

O'TOOLE SCRIVO

ATTORNEYS AT LAW

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February 4, 2020

BY EMAIL AND FEDEX

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**Re: Appeal of Zoning Officer Determinations
Marve Development Corp.
251 ½ Grove Avenue
Block 1201, Lot 12**

Dear Mr. Gaccione:

This firm represents appellant Marve Development Corporation (“Marve”) in connection with Marve’s Appeal of the Zoning Officer’s Determinations (“Appeal”) relative to alleged zoning violations at 251 ½ Grove Avenue, Lot 12, Block 1201 (the “Property”). The Appeal challenges the Township Zoning Official’s “zoning decision” dated August 30, 2019 (“Zoning Decision”). (See Zoning Decision, attached as Exhibit A; see also Notice of Appeal dated September 20, 2019, attached as Exhibit B). The Appeal is scheduled to be heard at the Board’s February 13, 2020 meeting.

We write to inform the Township of Verona (“Township”) and the Zoning Board of Adjustment (“Board”) that alleged zoning violations in the Zoning Decision were the subject of extensive litigation before the Township’s Municipal Court and the Superior Court of New Jersey, Law Division, on appeal (“Zoning Appeal”), in 2017, which were both decided in Marve’s favor. The Board is bound by the outcome of those proceedings, and res judicata and collateral estoppel prohibit the relitigation of matters previously adjudicated. Below is a summary of the prior proceedings and rulings, which are binding.

I. 2017 Zoning Ordinance Violations and Municipal Appeal

A. Municipal Court’s Decision

In 2016, the Township issued four summonses to Marve for alleged zoning violations at the Property. Those summonses were preceded by correspondence from the former Zoning

Official—much like the instant Zoning Decision—that raised the alleged violations. The summonses cited (1) violation of Section 4:50-9.1(b), a mobile temporary storage container on site for more than thirty consecutive days; (2) violation of Section 1:50-17.11, mobile temporary storage containers over maximum allowed height of fifteen feet; (3) violation of Section 1:50-17.11(a), principal permitted uses, limousine and party bus; and (4) violation of Section 1:50-17.11(a), principal permitted use as school bus repair.

Marve and the Township litigated these matters through and including a trial before the Hon. John A. Paparazzo, J.M.C., in the Municipal Court. With regard to the mobile temporary storage containers, the Municipal Court determined that the zoning regulations at issue, which prohibited a mobile temporary storage container for more than thirty consecutive days and prohibited the storage unit from being higher than fifteen feet, applied only to residential properties. The Court found that because the Property was not residential, the ordinances did not apply. (Municipal Court Trial Transcript, T104:14 to 110:14, attached as Exhibit C). Accordingly, the Court dismissed SC-2742 and SC-2743. The Municipal Prosecutor also dismissed SC-2744 because the use had ceased.

With regard to the violation for parking and repair of school buses, SC-2745, the Municipal Court considered whether bus repair was a principal permitted use at the Property. Thomas Altunaga (“Altunaga”), Marve’s site manager, testified at the trial on February 15, 2017.¹ Altunaga testified that he first began working for a business located on the Property in 1959, and he worked continuously at the Property ever since:

COUNSEL: So you’ve worked continuously at that -- out of that property since 1959?

ALTUNAGA: Yes. Except when I was on vacation or something.

[Id. at T117:15 to 118:5.]

Altunaga explained that when he started working at the Property, tenants stored their commercial vehicles on the Property and employed mechanics to repair and maintain vehicles in the garages located on the Property. (Id. at T118:6 to 123:3). To be certain, Altunaga testified that mechanics had been working for tenants at the Property continuously from 1959 to the time of his testimony:

COUNSEL: And during that time would it be fair to say that there was always at least one mechanic working there, working on commercial vehicles?

¹ Mr. Altunaga is suffering from critical illness and receiving in-patient medical care. Accordingly, he is unavailable to testify and Marve will rely on read-ins of his prior testimony pursuant to N.J.R.E. 804(b)(1).

ALTUNAGA: Yeah. There is this, you know, several right now. I see them working on their own equipment. And Richie downstairs. But there's always been mechanics there working.

COUNSEL: That includes the 1960's?

ALTUNAGA: Yeah.

COUNSEL: The 1970's?

ALTUNAGA: Yes. All the way through.

[...]

COUNSEL: From the time you first set foot on the property in October 1959 up until two days ago, February the 12th, 2017, would there be a mechanic on there each and every day -- each and every working day?

ALTUNAGA: Yeah. Not for the companies I work for, but there was someone there always working, you know, working on something. Their truck, their pickup, their small dump trucks, or, you know, their working on the school buses. They're working on next door. Everyone at the shop, the asphalt guy, he had a contractor. He had two mechanics. And then the other guy, Creo, they had two mechanics. And this new guy comes in, he does it. Yeah. I've seen him have a mechanic. They're always working on something.

[Id. at T118:6 to 123:3.].

According to Altunaga, "roll-offs," "dump trucks," "low-bed trailers," "bulldozers," "storage units," "trailers," and "small buses" and "school buses" were all stored and repaired at the Property. (Id. at T119:23 to 25).

In addition, Altunaga's testimony was consistent with the testimony of Thomas G. Jacobson, the Township's code enforcement officer, and Howard Conkling who, at the time of his testimony, lived at 247 Grove Avenue for over thirty (30) years. Notably, Jacobson testified that the first time he stepped foot on the Property in 2005, he observed commercial vehicles, such as trucks, other commercial vehicles, lifts, heavy equipment and cranes, being stored and repaired by mechanics on the Property. (Id. at T68:8 to 69:21). Similarly, Conkling testified that the Property

had been an “industrial commercial storage yard” the entire time he lived on Grove Avenue. (Id. at T94:14 to 1). Specifically, Conkling testified that since 1984, the Property had “commercial vehicles,” “cranes,” “dump trucks,” “flatbed trucks,” and “buses” stored on site. (Id. at T94:21 to 96:6).

Despite Altunaga’s testimony, the Municipal Court determined that the parking and repair of school buses was not a permitted use at the Property. (Municipal Court Decision Transcript, T19:13 to 21, attached as Exhibit D). Thus, the Municipal Court found Marve guilty of violating SC-2745. (Id.).

B. Superior Court’s Reversal of Municipal Court’s Decision

On appeal, the Superior Court, Law Division, (“Municipal Appeal Court”) considered the zoning violations *de novo* and reversed the decision of the Municipal Court.

During the appellate proceeding, the Township admitted, and the Municipal Appeal Court expressly found that the Township **“conceded that Defendant-Appellant’s use of storing and repairing commercial vehicles at the premises located at 251 ½ Grove Avenue, Verona, NJ 07044 was permitted prior to the implementation of the Verona Zoning Code 150.17-11 on August 15, 2011.”** (See June 29, 2017, Order, attached as Exhibit E) (emphasis added). Indeed the following colloquy occurred between the Municipal Appeal Court and counsel for the Township at oral argument:

COURT: For this nonconforming use issue, the taking issue, the first question is whether the use was permitted before the ordinance was amended in 2011, all right. I believe the State conceded that it was permitted.

COUNSEL: Your Honor, this particular use, I don’t know that it was conceded that this was, oh, I apologize, before 2011? Yes.

COURT: Okay, all right. So, it was permitted before 2011, okay. And so then, if it was permitted before 2011 and it continued or it’s substantially similar, if a similar use of the property continued, then the nonconforming use doctrine would prohibit a conviction, correct?

COUNSEL: Yes, Judge.

COURT: All right. I looked at my colleague’s decision, and it seemed that, below, you know, before Judge Paparazzo, both the State and the Defense conceded

that, prior to the amendment, it was a permitted use. Is that accurate based upon the record?

COUNSEL: Your Honor, I would submit that it was a permitted accessory use and that it was not a principal use.

COURT: All right. But before him, wasn't the indication it was a permitted use, period?

COUNSEL: Your Honor, from 1997 to 2011, that M1 light industrial zoning phase, I believe that the Court found that this particular use of Marve's tenant, F.S., was not allowed for the parking and repair of school busses.

COURT: I'm not getting into the school, what they were doing before 2011, whatever it be, was a permitted use, correct? That was the position before the Court below.

COUNSEL: Permitted use.

[Law Div. Hearing Transcript, T4:2 to 5:9, attached as Exhibit F.]

Accordingly, the Municipal Appeal Court correctly determined that the primary issue was whether the use permitted before the 2011 ordinance change continued, and if so, whether there had been a substantial change in that use. (Id. at T15:21 to 23).

The Municipal Appeal Court expressly found that from "July 7, 1997 through August 15, 2011, the property located at 251 ½ Grove Avenue was zone M1 light industrial. Prior to August 15, 2011, heavy commercial vehicles were repaired at the property as permitted by that light industrial zoning." (Id. at T15:1 to 6). The Court also found that F.S. Transportation's primary use of the Property was to "repair and store buses." (Id. at T15:12 to 14).

Based on the testimony before the Municipal Court, the Municipal Appeal Court concluded that the storage and repair of commercial vehicles was permitted before the 2011 zoning amendment and that there was no substantial change in the use through the present:

COURT: These are commercial-type vehicles, whether they be front loaders or fork lifts or dump trucks, pre 2011, or a series of school busses now. It is the storage and repair or repair and storage of said vehicles, which has happened since the 1950s, and it continues now, so it's a continuing [non]-conforming use.

[Id. at T17:1 to 6; see also T17:17 to 22.]

In addition, the Municipal Appeal Court found no evidence of a substantial change or expansion of the non-conforming use. (Id. at T15:24 to 16:7).

II. The Board Is Bound by the Determination of the Municipal Court and Municipal Appeal Court

In the instant Appeal, Marve challenges the Zoning Official's finding that "many of the businesses listed . . . are either an expansion of an existing non-conforming use or a new non-permitted use by itself" requiring either a D-1 or a D-2 variance. (See Zoning Decision at 19). Generally, the Zoning Decision may be broken into four violation categories: (1) parking violations, (2) welding/fabricating violations, (3) auto repair violations, and (4) other violations. In sum, the Zoning Decision finds that parking, welding/fabricating, and auto repair are not permitted principal uses at the Property. In view of the Municipal Appeal Court's decision, the Board is bound by Municipal Appeal Court's decision and is required to reverse the Zoning Decision.

Specifically, Marve challenges² the Zoning Decision determinations as follows:

A. Parking:

The present uses on the Property, including outdoor storage of vehicles and equipment and/or parking, are pre-existing non-conforming principal uses that have been conducted by Marve's tenants, including Verona Construction Company and other contractors, since the 1950s, and have continued without interruption to the present. Thus, Marve has a vested right to continue these uses on the entirety of its Property. In fact, the Municipal Appeal Court found "[i]t is undisputed that, since the 1950s, several construction companies have operated on the property located at 251 ½ Grove Avenue in Verona. The uses of this property have included storage of construction equipment, repair of such equipment, and parking of construction-related materials." (Law Div. Transcript, T14:18 to 23, attached as Exhibit F). The Municipal Appeal Court further found that there was no substantial change or expansion of these uses. (Id. at T15:24 to 16:7). The Board is bound by the Municipal Appeal Court's decision and must reverse the Zoning Decision.

B. Welding/Fabricating and Auto Repair:

With respect to welding, fabricating, and auto repair, Marve's tenants, including Verona Construction Company and other contractors, performed these uses throughout the entirety of the Property in preparing and/or storing materials and repairing commercial vehicles, equipment and materials. Moreover, fabricating, including welding, was permitted under the M-1 Zone regulations until the adoption of the C-2 zone regulations on August 15, 2011. Further, the

² Marve incorporates by reference all challenges to the Zoning Decision in its Notice of Appeal dated September 20, 2019.

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Municipal Appeal Court found that commercial vehicles and “heavy commercial vehicles were repaired at the property” as permitted prior to August 15, 2011. (Id. at T15:3 to 5). Therefore, these uses are protected non-conforming uses and there has been no expansion thereof. The Board is bound by the Municipal Appeal Court’s decision and must reverse the Zoning Decision.

C. Self-Storage:

With regard to the mobile temporary storage containers, the Municipal Court determined that Sections 4:50-9.1(b) and 1:50-17.11, that prohibit mobile temporary storage container for more than thirty consecutive days and prohibited the storage unit from being higher than fifteen feet, applied only to residential properties. The Court found that because the Property was not residential, the ordinances did not apply. Sections 4:50-9.1(b) and 1:50-17.11 are the same exact regulations cited in the instant Zoning Decision. The Board is bound by the Municipal Court’s decision and must reverse the Zoning Decision.

III. The Board Is Bound by the Findings and Determinations of the Municipal Appeal Court Based on the Doctrine of Collateral Estoppel

The Board is bound by the prior determinations of the Municipal Court and the Municipal Appeal Court. (Municipal Court Transcript, T104:14 to 110:14, attached as Exhibit C; Law Div. Transcript, T17:1 to 22, attached as Exhibit F; June 29, 2017, Order, attached as Exhibit E). Additionally, based on the identical nature of the violations contained in the Zoning Decision and the determinations made by the Municipal Appeal Court, *res judicata* and collateral estoppel prohibit the Board from relitigating this matter and preclude the Board from rendering decisions or findings contrary to those of the Municipal Court and Municipal Appeal Court. Charlie Brown of Chatham, Inc. v. Bd. of Adjustment, 202 N.J. Super. 312, 327 (App. Div. 1985) (“*Res judicata* as a principle of law bars a party from relitigating a second time that which was previously fairly litigated and finally determined.”)

We request the opportunity to meet and discuss an amicable resolution to some or all of the matters raised in the Zoning Decision prior to the hearing on February 13, 2020. Thank you.

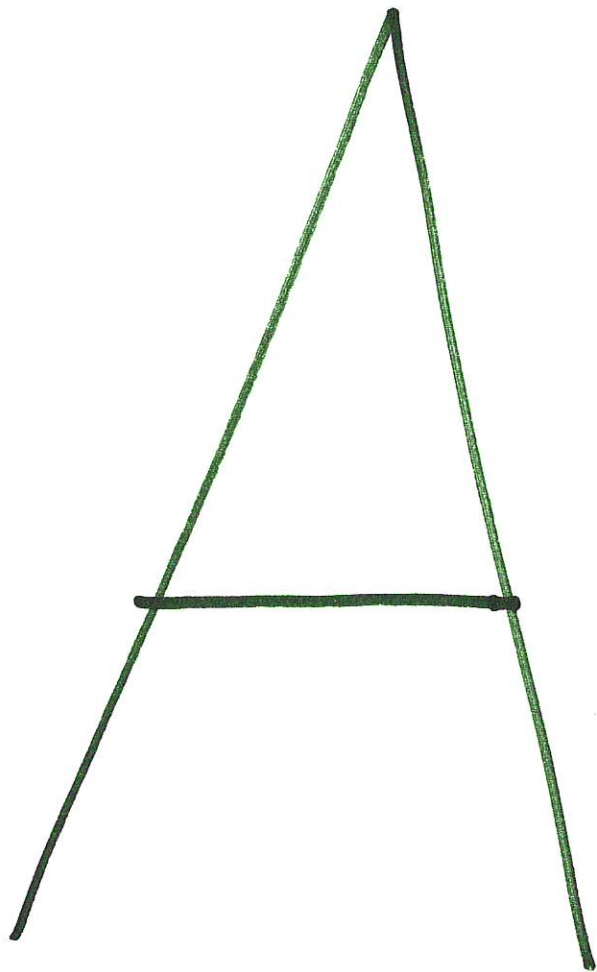
Very truly yours,

/s/ Joshua A. Zielinski

Joshua A. Zielinski

Encls.

cc: Ms. Kelly Lawrence, Board Secretary



MAYOR
JACK McEVOY
DEPUTY MAYOR
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DEPARTMENT OF PUBLIC WORKS
10 COMMERCE COURT
VERONA, NEW JERSEY 07044

August 30, 2019

Owner:
Marve Development Corporation
PO Box 216
251½ Grove Avenue
Verona, N.J. 07044

Property:
Lot 12 Block 1201
251 Grove Avenue
Verona, N.J.

Zone:
C-2 (Professional Office and Business)

Dear Property Owner,

The Township of Verona's zoning and engineering department has been receiving numerous complaints from the property owners which adjoin No. 251½ Grove Avenue, Lot 12 Block 1201 hereafter referred to as the "Site". The complaints have been in regard to noise, noxious fumes, and property maintenance issues. There is also a deep concern that there seems to be number of tenants which are renting/leasing areas of the property for uses which are not permitted under the current Township of Verona Zoning Ordinance known as Chapter 150 (adopted August 15, 2011).

This office has been conducting a series of site inspections over the past few weeks in hopes to better assess the situation as it exists. We have been provided with a list of all the current tenants (uses) of the "Site" and is attached hereon. This letter shall serve as a zoning review of each of the uses and determine if they are a permitted use within the C-2 Zone or if they were granted permission by resolution by the Township Planning Board or by the Board of Adjustment at some point in time, or even former zoning officers.

History of Property:

The "Site" has been the topic of many zoning & property maintenance related issues over the past few decades, ever since the long-standing principal user/owner of the property, Mr. Cestone ceased daily operation of their business. Since ceasing its operation of a construction company the owner and principle user of the property "Verona Construction Company" which is now doing business as "Marve Development" has chosen to internally subdivide and lease out sections of the existing principal structures. The owner has also offered for lease large outdoor areas of the open space(s) on the property itself for a multitude of mixed uses. This office cannot find any documentation in regards to zoning or construction permit applications having been submitted by the owner or the prospective tenant(s) seeking Township approval prior to occupying the building or utilizing the property. Some of the current tenant's pre-date the current zoning regulations/ordinances and that is being considered as part of this review.

The "Site" is tucked away behind the surrounding residential districts and is not openly visible from the public roadway, it would appear that the "uses" at the site have been in a state of perpetual expansion by the owner over many years.

There has been considerable debate over the past several years questioning the validity of several of the uses as they exist and if they are a permitted use, non-conforming use and or existing non-conforming use. It would appear that the previously argued existing non-conforming use is being used as the basis for the current expansion of much of the "Site" and its combined uses. This is based upon previous letters addressed to the owner(s) from previous Township Officials and subsequent correspondence by the owner's legal representatives addressed back to the Township Officials.

With that we would like to offer the following as factual evidence:

1952 Verona Construction Company

The "Site" was previously owned/occupied by the Verona Construction Company and at the time the property was split zoned. A majority of the lot was in an Industrial Zone while the balance was in a Residential Zone District. The owner/applicant went before the Board of Adjustment on March 6th 1952 seeking permission to use "premises 251 Grove Avenue, rear of lots facing Grove Avenue, and rehabilitate former garage located thereon. (See attached for minutes of that meeting.)

Sworn testimony was given by Mr. N. Fiore and Mr. Ralph Cestone who spoke on behalf of the applicant. During the meeting questions were asked by the various members of the Board about the use of the property as it related to the application as well as the future intent of both the building and the site as well. The applicants testified that the purpose of the application was to seek approval to rehabilitate a portion of an existing garage and to construct a new garage where there was an old foundation present on the property. The intention was to utilize the garages to store trucks, cars and other contractor's equipment.

Board members asked about the remainder of the property. Mr. Cestone had offered testimony that at the present time there was no double purpose for the site. He further reiterated that they would use the other parts of the property someday if he could not build as they asked now and that they would have to build in the industrial portion of the property.

Testimony was further provided about the location of the overhead doors not facing the back of the residential dwellings along Grove Avenue. It was stated by Mr. Cestone that the "back" of the storage building would face the dwellings. A member of the Board then asked Mr. Cestone about noise. The applicant then offered that *"We plan to store equipment there and remember the bull dozers, trucks, etc. are of no value unless they are being used, therefore we would rarely store them there."*

"The only noise would be when they were started and after they get out of the yard they are like any other truck they will be quite a distance from the houses."

The applicant went on to further state that the trucks would only be stored there in between jobs and that would be seldom, and that most of the storage would be small stuff.

Mr. Anderson of the Board directed a question to Mr. Cestone regarding the storage, he asked *"You would plan to store all of the equipment in the building?"* To which Mr. Cestone's reply was *"Yes to prevent deteriorating."* It was further explained that in the past the company did not store materials anywhere and that all materials were used at the job site.

Mr. Baldwin of the Board had inquired about using the premises specifically for repairs. Mr. Cestone stated *"Do not plan that at present. We do not believe in maintenance and employing a crew we have the manufacturers of the machines maintain them."*

Mr. Donohue of the Board asked about what type materials would be stored? To which Mr. Cestone answered *"Only excess material."*

The meeting adjourned and a vote was taken in closed session to which the application was denied.

(1986) "Dews Diesel" Appeal to Board of Adjustment

Dews Diesel had apparently obtained a lease for a newly subdivided portion of the existing storage facility owned by Mr. Cestone. Dews Diesel was conducting business as a diesel engine repair facility which also had a retail component attached to it. The Township had issued a summons to the owner of the property citing violations of the current zoning ordinance. (Expansion of an existing non-permitted use) Proceedings were then conducted at the Verona Municipal Court on August 6, 1986. The decision of the court was that such matters were under the discretion of the Board of Adjustment. Subsequently the applicant "Dews Diesel" made application to the Verona Board of Adjustment seeking an interpretation of the zoning ordinance. The result was that the Board found that the "use" of repairing diesel engines was in fact an introduction of a new use and was also an expansion of a non-conforming use which required a use variance in accordance with NJSA 40:55d-70.

Testimony by the Professional Planner Mr. Peter Steck who was hired by the Township stated in his report to the Board that repairs conducted at the subject premises prior to the use of the premises by Dews Diesel were accessory to the principal use as a contractors storage yard and that the applicants current use of repair and rebuilding of diesel engines is not a permitted use in the M-1 Zone and is a new principal use constituting an expansion of the non-conforming use of the subject premises. The results of that meeting were a vote of 7-0 that a use variance would be required for Dews Diesel to continue its operation. This was adopted by the Board of Adjustment on November 12, 1987 and memorialized on December 10th, 1987.

1988 Dews Diesel Variance Application

Application was made before the Township of Verona Board of Adjustment by the applicant known as "Dews Diesel" for a proposed use of repairing diesel engines. The applicant was seeking a use variance based on the factual findings and rendered decision of the Verona Board of Adjustment at the December 10, 1987 meeting. At the time of the application the site was zoned M-1 (Light Industrial)

The findings during variance application meeting were that the "use" of repairing diesel engines in a building that had been historically used as a storage facility was an introduction of a new use as well as an expansion of an existing non-conforming use. The application was denied on February 11th 1988 and memorialized on March 10th 1988.

It is believed that Dews Diesel terminated its lease with the property owner and vacated the premises; however this office could find no factual evidence of this.

1988 Rogers Roofing Company Site Plan Application

Rogers Roofing Company submitted a site plan application to the Township Planning Board seeking approval of a site plan that included a change in use to a permitted use of warehouse space with accessory office space and incidental shop work in connection with the applicants roofing business. Rogers Roofing was proposing to lease space at the Northern most part of the existing building which was historically occupied by the existing non-conforming use. (Verona Construction Company - Marve Development Company) The site plan application was approved on June 23, 1988 and memorialized on July 28, 1988. The NJ Municipal Land Use Law cites that the goals of zoning as it is related to non-conforming uses is to bring them back to conformity as quickly as possible. Such was the case with the Rogers Roofing Application.

Current Site Use

The current owner of the property (Cestone) appears to have discontinued their prior use of the buildings and site which formerly operated as a construction company storage facility. The owner has subdivided most of the original structures and has leased them out to various tenants and uses. The same is true for large areas of open space throughout the site. The zoning office has no records of the owner or its tenants seeking approval of any of the uses which currently exist at the property. It has been argued by the owner that the non-conformity use of the property

is historic, dating back decades and thus being "grandfathered" in. This office can find no factual evidence which predates the 1952 denial by the Verona Board of Adjustment, where said applicant sought approval for a use variance. The primary concern of this zoning review is not as to whether or not the existing non-conforming use exists and is protected but rather has it been expanded beyond its original intent and purpose.

The current zoning of the property known as No. 251 1/2 Grove Avenue, Lot 12 Block 1201 is situated in the C-2 Zone (Professional Office and Business) district as described in the Township of Verona's Zoning Ordinance Chapter 150, dated August 15, 2011. The zoning prior to 2011 was M-1 (Light Industrial)

§150-17.11 C-2 (Professional Office and Business District)

- A. Principal Permitted Uses:
 - 1. Commercial and professional offices.
 - 2. Commercial schools offering instruction.
 - 3. Family day care centers.
- B. Permitted Accessory Uses:
 - 1. Accessory uses customarily incidental to the principal use.
- C. Conditional Uses:
 - 1. Mixed residential and professional offices (non-medical)
 - 2. Mixed residential and commercial offices (non-medical)
 - 3. Mixed professional and commercial offices (non-medical)

The former M-1 Zone (Light Industrial) (Amended 7-14-97 by Ord. 2-97)
(The former zoning is shown for informational purposes only and is not considered as part of the decision of this report, however it may prove to show that expansion has occurred prior to the current 2011 zoning ordinance)

- A. Principal Use:
 - 1. Manufacturing, processing, producing or fabricating operations which can meet performance standards.
 - 2. Warehouses.
 - 3. Wholesale trade.
 - 4. Research and development.
 - 5. Child care centers.
- B. Accessory Uses:
 - 1. Accessory uses customarily incidental to the principal or conditional use, except that there shall be no outside storage of products, materials or equipment.
- C. Conditional Uses:
 - 1. A satellite dish antenna installed in the side yard or a rooftop.

The following is a list of current tenants which are utilizing either the buildings, open spaces or both. This list was provided to this office by the owner of the property. We have listed the "use" of the business as well as to whether the "use" is a permitted "use" under the current zoning ordinances. Violation(s) of zoning, if any will be indicated after each use as described.

AAA Yardwork – Occupancy Date, May 2003.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their landscaping trucks and equipment. "Parking" is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

AK Welding – Occupancy Date, July 2013.

Based upon visual inspection of the site this tenant is utilizing a portion of the building as a welding shop in a space which was previously argued was protected as a non-conforming "storage use". The current use is not a permitted use in the current C-2 zone district (2011). The use is also considered an expansion of an existing non-conforming use and covered under NJ Municipal Land Use Law section 33-2. Township Fire Marshall and Code Enforcement Officer shall be required to inspect and verify all materials stored.

Zoning Violation: Variance §150-17.11 a.

Welding, Fabricating and Repair Shops are not a permitted use in the current zone. Use would require a variance be granted as per N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.3 a.

Prohibited uses in all zone districts in the Township of Verona. "Use Group H-High Hazard use as defined in the building code." IBC Chapter 3, Section 307. Storage of Flammable gasses, liquids, solids and oxidizers.) The use of a building or structure, or portion thereof, that involves the manufacturing, processing, generation or storage of materials that constitute a physical or health hazard.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

American Asphalt – Occupancy Date, August 2015.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their commercial trucks and equipment. "Parking" is not a permitted principal use it is an accessory use incidental to a principal use. This tenant is also utilizing areas within the property

for storage of materials some of which appear to be an unsecured and combustible. The Township Fire Marshall and Code Enforcement Officer shall be required to inspect and verify all materials stored.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

ANIPARK Enterprises LLC – Occupancy Date, September 2014.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their commercial trucks and equipment. "Parking" is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Assured Air System Inc. – Occupancy Date, September 2006.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their commercial trucks and equipment. "Parking" is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Bulk Be Gone – Occupancy Date, March 2016.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their commercial trucks and equipment. "Parking" is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use. There is also a vast amount of loose debris which at the time of inspection was not clear as to whether this was refuse or intended to be saved for future use. The Township Fire Marshall and Code Enforcement Officer shall be required to inspect and verify all materials stored.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Capaldo Enterprises LLC – Occupancy Date, January 2015.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their commercial trucks and equipment. "Parking" is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Carolyn Contractors -- Occupancy Date, January 2015.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their commercial trucks and equipment. "Parking" is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Centurion Auto Works -- Occupancy Date, January 2016.

Based upon visual inspection of the site this tenant is utilizing a portion of the building as an automotive repair facility in a space which was previously argued was protected as a non-conforming "storage use". The current use is not a permitted use in the current C-2 zone district (2011). The use is also considered an expansion of an existing non-conforming use and covered under NJ Municipal Land Use Law section 33-2. Township Fire Marshall and Code Enforcement Officer shall be required to inspect and verify all materials stored.

Zoning Violation: Variance §150-17.11 a.

Automotive Service Stations and Autobody Repair Shops are not a permitted use in the current zone. Use would require a variance be granted as per N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.3 a.

Prohibited uses in all zone districts in the Township of Verona. "Use Group H-High Hazard use as defined in the building code." IBC Chapter 3, Section 307. Storage of Flammable gasses, liquids, solids and oxidizers.) The use of a building or structure, or portion thereof, that involves the manufacturing, processing, generation or storage of materials that constitute a physical or health hazard.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Covello, Sebastian – Occupancy Date, March 2015.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their private boat and trailer. "Parking" is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Drive Up Storage – Occupancy Date, October 2014.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to operate a business which consists of staging many temporary mobile storage trailers commonly referred to a "PODS". Mobile storage units are not a permitted principal use in any current zone district within the Township. These types of units are permitted as a temporary use and regulated within §150-9.1. Temporary use is defined within the current zoning ordinance as "A use established for a fixed period of time with the intent to discontinue such use upon the expiration of the time period." It has been argued that these mobile storage units are protected under the existing non-conforming nature of a "storage use" such hold true by name only. Based upon the 1952 testimony provided by the current owner the requested "storage" use was to be contained within the confines of the building itself and that "materials" only would be "stored" in the open areas of the "site". The materials "stored" whether in the building or in the yard areas were accessory to the nature of the construction business itself. The current mobile storage unit use is an expansion of an existing non-conforming use. These storage units are in no way accessory to any of the permitted or non-permitted uses as they currently existed or presently exist. Periodic aerial photography clearly depicts an expansion of the mobile storage container use.

Zoning Violation: Variance §150-17.11 a.

Storage of Temporary or Permanent Units/Containers is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Zoning Violation: Variance §150-9.1 a.

Mobile temporary storage units shall not exceed eight feet in height, eight feet in width or sixteen feet in length.

Zoning Violation: Variance §150-9.1 b.

Mobile temporary storage units may remain on a property for up to 30 consecutive days. No lot shall contain a mobile temporary storage container for more than 90 days per 360-day period.

F.S. Transportation – Occupancy Date, August 2013.

Based upon visual inspection of the site this tenant is utilizing a portion of the building as a bus repair facility in a space which was previously argued was protected as a non-conforming “storage use”. The current use is not a permitted use in the current C-2 zone district (2011). The use is also considered an expansion of an existing non-conforming use and covered under NJ Municipal Land Use Law section 33-2. Township Fire Marshall and Code Enforcement Officer shall be required to inspect and verify all materials stored.

Zoning Violation: Variance §150-17.11 a.

Automotive Service Stations and Autobody Repair Shops are not a permitted use in the current zone. Use would require a variance be granted as per N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.3 a.

Prohibited uses in all zone districts in the Township of Verona. “Use Group H-High Hazard use as defined in the building code.” IBC Chapter 3, Section 307, Storage of Flammable gasses, liquids, solids and oxidizers.) The use of a building or structure, or portion thereof, that involves the manufacturing, processing, generation or storage of materials that constitute a physical or health hazard.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Austin Fanning General Contractors LLC – Occupancy Date, March 2012.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their commercial trucks and equipment. “Parking” is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Friel Brothers Paving Inc. -- Occupancy Date, January 1999

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their commercial trucks and equipment. "Parking" is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Gaeta Recycling Co. Inc. -- Occupancy Date, July 2014,

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to operate a business which consists storage of refuse containers or dumpsters of varying sizes. Dumpsters are regulated under §150-7.15 a. and §150-17.11 a. (Dumpster: A large container for the temporary storage of waste) again, It has been argued that storage is protected under the existing non-conforming nature of a "storage use" such hold true by name only. Based upon the 1952 testimony provided by the current owner the requested "storage" use was to be contained within the confines of the building itself and that "materials" only would be "stored" in the open areas of the "site". The materials "stored" whether in the building or in the yard areas were accessory to the nature of the construction business itself. The current dumpster storage container use is an expansion of an existing non-conforming use. These dumpster containers are in no way accessory to any of the permitted or non-permitted uses as they currently existed or presently exist. Periodic aerial photography clearly depicts an expansion of the mobile storage container use.

Zoning Violation: Variance §150-17.11 a.

Storage of Temporary or Permanent Units/Containers is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Zoning Violation: Variance §150-9.1 a.

Mobile temporary storage units shall not exceed eight feet in height, eight feet in width or sixteen feet in length.

Gil Brothers – Occupancy Date, September 2017.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their landscaping trucks and equipment. "Parking" is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Heavy Iron Services – Occupancy Date, November 2015.

Based upon visual inspection of the site this tenant is utilizing a portion of the building as a welding shop in a space which was previously argued was protected as a non-conforming "storage use". The current use is not a permitted use in the current C-2 zone district (2011). The use is also considered an expansion of an existing non-conforming use and covered under NJ Municipal Land Use Law section 33-2. Township Fire Marshall and Code Enforcement Officer shall be required to inspect and verify all materials stored.

Zoning Violation: Variance §150-17.11 a.

Welding, Fabricating and Repair Shops are not a permitted use in the current zone. Use would require a variance be granted as per N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.3 a.

Prohibited uses in all zone districts in the Township of Verona. "Use Group H-High Hazard use as defined in the building code." IBC Chapter 3, Section 307. Storage of Flammable gasses, liquids, solids and oxidizers.) The use of a building or structure, or portion thereof, that involves the manufacturing, processing, generation or storage of materials that constitute a physical or health hazard.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

JB Management Inc. – Occupancy Date, July 2012.

Based upon visual inspection of the site this tenant is utilizing a portion of the building as an automotive repair shop in a space which was previously argued was protected as a non-conforming "storage use". The current use is not a permitted use in the current C-2 zone district (2011). The use is also considered an expansion of an existing non-conforming use and covered under NJ Municipal Land Use Law section 33-2. Township Fire Marshall and Code Enforcement Officer shall be required to inspect and verify all materials stored.

Zoning Violation: Variance §150-17.11 a.

Automotive Service Stations and Autobody Repair Shops are not a permitted use in the current zone. Use would require a variance be granted as per N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.3 a.

Prohibited uses in all zone districts in the Township of Verona. "Use Group H-High Hazard use as defined in the building code," IBC Chapter 3, Section 307. Storage of Flammable gasses, liquids, solids and oxidizers.) The use of a building or structure, or portion thereof, that involves the manufacturing, processing, generation or storage of materials that constitute a physical or health hazard.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Jervae Realty – Occupancy Date, January 2017.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their private trailer. "Parking" is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Kidxercise LLC – Occupancy Date, November 2017.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their “Kidxercise” converted school buses. “Parking” is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Lee Tree Service – Occupancy Date, April 2013.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their landscaping and tree removal trucks and equipment. “Parking” is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Moriarty General Contractors – Occupancy Date, January 2018.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their commercial trucks and equipment. “Parking” is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Navarro Lawn & Tree Service – Occupancy Date, December 2014.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their landscaping and tree removal trucks and equipment. "Parking" is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Rojas Heavy Equipment Repair, – Occupancy Date, May 2017.

Based upon visual inspection of the site this tenant is utilizing a portion of the building as an autobody repair shop in a space which was previously argued was protected as a non-conforming "storage use". The current use is not a permitted use in the current C-2 zone district (2011). The use is also considered an expansion of an existing non-conforming use and covered under NJ Municipal Land Use Law section 33-2. Township Fire Marshall and Code Enforcement Officer shall be required to inspect and verify all materials stored.

Zoning Violation: Variance §150-17.11 a.

Automotive Service Stations and Autobody Repair Shops are not a permitted use in the current zone. Use would require a variance be granted as per N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.3 a.

Prohibited uses in all zone districts in the Township of Verona. "Use Group H-High Hazard use as defined in the building code." IBC Chapter 3, Section 307. Storage of Flammable gasses, liquids, solids and oxidizers.) The use of a building or structure, or portion thereof, that involves the manufacturing, processing, generation or storage of materials that constitute a physical or health hazard.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

John Sweeney – Occupancy Date, August 2003.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to operate a “used construction vehicles” business which includes parking of used vehicles within the open space yard. “Parking” is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use. Automobile sales is a non-permitted use in the zone. Sales of automobiles are regulated under §150-8.4 of the Township Zoning Ordinance and may be permitted upon authorization of the Planning Board.

Zoning Violation: Variance §150-8.4 a

Automotive sale business shall be operated from an enclosed building.

Zoning Violation: Variance §150-8.4 b

No parking or storage of vehicles shall be permitted in the required front yard.

Zoning Violation: Variance §150-8.4 c

Outdoor storage of vehicles for sale or otherwise shall not exceed more than twice the gross floor area of the principle building.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

TKJ Landscaping, LLC – Occupancy Date, September 2018.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their landscaping trucks and equipment. “Parking” is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Weber Lawn Company – Occupancy Date, April 1997.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their landscaping trucks and equipment. "Parking" is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

Wilborn, Heinz – Occupancy Date, June 2012.

Based upon visual inspection of the site this tenant is utilizing a portion of the open space yard to park their private trailer. "Parking" is not a permitted principal use it is an accessory use incidental to a principal use. Parking for the existing non-conforming use was accessory to that particular use.

Zoning Violation: Variance §150-17.11 a.

Parking is a non-permitted principal use and would require a use variance in accordance with N.J.S. 40:55-70 D.

Zoning Violation: Variance §150-4.2 e.

No minimum off-street parking area or loading or unloading area shall be considered as providing off-street parking, loading or unloading for a use or structure on any other lot or parcel than the principal use to which it is ancillary.

Zoning Violation: Variance §150-13.3 a.

No existing building or premise containing a non-conforming use as permitted shall be enlarged, extended, reconstructed or structurally altered unless such use is changed to a permitted use. No non-conforming use shall be changed to another or different non-conforming use.

That concludes the review of the uses that are currently operating a business or utilizing portion(s) of the existing "site" which are in violation of the Current Zoning Ordinances.

Zoning Decision:

The current owner(s) of the property commonly known as 251½ Grove Avenue had historically owned and operated a construction business at the "site" dating back beyond the 1950's but at the present time are no longer operating as construction business and longer store any construction equipment associated with that business within the existing structures or store any materials related to their construction business within the open lot areas as their use of the "site" was originally argued for.

Based on the factual documentation which is on file in the offices of both the Township Zoning and Construction Departments, it is apparent that the construction companies whether "Verona Construction Company or Marve Development have continually opined that their primary and principal use of the property was and has been "storage" for their construction equipment and for the outdoor storage of extra materials related to the construction business only. Due to that fact that their continued and historic use of the property as "storage" predated the current zoning regulations of the Township this type of situation known as a pre-existing non-conforming use is protected under Statutes contained within the NJ Municipal Land Use Law, see e.g. N.J.S. 40:55D-68, which states the pre-existing non-conforming use may continue as long as the use is not abandoned by the owner of the property.

