The Manasquan Planning Board held a Regular meeting on June 3, 2015 at 7PM in the Council Chambers of the Borough Hall, 201 East Main Street, Manasquan, NJ. Chairman Neil Hamilton opened the meeting and asked everyone present to please stand and Salute the Flag.
<u>ROLL CALL</u>:
<u>Board Members Present</u>:
Neil Hamilton, Paul Rabenda, Councilman McCarthy, Greg Love, Lenny Sullivan, Mark Apostolou, Kevin Thompson, Robert Young
<u>Board Members Absent</u>:
George Dempsey, John Muly, Joan Harriman, John Burke, Peter Ragan
<u>Professionals Present</u>:
Geoffrey S. Cramer – Planning Board Attorney
Albert D. Yodakis – Planning Board Engineer/Planner

Geoff Cramer read the rules of the Sunshine Law.

Neil asked if the Vouchers are in order and Lenny Sullivan said they are, Kevin Thompson made a motion to approve the vouchers, seconded by Councilman McCarthy.
<u>Board Members Voting Yes</u>:
Paul Rabenda, Owen McCarthy, Greg Love, Leonard Sullivan, Mark Apostolou, Kevin Thompson, Robert Young and Neil Hamilton.
VOUCHERS APPROVED

<u>RESOLUTION #22-2015</u> – 56 Union Avenue, LLC – 56 Union Avenue – Block: 81 – Lot: 57.01 – Zone: B-1 – Sign – Kevin Thompson made a motion to memorialize the Resolution, seconded by Mark Apostolou, all in favor none opposed.
RESOLUTION MEMORIALIZED

Chairman Hamilton said RALCO #46-2014 – a continuation of a major subdivision – the cemetery at 49 Forest Avenue – Mr. Cramer will be making a public statement in reference to that application so the applicants are advised. Owen said he saw them pull up but maybe you would want to hear the 15-minute presentation. Geoff said he was informed Mr. Starkey attorney for the applicant RALCO was going to be at the meeting tonight to make a few remarks before Geoff delivers his legal opinion. Neil said we will hear the informal presentation first then.

<u>15-MINUTE PRESENTATION – RON LANGELL</u> – 56 Union Avenue, LLC – Block: 81 – Lot: 57.01 – Zone: B-1 – Addition of apartments over the existing building. Geoff swore in Ronald Langell, 1210 Tecumsuh Place, Wall Twsp., NJ. He is not represented by his attorney tonight. He had his Architect, Darren Vickery, 139 Hopewell Road, Hopewell, NJ. They are here to get feedback from the Board for expansion of development for this

property. The Architect gave his description of what they are proposing to do. They want to add five (5) two-bedroom apartments above the existing one-story portion of the building. And also cosmetically improve the look of the building. The plans also show two apartments on the back portion of the building, and two apartments existing on the other side of the building. He had a graphic that showed five (5) proposed apartments with a common corridor that connects the existing apartments and the proposed apartments and each apartment is at least 800 square-feet, two (2) bedrooms. They will architecturally make the building appear as if the apartments have always been part of the architecture. Currently there are four (4) apartments and they are proposing nine (9). Business, there are six (6). He had plans which he put on an easel to explain the proposal to the Board members. They are proposing an elevator and would have to update the existing apartments to provide egress windows. If they add additional apartments the existing apartments bedrooms would not have egress windows. Kevin asked how many parking spaces they have. Ron Langell answered 21 on premise and one of their tenants who abut their property has 14 spaces, but that has nothing to do with this project. Neil asked the height of the building. The Architect said approximately 30-feet, once they finish the plans they will not exceed 40-feet. Neil said he asked Greg Love who is a member of the Board and a representative of the Environmental Commission to take a look at this building and how the parking would be configured. He has some questions as to how you are going to put this all together with the impact on that stream. Greg said he originally thought they were going to encroach closer to the little stream that runs behind the property. Although that area in the back he would like to see it cleaned up, there seems to be a lot of debris and everything down in that stream area and how are you going to handle where the black top is now and then where the stone driveway area is going. Ron Langell said they are thinking about doing asphalt on the entire lot and grading it. He would still have 21 parking spaces. There is also public parking across the Street in the public square.
The Architect said the only additional design beside cosmetics is the front porch effect which adds a little bit of footprint, but if that turns out to be not acceptable we could adjust the architecture to still have the same aesthetic. Greg asked how many studio apartments they will have when it's all constructed and how many two-bedroom apartments. The Architect said seven (7) two-bedroom, one (1) single bedroom and one (1) three bedroom apartments. Neil asked if they calculated how many parking spaces they will need. The Architect said he calculated (18) for the apartments and (32) plus or minus for the office spaces. Neil said so you are short overall. You need (50) spaces and you have (21). Neil said being this is informal they are only allowed 15-minutes, he asked the Board for comments. It was the consensus of the Board that they are short on parking, they are not even close. The Board felt the building would be a great aesthetic improvement to the #71 corridor. Owen said the deficiency as it exists for your parking would certainly be an impediment for you seeking approval before this Board. They may want to cut back on the apartment sizes. If he does make an agreement with Mr. Wright he would need to know the agreement runs with the land and that would impact his sale price. Neil said you have an idea of what the Board feels, you would need to work on the parking deficiency and get all his DEP issues involved with that stream for any paving or buffering you are going to do in the back that there are no impact there, no Environmental issues.

