

**LAKWOOD PLANNING BOARD
MINUTES
JUNE 26, 2007**

I. CERTIFICATION OF COMPLIANCE

Chairman Banas called the meeting to order at 6:00 p.m. with the Pledge of Allegiance and Mrs. Johnson read the Certification of Compliance with the NJ Open Public Meetings Act:

“The time, date and location of this meeting was published in the Asbury Park Press and Ocean County Observer and posted on the bulletin board in the office of the Township of Lakewood. Advance written Notice has been filed with the Township Clerk for purpose of public inspection and, a copy of this Agenda has been mailed, faxed or delivered to the following newspapers: The Asbury Park Press, The Ocean County Observer, or The Tri-Town News at least 48 hours in advance. This meeting meets all the criteria of the Open Public Meetings Act.”

2. ROLL CALL

Mr. Herzl, Mr. Franklin, Mr. Banas, Mr. Akerman, Mr. Fink

3. SWEARING IN OF PROFESSIONALS

Mr. John Moore and Mr. Truscott were sworn in.

Mrs. Johnson stated there were 2 changes to the agenda. Item #2 – SD 1542 Rye Oaks LLC – a letter was received by the applicant’s attorney requesting the application be carried to July 31, 2007 and the applicant will re-notice. No action was required. The second change is item #5 – SD 1585 Arboretum Properties LLC a letter was received by the applicants’ attorney requesting the application be tabled until August 21, 2007 with no re-notice. Mr. Banas did not like that and stated the applicant must re-notice as the time is too advanced for just an announcement. Mr. Penzer said he would re-notice but asked it not be placed on the August agenda, because he is working with the objectors and will inform the board when the application would be ready to be placed on future public hearing. He will re-notice when the applicant is ready for the public hearing.

4. NEW BUSINESS

- 1. SP # 1820B (VARIANCE REQUESTED)**
APPLICANT: 1161 ROUTE 9 LLC
Location: Route 9, between Chestnut Street and Yale Drive
Block 1064 Lot 4
Amended Preliminary & Final Site Plan for addition to existing building

Mr. Moore stated the applicant is seeking Preliminary and Final Site Plan Approval for a 1,507 square foot addition to an existing commercial retail building, parking facilities, and stormwater management measures. The site is located at Block 1064 Lot 4, fronting River Avenue in the HD-7 Zone. The one (1) story building is proposed to be used as a grocery store. Twenty parking spaces are required for a 5,870 S.F building except for building that contains any medical or dental offices in the H-7 zone. The applicant has proposed 35 parking spaces. A note should be added to the plans stating that no medical or dental office uses are permitted in the building; as the parking calculations would be affected. The following variances are required: Lot Area: 28,000 square feet is proposed where 43,560 square feet is required. This is an existing condition; Lot Frontage: 140' is proposed where 150' is required. This is an existing condition. Front Setback to RT. 9: 75.5' is proposed where 150' is required. This is an existing condition. Side Setback: 5.8' is proposed on one side where 30' is required. This is an existing condition. Front Setback to Pineview Ave.: 34.1' is proposed where 150' is required. This is an existing condition. Accessory Structure Rear Setback: 2' for freezer #1, 22' for freezer #2, 24' for freezer #3, and 4' for the storage trailer is proposed where 30' is required. These are all existing conditions. Accessory Structure Side Setback: 2' for freezer #1, 15' for freezer #2, and 29' for freezer #3 is proposed where 30' is required. These are all existing conditions. As per section 18-903 H.6. of the UDO, parking is permitted in the required front setback when the principal building has a minimum 150' setback. Since the proposed front setback is less than 150' the applicant will need to obtain a design waiver for parking within the required front setback. The applicant is requesting a waiver from providing the required 25' landscape buffer. Ocean County Soil Conservation District and NJDOT approvals will be required. Evidence of outside agency approvals shall be made a condition of final site plan approval. We defer to the NJDOT to determine if a road widening dedication will be required at this time. A note has been added to the plans stating that "The proposed parking space inside the future NJDOT R.O.W. shall be removed upon the widening of the future NJDOT R.O.W. widening. The applicant has proposed planting two trees within the area of the future NJDOT R.O.W. widening. The board should determine if this location will be acceptable. The applicant has provided three lighting fixtures to illuminate the parking lot. The applicant should call out the location of poles on the Site Plan. The applicant shall provide pavement marking details for the handicap parking stalls. The applicant has removed the "No Parking Fire Lane" sign detail from the Detail Plan. It appears that the dumpster enclosure gate will interfere with a parking space when it is open. The applicant shall address this issue. The applicant should show location of the site identification sign on the plans. The applicant should relocate the portion of storm system within the future R.O.W.

Mr. Truscott read from a letter dated May 1, 2007. The applicant is seeking preliminary/ final major site plan and variance approvals to modify an existing one (1) story masonry building of approximately 4,363 square feet by constructing a 1,507-square foot ground-level addition. The current use (a commercial grocery) will remain unchanged. The building is situated within Block 1064 Lot 4, a 0.643-acre tract located in the southern part of the Township along northbound Route 9, just north of the Route 9 / Cross Street / Chestnut Street Extension intersection. Lot 4 has dual frontage on Route 9 and the currently unimproved Pineview Avenue. The properties surrounding the tract to the north, east and south are vacant; southbound Route 9 parcels to the west of the tract are used for

