 So my thought is, we stand by
6 the Building Inspector, the Building
7 Committee, the Town attorney. Vote on that
8 issue. Get it off of our plate and move onto
9 the variance.
10 So that is my thoughts as
11 Chairman. If somebody wants to express a
12 thought before a motion is made, that is
13 fine. Otherwise, I'll entertain a motion and
14 go from there.
15 Do you want to make a motion?
16 **MS. QUINN:** I would like to
17 make a motion that we uphold the decision
18 that was made by the Building Official and
19 the Building Committee Members.
20 **CHAIRMAN COLLINS:** Is there a
21 second?
22 **MR. LAMBERTSON:** I second that.
23 Yes.
24 **CHAIRMAN COLLINS:** Do you want

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1 someone did not hear the Board, there was a
2 motion. It was seconded. The Board did
3 unanimously support the Building Inspector
4 and the decision of the Building Inspector
5 and the Committee Building and the Town
6 attorney, that decision.
7 But we will now have the Board
8 Members explain. I've already explained why
9 I voted the way I did.
10 **MR. HUTT:** If I can interrupt
11 just one moment.
12 Several of the comments have
13 said that it was the decision of the Town
14 Solicitor.
15 **AUDIENCE MEMBER:** Please use
16 the mic.
17 **MR. HUTT:** Several of the
18 comments have been that the Board is
19 supporting the decision of the Town
20 Solicitor. And the Town Solicitor, meaning
21 no disrespect to Ms. Schrider-Fox, she has no
22 decision-making authority. She advises the
23 Mayor and Council and the Building Official
24 about what she thinks the Code should be.

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1 But I think it's a bit of a
2 misnomer to say that you're supporting the
3 decision of the Town Solicitor. You're
4 supporting the decision of the Building
5 Official and your municipality, the Building
6 Committee.
7 **CHAIRMAN COLLINS:** And denying
8 the appeal.
9 **MR. HUTT:** You're denying the
10 appeal of the Building Committee's decision
11 regarding whether or not an elevator shaft
12 qualifies as a piece of mechanical equipment.
13 That is the decision that the Board is
14 making, and that was the motion.
15 The only reason why I stopped
16 you is because I started to hear another
17 reference to supporting the decision of the
18 Town attorney. Again, I think you are
19 supporting the decision of the Building
20 Committee on this matter, who is probably
21 informed, as we just heard and she confirmed,
22 she helped them reach that decision. But it
23 is not her decision that people are
24 supporting. She did not have a vote.

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1 **CHAIRMAN COLLINS:** I'll clarify
2 my comment. The decision we are making to
3 deny the appeal and to confirm the decision
4 of the Building Inspector is not based on any
5 participation of the Town attorney. That
6 decision is a denial of the appeal and is, in
7 essence, supporting the Building Inspector
8 Building Committee.
9 We've all voted to do that.
10 **MS. BUNTING:** I support the
11 decision of the Building Committee because I
12 feel they followed the guidelines that they
13 had and the ones that they ordinarily use.
14 **MS. QUINN:** I also agree based
15 on the definition, and the different
16 definitions, I accept the definition given by
17 our Building Official.
18 **MR. LAMBERTSON:** I accept the
19 definition of our Building Committee and
20 Official based on the definition of a
21 building versus mechanical.
22 **CHAIRMAN COLLINS:** So now, Mr.
23 Willard, we will move onto the variance part
24 of your presentation.

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1 **CHAIRMAN COLLINS:** Essentially,
2 we are removing any reference to the Town
3 attorney.
4 We're simply saying, Mr.
5 Willard made an appeal to the Board to
6 overturn the Building Inspector's decision.
7 We're denying that appeal.
8 **MR. HUTT:** Correct. The motion
9 was made to deny that appeal and agree with
10 the Building Committee's decision. And
11 again, the Board is clarifying that it is
12 voting to support the decision of the
13 Building Committee regarding the height of
14 the elevator shaft, not qualifying as a piece
15 of mechanical equipment, but instead part of
16 a structure. And, therefore, if it is going
17 to exceed the 32-foot height requirement, it
18 would require a variance.
19 And, hopefully, the Board
20 Members can confirm that was their
21 understanding and they were not basing it off
22 of being in support of the Town Solicitor's
23 decision because she did not technically have
24 a decision.

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1 **MR. WILLARD:** Thank you for
2 taking the time to consider that and also
3 allowing us to then do the variance on the
4 heels of this as well. We appreciate it.
5 You, actually, as far as my
6 presentation, got more than I accepted in
7 that first portion from Mr. Fisher and Spiro.
8 They'll be available for comments, if you
9 would like. You're going to see a few more
10 slides.
11 But now, I would like to go
12 through the elements of a variance, which you
13 probably have been briefed on or know about
14 as a Board of Adjustment.
15 Your Code tracks Title 22,
16 Section 3327(3), in other words, it's the
17 Municipal Code and the Delaware Code, which
18 is the Board of Adjustment section, which
19 says, This is what you can do if you
20 establish a Board of Adjustment.
21 And there are certain elements
22 of a variance. And the big picture -- it's
23 kind of a balancing act. Your attorney will
24 give you more specific elements, and I'll go

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1 through them.
2 Your Town gives out a pretty
3 good handout to the applicants listing what
4 they are. It's probably in more detail than
5 I've seen in most states. But there are five
6 pretty major elements. I'm going to list
7 them as they are sort of presented and as it
8 applies to the facts of this case.
9 I think you have the facts of
10 this case. You have the size of the
11 elevator. You have the design, that Meaghan
12 will show you up there, of it. You've
13 already heard about why they want to do it.
14 Why they put it where they put it for minimal
15 impact. Why they have to do it that way.
16 Keith talked about that. And how an
17 alternative doesn't make a lot of sense for
18 safety and other reasons involving the
19 design.
20 And relative to the impact on
21 neighboring properties, that is this bump
22 that's sort of on top of the building is
23 relatively small compared to this whole
24 building. It seems to match your variance

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1 that product requires, I wouldn't even say it
2 is an amenity, but it is a necessity to have
3 an elevator that is functioning for the
4 safety and all of the reasons you need to get
5 upstairs and do it in a safe way that makes
6 sense.
7 So if they approve the hotel
8 facility, it should enhance property values.
9 It also should stimulate the economy more
10 than it already is in Fenwick Island.
11 So I think that is all in the
12 public interest to do this.
13 There are special conditions or
14 exceptional situations. We all know the
15 history of this hotel and the ordinance that
16 took place to get us here. This isn't a
17 run-of-the-mill property for Fenwick. It
18 could be one of the jewels of Fenwick. It is
19 a larger property expanding over several
20 blocks. It has the capacity to have special
21 zoning.
22 So I think it is exceptional.
23 It's unusual. And, therefore, the variance,
24 that is, to put an elevator shaft on top of

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1 law to be an approval.
2 One of them is not contrary to
3 public interest. What is the public interest
4 of the Town? To have a healthy and safe
5 interest of the Town.
6 You might refer to your Purpose
7 Section of your Code in 161 of the Zoning
8 Code, For the purpose of promoting health,
9 safety, morals -- morals, I don't know what
10 those are -- and the general welfare of
11 inhabitants. That was supposed to be funny.
12 These days, you don't know what they are.
13 Right?
14 But that is common sense. And
15 I think the whole spirit of this project,
16 which is another element, is not contrary to
17 the spirit of the zoning law. It is an
18 improvement.
19 Spiro talked about the
20 nostalgia of the Tingles and the Sands. It
21 is old. And it needs more than just a
22 facelift.
23 But by doing it, he picked out
24 a pretty good product, as you've seen. And

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1 it is something that comes part and parcel of
2 the special use of this, which is to do a
3 three-star hotel. I think it is three star,
4 right, Spiro?
5 **MR. BUAS:** Three or four.
6 **MR. WILLARD:** You'll also see
7 in your statute -- your statute speaks of
8 literal interpretation will result in
9 exceptional practical difficulty.
10 Us lawyers like to toss out
11 words and things like that. But that is how
12 the Delaware case law has approached
13 variances. That is, if you take a literal
14 interpretation, that would be elevator
15 overrun to not go past 32 feet, literal
16 interpretation.
17 Your Board of Adjustment, you,
18 allow some leeway to that, if there is
19 exceptional practical difficulty to not give
20 it a little bit of leeway. And that is what
21 we're asking for. And that is what a
22 variance is.
23 And the exceptional practical
24 difficulty is it was not specifically

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1 addressed in the Code. And Mr. Hutt may talk
2 about Quick Chek. That is the case that
3 everybody goes to where they say you can
4 consider a balancing test. That is the
5 exceptional practical difficulty to the
6 applicant versus how it affects the
7 neighboring properties.
8 In this case, to get this
9 three-star hotel, how they designed it and
10 get the building permit, it is virtually an
11 impossibility. It can't happen. The project
12 will not go forward without having these two
13 elevators located where they are in there.
14 And they tried to mitigate the effects on the
15 neighboring properties.
16 And as you see by some of the
17 renditions, and this is something you all
18 have to decide relative to what it would cost
19 him if the project goes south versus what you
20 see, how it affects neighboring properties,
21 and based on the overall concept of the
22 project, it's going to help neighboring
23 properties if they get the project done.
24 So when you do the balancing

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1 test, I think there is an exceptional
2 practical difficulty. And it sort of dwarfs
3 any negative effect. Here we're just talking
4 about the elevator shaft. Nothing else.
5 That's what we're talking about.
6 What are some of our other
7 elements? Allowing the overrun seriously
8 will affect the neighboring uses. And
9 believe it or not, when you see words like
10 substantial and seriously in the Code, judges
11 say, Is that serious?
12 So to allow that overrun look
13 -- they've designed it to look like
14 everything else. It is lower than the HVAC
15 stuff as well. It's in the back where it's
16 located. And we will submit to you that it's
17 not seriously affecting neighboring
18 properties -- just the elevator shaft we're
19 talking about.
20 Would denying the overrun
21 create exceptional practical difficulty? I
22 talked to you about that. Spiro and I talked
23 about that at length. The project for this
24 hotel wouldn't happen. It is one stumbling

