

## 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. Flancbaum, Mr. Rennert, Mrs. Zografos, Mr. Cautillo

## 3. SWEARING IN OF PROFESSIONALS

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

## 4. MEMORIALIZATION OF RESOLUTIONS

### 1. SP 2059AA Congregation Tiferes Shmuel Corp

Princewood Avenue

Block 429, Lot 26

Amended Change of Use/Site Plan Exemption to convert existing house into a synagogue

A motion was made and seconded to approve the resolution.

### 2. SP 2221AA Cong Bais Yesocher Tiferes Aryeh

Ridge Avenue

Block 175, Lot 85.02

Change of Use/Site Plan Exemption to convert existing house into a school

A motion was made and seconded to approve the resolution.

### 3. SD 2180 590 Atlantic Ave LLC

Belmont Avenue

Block 378, Lot 1.09

Preliminary and Final Major Subdivision to create 2 lots

A motion was made and seconded to approve the resolution.

### 4. SD 2183 Bais Rifka Rochel

Fourth Street

Block 127, Lot 4

Preliminary and Final Major Subdivision to create 5 lots

A motion was made and seconded to approve the resolution.



on it. With the Oak Street Core, the governing body wanted a little more scrutiny so there was a lot of debate who would be on the committee, where they would do it and in an effort to have full transparency decided the full board would be the committee. The thing they are feeling their way with is to what extent the public participates in this. Just like the zoning officer doesn't have public comment when somebody comes in and asks for a permit. These applications don't require notice and he does not think the board is required to take public comment on this. However, it is certainly within the board's authority and discretion to allow someone to comment on it and they could impose the four minute rule.

Mr. Herzl feels more comfortable allowing the public to speak. He doesn't want people to think they are trying to bypass the law.

Mr. Flannery said these are all conforming applications but if there are questions, he is happy to answer them.

Mr. Shlomo Klein said the applications being heard tonight are on Pinehurst. As the board knows, Pinehurst is not improved on the plans. There is another development being built now which is connecting to Pinehurst and it is the only Cross intersection that connects from north to south. Because no roads are proposed, no sidewalks are required but when he looked in the ordinance it says that the developer has to put in roads. The Township Committee approved the plans effectively waiving the requirements but that is not what was represented to the board. It was represented to the board that no waivers are being requested. He questioned who would maintain these right-of-ways.

Mr. Jackson said in this particular circumstance, this whole Oak Street Corridor was on the basis of a design and plan that was submitted by the municipality and approved by CAFRA so they have an overriding blueprint. That blueprint did not provide for the completion of certain right-of-ways. Why the governing body did not want to have cross streets there is up to them. You don't have to have a grid everywhere and maybe they don't want traffic going down those streets. He knows CAFRA has requirements for impervious coverage on subdivisions which even includes the roadway. He does not think it is a waiver as their requirement is you have to put curbs and sidewalks where they're required. Since this is an area shown as green on a CAFRA plan, roads and sidewalks are not required there. He spoke at length with the township attorney and administrator and they said the administration has no interest in somebody putting curb and sidewalks in what's going to be green space as it doesn't make any sense. The applicant is meeting their curb and sidewalk requirement because they will have to do it to the midpoint of the unimproved roadway and this doesn't prevent the municipality from putting curbs and sidewalks if they ever decide they need those roadways in the future. Putting curb and sidewalk along there would in fact violate the CAFRA plan.

Mr. Vogt agrees. The applicant would have to go back and seek amendment. There are a number of issues which CAFRA applications are reviewed on and one of them is impervious coverage. Per their review letter, all improvements, curbing, sidewalk and pavement restoration must be in conformance with the NJDEP approved Oak Street Corridor improvement plan and Planning Board requests, if any. He personally thinks that was requested on these particular applications because the roads are not being put in. It is reasonable but if the board feels differently they can certainly take action.

Mr. Herzl doesn't believe they need sidewalks that go nowhere.

Mr. Rennert asked if it makes sense to ask the Township Committee what their intention was.

Mr. Flannery said the Township Committee passed an ordinance that said these are minor subdivisions which the board should have a committee review and should be approved administratively. With respect to improvements, it said improvements are in or guaranteed in accordance with the CAFRA plans. Concerning the maintenance of the right-of-ways, they have to be maintained by the property owner just like the right-of-way from the curb to the



**2. SD 2201AO Oak Street Development, LLC**  
Havens Avenue Block 1032, Lot 4  
Administrative Minor Subdivision

A review letter prepared by Remington, Vernick & Vena Engineers dated February 7, 2017 was entered as an exhibit.

Mr. Herzl confirmed no variances or waivers are being requested.

Mrs. Morris said the improvements will have to match the approved Oak Street Corridor plans.

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

**3. SD 2202AO Oak Street Development, LLC**  
Havens Avenue Block 1039, Lot 2  
Administrative Minor Subdivision

A review letter prepared by Remington, Vernick & Vena Engineers dated February 7, 2017 was entered as an exhibit.

Mr. Herzl confirmed no variances or waivers are being requested.