commercial purposes. The tract and surrounding properties are located in the HD-7 (Highway Development) Zone. In 2005, the applicant submitted a proposal for the site, seeking preliminary and final site plan approval to modify the existing building by constructing a 1,503-square foot ground-level addition and a second story of 5,863 square feet, for a total increase of 7,366 square feet. At the time, the building was used as a commercial garage, and the proposed use was to be offices. It is our understanding that the Planning Board did not take any action on the prior application. Retail businesses, such as commercial grocery establishments, are permitted uses in the HD-7 Zone. The following variances are requested for the principal structure: Lot area: 1 acre (43,460 square feet) required; 0.643 acre (28,000 square feet) proposed. This is a pre-existing condition. Lot Frontage: 150 feet required; 140 feet proposed. This is a pre-existing condition. Front yard setback (for non-residential development fronting a State Highway): 150 feet required; 75.6 feet proposed. This is a pre-existing condition. Front yard setback (through lot: frontage along Pineview Avenue): 50 feet required; 34.1 feet proposed. This is a pre-existing condition. Side yard setback (one): 30 feet required; 5.8 feet proposed. This is a preexisting condition. The proposed addition also has a side yard setback of 5.8 feet. The following variances are requested for accessory structures located behind the building: Front yard setback: not permitted, 2 feet proposed. Side yard setback: 30 feet required; 2 ft. proposed (Freezer #1). Front yard setback: not permitted, 24 feet proposed. Side yard setback: 30 feet required; 15 ft. proposed. (Freezer #2). Front yard setback: not permitted, 22 feet proposed. Side yard setback: 30 feet required; 29 ft. proposed. (Freezer #3). Front yard setback: not permitted, 4 feet proposed (Cargo Storage Trailer). An additional variance is required for the parking provided in the front yard setback (principal building has a setback less than 150 feet-Section 18-903.H.6). The site plans must be changed to indicate the required waiver. The positive and negative criteria for the requested bulk variances should be addressed. The applicant should detail efforts made to acquire contiguous Lots 1 and/or 3 (both currently vacant and owned by the Township), or any of Block 1065 to the east of the tract, in order to create conformance with the one (1) acre minimum lot size for the HD-7 Zone. Waivers have been requested for the following: Section 18-803.E.2.a: a 25-foot wide landscape buffer requirement for commercial uses required; no buffering proposed, and Section 18-803.E.2.g: development permitted within the 150-foot setback from State Highway 9 up to one hundred (100) feet from the property line; parking is proposed within this setback. The site plan delineates the proposed widening of River Avenue (Route 9) and any potential dedication. We note that one (1) proposed parking stall is located in the dedicated area. The accessory structures shown on the existing conditions portion of the site plan were not indicated in the plans submitted with the 2005 application. Applicant must address why an apparent non-conformities have recently been created. The tract is a through lot; the plans indicate front yard setbacks for the secondary frontage along the Pineview Avenue right-of-way. The status of unimproved Pineview Avenue must be verified, as the Grading/Drainage and Soil Erosion/Sediment Control Plans indicate a proposed stormwater facility off-site in the Pineview Avenue right-of-way. No final approval can be granted until such time as the placement of the drainage facility in a mapped roadbed is approved by the Township Engineer. A metal box is shown off-site within the Pineview Avenue right-of-way, near the property's southeastern corner, and the ownership and status of this box should be discussed with the Board. Applicant must testify as to why the site identification sign will not be relocated within the property boundary. Signage should comply with Township requirements. Applicant's amended plans do not include off-street parking requirements.

Prior plans noted parking requirements as 1 space per 200 square feet, which is based on retail use. Based on this parking standard, the 35 spaces provided comply with the Ordinance requirements. Required and provided parking notations must be added back to the plans. We recommend the use should be stipulated and additional Board approval required if the proposed use varies from that approved. We recommend that the site plan be revised to identify all setback lines and required buffer areas. The site plan includes a grading, drainage and utility plan, soil erosion and sediment control plan, and a landscape and lighting plan. Shade tree/utility easements or proposed sidewalks are not shown on the revised plans. The landscaping plan proposes virtually no landscaping. Landscaping along the highway would improve the visual appearance and streetscape. Landscaping within the parking area would provide some visual relief to the parking area. The recycling and trash enclosure area should be screened with landscaping, as well as the enclosure. The dumpster enclosure is not indicated on the Landscape plan. Applicant should clarify this omission and amend the plans as required. An Environmental Impact Statement (EIS) has been submitted for the Planning Board's review. We note that Page 1 of the EIS indicates that field studies were conducted in April & May 2005. The applicant's professional should note if an update is appropriate. The architectural plans submitted for Planning Board review was issued on April 6, 2005 (revised through September 20, 2005). The applicant's professional should note if an update is appropriate. Delivery/loading area should be delineated on the plans, as appropriate. The required outside agency approvals may include, but are not limited to: Ocean County Planning Board; New Jersey Department of Transportation (NJDOT); Soil Conservation District; Sewer and water utilities; and, All other required Outside Agency approvals.

Mr. Penzer, Esq. appeared on behalf of the applicant. He said he was in front of the board with this application about 2 years ago, and it was much larger. The Township Committee has decided they do not know the nature and extent of the Hagerman toxic problem and have received a grant from the government to start work on the brownfields. Therefore, they do not want to cut off any piece of land because they hope to make it more attractive to a development as a whole. This property will not have medical offices, so it does not need additional parking and the use is a grocery store and if they change it they will have to come back to the board. They have revised the plans to make it one story instead of 2 stories. They have worked with the inspection department to find out where the toxic land is located in the back and have achieved a balance approximately where it is safe and now they say come in front of the board and get approval. Mr. Banas said following the application in 2005, did the applicant seek and get approval from the Zoning Board for this? Mr. Penzer said no. Mr. Banas said it was the old Cleveland Electric building and asked where they got approval for the grocery store that is there presently and Mr. Penzer stated the inspection department worked with them and said as long as they see them working until they get to the Planning Board and they saw we filed the plans, they worked with them but they did not get approval from anybody except the inspection department. Mr. Banas asked if it fit the program that is on our ordinance at this point and Mr. Penzer said that is correct. Mr. Banas said he had difficulty with the parking in the front lot and the kind of plants in terms of the items that Mr. Truscott has pointed out he would like. On another application at another area, the board insisted on having 150 ft. from Route 9 to be pretty clear and this one is parking within 100 ft of Route 9. Mr. Penzer said it is an existing building, they did not put it up. Mr. Flannery is the application for the engineer. Commenting on the planners report, Mr. Flannery stated they were filling in the "L" shape