While said maybe true and in fact protected, the historic and continued use of the property as "storage" was specifically related to a specific business, which was the construction business and accessory uses and storage of materials as it directly related solely to that business itself. Many of the listed businesses addressed as part of this zoning review are either an expansion of an existing non-conforming use or a new non-permitted use by itself. Both of which would require either a D-1 (non-permitted use) variance or a D-2 (expansion of an existing non-conforming use) variance, See N.J.S. 40:55D-70.

As contained within the Municipal Land Use Law under Chapter 27-1.1 "There is also a judicial tendency to strictly limit the scope of the nonconforming use and to reduce it "to conformity as quickly as is compatible with justice."

"Moreover, land use regulation is widely viewed as an important factor in preserving health, safety, beauty, natural resources and overall quality of life in communities. Thus, a readily apparent conflict exists between the desire to treat property owners equitably and the laudable goals of land use control. The result is, as it should be, a compromise."

The MLUL permits qualifying pre-existing nonconforming uses and structures to co-exist with the ordinance that, on its face, prohibits them. However, the existence of nonconforming uses and structures is expressly disfavored, precarious, and subject to review at various times. In dealing with nonconforming uses and structures, the legislature and municipal boards must continually balance the important goal of bringing such uses and structures into conformity, with the equally compelling interest in protecting property rights from being unfairly restricted.

The use of the property has over the course of time expanded and introduced new non-permitted uses which are well beyond the true nature, scope and intent as originally argued by the present

owners of the property for "storage" as a principle use. A pictorial history of the site is included at the end of this report which will show clear evidence of an expansion of a non-conforming use.

The Township feels that we are acting in the best interest of the general public in asking for variances for such uses as contained herein to continue based upon the intent of the Municipal Land Use Law.

We are therefore requiring that the owner of the property "Marve Development Company" review the list of variances as contained herein and submit a formal application to the Township of Verona Board of Adjustment seeking approval of the variances as listed within 60 days of the date of the certified mailing. If application is not made by that time we shall then require all businesses (uses) acting in violation(s) as specified contained in this notification to cease and desist all operation and vacate the premises 30 days after the expiration of the 60 day timeframe. (90 days total from the date of certified mailing).

A second matter of concern which has gone un-noticed is the expansion of the overall site in relationship to "Lot Coverage and Improved Lot Coverages". Many of the uses which are presently occupying the site are by their nature themselves considered to be a structure and would be required to be part of the overall calculations for impervious coverages i.e. "Drive Up Storage" or the "Gaeta Refuse Containers". By simply looking at the timeline of aerial photographs this becomes very apparent. We are requiring that the owner submit to the engineer's office a boundary and topographic survey which accurately depicts the current site conditions and all of the "uses", "storage" and structures on site. There must also be a map which shows the conditions and calculations which existed before the adoption of the current zoning ordinance (2011). Most if not all of the uses/storage/structures listed as part of this report have started their occupation at the site after 2011. Those would be considered newly created impervious coverage and are not protected under the MLUL of pre-existing non-conformity.

VIOLATIONS AND PENALTIES.

The property owner, Marve Development Company, its subsidiaries or the businesses (tenants) which are still in operation after the prescribed timeframe shall be subject to the following penalties as defined under Chapter 150 of the Township of Verona Zoning Ordinance.

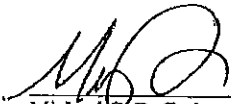
§150-16.6

A. Any owner, general agent, contractor or tenant of any building or premises or part thereof, in which premises or part thereof is in violation of any provision of this ordinance has been committed or shall exist, or any other person who commits, takes part or assists in such violation or who maintains any building or premises in which any such violation shall exist; or any person who constructs, alters, restores, repairs, reconstructs, converts or maintains, or permits the construction, alteration, restoration, conversion or maintenance of, any building or structure, or who uses, maintains or permits the use or maintenance of any land, building or structures, in violation of any provisions of this ordinance, shall, upon conviction, be subject to a fine not to exceed \$1,250.00 or imprisonment for a term not to exceed 90 days, or both, at the discretion of the court.

B. For every day that a use or structure in violation of any provision of this ordinance is permitted to exist or is continued in any building or location, a distinct violation of this ordinance shall be deemed to have been committed.

- Address additional variances and comments as per the Construction Official/Code Enforcement Officer.
- Address additional comments as per the Fire Marshall/Inspector.
- Address additional comments as per the Township Engineer.
- Address additional variances as may be deemed necessary by the Board of Adjustment

Respectfully Submitted,



Michael E. DeCarlo
Engineering Manger & Zoning Official

Note:

Appeals to the zoning board of adjustment from the decision of an administrative officer must be taken within 20 days by filing a notice of appeal with the officer from whom the appeal is taken specifying the grounds of such appeal. N.J.S. 40:55D-72a. Failure to adhere to the time for appeal will result in the zoning board not having jurisdiction to consider the appeal.

Prior Resolutions and Board of Adjustment Applications
and Decisions.

Minutes of a regular meeting of the Board of Adjustment of the Borough of Verona, N.J., held on Thursday evening, March 6th, 1952 at 8:15 P.M., in the Council Chambers of the Municipal Building, Verona, N.J.
Present: J.D. Baldwin, Jr., L.F. Anderson, E.W. Bonta and J.J. Donohue.
Absent: G. Weldon Samuel.

The secretary read the application of Verona Construction Company of 257 Fountain Avenue for permission to use premises 251 Grove Avenue, rear of lots facing on Grove Avenue, and rehabilitate former garage located thereon, a permit being necessary as the said fifty feet within which the foundation is located is zoned Residential while the balance of the property owned by the Verona Construction Company, to the east is zoned Industrial.

Mr. M. Fiore of 744 Broad Street appeared for the applicant. He stated that his client had purchased a parcel of land with an entrance of fifty feet from Grove Avenue, most of which was zoned for Industrial use, but the front of a part of the lot was zoned for Residential use. There is a foundation of an old garage there and we would like to use part of the foundation and erect a garage there and store trucks, cars and other contractor's equipment there. There is also a stucco building fifteen feet from the line."

Mr. Ralph Costone, 22 Cliff Street, an engineer in the employ of the Verona Construction Co., was sworn. He stated that he was the Treasurer and Engineer of the company, that there was a space varying from 6 to 15 feet between the side line of the property and the neighbor's rear line. They would like to grade the property, plant shrubs there and put up a chain link fence. Mr. Baldwin: Will you fence the entire lot. Mr. Costone: Yes, I believe we will fence all around it this part at once and finally all the lot. The line along where we ask the change of zone use will be forward. We plan to use 90 feet of the foundation if permitted to do so.

Mr. Baldwin: Who owns the stucco building? Mr. Costone: We do and also the 50 foot strip.

Mr. Baldwin: How close to the road is the first house? Mr. Costone: The same as any other house on what would be a corner. We intend to use that as a road for a right of entry—we must use the property.

Mr. Baldwin: What use would you put the rest of the property? Mr. Costone: Actually nothing at present—but eventually for storage and equipment.

Mr. Baldwin: The reason you want to use it is to save storage costs?

Mr. Costone: At present we have no double purpose—I can say little as to the future—to use it we would have to put in storm drains due to the condition of the ground—we would have to drain to the Peckman and eliminate the wet pockets. We want to use the rest of the property some day—if we cannot build as we ask now we would have to build in the industrial part—that would not be as aesthetic—it would just be a storage building. The way we planned would be to have the back of the garage toward the houses—shrubs, etc., would make a nice appearance. If not that way we would have to face it North.

Mr. Baldwin: The doors would face East. Mr. Costone: The doors would have to be placed that way with all activities visible.

Mr. Baldwin: You plan to have the back of the garage face the houses on Grove?

Mr. Costone: Yes—the garage to be of cement block and plaster. Mr. Baldwin: When you bought, did you know this property was partly Residential. Mr. C. Yes, that is we knew the houses on Grove Avenue were residential but we never gave it a thought so far as our piece was concerned. There was no such industrial right there we thought we were allright. I don't think my father knew it was partly residential.

Mr. Baldwin: Did you know you couldn't build within 30 feet of the residential district? Mr. Costone: No, that part makes no difference—if the permit is not granted we would make a road further back.

Mr. Fiore: Of the objectors will sit down with Mr. Costone and find out just what he would like to do I am sure they would find it to their advantage to have it his way. That would be better than a building visible from the houses. This plan would serve as a party wall and would be sheltered from these houses.

Mr. Baldwin: What about noise? Mr. Costone: We plan to store equipment there—and remember the bull dozers, trucks, etc., are of no value unless they are being used, therefore we would rarely store them there. The only noise would be when they were started and after they get out of the yard they are like any other truck—they will be quite a distance from the houses.

Mr. Baldwin: What about the trucks?

Mr. Costone: The trucks are valuable when on the job. The only time we would store them would be between jobs and that is seldom. Our jobs are 50 or 60 miles away and more generally the storage would be of small stuff.

Mr. Anderson: You would plan to store all of the equipment in the building?

Mr. Costone: Yes—to prevent their deteriorating.

Mr. Baldwin: What use do you plan for the rest of the property?

Mr. Castone: No use planned at the minute.
 Mr. Baldwin: Not planned- what about pipes, machines, derricks, etc.
 Mr. Castone: It is too low-we would use parts of the lot nearer-the N E Corner High ground.
 Mr. Baldwin: Where are these things stored now?
 Mr. Castone: For the past few years, not stored anywhere-all being used on the jobs-we want to insure against the future-to keep out the weather.
 Mr. Baldwin: You would also use the premises for repairing?
 Mr. Castone: Do not plan that at present. We do not believe in maintenance and employing a crew-we have the manufacturers of the machines maintain them; some small and minor repairs we might make-the rest by the manufacturers.
 Mr. Donohue: Will you fence? Mr. Castone: Yes-a six foot chain fence.
 Mr. Donohue: If the variance limited to your present request how many houses would be affected. Mr. Castone: Possibly four or five-the place is not pentared squarely.
 Mr. Donohue: Are there any fuel tanks or gas tanks?
 Mr. Castone: Possibly a fuel tank for heating but no gas tanks. The trucks would not be based here except for storage-not working here-just stored out of the weather. Mr. Donohue: What materials would you store? Mr. Castone: Only excess materials.
 Mr. Donohue: Not carloads, gravel, etc.,
 Mr. Castone: No, we buy once for use and do not store. Our contracts are in South Jersey-60 miles from here. Trucks can't be back every night-only when we have no work would the trucks be stored. The trucks may not be back for a year. When a job is finished we might store 3,4,5 lengths of pipe.
 Mr. Donohue: No large quantity. Mr. Castone: No. What we would store is brass and copper cocks, A box the size of a desk would hold them all.
 Mr. Bonta: Do you use structural steel? Mr. Castone: No, we are not in that line of business, ours is pipe line and road construction. No bulky materials for storage.

The following citizens were sworn and stated that they did not favor the granting of the application- T. Tichener, 233 Grove Avenue, Edward Overton, 249 Grove Avenue, R. Finnegan, 245 Grove Avenue, Nelson Venezia, 243 Grove Avenue, Mrs Beatrice Rodman 235 Grove Avenue, Mr. Nelson Bahney of 241 Grove Avenue.

No further citizens wished to speak. The meeting adjourned at 9:45 P.M.

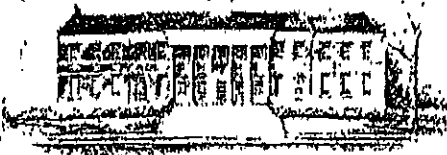
James D. Baldwin, Jr.,
Chairman.

Eliens C. Kreuzer, Secy.

In Executive Session: Present: The Same.
 Following discussion Mr. Donohue moved that the application be denied, seconded by Mr. Anderson. On Roll Call the vote: Aye to deny: Mr. Donohue, Mr. Anderson, Mr. Bonta and Mr. Baldwin. Absent: Mr. Saueel.
 The meeting adjourned at ten fifteen P.M.

James D. Baldwin, Jr. Chairman

Eliens C. Kreuzer, Secy.



62/12

*Township
of
The Borough of Verona*

VERONA, NEW JERSEY 07044

OFFICE OF THE CONSTRUCTION OFFICIAL

239-3220

April 1, 1986

Mr Ralph Cestone
Marve Development Corp.
251 1/2 Grove Avenue
Verona, New Jersey 07044

Dear Mr Cestone,

In order to resolve the question regarding the use of a portion of the subject property for the repair of diesel engines, I have taken into account your argument that the use has been in effect for some 35 years. I have also taken into account the concerns of the residential property owners directly adjacent to the subject property and I have reached the following conclusion.

The repair of diesel engines in a building that had been used primarily for storage is an introduction of a new use and thus an extension of a non-conforming use. The use is non-conforming because it is not listed as one of the principle permitted uses in an M-1 zone. Therefore the question properly belongs in the form of an application before the Board of Adjustment.

As you are no doubt aware, you may appeal this interpretation to the Board of Adjustment. If the interpretation is upheld you may pursue an application for a variance to allow the use, as described, to continue. Application forms and information regarding an appeal may be obtained by contacting the Secretary to the Board of Adjustment at 21 Grove Avenue, 239-3220 (x213).

Sincerely,

Patrick Hynes
Construction Code Official

IN THE MATTER OF THE
APPLICATION OF DEWS DIESEL

BOARD OF ADJUSTMENT
TOWNSHIP OF VERONA
ESSEX COUNTY, NEW JERSEY

WHEREAS, the applicant, Dew's Diesel, is the occupant/lessee of a portion of property located at 2514 Grove Avenue, Verona, New Jersey, said property also being known as Block 62, Lot 12, which property is located in the M-1 Zone; and

WHEREAS, the applicant seeks a variance pursuant to N.J.S.A. 40:55D-70 (a) on appeal from an interpretation of the Zoning Ordinance by Patrick T. Ryan, the construction official, set forth in a letter dated June 26, 1987 or, in the alternative a use variance, if necessary, pursuant to N.J.S.A. 40:55D-70(d); and

WHEREAS, the owner of the premises, Marve Development Corporation, having consented to the application; and

WHEREAS, the construction official's letter set forth that the use of the premises by applicant was not in conformity with the Verona Zoning Ordinance and, particularly, that it is not a permitted use in the M-1 Zone and that it is an expansion of a nonconforming use requiring a use variance pursuant to N.J.S.A. 40:55D-70(d); and

WHEREAS, the construction official's interpretation of the Zoning Ordinance by letter dated June 26, 1987, further advised the applicant that the repair of diesel engines in a building that had been used primarily for storage is an introduction of a new use and thus an expansion of a nonconforming use; and

WHEREAS, proceedings were conducted before the Verona Municipal Court on August 2, 1986 following the issuance of summons to the applicant for violation of the Zoning Ordinance which proceedings were appealed to the Superior Court of New Jersey, Law Division, Essex County and a hearing was conducted before Honorable Felix A. Martino concerning the matter; and

WHEREAS, the applicant has presented the testimony of Ralph Costone of Marve Development Corporation concerning the historical use of the premises and Dew Diesel concerning the use of the premises by the applicant since its lease of the premises; and

WHEREAS, the Board of Adjustment retained the services of Peter Steek, a Community Planning Consultant, to review the evidence and testimony presented, inspect the premises and provide an interpretation of the Verona ordinance concerning the historical use of the premises and the current use of the premises in light of permitted uses in the M-1 Zone; and

WHEREAS, principal permitted uses in the M-1 Zone, (light industrial district) include manufacturing, processing, producing or fabricating operations which can meet the performance standards set forth in Article XI and warehousing; and

WHEREAS, the Board bifurcated the proceedings so that the applicant and objectors presented testimony and evidence with respect to the appeal from the interpretation of the Zoning official, pursuant to N.J.S.A. 40:55D-70(a), before proceeding with the application for a use variance pursuant to N.J.S.A. 40:55D-70(d), if necessary; and

WHEREAS, the Board after carefully considering the evidence presented and the testimony taken at both the October 8, 1987 and November 12, 1987 Public Hearings and having heard the testimony of the objectors and having received the report of Peter Steek, Community Planning Consultant, who testified at the November 12, 1987 hearing which

report was marked B-1 in evidence and having made the following factual findings:

(1) The property is located in the M-1 zone.

(2) The construction official, by letter dated June 26, 1987, issued an interpretation of the use of the premises by the applicant in the M-1 zone, that will require a use variance because the repair of diesel engines in a building that had been used primarily for storage is an introduction of a new use and thus an expansion of a nonconforming use in the M-1 zone.

(3) Based upon the testimony of Mr. Stack and the observations contained in his report which are consistent with the testimony taken, the repairs conducted at the subject premises prior to the use of the premises by to, Daws Diesel were accessory to the principal use as a contractor's storage yard and the applicant's current use of repair and rebuilding of diesel engines is not a permitted use in the M-1 zone and is a new principal use constituting an expansion of the nonconforming use of the subject premises.

(4) A use variance pursuant to N.J.S.A. 40:55D-70 (d)(2) is required and the opinion and interpretation of the construction official was correct.

NOW, THEREFORE, be it resolved by the Board of Adjustment of the Township of Verona, that the application pursuant to N.J.S.A. 40:55D-70 (a) on appeal from the interpretation of the Verona construction official that the repair of diesel engines by the applicant is not a permitted use in the M-1 zone and an expansion of a nonconforming use requiring a use variance is denied and the applicant must proceed with its application for a use variance pursuant to N.J.S.A. 40:55D-70(d) (2), for an expansion of a nonconforming use.

VOTE :

AYES

NAYS

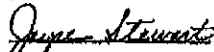
ABSTENTIONS

GARY BALLERINI
JAMES FLYNN
ROBERT KIRKMAN
MICHAEL RICHELIX
LOUIS RUSSO
WILLIAM KARP
CATHERINE ADAMCZYK



CATHERINE ADAMCZYK, CHAIRPERSON

The foregoing is a true copy of a resolution adopted by the Board of Adjustment at its meeting on the 12th day of November, 1987, and memorialized on the 16th day of December, 1987.



JOYCE STEWART, Secretary

IN THE MATTER OF THE APPLICATION

OF

DEWS DIESEL

BOARD OF ADJUSTMENT
TOWNSHIP OF VERONA
ESSEX COUNTY, NEW JERSEY

RESOLUTION

WHEREAS, the applicant Dews Diesel is the occupant/lessee of a portion of property located at 251 1/2 Grove Avenue, Verona, New Jersey, said property also being known as Block 62, Lot 12, which property is located in the M-1 Zone; and

WHEREAS, the applicant sought a variance pursuant to NJSA 40:55D-70(a) on appeal from an interpretation of the Zoning Ordinance by Patrick T. Hynes, the Construction Official, set forth in a letter dated June 26, 1987 or, in the alternative, a use variance, if necessary, pursuant to NJSA 40:55D-70(d); and

WHEREAS, the Board of Adjustment of the Township of Verona by resolution dated December 10, 1987 denied the application pursuant to NJSA 40:55D-70(a), in a bifurcated proceeding, on appeal from the interpretation of the Verona construction official on the basis that the repair of diesel engines by the applicant is not a permitted use in the M-1 Zone and an expansion of a nonconforming use requiring a use variance requiring the applicant to proceed with pursuant to NJSA 40:55D-70(d)(2), for an expansion of the nonconforming use.

WHEREAS, the Board after carefully considering the evidence presented and the testimony taken at the public hearings conducted on October 8, 1987 and November 12, 1987 on the application on appeal from the interpretation of the Zoning Ordinance by the construction official pursuant to NJSA 40:55D-70(a) and, on February 11, 1988, and having made the following factual findings:

1. The property is located in an M-1 Zone.
2. The construction official, by letter dated June 26, 1987, issued an interpretation of the use of the premises by the applicant in the M-1 Zone, that will require a use variance because the repair of diesel engines in the building that has been used primarily for storage is an introduction of a new use and thus an expansion of a nonconforming use in the M-1 Zone.
3. As a use variance pursuant to NJSA 40:55D-70(d)(2) is required, the applicant is required to present testimony and meet its burden of proof on both the positive criteria and the negative criteria as set forth in the statute.
4. The testimony presented by the applicant and the applicant's expert, Dean Boorman, a community planning and development consultant, is inconsistent with other testimony and the Board finds, as a matter of fact, that the premises in question have not always been or have continued to be used for repair of trucks and equipment as a "major portion of the overall operation of the site".
5. Contrary to the testimony presented by Mr. Boorman, it is the finding of the Board that it would not be an unreasonable hardship for this portion of the property to conform to the requirements of the M-1 Zone should the variance not be granted and that there are no special reasons for a departure from regulations of the Zoning Ordinance pertaining to use.
6. The variance requested cannot be granted without substantial detriment to the public good and will substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance as it has been demonstrated that there has been negative adverse impact to the surrounding residential area

as a result of the introduction of this new more intense use of the subject premises and that permitted uses in the M-1 Zone would not adversely or substantially negatively impact the public good.

7. The Board finds, as the matter of fact, that the enlargement of the nonconforming use is not negligible or insubstantial and, therefore, based upon the quality, character and intensity of the use proposed, the overall effect on the neighborhood and the zoning plan is such that the applicant has not met the burden of proof with respect to the negative criteria.

NOW, THEREFORE, be it resolved by the Board of Adjustment of the Township of Verona, that the application pursuant to N.J.S.A. 40:55D-70(d), for a use variance for an expansion of a nonconforming use, is denied.

VOTE :

AYES

NAYS

ABSTENTIONS

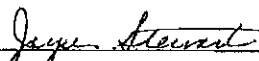
ROBERT KIERNAN
GARY BALLERINI
LOUIS RUSSO
JAMES FLYNN
WILLIAM KARP
CATHERINE TAMASIK

MICHAEL ZICHELLI

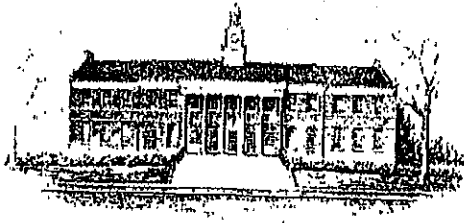


CATHERINE TAMASIK, CHAIRPERSON

The foregoing is a true copy of a resolution adopted by the Board of Adjustment on the 11th day of February, 1988 and memorialized on the 10th day of March, 1988.



JOYCE STEWART, Secretary



*Township
of
The Borough of Verona*

600 Bloomfield Avenue
Verona, New Jersey 07044

Office of the Planning Board

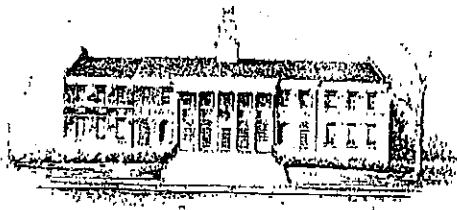
238-3220

M E M O

TO: Pat Hynes, Building Inspector
FROM: Michele Rogerson, Clerk of Planning Board
RE: Site Plan, 251½ Grove Avenue
DATE: August 1, 1988

Attached please find a copy of resolution 11-88 for the site plan approval of 251 ½ Grove Avenue, which was approved on June 23, 1988, memorialized, July 28, 1988.

Also, please find resolution #10-88 for the adoption of the Reexamination Report of Master Plan, which was adopted July 19, 1988 and memorialized, July 28, 1988. This reso. is for your information and for your file.



Township
of
The Borough of Verona

800 Bloomfield Avenue
Verona, New Jersey 07044

Office of the Planning Board

239-3220

August 1, 1988

Todd Smith
100 Valley Rd.
Montclair, NJ 07042

RE: Site Plan, 251½ Grove Avenue

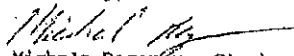
Dear Mr. Smith,

Attached please find a copy of the resolution #11-88 for the site plan approval of 251½ Grove Avenue; which was approved June 23, 1988 and memorialized July 28, 1988.

A Notice has been sent to the paper on the decision and should appear in the August 4, 1988 edition of the Verona-Cedar Grove Times. The bill for this notice shall be sent to you.

If you have any further questions please contact me at, 85704805.

Sincerely,


Michele Rogerson, Clerk
Planning Board

RESOLUTION
PLANNING BOARD
OF THE
TOWNSHIP OF THE BOROUGH OF VERONA

WHEREAS, the Planning Board of the Township of the Borough of Verona having reviewed the application for final site plan approval for property known as Block 62 Lot 12 on the Municipal Tax Map commonly known as 251 1/2 Grove Avenue; and

WHEREAS, the Planning Board of the Township of the Borough of Verona having heard the testimony of the applicant and neighbors, and having reviewed the site plan showing existing conditions and proposed parking layout prepared by McCumsey Associates; and

WHEREAS, it appearing that the previous use of the northernmost building on the property was a non-conforming use and the applicant proposes a change in use to a permitted use of warehouse space with accessory office space and incidental shop work in connection with the applicant's roofing business,

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of the Borough of Verona that having considered the evidence presented including the testimony of the applicant and it being satisfied that the requirements of Municipal Site Plan Ordinance have been met, does hereby grant site plan approval subject to the dumpster and parking for the northernmost building being located on the easterly side of said building.

Approved: June 23, 1988.

Memorialized: July 28, 1988

I, Mitchell T. Martin, Secretary of the Planning Board of the Township of Verona in the County of Essex, do hereby certify that the foregoing is a true and correct copy of a resolution duly approved by said Planning Board on the 23rd day of June, 1988, memorialized, the 28th day of July, 1988.

Mitchell T. Martin
Mitchell T. Martin, Secretary

VOICES:

AYES

Albert D'Alessio
John Zingali
Larry Casparro

NAYS

Edward Conlon
Kurt Landsberger
Frederick Ferguson

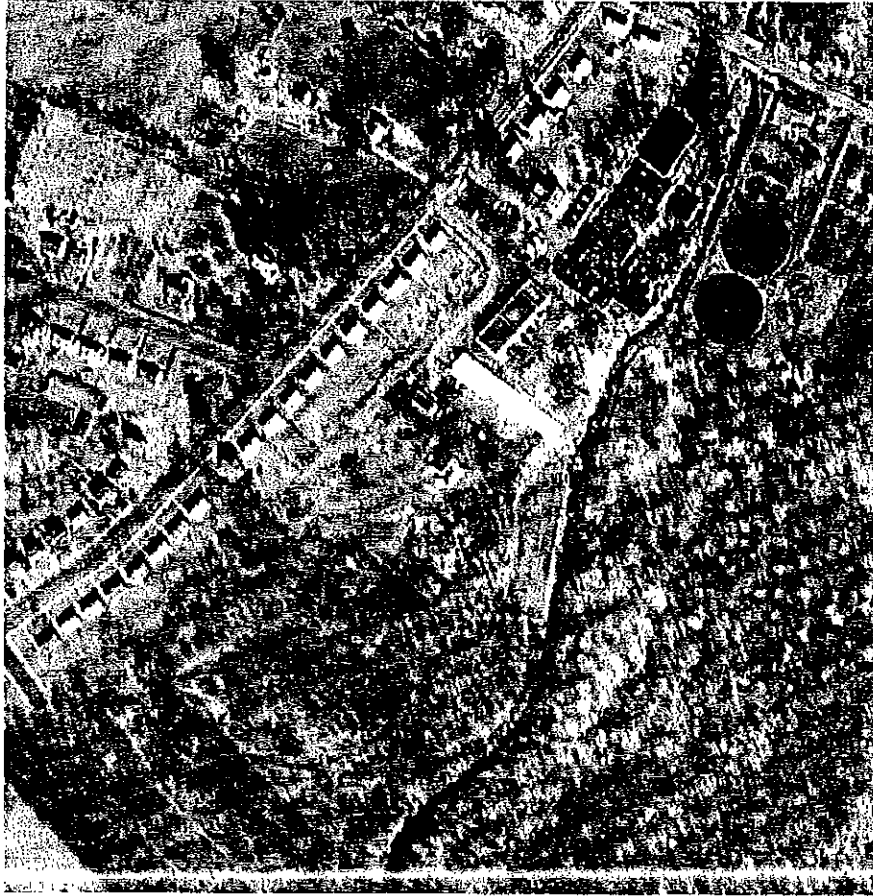
ABSTENTIONS

Edward Curley



1930 Aerial Photo of the site and surrounding area
Map Ref. NJDEP Geo-Web

The site appears to show a larger wooded area toward the rear along the Peckman River, The existing buildings which were present are not clearly visible.



1954 Aerial Photo of the site and surrounding area

Map Ref. <https://www.historicaerials.com/>

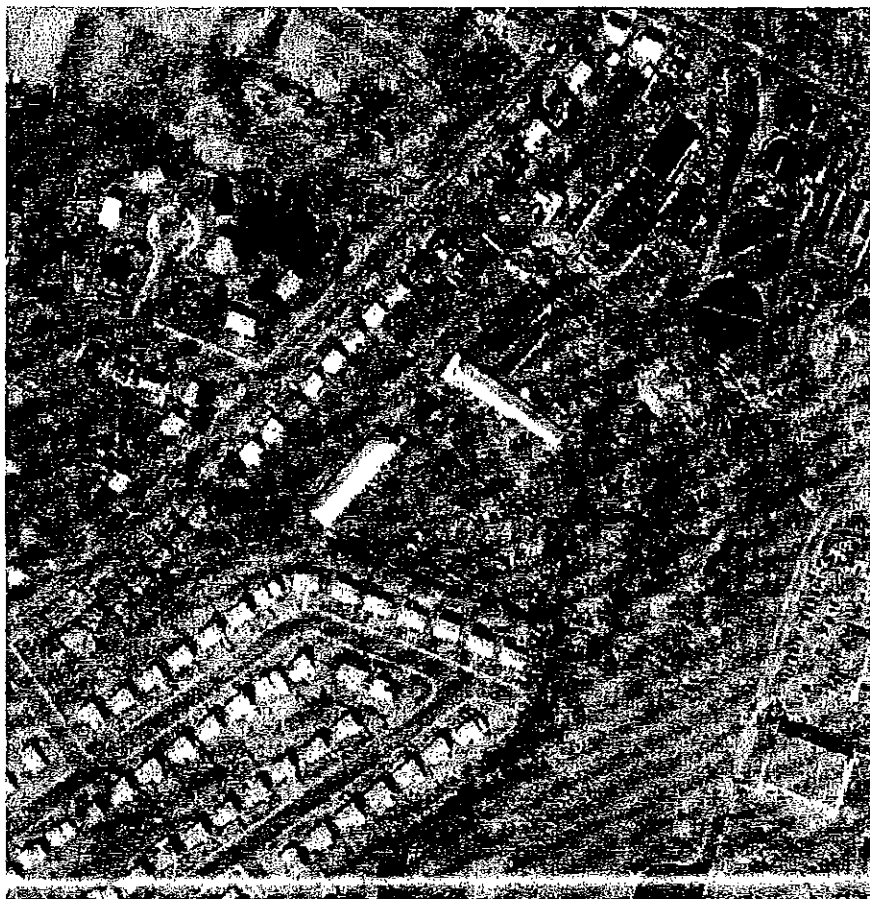
The photograph clearly shows the buildings which were present and also the extent of the storage within the open yard areas.



1966 Aerial Photo of the site and surrounding area

Map Ref. <https://www.historicaerials.com/>

This photograph clearly shows the same building as the 1954 photo, but now there is a new structure which would be an expansion of a non-conforming use in all of the previous zoning ordinances which were reviewed. There seems to be small increase in the amount of storage in the open yard area as well as some clearing of land.



1970 Aerial Photo of the site and surrounding area

Map Ref. <https://www.historicaerials.com/>

This photograph clearly shows the same conditions as the 1966 photo.



1979 Aerial Photo of the site and surrounding area

Map Ref. <https://www.historicaerials.com/>

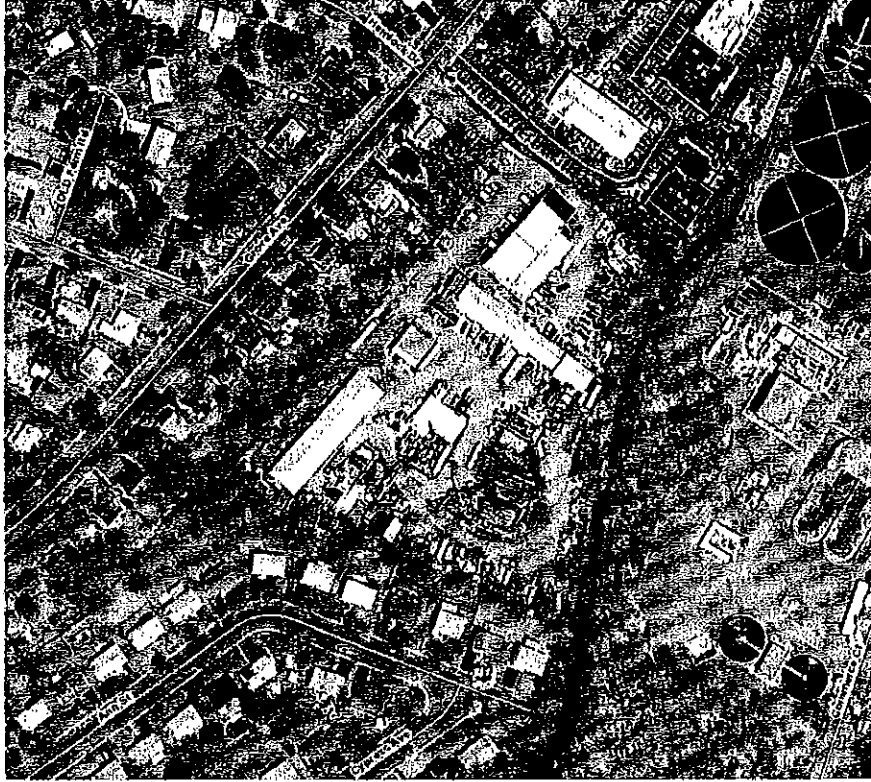
This photograph clearly shows the site now utilizing more of the open lot areas for storage. There is also an increase in the amount of vehicles being stored at the property as well as the expansion of the implied existing non-conforming use by the property owner.



2002 Aerial Photo of the site and surrounding area

Map Ref. Google Historical Maps

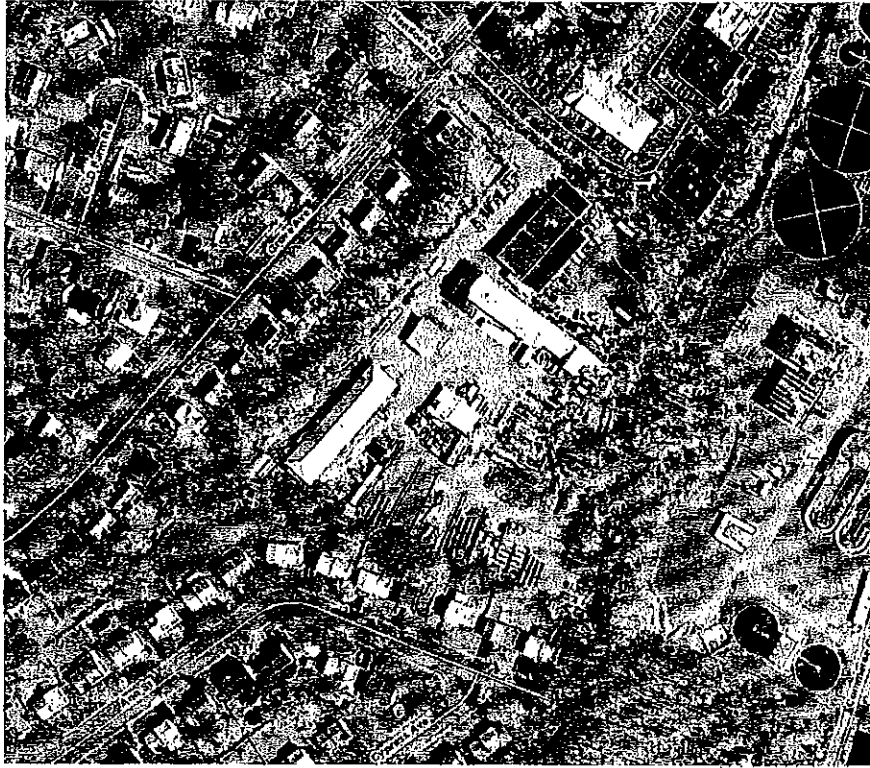
This photograph shows and expansion of existing buildings. The office located left center and the building at the top, again an expansion has taken place with no zoning approvals.



2007 Aerial Photo of the site and surrounding area

Map Ref. Google Historical Maps

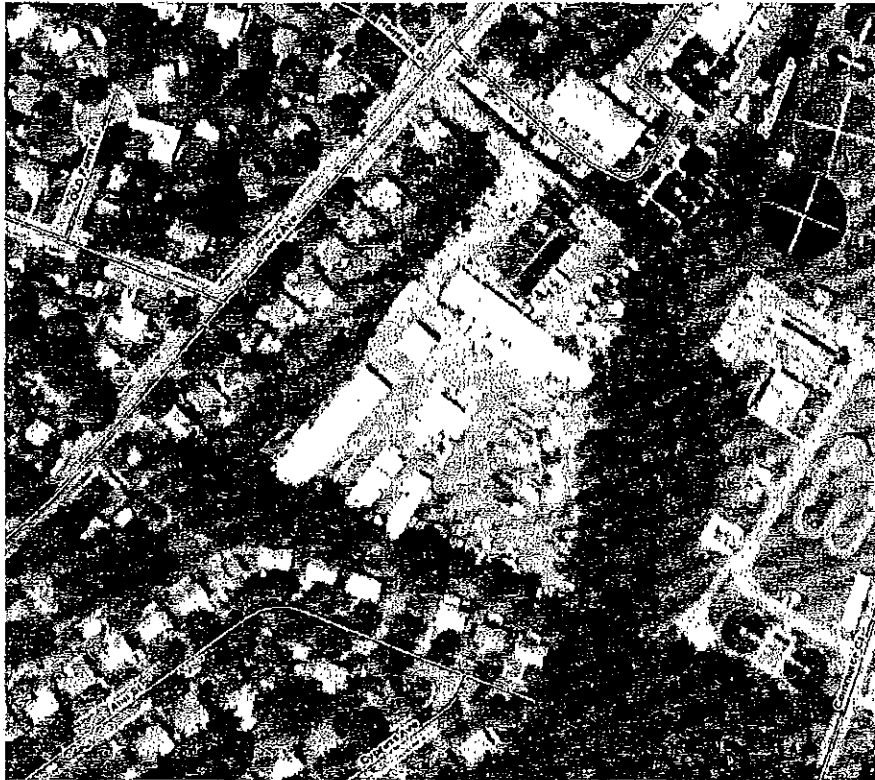
This photograph shows a total expansion of storage and possibly multiple uses now occupying the property as tenants.



