The Manasquan Planning Board held a Regular meeting on October 6, 2015 at 7PM in the Council Chambers of the Borough Hall, 201 East Main Street, Manasquan, NJ. Chairman Neil Hamilton asked everyone present to please stand and salute the Flag.

ROLL CALL:
Board Members Present:
Neil B. Hamilton, John Muly, John Burke, Greg Love, Peter Ragan, Mark Apostolou, Kevin Thompson, and Robert Young.
Board Members Absent:
George Dempsey, Joan Harriman, Owen McCarthy, and Leonard Sullivan.
Professionals Present:
Geoffrey S. Cramer – Planning Board Attorney
Albert D. Yodakis – Planning Board Engineer/Planner – BORO Engineering

Geoff Cramer, Board Attorney read the Sunshine Law Meeting Act Statement.

John Muly made a motion to approve the vouchers, seconded by Greg Love.
Board Members Voting Yes:
John Muly, John Burke, Greg Love, Peter Ragan, Mark Apostolou, Kevin Thompson, Robert Young and Neil Hamilton.
VOUCHERS APPROVED

Mark Apostolou made a motion to approve the minutes of September 1, 2015 – Regular Meeting - the motion was seconded by John Burke, all in favor none opposed.
MINUTES APPROVED

RESOLUTION #25-2015 – Livelli, Paul – 559 Salmon Avenue – Greg Love made a motion to memorialize the Resolution, seconded by Mark Apostolou, all in favor, none opposed.
RESOLUTION MEMORIALIZED

RESOLUTION #27-2015 – Hogan, Robert – 20 Dewey Avenue – Mark Apostolou made a motion to memorialize the Resolution, seconded by Greg Love, all in favor, none opposed.
RESOLUTION MEMORIALIZED

APPLICATION #29-2015 – Vidreiro, Jorge – 109 McLean Avenue – Block: 109 – Lot: 18 – Zone: R-1 – Mr. and Mrs. Vidreiro had come before the Planning Board on August 4, 2015 with a 15-minute presentation. At that time the Board gave them direction as to what might be acceptable. They returned to tonight's meeting with a reduced height for the garage and setbacks are conforming. The main issue they have tonight is for a building coverage Variance. Mr. Vidreiro stated they are going over by 3.3%, almost 200-square feet. They need the room because they do not have a basement or an attic. This garage will

be used for storage of vehicles and materials, and a small gym. The second floor is about 6-feet high, he can stand up there. Mr. Burke asked why one garage door is 8-feet and one is 7-feet. Mr. Vidreiro said some of his cars are a little big and won't fit. He wants to stack a car in there. The other is 7 ½-feet inside height. Mark Apostolou made a motion to open the meeting to the public, seconded by John Burke, all in favor none opposed.
<u>Audience Members Coming Forward</u>:
<u>Dick Meincke – 36 N McClellan</u> – His property abuts theirs and he thinks when the garage is built it will be very insignificant and will not bother him at all and he is in favor of the application. He feels they have already improved the neighborhood significantly with all they have done so far.
<u>Carol Coyle – 101 McLean Avenue</u> – She also is in favor of the application. She lives right next door to the applicant, it's a delight to have such an improvement to what she had there before and they are such good neighbors.
Mark Apostolou made a motion to close the public portion, seconded by John Burke, all in favor, none opposed. John Burke made a motion to approve the application, seconded by Mark Apostolou. This is for a building coverage of 28.4%.
<u>Board Members Voting Yes</u>:
John Muly, John Burke, Greg Love, Peter Ragan, Mark Apostolou, Kevin Thompson, Robert Young, and Neil Hamilton.
APPLICATION APPROVED

