

1. CERTIFICATION OF COMPLIANCE

Chairman Michael Neiman called the meeting to order at 6:00 p.m. with the Pledge of Allegiance and Ally Morris read the Certification of Compliance with the NJ Open Public Meetings Act:

“The time, date and location of this meeting was published in the *Asbury Park Press* and posted on the bulletin board in the office of the Township of Lakewood at least 48 hours in advance. The public has the right to attend this meeting, and reasonable comprehensive minutes of this meeting will be available for public inspection. This meeting meets the criteria of the Open Public Meetings Act.”

2. ROLL CALL

Mr. Franklin, Mr. Hibberson, Mr. Herzl, Mr. Neiman, Mr. Follman, Mr. Rennert, Mr. Cautillo

3. SWEARING IN OF PROFESSIONALS

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

4. MEMORIALIZATION OF RESOLUTIONS

1. SP 2167 Congregation Lutzk

Whitesville Road Block 250, Lot 16.01
Amended to a Preliminary and Final Major Site Plan for an addition

A motion was made and seconded to approve the resolution.

2. SD 2119 1495 East Spruce, LLC

East Spruce Street Block 855.01, Lots 26 & 29
Denial of a Preliminary and Final Major Subdivision to create five lots

A motion was made and seconded to approve the resolution.

3. SD 2157 Dovid Berger

Second Street Block 72, Lot 7.01
Preliminary and Final Major Subdivision to create 5 lots

A motion was made and seconded to approve the resolution.

4. SD 2159 Mark Properties, LLC

Providence Avenue Block 1048, Lots 1 & 5
Denial of a Preliminary and Final Major Subdivision to create 11 lots

A motion was made and seconded to approve the resolution.

5. SD 2069A Sam Rabinowitz c/o Accurate Builders

Locust Street Block 1081, Lot 4
Amended Preliminary and Final Major Subdivision for 74 residential units

Mr. Magno stated that a lot consolidation should be provided to meet the bulk standards of the zone, a minimum side yard setback of 25 ft whereas 50 ft is required for proposed building three, relief is required for the number of off-street parking spaces, a proposed trash enclosure with landscape screening is proposed within 3.5 ft from the property line adjacent a non-residential use whereas 15 ft is required, buffer relief is requested as well as a variance for the 15 ft wide ingress driveway and sign variances.

Mrs. Miriam Weinstein, Esq. stated that this is a major site plan approval to construct three buildings on the subject property. One building would be two stories with retail on the first floor and office on the second floor, the second building would be three stories and consist of office space and a shul and the third would have three stories of office space. At the previous hearing, the board asked that the applicant review the project and minimize the relief requested. As a result, they have redesigned the project and have eliminated many of the variances initially requested. This is a unique project due to its mixed use nature. The nature of the mixed use allows each use to compensate for the other with regard to parking requirements as their parking needs are at different times of the day. The shul utilizes parking in the morning before offices open and at night after they close. By doing it this way, for once the shul will actually have ample parking for all of its congregants at service times. During daytime hours, the shul space will not have any parking needs so they would actually be creating more parking spaces for the office tenants. The retail use will mostly utilize parking on Sundays when offices are closed.

Mr. Edward Liston, Esq. representing Howard Matthews and Ruth Schuster. As the board recalls, last time they were here, many of the variances called for in this ordinance were called out as waivers. The applicant has corrected them except in once instance which he does not think it is fatal to the notice. There are now nine variances but the variance called out in paragraph 2C says a sign variance and then at the end of that paragraph, it states waiver.

Mrs. Weinstein said it correctly states variance, not waiver.

Mr. Liston said the notice he received from the Planning Board secretary states waiver. He wants to make sure the board is aware that nine total variances are being requested.

Mrs. Weinstein said the variance listed in the notice under G has been omitted. That was the variance for the trash enclosure to be located not less than 50 ft from the side or rear of a property line when the adjacent property is developed with a residential use. That variance has been eliminated, therefore, the applicant is requesting a total of eight variances.

Mr. Graham MacFarlane, P.E., P.P. was sworn in. He said there are currently five houses and one trailer on the site which will be removed. Their plan is to develop the plan in accordance with the requirements of the UDO which allows for commercial properties. Building 1, a two story building is proposed at the front of the site and will contain first floor retail and second story office. Two separate buildings will be located in the back, building 2 will contain a shul with office space above and building 3 will be three stories of office space.

Mr. Neiman asked if the buildings will be developed at once or if this project will be phased.

Mr. MacFarlane believes there will be a phase plan in regards to the construction of the building. They are not asking for any phasing with regard to the site improvements. Building 1 will contain 8,520 sf of retail space on the first floor, a total of 36,570 sf office space between all of the buildings and 2,040 sf of shul space on the first floor of building 2. He believes all of the variances fall under the same category and that all of the variances requested satisfy both C-1 and C-2 relief. Under the C-1 variance, this property is limited by physical features and its shape. It is narrow compared to its overall depth and the property is constrained by freshwater wetlands

and by riparian buffers associated with a category 1 waterway of the Cabinfield Branch. These variances proposed allow development of the site with the mixed commercial uses with a manner that will not have any impact to the environmental sensitive lands. The property depth is approximately three times its width making this property constrained in regards to its shape. Success of the retail use in particular relies upon visibility and recognition by passing motorists. The location and orientation of this building leads to the requested relief for the buffer requirements. Without that relief, he does not believe the retail uses would be successful as they would not have visibility of passing motorists or anybody who is looking to access the site. In his opinion, the requested relief related to these variances does satisfy the land use law standards. These variances also do satisfy the C-2 criteria in a similar regard. The C-2 variances relief may be granted where the purpose of zoning is advanced by the deviation. In this application, the proposal to improve the site with commercial uses that satisfy the zoning standards of the municipality and require the relief requested would substantially outweigh any detriment. While the UDO does contain language that requires buffers where commercial properties adjoin residential uses, it also indicates that fencing may ensure privacy and this has been a long standing practice of this board to allow fencing in lieu of dedicated buffers or dimensional requirements. The granting of the variances that allow successful redevelopment of this property substantial outweigh any detriment. They are also seeking some relief for the area of the site. The ordinance allows 35 sf, they are proposing a sign with an area of 40 sf which is a slight deviation. They will have multiple tenants in this location. Since this is in a residential zone, the sign height is limited to 6 ft which is essentially a ground or monument type sign. They are proposing a sign with an overall height of 12 ft, maintaining 7 ft clear underneath for visibility and a sign board area that is 5 ft high and 8 ft wide giving them the 40 sf of overall sign area. He believes the variances are warranted in order to provide proper identification of the site for any motorists. All of the technical comments in the board engineer's review letter can be addressed. To summarize the changes from the initial proposal, the application had a separate dumpster proposed on the west property line for building 3. That has been eliminated from the project and combined with the dumpster for building 2. There was a separate trash area that would serve building 1 at the front of the site. Since building 1 does have retail use, it does have a loading area behind suitable for trucks entering the site including single unit and box trucks. No tractor trailers would be entering for these types of retail uses.

