The Manasquan Planning Board held a Second meeting on May 19, 2015 at 4PM in the Council Chambers of the Borough Hall, 201 East Main Street, Manasquan, NJ.

ROLL CALL:
Board Members Present:
Neil Hamilton, John Muly, Paul Rabenda, Leonard Sullivan, Mark Apostolou, Kevin Thompson
Board Members Absent:
Mayor Dempsey, Joan Harriman, Councilman McCarthy, John Burke, Greg Love, Peter Ragan, and Robert Young

Chairman Hamilton opened the meeting and asked everyone present to please stand and salute the Flag.

Attorney Geoff Cramer read the Sunshine Law Announcement.

Neil told the audience that tonight's meeting will be ending by 6:15PM as the Mayor and Council will be using the Courtroom for a public meeting regarding the Dunes.

Mark Apostolou made a motion to approve the minutes of April 7, 2015; the motion was seconded by Kevin Thompson, all in favor none opposed.
MINUTES APPROVED

RESOLUTION #19-2015 – Kettner, John – 111 Beachfront – Block: 167 – Lot: 4.02 – Zone: R-4 – Kevin Thompson made a motion to memorialize the Resolution, motion seconded by Mark Apostolou.
Board Members Voting Yes:
John Muly, Paul Rabenda, Leonard Sullivan, Mark Apostolou, Kevin Thompson and Neil Hamilton.
RESOLUTION MEMORIALIZED

APPLICATION #20-2015 – Morris, Frank – 50, 50 ½ and 52 Ocean Avenue – Block: 162 – Lot: 13 – Zone: R-2 – Major three (3) lot subdivision – Bulk Variances – Keith Henderson is the attorney representing the applicant. He said the applicant is the contract purchaser, the property is owned by Helen LaPorta and the contract gives them permission to make this application. The Board accepted jurisdiction of the application. Keith said in the Engineer's letter it noted a height variance required for one of the lots, the applicant has reduced that and submitted amended plans showing that it will just be a hardship variance, it's not a Use Variance, Al said he did receive revised plans. Keith had three witnesses to be sworn in, Frank Morris, applicant, he lives on Allenwood Road, Wall, NJ. Paul Moore, Professional Planner/Architect, Wall, NJ., and Jason Fichter, PE, PP, CRM of In Site Engineering, LLC, 1913 11th Avenue, Wall, NJ. The Board accepted his credentials. Geoff

