

**LAKESWOOD PLANNING BOARD
MINUTES
OCTOBER 11, 2005 • 6:00 PM**

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 Ocean County Observer and 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 at least two of the following newspapers: The Asbury Park Press, The Ocean County Observer, or The Tri-Town News at least 48 hours in advance. This meeting meets all the criteria of the Open Public Meetings Act.”

II. ROLL CALL: Mr. Herzl, Mr. Franklin, Mr. Miller, Mr. Neiman (arrived late), Mr. Banas, Mrs. Wise, Mr. Dolobowsky, Mr. Ackerman and Mr. Klein.

Also present were:

Attorney John Jackson, Engineer Maxwell Peters and Planner Stanley Slachetka.

Mr. Banas asked if there were any changes to the agenda and Mr. Kielt replied there were none.

III. NEW BUSINESS

Mr. Neiman arrived at the meeting.

1. **SD #1479** (Variance requested)
Applicant: Shlomo Katz
Location: corner of Cedarview Avenue & fourteenth Street
Block 39 Lot 4
Minor subdivision to create two lots

Mr. Peters stated the applicant is seeking a minor subdivision approval to divide two existing lots into three proposed lots. The site is located at Cedarview Avenue and Fourteenth Street within the R-12 zone. A variance will be required for minimum lot area, 12,000 square feet is required; the applicant has provided 10,125 square feet for lots 3.01 and 3.02. A variance will be required for minimum lot width, 90 feet is required, the applicant has provided 81 feet for lots 3.01 and 3.02. The applicant has satisfactorily addressed all issues and comments raised in the technical meeting.

Mr. Slachetka stated the applicant must address the positive and negative criteria of the variance requests. Driveway aprons should be shown for each lot. We recommend that

the stub of the existing driveway on lot 15.01 should be reduced to extend no closer than 3 feet from the property line. Filing of the subdivision must comply with all provisions of the Map Filing Law. A performance bond should be posted for any required site improvements. The balance of the comments were technical in nature.

Bill Stevens, P.E., appearing on behalf of the applicant. He was sworn in and his credentials were accepted. The property is located along Cedarview Avenue near Fourteenth Street. This is the residence of Shlomo Katz. His house is located on proposed lot 15.01. There is an existing home located on the intersection of Fourteenth and Cedarview which is owned by Mr. Katz. Mr. Katz is proposing a minor subdivision to create three lots out of the two existing lots. He is proposing the same for his family members. It is located in the R-12 zone. The applicant is seeking variances for two lots. Lot 15.01 and 15.02 for lot area and lot width where 12,000 square feet is required and 10,125 square feet is provided and where 90 feet is required for lot width and 81 feet is proposed. He had an Exhibit which was marked as Exhibit A-1, which shows the zoning. It was a tax map of the surrounding area. The colored lots are existing nonconforming lots to the area. The purpose of the exhibit is to show that what Mr. Katz is asking for is consistent with the neighborhood and would not be detrimental to the zoning plan or zoning ordinance because there are other lots of similar size in the area. There are four lots on Forest Avenue that are smaller than what they were proposing. Between Ardenwood and Heathwood Avenues there are two lots that are 75 x 125 feet. Between Heathwood and Pine there are two lots that are 75 x 150 feet and five lots that are 87 x 125 feet. In the block, there are two lots which were recently approved by the board which are 75 x 125 feet and 70 x 100 feet. Between Cedarview Avenue and Oakwood, there are two lots which are 80 and 90 feet wide by 150 feet deep. Between Oakwood and Laurelwood, there are two lots which are 75 by 125 feet. On the other side of the cross street, there is a lot which is 75 by 125 feet. This shows that what they were requesting was not out of character with the neighborhood. This satisfies the negative and positive criteria to grant the variance.

Mr. Jackson asked if the design would promote good civic design and appropriate population density. Mr. Stevens stated that he felt it would because it keep with the character of the neighborhood. Mr. Jackson asked the total number of lots in the immediate area which are undersized. Mr. Stevens stated there are 19 lots that are undersized. Some of the lots are smaller than what the applicant is proposing. Mr. Banas asked how many lots there were in total. Mr. Stevens stated there are approximately 60 lots of which 20 are undersized. Mr. Banas stated that in proposed lot 15.01 there is enough land to make them all even. Mr. Stevens stated that there is an existing house which creates the problem.

Mr. Dolobowsky stated it would take the entire 30 foot side yard setback of the lot with the existing house to make the lots even. He wanted to know if the lots could be made more even. Mr. Penzer stated they spent a lot of time on this issue. The problem is that it would make it tight. It was at the board's discretion. Mr. Dolobowsky stated the area was R-12 and did not understand why they would want to subdivide and make another undersized lot. Mr. Stevens stated the lot line is shown on lot 15.01 to maintain the turn around which is necessary because of Cedarview Avenue. There is ten feet between the driveway and the proposed lot line. The lot line could be shifted and obtain another six feet which would bring the lots up to 84 feet wide as opposed to 80 feet. Mr. Banas felt

this made more sense. He asked how wide the driveway was. Mr. Stevens stated the main part of the driveway is 20 feet wide. The turn around portion is nine to ten feet wide. Mr. Banas stated that since it was all family, he did not see where the hardship would exist if they cut down the lot size of lot 15.01. Mr. Stevens stated that in moving the lot line six feet and giving the other lots three feet it would work.

Shlomo Katz, applicant, was sworn in. He stated he lives on proposed lot 15.01. He looked at it that the positive outweighs the negative. He would put in nice homes. Making the existing house tighter might have a detriment on the way they currently live. Mr. Banas stated that lot 3.02 would not have a 20 foot wide driveway. Mr. Stevens stated that it could have a double wide driveway. Mr. Banas stated that a large building would not be able to be built.

Mr. Banas opened the application to the public. Seeing no person wishing to speak for or against the application, he closed the public hearing.

Mr. Penzer stated that they agreed to the issues raised in the professionals' reports. The street trees would be shown and they would comply with the Map Filing Law. They would have off-street parking. A performance bond would be posted for any site improvements and the sidewalk would be provided. They would obtain outside agency approvals. They would provide a shade tree easement if the board desired. Mr. Banas stated they would want it. Mr. Penzer stated they agreed to the map symbols. Mr. Banas stated there was an article in today's Press that dealt with sidewalks. The comment that Mr. Miller made was very genuine and straight forward. He asked that sidewalks be placed on the maps in the beginning. Mr. Stevens stated they were shown. Mr. Banas stated he was making a general statement to all engineers. Mr. Penzer stated that Mr. Katz is a very qualified builder and the homes that would be built would enhance the neighborhood.

On motion by Mr. Neiman and seconded by Mr. Miller, the application was hereby approved with the requested variances as discussed.

Mr. Dolobowsky stated that the six foot from the one property would make the other two three feet wider. Mr. Penzer stated that was correct.

ROLL CALL: Mr. Herzl, yes; Mr. Franklin, yes; Mr. Miller, yes; Mr. Banas, yes;
Mr. Neiman, yes; Mr. Dolobowsky, yes; Mrs. Wise, yes; and
Mr. Ackerman, yes.

Mr. Penzer asked if item 7, SP#1823, be carried to the next meeting since the engineer was not available.

Mr. Jackson stated that SP#1823 was carried to the November 15, 2005 public hearing at 6:00 p.m. No further notice was required of the applicant.