on the northwesterly side of the building. The variances are all existing and they have been unsuccessful in purchasing additional land from the Township. The front yard setback 75.6 ft is existing for 150 ft. required and that is about 50% of what is required. This lot is only 200 ft deep with a paper street behind it and a 150 ft. setback is an unusual burden for this property along with the fact that this is an existing building. He pointed out other applications that the board approved (Minnisohn's, Uman Holdings and the old paint store) with less front yard setbacks and what was used was the NJDOT desired typical setback. If they use that in this application, they lose one parking space in the future when they come through and they have more parking than what is required. He does not believe the paper street will ever be used and feels the setback variance requested there is not substantial in nature. The variance for the accessory structures, front yard setback is for the paper street is and their rationale is the same. They will be providing an enhanced storm drainage system and landscaping that will comply with the comments in the reports. He feels there is virtually no negative criteria because it is an existing building that is going to look much nicer when it is done and will be a viable business. The positive criteria is it will be an asset to the community. The bulk of the variances listed and requested are already there and if the board votes no it will just stay there and will be a sight that is in disrepair rather than a site that they can improve. The waiver requested for the landscape buffer is because they are a commercial use on Route 9 and it is an existing use that has no buffer and they have no availability to provide a buffer without knocking the building down. The adjoining properties are owned by the Township. They are 5 parking spaces over what the ordinance requires so if the widening of Route 9 is done they will only lose 1 space. The freezers that are on site now and were not on the plans in the 2005 application were created with the permission of the inspection department and all that will be cleaned up and when the building is squared off. They agree to the Township Engineer's approval on the drainage as a condition of approval. They do not know who owns the metal box, and it is not on the applicant's site and is in the Township's right of way. Mr. Flannery stated the identification sign cannot be moved because there is no room on the property. It is in the right of way now and is an existing condition and they request that it remain as such. They are 5 over on the parking spaces, one which would be eliminated and one in the way of the dumpster, so they still have 3 over if the professionals think it would make sense to eliminate them and put landscaping where those are. His opinion is they are better served with the parking. They will comply with the dumpster enclosure. Nothing environmentally has changed since the EIS was submitted so an update would not yield any other information and also the architectural plans have not changed. They agree to the remainder of the comments on the planners report. With regards to Mr. Peter's letter, Mr. Flannery said they will add the note that there will be no medical or dental offices. Mr. Penzer said they would even make a notation that should it change, they would come back to the board. They understand they need a NJDOT permit. They defer to the board's decision on if the 2 trees are appropriate. The gate that would make the parking space inaccessible was explained that the dumpster would be picked up when that space wouldn't be needed, but they do have extra spaces if the board would rather them put landscaping there. They agree to the remainder of the comments and would provide all the information requested.

Mr. Banas said they are providing for various trailers and asked what the regulation was in regards to trailers. Mr. Flannery said the old ordinance was clear that you could not have trailers, but the new ordinance for educational facilities is okay. What they are asking for

here, if the site plan for the building gets approved, the storage trailer would not be needed. That could be used as a loading area. Mr. Flannery said the trailer would be eliminated and the freezers will be inside the building. Mr. Banas questioned the cargo storage area (3D) on the rendered site plan that was marked A-1 it is the brown structure to the rear of the site will be removed. Mr. Banas said the plans should indicate that should this be approved, which will be removed, etc. Mr. Flannery agreed. Mr. Banas stated as it related to the Route 9, the width varied the length of Lakewood from 52 to 57 ft. and he was under the impression that the county determined that the ½ of the width throughout all of Lakewood was going to be 57 ft. from center line rather than the 54 that Mr. Flannery mentioned. Mr. Flannery stated they would be happy to indicate the desired typical setback at 57 ft. 5 extra feet would mean 1 additional parking space gets impacted. Mr. Truscott said Mr. Banas was correct and pointed out to Mr. Flannery that his plans do show 57 ft.

Mr. Franklin said that on the side of the building where there is all the curb (wheel stops), he feels that should be an 8 ft. sidewalk and do away with the wheel stops because the grade would work out because the finished floors are 1532 and the grade outside is 14. Mr. Flannery agreed. Mr. Franklin said it should continue down to that left side (by the handicap space and swing around). Mr. Truscott had a question about the sign and said isn't there an island in the middle in the center of the site that would be not pavement that would be within the property line. Mr. Flannery said it would be in the view but deferred to the planner who said it would be more appropriate to be off the right of way and the applicant agreed. Mr. Banas asked about the 2 trees and Mr. Truscott stated the applicant did agree to additional landscaping and said additional shrubbery would be more appropriate for screening as opposed to trees. Mr. Flannery said he would be in whatever shrubberies Mr. Truscott recommends.

Mr. Banas opened the microphone to the public

Seeing no one, this portion was closed to the public

Motion was made by Mr. Herzl, seconded by Mr. Franklin, to approve this application based on all the professional's reports

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mr. Banas; yes, Mr. Akerman; yes, Mr. Fink; yes

2. SD # 1542 (VARIANCE REQUESTED)

APPLICANT: RYE OAKS LLC

Location: Ocean Avenue (Route 88) east of railroad
Block 536 Lots 1, 2 & 4

Preliminary & Final Major Subdivision for 40 townhouses and 1 retail center

Carried to July 31, 2007

Mr. Liston, the attorney for item #7 – Yosef and Esther Tesler asked to be heard before the remainder of the agenda, and Mr. Penzer, who is the attorney for the remaining applications agreed to let him be heard.

