

## **1. FLAG SALUTE & CERTIFICATION OF COMPLIANCE**

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

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

## **2. ROLL CALL**

Mr. Garfield, Mr. Sabel, Mr. Franklin, Mr. Isaacson, Ms. Zografos, Mr. Meyer, Mr. Herzl

## **3. SWEARING IN OF PROFESSIONALS**

Mr. Terrance Vogt, P.E., P.P., C.M.E. was sworn.

## **4. MEMORIALIZATION OF RESOLUTIONS**

### **1. SD 2338 Clearview Equities, LLC**

529, 537, 547 Ocean Ave, 20 Linden Ave, 518 & 520 Bergen Ave  
Block 189.02, Lots 156-158, 173.01, 174.01, 174.02  
Preliminary and Final Major Subdivision to create twelve lots

A motion was made and seconded to approve the resolution.

## **5. ORDINANCES & CORRESPONDENCE**

### **1. R2018-34 – addition of hotels to the permitted uses in the B-5 zone**

Ms. Morris explained this is an ordinance for an addition of hotels to the permitted uses in the B-5 zone. They have considered this before and it is her understanding that the judge overturned the adoption of that previous ordinance so the Township is going through the motion again.

Mr. Adam Pfeffer, Esq. said it was not thrown out by the judge. As the board is aware, they have 35 days to comment on an ordinance and apparently there was not a written report sent back to the Township Committee. In the past, the board did recommend adopting the ordinance to the Township but there was an objector who challenged the ordinance which was subsequently withdrawn and the Township is now going forward to adopt this ordinance again.

Mr. Robert Ulaky, Esq. said his office represented the board as conflict attorney on the application which is now in litigation. In the zone, the permitted uses include motels. The Planning Board accepted jurisdiction and approved a hotel. An objector then filed suit contesting the approval and now there is this ordinance proposal to include in the zone a permitted use of a hotel to clarify the situation.

Mr. Pfeffer confirmed that is correct. The board had originally recommending adopting the ordinance but there was not a written report sent to the Township within the 35 days so it was challenged again. Additionally, it was supposed to be corrected during the Master Plan hearing but through an error, the same exact language was copied and pasted into the new Master Plan which only talks about motels.

Mr. Vogt said the only material difference in the UDO now and then was that a hotel has an interior entrance and interior doors and a motel has exterior doors. That is the only material difference. Secondly, in the middle of this litigation, there was a court case found that actually backed up the Township which basically said that a use doesn't have to be exactly stipulated in the zoning ordinance. If it is a similar use, essentially close enough and this clearly fits under that case. As part of their defense, they did research in terms of how many motel zones there are in the Township, there are eight, and how many motels have been approved in Lakewood in the last 30 years, which is zero.

Mr. Herzl said the board has approved hotels.

Mr. Vogt affirmed, motels are not functional in this area based upon the market.

A motion was made and seconded recommending the Township Committee adopt the ordinance.  
All were in favor.

## **2. SD 1946 H & H, LLC - Revisions to approved playground equipment**

Ms. Morris said they have received a request to modify the playground equipment shown on the plans. The board has pictures of the equipment which has already been installed as well as a list of the equipment that has been installed and a letter from some of the HOA members indicating they do not want additional equipment.

Mr. Vogt can't tell the board if what was installed complies with any particular code. All he knows of the situation is this is what was installed and they have provided information indicating the homeowners feel this suffices.

Mr. Sabel asked if the HOA was unanimous in this decision.

Mr. Jack Mueller, 641 5<sup>th</sup> Street, developer of the project was sworn. The HOA does not want the additional equipment. They are here if the board would like to ask them. The HOA wanted cash instead which they put into an escrow account subject to the board's approval.

Mr. Brian Flannery, P.E. P.P. was sworn. He said it not required by ordinance. It is just something shown on the plan and the end users want something different.

Ms. Zografos said it looks like the equipment not installed is more for adults than children which she doesn't find appropriate.