2012 Aerial Photo of the site and surrounding area

Map Ref. Google Historical Maps

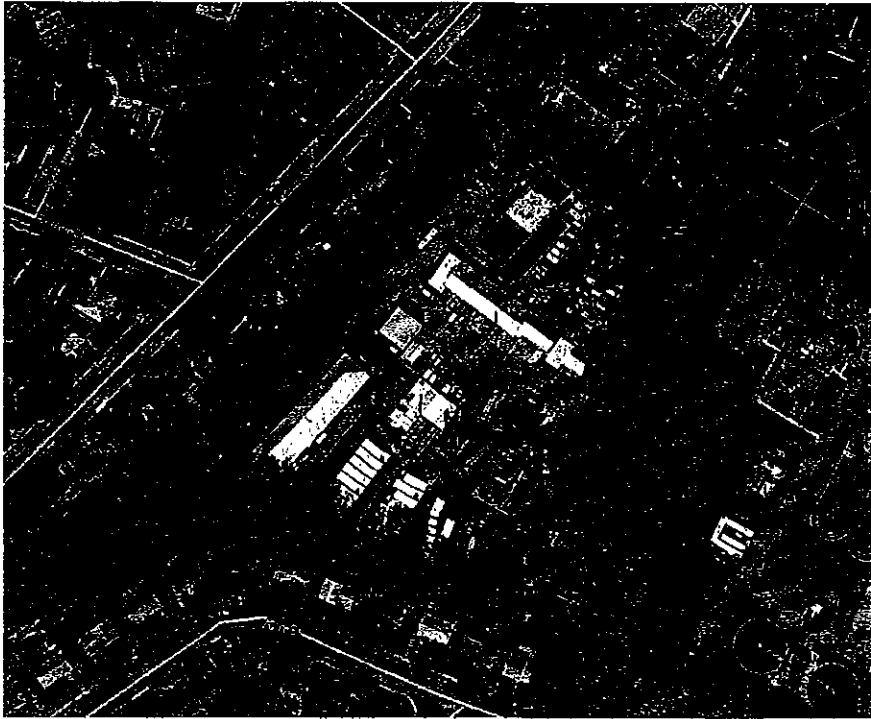
This photograph shows roughly the same conditions as the 2007 photo.



2013 Aerial Photo of the site and surrounding area

Map Ref. Google Historical Maps

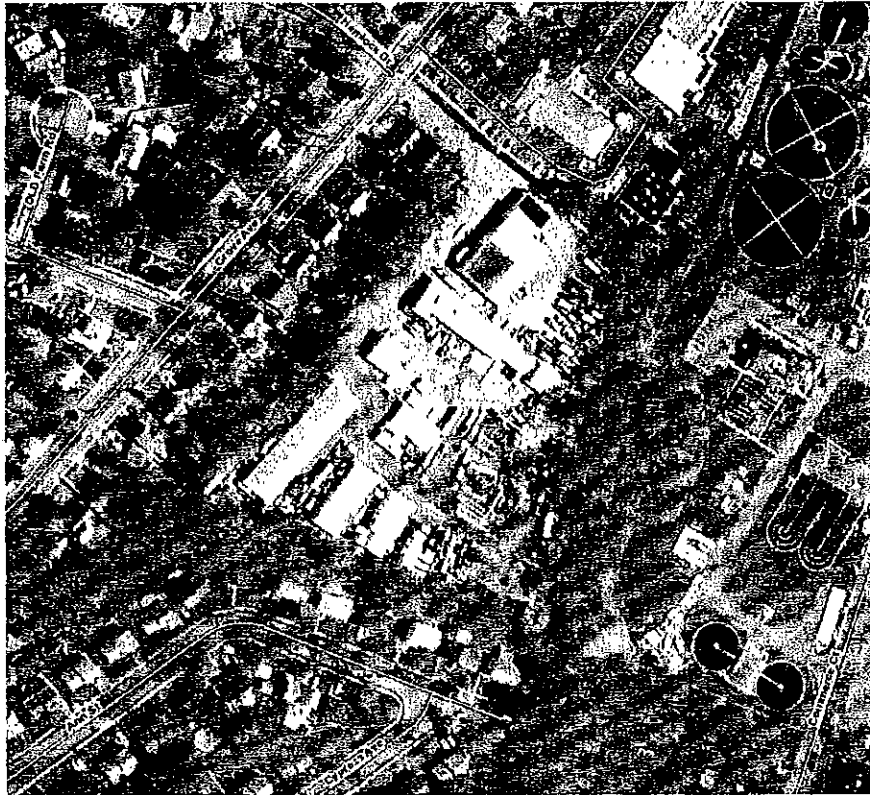
This photograph shows the beginning of the mobile storage units (PODS) now being stored at the property. A different use and tenant. This would constitute an expansion of a non-conforming use.



2014 Aerial Photo of the site and surrounding area

Map Ref. Google Historical Maps

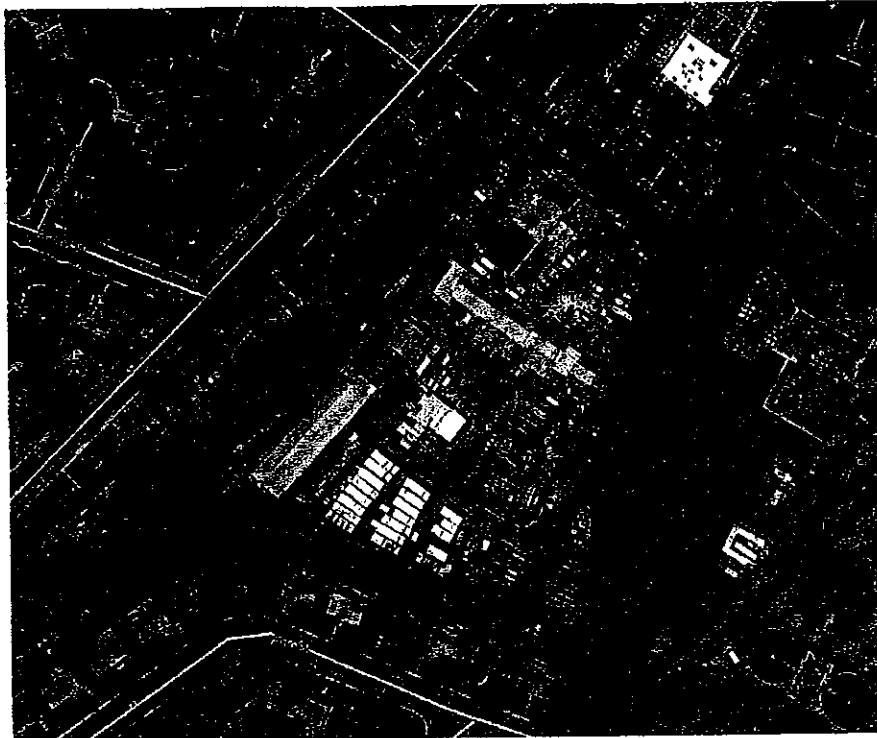
This photograph shows an increase in the mobile storage units at the site as well as the refuse containers at the bottom right.



2015 Aerial Photo of the site and surrounding area

Map Ref. Google Historical Maps

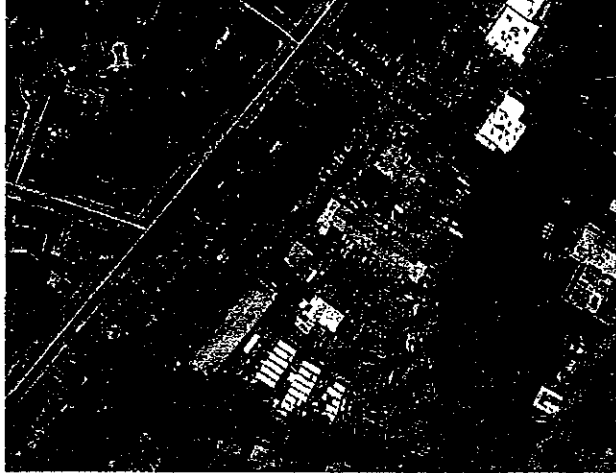
This photograph shows increases in vehicles all throughout the property.



2016 Aerial Photo of the site and surrounding area

Map Ref. Google Historical Maps

This photograph shows increase in the amount of refuse containers at the bottom right.

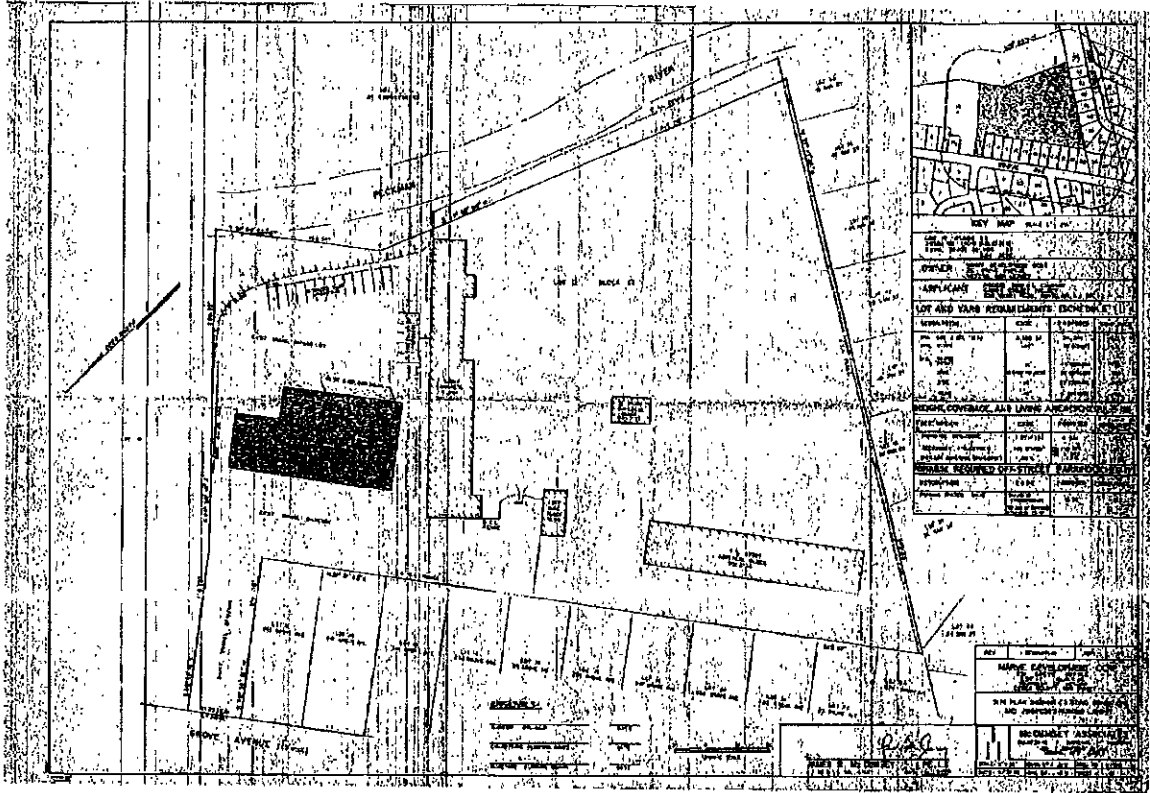


2018 Aerial Photo of the site and surrounding area

Map Ref. Google Historical Maps



1966 Aerial - Expansion??



KEY MAP

NO.	DESCRIPTION	DATE
1
2
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NO.	DESCRIPTION	DATE
1
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B

O'TOOLE SCRIVO

ATTORNEYS AT LAW

JOSHUA A. ZIELINSKI
jzielinski@oslaw.com

September 20, 2019

BY HAND DELIVERY

Mr. Michael C. DeCarlo
Zoning Official and Engineering Manager
Township of Verona
600 Bloomfield Ave.
Verona, New Jersey 07044

RECEIVED
BUILDING DEPARTMENT
SEP 20 2019
TOWNSHIP OF VERONA



**Re: NOTICE OF APPEAL OF ZONING OFFICIAL'S DETERMINATIONS
Marve Development Corp.
251 ½ Grove Avenue
Block 1201, Lot 12 (the "Property")**

Dear Mr. DeCarlo:

This firm represents appellant Marve Development Corporation ("Marve"), owner of the above-referenced Property. On September 6, 2019, Marve received the Township of Verona Zoning Official's "zoning decision" dated August 30, 2019 ("Decision"), regarding the Property. Please accept this correspondence as Marve's Notice of Appeal pursuant to N.J.S.A. 40:55D-72 and Township of Verona Code ("Code") Chapter § 30-19. Marve hereby appeals, and requests the reversal of, the entire Decision pursuant to N.J.S.A. 40:55D-70(a). A check in the amount of \$100 is enclosed to cover the fee for the appeal.

Marve's grounds for its appeal are as follows.

Preliminarily, Marve does not dispute the Zoning Official's finding that the "continued and historic use of the [P]roperty for storage predated the current zoning regulations of the Township [and] this type of situation is known as a pre-existing non-conforming use protected under . . . N.J.S.A. 40:55D-68." Decision at 19. Further, Marve acknowledges the Zoning Officer's finding that "the historic and continued use of the [P]roperty" included "the construction business" and its "accessory uses" as well as "storage" and storage of vehicles. *Id.* at 19. Marve further acknowledges that the Decision appears to adopt the Township Planner's determination, made in or around 1987, that the principal use of the Property was "a contractor's storage yard." *Id.* at 4. Finally, Marve reminds the Township that as recently as 2017, the Township acknowledged and allowed the continuation of protected non-conforming uses at the Property.

Marve disagrees with and challenges the Zoning Officials findings that "many of the businesses listed . . . are either an expansion of an existing non-conforming use or a new non-permitted use by itself" requiring either a D-1 or D-2 variance. Id. at 19.

With regard to the alleged zoning violations, Marve appeals each violation for the reasons set forth below.

PARKING VIOLATIONS:

Occupants: AAA Yardwork; Anipark Enterprises, LLC; American Asphalt; Assured Air System, Inc.; Bulk Be Gone; Capaldo Enterprises, LLC; Carolan Contractors; Austin Fanning General Contractors, LLC; Friel Brothers Paving Inc.; Gil Brothers; Jervae Realty; Kidxercise, LLC; Lee Tree Service; Moriarty General Contractors; Navarro Lawn & Tree Service; TKJ Landscaping LLC; John Sweeney; Weber Lawn Company; Wilborn, Heinz (collectively, the "Parking Violations")

Basis: Marve challenges the determinations, for each of the Parking Violations, that "parking is not a permitted principal use it is an accessory use incidental to a principal use." Decision at 6. Marve further challenges that "parking for the pre-existing non-conforming use was accessory to that particular use." Id. at 6.

Dating to at least 1950, Verona Construction Company and/or Marve utilized the entirety of the "open lot areas" for storing, parking, repairing, and maintaining vehicles and equipment including trucks, buses, trailers, heavy equipment, and storage units. See id. at 19. Thus, the pre-existing non-conforming principal use as "storage" included outdoor storage of vehicles and equipment which necessarily includes parking of such vehicles and equipment. Parking was not merely accessory to the storage use but, in fact, part and parcel of it. In addition, dating back to at least the 1950s, Marve began leasing the Property to tenants for uses that included outdoor storage and/or parking including equipment and vehicles.

The present uses on the Property, including outdoor storage of vehicles and equipment and/or parking, are pre-existing non-conforming principal uses that have existed since 1950, and have continued without interruption to the present. Thus, Marve has a vested right to continue these uses on the entirety of its Property. In fact, the 1979 aerial photo attached to the Decision shows, inter alia, vehicles being stored and parked on all areas of the Property. See 1979 Aerial Photo attached to Decision. Indeed, according to the Decision, "[o]utside storage of products materials or equipment" was not prohibited until 1997, at the earliest, upon the amendment of the M-1 Zone regulations. Id. at 5.

Further, to the extent parking is now deemed by the Zoning Official or Board to be an expansion or a new use, we understand that the parking of vehicles was resolved in Marve's favor in prior litigation with the Township in 2017. Moreover, parking is substantially similar to the "storage" use. To the extent the Board deems parking accessory, parking is accessory to the

principal uses and there has been no substantial change or expansion. There has been no expansion of the storage and/or parking uses insofar as Marve, its predecessors and tenants have used all or substantially all of the Property for storage of vehicles and equipment, including parking, maintenance and repairs, since the 1950s through and including present. Uses may change over time so long as such use is substantially similar to the protected use. Bonaventure Intern., Inc. v. Borough of Spring Lake, 350 N.J. Super. 420, 433 (App. Div. 2002); Kramer v. Montclair, 33 N.J. Super. 16, 18 (App. Div. 1994). Minor changes in type of materials stored is not an expansion. Schaible v. Millburn Zon. Bd., 15 Misc. 707 (Sup. Ct. 1937). Minor changes to the type of business are not an expansion. Stout v. Mitschele, 135 N.J.L. 406 (Sup. Ct. 1947). A mere change in ownership or tenancy of a property does not terminate the right to continue a nonconforming use or structure. Arkam Machine & Tool Co. v. Lyndhurst Twp., 73 N.J. Super 528, 533 (App. Div. 1962). Marve challenges all zoning violations referenced in the Decision.

WELDING VIOLATIONS:

Occupants: AK Welding; Heavy Iron Services

Basis: Verona Construction Company and its successors and affiliates performed welding and other fabricating throughout the entirety of the Property in preparing and/or storing materials and repairing equipment and materials. Fabricating, including welding, was permitted under the M-1 Zone regulations until the adoption of the C-2 zone regulations on August 15, 2011. These uses are protected non-conforming uses and there has been no expansion thereof. Marve challenges all zoning violations referenced in the Decision.

AUTO REPAIR VIOLATIONS:

Occupants: Centuron Auto Works; F.S. Transportation; JBJ Management Inc.; Rojas Heavy Equipment Repair

Basis: Verona Construction Company and its successors and affiliates performed repairs on vehicles and equipment throughout the entirety of the Property. These uses are protected non-conforming uses and there has been no expansion thereof. We understand that maintaining and repairing vehicles was resolved in Marve's favor in prior litigation with the Township in 2017. Marve challenges all zoning violations referenced in the Decision.

TRAILERS AND BUSES:

Occupant: Jervae Realty; Kidxercise; Covello, Sebastian; Wilborn, Heinz

Basis: Verona Construction Company and its successors and affiliates utilized the entirety of the Property for, inter alia, storage and parking including vehicles and trailers. The storage of private trailers, boat trailers, and school buses are protected non-conforming uses. We understand that the parking of vehicles, including trailers and buses, was resolved in Marve's favor in prior litigation with the Township in 2017. Marve challenges all zoning violations referenced in the Decision.

OTHER VIOLATIONS:

Occupant: American Asphalt

Basis: Verona Construction Company and its successors and affiliates utilized the entirety of the Property for, inter alia, storage and parking including "unsecured" materials and "combustible" materials. American Asphalt has not expanded the nonconforming use. Marve challenges all zoning violations referenced in the Decision.

Occupant: Drive Up Storage

Basis: Verona Construction Company and its successors and affiliates utilized the entirety of the Property for, inter alia, storage. The "PODS" subject of the zoning violation are empty, are not being utilized for "temporary storage" within the zoning ordinance's definition of "mobile temporary storage container," and, therefore, are not subject to Code § 150-9.1 regulating the size, time limitations, and manner of placement of mobile temporary storage containers. We understand the storage of containers and dumpsters was resolved in Marve's favor in prior litigation with the Township. Marve challenges all zoning violations referenced in the Decision.

Occupant: Gaeta Recycling Co. Inc.

Basis: Verona Construction Company and its successors and affiliates utilized the entirety of the Property for, inter alia, storage. The "dumpsters" subject of the zoning violation are empty, are not being utilized for the "storage of waste" within the zoning ordinance's definition of "dumpsters," and, therefore, are not subject to Code § 150-7.15. We understand the storage of containers and dumpsters was resolved in Marve's favor in prior litigation with the Township in 2017. Marve challenges all zoning violations referenced in the Decision.

Occupant: John Sweeney

Basis: Verona Construction Company and its successors and affiliates utilized the entirety of the Property for, inter alia, storage and parking. Marve reserves the right to dispute that John Sweeney is conducting vehicle sale transactions at the site. To the extent vehicle transactions are being conducted, the Verona Construction Company and/or Marve sold used vehicles and equipment as needed and, therefore, the use is protected and has not been expanded. In addition, according to the Code § 150-8.4, and the Zoning Official's Decision, automobile sales are permitted in all zones upon approval of the Planning Board. Marve challenges all zoning violations referenced in the Decision.

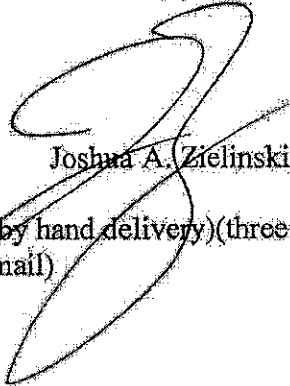
Marve reserves the right to change, modify or supplement each and every basis for appeal set forth above. Marve further reserves the right to rely upon any and all testimony, proofs, or basis proffered by its witnesses, professionals including its engineer(s) and/or professional planner, which professionals will further set forth the factual and legal basis for Marve's appeal.

Please inform the undersigned when this appeal will be placed on the Zoning Board's agenda. Please feel free to communicate with the undersigned regarding this appeal.

Marve Development Corp.
September 20, 2019
Page 5

Thank you.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to be 'J. Zielinski', is written over the typed name.

Joshua A. Zielinski

cc: Secretary, Board of Adjustment (by hand delivery)(three copies)
Marve Development Corp. (by email)

231803180

O'TOOLE SCRIVO, LLC
14 Village Park Road
Cedar Grove, NJ - 07009
973.239.5700

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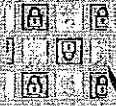
DATE

Sep/20/2019 \$100.00

PAY Township of Verona

TO THE
ORDER
OF

Marve Dev. Corp. Zoning Appeal
Court Fees



[Handwritten Signature]
AUTHORIZED SIGNATURE

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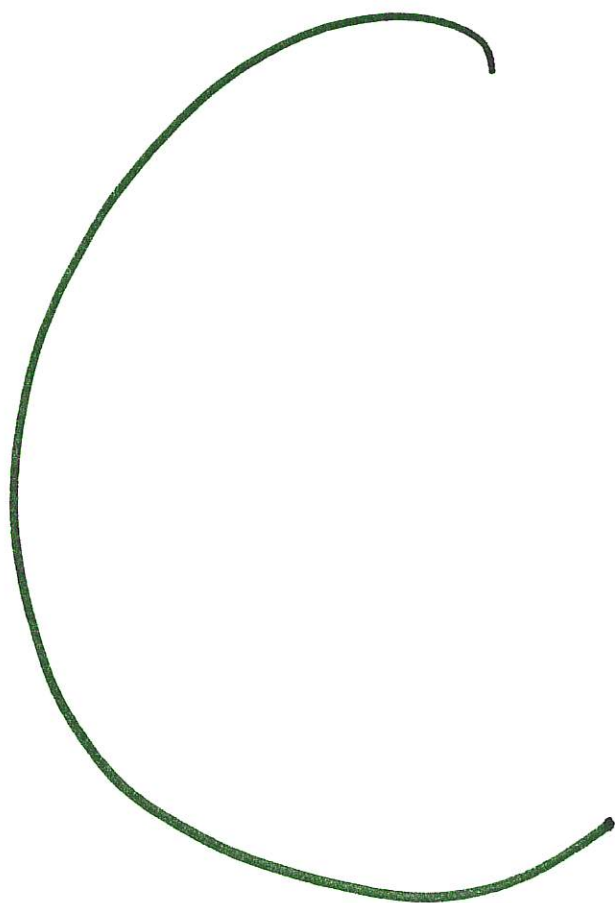
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SEP 20 2019
TOWNSHIP OF VERONA

~~RECEIVED
BUILDING DEPARTMENT
SEP 19 2019
TOWNSHIP OF VERONA~~

[Handwritten mark]

rev'd Kelly Lawrence
9/20/19 2:02pm



MUNICIPAL COURT
ESSEX COUNTY
VERONA, NEW JERSEY
DOCKET NO. SC-2016-2743 to 2745

STATE OF NEW JERSEY,

vs.

MARVE DEVELOPMENT CORP.,

Defendant.

TRANSCRIPT OF PROCEEDINGS

TRIAL

Place: Verona Municipal Court
600 Bloomfield Avenue,
Verona, NJ 07044

Date: February 15, 2017

B E F O R E:

HONORABLE JOHN A. PAPANAZZO, J.M.C.

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

BRIAN W. MASON, ESQ.,
Municipal Prosecutor,
Attorney for the Plaintiff.

CHRISTOPHER W. KINUM, ESQ.,
(Critchley, Kinum & DeNoia, LLC),
Attorney for the Defendant.

TAPE REPORTERS, INC.

Cathy Betz
29 Beach Road
Monmouth Beach, New Jersey 07750
(732) 263-1191

I N D E X2/15/17

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>FOR THE STATE</u>				
ABDUL SHAIKH				
By Mr. Mason	8		17,22	
By Mr. Kinum		13		18
By the Court	19			
THOMAS JACOBSEN				
By Mr. Mason	23		70	
By Mr. Kinum		49		75
JONATHAN HOTCHANDANI				
By Mr. Mason	77			
By Mr. Kinum		86		
By the Court	87			
HOWARD CONKLING				
By Mr. Mason	90			
By Mr. Kinum		93		

I N D E X2/15/17

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>FOR THE DEFENDANT</u>				
THOMAS ALTUNAGA				
By Mr. Kinum	115		148	
By Mr. Mason		123		155
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<u>MOTION TO DISMISS</u>				
<u>SUMMONS SC-2742</u>				
<u>ARGUMENT</u>				
By Mr. Kinum				56, 98
By Mr. Mason				99
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2/15/17

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<u>ARGUMENT</u>	
By Mr. Kinum	110
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<u>EXHIBITS</u>	<u>Ident.</u>	<u>Evid.</u>
S-1 Copy of Lease.	9	
S-2 Ordinance.	25	28
S-3 Permitted Use Document.		28
S-4 Photographs.		31
S-5 Testimony Document.	36	39
S-6 Business Listing.	48	162
S-7 Copy of Lease.		80

THE COURT: Okay. The special session that we're here on today is the matter of Marve Development Corporation under SC-2742, a violation of ordinance 4:50-9.1(b), a mobile temporary storage containers on site more than 30 consecutive -- I can't read the writing. I apologize. More than 30 --

MR. MASON: More than 30 consecutive --

THE COURT: -- 30 consecutive --

MR. MASON: -- days, Judge.

THE COURT: -- days. Okay. Thank you.

Under Complaint 743, mobile temporary storage containers over maximum allowed height of 15 feet, 1:50-17.11. It looks like D-9.

Complaint 274, principal permitted uses, limousine and party bus, 1:50-17.11(a). And 2745, principal permitted use as school bus repair, 1:50-17.11(a). Those are all the complaints. Are there any other complaints that we have pending? That's it?

MR. MASON: No. That's it, Judge.

THE COURT: Okay.

MR. MASON: And on the limo business, Judge, that particular one, that use is ceased, so I'll dismiss that.

THE COURT: Okay. So wait a second. Just give me the complaint. Is that 2744?

1 MR. MASON: That would be correct, Judge.
 2 THE COURT: Okay. When you -- when you say
 3 it's ceased, that -- they're not operating there any
 4 further?
 5 MR. MASON: That's correct.
 6 THE COURT: Okay.
 7 MR. MASON: So the matter's been remedied.
 8 THE COURT: Oh. Can I have appearances
 9 please, Mr. Prosecutor?
 10 MR. MASON: Brian Mason on behalf of the
 11 State.
 12 MR. KINUM: Good morning, Your Honor.
 13 THE COURT: Good morning.
 14 MR. KINUM: Chris Kinum, K-i-n-u-m,
 15 Critchley, Kinum & DeNoia, on behalf of Marve
 16 Development.
 17 THE COURT: And, Mr. Kinum, you have no
 18 objection to dismissal of 2744. Is that correct?
 19 MR. KINUM: Absolutely not, Judge.
 20 THE COURT: And it's dismissed by motion?
 21 Okay. So we have the three complaints remaining. Is
 22 the State ready?
 23 MR. MASON: Yes, Judge.
 24 THE COURT: Call your first witness.
 25 MR. MASON: Judge, I will note we have one

1 subpoenaed witness who is not here yet. And that's
 2 Jonathon, and it's spelled H-o-t-c-h-a-n-d-a-n-i. So
 3 we'll deal with that in due course.
 4 THE COURT: Okay.
 5 MR. MASON: But he was a subpoenaed witness.
 6 He was here last time.
 7 THE COURT: Okay.
 8 MR. MASON: He was told to appear this time,
 9 Judge. So --
 10 THE COURT: Okay.
 11 MR. MASON: Judge, we'll take Sam Shaika,
 12 S-h-a-i-k-a (sic). Sam, please?
 13 (Court and clerk confer.)
 14 THE COURT: Okay. Counsel, I just want to
 15 make sure your client can only, myself by also the
 16 other parties. Sir, you're hearing all the parties
 17 speaking?
 18 MR. SASTONE: Yes, sir.
 19 THE COURT: Okay. Because I want to make
 20 sure again if -- if someone's speaking and you --
 21 you're not hearing it, just grab your attorney's arm,
 22 and he'll tell me we have an issue. Okay? Again, the
 23 reason is is that we have never tried out this
 24 instrument before. It's brand new, so we -- we don't
 25 know if it works either. Okay?

1 Sir, your name, please, sir?
 2 MR. SHAIKH: My -- my legal is name Abdul.
 3 THE COURT: Spell for me?
 4 MR. SHAIKH: A-b-d-u-l.
 5 THE COURT: Last name?
 6 MR. SHAIKH: My name -- oh. Shaikh.
 7 S-h-a-i-k-h.
 8 THE COURT: A-h (sic).
 9 MR. SHAIKH: Yes.
 10 THE COURT: All right. Sir, want to raise
 11 your right hand, please, sir?
 12 MR. SHAIKH: Yes, sir.
 13 A B D U L S H A I K H, STATE'S WITNESS, SWORN.
 14 THE COURT: Please have a seat, sir.
 15 Your witness, Mr. Prosecutor.
 16 MR. MASON: Okay.
 17 DIRECT EXAMINATION BY MR. MASON:
 18 Q Sir, what is your relationship to F.S.
 19 Transportation, Inc.
 20 A I'm the owner of the company.
 21 Q Okay. And do you lease property here in
 22 Verona?
 23 A Yes, sir.
 24 Q And what's the address?
 25 A It's 251-1/2 Grove Avenue, Verona, New Jersey.

1 Q All right. And do you have a commercial
 2 lease with the landlord there?
 3 A Yes, sir.
 4 Q And who's the landlord of that property?
 5 A Marvec (sic) Development Corporation.
 6 Q I'm showing you a document, and would you
 7 tell me is this a true and accurate copy of the lease
 8 for that property.
 9 A Yes.
 10 Q Take a moment. Take a look at it, please,
 11 and just look at the -- thumb through it and make sure
 12 the signatures are familiar on the last page.
 13 A Yes.
 14 Q All right. Is that a true and accurate copy
 15 of the lease for that property?
 16 A Yes, sir.
 17 Q And you produced that pursuant to a subpoena
 18 in this matter?
 19 A Yes, sir.
 20 MR. MASON: Judge, I'd offer it as S-1.
 21 THE COURT: Any objection, counsel?
 22 MR. KINUM: No objection, Judge.
 23 THE COURT: S-1 is in evidence.
 24 (S-1, copy of lease, admitted into evidence.)
 25 Q Sir, when did your company take possession of

1 that property?

2 A May of 2012.

3 Q All right. And what's the nature of your
4 business?

5 A We operate school buses. We do repairs in the
6 facility.

7 Q Okay. And so is -- do you store school buses
8 there?

9 A It's about -- we have about eight or ten backup
10 buses there.

11 Q Okay. Eight to ten.

12 THE COURT: You said backup buses?

13 THE WITNESS: Yeah. We keep buses there in
14 case one of our buses fails. So --

15 Q And how big of a fleet of buses do you have?

16 A We have altogether about 45 buses. We have mini
17 vans, (indiscernible) vehicles, and 16-passenger yellow
18 buses.

19 Q Okay. So the 45 number, are those just
20 buses?

21 A All -- they're -- I would --

22 Q That's all of your vehicles?

23 A All the vehicles.

24 Q Okay. And so are all of those vehicles
25 serviced here in Verona?

1 A Yes, sir.

2 Q All right. And do you have a standalone
3 building, or do you occupy a portion of the building?

4 A One portion of the building. One garage.

5 Q Okay. One garage? How many bays?

6 A One bay.

7 Q And do you have any full-time employees
8 assigned there?

9 A Yes.

10 Q And --

11 A With a mechanic.

12 Q How many?

13 A One.

14 Q One mechanic?

15 A One mechanic.

16 Q And these are school buses, correct?

17 A School buses. Yes.

18 Q And therefore you have contracts with boards
19 of education?

20 A Yes. Of various counties.

21 Q Okay. And is that throughout the state of
22 New Jersey?

23 A We operate only in the state of New Jersey.

24 Q Okay. How many different school boards?

25 A Oh. We do Morris County Education Services

1 Commission. We do Sussex Co-op. We help Essex County
2 -- Essex -- Essex County, and Passaic County which is
3 called Northern Region now.

4 Q If I counted correctly that == that's four
5 different districts?

6 A One, two, three, four. And we have also Bergen
7 County also.

8 Q Okay. So that's ==

9 THE COURT: You have also what? I'm sorry.
10 I didn't hear.

11 THE WITNESS: Bergen County.

12 THE COURT: Bergen County.

13 Q And so that's --

14 A It may change. Depend upon each year the
15 contract, what contracts we get. Each of the contracts
16 may change. But right now we have these. We servicing
17 these counties.

18 Q Okay. Does your business in any way relate
19 to -- or do you have any contracts with construction
20 companies?

21 A No, sir.

22 Q Okay. And when did you first look at the
23 property before you took possession?

24 A I will say April -- April of 2012.

25 Q Okay. And at any given time what's the

1 maximum number of vehicles that you have there?

2 A It's not more than 10 that are stored there.

3 Q So 10's the maximum number?

4 A Yes. Never.

5 Q And prior to taking possession, did you file
6 any applications with any of the Verona land use
7 boards?

8 A No, sir.

9 Q All right. Did you appear before any of the
10 land use boards?

11 A No, sir.

12 Q And did you have any discussions with the
13 landlord and the landlord's agent relative to municipal
14 approvals for your use of that site?

15 A I don't believe so.

16 MR. MASON: Okay. Your witness.

17 MR. KINUM: Thank you.

18 CROSS EXAMINATION BY MR. KINUM:

19 Q Mr. Shaikh ==

20 A Yes.

21 Q -- you were kind enough to tell us that you
22 have one employee --

23 A Yes.

24 Q -- on the premises. And that's a mechanic,
25 correct?

1 A Correct. Mechanic. Yes, sir.
2 Q How many hours a week does he work?
3 A He works typically from about 8:00 to 4:00.
4 Q Okay. Does --
5 A And --
6 Q -- do any buses come in and out of the
7 property during the evening?
8 A Very rarely.
9 Q How about weekend --
10 A Maximum -- weekends also very rarely.
11 Q So it's primary that --
12 A From 8:00 to 4:00.
13 Q So how do you decide which of the eight to
14 ten buses are going to be at the premises?
15 A Oh. We -- we have buses there. We -- when we
16 need a bus to be replaced so we have the backup buses,
17 you know, that we give to the drivers when they come in
18 and keep their buses. And when their bus is repaired,
19 they come and pick up the bus, and we leave the backup
20 bus in the garage.
21 Q Am I accurate you just swap one bus in.
22 A One bus in. Yes.
23 Q And swap one bus out.
24 A Right.
25 Q And do you have other places where you store

1 your -- your fleet of 40-foot buses?
2 A Yes. We have in Irvington and Passaic and also in
3 Pinebrook.
4 Q Okay. So you have a maximum of 10 buses
5 there.
6 A Nine or ten buses.
7 Q And one employee who works about 8:30 to
8 4:00.
9 A One employee. Yeah. 8:00 to 4:00.
10 Q 8:00 to 4:00. Can you describe the -- the
11 one-bay garage that you use. Does it have a lift in
12 it?
13 A Yeah. The lift in it. Yes.
14 Q Okay. What attracted you to the property?
15 A The privacy and safety, that's it --
16 Q Okay.
17 A -- of the location.
18 Q And that garage, the lift it has the ability
19 to lift the heavy --
20 A Lift the vehicle.
21 Q -- commercial vehicle?
22 A Yes. It has it.
23 THE COURT: One second. One second. Okay.
24 We have to speak one at a time. See he's going to ask
25 the question. Because the process is counsel may ask

1 -- well, the prosecutor may ask a question. There may
2 be an ejection -- objection. In addition, I'm taking
3 notes, and I -- I -- I can't take notes. So --

4 THE WITNESS: Okay.

5 THE COURT: -- let the person ask the
6 question, but I have to hear the answer. Because
7 everybody's talking. It's not -- it's not a debating.
8 This is a court session. Okay?

9 THE WITNESS: Sure.

10 THE COURT: So listen to the question, and
11 then give the answer. Sorry, counsel. Go ahead.

12 MR. KINUM: Okay.

13 THE WITNESS: Okay.

14 Q There's a lift in the garage. Am I correct?

15 A Yes. There a lift in the garage.

16 Q Okay. And that lift is able to lift your
17 commercial vehicle?

18 A Yes.

19 Q Is the -- is the amount of 10 buses that you
20 keep on the property, is that limited by the lease?

21 A I believe so. Yes, sir.

22 MR. MASON: Okay. That's all the questions I
23 have. Thanks.

24 THE COURT: Mr. Prosecutor, any further
25 questions?

1 MR. MASON: Just a couple followup.

2 REDIRECT EXAMINATION BY MR. MASON:

3 Q You said that use of the property on nights
4 and weekend is very rare, correct?

5 A Very. Yes.

6 Q But it does happen, correct?

7 A Yes. Very rarely. Yes.

8 Q And the vehicles in need of repair if they
9 can't be driven in they get towed, correct?

10 A They get towed in. Yes.

11 Q And, again, whenever they break down is when
12 they -- when they're brought in, correct?

13 A They're brought down for duty, and if they break
14 down --

15 Q Right.

16 A -- or routine maintenance.

17 Q Okay. And so let's just deal with the ~~the~~ the
18 ones that are broken down.

19 A Yes.

20 Q Again, those can be brought in at night or
21 over the weekend whenever they become inoperable,
22 correct?

23 MR. KINUM: Objection.

24 THE COURT: Your objection?

25 MR. KINUM: Leading. Mischaracterizes the

1 testimony.

2 THE COURT: Sustained as for form.

3 MR. MASON: Okay.

4 Q So the ones that are in need of repair, when
5 are they brought in?

6 A As -- as needed. Typically during the school bus
7 hours, you know.

8 Q Okay.

9 A It's just typically.

10 Q Are any of them ever brought in at night or
11 on the weekend?

12 A Very rarely.

13 Q But it does happen, correct?

14 A It does happen. Yeah.

15 MR. MASON: No other questions.

16 THE COURT: Counsel, any further questions?

17 MR. KINUM: Just quickly.

18 RECROSS EXAMINATION BY MR. KINUM:

19 Q When you say very rarely, once a month, once
20 every three months, once a week? Can you just define
21 it for us?

22 A Very difficult to point out, but it's -- it's very
23 minimal. I mean, I -- I would say once a month is also
24 too many.