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1 block. They've gone so far as to explore how
2 they can maybe get around it. And it doesn't
3 make sense for safety reasons, for exactly
4 what your Code says should be addressed, it's
5 not practical at all to try to do ramps on
6 either floor just to lower that.
7 The elevator and modest shaft
8 overrun, they use again in the Code and the
9 law, it says, normal improvement. This is
10 not something abnormal. We're not trying to
11 do something fancy or crazy here, to use this
12 feature, the mechanical part of the elevator
13 on the top as a normal way to run elevators.
14 In fact, there are Federal
15 Codes that require certain things like that.
16 So they have to have it. And to lower it, it
17 doesn't make sense.
18 What did Meaghan just show me?
19 There are other shafts around there that you
20 can see. And I will submit to you the ones
21 that we are promoting are a little less
22 intrusive.
23 Minimal dimensions. They're
24 required to have two elevators on a hotel of

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1 this size. Instead of nine by nine, it's
2 nine by seventeen. And they positioned it
3 somewhat so it goes east/west so it is less
4 visible from that way, as opposed to this
5 way, which may not get as much eye traffic,
6 if you would.
7 The harm -- the probable effect
8 on these neighboring properties. No project
9 is planned which is an elevator shaft overrun
10 that is less than HVAC units and likely not
11 visible from the street. That's just a way
12 of me restating a balance test, asking for
13 nine by seventeen, possibly six feet, more
14 likely four feet extension. The roof there
15 looks like all of the other roofs and is less
16 than HVAC. It's not something that's going
17 to have a probable effect on neighboring
18 properties.
19 The difficulty is practical.
20 The inability or awkward and unsafe
21 alternative designs versus theoretical. This
22 is not a maybe or speculation. You can't
23 say, Well, this could be a problem. That is
24 not getting a variance. It is. It is

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1 costly, and the project probably wouldn't
2 happen for this very reason. You can't
3 speculate about that exceptional practical
4 difficulty.
5 The spirit of the Zoning Codes
6 observed by Code, and I spoke already of your
7 Code 160.1, the purpose of your Zoning Code
8 is to promote health, safety, morals and
9 general welfare of the inhabitant.
10 The people that actually come
11 stay here, they are inhabitants of your Town.
12 And I think they want elevators. I think
13 even maybe more importantly, the landowners
14 and people already that live here want a
15 quality hotel. And Spiro already talked how
16 this design needs the elevator shaft like
17 that.
18 Now, I'll let Mr. Hutt handle
19 some of these other things. Quick Chek
20 doesn't necessarily speak to about
21 substantial justice. It's not self-created.
22 Some of these things are clearly outside of
23 Spiro's control. That is, the self-created
24 element is like -- it's not the fact that you

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1 that's why we're asking for a little more.
2 **MR. BUAS:** Can you put up the
3 picture of the elevator shaft, the little
4 snippet that shows the overrun?
5 I'll talk a little bit again
6 about the brand. I want to make it clear.
7 It's three to four stars. That's our
8 mandate. We are not a hard brand hotel, like
9 a Hilton or a Doubletree where they have a
10 huge book that tells them actually everything
11 they're going to check.
12 The hotels have gone to -- a
13 lot of them have gone to more of a
14 review-type status of your guest imaging and
15 your guest experience.
16 There is no way I can maintain
17 that kind of rating if you have to go down
18 the hall and take a ramp with your luggage
19 cart down eight feet, and then get the
20 elevator and not expect that the ramp is
21 going to hit an overhang that looks over the
22 lobby. It makes no sense.
23 And in case of a fire or
24 emergency, which hotels have fire alarms go

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1 need a variance. It's the fact that the
2 conditions you created made you have to get a
3 variance.
4 And what I mean by that is the
5 need for the Code and the hotel's need for
6 elevators for safety reasons, for design
7 reasons is not something that he created or
8 he made up. That's why this whole issue is
9 not self-created.
10 I don't know. Spiro, do you
11 want to come wrap this up? Those are the
12 elements I tried to address of a variance.
13 And I think this meets it. It's minimal.
14 He's not putting in extra elevators because
15 he just wants to. It's really what he has to
16 do at this point. It's buried in the middle
17 of the building. They have specs for the
18 lowest possible. You've heard why we're
19 asking for specs, Mr. Chairman. You had
20 questions about that. I hope that answers
21 your question. We expect it to come in lower
22 than before, that's what we're hoping for,
23 when they actually submitted that to the
24 elevator company. From a practical reason,

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1 off because they are sensitive systems,
2 you're going to run down the hall, take a
3 ramp down, get to the elevator corridor and
4 take a ramp back up to get to the staircase.
5 Nobody would expect that.
6 So if you've ever encountered a
7 ramp that you weren't expecting, you're going
8 to lose your footing. You're going to
9 overshoot it when you're stepping down or
10 stepping up.
11 I can't build this hotel with
12 ramps. I know what's going to happen. In a
13 matter of years, customers are going to voice
14 on that, and then I would end up not being a
15 Hilton anymore and I'll have to turn it into
16 a Days Inn. And as a Days Inn, I can't cut
17 my mortgage because I spent so much money on
18 this property. So that's not an option.
19 I wanted to show, though, what
20 we did. Go to the snippet of the side of the
21 building with the measurements.
22 We have tried hard to listen
23 to, or I have, to what I've heard people
24 talking about.

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1 Our height limit is 32 feet.
2 Our roof actually is less than 32 feet. And
3 we did that so we could add some roof element
4 and put some design features.
5 So our flat roof is at 29 feet
6 nine-and-a-quarter inches. Two full feet
7 short of the 32. If we wanted to use the
8 whole 32 and try to do what the Code allowed
9 us, we would have a flat roof. And we would
10 not have a pretty building in the front.
11 If we did that, and even doing
12 this, nobody can build a 32-foot hotel and
13 have an elevator go to the third floor. It
14 can't be done. You need that 43 inches, was
15 it, plus the foot for the beam. So it's
16 actually 55 inches, plus you need another
17 eight or something for the construction of
18 the roof above it.
19 So the actual overrun comes to
20 close to six feet. Because we drop the roof
21 where the elevator starts down to 29 feet, we
22 gave ourselves a two-foot cushion. So we
23 didn't have to go higher.
24 Show the pictures of the other

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1 elevator probably is going to be closest to
2 her property.
3 One of other concerns that she
4 brought up was, she didn't like the idea of
5 people sitting on their balcony and looking
6 over on her yard. Well, we have roofs that
7 face her yard now.
8 But we have taken all of the
9 guest rooms and shifted them down. So the
10 actual placement of the elevator, the
11 entrance, all of those things on those sides
12 take away those concerns.
13 If we were to flip it and put
14 the building on the other side, which would
15 have made sense to have the pool on the south
16 side because you get more sun, we would have
17 had all of those rooms overlooking.
18 And that's the kind of stuff we
19 were looking at when we said, How are we
20 going to lay this out? We tried to please as
21 much as we could. We're not going to please
22 everyone.
23 Let's see. I'm not sure I have
24 anything else specifically.

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1 hotels.
2 We were trying to avoid having
3 any kind of visual impact that people would
4 go wow -- you know -- looks like that. We're
5 not doing that.
6 We cut 50 to 60 percent off
7 that on these buildings by doing what we did.
8 We dropped that roof down two feet, plus a
9 little bit below the 32. But then we went on
10 the outside and covered it back up to the 32
11 with peaks.
12 So when you're on the roof, you
13 are actually in the two-foot well, and toward
14 the front of the building, it ramps up to
15 your peaks.
16 We have actually caused our
17 guest rooms inside to have a little bit of a
18 slanted ceiling trying to meet as many of the
19 concerns as we've heard.
20 Can you go to the picture of
21 the back -- the rendering of the back of the
22 building.
23 I know that Jackie has been
24 very vocal. I thought she was here. The

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1 I do want to bring up the fact
2 that we did get 87 overwhelming -- 87 letters
3 of support. I got personal phone calls.
4 Numerous calls from people wishing me the
5 best.
6 I did explain to a few of the
7 people that called me, there is no animosity
8 between me and the City. They had to take
9 this route. The Code was the Code. And I
10 can't have something that they think is not
11 allowed.
12 So we had to go this course. I
13 have no problem with that. But I cannot see
14 how anybody can deny this. It just seems to
15 me that this intrusion on the visual -- does
16 that change the building? Do you see the
17 front view? Are they going to see an
18 elevator? Are they going to notice that
19 tower back there? The answer is no.
20 Should I take questions?
21 **CHAIRMAN COLLINS:** I have some
22 questions for you.
23 First of all, I got a little
24 bit confused. And you can probably clarify

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1 this pretty quickly.
2 You say the roof is at 29 feet?
3 **MR. BUAS:** 29 something. The
4 flat roof. See --
5 **CHAIRMAN COLLINS:** I
6 understand. Let's go back.
7 When the gentleman that spoke,
8 your architect, when he says that he has seen
9 a model where the shaft can come up three
10 feet three inches above the roof line, is
11 that three feet three inches above the
12 29 feet?
13 **MR. BUAS:** No. It would be
14 three feet three inches above the 32 feet.
15 Go back to the cut sheet for
16 the elevator.
17 So the elevator needs 43 inches
18 to take it from -- do you have a blowup of
19 this? Thank you. Let me see where I am.
20 Four feet five-and-a-half
21 inches -- let me put the mouse there -- is
22 what the overrun is. But that is not
23 whatever that thing is up top. The
24 mechanical piece -- that square. Thank you.