<u>APPLICATION #46-2014</u> – RALCO – Major Subdivision carried from 5/5/15 – 49 Forest Avenue – Chairman Hamilton told Mr. Starkey his Architect doesn't need to set anything up until the Board gets Mr. Cramer's statement. Mr. Cramer told Mr. Starkey he has an opinion to give but Mr. Starkey could certainly have a presentation. Mr. Starkey said there has been two letters from Tim Middleton, Esq. and Mr. Starkey wrote two letters of response to those letters. The topic that needs to be addressed right now is the suggestion that a Use Variance is needed in this case which if that were correct would effectively put a halt on our application and everything we have done up to date. The objection is that cemeteries are not a permitted use in the R-2 Zone under the Manasquan Zoning Ordinance and because of that when our application is to carve out a piece of that property for residential use, that would arguably intensify the cemetery use. The response to that, this cemetery has been operating since 1876. The State Legislature has taken action adopting the State Cemetery Act to say that any Ordinances adopted by Municipalities such as R-2 here, is ineffective and void, it's pre-empted by State Law. Mr. Starkey read from a Resolution of 2005 where it stated the issue of a Use Variance came up and Mr. Cramer drafted a Resolution, this Board adopted it. It read page 2 chapter 6 "However, unlike other land use applications there is no legal requirement for the Applicants to obtain a use variance in the context of an existing cemetery association that has been established for a great many years as in the instant case." In 2005 you made the right decision and we should be able to rely on that. I understand Mr. Cramer will give you a legal opinion on his findings following the objector's letters and my follow-up letters. We filed our application 6 months ago, we have been through two (2) full hearings, countless hours, expenditures of time and money by my client, his professionals by this Board, by your professionals. What I ask this Board to do tonight, because we have put in all our evidence for a fully conforming subdivision with no variances, I am asking for a vote on our subdivision application. An up or down vote. If you make a decision on this and we are wrong and the objector is right, my client is at risk and he knows that. If this goes to Superior Court and it's overturned, my client is at risk. He is willing to take that risk. I am asking to give us a vote tonight and render a decision and add just one additional fact. Neil said the concern he had when he spoke to Mr. Cramer and also Owen McCarthy involved in the discussion, our concern is we didn't want to open this tonight to have a hearing, if you are going to have a hearing, we are not the Law Judge, you have to take this out to Freehold and you have to get a Land Use Law Judge to decide who is right or wrong, if you want to take that course of action. I did hear you say if you are asking this Board tonight if we want to grant the subdivision for those five properties, I'm sure we could accommodate that, at least you know what our feeling is. Our understanding was we had no option to deny this application as initially proposed to us. If you are asking that comment to give you some direction I'm sure we could accommodate that. But, we're not going to go back and forth here Mr. Middleton, Mr. Cramer is going to make his statements as to his feelings and he is going to come out and tell you what his feelings are and if it does not accommodate you to proceed on then this case is right now going to be stopped until you follow the directions of Mr. Cramer and we will re-hear it at another time, if you so choose. Mr. Starkey said he thinks what we have here is a pure legal issue. Neil said he would ask this Board right now if they are in favor of granting a five (5) lot subdivision for Residential homes. Chairman Hamilton asked the Board to verbally comment yes or no on this matter. Geoff said if he is asking for a poll, he can do that. Mr.