Mrs. Morris said the improvements will have to match the approved Oak Street Corridor plans.

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

**4. SD 2203AO Oak Street Development, LLC**  
Broadway Avenue Block 1042, Lot 2  
Administrative Minor Subdivision

A review letter prepared by Remington, Vernick & Vena Engineers dated February 7, 2017 was entered as an exhibit.

Mr. Herzl confirmed no variances or waivers are being requested.

Mrs. Morris said the improvements will have to match the approved Oak Street Corridor plans.

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

**6. ORDINANCES FOR DISCUSSION**

- **Land Development Checklist** (re: Digital Copies, Department of Public Works Approval, Traffic Studies, Ocean County Planning Board Submission, and Architectural Plans and Elevations)

Mr. Herzl is in favor of these revisions. He commented that these changes will make the board's job a bit easier.

Mrs. Morris agreed. Right now if someone doesn't want to submit a traffic study, there is no official waiver that needs to be granted.

Mr. Grunberger arrived.

A motion was made and seconded recommending the Township Committee pass the proposed ordinance. All were in favor.

- **Zoning Districts and Regulations (re: hotels as permitted uses in the B-5 Zone)**

Mrs. Morris said the ordinance currently permits motels but it is silent on the matter of hotels. A previous application had approved a hotel on Route 70. An appeal was filed in court and after further review, they have come across that motels are permitted but not specifically hotels. She believes it is the Committee's feeling as well as the board engineer's that they should be the same and it may have just been an oversight.

Mr. Herzl asked if the B-5 zone is mostly on Route 70.

Mrs. Morris is unsure but it is mostly on Route 70.

Mr. Rennert would like to see a map showing where the B-5 zone is located before making a recommendation.

A Zoning Map was displayed for the board's review.

Mr. Flancbaum learned that a difference between a motel and a hotel is a lobby.

Mr. Vogt said each of the rooms have exterior entrances in a motel.

Mr. Rennert is sure at the time the Township wanted motels and hotels but he thinks today if they are being asked to reinterpret it, they should really see what it's going to effect.

Mr. Flancbaum said there are already hotels in the B-5 zone including the Hilton Garden.

Mrs. Morris believes that application was in the LP zone.

Mr. Rennert asked if there are any other zones which say whatever is permitted in the B-5 zone is permitted here.

Mrs. Morris said the board could make a recommendation to add it as a use but specifically not added in any other zones that reference B-5.

Mr. Rennert wants to see what they are effecting before recommendation.

Mr. Flancbaum questioned why they can't just restrict to whatever is shown on the zoning map so if you have a situation where whatever is allowed in the B-5 is also allowed in the B-2, B-3 it would not be included.

Mr. Herzl in unsure as to whether they can exclude it.

Mr. Flancbaum said it is excluded now anyway.



Mr. Tom Muller, P.E. displayed a colored rendering to the board. The plan indicates the 20 ft wide residential buffer along the back of the property, a staggered row of green giant arborvitaes along that buffer as well as a solid 6 ft high vinyl fence.

Mr. Herzl questioned the elevation of the objector's property.

Mr. Muller said it is roughly the same within 4 ft of their property versus the neighboring property. The arborvitaes are very fast growing and get up to 20 to 30 ft. They are planting them at 8 to 10 ft whereas the ordinance only requires 7 to 8 ft.

Mr. Vogt said his recollection of the code is that as a rule you have that 20 ft required buffer and if you cannot meet the 20 ft, the code talks about options which can be done to compensate. It is his understanding that they do have the 20 ft so they have the permitted width but they are also trying to give a buffer which technically exceeds the minimum standards.

Mr. Muller affirmed.

Ms. Donato said there is one standard for synagogues but another for schools. Per ordinance 'On those sites where no existing vegetation is present or existing vegetation is inadequate to provide screening, the applicant shall suitably grade and plant the required buffer area, such that this planting shall provide an adequate screen of at least six ft in height so as to continually restrict the view.'

Mr. Herzl said the arborvitaes will be 20 to 30 ft high.

Ms. Donato said in about 10 years at full growth and they are not properly placed and staggered.

Mr. Flancbaum said there should be no back and forth. The applicant should follow the ordinance. He suggested planting 6 ft trees.

Mr. Vogt said they heard that the adjoining property is higher than the subject property. Hypothetically, if the adjoining property is 50 ft higher, would the board ask for 50 ft high trees. He thinks this needs to be worked out between the applicant and objectors before the public hearing.

Mrs. Weinstein said they have tried to work it out and they are meeting the ordinance. She asked how tall the trees would be at planting.

Mr. Muller said 8 to 10 ft. Typically they grow 2 to 3 ft a year.

Mrs. Weinstein said the ordinance requires a minimum of 6 ft. The applicant has gone to great expense to try to make this neighbor happy. Their position is they are meeting the ordinance. They could sit down with them but they're not going to get any further than they got the last few times they have met.

Mrs. Donato said they did go someplace, they just didn't go quite far enough. She thinks this can be resolved.

Mr. Vogt said if they arrive at an alternative concept with regards to the buffer, he asked that a revised plan be provided to the board at least 10 days prior to the hearing. If that is not an option, bring an exhibit to the hearing.