Mr. Rennert asked if there are any commercial uses in the area.

Mr. MacFarlane referred to an aerial map which shows the site and surrounding area. The area is a mixed use of commercial and residential. The site immediately to the west is residential, to the east is a school, and to the west is an insurance company and a school.

Mr. Rennert would like to know what is further down the street.

Mrs. Weinstein said an office was approved by this board across the street.

Mr. MacFarlane said the property is located within a residential zone, however, the ordinance does allow for commercial uses.

Mrs. Weinstein said if the board recalls, there was an ordinance passed that permits commercial uses along County Line Road in certain areas if they're within a certain amount of feet within certain intersections. This is one of those areas where commercial is permitted as a conditional use.

Mr. Rennert points out that this is a residential zone. The ordinance does allow for conditional uses which are commercial. There should be buffers to the residential areas.

Mr. MacFarlane said there are four standards outlined which this project must satisfy in order for the commercial uses to be permitted and remain under the jurisdiction of this board. If any of those conditions are not satisfied, the application would need a use variance and would have been before the Zoning Board.

Mr. Rennert would like to discuss having two uses on one lot. If this were two lots, it would be a flag lot in the back with a commercial property.

Mrs. Morris said there is nothing in the UDO that prohibits more than one principal use on one lot.

Mr. MacFarlane said that is correct. The Lakewood UDO does not prohibit multiple buildings on a particular property.

Mr. Neiman asked why this isn't considered a flag lot. It is one lot but there is more than one building on a lot.

Mr. Rennert said that is his point. Someone could come in and build two houses on one lot and not subdivide it.

Mr. Magno said these lots have to be consolidated in order to meet the requirements of the zone for area.

Mr. Neiman said there would be three buildings on one lot. The question is if that is allowed.

Mr. MacFarlane said it is. This is in conformance with the Lakewood ordinance.

Mr. Rennert asked if the applicant would be willing to restrict the use of the shul building during the day when the offices/stores are open.

Mr. Herzl asked if a hall is proposed.

Mrs. Weinstein is not sure but this is a property that wouldn't have an issue because if it is used in the evenings then there are 149 parking spaces and that is more than almost every hall around town has.

Mr. Rennert asked if the applicant is willing to limit the use of the shul to only the mornings and evenings.

Mrs. Weinstein agreed.

Mr. Liston said the ordinance this application is proposed under was approved by the Township Committee on December 5, 2015. The only way to get these three uses together is to create one lot that complies with the conditional use size of the lot.

Mr. MacFarlane said that is not correct.

Mr. Liston asked what the minimize lot size is in order for the conditional use to apply.

Mr. MacFarlane said 20,000 sf. They have 151,000 sf. All of it is useable except for the back portion which is constrained by the C-1 buffer. The portion of the site that is not being developed is approximately an acre.

Mr. Liston asked if the area being developed complies with the conditional use requirements.

Mr. MacFarlane confirmed. The site overall is about 3.4 acres with about 1 acre within the C-1 buffer.

Mr. Liston said the applicant is still seeking eight variances. He asked if there is a way that this property could be developed in accordance with the zoning ordinance so that it is in essence an as-of-right application.

Mr. MacFarlane said there is always a way a project can be proposed which does not seek any variances but that is not the application sought.

Mr. Liston said it is possible. He asked if it is fair to characterize what the applicant is trying to do as an overdevelopment burdened by eight variances.

Mr. MacFarlane said he has provided testimony justifying the variances in accordance with the land use law.

Mr. Liston asked where the hardship is if this can be developed consistent with the zoning ordinance without any variances.

Mr. MacFarlane never indicated that this is a hardship application.

Mr. Liston said he testified as to compliance to C-1.

Mr. MacFarlane did testify that this does satisfy the tests for a C-1 but he never said it was a hardship.

Mr. Liston asked if he knows what a hardship is under the C-1 criteria.

Mr. MacFarlane does not believe this property is seeking a hardship. He believes this property is unique in its shape and it does have limitations as to environmentally sensitive lands.

Mr. Liston said he cannot count the environmentally sensitive lands anyway.

Mr. MacFarlane does not believe that is correct. The DEP regulations do allow for a disturbance within those areas but they are not seeking to do so.

Mr. Liston said therefore they are not using a good portion of the property. If that portion was to be eliminated, they still have a lot that is big enough to be developed under this ordinance. On that 2.4 acres, the applicant could develop a reasonable plan consistent with the zoning ordinance without asking for any variances.

Mr. MacFarlane said there certainly can be another plan developed that does not seek any variances.

Mr. Liston said there is no hardship.

Mr. MacFarlane agrees.

Mr. Liston said then they are really looking at a C-2 application.

Mr. Neiman said the Township just created this ordinance. He asked why the applicant is asking for so many variances on a brand new ordinance when they could do it variance free.

Mr. Liston agrees and would like to go through each and every variance requested and ask specifically how that variance advances the purpose of zoning if it's granted and how the positive aspects of that outweigh the negatives.

Mr. Jackson said the concept of hardship is laid out under C-1. Under the statute, the core question presented by an application is whether there has been a showing of peculiar and exceptional practical difficulties or hardship arising out of the exceptional narrowness, shallowness or shape of a specific piece of property or by reason of exceptional topographic conditions or physical features uniquely affecting a piece of property or by reason of an extraordinary and exceptional situation uniquely affected a specific piece of property or the structures lawfully thereon.