Middleton said he doesn't believe the Board has jurisdiction, but if it did proceed he will cross-examine their witnesses. Neil said right now we are relying on our Legal Attorney as our expert and he is going to guide this Board. Mr. Starkey said I agree with no cross-examination. Owen McCarthy said for the record, we should note that there has been multiple communications both from Mr. Starkey and Mr. Middleton and those should be incorporated and reference those for the record in case either side chooses to pursue their rights to appeal. The submissions he sees, first May 27, 2015, two submissions from Mr. Middleton, followed by June 1, 2015. Mr. Starkey, you responded on May 29, 2015 and June 2, 2015, two submissions will be incorporated those submissions for the record so if there is any further appeal, your legal arguments and your communication to this Board will be part of the record. Mr. Cramer said that the quality and content of Mr. Starkey's and Mr. Middleton's submissions were very, very good and with that said he proceeded with his opinion. Geoff Cramer read his statement:

"LEGAL OPINION DELIVERED BY PLANNING BOARD ATTORNEY OF THE BOROUGH OF MANASQUAN AT THE PUBLIC MEETING OF JUNE 3, 2015 WITH REGARD TO RALCO BUILDERS, LLC – MAJOR SUBDIVISION APPLICATION

The board has before it the development application of Ralco Builders, LLC/OCLAR Properties, LLC seeking approval of a five lot major subdivision on property known as Lot 1 in Block 29 on Forest Avenue in the R-2 Residential Zone.

Each lot would have 5,000 square feet.

Variances were originally requested from lot frontage and rear yard setback requirements of the Zoning Ordinance and seeking waivers from various development requirements.

The Applicant has not requested a use variance or interpretation as to whether a use variance is required.

The parent lot (i.e. the lot from which the five lots will be subdivided) has approximately two acres. It is presently the site of a cemetery with a mausoleum previously the subject of an application made to and approved by this Board.

In fact, the Applicant's property to be subdivided is part of a much larger cemetery, most of which is located in neighboring Wall Township.

The application, if approved, would result in the elimination of the wooded buffer that separates Applicant's mausoleum from Forest Avenue and screens the view of that mausoleum for residential properties along Forest Avenue.

The cemetery use is not a permitted use in the R-2 Zone. It is, in fact, a non-conforming use in the R-2 Zone. The subdivision would, if approved, significantly reduce the size of the Applicant's cemetery as it presently exists in the Borough of Manasquan. That reduction of the lot area and elimination of the buffer is not insignificant or di minimus and under the holding in the Razberry's Inc. vs. Kingswood Township case (a 1991 Appellate Division case) would reduce the cemetery size resulting in an expansion or intensification of the cemetery use on the remaining property requiring a use variance for which no application has been made or notice provided.

It is my opinion as the Board's legal counsel, that the Board has no jurisdiction to continue to hear this subject application until Applicants: 1) Amend their development application to request an interpretation that no use variance is required, and in the event that the Board does not agree with that interpretation, requesting use variance relief. 2) Pay the fee for use variance application and any additional escrows that might be required.

3) Re-notifies all property owners within 200-feet of the application as amended and re-publishes notice of the amended application."
Neil said it is Mr. Cramer's opinion that this is a Use Variance, so as he said we have no jurisdiction to continue. We can no longer hear this case, you can re-file. Geoff asked Mr. Starkey if he would be amending. Mr. Starkey said that's a decision he would have to take up with his client to determine what course of action they will take next.

<u>APPLICATION #21-2015</u> – Plaine, Mary – 368 First Avenue – 369 Beachfront – Block: 185 – Lot: 28 – Zone: R-4 – Keith Henderson is the attorney representing the applicant. The Board accepted jurisdiction on this application. Geoff Cramer swore in three witnesses: Leon Maes – owner/applicant, Taras Dobusz – Architect, Robert Van Wickle – Builder. Mr. Henderson called Mr. Maes first to testify. He stated the buildings were built in 1928; his parents purchased the dwellings in 1949 and moved down here permanently in 1963. The purchased the land from the American Timber Company when it became available in the mid '80's. At the present time there is one dwelling on the lot; one was destroyed in Super Storm Sandy. The one at 369 Beachfront was destroyed. The Town ordered them to demolish the building following the Storm. The purpose of the present application is to build a 2 ½-story single-family dwelling. The previous house was not conforming to the building or FEMA Codes. It was built in a 1920 cottage design. A Survey prepared by George Edwards, dated February 3, 1991 was marked Exhibit A-1. Following the Storm they had a second Survey prepared by William Fiore, dated 4/10/2014 marked as Exhibit A-2 which depicts the property conditions after the hurricane. They also had a photograph of the photograph pre-Sandy which depicts conditions prior to Sandy that was marked Exhibit A-3. Next witness called was the Architect, Taras Dobuz, he gave his background and the Board accepted his credentials. He gave his testimony citing the deficiencies and proposed variance relief. The lot is also an odd shaped lot, not quite a rectangle. It is a very narrow lot. The eliminated the lot coverage variance request. Al Yodakis explained to the Board that he does agree with what the architect just stated. There is a front setback variance requested, they are proposing side yard setback variance on the north. They are also proposing a height variance. The BFE here is 14-feet. The proposed height is 36-feet. Lenny questioned the height and the need to be 3-feet over the BFE. Bob Young asked the height of the ceilings. The architect said 9-foot on the first floor and 8-foot on the second floor. Keith said that concludes the applicant's testimony, he next wanted to discuss the variances. He said this lot is just a tiny bit under on conformity, it's 1.92% short of being conforming. It's also on the Whiting Avenue ramp. It's in keeping with the other properties in the area. We are not asking for 38-feet which we would be allowed to have if we were conforming. The half story is a very minimal thing. The Boardwalk itself is at 14 there so we'd be raised just a moderate level over that to the first floor elevation. We are asking for a 2-foot variance and only one dormer variance. Neil asked about the parking. Keith said they can accommodate two cars in the garage and two in driveway. TRC said maybe you could slide that structure back slightly so the front stairs don't go right to the Borough property line, you have a lot of rear yard separation. The architect said they are already pulling the stairs into the deck, two treads back and we will have an 6-inch step from the first floor elevation to the deck. Lenny said he thinks we can get a little bit of height back. Keith said if you compare the percentage difference of deficiency of lot size with the percentage difference between 38 and 36, that's very reasonable request with a lot