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1 All right.
2 So where is my four feet?
3 **CHAIRMAN COLLINS:** Where is
4 your 29 feet?
5 **MR. BUAS:** My 29 feet is right
6 here. That's actually the bottom side.
7 That's the ceiling of my guest room or my
8 hallway. 29 feet is here. My 32 feet is
9 here. This roof line could have been here.
10 We saved one foot eight inches. Is that
11 correct? One foot eight inches is what we
12 brought the building down to minimize any
13 effect.
14 But that wasn't the only reason
15 we did this. We also did this so we can have
16 one foot eight inches in the front of the
17 building to put peaks and arches so we don't
18 have a flat roof.
19 In the front -- is it hard for
20 you to get to the front view?
21 **CHAIRMAN COLLINS:** Well, wait,
22 before you go off that, I'm just trying to
23 understand -- click it back a second.
24 Okay. Again, I'm just trying

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1 to understand technically. That 29 feet that
2 you say -- and I understand -- I think it's a
3 positive thing what you're saying about that
4 29 to 32.
5 But the 29 feet, what is
6 between the 29 feet and the 32 feet where the
7 elevator is coming out?
8 **MR. BUAS:** So if you get off --
9 if you go through our trap door and get up on
10 the roof, there is a flat section of roof in
11 the middle of the building that's right here.
12 And that's not 29. It is actually -- I don't
13 know how big this is -- another
14 foot-and-a-half -- a foot. So I know from
15 here to here is one foot eight inches. So
16 whatever the differential is, we've got
17 two feet three inches. I'm not sure.
18 But at any rate, this is my 32
19 foot limit here. We dropped the roof to
20 here. If it was a flat roof and didn't need
21 a shaft, my building would be up here.
22 **CHAIRMAN COLLINS:** I get that
23 part.
24 I'm just trying to distinguish

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1 what is between the 29 feet and the 32?
2 **MR. BUAS:** In the center of the
3 building --
4 **CHAIRMAN COLLINS:** What is
5 between the 29 and the 32?
6 **MR. BUAS:** Go to the front of
7 the building. Go to the front of the
8 building. There's nothing. The elevator
9 shaft above that we need is that 43 inches,
10 plus a foot for the beam. So that's 55
11 inches, plus the roof above that. So it
12 might be 60 inches on, 63 inches.
13 So if I take that 63 inches,
14 instead of starting at 32 feet and start at
15 29 feet, we drop it down. We dropped the
16 whole center of the building down. Same with
17 the mechanical. We're not starting at
18 32 feet.
19 So that allowed us -- that
20 allowed us to -- see, this line right here is
21 the top of the flat roof, the customer's
22 roof. But we wanted to give some design to
23 the building. It's a flat roof. So that
24 allowed us to have these little peaks here.

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1 And in these guest rooms, this
2 roof that comes down here is actually a
3 sloped element. So when you're in your room
4 and you're looking straight toward the
5 sliding glass door, there are two sections
6 coming down in a slope between the sliding
7 glass door. And that's a great street
8 appeal. It would have made more sense not to
9 have the slope in the room -- to balance this
10 out -- I rather have a slope in the room
11 rather than a flat facade. I know it sounds
12 confusing.

13 **CHAIRMAN COLLINS:** And I don't
14 want to beat this to death. We've got a lot
15 of stuff to cover here.

16 When you come to that 29 foot
17 where the roof is, when you come through that
18 where the elevator shaft is, you're actually
19 then going up into what part of the elevator
20 shaft is -- part of that --

21 **MR. BUAS:** Go back to the
22 elevator, please.

23 So this is the elevator shaft,
24 this whole distance. Only three foot three

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1 inches, if we built this. And this is
2 buildable today. So we plan to build this.

3 But all of this goes to the
4 engineers. When it goes out to bid for a
5 contractor, the contractor will send out to
6 two or three elevator companies. This is
7 what Delaware Elevator Company will come back
8 at. They're the most likely people to win
9 these contracts. And they win them all over.

10 But if they have not changed
11 the schematic since the last thing we built,
12 this is what we would build. From the
13 roughly six feet -- no -- four feet eleven
14 inches is what we're allowed for the shaft
15 here, plus the thickness here, actually. So
16 the shaft is really between 29 and 35. So,
17 therefore, the five feet -- this is almost 30
18 -- five feet six inches is what my shaft is
19 right now. But because I dropped down two
20 feet, we have lessened that exposure.

21 **CHAIRMAN COLLINS:** Again, just
22 so we're clear, if you're able to accomplish
23 what the gentleman said, your architect said,
24 based on the way you've designed the roof,

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1 the elevator shaft, the way you designed the
2 roof, the elevator shaft comes through if
3 he's able to achieve this, is only going to
4 come up, encroach three feet three inches?

5 **MR. BUAS:** Yes. Now, the six
6 feet is not going to happen. But the feeling
7 is, the design comes out and because of maybe
8 the Hilton ratings, these elevators have to
9 be certain specs for stretchers, for
10 emergencies. One of our elevators is bigger
11 than the other for that purpose.

12 Say if they want that beam
13 there, if they want the beam there this way,
14 instead of this beam, that 42 inches is
15 required. That's where any of that stuff
16 comes into effect. That 43 inches is clear
17 space. Can't see it on this one. Between
18 the top and the beam, the beam is part of 32
19 inches.

20 **CHAIRMAN COLLINS:** Just a
21 couple of other questions.

22 When I looked at your packet,
23 the electrical equipment that was allowed by
24 the Town that was approved, is that sitting

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1 on the roof?

2 **MR. BUAS:** Do you have that?

3 **CHAIRMAN COLLINS:** That 29 feet
4 -- and that equipment is sitting on there?

5 **MR. BUAS:** It's sitting on
6 29 feet. We have another 18 inches, a foot,
7 20 inches before we hit the 32 feet. The
8 first foot and eight inches of mechanical is
9 actually still within the height limit.

10 **CHAIRMAN COLLINS:** So based on
11 the sketch or the schematic that I saw, the
12 electrical equipment that has been approved
13 that's up there, that's going to be up there,
14 if I read the schematic correctly, when the
15 elevator shaft comes up, if your guy over
16 here can keep that at three foot three inches
17 --

18 **MR. BUAS:** He is.

19 **CHAIRMAN COLLINS:** -- that
20 shaft actually is a little bit below the
21 electrical equipment?

22 **MR. BUAS:** So the top
23 measurement there is the HVAC screen, 37 feet
24 four inches. So 32. That would be five feet

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1 four-and-a-half inches. Again, that's based
2 on LG. That's based on LG. But the
3 contractor wanted DC. The box might be a
4 little bit different size. Actually,
5 Mitsubishi is the one that engineered it.
6 But most of the things that end up in Town
7 end up being LG, so we got the spec from LG.
8 **CHAIRMAN COLLINS:** Spiro -- do
9 you mind if I call you Spiro?
10 **MR. BUAS:** I don't mind at all.
11 **CHAIRMAN COLLINS:** Now, what
12 I'm seeing that you've got up there, I
13 understand about the roof limit and I
14 understand about the height limit.
15 But now I'm looking at -- you
16 know -- I would like to be viewing this as
17 the probability that this can be done at
18 three feet three inches above.
19 When I'm looking up there and
20 I'm seeing elevator overrun 35, three inches.
21 And now I'm seeing that the screen, which I
22 thought what I saw was below the top of the
23 elevator shaft, that the screen is 37 feet --
24 **MR. BUAS:** The screen is never

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1 below. The screen -- the screen HVAC -- the
2 screen is required under your Code. The
3 screen is required on any HVAC system. So
4 the screen is the HVAC that's behind it.
5 **MS. SCHUCHMAN:** Tim, can I
6 repeat what Spiro just said?
7 What Spiro just said is
8 correct. The approval for the mechanicals
9 and the screening was no more than six feet.
10 The mechanical will be hidden. And we
11 required a screening so you could not see it
12 as our ordinance does say for mechanical
13 screening and setback areas.
14 So he's being permitted to
15 encroach above the roof with his HVAC and his
16 screening not to exceed six feet above the 32
17 feet roof maximum. And in actuality, for
18 that screening is 37 four-and-a-quarter
19 inches, which is a less than six feet and
20 HVAC is going to be a little bit less than
21 the screen.
22 The elevator encroachment is
23 35.3. So the elevator is definitely two feet
24 lower than the mechanical screen.

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1 **MR. BUAS:** And the mechanical
2 is pretty much the same overrun and is pretty
3 much the same size as the HVAC. There's very
4 little differential. It is because the
5 elevator we were able to drop down those
6 eight inches, that dropped the shaft down.
7 On the mechanical, they said one foot above
8 the roof because they get little feet to sit
9 on.
10 **CHAIRMAN COLLINS:** A couple of
11 other questions for you.
12 When I read in the packet the
13 letters -- and you characterized it
14 completely and it was in the record -- that
15 there were many letters submitted that wanted
16 the project.
17 But in the letters, one of the
18 things, or a couple things I read, and I
19 would just like to hear you explain this
20 because I'm sure it's going to come up.
21 When you bought the property
22 and you were making your decisions and so
23 forth, which I can certainly recognize were
24 major decisions, what was your view of the

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1 issue that you were going to run into in
2 terms of this whole height thing? I mean,
3 obviously, you knew what the ordinances were
4 and you knew what you were dealing with.
5 I'm asking you, I'm not
6 challenging you, I'm just asking you because
7 I know it's going to come up.
8 **MR. BUAS:** Yes. I'm not sure I
9 can answer you.
10 I do a lot of stuff. And once
11 they're done, they're done. I'm not quite
12 sure what my thought process was then.
13 I knew it was an older hotel.
14 I knew it needed work. Right away, I had
15 questions from people. Are you going to
16 rebuild it and tear this piece of junk down?
17 I'm like, I would love to one day. And one
18 day, I got enough people asking, Well, let's
19 look at this a lot quicker than one day. And
20 then we ran into this zoning.
21 So it seemed logical to me
22 without thinking, Hey, I got neighbors that
23 are just as many rooms here -- a lot more
24 rooms than mine. I didn't imagine that it

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1 was only zoned for whatever it was zoned for
2 back then.
3 The height -- from the
4 beginning -- as I met people -- we have a
5 real strict height requirement here. Well,
6 every town has a height rule. But the height
7 rules are defined differently. They're the
8 highest liveable space -- the highest
9 liveable space.
10 For example, 50 feet, ceiling
11 level 50 feet in certain zones. Well,
12 another zone could be 35 feet, half up a
13 gable roof to encourage gable roofs, instead
14 of flat roofs.
15 So you can build your building.
16 You know where the top floor is going to be.
17 And then this question about an elevator
18 shaft doesn't come up because it's not a
19 deadline. It's a deadline to habitable
20 space.
21 And this is the elevator shaft
22 that I want to build. We did not lower the
23 building off that 32 by that 48 inches for
24 the elevator only. We did it to get space in

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1 the front. It helped the elevator.
2 Can you go to the picture of
3 the other properties?
4 And we took the impact by doing
5 that away from that. Those properties -- my
6 guess is -- look at this picture of that
7 door. Those properties have a staircase
8 going all the way up to the elevator tower,
9 which would be beneficial because when you're
10 working on the mechanical elevator, you can
11 take a staircase up. They have hydraulic
12 equipment up there. And then they have their
13 overrun.
14 We took a lot of pain and time
15 and design and went through a lot of work to
16 get this, not only the elevator below, but
17 also the whole front of the building not to
18 look like that. That would be easier to
19 build.
20 **CHAIRMAN COLLINS:** So,
21 basically, you viewed it as a project that
22 you could build because the 32 foot limit,
23 the 30 became 32. You looked at it in terms
24 of that building being able to get built and

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1 so forth. And the whole thing about the
2 mechanical equipment and the elevator shaft,
3 these were pieces that were out there that
4 were undefined that you were willing to take
5 on and try to resolve --
6 **MR. BUAS:** I didn't even think
7 about it. I didn't think a shaft would be
8 part of --
9 **CHAIRMAN COLLINS:** You thought
10 more in terms of how high can I get the --
11 **MR. BUAS:** A 32 foot building,
12 which is three stories.
13 **CHAIRMAN COLLINS:** One other
14 thing out of interest that I would like for
15 you to clarify.
16 I certainly respect and
17 appreciate the fact that you talked about
18 listening to the people. And you mentioned
19 Jackie, particularly, which I think is the
20 gal that has the cottage alongside. And you
21 talked about how -- you know -- you did that.
22 In fact, I noticed that when I looked at the
23 things. I thought, Well, maybe that would
24 help her situation out some.

