

1. FLAG SALUTE & CERTIFICATION OF COMPLIANCE

Chairman Yechiel Herzl called the meeting to order at 6:00 p.m. with the Pledge of Allegiance and Ally Morris 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 at least 48 hours in advance. The public has the right to attend this meeting, and reasonable comprehensive minutes of this meeting will be available for public inspection. This meeting meets the criteria of the Open Public Meetings Act.”

2. ROLL CALL

Mr. Garfield, Mr. Franklin, Mr. Sabel, Mr. Flancbaum, Mr. Herzl, Mr. Rennert, Mr. Isaacson, Ms. Zografos, Mr. Meyer

3. SWEARING IN OF PROFESSIONALS

Mr. Terrance Vogt, P.E., P.P., C.M.E. was sworn in.

4. MEMORIALIZATION OF RESOLUTIONS

- 1. SP 2273 Congregation Anshei Ridge**
322 & 328 Ridge Avenue Block 236.02, Lots 3 & 4
Preliminary and Final Major Site Plan for an addition to an existing synagogue

A motion was made and seconded to approve the resolution.

- 2. SP 2274 Yeshiva Ohr Yissocher Academy Inc**
300 Cross Street Block 529 & 530, Lots 1 & 1
Preliminary and Final Major Site Plan for a school

A motion was made and seconded to approve the resolution.

5. PUBLIC HEARING

- 1. SP 2186 Bais Reuven Kamenetz of Lakewood, Inc**
Cedarbridge Avenue Block 1160.01; 1160.12, Lots 386 & 387; 261
Preliminary and Final Major Site Plan for a school

Mr. Herzl said this is not open for public hearing, it is only to decide jurisdiction.

Ms. Morris said Mr. Jackson has a conflict with one of the objectors so Mr. Dasti will fill in.

Mr. Jackson said recently he learned that one of the objectors was Mr. Bathgate who is an attorney he deals with frequently and he thought it would be best to recuse himself from this matter.

Ms. Zografos stepped down.

Mr. John Doyle, Esq. representing the applicant, said there is one objector who is a neighbor that does not want a school on this site. The documents and arguments talk to lot 261 in terms of the 2008 application. Lot 261 is the corner property and lots 386 and 387 are the other two lots. That is a red herring because all the board has in front of it at this point, is an application that was revised to propose a school on lots 386 and 387. That application was submitted on October 2, 2017 and dated September 29, 2017. The application was reviewed by the board engineer and remember, the ordinance did not become effective until December 12, 2017, so the question was did they submit an application before that date. On October 19, 2017, the engineer's report indicates revised submission listing all three lots and refers to the map. Not once does the board engineer suggest that the application is incomplete or cannot be considered. In fact, at least half a dozen times, it states testimony should be given and you don't get testimony if you do not have a complete report. Once the application is submitted, the next step would be to go to a plan review meeting. In the case of Dunbar it was said that it is beyond argument that a submission need not be a complete application. They noted that the earlier form of the law, before it become law, said you didn't get the benefit of the privilege unless your application was deemed complete. In the Dunbar case it was said they don't have to be deemed complete. They made it clear in the case in saying deemed complete was too tight and submitting an application was enough in that the burden was less. Not only did they submit an application, they had an application waiting to be heard under the law.

Mr. Herzl asked what has changed since that ordinance was adopted.

Mr. Doyle said this board hears application for permitted uses and the Zoning Board hears applications for non-permitted uses so then the question becomes as of what time to be heard by this board, if you were a permitted use, do you have to be deemed complete or submit rather. On October 2, 2017 with the plans dated September 29, 2017, schools were a permitted use on those three lots. On October 19, 2017, when it was reviewed by the board engineer, schools were a permitted use on these three lots. On October 31, 2017, when the plan review meeting was held, schools were a permitted use on these three lots.

Mr. Herzl asked which lots are currently permitted.

Mr. Doyle said schools would not be permitted based upon the ordinance which became effective on December 12, 2017 after their application was submitted and was deemed sufficient for a public hearing.

Mr. Herzl asked if that included all three lots.

Mr. Doyle confirmed. As of December 12, 2017, schools were no longer permitted on any of the three lots. Before that date, they were permitted on all three lots.

Mr. Ron Gasiorowski, Esq., representing the objector, said the issue here is whether this board has the jurisdiction to hear this application. His position is that the Zoning Board has this jurisdiction, not the Planning Board. There was never an application filed for this matter which included both of the lots in question. Years ago, when there was a question concerning use, you would proceed first to the Zoning Board for a use variance and if that were granted, you would then go to the Planning Board. That has since changed where the legislature says, if in fact you have a use variance then you go before the Zoning Board both for the variance and site plan. The argument that the Zoning Board is not qualified to hear a site plan applications has no merit.

Mr. Herzl asked if the only lot in question concerning jurisdiction is lot 261.

Mr. Gasiorowski said when the plan was first submitted, there was an approval for an office building going back perhaps 10 years on lot 261. When that was approved, the adjacent lot, where there is a proposed school to be constructed, was no way involved. There was an ingress/egress into the adjacent lot and there was in fact an

ingress/egress into the office building lot off of that main road. They now propose to have the buses ingress off of the main road but egress onto the adjacent side road, having to traverse through the office building parking lot with a roadway in order to do that. He doesn't think there is any question that makes the office building a school use because of that under case law. The question is, when this application was filed and the fact of the matter is that it was filed after the zone changed, therefore they have to be before the Zoning Board.

Mr. Isaacson asked how there is a question as to whether it was filed before or after the zone change.

Mr. Gasiorowski said the application for lot 261 was never filed showing a school use on that property.

Mr. Doyle said a map was submitted on October 2, 2017 'Preliminary and Final Major Site Plan for a proposed school' on Airport Road and Cedarbridge Avenue including lots 386, 387 and 261. Not only was it submitted but the board engineer looked at it and said it was a submission. The plan review committee looked at it, lot 261 being part of the application, with a public hearing date of December 5, 2017. Those are the facts and it was a complete application ready to be heard.

Mr. Rennert questioned what was not submitted.

Mr. Gasiorowski said they only filed an application for the school building on those adjacent two lots, 386 and 387.

Mr. Rennert asked if the issue is that the application did not list lot 261.

Mr. Vogt said the plans in question show lot 261.

Mr. Dasti said both attorneys would agree that the school application was amended to provide the driveway through the corner lot, 261 which was shown on the original application filed in 2016. There is no question that as a result of the driveway, there is a nonconformity with regard to the driveway going through the office lot 261. The issue is, when was the application complete and was it before when the ordinance was adopted in early December of 2017 which made these lots nonconforming in terms of a school use. The case Mr. Doyle referred to earlier is the most recent case which interprets the new law. The case is called 'Dunbar Homes v. Franklin Township' and it is an appellate division case which means it is binding on everybody in New Jersey except for the Supreme Court. He read onto record 'not withstanding any provisional law to the contrary, those development regulations which are in effect on the date of submission of an application. The ordinance which is in effect on the date of the submission of the application shall govern the review of that application for development and any decision made with regard to that application for development. Any provisions of an ordinance, except those relating to health and public safety, that are adopted subsequent to the date of submission of an application for development, shall not be applicable to that application for development.' Dunbar goes through what it means to be a complete application as of the date that the ordinance is in effect. Judge Espinosa went through different definitions in land use law to try and determine what completeness really meant. The first thing she quoted after the statute he had just read was the definition of 'application for development', which means 'an application form completed as specified by this chapter and the rules and regulations of the board or agency before which the application is being presented and all accompanying documents, information, fees, etc.' She then quotes an earlier section to define when an application is deemed complete. It is complete when 'the time period for action by a municipal agency commences'. The application, in his opinion, was not complete until it physically included lot 261. The reason as to what made these applications complete is that the public knows what's going on. The public didn't know about lot 261, the vacant lot, until after the new ordinance became effective. There is no question that it was the ordinance first and then lot 261 was put on the amended application. Not until the application was amended, was it complete. The notice, as he understands it, did include lot 261 in order to alert the public that lot 261 was part of the complete application. He advises the board, based on the Dunbar case and his reading of the statute, this

application was not complete until after the new ordinance went into effect. Therefore, schools are not permitted for this application. When he reviewed the file, he wondered why no one went to the zoning officer or board for interpretation of the ordinance. If the applicant wishes, they can still go to the Zoning Board for interpretation of the ordinance but the direct question tonight, in terms of jurisdiction, is he doesn't believe the Planning Board has jurisdiction because the application was not complete until lot 261 was included which was after the ordinance was adopted.

