

## 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 & SWEARING IN OF PROFESSIONALS

Mr. Stern, Mr. Flanbaum, Mr. Herzl, Mr. Isaacson, Mr. Meyer were present.

Mr. Dave Magno, P.E., P.P., C.M.E. was sworn.

## 3. MEMORIALIZATION OF RESOLUTIONS

### 1. SD 2082A MC Tuscany II Property, LLC

E County Line Rd Block 194; 195; 196; 197; 198, Lots 1 & 4; 1-3; 1-5; 3, 5, & 8; 10  
Amended Preliminary and Final Major Subdivision to revise tract boundaries and setback variances

Mrs. Morris said this resolution hasn't been finished. It will be scheduled for the next meeting.

### 2. SP 2150A Madison Group Development

500, 504, 512, 600 River Avenue Block 420; 420.01, Lots 16; 12, 14, & 23  
Extension of a Minor Subdivision

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

### 3. SP 2345AA Beth Medrash Govoha of America

619 & 633 7<sup>th</sup> Street, 610 8<sup>th</sup> Street Block 46, Lots 3-6 & 22-24  
Change of Use/Site Plan Exemption to convert an existing house into a school campus

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

### 4. SD 2397 453 Ridge LLC

453 Ridge Avenue & 121 Highgrove Crescent Block 223, Lots 9.06 & 78  
Minor subdivision to realign lot lines

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

### 5. SP 2346AA Chaim Cohen

72 White Street Block 251, Lot 20  
Change of Use/Site Plan Exemption to convert an existing house into a school

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

## 5. PUBLIC HEARING

Mrs. Morris said we have five members, but not all can vote on all of the applications. While we wait for additional members to arrive, we will consider the applications that we have a quorum for.

5. **SD 2429 Benjamin Bar**  
Sunset Road Block 76, Lot 19  
Concept Plan for a Minor Subdivision to create two lots

Mrs. Morris said this is a concept application for a minor subdivision. The applicant is looking for some feedback from the Board on whether this is feasible before he goes forward with purchasing the property. He is here to answer any questions the Board may have.

Mr. Magno read from his report dated December 12<sup>th</sup>. He said this a concept plan for a minor subdivision. The property is located in the R-12, they are looking for variance relief to subdivide a 15,000 square foot lot into two 7,500 square foot lots.

Mr. Herzl said the rest of the block, what size are the lots?

Mr. Magno said that I don't know.

Mrs. Morris said I believe the applicant is prepared to point out some similar sized lots.

Ms. McLeer said I was explaining to the applicant that the Board already has copies of the maps that he submitted so he doesn't need to provide them additional copies at this time.

Mrs. Morris said correct. Unless he's presenting additional maps that I haven't seen yet that highlight undersized lots in the area. We could then mark them as an exhibit.

Mr. Benjamin Bar appeared and was affirmed. He said I'm proposing that Lot 19 should be split into 50 by 150, which gives 7,500 square feet per lot. The house would be built on the left side of Lot 19 as opposed to what the engineer thought.

Mr. Herzl asked if there is a house on the lot now.

Mr. Bar said yes, on 18 merging onto 19.

Mr. Herzl said I'm confused. Lot 18 and Lot 19 right now are one lot?

Mr. Bar said yes.

Mr. Stern said it's two lots and one house...

Mr. Flancbaum said the house is on Lot 18 and Lot 19, but they're not one lot. They're two separate lots.

Mr. Bar said he is proposing to split 19 into two lots.

Mr. Flancbaum said so you'd have one 50 by 150 lot on one side, and then one 50 by 150 lot on the other. And the existing house would stay.

Mr. Bar said yes. I would build a house on the 50 by 150 lot.

Mr. Flancbaum said but the existing house will stay. So one lot which is 50 by 150, but this house would stay.

Mr. Bar said yes.

Mr. Herzl said in the surrounding area, are there any 7,500 square foot lots.

Mr. Bar introduced maps that were marked as A-1.

Mr. Herzl said that Mr. Isaacson pointed out, you can't fit a 50' wide house on a 50' wide lot

Mr. Bar said that's a misunderstanding, the house itself would be narrower.

Mr. Isaacson asked Mrs. Morris for a street view on the overhead Google Maps.

Mr. Flancbaum said you live on Carey Street, correct? What's the condition of that house? Is it an old house, a new house?

Mr. Bar said it's a newer house.

Mr. Flancbaum said it's not a knock-down?

Mr. Bar said on Carey?

Mr. Flancbaum said the existing house on Sunset.

Mr. Bar said it's a good house but it's an older house. Potentially, but not for the next 15 to 20 years.

Mr. Herzl said I see three lots, 16, 17, and 18, which are 50 by 150. Most of the block is bigger lots.

Mr. Stern said the little-bitty houses are older houses.

Mr. Flancbaum asked if public notice was provided.

Mrs. Morris said no, it's not required, and this was a rush application so the applicant could have information on a potential property purchase.

Mr. Herzl said I recommend you go around the neighborhood and see what percentage have that size lots.

Mr. Bar said there are three across the street, two on the right side that are 50 by 150...

Mr. Stern said are there any newer houses that size. I live in the area. I know there's lots of little lake houses, but there's lots of mega-mansions in the area too. We wouldn't want to give encouragement to think that you can come back and build a mega house on an itty-bitty lot.

Mr. Bar said no, the idea is a narrower and deeper and taller house. I don't have any plans to build any mansion.

Mr. Stern said maybe knock down the house and split it into two big lots.

