

I. CERTIFICATION OF COMPLIANCE

Chairman Banas called the meeting to order at 6:00 p.m. with the Pledge of Allegiance and Mr. Kielt 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 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*, and *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. Franklin, Mr. Banas, Mrs. Koutsouris, Mr. Fink, Mr. Schmuckler, Mr. Percal

3. SWEARING IN OF PROFESSIONALS

Mr. Peters and Mr. Truscott were sworn in.

4. NEW BUSINESS

1. SD# 1628 (Variance requested)
Applicant: Park Avenue Development LLC
Location: corner of East Harvard Street and Park Avenue
Block 232 Lot 10
Preliminary & Final Major Subdivision for six-2 family townhouses and one single family townhome

Mr. Peters read from a letter dated August 18, 2008 and stated the Applicant is seeking Preliminary and Final Major Subdivision Approval to subdivide existing Lot 10 of Block 232 into seven (7) new lots. A one (1) story masonry dwelling is presently located on the existing lot, and will be removed. Seven (7) townhouses have been proposed on the new lots. Six (6) of the seven (7) townhouses will be two family units. The townhouse that is proposed on Lot 10.07 will be one family unit. Driveways, stormwater management system, and other residential development associated construction is proposed on site. The property has frontages along Harvard Street and Park Avenue. The site is situated within the B-4 zoning district. The

applicant is requesting the following variances: Minimum distance between buildings; twenty five (25) FT is required, where 20.11 FT are provided. The applicant shall revise the zoning schedule to show new Lot 10.07 will have frontages along both Harvard Street and Park Avenue. The applicant has revised the plans to show additional parking has been provided. Four (4) parking spaces are provided per townhouse unit with five (5) bedrooms; three (3) parking spaces are provided per townhouse unit with four (4) bedrooms; and 2.3 parking spaces are provided per townhouse unit with two (2) bedrooms. As shown in the revised zoning schedule a total of thirty nine (39) parking spaces are provided. In accordance with the NJ RSIS, 2.3 parking spaces are required for a townhouse with two (2) bedrooms, and the requirement for a townhouse tops out at 2.4 parking spaces for townhouse with three (3) bedrooms, yielding a total of 4.7 parking spaces per two family unit. With the given number of bedrooms in each unit, a total of thirty one (31) parking spaces are required. The Board should determine if the proposed parking spaces will be adequate. The applicant shall submit architectural plans to show no outside stairway are proposed to the basement of the proposed single family townhouse unit on Lot 10.07. The site will be served by public water and sewer. The applicant has proposed a 6 FT wide shade tree and utility easement along Harvard Street and Park Avenue at the property frontages to be dedicated to the Township. The applicant shows on the plans existing curbs and proposed sidewalks along the property frontages. The applicant shows on the plans a drainage easement is to be dedicated to a Homeowner Association (H.O.A.). Descriptions of the easement shall be submitted for review. Documents for the H.O.A. shall be provided to the Board Engineer, Solicitor, and Planner for approval. The H.O.A. documents shall include the ownership and maintenance of all common areas and the proposed stormwater recharge system. Site Plan Review The text "PRO. 6' CONC." which was pointed to an open space by the single family townhouse unit was removed from the plan. The applicant shall add the text back on to the plan, but repositioned it to the proposed sidewalk along the property frontage. The applicant shall provide additional proposed spot elevations along the proposed sidewalks where they intersect with the proposed driveways to show that the entire length of proposed sidewalks is handicap accessible. The applicant shall provide cutoffs for the lighting fixture located by neighboring Lot 1.05. The isolux diagrams shown on the plan for the fixtures indicate light will spill over to the neighboring lot. The applicant shall revise the Soil Erosion & Sediment Control Plan and Grading Plan to show the tree protection fence to ensure trees will be protected during grading and clearing. Two trees along the southern property line noted as "to remain" overlap with proposed landscaping. The applicant has revised the plans to show trash storage areas for all proposed units. A detail of typical building landscaping for the proposed townhouse units is shown on the Grading, Drainage, Utility & Landscape Plan to reflect landscaping is provided to screen the proposed trash storage areas. The applicant shall include a similar detail for the proposed single family unit as well. We recommend the applicant provide board on board fencing around the storage areas in addition to the landscaping. The Department of Public Work should determine if the proposed sizes of the storage areas will be sufficient and the Board should determine if the landscaping around the storage areas will be sufficient. The remaining comments are technical in nature.

Mr. Truscott read from a letter dated August 11, 2008. The applicant is seeking preliminary/final major subdivision and site plan approvals to construct seven (7) townhomes and the associated site improvements. The development will consist of two (2) structures. One building will contain six (6) dwelling units, and the second building will contain seven (7) units for a total of thirteen (13) dwelling units. The structures will be constructed with three levels; one residential unit in the basement level, and, above, a residential unit consisting of two floors. Off-street

parking is proposed in the front of each unit. The parcel is located on the west side of Park Avenue at the intersection with Harvard Avenue. The property currently contains a one-story dwelling and pavement area. All of the improvements will be removed for this project. The western boundary of the lots adjoins the New Jersey Southern Branch Main Line Stem. The surrounding land uses are generally residential. The site plan has been revised to increase the number of parking spaces from 32 to 39 spaces. The property is situated in the B-4 Zone District. Townhomes are a permitted conditional use in this zone. The following variances are requested: Distance between buildings – 25 feet required, and 20.11 feet proposed (Section 18-1010.B.2). Review Comments. Parking Off-street parking is proposed in a stacked arrangement in the front of the units. Grass pavers have been added to provide additional off-street spaces. 39 spaces are proposed, or an average of 3 spaces per unit. The site plan indicates that four units will have five bedrooms, three units will have four bedrooms, and six units will have two bedrooms. The layout of the townhouse development provides that thirty-six (36) spaces will need to back out onto Park Avenue for egress purposes. In addition, some spaces are in close proximity to the intersection of Park Avenue and Harvard Street. The applicant's professionals should address the appropriateness of this ingress/egress arrangement. The area for the storage of solid waste and recycling containers should be addressed. The size of the enclosure should be approved by the Lakewood Department of Public Works. Revise the Zoning Requirement Chart on Sheet 3. There is no maximum lot coverage requirement. Revise the list of "Variances Required." The property will be served by public water and sewer. A drainage easement is identified on the plans to be dedicated to a Property Owners' Association. The Property Owners' Association should be established and all deed restrictions and covenants in place prior to the issuance of any Certificates of Occupancy. A condition of any approval should be a requirement for half-width paving of Park Avenue to address the pavement repair for the utility connections. We note the location of the proposed development adjacent to the rail line and the need for buffer or screening in the rear. Additional buffer width and rear yard screening is appropriate in our opinion. Mid-height plantings should supplement the proposed buffer. A note on the plan indicates that the attic area will be a non-habitable space. The architectural plan should have a similar note. The plans must show evidence that the lot numbers have been assigned by the Tax Assessor. Performance guarantees and inspection fees should be posted in accordance with UDO requirements. The required outside agency approvals may include, but are not limited to: Ocean County Planning Board; Soil Conservation District; Sewer and water utilities; and, All other outside agency approvals.

Mr. Penzer Esq. appeared on behalf of the applicant. He said one of the issues they discussed was the habitability of the attic and he said he read the minutes and the board members were right and he was wrong and the applicant agrees to comply with the board. Mr. Penzer entered 7 photos for exhibits on a board marked A1, which is a picture of the subject property as existing on March 27, 2008, the second one, is April 1, 2008. Mr. Penzer then showed a picture that his client got from his architect (from China) which actually depicts what it will look like based on the plan blown up. Mr. Penzer passed around A1 to the board and said the board asked him to make certain recommendations which they did do. Firstly, there was discussion on making the space between the buildings wider and they had it at 14 ft. and made it 20.01 ft.; the board asked them to increase the parking and they are now 6 per 2 family unit. He introduced exhibit A4 and said they would like to do grass pavers on the other parking spaces that are going to be there, which is double the money, and he introduced a pamphlet and said it actually has the grass growing in cones and you can park on it. Mr. Banas asked if the pavers were going to remain in place and will not move and Mr. Penzer said they will not move.

Mr. Penzer stated they have increased the parking spaces to 4.7 spaces per 2 family unit: they have 4 parking spaces for every 5 bedroom townhouse, 3 parking spaces for every 4 bedroom townhouse and 2.3 spaces for every 2 bedroom and Mr. Carpenter agreed. Mr. Penzer said there is no outside stairway for the single townhouse and they will modify that. They have given the Shade Tree easement and they will provide curb and sidewalk and there will be a homeowner's association taking care of the drainage easement. They agree to comply with the remainder of the comments in Mr. Peters report.

With regard to Mr. Slachetka's report, they stated they have 39 spaces and they have a traffic expert available. Mr. Carpenter said he did not speak to Mr. Franklin about the trash enclosures but Mr. Franklin had given him sizes of the containers that the township they use and he was able to come up with the size of the trash enclosures. Mr. Franklin said they are 5 bedroom units, one on top of each other so there will be 3 possibly 4 garbage cans per unit, so there will be 8-10 garbage cans in front of the house. Mr. Carpenter said they can double the size of the enclosure that is shown. They agree to _ width of the paving of Park Avenue because of the utility work. Mr. Carpenter entered exhibit A5 which is sheet 4 of 6 of the grading, drainage and utility and landscape plan and said along the railroad they have a double row of trees; 8 ft. white pines and 10 ft. Leland cypress and he feels that will provide a dense screen. Mr. Truscott said that was the point of his comment to put more mid level plantings because the white pines do get bare at the bottom and even though there will be a fence, it will be a bare bottom and he suggested offsetting it with some mid level plantings. Mr. Penzer said they have no problem meeting with Mr. Truscott and satisfying his concerns. Mr. Carpenter said he believes they specified a board on board fence along the railroad that will be semi solid for at least 6 ft. Mr. Banas suggested sitting down with Mr. Truscott and coming up with additional plantings and Mr. Penzer agreed. Mr. Penzer read the minutes from the meeting dated July 15th where Mr. Fink asked about a note on the plans indicates the attic will be a non habitable space. The architectural plans will have a similar note. Mr. Penzer said he did not remember but he agrees that it will not be habitable, it will be a big open play area, no rooms, no bathrooms, no plumbing and they could even deed restrict it. Mr. Banas asked if they had a basement and Mr. Penzer said they had a 2 bedroom unit downstairs. Mr. Schmuckler asked what their big issue is with having a bedroom in the attic is and if it is a fire issue and Mr. Banas said in some cases fire escapes are required. Mr. Penzer said the fire commissioners saw these architectural's and approved them and before the building plan is issued they have to make sure it is safe. Mr. Penzer said his client has found there is no place for the kids to play, it is either the bedroom or another room and he feels it will be a big selling point to have an area where the children will be out the mother's hands but still safe to play. Mr. Jackson said he thought Mr. Schmuckler was referring to the safety and if there were egress windows there it would be safer in case of fire and it would be something they would have to ask Code Enforcement or an architect. Mr. Schmuckler said his concern is whatever it is going to be they want to make sure it is approved for right now so when they do build it, it should be built properly. Mr. Banas said Mr. Schmuckler has to understand they are looking at a set of plans and the department that looks at the safety is not the Planning Board but the Zoning and Building Department; however, safety is paramount in all of their thinking. They agree to the remaining comments in Mr. Slachetka's report except for one point which he will come back to.