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

## 6. PUBLIC HEARING

### 1. SP 2109 RD Lakewood, LLC

New Hampshire Avenue and Pine St Block 961.01, Lots 2.02 & 2.03  
Extension of a Preliminary and Final Major Site Plan for a bank and a hotel

Mr. Adam Pfeffer, Esq. said this application is currently in litigation.

A motion was made and seconded to approve two one year extensions.  
All were in favor.

### 2. SD 2288 Locust Holdings, LLC

Locust Street Block 1086, Lot 6-15, 29, & 30  
Preliminary and Final Major Subdivision to create twenty-nine lots

*A review letter prepared by Remington & Vernick Engineers dated August 8, 2018 was entered as an exhibit.*

Mr. Garfield stepped down for this application.

Mr. Brian Flannery, P.E., P.P. said at the last hearing, they had discussed the variances required and the access. He has four new exhibits he would like to enter into evidence as the applicant has decided rather to ask for the variance for the side yard setback on the triplex, they would make it smaller in order to comply. Exhibit A-6 is a copy of the application and as the board recalls, the variance was limited to the triplex unit. They had proposed an 8 ft side yard setback whereas 20 ft is required with three 29 ft wide units.

Mr. Herzl asked if this is now a variance free application.

Mr. Flannery confirmed. Exhibit A-7 shows 25 ft wide units with the required 20 ft side yard setback. The other question was with respect to the development of the roadways. Exhibits A-8 and A-9 are copies of tax maps showing the other application which came in for June. An application was submitted to the board secretary which would improve June out to Vermont. The question was with respect to the ultimate development of the roads in that area and what is best for traffic circulation. Exhibit A-8 is option A which is what they are proposing and it is consistent with what Harrogate requested. If the board doesn't like that plan, Exhibit A-9 proposes improving Evergreen. In either case, there would be one entrance on Vermont and one entrance on Locust. Being that this is now a by-right application, he doesn't think A-9 has any possibility of being the choice but he wanted to point out to the board so they could see the traffic circulation. There are roughly 30,000 bus stops for private schools and approximately 11,000 of them pick up one student. So under A-8 a bus would have less places to stop and a bus under A-9 would have many more stops.

Mr. Herzl asked what exactly are they proposing.

Mr. Flannery said they would improve the road to Evergreen Boulevard and provide a 45 ft wide radius for buses to turn around and they would continue to the road so that when the next development behind them is constructed there will be a through street.

Mr. Sabel asked if they are not planning to improve June Street for this application.

Mr. Flannery said no, they would provide emergency access in the form of a cul-de-sac which slightly exceeds RSIS standards to allow buses to turn around, develop the frontage on Evergreen up until June in order to respect the wishes of Harrogate.

Mr. Sabel said he had done some research and a bus does not fit in a 45 degree angle. A bus needs at least an 80 ft diameter in order for a bus to make a full circle.

Mr. Flannery said they are proposing a 90 ft diameter. He had looked at the some of the newer developments and the number of children per unit are less than two each so they are not looking at a couple hundred kids initially for this application. By the time people move in, June will be improved.

Mr. Herzl asked why Farry isn't being developed.

Mr. Flannery said it is a little problematic being at the intersection and that is something that the County and State are going to have to decide.

Mr. Sabel questioned how they are proposing a cul-de-sac on Township property.

Mr. Flannery said right-of-ways are not Township property. The right-of-ways are for access for the public and the adjoining property owner. The property owner actually owns it and if the Township isn't going to build the road then it goes back to the property owner.

Mr. Herzl asked if Vermont goes all the way to Route 70.

Mr. Flannery confirmed and there is a traffic light at Route 70 and the County is working on a traffic light at the corner of Vermont.

Mr. Herzl asked how close Route 70 is from June.

Mr. Flannery said 200 ft. He prefers the traffic engineer provide testimony pertaining to that.

Mr. Herzl opened to the public.

Mr. Shaya Klein was sworn. He is with the HOA of Locust Grove Development which is a few hundred feet away. He is also a school bus driver. School buses only having one means of access is going to create crazy traffic.