Mr. Bar said we aren't ready to knock it down because it's still a good house.

Mr. Flancbaum said the 50 by 150 lots, that goes back decades. My concern is once we do this, they next guys gonna come in and ask for it too. We've had other people ask for similar relief and we've denied it. My opinion is it's an R-12 zone and it should stay that way. We don't need to create new 50 by 150 lots.

Mr. Bar said would you consider 75, to split the property in half.

Mr. Flancbaum said my opinion is no. We've had these applications over the years and have denied them or told the applicants to go back to the drawing board.

Mr. Herzl said Lot 18 and Lot 19, I think you could have two 75-foot lots.

Mr. Bar said would that be acceptable?

Mr. Herzl said I can't give a guarantee, but it's more likely.

Mr. Flancbaum said this isn't a public hearing, we aren't going to vote.

Mr. Stern said but if you came back at 11,000 I think it'd be much more well received.

Mr. Herzl said you stand a much better chance at two 11,000 square foot lots.

Mr. Bar said thank you.

**2. SD 2408 Avraham Green**

105 Linden Ave & 154 Somerset Ave Block 189.30, Lots 156 & 157  
Minor Subdivision to create five lots

Mr. Magno said this is a subdivision with variances. The project is in the R-7.5 zone, which permits single-family detached and two-family and duplexes, provided they are on 10,000 square foot minimum lots and with 60-foot minimum widths. The applicant is requesting 5 lots, two duplex buildings and one single-family. The single-family lot would be the one with the variance. It is slightly under 5,000 square feet where 7,500 square feet is required. It also needs design waivers for lot lines that are not perpendicular, however those lines are all parallel and perpendicular to the others, so it is a good practice to do it that way.

Mrs. Miriam Weinstein, Esquire, appeared on behalf of the applicant. She said I want to remind the Board of some history with this property. This was the site of Rabbi Brody's shul. I'm sure the Board remembers the neighbors had some objection with a shul at this location. A concerned neighbor went out and acquired this property to appease the Rabbi and neighbors. We are here with this application for two duplexes and one single-family home. She had Mr. Glenn Lines, P.P., P.E., sworn.

Mr. Lines said we are proposing 5 lots, a duplex on Somerset and a duplex on Linden, and a smaller under 5,000 square foot lot on Linden. We are proposing the 4,955.30 lot will comply with all setbacks as required. As will the duplexes. So it's just the one variance. As for fitting in with the neighborhood, it's sort of a lone single lot. It's a nice buildable lot with a 1,700 square foot footprint with no variances that will fit in with the rest of the

neighborhood. It's wide enough, just doesn't have much back yard. We can get 4 parking spaces and a nice front setback.

Mr. Herzl said the houses front to where.

Mr. Lines said 3 on Somerset and then one of the duplex lots and the single will front on Linden.

Mr. Herzl said the duplex on the corner, one will face Somerset and one will face Linden?

Mr. Lines said both will face Linden, but the parking for one will be on Somerset.

Mr. Isaacson said there are two houses there currently and you want to put 5 in the overcrowded Ridge neighborhood.

Mr. Stern said and with basements, so really it's like 10.

Mrs. Weinstein said this is what the neighbors want.

Mr. Herzl said we are going down from the synagogue of 100 cars. It's a dangerous corner for a school, and residential fits.

Mrs. Weinstein said the four duplexes are fully compliant. The fifth lot is the size of a duplex lot and is surrounded by duplexes. It's half a duplex.

Mr. Isaacson said this is what the neighbors want?

Mrs. Weinstein said yes.

Mr. Herzl said is there anything in the report you don't agree with.

Mr. Lines said no. We can agree with all requirements.

Mr. Herzl said sidewalks.

Mrs. Weinstein said yes, on both frontages.

Mr. Isaacson said the house on the corner of Linden and Somerset, the parking is on Somerset?

Mrs. Weinstein said for one of the units. The fronts of both houses are on Linden.

Mr. Stern said can you do four double-stacked cars, with a loop-de-loop for them?

Mr. Flanbaum said a half circle?

Mr. Lines said there isn't enough room to do that.

Mr. Stern said they have them on James, they're a lot safer.

Mr. Lines said you need a place for everybody to back up. The lot has to be at least 60 feet wide. It's like a shopping center, 24 feet is needed between the backs of the cars. You'd have to back out at least 15 feet further back before you could pull out into the street.

Mr. Stern said I'm most concerned about Somerset.

Mr. Lines said that's what I'm talking about.

Mr. Herzl said show us on the map where the driveways are going to be.

Mr. Lines said on Somerset the first house has 4 spaces double-stacked, and the second lot is the same. As you get to the corner lot, they are single-stacked, so that's four spaces. On the bigger center lot on Linden, we could make it four, and it's only about 2 feet off the property line.

Mr. Herzl said I'd like it as far as possible from the corner.

Mr. Lines said they are. The single, we are proposing 3 across with one behind it. I understand the concern with backing out and swapping cars. We could make it wider, 4 across, without any cars pulling into traffic to let others out.

Mr. Stern said and when everyone is late and rushing...

Mr. Lines said that would address it.

Mr. Sable arrived.

Mr. Stern said on Somerset?

Mr. Lines said we could move those back. You can back out and have some space, another 15-foot driveway isn't going to bother this lot. You have some maneuvering room. We may be able to do the same with the other lot.

Mr. Stern said that would be good.

Mr. Lines said that's a very constructive recommendation.

Ms. McLeer asked for testimony on the positive and negative criteria.

