

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. Franklin, Mr. Hibberson, Mr. Herzl, Mr. Follman, Ms. Zografos, Mr. Garfield

3. SWEARING IN OF PROFESSIONALS

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

4. MEMORIALIZATION OF RESOLUTIONS

1. SP 2241 Congregation Talmud Torah Inc

Pine Street Block 855.01, Lots 21, 34.03, & 37 (future Lot 21.02)
Preliminary and Final Major Site Plan for a school

A motion was made and seconded to approve the resolution.

2. SP 2249AA Congregation Nachlas Yisroel

East Spruce Street Block 855.01, Lot 29
Change of Use/Site Plan Exemption to convert existing home to a school

A motion was made and seconded to approve the resolution.

3. SD 2185 Mark Properties, LLC

Netherwood Drive Block 435, Lot 6
Extension of Minor Subdivision to create 2 lots

A motion was made and seconded to approve the resolution.

4. SD 2186 Pinchos Wolhendler

East Seventh Street Block 208, Lots 134.03 & 134.04
Extension of Minor Subdivision to create 3 lots

A motion was made and seconded to approve the resolution.

5. SD 2001 Joseph & Renee Klein

East Eighth Street Block 166, Lot 2.44
Extension of Minor Subdivision to create 2 lots

A motion was made and seconded to approve the resolution.

- 6. SD 2254 Eli Kofman**
Manetta Avenue Block 236, Lots 6.01 & 6.02
Minor Subdivision to create two lots

A motion was made and seconded to approve the resolution.

- 7. SP 2238AA Shea Rosenfeld**
Hope Chapel Road Block 2, Lot 114
Change of Use/Site Plan Exemption to make temporary house of worship trailer into permanent house of worship

A motion was made and seconded to approve the resolution.

- 8. SP 2172 Center 101, LLC**
Clifton Avenue Block 90, Lot 9
Preliminary and Final Major Site Plan for a five-story office and retail building

Mrs. Morris reminded the board this is the application the court has remanded back to the board for approval.

Mr. Franklin said this is impossible to build unless the Township closes the street down as there is no place to set cranes.

Mr. Herzl said they could utilize the parking lot behind them and lose more parking.

Mr. Jackson said the board could impose a condition that the applicant must satisfy the building department that there is proper staging, safety, permission is obtained from adjoining neighbors to stage and complete the construction.

Mr. Adam Pfeffer, Esq. said he would like an opportunity to see the revised resolution before it is passed.

Mr. Jackson said he would send him a draft including the board's concerns with the staging of the equipment and general public safety and a staging/construction plan must be submitted.

Mr. Hibberson asked if they could discuss with the mayor before passing this.

Mr. Herzl does not know if the mayor could do anything as it is a court order.

Mr. Hibberson said they were supposed to express their concerns to the mayor and committee.

Mr. Jackson said the court issued an order and the board must obey. They can put another provision in the resolution as suggested by Mr. Franklin.

Mr. Rennert arrived.

- 9. SD 2067 Mark Moskovitz**
Central Avenue & Bradshaw Road Block 83, Lot 7
Extension of Minor Subdivision to create two lots

A motion was made and seconded to approve the resolution.

- 10. SD 2129 Miriam Klein**
Miller Road Block 12, Lot 201
Extension of Minor Subdivision to create two lots

A motion was made and seconded to approve the resolution.

5. PUBLIC HEARING

- 1. SD 2266 Claire Drive, LLC**
Claire Drive Block 430, Lots 13-16
Minor Subdivision to create five lots

A review letter prepared by Remington, Vernick & Vena Engineers dated July 18, 2017 was entered as an exhibit.

Mr. Vogt said a minimum lot width variance is required, the proposed road extension is not RSIS compliant, and a design waiver is required for non-radial side lot lines.

Mrs. Miriam Weinstein, Esq. said they were previously before this board with an application to subdivide this property into 5 lots. At that time, the board felt the application was too aggressive and that the road was too narrow to accommodate the homes. The applicant redesigned this project, proposing 5 lots and to widen the Claire Drive extension which the property fronts on to 32 ft of pavement in width. All lots are now 12,000 sf in conformance with the R-12 guidelines. These are not developers, they are end users who purchased this property from the Township of Lakewood. The purchase price that the Township based their appraisals on was an appraisal that valued the lots as duplex lots. While the Hearthstone area is zoned R-12, their testimony will once again show that most of the lots in that area are in fact non-conforming and are significantly smaller. The applicant's will be paving a much needed new artery in this very congested area and will be extending water and sewer as well. While this road doesn't lead anywhere currently, it is only a matter a time before the land to the north of this property is developed at which time opening up this road will offer a much needed alternative to Route 9.

Mr. Brian Flannery, P.E., P.P. was sworn. An exhibit showing the subject property in orange as well as the surrounding development. Properties highlighted in blue are developments more intense than the subject application. If the board looks at the easterly orange line, everything to the east of that is in the HD-7 zone including townhouses and apartments. To the west, he has highlighted two cul-de-sacs which were approved on 8,000 sf lots and the whole Hearthstone area. A rendering of Hearthstone was shown which includes 240 lots. The orange and blue lots are 12,000 sf and 10,000 sf of which 75% of the lots are less than 10,000 sf. Their proposed 12,000 sf lots are bigger than 75% of the lots just in Hearthstone alone. It is end users that are putting this together in order to build nice houses. The original proposed road had a little twist in the road which he found to be a traffic calming measure and something that would be unique but the Township engineer felt different so it was taken out. The board engineer's review letter indicates the road should be RSIS compliant, Public Works and the Police department would have to approve it which he believes they will. Instead of just coming off of the cul-de-sac, turning and going straight, it provides curves and reverse curves so that it is in a logical fashion and it also provides for two stop sign locations so that anybody coming into the cul-de-sac would stop and not go speeding through from either direction.

Mr. Vogt asked which plan he is referring to.