Mr. Herzl asked if the cul-de-sac would be sufficient for a bus to turn around.

Mr. Klein does not believe so. He thinks the buses will stop by Woodbine and will not go into the development even if there is a way out to Route 70 which is going to create traffic. The traffic report was done a year ago and it should be updated as many families are moving into the neighborhood. He also argued that the average family has four or five children, not two. This development does not propose a synagogue or playground which means people are going to be trying to cross these dangerous roads.

Mr. Shabsi Glick, 42 Harmony, was sworn. He is a bus driver and he wanted to point out another issue. He has lived here for four years and the shul which was built in his development was too small and currently they have been in a trailer with no place to move. These small developments are going to come in without providing any place for the public to pray and that means other shuls in the area are going to be overcrowded. He doesn't think it is fair to build this amount of units without providing anything for the public. He is concerned about having access to Vermont as it is a very dangerous road.

Mr. Herzl questioned if the board can approve this application subject to June being improved.

Mr. Vogt asked if he is talking about the secondary road access.

Mr. Herzl said yes.

Mr. Vogt believes that is a requirement in RSIS. It is their opinion that for an application of this size, it requires a secondary access which was presented to the board.

Mr. Jackson said it would be subject to that getting built and that relates to health, morals and general welfare. The applicant has to build that secondary access one way or the other. He is not sure it wouldn't be beyond the board's authority to require that but it has to be built and it has to be a condition of approval.

Mr. Flannery said with respect to the roadways, RSIS governs for residential properties and the RSIS requires an emergency access, they don't require a fully paved access that school buses can go on but the applicant would be willing to stipulate that he will not ask for certificate of occupancies on any of these units until that roadway is approved and bonded, but not when it's built. That way there is a timeframe so that the board is comfortable this is going to get built.

Mr. Vogt understands what he is proposing but at a minimum, the emergency access would have to be constructed.

Mr. Flannery confirmed it would be.

Mr. Vogt said if the resolution includes that condition then he is fine. They have to have a secondary emergency access at a minimum prior to any COs being issued.

Mr. Sabel questioned how many units there must be to require a clubhouse/shul.

Mr. Vogt isn't sure what the law is about a shul. He knows at one time they had spoken about recreation and the applicant was going to make a contribution.

Mr. Flannery confirmed. The ordinance clearly says that between 25 and 30 units there is a contribution required because you are not going to build the kind of park that is beneficial and you pay \$500 per unit. Any developer's agreement or any approvals should stipulate that this applicant is responsible for \$500 per unit as a contribution to recreation and there is also a park right around the corner. The Township will use that money as they see fit to provide recreation for residents in general.

Mr. Vogt said that addresses the recreation issue but not the shul.

Mr. Flannery said there is no requirement in the ordinance to provide a shul.

Mr. Herzl questioned even if there over 25 units.

Mr. Flannery said if there are 25 units then you have to set aside either 5% for recreation or make a contribution. The developers know in order to sell these units, people need somewhere to pray. The Township can't really put in the ordinance that you need to build a shul. This applicant understands it is an issue he needs to deal with and he fully intends to either develop with some of the other applicants a shul on a separate site or he'll have to do a basement shul because he can't sell the units if there is nowhere for people to pray.

Mr. Sabel said in the last few months they have had two applications in this area and he has had people in the community begging them they need a shul because the developers are building 70 to 80 houses without a shul nearby. This is going to be the same situation and the Planning Board is going to be blamed.

Mr. Jackson said what they talked about was in terms of having an appropriate recreation center. It has been the experience of this board that when you have a concentration of people, they need some sort of area for their community needs.

Mr. Pfeffer said the applications Mr. Sabel is referring to were granted multiple variances but this application is a by-right application.

Mr. Flannery said the residents approaching this board should be going to the governing body who passes the ordinances.

Mr. Sabel said the board should be able to do more.