Mr. Franklin said the little grass patch they want to put in doesn't really look that good after they put them in and park cars on them it will look like a patch of weeds and they would be better off having a sea of concrete there for the homeowner because it will be hard to maintain and would

not be worth the money and effort they would be putting into it as a builder. Mr. Penzer said his client thinks it will look nice (and they are much more expensive 275 sf vs. 575 sf). Mr. Banas agreed with Mr. Franklin and said he can't see putting in the pavers either. Mr. Penzer said they would put in concrete and Mr. Banas then asked if they would have too much impervious surface. Mr. Peters said he did not think they had any limit to the impervious surface by the zone it is just the building coverage limit; it would affect the stormwater management which is something that Mr. Carpenter would have to address. Mr. Banas said they have increased the parking area and Mr. Truscott said it would be approximately 1200 sf of additional pavement. Mr. Banas asked if they will get rid of the water and Mr. Carpenter said the system they have designed can be slightly modified to accommodate the additional impervious coverage. Mr. Banas asked him to work with Mr. Peters to include that. Mr. Truscott wanted to clarify to Mr. Penzer about the number of spaces that pull out onto Park Avenue and Mr. Penzer said he has a traffic expert to testify on that point. Mr. Schmuckler asked if they had too much parking and Mr. Banas said never too much and Mr. Truscott said there are 7 townhouses and there are 2 in each for a total of 13 units. Mr. Banas asked about the attic again and Mr. Penzer said the attic is going to be a play area and he envisions it to be a big open area, no rooms, no bathrooms, no plumbing whatsoever, just a play area and it will be in the resolution that the inspection department or zoning officer has the ability to say it is beyond the approval. Mr. Jackson said that is up to the board if that is the restriction they want in the resolution. Mr. Fink said his issue is ensuring that the attic was a true playroom and not a bedroom. Mr. Schmuckler asked again if it was considered a bedroom, what would it need and Mr. Banas told him to stop considering it a bedroom, it is not. Mr. Banas said the "ifs" he brings up are negative to the board, the applicant has not brought up the plans as bedrooms, they are stating they are playrooms, and asked him to please stay on point.

Mr. Penzer addressed the Planners comments regarding cars backing out of the parking spaces and had a traffic expert to testify. Scott Kennel from McDonough & Rea Associates stated the layout shows 36 parking spaces back out onto Park Avenue for egress purposes and some spaces are in close proximity to the intersection of Park Ave. and Harvard St. He showed them on the exhibit where the townhouses would be built and stated that Park Avenue is used as a north-south cut through and cars are traveling at speeds greater than the speed limit. There is also some issues with site distance if you are on Harvard with the yield sign looking to the north. He suggests making this an all-way, multi-way stop; have a stop sign on Harvard for the westbound approach; stop northbound Park Avenue and stop southbound Park Avenue and with that then you provide a safer condition for the driveways, the ingress and egress movements, you lower the speeds on Park Avenue and may even lower the volume and cut-throughs and you address the site distance issue for the people on Harvard Street looking to the north. That is his suggestion to address an existing situation and also the condition with the new community. Mr. Flannery asked where he would put the stop sign on Park Avenue and Mr. Kennel said somewhere in the vicinity of Harvard Street which is just for the 3 parking spaces but he suggested one on the west side of the island, replace the yield sign that is on Harvard with a stop sign and given the alignment he said a stop bar would be south of a driveway opening (he pointed to a map) and voiced his concerns over reshaping something by the 3 spaces. There were multiple discussions on the position of stop signs. Mr. Peters said the installation of stop signs must go through the Township Committee. Mr. Truscott said that should be a condition of approval and Mr. Penzer agreed.

Mr. Banas opened the microphone to the public

Seeing no one, this portion was closed to the public

Mr. Penzer said it would be a dynamite improvement to the area and it would make the traffic safer with the stop signs.

Motion was made by Mr. Herzl, seconded by Mr. Fink, to approve the application with all the recommendations in the professional's reports and the attic be used as a playroom and the applicant sit down with the police department to work out the stop signs and safe traffic. They also took out the grass pavers.

ROLL CALL: Mr. Herzel; yes, Mr. Franklin; yes, Mr. Banas; yes, Mrs. Koutsouris; yes, Mr. Akerman; yes, Mr. Fink; yes, Mr. Schmuckler; yes, Mr. Percal; yes

2. **SP# 1892** (No variance requested)
Applicant: Princeton One
Location: corner of Princeton Avenue & Fourth Street
Block 159 Lots 9 & 24
Preliminary & Final Major Site Plan for proposed 5 story office building

Mr. Peters read from a letter dated August 18, 2008 and stated the Applicant is seeking Preliminary and Final Site Plan Approval for Block 159, Lots 9 & 24. The applicant has proposed to construct a five (5) story commercial building with a basement for storage. The first and second floors will be occupied by retail stores and the rest of floors will contain professional offices. The lots are currently vacant. The property has frontages along Fourth Street and Princeton Avenue, and is located within the B-2 zoning district. No variances are requested by the applicant; however, a front yard setback should be requested. Footnote number two in the Schedule of General Zoning Regulations states " In any district where more than one residence building is situated on one side of a block, no new building shall be erected and no existing building reconstructed or altered to project beyond a setback line which will represent an average of the setback lines or distances of all residence building on said side of block." Along Princeton Avenue the front yard setback of the existing homes is in the range of 22 to 27 feet, where a front yard setback of 20.1 FT is provided. Along Fourth Street the existing setback is approximately 32 feet, where a front yard setback of 15.8 FT is provided.

Mr. Peters said he did not send a revised letter but did receive 2 extra items: one is provided by the applicant where they average out the front yard setbacks to come up with the 20.1 ft. and 15.8 ft. which they have proposed, and those setbacks are measured to the front porch of the homes. The second item he received tonight is a memorandum from Ed Mack, the Zoning Officer to Kevin, which discusses his view on how the setback lines should be measured and Mr. Mack is of the opinion that the front yard setback should be measured to the building line and not to the porch line, and that is something Mr. Peters thinks the applicant will go through in their arguments. Mr. Banas asked if he received a copy and Mr. Kielt said he just received the memo prior to the meeting so Mr. Peters read the memo into the record. The memo is dated August 19, 2008 to Kevin Kielt regarding front setback lines. It says after consulting the UDO, especially Section 18-818 and 18-200 Mr. Mack feels confident that the setback lines should be measured at the building line. The use of front steps or porch would seem to conflict with the UDO and will be inconsistent as the existing structures vary greatly as to the size of porches

and the amount of steps. Mr. Mack also pointed out that some type of limit as to porches and steps or clarification to this area should be added to the UDO to avoid future confusion.

Mr. Peters feels this is a gray area in the UDO and he believes Mr. Doyle and Mr. Gasiorowski will both have an opinion on that. Mr. Banas asked how they measured it prior to this application and Mr. Peters stated was to the building lines.

Mr. Peters continued with his review letter.

Outside agency approvals from Ocean County Planning Board and Ocean County Soil Conservation District are required. Evidence of the approvals should be made a condition of Final Planning Board approval. Although on-site parking requirements are exempted from the B-2 zoning district, the applicant shall provide testimony on the locations of any nearby parking lots which can be used for employee and customer parking. Curbs and sidewalks exist along Fourth Street and Princeton Avenue at the property frontages. The applicant has revised the plans to show existing sidewalks are to be removed and replaced. The applicant has shown on the Architectural Plans a garbage storage area and a proposed compactor on either side of the building. The applicant shall provide testimony on how waste will be emptied from the storage areas and be picked up by trash collection vehicles. Twenty five foot buffer areas are required along the western and northern property lines. The applicant has shown on the landscape plan additional landscaping since the last revision and 6 FT board on board fence along the property lines will be provided. The Board should determine if the landscaping will provide a sufficient buffer to the neighboring lots. The remaining comments are technical in nature.

Mr. Peters did have one other comment regarding the plans. On the previous plans the applicant showed a substantial area for staging which included a part of the right of way and part of a neighboring lot and that has been revised to just show the staging area within the lot itself and that is something the applicant should provide testimony on if that will be sufficient for the construction of the building. Mr. Banas said one of the requests was to submit a plan for staging area of the entire building and he hopes it is here.