Mr. Rennert commented that he did have some concerns with the left turn in, left turn out. The traffic engineer did review the traffic report submitted and it was determined it would exceed applicable standards.



Mr. Franklin said there should be some type of fence around the drainage basin.

Mrs. Weinstein agreed to provide fencing.

Mr. Rennert asked if there is a Simcha hall or a rentable basement.

Mrs. Weinstein said no.

A motion was made and seconded to advance the application to the March 21, 2017.  
All were in favor.

## 8. PUBLIC HEARING

### 1. SD 2179 Mark Properties LLC

Netherwood Drive Block 433; 436, Lots 1, 2 & 3; 1 & 2  
Preliminary and Final Major Subdivision to create 12 lots

A review letter prepared by Remington, Vernick & Vena Engineers dated February 13, 2017 was entered as an exhibit.

Mr. Vogt said there was a question concerning existing lots 5 and 6 relative to the proper sizing. There is a design waiver with respect to section 18-821 of the UDO which requires at least two basic house designs for subdivisions consisting of between four and six structures.

Mrs. Miriam Weinstein, Esq. said this application was modified and it is now fully conforming to create six fully conforming single family lots in the R-12 zone. In addition, the applicant is improving four paper streets surrounding this subdivision as the board had recommendation at previous meetings in order to help alleviate some of the congestion in the area.

Mr. Brian Flannery, P.E., P.P. was sworn in. Lots 5 and 6 are not part of this application. If the board recalls, these lots were part of a larger application. At that time, the board did not want to grant the variances and asked that the roads be improved so they are back here this evening with a piece of that application. It is a by right application with no variances requested. The Percal Map shows many of the lots in the area being less than 12,000 sf. On the prior application, Netherwood didn't go from Finchley to Cross. This application, per the board recommendations, they are improving the right-of-ways that front their property. It is not going to be the best from a traffic standpoint for the few houses on Netherwood but for the general public it is certainly a better application.

Mr. Herzl confirmed that sidewalks will be provided along all frontages.

Mr. Flannery said there will be and also the map shows Princewood Avenue with the curb going around. The board engineer's report indicated they should be redesigned for future extensions which the applicant agrees to. They would satisfy all of the comments in the report.

Mr. Herzl opened to the public.

Mr. Goldsmith, 87 Finchley Boulevard, was sworn in. He questioned why these applications are being chopped up into pieces. He suggested they look at the whole development as one to see what makes sense as far as traffic. He said a waiver is being requested from providing a drainage plan.

Mr. Vogt said it is not a waiver. For the most part, applications are not 100% complete but they get to a point where the design is viable but there is still work which has to be done and they would need to comply with the New Jersey Stormwater Rule. If the board acts favorably, this process goes into a compliance period where they would review this plan possibly several times past this hearing to ensure it is fully conforming with all of the design standards including stormwater.

Mr. Goldsmith asked about the architectural plans.

Mr. Flannery said before the applicant comes in with plot plans, architectural plans would be provided. At this point he doesn't know what houses he is building.

Mr. Goldsmith said the builders try to bypass this step where it is scrutinized by the board and public in order to put in attic apartments, double basements etc.

Mr. Herzl said that is up to the building department.

Mr. Vogt said even if the board had architectural plans, the board is not reviewing the submission with respect to compliance with building code standards. That is not the purview of this board. The purview of this board is to review land use applications. The applicant is agreeing to comply at time of plot plan.

Mr. Rennert said there has been discussion with the Township Committee requiring architectural plans.

Mrs. Morris said right now they are required for site plans, they are adding them in as a requirement for major subdivisions.

Mr. Vogt said in the future, architectural plans will be required but from a completeness standpoint, they may not be the ones that ultimately get submitted with the plot plan.

Mr. Rennert said the Zoning Board always require specific architectural plans.

Mr. Vogt said the Zoning Board requires to see the façade be one third brick or stucco. That is a common requirement. The Zoning Board has more latitude because the people coming in front of them need to have zoning relief. The board can certainly ask the applicant if they are willing to do what is done at the Zoning Board but this is a conforming application.

Mr. Shlomo Klein was sworn in. He asked if the applicant is willing to improve about a 100 ft of Princewood Avenue which would make it easier for everybody including the Hearthstone community.

Mr. Herzl said he is not building over there. He asked why the applicant be responsible to improve that road.

Mr. Klein understands he is not responsible but he thought the applicant may want to do it out of good will.

Mr. Flannery said improving that road will not make everybody happy, it would make some people unhappy. If you look on Google Earth, there are trees on the subject property. Those trees aren't going to stay there as they are on somebody else's property. Somebody is going to build a house on that corner and when they do that, they would improve that 100 ft of road. It is not the applicant's responsibility to improve that portion of the road.

Mr. Bill Hobday, 30 Schoolhouse Lane, was sworn in. He asked if this plan is complete. The board engineer's review letter indicates the grading plan and profiles submitted are incomplete.