Mr. Neiman asked if the 300 ft wetlands buffer can be included in the hardship.

Mr. Jackson said the testimony, which the board would have to weigh, is whether this property has constraints against it, practical difficulties due to topography, geometry or location. It makes it difficult to develop to the extent that it could be developed within the guidelines and that's under C-1. Under C-2, the question is whether it advances the purposes of zoning which are laid out in the statute.

Mr. Neiman said this is a brand new ordinance and when the Township Committee passed the ordinance he doubts they anticipated for the first application to have eight variances.

Mr. Jackson said that is a good argument but it doesn't really make a difference as to how new the ordinance is.

Mr. Neiman said the board could look at it differently.

Mr. Jackson said the board has to consider the testimony, the number of variances, and the uniqueness of the property as well as all of the conditions under C-2.

Mr. Liston would like to take the board through each variance to convey that this is overdevelopment of the first magnitude. He said a 25 ft buffer is proposed whereas 50 ft is required when adjacent to residential development.

Mr. MacFarlane said that variance is associated with building 3, it is a side yard setback. The residential use is to the west.

Mr. Neiman asked if they are asking for this variance in the front as well.

Mr. MacFarlane said they are not. In his opinion, this variance is not of any significant impact.

Mr. Liston asked if it is possible that the rear portion of that lot could be developed for residential use consistent with the ordinance.

Mr. MacFarlane said it is possible.

Mr. Liston does not believe the lot shape is unique, it is slightly trapezoidal.

Mr. MacFarlane agreed, his opinion of the lot is irregular because of its length to width ratio.

Mr. Liston said the only way he would consider a lot regular is if he didn't have to call it irregular so he could make an argument for a variance.

Mr. MacFarlane said his opinion is its shape is irregular.

Mr. Liston asked how a sign variance advances the purpose of zoning.

Mr. MacFarlane believes it is necessary to provide adequate visibility identification for motorists and for public safety which is one of the goals of the land use law.

Mr. Liston said 149 spaces are provided whereas 169 spaces are required with three different uses on the property. If one of the uses were eliminated or if all three uses were minimized and the variances eliminated, they could add more parking.

Mr. MacFarlane said it is possible.

Mr. Liston said there is no hardship other than profit hardship.

Mr. MacFarlane said the traffic expert was going to discuss the parking variance.

Mr. Neiman said the plan doesn't indicate a variance is being requested for parking.

Mr. MacFarlane said the plan is based upon 85% net leasable space which the board has considered in the past. He knows there has been some change in that interpretation so in order to be conservative, they will ask for relief and provide testimony as to why those 149 spaces are adequate.

Mr. Liston said a variance is requested for the trash enclosures as the design does not blend with the building exterior.

Mr. MacFarlane said that is correct but they would eliminate that variance and provide trash enclosures which will match the exterior of the buildings in accordance with ordinance requirements.

Mr. Liston asked if all of the trash enclosures will be 15 ft from the side or rear property lines.

Mr. MacFarlane said no, the original plan had a dumpster on the west side of the property. The ordinance does still require 15 ft separation to non-residential uses. A proposed trash enclosure will be located 3.5 ft from the property line.

Mr. Liston said by switching that around they are losing parking spaces.

Mr. MacFarlane said that is not correct. They still have the same number of spaces as the application had when it was initially filed.

Mr. Liston asked if a variance is being requested from screening the trash enclosures.

Mr. MacFarlane confirmed. It is for two dumpsters that are located on the site which are not visible from the street or general public.

Mr. Liston said if there were no cars in the lot, they would be visible.

Mr. MacFarlane said in his opinion, they will not be seen by the general public and do not affect the site aesthetics.

Mr. Liston said a 25 ft wide buffer area is proposed whereas 50 ft is required where the non-residential development is adjacent to an existing residential development or an area zoned for residential land uses. He asked where those are located.

Mr. MacFarlane said the ordinance does allow the board the latitude to require buffers for commercial properties that do adjoin residential properties. In the past, this board has certainly considered or permitted fencing and landscaping in lieu of providing a dimensional buffer. That relief is requested on the west side. Fencing and some landscaping is proposed in order to provide privacy and to minimize any impact to the adjoining property.

Mr. Liston asked what project in this zone and subject to this zoning ordinance did that happen.

Mr. MacFarlane cannot provide a specific project. He did previously serve as board engineer for six years and has been doing applications for a long period of time. He knows that the board has considered or approved similar buffer arrangements.

Mr. Liston said his question specifically went to the ordinance which was adopted on December 5, 2015. He asked if he could cite any such variances granted under this ordinance which has a specific requirement of 50 ft to residential property.

Mr. MacFarlane said he is not prepared to answer that.

Mr. Liston said it probably never happened. A variance is being requested for ingress and egress.

Mr. MacFarlane said yes, the Lakewood ordinance requires a minimum driveway width of 20 ft. They have provided a 15 ft wide driveway for the ingress in accordance with the standards of Ocean County. County Line Road is under the jurisdiction of the County and their standards which are different from Lakewood standards so they are asking for that variance.

Mr. Liston said Lakewood standards are more stringent and they can provide those standards.

Mr. MacFarlane confirmed but relief is still being requested which is consistent with Ocean County standards.

Mr. Liston asked if he is suggesting that if they design this in accordance with Lakewood standards, the County would deny it.

Mr. MacFarlane did not say that.

Mr. Liston said even with the constraint of the wetlands issue, the property still complies with the minimum lot size and could be developed without any variances in accordance with the ordinance.

Mr. MacFarlane confirmed.

Mr. Liston objects to the traffic engineer being called. Mr. Kennel, although his credentials have been accepted before this board in the past, does not have an engineering degree, does not have a college degree and would argue that he has learned his profession by experience. His firm has a very well respected traffic engineer certified and licensed by the state of NJ who is not here tonight. This witness has been refused in Brick Township in a case where he represented one of the objectors because he does not have an engineering degree.

Mr. Jackson said under the NJ rules of evidence, this board is not bound by evidence, but if this were in a court of law, an expert witness can provide testimony when they have knowledge, experience and skill that is beyond the ken of the ordinary layperson. So you do not necessarily have to have a degree, license or official school credentials. The board has had that experience where many people are in a field and from their experience, doing it day to day, they have knowledge that is well beyond what an ordinary layperson would have which is what they call expertise. The board can consider that and it is ultimately up to the board whether to accept his knowledge, skill and expertise beyond the ken of an ordinary person and he could be helpful to the board as a finder of fact and providing his opinions.