Mr. Truscott read from a letter dated August 8, 2008. The applicant proposes to construct a 35,970-square foot retail and office building at the above-referenced location. The first level will be retail use and the balance of the building will contain offices. Entrances to the structure will be provided on both Princeton Avenue and Fourth Street. The project site is 15,000 square feet in area and currently vacant. The tract is located at the intersection of Fourth Street and Princeton Avenue. The revised plans indicate that the footprint and mass of the building have been substantially reduced. The building setbacks have been increased from 7 feet on the north side and 10 feet on the west side to 25 feet on the north and west sides. The front setback has been increased from zero feet to 20 feet. The added setbacks allow for additional buffer plantings. The applicant should detail the nature of the changes to the floor plan of the building for the Board. The subject parcel is located in the B-2 Central Business Zone District. Retail and office uses are permitted principal uses in this zone. No variances are requested. Review Comments The new building setbacks appear to be based on the average setbacks as surveyed by the applicant on each street frontage. A copy of the survey, prepared by Mager Associates and dated July 11, 2008, should be submitted to the Board professionals for review prior to the public hearing. The survey will be reviewed to determine compliance with the requirements of the UDO. We recommend that the lots be consolidated by deed. The architectural plans indicate that the first floor will consist of six (6) retail establishments, each one with a separate entrance on Princeton Avenue. Two (2) of the retail units will be 438 square feet in area, and four (4) retail

units will be 929 square feet in area. Entry to Floors 2 through 5 will be via side entrances. The basement level will be limited to storage. The applicant has not proposed off-street parking spaces as part of this application. Off-street parking is not required for non-residential uses in the B-2 Zone in accordance with Section 870.B9 of the Lakewood Unified Development Ordinance. However, the applicant should be prepared to discuss the parking demand for this project and specific availability of parking for the anticipated offices and businesses, on-street and off-premises. Signage for the retail and office uses shall comply with the UDO requirements. The Lakewood UDO (Section 802) provides that site plans propose screening, landscaping, and other site improvements to minimize adverse effect on surrounding property. The site plan has been revised to propose a double row of evergreens, a 6-foot high board-on-board fence, plus shade trees on the north and west property lines. The building setback is 25 feet, of which twenty feet is landscaped or open. The Planning Board should decide if the proposed buffer is sufficient. The landscape treatment of the open areas of the site should be identified. The applicant should address how solid waste will be removed from the retail stores and offices. Two small garbage compactor rooms on the first floor are shown on the architectural plan. How will containers be brought to the street? The Environmental Impact Statement (EIS) submitted for Planning Board review notes that there are no significant environmental issues addressed on the site. Additional information should be provided on the architectural plans concerning the materials proposed for the building façade and the first floor doors. Isolux levels of building-mounted lights should be provided for the sides of the building which adjoin residential uses. The balance of the comments are technical in nature.

Mr. Doyle Esq. appeared on behalf of the applicant.

Mr. Gasiorowski is representing an objector, Mr. Schwartzman. Mr. Gasiorowski said he read the letter from Mr. Mack to Mr. Kielt and said Mr. Mack is the zoning officer of Lakewood and he has opined as to what the correct setback line is in projects such as this and it is measured to the building line and not the porch. Mr. Doyle may be of a different opinion and he indicated in his notice that he has satisfied the setback lines and if a variance is necessary he is applying for same. Mr. Gasiorowski's position is that the ruling of the zoning officer as to this board is binding. This board in viewing this matter must accept the finding of the zoning officer and determine that the setback line is the building line of the building and not the front porch and the proofs which the applicant must overcome would be that setback established by the opinion of Mr. Mack. If Mr. Doyle wants to question that, it is proper to take an appeal to the Zoning Board of Adjustment pursuant to 40:70 55D-70a but it is not for this board to interpret or question the opinion of Mr. Mack

Mr. Doyle said he did not get the opportunity to see the memorandum. Mr. Gasiorowski refers to it as a Zoning Officers opinion; this is not an opinion. First of all, it is a memorandum: he is giving information, not an opinion. He has he feels confident it should be measured, not are measured and goes on to say that he acknowledges that there is confusion because he states some type of limit as to porches and steps or some type of clarification to this area should be added to the UDO to avoid any future confusion. This is not an opinion, this is merely an illumination of what he thinks might be the case if these were the facts but he is not sure and thinks the confusion should be eased. He cites 2 specific sections 18 200 which is definitions: and they are dealing with a provision of the ordinance that he feels has never been enforced before and said Mr. Banas asked the right question before when he said what did they measure from before. Mr. Doyle said he and Mr. Flannery have never heard this provision in a footnote to a schedule appended to an ordinance ever enforced or included in a report before. When this

board approved 3 similar 5 story structures in this same neighborhood, this same issue was not raised so that must add to the confusion because it is a question of novel impression upon which Mr. Mack does not issue an opinion but merely a memorandum. As to the sections he mentioned: **Building-** “any structure having a roof supported by columns, piers or walls including trailers permitted by ordinance or having other supports in any unroofed platform, terrace, porch, or deck, having a vertical face higher than the 3 ft. above the level of the ground from which the height of the building is measured”. The definition that Mr. Mack cites, part of the building is a porch or deck, and that is what they measured to. The second Section Mr. Mack cites speaks of projections into required yards: what can go into the front setback; chimneys, bay windows, handicapped ramps, projections from the second story, steps that descend to the basement, all other steps. Mr. Doyle said what was missing in that definition is porches, so consistent with those 2 sections that he cites, a porch is a part of the building, steps may not be. Their surveyor measured to the porch line, not the step, so they are consistent with those 2 provisions, there is no opinion for them to appeal from and they are right under the ordinance and they have specifically listened to the professionals and reduced the size of the building from a footprint of 13,000 sf to 6,000 sf covering less of the land that was allowed to be covered in the other 3 similar applications to meet the concerns raised and have a fully conforming application. They also added the notation in their notice in case the board were to think differently that they don’t conform to grant a variance.

Mr. Gasiorowski said if you look at the section Mr. Doyle is referring to; Section 18-818 it says not part of a building shall be erected within or shall project into any required yard except as follows, and then it lists the things that can project and many of them are limited by 30 inches. In the very rear of #5 it say “all other step excluding the landing or stoop may project into any front or rear yard setback” which means any landing or stoop may not project into the front yard setback and a porch is a form of landing. By setback they refer to the building line and Mr. Peter’s letter states the setback should be measured. Mr. Gasiorowski feels confident that the setbacks should be measured at the building line. The fact that Mr. Doyle said it has not been enforced in the past means nothing; there is a zoning officer who is called upon to render decisions and said it should be measured at the building line. Mr. Gasiorowski agrees with Mr. Doyle that he can come before the board and ask for a variance, but he will seek a variance as is set forth in the letter from Mr. Peters as he was guided by Mr. Mack.

Mr. Banas wanted it to be clear for him and said someone read the definition of a building and said a building might include a porch if it had a roof on it but not including the steps. Mr. Banas remembers they never included the stairs in the past but they included the porch as part of the building and asked Mr. Peters. Mr. Peters said he could not recall an application, generally they do not have a front porch like this, they have back decks which they do not include as part of the building. A covered front porch; he cannot remember an instance where they had one. Mr. Banas seems to remember porches in the past and said they divided the 2 and not including the stairs, but up to that portion which was covered by a roof. Mr. Franklin asked if they had that situation with the synagogue on 10th and Clifton and the porch stuck out and they shortened the plan so the porch would stick out and they took the parking out of it.

Mr. Doyle said there is a building, building has a porch, and there is steps coming down from the porch; this happens a couple of times and there is a survey that they will put in to evidence that will show the measurements. The question is ultimately, what is the starting point, is it the closest thing, that is, the step, is it the furthest thing, which is the building, or is it the thing in

the middle, which is the porch? They agree with Mr. Gasiorowski. They can't take the advantage of measuring to that last step, and he says they can't even take the advantage of measuring to the porch because that is not part of the building. The problem with that argument is the definition of building and he re-read the definition again. The definition of building says unroofed porch is a part of the building, so measuring it to the last step is a no-no but measuring it to the building is inconsistent with the definition. Measuring it to the unroofed deck or porch which is part of the building is the middle course and Mr. Doyle feels is the right course.

Mr. Gasiorowski said what you have to look at is the definition of setback which is on page 18-227 which says the required minimum horizontal distance between the building line and the related front, side or rear property line which addresses the problem, it says building line, not building. The definition of building line on page 18-206 says it is a line formed by the intersection of the horizontal plane and average grade and a vertical plane that coincides with the exterior surface of the building on any side. All yard requirements are measured at the building line.

Mr. Doyle said the building line is where it coincides with the exterior surface of the building. The definition of a building includes any unroofed platform or deck. He said Mr. Jackson should have the final word on this with the board. Mr. Doyle also stated if the board decides they need a variance, the applicant has noticed for it and the board can grant it. Mr. Gasiorowski said if they carry forward Mr. Doyle's argument to it's logical conclusion, it would mean that if a person wanted to he could construct a building, then extend a porch almost to the property line, and in his opinion, that would not violate the front yard setback. Mr. Doyle said he did not say you can put a porch in the required setback, what you can put in cornices and handicapped ramps, all he is saying is you have to measure it out from the street line to the first thing you hit that counts; that is the building that includes the porch and that is what they did.

Mr. Banas asked if there was anyone else that the board feels would offer a viable opinion and Mr. Akerman suggested Mr. Flannery, but he is a witness for the applicant. Mr. Akerman said he recalls in the past, they cannot go outside of the building envelope. Mr. Akerman suggested Mr. Truscott give an opinion and Mr. Truscott said he read Mr. Mack's letter and said it is pretty clear, whether it is an opinion or whatever you want to call it, it is pretty clear what he is saying to the board. At the same time, his memo seems to be consistent with the testimony they have heard before the board many times, as he recalls, the building line has always been to the building face and they never really included the porches or landings into that conversation or discussion. On the other hand, to find specific reference in the ordinance, there is nothing clearing stating how they treat porches, it is not found in the Lakewood Ordinance. He thinks in terms of how the board is going to treat it, he would think they would want to ask what is the prevailing set back here, is it the covered porch that should guide the board or what the testimony has been before, or the past practices.

Mr. Jackson said he feels Mr. Doyle is right, the letter of Mr. Mack appears to be more of an advisory or suggestion or even interpreted as a means of saying we should maybe make a recommendation for an ordinance change to tighten this loophole up before the governing body. He doesn't think Mr. Mack was trying to legislate with the letter or determine anything with this application, he thinks he was just suggesting what he thought was a good place to start. Mr. Gasiorowski raises a good point too, as this is the interpretation of the zoning officer.

Mr. Jackson said he thinks it comes down to what the intention of Mr. Mack was here, even if he was trying to set the policy he thinks a court reviewing it would not worry about the technicalities and to make an applicant appeal from here to the Board of Adjustment seems to him a very cumbersome technical impossible task. He said it is a very defined legal issue and a practical pragmatic approach for the board to decide is to set their policy and make their determination where it should be measured from, make a recommendation to the governing body to adopt an ordinance and go forward with this application. If it is something that requires a variance, grant a variance if they think it is appropriate.

Mr. Banas said he sees no reason why they would not advance the application and based and that, he suggested they go on.