Mr. Lines said as far as positive, we are providing another lot in this neighborhood. It's the same lot size as the duplexes and we aren't proposing any other variances except for that one. As far as negative, I don't think there are any. This is an isolated case with a large corner lot. There is no real negative to the application.

Mr. Herzl opened to the public.

Mr. Isaac Sternheim appeared and was affirmed. He said looking at this application, I want to state that Mr. Green and his family did everything to make peace. They bought the property from us and paid our previous costs. I think you should approve the application.

Mr. Nissan Gelbwachs appeared and was affirmed. I live across the street from the application. I've been there 14 years and have seen the neighborhood turn over. Over the last few years people have moved in. This is one of the

last strongholds for the old population and we are happy to see it cleaned up and good people brought it. We'd be very happy to see this application go through.

Mr. Herzl asked if the Planning Board could approve a triplex.

Mr. Magno said that would have to go to the Zoning Board, here its' not a permitted use.

Mr. Herzl closed to the public.

Mr. Flancbaum made a motion to approve the application as presented, with Mr. Stern's excellent suggestions for traffic flow, and Mr. Stern seconded. All were in favor.

- 1. SD 2418 Yeruchem Gelb**  
414 & 420 Ocean Avenue                      Block 539, Lots 3-6  
Minor Subdivision to create six lots

Mr. Flancbaum left the meeting, given that Mr. Sable had arrived and could sit on the remaining applications.

Mr. Terence Vogt, P.P., P.E., C.M.E., appeared and was sworn.

Mr. Vogt said under zoning, the applicant is not requesting variances. It's a complying application.

Mr. Joe Kociuba, P.P., P.E., appeared and was sworn. This is fully conforming, 4 existing lots into 6 to contain 3 duplexes. Each of the combined duplex lots is 10,000 square feet, no setback or coverage variances. It's on a State highway and we are in the process of obtaining DOT approval and request the approval as noted.

Mr. Herzl said is there anything in the report that you can't agree with.

Mr. Kociuba said there is nothing in the report we disagree with.

Mr. Herzl opened to the public and no one came forward.

Mr. Stern said you're doing the loop-de-loops.

Mr. Kociuba said yes.

Mr. Stern said on Linden we aren't required, but we are here?

Mr. Kociuba said yes, the State requires it, and requires driveways to be placed at certain distances. You can't put a single driveway to each lot.

Mr. Stern said what's the logic?

Mr. Kociuba said the State wants to limit openings on their roads. By doing combined driveways, we comply with that. You do a K-turn on the property.

Mr. Vogt said a turn-around driveway.

Mr. Herzl said its much safer.

Mr. Meyer made a motion to approve, and Mr. Sable seconded. All were in favor.

#### 4. CORRESPONDENCE

- **SP 2301 She'erit Ezra** – additional design waiver required for driveway widths for this previously-approved school, as a result of changes requested by the County

Mr. Herzl said this was fully approved by our Board and is being modified based on what the County wanted.

Mrs. Morris said correct.

Mr. Isaacson said we said it should be up to the County.

Mrs. Morris said correct, unfortunately it needs a design waiver so that's why they are back before this Board.

Mr. Jackson said we received a letter from an objector on this. And it was noticed for. I'm satisfied that the Board has the jurisdiction to grant the relief if they want based on the fact that they sent out notice. The Board will decide on its merits.

Mr. Adam Pfeffer, Esquire, appeared on behalf of the applicant and said this application came before the Board not that long ago and was fully conforming. When we submitted to the County, they indicated they wanted a second entrance aisle. They also required we go from 20 feet to 15 feet. Based on that we are asking for a design waiver.

Mr. Herzl said what's 15 feet.

Mr. Pfeffer said the width of the access aisle. This is what the County has asked for.

Mr. Glenn Lines, P.P., P.E., appeared and was sworn. He said based on the County's requirements, we originally submitted this with a 2-way entrance drive on the westerly side of the property. After numerous revisions with the County, they indicated they'd like a one-way in and one-way out. So we redesigned the plan based on that. We didn't think they'd agree to this because it's too close.

Mr. Isaacson what is it they usually want, 100 feet?

Mr. Pfeffer said I believe this is what the Board wanted but based upon County regulations we didn't think they'd approve it.

Mr. Herzl said is there anything that's changing?

Mr. Pfeffer said no.

Mr. Stern said you're not losing parking.

Mr. Pfeffer said no. Nothing is changing except for the access aisle and the width of it.

Mr. Lines said we're here because the Ordinance says you have to have a 20 foot wide minimum driveway. The County wants it restricted to that 15 feet so that you can't get a bus in to the site. It makes that turning movement difficult for buses.



Mr. Pfeffer said now you have the access aisles to show you cannot pull a bus in. We aren't proposing buses.

Mr. Sable said you cannot pull a bus in?

Mr. Lines said no, you'd have to swing out into oncoming traffic to get a bus in. That's why the County wanted the driveways narrower.

Mr. Stern said to prevent a bus?

Mr. Lines said correct. It's a small school, our testimony last time was they have two vans they are using.

Mr. Sable said we had a question about RSIS at the time of the approval.

Mr. Lines said the County requires a certain distance between driveways. But this is a site plan so the Residential Site Improvement Standards do not apply, because it's not residential.

Mr. Sable said over on Massachusetts was also a school and they had to follow the RSIS guidelines.

Mr. Pfeffer said I don't believe it was RSIS, I think the question was relating to the access aisle. This here the County is asking us specifically to put in. If we started with the application this way, Glenn did you think the County would approve it?