Mr. Vogt said the plans have been revised subsequent to the initial review comment. If you look at what is in bold, it refers to the review of the revised submission. They have made improvements, there are more improvements to be made but they are complete. They are not 100% technically adequate, it is certainly feasible but if the board acts favorably making it 100% is typically done at compliance phase.

Mr. Hobday suggests adding that to the review comments so someone reading it would understand.

Mr. Eli Bacharach, 1023 Netherwood Drive, was sworn in. This whole area going down to Cross consists of four blocks that are going to be developed by this builder. He is going to be putting in three times the amount of houses in this area. Knowing there is going to be such a strain and all the traffic from Route 9 and Cross are going to be coming through Netherwood, he asked if the board could obligate him to open Princewood.

Mr. Flannery said on a future application, if somebody asks for relief then maybe the board can ask them to do something so that the benefits outweigh the detriments but it is really inappropriate to be talking about a future application when they have a conforming application.

Mr. Bacharach said those applications have come before the board over the past few months so they know what is coming. His request is to obligate them to open up that street knowing that these applications are going to be coming down in the future.

Mr. Rennert said when this applicant came before the board and wanted to develop the entire neighborhood, all of the neighbors came out to oppose it. He asked if that street was proposed to be opened as part of that application.

Mrs. Weinstein said the various owners of the properties came together and they brought one application that was going to encompass the area. She reminded the board that these very same neighbors all came out and objected to which is the reason the board elected to vote it down. Now the neighbors are asking why this isn't being submitted as one application. At that time, the neighbors all came back not wanting the roads opened up and it should be closed off kind of like Shonny Court was. The board did not like that idea as this area is very congested and from a planning perspective it is actually a better approach to open up the roads. It is various different applicants that own the different properties and they are coming back with each one piece meal opening up all the roads and doing exactly what the board is requesting and giving fully conforming applications.

Mr. Herzl closed to the public.

A motion was made and seconded to approve the application.

Affirmative: Mr. Franklin, Mr. Hibberson, Mr. Herzl, Mr. Rennert, Mr. Flancbaum, Mrs. Zografos, Mr. Cautillo

Abstain: Mr. Grunberger

**2. SP 2207 36 Airport Road, LLC**

Airport Road

Block 1160.12, Lots 263, 263.01, & 263.02

Preliminary and Final Major Site Plan for an addition to an existing office building

A review letter prepared by Remington, Vernick & Vena Engineers dated February 15, 2017 was entered as an exhibit.

Mr. Vogt said variances include minimum lot area as well as for sign area. Design waivers are also required from providing sidewalk along the project frontage and from providing shade tree and utility easement along the Airport Road project frontage.

Mrs. Miriam Weinstein, Esq. said this is for an addition to an existing office building which would be done in two phases. This site currently houses two office buildings. The first is a roughly 6,000 sf one-story office building, the second is a newly completed single story office building which was approved by this board. As a result of a need for additional office space, the applicant proposes initially to construct a second story addition to the newer building then at a later date, the second phase would consist of demolishing the smaller building and then construct a three story office building above a parking area that will ultimately be connected to the first building. All of the site work associated with this project will be constructed as part of the second phase of the project. The minimum lot area variance is an existing condition created by a previous right-of-way taking when they made the entrance to the parkway. At that point they took away 12.23 ft which resulted in a lot size of 2.91 acres where 3 acres is required. The second variance is for signage as 114 sf is proposed and only 75 ft is permitted.

Mr. Graham MacFarlane, P.E., P.P. was sworn in. The proposed sign is 15 ft in width and 9 ft in height for a total of 114 sf. They believe it is an appropriate scale and size for the building.

Mr. Herzl asked if other buildings have similar sized signs.

Mr. MacFarlane confirmed, it is a ground level sign consistent with the zone. Parking provided is in excess of ordinance requirements. At full build out, they will have 174 spaces which provides a little higher ratio than what is required by ordinance. The approval is being sought in two phases and each phase will have enough parking for that phase to stand on its own. For phase one, they would have 107 spaces whereas 90 are required.

Mrs. Weinstein said there was a comment in the engineer's review letter recommending the lots be consolidated. She wanted to clarify that at the moment this is actually a condominium because there are two office building that are sharing a single lot. The applicant does agree to the lot consolidation but they will not do that until the building is demolished.

Mr. Vogt said the applicant agrees to lot consolidation at time of demolition.

Mr. Cautillo asked if sidewalks are proposed.

Mr. MacFarlane said no, there are no other sidewalks within the industrial park. That waiver was granted at time of the original application.

Mrs. Weinstein said this is the one part of town they do not install sidewalks as they do not want to encourage pedestrian traffic within the industrial park.

Mrs. Morris believes they had reached out to the industrial commission asking if they wanted sidewalks and their answer was they did not.

Mr. Herzl opened to the public.

Mr. Shlomo Klein was sworn in. He asked how close this application is to Route 70.

Mr. MacFarlane said not close. It is one lot from Cedarbridge Avenue.

Mrs. Weinstein said it is adjacent to the parkway entrance on Airport Road.

Mr. Klein stressed the need for sidewalks, even if they are within the industrial park.

