

Mrs. Morris said this had been held up because there were trailers on the site and they weren't sure if they were permitted. That has since been worked out with the Zoning officer.

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

5. PLAN REVIEW ITEMS

1. **SP 2205 New Jersey American Water Co.**
Sunset Road Block 290, Lot 1.02
Preliminary and Final Site Plan for building addition and site improvements

A review letter prepared by Remington, Vernick & Vena Engineers dated September 21, 2016 was entered as an exhibit.

Applicant is requesting a combined plan review and public hearing at this meeting.

Ms. Jennifer Cortis (sp??) of Dilworth Paxson, LLP. The applicant is proposing to expand existing water treatment facility by constructing various water treatment structures and associated piping. The applicant will comply with the comments in the engineer's review letter.

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

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

2. **SP 2208 Lakeside Holdings, LLC**
Airport Road Block 1160.01, Lot 2
Preliminary and Final Major Site Plan for an office building

A review letter prepared by Remington, Vernick & Vena Engineers dated September 26, 2016 was entered as an exhibit.

Mr. Magno stated that submission waivers are requested for topography, contours and man-made features within 200 ft, an environmental impact statement, tree protection management plan, design calculations and architectural drawings. Topography, contours and man-made features within 200 ft are supported as there is enough topography for the design. Waiving of the environmental impact statement is not supported unless the freshwater wetlands, transition areas, riparian buffer, and flood hazard areas associated with the existing stream on the edge of the site are addressed. We can support waiving a Tree Protection Management Plan since it appears no existing trees would be removed as a result of the proposed project. We can support waiving design calculations for drainage since impervious surface would be reduced and disturbance appears to be less than an acre. We recommend architectural drawings be required for the Public Hearing.

A motion was made and seconded to approve the waivers as recommended by the Board Engineer and Planner.
All were in favor.

Mr. Joe Kociuba, P.E., P.P. understands the request for the environmental impact statement. They are proposing to develop an existing site with a new 16,000 sf two-story office building. He did contact an environmental consultant and have established where the wetlands are. They will need some buffer management transition

area waivers. As a result of that, they will be requesting a rear setback variance of 20 ft whereas 30 ft is required.

Mr. Neiman asked where the wetlands are on the property.

Mr. Kociuba said they are in the front so it is causing them to push the building back.

Mr. Neiman asked if plans would be provided delineating where the wetlands are.

Mr. Kociuba confirmed. The plan will be provided to the board engineer for review.

Mr. Flancbaum asked what the rear setback variance backs up to.

Mr. Kociuba said the parkway.

A motion was made and seconded to advance the application to the November 15, 2016 meeting. All were in favor.

3. SD 2168 Aharon Mansour
Park Avenue Block 232, Lot 12
Preliminary and Final Major Subdivision to create six lots

A review letter prepared by Remington, Vernick & Vena Engineers dated September 29, 2016 was entered as an exhibit.

Mr. Magno stated that submission waivers are requested for an environmental impact statement and design calculations. A waiver has been requested from providing an Environmental Impact Statement since the site has been previously developed. We can support the requested submission waiver provided freshwater wetlands, transition areas, riparian buffer, and floor hazard areas are addressed with resolution compliance submission should approval be granted. A waiver has been requested from providing drainage calculations since the applicant's engineer claims the site is not a Major Development. We can support the requested submission waiver provided the Impervious Area Plan is revised to indicate the stone area is not impervious surface with resolution compliance submission should approval be granted. The project may not qualify as Major Development.

A motion was made and seconded to approve the waivers as recommended by the Board Engineer and Planner. All were in favor.

Mr. Neiman asked if they are dealing with any underground tanks.

Mr. Glenn Lines, P.E., P.P. said not that he is aware of. It was never a gas station.

A motion was made and seconded to advance the application to the November 15, 2016 meeting. All were in favor.

4. SD 2169 Locust Holdings, LLC
Evergreen Boulevard Block 1086, Lots 9-14
Preliminary and Final Major Subdivision to create twenty lots

A review letter prepared by Remington, Vernick & Vena Engineers dated September 21, 2016 was entered as an exhibit.

Mr. Adam Pfeffer, Esq. said they have reviewed the engineer's review letter and would address any concerns at the public hearing.

Mr. Neiman asked if there is a potential for wetlands on this property.

Mr. Magno said according to the NJDEP mapping, yes. The applicant may be able to testify that there are not. He has seen the site and he believes there is not. A submission waiver from providing an environmental impact statement is requested. Testimony shall be provided to support this waiver request since NJDEP Environmental Constraints mapping indicates the potential for freshwater wetlands.

A motion was made and seconded to approve the waivers as recommended by the Board Engineer and Planner. All were in favor.

Mr. Neiman asked that the road not being compliant with RSIS is addressed.

A motion was made and seconded to advance this application to the November 15, 2016 meeting. All were in favor.

5. SD 2172 Mark Properties, LLC

Pine Boulevard

Block 423, Lots 29, 30, 31, & 76

Minor Subdivision to create two lots

A review letter prepared by Remington, Vernick & Vena Engineers dated October 24, 2016 was entered as an exhibit.

Mr. Magno said variance relief is sought for minimum lot area. A 10 ft dedication is required to provide the proper half right-of-way width for the 30 ft wide unimproved right-of-way. Design waivers are requested from improving the existing right-of-ways with pavement, curb, and sidewalk along the projects street frontages, providing street trees and from providing shade tree and utility easements.