Mr. Neiman has had professional licensed engineers testifying before this board that there is no traffic on Route 9.

Mr. Liston asked if there was a traffic report prepared and submitted to the board engineer.

Mrs. Weinstein said it was not submitted to the board.

Mr. Scott Kennel was sworn in.

Mrs. Weinstein asked how long he has been practicing in the field as a traffic consultant.

Mr. Kennel said he has been doing transportation and traffic planning for 35 years throughout NJ. He has testified in over 100 municipalities, he has been qualified by the NJ Superior Court on three matters which were land use matters as a traffic expert. He has been involved in NJDOT applications, prepared over 400 access applications, he has been recognized by the Institute of Transportation Engineers and is an active member.

Mr. Neiman said the board will accept his credentials.

Mr. Kennel said a report dated December 15, 2015 was submitted as part of the Ocean County application.

Mr. Liston said the traffic report is signed by John H. Rey, P.E. and Scott Kennel. He said the board deserved to have an engineer testifying.

Mr. Jackson said the board has accepted his credentials.

Mrs. Weinstein asked that he explain to the board the parking calculations, the nature of the mixed uses and how that affects parking.

Mr. Kennel said 169 parking spaces was calculated by the board engineer and they are providing 149, 9 of those spaces are for the shul which would have time limitations as testified earlier. The calculation by the board engineer was based on gross floor area. He agrees, as far as the retail component and documentation provided by the Institute of Transportation Engineers (ITE), their data is also based on gross floor area. That would result in 42 parking spaces for the 8,520 sf of retail space. As far as the office use, the gross leasable area is the basis for the ITE, and the rates are consistent in the ITE parking data with what the Township ordinance of 3.3 spaces per 1,000 sf. When you consider the parking calculations for the leasable area which is approximately 31,100 sf and would require 103 spaces. In total with the retail that would be 145 spaces. It is also important to recognize that the peak periods for the retail and office are not coincidental so there is a parking sharing phenomena that takes place. Secondly, there is an expected internal credit between the office and retail as far as the parking need. Without even taking those credits, his calculations are 145 parking spaces would be required for the office and retail uses, whereas 149 is being provided. And when you exclude the shul, they would be asking for relief of

11 parking spaces which in his opinion is minimal and based on his calculations what is proposed is sufficient to support the uses.

Mr. Rennert asked for the architectural plans of the shul building.

Mr. MacFarlane said if he refers to sheet A-1 of building 2 shows where the shul space would be. The remainder of building 2 is office space.

Mr. Rennert said he wouldn't call this a shul building. This is an office building with a shul for people that work there.

Mr. Herzl inquired the size of the shul.

Mr. MacFarlane said 2,040 sf. It is half of the floor area of building 2.

Mr. Rennert said the shul is only a small portion of this application. His understanding was that one of the buildings would not be used during the day.

Mrs. Weinstein said no, her testimony was clear that the shul was in part of the office building.

Mr. MacFarlane said building 2 has a footprint of 4,080 sf and the shul is occupying half of the first floor.

Mr. Jackson asked if the shul is its own freestanding congregation or is it being utilized by the office workers.

Mrs. Weinstein said it would be its own congregation but she imagines that it would be used by the people that work over there but it would be used by others as well. It would probably be used by different parties during the week than it would be used by during the Sabbath.

Mr. Liston asked that the applicant provide this testimony.

Mr. Yosef Hirsch was sworn in. He said there is a shul currently on the property. That shul will move into the first floor of the building and will be used as it is being used now for just a couple hours a day. During the week it is not a regular shul, it just gets used at night for a few hours.

Mr. Neiman said one of the existing five buildings is a shul now and that same shul will be in the office building.

Mr. Hirsch confirmed.

Mr. Jackson asked if the Rabbi will live on the premises.

Mr. Hirsch said no.

Mr. Herzl asked if the shul will be opened 7 days a week.

Mr. Hirsch confirmed, just at night, on Sabbath and on the holidays.

Mrs. Weinstein said at this point there are no morning services and they cannot have afternoon services because they have already testified that they wouldn't use the property between the hours of 9 am to 8 pm.

Mr. Rennert asked how many spaces would be required if the calculations were based on the Lakewood UDO.

Mr. Kennel said without the shul it would be 160 and with the shul it would be 169. They are providing 149 spaces.

Mr. Magno said he is trying to give the board justification for 149 spaces. Their report clearly states 169 spaces are required based on the UDO. That is why relief is required.

Mr. Rennert said the site plan is wrong as it indicates 149 spaces are required.

Mr. Magno said he is using that based on other data.

Mrs. Weinstein said the legal notice referenced the required number of spaces as per the board engineer's report and are in fact requesting a variance. Mr. Kennel is providing testimony for the justification for the granting of this variance.

Mr. Liston asked what studies were done taking into account the testimony just heard about the use of the shul.

Mr. Kennel said the shul is based on the operations which was testified.

Mr. Liston asked if he knew about them before hand as the board did not.

Mr. Kennel said based on his knowledge, a shul typically has their peak periods early morning and late afternoon and that is usually not consistent with the other two uses on the site. As he said before, there is a shared parking phenomena here and the UDO does not recognize shared parking which was part of his testimony.

Mr. Liston asked if there is any reference in his report to the County about the shul and the parking it will require.

Mr. Kennel said there is not.

Mr. Liston asked if it is fair to say that this is the first time he has heard a description of a shul and its use was tonight.

Mr. Kennel said no, they have had prior discussions concerning the shul. They discussed peak periods which are early morning and late afternoon.

Mr. Liston asked how many people the shul will hold, on a religious holiday for example.

Mr. Kennel said if it is a religious holiday, it is likely that the other uses will not be in operation so they would have ample parking for the shul.

Mr. Liston asked how many people can occupy the shul based on fire code.

Mr. Kennel said it may be in the range of 50 to 60 people.

Mr. Liston asked if there is a religious restriction on the use of the office buildings that would guarantee that on a high holy day people wouldn't be in those buildings.