swore them in, the first to testify was Frank Morris who gave testimony to the fact that he proposes to demolish all the existing homes and put three single-family homes on the site. He is also asking for subdivision and variance relief. Geoff asked him how many houses are on the property now and the addresses. He said three and they are 50, 50 ½ and 52 Ocean Ave. Next, Paul Moore, Architect submitted Exhibit A-1 – 3 split poster board showing elevations of each lot with three new homes. The 3 panels showed the three different homes front, and side view, side view is what you will see from the easement area. The one on the left panel shows the Ocean Avenue home, the middle one is the middle home and the one on the right is the water front home. The two houses behind will be blocked by the front house. The front two houses have a flood elevation of 9, the rear elevation is 10 and it's required to have an additional one foot of free board, so the design elevation for the front two homes is 10 and the waterfront home is 11. The waterfront home is the one they are requesting a height variance for. They have to start a little bit higher because the existing grade back there is down about elevation 3 ½ and that floods on moon tides, so we want to get the actual ground up so it didn't flood. We have the most grade in the garage storage area of that unit at 5.5. We should easily be about a foot above of where it's going to flood at moon tide. Keith asked if in any of the cases in which Mr. Moore appeared before this Board has the Zoning Officer include stair cases in the front setback, he answered never, and they have never been counted toward his setback. He is aware that in Mr. Yodakis' letter he has included them. He addressed the parking. They are providing four parking spaces per lot, total of twelve on site. Al Yodakis said the new Ordinance that was put in place says that if you are raising a home, steps can be extended. It specifically calls out for new construction; steps need to meet the setbacks. Keith said which means the front of the building without steps. Go back to the definition. Al said if that's how it is to be interpreted, it has no meaning. Keith said the Ordinance has no meaning anyway, because the Ordinance says on lifted homes, setbacks are excluded by State Statute. Mark said he would defer to the Board attorney. Neil said we will get to that. Mr. Cramer asked Mr. Moore if there is only one access drive to get to each of these houses. Mr. Moore said there is an easement past the first two lots to get to the waterfront and middle home. Mr. Cramer asked if that access would be burdened with any parking at all. Mr. Moore said no, all the parking is completely outside of that. Parking is strictly prohibited along that corridor. Mr. Moore said the easement is 12-feet wide. Mr. Cramer asked how they proposed to enforce that if someone parks a car out there. Keith said they would give the Town a Title 39 Waiver. Geoff said why not treat this as a public right-of-way with restricted parking? Keith asked if the Town wants to maintain it. Geoff said you will have utilities in that right-of-way, Keith said yes. Geoff said in the letter from the Fire Department they are suggesting this be one big fire lane. It seems to him we are looking here at something more than just a driveway. Keith said we have an Engineer/Planner who is going to testify. Next, Fichter, he had two Exhibits – A-2 is a copy of the plan that was submitted to the Board and they added color to it for clarity, A-3 is an aerial of this section of Ocean Avenue from N. Potter Avenue to the Creek, showing both sides of Ocean Avenue, the lot lines are taking from the Monmouth County Department of GIS, it's basically a reflection of your Tax Maps, they outlined the subject property in blue, and they highlighted certain lots in yellow. Mr. Fichter gave his credentials which were accepted by the Board. He said the lot is 15,798 square-feet, it's located in the R-2 Zone, which requires 5,000 square-foot lots, and they have a bit of a challenge gaining full

utilization of this property by way of your Ordinance based on its existing geometric condition. The property itself is about 3 X the minimum lot size requirement in the Borough's Ordinance, whereas the frontage requirement is only 1 X that what your Borough Ordinance requires. We have a single lot, but today there are 3 dwellings on the property. The applicant is seeking to do is subdivide the single lot, reconfigure the homes and provide a better condition for the residents of the property as well as the immediate neighbors and the Borough as a whole. The house closer to the water will be moved back to bring it into closer compliance with the DEP. The lots will be reconfigured. The utilities will be located throughout the property. As far as stormwater goes, this project does not qualify as major development, therefore your Ordinance Chapter 28 applies, which requires that a dry well be provided for each of the three proposed lots to collect 1-inch of runoff from the roof area. The proposed curb cut is going to be located in the same spot as the existing curb cut and about the same size, so there will not be an impact to the existing parking patterns. Since we are doubling the onsite parking requirement for each of the dwellings, we are reducing this properties burden for the on Street parking supply. We are requesting 5 Variances, first is the building height, this is for the house on the water which meets the criteria for a C Variance as it does not exceed the 10% threshold over what is permitted. Building height permitted is 33-feet; they are proposing 36.25-feet. He said the hardship here is the difference in the elevation, in that it drops down and the BFE goes up, so they have a difference of two vertical feet constraining this property as opposed to the middle lot. This drives the dwelling up. The flood elevation at the top of curb is a little more than 5-feet below the BFE that's impacting lot 13.03. You can see how height becomes an issue on that back lot. We are proposing a little bit of fill on that back lot just to get up above the flood elevation, at a very high tide the tide will come onto the property. We are trying to provide underneath the house an area for parking and area for storage. Once we lift up the grade, we need to provide clearance underneath for the parking, bicycles, beach chairs, etc. That will essentially set the finished floor of the home. The waterfront home has a very shallow roof slope. That is an effort to try to minimize the variance that we are requesting. They are also requesting two variances for lot frontage. The front lot conforms; the other two have 0-feet of frontage. When you are looking at a Hardship is something that prevents you from getting maximum utilization out of this property. That's the logic he is following, taken from the Supreme Court of NJ, the Kaufmann Case and the Davis Case. It's really the extent of use of the property rather than no use of the property. There are already three homes there, what they are doing by way of the subdivision application is improving the means of access to each dwelling, safety and aesthetics of each dwelling. They are also requesting two variances for a building lot to abutt a Street. The MLUL says if you can't provide homes that abut an improved public Street, the next subchapter in MLUL talks about if you cannot do that, that's ok as long as you provide safe and adequate access for emergency vehicles. The 12-foot wide drive way that we are providing is suitable for emergency vehicles. He believes this meets the requirements for a C-2 Variance. He looked at the State development and re-development plan, SDRP which talks about development throughout the entire State, they encourage developers to focus develop in certain places and stay away from other places. This property is located in Planning Area 1, or the Metropolitan Planning Area. This is the area that the SDRP says development should be focused. This lot has three principal structures on one lot. This application separates each lot of conforming size with one home on each