- 2. SD #1496** (No variance requested)
Applicant: Fruma Liebb
Location: Clear Stream Road, west of Hope Chapel Road
Block 120 Lot 2
Minor subdivision to create two lots

Mr. Peters stated the applicant is seeking a minor subdivision of block 2 lot 120. Two new lots are proposed. Proposed lot 120.1 will retain the existing structure. Proposed lot 120.2 will be a flag lot on which a new home is proposed. The site is located on Clear Stream Road within the R-40 zoning district. No variances will be required. The applicant will be required to obtain outside agency approvals. The applicant has proposed a 6 foot wide shade tree and utility easement to be dedicated to the Township. The applicant has indicated proposed locations for the septic field and potable well. We recommend that the well be located up-slope of the septic field. Preliminary approval from the Ocean County Health Department must be provided to the Board's Engineer prior to signing the final plat. The plat has been prepared in conformance to the New Jersey Map Filing Law.

Mr. Slachetka stated we have reviewed the plat for compliance with the provisions of section 805.G of the UDO. The applicant should address the following requirements: the access strip shall remain open and unbuilt upon at all times, the flag lot shall not be further subdivided, nor shall the access strip to it be used as access to any other lot or tract of land, and testimony should be provided to address the following provisions of section 805.G.5 of the UDO: "Flag lots shall be created only in conjunction with an overall development plan of the entire tract of which the flag lot is a part and the applicant shall demonstrate a need, consistent with good planning principals, for the creation of the flag lot and shall further demonstrate that normal subdivision techniques are not practical because of topography, lot or land configurations or other physical characteristics or constraints of the land related to the proposed development concept." The applicant has to address all the other requirements for flag lot provisions. Street trees are required and should be shown. Off-street parking in accordance with the RSIS standards is required for new lot 120.02. Two and a half spaces are required. The balance of the comments are technical in nature.

Abraham Penzer, Esq., appearing on behalf of the applicant.

Brian Flannery, P.E., was sworn in and his credentials were accepted. He stated the application is for a minor subdivision with no variances. There is an existing dwelling and the subdivision will create a second lot. With regards to the engineer's report, item one is information, item two indicates no variances are required. Item three indicates that Ocean County Planning Board approval is required and they acknowledged that. Item four is information. Item 5 relates to the well and septic field. The locations shown are consistent with the state regulations and the slope proposed is sufficient. Ocean County Health Department does not give preliminary approval. Mr. Peters stated he would have to contact the Board of Health. Mr. Flannery stated that other counties give preliminary approvals, Ocean County does not. Mr. Peters stated if that is the case, he did not have a problem with making it a condition of the building permit. Mr. Banas asked about the slope. Mr. Peters stated he would feel more comfortable if he were buying a house to

have the well up slope from the septic. Mr. Banas asked about the water to the house. Mr. Flannery stated the well is 50 feet deep at a minimum. The upper aquifer has nothing to do with the lower aquifer. The water in the septic system is a sub-surface system and has adequate separation from the water table. The two water tables are separated. The surface water is directed away from the well. Mr. Peters was satisfied with it. Mr. Flannery stated they would comply with the Map Filing Law. In reviewing Mr. Slachetka's report, items A and B were information. Item C.1. indicates the requirements of the UDO and the access strip should remain unbuilt. He stated they provided an access strip that is fifty feet wide. They have shown a driveway with turn around provisions. Flag lots should be created in conjunction with the overall development plan of the entire tract. Good planning principals should be used. The property was a classic flag lot in that there is an existing home in the middle of it. The applicant wants to build a house in the rear. It complies with the ordinance. The lot could not be further subdivided and he felt it complied with the ordinance. The balance of the planner's comments were minor in nature and they agreed to comply. Mr. Banas stated that the owner in the back would bring the garbage can up front. Mr. Flannery replied they would.

Mr. Dolobowsky asked if the buffer was a single row of shrubs and Mr. Flannery replied it was. Mr. Dolobowsky wanted to know if they could provide extra shrubbery. Mr. Flannery felt that they could. Mr. Dolobowsky asked if the shrubs be alternating somehow to provide room for growth. He wanted the professionals to review the exact numbers with them. He asked about the driveway being 37 feet and wanted to know if it could be 40 feet. Mr. Flannery stated they could provide the same.

Mr. Banas opened the application to the public. Seeing no person wishing to speak for or against the application, he closed the public hearing.

Mr. Neiman asked about the septic. Mr. Banas stated it was already taken care of. Mr. Penzer stated the applicant would not be able to get a building permit unless the Ocean County Health Department approves the septic.

On motion by Mr. Dolobowsky and seconded by Mr. Miller, the application was hereby approved with the applicant providing additional shrubbery, the septic system, and driveway as discussed.

ROLL CALL: Mr. Herzl, yes; Mr. Franklin, yes; Mr. Miller, yes; Mr. Neiman, yes; Mr. Banas, yes; Mrs. Wise, yes; Mr. Dolobowsky, yes; and Mr. Ackerman, yes.

3. SD #1497 (Variance requested)
Applicant: Sam Bauman
Location: Birch Street, between River Avenue and Williams Street
Block 417 Lots 6 & 7
Minor subdivision to create two lots

Mr. Peters stated the applicant is seeking a minor subdivision of block 417 lots 6 and 7. Two new lots are being proposed and would be known as 6.01 and 6.02. The property is

located on Birch Street in the R-10 zoning district. Variances will be required for lot area where both lots propose 9,470.5 square feet where 10,000 square feet is required; lot width for both lots where 50 feet is proposed and 75 feet is required; and side yard setback where both lots propose 5 feet on one side and 15 feet total where 10 feet one side and 25 feet total are required. The applicant will be required to obtain all outside agency approvals. The applicant has stated that all existing structures are to be removed. Testimony shall be provided as to the timing of such removal. If removal of structures will not be complete prior to subdivision, a bond shall be posted to insure prompt removal. The applicant will be required to comply with the Map Filing Law.

Mr. Slachetka stated that the applicant should address the positive and negative criteria for the requested variance for each lot. The testimony should include information concerning the lot area and width of single family residences in proximity to the subject tract. Compliance with the off-street parking requirements of RSIS must be confirmed. A total of 2.5 off-street parking spaces are required for each of the proposed dwellings and the applicant indicates that three spaces are provided. Existing structures which are proposed to be razed should be removed prior to submission of the map for signature or a performance bond posted. Two shade trees are proposed along Birch Street. The balance of the comments are technical in nature.

John Paul Doyle, Esq., appearing on behalf of the applicant. Birch Street is a one block long street. Most of the lots have been built on 50 foot frontages. This would be no different. This is a removal of a house that does not comply with modern health, safety or energy conservation codes. The new homes would.

Brian Flannery, P.E., was sworn in and his credentials were accepted. The application is for a minor subdivision to create two lots. The exhibit that showed the lot in question was marked as A-1. The street showing the lots with fifty foot lots was marked as A-2. A-1 was an enlargement of the tax map with the subject property highlighted in green and a 200 foot radius line. The undersized lots are highlighted in yellow. A-2 was a copy of the tax map colored in the same fashion. The application would provide a lot line to create the lots as indicated with a 50 foot width where 75 feet is required. This is similar to what is in the area. The lots are in accordance with the surrounding area. They meet the criteria of the land use law and a variety of housing types would be provided. The variance relief requested is minor in nature and would not cause any detriment to the zoning plan or ordinance. The lot area relief is for about 5% of the lot area. This is consistent with a majority of lots on the block. They were proposing 7 feet and 15 foot total for a side yard setback where 10 feet and 25 feet is required. The plan has been amended to indicate that there would be a 10 foot setback from the exterior line. The neighbors would have the ten foot setback. Between the two proposed homes would have the smaller side setback. The neighbors were at the last meeting. Mr. Banas stated that if they were not present tonight they would not hear testimony regarding it. Mr. Flannery stated the remainder of the report was minor in nature and they would provide any information requested.