25 Q Okay. So less than once a month.

1 A Less than once a month. Yes.

2 MR. KINUM: That's all the questions I have.
3 Thanks.

4 THE COURT: Sir, I -- I have questions. I'm
5 not -- now I'm very confused.

6 EXAMINATION BY THE COURT:

7 Q You have different locations in Irvington,
8 Passaic, Pinebrook. Is that correct?

9 A Yes, sir.

10 Q Okay. The one in Pinebrook is up at end of
11 40 -- of Bloomfield Avenue. Is that correct?

12 A Bloomfield Avenue. Yes, sir.

13 Q On the left. It's that big bus area?

14 A No, sir. It is on -- off Bloomfield Avenue.

15 Q Right.

16 A But it's -- it's a rental office.

17 Q Okay. Where you have these other locations,
18 Irvington --

19 A Right.

20 Q -- Passaic, Pinebrook, are repairs of buses
21 done there as well?

22 A No.

23 Q Okay. That's what my question is. I didn't
24 understand your testimony. Are all the repairs for
25 your buses done in Verona?

1 A Yes.
2 Q Okay.
3 A Unless the deal -- unless we have percent of
4 dealership.
5 Q Okay. So brand new bus, you have a
6 dealership issue. You send that to the dealer --
7 A Right.
8 Q -- because that's your -- that's your
9 arrangement.
10 A Right.
11 Q Okay. But if you have a bus that's not under
12 warranty by a dealer, then all of your buses from all
13 of your locations come to Verona to be repaired?
14 A Yes, sir.
15 Q Okay. So in all of your facilities how many
16 buses do you have?
17 A We have -- right now we have 45 --
18 Q Okay.
19 A -- total. Including --
20 Q Now in regards to repairs that could be oil
21 changes, change of tire, any type of repairs. Is that
22 accurate?
23 A Yes. All type. Yes.
24 Q Okay. And you also keep, so I understand
25 your testimony, you also keep the backup buses here in

1 Verona. Ten -- I think you said maximum ten.
2 A Maximum.
3 Q Is that correct?
4 A Yes sir.
5 Q So if a vehicle is brought in, then the
6 driver can take that other repaired vehicle at that
7 location to take that out to do their -- their --
8 A Yes.
9 Q -- contract. Okay. And you only have one
10 mechanic that does all these repairs.
11 A One mechanic. Yeah. Right.
12 Q The other question I have from your testimony
13 it indicated I'm -- the lease is in evidence, but I
14 haven't read it. But there's one bay in this garage.
15 Is there anyone else using this garage besides your
16 people?
17 A No, sir.
18 Q Just -- just this garage is for you.
19 A Just for us.
20 Q For your company.
21 A Exclusive. Yeah.
22 THE COURT: Thank you. Any further
23 questions, Mr. Prosecutor?
24 MR. MASON: Judge, in light of Your Honor's
25 questions, just one.

1 REDIRECT EXAMINATION BY MR. MASON:

2 Q These backup vehicles, are they stored inside
3 or outside?

4 A A couple of them are inside. I believe ours, and
5 -- and some of them are outside.

6 Q Okay. How many get -- what capacity do you
7 have to store vehicles inside? How many?

8 A Every now and -- like the snow day we could store
9 three vehicles inside, you know.

10 Q Okay. So if you had a maximum of seven, ten,
11 you'd have seven outside.

12 A Seven outside. That's right.

13 MR. MASON: Okay. No other questions.

14 THE COURT: Counsel, do you have any further
15 questions?

16 MR. KINUM: Nothing, Judge.

17 THE COURT: Thank you. Thank you, sir. You
18 may step down.

19 (Witness excused.)

20 THE COURT: Next witness, please?

21 MR. MASON: Tom Jacobsen.

22 THE COURT: Mr. Jacobsen, please raise your
23 right hand.

24 MR. JACOBSON: Yes, sir.

25 T H O M A S J A C O B S E N, STATE'S WITNESS, SWORN.

1 THE COURT: Please have a seat. Please
2 state your full name, spell your last name.

3 THE WITNESS: Thomas G. Jacobsen,
4 J-a-c-o-b-s-e-n.

5 THE COURT: Your witness.

6 (Counsel confer.)

7 DIRECT EXAMINATION BY MR. MASON:

8 Q Okay. Mr. Jacobsen, by whom are you
9 employed?

10 A Township of Verona.

11 Q And for how long?

12 A Forty years.

13 Q And what is your most recent position?

14 A Construction official and code enforcement
15 officer.

16 Q And how long have you held that position?

17 A Thirteen years.

18 Q And prior to that?

19 A I would say buildings and grounds.

20 Q Okay. And where did you grow up?

21 A Verona. Township of Verona.

22 Q Are you familiar with property located at
23 251-1/2 Grove Avenue?

24 A Yes, sir.

25 Q And can you describe that property to us?

1 A It's a typical flag lot in that the access to the
2 lot is off Grove Avenue. There's an entrance and an
3 exit and one large driveway. And on the north end it
4 abuts -- the property abuts a child care facility. On
5 the east side the property abuts the Peckman River. On
6 the south side the property abuts single-family houses
7 on Ann Street. And on the west side the property abuts
8 single family houses on Grove Avenue.

9 Q And now on the other side of the Peckman
10 River, what's there?

11 A The Township of Verona engineers offices.

12 Q Now that particular property do you know what
13 the current zoning on that is?

14 A Yes.

15 Q And what's that?

16 A C-2, professional office and business.

17 Q All right. And just to help you, are you
18 familiar with the permitted uses in that zone?

19 A I have them listed on the sheet.

20 Q Okay.

21 A Yes.

22 Q And when you say sheet, you're talking about
23 the provisions of the ordinance 150-17.11?

24 A Yes, sir.

25 MR. MASON: Judge, although -- I don't know

1 whether we need it as an exhibit, but for the ease of
2 the Court, we're going to have it marked so that
3 everybody has a copy of the ordinance.

4 Q Is that a true and accurate --

5 THE COURT: Well, we're going to mark --

6 Q -- copy?

7 THE COURT: Okay. We have to mark it. It'll
8 be S -- S-2.

9 (S-2, ordinance, marked for identification.)

10 MR. MASON: And this is Page 159 of the
11 Verona --

12 THE WITNESS: Of the zoning ordinance.

13 MR. MASON: -- (indiscernible).

14 Q Is that a true and accurate copy of -- of the
15 permitted uses?

16 A Yes, sir.

17 Q Okay. Now with regard to the permitted uses,
18 is a bus repair -- school bus repair company one of the
19 permitted uses?

20 A No, it is not.

21 Q Is a storage facility, pods, that type of a
22 thing, outdoor storage of storage containers. Is that
23 a permitted use?

24 A No, it is not.

25 Q Now do you know the prior zoning on this

1 property?

2 A Yes.

3 Q Okay. First off, with regard to the current
4 use do you know when the -- that current ordinance was
5 adopted, the effective date?

6 A Yes.

7 Q And when was that?

8 A It was adopted August 15th, 2011.

9 Q Okay. And prior to that, what was the zoning
10 on the property?

11 A It was zoned M-1.

12 Q Okay. And that's -- what is that, light
13 industrial?

14 A Light industrial.

15 Q And do you -- did you produce for us a copy
16 of the permitted uses with regard to the M-1?

17 A Yes.

18 Q And I'm going to ask you to take a look at
19 this document and tell me what that is, and where it
20 came from.

21 A This came from the -- the previous -- before
22 August 2011 the previous zoning book, which was
23 probably a quarter of the size. That's what this came
24 out of. How far it dates back, I don't know.

25 Q Well, take a look at it, and can you tell me

1 the effective date of the --

2 A The --

3 Q -- light industrial?

4 A This says 05/15/2007 at the bottom of this sheet.

5 Q Okay. And if you look under the permitted
6 uses can you tell me the effective date?

7 A 1997. I'm sorry. 7/14/1997.

8 Q Okay. So --

9 THE COURT: I apologize. I'm not following
10 you. I've got two different dates, and I'm not sure
11 what you're saying.

12 Q What is the effective date?

13 A The effective date is amended ordinance 7/14/1997.

14 MR. MASON: Okay. Judge, I'd offer S-2 and
15 3.

16 THE COURT: Any objection, counsel?

17 MR. KINUM: No, Your Honor.

18 THE COURT: Okay. We can mark them so --
19 just make sure we have the marking correctly.

20 MR. MASON: S-2.

21 THE COURT: S-3 into evidence.

22 MR. MASON: No. Well, wait.

23 THE COURT: S-2 you have is -- we have that.
24 Wait. Let's mark that, because you may be using that
25 so there's no confusion. The ordinance is S-2. Let's

1 mark that S-2 as well. I just marked mine.

2 MR. MASON: Okay.

3 THE COURT: I'm not giving mine up. And then
4 the other is S -- S-3. S-2 and S-3 have been marked,
5 (S-2, ordinance, admitted into evidence.)
6 (S-3, permitted use document, admitted into
7 evidence.)

8 Q Did you check the tax records and determine
9 the owner of that property?

10 A Yes.

11 Q And the recorded owner?

12 A Yes.

13 Q What -- what was the recorded owner?

14 A Marve Development.

15 Q Okay. And with regard to that property have
16 you done inspections of that property recently?

17 A Yes.

18 Q All right. And what's the most recent
19 inspection?

20 A Last month when I took some pictures of the -- the
21 pods.

22 Q Okay. Now you mentioned pods. Tell me what
23 you're referring to.

24 A The storage units that are stored on the property,
25 At the time I counted 186 storage units.

1 Q And did you -- you said you took some photos
2 then, correct?

3 A Yes.

4 Q And had you taken photos previous to that?

5 A I have photos dated 6/16/14.

6 THE COURT: '14?

7 THE WITNESS: Yes. Yes, sir.

8 MR. MASON: 2014.

9 A Sixteen. Eighty-three as of -- these pictures was
10 11/23/16.

11 Q Okay.

12 A I have pictures here. But the original ones, I
13 have pictures. I have a whole file of --

14 THE COURT: Don't be --

15 A -- pictures.

16 THE COURT: Don't be helpful.

17 THE WITNESS: Okay.

18 THE COURT: Because you're confusing the
19 Judge, and that's a bad thing.

20 THE WITNESS: Okay.

21 THE COURT: Just listen to the questions.

22 Q Confusing me.

23 A Okay.

24 Q You just showed me a document that's got four
25 photos on it, right?

1 A Right.

2 Q When were these photos taken?

3 A Those photos were taken on 6/16/14.

4 Q Okay.

5 A But I went back as of 11/23 and I counted 187
6 storage units.

7 Q Okay. But these photos are not from 2016,
8 correct?

9 A Correct.

10 Q But they accurately reflect the property as
11 of 6/16/14.

12 A Correct.

13 Q And you took these photos yourself, correct?

14 A Yes, sir.

15 Q All right. And you said you went back in
16 2016 and you counted the units, correct?

17 A Correct.

18 Q In 2014, did you count the units?

19 A I did not.

20 Q However, do -- do the photos accurately
21 represent what the storage units look like and how they
22 were stacked in 2016?

23 A Yes.

24 MR. MASON: Judge, I would offer S-4.

25 THE COURT: Counsel, any objection to S-4?

1 MR. KINUM: I object, Judge. Here we're
2 talking about a photograph that was taken over two and
3 a half years ago. And now the witness is trying to
4 introduce this into evidence to try to depict a
5 condition that allegedly existed at the time he issued
6 a summons in 2016.

7 THE COURT: Well, no. I thought I heard
8 testimony there's going to be more photos of 2016. Am
9 I incorrect, or --

10 MR. MASON: Well, I -- I'm not quite sure
11 what he said. What I did ask him, Judge, is whether
12 they -- it still accurately depicts how they were
13 stacked and what they look like.

14 THE COURT: Well, I'm going to allow S-4 into
15 evidence as to what was here in 2014 as to your
16 objection, counsel. As to what happened or what the
17 conditions in October of 2016, we have to hear
18 testimony as to that.

19 MR. KINUM: Thank you, Your Honor.

20 THE COURT: So S-4 is in evidence.

21 MR. MASON: Okay.

22 (S-4, photographs, admitted into evidence.)
23 admitted into evidence.)

24 Q Did you take pictures again in 2016?

25 A Yes.

1 Q Okay. Do you have those with you?

2 THE COURT: Just before we go any further, S-
3 4, just so the evidence is clear, there's four
4 photographs. But on the top it has an address, but
5 then it says June 16th, 2014, and then it says
6 something about November 23rd, 2016. As of this time
7 S-4 is in evidence, but I'm going to ignore that
8 notation on the right corner. There's no testimony as
9 to that. So S -- as far as S-4, I'm just accepting the
10 four photos as of June of 2014.

11 You may proceed.

12 A These are the latest photos I took on 1/25/17. If
13 you want --

14 Q 1/25/17.

15 A Yes. Those are the latest ones.

16 Q Did you make copies of these and provide
17 these in discovery?

18 A I did not. They just stood out. These are from
19 '14 and '15.

20 Q Okay. So when you went out most recently,
21 let -- let's go back. 2014 the -- the photos indicate
22 that the units are stacked one on top of the other,
23 correct?

24 A Correct.

25 Q And 2016 when you went out, were the units

1 stacked one on top of the other?

2 A Yes.

3 Q And at any point in time did you measure the
4 height of the containers?

5 A Yes.

6 Q Okay. When did you do that?

7 A I don't know the exact date.

8 Q Okay. Would that have been in 2014 or 2016?

9 A That would be in 2016.

10 Q Okay. And what was the height of the
11 containers when they were stacked one on top of the
12 other?

13 A Each unit measures eight feet for a total of 16
14 feet --

15 Q Okay.

16 A -- as they're stacked.

17 Q And did you count how many units were there
18 in 2014?

19 A I did not.

20 Q Can you approximate how many units you saw in
21 2014?

22 A It appeared to be the same amount as what's there
23 now.

24 THE COURT: That's not the question. In 2014
25 how many units were present?

1 THE WITNESS: I do not know.
2 THE COURT: Okay. Thank you.
3 Q Did you go back and look at historically
4 whether there were any records indicating use of this
5 property?
6 A I did some research.
7 Q Okay. Did you find any records relative to
8 the 1950's?
9 A I found something from 1952.
10 Q '52. And what did you locate?
11 A It was for an application to the board of
12 adjustment.
13 Q Okay. And do you recall whether or not it
14 reflected minutes of that application?
15 A It was some minutes in it. It was -- it was a
16 denial for an application.
17 Q Okay. And do you know who testified at that
18 application?
19 A I do not know. I have the -- I have the -- I have
20 the --
21 Q Okay. I'm going to show you a document and
22 ask you to take a look and tell me whether or not this
23 is what you were talking about when you said you found
24 documents from 1952.
25 A Yes, sir. This is the document.

1 Q Okay. And does that refresh your
2 recollection as to who testified in furtherance of that
3 application?
4 A Yes.
5 Q And you testified on behalf of the applicant.
6 A Mr. Sastone.
7 Q Okay. And who was the property owner then?
8 A Mr. Sastone, I believe.
9 Q Individually or --
10 A Marve -- well, I'd have to read through again.
11 Application of Verona Construction Company.
12 Q And what was the location?
13 A 257 -- I'm sorry. 251 Grove Avenue.
14 Q Okay. And do you understand that to be the
15 same location as we've talked about as 251-1/2?
16 A Yes.
17 Q And does that accurately reflect the document
18 that was kept in the ordinary course of business within
19 the Verona Building Department relative to that
20 property?
21 A Yes.
22 Q And did you make a copy yourself?
23 A Yes.
24 Q And that's a true and accurate copy?
25 A Yeah. Yes.

1 MR. MASON: Judge, S-5 I think we're up to or
2 six.
3 THE COURT: Any objection, Counsel?
4 MR. MASON: We're up to six.
5 MR. KINUM: I object to this being introduced
6 into evidence, yes.
7 THE COURT: Okay.
8 MR. KINUM: I can't object to it being
9 marked.
10 THE COURT: Oh. We're going to mark it this
11 way. S -- S -- I think we are at five.
12 THE CLERK: S-5.
13 MR. MASON: Judge, I -- I was moving it as a
14 business record. If there's a request to voir dire, I
15 have no objection.
16 THE COURT: All right. Let's mark it first.
17 Let's do that first. Okay. S-5 has been marked. It's
18 got to go back to counsel.
19 (S-5, testimony document, marked for
20 identification.)
21 THE COURT: Counsel, first of all have you
22 seen S-5. Let's start with that.
23 MR. KINUM: I have, Your Honor.
24 THE COURT: Okay. Fine. I just want to make
25 sure that's -- okay.

1 MR. MASON: It's okay.
2 THE COURT: Your objection, counsel?
3 MR. KINUM: It's -- the document is
4 completely irrelevant. The testimony that Mr. Sastone
5 might have given over 65 years ago concerning a
6 different owner, Verona Construction. Here the
7 defendant is Marve Development, is irrelevant to the
8 issue before Your Honor. The issue is what were the
9 preexisting uses on the property at the time that we
10 had the zoning change in 2011. What Mr. Sastone
11 (phonetic) -- what Mr. Sastone might have said 65 years
12 ago concerning the property concerning a different
13 owner is completely irrelevant, doesn't aid the Court
14 in any way.
15 THE COURT: Mr. -- I'm sorry. You done,
16 counsel? I'm sorry.
17 MR. KINUM: Yes, Your Honor.
18 THE COURT: Okay. Mr. --
19 MR. MASON: Judge, I -- I think it goes right
20 to the point as to what was the principal use of the
21 property as per the testimony of the owner. Mr.
22 Sastone obviously via Marve Construction owns the
23 property and back in 1952 via Verona Construction made
24 an application relative to the property and testified
25 as to the principal use.

1 And that's really the key here, what was the
2 principal use. And the next question I'll go through
3 with the witness is -- is whether or not that use still
4 exists today, and whether it existed at the time that
5 the summonses were issued.

6 THE COURT: Well, counsel?

7 MR. KINUM: Again, Judge, we're talking about
8 a different owner of the property and testimony from 65
9 years ago. The relevant issue is, yes, what was the --
10 the principal use of the property when at the time that
11 the zoning change was made and the years leading up to
12 that this century, not 65 years ago.

13 THE COURT: Well, you need, again, in regard
14 to preexisting uses, and I've had trials before in this
15 issue. I've had cases in one court, Pequannock, which
16 was according to the historians was surveyed by the
17 British in 1685 I think it was.

18 But in any event prior use is -- is important
19 to the Court to understand what prior uses were
20 present. It would benefit in fact the defendant as far
21 as preexisting uses. I'm going to allow it. It may
22 not be relevant, counsel. I haven't seen it obviously.
23 So I'm going to accept the document as a business
24 record as to whether I accept and how that information,
25 that document is accepted by the Court will be after I

1 hear all the testimony and I review it. Because
2 obviously I can't look at a document before into
3 evidence. So I'm going to allow it as a business
4 record. Whether I accept it, whether it's relevant is
5 another issue.

6 So S-5, I think it is.

7 THE CLERK: Uh-huh.

8 THE COURT: S-5 is in evidence subject to
9 what weight I give that document. It's in evidence.

10 (S-5, testimony document, admitted into
11 evidence.)

12 Q Okay. Back in the beginning of 2016, did you
13 make inquiry as to the property manager as to the uses
14 of the property?

15 A Yes.

16 THE COURT: Ask that question again. I'm
17 sorry. Did you --

18 Q Back in January of 2016, did you make inquiry
19 of the property manager as to the uses on the property?

20 A Yes.

21 Q And did you receive a response from the
22 property manager?

23 A Yes.

24 Q And was that in the form of a fax?

25 A Yes.

1 Q And let me just show you.
2 (Counsel confer.)
3 THE COURT: No.
4 Q The document I'm showing you, is that the fax
5 response that you received from the property manager?
6 A Yes, it is.
7 Q And there is some notations on that. Who
8 made the notations? I should -- let me rephrase. Did
9 you make those notations?
10 A Did not.
11 Q Okay. When you received the fax, did it have
12 those notations on it?
13 A Yes.
14 Q And did you ask for the identity of the
15 tenants and when they took possessions of the property?
16 A Yes.
17 Q And that's what you received in response.
18 A Yes.
19 Q Correct? Now based on that your office did
20 actually a chart. Is that correct?
21 A That is correct.
22 Q And typed it up?
23 A Correct.
24 MR. MASON: Okay. So first of all, Judge,
25 I'd like the fax to be marked as S-6.

1 THE COURT: Any objection, counsel --
2 MR. MASON: And I'd move --
3 THE COURT: -- into evidence?
4 MR. MASON: -- that into evidence.
5 MR. KINUM: I object, Judge. It's hearsay.
6 I don't see what --
7 MR. MASON: Judge, and it's --
8 MR. KINUM: -- exception it falls under the
9 hearsay rule.
10 THE COURT: Judge, it's an admission.
11 MR. KINUM: An admission of what?
12 THE COURT: Admission by whom. I'm sorry.
13 MR. MASON: By the defendant property owner
14 via the property manager as to the occupants on the
15 property and when they occupied the property.
16 MR. KINUM: It's not any statement against
17 interest, Judge.
18 MR. MASON: It --
19 MR. KINUM: It's not admission.
20 MR. MASON: It is, Judge, because it relates
21 to when the two uses that are in question here took
22 place.
23 THE COURT: Well, you'll have to lay more
24 foundation then how this fax -- who the person who sent
25 it. I need more information to address the objection.

1 Q Who did you make inquiry of?
2 A The person, the gentleman?
3 Q Yes.
4 A The site manager Mr. Altunaga.
5 Q Okay. And had you met Mr. Altunaga prior to
6 making this request?
7 A Yes.
8 Q And what's your understanding of his
9 relationship to Marve, the property owner?
10 A He had stated he was the site manager.
11 Q Okay. And what were your understanding is as
12 site manager of what his responsibilities were?
13 A Taking care of the site, and he knows what the
14 businesses that are there, where they're located.
15 Q And had you had prior to making this request
16 other interaction with him relative to activities on
17 this subject property?
18 A No.
19 Q And you never talked to him about hours of
20 operations and businesses or anything else?
21 A There was some discussions with some of the
22 businesses, but I don't recall exactly what time frame
23 in relation to this document.
24 Q Okay. And why did you ask him for the
25 information relative to the occupants of the property?

1 A We were receiving complaints from neighbors.
2 Q And did you -- based upon the information
3 that he provided, did you issue summonses based upon
4 the dates that occupancy took place?
5 A Yes.
6 Q And why was the date of occupancy relevant to
7 you?
8 A Because if it was after twenty -- August 2011,
9 then they were in violation of the zoning code for the
10 use.
11 MR. KINUM: Objection.
12 Q When -- when you say --
13 THE COURT: Wait. Wait. Wait. There's an
14 objection. Your objection?
15 MR. KINUM: He said allegedly in violation.
16 THE COURT: Well, it's his testimony. I'll
17 -- I'll accept -- we'll accept his testimony. You
18 might as -- you can cross examine him on that issue.
19 Q Explain to --
20 THE COURT: I'll allow it.
21 Q -- me again why that date was relevant?
22 A That date was relevant if it was -- if -- if these
23 uses were occupied the site after August 2011, they're
24 in fact not permitted uses. And they should have
25 obtained a variance for zoning approval.

1 Q And 2011 is when the most current zoning on
2 the property took effect, right?

3 A That's correct.

4 MR. MASON: Judge, again, I would offer the
5 document.

6 THE COURT: Well, I have further questions,
7 but, counsel, I'll let you ask questions in regard to
8 the document and the questions you want to ask first
9 before I address questions as far as what --

10 MR. KINUM: I -- I have no questions. It's
11 the -- the documents rank hearsay.

12 THE COURT: All right. Well, let me address
13 it.

14 How did you request this document? How did
15 you know who to contact?

16 THE WITNESS: When we received complaints
17 from the neighbors, the -- I believe the secretary in
18 the office at --

19 THE COURT: Whose office?

20 THE WITNESS: In -- in -- in Marve -- Marve
21 Development Office said speak with Tom Altunaga who's
22 the site manager. And then I was put in contact with
23 him.

24 THE COURT: So you were put in contact with
25 the site manager from Marve, not the site manager for

1 this property?

2 THE WITNESS: Right.

3 THE COURT: Okay. And that information and
4 this person -- can you spell the person's last name?

5 THE WITNESS: In the office?

6 THE COURT: Yeah.

7 THE WITNESS: I'm not sure of the spelling.
8 It was him.

9 THE COURT: You have a document in front of
10 you. What is -- what is --

11 THE WITNESS: Well, this is --

12 THE COURT: -- is the person identified?

13 THE WITNESS: I'm sorry, Judge. You want the
14 site manager's name?

15 THE COURT: Yeah.

16 THE WITNESS: Oh, I'm sorry. I thought you
17 meant -- Tom Altunaga, A-l-t-u-n-a-g-a.

18 THE COURT: Okay. And the document that you
19 have in front of you is that just a listing of
20 information?

21 THE WITNESS: Yes. It's a listing of -- of
22 all the businesses on the property with the dates they
23 went in, they occupied the property.

24 THE COURT: And this document came from the
25 site manager for the defendant for Marve -- Marve

1 construction or Marve Development.

2 THE WITNESS: Correct.

3 THE COURT: Is that correct?

4 Counsel, your objection it's hearsay?

5 MR. KINUM: Yes, Judge.

6 THE COURT: Why? It's -- it's from your
7 client's business office that document -- they sent to

8
9 MR. KINUM: It's an out-of-court declaration
10 that they're trying to assert to prove the matter
11 that's contained in the document.

12 THE COURT: But it comes --

13 MR. KINUM: It has to fit into --
14 respectfully, it has to fit into some type of hearsay
15 exception. It's not a statement against interest. I
16 don't see what exception it could fit into.

17 THE COURT: You're saying if -- if a letter
18 is sent to a -- to a government agency, and it's sent
19 -- any letter. It doesn't matter. That in a trial
20 that that document is hearsay? If it's -- if it's
21 authenticated to be from -- from a certain party?

22 MR. KINUM: Correct, Judge. It's hearsay
23 contained within the document.

24 THE COURT: Mr. Prosecutor, your position in
25 regards to that objection?

1 MR. MASON: Judge, again, that's why I went
2 through the relevance of the time frame and the
3 occupancy. It relates specifically to the violations
4 of this case. So it's an admission as to the element
5 of these violations, when they took possession.

6 THE COURT: I'm going to reserve on it. I --
7 I -- again, I have to -- I have to hear this case, and
8 then I'll reserve. You can make the motion to offer
9 that at the end of your case.

10 MR. MASON: Okay.

11 THE COURT: What is that marking on that
12 document?

13 THE CLERK: That if --

14 MR. MASON: We didn't mark it.

15 THE CLERK: We have to mark it S --

16 MR. KINUM: You marked it S.

17 THE COURT: It has to be marked.

18 THE CLERK: S-6.

19 THE COURT: No, no. I don't want it -- no,
20 no. I don't know --

21 MR. MASON: Marked S-6 for identification.

22 THE COURT: She -- do this. Go around that
23 way, because you're coming before me, and then I'm
24 seeing documents. We can't do that. We'll mark that
25 document for identification only.

1 (S-6, business listing, marked for
2 identification.)

3 THE COURT: It's been marked for
4 identification. Okay. You may proceed.

5 MR. MASON: Thank you.

6 Q You issued --

7 THE COURT: No.

8 MR. MASON: You can just leave it. No.
9 That's fine. Thank you.

10 Q You issued several summonses in December as
11 -- strike. That's okay. You issued several summonses
12 in -- in this matter, correct?

13 A Pardon? Can you repeat?

14 Q In this case.

15 A Yes.

16 Q Okay. And when did you issue those
17 summonses?

18 A October 12th, 2016.

19 Q Okay. And with regard to the mobile storage
20 container, why did you issue that summons? There were
21 -- there were two summonses, correct?

22 A Correct.

23 Q Okay. And why did you issue those two
24 summonses?

25 A There were two summonses. One was for the

1 accessory use over 15 foot maximum, which, because in
2 this case that stacked the 15 feet.

3 Q Okay.

4 A And you can't have the storage units over 90 days.

5 Q Okay.

6 A And -- and that's how --

7 Q And how did you know that they had been there
8 over 90 days?

9 A Oh, from pictures. And we've got pictures dated
10 back to 2014.

11 Q Based on your site visits.

12 A Yes.

13 Q Is that correct? You also issued a summons
14 relative to the school bus company?

15 A Yes.

16 Q And what was the basis for that?

17 A Permitted use. It is not permitted in that zone
18 under the 2011 zoning code.

19 Q Did you have any information whatsoever that
20 there had been a prior bus company repair business
21 there?

22 A No.

23 MR. MASON: Your witness.

24 MR. KINUM: Thank you.

25 CROSS EXAMINATION BY MR. KINUM:

1 Q Mr. Jacobsen, I'm going to take these
2 summonses one at a time and see if I can keep up with
3 it.

4 A That's fine. That's --

5 Q All right. So we start out with SC-2 --
6 2742, which is you -- well, first of all why don't we
7 mark it as D-1 as you put it in front of you.

8 THE COURT: Well, he would have -- you have
9 your summonses, don't you?

10 MR. KINUM: Yeah. Yeah. That --

11 THE COURT: We don't have to mark it.

12 A Yes. Which one do you want to do?

13 Q Let's start with 2742.

14 A Two seven --

15 Q And it says complaining witness, and that's
16 Tom Jacobsen. That's you, right?

17 A That's correct.

18 Q And the handwriting on the summons is your
19 handwriting?

20 A That's correct.

21 Q Okay. And you have for the violation mobile
22 temporary storage containers onsite more than 30
23 consecutive days. Did I read that correctly?

24 A Yes.

25 Q You're saying in violation of 150-9.1,

1 parens, (b), closed parens. Did I read that correctly?

2 A That's correct.

3 Q And that's from the Verona Township Zoning
4 Ordinance?

5 A Yes.

6 MR. KINUM: All right. Let's mark this as D-
7 1 if we could. What I did to try to figure out what
8 was going on, I went to the zoning code.

9 MR. MASON: Thank you.

10 THE COURT: Okay. Well, I have the -- I have
11 the zoning code. We don't have to mark it, I don't
12 think.

13 MR. KINUM: Okay.

14 THE COURT: He could just identify what page
15 and what --

16 MR. KINUM: All right.

17 THE COURT: And then he can --

18 Q So basically you're relying on Page 106 of
19 that code, correct?

20 A Correct.

21 Q All right. And the top of that is Article 9,
22 right?

23 A Correct.

24 Q All right. And that's in -- that's a -- an
25 article dealing with regulations governing certain

1 temporary uses, correct?

2 A Yes.

3 Q We're not dealing with permanent structures
4 here. We're dealing with temporary things, correct?

5 A Correct.

6 Q All right. And there's three separate items
7 that are listed, right? We have the mobile temporary
8 storage container, right?

9 A Yes.

10 Q And that's one of the reasons we're here
11 today. That was the basis for your summons. Right?

12 A Correct.

13 Q And then we have the mobile temporary toilet
14 facility.

15 A Correct.

16 Q Is that commonly referred to as like a porta-
17 john, or something like that?

18 A That's correct.

19 Q And then we have dumpsters, right?

20 A Correct.

21 Q All right. Why don't you start at the bottom
22 and work my way up. We have dumpsters under 150-9.3,
23 right? Can we agree that this is limited with respect
24 to dumpsters. It's limited to residential property,

25 A Correct.

1 Q Because exactly right in in the language
2 under dumpsters it says roll-off Dumpster -- dumpsters
3 utilized in conjunction with single and two-family
4 residential development, right?

5 A Yes.

6 Q It actually used the term residential
7 development.

8 A Yes.

9 Q Okay. So the dumpsters are just for
10 residential property, right?

11 A Right.

12 Q All right. Because we know that there are
13 supermarkets in Verona where there's permanent
14 dumpsters, right?

15 A Yes.

16 Q They stay there for more than 30 days.

17 A Uh-huh.

18 Q And they're not violating any statute, right?

19 A Yes.

20 Q Okay. As we work our way up, then we have
21 the mobile temporary toilet facility under 150-9.2,
22 right?

23 A Yes.

24 Q Okay. And that's the porta-john.

25 A Yes.

1 Q And that's limited to residential property as
2 well, correct?

3 A It does not say anything about residential in this
4 paragraph.

5 Q You're the code enforcement officer for the
6 town --

7 A Yes.

8 Q -- right? I mean, it's your job to -- to
9 understand the -- the code, right?

10 A Right.

11 Q All right. And we have parks in Verona,
12 right?

13 A Uh-huh.

14 THE COURT: You have to answer yes or no.

15 A Yes. Sorry.

16 Q Okay. And there's mobile temporary toilet
17 facilities in the parks -- well, there's porta-johns in
18 the park, right?

19 A Yes.

20 Q All right. But that wouldn't fall under the
21 category of temporary toilet facilities, because
22 they're for -- they're there for years at a time. I
23 mean, they're swapped out, but they're there in that
24 position, right?

25 A Yes.

1 MR. MASON: Judge, I'm just going to object
2 to this line because it's a county park. Obviously
3 municipality doesn't have the ability to regulate the
4 county. It goes the other way around.

5 THE COURT: Well, maybe counsel's going to --

6 MR. MASON: Supremacy clause.

7 THE COURT: Maybe counsel's going to address
8 that to other locations in Verona. I don't know.

9 Q There are -- there are nine county parks in
10 the town, right?

11 A Yes.

12 Q There's ballfields for little league, right?

13 A Yes.

14 Q And there's porta-johns at those locations?

15 A Yes.

16 Q And they don't fall under this 159.2, right?

17 A No.

18 Q And that's because they're not a residential
19 property, right?

20 A Correct.

21 Q All right. Now let's get to the -- to the
22 one we're -- we're here for on SC-2742. And that's
23 under 150-9.1, and you charged under Section B of that,
24 right?

25 A Yes.

1 Q And it says mobile temporary storage units
2 may remain on a property for up to 30 consecutive days,
3 correct?

4 A Yes.

5 Q All right. And that's limited to residential
6 property as well, right?

7 A Yes.

8 Q And we know that the property here at 251-1/2
9 Grove Avenue that's commercial property, right?

10 A Yes.

11 Q So we can agree that this statute does not
12 apply to that property, correct?

13 A I refer to counsel -- to the prosecutor --

14 THE COURT: No, no, no. You've got to --

15 A -- or --

16 THE WITNESS: No?

17 THE COURT: -- answer it.

18 A Yes. I agree.

19 MR. KINUM: Judge, I'm going to move for
20 dismissal of SC-2742.

21 THE COURT: Well, you want to do that now, or
22 you want --

23 MR. KINUM: I mean, I was going to take them
24 out one at a time.

25 THE COURT: Okay.

1 MR. KINUM: I can --

2 THE COURT: Wait. That's fair.

3 MR. KINUM: -- wait 'til the end.

4 THE COURT: No, no. That's fair. I mean, if
5 you're done with that questioning, counsel --

6 MR. KINUM: Yes.

7 THE COURT: -- on that issue.

8 MR. KINUM: On that issue.

9 THE COURT: Okay. I just don't want to be
10 going back and forth.

11 MR. KINUM: And that's what I'm trying to do.
12 I'm trying to --

13 THE COURT: Okay. Sure.

14 MR. KINUM: -- keep it streamlined.

15 THE COURT: I'm going to follow you while
16 you're presenting your case. Mr. Prosecutor?

17 MR. MASON: Judge, you want to address the
18 motion now?

19 THE COURT: Yeah.

20 MR. MASON: That's a legal opinion from a lay
21 witness.

22 THE COURT: Well, but Mr. Jacobsen just
23 testified that the -- which one is it, 742, deals with
24 this 251-1/2 Grove Avenue which so far has been
25 testified as a commercial site. And he testified that

1 159 -- 150-9.1(b) pertains to residential properties.
 2 MR. MASON: Right, Judge.
 3 THE COURT: So --
 4 MR. MASON: Well, first of all --
 5 THE COURT: -- it applies to residential.
 6 MR. MASON: -- Judge, I'd like to cross
 7 examine --
 8 THE COURT: Okay. No. I'll allow you to do
 9 that. We'll -- let's do it at the end then.
 10 MR. KINUM: Okay.
 11 THE COURT: I think it's --
 12 MR. KINUM: All right. Then let me --
 13 THE COURT: -- we'll do it --
 14 MR. KINUM: Then let me finish then. I was
 15 --
 16 THE COURT: Yes.
 17 MR. KINUM: -- trying to streamline, and I'll
 18 finish on the summons --
 19 THE COURT: No. That's okay.
 20 MR. KINUM: -- because I do have more.
 21 THE COURT: Okay.
 22 Q In fact, Mr. Jacobsen, the term mobile
 23 temporary storage container that's not like a common
 24 term, right? I mean, I realize you're a code
 25 enforcement officer, so you might be more familiar with

1 it than others, correct?
 2 A That's up to opinion.
 3 Q Can we agree that the mobile temporary
 4 storage container is actually defined within the Verona
 5 code?
 6 A Yes.
 7 Q All right. And that's found at Page 30,
 8 correct?
 9 (Beeping sound.)
 10 THE COURT: Wait a second. Wait. I'm
 11 hearing a beeping. Is that -- we're okay? So you can
 12 still hear everything. Is that correct? You can still
 13 hear what's going on?
 14 MR. SASTONE: Yes, sir.
 15 THE COURT: Okay. I just heard a sound, and,
 16 again, I just wanted to make sure we weren't --
 17 THE WITNESS: Page -- oh, you got it.
 18 MR. MASON: I got a --
 19 THE COURT: Counsel, what section?
 20 MR. KINUM: It's -- it's Page 30 of -- in the
 21 definitions --
 22 THE COURT: Well, just give me the section.
 23 MR. KINUM: In the definitions of the code,
 24 Your Honor.
 25 THE COURT: Okay.

1 MR. KINUM: And if I may approach, I'll just
2 give you this.

3 THE COURT: Okay. Well, I just want to look
4 at my book too. Okay. You may proceed.

5 MR. KINUM: Okay.

6 Q And, Mr. Jacobsen, can you read the
7 definition contained in the Verona code for a mobile
8 temporary storage container.

9 A Yes. Temporary or portable storage units that are
10 transportable units designed and used primarily for
11 temporary storage of building materials, household
12 goods, personal items, and other materials for use on a
13 limited basis on residential property. A portable
14 temporary toilet is not a mobile temporary storage
15 container.

16 Q On residential property, correct?

17 A Correct.

18 Q So that's consistent with your previous sworn
19 testimony that the mobile temporary storage container
20 statute is limited to just the residential property,
21 correct?

22 A Correct.

23 Q Now let's move on to the next summons.

24 THE COURT: Which one? Just give me the
25 number, counsel, just so I'm following.

1 MR. KINUM: 2743.

2 THE COURT: Four three. Go ahead.

3 MR. KINUM: All right.

4 Q So, again, this is your handwriting, Mr.
5 Jacobsen?

6 A Yes.

7 Q You actually signed the summons?

8 A Yes, sir.

9 Q Okay. And the -- the stated reason or basis
10 for the summons is mobile temporary storage containers
11 over maximum allowed height of 15 feet, right?

