





## 5. PUBLIC HEARING

### 1. SD 2180 590 Atlantic Ave LLC

Belmont Avenue Block 378, Lot 1.09  
Preliminary and Final Major Subdivision to create 2 lots

A review letter prepared by Remington, Vernick & Vena Engineers dated January 15, 2017 was entered as an exhibit.

Mr. Vogt said variances include minimum lot width and minimum rear yard setback.

Mr. Brian Flannery, P.E., P.P. was sworn in. A minimum lot width variance of 75 ft is being requested. The majority of the lots in the area are 70 ft wide. The other lot would be 100 ft wide and it makes sense to have a bigger lot as it is on the corner. It is a C-2 variance where the benefits outweigh the detriments. The board engineer had a comment with respect to the front and rear setbacks and because there is a drainage easement, they may not be able to have a driveway in the front. Somebody is going to want the front to be toward the west even if it's a side entry garage and the garage comes off Drake Road, it can still be configured as proposed. That can be worked out at time of plot plan.

Mr. Herzl asked why the minimum lot area is 10,000 sf, not 12,000 sf.

Mr. Flannery said a piece of land was set aside for passive recreation so based on that, you are allowed to reduce the lot areas by 15% and the lot widths by 10%.

Mr. Herzl asked if that open area has anything to do with this application.

Mr. Flannery said that is why this is not considered a minor subdivision as it is being looked at as part of what was already there. If this were considered a minor then they would need 12,000 sf for lot area and 90 ft for lot width.

Mr. Jackson asked if this lot was somehow taken in with that other subdivision so it would be subject to open space distribution.

Mr. Flannery said the open space was included in an easement on one of the lots.

Mr. Jackson replied that you could also say this is distinct from that.

Mr. Flannery explained that is why the notices say 12,000 sf area and 90 ft width.

Mr. Jackson understands what their argument is and he thinks that is a planning argument to say this is appropriate here because of that property. He believes the board should look at this as undersized for the zone and determine whether it is appropriate.

Mr. Flannery said they have 12,000 sf and 16,000 sf lots.

Mrs. Weinstein said the variance is for lot width.

Mr. Flannery said a 75 ft wide lot is proposed whereas 90 ft or 81 ft, depending on which way you look at it. When you compare it to the neighborhood, there are many 70 ft wide lots in the area. If they split down the middle, they would be off by 5 ft but that's not what makes the most sense for this property.

Mrs. Weinstein confirmed the notice did state that a 75 ft width variance is requested whereas 90 ft is required.

Mr. Rennert questioned the open space easement.

Mr. Flannery said there is an open space easement on a lot on Drake Road.

Mr. Rennert inquired as to access to these lots.

Mr. Flannery replied that the corner lot has a drainage easement as there is an underground drainage system there. The board engineer comments that they couldn't get a driveway in at that location. His testimony is they could still front the house that way and put the driveway on the side with a side entry garage.

Mr. Jackson asked if they would agree that the house will have a maximum front yard setback and face Belmont Avenue. He has had situations in the past where the house is turned a different way and it upsets the neighbors.

Mrs. Morris said if it fronts on Atlantic, there would be no backyard.

Mr. Flannery said it would work but it would look out of place as the house would be narrow.

Mr. Jackson said that is why he is asking if they would agree that both houses would front on Belmont.

Mr. Flannery thinks it is an unnecessary condition but if that is what the board wants, they would agree.

The board agreed not to impose that restriction.

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

A motion was made and seconded to approve the application.

All were in favor.

**2. SD 2185 Mark Properties, LLC**

Netherwood Drive

Block 435, Lot 6

Minor Subdivision to create 2 lots

A review letter prepared by Remington, Vernick & Vena Engineers dated January 12, 2017 was entered as an exhibit.

Mrs. Morris explained at the January 3, 2017 meeting the board started to review the application but felt the plans were not complete with respect to the extent of improvements they were doing or not doing along the right-of-ways so they had tabled it pending receipt of more complete plans.

Mrs. Miriam Weinstein, Esq. said they appeared previously to be heard on this matter as a fully conforming minor subdivision to create two lots. At that time, the board asked them to provide an improvement plan for Biltmore Avenue and Netherwood Drive. The applicant has since submitted plans showing curbs, sidewalks and street trees along the frontages which would be provided at the time that construction is proposed. Their position is that this is in fact a fully conforming minor subdivision application since no new construction is being proposed at this time. They are simply asking for the subdivision line to be drawn but before they actually do any construction on the lots,

they would agree to put in the improvements. Out of abundance of caution, legal notices were sent in case the board wishes to classify this as a major subdivision.