Mr. Lines said no, I didn't think the County would ever give us two driveways. That opening was wider, and we also lined up with Cindy Court, which we thought they would want. That was my opinion before we submitted it. Even the exit driveway now is close to an opposing street.

Mr. Stern said do you think this is so the future owners can't put buses there?

Mr. Lines said I don't think they were thinking that far ahead. I think they like this traffic pattern.

Mr. Herzl opened to the public.

Mr. David Matyas appeared and was affirmed. He said when this project came before the Board last, and a lot of neighbors came out and protested, we were advised by the Board that being it was fully conforming there was nothing they could do about it. However the project was non-conforming to begin with because it was not going to pass Ocean County standards. It was submitted to the Township in a way that they would approve it, with the full knowledge that the County was going to reject it and make them change it and they were hoping to get a approval later on, because it was already approved and this is a design waiver. And the Fire industry they say the code is written in blood. I'm sure it applies to others such as construction and zoning. Not all codes are for safety, some codes such as having a buffer by the neighbors are for society purposes, but some are for safety. You have to go back to when each code was written to see the reason for each one. Even if this particular code is also for society purposes, it also shouldn't easily be dismissed because it was put in there for a reason. The Township has a code that the driveway has to be a certain size. Ocean County for whatever reason doesn't agree. Now in order to conform with the County the applicant wants the driveway to be smaller. However, this is no longer conforming to Township code. I do not know the reason behind the code, but that is the code. This building was approved based on it following the code. The code development is not supposed to have variances applied to it just to make it easier for the applicant. As you can see Ocean County didn't give a variance just because it was easier for the applicant. An argument that without the variance the project can't proceed is not a valid argument. Originally we were advised by the Board that

being that it's fully conforming there was nothing you could do about it. Being that it's no longer fully conforming, the Board is not forced to approve it, at least not without additional studies such as traffic studies to see how this changes the previous studies. One comment they brought in, proving buses for sure can't come in here. Last time Mr. Sable, he at that time stated that even though now there are no buses there is no guarantee there won't be buses. The school changes, sells, a lot of different changes. One of the reasons he didn't want to approve it the first time was because there was no way of safely showing that there's buses here. We just had the applicant testify that we cannot safely have buses going in. That doesn't mean buses aren't going to service here. It means buses will be down the block, buses will on Lanes Mills. I have customers who are bus companies and while they will not enter this lot, they go ahead and they do things on the side in order to make sure. That is something that should be taken care of. Originally we were told that they only real way of doing this was if they could get a bus here. Now they're saying they for sure can't get a bus here. That is something that should be taken into consideration.

Mr. Herzl said Mr. Jackson, is there a way that we can restrict it no buses.

Mr. Isaacson said you gotta deed restrict it.

Mr. Jackson said you could put it as a condition of the site plan, you could deed restrict. The issue is it comes to enforcement.

Mr. Stern said you can give the citizens the private right of enforcement.

Mr. Jackson said if there were a deed restriction for the benefit of the public, then any individual could sue to enforce it.

Mr. Stern said you can have a restrictive covenant that runs with the land that is privately enforceable by the public.

Mr. Jackson said yes.

Mr. Sable said and it's going to show on the deed that if any other school wants to buy it that they can't have buses.

Mr. Jackson said that would run with the land.

Mr. Yochy Miller appeared and was affirmed. He said this is a big school with phase 2, phase 3, there's going to be a lot of students and busing at some point. I'd like those buses to be on the property, otherwise they'll be around the neighborhood. I'd like to keep that at 20' and let the buses go on the property and not affecting the neighborhood.

Mr. Ruben Gleiberman appeared and was affirmed. He said I live on the corner of Cedarwood and Lanes Mill. Currently there is a shul across the street from me. There have been numerous accidents on that corner. A yeshiva is a yeshiva and is going to keep growing. There's going to be busing.

Mr. Herzl said they can't fit the buses unless they buy more property.

Mr. Gleiberman said that's my problem. They're going to drop their kids off on Cedarwood. I don't understand the concept of there are never going to be buses here. Where are they going to be off-loading.

Mr. Herzl closed to the public.

Mr. Sable said how are garbage trucks going to go in and out?

Mr. Lines said they come at night. Public Works is running three shifts, early in the morning or late at night for schools. The traffic is less and they can go where all the cars are supposed to park. Public Works can't collect all the garbage from all the schools in a regular work day. So they do it at night.

Mr. Herzl said if Public Works can't get a truck in, they will have to go private.

Mr. Sable said we can't make the driver go into oncoming traffic even at 12:00 at night.

Mr. Lines said we are right across from Cindy Lane, they can go down there and come back. We will resubmit to Public Works.

Mr. Pfeffer said we have no problem with that, they are a third-party approval.

Mr. Stern said so the testimony is that there are no plans for buses.

Mr. Pfeffer said yes and I think there was language in the resolution that says buses are not part of it. In the resolution was some kind of governing language on how we can't bring buses into the site.

Mr. Stern said why didn't we deed restrict.

Mr. Pfeffer said it's against public policy, and if we obtain more land we have to go to court to overturn that. It's only a hardship on us to do that.

Mr. Sable said you could have buses.

Mr. Pfeffer said the Rabbi said on the record he has no busing.

Mr. Sable said maybe in the future though.

Mr. Isaacson said maybe the school gets bigger.

Mr. Stern said what's against public policy about having deed restrictions.

Mr. Pfeffer said there are certain considerations for schools given by the Township to have buses to the site. We agree that we do not bring buses to the site.

Mr. Stern said I'm not worried about your client, I'm worried about the client 25 years from now.