12 A Yes.

13 Q And the statute there is 150-17.11(d)(9),
14 correct?

15 A Correct.

16 Q And that's -- and that section deals with
17 accessory structures, correct?

18 A Yes.

19 Q Do you have the definition of structure?

20 A Yes. Accessory structure. A structure, the use
21 of which is incidental to that of the main building or
22 structure that is located on the same lot as the main
23 building or structure.

24 Q Okay. Now we can agree these pods on a
25 building, correct?

1 A Pardon?
2 Q We can agree that these pods are not a
3 building, correct?
4 A Correct.
5 Q All right. And they're not a bridge or
6 anything like that, right?
7 A Correct.
8 Q All right. And is anywhere in the -- is
9 anywhere in the code -- the Verona code the term
10 structure defined?
11 A Principal.
12 Q I --
13 A I --
14 Q I'm sorry. I didn't mean to interrupt.
15 A I have principal building and principal use. I
16 don't see structure.
17 Q I'm asking for, I mean --
18 A I don't --
19 Q I'm trying to figure -- I'm trying to figure
20 out the code. Okay.
21 A Okay.
22 Q So I get assigned this case. I go to the
23 code. I look. I will tell you to save you some time,
24 the term structure is not defined within the Verona
25 ordinance code. Do you agree with that?

1 A I -- I don't necessarily agree. I -- I didn't
2 check, quite honestly.
3 Q Do you want to take some to check?
4 A Yes.
5 Q To make sure? Thanks.
6 THE COURT: Before you go any -- question.
7 I'm missing this. I've got all the other ordinances
8 here but 150.17.1. I don't see that in our file. I've
9 got 116.6, 16.7, 150.9.1. I don't have the other one.
10 (Court and clerk confer.)
11 THE COURT: Oh, here it is. Oh, here it is.
12 It's over here.
13 MR. KINUM: Nice and neat on the computer,
14 Judge. Just press print.
15 THE COURT: Here it is. I've got it. I have
16 it. I have it. Here it is over here. It's in
17 evidence. That's why. All right. I have it.
18 THE WITNESS: There's no definition for
19 structure, Judge.
20 THE COURT: You're saying in the Verona code
21 there's no definition -- definition of a structure?
22 THE WITNESS: In our zoning ordinance we have
23 definitions, and it doesn't --
24 THE COURT: Wait. That's impossible.
25 THE WITNESS: -- define structure.

1 THE COURT: You're telling me in the zoning
2 code book there's no definition of structure?

3 THE WITNESS: No. They have principal
4 building, principal use, accessory structure, accessory
5 use.

6 THE COURT: But the -- okay. But they don't
7 say what a structure is.

8 THE WITNESS: They do not. Do you want me to
9 look under building just --

10 THE COURT: I don't want you to look
11 anywhere. I'm just saying that I just, you know --

12 MR. KINUM: I mean, I spent some --

13 THE COURT: -- a little bit shocked about
14 that.

15 MR. KINUM: I spent some time, Judge. I was
16 shocked as well, because I thought I could have
17 streamlined this. But --

18 THE COURT: No. I'm just saying because I
19 just tried a case in another court, and structure was
20 the whole case, whether something was a structure or
21 not, and the definition was all through the code, and
22 that's why I'm a little bit shocked that we know that
23 term structure. But, again -- again, counsel, you may
24 proceed. There's no definition.

25 MR. KINUM: And, Judge, we have the same

1 issue here in this case with structure. All right.

2 Q So the definition of the term structure is
3 not in the code, right?

4 A Correct.

5 Q Right. In that case do you rely on a -- on a
6 dictionary definition?

7 A Not dictionary definition. I consult with our
8 commercial administrator, the town engineer, and -- and
9 get his opinion on what we felt this was.

10 Q Would you agree with the Webster's dictionary
11 definition of structure as something built or
12 constructed as a building, bridge or dam?

13 A I would agree with that.

14 Q What --

15 A Yes.

16 Q And we can agree that the odds at issue here,
17 the store -- the temporary storage units they are not a
18 building, correct?

19 A That's correct.

20 Q They're not a bridge, right?

21 A No.

22 Q And they're not a dam, correct?

23 A No.

24 Q And the -- the summons for 2743, that relies
25 -- that only applies to structures, correct?

1 A Well, this -- this for height.
2 Q Okay.
3 A Well, we -- we consider it an accessory --
4 accessory structure.
5 Q Right. So you --
6 A I'm not the man.
7 Q Structures can only be 15 feet high, right?
8 A Accessory.
9 Q Right. Accessory.
10 A Maximum 15 feet.
11 Q Okay. But things that aren't a structure can
12 be higher than 15 feet, correct?
13 A Depends what the use is and -- and --
14 Q But I'm -- I'm just focusing on this summons
15 right here.
16 A Uh-huh.
17 Q I just want to make sure I understand the
18 basis for the summons. The basis for the summons is an
19 accessory structure can't be above 15 feet, correct?
20 A Correct.
21 Q And you'd agree that if the store -- the
22 temporary storage units are not an accessory structure,
23 then the Summons 2743 does not apply, correct?
24 A I would agree.
25 Q Okay. Now let's move on to 2744. That one's

1 been dismissed. Okay. So we can move -- jump right to
2 2745. And that's the principal permitted uses school
3 bus repair, correct?
4 A Correct.
5 Q And use -- and that's 150-17.11, parens, (a),
6 closed parens, right?
7 A Correct.
8 Q All right. And you're saying that as of the
9 change in the fall of 2011 this no longer was a
10 permitted use on the property, correct?
11 A Correct.
12 Q Right. Now you've had the chance to -- to be
13 at the property at 251-1/2 Grove Avenue, correct?
14 A Yes.
15 Q You've conducted some investigations,
16 correct?
17 A Correct.
18 Q Would you agree that there are garages on the
19 property?
20 A Yes.
21 Q And in those garages there's lifts, correct?
22 A Yes.
23 Q And those lifts are designed to lift heavy
24 commercial equipment?
25 A Yes.

1 Q And you'd agree -- how long have you been in
2 the code enforcement position?
3 A Thirteen years.
4 Q Correct. And before that what position were
5 you in?
6 A In buildings and grounds for the Township of
7 Verona.
8 Q What was the first time you ever stepped --
9 stepped foot on 251-1/2 Grove Avenue?
10 A Probably -- I'm guessing maybe --
11 Q I don't want you to guess. What -- what's
12 your best estimate?
13 A Well, I don't know. Because -- about 10 years ago
14 when there were some complaints for property
15 maintenance.
16 Q All right. So after you became the code
17 enforcement officer.
18 A That's what I'm talking about.
19 Q Sometime in 2005, 2006, 2007, somewhere in
20 that neighborhood?
21 A That's probably accurate.
22 Q And when you went on the property did you see
23 commercial vehicles?
24 A Yes.
25 Q You saw trucks, right?

1 A Yes.
2 Q Heavy equipment, right?
3 A Yes.
4 Q Cranes, correct?
5 A Yes.
6 Q All right. And did you actually see
7 mechanics on the property?
8 A Yes.
9 Q And you'd agree that as of that time on that
10 property tenants of Marve Development were repairing
11 commercial vehicles, correct?
12 A Yes.
13 Q I mean, there's garages there, right?
14 A Yes.
15 Q Mechanics there, right?
16 A Yes.
17 Q There's commercial vehicles there, right?
18 A Yes.
19 Q When you looked at the property, did you see
20 cranes?
21 A Yes.
22 Q All right. Did you issue any summonses for
23 cranes?
24 A No.
25 Q Would you agree a crane is a lot bigger than

1 a school bus, right?

2 A Yes.

3 Q Right. Did you see any big construction
4 vehicles?

5 A Yes.

6 Q No trucks.

7 A Yes.

8 Q Do you agree that those are larger than a
9 school bus as well, correct?

10 A Yes.

11 MR. KINUM: All right. That's all the
12 questions I have, Judge.

13 THE COURT: Any other questions, Mr.
14 Prosecutor?

15 MR. MASON: Yes. Definitely.

16 REDIRECT EXAMINATION BY MR. MASON:

17 Q And let's -- let's stick with your visits in
18 2005, 2006. The cranes, why no summonses? Why didn't
19 you issue any summonses?

20 A I was there strictly for property maintenance
21 issues. There was no -- I just didn't at the time.
22 There were --

23 Q See any violation that the -- because there
24 were cranes there?

25 A Didn't notice any violations at the time. Didn't

1 think about it. I was there just for property
2 maintenance.

3 Q Okay. See any bus companies?

4 A No.

5 Q School bus companies?

6 A No.

7 Q The -- did you see any storage of pods or
8 temporary storage units?

9 A Back then?

10 Q Yeah.

11 A No.

12 THE COURT: Back when?

13 Q And --

14 THE COURT: I'm not sure what we're talking
15 about.

16 MR. MASON: 2005, 2006.

17 Q And based upon your viewing of the site, and
18 did you have interactions with the owner or the
19 property manager?

20 A During that time?

21 Q Yeah.

22 A No.

23 Q Okay. Did you -- did you -- what was your
24 understanding -- or did you have an understanding as to
25 the principal use of that property back in 2005, 2006?

1 A Not that much --
2 Q Well --
3 A -- as far as --
4 Q I don't understand what not that much is.
5 Either you had an understanding, or you didn't have an
6 understanding.
7 A Well, based on the zone at the time it was -- it
8 was -- back then it was M-1, light industrial.
9 Q Not asking you about the zoning. I'm asking
10 you based on your observations what was the principal
11 use of the property?
12 A The principal use of the property was light
13 industrial, the trucks.
14 Q Okay. And --
15 A Construction material.
16 Q And counsel gave you a Webster's dictionary
17 definition of structures. In zoning parlance is that
18 an exclusive list?
19 A I don't follow you.
20 Q Talked about bridges. Talked about
21 buildings. Is that an exclusive definition of a
22 structure as far as you're concerned as the zoning
23 officer?
24 A Yes.
25 Q Exclusive.

1 A Was --
2 Q No other -- no other --
3 MR. KINUM: Objection. Asked and answered.
4 Leading.
5 THE COURT: Well, okay. Sustained. You can
6 rephrase the question. I'll sustain the objection.
7 Q You understand the word exclusive, right?
8 A In this case could you please clarify?
9 Q He gave you a Webster's definition of what a
10 structure is, right?
11 A Correct.
12 Q He talked about buildings. He talked about
13 bridges, correct?
14 A Correct.
15 Q Is that the sole extent of what a structure
16 means to you as a zoning officer?
17 A No.
18 Q Okay. With regard to supermarkets, are there
19 any supermarkets in Verona?
20 A No.
21 Q So when he asked you about dumpsters and
22 supermarkets there are none in Verona, correct?
23 A Correct.
24 Q There are other businesses, however, that
25 have dumpsters, correct?

1 A Correct.
2 Q And there's businesses. Did they apply for a
3 site plan approval or for zoning variances?
4 A The planning board approval for the site plan.
5 Q Okay. Which included approval for the
6 dumpsters, correct?
7 A Correct. As part of site plan approval.
8 Q And the Verona park is owned by the county,
9 correct?
10 A Correct.
11 Q And with regard to the porta-johns at
12 municipal fields, is the municipality bound by zoning
13 ordinances?
14 A No.
15 Q With regard to your testimony as to temporary
16 storage units, you indicated that they're only
17 permitted on residential property, correct?
18 A Yes.
19 Q Are they permitted at all in a light
20 industrial?
21 A No.
22 Q So are they permitted at all on the Marvec
23 property?
24 A No.
25 MR. MASON: Okay. No other questions.

1 RECROSS EXAMINATION BY MR. KINUM:
2 Q The previous zoning before 2011, that was M-
3 2?
4 A M-1.
5 Q M-1. Okay. And under the M-1 you were on
6 the property and you saw that there were commercial
7 vehicles, heavy commercial vehicles which were being
8 repaired, correct?
9 A Correct.
10 Q By mechanics, correct?
11 A Correct.
12 Q And you didn't issue a summons because there
13 was no violation, correct?
14 A At the time. Correct.
15 Q Right. It's permitted use at that time.
16 Yes?
17 A I didn't delve into it, but it was light
18 industrial, and it was different than what today's
19 zoning is --
20 Q Okay.
21 A -- a lot different.
22 Q Because if you saw that there was a violation
23 as a code enforcement agent, it was your obligation to
24 issue a summons, correct?
25 A That's correct.

1 Q The summons that you issued are the 2744.
 2 THE COURT: That -- that's dismissed.
 3 Q 2742. I want to stay away from the
 4 dismissal.
 5 THE COURT: Yeah. You won that one already.
 6 MR. KINUM: I can screw that one up.
 7 Q All right. 2742. That's based strictly on
 8 150-9.1(b), correct?
 9 A Correct.
 10 Q And the Summons 2743, that's based strictly
 11 on 150-17.11, parens, (d), parens, (9).
 12 A (d)(9).
 13 Q Correct?
 14 A Correct.
 15 MR. KINUM: All right. I have no further
 16 questions.
 17 THE COURT: Mr. --
 18 MR. MASON: No.
 19 THE COURT: Mr. Jacobsen, you're saying in
 20 the ordinances in Verona, zoning, build -- I don't care
 21 where they are. There's no definition of structure?
 22 THE WITNESS: We don't -- in this case I have
 23 to go by our zoning, and we do not define. It is duly
 24 noted, Your Honor. I think it -- we need to include
 25 that.

1 THE COURT: You think? Okay. Next witness?
 2 MR. MASON: Okay, Judge. That would be
 3 Jonathan -- I know I'm going to mispronounce it, so
 4 I'll just spell it.
 5 THE COURT: He knows who he is. Step up,
 6 sir.
 7 MR. MASON: It's H-o-t-c-h-a-n-d-a-n-i.
 8 THE COURT: Sir, just want to raise your
 9 right hand, please?
 10 (Indiscernible). He's going to get out of
 11 there in a second.
 12 J O N A T H A N H O T C H A N D A N I, STATE'S
 13 WITNESS, SWORN.
 14 THE COURT: Please have a seat. Please state
 15 your full name and spell your last name.
 16 THE WITNESS: Jonathan Hotchandani,
 17 H-o-t-c-h-a-n --
 18 THE COURT: Wait. H-o-t-c-h --
 19 THE WITNESS: H-o-t-c-h-a-n-d-a-n-i.
 20 DIRECT EXAMINATION BY MR. MASON:
 21 Q Sir, do you own a business here in Verona?
 22 A Yes.
 23 Q And what's the name of the business?
 24 A It's called Driveup Storage.
 25 Q And where is that located?

1 A 251 Grove Avenue.
2 Q And what's the principal nature of your
3 business?
4 A It's a portable storage company.
5 Q Okay. Do you have structures that you store
6 on the property? Units --
7 THE COURT: You used a bad word.
8 Q Some -- what do you store?
9 A I store mobile storage units.
10 Q Okay. And are they, for lack of a better
11 description, can we call them pods?
12 A Sure.
13 Q All right. Are they hard sided or soft
14 sided?
15 A They're steel.
16 Q Okay. So they're steel containers?
17 A Correct.
18 Q And these steel containers, what's in them?
19 A Various things. Household items. Business type
20 storage. I mean, mainly it's household items.
21 Q Okay. So how do the household items get into
22 it?
23 A So we -- the way the program works is I customized
24 a moving truck. We put the particular unit on to that
25 truck. It fastens down. We then make an appointment

1 with the client. We drive that truck with the unit on
2 to their address. They load up their items. They lock
3 it up, and then we bring it back, detach it, forklift
4 it off, and keep it during the storage period.
5 Q Okay. And so essentially you bring the unit
6 to their residence, correct?
7 A That's correct.
8 Q Do you unload -- would it be an accurate
9 description to say that these units are on a flatbed of
10 some sort?
11 A Yes. A customized flatbed.
12 Q And they get loaded on and off the flatbed?
13 A With a forklift.
14 Q Okay. When you get to a person's residence,
15 do you unload it?
16 A No.
17 Q Okay. So --
18 A It stays on the truck at all times.
19 Q All right. So you take the unit to a
20 residence. It stays there until it's filled, correct?
21 A Yeah. Usually a period of a couple of hours.
22 Q And so these units are temporarily at a
23 residence, they're filled, and then brought back to
24 Verona.
25 A That's correct.

1 Q With regard to those units, how long have you
2 been in possession of the property?

3 A I think the leases there was 2002, I believe.

4 MR. MASON: Judge, I think we're up to seven.

5 Q Would you take a look at this document,
6 please. And just look through it, especially the last
7 page and first here. Is that a true and accurate copy
8 of the lease?

9 A Yes, it is.

10 Q And you produced that pursuant to a subpoena,
11 correct?

12 A That's correct.

13 MR. MASON: Is that -- Judge, I'll offer S-7.

14 THE COURT: Any objection?

15 MR. KINUM: No objection, Your Honor.

16 THE COURT: S-7 is in evidence.

17 (S-7, copy of lease, admitted into evidence.)

18 THE COURT: Thank you.

19 Q And with regard to that document, does that
20 refresh your recollection as to when you took
21 possession of the property?

22 A Yes. March 1st, 2012.

23 Q All right. And do you have a building that
24 you lease?

25 A No.

1 Q Okay. Do you have an area that you lease?

2 A Yes.

3 Q Approximately how many square feet?

4 A At this point 12,000 square feet.

5 Q Okay. Do you have the maximum number of
6 storage units that you're permitted?

7 A I mean, in terms of the space it's about 200 and
8 about 210.

9 Q Okay. Are you limited otherwise by the
10 leases to the number of units?

11 A No. Not specifically.

12 Q Okay. And --

13 A It's just in terms of space.

14 Q And before you started your business, did you
15 make any application to any land use boards in Verona?

16 A No.

17 Q Do you know whether or not the property owner
18 did?

19 A I'm not aware.

20 Q And when you first looked at the property,
21 well, first of all, did you look at the property before
22 entering into the lease?

23 A Yes, I did.

24 Q Did you see any other temporary storage units
25 on the property?

1 A Not that I can recall.
2 Q And so you were the first business of this
3 nature on the property, correct, when you took
4 possession?
5 A Yes.
6 Q And the primary use is related to storage of
7 residential items?
8 A Yeah. Primary. Uh-huh.
9 Q What are your hours of operation?
10 A 8:00 to 6:00.
11 Q Okay. Any units brought in after 6:00?
12 A No.
13 Q Any units brought in or taken out over the
14 weekend?
15 A Sometimes on Saturday during the middle of the day
16 possibly.
17 Q Okay. What about on Sunday?
18 A Typically no.
19 Q When you say typically, does that mean that
20 it's never done or it's rarely done?
21 A Very rarely.
22 Q Okay. So you've got people that tend to move
23 out on the weekends, correct?
24 A Correct.
25 Q And you have to take the units from your

1 yard, deliver it to the residential property. It stays
2 there until it's filled, and then it's brought back,
3 correct?
4 A That's correct.
5 Q Do you ever leave any of the units at a
6 residence overnight?
7 A No.
8 Q Okay. And you say that it's left there
9 temporarily a few hours, right?
10 A Yup. It's actually just still on the truck.
11 Q Right. I'm just --
12 A So it doesn't -- it's -- it's extremely temporary.
13 MR. MASON: Okay. And there was -- Judge, we
14 have a photograph that's marked --
15 THE COURT: I'm sorry.
16 MR. MASON: -- in evidence.
17 THE COURT: Yes. It's S-4. Is that the one
18 you want?
19 MR. MASON: Yeah.
20 Q Forget about the writing at the top.
21 A Sure.
22 Q Is this a picture of your storage units?
23 A Yes, it is.
24 Q And are they stacked one on top of the other?
25 A Yeah.

1 Q And what's the height of a unit without being
2 stacked?
3 A Eight feet.
4 Q Okay. And there's a pallet or something
5 underneath it. It's got legs or something?
6 A Yeah. It's like a -- yeah. I mean, there's a --
7 there's a base to it.
8 Q So you need the forklift on it.
9 A Yeah. Exactly.
10 Q Right?
11 A Uh-huh.
12 Q Okay. And so when it's stacked on top of one
13 another what's the height?
14 A It's 16 feet total.
15 Q And you've had units on that property since
16 you took possession?
17 A It -- so we took possession. That was when we
18 ordered the units. And then the actual units were
19 delivered July maybe of 2012.
20 Q Okay. Have you had some of the same units
21 there since July of 2012 --
22 A Yes, I have.
23 Q -- to the present?
24 A Uh-huh.
25 Q Right. And would this be -- this photograph,

1 would that also accurately depict the property as it
2 exists today?
3 A Yeah.
4 Q And would it accurately --
5 A I mean, I think we have more space at this point.
6 I'm not sure exactly what is going on here, but I mean,
7 we might have expanded into another side of it as well.
8 Q All right. So today you might have more
9 units than that are reflected.
10 A Correct. Yeah. I guess. Yeah. Since 2014.
11 Q Do you know how many units you've got there
12 today?
13 A I have 209 there.
14 Q Okay. And when you first accepted delivery
15 of the --
16 A There --
17 Q -- there's odds. How many did you accept
18 first?
19 A Thirty units.
20 Q All right. And you grew it ever since?
21 A Uh-huh.
22 Q And some of those initial 30 units, are they
23 still on the property?
24 A Yes, they are. And one other thing to note also
25 is when I ordered more units --

1 Q Uh-huh.
2 A -- I ordered them at seven-and-a-half feet.
3 Q Okay.
4 A So the combination of those two newer units is
5 going to be -- is going to be 15 feet.
6 Q And when did you order these newer units?
7 A July of this year.
8 Q Okay. And are they --
9 A Of -- sorry, of last year. So 2016.
10 Q All right. So some are 16 foot if they're
11 stacked, and some are 15 foot.
12 A The newer ones are 15 feet. Yes.
13 Q And if you stack a new one on top of an old
14 one you're --
15 A They're 15 and a half.
16 Q -- somewhere in between. Right?
17 A Uh-huh.
18 Q All right.
19 CROSS EXAMINATION BY MR. KINUM:
20 Q Sir, mobile temporary storage unit. Is that
21 an accurate description --
22 A Yes.
23 Q -- of -- okay. And the units are actually
24 mobile, correct?
25 A Absolutely.

1 Q They're not installed at the property,
2 correct?
3 A Not at all.
4 Q And they're -- and they're not permanently
5 put into the property, correct?
6 A Not at all.
7 Q And they're temporary, correct?
8 A Correct. They're very mobile.
9 Q And can you characterize what percentage of
10 your business is done during normal business hours,
11 Monday through Friday?
12 A Ninety-nine percent.
13 Q Ninety-nine percent. Okay.
14 MR. KINUM: That's all the questions, I have.
15 Thanks.
16 EXAMINATION BY THE COURT:
17 Q Sir, I'm looking at S-7 the lease, it shows
18 that your address is in New York City, correct?
19 A That is correct.
20 Q So do you have an office onsite?
21 A No. Not in Verona. We don't have an office.
22 Q So if I wanted to come look at the unit or
23 look at my stuff that's in the unit is that allowed or
24 is that something?
25 A No.

1 Q Okay. So that's just a storage area.
2 A That's correct.
3 Q Okay. So I -- I can't --
4 A So they -- so everything is done online --
5 Q Okay.
6 A -- effectively, so we have the headquarters which
7 is in my apartment.
8 Q Okay.
9 A And my assistant then forwards calls if he's not
10 there.
11 Q Okay.
12 A But, yeah, everything there is -- all -- all the
13 corporate stuff is done in New York, and this is 100
14 percent just for the storage of the actual units.
15 Q Okay. So if a potential -- like myself, a
16 potential client wants to come see online, I really
17 can't really make a determination. I can't go to
18 Verona and say, I want to walk through one of your
19 units.
20 A I mean, you can drive by if you want. But --
21 Q Well, but I'm saying legally. I'm just
22 saying it's not something where you offer a service
23 where I come down there and you show me the unit.
24 A No.
25 Q Okay.

1 A No. No.
2 THE COURT: Okay. Thank you. Unless there's
3 further questions, you can step down, sir. Thank you.
4 MR. MASON: Thank you.
5 MR. KINUM: No other questions.
6 THE WITNESS: Thank you.
7 THE COURT: Can this gentleman leave, or --
8 MR. MASON: Yes, Judge. He's free to go.
9 THE COURT: I know he had a problem coming
10 last time, so --
11 THE WITNESS: Yeah. No worries. Thank you.
12 MR. MASON: Thanks.
13 THE WITNESS: I'll probably stick around.
14 Don't worry about it.
15 THE COURT: Oh, you can stay. Don't get me
16 -- I'm not throwing you out of the courtroom. You can
17 stay. But I know that last time you had a problem
18 getting here, so --
19 THE WITNESS: Yeah.
20 (Witness excused.)
21 THE COURT: Okay. Mr. Prosecutor?
22 MR. MASON: Mr. Connelly (phonetic).
23 THE COURT: I'm sorry?
24 MR. MASON: Mr. Connelly.
25 MR. CONKLING: Conkling.

1 THE COURT: Sir?
 2 MR. MASON: Conkling. Sorry. Judge, I'm
 3 returning to the Court S-4 and 5.
 4 THE COURT: Okay. Sir, want to raise your
 5 right hand, please, sir?
 6 H O W A R D C O N K L I N G, STATES'S WITNESS, SWORN.
 7 THE COURT: Please have a seat, sir, and
 8 please state your full name and spell your last name.
 9 THE WITNESS: My full name is Howard.
 10 THE COURT: Howard?
 11 THE WITNESS: First -- Howard first name.
 12 Last name's Conkling, C-o-n-k-l-i-n-g.
 13 THE COURT: I-n-g. Conkling.
 14 THE WITNESS: Yes, sir.
 15 THE COURT: Thank you.
 16 DIRECT EXAMINATION BY MR. MASON:
 17 Q Mr. Conkling, where do you live?
 18 A I live at 247 Grove Avenue in Verona.
 19 Q Okay. And where is that in relation to 251-
 20 1/2?
 21 A The east side of my property faces the first
 22 warehouse that you see when you enter Ralph Sastone's
 23 property. The entrance of the property is one house
 24 further north.
 25 Q Okay. And so from your -- would it be the

1 rear of your backyard faces the property?
 2 A Yes.
 3 Q And the one side of your property there it's
 4 -- it's one lot away from the driveway, right?
 5 A That's correct.
 6 Q Okay. And do you have a -- how long have you
 7 lived there?
 8 A Since approximately 1985.
 9 Q Okay.
 10 A '85, '86.
 11 Q And since you moved in, did you have a clear
 12 and unobstructed view of Mr. Sastone's property?
 13 A Yes.
 14 Q Okay. Is there any screening on his property
 15 or yours that obstructs the view of what goes on there?
 16 A But we have bushes, and trees, and vines.
 17 Q Okay. But do you still have the ability to
 18 see what's going on in that property?
 19 A That's correct. Yes.
 20 Q And have you made any complaints to Verona
 21 Township relative to the activities on that property?
 22 A Over the years. Yes.
 23 Q Okay. And let's deal within, let's say the
 24 last year. Did you bring the property to the attention
 25 of the zoning officer?

1 A Yes. Approximately 13 or 14 months ago.
2 Q Okay. And what was that issue?
3 A The issue was dealing with vehicles coming in and
4 out at all hours of the day and night, and every day of
5 the week.
6 Q Okay. Some of those vehicles were limos?
7 A That's correct.
8 Q Okay. Were there any buses that you had
9 issues with?
10 A Those -- there were -- some of the limos were
11 buses also. I mean, they're relatively large vehicles.
12 Q It's probably a bad question. How about
13 school buses?
14 A I've -- school buses occasionally being towed in
15 and out at different hours.
16 Q Okay. And with regard to the school buses,
17 have you ever been home when those buses have been
18 backed up?
19 A Yes.
20 Q Is there any audible noise?
21 A There's a beeper noise. Yes, your --
22 Q Okay. And as far back as you can recall,
23 when's the first time that you noticed any school buses
24 on the property?
25 A I would say in the last two years.

1 Q Okay. And prior to that, did you make any
2 observations of school buses on the property?
3 A There's -- there is a bus on the property, a party
4 bus, but I don't know its relationship to any of the
5 other buses.
6 Q I'm just dealing with the school bus.
7 A I -- rephrase your question? I'm sorry. I -- I
8 --
9 Q Prior to two years ago, did you tour -- so
10 years ago --
11 A No.
12 Q -- were there any school buses on the
13 property?
14 A No.
15 Q All right. And specifically if you can
16 recall back toward 2010, 2011.
17 A No.
18 Q From your home, can you see any temporary
19 storage units on the property?
20 A No. They're -- they're not located near my
21 property.
22 MR. MASON: Okay. Your witness.
23 MR. KINUM: Thank you.
24 CROSS EXAMINATION BY MR. KINUM:
25 Q Mr. Conkling, we can agree that the property

1 behind you it's not a park, right?
2 A No. Correct.
3 Q And it's -- and you knew that in 1984 when
4 you moved in, right?
5 A That's correct.
6 Q And it's not a condo development, right?
7 A That is correct.
8 Q It's not an office building.
9 A Well, there is offices there.
10 Q But, you know, it's not a traditional office
11 building where you would see a law firm and doctors'
12 offices, or something like that.
13 A Correct.
14 Q Correct? And would you agree that it's
15 basically since the time you've been there in 1984 an
16 industrial commercial storage yard.
17 A It is changed.
18 Q Okay. But I'm going to ask you to focus on
19 my question. Industrial commercial storage yard.
20 A That's correct.
21 Q And since that time, there's been commercial
22 vehicles on the property, right?
23 A That is correct.
24 Q They're stored on the vehicle -- on the
25 property, correct?

1 A That is correct.
2 Q And there's cranes on the property, right?
3 A There have been cranes. Yes.
4 Q How high are those cranes?
5 A I'd estimate sometimes as much as 100 feet when
6 they work on them.
7 Q Okay. And they actually work on those
8 cranes, correct?
9 A That is correct.
10 Q And those cranes have been on that property
11 continuously since 1984 to the present?
12 A Correct.
13 Q And there are dump trucks on the property,
14 correct?
15 A At times. Yes.
16 Q All right. And can you describe some of the
17 other commercial vehicles that are stored on the
18 property?
19 A There was a steam shovel at one point. An old
20 steam shovel.
21 Q And that was right next to your property,
22 right?
23 A That was -- correct.
24 Q And can you describe that vehicle?
25 A I would say it was a vintage 1940 steam shovel.

1 Q Large vehicle?
2 A Relatively large. Yes.
3 Q And other types of commercial vehicles?
4 A There's flatbed trucks occasionally.
5 Q And you mentioned a party bus, correct?
6 A There's a party bus.
7 Q Okay. And would you agree that --
8 A That is a recent arrival.
9 Q You'd agree that the primary basis for your
10 recent complaint, that was alleviated when that limo
11 and party bus company left, right?
12 A There's two bases for my complaint.
13 Q Okay. But let's focus with -- with my
14 question, if you would.
15 A Uh-huh.
16 Q It's a limo company then, right?
17 A It's primarily noise.
18 Q Right. And -- and they -- it was a noise,
19 right, when they backed up you heard the beeping sound?
20 A It's noise and activity.
21 Q And the hours, correct?
22 A Correct.
23 Q And that tenant has left, correct?
24 A That tenant has left. Yes.
25 Q All right. And you haven't heard those --

1 that noise in the last few months, correct?
2 A I would say the last 90 days. Yes.
3 Q And have you ever walked on the property?
4 A Years ago more often, because the building behind
5 me, we would walk our dog back there. It was
6 unoccupied for about the first year or two I was there.
7 Q From 1984 to the present, would it be unusual
8 if you saw a commercial vehicle driving in and out of
9 the property?
10 A No.
11 Q It's something that you would expect to see?
12 A Yes.
13 Q Pretty much every single day, right?
14 A I would say weekdays more. Yes.
15 Q All right. But you know your neighborhood.
16 That's part of the neighborhood, correct?
17 A Has been.
18 Q All right. That's all the questions I have.
19 THE COURT: Any further, Mr. Prosecutor?
20 MR. MASON: No, Judge.
21 THE COURT: Thank you, sir. You may step
22 down.
23 THE WITNESS: Thank you, Your Honor. Thank
24 you.
25 MR. MASON: Your welcome. Thank you, sir.

1 THE COURT: Further witnesses?
2 MR. MASON: No, Judge. State's case.
3 THE COURT: State has rested.
4 MR. KINUM: Thank you, Judge. I have an
5 application, and I'd like to take the summonses one at
6 a time. And I think if we do, I think we could
7 simplify things.
8 THE COURT: All right. 2742?
9 MR. KINUM: First beginning with 2742.
10 THE COURT: Let me just grab the ordinance,
11 so I can -- I have a lot of papers up here. One
12 second, counsel. That's 450-9.1, right -- or 150-9.1.
13 I have it. Go ahead, counsel. I do.
14 MR. KINUM: We -- we all heard Mr. Jacobsen's
15 testimony, and we appreciate the -- the veracity to
16 which he testified. And respectfully he gave us all
17 the testimony we need to dismiss this summons. The
18 summons is based on the statute 150-9.1(b) of the
19 Verona ordinance code. And Mr. Jacobsen's own
20 testimony is that that specific ordinance only deals
21 with residential problem. You've heard the testimony
22 loud and clear. We also -- and that testimony is
23 consistent with the definition of mobile temporary
24 storage unit contained within the Verona municipal code
25 which says it's on residential property. So I would

1 respectfully move to dismiss that summons, Your Honor.
2 THE COURT: Okay. Could we -- can we hear
3 the rebuttal then we'll --
4 MR. KINUM: Yes. Absolutely.
5 THE COURT: Okay. Mr. Prosecutor?
6 MR. MASON: Judge, we've -- we've got two
7 different things. The ordinance itself dealing with
8 the temporary units doesn't say that it's limited to
9 use on residential property. Unlike when you talk
10 about the Dumpster issue where it specifically says on
11 residential property. The regulations as to the
12 temporary storage units don't have that same
13 limitation.
14 My understanding is counsel is relying upon
15 the definition which does contain the word residential.
16 Now if you look at the definition, what we're talking
17 about for a temporary storage unit, you have to define
18 when you're looking at that definition as the witness
19 from the mobile company indicated, that they are sent
20 to residential properties for a limited time to be
21 loaded. Once it's loaded, it's then removed. So my
22 position is is that these are in fact mobile temporary
23 units, but the definition doesn't limit whether they
24 can be on commercial or on residential property. And
25 hence the application of the restriction on how long

1 they can remain applies.

2 Now if counsel prevails then as Mr. Jacobsen
3 testified, these units are prohibited completely on the
4 subject property. So, however, Your Honor rules, I'm
5 satisfied because if Your Honor takes the position that
6 it doesn't apply to this property, the regulations on
7 the temporary units, then tomorrow's summonses will be
8 issued for -- for an improper use on the property.
9 Given the testimony that we've heard and counsel's own
10 argument, that leads to the conclusion that these
11 temporary units are not permitted on this property.

12 THE COURT: Let me just ask a question,
13 because this -- this is bothering me during this whole
14 trial. Does Verona have in their ordinances -- in
15 their -- that's why I hate when municipal courts hear
16 zoning cases. Towns that I deal with if -- if you're a
17 tenant you have to go before a board and say here's my
18 lease. Here's what I'm doing. And this is the use.
19 And the town with whatever board they decide says,
20 okay, you're permitted. You meet the requirements.
21 And then they give that information to the police and
22 fire company so that if you're in fact in one of the
23 towns where I have my office they want to know what
24 kind of cleaning supplies you had in your office so
25 that if they came to your structure, it came to your

1 business to fight a fire and the police come in, they
2 know what they're dealing with, especially the fire
3 department if it's a -- mine was a law office. If it
4 was a commercial establishment, and a lot of commercial
5 establishments have 55-gallon drums that they wanted to
6 know.

7 So does Verona have an ordinance saying I'm
8 Mr. Temporary Storage Company. I want to lease this
9 land. Does Verona have an ordinance saying you have to
10 go before a board to say it's permitted?

11 MR. MASON: No, Judge. There's no licensing
12 of tenants. There's no registration of tenants.
13 Tenancies are permitted. And when they're discovered
14 to be in violation of an ordinance, then as in this
15 particular case a summons is issued after an effort to
16 resolve it.

17 THE COURT: So -- so you're saying then that
18 the gentleman that just testified to, Mr. -- the last
19 gentleman. The gentleman before that has the --
20 Jonathan Hotchandani. That his company -- there's no
21 ordinances saying that controls commercial storage
22 units?

23 MR. MASON: There's none that say that --
24 first of all, the temporary units are not permitted in
25 that zone.

1 THE COURT: No. We all know on TV and Mr.
2 Hotchandani has a company where, you know, you get -- I
3 forget what they're called and, you know, his company
4 is his company, and I'm sure he makes a lot of money.
5 But, you know, you get to see on TV they come and do
6 exactly what he does, and they have -- some have
7 outside storage. Some have storage that you can put
8 them inside in air conditioning and heating.

9 But -- so you're saying that that company
10 comes into Verona they can just move in and -- and --
11 and there's no ordinance that requires them to register
12 or make an application? Nothing?

13 MR. MASON: There's no ordinance that
14 requires them to register or to get a permit to be a
15 tenant.

16 THE COURT: Okay.

17 MR. MASON: Now their use is subject to what
18 the zone is in that area.

19 THE COURT: Right.

20 MR. MASON: And if they move into an area
21 where that is not allowed, as Your Honor is well aware,
22 Verona doesn't have any temporary storage facilities.
23 It's a -- and another company that comes to mind is, I
24 think, Pods to Go (phonetic).

25 THE COURT: Right. So -- that's the company

1 I --

2 MR. MASON: And --

3 THE COURT: Nothing against Mr. Hotchandani's
4 company. I'm just saying those are the things that are
5 on TV that I see. Right.

6 MR. MASON: Right. There's no facility in
7 town. And if there's a zone that allows it, then
8 that's where it has to go.

9 THE COURT: Okay.

10 MR. MASON: When it goes in a -- a zone that
11 it's not permitted the violations would issue. In this
12 particular case the zoning officer issued only the
13 violation for the height and the duration --

14 THE COURT: Right.

15 MR. MASON: -- under the temporary storage
16 unit, which clearly these are. I think they fit the
17 definition --

18 THE COURT: Okay.

19 MR. MASON: -- given his testimony and given
20 the photographs, it's clear that these are units that
21 are temporarily on a residential property which are
22 filled with household goods or building materials and
23 the like --

24 THE COURT: Right.

25 MR. MASON: -- and then taken offsite and are

1 being stored on this particular property. Hence, I
2 believe, the ordinance dealing with the regulations on
3 those structures which does not say that it's limited
4 to a residential property, the violation is valid here,
5 or the citation for the violation is valid.

6 THE COURT: Okay.

7 MR. MASON: Again, Judge, if -- if I'm wrong
8 on that then the -- the flip side is that he's not
9 permitted to have them there at all unless it is a pre-
10 existing nonconforming use, and in this particular case
11 I think all the witnesses are in agreement that prior
12 to his occupancy there was never a temporary storage
13 unit facility there.

