

I. CERTIFICATION OF COMPLIANCE

Chairman Banas called the meeting to order at 6:00 p.m. with the Pledge of Allegiance and Mr. Kielt read the Certification of Compliance with the NJ Open Public Meetings Act:

“The time, date and location of this meeting was published in the *Asbury Park Press* and posted on the bulletin board in the office of the Township of Lakewood. Advance written Notice has been filed with the Township Clerk for purpose of public inspection and, a copy of this Agenda has been mailed, faxed or delivered to the following newspapers: *The Asbury Park Press*, and *The Tri-Town News* at least 48 hours in advance. This meeting meets all the criteria of the Open Public Meetings Act.”

2. ROLL CALL

Mr. Herzl, Mr. Franklin, Mr. Neiman, Mr. Banas, Mrs. Koutsouris, Mr. Fink, Mr. Schmuckler, Mr. Percal

3. SWEARING IN OF PROFESSIONALS

Mr. Peters and Mr. Truscott were sworn in.

Mr. Banas announced that the special meeting scheduled for September 23rd is to hear the case handed down by Judge Grasso dealing with the western section of Lakewood as it relates to zoning. There are a lot of things that have happened since the 23rd was designated as a special meeting: according to the instructions supplied by Judge Grasso, there needs to be a lot of items needed to be pulled together by the planners and professionals and so the meeting of September 23rd will consist of 2 items; discussion of those items they will need to pull together followed by a discussion of some of the work that they have in the backlog that they can't get to. At the conclusion of the meeting on the 23rd, another meeting will be scheduled giving the professional staff an opportunity to get all the work necessary for a good presentation.

4. NEW BUSINESS

1. SD # 1637 (Variance Requested)
Applicant: Lakewood Development Corp
Location: Fifth Street & Clifton Avenue
Block 93 Lots 6 & 12
Minor Subdivision to realign two lots

Mr. Peters read from a letter dated September 12, 2008. The Applicant is seeking a Minor Subdivision approval to realign the lot lines of Lots 6 and 12 of Block 93. An area of 2,500 SF is to be conveyed from Lot 12 to Lot 6. After the realignment, the lots are to be known as Lots 12.01 and 6.01. All existing structures will be removed. The property has frontage along Fifth Street and Clifton Avenue. The site is situated within the B-2 zoning district. No variance is requested by the applicant. Outside agency approvals from Ocean County Planning Board will be required. Evidence of the approval shall be provided prior to signature of the final plat. The applicant shows in Detail C, the outline of the existing commercial building on Lot 12.01 is encroaching into the public right of way along Clifton Avenue and neighboring Lot 13. The demolition of the building will eliminate these encroachments. Per section 18-807 of the UDO, all non-residential uses in the B-2 zoning district are exempt from the parking requirements of the section. The applicant shows on the plan existing curb and sidewalk/brick pavers exist along Fifth Street and Clifton Avenue at property frontages. The applicant shows on the plan, two property corners being unable to be marked. The corners shall be located with proposed offset markers.

Mr. Truscott read from a letter dated September 11, 2008. The applicant proposes to subdivide a portion of Lot 12, approximately 2500 square feet, and consolidate the land with existing Lot 1. All structures on Lot 6.01 will be removed, and the commercial structure on new Lot 12.01 will remain. No improvements are proposed at this time. The property is located at the southwest corner of the intersection of Clifton Avenue and Fifth Street. The tract area is 0.34 acres. The property is located in the B-2 Zone District. No variances are requested. All improvements shown on the plat to be removed must be removed prior to the filing of the plat unless a bond is posted. The proposed subdivision is to be perfected by map. Compliance with the Map Filing Law is required. The required outside agency approvals may include, but are not limited to: Ocean County Planning Board.

Scott Kinnealy Esq. appeared on behalf of the applicant with Mr. Andrew Marshall from Owen Little & Assoc. as the engineer. Mr. Marshall stated the applicant is adding 2500 sf from lot 12 to lot 6 which fronts on 5th St. New Lot 6.01 will have 10,000 sf and new Lot 12.01 will have 5,000 sf. The buildings will be demolished and the property corners will be placed on offsets either 2-5 ft. offsets and they will be placed on the map so that when it is filed, any surveyor will know what those points are. They will be set in the next week or two, prior to the filing of the map. They agree to comply with the recommendations from the professionals.

Mr. Banas opened the microphone to the public

Seeing no one, this portion was closed to the public

Motion was made by Mr. Neiman, seconded by Mr. Herzl, to approve the application

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

2. SP# 1892 (No variance requested)
Applicant: Princeton One

Location: corner of Princeton Avenue & Fourth Street
Block 159 Lots 9 & 24
Preliminary & Final Major Site Plan for proposed 5 story office building

This application is a continuation from a previous meeting and the letters were previously entered into the minutes.

Mr. Neiman was not at the previous meeting but has read the minutes and asked if he would be allowed to vote and Mr. Jackson told him he needed to listen to the tape or read the transcripts in order to be eligible to vote. Mr. Herzl and Mr. Neiman are ineligible to vote if there is a vote tonight.

Mr. Peters stated The Applicant is seeking Preliminary and Final Site Plan Approval for Block 159, Lots 9 & 24. The applicant has proposed to construct a five (5) story commercial building with a basement for storage. The first and second floors will be occupied by retail stores and the rest of floors will contain professional offices. The lots are currently vacant. The property has frontages along Fourth Street and Princeton Avenue, and is located within the B-2 zoning district. No variances are requested by the applicant; however, a front yard setback should be requested. Footnote number two in the Schedule of General Zoning Regulations states In any district where more than one residence building is situated on one side of a block, no new building shall be erected and no existing building reconstructed or altered to project beyond a setback line which will represent an average of the setback lines or distances of all residence building on said side of block. Along Princeton Avenue the front yard setback of the existing homes is in the range of 22 to 27 feet, where a front yard setback of 20.1 FT is provided. Along Fourth Street the existing setback is approximately 32 feet, where a front yard setback of 15.8 FT is provided. Outside agency approvals from Ocean County Planning Board and Ocean County Soil Conservation District are required. Evidence of the approvals should be made a condition of Final Planning Board approval. Although on-site parking requirements are exempted from the B-2 zoning district, the applicant shall provide testimony on the locations of any nearby parking lots which can be used for employee and customer parking. Curbs and sidewalks exist along Fourth Street and Princeton Avenue at the property frontages. The applicant has revised the plans to show existing sidewalks are to be removed and replaced. The applicant has shown on the Architectural Plans a garbage storage area and a proposed compactor on either side of the building. The applicant shall provide testimony on how waste will be emptied from the storage areas and be picked up by trash collection vehicles. Twenty five foot buffer areas are required along the western and northern property lines. The applicant has shown on the landscape plan additional landscaping since the last revision and 6 FT board on board fence along the property lines will be provided. The Board should determine if the landscaping will provide a sufficient buffer to the neighboring lots. The applicant shall provide testimony on any proposed signage. Plan Review. The applicant shall revise the Title Plan to list sheet 3 of the drawing set is the Layout, Grading, Drainage, Utility, & Landscape Plan, since the sheet 3 has been rename as such. The applicant shall revise the grading plan to show the proposed basement floor elevation, as the applicant has indicated on the plan a basement is proposed for the proposed building. The applicant shall perform boring tests within the building footprint to determine the seasonal high ground water table (S.H.G.T.) elevation. The S.H.G.T. elevation shall be at a minimum two (2) FT below the proposed basement floor elevation. The applicant shall revise the layout plan to show the required setback lines. The applicant shall provide a Lighting Plan to the Planning Board Planer and Engineer for review.

Proposed Lighting fixtures with their iso-lux diagrams shall be shown on the plan. The applicant shall revise the plans to show the locations of the proposed doors in accordance with the revised architectural plans. Stormwater Report Review. Per NJ BMP manual, permeability rates for stormwater infiltration calculations shall be based on field tests and laboratory analysis with a safety factor of 2 applied to the permeability rates. The applicant shall perform soil boring tests on site and include the soil boring logs and laboratory results in the Stormwater Report. Per NJ BMP manual, the bottom invert of the proposed underground drainage trench shall be at a minimum two (2) FT above the seasonal high groundwater table (S.H.G.T.) elevation. The applicant shall perform soil tests within footprint of the proposed trench to obtain the S.H.G.T. elevation and demonstrate the underground drainage trench has been designed in accordance with the requirement. Environmental Impact Statement (EIS) Review. The EIS indicates that the site, in its current form, does not contain aesthetic value as it is vacant. However, the proposed development is the construction of a five (5) story building. This building will be approximately 20 feet from the nearest residence. The applicant should provide a discussion regarding aesthetic impacts on the adjacent properties.