Mr. Pfeffer said its already in the resolution.

Mr. Stern said the difference is if it's privately enforceable, the neighbors can hire someone to enforce the deed restriction.

Mr. Pfeffer said they can come to the same enforcement before the Township.

Mr. Stern said the difference is between public and privately enforceable.

Mr. Pfeffer said I disagree, if it's in the resolution the Township can do stuff on their end.

Mr. Stern said but that will never happen.

Mr. Sable said and if buses come they will have nowhere to stop, only on Lanes Mill. I think the Board made it clear that we could only approve it because it was fully conforming. Now it's not, we have a design waiver.

Mr. Matyas reappeared. Busing, I'm on Cindy Court. Cindy has a bend and full-sized buses have a headache because of how the cul-de-sac is. If you're not having buses there, and we asked about garbage, only at night. In Brick they made it clear that you can't go based off of it will only be done during certain hours. It has to be accessible at all times.

Mr. Herzl said lakewood tries to accommodate.

Mr. Matyas said what about a fire truck. Garbage can only come when the parking lot is empty. I don't know how a firetruck is going to get in there. Last time Mr. Wolf was here last time, he has been a firefighter many years and he made it very clear that unless they're able, from his experience...

Mr. Pfeffer objected.

Mr. Sable asked about deliveries.

Mr. Pfeffer said box trucks don't have a problem.

Mr. Herzl said they don't have tractor trailers.

Mr. Sable said 24-footers.

Mr. Herzl said yeah they fit.

Mr. Stern said we did vote for this and we agonized and we voted for it. This is a minor change and I think we should approve this, that's what I'm agreeing with. What I disagree with, I think in future cases a privately enforceable deed restriction is the only way that neighbors who are concerned about the impact in 10 years, somebody less responsible, less ethical, that the current ownership comes along and they call the Township over and over again, if they get mad enough they hire you (Mr. Pfeffer) and you get 10 weeks of recorded violations and you file for an injunction. Future applications, I think it is not contrary to public policy. It's good for public policy that the citizens would be able to rise up and hire an attorney if the promises made here were not kept by future owners.

Mr. Sable said why not now.

Mr. Stern said we were persuaded and we voted for it. I'm just saying in the future, a private deed restriction shouldn't be a surprise.

Mr. Herzl asked for a motion.

Mr. Stern motioned to approve.

Mr. Herzl said I would like to add, it should go to Public Works again and it's based on an understanding that no buses, it's not a deed restriction but...

Mr. Stern said we already have that, it's already in there.

Mr. Jackson said there's already a deed restriction?

Mr. Stern said no, I'm not advocating for deed restriction.

Mr. Isaacson said I don't understand why you are averse to a deed restriction.

Mr. Stern said because we voted for it and there's a concept of settled expectations, that is public policy.

Mr. Isaacson said it was based on buses having exit and entry.

Mr. Stern said no, that was the whole point. We said no buses.

Mr. Isaacson said we have the benefit of a second look.

Mr. Meyer seconded the motion to approve.

Mr. Herzl said with no buses and they have to go back to DPW.

Mrs. Morris took a roll call. Affirmative: Mr. Stern, Mr. Herzl, Mr. Meyer. Negative: Mr. Sable, Mr. Isaacson.

Mr. Sable said I would have approved it with a deed restriction.

Mr. Isaacson said me too.

**3. SD 2421 Israel Klein**  
335 Ridge Avenue Block 224, Lot 13  
Minor Subdivision to create two lots

Mr. Vogt said variances are required for lot width and minimum side yard setback for both lots. Under design waivers, with respect to the right-of-way dedication the application is proposing a road widening easement in lieu of a dedication.

Mr. Israel Klein appeared and was affirmed. Mr. Glenn Lines, P.P., P.E., appeared and was sworn.

Mr. Klein said this is an oversized lot, 313 feet deep. It exceeds width and is oversized. You can't utilize the whole thing, so we'd like to have a slight variance to divide it in two, 32.5-foot width and the setback is 10 feet and we'd like to have it 7.5 feet on the sides. All the houses in the area comply with that. Nice big back yard, open space. The lot size is more than enough. My father is going to live there, we've had this for three years. He wants to live next to his kids. It's a duplex. The only way to have my sister live next to my father is to do a duplex. Elderly couple and a young daughter, 32 years old, 4 kids, grown family.

Mr. Lines said this is an existing 65-foot wide lot to subdivide down the middle for two duplexes to have two 32.5-foot wide lots. We are on Ridge Avenue where the existing right-of-way is 33' feet so we would require an 8.5-foot dedication but as is normal we are proposing the 8.5-foot wide road widening easement so they widen Ridge Avenue and behind that a 6-foot shade tree easement.

Mr. Herzl said where is the side setback, 7.5?

Mr. Lines said you have to put what's required, that's the 10.

Mr. Isaacson said you're giving 7.5 on both sides instead of 10?

Mr. Lines said yes, so instead of a 22-foot wide house, we are requesting that minor variance of 2.5 feet to go to a 25-foot wide house.

Mr. Isaacson said what are those houses it backs up to?

Mr. Klein said L 'Chaim Way.

Mr. Isaacson said you spoke to those neighbors?

Mr. Klein said their concern was about a double basement. But we have 4 parking spots for each lot.

Mr. Isaacson said one rentable basement or two.

Mr. Herzl said two is not legal.

Mr. Klein said one.

Mr. Lines said he means one per each half of the duplex. Like a regular duplex.