Mr. Isaacson said even though the notice included lot 261.

Mr. Dasti said the date of the notice is January 2018 so it was after the ordinance was adopted.

Ms. Morris commented that lot 261 was never added to the application form and she doesn't believe she has an affidavit of ownership for lot 261 either. It was added to the plans but the application paperwork was never revised.

Mr. Dasti said the notice that went out to the property owners which included lot 261 as part of the application, talked about a meeting which would have been held by the Planning Board January 23, 2018 which is six weeks after the ordinance went into effect and it was mailed to the property owners on January 11, 2018, a month after the ordinance was adopted.

Mr. Isaacson said there was no notice sent out for lot 261 prior to December 12, 2017.

Mr. Dasti said there is no notice either on file or to the public before the ordinance became into effect.

Mr. Doyle said there was a question from Mr. Isaacson as to what the public was aware of. Mr. Dasti correctly said the application did not list 261. The question is, what the law says, is the application had to be submitted. Mr. Dasti said the public had no notice. Typically, a member of the public doesn't know until they get a notice of the hearing. The statute doesn't speak to when the hearing is being held, it speaks to when the application was submitted. If somebody went to the Planning Board office in November of 2017, before the ordinance was adopted, and wanted to see this file then they would see an application with twenty pages of maps that list lot 261, an engineering report which lists lot 261. The application form is basically a two page document. He asked if those three numbers missing from that application matters more than the twenty pages of plans, eight other documents including an environmental impact statement, stormwater report, and engineer's report having lot 261 being included as part of the application. If it was complete enough to be scheduled for a hearing, then it meets Dunbar.

A motion was made by Mr. Flancbaum, seconded by Mr. Isaacson confirming that the Planning Board does not have jurisdiction to hear this application.

Affirmative: Mr. Garfield, Mr. Franklin, Mr. Sabel, Mr. Flancbaum, Mr. Herzl, Mr. Rennert, Mr. Isaacson, Mr. Meyer

2. SD 2101 Meyer Wainbrand

3 Cory Court Block 251, Lot 1.09

Minor Subdivision to create two lots

A review letter prepared by Remington & Vernick Engineers dated February 4, 2016 was entered as an exhibit.

Ms. Zografos returned to the dais and Mr. Grunberger arrived at the meeting.

Mr. Vogt said variances requested include minimum lot area and width.

Mr. Joseph Kociuba, P.E., P.P. was sworn. This is a minor subdivision of an existing 35,741 sf lot on Cory Court currently in the R-40 zone which was designated under the Master Plan ordinance to be an R-12 zone. It has access to Whitesville Road which is not one of the roads noted in the Master Plan in need of improvement. They are proposing to subdivide the lot into two lots, the one lot being 14,480 sf and the second lot, which will maintain an existing home on the property, 21,257 sf. Cory Court is a small cul-de-sac at the end of the entrance of West Gate.

Mr. Herzl asked if the ordinance was adopted recommending this area be rezoned to R-12.

Mr. Kociuba said the ordinance was passed and it had comments about expansion of specific County roads. Variances are requested for this application as this area is currently an R-40 so a lot area and lot width variance is required. New lot 1.32 proposes a lot width of 90 ft whereas 150 ft is required. In the R-12, both lots would be fully conforming and actually oversized.

Mr. Flanbaum asked how many houses are on Cory Court and how large are the properties.

Mr. Kociuba said there are five. The properties range from around 40,000 sf down to 32,000 sf.

Mr. Flanbaum questioned how many lots are below 40,000 sf.

Mr. Kociuba does not know.

Mr. Flanbaum said the Master Plan hasn't been enacted.

Mr. Kociuba said there is an enacting ordinance but there are caveats in the ordinance. He referenced sections in the Master Plan and MLUL to justify the variances requested.

Mr. Herzl believes the board said that the R-12 zoning doesn't go into effect until Cross Street is improved and widened. This would defeat the whole purpose of the new Master Plan. The board said wider roads are needed and they can't start granting variances before that is done.

Mr. Kociuba said they are not under the opinion that they are a permitted subdivision. They fully understand that variances are required.

Mr. Herzl said it is a big variance going from R-40 down to R-12. There are no lots in the area with similar lot sizes.

Mr. Jackson said the applicant is seeking a variance under the C-2 criteria where it basically promotes the purposes of zoning and the question is whether the benefits substantially outweigh any detriments. The burden is a bit different than the board is used to under a C-1 or on the negative criteria. On the negative criteria, the question when you look at the detriments, whether they substantially outweigh the positives but on a C-2 you have to list the reasons of the MLUL they are advancing and if they substantially outweigh and drawbacks.

Mr. Herzl said the board clearly indicated the roads must be improved before any new construction.

Mr. Jackson said that gets to the negative criteria where the question is whether the detriments don't negatively affect the Master Plan, zoning plan, ordinances or well being of the neighborhood. The board then has to weigh the negatives against the positives.

Mr. Herzl asked if there are any other 14,000 sf lots in the immediate area.

Mr. Kociuba said within their block 251, this board has approved several subdivisions. A copy of a tax map was submitted showing these subdivisions specifically along Drake Road at the corner of Old Whitesville, there are four lots approved. The Planning Board has seen it reasonable to promote higher density in this area, prior to the Master Plan.

Mr. Herzl reiterated that the Master Plan was very specific in that the roads must be improved. If the board starts granting variances now, then the whole Master Plan goes out the window.

Mr. Flancbaum said to ask for a 14,000 sf lot in this development, which is fairly new, is ridiculous.

Mr. Kociuba said the applicant would be amendable to a condition in the resolution that any road improvements would have to be made before construction.

Mr. Flancbaum doesn't think the board should start doing that.

Mr. Herzl opened to the public.

Mr. Steven Szpilzinger, 508 Lakewood New Egypt Road, was sworn. The lots for Cory Acres were advertised and sold as one acre lots. He understands zoning can change but that is how it was sold to him and all of the lots were sold like that. As of now, on Cory Court, they are all single family homes on large properties. He believes these variances should not be granted and asked that the board vote on this application as he has been dealing with this for years.

Ms. Dina Szpilzinger, 508 Lakewood New Egypt Road, was sworn. She is adjacent to the lots where the variances are being requested. If the board looks at the acreage on Cory Court, they will see that all of the lots are over an acre except for one which is .99 of an acre. When she bought the property, she was told all of these lots would be one acre lots and they wanted a property where they had a lot of space. She would like to keep it that way as long as the zoning is not changed.

Mr. Shlomo Klein was sworn. He commented that he did not see the previous speakers at the Master Plan meetings where the zoning was changed. The only thing holding up the zoning changes are the road improvements. He questioned why they weren't present if they are so concerned. The whole purpose of ordinance to implement infrastructure was not so much that they are against density but they need the infrastructure. Now all of these people who don't want the zoning changed don't want the infrastructure so the zoning never changes. He is glad to see the board is standing on their word and not approving applications before the infrastructure is in place.

Mr. Herzl closed to the public.

Mr. Kociuba said this application was pending since before the Master Plan and the intent was requesting those variances under the C-2 criteria. There have been numerous subdivisions in this area which have been approved under C-2 for higher density in this block in particular. There is a detention basin lot adjacent to this property which is a passive lot not to be developed.

A motion was made and seconded to deny the application.

Affirmative: Mr. Garfield, Mr. Franklin, Mr. Sabel, Mr. Flancbaum, Mr. Herzl, Mr. Rennert, Ms. Zografos, Mr. Meyer

No: Mr. Grunberger

Abstain: Mr. Isaacson

3. SP 2210 First Lakewood Forest Associates

114 Clifton Avenue Block 90, Lot 8

Preliminary and Final Major Site Plan for a 5 story office and retail building

A review letter prepared by Remington & Vernick Engineers dated March 14, 2018 was entered as an exhibit.