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1 But when you said you moved --
2 shifted the rooms down to the other end,
3 don't those rooms --
4 **MR. BUAS:** Put the front of the
5 building up.
6 My initial thought would be to
7 have the pool above the lobby.
8 **CHAIRMAN COLLINS:** I get that.
9 Didn't you shift the rooms down
10 on the other end?
11 **MR. BUAS:** Well, no. It caused
12 everything to be double-sided. That's where
13 this tier came in. The whole back would have
14 been rooms. The whole front would have been
15 rooms. And this area here would have had --
16 or this area here would have had a lobby and
17 a pool above. For a pool, you need your five
18 or six feet of depth.
19 **CHAIRMAN COLLINS:** I get that.
20 Just go to the back of the building.
21 **MR. BUAS:** Okay.
22 **CHAIRMAN COLLINS:** Go to the
23 back of the building. That's the picture.
24 Use that one.

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1 I'm not trying to make this
2 difficult. I'm just trying to understand.
3 But you were the one that said it. You said
4 that you tried to help a property owner out
5 and so forth. I get that.
6 But aren't the rooms down on
7 the other end looking over the property
8 owner --
9 **MR. BUAS:** I understand where
10 you're coming from now.
11 The original design had me
12 doing a pool above the lobby. And when that
13 didn't quite work, we got to this. And this
14 is where we were, which left rooms on that
15 side. At first, we had rooms going all
16 across the back. Actually, had rooms come up
17 this side, also, and on the other side.
18 When we realized we had to go
19 with this process, it would have made more
20 sense to flip it than have -- from the front
21 side or the back side -- have all of that
22 down on this end and this up here. When you
23 are on the pool deck, you want that sun as
24 long as you can get it. It would make more

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1 sense. This, I thought, worked better with
2 the neighbors.
3 Even down on this end, we've
4 taken the last 35 -- no -- the hallway is 40
5 feet and turned the rooms facing the street.
6 Now, we did it so they can get a view. But
7 they're not facing over the neighbor.
8 **CHAIRMAN COLLINS:** Well, that
9 answers the question.
10 The ones on that end face the
11 street?
12 **MR. BUAS:** The ones on the far
13 end face the street. Here is that view here.
14 So this is the street. And we've got these
15 rooms facing over the street. We've got
16 33-foot deep rooms, plus another six-foot
17 hallway. So, roughly, 40 feet before rooms
18 start.
19 **CHAIRMAN COLLINS:** I get it.
20 Is there any Board Member,
21 other Board Member that has any question?
22 **MS. QUINN:** I'm curious.
23 What kind of a timeline are you
24 looking at?

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1 **MR. BUAS:** I wish I knew.
2 **MS. QUINN:** I know when you
3 purchased it and what was said.
4 **MR. BUAS:** Yes. When I
5 purchased it, we did. The Holiday Express
6 was a \$35,000 application fee. That check
7 sat on my desk for two months. I just could
8 not, or did not think it was the right fit.
9 Even though from my pocketbook, the Holiday
10 was the right thing. It brought money in.
11 And it would have been easier to build. But
12 I didn't think it was the right fit for the
13 Town. And on the Holiday Inn side, the
14 customers might be unhappy wanting to get a
15 Holiday Inn Express and the rate aspect of
16 it.
17 My wife worked pretty hard with
18 me on this doing brand after brand after
19 brand. None of them worked.
20 Then this came up. So that is
21 why it has taken so long to get to this
22 point.
23 Now we've got a time crunch.
24 We've got to get past this today. We've got

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1 to get bids out. I got to be under
2 construction -- I got to do something by
3 November. Because I don't have the stomach
4 -- it takes 14 months -- I don't have the
5 stomach to be -- you know -- May of 2021, are
6 we going to be open yet? Or are we going to
7 be like the Hyatt down the street that hasn't
8 opened yet and lost the whole summer.
9 It's an expensive project. I
10 can't lose two summers.
11 So I expect to start something
12 this fall. My timeline is moving a little
13 bit. I want to be opened January of 2020.
14 I'm comfortable with February. I know it's
15 going to be pushed to March. I don't want
16 any of my builders to tell me after March.
17 I'll give them a month pushing. May 1st is
18 fine. I know what's going happen. It is
19 going to rain and it's going to snow. And
20 they are going to tell me, Sorry, July 15th.
21 I can't do that.
22 So the timeline is, demo
23 between now and the first of the year. Pile
24 driving either December, I would love, or

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1 January.
2 But I was just talking to one
3 of the possible general contractors here that
4 said that he has been negotiating with
5 another building for -- what did you say --
6 Daniel, two or three months. Are you still
7 in here? He left us. Two to three months by
8 the time you get the bids back. And now it
9 is not happening until October 15th.
10 So that's why I want to start
11 the demo ahead of time, depending on what my
12 comfort level is.
13 **CHAIRMAN COLLINS:** Okay. Thank
14 you.
15 Okay. We're going to open this
16 up to the public. But just a few quick
17 comments.
18 First of all, if you could
19 really make an effort to address the issue.
20 We, hopefully, have opened up the door to
21 some of the questions you had.
22 We're going to try to limit
23 this part of it to no more than half an hour.
24 We're not going to get involved in trying to

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1 So this isn't a discussion
2 about anything other than that. Everything
3 else about this project has been approved.
4 It's gone in front of the Town Council and
5 all of the things that had to be done to get
6 it to where it is.
7 So we're really dealing with a
8 request to bring an elevator shaft through
9 the roof and encroaching up into what -- and
10 we may have to look at this at the end when
11 we vote -- but, hopefully, what is not going
12 to encroach more than three feet and three
13 inches into, basically, the area that it
14 would not ordinarily be allowed to do.
15 Is Jackie still here?
16 **MR. WILLARD:** I'm sorry. Can I
17 interrupt for one second?
18 **CHAIRMAN COLLINS:** Sure.
19 **MR. WILLARD:** We have something
20 in the law called double jeopardy. If I
21 don't get to Georgetown in 45 minutes, I will
22 probably be disbarred.
23 My client has excused me. Mr.
24 Hutt has my phone number if I need to be

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1 put a timer on people for three minutes or
2 two minutes or four minutes.
3 But we will let the people that
4 want to speak to the opposition of this hotel
5 opposing it, we'll let them speak first.
6 But again, when you come up,
7 try to keep it concise. Try to address the
8 issue.
9 We're really dealing here with
10 a request for variance to bring an elevator
11 shaft up into and encroach into an area
12 that's above the recognized roof limit for
13 Fenwick of 32 feet.
14 And as the gentleman, the
15 architect pointed out earlier, that
16 encroachment is actually less than one
17 percent of that entire roof that's up there.
18 So it's really a very small area.
19 And also it has been pointed
20 out that the -- I think I'm characterizing
21 this correctly -- that the elevator shaft is
22 actually going to encroach below equipment
23 that has already been authorized to go up
24 there.

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1 contacted. I apologize. I did not think it
2 would go this long. Spiro knows how to
3 contact me. I have to excuse myself. I
4 apologize.
5 **CHAIRMAN COLLINS:** Are you
6 leaving now?
7 **MR. WILLARD:** Yes.
8 **CHAIRMAN COLLINS:** Well, if
9 anyone wants to speak. We have a sign-in
10 sheet.
11 Right?
12 **MS. SCHUCHMAN:** We do.
13 **CHAIRMAN COLLINS:** If anyone
14 signed the sheet that is in opposition to the
15 project that wants to come forward and speak,
16 now is the time to do it.
17 I don't think we have to, as
18 far as people just speaking to the issue, I
19 don't think they have to be sworn in. Do
20 they?
21 **MR. FREDRICK:** Peter Frederick.
22 F-R-E-D-E-R-I-C-K.
23 **MR. HUTT:** We should have the
24 witnesses -- the folks who have spoken beside

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1 -- we don't swear in attorneys as they're
2 Members of the Bar.
3 But this gentleman and any
4 other speakers should be sworn in. And we
5 should have Mr. Buas, as well as Mr. Fisher
6 confirm what they testified to was true and
7 accurate.
8 **CHAIRMAN COLLINS:** Well, why
9 don't we do that first?
10 Spiro, the information that you
11 gave us and the testimony that you gave us,
12 are you confirming that testimony is true and
13 correct?
14 **MR. BUAS:** Yes, sir. I do.
15 **CHAIRMAN COLLINS:** Mr. Fisher,
16 the testimony that you have given, are you
17 confirming that that is also true and
18 correct?
19 **MR. FISHER:** I do, yes.
20 **CHAIRMAN COLLINS:** Peter, is
21 your testimony going to be true and correct?
22 **MR. FREDERICK:** Yes, sir.
23 Thank you very much. I think
24 the presentation was fantastic. And I had a

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1 whole list of questions, and you've answered
2 most of them.
3 The interesting thing that
4 comes to mind is that I'm really not too sure
5 what we're asking for the variance for.
6 But before I get into that, I
7 have a couple of questions.
8 Based on what I heard today,
9 the brand has presented plans and the
10 Tapestry has different plans and you used
11 those to develop this property. And I
12 assume, including that, was the mechanicals.
13 You talk about, or we talked about the
14 elevators shaft.
15 What would be wrong with
16 putting out an RFP for an elevator shaft that
17 fits within the 32 height limit? Was that
18 ever done? I did a little bit of research
19 and I found 11 manufacturers of hydraulic
20 lifts. And they all claim they have some
21 device that doesn't require any structure on
22 top of the building. I know nothing about
23 elevators.
24 But when people advertise that,