lot, which eliminates the Use Variance condition. He had other arguments supporting the application. Neil told him to speed it up as the Board has to watch their time. Using Exhibit A-3 he showed in yellow highlighter, the yellow lots represent lots that have stacked lots, lots that have no frontage and there is some form of shared means of access to those lots. It identifies 9 lots that have no frontage which require a shared driveway. The Tax Map identifies 14 easements mainly associated with those lots, some also associated with narrower lots where two lots share access. He then addressed how this subdivision would accommodate the Master Plan. Neil told Mr. Fichter that he was not in attendance during the Informal Presentation by this applicant and the fact that he spoke out against this project, he does recognize the size of the property, but he recognizes the density that occurred or has received Variances down there as you note on the Eastern portion of Ocean Avenue on the North side, pretty much all of that is pre-existing where this Board has granted Variances for elevations, additions, etc. Also, we have done a good job in approving applications where we have gotten rid of some of these old summer bungalows and we've gotten down to maybe one or two homes going back. As I stated to Mr. Henderson at the informal I was against the 3 lot subdivision, I would certainly entertain a two-lot subdivision and I have spent time on Ocean Avenue since that hearing trying to open my mind that you come in with a 3-lot subdivision could I be supportive of that and my answer today still is no. If you want to ask the Board so we can proceed on that we know that we are on the same track, you have support of the three lots, you know that I'm a negative on the three. Keith said we knew that from the informal. I repeat what I said then, I don't think it's the Planning Board's function to change the Zoning Ordinance. These lots all exceed the 5000 square foot for the Zone and that's what the Master Plan says, that's the appropriate density for the Zone. If that's how you feel then the Planning Board should send a proposal to the Mayor and Council to change the Zoning. In land use circles we call that under utilization when you can't use that. I can give you tons of cases in Shore Towns around here that have gone to Court on this issue and they've all gotten reversed when the Planning Board turned them down. Two houses won't happen here for a variety of reasons. It's either going to be an attempt to lift what's there and have the three lots and the houses on the lots for whatever they are or it's going to be just a clean sweep and it won't work any other way. Mr. Fichter said from a planning perspective when he looks at any property one of the things he has to look at is alternatives. I stated throughout my testimony that what is proposed here is a better planning alternative than what's existing. In his homework on this property and evaluating this, the alternative is the existing condition. He thinks that the Board and the Community and so on would prefer attractive homes in an organized manner with safer access as opposed to what's there today. Neil said that's up to the Board, he then asked for comments from the Board. Paul Rabenda asked Frank Morris if to alleviate the Fire Marshall's concern about fire trucks and fire lane markings, would he entertain putting in an R-13 sprinkler system in those back two houses? Frank said the State is pushing it now and he would definitely have no problem with that. We have to run this past Chris Barkalow but this way you won't have a driveway marked Fire Lane. 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>Fred Fialkowski</u> – 59 Ocean Avenue – He had a petition which was signed by 30 people but was told by the Chairman it was not admissible. He doesn't believe this is the best use for this property, he wants more open space.
<u>Michael Iuliano</u> – 48 ½ Ocean Avenue – He is against the subdivision, would prefer to see two houses there. He feels you are changing one house, two bungalows into three large houses. He prefers to see two houses there. He is aware also there is another bid on the property. He would like to see the house on the water kept to 33-feet there is no reason to raise it up.
<u>Hugh Flannery</u> – 38 Ocean Avenue – he reviewed the application and believes it will be good for the neighborhood.
<u>Maureen Kelly</u> – 107 Seaside Place, Sea Girt – last week she put a formal bid in for this property and is willing to work with the Board on whatever they see fit, whether it's keeping the existing structures and just lifting them. You have options. Neil said that is not something the Board needs to entertain that, we are dealing with this application right now. If this should fail or they change their mind.
<u>George Forshay</u> – 36 Ocean Avenue – He lives next to Mr. Flannery, Frank Morris built his house and he built many houses on Ocean Avenue and one thing we can attest to is he does a wonderful job and whatever he develops is going to look good. As far as parking goes, Ocean Avenue is a mess already; there is nothing you can do to correct it. Summertime there is no parking.
<u>Annemarie Kelly</u> – she owns a house at 18 Sims Avenue, her son-in-law is Michael Iuliano, suggestion for the thought of anybody to dump in sand and elevate that house is obviously going to swamp the houses that are around it. Neil said that would be monitored by the Construction Department.
<u>Andrew Cefalo</u> – 48 Ocean Avenue – he had questions with regard to the bulkhead that is there and would they be making modifications because once that water rises it comes up on his property and the reason he believes is a result of the bulkhead not being up to standards. Second question is the side yard requirements he didn't hear any mention to that, Neil told him they are adhering to all of that. Third, he wants to know if there will be any improvements to his side of the property because right now there is a dilapidated fence, he put down 2 X 6's – Mr. Henderson said they will stipulate they will replace the bulkhead and the fence.
<u>Tom Laba</u> – 46 Ocean Avenue – he feels the traffic impact is very dangerous with children.
Kevin Thompson made a motion to close the public portion of the hearing, seconded by Mark Apostolou, all in favor none opposed.
Neil said we got the message from the public pro and con, now it's up to the Board now.
Mr. Henderson gave his closing argument.
Mr. Cramer asked Mr. Henderson if in the Engineer's report he would comply with everything, curbs and sidewalk replacement, etc. etc. Mr. Henderson said they would comply.
Kevin Thompson asked if the green areas on the colorized rendering would be grass or gravel. Mr. Moore said grass. He asked if they would stipulate to the replacing the bulkhead and take the fence down and they said yes. Also, the sprinkler system for both of the rear houses. Paul Rabenda said any house that has its width and parking with the garage in the rear is going to lose the width of that driveway. John Muly said he would like