Mr. Brian Flannery, P.E., P.P. was sworn in. He said Biltmore Avenue is in the back, Netherwood Avenue is a paper street at this point, is to the west and it also has frontage on Cross Street. The applicant submitted an improvement plan which shows the applicant's intent which is not to ask for any waivers. They would put in any improvements required by ordinance and the engineering department at such time they go to develop. This is simply a request for a minor subdivision to split a 26,700 sf lot into two 13,000 sf lots. The improvement plan shows street trees, curb and sidewalk. There is a problem with Biltmore Avenue in that the dormitory across the street has the curb constructed too close to the center of the road. If they had built their roadway correctly, there would be plenty of room in the right-of-way and what the applicant had shown would have left a 32 ft paved cartway.

Mrs. Morris believes it was mostly replaced by existing curb which was in a poor condition.

Mr. Flannery explained that the curb is in the wrong place because there is a utility pole there which someone didn't want to move. So instead of paying to move the utility pole, they put the curb and pavement in the wrong place and have created a problem on their side of the street. The applicant will certainly at the time of construction work with the engineering office, follow ordinances and do what is necessary to make sure that a safe roadway is there.

Mr. Vogt said they have recommendations relative to the intersection of Biltmore Avenue and Cross Street.

Mr. Flannery said the applicant will agree to provide a safe intersection.

Mr. Vogt asked if they are agreeing to the recommendations in their letter.

Mr. Flannery said the letter recommends providing a safe intersection and they are agreeing to that.

Mr. Vogt said they would comply with any applicable Township and County comments.

Mr. Flannery said all of the normal comments in the letter are agreed to.

Mr. Herzl inquired as to why the school installed sidewalks in the wrong location.

Mr. Flannery said it was put in because there is a utility pole that somebody did not want to move.

Mr. Herzl asked how they would make it safe if the road is too narrow.

Mr. Flannery said making it safe and making it a 32 ft wide cartway are two separate issues. Since Cross Street is County, they would need their approval. What he envisions will happen is they would widen more on their side than what they would normally be required to and the applicant or the developer is okay with that in order to get County approval.

Mr. Franklin commented if the curb is in the wrong location then it should be moved, move the pole and make the street right. He asked how this got passed the engineer's office in the first place.

Mr. Vogt understands what he is saying and believes it is more of a Township issue. He does not know how the road got installed incorrectly.

Mr. Franklin said it is an issue where the engineer has to work it out with the owners of the other lot in order to get this curb moved into the right spot. This should be the problem of the person that put it in.

Mr. Rennert asked if a bond is in place for that project.

Mr. Vogt is unsure as to the project in question.

Mrs. Weinstein said it is a recent approval by this board.

Mr. Flannery said this applicant would be happy to work with the engineering department and the Township to see what can be done to get the people on the other side of the street to put the curb in the right place.

Mr. Rennert said the 32 ft wide roadway is not really all that big. That's a minimum.

Mr. Flannery said 32 ft roadways are needed in Lakewood so they can have on-street parking on both sides. This problem is limited to the intersection and they are not going to be parking cars at the intersection. The applicant is not asking to build anything right now, all he is asking to do is subdivide the lot. He is happy to work with the Township engineer to resolve how that happened because he knows when it comes to construction, he will have to satisfy the Township that it is a safe road.

Mr. Herzl questioned why the County didn't catch this.

Mrs. Morris commented that this applicant has no control over the property across the street.

Mr. Franklin agreed but the Township does. The engineering department should notify these people that the curbs need to be put in the right spot and the pole has to be moved. He is willing to make a motion to that affect.

Mrs. Morris said the engineering department is aware of the problem. She is not sure what is being done as it is a recent discovery.

Mr. Vogt said they would follow up internally and with the applicant as to what is going on.

Mrs. Zografos suggested that the board engineer send a letter. The board was in agreement.

Mr. Rennert inquired as to the shape of the lot. He asked why more area is given to the lot to the right.

Mr. Flannery said the lot to the right has a nice building envelope. Ultimately, Netherwood Drive will be improved and these two houses would face Netherwood. There was another application approved by the board which included improving Netherwood.

Mrs. Morris asked if they are required to either restrict or require access for the homes on either of the roads or are they deed restricted from one side in particular.

Mr. Flannery said when they come in with a plot plan, there is a provision in the ordinance for reverse frontage lots. Reverse frontage lots indicates that one is a front and one is a rear and you are not allowed to have your driveway from the rear.

Mrs. Morris said it hasn't been decided at this point.

Mr. Flannery confirmed.

Mr. Herzl said both driveways can't be off Biltmore as it has a narrow point and there is only 60 ft to work with.

Mr. Flannery said both would come off Netherwood.

Mr. Rennert asked if they could call it a rear yard setback for practical purposes.

Mr. Flannery said if the board feels comfortable, Biltmore would be a rear yard with no driveways from Biltmore then that would be acceptable.

Mr. Herzl said no homes facing Cross Street as well.

Mr. Flannery agreed.

Mr. Herzl opened to the public.