<u>APPLICATION #20-2015</u> – Morris, Frank (LaPorta) – 50 Ocean Avenue – Block: 162 – Lot: 13 – Zone: R-2 – Carried from 05/19/15 and 07/07/15 – Major three (3) lot subdivision – Chairman Hamilton told Keith Henderson, attorney for the applicant that the Board members who had been absent from the previous applications had listened to the CD's so they could hear the meeting tonight. Keith Henderson stated the Board would recall this was a tied 3-3 vote, the applicant got additional information about the property specifically that the property was currently C/O'd for 4 units rather than 3 units. We made a request for a re-hearing pursuant to your Planning Board rules and that request was granted. Under your rules a re-notice was required and the applicant submitted everything and Mr. Cramer found the file in order and accepted jurisdiction. Mr. Henderson had one witness tonight, Jason Fichter, Engineer and Professional Planner and also Certified Flood Plane Manager, who was sworn in at the last meeting. He testified supporting C-1 and C-2 Variances for this property. Keith asked him if after learning that the property is currently utilized for four (4) separate living units if that changes his previous testimony. He answered no it does not, it supports it and improves it a little bit. He offered testimony to get into the impact of four verses three units and also highlighted statements from his previous testimony. He believes the application is significant in that it reduces the intensity on the property going from four dwelling units to three. Regarding the parking the application proposes two times what is required by the Ordinance. Each dwelling is required to have two parking spaces whereas the design provides four. This improves the parking on the Street by reducing the burden from this property. That is a benefit. He believes this is a better Planning alternative when compared to the existing conditions. The new homes will have greatly improved safety features. Neil said to correct you there is three homes, four dwelling units. Mr. Fichter said fair enough. The new homes would be provided access via a defined easement, utilities would also be placed in that easement, and

the aesthetics of the site would be greatly enhanced. He previously offered the variances under the C-1 criteria. The Master Plan discusses a density which equates to 5000-square foot lots, so this property has more than three times that square footage yet only has the frontage to support one lot. In the MLU Law in talking about hardships one of the criteria is to evaluate an exceptional narrow property, which is exactly what this property is. There is also case law talking about hardships, when you demonstrate a hardship you don't have to demonstrate that there is nothing you can do with the property, you are demonstrating that the hardship imposes a restriction on the property to prevent you to limit the extent to which you can develop that property, that is what we have here. The density they are proposing is in accordance with the Master Plan and adequate emergency access is provided. Mr. Henderson asked Mr. Fitcher if he is aware of the under utilization doctrine and he said he is familiar with it. Mr. Henderson said if you went to two lots here the resulting area of the two lots would give approximately 58% over what is required by both the Zoning Ordinance and the Master Plan, Mr. Fitcher agreed. Mr. Henderson said there is case law that states an under utilization like that in itself is a hardship. Mr. Fitcher said yes that's true and what we have demonstrated by the plan that was submitted was this property can be safely, adequately and reasonably designed for the three homes. The application is definitely strong. Mr. Henderson said last time a couple of issues popped up, we had a disagreement with your Engineer as to whether the exterior stairs would be included in the setback. He said if that is an issue, the applicant would stipulate we will find a way to build them underneath. We don't agree with the Engineer but it's not a fight worth having. We won't ask for a setback variance if that is a concern of the Board. That really completes his testimony. Neil Hamilton said if you revert back to the last meeting, the issue was three or two structures and obviously it came down to a tie vote. So, it failed. In my mind we don't need to go through all the testimony again, we are looking at whether or not this Board is going to approve a three lot subdivision or a two lot subdivision. If a three is approved then we will go through all the Engineering aspects if we need to or we can put that off and you can meet with our Engineer and work that out, aside from this meeting. If that fails and you are down to a two lot subdivision it's your client's prerogative whether he moves forward and where we go from there and the same, the Engineering will all come into play. To be on the cautious side I don't know how you want to do this, I don't know where you want to go to right now. Mr. Henderson said he would rather have a poll vote or if you want to go to the public first. Mr. Love asked how many bedrooms are there now in the four units and how many potentially could there be in three separate houses. Mr. Fitcher said that's not something that is typically evaluated. Mr. Henderson said we would conform to the Ordinance. Greg Love said you could be creating more congestion there. Mr. Henderson said the lots conform 100% with the density and the houses will conform by Ordinance, that's all the applicant has to show. Kevin Thompson made a motion to open the meeting to the public, seconded by Mark Apostolou, all in favor none opposed.

<u>Audience members coming forward</u>:

<u>Michael O'Boyle – 60 Ocean Avenue</u> – He thinks there is some confusion, there are two bungalows in the back that are dilapidated, needed to be torn down five years before the hurricane, there is one large house in the front. He is opposed to building three units on this lot, he thinks that would be overcrowding, in the summertime it's intense and he said two houses are no problem.