Mr. John Doyle, Esq. believes this would provide sensible development generally consistent with the Master Plan.

Mr. Magno asked why they came up with this configuration. He asked why they didn't square off the lots and put the lot line on the zone line.

Mr. Brian Flannery, P.E., P.P. said they have 4 existing lots and the applicant is just looking to create 2 lots. The current thought on the development process is that this configuration will make it better. There are other uses in the HD-7 zone that aren't commercial uses and he doesn't think anyone expects to see a commercial use on this part of the property. This configuration leaves the back area for any potential recreation, open space, buffering or passive space for any future development for the remainder of the property.

A motion was made and seconded to advance the application to the November 15, 2016 meeting. All were in favor.

9. SP 2210 First Lakewood Forest Associates

Clifton Avenue Block 90, Lot 8
Preliminary and Final Major Site Plan for an office and retail building

A review letter prepared by Remington, Vernick & Vena Engineers dated October 26, 2016 was entered as an exhibit.

Mr. Magno stated that the following submission waivers are required:

1. B2 - Topography within 200 feet thereof.
2. B4 - Contours of the area within 200 feet of the site boundaries.
3. B10 - Man-made features within 200 feet thereof.
4. C6 - Plans and profiles of proposed utility layouts such as sewers, storm drains, and water, showing feasible connection to existing and proposed utility systems.
5. C10- Shade Trees.
6. C13 - Environmental Impact Statement.
7. C14 - Tree Protection Management Plan.
8. C15 - Landscaping and Lighting Plans.
9. C16 - Soil erosion and sediment control plan consistent with requirements of the local soil conservation district.
10. C17 - Design calculations showing proposed drainage facilities to be in accordance with the appropriate drainage runoff requirements.
11. C21 - Architectural drawings of the proposed structures - generalized elevations (all four side of non-residential) and floor plans.

We support the "B-Site Features submission waivers for the Plan Review Meeting. Also, we support submission waivers C10, C13, and C14 due to the existing and proposed developed nature of the site.

A motion was made and seconded to approve the waivers as recommended by the Board Engineer and Planner. All were in favor.

Mr. Adam Pfeffer, Esq. said this is a fully conforming application. They have reviewed the board engineer's letter and would address any questions or concerns at the public hearing.

Mr. Neiman asked about parking.

Mr. Pfeffer said parking is not required in this zone.

Mr. Neiman asked even for a 5 story building.

Mr. Magno said the applicant did provide calculations on the plan if it were in a different zone.

Mr. Graham MacFarlane, P.E., P.P. said 92 spaces would be required.

Mr. Neiman asked where those 92 people are going to park.

Mr. MacFarlane said there are public parking lots in the area. The ordinance doesn't require parking.

A motion was made and seconded to advance the application to the December 20, 2016 meeting. All were in favor.

- 10. SD 2177 Vermont Management, LLC**
Squankum Road Block 172, Lot 5
Preliminary and Final Major Subdivision to create eleven lots

A review letter prepared by Remington, Vernick & Vena Engineers dated October 27, 2016 was entered as an exhibit.

Mr. Magno stated that submission waivers are requested including site features and an environmental impact statement. A Survey without topography has been submitted. While a submission waiver from providing topography may be granted for the Plan Review Meeting, a topographic survey will be required. It should be noted the Existing Conditions Plan shows topography and large individual tree locations. However, the source of information for this Existing Conditions Plan has not been provided. We can support granting a submission waiver from providing an Environmental Impact Statement due to the developed nature of the site.

A motion was made and seconded to approve the waivers as recommended by the Board Engineer and Planner. All were in favor.

Mr. Adam Pfeffer, Esq. said they have reviewed the board engineer's review letter and would address any questions or concerns at the public hearing.

Mr. Neiman said if there is one variance on this application, he will not be voting. This is such a dangerous corner.

A motion was made and seconded to advance the application to the December 20, 2016 meeting.
Affirmative: Mr. Franklin, Mr. Hibberson, Mr. Herzl, Mr. Flancbaum, Mr. Follman, Mr. Cautillo
No: Mr. Neiman

- 11. SD 2178 Eli Liberman**
Cross Street Block 490, Lot 1.01
Minor Subdivision to create two lots

A review letter prepared by Remington, Vernick & Vena Engineers dated October 27, 2016 was entered as an exhibit.

Mr. Magno said he is not sure if this is before the correct board. The existing site is clearly an industrial site consisting of two buildings that manufacture auto parts. They are subdividing the lots so that the building would be on separate lots. The one building is a warehouse for the product and the other makes the product.

Mr. Joshua Schmuckler said he is very familiar with this site. There was a previous site plan approved about 15 years ago that the applicant is going to be building out. If you are facing the property, there is a building on the right with an office type building with some warehouse space and the building on the left which is a warehouse. That warehouse is going to be knocked down and the approved site plan would be built. The applicant needs to do a financial subdivision. There would be one access with an easement through the center.

Mr. Magno said testimony was just provided that the building would be knocked down but the plans do not indicate that.

Mr. Jackson said this should be a minor subdivision and site plan application.

A review letter prepared by Remington, Vernick & Vena Engineers dated September 8, 2016 was entered as an exhibit.

Mrs. Morris said there is a question as to whether or not the board can hear this application but she would defer to the Township Attorney.