Mr. Lionel Vineman, 1025 Netherwood Drive, was sworn in. He is concerned about safety as Netherwood, Biltmore and Damiano all open up into each other with a busy County road intersecting so you have traffic coming from five directions in one small spot.

Mr. Vogt said County approval is required. The County may approve this with additional improvements, if necessary. That is a standard condition. They have recommended in their letter that the intersection of Cross Street and Biltmore Avenue has to be widened per applicable Township and County standards which the applicant agreed to.

Mr. Vineman wants to find the safest way to deal with the present lots.

Mrs. Morris said the County also has to approve the subdivision and stamp the plans before they can be filed.

Mr. Vineman commented as to the odd shape of the lot.

Mr. Vogt said there are no conditions as to how lot area is achieved.

Mr. Bill Hobday, 30 Schoolhouse Lane, was sworn in. He commented that Biltmore Avenue is only 20 ft wide in this area. A lot of times the County approves subdivisions based on Township approval. This should not be approved as the road is not wide enough as opposed to approving with the condition that the County will have to approve it and they might require them to widen the road.

Mr. Follman said there will be no driveways on Biltmore Avenue.

Mr. Hobday said there are too many issues here which must to be decided.

Mr. Herzl said the board would condition the applicant to widen Netherwood and the houses must face Netherwood.

Mr. Vogt said the County has control over Cross Street. The Township does not control what the County is going to decide. Their recommendation, which the applicant has already agreed to, is widening Biltmore. The Township can control the widening of Biltmore.

Mr. Hobday is unsure of that. The board is taking a chance approving this before getting the entire story.

Mr. Isaac Goldsmith, was sworn in. He said there was a recent application for this property which was denied by this board. They basically carved it out and resubmitted which he believes is illegal.

Mr. Jackson asked if that application is contiguous to this.

Mr. Goldsmith said it is not but it got denied and now they are carving it into pieces and submitting new applications.

Mrs. Morris said it was a much larger application.

Mr. Jackson said that is not part of this application.

Mr. Herzl said this is a new application.

Mrs. Morris believes that subdivision consisted of three or four blocks.

Mr. Goldsmith submitted a map of the denied application to the board.

Mr. Jackson said this is a different application as this is only one block and lot.

Mr. Rennert asked if this application and SD 2179, which was tabled earlier tonight, equal the old application which was previously denied.

Mr. Goldsmith said they carved the third part out which was already approved. They tried combining everything together with that approval but it was denied.

Mr. Jackson said it is correct that you cannot come back with the same application if it was denied but this is not the same application. This only deals with one block and lot and it is a different owner.

Mrs. Weinstein confirmed this lot was part of that previous application but they would not be barred by the doctrine of res judicata.

Mr. Jackson agrees, this is a clean slate legally.

Mr. Rennert asked if the board can hear this application along with the SD 2179 application as it is on the same street.

Mr. Jackson said the applicant can time how they want to make the application. This is its own four corners, free standing application. The board can keep in mind that there may be something coming in adjacent to this and that may or may not be fully conforming and may or may not have the ability to change things.

Mr. Flannery said the other application is 340 ft away from this application.

Mr. Goldsmith asked if the County has ever come back and said it is unsafe. He believes an approval here is basically a rubber stamp approval at the County.

Mr. Vogt said the County is going to look at this application and what they envision for the build out of Cross Street.

Mr. Jacob Trainer, 32 Tova Drive, was sworn in. He said Biltmore Avenue is a mess. There would be no parking on Biltmore and it should be 32 ft wide.

Mr. Jackson asked if their lot line allows for a full width roadway on Biltmore.

Mr. Vogt said Biltmore is showing a 50 ft right-of-way.

Mr. Jackson said this property has no interference whatsoever on Biltmore

Mr. Trainer is not against this application but he believes it should be held until they can figure out how they can have 32 ft of paved road.

Mr. Franklin said if they are putting their curb in at 16 ft from the center line for a 32 ft wide road. The mistake is across the street so the Township has to get a hold of these people and get them to move that curb and sidewalk so it is 16 ft from the center line.

Mr. Trainer asked if the board is willing to hold off on this application until it is resolved.

Mr. Rennert questioned how they can cause a hardship to someone that is trying to subdivide a lot with no variances.

Mr. Trainer said this is really a major subdivision. They are developing this whole neighborhood in pieces.

Mr. Shlomo Klein, 189 Chateau Drive, was sworn in. He is not objecting to this application but would like to address safety issues. This board approved the application across the street with a 20 ft setback and that is how the curb got in the middle of the street. The curb and sidewalk is not only in the intersection, it starts in the middle of the street going crooked until the end of the street.

Mr. Franklin said this board never approved a curb that would be 5 ft off on one end and 16 ft on the other end. This board would never allow one to be put on that angle. It was constructed incorrectly.

Mr. Jackson said generally the road is a municipal improvement. That usually has to be inspected and approved by the engineering department. Perhaps there was a reason the town wanted it like that.