Mr. Flannery said it is the road improvement plan prepared by New Lines Engineering dated 4/25/17, revised 7/31/17. This is only an exhibit as it was not submitted prior for the board engineer to look at. The applicant has been working with Public Works and the Police department to figure out how to make this work as there is a

Township right-of-way there as well as property which will be developed. The applicant feels this is a plan that works and if approved, it would be subject to an RSIS compliant road.

Mr. Franklin asked if there is any way to soften the bump between lot 18 and 13.05.

Mr. Flannery said the revised plan does show that.

Mr. Herzl asked if the cul-de-sac will be open to Silvestro Drive.

Mr. Flannery said yes, it is a paper street right now which comes out to Pine Boulevard and Pine Boulevard goes into Hearthstone and out to Route 9.

Mr. Herzl asked how far to Pine Boulevard.

Mr. Flannery said probably another 800 ft.

Mr. Herzl asked if all of these lots are single families.

Mr. Flannery confirmed.

Mr. Rennert questioned the shape of the cul-de-sac.

Mr. Flannery said when Hearthstone was developed, the cul-de-sac was put in. The original developer of Hearthstone put the cul-de-sac in the wrong place. It should have allowed the paper street to come out on the center line and then they wouldn't be in this situation. His thought process was the original developer wanted to squeeze in a few extra lots. There are houses on both sides of Claire Drive now and then there is the vacant land behind it. There is a paper street that comes off the cul-de-sac and if Hearthstone had been laid out properly, it would have come off the center line but instead it comes off all the way on one side and then there are neighbors on the other side which aren't going to give up any property so this applicant is dedicating a substantial amount of property and then he is providing a road widening easement beyond that in order to provide for a 32 ft wide cartway with sidewalk along the frontage along these proposed lots. The 2007 Master Plan adopted by this board suggested rezoning this area to R-7.5 single family only as there is no R-12 in the area. There are 25 lots which are 12,000 sf out of 240 and the rest of the area around has none. Of those 25 lots, one is vacant and one is only 50 ft wide so if you look at the number of houses on 12,000 sf lots, they are down to 23. The proposed lots meet the area and the widths are certainly consistent with other lots in the area and when you look at a transition between the townhouses and Hearthstone, this will certainly be a nice project and it is being built by end users so they are going to build nice houses.

Mr. Rennert asked if Princewood intersects with Claire Drive.

Mr. Flannery said no.

Mr. Rennert asked what is currently on lot 18 and lot 12.

Mr. Flannery said lot 18 has a single family home and lot 12 is wooded.

Mr. Herzl asked him to go through the engineer's report.

Mr. Flannery said lot width variances are requested ranging from 76 ft to 84 ft whereas 90 ft is required. He didn't do a summation of how many lots are 90 ft wide but he believes you would get a similar percentage.

Mr. Herzl asked if garbage trucks can fit all the way down this road.

Mr. Flannery said there was an approval to build on this road with a hammerhead turnaround so that a garbage truck can turn around but this application will need Public Works approval. There is a hammerhead shown but once the road goes through, that will not be needed.

Mr. Franklin said the hammerhead would work.

Mr. Flannery said comment three relates to the extension of Claire Drive and they would agree to the conditions of Public Works, Police and the Township engineer and that it would either be RSIS compliant or there would be a de minimis exception but they agree that it would be safe and they would not get approval until they can prove that to all three departments.

Mrs. Weinstein confirmed Public Works already approved the design.

Mr. Vogt asked how they would handle their comments concerning the right-of-way.

Mr. Flannery said they provided a right-of-way dedication which gets them the 32 ft cartway in the right-of-way and they are proposing a road widening easement which takes them the rest of the way. The combination of the two is a few feet more than if they just gave what would have been needed on the right-of-way. It is his testimony that meets RSIS and any relief would be a de minimis exception.

Mr. Vogt said the easements, in lieu of the full right-of-way, will keep them from needing lot area variances.

Mr. Flannery said that is correct. The rest of the comments in the report would be addressed. This applicant will be extending sewer and water which is a public benefit, the road will be extended which ultimately will be a public benefit. It is end users who will provide nice houses and the lots are larger than the majority of the lots in the area and certainly consistent with the development in the area. The Master Plan suggested this area to be R-7.5 which these lots greatly exceed.

Mr. Rennert asked what the difference is between an easement and a dedication to the end user.

Mr. Flannery said there is no difference. The sidewalks will be there, the homeowners would be responsible for the sidewalks and anybody can walk on the sidewalks. It is not going to be any different.

Mr. Rennert is trying to understand the difference.

Mr. Flannery said it would be better for the homeowner if the board granted the variance for the de minimis relief because then it is not part of their lot so if someone trips, instead of suing the homeowner they would sue the Township.

Mr. Rennert said it may be better to grant the variances. He asked what the lot areas would be.

Mr. Flannery believes they are 300 sf shy of 12,000 sf.

Mrs. Morris said there was discussion with the Township engineer as to whether or not an easement, in lieu of the dedication, is sufficient to meet RSIS which is why Mr. Flannery testified it meets the intent of RSIS. Also, there is an ordinance which states the property owners are responsible for the sidewalk.

Mr. Jackson believes the board has to look at this and decide whether or not the configuration makes sense.

Mr. Flannery said the paving and curbing is within the right-of-way. The sidewalk is outside of the right-of-way and the sidewalk is always the homeowner's responsibility anyway. If they do not do a dedication then the lot sizes would be 11,660 sf, 11,787 sf, 11,704, 12,915 sf, and 14,658 sf so the average lot size is well over 12,000 sf lots in a neighborhood where 75% are less than 10,000 sf.

Mr. Jackson said typically the sidewalk is within the right-of-way, as are the utilities, road and drainage. In most towns, there is an ordinance which states the homeowner is responsible for the sidewalks. If someone trips on the sidewalk, generally, homeowners are not liable for that if it is within the right-of-way unless the homeowner did something to create the hazardous condition but the government also has a lot of immunities that defy trips and falls. He doesn't think the board should worry about that. He thinks it is always better to have the sidewalks in the public right-of-way. That is why when people do subdivisions, 50 ft is supposed to be dedicated to the right-of-way so the government can take care of all that.