Mr. Slachetka read from a letter dated August 8, 2008. The applicant proposes to construct a 35,970-square foot retail and office building at the above-referenced location. The first level will be retail use and the balance of the building will contain offices. Entrances to the structure will be provided on both Princeton Avenue and Fourth Street. The project site is 15,000 square feet in area and currently vacant. The tract is located at the intersection of Fourth Street and Princeton Avenue. The revised plans indicate that the footprint and mass of the building have been substantially reduced. The building setbacks have been increased from 7 feet on the north side and 10 feet on the west side to 25 feet on the north and west sides. The front setback has been increased from zero feet to 20 feet. The added setbacks allow for additional buffer plantings. The applicant should detail the nature of the changes to the floor plan of the building for the Board. Zoning. The subject parcel is located in the B-2 Central Business Zone District. Retail and office uses are permitted principal uses in this zone. No variances are requested. Review Comments. The new building setbacks appear to be based on the average setbacks as surveyed by the applicant on each street frontage. A copy of the survey, prepared by Mager Associates and dated July 11, 2008, should be submitted to the Board professionals for review prior to the public hearing. The survey will be reviewed to determine compliance with the requirements of the UDO. We recommend that the lots be consolidated by deed. The architectural plans indicate that the first floor will consist of six (6) retail establishments, each one with a separate entrance on Princeton Avenue. Two (2) of the retail units will be 438 square feet in area, and four (4) retail units will be 929 square feet in area. Entry to Floors 2 through 5 will be via side entrances. The basement level will be limited to storage. The applicant has not proposed off-street parking spaces as part of this application. Off-street parking is not required for non-residential uses in the B-2 Zone in accordance with Section 870.B9 of the Lakewood Unified Development Ordinance. However, the applicant should be prepared to discuss the parking demand for this project and specific availability of parking for the anticipated offices and businesses, on-street and off-premises. Signage for the retail and office uses shall comply with the UDO requirements. The Lakewood UDO (Section 802) provides that site plans propose screening, landscaping, and other site improvements to minimize adverse effect on surrounding property. The site plan has been revised to propose a double row of evergreens, a 6-foot high board-on-board fence, plus shade trees on the north and west property lines. The building setback is 25 feet, of which twenty feet is landscaped or open. The Planning Board should decide if the proposed buffer is sufficient. The landscape treatment of the open areas of the site

should be identified. The applicant should address how solid waste will be removed from the retail stores and offices. Two small garbage compactor rooms on the first floor are shown on the architectural plan. How will containers be brought to the street? The Environmental Impact Statement (EIS) submitted for Planning Board review notes that there are no significant environmental issues addressed on the site. Additional information should be provided on the architectural plans concerning the materials proposed for the building façade and the first floor doors. Isolux levels of building-mounted lights should be provided for the sides of the building which adjoin residential uses. Performance guarantees should be posted for all improvements in accordance with ordinance provisions. Outside agency approvals which will be required include: Ocean County Planning Board; Soil Conservation District; Sewer and water utilities; and, All other required outside agency approvals.

Mr. Doyle Esq. appeared on behalf of the applicant and Mr. Gasirowski appeared representing an objector.

Mr. Banas stated Mr. Mack and Mr. Kielt did some research on the application and Mr. Mack read his letter to the board into the record. It is dated September 2 sent to Mr. Jackson and it reads "In response to your letter of August 8, 2008 let me explain how we have traditionally measured front yard setbacks. Please understand that we are discussing older sections of town and usually only in regards to additions to existing structures or the removal and replacement of an existing structure in an established neighborhood, where some houses clearly do not conform to the setbacks as they exist today. In answer to the first part of your question as to at what point setbacks are measured and are steps, landings, and mechanical equipment considered? I will take them one at a time. The UDO is specific in Section 18-818A5 that steps are not considered as part of the set back. Landings which are small and do not have a roof are not considered. Air conditioner units are also not considered in the setback. Balconies porches and cantilevered sections of a building are measured to the most projected surface other than porch steps. Porches with roofs are counted in the setback, chimneys are not. In answer to the question as to whether this is done by ordinance or as a matter of practice, I would have to say both. In conclusion I would like to say that the front set back tabulation was completed using the standards that are stated in this letter."

FOURTH STREET

ADDRESS	LOT #	FRONT SETBACK	REMARKS
1 & 2	15	6.4 ft	to roofed porch
31	14	20.7 ft	to dwelling foundation
25	20	0.4 ft	to dwelling foundation
21	13	n/a	not residential(day care)
19	12	23.4 ft	to roofed porch
17	11.01	29.0 ft	to roofed porch
15	11.02	29.9 ft	to roofed porch

TOTAL FRONT SETBACKS

109.8 ft ÷6 dwellings = 18.3 ft AVERAGE FRONT SETBACK

PRINCETON AVENUE

ADDRESS	LOT #	FRONT SETBACK	REMARKS
420	23	18.9 ft	to roofed porch
416	7	18.6 ft	to roofed porch
414	8	26.7 ft	to dwelling foundation (front stoop&steps-not roofed)

TOTAL FRONT SETBACKS

64.2 ft ÷3 dwellings = 21.4 ft AVERAGE FRONT SETBACK

The above tabulation prepared in accordance with:

- Location Plan Block 159 Tax Map sheet 31, prepared by Mager Assoc. dated 7/21/2008
- Field verification of Primary use & verification of front setback measured to appropriate location by Edward Mack & Kevin Kielt on 08/27/08

The above tabulation was attached and was completed by Kevin Kielt and Ed Mack and Mr. Mack stated they walked to the site and found there were no sites they had a conflict with. Mr. Kielt did the math but this is what they found in the field. Mr. Kielt said anything less than the dimensions listed in the chart would need a variance.

Mr. Doyle said the board and Mr. Gasiorowski insisted that the meeting be adjourned so Mr. Mack can do a report and now that his report is here they see it uses the same method they used in providing the substantial change they made in the original structure by reducing it by more than _ (from 61,000 sf to less than 30,000 sf). Mr. Mack makes 2 factual comments in their survey; on Princeton Avenue the applicant stated they believed a particular building had a different setback than Mr. Mack uses and that changes the average slightly and on 4th Street they believed one of the buildings on Lot 13 was used for residence purposes and Mr. Mack's conclusion is that it does not, so he changes what the ordinance requires. Therefore, if the structures already shown were to move back 2.5 ft on 4th Street and 1.8 ft on Princeton Avenue, they would be fully conforming. Mr. Doyle said they would make the change and are willing to proceed. Mr. Banas said before that, Mr. Gasiorowski had a question for Mr. Mack.

Mr. Gasiorowski said they are still of the opinion that whether it be a waiver or a variance, one is still required for the buffer area. His question for Mr. Mack is about the property in the B2 zone, and if you are building a new residential zone, then the required setback would be 25 ft. and Mr.

Mack said yes. Mr. Gasiorowski said 2 of the lots skewer the average which is lot 15 (6.4 ft) and lot 20 (0.4 ft) and those are residential uses and Mr. Mack said yes and they are non conforming as to what the required setback would be in the residential zone if they were built today.

Mr. Doyle asked Mr. Mack if there was any front setback in this zone and Mr. Mack said no and Mr. Doyle asked him if he was away of this footnote being enforced at any time previously and Mr. Gasiorowski objected. Mr. Doyle asked Mr. Mack if he made the changes in the plans as far as moving the buildings would he be conforming and Mr. Mack said yes. Mr. Banas asked Mr. Truscott if he agreed and he said yes.

Mr. Doyle said Mr. Gasiorowski suggested they still need a waiver for the buffer and he pointed out that the argument was that a 50 ft. buffer should apply and Mr. Flannery was of the opinion that it should not, Mr. Gemma was of the opinion that it should and Mr. Truscott opined that the 25 ft. was the appropriate one. Mr. Banas asked Mr. Mack his opinion and he said it is 50 ft. but he would have to look at it. Mr. Truscott said he would need a minute to look at the previous review letter and said in his letter of July 11th he stated a 25 ft. buffer is required by ordinance.

Mr. Schmuckler asked about drainage and said there was talk at the last meeting about water drainage and flooding and asked where the water would be draining. Mr. Doyle said he believed the testimony was from a lay person who said the problem was from a particular occasion with certain pictures and both Mr. Flannery's testimony and the board engineer's report had no indication of drainage issue to be resolved. Mr. Schmuckler asked Mr. Franklin if his office had ant record on drainage issues in that area and Mr. Franklin said the engineer's office would have that information.