Mr. Flannery said if the board wants a basement shul, the applicant knows he would have to do that at a minimum anyway and he would agree to it. At this point he doesn't know which unit it is going to go in because when he sells them, the potential buyers would indicate where it makes the most sense. At this point he is not required to but he certainly understands he needs to do that and he is willing to say he would provide a basement shul or some other facility dedicated that is appropriate. It has been done in the past, for example, in the Prospect Street area and it has worked well.

Mr. Shlomo Klein was sworn. The applicant has indicated this is a by-right application but they are also asking for a waiver from improving Evergreen Boulevard. The Township did not approve vacating this road because it is a road which will be needed. He argued that this road should be improved even if Harrogate does not want that.

Mr. Joseph Hanstater, 29 Harmony Drive, was sworn. His greatest concern is safety of his children and other children in the area. He asked that they do everything possible to minimize traffic and any safety issues.

Ms. Joanne Kashansky, 137 Sophie Lane, was sworn. She is president of the board of trustees at Covington Village which is a 55+ condo community next to Harrogate. She has lived in the area for 13 years and life on Locust has changed greatly since then due to the numerous developments being built. She is greatly concerned about safety and opposes this application.

Mr. Vincent Cioffi, 638 Sophie Lane, was sworn. He expressed his concerns about traffic on Vermont and Locust.

Mr. Craig Fields, 636 Sophie Lane, was sworn. He is greatly concerned about safety. He said the speed limit on Vermont and Locust is 45 mph which he believes to be too high.

Mr. Herzl closed to the public. This is a by-right application but the board is trying to make the development as safe as possible.

Mr. Pfeffer said the applicant agrees, even though it is a different application, that no COs can be issued on this development until such time that June is bonded for.

Mr. Scott Kennell, traffic expert, was sworn. Since the last meeting, his firm has performed additional traffic counts at Vermont and Locust. These counts affirmed the traffic volumes which he utilized in the analysis presented to the board in their traffic study dated September 26, 2017. The two-way traffic volumes on Locust are approximately 350 vehicles. Given the many other roadways in the area, that is a low volume when you consider thousands of vehicles on Route 70 in one direction, never mind two directions.

Mr. Herzl asked what his projections would be after this development is built.

Mr. Kennel said they projected that on this portion of Locust, there will be approximately 450 to 475 vehicles during peak hours. As testified previously, the County is designing the traffic signal at the intersection of Locust and Vermont knowing full well the proximately to the Route 70 intersection but there are design techniques which allows them to be able to have a signal at that location. He also considered the traffic that will be generated by the development on the old driving range which again presented and resulted in a level of service 'B' at the site driveway.

Mr. Herzl asked if he performed an analysis for June and Vermont.

Mr. Kennel said no but given the application was just submitted, he will be preparing a traffic report for those roads as well.

Mr. Herzl thinks it is very essential to know if people could go out over there.

Mr. Kennel understands and based on the traffic volumes, that will be approved by the County in his opinion. Vermont is a County road and so is Locust so they are subject to County requirements and review. There was also a question concerning the number of left turns being made on south bound Vermont onto Locust. During peak hours, between 8:30 and 9:30 am, it was approximately 50 vehicles and during afternoon peak hours, between 4:45 and 5:45 pm which equals approximately one vehicle per minute making that south bound left.

Mr. Sabel asked if that is alot.

Mr. Kennel said in his opinion, it is not and the County will design to account for that. His understanding is they are going to provide a dedicated left turn lane on Vermont.

Mr. Sabel asked if he thinks it will be dangerous making a left turn from June onto Vermont.

Mr. Kennel said that will be evaluated. It is likely the County will make that a right in/right out due to the proximately to Route 70.

Mr. Herzl said the board would most likely request that as well as it is too close to Route 70.

Mr. Kennel said the County design of the traffic signal takes into account that Vermont is going to be improved between Route 70 and Chestnut sometime next year.

Mr. Vogt confirmed that is correct.

Mr. Sabel questioned if he considered all of the new traffic coming in for the new developments under construction.