Mr. Isaacson said a duplex with two basements.

Everyone spoke over each other.

Mr. Lines said it one of the last very deep lots. They're narrow but deep. We have 20,000 square feet but it's only 65 feet wide. We are requesting a minor setback variance. We are missing 10 on the width and are only asking for 5 of it back on the setbacks.

Mr. Sable said that's very narrow.

Mr. Lines said

Mr. Lines said he means a basement under each unit.

Mr. Sable said we know what he means.

Mr. Lines said 4 spots on each lot like is required.

Mr. Herzl said can you comply with the letter.

Mr. Lines said yes. There's a lot of narrow lots in the same situation.

Mr. Sable said it would be nice if you could show us the other undersized lots in the area.

Mr. Herzl opened to the public and no one came forward

Mr. Isaacson made a motion to approve the application and Mr. Meyer seconded. Affirmative: Mr. Meyer, Mr. Isaacson, Mr. Herzl, Mr. Stern. Negative: Mr. Sable.

**4. SP 2199 Harold Herskowitz**  
310 Third Street Block 91, Lot 6  
Preliminary and Final Major Site Plan for a 5-story office and retail building

Mr. Jackson said this was filed in 2016 and at that time there was a discrepancy as to where the zone line was. As a consequence, the applicant came in and said it was in a zone that allows this use that I want. And an objector raised a point that he was on the other side of the line that has other zoning criteria. Mr. Herskowitz was very upset by that. We looked at the Township records and it was unclear. It turns out Mr. Herskowitz was correct. Since then the zoning has changed and I think it's fair to look at this application under the zoning criteria at the time of his application.

Mrs. Miriam Weinstein, Esquire, appeared on behalf of the applicant. She said the only supplement I'll offer is I don't think it was a question of two zones. Fran Siegel, the Zoning Officer, her computer said it was the B-2, which he confirmed with her. And then the actual zoning map on file with the Township showed the property as being outside the B-2 zone. That was where the discrepancy came in and an objector came up.

Mr. Herzl said I think with the Master Plan we corrected that.

Mrs. Weinstein said there was some back and forth before it became apparent that there was a mistake on the zoning map.

Mr. Herzl asked who did that.

Mrs. Morris said Birdsall, the previous Township Engineering company that prepared the zoning maps. There was a particular line that was obviously moved over by a block or a couple properties. And then they hired Terry.

Mr. Herzl said now the whole property is in the B-2.

Mrs. Weinstein said it always was, but now the zone map was corrected.

Mr. Jackson said this case does have the older docket, and in my view this should get the benefit of the zoning in place at the time of application.

Mr. Joseph Kociuba, P.P., P.P., appeared and was sworn.

Mr. Herzl said he was here on time, it was the Township's mistake.

Mr. Jackson said yes. It wasn't the Planning Board's place at the time to say the map was wrong. Turns out Mr. Herskowitz and his team were correct.

Mr. Isaacson said the Planning Board couldn't make an approval based on that zone?

Mr. Jackson said it was outside our jurisdiction to make a decision contrary to the zoning map.

Mrs. Weinstein said it was dismissed without prejudice. Everything is being done based on time of application which is what the law says.

Mr. Isaacson said what is the objector's opinion now?

Mrs. Weinstein said there hasn't been a conversation, they were noticed and have not appeared tonight.

Mr. Kociuba said the application proposed is a 7,000 square foot lot in the B-2 with frontage on Second Street surrounded by other commercial uses.

Mr. Sable said Third Street.

Mr. Kociuba said yes, Third Street. There is an existing structure on the property that is 14,000 square feet of retail. The applicant is proposing to demolish that and construct 3 stories of toy store retail and 2 stories of office above that. The zoning still permits 5 stories. A total of 30,154 square feet is proposed. The layout, there is an existing rear setback of 1.4 feet that was granted back in 2004 by this Board, a variances was granted for a rear yard setback. The proposal is for 1.5-foot setback which is what was granted previously. We are proposing a 7.5 feet setback on the right side and zero on the left, you are permitted zero setback commercial to commercial. We have a zero front setback which is also permitted. We provide the 7.5 on the right side which compliance. There are no building coverage requirements for this so in our opinion there are no variances required. A rear yard setback is noted in the report and that was previously granted.

Mr. Vogt said so you're not asking for that as part of this application.

Mrs. Weinstein said well we are, but it was actually on this site already.

Mr. Vogt said you're asking for affirmation of the previous variance.

Mrs. Weinstein said yes.

Mr. Sable said we still have to act on it.

Mrs. Weinstein said you still have to act on it.

Mr. Sable said explain the rear setback.

Mr. Kociuba said at the time the toy store requested a variance for an addition in the rear to a 1.5-foot setback where 10 feet is required.

Mr. Sable said that exists?

Mr. Kociuba said yes.

Mr. Herzl said B-2 has side yard setbacks?

Mr. Kociuba said if you don't have commercial next to it, yes. We are next to a parking lot so we met the 7.5-foot setback on that side.

Mr. Isaacson said you're knocking the toy store down?



Mr. Kociuba said yes. The rear is going to stay at 1.5. The other variance in Terry's letter is for aggregate side yard setback, at 15 feet. But just as in a duplex, if we are permitted a zero setback on one side I don't think the aggregate is applicable. Aggregate is typically that the two sides have to add to 15, but I don't believe the intent of the Ordinance is that if we get a zero setback on one side we have to shift everything to have 15 on the other. The intent was zero on one side and 7.5 on the other. That's how it's applied for any duplex setting.