Mr. Banas opened the microphone to the public

Moshe Rabinowitz, lives on the corner of Princeton and 5th. He said if you have a 5 story office building with about 7,000 sf on each floor, just the workers that come to work there, at least 10 on each floor, is about 50 cars. There is no place to put 50 cars in his area, and this is before deliveries, customers, etc. Nobody is going to park on Madison or Clifton to make a delivery. That 4th Street is an extremely busy intersection right now and bringing in this office building is going to be impossible and a few years down the line with double parked cars and making deliveries, traffic will not get through and then we will be asking the question, what were they thinking about parking? He does not think than 20/20 hindsight is going to do any good, you have to make sure there is going to be ample parking for the workers, the customers so the neighborhood can continue to function normally.

Mr. Banas told Mr. Doyle they were back to the point of staging and asked him to identify what the staging area is: parking of employees working on the building is part of staging as well. Mr. Doyle said the staging will happen because the building has been more than halved so that will provide space, approximately _ the western half and in addition, the lot to the north of the site, there is an agreement and that owner that would be subject to the board's approval that would allow for staging. There would not be staging required on any lot or in any area where it was not allowed nor in the public's right of way. Mr. Banas asked if a letter has been submitted to the board attorney for review and Mr. Doyle said no but typically that is enforced as a condition of approval subject to post approval to the attorney's review.

Mr. Franklin said he has built a few of these things and they cannot be built without a staging area. Mr. Doyle said they have provided for 2 possible staging areas. Mr. Franklin said they do not have enough room: when the steel comes in, they have to shake the loads out so they know where the pieces are, it is like a puzzle they have to put together. After you lay all the steel out, the crane comes and picks the pieces up and putting them together, and while you are doing this, more steel is coming in that has to be put together. Mr. Doyle said that is one way of doing it, and staging is a matter of making sure that at every stage you respect the rights of Township and your neighbors and you only place your material and your men on your site or where it is allowed and they can do that. Mr. Franklin said they can not do that, it is not physically possible; maybe with a tower crane, but he does not see anybody wanting to set a tower crane up in Lakewood. He said there is no way you are going be able to get the scaffolds built around the outside in the small area you have to service the scaffolds, unless you can get something from the other people that you can go onto their properties and service these things. Mr. Doyle said he believes there is building on Second Street that was constructed and Mr. Franklin said that is because they used a lot. Mr. Gasiorowski objected on that note and Mr. Banas asked Mr. Doyle to speak specifically on this application only.

Mr. Fink asked Mr. Doyle if he made arrangements with adjoining property owners and Mr. Doyle said no what he did say was since the building footprint has been shrunk there is room on the western side in addition to the property to the north of the site to provide sufficient staging. Mr. Banas said the gentleman standing beside him wanted to know where the cars of the employees of the construction which Mr. Banas felt is a part of staging and Mr. Doyle stated they would park consistent with the ordinances of the municipality at such places that they would be able to find. There is no parking requirement as a part of the approval process.

Mr. Rabinowitz continued speaking and said the building that went up on Second Street and the public parking spaces are full so they are going to block his driveway and he will not be able to get out because the workers will be blocking his driveway. Mr. Banas said if they do, the police will help him with that and Mr. Rabinowitz said with respect he cannot wait for that, even for 10 cars it will be a problem.

Mr. Doyle said he thought, except for the letter from Mr. Mack, the public hearing was closed and Mr. Banas said no. The board members all stated there was no public portion on this application at the last meeting when it was continued.

Bill Hobday, 30 Schoolhouse Lane was sworn in. He stated this does not belong in a residential area; even, according to zoning, when they put one there. But this is a residential area with such a need for parking as it stands and to put a 5 story office building here would be a detriment to the owner because you couldn't get people in and out of there or they would take the spaces of people that have residences in the area. There is a perfectly good corporate park that still today stands vacant and that is where we should, as a Township, be directing 5 story office buildings. The industrial park is full but as far as he understands, but the idea is that the corporate park remains empty without a building in it. That contract was let in 2000 with the idea that by 2008 we would have a robust corporate center beginning to return taxes to the municipality. Mr. Banas takes it that his comment means he would like the board to consider a negative vote on the application and Mr. Hobday said he has guessed right.

Naftali Greenwald, White Oak Estates on 13 Gefen Drive, was sworn in. He stated his brother-in-law lives on the adjacent property to the west and he visits there and when he is in the driveway trying to pull out onto 4th Street the traffic on 4th Street is quite heavy and on the corner is a very difficult intersection to maneuver and the stop signs have been knocked down numerous times by accidents. It is one of the more dangerous intersections in Lakewood and he passes by every single day. Trying to pull out of Princeton onto 4th Street is very difficult and if most of the staging for parking will be on that side of the lot, then anyone trying to turn onto 4th from Princeton will have a difficult time and it will add to the traffic there

Avrohom Zweiback, he lives 2 houses down from the applicant. He stated that even though it is a B2 zone but it is mostly residential and prior to the applicant purchasing the lot which was bought off the Township, one of the reasons he did not bid against him was because he was said it was going to be residential application. He made an offer to buy the lot from him for residential and the offer is still there and he wants the board to know there are other options other than commercial.

Shlomie Weinberg, 15 4th Street was sworn in. He said he did not have much to add and he is not familiar with the ordinances and he is not a lawyer or an engineer but he understands the ordinances are there for the benefit of the public and we must look at how this particular structure will affect the public. He lives in this area and the corner of 4th & Princeton is a very busy corner and it is not the safest corner and adding a business with having people parked all along Princeton Avenue and having cars constantly coming in and out would only add to traffic and safety issues and the parking issues is one they know throughout the town is a problem. He is definitely against this project.

Jacob Weiss, 16 5th Street was sworn in. He said he owns a property that is 50 ft. from the subject property and has been living there for 12 years with his wife and children. The last meeting he was treated to a legal debate and heard much of the technicalities but he would like to bring some common sense to the discussion. He said there are many neighbors here tonight and they have many concerns and he can do a good job addressing them. The first concern is stormwater runoff and experience has shown that the current drainage system is not sufficient along Princeton Avenue between 4th & 5th. There are floods there very often and the police have been called there on more than on occasion to control the traffic through the flooding. Mr. Doyle attempted to brush away the testimony by saying it is coming from a layman but photographs do not lie. Even if the project did not create the problem, with a 6,000 sf building it will greatly exasperate the problem, especially since the proposed site sits exactly on the problem site on the corner where that sewer problem is. The second issue he would like to see addressed is parking. Even though the legalities say the B2 zone does not require parking however comments were made as to the necessity of a waiver for the structure, whether it be 50 ft. or 25 ft. and if the proper amount is 25 ft. there have been some issue as to whether the 4 ft. of the concrete should be suitable as buffering material. He thinks the township experts have proclaimed that they are not which would effectively mean they would need 29 ft. setback from the buffer zone from the neighbor and he does not believe the applicant has made any indication that he plans to pull that conditional 4 ft. on the western side of the building. Although the parking is not required it only means it is not inherently require this structure to obtain parking: however, it does not mean that every single structure and every single corner in the B2 zone is suitable for this type of structure, it just means it is legal to put this type of structure there. The planning board consists of human beings and if all they had to do is

approved based on whether they conform, a computer can do that, the point of the planning board is to foresee and plan and see what is suitable growth and what is not suitable growth, just because it is legally sanctioned does not mean that it is a good plan. The expert testimony stated that a building of this size would require 120 parking spaces per Township code and he believes the number of spaces available on the streets is about 4 or 5. Mr. Flannery testified that there are parking lots up and down Monmouth Avenue and under questioning he admitted that the nearest available parking lot with vacancy is on 1st and Madison Avenue which is 6/10 of a mile away from the proposed site. A customer would have to look for parking from 4th street all through the downtown traffic to 1st and Madison and then walk back through the downtown traffic. This is obviously not suitable and he believes a more likely scenario would be a customer would arrive at the intersection, finds no parking, circles the block, finds no parking, circles the block in another direction, still finds no parking, and in exasperation is tempted to double park and maybe even triple park. There are also traffic issues and they need to be addressed in B2 as much as in any other zone, perhaps even more so. 120 cars circling the block looking for parking is not exactly beneficial to the traffic situation in the area. This is a "T" intersection, close to a 6-way intersection with stop signs. Mr. Banas said the board is familiar with this location and have heard from the applicant in regard to the parking and traffic. Mr. Weiss said this intersection is one of the only intersections in the area which cuts through the railroad tracks hence connection the eastern side with the western side so it is a major artery. There are also many children in the neighborhood, possibly hundreds, that use that intersection daily, so without providing some type of relief it would put the children at great risk. He would hope the board would use their brains and intellect instead of the legalities and technicalities of this application fitting in the zone. Mr. Banas asked him if he was in favor of this application and Mr. Weiss said he is opposed.