Mr. Jackson said Michelle Donato Esq. is representing an objector on this application. Her argument is that this matter was previously the subject of a Zoning Board application which was a cluster development. A cluster development is where you put all of the houses on a small portion of the a lot so you get very high density in one little area and in exchange you leave a large area of open space. It appears from the Zoning Board resolution that it was done in this case. Now the applicant seeks to build on the property that was previously dedicated as open space pursuant to the variance that was granted for that clustering. In his view, unless someone can convince him otherwise, he thinks that only the Superior Court of New Jersey has the jurisdiction or authority to vacate any kind of a deed restriction or condition that was placed on for public good. He doesn't think the Planning, Zoning or Township Committee can vacate it. There are also issues that since the Zoning Board granted that variance it should go back to them which is complicated if the zoning change.

Mr. Adam Pfeffer, Esq. would like to address those issues.

Ms. Susan DiMaria, Esq. would like to make a ruling on the jurisdictional issue before going into the application.

Mr. Jackson said before they can comprehend the jurisdictional issue, he wants to make that the board can determine whether the property the applicant is seeking approval for is the same property that is in this resolution.

Mr. Brian Flannery, P.E., P.P. was sworn in. He stated that this is the open space that was part of that subdivision. As part of a cluster application, there is formula for how much open space you have to provide and the resolution clearly states the applicant is providing more open space than is needed. About an acre and a half was needed and they provided fifteen. This was indicated to be dedicated to the Township and it is similar to several other applicants where the board approves something and it says it should be dedicated to the Township and the Township doesn't want it and they leave it with the developer, the developer doesn't pay taxes...

Mr. Jackson said the law cannot be clearer in that the only entity that has the ability to lift that encumbrance is the Superior Court and there are numerous reported cases on that.

Mr. Flannery said if there were a deed restriction that was placing an encumbrance on the property but there is nothing that places an encumbrance on the property. It is no different than any other subdivision where it leaves an open space and at some point in the future you come back to deal with the open space. It is no different than Marshall's development on County Line Road or Westgate.

Mr. Jackson said he makes a good point but it is in the resolution and it should have been on the subdivision. This is for the benefit of the public and if his case is that compelling then it should be very easy to convince a Superior Court judge.

Mr. Flannery said it is not a deed restriction.

Mr. Jackson said it is in the resolution. It states it is to be dedicated to the Township of Lakewood for open space and recreation in exchange for the cluster.

Mr. Flannery said the resolution and ordinance specified how you determine how much area needs to be set aside for open space and this project has more than sufficient area. The ordinance was also changed, as you read in the ordinance, this was a special permit so it was clustering that was done at the Zoning Board...

Mr. Jackson said regardless of what the ratios were at that time, it was in front of the Zoning Board and it needed a 'D' variance

Mr. Flannery disagrees. It didn't need a 'D' variance, it needed a special permit which was something that wasn't consistent with the MLUL. It was something that was in Lakewood's ordinance since 1950 and they wanted the clusters done by the Zoning Board. Probably wasn't the right way to do it and when they updated the UDO in 2007, they corrected the UDO to say that it is clustering and they put that provision in the jurisdiction...

Mr. Jackson understands but he thinks this is the wrong forum to make that argument.

Mr. Neiman remembers when they used to do the clustering and the applicants would dedicate land. The board questioned then how or who would remember what land is dedicated.

The board will follow the recommendation of their attorney and would like clarity on this before hearing it.

Mr. Jackson recommends to decline the application based on jurisdiction because he thinks the only way this can be rectified is through a court order.

Mr. Pfeffer asked that this be carried to the December 20th meeting.

Mr. Neiman asked if the board should carry the application.

Mr. Jackson said they have to go to court, they have a resolution that states the land is open space and dedicated to Lakewood Township.

Mr. Flannery said this is no different than three other applications that came to this board and the ruling was different. He asked that the board grant the applicant a courtesy and schedule them for the December 20th meeting.

Mr. Pfeffer said he was just retained and had not had an opportunity to review all of the documents for this project. He respectfully asked that this be carried.

Mr. Jackson said he would prepare the resolution of denial based on jurisdiction and if the applicant's professionals can making a convincing argument that this board has jurisdiction then they could reconsider.

Mrs. Morris said this is a conforming minor subdivision so no notice is required.

Ms. DiMaria said that is the other issue that was identified in Ms. Donato's letter. She represents the Red Oak homeowner's association and said this should have had public notice under 40:55da.

Mr. Jackson said her argument is that the Zoning Board has the authority over this. He doesn't necessarily agree with that on the basis that the laws have changed since then.

Ms. DiMaria said the applicant is asking to modify the condition of the original application.

Mr. Neiman said this has to be noticed to come back.

Mr. Pfeffer said they have no issue noticing for the December 20th meeting.

Mr. Neiman said no, December 20th they will have a denial resolution. If by then the applicant has documentation that this is permitted, then the applicant can notice and come back.

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

3. SD 2153 Meir S Kaufman

South Street

Block 855.06, Lots 26 & 32

Minor Subdivision to create three lots

A review letter prepared by Remington, Vernick & Vena Engineers dated September 14, 2016 was entered as an exhibit.

Mr. Magno said variance relief is sought for minimum lot area and lot width. Design waivers are no longer required as the applicant will be providing curb and sidewalk.

Mr. Brian Flannery, P.E., P.P. was sworn in. A map displaying recently approved subdivision in the area was submitted as an exhibit. There had been flag lots approved in the past and that's how people took advantage of the depth. Here, the subdivision requested is 75 ft wide lots consistent with the lots on the other side.