Mr. Sable asked about the 1.5 setback to the rear.

Mr. Pfeffer said at the time they were required to obtain from Lot 8 an easement of 8.5 feet to essentially account for the 10 feet. So an easement was granted and exists to allow 10 feet of access at the rear of this property.

Mr. Isaacson said what's currently on Lot 8.

Mr. Kociuba said a commercial use that fronts on Clifton.

Mr. Herzl said this property backs up to the Township parking lot.

Mr. Kociuba said yes on the west side.

Mr. Isaacson said there are some spots in front of the toy store now. Are they staying?

Mr. Kociuba said those are going. The paved area in front is not sufficient for parking by Ordinance

Mr. Isaacson said and no handicapped parking is required?

Mr. Kociuba said handicapped is required based off the number of spaces, so if we're not proposing any we aren't required to provide handicapped parking.

Mr. Isaacson said so this is under the old zoning.

Mr. Kociuba said correct, the old B-2 did not require parking.

Mr. Isaacson said and now it says...

Mr. Kociuba said now it says no parking is required for the lowest two floors, any floors above two require parking.

Mr. Isaacson asked how many parking spaces would be required.

Mrs. Weinstein said the toy store is going to stay.

Mr. Sable said and that's a concern because mothers and kids want to park close to the building.

Mrs. Weinstein said and when your wife goes there now, she can get a spot in front? If I go to the toy store, I never get a spot in front and I have to walk.

Mr. Kociuba said at the time of application, the parking standard for offices was less per square foot. At the time of application, the office portion would require 39 stalls and the 1 floor of toy store would require 31, for a total of 70 spaces.

Mr. Isaacson said you would need 70 now?

Mr. Kociuba said it is not our position, but yes 70 would be required now.

Mr. Herzl said and how many they have on the Township lot.

Mr. Kociuba said the parking lot immediately to the west is 64 stalls, to the south there is approximately 180 public stalls, and to the north there's approximately 78. There is ample Township parking surrounding this property.

Mr. Vogt asked for the building height.

Mr. Kociuba said it is 65 feet at the parapet, the building height is 65 feet, which is permitted at the top of the roof. I think there was an error on the architectural plans that said 70 feet.

Mr. Vogt said so based upon the correct architectural, you are not requesting a height variance.

Mr. Kociuba said that is correct.

Mr. Herzl asked about the parapet.

Mr. Kociuba said I don't think there's a specific recommendation. The height is measured to the roof deck.

Mr. Stern said is this the same design from 2016? It talks about cantilevered balconies.

Mr. Kociuba said I don't believe the balconies are cantilevered, there is a cantilevered balcony on the fourth and fifth floors but it's not cantilevered past the building. The building steps in.

Mr. Stern read from the review letter that references extending past the property line.

Mr. Kociuba said I don't believe that was correct.

Mr. Jackson said do you agree as a condition of approval that the rear balconies will not encroach into the property line.

Mr. Kociuba said yes.

Mr. Jackson said if that's a discrepancy then that will be corrected.

Mr. Stern read further, "number 4, at the plan review meeting the applicant's engineer agreed to provide off-street parking requirements as if the project was not in the B-2 zone."

Mr. Kociuba said I don't believe we agreed to provide the parking, we agreed to provide the calculations.

Mr. Vogt said Joe is right. The language of the letter says to provide off-street parking requirements, so the Board understood if this was not B-2, this is the amount of parking that would be required.

Mr. Jackson said it didn't say meet the requirements, it said provide the data. I don't think there was ever any discussion for providing parking.

Mr. Isaacson said in this case how did the B-2 zone go from zero to 70? What was the thought process?

Mr. Vogt said I can't say for sure but I assume the rationale was that there was adequate on-street or Township parking. Over time, this area changed. The Town decided to increase the parking standards but that was after this application was filed.

Mr. Jackson said there's always been controversy with the downtown parking. There was talk about the Town putting in a parking garage, there was a time when there was no parking required, and it's changed.

Mr. Herzl said a lot of people have been saying that there are so many buildings going up that its not enough.

Mr. Vogt said I suspect what happened was there was enough parking at one point.

Mr. Herzl said Mr. Herskowitz is the last one who can come back on the old Ordinance.

Mr. Stern said so you have a public parking lot that the Township built, and you have a bunch of people with conforming applications, you do the math. If they're all relying on this parking lot they're going to exceed the capacity. What do we do?

Mr. Herzl said four years ago we had an application that we denied because it didn't have enough parking. The judge reversed it.

Mrs. Morris said I would imagine the thought is the same way we say the Planning Board can be concerned about traffic, but it's really the governing body's responsibility to improve and maintain the roadways. And the zoning that they put in place is a reflection of the fact that they have proper planning for that traffic. In a similar way, the downtown parking, in the past the Committee did not require parking. We assume they were going to be accommodating that parking elsewhere. Now that they are requiring parking, that intent has changed or they cannot supply enough.

Mr. Stern said so the fact that this is grandfathered is what is saving it.

Mr. Jackson said correct. When he applied he was under the wire. Now I think the time of application rule should apply. We know that the parking may not be enough but we swear to uphold the Constitution and the Constitution says that he is protected under the time of application...

Mr. Stern said well that's a settled expectation, if they spent the money back then, and the Township made a goof, they can't say well now we're going to give you the more restrictive things.

Mr. Sable said what would happen to make this a variance-free application regarding setbacks. Would that make a big difference?

Mr. Stern said why do we care whether it's one or two.

Mr. Isaacson said what's your concern with the setback.