3. SD # 1581 (VARIANCE REQUESTED)

APPLICANT: MEIR KOHEN

Location: Albert Avenue, between Oak Street and South Street
Block 855.06 Lot 15

Minor Subdivision to create two lots

Mr. Moore stated the applicant is seeking a minor subdivision of Block 855.06 Lots 15. Two single family lots are proposed. A dwelling building is proposed on each of the new Lots. The existing lot is currently used for single family dwelling that will be removed. The site is located along Albert Avenue and between South Street and Oak Street in the R-20 Zoning District. A variance is requested for lot area. Each of the proposed lots has an area of 19,270 S.F, where 20,000 S.F are required. The applicant has provided three (3) off street parking spaces for each of the proposed dwellings. The Planning Board will determine if three (3) parking spaces are adequate for the site. Outside agency approvals will be required from the Ocean County Planning Board and the Ocean County Soil Conservation District. Evidence of both approvals should be made a condition of final subdivision approval. The applicant proposes to dedicate a 6 ft wide shade tree easement to the Township of Lakewood along the property frontages on South Street, Albert Avenue, and Oak Street. Curb and sidewalk are either existing or proposed along the property frontages. The applicant proposes that the future dwellings will be served by individual septic and well. The applicant shall provide testimony on the nearest location of public water and sewer. The applicant should revise the zoning schedule to show “front yard setback (oak st./south st.)” for the front yard setbacks of Oak and South Street. The existing dwelling shall be removed prior to signature of the final plat or a bond posted to ensure its prompt removal after the subdivision is completed. The applicant should show on the plan detail of truncated domes. The applicant shall revise the P.L.S certification to replace “and with the outbound corners marked.” with “and that the outbound corner markers as shown have been found, or set.”

Mr. Truscott read from a letter dated June 6, 2007. The applicant seeks minor subdivision approval to subdivide existing Lot 15 into two (2) new corner lots, located within Block 855.06. Lot 15 currently contains an existing bi-level frame dwelling which will be removed as part of this project. The existing lot is 38,540 square feet in area. The tract is located in the southern part of the Township. The tract and contiguous properties are located in the R-20 (Residential) zone. The surrounding land uses are residential in nature. Revised plans have been submitted by the applicant subsequent to a Plan Review meeting held on March 27, 2007. Single-family detached housing is a permitted uses in the R-20 Zone. The applicant has requested the following variances: Minimum Lot Area: 20,000 square feet required, 19,270 square feet proposed for both lots. The positive and negative criteria for the requested bulk variances should be addressed. During the Plan Review meeting, the applicant indicated that the dimensions of the proposed lots and the contemplated land use(s) in comparison with current lot sizes and uses in the surrounding area will be

addressed. The Zoning Table and subdivision plat reflect the fact that the proposed subdivision is creating two (2) corner lots; one (1) rear yard, one (1) side yard and two (2) front yard setbacks are indicated on the plans, and should remain unchanged, and the proposed lot numbers are duly noted on the subdivision plans. Parking for all proposed lots must comply with NJ RSIS standards. Confirm that sufficient area is provided for three (3) vehicles for all proposed lots. Proposed and existing septic tanks, disposal fields and wells are indicated on the subdivision plan. The plans indicate that the existing septic system shall be abandoned in accordance with applicable statutes. The plat indicates an existing dwelling on Lot 15. The dwelling and existing improvements (including the existing septic system, if applicable) must be removed or a bond posted for such removal prior to the signature of the plat by the Planning Board. The remaining comments are technical in nature.

Mr. Penzer, Esq. appeared on behalf of the applicant with Mr. Carpenter as the engineer. Mr. Penzer mark exhibit A-1 which is a list of all the lots in the area that are in color. It showed which lots that are less in size and said immediately across the street Block 798 Lots 1-4 each one is about 18,000 sf. To the right lot 18.01 and 18.02 are also undersized. There are also lots on South Street undersized with width. There are approximately 11 lots that are all undersized. In regard to the engineer's report, and asked if they would like 3 parking spaces and Mr. Banas asked how many bedrooms the home would have. Mr. Penzer stated 5 and Mr. Banas said they would be more comfortable with 4 parking spaces and Mr. Penzer agreed. Mr. Carpenter stated the nearest public water and sewer was located on New Hampshire Avenue, about 1200 ft away from this site. The only other water and sewer is on Pine Street and that is even further away. They agree with the remainder of the comments in Max's report.

In regard to the planners' report Mr. Penzer stated an objector was at the technical meeting and told the Mr. Penzer that the well was at the rear of his property and the applicant's septic field would be too close, so Mr. Carpenter re drew the plans to move the septic farther away. Mr. Banas said the Board of Health would be approving that. Mr. Penzer asked that instead of posting a bond before the signature, to post one prior to the demolition or a building permit. They agreed with the remainder of the planners comments. Mr. Banas thought this was the last piece of roadway to complete Oak Street from Route 9 but Mr. Carpenter said this part of Oak Street already exists so this application would not make it through to Route 9. Mr. Franklin stated the driveway to this new lot opens out to Oak Street and it will be too difficult to back out onto that street, and suggested they change the driveway around to have head in parking so you can back out and drive out head first. The applicant agreed.