Mr. Kennel doesn't believe there are any restrictions.

Mr. Liston said he really doesn't know what the parking impact of the shul will be and there is no study which supports the shared parking proposed.

Mr. Kennel said it is based on his experience and the experience of the dozens of projects he has worked on in Lakewood on a regular basis.

Mr. Liston asked if he has ever handled an application like this with these various uses.

Mr. Kennel said off the top of his head this would be the first application with the three uses proposed. He has worked on office and retail uses.

Mr. Neiman opened to the public.

Mr. William Hobday was sworn in. He objected to the variances requested. He said this is a residential area and it is a detriment to the neighborhood.

Mr. Herzl said if building 2 and 3 were merged, a lot of the variances go away. He asked why three separate buildings are proposed.

Mr. MacFarlane said if one larger building was proposed, it would put difficulties on the client in regards to financing and the ability to construct the building but it would certainly reduce the need for a variance.

Mr. Franklin believes if the buildings were shifted, they would be able to get the required parking.

Mr. MacFarlane said that is not the application proposed. They understand the variances requested and have provided their testimony but they think this plan is reasonable and satisfies the zone criteria in that it is proposing the construction of commercial properties where the ordinance allows for it.

Mr. Yosef Binder, 127 Chateau Drive, was sworn in. He lives on the other side of town but he does travel through this area daily and would like to mention that the general policy of having applications with multiple variances is not only affecting the people in the immediate area but it is affecting the town as a whole.

Mr. Neiman closed to the public.

Mrs. Weinstein said this property could be developed with other uses including residential. She wanted to point out that only two of the neighbors have obtained council. Many others were noticed and did not come here tonight.

Mr. Jackson said the number of people present or not present should not affect the decision of the board.

Mr. Liston reiterated that they are dealing with an ordinance which is less than 3 years old which was set up for a reason with specific strictures. The Township Committee made it known in the way they set up the ordinance unusually making things that are normally in other zones waivers, variances. This application comes in asking for eight variances from those strictures. They all know that overdevelopment has been the scourge of this town. It has dampened enthusiasm for living here, it has hurt traffic. Their own engineers confirmed they could design something consistent with the ordinance. He pointed out that the board should not consider the burden of

financing as it has nothing to do with zoning. Under the circumstances, the case hasn't been proven and this is an overdevelopment of the property. He urged the board to deny the application.

Mr. Jackson said it is not the board's role to count the number of variances. He does not think it is appropriate for the board to consider the age of the ordinance that the variances are sought from. The board should weigh the positive and negative criteria, make the balances, consider the reasons for the variances and weigh that in their determination. Every piece of property is specific. The board should look at the uniqueness of this application and consider the testimony. The board can grant all of the relief, none of the relief or some of the relief.

Mr. Neiman said there is a lot of traffic in this area because the County vacated Kennedy Boulevard.

A motion was made and seconded to deny the application.

Affirmative: Mr. Franklin, Mr. Hibberson, Mr. Follman, Mr. Rennert, Mr. Cautillo

No: Mr. Herzl, Mr. Neiman

2. SP 2181 River 1161, LLC

River Avenue

Block 1064, Lot 4

Preliminary and Final Major Site Plan for an addition to an existing grocery store

A motion was made and seconded to carry this application to the December 20, 2016 meeting.

All were in favor.

3. SD 2163 ARM Developers, LLC

Prospect Street

Block 445, Lots 17.01-17.12 & 18

Preliminary and Final Major Subdivision to create thirty-two lots

A review letter prepared by Remington, Vernick & Vena Engineers dated October 6, 2016 was entered as an exhibit.

Mr. Neiman and Mr. Follman left the meeting, Mr. Grunberger arrived at the meeting and Mr. Rennert stepped down.

Mr. Magno said there were two previous applications on this site. The applicant tried to make a better layout by not having any lots front on County roads.

Mrs. Miriam Weinstein, Esq. said this application combines two previous approvals and improves them in conjunction with feedback they received from the board engineer. The initial approval called for driveways on lot 17.01 through 17.12 to front on Prospect Street. Ocean County imposed a deceleration lane across the property's Prospect Street frontage which is why they went back to the drawing board. The lots were flipped and now the decks front Prospect Street and the driveways are on the internal roadway which will be accessed off of Massachusetts Avenue. In addition, by combining the two projects into one with a single developer, the developer is providing a much needed shul for this area.

Mr. Brian Flannery, P.E., P.P. was sworn in. Four exhibits were entered into the record: A-1 is the map submitted showing the proposed development, A-2 is the prior approval on lot 18, A-3 is the prior approval on lot 17 and you can see how they are strange pieces of property. Lot 18 backed up to Mrs. Payne's property and she was here because it has a row of townhouses behind and it went to court. A-3 has all of the driveways coming out to Prospect Street. The County has a deceleration lane there and they had to combine driveways. Both of these

applications were kind of a mess but they were approved. Fortunately, the same applicant bought the two properties and now they have the odd lines in the back fit together and they can do something that makes more sense. A-4 is a map that shows the two approvals together so the board can compare that to A-1. The board engineer made the suggestion to combine these lots and now they have an area in the middle where they can fit a shul. There will be a private 24 ft wide driveway for the units on lot 17. The density permitted is 8 units per acre, they are proposing 7.8 units per acre.

Mr. Franklin said four spaces are not provided for each unit.

Mr. Flannery said in front of the units are spaces and on the opposite side there is additional parking and those add up to the ordinance requirements. The private driveway would be owned by a homeowner's association. The intention would be that the cul-de-sac be a public road if accepted by Public Works.

Mr. Herzl asked if Public Works would pick up garbage on the private road.

Mr. Flannery said they do have approval to pick up the garbage cans on the private driveway.

Mr. Herzl asked if there are any variances.

Mr. Flannery said minimum front yard setback variances are requested on both Prospect Street and Massachusetts Avenue as well as minimum rear yard setbacks for the synagogue and the decks for lots 18.02 and 18.03. It is his testimony that the variance for the decks make sense but if the board does not want to grant those variances, they could propose patios.

Mr. Herzl asked if any parking is proposed for the synagogue.