Gerry Ballwanz, Governors Road was sworn in. She stated many times in the past we heard the attorneys and applicants go through the question "is it a detriment to the zone?" Even though this is an approved use somehow the precedent has been set that this is now a mostly residential zone so she would think that the question and answer would be that it is a detriment to the zone and it is not a good proposed use of that land. There is also the proximity to the railroad tracks and to that corner and there is a danger there with congestion. She would not be in favor of this as it is proposed with 5 stories, maybe if it were to be lower in size it may not be as detrimental to the people living there.

Mr. Jackson said legally, using the term "detriment to the zone" would mean asking for a variance and the applicant is not, so that term should not be used. Using the term "detriment to the neighborhood" is a valid consideration.

Esther Kresnow, 418 Princeton Avenue was sworn in. She is here to speak on behalf of all the women in the Princeton Avenue neighborhood. Mr. Jackson said she can only speak on behalf of herself. She said is appalled at the application and that they can even think of putting up a building of that size and that type in the neighborhood that they live in. The children go out to play in this neighborhood, they go out to the buses and ride their bikes and it is definitely a detriment to the neighborhood. Across the street from the proposed building is a Township park and the children walk and ride their bikes there and it is unsafe to have the building there where people will double park right where the children will be crossing to get to the park. She said at the last meeting, Mr. Doyles' planner said the aware the area is congested but they are

still putting up the building this size. She feels it is the responsibility of the board to represent the people who live here and it will take away from their beauty and safety.

Alexander Zucknick, 421 Princeton Avenue was sworn in. He said he lives right across the street for the past 9 years and the planning board is supposed to be representing the people and this is a local issue. These are the people who live in the neighborhood and all the people on the planning board are here to represent them and this is a typical case of what goes on all over the place, you have some big developer that doesn't even live in Lakewood and doesn't care about the neighborhood and only cares about how much money he can make just coming into a neighborhood that is a nice beautiful residential neighborhood, and he is coming in and trying to change that and if the board allows it then they cannot call themselves a representative government because then they are just a government of corrupt people that belong to the developers which goes on in a lot of issues. Mr. Banas said he did not think the board fit into that category. Mr. Jackson said what about the right of the property owner to rely on the zoning law to make plans and bring an application before the board and have them apply the law. Mr. Zucknick said the property owner was informed by all the neighbors and Mr. Jackson said his comments were not appropriate if things do not go his way, that does not mean that there is anything improper going on, but the board will give the appropriate weight to all sides to this. Mr. Zucknick said if this was just a legal issue as to what rights he can get away with on his property, there would be no reason for the public to be called to meetings, so obviously the public's opinion makes a difference if you don't just say that there are zoning laws. If there were just zoning laws you wouldn't need everyone's opinion.

Zipora Mandelbaum, 15 4th Street was sworn in. She was very emotional and crying. She is directly next door from the application. She is coming as a mother who has 7 children and when she moved here 7 years ago and it was an unsafe area when she moved in back then. There was a shooting that went into their backyard but since then they neighborhood has been built up and it has been built up residential. Even though this is a B2 zone she does not think the residents are a detriment to the neighborhood and she feels they are an asset to the neighborhood, It has only gotten nicer and better the more people that have moved in. They are responsible parents and her children range in age from 2 to 14 years and her children from 10 and under do not go outside unsupervised; they ride in the streets, they ride on the sidewalks. She will not talk about the traffic, congestion, or the cluttering because enough people have talked about that, but she is talking because there are now residences here and they are an asset to the neighborhood and it is built up and it has come a long way and she is concerned about her children. There is going to be right next door to her driveway a building with 2 stories of stores with trucks to do deliveries, pulling in day and night right next door to her house. The garbage truck will be pulling in to get rid of the garbage. Her children only ride on the sidewalks but if there are these massive trucks pulling in right next door to her house she is very concerned about it. Six weeks ago her son was almost run over by a car and she is worried that even if they do everything the right way and we watch our children it will still be unsafe right next to this building. She respects Mr. Weinstein's' need for business but he bought the land from the Township for a very minimal amount of money and he was offered somewhere in the amount of \$600,000. to give this property so they could put houses on it. Mr. Doyle interrupted and Mr. Banas interrupted her and said he understood what she is saying and appreciated it and thanked her and told her to take a deep breath. She said she has been doing that for months and cannot do that until she knows her children are safe.

Abraham Mandelbaum, 15 4th Street was sworn in. He thanked the board for giving them the forum to express their feelings and for their time. He wanted to reflect his sentiments and those others who are not getting up to speak. There have been serious issues that have been brought up in the professional's reports with regards to traffic, parking, stormwater and safety. Based on the discussions, they as neighbors do not feel that the traffic issue has been dealt with and the applicant has given the answers the professionals have asked them to do and the parking issue has not been addressed. Although many feel the stormwater problem may be toys stuck in the drains he has spoken to the Township Engineer and the 4th Street drainage is old and was built when there was very little developed on that street and the drainage system cannot hold the volume of water generated. They have seen flooding the day after the Township has come to clean out the drains, this is not a toy that has been stuffed down, and this is a serious issue. One last issue not in the professional's report but he feels is important is the issue of safety. It is not fair for them to theorize exactly who is going to be frequenting these stores both the people running them and patronizing them but even in the best case scenario we are talking about a large amount of people and this is definitely a residential neighborhood and the issue of safety brought up tonight are very serious. We are talking about 2 intersections that are about 50-60 ft. away from each other and he encourages any of the board members to come by at 8:30 am when the school buses are picking up and the garbage trucks are coming and it is literally a nightmare.

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

Mr. Doyle said before they close it to the public, there were issues he would like to rebut on staging and drainage. Mr. Banas said he would have the opportunity to speak but he will not accept anymore testimony from the public. Mr. Doyle said he would like to call Mr. Carpenter back to testify again and Mr. Gasiorowski said he already rested his case and Mr. Banas said if he did that he would have to open it to the public again following that because they may have questions relating to his expert.

Mr. Jackson said this is a process and not a court case with strict rules and the staging issues were raised and the applicant and Mr. Banas interrupted him and said he gave Mr. Doyle the opportunity when there were issues presented by one of the public to refute the statements that were made and he said no. Mr. Doyle said he asked him if he had something to say, and he is not a witness so he interpreted his meaning to be does he want to question the witness and that is why he said no. What he would like to do is present an expert witness and Mr. Banas and Mr. Doyle discussed the merits of who said what. It was decided to let him do it and Mr. Gasiorowski said he had a problem with it because in the professionals' reports there was comments as to what the applicant was to address; staging, drainage, etc., so the applicant coming before you knew what the concerns were, he had the opportunity to present testimony with regard to that and he chose not to. Mr. Gasiorowski presented testimony, he called Mr. Schwartzman as a witness who presented a series of photographs and that has all been closed, now at the very end you have comments from the public and he would submit respectfully that this is not the time when the applicant comes back and reinvents his case.

Mr. Doyle said he does not want to reinvent his case, he wants to have an opportunity to respond to comments that were brought. He does not see in the latest planners report or the engineer's report specific issues raised as to staging so they did not have the chance. Mr. Jackson he knows Mr. Franklin raised serious concerns about staging and that might be a

legitimate basis to take action one way or the other on this and he thinks the applicant should be given the opportunity to address this which may or may not be satisfactory to the board. Mr. Banas agrees with everyone and said let's get all of the issues on the table and let's get it out so the board can render a complete decision. Mr. Gasiorowski said in the report of Mr. Peters' dated July 15, 2008 he states the applicant should perform a drainage study to show the existing stormwater sewer system will be able to handle the additional run off caused by the construction of the building and other impervious areas. He is not aware of any reports being furnished and Mr. Peters said he did have some outstanding comments that Mr. Carpenter agreed to address as a condition of approval. Mr. Gasiorowski said how can you have that as a condition of approval when you listen to the comments from the property owners, stormwater runoff is an issue, and the board engineer has asked for a study to be done prior to this matter being heard and what is incredulous is the lack of testimony dealing with stormwater drainage and flooding and further, in Mr. Peters report he states this building will be approximately 20 ft. from the nearest residence and the applicant should provide and discuss the aesthetic impacts on the adjacent properties and they have not done so until hearing the outrage of the residents. Mr. Banas said let's hear what Mr. Doyle has to say about them now and Mr. Doyle noted there is an August 18th report written after the July letter that eliminated those comments.