Mr. Sable said I think we'd feel more comfortable if there's no variance, it's grandfathered, and there's nothing we could do.

Mr. Herzl said the main issue we should consider is parking. If we can't consider that, I don't know if the setbacks make a difference. On Clifton Avenue all the stores are attached to each other.

Mr. Kociuba said we could go to the zero setback on the west side, there's certainly an argument for that, that the parking lot is a commercial use. And the building would be even bigger.

Mr. Harold Herskowitz appeared and was affirmed. He said I can make a statement if you want. If you're wondering why this sounds like a crazy idea, I want to give you some background. I fought for nine years to create parking downtown at the lowest possible cost for the Township. All the properties together cost around 1.3 million dollars. I personally bought and sold a property at a loss because I didn't want someone else to upsell it to the Township. It was appraised at \$470,000, I paid \$215,000 and the Township bought it at \$280,000. That wasn't even near my store. It's a public lot now. If you ever want to go down to Cedarbridge and you don't want to sit in traffic, you can thank me because I came up with the idea of buying four dilapidated houses and creating one large connected parking lot. On a daily basis everybody cuts through there. After I created that system, to benefit my business as well, I didn't ask for parking spots to be reserved for me. When I come in at 11, I don't have a parking spot. A year after the parking lot was done, and I worked hard on these, I had to get involved in politics, my kids didn't get into school, we had a crazy nine years of fighting and backstabbing. When it finally got done, someone came along to make a bais horaah, or a court. They said there would be at most 17 people in the building at any time. Then they put a social hall in the basement. On the third floor, they rented it to a bank with 50 cubicles for workers. On the second floor, they put in a kollel of 40 to 50 guys. It needs 150 spots to operate, and they were not in the B-2 zone so they don't have the benefit of saying I can build whatever I want. I didn't know they did anything illegal, but the inspection department did and they shut them down. And they blamed it on the merchants. We told them to buy a parking lot, and they finagled, and they ended up getting approved with no parking based on the fact that they promised they wouldn't take up any downtown parking. That lasted maybe a week before they started parking all over the place. They promised to rent a lot by Classy Cleaners. They don't even have space for their own cars.

Mr. Stern said if the deed restriction was privately enforceable...

Mr. Herskowitz said I'm not going to call on them. Then I'd be a moiser. What happened was my parking is worse than it was before I put those parking lots in. Now that those are all connected, I have no on-street parking, maybe one that can be used by a customer.

Mr. Isaacson asked where he parks.

Mr. Herskowitz said either in a striped area or where a garbage can is supposed to be.

Mr. Sable said this application does not make me happy, I will not make a motion to approve it.

Mr. Herskowitz said I gave my life to that parking lot and it was stolen.

Mr. Sable said based on your testimony, I'm not making a motion to approve this.

Mr. Isaacson said how are your tenants going to park there?

Mr. Herskowitz said I don't know. Somehow my customers are parking already. Nothing is changing. I have a lot more customers coming in at 2:00 when the parking lot empties out.

Mr. Isaacson said so you're making the space at your own peril.

Mrs. Weinstein said yes.

Mr. Herskowitz said there was a 5-story building built on Second Street with no parking.

Mr. Isaacson said how many 5 story buildings have been built downtown.

Mrs. Weinstein said I don't know.

Mr. Isaacson said can you ask your client.

Mrs. Weinstein said I don't think he knows either.

Mr. Herskowitz said there's a 5-story on Second Street, and on 4<sup>th</sup> and Monmouth.

Mr. Herzl said they have a parking lot.

Mr. Herskowitz said they do not have adequate parking.

Mr. Herzl asked if his next plan was to build a parking garage for the Town.

Mr. Herskowitz said there are some plans for parking downtown.

Mr. Sable asked if he would hold this application until some other plan for parking was made.

Mr. Herskowitz said no. Whatever I build is not going to change anything.

Mr. Sable said it's going from worse to worse.

Mr. Herskowitz said the footprint isn't changing, the variance was already granted.

Mr. Sable said if this were variance free I would make a motion to approve it. It is a problem, we didn't know how bad it was until the applicant came up and told us.

Mr. Herskowitz said the difference between what I have now and what I'm going to build, there are that amount of spots. You have spots in the downtown. Bagel Nosh is more popular, I can't cry that Bagel Nosh is taking up all the parking. You're telling me that I'm less deserving of the spots than the Bais Horaah, which is currently not in the B-2 zone, and is using up the parking spots. You're telling me they have more of a right. Let's say I rent out 10 offices and those people show up at 9am, they're going to get the spots before the Bais Horaah people show up at 9:45. That's the only difference.

Mr. Stern said my company buys office buildings. I don't think you're going to get a lot of leasing on those top floors. Helpful hint, maybe do some pedestal parking underneath and make your toy store under the 4<sup>th</sup> floor. Like the apartments on...

Mr. Herskowitz said I want a building that looks beautiful. I'm building it for myself.

Mr. Stern said I think your customers, of which I am one, would appreciate that parking.

Mr. Herskowitz said I can't afford that.

Mr. Herzl opened to the public and no one came forward.

Mr. Meyer made a motion to approve the application and Mr. Stern seconded. Affirmative: Mr. Meyer, Mr. Isaacson, Mr. Herzl, Mr. Stern. Negative: Mr. Sable.

**6. APPROVAL OF MINUTES**

**7. APPROVAL OF BILLS**

**8. ADJOURNMENT**

The meeting was hereby adjourned. All were in favor.

Respectfully submitted  
Ally Morris  
Planning Board Recording Secretary