Mr. Flancbaum said the industrial commission is discouraging sidewalks within the industrial park to discourage pedestrian traffic. There are schools in the industrial park and they do not want to encourage children to be walking but to stay within the school property. From his recollection, there were actually some businesses within the industrial park which opposed sidewalks as well.

Mr. Klein said they should be looking to the future as many of these areas will eventually be residential. He asked that the waiver not be granted.

Mr. Herzl closed to the public.

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

**3. SP 2213 Congregation Neustadt**

East County Line Road                      Block 172.01, Lot 2  
Preliminary and Final Major Site Plan for a house of worship

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

Mr. Vogt said variances required include minimum lot area, lot width, rear yard, side yard, combined side yard, and for the number of off-street parking spaces. A variance is also required for proposed parking located closer than 5 ft from a side property line. In addition, the applicant requires relief with respect to perimeter buffer.

Mr. Samuel Brown, Esq. said this congregation serves a community that for the most part will be walking to services. The services will not be going on throughout the day. There will be one morning service before businesses are generally open, evening services and afternoon services depending on the time.

Mr. Brian Flannery, P.E., P.P. said this synagogue is for more of a neighborhood use. Within a quarter mile radius, there are 918 families, within a half mile there are over 3,000 families. This is something that is needed for the area and it makes sense. They are asking for some variances relating to it but it is his opinion these are all variances where the benefits outweigh the detriments. This is a 10,966 sf lot after dedication to widen East County Line Road which is a benefit to the public. The applicant was originally looking for a kiddish hall where the parking demand would be higher and were looking for an off-site parking facility to accommodate that but have not so at this point the basement would only be used on Shabbos or holidays when there is no driving. The parking demand for the shul itself is 6 spaces and they are providing 7 spaces.

Mr. Brown said the basement would not be rented out. It would be used specifically for the congregants of the shul. It is only intended to be used for holidays and weekends, not during the week. If they do have a weekday event, it would take place within the sanctuary, not in the basement.

Mr. Herzl said this would be deed restricted until they can obtain more parking.

Mr. Flannery said they would make it a condition of approval but would prefer not to have a deed restriction.

Mr. Brown said there is a deal in the works but in the meantime they are more than happy to allow a condition of this approval be that this not be used for any outside events and that it be restricted for weekends and holidays.

Mr. Flannery said a variance is also requested for parking within 5 ft of the property line and for perimeter buffer of 10 ft whereas 20 ft is required.

Mr. Herzl asked if there are existing sidewalks.

Mr. Flannery said yes, there will be sidewalks along the frontage. All other comments in the engineer's report can be met.

Mr. Brown pointed out that there are many residents present in support of this application. The applicant has discussed this application with the immediate neighbors and they are all in support of it.

Mr. Herzl opened to the public.

Mr. Shlomo Klein was sworn in. He complained about the timer and had nothing relevant to say pertaining to this application.

Mr. Bill Hobday, 30 Schoolhouse Lane, was sworn in. He asked the board to look at these variances closer.

Mr. Joel Leiberwitz, 210 East County Line Road, was sworn in. He asked that the board be strict concerning parking variances.

Mr. Herzl closed to the public.

Mr. Flannery said a parking variance is not being requested. They submitted with the need for a parking variance but have since changed the application and withdrew the hall.

A motion was made and seconded to approve the application.

Affirmative: Mr. Franklin, Mr. Hibberson, Mr. Herzl, Mr. Flancbaum, Mr. Grunberger, Mr. Rennert, Mrs. Zografos  
No: Mr. Cautillo

**4. SD 2186 Pinchos Wolhendler**

East Seventh Street

Block 208, Lots 134.03 & 134.04

Minor Subdivision to create 3 lots

A review letter prepared by Remington, Vernick & Vena Engineers dated February 13, 2017 was entered as an exhibit.

Mr. Vogt said variances requested include minimum lot width, side yard and combined side yard setback.

Mr. Brian Flannery, P.E., P.P. and Pinchos Wolhendler were sworn in. The application is to create three lots for a duplex and a single family home. If the board remembers at the tech meeting, the board asked the applicant to see what he could do as far as reducing variances. The revised plans show 10 ft on the one side toward the neighbor on the duplex so that it conforms to the ordinance. This is in an R-10 zone, immediately to the west is an R-7.5 zone and then a little further to the east is the R-12 zone. The majority of the lots in the immediate vicinity have variances and are more consistent with the R-7.5 zone. This board's recommendation for this area was to re-zone both R-10 zones east of the downtown area to R-7.5 to provide additional housing opportunities compatible with the redevelopment of that area.

Mr. Herzl asked if this would be a conforming application if it were in the R-7.5 zone.

Mr. Flannery confirmed, it would be a by right application. This is a very unique piece of property totaling almost 28,000 sf with a wetland area in the back. Nothing will be built within 50 ft of the off-site wetlands so there is no wetland impact by the proposed development.

Mr. Franklin asked who owns the easement.

Mr. Flannery would imagine it is an easement to the Township. It would certainly be clarified during resolution compliance.