Mr. Herzl asked if the lot areas are the same.

Mr. Flannery said yes, just under 15,000 sf.

Mr. Neiman opened to the public.

Mr. Bill Hobday, 30 Schoolhouse Lane, was sworn in. He is concerned about the variances being sought.

Mr. Moshe Greenfeld, 1472 South Street, was sworn in. He thinks this would be an upgrade with new houses and sidewalks.

Mr. Jackson recognizes about 5 other residents in the audience whom agree with that statement.

Mr. Simon Szimonowitz, 1468 South Street, was sworn in. This is an improvement as it allows larger families to be able to live on this block. This would make the block safer and more family friendly.

Mr. Neiman closed to the public.

A motion was made and seconded to approve the application.

Affirmative: Mr. Grunberger, Mr. Franklin, Mr. Herzl, Mr. Neiman, Mr. Flancbaum, Mr. Follman

No: Mr. Hibberson, Mr. Cautillo

4. SD 2154 Bais Rivka Rochel

4th Street

Block 127, Lot 4

Preliminary and Final Major Subdivision to create 5 lots

A review letter prepared by Remington, Vernick & Vena Engineers dated September 14, 2016 was entered as an exhibit.

Mr. Magno said variance relief is sought for the front stagger for the proposed building on the combination of new lots 4.01 and 4.02, minimum rear yard setback for a duplex, maximum building coverage for a duplex, minimum rear yard setback for a townhouse and minimum side yard setback for a townhouse.

Mr. Herzl asked what is currently on this property.

Mr. Lines said Regency Development has their offices there. Years ago it was the old Sons of Israel chapel. They are proposing to build 1 duplex and 1 three unit townhouse building. Rear setback variances for the decks, side yard setback variance for the townhouse building.

Mr. Neiman asked if townhouses are a permitted use in this zone.

Mr. Lines confirmed. Sufficient parking is provided as well as stormwater management. They set the front of the units at 30 ft off the property line which is a little bit further back than the existing building in order to provide more front yard space and separation between Fourth Street and the buildings but by doing that, they end up with the rear yard setbacks. They could move the buildings forward and eliminate the rear yard setbacks but he feels from a planning standpoint, it is better to be in this location away from Fourth Street. The side yard setback will be next to a new building, not an existing structure. If there was another duplex next to the proposed duplex, it would be a 10 ft setback but they do not feel the duplex would be adversely impacted.

Mr. Cautillo asked if curbs and sidewalks will be provided.

Mr. Lines said by the time they get done on the Fourth Street side, all of the curb and sidewalk will be replaced. Most of the Monmouth Avenue will be replaced. In the end, it is always up to the Township Engineer. If there is damaged sidewalk, they would replace it.

Mr. Magno said a variance is needed for the duplex for the stagger of the building.

Mr. Lines said they are not requesting that variance. They will make sure the plan complies with the ordinance.

Mr. Magno asked if the coverage variance on the duplex lots is being requested.

Mr. Adam Pfeffer, Esq. confirmed. They are requesting 30.8% whereas 30% is allowed.

Mr. Neiman opened to the public.

Mr. Bill Hobday, 30 Schoolhouse Lane, was sworn in. He objected to the board granting these variances.

Mr. Neiman closed to the public.

A motion was made and seconded to approve the application.
Affirmative: Mr. Herzl, Mr. Neiman, Mr. Flancbaum, Mr. Follman
No: Mr. Grunberger, Mr. Franklin, Mr. Hibberson, Mr. Cautillo

Mr. Jackson said the vote is split, the application is denied as you need the majority to carry the motion.

Mr. Kociuba said there is a wood bridge that crosses the stream. A 15 ft rear yard setback is proposed whereas 20 ft is required. This variance can be approved under the C1 criteria, a hardship due to extraordinary circumstances as those wetlands run through the middle of the property. The school does require 6 parking spaces for the three offices and three classrooms which are provided. The Bais Medrash, if calculated separately, would require 6 additional spaces. The plan currently shows 4 but that can be expanded so they are not requesting a parking variance. The only variance required is for rear setback.

Mr. Herzl asked if the paved drive is going through the wetlands.

Mr. Kociuba said no, it is going through the buffer. The driveway extends the length of the property, approximately 300 to 400 ft long.

Mr. Grunberger asked if people will be parking in the back.

Mr. Kociuba said it is the intention that the primary parking would be in the front.

Mr. Herzl asked where the trash would be kept.

Mr. Kociuba said it would be at the rear of the parking lot next to the school.

Mr. Franklin said the architectural show a three story building.

Mr. Kociuba said the plans are incorrect. They show a three story elevation but they did show two stories on the floor plan. The elevation was incorrect, it is a two story building.

Mr. Neiman said there is no simcha hall proposed.

Mrs. Weinstein said that is correct.

Mr. Neiman opened to the public.

Mr. Bill Hobday, 30 Schoolhouse Lane, was sworn in. He objects to the granting of a variance.

Ms. Ann Richardson, 1870 Lanes Mill Road, was sworn in. She said the stream is part of the Metedeconk River. There is also a well that flows to that river. This area has always been wetlands classified as C1. She believes that previous people have applied to the DEP to get permits but have been denied.

Mr. Jackson asked if there are any environmental constraints as this is part of the Metedeconk River.