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1 I assume there might be something that would
2 fit within. And if you have an RFP that asks
3 for 32 feet, did you get no response? Or is
4 it too expensive? I'm just curious.
5 **MR. BUAS:** It's not possible.
6 It doesn't exist.
7 So to have an elevator -- there
8 is an elevator that doesn't quite need as
9 much of an overrun. But it does not meet the
10 weight qualifications for the stretcher to be
11 put on the elevator, the size and weight of
12 the structure.
13 So of the options that are
14 available, this is the least-intrusive
15 option. The only two options we have, and,
16 Keith, you should speak to this, are
17 mechanical or hydraulic or cable. Cable
18 takes you up higher.
19 **MR. FISHER:** That's correct.
20 **MR. FREDERICK:** There is not a
21 hydraulic elevator that would fit within the
22 32-foot limit?
23 **MR. FISHER:** You have to meet a
24 5,000-pound weight limit based on the

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1 requirement. And the brand specifies the
2 speed of the elevator, which requires a
3 higher size beam.
4 I've been a licensed
5 professional for 18 years. We've done over
6 -- I can't even count the amount of
7 elevators. I've never seen an elevator not
8 require an overrun.
9 **MR. FREDERICK:** I'm curious.
10 It's impossible to have an elevator in a
11 structure that is 32-foot high. I find that
12 hard to believe. And that's not my
13 profession.
14 **MR. BUAS:** In a residential
15 house you can do that. There are different
16 standards for those elevators. We have the
17 safety code elevators and escalators. And it
18 clearly states -- and I think your stuff is
19 better than mine -- mine gets complicated,
20 but you need 43 inches of overrun. Then you
21 need your hoist beam. Then you need roof
22 above it. So you have to add those numbers
23 together. The number you start with is from
24 the top of the elevator cab to anything that

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1 has to be 43 inches of clear space.
2 So it's not possible in a
3 commercial elevator to provide that. That is
4 coming from ASME 17.1 from 2016. This is the
5 most recent. I don't know if Delaware uses
6 the most recent.
7 **MR. FISHER:** Every three years.
8 **MR. FREDERICK:** Thank you very
9 much.
10 It is interesting when you
11 listen to the information that you presented,
12 I think if we were to poll everybody here,
13 everybody in the Town of Fenwick, to get a
14 99 percent vote in favor of your project.
15 Not because of your project, but because we
16 are all in favor of moving the Sands. And
17 that is the exciting part of your project.
18 Also, in your lawyer's closing
19 statement, I found it very interesting. It
20 is sort of typical scare tactics when you
21 have an audience that is one hundred percent
22 in favor, that says, We're going to walk away
23 if you don't approve us. That I find to be
24 an interesting comment.

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1 **MR. BUAS:** I want to clarify
2 that.
3 **MR. FREDERICK:** He said that,
4 though.
5 **MR. BUAS:** I know. Poor Keith
6 did not know it. He went through the trouble
7 of designing this one way. We tried to put
8 ramps in and presented the ramps to me and I
9 hate it. It does not work. I'm not going to
10 put my people through that.
11 The more I thought about it and
12 I talked to my representative at Hilton, my
13 guidance, my threshold to be able to keep
14 this topnotch brand is to have great customer
15 satisfaction. I will not have \$89 dollar
16 room nights here. They are going to be north
17 of \$400 dollars and probably north of \$600
18 dollars in season.
19 So a customer is not going to
20 be happy when they have to come down a ramp,
21 turn and then go down another ramp to get to
22 the elevator. And I realize and see the
23 light. If I did that, I would not be a
24 Hilton in five or six years.

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1 **MR. FREDERICK:** I understand
2 that.
3 **MR. BUAS:** I decided I can't do
4 that. I can't take that risk of this size of
5 an investment without being able to carry a
6 brand and carry the cost.
7 **MR. FREDERICK:** Thank you. Let
8 me just ask you one more question.
9 And the question is, you're
10 asking for a variance. We have agreed, I
11 believe, that the elevator shaft is part of
12 the structure.
13 So what you're asking for is a
14 variance to raise the height of the structure
15 six feet, perhaps, maybe only need four?
16 **MR. BUAS:** Only the area which
17 encumbers the elevator.
18 **MR. FREDERICK:** And how do you
19 define that? Basically, the variance --
20 you're asking to raise the height of the
21 building -- the building height of the
22 structure.
23 **MR. BUAS:** If that's a concern,
24 then we can tell this Board we're only asking

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1 for the elevator. It's not for the rest of
2 the building. The building is designed at
3 29 feet eight inches, plus the roof peaks at
4 32 feet.
5 So I have no problem then
6 coming back with a restriction saying, Yes,
7 you can have this variance, but it is only
8 for the dimensions -- that rectangle shape of
9 the elevator.
10 **MR. FREDERICK:** And what
11 happens when the next developer comes in and
12 ask for --
13 **CHAIRMAN COLLINS:** Peter, what
14 I'm trying to do here, I'm trying to control
15 dealing with this issue of this, not
16 speculating on what's going to happen with
17 another project or anything like that. I
18 think we need to just address this issue.
19 **MR. BUAS:** We were denied the
20 permit because of the elevator shaft
21 exceeding the height. That's all we were
22 denied for. We wouldn't be here for a
23 variance if our building exceeded the height.
24 But the elevator shaft, correct me if I'm

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1 wrong, was the only thing that was of
2 concern.
3 Is that correct?
4 **MR. FREDERICK:** I heard you say
5 the building shaft is part of the structure.
6 I'm repeating what you said. I understand
7 your position. That should be clarified
8 before you vote.
9 If it's part of the structure,
10 which you said it was, then you're raising
11 the height limit of the structure.
12 **CHAIRMAN COLLINS:** Okay. Is
13 there anyone else who would like to speak in
14 opposition?
15 **MR. HAYDEN:** Warren Hayden.
16 H-A-Y-D-E-N.
17 **CHAIRMAN COLLINS:** Your name
18 and address.
19 **MR. HAYDEN:** Warren Hayden, 4
20 East James Street, which is within 50 feet of
21 the Sands Hotel.
22 **CHAIRMAN COLLINS:** And you will
23 testify truthfully?
24 **MR. HAYDEN:** I will.

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1 Thank you for the time and the
2 presentation. I'm kind of up here as a
3 reluctant witness because I tried to stay
4 unemotional and detached from this thing
5 since it started back in 2015.
6 The reasons for that are
7 two-fold. One, I thought that there would be
8 enough money involved and lawyer up that it
9 would get ramped through no matter what I
10 said.
11 And I come here to relax and
12 not worry about when I walk down Bunting
13 Avenue where I stood on this issue.
14 And, I guess, what made me talk
15 is the recent social media. And the people
16 that are here against it are the loud,
17 ridiculous minority. I just want to explain
18 -- and I'm a little nervous -- about where we
19 stand.
20 I mean, we purchased our home
21 six-years-ago. We plan on retiring here.
22 It's really close to the property. And we're
23 talking -- the way I read this -- is if you
24 go up to 38 feet.

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1 Well, when we purchased our
2 home -- we have a view of the bay and the
3 sunset. That will be gone. That was part of
4 the value of our house.
5 So I understand he's trying to
6 increase the value of his property. And I
7 appreciate that.
8 But another reason why we
9 bought in Fenwick is a relative who is a
10 major property owner and who is a hotel owner
11 in Ocean City said, You're buying in the
12 right spot because Fenwick is really tough on
13 the rules. You don't have to worry about it.
14 We went through the thing in
15 2015 to go up from 37 rooms to 61. And it
16 was brought up then, it's in the minutes,
17 that the hotel elevator would exceed the
18 height limit. And we just kicked the can
19 down the road. That goes back to April of
20 '15.
21 And so here we are.
22 And what I would ask the Board
23 to consider and the residents to consider,
24 everybody, as was mentioned earlier, is in

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1 favor of the hotel. But the next time, it
2 might be 50 feet from your house. And 99
3 percent of the people are against you.
4 So maybe you won't be viewed as
5 the loud, obnoxious minority. Maybe you'll
6 say, Hey, they were right.
7 That is all I wanted to get
8 out. Thank you.
9 **CHAIRMAN COLLINS:** Is there
10 anyone else who wants to speak in opposition
11 that has a different viewpoint than what has
12 already been expressed, they can come forward
13 if they would like to.
14 Your name, ma'am.
15 **MS. KYLE:** Amy D. Kyle.
16 **CHAIRMAN COLLINS:** And your
17 address, ma'am.
18 **MS. KYLE:** 1205 Bunting Avenue.
19 And I would like to say --
20 **CHAIRMAN COLLINS:** Your
21 testimony will be truthful?
22 **MS. KYLE:** To the best of my
23 knowledge and belief.
24 **CHAIRMAN COLLINS:** Thank you.

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1 MS. KYLE: I signed up in the
2 middle -- opposed and not opposed. Like
3 everyone else, I would love to see a good
4 hotel here.
5 But there are two things that
6 worry me about this. I think we need to
7 continue to think about, it is a community.
8 And you're not all lawyers on the panel.
9 And one of them follows on the
10 previous comment in that -- there are a lot
11 of flies in here, aren't there? The equity
12 for the people that bought their house or
13 selected their place under the rules that
14 were in place at the time. If you allow
15 exceptions to that, we have to consider the
16 equity.
17 The elevator -- I was in favor
18 of that. The people that went and talked to
19 their neighbor and worked it out with the
20 neighbor. So the person who was going to be
21 impacted by the elevator out there had their
22 concerns addressed. I think it's fine. Go
23 forward with that.
24 Here, it's a little unclear.