Mr. Doyle stated that the Lakewood Fire District indicated that they had no comments or objections. This letter, dated September 19th, was marked as A-3. They would meet all the review comments of the planner's and engineer's reports. Mr. Flannery felt that the

variances could be requested without any detriment to the zoning plan or zoning ordinance. The proposed homes were marked as A-4. They were located on block 417 lots 4.01 and 4.02. They were a couple of lots removed from the lot in question.

Mr. Banas opened the application to the public. Seeing no person wishing to speak for or against the application, he closed the public hearing.

On motion by Mr. Ackerman and seconded by Mrs. Wise, the application was hereby approved granting the requested variances.

ROLL CALL: Mr. Herzl, yes; Mr. Franklin, yes; Mr. Miller, yes; Mr. Neiman, yes; Mr. Banas, yes; Mrs. Wise, yes; Mr. Dolobowsky, yes; and Mr. Ackerman, yes.

4. SD #1482 (Variance requested)
Applicant: J & J Group LLC
Location: Cushman Street, west of Route 9
Block 430 Lot 56
Minor subdivision to create two lots

Mr. Peters stated the applicant is seeking minor subdivision approval for an existing synagogue at the end of Cushman Street in the HD-7 zone. Variances will be required for the following: lot area of proposed lot 56.02 where 0.246 acres is proposed where 1.0 acres are required; lot area of proposed lot 56.01 where 0.25 acres is proposed where 1.0 acres are required; lot width of proposed lot 56.02 where 88.13 feet is proposed where 150 feet is required; lot width of proposed lot 56.01 where 89.26 feet is proposed and 150 feet is required; side yard setback of proposed lot 56.01 where 12.5 feet is proposed where 30 feet is required; total side yard setback of proposed lot 56.01 where 39.26 feet is proposed where 60 feet is required; and rear yard setback of proposed lot 56.01 where 20 feet is proposed where 50 feet is required. Ocean County Planning Board approval is shown. The plans have been prepared in accordance with the map filing law.

Mr. Slachetka stated the board should know that the land area within the zoning setbacks is 615 square feet therefore there is limited feasibility for new construction pursuant to current zoning requirements without subsequent variances. The applicant must address the positive and negative criteria for each of the requested variances. The review of the site plan approved by the planning board in 2004 indicates that a two story synagogue with seven parking spaces was proposed. The current site shows a three story synagogue. The square footage of the current building would appear to be fifty percent greater than the prior application. There are some differences in the site improvements on the prior plans versus the existing structure, such as the location of the handicap ramp and the lack of trash enclosures. The applicant should provide testimony addressing compliance with the off-street parking for the additional building area. Although no development is proposed at this time, the applicant should state his intentions concerning the proposed use of the new lot based on the permitted uses in the HD-7 zone. This would be for informational purposes only. The remaining of the comments are technical in nature.

Ray Shea, Esq., appearing on behalf of the applicant.

Ray Carpenter, P.E., was sworn in and his credentials were accepted.
Mr. Weissman, principal in J & J, was sworn in.

Mr. Shea stated that they were asking to redo what was already done. There was a residential subdivision applied for by Mr. Weissman's company and this board asked that there be a community building associated with the residential subdivision and there was an agreement that it could be supplied off-site. As a condition of the approval, he came back and submitted a site plan application to create the synagogue which was the subject of Resolution SP-1768 adopted by this board granting site plan approval to the synagogue. Unfortunately, the tax assessor had merged the two lots which was unknown. When they found out that the tax assessor merged the lots, it required a reapplication to the board. They were asking the board to reapprove the application. In that connection, with respect to the reports prepared, the specific variances that are itemized are already granted in SP-1768 in paragraphs one through six of paragraph c. He stated that the observation in the report dated October 7th that the current site shows a three story synagogue would appear to be 50 percent greater than the prior application and the variance granted. Mr. Carpenter will testify that there is no change from the previous application to the present one. There is no enlargement of the building or any attempt to get more than what was previously granted. He stated that in SP-1768 Mr. Weissman testified that to make the synagogue less than approved for would be insufficient to accommodate the needs of the residents of the development. In F.5 of page 3 of the resolution this is indicated.

Mr. Carpenter stated that the plans submitted were the originally plans that were approved. There have been no change in the square footage of the synagogue. There is a basement, a main floor and a second floor. The variances were approved with the previous application. There have been no changes. The parking is the same. Everything shown on the site plan is to be constructed.

Mr. Peters stated he did not know how to clear up the issue if a basement was constructed. If the new subdivision plan shows clarification that there is a two story synagogue, he did not think the basement had to be considered a story. Normally the number of stories is what is above ground. Mr. Carpenter agreed with this. Mr. Peters stated that is how it was represented on the originally approved plans. The new plans show it is a three story synagogue which includes the basement. Mr. Carpenter stated that was an error because it was a basement with two stories. Mr. Dolobowsky stated the question arose because of the number of parking spaces. It was a building concern. Mr. Carpenter stated there were no changes. Mr. Shea apologized for the mistake. Mr. Carpenter stated the variances requested are the same. It was creating a beneficial use of the property and was tied in as a requirement of a previously approved subdivision across the street. He did not see any reason why the variances could not be granted. Mr. Shea stated that with the remaining lot, any use would require an application.

Mr. Banas asked about ADA standards. Mr. Carpenter stated that the ADA requirement is that you only have to provide ADA access to the main floor of the building. Mr. Peters

stated that was correct. No access was required to the basement or the top floor. He felt that 3,000 square feet of public area is the requirement. He did not think they were above that. Mr. Banas stated if that is the standard he did not personally agree to it. People would be eliminated from the ability to use the synagogue in its fullest extent. Mr. Shea stated the main floor is the sanctuary. It was true with regard to the mitkva in the basement. The building meets all ADA requirements. Mr. Banas stated he could not accept it because all of the congregants would not be able to use the Mitkva. Mr. Jackson stated that whatever variances are requested, the board can either grant or deny them. Whether it was ADA compliant he did not know. If that is the reason for denying the application, it was not part of the requirement. If you look at the variances and say it is an undersized lot and deny the variances on that, it would be acceptable. Mr. Shea stated the building has been constructed consistent with the prior approval. They were here because the tax assessor merged the two lots. It was a technical appearance. The building has been built.

Mr. Jackson asked how a merger issued required them to reappear. Mr. Shea stated they had to reapply. Mr. Jackson stated the application was for one lot and it was approved. Mr. Shea stated that at the time they did not know the lots were merged. When they originally applied, it was two lots. The lots were then merged. Mr. Jackson stated that common ownership requires a merger. Mr. Shea stated the building was built and occupied. Mr. Banas stated that whenever an application appears before the planning board, all of the plans are up for review. Mr. Jackson stated the board would have to make a judgment on. The court would look at it if it was arbitrary to approve it on one application and not the other.

Mr. Neiman stated if the tax assessor made a mistake and merged the lots, the mistake should just be corrected. Mr. Jackson stated that when there are undersized lots under common ownership, they are merged together as one lot. Mr. Shea stated the other lot does not make this a conforming lot. The building has been approved by those people who know what the ADA requirements are. The building is operating. Mr. Jackson stated the board should consider all the evidence and make a determination. Mr. Shea stated that Hill v. Eatontown set the law for this that if a building permit is issued in good faith and reliance upon the approval, the fact that a mistake was made would not be held against them.

Mr. Ackerman asked if it was a planning board mistake. Mr. Jackson replied no. Mr. Kiehl stated it was not a mistake. The Doctrine of Merger happens in the tax assessor's office. Once a year when the tax maps are redone, it happens. It was not a mistake, it was just a function of the assessor's office. The procedure was discussed further. Mr. Shea stated the board did not make a mistake. The board acted on the information it had before it and so did the applicant.