to know how many other audience members would like to speak and he feels they should have the opportunity. Neil said we would have to continue this application. He said we will give 5 more minutes to the public. Maybe you could come up with something that we haven't heard so far.
<u>Pat Connolly</u> – 65 Ocean Avenue – she said they are extremely concerned with the density on Ocean Avenue and they are asking the Board to help them by denying this application and it would be a tremendous gift to the people on Ocean Avenue. This density is horrendous and is ruining our Town. We are asking you to have the courage to deny this application.
Keith Henderson asked to cross examine. He asked Ms. Connolly how many dwelling units she has on her property. She answered two. He said three. She said no, there are two dwellings, one dwelling has two apartments. Keith said three living units. He asked how many parking spaces she has. She said none. He asked how wide her lot is. She said 25 X 150-feet, which is pre-existing. Keith said this was approved before this Board in 2001 and all those Variances were approved. He thinks it's somewhat disingenuous for the objector to be discussing an application like this which has 12 parking spaces which consists of 50-foot lots and she has the same number of dwelling units with 0 parking spaces on a 25-foot lot. Mario said we have a Deed Restriction there, we cannot put heat in the back. Neil said alright we're done.
<u>Susan O'Brien</u> – 44 Ocean Avenue – she is concerned with access for emergency vehicles. She lives in a house that had a house in the front with a shared easement and they had an accident and the neighbor blocked the driveway and an ambulance couldn't get back there to help her husband who was hurt out on the water. Neil said the applicant is aware of that and will take all legal precautions.
<u>Judy Collins</u> – 82 Ocean Avenue – Two things, if you go ahead with this project will the transformers at that end of the Street going to be able to handle the electricity load. It took them awhile up at her end of the Street to figure that out and replace the transformer. Neil said that's something JCP&L will work out and also the NJ Gas Company. Her other concern is all the wires that cross her property to go to different buildings, she doesn't know if you can put underground wires on these three properties. Keith Henderson said they can try but it depends on JCP&L. Frank Morris feels they should be able to put everything underground. Worst case scenario, he would have to buy a pole.
Kevin Thompson made a motion to close the public portion of the meeting, seconded by Mark Apostolou, all in favor none opposed.
Kevin Thompson made a motion to approve the application as stated with all the stipulations, Paul Rabenda seconded the motion.
<u>Board Members Voting Yes</u>:
John Muly (would like to see two houses but voted yes), Paul Rabenda,
Kevin Thompson,
<u>Board Members Voting No</u>:
Lenny Sullivan (he would like to see two houses; he thinks the density is too much as it is).
Mark Apostolou (he thinks the substantial detriment does exist as a result of the proposed).
Neil Hamilton
Geoff said a split vote fails.
APPLICATION DENIED