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1 We haven't really cleared the compilation of
2 comments from the neighbors and how they're
3 impacted and whether there is something that
4 can be done to address that. And I'm not
5 sure why. It's sort of scattered through
6 here. That would be something that the Board
7 should inquire into in an organized way. I
8 haven't quite heard that.
9 So that is one thing that
10 concerns me about this.
11 The other thing is this issue
12 of the mechanical equipment. Now, I know
13 that is not technically in front of you. But
14 everyone has brought it into their comments.
15 The project sponsors have brought it in. The
16 people who are supporting it have brought it
17 in by saying this is less than the mechanical
18 equipment. The mechanical is going to have
19 this impact and that the elevator shaft is
20 less. So I think that seems to be true.
21 And I guess what worries me is
22 the way that the mechanical equipment was
23 brought in seems illegal. It wasn't an
24 interpretation of the ordinance, but outside

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1 of the existing exception to the height
2 limit.
3 So it's sort of unclear how
4 that came to pass. And I respect it was done
5 in good faith by people who have a different
6 view than me. It's also not a reason to do
7 this.
8 So these issues are somehow
9 linked. And the way they approved this
10 additional stuff on the roof would seem to
11 allow all kinds of stuff to be brought in
12 because it says it's not part of the
13 building. So anything you can say isn't part
14 of the building can't go on the roof because
15 there's no limit on the height.
16 So it just also disturbs me.
17 So those are the two issues I want to raise
18 in the context of this community discussion
19 about this project.
20 Thank you for the opportunity
21 to speak.
22 CHAIRMAN COLLINS: We
23 appreciate all of the comments. I mean,
24 that's why we're here.

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1 Again, just keep in mind that a
2 lot of the things -- everything that you're
3 seeing here -- everything that you're seeing
4 here is all approved. We're, basically,
5 talking about something that is going to come
6 through the roof that represents less than,
7 according to the architect, less than one
8 percent intrusion on the top of the building
9 in terms of everything that is up there, the
10 total square footage.
11 So, again, I'm just encouraging
12 anybody who wants to speak in favor of or
13 against to try to focus on that particular
14 issue.
15 MS. NAPOLITANO: Jacque
16 Napolitano.
17 CHAIRMAN COLLINS: Your
18 testimony will be true.
19 MS. NAPOLITANO: Yes. I'm
20 Jacque Napolitano. 2 East James Street.
21 I live directly behind the
22 Sands. I also want to say that I am in favor
23 of the Sands being rebuilt. I mean, not the
24 Sands. Tapestry is fine. But, I guess, it

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1 has been pretty rough all around for all of
2 the residents here.
3 And I really agree with Mr.
4 Fredericks. It is a structure. They have to
5 really look at that and consider that.
6 Please, Board, I am asking you to look at
7 that.
8 We are changing an ordinance in
9 the Town of Fenwick that is going to open up
10 our town to Ocean City and Dewey Beach
11 standards. And I don't think that is what we
12 are here about.
13 It is a structure. And it is
14 going to get opened up for other people to
15 come in and build another three feet, six
16 feet higher and where does it end. That's a
17 concern I have.
18 The other concern, I understand
19 there is a pool bar in the plans. So if
20 you're going to change the ordinance for
21 this, will this be a change in the time
22 ordinance as well? I know it's a part of it.
23 And it concerns me.
24 There have been a lot of

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1 property has, basically, been destroyed
2 greatly.
3 As far as the height
4 restriction, I think it has really opened our
5 Town to something we can't turn back from.
6 So I understand our variance
7 for Ms. Shelton. I was one hundred percent
8 for that. She has a medical issue. She
9 needs help. That's different than what we
10 are looking at here.
11 And I think there are other
12 ways in which we can deal with this. Maybe
13 somebody can do a study on other elevators in
14 which to bring forth. You say hydraulic is
15 not a possibility. I think maybe before you
16 vote, maybe that needs to be brought to the
17 forefront.
18 **CHAIRMAN COLLINS:** Jacque, I
19 will ask you because you articulated it in a
20 way that maybe will help a little bit.
21 I guess one of the things I'm
22 trying to understand is -- and the gentleman
23 that came up before you, I certainly
24 appreciate what his concerns are and his

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1 ordinances that have been changed around time
2 here and not in a good way. I feel it has
3 not been transparent, especially the
4 mechanical. That wasn't right. I think
5 everybody knows what we're talking about
6 here.
7 I guess that's my concern. I
8 know that my neighbors, Jody and Warren
9 Hayden, it is a very big concern for them.
10 They did not want an increase so much to
11 build a deck on top of their home. And now
12 this building is going to be so high they
13 will have no view of anything. That's not
14 fair for them. That's not what they bought
15 into. That needs to be looked at honestly.
16 We're not talking about a view
17 of the ocean or something that is frivolous
18 for them. They bought this house for a
19 reason. They were going to retire. It is
20 not fair to them.
21 As far as I'm concerned, I have
22 a very small home. It's going to probably
23 annihilate my privacy -- everything. The top
24 of the pool. The pool bar. The balcony. My

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1 emotions about it.
2 What I'm trying to understand
3 is, if you're in one of these -- in a house
4 -- a surrounding house to this motel, the
5 motel has been approved. Everything in place
6 except this elevator shaft.
7 So if you're on your deck or
8 you're two houses away or one house away or
9 whatever, and you're on your deck and you
10 have this structure in front of you that has
11 been approved by the Town, not us, the Town,
12 the Town has approved this structure and it
13 has, what was it, 18 or 19 -- how many square
14 feet is it across the top of the building?
15 **MR. BUAS:** 17,000.
16 **CHAIRMAN COLLINS:** Okay.
17 Roughly 17,000. So you're up on your deck.
18 And this building has got a roof of 17,000
19 square feet, this structure in front of your
20 home -- adjacent or close. And the structure
21 comes up out of the roof, and that structure
22 is only less than one percent of the
23 viewpoint across that roof.
24 I mean, I know in a perfect

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1 world, maybe people wouldn't even want the
2 structure there. I don't know.
3 But I'm having some difficulty
4 understanding how something that only
5 encroaches up into the roof and occupies less
6 than one percent of the total roof line is so
7 detrimental to a view, to a sunset, to air
8 flow, to quality of life. How does that --
9 **MS. NAPOLITANO:** Well, I think
10 the bigger picture is not just that square
11 percentage that you just gave. It's a bigger
12 percentage when you look at what can happen
13 afterwards if you change this ordinance.
14 **CHAIRMAN COLLINS:** Listen, I
15 respect what you're saying.
16 **MS. NAPOLITANO:** And please be
17 respectful. I mean, honestly, snickers don't
18 need to be. Thank you.
19 **CHAIRMAN COLLINS:** Well, let me
20 finish.
21 We're not dealing with that.
22 Some of the comments that you just made about
23 it turning into Ocean City and what's the
24 next project going to be and what's going to

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1 happen after this.
2 **MS. NAPOLITANO:** Understood.
3 **CHAIRMAN COLLINS:** We can't
4 make those decisions. We can only make a
5 decision based on this one issue of this
6 elevator shaft coming up. That's what's in
7 front of us. Not projecting into the future
8 or other things. That's not in our control.
9 That should go to the Town Council and the
10 Ordinance Committee.
11 **MS. NAPOLITANO:** That's my
12 point. Many of these issues don't go through
13 the correct channels.
14 **CHAIRMAN COLLINS:** But we can't
15 deal with that here today.
16 **MS. NAPOLITANO:** But you're
17 looking at the small little picture and I'm
18 looking at the bigger one. We're going to
19 have to agree to disagree on this. Because
20 it will change the structure and the dynamics
21 of our Town. I think that's what most people
22 are saying here. Most people are concerned
23 about this.
24 **CHAIRMAN COLLINS:** Okay. Thank

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1 you.
2 Anyone else? We're kind of
3 running out of time here. We've been here a
4 long time. If there is anyone else who wants
5 to speak.
6 Your name and address.
7 **MR. KELLY:** Brian Kelly. 2
8 West Indian Street.
9 **CHAIRMAN COLLINS:** Your
10 testimony will be truthful.
11 **MR. KELLY:** Yes. All of my
12 testimony will be truthful.
13 If I could get the front
14 elevation of the hotel. Not the rendering,
15 but the elevation. That's just part of it.
16 It does not cover the whole property.
17 **CHAIRMAN COLLINS:** Brian, let
18 me interrupt you for one second.
19 You're going to address an
20 issue other than what has already been
21 discussed?
22 **MR. KELLY:** I am. So there are
23 two issues I want to address. Actually,
24 three issues.

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1 One is the negative impact that
2 this property and the elevations above the
3 height limits of the Town of Fenwick would
4 have on the adjacent properties. I'm one of
5 those people who is going to be impacted by
6 directly looking over the Sands.
7 I have a reverse floorplan like
8 many of the homes in Fenwick. And so the
9 elevation that we see is not what you see on
10 the renderings which is at ground level.
11 They are the same level or equal to the level
12 that we see here.
13 So that negative impact is one
14 thing that I want to talk about.
15 I also want to talk about the
16 way that this property is presented. These
17 things need to be done. It's an all or
18 nothing take it or leave it situation with
19 this development.
20 And the other is that from the
21 moment that this property was purchased and
22 the way it has been moved through the process
23 in the Town, there has really been no
24 compromises, in my opinion, on behalf of the

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1 developer. He, obviously, made an
2 investment. He wants to get the most of that
3 investment. I don't have any problem with
4 him doing that. But I don't think it should
5 negatively impact the adjacent properties.
6 That is the reason the Town has the ordinance
7 that it has concerning the height limits.
8 As we talk about the negative
9 impacts, when we look at this property, we
10 can see the shielding for the HVAC and the
11 other elevator shaft all substantially
12 exceeds the height limits that the Town
13 currently has.
14 And the decision was made by
15 the Building Official and the guidance gotten
16 by the Town attorney was a very, very serious
17 mistake because those items are going to be
18 physically attached to the roof. They are
19 part of the building because they are
20 attached to the roof.
21 **CHAIRMAN COLLINS:** Brian,
22 listen, I --
23 **MR. KELLY:** Don't interrupt me.
24 Don't interrupt me. Do not interrupt me.