Mr. Ackerman asked about the legal status of the lot at the time of the original application. Mr. Jackson stated that they were separate lots.

Mr. Banas opened the application to the public. Seeing no person wishing to speak for or against the application, he closed the public hearing.

Mr. Shea stated that Mr. Jackson has indicated that there are a number of elements that have to be present for the Doctrine of Mergers to occur. It had to be approved after 1954. He was asking the board to restore them so the people can worship in peace at the building that was originally approved. He hoped the testimony satisfied the board.

On motion by Mr. Miller and seconded by Mr. Neiman, the application was hereby granted as presented.

ROLL CALL: Mr. Herzl, yes; Mr. Franklin, yes; Mr. Miller, yes; Mr. Neiman, yes; Mr. Banas, yes; Mrs. Wise, yes; Mr. Dolobowsky, yes; and Mr. Ackerman, yes.

Mr. Banas stated he made an error the first time around with the application. He felt the members should do what they could to make an access to the facility for disabled people so they could use the facility as well. He felt this was extremely important.

5. SD #1500 (Variance requested)
Applicant: B & B Developers
Location: Route 9, north of Oak Street
Block 782 Lot 36
Block 782.01 Lots 2, 5, 15.01, 16.01 & 16.02
Preliminary & final major subdivision - 42 townhouse units

Mr. Peters stated the applicant is seeking to replace an existing storage facility with a townhouse community on River Avenue in the HD-7 zone. A variance will be required for rear yard setback where 15' is proposed and 20' is required. The applicant has indicated that at-grade patios will be substituted for decks on all lots where this variance is requested. Outside agency approvals will be required. The applicant shall include a note on the final plat indicating that a right of way shall be dedicated to Lakewood Township. The applicant has indicated that a homeowners association shall be created and be responsible for the common areas such as the tot lot, detention basin, and underground recharge system. The proposed wording for the homeowners association shall be provided to the Planning Board Attorney for review. The wording must include maintenance plans for any and all stormwater management systems. The planning board should determine if a secondary access point should be required. The applicant has revised the plans to show fencing around the basin and tot lot. However, the proposed post and rail fence, to surround the 7' shear drop into the basin. This does not constitute an adequate safety measure. The plans indicate a modular block retaining wall along the easterly property line. A safety fence is recommended to be installed on top of this wall due to the 4' drop off. The applicant should provide a detail demonstrating the feasibility of constructing the tot lot over the underground stormwater management system. The balance of the comments were technical in nature.

Mr. Slachetka stated the applicant should address the positive and negative criteria for the requested variance. The final plat should be revised to reflect the conservation easement on lot 36.01, the dedication of lot 36.48 to the homeowners association for parking, and the parking turnaround on lots 36.30 and 36.31. A proposed playground is

in the southeast corner of the site. We question the proximity of the playground to the stormwater basin given the basin's configuration, despite the fact that fencing is now proposed for each facility. The distance from the stormwater basin to building #6 is approximately 15 feet. Engineering testimony should be provided concerning the health and safety issues, if any, related to the proximity of the basin to a residential dwelling. The applicant has revised the circulation layout pursuant to the discussions at the prior planning board meeting. Testimony should be provided concerning the compliance of the interior road circulation with RSIS standards and the adequacy of the proposed turn around for emergency purposes. The planning board may wish the applicant to submit traffic impact information addressing the sufficiency of the Route 9 ingress/egress. Typical architectural floor plans and front elevations have been submitted for the board's information. Section 1010 of the UDO requires that architectural elevations of the side and rear elevation also be submitted to the board. The project engineer should certify that all site improvements are in compliance with the RSIS. The site plan indicates that three off-street spaces will be provided per unit, for a total of 126 spaces. The RSIS does not have a parking standard for a four-bedroom townhouse unit, however, three spaces per unit is the standard for a five bedroom single family detached dwelling unit and should be sufficient. The balance of the comments were technical in nature.

Miriam Weinstein, Esq., appearing on behalf of the applicant. This application calls for the subdivision of the existing lots to permit the construction of 42 townhouse units to be located in 7 buildings. She thanked the board for their guidance at the technical meeting. They complied with all the recommendations that the board gave them.

Ray Carpenter, P.E., was sworn in and his credentials were accepted. The site is a six acre site in which they were proposing 42 single family dwellings. They took into consideration the previous reviews of the site and made numerous revisions. There is a main access off of Route 9 to a roadway circulating throughout the unit with additional parking off of the side of the buildings, a detention basin, and a recreation area. It was pretty much conforming. They were asking for variances for three buildings for rear yard setback. The reason is because of the narrowness of the lot. The property on both sides is fully developed. They were not asking for any waivers or any other variances. In review the engineer's report, he agreed with the comments under A. Under B, he spoke to Mr. Peters and he agreed to put a four foot chain link fence behind the post and rail fence around the detention basin. They would like to leave the post and rail fence as a decorative feature of the site plan. He discussed with Mr. Peters about providing a secondary access to the site. There is limited frontage on Route 9. The secondary access to the site is not necessary with the turn around that has been provided. He agreed with the comments in C and D. There is no impact on the stormwater management system by putting the tot lot over it. There is nothing that is constructed in the stormwater management system that would impede the use of the tot lot. The only question is that when you install the equipment you have places so the concrete footings so it is not directly on top. Mr. Franklin did not see a problem with this. Mr. Peters stated that as far as the footings were with regard to the tot lot, he asked for details so the contractor is well aware of the pipes. Mr. Carpenter stated a map showing the drainage pipe and anchor from the equipment would help. There will also be a large note on the plans that the footings should not conflict with the system. Mr. Peters stated that was sufficient. He stated the four foot fence around the detention basin may not be high enough.

Mr. Carpenter stated they could provide a six foot fence. Mr. Slachetka stated it may be possible to move the tot lot to one of the areas in the middle of the site and eliminating one unit from one building and adding it to a different building. This would have the tot lot nearer to the center of the site and would not cause any loss of units. Even with fencing, there would be a lot of activity in the area and things happen. He felt it should be away from the stormwater system. He felt the southern building would be better or making building 4 or 5 a 4 unit building. Mr. Banas preferred building 4 since it would be in the center of the area and farther away from the detention basin. Ms. Weinstein stated that would be acceptable.

In reviewing the planner's report, Mr. Carpenter stated the variances were discussed. The distance from the stormwater basin is 15 feet, normally it is 12 feet. There is a seven feet basin with three to four feet of water in it during the 100 year storm. He felt they thought the water would go from basin to basement and he did not believe that would happen. Mr. Peters asked what kind of soil was in the area. Mr. Carpenter stated Lakehurst sand. Mr. Peters felt that would be fine. Mr. Carpenter stated the turn around would be addressed on the plans. There would be an impact to Route 9 which he hoped would be alleviated. The dedication of the roadways to the township was up for discussion. It was up to the town whether they wanted to accept the road. He showed the road being owned by the association. If the board wants something different they would comply. Mr. Franklin stated with the drainage problem, the township would not maintain that. Ms. Weinstein stated they wanted to see the road dedicated to the township. The association would be responsible for the drainage basin. Mr. Franklin stated it would have to be the entire drainage system. Ms. Weinstein stated the drainage system would be dedicated to a homeowners association. They wanted to dedicate the road to the township. Mr. Carpenter stated there is a parking area which would be maintained by the association and not the township. Mr. Franklin stated that was a decision for the township engineer. Mr. Carpenter stated they would submit the same to the township engineer to see if he accepts the roadway. Mr. Banas asked if the road was built in accordance with the specifications. Mr. Carpenter replied it was. They concurred with the balance of the planner's comments.