Mr. Doyle continued and said this is an application for a use that is permitted; it is a business use in a business district in an area that is business and meant to have economic regeneration as stated in the Master Plan and they are seeking to contribute to that with a commercial building in a commercial zone that also allows houses. He said they have tried diligently to meet concerns and they have shrunk the footprint by more than _ the size. If the problem is that there is a commercial building next to a house, that is a problem that they have not caused, it is a problem that the zoning allows. The chairman raised a question about staging, but by having shrunk the building they have sufficient staging area on site and they also have an agreement with an adjacent owner to provide for staging. None of the commissions, Environmental or Fire, have any objections to the plan and they are prepared to proceed with describing the plan and responding to the reports.

Mr. Flannery stated he received his engineer's license in 1980, his planner's license in 1982, he has testified before this board almost every meeting they have had for the past 15 years or so. He has appeared before hundreds of boards throughout the State of New Jersey. Mr. Flannery entered into exhibit A1 which is the cover sheet of the Preliminary & Final Major Site Plan that was submitted. Exhibit A2 is sheet 3 of 4 which is the layout grading, drainage, utility and landscape plan and exhibit A3 is the location plan prepared by Mager and Associates. Exhibit A4 is the construction staging plan, sheet 1 of 1, prepared by R.C. Associates, A-5 is an aerial photo of the surrounding area. Mr. Flannery said this application will have retail commercial on the first floor and offices on the balance of the floors. With regards to the planners report, it points out the revised floor plans have been drastically reduced; the original application came in with a 0 ft. front setback which is what the ordinance stipulates and what has been brought out on this application is a footnote on an appended zoning schedule on the back of the ordinance which says that the front setback should be measured, if there is 2 or more residential buildings on the block, from the average setback. We go from there to the letter of Mr. Mack and Mr. Flannery believes Mr. Mack is looking for the board to make some kind of recommendation to the Township Committee on clarifying the issue and Mr. Flannery thinks the recommendation should be that the footnote should be deleted because it have various implications that are not good in some instances. In this instance it is pushing the building further back and a lot of the neighborhoods in Lakewood it will be pushing the buildings further forward. There are a lot of existing buildings that are close to the road, especially in the area east of the railroad tracks, and in those areas it will mean applicants can put their buildings closer to the road because the average front setback is closer to the road.

Mr. Gasiorowski objected to this line of testimony because he said we are talking about this application, not Mr. Flannery's opinion as to other applications or even his interpretation of what is acceptable.

Mr. Flannery continued with Mr. Mack's memo and stated it said the setback should be measured at the building line and Mr. Flannery agrees on that and the building line as Mr. Doyle read, in his opinion, includes the porches. He went on to read the definitions again and said the porches in this case have roofs and also uncovered porches 3 ft. high are also included. It is his opinion that the map and the setback they have provided comply with Mr. Mack's opinion. Continuing with the planners report, Mr. Flannery said they would agree to consolidate the lots by deed. Exhibit A5 was prepared to show where parking areas are in the area and immediately across the street is the recreation center; there are areas behind that for parking. There is municipal parking spaces along Monmouth and the municipal parking lot is west of this and the reality is the ordinance does not require that they provide parking.

Mr. Fink asked Mr. Kielt about the municipal parking lot and asked how far away it is and Mr. Flannery said it is 2 blocks away and the community center is right across the street and there is parking available at the community center (in back of it). Mr. Franklin said there is no approved parking lot back there and there are changes to move that community center out of there so don't count on that. Mr. Banas said the parking would be on Second Street by the old library, about 20 spaces. Mr. Doyle said twice the Township Committee introduced ordinances that would require parking be provided and both times the ordinances failed and did not go through second reading so the current law is they are not required to provide parking. Mr. Gasiorowski said this is improper testimony and hearsay, they have no knowledge of why the ordinances did not pass and Mr. Doyle said it is of public record as to what happened with the ordinances.

Mr. Flannery said the signage would agree with the UDO requirements. They have provided a 25 ft. buffer to both sidelines, one rear and one side, since they have 2 frontages and that complies with the ordinance requirements. The ordinance, Section 18-803E buffering indicates under 2a "except as otherwise stated, non residential developments shall provide a minimum of 25ft. wide buffer as measured from the property line toward the proposed use and the buffer shall be increased to 50 ft. where residential development is adjacent to an existing single family development or an area zoned for residential land uses." He said the ordinance in the same section defines a residential development (under H) as 6 or more detached single family dwellings fronting on residential access roadways and this property is on a corner of 4th and Princeton, neither of which is a residential access roadway under RSIS definitions so this doesn't apply as an existing single family residential development so the 25 ft. buffer is what is stipulated in the ordinance and the past practice of the board has not been to imposed the 25 ft. buffer in the B2 zone. Mr. Banas said past practice doesn't necessarily have to be followed and Mr. Flannery said they picked up on the board's desire here and they have provided a buffer in accordance with the ordinance. Anywhere that is not covered with sidewalk or landscaping, there would be vegetative cover and they can clarify the plants to make that meet the requirements of the professionals. The architectural plans do depict a trash compactor on each end of the building that would be picked up by Public Works. Mr. Doyle said if the board determined it would be appropriate for the applicant to use the services of a private cartage company they have the appropriate internal collection mechanism and they would contract with one. Mr. Banas said his opinion is that a private one would be the approach to take here and

Mr. Franklin said the ordinance states DPW has to pick up all the downtown garbage and being they have 2 compactors, they would have to get together with the applicant to work out the containers that would accommodate the DPW. Mr. Peters said along the northern edge of the building he would like to see the sidewalk extended to the curb and Mr. Flannery agreed. They agree to the remainder of the comments in the planner's report.

In regards to the engineers report, Mr. Flannery stated it talks about the front yard setback issues and he has already said his position but also stated the board can grant a variance if needed and said the positive criteria is they are complying with recently adopted Master Plan and page 56 it says to encourage development and redevelopment based on smart growth planning principles and Mr. Flannery said this is a smart growth planning principle which will provide retail and office uses in a downtown area. The state is moving to concentrating the development in a downtown area rather than having sprawl and having people drive. He said there is parking available. Mr. Fink said the basement would be used for storage and asked if they would consider putting in an underground parking facility off of Princeton Avenue. He thinks it would add a tremendous value to the building. Mr. Flannery said he would agree if it was possible but he believes the site is not big enough or deep enough to make that transition and get cars below grade. In order to make the retail work it has to be at grade level so that the parking garage would have to be completely below grade level and there is a slope that you have to have coming from the roadway into a parking area and by the time you got down as deep as you need to get, there would be no viable parking. Mr. Peters said they may be able to get one row of parking, maybe not more than 10 cars and with a building this size he did not know if it would make a significant difference.

Mr. Percal has a concern and it is with traffic. This is a very busy intersection and has an aggravating factor less than 50 ft. away from that is a 3 jointed intersection with Ridge, 4th and Park. There is a tremendous amount of bicycle traffic with kids going to school and he is concerned because this is a B2 situation which does not require parking that we know very well there is going to be parking all the way around the building and since there will be retail there will be constant in and out parking which will create an very hazardous condition and he thinks it will be a problem traffic-wise.

Mr. Flannery continued with Max's report and the reasons for granting a variance if the board determines that a variance is required. He said in the MLUL NJAC40:55-D2 g it says to provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space both private and public in order to meet the needs of all New Jersey citizens. He said the environmental commission indicates they have not problem with it and that was when it was the building that was twice the size. From an environmental stand point this property has no issues, it has no wetlands, no buffers, no C1. It is in a zone the Township put aside for these types of uses. It also allows for residential uses and in the past people put in residential because there was not the need for the retail and the office but Lakewood has grown as a town to where there is a need for retail and office and at this point the B2 is replacing some of the retail with commercial and in this case taking a vacant lot and putting in uses that are permitted by the ordinance. As far as the negative criteria, there is drainage, which is being taken care of by the architectural plans, traffic, which he agrees with Mr. Percal is a problem, but traffic in the area is not something that is being caused by this application, it is an existing situation. The issue with aesthetics is that this building next to residential structures creates an impact on the residential structure that they did not anticipate,

but they are in the B2 zone and anyone buying in the B2 zone is on notice that it permits 65 ft. high buildings. They have responded to the buffering and the front yard setbacks the best they could and it is his opinion that the board can grant the variances if they determine they are needed without any detriment to the zone plan or zoning ordinance. They have already discussed numerous items in Max's reports already when they went over the planners' report. Mr. Flannery said any signage would be on the building and would comply with the UDO. The comment about the EIS and the proximity of the building to the nearest residence being 20 ft. but that was the original proposal, now it is exceed 20 ft. As far as the environmental comments, the Environmental Commission reviewed it and had no problem with the application. They agree to comply with the remainder of the comments in the Engineers report.

Mr. Doyle asked if there was a minimum lot area in the B2 zone and Mr. Flannery said no, nor a minimum lot width or lot frontage. Mr. Doyle said based upon the exhibit from the licensed surveyor that they meet the front yard setbacks and they provide 25 ft side yard and rear yard setback where 7ft. side yard and 10 ft. rear yard is required. Mr. Flannery said the height is what is permitted in the zone and the buffer is consistent with the ordinance. Mr. Doyle also stated that the Fire Commission's letter checked off the box marked no comment or objection is currently proposed.

Mr. Gasiorowski again brought up the memorandum of Mr. Mack and said the lateness of this opinion letter was for everyone, the applicant, the objection, as well as the board. It was not caused by the objector. He said he thought Mr. Flannery stated that Mr. Mack's letter did not state that the setback could be taken to the vertical plane of the main building itself but rather be taken to the porch. Mr. Doyle objected to this line of questioning. Mr. Banas said he gave Mr. Doyle leeway, he will give Mr. Gasiorowski the same. Mr. Flannery said the memo says "I feel confident that the setback should be measured at the building line". Mr. Gasiorowski asked Mr. Flannery if it is his interpretation of this memo that Mr. Mack is saying that the building line would be the front line of the porch and Mr. Flannery said it is his interpretation of this memo that he is saying he feels confident is that it should be measured at the building line. Mr. Gasiorowski asked him if the front line is the front of the porch rather than the main part of the building itself and Mr. Flannery said he did not think Mr. Mack gives a definitive answer. Mr. Gasiorowski said the planner and engineer said, based on the reliance of the letter, said that the setback would be at the vertical plane of the building itself rather than the front of the porch and Mr. Flannery said he didn't think their letters were on reliance of Mr. Mack's memorandum because it was just received this afternoon. Mr. Gasiorowski asked if Mr. Peter's letter said the proposed setbacks did not conform with the requirements of the ordinance and Mr. Flannery said they could read the report again and Mr. Banas said it is clear. Mr. Flannery said he is bringing information for the board to make a decision on what the appropriate front setback is. Mr. Gasiorowski read the statement from Mr. Peters where it stated no variances are requested by the applicant; however, a front yard setback should be requested and Mr. Gasiorowski said that sound pretty definitive. Mr. Gasiorowski continued reading from Mr. Peters report and gave the square footage involved in the front yards of dwellings on 4th and Princeton and Mr. Flannery said Mr. Peters did not have the numbers based on the survey of the property and the only way to determine what the front setback is Mr. Peters estimated (22-27 ft. etc.). Mr. Banas asked Mr. Peters to clarify the figures and Mr. Peters stated he did not have the survey when he prepared the review letter. He did review it subsequent to his preparation of the letter and he did enter it into his testimony. The numbers in his review letter, the range of 22-27 ft. along Princeton Ave and also along 32 ft. along 4th St. that was scaled off the existing conditions plan

which was previously submitted. Mr. Banas asked if he had an opportunity to compare the survey with this information and come up with any calculations and Mr. Peters said he did not calculate the average based on that survey, it does appear that the numbers provided by Mr. Carpenter are in the appropriate range based on the survey to the front of the porch. That still seems to be a gray area as to whether to measure it to the face of the building or the porch.