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1 **CHAIRMAN COLLINS:** I have the
2 right to interrupt you. In fact, I have the
3 right to ask you to sit down. But I'm being
4 nice about it.
5 What I'm saying to you is,
6 you're addressing issues that --
7 **MR. KELLEY:** I'm addressing the
8 elevator shaft. It exceeds the height
9 limit --
10 **CHAIRMAN COLLINS:** You made a
11 comment that this was all illegal and it was
12 all done incorrectly.
13 **MR. KELLY:** I did not say it
14 was done illegal. I said the process that
15 was done has not been open and forthright
16 with the community.
17 **CHAIRMAN COLLINS:** We're not
18 here to discuss that.
19 **MR. KELLY:** Okay. Well, I
20 won't --
21 **CHAIRMAN COLLINS:** You go to
22 the Council and deal with the Town on that.
23 We're trying to only get
24 opinions on Town -- which, incidentally, what

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1 did you say your address was?
2 **MR. KELLY:** 2 West Indian
3 Street.
4 **CHAIRMAN COLLINS:** Isn't that
5 on the other side of the highway?
6 **MR. KELLY:** It is directly
7 across from the hotel unobstructed.
8 **CHAIRMAN COLLINS:** Isn't there
9 a commercial piece of property in front of
10 you?
11 **MR. KELLY:** No. There is not.
12 There's a parking lot.
13 **CHAIRMAN COLLINS:** So you live
14 on the other side of the street behind a
15 commercial building?
16 **MR. KELLY:** Are you opting for
17 the developer here?
18 **CHAIRMAN COLLINS:** No. I am
19 only trying --
20 **MR. KELLY:** Certainly seems
21 like you are.
22 **CHAIRMAN COLLINS:** I'm only
23 trying to -- listen.
24 **MR. KELLY:** Don't yell at me.

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1 **CHAIRMAN COLLINS:** I will have
2 you put in your seat.
3 **MR. KELLY:** No. I'll have you
4 put in your seat.
5 **CHAIRMAN COLLINS:** Look.
6 **MR. KELLY:** Well, you're
7 lobbying for the developer.
8 **CHAIRMAN COLLINS:** Look, we
9 have been here a long time. Just do me a
10 favor and address --
11 **MR. KELLY:** Let me talk without
12 you interrupting me.
13 **CHAIRMAN COLLINS:** Talk about
14 the elevator shaft. Talk about the elevator
15 shaft.
16 **MR. KELLY:** So the elevator
17 shaft exceeds the height of the building.
18 And that's being done so that the developer
19 can create as many rooms as he can on this
20 property. We don't have a problem with that.
21 But we do have a problem
22 because it negatively impacts myself and the
23 other neighbors in the area.
24 So that has been repeated over

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1 and over again. And there have been letters
2 that have been submitted from the neighbors
3 saying it affects them.
4 When you take a look at this
5 building and see all of the stuff that is
6 over the existing height limit, if I or
7 anyone else would have done that, or I put
8 elevators on my roof and put screening around
9 my roof, I'm sure I would get a notice from
10 the Building Official saying, Oh, no. You
11 can't do that. I'm right along the highway,
12 too.
13 I think there should be
14 compromise on the part of the developer. And
15 I request that that's what happened in this
16 instance and to make some changes to the
17 plans so that it's not all on the side of the
18 neighboring property owners to have all of
19 the negative impacts without any onerous
20 consequences.
21 That's all I have to say.
22 **CHAIRMAN COLLINS:** Thank you.
23 Anyone else?
24 Okay. We have quite a few

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1 letters that support this project. Those are
2 open to the public view.
3 Is there anybody that wants to
4 come up and address the positive part of the
5 project?
6 **MR. TINGLE:** Mark Tingle. 1605
7 Coastal Highway.
8 I mean, as far as blocking his
9 view though --
10 **AUDIENCE MEMBER:** Get the mic.
11 **CHAIRMAN COLLINS:** Will your
12 testimony be true.
13 **MR. TINGLE:** Yes.
14 **MR. HUTT:** The purpose of this
15 public hearing is not to have a back and
16 forth.
17 **MR. TINGLE:** I want to address
18 the visual.
19 **MR. HUTT:** The purpose of this
20 hearing is to discuss a variance for an
21 elevator shaft.
22 **MR. TINGLE:** Okay. The
23 elevator shaft would be over the height
24 restriction for the Town, which people are

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1 objecting it's going to block their view.
2 Well, the last comments were in
3 regard to it blocking his view. Well,
4 obviously, he knows nothing about the
5 topography of the Town.
6 His house is probably at a base
7 of two-foot flood. And Bunting Avenue is
8 probably at his street somewhere around
9 eight-and-a-half to nine-foot flood.
10 So, basically, the houses on
11 the ocean front block -- any views to the
12 east due to the height, they already have in
13 excess over where his house is sitting.
14 So, basically, that kind of
15 stuff -- there's no point in even arguing it.
16 The thing I want to say is,
17 we're here to try and say, What would this
18 hurt? We are supposed to talk about the
19 negative effect that this would have by
20 allowing this.
21 I heard a couple people say
22 about blocking their view and a couple of
23 other things. In all reality, this is an
24 asset to all of us. This is going to help

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1 the Town.
2 The tax revenue that this will
3 generate for the Town is a plus. The
4 building permit itself, hopefully, we can
5 take that money and go get the bay dredged so
6 that people can get in and out of the lagoon.
7 But overall, there is no
8 economic negatives to doing this. And that's
9 the way we have to look at this overall.
10 And as far as the height thing,
11 the elevation just changed all that. That's
12 all.
13 **CHAIRMAN COLLINS:** We have a
14 few more minutes if there is anyone else.
15 **MR. WAIDE:** Ben Waide. Ten
16 West Dagsboro Street.
17 I will be truthful and I will
18 be quick. A couple of things.
19 The biggest process is set up,
20 for just what we're seeing today, is set up
21 for an opportunity when an issue comes up
22 that is outside of the ordinances to address
23 it. That's what's being done today.
24 I think they've done an

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1 outstanding job of answering every single
2 question that the Committee has to address to
3 give an answer. They've done a wonderful
4 job.
5 A lot of emotion involved in
6 the thing. I'll tell you, I was involved in
7 the beginning of this. Anybody who says this
8 man hasn't gone through a rough patch himself
9 and is not meeting his expectations -- I
10 mean, it went from 86 rooms to 75 rooms to 54
11 rooms, back and forth and back and forth.
12 And it came out to a place where we and the
13 developer, the Town developer were satisfied
14 with that.
15 Now, this is the next step in
16 that. I think it's the right thing for the
17 Town to do. If you take these two tables and
18 make it nine feet that way, raise the height
19 to here, that's what we're talking about.
20 That's what we're talking about. 43 inches,
21 18 feet, 9 feet. That's what we're talking
22 about.
23 Really, beyond the emotions, I
24 doubt very seriously if it will change

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1 anybody's view of anything.
2 Let's talk about what the
3 downside of this is. Everybody agrees that
4 the hotel is a detriment to the Town. We got
5 an investor who is willing to do something
6 about that.
7 If he decides not to do
8 something about that, it keeps going down and
9 down and down. It digresses and so does the
10 clientele that comes to that hotel and comes
11 to our Town.
12 I think questions have been
13 asked and questions have been answered. And
14 I hope you all vote for it.
15 **CHAIRMAN COLLINS:** Thank you.
16 Okay. What I'm going to do at
17 this point is -- there's probably a few other
18 people here, I'm sure, or other people I
19 should say that were in opposition.
20 If those people that were in
21 opposition would like to, that didn't speak,
22 because we're going to cut this off now,
23 those people that were in opposition that did
24 not have an opportunity to speak or would

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1 like to signify their opposition, they can
2 raise their hands.
3 (Indicating.)
4 And we only had a couple of
5 people that had an opportunity to speak that
6 are favor of the variance. The people that
7 are in favor of this, can they raise their
8 hands, please. (Indicating.)
9 Thank you.
10 Spiro, do you and your party
11 have any additional comments you would like
12 to say?
13 **MR. BUAS:** Yes. If you don't
14 mind. I'll be really quick.
15 I really do understand some
16 people are having a hard time with this. I
17 can really understand that.
18 I'm going to do a quality
19 project. I have taken the time to find a
20 quality project. And now that I've found it
21 and they've approved it, they're going to
22 keep on me to make sure it stays a quality
23 project.
24 I really have trouble sometimes

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1 trying to understand that the building is
2 going to be taller or the building is going
3 to be wider, or whatever it might be. God,
4 compared to what you see today, I don't
5 understand how that could be a negative.
6 If you're concerned, and I
7 understand what Tim brought up with our
8 height code at 32 feet, it is practically
9 impossible to build a hotel at 32 feet
10 because you have to an elevator and the
11 elevator has to exceed that. So I think that
12 is one of the crucial elements.
13 Thank you.
14 **CHAIRMAN COLLINS:** One question
15 I have for the architect is, we're getting to
16 the point where we're going to have a motion
17 here and either approve this or not approve
18 it.
19 But we have the option of
20 including conditions, I believe, do we,
21 David?
22 **MR. HUTT:** Yes.
23 **CHAIRMAN COLLINS:** We have the
24 opportunity that we can include conditions to

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1 the approval, if there was an approval.
2 If there is a condition put
3 into the process that it is conditional on
4 that elevator shaft not exceeding the three
5 feet, whatever it was, three or four inches,
6 what is your viewpoint on that?
7 **MR. BUAS:** I would like to
8 answer that. We actually discussed that.
9 We are not going to need the
10 six feet. I know already that. We are not
11 going to need the six feet. By dropping that
12 roof down to 1.1 foot eight inches, the most
13 we're going to need is four foot ten inches,
14 if anything changes in the Code.
15 I expect it to be built as
16 shown. But I would like a little leeway so I
17 don't have to come back if it ends up not
18 being three feet three inches and it's four
19 feet and one inch because the beam has to be
20 beefed up because of the weight limit.
21 These specs came off an
22 elevator by Delaware Elevator from another
23 job. This is the last specs they did for
24 this type of an elevator.

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1 As you can see, it's not just
2 the elevator. It's the entire building. I
3 tried to maximize my visual at the same time
4 realizing that there is a height limit.
5 Because I dropped that building down one foot
6 eight inches, that means my parking lot here
7 is one foot eight inches lower.
8 **CHAIRMAN COLLINS:** What I'm
9 getting at, though, and it's up to the Board
10 to decide --
11 **MR. BUAS:** What if I change my
12 request? What if I change my request from
13 six feet to four feet six inches? That gives
14 me a little bit of leeway and a comfort level
15 that I'm not going to meet that six-foot
16 level.
17 **CHAIRMAN COLLINS:** The
18 gentleman over there came up and did a
19 demonstration that people can kind of grab
20 ahold of.
21 But if the variance is approved
22 and we say up to six feet, and then all of a
23 sudden, it is six feet, there are people
24 that, obviously, are upset about this anyway.