that size. You have two houses next to each other, one is on a lot this size and the other is on a lot 80-feet bigger and you don't allow some allowance for that closeness, you will have one house at 38-feet and the other at 33-feet, 5-feet difference, just because an 80-square foot difference in lot size, that's not a reasonable approach to look at it, that's his opinion. Owen said this is a minor case where it is a minor difference, there are other cases where the difference is more significant and then we heard the reverse that people have to be able to build, so there are two sides to that coin. In this case it would benefit this applicant, but there are other applicant's that have been in front of this Board, some of your clients on other matters where it wasn't 80-square feet, it was a larger amount. Keith said you also have a vacant 30-foot right-of-way next door to this which takes away from that problem. Bob Young asked if the applicant would try to lower it by a foot. Al Yodakis went over the rest of his report, utilities, landscaping, curb and sidewalk, parking, the 3-foot walkway, the 80-foot storage, they have addressed all the comments in the Engineer's report. Owen asked if the half-story would be used for living space and the height of that area. The builder said the height of the ceiling is at 7.6-feet. Owen said height is obviously a concern, I saw what was there first hand and the home did sustain significant damage, the concern of the Board is the height and if the half-story is just for storage would you be willing to lower that to 7-feet. Keith said if 6-inches would help we will find a way to get it. Don't forget if you lower the pitch of the roof we could make this go away but you would have an ugly looking house. Neil asked Lenny if 6-inches would be ok for him and he said no. Paul said he is 98.5% compliant in the lot size, that's almost Ivory soap, so he is ok with it. Kevin said he is ok with the height based on the fact that they have the ramp with no house right next to them, that's a factor. Kevin made a motion to open the meeting to the public, seconded by Owen McCarthy, all in favor none opposed.

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

<u>Pat Chesnaky</u> – 379 First Avenue – She is across the Street from Mary's house, she feels what they came up with will really make a good Beachfront property and will be an asset to the neighborhood.

<u>Mary Lou Bird</u> – 367 Beachfront – She said Mary Plaine is her neighbor, her only question is how far above her house will their house be. She did not know her elevation, she didn't get a drop in her house during Sandy, she said they got the worst of it. And, also how much further towards the Beach will their house be. The Board said it's not going to be closer; it will be where the old house was. The builder said in the front probably about 4-feet up, because the lot slopes downhill toward the back. Almost the same as what it was. Mrs. Bird asked if the porch would go out further. She was told no.

<u>Ed Romenko</u> – 369 First Avenue – He heard what was said today and has no concerns at all, he knows the builder builds very nice homes. Mary has spoken to him about her new home she wants to build and he thinks it's all positive and the Board should approve it. He feels it is a reasonable request.

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

Robert Young asked about the existing wall on the property and if that would remain. Mary Plaine said yes it would remain.

Mr. Henderson gave his closing statement.