14 THE COURT: Okay. Well, in regard -- I have
15 to read the statute or the ordinance and if it's clear
16 in its face, which this is. But more importantly, the
17 testimony of Mr. Jacobsen under SC-2742, mobile
18 temporary storage containers on site more than 30
19 consecutive days, but the statute, the ordinance 150-
20 9.1, Mr. Jacobsen was absolutely clear. It deals with
21 residential properties.

22 A, mobile temporary storage unit shall not
23 exceed eight feet in height, eight feet in width, or 16
24 feet in length. So there -- the ordinance dealing with
25 residential properties doesn't want someone to come in,

1 I guess, with one of those storage units you see down
2 at the -- at the port -- Port Newark, and coming in and
3 -- and being a problem that way or stacking them three
4 high.

5 B, mobile temporary storage units may remain
6 on the property for up to 30 consecutive days. No lots
7 shall contain a mobile temporary storage container for
8 more than 90 days or a 360-day period. Not knowing Mr.
9 Jacobsen obviously if someone is building their house
10 or had a fire and they needed to go longer, I'm sure
11 Mr. Jacobsen or the town would -- would grant a -- a
12 waiver to that if someone is -- is moving forward.

13 But as we all know we don't want temporary
14 units sitting on people's property, and -- and that is
15 a big issue down the shore where Sandy destroyed
16 properties. We don't want people living out of their
17 storage units. I sat in a town in upper Morris County
18 where unfortunately people were living in unit, because
19 when you asked them their address their address was
20 Unit 4, and there were no -- no -- there were no
21 apartments or condos there. People were living in
22 these storage units.

23 In fact, as a result of Sandy by storing
24 items in one of those storage companies that you've
25 signed a statement, and you signed specifically that

1 you're not going to live in that unit. Some people are
2 very poor. Some people get thrown out of their house.
3 Some people live in those units because that -- they
4 have no place to live. So that's what that is for, but
5 I find -- I agree with counsel.

6 This ordinance deals with residential
7 properties that when people get these units there they
8 don't use Mr. Hotchandani's location where he takes
9 them. Then if it's on their property and you -- you
10 don't want -- it can't be there longer than 30
11 consecutive days. They're -- as far as a company as
12 Mr. Hotchandani's company whether that's permitted use,
13 that's another -- that has to be another day, because
14 this ordinance that's before me, and I have to apply
15 the ordinance. It doesn't apply. It applies to
16 residential properties. It's clear from the -- and
17 it's clear from Mr. -- Mr. Jacobsen testifies before
18 this Court on numerous occasions. And when he has a
19 good case he -- he testifies when he -- when he -- it
20 never -- never varies. I find him to be extremely
21 credible.

22 And most of the time he dismisses cases as he
23 did -- as the prosecutor did in this case because the
24 company left. So he's not even seeking prosecution on
25 maybe there could have been a violation at that time.

1 So, again, I do find that this -- this ordinance
2 applies to residential properties. The charge in this
3 case has to be whether that property at that location
4 under the Verona ordinances is there a permitted use
5 for that type of business. The ordinance cited in this
6 case deals with temporary location of a storage unit on
7 a -- on a private property or residential property.

8 What this case deals with, the testimony
9 deals with a commercial operation of 210 units. That's
10 a major operation. That would be like going down the
11 highway and seeing one of those storage units that, you
12 know, you rent. I mean, that's a major structure. So
13 while his is not a structure, but the Court -- the
14 Court as the judge in this town, but more importantly
15 as a resident, I am absolutely concerned that we have
16 storage units in Verona which could contain high
17 explosives or chemicals. We don't know that. I mean,
18 somebody put something in there.

19 So I think that, Mr. Prosecutor, I think that
20 you need to contact the town attorney, and I think that
21 maybe if there isn't an ordinance it has to be
22 addressed, because someone could put a container, and
23 there's 210 there. And the poor fire department, which
24 is voluntary in -- in Verona, goes to fight a fire,
25 they could be dealing with severe issues. But I do not

1 find that this ordinance applies to this -- the
2 testimony in this case, and I must enter a finding of
3 not guilty in regard to Complaint SC-2742.

4 MR. KINUM: Judge, that would apply to the
5 other one as well then.

6 THE COURT: Well, let me do one at a time.
7 Not guilty to -- the next one, counsel, is 2743.

8 MR. KINUM: That's correct, Your Honor. And
9 basically it's the same argument there. Here we have
10 commercial property. In addition, the -- Your Honor
11 expressed some surprise and should that there's no
12 definition of the term structure. There's -- there's
13 no notice to -- to a landowner in town to say am I
14 violating a potential statute or ordinance in the
15 municipal or in the zoning code. We don't have a
16 definition of the term structure. The charge is based
17 solely on -- on the basis that -- that these temporary
18 mobile storage units are somehow accessory structures.
19 They're not buildings. They're not bridges.

20 We have to go to a common definition. We
21 went to Webster's. They don't fall under that
22 definition. The statute's hopelessly vague. And,
23 again, respectfully, it doesn't apply. Here we have a
24 commercial area. So my position, Judge, is that
25 summons must be dismissed as well.

1 THE COURT: Mr. Prosecutor?

2 MR. MASON: Judge, based on your prior
3 ruling, I'll concede the issue.

4 THE COURT: Yeah. I -- I'm pretty much
5 shocked that Verona does not definition of structure,
6 and -- and I say that because I had a case in
7 Pequannock Township which dealt with a temporary
8 structure. The gentleman was operating a golf
9 structural place, which was made of certain materials.
10 And that case went to the -- went to the -- on appeal.
11 And structure was defined in specificity in regard to
12 the ordinance. And clearly what the testimony was I
13 found that clearly was a violation of the ordinance.

14 I -- I would think a structure would be
15 important, especially on -- on this property where it's
16 a commercial property. And we know that, again,
17 looking at the news this morning in Belmar at a -- at a
18 -- at a marina where someone was putting on shrinkwrap
19 and caused the fire and caused a severe fire and damage
20 to boats. I've seen commercial areas where they --
21 they put these temporary structures with the
22 shrinkwrap, and they use that to fix items. I mean,
23 that could burn, that cause a problem, and at this
24 point if -- what I've heard today if structure is not
25 defined, that would probably be allowed unless there's

1 a definition.

2 So, again, Mr. Prosecutor, I would ask that
3 you contact the town attorney. I think they have to
4 have a review of their zoning and building ordinances,
5 because -- or at least zoning, because -- which I would
6 hope that the building ordinance has a (indiscernible)
7 for structure. I mean, that -- would have to have
8 that, otherwise they would not be able to function.
9 But I think the zoning ordinance should have structure
10 as well, because temporary structures that are put up,
11 I think the State is going to have a problem
12 prosecuting any cases when there's no definition, so I
13 will dismiss that -- a finding of not guilty, I'm
14 sorry, in regard to that one.

15 MR. KINUM: Thank you, Your Honor. And --

16 THE COURT: Then we have 2745?

17 MR. KINUM: 2745, the testimony from Mr.
18 Conkling we appreciated, and it was very important.
19 Here you have a neighbor who's right next to the
20 property. The primary cause of his complaints,
21 legitimate, were that -- that there was a limo company
22 coming in at all hours of the night, party buses,
23 hearing that beep, beep sound as they back up. And I
24 could see how that could aggravate someone.

25 The landowner, Marve Development, addressed

1 the issue, and told the tenant you have to leave.
2 They're gone. So now what we have here is a summons
3 for a school bus company where they're not storing all
4 45 of their buses on the property. They store a
5 limited amount of 10 buses on the property. And Mr.
6 Conkling testified that this is an industrial
7 commercial storage yard. What makes this yard
8 attractive to tenants dating back to the 1960's, is the
9 fact that there are various garages with bays and lifts
10 that can lift up heavy commercial equipment, heavy
11 commercial trucks, and repair those.

12 To me a school bus and a -- and a dump truck
13 is a distinction without a difference. They're both
14 are big commercial vehicles. It's basically the same
15 exact type of use. There's been repair work that's
16 been going on in commercial vehicles for 50, 60 years
17 on the property. We're not talking about a new heavy
18 use. We're talking about 10 vehicles in a very large
19 yard where there's literally over a 100 other types of
20 vehicles on the yard at all times.

21 So our position, Judge, is this is a pre-
22 existing use. It's not an expanded use. Based on the
23 testimony from the States's own witnesses we don't need
24 to put on the case, and that the case should be
25 dismissed. Summons 2745 should be dismissed as well.

1 THE COURT: Mr. Prosecutor?

2 MR. MASON: Judge, I understand this is a
3 motion to dismiss at the end of the State's case.

4 THE COURT: Right.

5 MR. MASON: And not a final adjudication.

6 And as Your Honor is well aware, the State is entitled
7 to every reasonable inference at this junction. Judge,
8 there's been no testimony that repairs have been going
9 on for 50 to 60 years on the property. I didn't hear
10 that from a single witness so far. That is one of
11 counsel's arguments and is reflected in his papers as
12 in the brief here also indicates that it's been a
13 construction yard for 50 or 60 years, which seems
14 consistent actually with the testimony of Mr. Conkling.

15 This is an instance, Judge, where the zoning
16 officer has knowledge of the property that it was not
17 used previously as a bus, storage and repair facility.
18 That's the primary use of this particular business, and
19 that is the violation. It is not a permitted use in
20 that zone. Now I'm going to anticipate that there may
21 come at some point in this case testimony about there
22 were repairs to construction vehicles. Well, these are
23 buses. They're not construction vehicles.

24 And the case law is crystal clear that you
25 have to give a very narrow interpretation and that the

1 law of -- of zoning interpretation is that if it is not
2 a specifically permitted use, it is a prohibited use,
3 which is consistent with the definition contained in
4 the ordinance, which says a prohibited use, a use that
5 is not permitted in a zone district, whether directly
6 or by omission.

7 So therefore if it's not in the included use,
8 it is an excluded use. And this particular case the
9 ordinance is very clear as to what is allowed in that
10 zone. Although Your Honor doesn't have before it a
11 violation now relative to the pods, it has only before
12 Your Honor the issue of the school bus, repair and
13 storage. In this particular case that is not a
14 specifically permitted use. And, therefore, I think
15 the State at this junction is entitled to every
16 reasonable inference, and the motion should be denied.

17 THE COURT: Counsel, with the case law that I
18 have to apply and that's asking to give every
19 reasonable inference, and it sounds like on this
20 complaint it would be the argument of a prior existing
21 use, a nonconforming use, then I have to deny your
22 application at this point, because I think the case law
23 deals that that burden is upon you. I'm satisfied with
24 the issue, and I think I have to hear testimony in
25 regards to that.

1 And the prosecutor brings up a very good
 2 point, and do I consider large cranes and large
 3 vehicles and construction vehicles to be similar to
 4 school buses. Because as the prosecutor was arguing
 5 that, I was thinking, well, then can a auto repair
 6 business go in there. And that's the question I'm
 7 having. Is a school bus a construction vehicle. So I
 8 have to deny your motion at this point pending
 9 testimony as far as the issue of the prior non --
 10 nonconforming use. Okay.

11 MR. KINUN: And, Judge, to meet that burden
 12 we'll call Thomas Altunaga.

13 THE COURT: Sure. Sir, Thomas Altunaga, do
 14 you want to step up, please? Take your time. Sir,
 15 would you rather have a seat? You can have a seat.
 16 I'll swear with -- I see you have a little problem.
 17 Just right there. Yes, sir. Just want to raise your
 18 right hand, please, sir.

19 T H O M A S A L T U N A G A, DEFENDANT'S WITNESS,
 20 SWORN.

21 THE COURT: Sir, please state your full name
 22 and spell your last name.

23 THE WITNESS: Thomas Altunaga.

24 THE COURT: Spell that. Spell your last
 25 name.

1 THE WITNESS: A-l-t-u-n-a-g-a.

2 THE COURT: A-g-a. Your witness, counsel.

3 MR. KINUM: Thank you, Your Honor.

4 DIRECT EXAMINATION BY MR. KINUM:

5 Q Mr. Altunaga, are you familiar with the
 6 property at 251-1/2 Grove Avenue in Verona?

7 A Yes, I am.

8 Q When is the first time you ever set foot on
 9 that property?

10 A It was the end of October, beginning of November
 11 1959.

12 Q Okay. And what circumstances led you to be
 13 on the property in October of 1959?

14 A I was just laid off from the labor's union, so I
 15 was looking for a job. And I walked in there, and they
 16 gave me a job.

17 Q And who's they?

18 A Ralph's father, Mr. Sastone.

19 Q Okay. And what company gave you a job?

20 A It was either Verona Construction or Marve -- or
 21 Essex Equipment.

22 Q Okay.

23 A I think it was Essex Equipment in the beginning.

24 Q Are you familiar with a company Marve
 25 Development?

1 A That's -- Ralph just asked me if I would work for
2 him now. I just lease -- recently I went with them.

3 Q Has Marve Development ever done any
4 construction work?

5 A No. I never worked for them as a construction
6 person.

7 Q Okay. Did they ever do -- did the company
8 itself do construction?

9 A No. I've never seen him do anything.

10 Q All right. And what position were you hired
11 to in 1959?

12 A They told me until the weather breaks he said to
13 me go down and work with the mechanics and go get parts
14 and wash trucks and stuff like that.

15 Q Okay. So there were actually mechanics on
16 the property in 1959?

17 A There was about six or seven.

18 Q All right. And there's garages on the
19 property in '59?

20 A Yeah. They were all in those garages.

21 Q Are there still the same garages on the
22 property today in 2017?

23 A Yes. Same thing.

24 Q Okay. When was the last time you were at the
25 property?

1 A Monday.

2 Q Okay. Two days ago.

3 A Two days ago. I have this.

4 Q And where -- when you were on the property,
5 did you see mechanics working on the property?

6 A Yeah. I was talking to the mechanic downstairs.

7 Q Okay.

8 A His name is Rich down there.

9 THE COURT: You were talking on break. He
10 wasn't working when you were talking to him, right?

11 THE WITNESS: Yeah.

12 THE COURT: Go ahead.

13 THE WITNESS: He does a lot of talking.

14 (Court and clerk confer.)

15 Q And is it fair to say that -- well, was there
16 any time you were away from the property, let's say
17 from 1959 up until Monday, February the -- the 11th, or
18 February the 12th. Was there any time you were away
19 from -- of 2017. Was there any time that you were away
20 from the property?

21 A When you say away, do you mean for a long period
22 of time?

23 Q Yeah. Yeah.

24 A Well, I -- I wouldn't say that, because I would go
25 off to a construction site. But then I would always be

1 back at night or in the morning, you know. Somehow or
2 the other we were over there.

3 Q So you've worked continuously at that -- out
4 of that property since 1959?

5 A Yes. Except when I was on vacation or something.

6 Q And during that time would it be fair to say
7 that there was always at least one mechanic working
8 there, working on commercial vehicles?

9 A Yeah. There is this, you know, several right now.
10 I see them working on their own equipment. And Richie
11 downstairs. But there's always been mechanics there
12 working.

13 Q That includes the 1960's?

14 A Yeah.

15 Q The 1970's?

16 A Yes. All the way through. Because they -- Marve
17 Atkin (phonetic) -- Marvac (phonetic) -- Verona
18 Construction and Essex Equipment maintained their
19 equipment there. We had our big yard there, and they
20 worked on that stuff constantly, you know, when they
21 come in the wintertime.

22 Q And did other tenants come onto the property?

23 A Later on other tenants, you know, start moving in
24 as the company I worked for, you know, started to
25 downsize. Space became available, and they utilized

1 it. They rented it to other people, and it happened to
2 be different businesses, but they did their own repair
3 work. That's why they came there. They could repair
4 their stuff and park it.

5 Q Okay. And were those changes made before
6 2011 when additional tenants would come on?

7 A I believe so. I -- I, you know, I -- before 2011.
8 I think there was the -- different tenants came on
9 before that. I'm not sure, but I -- Marvec Allstate I
10 think started to rent there too. They start --

11 THE COURT: Marvec Allstate, you said?

12 THE WITNESS: Yes.

13 THE COURT: Okay.

14 THE WITNESS: That's a construction company.

15 THE COURT: Okay.

16 A They started to rent there, and, you know, it was
17 a new name. And I happened to work for them too. That
18 had to be -- I was here around 2000 -- maybe 2005,
19 2004, maybe, before that too.

20 Q And during that time what type of vehicles
21 generally would be repaired? What type of commercial
22 vehicles?

23 A Well, we had dump trucks. We had roll-offs. We
24 had low-bed trailers, bulldozers. Storage units, you
25 know, those SeaLand storage units, trailers. Also we

1 had -- I -- I don't know the exact terminology, but we
2 had small buses that we used to transport laborers
3 with. They were painted red, you know. Because if you
4 work on the Parkway you couldn't bring your car there.
5 So you had to have buses for them, you know, to bring
6 the laborers back and forth. So we always had several
7 of those.

8 And, in fact, we had one or two old school buses,
9 you know. But they were painted red, you know. They
10 were used for transporting labors on the job site.

11 Q When you say we, what company were you
12 referring to?

13 A That's when I was with Marvec -- Marveco. Because
14 we were working in New York City. That was Marveco.
15 And --

16 THE COURT: Spell that, sir, if you could.

17 THE WITNESS: Marveco.

18 THE COURT: Yeah. Can you spell it?

19 THE WITNESS: M-a-r-v-e-c-o.

20 THE COURT: E-e-c-o (sic). Thank you.

21 THE WITNESS: Yes.

22 A And that was another company that came in. Okay.

23 Q Okay. Another tenant of Marve Development,
24 correct?

25 A Yeah. They were -- they rented property there.

1 That's where we stored our equipment.

2 Q Let's focus on the buses. So buses were
3 actually stored on the property before 2011?

4 A Yeah. They were -- when I first went to work
5 there in '59, there was, like, two or three used jitney
6 bus -- you know, in Atlantic City use Jitney buses.
7 They were on the site, you know. It was -- the rest
8 were out on a job, but they were on the site. And they
9 were being repaired and painted. Marve -- Verona red,
10 you know, Verona construction red. They were being
11 redone over.

12 Q And those buses were used for what purpose,
13 sir?

14 A Transport the laborers. In other words, they
15 would pick up the laborers, and a lot of times they --
16 a lot of laborers didn't have a car, so what Mr.
17 Sastone did he picked up these people, and gave them a
18 ride. Got them to the job. And on the job site if we
19 were on the Parkway or the Turnpike, like I said, you
20 had to have a bus to bring the men out to the job site.
21 You had to stay at a service area, and from there you
22 would use the buses to go there, you know. They would
23 leave Verona, go pick up somebody, you know. Go there
24 and they'd come back at night.

25 Q Were those buses actually repaired onsite at

1 251-1/2 Grove Avenue?

2 A Yeah. They were brought -- they need to buy a
3 wrecker when they were in bad shape or on a low bed
4 trailer. And they were taken off, and they were fixed
5 and repaired and sent back out.

6 Q And were those buses actually stored on the
7 property at 251-1/2 Grove Avenue?

8 A Yeah. In the winter when we had no work, you
9 know, things come back into the yard. Things were
10 piled up, and, you know, everything would -- would stay
11 there maybe from we'll say when they shut down in
12 December and November and until the springtime, six,
13 seen months, you know. Out of six or seven months four
14 months they would be there.

15 Q Okay. From the time you first set foot on
16 the property in October 1959 up until two days ago,
17 February the 12th, 2017, would there be a mechanic on
18 there each and every day -- each and every working day?

19 A Yeah. Not for the companies I work for, but there
20 was someone there always working, you know, working on
21 something. Their truck, their pickup, their small dump
22 trucks, or, you know, they're working on the school
23 buses. They're working on next door. Everyone at the
24 shop, the asphalt guy, he had a contractor. He had two
25 mechanics. And then the other guy, Creo, they had two

1 mechanics. And this new guy that comes in, he does it.
2 Yeah. I've seen him have a mechanic. They're always
3 working on something.

4 MR. KINUM: That's all the questions I have.
5 Thanks.

6 THE COURT: Cross?
7 CROSS EXAMINATION BY MR. MASON:

8 Q Sir, you know Mr. Jacobsen, right?

9 A Yeah.

10 Q Okay. And as a matter of fact, you had a
11 conversation with him prior to January of 2016 about
12 what tenants occupied the property, right?

13 A Yeah. They asked me for a list of tenants --

14 Q Okay.

15 A -- and the fire marshal and John -- Tom Jacobsen
16 were there, so I supplied them with a -- I went to the
17 secretary. She gave me a list of the tenants, and I
18 passed it on to him.

19 Q And you faxed that over, or you had her fax
20 it over to you.

21 A Yeah. She faxed it over, I believe.

22 Q Take a look at S-6, please. Can you tell me
23 whether you recognize that document?

24 A Yeah. This is -- yeah. This is it.

25 Q Okay. That's the list that you had compiled

1 on behalf of Marve -- Marve and --
2 A Development.
3 Q Excuse me?
4 A This is a list from Marve Development.
5 Q From Marve Development.
6 A Yeah.
7 Q Right. And you provided that to Mr.
8 Jacobsen, right?
9 A Yeah.
10 Q And that's a true and accurate copy, correct?
11 A Yeah. I would -- well, it might have changed by
12 now, because people coming and go, but --
13 Q But back in December at least --
14 A Yeah.
15 Q -- of 2016, that was accurate, right?
16 A Yes.
17 Q And the -- the document that I showed you,
18 the three pages, that is an accurate copy of what was
19 sent, correct?
20 A Yes. That's so people that had a lease that --
21 Q Right.
22 A Yeah.
23 Q And also when they took possession, and one
24 or two word description of what they do, correct?
25 A When they took possession, I think what it is is

1 -- it's to due -- some of the leases were due up, and
2 they were just signed that, or they were --
3 Q Okay.
4 A We -- yeah. You know how people's lease are
5 opened, then they're signed again. But as close as I
6 can the secretary provided that thing, and I sent it
7 over.
8 Q Okay. And when you sent it over, you
9 believed it was true and accurate, correct?
10 A Pretty close, I would say, you know.
11 Q Well, you didn't try to deceive anybody,
12 right?
13 A No. I just gave them the list, you know.
14 Q Right. And you believed it was accurate
15 information you were conveying.
16 A Yes.
17 Q Accurate information from Marve Development,
18 right?
19 A Right.
20 Q Okay. So we'll get back to that in a second.
21 But let's talk about -- you said 1959. You went in
22 your -- and you were hired by one of two construction
23 companies, right?
24 A Yes.
25 Q And they were the principal businesses on the

1 property at the time, correct?

2 A No. There was other people on the property.
3 There was an industrial factory on the property.

4 Q Okay. There was a factory.

5 A Yeah. I -- I don't know if you would call it a
6 factory, but, you know, they had their trucks, and, you
7 know, it was other people too.

8 Q All right. Well, we'll stick with your
9 description of a factory.

10 A It's just something to say, a factory, you know.
11 It was a paint manufacturing plant.

12 Q All right. A manufacturing plant. Are there
13 any manufacturing plants on the property today?

14 A No. Not I'm aware.

15 Q And when did the manufacturing plant go out?

16 A I couldn't say for sure. I do know that they went
17 -- closed their doors. They went bankrupt, and then it
18 was bought, and it was part of Marve, I guess, well, I
19 call it, well, Marve Development part of the company.
20 But like I said, I'm not sure.

21 Q All right. So it was acquired by Marve,
22 correct?

23 A I believe so.

24 Q Right. And that was prior to 2000, right?

25 A Well, I think we're going back to around 1960-

1 something.

2 Q Okay. So in the 1960's. When that went out,
3 was the primary use of the property related to
4 construction equipment?

5 A It was turned into a storage area then --

6 Q Okay.

7 A -- was rented -- I don't know which company rented
8 it, because, yeah, so many different companies, but it
9 became a storage area, and trucks were parked up there,
10 big dump trucks that were in the parking lot.

11 Q Construction related equipment, correct?

12 A And the jitney buses were up there, and things
13 like that.

14 Q We'll get to the jitney buses. But this was
15 all related to construction activity, correct?

16 A I -- I only could tell you about the, you know,
17 the people that I know. But I don't know -- there was
18 other people there too, but --

19 Q Let's talk about --

20 A -- you know, I didn't pay --

21 Q -- what you know. You know there were dump
22 trucks, right?

23 A I do know there was a guy there that rented it,
24 that had antique cars. They were up there.

25 Q Let's go to what you've testified to. You

1 said there were dump trucks, right?

2 A Dump trucks.

3 Q They're not related to collecting antique
4 cars, right?

5 A They're what?

6 Q They're not related to antique cars in any
7 way, right?

8 MR. KINUM: Objection, Judge. Argumentative.

9 A No.

10 MR. KINUM: I mean --

11 THE COURT: Wait, wait, wait, wait for the
12 objection.

13 MR. KINUM: Trying to testify here, and he's
14 not given -- be given a chance to finish his answers.

15 THE COURT: Okay. Sustained.

16 Q The -- what it -- a dump truck is related to
17 construction activity, correct?

18 A I wouldn't say construction. Landscapers have
19 dump trucks.

20 Q Well, don't you think --

21 A Carpenters have dump trucks. Masons have dump
22 trucks.

23 Q And aren't they all related in construction
24 activities?

25 A I guess you could say that. I don't, you know. I

1 couldn't, you know, I can't answer that question,
2 because I don't know. Everybody uses a little dump
3 truck for something different, you know.

4 Q Well, okay. A mason builds things out of
5 brick or concrete, correct?

6 A You could say that, but then also you could take
7 -- I've got a couple friends that got a small dump
8 truck. They're always hauling stuff, you know,
9 different junk.

10 Q Let's not talk about your friends --

11 A Clean out.

12 Q -- unless they're using this property. Okay.

13 A No. They don't rent there.

14 Q Okay. So landscapers, they do construction
15 related activities, building fields, lawns,
16 landscaping, shrubs, correct?

17 A Yeah.

18 Q Installation of those things. And they use
19 dump trucks to -- to transport those materials to a job
20 site, correct?

21 A Okay.

22 Q A dump truck is used to haul material to a
23 construction site, correct?

24 A Okay.

25 Q Cranes. There were cranes on the property,

1 correct?

2 A Yes.

3 Q Cranes are related to erecting buildings and
4 the like, correct?

5 A Right.

6 Q All related to construction material,
7 correct, or construction activities, correct?

8 A Okay.

9 Q Spreaders, earthmovers, those things were on
10 the site, right?

11 A Right.

12 Q All related to construction, correct? And
13 the -- you have to answer --

14 THE COURT: You have to answer the question.

15 Q -- yes or no, sir.

16 A Yes.

17 Q And you testified that at some point in time
18 there were two or three jitneys, right?

19 MR. KINUM: Objection. Mischaracterizes his
20 testimony.

21 Q Did you say there were two or three jitneys?

22 A I believe I said there was -- if I remember right,
23 five. There was five of them on the property.

24 Q Oh. Five of them. Okay.

25 A School buses. Well, I -- I shouldn't say school

1 buses. They were used school bus repainted red.

2 Q Right. And they were used to take laborers
3 to job sites, correct?

4 A They were parked there. And when we get a job on
5 the Parkway or the Turnpike, they were sent out to
6 there.

7 Q Right.

8 A Other than that they would sit on the job, and --

9 Q Okay.

10 A -- when the time come they would go out to a job
11 site, and they would just transport the laborers on the
12 Parkway.

13 Q All right. And whose job site?

14 A I believe it was under Verona construction.

15 Q Okay. And that was a construction company,
16 correct?

17 A It could have been under Essex Equipment too. I'm
18 not sure.

19 A And Essex Equipment owned construction equipment,
20 correct?

21 Q They -- I would -- I can't say what they
22 owned. Okay. But it was -- I know it was part of a
23 company. You have to remember. I'm a laborer and
24 stuff like that. I didn't work in the office. What
25 was transferred, but --

1 Q Understood.

2 A -- the Essex Equipment was an equipment company
3 that had the buses. It had the cars, and, you know the
4 vans and everything. I remember that, because I used
5 to drive up.

6 Q All right. So let's just talk about as a
7 laborer what you recall of Essex Equipment.

8 A Okay.

9 Q What type of equipment did you see?

10 A I seen a couple low bed trailers. I seen the
11 buses there. I seen a couple cars, a couple vans,
12 yeah, you know. And then there was Verona
13 Construction, you know. They would put me to work with
14 Essex. Then I would work with Verona, you know. Then
15 I would go out to a job. In the winter I was pretty
16 fortunate Mr. Sastone always used to bring me back to
17 work with the mechanics to keep me going in the winter.
18 I didn't get laid off. So it was -- worked out fine.

19 Q Okay. And so these five jitneys, you said
20 they were school buses that were repainted, right?

21 A Yeah. I -- I -- the one, two, I know were school
22 buses that were repainted. But the jitneys came from
23 Atlantic City, you know. Used jitneys there.

24 Q Okay.

25 A And they were parked there. Yeah.

1 Q Were they ever used to deliver children while
2 onsite?

3 A Not that I know of. No.

4 Q Okay. And they were used to transport
5 laborers, correct?

6 A Laborers and, you know, whoever else had to get
7 out there, I guess, you know. No office personnel, but
8 mostly --

9 Q People that had to get out to a job site.

10 A That too. People like myself.

11 Q And these were -- these were construction
12 sites, correct?

13 A Yeah.

14 Q And so the maximum you saw were five jitneys,
15 right?

16 A On the property, you know.

17 Q Right.

18 A There was some on -- on the field already.

19 Q Okay. Do you know how many were in the field
20 when there were five on the property?

21 A Gee. Trying to think how many crews we had going
22 then. There might have been another -- I don't --
23 three to four more out in the field, out -- yeah. In
24 other words, where crews out there --

25 Q Okay.

1 A -- you know, like any given time.
2 Q Verona Construction still in business?
3 A I -- I don't know if they're technically still in
4 business, but the company still has one piece of
5 equipment in Verona.
6 Q Okay. Does it use that piece of equipment on
7 a job site?
8 A It hasn't moved in, you know, several years.
9 There's still some part --
10 Q How many years?
11 A I would say safe to say 10 years it hasn't moved
12 out.
13 Q Would it be safe to say that in 10 years that
14 Verona Construction hasn't been actively involved in
15 the construction business?
16 A I would say. I don't know, you know, if they had
17 any work, you know, related other than that, you know.
18 But I don't remember. I don't recall them doing
19 anything else.
20 Q All right. And it would be safe to say when
21 -- is Essex Equipment still in business?
22 A That I can't answer. I don't know if they --
23 Q Who owned Essex Equipment?
24 A I believe maybe Mr. Sastone. Mr. Mike Sastone
25 might have owned it, or someone there. It might have

1 been in a shareholder thing, you know. It was --
2 Q And who owned Verona Construction?
3 A I understood that Mr. Sastone too owned that.
4 Q Okay. And who owned -- owns Marve
5 Development?
6 A I was -- think Ralph does. I don't know. I'm not
7 sure.
8 Q And you went back and forth in between these
9 three entities --
10 A Yeah. Not --
11 Q -- receiving patrons.
12 A Marve Development didn't come until five years ago
13 when I retired from Marve Construction and Marveco.
14 That's when Ralph asked me if I would stay on, make a
15 drawing for him, and do some other things.
16 Q Okay. Tell me what Marveco is?
17 A A construction company.
18 Q Okay. Was that also located there?
19 A Yes. We were there.
20 Q Okay. And for how long was it there?
21 A About two years.
22 Q Okay. When was the last --
23 (Interruption by cell phone.)
24 A Oh.
25 Q When was the last time it was on the

1 property.
 2 A Who? Marveco?
 3 Q Marveco.
 4 A I would say maybe 1985 --
 5 Q Okay.
 6 A -- I think.
 7 Q So that construction company hasn't been
 8 there, correct? In the last --
 9 A You know --
 10 Q -- since 1985.
 11 A I don't know if they diminished it, or they just,
 12 you know, use a different name, you know. But I can't
 13 say if they still own a pickup truck or not, you know.
 14 Q You said you recently started working for
 15 Marvec Development, right?
 16 A When I retired from the construction industry.
 17 Q All right. Do you remember what year you
 18 retired from the construction business?
 19 A Let me see. I'm 80. Five years ago.
 20 Q Five years ago. Okay.
 21 A Seventy-five I was going to retire.
 22 Q All right. And so if this is 2017 you're
 23 talking about 2012?
 24 A Yes.
 25 Q Okay.

1 A Around there.
 2 Q And what construction company did you retire
 3 from?
 4 A Marve -- Marvec -- Marveco -- Marvec -- Marvec
 5 Construction.
 6 Q Marvec Construction.
 7 A Yeah. M-a-r-v-e-c.
 8 Q Okay. Not to be confused with Marveco.
 9 A No.
 10 Q Okay. And Marvec Construction, where was
 11 that located?
 12 A Our principal office was in Verona.
 13 Q Okay. At 251-1/2?
 14 A Yeah. That's where they had their office.
 15 Q Okay. And who owned that company? Who owned
 16 that company?
 17 A I think, you know, as a worker, you know, you're
 18 not privileged to --
 19 Q Who did you believe owned that?
 20 A I believe maybe Ralph's son owned that, you know.
 21 Q Okay. And did that go out of business?
 22 A They still have equipment there. Out of business?
 23 I don't think so. I think there's -- I don't if
 24 they're out of business, but there's still a lot of
 25 equipment. There's storage sheds there. There's

1 SeaLand containers that belong to them. And --

2 Q And when did they first come on the property?

3 A I would say it was right after I came back from
4 the Brooklyn job. That would have been around maybe
5 1988, '89. Don't hold me to it.

6 Q All right.

7 A Somewhere.

8 Q So that was another construction company,
9 correct?

10 A Yes.

11 Q And that had construction equipment stored on
12 the property, correct?

13 A Yes.

14 Q And these mechanics that you said over the
15 years that you've seen on the property had been
16 repairing construction-related equipment, correct?

17 A Yeah. For all their own equipment, you know, they
18 repaired it.

19 Q Right.

20 A Whatever it is.

21 Q The equipment owned by the various different
22 construction companies.

23 A And different people. They, you know, landscapers
24 and everybody.

25 Q Okay. And you talked about that prior to

1 2011 that Marvec Development started leasing out
2 property to other companies, correct?

3 A 2011. I don't know when they started leasing. I
4 don't have a date on their leases, but I think there
5 was people leased way before that too. Yes.

6 Q Were they?

7 A Yeah. That --

8 Q Well, you talked about these other --

9 A Yeah. Friel Brothers I think was there. I think
10 that goes back to almost in 1989 or 2000.

11 Q And what was the name of that company?

12 A Friel Brothers.

13 Q And that's another construction company.

14 A A paving company.

15 Q Right. Paving company does construction.

16 A They've been there --

17 Q They build roads, correct?

18 A Yeah. They've been there when Marvec -- Marvec
19 Construction started, Friel Brothers started. They
20 were there too.

21 THE COURT: So what was the name of the
22 company, sir?

23 THE WITNESS: Friel Brothers.

24 THE COURT: Field Brothers?

25 THE WITNESS: Yes (sic).

1 THE COURT: Thank you, sir.

2 Q Now I don't want to lean over here, but I --
3 I want to see the document in front of you. Let's take
4 a look at S-6. Okay. If we look at the very top, AAA
5 Yard Work.

6 A Yeah.

7 Q Right. There -- and there's a note, they're
8 landscapers, correct?

9 A Right.

10 Q And they took possession in 2013 -- 2003,
11 correct?

12 A Yes. Yeah. A girl, Kim, wrote this out. Yes.

13 Q All right. But is that accurate based upon
14 your understanding of the property?

15 A I would say so. She has a pretty understanding of
16 the property. I'm sure she might have looked at a
17 lease.

18 MR. KINUM: Mr. Altunaga, you're to testify
19 to your own personal knowledge. Don't guess at
20 anything.

21 A No. I -- I -- this was made up by the secretary.

22 Q Right. And you provided it on behalf of
23 Marvec --

24 A She --

25 Q -- Development, correct?

1 A What -- just a secretary made a list, and she
2 wrote down these different things, what they ask for
3 for the fire marshal. And this is all her writing.
4 This isn't what I wrote down.

5 Q Understood. But --

6 A And as -- as far as the accuracy go, I'm sure
7 she's accurate. I, you know, I know she wrote down to
8

9 Q Are you sure she's --

10 A -- the best of her ability.

11 Q You said you're sure she's accurate, correct?

12 A Yes.

13 Q And, again, this is information that was
14 requested of you. You were asked who the tenants are,
15 correct?

16 A Yeah. The fire department wanted that
17 information.

18 Q Okay. And you were asked for the nature of
19 their business, correct?

20 A Yeah. They asked for, like I said, the fire
21 marshal asked for it, and she provided it.

22 Q And you were also asked for when their lease
23 started, correct?

24 A Yeah.

25 Q All right. And this -- this three-page

1 document, S-6, is what you gave in response to that
2 inquiry, correct?
3 A Yeah.
4 Q Okay.
5 A Secretary made it up, and we just faxed it over.
6 Q Understood. But this was your response to a
7 question -- to the questions posed, correct?
8 A Yeah. From the fire marshals wanted all the
9 information.
10 Q Got you. What's also -- you look at the --
11 the top here. Whose handwriting is that?
12 A This is mine, the cover sheet.
13 Q Okay. And who's the -- and who did you
14 address it to?
15 A Oh. To Tom Jacobsen.
16 Q Okay.
17 A I gave it to him, and he said he would pass it on
18 to the fire department too.
19 Q Okay.
20 A And I just sent it to one.
21 Q So this is what you're providing to Mr.
22 Jacobsen, correct?
23 A Yes. What they asked for.
24 Q Right. Right. So let's go back. Are you
25 familiar with Creo Contracting?

1 A Yeah.
2 Q Okay. And that was a construction company?
3 A They was an asphalt company.
4 Q Okay. And they were in -- they started their
5 lease sometime in 2000, correct?
6 A Yeah. They're not all construction people.
7 Here's a --
8 Q No, no. Just follow my questions. Okay?
9 I'm -- I'm sure counsel will go through the other ones
10 if he deems it necessary. But Creo's no -- no longer
11 there, right?
12 A No. Creo isn't there.
13 Q Okay.
14 A American Asphalt is there.
15 Q Finelli & Son. Were they a tenant?
16 A I think they are, you know --
17 Q Okay. They're current --
18 A She wrote it down. She has it down there. Okay.
19 Q Are they currently a tenant?
20 A I don't know. I -- I couldn't answer. I can't
21 testify to that.
22 Q Okay. Do you know whether they're a
23 contractor or not?
24 A I think she wrote down contractor.
25 Q Okay. Friel Brothers Paving?

1 A They're -- yeah. They're still there.
 2 Q Still there. And they're a paving company,
 3 right?
 4 A Yeah.
 5 Q And they went in in January of 1999?
 6 A Yes.
 7 Q Gardens of Distinction, a.k.a. Great Notch
 8 Landscape. That's a landscaping company?
 9 A Yeah. He's still there.
 10 Q Okay. And they went in in October of 2000?
 11 A Yeah.
 12 Q AAA Yard Work, that's another landscaper.
 13 A Yeah.
 14 Q They're still there?
 15 A Yeah.
 16 Q And they went in in 2003, correct?
 17 A Yeah. But they're also -- you know, you're just
 18 pointing out these people --
 19 Q Right.
 20 A -- but they're --
 21 Q And that's -- if you just follow my questions
 22 as I indicated, counsel will ask you anything he deems
 23 relevant. M3 Crane.
 24 A He's still there.
 25 Q Still there. That's a crane company, right?