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

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

**5. SD 2157A Dovid Berger**

Second Street

Block 72, Lot 7.01

Amended Preliminary and Final Major Subdivision to create 5 lots

A review letter prepared by Remington, Vernick & Vena Engineers dated February 19, 2017 was entered as an exhibit.

Mr. Vogt said a variance is required for minimum lot width and maximum building coverage.

Mr. Glenn Lines, P.E., P.P. was sworn in. The only lots being requested tonight are for lot 7.09. All of the other variances listed in the schedule were approved previously by the board. It turns out two things were missed when they were here originally. Lot 7.09 is 60 ft whereas 75 ft is required which was shown on the original application but it was not included in the resolution. Many of the single family lots within a six block area are 50 ft wide or less. Also, because the way some of the ordinances were recently revised, this lot is the only lot within these six blocks that have a 25% lot coverage requirement, all the other are 30% to 35%. For some reason, the ROP zone for single family houses is 25% while duplexes, townhomes are 35%.

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

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

**6. SP 2219 Congregation Mishkan Hatorah Inc**

East County Line Road

Block 174, Lots 20.02 & 20.03

Preliminary and Final Major Site Plan for a school with a dorm

A review letter prepared by Remington, Vernick & Vena Engineers dated February 1, 2017 was entered as an exhibit.

Mr. Jackson said he spent a lot of time discussing this matter with Mr. Gasiorowski and Mr. Doyle. This board may recall that this applicant proposes a dormitory as an accessory permitted use to a Yeshiva. They had argument and debate about it with the attorneys, the board made a ruling that it is an accessory use to a school and that the applicant could go forward. Mr. Gasiorowski then filed an appeal asking the court to rule on that issue. At the last hearing, when he had made a strong recommendation that the board not go forward with the case on the basis that there was an appeal in superior court. For some reason, it was put back on the agenda tonight.

Mr. Doyle asked that it be put back on the agenda as the person who would be most harmed by doing that would be his client and they were willing to accept that and they have come here tonight ready to proceed.

Mr. Jackson said traditionally, once someone files an appeal from a lower court action, the jurisdiction is then vested in that higher court and if you want relief in the lower court you have to go to the higher court and ask for a ruling. He did research on the issue and could not find anything that specifically prohibits the Planning Board from hearing a case once someone files an action in lieu of prerogative writ. In reality, a Planning Board is not a court, it is a quasi judicial entity. In many ways it is like a court and in many ways it is not like a court. Their decisions go to court and then it becomes a court action, goes to superior court and then from there to the appellate and possibly the Supreme Court. Certainly their rules and regulations are not set up where the court rules apply to it governing an appeal. His concern is that an objector could file a complaint so the board couldn't hear the case and effectively obtaining an injunction against a court. He does think an appeal should act as an automatic stay or injunction against a board from proceeding. He also notes that the board has not made a decision on this case either. Traditionally when there is an appeal, somebody has appealed the board's decision so there's a full record, resolution and official action and that's not what they have here. He thinks it is a difficult call and it is a call the board has to make. The downside to proceeding is the court may say they have no business going forward and then it's all moot. The greater risk for that is on the applicant but he thinks the board could be within its rights to decide to wait for the court for direction and whether they can hear the application. On the other hand, an applicant has filed a matter, it's in front of the board and he thinks an applicant has an expectation and a right and there is also inherently proper in it following its course. He spoke with Mr. Gasiorowski before the meeting and he indicated he would not be appearing tonight as he thought it was put off and that could be another complication.

Mrs. Morris said it has been on the calendar for a while. They had originally carried it from the January meeting to February 7<sup>th</sup>. She believes an announcement was made at that meeting to carry to tonight.

Mr. Doyle said every legal matter starts with the facts. The facts are that an application was made by the applicant, the board found through its administrative staff to be complete. The congregation noticed in accordance with the law. The board heard conflicting arguments, both legal and factually, as to whether or not it has jurisdiction. The board made a reasoned factually decision based upon the evidence before it that it had jurisdiction. On that basis, they were to go forward with the application on February 7<sup>th</sup>. A complaint was filed a few weeks before the hearing but was not discovered until the morning of the hearing when the attorney told the board attorney. He asked that this matter be reconsidered tonight and so they are here and procedurally have a right to be here. The question is whether that has changed by reason of this lawsuit. When the Planning Board accepts jurisdiction, what the law says is clear. It should be noted that a board may not refuse to exercise its jurisdiction or hear a matter properly presented. The lawsuit could have asked for an injunction or stay but it did not. What that lawsuit tried to do is to bully the board in not hearing the case. If an objector walks in at 5 o'clock saying he filed a suit and you had citizens and experts ready to give testimony, that wouldn't be right. More than that, the board's determination was right. Not merely because the board made it but because the law in a Monmouth University case holds that dormitories are an accessory use to a principal use that is a school of higher learning which is what a yeshiva is. The board's decision was made, the decision was right and the application is complete. It's all of the law and all of the facts against a piece of paper called a complaint. This would set a terrible precedent that one person could hijack the board. He ask that this not happen and continue with the case.