Mr. Herzl asked if it would be better if the board grants the lot variances.

Mr. Jackson thinks it is a cleaner way.

Mr. Herzl opened to the public.

Mr. Shlomo Klein was sworn. He made a comment concerning the difference between easements and dedications as front yard setback variances may be needed.

Mr. Flannery said the applicant would comply with the front yard setback from either the extended right-of-way or if they don't take the right-of-way, they would do it from the easement line so they are not trying to cheat. They have plenty of depth and they would like to have the houses pushed back.

Mr. Vogt said when they come in with plot plans, they are going to have to be 30 ft off of the dedication.

Mr. Jackson said the plan should be revised to avoid confusion.

Mr. Klein commented it is a safety concern not having sidewalks across the street as people walk from the back to get to Chateau and a nearby synagogue. An adjacent lot is currently being used by pedestrians but it has been sold and will probably be fenced off. There was testimony that the street is being opened up for the public good but he disagrees. He understands everyone has a right to develop their property but this would be a negative to the public. He is not objecting but wanted to make that point. This application came in as a minor subdivision but he believes it should be a major which would require architectural plans.

Mr. Jackson said whether or not it is a major or minor subdivision is defined by ordinance.

Mr. Morris said Mr. Klein's point is that any time there is a new roadway or roadway extension, it is automatically a major regardless of the number of lots. This applicant chose to develop the roadway separately which anyone has the right to do. They could submit plans separately to the Township engineer to build the right-of-way. That roadway is bonded and essentially already in existence then this is a minor because the roadway is not part of this

application. By being a minor subdivision rather than a major subdivision, one of the differences in the application requirements for submission is the requirement for architectural plans.

Mr. Avrohom Zelasko, 954 Claire Drive, was sworn. He owns lot number 40 and does not object to this application. He understands sidewalks cost a great deal of money but he asked if curbs could be provided so people do not park on the grass. It would also make it safer for people walking to school so they don't have to walk in the street.

Mr. Flannery said the applicant would agree but there is a grading issue there so they would go with an exposed curb. It would still create that delineation and anyone on the other side that eventually builds, would build up to that curb.

Mr. Herzl closed to the public.

Mr. Grunberger asked if the width variances are requested to allow for 5 houses.

Mr. Flannery confirmed. These are 12,000 sf lots in an area that is predominately 8,000 sf lots and a majority of the other lots in the same R-12 zone are 80 ft wide so they are not building anything that is out of character.

Mr. Herzl said they have removed one house from the previous application.

Mr. Flannery confirmed.

Mr. Jackson said it certainly is a legitimate argument to say the applicant could comply by having smaller lots but they are arguing under C-2 in that they advance the purpose of zoning by allowing the lots in the configuration that they are.

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

2. SD 2272 Congregation Talmud Torah Inc
Pine Street Block 855.01, Lots 21, 34.03, & 37
Minor Subdivision to create two lots

A review letter prepared by Remington, Vernick & Vena Engineers dated July 26, 2017 was entered as an exhibit.

Mr. Vogt said variances requested include minimum lot width and front yard setback. There was a question regarding the accessory structure and it is their understanding it is going to be removed.

Mrs. Miriam Weinstein, Esq. confirmed.

Mr. Vogt said design waivers are required including curb, sidewalk, street trees, shade tree and utility easements for proposed lot 21.01 along East Spruce Street and for curb, sidewalk and street trees for proposed lot 21.02 along Pine Street.

Mrs. Miriam Weinstein, Esq. said if the board recalls, they received approval for a school on a portion of this property. The mother lot is roughly 2.9 acres which fronts on Pine and East Spruce Street. This application is taking an existing three lots, consolidating them and then subdividing them into two lots. The school would be built on the larger lot which fronts on Pine Street, the second is a 20,000 sf rectangular lot on East Spruce Street upon which a single family home will remain for the time being. Two variances are requested including minimum lot width of 90

ft whereas 100 ft is required and a minimum front yard setback of 20.69 whereas 30 ft is required, both are existing conditions.

Mr. Herzl said the school had no variances associated with it.

Mrs. Weinstein confirmed, it was already approved and the resolution was passed tonight.

Mr. Herzl said if the house is ever removed, they would have to meet the setbacks.

Mrs. Weinstein confirmed.

Mr. Glenn Lines, P.E., P.P. was sworn. He said a minimum lot width of 90 ft is requested. Two lots to the east are 90 ft and he believes all of the lots on the east side of East Spruce Street are 90 ft wide so these proposed lots would be in keeping with the development pattern of East Spruce Street. There is no additional land available on either side of this property.

Mr. Herzl asked if there are any items in the report which the applicant does not agree with.

Mr. Lines said the engineer did point out the plan submitted did not show curb, sidewalk, shade trees or shade tree and utility easement for lot 21.01. That will be provided. As far as lot 21.02 on Pine Street, the site plan shows all of those improvements including shade trees, curbs, sidewalks. Therefore, none of those waivers are required. All of the other items in the engineer's review letter can be met.

Mr. Rennert said there should be a condition in the resolution stating that if the house ever gets knocked down, then the new house will conform with the setbacks.

Mr. Herzl opened to the public.

Mr. Shlomo Klein was sworn. He said a waiver is required from improving America Avenue.

Mr. Chaim Klein, 1421 East Spruce Street, was sworn. He wants to ensure sidewalk is being providing along East Spruce Street.

Mrs. Weinstein said the applicant doesn't own the lot he is referring to on East Spruce Street. The school is purchasing the front portion and the party they are buying the property from is going to retain that lot which she is sure they are going to sell and the house is going to be removed.

Mr. Follman said the applicant's engineer just testified that sidewalks would be provided along East Spruce Street.

Mrs. Weinstein said there will be sidewalks and curbs along the school's property frontage. If and when the house comes down, the new owners are going to have to install curb and sidewalk.

Mr. Herzl asked if the board could require the applicant to install curb and sidewalk on the property that doesn't belong to the school.

Mrs. Morris believes they can as it is part of this application.