Mr. Henderson addressed Mr. O'Boyle, he asked if he understood the parking situation. He said the applicant has offered to supply double the parking requirement for each of those three lots, each of which will conform fully to the area requirements of the Zone. Mr. O'Boyle said if you allow three units, everybody else is going to step forward and want a third unit. Mr. Henderson said there are very few lots on that Street that are as deep as this lot which would not permit them to have conforming lots. Mr. O'Boyle said but you would set a precedent.

<u>Veronica Juliana</u> – 48 ½ Ocean Avenue – She lives next door to the property in question and has strong objections to the application. She is surprised to hear this is zoned for four different residences, there are two shack bungalows that are not winterized, usually having 15 to 16 kids in them a piece. There is one larger house in the front that was always owner occupied. This is not a movement to go from four to three; this is actually to go from one large house plus two very small shacks moving up to three full houses. She doesn't live here year round but is amazed by the changes that Manasquan has gone through over the last 40-years and she hopes they continue to go in a positive direction. There was an emergency in a rear house and the emergency vehicles could not get to him. The density issue needs to be addressed and the safety element also.

Keith asked her if she is testifying that the large house has only one living unit in it and she said as far as she knows there was only one woman plus potentially her mother. She knows the owner and knew her mother was there for awhile, she didn't go all through the house. She doesn't know if there is two C/O's for the main house.

<u>Hugh Flannery – 38 Ocean Avenue</u> – Three lots west of the proposed application. He complimented the Board for the way the Town has grown and the control they have utilized. He is in full support of this project. He thinks it would benefit the neighborhood, it would be an attractive use of the land, whether you put two bigger houses or three medium size houses on there, he thinks Mr. Morris has demonstrated a plan that covers the parking, and he is in full support of it and he suggests to the Committee that they support it.

<u>Fred Falkowski – 59 Ocean Avenue</u> – He is opposed to the plan. He thinks the density is way too high. He believes it will put a lower ceiling on his property value.

<u>Don Prior – 54 ½ Ocean Avenue</u> – He lives right next door to the proposed application, he is in favor of the application. He could think of nothing better than to put three units on this property, if they did become rentals he would think you would only get families and not the kind that has rented there. Why would anyone be against this, isn't this how we expand our base and help our taxes? We would all have a chance to benefit, it's there, it's plausible and as they are they will never be any more than rentals and I pray you use your best judgment to help us financially and aesthetically.

Mark Apostolou made a motion to close the public portion, seconded by Kevin Thompson, all in favor none opposed.

Mr. Henderson gave his closing statement, he urged the Board to vote in favor. Stating the application meets the Bulk requirements of the zone, you have a very reliable builder who is a known product of Manasquan who would be taking on the task of the construction. The applicant has offered to make the stairs comply with the Ordinance and so all you are talking about is one height variance, which the applicant would also give up if that's a problem for the Board. Then you are talking about the frontage requirements. Access will be improved; parking will be double, hugely improved over what's on the site right now.