Mr. Herzl and Mr. Rennert stepped down.

Mr. Jackson said there was an issue with this when it was first filed as to what zone the building was in.

Ms. Morris said when this application was originally submitted a year or two ago, all parties involved agreed there was an error on the zoning map that was on file. The applicant believed their property was in the B-2 zone, the zoning officer was in agreement and she believes she initially processed the application indicating it was in the B-2 zone. When they heard a similar application, someone brought up the point that the zoning map was actually showing the property in a different neighboring zone rather than the B-2. It turns out the zone map had been on file for a number of years incorrectly had shifted the B-2 zone line in disfavor of this property and a number of others on Clifton Avenue. As such, this applicant chose to table their application indefinitely until that error was corrected because they didn't want to risk a denial as they had for a similar application which was the toy store. In December of this year, the Master Plan rezoning ordinance was adopted by the committee which also adopted a zone map that correctly reflected the zoning for this property. However, the adoption of that same ordinance that adopted the zone map showing this property in the correct B-2 zone also enacted parking requirements for the B-2 zone over two stories.

Mr. Jackson said if the board takes the map that was on file back when this application was first filed, the map would have shown this building being not allowed. He think there is a discrepancy over that was an error and he thinks it is a difficult thing to say the map on file was wrong absent a court saying that. If the applicant is allowed to proceed under the ordinance and zoning map as amended after this board adopted a new Master Plan, then there are things that go with that. One of the things is there are now parking requirements. The original B-2 zone had no parking requirements. If the board determines that this is a new application filed under the new zoning map then the present day regulations apply and it is in the correct zone but they would have to comply with the parking requirements.

Mr. Adam Pfeffer, Esq. said they had originally submitted this application approximately 18 months ago. As the board may recall, he also represented the neighboring property with a similar application. That original application was denied, they had filed an appeal and the judge overturned the board's decision. This neighboring property owner then came in with more or less the same application, variance free under the zone they believed they were in. The Township has acknowledged that there was a mistake that everyone was aware of. He marked a zoning display which talks about the zoning map dated May 30, 2006 and the zoning map dated December 2017 as exhibit A-1. As the board can see, the site is indicated and it shows that it was the ROP but it was supposed to be in the B-2. The Township every several years updates the zoning map and the prior engineering company made a mistake. When this issue was raised, they agreed to table the application so the map could be corrected. It is very important to know that when the zoning map changed, no notice was given to the property owners which is required by law. He had spoken with the Township attorney and he had indicated there was a mistake, they were going to fix it and to hold off on the application. He had no issue with that and every couple of weeks or so he would follow up with the Township as his client wanted to know what to do as they are trying to avoid legal fees for the Township and tax payers. It was close to a first reading but at that point, the Master Plan was moving along and they decided they are going to fix it all in one shot.

Mr. Jackson said when he put this matter on hold, he asked what the mechanism was in order to do that. He asked if the board consented to it.

Mr. Pfeffer said they did.

Ms. Morris said most likely, she received an email from the applicant's professionals saying they were going to table the application and she noted that on the agenda.

Mr. Jackson asked which zoning map was on file when this application was filed.

Mr. Graham MacFarlane, P.E. P.P. was sworn. If someone had come in at the time this application was filed, they would have been referred to the zoning map dated May 2006 that showed the property not within the B-2 zone.

Mr. Jackson said if one were buying next door then they would think that a five story building with no parking was prohibited.

Mr. MacFarlane said they would refer to whatever is permitted in the ROP zone.

Ms. Morris said it does permit the building but it is not exempt from parking requirements.

Mr. Pfeffer said if you had looked at the map prior to this then it would have shown something different. It changed overnight.

Mr. Jackson said one of the issues is zoning is not only a covenant with the people who own property it is also a covenant with everyone else who owns an adjoining property. It also sets their expectations as to how the community might grow and develop. He would respectfully submit that somebody who was in that area might have the expectation that a five story building is not going to be plopped down with no parking. That would be up to the board to decide but he wanted to make that observation and he doesn't believe it was raised on the other case. Now they are going to have two five-story office buildings near each other with no parking between them. He doesn't think it would be controversial for him to state that there is a traffic congestion and parking problem in Lakewood, probably worse than anywhere else in Ocean County and maybe as bad as anywhere else in the State.

Mr. Pfeffer argued that they haven't even gotten into their testimony yet. They are talking about the zone and date of their application.

Mr. Jackson said just from a planning and engineering perspective, he questioned what would be the benefit of having this much square footage without any parking.

Mr. Pfeffer argued again that they are not discussing that yet. The reason he says that is, if they are in the right zone and their application was in then under the ordinance, their application was fully conforming.

Mr. Jackson is not trying to come across as advocating the other side of this, however, his client has an attorney to voice the arguments that support his client's view of this. He is just trying to provide the board with some of the other ways that other people may look at this. The board would have to decide if they want to proceed with this application with the parking requirements or without.

Ms. Morris said if the board decides that parking is required then the notice is incorrect.

Mr. MacFarlane said when they started this application, looking at the zoning map, he scratched his head and thought wait a minute, everyone knows this first block on Clifton Avenue is in the B-2 zone. He then called Ms. Morris and they talked about it and she also confirmed that and they talked about their understanding that there had been drafting errors which was prepared by Birdsall in 2006. He believes Ms. Morris did some research and confirmed with Ms. Siegel and they were in agreement that the property was supposed to be located in the B-2 zone so the application was prepared based on that. At that time, when the application was submitted in September of 2016, that B-2 zone did not have any parking requirements so this application would be protected by the time of application statute which says the applications are judged based upon the zoning in affect at the time the application is filed. To him the question is, was the property in the B-2 zone at the time the application was made and if it was, the question is what are the standards the application is to be judged against. His pain is that the property is located and always has been located in the B-2 zone and that the time of application statute holds and that this application should be judged against the zoning standards that were in affect at the date the application was filed which was September of 2016 which does not require off-street parking. The zone line as shown on the May 2016 zoning map shows the line cutting across several lots within the first block and a half along Clifton at an angle, not following the lot lines and really making no sense whatsoever. Then it was drawn along Clifton Avenue.

Mr. Grunberger asked why the parking requirements have nothing to do with this application.

Mr. Pfeffer said because their application was submitted approximately 18 months ago, they would go by the ordinance in place at that time.

Mr. Jackson said the applicant believes since there was an error on the map, they are grandfathered. There is also a view where you can say that when the zoning was changed to correct the map to B-2, there were a host of facts which went with that which includes a requirement for parking.

Mr. Grunberger said but there was a mistake on the map and it was submitted prior to those requirements going into effect.

Mr. Jackson doesn't know that it was a mistake. If that is the map on file in town hall, he doesn't see how you can just say it was a mistake.

Mr. Grunberger said the question really is was it a mistake.

Mr. Pfeffer said he could go back to the Township attorney and get it in writing but they did agree that's exactly what happened.

Mr. Jackson is not so sure that even if somehow the map did not reflect what it wanted it to, he doesn't know that it was a mistake when you look at what's on file and that's what everybody else relied on.

Ms. Morris said tax records referenced these properties as B-2 and it was general consensus among the Township attorney, herself and the zoning officer that the zoning map at the time of this application was wrong, however, she understands Mr. Jackson's point in that often times the Township can't just decide to repeal ordinances that they passed because they think they did something incorrectly. Essentially, these things stand until they are fought in court. So even though the zone map may have had an error, it was still the legal zone map on file and it is not the wrong zone map until a court says otherwise.

Mr. Jackson agrees that is the zone map on file and that is the law of the land when that map was adopted and put on file.

Mr. Pfeffer said the tax records for all of these properties indicate they are within the B-2 zone. To change it out of the B-2 zone, the Township would have needed to provide notice and send it to all of the properties to let them know it is being changed.

Mr. Jackson said that is a whole different issue which requires different research.