Mr. Franklin doesn't believe so.

Mr. Vogt said if he expected this to come up as part of this application then he would have prepared for such. He doesn't have the particulars.

Mr. Jackson said it is not necessarily true the applicant or the builder did improperly.

Mr. Franklin would go that direction.

Mr. Jackson said it really doesn't have anything to do with this application.

Mr. Franklin agrees. This application does have 16 ft on each side.

Mr. Klein said the last application approved for this property was already existing going crooked until the middle if you look it up on Google maps. The engineering department did not pick up on this. When the application came in,

it shows the curb going towards the middle of the street and he could not understand how the board could approve such a thing. The applicant said he agreed to make the intersection safe but why doesn't the board condition the applicant to improve the road along with the property owners across the street. The County did not catch this either as they did not touch the road.

Mr. Vogt said they have already acknowledged that the road is not wide enough and are recommending the road be widened.

Mr. Klein said the applicant agreed to make the intersection safe and to do whatever the code requires.

Mr. Vogt said he will not sign the plans unless or until they demonstrate that the final design is adequate per applicable standards.

Mr. Klein asked if the applicant is agreeing to improve Biltmore to 32 ft wide and install curb and sidewalks on their side and to work with the neighbors across the street to fix that side as well as installing curb and sidewalk on Netherwood.

Mr. Flannery said this is a conforming minor subdivision application. They are not asking to build anything. Biltmore is an existing problem. If this doesn't get approved, it is still going to be an existing problem. If this gets approved it is going to be an existing problem until somebody decides to build and at that point they will do what the County requires, what the Township requires and there will be safe access.

Mr. Klein asked how the County approved this 20 ft wide road.

Mr. Flannery said a minor subdivision application needs to be approved by the County. The County is very concerned about traffic safety. They will look at this and they will require by their standards that it is safe.

Mr. Klein asked if Netherwood will be improved.

Mr. Flannery said before a house is built on either of these lots, there will be curb, sidewalk and street trees along the entire frontage and there will be safe roadways in accordance with County and Township standards on Cross Street, Biltmore and Netherwood. They are talking about a minor subdivision where they are just trying to put a lot line in and the public seems to think that this applicant should fix an existing problem and that is not fair to the applicant.

Mr. Herzl closed to the public.

Mr. Rennert asked if this approval is granting Netherwood Drive to go out to Cross Street or is Netherwood Drive going out to Cross Street either way.

Mr. Flannery said this approval is not approving any roadway construction, any residential development, houses, nothing. This is not approving any development.

Mr. Jackson said this is a fully conforming application which the board has very carefully scrutinized and the law is that the applicant is essentially entitled to an approval when they conform. He knows the board is constrained by that and it is sometimes frustrating to the board but that is the law.

Mrs. Zografos understands it is a conforming application but she is struggling with what safer means. She questioned if the board is allowed to define safer or does that have to remain ambiguous.

Mr. Vogt said safer for the purpose of the Township roadway is going to be per applicable Township and RSIS standards.

Mrs. Zografos questioned if the applicant has to make the road safer by meeting the requirements.

Mr. Jackson said they will have to meet all the site triangle requirements, install the curbs where they are supposed to be. The County might want Cross Street widened but that is not their jurisdiction. Their property lines are all where they should be to give sufficient room for the roads to be widened. There have been a number of measures put in place which will make the road more compliant. Whether it is safer or not, that is in the eye of the beholder.

Mr. Herzl said it has to be built according to Township and County standards.

Mrs. Zografos asked if the applicant is only required to compensate for their half of the road from the center line.

Mr. Vogt said the final roadway is going to have to be the standard whether it is entirely on this site or if something has to be done on the other side of the street.

Mr. Rennert asked if the board can condition a 32 ft wide roadway.

Mr. Flannery said the applicant would object as the New Jersey Residential Site Improvement Standards dictate what's required and that has been determined at State level as the law. RSIS clearly states that a municipal agency cannot force an applicant to exceed them. The applicant is going to comply with RSIS and work with the engineer to see if the curb on the other side of the street can be moved. If it can be moved to where it belongs then this applicant would be happy to put his curb and pavement 16 ft from the center line and they would have a 32 ft wide road.

Mr. Jackson asked in general if the applicant has to improve the other side of the street or just their side.

Mr. Flannery said typically the applicant improves their side of the road. In this case, the engineer has pointed out that the other side of the road is wrong and they are agreeing they would have an RSIS compliant roadway for the Township roads as well as County standards because the County isn't restricted by RSIS.

Mr. Franklin wants to ensure they get the road in the right-of-way where it's supposed to be. They should not push it over onto this property.

Mrs. Morris is unsure whether the board can impose that condition.

Mr. Jackson said the municipal engineering department decides where the road actually goes.