1 A Yeah.
 2 Q Cranes used as in construction, not the
 3 birds, right?
 4 A Yes.
 5 Q All right. And they went in -- in October of
 6 2010?
 7 A That's what she wrote down. That's yes. That's
 8 when they --
 9 Q Okay. John Sweeney?
 10 A Who?
 11 Q John Sweeney. Down here, John Sweeney.
 12 A Yeah. He's not a construction company. He's just
 13 storing all equipment.
 14 Q Right. And the equipment that he stall --
 15 install -- storing are --
 16 A Trailers, cars --
 17 Q Move your finger.
 18 THE COURT: Sir, sir, sir. Wait, wait, wait.
 19 A -- pickup truck.
 20 THE COURT: I think your client wants to
 21 speak to you. One second.
 22 MR. MASON: No problem.
 23 A He has all cars and pickup --
 24 (Counsel and client confer.)
 25 THE COURT: Wait, wait. One second, one

1 second, one second. Don't testify. Okay. Go ahead.
2 You may proceed.

3 Q The note here says used contracting vehicles,
4 correct?

5 A Used contracting? That's what she wrote down.
6 Salt spreaders --

7 Q Okay.

8 A -- and stuff.

9 Q And trailers, right?

10 A Yeah. But she also -- he also has a box trailer,
11 and he has a lot of little pickup trucks.

12 Q Okay.

13 A He thinks they're going to be worth a fortune.

14 Q All right. And Weber Lawn Company?

15 A He's there.

16 Q And that -- he went in in April of 1997?

17 A Yup.

18 Q And he's a landscaper, correct?

19 A That's all. Cuts grass.

20 Q Okay. Which is part of landscaping, correct?

21 A That's all he does.

22 Q Okay. Now since we're only left with the
23 school bus company, the school bus company, is that in
24 any way related as far as you know to the storage of
25 construction material?

1 A I don't -- yeah, you know, I know he has a couple
2 buses on the property, and they repair them. That's
3 all I know.

4 Q Right. And you know that they're big yellow
5 buses?

6 A They're small. They're not big.

7 Q Okay. They're yellow buses.

8 A They're little buses. They're handicapped buses,
9 I think.

10 Q Okay. And they say school bus on the side?

11 A Transport. School transport.

12 Q Okay. Unlike the jitneys which were painted,
13 one was Verona red, right?

14 A Yeah.

15 Q And that was for what construction company?

16 A They were for Verona Construction.

17 Q Okay. And you said there were other buses
18 painted a different color?

19 A No. They -- well, they were painted red in the
20 wintertime. They were all redone.

21 Q Okay. So all the buses that were ever on the
22 site prior to the school buses --

23 A Were painted red.

24 Q -- were painted red.

25 A Yeah.

1 Q Correct? Okay. Which was for Verona
2 Construction, correct?

3 A No verbal response.

4 Q Sir, is that correct?

5 A Yes.

6 MR. MASON: No other questions.

7 THE COURT: Any questions?

8 MR. KINUM: Yes.

9 REDIRECT EXAMINATION BY MR. KINUM:

10 Q Mr. Altunaga, I want to give you the
11 opportunity to clear a couple things up. Okay?

12 A Okay.

13 Q First, with respect to the school buses, you
14 used some testimony that it's not a traditional long
15 school bus, correct?

16 A No.

17 Q All right. Is it similar to a van?

18 A What, the ones that are on the property now?

19 Q Correct.

20 A Yeah. In fact they do have vans. They have vans
21 too, and they have not only just the buses, he has vans
22 and he has, like, station wagons, you know. They look
23 like regular cars and stuff, you know, but it says
24 school vehicle on it.

25 Q And are you aware as to whether there's a

1 limit as to the number of vehicles that bus company can
2 have on the property?

3 A I don't think there was any question how many they
4 could keep, or not.

5 Q Okay. You heard the testimony that the --
6 the owner of the bus company gave that there's never
7 any more --

8 A But --

9 Q -- than 10 buses?

10 A Yeah. That's right, because I do believe when I
11 was making the drawing he has nine parking places for
12 the buses. Nine.

13 Q But that's consistent with what you see when
14 you're there every day.

15 A Yeah. He has -- he rents nine spots.

16 Q Okay. And you say that these -- these buses,
17 they're more similar to vans, right?

18 A Yes. Some of them are like oversized vans. Some
19 of them were like, you know -- you know, like, the --
20 you see the towns now they have these buses that
21 transport senior citizens, them small buses. That's
22 about the size of them. They're not -- they got -- he
23 doesn't seem to -- and the traditional big yellow
24 buses. He seems to be in special education.

25 Q Got it. So it's the smaller buses.

1 A Yeah. They're small.

2 Q Were the jitneys that were always there when
3 you were there, were they bigger than these vans at the
4 current bus companies?

5 A They were about the same time, but they were about
6 the same size. But they were, yeah, you know what I
7 mean. They weren't, you know, as modern, you know.
8 This is going back into the '60's, and they came from
9 Atlantic City. It would be a --

10 Q How about vans? Would you see vans in the
11 1960's, '70's, '80's, '90's on the property?

12 A Yeah.

13 Q We had, I believe, Verona Construction has
14 several vans. In other words, that they transported
15 different items in parts and things like that. They
16 had several vans, you know. Regular vans. Not --
17 yeah. Yeah. Probably -- it's just like the vans you
18 see now, but yeah, you know, they're in closed vans.

19 Q Those vans you just testified about similar
20 to the vans for the bus company?

21 A Yeah. I would say size -- size wise you're
22 talking about the same size.

23 Q Okay. You testified before that you wanted
24 to testify about this -- this exhibit -- that it's not
25 all construction companies, right?

1 A No. There's an air conditioner guy there, and the
2 rug guy, well, he just left. The well guy is there.

3 THE COURT: Weld guy or well?

4 A And --

5 THE COURT: Sir? Sir?

6 Q Is that weld, Mr. --

7 THE COURT: Well?

8 A Yeah. Weld. They --

9 THE COURT: Sir?

10 A He calls himself AK Welding.

11 THE COURT: Welding. Okay. Thank you.

12 THE WITNESS: Welding.

13 A And then there's Ampak Enterprises (phonetic), and
14 I don't know what they do. They do things. And
15 there's Assured Air, that's what do you call it. They
16 deal with furnaces, air conditionings (sic), you know,
17 commercial. Caroline (sic) Contractors. He builds --
18 he does additions. Drive-up storage, that's the guy
19 over there. F -- has a school -- Austin Fan Contractor
20 (phonetic). He's -- I understand he does, you know,
21 not major construction, you know, house construction,
22 you know, apartments, you know, your apartment. Friel
23 Brothers. Fun Bus. There are two big buses there.
24 They run for children. They have, you know, birthday
25 parties. Fun Bus. He's still there. And a recycling

1 guy with the roll-offs.

2 The only difference between this and when I was
3 there, we had 25 tandems, you know, large tandems.
4 Gaeta (phonetic) has just the bodies. In other words,
5 you're not on the truck, you know. So they're not as
6 predominant as it was there, but, you know, it was a
7 crowded yard years ago, all the way up until --
8 especially when we come back from New York. We come
9 back with a lot of equipment.

10 Heavy Iron. I don't know what he does, you know.

11 Q Mr. Altunaga, I just want to focus you on
12 something if I can. The Fun Bus. There's actually
13 buses that are stored on the property now?

14 A Yeah. They've been there for a while. I thought
15 from 2015 she's been there.

16 Q And you're not aware of any summonses ever
17 being issued to the Fun Bus, right?

18 A No. I never -- they -- they're the big -- they're
19 the regular school bus size. But they're not yellow,
20 you know, but they're this -- they call it Fun Bus, you
21 know. They're two big ones.

22 Q The landscapers that you testified about,
23 those are just guys that go out and cut grass?

24 A Yeah.

25 Q And can you estimate the total number of --

1 of commercial vehicles that are stored on the property?

2 A Right now? I -- let me see. American Paving,
3 one, two, dump truck. Let's say four. Freil Brothers,
4 he has a couple of pickup trucks. He has a van, a
5 trailer, paving machines. Or, no, you don't want
6 trucks. I'd say he has another --

7 Q All vehicles.

8 A So he has another, say, five, you know, counting
9 his pickup trucks and vans. Then the landscaper guys
10 like Pat Robertson, AA (sic), he has one, two, three.
11 He has maybe a total of five. And -- geez. I'm trying
12 to remember. This guy, I think, he has one or two.
13 Assured Air has four. This guy has one. Caroline
14 Construction, he has two. Creo, he's gone. FS
15 Transport General. Austin Fanning, he has two.
16 Finelli, I think he has just one. Friel Brothers I
17 gave you. Fun Bus is two.

18 Gaeta Recycling, they're not vehicles. They're
19 just the dumpsters. Okay. Gardener's Distinction, he
20 has one, two, three. He has maybe four. Maybe five.
21 Heavy Iron has two. I know, because I see it out
22 there. This guy, I think, a couple of cars. All
23 right. I'm not 100 percent sure. Lee Tree Service, he
24 has two trucks. This guy maybe one I know of, I see,
25 you know, once in a while when I check the property for

1 Ralph.

2 M3 Crane, let me see. They all got a pickup
3 truck, three trailers. They got about a total, I would
4 say, six vehicles any given time. This guy has two
5 vehicles. They're always parked out front right by the
6 office. Providence, I see just two pickup trucks.
7 Sweeney, they don't move, but, you know, if you count
8 all this, you know, little pickups and everything he
9 has there, I would say he has a spot worth maybe 10 --
10 10 vehicles there. Non-runable ones. This guys got a
11 limited party bus. He's gone.

12 Weber Lawn, he has two. I always talk to him.
13 And this air conditioner guy, I only see him once in a
14 while with one truck. I don't know if he has more any
15 other place, and the guy from Hing (phonetic), I only
16 can testify to one truck, you know, that I see him
17 drive in. I don't know if they park them or they leave
18 them there.

19 Q So we're talking rough estimate about 50 to
20 60 commercial vehicles?

21 A I would say, yeah. That's a pain in the neck, you
22 know. They park all over.

23 Q And that's been pretty consistent, you know,
24 through the decades as you've been there?

25 A That's every -- nothing's really changed, you

1 know. It's been the same. It's been, you know, it's
2 cranes, backhoes, trucks, cars, buses, you -- you know.
3 It's been a pile of stuff there.

4 Q So it's fair to say it's commercial vehicles
5 of all different flavors.

6 A Yeah. It just is, you know, a commercial vehicle
7 is a commercial vehicle, is what is, you know, buses
8 got a commercial, whatever. You've got a commercial
9 plate it's a commercial vehicle.

10 MR. KINUM: That's all the questions I have.
11 Thanks.

12 THE COURT: Mr. Prosecutor?

13 MR. MASON: Judge, just a couple.

14 THE COURT: Go ahead.

15 RECROSS EXAMINATION BY MR. MASON:

16 Q You went through those lists and some of
17 those tenants actually took possession after 2011,
18 right?

19 A I don't -- I have to look at it. I don't know
20 when they took possession. I wasn't, you know, privy
21 to it. Yeah. Some of them are 2012, 2013, '10, '14,
22 '13.

23 Q Storage company took possession in 2012.

24 A Yeah.

25 Q Correct?

1 A They -- there's been -- there was -- yeah, I guess
2 the other people moved out, and these --

3 Q Is this a school bus company?

4 A -- people moved in.

5 Q I'm sorry, sir. I interrupted you.

6 A In other words, this was always rented. In other
7 words, it, like, if you see possession here --

8 Q Uh-huh.

9 A -- someone was here before that.

10 Q Right.

11 A So when the secretary made this list, this is an
12 up-to-date list not of everybody that ever was there.
13 Okay, that, you know, there's people that were there,
14 and they moved out. Their leases, they -- you know,
15 small businesses fail, I guess.

16 Q And -- and you don't have a list of all the
17 tenants that were in possession, say, in 2010?

18 A Oh. Previous tests (sic)? I don't think so.
19 They might -- we might have something in Verona, but
20 I'm not sure.

21 Q Bring anything with you today?

22 A No. I didn't bring nothing.

23 Q And can you testify as to all the tenants
24 that were on the property in 2010?

25 A I couldn't tell you who was on in 2010 if it isn't

1 here, you know, it isn't, you know, I'd have to, you
2 know, go back to Verona and see who's there.

3 Q Okay. But you don't have --

4 A And that's if the girl kept them. There would be
5 no reason to keep that information.

6 Q But as you sit here today, you don't have the
7 ability to testify --

8 A The only --

9 Q -- as to who --

10 A -- one I know is -- well, they're not there
11 either. Is New Jersey Carpet. They were there in
12 2010, but they're not there no longer.

13 Q Right.

14 A Vinnie Callucci (phonetic), that is. He had a big
15 warehouse there. He stored carpet. Where the party
16 bus was he had that whole building. He had all carpet.

17 Q The carpet guy.

18 A Yeah. He had all carpet there. Rolls and rolls
19 of carpet. They would get carpet delivered every day
20 from, you know, different companies. Trailers would
21 come in, and they worked out of there. But, you know,
22 he went and bought a new building, you know. That's
23 the best I could tell you.

24 Q Looking at S-6, do you know whether any of
25 those tenants ever applied before a land use board

1 whether it's the planning board or the board of
2 adjustment?
3 A I don't think so.
4 Q And do you know whether Marvec filed an
5 application on behalf of any of those tenants?
6 A I don't think so.
7 Q Now counsel had asked you about landscapers,
8 and he said and they just cut lawns. Do you remember
9 that question?
10 A That's all Weber does. He cuts grass. He don't
11 do nothing --
12 Q That's one landscaper.
13 A That's, I think, Providence and the other ones,
14 that's all they do is just cut grass.
15 Q Do you know whether they install plants?
16 A I don't know.
17 Q Do you know whether they trim trees?
18 A I don't think so.
19 Q You don't think see.
20 A I don't. I don't --
21 Q You don't know.
22 A I don't know. Yeah. I can't answer these --
23 Q Do you know whether --
24 A -- questions.
25 Q -- install trees?

1 A And I --
2 Q You don't know.
3 A I don't -- yeah. I only can answer what --
4 Q You don't know whether they put in paths,
5 correct?
6 A Put in what?
7 Q Paths. Garden path.
8 A A couple of them do, but some of the others, I
9 don't think they do.
10 Q Okay. You don't know whether any put in,
11 like, stone retaining walls.
12 A Who? Maybe one or two, I think, might do that. I
13 --
14 Q Okay.
15 A -- I can't testify, because I don't check on their
16 work, you know. I don't --
17 Q Do you know whether any of them have
18 forklifts?
19 A I don't see no forklifts here. All I see is --
20 Q Or whether any of them have any drilling
21 equipment, you know, to bore a hole, to plant a tree?
22 A I -- I'm trying to think, you know. Trying to
23 look at the back of the yards. You know how you don't
24 pay attention, you know, there's no reason for me to
25 keep this information in my head. I see snow plows.

1 Okay. They have snow plows and salt spreaders. A lot
2 of them have. And some of them have small dump trucks,
3 you know. They might do --

4 Q Any excavation --

5 A -- block work.

6 Q -- equipment? Any excavation equipment?

7 A No. I haven't seen, you know, where you see
8 backhoes and stuff like that. I don't see that.

9 Q And some of them have inside storage,
10 correct? Some of these businesses have inside storage,
11 correct?

12 A No. No. These are all --

13 Q These -- these are --

14 A -- outside.

15 Q -- all outdoor?

16 A All outdoors.

17 Q Okay. Now just --

18 A I mean, the -- the ones that do rent a yard, but
19 they're not the landscapers. The landscapers -- oh,
20 wait. One guy does rent a garage. I don't know who he
21 is. He's out there in the corner of the yard. And he
22 parks his trucks inside a garage. Okay.

23 Q Now with regard to the bus company, you said
24 that he rents nine spots, correct?

25 A That's nine spots.

1 Q And he's got room inside for an additional
2 three, correct?

3 A One.

4 Q Were you here when he testified?

5 A I -- the way they got the lift there, I think he
6 has one inside and nine outside. That's what he could
7 fit.

8 Q Okay. So you think he only can put one
9 inside.

10 A I think they repair one at a time. If they're not
11 repairing them, maybe he can put two inside. Yeah, you
12 know. He cleans it.

13 Q They're not repairing. Can he fit three
14 inside?

15 A I -- that I don't know. I, you know, I don't --
16 I'm not in his shoes. I don't --

17 MR. MASON: Understood. Thank you very much,
18 sir.

19 THE COURT: Any further questions?

20 MR. KINUM: Nothing further, Judge.

21 THE COURT: Okay. Thanks. You may step
22 down.

23 THE WITNESS: Okay.

24 (Witness excused.)

25 THE COURT: Any further witnesses?

1 MR. KINUM: No, Your Honor.
2 THE COURT: Okay.
3 MR. MASON: Judge, I'd move S-6.
4 THE COURT: Well, it's been testified to at
5 this point, correct, counsel?
6 MR. KINUM: It has.
7 THE COURT: S-6 is in evidence.
8 (S-6, business listing, admitted into
9 evidence.)

10 THE COURT: So before you argue this case,
11 isn't -- isn't this whole case about we have a
12 construction yard with constructional equipment. And
13 the question is whether a bus company, re-storage and
14 repair business is consistent or incidental to a
15 construct -- the question is whether that's a
16 construction business.

17 Your argument, Mr. Prosecutor, is that only
18 construction equipment could be incidental. And your
19 argument is it's a bus company. It's commercial
20 vehicles. It's commercial operation. Is that -- am I
21 saying that accurately? If not, tell me I'm not.

22 MR. MASON: And additionally, Judge, I would
23 submit it's more than simply a construction yard. Mr.
24 Conkling testified that it's a commercial storage yard.

25 THE COURT: Yeah. Okay.

1 MR. MASON: You have different commercial
2 companies including the landscapers, which -- which
3 bring us out of the arena of pure construction.

4 THE COURT: Well, you also have a carpet --

5 MR. MASON: Exactly in 2010.

6 THE COURT: -- company. Yeah. And there
7 was, you know, it's -- it's a typical -- when you take
8 the train to New York, and you see those construction,
9 and I have worked in construction, you know, if -- and
10 luckily with this property is that you can't park your
11 -- many towns don't let you park your commercial
12 vehicle in your driveway. So this is a perfect
13 location for commercial businesses to at least have
14 their vehicles parked in a location where they're not
15 going to be hassled by the local police, or by
16 officials who can park there, lot there.

17 Mr. Prosecutor, is that your agreement? Is
18 that the issue here?

19 MR. MASON: Judge, in essence. I'd like to
20 just clarify it a little bit.

21 THE COURT: Sure. Well, I'm going to ask you
22 both, because I -- I just got counsel's brief. So I'm
23 going to ask you both to -- now that we have these
24 other cases out of the way, and I think that I'm going
25 to allow you both to, because I'm not going to make a

1 decision today, especially since we have a court
2 session two o'clock.

3 But narrow the issue and -- and give me what
4 case law you want to address, because I just got
5 counsel's brief, and I -- I have not looked at the case
6 law. But the question, I think, and I'll -- and you
7 can put it into your briefs, in a letter brief. It
8 doesn't have to be anything big.

9 MR. MASON: Okay.

10 THE COURT: But just tell me what you -- both
11 positions is. But I think it narrows it down to that
12 determination by the Court. And so --

13 MR. MASON: But that's in essence it, Judge.
14 It's -- it's the primary use of this property was
15 clearly construction-related activity, industrial
16 constructive -- construction. All related. The use of
17 a few jitneys was incidental to that. Now what we have
18 is a primary use being a bus repair company, which is
19 school buses, which is not incidental to any
20 preexisting, permitted use. And that's really where
21 the -- the analysis has to be, is on the date that the
22 current ordinance was adopted, was there a permitted
23 use there. A primary permitted use involving a bus
24 company. And clearly there wasn't.

25 You heard the testimony of both the bus

1 company operator, an employee of Marvec Development.
2 There's never been a school bus company there. This is
3 the first time it comes after the adoption of the
4 ordinance. Clearly not incidental.

5 Even if Your Honor wanted to look at it as
6 incidental, the case law requires any expansion of that
7 nonconforming use to be subject to a application before
8 the board of adjustment. And as Your Honor's comments
9 relative to it's a good place to keep these vehicles,
10 nobody's saying it's not. But you have to do it in a
11 right fashion. You have to do it with approval from
12 the land use board, so that you have people like Mr.
13 Conkling who are neighbors, that they're protected.
14 You've got a situation here where buses come in at
15 different hours. Tow trucks come in at different
16 hours. At least with a land use application there'd be
17 a restriction on the hours. Here it's wide open
18 because it's not an approved use.

19 THE COURT: Okay. Well, put that into a
20 letter brief. I'll listen to both sides --

21 MR. MASON: Certainly, Judge.

22 THE COURT: -- and whatever case law. But I
23 think it comes down to if that use is consistent with
24 what was there before, hence why these cases are before
25 zoning boards, because they have the ability to call

1 experts. But it's before me, and I'll make a decision.
2 Can you get that to me within the next 10 days?

3 MR. KINUM: Yes, Judge.

4 THE COURT: Okay.

5 MR. MASON: Definitely.

6 THE COURT: Okay. And then give me a date
7 that I can schedule this for?

8 THE CLERK: March 1st?

9 THE COURT: March 1st?

10 MR. KINUM: That's great.

11 THE COURT: What time is that?

12 THE CLERK: Five o'clock.

13 THE COURT: March 1st, 5:00 p.m.

14 MR. MASON: Okay. Thank you, Judge.

15 THE COURT: In fact, if you want to get here
16 on March 1st at 4:30 so you don't have to wait around
17 for court. I don't want to hold a court room for a
18 decision. So let me do it 4:30, and I'll put it on the
19 record. This way the five o'clock session's not going
20 to be held up by my decision if that's okay. Okay?

21 MR. KINUM: Thank you, Judge.

22 MR. MASON: Thank you, Judge.

23 THE COURT: Okay. Thank you. You've got --
24 you have to take that back from you, Mr. Sastone. We
25 -- we -- we own that. Okay?

1 MR. KINUM: He's hearing like a champion now.

2 THE COURT: And I think he's going to walk
3 out with it. We've got to be careful of that.

4 MR. KINUM: Thank you, Judge.

5 THE COURT: Thank you. Have a good day.
6 Here you go: We -- we got that last piece of evidence,
7 correct? The -- the -- the

8 MR. MASON: Yes, Judge.

9 THE COURT: Okay.

10 (Proceedings concluded.)
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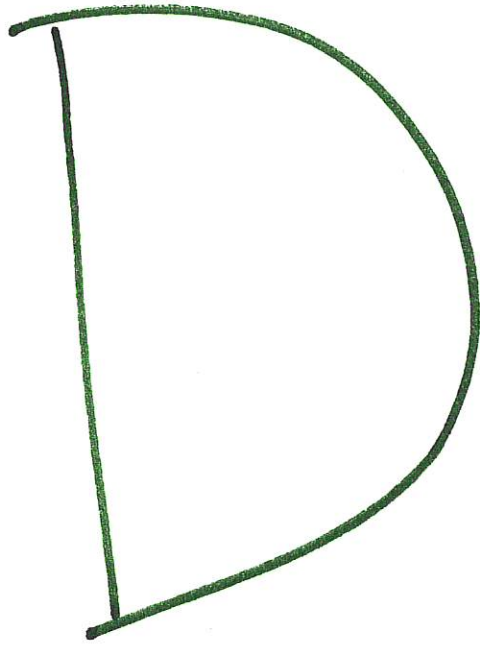
CERTIFICATION

I, Cathy Betz, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings in the Verona Municipal Court, Essex County, on February 15, 2017, on CD No. 1, Index Nos. 9:09:15 to 11:39:45, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

/s/ Cathy Betz
Cathy Betz, AD/T 540
Tape Reporters, Inc.

Date: 4/6/17

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MUNICIPAL COURT
ESSEX COUNTY
VERONA, NEW JERSEY
DOCKET NO. SC-2016-2743 to 2745

STATE OF NEW JERSEY,

TRANSCRIPT OF PROCEEDINGS

vs.

COURT DECISION

MARVE DEVELOPMENT CORP.,

Defendant.

Place: Verona Municipal Court
600 Bloomfield Avenue
Verona, NJ 07044

Date: March 1, 2017

B E F O R E:

HONORABLE JOHN A. PAPAARAZZO, J.M.C.

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

BRIAN W. MASON, ESQ.,
Municipal Prosecutor,
Attorney for the Plaintiff.

CHRISTOPHER W. KINUM, ESQ.,
(Critchley, Kinum & DeNoia, LLC),
Attorney for the Defendant.

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I N D E X3/1/17

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1 THE COURT: The next matter we have is the
2 matter of Marve Development Corporation, SC-2745. This
3 matter was tried before the Court on, I think, two
4 prior occasions. I adjourned the case to allow counsel
5 to both to submit briefs in regard to this matter. The
6 only complaint that's pending right now is the
7 complaint under SC-2745, October 12th, 2016, principal
8 permitted uses school bus repair.

9 Appearances, please?

10 MR. MASON: Brian Mason on behalf of the
11 State.

12 MR. KINUM: Good afternoon, Your Honor.
13 Chris Kinum, K-i-n-u-m, on behalf of Marve Development
14 Corp.

15 THE COURT: Okay. I just received these
16 briefs like yesterday. So the problem I have is I read
17 them, but I have a bunch of questions. So why don't
18 you both have a seat, and I'll let the prosecutor ask
19 -- ask -- answer the questions first, and then,
20 counsel, I'll get your position.

21 Clearly there's no question in this case that
22 the present ordinance there's a violation of the use at
23 time, because the present ordinance has been changed,
24 and obviously the use now does not meet the present
25 ordinance.

1 Do you stipulate to that? Is that clear that
2 the present ordinance that the use --

3 MR. MASON: That's correct, Your Honor.

4 THE COURT: Okay. So that's -- that's --
5 that's not in question. My question though as far as
6 nonconforming use, does the use that's nonconforming
7 based upon the present ordinance, does that use have to
8 be permitted under the previous zoning or ordinance
9 structure? Mr. --

10 MR. MASON: Yes, Judge.

11 THE COURT: Okay. Counsel, is that your
12 position?

13 MR. KINUM: That's my position, and it was
14 permitted.

15 THE COURT: Okay. Okay. Under the
16 ordinance, the previous ordinance it was permitted?

17 MR. KINUM: Yes, Your Honor.

18 THE COURT: The parking of school buses was
19 permitted? Do you have a copy of that -- that --

20 MR. MASON: Judge, it was actually an exhibit

21
22 THE COURT: Okay. Well, take a look.

23 MR. MASON: -- that we marked when Mr.
24 Jacobsen testified.

25 THE COURT: This -- this is the problem.

1 Because when I got the briefs I was at home, and I
2 didn't have any of the exhibits. So I had to read them
3 last night and today, so --

4 MR. MASON: It kind of looks like a chart
5 with some with writing on the --

6 THE COURT: That's S-2.

7 MR. MASON: -- left-hand side.

8 THE COURT: Okay. So that's a professional
9 office. But how about the previous?

10 MR. MASON: It kind of looks at --

11 THE COURT: Because we all agree that the
12 professional office business zone district, school bus
13 parking repairs is not part of it. We know that.

14 MR. MASON: Judge, it -- it looks like a
15 chart with handwriting on the left. That's it.

16 THE COURT: Okay.

17 MR. KINUM: That's correct, Judge.

18 THE COURT: So that's S-3?

19 MR. MASON: Yes.

20 MR. KINUM: Yes, Judge.

21 THE COURT: Okay.

22 MR. MASON: Because I -- I moved that in with
23 Mr. Jacobsen on the -- on the stand to cover this very
24 issue, Judge.

25 THE COURT: So it's an M-1 light. Is that

1 we're talking about?

2 MR. MASON: That's what it was.

3 THE COURT: Manufacturing, processing,
4 producing or fabricating operations which can meet the
5 performance standards set forth in Article 9 which I
6 have no idea what that says. So how it -- where is
7 that in there, counsel, that in your -- I'm not holding
8 you to it. I just want to -- I'm reading the briefs.
9 I'm reading the case law. And if a nonconforming use
10 has to be permitted under the previous zone or -- or
11 ordinance how -- how is that part of that?

12 MR. KINUM: I believe, Judge, that issue was
13 addressed by my questioning Mr. Jacobsen.

14 THE COURT: Saying?

15 MR. KINUM: Who upon in testimony said that
16 it was a permitted use at that time.

17 THE COURT: No. I don't -- that -- no.

18 MR. KINUM: Well, that -- that commercial
19 vehicles could be repaired and parked there.

20 THE COURT: Well, you're talking about the
21 accessory use to the business, correct?

22 MR. KINUM: Yes, Judge. But it is
23 potentially a primary use in connection with a
24 industrial storage yard which we all agree that this
25 is, or a commercial storage yard.

1 THE COURT: Yeah. But -- so then you may
2 have to send me another brief, because you have to tell
3 me if we -- if we all agree that a nonconforming use,
4 the use in the prior ordinance has to be permitted. I
5 -- I'm looking at M-1, and I don't see where it says
6 parking of school buses. It's not a manufacturing
7 business. It's not a processing business. The school
8 buses don't produce or fabricate operations. There's
9 -- it's not warehousing. It's not a wholesale trade.
10 It's not research and development, and it's not a
11 childcare center. So how -- how is it -- how -- I'm
12 trying to ask both of you, how is an M-1 light
13 industrial allowing the parking of school buses?

14 MR. MASON: And, Judge, my position it does
15 not. If you go over to the left on that page, it talks
16 about accessory uses, which is principally or -- it's
17 an accessory to the principal use.

18 THE COURT: Right.

19 MR. MASON: School buses are -- are -- a
20 school bus company is not. And I think the last
21 category is the conditional use. And I believe that's
22 a daycare center. And this is clearly --

23 THE COURT: Well --

24 MR. MASON: -- not a daycare center.

25 THE COURT: Well, it says accessory uses

1 customary incidental to the principal or conditional
2 use.

3 MR. MASON: Right.

4 THE COURT: Except there shall be no outside
5 storage of products, materials or equipment. A
6 satellite or dish antenna installed in a side yard or a
7 rooftop. So --

8 MR. MASON: That's the extent of what's --
9 what was allowed in that zone.

10 THE COURT: So, counsel, addressing S-3 in
11 evidence you're saying that the parking of school
12 buses, which is now present in the -- in the case
13 today, you're saying that's permitted under an M-1
14 light industrial?

15 MR. KINUM: Yes, Judge. And if not, it was
16 permitted before that particular zoning ordinance came
17 into effect. Because we go back to 1959, and I'm sure
18 that everyone agreed -- would agree that we've had
19 commercial vehicles there which were parked and
20 repaired there on a daily basis since 1959, which would
21 preexist that zoning change that you have in front of
22 you, which is S-3.

23 THE COURT: Yeah. But wouldn't the burden
24 then show that you'd have to show to prove a
25 nonconforming use that the principal use was permitted

1 that's even back to 1959?

2 MR. KINUM: Yes, Judge. And it's my
3 understanding we did do that through the testimony of
4 Mr. Jacobsen.

5 THE COURT: Testimony of Mr. Jacobsen?

6 MR. KINUM: Yes.

7 THE COURT: You have to tell me then in --
8 it's not in your brief. Tell me what he said or what
9 he testified to saying that buses were permitted use
10 going back to whenever.

11 MR. KINUM: Commercial vehicles were a
12 permitted use. And he has been on the premises on
13 several occasions and has not issued any summonses with
14 respect to commercial vehicles which were stored there
15 and repaired there.

16 THE COURT: So your argument is -- is that a
17 bus is a commercial vehicle. A -- a dump truck, a
18 crane is a commercial vehicle. So therefore commercial
19 vehicles are permitted use.

20 MR. KINUM: Correct, Your Honor.

21 THE COURT: Is that -- okay. So that's your
22 argument.

23 MR. KINUM: Right.

24 THE COURT: I just want to make -- I just
25 want -- because I got the briefs, and I'm going back

1 and forth. Okay. Mr. Prosecutor, anything else you
2 want to add in regard to this matter?

3 MR. MASON: No, Judge. I hopefully
4 adequately covered it. I apologize for the lateness of
5 the submission.

6 THE COURT: That's okay. Clearly from the
7 testimony, and a great deal of the testimony during the
8 trial dealt with the other complaints. And I'm going
9 to try to narrow down the testimony as I recall it from
10 my notes. The question in this case deals with,
11 because the other uses there, the cases where not
12 guilty findings were -- were addressed. But this deals
13 with a school bus business, and I'll get to the
14 testimony in a few seconds, where the company has a
15 school bus parked there, and also a mechanic repairs
16 the vehicles at that time -- during its operation.

17 Mr. Jacobsen testified as to the various
18 aspects of the property. He's in the Township of
19 Verona for 40 years, construction official, code
20 enforcement official for 13 years. He described the
21 property, and I have to comment that this -- this
22 property has run amuck. I mean, it's just a property
23 that pretty much has so many different uses during the
24 years that it's -- it's hard for the Court to determine
25 what's going on there.

1 But more importantly the Court is a little
2 bit confused as to how in the Township of Verona any
3 type of business can run on the property. We have all
4 types of businesses from carpeting businesses, to -- to
5 construction businesses, to storage businesses, to bus
6 business. It's -- it's beyond the Court's
7 comprehension is what's happening there, but that's the
8 Township of Verona. I have to deal with this case.

9 But clearly this is a -- when you use the
10 word mixed use, this is a mixed up use as far as this
11 property is concerned, as far as the Court's concerned.
12 And there's numerous businesses, even to a point where
13 the one witness testified that people have landscaping
14 trucks just parking there. There seems to be no
15 oversight by the township as to what type of businesses
16 are there, any review of the businesses.

17 It doesn't appear that the town has an
18 ordinance to address what kind of chemicals are there.
19 If the fire department goes to a fire, I don't know if
20 they know what they're going to understand what's
21 there, what's not there. So this -- this property is
22 in the Court's opinion extremely not monitored, and I'm
23 not quite sure what the town's to do, but that's --
24 that's the -- that's the facts that have been presented
25 to the Court.

1 But in regard to the buses, the question
2 comes down to whether that was a -- a nonconforming
3 use, and as part -- as counsel both agreed that it was
4 a permitted use prior, and therefore this -- it could
5 be extended or it was a use that was permitted prior,
6 and therefore could be continued.

7 There was testimony by the property manager
8 who indicated that there were certain construction
9 companies that had little buses that they put their
10 workers in, so if they're working on the Parkway or
11 locations like that, you can't drive your car there, so
12 they were driving there. I do not accept that argument
13 that those buses are similar to having a bus operation.
14 That makes no sense. It -- it -- it would extend the
15 extension of nonconforming use. That makes no sense
16 whatsoever.

17 I don't accept the fact that there were buses
18 on the property in conjunction with a construction yard
19 that would allow a business such as a bus company to be
20 part of it that I -- I don't accept that. The facts
21 are not sufficient for the Court to accept that. It's
22 a -- it's a use just as someone brought a pickup truck
23 and -- and pulled to the yard and took the men over to
24 a site. So the fact that they used buses is -- is not
25 a busing operation.

1 There are various testimony from various
2 witnesses. Mr. Howard Conkling testified. He lives
3 close to the property. I think he abuts the property.
4 He has a clear view of the property. He had made
5 complaints to the zoning, approximately 13 or 14 months
6 ago about vehicles coming in and out of the property.
7 He indicated school buses were towed in and out. There
8 was some beeper noise, maybe not from the school buses
9 but from vehicles. He indicated the last two years
10 school buses have been on the property. He said there
11 were no school buses prior to two years ago, and in
12 2010, 2011 there were no school buses on the property.

13 Thomas Altunaga testified. He is the
14 gentleman who has worked in that location since 1959.
15 And he's the person that testified as to the numerous,
16 numerous businesses, construction companies, different
17 corporations that are operating on this property.
18 Marvec Allstate was one of the names, a construction
19 company. He testified as to different companies are
20 there. Dump trucks, bulldozers, roll-offs, SeaLand
21 units, trailers, small buses that carry these laborers.
22 There was Marveco, another company, and another
23 business that ran out of that location.

24 He indicated the buses were used to transport
25 workers as part of a construction business, and there

1 was never a bus company per se at that location. There
2 was a paint manufacturing plant there. Trucks were
3 parked there. Dump trucks were parked there. Antique
4 cars were parked there. Cranes are on the property.
5 Earth movers. Five jitneys. So there were a lot of
6 equipment on there.

7 There's landscapers there. Some that just
8 did cutting of lawns. Some that did more than just
9 cutting of lawns. Essex Equipment was another company
10 that was there. Verona Construction, another --
11 another company that's there.

12 So he testified to Marve Development Company,
13 Marveco, Marvec Construction. So he testified as to
14 all the tenants, and that be 1989 to 2000 the owner
15 began to lease the property to other tenants. There
16 was a paving company there.

17 He then testifies to buses on the property.
18 These were the yellow buses there, and these were bare
19 -- both for repair and also were stored there. He
20 indicated that the yard is a crowded yard, there's 25
21 tandems. Fifty or 60 commercial vehicles. He said
22 there's all types of commercial vehicles, not all
23 related to the construction business. He says the
24 landscapers, some are just landscapers. Some do more
25 extensive landscaping. Some have snow plows,

1 spreaders, there's some outdoor storage at that
2 property.

3 The -- I read the briefs from the attorneys,
4 and the first question I had was does the Court have to
5 first analyze if this was a permitted use. And both
6 the prosecutor and defense counsel have indicated that
7 there has to be a permitted use prior to -- at the time
8 of the original ordinance. Counsel's argument is
9 whether the storing, maintaining, or repair of eight to
10 ten small school buses and vans in an industrial,
11 commercial storage yard is substantially similar to the
12 previous use of the commercial yard carried out for
13 over 50 years at the property, and that this is an
14 industrial and commercial vehicles have been stored,
15 repaired and maintained by Marve Development
16 Corporations industrial commercial storage yard on a
17 continual basis since 1959.

18 Upon reading the briefs clearly, the law is
19 absolutely clear, that a township cannot pass an
20 ordinance to zone out a business. That we -- that's
21 clear. We don't have to argue that. The Supreme
22 Court, Appellate Division have made that clear that
23 would be taking someone's property rights away.

24 One case cited the existence of the use prior
25 to the passage of the new ordinance. Once that has

1 been established, the nonconforming use is a vested
2 property right. In analyzing whether a use is
3 customarily incident to the permitted use, two
4 determinations must be made. The first is whether the
5 use is incidental for the main use. Does the use bear
6 a close resemblance and obvious relation to the main
7 use to which the premises are put.