Mr. Kennel said he factored those into his analysis. The development west of the driving range has direct access to Route 70.

Mr. Sabel said only one way in.

Mr. Kennel said yes, there is a public roadway behind the hotel which comes out to Route 70. Those residents will have a direct access out to Route 70 and will not be coming out to Locust. They can of course use Locust if they so desire to go to other destinations.

Mr. Sabel asked if there is going to be access from that development to Locust.

Mr. Kennel said no, not the westerly development.

Mr. Flannery marked sheet 145 of the tax map as exhibit A-10. The plan for the driving range development which is currently under construction was marked as exhibit A-11. He commented that it was also a by-right application.

Mr. Klein asked if it is a better option that Evergreen be fully improved.

Mr. Kennel said in his opinion, no. It is his opinion that the plan presented is superior than aligning access across from Harrogate's access which is a driveway and not a street. They are creating a street east of Harrogate so in his opinion the design proposed is superior.

Mr. Klein said his question was not concerning what would be better for Harrogate or this development. He is concerned about traffic as a whole on the south side Lakewood.

Mr. Garfield expressed his concerns about traffic in the area.

Mr. Franklin said he would like the basement 7 ft high and to eliminate the third floor completely and set the tresses down to the second floor so there isn't an 8 ft ceiling above it. This way there won't be extra bedrooms in the attic or in the basement.

Mr. Flannery said they are here for a subdivision application. The architectural plans submitted are typical plans as the checklist requests architectural plans. The Township attorney has said in the past, on a conforming application there is no reason to even look at the architectural plans. This application is to create lots and then they would conform to the ordinance and whatever the ordinance allows on construction is what the applicant would ask for. If they were here asking for variances then the board has that flexibility but they are not asking for any relief. The road waiver Mr. Klein spoke about is a waiver to build a road they cannot build because they provided a superior alternative.

Mr. Franklin said the area is so tight, it is going to be very congested if there are apartments in the attic and basement.

Mr. Flannery said the ordinance doesn't allow putting apartments upstairs. The applicant has certain rights established by ordinance and the owners of this property shouldn't be subjected to rules that owners of other properties aren't. If the board feels a certain way then they should make a recommendation to the governing body that they change the ordinance.

Mr. Sabel said he had requested accident reports at certain intersections in this area. On Locust and Vermont, in the past eighteen months there were over 28 accidents. There is no traffic light yet and that is a fact and there has not been any confirmation from the County if that light is coming in. On the intersection of Route 70 and Vermont, there were 44 accidents and at the intersection of New Hampshire and Locust, there were 30 accidents. He thinks improving June is not a good idea and he believes these numbers will be increased tremendously. He understands it is a fully conforming application but he thinks the board should still have some leeway. The road should be fully developed, not just bonded and the road should be opened all the way to Route 70.

Mr. Pfeffer said he is talking about off-site improvements. This is a by-right application and June is a separate application.

Mr. Flannery said the board cannot impose off-site improvements on a conforming application. The governing body, the County and the State have the responsibility to fix the traffic needs.

Mr. Sabel wants to confirm that this is in fact a fully conforming application.

Mr. Vogt said they have reviewed the plan showing the road in the center of the property which goes to the proposed turnaround. They do not have design documents for the emergency access and that would be provided during compliance which they would review in accordance with applicable Township and RSIS standards.

Mr. Sabel asked if they reviewed the plan with the adjusted lot lines.

Mr. Vogt said they have not reviewed that yet but it is not a design change per se. They will either shift or reduce the units.

Mr. Flannery said they are reducing the number of units.

Mr. Isaacson asked if they would be willing to hold off on this application until the other application for June comes in.

Mr. Pfeffer said that is a separate application and applicant.

Ms. Morris said there are deadlines for board action dependent upon when the application was submitted. The deadline for this application, when it had a variance, was December 6. She doesn't know the exact date but now that this application is fully conforming, it will be sooner. If the board doesn't act within a certain timeframe then it will be default approval.