Mr. Vogt said the County is going to have to give input relative to how they feel this access is going to be with what is being proposed here and perhaps what will be coming down the line.

Mr. Jackson said they look at one line, not the overall picture as they do not have the expertise.

Mr. Rennert said the board is possibly allowing a lot to be built on a 20 ft street.

Mr. Jackson said the board conditioned that there would be no access on Biltmore.

Mr. Rennert said the whole area is being developed.

Mr. Jackson said the board is getting into the realm of off-site improvements. The law doesn't allow the board to impose on a developer to correct the whole neighborhood's problems. It is not fair to them just because they want to develop now. The board has to balance all of that. The applicant provided testimony that they would comply with all of the regulations.

Mrs. Morris believes the provision Mr. Flannery is talking about where in association with a minor subdivision, the board cannot require that they go above and beyond RSIS.

Mr. Flannery said it applies to major subdivisions as well. The developers have exceeded it on their own because you need it in Lakewood.

Mrs. Zografos wants to make sure it is clear that when the board says the applicant is responsible, it is for the totality, whether they negotiate with the person across the street to move their line or they have to accommodate with theirs it will be what is determined to be safe as a matter of law.

Mrs. Morris said the applicant will not be responsible only for maintaining their half of the right-of-way. They will be responsible for ensuring the pavement width, regardless of where it is within the right-of-way, is satisfactory to RSIS and Township standards.

Mr. Flannery said the applicant agrees to that. The applicant wants to do the right thing including finding out how the curb got in the wrong place and putting it in the right place. If that doesn't work, they will move it to where they can and then they would ensure they are RSIS compliant even if they have to pave more than 16 ft on their side.

Mrs. Morris said they do have 25 ft just on their side before they hit the property line.

Mr. Jackson said the approval should be conditioned with Biltmore having a proper width.

Mrs. Zografos isn't sure what the obligation is on the applicant. She is concerned if someone only has to maintain a half and for some reason the way things are mapped out they have already met that then they are not making an improvement or making things better. It's really going to be status quo.

Mr. Jackson said the board can be aggressive and say it is incumbent upon this applicant to get the road in the right place.

Mr. Flannery said in the right place is subjective also. The dormitory across the street thinks the curb is in the right place now.

Mr. Jackson said it must be acceptable to the municipal engineer.

Mr. Herzl asked how close the dormitory is to the street.

Mr. Flannery said the dormitory is 22 ft from the property line and then there is another approximately 20 ft to the curb. The problem is the dormitory is too close and the curb is too far.

Mr. Herzl said they have sufficient room to move back the curb.

Mr. Flannery confirmed they do.

Mr. Rennert said if they move it back then they will have to move the utility pole. He asked if the engineering department is going to say they meet RSIS without moving the poles so they're not going to force them to do 32 ft.

Mr. Franklin said the pole needs to be moved so the road is straight and they can be build a proper 32 ft wide road.

Mr. Rennert asked how the board is going to force them to make it a 32 ft road.

Mr. Franklin said they need to look at the approved plan and see if the curb was allowed to come that far over.

A motion was made and seconded to approve the application.

All were in favor.

**3. SD 2169 Locust Holdings, LLC**

Evergreen Boulevard Block 1086, Lots 9-14  
Preliminary and Final Major Subdivision to create twenty lots

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

Mr. Grunberger arrived. Mr. Rennert and Mr. Hibberson stepped down.

Mr. Flannery said they are here for conceptual review only. If the board recalls, Harrogate came out and they have met with them to try and come up with a compromise. They are not looking to go forward with the application at this point but would like input from the board.

Mrs. Morris said this was carried from a previous meeting to tonight for a public hearing and the board engineer has a review letter prepared on the plans which were available at the time. She believes the applicant has met with Harrogate, revised the plans and indicated it was too late to accept those plans as there was not enough time for the board engineer to prepare a letter. She believes Mr. Flannery is indicating that they do not want the board to act on this as he doesn't want to be under pressure for incomplete or unreviewed plans but he is looking for feedback on those so he can come back for a public hearing at a future meeting.

Ms. Susan DiMaria, Esq. representing Harrogate. At the last meeting, there was discussion about jurisdiction. They are not pursuing that tonight but she wants it on the record that they are not waiving that. They have met with the applicant and have had some productive discussions and it was their wish to come here informally to have the board take a look at the revised plans.

Mr. Flannery said the original plan was to subdivide the property along the existing paper streets. Harrogate has indicated that Evergreen Boulevard is across the street from their entrance and they would prefer that they develop it in a different fashion. One of the lots owned by Harrogate would be included and they would provide a 50 ft buffer along Vermont Avenue so that would benefit these homeowners and Harrogate and they would provide a cul-de-sac to the back of the property. This involves the applicant getting the other property owners on board with the same concept. It is not a simple solution but if it works he thinks it is better for everybody.

Mr. Herzl asked if any variances will be sought.