Mr. Flannery said 6 spaces, 2 of them being handicapped. There is also a playground area. The synagogue and the playground is something that was not part of the original application. The previous approvals proposed 29 lots and they had a vacant area along Prospect Street that at some point would have been developed so it would have been 31 units so this application gets them one additional unit. The applicant did agree to a 4 ft high fence along the retaining wall along her property and the board engineer would have required that anyway.

Mr. Herzl opened to the public.

Mr. William Hobday, 30 Schoolhouse Lane, was sworn in. He objected to the variances requested. He is concerned about the driveway access onto Massachusetts Avenue. He asked how close the intersection is to the property.

Mr. Flannery said it is 150 ft to the intersection. The applicant has met with the County and they are much happier with this design than the prior design which had driveways coming out onto Prospect Street. This has the availability that traffic can get out to Prospect and Massachusetts and it makes the turning movements all in one place 150 ft from the intersection. So from a traffic safety standpoint, it is a much improved design. There is a traffic report submitted to the County and this meets their requirements.

Mr. Herzl asked if the driveway was one way then would the flow of traffic be better.

Mr. Flannery said his opinion is that on Massachusetts Avenue, right in and right out is the appropriate movement. That is what's proposed and approved by the County. Additionally, there is only a right out onto Massachusetts.

Mr. Magno said the County will be putting a light at that intersection.

Mr. Flannery said that is correct and this applicant is required to pay his fair share of that light as well as certain land and easements areas in order to make the light and all of the widening work.

Mr. Hibberson asked the width of the egress onto Prospect Street.

Mr. Flannery said the plan showed 9 ft but they would be widening it to 15 ft as a one way.

Mr. Hobday said the roadway will be 24 ft wide. He asked if that will be an issue with trash collection and emergency vehicle access.

Mr. Flannery said the cul-de-sac will be 32 ft. Any fire for the units on the private driveway can be accessed via Prospect Street. RSIS also has roads that are allowed at only 18 ft wide.

Mr. Hobday said 32 ft should be standard because people tend to park on the street even if not allowed.

Mr. Franklin said they try to make it their standard as it gives you four 8 ft lanes. This way the school buses can pass each other even with on-street parking.

Mr. Flannery said it is a Lakewood standard but it exceeds RSIS and it's actually a de minimis exception from the RSIS because you're not supposed to exceed the standards either.

Mr. Grunberger asked if the 24 ft includes the parking spaces along the road.

Mr. Flannery said no, they are in addition.

Mr. Hobday asked if each unit will have their own cans and if there will be any issues with garbage trucks coming down the 24 ft wide private drive.

Mr. Flannery said each unit will have its own garbage can. The applicant already received approval from DPW.

Mr. Franklin said there are two 12 ft lanes.

Mr. Flannery said DPW wants a gate at each of the rear yards and they would store their garbage cans in the rear and bring them out to Prospect Street.

Mr. Hobday again stated that the board should not grant these variances as it is in a highly congested area.

Mr. Magno said this application has less variances than the previous applications. The applicant decided not to develop those projects which are already approved. He is reducing the variances and making the project safer by not having 12 driveways come out onto Prospect Street.

Mr. Klein, 189 Chateau Drive, was sworn in. He asked if a bus shelter can be provided similar to Chateau Woods.

Mr. Flannery said the applicant would work with the board engineer during resolution compliance and if a bus shelter can be added, he would be happy to do so.

Mr. Herzl closed to the public.

A motion was made and seconded to approve the application.

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

4. SP 2199 Harold Herskowitz

Third Street

Block 91, Lot 6

Preliminary and Final Major Site Plan for a 5 story office and retail building

Mr. Jackson said he has had discussions between Mr. Gasiorowski and Mrs. Weinstein concerning the zoning of this property. Apparently, the township zoning map shows this property in the ROP, not the B2 zone. He does not think the board should hear this case until that gets straightened out.

Mr. Neiman said the ROP would require parking.

Mrs. Morris confirmed, it is not just this property. It is a line that they believe was transcribed in error when they made the new zoning map in 2006. The zoning officer and the tax records have this as B2 but the map on file says it's in the ROP zone.

Mrs. Miriam Weinstein, Esq. said she has done some further research since she spoke to Mr. Jackson. It is really within the purview of the zoning officer to make the determination. The zoning officer does indicate that this property is in the B2 zone. On the 1993 zoning map, this property was listed as B2. The 2006 map appears to list it as ROP but there were no ordinances passed in the interim which would have changed the property to the ROP zone which is the reason why the zoning officer has indicated this property is in the B2 zone.

Mr. Neiman said he is going to follow the board attorney's recommendation and not hear this until this is worked out.

Mrs. Morris said the township did prepare a new zoning map that they are waiting for the committee to adopt which also copied the inaccuracies from 2006.

Mrs. Weinstein thinks this affects a lot of other properties that the board has probably already granted approvals on thinking they were in the B2 zone.

Mr. Jackson said a resolution will be prepared indicating this application has been administratively dismissed without prejudice.

A motion was made and seconded to administratively dismiss the application without prejudice.

Affirmative: Mr. Franklin, Mr. Hibberson, Mr. Herzl, Mr. Neiman, Mr. Follman, Mr. Cautillo

Abstain: Mr. Rennert

5. SD 2165 Isaac Anemar

Gudz Road

Block 11.02, Lot 15

Minor Subdivision to create two lots

A review letter prepared by Remington, Vernick & Vena Engineers dated November 7, 2016 was entered as an exhibit.

Mr. Rennert returned to the dais.

Mr. Magno said a minimum lot width variance is required for the lot that is fronting on Gudz Road. He asked what the purpose of the offset line is in the rear of the property.

Mr. Glenn Lines, P.E., P.P. was sworn in. A lot width variance of 69.54 ft whereas 90 ft is required is requested on lot 15.01. The owner of lot 15.01 will remain and new single family dwellings are proposed. The reason for the variance is because the owner will remain and this is the lot configuration he prefers. It is a C-2 variance and is not based on hardship. The little offset in the back was to give a little more area for a playground, swing set, etc. A map of the area indicates 25 lots are 75 ft or less and 35 lots are less than 90 ft so over half of the lots in the area are non-conforming.

Mr. Rennert asked how many lots are less than 69.54 ft.