Mr. Pfeffer understands but he is saying the notices were never done because it was a mistake.

Mr. Jackson thinks the board has to determine whether the new regulations apply to this or not.

Mr. Isaacson believes if Mr. Pfeffer had been told 18 months ago that they have to go with the map on file then he would have done something about it then. The Township told the applicant to hold off as they were going to change the map and that took away his opportunity to appeal it. The application had been submitted in proper time and it should be grandfathered in and not subject to the new B-2 regulations. Perhaps Mr. Pfeffer can provide proof of correspondence with the Township that it is the B-2 zone. He would make a motion to proceed under the B-2 zone before the new regulations were put into effect.

Mr. Pfeffer agrees to get a letter from the Township attorney indicating that there was an error, the time of the application and that it was properly in the B-2 zone.

Mr. Jackson wants the board to understand that if they decide this application is in the B-2 and was always in the B-2 then this applicant has a by-right application for no parking with a five-story office building.

Mr. Pfeffer said the question is whether this is in the B-2 zone or not. If the board requires additional information or further clarification then they will go back and do that. He believes the motion includes a condition to provide a letter from the Township attorney acknowledging that it is in the B-2. The board will still have an opportunity to hear the application after making this decision.

Mr. Franklin suggested that they hold off on this application until Mr. Pfeffer provides a letter from the Township attorney.

Ms. Morris doesn't see how that would make a difference on whether or not the applicant needs to use the new rules with the new map or whether they can disregard them.

Mr. Pfeffer said then if it was in the B-2 and it was a mistake at that time then the old rules would apply.

Ms. Morris argued then they would have been able to use the old map and not have to wait for the new map.

Mr. Jackson questioned why the applicant didn't move forward.

Mr. Pfeffer said it was indicated to him that it was a mistake and they would need to get clarification and they agreed to table the application.

Ms. Morris said the application that was denied, Mr. Jackson said the board has to rely on the map on file which is why this application didn't go forward at that time. The question is now that they are relying on the new map adopted in December 2017, do they have to comply with the new rules for parking that were also adopted in December in the same motion.

Mr. Jackson said his opinion remains that the map on file is the law of the land because people have expectations that come from looking at that map.

Ms. Morris pointed out that if the new map had been adopted a month earlier then the new parking requirements then they wouldn't be having this discussion. It is because it was all put into one ordinance.

Mr. Pfeffer said the only reason they didn't proceed any sooner is because the Township told them to wait on the Master Plan as they were combining them. He would have done something if he knew there were going to be changes.

Mr. Flancbaum believes Mr. Pfeffer should lay out a factual pattern when he comes back including a letter from the Township attorney stating that it was a mistake. Perhaps he should bring in the map that predated the 2006 map.

Ms. Morris said the engineer's review letter doesn't go over the parking calculations so if the board determines this should be heard under the current regulations then they will need a new review letter including those parking calculations.

A motion was made and seconded to carry the application. The applicant will renote.

- 4. SD 2320 Barry Eichenstein**
14 & 19 Primrose Drive Block 11.01, Lots 3.03 & 4.07
Minor Subdivision to realign lot lines

A review letter prepared by Remington & Vernick Engineers dated February 26, 2018 was entered as an exhibit.

Mr. Vogt said submission waivers are requested for topography of the site and for proposed improvements to the site. The basis of the waiver requests is that they are seeking lot line changes at this time only.

The board granted the waivers as recommended by the Board Engineer and Planner.

Mr. Vogt said it appears a minimum front yard setback for new lot 4.21 is nonconforming and a variance is required. A front yard offset of 29.7 ft is shown, whereas a minimum front yard setback of 30 ft is required which is an existing condition. The applicant's engineer correctly indicates the hardship involved with reconstructing the front portion of the existing house to comply. Therefore, they recommend the variance be granted for the existing nonconformance similarly for the wood decks on proposed lots 3.04 and 4.21. Testimony shall be provided concerning off-street parking as proposed lot 4.21 can only accommodate two vehicles.

Mr. Glenn Lines, P.E., P.P. was sworn. The application is to subdivide the rear portion of lot 3.03 and transfer it to the rear of existing lot 4.07.

Mr. Grunberger questioned why they are transferring the land.

Mr. Lines said it gives the owner of 14 Primrose a larger backyard and 19 Primrose is kind of an odd 'L' shaped lot with a piece in the back. The owner of 19 Primrose hasn't really used that rear portion as it is still wooded so it really doesn't affect the use of his lot. No new variances are being created as a result of this application. They do acknowledge that the deck on new lot 3.04 is within the rear setback. At the time it was constructed, it was permitted to have it within the setback as long as it was below a certain height. These are all existing conditions including the parking which currently works. The driveways can fit two cars plus the garage so there are three spaces per lot.

Mr. Rennert asked if there will be basement apartments.

Mr. Lines doesn't believe there are.

Mr. Herzl asked if there are sidewalks.

Mr. Lines said yes, existing sidewalk, curb and shade trees.

Mr. Rennert wants to make it a condition of approval that the basements will not be rented out as there is a parking variance.

Mr. Lines agreed.

Mr. Herzl opened to the public.

Mr. Shlomo Klein was sworn and said he has a hard time believing the basements will not be rented out if they are finished. He asked that the applicant go on record confirming they won't be rented out.

Mr. Herzl closed to the public. He said there are two existing homes and there will still be two existing homes after the lot line adjustment.

Mr. Lines confirmed, they are not building anything, no apartments are being added. They are simply moving a piece of land from one lot to the other.

A motion was made and seconded to approve the application.
All were in favor.

5. **SD 2322 Ave of the States Office, LLC**
Cedarbridge Ave and Ave of the States Block 961.02, Lot 1
Minor Subdivision to create four lots

6. **SP 2276 Ave of the States Office, LLC**
Cedarbridge Ave and Ave of the States Block 961.02, Lot 1
Preliminary & Final Major Site Plan for a mixed use site

Review letters prepared by Remington & Vernick Engineers dated March 19, 2018 and April 2, 2018 were entered as exhibits.

Mr. Vogt said there are two submission waivers relating to map scale which are relatively minor in nature.

The board granted the waivers as recommended by the Board Engineer and Planner.

Mr. Vogt said design waivers are requested from providing curb, sidewalk, street trees and shade tree/utility easements along the project frontages. As indicated, granite block curb exists along the entire Avenue of the States frontage and some concrete curb exists along Pine Street and Cedar Bridge Avenue. As long as the applicant proposes to install curbing along the Cedar Bridge Avenue frontage of new lot 1.05, they can accept a request for a design waiver from the other properties. Concrete sidewalks exist on the Pine Street frontage. A meandering asphalt path exists on the Avenue of the States frontage. As long as the applicant proposes to install sidewalk along the Cedar Bridge Avenue frontage of new lot 1.05, they can accept that waiver.

Mr. Herzl said technically the property frontages would have curb and sidewalks.

Mr. Vogt confirmed, as long as they do as indicated in their letter.

Ms. Morris said the subdivision is for a very large parcel that runs along Avenue of the States from Cedarbridge Avenue to Pine Street. The site plan she believes, where they will be proposing sidewalk, is just for the corner of Cedar Bridge Avenue and Avenue of the States. She is not sure about curb and sidewalk for the length of Avenue of the States or Pine Street.

Mr. Vogt said they would hear testimony but he just wants to put on the record the waivers, as they currently understand them. Continuing on, the applicant has requested a waiver from providing street trees along the undeveloped, heavily wooded frontages of the site being new lots 1.02 and 1.04 to be retained by the Township. The applicant agrees to propose street trees along the frontages of new lots 1.05 and 1.06 associated with the future site plan application. Finally, waiver relief is sought from providing shade tree and utility easements along the project frontages. The applicant's engineer indicates that a design waiver is requested along lots 1.02 and 1.04 which would be retained by the Township. The revised minor subdivision proposes shade tree and utility easements along new lots 1.05 and 1.06. Going on to the site plan application, there is one submission waiver requested from providing an environmental impact statement. That waiver is supported as they have very similar documentation as part of their CAFRA application and CAFRA permit and the conservation restrictions have preserved specific designated portions of wetlands buffers in the overall Cedarbridge Corporate Development Campus.