Keith Henderson asked if there was some way the tapes could be listened to by some of the missing members. Geoff said only if the hearing is continued. Neil said it would have to be at night. Keith said that's ok, but it is his request that it be carried until you can get a full Board and somebody could listen to the tapes. Geoff said there would also have to be an opportunity for further public comment. Mary said she didn't know you could do that after you took a vote. Geoff said in the Rules and By-Laws we have had this before. Mark said that was a motion for reconsideration not a continuation. Keith said the applicant is entitled to a full Board. Mark said he believes your motion has to be before the hearing, with due process you are entitled to make a motion for reconsideration in the By-Laws, but without being rude he believed it had to be before the hearing for that continuance. I do think you have the right for a motion for reconsideration. Keith made a motion for reconsideration and he will do so in writing. Neil said he believes the Judge is right, you look at the Board on a Use Variance and say, it's not going to happen tonight so you continued on, but we didn't do that today. Keith said it's not a Use and he didn't expect a 50/50 tie. Neil said being we have heard this we don't need to re-hash it for 50-minutes. Mark said he would defer to the Board Attorney but if the motion for reconsideration is considered, then all the other members would have to listen to what was heard tonight. On reconsideration he doesn't believe the public would have the right to be heard because it's only the Board's determination on that. The Board is determining whether or not the facts as presented previously warrant the relief. Geoff said there was a previous case of similar procedural circumstances, Mr. Henderson was involved in that case. There was an opportunity for everyone to be heard on the date that the matter was reconsidered. Mary said July 7th is open. The Board accepted Mr. Henderson's request for reconsideration, the people in the audience can return on that date at 7PM.

<u>APPLICATION #22-2015</u> – 56 Union Avenue Associates, LLC – Langell, Ron – Joseph Lane is the attorney representing the applicant, Kerri Arrington. This is an application for a Variance to install a sign on the property, there is an existing sign post and the applicant is looking to install a 4 X 6-foot sign on a 14-foot high pole. The sign would be 24-square feet in total. Geoff swore in Kerri Arrington and the Board Engineer. Mr. Lane asked to have an exhibit of a photograph of the property with a photo shopped in sign. This was marked as Exhibit A-1. Neil asked Mr. Lane if he received a copy of the TECH report and he said yes and there is no interest by the applicant to reduce the size of the sign. There are quite a few tenants in the building and one of the purposes to have a sign on the road is so that people don't have to drive down the Street and turn their head and take their eyes off the lane of traffic. Neil said you would remove all the signage off the face of the building. Mr. Lane said yes. Next, Ms. Arrington explained why they want to do that being she is authorized on behalf of 56 Union Avenue Associates, LLC. She said there is no visibility and everybody passes by the building and can't find the tenants. She said the businesses around them have signs, Dunkin Donuts, Ocean Star Gas Station, and Frank's Transmission. They want to have a sign so when people are traveling up and down Highway 71 they can see the sign and help the tenants grow their business. Board members asking questions were Lenny Sullivan, Mark Apostolou, Al Yodakis, Paul Rabenda, Neil Hamilton, and John Muly. Kerri Arrington said that pole has been there for over 40 years since the Roger's owned the building. They presently have six businesses there. The sign will be lit and the anchor tenants will have a bigger spot on the sign than