Mr. Kociuba said there are wetlands as he testified earlier. They do have a letter of interpretation to establish that the wetland line shown on the plan is accurate. They are proposing to develop within the buffer and requesting relief from the DEP to do so. The applicant has acquired Trident Environmental and are working with the DEP. It is their opinion that this waterway is actually a disconnected waterway and wouldn't be considered tributary to a C1 but that is the DEP's jurisdiction.

Mr. Magno said the application is going to need DEP approval for a flood hazard area. Whether the project is viable or not is really going to be determined by the DEP.

Mr. Neiman asked why applications like this don't get that approval first.

Mr. Magno said the DEP time frame is so long. It could be a year from now.

Mr. Hibberson asked if there is any history of flooding.

Ms. Richardson entered pictures as an exhibit showing flooding.

Mr. Jackson said you can build on a flood hazard zone but there are certain requirements.

Mr. Neiman said he remembers going down Squankum Road, there was always an area that flooded and then they curbed it and there was no flooding anymore. Sometimes curbing can help something like this.

Mr. Richardson said not in this case because the water comes from the Metedeconk River underground.

Mr. Hobday said he used to live within 1 mile of this area and when they had heavy rains, the area flooded.

Mr. Neiman asked why he feels the sidewalk waiver should be granted.

Mr. Kociuba said there are no sidewalks in the area and there is a substantial grade difference which would make sidewalk construction across the frontage impossible. They are only touching the wetlands buffer and a sidewalk extension would have to cross the wetlands themselves.

Mr. Neiman asked about the other side of the wetlands.

Mrs. Weinstein said they have no objection to installing sidewalks anywhere where they are not crossing wetlands.

Mr. Grunberger asked how many students will be in this yeshiva.

Mrs. Weinstein said there are currently 28 students, maximum of 50. It will not be a very large yeshiva. All the students will live in the dormitory.

Mr. Grunberger said the plan is only showing 6 spots in the front and 4 in the back.

Mrs. Weinstein said they would agree to provide 6 in the rear for a total of 12.

Mr. Cautillo asked if a certification is needed in order to operate this school.

Mrs. Weinstein said they would abide by any state requirements. That is beyond the purview of this board.

Mr. Neiman closed to the public.

A motion was made and seconded to approve the application.

Affirmative: Mr. Grunberger, Mr. Herzl, Mr. Neiman, Mr. Flancbaum, Mr. Follman

No: Mr. Franklin, Mr. Hibberson, Mr. Cautillo

7. SP 2199 Harold Herskowitz

Third Street Block 91, Lot 6
Preliminary and Final Major Site Plan for a 5 story office and retail building

A review letter prepared by Remington, Vernick & Vena Engineers dated October 19, 2016 was entered as an exhibit.

Mr. Magno said variance relief is sought for minimum rear yard and aggregate side yard setbacks of 7.5 ft whereas 15 ft is required. It gets tricky being this is in the business zone. The one side is not against a business, it's against a parking lot so you don't have the 0 ft set back.

Mrs. Miriam Weinstein, Esq. said they are seeking approval for a 5 story office and retail building in the downtown area. This is a virtually variance free application. The rear yard setback is actually an existing condition on the existing structure that was already approved by a previous application. There really is no requirement for side yard setbacks in the B-2 zone but that's conditioned on the fact that the property is situated between two commercial uses. The subject property is bordered by a business use on one side and a parking lot on the other. The position that the board engineer has taken is that a variance is technically needed since a parking lot is not a commercial use. Nonetheless, a parking lot is clearly an auxiliary use to a commercial use of the use and for certain a non-residential use. So while this, technically speaking a variance, and they have noticed and seeking approval for same, their testimony will provide the positive and negative criteria for the board to grant this variance. Parking is not required for commercial uses in the downtown area and she points out that there is a large municipal parking lot adjacent to the subject property and that the first three stories of this five story building will continue the retail toy business that is already operating at this location so will not yield any new parking requirements. Their testimony will provide the parking requirements that would be required if this property would have been located in a different zone.

Mr. Joe Kociuba, P.E., P.P. was sworn in. The site is in the B-2 zone fronting on Third Street and is surrounded by existing commercial uses. Specifically, commercial uses fronting on Clifton area on lot 7 and 8 with the public parking lot on lot 5. That is an accessory parking area to commercial uses. This board has accepted that previously, specifically under the application of Mordechai Zafrani at 304 Monmouth Avenue that accessory parking lots are considered a commercial use and there was no variance required on that particular application. There is an existing three story toy store on the property of approximately 1,400 sf. It is a retail use that would have a parking demand of 70 parking spaces. That exists now and utilizes the existing parking surrounding the property. The applicant proposes a new five story office building. The first three stories would be retail and would two stories of office above. It does have a 1.5 ft rear yard setback and the existing building has a 1.4 ft rear yard setback and had been granted a variance previously by this board. The application does propose to step back the fourth and fifth floors so they would meet the setback requirement. There is a total of 30,154 sf proposed, 18,468 ft would be retail with the remainder being office which would generate a total of 131 parking spaces required. That is 61 spaces greater than what would be the demand currently. There are two very large stairwells that traverse the entire height of the building as is needed in a five story building. Those account for 2,494 sf or approximately 11 spaces. It is his professional testimony that there is an excess demand of approximately 50 spaces but as testified and indicated by the board engineer, parking is not required in the B-2 zone. It is only required for residential uses. They are also proposing a 7.5 ft side yard setback adjacent to the commercial. Even though they are not required to provide a setback there, they are providing 7.5 ft. A 0 ft setback is proposed on the left side, adjacent to an existing commercial use, a 0 ft front yard setback and the 1.5 ft rear yard setback. The technical aggregate setback that has been indicated isn't required. They are adjacent to two commercial uses. One being an accessory parking lot and one being commercial so a side yard setback, in his opinion, is not required. The rear yard setback was already granted by this board previously so this application does not require any variances. However, they have noticed for those variances and do see that the