Mr. Gasiorowski asked Mr. Flannery if he visited the site and he testified about his disagreement with the footnote and Mr. Flannery said yes to both. Mr. Gasiorowski asked him if he was a planner and said in the Township of Lakewood there is a Master Plan and also a Zoning Ordinance and a UDO and Mr. Flannery said yes. He asked if there was any doubt with the UDO that the schedule of general regulations in footnote 2 specifically says if you are going to be putting a commercial building in an area where there are residential homes, you have to conform with the average setback of the residences. Mr. Flannery said there are a lot of conflicting provisions in the UDO and this is an ordinance of several hundred pages that was put together in a hurry and adopted in 2005 and since then we have found provisions that were really not the intent of the governing body. Mr. Gasiorowski said the main body of the ordinance refers to the schedule and it says when you want to determine what the setbacks are you have to look at that general regulation and Mr. Flannery said no it doesn't say that, it says that there is a schedule attached hereto. Mr. Gasiorowski said that schedule gives you the various setback requirements and Mr. Flannery said it lists setback requirements and some of them conflict with what is in the ordinance. Mr. Gasiorowski asked Mr. Flannery to show him where footnote #2 conflicts with what is in the ordinance and Mr. Flannery said Section 18-903B 3 lists design regulations, non residential, and it gives a rear setback, side setback, maximum building height and accessory uses not to be located in a front yard. There is no front setback listed, the schedule has that area blanked out as well and the past interpretation was that there was no front setback requirement. Mr. Flannery said the footnote has been in the ordinance since July 14th 2005 when the ordinance was adopted.

Mr. Gasiorowski asked Mr. Flannery if the architectural drawings showed the front elevations, side elevations and the like and Mr. Flannery said his office did not submit the plans so he is not aware but he did look at the plan and said it does not have front yard porches on it but shows the vertical plane of the building being utilized for the front yard setback. Mr. Gasiorowski said even though you are using the vertical plane of the building as the front setback you are urging this board in determining what the average setback is should be utilizing the porches of the respective surrounding residential homes. Mr. Flannery said that is the way building line is defined in the ordinance. Mr. Gasiorowski referred to the aerial photo and asked if the footnote says that in determining what the average setback is you have to refer to residential and Mr. Flannery said yes. Mr. Flannery said the usage on Lot 13 appears to be a child care center and had no front setback and apartments and that is one of the buildings they used to come up with the average. Mr. Gasiorowski said the houses that are on Princeton are residential, and they are not shown on the aerial photo along with the homes on 5th which have a mixture of residential and a yeshiva; so the predominate use of the surrounding area from this site is in fact residential and Mr. Flannery said yes. Mr. Gasiorowski asked him if the reason for the footnote is to preserve the integrity of the existing residential uses and Mr. Flannery said he felt it was something that was left over from the previous ordinance and Mr. Gasiorowski said when the governing body decided to pass a new ordinance they preserved that footnote.

Mr. Gasiorowski asked Mr. Flannery what the total square footage of the retail use of the property and Mr. Flannery said 11,990 sf as indicated on A2. There are 3 stories above that for offices and that is 35,970 which includes the basement. The retail is on the first 2 floors and the 3 floors above that are offices. Mr. Gasiorowski said both the planner and engineer make mention about the parking and they asked how much parking would be required by this use and he asked if the applicant has entered into any type of leases or proposed uses for this retail use and Mr. Flannery said he has no knowledge of it. Mr. Gasiorowski asked if he was familiar with the requirements for parking in a retail zone was and Mr. Doyle objected because there is no parking required in this zone. Mr. Banas overruled. Mr. Gasiorowski continued with Mr. Peters report and request that the applicant identify the location of any nearby parking lots that can be used for employee and customer parking and Mr. Flannery said they did identify them and Mr. Gasiorowski asked if they conducted any surveys as to the occupancy rates of those parking lots during business hours and Mr. Flannery said no. Mr. Gasiorowski said while those lots may be there, they have no opinion as to whether or not they are at capacity or are unoccupied parking spaces and Mr. Flannery said no. They then discussed opined the variations of retail and office use with regards to the amount of parking spaces needed.

Mr. Banas said the only identifying parking lot that was submitted was the one across the street from the old library, the others are not parking lots, you cannot use the existing parking lot of the library, it is already utilized and there is not enough there as it is; you can't use the one behind the former Gelbstein's Bakery or the Northern Ocean Resource Building, that is already full; there are no spaces available in the township municipal building lots. Mr. Flannery said the parking lots closer to Route 9 are under utilized, by Second Street, Mr. Flannery said if the type of use is the type of use that takes people off the street and people in the neighborhood, then they don't need parking, they walk from their house to the facility.

Mr. Gasiorowski said earlier in his testimony Mr. Flannery referred to this being a part of the downtown area and asked him again what the predominate use on the block was and Mr. Flannery said it was residential and there is no retail use on the block. The parking lot off Route 9 is about 4 blocks and he has shopped in cities where he has walked more than 4 blocks. Mr. Gasiorowski looked at Section 18-803e buffering subsection 2a and said it stated unless otherwise stated in the chapter, non residential development shall provide a minimum of 25 ft. wide buffer area as measured from the property line toward the proposed use and said this property would fit that description under the terms of the ordinance and Mr. Flannery agreed. Mr. Gasiorowski continued and read that is said the buffer shall be increased to 50 ft. wide where the non residential development is adjacent to an existing single family residential development or an area zoned for residential land use. Mr. Flannery said the B2 does permit residential uses and all of the uses are residential but said in H of that section it says existing single family development shall be defined as 6 or more detached single family dwellings, fronting on residential access roadways as defined in the RSIS. Mr. Flannery said 4th & Princeton are not residential access roadways. Mr. Gasiorowski asked the width of 4th and Mr. Flannery said if he is trying to figure out if it is a residential access roadway, he has the definition from RSIS which says it is the lowest order, other than rural street type, of residential street, provides frontage for access to lots and carries traffic for destinational origin on the street itself and said 4th Street & Princeton Avenue don't carry traffic with destination origin on the street, he said they are minor collectors and they don't fit the definitions of a residential access roadway.

**PLANNING BOARD MEETING
AUGUST 19, 2008**

**TOWNSHIP OF LAKEWOOD
REGULAR MEETING**

Mr. Gasiorowski asked him about his testimony about the need for retail and office use at this site and Mr. Flannery said he did not specifically say at this site but said there is a need for retail and office and this site is zoned accordingly. Mr. Gasiorowski asked if he did any studies showing there are existing vacancies both in office use and retail uses showing a demand or lack of demand for such a use in Lakewood and Mr. Flannery said no.

Mr. Banas said looking at the time, he would like to clear up the calendar which will not be heard this evening. He said the remainder of the applications would not be heard and asked them to be carried.

**SP# 1885 – Omnipoint Communications Inc.
Extension granted by applicant's attorney**

Motion was made by Mr. Akerman, seconded by Mr. Schmuckler, to carry to the meeting of September 16, 2008

ROLL CALL: Mr. Franklin; yes, Mr. Banas; yes, Mrs. Koutsouris; yes, Mr. Akerman; yes, Mr. Fink; yes, Mr. Schmuckler; yes, Mr. Percal; yes

**SD# 1632 – Aaron Bauman
Extension granted by Mr. Doyle through 10/31**

Motion was made by Mr. Akerman, seconded by Mr. Schmuckler, to carry to the meeting of September 16, 2008

ROLL CALL: Mr. Franklin; yes, Mr. Banas; yes, Mrs. Koutsouris; yes, Mr. Akerman; yes, Mr. Fink; yes, Mr. Schmuckler; yes, Mr. Percal; yes

**SD# 1536A – Eli Gross
Extension granted by Mr. Doyle**

Motion was made by Mr. Akerman, seconded by Mr. Schmuckler, to carry to the meeting of September 16, 2008

ROLL CALL: Mr. Franklin; yes, Mr. Banas; yes, Mrs. Koutsouris; yes, Mr. Akerman; yes, Mr. Fink; yes, Mr. Schmuckler; yes, Mr. Percal; yes

They continued with item #2 SP #1892 – Princeton One

Mr. Doyle re-directed the witness, Mr. Flannery and asked him about the planner's report and the testimony on the location of any nearby parking lots that can be used for employee and customer parking and asked if that was done and Mr. Flannery said yes and there was no comment made by the professionals on traffic studies or traffic issues in either report. It was determined that this is in the downtown area because Mr. Franklin concurred that his department picks up the trash in the downtown.

Mr. Truscott had a question of clarification for Mr. Flannery on the architectural plans because they indicate the first floor will be retail and the remainder will be office but the site plans shows floors 1&2 are retail and Mr. Flannery said they would amend the architectural plans to be consistent with the site plan.

Mr. Gasiorowski had a question about that and asked how the 2nd floor retail would be access and Mr. Flannery said through a stairwell. Mr. Gasiorowski read the planner's report where it said the applicant should be prepared to discuss the parking demand for this project and specific availability of parking to the anticipated offices and businesses on street and off premises and he asked again what the parking demand will be for this project and asked specifically what parking lots or area will be available for that use. Mr. Flannery said again that he doesn't have specific uses so he cannot give an answer and Mr. Gasiorowski asked if there were generic requirements for parking for office use and retail use and Mr. Flannery said Lakewood has ordinance stipulating parking demands and the B2 zone has no parking requirement.