Mr. Slachetka stated that with regard to item C.5 he wanted confirmation from the standpoint of access to Route 9 that the access issues were acceptable to NJDOT. It would be conditioned upon approval from NJDOT. Mr. Carpenter stated he has had conversations with NJDOT and it meets their standards. NJDOT cannot direct them to use the paper street.

Mr. Banas asked why the sidewalk does not go all the way to the extent of their property. Mr. Carpenter stated it does and it would be corrected on the plans.

Ms. Weinstein asked about the variances and if the purposes of the Municipal Land Use Law would be advanced by deviation from the zoning ordinance. Mr. Carpenter replied it would because they were providing backyards, parking in the front and because of the geometric condition of the property, they could not meet the rear yard setback. No detriment would occur if the variance was granted. The adjacent properties are already developed. Sufficient screening is proposed. The benefits of the variance would outweigh any detriments. He was satisfied that the positive and negative criteria were met.

Mrs. Wise asked about a left turn onto Route 9 or signage. She felt it would be difficult to make a left. Mr. Dolobowsky stated with other applications, they made sure there were two lanes coming out of developments on Route 9. One was a left turn only with room for stacking and one was a right turn lane. Mr. Slachetka stated that was what he was going to suggest. Mr. Carpenter stated they could provide the two lanes out.

Mr. Neiman stated in other applications this size, the board asked for dedication of one unit for public use. He asked if they were proposing the same. Ms. Weinstein stated the applicant did not plan to do so, but she would check with him. Mr. Neiman felt there would be a need for a community building. Ms. Weinstein stated the applicant did not want to give one of the units, there is another lot that they might be willing to give or to rent space from the commercial space. Mr. Banas stated then it was really not a community building. Mr. Neiman felt good planning was important and with an application of this size not having a community building would not be good planning. Ms. Weinstein stated would be lot 16 which is also owned by the applicant. Mr. Banas stated that was within the 55 feet delineation of the HD-7. Ms. Weinstein stated there is an existing structure. Mr. Dolobowsky stated it would have to be reengineered to be a community building within the 55 feet. Mr. Franklin stated it might work. There would be 70 feet from the setback if you go to the parking lot and access to the parking lot. Ms. Weinstein asked if the board would let them lease space from the building next door. Mr. Banas replied no.

Mr. Dolobowsky stated that you could build a community building at the back of lot 16. You would get your setback off of Route 9. There would be access through the parking lot and it would be a reasonable compromise on both sides. Mr. Jackson stated he has concerns with incorporating lot 16. He did not know if the other owners were notified.

Mr. Banas suggested that they review this and come to the next technical meeting. Mr. Neiman did not want this to hinder their approval. He just want them to realize that it was important to planning when you are building a development this size to have a community building. Ms. Weinstein did not believe that the ordinance required it. The applicant would come up with a solution to have a community building. At this point, they did not want to hinder this application since there was no requirement in the ordinance for them to provide a community building. Mr. Banas stated there is and there is not. There are a lot of people within the community that would be in need of a community building. The board could not discuss lot 16 because of notification. If the applicant is willing to put a community building for the purpose of servicing the community, then that would be an item in the resolution that the board would give them a period of time to construct it and then this application could move forward. Ms. Weinstein asked if they were going to make this application subject to the construction of the community building. Mr. Banas replied yes. Mr. Jackson stated the applicant could designate one of the buildings initially and then come back for an amendment. This way they could get their approval tonight and then come back at a later date. Mr. Neiman agreed with this. Ms. Weinstein stated the applicant has agreed to designate one of the units as a community building. Mr. Jackson stated the resolution could include that the applicant could come up to a different solution for a community center. Mr. Banas stated it had to be adjacent to the property. Ms. Weinstein stated that

if one of the units is not used, they would have to come back for the use of lot 16.

Mrs. Wise asked about the adjacent properties for buffering. On the north side she did not see any buffering surrounding building 3 and back behind building 1. Mr. Dolobowsky stated it seems to stop where it would go straight north behind 3 and then east and then behind buildings 1 and 2. Mr. Carpenter stated he indicated there is existing vegetation along that line.

Mr. Dolobowsky asked the planner if when the UDO was written and multi-family units were discussed and how to count the number of units versus parking spaces. There was talk about counting units and units and basements. Mr. Slachetka stated it was a question in relation to density in certain districts not parking requirements. It was handled differently in different districts. The parking requirements based on RSIS standards is based on a unit. The spaces have to be provided per unit. Mr. Dolobowsky stated he has two sets of plans. One is from Salvatore Santoro. Ms. Weinstein stated it was not them. Mr. Kiert stated that he and Mr. Carpenter were working on two of Mr. Carpenter's projects which he thought got mixed up. Ms. Weinstein stated that David Feldman was their architect. Mr. Dolobowsky stated that Mr. Feldman's plans show basements with lots of windows and front entrances. Mr. Carpenter stated that is how it is designated in the townhouse district. They can have basements. In the RM zone, if a townhouse unit has a basement it automatically constitutes another dwelling unit. You are allowed to have basements and designate them as a living unit but it is not automatically considered a dwelling unit. Mr. Slachetka wanted to review the ordinance to see specifically what it said. For the purposes of calculation and density, the density presented in the application is correct. Mr. Dolobowsky wanted to know how many units there were and how many parking spaces. Ms. Weinstein stated there were 42 units. Mr. Carpenter stated there 126 parking spaces, which is three per unit. Mr. Dolobowsky did not feel that was bad. He stated that after the builder is done, the homeowners may rent their basements creating a parking problem. It has happened in a number of developments in town. He wanted to know what they could do to discourage that. Ms. Weinstein stated she did not know. They were single family units. Mr. Dolobowsky stated he was not saying that they would do it, but it happens. Ms. Weinstein stated the applicant would be a restriction that the basements could not be used. Mr. Slachetka stated that if the board told the applicant they could not have the separate basement access, that might prevent the use of the basement. Ms. Weinstein stated it was for safety purposes. She suggested that the units be deed restricted that they have to remain single family dwelling units. She felt it was a code enforcement issue. Mr. Dolobowsky asked if the entrances could be moved to the back. Ms. Weinstein stated there are decks on the rear and it would not work out as well. Mr. Dolobowsky suggested replacing the regular entrance with an egress window for emergencies. Mr. Carpenter stated that if you have bicycles, you would not walk around the back to put it in the basement. Mr. Banas stated that once you establish a pattern of moving whatever you are moving, that pattern is established and it becomes easy. Mr. Miller stated you may have to go over your neighbors property to get to the back. Mr. Dolobowsky asked the attorney if the board should deed restrict it. Mr. Jackson stated he did not think it was unreasonable for the board to deed restrict it to single family dwelling units. Mr. Slachetka stated the distinction between the RM district and the HD-7 district is that the intent is that the townhouse units be single family units. If they are creating a two

family unit then it creates a condition with regard to the need for a variance. He felt that some specific condition restricting the units to single family is appropriate. It was a code enforcement issue. He felt a deed restriction was appropriate.

Mr. Banas opened the application to the public. Seeing no person wishing to speak for or against the application, he closed the public hearing.

Mr. Banas stated that Mr. Dolobowsky has suggested a restriction on the use of the basement. He suggested to eliminate the stairs from the outside and entrance to the basement through the kitchen with a kick out window for safety purposes.