Mr. Herzl closed to the public.

Mr. Follman asked if they could make the access on Avenue of the Americas and eliminate the second exit.

Mr. Lines said they are talking about one house, maybe two. There is only one lot which butts up to the end of America Avenue and their lot 24 which extends between East Spruce Street and America Avenue so they are talking about the possibility of two houses with a driveway versus the traffic of the school. One driveway 50 or 100 ft away from the school's entrance is going to cause a major traffic problem.

Mr. Rennert asked what is on the other side of Pine Street.

Mr. Lines says there are buildings going up but he doesn't believe any of them have access to Pine Street as there is a 50 ft buffer along there.

A motion was made and seconded to approve the application. A waiver from installing curbs and sidewalks along East Spruce Street was not granted.
All were in favor.

3. SP 2227 Yerek, LLC
Airport Road Block 1160.01, Lots 242.01 & 242.02
Preliminary and Final Major Site Plan for warehouse storage units

A review letter prepared by Remington, Vernick & Vena Engineers dated August 16, 2017 was entered as an exhibit.

Mr. Rennert and Ms. Zografos stepped down.

Mr. Vogt said a submission waiver is requested from providing an environmental impact statement. Per NJDEP-GIS mapping, there does not seem to be any environmental constraints. Therefore, the waiver can be granted with the understanding that the applicant comply with the tree protection ordinance.

A motion was made and seconded to approve the waiver as recommended by the Board Engineer and Planner.

Mr. Vogt said variances are requested including front yard setback, rear yard setback, minimum building coverage, design waivers from installing sidewalk, providing street trees, as well as shade tree and utility easements along the project frontages. The board has acted favorably on similar applications in the past within the Industrial Park.

Mr. Adam Pfeffer, Esq. said Mr. Ron Gasiorowski, Esq. is here on behalf of a neighboring property owner. There are 4 or 5 conditions his client is agreeable to.

Mr. Ron Gasiorowski, Esq. said he represents an interested party who has agreed on some conditions with the applicant including preserving natural buffer and supplement with vegetation as necessary to screen the front and sides, there will be no parking on Airport Road access driveway, all sides of the building closest to Airport Road is to have faux windows and masonry. The front and side of the rear building is to have faux windows and masonry, add the loading and unloading

Mr. Pfeffer said the neighbor did not want the building to look like a warehouse so they will look like windows but you can't look out of it. It's basically just a frame on the building.

Mr. Gasiorowski said it is basically a fake window. Other conditions include front and side of the rear building to have similar windows and masonry, a loading/unloading aisle will be added to the center of the buildings on the

plans, an issue was raised with regard to the interior plans. As he understands it, there will be a small office in each of the units.

Mr. Pfeffer confirmed.

Mr. Gasiorowski said there will be no additional office space added to that.

Mr. Pfeffer confirmed. With regard to the front yard setback, he believes there was correspondence from the Industrial Commission indicating they had no objection. Therefore, that variance would be eliminated.

Mrs. Morris does not recall seeing that. The board has a letter from the Industrial Commission in their packets.

Mr. Pfeffer said that is an old letter. There is a new letter where they signed off on the variance.

Mrs. Morris has not seen it.

Mr. Pfeffer said he had a conversation with someone in the Industrial Commission and they indicated as long as they had no parking variances, then they have no objections. They also indicated they had no issue with the lot coverage variance.

Mr. Vogt said the board could approve the application with the condition that they provide documentation from the Industrial Commission indicating they are in favor of the variance.

Mr. Pfeffer has no objection to that.

Mr. Vogt said they have given the front yard setback to other applications in the past but they typically have a letter confirming that.

Mr. Pfeffer said this application proposes 23 contractor office and storage units. The units are proposed to be grouped into 4 buildings ranging from 27,067.81 to 30,558.90 sf. Three of the buildings will contain 6 units and the fourth building will contain 5 units. These are essentially small warehouse facilities for people who don't need a large warehouse facility. This will give them a small office space and the warehouse space they need.

Mr. Brian Flannery, P.E., P.P. was sworn. The ordinance requires a total of 148 spaces whereas 149 spaces are being provided. The application was initially submitted with a parking variance but it has since been eliminated. A minimum front yard setback variance of 50 ft is required whereas 100 ft is required. The 100 ft setback can be reduced to 50 ft with the approval of the Industrial Commission as previously indicated. They are confident that approval will be granted and that the setback proposed is consistent with other buildings in the area and it is appropriate for the type of use proposed. A rear yard setback variance of 20 ft is proposed whereas 30 ft is required. It is a corner lot and they really have two sides and the 20 ft is appropriate for the use provided. One of the conditions in the report was to retain the existing vegetation and supplement so they would be enhancing the 20 ft they have which would meet the intent of the 30 ft setback. A maximum building coverage variance of 40.77% is proposed whereas 30% is permitted. Due to the nature of the type of use with the indoor storage, they feel this is an appropriate use and this would be a C-2 variance. Design waivers are requested including providing sidewalk along the frontage. There are no other sidewalks in the area and it is really not a good place for people to be walking. A design waiver is also required from providing street trees. The applicant would be putting in supplemental planting and the applicant would put in whatever trees the board feels are necessary. The other items in the report would be completed to the satisfaction of the engineer.

Mr. Herzl asked about traffic circulation.

Mr. Flannery said there is an entrance in only on Airport Road and an entrance/exit on Energy Way. He said it will not be larger trucks coming in.

Mr. Herzl asked what the largest truck would be that could make the turn from Airport Road into the parking lot.

Mr. Flannery said the distance between the two buildings is 100 ft so there should be adequate room. Sheet 11 shows the turning radius. It is 32 ft of pavement.

Mr. Herzl asked if a large truck could make that turn.

Mr. Flannery confirmed.

Mr. Franklin asked if they could regulate the square footage of the office areas.

Mr. Pfeffer said it is only going to be 600 sf of office in each of the bays.

Mr. Vogt asked what the largest size vehicle is that could access this site.