The board granted the waivers as recommended by the Board Engineer and Planner.

Mr. Vogt said variances are required for off-street loading and unloading. Loading spaces shall be a minimum of 12 ft in width, 35 ft in length, with at least 10 ft of vertical clearance. The proposed bank and smaller retail building on lot 1.05 have no loading and unloading spaces. The proposed loading and unloading spaces on new lot 1.06 are only 30 ft long. Our review of the revised plans indicates the actual proposed impervious coverage percentage for new lot 1.05 must be provided. It is not clear whether a variance will be required.

Mr. Rennert questioned whether the 30 ft width is sufficient for certain trucks.

Mr. Vogt said there will be testimony but for smaller box trucks it would be sufficient. The applicant would have to convince the board that one of the uses does not require loading spaces at all and that the 30 ft spaces would suffice rather than the UDO standard.

Mr. Herzl said the use now may not require them but somebody else could move in there down the line and they may need them. He thinks that is why the UDO requires these things.

Mr. Vogt said that is a fair question and he would recommend that if the board acts favorably, the approval should be contingent upon any change of use that it should come back before the board whether it is permitted or not to reevaluate the adequacy of the site.

Mr. Jackson said they could make that a condition in the resolution. He doesn't believe this town general operates that way but most towns require board review for any change of use that isn't the exact same use. The question is what would trigger someone to look at the resolution when the change of use is requested. Either way, they could put it in the resolution and hope it works. At the same token, this applicant is making a big investment and may be there for a number of years so why make them put in a loading dock that is not going to be used, that is pretty wasteful too. That type of thing is self-regulating and if you have a warehouse type use that goes in there that needs a loading dock at this scale, they are going to put one in.

Mr. Vogt said a front yard parking setback requirement is required for lot 1.06. It is their understanding that lot 1.06 is going to be an office use and therefore they propose 20 ft front yard setback so it wouldn't be a variance condition. Their review of the revised plans indicate a variance is required from providing public amenities on proposed lot 1.05. Per ordinance 2015-66: At least 5% of the gross area of properties developed with retail uses shall be reserved for public amenities, such as: sidewalks; seating areas; water features; monuments; plazas; gazebos; and, bicycle facilities. Lawns and landscaping areas shall be considered public amenities if accompanied by other public amenities. Drainage basins shall not be considered to be public amenities. A design waiver is required for proposing a driveway width greater than 30 ft across from the vehicular access to the Blue Claws stadium. The applicant's engineer indicates the site has been designed with a four lane entrance and exit driveway with two 12 ft wide lanes in each direction. Approval of the waiver will allow for better traffic flow to and from the site. Per the engineer's response letter, the main access is aligned with the Blue Claws stadium driveway. Since the stadium is in operation mostly at night and weekends, it is the applicant's position that peak traffic will be offset from the proposed use. Traffic testimony shall be provided. Finally, under landscape buffers, the applicant is requesting a waiver to reduce the required landscape buffer from 25 ft to 20 ft on the south side of proposed lot 1.06.

Mr. John Doyle, Esq. said the subdivision application creates three lots and leaves a fourth lot for future development. Proposed lot 1.05 is going to have three structures, a retail building of 23,000 sf, a Chase Bank of 3,500 sf and a pad site of 3,300 sf. Proposed lot 1.06 is the 20,000 sf office building. As they go through the waiver requests and variances which are nominal, he doesn't want to lose sight of the vision that is meant for this area of ratables, jobs and new structures.

Mr. Herzl said this property is very large. He questioned why they had to request design waivers.

Mr. Doyle understands but when you look at other areas within the park that have been developed with some of those design waivers granted, not only for consistency and uniformity but it also brings a certain commonality about it that makes it work.

Mr. Brian Flannery, P.E., P.P. was sworn. Currently this is an 86 acre parcel which is owned by the Township. It is immediately west of the Blue Claws Stadium and it goes all the way between Cedar Bridge and Pine. They are proposing as part of the minor subdivision to chop it up into four lots, two of which would remain in the ownership of the Township. The other two would be developed as a retail and office center. Lot 1.02 would be the remaining 69 acre parcel which the Township would own and there would be future development of that in accordance with the ordinance. Lot 1.04 is a 6.05 acre parcel which is going to remain in the ownership of the Township as well. Lot 1.05 is 3.8 acres and that is the site which would have the retail development including the 'L' shaped retail building, bank and the pad site. Lot 1.06 which is 7 acres would have the office building on it. No relief is being requested as part of the minor subdivision application. There are design waivers requested with respect to the curbing, sidewalk, street trees and as indicated in the engineer's report, they would provide all of that in front of their properties. For the most part, most of that already exists in the area. Obviously, there are no street trees in front of the wooded portions of the site and they are not proposing to put them in. The Township is going to sell that property in the future and someone would provide them at that time. The applicant agrees to all of the recommendations in the engineer's review letter.

Mr. Herzl asked if there would be curb and sidewalk along their two properties.

Mr. Flannery confirmed, full curb and sidewalk.

Ms. Morris said the engineer's review letter indicates they would support the waivers for curb and sidewalk along all of Pine Street and Avenue of the Americas, provided the applicant provides curb and sidewalk along Cedar

Bridge Avenue. She asked if anything is being provided on the site plan for the portion that abuts Avenue of the States.

Mr. Flannery said his reading of the engineer's comments is that on Cedar Bridge, they are going to provide curb/sidewalk in front of lot 1.05 and obviously there is already existing curb and some asphalt sidewalk in front of their properties which would be replaced with concrete sidewalks.

Ms. Morris asked if they are replacing the concrete sidewalks along Avenue of the States.

Mr. Flannery confirmed, they would agree to all recommendations in the engineer's report. Going to the site plan application, the engineer's review letter indicates a total of 606 off-street parking spaces are provided between the two sites where 450 are required and that is why they are asking for some relief because they are asking for relief that makes sense in order to provide an additional 150 parking spaces and they know in Lakewood, available parking spaces are important and this is a site where they don't want people having to try to go somewhere else to park and try to cross one of these roads. The relief requested would be consistent with the area and it makes sense. With respect to the variance for off-street loading and unloading, it is his opinion that reading the ordinance they are really not asking for a variance with respect to loading and unloading. For the retail site, they have two large 100 ft long loading areas behind the building which comply. If you read the report, it is saying they don't have a loading area for the bank and he hasn't seen any banks in Lakewood or any other town that have a 35 ft loading area.

Mr. Rennert questioned if this variance only applies to the Chase Bank building, not the retail building.

Mr. Flannery said it is regarding the Chase Bank building, the pad site and the proposed office building. The proposed office building, they have spaces for the FedEx trucks which are 12 ft by 30 ft. They would agree to make them 12 ft by 35 ft so that is one less variance they are asking for. The FedEx trucks fit in 12 ft by 30 ft but if it's one less thing they can cross of the list they don't need, then they would make them 5 ft deeper and they'll have 35 ft loading spaces for the office building.

Mr. Doyle said on the retail building, they meet the ordinance. On the bank and pad site, they do not but there is little point to having them. On the proposed office building, they would agree to meet the 35 ft depth.

Mr. Rennert asked what would be the use for the pad site.

Mr. Doyle said he is referring to the proposed retail site which would be a small store of about 3,300 sf.

Mr. Flannery said in reading the ordinance, for the loading it says 'loading spaces shall be provided in sufficient number and sufficient size so that no loading or unloading operations infringe upon street, sidewalk or public property'. It is his testimony that this complies with that. It further has a chart that goes by the size of the facility and for 10,000 to 99,000 sf, you need one loading dock. They have provided two proper loading docks for this site that, in his opinion, comply with the ordinance. With respect to the office building, they had done 12 ft by 30 ft which they thought was fine for the FedEx trucks but they would now amend the application and they would make them 12 ft by 35 ft so on that site they clearly comply because you need one for less than 99,000 sf and they are providing two.

Mr. Herzl asked if there would be medical offices.