Mr. Banas opened the microphone to the public

Seeing no one, this portion was closed to the public

Motion was made by Mr. Akerman, seconded by Mr. Fink, to approve the application with the recommendations from the professionals

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mr. Banas; yes, Mr. Akerman; yes, Mr. Fink; yes

4. SD # 1582 (VARIANCE REQUESTED)

APPLICANT: YAAKOV SINGER

Location: White Road, east of Cross Street
Block 251 Lot 9.02

Minor Subdivision to create 2 lots

Mr. Moore stated the applicant is seeking a minor subdivision of Block 251 Lot 9.02. Two new lots are proposed. A new dwelling will be constructed on each of the proposed Lots 9.04 and 9.05. The site is located on White Street in the R-40 Zoning District. The applicant is requesting a variance for lot width for both of the proposed lots. Proposed Lots 9.04 and 9.05 have widths of 125 ft, where a lot width of 150 ft is required. Outside agency approvals will be required from the Ocean County Planning Board and Ocean County Soil Conservation. Evidence of both approvals should be made a condition of final subdivision approval. The applicant proposes to dedicate a 6 ft wide shade tree & utility easement to the Township of Lakewood along the White Street frontage of the property. The applicant proposes that the future dwellings will be served by individual septic and wells. The applicant shall provide testimony on the nearest location of public water and sewer. Curb and sidewalk are proposed along the property frontage. The applicant shall revise the zoning table to show the required and proposed number of parking spaces. Each driveway can accommodate more than four parked cars. The two corner markers for the western property line of proposed lot 9.04 shall be set prior to signature of the final map in accordance with the surveyor's certification.

Mr. Truscott read from a letter dated June 6, 2007. The applicants seek minor subdivision and variance approvals to subdivide existing Lot 9.02 into two (2) new lots, located within Block 251. Lot 9.02 is a wooded, unimproved lot. The tract is located in the southwestern part of the Township, near the border with Jackson Township. The tract and surrounding properties are located in the R-40 (Residential) Zone. In general, the surrounding land uses are low in density, with individual lots either residentially developed or wooded and unimproved. Lots 9.03 and 9.01, which adjoin the property to the east and west, respectively, contain residences.

Applicant has submitted plans which have been revised subsequent to a March 27, 2007 Plan Review meeting. Single-family detached housing is a permitted use in the R-40 Zone. The applicant has requested the following variances for both of the proposed lots:
Minimum Lot width: 150 feet required, 125 feet proposed. The positive and negative criteria for the requested bulk variances should be addressed. Applicant should discuss the dimensions of the proposed lots and the contemplated land use(s) in comparison with current lot sizes and uses in the surrounding area. Any attempts to purchase additional property to mitigate the variances should be noted. Parking for all proposed lots must comply with NJ RSIS standards. Confirm that sufficient area is provided for three (3) vehicles for all proposed lots, and indicate as such on the subdivision plans, preferably under the zoning bulk table. A shade tree and utility easement indicating three (3) trees to be planted for each proposed lot is shown on the subdivision plan. The revised plans indicate that sidewalks are proposed along White Street. Proposed septic tanks, disposal fields (partially in the front yard setbacks) and wells are indicated on the subdivision plan. Lots requiring septic systems shall be of sufficient size to achieve required separation

distances in accordance with New Jersey Department of Environmental Protection septic design regulations, and shall be designed in accordance with the requirements of the State enforced by the County Board of Health. The remainder of the items are technical in nature.

Mr. Penzer Esq. appeared on behalf of the applicant with Mr. Flannery testifying and Mr. Surmonte as the engineer. Mr. Flannery said the master plan recently approved that in the R40 zone, the minimum lot width be 100 ft. so they would be 25 ft above what the master plan recommended. Additionally, this piece of property could be a conforming application with a flag lot subdivision and Mr. Flannery feels this application is inherently better than a flag lot. There are several lots in the area on Drake Road that have smaller widths and many lots on Maplehurst Avenue in the same zone. There are no adverse impacts and this application could be conforming if done in a flag lot fashion. Mr. Penzer marked A1 as an exhibit of a flag lot that could be done without any variances. A2 is the subdivision that was submitted. Mr. Banas said the planning board does not like flag lots. Mr. Flannery said they agree to the comments in the professionals report. The positive criteria is that they are developing the property in accordance with the master plan and feels there are not negative impacts. They did not attempt to purchase additional property to mitigate the variances because they could make a conforming flag lot subdivision. They will comply with RSIS and Mr. Banas asked how many bedrooms there would be and Mr. Flannery said this is a minor subdivision that they are just creating a lot line and there are no houses proposed but felt there would probably be 5 or 6 bedroom houses and he agreed there would be 4 parking spaces per lot. Mr. Surmonte has indicated where the septic are on the plans. The nearest water is on Drake Road, over 600 ft. away and the applicant will investigate if bringing the water in is feasible, but the sewer is thousands of feet away, the closest would be the new cul de sac on Whitesville Road that Martin Lewin just built but it would be too low and they would need a pump to bring it there.

Mr. Jackson asked if they tried any buy/sell method for the adjoining property owners and Mr. Flannery said yes. Mr. Jackson asked if their basis for that was because they would be entitled to a flag lot configuration that would not require them to buy anything. Mr. Flannery said they were not undersized, they conform to the area, it is the lot width, but the lot width proposed exceed what the master plan suggests and a 2 lot subdivision can be accomplished with a flag lot with no variances. There are homes on the lots on each side. Mr. Penzer said he did send out a buy/sell letter and the woman next door said she wanted to sell the entire piece but the price she offered was much more than they paid for all the properties together. Mr. Flannery said the benefits of this configuration outweigh any detriments and the alternatives being a two lot flag lot subdivision, and this application is far superior. Mr. Jackson was trying to figure this one out because case law requires that an undersized isolated lot case, for the board to make a finding whether the applicant can purchase adjoining property at fair market value, if there is a dispute regarding that the board actually has a hearing to determine what the fair market value is. That is what Judge Serpentelli ruled in the Dalmeir case. That talks about undersized lots and he does not believe that undersized refers to lack of width, depth, or shapes of property but area, and these lots have sufficient area. Mr. Flannery said this is not an isolated lot but a subdivision and the board needs to look at certain aspects for a C1. The interesting thing about this is that they can do a flag lot and the board has a preference for non flag lots.