Mr. Doyle said at this point, subject to any further questioning by the board or by Mr. Gasiorowski, he is not presenting any more witnesses.

There was a 5 minute recess.

Mr. Gasiorowski called Mr. Abraham Mandelbaum as a witness. He resides at 15 4th Street in Lakewood. Mr. Mandlebaum said his building is 7 ft. west of the proposed structure as shown on A3 and Mr. Gasiorowski had him point to it. He said his lot is 11.02 which is right next to the proposed application. Mr. Mandlebaum discussed with Mr. Gasiorowski his concerns with the existing conditions on the site and Mr. Mandlebaum said these were concerns of the neighbors as well. Mr. Mandlebaum has lived there about 7 years and there have been significant rains in this area and when they do they have the police there to block the intersection because of flooding. Mr. Gasiorowski had photos which he marked O-2 through O-8, which is a series of photos taken by Mr. Mandlebaum and they are pictures of various stages of flooding in the street up to grass past the sidewalk. Mr. Banas asked when they were taken and Mr. Mandlebaum said about 6 weeks ago and they were not touched up. Mr. Mandlebaum said in times of rainfall the presence of moderate rainfall it is common to have at least that amount of water and it has come up to his driveway apron.

Mr. Doyle asked Mr. Mandlebaum if he owned his home and Mr. Mandlebaum said he did not, it is owned by Sean Kohn. Mr. Doyle asked if the flooding may be caused by clogged gutters and was told the township cleans the gutters yearly and it has no effect.

Mr. Gasiorowski asked Mr. Mandlebaum if he was familiar with the child care center and asked how long it has been there. Mr. Mandlebaum said it has been there the entire time. Mr. Mandlebaum said he is 100 % sure there are no apartments on the second floor it is a one story structure. Mr. Doyle asked him if he has ever been in the building and Mr. Mandlebaum said he has taken 2 steps into the building.

Mr. Gordon Gemma, 68 Seneca Place, Oceanport, NJ was sworn in. He said he is a licensed planner. Mr. Gemma has visited the site and he is familiar with the Master Plan, the Zoning Ordinance of Lakewood Township, he has read the reports from the professionals and also their

prior review letters. He heard the testimony of Mr. Flannery but has not seen the architectural plans. Mr. Gemma said there is no requirement for parking in the B2 zone but the demand for parking is within the board's purview to access for the suitability of this site for the subject property. There are standards that the township has based upon types of uses; retail use has one standard, medical use has one standard, regular office use has one standard. He said if you were to use the most conservative parking standards, the parking demand would be 120 spaces. This is based upon 1 space per 300 sf of use. Mr. Banas interrupted and said the reports from the professionals are not demands, they are not statements of what the board is demanding, they are alerting the board of the conditions and the constant use of the word demand is erroneous. It is merely their suggestions which the board may accept or reject. Mr. Gemma said he has reviewed the UDO with regards to the setbacks and particularly footnote #2. Mr. Gemma said that footnote speaks for itself. Mr. Gemma read for the re-examination report of March 2007 and said one of the goals was "to encourage new development consistent with the scale of established land uses while preserving the character and developed nature of existing neighborhoods and proximate land uses" The municipality should "encourage growth and development in appropriate locations and consistent with the established land uses". That footnote is consistent with the re-examination report. The neighborhood is primarily residential and what the master plan is saying is if you are going to build on this piece of property you have to honor and respect the residential character of the neighborhood. Mr. Gemma said he read Mr. Mack's report and feels the setback lines should be measured by and Mr. Doyle objected and Mr. Banas agreed with Mr. Doyle. Mr. Gasirowski said based upon the ordinance itself, as a planner, he can opine and give an opinion. Mr. Banas asked Mr. Jackson for his legal advice and Mr. Jackson said as a planner he does not think it is inappropriate to give his opinion what would be an appropriate way to interpret it. It might be helpful to the board to hear Mr. Gemma's opinion, they don't have to follow it, but it might be helpful to hear another professional planner's take on it.

Mr. Gemma said the best way to characterize it is the way Mr. Gasirowski asked Mr. Flannery and that was, how do you define the building line? You have to look at the line of the building that is going down the road to see if there is a consistency. In this case, you have a building with no porch vs. buildings that, some have porches and to really try to be consistent with the building line itself so that the buildings don't seem to be too close to the property line as compared to all the other buildings. In this instance, you have to look at what the building line itself is, the building line is the face of the building, the horizontal plane of the building and in his opinion it would be consistent with what Mr. Mack said basically you have to use the horizontal face of the building, not the porch. The porch is an encroachment beyond that. Mr. Gasirowski asked Mr. Gemma if he reviewed the buffer section 18-803e subsection 2a and Mr. Gemma said yes and the applicant is saying they met a 25 ft. buffer, but it is not true. They are including a sidewalk and a sidewalk can't be a part of a buffer because a buffer includes natural wooded tracts, planted materials, trees, screening, vegetation, etc., but a sidewalk is none of them. He disagrees with Mr. Flannery about whether you should have 50 ft. or not because what he has the board focusing on are the RSIS and says under those standards for a road it is not a residential road and that would be great if your ordinance said that the 50 ft. is adjacent to an existing single family development and an area zoned for residential: it doesn't say that, it says "or". This is zoned for residential, it is a permitted use, single family is a permitted use, multi family is a permitted use, the zone says "or", if you are adjacent to an area zoned for residential then you have to have 50 ft. buffer. Mr. Banas said this is a B2 zone and Mr. Gemma said the

surround use is residential and residential is a permitted use. Mr. Jackson advised asking the professionals for their opinion on whether it requires a 50 ft. buffer.

Mr. Truscott said in his letter they did mention the 25 ft. buffer is shown on the plan but only a 20 or 21 ft. buffer is provided, so he agrees with Mr. Gemma's comment that it was not met. It is his opinion that a 50 ft. buffer is not required and a 25 ft. and he is more in agreement with Mr. Flannery's interpretation of the ordinance as to the width of the required buffer.

Mr. Gasiorowski asked Mr. Gemma if there was any other building in the immediate area that rises to the height of this proposed building and Mr. Gemma said not that he is aware of. Mr. Gasiorowski asked him what impact that would have on the surrounding residential uses and Mr. Gemma said there are a lot of issues; there is a impact as far as light, air and open space and basically they will have a 65 ft. tall building next to a residential building, within 35 ft. of that residential building and it will have an adverse effect in terms of privacy and utilization of the residential building to the façade, it will have an adverse impact as far as traffic generation. Mr. Slachetka's letter of July 15 recommended a traffic study of all the plethora of issues that this generates; it will generate a lot of cars, generate a lot of idling, generate traffic, there are issues of traffic safety, issues to the adjacent side with the drainage issues. This has all been studiously avoided by the applicant who says he doesn't have to provide the information in this zone, and they don't have to under the compliance issues but for the board to make an informed decision, it is something the board should consider and should raise. Mr. Gemma said he is not even sure the site triangle easement is adequate. Mr. Banas asked him if he is suggesting that they have to get drainage for the surrounding area and Mr. Gemma said he is suggesting that this property is on a corner and there is a site triangle and he is asking if it is adequate given the amount of traffic that exists along with what will be generated. That is certainly within the board's jurisdiction. He said the applicant has made a big issue that this is a totally compliant application, and even if they were correct, and he does not agree that they are, but even if they were, there is a court case that says a board, in its' review of the subdivision, may consider the general purposes of zoning and public welfare independent of the standards that are set forth in the ordinances. The court says you don't have to forget common sense.

Mr. Gasiorowski asked Mr. Gemma if he examined the photographs of the property and Mr. Gemma said yes. Mr. Gemma said right now the property is vacant so it is pervious and he feels the variances required on this application are bulk variances or "C" variances. A C1 variance deals with the uniqueness of the property and a hardship would be incurred and C2 the balancing test. This case would not be a C1 variance; there are no environmental constraints as they testified. It is a rectangular lot in the area with nothing unique about it and if they wanted to build a smaller building they could. The standard for the C2 variance is the weighing test, is it somehow advancing the purpose of zoning by developing the proposed use on the proposed property and does that advancement of the purposes of the zoning outweigh any detriment upon both the zone plan also any adverse impact upon the surrounding neighborhood. He does not believe the applicant has satisfied that standard, they have not provided new testimony such as the lack of an impact, drainage, traffic, parking availability, and he thinks from a common sense approach when you put a 65 ft. building next to a 3 story residence, there is an adverse impact in terms of light, air and open space and the only purpose that they advance the section of the ordinance where they talk about having the ability of developing a wide variety of different types of uses consistent with the zoning and he thinks the Master Plan has other purposes in trying to advance specific ones. The Master Plan says that whatever you put

there has to be consistent in scope and scale with the neighborhood and can't have an adverse effect on the neighborhood and he thinks the applicant is in violation of those goals and objectives that are set forth. Mr. Gemma said this application contrary to the specific goals and objectives of the March 2007 Master Plan re-examination report and if this application is approved it would have an impact upon light, air and open space which is one of the specific purposes of zoning given the size of one building next to size of another.

Mr. Doyle asked Mr. Gemma what application he testified in front of this board for and Mr. Gemma said it was in connection with the re-examination and re-zoning that was referred down from the council through the Planning Board for the report. A number of years ago he testified in connection with the Sovereign Bank and that is all he can recall in front of this board. Mr. Doyle said his testimony at the Master Plan re-examination meeting was as a representative for objectors and Mr. Jackson said the characterization of objector at a Master Plan public comment period and there are no objectors. He was representing people or testifying on behalf of people who have the right to comment on the plan doesn't necessarily make them objectors, it is not an application it is a democratic process. Mr. Doyle said his recollection is that there was a report from the land use committee and the board was considering whether to affirm that, revise that, or reject it and Mr. Gemma testified with respect to the fact that he thought the land use committee should have been at a minimum revised if not rejected. Mr. Banas said he could not see the relevance.

Mr. Doyle asked Mr. Gemma how many times he has been to the site and when and Mr. Gemma said he visited the site twice, once 3 weeks ago for 10 minutes and today he drove by but did not stop. He did not see the flooding conditions as shown in the photos. Mr. Doyle asked if this property is in a residential or non residential zone and Mr. Gemma said it is in a B2 zone. Mr. Doyle directed him to the ordinance, the index roman numeral page 3. Under Article 9 it states Residential but does not reference the B2 zone. Mr. Doyle asked him to go to Section 903 entitled non residential zoning districts and the B2 is located in that zone.