Mr. Flannery said they would comply with area. Due to the nature of the cul-de-sac, it pushes the units close to the back and they would need variances for the decks. Currently the decks have to comply with the full setback and

they would look for decks which would be 10 ft from the property line so they provide adequate access without any other issues.

Mr. Herzl asked if the cul-de-sac is wide enough.

Mr. Flannery said it is an RSIS compliant cul-de-sac. The yield is a little less than what they could do if they just chop it up into little rectangular pieces but it turns out to be a nice product. If the neighbors are happy then the applicant is looking to go forward with that. The next step would be selling it to the other property owners on the fact that this makes sense to all of them but it wouldn't make sense for this applicant to go any further if the board doesn't like the concept.

Mr. Herzl asked where the cul-de-sac is coming out from.

Mr. Flannery said the cul-de-sac would be in the middle of the block. They would ask for a vacation of a little piece of June Street and Farry Street they were formally using as access and the cul-de-sac would come up the middle. The approval would be subject to those vacations.

Mr. Herzl asked how many lots are proposed.

Mr. Flannery said 30 lots, the original application proposed 24 but they have added property. The yield for this applicant is slightly less but there is a benefit of less roadway improvements and it is a nicer development. When he met with the two parties, it was his thought that the Planning Board would find something like this a favorable solution and the minor relief sought for decks would be de minimis. The lots on the cul-de-sac back up to the Evergreen Boulevard right-of-way and obviously they would buffer along that. It would seem that if this type of development goes in, there may not be a further need for development of Evergreen Boulevard. Those would be reverse frontage lots and the ordinance does make provisions for reverse frontage lots so there would be some sort of buffer provided.

Mr. Herzl is comfortable with the application if the only variance requested is for the decks and all of the other details are worked out with the neighbors.

Mrs. Morris asked if the buffer provided along Evergreen would be within the right-of-way as she doesn't see room for it on their property.

Mr. Flannery said they would have the decks at 10 ft back and then they would put up a fence and trees. It is something they have to work out with the Township as Evergreen is a 65 ft wide right-of-way. If they were to vacate it and half goes to each side then there is plenty of room for a buffer and no need for deck variances.

Ms. DiMaria said they have discussed this but she is unsure if this is the exact layout they would want to see.

Mr. Pfeffer understands this is only a concept plan. It will have to be tweaked and finalized.

**4. SD 2173 Shulem Illowitz**

Joe Parker Road

Block 189.04, Lots 188-190

Minor Subdivision to create four lots

A review letter prepared by Remington, Vernick & Vena Engineers dated January 5, 2017 was entered as an exhibit.

Mr. Rennert stepped down.

Mr. Vogt said variances necessary include minimum lot area, lot width and side yard setback for accessory structures.

Mr. Abe Penzer, Esq. said this is a very unique application. There are many people in the audience who are members of the school adjacent to this property. The applicant found that this school could use the property. The lots are very deep and there is really nothing you can do with the rear of the lots except for the school. They propose to convey lands from the rear of existing lots 189 and 190 to lot 188 which is an existing school site. The school would use this area for a playground or parking which they so badly need.

Mr. Herzl said if they do not convey the land to the school then they would not need a lot area variance.

Mr. Penzer understands. This applicant would be helping a school who could really use this area.

Mr. Jackson said one of the concerns is the area of the lots behind the three houses. He said to consider doing a conservation easement or open space so it would be used for recreation in conjunction with the school. The concern is they don't want to see additional houses built back at some future time.

Mr. Penzer said that is not the intent.

Mr. Herzl said if they leave that as open space then they would have sufficient area.

Mr. Penzer said it is an interesting C-2 variance because it is an inherently beneficial use. The Township is looking for additional play area and parking and this would be a wonderful thing for these girls.

Mr. Glenn Lines, P.E., P.P. was sworn in. He said they are looking at this as a cluster application where are provisions for R12/R20 zones. The school is agreeing to hold any future development on their property to what they would have been allowed for the original lot. For example, if they were allowed 30% lot coverage on that piece alone then they would hold to that 30% and they wouldn't come in and build a huge school and use 30% of the entire property. So that additional area for the school wouldn't go towards making the school any larger. They would rely on the existing lot to make it larger. If they extend the school back then they would lose the turnaround for the buses which may require more parking. The majority of this 34,000 sf behind them will stay open space/playground area but they haven't really designed anything officially yet.

Mr. Jackson asked if the applicant and school agree that area would only be used for playground area. No additional parking is shown in the back.

Mr. Lines said right now the parking is in the front of the school and some cars park in the back.

Mr. Penzer said they do not have a problem restricting this but they do not want to limit it to only playground as they need the additional parking.

Mr. Herzl asked how cars will get to the back.

Mr. Lines said they would take the turnaround for the buses and flip it the other way so the school can be expanded and provide some additional parking along that driveway. That would leave a majority of this area for playground/open space. Right now they have 34,000 sf being added. If they have a new application, they would still have 34,000 sf of open space/play area when the project is completed.