Mr. Neiman stated that if the applicant agreed to deed restrict the basements, he would be comfortable. He did not think the stairs should be removed. Mr. Banas stated that the attorney indicated that a deed restriction does nothing more unless you follow up through code enforcement which may create a problem. However, he was not suggesting to have the people walk on the rear of others properties. The entrance would be as shown but there would be no entrance to the basement from the outside and one of the windows would be a safety egress window. Mr. Neiman asked if the basements were ground level or below the ground. He was uncomfortable with having no entrance to the basement. Mr. Franklin suggested an exist in the rear. Ms. Weinstein stated the lots would be fee simple so the yards would be owned by other owners and have to cross over the neighbors land. It is simpler to keep the entrances in the front.

Mr. Miller stated there would be a problem if they were in the rear. If they were eliminated, it would be a problem as it relates to storage. The items stored would have to be brought outside. He felt that they should be deed restricted. The inspection department was in the process of hiring additional inspectors and code enforcement personnel. He felt this would eliminate the problem.

Mrs. Wise stated there is a problem with the use of the basements. It becomes a problem with policing it and they should try to eliminate any problems. The egress window is a great idea for safety measure and would not put forth the temptation.

Mr. Neiman stated the basements are used in the township. No applicant really deed restricted the units, only guaranteeing one utility. If they are willing to deed restrict the use it was a stronger legality against having a family living in the basement. Mr. Miller stated he concurred with this. It was being deed restricted as a single family unit with one utility. The inspection department would have more power.

Mr. Banas stated the township has a problem with enforcement. They did not have the proper enforcement according to the newspapers. Mr. Miller stated that might be in the paper because it sells the paper. The township will see a greater improvement in that area.

On motion by Mr. Neiman and seconded by Mr. Herzl, the application was hereby approved with all of the conditions and that the applicant has agreed to designate one unit as a community center and in the future he wishes to switch that the application would be amended to have a community center adjacent to the property, deed restric-

tions restricting the units to one family, and any other conditions as discussed. The total lot would be in the center of building 4 and two lanes coming out to Route 9 and the street would be dedicated to the Township

ROLL CALL: Mr. Herzl, yes; Mr. Franklin, yes; Mr. Miller, yes; Mr. Neiman, yes; Mr. Banas, no; Mrs. Wise, no; Mr. Dolobowsky, yes; and Mr. Ackerman, yes.

6. SP #1822 (Variance requested)
Applicant: Chevrus Lomdel Torah
Location: Fifth Street, west of Private Way
Block 48 LOT 10
Preliminary and final site plan for proposed synagogue

Mr. Peters stated the applicant is seeking to replace an existing 2 _ story dwelling with a new 2 story synagogue on Fifth Avenue in the R-12 zoning district. Variances will be required for the following: lot area where 12,000 square feet is required and 7,500 square feet is proposed; lot width where 90 feet is required and 50 feet is proposed; lot coverage where 25% is allowed and 42.7% is proposed; side yard where 7 feet one side and 18 feet total is proposed and 10 feet one side and 25 feet total is required; parking where 16 on-site parking spaces are required and none are proposed; buffer where 7 foot is proposed and 20 foot is required; and the bulk requirements are existing conditions. Outside agency approvals are required. Testimony should be provided as to times of operation, extent of operation, trash storage and removal and exterior lighting. At the last meeting they discussed handicap accessibility to the second floor. According to the uniform construction code, any building levels with greater than 3,000 square feet must be handicap accessible. The top floor of the building is 3,200 square feet where the code does not specific if it should be the gross area or net area of the building. If the stairways are subtracted out, it falls under the 3,000 square foot threshold. He felt it would be looked at by the code official during code review. A drywell has been located at the bottom of the stairs to the basement. He suggested that a soil boring be taken to determine the ground water levels.

Mr. Slachetka stated the applicant should address the positive and negative criteria for the requested variances. The application does not comply with the following provisions of section 905: a 20 foot wide landscaped buffer is required. Twelve arbor vitae shrubs are proposed along the rear property line to address the buffer requirements. Vegetative screening or fencing along the side property lines should also be considered. The applicant should provide testimony concerning the location of the congregation relative to the subject site to justify the parking variance. Foundation plantings should be provided on the side of the proposed building to buffer the use from the adjacent residences. Any proposed site and building mounted lighting should be identified on the site plan with the appropriate isolux levels. The applicant should address provisions for solid waste management for the proposed building. The applicant should explain why the handicap access to the synagogue must be located in the rear of the structure. Would front or side handicap access be feasible? The balance of the comments were technical in nature.

Miriam Weinstein, Esq., appearing on behalf of the applicant. This application calls for the demolition of the existing synagogue and the construction of a new two story synagogue building with a social hall in the basement. This synagogue is one of the oldest synagogues in Lakewood. It has been in existence since August of 1973. They were not bringing new traffic to the area. They were trying to make room at the synagogue. This area is one of the more populated areas. Most of the people walk to the synagogue. They have complied with all the recommendations from the technical meetings.

Ray Carpenter, P.E., was sworn in and his credentials were accepted. They were proposing to remove the existing synagogue and replace it with a new structure. They would comply with the setback but extend the structure towards the rear of the property. The people use the facility are in the direct vicinity and would be walking to the facility.

Ms. Weinstein read a letter dated September 23, 2005, to the members of the planning board, the Laurel and Pines Condominium Association hereby wishes to let the planning board know that we are in favor of the application. There are residents of Laurel and Pines who use the existing facility which are presently overcrowded. Due to the close proximity of the proposed new building there is no need for any of our residents to add any additional parking since they can walk. The president of the association signed the letter. Mr. Jackson suggested that the board disregard the letter since they were not here to testify.

Mr. Aitay was sworn in. He lived in Laurel and the Pines and uses the synagogue. Many of the residents of his development use the synagogue and they walk there. Ms. Weinstein stated they wanted to make the point that the residents of the development use the synagogue and walk.

Ms. Weinstein stated she also has a letter from Private Way apartments across the street that they would let them utilize their facility. Mr. Banas stated that the letter is hearsay. Mr. Jackson stated the attorney could say she had negotiations and reached an agreement with the party it was acceptable. Mr. Jackson marked the letters as A-1 and A-2. Ms. Weinstein stated they were willing to allow them to use their facility for overflow parking.

Mr. Carpenter stated in reviewing Mr. Peters' report, he agrees with the variances requested. Most of the variances were because of the existing building. The building was extended to the rear to provide additional square footage. The operation of the synagogue has been testified to. They talked about the Uniform Construction Code requirement and the ADA accessibility. They would comply with whatever was required. In reviewing Mr. Slachetka's report, they were indicating that the variances that exist today would be the same as what they were requesting even though the building will be larger. One of the benefits is that they were providing more area and landscaping on the site. There was some discussion about putting some landscaping along the east side of the structure to buffer it. They will be putting a fence along the property line. There is a pipe near the base of the structure and if they provide vegetation there it would grow into the pipe. They provided the architectural plans to the board with the building as proposed. The only lighting proposed on the site will be strictly architectural lighting. It will be like

sconces on the building. They were not proposing any large site lighting. Mr. Banas asked how many lights there would be. Mr. Carpenter stated they would meet the ordinance. If it floods over they would put shades in. There was not a lot of solid waste generated on the site. They have a garbage can on site. Mr. Banas stated that during social events they would be generating garbage.

Mr. Miller stated he spoke to Mr. Franklin and asked how garbage was picked up on Fifth Street and he told him that there was not any problem with it. Mr. Franklin stated the problem is that there are a lot of cars parked there.

Ms. Weinstein stated the handicap access is located in the rear because the entrance to the synagogue is only a men's entrance. By placing it at the rear, it is able to be utilized by both men and women.

Mr. Carpenter stated they would comply with most of the recommendations.