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1 And they are going to come along and say, You
2 know what, the guy got it through by having
3 an architect come and say it was going to be
4 three feet and a couple of inches.
5 **MR. BUAS:** I completely
6 understand.
7 If the fire marshal says, Hey,
8 your beam sticks down 12 inches and you need
9 to have your -- what do you call it -- your
10 sprinkler heads now have to be below that.
11 You have to raise it four inches or two
12 inches for sprinkler heads. I would like
13 some leeway.
14 This is what we plan to build
15 when we get to that point, and we don't get
16 to that point until we get past this point.
17 We have to get past this to go there. I
18 probably could have drawn something taller
19 and asked for it, but we really think this is
20 what we're going to build.
21 But to be safe and not to come
22 in front of this Board again, I would like to
23 make the adjustment to somewhere around
24 four feet six inches, which means in his

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1 demonstration, yes, we would add a piece of
2 paper, a legal size piece of paper saying yes
3 to that demonstration.
4 I think that's a fair
5 compromise. It gives you more of a comfort
6 level. I have no motivation to go higher.
7 There's no reason why I would want to.
8 **CHAIRMAN COLLINS:** Pat, when we
9 get this in front of us to vote on, if there
10 was a situation where we approved, let's say
11 four feet six inches, and something happens
12 and they have to come back to you and say,
13 Some of the things that he just cited, we
14 have to have five feet, what happens then?
15 **MS. SCHUCHMAN:** He comes back
16 to you.
17 **CHAIRMAN COLLINS:** It has to
18 come back to the Board of Adjustments?
19 **MS. SCHUCHMAN:** Yes.
20 **CHAIRMAN COLLINS:** We are going
21 to close this? Do you guys have anything?
22 Do you have any questions for anybody that
23 spoke or any comments?
24 **MR. HUTT:** If there are no

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1 further questions from the Members of the
2 Board, a Member of the Board should make a
3 motion to close the public record, and then
4 we will know that there will be no further
5 discussion between --
6 **AUDIENCE MEMBER:** Give him the
7 mic, please.
8 **MR. HUTT:** Sorry. If there is
9 no further questions from the Board to any of
10 the Town Staff or to the Applicant, the
11 Applicant or to any of the speakers here who
12 are here, then a Board Member should make a
13 motion to close the public record.
14 And what we will do then, it
15 will formally end the discussion between the
16 Applicant, the audience, the Town, and then
17 it will be solely in the Board's hands at
18 that point.
19 I also understand there may be
20 at least one or two Board Members that may
21 want to take a short recess after the record
22 is closed.
23 **MR. LAMBERTSON:** I'll move to
24 make a motion to close this.

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1 **MS. QUINN:** I'll second it.
2 **CHAIRMAN COLLINS:** We'll take a
3 five-minute break here and then come back.
4 **MR. LAMBERTSON:** Yes.
5 **MS. QUINN:** Yes.
6 **MS. BUNTING:** Yes.
7 (Off the record at,
8 approximately, 5:21 p.m.)
9 **CHAIRMAN COLLINS:** We are back
10 in session. I would ask everybody to come
11 back.
12 (Back on the record at,
13 approximately, 5:30 p.m.)
14 **CHAIRMAN COLLINS:** Okay. We
15 heard the various testimony, we've read the
16 letters, and we've had input from as much as
17 we could get and fit in.
18 I personally would like to say,
19 I appreciate all of the comments positive and
20 negative. I think there is a merit to a lot
21 of what was said.
22 I also would like to apologize
23 to the gentleman, that might have left by
24 now, I had a little tit for tat with.

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1 But I think overall that it was
2 a good meeting.
3 So we are prepared to go
4 forward. We need a motion.
5 **MR. LAMBERTSON:** I would like
6 to make a motion to grant the variance for
7 the elevator shaft only to not exceed four
8 foot six.
9 **CHAIRMAN COLLINS:** Is there a
10 second?
11 **MS. BUNTING:** I second the
12 motion.
13 **CHAIRMAN COLLINS:** So we have a
14 motion on the floor to grant the variance
15 with the elevator shaft not to exceed four
16 foot six inches. So the motion that is on
17 the floor does have a condition to it which
18 is --
19 **MR. BUAS:** Can you clarify
20 that? Four foot six inches over the 32. I
21 dropped my shaft down.
22 **CHAIRMAN COLLINS:** This four
23 foot six inches that will come up for a vote
24 here in a minute or two is four foot six

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1 inches --
2 **MR. HUTT:** The variance is for
3 four feet six inches -- the Town's limit.
4 **CHAIRMAN COLLINS:** Above
5 32 feet.
6 Is that correct, David?
7 **MR. HUTT:** Yes.
8 **CHAIRMAN COLLINS:** So we will
9 vote and discuss our reasoning first.
10 **MR. HUTT:** If there is any
11 discussion among the Board Members whether or
12 not they think that's an appropriate motion,
13 or that's an appropriate height. Or you can
14 ask the Board if that's what they think, or
15 you can ask the Board if they're ready to
16 vote.
17 **MR. LAMBERTSON:** I'm ready to
18 vote.
19 **MR. HUTT:** If the Board Members
20 are ready to vote, the proper format for this
21 is the Board Members, when they vote, to
22 indicate what they're voting on, their
23 approval or rejection of the motion that's on
24 the floor. But also the basis for that.

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1 As Mr. Willard noted when he
2 commented, when he spoke in the opening
3 session, it is very important that the Board
4 indicate the evidence upon that it is
5 considering for the conclusion that it's
6 reaching.
7 So you heard Mr. Willard walk
8 through some of the factors.
9 **AUDIENCE MEMBER:** Can you give
10 him the mic? We can't hear.
11 **CHAIRMAN COLLINS:** The
12 conversation is, essentially, that we're
13 going to vote. But there has to be a
14 clarification of why you are voting either
15 for or against. And those clarifications
16 have to be along the lines of what Mr.
17 Willard laid out, which was pretty lengthy.
18 There were probably 15 or 20 different things
19 there that you, as a voter on the Board of
20 Adjustments, you can't simply say yes or no.
21 You have to say yes because, and that has to
22 be not only in the record, but it also has to
23 be part of the justification for or against
24 as Mr. Willard pointed out.

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1 I also don't think it is just a
2 matter of economics. I think there's a lot
3 more at stake here. And even though this is
4 the only thing we are voting on, somehow
5 issues in a small town are always linked.
6 So I am voting no.
7 **MS. BUNTING:** It is my opinion
8 that the elevator shaft is minimally visible,
9 according to and referring to the Quick Chek
10 Court, which was the standard in our form
11 that we've used. It minimally affects the
12 adjoining property.
13 The majority of the Fenwick
14 Island citizens all over Town do not object
15 to the increase in the elevator shaft height
16 of four foot six inches as we've stated now.
17 And many of the adjoining properties do not
18 object to the extra height.
19 I appreciate the concerns of
20 those who oppose this. But I think we need
21 to consider that we are replacing a long-time
22 motel. We're not taking a residential
23 property away from the Town. We are
24 replacing a motel. And we are not putting a

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1 And those conditions or those
2 justifications will be mentioned when we
3 vote.
4 So we'll call for a vote. We
5 know what's on the table, the vote, and The
6 Chairman gets to go last.
7 **MR. LAMBERTSON:** I vote yes as
8 I put in the motion.
9 I believe the harm to the
10 Applicant for a denial is greater than the
11 probable effect to the neighboring properties
12 that adjoin.
13 I think all in all for the
14 Town, it will be a great thing.
15 **MS. QUINN:** I appreciate the
16 work you've done and the design is very nice.
17 And certainly it would be an improvement.
18 However, I feel I'm going to
19 reject the motion. This decision is not made
20 by popular vote. And I feel that the most
21 votes that were against this were from the
22 properties that neighbor this place. And I
23 feel that those have to be taken into
24 consideration.

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1 convenience store there. We are putting
2 something that was already there and making
3 it better.
4 I feel that the safety concerns
5 have been addressed considering ADA
6 regulations. And I vote in favor of the
7 request for the variance.
8 **CHAIRMAN COLLINS:** As we went
9 along today, I made some notes. And I
10 listened very carefully.
11 A couple of things I would like
12 to say is that -- a couple of things I heard
13 and a couple of things that I read in the
14 letters. This vote does not set a precedent.
15 These are individual cases. They don't
16 necessarily set a precedent for a similar
17 case that comes along. And it is what it's
18 labeled. It's an adjustment. It is a
19 one-time adjustment relative to the issue
20 that is in front of us. And the reason that
21 the Board of Adjustments exist by law is to
22 deal with what we're dealing with today,
23 which can be emotional and upsetting and
24 controversial.

1 However, having said that, this
2 building is in the commercial zone. It is in
3 compliance with all other aspects approved,
4 except the elevator shaft. I think it is an
5 imbalance request, based on exceptional
6 practical difficulty, as Mr. Willard pointed
7 out. And I don't think it has a greater
8 impact on the neighboring properties. I
9 appreciate the concerns of neighboring
10 properties. But I don't think that the
11 impact on those properties, meaning the
12 elevator shaft coming through the roof and
13 the way you've described it, is going to have
14 a negative impact on the Town of Fenwick
15 Island. And I hope it has the minimal or no
16 impact on the people that are very concerned
17 about their views and the future of Fenwick
18 Island becoming an Ocean City and that type
19 of thing.
20 So I think it's a reasonable
21 request. And I also approve the variance.
22 Do we officially have to bring
23 it to an end, the meeting, and close the
24 record?

1 **MR. HUTT:** Yes. The record has
2 been closed. Now you need a motion to
3 adjourn.
4 **CHAIRMAN COLLINS:** We're
5 closing the record. And I now make a motion
6 to close the meeting.
7 **MR. LAMBERTSON:** Second.
8 **CHAIRMAN COLLINS:** Thank you.
9 (The hearing was concluded at,
10 approximately, 5:40 p.m.)
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1 State of Delaware:
2 New Castle County:
3
4 **CERTIFICATE OF REPORTER**
5
6 I, Gloria M. D'Amore, Registered
7 Professional Reporter and Notary Public, do
8 hereby certify that the foregoing record,
9 Pages 1 to 151 inclusive, is a true and
10 accurate transcript of my stenographic notes
11 taken on Thursday, August 23, 2018, in the
12 above-captioned matter.
13 **IN WITNESS WHEREOF,** I have hereunto set
14 my hand and seal this 29th day of August,
15 2018, at Wilmington, Delaware.
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GLORIA M. D'AMORE, RPR

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