Mr. Lines said other than the flag lots, the 70 ft would be the narrowest lot. They could modify the lot line by twisting it a bit and provide a fully conforming 90 ft lot width. It actually doesn't provide any more buildable area on lot 15.01 but it does comply with the 90 ft lot width at the setback line perpendicular to a line from the midpoint of the front property line to the midpoint of the back property line.

Mr. Rennert asked if the home will remain.

Mr. Lines confirmed, it has to be taken down.

Mr. Rennert asked why this layout is requested when it could be variance free if the lot lines were rearranged.

Mr. Lines said the owner prefers the shape of the lot that he is retaining and would allow a slightly wider house than if they twist the lot line.

Mr. Rennert said he is starting a trend with this 70 ft lot width variance.

Mr. Lines said there are a lot of existing 75 ft wide lots in the area.

Mr. Rennert said they would be the only lot with a 70 ft lot width in the area.

Mr. Lines confirmed.

Mr. Grunberger asked if they could make the lot 75 ft wide.

Mr. Rennert asked how many 75 ft wide lots are in the vicinity.

Mr. Lines said 25.

Mr. Rennert feels more comfortable with the 75 ft wide lot.

Mr. Lines said if they make the lots 75 ft wide, the little notch in the back would get bigger because they need to conform to lot area. They would move the lot line 15 ft over so the new lot 15.01 would be 75 ft wide.

Mr. Rennert asked if the applicant would have to come back before the board.

Mr. Magno said if the board wants the 75 ft wide lots he believes it is clear enough that the plan could be revised and submitted for compliance.

Mr. Lines said there would be plenty of room to build a house within the 75 ft with the 10 ft line offset.

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

A motion was made and seconded to approve the application. The lot widths would be 75 ft minimum, no new variances are being created as a result of this change.

Affirmative: Mr. Grunberger, Mr. Franklin, Mr. Hibberson, Mr. Herzl, Mr. Rennert, Mr. Cautillo

6. SD 2170 Thomas Rosenberg

Ridge Avenue

Block 223, Lots 83.03 (future 83.05) & 89

Minor Subdivision to create three lots

A review letter prepared by Remington, Vernick & Vena Engineers dated November 10, 2016 was entered as an exhibit.

Mr. Glenn Lines, P.E., P.P. was sworn in. He said this is basically a lot line adjustment between three existing lots.

Mr. Magno said this is between Ridge Avenue and Highgrove Crescent. Variances are requested including minimum lot area, lot width, front yard, side yard and aggregate side yard setbacks. Along Ridge Avenue, there is not enough room to provide four off-street parking spaces so that would require relief as well. A design waiver is requested from providing street trees.

Mr. Lines said a plan was prepared a few years ago which had duplexes with a private road and it was way overdeveloped so that piece of land which is sort of landlocked is being subdivided off of lot 89.01 and added to the Highgrove Crescent lot. In addition, what is shown as lot 88.01 is an existing 7,650 sf lot which they would be increasing to 8,500 sf. The existing lots on Ridge Avenue are 50 ft wide. A map of the area indicates numerous numbers of undersized lots, many of them have 50 ft frontage. The variances requested for side yard setbacks are to the existing structures as they are not proposing to tear them down. They do have 14 ft on one side of the house so they can get cars into the backyard and that is currently where the people park. They do not park on Ridge Avenue. They would either park on the side of the house or the backyard. There is enough room on these properties to fit four parking spaces.

Mr. Rennert said then they are not requesting a parking variance.

Mr. Lines confirmed. Predominately this is an R-7.5 neighborhood.

Mr. Rennert said this is an R-10 zone but a lot of the lots conform to R-7.5 standards.

Mr. Lines said that is correct. Technically they are requesting two lot area variances which they didn't have before.

Mr. Rennert asked if there are any plans for the 42,000 sf lot.

Mr. Lines said there are no plans at this time. The owner will be building a house on the Highgrove Crescent side and they want a large lot.

Mr. Rennert asked if the applicant would agree to move the lot lines further back into the Highgrove Crescent lot in order to eliminate the minimum lot variances for lots 88.01 and 89.01.

Mr. Lines said it would be encroaching into the area where the owner would like to build his pool.

Mr. Rennert said the applicant is requesting variances in a very highly dense neighborhood. He would like to try and eliminate any new variances.

Mr. Lines said they would comply if that is what the board wants.

Mr. Magno said the applicant is not asking for any off-street parking relief including the two existing lots.

Mr. Lines said they have four spaces on those lots. They are not houses that are big enough to have basement apartments. These are very small 50 to 60 year old homes. They probably do not need four but they have enough room for four.

Mr. Magno said no improvements are proposed for those two lots so they would have to provide an improvement plan in order to provide parking for those lots so they do not need relief unless the applicant wants the board to grant relief now.

Mr. Lines said they would provide a plan to the board engineer which would outline where the parking spaces are on the property.

Mr. Magno said there is an existing well on future lot 83.05. It looks like the well has equipment that services the lot which was part of the previous subdivision.

Mr. Lines said it was probably for irrigation. If it is in the way then they would close it according to DEP regulations.

Mr. Magno said his concern is that it looks like it doesn't belong on this lot. He suggested that the surveyor check it.

Mr. Lines said it could not be a drinking water well as it is not permitted because there is public water. It is probably an irrigation well and it will either be removed or it will be used by the new lot owner. It probably was addressed by the prior subdivision.

Mr. Rennert opened to the public.

Mr. Joshua Schmuckler, 61 Canary Drive, was sworn in. He had asked the applicant why he prefers this layout and his reply was he would rather have a larger backyard with a pool than to create more lots.

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

Mr. Rennert asked if the houses were demolished without this approval, would they be able to build a new home with all of the setback variances.

Mr. Lines said no, they could not build the house exactly where it is today. They would have to go to the Zoning Board to get new variances.

Mr. Rennert said then the board is granting very large variances, although they are existing, to something that is probably not going to be there in five years.

Mr. Jackson asked if this would exacerbate these variances.

Mr. Magno said yes as they are taking the one oversized lot and making it undersized. He could solve that by making the two lots 10,000 sf.

Mr. Lines said realistically if you were to tear down the two houses, they would get moved back so the front setback variance is going to be eliminated.

Mr. Rennert asks if the applicant agreed to come before the board if any when these two lots are redeveloped.