board engineer do indicate that those variances are needed. The variances can be justified under the c1 and c2 criteria. The c1 being the hardship which applies to an extraordinary or exceptional situation unique to a particular property. In this case, there is an extraordinary circumstance in that the existing building does have a 1.4 ft setback already. In addition, under the c2 criteria special reasons do existing to promote the purpose of zoning. Particularly, they are proposing a 7.5 ft side yard setback on the right side where none is required. Rather than giving the 10 ft of space in the rear of the property which would really have no benefit to anyone seeing that the property is surrounded by commercial, they are providing that setback along the right hand side adjacent to the parking area providing additional air, light and open space which benefits the public. They keep the existing rear yard setback where it is, they promote air, light and open space and promote a desirable visual environment by narrowing the building and proposing a more visually appealing building. Reviewing the possible detriments to the public good, there is no substantial reduction in air, light and open space. They are conforming with the requirements of the zone. The parking is contemplated by the ordinance. There are substantial public parking lots available. He displayed an aerial of the property and the surrounding areas. There is a public parking lot directly to the west which has approximately 64 spaces, approximately 180 spaces are available to the south and approximately 80 spaces available in a public parking lot to the north. So there is ample public parking surrounding this property.

Mr. Franklin said being they are building on this entire lot minus a few feet, how do they plan on staging the construction.

Mr. Kociuba said there will be a 7.5 ft area on the right side.

Mr. Franklin asked what they can do within 7.5 ft when constructing a 5 story building. He asked where the crane would be set.

Mr. Kociuba said the front.

Mr. Franklin said there are power lines in the front and you can't lift steel over power lines.

Mr. Kociuba said he would have to review that with the contractor, DPW and the electric company. The materials would have to be staged as it's constructed. He understands it will be challenging but he does believe it can be built and it is fully conforming to the ordinance.

Mr. Franklin said he was on the Township Committee when that ordinance was adopted and it was for a 5 story nursing home. They had issues with parking and the people who lived there could not have a car. The only people who had cars were the people that worked there. This will really foul up the parking for the downtown area. The small businesses and their customers won't be able to get to the stores and they are going to put those people out of business so this big building could be built. This is not going to work, it is just too big.

Mr. Kociuba said the Township Committee has had ample time to change that ordinance if they felt there was a substantial parking issue. The Planning Board are governed by the ordinances of the Township and that's what they are presenting is an ordinance compliant application.

Mr. Franklin doesn't think anyone thought this would happen to the rest of the town. They can't put the rest of the town out of business for one building.

Mrs. Weinstein pointed out that at the time the board approved the rear yard setback variance, that parking lot did not exist.

Mr. Harold Herskowitz, 1496 Cedar Row, was sworn in. He said there have been numerous 5 story buildings in the downtown area. There was one built on Second Street which is a much smaller street that has parking on both sides and it corners Lexington Avenue which is a small street as well. There was also one built on Fourth and Monmouth. Even though they went and purchased some parking, it is a tenth of the parking that they would have available. When these buildings were approved, there were no parking requirements put on them and it was approved.

Mr. Franklin said by the time they got the approval, they had bought property from an adjacent development and they came back with the parking.

Mr. Herskowitz said the amount of parking they purchased is nothing and they don't border any municipal parking lots.

Mrs. Weinstein represented the applicant for the Fourth and Monmouth building and that is correct. There was absolutely no parking and they did have difficulty so later on the applicant did acquire some parking but that application had absolutely no parking at the time it was approved. She thinks the Township Committee has had ample time to review this ordinance and change it.

Mr. Herskowitz said that no one is more concerned about the downtown area than he is. His business has grown to the point where they need an elevator and storage for the toys. The building was built in 1906 and he thinks it's time to do something different. The offices upstairs are already being used. He has an IT department that takes care of the computers and they are already parking in a municipal lot. He is not sure what the total number of employees will be. They will have to see what they need for themselves first before they rent out any offices. He said there are about 10 merchants that use the parking that he was very involved with in creating that parking lot and they are all for it.

Mr. Ron Gasiorowski, Esq., objected as that is hearsay.

Mr. Herskowitz will retract what they said. He did speak to them and informed them of his plans and there is not one store here to object.

Mr. Kociuba said that is a dead end utility pole that provides electric to this building so they can work with the electric company to eliminate that in order to ease construction.

Mr. Gasiorowski is representing Dr. Bolinsky. He operates a medical facility and he has indicated that he is concerned about this building and the impact it will have on parking. He asked about the front façade of the building.

Mr. Kociuba said he is not an architect but he believes the front façade is a combination of both glass and some kind of siding.

Mr. Gasiorowski said the board engineer commented that a full set of signed and sealed architectural plans had not been submitted as of the date of the review letter, August 22, 2016. He asked if these plans have been submitted to the board for review.

Mr. Kociuba said it is his understanding they had been submitted.

Mr. Magno has not received or reviewed the architectural plans.

Mr. Kociuba said on the October 19, 2016 review letter, there is a comment indicating that there is a set of preliminary architectural floor plans consisting of 5 sheets that were submitted.