Mr. Carpenter said he spent 33 yrs working for the NJDOT in heavy construction and this is a piece of cake compared to a lot of jobs that he has done. This building can be constructed in 2 stages; either from front to back or back to front or from the middle out. The building can be constructed with the equipment available today without any extraordinary means in the right of way that they have to work with will be more than adequate. Mr. Gasiorowski objected to his qualifications and Mr. Jackson said he cut him off from that and Mr. Franklin has the experience to see if what he says makes sense or doesn't make sense. Mr. Carpenter said the property directly north of the site is more than double the size of the area that they used to construct other buildings of this nature to shake out the steel. When he did jobs with the DOT they did not have as much room so the trucks has the steel already in place so it was taken off and put right in place so if you are careful in how you do stage your trucking you do not need a staging area, you stage offsite and you bring the trucks onsite with exactly what you need. Mr. Jackson asked where they are going to park the trucks and Mr. Carpenter said right next to the building between the building and property line and Mr. Franklin said he did not think in the real world you can get your trucks loaded and take right from the truck to erection, you have got to shake the steel out, some of the parts are real small that have to go together with the "H" columns and the bar joists and the structural beams, you have to spread it out on the ground so you can find the numbers so you can pick them up. You also have to set your crane up in a couple of different locations and he does not see how you can do that without taking half of the street; you are going to have trailers coming in after you are done with that with brickwork, forklifts, mixing areas for the mortar, sheetrock, steel studs, etc. there is a lot of stuff including the trailers, men, onsite storage for the materials that are going in these buildings. There are concrete pumps that are going on between each one of the floors, the concrete trucks are going to be in the streets, there is a lot to this thing and this is not just a small building sitting on a lot big enough to build it. Mr. Banas asked where the construction trailers would be located and Mr. Carpenter said 1 trailer would be located on the trailer to the north and Mr. Banas said they did not receive any communication on as yet. Mr. Carpenter said he had previously submitted a staging plan and there is he believes it can be safely and satisfactorily done on this site as it has been done on other sites in town. Mr. Carpenter said he did submit a drainage report to the board and Mr. Peters initial comments caused them to make a change to the design to enlarge

the system and it does not connect to the system on 4th Street. The final 2 comments in Mr. Peters' latest report are relatively minor and will be met.

Mr. Gasiorowski asked if he received a written report based on the latest drainage report submitted analyzing the content and Mr. Carpenter said the second letter shows that the original concerns were met by the revisions. Mr. Jackson said Mr. Carpenter said there were 3 ways to for staging and asked if he addressed all 3 ways and Mr. Carpenter said what they showed is the specific location on the staging plan for the crane and where they were going to store the materials and where the construction trailer was and there is no specific comments from Mr. Peters addressing whether he agreed, disagreed, etc. to that staging plans. Mr. Jackson asked if they have agreements in place from that property owner and Mr. Carpenter said not at this time but they will provide them but he has made verbal commitments that the property will be available to them. Mr. Franklin said he thought he saw a staging plan at one time but it is not here now, but he remembers seeing they were using _ of Princeton Avenue and Mr. Carpenter said that was changed when the building was reduced it provided more than adequate space on the site to do the construction.

Mr. Schmuckler asked Mr. Peters if they were providing a 25 ft. buffer and Mr. Banas said that is a good question for later but now they are only asking questions of Mr. Carpenter.

Mr. Banas opened the microphone to the public

Jacob Weiss, 16 5th Street said he changed the plans so the drainage does not enter the sewer on 4th Street but asked where does it enter and Mr. Carpenter said the drainage now goes into a recharge system that is totally contained on the site.

Mr. Franklin asked how far does the crane have to be from the power lines and Mr. Carpenter said 8 ft. and Mr. Franklin corrected him and said 10 ft. but asked if he knew where the power lines were and Mr. Carpenter said you can make arrangements to have those wires shut off and grounded and Mr. Franklin said he did not think people were going to like that too much either and Mr. Carpenter said there are ways of doing that. Mr. Franklin said there are power wires on both sides and they are on the applicants' side of the street and Mr. Carpenter said if you position the crane properly it won't be within 10 ft. of the wires. Mr. Franklin said there is not enough room to unload the trucks and swing the loads inside and to clear the wire and Mr. Carpenter said that is up to him and the construction supervisor to meet those criteria.

Abraham Mandelbaum 15 4th Street asked Mr. Carpenter if he was aware that besides power lines there is a main phone line which goes along Princeton Avenue with a big junction box on a telephone pole immediately across from where you want to stage the crane. Mr. Carpenter said all the existing utilities will be maintained.

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

Mr. Schmuckler asked Mr. Peters if they were providing a 25 ft. buffer and Mr. Peters said in his opinion the applicant has provided a 25 ft. setback, he would not consider that whole area to be a buffer area (sidewalk, drainage areas which cannot be considered buffer). They would need a waiver for the buffer. Mr. Carpenter said they could eliminate the sidewalk in the rear of the building and Mr. Percal said the idea of eliminating the sidewalk in an area that is 90%

residential is a no-no and Mr. Schmuckler asked about the 2 ft. drainage and Mr. Carpenter said that could be in the buffer area. Mr. Truscott explained Mr. Carpenter said he would eliminate the sidewalk that went around the building, not the street side, but he did not know how he could do that because you still have to provide access to the rear of the building. Mr. Carpenter said those are only emergency exit doors for fire protection and Mr. Banas said he does not think the board would allow removal of that and have asked at previous meeting to extend the sidewalk on the Princeton Avenue and 4th Street side to eliminate any grass growth of any type and make the sidewalk go from the curb to the building itself. Mr. Schmuckler asked again about the drainage area and Mr. Peters said it is actually a 4 ft. area with stone and if you put vegetation on either side it is a gray area whether you consider it a buffer, it is more of a French drain. Mr. Banas asked if they met the constraints of a buffer in the side and the rear and Mr. Peters said the ordinance defines a buffer as grass or ground cover combined with trees or shrubs, so in that instance the 4 ft. grass area above the stone trench could be considered the buffer if you vegetated all the way to the building and remove the sidewalk. Mr. Truscott said he is not sure you can just remove that sidewalk if you have emergency exits. Mr. Fink asked, bottom line, do they have the 25 ft. and Max said going by the letter of the ordinance, that grass area can be considered part of the buffer but you would have to take out the sidewalk and vegetate all the way to the building and from a practical standpoint he does not know how you can vegetate right up to the building wall. Also, on the north side of the building, there is not only emergency exits but there is also an entrance to the trash enclosure for the dumpster and that is something else that would have to be worked out within the building. Mr. Banas said you need a firm surface, you can't get rid of the sidewalk. Mr. Banas asked if they needed a variance and Mr. Flannery said they did not need a variance, they need a design waiver. They will remove the sidewalks and use the grass area for emergency exit and are revising the plans to move the building back to comply with frontyard setback in accordance with Mr. Mack's measurements and would be happy to supply those plans to the board so they would have those specific plans to look at when voting on the application. The applicant is offering to revised the plans to show that taking the sidewalk out, doing the minor modifications that were discussed, if that is the boards' pleasure, the applicant will do that. Mr. Banas said the past posture of the board is they always want to see what they are voting on.

Mr. Gasiorowski would commend this friend Mr. Flannery for suggesting that and Mr. Doyle agreed. Mr. Gasiorowski asked that he be copied because he is not and Mr. Doyle said he would provide them. Mr. Banas said they need new plans.

Mr. Kielt questioned Mr. Banas and said they have sat through 2 meetings, there is another option to this, and based upon the calendar we just keep getting deeper and deeper. Typically things like this get handled in resolution compliance; they are changing the building by 1 ft. by 2 ft. Mr. Banas said what everybody is ready to do is come to the issue and vote up or down on the application.