Mr. Jackson said titles are not part of the definition of what is going on and he thinks Mr. Gemma's testimony is that there is residential uses included within the B2. If it is characterized in the title as non residential zoning, he thinks as a matter of construction of the ordinance it is not necessarily an indication; the title blocks are not usually a part of the legislation.

Mr. Gemma said he indicated that on the key map he did not see impervious coverage but he does not believe there is a limit of impervious coverage in the B2 zone. Mr. Doyle asked Mr. Gemma if he is aware of any other structure within the downtown area that are 5 stories high and Mr. Gemma asked him if he meant the B2 zone and Mr. Doyle said per the Master Plan, roughly Route 9 to Lexington and Route 88 to 5th Street. Mr. Gasiorowski objected but Mr. Banas understood where he was going with this but asked him to be quick about it. Mr. Gemma said he did not know but would assume there are. Mr. Doyle asked him if he was aware of any 65 ft. tall buildings that were approved but not yet built as close as a block away and Mr. Gemma said he is not and it would be inappropriate for him to comment on another application with the information provided. Mr. Doyle asked him about the footnote and Mr. Gemma said the adoption of an ordinance is a legislative function and in this instance it being part of the ordinance and not being amended it is part of the legislative function and that needs to be followed or a variance or waiver is required. Mr. Doyle said the legislative function for parking was provided for when they said you do not need to provide parking, Mr. Gemma said the right

the board has and the admonition from the appellate division in the L Shyer case was that the board can look at general principles of public safety and welfare and not just being restricted to the strict application of the ordinance. Mr. Doyle said the L Shyer case was a subdivision dealing with direct access onto a road by multiple access points.

Mr. Doyle said with respect to the reports and the board's question he said Mr. Gemma listened to the testimony of the applicant's witness and asked if he went through every paragraph in the engineer's report and respond to each comment and Mr. Gemma said he certainly commented upon each of the paragraphs but he does not believe he went through the planners' report. He thinks Mr. Flannery missed the comment from the July 15th letter that recommended a traffic study. Mr. Doyle said he did not mention the problem with the site triangle or the drainage issue that allegedly cause the flooding depicted in the photos and Mr. Gemma said he did not hear anything. Mr. Gemma also did not read anything in either report about the need for a site triangle easement. Mr. Gemma said Mr. Mack's memo does not mention this case specifically. They talked about the term building line and Mr. Doyle asked if it is defined in the ordinance and Mr. Gemma said he believed it was. Mr. Gemma read the definition of a building line as "a line formed by the intersection of a horizontal plane at average grade level and a vertical plane that coincides with exterior surface of the building at any side. In the case of a cantilevered section of a building, the vertical plane will coincide with the most project surface all requirements are measured to the building line". Mr. Gemma said the horizontal plane would be the front face of the building. They then discussed the definition of the porches and the front setback again and Mr. Jackson said this is a legal opinion and to get another planner's opinion is not the board's decision and ultimately it will be the board's decision. Mr. Doyle said it is a matter of legal interpretation, one that in a court of law is not entitled to a presumption of validity so it should be made very carefully and when a witness testifies that those words are defined and the definition then he thinks it is the end of the issue.

Mr. Doyle said Mr. Gemma indicated the board should consider the height of this building next to the height of the residential building and said the height proposed is permitted and Mr. Gemma said the board can take into account the impact of one use upon the other, even if permitted. He suggested the board does not have enough information to deal with application because of a lack of a traffic report. Mr. Gemma said his judgment is that the board should impose a 50 ft buffer on this site but understands the interpretation from Mr. Truscott and Mr. Flannery referred to the RSIS which has specific standards depending on utilization. Mr. Gemma and Mr. Jackson discussed the average setback and if the ordinance was meant to be that precise and what he thought it should be but Mr. Gemma could not answer but said you would have to be within the context of the neighborhood and the context of the overall setback. He thinks it should be consistent with what the single family houses are on 4th and Princeton. Mr. Doyle said if that standard was met and the applicant still proposed a 5 story building would Mr. Gemma still be finding that the building would be objectionable and Mr. Gemma said with the issue of the setbacks it would be more appropriate but if they applicant supplied more information such as a traffic study etc. and the sufficiency of parking he could not say if it would have an adverse effect. Mr. Doyle said the Township Committee did not require this zone to provide parking.

Mr. Gasiorowski wanted to clarify something that Mr. Doyle keeps referring to with regards to an approval of a similar size building within one block of this project but the only one he is aware of is the one he was involved with that there was a question concerning the zone line and Mr.

Penzer handled the Site Plan approval and that approval was reversed by consent order. Mr. Banas said the building that Mr. Doyle is talking about is on 5th and beyond Lexington. Mr. Doyle said the one he is referring to is on 1st & Clifton and the other on Monmouth, both 65 ft. high both having less buffer than this one, both having no parking, both having more coverage.

Mr. Jackson said Mr. Gasiorowski may agree or disagree with the zoning but the zoning is what it is. There is some issue on the setbacks and averaging of the setback, then there is a buffering issue which is really a design waiver issue, and he asked what the board is supposed to do? There is not any flood regulation issues, the engineering letter did not raise any issue with that, the zone does not require parking for whatever reason and he asked where the board should hang its' hat? Mr. Gasiorowski said when you read the footnote it does not speak in terms of establishing an exact setback it says you have to look at the existing residential homes, see what those setbacks are and then take an averaging with regard to what the setback would be required for this particular building. That is really a planning issue, a statement by the legislature saying if you are in an area and you are surrounded by residential homes, you cannot do anything which impacts that, so they are requiring that you look at each of those residential uses, take the setback and average it so it comports with what is there. Mr. Doyle said it is a design waiver for the buffer and a variance for the setback (if needed). The engineer's report did not have a survey when it was done and Mr. Peters did read into record his revised statement and Mr. Doyle feels they do not need a variance.

Mr. Gasiorowski said he meets in his mind the variance requirement because he is taking his measurements to the front of the porch, not to the building. Secondly, he is factoring into his averaging the child care center which is not a residential use; that is part of his equation. Mr. Gasiorowski said you can call upon Mr. Peters to look at the survey which has been produced recently and let him compute it out and give the numbers. Mr. Jackson said at what point does the board get to decide this and Mr. Gasiorowski said hopefully tonight.

Mr. Doyle said Mr. Gasiorowski suggests this recent survey, which has been with the board for more than the statutory 10 days speaks for itself and the objectors have a copy of it and could have come up with the figures themselves. Mr. Gasiorowski said Mr. Mandlebaum has a copy of the survey and he worked some numbers. Mr. Banas said he would rather have the engineer do the numbers.

Mr. Banas said it was 10:00 and this is a hot issue so he asked the board if they wanted to stay and hear the conclusion of this or should it be tabled. Mr. Akerman said if they are waiting for Max's report then it could wait. Mr. Peters said if they are going to ask him to do some calculations he thinks they should determine what they want him to calculate, whether it is to the front of the porch, to the building, there is a difference of probably 8 ft. and if he is counting the child care center. The calculation will not take a lot of time but the board has to determine what that criteria would be. Mr. Banas said he is old fashioned, and before they found this paragraph they did it one way and he suggests they didn't do it wrong all those years. Mr. Peters said in that case he provided a range in his letter, he didn't do a specific average, but he can figure out the average of a few buildings.

Mr. Percal said originally the letter specified from the building, not the porch. Mr. Peters said the original survey plan did not show the porches or the front projections, it was just the outside limits of the overall building. Mr. Jackson said on an ordinary subdivision, when

someone has a house and you measure the setback on just an ordinary residential house, do you count the steps and Mr. Peters said no, they have been going to the face of the building. The board all asked why would they change it. Mr. Fink said they have to be consistent, whatever they have done in the past, has to be done for this application also, no changes. The board all agreed to measure it to the building line.

Mr. Doyle said if it is from the building line then it is no different then what they suggested. Mr. Doyle said both himself nor Mr. Flannery had never seen this paragraph before, they did not see it in the earlier parts of this application so he is not sure there is a clarity of what has always been done in the past. If you look at exhibit A3 they definitely did not measure to the first step, that would be wrong; they did show the measurement to the building but they showed it to the porch. Mr. Doyle then read the definition of setback and said it is "the required minimum horizontal distance between the building line and the related front, side, or rear property line." The definition of building line is "a line formed by the intersection of the horizontal plane at an average grade level and a vertical plane that coincides with the exterior surface on any side. In case of a cantilevered section of a building the vertical plane will coincide with the most projected surface." All yard requirements are to be measured to the building line. Mr. Doyle continued reading and said a deck or porch is a part of the building and that is under the building line and that is what the setback is to be measured by. The question that binds all of the people in attendance is not the past recollection of what was done, it is the law. Mr. Banas said he would assume they have been following the law. Mr. Doyle said the law is the ordinance that says the setback is measured to the building line and the building line is measured by the building and the building includes a porch.

Mr. Gasiorowski said you have a zoning officer and the letter is addresses to Mr. Kielt and wanted to know if Mr. Kielt requested this letter for this application and Mr. Kielt said Mr. Mandlebaum was at the counter and he raised the question to Mr. Kielt who told him that there was a zoning officer in town and to get an opinion from him. Mr. Gasiorowski said that is what the zoning officer did and Mr. Doyle does not want to believe it and that is what he said. Mr. Jackson said in the context that this came up that it is not an official determination by the zoning officer related to this application based on the ordinance. Mr. Gasiorowski said the board should ask him to make it more definitive for them and Mr. Banas said then the board can't rule on it tonight. Mr. Gasiorowski said it is an important issue and wouldn't the board want to know what Ed Mack says?

The board agreed to consult with the zoning officer. Mr. Jackson said the board could consult with him but in this context they are not bound by his determination. Mr. Jackson does not think that Mr. Mack will set forth a ruling because of the ambiguous language in his memo. Mr. Gasiorowski said the memo was in direct response to a question posed by Mr. Mandlebaum.

Mr. Banas said he feels there is only one way to resolve it and that is that Max's numbers will be based on what they told him to measure from but that problem will be with the board forever and a day unless they get a definite ruling and they should go and address the issue and he asked Mr. Jackson to write a letter citing the board's problem and get a definite decision from him. We should also give him a deadline to respond by and Mr. Kielt said that was September 16, 2008.