Mr. Banas opened the microphone to the public

Janet Scher, 1050 Cross Street, was sworn in. She said while this is in a R40 zone, it is only an R40 zone because of an error that is on the map that no one has been able to distinguish the source of. The area was A1 and suddenly appeared R40 on a map and the predilection of the master plan committee was not to address the error. Having been in an A1 zone that has miraculously turned into an R40 zone and now faced with a situation where there is downsizing even further, the negative impacts that they see as neighbors with regard to the diminution of trees, the fact that this is the southwest corner of town which is the only remaining recharge area for the water that we drink, adjacent to the Crystal Lake Preserve and as neighbors they are very concerned. Barred owl, pine snake and cooper's hawk has been sighted adjacent to this area at the Crystal Lake Preserve and 12 acres have been placed in farmland preservation. The neighbors don't feel that the Planning Board in its' wisdom should yield to concerns about flag lots, this is an area that should not be further downsized and the owner should remain with the existing acreage and the house and the width requested should not be approved.

Carol Murray, 51 Drake Road, was sworn in. She said she is in full agreement with what Janet said and thinks the applicant is operating from an incorrect premise. This is a zoning error, it was A1 and should still be A1 by rights and to further downgrade just does nobody any good. There is nothing here but a profit motive and greed and asked to board to please deny it.

Tony DeStefano, 71 White Road, was sworn in. He said he moved to White Road 7 years ago, it was a 2 acres lot and went to an R40 without his knowledge and never notified. This is not a hardship whatsoever and all the homes on White Road are between 5 to 6,000 dollar homes and why should they have to put up with and argue for a different zone. There is a gray area that can not be built on and there is a stream that goes through there that goes to the Crystal Lake, so it goes across Drake Road. He feels this should not be approved, there is not a hardship whatsoever.

Seeing no one else, this portion was closed to the public.

Mr. Banas asked the question of if there were wetlands and Mr. Surmonte said absolutely not based on his observations. They have not obtained an LOI but he never saw a reason based on his sight visit. Mr. Flannery also testified on that because he is familiar with the application, and as far as there being a stream it is an area that flows to a stream (defined by the Dept. of Environmental Protection as 50 acres or more draining to that point) and this area drains across White Road, then across Drake Road and into the Katz property pond. That is not wetlands. He also said the zoning was not done by mistake. In 1999 the master plan was done which clearly showed that the area was proposed to be rezoned to R40 and the ordinance and the zoning map was changed properly in the summer of 2005 and has been in place since. He also found the section in the MLUL Section 40:55D-70 and they are not saying they have a hardship and then he quoted the section. The test is do the benefits outweigh the detriments and the benefits are you don't have flag lots and the detriments are the association of flag lots. They are not saying they have a hardship and they are not downgrading the area they are doing what is purported in the master plan and the ordinance. Mr. Penzer agreed.

Mrs. Scher wanted to comment and Mr. Banas said the portion was closed but asked Mr. Jackson for his opinion and he said because they took additional testimony from the applicant that this person does want to comment, also a gentleman missed his opportunity to comment so Mr. Banas opened it up to the public again.

Mario Pascarello, 68 Drake Road, was sworn in. He said he would like to remark about what Mr. Flannery said about the stream. It is a gray area, it comes down White Street, underneath, through his property and there is a little pond and it has frogs in it. It empties out under Drake Road and goes on to the Katz property. He had gotten in touch with the county to check that water and they come every 2 weeks and he hopes they don't do anything to disturb this water because we all need to have a drink.

Janet Scher approached the microphone again and said she wanted to clarify the argument that in fact they have all been noticed and this is part of the master plan does not hold water for the simple reason that the map that is relied upon to follow that to its' logical conclusion only proposes the possibility of R40 in a certain zone. When the error occurred not only did R40 appear in the A1 zone, but just adjacent to Mr. Flannery's home, the area miraculously changed from A1 to R12, so the map that is used to rely on the argument simply does not substantiate the final conclusion. Mr. Jackson said there has been some talk about the zoning map being in error and said you have to give a presumption of validity to the ordinances as they appear on the books and the determination of the zoning officer. While the objectors may be right or may not be right, he doesn't think it is the planning boards' role and it would be inappropriate to do an examination of whether the governing body adopted this in the appropriate form. They have to presume they are correct. Mr. Penzer said they should not lose sight of the fact that they can't look at something and say there is an error. The time for appeal on that issue is 140 days and that is done. This board has said time and time again, they do not like flag lots. Here they had a choice and they chose not to do a flag lot.

Mr. Akerman commented that they came with a wide lot and if they came in with a flag lot, he would have recommended they do a conventional subdivision as they have done in the past.

Motion was made by Mr. Herzl, seconded by Mr. Fink, to approve this application

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mr. Banas; yes, Mr. Akerman; yes, Mr. Fink; yes

- 5. SD # 1585 (VARIANCE REQUESTED)**
APPLICANT: ARBORETUM PROPERTIES LLC
Location: Arboretum Parkway and County Line Road West
Block 25.07 Lots 54 & 60
Minor Subdivision for 3 lots

Carried to a future meeting.