Mr. Doyle doesn't know if any of the office space has been rented out yet and whether it would be medical or non-medical use.

Mr. Herzl asked if the proposed use was medical, would they still have sufficient parking.

Mr. Flannery said the parking in this zone is different than the parking requirements in the rest of the town. The general office is 1 per 300 sf, this is a separate standard in this Cedarbridge Development so it is 1 per 250 sf.

Mr. Herzl asked if it makes any difference if it is medical or not.

Mr. Flannery said no and they have exceeded the 1 per 250 requirement. There are cross access easements between these so in as much as the office and the retail have different demand times, there is availability to compensate for the parking. Item 3 under zoning indicates there may be an impervious coverage variance but that will not be needed as they have measured it. Obviously on the office building site, they are well under the 80% impervious coverage. On the retail site, they are under 80% impervious coverage as well. He has looked at those calculations and they would, as part of resolution compliance, give the exact number rather than just saying less than 80% but it is certainly less than 80%. Concerning the front yard parking setback, 20 ft is allowed for the retail building and what happened is the retail was added to the ordinance and when they originally created this zone, it didn't allow retail, only offices, and at that point they thought 50 ft is nice but when they came in with the retail they realized it was a waste of space and they made it 20 ft which is provided for the retail. They are asking for 20 ft for the office building and how they are compensating for that is by adding more parking. There are 35 parking spaces across the front and they could push the building back but they would lose close to 40 parking spaces. This is consistent with other buildings in this area. If this was fronting on New Hampshire Avenue, this wouldn't be proposed because the building on New Hampshire Avenue gives the 50 ft and when you look at the other side of New Hampshire Avenue, the buildings are set back further. There is a building across the street which is less than 50 ft as well in order to provide more parking.

Mr. Rennert asked if it is possible to eliminate any setback variances.

Mr. Flannery said they could eliminate the parking setback but they would lose 38 parking spaces but they would still comply with the ordinance. They would rather have 70 extra parking spaces. It would be different if it was a variance that would have some detriment to the public but there is no detriment. It is a C-2 variance where the benefits have to outweigh the detriments. The benefits are enormous and the detriments are none.

Mr. Rennert said he would rather have the parking than the setback.

Mr. Flannery said the last variance item is providing public amenities which indicates amenities such as seating areas, bicycle facilities, lawns and landscaping areas shall be considered public amenities if accompanied by other public amenities and the intent is that they would have benches and bike racks along the frontage area which would comply with ordinance. The amount of green wrapped in the front on the plan represents 12% of this site where 5% is required. If they haven't provided enough benches and bike racks then they would provide additional areas with those amenities in order to appease the board engineer and the board but it is his testimony that relief is not required. A design waiver is requested for a driveway which exceeds 30 ft. This is an old provision in the ordinance that he has tried to have changed because it is ridiculous as it makes sense to have an entrance this size but a facility like this needs an entrance like this so you have left turning lanes and people can move in and out. The last design waiver requested is on the south side of the building. They have provided a 20 ft buffer partial because in the front and the back they have more than 20 ft but 25 ft is required. That is situation again, where they would lose another 20 parking spaces. It is his testimony that 20 ft is more than an adequate buffer and it makes sense to grant the design waiver that provides additional parking in lieu in doing something that doesn't have any real benefit.

Mr. Rennert asked if there are any trees behind the parking.

Mr. Flannery said yes, the 20 ft would be landscaped. The trash will be picked up by a private hauler.

Mr. Herzl asked where the dumpsters are located.

Mr. Flannery said each building would have its own dumpster.

Mr. Garfield said there are two shown by the office building and four by the retail building. He questioned why that is.

Mr. Flannery said typically an office building doesn't have the same waste generation and it is going to be private pick up so they would have to pick up the trash as often as needed. Item 7 in the report is asking to add another piece of sidewalk which they agree to. This project is being built in accordance with CAFRA. There are comments in there about landscaping and they would do whatever the board feels is required. There are some comments from the Shade Tree Commission which they haven't seen to the extent that the ordinance requires what the Shade Tree Commission or the board requires they would provide it but they won't to give a blank check on what the Shade Tree Commission requests.

Mr. Herzl asked if there are any basements in these buildings.

Mr. Flannery said the retail building has a basement. It is only for the retail use.

Mr. Herzl asked if the applicant agrees to everything else in the report.

Mr. Flannery confirmed and then referenced sections in the Master Plan and MLUL to justify the variances requested.

Mr. Jackson asked if the traffic study has been submitted.

Mr. Vogt said they have one but they have requested that the applicant bring in their traffic engineer to give testimony including updated counts as to the current conditions. Concerning the landscaping, it is his understanding that the applicant has retained a landscape architect to do the final landscape plan.

Mr. Flannery confirmed and agrees to provide a landscaping plan by a licensed landscape architect.

Mr. Scott Kennel, Traffic Expert, was sworn. As far as access to the site, there will be a right in. The access to Cedar Bridge Avenue will be a right in/right out only, there will be no left turns onto Cedar Bridge Avenue. As you turn onto Avenue of the States, there will be a right in/right out adjacent to the pad site, between the pad site and the bank. As you move further south, the main access that would serve both projects directly opposite the Blue Claws access will have full movements at that location.

Mr. Herzl asked if there is a light there.

Mr. Kennel said no but he would discuss level of service analysis that he performed.

Mr. Herzl questioned how you can make a left.

Mr. Kennel said you can, the Blue Claws operation occur after their peak hours. Game times are generally 6:35 or 7 pm so the traffic associated with the baseball stadium occurs after the peak hour traffic generation from the retail and office buildings. There is one more driveway serving the site as you proceed to the southerly end to the south

end of the office building, there will be a right in/right out at that location so there will be four driveways serving the two sites.

Mr. Herzl asked if there is an internal road between the two properties.

Mr. Kennel said there is. You could make a right turn into the site from Cedar Bridge Avenue and proceed in the southerly direction behind the retail building directly to the office so there are multiple interconnection points between the two sites which lessens traffic on the public roadways to provide the most direct access to the specific users to the specific road they want to access.

Mr. Doyle said a traffic report was submitted back in February but that was before the light was installed.

Mr. Kennel said that is correct.

Mr. Herzl asked where the light was installed.

Mr. Kennel said on Cedar Bridge Avenue and Avenue of the States opposite the firehouse. Typically it is best to do a traffic count a certain period after that has been installed so the traffic kind of normalizes and people get familiar with it. When it was turned on, it was very close to Passover and he had done some counts right before Passover and he also did additional counts last night after Passover to have a good representation of baseline traffic counts. He will perform a full blown traffic study which would have to go to the County and it could be provided to the board engineer but because of the timing of when the light was turned on and the holidays, he didn't have the opportunity to do the full blown traffic study submittal. He did do an analysis.

Mr. Herzl asked what level of service the main entrance would operate at.

Mr. Kennel said it is important to recognize also is the access opposite the Blue Claws access is approximately 500 ft south of Cedar Bridge Avenue and based on their analysis, the average queue or stacking of vehicles from Cedar Bridge Avenue would be half a mid point and that analysis takes into consideration a 2028 design year where traffic counts recently collected were expanded with a 10% growth rate. It also included traffic from ten other known developments in the area, six of them are within the Cedarbridge Corporate Park and then other developments in the area, for example the retail use on America Avenue which will open up shortly. Traffic from that site was included and when he considered all of that traffic, the average queue would be at about the midpoint between Cedar Bridge Avenue and the main access so traffic would not queue up passed the site driveway. The site driveway is projected to operate at a level of service 'C' with a 95th percentile queue and for traffic exiting here being less than two vehicles. A lot of that is attributed to the random platooning of traffic on Avenue of the States as well as the traffic signal that platoons traffic in the south bound directions. So with a combination of all of those, that would operate at a level of service 'C'.

Mr. Herzl said technically people could make a right onto Cedar Bridge and get to the light.

Mr. Kennel confirmed and his analysis considered specifically people from the retail and even some of the office users who may be parked in the westerly portion may consider that if they have destinations to the east.