Mr. Sabel made a motion to deny for the following reasons: The applicant is taking away 65 ft of roadway from the Township and they are providing a narrower road which is taking away from the Township, community and residents. Based on safety for kids, residents and seniors, even if they fully develop June or make it a right in, it is still terrible. Sidewalks should be provided for the west side of Evergreen Avenue.

Mr. Flannery agreed to provide sidewalks wherever the board requires.

Mr. Sabel said the opportunity to finish Evergreen all the way to Route 70 when the whole town is looking for access roads to help traffic to Vine, Chestnut, Vermont and this is another opportunity for cars to go through and if they vacate this road, they will not have the opportunity. Based on the OPRA request and statistics that this is a very dangerous intersection, taking away Evergreen is not a good idea. There are no schools, parks, community clubhouses in the area which will increase pedestrian traffic tremendously.

Mr. Franklin seconded the motion to deny.

Affirmative: Mr. Franklin, Mr. Sabel

No: Mr. Herzl, Mr. Isaacson, Ms. Zografos, Mr. Meyer

Motion failed.

A motion was made by Mr. Meyer, seconded by Ms. Zografos conditioned upon an emergency access be provided and no COs would be issued until June is bonded.

Affirmative: Mr. Herzl, Ms. Zografos, Mr. Meyer

No: Mr. Franklin, Mr. Sabel, Mr. Isaacson

Motion failed.

Mr. Isaacson would like to make a motion to condition June be paved.

Mr. Pfeffer said it is not their property.

Mr. Flannery said they would agree to base pave the road but they would not provide curb and sidewalk.

Mr. Isaacson asked if it would ease traffic.

Mr. Flannery said it would provide for the flow of traffic in and out.

Mr. Vogt asked if the applicant agrees to provide sidewalk along Evergreen.

Mr. Flannery confirmed on their side but if the board wants sidewalk on the side not being developed, the applicant would agree to that.

Mr. Herzl thinks there should be a motion for June so the buses would be able to travel that road.

Mr. Pfeffer said they would agree to base coat only with no curb or sidewalk.

Mr. Herzl asked if base coat is sufficient enough for buses.

Mr. Vogt confirmed.

A motion was made by Mr. Isaacson, seconded by Mr. Herzl to approve the application with the condition that June Street be base paved.

Affirmative: Mr. Herzl, Mr. Isaacson, Ms. Zografos, Mr. Meyer

No: Mr. Franklin, Mr. Sabel

**3. SD 2063 Eli Schwab**

Joe Parker Road Block 189.16, Lot 157

Extension of Minor Subdivision to create three lots

Mr. Lines said they have finally worked out their differences with the County and have submitted revised plans.

A motion was made and seconded to approve a one year extension.

Affirmative: Mr. Franklin, Mr. Sabel, Mr. Herzl, Ms. Zografos, Mr. Meyer

Mr. Garfield: No

**4. SD 2310 BMW Homes, LLC**

East 5th Street Block 242, Lots 3.01, 3.02, 4.01, 4.02, 5.01, 5.02, & 19

Extension of Minor Subdivision to create ten lots

Mr. Lines said their approval expires next week so they don't enough time to get all the signatures on the plan.

A motion was made and seconded to approve a six month extension.

All were in favor.

- 5. SD 2185 Mark Properties, LLC**  
Netherwood Drive Block 435, Lot 6  
Extension of Minor Subdivision to create 2 lots

Mr. Lines said this approval expires September 27<sup>th</sup>. The County has approved the plan and they just need Township approval.

A motion was made and seconded to approve a one year extension.  
All were in favor.

- 6. SD 1752A 1275 River Holdings, LLC**  
Blue River Way Block 1077, Lots 39.03-39.50  
Amended Preliminary and Final Major Subdivision to relocate tot lot

*A review letter prepared by Remington & Vernick Engineers dated August 22, 2018 was entered as an exhibit.*

Mr. Vogt said a variance is required for minimum lot area.