Mr. Flannery said a tractor trailer. If the board acts favorably, they would provide the turning movements for the tractor trailers.

Mr. Vogt said the applicant would agree that no trucks larger than what meets their design is going to access the site.

Mr. Flannery confirmed.

Mr. Herzl asked about trash pickup.

Mr. Pfeffer said they would have private trash pickup.

Mr. Herzl asked about the HVAC units.

Mr. Flannery said the HVAC will be located either in an attic space on the roof and screened or on the ground and screened to the satisfaction of the board engineer.

Mr. Herzl opened to the public.

Mr. Shlomo Klein was sworn. He understands the board usually grants waivers from providing sidewalks in the Industrial Park but the zoning will be changing. He said the person who created this plan is trying to eliminate parking requirements by calling it warehouses but it is going to be mostly offices.

Mr. Herzl closed to the public.

Mr. Pfeffer said architectural plans were submitted showing the proposed office space. This is a warehouse building. If the board wishes for them to put in sidewalks then they will do it but he believes the Industrial Commission does not want sidewalks in that area.

Mrs. Morris believes they have a letter on file from the Industrial Commission specifically stating they do not want sidewalks.

Mr. Herzl said if they ever want to add additional office space, then they must come back before this board.

Mr. Pfeffer understands.

Mr. Herzl said they would leave the decision on whether or not the applicant should provide sidewalks to the Industrial Commission.

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

4. **SD 2208 Prospect St. Holdings, LLC**
Blanche Street Block 445, Lots 9 & 19
Preliminary and Final Major Subdivision to create 9 lots

5. **SP 2231 Prospect St Holdings, LLC**
Blanche Street Block 445, Lots 9 & 19
Preliminary and Final Major Site Plan for a synagogue

A review letter prepared by Remington, Vernick & Vena Engineers dated July 31, 2017 was entered as an exhibit.

Mr. Vogt said submission waivers including an environmental impact statement and a tree protection management plan were granted at the May 9th meeting. It appears a minimum rear yard setback variance is requested.

Mr. Brian Flannery, P.E., P.P. was sworn. It is their opinion that a setback variance is not needed. Also, since they are just doing the subdivision application, the third lot is vacant so there would be no variance in either case.

Mr. Vogt asked if there are any other variances associated with the subdivision.

Mr. Flannery said the only relief requested when the application was submitted was from not improving Blanche and Columbus Avenue. It indicates that relief is needed not to improve them and obviously on the subdivision application where they are showing two duplexes that do not have any frontage but the applicant would not like to request any relief so they would amend the application to include improving all of the roadway frontages so that absolutely no relief is needed.

Mr. Adam Pfeffer, Esq. said this would therefore be a by right fully conforming application to create two duplexes as well as a fifth lot.

Mr. Flannery said they would agree to satisfy all of the comments in the engineer's report.

Mr. Herzl opened to the public.

Mr. Ed Liston, Esq. said this developer has been postponing and attempting to change the requirements of earlier board resolutions having to do with a shul and the number of families that it will serve. Originally, it was supposed to serve 120 families and then it went to 150 families. Now, the developer is serving 165 families and he is talking

about an additional shul in the basement of one of the homes somewhere to handle the overflow. He currently represents 41 people who have bought homes in this area from this developer and feel that they were hoodwinked because he is not doing what he is supposed to do.

Mr. Herzl asked if the original resolution says 120 families.

Mr. Liston said it states 150 families, now is he talking about 165 families and they would like to hold him to 150.

Mr. Pfeffer objected and said this has nothing to do with this application.

Mr. Liston believes it does. They want conditions put on this subdivision application that no building permits can be issued until certain things happen that the developer has already promised and is already required to do under earlier resolutions.

Mr. Follman asked if it is on this piece of property.

Mr. Liston said yes because he is doing it chunk by chunk and he is trying to add in these other homes to what he has already agreed to do for a limited number of homes. That is the problem. They want him to comply with the things he is already required to do for the homes that are already built before he gets any more building permits because he going to have to probably construct another shul. Resolution SD 1997 requires several things including 'the applicant agrees to enter into a developer's agreement with the Township whereby a recreation area within 1,000 ft of the subject property and community center on either block 445 or 471 will be constructed'.

Mr. Grunberger left the meeting.

Mr. Liston said nothing has been done to satisfy that condition yet the board keeps giving the developer more approvals and they keep building more houses and he is not doing any of the undertakings he is required to do. 'The applicant has agreed to acquire a nearby parcel and to construct a 10,000 sf community center to be available for the use of nearby residents. The residents of the proposed subdivision shall be provide the opportunity to purchase 1 of 150 shares in the community center for a nominal fee. The applicant shall place \$10,000 per lot as each lot is sold in an attorney trust account which will serve as a guarantee that the clubhouse shall be built.' This is a condition of approval, this 10,000 sf community center is also a shul which is going to have two separate prayer areas. So far, although this requirement goes back to 2015, there has been no proof that he has collected any money or contributed any money. There are 20 houses which are built, that means he should have contributed \$200,000 but there is no proof of that. The other issue they are concerned about is the public park. He said there are minutes which indicate the public park should be 2 acres to service this community. That does not appear in the resolution, it only says 'the applicant will make a diligent effort to acquire land from the Township to develop a park which would be owned by the Township'. None of that has been done, no land has been set aside for the park and now the developer, in a document which he gave to his clients and signed, states it is not 2 acres, it is 20,000 sf which is less than half an acre. They would like the board on all future approvals including this subdivision approval and the community center and shul is to do the following, one of the things required in the resolution is that the shul should be owned by a non-profit controlled by the homeowners similar to a homeowner's association. The developer is now telling his clients he would own the shul and would name it after himself. They would like the money for the shul to be put in an escrow account and that the shul be in the ownership of the members of the community. The size of the park should be 2 acres given the number of people which will be using it and they do not want any further building permits issued unless and until the property is located, the plans are filed and approved by this board and the 2 acre park is at least under construction.

Mr. Herzl said this applicant is coming in for a subdivision independent from the other applications. He asked if the board can require these items.