You will get rid of some group rental bungalows. You will have three houses that are not the type of houses that are going to be rented as group rentals. The lots that you would have in connection with a two lot subdivision would each be 58% over what the Ordinance requires. There is case law in the Land Use Act and in the Land Use cases which specifically says that when you have an under utilization of a property, that creates a hardship. Requiring us to create two lots that are 58% over the requirements when you've got three lots, each of which compiles or in one case is over is a hardship and is a hardship that is recognized. The Master Plan was adopted in 1992, there was a re-examination in 1997, the Housing Plan was adopted in 2000, there was another re-examination in 2003, the 1992 Master Plan established this lot and surrounding properties as an area which is zoned for moderate density of eight units per acre or 5,000-square foot lots. That Master Plan has been re-examined and re-examined and there has never been a suggestion that this should be re-zoned for 7500-square foot lots. If the Board wants to be true to the Master Plan and the Zoning Ordinance you should approve this application. He asked for a poll of the Board. John Burke had a couple of questions that were not clear on the tape. He said it came up about running a fire pipe down that access road, was that part of the original testimony? Frank Morris said he would sprinkler the second and third house if you required it. Next, John said the easement is going to be wide enough for fire engines and first aid access. Frank said 10-feet is required, we are doing 12-feet. Greg Love asked where the parking is for the middle house. Mr. Fitcher said there are two parking spaces in the back, you have one parking space under the building and another space.
Neil asked Mary to skip around so as not to put the board members on the hot seat. Neil spoke first, he said he has been negative on this application from the get go, he understands the Master Plan and the testimony Mr. Henderson has provided but it is his feeling and progress for Manasquan, we will have to look at the Master Plan but we try to encompass the entire Town when we do look at it. His personal feeling is it will be a nice project, the houses would be larger than what three would be, and it's quiet there in the winter time. You have the best of two worlds there, you have the Beach and Stockton Lake, and it's his personal feeling that two homes are sufficient. Kevin said yes, as he voted last time. He doesn't think we missed it in visiting the Master Plan. John Muly, since the last meeting and in looking at the property and the construction up and down Ocean Avenue, there is only one other place that has three houses deep and that's next door. One of them is being re-done since the flood. Personally, he agrees with Neil he thinks two houses on there would be a real asset, Mr. Morris builds a beautiful house, there is no question about that but he thinks three houses is too much and he favors two. Al Yodakis said if there was a road as a right-of-way would the front two lots meet the lot area, but the answer was no. Mark Apostolou said he is opposed to three for the following reasons: by going to two, we could eliminate the height variance, to him this is a giant flag lot and he knows that the Master Plan zones out flag lots. He has a grave concern about the easement with regards to this roadway. He fears this will become a parking disaster with this easement. Who is going to enforce those easements, who is going to enforce parking? The ingress and egress to get out has him greatly concerned. He is opposed to three lots. Peter Ragan said he is inclined to vote no, he agrees specifically with Judge Apostolou's comments regarding flag lots. The comments of the last review of the Master Plan specifically go over the elimination of flag lots in Town. Greg Love said he is leaning more toward a two building structure, he thinks inlet and egress along an easement like that for three buildings is just

too much, especially in the summertime. Even though the lot coverage is acceptable in the R-2 zone, he doesn't think it develops into a good situation when you have three in a row like that. He thinks it's a unique area that is within our Town and he doesn't think we should over exploit it. He would tend to vote no. Robert Young said he would vote no as well for all the reasons that have been outlined, but primarily what the Judge highlighted. John Burke said when he listened to the tape his first reaction was to vote no. Then, listening to the testimony tonight he is afraid if you go to two, you will have two massive houses there. He thinks three moderate size houses on this property is probably a better deal than two massive houses. He thinks he would vote yes on this. Mr. Henderson took a moment with his client, he asked the Board to carry this for a month. They are a contract purchaser and they would like to discuss your polling with the seller and decide if we can move forward with the deal. Mark said he won't be here next month. Geoff said it wasn't a vote. Neil said so knowing what you heard from the Board tonight can I assume you are going to come back with a two lot subdivision with site plan amenities. Mr. Henderson said we don't know, we have to talk to the seller, we are past our contract time, we've gotten every extension we could get and he doesn't know what the seller's position will be. Neil said so we are not going to have a re-hearing in all fairness to those in attendance both for and against. Keith said we're done, if we come back and we ask for a vote on three, that means we want to appeal. We are not going to put in any more proofs. They are asking for a continuance to the November meeting. Kevin Thompson made a motion to carry the application to the November 4, 2015 Wednesday meeting, seconded by Peter Ragan, all in favor none opposed.
APPLICATION CARRIED TO WEDNESDAY, NOVEMBER 4, 2015

<u>APPLICATION #26-2015</u> – Hawryluk, Raymond and Kathleen – 484 Long Avenue – Block: 174 – Lot: 99 – Zone: R-3 – Michael Rubino is the attorney representing the applicants this evening. The application is carried from the September 1, 2015 Planning Board hearing. Mr. Rubino said Mr. Liston is here in the audience, he represents the Graw's who live immediately to the west of the applicant's property. He and Mr. Liston have been in contact with one another and have agreed upon a stipulation between his clients and his. There are other people in the audience who he understands are still going to object. The Graw's have removed their objection to the project. He wanted that put on the record. He said there is a proposed entrance to the property that needs a variance on the west side of the property, it's in the middle of the building, that request for variances is going to be withdrawn. There is an entrance off the Street and there will be one in the back, so there will be two entrances to the property. The existing door will have to be closed up. They have to go over that with their builder. There will not be any steps in that side yard setback. As to the HVAC units will be in the western section of the rear yard. There is also a question as to the maintenance of the docks; there are some accusations that his client's son has run a charter business out of the docks. They are willing to stipulate that those docks cannot be used for commercial purposes by anyone. They are willing if there is a successful Resolution to take the Resolution and record it so it's memorialized in the County. So, anybody buying the property would be on notice that there is this condition. It's similar to a restriction running with the land but anybody who buys it couldn't come in and say I didn't know. Mr. Cramer said it's a <u>Notice Given</u>. On top of that, his clients are willing, and he does apologize on their behalf, there is an odd shaped