Mr. Herzl is trying to avoid the lot area variances. If they leave open space in the back then they have 20,000 sf for each lot.

Mr. Lines said that is why he brought up clustering.

Mr. Jackson asked what the limits would be for the play area.

Mr. Lines does not have a plan yet. They will have 34,000 sf of playground and open space property.

Mr. Penzer said they would agree to restrict that area from any future buildings.

Mr. Jackson thinks the board wants to know where the play area and parking is going to be.

Mr. Lines does not have a site plan prepared.

Mr. Penzer said they would come back with a site plan.

Mr. Jackson said this subdivision allows the board to dictate it as they are asking for undersized lots.

Mr. Herzl asked what is on lot 61.

Mr. Lines said it was a farm. It is all open space to the County and completely unbuildable.

Mr. Herzl suggested that the parking lot be in the rear of the lots and keeping the open area closer to the houses.

Mr. Lines said they may do that.

Mr. Jackson said the dilemma is right now is when the board has the ability to know exactly what it's giving up when it's allowing for the undersized lots. When they come back with a site plan after the lots are subdivided, the board will have no ability to dictate where it goes or where it doesn't go. Mr. Herzl's concern is he would want the open space where there is no development in the area right behind the three lots which are undersized.

Mr. Herzl said a big variance is also being requested for lot width. If the board is inclined to approve this, they want to ensure that open area is there.

Mr. Jackson said you can't give a deed restriction with a conservation easement in the abstract. He has to show where it is going on the property that is being subdivided off.

Mr. Penzer said he was advised by the Rabbi that he wants to build but he wants to leave 34,000 sf open space as agreed to. His concern is that he doesn't know the exact configuration as to what this building will be. He knows it will be between 6,000 and 8,000 sf maximum. The problem is because of the nature of the L shaped lots, without doing the physical manifestation of the engineering is it is hard to know where is the exact point. All they can do is agree they would not exceed the lot coverage, the 34,000 sf lot will be dedicated for recreation and parking only, and the building would not be larger than 8,000 sf.

Mr. Jackson asked if there is any harm in defining their concept more and then maybe they can see where the conservation easement will be.

Mr. Penzer said they do not know where the building is going to be and if they do the conservation easement now then they are defining it exactly. He can only tell the board that at the end of the day, the lot will be 34,000 sf. He has no problem restricting to that.

Mr. Hibberson said they are asking the board to make a judgment without knowing all of the facts.

Rabbi Berel Leifer, 415 Monmouth Avenue, was sworn in. He said as the school stands now they are only at about 10% lot coverage. If they were to add on 8,000 sf then they would still be under the 30% requirement. He asked why he is being denied that 8,000 sf.

Mr. Jackson said the issue is three undersized lots are being created. If the school thrives and expands and it takes up the area that it takes up, the thing that laid the groundwork for that are these three undersized lots. In consistent with the clustering concept, they want to set aside some space so the overall area isn't too crowded so that there's a trade off. The board approves undersized lots but in return for that they made certain that in the future a certain amount of area would be left open. The board loves the idea but they want assurances that that extra 34,000 sf is going to get aside and it is going to be set aside right behind these lots so that when people question these undersized lots the board ensured there was a lot of space open.

Mr. Leifer said with the addition of this lot they are creating a much bigger open area being the existing building is approximately 6,200 sf, he has to add on 8,000 sf. In the interest of the school, he has to determine where it would work out the best.

Mr. Jackson reiterated that this is the point where the board has the ability to dictate or be confident as to where the open space will be. He would still have all of that lot area as there would be an easement.

Mr. Leifer needs to add on at least 8,000 sf.

Mr. Follman said it would be added on their old property.

Mr. Leifer said if they do that then they are putting the kids within 25 ft of Joe Parker Road which is heavily trafficked.

Mrs. Morris said that is exactly why the board wants a map.

Mr. Lines said in going back to the cluster idea, in order to give the school the most property, their three lots right now total 40,170 sf. In order to be three compliant lots in the zone, they would need another 19,830 sf. They would need new side setback variances but they would not need a lot area variance.

Mr. Herzl asked if that property can be conveyed to the back of these properties.

Mr. Lines suggests they take that 19,830 sf and put it on the south side of the L shaped lot behind the school. So there would be 19,830 sf guaranteed open space and leaves about 14,000 sf on the north side which could be parking, the bus turnaround or possibly the building.

Mr. Franklin would like the applicant to hold off on this and work on the plan. They need to show the additional parking, open space area and school addition.

Mr. Hibberson asked if that open space will be available to the property owners of the new lots.

Mr. Lines said no. It will not be part of their lot. Based on development along Joe Parker Road, it is not uncommon to have smaller lots.