Mr. Jackson said the developer may be in breach of that agreement or resolution and there may be remedies associated with the approvals that go with that resolution. He is unsure whether it is up to the building department or a lawsuit has to be filed. That is a self contained approval.

Mr. Liston said the resolution references certain properties.

Mr. Jackson said the shul also has to be within 1,000 ft of those properties.

Mr. Liston said that is correct.

Mr. Jackson asked if it is the same exact corporate entity making this application.

Mr. Liston said it is a different corporate entity but it is the same principal.

Mr. Jackson said then they have another entity coming in on a separate piece of property so how does this board have jurisdiction over this particular parcel. If the same property owner bought a parcel across town or in a different town, would he object then. He is basically seeking an injunction against this application by virtue of claims of failure to perform under other resolutions.

Mr. Liston said this subdivision is in the same area and the developer is now proposing that these people go to the same shul.

Mr. Jackson said nothing could prevent this developer from selling this piece of property and then that person develops it. He doesn't see the nexus and he believes there is nothing the board can do about it as it is a different entity and property.

Mr. Liston said the developer is linking all of these properties in a unilateral agreement that he signed June 13, 2017. It talks about all of the same properties and now he wants the maximum use of the shul to be 165 families.

Mr. Jackson said he is basically asking the board to effectively enter a judgment against this applicant and then enforce some kind of writ of execution on this property. He doesn't believe the board can do that.

Mr. Liston handed out an agreement signed by the developer concerning the shul to the board members.

Mr. Pfeffer said he believes the agreement has already been shown to the board. He was before this board sometime in June for the hearing. There was an agreement in place that would have resolved many of these issues.

Mr. Jackson said at this stage, he is unsure what the nexus is between this application and the other applications. He suggests the board hears the whole case and they would revisit it at the end based on what the proofs are.

Mr. Liston said in the agreement, the developer is trying to extend this application into the shul from the prior application because now he wants 165 families. He also talks about putting another shul in the basement of a house unspecified.

Mr. Jackson said it may have come up in the minutes that the park would be 2 acres but it is not in the resolution.

Mr. Liston understands. The resolution is very vague on the park, the location, on whether the town is going to own it or if the homeowner's are going to own it. At this point, they want to make sure there is a park for the 150 families already living there. They want to make sure that park is set up in such a way that whatever size it is, he builds it and turns it over to a non-profit owned by the homeowners. The only way to make sure this developer does anything is to make sure they don't get anymore building permits or certificate of occupancies.

Mr. Herzl said this board does not issue building permits or CO's. They are coming in with a standalone application.

Mr. Liston said the board does have the right to put conditions in the approval including these future property owners cannot become part of that shul. The shul belongs to the 150 families already living there. Same goes for the park. He intends to enforce that in court.

Mr. Shlomo Klein was sworn. He believes there is an issue with the affidavit of ownership. He wants to ensure that all of the streets are being improved and sidewalks are being installed on both sides of the road.

Mr. Baruch Blaustein, 28 Empire Lane, was sworn. He asked if this property was ever designated for a shul and therefore cannot be subdivided to build any townhouses on it.

Mr. Flannery said no.

Mr. Blaustein said at the February 17, 2015 meeting, Mr. Rennert asked if the applicant could reference a certain block and lot for the community center. He suggested that the resolution could reference one of the six blocks within 1,000 ft which the applicant's attorney agreed to. Following that, a signed developer's agreement for block 472 stated the developer shall construct a community center within 1,000 ft of the subject property which shall be located on block 445 lot 9 as well as recreation area which would be located within 1,000 ft of the subject property.

Mr. Flannery said he is referring to a prior application and developer's agreement. This property has no restriction on it that says it can't be developed. It was sold by the Township on open market and there was no restriction at the time the town sold it.

Mr. Blaustein said the developer of that project did sign the agreement so he assumes he signed it after he bought the property.

Mr. Flannery said it is a different entity.

Mr. Blaustein said the developer's agreement also states that 'any assignment, transfer or sale of the subject property, or any part thereof, shall not operate to relieve developer, its heirs, successors or assigns, from its obligations to complete the construction of all improvements required in this agreement.'

Mr. Flannery said that developer has obligations which he has to meet. That is that applicant's burden and it has nothing to do with this application.

Mr. Jackson said this is a different parcel and he doesn't believe it carries over to any other parcel.

Mr. Blaustein said this is a specific developer's agreement with building a shul on block 445 lot 9 which is this property.

Mr. Flannery said the previous applicant didn't own the property. The Township owned the property so how can a previous applicant put restrictions on it.

Mr. Jackson said if the board approves then they need to go to court and ask the judge to enforce that agreement. This board can't resolve a lawsuit between parties. They are not a court of equity or of law. The board looks at applications and decide if the layout makes sense, if it meets the bulk criteria, it has parking, it meets the land use ordinances. That is what the board is limited to.

Mr. Blaustein asked if there are any variances associated with this application.

Mr. Flannery said no.

Mr. Blaustein requested that this board listen to the subdivision and site plan application together because once the subdivision is approved, the application for the shul seems to have numerous variances. Those variances may be eliminated if the property was larger so once the subdivision is approved, the board won't have that option.

Mr. Klein asked about sidewalks.

Mr. Flannery said his interpretation of the ordinance is they are required to put sidewalk along project frontages which the applicant is proposing to do.

The board determined to hear both applications together.

Mr. Vogt said referring to the shul, a submission waiver from providing an environmental impact statement was granted at the May 9, 2017 meeting. Based upon the current architectural plans, it appears that a minimum rear yard setback of 11.67 ft is proposed whereas 15 ft is required. Relief is also required for parking areas closer than 5 ft to any side or rear property line that is adjacent to a residential zoned property, it is not clear whether off-street parking relief is required for the proposed number of spaces, perimeter buffer relief is necessary for the proposed synagogue and parking lot which are less than 20 ft away from the zero lot line duplex property lines. A design waiver is also required as the proposed driveway accessing Amsterdam Avenue is only 23 ft from Blanche Street, which is less than the required 30 ft from an intersection. They recommend the proposed off-street parallel parking spaces be removed to allow the entire parking lot to be shifted northward. In addition, the proposed synagogue can be moved northward and the parking lot re-designed into a complying configuration.