roof on the property that has been built. When they had the property constructed they thought they would be in front of this Board before the house was up, they understand that the Board might take it wrong that they had the nerve to go ahead and build it, but they did not realize that that house would never be done as fast as it was and the roof of the house would be up before they got before the Board. They are willing to take off two feet of that roof for starters, so it would stick out 7-feet rather than 9-feet. That does a couple of things, it makes the roof comply with your rear yard setback, the roof as it exists goes approximately 2-feet into your rear yard setback, by taking off 2-feet of roof it will bring the roof into compliance as far as the roof in your rear yard setback. There was some question in your Engineer's report as to what the coverage was, we recalculated that the original coverage was 37.8%, your Engineer came up with 39.2%, we re-checked those figures and as submitted the 37.8% is correct, but if you take off the 2-feet we are talking about because that goes to coverage even though it's 30-40-feet up in the air, that brings the coverage down to 36.3%. That is building coverage. So the variances we are asking for that remain, setback for the rear deck, where it's proposed to be 17.3-feet from the rear line where 20-feet is required. There is still a coverage variance for lot coverage of the 36.3% that he mentioned as opposed to 35%. Mr. Liston came to the microphone stating he represents Andrew and Teresa Graw who are the owners of 480 Long Avenue, direct to the west of this property. Our concerns have been met by the applicant and he wants that on the record. If there is an approval he asks the Board attorney to provide him with a draft copy of the Resolution in advance so he can review it with his clients, who are both attorneys as well. Neil Hamilton said we can do that. Mark Apostolou asked him if at that time he would remove any objection and also that this Resolution is to be recorded. Mr. Liston said yes, that's important because if there was a violation while these folks own it would open the door to the Chancery Division to get an injunction if they had to. We don't want to do that, we want this to be put to rest tonight. Mark asked Geoff if in the future the Board could request this of all applicants' and that is something the Board will look at. Neil said two members aside from those who heard this application before Mr. Ragan and Mr. Thompson both listened to the tape and they can vote on this tonight. The side entrance was the sticking point and you have addressed that, and the prow roof to be within deminimus, reasonable request and the rear deck is fairly deminimus as well. He asked for any comments from the Board. Mr. Rubino said he would first like to go through the Engineer's letter. Paragraphs #1 through #4 are all complied with, paragraph #5 raises a question as far as Storm water re-charge, that's been changed, all water will be self contained they will no longer need any approval from the DEP. There will not be any pipes going through the bulkhead. Paragraph #6 they will comply with, #7 they will indicate the driveway material on the plan and they have met with the Zoning Officer to come up with a plan so the front door is not blocked. They have way more than 80-square-feet of storage. A proposed landscaping plan will be provided, there will be minimal landscaping. #10 all new utilities if possible to be underground, his clients tell him everything on the Street is already above ground and it really wouldn't be possible to put their underground. Neil said in your Architectural is the front of that structure going to remain the same with the garage doors and the entrance door in the center. Mr. Rubino said yes they are. Neil said if there was a change you would have to come back to this Board and I hope you don't want to do that. Neil said we are going to approve what we see if you change something you would have to come back. Mr. Hawryluk said there will be 4-feet between the two

driveways that will be a path way to the door that will delineate where the two driveways are. John Burke asked what the driveway material will be. Mr. Hawryluk said we are going to put concrete in and then four foot of walkway which may be gravel at first but eventually into pavers. John Burke said you testified there will not be any commercial activity out of that property, Mr. Rubino said out of the dock. John said does that include contracting with somebody to fish at another location than having them come to this property to get on the boat. Mr. Rubino said his understanding would be no, if you are going to for hire clients and they are going to come to your boat, you can't do that. Mr. Rubino said that's not to say that somebody can't go on the boat at 4 o'clock in the morning to go striper fishing this time of the year. If they have to pay to get on the boat they can't do it. Mark Apostolou made a motion to open the meeting to the public, seconded by Robert Young, all in favor none opposed.