Mr. Herzl said the judge may rule that the Zoning Board has jurisdiction.

Mr. Doyle thinks typically a court has a full record and the only way to develop a full record is to have a hearing.

Mr. Herzl said as long as the applicant understands it is at his own risk then he does not have a problem hearing this tonight.



A motion was made by Mr. Hibberson, seconded by Mr. Flancbaum to hear this matter.

Affirmative: Mr. Hibberson, Mr. Flancbaum, Mr. Herzl, Mr. Rennert, Mrs. Zografos, Mr. Cautillo

No: Mr. Franklin

Mr. Vogt said it is his understanding that no bulk variances are being requested. There was a question concerning parking relief. Buffer relief is necessary with regard to a 20 ft buffer from a residential use. The revised plans show curb and sidewalk along East County Line Road which are being provided by the County. A design waiver is sought from providing curb along Lucerne Drive.

Rabbi Rubenstein was sworn in. The Yeshiva was founded in 2003, they moved to this located in 2006. Their Yeshiva is a post high school meaning adults over 18.

Mr. Doyle questioned the number of existing students attending this school.

Rabbi Rubenstein said it varies between semesters but it is between 30 and 40.

Mr. Doyle said there are two structures built in the approximate 1980's which have been used for the Yeshiva since 2006 and as a Yeshiva there are currently dormitory rooms and students who live there. He asked how many students live there.

Rabbi Rubenstein said everyone in general. By definition, a Yeshiva for post high school students means everyone stays 24/7.

Mr. Doyle said there are a number of Yeshivas in the area.

Rabbi Rubenstein confirmed, they all have dormitories.

Mr. Doyle referenced applications SP 2129 and SP 2163 which allowed dormitories as a permissible accessory use to a Yeshiva. He asked if it is incidental for the Yeshiva to its school function as a Yeshiva to have a dormitory and if it is customary.

Rabbi Rubenstein confirmed. He does not know of any Yeshiva that doesn't have a dormitory.

Mr. Doyle said there will not be students driving or parking at the school or parents dropping off and picking up their children.

Rabbi Rubenstein confirmed.

Mr. Doyle said this application is for an addition that would be a structure between the two existing structures. He asked what the newly proposed structure use would be.

Rabbi Rubenstein said there would be a basement with a dining room, bathrooms and an office. On the first floor, there will be a large classroom, library, coat rooms, perhaps another office and a lobby.

Mr. Doyle said he is not expanding the dormitory space, he is expanding the general service space.

Rabbi Rubenstein confirmed. No additional dorm rooms are being proposed.

Mr. Doyle asked if the predominant principal is the teaching and as an accessory to that is the dormitory until the traditional Yeshiva model.

Rabbi Rubenstein said the focal point to the Yeshiva is the study hall. Being as such, the dormitory is an accessory.

Mr. Herzl asked how many students are anticipated to attend this Yeshiva in the future.

Rabbi Rubenstein said he doesn't have any plans. The point of the addition is not to enlarge the school.

Mr. Herzl asked if any parking variances are being requested.

Mr. Doyle said a space is needed for each of the discreet services including the kitchen, the dormitory, office and when you add it up, the total is either 4 or 5 and they are providing 6 spaces. There was a concern that the original plan showed a gravel driveway and it would be paved.

Mr. Glenn Lines, P.E., P.P. was sworn in. No bulk variances are being requested. The architectural plans will be revised to preclude any setback variances. Along the rear property line, they have a 20 ft wide buffer that stretches from the front setback line to the northeast corner of the property and then extends up to the back of the existing structure which is the dormitory. That structure is 14.5 ft off the property line so at that point, the buffer can't be 20 ft wide, it can only be 14.5 ft wide.

Mr. Herzl said it is an existing condition.

Mr. Doyle confirmed and it would be a hardship.

Mr. Vogt asked if any landscaping is proposed.

Mr. Lines said a row of white pines along the rear property in addition to a 6 ft vinyl fence. They do not show buffering on the easterly property line. There have been discussions with the owner of lot 50.05 and they have made specific requests as to what they would like to see as far as buffering. The applicant will accommodate their requests.

Mr. Herzl asked how far that corner is from the new construction.

Mr. Lines said probably 50 or 60 ft.

Mr. Vogt said the applicant would provide landscaping buffer to the satisfaction of the neighbor

Mr. Doyle said they will provide reasonable landscaping to the degree that there was a desire to have trees on the eastern side mindful of the fact that the only common boundary is 20 ft at the northeast corner. There was mention of trees 8 ft at planting which is certainly reasonable.

Mr. Vogt wants to be clear that if the board acts favorably, they know how to enforce this.

Mr. Doyle said there was mention of a particular type of tree but they would certainly consider the board and shade tree commission's recommendation. Curbs and sidewalks are being installed by the County along East County Line Road. The curbs on Lucerne Drive were not required as a result of the CAFRA permit which they will provide.

Mr. Vogt said they are seeking the waiver because there is an existing CAFRA permit that precludes them from putting in curb and sidewalk.