Mr. Brian Flannery, P.E., P.P. was sworn. The subdivision application would create 5 lots including 4 zero lot line lots and a 30,000 sf lot where a shul is proposed to be built. The ordinance requires 24 parking spaces whereas 33 parking spaces are being proposed.

Mr. Jackson asked if the duplexes have anything to do with the shul.

Mr. Flannery said no.

Mr. Herzl asked about parking for the duplexes.

Mr. Flannery said each unit has their own driveway with four spaces. They are going to build 32 ft wide roads all the way around with sidewalk on their side as per the ordinance.

Mr. Jackson asked if this shul is based on the promises and representations that were made on the previous applications in this area.

Mr. Flannery said this is a separate applicant. If the board acts favorably, the other developer would have to go back to the governing body where he has a developer's agreement to the homeowner's if he wants to use this shul to meet that previous agreement.

Mr. Jackson said his interpretation is this is a shul that may or may not fulfill that other requirement but that is a different issue and this application stands on its own.

Mr. Herzl said there was testimony from a resident that said the resolution references this property for a shul.

Mr. Flannery said the developer's agreement with the Township referenced this lot. That is a document prepared by the Township with another developer and entity. That has nothing to do with this entity.

Mr. Jackson asked if it is the same principal.

Mr. Liston said yes.

Mr. Flannery said it is the same principal but it is a different entity.

Mr. Jackson said the board may want to get involved but they could make as a condition of approval that at the signing of the site plan that those issues are resolved one way or the other. Either the applicant could go to court or the objectors could go to court.

Mr. Flannery said it is their position that this is a conforming application. The engineer's report references a variance which he would address and believes they do not need. It mentions parking within 5 ft of the property line which relates to one spaces and they have 33 spaces where they only need 24 so they could eliminate that space.

Mr. Jackson said if he is right under those circumstances, the condition that they get the other issues resolved, should be very easy to get rid of.

Mr. Flannery said it would be inappropriate to tie this different entity and this applicant to a different application. There are remedies for those other applications, agreements, resolutions, restrictions which could be enforced.

Mr. Jackson asked what would be the harm if the board were to look at this as its own free standing application.

Mr. Liston said the board would be playing the developer's game. He promised in the developer's agreement that the shul would be built on lot 9. The Township then sells him lot 9 and then takes it into a name of another LLC which he also controls and now he is going to build more houses and create a variance situation on the shul. He asked how the board could let him get away with that. The board has the power to not grant the subdivision because what is required in the developer's agreement.

Mr. Jackson said the board has to determine if they want to get involved in these other issues with those other parcels or they can take the approach that it is a separate legal entity and a separate parcel but do it in a way that would give the objectors the ability to go to court.

Mr. Herzl said if the old resolution references this property then they may have an issue.

Mr. Jackson asked if the resolution references this particular block and lot.

Mr. Pfeffer said the resolutions states 1,000 sf of the subject property and community center on either block 445 or 471. It does not mention this lot specifically.

Mr. Jackson believes there was an issue raised concerning the lack of community centers and it is creating a problem. The criteria is not in the ordinance but the board should enforce them to do this. Based on that, he thinks the board kind of improvised and said they are going to ask the developer to promise a shul as there are other zones where you are required to build a community center.

Mrs. Morris thinks the issue is it is more than 25 houses and they were getting different entities doing 20 houses at a time.

Mr. Jackson said that resolution is part of the conditions on approval SD 1997. It doesn't encumber this lot. There is no mortgage, lien, easement recorded and no encumbrance on it. If somebody bought a property on a promise that they were going to get a community center then their complaint is with the developer. If there are violations concerning that then that goes to SD 1997, not to the application which is before the board now. He thinks people are looking for an equitable remedy and he doesn't think this board is equipped or it is appropriate for this board to solve contractual disputes between the developer and the homeowners.

Mr. Liston disagrees that there is no encumbrance on lot 9. Lot 9 is encumbered to the Township by virtue of the developer's agreement which was signed in connection with a requirement which the board put in the resolution for SD 1997. Now the board is letting him get out of that by virtue of this subdivision. He thinks the board does have the power to enforce this.

Mr. Pfeffer said this applicant is proposing a synagogue which may meet that criteria but if it doesn't then there are other forms they could use. They have a by right application for a subdivision and a fully conforming application for a synagogue on this property.

Mr. Jackson suggests the board hears the merits of the application.

Mr. Hibberson asked if Mr. Jackson believes this property is unencumbered.

Mr. Jackson said yes. He doesn't think the testimony heard so far creates an encumbrance on this property.

Mr. Flannery wants the board to understand that there is no place in the ordinance which requires an applicant to build a shul. The ordinance states if more than 25 units are built, then 5% of the total area must be set aside for recreation. Typically in Lakewood, that would be for a shul. If all of these applications had come in at once, the only requirement would have been to set aside 5%. If it were 10 acres of property, then it would be 20,000 sf and they are looking at a 30,000 sf lot.

Mr. Jackson said there is really no mechanism to attach a community center to those 20 lots.

Mr. Flannery said the ordinance parking requirements for this shul is 24 spaces and they have shown 33. In addition, they are building roadways all around which would have on-street parking.

Mr. Herzl said there was testimony before concerning a second shul.

Mr. Flannery said that is not correct. It is a very typical shul which has the main sanctuary downstairs and a secondary upstairs which is the same as every other shul in town.

Mr. Jackson asked if there would be a Simcha hall in the basement.

Mr. Flannery said no. There is a mikvah in the basement and there would be no catering.

Mr. Jackson asked how they calculated parking.

Mr. Flannery said the parking criteria is based on the size of the main sanctuary.

Mr. Herzl asked how much parking they would need if the second floor was also used as a sanctuary. He also asked if there would be enough on-street parking for both floors.