Mr. Herzl thinks it is easier to make a right and go to the light then make a left turn on Avenue of the States.

Mr. Kennel said it would be the driver's preference but their analysis which will be completed within a few weeks showed that this worked at a level of service 'C' with all of the conditions mentioned earlier.

Mr. Herzl questioned the other driveways.

Mr. Kennel said they would be a level of service 'C'. Analyzing the Cedar Bridge Avenue access and here they have the benefit of the traffic light at Shenandoah which platoons traffic in the east bound direction so that helps the operational characteristics here. At the newly installed traffic signal, that intersection will be an overall level of service 'C' with or without the development when he considers traffic growth and all of the other developments in the area that have been approved.

Mr. Vogt asked that he put on the record what a level of service 'C' means.

Mr. Kennel said they rate an intersection from level of service 'A' to 'F'. 'A' in this area is 2 o'clock in the morning. The general design standards to design an intersection to a level of service 'C' or 'D' is accepted in the industry. What they are providing here is a level of service 'C' which means the average vehicle delay will be approximately 25 seconds per vehicle when you consider all of the movements and all of the vehicles utilizing the intersection.

Mr. Herzl asked if there is a pedestrian walkway between the two sites.

Mr. Kennel doesn't see one on the plans but that is something they could provide.

Mr. Herzl believes that should be added because if the overflow traffic is going from one site to the next, there should be some sort of walkway.

Mr. Kennel said that is a good suggestion. He would suggest it would be after the first internal intersection since most of the turning movements occur there and then do it in line with the two buildings.

Mr. Sabel suggested perhaps it should go through the parking lot as well.

Mr. Kennel said if they provide a crosswalk then they would lose approximately two spaces. If the board thinks that is something that is needed, they would provide that.

Mr. Herzl believes they should as it is a safety issue.

Mr. Grunberger said none of the plans show the southern driveway as a right in/right out only.

Mr. Kennel said they can add specific signage to enforce that but the intent is that three of the four driveways would be right in/right out.

Mr. Rennert said if there is a way to limit left turns after a certain hour at night.

Mr. Jackson doesn't see how you could do that as a site management issue. He questioned how that would be enforced. The Blue Claws almost always have police officers out there managing the entrance and exit.

Mr. Herzl said on Route 9/Madison Avenue, there are signs prohibiting left turns after a certain time of day.

Mr. Jackson said he is right, there are signs that can regulate that but thinks the Planning Board can only do that within the site, you couldn't put it out on the road.

Mr. Herzl said the signs would be in the site.

Mr. Kennel said based on his experience, it is a ramp up and the board has to remember, this isn't the only access off of Avenue of the States and it's a gradual influx of patrons and again, it generally occurs after 5:30 pm and more so between 6 and 6:30 pm. Generally office employees have left by 5 pm so they are compatible in his opinion.

Mr. Herzl said retail buildings are open until 11 pm.

Mr. Kennel understands but again, this is a modest sized retail and once people arrive at the stadium, you don't have constant traffic entering and typically with baseball games, you generally don't have people leaving all at once.

Mr. Herzl said when there is a game there, the traffic is backed up on Cedar Bridge Avenue.

Mr. Kennel said the traffic is backed up because there was no traffic light. Prior to four weeks ago, there wasn't a traffic signal there and you had to have police just as you have police out on New Hampshire Avenue.

Mr. Herzl asked if he feels that even when there is a game, it will still run at a level of service 'C'.

Mr. Kennel said yes because again, they are not coincidental peak hours.

Mr. Herzl opened to the public.

Mr. Shlomo Klein was sworn. He asked why there isn't an affidavit of ownership form in either application. He questioned whether the Township gave this applicant permission to develop this property.

Mr. Jackson said if the Township owns the property presently, he doesn't think they would require an affidavit of ownership but the applicant is supposed to be submitted.

Ms. Morris said the applicant submitted documents as required but he is looking for the affidavit of ownership form which states who owns the property and the application is authorized.

Mr. Jackson said the purpose for that regulation is so that the public knows who the applicant is, one is the municipality. He would put in a condition in the resolution that the Township must sign off on this project.

Mr. Klein believes this is a loophole that a lot of developers do in that they provide excess parking and then ask for a waiver. Afterwards, they use it for the next lot to have an easement to get this parking. On Route 9 and Chestnut, they developed the basement because they had additional parking but the reason why they were able to get more parking is because they got a waiver for the buffer. He believes the applicant is giving more parking in order to use the basement or for the adjacent property.

Mr. Herzl said the applicant testified that the basement would only be used for the tenant upstairs and it would not be rented out.

Mr. Klein argued that they could come back later with an application and use this parking and it would be a by-right application. He questioned circulation of the property and suggested they connect the properties.

Mr. Kennel said they don't know what is being developed there and have no control over that. It may be something that's feasible as the next lot is developed but at this point they don't know when that would take place or how they're lot configuration would be.

Mr. Klein argued that they are subdividing the property on behalf of the Township so technically they are the applicant so he questioned why they can't connect the properties.

Mr. Doyle said the question was already answered. That would be in the future and they can't decide on that now.

Mr. Klein asked why they don't connect the sidewalks to all of the buildings frontages. He said there are only certain sections where there are marked crosswalks.

Mr. Kennel said this is no different than other retail type developments. There is the use of the circulation aisles and typically people park closest to the building they are going to patronize. The pedestrians have to be cognizant of vehicles and the vehicles have to be cognizant of pedestrians.

Mr. Klein said a lot of people are going to be walking here and there should be sidewalks and crosswalks for the safety of the pedestrians.

Mr. Herzl agrees there should be striped crosswalks throughout the development.

Mr. Vogt said he would not interrupt the parking with concrete, he would look at working with the applicant's professional and add additional striped areas to provide additional interconnections within the site. He thinks it was testified earlier that they would lose parking spaces but it would be a finite number.

Mr. Doyle agrees to work with the board engineer concerning striping/crosswalks within the site.

Mr. Felsing, 21 Hawk Way, was sworn. He expressed his concern about the dangerous and aggressive driving in Lakewood and questioned the additional traffic this development would cause on Pine Street.

Mr. Kennel said in the afternoon, there will be anywhere between 20 to 30 vehicles that'll be processed through Pine Street and out of the Avenue of the States intersection during peak hours.

Mr. Felsing said that schools were not in session when the traffic counts were taken. He thinks it would be much better to have traffic diverted from Pine Street. He said in the mornings and afternoons when the schools are letting out, the traffic is backed up on Pine Street almost to Avenue of the States.

Mr. Kennel said any traffic that will be coming to the site that is originating from Pine Street is going to be generated by the residents which live along Pine Street and will use that to access this development. A lot of that traffic is already on the roadways and they can now take advantage of the retail opportunities as well as potential employment opportunities.

Mr. Felsing argued the traffic is not from the residents in that area, it is school buses and parents picking up and dropping off their kids and he wasn't taking counts when schools were in session. He suggested that new counts be taken when school is in session.

Mr. Kennel said schools were in session yesterday and based on his counts, there were 40 school buses recorded just during the peak hour going through the Cedar Bridge Avenue and Avenue of the States intersection. It is clearly evident that school was in session with that many buses within the peak hour. There will be additional traffic counts done as required by the County.

Mr. Felsing believes it is a conflict of interest that the traffic engineer is hired by the developer.

Mr. Herzl closed to the public.

A motion was made and seconded to approve the subdivision.
All were in favor.

Mr. Sabel (?) asked if they can design the curb on the Cedar Bridge Avenue entrance so people cannot make a left turn.

Mr. Doyle said it is the County jurisdiction.

A motion was made and seconded to approve the site plan.
All were in favor.

7. SP 2278 Yeshiva Ohr Hatorah

780 Vassar Avenue Block 1602, Lot 3

Preliminary and Final Major Site Plan for an addition to a school

A review letter prepared by Remington & Vernick Engineers dated April 2, 2018 was entered as an exhibit.