Mr. Lines confirmed, the entire development's requirement was they were not to have curbs. There are grass swales along the edge of the road for recharge and water quality purposes.

Mr. Herzl asked why CAFRA wouldn't want curbs.

Mr. Vogt said it may be a policy issue in terms of the way stormwater is handled.

Mr. Doyle asked about garbage pickup.

Mr. Lines said they would work with Public Works concerning garbage pickup. The HVAC equipment is on the ground next to the building and they are already providing fencing and landscaping screening along the rear of the property line. He thinks with the buffering that's being provided along the property line, he doesn't see why they would need additional screening next to the building.

Mr. Doyle said there will be no bus service. The largest vehicle would be a passenger van.

Mr. Lines confirmed, the site has not been designed for school buses.

Mr. Doyle asked about stormwater management.

Mr. Lines said the maintenance recharge system would be the Yeshiva's responsibility.

Mr. Doyle asked about signage.

Mr. Lines said no free standing signs are proposed.

Mr. Doyle said the rest of the comments in the board engineer's report can be met.

Mr. Lines confirmed.

Mr. Herzl opened to the public.

Mr. Charles Benattar, 3 Davos Place, was sworn in. He has been living here before the Yeshiva was built and they have been very good neighbors. There has never been any issues concerning parking or privacy.

Mr. Shlomo Klein was sworn in. He doesn't understand why curbs and sidewalks are not being provided. The applicant should already have a copy of the CAFRA permit. He stressed that curbs and sidewalk are vital to the safety of this community.

Mr. Lines said they have not filed an OPRA request. He knows for a fact that curbs are not required as he was the Township engineer when this development was being constructed and remembers seeing the CAFRA permit. They have no problem getting a copy of the original permit from the State.

Mr. Benattar said as a neighbor he can attest that this whole area does not have curbs and sidewalks.

Mr. Bill Hobday, 30 Schoolhouse Lane, was sworn in. He asked about bussing.

Mr. Doyle said there will be no bussing. The students are residing on site.

Rabbi Rubenstein said in all the years the school has been at this location, they have never had a bus.

Mr. Doyle pointed out that most of the remaining citizens present are in support of this application but due to time constraints, they would not have each of them speak.

Mr. Herzl said the applicant will try to satisfy all of the reasonable needs and requests of the neighbors.

Mr. Doyle acknowledged, there is only one objector and they would try to meet their concerns.

Mr. Herzl asked if the applicant agrees to frost the windows and they be at least 7 ft above the ground if a second story is ever proposed in the future.

Mr. Doyle confirmed.

Mr. Herzl asked if there will be any privacy issues for the rear neighbor after the landscaping and fence are provided.

Mr. Lines said he has 90 to 100 ft from the back of his house to their property. He thinks the landscaping will take care of everything as far as the interaction between the two properties.

Mr. Franklin said the applicant will install curb and sidewalk along East County Line Road if the County does not put them in.

Mr. Doyle agrees.

A motion was made and seconded to approve the application.

Affirmative: Mr. Franklin, Mr. Hibberson, Mr. Herzl, Mr. Flancbaum, Mrs. Zografos, Mr. Cautillo

Abstain: Mr. Rennert

**7. SP 2220 Pine Holdings, LLC**

Pine Street Block 961.01, Lot 5  
Preliminary and Final Major Site Plan for a daycare

Applicant failed to provide the requested traffic study for this project.

A motion was made and seconded to carry this application to the March 7, 2017 meeting.

All were in favor.

**8. SP 2218 Lakewood Shopping Village, LLC**

Avenue of the States Block 961.02, Lot 1  
Preliminary and Final Major Site Plan and Minor Subdivision for a shopping center

Applicant has requested to carry this project to a future meeting date.

A motion was made and seconded to carry this application to the March 7, 2017 meeting.

All were in favor.

- 9. SD 2181 Cedarwood Hills Homeowners Association**  
Flannery Avenue & Quick Chek Drive Block 1603.01, Lot 21  
Preliminary and Final Major Subdivision to create 2 lots

Applicant has requested to carry this project to a future meeting date. This application will not be heard.

A motion was made and seconded to carry this application to the March 21, 2017 meeting.  
All were in favor.

- 10. SD 2182 BBC Capital Group, LLC**  
Central Avenue Block 79, Lot 10  
Minor Subdivision to create 2 lots

Applicant has requested to carry this project to a future meeting date. This application will not be heard.

A motion was made and seconded to carry this application to the March 21, 2017 meeting.  
All were in favor.

## **9. PUBLIC PORTION**

Mr. Shlomo Klein wants to address the issue at Biltmore and Cross. The board engineer said that he didn't do anything wrong and he wants to clarify what is going on. The UDO is very specific that if you have a property you are building, you have to improve the road to RSIS standards. The Yeshiva asked for a 30 ft setback but it is only 21 ft and the engineer did not catch it.

- 10. APPROVAL OF MINUTES**  
**11. APPROVAL OF BILLS**  
**12. ADJOURNMENT**

The meeting was hereby adjourned. All were in favor.

Respectfully submitted,  
Sarah L. Forsyth  
Planning Board Recording Secretary