Mr. Gasiowski said the review letter indicates the plans are unsigned and unsealed. On page 3 of the review letter, it indicates that signed and sealed preliminary architectural plans, which includes elevations, have not been provided for the public hearing. Further down that page it states that the board can call upon supporting documents will be required at the time of public hearing, including but not limited to aerials and/or tax maps of the project area and surroundings to identify the existing character of the land. He asked if the building is in keeping with the character of the neighborhood.

Mr. Kociuba doesn't believe the comment was that they had to demonstrate it's so that the board may request it.

Mr. Gasiowski didn't say they have to. The board could require it. His question is that his testimony that this 5 story building with the front elevation and height shown is in keeping with the existing character of the neighborhood.

Mr. Kociuba said it is a commercial and office use in a commercial and office zone. There are a number of 5 story buildings through the downtown area.

Mr. Gasiowski asked if there are any 5 story buildings within 500 ft of this proposed building.

Mr. Jackson believes the question is if the architectural style is consistent with other buildings in the area.

Mr. Neiman said it doesn't matter if it is a permitted use.

Mr. Gasiowski said it is not his comment, it is the comment of the engineer. The applicant's professionals provided testimony that no variances are required for this site plan.

Mr. Kociuba said that is correct.

Mr. Gasiowski said with regard to the existing building, when he looks at the comments of the engineer where it has a project description it says a two and a half story building exists on site and will be removed with all other site improvements. That means prior to any construction, this entire site is going to be leveled and cleared.

Mr. Kociuba said that is correct.

Mr. Gasiowski said they don't really have a pre-existing non-conforming use or setback because any of those setbacks which may have been granted years ago are going to be completely removed as a result of this application.

Mr. Kociuba said it is the standard policy of the zoning office that any existing bulk standards may be re-utilized even though the structure is being eliminated.

Mr. Gasiowski asked for a document supporting that as it is contrary to the MLUL and you have a building which is existing and then being taken down you don't have to reprove the variances sought.

Mr. Neiman agrees that just because it was granted once doesn't necessarily mean it can be granted again and that is why the engineer listed it as a variance.

Mr. Kociuba stands by his opinion, however, he did provide testimony regarding the C2 variance being requested.

Mr. Gasiowski said his opinion is that no variances are necessary.

Mr. Kociuba said yes with a previously approved variance.

Mr. Gasiowski said since this property is going to be leveled, the applicant can comply with the 10 ft rear yard setback.

Mr. Kociuba said he could comply with that as well as the 0 ft side yard setback.

Mr. Follman left the meeting.

Mr. Gasiowski said the fact is, the ordinance requires a 10 ft rear yard setback and this applicant could in fact honor that setback.

Mr. Kociuba said that is correct and they are doing that for the fourth and fifth stories.

Mr. Gasiowski said setbacks are measured at ground level. Since they have an ingress/egress at the rear of the building, an easement will be required from the adjacent property owner so that it can be utilized for deliveries and patrons. In order to accomplish that, they would have to go to the owner of lot 8 and secure some form of an easement.

Mr. Kociuba said that is correct and he does not know if it has been secured.

Mr. Gasiowski said concerning the side yard setback, only 7.5 ft was provided on one side, therefore, he needs 15 ft on the other side.

Mr. Magno said no, he needs 15 ft total. He can do that by having 7.5 ft on each side.

Mr. Jackson said you need an aggregate of 15 ft.

Mr. Gasiowski said he only has 7.5 ft.

Mr. Magno said that is correct so he is short by 7.5 ft.

Mr. Kociuba said his testimony was that they provided 0 ft on the left and 7.5 ft on the right. It is his interpretation that the ordinance incorrectly addresses the fact of properties in the B-2 zone that have the separate 0 ft setback allowance for commercial. That aggregate doesn't apply if they have a 0 ft setback on both sides. He thinks it is a technicality of the ordinance that was not properly addressed with the 0 ft setback on commercial lots.

Mr. Gasiowski said where they have the 7.5 ft on the one side, it indicates that it is an existing non-conformity so they need a variance.

Mr. Kociuba said as a result of reviewing with the board engineer, he did note that on the plan but his testimony is that a variance is not required and that the aggregate does not accurately reflect the 0 ft setback allowance in the B-2 zone. It is his opinion that a variance is not required.

Mr. Gasiorowski said they can in fact move their side yard setback to conform.

Mr. Kociuba said yes.

Mr. Gasiorowski asked how emergency vehicles are going to access to the rear and side of the site.

Mr. Kociuba said there is a very large public parking lot adjacent to the property.

Mr. Gasiorowski asked how they are going to fight a fire on the left side where there is a 0 ft setback and fencing.

Mr. Kociuba said that is a standard condition throughout this area.

Mr. Gasiorowski said in those cases where there are a contiguous series of commercial uses side by side sharing a common wall.

Mr. Kociuba cannot testify to that.

Mr. Gasiorowski asked if that was the direction in which that ordinance was drafted.

Mr. Kociuba is unsure.

Mr. Gasiorowski said there is no landscaping whatsoever on this property but they do in fact have the necessary property to do so.

Mr. Kociuba said it is more consistent with the downtown area in that landscaping is not typical. There is landscaping in the public parking area.

Mr. Gasiorowski said the applicant has the ability to landscape but they are choosing not to and are seeking a waiver from this board both as to buffering and landscaping. As a matter of fact, if it is a non-residential use, you have to have a minimum of 25 ft of buffering and none is being provided.