Mr. Vogt said submission waivers are requested including a traffic study, the applicant's engineer indicates the proposed project is only a small addition that does not affect the existing off-street parking and circulation. The addition proposes removal of one classroom and the construction of four classrooms. The increase in students and teachers will not have a significant impact on traffic and they feel that is reasonable. Proof of submission to the Ocean County Planning Board waiver is supported as the proposed project size is under the threshold for their review. An environmental impact statement waiver can be supported since freshwater wetlands were flagged by the Environmental Management Group on November 27, 2017 and have been located on the survey. The tree protection management plan waiver would be for hearing purposes only and the applicant would have to comply with the tree ordinance as applicable, if approved. The landscaping/lighting plans waiver is supported for hearing purposes only, however, they do note per review of the plan that all landscaping has not been installed from the previous approval and must still be planted. Finally, design calculations showing proposed drainage facilities waiver is supported since the site is not a major development and the increase of impervious area is minimal. A copy of the stormwater management plan shall be provided which was filed with the County.

The board granted the waivers as recommended by the Board Engineer and Planner.

Mr. Vogt said testimony shall be provided concerning off-street parking. The applicant's professional indicates the school and addition will consist of 33 classrooms which would require 99 spaces and that does not include existing offices and the proposed addition which has an office. Currently there are 73 existing parking spaces and no additional spaces are being proposed. The applicant's engineer indicates that the existing basketball hoops will be removed, so no relief will be required. Finally, the revised plans indicate that the existing site identification sign will be relocated, therefore, relief will no longer be required. Design waivers are requested including providing sidewalks and street trees along the Vassar Avenue frontage, this design waiver was previously granted for the site under SP 2119. The bus loading and unloading zones added to the site plan shall be shown as proposed since they currently do not exist. They support granting the waiver from providing the circulation plan provided the proposed designated spots are made a condition of approval.

Ms. Miriam Weinstein, Esq. said this is a boy's elementary school which is one of the most popular and fastest growing schools in Lakewood. They are before the board for a site plan approval to construct a small addition to an already approved and existing school. The school would like to add additional classrooms and a Bais Medrash/study

hall so they can accommodate more students. The net additional classrooms as a result of this application is three. They are actually adding four new classrooms but they are losing one as a result of the addition. The application is conforming with the only being relief sought is for parking.

Rabbi Londinski was sworn. He said this is boy's elementary school with (inaudible) through eighth grade. Currently there are 818 students enrolled and the maximum after the addition would be 900 students.

Mr. Herzl questioned how many buses come to the site.

Mr. Londinski said it is split up because they have minion in the mornings. During minion they have five buses and then at 9 am, there are ten, 2 pm dismissal there are three, 4 pm there are six and 4:45 there are six.

Ms. Weinstein asked what the net addition of students and classrooms as a result of this addition would be.

Mr. Londinski said 82 students and three classrooms.

Ms. Weinstein asked how many staff members there are.

Mr. Londinski said 63.

Ms. Weinstein asked how many staff members drive to the school each day.

Mr. Londinski said approximately 40 because some staff members carpool.

Ms. Weinstein asked how many additional staff members he anticipates as a result of this addition.

Mr. Londinski said at most, six.

Ms. Weinstein said so currently there are roughly 40 to 50 cars plus an additional 6 more where 73 spaces are proposed after the addition. She asked if the basketball hoops would be removed.

Mr. Londinski said they would.

Mr. Jackson asked if a pool is being proposed.

Ms. Weinstein said there was a pool approved as part of the last application but it has not yet been installed.

Mr. Herzl asked if any new variances are being created as a result of this addition.

Ms. Weinstein said the only variance is for parking as per the board engineer's letter, it is indicated that three spaces are required per classroom. There will be 33 classrooms after this addition which would mean a requirement of 99 spaces. They would be requesting a variance for 73 spaces whereas 99 are required as per the requirements of the new ordinance.

Mr. Rennert questioned the landscaping which was not yet installed for the previous application.

Mr. Londinski confirmed that it will be put in.

Mr. Rennert asked if there are any plans to utilize the property in the back.

Ms. Weinstein said there are wetlands in the back.

Mr. Glenn Lines, P.E., P.P. was sworn.

Mr. Vogt said they identified 99 spaces based on the school but there are office rooms as well. He asked if that contributes to the ordinance requirements and if so, how much.

Mr. Lines said the section of the ordinance that requires three classrooms has no requirement for offices in this zone.

Mr. Vogt asked if he feels the UDO requirement is 99 spaces.

Mr. Lines said yes, in the M-1 zone.

Mr. Herzl asked if the applicant agrees to all of the comments in the review letter.

Mr. Lines confirmed. He went out to the site at about midday and also found an excess of parking spaces with the current use. It is his testimony that there is ample parking.

Ms. Weinstein said there would be ample parking spaces even after the additional classrooms are added.

Mr. Lines confirmed.

Mr. Jackson asked if the benefits of this addition would substantially outweigh any detriments.

Mr. Lines confirmed.

Mr. Rennert said they would still have a surplus of parking under the old ordinance even counting the offices and tutor rooms.

Mr. Jackson prepared a resolution which was read into the record.

Mr. Grunberger asked if at any point during the day, there is parking on the street.

Mr. Lines said when he went out to visit the site, there were three cars parked in the street in this area. He didn't know if they were specifically from the school but on site there were over twenty empty parking spaces.

Mr. Garfield said there was a reason the ordinance was changed to increase the requirement for parking. Looking at the site plan, perhaps they can add additional spaces on the left side of the property.

Mr. Lines said one of the requirements of Public Works is the dumpster was never properly landscaped and that was pointed out in the review letter. They had to get rid of that dumpster and now the Public Works department wants trash compactors so they will be unable to add anything to that far end of the parking lot as the compactors are so large.

Mr. Garfield argued that many schools around Lakewood do not have sufficient parking and he sees people parking on the grass and in the street.

Mr. Herzl said the Rabbi and engineer testified there will be ample parking.

Mr. Jackson questioned the sidewalks.

Mr. Lines said they were granted a waiver on the original application and are requesting the same waiver as there are no other sidewalks in the area.

Ms. Weinstein said it is in the Industrial Park.

Mr. Jackson said sidewalks were recommended at the plan review meeting as they know the board's view on that and urged them to add them to the plan.

Mr. Herzl said it should be up to the Industrial Commission.

Mr. Jackson said he would add that as a condition of approval.

Mr. Flancbaum said parents aren't dropping off kids on Vassar Avenue, this site doesn't work like that. He knows in the Industrial Park that sidewalks have not been recommended so as to not encourage children to walk on the sidewalks.

Ms. Zografos knows the Mayor has said in the past not to waive sidewalks and he has not said except for the Industrial Park. She works in the Industrial Park and she has seen kids hitchhiking and walking in the road especially on Airport Road.

Mr. Herzl polled the board and the majority of the board would like sidewalks installed unless the Industrial Commission overrides them and says they do not want them.

Mr. Jackson said the Industrial Park wouldn't supersede the board.

Mr. Lines said they would be willing to put in sidewalks but if the Industrial Park doesn't want them then they would come back under correspondence.

Mr. Sabel (?) said there needs to be crosswalks added.

Mr. Herzl opened to the public, seeing no one come forward, he closed to the public.

Mr. Rennert said there are businesses in the park which have previously made a request to the Industrial Commission that they do not want sidewalks.

Mr. Jackson said he will put in a condition that sidewalks are required, if the Industrial Commission objects then the applicant can come back under correspondence and ask for a waiver.

Mr. Grunberger asked if the second floor will be rented out as it is a large room.

Ms. Weinstein said it is a Bais Medrash/study hall and it will not be rented out.

A motion was made and seconded to approve the application.
All were in favor.

A motion was made and seconded to memorialize the resolution.
All were in favor.

6. CORRESPONDENCE

- **SP 2205 New Jersey American Water Company** – removal and replacement of existing building under previously approved site plan for water treatment structures

This correspondence item was carried to the April 24, 2018 meeting.

7. APPROVAL OF MINUTES

8. APPROVAL OF BILLS

9. ADJOURNMENT

The meeting was hereby adjourned. All were in favor.

Respectfully submitted
Sarah L. Forsyth
Planning Board Recording Secretary