8 Second, it must be determined whether a use
9 which is found to be incident to the permitted use is
10 also a customary use. There was an argument also that
11 the buses are only used during the week, but -- but
12 that's -- I mean, I didn't hear testimony, but we know
13 school buses are used on the weekends. You -- they
14 drive down the Parkway or any roadway. School children
15 are going to events on the weekends. They go to
16 tournaments. They go to wrestling tournaments at the
17 present time. They're going to Atlantic City. I think
18 it's this week or the next weekend. There's baseball
19 games on Saturday, soccer games on Saturday. So it's
20 not just Monday through Friday. I'm not sure if this
21 company does that or not.

22 But counsel's argument is that dump truck and
23 small school bus are substantially similar, just as
24 when they decided a case, a dairy cow farm and a horse
25 racing enterprise are substantially similar. Thus any

1 difference between the storage, repair, and maintenance
2 of the dump trucks and small school buses, vans during
3 business hours, on weekdays, on an industrial,
4 commercial storage line is de minimis, just as the
5 difference between parking six ton, 40-foot long, and
6 nine-foot high trucks, and the other trucks that were
7 larger, and the court said that was de minimis.

8 But, again, I have to go back to what we're
9 talking about here. The ordinance, as I read it, and I
10 have to read the ordinance as it's written. I can't,
11 the case law is absolutely clear. I can't add my -- my
12 view of the ordinance. I cannot interpret it. I have
13 to look at the clear, plain language of the ordinance.

14 And S-3 in evidence I -- looking at this --
15 this ordinance, there's not one word in here that
16 indicates that the M-1 designation of light industrial
17 in the Township of Verona allows the parking of school
18 buses. School buses are not manufacturing. They're
19 not processing. They're not producing or fabricating
20 operations which can meet the performance standard set
21 forth in Article 9. There's not -- it's not a
22 warehouse. It's not a wholesale trade. It's not
23 research and development. It's not a childcare center.

24 It's not an accessory use either, because the
25 school bus company is a school bus company. They --

1 they bring children. They're not part of a parking of
2 dump trucks in a construction business where they had
3 some small vans that they use or school buses to bring
4 their men. That -- that's not an accessory use. This
5 is a school bus company. They're there to bring
6 children or people to a school or location. To repair
7 them there I don't see it.

8 Both counsel, the prosecutor and defense
9 counsel are agreeing that the -- to address a
10 nonconforming use that the use has to be permitted in
11 the previous zoning ordinance. It's not here. I don't
12 see anywhere where it's here. Parking of school buses
13 is not a commercial operation like parking of dump
14 trucks. It's not even close. It's not even close.

15 So I do not find that -- I do find rather,
16 that the State has proven their case. I do find that
17 this was not a permitted use, school bus parking. This
18 was nowhere in the ordinance a permitted use. And
19 based upon that finding it cannot be a nonconforming
20 use, because it was never permitted to begin with.
21 It's not in the previous ordinance. It's -- it's not
22 similar to the other businesses. And it came in way
23 after the other businesses were there.

24 And the Court again questions this property,
25 because we're talking about the number of school buses.

1 How about if -- like the school bus company that's up
2 on -- off of Bloomfield Avenue. They may have 300,
3 400, 500 buses. Why can't they come in then? Then you
4 get this company, S-4, which is this -- which I
5 dismissed the case, this temporary storage. I mean,
6 this guy looks like we're down in Port Newark. It's
7 getting pretty close. And I think he testified he was
8 -- he wants more land. I mean, this is going to be --
9 we're going to have trucks coming in and out of there.
10 It -- just something has to give. There's a movie.
11 But something has to happen there, because there's
12 something very amiss in regard to this property.

13 But in regard to the matter before me I do
14 enter a finding of guilty. I find that Marve
15 Development Corporation has not met its burden. The
16 State has proven their case beyond a reasonable doubt.
17 This was not a permitted use. School buses and
18 location repair was not permitted at that property. It
19 was not permitted in the M-1 Zone. It's not permitted
20 today. And therefore I do find the defendant guilty in
21 regard to that matter.

22 Gentlemen, do you wish to be heard in regard
23 to sentencing?

24 MR. KINUM: Yes, briefly, Judge. And if I
25 may, I just want to make sure the record's clear that

1 I'm not conceding the permitted use argument, and --
2 and it's the defendant's position that you have to go
3 back to one zoning ordinance before the M-1 zoning
4 ordinance where all of these businesses were and are
5 legal.

6 With respect to sentencing, I would ask that
7 the minimums be imposed. This is a business that's
8 been paying taxes in the township since 1959. They
9 have run -- everyone agrees that this is an industrial,
10 commercial use storage yard. It's our position that
11 this is a business that is an industrial commercial
12 business that coincides with the rest of the yard. It
13 is simply 10 school buses, and that repairs have been
14 made continually since 1959 on commercial vehicles, so
15 this is not an egregious violation in any way. And if
16 -- if anything it was an honest mistake, but we concede
17 that, or our position is that it is permitted. It is a
18 permitted use. And we're going to potentially utilize
19 our right to appeal as well, Your Honor, respectfully.

20 THE COURT: Absolute right to appeal.

21 MR. KINUM: Thanks.

22 THE COURT: I don't put notches in the bench.
23 That's fine. Mr. Prosecutor, your position?

24 MR. MASON: Judge, under 150-16.6 it's a --
25 the fine can be up to \$1,250 a day for the violation.

1 In this particular case, Judge, prior to issuance of
2 the summons there was a -- a lot of effort to try to
3 avoid bringing this matter to court. And I think Your
4 Honor's kind of touched upon, this is really -- this
5 one summons is the tip of the iceberg.

6 There are a dozen or more businesses
7 operating on that property that are in violation. I
8 don't want it to sound punitive. I -- I really want to
9 -- the Court to formulate a disposition or a penalty of
10 this case that's going to be productive. I would ask
11 Your Honor to impose the maximum of 1,250 a day from
12 the date of issuance of the summons --

13 THE COURT: I don't think --

14 MR. MASON: -- in this case.

15 THE COURT: -- I can do that unless there's
16 -- there's a complaint for each day, which there isn't.

17 MR. MASON: Actually the ordinance says,
18 Judge, that you can do it --

19 THE COURT: Yeah.

20 MR. MASON: -- on a daily fine.

21 THE COURT: But they had that -- that group
22 of gentlemen and ladies down in Trenton in the Supreme
23 Court. I don't think they'd go with that. But I'll
24 hear from counsel.

25 MR. MASON: Well --

1 THE COURT: But unless --

2 MR. MASON: Well, I'll make my argument,
3 Judge, and --

4 THE COURT: Unless there's a claim from
5 court. Oh. Okay. I understand.

6 MR. MASON: And whatever you want to do
7 obviously it's within your discretion.

8 THE COURT: Counsel, your -- I'm sorry. Go
9 ahead.

10 MR. MASON: Judge, I would ask for the
11 maximum. I would ask for the daily. However, I would
12 condition that on revisiting the fines assuming that
13 there is an application filed before the land use board
14 within the next reasonable time period. I would think
15 is 45 days, Judge, that we could -- then revisit the
16 fines and reduce the fines. Because the township is
17 concerned with compliance. It has the very issues that
18 Your Honor expressed. There's a lot going on in that
19 property. We don't know what's going on there, and
20 there are a lot of uses that aren't permitted.

21 So this is going to be the first of many
22 other summonses that are issued. I think with maxing
23 out the fines with an agreement to revisit gives an
24 incentive to address this outside of the Court and
25 before the board where it belongs.

1 THE COURT: Counsel?

2 MR. KINUM: Judge, respectfully, we have
3 something called due process, Your Honor, and I would
4 ask Your Honor to focus on the fact that there's one
5 summons before the Court.

6 THE COURT: Not -- I'm not going to pose --
7 my understanding is that whatever the ordinance says,
8 your client has sent notice that he is looking at 25
9 summonses, and that would be the case. I -- I will not

10
11 MR. MASON: Exactly, Your Honor.

12 THE COURT: -- do that and look at that.

13 MR. MASON: And this is a business, again,
14 that's been -- been in town since 1959, and it has
15 been operated continuously as an industrial commercial
16 storage yard. And the fact that residential property
17 has -- was built after the fact that the business came
18 into effect, they do have a constitutional right to --
19 to run their business. There's nothing malicious with
20 respect to the business. And I'd ask that it, you
21 know, a minimum fine of maybe \$1,250 be imposed just
22 for one day with respect to the one summons.

23 THE COURT: But don't you think that someone
24 has to do something here? I mean -- I mean, this --
25 this property. I mean, I don't think, and I'm --

1 that's why I don't do zoning work. But -- but don't
2 you think that a zoning board has to look at this,
3 because it's -- it's a -- I understand what you're
4 saying about all these businesses, but in regard to the
5 health, safety, and welfare of the -- of the citizens
6 of Verona, don't -- and -- and the police department,
7 EMT's and -- and fire department, don't they need to
8 know who's there, what's there, and what they're
9 addressing?

10 I mean, I'm -- I'm concerned that, I mean, as
11 your witness testified that this is just a property
12 that I don't know what's there. I mean, it's just --
13 it's -- not that I -- that doesn't have to do anything
14 with the Court, but I just think that as we go forward
15 the prosecutor's indicating there needs to be a summons
16 every day, and you know that's coming down the line.

17 So instead of addressing that in a municipal
18 court, wouldn't it behoove everyone that the town can
19 express before a zoning board their concerns? And then
20 your client can say, hey, you know what, we've been
21 there for -- it's like a case I had in one court where,
22 you know, the train never went through the town for 40
23 years. All of a sudden the train's -- the choo-choo
24 train said we're using the track. And everyone -- I
25 mean, they were going to burn the town down because the

1 -- the train went through. But that track was there
2 for 50, 60 years, and of course this case still says
3 you can't stop the train.

4 But this property has been here a long time.
5 But it looks like every commercial person, and I
6 understand. I -- I think Verona has it, but there's a
7 lot of towns you can't park commercial vehicles in a
8 driveway, so you have to find someplace to go. And it
9 looks like your client's property is a good place to
10 go, and it makes sense. But it looks like there's a
11 lot of people. I mean, when I saw the case I dismissed
12 with those containers, wow, that looks like a business
13 that's -- we're going to have SeaLand coming in pretty
14 soon.

15 So doesn't it behoove that you can sit down
16 with the prosecutor and maybe the town attorney saying
17 this is what we've got here. You're right. There's a
18 lot of stuff that's there that's been there for 50
19 years. But where are we going from here? That's the
20 question, I think.

21 MR. KINUM: Right, Judge. And I think that
22 the analogy you gave with respect to the train, it's
23 the opposite here. That train has been running every
24 single day --

25 THE COURT: Yeah.

1 MR. KINUM: -- since 1959.
2 THE COURT: Yeah. I know. I understand
3 that.
4 MR. KINUM: And the fact that people built
5 and bought homes --
6 THE COURT: Yeah.
7 MR. KINUM: -- next to a commercial
8 industrial storage yard --
9 THE COURT: Right. Right.
10 MR. KINUM: -- is -- Marve Development should
11 not be punished.
12 THE COURT: No. I'm not talking about that.
13 I agree with your testimony. I think the prosecutor
14 agrees that with this construction yard with the
15 cranes, they'd been there -- I'm talking about all the
16 other businesses that are now coming in. I -- I know
17 there may be a nexus there, but I tell you what. If --
18 if I was on the Verona Police Department or fire
19 department or EMT's, well, I'd tell you what. I -- I
20 -- if they don't know what's there, I mean, I -- my
21 office was in a town where you had -- you had to list
22 your -- your scrubbing agents on -- for your sink.
23 They want to know every chemical. They made a going in
24 there with oil drums or who knows. It just seems that
25 they're -- we're in 2017, and it sounds like we're in

1 the dark ages here a little bit, that I'm --
2 MR. KINUM: My understanding that Mr.
3 Jacobsen has made multiple visits --
4 THE COURT: Okay.
5 MR. KINUM: -- to the property --
6 THE COURT: Okay.
7 MR. KINUM: -- with the fire marshal --
8 THE COURT: Okay.
9 MR. KINUM: -- and they are aware of
10 everything that --
11 THE COURT: Okay. Fine.
12 MR. KINUM: -- is on the property.
13 THE COURT: Okay.
14 MR. KINUM: And I think Mr. Jacobsen will
15 tell you that I have attempted to work with the town
16 and will continue to do so.
17 THE COURT: Okay. Well --
18 MR. KINUM: I just like to take the issues
19 one at a time.
20 THE COURT: Okay.
21 MR. KINUM: I'm a simple guy.
22 THE COURT: All right.
23 MR. KINUM: There's one -- there's one
24 summons in front of us --
25 THE COURT: Okay.

1 MR. KINUM: -- and I'd ask that we deal with
2 that.

3 THE COURT: No. I'll deal with that. I
4 agree.

5 MR. KINUM: And I will work with the town
6 going forward --

7 THE COURT: Okay.

8 MR. KINUM: -- and be happy to meet with --

9 THE COURT: Okay.

10 MR. MASON: Judge, and -- and -- and just for
11 the record. Two things. It's -- there have been lots
12 of meetings prior to the issuance of the summons.

13 THE COURT: Okay.

14 MR. MASON: It's not counsel --

15 THE COURT: Right.

16 MR. MASON: -- on either side, Judge.

17 THE COURT: I understand.

18 MR. MASON: -- that's -- that's an issue
19 here.

20 THE COURT: No, I understand.

21 MR. MASON: That's the least of the problems,
22 Judge, and that's why I -- I think that the monetary
23 aspect is important here. The second thing is -- is
24 that counsel mentioned about that this was there, and
25 then the building came after it. Well, that's actually

1 in -- first of all, there's no testimony before the
2 Court in that regard. But I -- I do have to correct
3 that misstatement, Judge. The files and the discovery
4 that we provided, there's testimony back in 1955, where
5 there was an expansion of this yard where they're
6 talking about that they zoned residential right to next
7 to it.

8 THE COURT: All right. Okay.

9 MR. MASON: So it's not that this came, and
10 then the housing came after it.

11 THE COURT: Okay. All right. It would be
12 inappropriate for the Court to address fines from
13 October 12th, because there's no -- the -- the State,
14 the township had the right to issue complaints every
15 day. They did not do that. If I -- I can't impose any
16 other fines, because it's not before the Court. And
17 Mr. -- Marve Development was not notified of any --
18 even though the ordinance says it -- it would be
19 inappropriate. If I was the appellate judge I'd
20 overturn that in about five seconds.

21 I am imposing based upon all the testimony a
22 1,000-dollar fine, 33-dollar court cost, 20 days to
23 file an appeal. Thank you, counsel.

24 MR. KINUM: Thank you, Your Honor.

25 (Proceedings concluded.)

CERTIFICATION

1
2
3 I, Cathy Betz, the assigned transcriber, do
4 hereby certify that the foregoing transcript of
5 proceedings in the Verona Municipal Court, Essex
6 County, on March 1, 2017, on CD No. 1, Index Nos.
7 4:44:20 to 5:12:00, is prepared in full compliance with
8 the current Transcript Format for Judicial Proceedings
9 and is a true and accurate compressed transcript of the
10 proceedings as recorded.

11
12
13
14
15 /s/ Cathy Betz

16 Cathy Betz, AD/T 540
17 Tape Reporters, Inc.

18
19 Date: 4/6/17
20
21
22

E

STATE OF NEW JERSEY

PLAINTIFF,

v.

MARVE DEVELOPMENT CORP.,

DEFENDANT.

SUPERIOR COURT OF NEW JERSEY
COUNTY OF ESSEX – LAW DIVISION
MUNICIPAL APPEAL NO. 2017-008

ORDER

THIS MATTER having been presented to the Court by way of notice of appeal from its conviction in the Verona Municipal Court by the Honorable John A. Paparazzo, J.M.C., filed by Defendant-Appellant, Marve Development Corporation, as represented by Christopher W. Kinum, Esq., and Victoria A. Lucido, Esq., appearing on behalf of the State, having opposed this motion, and the Court having conducted a *de novo* review of the record below, and the Court having reviewed the moving papers, and the Court having heard oral argument on June 28, 2017, and for the reasons set forth on the record on June 28, 2017, which are incorporated by referenced herein;

IT APPEARING that the State conceded that Defendant-Appellant's use of storing and repairing commercial vehicles at the premises located at 251 ½ Grove Avenue, Verona, NJ 07044 was permitted prior to the implementation of the Verona Zoning Code §150.17-11 on August 15, 2011;

IT IS ON THIS 29th day of June, 2017;


ORDERED, that Defendant-Appellant is found **NOT GUILTY** *de novo* on Complaint Summons No. 0720-SC-002745, contrary to the Verona Zoning Code §150.17-11(a); it is further

ORDERED, that as a result of Defendant-Appellant's acquittal on Complaint Summons No. 0720-SC-002745, Defendant-Appellant's sentence originally imposed in connection therewith by the Verona Municipal Court, to wit, a \$1,000.00 fine and \$33.00 court costs, be thus

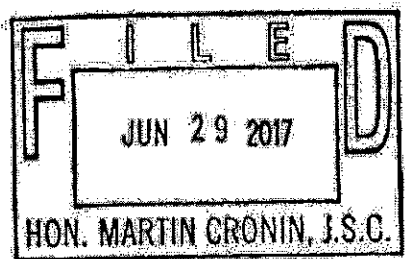
VACATED; and it is further

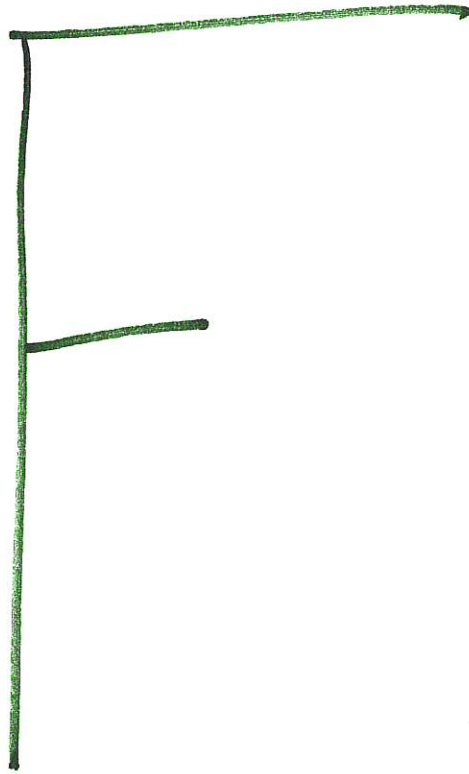
ORDERED, that a copy of this Order be served on all parties forthwith.

SO ORDERED.



HON. MARTIN CRONIN, J.S.C.





SUPERIOR COURT OF NEW JERSEY
ESSEX COUNTY
LAW DIVISION
INDICTMENT NO.: MA 2017-008
A.D.# _____

STATE OF NEW JERSEY,
vs.
MARVE DEVELOPMENT CORP.,
Defendant.

)
)
) TRANSCRIPT
)
) OF
)
) ORAL ARGUMENT
)
)
)

Place: Essex County Courthouse
212 Washington Street
Newark, NJ 07102

Date: June 28, 2017

BEFORE:

HONORABLE MARTIN G. CRONIN, J.S.C.

TRANSCRIPT ORDERED BY:

LISA M. LAZZARO, ESQ. (O'TOOLE SCRIVO, LLC)

APPEARANCES:

VICTORIA LUCIDO, ESQ. (ALOIA LAW FIRM)
TOWNSHIP ATTORNEY FOR TOWNSHIP OF VERONA

CHRISTOPHER W. KINUM, ESQ. (CRITCHLEY, KINUM & DENOIA,
LLC)

CHRISTOPHER L FOX, ESQ. (CRITCHLEY, KINUM & DENOIA,
LLC)

ATTORNEYS FOR THE DEFENDANT, MARVE DEVELOPMENT CORP.

Jill Campbell
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Riverdale, NJ 07457

Audio Recorded
Recording Opr: Nicholas Novak

I N D E X

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Mr. Kinum	10
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I N D E X T O W I T N E S S E S

NAME	DIRECT	CROSS	REDIRECT	RE CROSS
No witnesses were called during this proceeding.				

I N D E X T O E X H I B I T S

	ID	EVID
No exhibits were cited during this proceeding.		

1 THE COURT: State of New Jersey versus Marve
2 Development Corp., MA 2017-008. Appearances for the
3 record.

4 MS. LUCIDO: Good afternoon, Your Honor.
5 Victoria Lucido from the Aloia Law Firm, Township Attorney
6 for the Township of Verona.

7 MR. KINUM: Good afternoon, Judge. Chris Kinum,
8 K-I-N-U-M, and Chris Fox from Critchley, Kinum and Denoia
9 on behalf of Defendant Appellant Marve Development Corp.

10 THE COURT: You all may be seated. You may be
11 seated, Miss Zacatillo (phonetic). All right, Counsel, the
12 Court has reviewed the record, which includes June 2nd,
13 2017 letter brief by Mr. Fox, exhibits, also the June 13th,
14 2017 letter authored by the State. I reviewed the
15 transcript of Judge Papparazzo's, I'm mispronouncing it, on
16 March 1, 2017, the references exhibits, and underlying
17 transcript. You had communicate with my Law Clerk that you
18 were seeking to resolve it, but you couldn't resolve it, so
19 I have to rule, which I'm good with.

20 The question, I have a couple of questions for
21 the State, and I'll pose questions to the Defendant. This
22 is what I've discerned, and it's a question when I looked
23 at the record with the Judge's decision. I understand it's
24 a decision de novo. I'm going to start pretty similar to
25 the way he did it. I got a couple of questions, and then,

1 and we'll take it from there, all right?

2 For this nonconforming use issue, the taking
3 issue, the first question is whether the use was permitted
4 before the ordinance was amended in 2011, all right. I
5 believe that the State conceded that it was permitted.

6 MS. LUCIDO: Your Honor, this particular use, I
7 don't know that it was conceded that this was, oh, I
8 apologize, before 2011? Yes.

9 THE COURT: Okay, all right. So, it was
10 permitted before 2011, okay. And so then, if it was
11 permitted before 2011 and it continued or it's
12 substantially similar, if a similar use of the property
13 continued, then the nonconforming use doctrine would
14 prohibit a conviction, correct?

15 MS. LUCIDO: Yes, Judge.

16 THE COURT: All right. I looked at my
17 colleague's decision, and it seemed that, below, you know,
18 before Judge Papparazzo, both the State and the Defense
19 conceded that, prior to the amendment, it was a permitted
20 use. Is that accurate based upon the record?

21 MS. LUCIDO: Your Honor, I would submit that it
22 was a permitted accessory use and that it was not a
23 principal use.

24 THE COURT: All right. But before him, wasn't
25 the indication it was a permitted use, period?

1 MS. LUCIDO: Your Honor, from 1997 to 2011, that
2 M1 light industrial zoning phase, I believe that the Court
3 found that this particular use of Marve's tenant, F.S., was
4 not allowed for the parking and repair of school busses.

5 THE COURT: I'm not getting into the school, what
6 they were doing before 2011, whatever it be, was a
7 permitted use, correct? That was the position before the
8 Court below.

9 MS. LUCIDO: Permitted use.

10 THE COURT: Correct?

11 MS. LUCIDO: Correct.

12 THE COURT: All right. And then I turn to my
13 colleague's decision on page 4. I'll start at the bottom
14 of page 3. It's early on, attribution, line 21.

15 "Clearly, there's no question," this is the Court
16 speaking, "Clearly, there's no question in this case that
17 the present ordinance there's a violation of the use at the
18 time, because the present ordinance has been changed, and
19 obviously the use now does not permit, the use now does not
20 meet the present ordinance. Do you stipulate to that? Is
21 that clear that the present ordinance that's the issue?

22 MR. MASON: That's correct, Your Honor."

23 THE COURT: "Okay. So that's not the question.
24 My question, though, as far as nonconforming use, does the
25 use that's nonconforming, based upon the present ordinance,

1 does that use have to be permitted on the previous zoning
2 ordinance's structure?

3 MR. MASON: Yes, Judge."

4 THE COURT: "Okay. Counsel, is that your
5 position?

6 MR. KINUM: Yes, that's my position. It's
7 permitted."

8 THE COURT: But then the Court goes on, I'm
9 reading it. You can be seated while I'm phrasing questions,
10 thank you. Look at page 11 here. "Both counsel, the
11 prosecutor and defense counsel are agreeing to that, to
12 address a nonconforming use, that the use has to be
13 permitted in the previous zoning ordinance."

14 It's not here. I don't see anywhere where it's
15 here. Parking school busses is not a commercial operation.
16 So unless I'm missing, I would read that as saying that the
17 Court below, although the parties appear to stipulate or
18 agree that the prior use was permitted, concluded that the
19 prior use was not permitted. Is that a fair reading of the,
20 yes?

21 MS. LUCIDO: Yes, Judge.

22 THE COURT: Do you think he was right?

23 MS. LUCIDO: Your Honor, I mean, my position is
24 that the, that Judge Papparazzo was correct in his ruling.

25 THE COURT: In his conclusion or on that part of

1 it?

2 MS. LUCIDO: I believe in his conclusion.

3 THE COURT: All right. So let's take it step by
4 step. I'm not shutting you down from going there.

5 MS. LUCIDO: Okay.

6 THE COURT: All right. Relief. All right. So
7 this is going to be the issue fairly that you have to
8 resolve. There's a property there. For a long time there
9 was commercial vehicles, call it commercial vehicles. I'll
10 call them non-passenger cars, all right, are on that
11 facility. Those non, those moving structures could be dump
12 trucks. They could be front loaders. They could be little
13 busses, big busses. They could be a number of things. But
14 for a long time they were on that property, and I'll hear
15 you unto incidental or whatever. But they're being stored
16 there, and they're being fixed there, okay. Why, if it's
17 permitted before, what has been the change that would
18 support a conviction?

19 MS. LUCIDO: The change is that, prior, as Your
20 Honor alluded to, it was not a principal use. Marve's
21 current tenant, F.S., the principal use of this company is
22 to park, store, repair school busses. There was some
23 testimony at the hearing below where there was testimony
24 regarding busses that were used to transport workers back
25 and forth, jitney-type busses that were at the property

1 previously. It's the State's position that the
2 nonconforming use was an accessory use and to then
3 transform that nonconforming accessory use to a principal
4 use to allow F.S. to operate this type of business is
5 improper.

6 THE COURT: Okay. All right, you obviously read
7 the cases cited. You know, they all, you know, you go from
8 a cow to a horse or a horse to cow. I mean, to go from,
9 you know, repairing dump trucks to repairing school busses
10 doesn't seem like that big of a difference. I'll hear you
11 on that.

12 MS. LUCIDO: Again, Judge, I think it has to do
13 with the principal use. Changing from one animal to
14 another animal in the farm or from a specific type of truck
15 to more of those trucks or less of those trucks, it's still
16 the same principal use. Whereas the case that, the case of
17 Township of Belleville v. Parrillo's that I cited to Your
18 Honor, that change had to deal with a restaurant that had
19 dancing as an accessory use, and then that restaurant
20 changed to essentially a nightclub.

21 THE COURT: And you went to different hours. You
22 went to different parking. You went to different effect
23 upon the neighborhood.

24 MS. LUCIDO: Right.

25 THE COURT: I mean, I didn't see anything in the

1 record of, the only thing I saw was about when there's,
2 like, a weekend event that there might be some school
3 busses moving. But other than that, I didn't see any
4 evidence in the record that there was a great increase or
5 decrease in activity that would affect the neighborhood.

6 MS. LUCIDO: That's correct, Judge, and I don't
7 know that that was a major issue below as to the amount of
8 hours --

9 THE COURT: Okay.

10 MS. LUCIDO: -- that was --

11 THE COURT: But I think that's relevant to that
12 case, you know, to that case.

13 MS. LUCIDO: Yes, Judge.

14 THE COURT: All right, your distinction about
15 primary or accessory, I'll hear you on that, if you want to
16 amplify that based upon the record of how it really
17 switched.

18 MS. LUCIDO: Your Honor, the State would just
19 submit that the actual nature of F.S. Transportation is to
20 park and to fix school busses as opposed to that's just a
21 incidental or accessory use of a company that stores as a
22 warehouse or one of the other approved uses.

23 THE COURT: Now, the Defendant made a point in
24 the brief that the focus on, there was a focus by the State
25 below and I think was at least partially accepted by the

1 Court below, focusing on the nature of the Defendant's
2 business as opposed to the nature of the use of the
3 property. And if you have a, this type of case, shouldn't
4 the focus be on what the property's being used for and how
5 that, I don't want to get into how it affects, but how is
6 the property being used?

7 MS. LUCIDO: Your Honor, I believe that the focus
8 of Judge Papparazzo was more so on the actual business
9 rather than the use, because in the zoning, it outlines
10 specific types of businesses that are allowed per the
11 zoning code, not necessarily the uses.

12 THE COURT: Okay. All right. Counsel, don't get
13 too confident. You went from, you went from buttoned up to
14 now you got your shirt open and your arm is back. What's
15 going on here?

16 MR. KINUM: I'm thrilled, Judge, that you focused
17 on the exact issues that we hoped you would.

18 THE COURT: You may be seated. Thank you.
19 Briefly.

20 MR. KINUM: Okay. First, you went directly to
21 page 18 of the transcript of the Judge's ruling where he
22 erroneously says, respectfully erroneously says that
23 nonconforming use, that the use has to be permitted in a
24 previous zoning ordinance, and then at line 18, "This was
25 nowhere in the ordinance a permitted use where we know,

1 everyone stipulated, it was a permitted use."

2 So the Judge did not make the proper evaluation.
3 He just said that this not, this was not a permitted use in
4 the ordinance that preceded the current ordinance;
5 therefore you're guilty. And I'm confident he's wrong on
6 that.

7 And then Your Honor focused on the words that
8 really rung true with me is "effect upon the neighborhood."
9 I read all these cases. That's what it comes down to. Is
10 the use of the property, not necessarily the business, is
11 the use of the property, does that negatively change or
12 impact upon the neighborhood?

13 And here there's no difference. There's no
14 difference between whether you're repairing a dump truck, a
15 front loader, a crane, or a short school bus. For over 50
16 years, that bay in that garage has been used to repair
17 industrial, heavy commercial vehicles, or heavy non-
18 passenger vehicles, to use your term.

19 The use has not changed at all. The impact on
20 the neighborhood has not changed at all. Tom Altonaga
21 (phonetic) has worked there since 1959. Every day when he
22 goes to work, he expects to see a mechanic working in that
23 bay, with that lift, fixing heavy non-passenger vehicles or
24 heavy commercial vehicles.

25 The neighbor, okay, Mr. Howard Conklin, says,

1 "Yes, for 30 years I've lived next to an industrial
2 commercial storage yard. I knew what I was getting into
3 when I bought my house. There's a reason I got the house
4 for the price I paid."

5 THE COURT: Was he happy about that? I don't
6 know.

7 MR. KINUM: Well, he knew what he was getting
8 into. His only complaint was with another tenant. It was
9 a limo company who, they work late hours, and when the
10 limos went into reverse, you hear that beeping sound, which
11 I can understand as a, and we addressed that, and that
12 tenant is gone.

13 He had no complaint with this specific tenant.
14 He says he looks out the window, he expects to see heavy
15 commercial vehicles coming in and out of that driveway, in
16 and out of that property. That's what he's seen for 30
17 years. That's what he has now.

18 And there's no change in the amount of the use.
19 The owner of the bus company said it would be extremely
20 rare for a bus to come in on a weekend. We work from 8:00
21 to 4:30. We don't have a large number of busses there. We
22 have nine to 12 busses, and they are repaired just like a
23 dump truck would be repaired or a crane or some other type
24 of commercial vehicle. Therefore, under the cases, our
25 position is the conviction has to be reversed.

1 THE COURT: Anything?

2 MS. LUCIDO: Yes, Your Honor, just briefly. At
3 some point, a nonconforming use, it shouldn't just keep
4 going. At some point there should be an effort to conform
5 to the current zoning, and this zone was changed in 2011.
6 The current tenant started leasing the property in 2012.
7 So the zoning had already changed, and at some point it
8 should be more of a move towards conforming use than to
9 continue the nonconforming use.

10 THE COURT: Was that developed on the record
11 about the absence of efforts to change?

12 MS. LUCIDO: I believe there was just testimony
13 that there was no request for a variance, but I don't know
14 that that was expanded upon below.

15 THE COURT: I don't know if that's, I mean,
16 they're certainly on notice now that the Township is not
17 all that happy about the use to which it's being put, but
18 I'm not sensing that that's going to be sufficient
19 developed record to rule on that ground.

20 MS. LUCIDO: Understood, Judge.

21 THE COURT: Thank you. Give me a moment to get
22 organized here. All right. All right, before the Court is
23 an appeal from the ruling of the Honorable John Papparazzo
24 on February 15, 2017.

25 At that time, there was three charges presented,

1 SC 2742, 2743 and 2745. The first two are no longer before
2 the Court. The Judge addressed the remaining summons,
3 SC 2745, charging a violation of permitted use in a C2
4 zone. Found the petitioner guilty and ordered the
5 Petitioner to order a \$1,000 fine, \$33 in court costs.
6 This was after a trial before the Judge.

7 The Court had the opportunity to review the
8 transcript of not only that trial, the exhibits introduced
9 and together with a, the transcript of the Judge's order.
10 The Court has further reviewed the written submissions from
11 counsel, both the, from the State from the Aloia Law Firm
12 and also from, authored by Mr. Fox on behalf of the
13 Petitioner. Heard argument from counsel. The Court found
14 both the briefs and argument instructive.

15 From, and the Court does appreciate the candor
16 counsel have had with the Court in basically cutting
17 through this and getting to the gist of the matter.

18 It is undisputed that, since the 1950s, several
19 construction companies have operated on the property
20 located at 251 1/2 Grove Avenue in Verona. The uses of
21 this property have included storage of construction
22 equipment, repair of such equipment, and parking of
23 construction-related materials. There's also, mixed within
24 that on occasion, school busses present on the premises,
25 sometimes used to transport labor as to various job sites.

1 From July 7th, 1997 through August 15, 2011, the
2 property located at 251 1/2 Grove Avenue was zone M1 light
3 industrial. Prior to August 15, 2011, heavy commercial
4 vehicles were repaired at the property as permitted by that
5 light industrial zoning. That is conceded by the parties
6 both before the Court below and before this Court.

7 The record below reflects that the property owner
8 has leased the premises to various tenants, and the nature
9 of the business conducted by the tenants has changed to
10 some degree, and the present Petitioner could fairly be
11 described as primarily involved in providing transportation
12 services to school children and uses the premises to repair
13 and store busses for the purpose of facilitating that
14 business use.

15 In Berkeley Square Association v. Zoning Board of
16 the City of Trenton, 410 N.J. Super. 225 at 266, 67 (App.
17 Div. 2009), our Appellate Division recognized that it is
18 well settled that nonconforming uses or structures existing
19 at the time of the passage of an ordinance may be
20 continued.

21 The question then here reduces to whether the
22 permitted use before the 2011 amendment is continued or
23 whether there has been a substantial change in that use.
24 The Court concludes that there has not been a substantial
25 change in the use, that it is permitted before, it is

1 substantially the same now, and that it shall be, although
2 nonconforming under the existing zoning ordinance, and the
3 Petitioner/Defendant is on notice that it is a
4 nonconforming use and has responsibilities attendant
5 thereto, that the continued use is, under this
6 nonconforming use doctrine does not support the conviction
7 that my colleague below entered.

8 The question is, is it substantially similar? Is
9 it a permitted use before going forward? And the Court
10 finds the cases, some of the cases cited by the Petitioner
11 to be persuasive and the one case primarily cited by the
12 State as distinguishable. Let's start with the
13 distinguishable one.

14 Township of Belleville v. Parrillo's, Inc., 83
15 N.J. 309 (1980). As accurately summarized by the State, it
16 was a case where there was some, the prior use was a,
17 primarily a restaurant with some music and dancing. It
18 changed to be a discotheque with different hours, different
19 volume of customers, different impact on the neighborhood,
20 and that was an inappropriate expansion of the use.

21 It's distinguishable from here. There is no
22 claim that the use has been substantially changed. It's
23 still being used to, for the repair and storage of, I call
24 it, non, you know, non-civilian or non, you know, it's not
25 a Rav4 or a Camry or something.

1 These are commercial-type vehicles, whether they
2 be front loaders or fork lifts or dump trucks, pre 2011, or
3 a series of school busses now. It is the storage and
4 repair or repair and storage of said vehicles, which has
5 happened since the 1950s, and it continues now, so it's a
6 continuing conforming use.

7 The State does point out that there are some
8 distinctions, and they focus primarily upon the nature of
9 the business of the tenant, the tenant Petitioner, that
10 this, unlike a heavy construction company, this is now a
11 school transportation company, but the focus of the
12 inquiry, as the Court finds, when addressing a violation of
13 the zoning, is not so much the nature of the business of
14 the Defendant, but rather the use to which the Defendant
15 places the property. That use has not substantially
16 changed over time.

17 The Court finds that the Court below, my
18 colleague below, notwithstanding the, essentially the
19 stipulation of the parties, found that the prior use was
20 not permitted under the old ordinance. That's not
21 supported by the record, and I do not, as a Court reviewing
22 de novo, that's not my finding.

23 The Court finds more persuasive cases such as
24 Stout v. Mitschele, 135 N.J.L. 406 (1947), and oldie but a
25 goodie, where the New Jersey Supreme Court held that there

1 was no impermissible change to a preexisting nonconforming
2 use when the property owners converted the property from a
3 dairy farm to a horse-raising enterprise.

4 The Court decided that, though different, a dairy
5 farm and horse-racing enterprise were similar enough to
6 allow the change as a continuation of a non-conforming use.
7 Here a similar analysis, whether the, whether there's more
8 school busses now than there were before does not change
9 the basic use to which the property's being, was placed,
10 and it's a continuation.

11 Other cases that are instructive. You got Kramer
12 v. Town of Montclair, 33 N.J. Super. 16 (App. Div. 1954).
13 In Kramer, the property was a residential zone that
14 disallowed parking commercial vehicles but had been used to
15 park commercial vehicles prior to the zoning change, thus
16 making it a preexisting nonconforming use. There was
17 different sizes of trucks used there. The Court noted that
18 the change in the size of the trucks was insufficient, and
19 therefore there was no impermissible expansion of
20 preexisting nonconforming use.

21 Although the State did raise the potential issue
22 of an undue expansion from the preexisting use, an absence
23 of rigor perhaps in minimizing the nonconforming use,
24 there's an insufficient record before this Court to base
25 any violation on that. Therefore, for the reasons that

1 will be more fully set forth on the record, which will be,
2 incorporate my oral statements here, judgement of acquittal
3 on the only remaining summons before the Court. That is
4 the order of the Court. Thank you.

5 MR. KINUM: Thank you, Your Honor.

6 MS. LUCIDO: Thank you, Judge.

7 (Proceeding concluded.)

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CERTIFICATION

I, Jill Campbell, the assigned transcriber, do hereby certify the foregoing transcript of proceedings from 1:59 p.m. to 2:31 p.m., is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate noncompressed transcript of the proceedings as recorded.

Jill Campbell

/s/ _____
Jill Campbell, CET**D-298

October 3, 2019
Date

KING TRANSCRIPTION
Agency Name