**PLANNING BOARD MEETING
AUGUST 19, 2008**

**TOWNSHIP OF LAKEWOOD
REGULAR MEETING**

Mr. Doyle said there is only one interpretation and he directed Mr. Jackson to 20-2 of Cox “although the zoning officer usually has a working relationship with the planning and zoning board of adjustment in that the zoning officer often appears before the boards as a witness, it should be emphasized that the boards are a quasi-judicial bodies and are not involved with the enforcement of the ordinance. Sometimes the zoning officer seeks to consult with the board of adjustment to obtain its’ opinion informally as to whether the proposed use would violate the zoning ordinance and require a variance. The Supreme Court stated that this conduct would was improper since it involved a board of adjustment in giving advisory opinions. The zoning officer instead should seek legal advice from the municipal attorney or board attorney and act in accordance therewith. Mr. Jackson said that is an excellent point and said Mr. Secare should weigh in but in the context that this has arisen he thinks the Planning Board has a legal issue before it and has to make the determination. Mr. Gasiowski said he is calling for a clarification from Mr. Mack.

Motion was made by Mr. Percal, seconded by Mr. Akerman, to draft formally request a letter be written by Mr. Jackson addressing the issue with all the time constraints imposed to come up with a definite discussion

ROLL CALL: Mr. Franklin; yes, Mr. Banas; yes, Mrs. Koutsouris; yes, Mr. Akerman; yes, Mr. Fink; yes, Mr. Schmuckler; yes, Mr. Percal; yes

Motion made by Mr. Franklin seconded by Mrs. Koutsouris to adjourn this application to the meeting of September 16, 2008

ROLL CALL: Mr. Franklin; yes, Mr. Banas; yes, Mrs. Koutsouris; yes, Mr. Akerman; yes, Mr. Fink; yes, Mr. Schmuckler; yes, Mr. Percal; yes

Mr. Jackson told the members of the audience that they will have the opportunity to question the witnesses and/or give public comment on September 16, 2008

3. **SP # 1885** (Variance requested)
Applicant: Omnipoint Communications Inc.
Location: New Hampshire Avenue & Cedar Bridge Avenue
Block 563 Lot 1 Block 564 Lot 1
Preliminary & Final Site Plan to construct cell tower on MUA water tank

Carried to September 16, 2008

4. **SD# 1632** (Variance requested)
Applicant: Aaron Bauman
Location: 119 Pawnee Road, west of Seminole Drive
Block 2 Lot 55
Minor Subdivision to create 2 lots

Carried to September 16, 2008

5. **SD# 1536A** (No variance requested)
Applicant: Eli Gross (formerly Charles Clark)
Location: East County Line Road, across from Ann Court
Block 186.05 Lots 5, 31.01 & 31.02
Amended Minor Subdivision for 2 lots

Carried to September 16, 2008

6. **DISCUSSION – Setting up a special Public Hearing to discuss the remand by Judge Grasso to re-consider the Zoning Ordinance. In the Scher v. Lakewood etal.**

John Jackson said this was an appeal on Scher vs. Lakewood Township on the rezoning of the A1 zone to R40 and R12 zone. There was a trial and Judge Grasso gave an opinion that there was some confusion about whether the committee did change the zone. The judge quoted Mr. Banas, Mr. Cunliffe, Mr. Dolobowsky, and some people said there were mistakes made on the map etc. and what he said is he wants the Planning Board to re do the examination on that particular zone. It is remanded back and all applications in that zone are held in abeyance so he wants the board to review it. Mr. Banas said he would like to hear what he said and Mr. Jackson read him from the transcript. Mr. Jackson continued reading the order which said that a review of the record reveals that there was at a minimum a legitimate question before the board as well as the Township regarding the zoning status of the property. There are several references in the record including that of the Planning Board Chairman to an error or mistake on the Zoning Map with respect to the property in the A1 zone. The issue was also brought to the Township Committee who deferred action on the matter pending completion by the Master Plan. Although there was evidence before the municipality of a discrepancy regarding the proper zone designation of the property, no efforts were taken to follow through in order to fully clarify the issue. The court finds that the designation on the Zoning Map changing the property from A1 to R40 and R12 was the apparent result of a mistake or oversight in the map preparation rather than by rezoning and by rezoning they don't invalidate the whole ordinance but it is remanded to the municipality for further consideration and clarification as part of its' Master Plan re-examination and accordance with applicable statutes. Mr. Jackson said the court said to re do the Master Plan Re-examination on that individual zone and he thinks a special hearing is in order and Mr. Truscott should prepare a report based on that specific ordinance and append the old one, conduct the hearing, hear public comment and make the recommendation to the governing body and they can decide. He thinks it should be a priority because there is a stay on any applications in that zone.

Mr. Banas said it required a special meeting devoted primarily to this item. Mr. Kielt suggested September 23, 2008 and the members agreed

Motion made by Mr. Franklin seconded by Mr. Akerman to hold a special meeting on September 23, 2008

ROLL CALL: Mr. Franklin; yes, Mr. Banas; yes, Mrs. Koutsouris; yes, Mr. Akerman; yes, Mr. Fink; yes, Mr. Schmuckler; yes, Mr. Percal; yes

7. DISCUSSION – Applicant’s request to re-consider prior denial of Rye Oaks (SD 1542A)

Carried to September 16, 2008

5. MEMORIALIZATION OF RESOLUTIONS

1. SP # 1882 (No variance requested)
Applicant: Sudler Lakewood Land LLC
Location: Oak Street, New Hampshire Avenue & Salem Street
Block 1160.02 Lot 7.01
Preliminary & Final Site Plan for 140,000 sf warehouse/office “Building 30”

Motion was made by Mr. Percal, seconded by Mr. Schmuckler, to approve

ROLL CALL: Mr. Franklin; yes, Mr. Banas; yes, Mrs. Koutsouris; yes, Mr. Akerman; yes, Mr. Fink; abstain, Mr. Schmuckler; yes, Mr. Percal; yes

2. SP # 1883 (No variance requested)
Applicant: Sudler Lakewood Land LLC
Location: Oak Street and Paco Way
Block 1160.04 Lots 54, 383
Preliminary & Final Site Plan for 70,000 sf flexible use “Building 29”

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

ROLL CALL: Mr. Franklin; yes, Mr. Banas; yes, Mrs. Koutsouris; yes, Mr. Akerman; yes, Mr. Fink; abstain, Mr. Schmuckler; yes, Mr. Percal; yes

3. SD # 1617 (Variance requested)
Applicant: Lew Realty Inc.
Location: Ocean Avenue (Route 88) – former Ray Auer Buick
Block 189.03 Lots 75 & 193
Minor Subdivision

Motion was made by Mr. Percal, seconded by Mr. Schmuckler, to approve

ROLL CALL: Mr. Franklin; yes, Mr. Banas; yes, Mrs. Koutsouris; yes, Mr. Akerman; yes, Mr. Fink; abstain, Mr. Schmuckler; yes, Mr. Percal; yes

4. SP # 1867A (Variance requested)
Applicant: Lew Realty c/o Peter Walsh
Location: Ocean Avenue (Route 88) – former Ray Auer Buick
Block 189.03 Lots 75 & 193
Preliminary and Final Site Plan to modify existing auto dealership & construct a self storage facility

Motion was made by Mr. Percal, seconded by Mr. Schmuckler, to approve

ROLL CALL: Mr. Franklin; yes, Mr. Banas; yes, Mrs. Koutsouris; yes, Mr. Akerman; yes, Mr. Fink; abstain, Mr. Schmuckler; yes, Mr. Percal; yes

6. CORRESPONDENCE

7. PUBLIC PORTION

Sam Peluso wanted to ask about the special meeting and what is involved and said the courts opinion seems to him to ask for it to come back. He also said the court stated that no one with an interest in the matter should participate as a board member or as an advisory committee member and it suggested to him that court was looking for an advisory committee to revisit the matter. He doesn't think they want a hearing and the public to come in and say "let try to figure out what happened" the court is actually talking about an advisory committee on this matter and he thinks that is the tact the court is asking to be followed. Mr. Jackson asked him what he is asking for and he said he is asking that the remand be followed as the court said. Mr. Jackson said that is what they are doing, and Mr. Peluso said he did not hear anything about an advisory committee and Mr. Jackson said there will be none: the statutory requirement for a Master Plan Re-Examination requires that the planner give a report to the board and the board make its' determination. The last time, since this was such a far reaching and comprehensive effort the governing body appointed a committee of various cross sections of the community to participate, but that is not a statutory requirement. Mr. Truscott is going to prepare a re-examination report, the board is going to rely on that and make their recommendation, whichever way it may go to the governing body. Mr. Peluso then said the last 3 lines of the opinion that says on remand the court reminds the parties that no one with an interest in this matter should participate as a board member or advisory committee member. Mr. Jackson said that was in specific response that Mrs. Scher objected to her attorney that Mr. Flannery and other members were on that committee and the judge made that ruling.

Mr. Banas said based on what this gentleman has been saying, should they form a committee and Mr. Jackson said that is not necessary and he thinks that would be a bad idea. Mr. Franklin agreed. Mr. Jackson said he would think further about that but the way it was argued he does

not think Judge Grasso was in any way shape or form stating that this has to go back before an advisory committee.

Mr. Peluso does not want to see a meeting that results in nothing but another court case and there are people who have a fair amount of interest in this.

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

8. APPROVAL OF MINUTES

- Minutes from August 5, 2008 Plan Review Meeting

Motion was made by Mr. Percal, seconded by Mr. Schmuckler, to approve

ROLL CALL: Mr. Franklin; yes, Mr. Banas; yes, Mrs. Koutsouris; yes, Mr. Akerman; abstain, Mr. Fink; abstain, Mr. Schmuckler; yes, Mr. Percal; yes

9. APPROVAL OF BILLS

Motion was made by Mr. Percal, seconded by Mrs. Koutsouris, to approve

ROLL CALL: Mr. Franklin; yes, Mr. Banas; yes, Mrs. Koutsouris; yes, Mr. Akerman; yes, Mr. Fink; abstain, Mr. Schmuckler; yes, Mr. Percal; yes

10. ADJOURNMENT

The meeting was hereby adjourned. All were in favor.

Respectfully submitted
Chris Johnson
Planning Board Recording Secretary