Mr. Vogt asked that a Percal map be provided which illustrates that.

Mr. Hibberson said in his mind, these will be grossly undersized lots based upon what is accessible to them as residents in those three properties.

Mr. Penzer said that is correct but the issue before this board is if it is better to have undersized lots and giving a benefit for a school.

Mrs. Morris assumes the cluster type developments across the street were approved by the Zoning Board since cluster development is not permitted in this zone.

Mr. Lines believes so.

Mr. Penzer said he spoke with the Rabbi and he has no problem providing a gate in the back so the residents can utilize the property if they wish. It would be an unrestricted public area.

Mr. Grunberger is confused as to how much open space is being provided.

Mr. Lines said originally they were giving 34,000 sf to the school then they got into the discussion as to how much of that area would be used for parking. If they use the strict clustering idea where they have three lots for a total of 40,000 sf where they need 60,000 sf and then they would take another 20,000 sf which would go to the school and keep that as a conservation easement. That is the way clustering works, you get very dense housing like Horizons where there are 5,000 sf lots and they ended up dedicating acres of land for open space. So in order to get the smaller lots, they are giving the school the property but keeping 20,000 sf of that as open space, playground area, etc.

Mr. Grunberger asked where that 20,000 sf will be.

Mr. Lines said basically it would go between proposed lots 190.01 and 190.02. He is unsure of the exact width but it would be 20,000 sf.

Mr. Follman said a minimum of 20,000 sf.

Mr. Jackson said they would make that a deed restriction.

Mrs. Morris asked if that deed restriction would include accessibility for the other houses. She wants the board to understand that this is predicated on a lot of ifs. If this zone permitted cluster development and if they put this conservation easement here then they would have enough area and be compliant with cluster development which is not permitted in this zone. Cluster development is also predicated upon that open space being accessible to the people they are taking it away from. She can understand using cluster development as a theory for how they are designing a layout of the area but she wants the board to understand they are not approving a cluster development. This has a lot of differences, number one being that it is not permitted in this zone.

Mr. Jackson agrees and they could accomplish that being a conservation and open space area. The only way to enforce it is with a deed restriction and with that same encumbrance, the three homeowners would have access to that area for recreational purposes. He thinks that can be accomplished with a deed.

Mr. Hibberson and Mr. Franklin are in agreement that the applicant should come back with a revised plan.

A motion was made by Mr. Franklin, seconded by Mr. Hibberson to table this application until a revised plan is prepared.

Affirmative: Mr. Franklin, Mr. Hibberson, Mrs. Zografos, Mr. Cautillo

No: Mr. Grunberger, Mr. Herzl, Mr. Follman

Mr. Penzer has no problem coming back but there are members of the school who wish to speak. He asked that the board give them permission to speak so they do not have to come back.

Mr. Jackson is unsure it is a good idea to take comment in the middle of an application.

Mr. Bill Hobday said he has never seen a cluster plan with mixed use.

Mr. Jackson said it has been made very clear that this is not a cluster plan. The applicant is drawing analogies to clusters but they are not asking for a cluster development. It is not permitted in this zone and it is not a cluster application. In deference to the people who came out tonight, they are going to give some latitude and take comment at this time. He knows there have been issues in the past where people come out and don't get a chance to be heard.

Mr. Bill Hobday, 30 Schoolhouse Lane, was sworn in. He said the applicant is before this board with an incomplete plan. He hasn't detailed where he is going to put certain things and in addition to that they want to use a cluster effect but there are no cluster applications he has ever seen that has a mixed use.

Mr. Jackson said in fairness to the applicant, they did not propose to take some open space and create it. They came in for three lots of a certain dimension and that's what they sought approval for. The board in turn said if they want undersized lots then they want this accommodation. He doesn't think they came in with an incomplete application at all, they are just trying to appease the board.

Mr. Herzl said it is a subdivision, not a site plan for the school.

Mr. Hobday said there are too many ifs and not enough specifics.

Mr. Jackson said the applicant came in for three undersized lots and they are giving a portion to facilitate a school which is an inherently beneficial which is badly needed in Lakewood as everyone knows. The board likes the idea but they would be more comfortable with the variances if they could give some open space to make up for those undersized lots.

Ms. Raisy Lieberman, 1160 Coughlin Street, was sworn in. She is a parent of five daughters in the school and they have been with school from when they were very young. They have watched the school grow and they are incredible and accommodating. This property is not closed to the public. Her sister-in-law and neighbors are always there and their children use the playground. The people purchasing that property knows the size and knows what they are buying into. These property owners will get the benefit of the open space behind for their children to play. She feels it is a win-win for both the community and for the school.

Mr. Zev Schwartz, 406 East 5th Street, was sworn in. He asked the board to work with the school as much as they can to move forward. He personally knows the Rabbi and he is not in this for any financial reasons as he is a community man. He has two girls in the school and the school is growing because it is a great school.