the smaller tenants and then open spaces for spots that they are trying to rent. The vinyl slides in. The anchor tenants are present to speak for the sign. Customers have to turn the corner to park; there is parking on the side and in the rear. Mr. Lane said the service station across the Street has at least 18-20-square feet of signage, and a blank open box without a cover on it. The size of the sign is 6-foot high X 4-foot wide. Geoff swore in Ronald Langell, one of the owners of the building. He said they have small units in the back of the building and they won't rent because they can't have a sign visible to the Main road. John Muly said the TRC was concerned with the size of the sign. Mr. Lane said there are 9 tenants in the building, along with apartments. Neil asked if there was some way they could do a mock up with some heavy duty cardboard so TRC could look at it, so they could see it and make a recommendation to the Board. Mark asked what the coloring of the sign would be. It would be black letters on white background that would just slide in. She offered to set a timer on it so it would shut off at a certain time at night. They stipulated that all the present signage on the building would be removed. Kevin said he doesn't need a mock-up, he likes the concept, he understands if you are in business today, people have to be able to find you. I'm pro business, you are putting it all on one sign, you are condensing the signs and you are removing everything else from the building. A timer is even nicer. Al asked if they reviewed the color with their tenants. Paul feels a façade sign would look better on the building. Lenny agrees, he drove right by it and had to turn around at the Church and come back. Mark said it's a pre-existing use that was there, they are cleaning up the building. 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>Carl Giordano</u> – 62 Brower Drive, Brick, NJ – He is a co-owner of Mathnasium which is a national Franchise or math only learning center for children K-12 grade. We have lots of parents and children that are looking for our space. We are very proud to be part of the Community and we chose the space because of its proximity to Union Avenue and the fact that we are getting people from the north and the south, and they are surrounded by schools. They offer free assessment to any child in the Community; they can't find us even with the stickers on the window. If you stroll by after this meeting, the building almost looks abandoned because of the giant, rusty light box on it. He and Kerri did spend a lot of time with two different electricians to try to make the existing light box work, and then they wouldn't have had to come before the Board. It is beyond repair. He is in favor of the new sign and begs the Board for their support. Right now the building does not look aesthetically pleasing. Mark asked about color, Mr. Giordano said he will take what he can get, if it needs to not have the Logo which is black letters but has a red A+. Kevin said he feels the color is not critical.

<u>Tim Vasquez</u> – 26 Brookside Avenue, Old Bridge, NJ – He is the chief Instructor/Administrator for the AIKIDO Martial Arts School – he has been there for 12 years. He was there through the whole Sandy Storm, assisted in gutting out the whole building, one of the main problems they have with the building is people finding them. His facility is in the rear where the parking lot is. People literally drive by, back and forth looking for his facility, even with a GPS. Modernizing the building will be great; it will give the downtown walking area a better appearance.

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

Kevin Thompson made a motion to approve the application as was stated with the stipulations, one central sign brings the whole building together, Mark Apostolou seconded the motion and added that all present signage will be removed and no additional signage on the building will be allowed. Neil said the paper signs in the windows if not removed will have to be turned over to Code Enforcement and you conform to window signage.
<u>Board Members Voting Yes</u>:
John Muly, Leonard Sullivan, Mark Apostolou, Kevin Thompson, and Neil Hamilton.
<u>Board Members Voting No</u>:
Paul Rabenda
APPLICATION APPROVED

Kevin Thompson made a motion to adjourn the meeting, seconded by Mark Apostolou, all in favor none opposed.
MEETING ADJOURNED 5:50PM

Respectfully Submitted,

Mary C. Salerno
Planning Board Secretary