6. SD # 1587 (NO VARIANCE REQUESTED)
APPLICANT: ELANA SHAIN
Location: Gudz Road, north of Central Avenue
Block 11.10 Lots 72.01 & 72.02
Minor Subdivision from 2 lots to 3 lots

Mr. Moore stated the applicant is seeking Minor Subdivision Approval to subdivide two residential lots into three residential lots; one will be a flag lot. The property contains two existing dwelling, the existing dwelling on the proposed lot 72.05 will be removed; the existing dwelling on the proposed lot 72.3 will remain. One new single family home is proposed, on the flag lot. No new construction is proposed on lot 72.05 at this time. The property is located along Gudz Road within the R-12 zone. The applicant has requested the following variances for Lot 72.01: Lot area: 11,620 sf are proposed where 12,000 sf are required. Lot width: 70 ft lot width are proposed for Lot 72.01 where 90 ft are required. One side yard setback: 2.4 ft are proposed where 10 ft are required. Combine side yard setback: 19.5 ft are proposed where 25 ft are required. The applicant has also requested a variance for the minimum lot width for Lot 72.04. As per the U.D.O. definition of lot width, the width shall be measured at the front yard setback line. Lot 72.04 has a lot width of 90 ft at the front yard setback so no variance will be required. The applicant should revise the zoning table to show 90 ft as provided lot width for Lot 72.04. In the zoning table, the applicant states the Lot 72.04 has an area of 15,380 sf. The 20 ft wide access area shouldn't be counted in the lot area calculation. The Lot 72.04 without the access area has an area of 12,150 sf, which still satisfy the 12,000 sf minimum lot area requirement. The applicant shall revise the zoning table to the show the correct lot area. The applicant has provided four (4) parking spaces for Lots 72.03 and 72.04. The zoning table states a minimum of three parking spaces will be provided when a dwelling is built on Lot 72.05. The Board should note that the applicant shows a separate entrance for the proposed unfinished basement on the architectural plans. The board should determine if this will affect the parking requirements. Applicant will be required to obtain outside agency approvals from the Ocean County Planning Board, and Ocean County Soil Conservation District. Both approvals should be made a condition of final subdivision approval. Applicant has proposed a 6 ft wide shade tree and utility easement to the Township of Lakewood along the property frontage. The development will be serviced by public water and sewer. Concrete curb exists along the property frontage. The applicant has provided sidewalk along the property frontage. The existing dwelling on proposed lot 72.05 is noted as to be removed. The dwelling shall be removed prior to completion of the subdivision or a bond posted to ensure its removal after completion of the subdivision. The plan has been prepared in accordance with the New Jersey Map Filing Law.

Mr. Truscott read from a letter dated June 7, 2007. The applicant seeks minor subdivision approval to create three (3) tax lots from Block 11.10, Lots 72.01 and 72.02, located on the north side of Gudz Road. The majority of proposed Lot 72.03 and proposed flag Lot 72.04 will be comprised of land from existing Lot 72.02. The majority of existing Lot 72.01 comprises proposed Lot 72.05. The stem of the flag lot is located between proposed Lots 72.03 and 72.05. Two (2) dwellings are on the respective existing lots; the one (1) story frame dwelling on Lot 72.01 is to be removed. A portion of a concrete walk is to be removed from proposed Lot 72.02. The tract is located in an R-12 Zoning District in the

northwestern part of Lakewood Township near the border with Jackson Township. Contiguous zoning is R-15 to the northwest; all other areas are R-12. The surrounding land uses are residential in nature. The size of the tract is 1.37 acres (60,000 square feet). Current Lot 72.01 is 0.841 acres, and Lot 72.02 is 0.53 acres. Tract frontage is 200 feet along Gudz Road; Lot 72.02 is currently 75 feet wide, and Lot 72.05 is 125 feet wide. Required lot width in the R-12 zone is 90 feet. The applicant has revised its application subsequent to a March 27, 2007 Plan Review meeting. The amended plans provide for fee-simple access to the flag lot, instead of the original proposal to provide an access easement. Single-family detached housing is a permitted use in the R-12 Zone. The amended application requires the following variances for proposed Lot 72.03: Lot area: 12,000 square feet required; 11,620 square feet proposed. Lot width: 90 feet required; 70 feet proposed. Side Yard (one): 10 feet required; 2.4 feet proposed. Side Yard (combined): 25 feet required; 19.5 feet proposed. The positive and negative criteria for the requested bulk variances should be addressed. We note that proposed Lot 72.05, the adjoining lot to the east, is 110 feet wide and 33,000 square feet in size, exceeding the minimum lot width and lot area for the R-12 Zone (90 feet and 12,000 square feet, respectively). The amended application allows for fee-simple access to the flag lot via a twenty foot wide access strip with land formerly allocated to proposed Lot 72.03; the variances currently required of this application results from this removal. The applicant should provide detail of any and all limitations to allocate more land from Lot 72.05 so as to avoid the requested variances. Section 18-805.G.5 provides the following criteria for creating flag lots: "Flag lots shall be created only in conjunction with an overall development plan of the entire tract of which the flag lot is a part and the applicant shall demonstrate a need, consistent with good planning principles, for the creation of the flag lot and shall further demonstrate that normal subdivision techniques are not practical because of topography, lot or land configurations or other physical characteristics or constraints of the land related to the proposed development concept." The applicant should be prepared to discuss with the Board how this application complies with the above requirements. The applicant should discuss the dimensions of the proposed lots and the contemplated land use(s) in comparison with current lot sizes and uses in the surrounding area. We note that many of the lots on this segment of Gudz Road are also deep lots, and the applicant should distinguish the need for a flag lot configuration for this parcel. The applicant should revise the Schedule of Bulk Requirements table for flag Lot 72.04 to include total lot area, as well as lot area exclusive to the access strip ("flag staff"), change the lot width to 90 feet, and remove the notation that a variance is required for lot width (20 feet-access strip). The plat and subdivision plans indicate existing structures of various types to be removed from the tract. The improvements must be removed or a bond posted for such removal prior to the signature of the plat by the Planning Board. Parking for all proposed lots must comply with NJ RSIS standards. Confirm that sufficient area is provided for four (4) vehicles for Lot 72.04 (flag lot.), as indicated on the revised plans, and verify the existing and required parking for the existing dwelling on proposed Lot 72.03. The applicant has indicated that a minimum three (3) off-street parking spaces will be provided for proposed Lot 72.05, and that the number of bedrooms is unknown. The balance of the comments are technical in nature.