Mr. Gasiorowski asked if a new set of plans were being submitted and was told no, it would be submitted as part of resolution compliance if it is approved. Mr. Gasiorowski disagrees with that but continued and said they are here tonight to talk about this piece of property and how it is being constructed, how it complies with or doesn't comply with the code. He recognizes that this property is in the B2 zone and that commercial use is permitted but the Township Committee did attempt to put in certain safeguards for its' residents who live in that area and they clearly said in that footnote you have to take the average of the residential homes in which

it fronts on the street in which it fronts. In the letter from Mr. Mack he states it is an old area with older existing residential homes and they have skewed property frontages, especially 2 of them, one which has 6.4 ft setback and the other having 0.4 ft, If that property owner were to come back before the board to demolish those building and build residential homes he would have to have a front yard setback of 25 ft. but yet these older antiquated buildings are being used in an argument to diminish the required setback for an intense commercial use. The adjacent property owners were very passionate in their comments and the adjacent property owners' setback is 29.9 ft. so the footnote is to ensure the honor of the residential uses in a predominately residential area. It is really those people who live on that street who are impacted by this use that will give you the clearest testimony of all because theirs is heartfelt and without monetary compensation and because they live there. With regards to drainage, there are still reports that have not been satisfied and Mr. Peters' letter of August 15th, at the very end of the report where it repeats the earlier comment of July that states this building will be approximately 20 ft. from the nearest residence and the applicant should provide a discussion regarding aesthetics impacts on the adjacent properties. This board is basically the conscience of the community and it is you who is called upon to listen to the testimony and comments and only the board can understand if there will be an adverse parking or drainage impact on this surrounding area. He disagrees with Mr. Kielt with regards to the fact that these issues can be resolved in resolution compliance and are not simple problems that can be modified. He knows there is a problem with drainage and buffer and numerous other issues with this plan and the board has the power to deny this plan and they have to sit back and think about the comments from the public and ask if this particular application on this lot with this staging plan without a letter from the adjoining owner giving permission. He respects Mr. Franklin when he says it cannot be done and there is nothing before the board to show how it will be done. Please take a long hard look at this plan and listen to the comments of the residents who live in this surrounding area.

Mr. Doyle acknowledged the forceful and able way Mr. Gasiorowski presented himself and also noted the comments from the citizens and the neighbors. He wanted to mention the other cases in hope the chairman would not think them germane and he wanted to call them out so if there is litigation he could make the offer of proof of the reports and resolutions of the cases of SP 1871, SP 1833, and SP 1866 and Mr. Gasiorowski objected and said he never heard of an offer of proof being made in closing comments. Mr. Doyle said he had asked for that to be considered and it was rejected. Mr. Doyle said with respect to the site plan issues raised, you follow the law with regards to jurisdiction, you looked at drainage and the plans were changed based on the professional's recommendations. This is no different than the hundreds of applications the board has approved in the past. The parking issue has been raised, but if this was denied on parking, it would inconsistent with the law and with their jurisdiction and ability because there are no parking requirements per the governing body. As far as traffic, you cannot deny because of traffic. Except for the design waiver this is conforming and the Master Plan states this is a business zone and said that buildings up to 65ft. are permitted. This is also in the UEZ zone, an area meant to provide jobs, ratables and economic growth for the township and the applicant wants to be a part of what the Maser Plan says should happen in that area. The law says that planning boards have no inherent power to deny a fully conforming site plan so if you do deny it, he feels you would be inconsistent with the law. They opponents argue for flexibility with the law, the flexibility to say no. The ordinance provides for flexibility; it provides for flexibility on the setback and says if there are established houses that have created a general line that should be respected even if it is different than what the zoning in that area would allow. And

when Mr. Mack opined what that line was they lived up to that, but the ordinance does not have a height flexibility, it doesn't say if every other structure is a house, you must be a house. It says, you are in a business zone, you can have a business, you can grow the town with jobs and ratables and that is what they are trying to do. They have made the changes that were recommended by the board's professionals but when the comment is made the we cannot do what the law allows because they do not want to look at it and don't know who the customers will be, that is beyond the law and beyond fairness. When someone suggests you have 2 alternatives, approve it and be corrupt or deny it and listen to the people, that is not a fair choice; the choice here is, has this applicant, by reason of the submissions that he made, complied with the law, with you engineer and planners reports, and what your typical procedures; and the answer to all three of those is yes. He hopes the board will do their job consistent with the law and allow this fully permitted use.

Mr. Percal had some comments and said he is greatly troubled by several aspects of this application. He is troubled with the traffic issue and also the parking issue and the fact that there is going to be retail space on the first floor of this building which will mean in and out traffic and that is going to add negatively to the traffic problem in this neighborhood. When you visit the neighborhood in the summer when the kids are not going to school is one thing, when you visit it now you will see a lot of kids on bike, you will see buses and he thinks that it is going to be a problem. He did not realize how much it was going to bother him until Mr. Doyle compared this building to the municipal building in terms of parking availability because there are no residences near the municipal building. You cannot treat them with the same barometer. He believes it is the duty of this board to determine whether an application is going to negatively impact a neighborhood and it is their primary responsibility and it is the honest opinion of this board member that in this case the project will.

Mr. Franklin said he thinks the applicant could not prove to him without a doubt that they can construct this building. There is not enough room to put this building together, with the electric wires on the same side of the street as the building, there is no room for the crane to go, there is no room for them to set up, unload, and set up 5 stories of steel up. No room to put this job up properly. They are going to ask for different permissions after the fact, whether they would ever get these permissions granted. Their engineer spoke that he experience in building roads, and that is probably the toughest engineering in the world, but this is totally different, sticking a building in a tight lot. He thinks it is impossible.

Mr. Schmuckler said he looks at this in 3 ways; he feels this is a detriment to the neighborhood, the staging of the building has not been proven and there are 9 rear and side doors that there was supposed to be a 4 ft. sidewalk going around the building and if there is an emergency and if we are voting on plans without a sidewalk and 9 doors he feels that is serious problem. He is also worried about pedestrian safety with the township park right across the street and people being dropped off and picked up for shopping with onsite traffic.

Mr. Banas said Mr. Doyle is entirely correct. If an application comes before the board that is fully conforming they have only one direction to go, and that is to approve. Knowing that, he cannot vote positively for this building for 2 reasons: one is the staging which he feels is extremely critical and the applicant was aware he was concerned about that from the beginning and nothing has been presented except on the first set of plans when the staging area was there. The other area that is bothering him is the health and safety of the people in the area.

**PLANNING BOARD MEETING
SEPTEMBER 16, 2008**

**TOWNSHIP OF LAKEWOOD
REGULAR MEETING**

This is going to create a real real problem and it works negatively for the health and safety for not only the people in the area but in the surrounding area as well. It will impact to such a degree that no one will want to live in that section under the conditions that we will have.

Motion was made by Mr. Franklin, seconded by Mr. Percal, to deny the application for all the reasons that were just mentioned in the summary.

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

Mr. Banas announced again about the meeting of the 23rd and what was going to be heard at that meeting.

Mr. Banas announced that they would not be able to hear the entire agenda and asked that some items be carried to a later meeting. Item #3 will be heard, Items #4-6 will be carried to 9/23/08 and the remaining items will be carried to 10/28/08

Mr. Doyle represents applicants for items 4-6 and agreed to be carried.

Motion to carry SD1632, SD1536A and SP 1887A to 9/23/08 made by Mr. Herzl, seconded by Mr. Franklin

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

Mr. Alfieri represents item #7 SD 1629 and agreed to be carried to 10/28/08

Motion to carry SD1629 to 10/28 made by Mr. Herzl, seconded by Mr. Franklin

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

Mr. Penzer represents item #8 & #9 SD 1630 & SP 1894 and #11 SD 1635 and agreed to be carried to 10/28/08

Motion to carry SD 1630, SP 1894 & SD 1635 to 10/28 made by Mr. Herzl, seconded by Mr. Franklin

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

Mr. Doyle represents item #10 SP 1897 and agreed to be carried to 10/28/08.