Mr. Dolobowsky stated he visited the site some time ago. He stated that as far as the east side of the building goes it is close to the neighboring property and there are a number of huge trees and is basically an alleyway between two buildings. The plans indicate 12 arbutus in the back. He did not think they would survive that well in the shade. He suggested maybe putting up a fence. Mr. Slachetka stated he would recommend a fence and they were proposing a board on board fence instead of landscaping.

Mr. Banas opened the application to the public. Seeing no person wishing to speak for or against the application, he closed the public hearing.

On motion by Mr. Dolobowsky and seconded by Mr. Miller, the application was hereby approved as submitted granting the requested variances.

ROLL CALL: Mr. Herzl, yes; Mr. Franklin, yes; Mr. Miller, yes; Mr. Neiman, yes; Mr. Banas, yes; Mrs. Wise, yes; Mr. Dolobowsky, yes; and Mr. Ackerman, yes.

Mr. Banas called a brief recess. The meeting was reconvened.

8. SD #1501 (No variance requested)
Applicant: LWI Enterprises LLC
Location: corner of Massachusetts Avenue & Prospect Street
Block 445 Lot 17
Preliminary & final major subdivision - 16 townhouse lots

Mr. Peters stated the applicant is seeking preliminary and final subdivision and site plan approval to build 16 new town homes. The 1.785 acre property currently has one dwelling unit. The property in question is known as block 445 lot 17 on Prospect Street and Massachusetts Avenue in the A-1 zoning district. No variances are required. The applicant will be required to obtain outside agency approvals. The applicant has provided

a shade tree easement. Descriptions of all easements shall be provided to the Planning Board Engineer for review. The applicant has indicated that a homeowners association shall be created and be responsible for the common areas. The proposed wording for the homeowners association shall be provided to the Planning Board Attorney for review. The wording must include maintenance plans for any and all stormwater management systems. A proposed play area has been shown on the plans. The applicant has added play equipment details as requested. The play area will require fall safe ground cover. The type of ground cover and the limits should be shown on the plans. The applicant has added a post and rail fence at the top of the retaining wall. The wall has a height of up to fourteen feet. We do not believe a post and rail fence will provide an adequate safety barrier and recommend a six foot high chain link fence be installed. The balance of the comments were technical in nature.

Mr. Slachetka stated a trash enclosure is proposed at the east side of the site for solid waste collection and pickup. The sufficiency of the size of the enclosure should be confirmed by the department of public works. Additional landscaping around the east perimeter of the trash enclosure should be provided. We recommend that the landscaping plan be supplemented to provide vegetative screening on the east side of building number 1 to buffer the residences from Massachusetts Avenue. The proposed sidewalks should be shown on all plan sheets. A small portion of the sidewalk at the corner of Prospect Street and Massachusetts Avenue is proposed on private property. The applicant plans to dedicate this small (81 square feet) portion of the property at this location to the County, so that the public access for the sidewalk is provided. Architectural drawings of the front, side and rear elevations should be provided. Architectural drawings should be provided if the HVAC equipment is to be located on the roof. The balance of the comments are technical in nature.

Ray Shea, Esq., appearing on behalf of the applicant.

Brian Flannery, P.E., was sworn in and his credentials were accepted. Mr. Shea stated they were in possession of the board's professionals reports. They have no objections to the recommendations and were in agreement with them. They were in possession of the October 5, 2005 shade tree commission report to which they have no objection. This is a fully conforming plan. Mr. Flannery stated they have a rendered plan which shows the 16 units and parking. They will comply to the comments in the reports. The shade tree comments were reviewed and accepted. He would work with the planner on it.

Mr. Dolobowsky stated there are no variances or waivers but they have a 15 foot wall right behind the homes. He wanted to know if there was room behind the units to allow for the tilt of the wall that has to be there to support it. He wanted testimony regarding the proposed buffer. It appears to be two foot tall shrubs on top of the wall. He wanted to know if the air conditioning units really had to be on the roofs. Mr. Flannery stated the township engineer would have to provide the information with regard to the wall. They would provide larger landscaping if it is needed. They would also provide design calculations. The air conditioning units could be placed on the grade behind the units.

Mr. Shea stated the zoning for the lands was ordered by Judge Clyne in the matter of litigation between the applicant and the Township. Under that order, this zoning and all

of the dimensional requirements were set forth and what is proposed is fully conforming with the order. It also complies with the UDO that was just recently adopted. It was always a permitted use. The underlying reason for the initial litigation was that the master plan called for the use as designed but the ordinance was lacking.

Mr. Banas asked if the units were built on slabs. Mr. Flannery stated the units would be built on basements which would be for storage only.

Mr. Dolobowsky asked about the fence along the top of the wall. Mr. Flannery stated they provided one type of fence and the board recommended a six foot high chain link fence and they were in agreement with their recommendation.

Mr. Neiman asked if there were outside entrances to the basements. Mr. Flannery replied there were. Mr. Neiman asked if they could have the same deed restriction as the earlier application. Mr. Shea replied they would do it.

Mr. Banas opened the application to the public.

Ms. Payne, 120 Massachusetts Avenue, was sworn in. She was concerned about the land and the buffer. It was a rural area with single family homes. She would like to see a 25 foot buffer. She had concerns about the wall. Mr. Flannery stated it was allen type block wall. It was interlocking blocks with pavers. There are four units on the western side with ten feet to the retaining wall and then 20 feet to the rear of the homes. The deck is within the 20 foot area. He explained the setbacks on all the units. Mr. Neiman asked how much buffer was required. Mr. Flannery stated there was no buffer requirement. He explained what would be seen and it was marked as A-2. Ms. Payne felt the area should remain and the trees should not be removed. She wanted something that looked good in the area. She had concerns about the type of lighting. Mr. Flannery stated sheet 7 shows the lighting which is a 19 foot high fixture along with the isolux lines. If the boards professionals feel a different fixture is required they would provide the same. Mr. Slachetka stated the mounting height could be lowered and Mr. Flannery agreed to the same. There are three lights in the parking area. They would comply with the township ordinance. Mr. Dolobowsky asked about the wall height varying and which end would be 13 feet high. Mr. Flannery stated the ends on the easterly side would be the lowest, then it runs and goes higher, and then reduces back down. Traffic was also a concern and Ms. Payne detailed what went on during the day. She asked specific questions about the buildings which Mr. Flannery answered. Mr. Banas explained what the board could and could not do and enforce. Ms. Payne also had concerns about the stormwater. Mr. Flannery explained the same. Ms. Payne read a letter from her neighbor which supported her concerns. Mr. Miller liked it when residents came and brought issues up. The township does have vacancies on board and encouraged her to apply to sit on one.

Frank Gagliano, 229 North Drive, was sworn in. He stated he was here on other occasions. He felt that the zone permitted the development. He felt the board should be very careful with this initial project. Mr. Kielt stated on the corner was a RM zone which was multi-family. Mr. Gagliano felt the board should be careful with what they allow. He was concerned about the traffic with the hill in the road. He had concerns with the wall in the

area. He did not feel that a deed restriction would prohibit the use of the basements. He did not think the air conditioning units should be on the roofs. He had concerns about the drainage. Mr. Banas stated the size of the lot requires the board to face a problem that this was a court order that a certain number of units would be built on the property. The planner had a limited number of things that he could do that would permit him to shift things. As a result, he did what he thought was the best thing. If this was prior to the court decision, they might look at it differently. Mr. Miller stated the board would look at it differently if there was no court order. The issue of quads was discussed.

Mr. Jackson stated the board has considered all the items. The board has the legal discretion to review the site and make changes.

Seeing no further person wishing to speak for or against the application, Mr. Banas closed the public hearing.