<u>Audience Members Coming Forward</u>:

<u>Ed Foche</u> – 474 Long Avenue - He lives two doors away from the applicant, he asked if there will be two driveway cuts in front of this house. The answer was one 20-foot curb cut as it's a two car garage. He asked if they will drive onto the sidewalk and Neil said they will come in on an angle, we have many of them in Town. Mr. Foche said and he can use cement to pave that driveway. Mr. Hamilton said as long as the Zoning Officer didn't pick it up that he was over on impervious coverage, then he is good to go. If he has stones around the perimeter of the house all the way out by the docks for the most part he would assume the Zoning Officer would pick that up.

Mark Apostolou made a motion to close the public portion, seconded by Robert Young, all in favor none opposed.

Mr. Rubino gave his closing statement. Neil said so we are looking for two variances, the deck 20-feet required, 17.3-feet is what's proposed, building coverage 36.3% on building coverage where 35% is required. There will be a stipulation in the Resolution with reference to business operation.

John Muly made a motion to approve the application, seconded by John Burke.

<u>Board Members Voting Yes</u>:

John Muly, John Burke, Greg Love, Peter Ragan, Mark Apostolou, Kevin Thompson, Robert Young, Neil Hamilton

APPLICATION APPROVED

Mark Apostolou said being the Board or the Board Secretary has never heard from the attorney for the Hochschild/Immersberger application, once an attorney makes an appearance we can't transact any business without that attorney being present. This attorney has never returned any of Mary's phone calls and apparently the applicant says they can't get in touch with the attorney. Mark feels it's a stale application. Mary said she did ask Mrs. Hochschild for a letter stating they would not be here tonight but she never got it. They are taking down the bulkhead and putting up a deck, the plans were just approved by the Zoning Officer. Mark has a problem with their lack of respect to the Board Secretary and can we deem it to be withdrawn. Geoff said he doesn't believe it's been withdrawn, the understanding of the Board is that they will return with a proposal so he views it as a failure to advance or prosecute the application. Geoff will send them a letter, since they did not appear tonight or communicate through an attorney the Board at

the next meeting will consider a motion and a second to dismiss the application for lack of prosecution. Geoff will draft a letter to both the applicant and the attorney.
Geoff advised the Board about the Edgar's Pub law suit. He said the applicant never signed the stipulation agreement, nor have they done certain other things associated with the content of the settlement agreement. The Borough of Sea Girt moved for enforcement of litigants rights against the Reef and Barrel, formerly Edgar's Pub. Geoff had an exchange of e-mails with Owen McCarthy and the Chairman and they thought it best that Geoff tries to stay out of this. The attorney for Edgar's is Jim Kinneally. In any event, there is a hearing date for this notice of motion for this Friday, October 9th. The matter at the Judge's request has been put off until the 23rd of October and there has been back and forth between Mr. Kinneally and Mr. Montenegro, attorney for Sea Girt. Neil said Mr. Kitrick, attorney for the Borough of Manasquan looked at the agreement and in the fine print, Manasquan is riding in with this thing. It's not fair, it shouldn't be our issue.
There was discussion about the outstanding vouchers for legal fees and the fact that the Planning Board legal line is tapped out.
There was discussion about the Warjanka application and the fact that their lot has been sold. Al Yodakis asked about the Deed descriptions, Robyn did look at them, Al had reviewed them but they were never signed. Their attorney sent a letter for Neil and Mary to sign. Al would like a copy of the Deed for his records.
Kevin Thompson made a motion to cancel the October 20, 2015 second meeting, seconded by Mark Apostolou, all in favor none opposed.
Mark and Greg will not be present for the November meeting.
Kevin Thompson made a motion to adjourn the meeting, seconded by Mark Apostolou, all in favor none opposed.
MEETING ADJOURNED AT 8:22PM

Respectfully Submitted,

Mary C. Salerno
Planning Board Secretary