Mr. Adam Pfeffer, Esq. said they came in to subdivide a piece of the front parcel and now they would like to relocate the tot lot to the back of the development.

Mr. Glenn Lines, P.E., P.P. was sworn. The change on this plan is they are moving the tot lot from the middle of the development to the back.

Mr. Lines questioned moving it as it is easier to access in the middle of the development.

Mr. Pfeffer said the current location is on a smaller lot and it is also on a bit of a bend. They believe it is a safety issue and they are moving it to a larger lot.

Mr. Herzl opened to the public.

Mr. Shlomo Klein was sworn. He questioned if this is more of a financial benefit than a safety concern.

Mr. Herzl closed to the public.

A motion was made and seconded to approve the application.

Affirmative: Mr. Garfield, Mr. Franklin, Mr. Herzl, Mr. Isaacson, Ms. Zografos, Mr. Meyer

Abstain: Mr. Sabel

- 7. SD 2334 David Herzog**  
E Kennedy Blvd, 1127 E Co Line Rd Block 183, Lots 1, 2, & 4  
Preliminary and Final Major Subdivision to create seven lots

*A review letter prepared by Remington & Vernick Engineers dated July 12, 2018 was entered as an exhibit.*

Mr. Jackson said he has to leave but there was a question concerning res judicata. Res judicata is a judicial management tool that stops a tribunal and gives the tribunal the ability to hear things over gain. For example, if you went to court and you lost a motion and then you file the same motion next week, the judge can throw it out as it is the same thing. He thinks that is something the board has to decide after hearing the full case to make the determination as to whether there is in fact a material change. The applicant in that case did make some changes to

the application so it would be the board's judgment and discretion to determine whether they think it is sufficiently different to entertain the application again or to deny the application as it is essentially the same application.

Mr. Adam Pfeffer, Esq. thought that at the last meeting they had given testimony and it was in agreement that this was not subject to res judicata.

Ms. Morris said they had discussed it but it has been about five months since they had so she felt a re-discussion was warranted.

Mr. Brian Flannery, P.E., P.P. was sworn. They did go over the res judicata issue at the last hearing but he would be happy to do it again. Exhibit A-1 is sheet 44 of the tax map showing the subject property, exhibit A-2 is sheet 57.01 of the tax map which is the property across the street, exhibit A-3 is the map presented at the last meeting, and exhibit A-4 is the new map. One of the concerns was the lot along County Line Road was too small and they have now made that lot 70 ft wide, previously it was 63 ft. Res judicata related to the application that was denied and there are certainly major difference from this application. The application which was denied showed no improvements on Major Avenue. The plan now shows Major Avenue being developed along their frontage. The major change is with respect to lot configuration.

Mr. Herzl asked if Clayton is being developed.

Mr. Flannery said yes, they were always proposing to improve Clayton as they need to have frontage for their lots. In addition, they would provide a turnaround at the end of Major so that anybody who comes down here, which would probably only be for overflow parking, would have a place to turn around and go back. The reconfiguration of the lots is the major change. The plan which was denied proposed six lots requiring area variances and the new plan only proposes three. Lot 1.07 which fronts on County Line Road is 15,000, lot 1.01 is 16,000 sf, lot 1.02 is 15,000, 1.03 is 15,000 and lots 1.04 through 1.06 which are 12,000 sf lots. The majority of the lots in this new revised plan are conforming rather than only one was conforming prior. Additionally, the minimum lot width before was 63 ft and now it is 70 ft.

Mr. Herzl asked if sidewalks will be provided along Major and County Line Road.

Mr. Flannery confirmed.

Ms. Morris believes he mentioned they would provide sidewalks on their side of the road of Clayton.

Mr. Flannery said they would provide sidewalks on their side of the property.

Mr. Herzl asked if there any new variances.

Mr. Flannery said no, they reduced the variances.

Ms. Morris understands the differences between this plan and the plan which was denied. She questioned what is different between this plan and the plan before this board in June.