Mr. Shea stated there was discussion about court order zoning. The judge ordered that 19 homes be built on the site and 16 have been proposed. That should be taken into consideration. The applicant has agreed and has been responsive to some of the comments from the residents. The lighting will be dropped and the air conditioning units will not be on the roofs. They were asked to consider higher vegetation on top of the wall and it would be reviewed and worked on with the board's planner. The basements would not be occupied for living and it would be a deed restriction with only one utility.

Mr. Banas asked about moving the entrance to Prospect Street. Mr. Flannery explained why the entrance was best where it was. He did not see a valid reason to move it.

Mr. Dolobowsky asked if the application was submitted to the County. Mr. Flannery stated it was submitted and they were waiting on approval. Mr. Dolobowsky asked that everyone request that the county take a look at the are because of the hill to see if there is something that could be done. He further discussed about the vegetation on the wall.

On motion by Mr. Dolobowsky and seconded by Mr. Miller, the application was hereby approved with the fence on the top of the wall, the professionals asking the county for help along Massachusetts, taking a look at the wall, the air conditioning units on the ground, the lighting being lowered, and other items as discussed.

ROLL CALL: Mr. Herzl, yes; Mr. Franklin, yes; Mr. Miller, yes; Mr. Neiman, yes; Mr. Banas, yes; Mrs. Wise, yes; and Mr. Dolobowsky, yes.

9. SD#1502 (Variance requested)
Applicant: Ronny Holder
Location: Sunset Road, north of Liberty Drive
Block 284.11 Lot 20
Minor subdivision to create two lots

Mr. Peters stated the applicant is seeking a minor subdivision of block 284.11 lot 20. Two new lots are proposed. Proposed lot 20.01 will retain the existing structure.

Proposed lot 20.02 will be vacant once a portion of an existing building is removed. The site is located on Sunset Road in the R-12 zoning district. Variances will be required for lot width on lot 20.01 where 85 feet is proposed and 90 feet is required; lot width on lot 20.02 where 65 feet is proposed and 90 feet is required; and side yard set back on lot 20.01 where 6.4 feet is proposed where 10 feet is required. Ocean County Planning Board Approval will be required. The applicant has provided a six foot wide shade tree easement. A portion of the existing dwelling on new lot 20.02 is proposed to be removed. Removal shall either be complete prior to subdivision, or a bond posted to ensure prompt removal once subdivision is complete. The applicant has provided for curb and sidewalk. The plan meets the RSIS parking requirements.

Mr. Slachetka stated the applicant should address the positive and negative criteria for the requested variance for each lot. The testimony should include information concerning the lot width of the single family residences in proximity to the subject tract. We note that most of the adjoining lots on the west side of Sunset Road have compliant frontage. There was discussion at the technical workshop meeting concerning shifting of the lot line by three feet. This revision does not appear to be addressed in the revised plat. The balance of the comments were technical in nature.

Abraham Penzer, Esq., appearing on behalf of the applicant. He stated that Mr. Holder was in foreclosure. A person is willing to buy the lot even though it is more narrower than it should be. The only house that they could get on the property would not fit if they moved the lot line three feet. They complied with all the other requests. He stated that several neighbors asked him to indicate that they had no objections to the application. He sent out approximately 40 notices and nobody is here.

Mr. Abadi was sworn in. He stated he was the proposed builder. He asked his old employer to slow down the sheriff's sale.

Mr. Geissnger was sworn in. He explained why the lot line could not be moved three feet over. He wanted to end up with a decent size house.

Mr. Dolobowsky stated the lot is now 65 feet wide and when the setback is moved another variance would be needed. He asked if they would agree to the 15 foot setback on that side which it is.

Mr. Banas opened the application to the public. Seeing no person wishing to speak for or against the application, he closed the public hearing.

On motion by Mr. Dolobowsky and seconded by Mr. Neiman, the application was hereby approved granting the requested variances with the 15 foot setback between the two homes.

ROLL CALL: Mr. Herzl, yes; Mr. Franklin, yes; Mr. Miller, yes; Mr. Neiman, yes; Mr. Banas, yes; Mrs. Wise, yes; Mr. Dolobowsky, yes; and Mr. Chermack, yes.

IV. MEMORIALIZATION OF RESOLUTION

1. **SD #1338A** (Variance requested)
Applicant: Ezriel & Yaffa Munk
Location: Caranetta Drive, south of Central Avenue
Block 288 Lot 9
Minor subdivision to create two lots

On motion by Mr. Neiman and seconded by Mr. Dolobowsky, the resolution was hereby memorialized.

ROLL CALL: Mr. Herzl, yes; Mr. Franklin, yes; Mr. Miller, yes; Mr. Neiman, yes; Mr. Banas, yes; Mrs. Wise, yes; Mr. Dolobowsky, yes; and Mr. Chermack, yes.

2. **SD #1491** (Variance requested)
Applicant: Shimshon Bandman
Location: Holly Street, north of Stirling Avenue
Block 189.01 Lot 170
Minor subdivision to create two lots

On motion by Mr. Neiman and seconded by Mr. Miller, the resolution was hereby memorialized.

ROLL CALL: Mr. Herzl, yes; Mr. Franklin, yes; Mr. Miller, yes; Mr. Neiman, yes; Mr. Banas, yes; Mrs. Wise, yes; Mr. Dolobowsky, yes; and Mr. Chermack, yes.

3. **SD #1492** (Variance requested)
Applicant: Zev Berger & Yaakov Wienreb
Location: corner of Leonard Street and East End Avenue
Block 228 Lots 7 & 8
Minor subdivision to create two lots

On motion by Mr. Neiman and seconded by Mr. Miller, the resolution was hereby memorialized.

ROLL CALL: Mr. Herzl, yes; Mr. Franklin, yes; Mr. Miller, yes; Mr. Neiman, yes; Mr. Banas, yes; Mrs. Wise, yes; Mr. Dolobowsky, yes; and Mr. Chermack, yes.

- 4. SD #1495** (Variance requested)
Applicant: MTR Ventures
Location: Warren Street, north of Pine Street
Block 768 Lots 17 & 61
Preliminary and final major subdivision to create 5 lots

On motion by Mr. Neiman and seconded by Mr. Miller, the resolution was hereby memorialized.

ROLL CALL: Mr. Herzl, yes; Mr. Franklin, yes; Mr. Miller, yes; Mr. Neiman, yes; Mr. Banas, yes; Mrs. Wise, yes; Mr. Dolobowsky, yes; and Mr. Chermack, yes.

V. CORRESPONDENCE

Mr. Banas stated he received a letter from the school board and asked Mr. Kielt to provide all members with a copy.

VI. PUBLIC PORTION

None at this time.

VII. APPROVAL OF BILLS

On motion by Mr. Miller and seconded by Mr. Franklin, the submitted bills were hereby approved for payment.

ROLL CALL: Mr. Herzl, yes; Mr. Franklin, yes; Mr. Miller, yes; Mr. Neiman, yes; Mr. Banas, yes; Mrs. Wise, yes; Mr. Dolobowsky, yes; and Mr. Chermack, yes.

VIII. APPROVAL OF MINUTES

On motion by Mr. Dolobowsky and seconded by Mr. Franklin, the minutes of September 6, 2005 were hereby approved.

ROLL CALL: Mr. Herzl, yes; Mr. Franklin, yes; Mr. Miller, yes; Mr. Neiman, yes; Mr. Banas, yes; Mrs. Wise, yes; Mr. Dolobowsky, yes; and Mr. Chermack, yes.

IX. ADJOURNMENT

The meeting was hereby adjourned. All were in favor.

Respectfully submitted,
Elaine Anderson
Planning Board Recording Secretary