Kevin Thompson made a motion to approve the application as stated, he is ok with 36-feet but if the rest of the Board want the 6-inch reduction in height, but he says the full 36-feet,

Owen McCarthy seconded the motion, he would rather see some type of roof line instead of them cutting the roof and making it flat. He thinks the amount the lot is smaller is somewhat minimal, there is the Whiting Ramp next to the house so it will not dwarf an adjoining property owner. We have heard statements from three (3) neighbors in the area who had no objection, so subject to the stipulations of Mr. Henderson to the comments to our Engineer he seconded the application.
<u>Board Members Voting Yes</u>:
Paul Rabenda, Councilman McCarthy, Kevin Thompson, Neil Hamilton
<u>Board Members Voting No</u>:
Greg Love, Leonard Sullivan, Mark Apostolou, Robert Young
Keith Henderson asked the Chairman if the Board would consider it the applicant will agree to a one-foot reduction, which would reduce it to 35-feet only two feet over what is already permitted for an undersized lot, significantly undersized compared to what we have here.
Geoff Cramer said the Board would have to make a motion. Kevin made a motion to go to 35-feet, Owen seconded it. Lenny said how can you do that. Keith said what would you do? Have the applicant re-apply. Mr. Cramer said legally you had a hearing, you had a presentation, you had a motion and a second and the Board was divided four/four, that's a technical denial. Mark Apostolou said he doesn't know how you can do that. Geoff said it's not race judicata because they can come back with a different, separate application that might fly. Mark said he thinks we are setting a dangerous precedent if we change our minds; there are by-laws that allow for other technicalities, that's his own personal opinion. There was a lot of discussion about the procedure for the applicant to return to the Board. Neil said under the circumstances, the application has failed. Keith said he will make the motion but before he goes through all this could we have a show of hands if the Board would entertain 35-feet. Geoff said the only people you have to hear from are the people who voted no. They can choose to make their feelings known or be silent. Neil asked if they would entertain 35-feet, Lenny said 34-feet, Mark agreed as did Bob Young.
APPLICATION DENIED

<u>APPLICATION #24-2015</u> – Fattell, Victoria – 573 Main Street – Block: 178 – Lot: 27 – Zone: RPM – East side setback, Bulk Variance – Neil Hamilton said the only variance requested is 3.67-foot side yard setback. The current structure was demolished following the Storm and a new home will be built. Geoff Cramer found the file to be in order and accepted jurisdiction. He swore in Victoria Fattell, owner/applicant and Mark Heary, builder. The builder gave the presentation, they are proposing a two-story, single-family home, and the only change is the East side of the property where they need a variance for 3.67-feet. They received a copy of the TRC report and as noted there is concern for parking at the front of the property and Ms. Fattell has agreed to move the house forward and remove all front yard parking and only have parking in the rear. The parking will be accessed from Second Avenue. Neil said this application is de minimus and he asked the Board if they have any comments or questions. The air conditioning units will be in the rear. They will be using concrete for their driveway. The plot plan shows the concrete driveway in the front, this will be re-drawn to show it in the rear of the house. A curb cut exists on Second Avenue, none exists in the front. Councilman McCarthy made a motion to open the meeting to the public; Mark Apostolou seconded the motion, all in favor none

opposed. There was no public participation. The builder gave his closing statement with the variance requested and the stipulations. Mark Apostolou made a motion to close the public portion, the motion was seconded by Owen McCarthy, all in favor none opposed. Councilman McCarthy made a motion to approve the application as proposed, Kevin Thompson seconded the motion.
<u>Board Members Voting Yes</u>:
Paul Rabenda, Owen McCarthy, Greg Love, Leonard Sullivan, Mark Apostolou, Kevin Thompson, Robert Young and Neil Hamilton.
APPLICATION APPROVED

Neil advised the Board members to hold onto their RALCO paperwork.

Mark Apostolou asked if the Board should have a closed session meeting to discuss the By-Laws. Neil said this is something that does need to be reviewed and adjusted. Neil suggested that every Board member get a copy of the By-Laws for review prior to discussion.

Kevin Thompson made a motion to open the meeting to the public, seconded by Owen McCarthy, all in favor none opposed.
<u>Audience Members Coming Forward</u>:
Andrew Marcucci – 37 N Main Street – He said about four (4) years ago this Body approved a subdivision for the property on Atlantic Avenue where the Dairy Queen Complex is and one of the Board's conditions was that the plantings on Atlantic Avenue would be high enough to block the headlights in their parking lot. He said this is not happening and asked the Board to look into it. Kevin said he wants to see the Resolution, he will also talk to the person at the County who will give him input on this issue. Owen McCarthy said this has been looked at many times by numerous Code Officials. This has gone to Court and the Judge sent it back to the Board. The Board said they would ask the Code Department to look into this again.

Neil asked the Board for a vote to cancel the second meeting of June, Kevin made a motion, seconded by Leonard Sullivan, all in favor none opposed.

Kevin made a motion to adjourn the meeting, seconded by Leonard Sullivan, all in favor none opposed.
MEETING ADJOURNED AT 8:51PM

Respectfully Submitted,

Mary C. Salerno
Planning Board Secretary