Mr. Flannery said he hasn't done that calculation. They can have a calculation for the board as to how much on-street parking would be available.

Mr. Herzl thinks if there is going to be a synagogue on the second floor as well then they need to show they have enough parking between on-street and off-street.

Mr. Jackson believes the board is concerned there will be two distinct congregations, one upstairs and one downstairs.

Mr. Flannery said all of these people live within 1,000 ft of this.

Mr. Jackson said that is some of the issues the objectors raised.

Mr. Pfeffer said it is a secondary room.

Mr. Garfield asked what the maximum occupancy would be for the building.

Mr. Flannery said the parking requirements in town are based on the requirements in the UDO which doesn't go by occupancy. For shuls, it goes by the size of the sanctuary with the logic that not everybody that goes drives and the people that do drive would carpool.

Ms. Zografos asked if the portion of the resolution concerning the lots could be read on record.

Mr. Jackson said the resolutions states that 'the applicant has agreed to acquire a nearby parcel to construct a 10,000 sf community center to be available for the use of nearby residents. The residents within the proposed subdivision will be provided the opportunity to purchase 1 of 150 shares in the community center for a nominal fee. The applicant shall place \$10,000 per lot as each lot is sold in an attorney trust account which will serve as a guarantee that the clubhouse shall be built.'

Ms. Zografos said the resolution doesn't make reference to a developer's agreement and it is not signed by the Township. She agrees the board is not bound by the developer's agreement and looking at the wording in this resolution, she understands the argument but as Mr. Jackson said, it belongs in a court of equity.

Mr. Jackson said there is a condition in the resolution that there be a developer's agreement. The developer's agreement was prepared by the municipal attorney and signed by all parties.

Ms. Zografos said it may be a valid argument if there is case law. She asked if there is any land available on the other block.

Mr. Flannery said the other block referenced is owned by the Township. It could be purchased if the Township decides to sell it.

Ms. Zografos remembers discussing making this approval contingent on acquiring that Township property.

Mr. Jackson said it is not so easy for the Township to sell someone property as it has to be a bidding process.

Although Mr. Hibberson sympathizes with the objectors, he thinks this is outside of the board's jurisdiction and that they should continue with the application.

Mr. Liston read condition #1 on page 5 of resolution SD 1997. He thinks they have to look at the minutes carefully for all of the hearings that lead up to that resolution because there were things undertaken by the applicant that he thinks set this property aside for a shul. He thinks this board has the opportunity now to enforce its prior resolution.

Mr. Flannery said this property was sold at a public auction with no restrictions and it was not bought by this applicant. It was bought by the highest bidder and this applicant purchased it from the highest bidder.

A motion was made and seconded to approve SD 2208.

Affirmative: Mr. Herzl, Mr. Follman, Ms. Zografos

No: Mr. Franklin, Mr. Hibberson, Mr. Garfield

Mr. Jackson believes based on the context of this, the no's were based on wanting to hear the site plan application.

A motion was made and seconded to retain jurisdiction and to reconsider this application at the September 19, 2017 meeting.

Affirmative: Mr. Herzl, Mr. Follman, Ms. Zografos, Mr. Garfield

No: Mr. Franklin, Mr. Hibberson

- 6. SD 2188 Aaron Sperber**
Locust Street Block 1083, Lot 7
Minor Subdivision to create three lots

A motion was made and seconded to carry the application to the September 19, 2017 meeting.
All were in favor.

- 7. SP 2136 Yehoshua Frenkel**
Ocean Avenue Block 548, Lot 29
Preliminary and Final Major Site Plan for a synagogue and rabbi's residence

A motion was made and seconded to carry the application to the September 19, 2017 meeting.
All were in favor.

- 8. SP 2109 RD Lakewood, LLC**
New Hampshire Avenue and Pine St Block 961.01, Lots 2.02 & 2.03
Extension of a Preliminary and Final Major Site Plan for a bank and a hotel

Mr. Adam Pfeffer, Esq. said this application has been in litigation and asked for a one year extension.

A motion was made and seconded to approve a one year extension.

All were in favor.

- 9. SP 2240 Lakewood Business, LLC, c/o Daniel Werbler**
Cross Street Block 524, Lots 3.01 & 3.02
Preliminary and Final Major Site Plan for an office and warehouse building

A motion was made and seconded to carry the application to the September 19, 2017 meeting.
All were in favor.

- 10. SP 2242 Congregation Yeshiva Mkor Chaim**
Locust Street Block 1081, Lot 9
Preliminary and Final Major Site Plan for a school

A motion was made and seconded to carry the application to the September 19, 2017 meeting.
All were in favor.

- 11. SD 2273 White St Developers, LLC**
White Street Block 251, Lot 9.01
Minor Subdivision to create three lots

A motion was made and seconded to carry the application to the September 19, 2017 meeting.
All were in favor.

- 12. SD 2142 Congregation Kol Aryeh**
Hope Chapel Road Block 24.04, Lot 5
Minor subdivision to create two lots

A motion was made and seconded to carry the application to the September 19, 2017 meeting.
All were in favor.

- 13. SD 2271 M R Leifer Realty, LLC**
Lanes Mill Road Block 187, Lot 73
Minor Subdivision to create four lots

Adequate legal notice was not provided for this application and it was carried to the September 19, 2017 meeting.

6. ORDINANCES & CORRESPONDENCE

- **Resolution 2017** - - Proposed Ordinance: Signs, General Regulations

Mrs. Morris said this ordinance adds a revision to not allow signs to be placed on any residential or commercial building rooftops or fences.

A motion was made and seconded recommending the ordinance be adopted by the Township Committee.

Affirmative: Mr. Franklin, Mr. Herzl, Ms. Zografos, Mr. Garfield

Abstain: Mr. Hibberson

- 7. PUBLIC PORTION**
- 8. APPROVAL OF MINUTES**
- 9. APPROVAL OF BILLS**
- 10. ADJOURNMENT**

The meeting was hereby adjourned. All were in favor.

Respectfully submitted,
Sarah L. Forsyth
Planning Board Recording Secretary