Mr. Kociuba said he believes that would be the case if it is adjacent to a residential use.

Mr. Gasiorowski asked what the size of the easement will be in order to provide access.

Mr. Kociuba said probably about 3 ft wide.

Mr. Gasiorowski said they should include lot number 8 in their plan and notice for such.

Mr. Kociuba does not agree.

Mr. Gasiorowski said he is well aware of the fact that the engineer points out that there is no parking requirement but based upon the square footage proposed and the uses proposed, he asked what would be the required parking calculations.

Mr. Kociuba said 131 spaces. The existing building has an existing parking demand that should be accounted for in those calculations.

Mr. Gasiorowski said the applicant would be utilizing public parking but that would in fact be taking parking away from the existing businesses and residences in the area.

Mr. Jackson said this is a zone that does not require parking.

Mr. Gasiorowski asked if this will in fact impact the character and uses, being residential and commercial.

Mr. Kociuba said his testimony wasn't that a 131 spaces were required. You cannot simply ignore the existing need that is being addressed by the adjacent parking area and public parking in this location. The B-2 zone was meant as a pedestrian utilized area with public parking throughout. It is intended to utilize public parking and not parking on individual properties.

Mr. Gasiorowski asked if the issue of parking in this area is addressed in the Smart Growth plan.

Mr. Kociuba said he believes not requiring parking is part of the ordinance itself.

Mr. Gasiorowski said the Smart Growth plan spoke about a lack of parking in this area and they are seeking to create a use that will require parking for over 100 cars.

Mr. Kociuba said they are not proposing that much of an increase. The committee has had ample time to address that concern.

Mr. Gasiorowski asked if a traffic study was completed.

Mr. Kociuba said no.

Mr. Gasiorowski asked if they have any idea as to the number of patrons of the store are utilizing the parking in the front as well as the adjacent parking lots.

Mr. Kociuba said they have utilized the readily available township standards.

Mr. Gasiorowski said the proposed building will in fact be taking away parking in the front.

Mr. Kociuba said yes, the current front yard set back is 17 ft and the proposed is 0 ft.

Mr. Gasiorowski asked where the HVAC systems will be located.

Mr. Kociuba believes on the roof.

Mr. Gasiorowski asked how many offices there will be on the fourth and fifth floors.

Mr. Kociuba does not know of the exact configuration of the offices.

Mr. Jackson asked for clarification of the easement.

Mr. Neiman opened to the public.

Ms. Malka Malakh, 16 Circle Place, was sworn in. She is concerned that this application will create two front yards on her property as this street will be improved right behind her. She is concerned about the traffic this project will cause.

Mr. Neiman said it is a paper street which the applicant has the right to improve.

Mr. Herzl asked the width of the paper street.

Mrs. Weinstein said 40 ft.

Ms. Malakh said sidewalks are proposed on the west side.

Mrs. Morris said they are already moving forward to develop the roadway by right before they even submitted the application.

Ms. Malakh said her and her neighbors have asked the Township to vacate the road many times.

Mr. Rachamim Ram Malichy, 22 Circle Place, was sworn in. He has lived in this area for a long time. They really wanted a peaceful cul-de-sac neighborhood. A few years ago a school was built across the street where people are parking all over the street and in front of his home. He is concerned about congestion.

Mr. Neiman asked if a row of trees would help to ensure more privacy

Mr. Malichy is still concerned with the additional traffic and congestion this will cause.

Mr. Neiman said it is two additional homes on a street that is permitted to be improved.

Mr. Flannery said that is correct. It is a cul-de-sac that will only service two homes.

Mr. Neiman asked that a row of trees be provided to help shield his backyard.

Mr. Magno wants to ensure the trees will not be within the right-of-way.

Mr. Flannery said they would not. The applicant would plant a row of trees along the right-of-way where it impacts the houses.

Mr. Magno said there is no room for trees unless the applicant is willing to plant the trees on the neighbor's property.

Mr. Flannery said the fence in that area is within the right-of-way. This is an existing Township right-of-way that provides access to the back. There is a road that is already going in and the applicant will provide landscaping to the satisfaction of the board engineer. They are talking about two 16,000 sf lots in an area where you pass two 10,000 sf lots.

Mr. Yaakov Landesman, 37 St. Nicholas Avenue, was sworn in. He is located behind the proposed homes. He complained about congestion and traffic in the area. The area is not zoned for this type of congestion.

Mr. David Malach, 16 Circle Place, was sworn in. He is concerned about congestion and safety for his children.

Ms. Chagit Malichy was sworn in. She is concerned about congestion

Mr. Joel Schwartz, 50 Circle Place, was sworn in. Even though this application will negatively effect him, he wanted to commend the applicant for eliminating the side yard setback variance.

Mr. Neiman closed to the public.

Mr. Flannery said they are really only talking about one extra house because of the 75 ft wide lots. The 75 ft wide lots on St. Nicholas and Circle, no additional traffic or impact is going on Circle or St. Nicholas. He understands the residents enjoy the woods and open space on someone's private property but the variances requested make sense.

A motion was made and seconded to approve the application.

Affirmative: Mr. Grunberger, Mr. Franklin, Mr. Hibberson, Mr. Herzl, Mr. Neiman, Mr. Flancbaum, Mr. Cautillo

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

The meeting was hereby adjourned. All were in favor.

Respectfully submitted
Sarah L. Forsyth
Planning Board Recording Secretary