Motion to carry SP 1897 to 10/28 made by Mr. Franklin, seconded by Mr. Neiman

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

Mr. Alfieri represents item #12 SD 1636 and agreed to be carried to 10/28/08

Motion to carry SD 1636 to 10/28 made by Mr. Herzl, seconded by Mr. Franklin

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

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

Mr. Peters read from a letter dated August 18, 2008 and stated the Applicant is seeking Preliminary and Final Site Plan Approval for Block 563, Lot 1 and Block 564, Lot 1. The applicant has proposed to construct a gravel access driveway within the Right of Way of Drexel Avenue, and a wireless communications facility consisting of three pad mounted equipment cabinets, and six antennae mounted on an existing Lakewood MUA water tank. The site is located on New Hampshire Avenue with additional frontage on the unimproved Rights of Way of Chile Avenue, Drexel Avenue and Hughes Avenue. The project is located within the M1 zoning district. The applicant is requesting variances for the following: Minimum lot size: 2.57 acres is proposed where 3 acres is required. This is an existing non-conformance. Minimum lot width: 240 feet is proposed where 300 feet is required, this is an existing non-conformance. Front yard setback to Drexel Avenue: 1.9 feet is proposed where 50 feet is required. Front yard setback to Chile Avenue: 16 feet is proposed, where 50 feet is required. Maximum building height: 150 feet is proposed, where 65 feet is permitted, this is an existing non-conformance. Maximum fence height: Seven feet is proposed where six feet is permitted, this is an expansion of an existing condition. The applicant indicates in the zoning table the existing non conformity of side yard setback; however, the applicant shows on the plans and in the zoning table a minimum of 30 FT setback is required, where 96 FT are provided and will remain. Since the existing and proposed setbacks are in conformance with the requirement, the applicant shall revise the zoning schedule to indicate no side yard setback variance is required. In addition, the applicant shall revise the zoning schedule to show the existing non conformity of minimum lot size, minimum lot width, and maximum height of security fencing. Outside agency approval is required from Ocean County Soil Conservation District. Evidence of the approval shall be made a condition of the Planning Board approval. The applicant shall revise the 200 FT property owners list to include owners of Lot 1 of Block 549.01, Lot 1 of Block 554, and Lot 1 of

Block 555. In accordance with section 18-1012 D.1.c. of the Lakewood UDO, the applicant shall provide to the Township, as part of the application, and inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of Lakewood Township or within one (1) mile of the border thereof, including specific information about the location, height, and design of each tower. The proposed concrete driveway apron detail does not reflect the existing curbs shown on the plans. The applicant shall address this issue. The applicant shall provide evidence of the lease agreement between the Lakewood Municipal Utility Authority and the applicant to the Planning Board Solicitor for review. The applicant shall provide testimony on revisions regarding security fencing around the Ominpoint lease area.

Mr. Truscott read from a letter dated August 14, 2008. The applicant requests site plan and variance approvals to place transmitting/receiving antenna at an approximate height of 110 feet on an existing 115-foot MUA water tank. The applicant also proposes to place equipment cabinets within a 10 by 20 foot leased fence area at the base of the tank. A gravel driveway from America Avenue through Drexel Avenue will be constructed to provide access to the communication's facility. The subject site is occupied by the MUA water tanks pumping facilities and other buildings. The tract is 2.57 acres in area and is partially developed. The property is located in the M-1 Zone. Telecommunication facilities are a permitted use in the M-1 Zone. The following variances are requested: Front Yard setback. A minimum of 50 feet is required. The applicant proposes 1.9 feet on Drexel Avenue, a paper street, and 16 feet to Chile Avenue, a paper street, for the equipment. The height of the antennas, accessory structures, is +/-110 feet. The maximum height permitted in the M-1 Zone is 65 feet. The standards in the UDO are silent on the permitted height for antennas on a water tank or building. However, the maximum height for a telecommunications tower, per Section 18-1012.n(1) for a single use is ninety (90) feet. Based on the above, it is our recommendation that the applicant request a "c" variance from Section 18-903.M.7.g. for the height of the antennas. The telecommunications antennas, as a co-location on the tank, are accessory to the principal use of this site. This height variance of an accessory structure (the antennas) is within the ancillary power of the Planning Board pursuant to NJSA 40.55D-60. A variance is necessary for a 7-foot high fence where a maximum height of 6 feet is permitted per Section 18-1012.t. Additionally, the Board should review the use of barbed wire on the fencing. The applicant should address the positive and negative criteria for the requested variances. Review Comments. We have reviewed the site for compliance with the requirements of Section 18-1012 of the UDO. Our findings are as follows: Since the proposed antennas are a co-location rather a new telecommunications tower, many of the requirements of Section 18 1012 of the UDO are not applicable. The co-location of the antennas on the water tower will minimize the need for a new telecommunications tower. Inventory of existing sites. The applicant should address the following: *"Each applicant for an antenna and/or tower shall provide to the Township as part of the application and inventory of its existing towers, antennas, or sites approved for towers or antennas, that are either within the jurisdiction of Lakewood Township or within one (1) mile of the border thereof, including specific information about the location, height, and design of each tower."* Aesthetics. The plans now indicate that the color of the proposed antenna and cables on the water tank walls will match the color of the water tank. (18-1012.D.1.i.) Franchises. A copy of the Omnipoint Communications franchise information should be filed with the Township Clerk as per 18-1012. D.1.i. The proposed facilities must meet the standards and regulations of FCC and the State of New Jersey. Due to the location of the equipment area, landscaping does not appear to be necessary and can be waived by the Board. The equipment cabinets at the base of the water

tower are within a 80 ± square foot area and the cabinets are 5' 3" in height. The floor area and height comply with the UDO. Evidence of the lease with the MUA should be submitted to the Board Attorney. Performance guarantees should be posted for all improvements in accordance with ordinance provisions. Indicate the location of proposed electric and telephone lines from the communication's facility to the existing utility network. Outside agency approvals which will be required include: Ocean County Planning Board; Soil Conservation District; All other required outside agency approvals.

Mr. Lerner Esq. appeared on behalf of the applicant. Most of the variances are existing non conformities and the variances they are requesting by the proposed development are the front yard setbacks on unimproved dedicated paper streets that surround the MUA facility. They are also triggering a bulk variance for height for the antenna to be placed at 110 feet on a 115 foot existing water tower. They will comply with the ordinance that the antenna will be painted to match the coloration of the water tower and it will be virtually indistinguishable. The other variance is for the height of the fence, they are proposing 6 ft. with 1 ft. of barbed wire and that is for security reasons. The MUA came in for modification of that facility for improvements and if the planning board approved the MUA for an 8 ft. chain link fence they would match that fence for continuity and Mr. Banas agreed. Mr. Lerner has 4 witnesses to address the specifics in the wireless ordinance even though much of those regulations are not really relevant to this type of application because there are addressed to towers as opposed to antenna on existing structures, so they will address those portions that are directly applicable to this type of application.

Mr. Dan Collins will address the FCC compliance with radio frequency emissions and Mr. Lerner also has a copy of the FCC license issued to Omnipoint Communications, dated 1/15/05 that was marked as A1.

Daniel Collins, FCC compliance expert, was sworn in. He said he prepared a report and Mr. Jackson asked him if he prepared it in written form and if there is any issue about that it complies in all ways with FCC regulations and did anyone raise that as an objection and he asked Max if he had any problem and Max said he did not see the report but had no problem. Mr. Collins said he prepared a report dated 2/18/08 which contains his study and analysis and he said there is a standard for safe continuous exposure to radio frequency exposure from antennas and yes they are in compliance by a factor of 1500. The worst case radio frequency level is 1500 times below the level that considered safe continuous exposure. Mr. Banas asked how much energy is going to be radiated from the transmitter and Mr. Collins said 20 watts per channel and in each direction of transmission there are 8 channels. He said to put it in perspective, the worse case radio frequency energy level at ground level around this facility is going to be about 4x less significant than when 2 human beings stand next to each other and radiate each other. Mr. Banas asked if it would disturb the radio frequency within the automobiles passing and Mr. Collins said it would disturb no other use of radio frequency energy or electrical transmission or the water in the water tank.

Mr. Lerner offered as A2 the report of Mr. Collins dated 2/18/08 prepared by Pinnacle Telecom Group.

Mr. Lerner introduced Mr. Saurab Sood who is a radio frequency engineer with Omnipoint Communications who will testify as to why they need the facility where they need it in this portion of Lakewood and how it ties into other facilities and the inventories.

Mr. Saurab Sood was sworn in and qualified. He stated they need a facility in this portion of Lakewood because they are mandated to provide reliable coverage to their customers through their license with the FCC and they do not interfere with any other frequencies or devices and there is a gap in this area. He prepared an exhibit, a propagation study prepared by him showing an underlining map which was marked A3. It shows the borderline between Lakewood and Brick with the proposed site in red and the yellow portions shows reliable in car coverage and the green area shows reliable in building coverage, so all the area in white on the map shows unreliable coverage for Omnipoint customers. If you are outside you will get a different signal then when you are in a building and the colorations are for reliable coverage, but that does not mean customers do not get any coverage, they may get dropped calls or poor quality. He showed the members where there were current towers in Lakewood, one on Massachusetts Avenue and 2 are in Brick Township, 1 on Ridge Road and 1 on Burnt Tavern Road. He also gave the heights of the antennas. There is also one at 100 Woehr Avenue in Lakewood that was just approved last week and is now operational. Mr. Banas asked if this testimony is because they need to show the locations of antennas within a one mile radius per the ordinance. Mr. Sood said the next overlay shows what will happen once the site is approved the coverage will extend almost of a mile around the site and more than a mile radius of reliable in car coverage along Cedar Bridge Avenue, New Hampshire Avenue and Ocean Avenue. Mr. Sood said the next overlay shows depicts how the coverage gaps fills up with the addition of this site. The height of the antenna has a direct relation to the area that is covered by the antenna.