Mr. Jackson said as it stands now, if they wanted to rebuild any of these houses they would have to go before the Zoning Board. The board is concerned they are exacerbating pre-existing conditions.

Mr. Rennert asked what the R-7.5 requirements are for side yard.

Mr. Lines said 7 ft on one side and a total of 15 ft.

Mr. Rennert asked if that could be provided on these lots.

Mr. Lines agreed.

Mr. Jackson is not sure if the board can give a variance going forward to preserve a certain zoning requirement. You can grant a variance from the existing regulations but he does not think the board can impose R-7.5 criteria going forward.

Mr. Magno said right now their aggregate is over 15 ft. He doesn't see the point.

Mr. Jackson said in most places if you have a non-conforming lot even if it was granted a variance and you change the house, demolish the house and abandon those approvals by abandoning that configuration and those variances don't continue because it was based on a certain house but apparently Lakewood doesn't work that way. The resolution can recognize that the prior non-conforming bulk standards can stay but if the building is destroyed, changed, abandoned in which case they would have to apply for variances.

Mrs. Morris hasn't seen it on a filed map before so she doesn't know how it would be referenced.

Mr. Jackson said there is also a school of thought that if you have a non-conforming structure and you take land away from it you are exacerbating the non-conformity. That really relates more to uses than bulks but he doesn't see why it wouldn't apply to bulks as well.

Mr. Lines understands but they would also like to request the R-7.5 standards for those lots.

Mr. Jackson said if you increase the footprint of the house then the zoning officer says the applicant can hold the setbacks within the allowed footprint.

Mr. Schmuckler said the zoning officer will allow, even if the house is demolished past 12 months, the owner to retain those variances.

Mrs. Morris said even if the board is not granting it, technically they already have the setbacks.

Mr. Jackson said they have it on the lots now but not once the lots are reconfigured. In most places, that is not the way it works. Unless Lakewood has something in the ordinance that says the contrary, if the house is abandoned or knocked down, you don't continue those variances.

Mr. Rennert asked if the applicant would agree to conform to the R-7.5 standards for the front and side setbacks.

Mr. Jackson said a building envelope would be drawn on the plan and approval would be subject to that envelope.

Mrs. Morris inquired about lot coverage.

Mr. Lines said they would conform to all of the standards of the R-7.5 zone.

Mr. Jackson said the plan would not create any new variances except for the undersized lot.

Mrs. Morris said now technically the board is granting a front, side, rear setback.

Mr. Rennert said it is much better than what is currently there.

Mr. Franklin said if the board doesn't approve this then it would be R-10.

Mr. Jackson believes Mr. Franklin is arguing that the board is not going to facilitate this because that would push things toward meeting the R-10 zoning requirements if the houses were rebuilt.

Mr. Herzl said the applicant could build two houses right now.

Mrs. Morris said they could get the setbacks they have right now but not necessarily the coverage.

Mr. Rennert felt they would be improving it by giving the R-7.5 but he sees Mr. Franklin's point.

Mr. Lines said they have two lots that are existing on Ridge Avenue and they could go tomorrow and get two brand new houses 13 ft off of Ridge with the existing setbacks up to the lot coverage which is 30% for the R-10 zone. He is agreeing with the board in saying they would increase the lot areas to 10,000 sf, they would provide a conforming front yard setback for the R-7.5 zone and they would provide conforming side yard setbacks with the R-7.5 as well as lot coverage if and when those houses get demolished and rebuilt. The benefit of granting the approval is that the board is guaranteed that when those houses come down instead of being 13 ft off the road, they will be at least 25 ft and more like 40 ft like most of the houses are so they can get four spaces in the front yard.

Mr. Jackson asked about the ordinance that says you can rebuilt with the same setbacks. He thinks it is unique in Lakewood.

Mr. Lines said it is the zoning officer's interpretation of tearing down an existing home and rebuilding it.

Mr. Brian Flannery, P.E., P.P. was sworn in. The ordinance says that you could extend the house and keep that same setback, you can't increase the degree of non-conformity with that setback but you can increase the length and that is the way it was adopted. Lakewood is different than other towns.

Mr. Rennert closed to the public.

Mr. Lines said he is not sure if the applicant is agreeable to 10,000 sf lots. They are increasing a 6,675 sf lot to 8,500 sf lot and they are providing two 8,500 sf lots which they feel is more than in keeping with the neighborhood.

Mr. Schmuckler wants the board to understand that the applicant is going from a 6,600 sf lot to a 8,500 sf lot. He is going from 5 ft setbacks to R-7.5 setbacks. He is doing this in order to fit a pool in his backyard for personal use and does not intend to create any additional lots.

A motion was made and seconded to approve the application. Any new homes would have to conform with R-7.5 requirements.

Affirmative: Mr. Grunberger, Mr. Hibberson, Mr. Herzl, Mr. Rennert

No: Mr. Franklin, Mr. Cautillo

7. SD 2160 Madison Holdings LLC

East Fifth Street

Block 236, Lots 23, 24, & 29

Minor Subdivision to realign lot lines for three lots

A motion was made and seconded to carry the application to the December 6, 2016 meeting.
All were in favor.

8. SD 2144 Chaim Abadi

Shady Lane Drive

Block 12.01, Lots 7 & 11

Minor Subdivision to create three lots

The applicant requested this application be adjourned until further notice.

9. SP 2208 Lakeside Holdings, LLC

Airport Road

Block 1160.01, Lot 2

Preliminary and Final Major Site Plan for an office building

A motion was made and seconded to carry the application to the December 6, 2016 meeting.
All were in favor.

10. SD 2168 Aharon Mansour

Park Avenue

Block 232, Lot 12

Preliminary and Final Major Site Subdivision to create six lots

A motion was made and seconded to carry the application to the December 6, 2016 meeting.
All were in favor.

11. SD 2169 Locust Holdings, LLC

Evergreen Boulevard

Block 1086, Lots 9-14

Preliminary and Final Major Subdivision to create twenty lots

A motion was made and seconded to carry the application to the December 6, 2016 meeting.
All were in favor.

12. SD 2172 Mark Properties, LLC

Pine Boulevard

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

Minor Subdivision to create two lots

A motion was made and seconded to carry the application to the December 6, 2016 meeting.
All were in favor.

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