Mr. Penzer, Esq. appeared on behalf of the applicant with Mr. Flannery as the engineer. Mr. Flannery said this application was submitted with no variances but an easement for the flag lot. Based on the boards recommendations they have revised the plans with no

easements but now need variances. The professionals' reports recommend taking property from the adjoining lot to make it with no variances. He entered exhibit A1 which is a rendered version of the proposed improvement plan. He said the applicant does not want to take the property from the adjoining lot. He gave the history of the property and the wishes of the past owner who subdivided and built his dream house on what will now be lot 11.03. Then he sold the lots and the new owner owns both properties, but their idea of a dream house is different and that is why they want this large lot. The Shains are going to build their estate there and they want plenty of room for all of their amenities. That is why they are doing the flag lots and instead of an easement, they are requesting a variance for the fee simple flag lot, which is a better zoning alternative. The benefits are that the flag lot is done with fee simple and the detriments are avoided by having a fee simple rather than an easement. The professional report go on to say there is a lot of lots with this depth would be open to the same type of application and Mr. Flannery said the way to avoid that is what the board did, to put in the master plan that there should not be flag lots and the Township Committee adopts an ordinance saying no flag lots. They will change the schedule of bulk requirements as requested and will post a bond. As far as parking, they will provide 4 parking spaces and agree to it and made it a condition of approval. They agree to the remainder of the planners report. The applicant also agrees to the comments on Mr. Peters report.

Mr. Banas asked which one of the 3 homes does the architectural plans represent and Mr. Flannery said the flag lot. Mr. Banas asked how many bedrooms are in that structure and Mr. Flannery said 5 bedrooms, and Mr. Banas said there is a nursery making that 6. Mr. Banas asked how many bedrooms in the basement and Mr. Flannery said it say it is an unfinished basement and Mr. Banas said no way. There is an entrance from the outside and the inspection department needs to know what is going to be in the basement. Mr. Banas asked if anyone was going to be living in the basement and Mr. Flannery said no. Mr. Banas asked the height of the ceiling and Mr. Flannery said 8 ft 8 inches and Mr. Banas said that would accommodate living quarters and it was not enough. Mr. Franklin commented the plans shows 14 courses which would make it higher (9ft. 4in.) Mr. Banas said that sounds like living quarters to him and said the last time they did something like this they came up with 13 bedrooms. Mr. Flannery said they look at the neighborhood and this neighborhood would not rent the basement, and went on to say they would eliminate the entrance to the outside. Mr. Banas said not 14 courses and Mr. Flannery said they would make it 13 courses. Mr. Banas said they made other applications 7ft and Mr. Flannery said that was done on a commercial building. Mr. Flannery said if you put a restriction on there that states no kitchen facilities and no full baths allowed in the basement, no one will rent a basement without those. Mr. Jackson asked how many square feet this house was and Mr. Flannery said 3200 with the 1st and 2nd floor. Mr. Flannery said this is the type of neighborhood what would not rent basements. Mr. Jackson continued to ask Mr. Flannery about the basement use he stated and it would be more recreational, ping pong tables, etc. Mr. Banas said he thought they needed more than 4 parking spaces. Mr. Truscott wanted to remind the board about the variances and said those variances could be mitigated by shifting that lot line and making the other lot smaller. Mr. Flannery acknowledged that but said the applicant is looking at what their rights are they do not wish to do that. Mr. Jackson asked if there was going to be another application for 2 more flag lots on that property and Mr. Flannery said no, the applicant plans on building their estate on that lot with a large backyard, circular driveway and big home. Mr. Banas stated he could not vote for this.

Mr. Banas opened the microphone to the public

Seeing no one, this portion was closed to the public

Motion was made by Mr. Herzl, seconded by Mr. Akerman , to approve this subdivision

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mr. Banas; no, Mr. Akerman; yes, Mr. Fink; no

7. SD # 1577 (NO VARIANCE REQUESTED)
APPLICANT: YOSEF & ESTHER TESLER
Location: Lakeview Drive, west of Myrtle Place
Block 12.06 Lots 5.01, 44
Minor Subdivision for 2 lots

Mr. Ed Liston Esq. appeared as attorney for the applicant.

Mr. Moore read the report from Mr. Peters, then Mr. Jackson stated there was conversation with Mr. Fink who has done some business with the applicant. He did not know he was coming before the planning board and they have not discussed it, and even though he would vote with his heart he wanted to bring it to the boards' attention. Mr. Jackson said they have done business so Mr. Fink apologized.

Since there was a conflict with Mr. Fink and he wished to recluse himself there was not a quorum, so the application could not be heard. Mr. Liston said he did not know if there was a conflict and would waive it but it was the boards' decision.

Mr. Liston could not attend the next public hearing of July 31, 2007 because he would be away.

Motion was made by Mr. Herzl, seconded by Mr. Franklin, to table until August 21, 2007

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mr. Banas; yes, Mr. Akerman; yes, Mr. Fink; abstain

5. MEMORIALIZATION OF RESOLUTIONS

None at this time

6. CORRESPONDENCE

None at this time

7. PUBLIC PORTION

Mr. Penzer appeared to state that Pearl Cook called him about the Batim Management application last week and she advised him that the fire commission never signs the letter. The Fire Commission said there are sprinklers and they reviewed those plans. She said she also called Mr. Banas and Mr. Banas said she did. They confirmed what Mr. Franklin said about them not fighting fires in the back.

8. APPROVAL OF BILLS

Motion was made by Mr. Franklin, seconded by Mr. Akerman, to approve

ROLL CALL: Mr. Herzl; yes, Mr. Franklin; yes, Mr. Banas; yes, Mr. Akerman; yes, Mr. Fink; yes

9. APPROVAL OF MINUTES

None at this time.

10. ADJOURNMENT

The meeting was hereby adjourned. All were in favor.

Respectfully submitted
Chris Johnson
Planning Board Recording Secretary