Mr. Sood talked about the E911 bandaid which is for emergencies calls and Mr. Lerner explained when you called 911 they are able to pinpoint the phone call because they can identify where the phone call is coming from and the government is intending to create a mobile system so if you make a 911 phone call from your cell, the EMS, police or fire can pinpoint where that phone call is coming from, even though you may not know where you are. They can do this because of triangulation from the existing cell towers. Mr. Sood said the proposed installation is unmanned and there will be 2 antennas per sector, or 6 antennas for the site. It will be monitored by a switch by the main office so if there is any power failure or intrusion they will know and send a technician out. The cabinets will contain the radios and will run on electric with a battery back up, no generator. There is no noise generated by this antenna or cabinet and other telecommunication devices could be placed and not be interfered with by this applicant because they are on a totally different frequency. They will also not interfere with any police, industrial, commercial or residential electronics in the area.

Mr. Lerner entered exhibit A4 which shows Lakewood and the existing Omnipoint facilities in Lakewood and within a one mile radius and Mr. Sood also prepared a written report which was entered A5 which was labeled neighboring sites in Lakewood and one mile in Lakewood.

Mr. Lerner introduced Greg Novak who is an engineer and Mr. Banas said they have had antenna applications before the board before and are familiar with the testimony. Mr. Lerner said the MUA said they will lease the tower to Omnipoint, place the equipment where the MUA wants it, design it how the MUA wants it, so everything the board sees is how the MUA wanted so it would not interfere with their pumping station. Mr. Lerner said the 2 setback variances

they are requesting are being necessitated by the location of the facility on the MUA property, it is tucked in a corner so it does not interfere with any of the traffic of the MUA but their front yard faces paper streets. Mr. Banas said they pretty much granted the variance in their own way of thinking.

Mr. Lerner said his final witness is Timothy Kronk who prepared photo simulations that show what this will look like, he is a licensed professional planner.

Mr. Timothy Kronk said the variances required are diminimus in nature and this is a permitted location and to alleviate the construction of a tower we are using an existing structure. There are 3 photo exhibits marked A6, A7 & A8 which show the existing conditions taken 8/16/07, prior to the MUA signing the lease and one photo is a computer simulation showing the antenna inserted in 3 groups of 2 on the tanks. Exhibit A7 is a view from America Avenue and this shows and Exhibit A8 is the view from CedarBridge Avenue. There is also an aerial photograph marked A9.

Mr. Banas opened the microphone to the public

Seeing no one, this portion was closed to the public

Motion was made by Mr. Fink, seconded by Mr. Akerman, to approve this application with all the variances.

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

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

Carried to September 23, 2008

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

Carried to September 23, 2008

6. **SP # 1887A** (Variance requested)
Applicant: Allen Morgan
Location: 456 Chestnut Street-west of New Hampshire Avenue
Block 1087 Lot 17
Preliminary & Final Site Plan for a 2 story office building

Carried to September 23, 2008

7. **SD # 1629** (Variance requested)
Applicant: Shimshon Bandman
Location: Ridge Avenue between Manetta Avenue and Somerset Avenue
Block 189.01 Lots 6, 7, 8, 11 & 13
Preliminary and Final Major Subdivision – 25 lots

Carried to October 28, 2008

8. **SD# 1630** (Variance requested)
Applicant: Congregation Rachminstrivka
Location: East County Line Road, east of Park Place
Block 171 Lots 2 & 18
Minor Subdivision for 2 lots

Carried to October 28, 2008

9. **SP # 1894** (Variance requested)
Applicant: Congregation Rachminstrivka
Location: East County Line Road, east of Park Place
Block 171 Lot 2.02
Preliminary & Final Site Plan for proposed synagogue

Carried to October 28, 2008

10. **SP # 1897** (No variance requested)
Applicant: Cedar Holdings LLC
Location: Cedar Bridge Avenue, across from Arlington Avenue
Block 536 Lot 75.04
Preliminary and Final Site Plan for retail and warehouse building- total 28,770 sf

Carried to October 28, 2008

11. SD# 1635 (Variance requested)
Applicant: Batim Management Inc.
Location: 228, 232 Sixth Street, between Clifton and Lexington Avenues
Block 117 Lots 14 & 2
Preliminary & Final Major Subdivision – 2 lots for multi-family

Carried to October 28, 2008

12. SD# 1636 (Variance requested)
Applicant: Yehuda & Adina Kirshenbaum
Location: 1385 Pasadena Street, west of Alvarado
Block 187.13 Lot 15
Minor Subdivision for 2 lots

Carried to October 28, 2008

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

Mr. Kenneth Pape Esq. appeared on behalf of the applicant. Mr. Pape asks that the board allow the applicant to return to the board at a future time after public notice with an opportunity to provide amendments to the plan that are responsive to comments and concerns that arose from the board during the discussion of July 15th, very specifically, when they were in front of the board there was considerable discussion with regard to one portion of the site and with the number of units on the site. Mr. Banas said there were 2 specific portions, one was in the south side and the other was in the turn and the K turn where the garbage trucks were coming in. Mr. Pape said they are prepared to revisit all of those areas and the area that they spent considerable time before the vote was in the elbow where Mr. Franklin had indicated circulation was poor and parking failed and there was a light stanchion that would have been hit because of its’ design. He has advanced with an exhibit as a proffer to this board a redesign of that area and in his narrative letter of August 11th he indicated the applicant’s willingness to reduce the number of units. There is case law and statutory law that specifically allows the board, provided the applicant meets all of his procedural due process requirements for the board to reconsider the hearing and Mr. Pape believes it is a method of efficiently considering application without the requirement of putting the applicant and the township through the a litigated appeal or the filing of a brand new application. If the board grants the applicant the opportunity to return they understand it is not an approval they will have to earn an approval from the board.

Mr. Banas asked the board if they had anything for the applicant to consider. Mr. Fink said one of the issues that concerned him is the safety concerns with children and the fence in the backyards against the railroad. Mr. Peters commented and said he would recommend the wetlands LOI or documentation that there is no wetlands on site and also a NJDEP verification of what the stream buffer will be. Those were 2 items that Mr. Carpenter gave testimony he was confident would not impact the design but if he is incorrect on that it could influence the design.

Mr. Pape said they have been working on them Mr. Carpenter gave him reason to believe that they are under control but said the reason he is a little reluctant is because the time frame to secure those is 9-12 months and he would like to be doing them as the same time, even though he would be doing them at Mr. Engel's risk. Mr. Banas said he is trying to show him what the board is looking for. Mr. Truscott said he agreed with Mr. Peters with the wetlands and the C1 boundary and the whole intersection where you come into the complex was a problem with him and the units in the front that had to back out into areas where people were entering the site. Mr. Banas said please do not put a gallon in a quart bag and what they presented was too tight.

Motion was made by Mr. Miller, seconded by Mr. Akerman, to allow the reconsideration.

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

5. MEMORIALIZATION OF RESOLUTIONS

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

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

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

2. SD# 1454A (Variance requested)
Applicant: Towers Street LLC
Location: Towers Street, west of New Hampshire Avenue
Block 855.04 Lots 27.01
Extension of previously approved Preliminary & Final Major Subdivision – 4 lots

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

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

6. CORRESPONDENCE

- None at this time

Mr. Kielt said they needed a vote on a special meeting for November 25, 2008

Motion was made by Mr. Miller seconded by Mr. Neiman, to approve a special meeting

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

7. PUBLIC PORTION

- None at this time

8. APPROVAL OF MINUTES

- Minutes from September 2, 2008 Plan Review Meeting

Motion was made by Mr. Neiman, seconded by Mr. Akerman, to approve

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

9. APPROVAL OF BILLS

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

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

10. ADJOURNMENT

The meeting was hereby adjourned. All were in favor.

Respectfully submitted
Chris Johnson
Planning Board Recording Secretary