Mr. Flannery said that is shown on exhibit A-3. Lot 1.07 was 63 ft wide and they have now made it 70 ft wide. In order to do that, they had to make the first two lots along Clayton 77 ft and the third 72 ft. Mr. Rennert is not present tonight but he had suggested making the lot 70 ft which is consistent with other lots across the street. So they have three lots which conform with the lots across the street and four lots which conform to the ordinance except for lot width which was previously justified based on the unusual shape of the property.

Mr. Herzl asked if there is anything in the engineer's report which cannot be agreed to.

Mr. Flannery said the report mentions they may need relief for parking based on the number of bedrooms but they are not asking for relief. The boxes shown on the plan are only typical boxes and they would provide houses and parking spaces which conform to the ordinance. They are not seeking relief for parking. The Shade Tree Commission had comments with respect to landscape buffer which exceed ordinance requirements which they do not agree to.

Mr. Herzl said the report lists design waivers from providing sidewalks and street trees along Major Avenue.

Mr. Flannery confirmed they would provide sidewalk and street trees.

Mr. Herzl asked about the last design waiver required from providing sidewalk along the entire East County Line Road frontage.

Mr. Flannery said they would agree to that as well.

Mr. Herzl said then no design waivers are being requested.

Mr. Flannery confirmed.

Mr. Sabel believes there was concern by one of the board members concerning the entrance on County Line Road.

Mr. Flannery said they are still proposing a driveway but they have made it wider. They certainly agree to the condition to increase the front setback and provide an internal turnaround so that no one would have to back out.

Mr. Herzl asked if they have received approval from DPW.

Mr. Flannery said not yet but it is a very typical development. The truck would turnaround at the hammerhead on Major Avenue.

Mr. Vogt asked what they are proposing for landscaping as they do not agree to Shade Tree's recommendations.

Mr. Flannery said they would comply with the ordinance. The ordinance doesn't require a buffer from residential to residential.

Mr. Sabel questioned if the right-of-way dedication to the County would increase the variances.

Mr. Flannery said he testified at the last hearing that they would propose an easement. If that is not approved, they would come back to the board.

Mr. Herzl opened to the public, seeing no one come forward, he closed to the public. To summarize, Clayton will be fully developed on both sides, County Line will have curb and sidewalk, Major will have curb and sidewalk along their frontage.

Mr. Sabel asked how wide Major Avenue will be.

Mr. Flannery said it is usually done a couple feet short on the other side so that when they come in, they can put in the curb.

Mr. Sabel asked how many feet of pavement would there be on Major.

Mr. Herzl asked if it is enough for trucks and buses to turnaround.

Mr. Flannery said the plan only shows half width which would be 16 ft so he would say 28 ft would be appropriate which is an RSIS compliant road. When the other side is developed, they would provide 4 ft of pavement and curb.

Mr. Sabel asked what they would need to do in order to make this application conforming.

Mr. Flannery said they would have to eliminate lots.

A motion was made by Ms. Zografos, seconded by Mr. Garfield to deny the application.

Affirmative: Mr. Garfield, Mr. Franklin, Ms. Zografos

No: Mr. Herzl, Mr. Isaacson, Mr. Meyer

Abstain: Mr. Sabel

The motion failed.

A motion was made by Mr. Isaacson, seconded by Ms. Zografos to approve the application conditioned upon lot 1.07 being removed and the lot lines are extended back straight.

Affirmative: Mr. Garfield, Mr. Franklin, Mr. Herzl, Mr. Isaacson, Ms. Zografos

Abstain: Mr. Sabel, Meyer

Mr. Vogt said if he understands correctly, lot 1.07 will be removed and lots 1.04 through 1.06 would be extended to the back of the property. He does not know if there is a lot width variance but they would have three larger properties.

**7. APPROVAL OF MINUTES**

**8. APPROVAL OF BILLS**

**9. ADJOURNMENT**

The meeting was hereby adjourned. All were in favor.

Respectfully submitted  
Sarah L. Forsyth  
Planning Board Recording Secretary